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Vernon's Texas Statutes 1948
Volume 1

Revised Civil Statutes
Rules of Civil Procedure

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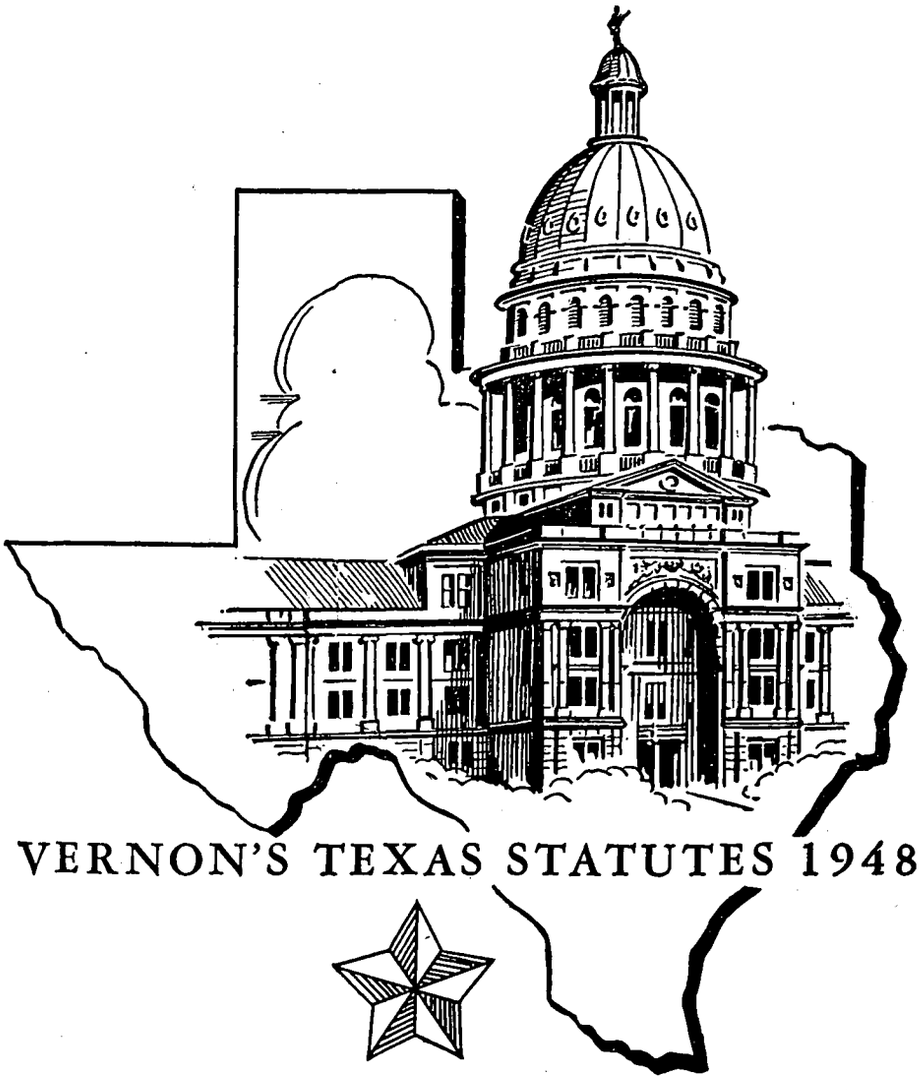

VERNON'S TEXAS STATUTES 1948

DEPARTMENT OF STATE

AUSTIN, TEXAS

August 16, 1948

I, PAUL H. BROWN, SECRETARY OF STATE, of the State of Texas, do hereby certify that the text of the laws appearing in

VERNON'S TEXAS STATUTES 1948

is found, by comparison with the original, which is now on file in this office, to be a true and correct copy of the REVISED CIVIL AND CRIMINAL STATUTES of 1925, and of subsequent acts to January 1, 1948, as published by this office, except where otherwise stated in the notes.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this 16th day of August, A.D., 1948.

Paul H. Brown

Secretary of State

VERNON'S
TEXAS STATUTES
1948

Containing

All Laws of a General and Permanent Nature
to the End of the 50th Legislature,
Regular Session, 1947

With

Texas Rules of Civil Procedure

COMPLETE INDEX and TABLES

Volume 1

Revised Civil Statutes
Rules of Civil Procedure

KANSAS CITY, MO.
VERNON LAW BOOK COMPANY

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VERNON'S TEXAS STATUTES 1948

This revised and up-to-date Edition of Vernon's Texas Statutes includes the general and permanent laws in force and effect to date of publication.

The classification and arrangement of the laws is based upon the Revised Civil and Criminal Statutes of 1925 and is identical with that of Vernon's Annotated Texas Statutes which, for more than two decades, has promptly and dependably served every requirement of the Bench and Bar of Texas. The user of these convenient volumes, therefore, may trace any textual article in this Edition to the same article in Vernon's Annotated Texas Statutes, where a vast storehouse of historical data and judicial constructions and interpretations may be found.

The detailed Index and Tables make the text of the law quickly accessible.

Certification

The Secretary of State has caused his Certificate of Authenticity to be attached under the Seal of the State of Texas.

Rules of Civil Procedure

For the first time in any compilation of State laws, the text of the Rules of Civil Procedure as amended is included in conjunction with the Revised Civil Statutes. The judicial constructions and interpretations of the Rules and the interpretive advisory opinions, together with valuable historical data, appear under the same classification and arrangement as in Vernon's Texas Rules of Civil Procedure.

Acknowledgment

Grateful acknowledgment is made to the Hon. Paul H. Brown, Secretary of State, for his courtesy and cooperation in the course of verification of the text of the laws. Appreciative acknowledgment is, likewise, made to the many members of the Bench and Bar of Texas for their practical suggestions offered in the preparation of this Edition.

THE PUBLISHER

October, 1948.

Cite This Book by Article

Vernon's Texas St. 1948, Art. ——

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SUPREME COURT

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C. H. CAVNESS	State Auditor	San Antonio

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of the 50th Legislature

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PRESIDENT PRO TEMPORE - - - - - - - - - - - - - - T. C. Chadick

ACTING SECRETARY OF THE SENATE - - - - - - - - Mrs. Loyce M. Bell

Name	County	District
Aikin, A. M., Jr.	Paris	8
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HOUSE OF REPRESENTATIVES

of the 50th Legislature

SPEAKER - W. O. Reed

CHIEF CLERK - - - - - - - - - - - - - - - - - - Clarence Jones

Name	County	District
Abington, W. H. (Bill)	Fort Worth	101–2
Aynesworth, J. K.	Waco	97–2
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Bean, Woodrow W.	Ysleta	90f
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CONSTITUTION OF THE UNITED STATES

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not. when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] [1] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

[1] See Amendments XIV, XVI, post.

Section. 3. [The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.] [1]

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.] [1]

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

[1] See Amendment XVII, post.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.] [1]

[1] See Amendment XX, post.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for

more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of

the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of Congress, gress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of the Conlay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

Section. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress may by Law provide for the Case of Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.] [1]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress: but no Senator or Representative, or Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

[1] See Amendment XII, post.

Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III.

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in

such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth. In witness whereof We have hereunto subscribed our Names,

Go: WASHINGTON—Presidt.
and deputy from Virginia

New Hampshire	JOHN LANGDON NICHOLAS GILMAN
Massachusetts	NATHANIEL GORHAM RUFUS KING
Connecticut	WM: SAML. JOHNSON ROGER SHERMAN

New York . .	ALEXANDER HAMILTON
New Jersey	WIL: LIVINGSTON DAVID BREARLEY. WM. PATERSON. JONA: DAYTON
Pennsylvania	B FRANKLIN THOMAS MIFFLIN ROBT MORRIS GEO. CLYMER THOS. FITZSIMONS JARED INGERSOLL JAMES WILSON GOUV MORRIS
Delaware	GEO: READ GUNNING BEDFORD jun JOHN DICKINSON RICHARD BASSETT JACO: BROOM
Maryland	JAMES MCHENRY DAN OF ST THOS. JENIFER DANL CARROLL
Virginia	JOHN BLAIR— JAMES MADISON JR.
North Carolina	WM. BLOUNT RICHD. DOBBS SPAIGHT. HU WILLIAMSON
South Carolina	J. RUTLEDGE CHARLES COTESWORTH PINCKNEY CHARLES PINCKNEY PIERCE BUTLER.
Georgia	WILLIAM FEW ABR BALDWIN

In Convention Monday, September 17th 1787.

Present

The States of

New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved,

That the preceding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled. Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the Unanimous Order of the Convention

GO: WASHINGTON Presidt.

W. JACKSON Secretary.

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.[a]

AMENDMENT [I.][b]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

a In Dillon v. Gloss, 256 U.S. 368, 41 S.Ct. 510, 65 L.Ed. 994 [1921], the Supreme Court stated that it would take judicial notice of the date on which a State ratified a proposed constitutional amendment. Accordingly the Court consulted the State journals to determine the dates on which each house of the legislature of certain States ratified the 18th Amendment. It, therefore, follows that the date on which the governor approved the ratification, or the date on which the secretary of state of a given State certified the ratification, or the date on which the Secretary of State of the United States received a copy of said certificate, or the date on which he proclaimed that the amendment had been ratified are not controlling. Hence, the ratification date given in the following notes is the date on which the legislature of a given State approved the particular amendment (signature by the speaker or presiding officers of both houses being considered a part of the ratification of the "legislature"). When that date is not available, the date given is that on which it was approved by the governor or certified by the secretary of state of the particular State. In each case such fact has been noted. Except as otherwise indicated information as to ratification is based on data supplied by the Department of State.

b Brackets enclosing an amendment number indicate that the number was not specifically assigned in the resolution proposing the amendment. It will be seen, accordingly, that only amendments XIII, XIV, XV and XVI were thus technically ratified by number. The first 10 amendments along with 2 others which failed of ratification were proposed by Congress on September 25, 1789, when they passed the Senate [1 Ann.Cong. (1st Cong., 1st sess.) 90], having previously passed the House on September 24 [*Id.*, 948]. They appear officially in 1 Stat. 97. Ratification was completed on December 15, 1791, when the eleventh State (Virginia) approved these amendments, there being then 14 States in the Union.

The several State legislatures ratified the first 10 amendments to the Constitution (i. e. nos. 3 to 12 of those proposed) on the following dates: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; New York, February 27, 1790; Pennsylvania, March 10, 1790; Rhode Island, June 7, 1790; Vermont, November 3, 1791; Virginia, December 15, 1791. The two amendments which failed of ratification (i. e. nos. 1 and 2 of those proposed) prescribed the ratio of representation to population in the House, and specified that no law varying the compensation of members of Congress should be effective until after an intervening election of Representatives. The first was ratified by 10 States (1 short of the requisite number) and the second by 6 States [2 Doc. Hist. Const., 325–390]. (Constitution of United States of America 1938, Library of Congress, Legislative Reference Service.)

AMENDMENT [II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT [III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT [IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT [V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT [VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT [VII.]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT [VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT [IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT [X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT [XI.]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT [XII.]

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

AMENDMENT XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President

and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

AMENDMENT [XVII.]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT [XVIII.]

Repealed. See Amendment XXI, post.

AMENDMENT [XIX.]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT [XX.]

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SEC. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SEC. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SEC. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SEC. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SEC. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

AMENDMENT [XXI.]

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SEC. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

ARTICLE ——

§ 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

§ 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.

Proposed by the Sixty-Eighth Congress on June 2, 1924.

ARTICLE ——

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.

But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

SEC. 2. This Article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Proposed by the Eightieth Congress, First Session, and deposited in the Department of State on March 24, 1947.

The Unanimous Declaration of Independence

made by the

Delegates of the People of Texas

in General Convention
at the Town of Washington
on the 2nd day of March 1836

When a government has ceased to protect the lives, liberty and property of the people, from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted; and, so far from being a guarantee for the enjoyment of those inestimable and inalienable rights, becomes an instrument in the hands of evil rulers for their oppression: When the Federal Republican Constitution of their country, which they have sworn to support, no longer has a substantial existence, and the whole nature of their government has been forcibly changed, without their consent, from a restricted federative republic, composed of Sovereign States, to a Consolidated, Central, military despotism in which every interest is disregarded but that of the army and the priesthood — both the eternal enemies of civil liberty, the ever-ready minions of power, and the usual instruments of tyrants: When, long after the spirit of the Constitution has departed, moderation is, at length, so far lost, by those in power that even the semblance of freedom is removed, and the forms themselves, of the Constitution discontinued; and so far from their petitions and remonstrances being regarded the agents who bear them are thrown into dungeons; and mercenary armies sent forth to force a new government upon them at the point of the bayonet: When in consequence of such acts of malfeasance and abdication, on the part of the government, Anarchy prevails, and Civil Society is dissolved into its original elements: In such a crisis, the first law of nature, the right of self-preservation — the inherent and inalienable right of the people to appeal to first principles and take their political affairs into their own hands in extreme cases — enjoins it as a right towards themselves and a sacred obligation to their posterity to abolish such government and create another, in its stead, calculated to rescue them from impending dangers, and to secure their future welfare and happiness.

Nations, as well as individuals, are amenable for their acts to the public opinion of mankind. A statement of a part of our grievances is, therefore, submitted to an impartial world, in justification of the hazardous but unavoidable step now taken of

severing our political connection with the Mexican people, and assuming an independent attitude among the nations of the earth.

The Mexican government, by its colonization laws, invited and induced the Anglo-American population of Texas to colonize its wilderness under the pledged faith of a written Constitution that they should continue to enjoy that constitutional liberty and republican government to which they had been habituated in the land of their birth, the United States of America. In this expectation they have been cruelly disappointed, inasmuch as the Mexican nation has acquiesced in the late changes made in the government by General Antonia Lopoez de Santa Anna, who, having overturned the Constitution of his Country, now offers us the cruel alternative either to abandon our homes, acquired by so many privations, or submit to the most intolerable of all tyrrany, the combined despotism of the sword and the priesthood.

It has sacrificed our welfare to the state of Coahuila, by which our interests have been continually depressed through a jealous and partial course of legislation carried on at a far distant seat of government, by a hostile majority, in an unknown tongue; and this too, notwithstanding we have petitioned in the humblest terms, for the establishment of a separate State Government, and have, in accordance with the provisions of the national Constitution, presented to the general Congress a republican Constitution which was, without just cause contemptuously rejected.

It incarcerated in a dungeon, for a long time, one of our citizens, for no other cause but a zealous endeavor to procure the acceptance of our Constitution and the establishment of a State Government.

It has failed and refused to secure on a firm basis, the right of trial by jury; that palladium of civil liberty, and only safe guarantee for the life, liberty, and property of the Citizen.

It has failed to establish any public system of education, although possessed of almost boundless resources (the public domain) and, although, it is an axiom, in political science, that unless a people are educated and enlightened it is idle to expect the continuance of civil liberty, or the capacity for self government.

It has suffered the military commandants stationed among us to exercise arbitrary acts of oppression and tyrrany; thus trampling upon the most sacred rights of the citizen and rendering the military superior to the civil power.

It has dissolved by force of arms, the State Congress of Coahuila and Texas, and obliged our representatives to fly for their lives from the seat of government; thus depriving us of the fundamental political right of representation.

It has demanded the surrender of a number of our citizens, and ordered military detachments to seize and carry them into the Interior for trial, in contempt of the civil authorities, and in defiance of the laws and the Constitution.

It has made piratical attacks upon our commerce, by commissioning foreign desperadoes, and authorizing them to seize our vessels, and convey the property of our citizens to far distant ports for confiscation.

It denies us the right of worshipping the Allmighty according to the dictates of our own conscience; by the support of a national religion calculated to promote the

temporal interest of its human functionaries rather than the glory of the true and living God.

It has demanded us to deliver up our arms, which are essential to our defence, the rightful property of freemen, and formidable only to tyrranical governments.

It has invaded our country, both by sea and by land, with intent to lay waste our territory and drive us from our homes; and has now a large mercenary army advancing to carry on against us a war of extermination.

It has, through its emisaries, incited the merciless savage, with the tomahawk and scalping knife, to massacre the inhabitants of our defenceless frontiers.

It hath been, during the whole time of our connection with it, the contemptible sport and victim of successive military revolutions; and hath continually exhibited every characteristic of a weak, corrupt, and tyrranical government.

These, and other grievances, were patiently borne by the people of Texas untill they reached that point at which forbearance ceased to be a virtue. We then took up arms in defence of the national Constitution. We appealed to our Mexican brethren for assistance. Our appeal has been made in vain. Though months have elapsed, no sympathetic response has yet been heard from the Interior. We are, therefore, forced to the melancholy conclusion that the Mexican people have acquiesced in the destruction of their liberty, and the substitution therefor of a military government — that they are unfit to be free and incapable of self government.

The necessity of self-preservation, therefore, now decrees our eternal political separation.

We, therefore, the delegates, with plenary powers, of the people of Texas, in solemn convention assembled, appealing to a candid world for the necessities of our condition, do hereby resolve and declare that our political connection with the Mexican nation has forever ended; and that the people of Texas do now constitute a free sovereign and independent republic, and are fully invested with all the rights and attributes which properly belong to independent nations; and, conscious of the rectitude of our intentions, we fearlessly and confidently commit the issue to the decision of the Supreme Arbiter of the destinies of nations.

Richard Ellis President
of the Convention & Delegate
from Red River
Charles B Stewart
J. W. Robinson
Edwin Waller
Thos Barnett
Asa Brigham

John S. D. Byrom

Franco Ruiz

J. Antonio Navarro

Jesse B. Badgett

Wm D. Lacey

William Menefee

Jno Kinchey

Mathew Caldwell

William Motley

Lorenzo de Zavala

Stephen H. Everitt

Geo W. Smyth

Elijah Stapp

Claiborne West

Tho B Scates

M. B. Menard

A. B. Hardin

J. W. Burton

Thos J. Gazley

R. M. Coleman

Sterling C. Robertson

Geo. C. Childress

Bailey Hardeman

Rob Potter

Thomas Jefferson Rusk

Chas. B. Taylor

John S. Roberts

Robert Hamilton

Collin McKinney

Albert H. Latimer

James Gowen

J. Wm. D. Cottle Jr

David Thomas

Edw. Conrad

Martin Parmer

Edwin O. Legrand

Stephen H. Blount

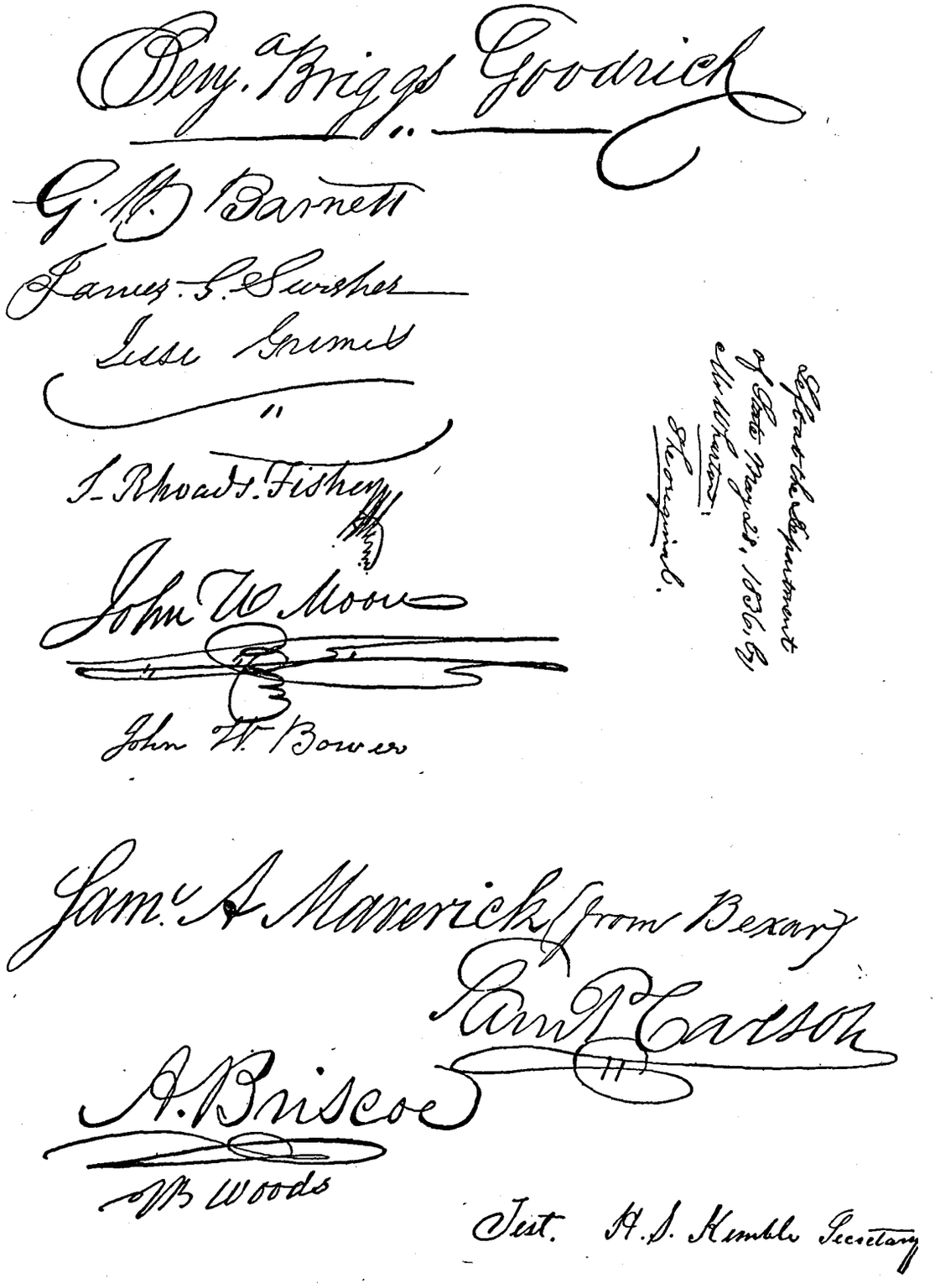
Jas. G. Swisher

Wm Clark Jr

Sydney O. Pennington

Wm. Carroll Crawford

Jno Turner



I, M. E. Sandlin, Assistant Secretary of State, of the State of Texas, do hereby certify that the foregoing is a true and correct copy of the unanimous declaration of independence made by the delegates of the people of Texas in general convention at the town of Washington on the 2nd day of March 1836.

Official Seal
State of Texas
April, 1936

(Signed) M. E. SANDLIN,
Assistant Secretary of State

CONSTITUTION
OF THE STATE OF TEXAS
WITH AMENDMENTS

PREAMBLE

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.

ARTICLE I

BILL OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Section 1. Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Sec. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Sec. 3. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Sec. 4. No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Sec. 5. No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Sec. 6. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Sec. 7. No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Sec. 8. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Sec. 9. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Sec. 10. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. (Adopted election Nov. 5, 1918.)

Sec. 11. All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Sec. 12. The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Sec. 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Sec. 14. No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

Sec. 15. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury. (Adopted election Aug. 24, 1935.)

Sec. 16. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts shall be made.

Sec. 17. No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Sec. 18. No person shall ever be imprisoned for debt.

Sec. 19. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Sec. 20. No citizen shall be outlawed, nor shall any person be transported out of the State for any offence committed within the same.

Sec. 21. No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Sec. 22. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Sec. 23. Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Sec. 24. The military shall at all times be subordinate to the civil authority.

Sec. 25. No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 26. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Sec. 27. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Sec. 28. No power of suspending laws in this State shall be exercised except by the Legislature.

Sec. 29. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II

THE POWERS OF GOVERNMENT

Section 1. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

ARTICLE III

LEGISLATIVE DEPARTMENT

Section 1. The Legislative power of this State shall be vested in a Senate and House of Representatives, which together shall be styled "The Legislature of the State of Texas."

Sec. 2. The Senate shall consist of thirty-one members, and shall never be increased above this number. The House of Representatives shall consist of ninety-three members until the first apportionment after the adoption of this Constitution, when or at any apportionment thereafter, the number of Representatives may be increased by the Legislature, upon the ratio of not more than one Representative for every fifteen thousand inhabitants; provided, the number of Representatives shall never exceed one hundred and fifty.

Sec. 3. The Senators shall be chosen by the qualified electors for the term of four years; but a new Senate shall be chosen after every apportionment, and the Senators elected after each apportionment shall be divided by lot into two classes. The seats of the Senators of the first class shall be vacated at the expiration of the first two years, and those of the second class at the expiration of four years, so that one half of the Senators shall be chosen biennially thereafter.

Sec. 4. The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of their election.

Sec. 5. The Legislature shall meet every two years at such time as may be provided by law and at other times when convened by the Governor. When convened in regular Session, the first thirty days thereof shall be devoted to the introduction of bills and resolutions, acting upon emergency appropriations, passing upon the confirmation of the recess appointees of the Governor and such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided that during the succeeding thirty days of the regular session of the Legislature the various committees of each House shall hold hearings to consider all bills and resolutions and other matters then pending; and such emergency matters as may be submitted by the Governor; provided further that during the following sixty days the Legislature shall act upon such bills and resolutions as may be then pending and upon such emergency matters as may be submitted by the Governor in special messages to the Legislature; provided however, either House may otherwise determine its order of business by an affirmative vote of four-fifths of its membership. (Adopted election Nov. 4, 1930.)

See Vernon's Ann.Civ.St. art. 5429, note, for text of rules.

Sec. 6. No person shall be a Senator, unless he be a citizen of the United States, and, at the time of his election a qualified elector of this State, and shall have been a resident of this State five years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-six years.

Sec. 7. No person shall be a Representative, unless he be a citizen of the United States, and, at the time of his election, a qualified elector of this State, and shall have been a resident of this State two years next preceding his election, the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-one years.

Sec. 8. Each House shall be the judge of the qualifications and election of its own members; but contested elections shall be determined in such manner as shall be provided by law.

Sec. 9. The Senate shall, at the beginning and close of each session, and at such other times as may be necessary, elect one of its members President pro tempore, who shall perform the duties of the Lieutenant Governor in any case of absence or disability of that officer, and whenever the said office of Lieutenant Governor shall be vacant. The House of Representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a Speaker from its own members; and each House shall choose its other officers.

Sec. 10. Two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn

from day to day, and compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Sec. 11. Each House may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offence.

Sec. 12. Each House shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either House on any question shall, at the desire of any three members present, be entered on the journals.

Sec. 13. When vacancies occur in either House, the Governor, or the person exercising the power of the Governor, shall issue writs of election to fill such vacancies; and should the Governor fail to issue a writ of election to fill any such vacancy within twenty days after it occurs, the returning officer of the district in which such vacancy may have happened, shall be authorized to order an election for that purpose.

Sec. 14. Senators and Representatives shall, except in cases of treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened.

Sec. 15. Each House may punish, by imprisonment, during its sessions, any person not a member, for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings; provided, such imprisonment shall not, at any one time, exceed forty-eight hours.

Sec. 16. The sessions of each House shall be open, except the Senate when in Executive session.

Sec. 17. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the Legislature may be sitting.

Sec. 18. No Senator or Representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this State, which shall have been created, or the emoluments of which may have been increased during such term; no member of either House shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made, in whole or in part, by either branch of the Legislature; and no member of either House shall vote for any other member for any office whatever, which may be filled by a vote of the Legislature, except in such cases as are in this Constitution provided. Nor shall any member of the Legislature be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the term for which he shall have been elected.

Sec. 19. No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature.

Sec. 20. No person who at any time may have been a collector of taxes, or who may have been otherwise entrusted with public money, shall be eligible to the Legislature, or to any office of profit or trust under the State government, until he shall have obtained a discharge for the amount of such collections, or for all public moneys with which he may have been entrusted.

Sec. 21. No member shall be questioned in any other place for words spoken in debate in either House.

Sec. 22. A member who has a personal or private interest in any measure or bill, proposed, or pending before the Legislature, shall disclose the fact to the House, of which he is a member, and shall not vote thereon.

Sec. 23. If any Senator or Representative remove his residence from the district or county for which he was elected, his office shall thereby become vacant, and the vacancy shall be filled as provided in section 13 of this article.

Precede Sec. 24. The Legislature is authorized to appropriate so much money as may be necessary, not to exceed Seventy-five Thousand ($75,000.00) Dollars, to pay claims incurred by John Tarleton Agricultural College for the construction of a building on the campus of such college pursuant to deficiency authorization by the Governor of Texas on August 31, 1937. (Adopted election Nov. 5, 1946.)

Appropriation. Acts 1947, 50th Leg., p. 96, ch. 65, in accordance with this constitutional amendment, appropriated $74,933.11 to pay deficiency appropriations granted by the Governor to pay claims incurred in construction of building mentioned.

Sec. 24. Members of the Legislature shall receive from the public Treasury a per diem of not exceeding $10.00 per day for the first 120 days of each session and after that not exceeding $5.00 per day for the remainder of the session.

In addition to the per diem the members of each House shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not exceed $2.50 for every 25 miles, the distance to be computed by the nearest and most direct route of travel, from a table of distance prepared by the Comptroller to each county seat now or hereafter to be established; no member to be entitled to mileage for any extra session that may be called within one day after the adjournment of a regular or called session. (Adopted election Nov. 4, 1930.)

Sec. 25. The State shall be divided into Senatorial Districts of contiguous territory according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one Senator; and no single county shall be entitled to more than one Senator.

Sec. 26. The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties.

Sec. 26a. Provided however, that no county shall be entitled to or have under any apportionment more than seven (7) Representatives unless the population of such county shall exceed seven hundred thousand (700,000) people as ascertained by the most recent United States Census, in which event such county shall be entitled to one additional Representative for each one hundred thousand (100,000) population in excess of seven hundred thousand (700,000) population as shown by the latest United States Census; nor shall any district be created which would permit any county to have more than seven (7) Representatives except under the conditions set forth above. (Adopted election Nov. 3, 1936.)

Sec. 27. Elections for Senators and Representatives shall be general throughout the State, and shall be regulated by law.

Sec. 28. The Legislature shall, at its first session after the publication of each United States decennial census, apportion the State into Senatorial and Representative districts, agreeably to the provisions of sections 25 and 26 of this Article; and until the next decennial census, when the first apportionment shall be made by the Legislature, the State

shall be, and it is hereby divided into Senatorial and Representative districts as provided by an ordinance of the Convention on that subject.

Proceedings

Sec. 29. The enacting clause of all laws shall be: "Be it enacted by the Legislature of the State of Texas."

Sec. 30. No law shall be passed, except by bill, and no bill shall be so amended in its passage through either House, as to change its original purpose.

Sec. 31. Bills may originate in either House, and, when passed by such House, may be amended altered or rejected by the other.

Sec. 32. No bill shall have the force of a law, until it has been read on three several days in each House, and free discussion allowed thereon; but in cases of imperative public necessity (which necessity shall be stated in a preamble or in the body of the bill) four-fifths of the House, in which the bill may be pending, may suspend this rule, the yeas and nays being taken on the question of suspension, and entered upon the journals.

Sec. 33. All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

Sec. 34. After a bill has been considered and defeated by either House of the Legislature, no bill containing the same substance, shall be passed into a law during the same session. After a resolution has been acted on and defeated, no resolution containing the same substance, shall be considered at the same session.

Sec. 35. No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed.

Sec. 36. No law shall be revived or amended by reference to its title; but in such case the act revived, or the section or sections amended, shall be re-enacted and published at length.

Sec. 37. No bill shall be considered, unless it has been first referred to a committee and reported thereon, and no bill shall be passed which has not been presented and referred to and reported from a committee at least three days before the final adjournment of the Legislature.

Sec. 38. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read before signing; and the fact of signing shall be entered on the journals.

Sec. 39. No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals.

Sec. 40. When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.

Sec. 41. In all elections by the Senate and House of Representatives, jointly or separately, the vote shall be given viva voce, except in the election of their officers.

Requirements and Limitations

Sec. 42. The Legislature shall pass such laws as may be necessary to carry into effect the provisions of this Constitution.

Sec. 43. The first session of the Legislature under this Constitution shall provide for revising, digesting and publishing the laws, civil and criminal; and a like revision, digest and publication may be made every ten years thereafter; provided, that in the adoption of and giving effect to any such digest or revision, the Legislature shall not be limited by sections 35 and 36 of this Article.

Sec. 44. The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law.

Sec. 45. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law; and the Legislature shall pass laws for that purpose.

Sec. 46. The Legislature shall, at its first session after the adoption of this Constitution, enact effective vagrant laws.

Sec. 47. The Legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this State, as well as the sale of tickets in lotteries, gift enterprises or other evasions involving the lottery principle, established or existing in other States.

Sec. 48. The Legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

The payment of all interest upon the bonded debt of the State;

The erection and repairs of Public Buildings;

The benefit of the sinking fund, which shall not be more than two per centum of the public debt; and for the payment of the present floating debt of the State, including matured bonds for the payment of which the sinking fund is inadequate.

The support of public schools, in which shall be included colleges and universities established by the State; and the maintenance and support of the Agricultural and Mechanical College of Texas.

The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employees of the State Government, and all incidental expenses connected therewith.

The support of the Blind Asylum, the Deaf and Dumb Asylum and the Insane Asylum; the State Cemetery and the public grounds of the State:

The enforcement of quarantine regulations on the coast of Texas;

The protection of the frontier.

Sec. 48a. In addition to the powers given to the Legislature, under Section 48 of Article III, it shall have the right to levy taxes to provide a Retirement Fund for persons employed in public schools, colleges and universities, supported wholly or partly by the State; provided that the amount contributed by the State to such Retirement Fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time five per centum of the compensation paid to each such person by the State, and/or school districts, and shall in no one year exceed the sum of One Hundred Eighty ($180.00) Dollars for any such per-

son; provided no person shall be eligible for a pension under this Amendment who has not taught twenty years in the State of Texas, but shall be entitled to a refund of the moneys paid into the fund.

All funds provided from the compensation of said persons, or by the State of Texas, for such Retirement Fund, as are received by the Treasury of the State of Texas, shall be invested in bonds of the United States, the State of Texas, or counties or cities of this State, or in bonds issued by any agency of the United States Government, the payment of the principal of and interest on which is guaranteed by the United States; provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amounts that may become due each year under such retirement plan as may be provided by law; and provided that the recipients of such retirement fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless such retirement fund, contributed by the State, is released to the State of Texas as a condition to receiving such other pension aid. (Adopted election Nov. 3, 1936.)

Sec. 49. No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt; and the debt created to supply deficiencies in the revenue, shall never exceed in the aggregate at any one time two hundred thousand dollars.

Sec. 49a. It shall be the duty of the Comptroller of Public Accounts in advance of each Regular Session of the Legislature to prepare and submit to the Governor and to the Legislature upon its convening a statement under oath showing fully the financial condition of the State Treasury at the close of the last fiscal period and an estimate of the probable receipts and disbursements for the then current fiscal year. There shall also be contained in said statement an itemized estimate of the anticipated revenue based on the laws then in effect that will be received by and for the State from all sources showing the fund accounts to be credited during the succeeding biennium and said statement shall contain such other information as may be required by law. Supplemental statements shall be submitted at any Special Session of the Legislature and at such other times as may be necessary to show probable changes.

From and after January 1, 1945, save in the case of emergency and imperative public necessity and with a four-fifths vote of the total membership of each House, no appropriation in excess of the cash and anticipated revenue of the funds from which such appropriation is to be made shall be valid. From and after January 1, 1945, no bill containing an appropriation shall be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts endorses his certificate thereon showing that the amount appropriated is within the amount estimated to be available in the affected funds. When the Comptroller finds an appropriation bill exceeds the estimated revenue he shall endorse such finding thereon and return to the House in which same originated. Such information shall be immediately made known to both the House of Representatives and the Senate and the necessary steps shall be taken to bring such appropriation to within the revenue, either by providing additional revenue or reducing the appropriation.

For the purpose of financing the outstanding obligations of the General Revenue Fund of the State and placing its current accounts on a cash basis the Legislature of the State of Texas is hereby authorized to provide for the issuance, sale, and retirement of serial bonds, equal in principal to the total outstanding, valid, and approved obligations owing by said fund on September 1, 1943, provided such bonds shall not draw interest in excess of two (2) per cent per annum and shall mature within twenty (20) years from date. (Adopted election Nov. 3, 1942.)

Sec. 49-b. There is hereby created a Board to be known as the Veteran's Land Board, which shall be composed of the Governor, the Attorney General, and the Commissioner of the General Land Office. The Legislature shall provide by law for the issuance by said Board of not to exceed Twenty-five Million Dollars ($25,000,000) in bonds or obligations of the State of Texas for the purpose of creating a fund to be known as the Veteran's Land Fund. Such bonds shall be executed by said Board as an obligation of the State of Texas in such form, denominations, and upon such terms as shall be prescribed by law, provided, however, that said bonds shall bear a rate of interest not to exceed three per cent (3%) per annum.

In the sale of any such bonds a preferential right of purchase shall be given to the administrators of the various teacher retirement funds, the Permanent University Funds, and the Permanent Free School Funds; such bonds to be issued only as needed, in the opinion of the Veteran's Land Board under legislative authorization.

The Veteran's Land Fund shall be used by the Board for the sole purpose of purchasing lands suitable for the purpose hereinafter stated, situated in this State (a) owned by the United States, or any governmental agency thereof; (b) owned by the Texas Prison System, or any other governmental agency of the State of Texas; or (c) owned by any person, firm, or corporation.

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

The lands of the Veteran's Land Fund shall be sold by the State to Texas Veterans of the present war or wars, commonly known as World War II, in such quantities, and on such terms, and at such prices and such rates of interest, and under such rules and regulations as may be prescribed by law; provided, however, that any such lands remaining unsold at the expiration of eight (8) years after the effective date of this Amendment may be sold to anyone as shall be prescribed by law.

All moneys received and which have been received and which have not been used for repurchase of land as provided herein by the Veteran's Land Board from the sale of lands and for interest on deferred payments shall be credited to the Veteran's Land Fund for use in purchasing additional lands to be sold to Texas Veterans of World War II, in like manner as shall be provided for the sale of lands purchased with the proceeds from the sales of the bonds, provided for herein, for a period of eight (8) years from the effective date of this Amendment; provided, however, that so much of such moneys as may be necessary to pay interest on the bonds herein provided for shall be set aside for that purpose. After eight (8) years from the effective date of this Amendment, all moneys received by the Veteran's Land Board from the sale of the lands and interest on deferred payments, or so much thereof as may be necessary, shall be set aside for the retirement of said bonds and to pay interest thereon, and any of such moneys not so needed shall be deposited to the credit of the General Revenue Fund to be appropriated to such purposes as may be prescribed by law. (Adopted election Nov. 5, 1946.)

Sec. 50. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

Sec. 51. The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; provided,

however, the Legislature may grant aid to indigent and disabled Confederate soldiers and sailors under such regulations and limitations as may be deemed by the Legislature as expedient, and to their widows in indigent circumstances under such regulations and limitations as may be deemed by the Legislature as expedient; to indigent and disabled soldiers, who, under special laws of the State of Texas, during the war between the States, served in organizations for the protection of the frontier against Indian raids or Mexican marauders, and to indigent and disabled soldiers of the militia who were in active service during the war between the States, and to the widows of such soldiers who are in indigent circumstances, and who are or may be eligible to receive aid under such regulations and limitations as may be deemed by the Legislature as expedient; and also grant for the establishment and maintenance of a home for said soldiers and sailors, their wives and widows and women who aided in the Confederacy, under such regulations and limitations as may be provided for by law; provided the Legislature may provide for husband and wife to remain together in the home. There is hereby levied in addition to all other taxes heretofore permitted by the Constitution of Texas, a State ad valorem tax on property of seven ($.07) cents on the one hundred ($100) dollars valuation for the purpose of creating a special fund for the payment of pensions for services in the Confederate army and navy, frontier organizations and the militia of the State of Texas, and for the widows of such soldiers serving in said armies, navies, organizations or militia; provided that the Legislature may reduce the tax rate herein levied, and provided further, that the provisions of this section shall not be construed so as to prevent the grant of aid in cases of public calamity. (Adopted election Nov. 6, 1928.)

Sec. 51a. The Legislature shall have the power, by general laws to provide, subject to limitations and restrictions herein contained, and such other limitations, restrictions and regulations as may by the Legislature be deemed expedient for assistance to, and for the payment of assistance to:

(1) Needy aged persons who are actual bona fide citizens of Texas and who are over the age of sixty-five (65) years; provided that no such assistance shall be paid to any inmate of any State supported institution, while such inmate, or to any person who shall not have actually resided in Texas for at least five (5) years during the nine (9) years immediately preceding the application for such assistance and continuously for one (1) year immediately preceding such application; provided that the maximum payment per month from State funds shall not be more than Twenty Dollars ($20) per month.

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

(3) Needy children who are actual bona fide citizens of Texas and are under the age of sixteen (16) years; provided that no such assistance shall be paid on account of any child over one (1) year old who has not continuously resided in Texas for one (1) year immediately preceding the application for such assistance, or on account of any child under the age of one (1) year whose mother has not continuously resided in Texas for one (1) year immediately preceding such application.

The Legislature shall have the authority to accept from the Federal Government of the United States such financial aid for the assistance of the needy aged, needy blind, and needy children as such Government may offer not inconsistent with restrictions herein set forth; provided however that the amount of such assistance out of State funds to each person assisted shall never exceed the amount so expended out of Federal Funds; and, provided further that the total amount of money to be expended out of State funds for such assistance to the needy aged, needy blind, and needy children shall never exceed the sum of Thirty-five Million Dollars ($35,000,000) per year. (Adopted election Aug. 25, 1945.)

Proposed by House Joint Resolution No. 13, Acts 1945, 49th Leg., p. 1047, which provided that "Sections 51a, 51b, 51c and 51d of Article III of the Constitution of the State of Texas be amended and the same are hereby amended so that the same shall hereafter consist of one section to be numbered 51a, which shall read as follows:"

Secs. 51-b to 51-d.

These sections, adopted at elections Aug. 24, 1935 and Aug. 23, 1937, were amended and consolidated into section 51a of this article by amendment adopted at election Aug. 25, 1945. See section 51a and note thereunder.

Sec. 51-e. Each incorporated city and town in this State shall have the power and authority to provide a system of retirement and disability pensions for its appointive officers and employees who have become disabled as a direct and proximate result of the performance of their duties, or have passed their sixty-fifth birthday, or have been employed by such city or town for more than twenty-five (25) years and have passed their sixtieth birthday, when and if, but only when and if, such system has been approved at an election by the qualified voters of such city or town entitled to vote on the question of issuance of tax supported bonds; provided that no city or town shall contribute more than the equivalent of seven and one half (7½) per centum of salaries and wages of the officers and employees entitled to participate in its pension system, and that said officers and employees shall contribute a like amount; and this Amendment shall not reduce the authority nor duty of any city or town otherwise existing. (Adopted election Nov. 7, 1944.)

Sec. 51-f. The Legislature of this State shall have the authority to provide for a system of retirement and disability pensions for appointive officers and employees of cities and towns to operate Statewide or by districts under such a plan and program as the Legislature shall direct and shall provide that participation therein by cities and towns shall be voluntary; provided that the Legislature shall never make an appropriation to pay any of the cost of any system authorized by this Section. (Adopted election Nov. 7, 1944.)

Sec. 52. The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of vatue [value] in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company; provided, however, that under legislative provision any county, any political subdivision of a county, any number of adjoining counties, or any political subdivision of the State, or any defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include, towns, villages or municipal corporations, upon a vote of a two thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same, for the following purposes to wit:

(a) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof or irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purposes of irrigation, drainage or navigation, or in aid thereof.

(c) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof. (Adopted election November 8, 1904; proclamation December 29, 1904.)

Sec. 52d. Upon the vote of a majority of the resident qualified electors owning rendered taxable property therein so authorizing, a county or road district may collect an annual tax for a period not exceeding five (5) years to create a fund for constructing lasting and permanent roads and bridges or both. No contract involving the expenditure of any of such fund shall be valid unless, when it is made, money shall be on hand in such fund.

At such election, the Commissioners' Court shall submit for adoption a road plan and designate the amount of special tax to be levied; the number of years said tax is to be levied; the location, description, and character of the roads and bridges; and the estimated cost thereof. The funds raised by such taxes shall not be used for purposes other than those specified in the plan submitted to the voters. Elections may be held from time to time to extend or discontinue said plan or to increase or diminish said tax. The Legislature shall enact laws prescribing the procedure hereunder.

The provisions of this section shall apply only to Harris County and road districts therein. (Adopted election Aug. 23, 1937.)

Sec. 53. The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law.

Sec. 54. The Legislature shall have no power to release or alienate any lien held by the State upon any railroad, or in any wise change the tenor or meaning, or pass any act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

Sec. 55. The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years. (Adopted election Nov. 8, 1932.)

Sec. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

The creation, extension or impairing of liens;

Regulating the affairs of counties, cities, towns, wards or school districts;

Changing the names of persons or places;

Changing the venue in civil or criminal cases;

Authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;

Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;

Vacating roads, town plats, streets or alleys;

Relating to cemeteries, grave-yards or public grounds not of the State;

Authorizing the adoption or legitimation of children;

Locating or changing county seats;

Incorporating cities, towns or villages, or changing their charters;

For the opening and conducting of elections, or fixing or changing the places of voting;

Granting divorces;

Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;

Changing the law of descent or succession;

Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

Fixing the rate of interest;

Affecting the estates of minors, or persons under disability;

Remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

Exempting property from taxation;

Regulating labor, trade, mining and manufacturing;

Declaring any named person of age;

Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

Giving effect to informal or invalid wills or deeds;

Summoning or empannelling grand or petit juries;

For limitation of civil or criminal actions;

For incorporating railroads or other works of internal improvements;

And in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities.

Sec. 57. No local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the Legislature, before such act shall be passed.

Sec. 58. The Legislature shall hold its sessions at the City of Austin, which is hereby declared to be the seat of government.

Sec. 59. The Legislature shall have power to pass such laws as may be necessary to provide for Workmen's Compensation Insurance for such State employees, as in its judgment is necessary or required; and to provide for the payment of all costs, charges, and premiums on such policies of insurance; providing the State shall never be required to purchase insurance for any employee. (Adopted election Nov. 3, 1936.)

ARTICLE IV

EXECUTIVE DEPARTMENT

Section 1. The Executive Department of the State shall consist of a Governor, who shall be the Chief Executive Officer of the State, a Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, and Attorney General.

Sec. 2. All the above officers of the Executive Department (except Secretary of State) shall be elected by the qualified voters of the State at the time and places of election for members of the Legislature.

Sec. 3. The returns of every election for said executive officers, until otherwise provided by law, shall be made out, sealed up, and transmitted by the returning officers prescribed by law, to the seat of Government, directed to the Secretary of State, who shall deliver the same to the Speaker of the House of Representatives, as soon as the Speaker shall be chosen, and the said Speaker shall, during the first week of the session of the Legislature, open and publish them in the presence of both Houses of the Legislature. The person, voted for at said election, having the highest number of votes for each of said offices respectively, and being constitutionally eligible, shall be declared by the Speaker, under sanction of the Legislature, to be elected to said office. But, if two or more persons shall have the highest and an equal number of votes for either of said offices, one of them shall be immediately chosen to such office by joint vote of both Houses of the Legislature. Contested elections for either of said offices, shall be determined by both Houses of the Legislature in joint session.

Sec. 4. The Governor shall be installed on the first Tuesday after the organization of the Legislature, or as soon thereafter as practicable, and shall hold his office for the term of two years, or until his successor shall be duly installed. He shall be at least thirty years of age, a citizen of the United States, and shall have resided in this State at least five years immediately preceding his election.

Sec. 5. The Governor shall, at stated times, receive as compensation for his services an annual salary of Twelve Thousand ($12,000.00) Dollars and no more, and shall have the use and occupation of the Governor's Mansion, fixtures and furniture; provided that the amendment shall not become effective until the third Tuesday in January, 1937. (Adopted election Nov. 3, 1936.)

Sec. 6. During the time he holds the office of Governor, he shall not hold any other office: civil, military or corporate; nor shall he practice any profession, and receive compensation, reward, fee, or the promise thereof for the same; nor receive any salary, reward or compensation or the promise thereof from any person or corporation, for any service rendered or performed during the time he is Governor, or to be thereafter rendered or performed.

Sec. 7. He shall be Commander-in-Chief of the military forces of the State, except when they are called into actual service of the United States. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, repel invasions, and protect the frontier from hostile incursions by Indians or other predatory bands.

Sec. 8. The Governor may, on extraordinary occasions, convene the Legislature at the seat of Government, or at a different place, in case that should be in possession of the public enemy or in case of the prevalence of disease thereat. His proclamation therefor shall state specifically the purpose for which the Legislature is convened.

Sec. 9. The Governor shall, at the commencement of each session of the Legislature, and at the close of his term of office, give to the Legislature information, by message, of the condition of the State; and he shall recommend to the Legislature such measures as he may deem expedient. He shall account to the Legislature for all public moneys received and paid out by him, from any funds subject to his order, with vouchers; and shall accompany his message with a statement of the same. And at the commencement of each regular session, he shall present estimates of the amount of money required to be raised by taxation for all purposes.

Sec. 10. He shall cause the laws to be faithfully executed and shall conduct, in person, or in such manner as shall be prescribed by law, all intercourse and business of the State with other States and with the United States.

Sec. 11. There is hereby created a Board of Pardons and Paroles, to be composed of three members, who shall have been resident citizens of the State of Texas for a period of not less than two years immediately preceding such appointment, each of whom shall hold office for a term of six years; provided that of the members of the first board appointed, one shall serve for two years, one for four years and one for six years from the first day of February, 1937, and they shall cast lots for their respective terms. One member of said Board shall be appointed by the Governor, one member by the Chief Justice of the Supreme Court of the State of Texas, and one member by the presiding Justice of the Court of Criminal Appeals; the appointments of all members of said Board shall be made with the advice and consent of two-thirds of the Senate present. Each vacancy shall be filled by the respective appointing power that theretofore made the appointment to such position and the appointive powers shall have the authority to make recess appointments until the convening of the Senate.

In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed thirty (30) days; and he shall have power to revoke paroles and conditional pardons. With the advice and consent of the Legislature, he may grant reprieves, commutations of punishment and pardons in cases of treason.

The Legislature shall have power to regulate procedure before the Board of Pardons and Paroles and shall require it to keep record of its actions and the reasons therefor, and shall have authority to enact parole laws. (Adopted election Nov. 3, 1936.)

Sec. 11A. The Courts of the State of Texas having original jurisdiction of criminal actions shall have the power, after conviction, to suspend the imposition or execution of sentence and to place the defendant upon probation and to reimpose such sentence, under such conditions as the Legislature may prescribe. (Adopted election Aug. 24, 1935.)

Sec. 12. All vacancies in State or district offices, except members of the Legislature, shall be filled unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the Senate present. If made during the recess of the Senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the Senate during the first ten days of its session. If rejected, said office shall immediately become vacant, and the Governor shall, without delay, make further nominations, until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the Senate; but may appoint some other person to fill the vacancy until the next session of the Senate or until the regular election to said office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter.

Sec. 13. During the session of the Legislature the Governor shall reside where its sessions are held, and at all other times at the seat of Government, except when by act of the Legislature, he may be required or authorized to reside elsewhere.

Sec. 14. Every bill which shall have passed both houses of the Legislature shall be presented to the Governor for his approval. If he approve he shall sign it; but if he disapprove it, he shall return it, with his objections, to the House in which it originated, which House shall enter the

objections at large upon its journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members present agree to pass the bill, it shall be sent, with the objections, to the other House, by which likewise it shall be reconsidered; and, if approved by two-thirds of the members of that House, it shall become a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor with his objections within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislature, by its adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of State and give notice thereof by public proclamation within twenty days after such adjournment. If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect. If the Legislature be in session, he shall transmit to the House in which the bill originated a copy of such statement and the items objected to shall be separately considered. If, on reconsideration, one or more of such items be approved by two-thirds of the members present of each House, the same shall be part of the law, notwithstanding the objections of the Governor. If any such bill, containing several items of appropriation, not having been presented to the Governor ten days (Sundays excepted) prior to adjournment, be in the hands of the Governor at the time of adjournment, he shall have twenty days from such adjournment within which to file objections to any items thereof and make proclamation of the same, and such item or items shall not take effect.

Sec. 15. Every order, resolution or vote to which the concurrence of both Houses of the Legislature may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect, shall be approved by him; or, being disapproved, shall be repassed by both Houses, and all the rules, provisions and limitations shall apply thereto as prescribed in the last preceding section in the case of a bill.

Sec. 16. There shall also be a Lieutenant Governor, who shall be chosen at every election for Governor by the same electors, in the same manner, continue in office for the same time, and possess the same qualifications. The electors shall distinguish for whom they vote as Governor and for whom as Lieutenant Governor. The Lieutenant Governor, shall by virtue of his office, be President of the Senate, and shall have, when in Committee of the Whole, a right to debate and vote on all questions; and when the Senate is equally divided to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the Governor to serve, or of his impeachment or absence from the State, the Lieutenant Governor shall exercise the powers and authority appertaining to the office of Governor until another be chosen at the periodical election, and be duly qualified; or until the Governor impeached, absent or disabled, shall be acquitted, return, or his disability be removed.

Sec. 17. If, during the vacancy in the office of Governor, the Lieutenant Governor should die, resign, refuse to serve, or be removed from office, or be unable to serve; or if he shall be impeached or absent from the State, the President of the Senate, for the time being, shall, in like manner, administer the Government until he shall be superseded by a Governor or Lieutenant Governor. The Lieutenant Governor shall, while he acts as President of the Senate, receive for his services the same compensation and mileage which shall be allowed to the members of the Senate, and no more; and during the time he administers the Government, as Governor, he shall receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. The President, for the time being, of the Senate, shall, during the time he administers the Government, receive in like manner the same compensation, which the Governor would have received had he been employed in the duties of his office.

Sec. 18. The Lieutenant Governor or President of the Senate succeeding to the office of Governor, shall, during the entire term to which he may succeed, be under all the restrictions and inhibitions imposed in this Constitution on the Governor.

Sec. 19. There shall be a Seal of the State which shall be kept by the Secretary of State, and used by him officially under the direction of the Governor. The Seal of the State shall be a star of five points encircled by olive and live oak branches, and the words "The State of Texas."

Sec. 20. All commissions shall be in the name and by the authority of the State of Texas, sealed with the State Seal, signed by the Governor and attested by the Secretary of State.

Sec. 21. There shall be a Secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall continue in office during the term of service of the Governor. He shall authenticate the publication of the laws, and keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the Legislature, or either House thereof, and shall perform such other duties as may be required of him by law. He shall receive for his services an annual salary of Six Thousand ($6,000.00) Dollars, and no more. (Adopted election Nov. 3, 1936.)

Sec. 22. The Attorney General shall hold office for two years and until his successor is duly qualified. He shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of government during his continuance in office. He shall receive for his services an annual salary of Ten Thousand ($10,000.00) Dollars, and no more. (Adopted election Nov. 3, 1936.)

Sec. 23. The Comptroller of Public Accounts, the Treasurer, and the Commissioner of the General Land Office shall each hold office for the term of two years and until his successor is qualified; receive an annual salary of Six Thousand ($6,000.00) Dollars, and no more; reside at the Capitol of the State during his continuance in office, and perform such duties as are or may be required by law. They and the Secretary of State shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this Section, or in his office, shall be paid, when received, into the State Treasury. (Adopted election Nov. 3, 1936.)

Sec. 24. An account shall be kept by the officers of the Executive Department, and by all officers and managers of State institutions, of all moneys and choses in action received and disbursed or otherwise disposed of by them, severally, from all sources, and for every service performed; and a semi-annual report thereof shall be made to the Governor under oath. The Governor may, at any time, require information in writing from any and all of said officers or managers, upon any subject relating to the duties, condition, management and expenses of their respective offices and institutions, which information shall

be required by the Governor under oath, and the Governor may also inspect their books, accounts, vouchers and public funds; and any officer or manager who, at any time, shall wilfully make a false report or give false information, shall be guilty of perjury, and so adjudged, and punished accordingly, and removed from office.

Sec. 25. The Legislature shall pass efficient laws facilitating the investigation of breaches of trust and duty by all custodians of public funds and providing for their suspension from office on reasonable cause shown, and for the appointment of temporary incumbents of their offices during such suspension.

Sec. 26. (a) The Secretary of State shall appoint a convenient number of Notaries Public for each county who shall perform such duties as now are or may be prescribed by law. The qualifications of Notaries Public shall be prescribed by law.

(b) Nothing herein shall affect the terms of office of Notaries Public who have qualified for the present term prior to the taking effect of this amendment.

(c) Should the Legislature enact an enabling law hereto in anticipation of the adoption of this amendment, such law shall not be invalid by reason of its anticipatory character. (Adopted election Nov. 5, 1940.)

ARTICLE V

JUDICIAL DEPARTMENT

Section 1. The judicial power of this State shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

The Criminal District Court of Galveston and Harris Counties shall continue with the district jurisdiction and organization now existing by law until otherwise provided by law.

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 2. The Supreme Court shall consist of a Chief Justice and eight Associate Justices, any five of whom shall constitute a quorum, and the concurrence of five shall be necessary to a decision of a case; provided, that when the business of the court may require, the court may sit in sections as designated by the court to hear argument of causes and to consider applications for writs of error or other preliminary matters. No person shall be eligible to the office of Chief Justice or Associate Justice of the Supreme Court unless he be, at the time of his election, a citizen of the United States and of this state, and unless he shall have attained the age of thirty-five years, and shall have been a practicing lawyer, or a lawyer and judge of a court of record together at least ten years. Said Justices shall be elected (three of them each two years) by the qualified voters of the state at a general election; shall hold their offices six years, or until their successors are elected and qualified; and shall each receive such compensation as shall be provided by law. In case of a vacancy in the office of any Justice of the Supreme Court, the Governor shall fill the vacancy until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. The Justices of the Supreme Court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution, and until their successors are elected and qualified. The Judges of the Commission of Appeals who may be in office at the time this amendment takes effect shall become Associate Justices of the Supreme Court and each shall continue in office as such Associate Justice of the Supreme Court until January 1st next preceding the expiration of the term to which he has been appointed and until his successor shall be elected and qualified. (Adopted election Aug. 25, 1945.)

Sec. 3. The Supreme Court shall have appellate jurisdiction only except as herein specified, which shall be co-extensive with the limits of the State. Its appellate jurisdiction shall extend to questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction under such restrictions and regulations as the Legislature may prescribe. Until otherwise provided by law the appellate jurisdiction of the Supreme Court shall extend to questions of law arising in the cases in the Courts of Civil Appeals in which the Judges of any Court of Civil Appeals may disagree, or where the several Courts of Civil Appeals may hold differently on the same question of law or where a statute of the State is held void. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may hereafter, be required by law, and he may hold his office for four years and shall be subject to removal by said court for good cause entered of record on the minutes of said court who shall receive such compensation as the Legislature may provide (Adopted election August 11, 1891; proclamation September 22, 1891.)

The sentence in the second paragraph which read "The Supreme Court shall sit for the transaction of business from the first Monday of October in each year until the last Saturday in June of the next year, inclusive at Capitol of the State," was repealed by amendment adopted at election Nov. 4, 1930. See section 3a.

Sec. 3a. The Supreme Court may sit at any time during the year at the seat of government for the transaction of business and each term thereof shall begin and end with each calendar year. (Adopted election Nov. 4, 1930.)

Sec. 3-b. The Legislature shall have the power to provide by law, for an appeal direct to the Supreme Court of this State from an order of any trial court granting or denying an interlocutory or permanent injunction on the grounds of the constitutionality or unconstitutionality of any statute of this State, or on the validity or invalidity of any administrative order issued by any state agency under any statute of this State. (Adopted election Nov. 5, 1940.)

Sec. 4. The Court of Criminal Appeals shall consist of three Judges, any two of whom shall constitute a quorum, and the concurrence of two Judges shall be necessary to a decision of said court. Said Judges shall have the same qualifications and receive the same salaries as the Judges of the Supreme Court. They shall be elected by the qualified voters of the State at a general election and shall hold their offices for a term of six years. In case of a vacancy in the office of a Judge of the Court of Criminal Appeals, the Governor shall fill such vacancy by appointment for the unexpired term.

The Judges of the Court of Appeals who may be in office at the time when this amendment takes effect shall continue in office until the expiration of their term of office un-

der the present Constitution and laws as Judges of the Court of Criminal Appeals. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 5. The Court of Criminal Appeals shall have appellate jurisdiction co-extensive with the limits of the State in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law.

The Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ of habeas corpus, and under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. The Court of Criminal Appeals shall have power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. The Court of Criminal Appeals shall sit for the transaction of business from the first Monday in October to the last Saturday of June in each year, at the State capital and two other places (or the capital city) if the Legislature shall hereafter so provide. The Court of Criminal Appeals shall appoint a clerk for each place at which it may sit and each clerk shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for four years unless sooner removed by the court for good cause entered of record on the minutes of said court. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 6. The Legislature shall as soon as practicable after the adoption of this amendment divide the State into not less than two nor more than three Supreme judicial districts and thereafter into such additional districts as the increase of population and business may require, and shall establish a Court of Civil Appeals in each of said districts, which shall consist of a Chief Justice and two Associate Justices, who shall have the qualifications as herein prescribed for Justices of the Supreme Court. Said Court of Civil Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all civil cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error.

Each of said Courts of Civil Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a [a] term of six years and shall receive for their services the sum of three thousand five hundred dollars per annum, until otherwise provided by law. Said courts shall have such other jurisdiction, original and appellate as may be prescribed by law. Each Court of Civil Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law.

Until the organization of the Courts of Civil Appeals and Criminal Appeals, as herein provided for, the jurisdiction, power and organization and location of the Supreme Court, the Court of Appeals and the Commission of Appeals shall continue as they were before the adoption of this amendment.

All civil cases which may be pending in the Court of Appeals shall as soon as practicable after the organization of the Courts of Civil Appeals be certified to, and the records thereof transmitted to the proper Courts of Civil Appeals to be decided by said courts. At the first session of the Supreme Court the Court of Criminal Appeals and such of [of] the Courts of Civil Appeals which may be hereafter created under this article after the first election of the Judges of such courts under this amendment. The terms of office of the Judges of each court shall be divided into three classes and the Justices thereof shall draw for the different classes. Those who shall draw class No. 1 shall hold their offices two years, those drawing class No. 2 shall hold their offices for four years and those who may draw class No. 3 shall hold their offices for six years, from the date of their election and until their successors are elected and qualified, and thereafter each of the said Judges shall hold his office for six years, as provided in this Constitution. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 7. The State shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law. For each district there shall be elected by the qualified voters thereof, at a general election, a judge, who shall be a citizen of the United States and of this State, who shall have been a practicing lawyer of this State or a judge of a court in this State, for four years next preceding his election, who shall have resided in the district in which he was elected for two years next preceding his election, who shall reside in his district during his term of office, who shall hold his office for the period of four years, and shall receive for his services an annual salary of two thousand five hundred dollars, until otherwise changed by law. He shall hold the regular terms of his court at the county seat of each county in his district at least twice in each year in such manner as may be prescribed by law. The Legislature shall have power by general or special laws to authorize the holding of special terms of the court or the holding of more than two terms in any county for the dispatch of business.

The Legislature shall also provide for the holding of District Court when the judge thereof is absent, or is from any cause disabled or disqualified from presiding.

The District Judges who may be in office when this amendment takes effect shall hold their offices until their respective terms shall expire under their present election or appointment. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 8. The District Court shall have original jurisdiction in all criminal cases of the grade of felony; in all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official misconduct; of all suits to recover damages for slander or defamation of character; of all suits for trial of title to land and for the enforcement of liens thereon; of all suits for the trial of the right of property levied upon by virtue of any writ of execution, sequestration or attachment when the property levied on shall be equal to or exceed in value five hundred dollars; of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars exclusive of interest; of contested elections, and said court and the judges thereof, shall have power to issue writs of habeas corpus, mandamus, injunction and certiorari, and all writs necessary to enforce their jurisdiction.

The District Court shall have appellate jurisdiction and general control in probate matters, over the County Court established in each county, for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators and guardians, and for the transaction of all business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians and minors under such regulations as may be prescribed by law. The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by law or this Constitution, and such other jurisdiction, original and appellate, as may be provided by law. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 9. There shall be a clerk for the District Court of each county, who shall be elected by the qualified voters for the State and county officers, and who shall hold his office for two years, subject to removal by information, or by

indictment of a grand jury, and conviction by a petit jury. In case of vacancy, the judge of the District Court shall have the power to appoint a clerk, who shall hold until the office can be filled by election.

Sec. 10. In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.

Sec. 11. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he shall have been counsel in the case. When the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals, or any member of either, shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes. When a judge of the District Court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law.

And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied and vacancies in their offices filled as may be prescribed by law. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 12. All judges of courts of this State, by virtue of their office,[1] be conservators of the peace throughout the State. The style of all writs and process shall be, "The State of Texas." All prosecutions shall be carried on in the name and by authority of the State of Texas, and shall conclude: "Against the peace and dignity of the State." (Adopted election August 11, 1891; proclamation September 22, 1891.)

[1] Word "shall" is apparently omitted.

Sec. 13. Grand and petit juries in the District Courts shall be composed of twelve men; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases, and in trials of criminal cases below the grade of felony in the District Courts, nine members of the jury, concurring, may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors not exceeding three, may die, or be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

Sec. 14. The Judicial Districts in this State and the time of holding the Courts therein are fixed by ordinance forming part of this Constitution, until otherwise provided by law.

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

Sec. 16. The County Court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices Court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed $200, and they shall have exclusive jurisdiction in all civil cases when the matter in controversy shall exceed in value $200, and not exceed $500, exclusive of interest, and concurrent jurisdiction with the District Court when the matter in controversy shall exceed $500, and not exceed $1,000, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases civil and criminal of which Justices Courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed $20, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from Justices Courts there shall be a trial de novo in the County Court, and appeals may be prosecuted from the final judgment rendered in such cases by the County Court, as well as all cases civil and criminal of which the County Court has exclusive or concurrent or original jurisdiction of civil appeals in civil cases to the Court of Civil Appeals and in such criminal cases to the Court of Criminal Appeals, with such exceptions and under such regulations as may be prescribed by law.

The County Court shall have the general jurisdiction of a Probate Court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law; and the County Court, or judge thereof, shall have power to issue writs of injunctions, mandamus and all writs necessary to the enforcement of the jurisdiction of said Court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the County Court, or any other Court or tribunal inferior to said Court. The County Court shall not have criminal jurisdiction in any county where there is a Criminal District Court, unless expressly conferred by law, and in such counties appeals from Justices Courts and other inferior courts and tribunals in criminal cases shall be to the Criminal District Court, under such regulations as may be prescribed by law; and in all such cases an appeal shall lie from such District Court to the Court of Criminal Appeals. When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 17. The County Court shall hold a term for civil business at least once in every two months, and shall dispose of probate business, either in term time or vacation as may be provided by law, and said court shall hold a term for criminal business once in every month as may be provided by law. Prosecutions may be commenced in said court by information filed by the county attorney, or by affidavit, as may be provided by law. Grand juries empanneled in the District Courts shall enquire into misdemeanors, and all indictments therefor returned into the District Courts shall forthwith be certified to the County Courts or other inferior courts, having jurisdiction to try them for trial; and if such indictment be quashed in the County, or other inferior court, the person charged, shall not be discharged if there is probable cause of guilt, but may be held by such court or magistrate to answer an information or affidavit. A jury in the County Court shall consist of six men; but no jury shall be empanneled to try a civil case unless demanded by one of the parties, who shall pay such jury fee therefor, in advance, as may be prescribed by law, unless he makes affidavit that he is unable to pay the same.

Sec. 18. Each organized county in the State now or hereafter existing, shall be divided from time to time, for the

convenience of the people, into precincts, not less than four and not more than eight. The present County Courts shall make the first division. Subsequent divisions shall be made by the Commissioner's Court, provided for by this Constitution. In each such precinct there shall be elected at each biennial election, one justice of the peace and one constable, each of whom shall hold his office for two years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8000 or more inhabitants, there shall be elected two justices of the peace. Each county shall in like manner be divided into four commissioners' precincts in each of which there shall be elected by the qualified voters thereof one county commissioner, who shall hold his office for two years and until his successor shall be elected and qualified. The county commissioners so chosen, with the county judge, as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.

Sec. 19. Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for two hundred dollars, and in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, of which exclusive original jurisdiction is not given to the District or County Courts; and such other jurisdiction, criminal and civil, as may be provided by law, under such regulations as may be prescribed by law; and appeals to the County Courts shall be allowed in all cases decided in Justices' Courts where the judgment is for more than twenty dollars exclusive of costs; and in all criminal cases under such regulations as may be prescribed by law. And the justices of the peace shall be ex officio notaries public. And they shall hold their courts at such times and places as may be provided by law.

Sec. 20. There shall be elected for each county, by the qualified voters, a county clerk, who shall hold his office for two years, who shall be clerk of the County and Commissioners' Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners' Court, until the next general election for county and State officers; provided, that in counties having a population of less than eight thousand persons there may be an election of a single clerk, who shall perform the duties of district and county clerks.

Sec. 21. A county attorney, for counties in which there is not a resident criminal district attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold his office for the term of two years. In case of vacancy the Commissioners' Court of the county shall have power to appoint a county attorney until the next general election. The county attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a district attorney, the respective duties of district attorneys and county attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of district attorneys in such districts, as may be deemed necessary, and make provision for the compensation of district attorneys, and county attorneys; provided, district attorneys shall receive an annual salary of five hundred dollars, to be paid by the State, and such fees, commissions and perquisites as may be provided by law. County attorneys shall receive as compensation only such fees, commissions and perquisites as may be prescribed by law.

Sec. 22. The Legislature shall have power, by local or general law, to increase, diminish or change the civil and criminal jurisdiction of County Courts; and in cases of any such change of jurisdiction, the Legislature shall also conform the jurisdiction of the other courts to such change.

Sec. 23. There shall be elected by the qualified voters of each county a sheriff, who shall hold his office for the term of two years, whose duties, and perquisites, and fees of office, shall be prescribed by the Legislature, and vacancies in whose office shall be filled by the Commissioners' Court until the next general election for county or State officers.

Sec. 24. County Judges, county attorneys, clerks of the District and County Courts, justices of the peace, constables, and other county officers, may be removed by the Judges of the District Courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing and the finding of its truth by a jury.

Sec. 25. The Supreme Court shall have power to make and establish rules of procedure not inconsistent with the laws of the State for the government of said court and the other courts of this State to expedite the dispatch of business therein. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 26. The State shall have no right of appeal in criminal cases.

Sec. 27. The Legislature shall, at its first session, provide for the transfer of all business, civil and criminal, pending in District Courts, over which jurisdiction is given by this Constitution to the County Courts, or other inferior courts, to such County or inferior courts, and for the trial or disposition of all such causes by such County or other inferior courts.

Sec. 28. Vacancies in the office of Judges of the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals and District Courts shall be filled by the Governor until the next succeeding general election; and vacancies in the office of County Judge and justices of the peace shall be filled by the Commissioners Court until the next general election for such offices. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 29. The County Court shall hold at least four terms for both civil and criminal business annually, as may be provided by the Legislature, or by the Commissioners' Court of the county under authority of law, and such other terms each year as may be fixed by the Commissioners' Court; provided, the Commissioners' Court of any county having fixed the times and number of terms of the County Court, shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation, under such regulation as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is or may be provided by law, and a jury therein shall consist of six men. Until otherwise provided, the terms of the County Court shall be held on the first Mondays in February, May, August and November, and may remain in session three weeks. (Adopted election August 14, 1883; proclamation September 25, 1883.)

ARTICLE VI

SUFFRAGE

Section 1. The following classes of persons shall not be allowed to vote in this State, to-wit:

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

Second: Idiots and lunatics.

Third: All paupers supported by any county.

Fourth: All persons convicted of any felony, subject to such exceptions as the Legislature may make.

Fifth: All soldiers, marines and seamen, employed in the service of the Army or Navy of the United States. Provided that this restriction shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, nor to retired officers of the United States Army, Navy,

and Marine Corps, and retired warrant officers and retired enlisted men of the United States Army, Navy, and Marine Corps. (Adopted election Nov. 8, 1932.)

Sec. 2. Every person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years and who shall be a citizen of the United States and who shall have resided in this State one year next preceding an election and the last six months within the district or county in which such person offers to vote, shall be deemed a qualified elector; provided, that electors living in any unorganized county may vote at any election precinct in the county to which such county is attached for judicial purposes; and provided further, that any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election. Or if said voter shall have lost or misplaced said tax receipt, he or she, as the case may be, shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner the wife may pay the poll tax of her husband and receive the receipt therefor. The Legislature may authorize absentee voting. And this provision of the Constitution shall be self-enacting without the necessity of further legislation. (Adopted election fourth Saturday in July, 1921.)

Sec. 2a. Nothing in this Constitution shall be construed to require any person, who at the time of the holding of an election hereinafter referred to is, or who, within eighteen months immediately prior to the time of holding any such election was, a member of the armed forces of the United States or of the Armed Force Reserve of the United States, or of any branch or component part of such armed forces or Armed Force Reserve, or the United States Maritime Service or the United States Merchant Marine, and who is otherwise a qualified voter under the laws and Constitution of this state, to pay a poll tax or to hold a receipt for any poll tax assessed against him, as a condition precedent to his right to vote in any election held under the authority of the laws of this state, during the time the United States is engaged in fighting a war, or within one year after the close of the calendar year in which said war is terminated.

Provided, however, that the foregoing provisions of this section do not confer the right to vote upon any person who is a member of the regular establishment of the United States Army, Navy, or Marine Corps; and provided further, that all persons in the armed forces of the United States, or the component branches thereof, not members of the regular establishment of the United States Army, Navy, or Marine Corps, are hereby declared not to be disqualified from voting by reason of any provision of sub-section "Fifth" of Section 1, of this Article. (Adopted election Aug. 25, 1945.)

Sec. 3. All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election, within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto.

Sec. 3a. When an election is held by any county, or any number of counties, or any political sub-division of the State, or any political sub-division of a county, or any defined district now or hereafter to be described and defined within the State and which may or may not include towns, villages or municipal corporations, or any city, town or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political sub-division, district, city, town or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence. (Adopted election Nov. 8, 1932.)

Sec. 4. In all elections by the people the vote shall be by ballot and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box and the Legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 5. Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

ARTICLE VII

EDUCATION

The Public Free Schools

Section 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Sec. 2. All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads or other corporations of any nature whatsoever; one half of the public domain of the State; and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public school fund.

Sec. 3. One-fourth of the revenue derived from the State occupation taxes and poll tax of one dollar on every inhabitant of the State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred ($100.00) dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school district[s] by general laws; and all such school districts may embrace parts of two or more counties, and the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public school or schools of such districts, whether such districts are [are] composed of territory wholly within a county or in parts of two or more counties, and the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified property tax paying voters of the district voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year one ($1.00) dollar on the one hundred dollars valuation of

the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law. (Adopted election November 2, 1926; proclamation January 20, 1927.)

Sec. 3a. Every school district heretofore formed, whether formed under the general law or by special act, and whether the territory embraced within its boundaries lies wholly within a single county or partly in two or more counties, is hereby declared to be, and from its formation to have been, a valid and lawful district.

All bonds heretofore issued by any such districts which have been approved by the Attorney General and registered by the Comptroller are hereby declared to be, and at the time of their issuance to have been, issued in conformity with the Constitution and laws of this State, and any and all such bonds are hereby in all things validated and declared to be valid and binding obligations upon the district or districts issuing the same.

Each such district is hereby authorized to, and shall, annually levy and collect an ad valorem tax sufficient to pay the interest on all such bonds and to provide a sinking fund sufficient to redeem the same at maturity, not to exceed such a rate as may be provided by law under other provisions of this Constitution.

And all trustees heretofore elected in districts made up from more than one county are hereby declared to have been duly elected, and shall be and are hereby named as trustees of their respective districts, with power to levy the taxes herein authorized until their successor shall be duly elected and qualified as is or may be provided by law. (Adopted election August 3, 1909, proclamation September 24, 1909.)

Sec. 4. The lands herein set apart to the Public Free School fund, shall be sold under such regulations, at such times, and on such terms as may be prescribed by law; and the Legislature shall not have power to grant any relief to purchasers thereof. The Comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the Board of Education herein provided for, in the bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the State shall be responsible for all investments. (Adopted election August 14, 1883; proclamation September 25, 1883.)

Sec. 5. The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, to which the Legislature may add not exceeding one per cent annually of the total value of the permanent school fund, such value to be ascertained by the Board of Education until otherwise provided by law, and the available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same, or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 6. All lands heretofore, or hereafter granted to the several counties of this State for educational purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners' Court of the county. Actual settlers residing on said lands, shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal shall be available fund. (Adopted election August 14, 1883; proclamation September 25, 1883.)

Sec. 6a. All agriculture or grazing school land mentioned in section 6 of this article owned by any county shall be subject to taxation except for State purposes to the same extent as lands privately owned. (Adopted election November 2, 1926; proclamation January 20, 1927.)

Sec. 7. Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

Sec. 8. The Legislature shall provide by law for a State Board of Education, whose members shall be appointed or elected in such manner and by such authority and shall serve for such terms as the Legislature shall prescribe not to exceed six years. The said board shall perform such duties as may be prescribed by law. (Adopted election Nov 6, 1928.)

Asylums

Sec. 9. All lands heretofore granted for the benefit of the Lunatic, Blind, Deaf and Dumb, and Orphan Asylums, together with such donations as may have been or may hereafter be made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said Asylums. And the Legislature may provide for the sale of the lands and the investment of the proceeds in manner as provided for the sale and investment of school lands in section 4 of this Article.

University

Sec. 10. The Legislature shall as soon as practicable establish, organize and provide for the maintenance, support and direction of a University of the first class, to be located by a vote of the people of this State, and styled, "The University of Texas", for the promotion of literature, and the arts and sciences, including an Agricultural, and Mechanical department.

Sec. 11. In order to enable the Legislature to perform the duties set forth in the foregoing Section, it is hereby declared all lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas, together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the State of Texas, or from any other source, except donations limited to specific purposes, shall constitute and become a Permanent University Fund. And the same as realized and received into the Treasury of the State (together with such sums belonging to the Fund, as may now be in the Treasury), shall be invested in bonds of the United States, the State of Texas, or counties of said State, or in School Bonds of municipalities, or in bonds of any city of this State, or in bonds issued under and by virtue of the Federal Farm Loan Act approved by the President of the United States, July 17, 1916, and amendments thereto; and the interest accruing thereon shall be subject to appropriation by the Legislature to accomplish the purpose declared in the foregoing Section; provided, that the one-tenth of the alternate Sections of

the lands granted to railroads, reserved by the State, which were set apart and appropriated to the establishment of the University of Texas, by an Act of the Legislature of February 11, 1858, entitled, 'An Act to establish the University of Texas,' shall not be included in, or constitute a part of, the Permanent University Fund. (Adopted Nov. 8, 1932.)

Sec. 12. The land herein set apart to the University fund shall be sold under such regulations, at such times, and on such terms as may be provided by law; and the Legislature shall provide for the prompt collection, at maturity, of all debts due on account of University lands, heretofore sold, or that may hereafter be sold, and shall in neither event have the power to grant relief to the purchasers.

Sec. 13. The Agricultural and Mechanical College of Texas, established by an Act of the Legislature passed April 17th, 1871, located in the county of Brazos, is hereby made, and constituted a Branch of the University of Texas, for instruction in Agriculture, the Mechanic Arts, and the Natural Sciences connected therewith. And the Legislature shall at its next session, make an appropriation, not to exceed forty thousand dollars, for the construction and completion of the buildings and improvements, and for providing the furniture necessary to put said College in immediate and successful operation.

Sec. 14. The Legislature shall also when deemed practicable, establish and provide for the maintenance of a College or Branch University for the instruction of the colored youths of the State, to be located by a vote of the people: Provided, that no tax shall be levied, and no money appropriated, out of the general revenue, either for this purpose or for the establishment, and erection of the buildings of the University of Texas.

Sec. 15. In addition to the lands heretofore granted to the University of Texas, there is hereby set apart, and appropriated, for the endowment maintenance, and support of said University and its branches, one million acres of the unappropriated public domain of the State, to be designated, and surveyed as may be provided by law; and said lands shall be sold under the same regulations, and the proceeds invested in the same manner, as is provided for the sale and investment of the permanent University fund; and the Legislature shall not have power to grant any relief to the purchasers of said lands.

Sec. 16. The Legislature shall fix by law the terms of all offices of the public school system and of the State institutions of higher education, inclusive, and the terms of members of the respective boards, not to exceed six years. (Adopted election November 6, 1928.)

There are two amendments numbered 16 adopted as amendments to Article 7. See, also, post.

Sec. 16. All land mentioned in Sections 11, 12, and 15 of Article VII, of the Constitution of the State of Texas, now belonging to the University of Texas shall be subject to the taxation for county purposes to the same extent as lands privately owned; provided they shall be rendered for taxation upon values fixed by the State Tax Board; and providing that the State shall remit annually to each of the counties in which said lands are located an amount equal to the tax imposed upon said land for county purposes. (Adopted Nov. 4, 1930.)

There are two amendments numbered 16 adopted as amendments to Article 7. See, also, ante.

Sec. 17. In lieu of the state ad valorem tax on property of Seven (7¢) Cents on the One Hundred ($100.00) Dollars valuation heretofore permitted to be levied by Section 51 of Article 3, as amended, there is hereby levied, in addition to all other taxes permitted by the Constitution of Texas, a state ad valorem tax on property of two (2¢) Cents on the One Hundred ($100.00) Dollars valuation for the purpose of creating a special fund for the payment of pensions for services in the Confederate army and navy, frontier organizations, and the militia of the State of Texas, and for the widows of such soldiers serving in said armies, navies, organizations or militia; provided that the Legislature may reduce the tax rate hereinabove levied.

Also, there is hereby levied, in addition to all other taxes permitted by the constitution of Texas, a state ad valorem tax on property of Five (5¢) Cents on the One Hundred ($100.00) Dollars valuation for the purpose of creating a special fund for the purpose of acquiring, constructing and initially equipping buildings, or other permanent improvements at the designated institutions of higher learning; and the governing board of each of such institutions of higher learning is fully authorized to pledge all or any part of said funds allotted to such institution as hereinafter provided, to secure bonds or notes issued for the purpose of acquiring, constructing and initially equipping such buildings or other permanent improvements at said respective institutions. Such bonds or notes shall be issued in such amounts as may be determined by the governing boards of said respective institutions, shall bear interest not to exceed three (3%) per cent per annum and shall mature serially or otherwise not to exceed ten (10) years from the first (1st) day of January of each year in which such funds are allocated or re-allocated to said respective institutions; provided, the power to issue bonds or notes hereunder is expressly limited to a period of thirty (30) years from the date of the adoption of this amendment; and provided further, that the Five (5¢) Cent tax hereby levied shall expire finally upon payment of all bonds hereby authorized; provided further, that the state tax on property as heretofore permitted to be levied by Section 9 of Article VIII, as amended, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed Thirty (30¢) Cents on the One Hundred ($100.00) Dollars valuation. All bonds shall be examined and approved by the Attorney General of the State of Texas, and when so approved shall be incontestable; and all approved bonds shall be registered in the office of the Comptroller of Public Accounts of the State of Texas. Said bonds shall be sold only through competitive bids and shall never be sold for less than their par value and accrued interest.

Funds raised from said Five (5¢) Cents tax levy for the ten (10) year period beginning January 1, 1948, are hereby allocated to the following institutions of higher learning, and in the following proportions to wit:

Institution	Per Cent of Total
John Tarleton Agricultural College	5.72107
North Texas Agricultural College	6.17028
Texas State College for Women	11.52992
Texas College of Arts and Industries	4.75551
College of Mines and Metallurgy	4.71936
Texas Technological College	16.54877
East Texas State Teachers College	8.10657
North Texas State Teachers College	12.64522
Sam Houston State Teachers College	5.55068
Southwest State Teachers College	6.78474
Stephen F. Austin State Teachers College	4.55414
Sul Ross State Teachers College	2.15315
West Texas State Teachers College	5.41643
Prairie View Agricultural and Mechanical College of Texas	5.34416

Not later than June 1st of the beginning year of each succeeding ten (10) year period, the Comptroller of Public Accounts of the State of Texas, based on the average long session full-time student enrollment for the preceding five (5) year period of time, shall re-allocate, to the above designated institutions of higher learning then in existence, all funds to be derived from said Five (5¢) Cent ad valorem tax for said ten (10) year period; and all such designated institutions of higher learning which participate in the allocation or re-allocation of such funds shall not thereafter receive any other state funds for the acquiring or constructing of buildings or other permanent improvements for which said Five (5¢) Cents ad valorem tax is herein provided, except in case of fire, flood, storm,

or earthquake occurring at any such institution, in which case an appropriation in an amount sufficient to replace the loss so incurred may be made by the Legislature out of other state funds. This amendment shall be self-enacting. The State Comptroller of Public Accounts shall draw all necessary and proper warrants upon the State Treasury in order to carry out the purpose of this amendment; and the State Treasurer shall pay warrants so issued out of the special fund hereby created for said purpose. (Adopted election Aug. 23, 1947.)

Sec. 18. For the purpose of constructing, equipping or acquiring buildings or other permanent improvements, the Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized to issue negotiable bonds or notes not to exceed a total amount of Five Million ($5,000,000.00) Dollars, and the Board of Regents of The University of Texas is hereby authorized to issue negotiable bonds or notes not to exceed a total amount of Ten Million ($10,000,000.00) Dollars. Any bonds or notes issued hereunder shall be payable solely out of the income from the Permanent University Fund. Bonds or notes so issued shall nature [1] serially or otherwise not more than twenty (20) years from their respective dates, and in no event later than twenty-five (25) years after the date of the adoption of this amendment. This amendment shall be self-enacting.

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

All bonds or notes issued pursuant hereto shall be approved by the Attorney General of Texas and when so approved shall be incontestable. (Adopted election Aug. 23, 1947.)

[1] Probably should read "mature".

ARTICLE VIII

TAXATION AND REVENUE

Section 1. Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; Provided, that two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this State shall be exempt from taxation, and provided further that the occupation tax levied by any county, city or town for any year on persons or corporations pursuing any profession or business, shall not exceed one half of the tax levied by the State for the same period on such profession or business.

Sec. 1-a. Three Thousand Dollars ($3,000.00) of the assessed taxable value of all residence homesteads as now defined by law shall be exempt from all taxation for all State purposes; provided that this exemption shall not be applicable to that portion of the State ad valorem taxes levied for State purposes remitted within those counties or other political subdivisions now receiving any remission of State taxes, until the expiration of such period of remission, unless before the expiration of such period the board or governing body of any one or more of such counties or political subdivisions shall have certified to the State Comptroller that the need for such remission of taxes has ceased to exist in such county or political subdivision; then this Section shall become applicable to each county or political subdivision as and when it shall become within the provisions hereof. (Adopted election Aug. 26, 1933.)

Sec. 2. All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places or [of] religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void. (Adopted election Nov. 6, 1928.)

Sec. 3. Taxes shall be levied and collected by general laws and for public purposes only.

Sec. 4. The power to tax corporations and corporate property shall not be surrendered or suspended by act of the Legislature, by any contract or grant to which the State shall be a party.

Sec. 5. All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation, and if any such property shall not have been heretofore rendered, the authorities of the city or town within which it lies, shall have power to require its rendition, and collect the usual municipal tax thereon, as on other property lying within said municipality.

Sec. 6. No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assemblage of the sixteenth Legislature.

Sec. 7. The Legislature shall not have power to borrow, or in any manner divert from its purpose, any special fund that may, or ought to, come into the Treasury; and shall make it penal for any person or persons to borrow, withhold or in any manner to divert from its purpose any special fund, or any part thereof.

Sec. 7-a. Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel mo-

tor vehicles over public roadways, shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads; and for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund under existing law; provided, however, that one-fourth (¼) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund; and, provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each County and the percentage allowed to be retained by each County under the laws in effect on January 1, 1945. Nothing contained herein shall be construed as authorizing the pledging of the State's credit for any purpose. (Adopted election Nov. 5, 1946.)

Sec. 8. All property of railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the roadbed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the principal office of the company is located, and the county tax paid upon it, shall be apportioned by the Comptroller, in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as a part of their tax assets.

Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed thirty-five (35) cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five (25) cents for city or county purposes, and not exceeding fifteen (15) cents for roads and bridges, and not exceeding fifteen (15) cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the Amendment September 25, 1883; and for the erection of public buildings, streets, sewers, waterworks and other permanent improvements, not to exceed twenty-five (25) cents on the one hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; provided, however, that the Commissioners Court in any county may re-allocate the foregoing county taxes by changing the rates provided for any of the foregoing purposes by either increasing or decreasing the same, but in no event shall the total of said foregoing county taxes exceed eighty (80) cents on the one hundred dollars valuation, in any one year; provided further, that before the said Commissioners Court may make such re-allocations and changes in said county taxes that the same shall be submitted to the qualified property tax paying voters of such county at a general or special election, and shall be approved by a majority of the qualified property tax paying voters, voting in such election; and, provided further, that if and when such re-allocations and changes in the aforesaid county taxes have been approved by the qualified property tax paying voters of any county, as herein provided, such re-allocations and changes shall remain in force and effect for a period of six (6) years from the date of the election at which the same shall be approved, unless the same again shall have been changed by a majority vote of the qualified property tax paying voters of such county, voting on the proposition, after submission by the Commissioners Court at a general or special election for that purpose; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property tax paying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed fifteen (15) cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. This section shall not be construed as a limitation of powers delegated to counties, cities or towns by any other section or sections of this Constitution. (Adopted election Nov. 7, 1944.)

Sec. 10. The Legislature shall have no power to release the inhabitants of, or property in, any county, city or town from the payment of taxes levied for State or county purposes, unless in case of great public calamity in any such county, city or town, when such release may be made by a vote of two-thirds of each House of the Legislature.

Sec. 11. All property, whether owned by persons or corporations shall be assessed for taxation, and the taxes paid in the county where situated, but the Legislature may, by a two-thirds vote, authorize the payment of taxes of non-residents of counties to be made at the office of the Comptroller of Public Accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer.

Sec. 12. All property subject to taxation in, and owned by residents of unorganized counties, shall be assessed and the taxes thereon paid in the counties, to which such unorganized counties shall be attached for judicial purposes; and lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties shall be assessed and the taxes thereon collected at the office of the Comptroller of the State.

Sec. 13. Provision shall be made by the first Legislature for the speedy sale, without the necessity of a suit in Court, of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale in like manner of all lands and other property upon which the taxes have not been paid; and the deed of conveyance to the purchaser for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; provided, that the former owner shall within two years from date of the filing for record of the Purchaser's Deed have the right to redeem the land on the following basis:

(1) Within the first year of the redemption period upon the payment of the amount of money paid for the land, including One ($1.00) Dollar Tax Deed Recording Fee and all taxes, penalties, interest and costs paid plus not exceeding twenty-five (25%) percent of the aggregate total;

(2) Within the last year of the redemption period upon the payment of the amount of money paid for the land, including One ($1.00) Dollar Tax Deed Recording Fee and all taxes, penalties, interest and costs paid plus not exceeding fifty (50%) percent of the aggregate total. (Adopted election Nov. 8, 1932.)

Sec. 14. There shall be elected by the quailfied [qualified] electors of each county at the same time and under the same law regulating the election of State and County officers, an Assessor and Collector of Taxes, who shall hold his office, for two (2) years and until his successor is elected and qualified; and such Assessor and Collector of Taxes shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes as may be prescribed by the Legislature. (Adopted election Nov. 8, 1932.)

Sec. 15. The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.

Sec. 16. The sheriff of each county in addition to his other duties shall be the Assessor and Collector of Taxes therefor; but, in counties having ten thousand (10,000) or more inhabitants, to be determined by the last preceding census of the United States, an Assessor and Collector of Taxes shall be elected to hold office for two (2) years and until his successor shall be elected and qualified. (Adopted election Nov. 8, 1932.)

Sec. 17. The specification of the objects and subjects of taxation shall not deprive the Legislature of the power to require other subjects or objects to be taxed in such manner as may be, consistent with the principles of taxation fixed in this Constitution.

Sec. 18. The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, (the County Commissioner's Court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

Sec. 19. Farm products in the hands of the producer, and family supplies for home and farm use, are exempt from all taxation until otherwise directed by a two-thirds vote of all the members elect to both houses of the Legislature. (Adopted election first Tuesday in September, 1879; proclamation October 14, 1879.)

Sec. 20. No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value nor shall any Board of Equalization of any governmental or political subdivision or taxing district within this State fix the value of any property for tax purposes at more than its fair cash market value; provided that in order to encourage the prompt payment of taxes, the Legislature shall have the power to provide that the taxpayer shall be allowed by the State and all governmental and political subdivisions and taxing districts of the State a three per cent (3%) discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State if such taxes are paid ninety (90) days before the date when they would otherwise become delinquent; and the taxpayer shall be allowed a two per cent (2%) discount on said taxes if paid sixty (60) days before said taxes would become delinquent; and the taxpayer shall be allowed a one per cent (1%) discount if said taxes are paid thirty (30) days before they would otherwise become delinquent. This amendment shall be effective January 1, 1939. The Legislature shall pass necessary laws for the proper administration of this Section. (Adopted election Aug. 23, 1937.)

ARTICLE IX

COUNTIES

Section 1. The Legislature shall have power to create counties for the convenience of the people subject to the following provisions:

First. In the territory of the State exterior to all counties now existing, no new counties shall be created with a less area than nine hundred square miles, in a square form, unless prevented by pre-existing boundary lines. Should the State lines render this impracticable in border counties, the area may be less. The territory referred to may, at any time, in whole or in part, be divided into counties in advance of population and attached, for judicial and land surveying purposes, to the most convenient organized county or counties.

Second. Within the territory of any county or counties now existing, no new county shall be created with a less area than seven hundred square miles, nor shall any such county now existing be reduced to a less area than seven hundred square miles. No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may in whole or in part be taken. Counties of a less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each House of the Legislature, taken by yeas and nays and entered on the journals. Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote. When any part of a county is stricken off and attached to, or created into another county, the part stricken off shall be holden for and obliged to pay its proportion of all the liabilities then existing, of the county from which it was taken, in such manner as may be prescribed by law.

Third. No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted, in such manner as may be provided by law, to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each.

County Seats

Sec. 2. The Legislature shall pass laws regulating the manner of removing county seats, but no county seat situated within five miles of the geographical centre of the county shall be removed, except by a vote of two-thirds of all the electors voting on the subject. A majority of such electors, however, voting at such election, may remove a county seat from a point more than five miles from the geographical centre of the county to a point within five miles of such centre, in either case the centre to be determined by a certificate from the Commissioner of the General Land Office.

Home Rule Charters

Sec. 3. (1) Holding the belief that the highest degree of local self government which is consistent with the efficient conduct of those affairs by necessity lodged in the Nation and the State will prove most responsive to the will of the people, and result to reward their diligence and intelligence by greater economy and efficiency in their local governmental affairs, it hereby is ordained:

(2) Any county having a population of sixty-two thousand (62,000) or more according to the then last Federal Census may adopt a County Home Rule Charter, to embrace those powers appropriate hereto, within the specific limitations hereinafter provided. It further is provided that the Legislature, by a favoring vote of two-thirds of the total membership of both the Senate and the House of Representatives, may authorize any county, having a population less than that above specified, to proceed hereunder for the adoption of a Charter; however, as a condition for such authorization, it is required that notice of the intent to seek Legislative authority hereunder must be published in one or more newspapers, to give general circulation in the county affected, not less than once per week for four (4) consecutive weeks, and the first of such publications shall appear not less than thirty (30) days next prior to the time an Act making proposal hereunder may be introduced in the Legislature. No County Home Rule Charter may be adopted by any county save upon a favoring vote of the resident qualified electors of the affected county. In elections submitting to the voters a proposal to adopt a Charter (unless otherwise provided by a two-thirds vote of the total membership of each House of the Legislature) the votes cast by the qualified electors residing within the limits of all the incorporated cities and towns of the county shall be separately kept but collectively counted and the votes of the qualified electors of the county who do not reside within the limits of any incorporated city or town likewise shall be separately kept and separately counted, and unless there be a favoring majority of the votes cast within and a favoring majority of the votes cast without such collective cities and towns, the Charter shall not be adopted. It is expressly forbidden that any such Charter may inconsonantly affect the operation of the General Laws of the State relating to the judicial, tax, fiscal, educational, police, highway and health systems, or any

other department of the State's superior government. Nothing herein contained shall be deemed to authorize the adoption of a Charter provision inimical to or inconsistent with the sovereignty and established public policies of this State, and no provision having such vice shall have validity as against the State. No Charter provision may operate to impair the exemption of homesteads as established by this Constitution and the Statutes relating thereto.

(3) a. A Charter hereunder may provide: the continuance of a County Commissioners' Court, as now constituted, to serve as the governing body of a county to operate hereunder; or, may provide for a governing body otherwise constituted, which shall be elective, and service therein shall be upon such qualifications, for such terms, under such plan of representation, and upon such conditions of tenure and compensation as may be fixed by any such Charter. The terms for service in such governing body may exceed two (2) years, but shall not exceed six (6) years. In any event, in addition to the powers and duties provided by any such Charter, such governing body shall exercise all powers, and discharge all duties which, in the absence of the provisions hereof, would devolve by law on County Commissioners and County Commissioners' Courts. Further, any such Charter may provide for the organization, reorganization, establishment and administration of the government of the county, including the control and regulation of the performance of and the compensation for all duties required in the conduct of the county affairs, subject to the limitations herein provided.

b. A Charter hereunder may provide that Judges of County Courts (including that County Court designated in this Constitution), and Justices of the Peace be compensated upon a salary basis in lieu of fees. The jurisdiction of the County Court designated in this Constitution, and the duties of the Judges thereof, may be confined to that general jurisdiction of a probate Court which elsewhere is defined in this Constitution. The office of Justice of the Peace may be made either elective or appointive. Other than as herein provided, no such Charter shall provide for altering the jurisdiction or procedure of any Court. The duties of District Attorney and/or County Attorney may be confined to representing the State in civil cases to which the State is a party and to enforcement of the State's Penal Code, and the compensation of said attorneys may be fixed on a salary basis in lieu of fees.

c. Save as hereinabove and hereinafter otherwise provided, such Charters, within the limits expressed therein, may invest the governing body to be established for any county electing to operate hereunder with the power to create, consolidate or abolish any office or department, whether created by other provisions of the Constitutions or by statute, define the duties thereof, fix the compensation for service therein, make the same elective or appointive and prescribe the time, qualifications and conditions for tenure in any such office; save, that no such Charter other than as hereinbefore authorized, shall provide to regulate the status, service, duties or compensation of members of the Legislature, Judges of the Courts, District Attorneys, County Attorneys, or any office whatever by the law of the State required to be filled by an election embracing more than one county. Excepting herefrom nominations, elections or appointments to offices, the terms whereof may not have expired prior to the adoption of this Amendment to the Constitution, at such time as a Charter provision adopted hereunder may be in effect (save as to those offices which must continue to be elective, as herein elsewhere specified), all terms of county officers and all contracts for the giving of service by deputies under such officers, may be subject to termination by the administrative body of the county, under an adopted Charter so providing, and there shall be no liability by reason thereof.

d. Any county electing to operate hereunder shall have the power, by Charter provision, to levy, assess and collect taxes, and to fix the maximum rate for ad valorem taxes to be levied for specific purposes, in accordance with the Constitution and laws of this State, provided, however, that the limit of the aggregate taxes which may be levied, assessed and collected hereunder shall not exceed the limit or total fixed, or hereafter to be fixed, by this Constitution to control counties, and the annual assessment upon property, both real, personal and mixed, shall be a first superior and prior lien thereon.

e. In addition to the powers herein provided, and in addition to powers included in County Home Rule Charters, any county may, by a majority vote of the qualified electors of said county, amend its Charter to include other powers, functions, duties and rights which now or hereafter may be provided by this Constitution and the statutes of the State for counties.

(4) Any county operating hereunder shall have the power to borrow money for all purposes lawful under its Charter, to include the refunding of a lawful debt, in a manner conforming to the General Laws of the State, and may issue therefor its obligations. Such obligations, other than those to refund a lawful debt, shall not be valid unless authorized by a majority of all votes cast by those resident qualified votes of the area affected by the taxes required to retire such obligations, who may vote thereon. In case of county obligations, maturing after a period of five (5) years, the same shall be issued to mature serially, fixing the first maturity of principal at a time not to exceed two (2) years next after the date of the issuance of such obligations. Such obligations may pledge the full faith and credit of the county; but in no event shall the aggregate obligations so issued, in principal amount outstanding at any one time, exceed the then existing Constitutional limits for such obligations and such indebtedness and its supporting tax shall constitute a first and superior lien upon the property taxable in such county. No obligation issued hereunder shall be valid unless prior to the time of the issuance thereof there be levied a tax sufficient to retire the same as it matures, which tax shall not exceed the then existing Constitutional limits.

(5) Such Charter may authorize the governing body of a county operating hereunder to prescribe the schedule of fees to be charged by the officers of the county for specified service, to be in lieu of the schedule for such fees prescribed by the General Laws of the State; and, to appropriate such fees to such funds as the Charter may prescribe; provided, however, no fee for a specified service shall exceed in amount the fee fixed by General Law for that same service. Such Charters as to all judicial officers, other than District Judges, may prescribe the qualifications for services, provided the standards therefor be not lower than those fixed by the General Laws of the State.

(6) a. Subject to the express limitations upon the exercise of the powers by this subdivision to be authorized, such Charters may provide (or omit to provide) that the governmental and/or proprietary functions of any city, town, district or other defined political subdivision (which is a governmental agency and embraced within the boundaries of the county) be transferred, either as to some or all of the functions thereof, and yielded to the control of the administrative body of the county. No such transfer or yielding of functions may be effected, unless the proposal is submitted to a vote of the people, and, unless otherwise provided by a two-thirds vote of the total membership of each House of the Legislature, such a proposal shall be submitted as a separate issue, and the vote within and without any such city, town, district, or other defined governmental entity, shall be separately cast and counted, and unless two-thirds of the qualified votes cast within the yielding defined governmental entity, and a majority of

the qualified votes cast in the remainder of the county, favor the proposed merger, it shall not be effected. In case of the mergers hereby authorized, without express Charter provision therefor, in so far as may be required to make effective the object of the proposed merger, the county shall succeed to all the appropriate lawful powers, duties, rights, procedures, restrictions and limitations which prior to the merger were reposed in, or imposed upon, the yielding governmental agency. Particularly, it is provided that the power to create funded indebtedness and to levy taxes in support thereof may be exercised only by such procedures, and within such limits, as now are, or hereafter may be, provided by law to control such appropriate other governmental agencies were they to be independently administered. Such mergers may be effected under proposed contracts between the county and any such yielding governmental agency, to be approved at an election as hereinbefore provided for. In order to increase governmental efficiency and effect economy the county may contract with the principal city of the county to perform one or more of its functions, provided such contracts shall not be valid for more than two (2) years.

b. In cases of the partial or complete merger of the government of a city operating under a Home Rule Charter, with the government of a county operating hereunder, those city Charter provisions affected thereby shall cease to control, and the county Charter provisions shall control.

c. When any embraced incorporated city or town elects to merge its governmental functions with those of the county under the provisions hereof, such Charter may provide for defining or redefining the boundaries of such cities and towns, provided, however, that in defining or redefining the boundaries of such cities and towns, such boundaries may be extended only to include those areas contiguous to such cities as are urban in character; and as to such cities or towns and for the benefit thereof the county, in addition to the primary city and county tax herein authorized and any other lawful district tax, may levy and collect taxes upon the property taxable within such city or town as defined or redefined, within the limits authorized by Sections 4 and 5 of Article XI of this Constitution, (or any Amendment thereof), for incorporated cities according to the population, provided that no tax greater than that existing at the time of such merger or for any added purpose shall be inposed upon any such city or town unless authorized by a majority of all votes cast by the resident qualified voters of such city or town.

d. Areas urban in character though not incorporated, under appropriate Charter provision may be defined as such by the governing body of the county, provided, however, that no portion of the county shall be defined as an urban area unless it has sufficient population to entitle it to incorporate under the then existing laws of the State; and no such urban area, when created, shall be vested with any taxing or bonding power which it would not possess if it were operating as a separate incorporated unit under the then existing Constitutional and Statutory provisions of this State; and provided further that the governing body of the county for the government of such areas shall have and exercise all powers and authority granted by law to the governing bodies of similar areas when separately incorporated as a city or town, and such areas shall be subject to additional taxation within the same Constitutional limits as control taxation for a city or a town of like population. Likewise such Charter may provide for the governing board of the county subject to existing Constitutional and statutory provisions to define, create and administer districts, and have and exercise the powers and authority granted by the Constitution and laws relative to the same.

(7) No provision of this Constitution inconsonant with the provisions of this Section 3, of Article IX, shall be held to control the provisions of a Charter adopted hereunder, and conforming herewith. Charters adopted hereunder shall make appropriate provision for the abandonment, revocation, and amendment thereof, subject only to the requirements that there must be a favoring majority of the vote cast upon such a proposal, by the qualified resident electors of the county; and, no Charter may forbid amendments thereof for a time greater than two (2) years. The provisions hereof shall be self-executing, subject only to the duty of the Legislature to pass all laws (consistent herewith) which may be necessary to carry out the intent and purpose hereof. Further, the Legislature shall prescribe a procedure for submitting to decision, by a majority vote of the electors voting thereon, proposed alternate and elective Charter provisions. (Adopted Aug. 26, 1933.)

ARTICLE X

RAILROADS

Section 1. Any railroad corporation or association, organized under the law for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right, with its road, to intersect, connect with or cross any other railroad; and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination, under such regulations as shall be prescribed by law.

Article[1] 2. Railroads heretofore constructed or which may hereafter be constructed in this state are hereby declared public highways, and railroad companies, common carriers. The Legislature shall pass laws to regulate railroad, freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable. (Adopted election November 4, 1890; proclamation December 19, 1890.)

[1] The resolution proposing this amendment reads "Article" instead of "sec."

Sec. 3. Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made and where shall be kept for inspection by the stockholders of such corporations, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously, and the President or Superintendent shall report annually, under oath, to the Comptroller or Governor, their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The Legislature shall pass laws enforcing by suitable penalties the provisions of this Section.

Sec. 4. The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals; and the Legislature shall pass no laws exempting any such property from execution and sale.

Sec. 5. No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation, with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing

line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

Sec. 6. No railroad company organized under the laws of this State, shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other State or of the United States.

Sec. 7. No law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city, town, or village or upon any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

Sec. 8. No railroad corporation in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

Sec. 9. No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat, without passing through the same, and establishing and maintaining a depot therein unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

ARTICLE XI

MUNICIPAL CORPORATIONS

Section 1. The several counties of this State are hereby recognized as legal subdivisions of the State.

Sec. 2. The construction of jails, court-houses and bridges and the establishment of county poor houses and farms, and the laying out, construction and repairing of county roads shall be provided for by general laws.

Sec. 3. No county, city, or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit; but this shall not be construed to in any way effect any obligation heretofore undertaken pursuant to law.

Sec. 4. Cities and towns having a population of five thousand or less may be chartered alone by general law. They may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful for any one year which shall exceed one and one-half per cent of the taxable property of such city; and all taxes shall be collectible only in current money, and all licenses and occupation taxes levied, and all fines, forfeitures and penalties accruing to said cities and towns shall be collectible only in current money. (As amended election November 2, 1920.)

Sec. 5. Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent. of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent. thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years. (Adopted election November 5, 1912; proclamation December 30, 1912.)

Sec. 6. Counties cities and towns are authorized in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from that levied, assessed and collected for current expenses of municipal government, and shall when levied specify in the act of levying the purpose therefor, and such taxes may be paid in the coupons bonds or other indebtedness for the payment of which such tax may have been levied.

Sec. 7. All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of a two-thirds majority of the resident property taxpayers voting thereon at an election called for such purpose to levy and collect such tax for construction of sea walls, breakwaters, or sanitary purposes, as may now or may hereafter be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for. (Adopted election Nov. 8, 1932.)

Sec. 8. The counties and cities on the Gulf Coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities. The Legislature is especially authorized to aid by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of sea walls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed, or to be constructed, in any locality.

Sec. 9. The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor. Fire engines and the furniture thereof, and all property used, or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation, provided, nothing herein shall prevent the enforcement of the vendors lien, the mechanics or builders lien, or other liens now existing.

Sec. 10. The Legislature may constitute any city or town a separate and independent school district. And when the citizens of any city or town have a charter, authorizing the city authorities to levy and collect a tax for the support and maintenance of a public institution of learning, such tax may hereafter be levied and collected, if at an election, held for that purpose, two thirds of the taxpayers of such city or town shall vote for such tax.

ARTICLE XII

PRIVATE CORPORATIONS

Section 1. No private corporation shall be created except by general laws.

Sec. 2. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

Sec. 3. The right to authorize and regulate freights, tolls, wharfage or fares levied and collected or proposed to be levied and collected by individuals, companies or corporations for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under Legislative control and depend upon Legislative authority.

Sec. 4. The first Legislature assembled after the adoption of this Constitution shall provide a mode of procedure by the Attorney General and District or County Attorneys in

the name and behalf of the State to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares, or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

Sec. 5. All laws granting the right to demand and collect freights, fares, tolls or wharfage, shall at all times be subject to amendment, modification or repeal by the Legislature.

Sec. 6. No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void.

Sec. 7. Nothing in this Article shall be construed to divest or effect rights guaranteed by any existing grant or statute, of this State, or of the Republic of Texas.

ARTICLE XIII

SPANISH AND MEXICAN LAND TITLES

Section 1. All fines, penalties, forfeitures and escheats, which have heretofore accrued to the Republic and State of Texas, under their constitutions and laws, shall accrue to the State under this Constitution; and the Legislature shall provide a method for determining what lands have been forfeited, and for giving effect to escheats; and all such rights of forfeiture and escheat to the State shall, ipso facto, enure to the protection of the innocent holders of junior titles, as provided in sections two, three and four of this Article.

Sec. 2. Any claim of title or right to land in Texas, issued prior to the 13th day of November, 1835, not duly recorded in the county where the land was situated at the time of such record, or not duly archived in the General Land Office; or not in the actual possession of the grantee thereof, or some person claiming under him, prior to the accruing of junior title thereto from the sovereignty of the soil, under circumstances reasonably calculated to give notice to said junior grantee, has never had, and shall not have, standing or effect against such junior title, or color of title, acquired without such or actual notice of such prior claim of title or right; and no condition annexed to such grants, not archived, or recorded, or occupied, as aforesaid, has been, or ever shall be released or waived, but actual performance of all such conditions shall be proved by the person or persons claiming under such title or claim of right in order to maintain action thereon, and the holder of such junior title, or color of title, shall have all the rights of the government which have heretofore existed, or now exist, arising from the nonperformance of all such conditions.

Sec. 3. Non-payment of taxes on any claim of title to land, dated prior to the 13th day of November, 1835, not recorded, or archived, as provided in Section 2, by the person or persons so claiming, or those under whom he or they so claim, from that date up to the date of the adoption of this Constitution, shall be held to be a presumption that the right thereto has reverted to the State, and that said claim is a stale demand, which presumption shall only be rebutted by payment of all taxes on said lands, State, county, and city, or town, to be assessed on the fair value of such lands by the Comptroller, and paid to him, without commutation or deduction for any part of the above period.

Sec. 4. No claim of title or right to land, which issued prior to the thirteenth day of November, 1835, which has not been duly recorded in the county where the land was situated at the time of such record, or which has not been duly archived in the General Land Office, shall ever hereafter be deposited in the General Land Office, or recorded in this State, or delineated on the maps, or used as evidence in any of the courts of this State, and the same are stale claims; but this shall not affect such rights or presumptions as arise from actual possession. By the words "duly recorded" as used in Sections two and four of this Article, it is meant that such claim of title or right to land shall have been recorded in the proper office, and that mere errors in the certificate of registration; or informality, not affecting the fairness and good faith of the holder thereof, with which the record was made, shall not be held to vitiate such record.

Sec. 5. All claims, locations, surveys, grants and titles, of any kind, which are declared null and void by the Constitution of the Republic or State of Texas, are, and the same shall remain forever null and void.

Sec. 6. The Legislature shall pass stringent laws for the detection and conviction of all forgers of land titles, and may make such appropriations of money for that purpose as may be necessary.

Sec. 7. Sections two, three, four and five of this Article, shall not be so construed as to set aside or repeal any law or laws of the Republic or State of Texas, releasing the claimants of head-rights of colonists of a league of land, or less, from compliance with the conditions on which their grants were made.

ARTICLE XIV

PUBLIC LANDS AND LAND OFFICE

Section 1. There shall be one General Land Office in the State, which shall be at the seat of government, where all land titles which have emanated or may hereafter emanate from the State shall be registered, except those titles the registration of which may be prohibited by this Constitution. It shall be the duty of the Legislature at the earliest practicable time to make the Land Office self sustaining, and from time to time the Legislature may establish such subordinate offices as may be deemed necessary.

Sec. 2. All unsatisfied genuine land certificates barred by section four, Article ten, of the Constitution of 1869, by reason of the holders or owners thereof failing to have them surveyed and returned to the Land Office by the first day of January, 1875, are hereby revived. All unsatisfied genuine land certificates now in existence shall be surveyed and returned to the General Land Office within five years after the adoption of this Constitution, or be forever barred; and all genuine land certificates hereafter issued by the State shall be surveyed and returned to the General Land Office within five years after issuance, or be forever barred; Provided, that all genuine land certificates heretofore or hereafter issued shall be located, surveyed or patented, only upon vacant and unappropriated public domain and not upon any land titled or equitably owned under color of title from the sovereignty of the State, evidence of the appropriation of which is on the county records or in the General Land Office; or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him.

Sec. 3. The Legislature shall have no power to grant any of the lands of this State to any railway company except upon the following restrictions and conditions.

First. That there shall never be granted to any such corporation more than sixteen sections to the mile, and no reservation of any part of the public domain for the purpose of satisfying such grant shall ever be made.

Second. That no land certificate shall be issued to such company, until they have equipped, constructed and in running order at least ten miles of road, and on the failure of such company to comply with the terms of its charter, or to alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the State and become a portion of the public domain and liable to location and survey. The Legislature shall pass general laws, only, to give effect to the provisions of this section.

Sec. 4. No certificate for land shall be sold at the Land Office except to actual settlers upon the same, and in lots not to exceed one hundred and sixty acres.

Sec. 5. All lands heretofore or hereafter granted to railway companies where the charter or law of the State required or shall hereafter require their alienation within a

certain period on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alienated, in conformity with the terms of their charters, and the laws under which the grants were made, are hereby declared forfeited to the State and subject to pre-emption, location and survey, as other vacant lands. All lands heretofore granted to said railroad companies to which no forfeiture was attached, on their failure to alienate, are not included in the foregoing clause, but in all such last named cases it shall be the duty of the Attorney General in every instance where alienations have been or hereafter may be made, to inquire into the same, and if such alienation has been made in fraud of the rights of the State and is colorable only, the real and beneficial interest being still in such corporation, to institute legal proceedings in the county where the seat of government is situated to forfeit such lands to the State, and if such alienation be judicially ascertained to be fraudulent and colorable as aforesaid, such lands shall be forfeited to the State and become a part of the vacant public domain, liable to pre-emption, location and survey.

Sec. 6. To every head of a family without a homestead there shall be donated one hundred and sixty acres of public land, upon condition that he will select and locate said land, and occupy the same three years and pay the Office fees due thereon. To all single men of eighteen years of age and upwards shall be donated eighty acres of public land, upon the terms and conditions prescribed for heads of families.

Sec. 7. The State of Texas hereby releases to the owner or owners of the soil all mines and minerals that may be on the same, subject to taxation as other property.

Sec. 8. Persons residing between the Nueces river and the Rio Grande, and owning grants for lands which emanated from the Government of Spain, or that of Mexico which grants have been recognized and validated by the State by acts of the Legislature, approved February 10th, 1852, August 15th, 1870, and other acts, and who have been prevented from complying with the requirements of said acts by the unsettled condition of the country, shall be allowed until the first day of January 1880, to complete their surveys, and the plots thereof, and to return their field notes to the General Land Office; and all claimants failing to do so shall be forever barred; provided, nothing in this section shall be so construed as to validate any titles not already valid, or to interfere with the rights of third persons.

ARTICLE XV

IMPEACHMENT

Section 1. The power of impeachment shall be vested in the House of Representatives.

Sec. 2. Impeachment of the Governor, Lieutenant Governor, Attorney General, Treasurer, Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Appeals and District Court shall be tried by the Senate.

Sec. 3. When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present.

Sec. 4. Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor trust or profit under this State. A party convicted on impeachment shall also be subject to indictment trial and punishment according to law.

Sec. 5. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office, during the pendency of such impeachment. The Governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

Sec. 6. Any judge of the District Courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge; or who shall fail to execute in a reasonable measure the business in his courts may be removed by the Supreme Court. The Supreme Court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths taken before some judge of a court of record of not less than ten lawyers, practicing in the courts held by such judge, and licensed to practice in the Supreme Court; said presentment to be founded either upon the knowledge of the persons making it or upon the written oaths as to the facts of creditable witnesses. The Supreme Court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable.

Sec. 7. The Legislature shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution.

Address

Sec. 8. The Judges of the Supreme Court, Court of Appeals and District Courts, shall be removed by the Governor on the address of two-thirds of each House of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall not be sufficient ground for impeachment; provided however, that the cause or causes for which such removal, shall be required, shall be stated at length in such address and entered on the journals of each House; and provided further, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such address shall pass, and in all such cases, the vote shall be taken by yeas and nays and entered on the journals of each House respectively.

ARTICLE XVI

GENERAL PROVISIONS

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

"I, ———, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of ——— of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected. So help me God." (Adopted election Nov. 8, 1938.)

Sec. 2. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who may have been or shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence therein from power, bribery, tumult or other improper practice.

Sec. 3. The Legislature shall make provision whereby persons convicted of misdemeanors and committed to the county jails in default of payment of fines and costs, shall be required to discharge such fines and costs by manual labor, under such regulations as may be prescribed by law.

Sec. 4. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with

deadly weapons, either within this State or out of it, or who shall act as second, or knowingly assist in any manner those thus offending, shall be deprived of the right of suffrage, or of holding any office of trust or profit under this State.

Sec. 5. Every person shall be disqualified from holding any office of profit, or trust, in this State, who shall have been convicted of having given or offered a bribe to procure his election or appointment.

Sec. 6. No appropriation for private or individual purposes shall be made. A regular statement, under oath, and an account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law.

Sec. 7. The Legislature shall, in no case, have power to issue "Treasury Warrants," "Treasury Notes," or paper of any description intended to circulate as money.

Sec. 8. Each county in the State may provide, in such manner as may be prescribed by law, a Manual Labor Poor House and Farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.

Sec. 9. Absence on business of the State, or of the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under the exceptions contained in this Constitution.

Sec. 10. The Legislature shall provide for deductions from the salaries of public officers who may neglect the performance of any duty that may be assigned them by law.

Sec. 11. All contracts for a greater rate of interest than ten per centum per annum, shall be deemed usurious, and the first Legislature after this amendment is adopted, shall provide appropriate pains and penalties to prevent the same; but when no rate of interest is agreed upon, the rate shall not exceed six per centum per annum. (Adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 12. No member of Congress, nor person holding or exercising any office of profit or trust, under the United States, or either of them, or under any foreign power, shall be eligible as a member of the Legislature, or hold or exercise any office of profit or trust under this State.

Sec. 13. It shall be the duty of the Legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect that method of trial.

Sec. 14. All civil officers shall reside within the State; and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

Sec. 15. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Sec. 16. The Legislature shall by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof.

No such corporate body shall be chartered until all of the authorized capital stock has been subscribed and paid for in full in cash. Such body corporate shall not be authorized to engage in business at more than one place which shall be designated in its charter.

No foreign corporation, other than the national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State. (Adopted election Aug. 23, 1937.)

Sec. 17. All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

Sec. 18. The rights of property and of action, which have been acquired under the Constitution and laws of the Republic and State, shall not be divested; nor shall any rights or actions which have been divested, barred or declared null and void by the Constitution of the Republic and State, be re-invested, renewed, or re-instated by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution, unless otherwise herein provided; and provided further, that no cause of action heretofore barred shall be revived.

Sec. 19. The Legislature shall prescribe by law the qualification of grand and petit jurors.

Sec. 20. (a) The open saloon shall be and is hereby prohibited. The Legislature shall have the power, and it shall be its duty to define the term "open saloon" and enact laws against such.

Subject to the foregoing, the Legislature shall have the power to regulate the manufacture, sale, possession and transportation of intoxicating liquors, including the power to establish a State Monopoly on the sale of distilled liquors.

(b) The Legislature shall enact a law or laws whereby the qualified voters of any county, justice's precinct or incorporated town or city, may, by a majority vote of those voting, determine from time to time whether the sale of intoxicating liquors for beverage purposes shall be prohibited or legalized within the prescribed limits; and such laws shall contain provisions for voting on the sale of intoxicating liquors of various types and various alcoholic content.

(c) In all counties, justice's precincts or incorporated towns or cities wherein the sale of intoxicating liquors had been prohibited by local option elections held under the laws of the State of Texas and in force at the time of the taking effect of Section 20, Article XVI of the Constitution of Texas, it shall continue to be unlawful to manufacture, sell, barter or exchange in any such county, justice's precinct or incorporated town or city, any spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication or any other intoxicants whatsoever, for beverage purposes, unless and until a majority of the qualified voters in such county or political subdivision thereof voting in an election held for such purpose shall determine such to be lawful; provided that this subsection shall not prohibit the sale of alcoholic beverages containing not more than 3.2 per cent alcohol by weight in cities, counties or political subdivisions thereof in which the qualified voters have voted to legalize such sale under the provisions of Chapter 116, Acts of the Regular Session of the 43rd Legislature. (Adopted election Aug. 24, 1935.)

Sec. 21. All stationery, and printing, except proclamations and such printing as may be done at the Deaf and Dumb Asylum, paper, and fuel used in the Legislative and other departments of the government, except the Judicial Department, shall be furnished, and the printing and binding of the laws, journals, and department reports, and all other printing and binding and the repairing and furnishing the halls and rooms used for the meetings of the Legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price, and under such regulations, as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contracts; and all such contracts shall be subject to the approval of the Governor, Secretary of State and Comptroller.

Sec. 22. The Legislature shall have the power to pass such fence laws, applicable to any sub-division of the State,

or counties, as may be needed to meet the wants of the people.

Sec. 23. The Legislature may pass laws for the regulation of live stock and the protection of stock raisers in the stock raising portion of the State, and exempt from the operation of such laws other portions, sections, or counties; and shall have power to pass general and special laws for the inspection of cattle, stock and hides and for the regulation of brands; provided, that any local law thus passed shall be submitted to the free holders of the section to be affected thereby, and approved by them, before it shall go into effect.

Sec. 24. The Legislature shall make provision for laying out and working public roads, for the building of bridges, and for utilizing fines, forfeitures, and convict labor to all these purposes.

Sec. 25. That all drawbacks and rebatement of insurance, freight, transportation, carriage, wharfage, storage, compressing, baling, repairing, or for any other kind of labor or service of, or to any cotton, grain, or any other produce or article of commerce in this State, paid or allowed or contracted for, to any common carrier, shipper, merchant, commission merchant, factor, agent, or middleman of any kind, not the true and absolute owner thereof, are forever prohibited, and it shall be the duty of the Legislature to pass effective laws punishing all persons in this State who pay, receive or contract for, or respecting the same.

Sec. 26. Every person, corporation, or company, that may commit a homicide, through wilful act, or omission, or gross neglect, shall be responsible, in exemplary damages, to the surviving husband, widow, heirs of his or her body, or such of them as there may be, without regard to any criminal proceeding that may or may not be had in relation to the homicide.

Sec. 27. In all elections to fill vacancies of office in this State, it shall be to fill the unexpired term only.

Sec. 28. No current wages for personal service shall ever be subject to garnishment.

Sec. 29. The Legislature shall provide by law for defining and punishing barretry.

Sec. 30. The duration of all offices not fixed by this Constitution shall never exceed two years; provided, that when a Railroad Commission is created by law it shall be composed of three Commissioners who shall be elected by the people at a general election for State officers, and their terms of office shall be six years; provided, Railroad Commissioners first elected after this amendment goes into effect shall hold office as follows: One shall serve two years, and one four years, and one six years; their terms to be decided by lot immediately after they shall have qualified. And one Railroad Commissioner shall be elected every two years thereafter. In case of vacancy in said office the Governor of the State shall fill said vacancy by appointment until the next general election. (Adopted election November 6, 1894; proclamation December 21, 1894.)

Sec. 30a. The Legislature may provide by law that the members of the Board of Regents of the State University and boards of trustees or managers of the educational, eleemosynary, and penal institutions of the State, and such boards as have been, or may hereafter be established by law, may hold their respective offices for the term of six (6) years, one-third of the members of such boards to be elected or appointed every two (2) years in such manner as the Legislature may determine; vacancies in such offices to be filled as may be provided by law,["] and the Legislature shall enact suitable laws to give effect to this section. (Adopted election Nov. 5, 1912, proclamation, Dec. 30, 1912.)

Sec. 30b. Wherever by virtue of Statute or charter provisions appointive offices of any municipality are placed under the terms and provisions of Civil Service and rules are set up governing appointment to and removal from such offices, the provisions of Article 16, Section 30, of the Texas Constitution limiting the duration of all offices not fixed by the Constitution to two (2) years shall not apply, but the duration of such offices shall be governed by the provisions of the Civil Service law or charter provisions applicable thereto. (Adopted election Nov. 5, 1940.)

Sec. 31. The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for mal-practice, but no preference shall ever be given by law to any schools of medicine.

Sec. 32. The Legislature may provide by law for the establishment of a Board of Health and Vital Statistics, under such rules and regulations as it may deem proper.

Sec. 33. The Accounting Officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution. Provided, that this restriction as to the drawing and paying of warrants upon the Treasury shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, nor to retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers and retired enlisted men of the United States Army, Navy, and Marine Corps. (Adopted election Nov. 8, 1932.)

Sec. 34. The Legislature shall pass laws authorizing the Governor to lease, or sell to the Government of the United States, a sufficient quantity of the public domain of the State necessary for the erection of forts, barracks, arsenals, and military stations, or camps, and for other needful military purposes; and the action of the Governor therein shall be subject to the approval of the Legislature.

Sec. 35. The Legislature shall, at its first session pass laws to protect laborers on public buildings, streets, roads, railroads, canals, and other similar public works, against the failure of contractors, and sub-contractors to pay their current wages when due, and to make the corporation, company or individual for whose benefit the work is done responsible for their ultimate payment.

Sec. 36. The Legislature shall, at its first session, provide for the payment, or funding, as they may deem best, of the amounts found to be justly due to the teachers in the public schools, by the State, for service rendered prior to the first day of July 1873 and for the payment by the school districts in the State, of amounts justly due teachers of public schools by such district to January 1876.

Sec. 37. Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Sec. 38. The Legislature may, at such time as the public interest may require, provide for the office of Commissioner of Insurance, Statistics and History, whose term of office duties and salary shall be prescribed by law.

Sec. 39. The Legislature may, from time to time, make appropriations for preserving and perpetuating memorials of the history of Texas, by means of monuments, statutes, paintings and documents of historical value.

Sec. 40. No person shall hold or exercise, at the same time, more than one Civil Office of emolument, except that of Justice of Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves

of the United States, and retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States; or retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, from holding in conjunction with such office any other office or position of honor, trust or profit, under this State or the United States, or from voting at any Election; General, Special or Primary, in this State when otherwise qualified. (Adopted election Nov. 8, 1932.)

Sec. 41. Any person who shall, directly or indirectly, offer, give, or promise, any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the Legislature to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law. And any member of the Legislature or executive or judicial officer who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself, or for another, from any company, corporation or person, any money, appointment, employment, testimonial, reward, thing of value or employment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same, or with any understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit, demand and receive any such money or other advantage matter or thing aforesaid for another, as the consideration of his vote or official influence, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery, within the meaning of the Constitution, and shall incur the disabilities provided for said offenses, with a forfeiture of the office they may hold, and such other additional punishment as is or shall be provided by law.

Sec. 42. The Legislature may establish an Inebriate Asylum, for the cure of drunkenness and reform of inebriates.

Sec. 43. No man, or set of men, shall ever be exempted, relieved or discharged, from the performance of any public duty or service imposed by general law, by any special law. Exemptions from the performance of such public duty or service shall only be made by general law.

Sec. 44. The Legislature shall prescribe the duties and provide for the election by the qualified voters of each county in this State, of a county treasurer and a county surveyor, who shall have an office at the county seat, and hold their office for two years, and until their successors are qualified; and shall have such compensation as may be provided by law.

Sec. 45. It shall be the duty of the Legislature to provide for collecting, arranging and safely keeping such records, rolls, correspondence, and other documents, civil and military, relating to the history of Texas, as may be now in the possession of parties willing to confide them to the care and preservation of the State.

Sec. 46. The Legislature shall provide by law for organizing and disciplining the militia of the State, in such manner as they shall deem expedient, not incompatible with the Constitution and Laws of the United States.

Sec. 47. Any person who conscientiously scruples to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

Sec. 48. All laws and parts of laws now in force in the State of Texas, which are not repugnant to the Constitution of the United States, or to this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation or shall be amended or repealed by the Legislature.

Sec. 49. The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

Sec. 50. The homestead of a family shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of the wife given in the same manner as is required in making a sale and conveyance of the homestead; nor shall the owner, if a married man, sell the homestead without the consent of the wife, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the husband alone, or together with his wife; and all pretended sales of the homestead involving any condition of defeasance shall be void.

Sec. 51. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot, or lots, not to exceed in value five thousand dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

Sec. 52. On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

Sec. 53. That no inconvenience may arise from the adoption of this Constitution, it is declared that all process and writs of all kinds which have been or may be issued and not returned or executed when this Constitution is adopted, shall remain valid, and shall not be, in any way, affected by the adoption of this Constitution.

Sec. 54. It shall be the duty of the Legislature to provide for the custody and maintenance of indigent lunatics, at the expense of the State, under such regulations and restrictions as the Legislature may prescribe.

Sec. 55. The Legislature may provide annual pensions, not to exceed one hundred and fifty dollars per annum, to surviving soldiers or volunteers in the war between Texas and Mexico, from the commencement of the Revolution in 1835, until the first of January, 1837; and also to the surviving signers of the Declaration of Independence of Texas, and to the surviving widows continuing unmarried of such soldiers and signers; provided, that, no such pension be granted except to those in indigent circumstances, proof of which shall be made before the County Court of the County where the applicant resides, in such manner as may be provided by law.

Sec. 56. The Legislature shall have no power to appropriate any of the public money for the establishment and maintenance of a Bureau of Immigration, or for any purpose of bringing immigrants to this State.

Sec. 57. Three millions acres of the public domain are hereby appropriated and set apart for the purpose of erect

ing a new State Capitol and other necessary public building at the seat of government, said lands to be sold under the direction of the Legislature; and the Legislature shall pass suitable laws to carry this section into effect.

Sec. 58. The Legislature shall have full power and authority to provide by law for the management and control of the prison system of Texas; and to this end shall have power and authority to place the prison system under the supervision, management and control of such trained and experienced officer, or officers, as the Legislature may from time to time provide for by law. (Adopted election November 2, 1926; proclamation January 20, 1927.)

Sec. 59a. The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its over-flowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as amy [may] be prescribed by law and shall also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property tax-paying voters of such district and the proposition adopted. (Adopted election Aug. 21, 1917; proclamation October 2, 1917.)

Sec. 60. That the Constitution of the State of Texas be so amended as to authorize a Texas Centennial, commemorating the heroic period of early Texas history, and celebrating a century of our independence and progress, to be held at such times, places and in such manner as may be designated by the Legislature of Texas.

That the Legislature of Texas be authorized to make appropriation for the support and maintenance thereof; provided, that this authorization shall not be construed to make appropriations for any other future exposition or celebration of any kind or character. (Adopted election Nov. 8, 1932.)

Sec. 61. All district officers in the State of Texas and all county officers in counties having a population of 20,000 or more, according to the then last preceding Federal Census, shall from the first day of January and thereafter, and subsequent to the first Regular or Special Session of the Legislature after the adoption of this Resolution, be compensated on a salary basis. In all counties in this State, the Commissioners' Court shall be authorized to determine whether precinct officers shall be compensated on a fee basis or on a salary basis; and in counties having a population of less than 20,000, according to the then last preceding Federal Census, the Commissioners' Court shall also have the authority to determine whether county officers shall be compensated on a fee basis or on a salary basis.

All fees earned by district, county and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, provided that fees incurred by the State, county and any municipality, or in case where a pauper's oath is filed, shall be paid into the county treasury when collected and provided that where any officer is compensated wholly on a fee basis such fees may be retained by such officer or paid into the treasury of the county as the Commissioners' Court may direct. All Notaries Public, county surveyors and public weighers shall continue to be compensated on a fee basis. (Adopted election Aug. 24, 1935.)

Sec. 62. (a) The Legislature shall have the right to levy taxes to provide a Retirement, Disability and Death Compensation Fund for the appointive officers and employees of the State; provided that the amount contributed by the State to such Fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time five per centum (5%) of the compensation paid to each such person by the State, and shall in no one year exceed the sum of One Hundred and Eighty Dollars ($180) for any such person.

All funds provided from the compensation of such person, or by the State of Texas, for such Retirement, Disability and Death Compensation Fund, as are received by the Treasury of the State of Texas, shall be invested in bonds of the United States, the State of Texas, or counties or cities of this State, or in bonds issued by any agency of the United States Government, the payment of the principal of and interest on which is guaranteed by the United States, provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amount likely to become due each year out of said Fund, such amount of funds to be kept on hand to be determined by the agency which may be provided by law to administer said Fund; and provided that the recipients of benefits from said Fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless the Fund, the creation of which is provided for herein, contributed by the State, is released to the State of Texas as a condition to receiving such other pension aid.

(b) Each county shall have the right to provide for and administer a Retirement, Disability and Death Compensation Fund for the appointive officers and employees of the county; provided same is authorized by a majority vote of the qualified voters of such county and after such election has been advertised by being published in at least one newspaper of general circulation in said county once each week for four consecutive weeks; provided that the amount contributed by the county to such Fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time five per centum (5%) of the compensation paid to each such person by the county, and shall in no one year exceed the sum of One Hundred and Eighty Dollars ($180) for any such person.

All funds provided from the compensation of each such person, or by the county, for such Retirement, Disability and Death Compensation Fund, as are received by the county, shall be invested in bonds of the United States, the State of Texas, or counties or cities of this State, or in bonds issued by any agency of the United States Government, the payment of the principal of and interest on which is guaranteed by the United States, provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amount likely to become due each year out of said Fund, such amount

of funds to be kept on hand to be determined by the agency which may be provided by law to administer said Fund; and provided that the recipients of benefits from said Fund shall not be eligible for any other pension retirement funds or direct aid from the State of Texas, unless the Fund, the creation of which is provided for herein, contributed by the county, is released to the State of Texas as a condition to receiving such other pension aid. (Adopted election Nov. 5, 1946).

ARTICLE XVII

MODE OF AMENDING THE CONSTITUTION OF THIS STATE

Section 1. The Legislature, at any biennial session, by a vote of two-thirds of all the members elected to each House, to be entered by yeas and nays on the journals, may propose amendments to the Constitution, to be voted upon by the qualified electors for members of the Legislature, which proposed amendments shall be duly published once a week for four weeks, commencing at least three months before an election, the time of which shall be specified by the Legislature, in one weekly newspaper of each county, in which such a newspaper may be published; and it shall be the duty of the several returning officers of said election, to open a poll for, and make returns to the Secretary of State, of the number of legal votes cast at said election for and against said amendments; and if more than one be proposed, then the number of votes cast for and against each of them; and if it shall appear from said return, that a majority of the votes cast, have been cast in favor of any amendment, the said amendment so receiving a majority of the votes cast, shall become a part of this Constitution, and proclamation shall be made by the Governor thereof.

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AND
VERNON'S TEXAS STATUTES 1948

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A BILL to be entitled "*An Act to Adopt and Establish the 'REVISED CIVIL STATUTES of the State of Texas.'* "

WHEREAS, It is expedient that the General Civil Statutes of this State should be arranged in appropriate titles, chapters and articles, and that the whole should, as far as practicable, be made concise, clear and consistent; therefore,

Section 1. *BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:*

That the following titles, chapters, subdivisions and articles shall hereafter constitute *THE REVISED CIVIL STATUTES* of the State of Texas.

†

VERNON'S
REVISED CIVIL STATUTES
OF THE
STATE OF TEXAS

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28. [Repealed.]
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29. Legal rate of publication.
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Article 1. [5492] [3258] Common law.—The common law of England, so far as it is not inconsistent with the Constitution and laws of this State, shall together with such Constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the Legislature.

SPECIAL LAWS

Art. 2. [5494] [3260] Special laws: notice.—Any person intending to apply for the passage of any local or special law shall give notice of such intention by having a statement of the substance of such law published in some newspaper published in the county embracing the locality to be affected by said law, at least once each week for the period of thirty days prior to the introduction into the Legislature of such contemplated laws. [Const. art. 3, sec. 57; Acts 1876, p. 7; G. L. vol. 8, p. 843.]

Art. 3. [5495] [3261] If no newspaper published.—If no newspaper is published in said county, a written copy of such statement shall be posted at the court house door and in five other public places in the immediate locality to be affected thereby in said county, for thirty days, and such notice shall accurately define the locality to be affected by said law. [Id.]

Art. 4. [5496] [3262] Notice for each county.—Where the locality to be affected by said law shall extend beyond the limits of any one county, such notice shall be given for each county to be affected.

Art. 5. [5497] [3263] Affecting persons.—Whenever any person intends applying for the passage of a special law which shall affect persons chiefly, and not directly affect any particular locality more than others, such persons, if residing in this State, shall make publication of notice of such intention in the county of the residence of such person in the same manner as if the said law was to affect such locality. [Const. art. 3, sec. 2.]

Art. 6. [5498] [3264] Where applicant is a non-resident.—If the applicant is a non-resident of this State, said publication need only be made in a newspaper published at the Capital, in like manner as if such person resided at the seat of government. [Id.]

Art. 7. [5499] [3265] Details unnecessary.—Said notice need not contain the particular form and terms of such contemplated law, but a statement only of the general purposes and nature of the same shall be sufficient. [Id.]

Art. 8. [5500] [3266] Proof of publication.—Whenever publication in a newspaper is required by law, proof of the same shall be made by the affidavit of the publisher accompanied with a printed copy of such notice as published.

Art. 9. [5501] [3267] Proof of posting.—The posting above provided for may be shown by the return of the sheriff or constable, or by the affidavit of any credible person made on a written copy of the notice so posted, showing the fact of such posting, and such proof or other competent proof of the giving of said notice shall accompany the introduction of every local or special law. [As amended Acts 1927, 40th Leg., p. 42, ch. 29, § 1.]

CONSTRUCTION OF LAWS

Art. 10. [5502] [3268] General rules.—The following rules shall govern in the construction of all civil statutory enactments:

1. The ordinary signification shall be applied to words, except words of art or words connected with a particular trade or subject matter, when they shall have the signification attached to them by experts in such art or trade, with reference to such subject matter.
2. The present or past tense shall include the future.
3. The masculine gender shall include the feminine and neuter.
4. The singular and plural number shall each include the other, unless otherwise expressly provided.
5. A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared.
6. In all interpretations, the court shall look diligently for the intention of the Legislature, keeping in view at all times the old law, the evil and the remedy.
7. Whenever one law which shall have repealed another shall itself be repealed, the former law shall not be thereby revived without express words to that effect.
8. The rule of the common law that statutes in derogation thereof shall be strictly construed shall have no application to the Revised Statutes; but the said statutes shall constitute the law of this State respecting the subjects to which they relate; and the provisions thereof shall be liberally construed with a view to effect their objects and to promote justice.

Art. 11. [5503] [3269] Grammatical errors.—Grammatical errors shall not vitiate a law, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands. In no case shall the punctuation of a law control or affect the intention of the Legislature in the enactment thereof.

MISCELLANEOUS

Art. 12. [3935–36] Fiscal year.—The fiscal year of the State shall terminate on the thirty-first day of August of each year, and appropriations of the State government shall conform thereto. All officers who are required by law to report annually or biennially to the Legislature or Governor shall close their accounts on that date, and as soon thereafter as practicable shall prepare and compile their respective reports. [Acts 1901, p. 9.]

Art. 13. [3937–38] Reports of officers.—All annual or biennial reports intended for the use of the Legislature or Governor shall be sent by the respective officers to the Secretary of State on or before November first, and he shall promptly cause the same to be printed before the assembling of the Legislature, and upon its organization he shall send to the presiding officer of each house ten copies of each printed report for the members thereof. [Id.]

Art. 14. Quorum.—The majority of any legally constituted board or commission, unless otherwise specially provided, shall constitute a quorum for the transaction of business.

Art. 15. Disqualifications.—No judge or justice of the peace shall sit in any case wherein he may be interested or where either of the parties may be connected with him by affinity or consanguinity within the third degree, or where he shall have been counsel in the case. [Const. art. 5, sec. 11.]

Art. 16. Oath of office.—Each officer in this State, whether elected or appointed shall, before entering upon the duties of his office, take and subscribe the oath prescribed by Article 16, Section 1, of the Constitution of this State; and if he shall be required by law to give an official bond, said oath shall be filed with said bond.

Art. 17. Date to qualify.—After each general election, those who are elected to the various county and precinct offices shall qualify by taking the official oath and entering upon and assuming the duties of their respective offices on the first day of January following the last general election, or as soon thereafter as possible. Those officers holding office at said time shall surrender their offices to their successors accordingly on said date, or as soon after such date as their successors shall have qualified and be ready to assume the duties thereof. [Acts 1921, p. 96.]

Art. 18. Term of office.—Each officer, whether elected or appointed under the laws of this State, and each Commissioner, or member of any board or commission created by the laws of this State, shall hold his office for the term provided by law and until his successor is elected or appointed and qualifies; and each, on retiring from office, shall deliver to his successor all books, papers and documents relating to his office.

Art. 19. Vacancies; ratification by Senate.—All vacancies in State or district offices, except members of the Legislature, shall be filled unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the Senate present. If made during the recess of the Senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the Senate during the first ten days of its session. If rejected, said office shall immediately become vacant, and the Governor shall, without delay, make further nominations until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy, who has been rejected by the Senate; but may appoint some other person to fill the vacancy until the next session of the Senate, or until the regular election to said office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter. [Const. art. 4, sec. 12.]

Art. 20. Vacancy filled by election.—All elections to fill vacancies in office shall be to fill the unexpired term only.

Art. 21. Vacancy in board or commission.—Any vacancy in the office of any commissioner, commission or board created by law where the appointment to such office shall be authorized to be made by the Governor shall be filled by the Governor for the unexpired time, unless otherwise provided by law.

Art. 22. Officers of Texas.—When an officer is referred to in any civil or criminal law of this State, it shall mean an officer of this State, unless otherwise expressly provided.

Art. 23. [5504] [3270] Definitions.—The following meaning shall be given to each of the following words, unless a different meaning is apparent from the context:

1. "Property" includes real and personal property.
2. "Person" includes a corporation.
3. "Written" or "in writing" includes any representation of words, letters or figures, whether by writing, printing or otherwise.
4. "Oath" includes affirmation.
5. "Swear" or "sworn" includes affirm.
6. "Signature" or "subscribe" includes the mark of a person unable to write.
7. "Justice" when applied to a magistrate, means justice of the peace.
8. "Preceding Federal census" shall be construed to mean the United States census of date preceding the action in question and each such subsequent census as it occurs.
9. "Governing body," the governing or legislative body of any incorporated town, city or village, whether known as a council, commission, board of commissions, common council, board of aldermen, city council or by whatever name such bodies may be known or designated.
10. "Official oath" means the oath required by Article 16, Section 1, of the Constitution of Texas.
11. "Comptroller" means the Comptroller of Public Accounts of the State of Texas.
12. "Land Commissioner" means the Commissioner of the General Land Office of Texas.
13. "Preceding" when used by way of reference to title, chapter or article, means the next preceding.
14. "Succeeding" in like manner, means the next succeeding.
15. "Month" means a calendar month.
16. "Year" means a calendar year.
17. "Effects" includes all personal property and all interest therein.
18. "Affidavit" means a statement in writing of a fact or facts signed by the party making it, and sworn to before some officer authorized to administer oaths, and officially certified to by such officer under his seal of office.

Art. 23a. Standard time.—The standard time throughout this state shall be that of the ninetieth (90th) meridian of longitude west from Greenwich, commonly known as "central standard time"; provided, however, that regions of this State using Mountain Standard Time, shall continue to use that time as their official standard time. In all statutes, orders, rules, and regulations, either now in force or hereafter to be promulgated, relating to the time within which any Act shall or shall not be performed by any person, it shall be understood and intended that the time referred to is the standard time as provided for in this Article, unless otherwise expressly provided. [Acts 1947, 50th Leg., p. 723, ch. 359, § 1.]

Art. 24. [Repealed].
See Rules of Civil Procedure, Rule 14.

Art. 25. [9] [3] Form of oath.—All oaths and affirmations shall be administered in the mode most binding upon the conscience of the individual taking same and shall be subject to the pains and penalties of perjury. [Const. art. 1, sec. 5.]

Art. 26. [10–13–14] Oaths, affidavits and affirmations; persons authorized to administer and issue certificate; members of armed forces; presumption; absence of seal.—1. All oaths, affidavits, or affirmations made within this State may be administered and a certificate of the fact given by:
a. A judge, clerk, or commissioner of any court of record;
b. A notary public;
c. A justice of the peace;
d. Any member of any board or commission created by the laws of this State, in matters pertaining to the duties thereof.

2. Such oath, affidavit, or affirmation made without this State and within the physical limits of the United States and its territories may be administered and a certificate of fact given by:
a. A clerk of any court of record having a seal;
b. A commissioner of deeds duly appointed under the laws of this State;
c. A notary public.
3. Such oath, affidavit, or affirmation made without the physical limits of the United States and its territories may be administered and a certificate of fact given by:
a. A minister, a commissioner, or charge d'affaires of the United States, resident and accredited to the country where the oath, affidavit, or affirmation is made;
b. A consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States, resident in the country where the oath, affidavit, or affirmation is made;
c. A notary public.
4. In addition to the methods above provided, any such oath, affidavit, or affirmation made by a member of the Armed Forces of the United States of America or any Auxiliaries thereto, may be administered by any commissioned officer in the Armed Forces of the United States of America or in the Auxiliaries thereto, and a certificate of such fact may be made by such officer.

In the absence of pleading or proof to the contrary it shall be presumed, when any certificate of an oath, affidavit, or affirmation is offered in evidence, that the person signing such as a commissioned officer was such on the date signed, and that the person making such oath, affidavit, or affirmation, to which such officer certifies, was one of those with respect to whom such action is hereby authorized.

No oath, affidavit, or affirmation administered in accordance with the provisions of this sub-section 4 of this Act shall be held invalid by reason of the failure of the officer certifying to such oath, affidavit, or affirmation to attach an official seal to the certificate thereto. [As amended Acts 1945, 49th Leg., p. 544, ch. 331, § 1; Acts 1947, 50th Leg., p. 2, ch. 2, § 1.]

Art. 27. [7092] [7093] Seals and scrolls.—Each commissioner and each commission and each board which is or may be created by the laws of this State shall have authority to adopt a seal with which to attest its official documents, certificates or any official written paper of any kind. No private seal or scroll shall be required in this State on any written instrument except such as are made by corporations.

Art. 28. [Repealed by Acts 1929, 41st Leg., p. 235, ch. 100, § 1]

Acts validated

Acts 1927, 40th Leg., ch. 232, p. 346, and Acts 1929, 41st Leg., p. 479, ch. 225, § 1, effective March 29, 1929, validated the appointment of all guardians by probate courts after citation was published under Article 28 of the Revised Civil Statutes of Texas, 1925, and without service of citation or notice by posting as provided in Article 4115, Revised Civil Statutes of Texas, 1925.

Acts 1929, 41st Leg., 2nd C. S., p. 91, ch. 53, §§ 1–3, validate the service of citations whether published or posted in all proceedings where guardians have been appointed, written wills probated, or executors or administrators appointed.

Art. 28a. Legal publications, definitions.—The following terms shall, unless the context indicates otherwise, have the following respective meanings:
(1) The term "publication" shall mean any proclamation, notice, citation, advertisement, or other matter required or authorized by law to be printed in a newspaper or newspapers by any institution, board, commission, department, officer, agent, representative, or employee of the State or of any subdivision or

department of the State, or of any county, political subdivision, or district of whatever nature within the State, whether to be paid for out of public funds or charged as costs or fees.

(2) The term "newspaper" shall mean any newspaper devoting not less than twenty-five (25) per cent of its total column lineage to the carrying of items of general interest, published not less frequently than once each week, entered as second-class postal matter in the county where published, and having been published regularly and continuously for not less than twelve (12) months prior to the making of any publication mentioned in this Act.

(3) The term "political subdivision" shall include cities, towns, and villages, but this definition shall not be exclusive.

(4) The term "district" shall include school districts of every kind, road districts, drainage districts, irrigation districts, levee improvement districts, conservation and reclamation districts, and improvement districts of every kind, but this definition shall not be exclusive.

(5) The term "shall" whenever used in this Act shall be construed as indicating mandatory provisions in this Act.

(6) The officer, employee, agency, or persons charged with the duty of inserting any publication in a newspaper or newspapers shall select the newspaper or newspapers in which such publication is to be inserted. [Acts 1933, 43rd Leg., 1st C.S., p. 223, ch. 84, § 1; Acts 1941, 47th Leg., p. 480, ch. 303, § 1.]

Art. 29. Legal rate of publication.—Wherever any publication, as publication is defined in Section 1 hereof [1], is authorized or required by any law, general or special, to be inserted in a newspaper, the legal rate which such newspaper shall charge for such publication shall be Two (2) Cents per word for the first insertion of such publication, and One Cent per word for each subsequent insertion, or such newspaper shall be entitled to charge for such publication at a rate equal to but not in excess of the lowest published word or line rate of that newspaper for classified advertising.

All bills for publication shall be accompanied by a certificate of the publisher, under oath, certifying the number of publications and the dates thereof, together with the clipping of said publication from an issue of said newspaper. The Board of Control, or any district or county official charged with the publication of any notice required by law to be published, is hereby fully authorized and empowered to cancel any contract made by them, or either of them, in the event said Board or official may ascertain or determine that a higher rate is being charged by said newspaper than provided for herein. All political advertising shall be done at the same rate as legal notices, and under the same supervision and regulations. Political advertising shall include the announcements for public office.

Without intending to exclude any other publication to which this Act [2] applies, it is specially provided that this Act shall apply to all citations or notices which are required to be published or may be published in delinquent tax suits and to notices of sale of real estate under execution, order of sale, or any other judicial sale provided for in Articles 3808, 4203, 7276, and 7342 of the Revised Civil Statutes of Texas, 1925. [Acts 1923, p. 97; Acts 1941, 47th Leg., p. 480, ch. 303, § 1.]

[1] Arts. 28a, 29, 29a.

[2] Arts. 28a, 29, 29a, 3808, 4203, 7276, 7342.

This article is from Acts 1923, 38th Leg., p. 97, ch. 51 which was amended by Acts 1925, 39th Leg., p. 372, ch. 161, set out in R.S.1925 as article 29a, post.

Art. 29a. Official publications.*—After the effective date of this Act [1], in every case where any law, general or special, requires the giving of any notice, the making of any proclamation or advertisement, or the service of any citation by any institution, board, commission, department, officer, agent, representative, or employee of the State or of any subdivision or department of the State or of any county, political subdivision, or district of whatever nature within the State by publication in a newspaper, the giving of such notice, the making of such proclamation or advertisement, or the service of such citation shall be by publication in a newspaper, as defined in Section 1 of this Act.[2] If any such law or laws specifies the manner of publication of such notice, proclamation, advertisement, or citation in a newspaper, such law or laws shall govern the manner of publication of such notice, proclamation, advertisement, or citation. If the manner of publication of such notice, proclamation, advertisement, or citation is not prescribed by the law requiring such notice to be given, such proclamation or advertisement to be made, or such citation to be served, then publication of such notice, proclamation, advertisement, or citation shall be made in a newspaper subject to the following restrictions and requirements:

(1) When the number of insertions of a publication is not specified by the law or laws requiring or authorizing such publication, such publication shall be inserted in some newspaper for at least one issue of such newspaper.

(2) If the period of time required for the giving of any notice, the making of any proclamation or advertisement, or the service of any citation is specified by the law or laws requiring or authorizing the giving of such notice, the making of such proclamation or advertisement, or the service of such citation, then the provisions of such law or laws shall be complied with as to such period of time in all publications made under the provisions of this Act.

(3) If the period of time referred to in paragraph 2 of this Article is not specified in the law or laws referred to therein, then such publication shall be in some newspaper issued at least one day prior to the happening of the events referred to in such publication.

(4) In every case where any notice, proclamation, or advertisement is required to be given by any district or political subdivision within the State, such notice or proclamation shall be given or made by publication in some newspaper published in such district or political subdivision, if there be such newspaper which will make such publication at a price not in excess of the maximum prescribed by this Act, but if there be no such newspaper, then such publication shall be made in any newspaper published in the county in which said district or political subdivision is situated, or, if there be no newspaper in such county which will make such publication at a price not in excess of the maximum prescribed by this Act, then such notice shall be posted at the courthouse door of said county.

(5) In every case where any notice, proclamation, or advertisement is required to be given or made by any county, such notice, proclamation, or advertisement shall be given or made by publication in some newspaper published in the county, if there be such newspaper which will make such publication at a price not in excess of the maximum prescribed by this Act, but if there be no such newspaper published in the county, then such notice shall be made by posting a copy of same at the courthouse door of said county.

In every case where the service of any citation or notice in any case, controversy, suit, or proceeding in any of the Courts of the State is required to be by publication under the provisions of any general or special law of this State, such publication shall be published as required by the general or special law providing for such notice by publication.

In every case, controversy, proceeding, or suit in any of the Courts of the State where the service of citation or notice is required to be made by publication under any general or special law of this State and in which case, controversy, proceeding, or suit the State or any political subdivision or district thereof is a party and in which case, controversy, proceeding, or suit the cost of publication of such citation or notice is to be charged as fees or costs, the refusal of any newspaper to make publication of such citation or notice without payment of the cost of such publication in advance of publication shall be deemed as unqualified refusal to publish such citation or notice, and the sworn statement of the publisher or the person offering to insert such publication shall be subject to record as proof of such refusal. [Acts 1925, 39th Leg., p. 372, ch. 161; Acts 1941, 47th Leg., p. 480, ch. 303, § 1.]

[1] Arts. 28a, 29, 29a, 3808, 4203, 7276, 7342.
[2] Arts. 28a, 29, 29a.

**Repealed in part, Rules of Civil Procedure, Rule 117a.*

Art. 30. Revised Statutes cited.—These Revised Civil Statutes shall be known and may be cited as the "Revised Statutes."

TITLE 2—ACCOUNTANTS—PUBLIC AND CERTIFIED

Art.
31–41. [Repealed.]
41a. Public Accountancy Act of 1945.

Sec.
1. Name.
2. Definitions.
3. Acts not restricted.
4. State Board of Public Accountancy.
5. Powers and duties of Board.
6. Compensation of Board.
7. Expenses of Board.
8. Prohibition against practicing without permit.
9. Annual permits to practice.
10. Registration with the Board.
11. Individuals or public accountants entitled to register.
12. Certification of certified public accountants.
13. Reciprocity.
14. Certified Public Accountants of other states or persons holding similar titles in foreign countries—registration thereof.
15. Examinations, re-examinations, and fees therefor.
16. Use of name "Certified Public Accountant"—abbreviations.
17. Use of name of "Certified Public Accountant"—partnerships.
18. Use of name "Public Accountant".
19. Use of name "Public Accountant"—partnerships.
20. Prohibited abbreviations.
21. Practice of public accountancy by corporations.
22. Revocation or suspension of certificate or permit.
23. Procedure and review.
24. Penalties.
25. Partial invalidity.

Arts. 31–41. [Repealed by Acts 1945, 49th Leg., p. 517, ch. 315, § 26.]

Art. 41a. Public Accountancy Act of 1945

Name

Section 1. This Act may be cited as the "Public Accountancy Act of 1945".

Definitions

Sec. 2. (a) "Practice of Public Accountancy". A person engages in the "practice of public accountancy" within the meaning of this Act who, holding himself out to the public as a public accountant, in consideration of compensation received or to be received by him, offers to perform or does perform, for other persons, services which involve the auditing or examination of financial transactions, books, accounts, or records, or the preparation of, or the reporting over his signature on, financial, accounting, and related statements.

(b) Board. The term "Board" when used in this Act means the "Texas State Board of Public Accountancy".

(c) Person. The term "person", when used in this Act, shall, unless the context indicates otherwise, mean individuals, partnerships and corporations.

Acts not restricted

Sec. 3. Nothing in this Act shall be construed as applying to any County Auditor, or other officer of the state, county, municipality, quasi-municipality, or other political subdivision thereof, or of their assistants, deputies or employees.

State Board of Public Accountancy

Sec. 4. The Texas State Board of Public Accountancy shall consist of five members, each of whom shall be a citizen of the United States and a resident of this state. Members of the Board and their successors shall be appointed by the Governor, with the advice and consent of the Senate, and shall be accountants in public practice who hold Certified Public Accountant certificates issued under the laws of this state. Members of the Board shall hold office for terms of two years, or until their successors are appointed and have qualified, except the members of the Board first to be appointed, who shall hold office, two for one year and three for two years, as designated by the Governor. Vacancies occurring during a term shall be filled by appointment for the unexpired term. The Governor shall remove from the Board any member whose permit to practice has become void, revoked or suspended.

Powers and duties of Board

Sec. 5. The Board shall administer the provisions of this Act. The Board shall formally elect a chairman and a secretary-treasurer from its members and may adopt such rules as it deems necessary for the orderly conduct of its affairs. The Board may promulgate, and may amend from time to time, rules of professional conduct appropriate to establish and maintain a high standard of integrity in the profession of public accountancy, after notice to all holders of valid permits to practice public accountancy in this state. Such notice shall set forth the proposed rules of professional conduct or amendments and the time when same shall be voted on by public accountants holding valid permits under this Act. No such rule or amendment shall be operative until approved by a majority of those voting at such election. The voting shall be by mail and under such reasonable rules and regulations as the Board may prescribe. The Board shall declare the results of such election and proclaim the effective date of such rules of professional conduct, or amendments, and adopt reasonable means of notifying all public accountants of the results of such election. A majority of the Board

shall constitute a quorum for the transaction of business. The Board shall have a seal which shall be judicially noticed. The Board shall keep records of all proceedings and actions by and before the Board. The Board may employ such clerks as are necessary to assist it in the performance of its duties and in the keeping of its records.

Compensation of Board

Sec. 6. Members of the Board shall not receive any compensation for their services, but shall be reimbursed for their necessary expenses incurred in the discharge of their official duties.

Expenses of Board

Sec. 7. All expenses incurred under this Act shall be paid from the fees collected by the Board under this Act. No expenses incurred under this Act shall ever be a charge against the funds of the State of Texas. The Board shall, as of December 31, 1946, and annually thereafter, report to the Governor of the State of Texas the receipts and disbursements under this Act, for each calendar year.

Prohibition against practicing without permit

Sec. 8. After January 1, 1946, no person shall engage in the practice of public accountancy in this state unless such person is the holder of a valid permit to practice public accountancy, issued by the Board.

Annual permits to practice

Sec. 9. Permits to engage in the practice of public accountancy in this state shall be issued by the Board to the following upon the payment of fees hereinafter specified:

(a) Holders of the Certificate of Certified Public Accountant issued under this Act.

(b) Such persons as are registered with the Board under the provisions of Section 10 of this Act.

(c) Such persons as are registered with the Board under the provisions of Section 14 of this Act.

There shall be paid to the secretary treasurer of the Board, a permit fee of Five ($5.00) Dollars. All permits shall expire on the 31st day of December of each year, but shall, annually, be renewed for a period of one year, upon the payment of a fee of not more than Five ($5.00) Dollars, the Board being hereby given the authority and duty to determine the amount of such renewal fee for each coming year on or before December 1st of each year, and to mail notices thereon each year by that date.

Failure of any permit holder to pay the annual registration renewal fee on or before January 31st of each year shall automatically cancel his permit. Any permit holder whose permit shall have been cancelled because of failure to pay the annual registration renewal fee may secure reinstatement of his permit at any time within that calendar year upon payment of the delinquent registration fee together with a penalty of Two Dollars and Fifty Cents ($2.50). After expiration of the calendar year for which the registration fee was not paid, no permit shall be reinstated except upon application and examination satisfactory to the Board. The Board shall have no authority to waive the collection of any fee or penalty.

Registration with the Board

Sec. 10. The following persons shall be registered with the Board for the practice of public accountancy in this state:

(a) All individuals and public accountants qualified or who may qualify under Section 11 of this Act.

(b) Partnerships qualified under Sections 17 and 19 of this Act.

(c) Corporations qualified under Section 21 of this Act.

All applicants for registration shall furnish satisfactory evidence that the applicant is entitled to registration. The Board shall have power to examine such applications and may refuse registration to any applicant who is unable to meet the standards imposed by this Act.

Individuals or public accountants entitled to register

Sec. 11. All persons listed in subdivisions (a), (b), and (c) of this Section who are citizens of the United States, or have declared their intention of becoming citizens, who reside within the State or have a place for the regular transaction of business therein, and who are twenty-one (21) years of age or over, and of good moral character, may register on or before the first day of November, 1947, with the Board as public accountants as provided in Section 10 of Acts, 1945, Forty-ninth Legislature, page 517, Chapter 315;

(a) Persons engaged at the date of the enactment of this Act, or persons who have engaged for at least three (3) years during the ten (10) years immediately preceding the date of enactment of this Act, in the practice of public accountancy within the State either as individuals on their own account, members of copartnerships engaged in the practice of public accountancy, or as officers of corporations engaged in the practice of public accountancy;

(b) Any individual who at the date of the enactment of this Act, may be an employee of any person engaged in the practice of public accountancy or may be employed in any governmental agency, provided all such persons meet any one of the three (3) following standards:

(1) Who is a graduate of a junior college, senior college or university and has completed thirty (30) or more semester hours or the equivalent thereof in the study of accounting, business law, economics and finance, of which at least twenty (20) semester hours or the equivalent thereof shall be in the study of accounting, and has been in the employ of a person engaged in the practice of public accountancy, or shall have been employed as an accountant or auditor in work of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters for two (2) years preceding the date of application; or

(2) Who is a graduate of a junior college, senior college or university but has not completed the hours of study in subjects specified in subdivision (1) of this Section, and has been in the employ of a person engaged in the practice of public accountancy, or shall have been employed as an accountant or auditor in work of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters for three (3) years preceding the date of application; or

(3) Who is a graduate of a high school or has an equivalent education and has been in the employ of a person engaged in the practice of public accountancy, or shall have been employed as an accountant or auditor in work of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters, for at least four (4) years preceding the date of application;

(c) Individuals serving in the armed forces of the United States or any of the United Nations, who at the date of entering such service may be qualified as specified in either subdivision (a) or (b) of this Section. In the case of any person serving in the armed forces of the United States or any of the United Nations on the effective date of this Act, the Board shall extend the time for compliance prescribed by any provisions of this Act, for a period of twelve (12) months from the time such person is honorably discharged from such service. [As amended Acts 1947, 50th Leg., p. 465, ch. 266, § 1.]

Certification of certified public accountants

Sec. 12. The certificate of "certified public accountant" shall be granted by the Board to any person who is:

(a) a citizen of the United States or who has duly declared his or her intention of becoming such citizen, and who is a resident of the State of Texas or has a place of business or is employed therein at the time of his application; and (b) who is over the age of twenty-one years; and (c) who is of good moral character; and (d) who meets the requirements of education and experience of one of the three following subdivisions:

(1) Who is a graduate of a junior college, senior college or university recognized by the Board, and has completed thirty or more semester hours or the equivalent thereof in the study of accounting, business law, economics and finance, of which at least twenty semester hours or the equivalent thereof shall be in the study of accounting, and has been engaged in practice as a public accountant, or been in the employ of a person engaged in the practice of public accountancy, or shall have been employed as an accountant or auditor in work of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters for one year preceding the date of application; or

(2) Who is a graduate of a junior college, senior college or university recognized by the Board but has not completed the hours of study in subjects specified in subdivision (1) of this section, and has been engaged in practice as a public accountant, or been in the employ of a person engaged in the practice of public accountancy, or shall have been employed as an accountant or auditor in work of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters for three years preceding the date of application; or

(3) Who is a graduate of a high school with a four year course or has an equivalent education and has been in practice as a public accountant, or been in the employ of a person engaged in the practice of public accountancy, or shall have been employed as an accountant or auditor in work of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters, for at least four years preceding the date of application; and

(e) Who shall have successfully passed written examinations in the theory of accounts, in accounting practice, in auditing, in commercial law as affecting accounting and in such other related subjects as the Board may deem advisable. Each applicant shall be required to make a grade of at least seventy-five (75%) per cent on each subject. Applicants for the examinations shall meet the requirements stated in subdivision (a), (b), (c) and (d) of this section before such applicant shall be permitted to take the examination; except, a candidate for the certificate of "certified public accountant" who meets the educational requirement in subdivision (1) of clause (d) of the first paragraph of this section shall be immediately entitled to examination in subjects other than accounting practice, but shall be required to meet the one-year experience requirement of said subdivision (1) before admission to examination in accounting practice. Provided, however, that anyone who meets the requirements of education and experience of one of the three subdivisions (1), (2), (3), and who is duly enrolled as an attorney in the Supreme Court of Texas and has complied with the provisions of the State Bar Act and is a member of the State Bar in good standing, shall be immediately entitled to examination in subjects other than commercial law, as affecting accounting, and will be given credit for commercial law without taking the written examination on commercial law. The holder of a certificate heretofore issued under the provisions of Chapter 122 of the Acts of 34th Legislature [1] shall not be required to secure a new certificate as a certified public accountant under this Act, but shall otherwise be subject to all the provisions of this Act; and such certificates heretofore issued shall, for all purposes, be considered certificates issued under this Act and subject to the provisions hereof.

[1] Arts. 31-41, repealed.

Reciprocity

Sec. 13. (a) The Board may in its discretion waive the examination of, and may issue a certificate as "certified public accountant" to, any person possessing the other qualifications mentioned in Section 12 of this Act who is the holder of a certificate as certified public accountant issued under the laws of any state or territory (or the equivalent thereof issued in any foreign country), provided the requirements for such certificates in the state or territory (or foreign country) which has granted it to the applicant were in the opinion of the Board equivalent to those required in this state at the time the applicant's original certificate was issued, and provided that such state or territory (or foreign country) may extend the same privilege to certified public accountants holding certificates from this state.

(b) Any person holding a permit under the laws of any state or territory to practice public accountancy, if such state or territory in the opinion of the Board has standards equal to those required by this state, shall be granted a permit by the Board of this state if such state or territory admits public accountants of this state to practice in such state or territory.

Certified Public Accountants of other states and persons holding similar titles in foreign countries—registration thereof

Sec. 14. A certified public accountant of another state or territory, or the holder of a certificate, license, or degree authorizing him to practice public accountancy in a foreign country, may register with the Board as a certified public accountant, of such other state or territory, or as holding such certificate, license or degree of a foreign country, if the Board determines that the standards under which the applicant became a certified public accountant, or received such certificate, license, or degree, were as high as the standards of this state at the same time for giving the Certificate of Certified Public Accountant. A person so registered may describe himself as a certified public accountant of the state or territory which issued his certificate, or may use the title held by him in a foreign country, provided that the country of its origin is indicated.

Examinations, re-examinations, and fees therefor

Sec. 15. All examinations provided for herein shall be conducted by the Board. The examinations shall take place as often as may be necessary in the opinion of the Board but not less frequently than once each year. The time and place of holding examinations shall be duly advertised for not less than three days in three daily newspapers published in the three most populous cities in Texas beginning not less than thirty days prior to the date of each examination. A candidate who fails shall have the right to any number of re-examinations. A candidate who passes a satisfactory examination in at least two subjects, or has passed at least two subjects under the prior Act (Chapter 122, Acts 34th Legislature [1]) shall have the right to be re-examined in the remaining subjects only, at subsequent examinations held by the Board, and if he passes in the remaining sub-

jects, he shall then be considered to have passed the examinations. The Board shall charge for the examinations (together with certificates to successful applicants provided for in this Act) a fee of Twenty-five Dollars ($25.00) which shall be payable by the applicant at the time of making initial application. Should the applicant fail to pass the required examination, re-examination or subsequent examinations will be given the same applicant for an additional fee of Ten Dollars ($10.00) for each examination. Any person who has taken the examination under the prior Act shall be entitled to re-examination under this Act. All fees provided for in this Act shall be paid to the secretary-treasurer of the Board.

[1] Arts. 31-41, repealed.

Use of name "Certified Public Accountant"—abbreviations

Sec. 16. Any person who has received from the Board a Certificate of Certified Public Accountant and holds a valid permit to practice, shall be styled and known as a "Certified Public Accountant" and may also use the abbreviation "C.P.A.". No other person except partnerships registered under this Act, shall assume or use that title or abbreviation or any other title, sign, card or device tending to imply that the person using the same is a certified public accountant.

Use of name of "Certified Public Accountant"—partnerships

Sec. 17. A partnership engaged in this state in the practice of public accountancy may register with the Board as a partnership of certified public accountants provided it meets the following requirements:

(a) At least one general partner thereof must be a certified public accountant of this state in good standing.

(b) Each partner thereof personally engaged within this state in the practice of public accountancy as a member thereof must be a certified public accountant in this state in good standing.

(c) Each partner thereof must be a certified public accountant of some state in good standing.

(d) Each resident manager in charge of an office of the firm in this state must be a certified public accountant of this state in good standing.

Application for such registration must be made upon the affidavit of a general partner of such partnership who is a certified public accountant of this state in good standing. Such affidavit must set forth the partnership name and the post office address thereof within the state, and the address of the principal office thereof, wherever located, together with the name, residence and post office address of each general partner. The Board shall in each case determine whether the applicant is eligible for registration. A partnership which is so registered and which holds a permit issued under Section 9 of this Act may use the words "certified public accountants" or the abbreviation "C.P.A.'s" in connection with its partnership name. Notification shall be given the Board, within one month, after the admission to or withdrawal of a partner from any partnership so registered.

Use of name "Public Accountant"

Sec. 18. Any individual qualified under this Act to register with the Board for the practice of public accountancy and who has so registered, and who holds a valid permit for the practice of public accountancy, may be styled and known as a "public accountant". No other person except partnerships registered under this Act shall assume or use that designation or any other designation tending to imply that the person using the same is a public accountant. This section shall not be applied to a certified public accountant.

Use of name "Public Accountant"—partnerships

Sec. 19. A partnership engaged in this state in the practice of public accountancy may register with the Board as a partnership of public accountants provided it meets the following requirements:

(a) At least one general partner thereof must be a certified public accountant or a public accountant of this state in good standing.

(b) Each partner thereof personally engaged within this state in the practice of public accountancy as a member thereof must be a certified public accountant or a public accountant of this state in good standing.

(c) Each resident manager in charge of an office of a firm in this state must be a certified public accountant or a public accountant of this state in good standing.

Application for such registration must be made upon the affidavit of a general partner of such partnership who holds a permit to practice in this state as a certified public accountant or as a public accountant. Such affidavit must set forth the partnership name and the post office address thereof within the state, together with the name, residence and address of each general partner of the partnership. The Board shall in each case determine whether the applicant is eligible for registration. A partnership which is so registered and which holds a partnership permit issued under Section 9 of this Act may use the words "public accountants" in connection with its partnership name. Notification shall be given the Board, within one month, after the admission to or withdrawal of a partner from any partnership so registered.

Prohibited abbreviations

Sec. 20. The use in the practice of public accountancy of the designations "chartered accountant", "certified accountant", "enrolled accountant", "registered accountant", "bonded accountant", "licensed accountant", or other such designations, or of the abbreviations "C. A.", "E. A.", "R. A.", "B. A.", "L. A.", or other such abbreviations by a public accountant or by any other person is prohibited. Nothing in this section shall prohibit certified public accountants or public accountants holding permits under this Act from using the designation "accountants and auditors" or "auditors and accountants".

Practice of public accountancy by corporations

Sec. 21. A corporation authorized to engage in the practice of public accountancy in this state and actually engaged in such practice at the time of the enactment of this Act, may register with the Board as a corporation engaged in the practice of public accountancy. Application for such registration must be made upon the affidavit of an officer of such corporation. The Board shall in each case determine whether the applicant is eligible for registration. A corporation which is so registered and which holds a permit issued under this Act may practice public accountancy under a corporate name indicating that it is engaged in such practice, provided it had such corporate name before the enactment of this Act.

Revocation or suspension of certificate or permit

Sec. 22. The Board shall have the power to institute proceedings against any person holding a certificate or permit under this Act to revoke or suspend the certificate or permit of such person who shall be charged and found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate or a permit;

(b) Any gross negligence or misconduct in the practice of public accountancy;

(c) Violation of any of the provisions of this Act or any of the rules or regulations promulgated by the Board.

Procedure and review

Sec. 23. Any proceedings instituted for the purpose of cancelling or suspending any certificate or permit granted by the Board shall be upon motion of the Board or upon the affidavit of any reliable citizen of this State. Upon the filing of such affidavit with the secretary of the Board, which affidavit must set forth specific facts upon which the charge is made, the Board, if it deems the information contained in the affidavit sufficient to support further action on its part, shall request the Attorney General of Texas to file suit, in the name of the Board as plaintiff, against the person complained of as defendant, for the purpose of cancelling or suspending such certificate or permit. Such suits shall be filed in the District Court of the county where the defendant resided at the time the acts complained of were committed. The petition shall set out the specific acts complained of and the cause shall be tried as other civil causes. If the court finds that the defendant has committed the act or acts charged in plaintiff's petition, and if such act or acts are in violation of the provisions of this Act, the court shall enter judgment cancelling or suspending such certificate or permit. Either party may appeal the case in the same manner as provided for in ordinary civil cases. Such suits must be instituted within two years after such affidavit is filed with the Board.

Penalties

Sec. 24. After the effective date of this Act, any person who shall hold himself out to the public as a public accountant or shall engage in the practice of public accountancy as same is defined in Section 2 of this Act, without having obtained a certificate or permit, or any person who shall violate any of the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars ($500.00), or by imprisonment in jail for not more than six months, or by both such fine and imprisonment.

Partial invalidity

Sec. 25. If any section or any part of this Act shall be held to be invalid, such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such section or part so held to be invalid. [Acts 1945, 49th Leg., p. 517, ch. 315.]

Section 26 of the Act of 1945, in addition to repealing arts. 31–41, and Pen.Code arts. 1132, 1133, repealed all conflicting laws and parts of laws.

TITLE 3—ADOPTION

Art.

42–46. [Repealed.]

46a. Proceedings for adoption, hearings and rights of adopted child.

Sec.

1. Petition.
1a. Copy of petition to Executive Director of Department of Public Welfare.
2. Investigation and report on filing petition.
3. Child living six months with petitioner.
4. Time for hearing petition.
5. Attendance of child at hearing.
6. Consent of parents, exceptions.
7. Restoration of child to parents.
8. Restrictions as to white persons and negroes.
9. Status of adopted child.
10. Restriction as to inspection of records.
10a. Inspection of sealed adoption records; statistics and reports.

46b. Validation of adoption.

46b—1. Adoption of adults.

Articles 42–46. [Repealed by Acts 1931, 42nd Leg., p. 300, ch. 177, § 11.]

Art. 46a. Proceedings for adoption, hearing and rights of adopted child

Petition

Section 1. Any adult person may petition the District Court in any of the following counties: (1) the county of his residence, (2) the county of the residence of the child to be adopted, or (3) if such child were placed for adoption by a child-placing institution of this State, in the county of the residence of the petitioner, or in the county of the residence of the child, or in the county where such child-placing institution is situated, for leave to adopt a minor child; such petition shall set forth the facts relative to petitioner and child, and be verified by the affidavit of the petitioner. But no such petition made by a married person shall be granted unless the husband and wife shall join therein, excepting when such petitioner shall be married to the natural father or mother, then such joinder by such father or mother shall be unnecessary. [As amended Acts 1947, 50th Leg., p. 1016, ch. 434, § 1.]

Copy of petition to Executive Director of Department of Public Welfare

Sec. 1a. Upon the filing and docketing of such petition the Clerk of the Court shall mail a certified copy of the same to the Executive Director of the State Department of Public Welfare, Austin, and shall note upon the docket the date of such mailing. [Added Acts 1947, 50th Leg., p. 1005, ch. 424, § 1.]

Investigation and report on filing petition

Sec. 2. Upon the filing of such petition for the adoption of any minor child, the court or judge shall cause an investigation to be made of the former environment and antecedents of the child for the purpose of ascertaining whether he is the proper subject for adoption, and of the home of the petitioner to determine whether it is a suitable home for the child. Such investigation shall be made by a suitable person selected by the court; provided, however, that the State Department of Public Welfare may make an investigation in any adoption case except those in which the child was placed for adoption by a legally licensed child-placing agency in the State. The results of such investigations shall be embodied in full written reports, which shall be submitted to the court at or prior to the hearing on the petition, and which shall be filed with the records of the proceedings and become a part thereof; provided further that a representative of the State Department of Public Welfare may appear in court if, in the opinion of the State Department of Public Welfare or the court, the best interest of the child will be served. [As amended Acts 1947, 50th Leg., p. 1005, ch. 424, § 2.]

Child living six months with petitioner

Sec. 3. No petition for the adoption of any minor child shall be granted until the child shall have lived for six months in the home of the petitioner; provided, that this requirement may be dispensed with upon good cause shown in the discretion of the Court, when the Court is satisfied that the home of the petitioner and the child are suited to each other.

Time for hearing petition

Sec. 4. Upon the filing of a petition for adoption the court shall appoint a time and place for hearing such petition not less than forty (40) days after the mailing of the certified copy of the petition to the Executive Director of the State Department of Public Welfare, as provided in Section 1a and not exceeding sixty (60) days after such mailing. [As amended Acts 1947, 50th Leg., p. 1005, ch. 424, § 3.]

Attendance of child at hearing

Sec. 5. The petitioner and the child to be adopted, if fourteen years of age or over, shall be required to attend the hearing in person, but a younger child shall not be required to attend unless the Court so orders.

Consent of parents, exceptions

Sec. 6. Except as otherwise amended in this Section, no adoption shall be permitted except with the written consent of the living parents of a child; provided, however, that if a living parent or parents shall voluntarily abandon and desert a child sought to be adopted, for a period of two (2) years, and shall have left such child to the care, custody, control and management of other persons, and such parent or parents so abandoning and deserting such child shall not have contributed to the support of such child during such period of two (2) years, then in such event it shall not be necessary to obtain the written consent of the living parent or parents in such default, and in such cases adoption shall be permitted on the written consent of the Judge of the Juvenile Court of the county of such child's residence, or if there be no Juvenile Court, then on the written consent of the Judge of the County Court of the county of such child's residence.

In the case of a child fourteen (14) years of age or over, the consent of such child also shall be required and must be given in writing in the presence of the Court. Consent shall not be required of parents whose parental rights have been terminated by order of the Juvenile Court or other Court of competent jurisdiction; provided, however, that in such cases adoption shall be permitted only on consent of the superintendent of the home or school, or of the individual to whom the care, custody, or guardianship of such child has been transferred by a Juvenile Court or other Court of competent jurisdiction. In case of a child not born in lawful wedlock the consent of the father shall not be necessary. [As amended, Acts 1937, 45th Leg., p. 1324, ch. 490, § 1.]

Restoration of child to parents

Sec. 7. Nothing in this Act shall prevent a Court of Competent Jurisdiction from taking away from such adoptive parent the custody of the adopted child and awarding the same to its natural parents, or either of them or to any other person, upon proof of the bad moral character of such adoptive parent, or upon proof of abuse, neglect or ill treatment of such adopted child by the adoptive parent.

Restrictions as to white persons and negroes

Sec. 8. No white child can be adopted by a negro person, nor can a negro child be adopted by a white person.

Status of adopted child

Sec. 9. When a child is adopted in accordance with the provisions of this Article, all legal relationship and all rights and duties between such child and its natural parents shall cease and determine, provided however, that nothing herein shall prevent such adopted child from inheriting from its natural parent; all adopted children shall inherit from the adopted as well as its natural parents. Said child shall thereafter be deemed and held to be, for every purpose, the child of its parent or parents by adoption as fully as though born of them in lawful wedlock. Said child shall be entitled to proper education, support, maintenance, nurture and care from said parent or parents by adoption, and shall inherit from said parent or parents by adoption, and as the child of said parent or parents by adoption, as fully as though born to them in lawful wedlock; subject, however, to the provisions of this Act. Said parent or parents by adoption shall be entitled to the services, wages, control, custody and company of said adopted child, and shall, as such adopting parent or parents, inherit from and as the parent or parents of said adopted child as fully as though the child had been born to them in lawful wedlock; provided, however, that upon the death of such adopted child, while unmarried and without issue of its body, all of its property, of whatsoever kind and nature, shall pass and descend to the adopting parent or parents, if living, but if such adopting parent or parents be not living, then all such property shall pass and descend to the next of kin of said adopting parent or parents according to the then law of descent and distribution, and not to the next of kin of such adopted child; and provided that, upon the death of such adopted child leaving surviving a husband or wife and child or children, or leaving surviving a husband or wife and no child or children, or leaving surviving a child or children and no husband or wife, then and in such event all property of whatsoever kind and nature of said adopted child shall pass and descend to said husband or wife and child or children or either of them as the case might be, according to the then law of descent and distribution; provided, further, that upon the death of a child of an adopted child without leaving a surviving father or mother, or husband or wife, or child or children, or a brother or brothers, or sister or sisters, all property of whatsoever kind of such deceased child of an adopted child shall pass and descend to the adopting parent or parents of such adopted child, if living, but if not living, then to the next of kin of such adopting parent or parents, according to the then law of descent and distribution, and not to the next of kin of such adopted child; provided, further, that if such adopting parent or parents shall have other children, both natural children and adopted children, then, in such event, the children by birth and adoption shall respectively inherit from and through each other as if all such children had been born in lawful wedlock of the same parents; provided, further, that nothing in this Act shall be construed so as to prevent or debar an adopted child from disposing of its property by Will according to the laws of this State; and finally, provided, that the legal adoption of a child, according to the laws of another State of the United States, residing in the State of Texas, shall be, in all respects, valid and binding as if the adoption had occurred in the State of Texas, insofar as the effect of the adoption and the rights of inheritance may be concerned as provided in this Act.

Restriction as to inspection of records

Sec. 10. The files and records of the court in adoption proceedings shall not be open to the inspection or copy by other persons than parties interested and their attorneys, except upon order of the court especially permitting inspection of the records except that all judgments, orders and decrees of the Court may be open to inspection by any person and certified copies may be obtained from the clerk of the Court. [Acts 1931, 42nd Leg., p. 300, ch. 177.]

Inspection of sealed adoption records; statistics and reports

Sec. 10a. The sealed adoption records shall not be inspected by the State Department of Public Welfare except on order of the court after written notice of the time and place of a hearing on the Department's request for such order has been given the adoptive parents if their residence is known. Said notice may be served in such manner as the court may direct. Where the residence of the adoptive parents is not known no notice shall be required.

The Director of the State Department of Public Welfare is directed to compile statistics and reports as to all adoptions in the State of Texas from the information furnished said Department by the Clerk

of the Court, and is hereby directed to make a report to the Governor biennially. [Added Acts 1947, 50th Leg., p. 1005, ch. 424, § 4.]

Section 5 of the amendatory Act of 1947 repealed all conflicting laws and parts of laws.

Provisions of section 9 of this article that adopting parents' children by birth and adoption shall inherit from and through each other as if all were born of same parents in lawful wedlock are void. Hoch v. Hoch, 140 T. 475, 168 S.W.2d 638; Eck v. Eck, Civ.App., 145 S.W. 2d 231, error dismissed, judgment correct.

Art. 46b. Validation of adoption.—All adoption papers which were signed by an adopting parent or parents prior to January 1, 1923, and under the terms of which any child was attempted to be adopted, be, and the same are, hereby validated and made of binding force and effect, although said adoption papers were not authenticated or acknowledged as required for deeds, and were not prior to the death of the adopting parent filed for record with the County Clerk of the adopting parent's residence.

All adoption decrees heretofore entered by District Courts in Texas, based on proceedings which conformed to the adoption statutes as thereafter amended, be, and the same are hereby validated and made of binding force and effect. [Acts 1934, 43rd Leg., 2nd C.S., p. 93, ch. 39, § 1; Acts 1937, 45th Leg., p. 1324, ch. 490, § 2; Acts 1947, 50th Leg., p. 1016, ch. 434, § 2.]

Art. 46b—1. Adoption of adults.—Section 1. Any adult resident of this State may petition the District Court in the district of his residence for leave to adopt an adult person. Such petition shall set forth the facts relevant to petitioner and the person to be adopted, and be verified by the affidavit of the petitioner. No such petition made by a married person shall be granted unless the husband and wife shall join therein, excepting when such petitioner shall be married to the natural father or mother; then such joinder by such father or mother shall be unnecessary.

Sec. 2. No petition for adoption of an adult shall be granted unless and until the adult to be adopted shall file, in the Court in which such petition for adoption has been filed a request that such petition be granted, which request shall be acknowledged by the person to be adopted in the manner hereafter required for acknowledgments to deeds, and a copy of which request so acknowledged shall be filed in the deed records in the county in which such adoption is pending.

Sec. 3. Upon the filing of a petition for adoption and the request of the person to be adopted that the said petition be granted, the Court shall appoint a time and place for hearing such a petition, which time shall be not less than ten (10) days nor more than thirty (30) days from the filing of such petition, unless the Court shall extend such time beyond the thirty (30) days by an order entered in the minutes. The petitioner and the person to be adopted shall be required to attend the hearing in person unless for reasons of physical disability or other good cause shown by an order entered in the minutes of the Court, such petitioner or person to be adopted is unable to be present in Court.

Sec. 4. No white person can be adopted by a negro person, nor can a negro person be adopted by a white person.

Sec. 5. When an adult person is adopted in accordance with the provisions of this Act, all legal relationships and all rights and duties between such adopted person and his natural parents shall cease and terminate, provided, however, that nothing herein shall prevent such adopted person from inheriting from his natural parents; all adopted persons shall inherit from the adopted as well as his natural parents. Said adopted person shall thereafter be deemed and held to be, for every purpose, the child of his parent or parents by adoption as fully as though born of them in lawful wedlock, and shall inherit from said parent or parents by adoption, and as the adopted child of said parent or parents by adoption, as fully as though born to them in lawful wedlock; subject, however, to the provisions of this Act, and shall, as such adopting parent or parents, inherit from and as the parent or parents of said adopted person as fully as though the adopted person had been born to them in lawful wedlock; provided, however, that upon the death of such adopted person while unmarried and without issue of his body, all of his property, of whatsoever kind and nature, shall pass and descend to the adopting parent or parents, if living, but if such adopting parent or parents be not living, then all such property shall pass and descend to the next of kin of said adopting parent or parents according to the then law of descent and distribution, and not to the next of kin of such adopted person; and provided that, upon the death of such adopted person leaving surviving a husband or wife and child or children, or leaving surviving a husband or wife and no child or children, or leaving surviving a child or children and no husband or wife, then and in such event all property of whatsoever kind and nature of said adopted person shall pass and descend to said husband or wife and child or children or either of them as the case might be, according to the then law of descent and distribution; provided, further, that upon the death of a child of an adopted person without leaving a surviving father or mother, or husband or wife, or child or children, or a brother or brothers, or sister or sisters, all property of whatsoever kind of such deceased child of an adopted person shall pass and descend to the adopting parent or parents of such adopted person, if living, but if not living, then to the next of kin of such adopting parent or parents, according to the then law of descent and distribution, and not to the next of kin of such adopted person; provided, further, that if such adopting parent or parents shall have other children, both natural children and adopted children, then, in such event, the children by birth and adoption shall respectively inherit from and through each other as if all such children had been born in lawful wedlock of the same parents; provided, further, that nothing in this Act shall be construed so as to prevent or debar an adopted person from disposing of its property by will according to the Laws of this State; and finally, provided, that the legal adoption of a person, according to the Laws of another State of the United States, residing in the State of Texas, shall be, in all respects, valid and binding as if the adoption had occurred in the State of Texas, in so far as the effect of the adoption and the rights of inheritance may be concerned as provided in this Act.

Sec. 6. The files and records of the Court in adoption proceedings shall not be open to the inspection or copy by other persons than parties interested and their attorneys, except upon order of the Court especially permitting inspection of the records, except that all judgments, orders and decrees of the Court may be open to inspection by any person and certified copies may be obtained from the Clerk of the Court. [Acts 1947, 50th Leg., p. 1009, ch. 428.]

TITLE 3A—AERONAUTICS

AERONAUTICS COMMISSION AND DIRECTOR OF AERONAUTICS

Art.

46c—1. Definitions.
46c—2. Declaration.
46c—3. Aeronautics Commission—Creation—Membership.

Art.
46c—4. Organization, Meetings, Reports.
46c—5. Office and Expense—Employees.
46c—6. General Powers and Duties of Commission.
46c—7. Federal Aid.
46c—8. Director of Aeronautics.

MUNICIPAL AIRPORTS ACT

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AERONAUTICS COMMISSION AND DIRECTOR OF AERONAUTICS

Art. 46c—1. Definitions.—1. For the purpose of the laws of this State relating to aeronautics, the following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires.

2. "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities, and air instruction.

3. "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

4. "Public aircraft" means an aircraft exclusively in the service of any government or of any political subdivision thereof, including the government of any State, territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

5. "Civil aircraft" means any aircraft other than a public aircraft.

6. "Airport" means any area of land or water which is designed for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant right of ways, whether heretofore or hereafter established.

7. "Commission" means the Texas Aeronautics Commission; "State" or "this State" means the State of Texas; and "Director" means the Director of Aeronautics of this State.

8. "Air navigation" means the operation or navigation of aircraft in the air space over this State, or upon any airport within this State.

9. "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessees, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the Statutes of this State.

10. "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

11. "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of the United States.

12. "Municipality" means any county, incorporated city, village or town of this State and any other political subdivision or district in this State which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

13. The singular shall include the plural, and the plural the singular. [Acts 1945, 49th Leg., p. 580, ch. 344, § 1.]

Section 10 of the Act of 1945 repealed all conflicting laws.

Art. 46c—2. Declaration.—It is hereby declared that the purpose of this Act[1] is to further the public interest and aeronautical progress by providing for the protection and promotion and development of aeronautics; by cooperating in effecting a uniformity of the laws relating to the development of aeronautics in the several states; by revising existing statutes relative to the development and regulation of aeronautics so as to grant to a State agency such powers and impose upon it such duties that the State may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a state-wide system of airports, may cooperate with and assist the political subdivisions of this State in order that those engaged in aeronautics of every character may so engage with the least possible restrictions consistent with the

safety and the rights of other person or persons; and by providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this State by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of the federal agencies. [Acts 1945, 49th Leg., p. 580, ch. 344, § 2.]

[1] Articles 46c—1 to 46c—8.

Art. 46c—3. Aeronautics Commission—Creation—Membership.—There is hereby created and established an aeronautics Commission to be known as the "Texas Aeronautics Commission," to consist of three (3) members, who shall be appointed by the Governor to be confirmed by the Senate. The Commission shall continue in office, as designated by the Governor at the time of appointment, through the last day of the second, fourth, and sixth calendar years respectively, following the passage of this Act.[1] The successors of the members initially appointed shall be appointed for terms of six (6) years in the same manner as the members originally appointed under this Act, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each member shall serve until the appointment and qualification of his successor. All members of the Commission shall be citizens and bona fide residents of the State subject to the approval of the State Board of Control. Each member shall be reimbursed for actual and necessary expenses incurred by him in the performance of his duties. Each member may be paid the sum of Ten Dollars ($10) per diem, or part thereof, spent in attending to his duties as Commissioner, but no member shall receive more than the sum of Six Hundred Dollars ($600) in any one year as per diem. In making such appointments the Governor shall take into consideration the experience in and knowledge of the aviation industry and the science of aviation possessed by any appointee. [Acts 1945, 49th Leg., p. 580, ch. 344, § 3.]

[1] Articles 46c—1 to 46c—8.

Art. 46c—4. Organization, Meetings, Reports.—The Commission shall, within thirty (30) days after its appointment, organize, adopt a seal, and make such rules and regulations for its administration, not inconsistent herewith, as it may deem expedient and may from time to time amend such rules and regulations. At such organization meeting it shall elect from among its members a chairman, a vice chairman, and a secretary, to serve for one year, and annually thereafter shall elect such officers; all to serve until their successors are appointed and qualified. It shall at its initial meeting fix the date and place for its regular meetings. Two (2) members shall constitute a quorum, and no action shall be taken by less than a majority of the Commission. Special meetings may be called as provided by its rules and regulations. All regular and special Commission meetings shall be open to the public. It shall report in writing to the Governor on or about December 1st of each year; said report shall contain a summary of its proceedings during the preceding fiscal year, a detailed and itemized statement of all revenues and of all expenditures made by or in behalf of the Commission, such other information as it may deem necessary or useful and any additional information which may be requested by the Governor. The fiscal year of the Commission shall conform to the fiscal year of the State. [Acts 1945, 49th Leg., p. 580, ch. 344, § 4.]

Art. 46c—5. Office and Expense—Employees.—Suitable offices and office equipment shall be provided by the State for the Commission in the City of Austin, and it may maintain temporary offices in any other place in the State that it may designate and may incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the enforcement of this Act[1] and the general promotion of aeronautics within the State. Regular meetings shall be held at its offices at Austin, but, whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it. The Commission may employ such clerical and other employees and assistants as it may deem necessary for the proper transaction of its business and shall fix their salaries. Provided that the Commission shall not make any obligations or expend any State monies unless and until an appropriation by the Legislature is made therefor. [Acts 1945, 49th Leg., p. 580, ch. 344, § 5.]

[1] Articles 46c—1 to 46c—8.

Art. 46c—6. General Powers and Duties of Commission.—Subdivision 1. The Commission is empowered and directed to encourage, foster, and assist in the development of aeronautics in this State, and to encourage the establishment of airports and other air navigation facilities, but will not have authority to promulgate rules and regulations which may impose a greater restriction upon aviation than now exists, and shall have no authority to impose economic control by way of regulations.

Subdivision 2. Legislation. It may recommend necessary legislation to advance the interests of the State in aeronautics and represent the State in aeronautical matters before federal agencies and other State agencies.

Subdivision 3. Financial Assistance. The Commission may render financial assistance in the acquisition, development, operation or maintenance of airports out of appropriations made by the Legislature for that purpose.

Subdivision 4. Authority to Contract. It may enter into any contracts necessary to the execution of the powers granted it by this Act[1] but shall have no authority to enter into any contract or agreement binding the State of Texas for the payment of any monies which have not been specifically authorized by appropriation of the Legislature, nor shall it enter into any contract or agreement binding the State of Texas in excess of the powers herein granted.

Subdivision 5. The Commission shall have no authority to issue certificates of convenience and necessity within the State of Texas.

Subdivision 6. The Commission shall conduct hearings and shall make investigation as it may deem necessary for the purposes of determining the location, type of construction, and the cost to the State of Texas of maintenance of emergency and all other classes of airports owned, operated, or directly financed in whole or in part by the State within the State of Texas. It shall render assistance within its power, not inconsistent with this Act, to any such subdivisions of the State in procuring such aid as the federal government may grant for the purpose of establishing and maintaining airports. [Acts 1945, 49th Leg., p. 580, ch. 344, § 6.]

[1] Articles 46c—1 to 46c—8.

Art. 46c—7. Federal Aid.—Subdivision 1. Cooperation with Government. The Commission is authorized to cooperate with the Government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this State, and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure

of federal monies upon such airports and other air navigation facilities.

Subdivision 2. Authority to Receive Federal Monies for State and Municipalities. It is authorized to accept, receive, and receipt for federal monies and other monies, either public or private for and in behalf of this State, or any municipality thereof, when authorized by the municipality to do so for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the State or by such municipalities or any other political subdivision of the State of Texas aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder, and it is authorized to act as agent of any municipality or other persons or person of this State upon the request of such municipality or person or persons in accepting, receiving, and receipting for such monies in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal monies, and the governing body of any such municipality or other person or persons is authorized to designate the Commission as its agent for such purposes and to enter into an agreement with it prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with this Act.[1] Such monies as are paid over by the United States Government shall be retained by the State or paid over to said municipalities or other person or persons under such terms and conditions as may be imposed by the United States Government in making such grants.

Subdivision 3. Contracts—Law Governing. All contracts for the acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the Commission, either as the agent of this State or as the agent of any municipality or other person or persons shall be made pursuant to the laws of this State governing the making of like contracts; provided, however, that where the acquisition, construction, improvement, maintenance, and operation of any airport, landing strip, or other air navigation facility is financed wholly or partially with federal money, the Commission, as agent of the State or of any municipality or other person or persons thereof, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other State law to the contrary.

Subdivision 4. Disposition of Federal Funds. All monies accepted for disbursement by the Commission pursuant to Subdivision 2 of this Section shall be deposited in the State Treasury, and unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the monies were made available, and held by the State in trust for such purposes. All monies are hereby appropriated for the purposes for which the same were made available, to be expended in accordance with federal laws and regulations and with this Act. The Commission is authorized, whether acting for this State or as the agent of any of its municipalities or other person or persons, or when requested by the United States Government or any agency or department thereof, to disburse such monies for the designated purposes, but this shall not preclude any other authorized method of disbursement. [Acts 1945, 49th Leg., p. 580, ch. 344, § 7.]

[1] Articles 46c—1 to 46c—8.

Art. 46c—8. Director of Aeronautics.—Subdivision 1. Appointment—Qualifications—Compensation. A Director of Aeronautics shall be appointed by the Commission, who shall serve for an indefinite term at the pleasure of the Commission. He shall be appointed with due regard to his fitness, by aeronautical training and by knowledge of aeronautics, and a minimum of five (5) years recent practical experience in aeronautics, for the efficient dispatch of the powers and duties vested in and imposed upon him by this Act. He shall devote his entire time to the duties of his office as required and prescribed by this Act[1] and shall not be actively engaged or employed in any other business, vocation, or employment, nor shall he have any pecuniary interest in or any stock in or bonds of any civil aeronautics enterprise. He shall receive such compensation as may be provided in the biennial departmental appropriation bill and shall be reimbursed for all traveling and other expenses incurred by him in the discharge of his official duties.

Subdivision 2. Power and Duties. The Director shall be the executive officer of the Commission and under its supervision shall administer the provisions of this Act (and the rules, regulations, and orders established thereunder) and all other laws of the State relative to aeronautics. He shall attend all meetings of the Commission, but shall not have the power to vote. He shall, subject to the approval of the Commission, appoint such experts, field and office assistants, clerks, and other employees as may be required and authorized for the proper discharge of the functions of the Commission. He shall be in charge of the offices of the Commission and responsible to the Commission for the preparation of reports and collections and dissemination of data and other public information relating to aeronautics. At the direction of the Commission he shall, together with the chairman of the Commission, execute all contracts entered into by the Commission which are legally authorized and for which funds are provided in any appropriation Act.

Subdivision 3. Delegation of Powers. The Commission may, by written order filed in its office, delegate to the Director any of the powers or duties vested in or imposed upon it by this Act. Such delegated powers and duties may be exercised by such Director in the name of the Commission. [Acts 1945, 49th Leg., p. 580, ch. 344, § 8.]

[1] Articles 46c—1 to 46c—8.

MUNICIPAL AIRPORTS ACT

Art. 46d—1. Definitions.—As used in this Act,[1] unless the text otherwise requires.

(a) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or right-of-ways, together with all airport buildings and facilities located thereon.

(b) "Air navigation facility" means any facility—other than one owned and operated by the United States—used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanism, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(c) "Airport hazard" means any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.

(d) "Municipality" means any county, or any incorporated city, village or town of this State. "Municipal" means pertaining to a municipality as herein defined.

(e) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee or other similar representative thereof. [Acts 1947, 50th Leg., p. 184, ch. 114, § 1.]

[1] Articles 46d—1 to 46d—22.

Art. 46d—2. General powers of municipalities in the establishment, acquisition, operation and maintenance of airports and air navigation facilities.—(a) Establishment, Operation, Land Acquisition. Every municipality is authorized, out of any appropriations or other moneys made available for such purposes, to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports and air navigation facilities, either within or without the territorial limits of such municipality and within or without the territorial boundaries of this State, including the construction, installation, equipment, maintenance and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers, and the purchase and sale of supplies, goods and commodities as an incident to the operation of its airport properties. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airport or to permit the removal, elimination, obstruction—marking of obstruction—lighting of airport hazards or to prevent the establishment of airport hazards.

(b) Acquisition of Existing Airports. The municipality may by purchase, gift, devise, lease, proceedings or otherwise, acquire existing airports and air navigation facilities, provided however it shall not acquire or take over any airport or air navigation facility owned or controlled by another municipality or public agency of this or any other State without the consent of such municipality or public agency.

(c) Establishment of Airports on Public Waters and Reclaimed Lands. For the purposes of this Act,[1] a municipality may establish or acquire and maintain, within or bordering upon the territorial limits of the municipality, airports in, over and upon, any public waters of this State, any submerged lands under such public waters, and any artificial or reclaimed lands which before the artificial making or reclamation thereof constituted a portion of the submerged lands under such public waters; and may construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(d) Limitation on Design and Operation of Air Navigation Facilities. All air navigation facilities established or operated by municipalities shall be supplementary to and coordinated in design and operation with those established and operated by the Federal and State governments. [Acts 1947, 50th Leg., p. 184, ch. 114; § 2.]

[1] Articles 46d—1 to 46d—22.

Art. 46d—3. Disposal of airport property.—Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to Section 12 of this Act,[1] every municipality may by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this Act.[2] Such disposal by sale, lease or otherwise, shall be in accordance with the laws of this State, or provisions of the charter of the municipality, governing the disposition of other property of the municipality, except that in the case of disposal to another municipality or agency of the State or Federal government for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may deem in the best interest of the municipality. [Acts 1947, 50th Leg., p. 185, ch. 114, § 3.]

[1] Article 46d—12.
[2] Articles 46d—1 to 46d—22.

Art. 46d—4. Operation and use privileges.—(a) Under Municipal Operation. In operating an airport or air navigation facility owned, leased or controlled by a municipality, such municipality may, except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to Section 12 of this Act,[1] enter into contracts, leases and other arrangements for a term not exceeding forty (40) years with any persons:

(1) granting the privilege of using or improving such airport or air navigation facility or any portion or facility thereof, or space therein for commercial purposes;

(2) conferring the privilege of supplying goods, commodities, things, services or facilities at such airport or air navigation facility; or

(3) making available services to be furnished by the municipality or its agents at such airport or air navigation facility.

In each case the municipality may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality.

(b) Under Other Operation. Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to Section 12 of this Act, a municipality may by contract, lease or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed forty (40) years the privilege of operating, as agent of the municipality or otherwise, any airport owned or controlled by the municipality; provided that no such person shall be granted any authority to operate the airport other than a public airport or to enter into any contracts, leases or other agreements in connection with the operation of the airport which the municipality might not have undertaken under Subsection (a) of this Section. [Acts 1947, 50th Leg., p. 185, ch. 114, § 4.]

[1] Article 46d—12.

Art. 46d—5. Liens.—To enforce the payment of any charges for repairs or improvements to or storage or care of, any personal property made or furnished by the municipality or its agents in connection with the operation of an airport or air navigation facility owned or operated by the municipality, the municipality shall have liens on such property, which shall be enforceable by the municipality as provided by law. [Acts 1947, 50th Leg., p. 186, ch. 114, § 5.]

Art. 46d—6. Delegation of authority to airport officer or board.—Any authority vested by this Act[1] in a municipality or in the governing body thereof, for the planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection and policing of airports or other air navigation facilities established, owned or controlled, or to be established, owned or controlled by the municipality may be vested by resolution of the governing body of the mu-

nicipality in an officer or board or other municipal agency whose powers and duties shall be prescribed in the resolution; provided however, that the expense of such planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection and policing shall be a responsibility of the municipality. [Acts 1947, 50th Leg., p. 186, ch. 114, § 6.]

1 Articles 46d—1 to 46d—22.

Art. 46d—7. Regulations and jurisdiction.—(a) Scope. A municipality, which has established or acquired or which may hereafter establish or acquire an airport or air navigation facility, is authorized to adopt, amend and repeal such reasonable ordinances, resolutions, rules, regulations and orders as it shall deem necessary for the management, government and use of such airport or air navigation facility under its control, whether situated within or without the territorial limits of the municipality. For the enforcement thereof, the municipality, may, by ordinance or resolution, as may by law be appropriate, appoint airport guards or police, with full police powers, and fix penalties, within the limits prescribed by law, for the violation of the aforesaid ordinances, resolutions, rules, regulations and orders. Said penalties shall be enforced in the same manner in which penalties prescribed by other ordinances, or resolutions of the municipality are enforced. To the extent that an airport or other air navigation facility controlled and operated by a municipality is located outside the territorial limits of the municipality, it shall, subject to Federal and State laws, rules and regulations, be under the jurisdiction and control of the municipality controlling or operating it, and no other municipality shall have any authority to charge or exact a license fee or occupation tax for operations thereon.

(b) Conformity to Federal and State Law. No ordinance, resolution, rule, regulation or order adopted by a municipality pursuant to this Act[1] shall be inconsistent with, or contrary to, any Act of the Congress of the United States or laws of this State, or to any regulations promulgated or standards established pursuant thereto. [Acts 1947, 50th Leg., p. 186, ch. 114, § 7.]

1 Articles 46d—1 to 46d—22.

Art. 46d—8. Taxation.—In addition to and exclusive of any taxes which may be levied for the interest and sinking fund of any bonds, notes or time warrants issued under authority of this Act,[1] or any other Act of the Legislature authorizing municipalities to issue such bonds, notes, or warrants for airport purposes, the governing body of any municipality may and is hereby empowered to levy and collect a special tax not to exceed for any one year five cents (5¢) on each One Hundred Dollars ($100) for the purpose of improving, operating, maintaining and conducting an airport or air navigation facility, or for any other purpose falling within the purview of this Act; provided, however, that nothing in this Act shall be construed as authorizing any municipality to exceed the limits of indebtedness placed upon it under the Constitution. [Acts 1947, 50th Leg., p. 186, ch. 114, § 8.]

1 Articles 46d—1 to 46d—22.

Art. 46d—9. Bond issues—financing acquisition costs and improvements.—The cost of planning and acquiring, establishing, developing, constructing, enlarging, improving, or equipping, an airport or air navigation facility, or the site therefor, including buildings and other facilities incidental to the operation thereof, and the acquisition or elimination of airport hazards, may be paid for wholly or partly from the proceeds of the sale of bonds of the municipality, as the governing body of the municipality shall determine. For such purposes a municipality may issue general or special obligation bonds, revenue bonds or other forms of bonds, secured or unsecured, including refunding bonds, and levy taxes to provide for the interest and sinking funds of any bonds so issued, the authority hereby given for the issuance of such bonds and levy and collection of such taxes to be exercised in accordance with the provisions of Title 22 of the Revised Civil Statutes of Texas, 1925, Article 701 et seq., and Acts amendatory thereof or supplementary thereto. All bonds issued by a municipality pursuant to this Act[1] which are payable, as to principal and interest, solely from the revenues of an airport or air navigation facility shall so state on their face. In any suit, action or proceeding involving the security, or the validity or enforceability, of any bonds issued by a municipality, which bonds state on their face that they were issued pursuant to the provisions of this Act and for a purpose or purposes authorized to be accomplished by this Act, such bonds shall be conclusively deemed to have been issued pursuant to this Act for such purpose or purposes. [Acts 1947, 50th Leg., p. 187, ch. 114, § 9.]

1 Articles 46d—1 to 46d—22.

Art. 46d—10. Validation of prior acquisitions, actions and bond issues.—Any acquisition of property heretofore made, within or without the limits of any municipality of the State, for the purposes authorized by this Act,[1] and any other action heretofore taken by a municipality in the furtherance of such purposes, including but not limited to the making of appropriations, the expenditure of money, the incurring of debts, the acceptance and disbursement of Federal, State or other grants or loans, the issuance of payment and bonds, the execution of leases and contracts, which acquisition or action would have been authorized had this Act been in effect at the time of such acquisition or action, is hereby ratified and made valid. All bonds heretofore issued in furtherance of purposes authorized by this Act and actions ratified by this Section are confirmed as legal obligations of the municipality, and, without prejudice to the general powers granted to the municipality by this Act, such municipality is hereby authorized to issue further bonds for such purposes up to the limit fixed in the original authorization therefor, which bonds shall be legal obligations in accordance with their terms. [Acts 1947, 50th Leg., p. 187, ch. 114, § 10.]

1 Articles 46d—1 to 46d—22.

Art. 46d—11. Application of airport revenues and sale proceeds.—The revenues obtained by a municipality from the ownership, control or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, shall be deposited in a special fund to be designated the "_____ Airport Fund," which revenues shall be appropriated solely to, and used by the municipality for, the purposes authorized by this Act.[1] [Acts 1947, 50th Leg., p. 187, ch. 114, § 11.]

1 Articles 46d—1 to 46d—22.

Art. 46d—12. Federal and state-aid.—(a) Acceptance Authorized, Conditions. Every municipality is authorized to accept, receive, receipt for, disburse and expend Federal and State moneys and other moneys, public or private, made available by grant or loan or both to accomplish, in whole or in part, any of the purposes of this Act.[1] All Federal moneys accepted under this Section shall be accepted and expended by the municipality upon such terms and conditions as are prescribed by the United States and as are consistent with State law; and all State moneys accepted under this Section shall be accepted and expended by the municipality upon such terms

and conditions as are prescribed by the State. Unless otherwise prescribed by the agency from which such moneys were received, the chief financial officer of the municipality shall, on its behalf deposit all moneys received pursuant to this Section and shall keep them, in separate funds designated according to the purposes for which the moneys were made available, in trust for such purposes.

(b) Aeronautics Commission as Agent. A municipality is authorized to designate the Texas Aeronautics Commission as its agent to accept, receive, receipt for and disburse Federal and State moneys, and other moneys, public or private made available by grant or loan or both to accomplish, in whole or in part, any of the purposes of this Act; and to designate the said Commission as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment or operation of any airport or other air navigation facility. All contracts made, let or awarded by the Texas Aeronautics Commission acting as agent of a municipality under authority of this Section, shall be made, let or awarded pursuant to the laws governing the making of contracts by or on behalf of the State. Such municipality may enter into an agreement with the said Aeronautics Commission prescribing the terms and conditions of the agency in accordance with such terms and conditions as are prescribed by the United States, if Federal money is involved, and in accordance with the applicable laws of this State. All Federal moneys accepted under this Section by the Texas Aeronautics Commission shall be accepted and transferred or expended by said Commission upon such terms and conditions as are prescribed by the United States. All moneys received by the Texas Aeronautics Commission pursuant to this Subsection shall be deposited in the State Treasury, and unless otherwise prescribed by the agency from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the State in trust for such purposes. [Acts 1947, 50th Leg., p. 188, ch. 114, § 12.]

1 Articles 46d—1 to 46d—22.

Art. 46d—13. Contracts.—A municipality may enter into any contracts necessary to the execution of the powers granted it, and for the purposes provided by this Act.[1] [Acts 1947, 50th Leg., p. 188, ch. 114, § 13.]

1 Articles 46d—1 to 46d—22.

Art. 46d—14. Joint operations.—(a) Authorization. For the purposes of this Section, unless otherwise qualified, the term "public agency" includes municipality, as defined in this Act,[1] any agency of the State government and of the United States, and any municipality, political subdivision and agency of another State; and the term "governing body" means the governing body of a county or municipality, and the head of the agency if the public agency is other than a county or municipality. All powers, privileges and authority granted to any municipality by this Act may be exercised and enjoyed jointly with any public agency of any other State or of the United States to the extent that the laws of such other State or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the State government when acting jointly with any municipality, may exercise and enjoy all of the powers, privileges and authority conferred by this Act upon a municipality.

(b) Agreement. Any two (2) or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this Act and any two (2) or more municipalities are specially authorized to make such agreement or agreements as they may deem necessary for the joint acquisition and operation of airports and air navigation facilities. Concurrent action by ordinance, resolution or otherwise of the governing bodies of the participating public agencies shall constitute joint action. Each such agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities and privileges involved, the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility, the proportion of the expenses of maintenance, operation, regulation and protection thereof to be borne by each and such other terms as are required by the provisions of this Section. The agreement may also provide for: amendments thereof, and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities and privileges jointly owned, prior to or upon said property, facilities and privileges, or any part thereof, ceasing to be used for the purposes provided in this Act, or upon termination of the agreement; the distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

(c) Joint Board. Public agencies acting jointly pursuant to this Section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled and operated, and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility or airport hazard, subject to the limitations of Subsection (d) of this Section.

(d) Limitations on Joint Board.

(1) Expenditures. The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies on or before the preceding December 1st.

(2) Acquisitions Beyond Sums Allotted. No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums therefor fixed by the joint agreement or allotted in the annual budget, may be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(3) Eminent Domain. Eminent domain proceedings under this Section may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common until conveyed by them to the joint board.

(4) Disposal of Real Property. The joint board shall not dispose of any airport, air navigation facility or real property under its jurisdiction except

with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into the contract, lease or other arrangements contemplated by Section 4 of this Act.[2]

(5) Police Regulations. Any resolutions, rules, regulations or orders of the joint board dealing with subjects authorized by Section 7 of this Act [3] shall become effective only upon approval of the governing bodies of the constituent public agencies provided that upon such approval, the resolutions, rules, regulations or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, regulations or orders of each public agency would have in its own territory or jurisdiction.

(e) Joint Fund. For the purpose of providing a joint board with moneys for the necessary expenditures in carrying out the provisions of this Section, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any Federal, State or other contributions or loans, and the revenues obtained from the joint ownership, control and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in Subsection (d) of this Section. [Acts 1947, 50th Leg., p. 188, ch. 114, § 14.]

[1] Articles 46d—1 to 46d—22.
[2] Article 46d—4.
[3] Article 46d—7.

Art. 46d—15. Public purpose, county and municipal purpose.—The acquisition of any land or interest therein pursuant to this Act,[1] the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection and policing of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any other powers herein granted to municipalities and other public agencies, to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity; and in the case of any county, are declared to be county functions and purposes as well as public and governmental; and in the case of any municipality other than a county, are declared to be municipal functions and purposes as well as public and governmental. All land and other property and privileges acquired and used by or on behalf of any municipality or other public agency in the manner and for the purposes enumerated in this Act shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity, and, in the case of a county or municipality, for county or municipal purposes, respectively. [Acts 1947, 50th Leg., p. 190, ch. 114, § 15.]

[1] Articles 46d—1 to 46d—22.

Art. 46d—16. Airport property and income exempt from taxation.—Any property in this State acquired by a municipality for airport purposes pursuant to the provisions of this Act,[1] and any income derived by such municipality from the ownership, operation or control thereof, shall be exempt from taxation to the same extent as other property used for public purposes. Any municipality is authorized to exempt from municipal taxation any property, acquired within its boundaries by a public agency of another State for airport purposes, and any income derived from such property, to the extent that such other State authorizes similar exemptions from taxation to municipalities of this State. [Acts 1947, 50th Leg., p. 190, ch. 114, § 16.]

[1] Articles 46d—1 to 46d—22.

Art. 46d—17. Supplementary authority. — In addition to the general and special powers conferred by this Act,[1] every municipality is authorized to exercise such powers as are necessarily incidental to the exercise of such general and special powers. [Acts 1947, 50th Leg., p. 191, ch. 114, § 17.]

[1] Articles 46d—1 to 46d—22.

Art. 46d—18. Airport zoning.—Nothing contained in this Act [1] shall be construed to limit any right, power or authority of a municipality to regulate airport hazards by zoning. [Acts 1947, 50th Leg., p. 191, ch. 114, § 18.]

[1] Articles 46d—1 to 46d—22.

Art. 46d—19. Interpretation and construction.—This Act [1] shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this State and other States and of the government of the United States having to do with the subject of municipal airports. [Acts 1947, 50th Leg., p. 191, ch. 114, § 19.]

[1] Articles 46d—1 to 46d—22.

Art. 46d—20. Severability.—If any provision of this Act [1] or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. [Acts 1947, 50th Leg., p. 191, ch. 114, § 20.]

[1] Articles 46d—1 to 46d—22.

Art. 46d—21. Cumulative.—This Act [1] is cumulative of and in addition to all laws of the State of Texas on this subject. [Acts 1947, 50th Leg., p. 191, ch. 114, § 21.]

[1] Articles 46d—1 to 46d—22.

Art. 46d—22. Short title.—This Act [1] may be cited as the "Municipal Airports Act." [Acts 1947, 50th Leg., p. 191, ch. 114, § 22.]

[1] Articles 46d—1 to 46d—22.

AIRPORT ZONING REGULATIONS

Art. 46e—1. Definitions.—As used in this Act,[1] unless the context otherwise requires:

(1) "Airport" means any area of land or water, whether of public or private ownership, designed and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes. Such areas shall be deemed to be "utilized in the interest of the public" when the owner thereof by contract, license or otherwise permits the use of such areas by others.

(2) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this Act.

(4) "Political subdivision" means any municipality, city, town, village or county.

(5) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation,

buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth. [Acts 1947, 50th Leg., p. 784, ch. 391, § 1.]

[1] Articles 46e—1 to 46e—15.

Art. 46e—2. Airport hazards contrary to public interest.—It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein. [Acts 1947, 50th Leg., p. 784, ch. 391, § 2.]

Art. 46e—3. Power to adopt airport zoning regulations.—(1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two (2) representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed. [Acts 1947, 50th Leg., p. 784, ch. 391, § 3.]

Art. 46e—4. Relation to comprehensive zoning regulations.—(1) Incorporation. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) Conflict. In the event of conflict between any airport zoning regulations adopted under this Act [1] and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail. [Acts 1947, 50th Leg., p. 784, ch. 391, § 4.]

[1] Articles 46e—1 to 46e—15.

Art. 46e—5. Procedure for adoption of zoning regulations.—(1) Notice and Hearing. No airport zoning regulations shall be adopted, amended, or changed under this Act [1] except by action of the legislative body of the political subdivision in question, or the joint board provided for in Section 3 (2),[2] after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.

(2) Airport Zoning Commission. Prior to the initial zoning of any airport hazard area under this Act, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the Airport Zoning Commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission. [Acts 1947, 50th Leg., p. 784, ch. 391, § 5.]

[1] Articles 46e—1 to 46e—15.
[2] Article 46e—3.

Art. 46e—6. Airport zoning requirements.—(1) Reasonableness. All airport zoning regulations adopted under this Act shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this Act.[1] In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) Non-conforming Uses. No airport zoning regulations adopted under this Act shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in Section 7 (3).[2] [Acts 1947, 50th Leg., p. 784, ch. 391, § 6.]

[1] Articles 46e—1 to 46e—15.
[2] Article 46e—7.

Art. 46e—7. Permits and variances.—(1) Permits. Any airport zoning regulations adopted under this Act [1] may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially altered or repaired. In any event, however, all such regulations shall provide that before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No

permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming structure or tree or non-conforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.

(2) Variances. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this Act, may apply to the Board of Adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of regulations and this Act; provided, that any variance may be allowed subject to any reasonable conditions that the Board of Adjustment may deem necessary to effectuate the purposes of this Act.

(3) Hazard Marking and Lighting. In granting any permit or variance under this Section, the administrative agency or Board of Adjustment may, if it deems such action advisable to effectuate the purposes of this Act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard. [Acts 1947, 50th Leg., p. 784, ch. 391, § 7.]

[1] Articles 46e—1 to 46e—15.

Art. 46e—8. Appeals.—(1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this Act,[1] or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the Board of Adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this Section must be taken within a reasonable time, as provided by the rules of the Board, by filing with the agency from which the appeal is taken and with the Board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certified to the Board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by order of the Board on notice to the agency from which the appeal is taken and on due cause shown.

(4) The Board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(5) The Board may, in conformity with the provisions of this Act, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken. [Acts 1947, 50th Leg., p. 784, ch. 391, § 8.]

[1] Articles 46e—1 to 46e—15.

Art. 46e—9. Administration of airport zoning regulations.—All airport zoning regulations adopted under this Act[1] shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall administrative agency be or include any member of the Board of Adjustment. The duties of any administrative agency designated pursuant to this Act shall include that of hearing and deciding all permits under Section 7(1),[2] but such agency shall not have or exercise any of the powers herein delegated to the Board of Adjustment. [Acts 1947, 50th Leg., p. 784, ch. 391, § 9.]

[1] Articles 46e—1 to 46e—15.
[2] Article 46e—7.

Art. 46e—10. Board of adjustment.—(1) All airport zoning regulations adopted under this Act[1] shall provide for a Board of Adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations as provided in Section 8.[2]

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such Board may be required to pass under such regulations.

(c) To hear and decide specific variances under Section 7 (2).[3]

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the Board of Adjustment. Otherwise, the Board of Adjustment shall consist of five (5) members, each to be appointed for a term of two (2) years and removable for cause by the appointment authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(3) The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the administrative agent, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The Board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses. All hearings of the Board shall be public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Board and shall be a public record. [Acts 1947, 50th Leg., p. 784, ch. 391, § 10.]

[1] Articles 46e—1 to 46e—10.
[2] Article 46e—8.
[3] Article 46e—7.

Art. 46e—11. Judicial review.—(1) Any person aggrieved, or taxpayer affected, by any decision of a Board of Adjustment, or any governing body of a political subdivision or any joint airport zoning board which is of the opinion that a decision of a Board of Adjustment is illegal, may present to a Court of record a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of illegality. Such petition shall be presented to the Court within ten (10) days after the decision is filed in the office of the Board.

(2) Upon presentation of such petition the Court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application, on notice to the Board and on due cause shown, grant a restraining order.

(3) The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The Court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the Board of Adjustment. In all appeals taken under this Act such case shall be tried and determined de novo on the basis of the facts adduced in the trial of the case in the Court, and the Court independently shall pass upon both the law and the facts as in an ordinary civil suit.

(5) Costs shall not be allowed against the Board of Adjustment unless it appears to the Court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

(6) In any case in which airport zoning regulations adopted under this Act,[1] although generally reasonable, are held by a Court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this State or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land. [Acts 1947, 50th Leg., p. 784, ch. 391, § 11.]

[1] Articles 46e—1 to 46e—15.

Art. 46e—12. Enforcement and remedies.—In addition, the political subdivision or agency adopting zoning regulations under this Act[1] may institute in any Court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this Act, or of airport zoning regulations adopted under this Act, or of any order or ruling made in connection with their administration or enforcement, and the Court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this Act and of the regulations adopted and orders and rulings made pursuant thereto. [Acts 1947, 50th Leg., p. 784, ch. 391, § 12.]

[1] Articles 46e—1 to 46e—15.

Art. 46e—13. Acquisition of air rights.—In any case in which: (1) it is desired to remove, lower, or otherwise terminate a non-conforming structure or use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this Act[1]; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or non-conforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by Title 52 of the Revised Civil Statutes of Texas, 1925, Articles 3264 to 3271, inclusive, and Acts amendatory thereof or supplementary thereto, such air right, avigation easement, or other estate or interest in the property or non-conforming structure or use in question as may be necessary to effectuate the purpose of this Act. [Acts 1947, 50th Leg., p. 784, ch. 391, § 13.]

[1] Articles 46e—1 to 46e—15.

Art. 46e—14. Severability.—If any provision of this Act[1] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. [Acts 1947, 50th Leg., p. 784, ch. 391, § 14.]

[1] Articles 46e—1 to 46e—15.

Art. 46e—15. Short title.—This Act[1] shall be known and may be cited as the "Airport Zoning Act." [Acts 1947, 50th Leg., p. 784, ch. 391, § 15.]

[1] Articles 46e—1 to 46e—15.

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CHAPTER 1. COMMISSIONER OF AGRICULTURE

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Article 47. [4435—4436—4438] Election and qualification.—A Commissioner of Agriculture shall be elected at each general election for a term of two years. He shall be an experienced and practical farm-

er, and shall have knowledge of agriculture, manufacture and general industry. His office shall be in Austin. [Acts 1907, p. 127.]

Art. 48. [4437] Bond.—He shall first execute a good bond in the sum of five thousand dollars, payable to the State of Texas, to be approved by the Governor and conditioned for the faithful discharge of the duties of his office. [Id.]

Art. 49. [4439] Clerks.—Said commissioner shall appoint one chief clerk, who shall possess a practical knowledge of agriculture, horticulture, manufacturing and kindred industries, and the proper methods of marketing the products of said industries. He may appoint such other clerks as the labors of his office may require. All clerks shall be removable at the pleasure of the commissioner. [Id.]

Art. 50. [4440—1] Chief clerk.—The chief clerk shall possess all the powers and perform such duties as may be prescribed by the commissioner, and all duties attached by law to the office of commissioner during the necessary or unavoidable absence of the commissioner, or his inability to act for any cause. The commissioner shall be responsible for the acts of his chief clerk, who shall, before entering upon the duties of his position, take the oath required of the commissioner, and enter into bond in the sum of three thousand dollars with two or more sureties to be approved by the Governor, and payable to the State of Texas, conditioned for the faithful performance of his duties. His expenses while traveling on the business of the office, under the direction of the commissioner, shall be paid by the State. [Id.]

Art. 51. [4443—4448—4449] Duties.—The duties of the commissioner shall be as follows:

1. He shall cause to be executed all laws in relation to agriculture.

2. He shall encourage the proper development of agriculture, horticulture and kindred industries.

3. He shall encourage the organization of agricultural societies; and, for the benefit of the agricultural communities, he shall cause to be held farmers' institutes at such times and at such places throughout the State as will best promote the advancement of agricultural knowledge and the improvement of agricultural methods and practices. He shall publish and distribute such papers and addresses read or delivered at these institutes as he shall deem to be of value to the farming interest.

4. He shall investigate the subject of sub-soiling, the problems of drainage and of irrigation, their relation to agriculture, with a view to extending the area of the same, and the best modes of affecting each in the different portions of the State.

5. He shall investigate and report upon the question of broadening the market and of increasing the demand for cotton goods and all other agricultural and horticultural products, both in the United States and in foreign countries. He shall compile the statistics showing from abroad the number of bales of cotton consumed by the spinners, and demands for our cotton, the methods and course that sales to foreign countries now take, showing the purchasers, brokers, etc., through whose hands the cotton largely passes after leaving the producers, likewise showing in what countries an increased trade could be worked up, and thereby giving a better outlet for the trade and the best method to bring consumer and purchaser together, and all other information beneficial to farmers.

6. He shall cause to be investigated the diseases of grain, cotton, fruit, and other crops grown in this State, with a view to discovering remedies for such diseases. He shall also investigate the habits and propagation of the various insects that are injurious to the crops of this State, and the best methods for their destruction. The protection of fruit trees, shrubs and plants shall be under his direct supervision and control, and he shall have and exercise all the powers and perform all the duties in relation thereto, conferred or imposed by law.

7. He shall investigate the subject of grasses and report upon their value and the cultivation of the varieties best adapted to the different sections of the State. He shall collect and publish information relating to forestry, tree planting, the best means of preserving and replenishing forests, and shall encourage the planting and culture of nut trees and recommend such legislation as may be necessary for the protection, restoration and preservation of the forests of this State.

8. He shall inquire into the subjects connected with stock raising, dairying and poultry; the obtaining and rearing of such domestic animals and fowls as are of most value, and the breeding and improvement of the same. He shall encourage the raising of fish and the culture of bees.

9. He shall investigate and report upon the growing of wool, and the utility and profit of sheep raising; he shall also inquire into the culture of silk, its preparation for market and its manufacture.

10. He shall correspond with the department of agriculture at Washington, and with such departments of the several states and territories of the United States, and, at his option, with those of foreign countries, and with the representatives of the United States in foreign countries, with the view of gathering information that will advance the interests of agriculture in Texas. He may also, for the same purpose, correspond with such organizations, societies, associations and individuals in the State as he may choose, having for their object the promotion of agriculture in any of its branches.

11. He shall collect and publish statistics and such other information regarding such industries of this State and of other states as may be considered of benefit in developing the agricultural resources of this State. He shall cause a proper collection of agricultural statistics to be made annually; and shall furnish blank forms to the tax assessors of each county before the first of January of each year, including forms as to the acreage in cotton, grain and other leading products of the State to be filled out by persons assessed for taxes, together with such instructions as will properly direct said assessor in filling them out. The heads of the several State departments, and of the State institutions, are required to furnish accurately such information as may be at their command whenever called upon for same by said commissioner. In the prosecution of his work, the commissioner is hereby empowered to enter manufacturing establishments chartered or authorized to do business in this State, and said corporations shall furnish such information as said commissioner may request of them.

12. He shall collect and publish statistics and other information regarding the irrigation of rice and other crops as may be of benefit in developing a more efficient system of laws safeguarding and defining the rights of users and sellers of water for irrigation purposes; he may employ a competent engineer and expert, possessing a practical knowledge of the application of irrigation to the raising of rice and other crops, for the purpose of assisting him in performing the duties required of him in this article, and he shall make up and file an annual report on same with such recommendations as he may deem beneficial to the industry, which report shall be filed with the Governor and transmitted to the Legislature.

13. He shall make and publish such rules and regulations as he may deem necessary to carry into effect the provisions of this chapter. [Id. sec. 11, Acts 1909, p. 353.]

Art. 51—1. [Repealed by Acts 1943, 48th Leg., p. 81, ch. 64, § 1.]

The article repealed was Acts 1937, 45th Leg., 1st C.S., p. 1794, ch. 23.

Sections 2–6 of the repealing Act of 1943 provided for the disposition of the jacks and stallions owned by the state through placements with caretakers on an annual lease basis.

Art. 52. [4444] Ex-officio duty.—The Commissioner shall be ex-officio a member of the board of directors of the Agricultural and Mechanical College of the State and shall be allowed all necessary expense in attending the meetings of said board. [Acts 1907, p. 127, sec. 12.]

Art. 53. [4445] Shall make report.—The commissioner shall make and submit to the Governor, on or before the first day of November of each year, a full report showing the work and expenditures of his office during the fiscal year preceding, which report shall be transmitted by the Governor to the Legislature. [Id. sec. 13.]

Art. 54. [4446] Report printed and distributed.—Under the direction of the Commissioner, the Board of Control shall cause to be printed annually not to exceed ten thousand copies of the annual report of said commissioner, said report to be distributed to the farmers through the farmers' institutes and other agricultural organizations or otherwise, at the discretion of the commissioner. [Id. sec. 14.]

Art. 55. [4447] Commissioner shall co-operate.—No provision of this chapter shall be construed to in any way conflict with the scope and character of the work of the Agricultural and Mechanical College or of the agricultural experiment stations, but the said commissioner shall co-operate with the said college and said experiment stations in all lines looking toward the agricultural and horticultural interests of the State. [Id. sec. 15.]

Art. 55a. Grading and classifying rough rice

Rice Grading Division; appointment of inspector-graders

Sec. 1. There is hereby created under the State Department of Agriculture what shall be known as the Rice Grading Division in the Division of Marketing; and it shall be the duty upon the passage of this Act for the Commissioner of Agriculture to appoint one Chief Rough Rice Inspector-grader, and it shall be further his duty to employ two assistants to such Inspector-grader, the salary of which shall be fixed by the Commissioner of Agriculture not to exceed Five Thousand ($5,000.00) Dollars per annum which shall be paid in equal monthly installments.

Inspection and grading

Sec. 2. It shall be the duty of the said Inspector and his assistants, under the direction and supervision of the Commissioner, to inspect and grade all rough rice grown in or produced in or imported into this State under such rules and regulations as said Commissioner may promulgate.

Cooperation with Federal Government or agencies

Sec. 3. The Commissioner of Agriculture and the proper agencies of the Federal Government shall cooperate and work together with reference to the grading and inspection of such rice, and any certificate executed by an officer of the United States Government, or of the Commissioner, or any Inspector, or Assistant Inspector provided for herein, shall be admissible as evidence of the grade or classification and as to the truth of the contents thereof in any court of judicial proceedings in this State, provided herein that incorrectness, falsity or lack of authenticity thereof may be shown. Said certificate shall be on the form prescribed by the United States Department of Agriculture and/or the Commissioner of Agriculture of the State of Texas.

Purpose of Act

Sec. 4. The purpose of this Act is to provide the rice farmers of Texas an inspector for the purpose of grading and classifying rough rice produced in Texas; and this Act shall not be considered as creating any office in the State of Texas, or causing any expense whatever to the State Government; but all expenses in administering this Act shall be borne by the rice farmers of Texas, through the Rice Growers' Association. [Acts 1931, 42nd Leg., p. 299, ch. 176.]

Art. 55b. [Repealed by Acts 1933, 43rd Leg., p. 10, ch. 8, § 1.]

The article repealed was Acts 1931, 42nd Leg., p. 498, ch. 278.

CHAPTER 2.—STATE SEED AND PLANT BOARD

Art.

56. State Register.
57. State Seed and Plant Board; membership; meetings; requiring applicant's appearance; prescribing inspectors' qualifications.
58. Fees.
59. May register as breeder.
60. Certificate as breeder.
61. May register as grower.
62. Certificate as grower.
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67a. Registration of agricultural seed growers.
Sec.
1. Purpose of act.
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3. Seed and Plant Board; certification of registrants to Commissioner of Agriculture; rules and regulations.
4. Inspectors; appointment; duties; rules and regulations; shipments into state; use of certain tags and terms in connection with seed.
5. Hearing on charges of violating rules.

Article 56. State Register.—The Commissioner of Agriculture is directed to establish a State Register of Cotton Seed Breeders and Cotton Seed Growers who produce and offer for sale cotton seed for planting purposes and who voluntarily apply for registration under the provisions of this chapter and conform to the rules and regulations established for the administration and enforcement thereof by said Commissioner. [Acts 2nd C. S. 1923, p. 127.]

Art. 57. State Seed and Plant Board; membership; meetings; requiring applicant's appearance; prescribing inspectors' qualifications.—The State Seed and Plant Board (formerly designated as the State Board of Plant Breeder Examiners) shall be composed, ex-officio, of the Chief of the Division of Field Seed Certification of the State Department of Agriculture, the Head of the Department of Genetics of the Agricultural and Mechanical College of Texas, and the Head of the Department of Plant Industry of the Texas Technological College. Said Board shall elect annually one of their number as chairman and another as secretary. The Board shall meet at such times and places as the chairman may order. All applicants for license as Registered Plant Breeder and Certified Seed Grower shall furnish such information as the Board may require and shall appear in person before said Board if the Board requests it. The Board shall prescribe the qualifications of inspectors that may be em-

ployed under this law. [Acts 2nd C.S. 1923, p. 127, Acts 1943, 48th Leg., p. 264, ch. 163, § 1.]

Art. 58. Fees.—All applicants for license as Registered Cotton Seed Breeder and Certified Cotton Seed Grower shall pay to the said Board a fee of ten dollars as a prerequisite to such application for such license. Such fees as may be collected shall be used by the said Board in defraying expenses incident to conducting such examinations. [Acts 2nd C. S. 1923, p. 127.]

Art. 59. May register as breeder.—Any cotton breeder in the State, or any person, firm or corporation engaged in breeding cotton, who produces and offers for sale cotton seed for planting purposes, and who has in his or its employ experienced and competent cotton breeder or breeders shall be eligible to registration as a Registered Cotton Seed Breeder, when he or it has satisfied the State Board of Plant Breeder Examiners [1] herein provided for:

1. That he or it is a person, firm or corporation of good character and reputation for honesty, competency and fair dealing;

2. That he is skilled in the science of cotton breeding or has in his or its employment one or more persons who are skilled in the science of cotton breeding;

3. That he, or persons in his or its employment has originated or made distinctive improvements in the character of a useful strain of cotton;

4. That he or it owns or controls land and other facilities necessary in the breeding and production of seed of high purity and excellence; and has complied with the rules and regulations established by said State Board of Plant Breeder Examiners in pursuance of law [Id.]

[1] Name changed to State Seed and Plant Board. See art. 57.

Art. 60. Certificate as breeder.—When the application of breeder of cotton seed made under the provisions of this law has been approved by said Board, said applicant shall be registered as a "Registered Cotton Seed Breeder" and shall be issued a certificate to that effect and shall be entitled to use the title "Registered Cotton Seed Breeder" and to advertise and sell cotton seed produced in conformity with the provisions of this law and the rules and regulations established in pursuance thereof as "Registered Cotton Seed;" which certificate shall expire one year from the date of issue unless otherwise revoked as herein provided. [Id.]

Art. 61. May register as grower.—Any person, firm or corporation engaged in producing cotton seed to be offered for planting purposes shall be eligible for registration as a "Certified Cotton Seed Grower," when he or it has satisfied the State Board of Plant Breeder Examiners [1]:

1. That he or it is a person, firm or corporation of good character and reputation for honesty, competency and fair dealing.

2. That he or it will plant only seed obtained from a registered cotton seed breeder, and will offer for sale only the first or second year progeny of such registered cotton seed.

3. That he or it owns or controls land and other facilities necessary in the production of seed of high purity and excellence; and has complied with the rules and regulations established by said Board in pursuance of this law. [Id.]

[1] Name changed to State Seed and Plant Board. See art. 57.

Art. 62. Certificate as grower.—When the application of a cotton seed grower made under the provisions of this law has been approved by the said Board, said applicant shall be registered as a "Certified Cotton Seed Grower" and shall be issued a certificate to that effect and shall be entitled to use the title "Certified Cotton Seed Grower," and to advertise and sell cotton seed produced in conformity with the provisions of this law and the rules and regulations established in pursuance thereof as "Certified Cotton Seed." Said certificate shall expire one year from date of issuance unless otherwise revoked as herein provided for. [Id.]

Art. 63. Form of application.—The Board shall prepare suitable form of application for registration for cotton seed breeders and cotton seed growers, and shall establish rules and regulations, tests and standards to carry into effect the purposes of this law, which are to provide supplies of high grade cotton seed for planting purposes, and to enable the farmers to secure pure bred cotton seed for planting true to name. Said forms shall be in conformity with the provisions of this law and all tags furnished the registered seed breeders and certified seed growers, shall contain the words, "Registered Cotton Seed Breeder," or the words "Certified Cotton Seed Grower," and such other conditions as may be prescribed by the State Board of Plant Breeders [1]. The Commissioner of Agriculture shall employ a sufficient number of competent inspectors to inspect fields of cotton, and the facilities for ginning, storing and handling cotton seed owned or controlled by persons registered under this law and used in the production of cotton seed to be offered for sale for planting purposes. Said inspectors shall make reports upon forms provided by said commissioner. [Id.]

[1] Name changed to State Seed and Plant Board. See art. 57.

Art. 64. Tags and labels.—If the reports of said inspectors show that the cotton grown by a licensee hereunder and the facilities for ginning, storing, and handling same conform to the rules and regulations and standards established by the board, there shall be issued to him or it a certificate evidencing his or its right to offer for sale the cotton seed so produced as "Registered Cotton Seed" or "Certified Cotton Seed." Then the said Commissioner of Agriculture shall also issue to said cotton seed breeders and cotton seed growers tags or labels to attach to packages or containers containing said cotton seed certifying that same has been produced under the terms of this law, and an amount sufficient to cover all cost of printing tags and inspection shall be collected by said Commissioner.

Art. 65. Inspection fee.—Before any cotton seed breeder or cotton seed grower is registered under this law he or it shall agree in writing to pay to the said Commissioner of Agriculture an inspection fee to be fixed by said commissioner to pay the expense of inspecting his fields, gin and other facilities used in producing cotton seed, and for printing tags. Said fee shall not exceed 25 cents per acre for each acre of cotton, and $1.00 for each gin and warehouse. [Id.]

Art. 66. Fund.—All money so collected shall belong to a special fund of this State and shall be paid over by the Commissioner of Agriculture to the State Treasurer, during the first week of each month, and shall be credited to the "Special Pure Bred Cotton Seed Inspection Fund," and such funds shall be expended in the enforcement of this law, by the Commissioner of Agriculture, and in the purchase and supply of means to enable the commissioner and his agents to enforce the provisions of this law. All such expenditures shall be verified by the affidavit of the Chief of the Division of Plant Pathology and Seeds to the Commissioner of Agriculture, and on the approval of such expenditures by the commissioner, the Comptroller shall draw his warrant on the Treasurer for the amount of such expenditures in favor of the person claiming the same, to be paid out of the "Special Pure Bred Cotton Seed Inspection Fund." [Id.]

Art. 67. Cancelling registration.—If the report of an inspector shall show that the character, quality and varietal purity of any field of cotton grown by any

licensee hereunder does not conform to the rules, regulations, tests, and standards promulgated under authority of this law, or that the gin, warehouse, or other facilities do not conform to such rules, regulations, tests or standards, or if charges be made that any of the licensees hereunder have been guilty of any dishonest, unfair or improper conduct or practice in the conduct of his or its business of breeding or growing and selling cotton seed, the said Commissioner of Agriculture shall give written notice thereof to said breeder or grower and fix a time for hearing evidence relating to said report or charges of which the accused party shall have at least ten days' notice. If in the judgment of said Commissioner of Agriculture such adverse report or charges are sustained he shall cancel the registration and certificate of accused party and retake all tags or labels and license or certificate issued to him or it. If any registered cotton seed breeder or certified cotton seed grower is not satisfied with such verdict of the Commissioner of Agriculture, such person or persons shall have the right to appeal the case to the State Board of Plant Breeder Examiners [1], and shall be entitled to a hearing. [Id.]

1 Name changed to State Seed and Plant Board. See art. 57.

Art. 67a. Registration of agricultural seed growers

Purpose of act

Sec. 1. The necessity for high grade planting seed for agricultural crops is hereby recognized and the purposes of this Act [1] shall be to enable farmers to secure pure bred agricultural seeds true to name and free from noxious weed seeds and free from plant diseases transmissible through the agency of planting seed.

Registration of planters; marking or tagging bags or containers

Sec. 2. Persons, firms, associations or corporations skilled in the science of plant breeding and who voluntarily apply, and who comply with the requirements herein provided for and who produce agricultural planting seed of the quality herein provided for registered planting seed, shall upon approval by the State Seed and Plant Board be recorded as "Registered Plant Breeders" by the Commissioner of Agriculture and shall be entitled to use the words "State Registered Plant Breeder," and all bags or containers for planting seed produced by them in conformity to tests and standards provided for registered planting seed, shall have securely attached tags, to be furnished at cost by the Commissioner of Agriculture, which shall contain the Seal of the State of Texas and the words "State Registered Planting Seed" and such other information as the Commissioner of Agriculture may deem necessary for the protection of the purchaser. Persons, associations, firms or corporations engaged in the production of agricultural planting seed who voluntarily apply, and who comply with the requirements herein provided for Certified Seed Growers, and who produce agricultural planting seed of the quality herein provided for certified planting seed, shall upon approval by the State Seed and Plant Board, be recorded as "Certified Seed Growers" by the Commissioner of Agriculture, and shall be entitled to use the words "State Certified Seed Growers," and all bags or containers of planting seed produced by them in conformity to tests and standards provided for certified planting seed shall have securely attached tags, to be furnished at cost by the Commissioner of Agriculture, which shall contain the words "State Certified Seed" and such other informations as the said Commissioner of Agriculture may deem necessary for the protection of the purchaser.

Seed and Plant Board; certification of registrants to Commissioner of Agriculture; rules and regulations

Sec. 3. The State Board of Plant Breeder Examiners created by the Chapter 2 of Title 4, Vol. 1, of Revised Civil Statutes of 1925 [1] to be hereafter called the State Seed and Plant Board, shall certify to the Commissioner of Agriculture the names of persons, firms, association, or corporations who are eligible to qualify as Registered Plant Breeders, and names of persons, firms, associations or corporations who are eligible to qualify as Certified Seed Growers; it shall promulgate rules, regulations, test and standards governing the production of Registered Planting Seed and Certified Planting Seed; shall prepare suitable blank forms to be used in making application for recognition as Registered Plant Breeders and Certified Seed Growers, and shall prescribe the qualifications of inspectors to be employed under the provisions of this Act; [2] it shall hear and pass upon all applications for Registered Plant Breeders and Certified Seed Growers before certifying the same to the Commissioner of Agriculture; it shall collect a fee of Ten ($10.00) Dollars from each applicant and deposit same in the State Treasury; it shall prescribe fees to cover the cost of administering this Act, which shall not exceed twenty-five (25c) cents per acre for cotton, nor more than one per cent of the retail value of the average production of such other field seed on such land as may be applied on, and shall have full power and authority to determine the eligibility of persons, firms, associations or corporations applying for recognition as Registered Plant Breeders or Certified Seed Growers. Before certifying any applicant it shall consider his or its reputation for honesty, competency and fair dealing, his or its facilities for producing planting seed of a high degree of purity and excellence, the quality of planting seed owned or controlled by the applicant to be used in the production of Registered Planting seed or Certified Planting Seed. Provided that the production of Certified Seed shall be not less than the degree of purity and excellence set for Registered Seed and in the consideration of an applicant for recognition as a Registered Plant Breeder it shall investigate his skill as a Plant Breeder or the skill of someone in his or its employment.

1 Arts. 56–67.
2 This article and Pen.Code, art. 1555a.

Inspectors; appointment; duties; rules and regulations; shipments into state; use of certain tags and terms in connection with seed

Sec. 4. (a) The Commissioner of Agriculture shall appoint a sufficient number of inspectors nominated by the State Seed and Plant Board to carry into effect the provisions of this Act.[1] He shall cause inspections to be made of the fields and facilities of persons, firms, associations, or corporations certified to him by the State Seed and Plant Board as eligible to qualify as Registered Plant Breeders and Certified Seed Growers. When such inspection reveals the fact that the growing crops of a Registered Plant Breeder from which it is proposed to produce Registered Seed show a high degree of purity, excellence, and freedom from plant diseases, transmissible through the agency of planting seed, that are required for Registered Seed, and that such field or fields are reasonably free from noxious weed seeds and noxious grasses, and if such seed when produced show the high germination per cent determined to be necessary by the said State Seed and Plant Board for such seed, and are rendered reasonably free of foreign substances, he shall cause to be issued to such person, firm, association or corporation a certificate evidencing the fact that such person, firm, association, or corporation is recognized by the State as a Registered Plant Breeder, and shall cause to be printed tags for each sack or container of seed so produced and so registered, and shall furnish such tags to the applicant at cost, which tags shall bear the words "State Registered Planting Seed", and which shall give in addition thereto the true and correct varietal name of such seed and such

other information as he may deem necessary for the protection of the purchaser. If an inspection of the fields and premises of persons, firms, associations, or corporations certified to him as Certified Seed Growers reveals the fact that such fields are of the degree of purity and excellence required for Certified Seed by the State Seed and Plant Board, and if such fields are reasonably free from noxious weed seeds and noxious grass seeds, and free from plant diseases transmissible through the agency of planting seed, and that such seed when produced show the high germination per cent required by the State Seed and Plant Board, and are reasonably free of foreign substances, he shall issue to each applicant his Certificate evidencing the fact that he or it is recognized as a Certified Seed Grower, and shall cause to be issued tags at cost of printing to the Certified Seed Grower, which tags shall bear the words "State Certified Planting Seed" and shall give the true and correct variety and such other information as he may deem necessary for the protection of the public. He shall collect, prior to the making of the inspection, such fees as may be determined by the said State Seed and Plant Board, which shall be deposited in the State Treasury and be credited to a fund to be known as the "Pure Seed Fund", and it shall be paid out by the Treasurer upon warrants issued by the Comptroller upon accounts approved by the Commissioner of Agriculture, for the payment of expenses incurred in the enforcement of this Act.

(b) The Commissioner of Agriculture shall promulgate rules and regulations, tests and standards necessary to carry out the provisions of this Act under which cotton, alfalfa, corn and sorghum seed for planting purposes may be shipped into Texas, and providing that no cotton, alfalfa, corn or sorghum seed for planting purposes may be shipped into Texas for planting purposes unless said seed meet the requirements as set forth by the Commissioner of Agriculture; and each lot of seed of one hundred (100) pounds or less, whether sacked or in bulk, approved for shipment into Texas, shall bear a special tag issued by the Commissioner of Agriculture. Said Commissioner, through his agents, or specially appointed agents, may investigate the quality of the seed to be shipped into the State of Texas and provide such reasonable requirements as may be necessary to insure to the farmers and seed purchasers of this State seed of known origin, value, and merit; and further providing that the Commissioner of Agriculture shall have full authority to refuse permission to any applicant to ship cotton, alfalfa, corn or sorghum planting seed into Texas when the records and information of the agents of said Commissioner of Agriculture show the seed to be of inferior quality, lacking prescribed varietal purity, from diseased fields, or other reasons prescribed in the rules and regulations under the provisions of this Section.

(c) The term "sorghum seed" shall mean seed of grain, sweet and grass sorghum.

(d) Providing that all persons, firms, or corporations seeking to ship cotton, alfalfa, corn or sorghum planting seed into Texas shall secure a permit from the Commissioner of Agriculture prior to shipping any cotton, alfalfa, corn or sorghum planting seed into Texas. Said permit shall be valid for one year but may be cancelled prior to date of expiration for violation of any of the provisions of this Act or the rules and regulations promulgated thereunder.

(e) Providing that any seed for planting purposes shipped into Texas without first complying with the provisions of the law and regulations promulgated hereunder, be considered restricted material, and may be returned to the shipper at his expense. Said shipper shall be granted ten (10) days from date of notice to remove such seed from the State of Texas. Upon his refusal or failure to do so, the confiscation of such seed by the Commissioner of Agriculture or his agents is hereby authorized and without recourse on the State of Texas.

(f) Providing that all planting seed shipped into Texas and bearing the label denoting Registered or Certified Seed shall have been produced under standards equal to the existing standards in Texas for such Class of seed. Such seed coming into the State of Texas and being declared by the Commissioner of Agriculture not to have been produced under Registration and Certification standards equal to the Texas standards, shall not bear the labels or be represented as Registered or Certified Seed, except as hereinafter provided for. Such seed may bear the Registration or Certification tag issued in the State of origin provided such tags are plainly marked "These seed do not meet the requirements of Registration or Certification in Texas."

(g) Providing that the use of the Red or Blue tag on planting seed in Texas is prohibited except when used by duly qualified Registered Plant Breeders or Certified Seed Growers, or when such tags are plainly marked in bold type "Non-Registered" or "Non-Certified" seed.

(h) Providing that the terms "from officially inspected fields," "State Inspected", "approved Seed", "Inspected fields", "first year from Certified Seed," "as good as Certified", and other similar terms be confined to a description of Registered and Certified Seed. Providing, however, that where such terms are used by firms, individuals, or corporations, such written material shall plainly show the words "Non-Registered" or "Non-Certified."

Any person, firm, or corporation violating any of the provisions of this Section, or the rules and regulations adopted in accordance with this Act, or who shall sell or offer for sale in Texas cotton, alfalfa, corn or sorghum seed produced outside the confines of the State of Texas without a permit issued in accordance with the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Ten ($10.00) Dollars nor more than One Hundred ($100.00) Dollars, or by imprisonment of not less than ten (10) days nor more than thirty (30) days in the county jail, or both, in the discretion of the Court. Each violation shall constitute a separate offense. [As amended Acts 1939, 46th Leg., p. 3.]

1 This article and Pen.Code, art. 1555a.

Hearing on charges of violating rules

Sec. 5. When an inspector reports to the Commissioner of Agriculture that any Registered Plant Breeder or Certified Seed Grower is guilty of any exaggerated claims, unfair dealing or is failing to observe any of the rules and regulations governing the production of State Registered Seed or State Certified Seed, the said Commissioner of Agriculture shall give notice to the accused party and shall set a date for a hearing upon such charges. If such charges are sustained, then the certificate theretofore issued to such Registered Seed Breeder or Certified Seed Grower shall be cancelled and all tags shall be withdrawn. Provided, however, that in the event such Registered Seed Breeder or Certified Seed Grower is dissatisfied with the verdict of the said Commissioner of Agriculture, he shall have the right to appeal to the State Seed and Plant Board and shall be entitled to a rehearing. [Acts 1929, 41st Leg., 1st C.S., p. 229, ch. 93.]

1 This article and Pen. Code, art. 1555a.

Section 6 of this Act, being a penal provision is published as Pen. Code art. 1555a. Section 7 directs that it shall be cumulative of articles 56–67, ante, and shall not be construed as a repeal of any part thereof unless in conflict therewith.

CHAPTER 3.—PINK BOLLWORM

Art.
68. Declared a nuisance.
69. Definitions.
70. Policy and methods.
71. Investigation and recommendation.
72. Emergency quarantine.
73. Destruction of cotton.
74. Examination of area.
75. Compensation Claim Board.
76. Pink Bollworm Commission.
77. Salary and expenses.
78. Powers.
79. Inspectors.
80. Federal co-operation.
81. Payment of claims.
82. Former zones.

Article 68. Declared a nuisance.—The Pectinophora gossypiella, Saunders, known as the pink bollworm, is hereby declared a public nuisance and a menace to the cotton industry, and its eradication is a public necessity. [Acts 3rd C. S. 1917, p. 62, Acts 1919, p. 72, Acts 3rd C. S. 1920, p. 71, Acts 1st C. S. 1921, p. 121.]

Art. 69. Definitions.—The term "pink bollworm" shall mean the insect in its various stages of development, including the egg, larval, pupal, and adult stages. The term "cotton" or "cotton products" shall mean cotton in the seed, ginned lint cotton, seed, hulls, cotton in the bolls, cotton stalks, and any and all character of cotton products except oil and meal. [Id.]

Art. 70. Policy and methods.—It is hereby declared the policy of the State in endeavoring to control and eradicate the pink bollworm to employ all such methods as scientific research demonstrates to be successful and as may be sanctioned by constitutional warrant, including inspection of cotton plants in the fields, or of cotton products wherever stored; the quarantine and fumigation of cotton and cotton products found to be contaminated; supervision of the growing of cotton in areas known to be contaminated; destruction of infested fields of cotton, or cotton products; and the prevention of planting of cotton in areas where infestation has been found. [Id.]

Art. 71. Investigation and recommendation.—If the Commissioner of Agriculture determines, through his co-operation with the Secretary of Agriculture of the United States, that the pink bollworm exists outside of Texas but adjacent to the Texas border, he shall certify that fact to the Governor, who shall thereupon cause the convening of the Pink Bollworm Commission appointed as hereinafter provided for, which commission shall give notice of, and hold a hearing in the manner hereinafter provided at some central and easily accessible point in the county or counties in this State along the boundary adjacent to such infestation, and investigate into the danger to the cotton industry of Texas from such infestation adjacent to the Texas border and make such recommendation to the Governor as they deem sufficient to the protection of the cotton industry of the State. Should this report express the conclusion that it is dangerous to the cotton industry of Texas that cotton be grown in this State along the boundary adjacent to such infestation, the Governor shall thereupon proclaim such area as may be set out in said report a non-cotton zone, in which it shall be unlawful to plant, cultivate or grow any cotton for such period as the proclamation may specify; and if such report indicates that it will be safe to grow cotton under rules and regulations within such zone adjacent to the infestation outside of Texas, the Governor shall thereupon issue his proclamation declaring it unlawful to grow cotton within such area as may be recommended by the Pink Bollworm Commission, except under such rules and regulations as the Commissioner of Agriculture shall promulgate. Should the report of such commission indicate that it may be dangerous to the cotton industry of this State to allow the free movement of contaminated material from such infested territory into this State, the Governor shall thereupon proclaim a quarantine against such infested territory, and thereafter it shall be unlawful to import into Texas from such quarantined territory anything or substance liable to be contaminated with pink bollworm, and it shall be the duty of the Commissioner of Agriculture to maintain a rigid inspection of articles liable to be contaminated which are being carried from such quarantined territory into the State of Texas. Before recommending the establishment or continuance in any county in this State bounded by an international boundary line, or a non-cotton zone, under this or any other article of this chapter, the Pink Bollworm Commission shall give careful consideration to the conditions existing, or likely to exist, on the non-Texas side of said boundary line, and the evidence concerning such conditions shall be such as to reasonably show that the establishment of a non-cotton zone in said county will effectively protect the cotton industry of Texas against the further spread of the infestation. [Id.]

Art. 72. Emergency quarantine.—If the pink bollworm shall be found in any gin, cotton seed oil mill, cotton seed warehouse, compress, or transportation vehicle in the State, or in any field of cotton, the Commissioner of Agriculture shall immediately certify that fact to the Governor, who shall proclaim a special emergency quarantine surrounding the known location of the pest to such extent as may be determined sufficient to prevent the spread of the pink bollworm, and it shall be unlawful for any person or persons to ship any cotton or cotton products of any kind from such quarantine district, or transport any car, vehicle, or freight, or any other article liable to carry the pink bollworm from the quarantined area through, or to any other point in the State, except under such rules and regulations as the Commissioner of Agriculture shall promulgate; such emergency quarantine shall continue in full force and effect until such time as a hearing, as provided for in this chapter, can be held by the said Pink Bollworm Commission.

Art. 73. Destruction of cotton.—When it is deemed necessary to the protection of the cotton industry of Texas that the Commissioner of Agriculture shall destroy cotton, cotton products, or fields of cotton in which the pink bollworm shall have been found or which are probably contaminated by being near infestation of the pink bollworm; he shall report such condition to the Governor, setting out in detail the area or amount of cotton or cotton products to be destroyed. The Governor shall thereupon declare such cotton or fields of cotton a public menace. Before the destruction of such cotton or cotton products the Compensation Claim Board, hereinafter provided for, shall go upon the premises and report to the Commissioner of Agriculture the value of the fields of cotton or cotton products to be destroyed. The Commissioner of Agriculture shall then be empowered to use all authority requisite to the complete destruction of such cotton, cotton products or fields of cotton to prevent the spread of the pink bollworm from such localities. The Commissioner of Agriculture shall certify to the fact of such cotton products or fields of cotton having been destroyed and shall file such report and certificate with the State Comptroller, who shall issue his warrant upon the State Treasurer for such sum as may be declared just and due. [Id.]

Art. 74. Examination of area.—Whenever the Commissioner of Agriculture shall deem it necessary to the protection of the cotton industry of Texas that

the growing of cotton within any area of the State, except as provided for in the preceding articles hereof, be placed under supervision, or that cotton growing be prohibited as a means of aiding in the control and eradication of the pink boll worm, he shall cause to be made a thorough examination of such area by a competent and experienced entomologist, who shall, after going upon the premises and after making an examination in person, report the result thereof to the Commissioner of Agriculture. Should this report express the conclusion that pink boll worms exist in such numbers as to constitute a serious menace within the territory under investigation, the Commissioner of Agriculture shall certify this report to the Governor, who shall cause the Pink Boll Worm Commission hereinafter provided for, to hold a hearing at some central and easily accessible point within the area under investigation; due notice of the time and place of such hearing shall be published in some newspaper in or near the county or counties under investigation, at least ten days before such hearing. The Commissioner of Agriculture shall present to the Commission a statement setting forth the following facts:

1. The name of the entomologist making the examination on behalf of the State Department of Agriculture.

2. The date when such examination was made.

3. The locality where the pink boll worm is alleged to exist.

4. That the inspector invited the owner of the land, or his agent, or representative, to accompany him on the inspection trip, and that the owner, or his representative, accompanied him, or declined to do so.

5. Any other information deemed necessary by the Commission for the discharge of its duties under the provisions of this Chapter.

Such statement shall be verified by oath of the person making the same and shall be filed and preserved in the office of the Commissioner of Agriculture and be open to the inspection of the public. Said Pink Boll Worm Commission shall make a report to the Governor immediately after the hearing. Should this report and recommendation be for the prevention of the planting of cotton in any area and for the establishment of a non-cotton zone, such recommendation shall specify the area to be embraced in the proposed non-cotton zone. Upon receipt of this report, the Governor shall declare the growing of cotton within such area as may be recommended by the Pink Boll Worm Commission a public menace, and thereafter it shall be unlawful to plant, cultivate or grow cotton, or to allow cotton to grow within such zone, such proclamation of the Governor to remain in effect until the Pink Boll Worm Commission, herein provided for, shall have certified that the condition of menace no longer exists. In the event of the establishment of any non-cotton zone authorized by this Chapter, all persons prevented from producing cotton in the non-cotton zones shall be entitled to receive compensation from the State in the measure of the actual and necessary losses sustained thereby. In all regulated or restricted areas now established or that may hereafter be established, all persons, firms or corporations required to comply with said regulations or restrictions imposed upon them by law or any constituted authority shall be entitled to receive compensation for the actual losses sustained and for all actual expenses incurred by reason of said restrictions or regulations. From and after July 1, 1929, the State shall own or lease and operate all fumigation and sterilization plants and shall operate same without cost to the cotton grower or gin, compress or mill owner. The Compensation Claim Board, herein provided for, shall have full power and authority to determine the amount of compensation to such persons, firms or corporations. In determining the actual and necessary losses, the Compensation Claim Board shall take into consideration the value of the average yield of cotton and other crops second in economic importance thereto in that vicinity; the total amount of land planted to crops during the year for which compensation is claimed; the percentage of such land customarily planted in cotton in that vicinity, and such other factors as they deem essential. The words "cultivated crops" as used above shall not be construed to include any small grain crops, hay or pasture crops which are not cultivated during the growing season. No person shall be entitled to compensation who does not in good faith obey the proclamation of the Governor establishing such non-cotton or regulated zone. Should the report of the Pink Boll Worm Commission express the conclusion that it will not be dangerous to the cotton industry of Texas to permit the growing of cotton within such district under such rules and regulations as it shall be deemed adequate to prevent the spread of the pink boll worm, the Governor shall proclaim such area as may be set out in the report of the Pink Boll Worm Commission a regulated zone, in which it shall be unlawful to plant, cultivate and market cotton except under such rules and regulations as shall be promulgated therefor by the Commissioner of Agriculture, which may include the planting of seed from non-infested territory, ginning at designated gins, milling or disinfecting of all seed products within such zone marketing, cleaning of fields, and such other rules as may be found necessary; provided that no ginner shall be authorized to gin cotton from regulated zones unless he shall disinfect all seed under such rules as the Commissioner of Agriculture shall prescribe. Such proclamation of the Governor, establishing such regulated zone shall remain in effect until the Pink Boll Worm Commission shall have certified that the menace no longer exists. [Acts 3rd C.S. 1917, p. 62, Acts 1919, p. 72, Acts 3rd C.S. 1920, p. 71, Acts 1921, 1st C.S. 1921, p. 121; Acts 1929, 41st Leg., p. 85, ch. 42, § 1.]

Art. 75. Compensation Claim Board.—The Governor shall appoint a Compensation Claim Board for the State, who shall serve until relieved therefrom by the Governor, whose duty it shall be determined [1] in the manner herein provided the measure of compensation due persons prevented from growing cotton and the damages sustained by persons having cotton condemned and destroyed as provided for herein, and losses sustained or expenses incurred by all persons, firms or corporations in such regulated or restricted areas. The said Board shall be composed of three citizens of the State residing outside any area under quarantine under the provisions of this law, at least two of whom are actually engaged in the production of cotton. Before entering upon their duties, the members of the Board shall take the official oath, and shall organize by electing one of its members chairman and the Commissioner of Agriculture shall act as ex-officio secretary. The concurrence of two members of the Board shall constitute legal action. The Compensation Claim Board shall conduct a public hearing in the county or counties from which the claims for compensation have been filed, due notice of which hearing shall be given by publication in some newspaper published in or near the county or counties in which the claimant resides, not less than ten days before the date of such hearing, and by mailing from the office of the Commissioner of Agriculture a letter to each claimant, not less than ten days before the date of such hearing, which notices shall state the time and place of each hearing. Every such claim for compensation from the State shall be made under oath, attested by two citizens of the county in which the claimant resides, upon blanks to be furnished by the Commissioner of Agriculture. Every such claim shall state:

1. The name and the post office of the claimant.

2. The location of the farm upon which the claim is based.

3. The total acreage of all cultivated crops produced in the year in which such claim is presented.

4. All other information deemed essential by the said Compensation Claim Board for the performance of the duties developed [2] upon them by this law.

Each allotment of compensation shall be evidenced by a written order, entered in a permanently bound book kept by the Board in the office of the Commissioner of Agriculture, and a certified copy of each allotment shall be given the claimant. If any Claimant is dissatisfied with the action of the Claim Board on his claim, he shall have the right within six months after the decision of the Claim Board to make application to the District Court of the county of which he is a resident or in which his cotton was destroyed or in which he was prevented from growing cotton or in the county where actual losses were sustained or actual expenses were incurred and have the action of the Claim Board reviewed by such District Court. If the State, acting through the Commissioner of Agriculture, is dissatisfied with any such decision of the Claim Board, it shall likewise have the right to resort to said court for such review. [Acts 3rd C.S. 1917, p. 62, Acts 1919, p. 72, Acts 3rd C.S. 1920, p. 71, Acts 1st C.S. 1921, p. 121; Acts 1929, 41st Leg., p. 85, ch. 42, § 2.]

[1]R.S.1925, art. 75, of which this is an amendment read "to determine."
[2]R.S.1925, art. 75, of which this is an amendment read "devolved."

Art. 76. Pink Bollworm Commission.—The Governor shall appoint a Pink Bollworm Commission for the State composed of five men who shall serve until relieved therefrom by the Governor. One shall be appointed upon the recommendation of the Commissioner of Agriculture; one upon the recommendation of the Secretary of Agriculture of the United States; one upon the recommendation of the District Judge of the county or counties under consideration; and two upon his own discretion. The latter two shall be actual cotton growers. Should any of the officials herein authorized to make recommendations for appointment fail or refuse so to do, or should any person so nominated refuse to serve or become incapacitated for service, the Governor shall make such appointment upon his own discretion. Said Bollworm Commission shall take the official oath. They shall organize by electing one of their number chairman and the Commissioner of Agriculture shall be ex-officio secretary. [Acts 3rd C.S. 1917, p. 62, Acts 1919, p. 72, Acts 3rd C.S. 1920, p. 71, Acts 1st C.S. 1921, p. 121.]

Art. 77. Salary and expenses.—The members of the said Board and of said Commission shall each receive a salary of five dollars per day and actual traveling expenses when engaged in the performance of their duties. [Id.]

Art. 78. Powers.—The Commissioner of Agriculture and his authorized agents shall have the power to enter into any field of cotton or upon any premises in which cotton or its products may be stored or held, and may examine any products or container of cotton or thing or substance liable to be infested with the pink bollworm, and shall have power to enter upon any premises for the purpose of issuing permits and to examine all books and records of purchasers or handlers or common carriers of cotton products. [Id.]

Art. 79. Inspectors.—The Commissioner of Agriculture shall make adequate investigation to determine the presence of the pink bollworm in the State and shall take prompt action to secure the establishment and maintenance of an effective quarantine of all infested areas that may be discovered within the State, pursuant to the provisions of this chapter. The Commissioner of Agriculture may employ inspectors, and such other help as he may deem necessary, and may prescribe the duties of such inspectors and other help. No person shall be appointed as an inspector who has not had at least two years actual experience as an entomologist, or two years training as an entomologist in the Science Department of some reputable college or university. Such inspectors shall be paid not exceeding one hundred and fifty dollars per month and their necessary expenses. [Id.]

Art. 80. Federal co-operation.—The Commissioner of Agriculture shall co-operate with the Secretary of Agriculture of the United States in any measure authorized and to be undertaken by authority of the Federal Government in preventing the introduction or establishment of the pink bollworm in the State of Texas. If the Congress of the United States should appropriate any moneys with which to assist this State in the payment of compensation to farmers for being deprived of the right to plant cotton, and should such appropriation by Congress provide for this money to be disbursed by the State of Texas, the State Treasurer is hereby authorized to receive such moneys from the United States Government, and the Commissioner of Agriculture is hereby authorized to disburse same in accordance with the laws of this State and the United States. [Id.]

Art. 81. Payment of claims.—All claims for damages and claims for compensation arising from the enforcement of the provisions of this law shall be paid on certified statement by the Chairman of the Compensation Claim Board, or upon certified copy of the final judgment of a court of competent jurisdiction, by warrants drawn by the Comptroller upon the State Treasurer, and all salaries and other expenses incurred in the administration of this law shall be paid in the usual way upon a certified statement of the Commissioner of Agriculture. [Id.]

Art. 82. Former zones.—All regulated zones and non-cotton zones in effect for 1921 are hereby renewed and carried forward and shall be subject to the provisions of this chapter and all procedure heretofore taken to establish such zones is hereby validated. [Id.]

CHAPTER 4.—AGRICULTURAL SEEDS

Art.
83–93a. [Repealed.]
93b. Texas Seed Law.
Sec.
1. Name of Act.
2. Definitions.
3. Label Requirements.
4. Prohibitions.
5. Exemptions.
6. Duties and authority of the Commissioner of Agriculture.
7. Inspection tax.
8. Seizure.
9. Violations and prosecutions.
10. Miscellaneous.
11. Partial invalidity.
12. Repeals.

Articles 83–93. [Repealed by Acts 1929, 41st Leg., p. 678, ch. 304, § 16.]

Art. 93a. [Repealed by Acts 1941, 47th Leg., p. 893, ch. 551, § 12.]

The article repealed was Acts 1929, 41st Leg., p. 678, ch. 304, §§ 1–15; Acts 1931, 42nd Leg., p. 262, ch. 157, §§ 1, 2.

Art. 93b. Texas Seed Law.

Name of act

Section 1. This Act shall be known as "The Texas Seed Law."

Definitions

Sec. 2. When used in this Act:

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

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

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

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

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

(f) Noxious weed seeds shall be divided into two classes, "primary noxious weed seeds" and "secondary noxious weed seeds" which are defined in (1) and (2) of this subsection. Provided, that the Commissioner of Agriculture may add to or subtract from the list of seeds included under either definition whenever he finds, after public hearing, that such additions or subtractions are within the respective definitions.

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

"Primary noxious weed seeds" in this State are the seeds of Johnson Grass (Andropogon halespensis), Bindweed or Morning Glory (Convolvulus spp.), Blue Weed (Helianthus ciliaris), and Dodder (Cuscuta, various species).

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

"Secondary noxious weed seeds" in this State are the seeds of Russian Thistle (Salsola kali), Wire Grass (Paspalum distichum), Bermuda Grass (Cynodon Dactylon), Wild Oat (Avena fatua), Chess or Cheat (Bromus secalinus), Buckhorn Plantain (Plantago lanceolata), Purple Nightshade (Solanum elaeagnifolium), Darnel (Lolium temulentum), Wild Mustard (Brassica sinapistrum), Curly Dock (Rumex crispus).

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

(h) The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this Act.

Label Requirements

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

(a) For Agricultural Seeds.

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

(2) Lot number or other lot identification.

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

(4) Percentage by weight of all weed seeds.

(5) The name and approximate number of each kind of secondary noxious weed seed, per ounce in groups (A) and (B) and per pound in groups (C) and (D), when present singly or collectively in excess of:

(A) One seed or bulblet in each 5 grans of Agrostis spp., Poa spp., Rhodes Grass, Bermuda Grass, Dallis Grass, Alsike and White Clover, Reed Canary Grass, and other agricultural seeds of similar size and weight, or mixtures within this group;

(B) One seed or bulblet in each 10 grams of rye grass, meadow fescue, foxtail millet, alfalfa, red clover, sweet clovers, lespedezas, smooth brome, crimson clover, Brassica spp., flax, Agropyron spp., and other agricultural seeds of similar size and weight, or mixtures within this group, or of this group with (A);

(C) One seed or bulblet in each 25 grams of proso, Sudan grass, and other agricultural seeds of similar size and weight, or mixtures not specified in (A), (B), or (D);

(D) One seed or bulblet in each 100 grams of wheat, oats, rye, barley, buckwheat, sorghums, vetches, and other agricultural seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group. All determinations of noxious weed seeds are subject to tolerances and methods of determination prescribed in the rules and regulations under this Act.

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

(7) Percentage by weight of inert matter.

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

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

(b) For Vegetable Seeds.

(1) Name of kind and variety of seed.

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

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

(B) Percentage of hard seed, if present;

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

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

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

Prohibitions

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

(1) Unless the test to determine the percentage of germination required by Section 2 shall have been completed within a twelve-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

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

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

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

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

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

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

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

(4) To fail to comply with a "stop-sale" order.

Exemptions

Sec. 5. (a) The provisions of Sections 2 and 3 do not apply:

(1) To seed or grain not intended for sowing purposes.

(2) To seed in storage in, or consigned to, a seed cleaning or processing establishment for cleaning or processing. Provided, that any labeling or other representation which may be made with respect to the unclean seed shall be subject to this Act.

(b) No person shall be subject to the penalties of this Act, for having sold, offered, or exposed for sale in this State any agricultural or vegetable seeds, which were incorrectly labeled or represented as to kind, variety, type, or origin which seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration giving kind, or kind and variety, or kind and type, and origin, if required.

(c) Providing that nothing in this Act shall be construed as preventing one farmer from selling to another farmer such seed grown on his own farm, as covered by the provisions of this Act without having said seed tested and labeled as provided for herein, when such seed is not advertised in the public press outside of the vendor's home county, and is not shipped by common carrier.

Duties and authority of the Commissioner of Agriculture

Sec. 6. (a) The duty of enforcing this Act and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. It shall be the duty of such officer, who may act through his authorized agents:

(1) To sample, inspect, make analysis of, and test agricultural and vegetable seeds transported, sold, offered, or exposed for sale within this State for sowing purposes, at such time and place and to such extent as he may deem necessary to determine whether said agricultural or vegetable seeds are in compliance with the provisions of this Act, and to notify promptly the person who transported, sold, offered, or exposed the seed for sale of any violation.

(2) To prescribe and, after public hearing following due public notice, to adopt rules and regulations governing the methods of sampling, inspecting, analysis, tests and examination of agricultural and vegetable seed, and the tolerances to be followed in the administration of this Act, which shall be in general accord with officially prescribed practice in interstate commerce, to provide definition of terms, and such other rules and regulations as may be necessary to secure the efficient enforcement of this Act.

(b) Further, for the purpose of carrying out the provisions of this Act, the Commissioner of Agriculture individually or through his authorized agents is authorized:

(1) To enter upon any public or private premises during regular business hours in order to have access to seeds subject to the Act and the rules and regulations thereunder.

(2) To issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seed which the Commissioner of Agriculture has reason to believe is in violation of any of the provisions of this Act which shall prohibit further sale of such seed until such officer has evidence that the law has been complied with. Provided, that in respect to seeds which have been denied sale as provided in this paragraph, the owner or custodian of such seeds shall have the right to appeal from such order to a Court of competent jurisdiction where the seeds are found, praying for a judgment as to the justification of said order and for the discharge of such seed from the order prohibiting the sale in accordance with the findings of the Court; and provided further, that the provisions of this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this Act.

(3) To establish and maintain or make provision for seed testing facilities, to employ qualified persons, and to incur such expenses as may be necessary to comply with these provisions.

(4) To make or provide for making purity and germination tests of seeds for farmers and dealers on request; to prescribe rules and regulations governing such testing; and may fix and collect charges for the tests made.

(5) To cooperate with the United States Department of Agriculture in seed law enforcement.

Inspection tax

Sec. 7. The vendor, before any agricultural seed or mixture of such seed are offered or exposed for sale, shall pay to the Commissioner of Agriculture, an inspection tax of not to exceed One Cent for each hundred pounds or fraction thereof sold, or offered for sale, in this State and shall affix to each lot shipped in bulk, and to each bag, barrel, or other package of such seed, a tag to be furnished by said Commissioner, stating that all charges specified in this Act have been paid. The Commissioner is hereby empowered to prescribe the form of such tags.

Seizure

Sec. 8. Any lot of agricultural or vegetable seed not in compliance with the provisions of this Act shall be subject to seizure on complaint of the Commissioner of Agriculture to a Court of competent jurisdiction in the area in which the seed is located. In the event that the Court finds the seed to be in such violation of the Act and orders the condemnation of said seed, it shall be denatured, processed, destroyed, re-labeled, or otherwise disposed of in compliance with the laws of this State. Provided, that in no instance shall such disposition of said seed be ordered by the Court without first having given the claimant an opportunity to apply to the Court for the release of said seed or permission to process or re-label it to bring it into compliance with the Act.

Violations and prosecutions

Sec. 9. Every violation of the provisions of this Act shall be deemed a misdemeanor punishable by a fine not exceeding Fifty Dollars ($50) for the first offense and not exceeding Two Hundred Dollars ($200) for each subsequent similar offense.

When the Commissioner of Agriculture shall find that any person has violated any of the provisions of this Act he, or his duly authorized agent or agents, may institute proceedings in the Court of competent jurisdiction in the area in which the violation occurred to have such person convicted therefor; or the Commissioner of Agriculture may file with the County or District Attorney with the view of prosecution such evidence as may be deemed necessary. Provided, however, that no prosecution under this Act shall be instituted without first having

given the defendant an opportunity to appear before the Commissioner of Agriculture, or his duly authorized agent, to introduce evidence either in person or by agent or attorney at a private hearing. If, after such hearing, or without such hearing in case the defendant or his agent or attorney fails or refuses to appear, the Commissioner of Agriculture is of the opinion that the evidence warrants prosecution he shall proceed as herein provided.

It shall be the duty of the County or District Attorney or the Attorney General of Texas, as the case may be, to institute proceedings at once against the person charged with such violation if, in his judgment, the information submitted warrants such action.

After judgment by the Court in any case arising under this Act the Commissioner of Agriculture shall publish any information pertinent to the issuance of the judgment by the Court in such media as he may designate from time to time.

Miscellaneous

Sec. 10. All money received by the Commissioner of Agriculture through the administration of this Act shall be paid by him to the State Treasurer who shall deposit said money to the account of the Texas Seed Act; said account shall be a continuing fund and shall be used in the administration of the Texas Seed Act.

Partial invalidity

Sec. 11. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudicated by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operations to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Repeals

Sec. 12. Chapter 304, General and Special Laws, Regular Session of the Forty-first Legislature, and as amended by the Forty-second Legislature, in House Bill No. 375,[1] be and the same is hereby repealed. [Acts 1941, 47th Leg., p. 893, ch. 551.]

[1] Article 93a and Pen.Code, art. 1708a.

Section 13 of the Act of 1941 repealed all conflicting laws.

CHAPTER 5.—COMMERCIAL FERTILIZERS

Art.

94. Branding or labeling.
95. Statement to be furnished chemist.
96. Words prohibited on tag.
97. Tax tags.
98. Analysis and publication.
99. Sale of inferior fertilizer.
100. Forbidden materials in fertilizer.
101. Statement of quantity.
102. Statement of sales.
103. Seizure.
104. Injunction.
105. Sale to user.
106. Containers and weights.
107. Analysis by purchaser.
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Article 94. Branding or labeling.—All corporations, firms or persons, before selling or offering for sale any commercial fertilizer for use within this State, shall brand or attach to each bag, barrel or package a plainly printed statement, showing the brand or name of said fertilizer, the net weight of the contents of the package, the name and address of the corporation, firm or person registering said fertilizer and the minimum percentages guaranteed to be present of available phosphoric acid, of nitrogen and of potash soluble in distilled water. Only such potash shall be claimed to be present as sulphate, which is in excess of the quantity required to combine with the chlorine present, less one-half per cent. In bone meal, tankage, or other similar products, the phosphoric acid shall be claimed as total phosphoric acid, unless it be desired to claim available phosphoric acid only in which latter case the guarantee must take the form above set forth. In the case of bone meal and tankage, information showing the fineness of the product may be branded or attached to the package, provided it takes a form approved by the State Chemist. All branding or labeling must be durable and legible, and so placed as to be easily read. [Acts 1911, p. 218.]

Art. 95. Statement to be furnished chemist.—All firms, corporations or persons, before selling or offering for sale any commercial fertilizer for use within this State, shall annually file with the chemist of the Texas Agricultural Experiment Station, herein termed the State Chemist, a certified statement giving the information required by the preceding article and the true names and sources of all the ingredients used in the manufacture of the said fertilizer. If the same fertilizer is sold under a different name or names, said fact shall be stated, and the different brands which are identical shall be named. If the source of any ingredient of said fertilizer is changed, notification must be promptly furnished the State Chemist. A copy of the brand or stamp on the bag or other package or on the label attached thereto shall be filed with the State Chemist on or before delivery to the dealers, agents or consumers in this State, which brand or stamp shall be uniformly used during the fiscal year for which it is filed, but such brand or stamp shall truly set forth the data required in the first article of this chapter, and be otherwise in accordance with its provisions. On receipt of the certified statement above described, and the copy of the brand or stamp, and after compliance with other requirements of this chapter, the State Chemist shall issue a certificate of registration for the commercial fertilizer, which shall be in force until the succeeding September first. A brand name previously registered shall not be allowed to be registered by another firm, corporation or individual, and no brand or name shall be allowed to be registered which is so nearly similar to another as to lead to uncertainty, confusion or fraud. The party whom the previous records of the State Chemist's office show to have first registered the name shall be permitted to retain it, subject, however, to appeal and hearing before the State Chemist to determine who is entitled to the brand; but the action of the State Chemist shall be without prejudice to the legal rights of the parties to the brand or trade-mark. No brand or name once registered shall be changed to a lower grade at any subsequent registration. The State Chemist shall publish annually a list of brands or trade-marks registered with him. [Id.]

Art. 96. Words prohibited on tag.—The words "high grade" shall not appear upon any bag or other package of any complete fertilizer which complete fertilizer contains, by its guaranteed analysis, less than ten per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag or other package of any complete fertilizer which contains, by its guaranteed analysis, less than eight per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any acid phosphate with potash, which shall contain, by its guaranteed analysis, less than thirteen per cent available phosphoric acid, and one per cent of potash, or a grade or analysis of equal total commercial value;

the word "standard" shall not appear upon any bag or other package of any acid phosphate with potash which shall contain by its guaranteed analysis, less than eleven per cent available phosphoric acid, and one per cent potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis, less than fourteen per cent available phosphoric acid; and the word "standard" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis less than twelve per cent available phosphoric acid. The word "standard" shall not appear upon any bag or other package of acid phosphate with nitrogen which shall contain, by its guaranteed analysis, less than nine per cent of available phosphoric acid and two per cent nitrogen, or a grade or analysis of equal total commercial value. No commercial fertilizer shall be sold, offered or exposed for sale for use within this State, upon which the use of the words "high grade" or "standard" is prohibited by this article, unless the words "low grade" is printed in two inch letters in a conspicuous place upon the package of said commercial fertilizer. No claim or guarantee for less than one per cent of phosphoric acid or of potash, or for less than a 0.82 per cent of nitrogen, shall be allowed in any commercial fertilizer. [Id.]

Art. 97. Tax tags.—To defray the expenses connected with the inspection of commercial fertilizer sold, or exposed, or offered for sale in this State, and experiments relative to the value thereof, all firms, corporations or persons engaged in the manufacture or sale of commercial fertilizers shall pay to the State Chemist an inspection tax of twenty-five cents per ton (2000 pounds) for such commercial fertilizers sold or exposed, or offered for sale in this State in order to entitle the same to inspection and delivery, and shall attach a tag furnished by the State Chemist as evidence that said tax is paid, and goods so tagged shall not be liable to any further tax. But nothing in this article shall interfere with fertilizers passing through the State in transit; nor apply to the delivery of fertilizing materials in bulk, to fertilizing factories for manufacturing purposes. The fees received by the State Chemist and all the penalties collected under this chapter shall be deposited with the treasurer of the Agricultural and Mechanical College of Texas, and shall be expended under the direction of the Board of Trustees of said College in defraying the expenses of inspecting and analyzing commercial fertilizers, the preparation of tags, and bulletins, experiments relative to the value of fertilizers, and for such other purposes as the Board of Trustees of said College shall allow or direct. Firms, corporations or persons, or agents representing them, who have registered their brands in compliance with this law, shall forward to the State Chemist a request for tax tags, stating that the said tags are to be used upon the brands of commercial fertilizers registered and sold in accordance with this chapter, and said request shall be accompanied with the inspection tax, whereupon the State Chemist shall issue tags to parties applying, who shall attach said tags to each bag, barrel or package thereof. All firms, corporations or persons are hereby forbidden to attach the tag prescribed by this article to any bag, barrel or package of any commercial fertilizer which has not been previously registered as required in this chapter, and which is not in accordance with all other provisions of this chapter. No tags shall be used after the end of the fiscal year for which they are issued, and they shall not be redeemed by the State Chemist. The fiscal year shall be comprised between the dates of September first and August thirty-first, inclusive. The State Chemist is hereby empowered to adopt a form for said tags. [Id.]

Art. 98. Analysis and publication.—The State Chemist shall cause one analysis or more to be made annually of such commercial fertilizer sold or offered for sale under the provisions of this Act as may be sampled under his direction. The State Chemist, in person or by deputy, shall have power to enter into any car, warehouse, store, building, boat, vessel, steamboat, or place, supposed to contain fertilizers for the purpose of inspection or sampling, and shall have the power to take a sample for analysis, not exceeding two pounds, from any package or lot of fertilizer found within the State. Said sample shall be drawn by means of a sampling tube of uniform diameter and at least eighteen inches long, placed in a jar or can, sealed and labeled by the inspector. Said sample shall be taken from not less than five bags, but in lots of 100 and over, from not less than 5 per cent of the entire number. All analyses shall be made by the official methods of the Association of Official Agricultural Chemists of North America. In the trial of any suit or action wherein is called in question the value or composition of any fertilizer, a certificate signed by the State Chemist and attested with his seal, setting forth the analysis made by the State Chemist, or under his direction, of the sample of said fertilizer analyzed by him under the provisions of this chapter, shall be prima facie proof that the fertilizer was of the value and consistency shown by his said analysis. And the said certificate of the State Chemist shall be admissible in evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions. The State Chemist shall issue at least one bulletin annually, setting forth the analyses of fertilizers made under the provisions of this chapter, the operations of the law, and such other information concerning violations or operations of this chapter, or otherwise pertaining to the sale of fertilizers as may be considered necessary. The State Chemist shall also investigate the composition, properties and agricultural values of fertilizers or of fertilizer materials or ingredients of fertilizers sold or offered for sale within the State of Texas, and shall publish his results as he may find. [Id.]

Art. 99. Sale of inferior fertilizer.—Whenever the State Chemist shall be satisfied that any lot or shipment of fertilizer is four per cent or more below the guaranteed value in plant food, he shall assess such deficiency against the manufacturer or guarantor of the fertilizer, and require that the value of the deficiency be made good to all persons who have purchased said fertilizer; and the State Chemist may seize any fertilizer belonging to such manufacturer or guarantor if the deficiency shall not be paid within thirty days after notice to such manufacturer. Any person, firm or corporation who shall intentionally or knowingly sell or offer for sale any commercial fertilizer for use within this State which is materially below the guaranteed value in plant food, shall refund to all purchasers of said commercial fertilizer twice the value of the deficiency in plant food. [Id.]

Art. 100. Forbidden materials in fertilizer.—It shall be unlawful to sell or offer for sale in this State any fertilizer or fertilizing materials which contain an undue quantity of hair, or which contains leather scraps, peat, or other substances of low availability as food for plants, but in which such forbidden materials aid in making up the required or guaranteed analysis. Whenever the analysis by the State Chemist shall show the presence of any of these unlawful materials in goods registered for sale, publication shall be made in bulletins giving the name or brand of the goods and the unlawful substance contained in its composition. No manufacturer or seller of such goods shall be allowed to collect pay for the same, and if payment has been made it shall be returned by the seller to the purchaser. A copy of the bulletin containing the statement of the presence of said unlawful materials in the named goods shall be evidence in any

court in this State in bar of payment and for recovery of money paid for goods so named. The presence of any forbidden material shall vitiate the whole, provided that manufacturers who desire to use any such material may do so under such regulations as the State Chemist may prescribe, if it be shown that it is available for a proper purpose. [Id.]

Art. 101. Statement of quantity.—It shall be lawful for the State chemist to require the officers, agents, or managers of any railroad, steamboat or other transportation company, transporting fertilizers or fertilizing material in the State, to furnish monthly statements of the quantity of such fertilizers, with the names of the consignor and consignee and the name or brand delivered on their respective lines at any and all points within this State. The State chemist is hereby empowered to compel such officers, agents or managers to submit their books for examination, if found expedient so to do. [Id.]

Art. 102. Statement of sales.—Every firm, corporation or person who has registered fertilizers for sale within this State, shall mail to the State chemist, on forms provided by the State chemist, within three days of each sale, shipment or delivery, a statement showing the official name of fertilizer, the quantity and the name and address of the person to whom the fertilizer is sold, and if such fertilizer is to be used for manufacturing purposes, the fact must be so stated, and also the composition of said fertilizer. Every corporation, firm or person registered to sell fertilizers within this State according to this chapter, shall annually on the first day of May, submit to the State chemist a statement of their sales of said fertilizer since September 1, preceding, and the State chemist is hereby authorized to require other statements of sales, if necessary, in such form as he may prescribe. The sales or shipments of any individual, corporation, firm, or person shall not be disclosed. [Id.]

Art. 103. Seizure.—Any commercial fertilizer sold, offered, or exposed for sale within this State in violation of any provision of this chapter, shall be liable to seizure at the instance of the State chemist. Upon complaint being filed by the State chemist, in person or by duly authorized deputy, with any county judge or justice of the peace, describing the commercial fertilizer and the place where it is believed that said commercial fertilizer is sold, offered or exposed for sale in violation of law, such county judge or justice of the peace shall issue his warrant directing and commanding the sheriff or any constable of his county to search such place, and if the law is being violated, to seize the commercial fertilizer, and it shall be the duty of the officer to whom such warrant is delivered to search the place described in the warrant and to seize all commercial fertilizer found therein which is in violation of law, and if admission into said place is refused, the officer executing said warrant is hereby authorized to force open the same. If it appears at the hearing before the county judge or justice of the peace who issued said writ, that the commercial fertilizer was being sold, exposed or offered for sale in violation of any provision of this chapter, said commercial fertilizer shall be condemned and delivered to an officer or agent of the State chemist, to be sold by or under the direction of the State chemist, and the net proceeds paid to the treasurer of the Agricultural and Mechanical College of Texas, for the purpose of enforcing the provisions of this chapter. The sale shall be made at the courthouse door in the county in which the seizure is made, after thirty days' advertisement in some newspaper published in said county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the name or brand of the goods, the quantity, and why seized and offered for sale. Said commercial fertilizer shall be sampled and subjected to analysis, if necessary, or tagged or branded and otherwise brought into compliance with the requirements of this chapter, before being sold. The State chemist, however, may, in his discretion, release the commercial fertilizer seized or condemned, upon the payment of the required tax or charge and all cost and expense incurred in any proceeding connected with such seizure and condemnation and upon compliance with all other requirements of this chapter. [Id.]

Art. 104. Injunction.—The Attorney General and the several county attorneys, when requested by the State chemist, shall institute suit to enjoin any person, firm or corporation, resident or non-resident, from manufacturing, or selling or soliciting orders for the sale of fertilizers in this State or selling fertilizers for use in this State without complying with all the provisions of this chapter, which injunction may issue without bond or advanced cost. [Id.]

Art. 105. Sale to user.—Manufacturers, jobbers, dealers or manipulators of commercial fertilizers may sell acid phosphate or other commercial fertilizer in bulk to persons, individuals or firms who desire to purchase the same for their own use on their own land but not for sale or distribution, under rules prescribed by the State chemist which shall not be inconsistent with the provisions of this chapter; provided, that the inspection tax shall be paid upon such fertilizer as provided in this chapter. But if such bulk fertilizer is offered for sale or distribution it must be tagged and branded and otherwise accord with the provisions of this chapter. [Id.]

Art. 106. Containers and weights.—All fertilizers or fertilizing materials sold or offered for sale for use within this State shall be in bags or packages of one hundred pounds net weight, except as provided in the preceding article. The weight of fertilizers shall be ascertained by the inspectors of the State chemist before drawing a sample, or by the purchaser within ten days of delivery to him, in the presence of at least two disinterested witnesses, one chosen by the purchaser and the other by the manufacturer, and the purchaser shall within five days notify the manufacturer to make good the deficiency. Upon failure of the manufacturer to do so within twenty days thereafter he shall be liable to a penalty of three dollars for each sack, barrel or package, which immediately attaches and becomes recoverable by the State, one-half of the penalty so received to be paid to the purchaser in case of a sale. If any such manufacturer shall refuse, decline or neglect to be present or to choose a witness within six days as herein provided, after having been notified or requested in writing by the purchaser so to do, then he shall have forfeited his right to do so and the purchaser may select two witnesses who shall select a third, and the three shall proceed to ascertain said weight. [Id.]

Art. 107. Analysis by purchaser.—Any person not a dealer in, or agent for the sale of any fertilizer, who may purchase any commercial fertilizer for his own use within this State and not for sale, may take a sample of same for analysis, which analysis shall be made free of charge by or under the direction of the State chemist. Said sample or samples of fertilizer shall be taken in the presence of both purchaser and seller. One cupful of the fertilizer shall be taken from the top and one cupful from the bottom of each sack, provided that there are not more than five sacks in the lot, but in lots of 10 to 100 sacks, from not less than five sacks; in lots of 100 and over, from not less than five per cent of the entire number. The samples so taken shall be intermixed upon some surface so as not to mix dirt or any other substance with the fertilizer. After thorough mixing, at least one pound of the material must be put into each of two cans or jars, one of which securely sealed and marked in such a way as to surely identify the sample and show by

whom it was sent, but the name of the fertilizer or of the person from whom it was purchased need not be given, and must be forwarded by express, all charges prepaid, to the State chemist; the other sample, securely sealed, shall be turned over to the company or agent selling same. The purchaser shall also send with the sample a certificate signed by himself and two disinterested witnesses, stating that the sender has purchased the fertilizer for his own use and not for sale and that the sample was taken in the manner prescribed in this article, and that the sender has in his possession a certificate signed by himself and the two witnesses, giving the name of the fertilizer and manufacturer thereof as tagged or branded on the packages and will forward this certificate to the State chemist on receipt of the analysis. If the person, company or agent shall refuse, decline or neglect to witness the taking of samples, after having been requested or notified by the purchaser in writing six days before so to do, then the sample may be taken in the manner already described in the presence of two disinterested witnesses. Any person having sent a sample for analysis under the provisions of this article, who shall, after having received the report of analysis of same, refuse to furnish the required certificate, shall thereafter forfeit the privilege of analysis of fertilizers under this article. [Id.]

Art. 108. Definitions.—The terms "commercial fertilizer," "misbranded," and "adulterated," as used in this chapter, shall have the same meaning as is given those terms in Article 1716 of the Penal Code. [Id.]

CHAPTER 6.—FRUITS AND VEGETABLES

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Article 109. Standards of containers.—The following standards of containers for the shipment of fruits and vegetables in this State are hereby established and adopted as State standards.

1. Standard Bushel Basket. The standard bushel basket shall contain not less than 2150.4 cubic inches in the basket proper, regardless of the manner in which the lid is made.

2. Standard Four Basket Crate. The basket in said crates shall hold not less than three quarts dry measure, and the dimensions of such baskets shall be 5x8 inches at the bottom, 6x10 inches at the top, and 4 inches deep, and shall contain not less than 201.6 cubic inches. The heads of the crates holding said baskets shall be 4½ inches wide by 11 inches at the bottom, and 13 inches at the top in length and not less than 7/16 of an inch thick. The veneer or boards for the bottoms, sides and tops shall be not less than 4½, 4, and 5½ inches wide respectively, and not less than 1/7 of an inch thick and 22 inches long. Both crates and baskets shall be made of good, substantial material, sufficiently strong to withstand the ordinary strain incident to transportation and handling.

3. Standard Six-basket Crate. Each basket of a six-basket crate shall contain not less than 268.8 cubic inches.

4. Standard Folding Onion Crate. The standard folding onion crate shall not be less than 19⅝ inches long, 11 3/16 wide and 9 13/16 inches deep, inside measurements, containing not less than 2154.4 cubic inches.

5. Standard Orange Box. The dimensions of the standard orange box shall be 12x12x12 inches for each one-half of box, inside measurement, and the dimensions of a one-half (or strap box) shall be 12x12x6 inches for each one-half box, inside measurement.

6. Standard Berry Box or Crate. The standard quart berry box or crate shall contain not less than 24 quart baskets containing 67.2 cubic inches each, dry measure; and the standard pint berry box or crate shall hold not less than 24 pint baskets, containing not less than 33.6 cubic inches, dry measure. [Acts 1917, p. 396, Acts 3rd C. S. 1917, p. 55.]

Art. 110. Grades and packs.—The following "grades and packs" are hereby established as State standards for the State of Texas:

(a) Standard Peach Grades and Packs. Standard peach grades are three in number; namely, Fancy. Choice or No. 1, and No. 2.

Fancy peaches shall be medium to large size, good color for the variety named, firm and sound, or proper maturity for shipment to distant markets, carefully picked and closely packed in bushel baskets or crates of four or six basket capacity.

Choice or No. 1 peaches shall be of average size and color for the variety named, sound, firm, practically free from blemishes and defects, of proper maturity for shipment to distant markets, carefully picked and closely packed in bushel baskets or crates of four or six baskets capacity.

No. 2 peaches shall be all such sound fruit as is not good enough for No. 1's, such as small, slightly uneven surface, greens, ripes or slight defects of whatever kind, but suitable for market purposes and for reasonably distant shipments. Each and every package of fruits and vegetables offered for sale or shipment shall have plainly stamped on it the grade of such fruits or vegetables and the name and post office address of the person shipping the same, provided that this shall apply only to shipments of such fruits and vegetables as have grades established by law.

Culls. Any and all peaches that are too small in size, ill shaped and poor in general quality to measure up to any of the above grades, shall be known as culls, unfit for market purposes, and shall not be shipped unless branded "Culls" and shipped in a separate consignment.

Texas Standard Peach Packs. The standard peach packs for six basket crate shall be eight in number; namely, 72's, 96's, 138's, 162's, 180's, 216's, 270's and 324's.

To Pack 72's. (Begin at end of basket.) Place 1 and 2 alternately in 4 rows, two layers high, 6 to the layer on end, blossom end up.

To Pack 96's. Place 2 and 2 alternately in 4 rows, 2 layers high, 8 to the layer on end, blossom end up.

To Pack 138's. Place 2 and 1 alternately in 5 rows, 3 lays high, 8 and 7 alternately to the layer, flat.

To Pack 162's. Place 2 and 1 alternately in 6 rows, 3 layers high, 9 to the layer, flat.

To Pack 180's. Place 2 and 2 alternately in 5 rows, 3 layers high, 10 to the layer, flat.

To Pack 216's. Place 2 and 2 alternately in 6 rows, 3 layers high, 12 to the layer, flat.

To Pack 270's. Place 3 and 3 alternately in 5 rows, 3 layers high, 15 to the layer, flat.

To Pack 324's. Place 3 and 3 alternately in 6 rows, 3 layers high, 18 to the layer, flat.

All packages must be filled tight, in all layers from bottom to top, and extend approximately 1 inch above the top rim or edge of the package, whether it be a bushel basket, crate basket, or box. All peaches in the same crate or package shall be as nearly as possible of a uniform degree of ripeness.

(b) Texas Standard Tomato Grades and Packs. Texas standard tomato grades may be two in number; namely, Fancy and Choice. Texas standard tomato packs shall be seven (7) in number for the six basket crate and nine (9) in number for the four basket crate and the manner in which tomatoes are packed will partly determine their grade.

Texas Standard Six Basket Crate. Fancy. To Pack 72's. Place 2 and 2 alternately in 3 rows, 2 layers high, 6 to layer, blossom end up, 12 to the basket.

To Pack 84's. Place 2 and 2 alternately in 4 rows on edge 8 to the layer for first layer, and 2 and 2

alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 3 and 3 alternately in 3 rows, on edge, blossom end out; 9 to the layer for the second or last layer; 15 to the basket.

To Pack 108's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer for the first layer, and 3 and 3 alternately in 3 rows on edge, blossom end out, 9 to the layer for the second or last layer, 18 to the basket.

Choice:

To Pack 120's. Place 2 and 2 alternately in 4 rows, on edge, 8 to the layer for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 20 to the basket.

To Pack 144's. Place 3 and 3 alternately in 4 rows, on edge, 12 to the layer for the first layer and 3 and 3 in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 24 to the basket.

To Pack 180's. Place 3 and 3 alternately in 5 rows, on edge, blossom end out, 15 to the layer for the second or last layer, 30 to the basket.

Texas Standard Four Basket Crate: Fancy:

To Pack 48's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second or last layer, 12 to the basket.

To Pack 56's. Place 2 and 2 alternately in 4 rows, on edge, 8 to the layer for the first layer and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second or last layer, 14 to the basket.

To Pack 60's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 3 and 3 alternately in 3 rows on edge, blossom end out, 9 to the layer for the second or last layer, 15 to the basket.

To Pack 64's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 1 and 2 alternately in 7 rows, on edge, blossom end out, 10 to the layer, 16 to the basket.

To Pack 72's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer, for the first layer, and 3 and 3 alternately in 3 rows, on edge, blossom end out, 9 to the layer for the second or last layer, 18 to the basket.

Choice:

To Pack 84's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer, for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 21 to the basket.

To Pack 88's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer for the first layer and 1 and 2 alternately in 9 rows, on edge, blossom end out, 18 to the layer, 22 to the basket.

To Pack 96's. Place 3 and 3 alternately in 4 rows, on edge, 12 to the layer for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 24 to the basket.

To Pack 104's. Place 1 and 2 alternately in 9 rows, on edge, 13 to the layer for the first layer, and 1 and 2 alternately in 9 rows, on edge, 13 to the layer, blossom end out, for the second or last layer, 26 to the basket. All tomatoes in the same crate or package shall be as nearly as possible of a uniform degree of ripeness.

All fruit for both fancy and choice grades must be sound and free from undesirable scars, "cat faces", and damage from insects or other causes.

(c) Texas Standard Orange Grades.

Texas orange, satsuma, tangerine and grape fruit grades may be four in number, namely; Fancy Bright, Bright, Fancy Russet and Russet.

Fancy Brights shall be bright color, shapely form, practically free from any skin defects or blemishes, fine texture, reasonably thin, heavy, juicy and free from frost damage.

Brights shall be fairly bright color, texture not as fine or smooth as Fancy Brights, skin thicker, and may have other reasonable skin defects that do not affect the merchantable quality of the fruit.

Fancy Russets shall be of the same general quality as fancy brights, except in color which shall be "Golden" russet.

Russets shall be same general quality as Brights, except in color, which may be rusty brown, not "Golden" enough for fancy Russets.

Texas Standard Orange Packs. The Standard orange packs shall be 8 in number; namely, 96's, 126's, 150's, 176's, 200's, 216's, 252's, and 288's.

To Pack 96's. Put 3 and 3 alternately in 4 rows, 4 layers high, 12 to layer.

To Pack 126's. Put 3 and 2 alternately in 5 rows, 5 layers high, 13 and 12 alternately to layer.

To Pack 150's. Put 3 and 3 alternately in 5 rows, 5 layers high, 15 to the layer.

To Pack 176's. Put 4 and 3 alternately in 5 rows, 5 layers high, 18 and 17 alternately to the layer.

To Pack 200's. Put 4 and 4 alternately in 5 rows, 5 layers high, 20 to the layer.

To Pack 216's. Put 3 and 3 alternately in 6 rows, 6 layers high, 18 to the layer.

To Pack 252's. Put 4 and 3 alternately in 6 rows, 6 layers high, 21 to the layer.

To Pack 288's. Put 4 and 4 alternately in 6 rows, 6 layers high, 24 to the layer.

The Standard Satsuma and Tangerine packs shall be 7 in number; namely 90's, 106's, 120's, 168's, 196's, 216's and 224's.

To Pack 90's. Put 3 and 3 alternately in 5 rows, 3 layers high, 15 to the layer.

To Pack 106's. Put 4 and 3 alternately in 5 rows, 3 layers high, 18 and 17 alternately to the layer.

To Pack 120's. Put 4 and 4 alternately in 5 rows, 3 layers high, 20 to the layer.

To Pack 168's. Put 4 and 3 alternately in 6 rows, 4 layers high, 21 to the layer.

To Pack 196's. Put 4 and 3 alternately in 7 rows, 4 layers high, 25 and 24 alternately to the layer.

To Pack 216's. Put 5 and 4 alternately in 6 rows, 4 layers high, 27 to the layer.

To Pack 224's. Put 4 and 4 alternately in 7 rows, 4 layers high, 28 to the layer.

All oranges, satsumas and tangerines to conform to this standard must be packed "stem-in, twist" with blossom end down in first layer and stem end down in all other layers.

The standard grapefruit packs shall be 7 in number; namely, 28's, 36's, 46's, 54's, 64's, 80's, 96's.

To Pack 28's. Put 2 and 1 alternately in 3 rows, 3 layers high, 5 and 4 alternately to the layer.

To Pack 36's. Put 2 and 2 alternately in 3 rows, 3 layers high, 6 to the layer.

To Pack 46's. Put 3 and 2 alternately in 3 rows, 3 layers high, 8 and 7 alternately to the layer.

To Pack 54's. Put 3 and 3 alternately in 3 rows, 3 layers high, 9 to the layer.

To Pack 64's. Put 2 and 2 alternately in 4 rows, 4 layers high, 8 to the layer.

To Pack 80's. Put 2 and 2 alternately in 4 rows, 5 layers high, 8 to the layer.

To Pack 96's. Put 3 and 3 alternately in 4 rows, 4 layers high, 12 to the layer.

All grapefruit to conform to this standard must be packed on edge, except the 80 pack, which should be packed flat in the same manner as oranges.

In the enforcement of the above standards of grade and pack, an allowance may be made of not exceeding ten per cent difference in size between the fruit on top and in the interior of the package. A variation of not more than three per cent of actual count may be made in the number of any kind of fruit prescribed for each particular pack. [Acts 1917, p. 396.]

Art. 111. Culls.—Any and all fruits and vegetables for which standard grades and packs are established in this chapter or for which standard grades

and packs may be hereafter promulgated by the Commissioner of Agriculture under the authority of this law, that are too small in size, ill shaped, and too poor in general quality to measure up to the grades herein established, shall be classed as "culls," and shall not be shipped, unless branded "culls" and shipped in a separate consignment. [Acts 3rd C. S. 1917, p. 55.]

Art. 112. Texas Bermuda Onion Grades.—Grade No. 1.—This grade shall consist of onions which are sound, mature, bright, well-shaped, of one variety, free from doubles, splits, bottle necks, and seed stems, and practically free from damage caused by dirt or other foreign matter, moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be two inches. In order to allow for variation incident to commercial grading and handling, six per centum, by weight, of any lot need not meet the foregoing requirements of this grade. In the case of yellow onions, not more than five per centum, by weight, of any lot may be noticeably pink.

If any lot which meets the requirements of this grade contains more than ten per centum, by weight, of onions with a minimum diameter of three and one-half inches, the grade shall be "Grade No. 1, Large."

Boiler Grade.—This grade shall consist of onions which are sound, mature, bright, well-shaped, of one variety, free from doubles, splits, bottle necks, and seed stems and practically free from damages caused by dirt or other foreign matter, moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be one inch and the maximum diameter shall be two inches. In order to allow for variations incident to commercial grading and handling, six per centum by weight, of any lot need not meet the foregoing requirements of this grade. In case of yellow onions, not more than five per centum, by weight, of any lot may be noticeably pink.

Grade No. 2.—This grade shall consist of onions not meeting the requirements of Grade No. 1, which are sound, of one variety, free from doubles, splits, bottle necks and seed stems, and practically free from damage caused by moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be two inches. In order to allow for variations incident to commercial grading and handling, ten per centum by weight, of any lot need not meet the requirements of this grade. If any lot which meets the requirements of this grade contains more than ten per centum, by weight of onions, with a minimum diameter of three and one-half inches, the grade shall be "Grade No. 2, Large."

Grade No. 3.—This grade shall consist of onions not meeting the requirements of any of the foregoing grades, which are sound, free from doubles, splits, bottle necks, and seed stems, and practically free from damage caused by moisture, sunburn, cuts, disease, insects or mechanical means. The minimum diameter shall be one inch. In order to allow for variations incident to commercial grading and handling, ten per centum, by weight, of any lot, need not meet the foregoing requirements of this grade.

Culls.—Culls shall consist of doubles, splits, bottle necks, and seed stems, or other onions which do not meet the requirements of any of the foregoing grades.

Terms Defined.—"Sound" means free from water-soaked, decayed, sprouted, or otherwise unsound onions.

"Mature" means having reached a state of development at which the onions are firm—not soft or spongy.

"Bright" means having the normal, attractive, pearly luster of Bermuda onions.

"Well-shaped" means the general appearance of being round—not three, four, or five-sided, or badly pinched by dry, hard soil, or thick-necked, but need not be of the exact, typical, flat Bermuda shape.

"One variety" means one variety or type, such as the Crystal Wax (white) or White Bermuda (yellow), or Red Bermuda (red), and not a mixture of different varieties or types.

"Practically free from damage" means that the appearance shall not be injured to an extent readily apparent upon casual examination.

"Sunburn" means discoloration due to exposure to the sun, but does not mean the green color running down the "veins" in the Crystal Wax (white) variety, unless such green color covers the surface between the veins.

"Diameter" means the greatest dimension at right angles to a straight line running from stem to the root.

"Noticeable pink" means the pink color often found in the White Bermuda (yellow) variety which is to be readily apparent upon casual examination. [Acts 4th C. S. 1918, p. 145.]

Art. 113. Texas Cabbage Grades.—Grade No. 1.—This grade shall consist of sound, green colored, partially trimmed, and reasonably hard heads, weighing not less than one and one-half pounds nor more than eight pounds each; which are free from cracked or over-ripe heads, stem rot and other diseases, and practically free from dirt, worm holes and lice.

In order to allow for variations incident to commercial grading and handling, five per centum by weight, of any lot, may be under prescribed size, and in addition, three per centum, by weight, of any such lot, may be below the remaining requirements of this grade.

Grade No. 2.—This grade shall consist of sound cabbage not meeting the requirements of Grade No. 1.

Terms Defined. "Over-ripe" means such cabbage as shows signs of going to seed and turning white from age.

"Partially Trimmed" means that not more than three outside leaves shall be left on the head. [Id.]

Art. 114. Snap Beans.—Grade No. 1.—This grade shall consist of sound, bright, clean beans of one variety and color, from one-half to full grown; which are free from leaves, stems, spots, insect damage, rust, or other diseases, and over-ripe pods.

In order to allow for variation incident to commercial grading and handling, three per centum, by weight, may be of another variety of the same color.

Grade No. 2.—Any beans not meeting the above requirements shall be classed as No. 2.

All beans are to be packed in hamper weighing, when packed, not less than 17 pounds net weight for one-half bushel hamper, and 34 net weight for one bushel.

Terms Defined.—"Over-ripe" are such pods as will not snap on being broken, and where there is an absence of abundant juice (water) in the pods; also, when the beans in the pod show evidence of maturing.

Art. 115. Texas Bartlett Pear Grades.—Extra Fancy. Shall consist of Bartlett Pears clean, bright, natural color and shape, sound, free from worms, specks, blemishes, bruises or limb scar red fruit.

Fancy. Shall be the same as "Extra Fancy," except it may contain ten per cent slightly scarred fruit and slight blemishes that do not injure texture of the skin or its keeping qualities.

Choice. Shall be the same as "Fancy," except as it may contain ten per cent of fruit that is misshapen and with worm strings that have healed over.

Culls. Any pears not measuring up to the above specifications shall be branded as "Culls."

Packing.—Fruit shall be tightly packed in clean standard boxes, one end stamped with the grade, number of pears, name of and post office of packer.

Packs Defined.—"Four Tier" shall be packed in four layers. Minimum pack 120 pears to the box.

"Five Tier" shall be packed in six layers. Minimum pack 135, maximum pack 180 pears to box.

"Six Tier" shall be packed in six layers, containing 216 pears to the box, or five layers containing 195 or 210 to the box, but will be considered "six tier."

Art. 116. Texas Irish Potato Grades.—Grade No. 1.—This grade shall consist of sound potatoes of similar varietal characteristics, which are practically free from dirt or foreign matter, frost injury, sunburn, second growth, cuts, scab, blight, dry rot, and damage caused by disease, insects, or mechanical means. The minimum diameter shall be one and three-fourths inches. In order to allow for variation incident to commercial grading and handling, five per centum, by weight, of any lot, may be under the prescribed size, and, in addition, three per centum by weight of any such lot may be below the remaining requirements for quality of this grade.

Grade No. 2.—This grade shall consist of potatoes of similar varietal characteristics, which are practically free from frost injury and decay, and which are free from serious damage caused by dirt or other foreign matter, sunburn, second growth, cuts, scab, blight, dry rot, or other disease, insects, or mechanical means, The minimum diameter shall be one and one-half inches. In order to allow for variations incident to commercial grading and handling, five per centum, by weight, of any lot, may be under the prescribed size, and, in addition, five per centum, by weight, of any such lot, may be below the remaining requirements for quality of this grade.

Culls. Any potatoes that do not measure up to the requirements for size and general quality in the grades number one and two shall be classed as "Culls," and shall not be shipped unless branded or marked "Culls" and shipped in separate consignments.

Three per centum, by weight, shall be allowed on all Texas grown new potatoes, for natural shrinkage. In instances where dirt adheres to the potatoes a fair and reasonable estimate by weight, of such dirt, shall be made and deducted from the gross weight of the potatoes and dirt, which estimate may be made by removing and weighing the dirt from three or more samples of not less than fifty pounds each, that, when taken together, represents the average conditions of the potatoes.

All potato containers must have some mark or brand showing the name and post-office address of the grower or shipper.

Terms Defined. "Practically Free" means the appearance shall not be injured to an extent readily apparent upon casual examination, and that any damage from the causes mentioned can be removed by the ordinary process of paring without appreciable increase in waste over that which would occur if the potato were perfect. Loss of the outer skin (epidermis) only, shall not be considered as an injury to the appearance.

"Diameter" means the greatest dimensions at right angles to the longitudinal axis.

"Free from serious damage" means the appearance shall not be injured to the extent of more than twenty per centum of the surface and that any damages from the causes mentioned can be removed by the ordinary processes or [1] paring without increase in waste of more than ten per centum, by weight, over that which would occur if the potato were perfect. [Id.]

[1] Probably should be "of."

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

Inspectors

Sec. 1. The Commissioner of Agriculture shall appoint Inspectors to inspect fruits other than citrus and vegetables other than potatoes at the different shipping or loading stations in this State when called upon by the grower, shipper, shipper's agent, or by any financially interested party. When one or more of the above mentioned parties are operating at one or more shipping points and inspection is requested, the Commissioner of Agriculture shall appoint an Inspector to make the requested inspection and the party or parties requesting inspection shall contribute his or their pro rata of the expense of inspection.

Forms or certificates for inspectors

Sec. 2. Where inspection is requested the Commissioner of Agriculture shall furnish forms or certificates to all appointed Inspectors, to be filled out by said Inspectors to cover each lot of fruits other than citrus, and vegetables other than potatoes.

Cooperative agreements with United States Department of Agriculture

Sec. 3. The Commissioner of Agriculture is directed and empowered to enter into cooperative agreements with the United States Department of Agriculture for the certification of grades of fruits other than citrus, and/or vegetables other than potatoes, and he may adopt the United States Standards for all fruit and/or vegetables grown in the State of Texas in addition to the grades specified in this Act, or he may promulgate additional grades, grading rules and regulations for fruits other than citrus, and/or vegetables other than potatoes.

Certificates delivered to applicants on payment of costs; certificates as prima facie evidence

Sec. 4. All Certificates of Inspection issued by the Commissioner of Agriculture designating the true grade, classification, pack or other standard requirements of such fruits or vegetables under the provisions of this Act, or other form evidencing that official inspection has been made, shall be issued by the Inspector and delivered to the applicant upon the payment of his contribution of his pro rata share of the cost of inspection. All certificates so issued under the provisions of this Act shall be acceptable in any court of this State as prima facie evidence of the true grade, classification, pack or other standard requirements of such fruit and/or vegetables at the time of inspection, in accordance with the provisions of this Act. [Acts 1917, p. 396; Acts 1919, p. 93; Acts 1935, 44th Leg., p. 410, ch. 161.]

Art. 117a. Inspection for protection of potato industry

Powers of Commissioner of Agriculture

Sec. 1. In order to promote, protect and develop the commercial potato growing industry of Texas, the Commissioner of Agriculture is hereby authorized and empowered:

(1) To fix and promulgate official standards for grading, classifying and inspecting Texas grown Irish potatoes offered for shipment in carload lots in this State.

(2) To co-operate with the United States Department of Agriculture and any and all of the bureaus and divisions of said department in accomplishing the purposes of this Act.[1]

(3) To enter into agreements with the United States Department of Agriculture, and the several bureaus and divisions of that department, regulating the inspection of potatoes as herein provided, stating the duties and responsibilities of the United States Department of Agriculture, and of the Department of Agriculture of the State of Texas, each to the other, with regard to the grading, classifying and inspection of such potatoes.

(4) To make all necessary rules and regulations for the purpose of enforcing the provisions of this Act.

[1] This Article and Pen.Code Art. 1112a.

Conformity to federal regulations

Sec. 2. In performing his duties under this Act,[1] the Commissioner of Agriculture shall conform as nearly as possible to the regulations prescribed by the Department of Agriculture of the United States with regard to grading, classifying and inspecting potatoes,

with such additions and qualifications as may be necessary under the various provisions of this Act.

[1] This Article and Pen.Code Art. 1112a.

Inspectors; appointment; compensation; duties; "Commercial Quantities", defined

Sec. 3. The provisions of this Act [1] with regard to grading, classifying, and inspecting potatoes offered for shipment in commercial quantities, shall be enforced by Inspectors appointed by the Commissioner of Agriculture. "Commercial Quantities" as the term is used herein shall be construed to mean any lot or shipment of potatoes of a gross weight in excess of five hundred (500) pounds, moving in intrastate and/or interstate channels of commerce by rail, truck, or other manner or medium of transportation. Said Inspectors shall be paid by the Commissioners Court of the county within which the duties of such Inspectors shall be performed, either from the General Fund of the county, or from the special Potato Inspection Fund herein provided, at the election of the Commissioners Court of said county. The Commissioner of Agriculture shall appoint such Inspectors only when requested to do so by formal resolution of the Commissioners Court of a county desiring such inspection, which resolution shall state the number of such Inspectors desired for such county, and the compensation to be paid to each. Upon receipt by the Commissioner of Agriculture of a duly certified copy of such resolution, he shall thereupon appoint Inspectors in the number desired by the county, and certify their appointment to the Commissioners Court of said county. Such certificate of appointment by the Commissioner of Agriculture shall state the names of the Inspectors so appointed, and the compensation to be paid to them, which shall not exceed the compensation fixed by resolution of the Court requesting such appointment, and after filing of such certificate with the Commissioners Court of any county, that county shall be liable for the payment of the compensation of such Inspectors as provided in the resolution of said Court, and the certificate of the Commissioner of Agriculture, until the Commissioners Court of said county shall, by certified copy of resolution to that effect, duly filed with the Commissioner of Agriculture, advise him that it desires to discontinue such inspection service, or to decrease the number of Inspectors or the compensation paid to them, in which case the Commissioner of Agriculture shall conform to such resolution of the Commissioners Court by discontinuing such inspection service, or by reducing the number of Inspectors appointed by the Commissioner of Agriculture for such county, as such resolution may provide. [As amended Acts 1941, 47th Leg., p. 856, ch. 532, § 1.]

[1] This article and Pen.Code, art. 1112a.

Requests for appointment of inspectors by Commissioners' Court

Sec. 4. It shall be the duty of the Commissioners' Court desiring such inspection service to file a certified copy of its resolution requesting the Commissioner of Agriculture to appoint such inspectors and the certificate of the Commissioner of Agriculture, making such appointment, with one duly authorized agent of each railroad company and motor truck company doing business as a common carrier, and with one duly authorized agent of each and all other common carriers receiving shipments of potatoes in said County and after such filing with any common carrier of copies of such resolution and certificate, it shall not receive or accept for shipment in car lots from any station within such County, any Texas grown Irish potatoes that have not been graded, classified and inspected by an inspector appointed by the Commissioner of Agriculture of the State of Texas, in accordance with the provisions of this Act.[1]

[1] This Article and Pen.Code Art. 1112a.

Duties of inspectors

Sec. 5. It shall be the duty of inspectors so appointed by the Commissioner of Agriculture to carefully inspect, grade and classify all potatoes so offered for shipment in accordance with the provisions of this Act[1] and pursuant to the rules and regulations for such inspection which shall be prescribed by the Commissioner of Agriculture, and to deliver one duly authenticated copy of his report of such inspection to the person offering such potatoes for shipment, and one duly authenticated copy to the railroad company or other common carrier receiving same for shipment, and to post in a conspicuous place on the inside of each car in which such potatoes shall be loaded for shipment, a placard showing the grade of the potatoes loaded in such car, and it shall be the duty of the agent of the railroad company or other common carrier making such shipment to endorse on the bill of lading issued by him for such potatoes, copy of a statement of the grade of such potatoes as shown by such inspectors' report.

[1] This Article and Pen.Code Art. 1112a.

Fee for inspection

Sec. 6. Before delivering his report of inspection to the person offering such potatoes for shipment, said inspector shall collect from him such fee for such inspection service as shall be provided by resolution of the Commissioners' Court of the County from which such shipment is made, not to exceed Three Dollars ($3.00) for each car lot of potatoes so inspected.

Fees as inspection fund; payment of inspectors

Sec. 7. All fees collected by such inspector shall be paid by him forthwith into the County Treasury of the County in which such inspection is made, to be set aside by the County Treasurer of said County as a special "Potato Inspection Fund". The Commissioners' Court of such County may, at its discretion, provide for the payment of all inspectors appointed by the Commissioner of Agriculture for such County under the provisions of this Act,[1] from such Special "Potato Inspection Fund," or it may at its discretion, transfer said fund to the general fund of such County and pay such inspectors from such general fund. In any case, the general fund of the County shall be liable for the payment of all compensations actually earned by inspectors appointed by the Commissioner of Agriculture under the provisions of this Act, for services within such County.

[1] This Article and Pen.Code Art. 1112a.

Penal provision

Section 8 of this Act being a penal provision is published as Pen. Code art. 1112a.

Inspectors' certificates as prima facie true

Sec. 9. A certificate of an inspector appointed under the provisions of this Act,[1] duly authenticated by his official signature, showing the grade, classification, quality or condition of potatoes inspected by him, and all certificates issued under authority of the Congress of the United States relating to the grade, classification, quality or condition of potatoes, shall be accepted in the courts of this State as prima facie evidence of the true grade, classification, quality or condition of such potatoes at the time of such inspection. [Acts 1929, 41st Leg., 2nd C. S., p. 157, ch. 80.]

[1] This article and Pen. Code, art. 1112a.

Art. 118. Commissioner of Agriculture.—The Commissioner of Agriculture is hereby authorized and empowered to enforce each provision of this chapter, and he shall promulgate and publish all necessary rules and regulations for the enforcement of this law, and such other information as will aid fruit and truck growers and the manufacturers of containers in complying with the provisions of this chapter. [Acts 1917, p. 401.]

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

Statement of purpose

Sec. 1. In order to provide the means whereby producers of certain citrus fruit, and all interested parties, may secure prompt and efficient inspection and classification of grades of fruit at reasonable cost, and because it is hereby recognized that the standardization of the citrus fruit industry by the proper grading and classifications of citrus fruit by prompt and efficient inspection under competent authority is beneficial alike to grower, shipper, carrier, receiver, and consumer, in that it furnishes the grower and the shipper prima facie evidence of quality and condition of products, it guarantees the carrier and the receiver of quality of products carried and received by them and assures the ultimate consumer of the quality of the products purchased, this Act [1] is passed.

[1] This article and Pen.Code, art. 719b.

Inspection

Sec. 2. The inspection in the State of Texas of all grapefruit and oranges, and the grades and classifications thereof, shall be under the direction of the Commissioner of Agriculture, of the State of Texas, hereinafter known as the Commissioner,

Establish regulations and grades

Sec. 3. The Commissioner of Agriculture, of the State of Texas, is hereby empowered and directed to enter into cooperative agreements with the United States Department of Agriculture providing for the inspection of certain citrus fruits and under the terms of said agreements the Commissioner of Agriculture shall adopt the official U. S. Standards for grapefruit and oranges as applied to the State of Texas. The inspection shall be conducted under the policies outlined by the United States Department of Agriculture under said cooperative agreements. The Commissioner is empowered to establish and enforce such grades, grading rules, and regulations in addition to those established by this Act [1] as he may deem necessary on citrus fruit, which shall not conflict with any provisions of this Act, after a thorough investigation has been made of the needs of the particular citrus fruit for which grades, grading rules and regulations are contemplated. The Commissioner shall cause to be published in one publication of general circulation in each county affected by this Act, the rules and regulations promulgated by him under this Act. Such publications shall be one each week for the three weeks prior to September 1st. Grades established in accordance with provisions of this Act shall not be modified during the current shipping season, of the citrus fruit for which they are established, except as hereinafter provided.

[1] This article and Pen.Code, art. 719b.

Appeal to change regulations

Sec. 4. The Commissioner is hereby given power and authority, and it is hereby made his duty, to promulgate rules and regulations relating to the grading, packing and marketing of certain citrus fruits as set out in this Act,[1] and it is hereby made his duty to enforce same. The Commissioner shall cause this to be published in some newspaper of general circulation in the territory affected by the rules and regulations which he has promulgated. Only in case of protest, hearings shall be conducted at places and at times to be determined by the Commissioner or his agent, after publications of rules and regulations have been promulgated, at which all interested parties will have a right to be heard. After such publication and public hearing, the rules and regulations shall be final, unless written protest by an interested person or parties shall be made to the Commissioner of Agriculture within thirty (30) days after such rules and regulations have been published. If the Commissioner after the hearing of protests refuses to modify such rules and regulations the interested person or parties shall have the right to appeal to the District Court of Travis County.

[1] This article and Pen.Code, art. 719b.

Power of regulations

Sec. 5. The Commissioner is hereby authorized to promulgate such rules and regulations relative to proper marking of containers, the issue of certificates of inspection, the tagging of the vehicle of transportation, and such other rules and regulations as he deems necessary for the improvement of the method of marketing of all citrus fruits as provided for in this Act.[1]

[1] This article and Pen.Code, art. 719b.

Engaging in trade prohibited

Sec. 6. The Commissioner and his agents, inspectors and employees, are each prohibited, during their respective terms of employment of office, from engaging in this State, either directly or indirectly, or elsewhere, in the business of buying or selling citrus fruits or in dealing in the same on commission.

Grading made mandatory

Sec. 7. Whenever any grades or classifications and standards for citrus fruit become effective under this Act,[1] no person thereafter shall pack for sale, offer for sale, consign for sale, or sell, except as provided in this Act, any such described citrus fruit grown within the State of Texas, to which such grades or classifications and standards are applicable unless such citrus fruits conform with such grades or classifications and standards.

[1] This article and Pen.Code, art. 719b.

Notice of time of shipment

Sec. 8. It shall be the duty of every person, firm, corporation, association, or other organization affected by this Act [1] to give due and timely notice to the Commissioner, his agents, inspectors and employees as to the time and place of the loading of citrus fruits subject to the provisions of this Act, or to report to the inspection station nearest to the point of loading. The terms "to ship," "shipper," and "shipment" as noted in this Act shall apply to the transportation of citrus fruit by an automobile, truck, trailer, or any other vehicle, as well as the transportation by rail and/or water.

[1] This article and Pen.Code, art. 719b.

Unlawful shipments

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

[1] This article and Pen.Code, art. 719b.

Issuance of certificate of inspection

Sec. 10. A certificate designating the classifications of the grade or grades of citrus fruits so subject to compulsory inspection under this Act [1] or other form evidencing that the official inspection has been made shall be issued by the inspector and delivered to the shipper. A certificate so issued under this Act shall be accepted in any Court of this State as prima facie evidence of the true grade or classifications of such citrus fruit at the time of inspection.

[1] This article and Pen.Code, art. 719b.

Re-use of containers

Sec. 11. No containers or sub-containers of citrus fruits within the meaning of this Act [1] shall bear

grade or other designations that are in any way false or misleading. This provision shall be construed to prohibit the future use of any container or sub-container for citrus fruits bearing any markings required by this Act, or any designations of brands, trademarks, quality or grade, unless all such markings which do not properly and accurately apply to the products repacked or replaced shall first be completely removed, erased or obliterated. All certificates of previous inspections shall be removed, erased, or obliterated.

1 This article and Pen.Code, art. 719b.

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

Sec. 12. It is provided that this law shall be self financing, and that the Legislature shall make no appropriation for the enforcement thereof; the Commissioner is hereby authorized and empowered to enter into agreements with the United States Department of Agriculture and the Inspection Service of the Federal Production and Marketing Administration relative to the amounts of contributions to be received from dealers and shippers for inspection and grading services under the terms and provisions of this Act[1]; it is further provided that the Commissioner may, in his discretion, adopt rules and regulations relating to such inspection contributions which will, in effect, adopt the financing plan provided under the Co-operative Agreement, provided that the contribution shall be fixed as nearly as possible with reference to the cost of maintaining the expenses of inspecting and grading citrus fruits under the provisions and requirements of this Act and the Co-operative Agreement and the issuance of certificates with relation thereto; the amount of contribution for and the case of each different commodity may be different, and in the case of each different service rendered on each such commodity, but shall in no case exceed the sum of one-half cent (½¢) for each container of one-half (½) bushel capacity or less, and one cent (1¢) for each container of more than one-half (½) bushel capacity for inspection and grading service performed in a regular packing house operating under a duly issued permit. Any regular grading and inspection service performed outside of a packing shed operating under a duly issued permit shall be for an amount sufficient to cover the actual cost of such inspection and/or grading services; all contributions for inspection or grading services shall be paid and delivered to the inspector by the person packing or making the shipment prior to the delivery of the certificate of inspection; whenever any person so packing and/or shipping citrus fruit fails or refuses to pay the contribution prescribed for the services rendered, the inspector may and shall withhold delivery of the inspection certificate until the prescribed contribution is paid; no inspector, agent or employee shall charge or collect a greater sum than the prescribed contribution for the services rendered; all moneys contributed for services of inspection and/or grading under the terms and provisions of this Act shall be handled and disbursed under the terms of the Co-operative Agreement; the County Auditor of any County in which this Act is operative shall have access to the financial records, books, vouchers and reports of the Chief Inspector at all times, and shall have the authority to make an audit of such books when, in his judgment, an audit shall be wise, and, upon written request of the Commissioner, the County Auditor shall audit said books and make his report in writing to the Commissioner regarding the fiscal affairs of the contribution account. [As amended Acts 1947, 50th Leg., p. 770, ch. 380, § 1.]

Disposition of funds

Sec. 13. [Repealed by Acts 1947, 50th Leg., p. 770, ch. 380, § 2.]

Deceptive pack

Sec. 14. It shall be unlawful to prepare, deliver, for shipment, load, ship, transport, offer for sale or sell for shipment a deceptive pack, load, arrangement of display of citrus fruits within the meaning of this Act,[1] or to mis-label any container or display of such citrus fruits. A deceptive pack or load is hereby defined as one which is so arranged to conceal the true grade af the citrus fruit within the package or to misrepresent the contents.

1 This article and Pen.Code, art. 719b.

Sale without grading by grower permitted

Sec. 15. No provision of this Act[1] shall be construed to prevent a grower of citrus fruits within the area affected by this Act from selling or delivering the same unpacked and unmarked, or selling his crop in bulk, or any part thereof, or to a packer for grading, packing or storage within said area. Nor shall any provision of this Act prevent a grower or packer from manufacturing the same into any by-product or from selling the same unpacked or unmarked to any person actually engaged in the operation of a commercial by-products factory for the sole and express purpose of being used in the said area for the manufacture of a by-product for resale. The terms of this Act shall not be applied to any number of containers less than six (6), such a number is regarded as non-commercial and not subject to the provisions of this Act.

1 This article and Pen.Code, art. 719b.

Registration and use of brands and/or trade-marks

Sec. 16. All fruits packed and offered for shipment under the provisions of this Act[1] shall be marked showing the proper official grade of the fruit in each container or same may be labeled or stamped with a registered brand or trade-mark. Brands or trade-marks to be eligible for registration must be defined by the minimum requirements of one (1) and/or a combination of the official grades designated herein. Such brands or trade-marks and their definitions under the U. S. Grades shall be registered with the Commissioner of Agriculture, of the State of Texas. No brands or trade-marks shall be eligible for registration under the terms of this Act which do not meet the minimum requirements of at least U. S. No. 2, or classifications of this grade.

1 This article and Pen.Code, art. 719b.

Responsibility of carriers

Sec. 17. It shall be unlawful for any shipper, forwarding company, private, contract, or common carrier to ship, transport or accept for shipment any citrus fruit within the meaning of this Act,[1] unless accompanied by a duly issued certificate of inspection as set out in the provisions of this Act, and any such shipper, forwarding company, private, contract, or common carrier may reserve the right in any receipt, bill of lading or other writing given to the consignor thereof, to reject for shipment and to return to such consignor or hold at the expense and risk of the latter, all citrus fruits which upon inspection, are found to be delivered for shipment in violation of any of the provisions of this Act.

1 This article and Pen.Code, art. 719b.

Commodities designated under this Act

Sec. 18. From and after the effective date of this Act[1] no person, firm, corporation, association or other organization within the area where this Act applies, namely the citrus zone as described in House Bill 553, Chapter 350,[2] of the Acts of the Regular Session 42nd Legislature of the State of Texas, shall pack for sale, consign for sale, or sell in straight or mixed commercial quantities, that is more than five (5) containers, unless such citrus fruits conform with the provisions of this Act as to minimum grades or classifications as specified in this Act, and with such addi-

tional grades, grading rules or regulations applicable thereto as may have theretofore been promulgated by the Commissioner previous to this Act and unless such fruits have been duly inspected as provided in this Act.

Citrus fruit shipped into the State of Texas from any other state or territory shall comply with the grading, packing and marking regulation which this Act provides for citrus fruit originating in this State.

1 This article and Pen.Code, art. 719b.
2 Pen.Code, art. 1700a—2.

Public weighers

Sec. 19. Under the terms of this Act[1] all citrus fruit purchased by weight prior to packing by any buyer or shipper, shall be weighed at the instance and expense of buyer, by a duly elected or appointed public weigher, who shall be governed in his rights and duties by the Statutes of the State of Texas covering public weighers as set out in the 1925 Revised Civil Statutes of the State of Texas, Title 93, Chapter 6, Article 5680, and any amendments thereto; and it shall be the duty of the buyer or shipper to deliver such certificates of weight issued by the public weigher to the seller, prior to any accounting or settlement between the buyer or shipper and the seller, on all citrus fruit purchased by weight prior to packing. Said public weigher shall receive for his services hereunder a fee of Ten (10) Cents when the net load weighs seven thousand (7,000) pounds, or less; a fee of Fifteen (15) Cents when the net load weighs in excess of seven thousand (7,000) pounds and not more than fourteen thousand (14,000) pounds; a fee of Twenty (20) Cents when the net load weighs in excess of fourteen thousand (14,000) pounds, said fees to be in full payment for each completed certificate showing net weight. [Acts 1933, 43rd Leg., p. 550, ch. 180; Acts 1935, 44th Leg., p. 556, ch. 238, § 1; Acts 1943, 48th Leg., p. 200, ch. 119, § 1.]

1 This article and Pen.Code, art. 719b.
Section 20 of Acts 1933 being a penal provision is published as Pen. Code, art. 719b.

Art. 118b. Citrus fruit growers act.

Definitions

Section 1. As used in this Act:[1]

(a) "Commissioner" means the Commissioner of Agriculture of the State of Texas. Commissioner is authorized to utilize all employees of the Department of Agriculture in the enforcement of this Act.

(b) "Citrus fruit," as the term is used in this Act, shall be construed to mean all citrus fruits grown in the State of Texas and bought and/or sold and /or handled in any way either as fresh or natural fruit or in canned and/or processed form.

(c) "Persons" shall mean and include any individual, partnership, group of persons or corporation or business unit handling citrus fruit in the State of Texas.

(d) "Handle" means buying or offering to buy, selling or offering to sell, or shipping for the purpose of selling, whether as owner, agent or otherwise, any citrus fruit within the State of Texas, and persons buying and/or shipping citrus fruit for canning and /or processing or handlers, as the term is defined.

(e) "Dealer" means any person who handles fruit, as the word "handle" is defined in (d) of this Section; a "maximum dealer" is a person who handles in excess of one thousand (1,000) standard boxes or the equivalent thereof of citrus fruit within any twelve-month period comprehended by a license issued under this Act; a "minimum cash dealer" is any person who handles one thousand (1,000) or less standard boxes or the equivalent thereof of citrus fruit within any twelve-month period comprehended by a license issued under this Act.

(f) "Buying agent" shall mean any person authorized by any licensed dealer to act for him in the handling of citrus fruit as defined in (d) of this Section.

(g) "Transporting agent" shall mean any person authorized by any dealer to act for said dealer in the transporting of citrus fruit.

(h) "Warehouseman" means and includes any person who receives and stores citrus fruit for compensation.

(i) "Packer" means and includes any person who prepares and/or packs citrus fruit or its products for barter, sale, exchange, or shipment.

(j) A "commission merchant" and/or "dealer" or a "contract dealer," as these terms are used in this Act, shall be construed to mean any "persons," as the word is herein defined, who purchase any citrus fruit on credit, or who take into their possession for consignment or handling, in behalf of the producer or owner thereof, or in any manner whatsoever, or by virtue of any contract whatsoever, which does not require and result in the payment to the producer, seller or consigner thereof the full amount of the purchase price thereof in current money of the United States, at the time of delivery of said citrus fruit to such persons or at the time when the title to such citrus fruit passes from the producer or seller thereof to such "commission merchant" and/or "dealer" or "contract dealer." [As amended Acts 1939, 46th Leg., p. 41, § 1.]

1 This article and Pen.Code, art. 1700a—3.

License and bond of dealer

Sec. 2. No person shall engage in the business of a dealer in citrus fruits as that term is herein defined unless such person shall first have procured a license in accordance with the provisions of this Act.[1] [As amended Acts 1939, 46th Leg., p. 41, § 2.]

1 This article and Pen.Code, art. 1700a—3.

Application for license

Sec. 3. Any person desiring to engage in business as a dealer in citrus fruits within this State shall, prior to engaging in such business, file with the Commissioner an application for license and receive a license, and said application shall be made under oath and the Commissioner shall provide forms for such applications, and said applications shall set forth the following specific information:

(a) The full name of the applicant and whether the applicant is an individual, partnership, corporation, exchange or association of persons; the full name and the address of the principal business office of the applicant and the address of the principal business office of applicant within the State of Texas; in the event that the applicant be a foreign corporation, the application shall name the State in which such corporation was chartered.

(b) The type of license applied for, whether "dealer," "minimum cash dealer," "canner" or "processor."

(c) Foreign corporations filing applications for license under this Act shall indicate clearly in such application the name and the address of an agent for service within this State upon whom service of legal process may be had in any suit brought against said corporate applicant within the State of Texas.

(d) How long the applicant has been engaged in business in the State of Texas.

(e) The applicant shall answer the following questions which shall be included in and made a part of any application for license under the terms and provisions of this Act[1]:

(1) "Have you heretofore been licensed in the State of Texas as a dealer in citrus fruits and/or perishable agricultural commodities?"

(2) "If you have answered that you have been so licensed, has any license so granted you within the State of Texas ever been suspended and/or revoked?"

(3) "If you have answered that a license so issued you within the State of Texas has been suspended and/or revoked, you will state when, where and give a short statement of the reason for such suspension

and/or revocation." [As amended Acts 1939, 46th Leg., p. 41, § 3.]

[1] This article and Pen.Code, art. 1700a—3.

License fee accompanying application

Sec. 4. All applications for license under this Act[1] shall be accompanied by a tender of payment in full of the fee for such license required; on receipt of said application duly executed, together with required fee, it shall be the duty of the Commissioner or his agents and/or employees thereunto duly authorized to immediately issue such license, provided that no license shall issue to any person when the application for license filed by such person shall indicate that such person is a suspended licensee within the State of Texas, or that such person's license to do business in Texas has been revoked until the Commissioner is furnished with satisfactory proof that the applicant is, on the date of the filing of such application, qualified to receive the license applied for; the issuance of license to persons who have suffered prior suspension or revocation of license in this State shall be discretionary with the Commissioner; in the exercise of such discretion, the Commissioner is authorized to take into consideration the facts and circumstances pertaining to the prior suspension and/or revocation; the financial condition of the applicant, as of the date of this application, and the obligations due and owing by the applicant to growers and producers of citrus fruits and/or perishable agricultural commodities; "obligation," as the term is used in this Section, shall be construed to mean any judgment of any Court within this State outstanding against the applicant or certified claims as of the date of the application under consideration by the Commissioner; prior to refusal of license by the Commissioner, any applicant for license shall be entitled to an open hearing on the facts pertaining to such application, said hearing to be conducted by the Commissioner, or his agent thereunto duly authorized; if, after such hearing, the Commissioner, in the exercise of his discretion, refuses the license applied for, the applicant shall, within ten (10) days from and after the denial of such license by the Commissioner and not thereafter, file his appeal from the order of the Commissioner denying such license, in any Court of competent jurisdiction within this State; if the Commissioner shall determine that the license applied for shall not be granted, the Commissioner shall deduct from the license fee tendered with such application, the sum of Five Dollars ($5), said Five Dollars ($5) to be retained by the Commissioner to defray costs and expenses incident to the filing and examination of said application and shall return the balance of the license fee so tendered with such application to the applicant.

(a) The following fees are hereby prescribed and shall be paid by applicants for license under this Act, and the Commissioner, his agents and employees are hereby authorized to collect the same.

(1) For license as a "dealer" or "handler" of citrus fruit, the sum of Twenty-five Dollars ($25).

(2) For license as a "commission merchant" and/or "contract dealer," as the term is in this Act defined, Twenty-five Dollars ($25).

(3) For license as a "minimum cash dealer" the sum of Five Dollars ($5).

(4) For a license as a "buying agent," the sum of One Dollar ($1).

(5) For a license as a "transporting agent," the sum of One Dollar ($1).

(b) All "commission merchants" and/or "dealers" and "contract dealers," as the terms are in this Act defined, shall, in addition to the license fee herein prescribed, deliver to the Commissioner, together with their application for license, a good and sufficient surety bond, payable to the Governor of the State of Texas and his successors in office, in the principal sum of Five Thousand Dollars ($5,000), said bond to be in such form as the Commissioner may prescribe and shall be conditioned upon faithful compliance with the terms and provisions of this Act and upon the faithful performance of the conditions and terms of all contracts made by said "commission merchants" and/or "dealers" and "contract dealers," pertaining to the handling of citrus fruit under this Act; cause of action may be maintained upon said bond by any person with whom said applicant deals in purchasing, handling, selling and accounting for sales of citrus fruit, as provided in this Act; the aggregate accumulated liability under any such bond shall not exceed the sum of Five Thousand Dollars ($5,000), and each such bond shall continue in full force and effect until notice of the termination thereof is given by registered mail to the Commissioner, which fact shall be set forth in the face of said bond, but such notice shall not affect the liability which may have accrued thereon prior to termination. No license shall be issued to any "commission merchant" or "dealer," or "contract dealer" prior to the delivery to the Commissioner and the approval by him of the bond required under the provisions of this Section. No cooperative association organized pursuant to Chapter 8, Title 93 of the Revised Civil Statutes of Texas, 1925, as amended,[2] that handles fruit only for its members shall be required to furnish bond as required in this Section. Any such cooperative association dealing in citrus fruit other than for its producer members shall be required to furnish bond as any other dealer. It is hereby declared to be the policy of the Legislature to make these exemptions with reference to cooperative associations because of the fact that the producer-members pool their fruit for sale rather than immediately selling it. [As amended Acts 1939, 46th Leg., p. 41, § 4.]

[1] This article and Pen.Code, art. 1700a—3.
[2] Articles 5737–5764.

Hearing on objection to application

Sec. 5. [Repealed by Acts 1939, 46th Leg., p. 41, § 5.]

Hearing on charge of violation of act

Sec. 6. Any license issued under the provisions of this Act[1] shall remain in full force and effect for a period of twelve (12) months from and after the date of issuance thereof unless said permit shall be cancelled in the manner hereinafter provided and pursuant to the proceedings hereinafter required, to wit: any person aggrieved, injured or damaged by virtue of any violation of the terms and provisions of this Act by any licensee or by the transporting or buying agent of any licensee hereunder, may file with the Commissioner or his duly authorized agent or employee a verified complaint, setting out the specific violation complained of; the Commissioner, on receipt of said verified complaint, shall set a date not more than ten (10) days from the receipt of such complaint for the hearing thereof; Commissioner shall, by registered mail to the last known address, notify the person complained of and shall furnish such person with a copy of such complaint; the Commissioner may, at his discretion, recess the hearing provided for in this Section from day to day if in his discretion the ends of justice demand such continuance; for the purpose of said hearings the Commissioner shall have the authority to summon witnesses; to inquire into matters of fact; to administer oaths, and to issue the subpoena duces tecum, for the purpose of obtaining any books, records, instruments of writing, and other papers pertinent to the investigation at hand; upon the conclusion of said hearing and the introduction of all evidence by the respective parties thereto, the Commissioner shall make his decision on the basis of the evidence introduced therein, and shall, if the evidence warrants, issue his order canceling the license of the person

complained of; any licensee, whose license is so cancelled by an order of the Commissioner, shall be notified in writing by registered mail of the cancellation of said license and it shall be unlawful and a violation of this Act for any licensee or buying or transporting agent to operate from and after said notification of cancellation, provided that said licensee or buying or transporting agent whose license has been so cancelled, shall have the right of appeal from the order of the Commissioner, canceling said license to any Court of competent jurisdiction within this State, provided that such appeal shall be filed in said Court within ten (10) days from and after receipt by licensee of notice of said cancellation, and provided further that the effect of said appeal by said licensee or licensee's agent shall not act to supersede the order of cancellation issued by the Commissioner, pursuant to final determination of the question of cancellation by said Court. [As amended Acts 1939, 46th Leg., p. 41, § 6.]

1 This article and Pen.Code, art. 1700a—3.

Cancellation of license; notice

Sec. 7. [Repealed by Acts 1939, 46th Leg., p. 41, § 7.]

Appeal from cancellation

Sec. 8. Any applicant for license whose application is rejected or any dealer who has been licensed hereunder and whose license is subsequently cancelled, may have an appeal from the Commissioner's ruling to any Court of competent jurisdiction.

Payment of purchase price on demand

Sec. 9. Any dealer who shall cause a producer or seller or owner, or agent of producer, seller or owner to part with the control or possession of all or any part of his citrus fruit, and who agrees by his contract of purchase to pay the purchase price upon demand following delivery, shall immediately make payment therefor to such owner or seller. Demand for the purchase price may be made upon dealer in writing, and the mailing of a registered letter making such demand, addressed to said dealer at his business address, shall be prima facie evidence that demand was made upon the mailing of said letter.

Written contract for handling

Sec. 10. When a dealer causes a producer, seller or owner, or agent of producer, seller or owner, to part with the control or possession of all or any portion of his citrus fruit by means of any agreement under which the producer, seller or owner or agent of producer, seller or owner, has waived the right to demand the purchase price, as and when he parts with said control or possession of citrus fruit, such contract for the handling, purchase or sale of citrus fruit by the dealer and the producer, seller or owner, or agent of producer, seller or owner, shall be evidenced in writing in duplicate and shall set out in full the details of such transactions. In the event the contract does not specify the time and manner of settlement, then the dealer shall settle therefor within thirty (30) days from the delivery of the citrus fruit into the dealer's control, and the dealer shall then directly account to and pay over to the said producer the full amount called for by the contract.

Buying by weight

Sec. 11. Any dealer who buys citrus fruit by weight and who does not have such fruit weighed over public scales by public weigher as provided in Title 4, Chapter 180 of the Acts of the Forty-third Regular Session of the Legislature of the State of Texas [1], as now written or as the same may be amended, shall be deemed guilty of a violation of this Act.[2]

1 See article 118a and Pen.Code, art. 719b.
2 This article and Pen.Code, art. 1700a—3.

Duration of license; license unassignable; identification cards

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

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

(b) If and when the holder of any identification card ceases to be the agent of the dealer by whom he was employed, it shall be the duty of said agent to return immediately such agent's card to the Commissioner for cancellation and failure to do so shall constitute a violation of this Act. [As amended Acts 1939, 46th Leg., p. 41, § 8.]

1 This article and Pen.Code, art. 1700a—3.

Regulations as to purchase

Sec. 13. It shall be unlawful for any dealer, packer, processor or warehouseman to purchase or receive or handle any citrus fruit without requiring the person from whom such citrus fruit is purchased or received, to furnish a statement in writing of (a) the owner of said citrus fruit, (b) the grower of said citrus fruit, together with the approximate location of the orchard where said fruit was grown, (c) the date said fruit was gathered and by whose authority same was gathered, and such records shall be kept in a permanent book or folder and shall be available to inspection by any interested party.

Commissioner's power and authority in enforcing act

Sec. 14. For the purpose of enforcing the provisions of this Act,[1] the Commissioner is hereby vested with full power and authority and it shall be his duty, either upon his own initiative or upon the receipt of a properly verified complaint, to investigate all alleged violations of this Act and for the purpose of making such investigation, he shall have, at all times, free and unimpeded access to all books, records, buildings, yards, warehouses, storage, and transportation and other facilities or places in which any citrus fruit is kept, stored, handled, processed or transported, and in furtherance of such investigation either the Commissioner in person or through his authorized representatives, may examine any portion of the ledger, books, accounts, memorandum, documents, scales, measures, and other matters, objects or persons pertinent to such alleged violation under investigation. The Commissioner shall take such action and hold such public hearings as in his judgment are shown

to be necessary after such investigations, and shall take the proper action with reference to the cancellation or suspension of the license of any dealer hereunder shown to have been guilty of a violation of the terms of this Act. Such hearings shall be held in the nearest city or town in the county where violations are alleged to have occurred. Any order made by the Commissioner with reference to the revocation or cancellation of any license granted under the provisions of this Act, shall be subject to review by a Court of competent jurisdiction.

1 This article and Pen.Code, art. 1700a—3.

Records on handling fruit on consignment or commission

Sec. 15. Where any citrus fruit is handled by any dealer upon a consignment or commission basis, unless otherwise agreed in written contract between the dealer and owner, then the dealer shall, upon demand of the seller, or owner, his agent or representative, furnish said owner or seller, his agent or representative, a complete and accurate record showing, among other things, date of sale, to whom sold, the grade and selling price of said fruit, together with itemized statement showing what expenses of any kind or character incurred in the sale or handling of said citrus fruit including the commission, if any, to the dealer, and the failure or refusal of such dealer to furnish such information within ten (10) days after such demand by owner or seller, his agent or representative, shall constitute a violation of this Act.[1]

1 This article and Pen.Code, art. 1700a—3.

Dealer's contract to include commissions

Sec. 16. If a dealer handles citrus fruit by guaranteeing a producer or an owner a minimum price, but at the same time handles the citrus fruit for the account of the producer or owner, said dealer shall include in his contract with the producer or owner, the maximum amount which he shall charge for commissions and/or service, or both, in connection with said citrus fruit so handled.

Settlements on grades and quality referred to in contract

Sec. 17. All citrus fruit except that obtained and handled by dealers, solely on a consignment basis without any price guarantee, shall be settled for by every dealer on the basis of the grade and quality which is referred to in the contract pursuant to which the dealer obtained possession or control of such citrus fruit, unless such citrus fruit has been inspected by a State or Federal inspector in the State of Texas and found to be of a different grade or quality than that referred to in said contract, in which event same shall be settled for on the basis of the grade and quality determined by such inspector. But nothing herein shall prevent the parties in lieu of such an inspection, from agreeing in writing only that the grade or quality of any of such citrus fruit was different from that referred to in the contract. Failure of the dealer to settle with a producer or seller on grade and quality in the manner herein provided, shall constitute a violation of this Act[1] and be punishable as hereinafter provided, and in addition shall be cause for revocation of license.

1 This article and Pen.Code, art. 1700a—3.

Investigations by commissioner

Sec. 18. [Repealed by Acts 1939, 46th Leg., p. 41, § 9.]

License fees to constitute dealers fund

Sec. 19. All license fees collected under the provisions of this Act shall be deposited with the Treasurer of the State of Texas, to be held by him in a special fund to be known as "Citrus Dealers Act Fund" and such fund shall be used on the order of the Commissioner when necessary to defray the expenses of the administration of this Act[1] and same is hereby appropriated for said purpose.

1 This article and Pen.Code, art. 1700a—3.

Venue of suits

Sec. 20. The venue of any and all criminal acts and civil suits instituted under the provisions of this Act[1] shall be in the county where the violation occurred or where the citrus fruits were received by the dealer, packer or warehouseman.

1 This article and Pen.Code, art. 1700a—3.

Penal provision

Sec. 21. [See Pen.Code, art. 1700a—3.]

Construction as to application of act

Sec. 22. The provisions of this Act[1] shall not apply to a retailer of citrus fruit nor to any person shipping less than six (6) standard boxes of citrus fruit in any one separate shipment nor shall this Act apply to noncommercial shipments by express. [As amended Acts 1939, 46th Leg., p. 41, § 11.]

1 This article and Pen.Code, art. 1700a—3.

License of dealers selling own crop

Sec. 23. Any citrus grower who handles and markets only citrus fruit grown by him, shall file an application for a license as a dealer in citrus fruit and upon so filing said application with the Commissioner of Agriculture of the State of Texas in the form prescribed, he shall be entitled to a license as a minimum dealer of citrus fruit; i. e., one handling not in excess of one thousand (1000) standard boxes, or the equivalent thereof, per twelve-month period and said license shall be issued to him without the payment of any fee or the posting of any bond and he shall thereupon be entitled to handle, market, sell, and dispose of his citrus fruit in accordance therewith subject to the pertinent provisions of this Act.[1]

1 This article and Pen.Code, art. 1700a—3.

Fruit to show origin

Sec. 24. All citrus fruit grown in Texas and marketed in accordance with this Act shall, when in its original perishable form, be so labeled as to show its Texas origin.

Exemption from bond; penalty

Sec. 25. Any person who purchases citrus fruit only from dealers duly qualified as such under this Act,[1] and pays therefor prior to or at the time of delivery or taking possession of such citrus fruit so purchased in current money of the United States, shall be exempt from giving the bond provided for in this Act and such person shall indicate on his application for license that he desires to operate as a cash buyer, buying only from dealers duly qualified as such under this Act, in accordance with the provisions of this Section and thereupon such person shall be entitled to a license as a cash citrus dealer, purchasing only from dealers duly qualified under this Act, upon the payment by such applicant of the license fee as required under this Act. Such dealer shall be subject to all the pertinent provisions of this Act. Any violation of this Section shall be deemed a misdemeanor and be punishable, as provided in Section 21 of this Act.[2]

Any producer handling or dealing in his own products exclusively, shall be licensed, upon application, by the Commissioner of Agriculture without charge and without being required to give a bond. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1911, ch. 32, § 1.]

1 This article and Pen.Code, art. 1700a—3.
2 Pen.Code, art. 1700a—3.

Director and examiner; appointment; salary

Sec. 26. [Repealed by Acts 1937, 45th Leg., 1st C. S., p. 1776, ch. 16, § 2.]

Applicable to Texas Citrus Zone only

Sec. 27. The terms of this Act[1] pertaining to necessity for and collection of license fees shall apply only to those entering into, or to those doing business in the Texas Citrus Zone, as said area is defined in Section 1, of House Bill No. 553, Chapter 350, General Laws of Texas, Regular Session, 1931.[2]

1 This article and Pen.Code, art. 1700a—3.
2 Pen.Code, art. 1700a—2.

Partial invalidity

Sec. 28. If any section, sentence, clause, phrase, or portion of this Act[1] shall be held unconstitutional, then such holding shall not affect the validity of the remainder thereof, but same shall remain in full force and effect. [Acts 1937, 45th Leg., p. 464, ch. 236.]

1 This article and Pen.Code, art. 1700a—3.
Sections 12 and 13 of the amendatory Act of 1939, read as follows:
"Sec. 12. Should any word, phrase, sentence, paragraph, or section of this Act be declared unconstitutional, it is hereby declared to be the intention of the Legislature to have passed the remainder of this Act in its entirety despite any such holding as to unconstitutionality.
"Sec. 13. Nothing in this Act shall ever be construed as amending, modifying, suspending, or repealing any of the laws of this State defining and prohibiting trusts, monopolies, and conspiracies against trade with particular reference to Chapter 3, Title 19, Penal Code of this State and Title 126, Revised Civil Statutes of Texas, 1925; and should this Act in any manner conflict with or alter, repeal, change, modify or affect, or attempt to alter, repeal, change, modify or affect the above-mentioned statutes or any sentence, section, clause, phrase or word thereof, this entire Act shall fall and be held for naught."

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

Name of Act

This Act shall be known and may be cited as the "Tomato Standardization and Inspection Act."

Preamble

In order to provide a means by which producers and shippers of tomatoes may secure prompt and efficient inspection, classification, and grading of tomatoes at reasonable cost, and because the Legislature of the State of Texas recognizes that the standardization of tomato shipments through the proper grading and classification of tomatoes, by prompt and efficient inspection under competent authority, will confer benefits upon growers, shippers, carriers, receivers, and consumers, in that the certification by competent authority will furnish the grower and shipper of such products with prima facie evidence of the quality, quantity, and condition of pack of the product so certified, and because such certification will guarantee to the carrier and receiver the quality of products carried and received by them and will assure the ultimate consumer of the quality of products delivered to him, this Act is passed.

Seasonal limitation

The provisions of this Act shall be effective during the Texas tomato marketing season. The phrase "Texas Tomato Marketing Season" as the same is used in this Act shall be construed to mean the period from the first day of April to the fifteenth day of July in each calendar year.

Authority of commissioner

Section 1. The inspection and certification of grade, size, pack, and marking and the designation of containers of tomatoes shall be under the direction of the Commissioner of Agriculture of the State of Texas, hereinafter called the Commissioner.

Definitions

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

"Commissioner": The Commissioner of Agriculture of the State of Texas.

"Cooperative Agreement": That certain agreement in regard to shipping point inspection service, effective October 1, 1931, made by and between the Texas Department of Agriculture and the Bureau of Agricultural Economics, United States Department of Agriculture, and all amendments thereto, or any additional and/or supplementary agreements hereafter made by and between the Texas Department of Agriculture and the Bureau of Agricultural Economics of the United States Department of Agriculture; said agreements being duly authorized by Public Statute Number 717, of the 71st Congress. (United States Statutes at Large.)[1]

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

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

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

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

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

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

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

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

"Inspection Certificate": The joint Federal-State Inspection Certificate, as provided in Section "c" of Paragraph 9, of the Cooperative Agreement.

"Deceptive Pack": Any container or sub-container of tomatoes used within this State having imprinted, inscribed, or otherwise placed thereon any marking designating any grade, standard, count, arrangement, and/or pack which does not truly represent the grade, standard, and count, arrangement, and/or pack therein contained.

1 46 Stat. 1242.

Exclusions

Sec. 3. The following tomatoes are hereby specifically excluded from the terms and provisions of this Act, and no inspection or certification thereof shall be required:

(A) Tomatoes sold or delivered by the grower thereof unpacked and unmarked to any person for packing and resale.

(B) A sale of a crop or any part thereof in bulk by a producer thereof to a packer for grading, packing, processing, or storing.

(C) No provision of this Act shall be construed to prevent a grower or packer from manufacturing tomatoes into any by-product thereof or from selling the same unpacked or unmarked to any person actually engaged in the operation of a commercial by-product plant when the purpose of such sale is the conversion of such agricultural commodity into a by-product for resale.

(C-2) The Commissioner may, in his discretion, issue to any grower of tomatoes who permits his entire crop of tomatoes to ripen on the vine, and markets the same as ripe tomatoes, a permit to personally transport and sell same to retail merchants or consumers, only tomatoes produced by him, provided that the said Commissioner may cancel said permit when in his judgment the same has been abused.

(D) The requirements of this Act shall not be applicable to sales of tomatoes in lots less than commercial quantities, as the term "commercial quantities" is in this Act defined.

Inspection

Sec. 4. When any person within this State has in his possession or control any tomatoes for the purpose of packing for shipment in commercial quantities the said tomatoes, such person shall give due and timely notice (said notice may be oral, written, or by telephone) to the Commissioner, his agent, inspector, or employee, as to the time and place of the packing and shipping of said tomatoes, or shall report his intention to pack and ship the said tomatoes to the Inspection Station nearest the point of loading, whereupon the Commissioner, his inspector or employee, thereto duly authorized, shall proceed to the designated packing and/or shipping point and shall inspect the tomatoes proposed to be shipped, and shall, after due and proper inspection, deliver to said dealer or shipper his certificate of inspection; said inspection certificate so delivered shall in all things conform to the inspection certificate provided for in the cooperative agreement; inspections under this Section, as to size, pack, marking, and type of container used shall be in conformity with the rules and regulations adopted and prescribed by the Commissioner relative thereto.

Certification required

Sec. 5. From and after the effective date of this Act, it shall be unlawful for any dealer or shipper to deliver to, or for any private, contract or common carrier to accept for shipment, or to transport in commercial quantities, any tomatoes, unless the tomatoes so shipped shall be accompanied by the certificate of inspection provided for in Section 4 of this Act, and any shipper, private, contract or common carrier shall have the right and may reserve the right in any receipt, bill of lading, or other contract of purchase or memoranda of the same, to reject for shipment any tomatoes not accompanied by the certificate of inspection provided for in Section 4 of this Act. It is specifically provided that any private, contract or common carrier shall reject any tender of tomatoes for shipment when the inspection certificate accompanying the same shall show on its face that the tomatoes tendered are not in compliance with this Act.

Minimum standards required

Sec. 6. From and after the effective date of this Act, no person within an area in which this Act is operative shall pack for sale, consign for sale, or sell or deliver to any transporting agency within this State in commercial quantities, any tomatoes unless the said tomatoes shall conform to the United States standards, grades, or classifications by this Act required, or the grades or classifications promulgated by the Commissioner pursuant to his authority herein granted.

Additional grades authorized

Sec. 7. The Commissioner is hereby authorized, in his discretion and if necessity requires, to adopt, prescribe, and promulgate other, different and additional grades of tomatoes, provided that such other and different standards and grades shall not conflict with the United States grades herein adopted. The Commissioner is further authorized to issue rules and regulations relating to standards, grades, pack and marking of tomatoes, as well as to containers and subcontainers to be used in the packing and shipping thereof.

Publication of orders, protest and appeal

Sec. 8. The Commissioner shall cause to be published in newspapers of general circulation in counties affected by this Act within this State such rules and regulations as he desires to promulgate under the terms of this Act. Any person aggrieved by any rule or regulation of the Commissioner so published, shall, within fifteen (15) days from and after the publication thereof, file his protest with the Commissioner. Such protest shall contain a clear and concise statement of the reasons therefor. The Commissioner shall set a date for a hearing, said date to be not less or not more than ten (10) days from and after the filing of said protest. The Commissioner or his agent or employee thereunto duly authorized, shall hold said hearing; said hearing shall be public in nature, and the Commissioner is authorized to hear testimony on the said protest, whereupon the Commissioner shall make his ruling upon the evidence introduced. Any person aggrieved by ruling of the Commissioner on the hearing of any protest under this Act, may, within ten (10) days from and after final decision by the Commissioner, have his appeal from the Commissioner's order to any Court of competent jurisdiction within this State; if no appeal is taken from the Commissioner's order within the ten-day period herein stipulated, the order of the Commissioner shall become final; it is specifically provided that no appeal taken from an order of the Commissioner shall operate in effect to suspend this law or any order of the Commissioner issued pursuant thereto, pending final determination of said appeal.

Containers

Sec. 9. The Commissioner is hereby authorized to prescribe containers for use in the shipment of tomatoes and is authorized to promulgate and publish rules and regulations relative to the use of containers for the shipment of tomatoes in the State of Texas; the rules and regulations adopted by the Commissioner shall conform to Article 109, of Chapter 6, Revised Civil Statutes of Texas, 1925; the Commissioner is, however, hereby authorized to provide for and adopt other and different containers, provided that the use of such other and different containers is not prohibited under any Statutes of the United States, the rules of the Interstate Commerce Commission, or the regulations of the United States Department of Agriculture; no container or sub-container used in the packing and/or shipment of tomatoes within this State shall have imprinted or inscribed or otherwise placed thereon any designation of grade, standard, count, arrangement, or pack which is false and misleading; this provision shall be construed to prohibit, from and after the effective date of this Act, the use of any container of tomatoes bearing any markings required by this Act or any designation of brand, trade-mark, quality, standard count arrangement, or grade, unless all markings which do not properly and accurately apply to the products therein packed, shall first be completely removed, erased, or obliterated.

Inspection contributions

Sec. 10. It is provided that this law shall be self-financing and that the Legislature shall make no ap-

propriation for the enforcement thereof; the Commissioner is hereby authorized and empowered to enter into agreements with the United States Department of Agriculture and the Inspection Service of the Federal Bureau of Agricultural Economics, relative to the amounts of contributions to be received from dealers and shippers for inspecting and grading services under the terms and provisions of this Act; it is further provided that the Commissioner may, in his discretion, adopt rules and regulations relating to such inspection contributions which will, in effect, adopt the financing plan provided under the Cooperative Agreement, provided that the contribution shall be fixed as nearly as possible with reference to the cost of maintaining the expenses of inspection and grading tomatoes under the Cooperative Agreement; the amount of contribution for each different service of an inspection and grading rendered may be different, but in no event shall the contribution for inspection of tomatoes exceed Six Dollars ($6) per carlot for inspection or grading service rendered in a regular packing house, or at a regular loading point; it is specifically provided that any regular inspection or grading service made or performed at a point distant from a packing shed or loading point, shall be for an amount sufficient to cover the actual cost of such inspection and/or grading service; all contributions for inspection or grading services rendered shall be paid and delivered to the inspector by the person packing or making the shipment prior to the delivery of the certificate of inspection; whenever any person so packing and/or shipping tomatoes fails or refuses to pay the contribution prescribed for the services rendered, the inspector shall withhold delivery of the inspection certificate until the prescribed contribution is paid; no inspector, agent, or employee shall charge or collect a greater sum than the prescribed contribution for the services rendered; all moneys contributed for services of inspection and/or grading under the terms and provisions of this Act shall be handled and disbursed under the terms of the Cooperative Agreement; the County Auditor of any County, in which this Act is operative, shall have access to the financial records, books, vouchers, and reports of the chief inspector at all times and shall have the authority to make an audit of such books when, in his judgment, an audit shall be deemed wise, and, upon written request of the Commissioner, said County Auditor shall audit and make his report in writing to the Commissioner regarding the fiscal affairs of the contribution account.

Penalties

Sec. 11. From and after the effective date of this Act, it shall be unlawful for any individual, firm, partnership, corporation, or association of persons to:

(A) Wilfully or knowingly interfere with the Commissioner or any agent, inspector or employee, as these terms are in this Act defined, in the performance of their duties under this Act;

(B) To ship any tomatoes without first obtaining the inspection certificate required under the terms and provisions of this Act;

(C) Knowingly and wilfully deliver to any transporting medium or agency any tomatoes "deceptively packed";

(D) Use any container or sub-container in the packing and/or shipping of tomatoes which has imprinted, inscribed or otherwise placed thereon any designation of grade, standard, size, count, or pack which is false and/or misleading;

(E) Use, in the shipment of tomatoes in or from the State of Texas, any container or sub-container, the use of which is not authorized by law and/or the rules, regulations, and orders of the Commissioner;

(F) Falsify, forge, or change any inspection certificate required under the terms and provisions of this Act;

(G) To wilfully and knowingly fail and refuse to obey any order, rule, or regulation issued by the Commissioner pursuant to his authority granted under the terms and provisions of this Act;

(H) It shall be unlawful for any transporting agency or medium or agent of any transporting medium to accept for transportation any tomatoes when the inspection certificate accompanying and relating to such tomatoes shows on its face that the tomatoes so delivered to such transporting medium are not properly certified for transportation;

(I) It shall be unlawful for the Commissioner, his agents, inspectors and/or employees to engage in business as dealers in tomatoes, save and except that this Section shall not be construed to in anywise prohibit the Commissioner, his agents, inspectors and/or employees from selling, in the capacity of producers, of tomatoes grown and produced by them.

Any person violating any of the terms or provisions of this Act shall be guilty of a misdemeanor and on conviction shall be fined not to exceed Two Hundred Dollars ($200).

Act cumulative

Sec. 12. This Act shall be cumulative of all laws now operative in the State of Texas relating to the inspection and/or grading and/or standardization of tomatoes, provided that all laws or parts of laws specifically conflicting herewith are hereby repealed.

Saving clause

Sec. 13. If any section, subsection, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional. [Acts 1939, 46th Leg., p. 33.]

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

Name of act

This Act shall be known and may be cited as the "Cabbage Standardization and Inspection Act."

Preamble

In order to provide a means by which producers and shippers of cabbage may secure prompt and efficient inspection, classification, and grading of cabbage at reasonable costs, and because the Legislature of the State of Texas recognizes that the standardization of cabbage shipments through the proper grading and classification of cabbage, by prompt and efficient inspection under competent authority, will confer benefits upon growers, shippers, carriers, receivers, and consumers, in that the certification by competent authority will furnish the grower and shipper of such product with prima facie evidence of the quality, quantity, and condition of pack of the product so certified, and because such certification will guarantee to the carrier and receiver the quality of products carried and received by them and will assure the ultimate consumer of the quality of products delivered to him, this Act is passed.

Seasonal Limitation

The provisions of this Act shall be effective during the Texas Cabbage marketing season. The phrase "Texas Cabbage Marketing Season" as the same is used in this Act shall be construed to mean the period from the first day of December to the fifteenth day of March in each crop year.

Authority of commissioner

Section 1. The inspection and certification of grade, size, pack and marking and the designation of

containers of cabbage shall be under the direction of the Commissioner of Agriculture of the State of Texas, hereinafter called the Commissioner.

Definitions

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

"Commissioner": The Commissioner of Agriculture of the State of Texas.

"Cooperative Agreement": That certain agreement in regard to shipping point inspection service, effective October 1, 1931, made by and between the Texas Department of Agriculture and the United States Department of Agriculture, and all amendments thereto, or any additional and/or supplementary agreements hereafter made by and between the Texas Department of Agriculture and the United States Department of Agriculture; said agreements being duly authorized by Public Statute Number 717, of the Seventy-first Congress. (United States Statutes at Large.)[1]

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

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

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

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

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

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

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

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

"Inspection Certificate": The joint Federal-State Inspection Certificate, as provided in Section "c" of Paragraph 9, of the Cooperative Agreement.

"Deceptive Pack": Any container or subcontainer of cabbage used within this State having imprinted, inscribed or otherwise placed thereon any marking designating any grade, standard, count, arrangement and/or pack which does not truly represent the grade, standard, count, arrangement, and/or pack therein contained.

[1] Acts 1931, Feb. 23, ch. 278, 46 Stat. 1242.

Exclusions

Sec. 3. The following cabbage is hereby specifically excluded from the terms and provisions of this Act, and no inspection or certification thereof shall be required:

(A) Cabbage sold or delivered by the grower thereof unpacked and unmarked to any person for packing and resale.

(B) A sale of a crop or any part thereof in bulk by a producer thereof to a packer for grading, packing, processing, or storing.

(C) No provisions of this Act shall be construed to prevent a grower or packer from manufacturing cabbage into any by-product thereof or from selling the same unpacked or unmarked to any person actually engaged in the operation of a commercial by-product plant when the purpose of such sale is the conversion of such agricultural commodity into a by-product for resale.

(D) The requirements of this Act shall not be applicable to sale of cabbage in lots less than commercial quantities, as the term "commercial quantities" is in this Act defined.

Inspection

Sec. 4. When any person within this State has in his possession or control any cabbage for the purpose of packing for shipment in commercial quantities the said cabbage, such person shall give due and timely notice (said notice may be oral, written, or by telephone) to the Commissioner, his agent, inspector, or employee, as to the time and place of the packing and shipping of said cabbage, or shall report his intention to pack and ship the said cabbage to the inspection station nearest the point of loading, whereupon the Commissioner, his inspector, or employee, thereto duly authorized, shall proceed to the designated packing and/or shipping point and shall inspect the cabbage proposed to be shipped, and shall, after due and proper inspection, deliver to said dealer or shipper his certificate of inspection, said inspection certificate so delivered shall in all things conform to the inspection certificate provided for in the cooperative agreement; inspections under this Section, as to size, pack, marking, and type of container used shall be in conformity with the rules and regulations adopted and prescribed by the Commissioner relative thereto.

Certificate of inspection required

Sec. 5. From and after the effective date of this Act, it shall be unlawful for any dealer or shipper to deliver to, or for any private, contract or common carrier to accept for shipment, or to transport in commercial quantities any cabbage, unless the cabbage so shipped shall be accompanied by the certificate of inspection, provided for in Section 4 of this Act, and any shipper, private, contract or common carrier shall have the right and may reserve the right in any receipt, bill of lading, or other contract or purchase or memorandum of the same, to reject for shipment any cabbage not accompanied by the certificate of inspection provided for in Section 4 of this Act. It is specifically provided that any private, contract or common carrier shall reject any tender of cabbage for shipment when the inspection certificate accompanying the same shall show on its face that the cabbage tendered are not in compliance with this Act.

Minimum standards

Sec. 6. From and after the effective date of this Act, no person within an area in which this Act is operative shall pack for sale, consign for sale, or sell or deliver to any transporting agency within this State in commercial quantities, any cabbage unless the said cabbage shall conform to the United States standards, grades, or classifications by this Act required, or the grades or classifications promulgated by the Commissioner pursuant to his authority herein granted.

Additional grades authorized

Sec. 7. The Commissioner is hereby authorized, in his discretion and if necessity requires, to adopt, prescribe, and promulgate other different and additional grades of cabbage provided that such other and differ-

ent standards and grades shall not conflict with the United States grades herein adopted. The Commissioner is further authorized to issue rules and regulations relating to standards, grades, pack and marking of cabbage, as well as to containers and subcontainers to be used in the packing and shipping thereof.

Rules and regulations; protest; appeal

Sec. 8. The Commissioner shall cause to be published in newspapers of general circulation in counties affected by this Act within this State such rules and regulations as he desires to promulgate under the terms of this Act. Any person aggrieved by any rule or regulation of the Commissioner so published shall, within fifteen (15) days from and after the publication thereof, file his protest with the Commissioner. Such protest shall contain a clear and concise statement of the reasons therefor. The Commissioner shall set a date for a hearing, said date to be not less or more than ten (10) days from and after the filing of said protest. The Commissioner or his agent or employee thereunto duly authorized, shall hold said hearing; said hearing shall be public in nature, and the Commissioner is authorized to hear testimony on the said protest, whereupon the Commissioner shall make his ruling upon the evidence introduced. Any person aggrieved by ruling of the Commissioner on the hearing of any protest under this Act, may, within ten (10) days from and after final decision by the Commissioner, have his appeal from the Commissioner's order to any Court of competent jurisdiction within this State; if no appeal is taken from the Commissioner's order within the ten (10) day period herein stipulated, the order of the Commissioner shall become final; it is specifically provided that no appeal taken from an order of the Commissioner shall operate in effect to suspend this law or any order of the Commissioner issued pursuant thereto, pending final determination of said appeal.

Containers

Sec. 9. The Commissioner is hereby authorized to prescribe containers for use in the shipment of cabbage and is authorized to promulgate and publish rules and regulations relative to the use of containers for the shipment of cabbage in the State of Texas; the rules and regulations adopted by the Commissioner shall conform to Article 109, Chapter 6, Revised Civil Statutes of Texas, 1925; the Commissioner is, however, hereby authorized to provide for and adopt other and different containers, provided that the use of such other and different containers is not prohibited under any Statutes of the United States, the rules of the Interstate Commerce Commission, or the regulations of the United States Department of Agriculture; no container or subcontainer used in the packing and/or shipment of cabbage within this State shall have imprinted or inscribed or otherwise placed thereon any designation of grade, standard, count, arrangement, or pack which is false and misleading; this provision shall be construed to prohibit, from and after the effective date of this Act, the use of any container of cabbage bearing any markings required by this Act or any designation of brand, trademark, quality, standard count arrangement, or grade, unless all markings which do not properly and accurately apply to the products therein packed, shall first be completely removed, erased or obliterated.

Contributions for inspection and grading

Sec. 10. It is provided that this law shall be self financing and that the Legislature shall make no appropriation for the enforcement thereof; the Commissioner is hereby authorized and empowered to enter into agreements with the United States Department of Agriculture relative to the amounts of contribution to be received from dealers and shippers for inspecting and grading services under the terms and provisions of this Act; it is further provided that the Commissioner may, in his discretion, adopt rules and regulations relating to such inspection contributions which will, in effect, adopt the financing plan provided under the Cooperative Agreement, provided that the contribution shall be fixed as nearly as possible with reference to the cost of maintaining the expenses of inspection and grading cabbage under the Cooperative Agreement; the amount of contribution for each different service of an inspection and grading rendered may be different, but in no event shall the contribution for inspection of cabbage exceed Five Dollars ($5) per car lot for inspection or grading service rendered in a regular packing house, or at a regular loading point, it is specifically provided that any regular inspection or grading service made or performed at a point distant from a packing shed or loading point, shall be for an amount sufficient to cover the actual cost of such inspection and/or grading service; all contributions for inspection or grading services rendered shall be paid and delivered to the inspector by the person packing or making the shipment prior to the delivery of the certificate of inspection; whenever any person so packing and/or shipping cabbage fails or refuses to pay the contribution prescribed for the services rendered, the inspector shall withhold delivery of the inspection certificate until the prescribed contribution is paid; no inspector, agent, or employee shall charge or collect a greater sum than the prescribed contribution for the services rendered; all moneys contributed for services of inspection and/or grading under the terms and provisions of this Act shall be handled and disbursed under the terms of the Cooperative Agreement; the county auditor of any county, in which this Act is operative, shall have access to the financial records, books, vouchers, and reports of the chief inspector at all times and shall have the authority to make an audit of such books, when in his judgment, an audit shall be deemed wise, and, upon written request of the Commissioner, said county auditor shall audit and make his report in writing to the Commissioner regarding the fiscal affairs of the contribution account.

Prohibited acts; penalties

Sec. 11. From and after the effective date of this Act, it shall be unlawful for any individual, firm, partnership, corporation, or association of persons to:

(A) Willfully or knowingly interfere with the Commissioner or any agent, inspector or employee, as these terms are in this Act defined, in the performance of their duties under this Act;

(B) To ship any cabbage without first obtaining the inspection certificate required under the terms and provisions of this Act;

(C) Knowingly and willfully deliver to any transporting medium or agency any cabbage "deceptively packed";

(D) Use any container or subcontainer in the packing and/or shipping of cabbage which has imprinted, inscribed or otherwise placed thereon any designation of grade, standard size, count, or pack which is false and/or misleading;

(E) Use in the shipment of cabbage in or from the State of Texas, any container or subcontainer, the use of which is not authorized by law and/or the rules, regulations, and orders of the Commissioner;

(F) Falsify, forge, or change any inspection certificate required under the terms and provisions of this Act;

(G) To willfully and knowingly fail and refuse to obey any order, rule or regulation issued by the Commissioner pursuant to his authority granted under the terms and provisions of this Act;

(H) It shall be unlawful for any transporting agency or medium or agent of any transporting medium to accept for transportation any cabbage when the inspection certificate accompanying and relating to

such cabbage shows on its face that the cabbage so delivered to such transporting medium are not properly certified for transportation;

(I) It shall be unlawful for the Commissioner, his agents, inspectors and/or employees to engage in business as dealers in cabbage, save and except that this Section shall not be construed to in anywise prohibit the Commissioner, his agents, inspectors and/or employees from selling, in the capacity of producers, of cabbage grown and produced by them.

Any person violating any of the terms or provisions of this Act shall be guilty of a misdemeanor and on conviction shall be fined not to exceed Two Hundred Dollars ($200).

Act cumulative

Sec. 12. This Act shall be cumulative of all laws now operative in the State of Texas relating to the inspection and/or grading and/or standardization of cabbage, provided that all laws or parts of laws specifically conflicting herewith are hereby repealed.

Partial invalidity

Sec. 13. If any section, subsection, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Saving clause

Sec. 14. Nothing in this Act shall ever be construed as amending, modifying, suspending or repealing any of the laws of this State defining and prohibiting trusts, monopolies, and conspiracies against trade, with particular reference to Chapter 3, Title 19, Penal Code of the State of Texas, and Title 126, Revised Civil Statutes of Texas, 1925, and if any provision of this Act is held to be in contravention of or conflict with any of said laws, then said provision shall be null and void and of no force or effect. [Acts 1945, 49th Leg., p. 274, ch. 203.]

CHAPTER 7.—NURSERY STOCK

Art.
119. Control.
120. Diseases and pests.
121. Abatement of nuisance.
122. Notice.
123. Treatment or destruction.
124. Appeal; enforcement of order; penalty for violations of act or regulations, etc.
125. Expense of treatment.
126. Examination and certificate.
127. Certificate to accompany shipment.
128. Nursery stock shipped into State.
129. May revoke certificate.
130. Transportation companies not liable.
131. Unlawful shipments.
132. Chief inspector.
133. Inspection fees.
134. Salary and expenses.
135. Definitions.

Article 119. [4458–68] Control.—The protection of fruit trees, shrubs, and plants shall be under the supervision and control of the Commissioner of Agriculture. The Commissioner shall prepare and enforce suitable rules and regulations for the traffic and shipment of cape jasmine, cut flowers, and such greenhouse and floral shipments as may require control, and for the inspection of nurseries, greenhouses, orchards, forest trees, and all products originating from the same, within the meaning of this chapter. He shall enforce the provisions of this chapter and make and enforce such other rules and regulations not inconsistent herewith as may be deemed necessary to carry the same into effect. He shall also provide such rules and regulations concerning city, private or public parks, avenues of shade trees, shrubbery and ornamentals along the streets of cities, for city residences, and city property generally, as will secure a protection and immunity from insect pests and contagious diseases intended to be provided for by this law. [Acts 1909, p. 316.]

Art. 120. [4459] Diseases and pests.—No person in this State shall knowingly or wilfully keep any peach, almond, apricot, nectarine, or other trees affected with the contagious diseases known as "yellows," "peach mosaic," or "phony peach," nor keep for sale any apple, peach, plum, or other tree affected with nematode galls, crown galls, fire blight, or root rot. No person shall knowingly or wilfully keep any plum, cherry, or other trees affected with the contagious disease or fungus known as black knot or plum canker; nor any tree, shrub, or plant infested with or by the San Jose scale or other insect pest dangerously injurious to or destructive of trees, shrubs, or other plants; nor any grapefruit, orange, or lemon trees, citrus stocks, cape jasmines, or other trees, plants, or shrubs infested with "white fly" Florida scale, cottony cushion scale, wooly aphis, or other injurious insect pests, or citrus canker, or other contagious diseases of citrus fruits; nor subtropical plants, shrubs, evergreens, or ornamentals; nor any china, forest or other trees, shrubs, or plants infested with injurious insect pests or contagious diseases. [Acts 1921, p. 100; Acts 1941, 47th Leg., p. 487, ch. 305, § 1.]

This Article and Articles 121–125, prior to 1941 amendment, were invalid in so far as they made the decision of the Commissioner of Agriculture final as to the existence of insect pests. Stockwell v. State, 110 T. 550, 221 S.W. 932, rev'g (Civ.App.) 203 S.W. 109.

Art. 121. [4459] Abatement of nuisance.—Every such infected or diseased tree, shrub or plant shall be a public nuisance, and it shall be the duty of the Commissioner or his representatives to abate it. For such purpose, he shall have power to enter upon any premises so affected for the purpose of legally inspecting and treating or destroying the same, and no damages shall be awarded against the Commissioner or his representatives for the exercise of such duties. [Acts 1921, p. 100.]

Art. 122. [4459] Notice.—If it shall be determined that any such tree, shrub, or plant should be destroyed, written notice, signed by the Commissioner or his representative, shall be delivered in person to the owner of such trees, shrubs or plants, or left at his usual place of residence, or left with the person in charge of such premises, trees, plants, or shrubs, if such owner be not a resident of the locality. Such notice shall contain a brief statement of the facts found to exist, whereby it is necessary to destroy such trees, shrubs, or plants, and call attention to the law under which it is proposed to destroy them. [Id.]

Art. 123. [4459] Treatment or destruction.—Within ten days from the receipt of such notice, the owner shall remove and burn all such diseased or infected trees, shrubs, or plants. If, however, in the judgment of said Commissioner or his representative, any such tree, shrub, or plant can be treated with sufficient remedies, he may direct such treatment to be carried out by the owner under the direction of the Commissioner or his representative. [Id.]

Art. 124. [4459] Appeal; enforcement of order; penalty for violations of act or regulations, etc.—Any person aggrieved by any order or notice of the Commissioner shall have the right of appeal to any Court of competent jurisdiction, such appeal shall be taken within ten (10) days from and after receipt of such notice or order, and not thereafter. Such appeal shall be heard by said Court in term time or vacation. If the decision on

such appeal shall be against such person, or if such person shall fail or neglect to perfect his appeal in the manner in this Section provided, the order or notice of the Commissioner shall be final and the Commissioner, his agents, or employees, shall summarily execute such notice or order and place such premises in compliance therewith. The sheriff or any constable of any Court within this State shall, on request of the Commissioner, his agent, or employee go upon any premises within this State for the purpose of assisting in the enforcement of such order or notice and placing such premises in compliance therewith. Any person who shall wilfully or negligently violate any of the terms and provisions of this Act, or wilfully or negligently fail or refuse to comply with any rule, regulation, order, or notice of the Commissioner, issued by said Commissioner pursuant to the duties upon him herein imposed, or the authority to him herein granted, shall, upon conviction, be fined not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200), and each day upon which any person shall maintain any premises within this State in a condition of noncompliance with the provisions of this Act after due notice has been given, as herein provided, shall be deemed a separate offense. [Acts 1921, p. 100; Acts 1941, 47th Leg., p. 487, ch. 305, § 2.]

Art. 125. [4459] Expense of treatment.—All charges and expenses of such treatment or destruction shall be paid by such owner or person in charge of said trees, shrubs, or plants, and shall constitute a legal claim against such owner or person in charge, which may be recovered by suit brought by such Commissioner or chief inspector or the county attorney of the county where such premises are situated, together with all costs, including an attorney fee of ten dollars, to be taxed as other costs.

Art. 126. [4460] Examination and certificate.—To ascertain whether nursery stock is infected with diseases or pests, the Commissioner shall cause to be made at least once each year an examination of each nursery or other place where nursery stock is exposed for sale. If such nursery stock is apparently free in all respects from infection or infestation, the Commissioner, upon receipt of inspection fee provided by this Act, shall issue to the owner or person in control of such stock, a certificate reciting that the stock examined was at the time of such examination apparently free from any such disease or pest. No such certificate shall be negotiable or transferable, and, if sold or transferred, shall be void. Any person offering for sale any nursery stock without a certificate of inspection, as herein provided, shall be deemed to be in violation of this Act. [Acts 1909, p. 316; Acts 1941, 47th Leg., p. 487, ch. 305, § 3.]

Art. 127. [4461] Certificate to accompany shipment.—All nursery stock consigned for shipment, or shipped by freight, express or other means of transportation, shall be accompanied by a copy of said certificate attached to each car, box, bale, bundle or package. When such box, bale, bundle, or package, contains nursery stock to be delivered to more than one person, partnership, or corporation, each portion of such nursery stock to be delivered to such person, partnership or corporation, shall also bear a copy of the certificate of inspection issued as provided in the preceding article. [Acts 1909, p. 316.]

Art. 128. [4462] Nursery stock shipped into State.—No person, partnership, or corporation outside this State shall be permitted to ship nursery stock into this State without having first filed with the Commissioner of Agriculture a certified copy of his, or their, certificate of inspection, issued by the proper authorities in the State from which the shipment originates. Such certificate shall show that the stock to be shipped has been examined by the proper officers of inspection in such State, and that it is apparently free from all dangerous insect pests or contagious diseases, and when fumigation or other special treatment is required by the Commissioner of Agriculture that the stock has been properly fumigated or treated. Upon receipt of such certificate, and provided that such certificate shall be acceptable to the Commissioner and approved by him, the Commissioner shall issue to such applicant a Texas importation certificate which shall permit the applicant to ship the nursery stock described into the State of Texas. For the issuance of any importation certificate the Commissioner shall charge a fee commensurate with the services rendered, which said fee shall in no event exceed Five Dollars ($5). Each box, bale, or package of nursery stock from outside the State shall bear a tag on which is printed a copy of the certificate of this State, and also a copy of the certificate of the State in which it originates. [Acts 1909, p. 316; Acts 1941, 47th Leg., p. 487, ch. 305, § 4.]

Art. 129. [4464] May revoke certificate.—The Commissioner may revoke any certificate issued under this chapter when he finds that false representations have been made by the party to whom the same was issued, or upon refusal of such party to comply with the law, instructions or rules given by the Commissioner as authorized by this chapter. [Id.]

Art. 130. [4463] Transportation companies not liable.—No transportation company or common carrier shall be liable for damages to the consignee or consignor for refusing to receive for transportation or deliver such trees, packages, bales, bundles or boxes when not accompanied by copies of the certificates provided for in the second preceding article. The agent of any such company or carrier shall immediately report to the Commissioner of Agriculture any such shipment not so accompanied. [Id.]

Art. 131. [4463] Unlawful shipments.—The Commissioner shall inspect shipments of nursery stock into this State, or originating within this State without tags or proper certificates as above provided for, for diseases or pests, and if infected, the same shall be dealt with as infected nursery stock. [Id.]

Art. 132. [4465] Chief Inspector.—The Commissioner shall appoint one person who shall be designated Chief Inspector, who shall inspect, or cause to be inspected, under the direction of the Commissioner, all trees, plants, and shrubs of every kind whatsoever, grown, produced or offered for sale by any nursery, dealer, person or corporation in this State, and also inspect, or cause to be inspected, all orchards provided for above. Such inspector may employ such persons or experts as may be necessary to enforce these provisions. [Id.]

Art. 133. [4465] Inspection fees.—The Commissioner shall fix and collect reasonable fees for the inspection herein provided for, of not less than two dollars and fifty cents nor more than fifteen dollars for each inspection. [Id.]

Art. 134. [4465] Salary and expenses.—Each person employed by the Commissioner as herein provided shall be paid a salary not exceeding five dollars per day and traveling expenses while actually engaged in the performance of his duties. [Id.]

Art. 135. [4467] Definitions.—The terms "nursery stock", "nursery" "dealer," and "agent of a nursery or dealer," as used in this chapter, shall have the same meaning as is given those terms by Article 1698 of the Penal Code. Any such agent shall have proper credentials from the dealer he represents or cooperates with; and failing in that, any such agent shall be classed as a dealer, and subject to such rules as may be adopted relating to them, and shall be amenable to the same penalties for the violation of any provision of this law. [Id.]

CHAPTER 7A.—PLANT DISEASES AND PESTS

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135a–135d. [Repealed.]
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2. Quarantine authorized.
3. Free areas; venue of actions.
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Articles 135a–135d. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 21, ch. 15, § 13.]

The articles repealed were Acts 1927, 40th Leg., p. 97, ch. 69, §§ 1–4.

Art. 135a—1. Insect pests and plant diseases

Quarantine against areas outside state

Sec. 1. If the Commissioner of Agriculture of this State, hereinafter called the "Commissioner," determines the fact that any dangerous insect pest or plant disease new to and not heretofore widely distributed in the State exists in any area outside of Texas, he is hereby authorized and it is made his duty to establish, maintain and enforce a quarantine at the boundaries of this State or elsewhere within the State against such infested area and shall prevent the movement from such quarantined area or areas into this State or into any part of it of any plants, plant products, things or substances liable to disseminate the pest or plant diseases under consideration; provided that nothing herein shall be construed to prevent the movement of such plants, plant products, things or substances into this State from a quarantined area under such safeguards as the Commissioner shall deem adequate to prevent the introduction into this State of dangerous insect pests or plant diseases quarantined against.

Quarantine against areas within state

Sec. 2. If any dangerous insect pest or plant disease not heretofore widely distributed in this State shall be found within the State, the Commissioner is hereby authorized and it is made his duty to establish a quarantine against such area as may be infested, and he shall prevent the movement of such plants, plant products, things or substances from such quarantined area into any other part of the State as are liable to spread the pest under consideration, except under such safeguards as shall be deemed adequate to prevent the spread of such dangerous insect pests or plant diseases to other parts of the State.

Free areas; venue of actions

Sec. 3. When the Commissioner determines the fact that any inspect pest or plant disease of general distribution in the State does not exist in any particular area, he is hereby authorized to publish such fact, and he shall have full power and authority to place a quarantine around such "free area" and prevent the introduction therein of any plants, plant products, things or substances liable to be infested with such insect pest or plant disease. Venue in cases arising under the provisions of this Section shall be in courts of competent jurisdiction in the county in which such "pest-free" zones are established.

Conditions precedent to establishing quarantine

Sec. 4. Before any quarantine shall be established, as provided for in Sections 1, 2 and 3 herein, the said Commissioner shall cause the Chief Entomologist of the Department of Agriculture and, if he deems it advisable, one or more other persons designated and appointed by the said Commissioner, to make an investigation and hold a public hearing at some convenient and accessible point, due notice of which shall have been given at least ten (10) days prior to the day of such hearing by publication in a newspaper of general circulation in the area or areas to be considered; provided that if the quarantine under consideration shall be such as is provided by Section 1 hereof, the notice called for by this Third Section shall be sufficient if published in two newspapers of general circulation within the State of Texas (selection of which shall be made by the Commissioner of Agriculture and his selection to be determinative and final) for the time and in the form as set out in this Section. Such notice shall state the pests or plant diseases and the area to be considered, at which hearing all persons interested shall have the right to be heard. The

Chief Entomologist and other persons, if any, appointed to conduct such hearing shall take the Constitutional oath of office and be empowered to administer oaths for the purpose of taking testimony and shall record the proceedings had, and shall investigate whether or not the particular pests or plant diseases under consideration constitute a menace to any valuable plants or plant products, and shall make a written report to the Commissioner of the findings thereof as to whether or not such pests or plant diseases as may be considered are in fact a menace to any valuable agricultural or horticultural crops and the reasons for such conclusions. Such report shall also indicate whether or not any quarantine action is necessary or desirable; and, if so, the best known means of circumscribing, controlling, preventing spread of or exterminating such pests or plant diseases. After receiving such report, the said Commissioner is authorized to promulgate such quarantine regulations as may be indicated to be necessary for the protection of the agricultural or horticultural interests of this State.

Appeal to courts by persons aggrieved

Sec. 5. Provided, that in the event any person or persons are aggrieved, and will be injuriously affected by the said quarantine, or whose property is to be destroyed by any such quarantine or order of the Commissioner, they shall have the right to appeal such matter to the District Court of any Judicial District in which such quarantine or order is promulgated by giving written notice thereof to the Commissioner, stating to what District Court said application is made, such notice to be by registered mail within ten (10) days from the date of the Commissioner's proclamation. Immediately after receipt of such notice the said Commissioner shall make a certified copy of his order and proclamation in said cause and transmit same to the District Court named in the notice. Upon receipt of said papers by the Clerk of said Court, said cause shall be docketed, "———, Commissioner of Agriculture vs. ———, defendant," on the Civil docket of said Court, and tried in said Court in the manner provided for the trial of Civil cases, and the judgment of said Court upon final hearing shall be "that the orders and proclamations of the said Commissioner be approved and enforced," or "that said orders and proclamations be and are vacated and held for naught," as the Court or jury may determine.

Emergency quarantine

Sec. 6. Provided further, that if a public emergency arises at any time in which there is likelihood of the introduction into this State or dissemination within the State of any plant disease or insect pest dangerous to the interests of horticulture and agriculture within this State, the Commissioner of Agriculture is hereby authorized to immediately establish an emergency quarantine at the boundaries of this State, or elsewhere within the State, and immediately make and enforce such rules and regulations as may be deemed necessary to prevent the introduction of any dangerous insect pest or plant disease into this State, and to prevent the carrying of such dangerous insect pest or plant disease from one part of the State into another part of the State, except under safeguards deemed adequate to prevent the dissemination of the pest; provided, however, that this emergency quarantine shall not remain in effect for more than thirty (30) days from date of promulgation, unless repromulgated and perpetuated by the Commissioner after official hearing, as provided herein.

Protection of carriers from damages; penalty for violation

Sec. 7. Provided further, that no railway company, steamship, motor-boat, motor-bus, truck or other carrier shall be liable to any consignor or consignee for damages for refusing to receive and transport and/or deliver across and/or into the area or areas protected by the emergency and/or permanent quarantine provided for herein, any fruit, plants, shrubs, or other carrier of insect pests or plant diseases, in violation of any quarantine proclamation or regulation issued by the Commissioner of Agriculture. The transportation and/or delivery of any fruit, plants, shrubs or other carrier of insect pests or plant diseases in violation of any quarantine proclamation and/or regulations issued by the Commissioner of Agriculture as provided for in this Act,[1] by any railroad company, steamship, motor-boat, motor bus, truck or other carrier (private or common) shall subject such person, persons, association, partnership or corporation so violating, to a penalty in the sum of Five Hundred ($500.00) Dollars to be recovered in a suit therefor to be instituted by the Attorney General on behalf of the State of Texas. Venue for such action is specifically provided for in Travis County, Texas.

1 Pen.Code, art. 1700a—1.

Investigation and report by Commissioner of Agriculture to Commissioners' Court; notice and hearing

Sec. 8. When so requested by the Commissioners' Court of any county in this State, the Commissioner shall cause an investigation to be made to determine whether or not any certain insect pest or pests or plant disease or diseases exist in such county or in any part thereof, and shall cause a written report to be made to the said Commissioners' Court which shall contain a statement as to the nature of the infestation, if any, the best known means or method of circumscribing, eradicating, controlling or exterminating the same, and shall state therein specifically what treatment or method is necessary to be applied in each case, as the matter may require, with detailed statement or description as to the method of making or procuring and of applying any preparation or treatment so recommended therefor, and the time and duration for such treatment. Upon receipt of such statement, the Commissioners' Court of such county is hereby authorized to cause the same to be published two (2) consecutive weeks in some newspaper of general circulation in the area or areas under consideration, together with notice of hearing to be held by said Commissioners' Court, which hearing shall be held not less than fifteen (15) days after the first notice shall have been published, at which hearing all persons interested shall have the right to be heard. After such hearing, the said Commissioners' Court shall make a report to the Commissioner, giving its conclusions. If such report approves the recommendations that shall have been made, and the Commissioners' Court of such county believes that such measures as shall have been recommended should be applied in such area or areas that may be under consideration; then the said Commissioners' Court shall, by an order duly entered in its Minutes, request the said Commissioner to establish a "control" or "eradication" zone, as the matter may require, in said area, and the Commissioner shall issue a proclamation creating such area or areas as may be designated an "eradication" zone or "control" zone, as the case may be, and shall prescribe rules and regulations governing the circumscribing, control, eradication or extermination of such pest or disease, and thereafter it shall be unlawful for any person to do any act prohibited by such rules and regulations, or refuse to do anything commanded to be done by such rules and regulations. The Commissioners' Court of the several counties shall have full power and authority to appropriate funds from the general revenue of the county and to employ such aid as may be necessary to carry into effect this provision.

Penal provision

Section 9 of this Act being a penal provision is published as Pen. Code, art. 1700a—1.

Destruction of plants for violation of quarantine; notice and hearing

Sec. 10. When any plants, plant products, things or substances are transported or carried from any area (whether within or beyond the boundary of the State of Texas) quarantined, or declared infested under the provisions of this Act,[1] in violation of a quarantine order preventing such transportation or movement, it shall be the duty of the Commissioner to take possession of same and give immediate notice to the owner thereof that such plants, plant products, things or substances as have been transported are a public menace and shall be destroyed, or, if practical, returned to the point of origin; or, if any plants, plant products, things or substances moved into the State or from any part of the State to another part are discovered to be infested with an insect pest dangerous to any agricultural or horticultural product, whether or not such plants, plant products, things or substances came from an area known to be infested, it shall be the duty of the Commissioner to take possession of them and give notice to the owner thereof that same are a public menace and shall be destroyed. It is specially provided that if and whenever the name of the owner of such plants, plant products, things or substances is unknown to said Commissioner of Agriculture, then in such event, the said Commissioner shall give notice that after a certain specified date, not less than ten days after the first publication of said notice, he will proceed to cause to be destroyed such plants, plant products, things or substances. Said notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county where such plants, plant products, things or substances were found, and said notice shall describe said Articles. If the owner thereof claims the said Articles prior to the date set by said notice, for destruction thereof, they shall be turned over and delivered to such owner at his own expense. If such claim is not made, the Commissioner, is hereby authorized to destroy and cause to be destroyed such Articles.

Continuation of previously established zones

Sec. 11. All control zones or eradication zones heretofore established in the Counties of Hidalgo, Willacy and Cameron, under the provisions of Chapter 69, Acts of the Regular Session of the 40th Legislature,[1] for the control of the Mexican fruit worm, Anastrepha ludens, Loew, are hereby validated and carried forward, and all quarantines, rules and regulations now in effect prohibiting the importation into this State, or dissemination within the State of any fruits, plants or other known carriers of dangerous insect pests and plant diseases are hereby validated and shall remain in full force and effect until abrogated by proclamation of the Commissioner of Agriculture, and hereafter all fruit and plants infested or contaminated with dangerous insect pests or plant diseases known to be a menace to agricultural and horticultural products in such control zones shall be destroyed or treated so as to render them free from such infestation, and when an orchard is found to be infested by such pest or diseases in said control zones, no fruit from the infested orchard or any adjoining orchards shall be moved or allowed to be moved until a committee, appointed by the Commissioners' Court of such county, shall have determined the extent of the infestation and shall have effected the destruction or processing of all contaminated fruit, and it shall be unlawful for the variety of citrus known as "sour orange," with ripe or ripening fruit thereon, to be maintained in said control zones between March 1st and October 1st, and such fruit is hereby declared to be a public nuisance, and in like manner all other citrus fruit trees neglected by the owner thereof to the extent that they may have ripe or ripening fruit thereon between the above mentioned dates are public nuisances, and the same shall be destroyed, and provided further, that all other fruit trees known hosts of the Mexican fruit worm having ripe or ripening fruit thereon between March 1st and October 1st in the said control zones are declared to be public nuisances and their destruction a public necessity, and when such trees have ripe or ripening fruit thereon between the dates of March 1st and October 1st, as evidenced by affidavits of three (3) citizens of the county, it shall be the duty of the Commissioner of Agriculture to order such tree or trees and fruit destroyed. And any person or persons who shall sell or move any fruit from any area within the control zones which has been found to be contaminated or infested with the Mexican fruit worm shall be subject to the penalties in the manner as provided in Section 9 [2] hereof.

1 Arts. 135a–135d, repealed.
2 Pen.Code, art. 1700a—1.

Enforcing destruction on refusal of owner

Sec. 12. In the event any person, firm or corporation owning fruit trees or fruit condemned by the Commissioner in accordance with this Act or regulation herein authorized, shall fail or refuse to destroy such trees or fruit immediately after having been instructed to do so by the Commissioner of Agriculture, or his authorized agent, or representative, or any inspector working under the Commissioner of Agriculture; then it shall be the duty of said Commissioner of Agriculture, or his authorized agent or representative, or the inspector working under the Commissioner of Agriculture, to abate the nuisance and to forthwith destroy such trees or fruit, or otherwise render them not a nuisance. And in carrying out this provision, the Commissioner of Agriculture, or his authorized agent or representative, or the inspector working under the Commissioner of Agriculture, as the case may be, shall call upon the sheriff of the county in which the fruit or fruit trees are located for such assistance in the premises as may be deemed necessary by the person seeking to destroy such fruit or trees, and it shall be the duty of such sheriff to render all necessary assistance in destroying such trees, plants or fruit, and to cooperate with and assist the said Commissioner of Agriculture, or his authorized agent and representative, or the inspector working under the Commissioner of Agriculture, in carrying out the provisions of this Section. [Acts 1929, 41st Leg., 2nd C.S., p. 21, ch. 15.]

Section 13 makes the act cumulative of all laws providing for quarantine regulations and inspection of plants, fruits and shrubs, except articles 135a to 135d, and article 1700a, Pen. Code, which are expressly repealed.

Art. 135a—2. Mexican fruit fly control and eradication.

Definitions

Section 1. (1) This Act shall be known and may be cited as the Mexican Fruit Fly Control and Eradication Act.

(2) As used in this Act, unless otherwise apparent from the context:

(a) The present tense includes the past and future tenses; and the future, the present.

(b) The masculine gender includes the feminine and neuter.

(c) The singular number includes the plural and the plural, the singular.

(d) "Department" means the Department of Agriculture of the State of Texas.

(e) "Commissioner" means the Commissioner of Agriculture of the State of Texas.

(f) "Section" means the Section of this Act unless some other Act is specifically mentioned.

(g) "Person" includes individual, partnership, firm, corporation, company, or association.

(h) "Sale" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

(i) The word "premises" as used in this Act shall mean any grove, orchard, farm, yard, lawn, or tract of land upon which citrus or other host fruit is grown, whether or not the same shall be enclosed, or any barn, storehouse, warehouse, shed, boxcar, truck, or any other building, receptacle, or conveyance whatsoever susceptible of use for the storage, packing, processing, or transportation of citrus or other host fruits.

(j) The words "host-free period," when used in this Act, shall be construed to mean a period of time during which no host fruits in any stage of development shall be produced or permitted to remain upon trees in the quarantined area. The Commissioner is hereby authorized to adopt the host-free period promulgated by the United States Department of Agriculture in the Citrus Quarantine Regulations governing Mexican fruit fly quarantine in the State of Texas, and this Act shall conform to such period as promulgated by the United States Department of Agriculture as to the beginning, continuance, and end of such host-free period.

(k) The words "host fruit," as used in this Act, shall be construed to mean fruits susceptible to infestation by the Mexican fruit fly, namely, mangoes, sapotas (including sapodillas and the fruit of all members of the family Sapotaceae and of the genus Casimiroa and all other fruits commonly called sapotas or sapotes), peaches, guavas, apples, pears, plums, quinces, apricots, mameys, ciruelas, and such other fruits as may in the future be found to be host to the Mexican fruit fly and are specifically declared to be host fruits by the Commissioner, and all citrus fruits except lemons, sour limes, calamondin, and normal-bloom citrus. The words "normal-bloom citrus," as used in this paragraph, shall be construed to mean that citrus which, because of its stage of development during the host-free period, will mature during the normal harvesting period. The "normal harvest period," as the words are used in this paragraph, shall be construed to mean that period of the year not within the host-free period. It is the intent of the Legislature and it is hereby specifically provided that all old crop fruit be removed from all premises in the quarantined area at the beginning of the annual host-free period.

(l) The words "fruit fly," as used in this Act, shall be construed to mean the insect known as the Mexican fruit fly, or Anastrepha ludens, Loew.

(m) The term "infested premises," as used in this Act, shall be construed to mean those premises upon which larvae of the Mexican fruit fly have been found or are known to exist.

(n) The "quarantined area," as the term is used herein, is hereby construed to mean those counties and parts of counties designated for fruit fly eradication or control by the Commissioner and proclaimed by the Governor of the State of Texas, as is herein provided.

(o) The "modified quarantined area" is hereby defined as meaning those counties or parts of counties which shall be designated as such by the Commissioner and proclaimed by the Governor of the State of Texas under the terms of this Act. The "free area" is hereby defined as meaning those counties or parts of counties which have not been designated by the Commissioner and proclaimed by the Governor to be quarantined or modified quarantined area.

Persons enforcing as peace officers

Sec. 2. (1) Any person in whom the enforcement of any provision of this Act is invested has the power of a peace officer as to such enforcement.

(2) The District or County Attorney of any county in which a violation of any provision of this Act occurs shall, upon the request of the Commissioner, his deputies, inspectors, any enforcing officer, or other interested person, prosecute such violation.

(3) Unless a different penalty is expressly provided, a violation of any provision of this Act is a misdemeanor.

(4) Whenever any notice, report, statement, or record is required by this Act, it shall be in writing, unless it is expressly provided that it may be oral.

(5) Whenever any notice, report, statement, or record is required by this Act to be kept or made in writing, it shall be in the English language.

(6) Whenever any power or authority is given by any provision of this Act to any person, it may be exercised by any deputy, inspector, or agent duly authorized by him, unless it is expressly provided that it shall be exercised in person.

(7) As used in this Act, the word "shall" is mandatory and the word "may" is permissive.

(8) The Commissioner may enter upon any premises to inspect the same or any tree, plant, shrub, or fruit growing or stored therein.

(9) The Commissioner is hereby authorized to promulgate and adopt rules and regulations for carrying out those provisions of this Act which he is directed and authorized to administer and enforce.

Commissioner of Agriculture; powers and duties

Sec. 3. (1) It shall be the duty of the Commissioner to control and/or eradicate the Mexican fruit fly in the State of Texas and to protect all premises, as defined herein, within the State of Texas from such pest. The Commissioner shall adopt necessary rules and regulations to be proclaimed by the Governor of the State of Texas for carrying out the provisions of this Act.

(2) It shall be the duty of the Commissioner, when advised of the existence of Mexican fruit fly within any county or part of county in this State, to certify such fact to the Governor of Texas who shall then proclaim such county or part of county to be quarantined, and such county or part of county shall thereafter be dealt with by the Commissioner as is herein provided. The following Counties and parts of Counties in the State of Texas are hereby declared to be quarantined area and are hereby quarantined because the Mexican fruit fly is therein known to exist, to wit: the Counties of Cameron, Hidalgo, and Willacy.

(3) The Commissioner is hereby authorized, when, in his judgment, the exigencies of the situation so require, to designate a modified quarantined area, which designation is to be by the Commissioner certified to the Governor to be proclaimed as such. The Commissioner shall adopt such rules and regulations as are necessary for the regulation of such modified quarantined area.

(4) It shall be the duty of the Commissioners Court of any county in a quarantined or modified quarantined area to appoint a committee of five (5), such committee to be known as the "Citrus Quarantine Advisory Committee," and said committee shall be composed of four (4) growers of citrus fruits, to be nominated and appointed by said Commissioners, Court subject to the approval of the Commissioner, and one representative of the Commissioner to be nominated by said Commissioner and appointed by said Court. It shall be the province of said committee, when advised by the Commissioner that an infestation exists within any premises in said county, to determine the extent of such infestation, and when the extent of such infestation shall have been determined by such quarantine advisory committee, such committee shall recommend to the Commissioner the procedure for eliminating such infestation.

(5) Whenever any county, part of county, district, or territory is designated for fruit fly control and/or eradication by the Commissioner and proclaimed by the Governor, as herein provided, said proclamation shall contain a provision quarantining said county, part of county, district, or territory, and the effect of

such quarantine shall be to quarantine said county, part of county, district, or territory and all premises therein of each individual, owner, lessee, renter, tenant, and occupant in the designated county, part of county, district, or territory without specifically designating said land or premises. The quarantine of such area shall be considered as continuing until said quarantine has been modified or removed by the Commissioner.

(6) When any premises within the quarantined area are found by an accredited entomologist to be infested, as the term is defined herein, such entomologist shall certify the fact of such infestation to the Commissioner. It shall thereupon be the duty of the Commissioner to satisfy himself as to the existence of such infestation and the extent thereof. The Commissioner may refer the fact of such infestation to the Citrus Quarantine Advisory Committee of the county in which such premises are located, or if such premises be located in more than one county, then to the Citrus Quarantine Advisory Committee of any county in which a portion of such premises lies situate. It shall be the duty of the Commissioner to decide the manner best suited to the control and/or eradication of such infestation, taking into consideration the recommendations of the Citrus Quarantine Advisory Committee as to the procedure to be followed. The findings of the Commissioner, together with the directions of the Commissioner, shall be reduced to writing and a copy of such instrument in writing shall be served upon the owner of said premises immediately; such directions shall be mandatory and the owner of said premises shall immediately proceed to comply with such order as regards said premises. The failure to obey such mandatory order of the Commissioner and to place such premises in compliance therewith shall, from and after the effective date of this Act, be a misdemeanor and any person disobeying such mandatory order of the Commissioner shall, on conviction, be fined not more than Two Hundred Dollars ($200).

(7) The maintenance of any premises, as herein defined, within the fruit fly quarantined area in an unhusbandlike or unsanitary condition is hereby declared to be a public nuisance. The words "unhusbandlike and unsanitary," as used herein, shall be construed to mean the maintaining of such premises with host fruit upon trees located on such premises during the host-free period, or the maintaining of such premises with fallen, refuse, or cull fruit upon the ground, such fallen, or refuse, or cull fruit having been permitted to remain upon the ground and/or premises for a period of seven (7) days during the harvest period. It is the intention of the Legislature that the cleaning of such premises once in each seven-day period within such harvest period shall be mandatory and any person who, within the harvest period, as the same is in this Act defined, shall fail to clean the fallen, or refuse, or cull fruit from his premises at least once in each successive seven-day period, and dispose of the same in a manner satisfactory to the Commissioner, or bury the same at a depth of not less than eighteen (18) inches beneath well tamped soil, or who shall maintain any premises with host fruit upon the trees located on such premises during the host-free period, shall be guilty of maintaining a public nuisance and such person shall, on conviction of maintaining such public nuisance, be fined any sum not to exceed Two Hundred Dollars ($200).

(8) The Commissioner is hereby authorized to direct owners, part owners, and caretakers of premises subject to the terms of this Act, to place such premises in husbandlike and sanitary condition, said direction to be in writing and signed by said Commissioner or his agent, which signature may be written or stamped thereon; the same shall be dated and shall direct said owner, or part owner, or caretaker, whether such owner, part owner, or caretaker be a person, firm, or corporation, to place such premises in a sanitary condition under the supervision of an inspector of said Commissioner. In the event that the owner of said premises be a nonresident of the State of Texas, the direction of the Commissioner as to the placing of such premises in a sanitary condition shall be sufficient if ten (10) days' notice be given to such nonresident owner by registered mail by said Commissioner and/or his agent or inspector.

(9) Whenever the Commissioner shall issue sanitation directions in writing to any owner, part owner, or caretaker of any premises which are located in the quarantined area, it shall be the duty of said owner, part owner, or caretaker to place such premises in a sanitary condition as directed in such written directions. Any owner, part owner, or caretaker of any premises, as herein defined, who fails or refuses, after the expiration of a ten-day period of notice, as provided herein, to place such premises in a sanitary condition, as herein defined, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than Two Hundred Dollars ($200). From and after the effective date of this Act, the maintenance by any person on any premises within the quarantined area of any growing host fruit, as herein defined, within the host-free period, as herein defined, shall be unlawful, and any person convicted of a violation of this provision shall be fined not more than Two Hundred Dollars ($200).

Appeals from orders of Commissioner

Sec. 4. (1) Any person, firm, or corporation aggrieved by any order of the Commissioner may appeal to any Court of competent jurisdiction within the county in which such premises lie situate.

(2) Owners and caretakers of premises subject to sanitary directions of the Commissioner under the provisions of this Act, shall furnish all necessary labor at their own expense for placing such premises in a husbandlike and sanitary condition. Administrators, executors, and guardians are hereby declared to be the caretakers of the premises within their jurisdiction and control and shall be held responsible for the execution of all sanitary directions issued by the Commissioner relating in whole or in part to the estate under their control by reason of said administration or guardianship. Husband and wife shall be held jointly and severally liable for the execution of sanitary directions of the Commissioner relating to their community estate, and the husband shall be held liable for the execution of such directions relating to his separate estate, and the wife shall be held liable for the execution of such directions relating to her separate estate, providing that the husband shall be held liable for failure to follow directions of the Commissioner relating to the separate estate of the wife, and the wife shall be held liable for the execution of directions of the Commissioner relating to the separate property of the husband, if either is the caretaker of such premises belonging to the separate estate of the other.

(3) When the Commissioner ascertains that a person, firm, or corporation is the owner, part owner, or caretaker of any premises which are subject to sanitary direction of the Commissioner under the provisions of this Act, and such directions are issued by the Commissioner, as herein provided, it shall be presumed that, at and on the date of the expiration of the notice period herein provided, said person, firm, or corporation was still the owner, or part owner, or caretaker, as the case may be, of such premises, and it shall only be necessary for the State to allege and prove that at the time of the service of said written sanitary directions, said person, firm, or corporation was the owner, or part owner, or caretaker of such premises subject to the sanitary directions of the Commissioner.

(4) Upon the failure of any owner, part owner, or caretaker to comply with a written sanitary order of

the Commissioner, under the terms and provisions of this Act, in the manner and within ten (10) days from and after the receipt of such written sanitary order, it shall be the duty of the Commissioner and/or his agents or inspectors to institute proceedings in a Court of competent jurisdiction in the county in which such premises lie situate to have such premises declared a nuisance by law. No cost bond shall be required of the Commissioner or his agents in the filing of such proceeding. The Commissioner and/or his agents or inspectors may, if the circumstances so warrant, petition the Court to appoint a receiver for such premises. The Court shall hear the petition with regard to such premises in termtime or in vacation, and if heard in vacation the same may be as fully disposed of and all issues determined in vacation the same as in termtime. The owner of such premises shall give such notice as the Court shall deem necessary. If, in the judgment of the Court, such premises are found to be a public nuisance, it shall be the duty of the Commissioner, his agents, or inspectors to go upon such premises with a sufficient number of helpers and to place such premises in compliance with the directions of the Commissioner. The Commissioner, his agents and/or inspectors shall be allowed the sum of not to exceed Twenty-five (25) Cents per man hour for each and every hour actually expended in placing such premises in compliance with the written directions of the Commissioner, together with an additional fee in the sum of Twenty-five Dollars ($25), which is hereby declared to be a reasonable recompense for the time involved in the execution of such compliance order, and is in no wise to be construed as a penalty. The aforesaid sum of Twenty-five Dollars ($25) shall be delivered to the Commissioner, who shall place the same in a fund to be known as the "Orchard Sanitation Fund" and the same shall be expended in the enforcement of the provisions of this Act by the Commissioner. A lien is hereby given said Commissioner, his agents, and/or inspectors upon all citrus fruit growing or standing on such premises for the purpose of securing the payment of the aforesaid sums, and said officers are authorized to retain in their possession and sell at public sale to the highest bidder at any time at the courthouse door of said county such citrus fruit as may be found upon said premises for the purpose of paying the fees herein provided, the residue, if any, to be paid to the owner of said premises or paid to the County Treasurer subject to the order of the owner, provided, however, that if, in the judgment of the Court, a receiver for such premises be named, and such receiver shall be named, then the provisions of this Section as to the sale of fruit found upon said premises shall be executed by said receiver and the fees herein provided for such services as shall be rendered by the Commissioner, his agents, and/or inspectors, shall be paid to the Commissioner by said receiver and the residue, if any, shall be paid by said receiver to the owner of said premises or to the County Treasurer subject to the order of said owner.

(5) In lieu of the sale of said citrus fruit, as provided in the preceding Section, said officer may fix said lien by filing with the County Clerk of the county in which said premises are located, a sworn statement of said indebtedness, together with a description of the property or properties upon which said lien is to be placed. Such lien shall be filed within thirty (30) days after the enforcement of the directions of the Commissioner by said officers, and suit shall be filed in a Court of competent jurisdiction against the owner of said premises within twenty-four (24) months after filing said statement for the collection of said account and the foreclosure of said lien. No cost bond shall be required of said officer filing said suit, nor of any person to whom said account may be assigned. The Court shall enter judgment for said debt with interest and costs of suit and foreclosing said lien on such premises as the Court may deem necessary for defraying said expenses and paying said fees to said officer and Court costs. Said officer may file a separate statement and separate suit covering each necessary compliance with a written direction of the Commissioner, or may wait until a number of them accrue and sue in the aggregate in one suit and a statement may be filed covering all of said necessary compliances with written directions of the Commissioner.

Peace officers may perform acts of Commissioner

Sec. 5. (1) Where, by any provision of the two (2) preceding Sections of this Act, the Commissioner, his agent, and/or inspector is authorized to perform any act, the same shall also include any and all peace officers of this State who may be legally authorized by any law to perform service in such territory.

(2) Any resident or residents of any county or part of county in which fruit fly control and/or eradication is being conducted may bring mandatory injunction to compel owners, part owners, or caretakers to place their premises in sanitary condition under the provisions of this Act after said owner, part owner, or caretaker has failed or refused, or is threatening, or has threatened to refuse or fail to comply with the written directions of the Commissioner, and the Court may, in termtime or vacation, upon notice to the defendant, hear and determine the same, and if the Court finds that said owner, part owner, or caretaker has been served with a written sanitary direction from the Commissioner, and that the defendant's premises are subject to said order, and that the material allegations in plaintiff's petition are true, the Court shall enter its order commanding said owner or caretaker to instantly comply with the written directions of the Commissioner, and upon failure of said person to comply with said written directions of the Commissioner, he shall then be held liable for contempt of Court and punished accordingly.

(3) Whenever the Commissioner ascertains that there are premises in any county in which fruit fly control and/or eradication is being conducted under the provision of this Act for which he can locate no owner or caretaker, said Commissioner is hereby authorized to seize the citrus fruit growing or standing on said premises and to sell the same in the manner and for the purposes heretofore provided.

(4) Any person, firm, or corporation, or transportation company who shall haul, or truck, or otherwise move any citrus fruit from any premises as herein described, or from any county, or part of county, or territory, or district which is under quarantine by virtue of this Act or by any order of the Commissioner of Agriculture of the State of Texas, or by a proclamation of the Governor of the State of Texas because of fruit fly infestation as provided for in this Act, in violation of said quarantine without a written permit or certificate of an inspector of the Department of Agriculture of the State of Texas, or inspector of the Bureau of Entomology and Plant Quarantine of the United States Department of Agriculture, or who shall so move into the State of Texas from any State, nation, territory, or area under quarantine for fruit fly infestation by the said Commissioner of Agriculture of the State of Texas, or by the United States Bureau of Entomology and Plant Quarantine, or by the sanitary authorities of the State, or nation, or territory from which they are moved without a certificate from the Commissioner of Agriculture of the State of Texas, or that having such permit or certificate from said Commissioner shall ship, truck, or in any manner transport such citrus fruit from said quarantined premises to any other place than the place designated by such certificate or permit, shall be fined not more than Two Hundred Dollars ($200). Any owner, part owner, or caretaker of such premises or citrus fruit, who shall permit or allow such citrus fruit to be shipped or transported, or otherwise moved

in violation of this Act without said permit or certificate, shall be deemed guilty of violating this provision the same as if he had personally shipped or transported such citrus fruit.

(5) Any resident of this State may bring injunction suit to compel the compliance with any provisions of this Act or restrain any threatened violation of same. Said injunctions and mandamus proceedings may be heard in vacation or termtime and if heard in vacation, the same may as fully be disposed of and all issues determined in vacation the same as in termtime. Notice of said hearing to the opposite party may be given under the direction of the Court, if, in the opinion of the Court, the ends of justice require such notice.

Penalty

Sec. 6. The violation of any of the terms or provisions of this Act is hereby declared to be a misdemeanor, and any person found guilty of the violation of any of the terms or provisions of this Act shall, on conviction, be fined not to exceed Two Hundred Dollars ($200).

Provisions cumulative

Sec. 7. This Act shall be cumulative of all laws now on the Statutes providing for quarantine regulations and the inspection of plants, fruits, and shrubs to prevent the importation or dissemination of dangerous insect pests and plant diseases in this State.

Severable construction

Sec. 8. If any section, subsection, sentence, clause, or phrase of this Act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional. [Acts 1937, 45th Leg., p. 486, ch. 247.]

Art. 135a—3. Insect pests and plant diseases common to citrus fruit.

Quarantine

Section 1. If the Commissioner of Agriculture of this State, hereinafter called the "Commissioner," determines the fact that any dangerous insect pest or plant disease, new to and not heretofore widely distributed in the State, exists in any area outside of Texas, he is hereby authorized and it is made his duty, to establish, maintain, and enforce a quarantine at the boundaries of this State or elsewhere within the State against such infested area and shall prevent the movement from such quarantined area or areas into this State or into any part of it of any plants, plant products, things or substances liable to disseminate the pests or plant diseases named in Section 2 hereof, provided that nothing herein shall be construed to prevent the movement of such plants, plant products, things or substances into this State from a quarantined area under such safeguards as the Commissioner shall deem adequate to prevent the introduction into this State of dangerous insect pests or plant diseases quarantined against.

Nothing in this Act shall be deemed to authorize the Commissioner or the Department of Agriculture to expend money without the State of Texas, or to send employees without the State of Texas, or to employ persons without the State of Texas. The provisions of this Act shall apply solely to diseases, pests and infections common to citrus fruit.

Certain insect pests and plant diseases declared public menaces

Sec. 2. The following named insect pests and plant diseases which are not known to be widely distributed in Texas, are hereby declared public menaces and their introduction into this State is hereby stated to be of serious jeopardy to the citrus industry and horticulture of Texas:

Black scale, Saissetia oleae
Branch-and-twig borer, Polycaon confertus
Long-tailed mealy bug, Pseudococcus Longispinus
Orange-peel miner, Marmara species
Withertip of lime, Glocosporium Limetticolm
Scaly bark, Cladosporium herbarum

It is known that these pests and public nuisances occur in a widely distributed area of the United States, and the unregulated movement of citrus trees and fruits, which are host plants of these pests, into Texas would result in the distribution of the pests throughout the State.

Shipments into state—Certificate of inspection

Sec. 3. Provided that no person, partnership, or corporation outside the State shall be permitted to ship citrus nursery stock or citrus fruit into the State of Texas without first having filed with the Commissioner of Agriculture a certified copy of certificate of inspection issued by the proper authorities of the State in which the shipment originates; such certificate must show that the stock or the fruit to be shipped has been produced in a county known to be free of the above-mentioned pests or that the stock or fruit has been fumigated by a method that will render it free of pests infestation and such method must be approved by the Commissioner of Agriculture of this State.

Shipments of citrus fruit or nursery stock—Certificate—Permit

Sec. 4. No transportation company or common carrier shall receive, transport or deliver shipments of citrus nursery stock or citrus fruit originating without this State which do not bear shipping tags or labels showing the certificate of inspection of the State in which it originates, together with the Commissioner's permit from the State of Texas.

Shipments not accompanied by certificate

Sec. 5. No transportation company or common carrier shall be liable for damages to the consignee or consignor for refusing to receive for transportation or deliver such trees or fruit, packages, bales, bundles, or boxes of trees or fruit, when not accompanied by copies of the certificates provided for by this Act. The agent of any such company or carrier shall immediately report to the Commissioner of Agriculture any such shipment not so accompanied.

Penalty for violation

Sec. 6. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200). [Acts 1939, 46th Leg., p. 55.]

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

Definitions

Section 1. (a) The term "agricultural insecticide" as used in this Act shall include any substance or mixture of substances offered for use for preventing, destroying, repelling, or mitigating any insects or pests which may infest agricultural crops, including fruits, vegetables, ornamentals, shade and forest trees.

(b) The term "Paris green" as used in this Act shall include the product sold as Paris green and chemically known as aceto-arsenate of copper.

(c) The term "calcium arsenate" as used in this Act shall include the product or products sold as calcium arsenate and consisting chemically of products derived from arsenic acid (H_3ASO_4) by replacing one or more hydrogen atoms by calcium.

(d) The term "fungicide" as used in this Act includes any substances or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any and all fungi, including rusts, smuts, mildew, molds, yeasts, and bacteria that may infest vegetation.

(e) The term "insect" shall include the forms of life to which the term insects is technically applied.

(f) The term "pests" shall include mites, ticks, rodents and weeds, and all other things generally referred to as pests; provided, however, that the specific enumeration included herein shall not exclude under this definition those things generally referred to as pests.

Adulterated products

Sec. 2. For the purpose of this Act a product shall be deemed to be adulterated in the following cases:

(a) In the case of Paris green: First, if it does not contain at least fifty (50%) per centum of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half (3½%) per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

(b) In the case of powdered standard lead arsenate, also known as acid or diortho lead arsenate: First, if it contains total arsenic equivalent to less than thirty (30%) per centum of arsenic oxide (AS_2O_5); second, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths (75/100%) per centum of arsenic oxide (AS_2O_5); third, if any substance has been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength; provided, however, that extra water may be added to lead arsenate if the resulting mixture is labeled arsenate of lead and water, the percentage of extra water being plainly and correctly stated on the label.

(c) In the case of calcium arsenate: First, if it contains total arsenic equivalent to less than forty (40%) per centum of arsenic oxide (AS_2O_5); second, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths (75/100%) per centum of arsenic oxide (AS_2O_5); third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

(d) In the case of agricultural insecticides or fungicides, other than Paris green, lead arsenate and calcium arsenate: first, if its strength or purity fall below the professed standard of quality under which it is sold; second, if any substance has been mixed and packed with it so as to reduce, lower or injuriously affect its quality or strength; third, if it is intended for control of insects or diseases on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling, or mitigating insects or diseases, shall be injurious to such vegetation when properly used, except in the case of weed killing chemicals.

Coloring

Sec. 3. It shall be unlawful to sell or offer for sale within the state, any white powdered agricultural insecticide or fungicide, highly toxic to man, unless such agricultural insecticide or fungicide is distinctly colored.

Misbranded articles

Sec. 4. For the purpose of this Act an article shall be deemed misbranded:

(a) If it be an imitation or offered for sale under the name of another article.

(b) If it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, unless relabeled to conform with the provisions of this Act.

(c) If the statements required in Section 5 are not branded or set forth on the label of each package.

(d) If any false or misleading statements are made on the package or in any printed matter accompanying the package.

Branding and labeling

Sec. 5. All corporations, firms, or persons, before selling or offering for sale any agricultural insecticide or fungicide for use within this state, shall brand or attach to each package a plainly printed statement, showing the brand or name of said insecticide or fungicide; the net weight, or volume if liquid, of the contents of the package; the name and address of the corporation, firm, or person registering said insecticide and the minimum percentage guaranteed to be present, of total arsenic, and the maximum percentage of water-soluble arsenic if such are present, and the names and percentage amounts of each inert ingredient; or, in place of the names and percentage amounts of each inert ingredient, the names and percentage amounts of each and every ingredient having insecticidal or fungicidal properties, and the total percentage of inert ingredients. All branding or labeling must be durable and legible, and so placed and arranged as to be easily read.

If any form of mineral oil is a component part, or the whole of an agricultural insecticide or fungicide intended to be used on vegetation, the label shall further show the minimum guaranteed percentage by weight or by volume of the amount of mineral oil present, the minimum guaranteed unsulphonated residue of said oil expressed in percentage of said oil.

The label on sulphur and mixtures containing same shall further show the percentage of sulphur present. In the case of ground sulphur the minimum guaranteed degree of fineness of the sulphur, according to methods generally recognized by the sulphur industry, also shall be shown.

Registration; filing copy of label; statement; cancellation of registration for misbranding or adulteration; injunction; procedure

Sec. 6. (a) All firms, corporations, or persons now or hereafter engaged in selling agricultural insecticides or fungicides, before selling or offering for sale any agricultural insecticide or fungicide for use as an agricultural insecticide or fungicide within this state, shall annually file with the Commissioner of Agriculture an application for registration giving the information required by Section 5 of this Act; provided, however, that all firms, corporations, or persons, now, at the time of the passage of this Act, selling or offering for sale any agricultural insecticide or fungicide for use as an agricultural insecticide or fungicide within this state, shall have thirty (30) days from the effective date of this Act within which to file first applications for registration as required by this Act.

(b) A copy of the label to be attached to each package shall be filed with the Commissioner of Agriculture on or before delivery to the dealers, agents or consumers in this state; and such label shall truly set forth the data required in Section 5 of this Act; and be otherwise in accordance with the provisions of this Act. On receipt of the application for registration above described, the registration fee, and the copy of the label, and after all other requirements of this Act have been complied with, the Commissioner of Agriculture shall issue a certificate of registration for the agricultural insecticide or fungicide, which shall be in force until the succeeding September first.

(c) Any firm, corporation, or person, who has registered agricultural insecticides or fungicides for sale within the State of Texas, shall furnish upon

request of the Commissioner of Agriculture, within five (5) days of receipt of such request, a statement showing the official name of the agricultural insecticide or fungicide and the names and addresses of a reasonable number, not exceeding ten persons, within the State of Texas, to whom it has been sold.

(d) Whenever it shall appear to the Commissioner of Agriculture that any firm, corporation, or person is selling or offering for sale any misbranded or adulterated agricultural insecticide or fungicide for use in this state as an agricultural insecticide or fungicide which has been registered under the provisions of this Act, it shall be the duty of the Attorney General, or any District or County Attorney of this State, upon request of the Commissioner of Agriculture, in addition to any other remedies, to institute a civil suit in the District Court of the proper county in the name and on behalf of the State of Texas, as plaintiff, and in the name of the firm, corporation, or person to whom the registration certificate was issued for such agricultural insecticide or fungicide, as defendant, to forfeit and cancel such registration, and service shall be had as in other civil cases. Any and all suits brought by the state under this section must be brought in Travis County, or in the county of the domicile or residence of the manufacturer of the agricultural insecticide or fungicide, or in the county where the agricultural insecticide or fungicide was sold or offered for sale, or in the county where the agricultural insecticide or fungicide was to be used or is used as an agricultural insecticide or fungicide.

If, upon the trial of such cases, it shall be determined that said agricultural insecticide or fungicide is misbranded or adulterated within the meaning of this Act, then the registration of such agricultural insecticide or fungicide shall be forfeited and cancelled and the sale of such misbranded or adulterated agricultural insecticide and fungicide shall be enjoined in accordance with the judgment of the Court.

In all proceedings begun under this section, either party may demand trial by jury of any issue of fact joined in any such case, and either party shall have the right of appeal as in other civil cases. All suits instituted under this section shall be advanced for trial and be determined as expeditiously as possible, and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Court.

The Texas Rules of Civil Procedure shall govern the procedure in all proceedings begun under this section, except that no bond for injunction shall be required of the State of Texas, and except as otherwise provided herein.

Inspection or sampling

Sec. 7. The Commissioner of Agriculture in person or by duly authorized representative shall have the power to enter into any building or place owned, controlled or operated by a registrant or dealer where, from probable cause, it reasonably appears that said building or place contains agricultural insecticides or fungicides, for the purpose of inspection or sampling, and shall have the power to take a sample for analysis, not exceeding two pounds, from any package or lot of agricultural insecticides or fungicides found within the state; and said samples shall be sealed and transmitted directly to the State Chemist at the Agricultural and Mechanical College of Texas at College Station. Upon the request of the Commissioner of Agriculture, it shall be the duty of the State Chemist to make such examination and analysis or to have the same made by duly authorized representative under his direction. All of such analyses shall be made by the methods of the Association of Official Agricultural Chemists of North America, if the necessary method has been adopted; or in the absence of such method, the State Chemist shall be authorized to select a method.

Notice of misbranding or adulteration; prosecutions; annual reports

Sec. 8. (a) If it shall appear from the examination and analysis of any of such samples that the same is misbranded or adulterated within the meaning of this Act, the State Chemist shall certify the results to the Commissioner of Agriculture, who shall cause notice thereof to be given to the manufacturer of said products, and said notice shall be accompanied by a copy of said analysis so made, together with a statement by said Commissioner as to where such samples were taken. A portion of any sample taken for examination and analysis shall be furnished by the State Chemist to the manufacturer of such product upon his request being made within thirty (30) days after receipt of such notice and statement. It shall be the duty of each prosecuting attorney of this state to whom the Commissioner of Agriculture shall report any violation of this Act to cause appropriate proceedings to be commenced and prosecuted in the proper courts of this state, without delay, for the enforcement of the penalties as in such case herein provided.

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

Submitting samples for analysis; fee

Sec. 9. Any person not a dealer in, or agent for, the sale of any agricultural insecticides or fungicides, who may purchase any agricultural insecticides and fungicides for his own use within this state and not for sale, may submit a sample of same for analysis, to the State Chemist, whereupon it shall be the duty of said State Chemist to make an analysis of said insecticides or fungicides for ingredients, which said analysis shall be made according to a method given by the Association of Official Agricultural Chemists or the American Society for Testing Materials; or, in the absence of such method, then, in accordance with accepted methods. The said State Chemist shall be permitted to charge a fee for the said analysis not in excess of Three ($3.00) Dollars, which said fee shall be remitted to the State Treasury to the account of the General Fund of the State of Texas.

Registration fees

Sec. 10. For the sole purpose of defraying the expenses connected with the inspection of agricultural insecticides or fungicides sold, or exposed or offered for sale, in this state, and with the making of examinations and analyses thereof, all firms, corporations, or persons engaged in the manufacture or sale of agricultural insecticides or fungicides shall, in place of a tonnage tax, pay annually to the Commissioner of Agriculture an inspection tax of Twenty-five ($25.00) Dollars for registration of each agricultural insecticide and fungicide, provided that the total of the registration fees for any one firm shall not exceed One Hundred ($100.00) Dollars. But in cases where the registration fees have been paid, either by the manufacturer or by the jobber, as required by this section, then in that event nothing in this section shall be construed as applying to retail dealers selling agricultural insecticides and fungicides. All such registration fees collected shall be deposited with the State Treasurer and shall be

paid into the General Revenue Fund of the State of Texas.

Violations of act

Sec. 12. Every firm, corporation, or person who shall sell or offer for sale any agricultural insecticide or fungicide without having attached thereto such statements as are required by law, or who shall sell or offer for sale any adulterated or misbranded agricultural insecticide or fungicide within the meaning of this Act, or who shall violate any other provisions of this Act, shall be guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than Fifty ($50.00) Dollars, nor more than Five Hundred ($500.00) Dollars for each offense.

Search warrants

Sec. 13. (a) A search warrant may issue under Title 6 of the Code of Criminal Procedure for the purpose of searching for and seizing any agricultural insecticide or fungicide sold, offered or exposed for sale within this state in violation of any provision of this Act. Search warrants may be issued by any magistrate upon the affidavit of the Commissioner of Agriculture in person or by his duly authorized representative, or of any other person, setting forth the name or description of the owner or person in charge of the premises to be searched; or stating that his name and address are unknown; the address and description of the premises; the description of the agricultural insecticide or fungicide; the grounds for belief that the described premises is a place where agricultural insecticides or fungicides have been sold, offered or exposed for sale in violation of the provisions of this Act. All such agricultural insecticides or fungicides shall be seized by the officer executing the warrant and shall not be taken from the custody of any officer by writ of replevin nor any other process but shall be held by such officer to await final judgment in the proceeding.

(b) Except as herein provided, the application, issuance, and execution of any such search warrant and all proceedings relative thereto shall conform to the provisions of Title 6 of the Code of Criminal Procedure.

(c) It is not intended by the provisions of this section that a search warrant shall be required for the Commissioner of Agriculture in person or his duly authorized representative to take samples of agricultural insecticides or fungicides as provided in Section 7 of this Act.

Condemnation and forfeiture of adulterated or misbranded products; suits

Sec. 14. (a) Any agricultural insecticide or fungicide that is adulterated or misbranded within the meaning of this Act shall be liable to be condemned, confiscated, and forfeited by a civil suit brought in the District Court of the county where said agricultural insecticide or fungicide is located, in the name of the State of Texas, as plaintiff, and in the name of the owner thereof or the name of the person, firm, or corporation selling, offering or exposing same for sale, as defendant; and service shall be had as in other civil cases. If upon a trial of said case it shall be determined that said agricultural insecticide or fungicide is misbranded or adulterated, within the meaning of this Act, then the same shall be disposed of by destruction or sale in accordance with the judgment of the court, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the General Fund of the State of Texas.

(b) District and county attorneys shall file forfeiture and condemnation suits under this law at the request of the Commissioner of Agriculture; but in the event any county or district attorney fails or refuses to do his duty, then upon the request of the Commissioner of Agriculture, it shall be the duty of the Attorney General to file such suits. In all proceedings begun under this section, either party may demand trial by jury of any issue of fact joined in any such case, and either party shall have the right of appeal as in other civil cases.

(c) All suits brought under this section shall be advanced for trial and be determined as expeditiously as possible, and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Court.

(d) The Texas Rules of Civil Procedure shall govern the procedure in all proceedings begun under this section, except that no bond for injunction shall be required of the State of Texas, and except as otherwise provided herein.

Application of section 6

Sec. 15. Section 6 of this Act shall not be construed as applying to retail dealers selling agricultural insecticides or fungicides when the manufacturer or jobber of such insecticides or fungicides has registered such products as required by this Act.

Exemptions

Sec. 16. This Act shall not apply to the sale of household insecticides, household disinfectants, and household deodorants.

Partial invalidity

Sec. 17. If any section, sub-section, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses or phrases be declared unconstitutional. [Acts 1943, 48th Leg., p. 168, ch. 98.]

CHAPTER 8.—EXPERIMENT STATIONS

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1. STATE EXPERIMENT STATIONS

Article 136. Purposes.—There shall be established at such places in this State as the board hereinafter named may deem proper, experiment stations for the purpose of making experiments and conducting investigations in the planting and growing of agricultural and horticultural crops and soils, and the breeding, feeding and fattening of livestock for slaughter. Proceeds from the sale, barter or exchange of crops raised on any of said experiment stations shall go to defray the expenses of operating the same. [Acts 1st C. S. 1913, p. 98.]

Art. 137. Main station.—The experiment station located at the Agricultural and Mechanical College in Brazos County which is in part supported by the Federal Government shall remain at said point as a permanent institution. It shall be known as the Main State Experiment Station, and shall be under the supervision of the Board of Directors of such college. Such Board shall have the authority to accept from the Federal Government such aid in its support as may be provided by Congress. All other experiment stations of whatever character, now or which may hereafter be established under the authority of this subdivision shall be considered sub-stations. [Id.]

Art. 138. Supervising Board.—The Board of Directors of such college is vested with the authority, duties, and powers conferred by this subdivision upon said Board, and shall exercise a general supervision and direction over all sub-experiment stations established hereunder. [Acts 1st C. S. 1921, p. 148.]

Art. 139. Powers of Board.—The Board shall have power:

1. To establish sub-experiment stations at such places in this State as it shall deem proper, in addition to those now in operation.

2. To abandon or discontinue any sub-station which may become undesirable for experiment purposes, and if deemed necessary to establish others in their stead at such other places in the same county as it shall deem advisable.

3. To sell any land or other State property used in the operation of an experiment station when so abandoned, and to apply the proceeds of such sale in the purchase of other land and property for the establishment of experiment stations. [Acts 1st C. S. 1913, p. 98.]

Art. 140. Sale of stations.—In the event of any such sale, the title to said property shall not pass from this State until a deed of conveyance therefor is made to the purchaser duly signed by the Governor and attested by the Secretary of State under his official seal. All funds received from the sale of station lands or property shall be deposited in the State Treasury and shall be paid out in accordance with the provisions of this chapter. [Id.]

Art. 141. Valley Citrus Station.—The Board is authorized to establish and maintain a horticultural and agricultural experiment station in the citrus belt of Cameron or Hidalgo County for the purpose of making scientific investigations and experiments in the production of citrus fruits and in determining the best methods of eradicating insect pests and dangerous diseases that infect citrus trees, and for the purpose of studying the other horticultural and agricultural problems of that region. For such purposes, the Board is empowered to secure a suitable site for the location of said station in either of said counties containing a sufficient amount of land not exceeding one hundred acres well adapted to the growing of citrus fruits and supplied with water for irrigation purposes. Said station shall be subject to all the provisions of this chapter applicable to its operation, maintenance and control. [Acts 1923, p. 69.]

Art. 142. Donations.—The Board shall have power to accept and receive all donations in money or other property when given to be used in connection with any experiment work authorized by this subdivision. [Acts 1923, p. 69.]

Art. 143. Leases.—In the location of any experiment station, said board may take into consideration and receive any donation either in money, land or

other property, to be used in the operation, equipment or management of any such station, and for experiment work, may lease such land as may, in its judgment, be necessary for any of the purposes named in this chapter. [Id.]

Art. 144. Inspections.—The Board shall visit said stations once each year, and make such criticisms to the director and his assistants as it shall deem expedient and needful. [Id.]

Art. 145. Expenses of Board.—The necessary traveling expenses of the members of the Board and those of the director and his assistants, shall be paid out of the funds appropriated by this State for the maintenance and support of said experiment stations. In addition to their actual traveling expenses, the members of said board, when traveling upon the official business of said stations, shall each be paid five dollars per day while actually engaged in the discharge of their duties. [Id.]

Art. 146. Director of Stations.—All sub-stations embraced within this subdivision shall be subject to the provisions of this law and shall be under the supervision, control, management and direction of the Director of the Texas Agricultural Experiment Station at the Agricultural and Mechanical College. Such director shall reside at College Station. The board is authorized to pay a part of the director's salary from the funds appropriated by the Legislature for the maintenance and support of said experiment stations, in such proportion as in its judgment may be just and proper; taking into consideration the division of his time between said sub-stations and the Main Station, and the sum appropriated for such purposes by the Federal Government. The director may employ such assistants and labor and may purchase such live stock, farming implements, tools, seed, and such other materials and supplies as he shall deem necessary to the successful management of any or all of such experiment stations, subject to the approval of the Board. [Id.]

Art. 147. Reports.—On the first day of each month the director shall make a complete report to the Board showing receipts and disbursements, the source of such receipts and for what the same were disbursed; and on or before the first day of January of each year, he shall make a full and detailed report to said Board of the operation of said stations, including a statement of receipts and expenditures for the entire year. Such annual report shall be transmitted to the Governor with such additional report as the Board shall deem proper. [Id.]

Art. 148. Bulletin.—The director shall issue and circulate among the farmers and live stock raisers of Texas, from time to time, as may be deemed beneficial to such industries, printed bulletins showing the results of such experiments, and the results accomplished and the progress made in the improvement of the agricultural and live stock interests of this State. Such bulletins shall be mailed to such persons as may desire them. The director shall invite the cooperation of persons engaged in such industries, and shall give them advice when requested, with reference to the management and cultivation of their farms, and the care, management and feeding of their stock. [Id.]

Art. 149. Disbursements.—Before warrants are issued by the Comptroller in payment of State experiment station accounts, vouchers covering the same shall be audited and signed by the director or an assistant designated by him, in writing, for that purpose, and also by a member of the Board. [Id.]

Art. 149a. Dairying station.

Establishment and purpose

Sec. 1. That the Board of Directors of the Agricultural and Mechanical College of Texas, are hereby authorized and empowered to establish and maintain an Agricultural Experiment Station in Texas, for the purpose of making scientific investigations and experiments in the study of dairying and dairy problems applicable to that region, the study of economics in the production and utilization of feeds, including grazing and feeding, and for the purpose of studying the other impending agricultural problems of that region relating to the dairy industry.

Location of station; acceptance of donations

Sec. 2. The Board of Directors of the Agricultural and Mechanical College of Texas are hereby authorized and empowered to secure a suitable site for the location of said Agricultural Experiment Station, to be located in Texas. The said Board of Directors are authorized to accept donations of land, water and money for the establishment and maintenance of said Station, and to use the appropriations herein made for the purchase of suitable lands and the erection of necessary buildings and equipment.

Supervision by Board of Directors of Agricultural and Mechanical College

Sec. 3. The Agricultural Experiment Station herein provided for shall be under the general direction and supervision of the Board of Directors of the Agricultural and Mechanical College of Texas, and be operated and conducted by the Directors of Experiment Stations as all other State Experiment Stations are now conducted. [Acts 1929, 41st Leg., p. 61, ch. 27.]

Art. 149b. Fruit, poultry and dairying station.

Establishment and purpose

Sec. 1. That the Board of Directors of the Agricultural and Mechanical College of Texas are hereby authorized and empowered to establish and maintain a horticultural and agricultural experiment station at some point within the limits of Atascosa, Bexar, Dimmit, Frio, La Salle, Maverick, Medina, Uvalde, Webb, or Zavala counties in the State of Texas for the purpose of scientific investigations and experiments in the production of fruits, nuts, citrus fruits and vegetables and nursery stock and in determining the best methods of eradicating pests and various diseases that infest the various fruits, trees and products hereinbefore mentioned and for the purpose of studying the other impending horticultural and agricultural problems of that section, and for the purpose of making scientific investigations and experiments in poultry raising and dairying and bee culture.

Location of station; acceptance of donations

Sec. 2. The Board of Directors of the Agricultural and Mechanical College are empowered to acquire a suitable site for the location of said horticultural and agricultural experiment station within the territory described in the next preceding section of this Act containing such amount of land, not exceeding two hundred fifty acres, well adapted to growing of various fruits, trees and products in this Act mentioned and where water is available for irrigation purposes. The said Board of Directors are authorized to accept donations of land, water and money for the establishment, equipping and maintenance of said station.

Supervision by Board of Directors of Agricultural and Mechanical College

Sec. 3. The horticultural and agricultural experiment station hereby provided for shall be under the general direction and supervision of the board of directors of the said Agricultural and Mechanical College of Texas and shall be operated and conducted by the directors of experiment stations as all other experiment stations are now conducted.

Establishment contingent on donation of lands

Sec. 4. It is specially provided, however, that unless there be contributed to the use and benefit of

said horticultural and agricultural experiment station by persons interested in the establishment thereof lands suitable for the purpose of said experiment station in such acreage as to meet the requirements of such station, with water available for irrigation, or such amount of money or other property as may be necessary to purchase a tract of land suitable for said purposes having available water for irrigation purposes thereon said horticultural and agricultural experiment station shall not be established. [Acts 1929, 41st Leg., p. 508, ch. 244.]

Art. 149c. Dairying station in Ninth Senatorial District.

Establishment and purpose

Sec. 1. That the Board of Directors of the Agricultural and Mechanical College of Texas, are hereby authorized and empowered to establish and maintain an agricultural experiment station in the Ninth Senatorial District of Texas, for the purpose of making scientific investigations and experiments in the study of dairying and dairy problems applicable to that region, the study of economics in the production and utilization of feeds, including grazing and feeding, and for the purpose of studying the other impending agricultural problems of that region relating to the dairy industry.

Location of station; acceptance of donations

Sec. 2. The Board of Directors of the Agricultural and Mechanical College of Texas are hereby authorized and empowered to secure a suitable site for the location of said agricultural experiment station, to be located in the Ninth Senatorial District of Texas. The said Board of Directors are authorized to accept donations of land, water and money for the establishment and maintenance of said station, and to use the appropriations herein made for the purchase of suitable lands and the erection of necessary buildings and equipment.

Supervision by Board of Directors of Agricultural and Mechanical College

Sec. 3. The agricultural experiment station herein provided for shall be under the general direction and supervision of the Board of Directors of the Agricultural and Mechanical College of Texas, and be operated and conducted by the Directors of Experiment Station as all other State experiment stations are now conducted. [Acts 1929, 41st Leg., p. 541, ch. 264.]

Art. 149d. Dairy, poultry, etc., station in Abilene district.

Establishment and purpose

Sec. 1. That the Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized and empowered to establish and maintain a dairy, poultry, pecan, crops and other native products experiment station on the Miles, Roscoe and Abilene Soil Type within a radius of fifty miles of Abilene, Taylor County, Texas, for the purpose of making scientific investigations and experiments in the production and propagation of dairy, poultry, pecan crops and other native products and for the purpose of studying the other impending livestock and agricultural problems of this region.

Location of station; acceptance of donations

Sec. 2. The Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized and empowered to secure a suitable site for the location of said dairy, poultry, pecan, crops and other native products experiment station on the Miles, Roscoe and Abilene Soil Type, containing a sufficient amount of lands, not less than 320 acres, well adapted to propagating, growing and improving dairy, poultry, pecan, crops, and other native products. The said Board of Directors is authorized to accept donations of lands, water, livestock, seeds, plants, and money for the establishment and maintenance of said station.

Supervision by Board of Directors of Agricultural and Mechanical College

Sec. 3. The dairy, poultry, pecan, crops, and other native products experiment station herein provided for shall be under the general direction and supervision of the Board of Directors of the Agricultural and Mechanical College of Texas, and be operated and conducted by the Director of the Experiment Stations, as all other State Experiment Stations are now conducted. [Acts 1929, 41st Leg., p. 623, ch. 284.]

Art. 149e. Experiment station in West Texas cross timber section.

Establishment and purpose

Sec. 1. That the Board of Directors of the Agricultural and Mechanical College of Texas are hereby authorized and empowered to establish and maintain a horticultural and agricultural experiment station at some point within the limits of Brown, Callahan, Comanche, Eastland, Erath or any other county in the West Cross Timber Section of Texas, as may be selected by the Extension Department of A. & M. College of Texas, for the purpose of making scientific investigations and experiments in the production of fruits, berries, grapes, vegetables and nuts and farm crops and for the fertilization and conservation of soils in the West Texas Cross Timber Land area and for conducting scientific experiments in poultry raising, dairying and bee culture, and for the purpose of studying the other impending horticultural and agricultural problems of that section.

Location of station; acceptance of donations

Sec. 2. The Board of Directors of the Agricultural and Mechanical College are empowered to acquire a suitable site for the location of said horticultural and agricultural experiment station within the territory described in the next preceding Section of this Act containing such amount of land, not less than one hundred sixty acres, well adapted to growing of various fruits, trees and products in this Act mentioned. The said Board of Directors are authorized to accept donations of land for the establishment, equipment and maintenance of said station.

Supervision by Board of Directors of Agricultural and Mechanical College

Sec. 3. The horticultural and agricultural experiment station hereby provided for shall be under the general direction and supervision of the Board of Directors of said Agricultural and Mechanical College of Texas and shall be operated and conducted by the directors of experiment stations as all other experiment stations are now conducted.

Establishment contingent on donations of lands

Sec. 4. It is especially provided, however, that unless there be contributed to the use and benefit of said horticultural and agricultural experiment station by persons interested in the establishment thereof, lands suitable for the purpose of said experiment station in such acreage as to meet the requirements of such station, or of such amount of money or other property as may be necessary to purchase a tract of land suitable for said purposes, said horticultural and agricultural experiment station shall not be established. [Acts 1935, 44th Leg., p. 472, ch. 190.]

Art. 149f. Livestock and poultry station in piney-woods region of Southeast Texas.

Establishment and purpose

Sec. 1. That the Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized and empowered to establish and maintain an agricultural experiment station in the piney-woods region of Southeast Texas in one of the Counties

of Liberty, Orange, Hardin, Newton, Jasper, or Tyler for the purpose of making scientific investigations and experiments in the study of livestock and poultry problems applicable to that region, the study of economics in the production and utilization of feeds, including grazing and feeding, and for the purpose of studying the other impending agricultural problems of that region relating to the livestock and poultry industry.

Location of station; acceptance of donations

Sec. 2. The Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized and empowered to secure a suitable site for the location of said agricultural experiment station, to be located in the pineywoods region of Texas in one of the Counties of Liberty, Orange, Hardin, Newton, Jasper, or Tyler. The said Board of Directors are authorized to accept not less than two hundred (200) acres of land as a donation for said experimental station, and may accept money or anything of value for the establishment and maintenance of said station, and to use donations and appropriations hereafter made for the erection of necessary buildings and equipment and the purchase of livestock, if and after the lands have been donated for said station.

Supervision by Board of Directors of Agricultural and Mechanical College

Sec. 3. The agricultural experiment station herein provided for shall be under the general direction and supervision of the Board of Directors of the Agricultural and Mechanical College of Texas, and be operated and conducted by the Director of Experiment Stations as all other State Experiment Stations are now conducted. [Acts 1935, 44th Leg., p. 440, ch. 178.]

Art. 149g. Experimental station in El Paso district.

Establishment and purpose

Section 1. The Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized and empowered to establish and maintain a horticultural and agricultural experiment station at some point within the limits of the El Paso irrigated valley in the State of Texas, for the purpose of making scientific investigations and experiments in the production of cotton, alfalfa, and farm crops, and fruits, berries, grapes, nuts, and vegetables; and for the development of information as to the best methods of management and use of irrigated soils and irrigation waters; and for conducting scientific experiments in animal husbandry, including the breeding, feeding, treating, and preparing for market of cattle, sheep, hogs, and other livestock, and in poultry raising, dairying, and bee culture, and for the purpose of studying the other impending horticultural and agricultural problems of that area.

Location of station; acceptance of donations

Sec. 2. The Board of Directors of the Agricultural and Mechanical College is empowered to acquire a suitable site for the location of said horticultural and agricultural experiment station within the territory described in the next preceding Section of this Act containing such amount of land, not less than one hundred and sixty (160) acres, well adapted to the purposes aforesaid. The said Board of Directors is authorized to accept donations of land, water, and money for the establishment, equipment, and maintenance of said station.

Supervision and direction

Sec. 3. The horticultural and agricultural experiment station hereby provided for, shall be under the general direction and supervision of the Board of Directors of said Agricultural and Mechanical College of Texas, and shall be operated and conducted by the Director of Experiment Stations, as all other experiment stations are now conducted.

Establishment contingent on donation of lands

Sec. 4. It is especially provided, however, that unless there be contributed to the use and benefit of said horticultural and agricultural experiment station by persons interested in the establishment thereof, lands suitable for the purpose of said experiment station, in such acreage as to meet the requirements of said station, with water available for irrigation, or of such amount of money or other property as may be necessary to purchase a tract of land suitable for said purposes and having available water for irrigation purposes thereon, said horticultural and agricultural experiment station shall not be established. [Acts 1937, 45th Leg., p. 450, ch. 227.]

Art. 149h. Experimental station in South-Central Texas.

Establishment and purpose

Section 1. The Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized and empowered to establish and maintain an Agricultural Experiment Station in the South-Central Texas region for the purpose of making scientific investigations and experiments in the study of poultry problems applicable to that region and the State of Texas, with particular emphasis on the study of scientific production of broilers and fryers, including the study of economics of production, feed utilization, marketing, and other related problems in the scientific production of poultry of this type. This Station shall be established and located in Gonzales County, Texas.

Location of station; acceptance of donations

Sec. 2. The Board of Directors of the Agricultural and Mechanical College of Texas, is hereby authorized and empowered to secure a suitable site for the location of said Agricultural Experiment Station in Gonzales County, Texas, containing such amount of land not less than fifteen (15) acres, well adapted to the purposes aforesaid. The said Board of Directors is authorized to accept donations of land, water, equipment, money or anything of value for the establishment and maintenance of said Station and to use donations and appropriations which might hereafter be made for the erection of the necessary buildings and equipment and the purchase of the necessary poultry stock, if and after the lands necessary for said Station have been purchased or donated.

Supervision and donation

Sec. 3. The Agricultural Experiment Station hereby provided for shall be under the general direction of the Agricultural and Mechanical College of Texas, and shall be operated and conducted by the Director of the Experiment Station as all other experiments are now conducted. [Added Acts 1941, 47th Leg., p. 126, ch. 99, § 1.]

Art. 149i. Dairy experiment station in First Senatorial District.

Establishment and purpose

Section 1. The Board of Directors of the Agricultural and Mechanical College of Texas are hereby authorized and empowered to establish and maintain a Dairy Experiment Station in the First Senatorial District of Texas for the purpose of making scientific investigations and experiments in the study of the grazing, feeding, pasturage, land maintenance; the study of economics in the production and utilization of feeds, and other problems of dairying applicable to northeast Texas.

Location of station; acceptance of donations

Sec. 2. The Board of Directors of the Agricultural and Mechanical College of Texas are hereby au-

thorized and empowered to secure a suitable site for the location of said Dairy Experiment Station to be located in the First Senatorial District. Said Board of Directors are authorized to accept donations of land, water rights, and money for the establishment and maintenance of said Station and to use any appropriations which are hereafter made for the erection of necessary buildings, and for the equipment and maintenance of said Station.

Supervision and direction

Sec. 3. The Dairy Experiment Station herein provided for shall be under the direction and supervision of the Board of Directors of the Agricultural and Mechanical College of Texas, and shall be operated and conducted by the Directors of Experiment Station, as all other State Experiment Stations are now conducted. [Acts 1941, 47th Leg., p. 1392, ch. 630.]

2. COUNTY FARMS AND STATIONS

Art. 150. Establishment.—The commissioners court of any county shall, under the terms and provisions of this subdivision, establish and maintain an agricultural experiment farm and station within their county. [Acts 1911, p. 208.]

Art. 151. Petition and election.—On petition of not less than ten per cent of the legal voters of such county who voted for Governor in the preceding election, the commissioners court shall submit the question of the adoption of the provisions of this subdivision to the qualified voters of said county; and said court shall order an election to be held not less than thirty nor more than sixty days from the date of the election order, which shall be signed by the county judge. Such election shall be held at the usual voting places and by the usual election officers, and as near as may be shall be conducted in accordance with the general election laws of Texas. Notice of such order shall be given by posting copies thereof at all the post offices within such county and at the court house door of such county. At such election those favoring a county experiment farm and station under the provisions of this subdivision shall vote a ticket on which shall be written or printed the words, "For a County Experiment Farm and Station," and those who are opposed shall vote a ticket on which shall be written or printed the words, "Against a County Experiment Farm and Station." Both tickets may be written or printed on the same piece of paper, and the voter may vote by erasing or drawing a line through the one he does not favor. [Id.]

Art. 152. Election returns.—The officers of the election shall make their report to and certify to the commissioners court the number of votes cast for and against such proposition, and if it appear that a majority of the votes cast at such election are in favor of such farm and station, the court shall so declare the result, and shall then proceed to execute the provisions of this law by establishing such farm and station. [Id.]

Art. 153. Acquisition of property.—Said farm and station shall consist of such number of acres of land as might be reasonably expected to produce a revenue sufficient to maintain the same, to be determined by the commissioners court, and shall, with sufficient houses, residences, barns and lots thereon, be donated to the county with good and legal title thereto, free of cost to the county. [Id.]

Art. 154. Location of station.—Said farm shall be located at the county seat or as near thereto as practicable, but if no such donation is offered at or within reasonable distance from the county seat, not to exceed two miles, then such farm may be located elsewhere in the county, having due regard for the benefits to be derived from such farm and station. [Id.]

Art. 155. Supervision.—Said experiment farm shall be affiliated with and directed in a manner similar to that of all experiment stations, and shall be under the advisory direction of the Director of State experiment stations. [Id.]

Art. 156. Director.—The said station shall be in charge of and under the direction of a director who shall be appointed by the commissioners court. He shall be a practical farmer, and shall pass a satisfactory examination touching his general knowledge, information, education, and his knowledge of farming, stock raising and other affairs incident to successful farm life. Such examination shall be prescribed by and taken under the Director of State Experiment stations or some one designated by him for such purpose. The said director shall be furnished a residence on said farm, free of cost for himself and family, as a part of his compensation, and shall receive such salary as the commissioners court may fix, not less than seventy-five dollars per month. The commissioners shall not rent or lease said farm to any one, nor permit it to be done by any one. [Id.]

Art. 157. Supplies and improvements.—The commissioners court shall supply said farm and station with sufficient houses, barns, lots, machinery, farm utensils, scientific instruments, materials, seeds and such other necessities as may be necessary, and shall make all needed improvements. Said farm shall be supplied with such stock, including work stock and cattle, both for service and breeding purposes, as may be necessary to promote the improvement of the farm and stock raising industry of such county. [Id.]

Art. 158. Labor.—The director of said farm shall conduct the same, and employ the necessary labor with the approval and advice of the commissioners court to conduct said farm. County paupers shall not be maintained or permitted to work upon said farm. [Id.]

Art. 159. Records.—The director shall keep a complete and accurate record of rainfall, temperature, the winds, and general climatic conditions; the planting, cultivation and marketing of all crops of every character; of his management and observation, and of his management of the live stock on said farm. [Id.]

Art. 160. Bulletins.—He shall make an annual report to the commissioners court showing in detail his methods and results, which report shall be published by the county, with the consent of the commissioners court, and mailed without cost to every person in the county engaged in farming and to others on request, to every experiment station in Texas, and to the State and United States Departments of Agriculture. [Id.]

Art. 161. Information.—The director shall at all reasonable times keep said farm open to the inspection of the public, and it shall be his duty to disseminate information, and to explain to all persons his manner and methods of preparation, soil culture, cultivation, gathering, preservation and marketing of the products of said farm. [Id.]

Art. 162. Sale of products.—He shall sell and market the products of said farm, under the rules made therefor by the commissioners court, and shall pay the proceeds thereof to the county treasurer, who shall place the same to the credit of the general fund of the county. The director shall perform such other duties as the commissioners court may prescribe not inconsistent with law. [Id.]

Art. 163. Expenses.—The labor necessary for the cultivation and care of said farm, including the salary of the director, and all expenses and expenditures provided for in this chapter, shall be paid by the county out of its general funds upon warrants drawn by the director and approved by the county judge. [Id.]

Art. 163a. Election on issuance of bonds or warrants for agricultural experiment station.—Sec. 1. The Commissioners Court of any county in this State is hereby authorized to call an election for the purpose of issuing bonds or warrants for the purpose of acquiring tracts of land and constructing buildings and improvements thereon for an agricultural experiment station, and is hereby authorized to levy and collect a tax sufficient to pay the annual interest and to provide a sinking fund for the payment of the principal at maturity.

Sec. 2. The election authorized herein shall be held under the provisions set forth in Title 22, Chapters 1 and 2, Revised Civil Statutes of Texas, 1925.

Sec. 3. The Commissioners Court of any county in this State which may acquire and construct an agricultural experiment station as authorized by this Act is further authorized to lease same to the State of Texas or to any agency of the Federal Government under terms to be agreed upon by the Commissioners Court and the lessor. [Acts 1941, 47th Leg., p. 703, ch. 438.]

Art. 164. Demonstration work.—The Commissioner's Court of any county of this State is authorized to establish and conduct co-operative demonstration work in agricultural and home economics in co-operation with the Agricultural and Mechanical College of Texas, upon such terms and conditions as may be agreed upon by the Commissioners' Court and the agents of the Agricultural and Mechanical College of Texas; and may employ such means, and may appropriate and expend such sums of money as may be necessary to effectively establish and carry on such demonstration work in Agriculture and Home Economics in their respective counties. [Acts 1911, p. 105; Acts 1st C. S. 1917, p. 56; Acts 1927, 40th Leg., p. 9, ch. 6, § 1.]

3. RAILWAY FARMS AND STATIONS

Art. 165. Powers.—Any railway corporation in Texas may acquire by lease or purchase, and maintain and operate, or cause to be operated, demonstration and experimental farms, orchards and gardens, no one of which shall exceed one thousand acres in size, for the purpose of aiding in the development of the agricultural and horticultural resources of Texas. No such corporation shall own or control more than four such farms. [Acts 1913, p. 319.]

CHAPTER 9.—SOIL CONSERVATION AND PRESERVATION

Arts. 165a–165m. [*Unconstitutional.*]

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165a—5. Rental of county machinery to landowners in counties of 290,000–320,000.
165a—6. Rental of county machinery to landowners in counties of 320,000 to 360,000.
165a—7. Rent of county machinery to landowners in counties of 60,000 to 80,000 and counties of 22,000 to 23,000.

Arts. 165a–165m. [Unconstitutional.]

Acts 1931, 42nd Leg., 2nd C.S., p. 2, ch. 2, §§ 1–13, constituting these articles, regulating cotton cultivation and making it unlawful to plant cotton on the same land that had been planted in cotton the year preceding, is unconstitutional as taking property without due process of law, as depriving owner of land and tenant of right to contract as to crops to be planted, and as retroactive law impairing the obligation of contracts. State v. Smith, Civ.App., 47 S.W.2d 642.

Art. 165a—1. [Repealed by Acts 1941, 47th Leg., p. 491, ch. 308, § 5(A).]

The article repealed was Acts 1935, 44th Leg., p. 504, ch. 214, §§ 1–8.

Art. 165a—2. Wind Erosion Conservation Districts.

Creation and nature of district

Sec. 1. The creation and incorporation of Wind Erosion Conservation Districts coextensive with the boundaries of any county in this State is hereby authorized under and by virtue of Section 59, Article XVI, of the Constitution. The area of any county may be formed into such a Conservation District when the qualified tax paying voters of such county, voting at an election to be held for such purpose, by majority vote sanction and authorize the creation and incorporation of such District. The creation of such Districts is deemed essential to the accomplishment of the purposes of the above mentioned Section of the Constitution and when any such District is created as herein provided the same shall be a governmental agency and body politic and corporate with the powers of government and with authority to exercise the rights, privileges and functions as are conferred by this Article. Such a District shall bear the name of the county creating same and shall be so designated.

Petition by taxpaying voters

Sec. 2. When petitioned by not less than fifty (50) duly qualified property tax paying voters, the Commissioners Court of any county in this State shall call an election to be held throughout such county to determine whether a majority of the legally qualified property tax paying voters of such county favor the creation and incorporation of the area of such county into a Wind Erosion Conservation District. The procedure for holding and declaring the result of such an election shall be in substantial compliance with the requirements for elections to vote bonds for

public improvements. All persons who are legally qualified property tax paying voters shall be entitled to vote at such election. Each voter favoring the creation and incorporation of such District shall have written or printed on his ballot "For the creation and incorporation of the ——— County Wind Erosion Conservation District," and each voter who opposes the creation of such District shall have written or printed on his ballot "Against the creation and incorporation of ——— County Wind Erosion Conservation District."

Canvass of returns and order declaring creation

Sec. 3. When the returns of the election mentioned in Section 2 have been canvassed by the Commissioners Court, the result of such election shall be declared by order entered on the Minutes of said Court and, if the result is in favor of the creation and incorporation of the District, the County Judge shall issue an order declaring such District to be created and incorporated and such order shall also be entered in the Minutes of the Commissioners Court and a certified copy thereof entered in the Deed Records of the county. Thereupon, the District shall be deemed to be legally created and incorporated with all rights, powers, authority and privileges herein conferred and authorized by Section 59, of Article XVI, of the Constitution, for the purpose of conserving and reclaiming the soil in such District.

Commissioners' Court as governing body; county treasurer as treasurer; bond

Sec. 4. When a Wind Erosion Conservation District is created, the County Commissioners and the County Judge will thereupon become the Governing Body of such District. The County Judge shall be Chairman of the Board with authority to vote in case of a tie and charged with the usual and customary duties as presiding officer. The County Treasurer will be the Treasurer of the District and the County Clerk shall become the Clerk of the Governing Body. The Treasurer shall have the care and custody of all funds, obligations and securities of the District and shall dispense and dispose of same in compliance with the orders of the Governing Body. The Treasurer shall execute and deliver to the County Judge a good and sufficient bond in the penal sum of not less than Five Thousand Dollars ($5,000) nor more than Ten Thousand Dollars ($10,000), conditioned for the faithful discharge of his duties and the disposition of all funds and obligations of said District as required by law. The bond shall be signed by a solvent Surety Company authorized to do business in this State, and the premium thereon shall be paid by the District. The Clerk shall keep an accurate record of all orders, minutes and resolutions of the Governing Body and shall countersign all vouchers and documents and perform such other acts as may be directed by the Governing Body. The duties herein imposed upon the County Judge and Commissioners, the County Clerk and Treasurer shall be ex-officio duties. By vote the Governing Body may allow the County Clerk and County Treasurer a monthly compensation of not more than Twenty-five Dollars ($25), which shall be paid by the District.

Powers of district

Sec. 5. The function of a Wind Erosion Conservation District is to conserve the soil by the prevention of unnecessary erosion caused by winds, and the reclamation of lands that have been depreciated or denuded of soil by reason of winds. Without limitation of the foregoing, such a District shall have and is hereby authorized to exercise the following rights, powers, privileges and authority, viz.:

(a) To prevent or aid in the prevention of damage to lands and the public roads and highways due to the unnecessary movement of sand, dust and soil originating from lands within or without such District.

(b) To construct improvements and maintain any and all facilities to arrest or prevent the erosion of soils or lands within such District by reason of winds.

(c) To have the right to enter upon any lands in the District for the purpose of treating same to prevent the spread of soil erosion and damage to other lands in such District.

(d) To borrow money for the corporate purposes of such District and to pledge any certificates, obligations, or securities held by such District as security therefor, and to pledge and assign any and all revenue or income to secure the repayment thereof. In this connection, any such District may issue its obligations, warrants, bonds and debentures or other evidences of indebtedness, with interest not to exceed five (5) per cent per annum, maturing within ten (10) years and payable out of and secured by the revenues and income of such District, with the reservation or provision that no such obligation shall be paid out of ad valorem taxes.

(e) To accept grants and to borrow money from the United States of America or from any corporation or agency created or designated by the United States of America to loan and/or grant money, and in connection with such grants and/or loans to enter into such agreements as may be required for such purpose.

(f) To sue or be sued in its corporate capacity.

(g) To adopt a corporate seal.

(h) To adopt by-laws and rules and regulations incident to or necessary to the dispatch of business or the discharge of corporate functions.

Governing body to consult and cooperate with other agencies

Sec. 6. The Governing Body of each Wind Erosion Conservation District shall consult and advise with the Director of Texas Experiment Station of A. & M. College, the County Agent, the Department of Agriculture of this State, and the Soil Erosion Service of the Department of Agriculture of the United States of America, and may generally conform to and cooperate in any regional plan determined upon in connection with the application and operation of this Act. Such Districts shall be agencies of the State of Texas charged with the responsibility of conserving the natural resource in soil.

Acceptance of donations and gifts

Sec. 7. The Governing Body of such Wind Erosion Conservation Districts shall have authority to accept gifts, grants, donations, advances and services from the United States or any other governmental agency, or agencies, in furtherance of the purposes for which such Wind Erosion Conservation District shall have been created, and shall administer and disburse such funds and all other money and property coming into its hands in the exercise of its sound discretion and in accordance with law. In the expenditure of funds, said Governing Body shall adhere to and be governed by the laws applicable to Commissioners Courts. All accounts shall be audited annually and a copy of such audit filed with the County Clerk for public inspection.

Method of assessments

Sec. 8. When a program of work shall be determined upon and an assessment against property is contemplated, the Governing Body shall make up an estimate of the cost of such work and tentatively allocate a portion of such cost to the land and the owners thereof that will derive benefit from such work. The Governing Body shall enter an order on its Minutes fixing the date for a hearing to determine whether or not assessments shall be made, and no assessment shall be made until a full and fair hearing shall first have been given to the owners of such property, and in no event shall an assessment be made against any person or property in excess of the actual benefit

to such owner in the protection given his property. Notice of the intention to make such assessment shall be given to the owners of all property against which a lien or assessment is contemplated, and such notice may be served in person upon the owner or the same may be published for two (2) weeks in some newspaper of general circulation published in the county, the first publication to be not less than ten (10) days prior to said hearing. The names of the owners, lienholders or interested parties need not be specifically set forth in such notice, but the parcel or parcels of land against which such assessments shall be made shall be briefly described in said notice by survey and block numbers or any other description reasonably identifying the same, but the amount of the proposed assessment shall be stated. Said notice shall command all parties to appear at a hearing to be held at the courthouse in said county and contest any proposed assessment against any particular piece of property, and at such hearing the Governing Body shall finally determine the amount, if any, of all assessments. If at such hearing it shall be determined that any particular piece of land will derive a benefit equal to or in excess of the amount of the assessment, then in that event the assessment shall be levied by order of the Governing Body. The assessment may be divided into three (3) equal annual installments which shall bear interest at the rate of five (5) per cent and shall be evidenced by certificates issued by the Governing Body, signed by the County Judge as Chairman, and attested by the Clerk under corporate seal. When so executed and levied, such certificate shall constitute a valid and binding first lien upon the property against which the same is made, and shall be recorded in the deed records of the county and, when so recorded, shall constitute notice to all subsequent purchasers.

Assessment liens; homesteads

Sec. 9. No assessment shall be made against any property used, claimed or occupied as a homestead, but the Governing Body is authorized to take liens securing such assessments in the manner now provided by law for fixing liens upon homesteads to secure the cost of improvements thereon.

Foreclosure of liens

Sec. 10. In the event any certificate issued by the Governing Body of any such District is not paid at the maturity thereof, suit may be instituted thereon in any Court of competent jurisdiction and the lien securing same foreclosed, and the property sold in the same manner and under the same procedure as provided for the foreclosure of other liens on real estate.

Percentage of automobile registration fees

Sec. 11. Due to the fact that the highways in many counties are rendered useless by reason of the accumulation of sand, soil and dust from adjoining lands, the Commissioners Court of any county, the area of which comprises a Soil Erosion Conservation District, may, in its discretion, transfer to such District as much as twenty (20) per cent of the automobile registration fees accruing to such county, and the Governing Body of the District may then expend the funds so transferred in defraying the cost of soil erosion work. In like manner the Commissioners Court is hereby authorized to transfer to such District all or any part of any Road and Bridge Special Taxes that may be authorized by vote of the people of such county.

No tax obligations

Sec. 12. Wind Erosion Conservation Districts created under and by virtue of this Act shall have no power to levy ad valorem taxes or create any obligation payable out of funds raised by taxation, save and except to the extent herein specifically provided.

Diversion of percentage of ad valorem taxes

Sec. 13. The fact that unprecedented damage has resulted to the soil of the counties hereinafter named by reason of soil erosion caused by wind, which has been so serious as to drive people from their homes and to render vast areas of valuable land untenantable; and the further fact that vast clouds of dust have been carried by winds for hundreds of miles and have caused practically every section of the State to suffer therefrom, and the further fact that such condition has seriously jeopardized the health of a great many people has resulted in a public calamity to the counties hereinafter named; therefore, to aid and facilitate the work to be performed by wind erosion conservation districts, the State ad valorem taxes that will accrue and be due and payable to the State of Texas for the years 1935 and 1936 from all property located in Dallam, Hartley, Oldham, Deaf Smith, Sherman, and Moore Counties, and fifty per cent (50%) of the ad valorem taxes that will accrue and be due and payable to the State of Texas for the years 1935 and 1936 from all property located in Lipscomb, Hansford, and Ochiltree Counties, are hereby diverted to the conservation districts that may be hereafter formed in said counties. And the Governing Bodies of such conservation districts are authorized to use said sums to defray the necessary costs and expenses incident to the purpose for which such conservation districts are formed. As and when taxes from said counties are collected and paid into the State Treasury, the State Treasurer shall transfer and pay over the same to the Governing Body of the conservation districts formed in said counties and shall require such receipt as he may specify to evidence the receipt of said funds, provided that in the event either of said counties fails or refuses to form such conservation district on or before October 1, 1935, then in that event the State Treasurer shall retain the State ad valorem taxes collected from said county as is required by general law. It is distinctly specified that the foregoing provisions shall not in any case apply to the ad valorem taxes collected for school purposes or collected for the payment of Confederate pensions. [Acts 1935, 44th Leg., p. 771, ch. 337.]

Acts 1941, 47th Leg., p. 491, ch. 308, constituting the State Soil Conservation Law, provides in section 5, that article 165a—2 should not be in anyway affected, impaired, nor impinged by the Act of 1941. See notes to article 165a—4.

Art. 165a—3. Validation of districts.—That all acts and proceedings of both the County Judge and County Commissioners Court in the matter of the creation and incorporation of Wind Erosion Conservation Districts of any county in this State which were created or attempted to be created under the provisions of Chapter 337,[1] Acts Regular Session, Forty-fourth Legislature and all elections, where a majority of legally qualified property taxpaying voters, voting at said elections, favored the formation of such districts, are hereby ratified, approved, and validated. [Acts 1935, 44th Leg., 2nd C.S., p. 1695, ch. 434, § 1.]

1 Article 165a—2, ante.

Art. 165a—4. State Soil Conservation Law.

Short title

This Act may be known and cited as the "State Soil Conservation Law."

Legislative determinations, and declaration of policy

Sec. 2. It is hereby declared, as a matter of Legislative Determination:

(a) The Condition. That the farm and grazing lands of the State of Texas are among the basic assets of the State and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of

the farm and grazing lands of this State by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any occupier of land to conserve the soil and control erosion upon such land causes a washing and blowing of soil and water from such lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

(b) The Consequences. That the consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming, and grazing.

(c) The Appropriate Corrective Methods. That to conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion may be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation, seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(d) Declaration of Policy. It is hereby declared to be the policy of the Legislature to provide for the conservation of soil and soil resources of this State, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this State, and thus to carry out the mandate expressed in Article XVI, Section 59a, of the Constitution of Texas. It is further declared as a matter of Legislative intent and determination of policy that the agencies created, powers conferred and the activities contemplated in this Act for the conservation of soil and water resources and for the reduction of public damage resulting from failure to conserve such natural resources, shall be supplementary and complementary to the work of various river and other authorities now established in the State and to other State officers, agencies, and districts engaged in closely related projects, and shall not be duplicative thereof nor conflicting therewith.

Definitions

Sec. 3. Wherever used or referred to in this Act, unless a different meaning clearly appears from the context:

(1) "District" or "Soil Conservation District" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this Act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "State District" means one of the five (5) districts established as provided in Section 4, Subsection A of this Act.

(3) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this Act.

(4) "Board" or "State Soil Conservation Board" means the agency created in Section 4 of this Act.

(5) "County Soil Conservation Committee" means the committee selected in each county of the State as provided in Section 4, Subsection B of this Act.

(6) "Petition" means a petition filed under the provisions of Subsection A of Section 5 of this Act for the creation of a district.

(7) "State" means the State of Texas.

(8) "Agency of this State" includes the government of this State and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this State.

(9) "United States" or "Agencies of the United States" includes the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(10) "Government" or "Governmental" includes the Government of this State, the Government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise of either of them.

(11) "Landowner" or "Owner of land" includes any natural person who holds title to farm or ranch lands lying within a soil conservation district organized under the provisions of this Act, who has attained the age of twenty-one years, and is a resident of a county, all or any part of which is included in such Soil Conservation District.

(12) "Board of Adjustment" means the agency appointed in accordance with the provisions of Section 10 of this Act.

(13) "Due Notice" means notice published at least twice, with an interval of at least seven (7) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the appropriate area, or notice posted for at least two weeks at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs, generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

(14) "Land Occupier" or "Occupiers of Land" includes any person, firm, or corporation who shall hold title to or be in possession of any lands lying within a district organized under the provisions of this Act, whether as owner, lessee, renter, tenant or otherwise.

State Soil Conservation Board

Sec. 4. A. There is hereby established to serve as an agency of the State and to perform the functions conferred on it in this Act, the State Soil Conservation Board. The Board will consist of five (5) members. The following shall serve in an advisory capacity to the Board: The President of The Agricultural and Mechanical College of Texas, the President of Texas Technological College, the Director of Vocational Agriculture of Texas, the State Commissioner of Agriculture and the State Co-ordinator of the Soil Conservation Service of the United States Department of Agriculture. The five (5) elective members of the Board shall be selected as follows: The State of Texas is hereby divided into five (5) State Districts for the purpose of selecting five (5) members of the State Soil Conservation Board. These five (5) State Districts shall be composed as follows:

State District No. 1, comprising fifty-one (51) counties: Dallam, Dawson, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Hardeman, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Borden, Scurry, Fisher, Foard.

State District No. 2, comprising fifty-one (51) counties: Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Runnels, Coke, Sterling, Glasscock, Midland, Ector, Winkler, Loving, Reeves, Culberson, Hudspeth, El Paso, Jeff Davis, Presidio, Brewster, Pecos, Terrell, Ward, Crane, Upton, Reagan, Irion, Tom Green, Concho, McCulloch, San Saba, Mason, Llano, Blanco, Gillespie, Crockett, Schleicher, Menard, Sutton, Kimble, Val Verde, Edwards, Real, Kerr, Kendall, Bandera, Uvalde, Medina, Kinney, Maverick.

State District No. 3, comprising fifty (50) counties: Burleson, Lee, Bastrop, Travis, Hays, Comal, Guadalupe, Caldwell, Fayette, Washington, Austin, Colorado, Lavaca, Gonzales, Wilson, Bexar, DeWitt, Jackson, Wharton, Fort Bend, Brazoria, Matagorda, Calhoun, Refugio, Bee, Karnes, Live Oak, Atascosa, McMullen, La Salle, Frio, Duval, Dimmit, Webb, Zapata, Jim Hogg, Starr, Brooks, Hidalgo, Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Jim Wells, Zavala, Goliad, Victoria.

State District No. 4, comprising fifty-one (51) counties: Lamar, Red River, Bowie, Delta, Hopkins, Franklin, Titus, Morris, Cass, Marion, Camp, Upshur, Wood, Rains, Van Zandt, Smith, Gregg, Harrison, Henderson, Cherokee, Rusk, Panola, Shelby, Nacogdoches, Anderson, Freestone, Leon, Robertson, Brazos, Madison, Grimes, Waller, Houston, Walker, Trinity, Angelina, San Augustine, Sabine, Newton, Jasper, Tyler, Polk, San Jacinto, Montgomery, Harris, Liberty, Hardin, Orange, Jefferson, Chambers, Galveston.

State District No. 5, comprising fifty-one (51) counties: Wilbarger, Wichita, Clay, Montague, Cooke, Grayson, Fannin, Hunt, Collin, Denton, Wise, Jack, Archer, Baylor, Knox, Haskell, Stephens, Throckmorton, Young, Jones, Shackelford, Palo Pinto, Rockwall, Kaufman, Ellis, Parker, Tarrant, Dallas, Johnson, Hood, Somervell, Erath, Eastland, Callahan, Coleman, Brown, Comanche, Mills, Hamilton, Bosque, Hill, Navarro, Limestone, McLennan, Falls, Milam, Bell, Williamson, Burnet, Lampasas, Coryell.

B. It shall be the duty of the State Soil Conservation Board to notify the County Judge of all counties in a State District wherein a District Conservation Convention is to be held, as hereinafter provided, at least sixty (60) days prior to the date of such District Convention. The County Judge, upon being notified by the State Board of the date on which the District Convention is to be held, shall, within twenty (20) days appoint a County Soil Conservation Committee of four (4) members. Each committee member so appointed shall be a landowner, and shall be actively engaged in the business of farming or animal husbandry. One member of the County Soil Conservation Committee shall be appointed from each Commissioner's Precinct within the county.

The County Judge shall, within five (5) days after such appointment, officially notify the persons so selected that they have been appointed as members of such Committee, and the County Judge shall, within five (5) days thereafter, certify the names and addresses of such persons to the State Soil Conservation Board.

The County Soil Conservation Committee shall select one of its members as chairman, who shall have authority to cast an additional vote in case of a tie and shall be charged with the usual and customary duties of a presiding officer. A majority of the members shall constitute a quorum and the concurrence of a majority of such quorum in any matter within their jurisdiction shall be required for final determination.

Members of a County Soil Conservation Committee shall receive no compensation for their services except the delegate to the District Conservation Convention who shall receive Five (5) Cents per mile for travel each way between the County Seat of his county and the place where the District Convention is held, and Four Dollars ($4) per day, not to exceed two (2) days, to be paid by the State Soil Conservation Board.

C. The County Soil Conservation Committee in each county shall elect one of its members as a delegate to attend the State District Conservation Convention. The name and address of the delegate to the District Convention shall be certified to the State Soil Conservation Board by the Chairman of the County Soil Conservation Committee not less than twenty (20) days prior to the date of the convention. Each State District Conservation Convention shall elect from among the qualified delegates present, by a majority vote, a member of the State Soil Conservation Board. The Chairman of the District Convention shall within five (5) days, certify to the State Soil Conservation Board, and the Secretary of State the name and address of the person elected. A majority of all qualified delegates elected to the State District Convention shall constitute a quorum. Each member of the State Soil Conservation Board shall be a qualified delegate to the State District Convention which elects his successor.

Board members for Districts 2 and 4 elected in 1941 under the provisions of House Bill No. 20, Acts, Forty-sixth Legislature, Regular Session [1] shall serve for the term for which they were elected, and until their successors are elected and have qualified. On the first Tuesday in May, 1943, at a place within the district to be designated by the State Soil Conservation Board, State District 2 shall elect a board member as hereinabove provided, to serve on the State Soil Conservation Board for a period of five (5) years, and State District 4 shall elect a board member as hereinabove provided to serve on the State Soil Conservation Board for a period of four (4) years. Thereafter, board members elected from State Districts 2 and 4 shall be elected for a period of five (5) years or until their successors are elected and have qualified.

Board members for districts 1, 3, and 5, elected under the provisions of House Bill No. 20, Acts, Forty-sixth Legislature, Regular Session,[1] shall hold their offices for the terms for which they were elected, and until their successors are elected and have qualified.

On the first Tuesday in May, 1942, at a place within the district to be designated by the State Soil Conservation Board, State District 1 shall elect a board member as hereinabove provided to serve on the State Soil Conservation Board for a period of two (2) years, and State District 3 shall elect a board member as hereinabove provided to serve on the State Soil Conservation Board for a period of three (3) years, and State District 5 shall elect a board member as hereinabove provided to serve on the State Soil Conservation Board for a period of four (4) years. Thereafter, board members elected from State Districts 1, 3, and 5 shall be elected for a period of five (5) years or until their successors are elected and have qualified.

Terms of office of all State Board Members shall begin on the day following their election.

D. Each member of the State Soil Conservation Board shall take the State Constitutional Oath of Office, and said State Soil Conservation Board shall designate one of its elective members to serve as chairman.

Vacancies upon such Board shall be filled for an unexpired term or for a full term, by the same manner in which the retiring members were respectively elected. Elective members of the Board may receive compensation for their services on the Board, not to exceed the sum of Ten Dollars ($10) per diem for each day of actual service rendered, but each member shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties as a member of the Board.

E. A majority of the elective members of the State Soil Conservation Board shall constitute a quorum and the concurrence of a majority of the elective members in any matter within their duties shall be required for its determination. The State Board shall keep a complete and accurate record of all its official actions, hold such public hearings at such times and places within the State as may be determined by the Board, and shall promulgate such rules and regulations as may be necessary for the performance of the functions of said Board under the provisions of this Act. The Board shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, which bonds shall be executed by some solvent company authorized to transact a surety business in this State.

F. The State Soil Conservation Board may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation, according to the terms and amounts as specified in the general appropriation bills. The Board may call upon the Attorney General of the State for such legal services as it may require, or may employ its own counsel and legal staff. It shall have authority to delegate to its Chairman, to one or more of its members, or to one or more agents, or employees, such powers and duties as it may deem proper. It shall have authority to locate its office at a point to be selected by the Board.

G. In addition to the duties and powers hereinafter conferred upon the State Soil Conservation Board, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of Soil Conservation Districts, organized as provided hereinafter, in the carrying out of any of the powers and programs.

(2) To coordinate the programs of the several Soil Conservation Districts organized hereunder so far as this may be done by advice and consultation.

(3) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

(4) To disseminate information throughout the State concerning the activities and programs of the Soil Conservation Districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

H. All moneys, funds, and securities coming into the hands of the State Soil Conservation Board shall be deposited in the State Treasury and placed in the State Treasury to the credit of a special fund to be known as the "State Soil Conservation Fund"; and all such funds, moneys, and securities hereafter deposited or credited to such fund are hereby appropriated to the use and benefit of the State Soil Conservation Board and may be, by said Board, used in the administration of and in compliance with this Act. Such funds when so placed in the State Treasury shall be under the same care and control by the State Treasury as any money belonging to the State. The Board shall provide and furnish a biennial audit by the State Auditor and Efficiency Expert and a report to the Governor of the State.

The Board may, by resolution, authorize the Chairman of the Board or the administrative officer to approve all claims and accounts that are payable by the Board. And any claim presented to the Comptroller of Public Accounts carrying such approval will be sufficient authority for the Comptroller to issue his warrant against any appropriation made for the use of the Board, and shall also be sufficient authority for the State Treasury to honor the payment of such warrant.

1 This article prior to its amendment in 1941.

Creation of Soil Conservation Districts

Sec. 5. A. Any fifty (50) or a majority of the landowners within the limits of that territory proposed to be organized into a district may file a petition with the State Soil Conservation Board asking that a Soil Conservation District be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district.

(2) That there is need, in the interest of the public health, safety, and welfare, for a Soil Conservation District to function in the territory described in the petition.

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(4) A request that the State Soil Conservation Board duly define the boundaries of such district; that an election be held within the territory so defined on the question of the creation of a Soil Conservation District in such territory; and that the Board determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the State Soil Conservation Board may consolidate all or any such petitions.

B. Within thirty (30) days after such a petition has been filed with the State Soil Conservation Board, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this Act, and upon all questions relevant to such inquiries. All owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such fur-

ther hearing held. After such hearing, if the Board shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a Soil Conservation District to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the Board shall give due weight and consideration to the topography of the area considered and of the state, the composition of the soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other Soil Conservation Districts already organized or proposed for organization under the provisions of this Act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in Section 2 of this Act. If the Board shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a Soil Conservation District to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

C. After the Board has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon Soil Conservation Districts in this Act is administratively practicable and feasible. To assist the Board in the determination of such administrative practicability and feasibility, it shall be the duty of the Board, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold an election within the proposed district upon the proposition of the creation of the district, due notice of such election shall be given, which notice shall set forth the boundaries of the proposed district. The question shall be submitted by ballots upon which the words, "For creation of a Soil Conservation District of the lands below described in general terms and lying in the county (ies) of ——— and ———," and, "Against creation of a Soil Conservation District of the lands below described in general terms and lying in the county (ies) of ——— and ———," shall appear. All owners of land within the boundaries of the territory as determined by the State Soil Conservation Board shall be eligible to vote in such election. When a part of a County is included in a district and the voting box of a landowner within the County is not included within the said district, the landowner within the county shall be entitled to vote at the voting box in which his land is located within the district. All elections for creation of districts shall be held in conformity with the general laws of the State except as herein otherwise provided.

D. The Board shall pay all expenses for the issuance of notices of public hearings and shall supervise the conduct of such hearings. It shall issue appropriate regulations governing the conduct of public hearings and elections, and providing for the registration prior to the date of the election of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such elections. No informalities in the conduct of such elections or any other elections held under this Act or in any manner relating thereto, shall invalidate said election or the result thereof, if notice thereof shall have been given substantially as herein provided, and said election shall have been fairly conducted.

E. The Board shall announce the result of such election and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Board shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Board shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the Board shall give due regard to and weight to the attitudes of the owners of lands lying within the defined boundaries, the number of landowners eligible to vote in such election who shall have voted, the proportion of the votes cast in such election in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determinations, having due regard to the legislative determinations set forth in Section 2 of this Act, provided, however, that the Board shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least two-thirds of the votes cast in the election upon the proposition of creating the district shall have been cast in favor of the creation of such district.

F. If the Board shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall divide the district into five (5) subdivisions of approximately equal area, in so far as this may be practicable. The Board shall appoint two (2) supervisors, one each from subdivisions 2 and 4 within the district, to act until at a regular election in subdivisions 2 and 4 their successors are elected and have qualified. Such appointed supervisors, together with the three (3) supervisors elected in accordance with the provisions of Section 6 of this Act, shall be the governing board of the district. One member of the District Board of Supervisors shall be selected from each of the five subdivisions composing the district. The State Soil Conservation Board, in cooperation with landowners, may change the boundaries of the subdivisions from time to time as may be necessary or desirable because of additions of territory to the district. Such district shall be a governmental subdivision of this State and a public body corporate and politic, upon the taking of the following proceedings:

The two (2) appointed supervisors shall present to the Secretary of State an application signed by them, which shall set forth and such application need contain no detail other than the mere recitals: (1) That a petition for the creation of the district was filed with the State Soil Conservation Board pursuant to the provisions of this Act, and that the proceedings specified in this Act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body corporate and politic under this Act; and that the Board has appointed them as supervisors; (2) The name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) The term of office of each of

the supervisors; (4) The name which is proposed for the district; and (5) The location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by laws of this State to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the State Soil Conservation Board, which shall certify (and such statement need contain no detail other than mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; and the Board did duly determine that there is need, in the interest of public health, safety, and welfare, for a Soil Conservation District to function in the proposed territory and did define the boundaries thereof; that notice was given and an election held on the question of the creation of such district, and that the result of such election showed a two-thirds majority of the votes cast in such election to be in favor of the creation of the district; that thereafter the Board did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the Board.

The Secretary of State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other Soil Conservation District of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other Soil Conservation District in this State, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the State Soil Conservation Board, which shall thereupon submit to the Secretary of State a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this State and a public body corporate and politic. The Secretary of State shall make and issue to the said supervisors a certificate under the seal of the State, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the State Soil Conservation Board as aforesaid, but in no event shall they include any area included within the boundaries of another Soil Conservation District organized under the provisions of this Act.

G. After six (6) months shall have expired from the date of entry of a determination by the State Soil Conservation Board that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petition may be filed as aforesaid, and action taken thereon in accordance with the provisions of this Act.

H. Petitions for including additional territory within an existing district may be filed with the State Soil Conservation Board, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The Board shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this Act for petitions to organize a district. Where the total number of landowners in the area proposed for inclusion shall be less than one hundred (100), the petition may be filed when signed by a two-thirds majority of owners of land in such area, and in such case, no election need be held. In election upon petitions for such inclusion, all owners of land within the proposed additional area shall be eligible to vote; only such landowners shall be eligible to vote.

I. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this Act upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate duly certified by the Secretary of State shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of filing and contents thereof.

Method of selection, qualifications, and tenure of Soil Conservation District Supervisors

Sec. 6. Within thirty (30) days after the date of issuance by the Secretary of State of a Certificate of Organization of a Soil Conservation District, the State Soil Conservation Board shall designate a time and place within the subdivisions wherein supervisors are to be elected, giving due notice of such designation in each subdivision of the district wherein elections are to be held. The owners of land within each subdivision shall meet at the time and place as designated by the State Soil Conservation Board for the purpose of electing from within the Subdivision a member to the Board of District Supervisors. The qualified voters present shall proceed by electing a chairman, secretary, and tally clerks. Nominations shall be in order, and when nominations have ceased, the nominee shall be announced by the secretary. The qualified voters present shall, by a written ballot, cast their vote for their choice from among the nominees. When the votes have been tabulated by the tally clerks, if no candidate has received a majority of the total votes cast, the two candidates receiving the largest number of votes shall be voted on in a second ballot, and the candidate receiving the largest number of votes shall be declared elected.

The secretary shall record the proceedings of the meeting, and shall, within five (5) days, certify to the State Soil Conservation Board the name and the proper address of the person elected.

The three (3) members as certified to the State Board shall serve until at a regular election within the subdivisions from which they are elected their successors are elected and have qualified.

The governing body of the district shall consist of five (5) supervisors, composed of the three (3) supervisors elected as provided hereinabove, together with the two (2) supervisors appointed as provided for in Section 5 of this Act by the State Soil Conservation Board. All five (5) such supervisors shall be owners of land within the subdivision from which they are appointed or elected and shall be actively engaged in the business of farming or animal husbandry.

The supervisors shall designate a chairman, vice-chairman, and secretary and may, from time to time, change such designation. Each of the supervisors who are appointed or elected upon creation of the district shall serve until at the regular election of supervisors their successors are elected and have qualified. Beginning with the year 1943, other than the first election and appointment of supervisors within a district, all elections for the election of district supervisors shall be held on the first Tuesday in October. On the first Tuesday in October, 1943, elections shall be held in all five (5) subdivisions in each district within the State for election of supervisors, which shall establish a regular period for elections. Terms of office of supervisors elected on the first Tuesday in October, 1943, shall be as follows: Subdivision No. 1, one year; Subdivision No. 2, two

years; Subdivision No. 3, three years; Subdivision No. 4, four years; and Subdivision No. 5, five years, or until their successors are elected and have qualified. Their successors in office shall be elected for a term of five (5) years. In districts created thereafter, the two (2) appointed and the three (3) elected supervisors shall serve until the regular period for elections in corresponding subdivisions in all districts, or until their successors are elected and have qualified. Their successors in office shall serve for the regular five-year term. Terms of office of all supervisors elected shall begin on the day following their election.

Vacancies shall be filled by election for the unexpired term, except that vacancies occurring prior to the first Tuesday in October, 1943, may be filled by appointment by the State Soil Conservation Board. A majority of the supervisors shall constitute a quorum and the concurrence of a majority of the supervisors in any matter within their duties shall be required for its determination. A supervisor may receive compensation for services not to exceed Four Dollars ($4) for each day he shall be in attendance at the regular meetings of the Board of Supervisors, and Five (5) Cents per mile for travel each way between the residence of a supervisor and the designated business office of the district supervisors. Supervisors shall be paid quarterly for their services, and may not receive compensation and mileage for any number of days in excess of five (5) in any three-month period, except that one member of each Board of Supervisors shall be entitled to receive Four Dollars ($4) per day not to exceed two (2) days, and Five (5) Cents per mile while attending an annual State-wide meeting of supervisors to be held at a time and place to be determined by the State Soil Conservation Board. The provision providing Five (5) Cents per mile for travel for district supervisors shall be in effect September 1, 1941, and thereafter.

The supervisors may employ such officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the State Soil Conservation Board, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings of all resolutions, regulations, and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements. The State Board may demand and pay the expenses of an audit at any time. Any supervisor may be removed by the State Soil Conservation Board, upon notice and hearing, for neglect of duty or malfeasance in office, or if disqualified as a voter within the district, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located within or near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

Powers of Districts and Supervisors

Sec. 7. A Soil Conservation District organized under the provisions of this Act shall constitute a governmental subdivision of this State and a public body corporate and politic exercising public powers, and such district and the supervisors thereof shall have the following powers, in addition to others granted in other sections of this Act:

(1) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in Subsection *o*, of Section 2 of this Act, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administrating and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupiers of such lands or the necessary rights or interests in such lands;

(2) To cooperate or enter into agreements with, and, within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this Act;

(3) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties, and to expend such income in carrying out the purposes and provisions of this Act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this Act;

(4) To make available, on such terms as it shall prescribe, to land occupiers within the districts, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion;

(5) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this Act;

(6) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(7) To take over, by purchase, lease, or otherwise, and to administer, any soil conservation, erosion control, or erosion prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this State or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this State or any of its agencies, any soil conservation, erosion control, or erosion prevention project within its boundaries; to act as agent for the United States, or any of its agencies, or for this State or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(8) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed;

to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers, to make, and from time to time amend and repeal, rules and regulations not inconsistent with this Act, to carry into effect its purposes and powers;

(9) As a condition to the extending of any benefits under this Act to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in the form of services, materials, or otherwise to any operation conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(10) The supervisors shall have no power to levy taxes, and no debts incurred in the name of the district shall create a lien on lands of landowners or land occupiers in the district.

Adoption of Land-use Regulations

Sec. 8. When petitioned by fifty (50) or more landowners within the district, the supervisors of any district shall have the authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct an election for submission of such regulations to the landowners within the boundaries of the district for their indications of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such election. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for inspection during the period between publication of such notice and the date of the election. The notices of the election shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed Ordinance No. ———, prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed Ordinance No. ———, prescribing land-use regulations for conservation of soil and prevention of erosion," shall appear. The supervisors shall supervise such election, shall prescribe appropriate regulations covering the conduct thereof, and shall announce the result thereof. All owners of land within the district shall be eligible to vote in such election. Only such landowners shall be eligible to vote. The supervisors shall not have authority to enact such proposed ordinance into law unless at least nine-tenths of the votes cast in such election shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by nine-tenths of the votes cast in such election shall be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinance adopted pursuant to the provisions of this Section shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of land within such district.

Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this Section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this Section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this Section for adoption of land-use regulations or in accordance with variances authorized in Section 10 of this Act; provided, however, that such suspension or repeal may be effected by a majority vote of the qualified voters voting at such election. Elections on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

The regulations to be adopted by the supervisors under the provisions of this Section may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;

(2) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees, and grasses, forestations, and reforestations;

(3) Specifications of cropping programs and tillage practices to be observed;

(4) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(5) Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources, and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in Section 2 of this Act.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened, or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all owners and occupiers of land lying within the district.

Performance of Work under the Regulations by the Supervisors

Sec. 9. The supervisors shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of Section 8 of this Act are being observed.

Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of Section 8 hereof are not being observed on particular lands, and that such non observance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to any Court of competent jurisdiction a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the Court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other opera-

tions or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land. Upon the presentation of such petition, the Court shall cause process to be issued against the defendant, and shall hear the case. If it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the Court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the Court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operation or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, from the occupier of such lands, provided further, that in no case shall the total charge for the work done by said supervisors or anyone under them, and to be charged against said lands, ever exceed for any calendar year, ten (10) per cent of the assessed valuation of said lands for State and county purposes. In all cases where the person in possession of lands who shall fail to perform such work, operations, or avoidances, shall not be the owner, the owner of such lands shall be joined as a party defendant.

The Court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the Court the supervisor may file a petition with the Court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The Court shall have jurisdiction to enter judgment for the amount of such costs and expenses, together with the costs of suit, including reasonable attorney's fee to be fixed by the Court. Such judgments shall be collected in the same manner as that provided for the collection of assessments in Wind Erosion Conservation Districts created by authority of House Bill No. 978, Acts of the Regular Session of the Forty-fourth Legislature of Texas.[1]

1 Art. 165a—2.

Board of Adjustment

Sec. 10. A. Where the supervisors of any district organized under the provisions of this Act shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of Section 9 hereof, they shall further provide by ordinance for the establishment of a Board of Adjustment. Such Board of Adjustment shall consist of three (3) members, each to be appointed for a term of two (2) years, except that one of the members first appointed shall be appointed for a term of one year, or until his successor is elected and qualified. The members of each such Board of Adjustment shall be appointed by the State Soil Conservation Board, with the advice and approval of the supervisors of the district for which such Board of Adjustment has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the State Soil Conservation Board and the supervisors of the district.

Vacancies in the Board of Adjustment shall be filled in the same manner as original appointments, and shall be for the unexpired term of the member whose term becomes vacant. Members of the State Soil Conservation Board and the supervisors of the district shall be ineligible to appointment as members of the Board of Adjustment during their tenure of such other office. The members of the Board of Adjustment shall receive compensation for their services at the rate of Three Dollars ($3) per diem for time spent on the work of the Board, not to exceed ten (10) days each year to be paid by the State Soil Conservation Board from appropriations made for that purpose.

The supervisors shall pay the necessary administrative and other expenses of operation incurred by the Board of Adjustment upon the certificate of the chairman of the said Board.

B. The Board of Adjustment shall adopt rules to govern its procedures which rules shall be in accordance with the provisions of this Act and with the provisions of any ordinance adopted pursuant to this section. The Board shall designate a chairman from among its members, and may, from time to time, change such designation. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. Any two (2) members of the Board of Adjustment shall constitute a quorum. The chairman, or in his absence such other member of the Board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the Board of Adjustment and shall be a public record.

C. An occupier of land within the district may file a petition with the Board of Adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the Board of Adjustment to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands occupied or owned by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the Chairman of the State Soil Conservation Board. The Board of Adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The supervisors of the district and the State Soil Conservation Board shall have the right to appear and be heard at such hearing. Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the Board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing, the Board shall determine that there are great practical difficulties or unnecessary hardships in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the Board of Adjustment shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

Cooperation between Districts

Sec. 11. The supervisors of any two (2) or more districts organized under the provisions of this Act may cooperate with one another in the exercise of any or all powers conferred in this Act.

State Agencies to Cooperate

Sec. 12. Agencies of this State which shall have jurisdiction over, or be charged with the administration of, any State-owned lands, and of any county, or other governmental subdivision of the State, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this Act. The supervisors of such district shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted pursuant to Section 8 of this Act shall have the force and effect of law over all such publicly owned lands, and shall be in all respects observed by the agencies administering such lands.

Discontinuance of Districts

Sec. 13. At any time after five (5) years after the organization of a District under the provisions of this Act, any fifty (50) or a majority of the landowners within the boundaries of such district may file a petition with the State Soil Conservation Board praying that the operations of the district be terminated and the existence of the district discontinued. The Board may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such a petition has been received by the Board, it shall give due notice of the holding of an election, and shall supervise such election and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words: "For terminating the existence of the ———— (name of the Soil Conservation District to be here inserted)," and "Against terminating the existence of the ———— (name of the Soil Conservation District to be here inserted)," shall appear.

All owners of land within the boundaries of the district shall be eligible to vote in such election. Only such landowners shall be eligible to vote.

The Board shall publish the result of such election and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Board shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Board shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Board shall give due regard and weight to the attitudes of the owners of lands lying within the district, the number of landowners eligible to vote in such election who shall have voted, the proportion of the votes cast in such election in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the landowners of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in Section 2 of this Act; provided however, that the Board shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the election shall have been cast in favor of the continuance of such district.

Upon receipt from the State Soil Conservation Board of a certification that the Board has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall transfer all property belonging to the district to the State Soil Conservation Board which may either dispose of it at public auction, and pay over the proceeds of such sale to be covered into the State Treasury, or make the property available for use by other districts. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificate of the State Soil Conservation Board, setting forth the determination of the Board that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of as in this section provided and shall set forth a full accounting of such properties. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The State Soil Conservation Board shall be substituted for the district or supervisors as party to such contracts. The Board shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of Section 9 of this Act, nor the pendency of any action instituted under the provisions of such Section, and the Board shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The State Soil Conservation Board shall not entertain petitions for the discontinuance of any district nor conduct elections upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this Act, more often than once in five (5) years. [Acts 1939, 46th Leg., p. 7; Acts 1941, 47th Leg., p. 491, ch. 308, § 1.]

Repeals, construction and saving clauses. Sections 2–5 of the amendatory Act of 1941, read as follows:

"Sec. 2. Preserving action taken under House Bill No. 20, Acts Forty-sixth Legislature, Regular Session [incorporated in article 165a—4 as amended by section 1 of the repealing act]. House Bill No. 20, Acts Forty-sixth Legislature, Regular Session, is hereby repealed; but nothing in this Act, amending House Bill No. 20, Acts of the Forty-sixth Legislature, Regular Session, shall invalidate any action authorized to be taken under said House Bill No. 20, where said action shall have been taken prior to the effective date of this amendment.

"Sec. 3. Separability Clause. If any provisions of this Act, or the application of any provision to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

"Sec. 4. Inconsistency with other Acts. In so far as any of the provisions of this Act are inconsistent with the provisions of any other law, the provisions of this Act shall be controlling, except where otherwise indicated in this Act.

"Sec. 5. Repealing and Affirming Certain Acts. A. Senate Bill No. 227, passed by the Regular Session of the Forty-fourth Legislature, page 504 [Art. 165a—1] is hereby repealed.

"B. This Act shall not in anywise repeal House Bill No. 13, Acts of the Forty-second Legislature, Regular Session, [Article 2372c] but the same is hereby expressly preserved in accordance with terms thereof.

"C. This Act shall not in anywise affect, impair, nor impinge upon the provisions of House Bill No. 978, Acts of the Regular Session of the Forty-fourth Legislature, [Art. 165a—2], under which Wind Erosion Conservation Districts have been created or may hereafter be created, but the same is expressly preserved in accordance with the terms thereof; the State Soil Conservation Board shall have authority, working with the governing bodies of the Wind Erosion Conservation Districts, to put into operation in said Wind Erosion Conservation Districts such provisions of this Act as are not in conflict with the provisions of House Bill No. 978, Acts of the Regular Session of the Forty-fourth Legislature.

"D. This Act shall not in anywise repeal Senate Bill No. 386, Acts of the Forty-fifth Legislature, Regular Session, Title 128, ch. 8, note, but the same is hereby expressly preserved in accordance with terms thereof."

Appropriation. Section 14 of Acts 1939, 46th Leg., p. 7, as amended by Acts 1941, 47th Leg., p. 491, ch. 308, § 1, made an appropriation of $22,058.34 for the support and maintenance of the State Soil Conservation Board for the period ending August 31, 1941.

Art. 165a—5. Rental of county machinery to landowners in counties of 290,000—320,000.—The Commissioners' Court in any County having a population of not less than two hundred ninety thousand (290,000) and not more than three hundred twenty thousand (320,000), according to the last United States Census may, by an order duly entered upon the minutes of said court, rent or let, direct to any landowner in said County, any tractor, grader, machinery or equipment belonging to said County, to be used by said landowner exclusively upon land situated in said County, in the construction of terraces, dikes and ditches for the purpose of soil conservation and soil erosion prevention and for the purpose of constructing water tanks and reservoirs; provided that no such tractor, grader, machinery or equipment shall be rented or let at a time when the County is using or in the need of the use of the same, and provided further, that the amount to be paid by the landowner to the County for the use of such tractor, grader, machinery or equipment shall be agreed upon by the Commissioners' Court and the landowner and shall be specified in the order renting or letting the same. [Acts 1939, 46th Leg., Spec. L., p. 589, § 1.]

Art. 165a—6. Rental of county machinery to landowners in counties of 320,000 to 360,000.—The Commissioners Court in any county having a population of not less than three hundred and twenty thousand (320,000) and not more than three hundred and sixty thousand (360,000), according to the last United States Census may, by an order duly entered upon the minutes of said Court, rent or let, direct to any landowner in said county, any tractor, grader, machinery, or equipment belonging to said county, to be used by said landowner exclusively upon land situated in said county, in the construction of terraces, dikes, and ditches for the purpose of soil conservation and soil erosion prevention and for the purpose of constructing water tanks and reservoirs; provided that no such tractor, grader, machinery, or equipment shall be rented or let at a time when the county is using or in need of the use of the same, and provided further, that the amount to be paid by the landowner to the county for the use of such tractor, grader, machinery, or equipment shall be agreed upon by the Commissioners Court and the landowner and shall be specified in the order renting or letting the same. [Acts 1941, 47th Leg., p. 435, ch. 268, § 1.]

Art. 165a—7. Rent of county machinery to landowners in counties of 60 000 to 80,000 and counties of 22,000 to 23,000.—Section 1. The Commissioners Court in any county having a population of not less than sixty thousand (60,000) and not more than eighty thousand (80,000), according to the last United States Census, may by an order duly entered upon the Minutes of said Court, rent or let, direct to any landowner in said county any tractor, grader, machinery, or equipment belonging to said county, to be used by said landowner exclusively upon land situated in said county, in the construction of terraces, dikes, and ditches for the purpose of soil conservation and soil erosion prevention and for the purpose of constructing water tanks and reservoirs; provided that no such tractor, grader, machinery, or equipment shall be rented or let at a time when the county is using or in need of the use of the same, and provided further, that the amount to be paid by the landowner to the county for the use of such tractor, grader, machinery, or equipment shall be agreed upon by the Commissioners Court and the landowner and shall be specified in the order renting or letting the same.

Sec. 2. The provisions of this Act shall also apply to counties in this State having a population of not less than twenty-two thousand (22,000) or more than twenty-three thousand (23,000) population, according to the last preceding Federal Census. [Acts 1941, 47th Leg., p. 604, ch. 372.]

CHAPTER 10.—MILK PRODUCERS AND DISTRIBUTORS

Art.
165—1. [Expired.]
165—2. Codes of fair competition; Counties of 290,000 to 300,000 and 42,128 to 42,138 population.
Sec.
1. Legislative policy.
2. Definitions.
3. Milk Industry Board; approval of code or agreement for fair competition.
4. Violation of code as unfair competition.
5. District court to restrain violations of code.
6. Amendment of code or agreement
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165—3. Milk grading and pasteurization.
Sec.
1. Definitions.
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4. Milk to conform to marked grades.
5. Construction as to resale of milk in containers.
6. Regulation of grading and labeling by State Health Officer.
7. Enabling clause.
8. Penalty.

Article 165—1. [Expired.]

Article was derived from Acts 1934, 43rd Leg., 2nd C.S., p. 56, ch. 19.

Art. 165—2. Codes of fair competition; counties of 290,000 to 300,000 and 42,128 to 42,138 population.

Legislative policy

Sec. 1. It is hereby declared to be the policy of the Legislature of Texas to provide for the general welfare in an emergency hereby declared to exist by cooperating with the Federal Government in making

effective the provisions of the National Agricultural Adjustment Act [1] and the National Industrial Recovery Act [2] within this State with reference to producers and distributors of milk and milk products to the end that disorganization of the dairy industry may be corrected and the value of this specialized agricultural commodity stabilized, such emergency being particularly acute in the larger centers of the State; to set up a code of fair practice as hereafter provided; and to eliminate unfair competition and practices in the production and distribution of milk and milk products.

1 7 U.S.C.A. §§ 601–620.
2 Pertinent provisions incorporated in 15 U.S.C.A. §§ 701–712, now obsolete.

Definitions

Sec. 2. (a) The term "person" when used under this Act shall mean any individual, firm, co-partnership, or corporation.

(b) The term "producer" shall mean any person regularly engaged in the production of fluid milk for sale.

(c) "Distributors" mean any of the following persons engaged in the business of handling fluid milk:

1. Pasteurizers, bottlers or other processors of fluid milk.

2. Persons distributing fluid milk at wholesale or retail: To hotels, restaurants, stores or other establishments for consumption on the premises; to stores or other establishments for resale; or to consumers irrespective of whether any such person is also a producer of milk.

(d) The term "processor" shall mean any person who receives or buys milk or milk fats for the purpose of changing its nature or character by physical or chemical means into other forms, such as butter, cheese, ice cream, frozen milk, condensed milk, buttermilk, chocolate, or other flavored milk, or milk converted into any other form.

(e) The term "fluid milk" when used under the provisions of this Act shall mean the fresh clean lacteal secretion obtained by the milking of one or more healthy cows which secretion has not been soured nor been skimmed or separated; that it has not less than eight and one-half per cent (8½%) of solids not fat, and not less than three and one-fourth per cent (3¼%) milk fat, nor been churned, nor evaporated, or condensed, nor been reduced to powdered form, nor otherwise processed so as to materially change its original condition.

(f) The term "milk industry" when used in this Act shall mean producers, distributors and processors of milk and milk products as defined in this Act.

(g) The term "milk products" when used under this Act shall mean all products of fluid milk, such as sour and sweet cream, skimmed milk, butter, cheese, ice cream, frozen milk, condensed milk, evaporated milk, powdered milk, powdered skim milk, buttermilk, chocolate milk or other flavored milks.

(h) The term "Commissioner" when used in this Act shall mean the Commissioner of Agriculture of the State of Texas.

(i) The term "Board" when used in this Act shall mean the local Milk Industry Board of the county or counties concerned.

(j) The term "members" when used in this Act shall mean the members of the Milk Industry Board.

(k) The term "milk shed" shall include all producers and producer operators who now hold permits from the Health Department to sell milk in any area or areas affected by this Act.

(*l*) The term "production area" means that area defined by the Milk Industry Board.

(m) The term "due notice" shall mean the mailing of a notice to all of the parties affected, or in lieu thereof, of an advertisement published in a daily newspaper, or in the event there is no daily newspaper then in any other publication of regular issue, said publication to be published in the territory affected. Said advertisement shall be a display advertisement and shall be of a size at least two (2) columns by six (6) inches. Said notice shall be mailed or shall be published at least five (5) days previous to the time of the hearing and it shall contain information as to the time and place of the hearing, and shall state where a copy of the code or a contemplated change in an existing code may be secured.

(n) A "retail outlet" shall be a person who handles milk and/or milk products for resale to people who customarily do not consume them on the premises where sold.

Milk Industry Board; approval of code or agreement for fair competition

Sec. 3. Any representative group engaged in the milk industry, in any county having a population not less than two hundred and ninety thousand (290,000) and not more than three hundred thousand (300,000) and in any county having a population of not less than forty-two thousand one hundred twenty-eight (42,128) and not more than forty-two thousand one hundred thirty-eight (42,138) at such time, may submit to the Board hereinafter authorized a code or agreement of fair competition and trade practices. In each county of the above mentioned class, a local Milk Industry Board of five (5) members shall be elected, as follows: Two (2) members of the Board shall be elected by the contracting producers; two (2) by the contracting distributors; and the fifth member, to represent the consumers, shall be elected by the other four (4). Such fifth member shall be a resident of the sales area and shall have no connection, financially or otherwise, with the distribution of milk or products derived therefrom. The fifth member shall be designated by the Commissioner in the event such member is not elected within five (5) days of the effective date of this agreement by the four (4) members as above provided.

Members representing the contracting producers and contracting distributors, respectively, shall be elected by the respective parties in a manner to be determined by themselves, provided that a vote of producers representing not less than seventy per cent (70%) of the total volume of milk produced within the production area, for distribution as fluid milk during the calendar month next preceding such election which percentage of distribution shall include ten per cent (10%) of the distributors by number, respectively, shall be necessary for such election. Upon election the names of all the members shall be certified by the party or parties conducting such election to the Commissioner for his approval. The Commissioner may require that such certification include a statement of the manner and vote by which the respective members were elected and the percentage of the total production or sales of fluid milk within the area represented by such vote. Members whose names have been certified to the Commissioner and approved by him shall enter upon the discharge of their duties. The certificate of the Commissioner approving such member shall be prima facie evidence that such member has been elected by the required number and percentage of the total volume of milk of the group from which he was elected. If the Commissioner shall not approve a member, there shall be a vacancy on the Milk Industry Board. Any member may be removed with or without cause, by vote of all producers or distributors, as the case may be, representing a volume of milk equal to at least three-fourths (¾) of the volume and number by which he was originally elected. Any vacancies on the Milk Board shall be filled in the same manner and by the same parties as provided for the original election.

The Milk Industry Board shall be organized by the members by the selection of a chairman, vice-chairman, who shall be members, and a secretary-treasurer

who may or may not be a member. The Milk Industry Board shall employ such agents, assistants and clerks as may be necessary to perform its duties. All officers and employees of the Milk Industry Board who handle funds of the Milk Industry Board or who sign or countersign checks upon such funds shall severally give bonds in such amounts and with such sureties as shall be determined by the Milk Industry Board. The cost of such bonds shall be paid by the Milk Board.

The members shall serve without compensation, but shall be entitled to reimbursement for the expenses incurred in the performance of their duties.

Said Board shall then provide for due notice to the parties interested and for a hearing on the proposed code and/or agreement. Said Board shall make such changes and modifications, if any, in such proposed code as in its discretion will tend to effectuate the policies herein declared. Any proposed code and/or agreement that receives the approval on matters affecting the distributors of ten per cent (10%) of their number and sixty per cent (60%) of their volume sold in the milk shed or trade territory affected, and affecting producers of fifty-one per cent (51%) of their number and seventy per cent (70%) of their volume represented in the milk shed affected, shall become a duly constituted code upon receiving the approval of the Board. The Board shall not approve a code or an agreement unless said code contains ample protection for consumers, competitors and tends to effectuate the policies herein declared. Every distributor and every processor and every retail outlet for milk or milk products, as defined in this Act, shall apply to the Board for a certificate of authority following the approval of a code and/or agreement to engage in such milk industry in the territory affected, and no distributor or processor or retail outlet after the effective date of said code, codes or agreements shall engage in or carry on any milk industry in any area where such code, codes or agreements are in effect without such certificate of authority. Every person required to procure a certificate of authority shall pay to the Board One Dollar ($1.00) for each certificate issued, said certificate to be valid for a period of one year from date issued, unless revoked sooner as herein provided.

Violation of code as unfair competition

Sec. 4. After the Board shall have approved such code, codes, or agreements, the provisions thereof shall be the standard of fair competition for such milk industry within the area defined in such code, codes or agreements, and any violations of such standards in any transaction in or affecting the milk industry in such area shall be deemed to be an unfair method of competition within the meaning of this Act.

District court to restrain violations of code

Sec. 5. Any District Court in the State of Texas having jurisdiction over the territory or any portion thereof where such code, codes or agreements are made effective is hereby invested with jurisdiction, and it is hereby made the duty of said Courts to prevent and restrain violations of any such code, codes or agreements of fair competition approved under this Act by the Board and/or provision of this Act, and it shall not be necessary in such suit for the plaintiff to allege and prove that such plaintiff will suffer irreparable injury, or any damage; nor that it does not have an adequate and complete remedy at law. It shall be the duty of the several District Attorneys authorized to act in said localities to institute, under the direction of the Board, proceedings in equity to restrain such violations.

Amendment of code or agreement

Sec. 6. Any code, codes or agreements approved by the Board under the authority of this Act may be amended, changed, enlarged, modified or suspended upon the Board's own motion and upon the approval on matters affecting distribution of ten per cent (10%) of the distributors affected in numbers and sixty per cent (60%) of the volume of the distributors affected and upon the approval on matters affecting production of fifty-one per cent (51%) of the producers affected and seventy per cent (70%) of the volume affected, or upon the application and approval on matters affecting distribution of ten per cent (10%) of the distributors affected in numbers and sixty per cent (60%) of the volume of the distributors affected, and on matters affecting production of fifty-one per cent (51%) of the producers affected and seventy per cent (70%) of the volume affected. The Board must provide for due notice and public hearing of contemplated changes.

Revocation of certificate of authority

Sec. 7. (a) The Board may suspend or revoke such certificate of authority after due notice and opportunity for hearing for violation of the terms and provisions of any code adopted and approved under the authority of this Act.

(b) Any distributor or processor or retail outlet who without such a certificate of authority carries on any transaction in the intrastate handling of milk products for which a certificate of authority is so required shall upon conviction thereof be fined not to exceed Two Hundred Dollars ($200.00) and each day such violation continues shall be deemed a separate offense.

(c) Any officer, agent or servant of any corporation violating any provision of this Title shall be individually and personally subject to the punishment provided for in Section 7, sub-section (b) of this Act whenever any such officer, agent or servant had knowledge of such violation by the corporation at the time same was committed and where it was at the time of such violation within the power of such officer, agent or servant to prevent same.

Code to provide for administration funds

Sec. 8. Any code, codes or agreements authorized hereunder shall provide for and have authority and power to provide for the necessary funds for the administration thereof. These funds shall include a sum not to exceed two (2) cents per one hundred (100) pounds of milk, or its equivalent, which shall, with all other fees for the certificate of authority, filing of codes or agreements, be paid into the Milk Industry Board, to be used for expenses in the administration of their duties. These funds shall be based on the milk sold as fluid milk and shall be paid by distributors for each calendar month within fifteen (15) days following the last of each month, direct to the Milk Industry Board.

Partial invalidity

Sec. 9. If any section or provision of this Act shall be declared unconstitutional or invalid for any reason, such decision shall not affect any other provision or portion of this Act, and such other provisions shall remain in full force and effect.

Prima facie validity of acts

Sec. 10. All acts of any such Board shall be prima facie valid.

Anti-trust laws not affected

Sec. 11. Provided the provisions of this Act shall not alter, repeal, change, modify or anyway change the purpose of the Anti-trust Laws of the State of Texas. [Acts 1934, 43rd Leg., 3rd C.S., p. 93, ch. 47.]

Art. 165—3. Milk grading and pasteurization.

Definitions

Section 1. The following definitions shall apply in the interpretation of this Act:—

(A). Milk. Milk is hereby defined to be the lacteal secretion obtained by the complete milking of one or more healthy cows, excluding that obtained within fifteen days before and five days after calving, or such longer period as may be necessary to render the milk practically colostrum free; which contains not less than eight per cent (8%) of milk solids-not-fat, and not less than three and one-fourth per cent (3¼%) of milk fat.

(B). Pasteurized Milk or Milk Products. Pasteurized milk or milk products is milk or milk products every particle of which has been heated to a temperature of not less than 142° F., and held at such temperature for not less than 30 minutes in pasteurization apparatus approved by the State Health Officer, provided that approval shall be limited to apparatus which requires a combined holder and indicating thermometer temperature tolerance of not more than 1½° F., as shown by official tests with suitable testing equipment, and provided that such apparatus shall be operated as directed by the State Health Officer and so that the indicating thermometers and the recording thermometer charts both indicate a temperature of not less than 143½° F., continuously throughout the holding period. The terms "pasteurization", "pasteurized", and similar terms shall also include the process of heating every particle of milk or milk products to 160° F., and holding at that temperature or above for not less than 15 seconds in apparatus designed and operated in accordance with specifications approved by the State Health Officer. Provided that nothing contained in this definition shall be construed as disbarring any other process which has been demonstrated as of at least equal efficiency and is approved by the State health authority.

(C). Milk Fat or Butter Fat. Milk fat or butter fat is the fat of milk.

(D). Cream. Cream is a portion of milk which contains not less than eighteen per cent (18%) milk fat, and the acidity of which is not more than 0.20% expressed as lactic acid.

(E). Skimmed Milk. Skimmed milk is milk from which a sufficient portion of milk fat has been removed to reduce its milk fat percentage to less than three and one-fourth per cent.

(F). Milk or Skimmed Milk Beverage. A milk beverage or a skimmed milk beverage is a food compound or confection consisting of milk or skimmed milk as the case may be, to which has been added a syrup or flavor consisting of wholesome ingredients.

(G). Buttermilk. Buttermilk is the product which remains when fat is removed from milk or cream in the process of churning. It contains not less than eight per cent (8%) of milk solids-not-fat.

(H). Cultured Buttermilk. Cultured buttermilk is the product resulting from the souring or treatment, by a lactic acid culture, of milk or milk products. It contains not less than eight per cent (8%) of milk solids-not-fat, and shall be pasteurized before adding the culture.

(I). Vitamin D Milk. Vitamin D milk is milk the vitamin D content of which has been increased by a method and in an amount approved by the health officer.

(J). Reconstituted or Recombined Milk. Reconstituted or recombined milk is a product resulting from the recombining of milk constituents with water, and which complies with the standards for milk fat and solids-not-fat of milk as defined herein.

(K). Milk Producer. A milk producer is any person who owns or controls one or more cows, a part or all of the milk or milk products from which is sold.

(L). Milk Distributor. A milk distributor is any person who offers for sale or sells to another any milk or milk products for human consumption as such.

(M). Dairy or Dairy Farm. A dairy or dairy farm is any place or premises where one or more cows are kept, a part or all of the milk or milk products from which is sold.

(N). Milk Plant. A milk plant is any place, or premises, or establishment where milk or milk products are collected, handled, processed, stored, bottled, pasteurized, or prepared for distribution.

(O). Milk Products. Milk products shall be taken to mean and include cream, vitamin D milk, buttermilk, cultured buttermilk, skimmed milk, reconstituted or recombined milk, milk beverages, and skimmed milk beverages. Section 4 shall also refer to ice cream, milk powder, condensed milk, butter, cheese, or similar products.

(P). Grades "A", "B", "C", and "D" Raw Milk or Milk Products. Grades "A", "B", "C", and "D" raw milk or milk products are milk or milk products which have been produced and handled in accordance with the specifications and requirements as promulgated by the State Health Officer and which grade and grade label has been determined and awarded by a City or County Health Officer or by his representative.

(Q). Grades "A", "B", and "C" Pasteurized Milk or Milk Products. Grades "A", "B", and "C" pasteurized milk or milk products are milk or milk products which have been produced and pasteurized in accordance with the specifications and requirements as promulgated by the State Health Officer and which grade and grade label has been determined and awarded by a City or County Health Officer or by his representative. Provided, however, that pasteurization of milk shall not constitute any change in the grade thereof and all milk shall be sold after pasteurization as the same grade as classified before pasteurization.

State Health Officer to fix specifications

Sec. 2. The State Health Officer is hereby authorized and empowered to define what shall constitute and to fix the specifications for the production of the following grades of raw milk and raw milk products, according to the safety and food value of the same and the sanitary conditions under which the same are produced and handled; to-wit: Grades "A", "B", "C", and "D" raw milk and raw milk products. Provided such specifications defined and fixed by the State Health Officer shall be based upon and in harmony with the specifications for these grades of raw milk and raw milk products as set forth in the current United States Public Health Service Milk Ordinance.

And the State Health Officer is hereby authorized and empowered to define what shall constitute and to fix the specifications for the production and handling of the following grades of pasteurized milk and pasteurized milk products, according to the safety and food value of the same, and the sanitary conditions under which the same are produced or handled; towit: grades "A", "B", and "C" pasteurized milk and pasteurized milk products. Provided such specifications defined and fixed by the State Health Officer shall be based upon and in harmony with the specifications for these grades of pasteurized milk and pasteurized milk products as set forth in the current United States Public Health Service Milk Ordinance.

The definitions, specifications and requirements promulgated by the State Health Officer in accordance with the two foregoing paragraphs of this Act shall become effective three months from the date of their promulgation; and the State Health Officer shall furnish printed copies of such grades, specifications, and requirements to County and City Health Officers, at least thirty days before their effective date.

Any city adopting any specifications and regulations for any grade of milk shall be governed by the specifications and regulations promulgated by the State Health Officer, as herein authorized.

Permits for use of labels in advertising or labeling milk

Sec. 3. Any person, firm, association or corporation desiring to use any grade "A", "B", "C", or "D" label in representing, publishing or advertising any milk or milk products offered for sale or to be sold within this State, shall make application for a permit to the City Health Officer in any incorporated city where the same is to be sold or offered for sale, for a permit to use any such label in advertising, representing, or labeling such milk or milk products; any person, firm, association or corporation that desires to use any grade "A", "B", "C", or "D" label in representing, publishing or advertising any milk or milk products offered for sale or to be sold outside of the limits of any incorporated city or town shall make application to the County Health Officer in any county where the same is to be sold or offered for sale, for a permit to use any such label in advertising, representing, or labeling such milk or milk products; any person, firm, association or corporation desiring to use any grade "A", "B", "C", or "D" label in representing, publishing or advertising any milk or milk products offered for sale or to be sold both within and without the limits of any incorporated city or town, shall make application to both the City Health Officer and the County Health Officer for a permit to use any such label in advertising, representing, or labeling such milk or milk products.

Any city or county health officer receiving such application as provided for in this section is hereby authorized and empowered to take the necessary steps to determine and award the grade of the milk or milk products offered for sale by such applicant, according to the requirements of this Act for grade labels. He shall report to the State Health Officer the name or names of all applicants to whom he has awarded permission to use grade "A", or grade "B" labels, and shall notify the State Health Officer of all such permits revoked by him; provided, that the State Health Officer may exempt the City Health Officer from making such reports in cities that have adopted milk ordinances which in his judgment make such reports unnecessary.

Milk to conform to marked grades

Sec. 4. No milk or milk products sold, produced or offered for sale within this State by any person, firm, association or corporation shall carry a label, device or design marked "grade A", or "grade B", or any other grade, statement, design or device, regarding the safety, sanitary quality or food value of the contents of the container which is misleading or which does not conform to the definitions and requirements of this Act.

No milk or milk products, except those produced or processed by a person, firm, association or corporation having a permit to use a grade "A" label under the provisions of this Act and which are produced, treated and handled in accordance with the specifications and requirements fixed and promulgated by the State Health Officer for grade "A" milk and milk products, shall be represented, published, labeled or advertised as being grade "A" milk or grade "A" milk products.

Construction as to resale of milk in containers

Sec. 5. Nothing in this Act shall be construed as requiring any person, firm, association or corporation to obtain a permit in order to resell or offer for sale in the same container any milk or milk products, representing or advertising the same as a grade of milk or milk products purchased from any person, firm, association or corporation having a permit to so represent or advertise such milk or milk products.

Regulation of grading and labeling by State Health Officer

Sec. 6. The State Health Officer is hereby authorized and empowered to supervise and regulate the grading and labeling of milk and milk products in conformity with the standards, specifications and requirements which he promulgates for such grades, and in conformity with the definitions of this Act; and he and his representatives shall have the power to revoke and re-grade permits issued by any local health officials, when upon examination he or his representative shall find that such permit for the use of any grade label does not conform to the specifications or requirements promulgated by him in conformity to this Act.

Enabling clause

Sec. 7. The governing body of any city in the State of Texas may make mandatory, the grading and labeling of milk and milk products sold or offered for sale under the United States Standard Milk Ordinance within their respective jurisdictions as defined herein according to Definition (P) Section 1 for grades "A", "B", "C", and "D" Raw milk or Milk Products, and Definition (Q) for grades "A", "B", and "C" pasteurized milk or milk products by adopting an ordinance to that effect and by providing the necessary facilities for determining the grades and for the enforcement of this Act. Provided, however, the provisions of this Section shall apply only to milk or milk products, sold or offered for sale by any person, partnership, or corporation directly to the consumer of such milk or milk products.

Penalty

Sec. 8. Whoever violates any provision of this Act shall be fined in the sum not less than Twenty-five ($25.00) Dollars nor more than Two Hundred ($200.00) Dollars and each separate violation shall constitute a separate offense. [Acts 1937, 45th Leg., p. 353, ch. 172.]

CHAPTER 11.—COTTON

Art.
165—4. Cotton Research Award Fund.
165—4a. Activities of agricultural agencies of state; declaration of policy; appropriation.

Article 165—4. Cotton Research Award Fund. —Section 1. By this Act it is expressly declared to be a State policy that the encouragement and stimulation of new uses for cotton shall be a matter of State-wide importance and concern and that the various agencies of the State Government, and more particularly the various State agricultural departments, agencies, schools, colleges, etc., are hereby directed to take full and sufficient notice and consideration of the policy herein established and set forth, and the activities of all agencies of the State Government, and more particularly those especially mentioned above are hereby directed to be revamped and reorganized so as to conform with the provisions of this Act.

Sec. 2. The Governor of this State is hereby directed as the Chief Executive and Administrative Officer of this State to use his efforts to carry out the policy set forth above.

Sec. 3. In order to assist in carrying out the policy set forth in this Act, there is hereby created the "Cotton Research Award Fund", and there is hereby appropriated to this fund out of any money in the State Treasury not otherwise appropriated the sum of Ten Thousand ($10,000.00) Dollars. The President of the University of Texas, the President of the A. & M. College, and the President of Texas Technological College are hereby designated as a Board of Trustees of said fund. Said Board of Trustees are hereby appointed and empowered to dispense said

fund in keeping with rules and regulations which a majority of said Board may adopt, provided that the same are not in conflict with the provisions of this Act. Said rules and regulations shall be drawn up and published within ninety days from the effective date of this Act, and among other things, they shall provide for:

(a) An award of not less than Five Thousand ($5,000.00) Dollars, nor more than Ten Thousand ($10,000.00) Dollars to any resident Texas citizen, who, by chemical research or other invention or device, discovers any process or method which hereafter brings about an increase in the consumption of cotton annually in an amount equal to or greater than three hundred thousand (300,000) bales of five hundred (500) pounds net weight;

(b) The persons mentioned above are to be the sole judges as to whether the required increase in consumption of cotton above mentioned has actually taken place, and the Comptroller of Public Accounts is hereby authorized to pay warrants drawn on the "Cotton Research Award Fund" when said warrants are signed by a majority of the three persons above mentioned. [Acts 1939, 46th Leg., p. 1.]

Art. 165—4a. Activities of agricultural agencies of state; declaration of policy; appropriation.—Section 1. Declaration of Policy. By this Act it is expressly declared that the policy of the various agricultural agencies of the State of Texas shall be shaped so that the subject of the increased use and outlet for farm products, especially cotton, shall be stressed as much as the production of said products, and the heads of the various State Agricultural Agencies, departments, schools, colleges, etc., are hereby directed to take full and sufficient consideration of the policy herein established, and that the activities of the various agencies mentioned above be revamped, where same has not already been done, so as to conform with the provisions of this Act.

Sec. 2. The sum of Two Hundred Fifty Thousand ($250,000.00) Dollars is hereby appropriated, out of any funds in the Treasury of the State of Texas, not otherwise appropriated, for the periods of time shown below, and for the purposes of establishing cotton research facilities in Texas, wherein new uses of cotton, cottonseed, and their products, the expansion of the present uses, and the development and expansion of new markets and outlets, may be sought out and discovered and made available, and such continuing biennial appropriations as may be deemed proper, are hereby specifically authorized. The sums of money appropriated herein shall be allocated and spent under the direction of a Cotton Research Committee, composed of the Presidents of the University of Texas, the Texas A. & M. College, and Texas Technological College, and in specific furtherance of the "Declaration of Policy" set forth in this Act, subject only to such limitations as may otherwise be provided by law.

It is contemplated that the Cotton Research Committee shall cause a careful survey to be made of the most effective way to spend the sums of money appropriated herein, in order that the purposes of this Act may be fully accomplished. The decision of the majority of the members of said Cotton Research Committee, as to the place or places where said research work shall be started and carried on, shall be final. This Act specifically authorizes the acceptance of grants or gifts from the United States Government, or from any private source, to supplement the herein mentioned appropriation. The Comptroller of Public Accounts of the State of Texas is authorized and directed to issue warrants against this appropriation upon requisition and claims presented and approved by a majority of the Cotton Research Committee established herein. The appropriations herein authorized shall be expended as follows:

	For the Year Ending August 31, 1942	For the Year Ending August 31, 1943
Purchase of laboratory equipment, and the housing and maintenance of same	$100,000.00	$ 50,000.00
Salaries, none to exceed $6,500. per annum, and not more than two to exceed $5,000. per annum	40,000.00	40,000.00
Miscellaneous Supplies, Expenses and Equipment, as the Cotton Research Committee may direct	10,000.00	10,000.00
TOTAL	$150,000.00	$100,000.00

Any unexpended balance of the above funds not used during the year ending August 31, 1942, is hereby appropriated for corresponding use in the following year. [Acts 1941, 47th Leg., p. 759, ch. 474.]

CHAPTER 12.—RICE

Article 165—5. Texas Rice Development Law [Inoperative.]

This article was from Acts 1941, 47th Leg., p. 695, ch. 434.

TITLE 5—ALIENS

Art.
166. Ownership of land prohibited.
167. Exceptions.
168. Time to alienate.
169. Liens, loans and debts.
170. Term of title.
171. May sell before escheat.
172. Proceedings to escheat.
173. Qualification as guardian, etc.
174. Corporation controlled by aliens.
175. Land owned in trust.
176. Reports and record of ownership.
176A. Filing of reports by December 31, 1941.
177. Personal property.

Article 166. [15] [19] Ownership of land prohibited.—No alien or alien corporation shall acquire any interest, right or title either legal or equitable in or to any lands in the State of Texas, except as hereinafter provided. [Acts 1854, p. 98, Acts C. S. 1892, p. 6, Acts 1921, p. 261.]

Art. 167. [16] [10] Exceptions.—This title shall not apply to any land now owned in this State by aliens, not acquired in violation of any law of this State, so long as it is held by the present owners; nor to lots or parcels of land owned by aliens in any incorporated town or city of this State, nor to the following classes of aliens, who are, or who shall become bona fide inhabitants of this State, so long as they shall continue to be bona fide inhabitants of this State:

1. Aliens who were bona fide inhabitants of this State on the date on which this Act becomes a law.

2. Aliens eligible to citizenship in the United States who shall become bona fide inhabitants of this State, and who shall, in conformity with the naturalization laws of the United States, have declared their intention to become citizens of the United States.

3. Aliens who are natural born citizens of nations which have a common land boundary with the United States.

4. Aliens who are citizens or subjects of a nation which now permits citizens of this State to own land in fee in such country. [Id.]

Art. 168. [16] [10] Time to alienate.—Any resident alien who shall acquire land under any provision of the preceding article shall have five years

after he shall cease to be a bona fide inhabitant of this State in which to alienate said land. [Id.]

Art. 169. [17] [11] Liens, loans and debts.—The provisions of this title shall not prevent aliens or alien corporations from lending money secured by lien upon real estate or any interest therein, nor from enforcing any such lien, nor from acquiring and holding title to such real estate or any interest therein when sold for the purpose of enforcing such lien, or for enforcing the collection of a debt. [Id.]

Art. 170. [18] [12] Term of title.—All aliens and all alien corporations who are prohibited from owning land in this State under the provisions of this title, who shall hereafter acquire real estate in Texas by devise, descent, or by purchase as permitted by this title, may hold same for five years, and if such alien is a minor, he may hold same for five years after attaining his majority, or if of unsound mind for five years after the appointment of a legal guardian. [Id.]

Art. 171. [19] [13] May sell before escheat.—Any alien who shall hereafter acquire lands in Texas, in contravention of the provisions of this title, may, nevertheless, convey the fee simple title thereof at any time before the institution of escheat proceedings as hereinafter provided. If any such conveyance shall be made by such alien either to an alien or to a citizen of the United States, in trust, and for the purpose and with the intention of evading the provisions of this title, such conveyance shall be null and void; and any such land so conveyed shall be forfeited and escheated to the State. [Id.]

Art. 172. [20] [14] Proceedings to escheat.—The Attorney General or the district or county attorney when he shall be informed or have reason to believe that lands in this State are being held contrary to the provisions of this title shall institute suit in behalf of the State of Texas praying for the escheat of the same on behalf of the State.

Art. 173. Qualification as guardian, etc.—No alien shall ever be appointed or permitted to qualify as guardian of the estate of any minor or person of unsound mind, or as executor or administrator of the estate of any descendent [1] in the State, unless he is permitted to own land under the provisions of this title. [Acts 1921, p. 262.]

[1] So in enrolled bill and R.S.1925. Should probably read "decedent."

Art. 174. Corporations controlled by aliens.—No corporation in which the majority of the capital stock is legally or equitably owned by aliens prohibited by law from owning land in Texas shall acquire title to or own any lands in Texas or any leasehold or other interest in such lands except as hereinafter provided and land so owned shall be subject to escheat as though owned by a non-resident alien. [Id.]

Art. 175. Land owned in trust.—Land owned in trust, either by an alien or by a citizen of the United States, for the beneficial use of any alien or aliens, or any corporation prohibited from owning land in this State under the provisions of this title, shall be subject to escheat as though the legal title thereto was in such alien or corporation. [Id.]

Art. 176. Report and record of ownership.—All alien [1] and all alien corporations now owning lands in this State shall on or before the last day of January 1926 file a written report under oath, with the clerk of the county court of the county in which such land is located, giving the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date and place of arrival of said alien in the United States, and his or her present residence and post-office address, and the length of time of residence in Texas, the foreign prince, potentate, State or sovereignty, of which the alien may at the time be a citizen or subject, and the number of acres of land owned by such alien in such county, the name and number of the survey, the abstract and certificate number, the name of the person or persons, from whom acquired, and shall either describe said land by metes and bounds, or refer to recorded deed in which same is so described, which report shall be known as "REPORT OF ALIEN OWNERSHIP." All aliens and all alien corporations hereafter purchasing, or in any manner acquiring lands located in Texas, shall, within six months after such purchase, or acquisition, file with the county clerk of the county in which such land is located, a "Report of Alien Ownership," in terms as above required. Any alien or alien corporation who may now own land in Texas, or who may hereafter acquire any land in Texas, by purchase or otherwise, who does not within the time prescribed in this article, file the reports herein provided for, shall be subject to have such land forfeited and escheated to the State of Texas. The reports herein required shall, when the alien is a minor or insane person, be filed by the parent or guardian of such alien. The county clerk of each county shall file and record the reports above provided for in a separate volume, to be entitled "RECORD OF ALIEN OWNED LANDS," for said county. The recording of such reports shall be paid by the alien owner. [Id.]

[1] So in enrolled bill and R. S. 1925. Should probably read "aliens."

Art. 176A. Filing of reports by December 31, 1941.—All aliens and all alien corporations that have not, within the times prescribed by Article 176, filed the reports therein provided for, may file such reports on or before the last day of December, 1941, and such filing shall be deemed compliance with Article 176. [Added Acts 1941, 47th Leg., p. 704, ch. 439, § 1.]

Art. 177. [15] [9] Personal property.—Aliens shall have and enjoy in this State such rights as to personal property as are or shall be accorded to citizens of the United States by the laws of the Nation to which such alien shall belong or by the treaties by such Nation with the United States. [Acts 1921, p. 262.]

TITLE 6—AMUSEMENTS—PUBLIC HOUSES OF

Art.
178. "Public houses of amusement."
179. Leases.

Article 178. "Public houses of amusement."—All buildings constructed, fitted and equipped for the purpose of theaters, commonly called theaters, opera houses, play houses, or by whatever name designated, which are and shall hereafter be used for public performances, the production and exhibition of plays, dramas, operas, or other shows of whatever nature, to which admission fees are charged, are hereby declared to be public houses of amusement, and the same shall be subject to regulation by ordinance, statute, or other law. Owners and lessees shall have the right to assign seats to patrons thereof, and to refuse admission to objectionable characters. [Acts 1907, p. 21.]

Art. 179. Leases.—Upon the failure of [1] refusal of any lessee, or his assigns, of any such public house of amusement to comply with the law governing such places of amusement, or upon conviction of the violation of any provision of the Penal Code relating to discrimination in the booking of plays, opera shows, or other productions, by whatever name known, which are and shall hereafter be used for public performances, he shall forfeit his lease and all rights and privileges thereunder. [Id.]

[1] So in enrolled bill and R.S.1925. Should probably read "or."

TITLE 7—ANIMALS

1. CRUELTY TO ANIMALS

Art.
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181. Cruelty to fowls.
182. Cruelty to animals.
183. May take animal.
184. Lien.
185. Enforcing lien.
186. Impounded animal.
187. May destroy animal.
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2. DESTRUCTION OF ANIMALS

190. By poison.
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190a—1. Bounties on coyote scalps in McMullen county.
190b. Bounties for destruction of predatory animals in certain counties.
Sec.
1. Counties to which applicable.
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1. Bounty authorized.
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190d. Wolf bounties in Shackelford county.
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190g—2. Bounties on rattlesnakes and predatory animals in certain counties.
190g—3. Bounties on rattlesnakes and predatory animals in Williamson county.
190g—4. Bounties on rattlesnakes and predatory animals in certain counties.
190h. Bounties on predatory animals and rattlesnakes in all counties.
190i. Rabid foxes and other wild animals; bounties; State Health Officer's duties.
191. Prairie dogs.
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192a. [Repealed.]
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1. Agencies required to cooperate.
2. Appropriation.
3. Expenditure of appropriation.
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5. Appropriations by Commissioners' Court.
6. Sale of furs and skins.
7. Bounty prohibited.
8. Entry on public or private lands.
9. Construction with other acts.
10–13. Penal provisions.
15. Partial invalidity.

3. LIVESTOCK REMEDIES

192—1. Texas Livestock Remedy Act.

1. CRUELTY TO ANIMALS

Article 180. Definitions.—As used in this subdivision, the word "animal" includes every living dumb creature; the words "torture" and "cruelty" include every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue when there is a reasonable remedy or relief. The words "owner" and "person" include corporations, and the knowledge and acts of agents and employés of corporations in regard to animals transported, owned, used by or in custody of the corporation shall be held to be the knowledge and acts of such corporation. [Acts 1913, p. 168.]

Art. 181. Cruelty to fowls.—Whoever receives live fowls, poultry or other birds for transportation or to be confined on wagons or stands, or by the owners of grocery stores, commission houses or other market houses, or by other persons when to be closely confined, shall place same immediately in coops, crates or cages made of open slats or wire on at least three sides and of such height that the fowls can stand upright without touching the top, have troughs or other receptacle easy of access at all times by the birds confined therein, and so placed that their contents shall not be defiled by them, in which troughs or other receptacles clean water and suitable food shall be constantly kept; keep such coops, crates or cages in a clean and wholesome condition; place only such numbers in each coop, crate or cage as can stand without crowding one another, but have room to move around; not expose same to undue heat or cold, and remove immediately all injured, diseased or dead fowls or other birds. [Id.]

Art. 182. Cruelty to animals.—It shall be unlawful for any person to overdrive, wilfully overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, unnecessarily or cruelly beat, or needlessly mutilate or kill any animal or carry any animal in or upon any vehicle, or otherwise, in a cruel or inhuman manner, or cause or procure the same to be done, or who having the charge or custody of any animal unnecessarily fails to provide it with proper food, drink or cruelly abandons it. [Id.]

Art. 183. May take animal.—When any person arrested under any provision of this law is, at the time of such arrest, in charge of any vehicle drawn by or containing any animal cruelly treated, any agent of the State Humane Society, having been authorized by the sheriff of the county to make arrests in such cases, may take charge of such animal and such vehicle and its contents, and the animal or animals drawing same, and shall give notice thereof to the owner, if known, and shall care and provide for them until their owner shall take charge of the same; and such agent shall have a lien on said animals and on said vehicle and its contents for the expense of such care and provision, or the said expense or any part thereof remaining unpaid may be recovered by such agent in a civil action. [Id.]

Art. 184. Lien.—Any officer or agent of said humane society may lawfully take charge of any animal found abandoned, neglected or cruelly treated and shall thereupon give notice thereof to the owner, if known, and may care and provide for such animal until the owner shall take charge of same, and the expense of such care and provision shall be a charge against the owner of such animal and collectible from such owner by said humane society in an action therefor. When said humane society shall provide neglected abandoned animals with proper food, shelter and care, it may detain such animals until the expense of such food, shelter and care is paid, and shall have a lien upon such animals therefor. [Id.]

Art. 185. Enforcing lien.—Any person or corporation entitled to a lien under any provision of this subdivision may enforce the same by selling the animals and other personal property upon which such lien is given, at public auction, upon giving notice to the owner, if he be known, of the time and place of

such sale, at least five days previous thereto, and by posting three notices of the time and place of such sale in three public places within the county, at least five days previous thereto. If the owner be not known, then such notice shall be posted at least ten days previous to such sale. [Id.]

Art. 186. Impound animal.—Every person who under the laws of this State or of any municipality thereof shall impound or cause to be impounded any animal in any pound or corral shall supply it during such confinement with sufficient wholesome food and water. If any animal so impounded shall continue to be without necessary food and water for more than twelve successive hours it shall be lawful for any person as often as necessary to enter into or upon said pound or corral and supply such animal with necessary food and water; the reasonable cost for such food and water may be collected by him from the owner of such animal which shall not be exempt from levy and sale upon execution issued upon a judgment therefor. [Id.]

Art. 187. May destroy animal.—Any agent or officer of said humane society may lawfully destroy or cause to be destroyed any animal in his charge when, in the judgment of such agent or officer, and by written certificate of two reputable citizens called to view same in his presence, one of whom may be selected by the owner of said animal if he shall so request, it appears humane to do so, and said citizens shall so certify that said animal appears to be injured to such an extent that it would be humane to destroy it. [Id.]

Art. 188. Badge.—Officers and agents of said humane society shall be provided with a certificate by said society stating that they are such officers or agents, or with a badge bearing the name and seal of said society; and shall on request show such certificate or badge when acting officially. [Id.]

Art. 189. Duty of officers.—Any member of said humane society may require any sheriff, constable, marshal or any policeman of any town or city or any agent of said society authorized by the sheriff to make arrests for the violation of the law relating to cruelty to animals, to arrest any person violating any provision thereof, and to take possession of any animal cruelly treated in their respective counties, cities or towns. [Id.]

2. DESTRUCTION OF ANIMALS

Art. 190. By poison.—1. May buy poison.—The commissioners court of each county may purchase the necessary poisons and accessories required by the citizens of such county for the purpose of destroying prairie dogs, wild cats, gophers, ground squirrels, wolves, coyotes, rats, English sparrows and ravens, and pay for the same out of the general fund of the county, and may furnish the same at cost or free to such citizens. If the court shall elect to sell the same, the proceeds shall be turned into the treasury to the credit of the general fund.

2. Notice of putting out poison.—Said court shall designate a certain day or days for putting out poison, giving notice of same by posting up notices in public places, such as school houses, gins and mills, or other public places, and also publishing the same in at least one county newspaper, if there be one, for three successive issues. Said notices shall be given at least twenty days prior to the first day of the time designated to put out the poison. Said notice shall state the time of putting out poison, and that the poisons can be secured from the commissioners court, and the terms on which it can be had.

3. Commissioner of Agriculture.—The Commissioner of Agriculture shall furnish said court with formulas and instructions for preparing the poisons and plans for using the same, and shall, upon the request of any such court, as soon as practicable after receiving such request, demonstrate and give instructions how to prepare the poison and when and how to apply the same.

4. Duty of land holder.—Every land holder whose premises are infested with any of such pests shall procure poison and apply the same as set forth in the plans furnished by the Commissioner of Agriculture.

5. Duty of lessee or tenant.—Every lessee or tenant holding premises by contract shall secure the poison and destroy all such pests. All such expenses incurred by such tenant or lessee in thus destroying such pests shall be charged against the owner of the land and collectible as other valid debts. [Acts 4th C. S. 1918, p. 144.]

Art. 190a. Bounty for destruction of predatory animals in certain counties.—It shall hereafter be lawful for the Commissioners Court of McCulloch, San Saba, Lampasas, Mills, Erath, Limestone, Jasper, Hood, Bastrop, Brazos, Grimes, Sterling, and Childress Counties to pay out of the General Fund of said Counties, bounties for the destruction of wolves, wild cats, and other predatory animals within said Counties as hereinafter provided.

On the petition of two hundred resident freeholders of any one of said Counties, being presented to the Commissioners Court of such County, the Commissioners Court may, by resolution entered upon its Minutes, provide for the destruction of such animals and the amount of bounty to be paid for the destruction of each of said predatory animals and the method of providing such destruction so as to entitle the person destroying such predatory animals to receive said bounty. Provided, that in the Counties of Sterling and Childress, the Commissioners Court is authorized to act upon a petition of as many as fifty (50) resident freeholders of said County.

The amounts paid as bounties for the destruction of predatory animals in said Counties shall be paid by warrant drawn upon the General Fund of the County by the Judge of such County on the filing with him of such proof as the Commissioners Court may require. [Acts 1925, 39th Leg., p. 179, ch. 44, §§ 1–3; Acts 1927, 40th Leg., p. 151, ch. 100, § 1; Acts 1929, 41st Leg., p. 208, ch. 90, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 43, ch. 27, § 1; Acts 1930, 41st Leg., 4th C.S., p. 46, ch. 26, § 1; Acts 1941, 47th Leg., p. 1298, ch. 572, § 1.]

Art. 190a—1. Bounties on coyote scalps in McMullen county.—The Commissioners' Court of McMullen County, in order to preserve game, is hereby authorized to pay out of the general fund, bounties on the scalps of coyotes, in such sum as they deem necessary not to exceed Fifty ($50.00) Dollars for each scalp. Said Commissioners' Court may require such proof and adopt such rules and regulations as are necessary in order to protect the interest of the County and make assurance that one coyote has been killed for each scalp paid for. [Acts 1939, 46th Leg., Spec.L., p. 515, § 1.]

Art. 190b. Bounties for destruction of predatory animals in certain counties.

Counties to which applicable

Sec. 1. It shall hereafter be lawful for the Commissioners' Court of Clay, Archer, Baylor, Young, Wise, Wilbarger, Wichita, Coryell, Callahan, Jackson, Eastland, Wharton, Taylor, and Brazos Counties to pay out of the General Fund of said counties, bounties for the destruction of wolves, wildcats and other predatory animals within said counties, as hereinafter provided.

Amount of bounty

Sec. 2. On petition of two hundred resident freeholders of any one of said counties, being presented to the Commissioners Court of such county, the Commissioners' Court may, by resolution entered upon

its Minutes, provide that any person who shall kill or catch in any of the above counties any wolf coyote, jack-rabbit, panther or wildcat shall be paid not to exceed $5.00 for each panther, wolf or wildcat scalp, and not to exceed ten cents (10¢) for each jack-rabbit scalp.

Payment of bounty

Sec. 3. The amounts paid as bounties for the destruction of predatory animals in said counties shall be paid by warrant drawn upon the General Fund of the County Judge of such county on the filing with him of such proof as the Commissioners' Court may require. [Acts 1929, 41st Leg., p. 69, ch. 35.]

See, also, article 190e, post.

Art. 190c. Destruction of predatory animals in counties having population of 11,800 to 12,000, bounties.

Bounty authorized

Sec. 1. That from and after the passage of this Act it shall be lawful for the Commissioners' Court of any county in this State having a population of not less than 11,800 and not more than 12,000 according to the last 1920 Federal Census, to pay a bounty for the destruction of wolves, wildcats and other predatory animals within said County.

Payment of bounty

Sec. 2. That the payment of the Bounties herein authorized shall be made from a fund created by the levy of taxes which the Commissioners' Court of said county is hereby authorized to levy, at a rate of not to exceed one-fourth of one mill on the total assessed valuation of the county. [Acts 1929, 41st Leg., 1st C.S., p. 257, ch. 107.]

Section 3 of this Act provides that it shall be cumulative of other acts relating to destruction of predatory animals and shall not operate as repeal thereof.

Art. 190d. Wolf bounties in Shackelford county.—The Commissioners' Court of Shackelford County, in order to preserve game, is hereby authorized to pay out of the general fund, bounties on the scalps of wolves, in such sum as they deem necessary not to exceed Fifty ($50.00) Dollars for each scalp. Said Commissioners' Court may require such proof and adopt such rules and regulations as are necessary in order to protect the interest of the County and make assurance that one wolf has been killed for each scalp paid for. [Acts 1930, 41st Leg., 5th C.S., p. 191, ch. 48, § 1.]

Art. 190e. Bounties on wolf scalps in Jack and other counties.—In Wise, Jack and Young Counties the Commissioners' Court of the County, in order to preserve game, is hereby authorized to pay out of the General County Fund bounties on the scalps of wolves killed in the county, not to exceed Fifty Dollars for each scalp. Said Commissioners' Court may require such proof and adopt such rules and regulations as are necessary in order to protect the interest of the county and make assurance that one animal has been killed for each scalp paid for. [Acts 1930, 41st Leg., 4th C.S., p. 88, ch. 47, § 1.]

See, also, article 190b, ante.

Art. 190f. Destruction of ravens and predatory animals in Callahan and other counties.—It is hereafter lawful for the Commissioners Courts of Callahan, Eastland, and Taylor Counties to pay out of the General Fund of said Counties bounties for the destruction of ravens, rabbits, rattlesnakes, and other predatory animals within said Counties as hereinafter provided.

The Commissioners Courts may by resolution entered upon its minutes provide for the destruction of such ravens, rabbits, rattlesnakes, and other predatory animals and the amount of bounty to be paid for the destruction of such, and the method of providing such destruction so as to entitle the person destroying same to receive said bounty. The amount paid as bounty for destruction of ravens, rabbits, rattlesnakes, and other predatory animals in said Counties shall be paid by warrant drawn upon the General Fund of the Counties by the Judges of such Counties on the filing with them of such proof as the Commissioners Courts may require. [Acts 1937, 45th Leg., p. 500, ch. 251, § 1.]

Art. 190g. Bounties on rattlesnakes and predatory animals in Bell County.—It is hereafter lawful for the Commissioners Court of Bell County to pay out of the General Fund of said County bounties for the destruction of rattlesnakes and predatory animals within said County as hereinafter provided.

The Commissioners Court may by resolution entered upon its minutes provide for the destruction of such rattlesnakes and predatory animals and the amount of bounty to be paid for the destruction of such, and the method of providing such destruction so as to entitle the person destroying same to receive said bounty. The amount paid as bounty for destruction of rattlesnakes and predatory animals in said County shall be paid by warrant drawn upon the General Fund of the County by the Judge of such County on the filing with them of such proof as the Commissioners Court may require. [Acts 1937, 45th Leg., 1st C.S., p. 1804, ch. 28, § 1.]

Art. 190g—1. Bounties on rattlesnakes and predatory animals in Burnet County.—It is hereafter lawful for the Commissioners Court of Burnet County to pay out of the General Fund of said County bounties for the destruction of rattlesnakes and predatory animals within said County as hereinafter provided.

The Commissioners Court may by resolution entered upon its minutes provide for the destruction of such rattlesnakes and predatory animals and the amount of bounty to be paid for the destruction of such, and the method of providing such destruction so as to entitle the person destroying same to receive said bounty. The amount paid as bounty for destruction of rattlesnakes and predatory animals in said County shall be paid by warrant drawn upon the General Fund of the County by the Judge of such County on the filing with them of such proof as the Commissioners Court may require. [Acts 1941, 47th Leg., p. 36, ch. 23, § 1.]

Art. 190g—2. Bounties on rattlesnakes and predatory animals in certain counties.—It is hereafter lawful for the Commissioners Courts of Crockett, Sutton, Menard, Mason, Kimble, Kerr, Bandera, Real, Edwards, Schleicher, Tom Green, Irion, Medina, Webb, and Zapata Counties to pay out of the General Fund of said Counties bounties for the destruction of rattlesnakes and predatory animals within said Counties as hereinafter provided.

The Commissioners Court in each County above named may by resolution entered upon its minutes provide for the destruction of such rattlesnakes and predatory animals and the amount of bounty to be paid for the destruction of such, and the methods of providing such destruction so as to entitle the person destroying same to receive said bounty. The amount paid as bounty for destruction of rattlesnakes and predatory animals in said Counties shall be paid by warrant drawn upon the General Fund by the Judge of such Counties on the filing with them of such proof as the Commissioners Court may require. [Acts 1941, 47th Leg., p. 671, ch. 413, § 1.]

Art. 190g—3. Bounties on rattlesnakes and predatory animals in Williamson county.—It is hereafter lawful for the Commissioners Court of Williamson County to pay out of the General Fund of said County bounties for the destruction of rattlesnakes and predatory animals within said County as hereinafter provided.

The Commissioners Court may by Resolution entered upon its minutes provide for the destruction of such rattlesnakes and predatory animals and the amount of bounty to be paid for the destruction of such, and the method of providing such destruction so as to entitle the person destroying same to receive said bounty. The amount paid as bounty for destruction of rattlesnakes and predatory animals in said County shall be paid by warrant drawn upon the General Fund of the County by the Judge of such County on the filing with them of such proof as the Commissioners Court may require. [Acts 1945, 49th Leg., p. 47, c. 29, § 1.]

Art. 190g—4. Bounties on rattlesnakes and predatory animals in certain counties.—Section 1. The Commissioners Courts of San Patricio, Bee, Aransas, and Refugio Counties, Texas, in order to preserve game, and to protect the interest of livestock and poultry raisers of said Counties, is hereby authorized to pay out of the general fund of said Counties bounties for the destruction of rattlesnakes, wolves, coyotes, panthers, bobcats, and other predatory animals; said bounty to be set by the Commissioners Courts of San Patricio, Bee, Aransas, and Refugio Counties, Texas, at an amount not to exceed Five Dollars ($5) per animal for wolves, coyotes, panthers, and bobcats; Fifty (50) Cents for coons, skunks, opossum, and like animals, and Ten (10) Cents for rattlesnakes; said Commissioners Courts, by resolution entered upon the minutes of the Commissioners Courts, to specify the amount of bounty to be paid for each of the said predatory animals and for rattlesnakes not to exceed the amounts as set forth above; and to prescribe such proof and regulations as are necessary in order to protect the interests of such Counties.

Sec. 2. Such bounties as may be prescribed by the Commissioners Courts of San Patricio, Bee, Aransas, and Refugio Counties, for the destruction of rattlesnakes and predatory animals, shall be paid upon warrant drawn by the County Judge on the general fund of said Counties. [Acts 1945, 49th Leg., p. 154, ch. 105.]

Art. 190h. Bounties on predatory animals and rattlesnakes in all counties.—Section 1. From and after the effective date of this Act all County Commissioners Courts throughout the State of Texas may pay a bounty not to exceed Five Dollars ($5) out of the General Fund of the County for the killing of all Jaguar, Cougar, Ocelot, Jaguarondi, Bob Cat, Gray Wolf, Red Wolf, Florida Wolf, Coyote, Javelina and Rattlesnake. The Commissioners Courts shall have authority to determine what animals are predatory within said County and said Court may further determine eligibility of persons to whom bounties will be paid.

Sec. 2. The amounts paid as bounties for the destruction of predatory animals in any county shall be paid by a warrant drawn upon the General Fund of the county by the Judge of said county upon the filing with him of such proof as the Commissioners Court may require. [Acts 1945, 49th Leg., p. 83, ch. 59.]

Art. 190i. Rabid foxes and other wild animals; bounties; State Health Officer's duties.—Section 1. It shall be the duty of the State Health Officer to determine and define the boundaries of all areas of the State in which foxes or other wild animals infected with rabies exist in sufficient numbers to be a menace to the health of that area. Such determinations shall be based upon a finding of fact by the State Health Officer; providing further that the State Health Officer shall cause to be published in a newspaper within each county within the defined area that a bounty exists in the county concerned.

Sec. 2. When the State Health Officer finds that the health of such area is menaced by rabies because of rabid foxes or other wild animals, and defines the area where such menace exists, he shall pay a bounty of Two Dollars ($2) for each and every fox or other wild animal destroyed in the defined area. For purposes of such payments the Health Officer shall have the power to require such evidence as proof of the destruction of a fox or other wild animal as he shall deem necessary.

Sec. 3. When the number of rabid foxes or other wild animals in any defined area is reduced to the extent that the destruction of such foxes or other wild animals is no longer necessary then the State Health Officer shall cease payment of the bounties, and shall serve notice to the public in the area concerned through publication in at least one (1) newspaper in each county concerned.

Sec. 4. For purposes of administering the provisions of this Act and for payment of the bounties so provided, there is appropriated out of the General Revenue Fund from moneys, not otherwise appropriated, Fifteen Thousand Dollars ($15,000) to the State Health Officer, any excess to be returned to the General Revenue Fund after eradication of rabid foxes or other wild animals. A budget for the appropriation herein made shall be submitted to and approved by the Legislative Audit Committee before any funds may be disbursed.

Sec. 5. It shall be lawful for any person to kill, take, hunt, catch or destroy wild foxes or other wild animals at any time in the affected area, as determined by the State Health Officer, and the hides and pelts of any wild foxes or other wild animals so taken within such defined area may be sold during the trapping season.

Sec. 6. All laws or parts of laws in conflict herewith are hereby specifically repealed.

Sec. 7. If it shall be held by any Court of competent jurisdiction that any section, sentence, or part of this Act is invalid, it is nevertheless declared to be the legislative intent that this Act would have been and the same is hereby enacted regardless of any such invalidity of any part thereof. [Acts 1947, 50th Leg., p. 229, ch. 133.]

Art. 191. Prairie dogs.—Prairie dogs are hereby declared to be a public nuisance, and it shall be the duty of every owner of land in this State to destroy all prairie dogs on his land.

1. *Duty of commissioners court.*—The commissioners court of any county in which the prairie dogs exist, shall investigate and determine whether owners of lands in their respective commissioner's precincts have killed or caused to be killed all prairie dogs, and if such land owners have failed to do so, said commissioners shall immediately notify the sheriff of his county of such failure, and of the name and post-office address of such owner, or his agent, and said sheriff shall immediately mail, by registered letter, a notice to the said owner, or his agent, that if he shall fail, within thirty days from and after the date of mailing of notice, to kill or cause to be killed such prairie dogs, he, the said sheriff, will proceed to destroy all prairie dogs on said land.

2. Duty of sheriff.—If any land owner has not within thirty days after receiving said notice destroyed the prairie dogs on his land, said sheriff shall immediately proceed to destroy said prairie dogs by the use of practical and economical methods in general use. He shall report his action, together with a sworn itemized bill of expenses to the first term of the commissioners court of said county, which court shall examine said account, and if found correct and reasonable, shall allow the same, and by its order duly entered, assess said amount against said owner and enter same as a lien against his land. Said court may pay the sheriff not exceeding five dollars per day for each day he has performed actual services in supervising the destruction of said prairie dogs.

3. Suit to recover assessment.—If the owner of any land against which costs and expenses have been assessed by the commissioners court shall fail to pay the same within thirty day after notice of such assessment, the county attorney of such county shall bring suit to enforce the payment thereof. The county attorney shall, in each suit brought by him for said purpose, be allowed a reasonable fee to be fixed by the court trying the cause, to be taxed as costs in the case, and upon the rendition of any judgment for such costs and expenses, execution and order of sale shall issue and be executed as in other cases. [Acts 1st C. S. 1915, p. 26.]

Art. 192. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 235, ch. 96, § 14.]

Art. 192a. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 235, ch. 96, § 14.]

The article repealed was Acts 1927, 40th Leg., p. 278, ch. 195.

Art. 192b. Co-operation between state and federal agencies in destruction of predatory animals.

Agencies required to cooperate

Sec. 1. That the State of Texas will cooperate through the Live Stock Sanitary Commission of Texas with United States Department of Agriculture, Bureau of Biological Survey, in destroying coyotes, wolves, mountain lions, bobcats and other predatory animals, and through the Agricultural and Mechanical College of Texas will cooperate with the United States Department of Agriculture, Bureau of Biological Survey, in destroying prairie dogs, pocket gophers (Salamanders), jack rabbits, ground squirrels and other rodent pests in the interest of the protection of live stock, crops and ranges.

Appropriation

Sec. 2. It is hereby authorized that an appropriation out of any sum in the State Treasury not otherwise appropriated in the sum of $——— for the fiscal year ending August 31, 1930, for said purpose, and the sum of $——— is hereby authorized to be appropriated from any sum in the State Treasury not otherwise appropriated for the fiscal year ending August 31, 1931, for the same purpose, provided that such monies so appropriated shall not be expended as hereinafter provided unless the Federal Congress shall appropriate adequate funds from the United States Treasury for each.

Expenditure of appropriation

Sec. 3. The funds hereby authorized to be appropriated shall be apportioned each year between the two divisions of predatory animal control and rodent control as follows: eighty-five (85%) per cent for predatory animal control and fifteen (15%) per cent for rodent control. These funds shall be expended in amounts as authorized by the Chairman of the Live Stock Sanitary Commission of Texas and disbursed by warrants issued by the State Comptroller upon vouchers or pay rolls certified by the Chairman of the Live Stock Sanitary Commission of Texas for the predatory animal control division of the work, and in amounts as authorized by the President of the Agricultural and Mechanical College of Texas, and disbursed by warrants issued by the State Comptroller upon vouchers or pay rolls certified by the Director of Rodent Control for the Rodent Control division of the work. The work of destroying predatory animals and rodent pests is to be carried on under the direction of the Bureau of Biological Survey of the United States Department of Agriculture.

Cooperative agreement

Sec. 4. The Chairman of the Live Stock Sanitary Commission of Texas is hereby authorized and directed to execute a cooperative agreement with the Secretary of Agriculture of the United States of America or the Bureau of Biological Survey of the United States of America for carrying out such cooperative work in predatory animal control in such manner and under such regulations as may be stated in said agreement. The president of the Agricultural and Mechanical College of Texas is hereby authorized and directed to execute a cooperative agreement with the Secretary of Agriculture or the Bureau of Biological Survey for carrying out such cooperative work in rodent control in such manner and under such regulations as may be stated in said agreement.

Appropriations by Commissioners' Court

Sec. 5. That the Commissioners' Court of any county within the State or the governing body of any incorporated city or town within the State is empowered and authorized at its discretion to appropriate funds for the prosecution of the predatory animal and rodent control work contemplated by this Act[1] and in cooperation with State and Federal authorities to employ labor and to purchase and provide supplies required for the effective prosecution of this work.

1 This article and Pen.Code, art. 1378a.

Sale of furs and skins

Sec. 6. All furs, skins and specimens taken by hunters or trappers paid from State funds shall be sold under rules prescribed by the Live Stock Sanitary Commission of Texas and the proceeds of such sales shall be paid into the State Treasury to be credited and added to said predatory animal fund. All furs, skins, and specimens taken by hunters or trappers paid from county funds shall be sold as prescribed by the Commissioners' Court of the county, and the proceeds of such sale shall be paid into the County Treasury to be credited and added to such predatory animal fund, provided that any specimen so taken may be presented free of charge to the Agricultural and Mechanical College, or any other State institution or to the United States National Museum for scientific purposes.

Bounty prohibited

Sec. 7. No bounty is to be collected from any county or other source for animals taken by hunters or trappers operating under this Act.[1] Scalps of all animals taken are to be destroyed and all skins of commercial value sold, and every precaution taken to prohibit the collection of bounty by any person herein mentioned.

1 This article and Pen.Code, art. 1378a.

Entry on public or private lands

Sec. 8. Any person working under the direction of the Bureau of the Biological Survey, United States Department of Agriculture, the Agricultural and Mechanical College of Texas, or the Live Stock Sanitary Commission of Texas, shall be authorized to enter upon public or private lands within this State for the purpose of carrying on the work of extermination of predatory animals and injurious rodents named in this Act,[1] provided the same is done without violating the State or Federal Constitution.

1 This article and Pen.Code, art. 1378a.

Construction with other acts

Sec. 9. The provisions, restrictions and penalties of Chapter 149, Acts of the Regular Session of the 39th Legislature[1] and of Articles 923r, 1377 and 1378 of the Penal Code shall not be construed as applying to hunters and trappers under this Act,[2] provided they are acting in performance of duties contemplated under the terms of this Act.

1 Repealed, except section 1 which was similar to C.C.P. art. 4.

2 This article and Pen.Code, art. 1378a.

Penal provisions

Sections 10–13 being penal provisions are published as Pen. Code art. 1378a.

Partial invalidity

Sec. 15. Provided that if any Section, Sub-section, sentence, clause or phrase of this Act[1] is for any rea-

son held to be unconstitutional, such decision shall not affect the validity of the remaining portion or portions of this Act. [Acts 1929, 41st Leg., 1st C.S., p. 235, ch. 96.]

[1] This article and Pen. Code, art. 1378a.

3. LIVESTOCK REMEDIES

Art. 192—1. Texas Livestock Remedy Act.

Title

Section 1. This Act shall be known and may be referred to as the "Texas Livestock Remedy Act".

Definitions

Sec. 2. For the purposes of this Act:

(a) The term "person" includes individual, partnership, corporation, and association.

(b) The term "drug" means (1) articles recognized in the official United States Pharmacopœia, official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man; and (3) preparations for external or internal use in the eradication of parasites in or on livestock, poultry or other domestic animals; and (4) articles (other than feed) intended to affect the structure of any function of the body of animals other than man; and (5) articles intended for use as a component of any articles specified in clause (1), (2), or (3) of this Section.

(c) The term "label" means a display of written, printed or graphic matter upon the immedicate [1] container of any article; and a requirement made by or under authority of this Act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(d) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. But this shall not be construed as including advertising matter not attached to such article or the container thereof used for display purposes only.

(e) The term "animal" means any animate being which is not human, endowed with the power of voluntary action.

(f) The term "livestock remedy" shall mean and include all drugs, combinations of drugs, proprietary medicines, and combinations of drugs and other ingredients which have been prepared or compounded for animal use, except that feeding stuff or mineral feed supplements shall not be included.

(g) The term "State Health Officer" shall mean the State Health Officer of the State of Texas. [As amended Acts 1945, 49th Leg., p. 529, ch. 317, § 1.]

[1] So in enrolled bill. Probably should read "immediate."

Unlawful Acts

Sec. 3. The following acts and the causing thereof within the State of Texas are hereby declared unlawful:

(a) The sale, delivery, holding or offering for sale of any livestock remedy which has not been registered with the State Health Officer as provided in Section 4 hereof;

(b) The manufacture, sale, delivery, holding or offering for sale of any livestock remedy that is adulterated or misbranded;

(c) The compounding or manufacture by anyone of any livestock remedy that is to be offered for sale or distribution unless such compounding or manufacture is done under the supervision of either a licensed, graduate veterinarian or a graduate chemist or a licensed pharmacist;

(d) The dissemination of any advertisement which is false or misleading in a material respect: Provided, that no person or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be subject to the penalties of this Act by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the State Health Officer, to furnish the name and address of the manufacturer, packer, distributor, seller or advertising agency who caused him to disseminate such advertisement;

(e) The refusal to permit entry or inspection, or to permit the acquisition of a sample or specimen of a livestock remedy, as authorized by Section 9 hereof;

(f) The disposal of a detained article in violation of Section 10 hereof;

(g) The giving of a guaranty which is false, except by a person who relied on a guaranty to the same effect signed by, and containing the name and address of, the person from whom he received the livestock remedy in good faith;

(h) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of any livestock remedy if such act results in such livestock remedy being misbranded, or the doing of any act which may result in the misbranding of such article;

(i) The forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device required by the provisions of Section 8 hereof;

(j) The use or revelation by the State Health Officer or any authorized agent or any employee of the State Health Officer of information acquired under authority of Sections 4 and 9 of this Act, except in the proper enforcement of this Act or to the courts when relevant in any judicial proceeding under this Act;

(k) The manufacture, sale or offer to sell, of any biological product that is intended for use on any livestock, unless such product is manufactured in one of the following ways:

1. Under license issued by the Federal Bureau of Animal Industry, in compliance with the regulations of such Bureau;

2. Under the direct supervision of the officials of a State Experimental Station;

3. Under the direct supervision of the officials of the Agricultural and Mechanical College of Texas.

(l) The sale or offer to sell of any biological product that has not been kept in refrigeration since its manufacture, under conditions as prescribed by the rules and regulations of the Federal Bureau of Animal Industry;

(m) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling, mark of registration or brand on any livestock remedy by any vendor thereof if such article is sold in its original package.

Registration

Sec. 4. (a) Any person may make application for the registration of a livestock remedy by filing with the State Health Officer on forms furnished by him, a sworn statement with respect thereto setting forth:

(1) The name and principal address of the manufacturer or person responsible for placing such livestock remedy on the market;

(2) The name, brand or trademark under which the livestock remedy is to be sold;

(3) The minimum net contents of the package, lot or parcel of such livestock remedy (stated by weight in the case of solids and by volume in the case of liquids, and by both count and weight or volume per dose in the case of dosage forms);

(4) The English name of each active ingredient, except in the case of livestock remedies for insecticidal use, the name and percentage of each ac-

tive ingredient together with the total percentage of inert ingredients or the name and percentage of each inert ingredient or the words "active ingredients 100%" when the article consists of ingredients all of which will prevent, destroy, repel or mitigate insects or parasites;

(5) The percentage of diluent filler or inert ingredient;

(6) If present, the name and quantity or proportion of all anthelmintic drugs, alcohol, strychnine, arsenic, lead, mercury, chloroform, or any derivative or preparation of such substances;

(7) If present, the minimum percentages of phosphorus (P) and iodine (i) and the maximum percentages of calcium (Ca) and salt (NaCl);

(8) If present, the quantity of vitamin A in U. S. P. units, vitamin D for poultry in A. O. A. C. chick units, vitamin D for other animals in U. S. P. units, and all other vitamins in milligrams or micrograms per gram, ounce or pound, in the case of solids and per milliliter, fluid ounce, or pint in the case of liquids, or per count in the case of dosage forms;

(b) A label or specimen of labeling for any livestock remedy shall accompany each application for registration, and when requested by the State Health Officer a representative and true sample or specimen of each livestock remedy to be registered.

(c) If the State Health Officer after examination and investigation finds the application and labeling comply with the requirements of this Act, a certificate of registration shall be issued the applicant on payment of a registration fee as hereinafter provided. All such certificates shall be issued for a period not exceeding one year, expiring on December 31st of each year. No certificate shall be construed as a recommendation or endorsement of the livestock remedy registered.

(d) The provisions of this section shall not apply to a livestock remedy intended solely for investigational, experimental or laboratory use by qualified persons, provided the article is plainly labeled "For Investigational Use Only".

(e) Nothing in this Act shall apply to any product registered with the Commissioner of Agriculture under the provisions of Chapter 98, Acts of the Regular Session of the 48th Legislature.[1]

[1] Art. 135b—1.

Registration Fees

Sec. 5. To provide for the costs of enforcement of this Act:

(a) The State Health Officer shall, prior to the issuance of an original certificate of registration for any livestock remedy, collect from the applicant therefor a registration fee of not more than Ten Dollars ($10.00) for each separate and distinct article registered; or a blanket fee of not more than One Hundred Dollars ($100.00) of any manufacturer or person registering ten or more products: Provided, that for a period of six months or less the original registration fees above mentioned shall be halved; and, provided further, that when a livestock remedy has been registered and the registration fee paid by the manufacturer or distributor, no other person shall be required to pay such fee.

(b) Registration of any livestock remedy may be continued in force and effect upon the payment of an annual renewal fee of not more than Ten Dollars ($10.00) for each separate and distinct product registered; or a blanket renewal fee of not more than One Hundred Dollars ($100.00) of any manufacturer or person registering ten or more products. Provided, that such re-registration must be applied for and all renewal fees paid on or before January 31st of each year.

(c) In the event the registration fees above set forth provide more revenue than necessary for the enforcement of this Act, the State Health Officer is hereby authorized and directed to reduce such fees by regulation, or by regulation to increase such fees if deemed necessary, but not in excess of the fees specified in sub-sections (a) and (b) hereof.

(d) Any retailer of livestock remedies who has bought a supply of such remedies at a time when such articles were duly registered shall be allowed to sell or otherwise dispose of the same without re-registering such articles.

Appropriations

Sec. 6. All monies received by the State Health Officer from registration fees shall be deposited in the State Treasury and there set apart as a fund to be used by the State Health Officer in enforcement of this Act, until August 31, 1947, after which time said monies shall be deposited to the General Revenue Fund, and the number of employees and the salary of each shall be fixed in the departmental appropriation bill. Such fund is hereby appropriated to the State Health Officer, and any unexpended balance at the close of the fiscal year is hereby reappropriated to the State Health Officer for the ensuing year. It is provided that salaries for any employees authorized by this Act shall be the same as for similar positions authorized by the departmental appropriation bill. This section shall be effective September 1, 1945.

Adulteration

Sec. 7. A livestock remedy shall be deemed to be adulterated:

(a) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to animal health;

(b) If its composition, purity, strength, or quality falls below or differs from that which it is purported or is represented to possess by its labeling: Provided, the State Health Officer is hereby authorized and directed to allow a reasonable tolerance from such representation as is in accordance with good manufacturing practices.

Misbranding

Sec. 8. A livestock remedy shall be deemed to be misbranded:

(a) Unless its label bears:

(1) The name and principal address of the manufacturer or person responsible for placing such livestock remedy on the market;

(2) The name, brand, or trademark under which the livestock remedy is sold;

(3) The minimum net contents of the package, lot or parcel (stated by weight in the case of solids, by volume in the case of liquids, and by both count and weight or volume per dose in the case of dosage forms);

(4) The English name of each active ingredient, except in the case of livestock remedies for insecticidal use, the name and percentage of each active ingredient together with the total percentage of inert ingredients or the name and percentage of each inert ingredient or the words "active ingredients 100%" when the article consists of ingredients all of which will prevent, destroy, repel or mitigate insects or parasites;

(5) Adequate directions for use;

(6) Adequate warnings against use in those conditions whether pathological or normal where its use may be dangerous to health of animals, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of animals;

(b) If its labeling is false or misleading in any material particular;

(c) If its container is so made, formed, or filled as to be deceptive or misleading as to amount of contents;

(d) If it is dangerous to health of animals when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(e) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) Provided, however, that any livestock remedy that is manufactured and distributed under license from and under the supervision of the Federal Bureau of Animal Industry and in compliance with the regulations of such Bureau, shall be deemed in compliance with this section of this Act.

Inspection and Examination

Sec. 9. (a) The State Health Officer or a duly authorized agent shall have free access at all reasonable hours to any establishment in which livestock remedies are manufactured, processed, packed, sold, or offered for sale, for the purpose of inspection of such premises and determining whether or not any provision of this Act is being violated.

(b) The State Health Officer or a duly authorized agent may secure samples or specimens of any livestock remedy after paying or offering to pay therefor, and shall make an examination or analysis of such sample to determine whether or not any provision of this Act is being violated.

Detained Articles

Sec. 10. (a) Whenever the State Health Officer or a duly authorized agent finds or has reasonable cause to believe a livestock remedy is adulterated or misbranded within the meaning of this Act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained, and warning all persons not to dispose of such article in any manner until permission is given by the State Health Officer or the court. Provided that any such article may at the discretion of the manufacturer or vendor be removed from display, but left on the premises.

(b) If such a detained article is found after examination and analysis to be adulterated or misbranded the State Health Officer shall petition the judge of the police, county or district court in whose jurisdiction the article is detained for a libel for condemnation of such article. If the State Health Officer finds that such detained article is not adulterated or misbranded he shall remove the tag or other marking.

(c) If the court finds that a detained livestock remedy is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the defendant, under the supervision of the State Health Officer or a duly authorized agent; and all court costs and fees, storage and other proper expenses, shall be levied against the defendant or his agent; provided, that when the adulteration or misbranding can be corrected by proper processing or labeling of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so processed or labeled, has been executed, may make an order directing that such article be delivered to the defendant for such processing or labeling under the supervision of an agent of the State Health Officer. The expense of such supervision shall be paid by the defendant. The bond shall be returned to the defendant on representation to the court by the State Health Officer that the article is no longer in violation of this Act, and that expenses incident thereto have been paid.

Penalties

Sec. 11. (a) Any person who violates any of the provisions of this Act shall be guilty of a misdemeanor and shall on conviction thereof be subject to a penalty of not more than One Thousand Dollars ($1,000.00) or imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(b) It shall be the duty of each state, county, or city attorney to whom the State Health Officer reports any violation of this Act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner provided by law. Before any violation of this Act is reported to any such attorney for the institution of criminal proceedings, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the State Health Officer or a designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding.

(c) Nothing herein contained shall be construed as requiring the State Health Officer to report for the institution of proceedings under this Act, minor violations of this Act, whenever the State Health Officer believes the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Veterinarians and Pharmacists

Sec. 12. Nothing in this Act shall be construed as being applicable to or interfering with the compounding and dispensing of veterinarians' prescriptions, nor the dispensing of drugs or preparations by registered pharmacists compounded at the request of the purchaser and not intended for the purpose of resale.

Regulations

Sec. 13. (a) The State Health Officer is hereby charged with the enforcement of this Act, and is empowered to promulgate and adopt such reasonable rules and regulations as may be necessary to carry into effect the full intent and meaning of this Act; provided, that such rules and regulations shall conform, insofar as practicable, with the rules and regulations promulgated under the Federal Food, Drug and Cosmetic Act,[1] and with the rules and regulations promulgated by Federal Bureau of Animal Industry; and provided that such power to promulgate rules and regulations shall extend to a reasonable enforcement of this Act and no further.

(b) The State Health Officer is hereby authorized and directed to promulgate regulations exempting from any labeling and packaging requirements of this Act livestock remedies or components thereof which are, in accordance with the practice of the trade, to be processed, labeled, or repacked at establishments other than those where originally processed or packed; but such articles, when so processed, labeled or repacked, shall be subject to all the provisions of this Act.

[1] 21 U.S.C.A. §§ 301–392.

Constitutionality

Sec. 14. All parts of laws inconsistent herewith insofar as the same affect livestock remedies are hereby repealed, and if any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this Act and applicability thereof to other persons or circumstances shall not be affected thereby. [Acts 1945, 49th Leg., p. 138, ch. 94.]

TITLE 8—APPORTIONMENT

SENATORIAL DISTRICTS

Art.
193. Senatorial districts.
194. [Repealed.]
194a. Returns made to Secretary of State; certificate of election.

REPRESENTATIVE DISTRICTS

195. Representative Districts.
196. Returns made to whom.

CONGRESSIONAL DISTRICTS

197. Congressional Districts.

SUPREME JUDICIAL DISTRICTS

198. Supreme Judicial Districts.

JUDICIAL DISTRICTS

199. Judicial Districts.
200. Amendments affecting Judicial Districts.

ADMINISTRATIVE JUDICIAL DISTRICTS

200a. Administrative Judicial Districts.
Sec.
1. Numbers and composition.
2. Presiding judge.
3. Clerk.
4. Meetings or council of judges.
5. Assignment of judges; vacancy in office.
6. Extended or special terms.
7. Duties of clerk.
8. Expenses of meeting judges.
9. Expenses paid by counties composing district.
10. Expenses of judge filing assignment.

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.	Administrative Judicial District.
Anderson	6	55	7	3, 87	1	1
Andrews	30	88	19	109	8	7
Angelina	3	12	2	2	9	1
Aransas	18	70	14	36	4	4
Archer	23	110	13	97	2	8
Armstrong	31	123	18	47	7	9
Atascosa	18	76	14	81	4	4
Austin	15	25	9	22	1	3
Bailey	30	120	19	64	7	9
Bandera	26	86	21	38	4	6
Bastrop	14	127	10	21	3	2
Baylor	23	113	13	50	11	9
Bee	18	70	14	36	4	4
Bell	21	95, 96	11	27	3	3
Bexar	26	78	20	37, 45, 57, 73	4	4
Blanco	19	85	10	33	3	3
Borden	30	118	19	32	11	7
Bosque	21	98	11	52	10	3
Bowie	1	1, 3	1	5, 102	6	1
Brazoria	17	21	9	23, 130	1	2
Brazos	14	26	6	85	10	2
Brewster	29	87	16	83	8	6
Briscoe	31	120	18	110	7	9
Brooks	27	74	14	79	4	5
Brown	25	125	21	35	11	7
Burleson	14	65	10	21	1	2
Burnet	20	84	10	33	3	3
Caldwell	19	81	10	22	3	3
Calhoun	18	69	9	24	4	4
Callahan	24	107	17	42	11	7
Cameron	27	72	15	103, 107	4	5
Camp	7	4	3	76	6	1
Carson	31	123	18	100	7	9
Cass	1	2, 3	1	5	6	1
Castro	31	120	18	64	7	9
Chambers	17	17	9	75	1	2
Cherokee	3	31	7	2	6	1
Childress	31	121	18	100	7	9
Clay	23	110	13	97	2	8
Cochran	30	119	19	72	7	9
Coke	25	92	21	51	3	7
Coleman	25	125	21	35, 119	11	7
Collin	10	43, 45	4	15, 59	5	1
Collingsworth	31	122	18	100	7	9
Colorado	15	25	9	25	1	3
Comal	19	80	14	22	3	3
Comanche	25	104	17	52	11	3
Concho	25	92	21	119	3	7
Cooke	9	46	13	16	2	8
Coryell	21	94	11	52	10	3
Cottle	30	121	18	50	7	9
Crane	29	88	16	109	8	7
Crockett	29	86	16	112	8	6
Crosby	30	119	19	72	7	9
Culberson	29	90	16	34, 41, 65	8	6
Dallam	31	124	18	69	7	9
Dallas	11	50, 51	5	14, 44, 68, 95, 101, 116	5	1
Dawson	30	119	19	106	11	7
Deaf Smith	31	123	18	69	7	9
Delta	8	126	1	8, 62	6	1
Denton	22	49, 102	13	16	2	8
DeWitt	18	68	14	24	4	4
Dickens	30	118	19	110	7	9
Dimmit	27	77	15	49	4	4
Donley	31	122	18	100	7	9
Duval	27	71	14	79	4	5
Eastland	24	106, 107	17	88, 91	11	8
Ector	29	88	16	70	8	7
Edwards	29	86	21	63	4	6
Ellis	12	100	6	40	10	1
El Paso	29	89, 90	16	34,41, 65	8	6
Erath	21	105	17	29	11	8
Falls	13	62, 96	11	82	10	3
Fannin	9	38, 41	4	6	6	1
Fayette	15	66	9	22	3	3
Fisher	24	117	17	104	11	7
Floyd	30	120	19	110	7	9
Foard	23	114	13	46	7	9
Fort Bend	17	20	9	23,130	1	2
Franklin	8	126	1	62, 76	6	1
Freestone	6	57	6	77, 87	10	2
Frio	27	76	15	81	4	4
Gaines	30	119	19	106	8	7
Galveston	17	17, 18	9	10, 56	1	2
Garza	30	118	19	106	7	7
Gillespie	25	85	21	33	4	3

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.	Administrative Judicial District.
Glasscock	29	91	16	70	8	7
Goliad	18	69	9	24	4	4
Gonzales	19	67	14	25	4	3
Gray	31	122	18	31	7	9
Grayson	9	44, 45	4	15, 59	5	1
Gregg	2	6, 33	3	71, 124	6	1
Grimes	5	26, 27	7	12	1	2
Guadalupe	19	80	14	25	4	3
Hale	30	120	19	64	7	9
Hall	31	121	18	100	7	9
Hamilton	21	94	17	52	10	3
Hansford	31	124	18	84	7	9
Hardeman	23	114	13	46	7	9
Hardin	4	14	2	75	9	2
Harris	16	19	8	11, 55, 61, 80, 113, 127, 129, 133	1	2
Harrison	2	5, 6	1	71	6	1
Hartley	31	124	18	69	7	9
Haskell	24	113	19	39	11	7
Hays	19	81	10	22	3	3
Hemphill	31	124	18	31	7	9
Henderson	6	54	7	3	5	1
Hidalgo	27	73	15	92, 93	4	5
Hill	12	59, 60	6	66	10	3
Hockley	30	119	19	72	7	9
Hood	12	105	12	29	2	8
Hopkins	8	39, 126	1	8	6	1
Houston	5	30	7	3	1	1
Howard	30	91	19	70	11	7
Hudspeth	29	90	16	34, 41, 65	8	6
Hunt	10	40, 42	4	8, 62	5, 6	1
Hutchinson	31	124	18	84	7	9
Irion	25	91	21	51	3	7
Jack	22	109	13	43	2	8
Jackson	18	22	9	24	1	4
Jasper	3	13	2	1	9	2
Jefferson	4	15, 16	2	58, 60	9	2
Jeff Davis	29	88	16	83	8	6
Jim Hogg	27	74	15	49	4	4
Jim Wells	27	71	14	79	4	5
Johnson	12	98, 99	12	18	10	3
Jones	24	115	17	104	11	7
Karnes	18	79	14	81	4	4
Kaufman	6	51, 52	4	86	5	1
Kendall	26	85	21	38	4	6
Kenedy	27	74	14	28	4	5
Kent	30	118	19	39	7	7
Kerr	26	86	21	38	4	6
Kimble	25	86	21	112	4	3
King	30	114	19	50	7	9
Kinney	29	87	21	63	4	6
Kleberg	27	74	14	28	4	5
Knox	23	114	13	50	11	9
Lamar	8	37, 38	1	6, 62	6	1
Lamb	30	120	19	64	7	9
Lampasas	20	93	21	27	3	3
La Salle	27	76	15	81	4	4
Lavaca	15	23	9	25	1	3
Lee	14	65	10	21	3	2
Leon	5	56	6	12, 87	10	2
Liberty	4	14	2	75	9	2
Limestone	13	61	6	77, 87	10	2
Lipscomb	31	124	18	31	7	9
Live Oak	18	76	14	36	4	4
Llano	20	85	21	33	3	3
Loving	29	88	16	109	8	7
Lubbock	30	119	19	72, 99	7	9
Lynn	30	119	19	106	7	7
Madison	5	56	7	12	10	2
Marion	1	3	1	76	6	1
Martin	30	88	19	70	8	7
Mason	25	86	21	33	4	3
Matagorda	17	21	9	23, 130	1	2
Maverick	29	87	15	63	4	6
McCulloch	25	93	21	35	3	7
McLennan	13	96, 97	11	19, 54, 74	10	3
McMullen	27	76	14	36	4	4
Medina	29	77	15	38	4	6
Menard	25	86	21	33	4	3
Midland	29	88	16	70	8	7
Milam	13	64, 65	11	20	3	3
Mills	25	104	21	27	3	3
Mitchell	24	117	19	32	11	7
Montague	22	47	13	97	2	8
Montgomery	5	27	7	9	9	2
Moore	31	124	18	69	7	9
Morris	1	35	1	76	6	1
Motley	30	121	18	110	7	9
Nacogdoches	3	9	7	2	9	1
Navarro	6	58, 60	6	13	10	3
Newton	3	13	2	1	9	2
Nolan	24	117	17	32	11	7
Nueces	27	71	14	28, 94, 117	4	5
Ochiltree	31	124	18	84	7	9
Oldham	31	123	18	69	7	9
Orange	4	15	2	1, 128	9	2
Palo Pinto	22	108	17	29	11	8
Panola	2	7	3	123	6	1
Parker	22	103	12	43	2	8
Parmer	31	120	18	64	7	9
Pecos	29	88	16	83, 112	8	6
Polk	5	28	7	9	9	2
Potter	31	123	18	47, 108	7	9
Presidio	29	88	16	83	8	6
Rains	10	42	4	8	6	1
Randall	31	123	18	47	7	9
Reagan	29	91	16	83	8	6
Real	29	86	21	38	4	6
Red River	8	36	1	102	6	1
Reeves	29	88	16	109	8	7
Refugio	18	70	14	24	4	4
Roberts	31	124	18	31	7	9
Robertson	14	63	6	85	10	2
Rockwall	10	51	4	86	5	*
Runnels	25	92	21	119	3	7
Rusk	2	8	3	4	6	1
Sabine	3	11	2	1	9	2
San Augustine	3	11	2	1	9	2
San Jacinto	5	29	7	9	9	2
San Patricio	18	70	14	36	4	4

* Omitted in enumerating counties in the first district.

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.	Administrative Judicial District.
San Saba	20	93	21	33	3	3
Schleicher	25	86	21	51	3	7
Scurry	24	118	19	32	11	7
Shackelford	24	115	17	42	11	7
Shelby	2	10	2	123	9	1
Sherman	31	124	18	69	7	9
Smith	7	32, 33, 123	3	7, 114	6	1
Somervell	12	98	12	18	10	3
Starr	27	74	15	79	4	5
Stephens	24	108	17	90	11	8
Sterling	25	91	21	51	3	7
Stonewall	30	118	19	39	11	7
Sutton	29	86	21	112	4	6
Swisher	31	120	18	64	7	9
Tarrant	28	101, 102	12	17, 48, 67, 96	2	8
Taylor	24	116	17	42, 104	11	7
Terrell	29	87	16	63	8	6
Terry	30	119	19	106	7	7
Throckmorton	24	113	13	39	11	7
Titus	1	35	1	76	6	1
Tom Green	25	91	21	51, 119	3	7
Travis	20	82	10	53, 98, 126	3	3
Trinity	5	28	7	9, 12	1	2
Tyler	3	12	2	75	9	2
Upshur	7	4	3	7	6	1
Upton	29	88	16	83, 112	8	6
Uvalde	29	77	21	38	4	6
Val Verde	29	87	21	63	4	6
Van Zandt	7	53	3	86	5	1
Victoria	18	69	9	24	4	4
Walker	5	29	7	12	1	2
Waller	15	20	9	9	1	2
Ward	29	88	16	109	8	7
Washington	14	24	10	21	1	2
Webb	27	75	15	49, 111	4	4
Wharton	17	22	9	23, 130	1	2
Wheeler	31	122	18	31	7	9
Wichita	23	111, 112	13	30, 78	2	8
Wilbarger	23	112	13	46	7	9
Willacy	27	74	15	103, 107	4	5
Williamson	20	83, 84	10	26	3	3
Wilson	18	79	14	81	4	4
Winkler	29	88	16	109	8	7
Wise	22	48	13	43	2	8
Wood	7	34	3	7, 114	6	1
Yoakum	30	119	19	106	7	7
Young	23	109	13	90	2	8
Zapata	27	75	15	49	4	4
Zavala	27	77	15	38	4	6

SENATORIAL DISTRICTS

Article 193. [24] [16] [11] Senatorial Districts.—The Senatorial Districts of this State shall hereafter be composed respectively of the following named counties, each of which districts shall be entitled to elect one Senator, to-wit:

No. 1. Bowie, Marion, Cass, Morris and Titus.

No. 2. Harrison, Gregg, Rusk, Panola and Shelby.

No. 3. Cherokee, Nacogdoches, San Augustine, Angelina, Sabine, Newton, Jasper and Tyler.

No. 4. Orange, Jefferson, Hardin and Liberty.

No. 5. Grimes, Montgomery, Trinity, Leon, Houston, Polk, Madison, Walker and San Jacinto.

No. 6. Navarro, Henderson, Anderson, Freestone and Kaufman.

No. 7. Camp, Wood, Upshur, Smith and Van Zandt.

No. 8. Lamar, Delta, Franklin, Hopkins and Red River.

No. 9. Cooke, Grayson and Fannin.

No. 10. Rockwall, Collin, Hunt and Rains.

No. 11. Dallas.

No. 12. Johnson, Hill, Ellis, Hood and Somervell.

No. 13. McLennan, Falls, Limestone and Milam.

No. 14. Bastrop, Lee, Burleson, Washington, Brazos and Robertson.

No. 15. Fayette, Lavaca, Colorado, Austin and Waller.

No. 16. Harris.

No. 17. Wharton, Ft. Bend, Matagorda, Brazoria, Galveston and Chambers.

No. 18. Wilson, Atascosa, Karnes, DeWitt, Victoria, Goliad, Live Oak, San Patricio, Bee, Refugio, Aransas, Calhoun and Jackson.

No. 19. Blanco, Hays, Comal, Caldwell, Guadalupe and Gonzales.

No. 20. San Saba, Lampasas, Llano, Burnet, Williamson and Travis.

No. 21. Bell, Erath, Bosque, Hamilton and Coryell.

No. 22. Montague, Jack, Wise, Denton, Palo Pinto and Parker.

No. 23. Hardeman, Foard, Knox, Wilbarger, Baylor, Wichita, Archer, Young and Clay.

No. 24. Scurry, Fisher, Jones, Shackelford, Stephens, Eastland, Callahan, Taylor, Nolan, Mitchell, Throckmorton and Haskell.

No. 25. Comanche, Mills, Brown, Coleman, McCulloch, Mason, Menard, Concho, Runnels, Coke, Tom Green, Schleicher, Irion, Sterling, Gillespie and Kimble.

No. 26. Kerr, Kendall, Bexar and Bandera.

No. 27. Zavala, Frio, McMullen, La Salle, Dimmit, Webb, Duval, Jim Wells, Kenedy, Nueces, Kleberg, Willacy, Brooks, Jim Hogg, Zapata, Starr, Hidalgo and Cameron.

No. 28. Tarrant.

No. 29. El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ward, Ector, Midland, Glasscock, Reagan, Upton, Crane, Crockett, Sutton, Edwards, Real, Kinney, Val Verde, Terrell, Brewster, Presidio, Jeff Davis, Pecos, Uvalde, Medina and Maverick.

No. 30. Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Dawson, Borden, Andrews, Martin and Howard.

No. 31. Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall and Childress. [Acts 1901, S. S. p. 10; Acts 1st C. S. 1921, p. 230.]

Art. 194. [Repealed by Acts 1931, 42nd Leg., p. 369, ch. 183, § 1.]

Art. 194a. Returns made to Secretary of State; certificate of election.—In all cases of election of State Senator, returns shall be made to the Secretary of State who shall receive the returns and count the votes, and issue certificates of election to persons receiving the highest number of votes for Senator at any election in their respective districts. [Acts 1931, 42nd Leg., p. 309, ch. 183, § 2.]

REPRESENTATIVE DISTRICTS

Art. 195. [26] [18] [13] Representative Districts.—The Representative Districts shall be composed respectively of the following named counties, each of which Districts shall be entitled to elect one Representative unless otherwise provided herein:

No. 1. Bowie.
No. 2. Cass.
No. 3. Bowie, Cass and Marion.
No. 4. Camp and Upshur.
No. 5. Harrison.
No. 6. Harrison and Gregg.
No. 7. Panola.
No. 8. Rusk.
No. 9. Nacogdoches.
No. 10. Shelby.
No. 11. San Augustine and Sabine.
No. 12. Angelina and Tyler.
No. 13. Jasper and Newton.
No. 14. Hardin and Liberty.
No. 15. Orange and Jefferson.
No. 16. Jefferson—two Representatives.
No. 17. Chambers and Galveston.
No. 18. Galveston.
No. 19. Harris—five Representatives.
No. 20. Waller and Fort Bend.
No. 21. Brazoria and Matagorda.
No. 22. Wharton and Jackson.
No. 23. Lavaca.
No. 24. Washington.
No. 25. Austin and Colorado.
No. 26. Brazos and Grimes.
No. 27. Grimes and Montgomery.
No. 28. Polk and Trinity.
No. 29. Walker and San Jacinto.
No. 30. Houston.
No. 31. Cherokee.
No. 32. Smith.
No. 33. Smith and Gregg.
No. 34. Wood.
No. 35. Morris and Titus.
No. 36. Red River.
No. 37. Lamar.
No. 38. Lamar and Fannin.
No. 39. Hopkins.
No. 40. Hunt.
No. 41. Fannin.
No. 42. Rains and Hunt.
No. 43. Collin.
No. 44. Grayson—two Representatives.
No. 45. Grayson and Collin.
No. 46. Cooke.
No. 47. Montague.
No. 48. Wise.
No. 49. Denton.
No. 50. Dallas—five Representatives.
No. 51. Dallas, Rockwall and Kaufman.
No. 52. Kaufman.
No. 53. Van Zandt.
No. 54. Henderson.
No. 55. Anderson.
No. 56. Leon and Madison.
No. 57. Freestone.
No. 58. Navarro.
No. 59. Hill.
No. 60. Navarro and Hill.
No. 61. Limestone.
No. 62. Falls.
No. 63. Robertson.
No. 64. Milam.
No. 65. Milam, Burleson and Lee.
No. 66. Fayette.
No. 67. Gonzales.
No. 68. DeWitt.
No. 69. Victoria, Goliad and Calhoun.
No. 70. Aransas, Refugio, Bee and San Patricio.
No. 71. Nueces, Jim Wells and Duval.
No. 72. Cameron.
No. 73. Hidalgo.
No. 74. Kleberg, Willacy, Kenedy, Jim Hogg, Brooks and Starr.
No. 75. Zapata and Webb.
No. 76. LaSalle, McMullen, Live Oak, Atascosa and Frio.
No. 77. Dimmit, Zavala, Uvalde and Medina.
No. 78. Bexar—five Representatives.
No. 79. Wilson and Karnes.
No. 80. Guadalupe and Comal.
No. 81. Hays and Caldwell—two Representatives.
No. 82. Travis—two Representatives.
No. 83. Williamson.
No. 84. Williamson and Burnet.
No. 85. Blanco, Llano, Kendall and Gillespie.
No. 86. Mason, Menard, Schleicher, Crockett, Sutton, Kimble, Kerr, Bandera, Real and Edwards.
No. 87. Maverick, Kinney, Val Verde, Terrell and Brewster.
No. 88. Presidio, Jeff Davis, Reeves, Loving, Winkler, Ward, Ector, Crane, Pecos, Upton, Midland, Martin and Andrews.
No. 89. El Paso—two Representatives.
No. 90. El Paso, Hudspeth and Culberson.
No. 91. Glasscock, Howard, Sterling, Reagan, Irion and Tom Green.
No. 92. Coke, Runnels and Concho.
No. 93. McCulloch, San Saba and Lampasas.
No. 94. Hamilton and Coryell.
No. 95. Bell.
No. 96. Bell, Falls and McLennan.
No. 97. McLennan—two Representatives.
No. 98. Johnson, Somervell and Bosque.
No. 99. Johnson.
No. 100. Ellis—two Representatives.
No. 101. Tarrant—four Representatives.
No. 102. Tarrant and Denton.
No. 103. Parker.
No. 104. Comanche and Mills.
No. 105. Erath and Hood.
No. 106. Eastland.
No. 107. Eastland and Callahan.
No. 108. Palo Pinto and Stephens.
No. 109. Young and Jack.
No. 110. Archer and Clay.
No. 111. Wichita—two Representatives.
No. 112. Wichita and Wilbarger.
No. 113. Baylor, Haskell and Throckmorton.
No. 114. Hardeman, Foard, Knox and King.
No. 115. Jones and Shackelford.
No. 116. Taylor.
No. 117. Nolan, Fisher and Mitchell.
No. 118. Dickens, Stonewall, Kent, Scurry, Borden and Garza.
No. 119. Gaines, Dawson, Yoakum, Terry, Lynn, Cochran, Hockley, Lubbock and Crosby.
No. 120. Bailey, Parmer, Castro, Lamb, Hale, Swisher, Briscoe and Floyd.
No. 121. Motley, Cottle, Hall and Childress.
No. 122. Donley, Collingsworth, Wheeler and Gray.
No. 123. Carson, Armstrong, Randall, Potter, Deaf Smith and Oldham.
No. 124. Hartley, Dallam, Sherman, Moore, Hutchinson, Hansford, Ochiltree, Roberts, Hemphill and Lipscomb.
No. 125. Brown and Coleman.
No. 126. Delta, Hopkins and Franklin.
No. 127. Bastrop. [Acts 1901, S.S. p. 10; Acts 2nd C.S. 1921, p. 264.]

Art. 196. [27] [19] [14] Returns made to whom.—In all districts composed of only one county, the county judge of each county shall receive the returns and issue a certificate of election to the Representative elected, as shown by the highest number of votes cast for any one person; but in the several districts composed of more than one county, the county judge of the following named counties shall receive the returns and issue certificates of election to the Representative elected in their respective districts, to-wit:

Third District—Marion County.
Sixth District—Harrison County.
Eleventh District—San Augustine County.
Twelfth District—Angelina County.

Thirteenth District—Newton County.
Fourteenth District—Liberty County.
Fifteenth District—Jefferson County.
Seventeenth District—Galveston County.
Twentieth District—Fort Bend County.
Twenty-first District—Brazoria County.
Twenty-second District.—Wharton County.
Twenty-fifth District—Colorado County.
Twenty-sixth District—Brazos County.
Twenty-seventh District—Montgomery County.
Twenty-eighth District—Polk County.
Twenty-ninth District—Walker County.
Thirty-third District—Gregg County.
Thirty-fourth District—Wood County.
Thirty-fifth District—Titus County.
Forty-second District—Hunt County.
Forty-fifth District—Grayson County.
Fifty-first District—Rockwall County.
Fifty-sixth District—Leon County.
Sixtieth District—Navarro County.
Sixty-fifth District—Burleson County.
Sixty-ninth District—Goliad County.
Seventieth District—Bee County.
Seventy-first District—Nueces County.
Seventy-fourth District—Starr County.
Seventy-fifth District—Webb County.
Seventy-sixth District—Atascosa County.
Seventy-seventh District—Uvalde County.
Seventy-ninth District—Karnes County.
Eightieth District—Guadalupe County.
Eighty-first District—Caldwell County.
Eighty-fourth District—Burnet County.
Eighty-fifth District—Blanco County.
Eighty-sixth District—Kerr County.
Eighty-seventh District—Val Verde County.
Eighty-eighth District—Reeves County.
Ninetieth District—El Paso County.
Ninety-first District—Tom Green County.
Ninety-second District—Runnels County.
Ninety-third District—McCulloch County.
Ninety-fourth District—Coryell County.
Ninety-sixth District—McLennan County.
Ninety-eighth District—Bosque County.
One Hundred and Second District—Denton County.
One Hundred and Fourth District—Comanche County.
One Hundred and Fifth District—Erath County.
One Hundred and Seventh District—Eastland County.
One Hundred and Eighth District—Palo Pinto County.
One Hundred and Ninth District—Young County.
One Hundred and Tenth District—Clay County.
One Hundred and Twelfth District—Wilbarger County.
One Hundred and Thirteenth District—Haskell County.
One Hundred and Fourteenth District—Hardeman County.
One Hundred and Fifteenth District—Jones County.
One Hundred and Seventeenth District—Mitchell County.
One Hundred and Eighteenth District—Scurry County.
One Hundred and Nineteenth District—Lubbock County.
One Hundred and Twentieth District—Hale County.
One Hundred and Twenty-first District—Hall County.
One Hundred and Twenty-second District—Donley County.
One Hundred and Twenty-third District—Potter County.
One Hundred and Twenty-fourth District—Dallam County.
One Hundred and Twenty-fifth District—Brown County.
One Hundred and Twenty-sixth District—Hopkins County. [Acts 1901, S.S. p. 10; Acts 2nd C.S. 1921, p. 264.]

CONGRESSIONAL DISTRICTS

Art. 197. [28] [20] [15] Congressional Districts.—Sec. 1. The State of Texas shall be apportioned into the following Congressional Districts, each of which shall be entitled to elect one member of the Congress of the United States:

First: The following Counties shall compose the First District, to-wit: Bowie, Cass, Franklin, Red River, Titus, Morris, Hopkins, Marion, Harrison, Lamar and Delta.

Second: The following Counties shall compose the Second District, to-wit: Jefferson, Orange, Angelina, Jasper, Newton, Sabine, San Augustine, Tyler, Hardin, Liberty and Shelby.

Third: The following Counties shall compose the Third District, to-wit: Van Zandt, Smith, Rusk, Panola, Wood, Camp, Upshur and Gregg.

Fourth: The following Counties shall compose the Fourth District, to-wit: Grayson, Fannin, Collin, Hunt, Rockwall, Kaufman and Rains.

Fifth: The following Counties shall compose the Fifth District, to-wit: Dallas.

Sixth: The following Counties shall compose the Sixth District, to-wit: Navarro, Limestone, Ellis, Robertson, Freestone, Leon, Hill and Brazos.

Seventh: The following Counties shall compose the Seventh District, to-wit: Houston, Montgomery, San Jacinto, Polk, Henderson, Anderson, Trinity, Walker, Grimes, Madison, Cherokee and Nacogdoches.

Eighth: The following Counties shall compose the Eighth District, to-wit: Harris.

Ninth: The following Counties shall compose the Ninth District, to-wit: Colorado, Matagorda, Goliad, Brazoria, Fort Bend, Wharton, Jackson, Victoria, Austin, Waller, Calhoun, Galveston, Lavaca, Fayette and Chambers.

Tenth: The following Counties shall compose the Tenth District, to-wit: Washington, Hays, Caldwell Bastrop, Travis, Williamson, Lee, Burleson, Burnet and Blanco.

Eleventh: The following Counties shall compose the Eleventh District, to-wit: Falls, Bosque, Bell, Coryell, McLennan and Milam.

Twelfth: The following Counties shall compose the Twelfth District, to-wit: Tarrant, Johnson, Parker, Hood and Somervell.

Thirteenth: The following Counties shall compose the Thirteenth District, to-wit: Wilbarger, Baylor, Throckmorton, Archer, Clay, Jack, Montague, Wise, Wichita, Cooke, Denton, Young, Hardeman, Foard and Knox.

Fourteenth: The following Counties shall compose the Fourteenth District, to-wit: Kleberg, Nueces, Jim Wells, Duval, Kenedy, San Patricio, McMullen, Live Oak, Bee, Aransas, Refugio, DeWitt, Karnes, Atascosa, Wilson, Guadalupe, Comal, Brooks and Gonzales.

Fifteenth: The following Counties shall compose the Fifteenth District, to-wit: Cameron, Hidalgo, Willacy, Starr, Zapata, Webb, Jim Hogg, Dimmit, Medina, Zavala, Frio, LaSalle and Maverick.

Sixteenth: The following Counties shall compose the Sixteenth District, to-wit: El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Midland, Glasscock, Ward, Crane, Upton, Reagan, Jeff Davis, Presidio, Brewster, Pecos, Terrell and Crockett.

Seventeenth: The following Counties shall compose the Seventeenth District, to-wit: Nolan, Fisher, Jones, Taylor, Shackelford, Callahan, Stephens, Eastland, Comanche, Erath, Palo Pinto and Hamilton.

Eighteenth: The following Counties shall compose the Eighteenth District, to-wit: Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson,

Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Motley and Cottle.

Nineteenth: The following Counties shall compose the Nineteenth District, to-wit: Bailey, Lamb, Hale, Cochran, Hockley, Floyd, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Haskell, Gaines, Dawson, Borden, Scurry, Mitchell, Andrews, Martin and Howard.

Twentieth: The following Counties shall compose the Twentieth District, to-wit: Bexar.

Twenty-first: The following Counties shall compose the Twenty-first District, to-wit: Sterling, Coke, Runnels, Coleman, Irion, Tom Green, Concho, San Saba, McCulloch, Mills, Lampasas, Schleicher, Menard, Mason, Llano, Kimble, Gillespie, Real, Kerr, Kendall, Bandera, Sutton, Edwards, Kinney, Uvalde, Brown and Val Verde.

Election

Sec. 2. Nothing in this Act shall in anywise affect the tenure in office of the present delegation in Congress of Texas but this Act shall take effect for the general election in 1934, and the Congressman shall be elected from each said district for 1934, and thereafter until this law shall have been changed by the Legislature of this State. [Acts 1903, p. 44; Acts 1905, p. 96; Acts 1909, p. 156; Acts 1917, ch. 119; Acts 1933, 43rd Leg., p. 344, ch. 135.]

Section 3 of Acts 1933 repeals all conflicting laws and parts of laws.

SUPREME JUDICIAL DISTRICTS

Art. 198. [29] [21] [16] Supreme Judicial Districts.—This State shall be divided into eleven (11) Supreme Judicial Districts, composed of the following named Counties for the purpose of constituting and organizing a Court of Civil Appeals in each of the several Supreme Judicial Districts as follows, to wit:

First: Trinity, Walker, Grimes, Burleson, Washington, Waller, Harris, Chambers, Austin, Colorado, Lavaca, Jackson, Matagorda, Wharton, Brazoria, Fort Bend, Galveston, Anderson, and Houston.

Second: Wichita, Clay, Montague, Wise, Tarrant, Cooke, Denton, Parker, Archer, Young, Jack, and Hood.

Third: Milam, Lee, Bastrop, Caldwell, Hays, Travis, Williamson, Bell, Burnet, Blanco, Llano, San Saba, Lampasas, Mills, McCulloch, Runnels, Tom Green, Concho, Comal, Fayette, Coke, Sterling, Irion, and Schleicher.

Fourth: Val Verde, Guadalupe, Sutton, Edwards, Kinney, Maverick, Menard, Kimble, Kerr, Bandera, Uvalde, Zavala, Dimmit, Webb, La Salle, Frio, Medina, Duval, McMullen, Atascosa, Bexar, Kendall, Wilson, Live Oak, Zapata, Bee, Karnes, Victoria, Goliad, Hidalgo, Cameron, Starr, Jim Hogg, Real, Brooks, Jim Wells, Kleberg, Kenedy, Willacy, Gillespie, Mason, Gonzales, Calhoun, Refugio, San Patricio, Aransas, Nueces, and DeWitt.

Fifth: Grayson, Collin, Dallas, Rockwall, Henderson, Kaufman, Van Zandt, and Hunt.

Sixth: Fannin, Lamar, Red River, Bowie, Delta, Hopkins, Franklin, Titus, Morris, Cass, Rains, Wood, Upshur, Marion, Harrison, Gregg, Smith, Cherokee, Rusk, Panola, Camp, and Hunt.

Seventh: Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Foard, Hardeman, Wilbarger, Crosby, Lubbock, Hockley, Cochran, Yoakum, Terry, Lynn, Garza, Dickens, Kent, and King.

Eighth: Crockett, Gaines, Andrews, Martin, Loving, Winkler, Midland, Glasscock, Reeves, Ward, Crane, Upton, Reagan, Terrell, Pecos, Brewster, Presidio, Jeff Davis, El Paso, Ector, Culberson, and Hudspeth.

Ninth: Shelby, Nacogdoches, Angelina, San Jacinto, Montgomery, Liberty, Jefferson, Orange, Hardin, Newton, Jasper, Tyler, Polk, Sabine, and San Augustine.

Tenth: McLennan, Freestone, Coryell, Hamilton, Bosque, Navarro, Johnson, Somervell, Falls, Limestone, Hill, Brazos, Leon, Madison, Robertson, and Ellis.

Eleventh: Dawson, Howard, Mitchell, Scurry, Nolan, Fisher, Stonewall, Taylor, Jones, Haskell, Knox, Callahan, Shackelford, Throckmorton, Baylor, Coleman, Brown, Comanche, Eastland, Stephens, Erath, Palo Pinto, and Borden. [Acts 1925, 39th Leg., p. 258, ch. 87, § 1; Acts 1927, 40th Leg., p. 378, ch. 255; Acts 1929, 41st Leg., p. 106, ch. 51; Acts 1932, 42nd Leg., 3rd C.S., p. 103, ch. 38; Acts 1934, 43rd Leg., 3rd C.S., p. 54, ch. 31; Acts 1939, 46th Leg., p. 148, § 1; Acts 1941, 47th Leg., p. 1408, ch. 641, § 1.]

JUDICIAL DISTRICTS

Art. 199. [30] [22] [17] Judicial Districts.—The judicial districts of the State shall be composed of the following named counties, and the terms of court in said districts shall be held therein each year, as follows:

1.—Newton, Jasper, Sabine and San Augustine.

Section 1. From and after the passage of this Act, the First Judicial District shall be composed of and confined to the Counties of Newton, Jasper, Sabine and San Augustine.

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

In the County of Jasper on the first Monday in January, and the twenty-second Monday after the first Monday in January.

In the County of Newton on the fifth Monday after the first Monday in January, and the thirty-fourth Monday after the first Monday in January.

In the County of San Augustine on the eleventh Monday after the first Monday in January, and the fortieth Monday after the first Monday in January.

In the County of Sabine on the seventeenth Monday after the first Monday in January, and the forty-fifth Monday after the first Monday in January.

Each term of court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term therein. [Acts 1907, p. 100; Acts 1913, p. 176; Acts 1917, p. 263; Acts 1930, 41st Leg., 4th C.S., p. 92, ch. 51, § 1; Acts 1943, 48th Leg., p. 9, ch. 10, § 1; Acts 1947, 50th Leg., p. 198, ch. 116.]

Acts 1947, 50th Leg., p. 198, ch. 116, reorganized the first judicial district to be composed of Jasper, Newton, Sabine and San Augustine Counties and provided for the terms thereof. The reorganization Act of 1947, further created the 128th Judicial District to be composed of Orange County only and provided for the terms thereof.

Sections 3 to 5 of the Act of 1947 contained temporary provisions relating to the incumbent judge, district attorney and clerks. Section 11 related to process issued or served before such Act took effect.

Sections 6–10 of the Act of 1947 related to the 128th Judicial District. See 128th District, post.

Sections 12, 13 and 14 of the Act of 1947 read:

"Sec. 12. That the District Court of the First Judicial District and the 128th Judicial District shall have such jurisdiction and power as is conferred on District Courts under the constitution and existing laws of Texas, and such as shall be thereafter given by law.

"Sec. 13. That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

"Sec. 14. If any section, paragraph, sentence, clause or word of this Act is held to be unconstitutional, the remaining portion of the same, nevertheless, shall be valid: and the Legislature declares that the Act would have been enacted without such unconstitutional portion."

Sections 2–4 of the Act of 1943 read:

"Sec. 2. The Judge of said court in his discretion may hold as many sessions of court in any term of the court in any county as is deemed by him proper and expedient for the dispatch of business.

"Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect, shall be valid for and returnable to the next

succeeding term of the District Courts of the several counties as herein fixed, as though issued and served for such terms and returnable to and drawn for the same.

"Sec. 4. It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect, such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all courts in said district shall conform to the requirements of this Act."

Section 2 of the amendatory act of 1930 validated all process and writs issued and all bonds and recognizances executed and entered into prior to the taking effect of such amendment.

Orange County, see 128th District, post.

2.—Angelina, Cherokee and Nacogdoches.

The 2nd Judicial District shall be composed of the Counties of Angelina, Cherokee and Nacogdoches; and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of Cherokee on the first Monday in January, and the fifteenth Monday after the first Monday in January, and the thirty-fourth Monday after the first Monday in January.

In the County of Nacogdoches on the fifth Monday after the first Monday in January, and on the twentieth Monday after the first Monday in January, and the thirty-ninth Monday after the first Monday in January.

In the County of Angelina on the tenth Monday after the first Monday in January, and on the twenty-ninth Monday after the first Monday in January, and on the forty-fourth Monday after the first Monday in January.

Each term of Court in each of such Counties may continue until the date herein fixed for the beginning of the next succeeding term therein. [Acts 1911, p. 93; Acts 1927, 40th Leg., p. 196, ch. 128; Acts 1931, 42nd Leg., p. 824, ch. 341; Acts 1939, 46th Leg., p. 150, § 1; Acts 1943, 48th Leg., p. 98, ch. 69, § 1.]

Sections 2–4 of Acts 1943, 48th Leg., p. 98, ch. 69, read:

"Sec. 2. The Judge of said Court in his discretion, may hold as many sessions of Court in any term of the Court in any County as is deemed by him proper and expedient for the dispatch of business.

"Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

"Sec. 4. It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect, such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws; but thereafter all courts in said District shall conform to the requirements of this Act."

Section 3 of the amendatory Act of 1939 read as follows:

"All pleadings and motions of every character filed in the District Court of any of said counties shall be filed in duplicate, one copy of which shall be marked 'original,' and the other shall be marked 'duplicate,' but the clerk shall be entitled to only one filing fee for filing both. The original pleading or motion shall remain at all times in the office of the District Clerk of such county, or in his custody, or in the Court, provided, however, that the Court may, by an order entered upon the minutes, allow the original pleading or motion to be withdrawn for a limited time whenever necessary, upon the condition that a certified copy thereof be left on file. The party desiring to withdraw such pleading or motion shall pay the cost of such order and of the certified copy of such pleading or motion."

Section 2 of the amendatory Acts of 1927, 1931 and 1939 validated all process and writs issued and all bonds executed and recognizances entered into prior to the taking effect of such amendments.

Section 3 of the amendatory Acts of 1927 and 1931 and section 4 of the amendatory Acts of 1939 repealed all conflicting laws and parts of laws.

Section 5 of the amendatory Act of 1939 provided that the Act should take effect and be in force from and after the 31st day of December, 1939.

3.—Anderson, Henderson and Houston.

The Third Judicial District of the State of Texas shall be composed of the Counties of Anderson, Henderson and Houston, and the terms of the District Court within said counties shall be held therein each year as follows:

In the County of Anderson on the first Mondays in April, July and December.

In the County of Henderson on the first Mondays in February, June and September.

In the County of Houston on the first Mondays in March, August and October.

Each term of court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term therein. [Acts 1905, p. 141; Acts 1915, pp. 34, 83; Acts 1929, 41st Leg., 1st C.S., p. 76, ch. 35; Acts 1937, 45th Leg., p. 685, ch. 344, § 1; Acts 1943, 48th Leg., p. 31, ch. 29, § 1.]

Sections 2–4 of the amendatory Act of 1943 read:

"Sec. 2. The Judge of said court in his discretion may hold as many sessions of court in any term of the court in any county as is deemed by him proper and expedient for the dispatch of business.

"Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

"Sec. 4. It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect, such court or courts affected thereby shall continue in session until the time for the beginning of the next succeeding term therein, as provided herein, but thereafter all courts in said district shall conform to the requirements of this Act."

Section 2 of the amendatory Acts of 1929 and 1937, validated all process and writs issued and all bonds executed and recognizances entered into prior to the taking effect of such amendments.

Section 3 of the amendatory Act of 1937 and section 5 of the amendatory Act of 1943 repealed all conflicting laws and parts of laws.

Anderson County, see, also, 87th District, post.

4.—Rusk.

From and after the passage of this Act, the 4th Judicial District shall be composed of and confined to the County of Rusk only and the terms of the District Court of said Rusk County, Texas, shall be held therein each year as follows: on the first Monday in January, March, May, July, September and November of each year; and each term of said Court shall continue in session until the Saturday before the next succeeding term or until all the business is disposed of; provided, however, that a regular term of said Court shall be and become in session immediately upon final passage of this Act and the appointment and qualification of a Judge as hereinafter provided for. [Acts 1925, 39th Leg., p. 266, ch. 93, § 1; Acts 1929, 41st Leg., p. 471, ch. 220, § 1; Acts 1931, 42nd Leg., p. 873, ch. 369, § 1.]

Acts 1931, 42nd Leg., p. 873, ch. 369, created the 123rd Judicial District to be composed of the counties of Panola and Shelby which were formerly part of the 4th Judicial District. See, also, the 123rd District, post, and the Historical Note thereunder.

Sections 2 and 3 of Acts 1931, 42nd Leg., p. 873, ch. 369, read as follows:

"Sec. 2. The Judge and Clerk of the 4th Judicial District now elected and acting as such shall continue to hold the offices of District Judge and District Clerk respectively of said 4th Judicial District in and for Rusk County until the time for which they have been elected expires and until their successors are duly elected and qualified.

"Sec. 3. The County Attorney of Rusk County, Texas, duly elected and now acting as such shall do and perform all the duties of County and District Attorney of said 4th Judicial District of Rusk County, Texas, until the next general election and until his successor is duly elected and qualified, and shall receive such fees for his services as are now or may hereafter be provided for County Attorneys performing like duties under and by virtue of the General Laws of this State."

Section 10 of the 1931 Act provided, in part, that the District Court of the 4th Judicial District "shall have such jurisdiction and power as is conferred on District Courts under the constitution and existing laws of Texas and such as shall be hereafter given by law."

Section 2 of the amendatory Act of 1929 validated all process and writs issued and all bonds executed and recognizances entered into prior to the taking effect of such amendment.

Special District Court of Rusk County. Acts 1935, 44th Leg., p. 3, ch. 2, created the Special District Court of Rusk County, Texas, with concurrent jurisdiction with the District Court of the Fourth Judicial District of Rusk County over civil and criminal matters. In view of section 4 of the Act of 1935 as amended by Acts 1937, 45th Leg., p. 410, ch. 206, § 1, and Acts 1941, 47th Leg., p. 540, ch. 335, § 1, the court automatically ceased to exist on June 15, 1945. Section 5 of the Act of 1935 provides as follows: "At the expiration of the time for which said Special Dis-

trict Court of Rusk County is created, the Judge thereof shall deliver all the dockets and records of said Court to the Clerk of the District Court of the Fourth Judicial District of Rusk County, Texas, for safe keeping and preservation, and any cause or causes upon the docket of said Special District Court of Rusk County shall, at said time, be automatically transferred by the District Clerk of Rusk County, Texas, to the docket of the Fourth Judicial District Court in and for Rusk County, and the Judge of the Fourth Judicial District shall thereafter have full power, authority and jurisdiction to try all such cases, to approve all statements of facts, bills of exception and make any and all orders, judgments and decrees proper and necessary in the cases theretofore tried in said Special District Court of Rusk County and transferred to said Fourth Judicial District Court as provided for herein."

5.—Bowie and Cass.

The Fifth Judicial District of Texas shall be composed of the Counties of Bowie and Cass, and the terms of the District Courts within said counties shall be as follows:

In Bowie County on the first Monday in January of each year and may continue in session for six (6) weeks; on the fourteenth Monday after the first Monday in January, and may continue in session for six (6) weeks; on the thirtieth Monday after the first Monday in January, and may continue in session for six (6) weeks; on the forty-second Monday after the first Monday in January and may continue in session for six (6) weeks.

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

The Clerk of the District Court in each of said counties and his successors in office shall be the Clerk of the Fifth District Court in said counties and shall perform all duties pertaining to the Clerkship of said Court.

The District Court of the Fifth Judicial District in Bowie and Cass Counties shall exercise general jurisdiction over civil and criminal matters as is now or may hereafter be conferred by law. Said Fifth Judicial District Court shall also have concurrent jurisdiction in Bowie County with the One Hundred and Second Judicial District Court; and all causes of action of a civil or criminal nature pending in either court in said county shall, at the adjournment of each term of said court in which the same is pending, be transferred by operation of law to the other court; and said courts, and judges thereof, either in term time or vacation, may transfer any civil or criminal cause pending in their respective court to the other district court in said Bowie County by an order entered upon the Minutes of their respective court. [Acts 1907, p. 198; Acts 1911, p. 167; Acts 1915, p. 6; Acts 1921, 1st C.S., p. 20; Acts 1933, 43rd Leg., p. 887, ch. 254; Acts 1933, 43rd Leg., Spec.L., p. 147, ch. 104; Acts 1935, 44th Leg., p. 407, ch. 159; Acts 1937, 45th Leg., p. 272, ch. 143, § 1; Acts 1939, 46th Leg., p. 152, § 1; Acts 1943, 48th Leg., p. 420, ch. 287, § 1.]

Section 1 of the amendatory Act of 1943, further contained the following temporary provisions:

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

"The judge and all district officers of the Fifth Judicial District as heretofore constituted shall be the judge and district officers of the Fifth Judicial District as constituted and reorganized by this section during the term for which they were elected.

"Upon taking effect of this Act, all suits, civil or criminal, and all other actions then pending on the docket of the Fifth Judicial District Court in Marion County, shall by operation of law be transferred to the Seventy-sixth Judicial District Court for Marion County, and said causes shall thereafter be and remain as pending on the docket of the Seventy-sixth Judicial District Court in Marion County. All process issued, and all bonds and recognizances made, and which were issued or served out of or returnable to the District Court of Marion County by and for the Fifth Judicial District, prior to the effective date of this Act, shall be valid and returnable to the next succeeding term of the District Court of Marion County for the Seventy-sixth Judicial District, as now fixed by law, as though the same had been issued and served for such term and court, returnable to and drawn from the same."

Section 2 of the amendatory Act of 1943 provided that such amendment should take effect at midnight on July 31, 1943. Section 3 repealed all conflicting laws and parts of laws.

Section 2 of the amendatory Acts of 1933 and 1935 validated all process and writs issued and all bonds executed and recognizances entered into prior to the taking effect of such amendments.

Bowie County, concurrent jurisdiction with the District Court of the 102nd Judicial District, see 102nd District.

6.—Fannin and Lamar.

The 6th Judicial District shall be composed of the Counties of Lamar and Fannin; and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of Fannin on the second Monday in January of each year, and may continue in session for eleven weeks, and on the twenty-first Monday after the second Monday in January of each year and may continue in session for eight weeks, and on the eleventh Monday after the second Monday in August of each year and may continue in session for six weeks.

In the County of Lamar on the eleventh Monday after the second Monday in January of each year and may continue in session for ten weeks, and on the fifth Monday after the second Monday in August of each year and may continue in session six weeks, and on the seventeenth Monday after the second Monday in August of each year and may continue in session until the second Monday in January of the following year.

Each term of Court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term therein. [Acts 1925, 39th Leg., p. 254, ch. 84, §§ 1, 2; Acts 1927, 40th Leg., p. 225, ch. 154, § 1; Acts 1931, 42nd Leg., p. 767, ch. 306; Acts 1943, 48th Leg., p. 357, ch. 236, § 1; Acts 1947, 50th Leg., p. 175, ch. 112, § 1.]

Sections 2–4 of the amendatory Act of 1947 read:

"Sec. 2. The Judge of said Court in his discretion, may hold as many sessions of Court in any term of the Court in any county as is deemed by him proper and expedient for the dispatch of business.

"Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

"Sec. 4. It is further provided that if any Court in any county of said district shall be in session at the time this Act takes effect, such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws; but thereafter all Courts in said district shall conform to the requirements of this Act."

Section 2 of the amendatory Acts of 1943 and 1931 provided that the "Judge of the 6th Judicial District shall convene a grand jury in the County of Lamar at only two terms of court in each year unless in his judgment it be necessary for a grand jury the third term, and the said Judge shall convene a grand jury in the County of Fannin at only two terms of court in each year unless in his judgment it be necessary for a grand jury at other terms."

Acts 1927, 40th Leg., p. 225, ch. 154, § 1, provided that the "Judges of the 6th Judicial District Court of Lamar County and of the 62nd Judicial District Court of Lamar County are hereby authorized to transfer any and all civil cases from their respective dockets in Lamar County to that of the other court, either by general order at the close of the term of each court or by order made with reference to any case on the civil docket either in term time or vacation."

Section 3 of the Act of 1925 and of the amendatory Acts of 1931 and 1943 repealed all inconsistent acts and parts of acts.

Lamar County, see, also, 62nd District, post.

7.—Upshur, Wood and Smith.

(a) The Seventh Judicial District of Texas shall be composed of Upshur, Wood, and Smith Counties; the

terms of the District Court shall be held therein each year as follows:

In the County of Upshur on the first Mondays in January and June.

In the County of Wood on the first Mondays in February and July.

In the County of Smith on the first Mondays in March and August.

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

(b) The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any county as is deemed proper and expedient for the dispatch of business. [Acts 1909, p. 120; Acts 1917, p. 130; Acts 1923, p. 37; Acts 1943, 48th Leg., p. 293, ch. 188, § 1.]

Paragraphs (c) and (d) of section 1 of the amendatory Act of 1943 read as follows:

"(c) All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn from the same.

"(d) It is further provided that if any Court in any county of said district shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all Courts in said district shall conform to the requirements of this Act."

Special District Court of Smith and Wood Counties. Acts 1935, 44th Leg., p. 7, ch. 3, as amended by Acts 1937, 45th Leg., p. 227, ch. 123, § 1, Acts 1939, 46th Leg., p. 155, § 1, Acts 1943, 48th Leg., p. 645, ch. 368, § 1 and Acts 1945, 49th Leg., p. 284, ch. 206, § 1, established a Special District Court to be composed of Smith and Wood Counties. Section 3 of the Act of 1935, as amended, read as follows: "The Special District Court as hereby reorganized and provided for Smith and Wood Counties shall cease to exist on June 15, 1947, and the term of office of the Judge thereof shall expire by operation of law at said time; and upon the expiration of said Court, the District Clerks in Smith and Wood Counties, respectively, who are hereby made clerks of the Special District herein provided for in their respective Counties, shall immediately transfer all cases then pending and undisposed of in said Special District Court in their respective Counties, to the Seventh District Court in the respective Counties, and all process, bonds and recognizances in cases then pending and undisposed of in any cases so transferred, shall be valid and effective in the Seventh District Court; and the Judge of the Special District Court, as hereby reorganized, shall have authority, after the expiration of said Court as provided herein, to approve all bills of exception, and statements of fact in any cases tried in said Special District Court, in which such approval is necessary."

By Acts 1947, 50th Leg., p. 385, ch. 215, § 1, it was continued as a permanent, regular District Court and designated as the 114th Judicial District Court.

Special District Court of Smith and Upshur Counties. Acts 1932, 42nd Leg., 3rd C.S., p. 116, ch. 47, created Special District Court of Smith and Upshur Counties, which, under the express provisions of section 11, ceased to exist on Nov. 15, 1934. Section 12 of the Act of 1932 read as follows: "At the expiration of the term for which said Special District Court is created, the Judge thereof shall deliver all the dockets and records of said Court to the Clerks of the District Courts of Smith and Upshur Counties for preservation, and any case or cases pending upon the dockets of said Special District Court at the time shall be by said Clerks transferred to the Docket of the District Court of the Seventh Judicial District of the County in which said causes are pending. The Judge of said Special District Court shall also have authority and power, after the expiration of his term of office, to approve any and all statements of fact, bills of exception, or make any other order necessary in cases tried in said Special District Court and appealed."

Former Special District Court of Smith and Wood Counties now the 114th Judicial District Court, see 114th District, post.

Transfer of cases between 7th and 114th Judicial Districts, see 114th District, post.

8.—Hunt, Hopkins, Delta, and Rains.

Delta County: On the first Monday in January and may continue three weeks; and on the second Monday in June and may continue until the business is disposed of.

Hopkins County: On the fourth Monday in January and may continue five weeks; on the fifteenth Monday after the fourth Monday in January and may continue up to and including the last Saturday preceding the second Monday in June; and on the fourth Monday in August and may continue six weeks.

Provided, however, that in the County of Hopkins the Judge of the District Court shall not impanel the Grand Jury for the term of Court commencing on the fifteenth Monday after the fourth Monday in January unless in his judgment there exists an imperative necessity for a Grand Jury, and further provided that preference shall be given to the trial of civil cases in said term of Court.

Hunt County: On the fifth Monday after the fourth Monday in January and may continue eight weeks; and on the sixth Monday after the fourth Monday in August and may continue eight weeks.

Rains County: On the thirteenth Monday after the fourth Monday in January and may continue two weeks; and on the fourteenth Monday after the fourth Monday in August and may continue until the business is disposed of.

The District Courts of the Eighth and Sixty-second Judicial Districts in Hunt County shall have concurrent jurisdiction with each other in said County throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the District Courts by the Constitution and Laws of the State; and the District Courts of the Eighth and Sixty-second Judicial Districts in the County of Delta shall have concurrent jurisdiction with each other in said County, throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the District Courts by the Constitution and Laws of the State; provided that the Judge of the Sixty-second Judicial District shall never impanel the Grand Jury in said Court in the Counties of Lamar, Hunt, and Delta, unless in his judgment he thinks it necessary. Either of the Judges of the District Court of Hunt County may, in their discretion, either in termtime or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said County of Hunt, by order or orders entered upon the Minutes of the Court making such transfer; and, where such transfer or transfers are made, the clerk of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and, when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court. Either of the Judges of the District Courts of the County of Delta may, in their discretion, either in termtime or vacation, transfer any case or cases of a civil or criminal nature that may at any time be pending in his Court, to the other District Court in said Delta County, by order or orders entered upon the Minutes of the Court making such transfer; and, when such transfer or transfers are made, and when so entered upon the docket, the Judge of said Court shall try and dispose of said case or cases in the same manner as if such cases were originally filed in said Court. The clerks of the District Courts of Delta and Hunt Counties respectively, as heretofore constituted, and their successors in office, shall be the clerks of both the Eighth and Sixty-second District Courts in said Counties respectively. [Acts 1897, p. 111; Acts 1905, p. 75; Acts 1939, 46th Leg., p. 154, § 1.]

Hunt and Delta Counties, see, also, 62nd District, post.

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

The Ninth Judicial District of Texas shall hereafter be composed of the following named counties, to-wit:

Polk, San Jacinto, Montgomery and Waller, and the terms of the district courts in and for said Ninth Judicial District of Texas, shall be begun and holden therein as follows, to-wit:

In the county of Polk, on the first Monday in January and July of each year and may continue in session for six weeks.

In the county of San Jacinto on the sixth Monday after the first Monday in January and July and may continue in session for five weeks.

In the county of Waller on the eleventh Monday after the first Monday in January and July and may continue in session for six weeks.

In the county of Montgomery on the seventeenth Monday after the first Monday in January and July and may continue in session for six weeks.

From Acts 1925, 39th Leg., ch. 34, p. 157, § 1, and Acts 1925, 39th Leg., ch. 166, p. 378, § 1. These acts are both amendatory of Acts 1915, 34th Leg., ch. 155, as amended by Acts 1917, 35th Leg., ch. 23. The text of these acts is identical, except the emergency sections, and the provision in section 2 relating to one of the terms of court in Hardin County. Said Acts 1925, 39th Leg., ch. 166 was enacted to correct the error in said Acts 1925, 39th Leg., ch. 34 as to such term of court.

Acts 1937, 45th Leg., p. 572, ch. 283, provided for temporary terms of the District Court in and for the counties comprising the Ninth Judicial District, from and after its effective date to Dec. 31, 1938.

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

Montgomery, Polk and San Jacinto Counties

Section 1. There is hereby created a Court to be held in Montgomery County, Polk County, and San Jacinto County, Texas, to be called the Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties, Texas.

Sec. 2. Said Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties shall have concurrent jurisdiction with the District Court of the Ninth Judicial District of all matters and causes of civil and criminal nature in Montgomery, Polk, and San Jacinto Counties over which, under the Constitution and General Laws of the State of Texas, the District Court of said Ninth Judicial District of Texas has original and appellate jurisdiction.

Sec. 3. The Judge of the Ninth Judicial District of Texas may, in his discretion, either in termtime or in vacation, by order entered upon the minutes of the District Court of Montgomery, Polk, and San Jacinto Counties, transfer any case or cases that may at that time be pending in said District Court of that County to the Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties, created by this Act, and holding session in that County, and said Special Ninth District Court shall have the same power and authority to try and finally dispose of such case or cases so transferred as the Court possessed from which the same were transferred; and the Judge of said Special Ninth District Court may, in his discretion, either in termtime or in vacation, by order or orders entered upon the minutes of his Court in any of the Counties for which the said Special Ninth District Court is created, transfer any case or cases pending upon his docket to the District Court of the Ninth Judicial District holding sessions in the County, and when said case or cases are transferred, the Court to which the transfer is made shall have the same right and authority to try and finally dispose of same as was originally had by said Special Ninth District Court.

Sec. 4. Any party or person desiring to bring a suit over which the District Court of the Ninth Judicial District has jurisdiction in Montgomery, Polk, and San Jacinto Counties, shall have the right to file the same either in said Court or in the Special Ninth District Court hereby created, subject to the right of the Judges of said Courts to transfer the same as herein provided.

Sec. 5. The Clerk of the District Court of each of the Counties of Montgomery, Polk, and San Jacinto, and his successors in office, shall be the Clerk of the Ninth Judicial District Court in his County, and shall perform all duties pertaining to the clerkship of each of said Courts.

Sec. 6. The Governor of the State of Texas is hereby authorized and empowered to appoint some person having the qualifications provided by law for District Judges, as Judge of said Special Ninth District Court, who shall hold his office for the duration of the time as provided by the Constitution and Laws of the State of Texas. The compensation of the Judge of the Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties hereby created shall be the same as the compensation paid to the Judges of other District Courts, including the expenses as provided for in Article 6820, Revised Civil Statutes of Texas, 1925; and the Comptroller of the State of Texas is hereby authorized to draw his warrant upon the State Treasurer for such payment; and the compensation herein provided for shall be paid in the manner in which other District Judges of the State of Texas are paid.

Sec. 7. There is hereby conferred upon said Special Ninth District Court, and upon the Judge thereof, all of the rights, powers, privileges, and duties that are given by law to the District Courts and District Judges of this State, and all laws of the State of Texas with reference to the District Courts and District Judges shall be deemed equally applicable to said Special Ninth District Court and the Judge thereof, except as herein specially excepted.

Sec. 8. The District Judge of said Special Ninth District Court may in his discretion impanel grand juries and try and dispose of any and all criminal cases that may be filed in said Special Ninth District Court or transferred thereto from the District Court of the Ninth Judicial District.

Sec. 8a. The District Attorney for the Ninth Judicial District of the State of Texas is hereby empowered and will have the authority to appoint one Assistant District Attorney to prosecute criminal cases in the Special Ninth District Court of the State of Texas, and the District Attorney is hereby empowered and will have the authority to dismiss the said Assistant District Attorney for a good and sufficient cause, and said Assistant District Attorney during the time of his services shall be paid a salary of Two Thousand, Seven Hundred and Fifty Dollars ($2,750) per year and be payable out of the General Revenue of the State of Texas by warrants issued upon same.

Sec. 9. The terms of said Special Ninth District Court created by this Act in Montgomery, Polk, and San Jacinto Counties, Texas, shall be as follows:

In the County of Polk, on the 18th Monday after the 1st Monday in January of each year and may remain in session five weeks and on the 20th Monday after the 1st Monday in July of each year and may remain in session five weeks;

In the County of San Jacinto, on the 16th Monday after the 1st Monday in January of each year, and may remain in session two weeks; and on the 18th Monday after the 1st Monday of July of each year, and may remain in session two weeks;

In the County of Montgomery, on the 1st Monday in January of each year, the 8th Monday after the 1st Monday in January of each year, the 3rd Monday in July of each year, and the 10th Monday after the 1st Monday in July of each year, and may remain in session eight weeks for each term thereof.

Sec. 10. The District Clerks of Montgomery, Polk, and San Jacinto Counties shall, immediately upon the taking effect of this Act, secure a seal having engraved a star of five (5) points in the center and the words "Special Ninth District Court of Montgomery County, Texas," and the imprints of which shall be attached to all process except subpoenas out of said Special Ninth District Court and shall be kept by said Clerk and used to authenticate his official acts as Clerk of said Court.

Sec. 11. Said Special Ninth District Court of Montgomery, Polk, and San Jacinto Counties created by this Act shall cease to exist the 30th day of June, 1943,[1] at which time the term of office of the Judge of

said Court shall expire by limitation of law and the provisions of this Act, except those as embodied in Section 12 herein.

1 Expiration date, see section 9 of Acts 1939, 46th Leg., p. 162, as amended, adding Trinity county, as set out post.

Sec. 12. At the expiration of the term for which said Special Ninth District Court is created, the Judge thereof shall deliver all the dockets and records of said Court to the Clerks of the District Courts of Montgomery, Polk, and San Jacinto Counties for preservation, and any case or cases pending upon the dockets of said Special Ninth District Court at the time shall be by said Clerks transferred to the docket of the District Court of the Ninth Judicial District of the County in which said causes are pending. The Judge of said Special Ninth District Court shall also have authority and power, after the expiration of his term of office, to approve any and all statements of facts, bills of exception, or make any other order necessary in cases tried in said Special Ninth District Court and appealed.

Sec. 13. Nothing in this Act shall be construed as in any way affecting the process, terms, jurisdiction, or authority of the District Court of the Ninth Judicial District of Texas, except as herein specially provided and specially conferred upon said Special Ninth District Court hereby created, and all process issued in any case pending in the District Court of the Ninth Judicial District shall be equally valid in any case or cases transferred to said Special Ninth District Court.

Sec. 14. The Judge of said Special Ninth District Court may, in his discretion, from time to time, order drawn and convened a grand jury in the Counties of Montgomery, Polk, and San Jacinto as he may deem proper and necessary.

Sec. 15. The Ninth Judicial District of the State of Texas composed of the Counties of Polk, San Jacinto, Waller, and Montgomery, from and after the effective date of this Act, the terms of the District Court in and for the several counties constituting said Ninth Judicial District shall be begun and holden therein as follows:

In the County of Polk, on the first Monday in January of each year and may remain in session four weeks, and on the 3rd Monday in July of each year and may remain in session four weeks;

In the County of San Jacinto, on the 7th Monday after the 1st Monday in January of each year and may remain in session three weeks, and on the 9th Monday after the 1st Monday in July of each year and may remain in session three weeks;

In the County of Waller, on the 10th Monday after the 1st Monday in January of each year and may remain in session six weeks, and on the 12th Monday after the 1st Monday in July of each year and may remain in session six weeks;

In the County of Montgomery, on the 16th Monday after the 1st Monday in January of each year and may remain in session eight weeks, and on the 18th Monday after the 1st Monday of July of each year and may remain in session eight weeks.

Sec. 16. All processes and writs issued out of the District Courts of said respective Counties and returnable to the terms of Court in said Counties as fixed at the time of the issuance of same are hereby made returnable to the terms of the District Courts of said respective Counties as said terms are fixed by this Act, and all bonds executed and recognizances entered into in said Courts shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said Courts as they are fixed by this Act, and all processes heretofore returned or hereafter returned as well as all bonds and recognizances heretofore taken or hereafter taken in the District Courts of said respective Counties shall be as valid as though no change had been made in the time of holding Courts therein, and all grand and petit jurors drawn and selected under existing laws for any of the Counties of said District are hereby declared lawfully drawn and selected for the first term of the District Courts of such respective Counties held in conformity with this Act.

Sec. 17. Should any District Court of the Ninth Judicial District be in session in any of the Counties of said District, under existing laws, when this Act takes effect, such Court shall continue and end its term under such existing laws as if no change in the time of holding Courts in said District had been made, and all processes, writs, judgments, decrees, and other proceedings in said Court, during such time, shall be valid to all intents and purposes and shall not be affected by the changes in the times of holding Court therein made by this Act, but after the period provided in the above contingency, the District Courts of the respective Counties herein mentioned shall be held in conformity with the terms as herein prescribed.

Sec. 18. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. This Act shall take effect and be operative on and after the passage of this Bill, and shall continue in force except as otherwise herein provided.

Sec. 19. If any section, paragraph, or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this Act, but the same shall remain in full force and effect. [Acts 1939, 46th Leg., p. 157.]

Trinity County

Section 1. From and after the passage of this Act, the Special 9th District Court of Montgomery, Polk, and San Jacinto Counties, Texas, shall also include Trinity County, Texas, and the name of such District Court shall hereafter be the Special 9th District Court of Montgomery, Polk, San Jacinto and Trinity Counties and the terms of such District Court in each of said counties shall be held therein each year, as follows:

In the County of Polk, on the 18th Monday after the 1st Monday in January of each year, and on the 20th Monday after the 1st Monday in July of each year.

In the County of San Jacinto, on the 16th Monday after the 1st Monday in January of each year, and on the 18th Monday after the 1st Monday in July of each year.

In the County of Montgomery, on the 3rd Monday in January of each year; on the 8th Monday after the 1st Monday in January of each year; on the 3rd Monday in July of each year; and on the 10th Monday after the 1st Monday in July of each year.

In the County of Trinity, on the 1st Monday in January of each year, and on the 23rd Monday after the 1st Monday in January of each year.

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

The Judge of such Court, in his discretion, may hold as many sessions in any term of Court as is deemed by him proper and expedient for the dispatch of business. [As amended Acts 1947, 50th Leg., p. 104, ch. 72, § 1.]

Sec. 2. The Judge of the Special Ninth District Court as the same is now constituted, shall, after the passage of this Act, continue to hold the office of District Judge in such Special Ninth District Court, until the time his successor is duly elected and qualified.

Sec. 3. The Clerk of the District Court of each of the Counties of Montgomery, Polk, San Jacinto and Trinity, and his successor in office, shall be the Clerk of said Special Ninth District Court from and after the passage of this Act, in his respective County.

Sec. 4. In Trinity County, said Special Ninth District Court of Montgomery, Polk, San Jacinto and

Trinity Counties, shall not have or exercise any criminal jurisdiction, but in all other respects it shall have concurrent jurisdiction with the District Court of the Twelfth Judicial District, of all matters and causes of a civil nature over which, under the Constitution and General Laws of the State of Texas, the District Court of said Twelfth Judicial District of Texas has original and appellate jurisdiction.

Sec. 5. The Judge of the Twelfth Judicial District of Texas, may in his discretion, either in term time or in vacation, by order entered upon the civil minutes of the District Court of Trinity County, transfer any civil case or cases that may at that time be pending in the said District Court of that County to the Special Ninth District Court of Montgomery, Polk, San Jacinto and Trinity Counties, re-organized by this Act, and holding session in that County, and said Special Ninth District Court shall have the same power and authority to try and finally dispose of such case or cases so transferred as the Court possessed from which the same were transferred; and the Judge of said Special Ninth District Court may, in his discretion, either in term time or in vacation, by order or orders entered upon the minutes of his Court, in Trinity County, transfer any civil case or cases pending upon his docket to the District Court of the Twelfth Judicial District holding sessions in Trinity County, and when said case or cases are transferred, the Court to which the transfer is made shall have the same right and authority to try and finally dispose of same as was originally had by said Special Ninth District Court.

Sec. 6. Any party or person desiring to bring a civil suit over which the District Court of the Twelfth Judicial District has jurisdiction in Trinity County, shall have the right to file the same either in said Court or in the Special Ninth District Court, hereby re-organized, subject to the right of the Judge of said Courts to transfer the same as herein provided.

Sec. 7. There is hereby conferred upon said Special Ninth District Court, and upon the Judge thereof, all of the rights, powers, privileges and duties that are given by law to the District Courts and District Judges of this State, and all laws of the State of Texas with reference to the District Courts and District Judges, shall be deemed equally applicable to said Special Ninth District Court and the Judge thereof, except as herein specially excepted.

Sec. 8. The District Clerk of Trinity County shall, immediately upon taking effect of this Act, secure a seal having engraved thereon a star of five points in the center and the words "Special Ninth District Court of Trinity County, Texas," and the imprints of which shall be attached to all processes except subpoenaes out of said Special Ninth District Court in said County, and shall be kept by said Clerk and used to authenticate his official acts as Clerk of said Court.

Sec. 9. Said Special 9th District Court of Montgomery, Polk, San Jacinto and Trinity Counties, as created by Senate Bill No. 270 of the Acts of the Regular Session of the Forty-sixth Legislature, and extended by Senate Bill No. 158, of the Acts of the Regular Session of the Forty-eighth Legislature, and hereby extended, shall cease to exist on the thirtieth day of June, 1949, at which time the term of office of the Judge of said Court shall expire by limitation of law. [As amended Acts 1943, 48th Leg., p. 118, ch. 87, § 1; Acts 1945, 49th Leg., p. 286, ch. 207, § 1; Acts 1947, 50th Leg., p. 104, ch. 72, § 2.]

Sec. 10. At the expiration of the term for which said Special Ninth District Court is created, the Judge thereof shall deliver all of the dockets and records of said Court to the Clerks of the District Courts of the respective Counties, for preservation, and any case or cases pending upon the dockets of said Special Ninth District Court at the time shall be by said Clerks transferred to the Docket of the Regular District Court of the County in which said causes are pending, the Judge of said Special Ninth District Court shall also have authority and power, after the expiration of his term of office, to approve any and all statements of facts, bills of exception or make any other order necessary in cases tried in said Special Ninth District Court and appealed.

Sec. 11. Nothing in this Act shall be construed as in any way affecting the processes, terms, jurisdiction or authority of the District Court of the Ninth Judicial District of Texas or of the District Court of the Twelfth Judicial District of Texas, except as herein specially provided and specially conferred upon said Special Ninth District Court hereby created, and all processes issued in any case pending in the District Court of the Ninth Judicial District or in the District Court of the Twelfth Judicial District shall be equally valid in any case or cases transferred to said Special Ninth Judicial District.

Sec. 12. That all processes issued or served before this Act takes effect, including recognizances and bonds returnable to the District Court of said Special Ninth District Court, shall be considered as returnable to said Court in accordance with the terms as prescribed in this Act, and all such process is hereby legalized and all grand and petit juries as drawn and selected under the existing laws in any of the Counties of said District, shall be considered lawfully drawn and selected for the next term of District Court of their respective Counties, after this Act takes effect, and all such processes are hereby legalized and validated, provided, if any Court in any County in the several Districts shall be in session when this Act takes effect, such Court or Courts, affected hereby, shall continue in session until the term thereof has expired under provisions of the existing law, but thereafter the Court in such County or Counties, shall conform to the requirements of this Act.

Sec. 13. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. This Act shall take effect and be operative on and after the passage of this bill, and shall continue in force except as otherwise provided.

Sec. 14. If any section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect. [Acts 1939, 46th Leg., p. 162.]

The Special Ninth District Court of Montgomery, Polk and San Jacinto Counties as created and organized by Acts 1935, 44th Leg., p. 233, ch. 95, as amended by Acts 1937, 45th Leg., p. 570, ch. 281, § 1, ceased to exist on Dec. 17, 1938.

A prior law creating a Special 9th District Court for Montgomery, Waller, Polk and San Jacinto Counties for the term of two years after its effective date expired by limitation on October 17, 1935, Acts 1933, 43rd Leg., p. 881, ch. 252; Acts 1933, 43rd Leg., Spec.L., p. 141, ch. 102, as amended Acts 1933, 43rd Leg., 1st C.S., p. 147, ch. 50, § 1.

10, 56.—Galveston County.

On the first Monday in February, April, June, October and December and may continue until the business is disposed of.

In all suits, actions or proceedings, it shall be sufficient for the address or designation to be merely the "District Court of Galveston County;" and the clerk of said courts shall file and docket the even numbers thereof in the Court of the Tenth Judicial District, and the odd numbers thereof in the Court of the Fifty-sixth Judicial District; but any case pending in either of said courts may, in the discretion of the judge thereof, be transferred from one of said district courts to the other, and so from time to time; and in case of the disqualification of the judge of either of said courts in any case, such case, on his suggestion of disqualification, shall stand transferred to the other of said courts, and be docketed by the clerk accordingly. The clerk of the court of the Tenth Judicial District shall perform the duties of the clerk

of the Court of the Fifty-sixth Judicial District; in case of vacancy in said office of said clerk, the same shall be filled by appointment by the judge of the Tenth Judicial District. [Acts 1909, p. 116; Acts 1911, p. 111.]

From Rev.Civ.St.1911, art. 30, omitting the following provisions therein contained:

"The district courts of Galveston county shall not have nor exercise any criminal jurisdiction, such criminal jurisdiction having been by law exclusively vested in a criminal district court. Said district courts shall have and exercise concurrent jurisdiction co-extensive with the limits of Galveston county, in all civil cases, proceedings and matters of which district courts are given jurisdiction by the constitution and laws of the state.

"The judges of said tenth and fifty-sixth judicial districts shall be elected at the time and in the manner provided by law, by the qualified voters of Galveston county."

Acts 1911, p. 111, relates exclusively to the criminal district court of Harris county.

11, 55, 61, 80, 113, 127, 133, 129—Harris

Harris County shall constitute the 11th, 55th, 61st, 80th, 113th, 127th, 133rd and 129th Judicial Districts. None of said eight (8) District Courts shall have or exercise any criminal jurisdiction in Harris County. Said District Courts of the 11th, 55th, 61st, 80th, 113th, 127th, 133rd and 129th Judicial Districts shall have and exercise concurrent jurisdiction, coextensive within the limits of Harris County, in all civil cases, proceedings, and matters over which District Courts are given jurisdiction by the Constitution and Laws of this State.

There shall be two (2) terms of each of said eight (8) Civil District Courts in Harris County in each year, and the first term shall be known as the January-June Term, shall begin on the first Monday in January, and shall continue until and including Sunday next before the first Monday in July; and the second term, which shall be known as the July-December Term, shall begin on the first Monday in July and shall continue until and including Sunday next before the first Monday in the following January.

In all suits, actions, or proceedings in said Courts, it shall be sufficient for the address or designation to be merely "District Court of Harris County." The Clerk of the Civil District Courts in Harris County shall be known as the "Clerk of the District Court of Harris County, Texas." The Clerk of said eight (8) Civil District Courts shall docket alternately on the dockets of the eight (8) District Courts of the 11th, 55th, 61st, 80th, 113th, 127th, 133rd and 129th Judicial Districts in Harris County all cases, actions, petitions, applications, and other proceedings filed in the District Courts of Harris County so that the first case or proceeding filed after the effective date of this Act and every eighth case or proceeding thereafter filed shall be docketed in the 11th Judicial District Court, and the second case or proceeding filed and every eighth case or proceeding thereafter filed shall be docketed in the 55th Judicial District Court, and the third case or proceeding filed and every eighth case or proceeding thereafter filed shall be docketed in the 61st Judicial District Court, and the fourth case or proceeding filed and every eighth case or proceeding thereafter filed shall be docketed in the 80th Judicial District Court, and the fifth case or proceeding filed and every eighth case or proceeding thereafter filed shall be docketed in the 113th Judicial District Court, and the sixth case or proceeding and every eighth case or proceeding thereafter filed shall be docketed in the 127th Judicial District Court, and the seventh case or proceeding and every eighth case or proceeding thereafter filed shall be docketed in the 133rd Judicial District Court, and the eighth case or proceeding and every eighth case or proceeding thereafter filed shall be docketed in the 129th Judicial Court, and so on seriatim, and all cases or proceedings in this manner shall be docketed in and divided and distributed among said eight (8) Civil District Courts, one-eighth (⅛) to each of them when first filed. All suits shall be filed by the Clerk in the order in which the petitions are presented to or deposited with him, and immediately after being so presented or deposited. In case of the disqualification of the Judge of any of said eight (8) Civil Courts in any case or proceeding, such case or proceeding, on his suggestion of disqualification, shall be transferred to another of said Courts, and the order of transfer may be made by any Judge of another of said Courts and may be transferred to any other of said Courts, or instead of transferring the case the Judge of any other of said Courts may sit in the Court in which the case is then pending and there try the same, and all transferred cases or proceedings shall be docketed by the Clerk accordingly. The Judges of said eight (8) Civil Courts shall sign the minutes of each term of the Courts in Harris County within thirty (30) days after the end of the term, and shall also sign the minutes at the end of each volume of the minutes, and each Judge sitting in said Courts shall sign the minutes of such proceedings as were had before him.

Each Judge of said Courts may take a vacation and not attend Court for six (6) weeks between the first day of July and the first day of October in each year, during which time the term of Court of which he is judge shall remain open and the Judge of any other Civil District Court in Harris County may hold such Court during the vacation of the Judges thereof. During the period of such vacation it shall not be lawful for a Special Judge of such Court to be elected by the practicing lawyers of such Court because of the absence of the Judge on his vacation, unless no Judge of said Civil District Courts is in the County. The Judges of said Courts shall, by agreement among themselves, take their vacations alternately so that there shall at all times be at least two (2) of said Judges in the County; and in the event of the absence, sickness or disqualification of the Judge of any of said Civil District Courts any of the other Judges of the said District Courts may act and preside or any regular practicing lawyers of the Bar of Harris County, Texas, may be elected who have the qualifications of a District Judge to act and preside over any of the said Courts during such absence, sickness or inability of any of the Regular Judges to act and preside therein; such Special Judge shall be elected according to Title 40 of the Revised Civil Statutes of the State of Texas of 1925.[1] [Acts 1903, p. 22; Acts 1923, p. 203; Acts 1927, 40th Leg., p. 135, ch. 88, § 1; Acts 1930, 41st Leg., 5th C.S., p. 131, ch. 14; Acts 1939, 46th Leg., p. 184, §§ 1–6; Acts 1947, 50th Leg., p. 525, ch. 308, § 3.]

1 Articles 1884–1926.

Two (2) additional District Courts are hereby created in and for Harris County, Texas, the limits of which districts shall be coextensive with the limits of Harris County. Said Courts shall be known as the 133rd and 129th District Courts. [Acts 1947, 50th Leg., p. 525, ch. 308, § 1.]

Immediately upon the passage of this Act, the Governor shall appoint two (2) suitable persons as Judges of the 133rd and 129th District Courts. They shall hold office as Judges until the next General Election and until their successor shall be duly elected and qualified. Thereafter such Judges shall be elected as provided by the Constitution and the Laws of the State for the election of District Judges, provided that said District Courts shall cease to exist upon the expiration of four (4) years from the effective date of this Act. [Acts 1947, 50th Leg., p. 525, ch. 308, § 2.]

The letters A, B, C, D, E, F, G, and H shall be placed on the docket and the Court papers in the respective District Courts of Harris County to distinguish them: A being used in connection with the 11th District Court; B, the 55th District Court; C, the 61st District Court; D, the 80th District Court; E, the 113th District Court; F, the 127th District

Court; G, the 133rd District Court; and H, the 129th District Court. [Acts 1947, 50th Leg., p. 525, ch. 308, § 4.]

The Clerk of the District Court of Harris County, upon the taking effect of this Act, shall prepare promptly dockets for the Courts so created by this Act and shall place on the dockets of said 133rd and 129th District Courts the seventh and eighth cases, respectively, pending on the respective dockets of the 11th, 55th, 61st, 80th, 113th and 127th District Courts, and shall continue in this manner through said dockets until all said cases thereon are exhausted and the dockets of said eight (8) Courts are equalized as near as may be. No case then on trial in any of the existing District Courts, nor any case pending on appeal therefrom, shall be transferred to the dockets of the 133rd and 129th District Courts. The cases so transferred shall bear the same docket numbers as in the Court from which they are transferred and the Judges of the existing District Courts, respectively, shall make proper orders transferring from such Courts to the 133rd and 129th District Courts the cases which have been placed on the dockets of the 133rd and 129th District Courts in pursuance of this Act. [Acts 1947, 50th Leg., p. 525, ch. 308, § 5.]

The respective Judges of the District Courts of Harris County shall, from time to time as occasion may require, transfer cases from any one of such Courts to any other such Court in order that the business may be equally distributed among them, that the Judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the Judge in whose Court it is pending; provided, however, that no case shall be transferred from one Court to another without the consent of the Judge of the Court to which it is transferred. When any transfer is made, proper order shall be entered on the minutes of the Court as evidence thereof and such order on the minutes shall be notice of the transfer to the attorneys of record of all parties to the cause. [Acts 1947, 50th Leg., p. 525, ch. 308, § 6.]

Sections 1, 2, 4–8 of Acts 1939, 46th Leg., p. 184, created an additional district court in and for Harris county to be known as the 127th District Court, provided that its limits should be coextensive with the limits of the county, authorized the appointment of a judge, provided for letters to distinguish the docket and papers in the respective district courts, specified the duties of the Clerk as to the dockets and provided for the transfer of cases.

Section 7 of the amendatory Act of 1939 made an appropriation for the salary of the Judge of 127th Judicial District Court until Sept. 1, 1939. Section 8 read as follows: "All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only. As to all other laws and parts of laws, this Act shall be cumulative."

Harris County, see, also, 80th District, post.

12.—Grimes, Walker, Leon, Trinity and Madison

The Twelfth Judicial District shall be composed of the Counties of Grimes, Walker, Leon, Trinity, and Madison, and the terms of the District Courts are hereby designated and shall be held therein each year as follows:

In the County of Grimes on the first Mondays in January and June.

In the County of Walker on the first Mondays in February and July.

In the County of Leon on the first Mondays in March and October.

In the County of Trinity on the first Mondays in April and November.

In the County of Madison on the first Mondays in May and December.

Each term of Court in each of such Counties may continue until the date herein fixed for the beginning of the next succeeding term therein. [Acts 1905, p. 55; Acts 1919, p. 111; Acts 1931, 42nd Leg., p. 775, ch. 310; Acts 1933, 43rd Leg., 1st C.S., p. 318, ch. 115, § 1; Acts 1943, 48th Leg., p. 109, ch. 81, § 1.]

Sections 2–4 of the amendatory Act of 1943 read as follows:

"Sec. 2. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any County as is deemed by him proper and expedient for the dispatch of business.

"Sec. 3. All process issued and returnable to a succeeding term of Court and all bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same. All process issued and made returnable on or before Monday next after the expiration of twenty (20) days from the date of service thereof shall be valid, and unaffected by this Act.

"Sec. 4. It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein, but thereafter all Courts in said District shall conform to the requirements of this Act."

Section 2 of the amendatory Acts of 1931 and 1933 validated all process, writs and bonds issued, served or executed and all recognizances entered into prior to the taking effect of such amendments.

Acts 1939, 46th Leg., p. 176, § 11, also defined the terms of the district court in and for the several counties constituting the 12th Judicial District.

Sections 1–10, 12, 13, of Acts 1939, 46th Leg., p. 176, relate to the 87th Judicial District and are set out under 87th District, post.

Trinity County, see, also, 9th District, ante, Special Ninth District Court of Montgomery, Polk, San Jacinto and Trinity Counties.

13.—Navarro.

On the first Mondays in January, April, July and October. The January, April and October terms shall each continue twelve (12) weeks or until all the business be disposed of, and the July term shall continue twelve (12) weeks or until the business be disposed of. Jury trials may be had at each and all of said terms of Court. There shall be organized Grand Juries at the April and October terms of said Court, and at such other terms thereof as may be determined and ordered by the Judge thereof. The County Attorney of Navarro County shall perform all the duties usually performed by a District Attorney. [Acts 1899, p. 38; Acts 1915, p. 11; Acts 1923, p. 45; Acts 1943, 48th Leg., p. 336, ch. 216, § 1.]

14, 44, 68, 95.—Dallas.

None of the said district courts of Dallas County shall have nor exercise any criminal jurisdiction in Dallas County, but all of said courts shall have and exercise concurrent jurisdiction co-extensive with the limits of Dallas County in all civil cases, proceedings and matters of which district courts are given jurisdiction by the Constitution and laws of the State. The terms of said courts shall be as follows:

Fourteenth District: On the second Monday in January and ending on the Saturday before the second Monday in April; on the second Monday in April and ending on Saturday before the second Monday in July; on the second Monday in July and ending on Saturday before the second Monday in October; and on the second Monday in October and ending on Saturday before the second Monday in January.

Forty-fourth District: On the first Mondays in January, April, June and October and continue until all business be disposed of.

Sixty-eighth District: On the first Mondays in February, May, September and December and continue until all business be disposed of.

Ninety-fifth District: On the first Mondays in March, June, September and December, and each term shall continue until the Sunday immediately preceding the date set for the beginning of the next term thereof.

In case of vacancy by death, resignation or removal in the office of clerk of said district courts of Dallas County, his successor shall be appointed by a majority of the judges of the said four civil courts and the judges of the Criminal District Courts acting together, and if they fail to make such appointment within

twenty days after such vacancy is created, then such appointment shall be made by the Commissioners Court of Dallas County.

The letters A, B, C and D shall be placed on the dockets and court papers in the respective district courts of Dallas County to distinguish them. A being used in connection with the Fourteenth District Court, B the Forty-fourth, C the Sixty-eighth, and D the Ninety-fifth District Court. All suits, prosecutions and proceedings hereafter instituted in the district courts of Dallas County shall be numbered consecutively, beginning with the next number after the last file number on the dockets of the Fourteenth, Forty-fourth and Sixty-eighth District Courts, and shall be entered by the district clerk upon the dockets of said courts alternately, beginning with the Fourteenth District Court, next the Forty-fourth District Court, third the Sixty-eighth District Court, and fourth the Ninety-fifth District Court.

The respective judges of the district courts of Dallas County shall, from time to time as occasion may require, transfer cases from any one of such courts to any other such court in order that the business may be equally distributed among them, that the judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the judge in whose court it is pending; provided, however, no case shall be transferred from one court to another without the consent of the judge of the court to which it is transferred. When any transfer is made, proper order shall be entered on the minutes of the court as evidence thereof, and notice of the transfer shall be given in writing by the clerk to the attorneys of record of all parties to the cause. [Acts 1913, p. 171; Acts 1917, p. 130; Acts 1923, p. 118.]

Acts 1925, 39th Leg., p. 210, ch. 61, creates the District Court of the 101st Judicial District and gives such court concurrent jurisdiction except as to criminal matters with other district courts in Dallas County.

Dallas County, see, also, 101st District and 116th District, post.

15, 59.—Grayson and Collin

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

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

FIFTY-NINTH DISTRICT: (a) Collin County. On the third Monday in January and continuing until and including the last Saturday before the fourth Monday in April; on the fourth Monday in April and continuing until and including the last Saturday before the second Monday in September; and on the second Monday in September and continuing until and including the last Saturday before the third Monday in January.

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

The District Courts of the Fifteenth and Fifty-Ninth Judicial Districts, in the County of Grayson, shall have concurrent jurisdiction with each other throughout the limits of Grayson County of all matters civil and criminal of which jurisdiction is given to the District Courts by the Constitution and laws of this State, provided, that the Judge of the Fifty-ninth Judicial District may impanel the Grand Jury in Grayson County when, in the discretion of said Court, it is deemed by him proper so to do he may draw and impanel such grand jury for any terms of his Court as provided by law for other District Courts for impaneling grand juries. Either of the Judges of District Court of Grayson County, may in his discretion, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in Grayson County, by order or orders entered upon the minutes of the Court making such transfer; and where such transfer or transfers are made, the Clerk of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally in said Court. The Clerk of the District Court of Grayson County, as heretofore constituted, and his successor in office shall be the Clerk of both the Fifteenth and Fifty-ninth District Courts in said Grayson County, and shall perform all the duties pertaining to the clerkship of both of said Courts. [Acts 1903, p. 2; Acts 2nd C.S.1909, p. 393; Acts 2nd C.S.1923, p. 29; Acts 1934, 43rd Leg., 2nd C. S., p. 24, ch. 10, § 1; Acts 1943, 48th Leg., p. 12, ch. 12, § 1.]

Section 2 of the amendatory Act of 1943 read as follows: "If any section, paragraph or provision of this Act be held or declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect."

16.—Cooke and Denton.

(a) The 16th Judicial District of Texas shall be composed of Cooke and Denton Counties, and the terms of the District Court shall be held therein each year as follows:

In the County of Cooke on the first Mondays in January and September, and on the sixteenth Monday after the first Monday in January.

In the County of Denton on the eighth Monday after the first Mondays in January and September, and on the twenty-second Monday after the first Monday in January.

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

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

(c) All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn from the same.

(d) It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect such court or courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all courts in said district shall conform to the requirements of this Act. [Acts 1917, p. 43; Acts 2nd C.S.1923, p. 42; Acts 1943, 48th Leg., p. 100, ch. 71, § 1.]

17, 48, 67, 96.—Tarrant.

The district courts of the Seventeenth, Forty-eighth, Sixty-seventh and Ninety-sixth Districts shall have concurrent jurisdiction throughout the limits of Tarrant County of all civil matters of which jurisdiction is given to the district courts by the Constitution and laws of the State. None of said courts shall have nor exercise any criminal jurisdiction. The terms of said district courts shall be as follows:

Seventeenth and Ninety-sixth Districts: On the first Mondays in January, April, July and October and continue until the business is disposed of.

Forty-eighth District: On the first Mondays in February, May, August and November and continue until the business is disposed of.

Sixty-seventh District: On the first Mondays in March, June, September and December and continue until the business is disposed of.

The judges of said four courts shall each have the right, within his discretion, to make transfer of cases from his court to any other of said courts.

The clerk of the district courts of Tarrant County shall make up dockets for each of said Courts. All cases, prosecutions and proceedings filed with the clerk shall by him be entered upon the dockets of said courts alternately, so that the business may be equally distributed between them; provided, that all garnishment cases shall follow the cases in which they are sued out, and that such garnishment cases shall not be estimated by the clerk in dividing business. In all injunctions granted by said judges, the suits wherein granted shall be docketed in the court of the judge who granted such injunctions; and in all cases wherein receivers may be appointed by said judges, the suit wherein such receivers shall be appointed shall be docketed in the court of the judge who appointed such receivers. [Acts 1907, p. 338; Acts 1923, p. 104.]

18.—Somervell and Johnson.

(a). The 18th Judicial District of Texas shall be composed of Somervell and Johnson Counties and the terms of the District Court shall be held therein each year as follows:

In the County of Somervell on the first Mondays in January and June.

In the County of Johnson on the first Mondays in February and July.

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

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

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

(d). It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect such court or courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all courts in said district shall conform to the requirements of this Act. [Acts 1905, p. 37; Acts 1917, p. 75; Acts 1943, 48th Leg., p. 395, ch. 267, § 2.]

19, 54, 74.—McLennan.

Section 1. The District Courts of the 19th, 54th and 74th Districts shall have concurrent jurisdiction throughout the limits of McLennan County in all civil and criminal cases and proceedings of which District Courts are given jurisdiction by the constitution and laws of the state.

Sec. 2. The Judges of the 19th and 74th Judicial Districts shall never impanel a grand jury in their courts, but either of them may at any time, when in his judgment a necessity exists therefor, convene the grand jury impaneled by the Judge of the 54th District Court.

Sec. 3. The Judges of said courts may exchange districts whenever they deem it expedient, and a Judge of either of said courts may sit in any one of said three courts, either upon the request of the regular Judge thereof or in case of his absence or inability to act.

Sec. 4. Any one of the Judges of said courts may in his discretion, either in term-time or vacation, transfer any cause or causes, civil or criminal, that may at any time be pending in either of said courts over which he may be presiding, to any other of said courts, by order or orders entered upon the minutes of his said court; and where such transfer is made, the clerk of said courts shall enter such cause upon the docket of the court to which such transfer is made, and when so entered upon the docket, the Judge of said court to which such cause has been transferred, shall try and dispose of said cause in the same manner as if such cause had been filed in said court.

Sec. 5. The terms of said District Courts shall be held therein each year as follows: The terms of the 19th District Court shall begin on the second Monday in January, March, May, July, September and November of each year, and each of said terms shall continue until and including the Sunday next preceding the date for the beginning of the next succeeding term.

The terms of the 54th District Court shall begin on the first Monday in January, March, May, July, September and November of each year, and each of said terms shall continue until and including the Sunday next preceding the date for the beginning of the next succeeding term.

The terms of the 74th District Court shall begin on the second Monday in February, April, June, August, October and December of each year, and each of said terms shall continue until and including the Sunday next preceding the date for the beginning of the next succeeding term. [Acts 1893, p. 52; Acts 1915, p. 3; Acts 1917, p. 13; Acts 1937, 45th Leg., p. 769, ch. 371; Acts 1947, 50th Leg., p. 725, ch. 361, § 1.]

Sections 6 and 7 of the Act of 1937 as amended in 1947 read as follows:

"Sec. 6. If either of said courts be in session at the time this Act takes effect, the term of said court then in progress shall continue until and including the Sunday next preceding the date for the beginning of the next succeeding term.

"Sec. 7. If any part of this law shall be declared unconstitutional, it is hereby declared to be the intent of the Legislature to pass all constitutional portions thereof notwithstanding."

The Act of 1937, seemed to provide a substitute for Acts 1893, p. 52, Acts 1915, p. 3, and Acts 1917, p. 13, defining the jurisdiction of the Nineteenth, Fifty-fourth and Seventy-fourth District Courts, and providing for the terms thereof which, as appearing in Rev.Civ.St.1925, read as follows:

"Nineteenth District: On the first Mondays in January, April, July and October and continue until the business is disposed of; provided the October term shall not continue longer than the last Saturday before the 25th day of December.

"Fifty-fourth District: On the first Monday in January, March, May, September and November, and each of said terms may continue until and including the Saturday next preceding the beginning of the next succeeding term, unless the business of the term shall be sooner disposed of; and grand juries shall be impaneled at the March and September terms of court and at such other terms as the judge of said district may determine and order.

"Seventy-fourth District: On the second Mondays in February, April, June, August, October and December and continue until the business is disposed of.

"The said three courts shall have concurrent jurisdiction throughout the limits of McLennan County in all civil and criminal cases and proceedings of which district courts are given jurisdiction by the Constitution and laws of the State. Any one of the judges of said courts may, in his discretion, either in term time or vacation, transfer any cause or causes, civil or criminal, that may at any time be pending in his court, to any other of said courts by order or orders entered upon the minutes of his said court, and where such transfer or transfers are made, the clerk of said courts shall enter such cause or causes upon the docket of the court to which such transfer or transfers are made, and when so entered upon the docket, the judge of said court to which such cause or causes have been transferred, shall try and dispose of said cause or causes in the same manner as if such cause or causes were originally in said court.

"The judges of the Nineteenth and Seventy-fourth Judicial Districts shall never impanel a grand jury in their courts, but may at any time reconvene the grand jury impaneled by the judge of the Fifty-fourth District, when a

necessity therefor exists in the judgment of the judge or judges of said Nineteenth and Seventy-fourth Judicial Districts. No petit juries shall be drawn for the July term of the Nineteenth Judicial District or for the August term of the Seventy-fourth Judicial District, unless the judges of said courts shall deem the same necessary."

20.—Milam.

On the first Mondays in January, March, May, and September, and the second Monday in November, and each term may continue until and including the Saturday next preceding the beginning of the next succeeding term, unless the business of the term shall be sooner disposed of.

Grand juries in said district shall be organized at the May and November terms of said court and at such other terms as the judge of said court may determine and order by causing an order to that effect to be entered upon the minutes of said court by the clerk thereof.

The office of district attorney for said district is hereby abolished, and the regularly elected county attorney of said county shall perform all the duties of district attorney. [Acts 1893, p. 52; Acts 1917, p. 256.]

21.—Washington, Lee, Bastrop and Burleson.

Section 1. The Twenty-first Judicial District shall be composed of the Counties of Washington, Lee, Bastrop and Burleson, and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of Washington on the first Mondays in March and September;

In the County of Lee on the sixth Mondays after the first Mondays in March and September;

In the County of Burleson on the tenth Mondays after the first Mondays in March and September;

In the County of Bastrop on the second Monday in January, and the fifteenth Monday after the first Monday in March.

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

Section 2. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any County as is deemed by him proper and expedient for the dispatch of business.

Section 5. Judgments of all such District Courts shall become final on and after the expiration of ten (10) days after the date of judgment, or on and after the day the motion or amended motion for new trial, if any be filed, is overruled, as if the term of Court had expired, when execution and all such other writs to enforce such judgment may issue. On and after the day such judgment becomes final, the judgment cannot be set aside except by bill of review for sufficient cause, filed within the time allowed by law for the filing of bills of review in other District Courts. [Acts 1911, p. 39; Acts 1917, p. 310; Acts 1943, 48th Leg., p. 176, ch. 101, § 1.]

Sections 3 and 4 of this subdivision, as amended in 1943, read as follows:

"Section 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

"Section 4. It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein, but thereafter all Courts in said District shall conform to the requirements of this Act."

From Acts 1923, 38th Leg., ch. 98, p. 196, omitting section 2 thereof which relates to the return of processes, etc., and section 3 which reads as follows: "It is hereby made discretionary with the judge of said judicial district as to whether a grand jury shall be organized and impanelled at the July terms of the district courts in Hays and Caldwell Counties."

Sections 2-4 of the amendatory Act of 1943 read as follows:

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

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

"§ 4. It is further provided that if any court in any county of said District shall be in session at the time this Act takes effect, such court shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein, except the 1943 spring term of the District Court of Fayette County shall begin on the first Monday in May 1943 and continue in session until the beginning of the succeeding term therein, as provided herein; but thereafter all courts in said District shall conform to the requirements of this Act."

Section 2 of the amendatory Act of 1937 related to process, writs and bonds issued, served or executed prior to the taking effect of the Act.

22.—Austin, Hays, Caldwell, Fayette, and Comal.

The 22nd Judicial District shall be composed of the Counties of Austin, Hays, Caldwell, Fayette, and Comal, and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of Austin on the first Mondays in January and June.

In the County of Hays on the first Mondays in February and September.

In the County of Caldwell on the first Mondays in March and October.

In the County of Fayette on the first Mondays in April and November.

In the County of Comal on the first Mondays in May and December.

Each term of court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term therein. [Acts 1915, p. 113; Acts 1923, p. 196; Acts 1937, 45th Leg., p. 790, ch. 386; Acts 1943, 48th Leg., p. 274, ch. 173, § 1.]

23.—Brazoria, Fort Bend, Wharton and Matagorda.

There shall be two terms of the 23rd Judicial District Court in each of the Counties of Brazoria, Matagorda, Fort Bend and Wharton, Texas.

In Brazoria County the first term shall be known as the April-September term and shall begin each year on the first Monday in April and shall continue until and including Saturday before the first Monday in October of each year; the second term of said court in Brazoria County, Texas, which shall be known as the October-March term, shall begin each year on the first Monday in October and shall continue until and including Saturday before the first Monday in the following April.

In Fort Bend County the first term shall be known as the May-October term and shall begin each year on the first Monday in May and shall continue until and including Saturday before the first Monday in November; the second term, which shall be known as the November-April term, shall begin each year on the first Monday in November and continue until and including Saturday before the first Monday in the following May.

In Matagorda County the first term shall be known as the June-November term and shall begin each year on the first Monday in June and shall continue until and including Saturday before the first Monday in December; the second term, which shall be known as the December-May term, shall begin each year on the first Monday in December and shall continue until and including Saturday before the first Monday in the following June.

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

continue until and including Saturday before the first Monday in the following July.

The Judge of said court, in his discretion, may hold as many sessions of court in any term of the court in any county as is deemed by him proper and expedient for the dispatch of business. [Acts 1905, p. 80; Acts 1915, 1st C.S., p. 37; Acts 1917, p. 73; Acts 1927, 40th Leg., p. 12, ch. 8, § 1; Acts 1931, 42nd Leg., p. 746, ch. 293, § 1; Acts 1939, 46th Leg., p. 166, § 1; Acts 1947, 50th Leg., p. 291, ch. 179, § 7.]

Sections 1-6, 8 and 9 of Acts 1947, 50th Leg., p. 291, ch. 179, create an additional district court in and for Brazoria, Fort Bend, Matagorda and Wharton counties, to be known as the 130th District Court. See 130th District, post.

For sections 10 and 11 of the Act of 1947 relating to both the 23rd and 130th District Courts, see note under 130th District, post.

Sections 2 and 3 of the amendatory Act of 1939 read as follows:

"Sec. 2. All process, writs and bonds issued, served or executed prior to the taking effect of this Act and returnable to the terms of said Court in each of said counties comprising the said Judicial District and all process heretofore returnable as well as all bonds and recognizances heretofore entered into in any of said Courts in said Judicial District shall be valid and binding.

"Sec. 3. All process issued or served, before this Act goes into effect to the District Courts of any of said counties, shall be considered as returnable to said Courts in accordance with the terms prescribed by this Act and all such process is hereby legalized, and all grand and petit jurors drawn and selected under existing laws in any of said counties in said Judicial District for a term of Court after the date this Act becomes effective shall be considered lawfully drawn and selected for the next term of the District Court for these respective counties, held in accordance with this Act; provided, however, that if there should be a term of Court being held at the time said Act goes into effect said term of Court shall remain and continue in session until said term has ended and terminated under the law as it now exists for holding terms of Court in said Judicial District."

Section 4 of the amendatory Act of 1939 provided that the Act should take effect on January 1, 1940.

Section 2 of the amendatory Acts of 1927 and 1931 validated all process issued or served, bonds executed and recognizances entered, and grand and petit juries drawn and selected prior to the taking effect of such Acts.

Brazoria, Fort Bend, Matagorda and Wharton Counties, see, also, the 130th District, post.

24.—DeWitt, Goliad, Jackson, Refugio, Calhoun and Victoria.

The 24th Judicial District shall be composed of the Counties of DeWitt, Goliad, Jackson, Refugio, Calhoun and Victoria, and the terms of the District Court shall be held therein each year as follows:

In the County of DeWitt on the first Mondays in January and June and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such court in such County.

In the County of Goliad on the first Monday in February and last Monday in August and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such court in such County.

In the County of Jackson on the fourth Monday in February and third Monday in September and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such court in such County.

In the County of Refugio on the third Mondays in March and October and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such court in such County.

In the County of Calhoun on the second Mondays in April and November and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such court in such County.

In the County of Victoria on the fourth Mondays in April and November and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such court in such County. [Acts 1913, p. 190; Acts 1929, 41st Leg., p. 348, ch. 163, § 1; Acts 1943, 48th Leg., p. 11, ch. 11.]

Section 2 of the amendatory Act of 1929 read as follows: "All processes, all writs and bonds, civil and criminal, issued or executed prior or subsequent to the taking effect of this Act and returnable to the terms of said Court as heretofore fixed by law in the County of Calhoun in said Twenty-fourth Judicial District, as well as all grand and petit jurors, are hereby made returnable to the terms of said court, as said terms are here now fixed by this Act, and in conformity with the change herein made, and all bonds executed and recognizances entered into in said Court, shall bind the parties for their appearances or to fulfill the obligations of such bonds and recognizances at the terms of said Court as they are fixed by this Act, and all processes of every kind heretofore returned to, as well as all bonds and recognizances heretofore taken or hereafter entered into after this Act takes effect in said Court, in said District, shall be as valid and as binding as if no change had been made in the time of holding said court."

Section 3 repealed conflicting laws.

Sections 2-4 of the amendatory Act of 1943 read as follows:

"Sec. 2. Any term of court may be divided into as many sessions as the judge thereof may deem expedient for the dispatch of business.

"Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect, shall be valid for and returnable to the next succeeding term of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

"Sec. 4. The salary of the official court reporter of this District shall be as fixed by law, and shall be paid by each County in proportion to the time court is actually held in such County, such proportion to be determined by the judge of this court and to be paid on sworn written statement of the court reporter approved by the judge of this court."

25.—Gonzales, Colorado, Lavaca and Guadalupe.

The 25th Judicial District shall be composed of the Counties of Gonzales, Colorado, Lavaca and Guadalupe, and the terms of the District Court in each of said counties shall be held therein each year as follows:

In the County of Gonzales on the first Mondays in January and June.

In the County of Colorado on the first Mondays in February and September.

In the County of Lavaca on the first Mondays in April and November.

In the County of Guadalupe on the first Mondays in May and December.

Each term of court in each of such counties shall continue until 10:00 A. M. of the Monday herein fixed for the beginning of the next succeeding term thereof.

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

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

If any court in any county of said District shall be in session at the time this Act takes effect, such court shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein. [Acts 1907, p. 37; Acts 1929, 41st Leg., p. 396, ch. 182, § 1; Acts 1947, 50th Leg., p. 24, ch. 16, § 1.]

Section 2 of the amendatory Act of 1929 read as follows: "All processes, all writs and bonds, Civil and Criminal, issued or executed prior or subsequent to the taking effect of this Act and returnable to the terms of said Court as heretofore fixed by Law in the several counties composing the 25th Judicial District, as well as all Grand and Petit Jurors, are hereby made returnable to the terms of said Court as said terms are here now fixed by this Act and in conformity with the change herein made, and all bonds executed and recognizances entered into in said Court shall bind the parties for their appearances or to fulfill the obligations of such bonds and recognizances at the terms of said Courts as they are fixed by this Act, and all process of every kind and character heretofore taken or hereafter entered into after this Act takes effect in any of said Courts in said district shall be as valid and as binding

as if no change had been made in the time of holding said Courts.

"It is further provided, that if any Court in any county of said district shall be in session at the time this Act takes effect, such Court or Courts affected hereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter the Court in such county shall conform to the requirements of this act."

Section 3 of such amendatory act repealed conflicting laws and parts of laws.

This article is not repealed in any way by Acts 1933, 43rd Leg., p. 595, ch. 195, see article 2326c.

Acts 1933, 43rd Leg., Spec.L., p. 79, ch. 63, reads as follows:

"Sec. 1. The Judge of the Twenty-fifth Judicial District of Texas, composed of the counties of Guadalupe, Gonzales, Colorado and Lavaca, or the Judge of the Judicial District of which the counties of Guadalupe, Gonzales, Colorado and Lavaca are a part thereof, shall appoint an official shorthand reporter for such district in the manner now provided for district courts in this State; who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. Said official shorthand reporter shall receive a salary of not less than Two Thousand ($2,000.00) Dollars, per annum nor more than Two Thousand Seven Hundred ($2,700.00) Dollars, per annum, said salary to be fixed and determined by the District Judge of the Twenty-fifth Judicial District composed of the counties of Guadalupe, Gonzales, Colorado and Lavaca, or by the District Judge of which the counties of Guadalupe, Gonzales, Colorado and Lavaca are a part thereof, and said salary shall be in addition to the transcript fees of Fifteen (15¢) Cents, per one hundred words for the Q. and A record and Twenty (20¢) Cents, per one hundred words for a narrative statement of facts, and said reporter shall, in addition, receive allowances for expenses as now provided by Chapter 56, House Bill No. 276, Acts Regular Session of the Forty-first Legislature, 1929, which allowances, as now provided by law, are fixed and established as a part of this Act. Said salary when so fixed and determined by the District Judge of said Judicial District shall be paid monthly, out of the general funds of the counties, by the respective counties of the Judicial District in accordance with the proportion fixed, made and determined by the District Judge of said Judicial District as to the amount to be paid monthly by each county in the Judicial District.

"Sec. 2. From and after the passage of this Act all provisions relating to official shorthand reporters and their duties in district courts shall in all respects govern except that the salary of the official shorthand reporter as provided for in this Act shall be fixed and determined by the District Judge of said Judicial District and not otherwise; and the transcript fees and allowances for expenses shall be as provided for in this Act, and not otherwise. The provisions of this Act being declared and enacted as a special act by the Legislature, notices thereof having been duly published and exhibited as required by law."

26.—Williamson.

On the first Monday in January and may continue to and including the last Saturday in February; on the first Monday in March and may continue to and including the last Saturday in April; on the first Monday in May and may continue to and including the last Saturday in June; on the first Monday in September and may continue to and including the last Saturday in October; and on the first Monday in November and may continue to and including the last Saturday in December.

Grand juries for said district court shall be organized at the January, May and September terms of said court; provided, that the judge of said court may, when deemed necessary, organize and impanel grand juries at any other term of said court by entering an order therefor.

From Acts 1923, 38th Leg., ch. 68, p. 129.

27.—Bell, Lampasas and Mills.

The 27th Judicial District shall be composed of the Counties of Bell, Lampasas and Mills, and the terms of the District Court shall be held therein each year as follows:

In the County of Bell on the first Mondays in January and June and may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such County.

In the County of Lampasas on the first Mondays in March and September and may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such County.

In the County of Mills on the first Mondays in May and November and may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such County. [Acts 1913, p. 115; Acts 1918, 4th C.S., p. 60; Acts 1931, 42nd Leg., p. 766, ch. 305; Acts 1937, 45th Leg., p. 802, ch. 394; Acts 1943, 48th Leg., p. 8, ch. 9, § 1.]

Sections 2–4 of the amendatory Act of 1943 read as follows:

"Sec. 2. Any term of court may be divided into as many sessions as the judge thereof may deem expedient for the dispatch of business.

"Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

"Sec. 4. The salary of the official court reporter of this district shall be as fixed by law, and shall be paid by each County proportionately according to the population as shown by the last Federal Census."

Section 2 of the amendatory Act of 1931 provided that process and writs theretofore issued and returnable according to existing laws were thereby made returnable to the terms fixed by that act, and that bonds and recognizances should bind the parties for their appearances or to fulfill the obligations of such bonds and recognizances at the terms as fixed by that act, validated all process theretofore issued or taken, and declared that jurors drawn, selected and summoned under existing laws were lawfully drawn, selected and summoned for the first term held in conformity with the act.

Section 2-a of such amendatory Act of 1931 provided that the act should become effective September 1, 1931. Section 3 repealed conflicting laws and parts of laws.

28.—Nueces, Kleberg and Kenedy.

From and after the first day of January, A. D. 1947, the 28th Judicial District of Texas shall be composed of the Counties of Nueces, Kleberg, and Kenedy, and shall be a Court of general jurisdiction, with the jurisdiction conferred upon District Courts by the constitution and laws of the State of Texas; and in the County of Nueces, it shall have concurrent jurisdiction with the 94th and 117th District Courts. [Acts 1945, 49th Leg., p. 472, ch. 300, § 1.]

The 28th Judicial District of the State of Texas shall be composed of the Counties of Kenedy, Nueces and Kleberg, and the terms of the District Court shall be held therein as follows:

In Nueces County, a term to be known as the January-July term shall begin on the first Monday in January of each year and shall continue until and including the Sunday preceding the first Monday in July of the same year; in Nueces County a term to be known as the July-January term shall begin on the first Monday in July of each year and continue until and including the Sunday preceding the first Monday in January of the succeeding year.

A term of said Court for Kleberg County shall begin on the first Monday in March of each year and continue until and including the Sunday preceding the first Monday in September of the same year; a term of said Court in Kleberg County shall begin on the first Monday in September of each year and continue until and including the Sunday preceding the first Monday in March of the succeeding year.

A term of said Court for Kenedy County shall begin on the first Monday in April of each year and continue until and including the Sunday preceding the first Monday in October of each year; a term of said Court for Kenedy County shall begin on the first Monday of October of each year and continue until and including the Sunday preceding the first Monday in April of the succeeding year.

The Judge of such Court may devote as much time to the business of said Court in Kleberg County and Kenedy County as may be required by the dockets thereof in said Counties; and the remainder of his time shall be devoted to the business of said Court in Nueces County. [Acts 1925, 39th Leg., p. 243, ch. 79, § 1; Acts 1927, 40th Leg., p. 89, ch. 64, § 1; Acts 1947, 50th Leg., p. 776, ch. 385, § 1.]

Section 2 of Acts 1947, 50th Leg., p. 776, ch. 385, amended art. 199 (117, § 3), section 3 as amended act 199 (94, § 3), and section 4, providing for the election of a presiding judge and the appointment of an assignment clerk in the 28th, 94th and 117th Judicial Districts, is published as article 2093d.

Section 5 of the Act of 1947 provided: "This Act shall take effect on and be in full force and effect from and after midnight, July 6, 1947. All terms of the District Courts of the 28th, 94th and 117th Judicial Districts that may be in session at such time shall expire at midnight on July 6, 1947, subject to extension for the completion of matters then on trial; and the terms of said Courts shall be thereafter as provided in this Act."

Section 6 of the Act of 1947 repealed all conflicting laws and parts of laws.

The first paragraph of this section is from Acts 1945, 49th Leg., p. 472, ch. 300, § 1. The remainder of the section is from Acts 1925, 39th Leg., p. 243, ch. 79, § 1 as amended by Acts 1927, 40th Leg., p. 89, ch. 64, § 1.

Effective Jan. 1, 1947, the Criminal District Court for Nueces, Kleberg, Kenedy, Willacy and Cameron counties created by Acts 1925, 39th Leg., p. 244, ch. 79, became a court of general jurisdiction to be known as the 107th Judicial District Court, composed of the counties of Willacy and Cameron. See 107th District, post, and the note thereunder.

Section 2 of Acts 1927, 40th Leg., p. 89, ch. 64, repealed all conflicting laws or parts of laws excepting the provisions relating to the criminal district court for the counties of Nueces, Kleberg, Kenedy, Willacy and Cameron, the intent being only to change the times of holding the terms of the court of the 28th judicial district.

Section 2 of the Act of 1925 provided that the judge of the criminal district court should remain judge of the court until the expiration of his term and until his successor was elected and qualified.

Section 3 repealed specified laws, except as therein amended, and all conflicting laws and parts of laws.

Cameron and Willacy Counties, see 103d and 107th Districts, post.

Concurrent jurisdiction of 28th District Court in County of Nueces with the 94th and 117th District Courts, see 107th District, post.

District attorney of Criminal Court of Nueces, Kleberg, Kenedy, Willacy and Cameron Counties to serve 28th District Court in Counties of Nueces, Kleberg and Kenedy only after Jan. 1, 1947, see 107th District, post.

Nueces County, see, also, 94th and 117th Districts, post.

29.—Hood, Palo Pinto, and Erath.

The Twenty-ninth Judicial District of Texas shall be composed of the Counties of Hood, Palo Pinto, and Erath, and the terms of the District Court shall be held therein each year as follows:

In the County of Erath: On the first Monday in January of each year; on the first Monday after the third Saturday in May of each year; and on the first Monday after the fourth Saturday in August, of each year; and each of which terms of Court may continue in session to and including the Saturday immediately preceding the Monday for convening the next regular term of such Court in such County.

In the County of Palo Pinto: On the first Monday in March of each year; on the first Monday after the third Saturday in June of each year; and on the first Monday after the fourth Saturday in October of each year; and each such terms of Court may continue in session to and including the Saturday immediately preceding the Monday for convening the next regular term of such Court in such County.

In the County of Hood: On the first Monday after the third Saturday in April of each year; on the first Monday after the fourth Saturday in July of each year; and on the first Monday after the second Saturday in December of each year; and each such terms of Court may continue in session to and including the Saturday immediately preceding the Monday for convening the next regular term of such Court in such County.

Sec. 2. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any County as deemed by him proper and expedient for the dispatch of business.

Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

Sec. 4. It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all Courts in said District shall conform to the requirements of this Act. [Acts 1909, 2nd C.S., p. 390; Acts 1917, p. 75; Acts 1920, 3rd C.S., p. 5; Acts 1927, 40th Leg., p. 70, ch. 46, §§ 1–3; Acts 1931, 42nd Leg., p. 807, ch. 331; Acts 1943, 48th Leg., p. 178, ch. 103, § 1.]

The amendatory Act of 1931 recited in its title that this subdivision was amended, but the body of the act was not in the form of an amendment. Section 1 specified the counties of which the district should be composed, and the terms of court in each county. Section 2 legalized and provided for the return of process theretofore issued and served, including recognizances and bonds, and juries drawn or selected under existing laws, and provided for the continuance of any court then in session. Section 3 provided that no grand jury should be drawn for specified terms, provided that the judge might in his discretion order grand juries drawn.

Section 1 of the Amendatory Act of 1927 provided that sections 2 and 3, chapter 4, Acts 36th Leg., 3rd C.S. were amended. The amended provisions were set out as sections 2 and 3 of the amendatory act. Section 4 of the amendatory act repealed conflicting laws and parts of laws.

30.—Wichita.

The Thirtieth Judicial District shall be composed of Wichita County, Texas, and the terms of the said District Court shall be held therein each year as follows:

On the first Mondays of January and July of each year and may continue in session until the Saturday immediately preceding the Monday for convening of the next regular term of such Court in Wichita County, Texas.

Any term of Court may be divided into as many sessions as the Judge thereof may deem expedient for the dispatch of business.

All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for, and returnable to, the next succeeding term of the District Court of Wichita County as herein fixed as though issued and served for such term and returnable to and drawn for the same. [Acts 1925, 39th Leg., p. 171, ch. 39, § 1; Acts 1933, 43rd Leg., p. 880, ch. 251; Acts 1933, 43rd Leg., Spec. L., p. 139, ch. 100; Acts 1941, 47th Leg. p. 1386, ch. 626, § 1; Acts 1943, 48th Leg., p. 302, ch. 196, § 1.]

Acts 1943, 48th Leg., p. 29, ch. 26, § 1, which amended this subdivision, was repealed by Acts 1943, 48th Leg., p. 302, ch. 196, § 2.

Section 2 of the amendatory Act of 1941 related to the 90th Judicial District and placed Young County therein and is set out under the 90th Judicial District, post. Sections 3 and 4 related to the 97th Judicial District and placed Archer County therein and are set out under the 97th Judicial District, post. Section 5 related to process and writs theretofore issued. Section 6 provided that the act should take effect and be in operation on and after January 1, 1943. Section 7 repealed all conflicting laws and parts of laws.

See, also note under subdivision 89 of this article.

Jurisdiction of Wichita County Court diminished and transferred to District Courts of Wichita County in certain matters, see art. 1970—166b.

Office of District Attorney abolished, see art. 326p.

Wichita county, see, also, 78th District, post.

31.—Roberts, Wheeler, Gray, Lipscomb and Hemphill.

The 31st Judicial District of the State of Texas shall be composed of the Counties of Gray, Roberts, Hemphill, Lipscomb and Wheeler, and the terms of the District Court shall be held therein each year as follows:

Gray County: Beginning on the First Monday of January of each year; and on the Second Monday of June of each year; and on the Fourth Monday of September of each year.

Roberts County: Beginning on the Second Monday of March of each year; and on the Fourth Monday of August of each year.

Hemphill County: Beginning on the Second Monday of April of each year; and on the First Monday of November of each year.

Lipscomb County: Beginning on the Fourth Monday of March of each year; and on the Second Monday of September of each year.

Wheeler County: Beginning on the Fourth Monday of April of each year; and on the Fourth Monday of November of each year.

Each term of Court in each of such Counties shall continue until 10:00 a. m. of the Monday herein fixed for the beginning of the next succeeding term thereof. [Acts 1925, 39th Leg., p. 256, ch. 86, §§ 1–3; Acts 1927, 40th Leg., p. 60, ch. 42; Acts 1929, 41st Leg., p. 11, ch. 6; Acts 1933, 43rd Leg., p. 878, ch. 250; Acts 1933, 43rd Leg., Spec.L., p. 128, ch. 96; Acts 1943, 48th Leg., p. 23, ch. 20, § 1; Acts 1947, 50th Leg., p. 494, ch. 290, § 1.]

Sections 2 and 3 of the amendatory Act of 1947 related to the 84th and 100th Judicial Districts.

Sections 4–7 of the amendatory Act of 1947 read as follows:

"Sec. 4. Providing that each term of Court in each of said Counties in each District may be divided into as many sessions as the Judge thereof may deem expedient for the dispatch of business.

"Sec. 5. All process and writs issued out of and bonds and recognizances entered into, and all grand or petit jurors drawn before this Act takes effect, shall be valid for and returnable to the next succeeding term of the District Court in and for the several Counties as herein fixed, as though issued and served for such terms and returnable to and drawn for the same; and all such process, writs, bonds and recognizances taken before or issued by the various Counties affected by this Act shall be as valid as though no change had been made in the District Courts herein in the time of the holding of the Court herein.

"Sec. 6. It is further provided that this Act shall go into effect and be operative on and after August 1, 1947, provided that if any Court in any County of the hereinbefore mentioned Judicial Districts as the same existed prior to the passage of this Act shall be in session at the time this Act takes effect, such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of the existing laws; but thereafter the Court in such County or Counties shall conform to the terms of this Act.

"Sec. 7. All laws or parts of laws in conflict herewith be and the same are hereby repealed."

Section 2 of each of the amendatory Acts of 1933, read as follows: "All processes, writs and bonds issued, served or executed prior to the taking effect of this Act and returnable to the terms of said court in each of said counties comprising the Thirty-first Judicial District, and also process heretofore returnable, as well as all bonds and recognizances heretofore entered into in any of said courts in said Judicial District, shall be valid and binding. All processes issued or served before this Act goes into effect to the District Court of any of said counties shall be considered as returnable to said court in accordance with the terms prescribed by this Act, and also such process is hereby legalized and all grand and petit jurors drawn and selected under existing laws in any of the counties of said Judicial District for a term of court after this Act becomes effective shall be considered lawfully drawn and selected for the next term of the District Court for these prescribed counties held in accordance with this Act; provided, however, that if there should be a term of court being held at the time this Act goes into effect, said term of court shall remain and continue in session until said term is ended and terminated under the law as it exists prior to the time this Act takes effect."

Section 3 of each Act of 1933 repealed conflicting laws and parts of laws.

Sections 1 to 3 of the amendatory Act of 1929 specified the counties composing the 31st District and the terms of court therein. Sections 4 and 5 related to the 84th District. Sections 6 to 11 and 14 related to both districts. Section 6 provided for the selection of juries when not selected by jury commissioners at a prior term. Section 7 provided that terms of court then in session should not be affected. Section 8 related to the terms of the judge and district attorney. Section 9 provided for assistance of each district attorney by the other on request. Section 10 provided for the transfer of pending cases. Section 11 validated and provided for the return of process, writs, bonds and recognizances, and juries. Section 12 repealed conflicting laws and parts of laws. Section 13 related to partial invalidity. Section 14 provided for special terms. Section 15 made an appropriation.

Sections 1 to 3 of the amendatory Act of 1927 defined the 31st District and specified the times for holding court. Sections 4 and 5 defined the 84th District, and specified the terms of court. Section 6 relating to the 84th District, and section 7 relating to the 31st District, dispensed with a jury unless ordered by the judge. Section 8 provided for the appointment of a judge and district attorney for the 84th District. Section 9 required the District clerk to act as clerk of the 84th District. Section 10 gave the two districts, then composed of the same counties, concurrent jurisdiction, and provided for the transfer of cases between them. Section 11 required each district attorney to assist the other on request. Section 12 related to the effect of partial invalidity. Section 13 limited the duration of the act so far as it related to the 84th District. Section 14 repealed conflicting laws and parts of laws.

Acts 1929, 41st Leg., 5th C.S., p. 246, ch. 81, assigning Gray county to the 114th Judicial District, was repealed by Acts 1933, 43rd Leg., p. 865, ch. 246 and Acts 1933, 43rd Leg., Spec.L., p. 1, ch. 1, § 1.

32.—Nolan, Scurry, Mitchell, and Borden.

Section 1. The Thirty-second Judicial District of Texas shall be composed of the Counties of Nolan, Scurry, Mitchell, and Borden, and the terms of the District Courts of said District shall be held therein each year as follows:

In the County of Nolan, on the second Monday in January, third Monday in April, and second Monday in September of each year, and may continue in session until the Saturday immediately preceding the Monday for convening of the next regular term of such Court in Nolan County.

In the County of Mitchell, on the third Mondays in February, May, and October of each year, and may continue in session until the Saturday immediately preceding the Monday for convening of the next regular term of such Court in Mitchell County.

In the County of Scurry, on the third Mondays in March, June, and November of each year, and may continue in session until the Saturday immediately preceding the Monday for convening of the next regular term of such Court in Scurry County.

In the County of Borden, on the Second Mondays in April and October of each year, and may continue in session until the Saturday immediately preceding the Monday for convening of the next regular term of such Court in Borden County.

Any term of Court may be divided into as many sessions as the Judge thereof may deem expedient for the dispatch of business.

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

Sec. 3. It is further provided that this Act shall go into effect and be operative from and after its passage, providing that if any Court affected by this Act shall be in session at the time this Act takes effect, such Court shall continue in session until the term thereof shall expire under the provisions of this Act and thereafter the Court in such County shall conform to the terms of this Act. [Acts 1913, p. 4; Acts 1917, pp. 4, 20, as amended Acts 1929, 41st Leg., p. 30, ch. 10; Acts 1931, 42nd Leg., p. 860, ch. 366; Acts 1931, 42nd Leg., 1st C.S., p. 27, ch. 14; Acts 1933, 43rd Leg., p. 371, ch. 145, § 1; Acts 1934, 43rd Leg., 3rd C.S., p. 31, ch. 16, § 1; Acts 1934, 43rd Leg., 3rd C.S., p. 31, ch. 16; Acts 1943, 48th Leg., p. 284, ch. 180, § 1.]

Sections 2 and 3 of the amendatory Act of 1934, sections 4 and 5 of the amendatory Act of 1933, and sections 2 and 3 of the amendatory Act of 1929, were similar to sections 2 and 3 of the subdivision, as amended in 1943.

Section 2 of the amendatory Act of 1943, section 4 of the amendatory Act of 1934, section 6 of the amendatory Act of 1933, section 15 of the amendatory Act of 1931, Reg.Sess., and section 5 of the amendatory Act of 1929 repealed all conflicting laws and parts of laws.

Section 16 of the amendatory Act of 1931, Reg.Sess., and section 6 of the amendatory Act of 1929 related to the effect of partial invalidity.

Section 2 of the amendatory Act of 1933 related to subdivision 70 of this article and section 3 to subdivision 109.

Sections 2-14 of the amendatory Act of 1931, Reg.Sess., related to a special District Court of the 32nd Judicial District. By section 11, it was to expire Aug. 1, 1933.

Section 4 of the amendatory Act of 1929 provided that no grand jury should be drawn for one of the terms in Nolan county unless ordered by the judge.

33.—Gillespie, Mason, Blanco, Menard, San Saba, Llano and Burnet.

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

In Gillespie County: Beginning on the second Monday after the first Monday of February and August of each year and may continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of such court in Gillespie County.

In Mason County: Beginning on the fifth Monday after the first Monday in February and August of each year, and may continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of such court in Mason County.

In Blanco County: Beginning on the seventh Monday after the first Monday in February and August of each year and may continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of such court in Blanco County.

In Menard County: Beginning on the ninth Monday after the first Monday in February and August of each year, and may continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of such court in Menard County.

In San Saba County: Beginning on the eleventh Monday after the first Monday in February and August of each year, and may continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of such court in San Saba County.

In Llano County: Beginning on the fourteenth Monday after the first Monday in February and August, and may continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of such court in Llano County.

In Burnet County: Beginning on the seventeenth Monday after the first Monday in February and August of each year, and may continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of such court in Burnet County.

Any term of court may be divided into as many sessions as the Judge thereof may deem expedient for the dispatch of business.

All process issued, bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same. [Acts 1913, p. 68; Acts 1915, 1st C.S. p. 33; Acts 1923, p. 74; Acts 1927, 40th Leg., p. 15, ch. 10; Acts 1929, 41st Leg., 3rd C.S., p. 245, ch. 11, § 2; Acts 1943, 48th Leg., p. 46, ch. 42, § 1.]

Sections 1, 3, 5, and 9-12 of the amendatory Act of 1929 related to the 83rd and 112th districts, section 4 continued the terms of the district judge and district attorney of the 33rd and 83rd districts. Section 6 provided for the election of a district attorney in each of the three districts.

Section 7 of the Act of 1929 and section 2 of the amendatory Act of 1927 validated and regulated the return of pending processes and writs, bonds and recognizances, and juries. Section 8 of the Act of 1929 and section 3 of the Act of 1927, provided that any court then in session should continue in session until the term should expire. Section 13 of the Act of 1929 and section 4 of the Act of 1927 repealed conflicting laws and parts of laws.

Change in jurisdiction of Menard County court affecting Menard District Court, see article 1970—302.

District attorneys for 33rd District and other districts, see 112th District, post.

34, 41, 65.—El Paso, Hudspeth, and Culberson.

El Paso County shall constitute the Forty-first and Sixty-fifth Judicial Districts, and with the Counties of Culberson and Hudspeth, shall constitute the Thirty-fourth Judicial District, and the terms of District Courts therein shall be as follows:

Thirty-fourth District. (a) El Paso County: On the third Monday in September, and may continue four weeks; on the first Monday in November, and may continue until the last Saturday before the 25th day of December; on the first Monday in January, and may continue until the last Saturday before the third Monday in March; on the third Monday in April, and may continue until the last Saturday in June; on the first Monday in July, and may continue until the last Saturday in July.

(b) Culberson County: On the third Monday in October and may continue two weeks; on the first Monday in April, and may continue two weeks.

(c) Hudspeth County: On the third Monday in March, and may continue two weeks; on the first Monday in September, and may continue two weeks.

And the terms of Court in Culberson County and in Hudspeth County may, by order of the Court, entered in the minutes, be continued for such time as may be fixed by said order.

Forty-first District: On the first Monday in January, March, May, September and November, and continue until the last Saturday before the next succeeding term of Court, except the May Term, which shall continue until the last Saturday before the first Monday in July.

Sixty-fifth District: On the first Monday in February, April, June, September, October and December, and continue until the last Saturday before the next succeeding term of Court, except the June Term, which may continue until the last Saturday before the first Monday in August.

The said three District Courts of El Paso County shall have concurrent civil and criminal jurisdiction with each other in said county of matters over which the jurisdiction is given or shall be given by the Constitution and laws of the State of Texas to District Courts; provided, that no Grand Jury shall be impaneled in the District Courts of said County, other than that of the Thirty-fourth Judicial District, unless by special order of the Judge of either of the other District Courts, a Grand Jury shall be called for either of said Courts.

Any one of the Judges of said District Courts in El Paso County may, in his discretion, either in term time or vacation, transfer any case or cases, civil or criminal, to any other of said District Courts by order entered on the minutes of his Court, which orders when made, shall be copied and certified to by the Clerk of said Courts, together with all orders made in said case, and said certified copies of said orders shall be filed among the papers of any case thus transferred, and the fees therefor shall be taxed as part of the costs of said suit. And the Clerk of said Courts shall docket any such cause in the Court to which it shall have been transferred, and when so entered, the Court to which the same shall have been transferred shall have like jurisdiction therein as in cases originally brought in said Court, and the same shall be dropped from the docket of the Court from which it was transferred; provided, that where there shall be a transfer of any case from one Court to another, as herein provided, on motion of either of the parties to said suit, notice must be given to either the opposite party or his attorney by the party making the motion to transfer, one week before the time of entering the order of transfer.

The District Attorney of the Thirty-fourth Judicial District shall also act as District Attorney in and

for the Forty-first and Sixty-fifth Judicial Districts, and the Clerk of the District Court of El Paso County shall act as Clerk of the District Court for each of said District Courts. [Acts 1903, p. 78; Acts 1913, 1st C.S. p. 17; Acts 1915, p. 40; Acts 1929, 41st Leg., p. 211, ch. 92, § 1; Acts 1935, 44th Leg., p. 390, ch. 149, § 1.]

Acts 1929, 41st Leg., 1st C.S., p. 193, ch. 76, § 1, validated proceedings of the District Court of the Thirty-Fourth Judicial District of Texas sitting at El Paso, in regard to perfecting appeals in criminal cases.

Section 2 of Acts 1935, 44th Leg., p. 390, ch. 149 and section 2 of the amendatory Act of 1929, repealed all conflicting laws and parts of laws.

35.—McCulloch, Brown and Coleman.

The terms of said District Court shall be held in said counties each year as follows:

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

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

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

Each term of court in each of such counties may continue in session until the date herein fixed for the beginning of the next succeeding term therein. [Acts 1925, 39th Leg., ch. 36, p. 163; Acts 1931, 42nd Leg., p. 864, ch. 367, §§ 3, 4; Acts 1931, 42nd Leg., 2nd C.S., p. 17, ch. 9; Acts 1943, 48th Leg., p. 185, ch. 106, § 1.]

Sections 2-3a of the amendatory Act of 1943 read as follows:

"Sec. 2. The Judge of said court in his discretion may hold as many sessions of court in any term of the court in any county as is deemed by him proper and expedient for the dispatch of business.

"Sec. 3. All processes issued, bonds and recognizances made, and all grand and petit juries drawn for a succeeding term of court before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same. All processes issued, and made returnable on or before Monday next after the expiration of twenty (20) days from the date of service thereof, or on or before the first Monday after the expiration of forty-two (42) days from the date of issuance thereof, shall be valid and unaffected by this Act.

"Sec. 3a. This Act shall take effect and be in full force and effect from and after September 1, 1943; but nothing herein contained shall be construed as changing or affecting the terms of court to be held in the several counties comprising said district between the date of the passage of this Act and the date it shall become effective as herein provided."

Section 1a of the amendatory act of 1931, 2nd C.S., validated and regulated the return of "all process and writs issued out of and all bonds and recognizances made and entered into and all grand and petit jurors drawn before this Act shall take effect."

Section 2 of such act provided that the act should take effect January 1, 1932.

Sections 1, 2, 5 of Acts 1931, 42nd Leg., p. 864, ch. 367, related to the 51st judicial district and the newly created 119th judicial district.

Section 6 provided that the judges of the 51st and 35th Districts should be judges of those districts until the expiration of their terms and section 7 contained similar provisions concerning district attorneys. See the note under District 119 concerning sections 8 to 16.

Coleman county, see, also, 119th District, post.

36.—Aransas, San Patricio, Bee, Live Oak and McMullen.

The Thirty-sixth Judicial District shall be composed of the Counties of Aransas, San Patricio, Bee, Live Oak and McMullen, and the terms of this District Court shall be held therein each year as follows:

In the County of Aransas, beginning on the second Monday in February and on the first Monday in September, and may continue in session until 10:00 a. m. of the Monday for convening the next regular term of such Court in Aransas County.

In the County of San Patricio, beginning on the fourth Monday in February and on the third Monday in September, and may continue in session until 10:00 a. m. of the Monday for convening the next regular term of such Court in San Patricio County.

In the County of Bee, beginning on the first Monday in April and on the first Monday in November, and may continue in session until 10:00 a. m. of the Monday for convening the next regular term of such Court in Bee County.

In the County of Live Oak, beginning on the first Monday in January and on the fourth Monday in May, and may continue in session until 10:00 a. m. of the Monday for convening the next regular term of such Court in Live Oak County.

In the County of McMullen beginning on the fourth Monday in January and on the third Monday in June, and may continue in session until 10:00 a. m. of the Monday for convening the next regular term of such Court in McMullen County.

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

All process issued and returnable to a succeeding term of court and all bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same. All process issued and made returnable on or before Monday next after the expiration of twenty (20) days from the date of service thereof shall be valid, and unaffected by this Act.

It is further provided that if any Court in any County of said District shall be in session and at the time this Act takes effect, such Court or Courts affected thereby shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein, but thereafter all Courts in said District shall conform to the requirements of this Act. [Acts 1913, p. 190; Acts 1917, p. 247; Acts 1943, 48th Leg., p. 80, ch. 63, § 1.]

37, 45, 57, 73.—Bexar.

The District Courts of the 37th, 45th, 57th, and 73rd Judicial Districts shall have concurrent jurisdiction throughout and coextensive with the territorial limits of Bexar County of all civil matters of which jurisdiction is given to the District Courts by the Constitution and Laws of the State in all civil cases, proceedings and matters of which the District Courts are given jurisdiction by the Constitution and Laws of the State. None of said four (4) District Courts shall have or exercise any criminal jurisdiction in Bexar County. There shall be two terms of each of said four (4) Civil District Courts in Bexar County in each year, and the first term, which shall be known as the January-June term, shall begin on the first Monday in January of each year and shall continue until and including Sunday next before the first Monday in July of each year; and the second term, which shall be known as the July-December term, shall begin on the first Monday in July of each year and shall continue until and including the Sunday next before the first Monday in the following January.

In all suits, actions or proceedings in said Courts it shall be sufficient for the address or designation to be merely "District Court of Bexar County, Texas." The Clerk of the Civil District Courts in Bexar County shall be known as "Clerk of the District Courts of Bexar County, Texas." The Clerk of said four (4) Civil District Courts shall docket alternately on the dockets of the 37th, 45th, 57th, and 73rd Judicial Districts in Bexar County all cases, actions, petitions, applications and other proceedings filed in the Civil District Courts of Bexar County, Texas, so that the first case or proceeding filed on or after the first Monday of July, 1939, and every fourth case or proceeding thereafter filed, shall be docketed in the 37th Judicial District, and the second case or proceeding filed and every fourth case or proceeding thereafter filed shall be docketed in the 45th Judicial District and the third case or

proceeding filed and every fourth case or proceeding thereafter filed shall be docketed in the 57th Judicial District and the fourth case or proceeding and every fourth case or proceeding thereafter filed shall be docketed in the 73rd Judicial District, and so on seriatim, and all cases and proceedings shall in this manner be docketed in and divided and distributed among said four (4) Civil District Courts, one-fourth to each of them when first filed. All suits shall be filed by the Clerk in the order in which the petitions are presented to or deposited with him, and immediately after being so presented or deposited. In the case of disqualification of the Judge of any of said four (4) Civil District Courts in any case or proceeding, such case or proceeding, on his suggestion of disqualification, shall be transferred to another of said Courts, and the order of transfer may be made by any Judge of another of said Courts and may be transferred to any other of said Courts or instead of transferring the case the Judge of any other of said Courts may sit in the Court in which the case is then pending and there try the same, and all transferred cases or proceedings shall be docketed by the Clerk accordingly. The Judges of said four (4) Civil District Courts shall sign the minutes of each term of said Courts in said Bexar County, Texas, within thirty (30) days after the end of the term, and also shall sign the minutes at the end of each volume of the minutes, and each Judge sitting in said Courts shall sign the minutes of such proceedings as were had before him.

Each Judge of said Court may take a vacation and not attend Court for six (6) weeks between the first day of July and the first day of October in each year, during which time the term of the Court of which he is Judge shall remain open, and the Judge of any other Civil District Court in Bexar County may hold such Court during the vacation of the Judges thereof. During the period of such vacation it shall not be lawful for a special Judge of such Court to be elected by the practicing lawyers of such Court because of the absence of the Judge on his vacation, unless no Judge of said Civil District Courts is in the County. The Judges of said Court shall by agreement among themselves take their vacations alternately so that there shall be at all times at least two (2) of said Judges in the County; and in the absence, sickness, or disqualification of the Judge of any of said Civil District Courts, any of the other Judges of the said District Courts may act and preside, or any regularly practicing lawyer of the Bar of Bexar County may be elected who has all the qualifications of a District Judge to act and preside over any of the said Courts during such absence, sickness, or inability of any of the regular Judges to act and preside therein; such special Judge to be elected according to Title 40 of the Revised Civil Statutes of the State of Texas of 1925 as amended.[1] [Acts 1923, p. 101; Acts 1935, 44th Leg., p. 499, ch. 210, §§ 1–4; Acts 1939, 46th Leg., p. 168, § 1.]

[1] Articles 1884–1893.

Section 2 of Acts 1939, 46th Leg., p. 168, read as follows: "This Act shall take effect on and shall be in full force and effect from and after the 2nd day of July, 1939. All terms of the District Courts of the 37th, 45th, 57th, and 73rd Judicial Districts that may then be in session shall expire at midnight on the 1st day of July, 1939."

Section 3 repealed all conflicting laws and parts of laws.

Acts 1933, 43rd Leg., Spec.L., p. 106, ch. 81 reads as follows:

"Sec. 1. The judge of each judicial district, or the judge of each district court, either civil or criminal, in and for Bexar County, shall appoint an official court reporter for the district court of which he is judge, either civil or criminal, in and for Bexar County, in the manner now provided for the appointment of official court reporters for district courts in this State; each of whom shall have the same qualifications, and whose duties shall in every respect be the same, as now provided by law. An official court reporter so appointed shall receive, in addition to transcript fees hereinafter provided for, a salary of not less than Two Thousand Four Hundred ($2,400.00) Dollars, per annum, nor more than Three Thousand ($3,000.00) Dollars, per annum, said salary to be fixed and determined by the judge of the district court, civil or criminal, in and for Bexar County, for which such reporter may be appointed, and said salary when so fixed and determined shall be paid monthly by the Commissioners' Court out of the general fund of Bexar County.

"Sec. 2. The official court reporters of Bexar County shall receive as fees for making a transcript of the evidence given in either civil or criminal cases the sum of fifteen cents per one hundred words when made in question and answer form, and twenty cents per one hundred words when made in narrative form, and no charge shall be made in any case for the first duplicate copy.

"Sec. 3. From and after the passage of this Act all provisions relating to the duties of official court reporters in district courts shall govern; the provisions of this Act being declared and enacted as a special Act by the Legislature."

Transfer of causes from criminal district court of Bexar County, see C.C.P. art. 52—161 note.

38.—Medina, Kendall, Kerr, Bandera, Uvalde, Zavala, and Real.

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

In Medina County, first Monday in January and June.

In Kendall County, third Monday in January and June.

In Kerr County, first Monday in February and September.

In Bandera County, third Monday in February and September.

In Uvalde County, first Monday in March and October.

In Zavala County, third Monday in March and October.

In Real County, first Monday in April and November.

Each of said terms may continue in session until and including the Saturday next preceding the next succeeding term in and for such county respectively. [Acts 1923, p. 124; Acts 1929, 41st Leg., p. 125, ch. 60, § 1; Acts 1937, 45th Leg., p. 484, ch. 246, § 1; Acts 1943, 48th Leg., p. 35, ch. 32, § 1.]

Section 2 of each of the amendatory Acts of 1929, 1937, and 1943 specified the time when the act should take effect.

Section 3 of the amendatory Act of 1943, read as follows: "All process, all writs and bonds, civil and criminal, issued or executed prior to the taking effect of this Act and returnable to the terms of said courts as heretofore fixed by law in the several counties composing said Thirty-eighth Judicial District, as well as all Grand and Petit jurors drawn, are hereby made returnable to the terms of said courts as said terms are now here fixed by this Act, and in conformity with the changes herein made, and all bonds executed and recognizances entered into in said courts shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said courts as they are fixed by this Act, and all process of any kind issued or returned, as well as all bonds and recognizances taken or entered into in any of said courts of said district prior to the taking effect of this Act, shall be as valid and as binding as if no change had been made in the time of holding said courts." Section 3 of each of the other amendatory acts contained similar provisions.

Section 4 of the amendatory Act of 1943, read as follows: "The Judge of said court in his discretion may hold as many sessions of court in any term of the court in any county of said district as is deemed by him proper and expedient for the dispatch of business."

Section 5 of the Act of 1943, section 4 of the Act of 1937, and section 4 of the Act of 1929 repealed conflicting laws and parts of laws.

Changing jurisdiction of County Court affecting District Court of Kerr County, see article 1970—307.

39.—Haskell, Stonewall, Kent and Throckmorton.

Hereafter the Thirty-ninth Judicial District shall be composed of Haskell, Stonewall, Kent and Throckmorton Counties, Texas, and the terms of the District Court in each of said Counties shall be held therein each year as follows:

Beginning:

In Haskell County, on the first Monday in January; the fifteenth Monday after the first Monday in January; and on the third Monday after the first Monday in September;

In Stonewall County, on the sixth Monday after the first Monday in January; on the twentieth Monday after the first Monday in January; and on the ninth Monday after the first Monday in September;

In Kent County, on the ninth Monday after the first Monday in January and on the first Monday in September;

In Throckmorton County, on the twelfth Monday after the first Monday in January; on the twenty-third Monday after the first Monday in January; on the twelfth Monday after the first Monday in September;

And each term of Court in each of such counties shall continue until the date set herein for the beginning of the next succeeding term thereof. The Judge of said Court may hold as many sessions in any term of Court in any county as is deemed by him proper and expedient for the dispatch of business. [Acts 1917, chs. 4, 12; Acts 1927, 40th Leg., p. 44, ch. 32, § 1; Acts 1945, 49th Leg., p. 222, ch. 165, § 1.]

Section 3 of the amendatory Act of 1927 provided that the judge of the 39th District should be the judge of that district and that the district attorney of the 39th district should be the district attorney of the newly created 104th district.

Section 4 provided for the appointment of a judge for the 104th district and a district attorney for the 39th district.

Section 6 validated and regulated the return of process, writs, bonds, recognizances and juries.

Section 10 provided that partial invalidity should not affect other provisions.

Sections 2, 5, and 7–9 related to the 104th district.

40.—Ellis.

On the first Mondays in March, June, September and December and continue until the next succeeding term. [Acts 1913, p. 171; Acts 1917, p. 130.]

41.—See 34th District, ante.

42.—Taylor, Callahan and Shackelford.

The 42nd Judicial District of the State of Texas is composed of the Counties of Taylor, Callahan and Shackelford, and the District Courts therein shall hold their terms and sessions as follows:

Said court shall convene in Taylor County on the first Monday in January of each year, and may continue in session eight weeks; and on the 15th Monday after the first Monday in January of each year, and may continue in session seven weeks; and on the first Monday in September and may continue in session eight weeks.

Said Court shall convene in Callahan County on the 8th Monday after the first Monday in January of each year, and may continue in session for three weeks; and on the 22nd Monday after the first Monday in January, and may continue in session three weeks; and on the 8th Monday after the first Monday in September, and may continue in session four weeks.

Said Court shall convene in Shackelford County on the 11th Monday after the first Monday in January of each year and may continue in session four weeks; and on the 25th Monday after the first Monday in January, and may continue in session four weeks; and on the 12th Monday after the first Monday in September, and may continue in session four weeks. [Acts 1919, p. 256, 2d C.S., p. 24; Acts 1921, p. 112; Acts 1923, p. 346; Acts 1929, 41st Leg., p. 467, ch. 217, § 1.]

Section 2 of the amendatory Act of 1929 related to the 104th District. Section 3 validated and regulated the return of process issued or served before the act took effect, including recognizances and bonds, and juries drawn and selected under existing laws. Section 4 repealed conflicting laws and parts of laws. Section 6 specified the time the act should take effect.

Taylor County, see, also, 104th District, post.

43.—Wise, Jack and Parker.

Section 1. The Counties of Wise, Jack and Parker shall hereafter constitute and be the Forty-third Judicial District of the State of Texas, and the terms of the District Courts shall be held in said District as follows: In Wise County on the first Monday in May; on the first Monday in November; in Jack County on the first Monday in March; on the first Monday in September; in Parker County on the first Monday in April; on the first Monday in October. Each term of Court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term therein. It is further provided that if any Court in any county of said District shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein, but thereafter all Courts in said District shall conform to the requirements of this Act.

Sec. 2. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any county as is deemed proper and expedient for the dispatch of business.

Sec. 5. The County Attorneys of the respective counties embraced within the Forty-third Judicial District shall do and perform the duties of the County Attorneys and District Attorneys in their respective counties, and shall receive such fees for their services as are now or may hereafter be provided by the law. [Acts 1887, p. 68; Acts 1947, 50th Leg., p. 963, ch. 417.]

Sections 3 and 4 of the Act of 1947, read as follows:

"Sec. 3. That all process and writs heretofore issued out of the District Courts of said respective counties constituting the District herein mentioned and returnable to terms of Court in said counties according to existing law are hereby made returnable to the terms of the District Courts of said respective counties as said terms are fixed by this Act, and all bonds executed and recognizances entered in said Courts shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said Courts as they are fixed by this Act, and all process heretofore returned as well as all bonds and recognizances heretofore taken in District Courts of said respective counties shall be as valid as though no change had been made in the said District and the time of holding Courts therein, and all grand and petit jurors drawn and selected under existing laws for any of the counties of said District are hereby declared lawfully drawn and selected for the first term of the District Courts of such respective counties held in conformity with this Act.

"Sec. 4. All process issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid and returnable to the next succeeding term of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same."

Section 6 of the Act of 1947 repealed all conflicting laws and parts of laws. Section 7 provided that if any section, paragraph or provision of this Act be held or declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect.

44.—See 14th District, ante.

45.—See 37th District, ante.

46.—Wilbarger, Hardeman and Foard.

In the County of Wilbarger

First Term, beginning on the first Monday in January and may continue in session six weeks.

Second Term, beginning on the eleventh Monday after the first Monday in January and may continue in session six weeks.

Third Term, beginning on the twenty-second Monday after the first Monday in January and may continue in session four weeks.

Fourth Term, beginning on the forty-first Monday after the first Monday in January and may continue in session six weeks.

In the County of Foard

First Term, beginning on the sixth Monday after the first Monday in January and may continue in session two weeks.

Second Term, beginning on the seventeenth Monday after the first Monday in January and may continue in session two weeks.

Third Term, beginning on the thirty-sixth Monday after the first Monday in January and may continue in session two weeks.

In the County of Hardeman

First Term, beginning on the eighth Monday after the first Monday in January and may continue in session three weeks.

Second Term, beginning on the nineteenth Monday after the first Monday in January and may continue in session three weeks.

Third Term, beginning on the thirty-eighth Monday after the first Monday in January and may continue in session three weeks.

Fourth Term, beginning on the forty-seventh Monday after the first Monday in January and may continue in session three weeks. [Acts 1911, S.S. p. 100; Acts 1915, p. 24; Acts 1923, p. 148; Acts 1931, 42nd Leg., p. 748, ch. 294.]

Section 2 of the amendatory Act of 1931 validated and regulated the return of process, writs, bonds and juries returnable to previously existing terms of courts.

Section 3 repealed existing laws and parts of laws.

47.—Randall, Potter and Armstrong.

Section 1. The Forty-seventh Judicial District shall be composed of the Counties of Randall, Potter and Armstrong, and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of Randall, on the first Monday in January; on the sixteenth Monday after the first Monday in January; and on the eighth Monday after the first Monday in August.

In the County of Potter, on the fourth Monday in January; on the fifteenth Monday after the fourth Monday in January; on the first Monday in August; and on the fourteenth Monday after the first Monday in August.

In the County of Armstrong, on the tenth Monday after the fourth Monday in January; and on the eleventh Monday after the first Monday in August.

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

Sec. 2. The Judge of said Court may, in his discretion, hold as many sessions of Court in any term of the Court in any County as is deemed by him proper and expedient for the dispatch of business.

Sec. 3. All processes issued and made returnable to a regular term of any of said Courts as now fixed by law, all bonds and recognizances made and all grand and petit juries drawn before this Act takes effect, shall be valid for and returnable to the next succeeding term of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

Sec. 4. It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein, but thereafter all Courts in said District shall conform to the requirements of this Act.

Sec. 5. All laws and parts of laws in conflict herewith are hereby in all things repealed. [Acts 1913, S. S. p. 19; Acts 1923, p. 148; Acts 1927, 40th Leg., p. 10, ch. 7; Acts 1933, 43rd Leg., p. 873, ch. 248; Acts 1933, 43rd Leg., Spec.L., p. 55, ch. 47; Acts 1941, 47th Leg., p. 743, ch. 464; Acts 1943, 48th Leg., p. 331, ch. 212, § 1.]

The amendatory Act of 1927 related to the 47th and 108th Districts. Sections 4 to 6 were amended by the two amendatory Acts of 1933. The amendatory Act of 1943 amends the entire act, but apparently only so far as it applies to the 47th District. Another Act, Acts 1943, 48th Leg., p. 210, ch. 211, § 1, amends the act of 1927, so far as it relates to the 108th District.

Section 2 of the amendatory Act of 1941 read: "Until the first Monday in January, A. D. 1942, the terms of said Court shall remain in full force and effect as now prescribed by law."

Potter County, see, also, 108th District, post.

48.—See 17th District, ante.

49.—Dimmit, Zapata, Jim Hogg and Webb.

The Forty-ninth Judicial District shall be composed of the Counties of Dimmit, Zapata, Jim Hogg, and Webb, and the terms of the District Court are hereby designated therein each year as follows:

In the County of Dimmit on the first Mondays in February and September and on the second Monday in May.

In the County of Zapata on the fourth Mondays in February, May, and September.

In the County of Jim Hogg on the first Mondays in March, June and October.

In the County of Webb on the third Mondays in March, June, and October.

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

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

All process issued and returnable to a succeeding term of court and all bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several Counties as herein fixed, as though issued and served for such terms and returnable to and drawn for the same. All process issued and made returnable on or before Monday next after the expiration of twenty (20) days from the date of service thereof shall be valid, and unaffected by this Act.

It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all Courts in said District shall conform to the requirements of this Act. [Acts 1925, 39th Leg., p. 181, ch. 45, § 1; Acts 1935, 44th Leg., p. 291, ch. 106; Acts 1943, 48th Leg., p. 37, ch. 34, § 1.]

Sections 3 and 4 of the Act of 1925 read as follows:

"3. This Act shall not in any manner repeal or change Chapter 55 of the Acts of the Regular Session of the Thirty-eighth Legislature creating the Ninety-third Judicial District of Texas and fixing the terms of holding district courts in the counties composing the Seventy-ninth Judicial District of Texas except to take Jim Hogg County out of said Seventy-ninth Judicial District and place it in said Forty-ninth Judicial District and to add two weeks each year to each of the two terms of the district courts to be held in Brooks County, and in all other respects the said Chapter 55 of said Acts of the Regular Session of the Thirty-eighth Legislature shall remain in force as originally enacted.

"4. All process, recognizances, writs and bonds, issued, served, executed or entered into for the district courts of any of said counties constituting the Forty-ninth and the Seventy-ninth Judicial Districts, before this Act goes into effect, shall be returnable to the district courts of said counties in accordance with the time and terms as prescribed by this Act, and all grand and petit juries drawn and selected under the existing law in any of the counties comprising the Forty-ninth and Seventy-ninth Judicial Districts shall be considered as lawfully drawn and selected for the next terms of the district courts for their respective counties held in accordance with this Act."

Section 5 provided that the act should take effect August 15, 1925. Section 6 repealed conflicting laws. Section 2 related to the 79th district.

Section 2 of the amendatory Act of 1935 contained temporary provisions similar to the last two paragraphs of the subdivision as amended in 1943, Section 3 provided that the act should take effect Aug. 15, 1935. Section 4 repealed conflicting laws and parts of laws.

Webb County, see, also, 111th District, post.

50.—Baylor, Knox, King and Cottle.

(a) The 50th Judicial District of Texas, shall be composed of Baylor, Knox, King and Cottle Counties; the terms of the District Court shall be held therein each year as follows:

In the County of Baylor on the first Monday in January and September.

In the County of Knox on the first Monday in February and October.

In the County of King on the first Monday in March and November.

In the County of Cottle on the first Monday in April and December.

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

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

(c) All process issued, bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for, and returnable to, the next succeeding term of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn from the same.

(d) It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect, such Court or Courts affected thereby, shall continue in session until the term thereof shall expire under the provisions of existing laws, provided further that the District Court shall convene in the County of Baylor on May 10th, 1943, and continue in session until the next succeeding term as herein provided, and further provided that the District Court shall convene in Knox County, on the first Monday in June, 1943, and shall continue in session until the next succeeding term under the provisions of this Act. Thereafter all Courts in said District shall conform to the general provisions of this Act. [Acts 1911, p. 212; Acts 1917, p. 299; Acts 1929, 41st Leg., p. 39, ch. 14, §§ 7, 8; Acts 1943, 48th Leg., p. 117, ch. 86, § 1; Acts 1943, 48th Leg., p. 390, ch. 263, § 1.]

Section 9 of the amendatory Act of 1929 provided that the judge and district attorney of the former 50th district should be the judge and district attorney of the district thereby created. Section 10 validated writs and process theretofore issued or served and juries and jury panels theretofore chosen or selected and provided for their return to the terms thereby created. Sections 1–6 and 11–13 related to other districts.

51.—Tom Green, Irion, Schleicher, Coke and Sterling.

Section 1. The following Counties shall hereafter constitute the Fifty-first (51) Judicial District of the State of Texas, to-wit: Tom Green, Irion, Schleicher, Coke and Sterling.

Sec. 2.

(a) The Fifty-first Judicial District of Texas shall be composed of Tom Green, Irion, Schleicher, Coke, and Sterling Counties; the terms of the District Court shall be held therein each year as follows:

In the County of Tom Green on the first Mondays in January and June.

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

Irion County: A term to begin on the tenth Monday after the first Monday in January of each year and may continue in session two weeks.

Schleicher County: A term to begin on the twelfth Monday after the first Monday in January of each year and may continue in session three weeks.

Coke County: A term to begin on the fifteenth Monday after the first Monday in January of each year and may continue in session two weeks.

Sterling County: A term to begin on the seventeenth Monday after the first Monday in January of each year and may continue in session two weeks.

Irion County: A term to begin on the first Monday in September of each year and may continue in session two weeks.

Schleicher County: A term to begin on the second Monday after the first Monday in September of each year and may continue in session three weeks.

Coke County: A term to begin on the fifth Monday after the first Monday in September of each year and may continue in session two weeks.

Sterling County: A term to begin on the seventh Monday after the first Monday in September of each year and may continue in session two weeks.

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

(c) All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn from the same.

(d) It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect such court or courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all courts in said district shall conform to the requirements of this Act. [Acts 1909, p. 56; Acts 1917, p. 125; Acts 1927, 40th Leg., 1st C.S. p. 22, ch. 12; Acts 1931, 42nd Leg., p. 864, ch. 367, §§ 1, 2; Acts 1939, 46th Leg., p. 171; Acts 1943, 48th Leg., p. 478, ch. 319, § 1.]

Section 2 of the amendatory Act of 1943 related to the 119th District.

Sections 3 to 5 of the amendatory Act of 1931 related to the 35th District and the newly created 119th District. Section 6 provided that the judges of the 51st and 35th Districts should be judges of those districts until the expiration of their terms and section 7 contained similar provisions concerning district attorneys. See the historical note under District 119 concerning sections 8 to 16.

Change in jurisdiction of Irion and Sterling county courts affecting district courts, see articles 1970—303 and 1970—304.

Tom Green County, see, also, 119th District, post.

52.—Coryell, Hamilton, Comanche and Bosque.

(a). The 52nd Judicial District of Texas shall be composed of Coryell, Hamilton, Comanche and Bosque Counties and the terms of the District Court shall be held therein each year as follows:

In the County of Coryell on the first Mondays in January and June.

In the County of Hamilton on the first Mondays in February and July.

In the County of Comanche on the first Mondays in March and October.

In the County of Bosque on the first Mondays in April and November.

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

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

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

(d). It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect such court or courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all courts in said district shall conform to the requirements of this Act. [Acts 1925, 39th Leg., p. 6, ch. 4, § 1; Acts 1937, 45th Leg., 2nd C. S., p. 1921, ch. 38, § 1; Acts 1943, 48th Leg., p. 395, ch. 267, § 1.]

53, 98, 126.—Travis.

Sec. 1. The 53rd Judicial District shall continue as it is now, to be composed of the County of Travis

and the terms of said Court shall remain unchanged and shall be as follows: On the first Monday in January and may continue until and including the last Saturday before the first Monday in March; on the first Monday in March and may continue until and including the last Saturday before the first Monday in May; on the first Monday in May and may continue until and including the last Saturday in July; provided, that said May term may by order of the Court entered in the minutes be continued for such time as may be fixed by said order; and on the first Monday in October and may continue until the last Saturday before the 25th day of December.

Sec. 2. The 98th District Court of Travis County shall continue to be composed of the County of Travis; and the terms of said Court shall be held as follows: on the first Monday in February and may continue until and including the last Saturday in March; on the first Monday in April and may continue until and including the last Saturday in May; on the first Monday in June and may continue until and including the last Saturday in July; provided, that said June term may by order of the Court entered in the minutes be continued for such time as may be fixed by said order; on the first Monday in October and may continue until and including the last Saturday in November; and on the first Monday in December and may continue until and including the last Saturday in January.

Sec. 3. The 126th Judicial District of Texas is hereby created and said Judicial District shall be composed of the County of Travis, and the terms of said Court shall be convened and held as follows: On the first Monday in September and may continue until and including the last Saturday in October; on the first Monday in November and may continue until and including the Saturday before the third Monday in January; on the third Monday in January and may continue until and including the Saturday before the third Monday in March; on the third Monday in March and may continue until and including the Saturday before the third Monday in June; and on the third Monday in June and may continue until and including the last Saturday in July; provided, that said June term may by order of the Court entered in the minutes be continued for such time as may be fixed by said order.

Sec. 4. The said three District Courts of Travis County shall have jurisdiction over all matters, both civil and criminal, of which jurisdiction is given or shall be given by the Constitution and Laws of Texas to District Courts; and said three District Courts shall have concurrent civil and criminal jurisdiction of all matters, civil and criminal, of which jurisdiction is given to the District Court by the Constitution and the Laws of the State of Texas.

Sec. 5. All three of said District Courts shall have the right to select Jury Commissioners and empanel Grand Juries. The District Judge of the 53rd District Court shall order drawn a Grand Jury for the January and May terms of said Court; the District Judge of the 98th District Court shall order drawn a Grand Jury for the April and October terms of said Court; and the Judge of the 126th District Court shall order drawn a Grand Jury for the September and June terms of said Court. The respective Judges of said Courts may order both Grand and Petit Juries to be drawn for such other terms of his said Court as in his judgment is necessary, by an order entered in the minutes of the Court.

Sec. 6. The Judge of each of said Courts may, in his discretion, either in term time or in vacation, on motion of any party or an agreement of the parties, or on his own motion, transfer any cause, civil or criminal, on his docket to the docket of one of the other said District Courts; and the Judge of said Courts may, in their discretion, exchange benches of Districts from time to time; and whenever a Judge of one of said Courts is disqualified, he shall transfer the case from his Court to one of the other Courts, and any of said Judges may in his own courtroom try and determine any case or proceeding pending in either of the other Courts, without having the case transferred, or may sit in any of the other said Courts and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the Court in which the case is pending, and two or more Judges may try different cases in the same Court at the same time and each may occupy his own courtroom or the room of any other Court. In case of absence, sickness or disqualification of any of said Judges, any other of said Judges may hold Court for him. Any of said Judges may hear any part of any case or proceeding pending in any of said Courts and determine the same or may hear or determine any question in any case and any other of said Judges may complete the hearing and render judgment in the case. Any of said Judges may hear and determine demurrers, motions, petitions for injunction, application for appointment of receivers, interventions, pleas of privilege, pleas in abatement, and all dilatory pleas, motions for new trials and all preliminary matters, questions and proceedings and may enter judgment or order thereon in the Court in which the case is pending, without having the case transferred to the Court of the Judge acting and the Judge in whose Court the case is pending may thereafter proceed to hear, complete and determine the case or other matter or any part thereof and render final judgment, thereon. Any of the Judges of said Courts may issue restraining orders and injunctions returnable to any of the other Judges or Courts.

Sec. 7. The District Clerk of Travis County shall be the clerk of the District Courts of the 53rd Judicial District, of the 98th District Court and of the 126th Judicial District and shall perform all the duties of clerk of said three Courts; and the District Attorney for the 53rd Judicial District shall represent the State in all criminal cases in the 98th District Court and in the 126th District Court, as well as in the 53rd District Court, and perform such other duties as are, or may be provided by law governing District Attorneys.

Sec. 9. The Judges of each of said three District Courts, each for his own Court, shall have the right to appoint an official Court Reporter who shall have the qualifications and receive the same compensation as are now, or may hereafter be, fixed by law, for Court Reporters in District Courts. [Acts 1913, 1st C.S. p. 17; Acts 1915, p. 27; Acts 1923, p. 130; Acts 1929, 41st Leg., p. 379, ch. 172; Acts 1931, 42nd Leg., 1st C.S., p. 13, ch. 8.]

The Acts of 1929 and 1931 were not, in form, amendatory Acts but covered the subject matter of subdivision 53 of this article as it appeared in the Revised Civil Statutes of 1925. Section 2 of the Act of 1929 changed the name of the Criminal District Court of Travis County to 98th District Court of Travis County. In other respects, the provisions of sections 1 to 6 and 8 were repeated in substance with some additions in sections 1, 2, 4 to 7 and 9 of the Act of 1931.

Section 8 of the Act of 1931 provided that the judges of the 53rd and 98th District Courts should continue as judges of their respective districts and courts until their terms expired, and that the governor should appoint a judge for the 126th District Court. Section 7 of the Act of 1929 contained similar provisions concerning the judges of the 53rd District Court and Criminal District Court with an additional provision that "this Act shall not be treated or construed as creating a new judicial district or a new district court but only as changing the name of the Criminal District Court of Travis County and equalizing the jurisdiction of said Criminal District Court and the Fifty-third District Court."

Section 10 of the Act of 1931 read as follows: "All writs, process, bonds, recognizances, orders, decrees and judgments in civil and criminal cases and matters, issued, executed, entered into, required or rendered prior to the taking effect of this Act, in either of said District Courts and returnable to terms of said Courts, as heretofore fixed by law, are hereby made returnable to said respective Courts as if no change had been made in said Court, and all bonds executed and recognizances entered in said Courts shall bind the parties to their appearances or to fulfill the

obligations of such bonds and recognizances at the terms of said Courts, as heretofore fixed by law and continued by this Act, and all bonds and recognizances taken in either of said Courts (and all orders, decrees and judgments entered in either of said Courts) shall be as valid as though no change had been made in said District Court, and all Grand and Petit Jurors drawn or selected under existing laws in either of said Courts for a term of Court that may be in session when this Act takes effect or for any term that may be held after this Act takes effect shall be considered lawfully drawn and selected in accordance with this Act."

Section 9 of the Act of 1929 was substantially the same.

Section 11 of the Act of 1931 and section 10 of the Act of 1929 repealed conflicting laws and parts of laws.

Section 12 of the Act of 1931 and section 11 of the Act of 1929 provided that any term then in session might be held under existing law.

54.—See 19th District, ante.

55.—See 11th District, ante.

56.—See 10th District, ante.

57.—See 37th District, ante.

58, 60.—Jefferson.

Jefferson County shall constitute the Fifty-eighth Judicial District as well as the Sixtieth Judicial District. Neither of said two district courts shall have or exercise any criminal jurisdiction in Jefferson County, such criminal jurisdiction having been by law vested exclusively in a criminal district court. Said district courts of the Fifty-eighth and Sixtieth Judicial Districts shall have and exercise concurrent jurisdiction coextensive within the limits of Jefferson County in all civil cases, proceedings and matters of which district courts are given jurisdiction by the Constitution and laws of this State. There shall be two terms of each of said two civil district courts in Jefferson County in each year, and the first term, which shall be known as the January-June term, shall be begun in each of said courts on the first Monday in January and shall continue until and including Sunday next before the first Monday in July; and the second term, which shall be known as the July-December term, shall begin in each of said courts on the first Monday in July, and shall continue until and including Sunday next before the first Monday in the following January.

The Clerk of the district court of Jefferson County shall perform the duties of the clerk of the courts of both the Fifty-eighth and Sixtieth Judicial Districts, and in case of vacancy in said office of said clerk, the same shall be filled by appointment by the judge of the Fifty-eighth Judicial District.

In all suits, actions or proceedings it shall be sufficient for the address and designation to be merely the "District Court of Jefferson County," and the clerk of said court shall file and docket the even numbers thereof in the court of the Fifty-eighth Judicial District, and the odd numbers thereof in the court of the Sixtieth Judicial District, but any cases pending in either of said courts may, in the discretion of the judge thereof, be transferred from one of said district courts to the other, and so on from time to time. In case of the disqualification of the judge of either of said courts, in any case, such case on the suggestion of such judge of this disqualification entered on the docket, shall stand transferred to the other of said courts, and be docketed by the clerk accordingly. [Acts 1903, p. 8; Acts 1929, 41st Leg., 2nd C.S., p. 166, ch. 84.]

Sections 2 and 3 of the amendatory Act of 1929 read as follows: "Sec. 2. That all process and writs heretofore issued out of said two district courts and returnable to terms of said courts respectively according to existing laws, are hereby made returnable to the terms of said courts as said terms are fixed by this Act, and all bonds executed and recognizances entered in said courts shall bind the parties for their appearance, or to fulfill the obligations of such bonds and recognizances at the terms of said courts as they are fixed by this Act, and all process heretofore returned, as well as all bonds and recognizances heretofore taken in said two district courts shall be as valid as though no change was made in the number of terms or the time of holding said courts herein, and all petit jurors drawn and selected under existing laws for either of said courts are hereby declared lawfully drawn and selected for the first term of said district courts held in conformity with this Act.

"Sec. 3. Should either the court of the Fifty-eighth Judicial District or of the Sixtieth Judicial District be in session under existing laws when this Act takes effect, such court shall continue and end its term under existing law as if no change had been made in the number of terms or time for holding such court and all process, writs, judgments, decrees and other proceedings in said court during such time, shall be valid to all intents and purposes, and shall not be affected by the changes in number of terms and time for holding such court herein made by this Act, and from and after the expiration of the term of court in session at the time this Act takes effect as provided for above, such court shall be held in conformity with the terms of this Act."

Section 4 repealed conflicting laws and parts of laws.

59.—See 15th District, ante.

60.—See 58th District, ante.

61.—See 11th District, ante.

62.—Hunt, Lamar, Delta and Franklin.

The Sixty-second Judicial District of Texas, shall be composed of the Counties of Hunt, Lamar, Delta, and Franklin and the District Courts shall be held therein each year as follows:

In Hunt County, on the first Monday in December and may continue in session eight (8) weeks; and on the third Monday after the third Monday in May, and may continue in session seven (7) weeks;

In Lamar County, on the ninth Monday after the first Monday in December and may continue in session eight (8) weeks; and on the first Monday in August and may continue in session eight (8) weeks;

In Delta County, on the seventeenth Monday after the first Monday in December and may continue in session three (3) weeks; and on the ninth Monday after the first Monday in August and may continue in session three (3) weeks;

In Franklin County, on the third Monday in May and may continue in session three (3) weeks; and on the first Monday in November and may continue in session three (3) weeks.

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

Sec. 2. The District Courts of the Eighth and Sixty-second Judicial Districts in Hunt County, shall have concurrent jurisdiction with each other in said County throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the District Court by the Constitution and Laws of the State; and the District Courts of the Sixth and Sixty-second Judicial Districts in Lamar County shall have concurrent jurisdiction with each other in said County throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the District Court by the Constitution and Laws of the State; and the District Courts of the Eighth and Sixty-second Judicial Districts in Delta County shall have concurrent jurisdiction with each other in said County throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the District Court by the Constitution and Laws of the State; and the Seventy-sixth and Sixty-second Judicial District Courts in Franklin County shall have concurrent jurisdiction with each other in said County throughout the limits thereof of all matters, civil and criminal, of which jurisdiction is given to the District Court by the Constitution and Laws of the State.

Sec. 3. The judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any county as is deemed by him proper and expedient for the dispatch of business.

Sec. 4. Either of the Judges of the District Court of Hunt County may, in his discretion, either in term-time or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said County of Hunt, by order or orders entered upon the minutes

of the Court making such transfer; and, where such transfer or transfers are made, the Clerk of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and, when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court. Either of the Judges of the District Court of Lamar County, may, in his discretion, either in termtime or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said County of Lamar, by or for orders entered upon the minutes of the Court making such transfer; and, where such transfer or transfers are made, the Clerk of said Court shall enter such case or cases upon the dockets of said Court to which such transfer or transfers are made, and, when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court. Either of the Judges of the District Court of Delta County may, in his discretion, either in termtime or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said County of Delta, by order or orders entered upon the minutes of the Court making such transfer; and where such transfer or transfers are made, the Clerk of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and, when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court. Either of the Judges of the District Court of Franklin County may, in his discretion, either in termtime or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said County of Franklin, by order or orders entered upon the minutes of the Court making such transfer; and, where such transfer or transfers are made, and when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court.

Sec. 5. The Judge of the Sixty-second Judicial District shall never impanel the Grand Jury in said Court in the Counties of Hunt, Lamar, Delta, and Franklin, unless in his judgment he thinks it necessary.

Sec. 6. All processes, writs issued out of, and bonds and recognizances entered into, and all grand and petit jurors drawn and selected before this Act shall take effect shall be valid and returnable to the next succeeding term of the District Court in and for the several Counties, as herein fixed, as though issued and served for such terms, and returnable to and drawn for the same, and all such processes, writs, bonds and recognizances taken before or issued by the Courts and officers of the various Counties affected by this Act shall be as valid as though no change had been made in the length of the terms or the time of the holding thereof of the District Courts in the Counties affected by this Act.

Sec. 7. The Clerks of the District Courts of Delta and Hunt Counties, respectively, as heretofore constituted, and their successors in office shall be the Clerks of both the Eighth and Sixty-second District Courts in said Counties, respectively. The Clerk of the District Court of Lamar County, as heretofore constituted, and his successors in office shall be the Clerk of both the Sixth and Sixty-second District Courts in said County, respectively. The Clerk of the District Court of Franklin County, as heretofore constituted, and his successors in office shall be the clerk of both the Seventy-sixth and Sixty-second District Courts in said County, respectively.

Sec. 8. Should any District Court of the Sixty-second Judicial District be in session in any of the Counties of said District under existing laws when this Act takes effect such Court shall continue and end its term under existing laws as if no change in the time of holding Court in said District had been made and all processes, writs, judgments, and other proceedings in said Court during such time shall be valid to all intents and purposes and shall not be affected by the changes in the time of holding Court herein made by this Act. After the period provided in the above contingencies, the District Courts in said respective Counties herein mentioned, shall be held in conformity with the terms as herein prescribed. [Acts 1905, p. 75; Acts 1915, p. 46; Acts 1937, 45th Leg., p. 348, ch. 170, §§ 1–7; Acts 1947, 50th Leg., p. 793, ch. 394, § 1.]

Section 8 of the amendatory Act of 1937, and section 9 of this subdivision as amended in 1947, repealed conflicting laws and parts of laws.

Franklin County, see, also, 76th District, post.
Hunt and Delta Counties, see, also, 8th District, ante.
Lamar County, see, also, 6th District, ante.

63.—Val Verde, Terrell, Edwards, Kinney and Maverick.

The 63rd Judicial District shall be composed of the Counties of Val Verde, Terrell, Edwards, Kinney and Maverick, and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of Val Verde on the first Mondays in January and July;

In the County of Terrell on the first Mondays in February and August;

In the County of Edwards on the first Mondays in March and September;

In the County of Kinney on the first Mondays in April and October; and

In the County of Maverick on the first Mondays in May and November.

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

Sec. 2. The judge of said court, in his discretion, may hold as many sessions of court in any term of the court in any county as is deemed by him proper and expedient for the dispatch of business. [Acts 1913, 1st C.S. p. 34; Acts 1917, pp. 125, 487; Acts 1923, 3rd C.S. p. 48; Acts 1929, 41st Leg., p. 397, ch. 183, § 1; Acts 1935, 44th Leg., p. 281, ch. 101; Acts 1945, 49th Leg., p. 197, ch. 150, § 1; Acts 1945, 49th Leg., p. 516, ch. 314, §§ 1, 2.]

This subdivision was amended by two separate acts in 1945, but such amendments contained identical provisions. The amendment by Acts 1945, ch. 150, became effective May 3, 1945, and the amendment by Acts 1945, ch. 314, became effective June 5, 1945.

Sections 3 and 4 of the Acts of 1945 read as follows:

"Sec. 3. All processes issued, bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several counties as herein fixed, as though issued and served for such terms and returnable to and drawn for the same. All processes issued and made returnable on or before Monday next after the expiration of twenty days from the date of service thereof shall be valid, and unaffected by this Act.

"Sec. 4. It is further provided that if any court in any county of said District shall be in session at the time this Act takes effect, such court or courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all courts in said District shall conform to the requirements of this Act."

Section 2 of the amendatory Act of 1935 repealed the amendatory Act of 1929. Section 3 validated and made returnable to the next term as therein fixed all processes and writs issued, bonds and recognizances entered into, and grand and petit jurors drawn and selected before the act took effect.

Section 2 of the amendatory Act of 1929, also contained provisions concerning processes, writs, bonds and juries, and provided that any court in session when the act took effect should continue in session until the term expired. Section 3 repealed conflicting laws and parts of laws.

Section 1 of Acts 1927, 40th Leg., p. 225, ch. 154, effective March 30, 1927, transfers the civil and criminal jurisdiction of the county court of Edwards county to the district court of said county.

64.—Hale, Lamb, Swisher, Castro, Bailey and Parmer.

The 64th Judicial District shall be composed of the Counties of Hale, Lamb, Swisher, Castro, Bailey, and Parmer, and the terms of the District Courts of each of said Counties shall be held therein each year as follows:

In the County of Hale, the first Monday in January, the First Monday in June, and the Third Monday in November;

In the County of Lamb, the First Monday in February, and the First Monday in August;

In the County of Swisher, the First Monday in March, and the First Monday in September;

In the County of Bailey, the Third Monday in March, and the First Monday in November;

In the County of Parmer, the Second Monday in April, and the Second Monday in October;

In the County of Castro, the First Monday in May, and the Third Monday in September.

Each term of Court in each of such Counties may continue until the Saturday immediately preceding the Monday for convening the next regular term therein. [Acts 1911, 1st C.S. p. 102; Acts 1917, p. 309; Acts 1919, p. 132; Acts 1919, 2nd C.S., p. 26; Acts 1927, 40th Leg., p. 224, ch. 153, § 1; Acts 1929, 41st Leg., p. 39, ch. 14, § 11; Acts 1935, 44th Leg., p. 175, ch. 72; Acts 1943, 48th Leg., p. 51, ch. 47, § 1; Acts 1947, 50th Leg., p. 259, ch. 154, § 1.]

Sections 2 and 4 of the amendatory Act of 1947 provided: "Sec. 2. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any county as is deemed by him proper and expedient for the dispatch of business.

"Sec. 4. All processes issued or served, bonds and recognizances made, and all grand and petit juries drawn by or with the authority of the 69th District Court in and for Parmer County prior to the effective date of this Act shall be valid for and returnable to the next succeeding term of the 64th District Court, as though originally issued and served by and from said 64th District Court for such terms and returnable to and drawn for the same. The District Clerk of the 69th District Court of Parmer County shall from the effective date of this Act be, and he is, hereby made the District Clerk of Parmer County for the 64th District Court, and all processes and other official acts of said District Clerk of Parmer County, while acting by and under the authority of the 69th District Court in Parmer County shall be valid as the acts of the District Clerk of the 64th District Court of Parmer County; and all records of the District Court of Parmer County and all suits on the docket of the District Court of the 69th Judicial District for Parmer County shall be and the same are hereby transferred to the District Court of Parmer County for the 64th Judicial District. All processes issued or served and all bonds and recognizances made, and all grand and petit juries drawn before the taking effect of this Act in all other counties under the provisions of this Act shall remain unaffected and unchanged hereby."

Section 3 of the Act of 1947 amended subdivision 69 of this article.

Section 2 of the amendatory Act of 1935 validated processes, bonds, recognizances and juries and made them returnable to terms fixed by the act.

Section 3 provided that any district court in session when the Act took effect, should continue and end its term under existing laws validated all process, writs, judgments and other proceedings.

Section 4 repealed all laws and parts of laws in conflict with such Act.

Sections 1–10 of the amendatory Act of 1929 related to other districts. Section 12 provided that the judge and district attorney of the 64th District should be the judge and district attorney of such district as thereby created. Section 13 validated writs, process and juries and made them returnable to the terms of the court thereby created.

65.—See 34th District, ante.

66.—Hill.

On the first Mondays in January, March, May, July, September and November, and each term may continue in session for eight (8) weeks. [Acts 1905, p. 37; Acts 1915, p. 218; Acts 1933, 43rd Leg., 1st C.S., p. 112, ch. 35, § 1.]

67.—See 17th District, ante.

68.—See 14th District, ante.

69.—Deaf Smith, Oldham, Moore, Hartley, Sherman and Dallam.

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

In the County of Deaf Smith on the Third Monday after the Second Monday in January and July;

In the County of Oldham on the Eighth Monday after the Second Monday in January and July;

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

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

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

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

Each term of Court in each of such Counties may continue until the date herein fixed for the beginning of the next succeeding term therein. [Acts 1909, pp. 16, 69; Acts 1927, 40th Leg., p. 226, ch. 155; Acts 1943, 48th Leg., p. 101, ch. 72, § 1; Acts 1947, 50th Leg., p. 259, ch. 154, § 3.]

Section 1 of the Act of 1947 amended subdivision 64 of this article. For sections 2 and 4 of the Act of 1947, see note to subdivision 64, ante.

Sections 2–4 of Acts 1943, 48th Leg., p. 101, ch. 72, read as follows:

"Sec. 2. The Judge of said court in his discretion may hold as many sessions of court in any term of the court in any county as is deemed by him proper and expedient for the dispatch of business.

"Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several counties as herein fixed, as though issued and served for such terms and returnable to and drawn for the same.

"Sec. 4. It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect such court or courts affected thereby shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein, but thereafter all courts in said district shall conform to the requirements of this Act."

Parmer County, see 64th District, ante.

70.—Martin, Howard, Midland, Ector and Glasscock.

Section 1. The Seventieth Judicial District of Texas shall be composed of the Counties of Martin, Howard, Midland, Ector, and Glasscock, and the terms of the district court are hereby designated and shall be held therein each year as follows:

In the County of Martin on the first Monday in January of each year and on the twenty-sixth Monday after the first Monday in January; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such county.

In the County of Howard on the second Monday after the first Monday in January of each year and on the fourth Monday after the first Monday in January of each year; on the first Monday in September of each year; and on the twelfth Monday after the first Monday in September of each year; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such county.

In the County of Midland on the sixth Monday after the first Monday in January of each year; on the nineteenth Monday after the first Monday in January of each year; on the fourth Monday after the first Monday in September of each year; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such county.

In the County of Ector on the tenth Monday after the first Monday in January of each year; on the twenty-third Monday after the first Monday in January of each year and on the eighth Monday after the first Monday in September of each year; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for the convening the next regular term of such court in such county.

In the County of Glasscock on the twenty-eighth Monday after the first Monday in January of each year; and on the sixteenth Monday after the first Monday in September of each year; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for the convening the next regular term of such court in such county. [Acts 1917, pp. 4, 20, 125; Acts 1917, 3rd C.S., p. 51; Acts 1927, 40th Leg., p. 134, ch. 87, § 1; Acts 1929, 41st Leg., p. 50, ch. 19, § 1; Acts 1933, 43rd Leg., p. 371, ch. 145, § 2; Acts 1935, 44th Leg., p. 150, ch. 63; Acts 1941, 47th Leg., p. 417, ch. 247, § 1; Acts 1943, 48th Leg., p. 44, ch. 41, § 1.]

Sections 2 to 4 of the amendatory act of 1943 read as follows:

"Sec. 2. The judge of said court in his discretion may hold as many sessions of court in any term of the court in any county as is deemed by him proper and expedient for the dispatch of business.

"Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the district courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

"Sec. 4. It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect such court or courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all courts in said district shall conform to the requirements of this Act."

Section 2 of the amendatory Act of 1941, section 4 of the amendatory Act of 1935, section 6 of the amendatory Act of 1933, and section 2 of the amendatory Act of 1927, repealed all conflicting laws and parts of laws.

Section 3 of the amendatory Act of 1935 and section 5 of the amendatory Act of 1933 provided that any Court in session at the time the act took effect, should continue in session until the term thereof should expire but thereafter the Court should conform to the terms of the Act.

Section 2 of the amendatory Act of 1935, and section 4 of the amendatory Act of 1933 validated processes, writs, bonds, recognizances and juries, and made them returnable at the next succeeding term as therein fixed.

Section 2 of the amendatory Act of 1929 created a new 109th District. See note to subdivision 109 as to other sections of that act.

71.—Harrison and Gregg.

Section 1. The Seventy-first Judicial District shall be composed of the Counties of Harrison and Gregg, and the terms of the District Court are hereby designated and shall be held therein each year as follows:

Harrison County: On the first Monday in January and continue until the second Monday in March; on the second Monday in March and continue until the fourth Monday in June; on the fourth Monday in June and continue until the first Monday in September; on the first Monday in September and continue until the first Monday in November; on the first Monday in November and continue until the first Monday in January.

Gregg County: On the second Monday in February and continue to the first Monday in June; on the first Monday in June and continue until the first Monday in October; on the first Monday in October and continue until the second Monday in February.

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

Sec. 2. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in either county as is deemed by him proper and expedient for the dispatch of business.

Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of each county as herein fixed, as though issued and served for such terms and returnable to and drawn for the same.

Sec. 4. It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect, such Court or Courts affected thereby shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein, but thereafter all Courts in said District shall conform to the requirements of this Act. [Acts 1911, p. 93; Acts 1921, p. 80; Acts 1923, p. 113; Acts 1943, 48th Leg., p. 380, ch. 254, § 1.]

Acts 1927, 40th Leg., p. 150, ch. 99, changes the jurisdiction of the County Court of Harrison county and the jurisdiction of the District Court of the 71st Judicial District to conform thereto. See art. 1970—299.

Gregg County, see also, 124th District, post.

72.—Crosby, Lubbock, Hockley and Cochran.

The terms of the District Court of the 72nd Judicial District of this State composed of the counties of Crosby, Lubbock, Hockley, and Cochran, shall be held as follows:

In the County of Lubbock: On the second Monday in February and the second Monday in August of each year, and may continue in session until and including Saturday immediately preceding the Monday for convening the next regular term of said Court in Lubbock County.

In the County of Hockley: On the second Monday in March and the second Monday in September of each year, and may continue in session until and including Saturday immediately preceding the Monday for convening the next regular term of said Court in Hockley County.

In the County of Cochran: On the second Monday in April and the second Monday in October of each year, and may continue in session until and including Saturday immediately preceding the Monday for convening the next regular term of said Court in Cochran County.

In the County of Crosby: On the second Monday in May and the second Monday in November of each year, and may continue in session until and including Saturday immediately preceding the Monday for convening the next regular term of said court in Crosby County. [Acts 1925, 39th Leg., p. 250, ch. 80. § 1; Acts 1927, 40th Leg., 1st C.S., p. 72, ch. 22, § 1; Acts 1929, 41st Leg., p. 104, ch. 49, § 1; Acts 1943. 48th Leg., p. 3, ch. 4, § 1.]

Sec. 4. The 72nd Judicial District of Texas and the 99th Judicial District of Texas and the courts of said judicial districts in Lubbock County shall have concurrent jurisdiction with each other in said county in all matters over which jurisdiction is given or shall hereafter be given by the Constitution and laws of this State to district courts. Either of the judges of the said district courts for said county may in their discretion in term time or in vacation transfer a case or cases, civil or criminal, to said other district court, with the consent of the judge of said other district court, by order entered on the minutes of his court from which said case is transferred or minutes or orders made in chambers as the case may be, which orders when made shall be copied and certified to by the district clerk of said Lubbock County, together with all orders made in said case and such certified copies of such orders together with the original papers shall be filed among the papers of any case thus transferred and the fees thereof shall be taxed as a part of the costs of said suit, and the Clerk of said court shall docket any such case in the court to which it shall have been transferred and when so entered the court to which same shall have been thus transferred shall have like jurisdiction therein as in cases originally filed in said court and the same shall be dropped from the docket of the said court from which it was trans-

ferred, provided that all process and writs issued out of the district court from which any such transfer is made shall be returnable to the term of court to which said transfer is made according to the terms of the district court of said respective courts as fixed by this Act, and that all bonds executed and recognizances entered into in any district court from which any such transfer is made shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said court to which said transfer is made as said terms are fixed by this Act in the respective counties. [Acts 1927, 40th Leg., 1st C.S., p. 72, ch. 22, § 4.]

Section 2 of the Act of 1943 read as follows:

"All process issued, bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the terms of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

"If a section, paragraph or provision of this Act be held or declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs and provisions of this Act, but the same shall remain in full force and effect. This Act shall not prevent the holding and closing under present laws of any term of court that may be in session when this Act takes effect."

Section 2 of the amendatory Act of 1927 related to the 99th District. Section 3 validated process issued, bonds and recognizances made and juries drawn before the act took effect, and made them returnable to the terms fixed by that act.

Lubbock County, see, also, 99th District, post.

73.—See 37th District, ante.

74.—See 19th District, ante.

75.—Hardin, Liberty, Tyler and Chambers.

In the county of Hardin on the first Monday in January and on the nineteenth and thirty-third Mondays after the first Monday in January of each year, and may continue in session for four weeks.

In the county of Liberty on the fourth, twenty-third and thirty-seventh Mondays after the first Monday in January of each year, and may continue in session for six weeks.

In the county of Tyler on the tenth and forty-third Mondays after the first Monday in January of each year, and may continue in session for five weeks.

In the county of Chambers on the fifteenth and forty-eighth Mondays after the first Monday in January of each year, and may continue in session for four weeks. [Acts 1925, p. 378, 39th Leg., ch. 166, § 2.]

See note to 9th District, ante.

76.—Titus, Franklin, Camp, Morris and Marion.

Section 1. That the Seventy-sixth Judicial District of Texas shall be composed of the Counties of Titus, Franklin, Camp, Morris and Marion, and the terms of the District Court within said Counties shall be held therein as follows:

In Titus County beginning on the first Monday in January of each year and may continue in session for five (5) weeks; on the sixteenth Monday after the first Monday in January of each year and may continue in session for four (4) weeks; on the thirty-seventh Monday after the first Monday in January of each year and may continue in session for five (5) weeks.

In Franklin County on the fifth Monday after the first Monday in January of each year and may continue in session for three (3) weeks; on the thirtieth Monday after the first Monday in January of each year and may continue in session for three (3) weeks.

In Camp County on the eighth Monday after the first Monday in January of each year and may continue in session for four (4) weeks; on the thirty-third Monday after the first Monday in January of each year and may continue in session for four (4) weeks.

In Morris County on the twelfth Monday after the first Monday in January of each year and may continue in session for four (4) weeks; on the forty-second Monday after the first Monday in January of each year and may continue in session for four (4) weeks.

In Marion County on the twentieth Monday after the first Monday in January of each year and may continue in session for six (6) weeks; on the forty-sixth Monday after the first Monday in January of each year and may continue in session for six (6) weeks.

Sec. 2. The Clerk of the District Court in each of said Counties, and his successors in office, shall be the Clerk of the Seventy-sixth Judicial District Court in said Counties, and shall perform all duties pertaining to the Clerkship of said Court.

The Judge and all District Officers of the Seventy-sixth Judicial District, as heretofore constituted, shall be the Judge and District Officers of the Seventy-sixth Judicial District as constituted and reorganized by this Act, during the terms for which each were respectively elected.

Sec. 3. All processes, all writs and bonds, Civil and Criminal, issued or executed prior or subsequent to the taking effect of this Act, and returnable to the terms of said Court as heretofore fixed by law in the several Counties composing the Seventy-sixth Judicial District, as well as all Grand and Petit Jurors, are made returnable to the terms of said Court, as said terms are here now fixed by this Act, and in conformity with the changes made herein; and all bonds executed and recognizances entered into in said Court shall bind the parties for their appearances, or to fulfill the obligations of such bonds and recognizances at the terms of said Court as they are here fixed by this Act; and all processes of any kind heretofore issued or returned, as well as all bonds and recognizances heretofore or hereafter taken or entered into in any of the Courts of said District shall be as valid and as binding as if no change had been made in the time of holding said Courts.

Sec. 4. The District Court of the Seventy-sixth Judicial District in Titus, Franklin, Camp, Morris, and Marion Counties shall exercise general jurisdiction over civil and criminal matters as is now, or may hereafter be provided by law. The Seventy-sixth Judicial District Court in Marion County shall have concurrent jurisdiction with the Fifth Judicial District Court in said County, as to all matters of a civil nature, and all causes of action of a civil nature not disposed of at the end of the term, either of the Seventy-sixth Judicial District Court or the Fifth Judicial District Court, shall, by operation of law, be transferred from the Court whose term has expired to the other Court; and said Courts, or the Judges thereof, either in termtime, or in vacation, may transfer from one Court to the other any cause of action of a civil nature when deemed advisable by said Court to do so.

The Seventy-sixth Judicial District Court in Franklin County shall have concurrent jurisdiction with the Sixty-second Judicial District Court in said County in causes of action, civil or criminal, and all causes of action of a civil nature not disposed of at the end of the term, either of the Seventy-sixth Judicial District Court or of the Sixty-second Judicial District Court, shall, by operation of law, be transferred from the Court whose term has expired to the other Court; and said Courts, or the Judges thereof, either in termtime or vacation, may transfer from one Court to the other any cause of action, civil or criminal, when deemed advisable by said Court to do so.

Sec. 5. The Judge of the Seventy-sixth Judicial District Court in Titus County shall have summoned and empaneled a Grand Jury for the terms beginning in said County on the first Monday in January of each year and the thirty-seventh Monday after the first Monday in January of each year; and for the term beginning on the sixteenth Monday after the first Monday in January of each year the Judge of said

Court in his discretion may have a Grand Jury summoned and empaneled, but the same shall not be mandatory, and in the event a Grand Jury is not had for said term all bonds, processes issued, recognizances made, and all writs of any nature whatsoever, shall be valid and returnable to the next succeeding term of Court in Titus County as though issued and served for each term. [Acts 1915, p. 6; Acts 1917, p. 68; Acts 1937, 45th Leg., p. 270, ch. 142, § 1; Acts 1939, 46th Leg., p. 173, § 1.]

Morris County

Section 1. From and after the passage of this Act the Seventy-sixth Judicial District Court of Morris County, shall in addition to the Civil and Criminal Jurisdiction conferred upon District Courts by the Constitution and General Laws of this State have and exercise jurisdiction over all criminal matters which by the General Laws of this State are conferred upon the County Court.

Sec. 2. At the effective date of this Act all criminal cases on the docket of the County Court of Morris County shall be transferred to the docket of the Seventy-sixth Judicial District Court of Morris County.

Sec. 3. The jurisdiction of the County Court of Morris County shall be such as provided by the Constitution and General Laws of this State consistent with the change in jurisdiction of the District Court herein made.

Sec. 4. All appeals from criminal cases in the Justice Court of Morris County shall be made to the Seventy-sixth Judicial District Court of Morris County. [Acts 1939, 46th Leg., p. 195.]

Sec. 2 of the amendatory Act of 1939, p. 173 provided: "This Act shall take effect on the 2nd day of July, A. D. 1939, and shall be in force and effect from and after that date." Section 3 of the amendatory Act of 1939, p. 173, and section 5 of the act of 1939, p. 195, and section 2 of this amendatory Act of 1937 repealed all conflicting laws and parts of laws.

Transfer of cases pending in Marion County from 5th to 76th Judicial District Court, see note to 5th District, ante.

Franklin County, see, also, 62nd District, ante.

77, 87.—Limestone and Freestone.

Seventy-seventh District: (a) Limestone County: On the first Monday in December, March, June and September and shall continue eight weeks. (b) Freestone County: On the first Mondays in February, May, August and November and shall continue four weeks.

Eighty-seventh District: (a) Limestone County: On the first Monday in February, May, August and November and shall continue eight weeks. (b) Freestone County: On the first Mondays in January, April, July and October and shall continue four weeks.

The said district courts shall have concurrent jurisdiction of all cases, civil and criminal and appellate, over which the district courts of this State have jurisdiction under the Constitution and laws of this State, co-extensive with the limits of Limestone County and Freestone County, respectively, and grand juries shall be drawn for the Eighty-seventh District Court in Limestone County at the May and November terms and grand juries shall be drawn for said court in Freestone County for the January and July terms, and at such other terms of said court, both in Limestone and Freestone Counties, as the judge of said court may, from time to time, so order. There shall be organized grand juries at the March and September terms of the Seventy-seventh District Court in Limestone County, and at the May and November terms of said court in Freestone County, and at such other terms of said court in each county, as may be determined and ordered by the judge thereof.

The judges of the Seventy-seventh and Eighty-seventh Districts for the counties of Limestone and Freestone shall each, in his discretion, either in term time or vacation, on motion of any party, or on agreement of the parties, or in his own motion, where he thinks the administration of justice may be facilitated thereby, or for the purpose of equalizing the dockets of said court, transfer any cause, civil or criminal, from the dockets of their respective courts to the docket of the other district court of said county, and shall cause said transfer to be entered of record upon the minutes of his court, whereupon the clerk of the district court to which said cause has been transferred shall docket same and the same shall be tried and disposed of as if it had been originally filed in said court, and no transcript of the record shall be necessary to the jurisdiction of the court to which such case has been transferred and no formal proceedings shall be necessary to such transfer; provided that in any cause pending on any of the dockets of said district courts in either of said counties in which the judge of said court may be disqualified, recused or otherwise unable to try, he shall transfer said cause as above provided, to the other district court in the county where such cause is pending.

The clerks of the said district courts shall make up the dockets of the district courts of said counties, respectively, and shall file the new cases in the courts to which he may be directed to file same by the party filing them; and all criminal cases shall be originally filed in the court to which the indictment or information is returned, and all appeals in probate cases shall be to the court beginning the first term after such appeal is filed. The clerks of said courts shall respectively prepare civil, divorce, criminal and tax dockets as may now be customary or provided by law for the Seventy-seventh and the Eighty-seventh District Courts in their respective counties, and shall place letters on the envelope containing the file papers in each case after the number of said case, designating by the letter "A" causes pending in the Seventy-seventh District Court, and by the letter "B" causes pending in the Eighty-seventh District Court.

The clerk of the Seventy-seventh District Court in Limestone County and the clerk of the Seventy-seventh District Court in Freestone County shall be the clerk of the Eighty-seventh District Court of said counties, respectively; and the district attorney of the Seventy-seventh Judicial District shall be district attorney of said district in both Limestone and Freestone Counties and shall represent the State in all criminal causes in said court in said counties. The office of district attorney for the Eighty-seventh District is hereby abolished, and the duties enjoined by law upon said attorney shall be performed by the respective county attorneys of said district. [Acts 1923, pp. 47–52.]

District attorney for 77th Judicial District abolished, see art. 326o.

87th District, see, also, 87th District, post.

78.—Wichita.

The Seventy Eighth Judicial District of Texas shall be composed of Wichita County as now constituted, and the District Court and terms thereof shall be held therein as follows: Beginning the First Mondays in March, June, September and December, in each year, and each of said terms shall continue until, and close at midnight of the Saturday preceding the Monday for the opening of the new and succeeding term, but nothing herein shall prevent the judge of said court from adjourning the same prior to the end of the term if the work of the court has been finished. [Acts 1915, ch. 6; Acts 1923, 38th Leg., ch. 99, p. 198; Acts 1929, 41st Leg., p. 405, ch. 186, §§ 1, 2.]

Section 2 of the amendatory Act of 1929 validated processes, bonds and recognizances and made them returnable to the terms fixed by that act. Section 3 repealed conflicting laws and parts of laws.

Wichita County, see, also, 30th District, ante, and 8th District, post.

79.—Starr, Brooks, Duval and Jim Wells.

The 79th Judicial District shall, after this Act takes effect, be composed of the counties of Starr, Brooks, Duval and Jim Wells, and the terms of court of the

79th District shall be held in the respective Counties of said District as follows:

In the County of Duval: One term beginning on the first Monday in January, and may continue in session six weeks.

One term beginning on the sixteenth Monday after the first Monday in January, and may continue in session four weeks.

One term beginning on the fourth Monday after the first Monday in September, and may continue in session four weeks.

In the County of Jim Wells: One term beginning on the sixth Monday after the first Monday in January, and may continue in session four weeks.

One term beginning on the twentieth Monday after the first Monday in January, and may continue in session four weeks.

One term beginning on the eighth Monday after the first Monday in September, and may continue in session four weeks.

In the County of Starr: One term beginning on the tenth Monday after the first Monday in January and may continue in session four weeks.

One term beginning on the twenty-fourth Monday after the first Monday in January, and may continue in session four weeks.

One term beginning on the first Monday in September, and may continue in session four weeks.

In the County of Brooks: One term beginning on the fourteenth Monday after the first Monday in January, and may continue in session two weeks.

One term beginning the twenty-eighth Monday after the first Monday in January, and may continue in session two weeks.

One term beginning the twelfth Monday after the first Monday in September, and may continue in session four weeks. [Acts 1925, 39th Leg., p. 181, ch. 45, § 2; Acts 1931, 42nd Leg., p. 876, ch. 370; Acts 1933, 43rd Leg., 1st C.S., p. 131, ch. 38.]

See note under 49th District.

Section 2 of the amendatory Act of 1933 validated and provided for the return to the terms therein fixed of processes and writs, bonds and recognizances, and juries. Section 3 provided that the act should take effect January 1, 1934.

Section 4 of the Act of 1933 and section 6 of the Act of 1925 repealed conflicting laws and parts of laws.

Section 2 of the amendatory Act of 1931 provided that the act should take effect January 1, 1932. Other provisions of such section related to the 92nd District.

Section 1 of the amendatory Act of 1925 related to the 49th District. See note to subdivision 49 of this article as to other sections of that act.

80.—Harris County.

The Eightieth District shall be composed of Harris County.

Section 1. There shall be two terms of the district court of the Eightieth Judicial District in each year, and the first term in each year, which shall be known as the January-June term, shall be begun on the first Monday in January in each year and shall continue until and including Sunday next before the first Monday in July of the same year, and the second term in each year, which shall be known as the July-December term, shall be begun on the first Monday in July in each year and shall continue until and including Sunday next before the first Monday in the following January.

Sec. 2. All cases and proceedings pending in the district court of Waller County when this law takes effect, shall be and are hereby transferred from the Eightieth Judicial District as now constituted by said county, to the Ninth Judicial District Court as constituted by this Act; and all cases and proceedings pending in the district court of the Seventy-fifth Judicial District in Montgomery County when this law takes effect, shall be and are hereby transferred from the docket of the Seventy-fifth Judicial District Court as the same is now constituted in said county, to the docket of the Ninth Judicial District Court as the same is constituted by this Act; and all cases and proceedings pending on the docket of the Ninth Judicial District Courts in the counties of Hardin and Liberty when this Act takes effect, shall be and the same are hereby transferred from the Ninth Judicial District as now constituted in said counties, to the dockets of the Seventy-fifth Judicial District Courts of said Hardin and Liberty Counties as the same are constituted by this Act, and the judges of said Ninth and Seventy-fifth Judicial Districts as created by this Act shall carry into effect these provisions.

Sec. 3. The present judges of the Ninth and Seventy-fifth Judicial Districts as the same now exists, shall remain the district judges of their respective districts as reorganized under the provisions of this Act, and shall hold their offices until the next general election and until their successors are appointed or elected and duly qualified, and they shall receive the same compensation as is now, or may hereafter be provided by law for district judges, and a vacancy in either of said offices shall be filled as is now, or may hereafter be provided by law, and the present judge of the district court for the Eightieth Judicial District shall hold his office until his term expires and until his successor is elected and qualified, and a judge of said court shall hereafter be elected at the time and in the manner provided by law by the qualified voters of Harris County.

Sec. 4. The district attorneys of the Ninth and Seventy-fifth Judicial Districts as the same now exists, shall be and continue to remain as the district attorneys of said Ninth and Seventy-fifth Judicial Districts as the same are hereby reorganized, unless disqualified under the law to hold such offices hereunder, in which event the Governor shall appoint a district attorney for one or both of said districts with the qualifications required by law and he shall receive the salary as provided by law for such officers.

Sec. 5. All process and writs issued out of the district courts of the Seventy-fifth Judicial District in Montgomery County and out of the district court of the Ninth Judicial District in Hardin and Liberty Counties, and out of the district court of the Eightieth Judicial District in Waller County and all jurors selected prior to the taking effect of this Act are hereby made returnable to the terms of the Ninth Judicial District Court in Waller County and Montgomery County and the Seventy-fifth Judicial District Courts in Hardin and Liberty Counties, as said terms are fixed by this Act; and all bonds executed and recognizances entered in said courts shall bind the parties for their appearances or to fulfill the obligations of such bonds and recognizances at the terms of said courts as they are fixed by this Act; and all processes heretofore returned, as well as all bonds and recognizances heretofore taken in any of the district courts of said counties shall be as valid as though no change had been made in said districts and the times of holding courts therein.

Sec. 6. Should a district court be in session under the existing law in any county affected by this Act, the same shall continue and end its term under such existing law as if no change in the district had been made, and all process writs, judgments and decrees issued and rendered therein shall be valid and shall not be affected by the change of said districts and the time of holding courts therein made by this Act. [Acts 1925, 39th Leg., p. 379; ch. 166, §§ 3–8.]

See note to 9th District, ante, and 113th District, post. Harris County, see, also, 11th District, ante.

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

The Eighty-first Judicial District shall be composed of the Counties of Karnes, Frio, LaSalle, Atascosa, and Wilson, and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of LaSalle on the first Monday in March, and the first Monday in September.

In the County of Atascosa on the third Monday in March, and the third Monday in September.

In the County of Wilson on the second Monday in April, and the second Monday in October.

In the County of Karnes on the first Monday in May, and the first Monday in November.

In the County of Frio on the fourth Monday in May, and the fourth Monday in November.

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

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

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

It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect, such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all Courts in said District shall conform to the requirements of this Act. [Acts 1917, p. 247; Acts 1921, p. 32; Acts 1943, 48th Leg., p. 22, ch. 19, § 1.]

82.—Falls County.

On the first Monday in the months of January, March, May, September and November and each term may continue until and including the Saturday next preceding the beginning of the next succeeding term. Grand juries shall be organized at the May and November terms of said court, and at such other terms as the judge of said district may determine and order.

From Acts 1917, ch. 9.

83.—Jeff Davis, Presidio, Brewster, Pecos, Upton and Reagan.

That the following counties to-wit: Jeff Davis, Presidio, Brewster, Pecos, Upton and Reagan, shall hereafter constitute the Eighty-Third Judicial District of Texas, and the terms of Court shall be held in said Counties as follows, to-wit:

In Jeff Davis County: On the second Monday in January and July of each year and may continue two weeks.

In Presidio County: On the third Monday after the first Monday in January and July of each year, and may continue three weeks.

In Brewster County: On the sixth Monday after the first Monday in January and July of each year and may continue three weeks.

In Pecos County; on the ninth Monday after the first Monday in January and July of each year and may continue three weeks.

In Upton County; on the twelfth Monday after the first Monday in January and July of each year, and may continue two weeks.

In Reagan County; on the fourteenth Monday after the first Monday in January and July of each year and may continue two weeks. [Acts 1925, 39th Leg., p. 84, ch. 24, § 1; Acts 1929, 41st Leg., 3rd C.S., p. 245, ch. 11, § 3.]

Section 13 of the amendatory Act of 1929 repealed conflicting laws and parts of laws. See notes to Districts 33 and 112 of this article concerning other sections of the act.

Section 2 of the Act of 1925 validated and provided for the return of process, bonds, recognizances and juries, and provided that any court in session when the act took effect should continue in session until the term expired under existing laws, and that thereafter the courts should conform to the act. Section 3 repealed conflicting laws.

Pecos and Upton Counties, see, also, 112th District, post.

84.—Hutchinson, Hansford and Ochiltree.

The 84th Judicial District of the State of Texas, shall be composed of the Counties of Hutchinson, Hansford and Ochiltree, and the terms of the District Court shall be held therein each year as follows:

Hutchinson County: Beginning on the Second Monday of January of each year; and on the Third Monday of May of each year; and on the Second Monday of September of each year.

Hansford County: Beginning on the First Monday of April of each year; and on the Second Monday of November of each year.

Ochiltree County: Beginning on the Third Monday of April of each year; and on the First Monday of December of each year.

Each term of Court in each of such Counties shall continue until 10:00 a. m. of the Monday herein fixed for the beginning of the next succeeding term thereof. [Acts 1927, 40th Leg., p. 60, ch. 42; Acts 1929, 41st Leg., p. 11, ch. 6; Acts 1931, 42nd Leg., p. 826, ch. 342; Acts 1933, 43rd Leg., p. 875, ch. 249, § 1; Acts 1933, 43rd Leg., Spec.L., p. 103, ch. 79; Acts 1937, 45th Leg., p. 688, ch. 346; Acts 1943, 48th Leg., p. 102, ch. 73, § 1; Acts 1947, 50th Leg., p. 494, ch. 290, § 2.]

For sections 4–7 of the Act of 1947 see note under the 31st District, ante.

Section 2 of the amendatory Act of 1937, section 2 of the amendatory Act of 1933, and section 2 of the amendatory Act of 1931 related to processes, writs and bonds issued, served or executed prior to the taking effect of the Act. Section 3 of each of such acts repealed all conflicting laws and parts of laws.

See note to 39th District as to the amendatory Acts of 1927 and 1929.

Carson County, see 100th District, post.

Hemphill County, see 31st District, post.

85.—Robertson and Brazos.

The 85th Judicial District shall be composed of the Counties of Robertson and Brazos, in the State of Texas, and the terms of the District Court shall be held in said Counties each year as follows:

In the County of Robertson on the first Mondays in January and July and may continue in session until midnight on Saturday immediately preceding the Monday for convening the next regular term of such court in such County.

In the County of Brazos on the first Mondays in April and October and may continue in session until midnight on Saturday immediately preceding the Monday for convening the next regular term of such court in such County. [Acts 1917, p. 256; Acts 1943, 48th Leg., p. 39, ch. 36, § 1.]

Sections 2–4 of the amendatory Act of 1943 read as follows:

"Sec. 2. Any term of court may be divided into as many sessions as the Judge thereof may deem expedient for the dispatch of business.

"Sec. 3. All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

"Sec. 4. The salary of the official court reporter of this District shall be as fixed by law, and shall be paid by each County proportionately according to the population as shown by the last Federal Census."

86.—Kaufman, Van Zandt and Rockwall.

The Eighty-sixth Judicial District of Texas shall be composed of the Counties of Kaufman, Van Zandt and Rockwall, and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of Van Zandt on the first Mondays in January and June.

In the County of Kaufman on the first Mondays in February and July.

In the County of Rockwall on the first Mondays in April and October.

Each term of Court in each of such Counties may continue until the date herein fixed for the beginning of the next succeeding term therein. [As amended Acts 1941, 47th Leg., p. 394, ch. 226, § 1; Acts 1943, 48th Leg., p. 59, ch. 53, § 1.]

Sec. 2. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any County as is deemed by him proper and expedient for the dispatch of business.

Sec. 3. All process issued and returnable to a succeeding term of Court and all bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same. All process issued and made returnable on or before Monday next after the expiration of twenty (20) days from the date of service thereof shall be valid, and unaffected by this Act.

Sec. 4. It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein, but thereafter all Courts in said District shall conform to the requirements of this Act. [Acts 1917, p. 130; Acts 1935, 44th Leg., p. 145, ch. 59, § 1; Acts 1943, 48th Leg., p. 59, ch. 53, § 1.]

Section 2 of the amendatory Act of 1941 provided that the Act should take effect and be in force from and after January 1, 1942, and the terms of Court for the 86th Judicial District should remain unchanged for the year 1941.

Section 2 of the Act of 1935 validated and regulated the return of processes, writs, bonds, recognizances and juries. Section 3 provided for continuance of a court in session when the act took effect. Section 5 repealed conflicting laws and parts of laws.

Section 4 read as follows: "Sec. 4. The County Attorney of Van Zandt County shall represent the State in criminal cases in said County and receive the same fees and compensation as is now provided by law for the County Attorney of Kaufman County."

87.—Anderson, Limestone, Freestone and Leon.

Section 1. That from and after the first day of July, A. D., 1939, the 87th Judicial District shall be composed of and confined to Anderson, Limestone, Freestone and Leon Counties, Texas, and the terms of the District Court in each of said counties shall be held therein each year as follows:

In Anderson County, on the first Monday in February and August, and shall continue for eight weeks.

In Limestone County, on the first Monday in May and November and shall continue five weeks.

In Freestone County, on the first Monday in January, April, July and October, and shall continue four weeks.

In Leon County, on the fifth Monday after the first Monday in May, and on the fifth Monday after the first Monday in November and may continue three weeks. [As amended Acts 1939, 46th Leg., p. 181, § 1.]

Sec. 2. The Judge of the 87th Judicial District now elected and acting as such, shall, after the passage of this Act, continue to hold the office of District Judge until the time for which he has been elected expires, and until his successor is duly elected and qualified.

Sec. 3. The Clerk of the District Court of each of the Counties of Anderson, Limestone, Freestone and Leon, and his successor in office, shall be the Clerk of the 87th Judicial District Court from and after the passage of this Act, in his respective county, until the time for which he has been elected expires, and until his successor is duly elected and qualified.

Sec. 4. The District Attorney of the 12th Judicial District now elected and acting, shall represent the State in all criminal and civil actions in which the State is interested, arising in the 87th Judicial District of Leon County, Texas.

In Anderson County, the District Attorney of the Third Judicial District now elected and acting, shall continue to represent the State in all criminal and civil actions in which the State is interested, arising in the 87th District Court of said County. In Freestone and Limestone Counties, the County Attorney of each county shall continue to represent the State in all criminal and civil actions in which the State is interested, arising in the 87th Judicial District in said counties respectively.

Sec. 5. That the District Court of the 87th Judicial District, shall have such jurisdiction and power as is conferred on District Courts under the Constitution and existing laws of Texas, and as shall be hereafter given by law.

Sec. 6. The Judge of the 12th Judicial District of Texas, may, in his discretion, either in term time or in vacation, by order entered upon the minutes of the District Court of Leon County, transfer any case or cases that may at that time be pending in said 12th Judicial District Court of that county, to the District Court of the 87th Judicial District, reorganized by this Act, and holding session in that county, and said 87th District Court shall have the same power and authority to try and finally dispose of such case or cases so transferred as the Court possessed from which the same were transferred; and the Judge of the 87th District Court may, in his discretion, either in term time or in vacation by order or orders entered upon the minutes of his Court, in Leon County, transfer any case or cases pending upon his docket to the District Court of the 12th Judicial District, holding sessions in Leon County, and when such case or cases are transferred, the Court in which the transfer is made shall have the same right and authority to try and finally dispose of same as was originally had by said 87th District Court. In all counties wherein there are two separate District Courts, under the provisions of this Act, either of the Judges of said Courts may in their discretion, either in term time, or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in said county, by order or orders entered upon the minutes of the Court making such transfer; and, when such transfer or transfers are made, the clerks of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and when so entered upon the docket the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally filed in said Court.

Sec. 7. Any party or persons desiring to bring a civil suit over which the District Court of the 12th Judicial District has jurisdiction in Leon County, shall have the right to file same either in said Court or in the 87th District Court, hereby reorganized, subject to the rights of the Judges of said Courts to transfer the same as herein provided.

Sec. 8. The District Clerk of Leon County shall, immediately upon taking effect of this Act, secure a seal having engraved thereon a star of five points in the center and the words, "87th District Court of Leon County, Texas," and the imprints of which shall be attached to all processes, issued out of said 87th District Court, except subpoenas out of said 87th District Court in said county, and shall be kept by said Clerk and used to authenticate his official acts as Clerk of said Court. [Acts 1939, 46th Leg., p. 176.]

Section 2 of the amendatory Act of 1939, 46th Leg., p. 181, read as follows: "All processes issued or served before this Act takes effect, including recognizances and bonds returnable to the District Court of any of the counties of said 87th Judicial District, shall be considered as returnable to said Court in accordance with the terms as prescribed in this Act, and all such processes are hereby legalized and all grand and petit juries as drawn and selected under the existing laws in any of the counties of said District, shall be considered lawfully drawn and selected, for the next term of the District Court of the respective counties, after this Act takes effect, and all such processes are hereby legalized and validated."

Sections 9 and 12 of Acts 1939, 46th Leg., p. 176, validated and regulated the return of processes, recognizances, bonds, and juries. Section 10 read as follows: "Nothing in this Act shall be construed as in any way affecting the process, term, jurisdiction or authority of the District Court of the 12th Judicial District of Texas, except as herein specially provided and especially conferred upon said 87th District Court hereby reorganized, and all process is-

sued in any case pending in the District Court of the 12th Judicial District shall be equally valid in any case or cases transferred to said 87th District Court."

Section 11 of Acts 1939, 46th Leg., p. 176, fixed the terms of the District Court in and for the several counties constituting the 12th Judicial District. See note to 12th District, ante.

Section 13 of the Act of 1939, p. 176, provided that any term in session under existing laws when the Act took effect should continue and end its term under existing laws, validated processes, writs and other proceedings during such time, and provided that thereafter the courts should conform to such act.

Section 14 of the Act of 1939, p. 176, repealed all laws or parts of laws in conflict with the provisions of that Act, and provided that the Act "shall take effect and be operative on and after the passage of this bill, and shall continue in force except as otherwise herein provided."

Section 15 of the Act of 1939, p. 176, provided "If any section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect."

Prior acts relating to the 87th Judicial District Court, see Acts 1935, 44th Leg., p. 422, ch. 171, amended by Acts 1935, 44th Leg., 1st C.S., p. 1546, ch. 374, § 1.

Anderson County, see, also, 3rd District, ante.

Leon County, see, also, 12th District, ante.

Limestone and Freestone Counties, see, also, 77th District, ante.

88 [1], 91.—Eastland.

Eighty-eighth District: On the first Mondays in January, March, May, July, September and November, and may continue until the business is disposed of.

Ninety-first District: On the first Mondays in February, April, June, August, October and December, and may continue until the business of the court is disposed of.

The District Courts of Eastland County shall have concurrent civil and criminal jurisdiction with each other in said county in matters over which the jurisdiction is given or shall be given by the Constitution and laws of Texas to district courts; provided, that no grand jury shall be impaneled in the Ninety-first District Court, except that by the special order of the judge of said court, a grand jury shall be called for said court.

Either of the judges in the said District Courts of Eastland County may, in his discretion, either in term time or in vacation, transfer any case or cases, civil or criminal, to the other of said district courts by order entered on the minutes of his court, or minutes or orders made in chambers as the case may be, which orders when made shall be copied and certified to by the clerk of said courts together with all orders made in said case, and such certified copies of such orders shall be filed among the papers of any case thus transferred, and the fees thereof shall be taxed as a part of the costs of said suit, and the clerk of said court shall docket any such case in the court to which it shall have been transferred, and when so entered, the court to which it shall have been transferred shall have like jurisdiction therein as in cases originally brought in said court, and the same shall be dropped from the docket of the court from which it was transferred; provided, that when there shall be a transfer of any case from one court to the other, as herein provided, on motion of either of the parties to said suit, notice must be given to either the opposite party, or his attorney, by the party making the motion to transfer, one week before the time of entering the order of transfer.

The district clerk of Eastland County shall be the clerk of the district court of said Ninety-first Judicial District, sitting in Eastland County.

The county attorney of Eastland County shall perform all the duties of county attorney and district attorney in both of said district courts and shall receive the same compensation for his services as is or may be fixed by law for a district attorney acting in judicial districts composed of two or more counties.

The clerk of the District Court of Eastland County shall file all suits in his office alternately in said Eighty-eighth and Ninety-first District Courts. [Acts 1919, p. 256; Acts 3rd C.S.1920, p. 57; Acts 1923, p. 143.]

[1] Abolished. Acts 1945, 49th Leg., p. 308, ch. 223, §§ 1-3, read as follows:

"Section 1. The 88th Judicial District and the District Court thereof are hereby abolished.

"Sec. 2. Any cases pending upon the docket of said court shall be transferred by the clerk to the docket of the District Court for the 91st Judicial District. The Judge of the District Court of the 88th Judicial District shall have authority and power after the abolishment of his court to approve any and all statements of fact, bills of exceptions, or make any other order necessary in cases tried in said court and appealed.

"Sec. 3. All processes and writs heretofore issued out of the District Court of said 88th Judicial District and returnable to said court are hereby made returnable to the District Court of the 91st Judicial District, and all bonds executed and recognizances entered in said District Court of the 88th Judicial District shall bind the parties for their appearances or to fulfill the obligations of such bonds and recognizances in the District Court of the 91st Judicial District; all processes heretofore returned, as well as all bonds and recognizances heretofore taken in the District Court for the 88th Judicial District shall be valid and made returnable to the next ensuing term of the 91st Judicial District; and the obligees in all appearance bonds and recognizances taken in and for the District Court of the 88th Judicial District, as well as all witnesses summoned to appear before the District Court for the 88th Judicial District, shall be required to appear at the next term of the District Court of the 91st Judicial District."

89.—See 30th District, ante.

Acts of 1920, 36th Leg., p. 17, ch. 12, created the 89th Judicial District in Wichita county. This act was omitted from Rev.Civ.St.1925, art. 199, and a cross-reference to 30th Judicial District inserted.

Wichita County, see, also, 78th District, ante.

90.—Stephens and Young.

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

In the County of Stephens, on the first Monday in January, March, May, July, September, and November, and may continue in session until Saturday immediately preceding the Monday for convening the next regular term of such Court in Stephens County.

In the County of Young on the first Monday in February, April, June, August, October, and December of each year and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such Court in Young County.

Any term of Court may be divided into as many sessions as the Judge thereof may deem expedient for the dispatch of business. [Acts 1921, p. 111; Acts 1923, p. 346; Acts 1941, 47th Leg., p. 1386, ch. 626, § 2.]

Section 2 of the Act of 1941 contained an additional provision validating processes, bonds, recognizances, and juries, and making them returnable to the terms therein fixed, and a provision that the District Judge and District Attorney then elected and acting should continue to hold their offices until their terms expired and their successors were elected and qualified.

Section 1 of such Act related to the 30th District, and sections 3 and 4 to the 97th District. See the note to District 30 concerning other sections of the Act.

This subdivision of this article in the Revised Civil Statutes of 1925 contained a provision that "the judge of said court may, in his discretion, have a grand jury drawn for and organized at any of said terms of court."

91.—See 88th District, ante.

92.—Hidalgo.

Sec. 2. This act shall be in effect from and after January 1, 1932; provided, that upon the taking effect of this act there shall be, and there is, created the Ninety-second Judicial District, the limits of which shall be co-extensive with limits of Hidalgo County.

(a) The district court of the Ninety-second Judicial District shall have and exercise the jurisdiction prescribed by the Constitution and laws of this State for

district courts in general, and the judge thereof shall have and exercise the powers conferred by the Constitution and laws of this State on the judges of district courts. Its jurisdiction shall be concurrent with that of the district court of Hidalgo county for the Ninety-first Judicial District[1]. From and after the effective date of this act the county attorney of Hidalgo county shall act as and perform the duties of district attorney for the Ninety-second and Ninety-third Judicial Districts.

(b) The terms of the district court, Ninety-second Judicial District, shall begin on the first Mondays, respectively, in January, 1932; March, 1932; May, 1932; September, 1932; November, 1932; and thereafter on the first Mondays of January, March, May, September and November of each year; and each term of said court may continue in session for eight weeks.

(c) In addition to the jurisdiction vested in the district court for the Ninety-second Judicial District under the Constitution and general laws of this State, said court shall have and exercise jurisdiction over all civil matters over which, by general law, the county court of Hidalgo county would have original jurisdiction, except as in this act otherwise specially provided.

(d) From and after the taking effect of this act, the county court of Hidalgo county shall cease to have or exercise any civil jurisdiction, except as hereinafter specified and enumerated, nor shall the judge thereof be restricted or deprived of any duties, rights or powers now vested in him or required of him by the general laws except the civil jurisdiction by this act transferred from said court to the district court of the Ninety-second Judicial District.

The county court of Hidalgo county, shall have and retain jurisdiction of all cases appealed from the justice courts, and the general jurisdiction of a probate court as provided by the Constitution and laws of this State, and the county court or the judge thereof shall have power to issue all writs necessary to the enforcement of the jurisdiction of said court in all matters the jurisdiction of which, by this act, is not transferred from said court to the district court of the Ninety-second Judicial District.

(e) The clerk of the district courts of Hidalgo county shall, upon the taking effect of this act assume the duties of clerk of the Ninety-second District Court, and shall thereafter perform the duties of such, as though the court had existed at the time of his election. He shall promptly prepare a docket for the Ninety-second District Court, placing thereon all cases then on file in the Seventy-ninth District Court, such cases as may be filed in the Ninety-second District Court, and such cases as may be transferred to said court.

(f) The letters "A" and "B" shall be placed upon the docket and court papers in the respective district courts of Hidalgo county to distinguish them; "A" being used in connection with the Ninety-second District Court, and "B" being used in connection with the Ninety-third District Court.

(g) All suits and proceedings hereafter instituted in the district courts of Hidalgo county shall be numbered consecutively beginning with the next number after the last file number on the docket of any existing court, and shall be entered upon the dockets of said courts in the same manner as provided in paragraph (f) of this section.

(j) The respective judges of the Ninety-third and Ninety-second Judicial Districts shall, from time to time, as occasion may require, transfer cases or other proceedings from one court to the other in order that business may be equally distributed between them, that the judges of both said courts may at all times be provided with cases, or other proceedings to be tried or otherwise considered, and that the trial of no case or other proceedings need be delayed because of the disqualifications of the judge in whose court it is pending; and the judges of such courts may, in their discretion, exchange benches or districts from time to time, and either of them may in his own court room try and determine any case or proceeding pending in the other court without having the case transferred, or may sit in the other court and there hear and determine any case pending, and every judgment and order shall be entered in the minutes of the court in which the case is pending, and at the time the judgment or order is rendered. The judge of either of said courts may issue restraining orders and injunctions returnable to the other judge or court. [Acts 1931, 42nd Leg., p. 876, ch. 370.]

1 Probably means 93rd District.

Section 1 of Act 1931 relates to the 79th judicial district.

Subsection (h) of section 2 of such act transferred cases then on the docket of the District Court of Hidalgo County for the 79th District to the District Court for the 92nd District, made processes and writs returnable to the District Court for the 92nd District, legalized such writs and processes, as well as judgments, orders and decrees, and specified the order of docketing transferred cases. Subsection (i) contained similar provisions concerning cases then on the docket of the county court of Hidalgo County and processes and writs issued out of that court. Subsection (k) read as follows:

"(k) The district judge and the district attorney of the Seventy-ninth Judicial District as of the effective date of this act shall continue to hold their offices until their successors shall have been elected and qualified, but the Governor, upon this act taking effect, shall appoint a suitable person possessing qualifications prescribed by the Constitution and laws of this State as judge of the district court of the Ninety-second Judicial District of Texas, as herein constituted, and such person shall hold said office until the next general election, and until his successor shall have been elected and qualified, and thereafter the judge of the district court of the Ninety-second Judicial District of Texas shall be elected as prescribed by the Constitution and laws of this State for the election of district judges. There shall be elected for four years by the qualified voters of Hidalgo county, beginning with the next general election after the taking effect of this act, a judge for the Ninety-second Judicial District of Texas, whose powers and duties shall be the same as other district judges, together with all the additional powers and duties prescribed by this act, and who shall receive such salary as is now or may hereafter be prescribed by law for district judges."

Hidalgo County, see, also, 93rd District, post.

93.—Hidalgo.

On the first Monday in January and may continue nine weeks; on the ninth Monday after the first Monday in January and may continue twelve weeks; on the twenty-first Monday after the first Monday in January, and may continue eight weeks; on the first Monday in September and may continue eight weeks; and on the eighth Monday after the first Monday in September and may continue to and including the last Saturday in December. [Acts 1923, p. 107.]

Acts 1925, 39th Leg., ch. 45, p. 182, § 3, reads as follows: "This Act shall not in any manner repeal or change Chapter 55 of the Acts of the Regular Session of the Thirty-eighth Legislature, Acts 1923, p. 107, cited above, creating the Ninety-third Judicial District of Texas and fixing the terms of holding district courts in the counties composing the Seventy-ninth Judicial District of Texas except to take Jim Hogg County out of said Seventy-ninth Judicial District and place it in said Forty-ninth Judicial District and to add two weeks each year to each of the two terms of the district courts to be held in Brooks County, and in all other respects the said Chapter 55 of said Acts of the Regular Session of the Thirty-eighth Legislature shall remain in force as originally enacted."

Hidalgo County, see, also, 92nd District, ante.

94.—Nueces.

Section 1. There is hereby created for and within Nueces County the 94th Judicial District of Texas, and a District Court for said Judicial District, the limits of which shall be coextensive with the limits of Nueces County.

Sec. 2. The District Court for the 94th Judicial District shall have and exercise the jurisdiction prescribed by the Constitution and the Laws of this State for District Courts in general, and the Judge thereof shall have and exercise the powers conferred by the Constitution and Laws of this State on the Judges of District Courts. Its jurisdiction shall be concurrent with that of the District Court of Nueces

County for the 28th Judicial District and District Court of Nueces County for the 117th Judicial District.

Sec. 3. The terms of the 94th District Court shall be held as follows: a term to be known as the January-July term shall begin on the first Monday in January of each year and shall continue to and including the Sunday preceding the first Monday in July of the same year, and a term to be known as the July-January term shall begin on the first Monday in July of each year and continue until and including the Sunday preceding the first Monday in January of the succeeding year. [Acts 1947, 50th Leg., p. 776, ch. 385, § 3.]

Sec. 4. The Clerk of the District Courts of Nueces County shall, upon the taking effect of this Act, assume the duties of Clerk of the 94th District Court, and shall thereafter perform the duties of such, as if the Court had existed at the time of his election. He shall promptly prepare a docket for the 94th District Court, placing thereon such cases as may be filed in said Court and as may be transferred to said Court; provided that no case then on trial in the 28th District Court of Nueces County or the 117th District Court of Nueces County nor any case pending on appeal therefrom shall be transferred to the docket of the Court created hereby.

Sec. 5. The letters "A", "B", and "C" shall be placed upon the dockets and Court papers in the respective District Courts of Nueces County to distinguish them, "A" being used in connection with the 28th District Court, "B" the 117th District Court, and "C" the 94th District Court.

Sec. 6. All suits and proceedings hereafter instituted in the District Courts of Nueces County shall be numbered consecutively, beginning with the next number after the last file number on the docket of the existing Courts, and shall be entered upon the dockets of said Courts in the same manner as provided in Section 5 of this Act.

Sec. 7. The respective Judges of the 28th, 117th, and 94th Judicial Districts shall from time to time, as occasion may require, transfer cases from one to another in order that the business may be equally distributed among them, that the Judges of all of said Courts may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the Judge in whose Court it is pending; provided, however, no case shall be transferred from one Court to another without the consent of the Judge of the Court to which it is transferred. When any transfer is made, proper order shall be entered on the Minutes of the Court as evidence thereof, and notice of the transfer shall be given in writing by the Clerk to the attorneys of record of all parties to the cause.

Sec. 8. This Act shall not, in any manner, affect the status of the Criminal District Court of Nueces County nor the Judge or District Attorney thereof.

Sec. 9. The Governor, upon this Act taking effect, shall appoint a suitable person possessing qualifications prescribed by the Constitution and Laws of this State as Judge of the District Court of the 94th Judicial District of Texas, as herein constituted, and such person shall hold said office until the next general election, and until his successor shall have been elected and qualified, and thereafter the Judge of the District Court of the 94th Judicial District of Texas shall be elected as prescribed by the Constitution and Laws of this State for the election of District Judges. [Acts 1941, 47th Leg., p. 104, ch. 84; Acts 1945, 49th Leg., p. 45, c. 28, § 1.]

Effective date of 1947 amendment, expiration of terms in session and repeal of conflicting laws, see sections 5 and 6 of the Act of 1947 set out in note under the 28th District, ante.

Section 4 of the Act of 1947, which provided for the election of a Presiding Judge and authorized the appointment of an Assignment Clerk in the 28th, 94th and 117th Judicial Districts, is incorporated in article 2093d.

Section 2 of the amendatory Act of 1945 repealed all laws or parts of laws in conflict herewith.

Former 94th Judicial District, consisting of Bexar county, was omitted by Acts 1935, 44th Leg., p. 499, ch. 210, § 1, amending subdivision 37 of this article.

Nueces County, see, also, 28th District, ante, and 117th District, post.

95.—See 14th District, ante.

96.—See 17th District, ante.

97.—Archer, Clay and Montague.

Section 1. The Counties of Archer, Clay and Montague shall hereafter constitute and be the Ninety-seventh Judicial District of the State of Texas, and the terms of the District Courts shall be held in said District as follows:

In Archer County on the first Monday in January; on the first Monday in April; on the first Monday in July; on the first Monday in October.

In Clay County on the first Monday in February; on the first Monday in May; on the first Monday in August; on the first Monday in November.

In Montague County on the first Monday in March; on the first Monday in June; on the first Monday in September; on the first Monday in December.

Each term of Court in each of such Counties shall continue until the date herein fixed for the beginning of the next succeeding term therein.

It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the time for the beginning of the next succeeding term therein, as provided for herein, but thereafter all Courts in said District shall conform to the requirements of this Act.

Sec. 2. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any county as is deemed proper and expedient for the dispatch of business. [Acts 1923, p. 145; Acts 1941, 47th Leg., p. 1386, ch. 626, § 3; Acts 1943, 48th Leg., p. 454, ch. 302; Acts 1945, 49th Leg., p. 107, ch. 75.]

Sections 3 and 4 of the Act of 1945, sections 3 and 4 of the Act of 1943, and section 5 of the Act of 1941, validated and regulated the return of processes, writs, bonds, recognizances and juries.

Section 5 of the Act of 1945, section 2 of the Act of 1943, and section 4 of the Act of 1941, all read as follows: "The County Attorneys of the respective Counties embraced within the Ninety-seventh Judicial District shall do and perform the duties of the County Attorneys and District Attorneys in their respective Counties and shall receive such fees for their services as are now or may hereafter be provided by law."

Section 6 of the Act of 1945, section 5 of the Act of 1943, and section 7 of the Act of 1941 repealed conflicting laws and parts of laws.

Section 7 of the Act of 1945, read as follows: "If any section, paragraph or provision of this Act be held or declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect."

Sections 1 and 2 of the Act of 1941 related to the 30th and 90th Districts. Section 7 made the Act effective Jan. 1, 1943.

98.—See 53rd Judicial District, ante.

99.—Lubbock.

Section 1. The terms of the District Court for the 99th Judicial District in and for Lubbock County shall be held as follows:

On the first Monday in January and July of each calendar year, and shall continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of said 99th District Court in Lubbock County, Texas. [Acts 1927, 40th Leg., p. 85, ch. 61, §§ 1, 2; Acts 1927, 40th Leg., 1st C.S., p. 72, ch. 22, § 2; Acts 1945, 49th Leg., p. 200, ch. 153, § 1.]

Section 2 of the Act of 1945 provided that processes issued, bonds and recognizances made and juries drawn before the act took effect should be valid and returnable to the term therein fixed. Section 3 read as follows: "If a section, paragraph or provision of this Act be held or declared unconstitutional or invalid for any reason, such

holding shall not in any manner affect the remaining sections, paragraphs and provisions of this Act, but the same shall remain in full force and effect. This Act shall not prevent the holding and closing under present laws of any term of court that may be in session when this Act takes effect."

Sections 3 and 6 to 8 of the Act of the Regular Session of 1927 read as follows:

"Sec. 3. The District Clerk of Lubbock County shall act as the District Clerk for the court herein created. Immediately upon this Act taking effect the District Judge of the 72nd Judicial District shall enter an order transferring a portion of the cases on the docket in said 72nd Judicial District Court in Lubbock County to the District Court of the 99th Judicial District herein created, and said District Clerk shall hereupon transfer such cases accordingly and enter the same upon the docket of said court created by this Act, together with all records and papers relating thereto.

"Sec. 6. The Governor shall appoint a judge for the district court of said district created by this Act possessing the qualifications prescribed by the Constitution and laws of this State, who shall hold said office until the next general election and until his successor shall have been elected and qualified and thereafter the judge of said court shall be selected as prescribed by the Constitution and laws of this State.

"Sec. 7. The district attorney in and for the 72nd Judicial District shall act also as the district attorney for the district court herein established and created.

"Sec. 8. The sheriff of Lubbock County shall perform the duties in connection with the court herein created as provided by law for sheriffs to perform in connection with district courts."

Sections 4 and 5 of such act validated and provided for the return of processes, writs, bonds, recognizances and juries.

Section 1 of the act of the called session of 1927 related to the 72nd district. Section 4, relating to the concurrent jurisdiction of the 72nd and 99th Districts, is set out as part of subdivision 72 of this article. See the note to that district as to section 3.

Lubbock County, see, also, 72nd District, ante.

100.—Carson, Hall, Donley, Collingsworth and Childress.

The 100th Judicial District of the State of Texas, shall be composed of the Counties of Carson, Hall, Donley, Collingsworth, and Childress, and the terms of the District Court shall be held therein each year as follows:

Carson County: Beginning on the First Monday of January of each year; and on the First Monday of August of each year.

Hall County: Beginning on the First Monday of February of each year; and on the first Monday of September of each year.

Donley County: Beginning on the First Monday of March of each year; and on the First Monday of October of each year.

Collingsworth County: Beginning on the First Monday of April of each year; and on the First Monday of November of each year.

Childress County: Beginning on the First Monday of May of each year; and on the First Monday of December of each year.

Each term of Court in each of such Counties shall continue until 10:00 a. m. of the Monday herein fixed for the beginning of the next succeeding term thereof. [Acts 1925, 39th Leg., p. 178, ch. 43, §§ 1–3; Acts 1934, 43rd Leg., 4th C.S., p. 42, ch. 13; Acts 1935, 44th Leg., p. 548, ch. 234, § 1; Acts 1943, 48th Leg., p. 30, ch. 28, § 1; Acts 1947, 50th Leg., p. 494, ch. 290, § 3.]

Sections 1 and 2 of the act of 1947 related to the 31st and 84th Judicial Districts. Sections 4–7 are set out in note under 31st District, ante.

Section 2 of the Act of 1935 and section 2 of the Acts of 1934 and 1925 each validated and regulated the return of processes, writs, bonds, recognizances and juries. Section 3 of each act provided that if the court should be in session when the act took effect it should continue and end its term under existing laws and all process, proceedings, etc., during that time should be valid and thereafter court should be held in conformity with the terms therein prescribed. Section 4 of each act repealed all conflicting laws and parts of laws.

101.—Dallas.

An additional district court is hereby created in and for Dallas County, the limits of which shall be coextensive with the limits of the county. The district shall be known as the One Hundred and First Judicial District.

Sec. 2. The One Hundred and First District Court shall not have or exercise any criminal jurisdiction, but in all other respects it shall have and exercise the jurisdiction prescribed by the Constitution and laws of the State for district courts in general, and the judge thereof shall have and exercise the powers conferred by the Constitution and laws of the State on the judges of district courts. Its jurisdiction shall be concurrent with that of the existing district courts of Dallas County.

Sec. 3. The terms of the One Hundred and First District Court shall begin on the first Mondays, respectively, in March ——— June ———, September ——— and December ——— of each year, and each term shall continue until the Sunday immediately preceding the date set for the beginning of the next term thereof.

Sec. 4. The Governor shall appoint a suitable person as judge for said One Hundred and First District Court, who shall hold his office until the next general election until his successor shall have been elected and qualified. Thereafter the judge of said court shall be elected as provided by the Constitution and laws of the State for the election of district judges.

Sec. 5. The clerk of the district courts of Dallas County shall, upon the taking effect of this Act, assume the duties of clerk of the One Hundred and First District Court and shall thereafter perform the duties of such position as if the court had existed at the time of his election. He shall promptly prepare a docket for the One Hundred and First District Court, placing thereon every fifth pending case on the respective dockets of the Fourteenth, Forty-fourth, sixty-eighth and Ninety-fifth District Courts, continuing in this manner through said dockets until all the cases thereon are exhausted and the dockets of the five courts are equalized as near as may be; provided, that no case then on trial in any of the existing district courts nor any case pending on appeal therefrom shall be transferred to the docket of the court created hereby. The cases so transferred shall bear the same docket numbers as in the court from which they are transferred, and the judges of the existing district courts, respectively, shall make proper orders transferring from said courts to the One Hundred and First District Court the cases which shall have been placed upon the docket of the latter court in pursuance of this Act.

Sec. 6. The letters A, B, C, D, and E shall be placed on the dockets and court papers in the respective district courts of Dallas County to distinguish them, A being used in connection with the Fourteenth District Court, B, the Forty-fourth District Court, C the Sixty-eighth District Court, D the Ninety-fifth District Court and E the One Hundred and First District Court.

Sec. 7. All suits, prosecutions and proceedings hereafter instituted in the district courts of Dallas County shall be numbered consecutively, beginning with the next number after the last file number on the dockets of the existing courts, and shall be entered by the district clerk upon the dockets of said courts alternately, beginning with the Fourteenth District Court; next, the Forty-fourth District Court, third, the sixty-eighth District Court, fourth, the Ninety-fifth District Court and fifth, the One Hundred and First District Court.

Sec. 8. The respective judges of the district courts of Dallas County shall from time to time, as occasion may require, transfer cases from any one of such courts to any other such court in order that the business may be equally distributed among them, that the judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the judge in whose court it is pending: provided, however, no case shall be transferred from one court to another without the consent of the judge

of the court to which it is transferred. When any transfer is made, proper order shall be entered on the minutes of the court as evidence thereof and notice of the transfer shall be given in writing by the clerk to the attorneys of record of all parties to the cause. [Acts 1925, 39th Leg., p. 210, ch. 61.]

Dallas County, see, also, 14th District, ante, and 116th District, post.

102.—Bowie and Red River.

The 102nd Judicial District of Texas shall be composed of the counties of Bowie and Red River; and the terms of the District Courts within said counties shall be held therein as follows:

In Red River County beginning on the first (1st) Monday in January and may continue in session for six (6) weeks; on the fourteenth (14th) Monday after the first (1st) Monday in January and may continue in session six (6) weeks; on the thirtieth (30th) Monday after the first (1st) Monday in January and may continue in session six (6) weeks; on the forty-second (42nd) Monday after the first (1st) Monday in January and may continue in session six (6) weeks.

In Bowie County beginning on the sixth (6th) Monday after the first (1st) Monday in January and may continue in session eight (8) weeks; on the twentieth (20th) Monday after the first (1st) Monday in January and may continue in session ten (10) weeks; on the thirty-sixth (36th) Monday after the first (1st) Monday in January and may continue in session six (6) weeks; on the forty-eighth (48th) Monday after the first (1st) Monday in January and may continue in session four (4) weeks.

The Clerk of the District Court in each of the said counties and his successor in office shall be the Clerk of the 102nd Judicial Court in said counties and shall perform all duties pertaining to the Clerkship of said Court.

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

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

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

The Judge and all district officers of the 102nd Judicial District as heretofore constituted shall be the Judge and district officers of the 102nd Judicial District as constituted and reorganized by this section during the terms for which they each respectively were elected. [Acts 1925, 39th Leg., ch. 16, p. 41, §§ 1–4; Acts 1933, 43rd Leg., p. 885, ch. 253; Acts 1933, 43rd Leg., Spec.L., p. 145, ch. 103; Acts 1935, 44th Leg., p. 406, ch. 158; Acts 1937, 45th Leg., p. 268, ch. 141, § 1.]

Section 2 of the amendatory Act of 1937 and section 11 of the Act of 1925 repealed all conflicting laws and parts of laws.

Section 2 of the amendatory Act of 1935, and section 2 of each of the Acts of 1933, validated and regulated the return of outstanding processes, writs, bonds and recognizances, and juries theretofore drawn and selected.

Section 5 of the Act of 1925 related to the 6th District.

Sections 6 to 9 read as follows:

"§ 6. Processes issued in Red River County returnable to the district court of the Sixth Judicial District of Texas shall be returnable to the district court of the One Hundred and Second Judicial District hereby created and all causes of action, both civil and criminal, pending in the district court of the Sixth Judicial District in Red River County at the time of the taking effect of this Act is hereby transferred to the One Hundred and Second Judicial District hereby created in Red River County.

"§ 7. The district court hereby created shall have jurisdiction over all matters both civil and criminal over which district courts are given jurisdiction by the Constitution and laws of this State in Red River County; and shall have concurrent jurisdiction in Bowie County with the district court of the Fifth Judicial District in all civil and criminal matters over which the said Fifth Judicial district now has jurisdiction under the Constitution and laws of this State, provided that the judge of the One Hundred and Second Judicial District shall never impanel a grand jury in Bowie County unless in his judgment he thinks it necessary.

"§ 8. The district attorney of the Sixth Judicial District shall prosecute all criminal cases in the One Hundred and Second Judicial District Court while sitting in Red River County until the expiration of his present term of office and thereafter the county attorney of Red River County shall prosecute all criminal cases in the district court of the One Hundred and Second Judicial District and shall represent the State in all matters wherein the State is a party and shall receive such fees for his services as is now, or may be hereafter provided by General Laws of the State of Texas.

"§ 9. The judge of the Fifth Judicial District of Texas for Bowie County is hereby authorized, either in term time or vacation, to transfer any civil or criminal case pending on the dockets of the Fifth Judicial District of Texas in Bowie County, Texas, to the One Hundred and Second Judicial District hereby created, and in like manner the judge of the One Hundred and Second Judicial District hereby created is hereby authorized, either in term time or vacation, to transfer to the district court of the Fifth Judicial District of Texas in Bowie County, Texas, any civil or criminal case pending on the dockets of the district court of the One Hundred and Second Judicial District in said county."

Section 10 provided that the unconstitutionality of any one section should not affect other sections.

Bowie County, see, also, 5th District, ante.

Changing jurisdiction of county court affecting District Court of Bowie County, see article 1970—306.

Changing jurisdiction of county court affecting district court of Red River County, see article 1970—314.

103.—Cameron and Willacy.

(a) The One Hundred and Third Judicial District of Texas shall be composed of Willacy and Cameron Counties; the terms of the District Court shall be held therein each year as follows:

In the County of Willacy on the first Mondays in January and June.

In the County of Cameron on the first Mondays in February and July.

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

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

(c) All processes issued, bonds and recognizances made and all Grand and Petit Juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the Counties as herein fixed as though issued and served for such terms and returnable to and drawn from the same.

(d) It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all Courts in said District shall conform to the requirements of this Act. [Acts 1925, 39th Leg., ch. 79, p. 243; Acts 1943, 48th Leg., p. 296, ch. 191, § 1.]

Other provisions of section 1 of the act of 1925 constitute District 28 of this article. See the note to that District concerning sections 2 and 3.

Acts 1945, 49th Leg., p. 472, ch. 300, § 1, purports to amend sections 28, 103 and 107 of this article and all amendments thereto, "so as to renumber the same and

hereafter read as follows." It provides, however, that nothing therein shall affect the present terms of the 103rd District. See 107th District, post.

Criminal District Court, see 28th District, ante.
Willacy and Cameron Counties, see, also, 107th District, post.

104.—Jones, Fisher and Taylor.

The One Hundred and Fourth Judicial District of the State of Texas is composed of the Counties of Jones, Fisher, and Taylor, and the District Courts and the terms thereof in said Counties shall be held in said Counties as follows:

Said Court shall convene in Jones County on the first Monday in January of each year and may continue in session seven (7) weeks, on the 15th Monday after the first Monday in January, and may continue in session six (6) weeks; and on the first Monday in September and may continue in session six (6) weeks.

Said Court shall convene in Fisher County on the seventh Monday after the first Monday in January of each year and may continue in session three (3) weeks, and on the 21st Monday after the first Monday in January and may continue in session three (3) weeks; and on the sixth Monday after the first Monday in September, and may continue in session three (3) weeks.

Said Court shall convene in Taylor County on the 11th Monday after the first Monday in January of each year, and may continue in session four (4) weeks; and on the 24th Monday after the first Monday in January and may continue in session six (6) weeks; and on the 9th Monday after the first Monday in September and may continue in session seven (7) weeks. [Acts 1927, 40th Leg., p. 44, ch. 32, § 2; Acts 1929, 41st Leg., p. 467, ch. 217, § 2; Acts 1939, 46th Leg., p. 182, § 1.]

Sec. 5. It shall be the duty of the Commissioners' Court of Taylor County to provide in the county courthouse of said county, suitable quarters for holding the terms of court of said 104th Judicial District of Texas, in Taylor County, as well as suitable quarters for the officers of said Court. [Acts 1927, 40th Leg., p. 44, ch. 32.]

Sec. 7. The District Clerk of Taylor County shall act as clerk of the newly created 104th Judicial District of Texas, in Taylor County, as well as the 42nd Judicial District of Texas, and in filing civil suits, said clerk shall file same alternately in said two district courts and in numbering all suits in each of said courts, said clerk shall place after all numbers of all suits which are filed after this Act takes effect; the letters A or B, so as to distinguish causes pending in said two courts, placing after the number of all suits filed in said 42nd District Court the capital letter A, and placing after the number of all suits filed in said 104th District Court the capital letter B. [Acts 1927, 40th Leg., p. 44, ch. 32.]

Sec. 8. The 42nd Judicial District of Texas and the 104th Judicial District of Texas, and the courts of said Judicial Districts in and for Taylor County, shall have concurrent civil and criminal jurisdiction with each other in said county in all matters over which jurisdiction is given or shall be hereafter given by the Constitution and laws of this State to district courts. Either of the judges of said district courts for Taylor County may in their discretion, in term time or in vacation transfer any case or cases, civil or criminal, to said other district court by order entered on the minutes of his court from which said case is transferred or minutes or orders made in chambers as the case may be, which orders, when made, shall be copied and certified to by the district clerk of Taylor County together with all orders made in said case and such certified copies of such orders, together with the original papers, shall be filed among the papers of any case thus transferred, and the fees thereof shall be taxed as a part of the costs of said suit, and the clerk of said court shall docket any such case in the court to which it shall have been transferred, and when so entered the court to which same shall have been thus transferred shall have like jurisdiction therein as in cases originally brought in said court, and the same shall be dropped from the docket of the said court from which it was transferred. [Acts 1927, 40th Leg., p. 44, ch. 32.]

Sec. 9. In Taylor County, the District Attorney of the 42nd Judicial District shall represent the State in all criminal cases, including habeas corpus cases, which are tried by the Judge of said 42nd Judicial District, or by any regular or special judge presiding for him in said county. Likewise in said county of Taylor, the District Attorney of the 104th Judicial District shall represent the State in all criminal cases, including habeas corpus cases, which are tried by the Judge of said 104th Judicial District, or by any regular or special judge presiding for him in said county. Provided that the District Attorney of the 42nd Judicial District may, upon request of the District Attorney of the 104th District assist the said district attorney in the trial of any criminal case or habeas corpus case pending in the District Court of said 104th Judicial District in Taylor County, and likewise the District Attorney of the 104th Judicial District may upon request of the District Attorney for the 42nd Judicial District assist said district attorney in the trial of any criminal case, or habeas corpus case, pending in the District Court of said 104th Judicial District in Taylor County, and in all such cases the district attorney assisting shall receive the same compensation for such services as is now provided by law for such services in the district for which he was elected, but nothing herein shall be construed as limiting the authority of the district attorneys of the two districts from having absolute control and management of criminal cases and habeas corpus cases which are tried in their respective courts. [Acts 1927, 40th Leg., p. 44, ch. 32.]

Taylor County, see also, 42nd District, ante.
Section 2 of the Act of 1939 and section 3 of the Act of 1929, validated and regulated the return of process issued or served before the act took effect and juries drawn and selected under existing laws.
Section 3 of the amendatory Act of 1939, and section 4 of the Act of 1929 repealed all conflicting laws and parts of laws.
Section 4 of the Act of 1939 and section 5 of the Act of 1929 specified the date when the Act should become effective.
Section 1 of the Act of 1929 related to the 42nd District.
Section 1 of the Act of 1927 specified the counties and terms of court in the 39th District. See note to that District concerning sections 3, 4, 6 and 10.

105.—No 105th Judicial District.

106.—Terry, Lynn, Garza, Dawson, Gaines and Yoakum.

The One Hundred and Sixth Judicial District shall be composed of the Counties of Terry, Lynn, Garza, Dawson, Gaines, and Yoakum, and the terms of the District Courts of each of said Counties shall be hereafter held therein each year as follows:

In the County of Terry beginning on the first Monday in January and on the fourth Monday in August, and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such Court in Terry County.

In the County of Lynn beginning on the fourth Monday after the first Monday in January and on the first Monday after the fourth Monday in August, and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such Court in Lynn County.

In the County of Garza beginning on the eighth Monday after the first Monday in January and on the fourth Monday after the fourth Monday in August, and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such Court in Garza County.

In the County of Dawson beginning on the twelfth Monday after the first Monday in January and on the seventh Monday after the fourth Monday in

August, and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such Court in Dawson County.

In the County of Gaines beginning on the sixteenth Monday after the first Monday in January and on the tenth Monday after the fourth Monday in August, and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such Court in Gaines County.

In the County of Yoakum beginning on the twentieth Monday after the first Monday in January and on the thirteenth Monday after the fourth Monday in August, and may continue in session until the Saturday immediately preceding the Monday for convening the next regular term of such Court in Yoakum County.

Any term of court may be divided into as many sessions as the Judge thereof may deem expedient for the dispatch of business.

All process issued or served, bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the District Courts of the several Counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same. [Acts 1925, 39th Leg., p. 250, ch. 80, §§ 2–5; Acts 1941, 47th Leg., p. 529, ch. 325, § 1.]

Section 1 of the Act of 1925 related to the 72nd District. Section 6 repealed conflicting laws and parts of laws.

107.—Willacy and Cameron.

On the effective date of this Act, the Criminal District Court of Nueces, Kleberg, Kenedy, Willacy and Cameron Counties shall become a Court of general jurisdiction, with the jurisdiction provided by the Constitution and Laws of the State of Texas for District Courts, and shall be composed of the Counties of Willacy and Cameron, and thenceforth be known as the 107th Judicial District of Texas; and shall have concurrent jurisdiction with the 103rd Judicial District Court within said two Counties; provided that the 107th District Court shall give preference to criminal cases. The 103rd Judicial District Court shall be a Court of general jurisdiction, with the jurisdiction provided by the Constitution and Laws of the State of Texas, and shall continue to be composed of the Counties of Willacy and Cameron, but shall give preference to civil cases and shall not, except in cases of emergency, be required to empanel Grand Juries.

Sec. 2. All cases upon the docket of the Criminal District Court of Nueces, Kleberg, Kenedy, Willacy and Cameron Counties, in the Counties of Nueces, Kleberg and Kenedy, shall, on the effective date of this Act, be transferred by the District Clerks of said Counties to the docket of the 28th District Court, and the Judge of said 28th District Court to which said cases shall be transferred, shall thereafter have power, authority, and jurisdiction to try such cases so transferred to such Court, and in addition to approve all statements of fact, bills of exception, and to make any and all orders, decrees and judgments proper and necessary in any case theretofore tried by the said Criminal District Court above named, within said Counties; provided that any such action or actions be taken within the same time limits that would have governed the Judge of the Court from which said cause or causes were transferred.

Sec. 3. All cases upon the docket of the Criminal District Court of Nueces, Kleberg, Kenedy, Willacy and Cameron Counties in the Counties of Cameron and Willacy, shall, on the effective date of this Act, be considered as on file in the 107th District Court, as herein denominated, and the Judge of said 107th District Court, as herein denominated shall have power, authority, and jurisdiction to try all such cases, and in addition, to approve all statements of fact, bills of exception, and to make any and all orders, decrees, and judgments proper and necessary in any cases theretofore tried by the said Criminal District Court, hereinabove named, within said two Counties; provided, that any such action or actions be taken within the same time limits that would have governed the Judge of the Court from which said cause or causes were transferred.

Sec. 4. After the effective date of this Act, the District Attorney for the Criminal District Court for Nueces, Kleberg, Kenedy, Willacy and Cameron Counties shall serve the 28th Judicial District Court as designated by this Act, and shall thenceforth be known as the District Attorney for the 28th Judicial District of Texas, and at the next general election such office shall be filled by the election of a District Attorney for the 28th Judicial District of Texas for the Counties of Nueces, Kleberg and Kenedy, said office to be voted upon by the qualified voters of said three named Counties only.

The County Attorneys of Willacy and Cameron Counties shall, respectively, from and after the effective date of this Act, represent the State of Texas in all matters now handled by the above mentioned District Attorney for the above mentioned Criminal District Court within said respective Counties.

Sec. 5. Each term of Court within the 107th Judicial District shall begin on the first Mondays of January and July of each year, respectively, and may continue until the beginning of the succeeding term. The Judge of the 107th Judicial District Court, at his discretion, may hold as many sessions of Court in any term of the Court in either County in his district as may be deemed by him proper and expedient for the disposition of the Court's business, and the jurors therefor may be summoned to appear before such District Court at such times as may be designated by the Judge thereof.

Sec. 6. Nothing contained in this Act shall affect the present terms of the 28th and the 103rd Judicial District Courts but said terms shall continue as now provided by law for said respective Courts.

Sec. 7. In any County which is situated within two (2) Judicial Districts and in which the County Attorney of such County is performing the duties of a District Attorney, as well as those of a County Attorney, and in which Counties the office of District Attorney, or the office of Criminal District Attorney has been abolished since the enactment of Section 13, Article 3912—e, Revised Civil Statutes of Texas, Acts 1939, Forty-sixth Legislature, Special Laws, page 608, section 1, the Commissioners Court of any such County is hereby authorized, at their discretion, to pay to such County Attorney so performing such duties of District Attorney, as compensation, over and above the salary which such County Attorney draws as County Attorney, a sum not to exceed the amount of Twelve Hundred Dollars ($1200) per annum, such additional compensation to be paid in twelve (12) equal monthly instalments. [Acts 1945, 49th Leg., p. 472, ch. 300, § 1.]

The first paragraph of section 1 of Acts 1945, 49th Leg., p. 472, ch. 300, relates to the 28th Judicial District only and is set out thereunder.

Sections 2–4 of the Act of 1945, read as follows:

"Sec. 2. This Act shall take effect and be in operation on and after the first day of January, A. D. 1947.

"Sec. 3. If any paragraph, sentence, clause, section, or provision of this Act shall be held to be invalid or unconstitutional, the validity of other portions of this Act shall not be affected thereby, but shall remain in force and effect.

"Sec. 4. On the effective date of this Act, all laws and parts of laws in conflict herewith, are hereby repealed, in so far as such conflict is concerned."

See, also, note under 28th District, ante.

Former Criminal District Court. Acts 1925, 39th Leg., p. 244, ch. 79, § 1, establishing a Criminal District Court for the counties of Nueces, Kleberg, Kenedy, Willacy and Cameron, read as follows:

"1. There is hereby continued as established for the counties of Nueces, Kleberg, Kenedy, Willacy and Cameron a criminal district court, which shall have and exercise all of the criminal jurisdiction now vested in and exercised by the district court of the Twenty-eighth Judicial District

of Texas, and said Criminal District Court shall try and determine all causes for divorce between husband and wife and adjudicate property rights in connection therewith in said counties, and try and determine all causes for the collection of delinquent taxes and the enforcement of liens for the collection of same. All appeals from the judgments of said courts shall be to the Court of Criminal Appeals, except appeals in divorce cases and suits for the collection of delinquent taxes, which shall be to the Court of Civil Appeals under the same rules and regulations as now or may hereafter be provided by law for the appeals in civil cases from district courts.

"2. From and after the time when this Act shall take effect, the District Court of the Twenty-eighth Judicial District composed of the counties of Nueces, Kleberg and Kenedy, and the District Court of the One Hundred and Third Judicial District Court, composed of the counties of Willacy and Cameron, shall cease to have and exercise any criminal jurisdiction in either of said counties, and shall cease to have and exercise any jurisdiction of divorce cases in either of said counties, and shall cease to have and exercise any jurisdiction of suits for the collection of any delinquent taxes or the enforcement of liens for same.

"3. The judge of said Criminal District Court for the counties of Nueces, Kleburg [Kleberg], Kenedy, Willacy and Cameron shall be elected by the qualified voters of said counties, for a term of four years, and shall hold his office until his successor shall have been duly elected and qualified. He shall possess the same qualifications as are required of the judge of the district court, and shall receive the same salary as is now or may hereafter be paid to district judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in or exercised by district judges in criminal cases. The judge of said court may exchange with any district judge, as provided by law in cases of district judges; and in case of disqualification or absence of the judge, a special judge may be selected or appointed as provided by law in cases of district judges; the judge of said criminal district court shall be and remain judge of said court as provided in this Act, until the expiration of his term of office to which he was elected, and until his successors shall have been elected and qualified.

"4. The sheriff and clerk of the district court of Nueces county, as now provided by law, shall be the sheriff and clerk, respectively, of said criminal district court of Nueces county; and the sheriff and clerk of the district court of Kleberg County, as now provided by law, shall be the sheriff and clerk, respectively, of the criminal district court of Kleberg County; and the sheriff and clerk of the district court of Kenedy County, as now provided by law, shall be sheriff and clerk, respectively, of the criminal district court of Kenedy County; and the sheriff and clerk of the district court of Willacy County, as now provided by law, shall be the sheriff and clerk, respectively, of the criminal district court of Willacy County; and the sheriff and clerk of the district court of Cameron County, as now provided by law, shall be sheriff and clerk, respectively, of the criminal district court of Cameron County; and the district attorney of the said criminal district court elected and now acting for said district, shall be district attorney for said criminal district court in the counties of Nueces, Kleberg, Kenedy, Willacy and Cameron, and shall hold his office until the time for which he has been elected district attorney for the said criminal district court of Texas shall expire, and until his successor is duly elected and qualified; and there shall be elected for two years, beginning with the next general election after this Act takes effect, a district attorney for said criminal district court, whose power and duties shall be the same as other district attorneys; and said clerk, sheriff and district attorney shall, respectively, receive such fees and salaries as are now or may hereafter be prescribed by law for such officers in the district courts of the State of Texas, to be paid in the same manner.

"5. Said criminal district court shall have a seal in like design as the seal now prescribed by law for district courts, except for Nueces County, the words 'Criminal District Court of Nueces County, Texas' shall be engraved around the margin thereof; and for Kleberg County, the words 'Criminal District Court of Kleberg County, Texas' shall be engraved around the margin thereof; and for Kenedy County, the words 'Criminal District Court of Kenedy County, Texas' shall be engraved around the margin thereof; and for Willacy County, the words 'Criminal District Court of Willacy County, Texas' shall be engraved around the margin thereof; and for Cameron County, the words 'Criminal District Court of Cameron County, Texas' shall be engraved around the margin thereof.

"6. The terms of said criminal district court shall be held in said district each year as follows:

"In the county of Kenedy, on the first Monday in January of each year, and may continue in session one week, and on the tenth Monday after the first Monday in August of each year, and may continue in session two weeks.

"In the county of Willacy, on the first Monday after the first Monday in January of each year, and may continue in session three weeks; and on the second Monday after the first Monday in August of each year, and may continue in session for two weeks.

"In the county of Cameron on the sixth Monday after the first Monday in January of each year, and may continue in session ten weeks; and on the fourth Monday after the first Monday in August of each year, and may continue in session six weeks.

"In the county of Kleberg, on the fourth Monday after the first Monday in January of each year, and may continue in session two weeks; and on the first Monday in August of each year, and may continue in session two weeks.

"In the county of Nueces, on the sixteenth Monday after the first Monday in January of each year, and may continue in session six weeks; and on the twelfth Monday after the first Monday in August, of each year, and may continue in session nine weeks.

"7. The trials and proceedings in said criminal district court shall be conducted in criminal cases according to the laws governing pleadings, practice and proceedings in criminal cases in the district courts.

"The judge of the said criminal district court as heretofore existing, shall be and remain judge of said court as provided in this Act, until the expiration of his term of office to which he was elected, and until his successor is elected and qualified as now provided by law.

"8. A grand jury shall be drawn and selected for each term of said criminal district court held in Nueces, Kleberg, Kenedy, Willacy and Cameron Counties in the manner now provided by law, and all grand and petit jurors for criminal cases drawn and selected for the said criminal district court under existing laws at the time this Act takes effect, shall be as valid as if no change had been made, and the persons constituting such juries shall be required to appear and serve at the next ensuing terms of said courts as fixed by this Act, and their acts shall be as if they had served as jurors in the court for which they were originally drawn, and all laws regulating the selection, summoning and impaneling of grand and petit jurors in the district court shall govern said criminal district court, and jury commissioners shall be appointed for drawing juries for said court as is now or may hereafter be required by law in district courts, and under like rules and regulations."

Willacy and Cameron Counties, see also, 103rd District.

103.—Potter.

Sec. 1. The One Hundred and Eighth Judicial District shall be composed of the County of Potter, and the terms of said Court in said County shall be held as follows:

On the first Mondays in January, May and September of each year.

Each term of said Court may continue until the date herein fixed for the beginning of the next succeeding term thereof.

Sec. 2. The Judge of said Court may, in his discretion, hold as many sessions of said Court as is deemed by him proper and expedient for the dispatch of business.

Sec. 3. All processes issued and made returnable to a regular term of said Court as now fixed by law and all petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of said Court as herein fixed as though issued and served for such term and returnable to and drawn for the same.

Sec. 4. It is further provided that if said Court shall be in session at the time this Act takes effect, it shall continue in session until the time for the beginning of the next succeeding term as provided for herein, but thereafter it shall conform to the requirements of this Act.

Sec. 5. All laws and parts of laws in conflict herewith are hereby in all things repealed. [Acts 1927, 40th Leg., p. 10, ch. 7, § 2; Acts 1934, 43rd Leg., 2nd C.S., p. 98, ch. 42, § 1; Acts 1943, 48th Leg., p. 330, ch. 211, § 1.]

The amendatory Act of 1943 amends the Act of 1927, as amended by the Act of 1934, "also referred to as subdivision 108 of Article 199 of the Revised Civil Statutes." The Act of 1927 related to the 47th and 108th Districts. It is amended, so far as it relates to the 47th District, by Acs 1943, 48th Leg., p. 331, ch. 212, § 1.

Potter County, see also, 47th District, ante.

109.—Reeves, Ward, Winkler, Crane, Andrews and Loving.

The One Hundred and Ninth Judicial District of Texas shall be composed of the Counties of Reeves, Ward, Winkler, Crane, Andrews, and Loving, and the terms of District Court shall be held therein each year as follows:

In the County of Reeves on the first Monday in January of each year; on the fifteenth Monday after the first Monday in January of each year; and on the

first Monday in September of each year; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such county.

In the County of Ward on the Fourth Monday after the first Monday in January of each year; on the nineteenth Monday after the first Monday in January of each year; and on the fourth Monday after the first Monday in September of each year; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such county.

In the County of Winkler on the eighth Monday after the first Monday in January of each year; on the twenty-third Monday after the first Monday in January of each year; and on the eighth Monday after the first Monday in September of each year; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such county.

In the County of Crane on the eleventh Monday after the first Monday in January of each year; on the twenty-sixth Monday after the first Monday in January of each year; and on the eleventh Monday after the first Monday in September of each year; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such county.

In the County of Andrews on the thirteenth Monday after the first Monday in January of each year; on the twenty-eighth Monday after the first Monday in January of each year; and on the thirteenth Monday after the first Monday in September of each year; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such county.

In the County of Loving on the fourteenth Monday after the first Monday in January of each year; on the thirtieth Monday after the first Monday in January of each year; and on the fourteenth Monday after the first Monday in September of each year; and each such term of court may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such county. [Acts 1929, 41st Leg., p. 50, ch. 19, § 2; Acts 1933, 43rd Leg., p. 371, ch. 145, § 3; Acts 1943, 48th Leg., p. 43, ch. 40, § 1.]

Section 2 of the amendatory Act of 1943 provided that the judge might hold as many sessions of court in any term of the court as was deemed by him proper and expedient for the dispatch of business.

Section 3 validated processes issued, bonds and recognizances made and juries drawn before the act took effect and made them returnable to the next succeeding terms of court as therein fixed.

Section 4 provided that if any court should be in session when the act took effect such court or courts should continue in session until the term thereof expired under existing laws, but thereafter all courts should conform to the requirements of the Act.

Sections 1 and 2 of the amendatory Act of 1933 related to the 32nd and 70th Districts. Sections 4 and 5 were similar to sections 3 and 4 of the Act of 1943.

Section 1 of the Act of 1929 related to the 70th District. Section 3 provided that the judge of the 70th District should be judge of that District until his term expired and the district attorney of the 70th District should be the district attorney of the 109th District until the next general election. Section 4 provided for the appointment of a judge of the 109th District and a district attorney for the 70th District. Section 5 provided for the election of a district attorney at the next general election and each two years thereafter. Sections 5 and 6 were similar to sections 3 and 4 of the Act of 1943.

Section 6 of the Act of 1933 and section 8 of the Act of 1929 repealed conflicting laws and parts of laws.

110.—Briscoe, Floyd, Motley and Dickens.

(a) The One Hundred and Tenth Judicial District of Texas shall be composed of Briscoe, Floyd, Motley and Dickens Counties; the terms of the District Court shall be held therein each year as follows:

In the County of Briscoe on the first Mondays in January and June.

In the County of Floyd on the first Mondays in February and July.

In the County of Motley on the first Mondays in March and August.

In the County of Dickens on the first Mondays in April and November.

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

(b) The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any county as is deemed proper and expedient for the dispatch of business.

(c) All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn from the same.

(d) It is further provided that if any Court in any county of said district shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all Courts in said district shall conform to the requirements of this Act. [Acts 1929, 41st Leg., p. 39, ch. 14; Acts 1929, 41st Leg., p. 385, ch. 175, § 1; Acts 1943, 48th Leg., p. 121, ch. 91, § 1.]

Sections 1 to 5 of chapter 14 of the Acts of 1929 created the 110th District and specified the terms of court. Section 6, as amended by section 1 of chapter 175, provided for the appointment of a judge and district attorney, and validated and regulated the return of subpoenas, writs, process, bonds, recogizances and juries, sections 7 to 13 related to the 50th and 64th Districts.

111.—Webb.

Sec. 1. The 111th Judicial District of Texas is hereby created to be composed of the County of Webb in the State of Texas, and a District Court is established therein to be known as the District Court of Webb County, Texas, in and for the 111th Judicial District of Texas.

Sec. 2. The District Court hereby created shall have jurisdiction over all matters, both Civil and Criminal, over which the District Courts of this State are given jurisdiction by the Constitution and laws of this State, and shall have concurrent jurisdiction in Webb County, Texas, with the District Court of Webb County, Texas, in and for the 49th Judicial District of Texas in all Civil and Criminal matters over which the said 49th District Court now has jurisdiction under the Constitution and laws of this State; provided that the Judge of the 111th District Court shall never impanel a grand jury unless in his judgment he thinks it necessary to do so.

Sec. 3. The terms of the 111th District Court hereby created shall begin on the first Mondays, respectively, in January, March, May, July, September and November of each year, and each term may continue in session until the Sunday immediately preceding the date for the beginning of the next term thereof as provided in this Section.

Sec. 4. The Clerk of the District Court of Webb County in and for the 49th Judicial District shall, upon the taking effect of this Act, in addition to the duties now performed by him as Clerk of said 49th District Court, assume the duties of Clerk of said 111th District Court and said Clerk shall thereafter be known and designated as Clerk of the District Courts of Webb County, Texas, and shall perform the duties of Clerk of said 49th District Court and said 111th District Court, and said Clerk shall thereupon promptly prepare a docket for the 111th District Court, placing upon said docket all Civil cases, ex-

cept tax suits, pending on the docket of said 49th District Court up to and including No. 8000, and also place on the docket of said 111th District Court all Civil cases pending in said 49th District Court in which the Judge of said latter Court shall have entered his disqualification, and also place on said docket every odd numbered Civil case, except tax suits, then pending on the docket of said 49th District Court following Cause No. 8000 on docket thereof; provided, however, that no case then on trial in said 49th District Court nor any case pending on appeal from said latter Court shall be transferred to the docket of the said 111th District Court. The cases to be so transferred shall bear the same docket numbers in the 111th District Court as they now bear in the 49th District Court, and the Judge of the 49th District Court shall make proper orders transferring the said cases from said latter Court to the 111th District Court.

Sec. 5. After the organization of the 111th District Court and the transfers of cases have been made as herein provided, then all Civil cases, except tax suits, thereafter be[1] filed with the Clerk of said District Courts shall be noted and listed upon one file docket to be kept by said Clerk to be known as the Clerk's Civil File Docket and such cases shall be numbered consecutively, and each Civil case, except tax suits, so filed shall be assigned to and docketed in the Court designated by the attorney filing the same. The Clerk shall keep a separate file docket for Criminal cases, to be known as the Clerk's Criminal File Docket and a separate file docket for tax suits to be known as the Clerk's Tax Suit Docket, and all Criminal cases and tax suits shall be by the Clerk filed and docketed in the 49th District Court. The cases on the Clerk's Tax Suit File Docket shall bear a separate series of numbers and shall be numbered consecutively. The cases on the Clerk's Criminal File Docket shall bear a separate series of numbers and shall be numbered consecutively.

Sec. 6. The sheriff of Webb County, Texas, and all other officers shall, in addition to the duties now performed by them, perform the duties in connection with the 111th District Court as provided by law for sheriffs and other officers to perform in connection with District Courts, and the Judge of the 111th District Court shall appoint some legally qualified person as official shorthand reporter for said Court and such person shall hold his office at the pleasure of the Court and shall be entitled to the same fees and salary and perform the same duties and take the same oath as now or may hereafter be provided by the General Laws of this State relating to stenographers for District Courts in this State.

Sec. 7. The District Attorney of the 49th Judicial District of Texas shall, in addition to the duties now performed by him, prosecute all Criminal cases that may be filed in or transferred to the 111th District Court, and he shall also represent the State in said latter Court in all matters where the State is a party and he shall receive such fees for his services as are now or may hereafter be provided for district attorneys by the General Laws of the State of Texas.

Sec. 9. The Judge of the 49th District Court in his discretion is hereby authorized upon his own motion or upon the motion of any party, either in term time or vacation, to transfer any Civil or Criminal case pending in Webb County on the dockets of the 49th District Court to the 111th District Court, and in like manner the Judge of the 111th District Court in his discretion is hereby authorized upon his own motion or upon the motion of any party, either in term time or vacation, to transfer to the 49th District Court any Civil or Criminal case pending on the dockets of the 111th District Court, and when any such transfer is made, proper orders shall be entered on the Minutes of the Court from which the case is transferred as evidence of such transfer and notice of the transfer shall be given in writing by the Clerk to the attorneys of record of all parties to said cause, and in all cases pending on the dockets of either of said Courts, in which the Judge of said Court has entered or may enter his disqualification, the Judge of the other of said Courts may sit in the Court in which said cause is pending for the purpose of ordering the transfer of all such cases.

Sec. 10. The Governor of this State shall, upon the taking effect of this Act, appoint a Judge of the 111th District Court who shall hold the office of Judge of said Court until the next general election and until his successor shall have been elected and qualified, and thereafter the Judge of said 111th District Court shall be elected as provided by the Constitution and Laws of this State for the election of District Judges. [Acts 1929, 41st Leg., p. 73, ch. 39.]

1 The word "be" should be omitted.

Section 8 of the Act of 1929 provided that all process and writs issued or served before the act took effect, including recognizances, bonds and undertakings of all kinds, made returnable to the 49th District Court, should, as to cases transferred to the 111th District Court be considered returnable to that court and were thereby legalized.

Section 11 provided that the purpose of the act was to create a new district court for Webb county with concurrent jurisdiction and that its passage should not affect this article relating to the 49th District, except so far as it adjusted the dockets and prescribed additional duties for the officers of Webb county and the District Attorney.

Section 12 provided that partial unconstitutionality should not affect other sections. Section 13 repealed conflicting laws and parts of laws.

Webb County, see also, 49th District, ante.

112.—Pecos, Upton, Kimble, Sutton and Crockett. The One Hundred and Twelfth Judicial District of Texas shall be composed of the following Counties, to wit: Pecos, Upton, Kimble, Sutton and Crockett, and the terms of Courts shall be held therein each year as follows:

In Pecos County: On the first Monday in January, May and November and second Monday in July of each year.

In Upton County: On the first Monday in February and the second Monday in June of each year.

In Kimble County: On the fourth Monday in February and the second Monday in August of each year.

In Sutton County: On the third Monday in March and the first Monday in September of each year.

In Crockett County: On the first Monday in April and the third Monday in September of each year.

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

The Judge of each Court, in his discretion, may hold as many sessions in any term of Court as is deemed by him proper and expedient for the dispatch of business. [As amended Acts 1945, 49th Leg., p. 10, c. 6, § 1.]

Sec. 6. The said Thirty-third, Eighty-third and One Hundred Twelfth Judicial Districts of Texas, as herein constituted shall each respectively elect a District Attorney at the next general election and each two years thereafter.

Sec. 10. It shall hereafter be sufficient to address a petition or other pleading to be filed in the District Court of said Pecos County, TO THE DISTRICT COURT OF PECOS COUNTY, TEXAS, or if to be filed in the District Court of said Upton County, TO THE DISTRICT COURT OF UPTON COUNTY, TEXAS, without giving the number of the District Court in such address.

Sec. 11. The District Courts of the Eighty-Third Judicial District and the One Hundred and Twelfth Judicial Districts herein created in Pecos and Upton Counties shall have concurrent jurisdiction with each other throughout the limits of each of said counties of all matters civil and criminal of which jurisdiction is given to the District Courts by the Constitution and laws of this State. The Clerk of the District Court of Pecos County, Texas, as heretofore constituted and

his successors in office shall be the clerk of both the Eighty-Third and the One Hundred Twelfth District Courts of said Pecos County and shall perform all the duties pertaining to the clerkship of both of said Courts. The Clerk of the District Court of Upton County, Texas, as heretofore constituted and his successors in office shall be the clerk of both the Eighty-Third and One Hundred Twelfth District Courts of said Upton County and shall perform all the duties pertaining to the clerkship of both of said Courts.

Sec. 12. There shall be elected at the next general election and every four years thereafter, a Judge of the One Hundred Twelfth Judicial Districts of Texas. [Acts 1929, 41st Leg., 3rd C.S., p. 245, ch. 11.]

Sections 2 and 3 of the amendatory Act of 1945 read as follows:

"Sec. 2. All processes issued out of and all bonds and recognizances entered into, and all grand and petit jurors drawn and selected before this Act takes effect, shall be valid and returnable to the next succeeding term of the District Court in and for the several Counties, as herein fixed, as though issued and served for such terms, and returnable to and drawn for the same.

"Sec. 3. It is further provided that if any Court in any County of said District shall be in session at the time this Act takes effect such Court or Courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all Courts in said District shall conform to the requirements of this Act."

Sections 2 and 3 of the Act of 1929 related to the 33rd and 83rd Districts. Section 5 provided for the appointment of a judge and district attorney for the 112th District. Section 9 provided for the transfer of cases upon the taking effect of the act.

See note to the 33rd District concerning sections 4, 7, and 8 and 13.

Pecos and Upton Counties, see, also, 83rd District, ante.

113.—Harris. See 11th District, ante.

Acts 1930, 41st Leg., 5th C.S., p. 131, ch. 14, created an additional district court for Harris County to be known as the One Hundred and Thirteenth District Court.

Acts 1939, 46th Leg., p. 184, § 3, amended so much of Article 199 as related to the District Courts of Harris County as amended by Acts 1927, 40th Leg., p. 135, ch. 88, § 1, and Acts 1930, 41st Leg., 5th C.S., p. 131, ch. 14, to read as now set out under "11, 55, 61, 80, 113, 127.—Harris," ante.

114.—Smith and Wood.

(a) The Special District Court of Smith and Wood Counties and now existing by virtue of Acts 1945, 49th Legislature, page 284, Chapter 206, is hereby continued as a permanent, regular District Court. The District Court created and provided for by this Act shall be designated the 114th Judicial District Court and composed of Smith and Wood Counties, and the terms of said District Court shall be held therein as follows:

In Smith County on the first Mondays in January, April, July and October.

In Wood County on the first Mondays in March, June, September and December.

Each term of court in each county shall continue in session until the date fixed herein for the beginning of the next term in each county, respectively.

(b) The Judge of said court may, in his discretion, hold as many sessions of the court in any terms in either county, for the trial of cases, as is deemed necessary and expedient for the proper dispatch of the business of the court.

(e) The 114th Judicial District Court composed of Smith and Wood Counties as herein provided for shall have, and the Judge thereof shall have, all of the jurisdiction and authority of a District Court of General jurisdiction, and a District Judge, as provided by the constitution and laws of this state; and the Judges of said court and of the 7th Judicial District Court in Smith and Wood Counties may transfer cases from one of said courts to the other in said counties, either in term time or vacation, and any cases so transferred may be tried and disposed of by the court to which it is transferred.

(f) The Judge of the 114th Judicial District Court of Smith and Wood Counties shall have the authority to approve all bills of exceptions, statements of fact, and all other matters to complete the disposition of any cases that may have been heard and tried in said Special District Court before this Act becomes effective.

(g) The compensation of the Judge of said 114th Judicial District Court, as hereby reorganized and continued, shall be the same as the compensation paid to the Judges of other District Courts, including the expenses as provided for by law for District Judges; and the Comptroller of the State of Texas is hereby authorized to draw his warrant on the State Treasurer for such payment, and the compensation herein provided for shall be paid in the manner in which other District Judges of the State of Texas are paid.

(i) The District Attorney of the 7th Judicial District of Texas shall represent the state in all cases wherein the State of Texas is a party, in said District Court, in said county; and in case of the absence or inability of said District Attorney to so represent the state in any case pending in said District Court, then the County Attorney in said county in which said case is pending shall represent the state.

(j) The Judge of the Special District Court of Smith and Wood Counties shall continue to serve in said Special District Court until the date for the expiration of said Special District Court on June 15, 1947, as provided in said Acts 1945, 49th Legislature, Chapter 206. Immediately after the passage of this Act it shall be the duty of the Governor, with the advice and consent of the Senate, as provided by law, to appoint a person qualified by law as Judge of said 114th Judicial District Court herein created to take office at the time said court comes into existence as herein provided, which appointee shall hold office until the next General Election in this state, and until his successor is elected and qualified as provided by law. The terms of the Judge of said court shall thereafter be four (4) years, as provided by law for other District Judges.

(k) The District Clerks in Smith and Wood Counties, respectively, are hereby made clerks of the District Court herein provided for in their respective counties. [Acts 1935, 44th Leg., p. 7, ch. 3; Acts 1937, 45th Leg., p. 227, ch. 123, § 1; Acts 1939, 46th Leg., p. 155, § 1; Acts 1943, 48th Leg., p. 645, ch. 368, § 1; Acts 1945, 49th Leg., p. 284, ch. 206, § 1; Acts 1947, 50th Leg., p. 385, ch. 215, § 1.]

Paragraphs (c), (d), (h) and (l) of this subdivision as amended in 1947 read:

"(c) All causes now pending on the docket of the said Special District Court of Smith and Wood Counties, and all proceedings now pending in said Special District Court shall be valid in the District Court herein created, from and after the termination of said Special District Court; it being the purpose of this Act that the said Regular District Court herein created shall supercede said Special District Court and proceed with the business of said Special District Court without any interruption or change, except as herein provided. All processes and writs issued out of said Special District Court, and all bonds and recognizances entered into in any proceedings in said Special District Court, and all grand and petit jurors drawn and selected in said Special District Court before this Act takes effect, shall be valid, and the same shall be returnable to the next succeeding term of the District Court herein created, in and for the several counties, as herein fixed, as though issued and served for such term, and returnable to and drawn for the same; and all such processes, writs, bonds and recognizances taken before or issued by the various counties affected by this Act shall be as valid as though no change had been made in the District Court as herein provided.

"(h) Any appropriation made to pay the salary of the Judge of the Special District Court of Smith and Wood Counties, Texas, as heretofore existing, shall be available to pay the salary of the Judge of the court as herein reorganized and continued.

"(d) Provided that if any court in said counties of said District shall be in session when this Act takes effect, such court or courts affected thereby shall continue in session until the term thereof shall expire under present laws; but thereafter the court in said District shall conform to the requirements of this Act.

"(l) Said Special District Court of Smith and Wood Counties shall continue its existence until and including June 15, 1947, from and after which time said Special District Court shall cease to exist; and the Regular District Court herein created shall, at the expiration of said

Special District Court, come into existence, and the term of the District Judge of said Regular Court shall begin."

See, also, note under 7th District, ante.

Provisions of Acts 1930, 41st Leg., 5th C.S., p. 246, ch. 81, creating the 114th Judicial District, composed of Hutchinson, Carson and Gray counties, were repealed by Acts 1933, 43rd Leg., p. 865, ch. 246, and Acts 1933, 43rd Leg., Spec.L., p. 1, ch. 1, § 1.

Section 2 of the repealing act transferred all proceedings to the 31st and 84th Judicial Districts according to the location of the counties.

Gray County, see 31st District.

Hutchinson and Carson Counties, see 84th District.

115.—No 115th Judicial District.

116.—Dallas.

Sec. 1. One additional District Court is hereby created in and for Dallas County, the limits of which shall be co-extensive with the limits of the County. The District shall be known as the One Hundred and Sixteenth Judicial District.

Sec. 2. The One Hundred and Sixteenth District Court shall not have or exercise any Criminal jurisdiction, but in all other respects it shall have and exercise the powers conferred by the Constitution and Laws of the State on the Judges of District Courts. No jurisdiction shall be concurrent with that of the existing District Courts of Dallas County.

Sec. 3. The terms of the One Hundred and Sixteenth District Court shall begin on the first Monday, respectively in January, April, July and October of each year, and each term of said Court shall continue until the Sunday immediately preceding the date set for the beginning of the next term thereof.

Sec. 4. The Governor shall appoint a suitable person as Judge for said office until the next general election, and until his successor shall have been provided by the Constitution and Laws of the State for the election of District Judges.

Sec. 5. The Clerk of the District Courts of Dallas County shall, upon the taking effect of this Act, assume the duties of Clerk of the One Hundred and Sixteenth District Court, and shall thereafter perform the duties of such position as if the Court had existed at the time of his election. He shall promptly prepare a docket for the One Hundred and Sixteenth District Court, placing thereon every sixth pending case on the respective dockets of the Fourteenth, Forty-Fourth, Sixty-Eighth, Ninety-Fifth, One Hundred and First District, and One Hundred and Sixteenth District Courts, continuing in this manner through said dockets until all the cases thereon are exhausted and the dockets of the six Courts are equalized as nearly as may be; provided, that no case on trial in any of the existing District Courts, nor any case pending on appeal therefrom, shall be transferred to the docket of the Court created hereby. The cases so transferred shall bear the same docket numbers as in the Court from which they are transferred, and the Judges of the existing Courts, respectively, shall make proper orders transferring from said Courts to the One Hundred and Sixteenth District Court the cases which shall have been placed upon the docket of the latter Court in pursuance of this Act.

Sec. 6. The letters A, B, C, D, E, and F, shall be placed on the docket and Court papers in the respective District Courts of Dallas County to distinguish them; A, being used in connection with the Fourteenth District Court; B, the Forty-Fourth District Court; C, the Sixty-Eighth District Court; D, the Ninety-Fifth District Court; E, the One Hundred and First District Court and F, the One Hundred and Sixteenth District Court.

Sec. 7. All suits, prosecutions and proceedings hereafter instituted in the District Courts of Dallas County shall be numbered consecutively, beginning with the next number after the last file number on the dockets of the existing Courts, and shall be entered by the District Clerk upon the dockets of said Courts, alternatively, beginning with the Fourteenth District Court; next the Forty-Fourth District Court, third the Sixty-Eighth District Court; fourth, the Ninety-First District Court; fifth, the One Hundred and First District Court; sixth, the One Hundred and Sixteenth District Court.

Sec. 8. The respective Judges of the District Courts of Dallas County shall, from time to time, as occasion may require, transfer cases from any one of such Courts to any other such Court in order that the business may be equally distributed among them, that the Judges thereof may, at all times, be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the Judge in whose Court it is pending; provided, however, no case shall be transferred from one Court to another without the consent of the Judge of the Court to which it is transferred. When any transfer is made, proper order shall be entered on the Minutes of the Court as evidence thereof, and notice of the transfer shall be given in writing by the Clerk to the attorneys of record of all parties to the cause. [Acts 1930, 41st Leg., 5th C.S., p. 228, ch. 71.]

Dallas County, see, also, 14th and 101st Districts, ante.

117.—Nueces.

Sec. 1. There is hereby created for and within Nueces County the 117th Judicial District of Texas, and a District Court for said Judicial District, the limits of which shall be co-extensive with the limits of Nueces County.

Sec. 2. The District Court for the 117th Judicial District shall have and exercise the jurisdiction prescribed by the Constitution and the laws of this State for District Courts in general, and the Judge thereof shall have and exercise the powers conferred by the Constitution and Laws of this State on the Judges of District Courts. Its jurisdiction shall be concurrent with that of the District Court of Nueces County for the 28th Judicial District.

Sec. 3. The terms of the 117th District Court shall be held as follows: a term to be known as the January-July term shall begin on the first Monday in January of each year and shall continue to and including the Sunday preceding the first Monday in July of the same year, and a term to be known as the July-January term shall begin on the first Monday in July of each year and shall continue until and including the Sunday preceding the first Monday in January of the succeeding year. [Acts 1947, 50th Leg., p. 776, ch. 385, § 2.]

Sec. 4. In addition to the jurisdiction vested in the District Court for the 117th Judicial District under the Constitution and General Laws of this State, said Court shall have and exercise exclusive jurisdiction in all Civil matters over which, by General Law, the County Court of Nueces County would have original jurisdiction, except as in this Act otherwise specially provided.

Sec. 5. From and after the passage of this Act the County Court of Nueces County shall cease to have or exercise any Civil jurisdiction, except as hereinafter specified and enumerated, provided that said Court shall not be restricted nor deprived of any jurisdiction now vested in it by the General Laws, nor shall the Judge thereof be restricted nor deprived of any duties, rights or powers now vested in or required of him by the General Laws except the Civil jurisdiction by this Act transferred from said Court to the District Court for the 117th Judicial District. The County Court of Nueces County shall have and retain jurisdiction of all cases appealed from the Justice Courts, and the general jurisdiction of a Probate Court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle accounts of executors; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, par-

tition and distribution of estates of deceased persons; and to apprentice minors as provided by Law, and the County Court or the Judge thereof shall have power to issue all writs necessary to the enforcement of the jurisdiction of said Court in all matters the jurisdiction of which, by this Act, is not transferred from said Court to the District Court of the 117th Judicial District.

Sec. 6. The Clerk of the District Court of Nueces County shall, upon the taking effect of this Act, assume the duties of Clerk of the 117th District Court, and shall thereafter perform the duties of such, as if the Court had existed at the time of his election. He shall promptly prepare a docket for the 117th District Court, placing thereon such cases as may be filed in said Court and as may be transferred to said Court; provided, that no case then on trial in the 28th District Court of Nueces County nor any case pending on appeal therefrom shall be transferred to the docket of the Court created hereby.

Sec. 7. The letters "A" and "B" shall be placed upon the dockets and Court papers in the respective District Courts of Nueces County to distinguish them; "A" being used in connection with the 28th District Court and "B" the 117th District Court.

Sec. 8. All suits and proceedings hereafter instituted in the District Courts of Nueces County shall be numbered consecutively, beginning with the next number after the last file number on the docket of the existing Court, and shall be entered upon the dockets of said Courts in the same manner as provided in Section 7 of this Act.

Sec. 10. The respective Judges of the 28th and 117th Judicial Districts shall from time to time, as occasion may require, transfer cases from one to the other in order that the business may be equally distributed among them, that the Judges of both of said Courts may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the Judge in whose Court it is pending; provided, however, no case shall be transferred from one Court to another without the consent of the Judge of the Court to which it is transferred. When any transfer is made, proper order shall be entered on the Minutes of the Court as evidence thereof, and notice of the transfer shall be given in writing by the Clerk to the attorneys of record of all parties to the cause.

Sec. 11. This Act shall not, in any manner, affect the status of the Criminal District Court of Nueces County, nor the Judge or District Attorney thereof.

Sec. 12. The Governor, upon this Act taking effect, shall appoint a suitable person possessing qualifications prescribed by the Constitution and Laws of this State as Judge of the District Court of the 117th Judicial District of Texas, as herein constituted, and such person shall hold said office until the next general election, and until his successor shall have been elected and qualified, and thereafter the Judges of the District Court of the 117th Judicial District of Texas shall be elected as prescribed by the Constitution and Laws of this State for the election of District Judges. There shall be elected for four years by the qualified voters of Nueces County, beginning with the next general election after this Act takes effect, a Judge for the District Court of the 117th Judicial District of Texas, whose power and duties shall be the same as other District Judges, and who shall receive such salary as is now or may hereafter be prescribed by Law for District Judges of the District Courts of the State of Texas, to be paid in the same manner. [Acts 1930, 41st Leg., 5th C.S., p. 224, ch. 69.]

Sections 1 and 3 of the act of 1947 related to the 28th and 94th Districts.

Section 4 of the Act of 1947 which provided for the election of a Presiding Judge and authorized the appointment of an Assignment Clerk in the 28th, 94th and 117th Judicial Districts, is incorporated in article 2093d.

Effective date of 1947 amendment, expiration of terms in session and repeal of conflicting laws, see sections 5 and 6 of the Act of 1947 set out in note under the 28th District, ante.

Section 9 of the Act of 1930 provided for the transfer of cases on the docket of the county court when the act became effective and the return to the district court of processes and writs issued out of the county court.

Nueces County, see, also, 28th and 94th Districts, ante.

118.—No 118th Judicial District.

119.—Coleman, Concho, Runnels and Tom Green.

(a) The One Hundred and Nineteenth Judicial District of Texas shall be composed of Coleman, Concho, Runnels, and Tom Green Counties; the terms of the District Court shall be held therein each year as follows:

In the County of Coleman on the first Mondays in January and June.

In the County of Concho on the first Mondays in February and July.

In the County of Runnels on the first Mondays in March and October.

In the County of Tom Green on the first Mondays in April and November.

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

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

(c) All processes issued, bonds and recognizances made and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding term of the District Courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn from the same.

(d) It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect such court or courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter all courts in said district shall conform to the requirements of this Act. [Acts 1931, 42nd Leg., p. 864, ch. 367, § 5; Acts 1933, 43rd Leg., 1st C.S., p. 78, ch. 24, § 1; Acts 1937, 45th Leg., p. 693, ch. 349, § 1; Acts 1939, 46th Leg., p. 171, § 2; Acts 1943, 48th Leg., p. 478, ch. 319, § 2.]

Section 1 of the Act of 1943 and section 1 of the Act of 1939 related to the 51st District.

Section 3 of the Act of 1939, section 2 of the Act of 1937, and section 2 of the Act of 1933, validated and regulated the return of process, writs, bonds, recognizances and juries, and required parties to take notice of the change in the terms of court and answer in response thereto at the terms therein specified.

Section 4 of the Act of 1939, section 3 of the Act of 1937, and section 3 of the Act of 1933, specified the time the act should become effective.

Section 5 of the Act of 1939, section 4 of the Act of 1937, and section 4 of the Act of 1933 repealed conflicting laws and parts of laws.

Section 6 of the Act of 1939, section 5 of the Act of 1937, and section 5 of the Act of 1933, provided that nothing therein should change or affect terms of court between the date of the passage of the act and the date it should become effective.

Sections 1 to 5 of the Act of 1931, related to the 51st and 35th Districts. See the note to the 51st District concerning sections 6 and 7. Section 8 provided for the appointment of a judge and district attorney for the 119th District. Section 9 validated and regulated the return of process, writs, bonds, recognizances and juries, section 10 made the District Clerk of Tom Green County Clerk of the 119th District and specified the manner of filing and distinguishing cases. Section 11 contained similar provisions concerning Coleman county. Section 12 gave the 51st and 119th Districts concurrent jurisdiction in Tom Green County and the 35th and 119th Districts concurrent jurisdiction in Coleman county. Section 13 provided for the transfer of cases between districts having concurrent jurisdiction. Section 14 specified the cases in Tom Green County in which each district attorney should represent the state and required each district attorney to assist the other on request. Section 15 contained similar provisions concerning Coleman County. Section 16 provided that partial unconstitutionality should not affect other provisions.

Coleman County, see also, 35th District, ante.

Tom Green County, see, also, 51st District, ante.

120.—No 120th Judicial District.

121.—No 121st Judicial District.

122.—No 122nd Judicial District.

123.—Panola and Shelby.

Sec. 4. The 123rd Judicial District of Texas is hereby created and shall be composed of the Counties of Panola and Shelby and shall be known as the District Court of said Counties in and for the 123rd Judicial District.

Sec. 5. The terms of the said 123rd Judicial District Court shall be as follows: in the County of Panola on the first Monday in January, May and September of each year, and may continue in session for seven (7) weeks thereafter, or until the business thereof is disposed of; in the County of Shelby on the first (1st) Monday in March, July and November of each year and may continue in session for eight (8) weeks thereafter or until the business is disposed of.

Sec. 10. That the District Courts of the 4th Judicial District, and the 123rd Judicial District shall have such jurisdiction and power as is conferred on District Courts under the constitution and existing laws of Texas and such as shall be hereafter given by Law. [Acts 1931, 42nd Leg., p. 873, ch. 369.]

Sections 1–3 of Acts 1931, related to the 4th judicial district composed of Rusk County.

Section 6 provided for the appointment of a district judge to hold office until the next general election. Section 7 provided that the district attorney of the 4th District should be district attorney of the 123rd District until the next general election, and section 8 made the same provision concerning the district clerks of Panola and Shelby Counties. Section 9 validated and regulated the return of process, bonds, recognizances and juries, and provided that any court in session when the act took effect should continue in session until the term expired but thereafter should conform to the act. Section 11 repealed conflicting laws and parts of laws.

124.—Gregg.

Section 1. Gregg County, Texas, shall hereafter constitute the One Hundred Twenty-fourth Judicial District of the State of Texas.

Sec. 2. The terms of the Court of the said One Hundred Twenty-fourth Judicial District Court of Gregg County, Texas, shall be held in Gregg County, Texas, each year as follows: On the first Monday in January, March, May, July, September and November of each year and each term of said Court shall continue in session until and including the Saturday before the next succeeding term begins or until all business is disposed of provided, however, that the first regular term of said Court shall be and become in session immediately upon the taking effect of this Act and the appointment and qualification of the Judge thereof as hereinafter provided for.

Sec. 6. The Governor of the State of Texas, immediately upon this Act's taking effect, shall appoint a suitable and qualified person as District Judge of said One Hundred Twenty-fourth Judicial District, having the qualifications as provided by the Laws of the State of Texas, as District Judge of said One Hundred Twenty-fourth Judicial District created by this Act, who shall hold his office until his successor is duly elected, at the next general election after this Act becomes effective, and qualifies, and said Judge and his successor in office shall receive such salary as is now provided for District Judges under and by virtue of the General Laws of the State of Texas.

Sec. 13. The Judge of the Seventy-first Judicial District Court for Gregg County, Texas, either in term time or in vacation, may enter an order upon the minutes of the District Court for the Seventy-first Judicial District for Gregg County, Texas, transferring any cases that may be pending in said Court to the One Hundred Twenty-fourth Judicial District Court, or the Special District Court for Gregg County, Texas,[1] created by this Act and said One Hundred Twenty-fourth Judicial District Court, and the Special District Court for Gregg County, Texas, shall have the same power, authority and jurisdiction to try and finally dispose of said case or cases so transferred as would the Court from which the same were transferred. And the Judge of the One Hundred Twenty-fourth Judicial District Court, hereby created, may, at any time, either in term time or in vacation, by an order or orders, entered upon the minutes of his Court, transfer any case or cases pending upon the docket of said One Hundred Twenty-fourth Judicial District Court, to the District Court of the Seventy-first Judicial District, or to the District Court for the Special District Court for Gregg County, Texas, and when said case or cases are transferred, the Court to which transfer is made shall have the same right, authority and jurisdiction to try and finally dispose of the same as was originally had by the Court making such transfer. And the Judge of the Special District Court for Gregg County, Texas, created by this Act, may at any time, either in term time or in vacation, by an order or orders entered upon the minutes of his Court, transfer any case or cases pending upon the docket of the Special District Court for Gregg County, Texas, to the District Court of the Seventy-first Judicial District for Gregg County, Texas, or the District Court for the One Hundred Twenty-fourth Judicial District of Gregg County, Texas, and when said case or cases are transferred, the Court to which transfer is made shall have the same right, authority and jurisdiction to try and finally dispose of the same as was originally had by the Court making such transfer.

[1] Expired.

Sec. 14. Any party or parties desiring to institute or file any suit over which the District Court of the Seventy-first Judicial District, the District Court of the One Hundred Twenty-fourth Judicial District and/or the Special District Court for Gregg County, Texas,[1] has jurisdiction, shall have the right to file the same in either of said Courts, subject to the right of the Judge of either of said Courts to transfer the same, as herein provided for.

[1] Expired.

Sec. 15. The District Clerk of Gregg County, Texas, shall, when suits are filed, file the same in the Court designated by the Attorney filing said suit, and in order to designate cases filed in said Courts, the Clerk shall place after the number of each suit filed in the Seventy-first Judicial District Court for Gregg County, Texas, the capital letter "A," and after the number of each suit filed in the One Hundred Twenty-fourth Judicial District Court for Gregg County, Texas, the capital letter "B," and after the number of each suit filed in the Special District Court for Gregg County, Texas,[1] the capital letter "C."

[1] Expired.

Sec. 16. The Seventy-first Judicial District Court in and for Gregg County, Texas[1]; the One Hundred Twenty-fourth Judicial District Court for Gregg County, Texas, herein created, and the Special District Court for Gregg County, Texas, also herein created, shall have concurrent civil and criminal jurisdiction with each other in Gregg County, Texas, in all matters over which jurisdiction is given or may by given by the Constitution and Laws of the State of Texas to District Courts.

[1] Expired.

Sec. 17. The District Clerk of Gregg County, Texas, duly elected and now acting as such, shall be the District Clerk of the said Seventy-first Judicial District, the One Hundred Twenty-fourth Judicial District and the Special District Court for Gregg County, Texas,[1] until the next general election, and his successor is duly elected and qualified, and his successors in office shall likewise be the clerk for all three of said District Courts. He shall receive such salary as is now or may be hereafter prescribed

for District Clerks of the State of Texas, but in no event is he to receive more than the salary allowed by law for one District Clerk, and should be paid in the manner prescribed by law.

1 Expired.

Sec. 18. As a necessary incident to the extension of this Court and for purpose of retaining and perfecting the organization and proper functioning thereof the office of Criminal District Attorney for the One Hundred Twenty-fourth Judicial District of Texas is hereby continued; a Criminal District Attorney shall be elected at the next general election and each succeeding general election thereafter and shall hold his office for a period of two (2) years and until his successor is elected and qualified; he shall possess all the qualifications and take the oath and give the bond required by the Constitution and Laws of this State for other District Attorneys provided that the present Criminal District Attorney of the One Hundred Twenty-fourth Judicial District of Texas shall continue in office, take the oath and give the bond required by the Constitution and Laws for other District Attorneys, and continue and assume the duties and be known as the Criminal District Attorney of the One Hundred Twenty-fourth Judicial District of Texas. He shall continue with the organization of his office and proceed to organize and arrange the affairs of the office of Criminal District Attorney, appoint Assistants as provided herein, and shall receive the fees provided for herein for such office until the next general election and until his successor shall be elected and qualified. A vacancy in the office shall be filled in the manner provided for filling a vacancy in the office of District Attorney.

Sec. 19. The Criminal District Attorney for the One Hundred Twenty-fourth Judicial District of Texas shall have and exercise all such powers, duties and privileges as are now by law conferred, or which may hereafter be conferred, upon District and County Attorneys, and shall represent the State of Texas in all Criminal cases under examination or prosecution in the Seventy-first Judicial District Court in and for Gregg County, Texas, and the two Courts created herein, and in the County Court, Justice Court and all Municipal Courts of Gregg County, Texas, where the defendant is charged with violating a State Law, and shall be entitled to collect the fees provided by Law for representing the State of Texas in said Municipal Courts, which fees are the same as the fees for representing the State in Justice Courts.

Sec. 20. The Criminal District Attorney for the One Hundred Twenty-fourth Judicial District of Texas shall receive the same fees allowed by Law for County Attorneys in misdemeanor cases, and shall, in addition to the Constitutional salary of Five Hundred Dollars ($500.00) per annum allowed to District Attorneys, to be paid by the State of Texas in the manner provided by Law for paying the salary of District Attorneys, be paid the same fees which are now allowed and paid to County and District Attorneys in Counties where less than three thousand (3,000) votes were cast at the preceding presidential election.

Sec. 21. It is hereby made the duty of the Criminal District Attorney of the One Hundred Twenty-fourth Judicial District of Texas to represent the State of Texas in all Criminal cases under examination or prosecution in Gregg County in the Seventy-first Judicial District of Texas, and in the two Courts herein created, and in all criminal cases in any and all Courts in Gregg County, Texas, and it is further his duty to represent the State of Texas in all cases both criminal and civil in any and all cases wherein it is the duty of a District or County Attorney to represent the State of Texas that may arise in Gregg County, Texas. The Criminal District Attorney of the One Hundred Twenty-fourth Judicial District of Texas shall be permitted to retain out of the fees earned and collected by him the sum of Four Thousand Two Hundred and Fifty Dollars ($4250) per annum. After deducting the Four Thousand Two Hundred and Fifty Dollars ($4250), the remaining amount is to be applied first to the payment of the salary of his assistants and the actual and necessary expenses incurred by him in the conduct of his office; said expenses to be allowed as provided by law, the cost of premiums on whatever surety bonds may be required of the Criminal District Attorney in qualifying for his office and the conduct thereof; expense of securing evidence, making criminal investigations, clerical and stenographic and bookkeeping expense when deemed by the Criminal District Attorney necessary over and above the amounts now allowed to him by law; stamps, stationery, books, telephone, telegraph, traveling expenses, and all other actual and necessary expenses incident to the conduct of his office; and the balance remaining to be paid over to Gregg County in accordance with the terms and provisions of the Maximum Fee Bill; provided that in arriving at the amount collected by him he shall include fees arising from all classes of criminal cases, whether felony or misdemeanor, arising in any of the Municipal, Justice, County or District Courts, in said County of Gregg, or which may hereafter be created, including habeas corpus hearings, fines and forfeitures, but shall not include the Five Hundred Dollars ($500) annual Constitutional salary paid by the State of Texas; provided that on the 1st day of March each year he shall make a full and complete report and account, as now provided by law for officers required to make annual reports of fees collected, of all fees collected by him, and shall keep the account and make the report provided in Article 3899, Revised Civil Statutes; provided that in addition to the above he shall receive ten per cent (10%) for the collection of bond forfeitures and fines collected for the State and County, as is now provided by law, relating to the collection of fees for County and District Attorneys. Said Criminal District Attorney shall represent the State and County in all tax suits, including suits for inheritance tax, as is now provided for District and County Attorneys, and shall receive the same fees for said services as received by District and County Attorneys.

Sec. 22. (a) Said Criminal District Attorney is hereby authorized to appoint at his discretion a First Assistant Criminal District Attorney who shall receive a salary of Thirty-six Hundred Dollars ($3600) per annum, and said Criminal District Attorney is hereby authorized to appoint at his discretion a Second Assistant Criminal District Attorney who shall receive a salary of Three Thousand Dollars ($3,000) per annum, and the salaries of said Assistant Criminal District Attorneys shall be paid out of the General Fund of the County in twelve (12) equal monthly installments by warrants drawn on said Fund. Such Assistant Criminal District Attorneys shall take the Constitutional Oath of office and be authorized to represent the State in all of the Courts of the County in which the Criminal District Attorney is authorized by this Act to represent the State, such authority to be exercised under the direction of the Criminal District Attorney, and such Assistants shall be subject to removal at the will of the Criminal District Attorney. Each of said Assistants shall be and are hereby authorized to administer oaths, file informations, examine witnesses before the Grand Jury and generally perform any duty devolving upon the Criminal District Attorney, and to exercise any power conferred by law upon the County and District Attorneys, and the Criminal District Attorney when by him so authorized. The Criminal District Attorney shall be paid the same fees for services rendered by his Assistants as he would be entitled to receive if the services had been rendered by himself.

(b) Providing further that the Criminal District Attorney is hereby authorized when in his judgment the efficient conduct of his office so requires to appoint a criminal investigator who shall receive a salary of Three Thousand Dollars ($3,000) per year. Such Criminal District Attorney may, also, if in his judgment the efficient conduct of his office so requires, appoint a stenographer for said office who shall receive a salary of Eighteen Hundred Dollars ($1800) per year. The salary of such investigator and stenographer shall be paid out of the General Fund of the County in which they are appointed in twelve (12) equal installments, upon the certificate of the Criminal District Attorney by warrants drawn on said fund. [Acts 1931, 42nd Leg., 1st C.S., p. 37, ch. 23; Acts 1935, 44th Leg., p. 11, ch. 4; Acts 1937, 45th Leg., p. 655, ch. 324, § 1.]

Section 2 of the amendatory act of 1937, ch. 324, provides that: "The provisions of this Act shall in no wise alter, change, amend, or repeal the provisions of House Bill No. 157, passed at the Regular Session of the Forty-fifth Legislature, 1937 Art. 326k—8 but the provisions of said House Bill No. 157 shall remain in full force and effect."

Section 3 repeals all conflicting laws and parts of laws.

The amendatory Act of 1935 amended the entire Act of 1931 to read as set out therein. Sections 3, 4 and 5, read as follows:

"Sec. 3. This Act amends and shall take the place of House Bill No. 49, Chapter 23, being Section 124 of Article 199, as brought forward in the codification of the Statutes, enacted in 1931 by the 1st Called Session of the Forty-second Legislature, in which the One Hundred Twenty-fourth Judicial District of Texas, composed of Gregg County only, was created for a period of four (4) years from the effective date of said Act, said Bill further providing that said One Hundred Twenty-fourth Judicial District of Texas, as created, should automatically cease to exist upon the expiration of four (4) years from the date upon which said Act became effective, and that all the terms and provisions thereof should, upon the expiration of said time, be and become of no further force and effect whatsoever. Said Bill having become effective on August 12, 1931.

"Sec. 4. The said One Hundred Twenty-fourth Judicial District of Texas shall be composed of Gregg County alone, but this amendment, insofar as it affects the creation of the One Hundred Twenty-fourth Judicial District for Gregg County, the appointment of a suitable Judge therefor and other matters pertaining to said Court, and continue the Criminal District Attorney's office for the One Hundred Twenty-fourth Judicial District, and provided for the manner of election of a Criminal District Attorney, and prescribes his duties, powers and salary, shall not become a law, or become effective until August 13, 1935, being the day following the expiration of the four (4) year period provided for in said House Bill No. 49 creating said Court, and the day following the automatic ceasing of the existence of said One Hundred Twenty-fourth Judicial District of Texas, as created. But that part of this Act which creates the Special District Court for Gregg County, Texas, provides for the appointment of a suitable District Judge by the Governor of the State of Texas, making it a part of the District Attorney's duties to handle certain cases in said Court, and all that part of this Act which in any way affects the said Special District Court for Gregg County, Texas, is not suspended until August 13, 1935, but shall become a law and effective on the date the same shall be approved by the Governor of the State of Texas.

"Sec. 5. At the expiration of the time for which said One Hundred Twenty-fourth Judicial District of Texas was created in said House Bill No. 49, the same being the 12th day of August, 1935, the Clerk of said Court shall take into his possession all the dockets and records of said One Hundred Twenty-fourth Judicial District Court, as created by said Bill, for safe-keeping and preservation, and shall deliver the same to the District Judge of the One Hundred Twenty-fourth Judicial District as created by this Act, when such Judge shall have been appointed by the Governor of the State of Texas, as herein provided, and shall have taken the oath of office as provided for District Judges under and by virtue of the General Laws of the State of Texas, and the Judge of the One Hundred Twenty-fourth Judicial District Court created by this Act shall thereafter have full power, authority and jurisdiction to try all such cases pending on the docket, to approve all Statements of Facts, Bills of Exceptions and make any and all other orders, judgments and decrees proper and necessary in the cases theretofore tried in the said One Hundred Twenty-fourth Judicial District Court, created by House Bill No. 49, the same as if said cases had been filed or tried in the One Hundred Twenty-fourth Judicial District Court created by this Act, and further providing that all citations or other processes issued out of the four (4) year term of the One Hundred Twenty-fourth Judicial District Court, during its existence, shall be recognized and have the same legal force and effect as if issued out of the One Hundred Twenty-fourth Judicial District Court created by this Act."

Sections 7 to 12 created and regulated a special District Court for Gregg County. By section 8, it was to cease four years from the date the act became effective. The time was extended by the amendatory Act of 1937, 45th Leg., 2nd C.S., p. 1915, ch. 34, § 1, but this amendment was repealed by the amendatory Act of 1941, 47th Leg., p. 227, ch. 158, § 1, which amended the section to provide that the court should automatically cease to exist upon the effective date of the act and that all provisions of the Act of 1935, and amendments thereto, appertaining to the Special District Court, should become of no further force and effect upon the effective date of the act.

Section 23 repealed conflicting laws and parts of laws. Section 24 provided that partial unconstitutionality or invalidity should not affect other provisions.

Sections 2 and 3 of Acts 1941, 47th Leg., p. 227, ch. 158, read as follows:

"Sec. 2. It is hereby declared to be the intent of the Legislature to repeal House Bill No. 82 of the Second Called Session of the 45th Legislature which amended Section 8 of House Bill No. 226 of the Regular Session of the 44th Legislature and which extended the existence of the Special District Court of Gregg County, Texas, to the 25th day of January, 1943.

"Sec. 3. Upon the effective date of this Act, the Judge thereof shall deliver all of the dockets and records of said Court to the Clerk of the District Court for Gregg County, Texas, for safe keeping and preservation, and any case or cases pending upon the docket of said Special District Court at the time of its expiration shall be, by said District Clerk, transferred to the docket of the District Court for the One Hundred Twenty-fourth Judicial District of Gregg County, Texas. The Judge of said Special District Court shall also have authority and power, after the expiration of his term of office, to approve any and all Statements of Facts, Bills of Exceptions, or make any other order necessary in cases tried in said Special District Court to effect a final disposition thereof, and the Judge of the One Hundred Twenty-fourth District Court of Texas shall, after such cases have been transferred to his docket, have full power, authority and jurisdiction to try all such cases pending in said Court, and shall have concurrent power, authority and jurisdiction with the Judge of the Special District Court for Gregg County, after his office shall have expired by the termination of such Court, to approve all Statements of Facts, Bills of Exceptions and to make any all other orders, judgments and decrees proper and in the cases theretofore tried in said Special District Court for Gregg County, Texas."

Acts 1932, 42nd Leg., 3rd C.S., p. 120, ch. 48, creating the Special District Court of Rusk and Gregg Counties, expired by the terms of section 11 thereof on November 1, 1934.

Gregg County, see, also, 71st District, ante.

125.—No 125th Judicial District.

126.—See 53rd Judicial District, ante.

127.—Harris. See 11th District, ante.

128.—Orange.

Sec. 6. The 128th Judicial District of Texas is hereby created and shall be composed of the County of Orange only. It shall be known as the District Court of the 128th Judicial District and shall be in existence from and after the passage of this Act, until August 31, 1951, unless it shall hereafter be extended by an Act of the Legislature. All powers and duties by this Act in any way imposed upon the 128th Judicial District shall expire on said August 31, 1951, unless said court shall be extended by a subsequent Act of the Legislature; and upon such expiration all records, pleadings, documents and any other matters then relating to or pending in said 128th Judicial District of Texas, including all cases on the docket of said 128th Judicial District Court shall be transferred without prejudice to the Court of the First Judicial District, and thereafter Orange County shall be a part of said First Judicial District for all purposes.

Sec. 7. The terms of the said 128th Judicial District Court shall be as follows: The first Monday in January, May and September of each year; and each term of said court shall continue in session until the date herein fixed for the beginning of the next succeeding term; provided, however, that a regular term of said court shall be and become in session immediately upon final passage of this Act, and upon the appointment and qualification of a Judge

as hereinafter provided for. [Acts 1947, 50th Leg., p. 199, ch. 116.]

Sections 8-10 of the Act of 1947 provided:

"Sec. 8. The District Clerk of Orange County duly elected and acting as such shall be the District Clerk of said 128th Judicial District in and for Orange County, Texas, until the time for which he has been elected expires, and until his successor is duly elected and qualified.

"Sec. 9. The County Attorney of Orange County, Texas, duly elected and now acting as such, shall do and perform all the duties of County and District Attorney of said 128th Judicial District of Orange County, Texas, until the next general election, and until his successor is duly elected and qualified, and shall receive such compensation for his services as are now or may hereafter be provided for County Attorneys performing like duties under and by virtue of the general laws of this state.

"Sec. 10. The Governor of Texas, immediately upon the taking effect of this Act, shall appoint a suitable and qualified person to serve as District Judge of the 128th Judicial District of Orange County, who shall hold this office until the next general election, and until his successor is duly elected and qualified, and shall receive such salary as now provided for District Judges under and by virtue of the general laws of this state."

See, also, note under 1st District, ante.

129.—Harris. See 11th District, ante.

130.—Brazoria, Fort Bend, Matagorda and Wharton.

Section 1. An additional District Court is hereby created in and for the Counties of Brazoria, Fort Bend, Matagorda and Wharton, Texas, the limits of which district shall be co-extensive with the limits of said counties. Said court shall be known as the 130th District Court.

Sec. 2. Immediately upon passage of this law the Governor shall appoint a suitable person, having the qualifications provided by the Constitution and Laws of Texas for District Judges, as Judge of the 130th District Court. He shall hold office as such Judge until the next general election, and until his successor shall be duly elected and qualified. Thereafter such Judge shall be elected as provided by the Constitution and Laws of the State of Texas.

Sec. 3. There shall be two terms of the District Court of the 130th District in each of said counties each year. In Brazoria County the first term shall be known as the January-June term and shall begin each year on the first Monday in January and shall continue until and including Saturday before the first Monday in July; the second term of said court in Brazoria County, Texas, which shall be known as the July-December term shall begin each year on the first Monday in July and shall continue until and including Saturday before the first Monday in the following January.

In Fort Bend County the first term shall be known as the February-July term, and shall begin each year on the first Monday of February and shall continue until and including Saturday before the first Monday in August; the second term, which shall be known as the August-January term, shall begin each year on the first Monday in August and continue until and including Saturday before the first Monday in the following February.

In Matagorda County the first term shall be known as the March-August term, and shall begin each year on the first Monday in March and shall continue until and including Saturday before the first Monday in September; and the second term shall be known as the September-February term and shall begin each year on the first Monday in September and shall continue until and including Saturday before the first Monday in the following March.

In Wharton County the first term shall be known as the April-September term and shall begin each year on the first Monday in April and shall continue until and including Saturday next before the first Monday in October of each year; and the second term, which shall be known as the October-March term, shall begin each year on the first Monday in October and shall continue until and including Saturday before the first Monday in the following April.

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

Sec. 4. The clerk of the District Courts in each of the respective counties included in said Judicial District shall also be clerk of the District Court of the 130th District in such respective counties.

Sec. 5. There shall be one general docket for the 23rd District and the 130th District in each of the counties of Brazoria, Matagorda, Wharton, and Fort Bend. All suits and other proceedings instituted in any county in the district of which the District Court has jurisdiction shall be addressed to the District Court of the county in which the suit or other proceeding is instituted. The Judge of either the District Court of the 23rd District or the 130th District may hear and dispose of any suit or other proceeding on the general docket of the District Court of the county in which the suit or other proceeding is instituted, without the necessity of transferring the suit or other proceeding from one court to another. Every judgment and order shall be entered in the minutes of the District Court of the county in which the proceedings are pending and the clerk of the District Court in said county shall keep one set of minutes in which shall be recorded all the judgments and orders of the 23rd District Court and the 130th District Court. All citations and other process issued by the District Clerk and all notices, restraining orders and other process authorized to be issued by the Judge of the 23rd District Court or the 130th District Court shall be returnable to the District Court of the county in which such suit or other proceeding is pending, without reference to the number of the District Court, and on the return of such process a hearing or trial shall be presided over by the Judge of either the 23rd District Court or the 130th District Court.

Sec. 6. The official court reporter for the 23rd Judicial District shall also be the official court reporter for the 130th Judicial District, providing that at any time his services may be required in both the 130th and the 23rd District Courts at the same time, he shall be, and he is hereby, authorized and empowered to employ some competent qualified person to act for him in one of said District Courts, which said person so employed shall receive the same compensation for such services as is provided by law for the official court reporter for the 23rd Judicial District, and shall be paid for such services out of the same fund and in the same manner as the court reporter for the 23rd Judicial District.

Sec. 8. The Judges of the 23rd and the 130th District Courts shall sign the minutes of each term of said courts in each of said counties within thirty (30) days after the end of each term, and shall also sign the minutes at the end of each column of the minutes, and each Judge sitting in said court shall sign the minutes of such proceedings as were had before him.

Sec. 9. The Judges of the 23rd District Court and of the 130th District Court may each take a vacation and not attend court for six (6) weeks in each year; the Judges of said courts shall by agreement between themselves, take their vacations alternately so that there shall at all times be at least one of said Judges in the Judicial Districts composed of Brazoria, Fort Bend, Matagorda and Wharton Counties. [Acts 1947, 50th Leg., p. 291, ch. 179.]

Section 7 of the Act of 1947 amended the provisions relating to the 23rd Judicial District.

Sections 10 and 11 of the Act of 1947 provided:

"Sec. 10. There is hereby appropriated out of the funds of the Treasurer of the State of Texas not otherwise appropriated the sum of Six Thousand ($6,000.00) Dollars, or so much thereof as may be necessary to pay the salary of the Judge of the 130th District Court until September 1, 1947.

"Sec. 11. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the ex-

tent of such conflict only; as to all other laws and parts of laws this Act shall be cumulative. This Act shall not prevent the holding and losing under present laws of any term of court that may be in session when this Act takes effect."

131.—No 131st Judicial District.

132.—No 132nd Judicial District.

133.—Harris. See 11th District, ante.

Art. 200. [31] Amendments affecting Judicial Districts.—Wherever the law declaring what counties shall compose a judicial district, or the law prescribing the time or places for holding the terms of the district court of any judicial district shall have been or may hereafter be amended, in every such case all process and writs theretofore issued from any such district court and made returnable to a term of such court as fixed by law at the time of such issuance, shall be returnable to the next ensuing term of such court as prescribed by such amended law; and all such writs and process shall be as legal and valid as if the same had been made returnable to the term of such court as fixed by such amendment. All grand and petit jurors selected and drawn under theretofore existing laws in any county of any such judicial district shall be considered lawfully drawn and selected for the next term of the district court of such county as fixed by the amended law; and the obligees in all appearance bonds and recognizances taken in and for any such district court, as well as all witnesses summoned to appear before such district court under preexisting law, shall be required to appear at the next term of such court as fixed by the amended law.

ADMINISTRATIVE JUDICIAL DISTRICTS

Art. 200a. Administrative judicial districts.

Numbers and composition

Sec. 1. The State of Texas is hereby divided into nine Administrative Judicial Districts, which districts shall be numbered and composed of counties as follows:

First—Bowie, Red River, Lamar, Fannin, Grayson, Collin, Hunt, Delta, Hopkins, Franklin, Titus, Morris, Camp, Cass, Marion, Harrison, Gregg, Upshur, Wood, Raines,[1] Kaufman, Van Zandt, Dallas, Ellis,[2] Henderson, Anderson, Houston, Cherokee, Nacogdoches, Angelina, Panola, Shelby, Smith, Rusk.

Second—San Augustine, Sabine, Jasper, Newton, Orange, Jefferson, Tyler, Hardin, Liberty, Chambers, Galveston, Harris, Brazoria, Matagorda, Wharton, Fort Bend, Waller, Montgomery, San Jacinto, Polk, Walker, Trinity, Grimes, Madison, Leon, Brazos, Freestone, Limestone, Burleson, Washington, Bastrop, Robertson, Lee.

Third—Johnson, Somervell, Bosque, Hill, Navarro, McLennan, Falls, Milam, Williamson, Travis, Austin, Fayette, Caldwell, Comal, Hays, Colorado, Lavaca, Gonzales, Guadalupe, Blanco, Burnet, San Saba, Llano, Gillespie, Mason, Kimble, Menard, Bell, Lampasas, Mills, Coryell, Hamilton, Comanche.

Fourth—Jackson, Calhoun, Aransas, Refugio, San Patricio, Bee, Live Oak, McMullen, Goliad, Victoria, DeWitt, Karnes, Wilson, Atascosa, Frio, LaSalle, Dimmit, Webb, Zapata, Jim Hogg, Bexar.

Fifth—Nueces, Kleberg, Kenedy, Jim Wells, Duval, Brooks, Starr, Hidalgo, Willacy, Cameron.

Sixth—Maverick, Kinney, Edwards, Val Verde, Terrell, Kerr, Kendall, Bandera, Real, Medina, Uvalde, Zavala, Sutton, Crockett, Pecos, Brewster, Jeff Davis, Presidio, Culberson, Hudspeth, El Paso, Upton, Reagan.

Seventh—Yoakum, Terry, Lynn, Garza, Gaines, Dawson, Andrews, Martin, Loving, Winkler, Ector, Midland, Glasscock, Reeves, Ward, Crane, Sterling, Coke, Irion, Tom Green, Schleicher, Borden, Scurry, Howard, Mitchell, Nolan, Taylor, Callahan, Shackelford, Throckmorton, Haskell, Jones, Fisher, Stonewall, Kent, Runnels, Coleman, Brown, McCulloch, Concho.

Eighth—Cooke, Denton, Montague, Clay, Wichita, Archer, Jack, Wise, Young, Stephens, Eastland, Erath, Hood, Palo Pinto, Parker, Tarrant.

Ninth—Wilbarger, Baylor, Knox, King, Dickens, Motley, Cottle, Crosby, Lubbock, Hockley, Cochran, Bailey, Lamb, Hale, Floyd, Castro, Swisher, Briscoe, Parmer, Deaf Smith, Oldham, Hartley, Dallam, Sherman, Moore, Potter, Randall, Armstrong, Hansford, Ochiltree, Lipscomb, Hutchinson, Roberts, Hemphill, Carson, Gray, Wheeler, Donley, Collingsworth, Hall, Childress, Hardeman, Foard.

1 Probably should read "Rains."
2 Rockwall County is omitted from the first district.

Presiding judge

Sec. 2. Immediately after this Act becomes effective it shall be the duty of the Governor, with the advice and consent of the Senate, to designate one of the regularly elected and commissioned district judges of each of said districts as Presiding Judge of the Administrative Judicial District. Upon the death, resignation or the expiration of the term of office of such Presiding Judge, the Governor shall thereafter immediately designate a new Presiding Judge of the Administrative District, as in the first instance.

Clerk

Sec. 3. The Clerk of the District Court of the district from which the judge has been designated as the Presiding Judge of the Administrative District, and of the county of the residence of the judge, in addition to his regular duties as clerk of the district court, shall perform the duties of the clerk of the Administrative District.

Meetings or council of judges

Sec. 4. It shall be the duty of the Presiding Judge of such Administrative District, once each year, to call a regular conference, and, at such times as may be necessary, a special conference, of the several district judges of the several judicial districts composing the Administrative District, at a time and place to be designated by the Presiding Judge, for consultation and counsel as to the state of business, civil and criminal, in the several district courts of the Administrative District, and to arrange for the disposition of the business pending on the dockets of the several district courts of the District. At the time of such consultation, or at any time thereafter, with or without an additional meeting of the judges, it shall be the duty of the Presiding Judge, from time to time, to assign any of the judges of the Administrative District to hold special or regular terms of court in any county of the Administrative District in order to try and dispose of accumulated business, under such rules as may be prescribed by the session, or sessions, of the district judges of the Administrative District. Such meeting or council of judges shall have the power to prescribe rules regulating and facilitating the order of trials, the keeping of records in the various counties of the district where judges are sent from one district into another to facilitate the disposition of cases, and to make such other rules and regulations as may be necessary to carry this Act into practical operation. When it is deemed necessary, the Presiding Judge of the Administrative District may call special or additional meetings of the conference of judges during the year. The District Judges shall lay before each conference of judges a list of all cases pending, and the exact status of their dockets, together with such other information as may be required by the rules and regulations of the conference.

Assignment of judges; vacancy in office

Sec. 5. Judges may be assigned in the manner herein provided for the holding of District Court when the regular Judge thereof is absent or is from any cause disabled or disqualified from presiding, and

in instances where the regular District Judge is present or himself trying cases where authorized or permitted by the Constitution and laws of the State; and Judges may also be assigned in the manner herein provided for the holding of a District Court, when by reason of the death, resignation, or from any cause whatsoever, the office of District Judge of the District is or has become vacant. [As amended Acts 1943, 48th Leg., p. 25, ch. 22, § 1.]

Extended or special terms

Sec. 6. It shall be the duty of any district judge of any district within the Administrative District to extend the regular terms of his court, and to call special terms, when necessary to carry out the purposes of this Act and dispose of pending litigation. If the term be extended as herein provided no other term of the court in such district shall fail because of said extension, but such other terms may be opened and held as usual. The Presiding Judge of one Administrative District may call upon the Presiding Judge of another Administrative District to furnish judges to aid in the disposition of litigation pending in any judicial district within the Administrative District in which such judge so making the request has been designated as the Presiding Judge. For the trial of cases and the entry of orders and the disposition of other business necessary, the judge of any district in this State, or any District Judge sent to any district in this State by the Presiding Judge of an Administrative District, shall have power, by entering an order on the minutes, to convene a special term of the court for the disposition of the business coming before the district court.

Duties of clerk

Sec. 7. The district clerk performing the duties of clerk for the Administrative District shall conduct the correspondence for the Presiding Judge of the Administrative District, keep a record of all its proceedings, and a complete and accurate record of all cases pending in the several courts of the Administrative District, the time of their filing, the style and purposes of the causes, and their final disposition, and such other matters as may be prescribed by the council of judges herein referred to. For such purposes he is authorized, with the approval of the Presiding Judge, to purchase the necessary office equipment, stamps, stationery and supplies, and to employ one additional deputy clerk, under the direction of the council of judges or such rules as they may promulgate. Such cost shall be divided pro rata among the counties and paid by the counties on the certificate of the Presiding Judge. He shall, under the direction of the Presiding Judge of the Administrative District, make an annual report, and such special reports as may be directed by the Presiding Judge of the District, to the Attorney General. Such reports shall be there filed and open to public inspection, and shall be condensed and tabulated in the biennial reports of the Attorney General.

Expenses of meeting of judges

Sec. 8. The several district judges of the District, when required to attend the annual or special sessions of the judges herein prescribed, shall, in addition to all other compensation allowed them by law, receive their actual traveling expenses going to and returning from the place of meeting, and their actual expenses while in attendance on the meeting. [Acts 1927, 40th Leg., p. 228, ch. 156.]

Expenses paid by counties composing district

Sec. 9. All of the aforesaid salaries, compensation, and expenses, and all other expenses authorized and incurred herein for the purpose of administering this Law, shall be paid by the several counties composing the Administrative District out of the General Fund of said counties. Said salaries, compensations, expenses, and expenditures herein authorized are to be paid in proportion to the number of weeks provided by Law for holding District Court in the respective counties, on certificates of approval of the presiding Judge of the Administrative Judicial District. [As amended Acts 1929, 41st Leg., p. 488, ch. 231, § 1.]

Expenses of judge filling assignment

Sec. 10. When the district judges are assigned under the provisions of this Act to districts other than their own district, and out of their own counties, they shall, in addition to all other compensation permitted or authorized by law, receive their actual expenses in going to and returning from their several assignments, and their actual living expenses while in the performance of their duties under assignments, which expenses shall be paid out of the General Fund of the county in which their duties under assignments are performed, upon accounts certified and approved by the Presiding Judge of the Administrative District. [Acts 1927, 40th Leg., p. 228, ch. 156.]

Section 11 of Acts 1927, 40th Leg., p. 228, ch. 156, provides that if any part thereof is held invalid, such holding shall not affect the remainder.

Acts 1929, 41st Leg., 1st C. S., p. 157, ch. 57, § 1, changes the official spelling of the name of Zavalla County to "Zavala County."

TITLE 9—APPRENTICES

Art.
201. When minor may be apprenticed.
202. Minor not apprenticed to whom.
203. Duration of apprenticeship.
204. Shall not be apprenticed without notice.
205. In what county shall be apprenticed.
206. Obligation entered into.
207. Obligation approved and recorded.
208. Minor over 14 years of age may select.
209. Order of court apprenticing.
210. Evidence of authority.
211. Rights of master.
212. Residence of apprentice.
213. Removal from county.
214. When apprentice runs away.
215. Apprentice discharged when.
216. Citation to master.
217. Master released.
218. Inquiry into treatment.
219. Minor again apprenticed.
220. Proceedings may be had.
221. Suit upon obligation.
222. Costs paid by whom.
223. Guardian of person.

Article 201. [32] [23] [18] When minor may be apprenticed.—The county court may bind a minor as an apprentice—

1. When such minor is an orphan and without sufficient estate for his maintenance and education.
2. When the parents of such minor have suffered him to become a charge upon the county.
3. When the parents of such minor, not being a charge on the county, shall consent in writing to such apprenticeship, which consent shall be signed by them, and filed and entered of record in such court.

Art. 202. [33] [24] [19] Minor not apprenticed to whom.—A minor shall in no case be apprenticed to any one who is not legally competent to act as the guardian of such minor.

Art. 203. [34] [25] [20] Duration of apprenticeship.—The duration of apprenticeship shall be until the minor, if a male, arrives at the age of twenty-one years; if a female, until she arrives at the age of eighteen years, or until she marries if she marries before that age.

Art. 204. [35] [26] [21] Shall not be apprenticed without notice.—A minor shall not be apprenticed without citation in the same manner as is

provided in the case of an application for the guardianship of a minor.

Art. 205. [36] [27] [22] In what county minor shall be apprenticed.—A minor shall be apprenticed in the county in which he resides, and shall not be apprenticed to any person who is not at the time a resident of such county.

Art. 206. [37] [28] [23] Obligation entered into.—The person to whom such minor is apprenticed shall enter into an obligation in writing, payable to such minor, in the sum to be fixed by the county judge, not less than one thousand dollars, and to be approved by such county judge, conditioned:

1. That he will furnish said minor sufficient food and clothing.
2. That he will treat said minor humanely.
3. That he will teach, or cause to be taught, to said minor some trade or occupation, the same to be specified in such obligation.
4. That he will furnish said minor medicine and medical attention when necessary.
5. That he will send said minor to school for the full term of the public free school in the community in which he resides.
6. That he will not remove said minor out of the county without the leave of the court.
7. That he will not remove said minor out of the State.

Art. 207. [39] [30] [25] Obligation approved and recorded.—The obligation provided for by the preceding article when approved by the court, shall be filed in the office of the clerk of the county court and recorded upon the minutes of the court.

Art. 208. [38] [29] [24] Minor over 14 years of age may select.—A minor who is fourteen years, or over, may select the person to whom he desires to be apprenticed; and the court shall if such person be competent, apprentice the minor to the person so selected.

Art. 209. [40] [31] [26] Order of court apprenticing.—When such obligation has been approved and filed, the court shall enter an order upon the minutes, reciting such facts and directing that the same be recorded in the minutes, and authorizing the person to whom such minor is apprenticed to take charge and control of the person of such minor, and to retain the same until such minor arrives at the age of twenty-one years; or, if a female, until she arrives at the age of eighteen years, or until she marries, and the age of such minor at the time of entering such order shall be distinctly stated therein.

Art. 210. [41] [32] [27] Evidence of authority.—A certified copy of such order, under the seal of the court, shall be sufficient evidence of the authority of the person named therein to control the person of such minor.

Art. 211. [42–43] Rights of master.—The person to whom a minor has been apprenticed shall have the right, in the management and control of such minor, to inflict such moderate corporal chastisement as may be necessary and proper, and shall have the right to control the person of such minor, and shall be entitled to his services, and to all the profits arising from any such service during the continuance of such apprenticeship.

Art. 212. [44] [35] [30] Residence of apprentice.—It shall not be lawful for any apprentice to reside out of the county in which he has been apprenticed without the order of the county judge of such county, entered upon the minutes of the court. When such leave is obtained, a certified copy of the order granting the same shall be filed in the office of the clerk of the county court of the county in which the future residence of the minor is to be, together with a certified copy of the obligation and order apprenticing such minor; and the same shall be filed and recorded upon the minutes of the county court of such last named county; and thereafter such court shall have the same power and control over the case as if it had been originally commenced therein.

Art. 213. [45] [36] [31] Removal from county.—When an apprentice has been removed out of the county in which he was apprenticed, by the person to whom he was apprenticed, or with the knowledge or consent of such person, and without an order authorizing such removal, as provided in the preceding article, and shall be detained out of said county for more than thirty days, such apprentice shall not be held bound for a further compliance with his apprenticeship, and can only be retained at the pleasure of such apprentice.

Art. 214. [46] [37] [32] When apprentice runs away.—If any apprentice shall run away from or leave the employment of the person to whom he is apprenticed without permission, such person may pursue and recapture such apprentice and bring him before the county judge having jurisdiction of the case, who shall investigate the case; and if satisfied that said apprentice ran away or left the employment of such person without good and sufficient cause, he shall order such apprentice to return to his service; and upon his failure or refusal to do so the court may punish him as for contempt of court.

Art. 215 [47] [38] [33] Apprentice discharged when.—Upon the investigation provided for in the preceding article, if the court be satisfied that such apprentice has good and sufficient cause for running away from or leaving the employment of the person to whom he was apprenticed, the court shall discharge said apprentice and revoke all authority granted to the person to whom such minor was apprenticed, and shall enter an order to that effect upon the minutes.

Art. 216. [48] [39] [34] Citation to master.—The county judge may, upon the complaint of the minor or any other person, or without complaint, cause the person to whom a minor has been apprenticed, to be cited to appear before him at any time and place mentioned in such citation, and show cause why his authority over such minor should not be revoked and the minor discharged from his apprenticeship. And upon the return of such citation served, the judge, if satisfied that such person is incompetent from any cause to properly control such minor, or that such person has in any material respect violated the obligation entered into by him, shall enter an order upon the minutes revoking such authority granted to such person over such minor, and discharging such minor from such apprenticeship.

Art. 217. [49] [40] [35] Master released.—A person to whom a minor has been apprenticed may at any time, upon good cause shown to the county judge, be released from future liability upon his obligation of apprenticeship; and in such case an order shall be entered upon the minutes revoking the authority of such person over such minor, and declaring such apprenticeship at an end.

Art. 218. [50] [41] [36] Inquiry into treatment.—The county judge shall, from time to time, inquire into the treatment of the minors apprenticed by him, or by his predecessors in office, and shall defend them from all cruelty, neglect, breach of contract or misconduct on the part of the persons to whom they were apprenticed.

Art. 219. [51] [42] [37] Minor again apprenticed.—When the person to whom a minor has been apprenticed dies, or when his authority has been revoked, the minor may be again apprenticed as in the first instance.

Art. 220. [52] [43] [38] Proceedings may be had.—The proceedings provided for in the preceding articles of this title may be had either in term time or in vacation, except that a minor shall be apprenticed only at a regular term of the court for probate business, and after notice as in the case of the appointment of a guardian.

Art. 221. [53] [44] [39] Suit upon obligation.—In case of a breach of the obligation on the part of the person to whom a minor has been apprenticed, the minor, or the county judge, or any person for the use of the minor, may sue upon such obligation in any court of the county where such obligation, or certified copy thereof, has been filed and recorded, and shall be entitled to recover such damages as the minor may have sustained by reason of such breach; and all such damages shall be the property of such minor.

Art. 222. [54] [45] [40] Costs paid by whom.—In all proceedings apprenticing a minor, or discharging him from apprenticeship, and in all other proceedings connected with such apprenticeship, the person to whom such minor was apprenticed shall pay the costs of such proceedings, and the same shall be adjudged against him and collected as in other cases, except in a suit brought under the preceding article, in which case the costs shall be adjudged as in other civil suits.

Art. 223. [55] [46] [41] Guardian of person.—When a minor is apprenticed, the person to whom such minor is apprenticed supplies the place of the guardian of the person of such minor, and in such case there shall be no guardian of the person of such minor.

TITLE 10—ARBITRATION

1. ARBITRATION IN GENERAL

Art.
224. Right to arbitrate.
225. Agreement.
226. Agreement filed.
227. Day of trial designated.
228. Oath of arbitrators.
229. Continuances permissible.
230. Procedure on trial.
231. Award entered as judgment
232. Umpire selected.
233. Appeal from award.
234. In case of appeal.
235. Costs.
236. Refusing to proceed.
237. Corporation, etc., may arbitrate.
238. Mode not exclusive.

2. ARBITRATION BETWEEN EMPLOYER AND EMPLOYED

239. Board of arbitration authorized.
240. District judge to establish board, etc.
241. Controversy involving labor organizations.
242. Submission in writing.
243. Arbitrators to take oath, etc.
244. Powers and duties of chairman and board.
245. Adjudication terminates powers.
246. Status quo preserved.
247. Compensation.
248. Award to take effect when.
249. Judgment entered.

1. ARBITRATION IN GENERAL

Article 224. [56] [47] [42] Right to arbitrate.—All persons desiring to submit any dispute, controversy, or right of action supposed to have accrued to either party, to arbitration, shall have the right so to do in accordance with the provisions of this title. [Const., art. 16, sec. 13.]

Art. 225. [57] [48] [43] Agreement.—Such persons shall sign an agreement in writing, as plaintiff and defendant, to arbitrate their differences or matters in dispute, and in such agreement each party shall name for himself one arbitrator, who shall be over the age of twenty-one years, not related to either party by consanguinity or affinity, possessing the qualifications of a juror, and who is not interested in the result of the cause to be submitted for his decision. [Act April 25, 1846, p. 127. G. L. vol. 2, p. 1433.]

Art. 226. [58] [49] [44] Agreement filed.—If the amount in dispute is two hundred dollars or less, exclusive of interest, such agreement shall be filed with some justice of the peace of the county in which the defendant resides or in which the controversy arose. If the matter in dispute exceeds two hundred dollars, exclusive of interest, then such agreement shall be filed with the clerk of the district or county court of the county in which the controversy arose, according as the amount involved, or matter in dispute, may come within the jurisdiction of one court or the other. [Id.]

Art. 227. [59] [50] [45] Day of trial designated.—When such agreement is filed, the justice of the peace or the clerk of county or district court, as the case may be, shall forthwith designate a day for the trial of the cause, not less than two days thereafter, and shall issue process for such witnesses as either party may desire, returnable on the day fixed for trial. [Id.]

Art. 228. [60] [51] [46] Oath of arbitrators.—On the assembling of the arbitrators on the day of trial, the justice or clerk shall administer an oath to each, substantially as follows: "You do solemnly swear that you will fairly and impartially decide the matter in dispute between the parties, according to the evidence adduced and the law and equity applicable to the facts proved. So help you God." [Id.]

Art. 229. [61] [52] [47] Continuances permissible.—After being sworn, the arbitrators may, for good cause shown, continue the hearing to some other day, and during the progress of any trial, for good cause, may adjourn the same over to some other time.

Art. 230. [62] [53] [48] Procedure on trial.—Any arbitrator shall administer the necessary oath to the witnesses, and the trial of the cause shall proceed in like manner with trials in the courts of this State, the plaintiff holding the affirmative, and entitled to open and conclude the argument.

Art. 231. [63] [54] [49] Award entered as judgment.—After hearing the evidence and arguments, if any, the arbitrators shall agree upon their award and reduce the same to writing, specifying plainly their decision, which award they shall file with the justice or clerk as the case may be, and at the succeeding term of the court if no appeal is applied for such award shall be entered and recorded as the judgment of the court, with like effect as other judgments of said court.

Art. 232. [64] [55] [50] Umpire selected.—If the arbitrators chosen as aforesaid cannot agree, they shall select an umpire with like qualifications as themselves, or in case they disagree in the choice of an umpire, the justice or clerk shall select such umpire, and he shall be sworn in like manner as the arbitrators; and the cause may be tried anew at such time as the board of arbitration thus constituted may designate, with like proceedings as are prescribed in the preceding article.

Art. 233. [65] [56] [51] Appeal from award.—If a right of appeal is not expressly reserved in the original agreement to arbitrate, no such right shall exist, but the decision of the arbitrators shall be final. If such right of appeal is reserved, and either party desires to appeal from such decision or award, he shall file his written application to that effect with the justice or clerk, as the case may be, on

or before the return day of the term of the court next thereafter. [Id.]

Art. 234. [66] [57] [52] In case of appeal.—When an application for appeal is filed, as prescribed in the preceding article the same shall be noted on the docket of the court, and the opposite party served with a citation, as in ordinary cases of suit by petition. Upon return of service upon the opposite party, the cause shall stand for trial de novo as in ordinary cases.

Art. 235. [67] [58] [53] Costs.—The arbitrators may award the costs to either party; and, if their decision or award is silent as to costs, the same shall be taxed equally against both parties.

Art. 236. [68] [59] [54] Refusing to proceed.—After an agreement to arbitrate is filed, the parties thereto shall be bound to that mode of trial under the following penalties, to-wit: Such agreement may be pleaded in bar to any suit thereafter brought by a plaintiff in such agreement for the same cause of action, when such plaintiff has refused to proceed under such agreement; and said agreement may be pleaded in bar to any right claimed or defense set up by defendant in such agreement who has refused to proceed thereunder, where such right or defense existed at the time of filing such agreement. [Act 1846, p. 127.]

Art. 237. [69] [60] [55] Corporation, etc., may arbitrate.—The provisions of this title shall apply to corporations as well as natural persons; and executors, administrators and guardians may also consent to an arbitration of any controversy or matter of dispute relating to or affecting their respective trusts, with the consent of the court in which such administration or guardianship is pending.

Art. 238. [70] [61] [56] Mode not exclusive.—Nothing herein shall be construed as affecting the existing right of parties to arbitrate their differences in such mode as they may select.

2. ARBITRATION BETWEEN EMPLOYER AND EMPLOYED

Art. 239. [71] Board of arbitration authorized. Whenever any grievance or dispute of any nature, growing out of the relation of employer and employés, shall arise or exist between employer and employés, it shall be lawful, upon mutual consent of all parties, to submit all matters respecting such grievance or dispute in writing to a board of arbitrators to hear, adjudicate, and determine the same. Said board shall consist of five persons. When the employés concerned in such grievance or dispute, as the aforesaid, are members in good standing of any labor organization which is represented by one or more delegates in a central body, the said central body shall have power to designate two of said arbitrators, and the employer shall have the power to designate two others of said arbitrators; and the said four arbitrators shall designate a fifth person as arbitrator, who shall be chairman of the board. In case the employés concerned in any such grievance or dispute, as aforesaid, are members in good standing of a labor organization which is not represented in a central body, then the organization of which they are members shall designate two members of said board; and said board shall be organized as hereinbefore provided; and in case the employés concerned in any such grievance or dispute, as aforesaid, are not members of any labor organization, then a majority of said employés, at a meeting duly held for that purpose, shall designate two arbitrators for said board; and said board shall be organized as hereinbefore provided; provided, that when the two arbitrators shall have been selected by each of the respective parties to the controversy, the district judge of the district having jurisdiction of the subject matter shall, upon notice from either of said arbitrators that they have failed to agree upon the fifth arbitrator, appoint said fifth arbitrator. [Acts 1895, p. 85, G. L. vol. 10, p. 815.]

Art. 240. [72] District judge to establish board, etc.—Any board, as aforesaid selected, may present a written petition to the district judge of the county where such grievance or dispute to be arbitrated may arise, signed by a majority of said board, setting forth in brief terms the facts showing their due and regular appointment, and the nature of the grievance or dispute between the parties to said arbitration, and praying the license or order of such judge establishing and approving of said board of arbitration. Upon the presentation of said petition, said judge, if it appear that all requirements of this law have been complied with, shall make an order establishing such board of arbitration and referring the matters in dispute to it for hearing, adjudication and determination. The said petition and order, or a copy thereof, shall be filed in the office of the district clerk of the county in which the arbitration is sought. [Id.]

Art. 241. [73] Controversy involving labor organizations.—When a controversy involves and affects the interests of two or more classes or grades of employés belonging to different labor organizations, or of individuals who are not members of a labor organization, then the two arbitrators selected by the employés shall be agreed upon and selected by the concurrent action of all such labor organizations, and a majority of such individuals who are not members of a labor organization. [Id.]

Art. 242. [74] Submission in writing.—The submission shall be in writing, shall be signed by the employer or receiver and the labor organization representing the employés, or any laborer or laborers to be affected by such arbitration who may not belong to any labor organization, shall state the question to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate as follows:

1. That pending the arbitration, the existing status prior to any disagreement or strike, shall not be changed.

2. That the award shall be filed in the office of the clerk of the district court of the county in which said arbitration is held, and shall be final and conclusive upon both parties, unless set aside for error of law, apparent on the record.

3. That the respective parties to the award will each faithfully execute the same, and that the same may be specifically enforced in equity so far as the powers of a court of equity permit.

4. That the employés dissatisfied with the award shall not, by reason of such dissatisfaction, quit the service of said employer or receiver before the expiration of thirty days, nor without giving said employer or receiver thirty days written notice of their intention to quit.

5. That said award shall continue in force as between the parties thereto for the period of one year after the same shall go into practical operation; and no new arbitration upon the same subject between the same parties shall be had until the expiration of said one year. [Id.]

Art. 243. [75] Arbitrators to take oath, etc.—The arbitrators so selected shall sign a consent to act as such and shall take and subscribe an oath before some officer authorized to administer the same, to faithfully and impartially discharge his duties as such arbitrator, which consent and oath shall be immediately filed in the office of the clerk of the district court wherein such arbitrators are to act. When said board is ready for the transaction of business, it shall select one of its members to act as secretary, and the parties to the dispute shall receive notice of a time and place of hearing, which shall be not more than ten days after such agreement to arbitrate has been filed. [Id.]

Art. 244. Powers and duties of chairman and board.—The chairman shall have power to administer oaths and to issue subpœnas for the production of books and papers and for the attendance of witnesses, to the same extent that such power is possessed by a court of record, or the judge thereof, in this State. The board may make and enforce the rules for its government and transaction of the business before it and fix its sessions and adjournment, and shall hear and examine such witnesses as may be brought before the board, and such other proof as may be given relative to the matter in dispute. [Id.]

Art. 245. [77] Adjucation [1] terminates powers.—When said board shall have rendered its adjudication and determination, its powers shall cease, unless there may be at the time in existence other similar grievances or disputes between the same class of persons mentioned in the first article of this subdivision, and in such case such persons may submit their differences to said board, which shall have power to act and adjudicate and determine the same as fully as if said board were originally created for the settlement of such difference or differences. [Id.]

[1] Probably should read "Adjudication."

Art. 246. [78] Status quo preserved.—During the pendency of such arbitration it shall not be lawful for the employer or receiver party to such arbitration, nor his agent, to discharge the employés parties thereto, except for inefficiency, violation of law, or neglect of duty, or where reduction of force is necessary, nor for the organization representing such employés to order, nor for the employés to unite in, aid or abet strikes or boycotts against such employer or receiver. [Id.]

Art. 247. [79] Compensation.—Each of the said board of arbitrators shall receive three dollars per day for every day in actual service, not to exceed ten days, and traveling expenses not to exceed five cents per mile actually traveled in getting to, or returning from, the place where the board is in session. The fees of witnesses of the aforesaid board shall be fifty cents for each day's attendance and five cents per mile traveled by the nearest route to, and returning from, the place where attendance is required by the board. All subpœnas shall be signed by the secretary of the board and may be served by any person of full age authorized by the board to serve the same. And the fees and mileage of witnesses and the per diem and traveling expenses of said arbitrators shall be taxed as costs against either or all of the parties to said arbitration, as the board of arbitrators may deem just, and shall constitute part of their award; and each of the parties to said arbitration shall, before the arbitrators proceed to consider the matters submitted to them, give a bond, with two or more good and sufficient sureties, in an amount to be fixed by the board of arbitration, conditioned for the payment of all expenses connected with the said arbitration. [Id.]

Art. 248. [80] Award to take effect when.—The award shall be made in triplicate. One copy shall be filed in the district clerk's office, one copy shall be given to the employer or receiver, and one copy to the employés or their duly authorized representative. The award, being filed in the District Clerk's office, as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly, at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent on the record; in which case said award shall go into practical operation, and judgment shall be rendered accordingly, when such exceptions shall have been fully disposed of by either said district court or on appeal therefrom. [Id.]

Art. 249. [81] Judgment entered.—At the expiration of ten days from the decision of the district court, upon exceptions taken to said award as aforesaid, judgment shall be entered in accordance with said decision, unless during the said ten days either party shall appeal therefrom to the court of civil appeals holding jurisdiction thereof. In such case, only such portions of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided. The determination of said court of civil appeals, upon said questions shall be final, and being certified by the clerk of said court of civil appeals, judgment pursuant thereto shall thereupon be entered by said district court. If exceptions to an award are finally sustained, judgment shall be entered setting aside the award; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment, when entered, shall have the same force and effect as judgment entered upon an award. [Id.]

TITLE 10A—ARCHITECTS

Art.
249a. Regulation of practice of architecture.
Sec.
1. Architects to register.
2. Board of Architectural Examiners created; qualification; term of office; vacancies.
3. Oath; organization of Board; Board of Secretary-treasurer; powers and duties; rules and regulations.
4. Fees, disposition of; salaries and expenses; Architects' Registration Fund.
5. Quorum; meetings; rules and regulations.
6. Examinations; qualifications of applicants for registration.
7. Certificate; fee; registration of certificate; application to practicing architects; copartnerships.
8. Practicing architects from other states; fees.
9. Exemption from examinations; fee.
10. Seal to be used by architect.
11. Practicing architecture; registration certificates, necessity of; exceptions.
12. Revocation or cancellation of certificates.
13. Annual fee; certificate of renewal; failure to obtain renewal; notice of revocation; architects in military or naval service.
14. Report of proceedings of Board.
15. Penalty.
16. Exceptions from act.

249b. Certificate of registration; persons entitled to receive without examination; fee; affidavit.

Article 249a. Regulation of practice of architecture.

Architects to register

Section 1. In order to safeguard life, health, and property, and the public welfare, and in order to protect the public against the irresponsible practice of the profession of architecture by properly defining and regulating the practice of architecture, no person shall practice architecture, as herein defined, within this State, after ninety (90) days after the appointment and qualification of the members of the Board of Architectural Examiners hereinafter created, unless he be a registered architect, as provided by this Act.

Board of Architectural Examiners created; qualification; term of office; vacancies

Sec. 2. A Board of Architectural Examiners is hereby created, to be composed of three members, each

of whom shall have engaged in the practice of architecture for a period of five (5) years or more, to be appointed by the Governor of this State within thirty (30) days after this Act becomes effective, and said appointment shall be approved by a two-thirds vote of the Senate. One member of said Board shall hold office for the period of two (2) years from and after his or her appointment. One of the members of said Board shall hold office for the period of four (4) years from and after his or her appointment. One member of said Board shall hold office for the period of six (6) years from and after his or her appointment. Each of the members of said Board shall retain his or her office until his or her successor is duly appointed and qualified. The Governor of this State shall appoint a successor to each person whose term of office shall expire, and such appointment shall be approved by a two-thirds vote of the Senate, and such person so appointed shall hold office for the period of six (6) years from and after his or her appointment, and he or she shall be a registered architect, and have such other qualifications as provided by this Act. The person so appointed shall be a resident citizen of and legal voter of this State and shall have engaged in the practice of architecture for a period of ten (10) years or more. All vacancies occurring in the membership of said Board shall be filled by appointment by the Governor of this State for the unexpired term of such membership, and such appointments shall be approved by a two-thirds vote of the Senate.

Not more than one member of said Board shall be a stockholder or owner of any interest in, nor be a member of the faculty, or board of trustees, or other governing board of, nor be an officer of, any school or college which teaches architecture.

A member of said Board shall not be disqualified for nor prohibited from performing any work or rendering any service on any State, county, municipal, or other public building or work for a fee or other direct compensation because of membership on said Board.

Oath; organization of Board; Board of Secretary-treasurer; powers and duties; rules and regulations

Sec. 3. The members of the Board of Architectural Examiners shall, before entering upon the discharge of their duties, qualify, by subscribing to, before a notary public or other officer authorized by law to administer oaths, and filing with the Secretary of State, the Constitutional oath of office. They shall, as soon as organized, and biennially thereafter in the month of January, elect from their number, a chairman, vice-chairman, and secretary-treasurer. The Secretary-treasurer, before entering upon his duties, shall file a bond with the Secretary of State for such sum as will be twice the amount of cash on hand at the time the bond is filed; provided, however, that the amount of said bond shall, in no case, be less than Five Thousand Dollars ($5,000). Said bond shall be payable to the Governor of this State, for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer, and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the Board of Architectural Examiners.

The Board shall adopt all reasonable or necessary rules, regulations, and bylaws to govern its proceedings and activities, not inconsistent with this Act, the laws of this State, or of the United States, which it may deem advisable. The Board shall adopt a seal, which shall be used on official documents. The design of the seal shall be similar to the seal of other departments of the State, in that it shall contain the five-pointed star with a circular border, and within the border, shall contain the words, "Texas Board of Architectural Examiners." The Secretary-treasurer of the Board shall keep a correct record of all the proceedings of the Board, and of all moneys received or expended by the Board, which record shall be open to public inspection at all reasonable times. The records shall include a record of proceedings relating to examination of applicants, and the issuance, renewal, or refusal of certificates of registration; and they shall also contain the name, known place of residence, and the date and serial number of the registration certificate of every registered architect entitled to practice his or her profession in this State, and a record of all renewals of such certificates. The records shall be kept by the Secretary-treasurer of the Board, and such records shall be audited biennially during the month of January by a certified public accountant, a report of the findings of such audit shall be made to the Governor of this State, and a copy of said report shall be delivered to the Secretary-treasurer of the Board, who shall retain same as a permanent record of the office.

The Board shall cause the prosecution of all persons violating any of the provisions of this Act, and may incur the expense reasonably necessary in that behalf.

Fees, disposition of; salaries and expenses; Architects' Registration Fund

Sec. 4. All fees which are provided to be charged by virtue of this Act shall be deposited in the State Treasury, to the credit of a fund to be known as "Architects Registration Fund," and an appropriation from said Fund, in an amount not to exceed Six Thousand, Five Hundred Dollars ($6,500) per year, and in no case more than the amount on hand in said Fund, is hereby made and authorized to pay all salaries, compensations, and other expenses of said Board, or incurred by said Board in the discharge of their duties. Said salaries, compensations, and other expenses shall be paid by drafts for the proper amounts drawn upon said Fund and signed by the Secretary-Treasurer and countersigned by the Chairman of said Board.

If, at any time when the books and records of the Board are audited, as provided for in Section 3 of this Act, it is found that there is more than Six Thousand, Five Hundred Dollars ($6,500) on hand in the hereinabove named Architects Registration Fund, and in the hands of the Board, then all money over and above that total amount, Six Thousand, Five Hundred Dollars ($6,500), shall be permanently diverted to the General Revenue Fund of this State.

The Secretary-Treasurer of the Board shall receive such monthly compensation for his or her services as shall be determined by the Board, by resolution adopted at a regular meeting of said Board, but in no case shall such compensation exceed One Thousand, Eight Hundred Dollars ($1,800) per year, exclusive of allowable expenses of office. The other members of the Board shall each receive as compensation for their services, in addition to their necessary expenses, the sum of Ten Dollars ($10) for each and every day actually spent by them in going to, attending, and returning from regular and special meetings of said Board, and in conducting examinations of applicants for registration certificates as provided for by this Act, and in prosecuting violations of this Act, but in no case shall the compensation to any one member of the Board, other than the Secretary-Treasurer of the Board, exceed Six Hundred Dollars ($600) per year, exclusive of allowable expenses. Provided further the number of employees and the salaries of each shall be as fixed in the Biennial Departmental Appropriation Bill. [As amended Acts 1941, 47th Leg., p. 478, ch. 301, § 1.]

Quorum; meetings; rules and regulations

Sec. 5. Two members of the Board shall constitute a quorum. Regular meetings of the Board shall be held at such times as the Board may fix and determine. Special meetings of the Board shall be called by the Chairman, or in his absence from the State, or

inability to act, by the vice-chairman of the Board. Notice of the time and place of all meetings shall be given in writing to each member of the Board by the mailing of such notices to him or her, at his or her last known address, at least ten (10) days prior to the time of such meeting. Such notice shall be given by the Secretary-treasurer, or by the officer calling the meeting.

The Board shall adopt rules and regulations for the examination and registration of applicants to practice architecture in accordance with the provisions of this Act, and may amend, modify, and repeal such rules and regulations from time to time. The Board shall, within fifteen (15) days after the election of officers thereof, and upon the adoption, modification, or repeal of its rules, regulations, or bylaws governing proceedings, or its rules and regulations for examination of applicants for registration certificates, file with the Secretary of State, and publish in one daily newspaper of general circulation within the State and published in the State, and in an architectural journal published in the State, and if there be none, then in a second daily newspaper published in the State in a city different from that in which the other newspaper is published, at least twice, the name and address of each officer of the Board, and a copy of such rules, regulations, or bylaws, or the amendments, modifications, or repeals thereof.

Examinations; qualifications of applicants for registration

Sec. 6. Provision shall be made by the Board of Architectural Examiners for holding examinations of applicants for registration under this Act, at such place or places as may be determined by the Board, at least twice each year, if there be applicants. Any person of good moral character, over twenty-one years of age, upon payment of a fee of Five Dollars ($5) to the Secretary-treasurer of the Board, shall be entitled to enter the examination to determine his or her qualifications. All examinations shall be governed and directed by said Board, or by a committee of two of its members delegated by the Board, and due notice of the time, scope of examination, and place of holding such examination shall be published, as in the case provided for the publication of rules and regulations of the Board. The examination shall cover those subjects to be determined and prescribed by the Board, the knowledge of which is necessary in the proper practice of architecture.

Certificate; fee; registration of certificate; application to practicing architects; copartnerships

Sec. 7. If the result of the examination of an applicant shall be satisfactory to a majority of the Board, under its rules, the Secretary-treasurer shall, upon an order from the Board, issue to the applicant a certificate to that effect and upon payment to the Secretary-treasurer of the Board by the applicant of a fee of Twenty-five Dollars ($25), he shall thereupon issue, and cause to be recorded in the office of the Secretary of State and delivered to the person therein named, a registration certificate bearing a serial number authorizing him or her, subject to the provisions of this Act, to practice the profession of architecture in this State for a period of one year from the date of such certificate; provided, however, that same may be renewed from year to year in accordance with the provisions of this Act as set forth in Section 13.

Any person of good moral character who shall, at the time that this Act becomes effective, be practicing architecture in this State as his or her principal vocation, and who was engaged in the practice of architecture for a period of at least six (6) months prior to the passage of this Act, and who shall present to the Board an affidavit to that effect, shall be entitled to receive such certificate without examination, and upon payment to the Secretary-treasurer of the Board of a fee of Twenty-five Dollars ($25), the Secretary-treasurer of the Board shall issue a registration certificate as above required to each such person having complied with the provisions of this Act; provided, however, that the Board may, in its discretion, require further evidence than the affidavit hereinabove provided for, that the applicant was actually engaged in the practice of architecture at the time that this Act became effective and for six (6) months prior thereto. Such practicing architects shall be required to file their application for registration under this Act within ninety (90) days after the appointment and qualification of the members of the Board of Architectural Examiners.

Coincident with its issue, the Board shall cause each registration certificate issued by it to be recorded in the office of the Secretary of State. For the purpose of recording such certificates, the Secretary of State shall keep a book, or books, of suitable size and character, to be known as the "Register of Architects" and shall record each such certificate on a separate page of said book, together with the date same was filed for record, and the residence of the certificate holder at the time of filing same for record.

In the case of copartnership of architects, each partner must be registered to practice architecture. No firm or partnership shall be registered to practice architecture, but may practice as such provided each member of such firm or partnership is a registered architect in accordance with the provisions of this Act.

Practicing architects from other states; fees

Sec. 8. An architect of good moral character who has lawfully practiced architecture for a period of ten (10) years or more outside this State, or partly within and partly without this State, may be required at the discretion of the Board, in order to obtain a registration certificate to practice architecture in this State, to take only a practical examination the nature of which shall be prescribed by the Board of Architectural Examiners, provided that, as a condition precedent to the issuance of a registration certificate to such applicant, the Board may require him or her to furnish and file evidence satisfactory to the Board that he or she has not been restrained from practicing architecture in any other State or jurisdiction on account of negligence, incompetency, recklessness, dishonesty, or other causes to be grounds for the revocation of a registration certificate in this State, or that no registration certificate or other license, or permit to practice architecture, theretofore issued to him or her has ever been so revoked, and upon failure of the applicant to furnish and file such satisfactory evidence, the Board may, in its discretion, refuse to issue a registration certificate to him or her authorizing him or her to practice architecture in this State.

An architect who has legally practiced architecture in another State of the United States, or country outside the border of the United States, where the qualifications prescribed by law were, at the time he or she practiced in that State or country, substantially equal to those prescribed in this State at the date of his or her application, may obtain a registration certificate to practice architecture in this State merely by furnishing evidence satisfactory to the Board of the fact that he or she has so lawfully practiced in such other State or country; provided that the laws or legal regulations of that State or country extend like or similar privilege to registered architects of this State applying for the right to practice architecture in such other State or country.

The fee to be paid by an architect of another State or country, applying for his or her original registration certificate to practice architecture in this State, shall be the sum of Thirty Dollars ($30).

Exemption from examinations; fee

Sec. 9. Any person of good moral character making application for a registration certificate to prac-

tice architecture in this State who presents to the Board a diploma of graduation or satisfactory certificate from an architectural school or college, certifying that he or she has completed a technical course approved by the Board of Architectural Examiners, together with evidence of at least three (3) years satisfactory experience, subsequent thereto, in the office or offices of a reputable architect or architects, shall be entitled to a registration certificate as provided for by this Act, without being required to stand an examination therefor. The Board shall publish a list of approved schools, and any addition, eliminations, or changes therein, from time to time, as changes occur.

The fee to be paid by an applicant for a registration certificate, under this Section of this Act, shall be the sum of Twenty-five Dollars ($25).

Seal to be used by architect

Sec. 10. Every registered architect shall obtain and keep a seal, such as is authorized, prescribed, and approved by the Board of Architectural Examiners, with which he or she shall stamp all drawings or specifications issued from his or her office for use in this State. The design of the seal shall be the same as that to be used by the Board of Architectural Examiners as provided for in Section 3 of this Act, except that it shall bear the words "Registered Architect, State of Texas," instead of "Texas Board of Architectural Examiners."

Practicing architecture; registration certificates, necessity of; exceptions

Sec. 11. Any person, or firm, who for a fee or other direct compensation therefor, shall engage in the planning, or designing, or supervising the construction of buildings to be erected or altered in this State, by or for other persons than themselves, as a profession or business, and shall represent or advertise themselves as architects, architectural designers, or other title of profession or business using some form of the word "architect," shall be considered as practicing the profession of architecture in this State, and shall be required to comply with the provisions of this Act; and no person or firm shall engage in or conduct the practice of architecture as aforesaid in this State unless a registration certificate or certificates therefor have been duly issued to such person or the members of such firm as provided for by this Act, and no firm or partnership shall engage in, or conduct, the practice of architecture as aforesaid within this State except by and through persons to whom registration certificates have been duly issued, and which certificates are in full effect; but nothing in this Act shall prevent draftsmen, students, clerks of works, superintendents, or other employees or assistants of those legally practicing architecture under registration certificates as herein provided for, from acting under the instruction, control, or supervision of such registered architects.

Nothing in this Act shall prevent qualified professional engineers from planning and supervising work, such as railroads, hydro-electric work, industrial plants, or other construction primarily intended for engineering use or structures incidental thereto, nor prevent said engineers from planning, designing, or supervising the structural features of any building, but such engineers shall not employ the title "architect" in any way, nor represent themselves as such, nor shall any engineer practice the profession of architecture as defined herein, unless he or she be registered as an architect under the provisions of this Act.

Revocation or cancellation of certificates

Sec. 12. Registration certificates of architects issued in accordance with this Act, shall remain in full force and effect until expiration date unless revoked for cause as herein provided.

The registration certificate and right of any person to practice architecture in this State may be revoked and cancelled by any District Court of this State, in a suit by the State upon the relation of the Board of Architectural Examiners, upon the proof of the violation of the law in any respect in regard thereto, or for any cause for which the Board of Architectural Examiners is authorized to refuse to grant registration certificates, or for proof of gross incompetency, or for recklessness in the construction of buildings on the part of the architect designing, planning, or supervising the construction or alteration of same, or for dishonest practice on the part of the holder of such registration certificate; and when requested by the Board, the several District and County Attorneys of this State shall have the authority, and it shall be their duty, to file and prosecute appropriate judicial proceedings in the name of the State against such persons. The venue of each suit shall be in the county of the residence of the holder of such registration certificate.

Annual fee; certificate of renewal; failure to obtain renewal; notice of revocation; architects in military or naval service

Sec. 13. Every registered architect in this State who desires to continue the practice of his or her profession shall annually, during the time he or she shall continue in such practice, pay the Secretary-Treasurer of the Board during the month of July, a fee of Ten Dollars ($10), and the Secretary-Treasurer shall thereupon issue to such registered architect, and file for record with the Secretary of State, a certificate of renewal of his or her registration certificate for the term of one year. In the case of those persons paying their first renewal fee after the expiration of their original registration certificate, such fee shall be due in the month of July first succeeding the expiration date of the original registration certificate issued to such person, and such certificate shall remain in force until the end of such month. Any registered architect who shall fail to have his or her registration certificate renewed during the month of July of each and every year shall have his or her registration certificate revoked; and it shall be the duty of the Secretary-Treasurer of the Board to give notice of such revocation to the Secretary of State, whereupon the Secretary of State shall make an entry of such revocation accordingly upon the page of the Register of Architects containing the record of the registration certificate which is revoked. But the failure to renew such registration certificate in the time stated shall not deprive such architect of the right of renewal thereafter; but the fee to be paid upon the renewal of a registration certificate after the month of July and before the first of January of the year following shall be Fifteen Dollars ($15) to cover the additional expense incurred by the Board in effecting the renewal; and, in the event that the renewal is not made before the first day of January of the year following, the applicant shall be required to take and satisfactorily pass such examination as may be prescribed by the Board, and if the applicant passes such examination successfully, the fee to be paid upon the renewal of the registration certificate shall be, in such case, the sum of Thirty Dollars ($30); and provided that a registered architect who has entered service in the United States Army, Navy, Marine Corps, or Coast Guard subsequent to October 1, 1940, and who was at the time of his entry into said service or is now in good standing as a registered architect, shall have his name continued on the list of registered architects and shall be exempt from the payment of any further license fee during his service, as aforesaid, and until honorably discharged, and when honorably discharged from the service he shall be exempt from payment of such fee for the then current fiscal year.

[As amended Acts 1943, 48th Leg., p. 254, ch. 155, § 1.]

Report of proceedings of Board

Sec. 14. Immediately after the organization of the Board, and annually thereafter, the Secretary-treasurer of the Board shall file with the Secretary of State a full report of the proceedings of the Board during the preceding year, subscribed by the Chairman and Secretary-treasurer of the Board, and attested by the seal of the Board of Architectural Examiners.

Penalty

Sec. 15. If any person, or firm, shall, for a fee or other direct compensation, pursue the practice of the profession of architecture in this State as herein defined, or shall engage in this State in the profession or business of planning, or designing, or supervising the construction of buildings to be erected or altered by or for other persons than himself, herself, or themselves, and shall advertise, or put out any sign, card, or drawings in this State designating himself, herself, or themselves as an architect, architectural designer, or other title of profession or business using some form of the word "architect" without first having complied with the provisions of this Act, such person, or the members of such firm, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars ($25), and not more than Two Hundred Dollars ($200), for each offense; and each and every day of violation of this Act as above set forth, shall constitute a separate offense.

Exceptions from act

Sec. 16. This Act shall not apply:

1. To the practice of architecture solely as an officer or employee of the United States, but persons so engaged or employed shall not engage in the private practice of architecture in this State without first having a registration certificate as herein provided.

2. To legally qualified architects residing in another State or country outside the border of the United States, who do not maintain nor open offices in this State, provided that such architects, when undertaking or conducting the practice of architecture as herein set forth in this State, shall employ a registered architect of this State as a consultant, or shall act as a consultant of a registered architect in this State.

3. To any person, or firm, who prepares plans and specifications for the erection or alteration of a building, or supervises the erection or alteration of a building by or for other persons than himself, herself, or themselves, but does not in any manner represent himself, herself, or themselves to be an architect, architectural designer, or other title of profession or business using some form of the word "architect." [Acts 1937, 45th Leg., p. 1279, ch. 478.]

Section 17 of the Act of 1947 related to partial invalidity. Section 18 repealed all conflicting laws and parts of laws.

Art. 249b. Certificate of registration; persons entitled to receive without examination; fee; affidavit.

This article, Acts 1939, 46th Leg., p. 62, § 1, provided that any person of good moral character who, on May 22, 1937, had been engaged in the practice of architecture in this State for a period of at least six (6) months prior to said date and who failed to obtain a registration certificate as provided for in Section 7 of Chapter 478, Acts of 1937, Forty-fifth Legislature, should have thirty (30) days from the date upon which Act went into effect in which to file with the Board of Architectural Examiners the affidavit and pay the fee of Twenty-five ($25.00) Dollars in order to obtain a certificate authorizing such person to practice Architecture in the State of Texas, as provided in said Act.

Acts 1943, 48th Leg., p. 406, ch. 274, § 1 as amended Acts 1947, 50th Leg., p. 1012, ch. 430, § 1, read: "Any person of good moral character who on May 22, 1937, was practicing architecture in Texas or who was a citizen of Texas and was practicing architecture in the employ of an American company in a foreign country and had been engaged in the practice of architecture for a period of six (6) months prior to May 22, 1937, and who shall present to the Board of Architectural Examiners of this State an affidavit to that effect shall be entitled to receive from said Board without examination a certificate authorizing him or her to practice architecture in the State of Texas without examination upon payment to the Secretary-Treasurer of the Board a fee of Twenty-five Dollars ($25), and the Secretary-Treasurer of the Board shall thereupon issue a registration certificate as above required to each such person having complied with the provisions of this Act; provided, however, that the Board may, in its discretion, require further evidence than the affidavit hereinabove provided for, that the applicant was actually engaged in the practice of architecture on May 22, 1937, and for six (6) months prior thereto. Such practicing architect shall be required to file his or her application for registration under this Act within ninety (90) days from the date this Act goes into effect."

TITLE 11—ARCHIVES

1. ARCHIVES OF THE GENERAL LAND OFFICE

Art.
250. Enumeration.
251. Effect given to archives.
252. Deeds, etc.
253. Withdrawal.
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2. OTHER PUBLIC ARCHIVES

254. Of State Department.
255. Archives of Republic.
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257. Of Comptroller's Office.
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1. ARCHIVES OF THE GENERAL LAND OFFICE

Article 250. [82] [62] [57] Enumeration.—The following shall be deemed the records, books, and papers of the general land office and constitute a part of the archives of the same:

(1) All the records, books, titles, surveys, maps, papers and documents which in any manner pertain to the lands of the late Republic, or State of Texas, which have been, prior to the eighteenth day of April, A. D. 1876, delivered to the Land Commissioner in pursuance of, and in accordance with, the requirements of any law of the Republic or State of Texas, by any of the empresarios, political chiefs, alcaldes, regidores, commissioners, special or general, for extending titles.

(2) All books, papers, records, documents and archives pertaining to the lands of the Republic or State of Texas that have heretofore been delivered by the Commissioner of the Court of Claims to the Comptroller and by him turned over to the Land Commissioner in pursuance and by authority of law.

(3) All other books, records, papers and archives of the colony of Martin de Leon heretofore delivered by the Secretary of State, in accordance with law, to the Land Commissioner.

(4) The duly certified copy of the book or register of land certificates, usually known as the "Lost Book of Harris County," transmitted to the Land Commissioner by the clerk of the county court, in accordance with law.

(5) All other books, transfers, powers of attorney, field-notes, maps, plats, legal proceedings, official reports, original documents and other papers appertaining to the land of the Republic or State of Texas that have been deposited or filed in the general land office in accordance with any law of the Republic or of this State. [Act Dec. 22, 1836, p. 216; Act June 12, 1837, p. 263; Act Dec. 14, 1837, pp. 44, 62; Act Dec. 2, 1850, p. 32; G. L. vol. 1, pp. 1276, 1323, 1386; G. L. vol. 3, p. 860.]

(6) All owners of land between the Nueces and Rio Grande rivers, under grants or titles from the former government which grants or titles are such as are described in Section 4 of Article 13 of the present Constitution, and have been, previous to the adoption of his [1] Constitution, recorded in the respective counties where the land is situated, but have not yet been deposited or archived in the general land office of this State, be and they are hereby authorized and required to deposit and archive said grants or titles in said general land office. Such titles when so archived, shall be subject to all defenses and objections to which they would have been subject if not so archived; and said act of archiving shall invest said titles with no greater validity than they before had as titles recorded in the proper county; and the Land Commissioner is hereby authorized and required to receive the same as archives of said office. [Acts 1881, p. 37; G. L. vol. 9, p. 129.]

[1] So in enrolled bill. Should probably read "the."

Art. 251. [83] [63] [58] Effect given to archives.—Nothing in the preceding article shall be construed to give any of the said books, records or other papers named in said article any greater force or validity by reason of their being so recognized as archives of the general land office than was accorded them by the laws in force at the date of their execution and deposit in the general land office. [Id.]

Art. 252. [84] [64] [59] Deeds, etc.—Deeds and other instruments of writing which were executed or issued prior to the second day of March A. D. 1836, upon stamped paper of the second or third seal, and which deeds or instruments of writing are not original documents in the general land office, nor expressly declared by law to be archives of the said office, are hereby declared to constitute no part of the archives of said office. [Act Feb. 11, 1850, p. 200; Act Jan. 11, 1862, p. 36; G. L. vol. 3, p. 638; G. L. vol. 5, p. 480.]

Art. 253. [85] [65] [60] Withdrawal.—The owners of any land to which the deeds or other instruments of writing named in the preceding article relate, may withdraw the same from the general land office on making a written sworn application therefor, to the Land Commissioner, setting forth the fact of such ownership; and, if the commissioner shall be satisfied that the person applying is in fact the owner of the land to which such deed or instrument of writing relates, he may deliver the same to such applicant, taking his receipt therefor, and describing in such receipt the deed or instrument of writing delivered, with a summary of its contents and the name of the original grantee of the land to which such deed or instrument of writing may relate or refer. [Id.]

Art. 253a. Railway surveys.—The Commissioner of the General Land Office is Authorized and required to procure, accept and file in the General Land Office the original papers relating to the survey of lands by virtue of certificates issued by the State of Texas to The Texas & Pacific Railway Company and its predecessors in title, including the maps, sketches, reports and all papers drawn by the surveyors in making the original as well as the corrected surveys of such lands, which papers, maps, sketches and reports are now in the custody of said railway company. Said Commissioner shall verify the authenticity of such papers, maps, sketches and reports. In the event said Commissioner cannot procure the original papers, maps, sketches and reports above mentioned, he is authorized to procure, accept and file, verified copies thereof, or if he can procure only a portion of the originals, he shall procure and accept such portion and take and file verified copies of those originals which he cannot procure. Thereafter said original papers or verified copies thereof so filed by the Commissioner shall become archives in the General Land Office and the same or certified copies thereof shall be admissible in evidence as are other papers, documents and records and certified copies thereof of such office. [Acts 1930, 41st Leg., 5th C.S., p. 204, ch. 59, § 1.]

2. OTHER PUBLIC ARCHIVES

Art. 254. [86] [66] [61] Of State Department.—The Secretary of State is authorized to take possession of rooms in the basement of the capitol for the use of the State Department and the better preservation of archives. [Acts 1856, p. 3; G. L. vol. 4, p. 421.]

Art. 255. [87] [67] [62] Archives of Republic.—The entire archives of the Congress of the Republic of Texas, and of the several Legislatures of this State, arranged and filed according to law, together with the records, books and journals of said Congress and Legislatures, prepared in accordance with law, and heretofore, or hereafter, deposited in the office of the Secretary of State are declared to be archives of said office. [Acts 1854, p. 113; Acts 1887, p. 47; G. L. vol. 3, p. 1557.]

Art. 256. [88] [68] [63] Historical archives.—All books, pictures, papers, maps, documents, manuscripts, memoranda and data which relate to the history of Texas as a province, colony, Republic or State, which have been or may be delivered to the State Librarian by the Secretary of State, Comptroller, Land Commissioner or by any head of any department, or by any person or officer, in pursuance of law, shall be deemed books and papers of the State Library and shall constitute a part of the archives of said State Library; and copies therefrom shall be made and certified by the State Librarian. or by the person serving as Archivist of the Texas State Library, upon application of any person interested, which certificate shall have the same force and effect as if made by the officer originally in custody of them. [Acts 1907, p. 283; Acts 1943, 48th Leg., p. 267, ch. 165, § 1.]

Art. 257. [89] [69] [64] Of Comptroller's office.—All books, papers, records and archives, that were heretofore archives of the auditor's office, or of the office of the Commissioner of the Court of Claims, and which have heretofore, in pursuance of law, been delivered to the Comptroller, shall be deemed papers and records of the Comptroller's office, and shall constitute a part of the archives of his office. [Acts 1858, p. 40; Acts 1860, p. 48; G. L. vol. 4, pp. 912, 1412.]

Art. 258. [90] [70] [65] Other archives.—All books, papers, records, rolls, documents, returns, reports, lists and all other papers that have been, are now, or that may be, required by law to be kept, filed or deposited in any office of the executive departments of this State, shall constitute a part of the archives of the offices in which the same are so kept, filed or deposited.

Art. 259. University archives.—The librarian of the University of Texas and the archivist of the Department of History of said University are hereby authorized to make certified copies of all public records in the custody of the University of Texas, and said certified copies shall be valid in law and shall have the same force and effect for all purposes as if certified to by the county clerk or other custodian as now provided for by law. In making the certificate to the said certified copies, either by the librarian or by the archivist of the Department of History, the said officer shall certify that the foregoing is a true and correct copy of said document, and after signing the said certificate shall swear to the same before any officer authorized to take oaths under the laws of this State. [Acts 1921, p. 94.]

Art. 260. Loan of archives.—County Commissioners and other custodians of public records are hereby authorized, in their discretion, to lend to the

Library of the University of Texas, for such length of time and on such conditions as they may determine, such parts of their archives and records as have become mainly of historical value, taking a receipt therefor from the librarian of such University; and the librarian of said University is hereby authorized to receipt for such records as may be transferred to the said Library, and to make copies thereof for historical study. [Id.]

TITLE 11A—ASSIGNMENTS, IN GENERAL

Art.
260—1. Accounts and accounts receivable; notice; records.

Sec.
1. Definitions.
2. Assignment; filing of notice.
3. Notice of assignment.
4. Place for filing notice of assignment.
5. Filing and indexing notice of assignment; satisfaction or release; fee.
6. Record as notice.
7. Payment to one not holding prior protected assignment.
8. Right or lieu of assignee upon balance owing.

Art. 260—1. Accounts and accounts receivable; notices; records.

Definitions

Section 1. In this Act, unless the context otherwise requires:

(1) "Account" or "account receivable" means an existing or future right to the payment of money presently due, or to become due (a) under an existing contract: (b) which right to payment is not secured by a chattel mortgage, a conditional sale contract, or other instrument which may be filed for record in a public office of this or another state or of the United States and which instrument was given at or before the time the account was assigned and reserves the title to, or creates a lien upon, goods, the sale of which gave rise to the account; and (c) which right to payment is not represented by (A) a judgment, (B) a negotiable instrument, or (C) a non-negotiable instrument which so represents the obligation that an assignee who takes possession of it takes rights superior to those of a prior assignee of the obligation who did not take possession of the instrument; and (d) the assignment of which right is not subject to special statutory provisions of the state or of the Federal Government relative to the rights of creditors of the assignor or to successive assignees from the assignor.

(2) "Assignee", "assignment", "assignor", and "debtor" are limited respectively to an assignee, assignment, assignor of, and debtor on an account receivable.

(3) "Contract" includes express contracts, written or oral, and implied contracts, such as an obligation to pay for goods received or services rendered without an express contract.

(4) "Assignment" means any transfer of an account, other than by operation of law, including but not limited to a transfer as security, the creation by agreement of a lien on an account, and sales of accounts.

Assignment; filing of notice

Sec. 2. The assignment of any account or accounts may be protected by the execution and delivery by the assignor to the assignee of an instrument or instruments in writing, assigning such account or accounts and describing the account or accounts assigned with sufficient particularity to identify the same, and by the filing for record the "Notice of Assignment" as hereinafter provided for.

Notice of assignment

Sec. 3. Whenever any person, firm or corporation assigns within this state by instrument in writing all or any one or more of his accounts receivable, there may be filed for record a "Notice of Assignment", signed by the assignor and acknowledged or witnessed as provided in the case of chattel mortgages which shall contain:

(a) The name and mailing address and the residence, principal office, or place of business, within this state of both the assignor and assignee; or if either the assignor or the assignee has no mailing address within the state, the mailing address outside the state.

(b) A statement that the assignor has assigned or intends to assign one or more accounts to the named assignee.

(c) A statement of the period of time for which such notice is to be effective.

Place for filing notice of assignment

Sec. 4. The place for filing the notice of assignment shall be the office of the County Clerk of the County of the assignor's residence within this state; or if not a resident of this state, the office of the County Clerk of the County wherein the principal office of the assignor is maintained; or, if neither a resident of this state nor maintaining a principal office within this state, in the office of the County Clerk of Travis County, Texas. Such notice of assignment shall be effective for a definite period of time to be stated therein, not to exceed a period of three years. The County Clerk shall on request, for a charge of Fifty (50¢) Cents, issue a certificate with respect to any specified person either stating that the specified person is not a filing assignor, or if the specified person is a filing assignor, stating the contents of the filed notice of assignment.

Filing and indexing notice of assignment; satisfaction or release; fee

Sec. 5. Upon the filing for record of any notice of assignment the County Clerk shall receive, file, and index the same, as in the case of chattel mortgages, and shall preserve the same among the chattel mortgages in his office for each notice of assignment which shall be filed, and shall receive a fee of Twenty-five (25¢) Cents. Satisfaction, cancellation or release, signed by the assignee, of any such notice of assignment recorded in the office of the County Clerk may be entered on the record book in such office in which the notice of assignment is entered, as in the case of chattel mortgages, and for each such entry the County Clerk shall receive a fee of Twenty-five (25¢) Cents.

Record as notice

Sec. 6. Whenever any person, firm or corporation shall in good faith take a protected assignment of any account or accounts, which shall not have been satisfied, cancelled or released by the assignor, all creditors of, and all subsequent assignees, purchasers and transferees of or from the assignor shall be conclusively deemed to have received notice of such assignment, dating from the time of the filing for record of the notice of assignment hereinabove provided; and after such filing for record, no purchaser from the assignor, no creditor of any kind of the assignor, and no prior or subsequent assignee or transferee of the assignor, holding an assignment not protected, or holding an assignment under a notice of assignment subsequently filed for record, shall in any event have, or be deemed to have acquired, any right in the account or accounts so assigned or in the proceeds thereof, or in any obligation substituted therefor, superior to the rights therein of the assignee named in such prior protected assignment.

Payment to one not holding prior protected assignment

Sec. 7. Whenever any person, firm or corporation shall take a protected assignment of any account or accounts receivable, and the debtor thereafter acting without written notice of such assignment shall in good faith pay all or part of such account to the assignor or to any creditor, purchaser, assignee, or transferee, not holding a prior protected assignment, such payment shall be an acquittance to the debtor to the extent thereof, and such assignor, creditor, purchaser, assignee or transferee receiving such payment shall be a trustee of any sums so paid and shall be accountable and liable to the holder of the protected assignment therefor.

Right or lien of assignee upon balance owing

Sec. 8. The right or lien of the assignee upon any balance remaining owing on any assigned account receivable shall not be invalidated, irrespective of whether the assignee shall have consented to or acquiesced in the acts of the assignor, if merchandise sold, or any part thereof, is returned to or recovered by the assignor from the person owing the account receivable and he thereafter deals with it as his own property, or if the assignor grants credits, allowances or adjustments to the person owing an account receivable. [Acts 1945, 49th Leg., p. 463, ch. 293.]

TITLE 12—ASSIGNMENTS FOR CREDITORS

Art.
261. General assignment.
262. Details of assignment.
263. Discharge of liability.
264. Notice of assignee's appointment.
265. Acceptance of creditors.
266. Qualifications and bond of assignee.
267. Fraud will not defeat assignment.
268. Fraudulent sale of assignor.
269. Proof of claim, etc.
270. Dividend and allowance.
271. Surplus.
272. Examination of assignor, etc.
273. May discount claims.
274. Final report of assignee.

Article 261. [91] General assignment.—Every assignment made by a debtor for the benefit of his creditors shall provide for a distribution of all of his real and personal estate among all of his creditors consenting thereto, in proportion to their respective claims, and however made or expressed shall have the effect aforesaid and shall be construed to pass all such estate, whether specified therein or not. The term "real and personal estate" shall not include property exempt by law from execution. [Acts 1879, p. 57; G. L. vol. 8, p. 1357.]

Art. 262. [92] Details of assignment.—Assignments shall be in writing and proved or acknowledged and recorded in the manner provided by law for conveyances of real estate, and the debtor shall annex to such assignment an inventory containing the following statement:

1. A list of all the creditors of such debtor or debtors;

2. The place of residence of each creditor, if known;

3. The sum owing to each creditor, and the nature of the debt or demand;

4. The consideration of such indebtedness in each case, and the place where such indebtedness arose;

5. A statement of any existing judgment or security for the payment of any such debt;

6. An inventory of all such debtor's estate at the date of such assignment, both real and personal, and any incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate.

Such inventory shall be signed and sworn to by the assignor or assignors that the same is just and true. [Id.]

Art. 263. [93] Discharge of liability.—A debtor may make such assignment and shall thereupon stand discharged from all further liability to such consenting creditors on account of their respective claims. Such debtor shall not be discharged from liability to such creditor who does not receive as much as one-third of the amount due and allowed in his favor as a valid claim against the estate of such debtor. [Acts 1883, p. 46; G. L. vol. 9, p. 352.]

Art. 264. [94] Notice of assigneee's appointment. Every assignee shall, within thirty days after the execution of an assignment, give public notice of his appointment in some newspaper printed in the county where the assignor resides or where his principal business was conducted. If no newspaper be printed therein, then such notice shall be published in the newspaper nearest to such place of residence or business. Such notice shall be published for three successive weeks. The assignee shall also give notice by mail to each of the listed creditors of the assignor. [Acts 1879, p. 57; G. L. vol. 8, p. 1357.]

Art. 265. [95] Acceptance of creditors.—The creditors of the assignor consenting to such assignment shall make their written consent known to the assignee within four months after the notice provided in the preceding article. No creditor not assenting shall receive or take any benefit under the assignment. Any creditor who had no actual notice of such assignment may assent before any distribution of assets under the assignment. The receipt by a creditor of any portion of his claim from the assignee, shall be conclusive evidence of the assent of such creditor to the assignment. [Id.]

Art. 266. [96] [104] Qualifications and bond of assignee.—Every such assignee shall be a resident of this State and of the county in which the assignor resides, or in which his principal business was conducted, and he shall forthwith after the execution and delivery of the assignment, cause the same to be recorded in the county of such assignee's residence and in every county in which there is any real property conveyed to him by such assignment; and shall execute a bond with sureties to be approved by either the judge of the county or district court in the county of residence of said assignee, in such sum as may be fixed by said judge, conditioned that he will faithfully discharge his duties as such assignee, and that he will make proportional distribution of the net proceeds of the assigned estate among the creditors entitled thereto. Such bond shall be payable to the State of Texas and shall be filed with the county clerk of the county in which such assignee resides, and shall inure to the benefit of the assignor and creditors. Upon filing said bond, the assignee shall take possession of the assigned property and proceed to execute the assignment; and if such assignee shall not within five days after the delivery of the assignment, execute an approved bond and file the same as herein provided, such assignment shall nevertheless take effect as against the assignor and his creditors. It shall be the duty of the county judge or judge of the district court of the county in which the assignee resides, either in term time or vacation, upon the application of the assignor or any creditor, and being satisfied that such bond has not been given, approved and filed, to appoint in writing another competent assignee who shall, upon the execution of such bond approved and filed as herein provided, take possession of the assigned property and proceed to execute the assignment. In case of vacancy by death or otherwise of any assignee, or upon removal of any assignee by the district or county judge for just cause, such judge shall appoint another in his place. [Acts 1883, p. 46; Id.; G. L. vol. 8, p. 352.]

Art. 267. [97] Fraud will not defeat assignment.—No fraudulent act, intent or purpose of the assignor or assignee shall have the effect to defeat the assignment or to deprive the creditors consenting thereto from the benefits thereof; and any consenting creditor may be or become a party to prosecute or defend in any suit or proceeding necessary or proper for the enforcement of his rights under such assignments, or for the protection of his interests in the assigned property. [Id.]

Art. 268. [100] Fraudulent sale by assignor.—Except as to innocent purchasers for value, all property conveyed or transferred by the assignor previous to and in contemplation of assignment with the intent or design to defeat, delay or defraud creditors, or give preference to one creditor over another, shall pass to the assignee by the assignment, notwithstanding such transfer; and the assignee, or in case of his neglect or refusal, any creditor or creditors may in his name, upon securing such assignee against cost or liability, sue for, recover and collect the same, and cause the same to be applied for the benefit of creditors as other property belonging to the debtor's estate in the hands of the assignee. [Acts 1879, p. 57; G. L. vol. 8, p. 1357.]

Art. 269. [98] [102] Proof of claim, etc.—Every creditor consenting to an assignment shall, within six months from the time of the first publication of the notice of the appointment of the assignee, file with such assignee a distinct statement of the particular nature and amount of his claim against the debtor, which shall be supported by an affidavit of the creditor, his agent or attorney, that the statement is true, that the debt is just and that all proper credits or offsets have been allowed, and the assignee shall allow such claim as a valid claim against the estate unless he has good reason to believe it is not just and true. No creditor shall take any benefit under any assignment who neglects to file such statement within such time. The assignor or any creditor disputing such claim may, within eight months after such first publication, sue to set aside any allowance made by the assignee, and to restrain the payment thereof, and such action shall be tried as in other cases. The assignee shall furnish to any creditor upon request a copy of any statement of a claim that has been filed with such assignee. [Id.]

Art. 270. [105] Dividend and allowance.—Whenever any assignee shall have in his hands funds sufficient to pay ten per cent. of the debts due by the assignor, he shall make a pro rata distribution of the same among said creditors entitled thereto; and the assignee shall be entitled to reasonable compensation for his services and his necessary costs and expenses, including also his attorney's fees, to be allowed by the county or district judge. [Id.]

Art. 271. [99] Surplus.—Any creditor not consenting to the assignment may garnishee the assignee for any excess of such estate remaining in his hands after the payment to the consenting creditors [1] the amount of their debts and the costs and expenses of executing the assignment. [Id.]

[1] So in enrolled bill. Word "of" should probably be inserted.

Art. 272. [101] Examination of assignor, etc.—The judge of the court in which any proceedings shall have been filed may, on the application of the assignee, or of any creditor of the assignor, or without such application if the judge see fit, at all times require, upon such reasonable notice as the judge may direct, the assignor or any other person to attend and submit to a sworn examination upon all matters relating to the disposition made, or status of the property of the estate assigned, including all transactions in the past bearing upon the rights of the assignee or creditors with respect to the estate in assignment, as contemplated in law. The judge may enforce attendance and obedience to such orders so made by a writ or order as in other cases. Such examination shall be in writing, signed by the persons examined, and attested or sworn to before and filed with the clerk of the court wherein the proceedings are pending, for the use of those interested in the estate. No assignor or debtor shall be prosecuted or punished for any matter or thing disclosed by him on such examination as had above. The costs of such proceedings to be paid out of the estate assigned, or by the applicant for the examination, as the judge in each case may deem proper. [Id.]

Art. 273. [103] May discount claims.—Claims not due may be allowed at their present value by discounting them at the legal rate. If any creditor holds collateral security of less value than his debt, the value thereof may be estimated by the assignee, and only the difference between such sum and the debt shall be allowed. [Id.]

Art. 274. [106] Final report of assignee.—If any assignee shall desire to be finally discharged, he may make a sworn report of his proceedings under the assignment, showing the moneys and assets that have come into his hands, and how the same have been disbursed and disposed of. Such report shall thereupon be filed and recorded in the office of the county clerk of the county in which the assignment is recorded. No action shall be brought against such assignee by reason of anything done by him under the assignment as shown by his report, unless the same be brought within twelve months from the time of the filing thereof, as aforesaid; and any moneys or funds on hand shall be deposited in the district court subject to be paid out upon the decree of said court. [Id.]

TITLE 13—ATTACHMENT

Art.
275. Who may issue.
276. What facts must further appear.
277. Not to issue until suit begun.
278. May issue on debt not yet due.
279. Plaintiff must give bond.
279a. Exemption of State, counties, etc., from bond.
280. [Repealed.]
281. Attachment in tort or unliquidated demand.
282. Writ to issue instanter.
283–286. [Repealed.]
287. May demand indemnity.
288. Property subject to attachment.
289. [Repealed.]
290. Attachment of personal property.
291. Claimant's bond and affidavit.
292–299. [Repealed.]
300. Attachment creates a lien.
301. Judgment and foreclosure.
302. Judgment when property is replevied.
303. [Repealed.]

Article 275. [240] [186] [152] Who may issue.—The judges and clerks of the district and county courts and justices of the peace may issue writs of original attachment, returnable to their respective courts, upon the plaintiff, his agent or attorney, making an affidavit stating:

(1) That the defendant is justly indebted to the plaintiff, and the amount of the demand; and

(2) That the defendant is not a resident of the State, or is a foreign corporation, or is acting as such; or

(3) That he is about to remove permanently out of the State, and has refused to pay or secure the debt due the plaintiff; or

(4) That he secretes himself so that the ordinary process of law can not be served on him; or

(5) That he has secreted his property for the purpose of defrauding his creditors; or

(6) That he is about to secrete his property for the purpose of defrauding his creditors; or

(7) That he is about to remove his property out of the State, without leaving sufficient remaining for the payment of his debts; or

(8) That he is about to remove his property, or a part thereof, out of the county where the suit is brought, with intent to defraud his creditors; or

(9) That he has disposed of his property, in whole or in part, with intent to defraud his creditors; or

(10) That he is about to dispose of his property with intent to defraud his creditors; or

(11) That he is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or

(12) That the debt is due for property obtained under false pretenses. [Acts 1864, p. 37; G. L. vol. 5, p. 691.]

Art. 276. [241] [187] [153] What facts must further appear.—The affidavit shall further state that the attachment is not sued out for the purpose of injuring or harassing the defendant; and that the plaintiff will probably lose his debt unless such attachment is issued. [Id.]

Art. 277. [242] [188] [154] Not to issue until suit begun.—No such attachment shall issue until the suit has been duly instituted; but it may be issued in a proper cause either at the commencement of the suit or at any time during its progress. [Acts 1848, p. 65; G. L. vol. 3, p. 65.]

Art. 278. [243] [189] [155] May issue on debt not yet due.—The writ of attachment above provided for may issue, although the plaintiff's debt or demand be not due, and the same proceedings shall be had thereon as in other cases, except that no final judgment shall be rendered against the defendant until such debt or demand shall become due. [Id.]

Art. 279. [244-5] Plaintiff must give bond.—Before the issuance of any writ of attachment, the plaintiff must execute a bond, with two or more good and sufficient sureties, payable to the defendant in a sum not less than double the debt sworn to be due, conditioned that the plaintiff will prosecute his suit to effect, and will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment. Such bond shall be delivered to and approved by the officer issuing the writ, and shall, together with the affidavit, be filed with the papers of the cause. [Id.]

Art. 279a. Exemption of State, Counties, etc., from bond.—That neither the State of Texas, nor any county, nor any State Department, nor the head of any State Department, nor the Federal Housing Administration, nor Home Owners' Loan Corporation, nor any National Mortgage Association, nor any National Mortgage Savings and Loan Insurance Corporation created and/or to be created by or under authority of any Act of the Congress of the United States of America as a National Relief Organization operating territorially on a State wide basis shall be required to give any bond incident to any suit filed by any such agency and/or entity, for costs of Court or for any appeal or writ of error taken out by it or either of them, nor any surety for the issuance of any bond for the taking out of writs of attachment, sequestration, distress warrants, or writs of garnishment in any civil case. Provided that no County or District Attorney shall be exempted from the filing of bonds in the taking out of any extraordinary writ, unless said County or District Attorney shall first obtain the approval by proper order of the Commissioners Court of the county in behalf of which such action is taken or the approval of the Attorney General in actions brought in behalf of the State of Texas. [Acts 1935, 44th Leg., p. 670, ch. 283, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 280. [Repealed.]

Corresponding provisions, see Rules of Civil Procedu. Rule 592.

Art. 281. Attachment in tort or unliquidated demand.—Nothing in this title shall prevent the issuance of attachments in suits founded in tort or upon unliquidated demands against persons, co-partnerships, associations or corporations upon whom personal service cannot be obtained within this State. Where the demand is unliquidated, the amount of the bond to be made by the plaintiff shall be fixed by the judge or clerk of the court or by the justice of the peace issuing the attachment. The bond shall be made in the sum so fixed and upon the approval and filing of same the attachment shall issue as in other cases. [Acts 1st C. S. 1913, p. 31.]

Art. 282. [248] [194] [160] Writ to issue instanter.*—Upon the execution of such affidavit and bond, it shall be the duty of the judge or clerk, or justice of the peace, as the case may be, immediately to issue a writ of attachment, directed to the sheriff or any constable of any county where property of the defendant is supposed to be, commanding him to attach so much of the property of the defendant as shall be sufficient to satisfy the demand of the plaintiff and the probable costs of the suit. [Id.]

*Repealed in part, Rules of Civil Procedure, Rule 593.

Arts. 283–286. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 594–597.

Art. 287. [253] [199] [165] May demand indemnity.—Whenever an officer shall levy an attachment, it shall be at his own risk. Such officer may, for his own indemnification, require the plaintiff in attachment to execute and deliver to him a bond of indemnity to secure him if it should afterward appear that the property levied upon by him does not belong to the defendant.

Art. 288. [254] [200] [166] Property subject to attachment.—The writ of attachment may be levied upon such property, and none other, as is, or may be, by law subject to levy under the writ of execution.

Art. 289. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 598.

Art. 290. [256] [202] [168] Attachment of personal property.—When personal property is attached, the same shall remain in the hands of the officer attaching until final judgment, unless a claim be made thereto and bond be given to try the right to the same, or unless the same be replevied or be sold as provided by law.

Art. 291. [257] [203] [169] Claimant's bond and affidavit.—Any person other than the defendant may claim the personal property so levied on, or any part thereof, upon making the affidavit and giving bond required by the provisions of the title relating to the trial of the right of property.

Arts. 292–299. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 599–601, 603–607, 615–618.

Art. 300. [267] [213] [179] Attachment creates a lien.—The execution of the writ of attachment upon any property of the defendant subject thereto, unless the writ should be quashed or otherwise vacated, shall create a lien from the date of such levy on the real estate levied on and on such personal property as remains in the hands of the attaching officer, and on the proceeds of such personal property as may have been sold.

Art. 301. [268] [214] [180] Judgment and foreclosure.—Should the plaintiff recover in the suit, such attachment lien shall be foreclosed as in

case of other liens, and the court shall direct the proceeds of the personal property sold to be applied to the satisfaction of the judgment, and the sale of personal property remaining in the hands of the officer and of the real estate levied on, to satisfy the judgment. When an attachment issued from a county or justice court has been levied upon land, no order or decree foreclosing the lien thereby acquired shall be necessary, but the judgment shall briefly recite the issuance and levy of such attachment, and such recital shall be sufficient to preserve such lien. The land so attached may be sold under execution after judgment, and the sale thereof shall vest in the purchaser all the estate of the defendant in attachment in such land, at the time of the levy of such writ of attachment. [Acts 1885, p. 73; G. L. vol. 9, p. 693.]

Art. 302. [269] [215] [181] Judgment when property is replevied.—When personal property has been levied on, as hereinbefore provided, the judgment shall also be against the defendant and his sureties on his replevy bond for the amount of the judgment, interest and costs, or for the value of the property replevied and interest, according to the terms of such replevy bond.

Art. 303. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 608.

TITLE 14—ATTORNEYS AT LAW

Art.
304. Board of examiners.
305. Duties of board.
305a. Assistant secretary to Board, salary.
306. Authority of Supreme Court.
306a. Attorneys who have practiced in other states and who have been licensed to practice before United States Supreme Court; membership in legislature as equivalent of prelegal study.
307. [Repealed.]
307A. Licenses to graduates entering military service.
307B. Military or merchant marine service; exemption from examination in subjects passed prior to.
308. Foreign attorneys.
309. Oath of attorney.
310. Fees.
311. Convicts barred.
312. Misbehavior or contempt.
313. Disbarment.
314. Complaint.
315. Citation to issue.
316. Trial.
317. Retention of client's money.
318. [Repealed.]
319. Officers not to appear.
320. [Repealed.]
320a—1. State Bar Act.

Sec.
1. Citation of act.
2. Creation and general powers of State Bar.
3. Membership in State Bar; unlicensed persons prohibited from practicing; licensed persons.
4. Rules and regulations; fees.
5. Right of trial by jury not to be abrogated in disbarment proceedings.
6. Venue; conviction in court prerequisite to suspension.
7. Partial invalidity.

Rules of the State Bar of Texas

Article 304. [317] [257] Board of Examiners.—The Board of Law Examiners shall consist of five lawyers having the qualifications required of members of the Supreme Court. They shall be biennially appointed by the Supreme Court and shall each hold office for two years and be subject to removal by the Supreme Court for incompetency or inattention to duty. [Acts 1919, p. 63.]

Art. 305. Duties of Board.—Such Board, acting under instructions of the Supreme Court as hereinafter provided, shall pass upon the eligibility of all candidates for examination for license to practice law within this State, and examine such of these as may show themselves eligible therefor, as to their qualifications to practice law. Such Board shall not recommend any person for license to practice law unless such person shall show to the Board, in the manner to be prescribed by the Supreme Court, that he is of such moral character and of such capacity and attainment that it would be proper for him to be licensed. [Id.]

Art. 305a. Assistant secretary to Board, salary.—The Secretary of the Board of Legal Examiners with the approval of the Supreme Court, is hereby authorized to appoint an assistant to serve during the months of February and March, June and July, October and November, at a salary to be fixed by the Clerk of the Supreme Court at an amount not to exceed One Hundred Dollars ($100.00) per month, said salary to be paid by the Clerk of the Supreme Court out of any fees of his office not otherwise appropriated. [Acts 1934, 43rd Leg., 4th C.S., p. 2, ch. 2, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 306. Authority of Supreme Court.—The Supreme Court is hereby authorized to make such rules as in its judgment may be proper to govern eligibility for such examination and the manner of conducting the same, covering, among other points, proper guarantee to insure:

1. Good moral character on the part of each candidate for license.
2. Adequate pre-legal study and attainment.
3. Adequate study of the law for at least two years, covering the course of study prescribed by the Supreme Court, or the equivalent of such course.
4. The legal topics to be covered by such study and by the examination given.
5. The time and place for holding the examinations, the manner of conducting same and the grades to be made by the candidates to entitle them to be licensed.

Whenever as many as five applicants shall request the Board to conduct an examination in any particular town or city convenient to their place of residence, the examination of such applicants shall be conducted at such town or city at some suitable time, to be determined by the Board.

6. Any other such matters as shall be desirable in order to make the issuance of a license to practice law evidence of good character, and fair capacity and real attainment and proficiency in the knowledge of law.

No license to practice law in this State shall be issued by any court or authority, except by the Supreme Court of this State, under the provisions of this title. [Acts 1919, p. 63.]

Art. 306a. Attorneys who have practiced in other states and who have been licensed to practice before United States Supreme Court; membership in legislature as equivalent of prelegal study.—Section 1. The Supreme Court by general order may exempt from taking any examination as to prelegal or legal studies and attainments any attorney at law who has been duly licensed to practice law in a State of the United States and has not been disbarred or had his license to practice law suspended in any State where applicant has heretofore practiced law in such State for a period of seven (7) years and has been duly licensed to practice law before the Supreme Court of the United States and has resided in the

State of Texas for a period of twenty-four (24) months immediately before he is issued a license to practice law in this State, but such attorneys must in all instances furnish evidence as to moral character required of candidates to take the bar examinations in this State. The provisions of this section shall apply only to those States which give to persons licensed to practice law in Texas the same or similar reciprocal privileges.

Sec. 2. Membership in the Texas Legislature for twelve (12) consecutive years prior to making application to take the bar examination shall be considered equivalent to the prelegal study and training and study of the law required under Article 306, Revised Civil Statutes, 1925, as a prerequisite to taking the regular examination for license to practice law and may be susbstituted in lieu thereof, provided the applicant meets all requirements of the Supreme Court relative to moral character; and any person complying with the above is declared to be eligible to take such examination for license to practice law. In such cases thirty (30) days written notice of intention to take the bar examination, directed and delivered to the Clerk of the Supreme Court of Texas, shall be sufficient notice. [Acts 1939, 46th Leg., p. 68.]

Art. 307. [Repealed by Acts 1935, 44th Leg., p. 438, ch. 176, § 1.]

Art. 307A. Licenses to graduates entering military service.—Law licenses shall be granted, without requirements of passage of the State Bar Examinations, to all graduates of the law schools of the University of Texas, Baylor University, Southern Methodist University and of all law schools which are members of the Association of American Law Schools at the date of passage of this Act to all citizens of Texas who have entered, or may enter the military service of the United States, provided such military service shall have been commenced prior to the date set for the second State Bar Examinations next following the date of their graduation from said law schools; and provided further that such applicants must have been residents of Texas for at least one (1) year prior to graduation, and must meet the character requirements prescribed in the Rules of the Supreme Court of Texas.

Application for such licenses shall be made within one (1) year after the date of honorable discharge from the military service of the United States.

Military service shall include service in all branches of the Army, Navy and other military forces of the United States, including auxiliary services, during the present war, or during national emergency as declared by Congress or the President of the United States. [Added Acts 1943, 48th Leg., p. 397, ch. 268, § 1.]

Section 2 of the Act of 1943 related to partial invalidity. Section 3 repealed conflicting laws.

Art. 307B. Military or merchant marine service; exemption from examination in subjects passed prior to.—(a) Law Licenses shall be granted without requirements of passage of the State Bar Examination as to any subject or subjects which the candidate has satisfactorily passed prior to entering the Military Service or Merchant Marine Service of the United States in the Law Schools of the University of Texas, Baylor University and Southern Methodist University, provided such applicants are graduates of such Law Schools, provided such candidate has been a citizen of Texas for at least one (1) year prior to the passage of this Act, and has served at least one (1) year in the Military Service or Merchant Marine Service of the United States. Such candidate must have been honorably discharged or released from active Military Service and must have the character requirements prescribed by the Rules of the Supreme Court of Texas. Such candidate shall file with his application for license a certified copy of his honorable discharge or release from active Military Service or Merchant Marine Service of the United States. Such application shall be filed with the Clerk of the Supreme Court of Texas not later than six (6) months after such candidate graduates from one of the above-named Law Schools. Military Service or Merchant Marine Service shall include service in all branches of the Army, Navy and other Military Forces or Merchant Marine Service of the United States, including Auxiliary Service during World War II or during national emergency as declared by Congress or the President of the United States. [Added Acts 1947, 50th Leg., p. 504, ch. 298, § 1.]

Section 2 of the Act of 1947 repealed conflicting laws. Section 3 related to partial invalidity.

Art. 308. Foreign attorneys.—The Supreme Court shall make such rules and regulations as to admitting attorneys from other jurisdictions to practice law in this State as it shall deem proper and just. All such attorneys shall be required to furnish satisfactory proof as to good moral character. [Acts 1919, p. 63.]

Art. 309. [322] [260] [225] Oath of attorney.—Every person admitted to practice law shall, before receiving license, take an oath that he will support the Constitution of the United States and of this State; that he will honestly demean himself in the practice of law, and will discharge his duty to his client to the best of his ability; which oath shall be indorsed upon his license, subscribed by him and attested by the officer administering the same. [Acts 1860, p. 23; G. L. vol. 4, p. 1385.]

Art. 310. Fees.—The fee for any examination given by the Board shall be fixed by the Supreme Court, not to exceed twenty dollars for each candidate, which shall be paid to the clerk of said court at the time the application for examination is made. The money thus obtained shall be used to pay all legitimate expenses incurred in holding the examination; and as compensation to the members of the Board, under such regulations as shall be agreed upon by the Board, or determined by the Supreme Court. [Acts 1919, p. 64.]

Art. 311. [323] [261] [226] Convicts barred.—No person convicted of a felony shall receive license as an attorney at law; or, if licensed, any court of record in which such person may practice shall, on proof of a conviction of any felony, revoke his license and strike his name from the roll of attorneys. [Acts 1846, p. 247; G. L. vol. 2, p. 1553.]

Art. 312. [324] [262] [227] Misbehavior or contempt.—An attorney at law may be fined or imprisoned by any court for misbehavior or for contempt of such court. No attorney shall be suspended or stricken from the rolls for contempt unless it involve fraudulent or dishonorable misconduct or malpractice. [Acts 1860, p. 23; G. L. vol. 4, p. 1385.]

Art. 313. [325] [331] Disbarment.—Any attorney at law who shall be guilty of barratry or any fraudulent or dishonorable conduct or malpractice, may be suspended from practice, or his license may be revoked by the district court of the county in which such attorney resides or where the act complained of occurred, regardless of the fact that such act may constitute an offense under the Penal Code of Texas, and regardless of whether he is being prosecuted or has been convicted for the violation of such penal provision. [Acts 1921, p. 127.]

Art. 314. [326] [327] [229] Complaint.—The judge of any court, a practicing attorney, a county commissioner or justice of the peace may file with the clerk of the district court a sworn complaint of fraudulent or dishonorable conduct or malpractice on the part of any attorney at law.

Art. 315. [328] [266] [231] Citation to issue.—Upon the filing of such complaint, or upon its own observance of such conduct, such district court

shall order the attorney to be cited to show cause why his license shall not be suspended or revoked. If the citation be ordered upon the observation of the court, the charge and the grounds thereof shall be set out distinctly in the order of the court. Such citation shall be served upon defendant at least five days before the trial day.

Art. 316. [329–30] Trial.—Upon the return of said citation executed, if the defendant appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. The county or district attorney shall represent the State. A jury of twelve men shall be impaneled, unless waived by the defendant. If the attorney be found guilty, or if he fail to appear and deny the charge after being duly cited, the said court, by proper order entered on the minutes, may suspend his license for a time, or revoke it entirely, and may also give proper judgment for costs.

Art. 317. [332] [269] [234] Retention of client's money.—Each attorney who receives or collects money for his client and refuses to pay over the same when demanded, may be proceeded against by motion of the party injured or his attorney before the district court of the county in which such attorney usually resides or in which he resided when he collected or received the money; notice of which motion with a copy thereof shall be served on such party at least five days before the trial. In case the motion be sustained, judgment shall be rendered against the defendant, for the amount by him collected or received and not less than ten nor more than twenty per cent. damages on the principal sum. [Acts 1846, p. 245; G. L. vol. 2, p. 1551.]

Art. 318. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 76.

Art. 319. [334] [271] [236] Officers not to appear.—No judge of the Supreme Court, Courts of Civil or Criminal Appeals or district court, or clerk of any court, or deputy, or sheriff or deputy or constable shall be allowed to appear and plead as an attorney at law in any court of record in this State. No county judge shall be allowed to appear and practice as an attorney at law in any county or justice court, except in cases where the court over which he presides has neither original or appellate jurisdiction. [Acts 1876, p. 216; Acts 1st C. S. 1879, p. 12; G. L. vol. 8, pp. 1052, 1312.]

Art. 320. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 12.

Art. 320a—1. State Bar Act.

Citation of act

Section 1. This Act may be cited as the State Bar Act.

Creation and general powers of State Bar

Sec. 2. There is hereby created the State Bar, which is hereby constituted an administrative agency of the Judicial Department of the State, with power to contract with relation to its own affairs and which may sue and be sued and have such other powers as are reasonably necessary to carry out the purposes of this Act.

Membership in State Bar; unlicensed persons prohibited from practicing; licensed persons

Sec. 3. All persons who are now or who shall hereafter be licensed to practice law in this State shall constitute and be members of the State Bar, and shall be subject to the provisions hereof and the rules adopted by the Supreme Court of Texas; and all persons not members of the State Bar are hereby prohibited from practicing law in this State.

Within the meaning of this Section, all persons furnishing evidence of or complying with any of the following provisions shall be deemed as now licensed to practice law within this State, viz:

(a) That he is now enrolled as an attorney-at-law before the Supreme Court of this State.

(b) A license or the issuance of a license by the Board of Legal Examiners of this State authorizing him to practice law within this State.

(c) A license or the issuance of a license to practice law within this State by any authority, which, at the time of the issuance thereof, was authorized by the laws of this State, then in effect, to issue the license.

(d) Where an attorney, licensed before October 6, 1919, has lost or misplaced his license, issued by legal authority, and where the proof of its issuance is not available in the records of the Court in Texas in which he claims it was issued, then his status as a licensed attorney in this State may be established by a certificate of the District Judge in the District of his residence that such person has been engaged in the practice of law within this State for a period of five (5) years immediately and continuously next preceding the effective date of this Act, and, within the judgment of said District Judge, said attorney has theretofore been duly licensed to practice law under the laws of the State of Texas and is of good moral character. Before any such certificate shall be issued by a District Judge, the Judge shall give an opportunity to the President of the local Bar Association in the County of said Attorney's residence to be heard.

(e) Any proof satisfactory to the Supreme Court of this State that he is and was, upon the effective date of this Act authorized to practice law within this State. [As amended Acts 1939, 46th Leg., p. 66, § 1.]

Rules and regulations; fees

Sec. 4. Within six (6) months from the effective date of this Act and from time to time thereafter, as to the Court may seem proper, the Supreme Court of Texas shall prepare and propose rules and regulations for disciplining, suspending, and disbarring attorneys at law; for the conduct of the State Bar; and prescribing a code of ethics governing the professional conduct of attorneys at law. When the Court has prepared and proposed such rules and regulations, it shall submit by mail a copy of each such rule and regulation, as well as all such other rules and regulations as may have been proposed and filed with the Court, supported by petition signed by at least ten per cent (10%) of the registered members of the State Bar, in ballot form to each registered member of the State Bar for a vote thereon. At the end of thirty (30) days from the time such ballots are mailed, the Court shall count the ballots that have been returned, provided that no election shall be valid unless a minimum of fifty-one per cent (51%) of the members registered shall have voted at the election at which such rule or rules are adopted; and each and all of such rules and regulations that have received a majority of the votes cast shall be by said Court declared and adopted and shall be promulgated by said Court and shall become immediately effective. Such vote shall be open to inspection by any member of the Bar. No rule or regulation shall be promulgated that has not received a majority of votes cast in the manner above provided. Nothing herein shall be construed as authorizing the Court to prescribe fees to be charged for legal services rendered by any attorney.

The Supreme Court is further empowered and it shall be its duty to prescribe fees not exceeding Four Dollars ($4) per annum per person to be paid to the Clerk of the Supreme Court to be held by him and expended by the Court or under its direction for the

purpose of the administration of this Act. Any person licensed and registered may pay to the designated treasurer a sum of money from which the fees owed by such person may be taken from time to time as they become due.

Right of trial by jury not to be abrogated in disbarment proceedings

Sec. 5. The Supreme Court of Texas shall not adopt or promulgate any rule or regulation abrogating the right of trial by jury in disbarment proceedings, in the county of the residence of the defendant.

Venue; conviction in court prerequisite to suspension

Sec. 6. No disbarment proceeding shall be instituted against any attorney except in the district court located in the county of said attorney's residence, nor shall any attorney be suspended until such attorney has been convicted of the charge pending against him, in a court of competent jurisdiction in the county of such attorney's residence.

Partial invalidity

Sec. 7. If any sentence, paragraph or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other sentence, paragraph or section hereof, and the Legislature hereby expressly declares that it would have passed such remaining sentences, paragraphs and sections despite such invalidity. [Acts 1939, 46th Leg., p. 64.]

Section 2 of the amendatory Act of 1939 provided that "Nothing in this Act shall give the District Judge or the Supreme Court the right to reinstate or to license any person who has been disbarred. Section 8 repealed conflicting laws.

RULES OF
THE STATE BAR OF TEXAS

As amended to November 1, 1947

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Board or Board of Directors
Director
Member

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These Rules were prepared by the Lawyers' Advisory Committee and approved by the Supreme Court on Feb. 22, 1940. The amendment adopted June 5, 1944 is included.

The Order of the Supreme Court approving the Rules read:

"These Rules providing for the conduct of the State Bar of Texas, and the discipline, suspension and disbarment of attorneys at law and prescribing a code of ethics governing the professional conduct of the members of the Bar, as prepared and recommended by the Lawyers' Advisory Committee authorized and created under order of this Court, are hereby approved by the Supreme Court and ordered submitted to the registered members of the State Bar for a vote thereon."

ARTICLE I—DEFINITIONS

In these rules, unless the context or subject matter otherwise requires,

"State Bar" means the State Bar of Texas created by H.B.No.74, as enacted by the 46th Texas Legislature, Regular Session, 1939, as amended by S. B.No.477 [1];

"State Bar Act" means H. B. No. 74, as amended by S.B.No.477 [1];

"Board" or **"Board of Directors"** means the Board of Directors of the State Bar of Texas;

"Director" means a Director of the State Bar of Texas, and

"Member" means a member of the State Bar of Texas.

[1] Art. 320a—1.

ARTICLE II—STATE BAR OF TEXAS

Section 1. Name.—The name of this Bar shall be the "State Bar of Texas."

Section 2. Seal.—The State Bar shall have a seal, to be kept in the office of the Secretary, in the form of a five-pointed star around which shall be written: "State Bar of Texas—Created in 1939."

Section 3. Principal Office.—The principal office of the State Bar shall be maintained in Austin, until changed by vote of the State Bar at an annual meeting.

Section 4. Service of Process.—Service of citation or any other notice upon the State Bar may be had upon the President or Secretary.

ARTICLE III—PURPOSES AND ADMINISTRATION

Section 1. Purposes.—The purposes of the State Bar shall be the advancement of the administration of justice and the science of jurisprudence; the encouragement of cordial intercourse among its members; the improvement of the relations between the Bench and the bar and the public; and the protection of the professional interest of the members of the State Bar.

Section 2. Reports to Annual Meetings.—The Board of Directors, the several sections and committees, shall deliver to the Secretary at least thirty days before the annual meeting their respective reports and recommendations. Such reports and recommendations may be printed and sent to each member of the State Bar at least twenty days before the annual meeting, but the Board, or any section or committee, may present at the annual meeting any additional report or recommendation.

Section 3. Reports to Board.—All committees and sections from time to time shall render to the Board such additional reports as may be requested by the President or by the Board.

Section 4. Cooperation with Local Bar Organizations.—The Board of Directors, officers and members of the State Bar shall encourage and foster the organization of local bar associations and a closer cooperation between them and the State Bar.

Section 5. Referendum to Membership.—Whenever the Board of Directors under these rules shall be required to take a referendum, or whenever the Board may order a referendum to the membership of the State Bar, the Board shall prepare a questionnaire containing the matter or matters upon which the vote is to be taken, which shall be submitted to each member in the manner and under such conditions as to enable such member to vote and return the questionnaire as directed.

ARTICLE IV—REGISTRATION AND DUES

Section 1. Registration.—Immediately upon the taking effect of these rules the Secretary shall furnish every member a registration card by first class mail, which card shall, within thirty days after the same is mailed, be returned by the member by first class mail and shall contain such information as the Board of Directors may require.

In like manner, such registration card shall be furnished to and filed by each person thereafter admitted to the Bar in Texas.

Section 2. Suspension for Failure to File Registration Card.—Any member who fails to return his registration card completely filled out within thirty days after its being mailed to him shall be regarded as delinquent and shall be given written notice thereof by the Secretary. If the delinquent member fails to mail his registration card within thirty days after such notice is mailed, he shall cease to be a member of the Bar, but shall be reinstated upon mailing or delivering his registration card completely filled out to the Secretary.

Section 3. Fiscal Year.—The fiscal year of the Bar shall begin June 1 of each year and end May 31 of the next succeeding year.

Section 4. Membership Fee.—The annual membership fee prescribed by the Supreme Court shall be due and payable by each member to the Clerk of the Supreme Court June 1 of each fiscal year. However, any person becoming a member before the first

day of December shall pay on admission the full membership fee for that fiscal year, but if such person becomes a member after December 1, he shall pay on admission one-half of the annual membership fee. It shall be the duty of the Clerk to issue to each member so paying such fee a membership card. It shall be the duty of the Clerk to keep all books, and other records proper and necessary to carry out the provisions of this section.

Section 5. Suspension for Non-payment of Fees.—A member in default of payment of the fee for sixty days after it is due, shall be regarded as delinquent and shall be given written notice thereof by the Clerk of the Supreme Court. If the delinquent member fails to pay such fee within thirty days thereafter, he shall cease to be a member, but shall be reinstated upon payment of the fees due at the time he ceased to be a member, together with fees for the current year. If at the end of ninety days after June 1, a member has not paid to the Clerk membership dues for the current year, the Clerk shall strike from the rolls of the State Bar the name of the delinquent member.

Section 6. Reinstatement of Members.—A member removing from the state, may file notice thereof in writing with the Secretary. If he returns to Texas he may be reinstated as a member upon complying with the law of this State and the rules of the State Bar in force at the time of his return and upon payment of membership fees due for the year in which he shall return.

ARTICLE V—OFFICERS

Section 1. Officers Named.—The officers of the State Bar of Texas shall be a President, a Vice President and a Secretary. The President and Vice President shall each serve for a term of one year, and neither shall succeed himself in office.

Section 2. How President and Vice President Elected.—The State Bar shall elect annually from its membership a President and a Vice President in the manner and form provided in Article VI, Section 3, for the election of Directors, except that the election shall be for the entire state instead of by districts. The ballots cast at any such election shall be marked and returned by the voting member and thereafter canvassed and the results declared, as prescribed in said Section 3.

At its regular January meeting each year, the Board of Directors shall nominate by majority vote not fewer than two members of the State Bar as candidates for President and not fewer than two members of the State Bar as candidates for Vice President for the ensuing year, which nominations shall be published in the Bar Journal and by all other practicable means. All such names shall be printed on the official ballot. (For the interim between the adoption of these rules and the first election held hereunder, candidates for President and Vice President shall be nominated in accordance with the provisions of Article VI, Section 1a.)

Any other member's name shall be printed also on the ballot as a candidate for President or Vice President when a petition in writing, signed by not fewer than 175 members requesting such action, is filed with the Secretary on or before May 1. Any member may write in the names of some other member or members whose names are not printed on the official ballot, designating the order of his preference as between them, and as between them and the candidates whose names are printed on such ballot. If no candidate receives a majority of first choices, the first and second choices for each candidate shall be added together and the member receiving the highest total of first and second choices shall be declared elected.

Every such ballot for President and Vice President shall be designated as "Official Ballot for Officers of the State Bar of Texas." The ballots shall be mailed to members at the same time as ballots for the election of Directors are mailed.

Section 3. When Officers Assume Duties.—The President and Vice President and Directors shall take office immediately after the adjournment of the annual meeting next after their election.

Section 4. How Secretary Elected.—The Secretary shall be elected by a majority vote of the Board of Directors and shall hold office during the pleasure of the Board, but his term in no event shall exceed two years. He may be re-elected as many times as the Board of Directors may choose. He shall be a member of the State Bar. The Secretary shall also be treasurer of the State Bar and shall receive from the Clerk of the Supreme Court all funds of the State Bar after deducting all expenses provided for in Section 7 of this Article.

Section 5. Duties of President and Vice President.—The President shall preside at all meetings of the State Bar, and in his absence or inability to act, or at his request, the Vice President shall preside. Each shall perform such other duties as usually belong to his office.

Section 6. Duties of the Secretary.—The Secretary shall perform all duties usually required of a secretary and a treasurer, and such other duties as may be assigned to him by the Board of Directors. The Board shall fix his salary, which shall be paid in equal monthly installments. He shall be required to execute a corporate surety bond in such amount as the Board may direct, conditioned upon the faithful performance of his duties, the premium for which shall be paid by the State Bar. All of his accounts shall be audited annually by accountants selected by the Board of Directors, and a statement of the audit shall be printed in full in the next issue of the Bar Journal following the filing of such report. The Secretary, with the approval of the Board of Directors, may employ such clerical assistance as the work of the Secretary's office may require, salaries to be fixed by the Board of Directors and paid out of the funds of the State Bar.

Section 7. Clerical Assistance for Clerk of the Supreme Court.—The Clerk of the Supreme Court, with the approval of the Supreme Court, may employ one assistant to assist in discharging the duties imposed upon him by these rules and the State Bar Act.[1] The Clerk shall also be entitled to such stationery, office supplies, stamps and other items as may be needed to carry on the work imposed upon him by these rules and the State Bar Act. The salary of such assistant shall be fixed by the Board, which salary and the expenses above provided for, shall be paid each month by the Clerk of the Court, on approval of the Supreme Court, from the funds in his hands belonging to the State Bar. The Clerk may retain in his hands out of such funds an amount sufficient to take care of the expenses provided for by this Section.

1 Art. 320a—1.

ARTICLE VI—BOARD OF DIRECTORS

Section 1. How Comprised.—The Board shall consist of one director elected from each of the Congressional Districts of this state and any additional district hereafter created. The President and Vice President of the State Bar shall be ex-officio members of the Board with the same powers and duties as those of elected members.

At the first meeting after the directors assume office, the Board shall elect one of their own number as Chairman. He shall serve for one year and shall preside at all meetings of the Board.

Section 1a. Supreme Court to Appoint Interim Officers and Directors.—Within fifteen days after the adoption of these Rules the Supreme Court shall appoint from the membership of the State Bar interim officers including a President and a Vice President and an interim Board of Directors. One Director shall be so appointed from each Congressional District, who is a resident of the District from which he is appointed, and such Board of Directors shall have the same powers and duties prescribed for Directors elected by members of the State Bar and shall hold office until their successors are elected in accordance with the provisions of this Article.

Within fifteen days after its appointment, the interim Board of Directors shall hold a meeting in Austin, Texas, and transact such business as it deems necessary and shall nominate from the membership of the State Bar two candidates for President and two for Vice President. The Board of Directors shall immediately make such nominations public and shall call for other nominations as provided in Article V. All such other nominations for President and Vice President must be filed with the Secretary of the State Bar within ten days after the Board has announced its nominations. The election of the first Board of Directors elected under the provisions of these Rules shall then proceed in accordance with Section 3 of Article VI hereof.

Section 2. Qualifications of Directors; Vacancies; How Filled.—Each elected Director shall be a resident of the district for which he is elected and upon removal from the district shall thereby automatically vacate his office. No member, except residents of Bexar, Dallas, Harris and Tarrant Counties, may be a candidate for director if the county of his residence was the county of residence of the last preceding director from that district.

If there be any vacancy, the President shall appoint some member who is a resident of the district in which the vacancy exists to serve until the next regular annual election of Directors.

Section 3. How Chosen.—Each Director of the State Bar shall be elected by the members of the Bar residing in the district which such director is to serve.

No member's name shall be printed on the ballot as a candidate for Director, unless a petition in writing requesting such action, signed by at least five per cent of the members residing in such district is filed with the Secretary of the State Bar. Each such petition or application must be filed with the Secretary on or before May 1 of each year after 1940.

On or before the tenth day of May of each year, the Secretary of the State Bar shall cause to be printed a ballot for each district in which a Director is to be elected for that year. On each ballot shall be printed names of each candidate with his office address and county of residence. If the election is to fill an unexpired term, the ballot shall so specify.

The Secretary on May 15 (unless that day be Sunday or a legal holiday, in which event, on the next following working day) of each year, shall send by first class mail to each registered member of State Bar residing in any district for which a Director is to be elected during that year, at his office address, a true copy of the ballot containing the printed names of the several candidates for Director for that district.

Each member shall indicate the order of his preference as between the several candidates on the ballot by placing a figure following each name beginning with the figure "1" for his first choice, then "2" for his second choice, and so on through the list. Any member may write in the names of other qualified member or members as his first or subsequent choice for Director and following with his order of preference as between him, or them, and the candidates whose names are printed on the ballot. Any such ballot shall be counted and tallied the same as if the ballot had been cast by merely indicating a preference as between those whose names were printed thereon. No ballot shall be counted unless the voter indicates the order of his preference between all candidates thereon.

The member shall sign his ballot, write under his signature his office address, seal the ballot in an envelope, and mail it, first class, to the Secretary within fifteen days after the ballot has been mailed and post-marked at the city of the principal office of the State Bar. Otherwise, the ballot shall not be counted.

The Secretary shall keep the ballots safely with the containers in which they were mailed, until June 5 (or the next succeeding working day, if June 5 be Sunday or a legal holiday), at which time he, together with the Clerk of the Supreme Court and such assistant as they may require and designate, shall open, count, and tally all votes cast in all the several districts. The person receiving the majority of first choice votes in each district shall be declared elected Director for that district for the succeeding term. If no candidate receives a majority of first-choice votes, the candidate receiving the highest total of first and second-choice votes added together shall be declared elected Director for such district for the ensuing term.

The Secretary shall certify officially to all such results and shall mail immediately copies of his certificate to the President of State Bar, to the Chairman of the Board and to the Clerk of the Supreme Court.

If in any such election two candidates shall tie for the highest number of first and second-choice votes cast, the Secretary shall certify both names; whereupon the Board of Directors of the State Bar shall immediately break the tie by designating which of the two shall serve as Director, and shall notify both candidates, the Secretary and the Clerk of the Supreme Court of its action.

All Directors when elected shall assume office immediately after adjournment of the annual meeting next after their election.

All expenses reasonably incident to holding, canvassing, and declaring the results of the elections for Directors referred to in this Article shall be paid out of State Bar funds.

Section 4. Staggered Terms.—At the first meeting of the Board of Directors after these rules became effective, the elected Directors shall draw for one-year terms and two-year terms, the Directors drawing one-year terms to serve for one year and the Directors drawing two-year terms to serve for two years. Thereafter each Director elected at any annual election for Directors shall serve for a term of two years, unless he shall be elected or appointed to fill an unexpired term, in which event he shall serve for the unexpired term only.

In event any additional Congressional district is hereafter created, the Director elected shall serve one year if the terms of a majority of his fellow Directors expire in that time; otherwise, and always thereafter, such additional Director shall serve for two years. No Director who has served for two years shall ever succeed himself.

Section 5. Duties of the Board of Directors.—The Board shall be the general executive agency of the State Bar and upon it shall rest the duty of enforcing the provisions of the Act creating the State Bar.[1]

The Board shall make such regulations, not inconsistent with law or these rules, as shall be necessary and proper for the protection of the property of the State Bar, and for the preservation of good order and the conduct of the affairs of the Bar.

It shall from time to time suggest to the Supreme Court the submission to the Bar of new rules for the government of the Bar or such amendments to these rules as it may think requisite or expedient, upon ma-

jority vote of the directors present at any meeting considering such matters.

The Board shall direct the manner and purposes for which all funds of the State Bar shall be disbursed, but it shall have no power to make the State Bar liable for any debts in excess of the amount of money in the treasury at any one time not subject to liabilities already existent.

The Board shall perform all other duties required of it under other articles and sections of these rules and shall have full power to exercise whatever functions may be necessary or incident to the full exercise of any power bestowed upon it by these rules or by the laws of this state and not inconsistent therewith.

1 Art. 320a—1.

Section 6. Regular Meetings.—The Board of Directors shall hold regular meetings on the fourth Saturdays in January, April and September of each year at a place to be selected by a majority vote of the directors present at the last preceding meeting, and shall hold a regular meeting on the day preceding the opening day of the annual meeting of the State Bar in the city where such annual meeting is held.

Section 7. Special Meetings.—The Board of Directors may, by a majority vote at any regular meeting, designate a time and place for a special meeting, or the President of the State Bar in his discretion may, and upon written request of ten Directors shall call special meetings of the Board of Directors for a time and place designated in the call. If the President shall fail or refuse for five days after such request by ten Directors to call a special meeting, the Secretary shall call the meeting, specifying the time and place for holding the meeting. Any such call shall specify the matters to be considered, and nothing else may be considered. The time for such meeting shall be not less than five nor more than ten days from the date of the call.

Section 8. Notice of Special Meetings.—Notice of special meetings shall be mailed or telegraphed to each Director at his office address, as it appears in the Secretary's records, unless he shall file with the Secretary a written waiver of notice. The notice shall specify the time, place and purpose of the special meeting.

Section 9. Quorum.—A majority of the Board of Directors shall constitute a quorum for the transaction of business at all meetings, and no action whatever may be taken except upon a majority vote of the Directors present.

ARTICLE VI-A (Amendment 1944)

(Adopted June 5, 1944, and approved by Supreme Court of Texas June 21, 1944.)

From the date of passage of this rule, no member of the State Bar holding any political office for which remuneration is received or a candidate for such office shall be qualified to hold office in the State Bar.

Provided that this rule shall not affect any officer of said Bar for the tenure of the term for which he has been elected.

ARTICLE VII—COMMITTEES AND SECTIONS

Section 1.—The Board of Directors shall create from time to time such committees and sections as it may deem advisable and necessary and shall define powers and functions. As soon as practicable after each annual meeting, the President, with the advice and consent of the Board of Directors, shall appoint the members of all such committees for the ensuing year. Officers of sections shall be selected by such sections at the annual meeting.

Section 2.—Vacancies occurring in memberships of committees shall be filled by the President for the unexpired term.

ARTICLE VIII—MEETINGS OF STATE BAR

Section 1. Time and Place of Annual Meeting.—The annual meeting of the State Bar shall be held on the Thursday, Friday and Saturday, including July 4, or immediately preceding July 4 (if that date does not fall on Thursday, Friday or Saturday) of each year, at a place to be determined by vote of the Board of Directors at its regular January meeting preceding.

Section 2. Program for Annual Meetings.—The program for the annual meeting shall be prepared by the President, with the advice and consent of the Board of Directors. Programs for each section meeting, to be held in conjunction with the annual meeting of the State Bar, shall be prepared by the President of each section with the advice and consent of the President of the State Bar and the Board of Directors. All programs shall be submitted to the Board for approval at its regular April meeting preceding the annual meeting.

Section 3. Special Meetings.—Special meetings of the State Bar shall be called by the Secretary, (1) upon two-thirds vote of the Directors, or (2) upon written petition of at least five hundred members of the State Bar.

When such a meeting is voted by the Board, it shall designate the time and place of the meeting. The time shall be not less than twenty or more than forty days after the call is voted. When the call is made by a minimum of five hundred members, the President in his approval shall designate the place the meeting is to be held and the time, which shall be not less than twenty nor more than forty days after the President's approval. No matters may be considered at any special meeting except those plainly set forth in the call.

Section 4. Notice of Special Meetings.—At least ten days before any special meeting is to convene, the Secretary shall mail to each member at his office address a notice of the time and place of the meeting and the purposes for which the meeting is to be held.

Section 5. Order of Business at Annual Meetings.—The order of business at annual meetings shall be fixed by the President, with the advice and consent of the Board of Directors, and shall be included in the program submitted to the Board at its April meeting as prescribed in Section 2 of this Article.

Section 6. Quorum at Annual or Special Meetings.—One hundred members of the State Bar shall constitute a quorum for the transaction of business at any annual or special meeting.

Section 7. Parliamentary Rules.—All proceedings at any meeting of the State Bar shall be governed by Roberts' Rules of Order.

Section 8. How Member May Vote at Annual or Special Meetings.—No member may vote at any regular or special meeting of the State Bar unless he is present on the floor at the time a vote is called.

ARTICLE IX—ELECTIONS ADOPTING OR AMENDING RULES

Section 1. Submission to Members.—In submitting these rules, or any amendment, to the members of the State Bar, the Supreme Court shall cause to be furnished to each member a ballot which shall afford the member an opportunity to indicate clearly his approval or disapproval of each rule or amendment submitted.

Section 2. Counting of Ballots.—On the thirty-first day after the ballots shall have been mailed to the registered members as required by the State Bar Act[1] (unless the thirty-first day shall fall on Sunday or a legal holiday, in which event it shall be done on the next succeeding working day), the Clerk of the Supreme Court and the Secretary of the State Bar, with the aid of such assistants as the Supreme Court

may by order designate, shall open and count the ballots. The Clerk shall immediately certify in writing to the Court the results of the election; whereupon the Supreme Court shall immediately declare and adopt such rules as may have been adopted by the State Bar and promulgate the rules as directed and required by the State Bar Act.

1 Art. 320a—1.

Section 3. Publication of Rules.—When these rules shall have been adopted by the State Bar and promulgated by the Supreme Court, the Secretary shall immediately cause the rules to be published in pamphlet form and a copy thereof mailed to each member of the State Bar at his office address. In like manner, all rules or amendments subsequently adopted and promulgated shall be published and mailed to each member. The expense of publication and mailing the rules shall be paid out of funds of the State Bar.

Section 4. Expenses of Such Elections.—All expenses reasonably incident to holding, canvassing, and declaring the results of all such elections referred to in this Article shall be paid by warrant against State Bar funds.

ARTICLE X—FISCAL

Section 1. Budget Committees.—There is hereby created a budget committee and its membership shall consist of the President of the State Bar, who shall be ex-officio chairman, and two members of the Board of Directors to be appointed by the President and who shall serve for one year.

Section 2. Annual Budget.—It shall be the duty of the budget committee to advise with and assist the Secretary in the preparation of the annual budget for the State Bar for the fiscal year, next after their appointment. The budget shall be fully prepared and ready for consideration by the Board of Directors at its regular April meeting in each year. The Board may amend the budget as it deems proper, but the budget, whether amended or not, shall be approved by the Board at its April meeting. The budget shall itemize all purposes for which warrants may be issued against State Bar funds for the ensuing fiscal year and shall show the total amounts which may be expended for each purpose, and no warrants may be drawn for any purpose after the total amount allocated thereto shall have been exhausted.

The budget may be amended at any time, to meet any unforeseen emergency, by two-thirds vote of the members present at any regular or special meeting of the Board of Directors. Each amendment shall specify the items and purposes for which additional expenditures are allowed and specify the total amount additionally allocated to each purpose.

Section 3. Bar Warrants; How and for What Purposes Drawn.—No warrant on account of the State Bar of Texas shall be drawn against State Bar funds, nor paid out of the funds, unless the warrant is signed by the Secretary and countersigned by the President. The Secretary shall see that no warrant is so drawn and issued except to pay some item of expense authorized in the annual budget, or some amendment thereto; and that no warrant is drawn, if its payment shall overdraw the amount allocated by the budget or its amendments to the payment of that item. Each warrant shall specify thereon what item of expenditure it is drawn to pay.

The Board of Directors and officers of the State Bar shall be without authority to make any contract or incur any debt that cannot be paid from the receipts for the current year, except with the concurrent approval obtained by referendum of all members of the State Bar and of the Supreme Court.

Any violation by the Secretary of the terms of this Section, or neglect by him to perform the duties imposed by this Section, shall constitute a breach of trust and he shall be liable therefor on his bond to the State Bar.

Section 4. Expenses of Officers and Directors.—The Board of Directors may provide for the payment of all actual and necessary expenses incurred by the officers and directors of the State Bar in the discharge of their duties, except those incurred in attendance upon the annual meetings of the Bar.

ARTICLE XI—STATE BAR JOURNAL

Section 1. Journal Provided For.—A monthly journal, devoted to legal matters and the affairs of the State Bar and its members, may be published and circulated under the direction of the Board of Directors.

Section 2. Circulation to Members.—A copy of the Journal when published shall be mailed to each member of the State Bar registered in the principal office of the Bar, without expense to the member additional to the annual dues paid by him.

Section 3. Publication of Bar Matters.—The Journal, without charge to the State Bar, shall print all notices, reports of committees, and such other items as may be indicated by the President or the Board of Directors.

ARTICLE XII—DISCIPLINE OF MEMBERS; UNAUTHORIZED PRACTICE OF LAW

A. GROUNDS AND PROCEDURE FOR DISCIPLINARY ACTION

Section 1. Grounds for Disbarment, Suspension and Reprimand.—A member of the State Bar who shall be guilty of barratry, as defined by the laws of this State, or of any fraudulent or dishonorable conduct, or malpractice may be reprimanded or suspended from practice; or his license may be revoked by the district court of the county in which such attorney resides, regardless of the fact that such act may constitute an offense under the Penal Code of this State, and regardless of whether he is being prosecuted or has been convicted for the violation of such penal provision.

Section 2. Compulsory Disbarment.—The license of any member, who has been convicted in this state or in any state of the United States or in any of the courts or tribunals of the United States of any crime involving moral turpitude of the grade of felony as defined by the laws of this state, shall be revoked by the district court of the county in which such member resides.

Section 3. Misbehavior or Contempt.—A member may be fined or imprisoned by any court for misbehavior or for contempt of such court, but no member shall be suspended or have his name stricken from the rolls for contempt unless it involves fraudulent or dishonorable conduct or malpractice, and then only in the manner provided for in these rules.

Section 4. Wilful Violation of Canons of Ethics.—Any wilful violation of any canon of ethics, as contained in these rules or amendments thereto, which does not constitute grounds for suspension or disbarment under Sections 1, 2 and 3 of this Article, shall be sufficient ground for disciplining the member so offending, which discipline may be effected by formal or informal reprimand, as subsequently provided in these rules.

Section 5. Offenses More Than Four Years Old Barred.—Except in cases where disbarment is compulsory under Section 2 of this Article, no member shall be reprimanded, suspended or have his license revoked for any act committed more than four years prior to the time of filing of a complaint with the Grievance Committee as provided for in these rules.

Section 6. Jury Provided For.—No member shall be denied the right of trial by jury in the district court of the county of his residence in any proceeding instituted to suspend him or revoke his license, but the defendant may waive his right to a jury trial.

Section 7. Who May File Petition in Court.—The Grievance Committee of the district in which the accused member resides or maintains an office or where the alleged misconduct occurs may file with the clerk of the proper district court a petition against the accused member, praying that he be disbarred, suspended, or reprimanded, as the Committee may deem the facts to justify.

Section 8. Docketing and Prosecution of Cause.—The petition shall be filed in the name of the State of Texas, as plaintiff, against the accused member, as defendant, and shall be prosecuted by a member or members of the State Bar selected by the Grievance Committee. It shall not be necessary for the county or district attorney to represent the State or join in the prosecution or filing of such case, but he may do so.

Section 9. Issuance and Service of Citation.—Upon the filing of such petition, the Clerk of the Court shall issue citation or out-of-state notice to the member named, citing him to show cause why he should not be reprimanded or why his license should not be suspended or revoked. All such citations and out-of-state notices shall set out briefly the charges contained in the petition. If the defendant is a resident of this state or is to be found in the state, he shall be served with personal citation. If the defendant is absent from the state or is a non-resident of the state, and his residence is known, he may be served by out-of-state notice. If his residence is unknown upon affidavit so stating, made by a member of the Grievance Committee causing the petition to be filed, the defendant may be served with citation by publication. All such citations and such out-of-state notices shall be issued and served in accordance with the laws of this state governing the issuance and service of personal citations, citations by publication, or out-of-state notices in a civil suit in the district court.

Section 9a. Service by Publication.—Where service has been made on the defendant by publication, and no answer has been filed nor appearance entered on or before the return day, the court shall appoint an attorney to defend the suit in behalf of the defendant, such representation to be without expense to the State Bar. No judgment by default shall be rendered in any such case, but a jury of twelve men shall be impaneled and the parties filing such petition shall introduce their evidence; and the cause shall be tried as subsequently provided by these rules.

Section 10. Trial.—The trial shall be conducted in accordance with the practice and procedure governing the trial of civil cases in the district courts of this state, and in accordance with the rules of evidence, including the taking of depositions, in the trial of civil cases in district courts of this state, insofar as applicable and not in conflict with these rules.

Section 11. Judgment.—If the defendant be found guilty of the acts charged, or of either of them, or if he fail to appear and deny the charges after being duly cited, the court, by proper order entered on the minutes, may reprimand the defendant, suspend his license for a time, or revoke it. No suspension shall be imposed for a period exceeding twelve months. The court may also give proper judgment for costs.

Section 12. Appeal.—Either party to such proceeding shall have the right of appeal from the judgment of the district court to the Court of Civil Appeals and the Supreme Court under the law and rules applicable to appeals of civil cases tried in the district court.

Section 13. Notice of Judgment.—After the judgment of the court becomes final, the clerk of the district court shall mail to both the Clerk of the Supreme Court and the Secretary of the State Bar a certified copy of such judgment. It shall be the duty of the Chairman of the Grievance Committee to see that this provision is complied with. The defendant's name, if his license has been revoked, shall be stricken from the rolls kept by the Clerk. If his license has been suspended, his name shall be stricken from said rolls during the period of suspension. If the defendant has been reprimanded only a memorandum of the reprimand shall be made on said rolls.

Section 14. Petition for Reinstatement After Disbarment.—At any time after the expiration of two years from the date of final judgment of disbarment of a member, he may petition the court which rendered the judgment for reinstatement. The petition shall allege in substance that petitioner at the time of filing is of good moral character and, since his disbarment, has been living a life of general good conduct, and that he has made full amends and restitution to all persons, if any, naming them, who may have suffered pecuniary loss by reason of the misconduct for which he was disbarred. The petition shall state the name and address of the Chairman of the District Grievance Committee and the name and address of the Secretary of the State Bar.

Section 15. Notice, Hearing and Judgment.—The court shall examine the petition and, if satisfied that it states sufficient grounds to authorize reinstatement under these rules, shall fix by order endorsed on the petition a time and place for a hearing, and shall direct the clerk to serve each of the parties required to be named in the petition, by mailing to each of them by registered mail, return receipt requested, a certified copy of such petition and order. Thereafter, in term time or vacation, after the expiration of not less than fifteen days from the date of mailing of such notices, the court shall proceed without the aid of a jury to hear testimony both for and against the petitioner. Any of the parties named in such petition may contest the granting of such petition and may introduce evidence in opposition. If the court is satisfied that all the material allegations in the petition are true and that the ends of justice will be subserved, the court may reinstate the petitioner and enter judgment accordingly.

No judgment of reinstatement shall be entered by default, but the court in all cases shall hear evidence on such petition before rendering judgment. Either party to such hearing shall have the right of appeal from the judgment, as provided in Section 12 of this Article. After final judgment granting reinstatement, the petitioner shall furnish both the Clerk of the Supreme Court and the Secretary of the State Bar a certified copy of such judgment, and shall pay all membership dues for the current fiscal year. His name, as a member of the State Bar, shall be entered then on the rolls of the Clerk of the Supreme Court.

B. GRIEVANCE COMMITTEE, PROCEDURE BEFORE

Section 16. Grievance Committee.—The President, with the approval of the director from each respective Congressional District, shall appoint a Grievance Committee for each such district, to consist of five, seven or nine members of the State Bar, who shall be residents of the District. A majority of the Committee shall constitute a quorum for all purposes. Each Committee shall elect its own Chairman. The majority of the members of each of the first Commit-

tees shall draw for two year terms, and the minority for one year terms. Thereafter, as each member's term expires, a member shall be appointed in his place for a period of two years. So far as practicable, members of each Committee shall be appointed from different parts of the district.

Section 17. Disqualification of a Member of the Committee.—If, in the opinion of the majority of the Committee, any member of the Committee in any way is disqualified in any matter to be presented to or heard by the Committee, the Chairman of the Committee shall notify the President of such disqualification, and the President shall appoint another member of the Bar from that District to serve temporarily as a member of the Committee while it is considering such matter.

Section 18. Complaints, Investigation Thereof.—It shall be the duty of each District Committee and the several members thereof to receive complaints of professional misconduct, alleged to have been committed by a member of the State Bar within that district, or by a member having his office or residence therein, (whether committed before or after these rules become effective). Each Committee member shall report to his committee any case of professional misconduct which shall come or be brought to his attention. The Committee, or a subcommittee, shall make or cause to be made such preliminary investigation of each complaint as may, in the opinion of the Committee, be necessary and appropriate under the facts of the case.

Section 19. Informal Complaints; Action On.—After the Committee, or sub-committee thereof, has made an investigation and has afforded the member, against whom complaint has been made, an opportunity to be heard, the Committee shall proceed to consider such complaint and take such action thereon as it deems appropriate. If the Committee determines that disciplinary action is warranted, it shall order the filing of a formal complaint; otherwise, the complaint shall be dismissed.

The name of the accused member and the proceedings shall be private, unless requested to be made public by such member.

Section 20. Formal Complaint.—A formal complaint, when ordered by the Committee, shall be prepared, and shall contain a clear and concise statement of the facts upon which the charges of misconduct are based, and shall be filed with the Chairman of the Committee. Any such complaint, when made by a person other than a member of the Committee, shall be sworn to by the complainant.

Section 21. Service of Notice.—The Chairman of the Committee shall issue notice to the accused member, to which shall be attached a copy of the complaint, notifying him to appear and answer the complaint at a time and place specified, which time shall be not less than ten days after service of notice. Such notice shall be served upon the accused member either personally or by registered mail, return receipt requested, addressed to him at his last known address, as shown by the membership rolls kept by the Clerk of the Supreme Court. The date of service of notice shall be the day upon which the accused member is served or the day upon which the notice is mailed. Proof of service may be made by affidavit of the person serving or mailing the notice.

Section 22. Procedure Upon Default.—If the accused member does not appear before the Committee at the time fixed in the notice the Committee may proceed with the hearing.

Section 23. Answer.—The accused member may answer within the time fixed, by filing his verified answer with the Chairman of the Committee.

Section 24. Procedure After Answer.—If an answer is filed within the time fixed in the notice, the Chairman shall fix a time and place for a hearing, and shall so notify by mail the other members of the Committee and the accused member, or his attorney.

Section 25. Hearings, How Conducted.—The Committee shall hear and examine witnesses and all evidence material to the inquiry. If the accused member is a resident of the district, the hearing shall be held at some place in the county of his residence, unless a different place is agreed upon by the Committee and such member.

Section 26. Prosecution of Complaint.—The complaint may be prosecuted by any member or members of the Committee making the investigation, or any member of the Bar, or both, as may be determined by the Committee.

Section 27. Evidence at Hearing.—All testimony shall be under oath or affirmation, which may be administered, and a certificate of the fact given, by any person authorized by the laws of Texas to administer oaths or affirmations. Ex parte affidavits of witnesses, properly signed and sworn to by the witnesses, may be used at the hearing and considered by the Committee. The Committee may direct that evidence given at the hearing be taken stenographically, and may appoint a stenographer for that purpose. The transcript of the testimony may be certified by the person who reports the testimony, and whenever the testimony of a witness at the hearing, so stenographically reported, is admissible in evidence at a trial in court, it may be proved by such duly certified transcript. The Committee may order photostatic copies made of all documentary evidence, or any part thereof, and such documentary evidence, or the photostatic copies thereof, shall be preserved as a part of the record.

Section 28. Rights of Member Accused.—The accused member shall have the right to introduce evidence in his behalf and to examine and cross-examine witnesses. He also shall have the right, without expense to the State Bar, to be represented by counsel. He shall not be required to testify, but if he shall offer himself as a witness, he may be examined the same as any other witness.

Section 29. Notices Issued to Witnesses.—In any investigation or hearing before the Committee, it may request the attendance of witnesses and the production of documentary evidence by issuing notices to witnesses, requesting them to appear and testify or to produce said documentary evidence. Such notices shall be issued at the request of the Committee, or the accused member, but in the latter case, without expense to the State Bar. Such notice must be in writing and signed by the presiding member of the Committee, and shall notify the witness of the time and place he is requested to appear. If the witness is commanded to produce documentary evidence, the notice shall contain a brief description of such evidence.

Section 30. Service of Notices to Witnesses.—Notice to a witness shall be served on the witness personally or by mailing the same to him by registered mail, return receipt requested. Proof of service of the notice shall be made by affidavit of the person making the same.

Section 31. Examination of Witness Before District Judge; Procedure.—If any witness, after such notice has been given, fails or refuses to appear before the Committee, or to produce books, papers, documents, letters, or other writings described in the notice, or refuses to be sworn, or to testify, or if a witness is not a resident of, or is not to be found in, the county in which the hearing is being held, such witness shall be compelled by a Judge of any district

court to appear and testify at a hearing before such judge in the same manner as witnesses may be compelled to appear and testify in a civil suit in the district court. Application for such hearing may be filed by any party to such proceeding in any district court of the county in which such witness resides, or may be found. The judge shall fix by order a time and place for such hearing and shall provide for such notice to the Grievance Committee and the accused member as he deems proper. If such witness fails to appear, or testify, or produce such documentary evidence as may be requested, he shall be punished as in cases of contempt.

Section 32. Action of Committee on Formal Complaints.—After the hearing and consideration of a formal complaint, the Committee shall act thereon in one of the following ways, viz.:

(a) If the majority of the Committee hearing the evidence finds that a proceeding to disbar, suspend, or reprimand the accused member should be instituted in the district court, it shall file, or cause to be filed, a petition, as authorized by Section 7 of this Article.

(b) If the majority of the Committee finds that such a proceeding should not be instituted against the accused member, but that he should be reprimanded by the Committee, then the Chairman of the Committee shall deliver the reprimand in the presence of the Committee. If the accused member refuses to appear for such reprimand, the Committee shall file a petition as authorized under Section 7 of this Article. The reprimand shall be reduced to writing, and a copy thereof shall be mailed to both the Clerk of the Supreme Court and the Secretary of the State Bar, and a memorandum of the reprimand shall be made on the membership rolls kept by said Clerk.

(c) If the majority of the Committee finds that no disciplinary action is warranted, it shall dismiss the complaint and notify the complainant, the member accused, and the Secretary of the State Bar, to that effect.

Section 33. Accused May Agree That His License Be Suspended or Revoked.—An accused member may file with the Committee an answer, signed and acknowledged by him, agreeing that the Committee may either suspend his license for a time or revoke it. After such an answer is filed, the Committee may, at its discretion, enter, as a part of the record in the case, an appropriate order, either suspending his license for a time or revoking it, in the same manner as if a judgment had been entered by the district court, suspending or revoking his license. Such order shall have the same force and effect as such a judgment. The Chairman of the Committee shall mail to the Clerk of the Supreme Court and to the Secretary of the State Bar, a copy of this order, and the provisions of Section 13 of this Article, insofar as applicable, shall apply.

Section 34. Record of Proceedings.—The Committee shall keep a brief record of the proceedings had before it in all cases where a formal complaint is filed. The record shall show the Committee's action in each case and shall contain a brief statement of its findings and conclusions. In each case, the Committee shall forward a copy of such record to the Secretary of the State Bar.

C. UNAUTHORIZED PRACTICE OF LAW

Section 35. Grievance Committee May Investigate.—Each Grievance Committee, in its respective district, shall have power and authority, and it shall be its duty, to investigate the practice of law by persons not authorized to do so under the laws of this State and these Rules, and to receive complaints of such unauthorized practice. Each Committee shall make such investigation as it deems appropriate.

In conducting all such hearings and in making such investigations, each Committee shall have authority to hear and examine witnesses under oath and to examine all books, papers, documents or other writings necessary or material to the inquiry. Any person accused of such unauthorized practice shall be given notice, as the Committee may provide, and shall have an opportunity to be heard, and shall have the same rights as are given an accused member by the provisions of Section 28 of this Article. He may also request the Committee to notify witnesses to appear in his behalf at his expense.

The provisions of Sections 25, 26, 27, 29, 30 and 31 of this Article shall apply, insofar as applicable, to such investigations, hearings and proceedings before the Committee, and examination of witnesses before a District Judge. All such provisions conferring rights upon an accused member shall inure to the benefit of the person so charged.

Each Grievance Committee may institute and prosecute appropriate suits or proceedings, in the name of the Committee, or any member thereof, or any party complaining, as may be advisable in the opinion of the majority of the Committee, to suppress, prohibit, or prevent such unauthorized practice of the law, or may take such other action as it deems advisable under the circumstances, such as the filing of criminal charges or complaints. Such suits, proceedings, complaints, or criminal charges shall be prosecuted by a member or members of the Committee, or by members of the Bar, as may be determined by the Committee.

The Board of Directors may from time to time employ a suitable person or persons to make investigations of such unauthorized practice of law, and to perform such other duties as the Board may require, such persons to receive compensation as fixed by the Board.

These rules shall be cumulative of all laws of this State relating to the unauthorized or the unlawful practice of the law.

D. MISCELLANEOUS PROVISIONS

Section 36. Non-Liability of State Bar and Its Members.—Neither the State Bar, its Grievance Committees, nor any member thereof shall be liable to any member of the State Bar, or to any other person charged or investigated by the Committee, for any damages incident to such investigation, or any complaint, charge, prosecution, proceeding, or trial.

Section 37. Expense of Grievance Committee.—All traveling expenses, court costs, and all other expenses reasonably incurred in the discharge of the duties of the Grievance Committee and of individual members thereof when approved by the Grievance Committee and the Board of Directors of the State Bar, shall be paid out of the State Bar funds, after an itemized statement has been filed with the Secretary of the State Bar. Clerk of the district court, sheriffs, and other officers shall receive the same fee for their services in carrying out the applicable provisions of these rules as such officers would receive if performing similar service in connection with other suits instituted in the district court.

ARTICLE XIII—CANONS OF ETHICS

Section 1. Canons of Ethics.—The following code of ethics shall govern the professional conduct of the members of the State Bar.

Section 2. Canons Not Exclusive.—This code of ethics shall be cumulative of all laws of the State of Texas relating to the professional conduct of lawyers and to the practice of law.

Section 3. The Canons of Ethics.—1. Duty of a Member to the Courts. It is the duty of a member to maintain toward the courts a respectful attitude. Judges shall receive the support of members against unjust criticisms and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of a member to

submit his grievances to the proper authorities. In such cases, but not otherwise, such charges shall be encouraged and the person making them protected.

2. Selection of Judges. It is the duty of a member to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. A member should protest earnestly and actively against the appointment or election of those who are unsuitable for the bench; and he shall strive to have elevated thereto only those willing to forego other employment, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision.

3. Attempts to Exert Personal Influence on the Court. Marked attention and unusual hospitality on the part of a member to a judge should be avoided. A member shall not communicate or argue privately with the judge as to the merits of a pending cause, or attempt to gain from a judge special personal consideration or favor.

4. When Counsel for an Indigent Prisoner. A member assigned as counsel for an indigent prisoner should not ask to be excused for any trivial reason, and should always exert his best efforts in the prisoner's behalf.

5. Defense or Prosecution of Those Accused of Crime. It is the right of a member to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused. Having undertaken such defense, a member is bound by all fair and honorable means to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty but by due process of law.

It should be the primary duty of a member engaged in public prosecution not to convict, but to see that justice is done. He should not suppress facts or secrete witnesses capable of establishing the innocence of the accused.

6. Adverse Influences and Conflicting Interests. It is the duty of a member at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in, or connection with the controversy which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this rule, a member represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

7. Professional Colleagues and Conflicts of Opinion. A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A member shall decline association as colleague if it is objectionable to the original counsel, but if the member first retained is relieved, another may come into the case.

When members jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion shall be frankly stated to the client for his determination. His decision shall be accepted unless the nature of the difference makes it impracticable for member whose judgment has been overruled to cooperate effectively. In this event it is his duty to ask his client to relieve him.

Efforts, direct or indirect, which in any way encroach upon the practice of another member are unworthy of those who shall be members of the State Bar; but nevertheless, it is the right of any member, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the member of whom complaint is made.

8. Advising upon the Merits of a Client's Cause. A member should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable results of pending or contemplated litigation. A member should avoid bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

9. Negotiations with Opposite Party. A member should not in any way communicate upon the subject of controversy with a party represented by counsel. He should not undertake to negotiate or compromise the matter with the party, but should deal only with his counsel. It is incumbent upon the member most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he shall not undertake to advise him as to the law.

10. Dealing with Trust Property. Money of the client or other trust property coming into possession of a member shall be reported promptly, and except with the client's knowledge and consent shall not be commingled with his private property or be used by him.

11. Fixing the Amount of the Fee. In fixing fees, members should avoid charges which overestimate their advice and services. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the member's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other employment while employed in the particular case or antagonisms with other clients; (3) the customary charges of the bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are guides in ascertaining the real value of the service.

12. Contingent Fees. A contract for a contingent fee should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation.

13. Suing a Client for a Fee. Controversies with clients concerning compensation are to be avoided by the member so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients shall be resorted to only to prevent injustice, imposition or fraud.

14. Ill-feeling and Personalities Between Advocates. Any feeling existing between clients, should not be allowed to influence members in their conduct and demeanor toward each other or toward suitors.

All personalities between members should be avoided. In the trial of a cause it is improper to allude to the personal history or the personal peculiarities and idiosyncrasies of a member on the other side. Personal colloquies between members should be carefully avoided.

15. Treatment of Witnesses and Litigants. A member shall always treat adverse witnesses and suitors with fairness and due consideration. A client has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities.

16. Appearance of Member as Witness for His Client. It shall be unethical for a member to accept a case when he knows that he will be a material witness, but a member may testify to any matter without being guilty of misconduct if the necessity therefor is occasioned during the trial of the case.

17. Newspaper Discussion of Pending Litigation. A member should not publicize pending or anticipated litigation by newspaper interviews or otherwise. If the extreme circumstances of a particular case justify a statement to the public, it should not be made anonymously and should not go beyond quotation from the records and papers on file in the court.

18. Punctuality and Expedition. It is the duty of a member to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

19. Candor and Fairness. The conduct of a member before the court and with other members should be characterized by candor and fairness. He should not knowingly misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook; or, with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or, in argument to assert as a fact that which has not been proved; or to mislead his opponent by concealing or withholding positions in his opening argument upon which his side intends to rely.

A member should deal candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A member should not offer evidence which he knows the court should reject in order to get the same before the jury by argument for its admissibility, nor should he address to the judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.

20. Attitude Towards Jury. A member should not curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort or convenience. Suggestions of members looking to the comfort or convenience of jurors should be made to the court out of the jury's hearing. A member shall never converse or communicate privately with jurors about the case, and both before and during the trial he should avoid conversing or communicating with them, even as to matters foreign to the cause.

21. Right of Member to Control the Incidents of the Trial. A member must be allowed to judge as to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite counsel to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite counsel when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross-interrogatories and the like. A member should not do anything repugnant to his own sense of honor and propriety.

22. Taking Undue Advantage of Opposite Counsel. A member should not ignore known customs of practice of the Bar or of a particular court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible important agreements, affecting the rights of clients, should be reduced to writing; but a member should not avoid performance of an agreement fairly made because not reduced to writing.

23. Professional Advocacy Other Than Before Courts. A member openly and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the courts; but a member so engaged should not conceal his attorneyship, or employ secret personal solicitations, or use means other than those addressed to the person and understanding to influence action.

24. Solicitation, Direct or Indirect. A member should not solicit professional employment by circulars or advertisements, or by personal communications or interviews not warranted by personal relations, or endeavor to procure such employment through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills, or offering retainers in exchange for executorships or trusteeships to be influenced by a member. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments about causes in which the member is engaged or the importance of the member's position, and all other like self-laudation should be avoided.

25. Stirring up Litigation. A member should not volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship, or trust make it his duty to do so. A member shall not hunt up defects in title or other causes of action and inform thereof in order to be employed professionally, or seek out those with claims for personal injuries or other grounds of action in order to secure them as clients; or employ agents or runners for like purposes; or pay or reward directly or indirectly those who bring or influence the bringing of such cases to his office; or remunerate policemen, court, or prison officials, physicians, hospital attaches, or others who may succeed, under the guise of giving disinterested friendly advice, in influencing persons to seek his professional services. Any member having knowledge of such practices by any other member, shall immediately inform the proper Grievance Committee thereof.

26. Upholding the Honor of the Profession. Members shall expose without fear or favor before the proper tribunal or Grievance Committee corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member who has wronged his client. A member upon trial of a cause in which perjury has been committed should bring the matter to the knowledge of the prosecuting authorities. A member should aid in guarding the bar against admission to the profession of candidates unfit because deficient in moral character.

27. Justifiable and Unjustifiable Litigation. A member must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and having accepted retainer it becomes his duty to insist upon the judgment of the court as to the legal merits of his client's claim. His appearance in court shall be deemed equivalent to an assertion

on his honor that in his opinion his client's case is one proper for judicial determination.

28. Responsibility for Litigation. A member may refuse to act either as advisor or advocate for any person who may wish to employ him. A member upon his own responsibility must decide what employment he will accept as counsel, what causes he will bring into court for plaintiffs, what cases he will contest in courts for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses is the member's responsibility.

29. The Member's Duty in Its Last Analysis. No client, corporate or individual, nor any cause, civil or political, however important, is entitled to receive, nor shall any member render any service or advice involving disloyalty to the law, or disrespect of the judicial office, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. A member must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent.

30. Partnerships; Names. In the formation of partnerships for the practice of law, no person shall be admitted who is not a member of the legal profession, duly authorized to practice, and amenable to professional discipline. No person shall be held out as a practitioner or member who is not so admitted. In the selection and use of a firm name, no false, misleading, assumed or trade name shall be used. The continued use of the name of a deceased or former partner may be permissible by local custom, but care shall be taken that no imposition or deception is practiced through this use. If a member of the firm becomes a judge, his name shall not be continued in the firm name.

Partnerships between members of the State Bar and members of other professions or nonprofessional persons shall not be formed or permitted where a part of the partnership employment consists of the practice of law.

31. Division of Fees. No division of fees for legal services is proper, except with other lawyers, based upon a division of service or responsibility, or with a forwarding attorney. But sharing commissions between forwarder and receiver, at a commonly accepted rate upon collections of liquidated commercial claims, though one be a member and the other not, is not condemned hereby, where it is not prohibited by statute.

32. Intermediaries. The professional services of a member shall not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and a member. A member's responsibilities and qualifications are individual. He shall avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A member's relation to his client should be personal, and the responsibility shall be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

A member may accept employment from any organization, such as an association, club, or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment shall not include the rendering of legal services to the members of such an organization in respect to their individual affairs.

33. Retirement from Judicial Position or Public Employment. A member shall not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity.

A member, having once held public office or having been in the public employ, shall not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ, adverse to the interest previously represented by him while in such office or public employ. A public officer should endeavor so to discharge his official duties that his employment after the expiration of his term of office should be unnecessary.

34. Confidences of a Client. The duty to preserve his client's confidence outlasts the member's employment, and extends as well to his employees; and neither of them should accept employment which involves the disclosure or use of these confidences, either for the private advantage of the member or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information. A member shall not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client.

If a member is falsely accused by his client, he is not precluded from disclosing the truth in respect to his false accusation. The announced intention of a client to commit a crime is not included within the confidences which he is bound to respect. He may properly make such disclosures as to prevent the act or protect those against whom it is threatened.

35. Compensation, Commissions and Rebates. A member shall accept no compensations, commissions, rebates or other advantage from others without the knowledge and consent of his client after full disclosure.

36. Witnesses. In interviewing any witness or prospective witness for the opposing side, a member should scrupulously avoid any suggestion calculated to induce the witness to suppress or deviate from the truth, or in any way to affect his free and untrammelled conduct at the trial or on the witness stand.

37. Newspapers. A member may with propriety write articles for publication in which he gives information upon the law; but he shall not accept employment from such publications to advise inquirers in respect to their individual rights.

38. Discovery of Imposition and Deception. When a member discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court or a party, he shall endeavor to rectify it, at first by advising his client; and if his client refuses to forego the advantage thus unjustly gained, the member shall promptly terminate his employment.

39. Professional Card. The customary use of professional cards is permissible. The professional card of a member may with propriety contain only a statement of the member's name (and the names of lawyers associated with him), profession, address, telephone number, and special branches of the profession practiced. The professional card, or a professional listing, may be inserted in reputable law lists and law directories. The listing shall contain only such matter permitted in the professional card, but may include a brief biographical sketch of the lawyer and his associates, and, with their written consent, the names of not more than six representative clients for whom the lawyer and his associates are regularly employed as counsel.

40. Withdrawal from Employment as Attorney or Counsel. The right of a member to withdraw from employment, once assumed, arises only from good cause. Even the desire or consent of the client is not always sufficient. A member shall not throw up the unfinished task to the detriment of his client, except for reasons of honor or self-respect.

If the client insists upon an unjust or immoral course in the conduct of his case, or if he persists over the member's remonstrance in presenting frivolous defenses, or if he deliberately disregards an agreement or obligation as to the fees or expenses, a member may be warranted in withdrawing on due notice to the client, allowing him time to employ another member. So also when a member discovers that his client has no case and the client is determined to continue it; or even if a member finds himself incapable of conducting the case effectively. Upon withdrawing from a case after a retainer has been paid, a member shall refund such part of the retainer as has not been clearly earned.

41. Specialists. These rules apply to all branches of the legal profession; specialists in particular branches are not to be considered as exempt from the application of these principles.

42. Notice of Specialized Legal Service. Where a member is engaged in rendering a specialized legal service directly and only to other members, a brief, dignified notice of that fact, couched in language indicating that it is addressed to members, inserted in legal periodicals and like publications, when it will afford convenient and beneficial information to members desiring to obtain such service, is not improper.

43. Aiding the Practice of Law by Persons not Members of the State Bar. No member shall permit his professional services or his name to be used in aid of, or to make possible, the practice of law by any person not a member of the State Bar.

TITLE 15—ATTORNEYS—DISTRICT AND COUNTY

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2. COUNTY ATTORNEYS

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1. DISTRICT ATTORNEYS

Article 321. [338] [275] [240] Term of office.—District Attorneys and criminal district attorneys shall hold office for the term of two years. [Const. art. 5, sec. 21.]

Art. 322. [339] [276] [241] Districts may elect.—The following Judicial Districts in this State shall each respectively elect a District Attorney, viz: first, second, third, fifth, seventh, eighth, ninth, twelfth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-seventh, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, forty-second, forty-sixth, forty-seventh, forty-ninth, fiftieth, fifty-first, fifty-second, fifty-third, sixty-third, sixty-fourth, sixty-ninth, seventieth, seventy-second, seventy-fifth, seventy-sixth, seventy-ninth, eighty-first, eighty-third, ninetieth, hundredth, and hundred and sixth. There shall also be elected a Criminal District Attorney for Harris County, a Criminal District Attorney for Dallas County, a Criminal District Attorney for Tarrant County, and one Criminal District Attorney for the Counties of Nueces, Kleberg, Kenedy, Willacy and Cameron. [Acts 1901, p. 127; Acts 1915, p. 259; Acts 1927, 40th Leg., p. 222, ch. 151; Acts 1933, 43rd Leg., p. 74, ch. 43; Acts 1933, 43rd Leg., Spec. L., p. 150, ch. 107; Acts 1943, 48th Leg., p. 457, ch. 306, § 1.]

Both the amendments of 1933 and 1943, in section 2 thereof, provided that such amendments should not alter, amend or change any other law affecting district attorneys.

Art. 322a. Travis and Williamson Counties.—The office of district attorney of Travis and Williamson Counties from and after the first day of January, 1927, shall cease to exist, and there shall be elected a district attorney for the Fifty-third Judicial District at the next general election after the passage of this Act, and at each general election thereafter. He shall represent the State in all criminal cases in all of the district courts of Travis County, and perform such other duties as are or may be provided by law governing district attorneys; and he shall receive, in addition to the five hundred ($500.00) dollars per annum allowed by law to district attorneys, the same per diem and compensation provided by law for district attorneys in judicial districts of this State composed of two or more counties.

After the taking effect of this Act it shall be the duty of the county attorney of Williamson County to represent the State of Texas in all courts in Williamson County, in all matters and cases pertaining to the duties of county attorney and district attorney; and his fees and compensation shall be governed by the General Laws now existing, or hereafter enacted, pertaining to such matters and cases. [Acts 1925, p. 355.] [39th Leg., ch. 147, §§ 1, 2.]

Section 1 of the Act of 1925, cited to the text, amended Acts 1923, 38th Leg., p. 129, ch. 68, § 10, which, as amended, is also published as Code of Criminal Procedure, article 52—54.

Section 3 of the Act of 1925 repealed conflicting laws and parts of laws, and section 4 provided that the act should become effective on and after January 1, 1927.

Acts 1931, 42nd Leg., p. 744, ch. 291, and Acts 1931, 42nd Leg., Spec.L., p. 12, ch. 4, contained a recital in the title or enacting clause repealing "Article 322a and 326k—2 of the Civil Statutes and all other laws and parts of laws, in so far, and only in so far, as they are in conflict with the provisions of this Act." However, the body of the act contained no repealing clause or section, and it is questionable whether a repeal was effected.

Art. 322b. Fannin and Lamar Counties; County Attorney to represent state; stenographer.—The office of District Attorney in the Sixth Judicial District of Texas is hereby abolished and the County Attorney of each county composing said district, to wit: Fannin and Lamar Counties, shall represent the State of Texas in all matters wherein the State of Texas is a party in his respective county and shall receive such fees and compensation for his services as is now, and may hereafter, be provided by General Laws of the State of Texas; and provided further that each said County Attorney may employ a stenographer by and with the consent of the Commissioners Court of his county, to be paid such salary from county funds as shall be fixed by order of the Court. [Acts 1926, 39th Leg., 1st C. S., p. 11, ch. 6, § 1; Acts 1941, 47th Leg., p. 419, ch. 248, § 1.]

Art. 323. [340] [277] [242] Bond.—Each district attorney, before entering on the duties of his office, shall give bond, payable to the Governor in the sum of five thousand dollars, with two or more good and sufficient sureties, to be approved by the district judge of their respective districts, conditioned that such district attorney will faithfully pay over, in the manner prescribed by law, all money which he may collect or which may come to his hands for the State or for any county. Such bond shall be deposited in the office of the Comptroller.

Art. 324. Assistant District Attorneys, Special Investigators and stenographers in certain counties.—In any Judicial District of this State consisting of three (3) or more Counties, in which there is situated a City of not less than thirty-nine thousand (39,000) inhabitants and not more than forty-nine thousand (49,000) inhabitants, according to the last preceding Federal Census, the District Attorney shall appoint one (1) Assistant District Attorney, provided that the District Attorney shall furnish data to the County Judge of the County in which said above-mentioned City is located that he is in need of an Assistant and is himself unable to attend to all the duties required of him by law and that it is necessary and to the best interests of the State that an Assistant District Attorney be appointed. Said Assistant District Attorney so appointed shall be a qualified resident of the District in which said appointment is made and shall give bond and take the official oath; the said Assistant District Attorney shall be a qualified licensed attorney and shall have authority to perform all the acts and duties of the District Attorney under the laws of this State; said appointment shall be for

such time as the District Attorney shall deem best in the enforcement of the law, not to be less than one (1) month. Said Assistant District Attorney shall be paid by the County in which said above-mentioned City is located for the time of actual service rendered at the rate of Three Thousand Dollars ($3,000) per annum, in twelve (12) equal monthly installments out of the County Funds by warrants drawn upon such County Funds. Said sum shall be paid upon certificate of the District Attorney of said District, that said Assistant District Attorney of said District has performed his duties and is entitled to pay. The District Attorney of any such District, at any time he deems said Assistant unnecessary or finds that he is not attending to his duties as required by law, may remove said person from office by merely writing to said County Judge to that effect.

Section 2. Said District Attorney is hereby authorized, with the consent of the County Judge and the Commissioners Court of the County where said City of between thirty-nine thousand (39,000) and forty-nine thousand (49,000) population is located, to appoint one (1) Assistant in addition to his legal assistant provided for in this Act, which Assistant shall not be required to possess the qualifications prescribed by law for District or County Attorneys, which said Assistant shall be known as Special Investigator, and who shall perform such duties as may be assigned to him by the District Attorney and who shall receive as compensation a salary not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum, payable monthly out of the County Funds by warrants drawn on such County Funds.

Said Special Investigator shall have authority under the direction of the District Attorney to make arrests and execute process in criminal cases and shall have all the rights and duties of a peace officer in criminal cases and in cases growing out of the enforcement of all laws.

Section 3. The District Attorney is hereby authorized with the consent of the County Judge and the Commissioners Court to appoint one (1) stenographer who may or who may not possess the qualifications prescribed by law for District and County Attorneys, and who shall perform the necessary stenographic work as may be assigned to him by the District Attorney, and who shall receive as compensation a salary not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum, payable monthly out of the County Funds by warrants drawn on such County Funds.

Section 4. This Act is not intended and shall not be considered or construed as repealing any law now in the Statute books, but shall be cumulative thereof, and providing further shall be cumulative of all laws not in conflict with the provisions hereof. [Acts 1925, 39th Leg., p. 212, ch. 62, § 1; Acts 1927, 40th Leg., p. 32, ch. 23, § 1; Acts 1929, 41st Leg., p. 529, ch. 254, § 1; Acts 1931, 42nd Leg., p. 232, ch. 137, § 1; Acts 1941, 47th Leg., p. 384, ch. 215, § 1; Acts 1947, 50th Leg., p. 49, ch. 38, § 1.]

This article in so far as it applied to the 34th Judicial District, was amended by articles 326a–326e, post.

Art. 324a. Deputy district and county attorneys.—The provision of this Act[1] relating to the appointment and payment of deputies, or assistants, by the county attorneys and the district attorneys, in counties having a population in excess of one hundred thousand inhabitants, shall also apply to counties where one county composes a judicial district, and the population of the county is more than thirty-seven thousand five hundred, and less than one hundred thousand inhabitants, as shown by the last United States Census, and counties where the county attorney performs the duties of the county attorney and district attorney, as provided by law. [Acts 1925, p. 352.] [39th Leg., ch. 144, § 1.]

[1] Probably means arts. 3884, 3902, 3903.

Acts 1917, 35th Leg., p. 94, ch. 55, in so far as applicable to the 34th Judicial District, consisting of El Paso, Hudspeth, and Culberson counties, was amended by Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, see articles 326a–326e, post.

Art. 324b. Assistant district attorneys and investigators.—In any judicial district in this State consisting of more than one county in which there may be a county having a population in excess of 70,000 inhabitants, according to the last census of the United States, and according to any United States census which may hereafter be taken, the district attorney of each district in connection with and for the purpose of conducting his office in such county shall be and is hereby authorized, with the approval of the county commissioners court of such county to appoint one assistant district attorney, who shall receive a salary to be fixed by said commissioners court of such county, not to exceed $2,400.00 per annum. Such district attorney shall likewise be authorized, with the approval of such county commissioners court of such county, to appoint one special investigator, at a salary to be fixed by said commissioners court, not to exceed $2,400.00 per annum. The salary of such assistant and special investigator, above provided for, shall be paid by the county having a population of more than 70,000, by warrant drawn on the general funds thereof, all salaries payable monthly.

The assistant district attorney above provided for, when appointed, shall take the oath of office and be authorized to represent the State in any court or proceeding in said county in which such district attorney is, or shall be authorized to represent the State, such authority to be exercised under the direction of said district attorney, and such assistants and special investigators shall be subject to removal at the will of said district attorney. Said assistant district attorney shall be authorized to perform any official act devolving upon or authorized to be performed by such district attorney in said county, this Article is not intended to repeal any other law now existing, but is cumulative thereof.

This article in so far as it applied to the 34th Judicial District, was amended by articles 326a–326e, post.

Art. 325. Assistant for Sixth District.—The district attorney of the Sixth Judicial District of Texas is hereby authorized to appoint an assistant district attorney, whose qualifications and authority shall be the same as now required by law for district attorneys, and he shall take the oath and execute the bond required by law. Said assistant shall receive a salary of not exceeding two thousand dollars per year to be paid out of excess fees of said office as the same accrue under the law. [Acts 1917, p. 268.]

Art. 325a. District Attorney's salary in Eighth Judicial District.—The salary of the District Attorney for the 8th Judicial District of Texas composed of the Counties of Hunt, Hopkins, Delta and Rains shall be $4,000.00 per year, and shall be paid by the State in monthly installments upon warrants drawn by the Comptroller of Public Accounts. [Acts 1929, 41st Leg., p. 537, ch. 260, § 1.]

Art. 326. Hudspeth and Culberson Counties.—The commissioners court of Hudspeth and Culberson Counties are hereby authorized to pay to the district attorney for the Thirty-fourth Judicial District of Texas a sum not to exceed seventy-five dollars each per month as specially provided by law. [Acts 1923, p. 382.]

Art. 326a. El Paso, Hudspeth, and Culberson Counties.—The District Attorney in and for the 34th Judicial District of Texas, composed of El Paso, Hudspeth and Culberson Counties, from and after January 1st, 1927, shall receive from the state as pay for his services the sum of $500.00 per annum, as provided for in the Constitution, and in addition thereto shall receive the sum of $5,500.00, said salary to be paid in monthly installments in the same manner as now pro-

vided for the payment of the $500.00 as fixed by the Constitution. All commissions and fees allowed District Attorneys by law, except in escheat cases shall, when collected, be paid to the District Clerk of El Paso County, who shall pay the same over to the State Treasurer. [Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, § 2.]

Section 1 of Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, read as follows: "That Chapter 64 of the Acts of the Regular Session of the Thirty-fifth Legislature, page 123 thereof, and chapter 55 of the Acts of the Regular Session of the Thirty-fifth Legislature, page 94 thereof, and Article 1021 Code of Criminal Procedure, and Articles 324 and 324-B of Rev. Civ. Statutes be amended so as the following provisions will apply to the 34th Judicial District of Texas, and are not amended, qualified, or repealed in any other manner, nor as to affect any other Judicial District in this State." Section 7, of such chapter, read as follows: "The provisions of this Act shall apply only to the 34th Judicial District of Texas, and all laws and parts of laws in conflict herewith are hereby amended only as to this particular Judicial District, and it is not intended hereby to repeal, amend, or qualify any law in this State relative to District Attorneys other than the District in and for the 34th Judicial District of Texas, and the Legislature shall make due provision for the payment of the said District Attorney and the two assistants provided for above."

Art. 326b. Assistant district attorneys in such counties.—Said District Attorney in connection with, and for the purpose of conducting his office in said 34th Judicial District shall be, and is hereby, authorized to appoint two Assistant District Attorneys, one of whom shall receive from and after January 1st, 1927, as salary $3,600.00 per annum, and one of whom shall receive from and after January 1st, 1927, as salary $3,200.00 per annum, both such salaries payable by the State monthly. [Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, § 3.]

Art. 326c. Additional assistant district attorneys in such counties. Said District Attorney, in connection with and for the purpose of conducting his office in said District, shall be and is hereby authorized to appoint two additional Assistant District Attorneys, with the consent of the County Judge of El Paso County, Texas, one of whom shall receive a salary not to exceed $3,000.00, and one of whom shall receive a salary not to exceed $2,500.00. He shall also be authorized to employ a stenographer who shall receive a salary not to exceed $2,000.00 per annum, payable monthly, and two investigators, one of whom shall receive a salary not to exceed $2,400.00 and one of whom to receive a salary not to exceed $2,000.00, payable monthly. The salaries of the two last named assistants, investigators and stenographer, above provided for, shall be paid by said El Paso County by warrant drawn upon the general funds thereof. [Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, § 4.]

Art. 326d. Qualifications and duties of assistant district attorneys in such counties.—Each of said Assistant District Attorneys in said 34th Judicial District of Texas shall have all the qualifications that are now required by law of District Attorneys, and each of said assistants shall take an oath of office before the District Judge in and for said Judicial District, and said Assistant District Attorneys shall be authorized to represent the State in any Court or proceeding in which such District Attorney is or shall be authorized to so represent the State, such authority to be exercised under the direction of said District Attorney, such assistants, investigators, and stenographer, whether paid by the State or the County, shall be subject to removal at the will of said District Attorney, and each of such Assistant District Attorneys shall be authorized to perform any official act devolving upon or authorized to be performed by said District Attorney in said Judicial District. [Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, § 5.]

Art. 326e. Funds for use of district attorney in such counties.—El Paso County is hereby authorized to set aside each year a sum not to exceed $1,500.00 to be expended by said District Attorney in preparation and conduct of criminal affairs of said office and all sums of money now authorized by Art. 326 Civil Statutes to be paid by Hudspeth and Culberson Counties to the District Attorney shall by him be paid into the fund provided for in this Article and shall be used as directed and not as any part of salary of the District Attorney. This fund to be expended upon sworn claims of said District Attorney and approved by the County Judge of El Paso County. [Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, § 6.]

Art. 326f. District attorneys in large counties having county attorney.—Sec. 1. That in any county having a population in excess of 150,000 inhabitants, according to the last census of the United States and according to any United States census which may hereafter be taken and having a county attorney, the district attorney of such county shall receive a salary of five hundred dollars from the State of Texas, as provided in the Constitution of the State of Texas, and all fees, commissions and perquisites earned by such office; provided, that the amount of said salary, fees, commissions and perquisites to be so received and retained by him, shall not exceed the sum of ten thousand dollars in any one year, and provided further, that all salaries, fees, commissions and perquisites so earned and received by such office in excess of said salary during each and every fiscal year shall be paid into the county treasury of said county in accordance with the terms and provisions of the Maximum Fee Bill, except as to such portion of such excess as shall be used and expended in the payment of salaries to deputies, assistants, stenographers, investigators or other employees and incidental expenses of such office, as hereinafter provided.

Sec. 2. Such district attorney, in connection with and for the purpose of conducting his office in such county, shall be and is hereby authorized to appoint seven assistant district attorneys, one of whom shall receive a salary not to exceed forty-eight hundred dollars per annum, three of whom shall receive a salary not to exceed thirty-six hundred dollars per annum each; two of whom shall receive a salary not to exceed three thousand dollars per annum each, one of whom shall receive a salary not to exceed twenty-eight hundred dollars per annum, all salaries payable monthly. He shall also be authorized to employ one stenographer, who shall receive a salary not to exceed two thousand five hundred dollars per annum; and one stenographer who shall receive a salary not to exceed two thousand dollars per annum, payable monthly. He shall also be authorized to employ four investigators, one of whom shall receive a salary not to exceed three thousand dollars per annum, and the others shall receive a salary of not to exceed twenty-two hundred dollars per annum, payable monthly. Said investigators shall have the power and shall be authorized to make arrests and to execute all processes in criminal cases. The salaries of assistants, deputies, stenographers and investigators, and other employés above provided for, shall be paid by said county by warrant drawn from the general funds thereof.

Sec. 3. Should such district attorney be of the opinion that the number of deputies, assistants, stenographers, investigators or other employés above provided for are insufficient or inadequate for the proper investigation of crime and the efficient performance of the duties of said office, he may appoint such additional assistants and employés, and fix their salaries, provided such salaries shall in no event exceed the maximum provided herein to be paid to such assistants or other employés, but such additional assistants and employés, so appointed, before qualifying and entering upon the duties of such office and employment, shall be confirmed by the commissioners' court of the county court in which such appointments are made.

Sec. 4. The salaries for the additional assistants and employés, as hereinabove provided for herein, shall be paid monthly out of the excess fees collected

by such district attorney and his office, which would otherwise go to said county, a detailed itemized statement under oath of which he shall include in his annual report, as provided to be made in the Maximum Fee Bill; and in no event shall said county be liable for the salaries of such additional assistants or employés.

Sec. 5. The assistant district attorneys above provided for, when appointed, shall take the oath of office and be authorized to represent the State in any court or proceeding in which such district attorney is or shall be authorized to represent the State, such authority to be exercised under the direction of said district attorney, and such assistants, deputies, stenographers, investigators and employés, whether regular or additional, shall be subject to removal at the will of said district attorney. Each of said assistant district attorneys shall be authorized to perform any official act devolving upon or authorized to be performed by such district attorney in said county.

Sec. 7. The provisions of this Act shall apply to every district attorney within the State of Texas, within counties of a population of more than 150,000 inhabitants and having a county attorney, to be determined as above provided, whether the said district attorney be of and for a judicial district called and known by number, or whether called and known as a criminal judicial district, or whether of and for any court called or known as a criminal district court; and whether such district attorney be called and known as a district attorney or a criminal district attorney, or a criminal district attorney of any named county or court. [Acts 1927, 40th Leg., p. 93, ch. 67.]

Section 8 of Acts 1927, 40th Leg., p. 93, ch. 67, repeals all conflicting laws or parts of laws excepting Acts 1917, 35th Leg., p. 315, ch. 121, Acts 1917, 35th Leg., p. 378, ch. 167, Acts 1923, 38th Leg., 3rd C. S., p. 180, ch. 21, and provides that it shall be cumulative therewith and with all laws not in conflict, and excepts, also, from repeal, any law regulating grand jury bailiffs except the appointment by the court, which it expressly repeals.

Art. 326g. Assistant district attorneys in counties having no county attorney.—Sec. 1. That in any county having a population in excess of 150,000 inhabitants, according to the last census of the U. S. and according to any U. S. census which may be hereafter taken, and in which there is no county attorney, the district attorney or criminal district attorney may appoint 7 assistant district attorneys, one of whom shall receive a salary not to exceed forty-eight hundred dollars per annum; one of whom shall receive a salary not to exceed forty-two hundred dollars per annum; one of whom shall receive a salary not to exceed thirty-six hundred dollars per annum; two of whom shall receive a salary not to exceed three thousand dollars per annum each; two of whom shall receive a salary not to exceed twenty-four hundred dollars per annum each. He may employ two stenographers, who shall receive a salary not to exceed two thousand four hundred dollars per annum each. He may employ three investigators who shall receive a salary not to exceed two thousand four hundred dollars per annum each. The salaries of assistants, stenographers and investigators, and other employees, above provided for, shall be paid monthly by said county, by warrant drawn from the general funds thereof. [As amended Acts 1929, 41st Leg., p. 231, ch. 96, § 1.]

Sec. 2. Should such district attorney be of the opinion that the number of deputies, assistants, stenographers, investigators or other employees above provided for are inadequate for the proper investigation of crime and the efficient performance of the duties of said office, he may appoint such additional assistants and employees, and fix their salaries, provided such salaries shall in no event exceed the maximum provided herein to be paid to such assistants or other employees, but such additional assistants and employees, so appointed, before qualifying and entering upon the duties of such office and employment, shall be confirmed by the commissioners court of the county in which such appointments are made.

Sec. 3. The salaries for such additional assistants and employees shall be paid monthly out of the excess fees collected by such district attorney and his office, which would otherwise go to said county, a detailed sworn itemized statement of which he shall include in his annual report, as provided, to be made in the Maximum Fee Bill.[1] In no event shall said county be liable for the salaries of such additional assistants or employees.

Sec. 4. The assistant district attorneys above provided for, when appointed, shall take the oath of office and be authorized to represent the State in any court or proceeding in which such district attorney is or shall be authorized to represent the State, such authority to be exercised under the direction of said district attorney. Any such assistant, stenographer, investigator, or employee, whether regular or additional, shall be subject to removal at the will of said district attorney or criminal district attorney.

Sec. 5. The commissioners' court of the county of the district attorney's or criminal district attorney's residence may, upon the written sworn application of the district attorney or criminal district attorney, stating the necessity therefor, allow one or more automobiles to be used by the district attorney or criminal district attorney in the discharge of his official duties, which if purchased shall be bought by the county in the manner prescribed by law for the purchase of supplies, and paid out of the general fund, and they shall be and remain the property of the county. The amount to be expended for the purchase of an automobile or automobiles shall not exceed the sum of twelve hundred dollars for the first year, and shall not exceed the sum of five hundred dollars for any year thereafter. The expense of the maintenance and operation of such automobile or automobiles as may be allowed shall be paid for by the district attorney or the criminal district attorney from fees of office, and the amount thereof shall be reported in detail by the district attorney or the criminal district attorney on a monthly report, as is now required by law in reporting expenses incurred by him in the conduct of his office, and shall be deducted by him from the amount due by him to the county in the same manner as the other expenses are deducted which are provided for by law. Such expense account for the maintenance and operation of such automobile or automobiles shall be subject to the audit of the county auditor, and if it appears that any item of such expense was not incurred by such officer, or that such item was not necessary thereto, such item may be by such auditor or court rejected, in which case the correctness or necessity of such item may be adjudicated in any court of competent jurisdiction.

Sec. 6. The provisions of this Act shall apply to every district attorney within the State of Texas within counties of a population of more than one hundred and fifty thousand inhabitants, and in which there is no county attorney to be determined as above provided, whether the said district attorney be of and for a judicial district called and known by number, or whether called and known as a criminal judicial district, or whether of and for any court called or known as a criminal district court; and whether such district attorney be called and known as a district attorney, or a criminal district attorney, or a criminal district attorney of any named county or court. [Acts 1927, 40th Leg., p. 111, ch. 74.]

[1] Art. 3883 et seq.

See, also, article 3886, post.

Section 2 of Acts 1929, repeals all conflicting laws and parts of laws. Section 3 provides that if any section is held unconstitutional, such decision shall not affect the remaining sections.

Section 7 of Acts 1927, 40th Leg., p. 111, ch. 74, repeals all conflicting laws and parts of laws.

Art. 326h. Assistant district attorneys in counties with city of 50,000.—Sec. 1. In any judicial district in this State composed of more than one county and in which there is a city having an actual population of 50,000 inhabitants or more, the district attorney shall have authority, with the approval of the commissioners' court of such county in which said city is situated, to appoint not more than two assistants, who shall be licensed to practice law in this State, and shall perform such duties as shall be required of them by the district attorney; and under the direction of the district attorney shall have all the authority that may be exercised by the district attorney. The district attorney shall use one of said assistants as an investigator to assist in the performance of the duties of his office, in addition to whatever other duties may be required of such assistant. Said assistants shall take the constitutional oath of office and serve at the will of the district attorney, not to exceed under any one appointment the maximum time fixed by the Constitution for such officers.

Sec. 2. The salary of each of said assistants shall not exceed three thousand dollars ($3,000.00) per year, to be paid by the county in which said city is situated by warrant drawn on the general fund thereof, all salaries payable monthly. The district attorney shall ascertain the population of any city in his district necessary to be ascertained under this Act by making application to the mayor of any such city for a certificate as to the population of such city. It shall be the duty of any such mayor to ascertain by some reasonable accurate estimate the population of any such city, and his certificate to same under oath shall authorize the district attorney to assume its correctness and act upon the information contained in such certificate in making any appointment of an assistant or assistants under this Act. [Acts 1927, 40th Leg., p. 82, ch. 58.]

Art. 326i. Assistant district attorneys, criminal district courts.—Sec. 1. The district attorney of any criminal district court only for more than one county may appoint one assistant district attorney of each county containing a population of 22,000 or more as shown by the last preceding census of the United States, provided said district attorney shall furnish data to the judge of said criminal district court that he is in need of said assistants and it is necessary for the investigation and prosecution of crime and the efficient enforcement of law and to the best interest of the State that such assistant district attorneys be appointed. And when said data is furnished to said judge of said criminal district court he shall forthwith certify the same to the commissioners' court of the county in which such appointment is to be made.

And said district attorney is hereby authorized, with the approval of the commissioners' court of such county, to appoint one assistant district attorney for each county, as provided above, who shall receive a salary to be fixed by said commissioners' court in such county not to exceed $2,400.00 per annum. The salary of such assistant district attorneys above provided for shall be paid by the county for which said assistant is appointed, by warrant drawn on the general funds thereof, all salaries payable monthly.

Every person so appointed shall be a qualified resident attorney of the county and district in which such appointment is made, and shall give bond and take the oath of office required of district attorneys of this State, and shall have the power and authority to perform all the acts and duties of district attorneys under the law of this State, and said appointments shall be for such time as the district attorney shall deem best in the enforcement of the law, not to be less than one month.

Sec. 2. The assistant district attorneys, above provided for when appointed and qualified, shall be authorized to represent the State in any court or proceeding in said district in which such district attorney is or shall be authorized to represent the State, such authority to be exercised under the direction of said district attorney, and said assistant district attorneys shall be authorized to perform any official act devolving upon or authorized by said district attorney in said district.

Sec. 3. Said district attorney may likewise be, and he is hereby authorized, with the approval of such county commissioners' court of each county wherein an assistant district attorney may be appointed as provided by this Act, to appoint one special investigator for each of said counties wherein an assistant district attorney may be appointed as provided by this Act, at a salary to be fixed by said commissioners' court not to exceed $2,400.00 per annum. The salary of such special investigator above provided for shall be paid by each county in which a special investigator is appointed, by warrant drawn on the general funds thereof, all such salaries to be payable monthly. Said assistant district attorneys and special investigators shall be subject to removal at the will of said district attorney. This article is not intended to repeal any other law now existing, but is cumulative thereof. [Acts 1927, 40th Leg., p. 95, ch. 68.]

Art. 326j. [Repealed.]

This article (Acts 1927, 40th Leg., p. 195, ch. 127, § 1) was repealed by Acts 1927, 40th Leg., p. 222, ch. 151 (article 322, ante). See Townsend v. Terrell, 118 T. 463, 16 S.W.(2d) 1063.

Art. 326k. District Attorney and Assistant in Ninetieth Judicial District.—Sec. 1. The office of district attorney for the 90th Judicial District of Texas is hereby created, and the person now holding said office and acting as such district attorney shall continue to hold and exercise the duties of such office for the remainder of the term for which he was elected and until his successor is duly elected and qualified, and he shall receive such salary as now or hereafter provided by law for district attorneys in districts containing two or more counties.

Sec. 2. Said District Attorney may appoint a stenographer to assist said District Attorney for said 90th Judicial District whose salary shall not exceed the sum of Fifteen Hundred ($1500.00) Dollars per annum, and which shall be paid out of the General Funds of Stephens County, at such time and on such terms and conditions as may be prescribed by the Commissioners' Court of Stephens County. [Acts 1927, 40th Leg., 1st C.S., p. 171, ch. 60, § 2; Acts 1929, 41st Leg., p. 206, ch. 88, § 1.]

Acts 1929, 41st Leg., p. 206, ch. 88, § 1, amended section 2 of this article.

Section 3 of Acts 1927, 40th Leg., 1st C. S., p. 171, ch. 60, validates all acts previously performed by such district attorney or his assistant and all payments of compensation made to them, and section 4 provides that if any provision of the act is held invalid, such holding shall not affect the remainder.

Art. 326k—1. Criminal district attorneys in counties constituting three or more judicial districts.

Office created; term; qualifications; oath; bond

Sec. 1. In those counties in this State which within themselves constitute three or more separate Judicial Districts, and in which there is not now a District Attorney the office of Criminal District Attorney is hereby created, and shall exist from and after the passage of this Act. Such officer shall be known as Criminal District Attorney of such county. A Criminal District Attorney shall be elected in each such county at the next general election, and at each succeeding general election after the passage of this Act. He shall hold his office for the period of two years and until his successor is elected and qualified. He shall possess all the qualifications and take the oath and give the bond required by the Constitution and Laws of this State for other District Attorneys; and it is further provided and directed that the [1] present

County Attorney of any such county shall continue in office and take the oath and give the bond required by the Constitution and Laws for other District Attorneys and assume the duties and be known as the Criminal District Attorney of the county, and proceed to organize and arrange the affairs of the office of Criminal District Attorney of such county, and appoint assistants as provided in this Act, and receive the fees provided for in this Act for such office until the next general election and until his successor shall be elected and qualified.

[1] So in enrolled bill. Session law omits word "the."

Criminal district attorney, powers

Sec. 2. The Criminal District Attorney of any such county shall have and exercise, all such powers, duties and privileges within such county as are by law now conferred or which may hereafter be conferred upon District and County Attorneys.

Fees; limitation and distribution

Sec. 3. The Criminal District Attorney in each county affected by this Act shall receive the same fees allowed by law for County Attorneys in misdemeanor cases and shall also receive a salary of five hundred ($500.00) dollars per annum, to be paid by the State in the manner provided by law for paying the salaries of District Attorneys, and in addition thereto shall be paid the following fees by the State in the manner provided by law for paying the fees of County and District Attorneys;

For each conviction of felonious homicide and for each conviction where the punishment fixed by the Statute may be death, where the defendant does not appeal or dies, or escapes after appeal and before final judgment of the Court of Criminal Appeals or where upon appeal judgment is affirmed, the sum of forty dollars. For all other convictions in felony cases where the defendant does not appeal or dies or escapes after appeal and before final judgment of the Court of Criminal Appeals or where upon appeal the judgment is affirmed, the sum of thirty dollars; provided, that in all convictions of felony, in which punishment is fixed by the verdict and punishment in a house of correction and reformatory, his fee shall be fifteen dollars. For representing the State in each case of habeas corpus where the defendant is charged with a felony, the sum of twenty dollars; For representing the State in each examining trial, in felony cases, where indictment is returned, in each case, the sum of five dollars. The Criminal District Attorney shall receive fees for other services rendered by him as is now or may hereafter be authorized by law to be paid to District and County Attorneys in this State and for such services including the same fee now fixed and allowed by law in misdemeanor cases to County Attorneys, fees allowed by law for ex-officio services, said ex-officio fees may be allowed in addition to other fees herein provided, in an amount not to exceed fifteen hundred dollars per annum by the Commissioners' Court of the county and in the same manner as provided for county officers. The Criminal District Attorney shall retain out of the fees earned and collected by him the sum of three thousand five hundred dollars per annum and in addition thereto one-fourth of the gross excess of all such fees in excess of three thousand five hundred dollars per annum to an amount not in excess of two thousand dollars. After deducting the three thousand five hundred dollars and one-fourth of the remaining gross the remaining amount is to be applied first for the payment of the salaries of his assistants and the actual and necessary expenses incurred by him in the conduct of his said office, such as stamps, stationery, books, telephone, traveling expenses and other necessary expenses, and the balance remaining to be paid over to the county in accordance with the terms and provisions of the fee bill; provided that in arriving at the amount collected by him he shall include fees arising from all classes of criminal cases, whether felony or misdemeanor, arising in any of the Justice, County or District Courts or which may hereafter be created, including habeas corpus hearing, fines and forfeitures, but shall not include the five hundred dollars annual salary paid by the State; provided that on the first day of January, or as soon thereafter as practicable each year, he shall make a full and complete report and account, as is now provided by law for officers required to make annual reports of fees collected, of all such fees so collected by him; provided that in addition to the above he shall receive ten per cent for the collection of delinquent fees due the county, bond forfeitures, and money collected for the State and county as is now provided by law relating to the collection of fees by County and District Attorneys; such fees to be included in the report herein provided for and to be taken into consideration in arriving at the total maximum compensation provided in this Act; and provided further that the Criminal District Attorney shall represent the State and county in all tax suits, including suits for inheritance tax, as is now provided for District and County Attorneys. He shall receive the same fees as received by District and County Attorneys and the said fees in delinquent tax and inheritance tax suits shall be exempt to him as now provided for fees exempt to District and County Attorneys, and all such tax fees shall not be accounted for nor included in his annual report.

Assistants; compensation

Sec. 4. The Criminal District Attorney shall appoint as many assistants as shall be necessary to properly administer the affairs of the office of Criminal District Attorney and to enforce the law, not to exceed five assistants, said appointments to be made by the said Criminal District Attorney and ratified by the Commissioners' Court. One of said assistants shall receive a salary not to exceed three thousand dollars per annum, two of said assistants shall receive a salary not to exceed two thousand four hundred dollars per annum and two of said assistants shall receive a salary not to exceed twenty-one hundred dollars per annum, each payable monthly. Assistant Criminal District Attorney [1] shall be appointed by the Criminal District Attorney and when confirmed by the Commissioners' Court shall take the oath of office and be authorized to represent the State in all of the courts of the county in which the Criminal District Attorney is authorized by this Act to represent the State, such authority to be exercised under the direction of the Criminal District Attorney, and which said assistants shall be subject to removal at the will of the Criminal District Attorney. Each of said assistants shall be authorized to administer oaths, file information, examine witnesses before the Grand Jury and generally perform any duty devolving upon the Criminal District Attorney, and to exercise any power conferred by law upon County and District Attorneys and the Criminal District Attorney when by him so authorized. The Criminal District Attorney shall be paid the same fees for services rendered by his assistants as he would be entitled to receive if the services had been rendered by himself.

[1] Probably should read "Attorneys."

Additional assistants and investigators

Sec. 5. Should the work of the Criminal District Attorney require additional assistants and investigators and other employees provided for in this Act to properly investigate and punish offenders, and for the efficient performance of the duties encumbent upon the Criminal District Attorney, he may appoint such additional assistants and employees and fix their salaries, provided such salary shall in no event exceed the maximum provided herein to be paid to assistants so appointed; but such additional assistants and em-

ployees before qualifying and entering upon the duties of such office shall be confirmed by the Commissioners' Court of the county, upon a written application of the Criminal District Attorney, setting out under oath the necessity and facts requiring such additional appointment.

Assistants as special investigators; compensation

Sec. 6. The Criminal District Attorney is authorized, with the consent of the County Judge and the Commissioners' Court to appoint not to exceed two assistants in addition to his regular assistants provided for in this Act, which two assistants shall not be required to possess the qualifications prescribed by law for District or County Attorneys, which said two assistants shall be known as special investigators, and who shall perform such duties as may be assigned to them by the Criminal District Attorney and who shall receive as their compensation a salary not to exceed twenty-four hundred dollars per annum, payable monthly out of the county funds, by warrants drawn on such county funds; and providing further that said investigators for the Criminal District Attorney shall be allowed a sum of money by order of the Commissioners' Court for traveling and other expenses incident to the duties they shall perform under the direction of the Criminal District Attorney, which said sum of money so allowed by the said Commissioners' Court shall not exceed seventy-five dollars per month, as in the judgment of the Commissioners' Court may be deemed necessary to properly administer the duties of such office and investigation of criminal cases in said Criminal District Attorney's office and incident thereto; provided further that such amount as may be thus necessarily incurred shall be paid by the Commissioners' Court upon affidavit made by the Criminal District Attorney, showing the necessity of such expenditure and for what the same was incurred. The Commissioners' Court may also require any further evidence as in their opinion may be necessary to show the necessity of such expenditure, but they shall be the sole judge as to the necessity of such expenditure and their judgment allowing same shall be final.

Stenographers; compensation

Sec. 7. The Criminal District Attorney is authorized, with the consent of the County Judge and the Commissioners' Court to appoint not to exceed two stenographers, who may or who may not possess the qualifications prescribed by law for District and County Attorneys and who shall perform the necessary stenographic duties as may be assigned to them by the Criminal District Attorney, and who shall receive as their compensation not to exceed eighteen hundred dollars per annum each, to be paid in monthly installments out of the county funds by warrants drawn on such county funds.

Monthly report of expenses

Sec. 8. The Criminal District Attorney shall at the close of each month of the tenure of such office make as a part of the report required by this Act an itemized and sworn statement of the actual and necessary expenses incurred by him in the conduct of said office, such as stamps, stationery, books, telephone, traveling expenses, and any and all other necessary expenses. If such expenses be incurred in connection with any particular case, such statement shall name such case, such expense account shall be subject to the audit of the County Auditor and if it appears that any item of such expense was not incurred by such officer or that such item was not necessary thereto, such item may be by said Auditor rejected, in which case the correction of such item may be adjudicated in any court of competent jurisdiction. The amount of such expenses shall be deducted by the Criminal District Attorney in making his report from the amount, if any, due by him to the county under the provisions of this Act. [Acts 1929, 41st Leg., p. 25, ch. 9.]

Construction

Sec. 9. This Act is not intended and shall not be considered or construed as repealing any law now in the statute books, but shall be cumulative thereof, and providing further shall be cumulative of all laws not in conflict with the provisions hereof. This Act shall not apply to any county in this State having two or more incorporated cities each having a population of more than 20,000, according to the latest United States census. [Acts 1929, 41st Leg., p. 25, ch. 9; Acts 1929, 41st Leg., 1st C.S., p. 54, ch. 20, § 1.]

Acts 1929, 41st Leg., 1st C. S., p. 54, ch. 20, § 1, amended section 9 of this article.

Art. 326k—2. [Unconstitutional.]

This article, from Acts 1929, 41st Leg., 2nd C.S., p. 134, ch. 66, § 1, provided that district attorneys in judicial districts composed of two or more counties should receive certain compensation from the state in addition to the sum of $500 per annum, provided by the Constitution. In Witherspoon v. Sheppard, 123 T. 93, 67 S.W.2d 1037, the Commission of Appeals, in an opinion adopted by the Supreme Court, held that the act violated Const. art. 5, § 21.

Acts 1931, 42nd Leg., p. 744, ch. 291, and Acts 1931, 42nd Leg., Spec.L., p. 12, ch. 4, contained a recital in the title or enacting clause repealing "Article 322a and 326k—2 of the Civil Statutes and all other laws and parts of laws, in so far, and only in so far, as they are in conflict with the provisions of this Act." However, the body of the act contained no repealing clause or section, and it is questionable whether a repeal was effected.

Art. 326k—3. District Attorneys' compensation and assistants in certain districts.

Compensation; disposition of commissions; perquisites and fees

Sec. 1. District Attorneys in each judicial district in this State containing five or more counties having a combined population, according to the Fourteenth Census of the United States of the year 1920, of not less than 98,740 nor in excess of 98,750, shall receive from the State as pay for their services the sum of Five Hundred ($500.00) Dollars per annum, as provided by the constitution, and in addition thereto, and in lieu of the fees, commissions, and perquisites provided by law, shall receive from the State the sum of Ten ($10.00) Dollars for each of the first 350 days of every calendar year as compensation for attending examining trials, Habeas Corpus hearings, the sessions of the District Court of the district they represent, and for performing such other duties as imposed by law. The compensation provided for in this Act shall be paid monthly by the State upon warrants drawn by the Comptroller of Public Accounts, and it shall not be necessary for the District Attorney to file any account with the District Judge or the Comptroller of Public Accounts. Nothing in this Act shall be construed so as to deprive District Attorneys of the traveling expense allowances now provided by law, nor shall this Act affect the salary or compensation of any District Attorney fixed by special law. All commissions, perquisites and fees allowed to and collected by District Attorneys in districts composed of five or more counties, having the population as herein provided, shall be paid to the District Clerk of the County where said fees, commissions and perquisites are collected, who shall pay the same over to the State Treasury.

Assistant district attorney

Sec. 2. That in each of said Judicial Districts, the duly elected District Attorney shall have the right, with the consent of the Judge of said District Court to appoint an Assistant District Attorney who shall serve as such Assistant District Attorney for the same term as the district attorney is elected, and in case of a vacancy, the District Attorney, with the consent of the district judge of the District, may make an appointment to fill out the unexpired term. The district attorney of said district, at any time he deems said as-

sistant unnecessary, or finds that he is not attending to his duties as required by law, may remove such assistant district attorney from office by giving him written notice to that effect. Said assistant district attorney shall give a bond in the sum of Five Thousand Dollars, and take the oath of office, and shall have authority to perform all of the acts and duties of the district attorney under the laws of this State. Said assistant district attorney shall be a qualified resident attorney of the judicial district.

Salaries

Sec. 3. The assistant district attorney provided for in Section 1 of this Act shall receive an annual salary of three thousand six hundred dollars, to be paid monthly by the comptroller out of the funds appropriated for the payment of the salaries and fees of the district attorneys of the State of Texas or out of any money not otherwise appropriated, said salary to be paid upon the sworn account of such assistant district attorney approved by the district attorney and the district judge of said district; and in addition to this salary the assistant district attorney shall also be paid the amount of expenses incurred by said assistant district attorney in attending the courts of other counties than his residence in the performance of his duties as such assistant district attorney the same amount as is now paid district attorneys out of the funds appropriated for the payment of expenses of the district attorneys of the State. [Acts 1929, 41st Leg., 2nd C.S., p. 144, ch. 71.]

Art. 326k—4. District Attorney Seventh Judicial District, compensation.—Sec. 1. The District Attorney of the 7th Judicial District shall receive for the actual and necessary discharge of his duties in the District Court of the 7th Judicial District of Texas, and/or in the Special District Court of Smith County, Texas, the same per diem now allowed by the Acts of the Regular Session of the 43rd Legislature, for not to exceed fifty (50) days during each of the calendar years 1935, 1936, 1937 and 1938, respectively, in addition to the maximum number of days for which he may be paid under provisions of the Acts of the Regular Session of the 43rd Legislature. Payment of said additional compensation shall be made in the same manner as is provided for payment of compensation provided for by the Acts of the Regular Session of the 43rd Legislature.

Sec. 2. Nothing herein shall be construed as preventing the District Attorney of the 7th Judicial District of Texas from receiving his actual and necessary expenses while serving as said District Attorney in said district outside of the county of his residence, as now provided by law. [Acts 1935, 44th Leg., p. 153, ch. 65, § 1.]

Art. 326k—5. District attorney twelfth judicial district, compensation.—Sec. 1. The District Attorney of the 12th Judicial District of Texas shall receive for the actual and necessary discharge of his duties in the District Court of the 12th Judicial District of Texas, for not to exceed fifty (50) days each year in addition to the maximum number of days for which he may be paid under the Acts of the Regular Session of the 43rd Legislature. Payment of said additional compensation shall be made in the same manner as is provided for payment of compensation provided for by the Acts of the Regular Session of the 43rd Legislature.

Sec. 2. Nothing herein shall be construed as preventing the District Attorney of the 12th Judicial District of Texas, from receiving his actual and necessary expenses while serving as said District Attorney in said district outside of the county of his residence, as now provided by law. [Acts 1935, 44th Leg., p. 367, ch. 133.]

Art. 326k—6. Investigators of District or County Attorneys; arrests and service of process in criminal cases; responsibility.—Sec. 1. Any and all investigators appointed by a District Attorney or County Attorney where said County Attorney performs the duties of a District Attorney or Criminal District Attorney, as provided by law, shall have the same authority as the sheriff of the county to make arrests anywhere in the county, and to serve anywhere in the county, warrants, capiases, subpœnas in criminal cases, and all other processes in criminal cases issued by any District Court, County Court, or Justice Court in the State, but such investigators shall not be under the authority and direction of the sheriff, and shall only be under the authority and direction of the said District Attorney or County Attorney where said County Attorney performs the duties of a District Attorney or Criminal District Attorney; and such investigators shall not be allowed to draw any fees of any character for performing such duties.

Sec. 1-a. Said District Attorney or County Attorney where said County Attorney performs the duties of a District Attorney or Criminal District Attorney shall be responsible for the official acts of such investigators and they shall have power to require from such investigators, bond and security, and they shall have the same remedies against their investigators and the sureties of said investigators as any person can have against a District Attorney or County Attorney where said County Attorney performs the duties of a District Attorney and his sureties. [Acts 1935, 44th Leg., p. 495, ch. 206.]

Art. 326k—7. Assistant District Attorney in Fifty third judicial district; salary.—Sec. 1. That the District Attorney of the 53rd Judicial District of Texas is authorized to appoint an Assistant District Attorney in addition to that authorized by Section 2 of Article 326n, as carried forward in Vernon's Civil Statute of the State of Texas, under Acts of 1931, Forty-second Legislature, page 744, Chapter 291.

Sec. 2. The Assistant District Attorney provided for in Section 1 shall be a duly licensed attorney at law and a bona fide resident of Travis County and shall possess all the qualifications that are now required by law of the District Attorney of the 53rd Judicial District of the State of Texas; shall take the oath of office; shall be subject to removal by the will of the District Attorney; shall be authorized to perform any official act devolving upon or authorized to be performed by the District Attorney, and under such directions of the District Attorney, shall represent the District Attorney in matters pending before the 53rd, 98th and 126th District Courts of Travis County; that said Assistant District Attorney shall receive a salary of Three Thousand ($3,000.00) Dollars per annum, payable by the State monthly. After the end of the biennium closing August 31, 1937, such Assistant District Attorney shall receive such salary as may be provided for by the appropriation bill. For the purpose of paying such salary, there is hereby appropriated out of the General Revenue Fund of the State of Texas not otherwise appropriated the sum of Three Thousand ($3,000.00) Dollars for each of the fiscal years beginning September 1st, 1935 and September 1st, 1936. There is also hereby appropriated out of the General Revenue Fund of the State of Texas not otherwise appropriated the sum of Two Hundred Fifty ($250.00) Dollars per month from the effective date of this Act until September 1st, 1935 when the appropriation above made becomes effective. [Acts 1935, 44th Leg., p. 699, ch. 299.]

Art. 326k—8. Assistant district attorney for collection of delinquent taxes in counties of less than 25,000.—In any county in this State having a population less than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal

Census, and having a tax valuation exceeding Seventy-five Million Dollars ($75,000,000) according to the last tax roll which has been approved as required by law, the District Attorney or Criminal District Attorney in said county is hereby authorized to appoint, in addition to the other assistants allowed by law, a Special Assistant District Attorney or Assistant Criminal District Attorney, whose powers and duties shall be the same as those of other Assistant District Attorneys or other Assistant Criminal District Attorneys, and in addition whose special duty shall be to assist said District Attorney or Criminal District Attorney in all civil matters arising in and connected with the efficient conduct of said office, including the investigation of all records, preparation of and filing of suits for the collection of all delinquent taxes of whatever kind or character due such county. Such Special Assistant District Attorney or Special Assistant Criminal District Attorney shall be paid the sum of Three Thousand, Six Hundred Dollars ($3,600) per annum, payable in twelve (12) monthly installments, out of the General Fund of said county by warrant drawn upon such a Fund. Said salary shall be payable as herein provided when said District Attorney or Criminal District Attorney shall certify to the Judge of the County Court in such a county that any or all services enumerated herein have been performed and were necessary to the proper and efficient conduct of said office. [Acts 1937, 45th Leg., p. 72, ch. 43, § 1.]

District court for Gregg county, amendatory Act does not amend or repeal this article, see note to article 199, subd. 124.

Art. 326k—9. Criminal District Attorneys in counties of 75,001 to 77,100 and 30,900 to 30,950.

Office created

Section 1. In those counties in this State having a population of not less than seventy-five thousand and one (75,001), and not more than seventy-seven thousand, one hundred (77,100) inhabitants, and not containing a city of more than forty thousand (40,000) inhabitants, as determined by the last preceding Federal Census, and in which counties there are one or more Judicial Districts, and in counties of this State having a population of not less than thirty thousand, nine hundred (30,900), and not more than thirty thousand, nine hundred and fifty (30,950) inhabitants, as determined by the last preceding Federal Census, and in which the County Attorney performs the duties of County Attorney and District Attorney, and in which there is not now a District Attorney, the office of Criminal District Attorney is hereby created, and shall exist from and after the passage of this Act. Such officer shall be known as Criminal District Attorney of such county. He shall possess all the qualifications and take the oath and give the bond required by the Constitution and Laws of this State for other District Attorneys. And it is further provided and directed that the person who is the present County Attorney of any such county shall continue in office and take the oath and give the bond required by the Constitution and Laws for other District Attorneys, and assume the duties and be known as the Criminal District Attorney of the county, and proceed to organize and arrange the affairs of the office of Criminal District Attorney of such county, and appoint assistants as provided in this Act. Provided further, that the present County Attorneys in such counties shall continue to hold the office created by this Act, for a period in no event less than the time such officer would have held his office as County Attorney had this Act not been passed. A Criminal District Attorney shall be elected in each such county at the General Election of the year immediately preceding the termination of the term of the Criminal District Attorney provided for such counties in this Act. Thereafter, a Criminal District Attorney in such counties shall be regularly elected as provided by law.

Powers, duties and privileges

Sec. 2. The Criminal District Attorney of any such county shall have and exercise all such powers, duties, and privileges within such county as are by law now conferred, or which may hereafter be conferred upon District and County Attorneys, and such Criminal District Attorney shall act as and perform the duties of District Attorney for all Judicial Districts in such counties, and shall act as and perform the duties of County Attorney for all County Courts of such counties.

Salary; deputies and assistants

Sec. 3. The Criminal District Attorney in each county affected by this Act shall receive the same salary allowed other Criminal District Attorneys, as provided in Section 13 of Chapter 465,[1] Acts of the Forty-fourth Legislature, Second Called Session, or as may hereafter be provided by law.

Deputies, assistants, and clerks shall be hired by the Criminal District Attorney in such counties, and their compensation shall be fixed as provided by Subsection 4 of Section 14, Chapter 465,[2] Acts of the Forty-fourth Legislature, Second Called Session, or as may hereafter be provided by law.

1 Article 3912e.
2 Article 3902.

Laws governing office

Sec. 4. The provisions of Chapter 465[1] of the Acts of the Forty-fourth Legislature, Second Called Session, shall apply to and govern the offices of Criminal District Attorney created by this Act to the same extent and in the same manner that such Chapter would have applied had such offices been created prior to the passage of said Act.

1 Articles 3912e, 3896—3899, 3901, 3902.

Intention of act as to creation of office

Sec. 5. It is not the intention of this Act to create any office of District Attorney, nor any other Constitutional office, and the office of Criminal District Attorney is hereby declared to be a separate and distinct office from the Constitutional office of District Attorney, and no Criminal District Attorney shall draw or be entitled to any salary whatsoever from the State of Texas.

Act cumulative

Sec. 6. This Act is not intended and shall not be considered or construed as repealing any law now in the Statute Books, except those in conflict herewith, but shall be cumulative thereof. [Acts 1937, 45th Leg., p. 202, ch. 107.]

Art. 326k—10. Assistants and stenographers in districts composed of only one county of 50,500 to 55,000, having specified tax value; appointment; salary.—From and after the passage of this Act, in Judicial Districts composed of and confined to one County only and in which said Judicial District and County the population as determined by the last preceding Federal Census is not less than fifty thousand five hundred (50,500) and not more than fifty-five thousand (55,000) inhabitants and in which said Judicial District and County the tax value exceeds Seventy Million ($70,000,000.00) Dollars according to the last approved tax roll, the District Attorney or Criminal District Attorney of said Judicial District and County may appoint not to exceed two (2) Assistants who shall possess the qualifications of a District Attorney and one stenographer, one (1) of said Assistants to receive a salary of Three Thousand ($3,000.00) Dollars per annum and one of said Assistants to receive a salary of Twenty-seven Hundred Fifty ($2750.00) Dollars per annum, and the said stenographer to receive a salary of Fifteen Hundred ($1500.00) Dollars per annum, the salaries of said Assistants and the stenographer to be paid in the manner now prescribed by law for the payment of salaries

of like Assistants and deputies. [Acts 1941, 47th Leg., p. 40, ch. 28, § 1.]

Art. 326k—11. Certain county attorneys designated Criminal District Attorney.

Power of Commissioners Court; designation of office; effect of law

Section 1. In any county in this State not embraced in or constituting either a Criminal District Attorney's District or a District Attorney's District, and wherein the duty of representing the State in all criminal matters arising in such county devolves upon the County Attorney of such county, the Commissioners' Court thereof, upon petition of such County Attorney at any time during a non-election year, may, by appropriate action spread upon the minutes of such Commissioners' Court, designate the office of County Attorney in such county as the office of Criminal District Attorney of such County, and the incumbent of such office as the Criminal District Attorney of such County; and thereafter and until such time as such county shall be included within a regularly created and constituted District Attorney's District or Criminal District Attorney's District, such office shall be designated as the office of Criminal District Attorney of such county, and the incumbent thereof shall be designated as the Criminal District Attorney of such county; providing that such change in the designation and appellation of such office and the incumbent thereof, as aforesaid, shall in no manner alter or affect either the previous election and qualifications of the incumbent thereof, nor shall the same thereafter alter or affect either the rights, duties, or emoluments of such office or the incumbent thereof; and providing further that in all elections thereafter held to fill such office, and so long as the same shall be so designated, the said office shall be designated upon the ballot and in the election as the office of Criminal District Attorney of such county; and providing further that in the event any such county be thereafter embraced in or constitute a regularly created District Attorney's District or Criminal District Attorney's District, the designation of County Attorney shall be restored to such office unless the office of County Attorney be abolished in such county.

Intent of Act

Sec. 2. It is not the intention of this Act to create any office of District Attorney or any other Constitutional office; but it is the intention of this Act merely to authorize a change in the name and appellation of the office of County Attorney and the incumbent thereof in certain counties, without otherwise changing or affecting the rights, duties, or emoluments either of such office or the incumbent thereof.

Repeal

Sec. 3. This Act is not intended and shall not be considered or construed as repealing any law now in the statute books, except those in conflict therewith; but it shall be cumulative thereof. [Acts 1941, 47th Leg., p. 477, ch. 300.]

Art. 326k—12. Counties of 70,000 to 220,000; investigators or assistants; stenographer.—Section 1. From and after the passage of this Act, in a Judicial District composed of one or more counties and in which the population in any one of said counties, as determined by the last preceding Federal Census, is not less than seventy thousand (70,000) and not more than two hundred and twenty thousand (220,000) inhabitants, and in which county there are two (2) or more District Courts the District Attorney or the Criminal District Attorney, with the consent of the combined majority of the District Judges and Commissioners Court of such county, is hereby authorized to appoint at their discretion, not more than six (6) investigators or assistants who shall receive a salary of not more than Three Thousand, Seven Hundred and Fifty Dollars ($3,750) per annum, nor less than Three Thousand Dollars ($3,000) per annum, the amount of such salary to be fixed by the District Attorney or Criminal District Attorney and approved by a majority of the District Judges; such investigators or assistants, as well as the District Attorney or Criminal District Attorney, shall be allowed a reasonable amount for expenses not to exceed Six Hundred Dollars ($600), each, per annum. The assistants to the District Attorney or Criminal District Attorney must be duly and legally licensed to practice law in the State of Texas, however, the investigators need not be duly and legally licensed to practice law in the State of Texas.

Sec. 2. Said District Attorney and Criminal District Attorney shall also be authorized to appoint a stenographer who shall receive a salary not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum, the amount of such salary to be fixed by the District Attorney or Criminal District Attorney and approved by a majority of the District Judges.

Sec. 3. The salary of such investigators or assistants and stenographer, and the expenses provided for in this Act shall be paid monthly by the Commissioners Court of such county out of the General Fund of the county or, at the discretion of the Commissioners Court, out of the Jury Fund of said county; said investigators or assistants may be required to give bond and shall have authority under the direction of the District Attorney or Criminal District Attorney to make arrests and execute process in criminal cases and in cases growing out of the enforcement of all laws.

Sec. 3a. All laws or parts of laws in conflict with the provisions of this Act are hereby expressly repealed to the extent of the conflict only. [Acts 1947, 50th Leg., p. 364, ch. 206.]

Art. 326*l*. Assistant district attorney in Seventy-second Judicial District and salary.

Appointment authorized

Sec. 1. The District Attorney of the 72nd Judicial District of Texas, is hereby authorized to appoint one Assistant District Attorney.

Qualifications; power of dismissal

Sec. 2. The Assistant District Attorney provided for in Section 1 of this Act shall be a duly licensed Attorney at Law and shall be a bona fide resident of one of the counties composing the said 72nd Judicial District. Said Assistant District Attorney, when appointed, shall take the oath of office and shall be authorized to represent the State in any Court or proceeding in which the District Attorney is or shall be authorized to represent the State, said authority to be exercised by said Assistant under the direction of the District Attorney. The District Attorney shall have the power and authority to dismiss said Assistant, at his discretion, and to appoint another person to fill out the unexpired term, provided that any person appointed to fill out said term, shall possess the same qualifications as above mentioned.

Salary

Sec. 3. The Assistant District Attorney in the 72nd Judicial District of Texas shall receive an annual salary of Thirty-Eight Hundred ($3800.00) Dollars, payable monthly, out of the General Revenue Fund of the state not otherwise appropriated, upon the sworn account of such Assistant District Attorney, approved by the District Attorney of said 72nd Judicial District. [Acts 1929, 41st Leg., p. 406, ch. 187; Acts 1931, 42nd Leg., p. 745, ch. 292; Acts 1947, 50th Leg., p. 397, ch. 225, § 1.]

Art. 326m. Assistant district attorney in certain judicial district and salary.—Sec. 1. That in all Judicial Districts in this State composed of five counties in which the aggregate population of said

District as shown by the Federal census of 1920 is in excess of 74,427 and not in excess of 74,428, the duly elected District Attorney shall have the right, with the consent of the Judge of said District Court to appoint an Assistant District Attorney, who shall hold his office one year.

Sec. 2. The Assistant District Attorney provided for in Section 1 of this Act shall receive an annual salary of $3,000.00 to be paid monthly out of any money not otherwise appropriated, upon the sworn account of such Assistant District Attorney approved by the District Attorney and the Judge of said District. [Acts 1929, 41st Leg., p. 665, ch. 297.]

Art. 326n. District Attorneys, assistants, investigators and salaries in certain judicial districts.

Compensation of district attorney; commissions and fees

Sec. 1. District Attorneys in all Judicial Districts composed of only one county, in which county there are two or more District Courts with concurrent criminal jurisdiction, and which District Courts have exclusive jurisdiction of all prosecutions for failing or refusing to pay over money belonging to the State under Chapter Two (2) of Title Four (4) of the Penal Code of 1925,[1] and which District Courts further have concurrent jurisdiction with all District Courts in Texas in prosecutions involving the forging and uttering, using or passing of forged instruments in writing which concern or affect the title to land in this State, under Chapter Two (2) of Title Four (4) of the Code of Criminal Procedure of 1925,[2] shall hereafter receive from the State as pay for their services the sum of Five Hundred Dollars ($500.00) per annum, as provided by the Constitution, and in addition thereto shall receive the sum of Three Thousand Five Hundred Dollars ($3,500.00) per annum, said salary to be paid in monthly installments in the same manner as now provided for the payment of the Five Hundred Dollars ($500.00) fixed by the Constitution. All commissions and fees allowed District Attorneys by law, shall, when collected, be paid to the District Clerk of such counties, who shall pay the same over to the State Treasurer.

1 Pen.Code, art. 86 et seq.
2 Crim.Code of Proc., art. 186 et seq.

Assistant district attorney

Sec. 2. In such Judicial Districts the District Attorney, with the consent of either of the District Judges, is hereby authorized to appoint one assistant District Attorney, who shall receive as salary Three Thousand Dollars ($3,000.00) per annum payable by the state monthly.

Qualifications; oath; removal

Sec. 3. Said Assistant District Attorney shall have all of the qualifications that are now required by law of District Attorneys, shall take an oath of office before one of the District Judges of such District, shall be subject to removal at the will of the District Attorney and under the direction of the District Attorney, shall be authorized to perform any official act devolving upon or authorized to be performed by the District Attorney.

Investigators or assistants

Sec. 4. In such Judicial Districts the District Attorney, with the consent of the District Judges and the County Judge of such County, is hereby authorized to appoint, at his discretion, not more than two (2) Investigators or Assistants, who may be duly and legally licensed to practice law in the State of Texas; who shall receive a salary of not more than Twenty-seven Hundred ($2700.00) Dollars per annum, nor less than Eighteen Hundred ($1800.00) Dollars per annum, the amount of such salary to be fixed by the District Attorney and approved by the said Judges. Such Investigators or Assistants as well as the District Attorney shall be allowed a reasonable amount for expenses, not to exceed Six Hundred ($600.00) Dollars each per annum. Said District Attorney shall also be authorized to appoint a stenographer who shall receive a salary not to exceed Fifteen Hundred ($1500.00) Dollars per annum. The salaries of such Investigators or Assistants, and stenographer, and the expenses, provided for in this section shall be paid monthly by the Commissioners' Court of the County comprising such Judicial Districts, out of the General Fund of the County, or in the discretion of the Commissioners' Court, out of the jury fund of said County upon the certificate of the District Attorney. Said Investigators or Assistants may be required to give bond and shall have authority under the direction of the District Attorney to make arrests and execute process in criminal cases and in cases growing out of the enforcement of all laws. Should the District Attorney designate the persons appointed as Assistants, they shall be in addition to and shall have the same authority and qualifications and shall be subject to the same requirements as those Assistants provided for in Section 2 of this Act and Section 2 of Senate Bill No. 528 of the Regular Session of the 44th Legislature.[1] [Acts 1931, 42nd Leg., p. 744, ch. 291; Acts 1941, 47th Leg., p. 172, ch. 124, § 1.]

1 Article 326k—7, § 2.
Acts 1933, 43rd Leg., Spec.L., p. 26, c. 21, § 1 reads as follows: "The 18th Judicial District of Texas has and shall hereafter have and elect a District Attorney, whose compensation shall be the Five Hundred Dollars ($500.00) provided for by the Constitution, and in addition thereto such further compensation as may be provided by the General Laws of this State for district attorneys of districts composed of two or more counties."
Sections 2 and 3 of such act made appropriations to pay the district attorney provided for in § 1. Sections 4 and 5 made appropriations to pay the district attorneys of the 119th and 34th Judicial Districts.

Art. 326o. District Attorney abolished in Seventy-Seventh Judicial District.—The office of District Attorney in the 77th Judicial District of Texas is hereby abolished and the County Attorney of each county composing said district shall represent the State of Texas in all matters wherein the State of Texas is a party, in his respective county, and shall receive such fees and compensation for his services, as is provided by the General Laws of the State of Texas. [Acts 1933, 43rd Leg., Spec.L., p. 90, ch. 68.]

Art. 326p. [Repealed by Acts 1933, 43rd Leg. Spec.L. p. 150, ch. 107.]

This article was from Acts 1933, 43rd Leg., Spec.L., p. 114, ch. 87.

Art. 326q. [Unconstitutional.]

This article was from Acts 1931, 42nd Leg., p. 844, ch. 354, as amended by Acts 1941, 47th Leg., p. 603, ch. 371, § 1, created the office of criminal district attorney in counties with a population of 33,500 to 75,000 and not containing a city of 50,000 inhabitants. It was held invalid in *Hill County v. Sheppard*, 142 T. 358, 178 S.W.2d 261.

Art. 327. Failure to attend court.—When any district attorney shall fail to attend any term of the district court of any county in his district, the district clerk of such county shall certify the fact of such failure under his official seal to the Comptroller, and unless some satisfactory reason for such failure is shown to the comptroller, such district attorney shall receive no salary for the time that he has so failed to attend. [Acts 1846, p. 295; G. L. vol. 2, p. 1601.]

Art. 328. Vacancy in office.—When a vacancy occurs in the office of district attorney, the Governor shall appoint a qualified person, resident of the district, to fill the same.

2. COUNTY ATTORNEYS

Art. 329. [346] [280] [245] Election.—A county attorney for counties in which there is not a resident criminal district attorney, shall be biennially

elected for a term of two years by the qualified voters of each county. [Acts 1883, p. 2; G. L., vol. 9, p. 308; Const., art. 5, sec. 21.]

Art. 330. [351] [285] [248] Bond.—Each county attorney shall execute a bond payable to the Governor in the sum of twenty-five hundred dollars, with at least two good and sufficient sureties to be approved by the commissioners court of his county, conditioned that he will faithfully pay over in the manner prescribed by law all moneys which he may collect or which may come to his hands for the State or any county. [Acts 1876, p. 86; G. L. vol. 8, p. 922.]

Art. 331. [347] [281] Assistants.—County attorneys, by consent of the commissioners court, shall have power to appoint in writing one or more assistants, not to exceed three, for their respective counties who shall have the same powers, authority and qualifications as their principals, at whose will they shall hold office. Before entering on the duties of their offices, they shall each take the official oath which shall be indorsed upon their appointment, which oaths and appointments shall be recorded and deposited in the county clerk's office. [Acts 1891, p. 91.]

Art. 331a. Assistants and stenographer in certain counties and salaries.—Sec. 1. That in any county having a population of more than 100,000 and less than 150,000, and containing a city of more than 75,000 population, according to the United States Census for the year 1920, the County Attorney is hereby authorized to appoint two Assistant County Attorneys, each having the qualifications required of County Attorneys, one of whom shall receive a salary of $3000.00 per annum, and one of whom shall receive a salary of $2400.00 per annum. The said County Attorney is also hereby authorized to appoint one stenographer at a salary not to exceed $1800.00 per annum. The salaries of the Assistants and stenographer above provided for shall be paid monthly by the county in which such appointments are made.

Sec. 2. Should such County Attorney be of the opinion that the number of assistants above provided for are inadequate for the efficient performance of the duties of said office, he may appoint additional assistants under the provisions and restrictions of Article 3902 of the Revised Civil Statutes of 1925. [Acts 1929, 41st Leg., p. 198, ch. 83.]

Acts 1935, 44th Leg., p. 538, ch. 226, a special act passed as general law, provided for the appointment and compensation of a stenographer for the county attorney in a county having a population of not less than 32,300, nor more than 32,350.

Art. 331b. Assistant to county attorney performing duties of district attorney.—In all counties in which the county attorney performs the duties of the county attorney and district attorney, as provided by law, the county attorney may appoint one or more assistants who need not possess the qualifications required by law of county attorneys. The appointment of the assistants provided for by this act shall be governed by the provisions of Article 3902, whereby the number of assistants to be appointed and the compensation to be paid each shall be determined by the commissioners' court, provided that the provision of this bill shall apply only to counties in this State having a population of not less than 49600 and not more than 49700 according to the last government census of 1920. [Acts 1929, 41st Leg., p. 512, ch. 246, § 1.]

Art. 331b—1. Assistants to county attorneys acting as county attorney and district attorney.—In all counties in which the county attorney performs the duties of the county attorney and district attorney, as provided by law, the county attorney may appoint one or more assistants who need not possess the qualifications required by law of county attorneys. The appointment of the assistants provided for by this act shall be governed by the provisions of Article 3902, whereby the number of assistants to be appointed and the compensation to be paid each shall be determined by the commissioners' court, provided that the provision of this bill shall apply only to counties in this State having a population of not less than 42900 and not more than 43000 according to the last government census of 1920. [Acts 1929, 41st Leg., 2nd C.S., p. 135, ch. 67, § 1.]

Art. 331b—2. Assistant county attorney in counties of 46,000 and less than 46,150.—Sec. 1. That in any county having a population of more than forty-six thousand (46,000) and less than forty-six thousand, one hundred and fifty (46,150) inhabitants, and containing a total taxable valuation not in excess of Thirty Million, Seven Hundred and Forty-two Thousand, Six Hundred and Sixty Dollars ($30,742,660), as shown by the tax rolls for the preceding year, and in which there is a city of not more than forty-three thousand, one hundred and thirty-two (43,132) inhabitants, as shown by the last preceding Federal Census, the County Attorney is hereby authorized to appoint one Assistant County Attorney, having the qualifications required of County Attorneys, who shall receive a salary not to exceed Eighteen Hundred Dollars ($1,800) per annum, said salary to be paid in twelve (12) equal monthly installments (out of county funds) by each county in which such appointment is made, by warrants drawn on the General Fund thereof.

Sec. 2. Should such County Attorney be of the opinion that the efficient performance of the duties of said office necessitates the appointment of more than one Assistant, he may appoint additional Assistant under the provisions and restrictions of Article 3902 of the Revised Civil Statutes of Texas, of 1925. [Acts 1935, 44th Leg., p. 927, ch. 359.]

Art. 331b—3. Assistant county attorneys in counties of 60,001 to 100,000 having no district attorney.—Section 1. In all counties of this State having a population of sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, the county attorneys in such counties which do not have a district attorney, and where the county attorney performs the duties of county attorney and district attorney, the county attorney in such counties shall apply to the county Commissioners Court of his county for authority to appoint such assistant county attorneys as he may require in the performance of his duties as such county attorney, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expense of said office; and said Court shall make its order authorizing the appointment of such assistant county attorneys and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said Court may be proper. The compensation which may be allowed to the assistant county attorneys for their services shall be a reasonable one, not to exceed Thirty-six Hundred Dollars ($3600) per annum, to be paid out of the officer's salary fund of such counties.

Sec. 2. The provisions of this Act are cumulative of article 3902 of the Revised Civil Statutes of Texas of 1925, as amended. And in nowise shall be considered as a limitation on the other powers and authority of the Commissioners Court therein prescribed. [Acts 1945, 49th Leg., p. 253, ch. 187.]

Art. 331c. Fees and deputies of county attorneys in certain counties.—That in any county having a population of not less than 37,500, and not more than 100,000 inhabitants, as determined by the last

preceding Federal census, and each succeeding Federal census thereafter, and in which counties there are one or more Judicial districts where there is no District Attorney, the County Attorney shall be allowed to retain out of the fees earned and collected by him, the sum of $5,000.00 per annum, as his compensation, exclusive of the compensation of assistants, deputies and stenographers, and shall be allowed to retain any amount as may be incurred as expenses under the authority of Article 3899, Revised Statutes, 1925, and any other expenses allowed by law, including in addition to the items enumerated in the Statutes, expenses incurred in investigating crime and accumulating evidence in Criminal cases, and shall pay over all fees earned by such office in excess of $5,000.00, and in excess of such expenses herein provided for, during each and every fiscal year, into the County Treasury in accordance with the provisions of the maximum fee bill. In arriving at the amount collected by him, he shall include the fees arising from all classes of Criminal cases, whether felonies or misdemeanors, arising in any court in such county, including habeas corpus hearings and fines and forfeitures, and including fees for representing the State in Criminal actions in Corporation Courts; such latter fees to be the same as those fixed by law for like services in Justice Courts. Each County Attorney may appoint not to exceed three Assistant County Attorneys, two of which shall receive a salary of not to exceed $3,600.00 per annum, and one of whom shall receive a salary not to exceed $2,400.00 per annum. He may appoint one stenographer, who shall receive a salary not to exceed $1,500.00 per annum. The salaries of the assistants and stenographer shall be paid monthly by the County Attorney out of the fees of office. [Acts 1929, 41st Leg., 1st C.S., p. 220, ch. 89, § 1.]

3. GENERAL PROVISIONS

Art. 332. [352] [354] [355] Qualifications.—No person who is not a duly licensed attorney at law shall be eligible to the office of district or county attorney. District and county attorneys shall reside in the district and county, respectively, for which they were elected; and they shall, as soon as practicable after their election and qualification, notify the Attorney General and Comptroller of their post-office address. [Acts 1876, p. 85.]

Art. 333. To report to Attorney General.—District and County Attorneys shall, when required by the Attorney General, report to him at such times and in such form as he may direct, such information as he may desire in relation to criminal matters and the interests of the State, in their districts and counties.

Art. 334. [356] [290] [253] Shall advise officers.—The district and county attorneys, upon request, shall give an opinion or advice in writing to any county or precinct officer of their district or county, touching their official duties. [Acts 1913, p. 48.]

Art. 335. [363] [297] [257] Collection and fees.—Whenever a district or county attorney has collected money for the State or for any county, he shall within thirty days after receiving the same, pay it into the treasury of the State or of the county in which it belongs, after deducting therefrom and retaining the commissions allowed him thereon by law. Such district or county attorney shall be entitled to ten per cent. commissions on the first thousand dollars collected by him in any one case for the State or county from any individual or company, and five per cent on all sums over one thousand dollars, to be retained out of the money when collected, and he shall also be entitled to retain the same commissions on all collections made for the State or for any county. This article shall also apply to money realized for the State under the escheat law. [Acts 1876, p. 86; G. L. vol. 8, p. 922.]

Art. 336. [365] [299] [259] Accepting reward.—No district or county attorney shall take any fee, article of value, compensation, reward or gift or any promise thereof, from any person whomsoever, to prosecute any case which he is required by law to prosecute, or consideration of or as a testimonial for his services in any case which he is required by law to prosecute, either before or after such case has been tried and finally determined. [Id.]

Art. 337. [361] [362] Collection reports.—On or before the last day of August of each year, each district or county attorney shall file in the office of the Comptroller or of the county treasurer, as the case may be, a sworn account of all money received by him by virtue of his office during the preceding year, payable into the State or county treasury. [Id.]

Art. 338. [364] [298] [258] Register.—Each district and county attorney shall keep in proper books, to be procured by them for that purpose at their own expense, a register of all their official acts and reports, and all actions or demands prosecuted or defended by them as such attorneys, and of all proceedings had in relation thereto, and shall deliver such books to their successors in office; and the same shall at all times be open to the inspection of any person appointed by the Governor or by the county commissioners court of a county, to examine the same. [Id.]

Art. 339. [366] [300] [260] To prosecute officers.—When it shall come to the knowledge of any district or county attorney that any officer in his district or county entrusted with the collection or safe keeping of any public funds is in any manner whatsoever neglecting or abusing the trust confided in him, or in any way failing to discharge his duties under the law, he shall institute such proceedings as are necessary to compel the performance of such duties by such officer and to preserve and protect the public interests. [Id.]

Art. 340. [369] [303] [261] Admissions.—No admissions made by the district or county attorney in any suit or action in which the State is a party shall operate to prejudice the rights of the State.

Art. 341. Population determined.—The preceding Federal census shall be the basis for determining population under any provisions of this title.

TITLE 16—BANKS AND BANKING

TEXAS BANKING CODE OF 1943.

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373	Omitted
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399	Omitted
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522	342—606
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546a	342—510
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547a	Omitted
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CHAPTER I.—SCOPE OF ACT, DEFINITIONS, FINANCE COMMISSION AND STATE BANKING BOARD

Art.
342—101. Scope of Act—Short Title.
342—102. Definitions.
342—103. Finance Commission—Banking Section and Building and Loan Section—Creation—General Powers.
342—104. Finance Commission—Sections—Qualifications of Members.
342—105. Finance Commission—Residence of Members.
342—106. Finance Commission—Members—Appointment—Term.
342—107. Finance Commission—Vacancies.
342—108. Finance Commission—Confirmation of Appointments.
342—109. Finance Commission—Expenses and Compensation of Members.
342—110. Finance Commission—Disqualification of Members.
342—111. Finance Commission—Sections—Meetings—Quorum—Voting—Minutes.
342—112. Finance Commission—Report of Commissioner—Report of Commission—Limitation of Expenses of Banking Department.
342—113. Banking Section—Rules and Regulations—Loans and Investments—Insurance—Preservation of Books and Records.
342—114. Building and Loan Section—Rules and Regulations—Loans and Investments—Advisory Powers.
342—115. State Banking Board—Members—Powers.

Article 342—101. Scope of Act—Short Title.—This code provides a complete system of laws governing the organization, operation, supervision and liquidation of state banks, and to the extent indicated by the context, governing private banks and national banks domiciled in this State; as authorized by Article 16, Section 16 of the Constitution of the State of Texas, and as provided by Article 3, Section 43 of the Constitution of the State of Texas. This Act, and all amendments thereto, may be cited as "The Texas Banking Code of 1943." [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 1.]

Art. 342—102. Definitions.—As used in this code the following terms, unless otherwise clearly indicated by the context, have the meanings specified below:

"Code"—The Texas Banking Code of 1943.

"Banking Department"—The Banking Department of Texas.

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

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

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

"Commissioner"—The Banking Commissioner of Texas.

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

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

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

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

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

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

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

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

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

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

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

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

"Capital"—The common capital stock.

"Chapters and Articles"—Chapters and articles of this Code. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 2.]

[1] Effective 90 days after May 11, 1943, date of adjournment.
[2] Articles 342-548.
[3] Articles 542-548.
[4] 12 U.S.C.A. § 21.

Art. 342—103. Finance Commission—Banking Section and Building and Loan Section—Creation—General Powers.—There is hereby established and created The Finance Commission of Texas which shall consist of nine (9) members, and be divided into two (2) sections, namely: The Banking Section, consisting of six (6) members, and The Building and Loan Section, consisting of three (3) members. The Finance Commission and each section thereof shall serve as an advisory board to the Commissioner as to general policies and shall have such other duties, powers and authority as may be conferred upon them by law. The Banking Section and the Building and Loan Section shall make a thorough and intensive study of the Texas banking and building and loan statutes, respectively, with a view to so strengthening said statutes as to attain and maintain the maximum degree of protection to depositors, stockholders and shareholders, and shall report every two (2) years to the Legislature by filing with the Clerks of the Senate and the House of Representatives the results of its study, together with its recommendations. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 3.]

Art. 342—104. Finance Commission—Sections—Qualifications of Members.—Four (4) members of the Banking Section shall be active bankers who shall have had not less than five (5) years' executive ex-

perience next preceding their appointment in a state bank in a capacity not lower than cashier. Two (2) members of the Building and Loan Section shall be practical building and loan executives who shall have had not less than five (5) years' full time employment experience in a State Building and Loan or Federal Savings and Loan Association in a capacity not lower than secretary next preceding their appointment. Provided that experience as Commissioner, Deputy Commissioner, Departmental Examiner, or Examiner shall be deemed banking experience, and experience as Building and Loan Supervisor or Building and Loan Examiner shall be deemed building and loan experience, within the meaning of this article. Further provided that the Banking Section shall at all times consist of one (1) member, who is an officer in a state bank which, at the time of his appointment, had a capital and certified surplus not exceeding Fifty Thousand Dollars ($50,000); two (2) members, each of whom is an officer of a state bank which, at the time of their appointment, had a capital and certified surplus exceeding Fifty Thousand Dollars ($50,000) but not exceeding One Hundred Thousand Dollars ($100,000); and one (1) member, who is an officer in a state bank, which, at the time of his appointment, had a capital and certified surplus exceeding One Hundred Thousand Dollars ($100,000). The Building and Loan Section shall at all times consist of one (1) member who is a full time employed executive in a state association which, at the time of his appointment, had gross assets not exceeding Two Million Dollars ($2,000,000), and one (1) member who is a full time employed executive in a state association which, at the time of his appointment, had gross assets exceeding Two Million Dollars ($2,000,000). Two (2) members of the Banking Section and one (1) member of the Building and Loan Section shall be selected by the Governor upon the basis of recognized business ability. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 4.]

Art. 342—105. Finance Commission—Residence of Members.—No two (2) members of the same section of the Finance Commission shall be residents of the same State Senatorial District. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 5.]

Art. 342—106. Finance Commission—Members—Appointment—Term.—The Governor of the State of Texas, subject to confirmation by the Senate, shall appoint the members of the Finance Commission, each of whom, except the initial appointees, shall serve for a term of six (6) years, and the term of one third of the members of each section shall expire each two (2) years; further provided that the Governor shall, promptly after the effective date of this Act,[1] appoint nine (9) members to the Finance Commission, and designate the term to be served by each appointee; the term of two (2) members of the Banking Section and one (1) member of the Building and Loan Section to expire February 1, 1945, February 1, 1947, and February 1, 1949, respectively. Members of the Finance Commission shall, subject to the provisions of Article 7 of this Chapter,[2] serve until their successors are appointed and have qualified by taking oath in the form prescribed by the State Banking Board. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 6.]

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

[2] Article 342—107.

Art. 342—107. Finance Commission—Vacancies.—The office of a member of the Commission shall be vacant if the member ceases to have the qualifications of employment and residence which were necessary to his original appointment, provided that the increase or decrease in the capital and surplus of his employing bank, or the increase or decrease in the gross assets of his employing building and loan association shall not create a vacancy. In event of a vacancy on the Finance Commission for any cause, the Governor shall appoint a qualified person to fill the unexpired term. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 7.]

Art. 342—108. Finance Commission—Confirmation of Appointments.—In event of appointment of any member of the Finance Commission while the Legislature is in session, the appointment shall be promptly related to the Senate for confirmation, and in event of any such appointment while the Legislature is not in session, such appointment shall be promptly related to the Senate at the next meeting of the Legislature. If the Senate should refuse to confirm any appointment, the office shall thereupon become vacant. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 8.]

Art. 342—109. Finance Commission—Expenses and Compensation of Members.—Each member of the Finance Commission shall be reimbursed all expense incidental to travel incurred by him in connection with the performance of his official duties. not exceeding Four Dollars ($4) per day plus cost of transportation, and in addition shall receive Five Dollars ($5) per day compensation for his services for each day or fraction thereof while in attendance at any meeting of the Commission or either section thereof and while traveling to or from such meetings. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 9.]

Art. 342—110. Finance Commission—Disqualification of Members.—No member shall act at any meeting of the Commission or either section thereof, when the matter under consideration specifically relates to any corporation in which such member is an officer, director, or stockholder. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 10.]

Art. 342—111. Finance Commission—Sections—Meetings—Quorum—Voting—Minutes.—The Commission and each section thereof shall hold at least two regular meetings each year. Special meetings of the Commission may be called by the Commissioner, or by any three members of the Commission, and special meetings of either section thereof may be called by the Commissioner or any two members of the section which is to meet. The Commission and each section thereof may adopt rules and regulations governing the time and place of meetings, the character of notice of special meetings, the procedure by which all meetings are to be conducted, and other similar matters. A majority of the membership of the Commission shall constitute a quorum for the purpose of transacting any business coming before the Commission and a majority of each section shall constitute a quorum for the purpose of transacting any business coming before said section. The Commissioner shall preside at all meetings of the Commission and of each section thereof, but shall not vote except in the case of a tie or when his vote is necessary for effective action. Provided that the Commissioner shall not preside or vote at any meeting when the Finance Commission is considering the election of the Commissioner but the Commission shall elect one of its members to act as temporary chairman, who shall be entitled to vote. The Commission and each section thereof shall keep adequate minutes of the proceedings of all meetings. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 11.]

Art. 342—112. Finance Commission—Report of Commissioner—Report of Commission—Limitation of Expenses of Banking Department.—The Commissioner shall, from time to time, as directed by the Finance Commission submit to such Commission a full and complete report of the receipts and expenditures of the Banking Department, and the Finance Commission may from time to time examine the financial records of the Banking Department or cause them to be examined. The Finance

Commission shall biennially submit to the Legislature, by filing with the Clerks of the Senate and House of Representatives, its recommendations as to the financial needs of the Banking Department, and shall, if the departmental appropriation or any portion thereof is a lump sum or unitemized appropriation, adopt and from time to time amend budgets which shall limit and control the expenditure of such lump sum or unitemized appropriation. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 12.]

Art. 342—113. Banking Section—Rules and Regulations—Loans and Investments—Insurance —Preservation of Books and Records.—The Banking Section, through resolution adopted by not less than four affirmative votes, may promulgate general rules and regulations not inconsistent with the Constitution and Statutes of this State, and from time to time amend the same, which rules and regulations shall be applicable alike to all state banks to effect the following ends and purposes;

1. To prevent state banks from concentrating an excessive or unreasonable portion of their resources in any particular type or character of investment or in any single line of credit under any exception to Article 7, of Chapter V of this Code,[1] thereby preventing the solvency or liquidity of such banks depending to an undue extent upon such type or character of investment or single line of credit.

2. To provide adequate fidelity coverage or insurance on the officers and employees of state banks, and fire, burglary, robbery and other casualty coverage for state banks, so as to prevent loss through theft, defalcation or other casualty, and to make certain that the insurer or surety is solvent and will be able to pay losses sustained.

3. To provide for the preservation of the books and records of the Banking Department and of state banks during such time as said books and records are of value, and to permit the destruction or other disposition of such books and records after the same are no longer of any value. Provided, however, that every state bank shall preserve all of its records of final entry, or a facsimile thereof, including cards used under a card system and deposit tickets, for a period of at least ten (10) years from the date of the last entry on such records. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 13.]

[1] Article 342—507.

Art. 342—114. Building and Loan Section—Rules and Regulations—Loans and Investments —Advisory Powers.—The Building and Loan Section, through resolution adopted by not less than two affirmative votes, may promulgate general rules and regulations not inconsistent with the Constitution and Statutes of this State, and from time to time amend the same, which rules and regulations shall be applicable alike to all State associations, and shall authorize building and loan associations organized under the laws of this State to invest their funds in any manner and to the same extent which said association could invest such funds under existing or any future law, rule or regulation were they organized and operating as a Federal savings and loan association under the laws of the United States, provided, however, that this authority shall not be construed in any wise to confer authority to abridge or diminish or limit any rights or powers specifically given to State associations by the statutory laws of this State.

In addition to such powers as may be conferred upon the Building and Loan Section by this Act[1] or by the building and loan laws of Texas as amended, the Building and Loan Section shall have the following duties:

(a) When in the judgment of the Banking Commissioner or if in its own judgment protection of investors in State associations requires additional regulations or limitations, to recommend to the Commissioner such additional rules and regulations as will in its judgment prevent State building and loan associations from concentrating an excessive or unreasonable portion of their resources in any particular type or character of loan or security authorized by subdivisions 4 and 6-d of Section 38 of the Building and Loan Act of this State.[2]

(b) Upon the request of the Banking Commissioner to recommend to him standards for investments by State associations in the obligations authorized under the provisions of subdivision 5-c of Section 38 of the Building and Loan Act of this State,[2] which standards may also recommend a limit in the amount which State associations may invest in any particular type or character of investment under said subdivision to an amount or percentage based upon assets or reserves, permanent capital and undivided profits.

(c) To advise with the Commissioner or the Building and Loan Supervisor as to the forms to be prescribed for the filing of the annual statements with the Banking Department and the forms to be prescribed for the publication of the semiannual financial statements by State associations.

(d) To confer with the Commissioner and the Building and Loan Supervisor and with the President of the regional Federal Home Loan Bank of the district in which Texas State associations are members on general and special business and economic conditions affecting State associations.

(e) To request information and to make recommendations with respect to matters within the jurisdiction of the Commissioner and the Building and Loan Supervisor as relating to the building and loan business, including recommendations as to legislation affecting such institutions, providing, that no information regarding the financial condition of any State building and loan association obtained through examination or otherwise shall be divulged to any member of the Finance Commission, nor shall any member of the Finance Commission be given access to the files and records of the Department appertaining thereto; provided, further, however, that the Commissioner may disclose to the Building and Loan Section any file or record pertinent to any hearing or matter pending before such section. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 14.]

[1] Articles 342—101 to 342—911.
[2] Article 881a—37.

Art. 342—115. State Banking Board—Members—Powers.—The State Banking Board shall consist of the Attorney General, the State Treasurer and the Banking Commissioner; shall have such powers and duties as are conferred upon it by this Code[1] and by other laws of this State; and its findings and determinations shall be subject to review and may be set aside by a court of competent jurisdiction. The orders of the State Banking Board may be appealed to a court of competent jurisdiction and the trial in the court of competent jurisdiction shall be de novo the same as if said matter had been originally filed in such court. The State Banking Board shall have authority to promulgate rules and regulations prescribing the time and place of its meetings and hearings, and the procedure to govern the same. [Acts 1943, 48th Leg., p. 128, ch. 97, subch. I, art. 15.]

[1] Articles 342—101 to 342—911.

CHAPTER 2.—THE BANKING DEPARTMENT OF TEXAS

Art.
342—201. Banking Commissioner—Election—Qualifications—Salary—Vacancy.
342—202. Deputy Commissioner — Appointment — Qualification—Duties—Salary.
342—203. Departmental Examiner — Appointment — Qualifications—Salary.
342—204. Examiners — Assistant Examiners — Appointment—Qualifications—Salary.

Art.
342—205. Building and Loan Supervisor and Other Employees—Appointment—Salary.
342—206. Oath and Bond of Commissioner and Others—Premiums.
342—207. Commissioner—General Powers—Duties—Liabilities of Commissioner and Others—Defense by Attorney General.
342—208. Examination — May Administer Oath — Fees—Disposition.
342—209. Call Statements — Filing — Publication — Posting—Penalty.
342—210. Information Confidential—Privileged—Exceptions.
342—211. Violation of Duty by Commissioner and Others—Penalty.

Art. 342—201. Banking Commissioner—Election—Qualifications—Salary—Vacancy.—By and with the advice and consent of the Senate, the Finance Commission, by at least five (5) affirmative votes, shall elect a Commissioner who shall serve at the pleasure of the Finance Commission, provided that the Commissioner first elected shall take office at the expiration of the term of office of the present Commissioner; said Commissioner shall be an employee of the Finance Commission and subject to its orders and directions. The Commissioner shall be a practical banker with not less than five (5) years' experience, within ten (10) years prior to his election, as an executive in a state bank in a grade not lower than cashier, provided that experience as Commissioner, Deputy Commissioner, Departmental Examiner or Examiner of the Banking Department of Texas shall be deemed banking experience within the meaning of this article. The compensation of the Commissioner shall be fixed by the Departmental Appropriation bill, but shall not exceed Seven Thousand Five Hundred Dollars ($7,500) per annum. In event of a vacancy in the office of Commissioner, the Finance Commission shall elect a qualified person to fill the unexpired term in the same manner as herein provided for the election of the Commissioner. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 1.]

Art. 342—202. Deputy Commissioner—Appointment—Qualifications — Duties—Salary.— The Commissioner shall appoint a Deputy Banking Commissioner, who shall have the same qualifications as are required of the Commissioner, and shall, during the absence or inability of the Commissioner, or under his instructions, or in event of a vacancy in the office of the Commissioner, be vested with all of the powers and perform all of the duties of the Commissioner. The compensation of the Deputy Commissioner shall be fixed by the Departmental Appropriation bill, but shall not exceed Six Thousand Dollars ($6,000) per annum. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 2.]

Art. 342—203. Departmental Examiner—Appointment—Qualifications—Salary.—The Commissioner shall appoint a Departmental Bank Examiner who shall be a bank accountant with not less than five (5) years' experience as such or as an examiner in the Banking Department of Texas, the National Banking System, the Federal Deposit Insurance Corporation or the Federal Reserve System. The compensation of the Departmental Examiner shall be fixed by the Departmental Appropriation bill, but shall not exceed Five Thousand Five Hundred Dollars ($5,500) per annum. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 3.]

Art. 342—204. Examiners—Assistant Examiners—Appointment—Qualifications—Salary. — The Commissioner shall appoint not exceeding one (1) bank examiner and one (1) assistant bank examiner for each forty (40) corporations subject to examination by the Banking Department. Such examiners shall have the qualifications required of the Departmental Examiner, provided that experience as assistant examiner or Liquidating Supervisor of the Banking Department of Texas shall be included as qualifying experience. Each examiner shall receive not exceeding Three Thousand Dollars ($3,000) for his first year's service; Three Thousand Five Hundred Dollars ($3,500) for his second year's service; Four Thousand Dollars ($4,000) for his third year's service; Four Thousand Five Hundred Dollars ($4,500) for his fourth year's service; and Five Thousand Dollars ($5,000) for his fifth and each subsequent year's service. In determining the salary of an examiner his service need not be continuous. Assistant examiners shall receive not exceeding Two Thousand Four Hundred Dollars ($2,400) per annum. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 4.]

Art. 342—205. Building and Loan Supervisor and Other Employees—Appointment—Salary.— The Commissioner shall appoint a Building and Loan Supervisor, Building and Loan Examiners and such other officers and employees as may be necessary to maintain and operate the Banking Department and to enforce the laws of this State relative to corporations under the supervision of the Banking Department. The compensation of the Building and Loan Supervisor shall be fixed by the Departmental Appropriation bill, but shall not exceed Five Thousand Dollars ($5,000) per annum. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 5.]

Art. 342—206. Oath and Bond of Commissioner and Others—Premiums.—The Commissioner, the Deputy Commissioner, the Departmental Examiner, the Liquidating Supervisor, and each examiner, assistant examiner, and special agent, the Building and Loan Supervisor and each building and loan examiner and each other officer and employee specified by the Commissioner shall, before entering upon the duties of his office, take an oath of office and make a fidelity bond in the sum of Ten Thousand Dollars ($10,000), payable to the Governor of the State of Texas, and his successors in office, in individual, schedule or blanket form, executed by a surety appearing upon the list of approved sureties acceptable to the United States Government. Any bond provided under this article shall be on a form approved by the Finance Commission. The premiums for such bonds shall be paid out of the funds appropriated for the operation of the Banking Department. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 6.]

Art. 342—207. Commissioner—General Powers—Duties—Liabilities of Commissioner and Others—Defense by Attorney General.—The Commissioner shall supervise and shall regulate, as provided in this Code,[1] all state banks and shall enforce the provisions of this Code in person or through the Deputy Commissioner, the Departmental Examiner or any examiner. The Commissioner, each member of the Finance Commission, each member of the State Banking Board, the Deputy Commissioner, the Departmental Examiner, the Liquidating Supervisor, each examiner, assistant examiner, and special agent, the Building and Loan Supervisor, each building and loan examiner, and each other officer and employee of the State Banking Department shall not be personally liable for damages occasioned by his official acts or omissions except when such acts or omissions are corrupt or malicious. The Attorney General shall defend any action brought against any of the above mentioned officers or employees by reason of his official act or omission, whether or not at the time of the institution of the action the defendant has terminated his service with the Department. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 7.]

1 Arts. 342—101 to 342—911.

Art. 342—208. Examination—May Administer Oath—Fees—Disposition.—The Commissioner shall examine each state bank at least twice each year, and as often as he deems necessary to safeguard the interests of depositors, creditors and stockholders and to enforce the provisions of this Code.[1] The Commissioner, Deputy Commissioner, Departmental Examiner and each examiner may administer oaths and examine any person under oath upon any subject which he deems pertinent to the financial condition of any state bank. The Commissioner shall assess and collect a fee in connection with each examination, based on the bank's total assets, covering the cost of such examination, the equitable or proportionate cost of maintenance and operation of the Banking Department, and the enforcement of the provisions of this Code, including, but not limited to, the premium on the bond of the Commissioner and other officers and employees of the Banking Department, and such other fidelity or casualty insurance or coverage required or furnished pursuant to or in connection with the provisions of this Code, together with expenses authorized under Articles 3, 9, and 12 of Chapter I of this Code,[2] which fees shall in no event be less than Fifty Dollars ($50) for each examination so made. Such fees, together with any other fees, penalties or revenues collected by the Commissioner pursuant to the provisions of this Code or pursuant to other laws of this State relative to corporations under the supervision of the Banking Department, shall be paid by the Commissioner to the State Treasurer who shall deposit the same to the credit of the General Revenue Fund. The expenses of examination and of the Commissioner in enforcing the provisions of this Code shall be paid upon the certificate of the Commissioner by warrant of the Comptroller upon the State Treasury.

All officers and employees of the Banking Department shall be reimbursed for their services and expenses necessarily incurred in the discharge of their duties, as provided in this Code or any amendment thereto, and as may be now or hereafter provided by statute. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 8.]

1 Articles 342—101 to 342—911.
2 Articles 342—103, 342—109, 342—112.

Art. 342—209. Call Statements—Filing—Publication — Posting — Penalty.—The Commissioner shall at least twice each year call upon each state bank to make and publish a statement of its financial condition as of the close of business on a date specified in such call. Such statements shall be upon such form and reflect such information as may be prescribed by the Commissioner; shall be sworn to by any one of the following: the president, vice-president, cashier, assistant cashier, secretary, or treasurer, and attested by at least three directors; and shall be filed with the Commissioner within ten (10) days after such call. Such statement shall be published within twenty (20) days of the date of such call in some newspaper of general circulation published in the county of the bank's domicile, or if no such newspaper is published in said county, then in a newspaper of general circulation published in an adjacent county, and a publisher's certificate reflecting such publication shall be filed with the Commissioner within thirty (30) days after such call. A copy of the latest called statement shall be kept posted in the lobby of the banking house at a point accessible to the public. Any state bank which fails to file or publish such statement or to file such publisher's certificate, within the periods herein prescribed, or to post such notice, shall be subject to a penalty not exceeding Five Hundred Dollars ($500) to be collected by suit by the Attorney General on behalf of the Commissioner. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 9.]

Art. 342—210. Information Confidential—Privileged—Exceptions.—Subject to the provisions of Section 5 of Chapter 183 of the Forty-fourth Legislature of Texas (1935), page 461 (Article 489b, Section 5), and any other statutory provision of this State, all information obtained by the Banking Department relative to the financial condition of state banks, whether obtained through examination or otherwise, except published statements, and all files and records of said Department relative thereto shall be confidential, and shall not be disclosed by the Commissioner or any officer or employee of said Department. Further provided that no such information shall be divulged to any member of the Finance Commission, nor shall any member of the Finance Commission be given access to such files and records of the Banking Department; provided, however, that the Commissioner may disclose to the Finance Commission, or either section thereof, or to the State Banking Board information, files and records pertinent to any hearing or matter pending before such Commission or either section thereof or such Board. Further provided that upon request, the Commissioner may disclose to a Federal Reserve Bank any information relative to its members, and shall permit it access to any files and records or reports relating to its members. Further provided that the Commissioner may, in his discretion, if he deems it necessary or proper to the enforcement of the laws of this State or the United States, and to the best interest of the public, divulge such information to any other department of the State or National Government, or any agency or instrumentality thereof. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 10.]

Art. 342—211. Violation of Duty by Commissioner and Others—Penalty.—If the Commissioner or any officer or employee of the Banking Department shall give advance notice of any call to be made pursuant to Article 9[1] of this chapter; or divulge information or permit access to any file or record of the Banking Department in violation of Article 10[2] of this chapter; or knowingly be or become indebted to, or financially interested in, any state bank, directly or indirectly; or purchase any asset belonging to any state bank in the hands of the Commissioner for purposes of liquidation, he shall be deemed guilty of a misdemeanor in office, and shall upon conviction be fined not exceeding Two Hundred Dollars ($200), and forfeit his office or employment. [Acts 1943, 48th Leg., p. 134, ch. 97, subch. II, art. 11.]

1 Article 342—209.
2 Article 342—210.

CHAPTER 3.—INCORPORATION, MERGER, REORGANIZATION, PURCHASE OF ASSETS OF ANOTHER BANK, DISBURSING AGENT, AMENDMENT OF ARTICLES OF ASSOCIATION OF STATE BANKS, AND CONVERSION

Art.
342—301. Powers.
342—302. Legislative Control.
342—303. Capital and Surplus Requirements.
342—304. Articles of Association.
342—305. Application for and Granting of Charters —Approval—Conditional Approval.
342—306. Recordation of Articles of Association and Amendments.
342—307. Certificate of Authority—Posting—Revocation of Charter.
342—308. Merger—Trust Powers.
342—309. Reorganization—Incorporation to Take Over Business of Other Banks—Trust Powers.
342—310. Purchase of Assets of Another Bank—Disbursing Agent.
342—311. Existing Corporations—Powers Retained.

Art.
342—312. Amendment of Articles of Association—Rights of Stockholders upon Increase in Capital.
342—313. Conversion of State Bank into National Bank.

Art. 342—301. Powers.—Subject to the provisions of this Code,[1] five (5) or more persons, a majority of whom are residents of this State, may incorporate a state bank, with any one or more or all of the following powers:

(a) To receive time and demand deposits at interest or without interest; to lend money with or without security at interest; and to buy, sell and discount bonds, negotiable instruments and other evidences of indebtedness.

(b) To act as fiscal agent or transfer agent and in such capacity to receive and disburse money and to transfer registered and countersigned certificates of stock, bonds or other evidences of indebtedness.

(c) To act as trustee under any mortgage or bond issue and to accept and execute any trust not inconsistent with the laws of this State.

(d) To act under the order or appointment of any court of record as guardian, receiver, trustee, executor or administrator, and, although without general depository powers, to act as depository for any moneys paid into court.

(e) To purchase, invest in, and sell bills of exchange, bonds, mortgages and other evidences of indebtedness, and to lend money and to charge and collect interest thereon in advance or otherwise.

(f) To receive savings deposits with or without the payment of interest.

(g) To receive time deposits with or without the payment of interest.

(h) To issue, sell and negotiate notes, bonds and other evidences of indebtedness, and, in addition, to issue and sell, for cash or on an installment basis, investment certificates, creating no relation of debtor and creditor between the bank and the holder, to be retired solely out of specified surplus, reserves, or special retirement account, and containing such provisions relative to yield, retirement, penalties, withdrawal values, and obligations of the issuing bank as may be approved by the Commissioner.

A state bank shall have all incidental powers necessary to exercise its specific powers. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 1.]

[1] Articles 342—301 to 342—911.

Art. 342—302. Legislative Control.—The rights, privileges and powers conferred by this Code[1] are held subject to the right of the Legislature to amend, alter or reform the same. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 2.]

[1] Articles 342—101 to 342—911.

Art. 342—303. Capital and Surplus Requirements.—No state bank shall be hereafter chartered with a capital less than the following requirements, nor shall any state bank be permitted to reduce its capital below such requirements, said requirements to be determined by the last Federal Census preceding the granting of the charter or the reduction in capital:

(a) If domiciled in a city or town with not over five thousand (5,000) population, a minimum capital of Twenty-five Thousand Dollars ($25,000).

(b) If the population is over five thousand (5,000), a minimum capital of Fifty Thousand Dollars ($50,000).

(c) If the population is over fifteen thousand (15,000), a minimum capital of Seventy-five Thousand Dollars ($75,000).

(d) If the population is over thirty thousand (30,000), a minimum capital of One Hundred Thousand Dollars ($100,000).

Provided that any state bank authorized to exercise the trust or other powers specified in subsection (b), (c), or (d) of article 1[1] of this chapter shall have at least Fifty Thousand Dollars ($50,000) capital. Further provided that the State Banking Board may, in granting a charter, require surplus to be paid in an amount not to exceed twenty-five per cent (25%) of the common capital. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 3.]

[1] Article 342—301.

Art. 342—304. Articles of Association.—The articles of association of a state bank shall be signed and acknowledged by each person subscribing to stock and shall contain:

1. The name of the corporation.
2. The city or town and the county of its domicile.
3. Such of the powers listed in Article 1[1] of this chapter as it shall choose to exercise.
4. The capital and the denomination and number of shares.
5. The name and address of each subscriber for stock and the number of shares subscribed for by him.
6. The number of directors.
7. The number of years the corporation is to continue, not to exceed fifty (50), provided, however, that each such corporation shall have the right of renewal on the compliance with this Code.[2] [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 4.]

[1] Article 342—301.
[2] Articles 342—101 to 342—911.

Art. 342—305. Application for and Granting of Charters—Approval—Conditional Approval.—Applicants shall file with the Commissioner an application for charter on such form and include therein such information as may be prescribed by the Commissioner, and the proposed articles of association; shall pay an investigation fee as prescribed under Article 3921, Revised Statutes of Texas, 1925, and deposit with the Commissioner charter fees as prescribed by law. The Commissioner shall thereupon make a thorough investigation and report his findings to the State Banking Board.

In considering any such application, the State Banking Board shall, after hearing, determine whether or not:

1. A public necessity exists for the proposed bank.
2. The proposed capital structure is adequate.
3. The volume of business in the community where such proposed bank is to be established is such as to indicate profitable operation of the proposed bank.
4. The proposed officers and directors have sufficient banking experience, ability and standing to render success of the proposed bank probable.
5. The applicants are acting in good faith.

Should the State Banking Board determine any of the above issues adversely to the applicants, it shall reject the application. Otherwise such Board shall approve the application and the Commissioner shall, when the capital has been paid in in cash and the franchise tax paid, deliver to the incorporators a certified copy of the articles of association, and the bank shall come into corporate existence. Provided, however, that the State Banking Board may make its approval of any application conditional, and in such event shall set out such condition in the resolution granting the charter, and the Commissioner shall not deliver the certified copy of the articles of association until such condition has been met, after which the Commissioner shall in writing inform the State Banking Board as to compliance with such condition and delivery of the articles of association. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 5.]

Art. 342—306. Recordation of Articles of Association and Amendments.—The bank shall, upon receipt from the Commissioner of a certified copy of its articles of association and any amendment thereto, file the same with the County Clerk of the county of the bank's domicile for recordation in the Deed Records of said county. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 6.]

Art. 342—307. Certificate of Authority—Posting—Revocation of Charter.—No state bank may do business until it receives a certificate of authority from the Commissioner, which shall not be delivered until it has elected the officers and directors named in the application for charter or other officers and directors approved by the Commissioner; shall have adopted by-laws approved by the Commissioner; and shall have complied with all the other requirements of this Code[1] relative to the incorporation of state banks.

If any state bank does not open and actually engage in business within three months after the granting of its charter, or conditional approval of application for charter, the Commissioner may so inform the State Banking Board which may in its discretion forfeit the charter or cancel its conditional approval of application for charter, without any judicial action.

Each state bank shall keep its certificate of authority posted in its lobby at a point accessible to the public. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 7.]

1 Articles 342—101 to 342—911.

Art. 342—308. Merger—Trust Powers.—Any two or more state banks, or if national banks are hereafter authorized by the laws of the United States to participate in such a merger, any one or more state banks and any one or more national banks domiciled in this State may, with the approval of the Commissioner and the written consent of the owners of record of two-thirds of the capital of each of said banks, be merged. Said merging banks shall file with the Commissioner:

(1) A statement of the plan of merger approved by the board of directors of each merging bank, by a majority vote of the qualified directors.

(2) Written consent to such merger executed by the owners of record of two-thirds of the capital of each merging bank.

(3) Certificate of merger stating the facts required by Article 4[1] of this chapter and executed and acknowledged by a majority of the qualified directors of each merging bank.

The Banking Commissioner shall thereupon investigate the condition of the merging banks and if he finds that the state bank which will result from the merger (hereafter called the "resulting bank") will be solvent and its capital unimpaired; that it will have adequate capital structure; that such merger is to the best interest of the depositors, creditors and stockholders of the merging banks and of the public in general; that the distribution of the stock of the resulting bank is to be upon an equitable basis; and that the resulting bank has in all respects complied with the laws of this State relative to the incorporation of State banks, he may approve such merger, and, if he so approves, he shall deliver to the resulting bank a certified copy of the certificate of merger, which certificate shall constitute the charter and articles of association of the resulting bank, and shall be filed as provided in Article 6[2] of this chapter. The resulting bank shall be deemed a continuation in entity and identity of each of the banks involved in the merger; shall be subject to all the liabilities, obligations, duties and relations of each merging bank; and shall without the necessity of any conveyance, assignment or transfer become the owner of all of the assets of every kind and character formerly belonging to the merging banks; further, provided, that if any merging bank shall at the time of the merger be acting as trustee, guardian, executor, administrator, or in any other fiduciary capacity, the resulting bank shall, without the necessity of any judicial action or action by the creator of such trust, continue such office, trust or fiduciary relationship and shall perform all of the duties and obligations and exercise all of the powers and authority connected with or incidental to such fiduciary relationship in the same manner as though the resulting bank had been originally named or designated as such fiduciary.

The naming or designating by a testator, or the creator of a living trust, of any one of the merging banks to act as trustee, guardian, executor or in any other fiduciary capacity shall be considered the naming or designating of the bank resulting from the merger. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 8.]

1 Article 342—304.
2 Article 342—306.

Art. 342—309. Reorganization—Incorporation to Take Over Business of Other Banks—Trust Powers.—A state bank may be incorporated to take over the business of any incorporated bank or banks, state or national, as a step in the reorganization of such bank or banks, (which bank or banks, whether one or more, will be hereafter referred to as the "reorganizing bank"), and shall, subject to the provisions of this article, be authorized to purchase assets from the reorganizing bank and as consideration therefor, assume all liabilities, known or unknown, of the reorganizing bank, other than its liability to stockholders as such.

Persons desiring to incorporate a state bank under the provisions of this article shall proceed in the manner provided in Article 5 of this Chapter,[1] and in addition, shall file with the Commissioner:

(1) The proposed contract whereby the state bank is to purchase the assets from and assume the liabilities of the reorganizing bank, as above mentioned.

(2) Contracts, if any, whereby the proposed state bank is to purchase for cash the whole or any part of the right of any or all of the stockholders of the reorganizing bank to receive liquidating dividends upon liquidation of the reorganizing bank, which contracts shall expressly provide that they shall be binding and effective only in event the reorganizing bank is placed in voluntary liquidation within ten (10) days of the granting of the application for the charter applied for. Such contracts shall be executed on behalf of the proposed bank by the persons applying for the charter.

If the Commissioner, after investigation, determines that the proposed bank, if incorporated, will, after its capital has been paid in in full and all contracts above mentioned finally consummated, be solvent, its capital adequate and unimpaired, that such reorganization is to the best interest of the reorganizing bank, its depositors, creditors and stockholders and the public in general, and that upon incorporation such bank will have in all other respects complied with the law, he shall recommend to the State Banking Board that the charter be granted.

If the State Banking Board concurs in the findings of the Commissioner, it shall grant the application, and the Commissioner shall deliver a certified copy of the articles of association in the manner provided in Article 5 of this chapter. Provided, however, that the Commissioner shall not deliver a certificate of authority until the contracts above mentioned have been fully consummated, and the requirements of Article 7 of this chapter[2] have been met. The state bank so incorporated shall be deemed a reorganization of the reorganizing bank, and a continuation of such bank in entity and identity, sub-

ject to all of its liabilities, obligations, duties and relations, save and except its liability to stockholders as such, and shall pay and perform each and every obligation, duty and liability of the reorganizing bank in exactly the same manner as the reorganizing bank was obligated to do; further provided that if the reorganizing bank was at the time of incorporation of the new state bank, named or acting as guardian, trustee, executor, administrator or in any other fiduciary capacity, such state bank shall, without the necessity of any judicial action, or action by the creator of such trust, continue the trusteeship or other fiduciary relation and perform all of the duties and obligations of the reorganizing bank and exercise all the powers and authority relative thereto; and neither the reorganization of such bank, nor any liquidation of such bank in connection therewith, shall be deemed a resignation or refusal to act. The naming or designating by a testator or the creator of a living trust of the reorganizing bank to act as trustee, guardian, executor, or in any other fiduciary capacity shall be considered the naming or designating of the bank resulting from the reorganization.

The new state bank shall give notice of its assumption of the liabilities of the reorganizing bank by publishing notice thereof once each week for a period of two (2) weeks in some newspaper of general circulation published in the county of its domicile, or in event no such newspaper is published in said county, then in a newspaper of general circulation published in an adjacent county. The first notice shall be published within ten (10) days after the delivery of the certificate of authority to such bank. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 9.]

1 Article 342—305.
2 Article 342—307.

Art. 342—310. Purchase of Assets of Another Bank—Disbursing Agent.—Any state bank may, with the consent of the Commissioner, purchase the whole or any part of the assets of any other state bank or of any national bank domiciled in this State, and may hold the purchase price and any additional funds delivered to it by the selling bank in trust for or as a deposit to the credit of the selling bank. The purchasing bank may act as agent of the selling bank in disbursing the funds so held in trust or on deposit by paying the depositors and creditors of the selling bank, provided that if the purchasing bank acts under written contract of agency which specifically names each depositor and creditor and the amount to be paid each, and if such agency is confined to the purely ministerial act of paying such depositors and creditors the amounts due them as determined by the selling bank and reflected in the contract of agency and involves no discretionary duties or authority other than the identification of the depositors and creditors named, and if such contract is approved by the Commissioner, then the purchasing bank may rely upon such contract of agency and the instructions included therein, and shall not be in any way liable or responsible for any error made by the selling bank in determining its liabilities, the depositors and creditors to whom such liabilities are due, or the amounts due such depositors and creditors; nor liable or in any way responsible for any preference which may result from the payments made pursuant to such contract of agency and the instructions included therein. Further provided that, in event the selling bank should, at any time after such sale of assets, be closed and come into the hands of the Commissioner or, if a national bank into the hands of a receiver, then the purchasing bank shall pay to the Commissioner as statutory liquidator or to the receiver of such national bank the balance of the funds held by it in trust or on deposit for the selling bank, not theretofore paid to the depositors and creditors of the selling bank, and shall thereupon stand discharged of any and all liabilities, obligations or responsibilities to the selling bank, its receiver, the Commissioner as its statutory liquidator, or to the depositors, creditors or stockholders thereof. Provided further that payment to any depositor or creditor of the selling bank of the amount to be paid him under the terms of the contract of agency may be effected by the purchasing bank opening an account in the name of such depositor or creditor, crediting such account with the amount to be paid the depositor or creditor under the terms of such agency contract, and mailing a duplicate deposit ticket evidencing such credit to such depositor or creditor at his address as reflected by the records of the selling bank, or delivering it to him personally, and the relation of debtor to creditor shall thereupon arise between the purchasing bank and such depositors and creditors to the extent and only to the extent of the credit reflected by such deposit tickets. Further provided, that if any such depositor or creditor checks upon the credit so created, or if he does not within sixty (60) days of the mailing or the personal delivery of such deposit ticket protest the transaction and demand payment from the selling bank, he shall be deemed to have ratified the transaction and to the extent of the credit so created to have accepted the obligation of the purchasing bank as reflected by said deposit ticket in satisfaction of the obligation of the selling bank, and the obligation of the selling bank to the extent of such credit shall be deemed paid and satisfied within the meaning of this article. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 10.]

Art. 342—311. Existing Corporations—Powers Retained.—All corporations which on the effective date of this Act[1] were subject to the provisions of Title 16 of the Revised Civil Statutes of Texas, 1925, as amended,[2] or any chapter thereof, shall retain the powers provided in their charters. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 11.]

1 Effective 90 days after May 11, 1943, date of adjournment.
2 Articles 342 to 548.

Art. 342—312. Amendment of Articles of Association—Rights of Stockholders upon Increase in Capital.—Subject to the provisions of this Code,[1] any state bank may amend its articles of association for any lawful purpose.

If the owners of record of two-thirds of the capital stock, at any regular meeting of stockholders, or any special meeting called for that purpose, vote to amend the charter, the board of directors shall prepare, execute in the manner provided for the execution of articles of association, and file with the Commissioner an amendment to the articles of association. If the Commissioner finds that the amendment is not violative of law and does not prejudice the interests of depositors and creditors or the public, he shall approve such amendment and deliver to the bank a certified copy thereof, and said amendment shall thereupon become effective; provided, however, that if a state bank does not have the power to receive demand deposits, no amendments of its articles of association adopting any power provided under subsection (a), (b), (c), (d), or (f) of Article 1 of this chapter[2] and no amendment changing the domicile of any state bank to another city or town shall be effective until approved by the State Banking Board in the manner provided for the approval of an original application for charter. Each stockholder of a state bank shall be entitled to his proportionate part of any increase of stock effected out of surplus funds or undivided profits, and shall be entitled to subscribe for his proportionate share of any capital increase to be paid in cash; provided, however, that each stockholder or his assignee, in event he elects to assign such right of subscription, shall subscribe for and pay the amount of such subscription to the corporation within ten 10 days after the stockholders

have adopted such amendment, otherwise the board of directors may allocate the unsubscribed or unpaid portion of the increase among the other stockholders or otherwise as they deem to the best interest of the bank. Provided further, that any state bank may, under the provisions of this Code, amend its articles of association so as to extend its corporate existence for a period not exceeding fifty (50) years from the effective date of such amendment. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 12.]

1 Articles 342—101 to 342—911.
2 Article 342—301.

Art. 342—313. Conversion of State Bank into National Bank.—The owners of record of two-thirds of the capital of any solvent state bank may, by vote or written consent, authorize its officers and directors to take such action as may be necessary under the laws of the United States to convert it into a national bank, provided, however, that the state bank shall not cease to be a state bank subject to the supervision of the Commissioner until (1) the Commissioner has been given written notice of the intention to convert for at least thirty (30) days, (2) such bank has published notice thereof at least once a week for four (4) weeks in a newspaper of general circulation published in the county of its domicile, or, if no such newspaper is published in the county, in an adjacent county, (3) the bank has filed with the Commissioner a transcript of the conversion proceedings, sworn to by a majority of the qualified directors and a publisher's certificate showing publication of the notice above provided, and (4) such bank has received a certificate of authority to do business as a national bank. [Acts 1943, 48th Leg., p. 137, ch. 97, subch. III, art. 13.]

CHAPTER 4.—STOCK, STOCKHOLDERS, BY-LAWS, DIRECTORS, OFFICERS, EMPLOYEES

Art.
342—401. Transfer of Stock.
342—402. Stockholders Meetings—Quorum—Voting.
342—403. By-Laws—Adoption and Amendment.
342—404. Directors—Number—Change of Number.
342—405. Directors—Qualifications.
342—406. Directors—Election—Failure to Elect—Term—Vacancy.
342—407. Directors—Oath and Acceptance.
342—408. Directors—Meetings—Quorum.
342—409. Directors—Duties—Approval of Loans and Expenses—Election, Term and Compensation of Officers.
342—410. Directors, Officers and Employees—Liability—Reimbursement for Expenses.
342—411. Officers—Transfer of Securities—Bills Payable—Rediscounts—Sale of Notes.
342—412. Officers and Directors—Removal.
342—413. Officers, Employees, Agents—Embezzlement, Abstraction and Misapplication—Penalty.
342—414. Officers, Employees, Directors—False Entries and Statements—Penalty.
342—415. Officers, Directors, Employees, Stockholders—Destruction of Bank Records—Penalty.
342—416. Officers, Employees—Certification of Check Without Funds—Penalty.
342—417. Officers, Directors and Employees—Accepting Bonuses—Penalty.

Article 342—401. Transfer of Stock.—Shares of stock in a state bank shall be personal property and transferable only upon its books, and it shall be the duty of the officers of a state bank to transfer such stock upon its books at the request of the transferee, supported by a transfer in writing or other legally effective transfer. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 1.]

Art. 342—402. Stockholders Meetings—Quorum—Voting.—The stockholders of each state bank shall hold one (1) regular meeting each year at the time prescribed in its by-laws, and such special meetings as may be deemed necessary after notice as prescribed in the by-laws. At all stockholders' meetings the owners of a majority of the capital stock, present in person or by proxy, shall constitute a quorum. In the absence of a quorum a stockholders' meeting may be adjourned from time to time without notice to the stockholders. Each stockholder of record shall be entitled to one (1) vote for each share of stock owned by him, which he may cast in person or by proxy duly authorized in writing filed among the records of the bank. Stock owned of record by an estate shall be voted by its executor, administrator, guardian, trustee or personal representative and stock held in a fiduciary capacity shall be voted by the fiduciary. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 2.]

Art. 342—403. By-Laws — Adoption and Amendment.—The stockholders of a state bank shall adopt by-laws which may be amended at any regular annual meeting of the stockholders, or, if the purpose of the meeting is stated in the notice, at any special meeting of the stockholders called for that purpose. Neither the by-laws nor any amendment thereto shall be effective until filed with the Commissioner and approved by him. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 3.]

Art. 342—404. Directors—Number—Change of Number.—A state bank shall have not less than five (5) nor more than twenty-five (25) directors, the majority of whom shall be residents of the State of Texas. The number of directors may be changed from time to time within the limits above prescribed, without amendment of the charter, by resolution adopted at any regular meeting of stockholders or any special meeting of stockholders called for the purpose of electing directors, which resolution shall be spread on the minutes of the meeting, and a certified copy shall be filed with the Commissioner, for which filing no fee shall be charged. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 4.]

Art. 342—405. Directors—Qualifications.—No person shall serve as director of a state bank when (1) the bank holds a judgment against him, or (2) he is not the bona fide owner in his own right of unpledged and unencumbered stock in said bank of a par value of One Thousand Dollars ($1,000), or if the capital is not over Seventeen Thousand Five Hundred Dollars ($17,500), of a par value of Five Hundred Dollars ($500). [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 5.]

Art. 342—406. Directors—Election—Failure to Elect—Term—Vacancy.—Each state bank shall, at its regular annual meeting of stockholders, or at some adjournment thereof, or at a special meeting of stockholders called for such purpose, elect directors who shall serve until the next regular annual meeting of stockholders and until their successors have been elected and have qualified. If any state bank fails to elect directors within sixty (60) days after its regular annual meeting, the Commissioner may, after ten (10) days' notice by mail, call a meeting of stockholders for the purpose of electing directors, and if the stockholders do not elect directors at the meeting so called, the Commissioner may close the bank and liquidate it pursuant to the provisions of Chapter VIII of this Code.[1] Any vacancy on the Board of directors shall be filled by a majority vote of the remaining directors. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 6.]

1 Articles 342—801 to 342—816.

Art. 342—407. Directors—Oath and Acceptance.—Prior to taking office and within thirty (30) days after his election each director in a state bank

shall take oath that he is the bona fide owner in his own right of at least the minimum number of shares necessary for qualification; that such shares are not pledged or otherwise encumbered; that he accepts the position as director; and that he will not violate, nor knowingly permit any officer, director or employee of the bank to violate, the laws of the State of Texas in the conduct of the business of the bank; and that he will diligently perform his duties as director. Such affidavit shall be sworn and subscribed to before a notary public, spread upon the minutes of the directors' meeting, and a duplicate original thereof filed with the Commissioner. Failure to comply with any provision of this article shall forfeit the office and the same shall be deemed vacant. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 7.]

Art. 342—408. Directors—Meetings—Quorum.—The directors of a state bank shall hold at least one regular meeting each month as prescribed in the by-laws. Special meetings may be called in such manner and upon such notice as may be prescribed in the by-laws. A majority of the qualified directors shall constitute a quorum. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 8.]

Art. 342—409. Directors—Duties—Approval of Loans and Expenses—Election, Term and Compensation of Officers.—Subject to the by-laws the board of directors of a state bank shall supervise the conduct of its business and may promulgate rules and regulations relative thereto and prescribe the duties and responsibilities of the officers and employees. At each regular meeting the board shall review and approve or disapprove each loan and investment made and item of expense incurred since the last meeting; and shall examine and take appropriate action upon the over-draft, suspense and bills of exchange accounts. Such approval, disapproval or other action of the board shall be spread upon its minutes.

By a majority vote of its qualified members, the board shall elect a president, one or more vice presidents, and a cashier or secretary, and such other officers of the bank as may be prescribed by the by-laws or deemed necessary by the directors and fix their compensation; provided, however, that the president shall be a member of the board of directors. Each officer of the bank shall serve only during the pleasure of the board, and any contract for a fixed term of employment shall be void. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 9.]

Art. 342—410. Directors, Officers and Employees—Liability—Reimbursement for Expenses.—Except as otherwise provided by statute, directors and officers of state banks shall be liable for financial losses sustained by state banks to the extent that directors and officers of other corporations are now responsible for such losses in equity and common law. Further provided that any officer or director who does not approve of any act or omission of the board, and desires to relieve himself from any personal liability for such act or omission shall promptly announce his opposition to such act or omission and cause such opposition to be spread upon the minutes of the directors' meeting. If for any reason such opposition is not spread upon the minutes of the directors' meeting, he shall promptly report the facts to the Commissioner.

Any person may be indemnified or reimbursed by a state bank, through action of its board, for reasonable expenses actually incurred by him in connection with any action, suit or proceeding to which he is a party by reason of his being or having been a director, officer or employee of said bank. If there is a compromise of such an action or threatened action, there shall be no indemnification or reimbursement for the amount paid to settle the claim or for reasonable expenses incurred in connection with such claim without the vote, or the written consent, of the owners of record of a majority of the stock of the bank. Provided, however, that no such person shall be indemnified or reimbursed if he has been finally adjudged to have been negligent in the performance of his duties or to have committed any act or to have failed to perform any duty for which there is a common law or statutory liability. This article shall not bar any right or action to which such person would be entitled at common law or any other statute of this State. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 10.]

Art. 342—411. Officers—Transfer of Securities—Bills Payable—Rediscounts—Sale of Notes.—No officer of a state bank shall endorse, pledge, assign, transfer, rediscount or in anywise dispose of any note, bond, security or other obligation held by the bank, nor create any bills payable, unless he shall have previously been duly authorized to do so by the board of directors, as reflected by the minutes of its meeting. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 11.]

Art. 342—412. Officers and Directors—Removal.—If the Commissioner finds that an officer, director or employee of a state bank violates the provisions of this Code[1] or any other law applicable to state banks; or refuses to comply with the provisions of this Code; wilfully neglects to perform his duties; is guilty of any fraudulent or questionable practice in the conduct of the bank's business that endangers the bank's reputation and standing in the community; or refuses to submit to examination under oath, the Commissioner shall call together the directors of said corporation and lay before them the facts and demand a discontinuance of such practices and compliance with the provisions of this Code. Provided, however, that if the Commissioner subsequently finds, through examination, that the offending officer, director or employee has continued to violate the provisions of this Code or any other law applicable to state banks, or has refused to comply with the provisions of this Code, and further finds that his removal is to the best interest of such bank and its depositors, creditors and stockholders, the Commissioner may serve him by mail at his last known address with an order of removal, effective ten (10) days after the mailing of such notice, which shall state the ground or grounds for such removal with reasonable certainty. Unless such officer, director or employee shall within ten (10) days after the date of mailing of such notice of removal, appeal to the State Banking Board, such order shall be effective and final. An officer, director or employee desiring to appeal from such order shall file notice of appeal with each member of the State Banking Board within such ten (10) days, and the State Banking Board shall notify the appellant of the time and place of hearing fixed by it. At such hearing the appellant shall be given a reasonable opportunity to be heard, and thereafter if the State Banking Board finds that the appellant is guilty of any charge stated by the Commissioner in his notice of removal sufficient to justify his removal and finds that it is to the best interest of the bank involved, its depositors, creditors and stockholders that the appellant be removed, the order of the Commissioner shall thereupon become final; otherwise the State Banking Board may by appropriate resolution set aside the order of removal theretofore made by the Commissioner. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 12.]

[1] Articles 342—101 to 342—911.

Art. 342—413. Officers, Employees, Agents—Embezzlement, Abstraction and Misapplication—Penalty.—Any officer, employee or agent of a state bank who embezzles, fraudulently abstracts or wilfully misapplies money, funds, credit or other asset of such bank shall, upon conviction, be fined not exceeding Five Thousand Dollars ($5,000), or confined in the

penitentiary not more than ten (10) years, or both. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 13.]

Art. 342—414. Officers, Employees, Directors —False Entries and Statements—Penalty.—Any officer, director or employee of a state bank who knowingly makes a false entry upon the books or records or in any report or statement of such bank, or knowingly gives a false answer to any question propounded to him while being examined under oath by the Commissioner, Deputy Commissioner, Departmental Examiner, or any Examiner, shall, upon conviction, be fined not exceeding Five Thousand Dollars ($5,000), or confined in the penitentiary not more than ten (10) years, or both. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 14.]

Art. 342—415. Officers, Directors, Employees, Stockholders—Destruction of Bank Records—Penalty.—Any officer, director, employee or stockholder of a state bank who, for the purpose of concealing any fact or information from the Banking Commissioner, Deputy Commissioner, Departmental Examiner or any Examiner, or for the purpose of suppressing any evidence material to any pending or anticipated suit or legal proceeding, abstracts, removes, destroys, or conceals any book or record of such bank shall, upon conviction, be fined not exceeding Five Thousand Dollars ($5,000), or confined in the penitentiary not more than five (5) years, or both. Destruction or disposition of any book or record of a state bank after the period which it is required to be preserved by any rule or regulation of the Banking Section under Article 13 of Chapter I [1] shall raise a rebuttable presumption that this article has not been violated. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 15.]

[1] Article 342—113.

Art. 342—416. Officers, Employees—Certification of Check without Funds—Penalty.—Any officer or employee of a state bank who certifies any check drawn upon such bank, if the drawer does not have sufficient credit in his checking account to pay such check, unless he acts in good faith with reason to believe that the credit is sufficient, shall, upon conviction, be fined not exceeding Five Thousand Dollars ($5,000), or confined in the penitentiary not more than five (5) years, or both. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 16.]

Art. 342—417. Officers, Directors and Employees—Accepting Bonuses—Penalty.—Any officer, director or employee of a state bank who demands, or directly or indirectly receives a bonus, commission or other consideration on account of the making of a loan or investment or the purchase of any asset by such bank shall, upon conviction, be fined not exceeding Five Thousand Dollars ($5,000), or confined in the penitentiary not more than five (5) years, or both. [Acts 1943, 48th Leg., p. 144, ch. 97, subch. IV, art. 17.]

CHAPTER 5.—LOANS AND INVESTMENTS

Art.
342—501. Domicile—Furniture and Fixtures—Depreciation—Exception.
342—502. Other Real Estate—Depreciation—Exception.
342—503. Engaging in Commerce—Exception.
342—504. Real Estate Loans—Limitations.
342—505. Building and Loan Shares—Lawful Investment.
342—506. Own Stock—Security—Acquisition—Disposition—Investment Certificates—Maturity.
342—507. Limit of Liability of any One Borrower—Exceptions—Penalty.
342—508. Loan Fees Prohibited—Exception.
342—509. Loans to and Transactions with Officers and Directors—Penalty.
342—510. Loan of Trust Funds to Officers, Directors or Employees—Penalty.
342—511. Same Powers as National Bank.

Article 342—501. Domicile—Furniture and Fixtures—Depreciation—Exception.—No state bank shall, without prior written consent of the Commissioner, invest an amount in excess of fifty per cent (50%) of its capital and certified surplus in a domicile (including land and building) nor an amount in excess of fifteen per cent (15%) of its capital and certified surplus in its furniture and fixtures. Such domicile shall be depreciated each year not less than two and one-half per cent (2½%) of its cost to the bank until such domicile is charged down to twenty-five per cent (25%) of its cost, and the furniture and fixtures shall be depreciated each year not less than ten per cent (10%) of their cost to the bank until said account is charged down to One Dollar ($1), provided that the Commissioner may permit a lesser percentage to be charged off during any year. [Acts 1943, 48th Leg., p. 148, ch. 97, subch. V, art. 1.]

Art. 342—502. Other Real Estate—Depreciation—Exception.—No state bank shall acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the bank. No state bank shall assign an original book value to such real estate in excess of its reasonable value at the time of acquisition and such real estate shall be depreciated each year ten per cent (10%) of such original book value until charged down to twenty-five per cent (25%) of its original book value; provided that the Commissioner may permit a lesser percentage to be depreciated during any year. [Acts 1943, 48th Leg., p. 148, ch. 97, subch. V, art. 2.]

Art. 342—503. Engaging in Commerce—Exception.—No state bank shall invest its funds in trade or commerce by buying and selling goods, wares, merchandise or chattels or by owning or operating an industrial plant except when necessary to avoid loss on a loan or investment previously made in good faith. [Acts 1943, 48th Leg., p. 148, ch. 97, subch. V, art. 3.]

Art. 342—504. Real Estate Loans—Limitations.—No state bank shall make a loan upon security of real estate or invest its funds in obligations secured by real estate unless:

1. The security is a first lien upon such real estate or the loan or investment made by the bank is wholly guaranteed by the Administrator of Veterans Affairs under Title III of the Serviceman's Readjustment Act of 1944,[1] as amended from time to time.

2. The total "net balance" owing upon the indebtedness secured by such lien (a) does not exceed fifty per cent (50%) of the appraised value of such real estate; or (b) does not exceed sixty per cent (60%) of the appraised value of such real estate and such loan or obligation provides for uniform monthly, quarterly, semi-annual, or annual reductions of principal in such amounts as to retire forty per cent (40%) thereof within five (5) years of the date of the bank's loan or investment; or (c) does not exceed sixty-six and two-thirds per cent (66⅔%) of the appraised value of such real estate when such real estate consists of "residential real estate" and such loan provides for repayment in equal monthly installments in such amounts as to retire the same in its entirety, both as to principal and interest in not more than two hundred and forty (240) months from the date thereof and further provides for equal monthly deposits during the term thereof in amounts

sufficient to pay as they accrue the premiums on fire and tornado insurance and all taxes assessed against the security. The aggregate of loan and investments of the class provided for in this Subsection (c) of Section 2, made by any State bank shall never, without the written consent of the Commissioner exceed the certified surplus and capital of such bank.

The term "residential real estate" as used in this Subsection (c) of Section 2, shall mean land on which is situated a dwelling of not more than four (4) family units, the primary use of which is occupancy as a home.

The term "net balance" as used in this Section 2 shall mean the balance obtained after deducting from any loan or obligation the portion thereof guaranteed by the Administrator of Veterans Affairs under Title III of the Serviceman's Readjustment Act of 1944, as amended from time to time.

3. Such loan or obligation is supported by (a) either an attorney's opinion or a mortgagee's title insurance policy; (b) evidence of payment of all taxes other than taxes for the current year; (c) a written appraisal of such real estate signed by an appraiser; and (d) if the improvements situated upon such real estate constitute an appreciable portion of the security, adequate coverage insuring the interest of the bank against loss by fire and tornado. The above limitations shall not apply to a loan or obligation insured by the Federal Housing Administration, or to security taken to prevent loss on a loan or investment previously made in good faith. [Acts 1943, 48th Leg., p. 148, ch. 97, subch. V, art. 4; Acts 1945, 49th Leg., p. 149, ch. 99, § 1.]

1 38 U.S.C.A. § 694, et seq.

Art. 342—505. Building and Loan Shares—Lawful Investment.—A state bank may invest in, or lend on the security of, shares of stock insured by the Federal Savings and Loan Insurance Corporation which is issued by any building and loan association or savings and loan association domiciled in this State. [Acts 1943, 48th Leg., p. 148, ch. 97, subch. V. art. 5.]

Art. 342—506. Own Stock—Security—Acquisition—Disposition—Investment Certificates—Maturity.—No state bank shall acquire a lien by pledge or otherwise on its shares of stock nor purchase or acquire title to such stock, except to prevent loss upon a loan or investment previously made in good faith. If a state bank acquires such lien upon its stock or acquires title to its stock under the exception provided in this article, it shall not permit such lien to continue for more than two (2) years, nor shall it hold title to such stock for more than one (1) year. Provided that the stock on which the bank has a lien plus the stock held by it as owner shall not exceed, in par value, the aggregate of all surplus accounts and undivided profits of said bank; provided, however, that any provision of this Code[1] to the contrary notwithstanding, a state bank may make loans, charge or collect in advance interest thereon at a rate not exceeding that permitted by law, together with other charges permitted by this Code, and take as collateral therefor its investment certificates, issued simultaneously with the granting of the loans or otherwise, requiring weekly, semimonthly, monthly or other regular periodic installments to be paid upon such certificates; such loans, subject to acceleration for specified causes, shall mature when the withdrawal value of the investment certificate or certificates securing the same equals the face amount of the note evidencing the loans, and shall be comparable in form and principle of operation to sinking-fund loans which building and loan associations are now authorized to make under the laws of this State. [Acts 1943, 48th Leg., p. 148, ch. 97, subch. V, art. 6.]

1 Articles 342—101 to 342—911.

Art. 342—507. Limit of Liability of any One Borrower—Exceptions—Penalty.—No state bank shall permit any person or any corporation to become indebted or in any other way liable to it in an amount in excess of twenty-five per cent (25%) of its capital and certified surplus. The phrase "indebted or in any other way liable" shall be construed to include liability as partner or otherwise. The above limitation shall not apply to the following classes of indebtedness or liability:

1. Liability as endorser or guarantor of commercial or business paper discounted by or assigned to the bank by the actual owner thereof, who has acquired it in the ordinary course of business.

2. Indebtedness evidenced by bills of exchange or drafts drawn against actually existing values and secured by a lien upon goods in transit with shippers' order bills of lading or comparable instruments attached.

3. Indebtedness evidenced by notes or other paper secured by liens upon agricultural products, manufactured goods, or other chattels in storage in bonded warehouses or elevators with warehouse or elevator receipts attached, when the value of the security is not less than one hundred twenty-five per cent (125%) of the indebtedness and the bank's interest therein is adequately insured against loss, with insurance policies or certificates of insurance attached.

4. Deposit in a reserve depositary, or a Federal Reserve Bank.

5. Indebtedness arising out of the daily transaction of the business of any clearing house association in this State.

6. Bonds and other legally created general obligations of the State of Texas or of any county, city, municipality or political subdivision thereof and indebtedness of the United States of America, the Reconstruction Finance Corporation or other instrumentality or agency of the United States Government.

7. Any portion of any indebtedness which the United States Government, the Reconstruction Finance Corporation or any other agency or instrumentality of the United States Government has unconditionally agreed to purchase or has unconditionally guaranteed as to payment of both principal and interest.

Any officer, director or employee of a state bank who knowingly violates or participates in the violation of any provision of this article shall upon conviction be fined not more than Five Thousand Dollars ($5,000) or confined in the state penitentiary not more than five (5) years, or both. [Acts 1943, 48th Leg., p. 148, ch. 97, subch. V, art. 7.]

Art. 342—508. Loan Fees Prohibited—Exception.—No bank shall charge or collect any loan fee or any other charge, by whatever name called, for the granting of a loan. Provided, however, a bank may require an applicant for a loan or discount to pay the cost of any abstract, attorney's opinion or title insurance policy, or other form of insurance, and filing or recording fees or appraisal fees. Expenses necessary or proper for the protection of the lender, and actually incurred in connection with the making of the loan may be charged, and further provided that a bank may charge any borrower the reasonable value of services rendered in connection with the making of any loan, including the drawing of notes, the taking of acknowledgments and affidavits, the preparation of financial statements, and the investigation or analysis of the financial responsibility of the borrower or any endorser, surety or co-signer, in an amount agreed upon, but not to exceed One Dollar ($1) for each Fifty Dollars ($50) or fractional part thereof loaned; but the charges for such services shall not be deemed a loan fee or interest or compensation for the use of the money loaned; and the last charge next above shall not be

collected unless the loan is actually made. [Acts 1943, 48th Leg., p. 148, ch. 97, subch. V, art. 8.]

Art. 342—509. Loans to and Transactions with Officers and Directors—Penalty.—Without the prior approval of a majority of the board of directors spread upon its minutes, no state bank shall: (1) permit any officer thereof to become indebted to it, directly or indirectly, in any sum whatsoever, nor any director who is not an officer thereof to become indebted to it, directly or indirectly, in a sum exceeding ten per cent (10%) of its capital and certified surplus, or (2) sell any of its assets to any of its officers or directors, or purchase any asset in which any officer or director has any interest. No director shall be qualified to vote on any resolution that relates to any loan or the purchase or sale of any asset in which transaction such director is interested. Any officer or director who knowingly participates in or permits any violation of any of the provisions of this article shall, upon conviction, be fined not more than Five Thousand Dollars ($5,000), or confined in the State penitentiary for not more than five (5) years, or both. [Acts 1943, 48th Leg., p. 148, ch. 97, subch. V, art. 9.]

Art. 342—510. Loan of Trust Funds to Officers, Directors or Employees—Penalty.—No state bank shall directly or indirectly lend any funds or money held by it in trust to any officer, director, or employee of such bank. Any officer, director or employee borrowing or participating in or permitting the lending of trust funds in violation of this article shall upon conviction be fined not more than Five Thousand Dollars ($5,000) or confined in the State penitentiary not more than five (5) years, or both. [Acts 1943, 48th Leg., p. 148, ch. 97, subch. V, art. 10.]

Art. 342—511. Same Powers as National Bank.—Any provision of this Code [1] to the contrary notwithstanding, any state bank may make any loan or investment which such bank could make were it operating as a national bank, and the making of such loan or investment shall not constitute a violation of any penal provision of the statutes of the State. [Acts 1943, 48th Leg., p. 148, c. 97, subch. V, art. 11.]

1 Articles 342—101 to 342—911.

CHAPTER 6.—SURPLUS, DIVIDENDS, LIABILITIES, UNINVESTED TRUST FUNDS, PREFERENCES, RESERVES, DEBENTURES AND WITHDRAWALS

Art.
342—601. Surplus — Certified Surplus — Mandatory Transfers.
342—602. Liability Limit—Exceptions.
342—603. Pledge of Assets—Securing Depositors.
342—604. Uninvested Trust Funds—Segregation.
342—605. Preferences.
342—606. Cash Reserve—Reserve Depositaries—Amount Carried.
342—607. Capital Notes or Debentures—Capital Defined.
342—608. Limitation Upon Withdrawals.

Article 342—601. Surplus—Certified Surplus—Mandatory Transfers.—Each state bank shall maintain an account to be known as "surplus," any part of which account may, from time to time, be certified, which portion of the surplus shall be known as "certified surplus," before declaring any dividend each state bank shall transfer to "certified surplus" an amount not less than ten per cent (10%) of the net profits of such bank earned since the last dividend was declared; provided, however, that this article shall not require a transfer to certified surplus of a sum which would increase the certified surplus to more than the capital of the bank. Except to absorb losses in excess of undivided profits and uncertified surplus, such certified surplus shall not be reduced without the prior written consent of the Commissioner. The Board of Directors shall, in connection with each transfer to or reduction in the certified surplus, promptly file with the Commissioner its certificate reflecting such transfer or reduction. The certified surplus accounts maintained by state banks on the effective date of this Act,[1] shall be deemed "certified surplus" within the purview of this article. [Acts 1943, 48th Leg., p. 152, ch. 97, subch. VI, art. 1.]

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

Art. 342—602. Liability Limit—Exceptions.—No state bank shall without the prior written consent of the Commissioner be indebted or liable for an amount in excess of its capital and certified surplus except on account of the following:

1. Money on deposit with or collected by it.
2. Bills of exchange, checks or drafts drawn against money actually on deposit to the credit of the bank or due to said bank.
3. Liability to stockholders on account of the capital stock, surplus and undivided profits.
4. Liabilities arising under or pursuant to the provisions of the Federal Deposit Insurance Corporation Act,[1] the Federal Reserve Act,[2] the Reconstruction Finance Corporation Act,[3] the Federal Agricultural Credit Act of 1923,[4] or pursuant to any or all amendments to any or all of said acts.
5. Indebtedness evidenced by investment certificates or certificates of indebtedness.
6. Liability on endorsement of notes, bills of exchange or other evidences of indebtedness actually owned by said bank and sold or endorsed with or without recourse, provided said sale or endorsement shall have been previously approved by the board of directors of said bank. [Acts 1943, 48th Leg., p. 152, ch. 97, subch. VI, art. 2.]

1 12 U.S.C.A. § 264.
2 12 U.S.C.A. § 221 et seq.
3 15 U.S.C.A. §§ 601-617.
4 12 U.S.C.A. §§ 1151-1322.

Art. 342—603. Pledge of Assets—Securing Depositors.—No state bank shall pledge, or create any lien upon, any asset or in any way secure the repayment of any deposit except when specifically authorized to do so by law, except that it may pledge its assets to secure a deposit of or by the United States Government, the State of Texas, or any agency or instrumentality of either. This article does not prohibit the pledge of assets to secure the repayment of money borrowed. Any act, deed, conveyance, pledge or contract in violation of this article shall be void. [Acts 1943, 48th Leg., p. 152, ch. 97, subch. VI, art. 3.]

Art. 342—604. Uninvested Trust Funds—Segregation.—Unless the trust instrument provides otherwise, funds received in trust by a state bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business, unless it shall first set aside in the trust department United States government bonds or other securities eligible under the laws of this State for the investment of funds by guardians or trustees of a market value equivalent to the amount so used. In event of the liquidation of such bank the owners of the funds held in trust for investment shall have a lien upon the bonds or other securities so set apart. [Acts 1943, 48th Leg., p. 152, ch. 97, subch. VI, art. 4.]

Art. 342—605. Preferences.—No state bank shall transfer, assign, convey, mortgage, or create any lien upon any asset belonging to it or make any payment in money or otherwise upon any indebtedness after the commission of any act of insolvency

or in contemplation thereof, or while such bank is insolvent, with a view to prevent the application of its assets in accordance with the provisions of this Code,[1] and any transfer, assignment, conveyance, mortgage, payment or other act in violation of this article shall be void. [Acts 1943, 48th Leg., p. 152, ch. 97, subch. VI, art. 5.]

1 Articles 342—101 to 342—911.

Art. 342—606. Cash Reserve—Reserve Depositaries—Amount Carried.—Every state bank having a capital stock of less than Twenty-five Thousand Dollars ($25,000) capital shall at all times maintain a cash reserve of not less than twenty per cent (20%) of the aggregate amount of its demand deposits and five per cent (5%) of all other deposits, and every state bank having a capital of Twenty-five Thousand Dollars ($25,000) or more shall maintain a cash reserve of not less than fifteen per cent (15%) of its aggregate demand deposits and five per cent (5%) of all other deposits, provided that any member of the Federal Reserve System which maintains the reserves required by that System shall not be deemed to have violated the provisions of this article. Such cash reserve shall be kept in the vaults of the bank or on deposit with Federal Reserve banks or banks incorporated by any state or the United States with not less than Fifty Thousand Dollars ($50,000) capital approved as reserve depositaries by the Commissioner. No state bank shall deposit an amount in excess of twenty per cent (20%) of its capital, certified surplus and deposits in any one reserve depositary. [Acts 1943, 48th Leg., p. 152, ch. 97, subch. VI, art. 6.]

Art. 342—607. Capital Notes or Debentures—Capital Defined.—With the prior written approval of the Commissioner any state bank may, at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures, which shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors or the holders of investment certificates.

The term "capital" as used in this article relating to solvency of state banks shall be construed to embrace the amount of outstanding capital notes and debentures legally issued by any state bank and sold by it to the Reconstruction Finance Corporation or any other corporation or individual. The capital stock of any such bank may be deemed to be unimpaired when the amount of capital notes and debentures as represented by cash or sound assets exceeds the impairment as found by the Commissioner. Before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of its capital (disregarding the notes or debentures to be retired) must be paid in cash, to the end that the sound capital assets shall at least equal the capital stock of the bank. Provided, in the event the net profits are not sufficient to meet the interest and retirement payments on the capital notes or debentures issued prior to the effective date of this Act,[1] the Commissioner may require the bank's stockholders to pay into the bank in cash an amount sufficient to meet the deficiency. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such bank, and shall not be held liable for assessments to restore impairment in the capital of such bank. [Acts 1943, 48th Leg., p. 152, ch. 97, subch. VI, art. 7.]

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

Art. 342—608. Limitation Upon Withdrawals.—Upon the request of any state bank which is suffering from or threatened with unusual and excessive withdrawals due to financial conditions, panic or crisis, the Commissioner may, if he deems such action necessary in order to prevent unnecessary loss to or preference among the depositors and creditors of such bank, and to preserve the financial structure of the bank and its usefulness to the community, limit the right of withdrawal by or payment to depositors and creditors, and other persons to whom the bank is liable, provided, however, that such limitations shall be uniform in their application to each class of liability, and shall not defer any person in his right to full payment or withdrawal for more than ten (10) days. [Acts 1943, 48th Leg., p. 152, ch. 97, subch. VI, art. 8.]

CHAPTER 7.—DEFINITIONS, COLLECTIONS, DEPOSITORY CONTRACTS

Art.
342—701. Definitions.
342—702. Collections—Relation of Agency—Conditional Credit.
342—703. Collections—Scope of Agency—Liability of Agents.
342—704. Collections — Payment — Refusal — Dishonor.
342—705. Collections — Final Payment — Transmission.
342—706. Collections—Proceeds—Preference in Insolvency.
342—707. Depository Contract—Limitation of Actions.
342—708. Deposits—Discontinuance or Reduction of Interest.
342—709. Adverse Claims to Deposits.
342—710. Joint Deposits—Minors, Married Women—Trustees.
342—711. Forged, Unauthorized, Raised and Altered Items.
342—712. Items—Payment After Hours—Holidays—Stop Payment.

Article 342—701. Definitions.—As used in this chapter[1] the following terms, unless otherwise clearly indicated by the context, have the meanings specified below:

(a) The term "bank" includes any person, firm or corporation engaged in the business of receiving and paying deposits. To the extent that the Legislature has authority to legislate relative to such banks the term includes national banks and banks outside this State.

(b) The term "drawee bank" means the bank against which an item is drawn and by which an item is payable, including banks issuing cashiers' checks, or accepting drafts.

(c) The term "owner of item" shall mean the person entitled to the proceeds of the item.

(d) The term "item" means a check, note or other negotiable or nonnegotiable instrument providing for the payment of money.

(e) The term "unconditional credit" shall be construed to mean unconditional and irrevocable credit in a bank or upon an obligation of the bank or person receiving such credit. Provided, however, in event of the failure of a bank which is a member of a clearing house association, checks, drafts and other conditional credits given in connection with clearing house settlements shall be deemed unconditional credits to the extent necessary to pay those items involved in the settlement which the failing bank was, at the time of presentment, authorized or obligated to pay. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 1.]

1 Articles 342—701 to 342—712.

Art. 342—702. Collections—Relation of Agency—Conditional Credit.—Except when otherwise provided by agreement, and except as to holders of negotiable instruments for value without notice, when

an item is deposited with or received by a bank, the receiving bank (which will be hereafter referred to as the "original agent") and each bank, other than the drawee, to which such item is forwarded in the course of collection (which banks will hereafter be referred to as "subagents") shall be deemed the agent of the owner of the item. Such relation of agency shall exist although the original agent credits the item to the account of the owner and permits the owner to check against the credit so created, and such credit shall be conditional until the original agent has received the proceeds of the item in cash or, when authorized or accepted by it, in unconditional credit. Any withdrawal from such account during the process of collection shall first be charged to that portion of the account representing unconditional credit, and any withdrawal in excess of such unconditional credit shall be deemed an extension of credit to the owner of the item and secured by a lien upon such item and the proceeds thereof. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 2.]

Art. 342—703. Collections—Scope of Agency—Liability of Agents.—The original agent and each subagent, in the course of the collection of an item, shall, as agents of the owner of the item, be authorized:

1. To effect collection by or through: (a) forwarding the item to the drawee, if the drawee is a bank; or (b) forwarding the item to another bank for collection, which bank upon receiving the item shall become a subagent within the purview of this chapter; or (c) presenting the item across the counter of the drawee bank; or (d) presenting the item through any clearing house, or other established and recognized procedure or banking custom.

2. To receive the check or draft of the drawee, if a bank, or the check or draft of any other bank, as a step in the process of payment of the item.

3. To receive the check or draft of any subagent or of any other bank as a step in the process of transmitting the proceeds of the item from one agent to another.

4. To transmit an item or a remittance by mail, express or by any other common carrier in accordance with established banking custom.

5. To give reasonable instructions not in conflict with law or established banking customs and procedure, relative to the method of collection, payment and transmittal of the proceeds. The original agent and each subagent shall be liable for damages proximately caused by its own negligence, wrongful act, or breach of contract in connection with the collection of an item, in a sum not exceeding the amount of such item, but shall not be liable or responsible for the acts or omissions of any other agent or person or for the loss or destruction of any item or any remittance in the mail or while it is in the hands of any other common carrier or person. Further provided that no agent or subagent shall be deemed guilty of unreasonable delay if it forwards an item or remittance during the day on which it is received or during business hours of the following day. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 3.]

Art. 342—704. Collections—Payment—Refusal—Dishonor.—Except where otherwise provided in this Code,[1] or by express agreement of the parties, items presented to a drawee bank shall be received by it, subject to final adjustments and all clearing house settlements, checks, drafts, credits, advances of money, charges or entries to accounts, (including sight posting), shall be conditional and subject to revocation during the day on which the item is presented (or in case of a time item, the due date), or within twenty-four (24) hours after presentment, exclusive of Sundays and holidays, if it is finally determined that the drawee bank was not at the time of presentment (or in case of a time item, the due date) authorized or obligated to pay the item, and if the drawee bank shall within that time refuse payment and return the item, or undertake to give notice in the manner hereinafter prescribed:

1. If the item is presented across the counter for payment in cash or for deposit in the drawee bank, the drawee bank shall exercise reasonable diligence within the time above prescribed to give notice, by mail or otherwise, to the bank or person presenting the item that it has refused payment and that it holds the item subject to its or his order.

2. If the item is presented through a clearing house, the drawee bank shall, within the time prescribed, return the item to the clearing house presenting it.

3. If the item is presented by mail, the drawee bank shall within the time above prescribed deposit the item in the mail properly stamped and addressed to the bank or person presenting the same. The actual receipt of the notice provided under Section 1 above by the bank or person presenting the item, or the actual receipt of the returned item by the person, bank or clearing house, as provided in Sections 2 and 3 above, shall constitute dishonor within the purview of Article 5938 of the Revised Civil Statutes of Texas. If the drawee bank in refusing payment of any item fails to comply with the provisions of this article within the time above prescribed it shall, at the election of the owner of the item, be deemed to have accepted the item, and shall be liable for the amount thereof. If an item is presented by a bank as agent or subagent of owner, such bank may, in the absence of definite instructions from the owner, exercise the election herein provided for. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 4.]

[1] Articles 342—101 to 342—911.

Art. 342—705. Collections—Final Payment—Transmission.—An item shall be deemed paid when the bank or person presenting the same has received unconditional payment in cash, or, when authorized or accepted by him or it, in unconditional credit. The proceeds of an item shall be deemed transmitted from one agent to another when the receiving agent has received the proceeds in cash, or, when authorized or accepted by it, in unconditional credit. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 5.]

Art. 342—706. Collections—Proceeds—Preference in Insolvency.—If any subagent, having received payment of any item or transmittal of the proceeds from another subagent, fails without transmitting the proceeds to its preceding agent, or if the original agent having received payment or transmittal of the proceeds from a subagent, fails while the relation of the agency exists between it and the former owner of the item, such former owner shall have a preferred claim against the assets of the failed bank whether or not such assets were augmented or increased by the proceeds of the item. Provided that if an item is deposited with the original agent for collection and credit, the relation of agency shall cease when such original agent has received payment of the item or transmittal of the proceeds thereof, and the relation of debtor and creditor will arise between such agent and the former owner of the item. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 6.]

Art. 342—707. Depository Contract—Limitation of Actions.—The contract of deposit between a bank and a depositor, whether evidenced by deposit tickets or otherwise shall be deemed a contract in writing within the purview of Article 5527 of the Revised Civil Statutes of Texas. The cause of action on any such depository contract, other than a time deposit, shall not accrue until the bank has denied liability and given the depositor notice thereof. Provided that the delivery to the depositor of a statement of his account or pass book reflecting the balance, or the mailing of a statement of such account (with or with-

out cancelled items) to the depositor at his address as reflected by the books of the bank, shall constitute a denial of any liability on the part of the bank in excess of the balance reflected by such statement or pass book, and notice thereof to the depositor, and, to the extent of any excess over the balance reflected shall accrue the cause of action. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 7.]

Art. 342—708. Deposits—Discontinuance or Reduction of Interest.—Any bank heretofore or hereafter contracting to pay interest on any deposit or investment certificate without a definite maturity date may reduce the rate of, or discontinue its liability for, interest by posting prior notice thereof for at least thirty (30) days in the lobby of its banking house. This article shall not affect any contractual provision relative to the reduction of the rate of, or the discontinuing of liability for, interest. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 8.]

Art. 342—709. Adverse Claims to Deposits.—No bank shall be required to recognize the claim of any third party to any deposit, or withhold payment of any deposit to the depositor or to his order, unless and until the bank is served with citation or other appropriate process issuing out of a court of competent jurisdiction in connection with a suit instituted by such third party for the purpose of recovering or establishing an interest in such deposit. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 9.]

Art. 342—710. Joint Deposits—Minors, Married Women—Trustees.—A bank may pay a present or future deposit, payable to or on the order of (a) any one of two or more persons, or (b) a minor, married woman, or other person under disability, or in form payable to or on the order of one person, for the benefit of or in trust for another, without the terms of the trust being disclosed to the bank in writing, to any one of such joint depositors (before or after the death of the other joint depositor or depositors), or to such minor, married woman, or other person under disability, or, on the death or disability of the trustee, to the beneficiary of such trust. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 10.]

Art. 342—711. Forged, Unauthorized, Raised and Altered Items.—A bank may notify a depositor by mail at his address as reflected by the records of the bank to call for cancelled items charged to his account, or may mail such cancelled items to the depositor at such address. No depositor shall be permitted to dispute any charge to his account on the ground that the same is based upon a forged, unauthorized, raised or altered item unless, within one (1) year from the time check was paid, he shall notify the bank in writing that the item in question is forged, unauthorized, raised, or altered. [Acts 1943, 48th Leg., p. 154, ch. 97, subch. VII, art. 11.]

Art. 342—712. Items—Payment After Hours—Holidays—Stop Payment.—The payment of any item on or subsequent to the day on which it purports to be payable, whether such payment is made during or after regular business hours or on a legal holiday, shall be valid. The person primarily obligated to pay an item may at any time prior to presentment thereof for payment instruct the bank by or through which the same is payable not to pay such item, and shall each sixty (60) days thereafter renew such instructions. No bank shall be legally obligated to regard such instructions or renewals unless the same are in writing, dated, signed, and describe the item with certainty. After receipt of stop payment instructions in the form above provided prior to presentment for payment of the item, a bank shall exercise reasonable diligence not to pay the same, and if it thereafter negligently pays the item it shall be liable for the damages sustained in a sum not exceeding the amount of such item. Provided that payment of the item more than sixty (60) days after the filing of the stop payment instructions or the last renewal thereof shall not be deemed negligence. [Acts 1943, 48th Leg., p. 154, c. 97, subch. VII, art. 12.]

CHAPTER 8.—LIQUIDATION

Art.

342—801. Exclusive Methods of Liquidation.
342—802. Voluntary Liquidation of Solvent State Bank — Cancellation of Charter — Resumption of Business Prohibited.
342—803. Closing State Banks—By Commissioner—By Directors.
342—804. Posting of Notice—Creation of Liens, Transfers and Payment After Closing.
342—805. Contest of Liquidation.
342—806. Inventory of Assets—Custodia Legis—Jurisdiction.
342—807. Resumption of Business—Reorganization.
342—808. Notice to Depositors and Creditors.
342—809. Presentation of Claim.
342—810. Approval—Classification and Rejection.
342—811. Appeal by Claimant.
342—812. Powers of Commissioner—Sale of Assets—Compromises and Agreements.
342—813. Expenses of Administration.
342—814. Dividends—Delayed Claims.
342—815. Final Dividend—Report—Disposition of Assets—Discharge.
342—816. Deposit of Funds by Commissioner in Banks—Preferred Payment.

Article 342—801. Exclusive Methods of Liquidation.—The methods of liquidation of state banks as provided for in this Code [1] shall be exclusive and no state bank shall make an assignment for the benefit of creditors, nor shall any court appoint a receiver for any state bank. Provided, however, nothing in this article shall prohibit the liquidation of a state bank by The Federal Deposit Insurance Corporation as provided in Article 489b, Acts 1935, Forty-fourth Legislature of Texas, Page 459, Chapter 183. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 1.]

[1] Articles 342—101 to 342—911.

Art. 342—802. Voluntary Liquidation of Solvent State Bank—Cancellation of Charter—Resumption of Business Prohibited.—A solvent state bank may be closed and liquidated upon the written consent or vote of the owners of record of two thirds of its capital, which consent, or the resolution adopted by the stockholders, shall specify the date when such bank is to be closed and shall designate one or more individuals to act as the liquidating agent, who shall conduct the liquidation under the supervision of the board of directors, after giving suitable bond as prescribed by said board and approved by the Commissioner. Prior to the closing of such state bank, the directors shall file with the Commissioner a transcript of the proceedings authorizing the closing of the bank. Notice to its depositors and creditors to present their claims shall be published once a week for thirteen (13) weeks, beginning within ten (10) days after the closing of the bank, in a newspaper of general circulation published in the county of the bank's domicile, or if no such newspaper is published in said county, in an adjacent county. Upon presentment of lawful claims, the bank shall pay its depositors and creditors, provided that such payment may be effected through a disbursing agent as authorized under Article 10 of Chapter 3 of this Code.[1] The liquidating agent shall make a written report to the stockholders at each annual meeting, a copy of which, signed and sworn to by the liquidating agent, shall be filed with the Commissioner. The stockholders at any regular or special meeting may remove the liquidating agent and name a successor. The Commissioner may from time to time examine the liquidating bank and may, if the depositors and creditors are not paid upon presentment of

their lawful claims, or if, prior to the payment of all depositors and creditors, he finds any condition which would authorize the closing of the bank were it not in voluntary liquidation, take possession of the assets and liquidate the same in the manner herein provided for the liquidation of insolvent state banks.

Upon the expiration of six (6) months from the first publication of notice as above provided, the bank shall file with the Commissioner an affidavit sworn to by a majority of the qualified directors stating that all depositors and creditors who have presented their claims have been paid the amounts due them, and listing those depositors and creditors who have not presented their claims, giving their addresses as shown by the books of the bank and the amounts respectively due each. Such affidavit shall be accompanied by a publisher's certificate showing publication of notice as above provided, and by a sum equal to the aggregate amount due the non-claiming depositors and creditors. The Commissioner shall hold such money for the benefit of said depositors and creditors in the manner provided in Article 15 of this Chapter.[2]

At any time after the filing of such affidavit, the board of directors may distribute the remaining assets among the shareholders in proportion to their ownership of stock of the bank and shall thereafter file with the Commissioner an affidavit sworn to by a majority of the qualified directors showing such distribution. The filing of such affidavit and the approval thereof by the Commissioner shall have the effect of cancelling the charter of the bank without the necessity of any judicial action.

No state bank which has been closed pursuant to the provisions of this article shall resume business or reopen without the prior written consent of the Commissioner. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 2.]

1 Article 342—310.
2 Article 342—815.

Art. 342—803. Closing State Banks—By Commissioner—By Directors.—Whenever the Commissioner, through examination, finds that the interests of depositors and creditors of a state bank are seriously jeopardized through its insolvency or imminent insolvency and that it is to the best interest of such depositors and creditors that the bank be closed and its assets liquidated, he may close and liquidate the bank, unless its board of directors close the bank and place it in his hands for liquidation. Further, if the Commissioner, through examination, finds that the capital of a state bank is seriously impaired, or that it is conducting its affairs in an unsafe, unauthorized or unlawful manner, or that it refuses to submit to examination, or is hindering examination, he shall call together the directors of such bank and lay before them the facts and require such bank to make good the matter or matters complained of. If the board of directors of such bank fails or refuses to file with the Commissioner, within ten (10) days from the date of the Commissioner's official notice, satisfactory evidence that the matter or matters complained of have been cured to the satisfaction of the Commissioner, then in such event the Commissioner shall certify such facts to the State Banking Board, whereupon the State Banking Board shall notify such directors of a hearing to be held in Austin, Texas, not less than five (5) nor more than ten (10) days from the date such notice is mailed. Said directors may appear at such hearing and be heard and after said hearing said State Banking Board may order such bank closed and its affairs liquidated as provided in this Code,[1] or said State Banking Board may enter such other order as said State Banking Board may deem appropriate. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 3.]

1 Articles 342—101 to 342—911.

Art. 342—804. Posting of Notice—Creation of Liens, Transfers and Payment after Closing.—Immediately after the closing of any state bank by its directors or by the Commissioner under the provisions of Article 3 of this chapter,[1] the Commissioner shall place an appropriate sign to that effect at the main entrance of the bank, and thereafter no judgment lien, attachment lien or other voluntary lien shall attach to any asset of said bank, nor shall the directors, officers or agents of such bank thereafter have authority to act for or on behalf of said bank or to convey, transfer, assign, pledge, mortgage or encumber any asset thereof, and any attempt by any officer, director or agent to transfer, assign, convey, mortgage or pledge any asset of the bank or to create any lien thereon or in any manner to prefer any depositor or creditor of the bank after the posting of such notice or in contemplation thereof shall be void. The Commissioner immediately after posting the notice at the entrance of such bank shall advise its correspondent banks of its closing. No correspondent shall pay any item drawn on the account of the closed bank which is presented for payment after the receipt of such advice, unless the same has been previously certified. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 4.]

1 Article 342—803.

Art. 342—805. Contest of Liquidation.—At any time within five (5) days after the Commissioner has closed any state bank under the provisions of Article 3 of this chapter,[1] such bank, acting through its directors, may sue in the district court of the bank's domicile to enjoin the Commissioner from liquidating such bank, and the court, or the judge thereof if in vacation, may, without notice or hearing, restrain the Commissioner from liquidating the assets of such bank pending hearing on the merits, and shall, in that event instruct the Commissioner to hold the assets of such bank in his possession pending final disposition of such suit. The Commissioner shall thereupon refrain from liquidating such assets, provided, however, the Commissioner may, with the approval of the district judge, take such action as may be necessary or proper to prevent loss or depreciation in the value of the assets. The court shall, as soon as possible, hear the suit upon its merits and shall enter a judgment (1) enjoining the Commissioner from liquidating the assets of such bank, or (2) refusing such injunction. Appeal shall lie from such judgment as in other civil cases, but the Commissioner, irrespective of the character of judgment entered by the trial court or any supersedeas bond filed, shall retain possession of the assets of such bank pending final disposition on appeal. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 5.]

1 Article 342—803.

Art. 342—806. Inventory of Assets—Custodia Legis—Jurisdiction.—Promptly after the Commissioner has acquired possession of the assets of a state bank for liquidation, he shall prepare and file in the office of the district clerk of the county of the bank's domicile an inventory of such assets, and the clerk shall assign a cause number to the proceedings so instituted. The assets of the bank shall be deemed to be in the custody of the court in which such proceedings are pending and all suits and orders provided for under this chapter[1] shall be deemed to be in the nature of interventions or orders in said proceedings, of which suits and orders said court shall have exclusive jurisdiction. Provided, however, that during vacation of such court, the judge thereof shall be authorized to enter any of such orders and to conduct any hearing incident thereto. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 6.]

1 Articles 342—801 to 342—816.

Art. 342—807. Resumption of Business—Reorganization.—No state bank which has been closed under the provisions of Article 3 of this Chapter [1] shall be reopened unless the contest provided for under Article 5 of this chapter [2] is finally determined adversely to the Commissioner, or unless the Commissioner, acting under order of the district court, shall authorize such reopening by a certificate under the seal of his office. The Commissioner may in such certificate place such limitations upon the right of withdrawal by, or payment of, depositors and creditors of such bank as he may deem necessary to the protection of the depositors and creditors as a whole. Provided, however, that such limitation shall be applicable alike to all unsecured depositors and creditors and shall not defer their right of full withdrawal or payment for more than eighteen (18) months from the date of the reopening of such bank, nor defer any secured depositor or creditor to any extent without his written consent.

The limitations upon the right of withdrawal or payment set out in the certificate of the Commissioner shall when the bank is reopened be binding upon all unsecured depositors and creditors and all secured depositors and creditors who have assented thereto in writing. The State of Texas, or any county, city, common or independent school district or any other political subdivision of this State, as depositor or creditor, may by the proper administrative official or officials, board, or tribunal agree to such limitations, if, in his or their opinion such agreement is to the best interest of all concerned. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 7.]

1 Article 342—803.
2 Article 342—805.

Art. 342—808. Notice to Depositors and Creditors.—Upon final determination that any state bank is to be liquidated by the Commissioner, he shall publish notice for the time and in the manner prescribed in Article 2 of this Chapter,[1] provided, however, that the Commissioner's notice shall require all depositors and creditors to file written proofs of claim with the Commissioner at his office in Austin, Texas, and the Commissioner shall within thirty (30) days after the first publication of such notice mail a similar notice to each depositor or creditor shown upon the books of the bank at his address as reflected thereby. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 8.]

1 Article 342—802.

Art. 342—809. Presentation of Claim.—Each depositor, creditor or other person asserting any claim of any character against a state bank in the process of liquidation by the Commissioner, shall within eighteen (18) months of the date of the first publication of notice, as provided for in the preceding article,[1] present his claim in writing to the Commissioner at his office in Austin, Texas. Such claims shall state the facts upon which the same are based; shall set out any right of priority of payment or other specific rights asserted by the claimant and shall be signed and sworn to by the claimant. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 9.]

1 Article 342—808.

Art. 342—810. Approval—Classification and Rejection.—Within three (3) months after receipt of any claim against a state bank which is in his hands for liquidation, the Commissioner shall, unless such time is extended by written agreement with the claimant, approve or reject such claim in whole or in part. If he approves such claim, or any part thereof, he shall classify the same and enter such claim and his action thereon in a claim register. If the Commissioner rejects any claim in whole or in part, or if he denies any right of priority of payment or any other right asserted by the claimant, he shall notify the claimant of his action by registered mail. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 10.]

Art. 342—811. Appeal by Claimant.—Any claimant may, within three (3) months from the date of mailing of notice by the Commissioner as provided by the preceding Article,[1] sue upon such claim in the district court; otherwise the action of the Commissioner shall be final and not subject to review. The trial of such suit shall be de novo as if originally filed in said court and subject to the rules of procedure and appeal applicable to civil cases. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 11.]

1 Article 342—810.

Art. 342—812. Powers of Commissioner—Sale of Assets, Compromises and Agreements.—Pursuant to the order of the district court, entered with or without hearing, the Commissioner may sell any of the assets of a state bank in his hands for liquidation; may borrow money and pledge the whole or any part of such assets of such bank to secure the debt created; may compromise or compound any bad or doubtful claim held by or asserted against such bank; and may enter into any other kind or character of contract or agreement on behalf of such bank which he deems necessary or proper to the management, conservation or liquidation of its assets and all parties interested in the affairs of such bank shall be bound and precluded by the action of the Commissioner. Provided that said court, if it deems it advantageous or proper, may require notice and hearing before entering any order, and in that event shall, by order, fix the time and place of the hearing and prescribe the character of notice to be given thereof. Further provided that said court, in its discretion, and subject to such limitations as it may prescribe, may by general order authorize the Commissioner (a) to compound or compromise any claim or debt involving not more than One Thousand Dollars ($1,000) held by or asserted against the bank, and (b) to sell all chattels belonging to the bank. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 12.]

Art. 342—813. Expenses of Administration.—The expense of liquidation of state banks shall be paid out of the assets thereof, subject to review and approval by order of the district court. The Commissioner is authorized to employ such special agents, attorneys and other assistants as may be necessary or proper to the administration of the affairs of such banks, and shall, if he deems it to be in the interest of economy and efficiency, establish a central office unit to assist in the supervision of the liquidation of said banks. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 13.]

Art. 342—814. Dividends—Delayed Claims.—The Commissioner may from time to time in the course of the liquidation of a state bank, upon order of the district court, pay dividends to those depositors and creditors who have established their claims, provided that no final dividend shall be paid within eighteen (18) months of the date of the first publication of notice as prescribed in Article 8 of this Chapter.[1] All claims filed after the declaration and payment of any dividend and prior to the expiration of such eighteen (18) months shall, if approved, participate in dividends previously paid before any additional dividend is declared. Claims which are not presented within said eighteen (18) months period shall not participate in any dividend or distribution of assets until after full payment of all approved claims presented during such period. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 14.]

1 Article 342—808.

Art. 342—815. Final Dividend—Report—Disposition of Assets—Discharge.—At any time after the expiration of eighteen (18) months from the first publication of notice as specified in Article 8 of this Chapter,[1] after the Commissioner has liquidated all of the assets of a bank capable of liquidation or has

realized sufficient funds from such liquidation to pay the costs thereof, to pay all claims which have been filed and established, and leave funds available to provide for the payment of all non-claiming depositors and creditors, the Commissioner shall, acting under order of the district court, declare and pay a final dividend. The Commissioner shall deposit in one or more state banks all funds hereafter available for the benefit of non-claiming depositors and creditors. All unclaimed dividends and all funds hereafter available for non-claiming depositors and creditors, together with all funds held pursuant to the provisions of Article 540 of the Revised Civil Statutes of Texas, (which latter funds shall be transmitted by the State Treasurer to the Commissioner, together with a list of the depositors and creditors for whose benefit the same is held), shall be deposited by the Commissioner in one or more State banks for the benefit of the depositors and creditors entitled thereto. The Commissioner shall pay any depositor or creditor, upon his demand, any amount so held for his benefit. In event the Commissioner is in doubt as to the identity of any claimant or his right to the funds thus held, he shall reject the claim and notify the claimant by registered mail. The claimant shall, within three (3) months after mailing of such notice by the Commissioner, institute suit against the Commissioner in the district court to recover such funds, which suit shall be in the nature of an action in rem governed by the rules of procedure and appeal applicable to civil cases and the judgment therein shall be binding upon all persons interested in such funds. If such suit is not filed within the time prescribed, the rejection of the Commissioner shall be final. After paying a final dividend as above provided and doing each and every act necessary or proper in connection with the liquidation of the assets of such bank for the benefit of the depositors and creditors, the Commissioner shall file in the district court his final report of such liquidation, and said court shall by order fix and designate a time and place when and where such report shall be heard, and direct the Commissioner to give such notice thereof as the court may deem proper. If said court, after such notice and hearing shall find that the affairs of said bank have been administered properly and in accordance with law it shall approve such report, and the order of approval shall have the force and effect of forfeiting and cancelling the corporate charter of such bank, vesting title to the remaining assets, if any, in the stockholders of said bank, and releasing and discharging the Commissioner from any further duty, obligation or liability in connection with the administration of the affairs of such bank, and thereafter no person shall have or maintain any claim, suit or action against the Commissioner individually or in his capacity as statutory liquidator of such bank other than suits to recover unclaimed deposits as above provided. The district court may, in such order, direct the Commissioner as to the disposition of the books, records and remaining assets, if any, of such bank and may designate a trustee to whom the Commissioner shall deliver physical possession of the same, and who, under the supervision of said court shall administer or liquidate such assets for the benefit of the former stockholders of such bank. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 15.]

[1] Article 342—808.

Art. 342—816. Deposit of Funds by Commissioner in Banks—Preferred Payment.—The Commissioner shall, except where otherwise provided by law, deposit all funds coming into his hands in one or more state banks, and such funds so deposited by the Commissioner pursuant to the provisions of law shall constitute preferred claims against the assets of such bank in event of liquidation. [Acts 1943, 48th Leg., p. 158, ch. 97, subch. VIII, art. 816.]

CHAPTER 9.—GENERAL PROVISIONS

Art.
342—901. State Instrumentality—Depositary—Fiscal Agent.
342—902. Unauthorized Banking—Advertising—Private Banks—Penalty.
342—903. Branch Banking Prohibited.
342.—904. State Banks—Federal Reserve Membership.
342—905. Savings Department—Segregation of Assets—Discontinuance.
342—906. Safety Deposit Boxes—Access by Joint Lessees—Opening—Lien—Sale of Content.
342—907. Slander or Libel of Banks—Penalty.
342—908. Application of Code to National Banks.
342—909. Severability of Provisions.
342—910. Moratorium—Banks—Building and Loan Associations—Other Financial Institutions.
342—911. Repealer of Conflicting Laws.

Article 342—901. State Instrumentality—Depositary—Fiscal Agent.—All state banks are hereby declared to be charged with the public interest and shall be under state control and be subject to such legislation as may be enacted for the regulation of such banking institutions. Such state banks shall be deemed instrumentalities and agencies of the state, and may, when lawfully designated thereto, act as depositaries for the public funds of this State or any county, city, common or independent school district or any other political subdivision of this State, in accordance with the laws of this State governing depositaries of public funds now or hereafter existing; and such state banks shall act as fiscal agents for the United States, the State of Texas, or any county, city, common or independent school district or any other political subdivision of this State on request and upon reasonable compensation. [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 1.]

Art. 342—902. Unauthorized Banking—Advertising—Private Banks—Penalty.—*It shall* be unlawful for any person, corporation, firm, partnership, association or common law trust:

(1) To conduct a banking or trust business or to hold out to the public that it is conducting a banking or trust business; or

(2) To use the term "bank," "bank and trust," "savings bank," "trust" or any similar term in its name, stationery or advertising. Provided, however, that this article shall not apply to (1) national banks, (2) state banks, (3) other corporations heretofore or hereafter organized under the laws of this State or of the United States to the extent that such corporations are authorized under their charter or the laws of this State or of the United States to conduct such business or to use such term, and (4) private banks which were actually and lawfully conducting a banking business on the effective date of this Act[1] so long as the owners of such bank, their successors or assigns, shall continuously conduct a banking business in the city or town where such private bank was domiciled on the effective date of this Act; provided, however, that such private banks shall include the word "Unincorporated" in their firm or business names and such word shall be prominently set out upon the stationery and in all of the advertising of such private banks. This article shall not bar an individual from acting in any fiduciary capacity, if he does not hold out to the public that he is conducting any branch of the trust business. Any person violating any provision of this article shall, upon conviction, be fined not less than Five Hundred Dollars ($500), nor more than One Thousand Dollars ($1,000). [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 2.]

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

Art. 342—903. Branch Banking Prohibited.—No state, national or private bank shall engage in business in more than one place, maintain any branch office, or cash checks or receive deposits except in its own banking house. [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 3.]

Art. 342—904. State Banks—Federal Reserve Membership.—Any state bank may become a member of the Federal Reserve System and take such action as may be necessary or proper to effect and maintain such membership. [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 4.]

Art. 342—905. Savings Department—Segregation of Assets—Discontinuance.—Any state bank which has heretofore established a savings department shall maintain the segregation of assets of said department for ninety (90) days after the effective date of this Act,[1] and if any such bank shall be closed within said ninety (90) days, savings depositors shall be entitled to priority of payment out of the assets of that department as heretofore provided by law. After the expiration of said ninety (90) days, said assets shall no longer be segregated and if any state bank is closed subsequent to that time, the savings deposits shall not be entitled to any priority out of any asset of the bank, but shall participate in all assets on a parity with other depositors and creditors. [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 5.]

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

Art. 342—906. Safety Deposit Boxes—Access by Joint Lessees—Opening—Lien—Sale of Content.—Any state, national or private bank may maintain safety deposit boxes and rent the same. In all such transactions the relationship of the bank and the renter shall, in the absence of a contract to the contrary, be that of lessor and lessee and landlord and tenant and the rights and liabilities of the bank shall be governed accordingly, and the lessee shall be deemed in law for all purposes to be in possession of the box and the content thereof. If a safety deposit box is held in the name of two (2) or more persons jointly, any one of such persons shall be entitled to access to such box and shall be permitted to remove the content thereof and the bank shall not be responsible for any damage arising by reason of such access or removal by one of said persons. If the box rental is delinquent for six (6) months, the bank after at least sixty (60) days' notice by mail addressed to the lessee at his address on the books of the bank, may, if the rent is not paid within the time specified in said notice, open the box in the presence of two (2) executive officers of the bank and a notary public and place the content of the box in a sealed envelope or container bearing the name of the lessee. The bank shall then hold the content of the box subject to a lien for its rental, the cost of opening the box and the damages in connection therewith. If such rental, cost and damages are not paid within two (2) years from the date of opening of such box, the bank may sell any part or all of the content at public auction in like manner and upon like notice as is prescribed for the sale of real property under deed of trust. [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 6.]

Art. 342—907. Slander or Libel of Banks—Penalty.—Any person who shall knowingly make, utter, circulate, or transmit to another or others, any statement untrue in fact, derogatory to the financial condition of any bank, banking house, banking company, trust company, in the State, with intent to injure any such financial institution; or who shall counsel, aid, procure, or induce another to originate, make, utter, transmit, or circulate any such statement or rumor, with like intent, shall be guilty of an offense and upon conviction shall be punished by a fine of not more than Five Thousand Dollars ($5,000) or confined in the State penitentiary not more than five (5) years, or both. [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 7.]

Art. 342—908. Application of Code to National Banks.—It is not the intention of the Legislature in the enactment of this Code,[1] to discriminate between state banks and national banks and, to the extent that the State of Texas has power to legislate with reference to national banks, each provision of the Code shall apply alike to state banks and national banks domiciled in this State. [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 8.]

1 Articles 342—101 to 342—911.

Art. 342—909. Severability of Provisions.—If any provision of this Code[1] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable. [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 9.]

1 Articles 342—101 to 342—911.

Art. 342—910. Moratorium—Banks—Building and Loan Associations—Other Financial Institutions.—The Banking Commissioner of the State of Texas, with the approval of the Governor of Texas, from and after passage of this Act,[1] be and he is hereby authorized and empowered to declare financial moratoriums for and invoke a uniform limitation withdrawal, co-extensive with the boundaries of the State, of deposits or withdrawable shares or share accounts from all state banks, national banks, state bank and trust companies, private banks, building and loan associations and all other banking and financial institutions in the State of Texas, or both such moratoriums and limitations of withdrawal of deposits, shares or share accounts, and to promulgate any and all orders and decrees necessary to enforce such powers herein delegated. Any state bank or state banking institution, trust company, building and loan association, private bank or financial institution other than a national bank in the State of Texas, violating or refusing to comply with any order or regulation promulgated hereunder shall forfeit its charter, and the State Banking Commissioner shall thereupon take charge of and liquidate such institution, as provided in Chapter VIII of this Code.[2] Any other banking institution within this State so violating or refusing to comply with any such order shall immediately forfeit its right to act as reserve agent for any State banking institution; and shall also forfeit its right to act as depository of any state, county, municipal or other public funds, and all such reserve deposits and/or deposits of state, county, municipal, or other public funds shall be immediately withdrawn by the depositor on order of the State Banking Commissioner. [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 10.]

1 Articles 342—101 to 342—911.
2 Articles 342—801 to 342—816.

Art. 342—911. Repealer of Conflicting Laws.—The following statutes, together with all other laws or parts of laws in conflict herewith, are hereby repealed: * * * [Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 11.]

The portion of the text omitted from this article repealed certain enumerated prior banking laws. For Table showing where the provisions of repealed articles have been incorporated into the Texas Banking Code of 1943, see Table preceding article 342—101.

MISCELLANEOUS LAWS

Art.
342—489a. [Repealed.]
489b Federal deposit insurance.
Sec.
1. Banking institution defined.
2. Authority to banking institutions to contract under Acts of Congress safeguarding banks.
3. Federal Deposit Insurance Corporation as receiver or liquidator without bond.
4. Subrogation of Federal Deposit Insurance Corporation to rights against closed Institution.
5. Copies of Banking Commissioner's examinations furnished Federal Deposit Insurance Corporation.
6. Borrowing by closed institutions.
7. Acceptance as receiver as vesting title in Federal Deposit Insurance Corporation.
8. Powers conferred on Federal Deposit Insurance Corporation as receiver.
9. Partial invalidity.
489c. [Executed.]
490—548a. [Repealed.]

Arts. 342—489. [Repealed by Acts 1925, 39th Leg., p. 24; Acts 1927, 40th Leg., p. 18, ch. 12, § 1; Acts 1927, 40th Leg., p. 388, ch. 263, § 1; Acts 1927, 40th Leg., p. 429, ch. 284, § 1; Acts 1937, 45th Leg., p. 459, ch. 233, § 2; Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 11]

For derivation of these Articles, see Historical Note under Articles 342–489 of Vernon's Annotated Texas Civil Statutes.

Art. 489a. [Repealed by Acts 1937, 45th Leg., p. 370, ch. 180, § 1]

The article repealed was Acts 1933, 43rd Leg., 1st C.S., p. 21, ch. 9.

Art. 489b. Federal deposit insurance.

Banking institution defined

Sec. 1. The term "banking institution," as used in this Act shall be construed to mean any bank, trust company, bank and trust company, stock savings bank or mutual savings bank, which is now or may hereafter be organized under the laws of this State.

Authority to banking institutions to contract under Acts of Congress safeguarding banks

Sec. 2. Any banking institution now or hereafter organized under the laws of this State is hereby empowered, on the authority of its board of directors, or a majority thereof, by and with the consent and approval of the State Banking Commissioner, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges, which may at any time be available or enure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of Section 8 of the Federal "Banking Act of 1933" (Sec. 12B of the Federal Reserve Act, as amended,) [1] which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or any other Act or Resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such Corporation.

[1] 12 U.S.C.A. § 264.

Federal Deposit Insurance Corporation as receiver or liquidator without bond

Sec. 3. The Federal Deposit Insurance Corporation created by Section eight of the Federal "Banking Act of 1933" (Section 12B of the Federal Reserve Act, as amended) [1] is hereby authorized and empowered to be and act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by said Corporation, and which shall have been closed on account of inability to meet the demands of its depositors.

The appropriate State authority, having the right to appoint a receiver or liquidator of a banking institution, may in the event of such closing, tender to said Corporation the appointment as receiver or liquidator of such banking institution, and if the Corporation accepts said appointment, the Corporation shall have and possess all powers and privileges provided by the laws of this State with respect to a receiver or liquidator respectively of a banking institution, its depositors and other creditors, and be subject to all the duties of such receiver or liquidator, except in so far as such powers, privileges or duties are in conflict with the provisions of subsection (1) of Section 8 of said "Banking Act of 1933."

[1] 12 U.S.C.A. § 264.

Subrogation of Federal Deposit Insurance Corporation to rights against closed institution

Sec. 4. Whenever any banking institution shall have been closed as aforesaid, and said Federal Deposit Insurance Corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, the Corporation, whether or not it shall have become receiver or liquidator of such closed banking institution, as herein provided, shall be subrogated to all rights against such closed banking institution of the owners of such deposits in the same manner and to the same extent as subrogation of the Corporation is provided for in subsection (1) of Section 12B of the said Federal Reserve Act, as amended (being Section 8 of the said "Banking Act of 1933") [1] in the case of the closing of a national bank: Provided, that the rights of depositors and other creditors of such closed institution shall be determined in accordance with the applicable provisions of the laws of this State.

[1] 12 U.S.C.A. § 264.

Copies of Banking Commissioner's examinations furnished Federal Deposit Insurance Corporation

Sec. 5. The Banking Commissioner may furnish to said Corporation, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institutions and of any or all reports made by same, and shall give access to and disclose to said Corporation or any official or examiner thereof any and all information possessed by the office of said Banking Commissioner with reference to the conditions or affairs of any such insured institution.

Nothing in this Section shall be construed to limit the duty of any banking institution in this State, deposits in which are to any extent insured under the provisions of Section 8 of the "Banking Act of 1933" (Section 12B of the Federal Reserve Act, as amended) [1] or of any amendment of or substitution for the same, to comply with the provisions of said Act, its amendments or substitutions, or the requirements of said Corporation relative to examinations and reports, nor to limit the powers of the Banking Commissioner with reference to examinations and reports under existing law.

[1] 12 U.S.C.A. § 264.

Borrowing by closed institutions

Sec. 6. With respect to any banking institution, which is now or may hereafter be closed on account of inability to meet the demands of its depositors or by action of the Banking Commissioner or of a court or by action of its directors or in the event of its insolvency or suspension, the Banking Commissioner and/or the receiver or liquidator of such institution with the permission of said Banking Commissioner may borrow from said Corporation or any other source and furnish any part or all of the assets of said institution as security for a loan from same; provided, that where said Corporation is acting as such receiver or liquidator, the order of a court of record of competent jurisdiction shall be first obtained approving such loan. Said Banking Commissioner upon the order of a court of record of competent jurisdiction, and upon a like order and with the permission of said Banking Commissioner, the receiver or liquidator of any such institution may sell to said Corporation any part or all of the assets of such institution.

The provisions of this Section shall not be construed to limit the power of any banking institution, the Banking Commissioner, or receivers or liquidators to pledge or sell assets in accordance with any existing law.

Acceptance as receiver as vesting title in Federal Deposit Insurance Corporation

Sec. 7. Upon the acceptance of the appointment of receiver or liquidator aforesaid by said Corporation, the possession of and title to all the assets, business and property of such banking institution of every kind and nature shall pass to and vest in said Corporation and without the execution of any instruments of conveyance, assignment, transfer or endorsement.

Powers conferred on Federal Deposit Insurance Corporation as receiver

Sec. 8. [Repealed by Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 11.]

Partial invalidity

Sec. 9. The validity of any provision or part of this Act shall not be dependent upon any other provision or part thereof. If any provision or part thereof should for any reason be held unconstitutional or invalid such decision shall not affect the validity of any of the remaining provisions or parts of this Act. [Acts 1935, 44th Leg., p. 459, ch. 183.]

Section 10 of this Act repeals all conflicting laws and parts of laws.

Art. 489c. [Executed.]

The article was Acts 1937, 45th Leg. p. 370, ch. 180.

Arts. 490–548a. [Repealed by Acts 1941, 47th Leg., p. 727, ch. 455, § 1; Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 11.]

For derivation of these articles, see Historical Note under Articles 490–548a of Vernon's Annotated Texas Civil Statutes.

TITLE 17—BEES

Art.
549. State Entomologist.
550. Power and authority.
551. Certificate of inspection.
552. Common carrier accepting shipment.
553. Seizure.
554. May enter premises.
555. Protective quarantine.
556. Restrictive quarantine.
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559. Bulletins.
560. Duty to report diseased bees.
561. Transfer of bees.
562. Inspection and eradication.
563. Cost of destruction.
564. No bond required.
565. Experimental apiary.

Article 549. State Entomologist.—The entomologist of the Agricultural Experiment Station of the Agricultural and Mechanical College of Texas, shall be the State Entomologist of this State, and as such it shall be his duty to enforce the provisions of this title. As State Entomologist he shall receive no fees or remuneration other than his regular salary as Entomologist of such Experiment Station, provided, that he may be reimbursed for the necessary expenses incurred in discharge of his duties as State Entomologist. He shall employ such assistants and inspectors as may be necessary, subject to the approval of the Director and Governing Board of the Texas Agricultural Experiment Station. He shall make an annual report to such Director and Governing Board giving a detailed account of all funds received and disbursed, and for what purpose, as well as a full report upon all prosecutions, etc., made under the provisions of this title. [Acts 1913, p. 96.]

Art. 550. Power and authority.—The State Entomologist shall have power to deal with all contagious or infectious diseases of honey bees, which in his opinion, may be prevented, controlled or eradicated, and to do and perform such acts as, in his judgment, may be necessary to control, eradicate or prevent the introduction, spread or dissemination of any and all contagious diseases of honey bees as far as may be possible, and to make such rules and regulations, not inconsistent with law, as may be necessary to enforce this law. The State Entomologist shall have authority to prohibit the shipment or bringing into this State of any honey bees, honey, honey-comb, or articles or things capable of transmitting contagious or infectious diseases of bees from any State, territory or foreign country except under such rules and regulations as may be adopted and promulgated by said State Entomologist. [Id.]

Art. 551. Certificate of inspection.—All honey bees shipped or moved into this State shall be accompanied by a certificate of inspection signed by the State Entomologist or State Foul Brood Inspector of the State or county from which shipped. Such certificate shall certify to the apparent freedom of the bees, and their combs and hives, from contagious and infectious diseases and must be based upon an actual inspection of the bees themselves within a period of sixty days preceding date of shipment. The shipper of such bees is hereby required to file with the State Entomologist at College Station, at least ten days in advance of such shipment, a certified copy of said certificate, together with the names and addresses of both consignor and consignee. When honey bees are to be shipped into this State from other States or countries wherein no official apiary inspector or State entomologist is available, the State Entomologist of Texas may issue a permit for such shipment upon presentation of suitable evidence showing such bees to be free from diseases. Shipments of bees arriving at points within this State, not accompanied by the certificate herein described, shall be subject to confiscation and destruction by the State Entomologist or his assistants. This requirement shall not apply to shipments of live bees in wire cages, when without combs or honey. [Id.]

Art. 552. Common carrier accepting shipment.—No railroad company, express company, or other common carrier shall accept for intrastate shipment, any honey bees, used honey combs, used bee hives or fixtures, except under such regulations as the State Entomologist shall prescribe. [Id.]

Art. 553. Seizure.—The State Entomologist, through himself, assistants or inspectors, shall have

authority to seize and confiscate any shipment of diseased bees found in transit in this State, or found in any depot, express office, store room, car, warehouse or premises awaiting transportation or delivery, and the State Entomologist, through himself or assistants, shall have authority to enter, during ordinary business hours, any depot, express office, store room, car, warehouse, or premises for the purpose of inspecting any shipment of honey bees therein which he may have reason to believe are or may be infected with a contagious or infectious disease or which he may have reason to believe are being transported or have been or are about to be transported in violation of any provision of this title. [Id.]

Art. 554. May enter premises.—The State Entomologist, and his assistants and inspectors, shall have authority to enter, during ordinary business hours, any premises, public or private, wherein may be located any honey bees, or wherein he or they may have reason to believe any honey bees are kept or located, for the purpose of examining said bees and determining whether or not they are infected with any contagious or infectious disease. [Id.]

Art. 555. Protective quarantine.—The State Entomologist shall have authority to declare a protective quarantine in any district, county, precinct or other defined area wherein foul brood or other contagious disease of bees is not known to exist, or wherein any disease of bees is being eradicated in accordance with the provisions of this chapter, said quarantine to prohibit the movement or shipment, into said district, county, precinct or other area, of any bees, honey, appliances or other things capable of transmitting the disease or infection, except under such rules and regulations as he shall prescribe. [Id.]

Art. 556. Restrictive quarantine.—The State Entomologist shall have authority when, in his opinion, public welfare and necessity require it, to place a restrictive quarantine upon any district, county, precinct or other defined area wherein are located any honey bees infected with contagious or infectious disease, said quarantine to prohibit the movement or shipment therefrom of any bees, honey, appliances or other things capable of transmitting the infection, except under such rules and regulations as he shall prescribe. [Id.]

Art. 557. Sale and shipment.—Queen bees and their attendant bees shall not be sold or offered for sale in this State unless accompanied by a copy of a certificate from a State or Government entomologist or apiary inspector to the effect that the apiary from which said queen bees are shipped have been inspected within the preceding twelve months and found apparently free from contagious or infectious diseases, or by a copy of an affidavit made by the bee-keeper that the bees are not diseased, to the best belief of affiant, and that the honey used in making the candy contained in the queen cage has been diluted and boiled for at least thirty minutes in a closed vessel. [Id.]

Art. 558. Legal remedies.—All prosecutions under this title shall be begun and carried on in any county affected by the violation of said orders, quarantines, rules or regulations. The State Entomologist may enjoin any threatened or attempted violation of his orders, quarantines, rules or regulations in any court of competent jurisdiction, or take any other civil proceedings necessary to carry out and enforce the provisions of this title. It shall be the duty of the Attorney General and the various county and district attorneys to represent said State Entomologist whenever called on to do so. The State Entomologist, in the discharge and enforcement of the duties and powers herein delegated, shall have the authority to compel the production for examination by said State Entomologist, or any one designated by him, of all books, papers and documents in the possession of any person; to take testimony and compel the attendance and examination under oath of witnesses; the various sheriffs and constables throughout the State shall serve all papers, orders, summons and writs that may be delivered to them by said State Entomologist and protect the State Entomologist or his assistants or inspectors in the discharge of their duties, as herein defined, whenever called upon to do so. [Id.]

Art. 559. Bulletins.—The State Entomologist shall publish methods and directions for treating, eradicating or suppressing contagious or infectious diseases of honey bees, including the rules and regulations above provided for, and such other information as he shall deem of value or necessity to the bee-keeping interests of the State. [Id.]

Art. 560. Duty to report diseased bees.—If the owner of, or any person having control or possession of, any honey bees in this State, knows that any bees so owned or controlled are affected with American foul brood, or any other contagious or infectious disease, or knows of any other bees so diseased, it shall be his duty to at once report such fact to the State Entomologist at College Station, setting out in his said report all the facts known with reference to said infection. [Id.]

Art. 561. Transfer of bees.—The State Entomologist may order any owner or possessor of bees dwelling in hives without movable frames, or not permitting of ready examination, to transfer such bees to a movable frame hive within a specified time. In default of such transfer such Entomologist may destroy, or order destroyed, such hives, together with the honey, frames, combs and bees contained therein, without recompense to the owner, lessee or agent thereof. [Id.]

Art. 562. Inspection and eradication.—If the State Entomologist finds, or has reason to believe, that the owner or keeper of any bees or the owner of any apiary has refused or is refusing to comply with any rule or regulation hereinbefore provided for, then in that event such entomologist is hereby authorized to inspect or cause to be inspected said bees, and, if necessary, burn diseased colonies, appliances and honey and do any and all things necessary to eradicate foul brood or any other contagious or infectious disease of bees. [Id.]

Art. 563. Cost of destruction.—When any owner or possessor of bees shall fail to carry out the instructions of the State Entomologist as hereinbefore set forth, such entomologist or his assistants or inspectors shall carry out such destruction or treatment and shall present to the owner or possessor of said bees a bill for the actual cost of such destruction or treatment, including the cost of such hives, foundation, etc., as may be necessary for the proper treatment of the disease. On the failure of the owner or possessor of such bees to pay said bill within thirty days after the delivery of same to himself, tenant, or agent, or within thirty days after mailing same to his usual post-office address, such Entomologist shall certify to the county attorney of the county where such bees were located the amount and items of such bill; and the county attorney shall file suit for the recovery of said account. All moneys recovered by the county attorney for such destruction or treatment shall be paid to the State Treasurer. [Id.]

Art. 564. No bond required.—The State Entomologist, his assistants and inspectors, shall not be required to give any bond or security in any legal proceedings which he or they may institute or defend in any court in this State. [Id.]

Art. 565. Experimental apiary.—The Director of the Texas Agricultural Experiment Stations of the Agricultural and Mechanical College shall have power to establish and maintain experimental apiaries for the purpose of experimenting with the culture of

honey, and studying honey yield conditions, and other bee-keeping problems confronting the bee-keepers and the bee-keeping industry of this State; such experimental apiaries to be under the care, control, management and direction of the director of the experimental stations, and to be maintained and operated at such places in Texas as said director may direct. In the location of such experimental apiaries, said director may take into consideration any donation of money or other property to be used in the operation and management of such apiaries and may accept any lease of lands upon which to locate such apiaries. The director shall have authority to employ such assistants as may be needed, and to purchase from time to time, such supplies, equipment and bees as may be necessary in the successful management thereof. The receipts from the sales of any products or old equipment, shall be deposited in the experiment station treasury, in a fund to be known as the "Experimental Apiaries Sales Fund," to be expended by said director for the purpose of said experimental apiaries. [Acts 1919, p. 102.]

TITLE 18—BILLS AND NOTES

Art.
566. [Repealed.]
567. Drawer of bill liable.
568. Assignee may sue.
569. Instruments may be assigned.
570. Assignee may sue in his own name.
571. Assignor liable to assignee.
572–574. [Repealed.]
573. Plea of forgery.
574. Failure of consideration.
575. Liability fixed by protest.
576. Protest, how made.
577. Damages on protested bill.
578. Patent rights.

Article 566. [Repealed by Acts 1935, 44th Leg., p. 566, ch. 268, § 1.]

Art. 567. [581] [306] [264] Drawer of bill liable.—The drawer of a bill of exchange not accepted when presented for acceptance shall be immediately liable for the payment thereof. [Acts 1848, p. 187; G.L. vol. 3, p. 187; Acts 1935, 44th Leg., p. 656, ch. 269, § 1.]

Art. 568. [582] [307] [265] Assignee may sue.—The assignee of any negotiable instrument may maintain any suit in his own name which the original obligee or payee might have brought. He shall allow all just discounts against himself, and if he obtained the same after it became due, he shall also allow all just discounts against the assignor before notice of the assignment was given to the defendant. If he obtains such instrument before its maturity by giving for it a valuable consideration without notice of any discount or defense against it, he shall be compelled to allow only the just discounts against himself. [Acts 1840, p. 144; G. L. vol. 2, p. 318.]

Art. 569. [583] [308] [266] Instruments may be assigned.—The obligee or assignee of any written instrument not negotiable by the law merchant, may by assignment transfer all his interest therein to another. [Id.]

Art. 570. [584] [585] Assignee may sue in his own name.—The assignee of any instrument mentioned in the preceding article may sue thereon in his own name. He shall allow every discount and defense against the same which it would have been subject to in the hands of any previous owner before notice of the assignment was given to the defendant. In order to hold the assignor, drawer or endorser as surety for the payment of the instrument, the assignee shall use due diligence to collect the same. Such diligence can only be waived in writing. [Id.]

Art. 571. [586] [311] [269] Assignor liable to assignee.—The assignee of any instrument not negotiable by the law merchant, shall be entitled to recover from any previous assignor thereof. In any suit against a remote assignor of such instrument, he shall be subject only to such recovery and shall have the benefit of all defenses which he would have been entitled to had the suit been instituted by any intermediate assignee. [Id.]

Arts. 572–574. [Repealed.]

See Rules of Civil Procedure, Rules 30, 93.

Art. 575. [590] [315] [273] Liability fixed by protest.—The holder of any bill of exchange or promissory note assignable or negotiable by the law merchant may also secure and fix the liability of any drawer or indorser of such bill of exchange or promissory note for the payment thereof, without suit against the acceptor, drawer or maker, by procuring such bill or note to be regularly protested by a notary public for non-acceptance or non-payment, and giving notice of such protest to such drawer or endorser, according to the usage and custom of merchants. [Acts 1848, p. 187; G. L. vol. 3, p. 187.]

Art. 576. [591] [316] [274] Protest, how made.—It shall be the duty of any notary public who shall protest any bill of exchange or promissory note for non-acceptance or non-payment, to set forth in his protest and in his notarial record a full and true statement of what was done by him in relation thereto by specifying therein whether demand was made of the sum of money in such bill or note specified, of whom, and when and where such demand was made, and to make the requisite notices of protest for the drawers and indorsers who are sought to be made liable. When such notice shall be served by him, he shall note in his protest and notarial record on whom and when such notice was served. If such notice is mailed by him, he shall specify when and where mailed, and to whom and where directed. Such protest, or a copy of such notarial record, certified under the hand and seal of such notary public, shall be admitted in any court of this State as evidence of the facts therein set forth. [Id.]

Art. 577. [592] [317] [275] Damages on protested bill.—The holder of any protested draft or bill of exchange, drawn by a merchant within the limits of this State upon his agent or factor living beyond the limits of this State shall, after having fixed the liability of the drawer or indorser of any such draft or bill of exchange, be entitled to recover and receive ten per cent on the amount of such draft or bill of exchange as damages, together with interests and costs of suit thereon accruing. [Acts 1851, p. 23; G. L. vol. 3, p. 901.]

Art. 578. Patent rights.—All notes and liens given for a patent right consideration or patent right territory shall state on their face that the same were given for a patent right. Such statement shall be notice to all subsequent purchasers of said notes or liens of all equities existing between the parties to the original transaction, and the same shall be subject to all defenses against subsequent owners and holders that they would if the same had remained in the hands of the original owner. [Acts 1915, p. 138.]

TITLE 19—BLUE SKY LAW

Articles 579–600. [Repealed by Acts 1935, 44th Leg., p. 255, ch. 100, § 38.]

TITLE 19A—THE SECURITIES ACT

Art.
600a. The Securities Act.

Sec.
1. Short title.
2. Definitions.
3. Exempt transactions.
4. Pleading exemptions.
5. Permit for issue by Secretary of State; information for issuance.
6. Application of foreign issuer.
7. Protection to subscribers to preorganization certificates.
8. Secretary of State to examine application; grant or denial.
9. Permit, form and contents; term and renewals.
10. Use of permit to aid sale of securities forbidden.
11. Papers filed with Secretary of State as public records open to inspection.
12. Registration of persons selling, dealers or agents.
13. Method of registration.
14. Registration certificates.
15. Consent of foreign company or nonresident to suit in state.
16. Hearing by Secretary of State after notice refusing registration.
17. Form of certificates.
18. Registration of agents or salesmen of dealers.
19. Annual registration; renewals.
20. Sales by authorized persons.
21. Display or advertisement of fact of registration unlawful.
22. Posting certificate of authority.
23. Unlawful to sell securities without registration or temporary permit.
24. Lists of securities filed with Secretary of State on request; notice and hearing as to questioned securities.
25. Revocation of registration of dealers on hearing.
26. Revocation of registration of agents or salesmen.
27. Notices by registered mail.
28. Petition to District Court of Travis County on complaint of decision of Secretary of State.
29. Subpoenas or other process in investigations by Secretary of State.
30. Penal provision.
31. Certified copies of papers filed with Secretary of State as evidence.
32. Construction.
33. Suits and injunction by Attorney General against fraudulent practices; jurisdiction.
33a. Sales in violation of law voidable; action by purchaser; limitations.
33b. Actions for commissions; allegations and proof of compliance.
34. Administration and enforcement by Secretary of State and Attorney General.
35. Fees.
36. Fees paid to State Treasurer; use for administration of act.
37. Partial invalidity.
38. Repeals; saving as to existing proceedings.

Article 600a. The Securities Act.

Short title

Sec. 1. This Act shall be known and may be cited as "The Securities Act."

Definitions

Sec. 2. The following terms shall, unless the context otherwise indicates, have the following respective meanings:

(a) The term "security" or "securities" shall include any share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, preorganization certificate or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not.

(b) The term "company" shall include a corporation, a person, joint stock company, partnership, association, company, syndicate trust, incorporated or unincorporated, heretofore or hereafter formed under the laws of this or any other State, country, sovereignty or political subdivision thereof. As used herein, the term "trust" shall be deemed to include a common law trust, but shall not include a trust created or appointed under or by virtue of a last will and testament or by a court of law and equity.

(c) The term "dealer" shall include every person or company, other than a salesman, who engages in this State, either for all or part of his or its time, directly or through an agent, in selling, offering for sale or delivery or soliciting subscriptions to, or orders for, or undertaking to dispose of, or to invite offers for, or dealing in any other manner in any security or securities within this State. Any issuer other than a registered dealer, of a security or securities who, directly or through any person or company, other than a registered dealer, offers for sale, sells or makes sales of its own security or securities shall be deemed a dealer and shall be required to comply with the provisions hereof; provided, however, this Section or provisions shall not apply to such issuer if such security or securities are offered for sale or sold either to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer; and provided further, this Section or provision shall not apply to such issuer if the transaction is within the exemptions contained in the provisions of Section 3 of this Act.

(d) The term "salesman" shall include every person or company employed or appointed or authorized by a dealer to sell, offer for sale or delivery, or solicit subscriptions to or orders for, or deal in any other manner, in securities within this State, whether by direct act or through subagents; provided, that the officers of a corporation or partners of a partnership shall not be deemed salesmen, where such corporation or partnership is registered as a dealer hereunder.

(e) The terms "sale," or "offer for sale" or "sell" shall include every disposition, or attempt to dispose of a security for value. The term "sale" means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other thing of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given or delivered with or as a bonus on account of, any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term "sell" means any act by which a sale is made, and the term "sale" or "offer for sale" shall include a subscription, an option for sale, a solicitation of sale, an attempt to sell, or an offer to sell, directly or by an agent or salesman, by a circular, letter, or advertisement or otherwise, including the deposit in a United States Post Office or mail box or in any manner in the United States mails within this State of a letter, circular or other advertising matter; provided, however, that nothing herein shall limit or diminish

the full meaning of the terms "sale," "sell" or "offer for sale" as used by or accepted in courts of law or equity. Provided, further, that the sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase some other security shall not be deemed a sale or offer for sale of such other security; but no exchange for or sale of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Texas under this Act, if not exempt hereunder, or by other provisions of law.

(f) The terms "fraud," "fraudulent practice" shall include any misrepresentations, in any manner, of a relevant fact; any promise or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; the gaining, directly or indirectly, through the sale of any security, or an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be unconscionable; any scheme, device or other artifice to obtain such profit, fee or commission; provided, that nothing herein shall limit or diminish the full meaning of the terms "fraud," "fraudulent," and "fraudulent practice" as applied or accepted in courts of law or equity.

(g) "Issuer" shall mean and include every company or person who proposes to issue, has issued, or shall hereafter issue any security.

(h) "Broker" shall mean dealer as herein defined.

(i) "Mortgage" shall be deemed to include a deed of trust to secure a debt.

(j) If the sense requires it, words in the present tense include the future tense, in the masculine gender include the feminine and neuter gender, in the singular number include the plural number, and in the plural number include the singular number; "and" may be read "or" and "or" may be read "and."

(k) "No par value" or "non-par" as applied to shares of stock or other securities shall mean that such shares of stock or other securities are without a given or specified par value. Whenever any classification or computation in this Act mentioned is based upon "par value" as applied to shares of stock or other securities of no par value, the amount for which such securities are sold or offered for sale to the public shall be used as a basis of such classification or computation.

(l) The term "include" when used in a definition contained in this Act shall not be deemed to exclude other things or persons otherwise within the meaning of the term defined.

(m) "Registered dealer" shall mean a dealer as hereinabove defined who has been duly registered by the Secretary of State as in Sections 13 and 14 of this Act provided.

Exempt transactions

Sec. 3. Exempt transactions. Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to the sale of any security when made in any of the following transactions and under any of the following conditions, and the company or person engaged therein shall not be deemed a dealer within the meaning of this Act; that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

(a) At any judicial, executor's, administrator's, guardian's or conservator's sale, or any sale by a receiver or trustee in insolvency or bankruptcy.

(b) The sale by or for the account of a pledge holder or mortgagee, selling or offering for sale or delivery in the ordinary course of business, to liquidate a bona fide debt, of a security pledged in good faith as security for such debt.

(c) Sales of securities made by, or in behalf of a vendor in the ordinary course of bona fide personal investment of his personal holdings, or change of such investment, if such vendor is not otherwise engaged either permanently or temporarily in selling securities, provided, that in no event shall such sales or offerings be exempt from the provisions of this Act when made or intended, either directly or indirectly, for the benefit of any company or corporation within the purview of this Act.

(d) The distribution by a corporation of securities direct to its stockholders as a stock dividend or other distribution paid out of earnings or surplus.

(e) The sale of an increase of capital stock of a corporation only to its stockholders and without payment of any commission or expense to any officer, employee, broker or agents, and without incurring any liability for any expenses whatsoever in connection with such distribution.

(f) The issue in good faith of securities by a company to its security holders, or creditors, in the process of a bona fide reorganization of the company made in good faith, or the issue in good faith of securities by a company, organized solely for the purpose of taking over the assets and continuing the business of a predecessor company, to the security holders or creditors of such predecessor company, provided that in either such case such securities are issued in exchange for the securities of such holders or claim of such creditors, or both, and in either such case such security holders or creditors do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued other than the securities of or claims against said company or its predecessor then held or owned by them.

(g) The transfer or exchange by, or on account of, one corporation to another or to its stockholders of their or its own securities in connection with a proposed consolidation or merger of such corporation, or in connection with the change of par value stock to non-par value stock or vice versa, or the exchange of outstanding shares for a greater or smaller number of shares, provided that in such case such stockholders do not pay or give or promise and are not obligated to pay or give any consideration for the securities so transferred or exchanged other than the securities of said corporation then held by them.

(h) The sale by a domestic corporation of its stock forfeited for a delinquent assessment, according to law.

(i) The sale to any bank, trust company, loan and brokerage corporation, building and loan association, insurance company, surety or guaranty company, savings institution or to any registered dealer, provided such dealer is actually engaged in buying and selling securities.

(j) The sale by any domestic corporation of its stock or other securities issued in good faith and not for the purpose of avoiding the provisions of this Act, so long as the total number of stockholders and security holders of said corporation does not and will not after such sale exceed twenty-five (25) and the securities are issued and disposed of without the use of advertisements, circulars, agents, salesmen, solicitors, or any form of public solicitation.

(k) The sale of an interest in any partnership, pool, or other company, not a corporation, the total membership of which does not and will not after such sale exceed ten (10), and the organization expenses of which do not or will not exceed two (2) per cent of the total invested capital of such company.

(l) Subscriptions to capital stock necessary to qualify for incorporation when subscribed by not more than fifteen (15) incorporators in a proposed Texas corporation.

(m) Wherein the securities disposed of consist exclusively of notes or bonds secured by mortgage or vendor's lien upon real estate or tangible personal property, and the entire mortgage is sold or transferred with all of the notes or bonds secured thereby in a single transaction.

(n) Any security or membership issued by a corporation organized exclusively for educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any stockholder, shareholder, or individual member, and where no commission or remuneration is paid or given or is to be paid or given in connection with the disposition thereof.

(o) The sale by the issuer, itself, of any securities that are issued by a State or National Bank, by a trust company, or building and loan association organized and operating under the laws of the State of Texas and subject to the supervision of the Commissioner of Banking of the State of Texas, or Federal Loan and Savings Association, or a company subject to the supervision of the Banking Commissioner under Senate Bill No. 165, Forty-second Legislature.[1] Provided however, that all salesmen acting for any bank, trust company, or company subject to the supervision of the Banking Commissioner under Senate Bill No. 165, Forty-second Legislature, in the sale of such securities within this State, shall be licensed as provided in this Act.

(p) The sale, by the issuer itself, of any securities that are issued by the United States, any political subdivision or agency thereof, any territory or insular possession of the United States, the State of Texas, any State of the United States, the District of Columbia, or by any county, city, municipal corporation, district or political subdivision of the State of Texas or any authorized agency of the State of Texas.

(q) The sale and issuance of any securities issued by any farmers' cooperative association organized under Chapter 8 of Title 93, Articles 5737–5764, inclusive, Revised Civil Statutes of Texas as amended; and the sale of any securities issued by any farmers' cooperative society organized under Chapter 5 of Title 46, Articles 2514–2524, inclusive, Revised Civil Statutes of Texas. Provided, however, this exemption shall not be applicable to agents and salesmen of any farmers' cooperative association of farmers' cooperative society when the sale of such securities is made to non-members, or when the sale of such securities is made either to members or non-members and a commission is paid or contracted to be paid to the said agent or salesmen.

[1] Article 1524a.

Pleading exemptions

Sec. 4. It shall not be necessary to negative any of the aforesaid exemptions in any complaint, information or indictment, or any writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the party claiming the same.

Permit for issue by Secretary of State; information for issuance

Sec. 5. No dealer, agent or salesman shall sell or offer for sale any securities issued after the passage of this Act, except those which come within the classes enumerated in Subdivisions (a) to (q), both inclusive, of Section 3 of this Act, or Subdivisions (a) to (i), both inclusive, of Section 23 of this Act, until the issuer of such securities or a dealer registered under the provisions of this Act shall have been granted a permit by the Secretary of State; and no such permit shall be granted by the Secretary of State until the issuer of such securities or a dealer registered under the provisions of this Act shall have filed with the Secretary of State a sworn statement, verified under the oath of an executive officer or partner of the issuer, or of such registered dealer, and attested by the secretary or partner thereof, setting forth the following information:

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

(b) The location of its principal office and of all branch offices in this state, if any;

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

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

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

(f) A detailed statement showing all the assets and all the liabilities of the issuer, said statement to reflect the financial condition of the issuer on a day not more than ninety (90) days prior to the date such statement is filed. Such statement shall list all assets in detail and shall show how the value of such assets was determined, that is, whether the value set forth in said statement represents the actual cost in money of such assets, or whether such value represents their present market value, or some other value than the actual cost in money, and shall show the present actual value of said assets; also, whether the value set forth in the statement is greater or less than the actual cost value in money and greater or less than the present market value of such assets. If any of the assets consist of real estate, than said statement shall show the amount for which said real estate is rendered for state and county taxes, or assessed for taxes. If any such assets listed shall consist of anything other than cash and real estate, same shall be set out in detail so as to give the Secretary of State the fullest possible information concerning same, and the Secretary of State shall have the power to require the filing of such additional information as he may deem necessary to determine whether or not the true value of said assets are reflected in the statement filed. Should any of the assets listed in said statement be subject to any repurchase agreement, or any other agreement of like character, by the terms of which the absolute ownership of, or title to said assets is qualified or limited in any way, then the terms and conditions of said agreement by which the absolute ownership of, or title to said assets is qualified or limited, as well as the amount and character of the assets subject thereto shall be fully stated. Said statement shall list all current liabilities, that is, all liabilities which will mature and become due within six (6) months from the date of such application, and shall list separately from such current liabilities, all other liabilities, contingent or otherwise,

showing the amount of those which are secured by mortgage or otherwise, the assets of the issuer which are subject to such mortgage, and the dates of maturity of any such mortgage indebtedness. Such application shall also include a detailed profit and loss statement, which shall cover the last three (3) years operations of the issuer, if such issuer has been in operation for three (3) years, but if not, said profit and loss statement shall cover the time that said issuer has been operating. If said issuer has not been operating, but is taking over a concern of any kind which has been previously operating, then a financial and profit and loss statement showing the operations of the concern thus taken over for a period of the last three (3) years next preceding the taking over of said concern shall be included in said statement; said profit and loss statement shall clearly reflect the amount of net profit or net loss incurred during each of the years shown. [As amended Acts 1947, 50th Leg., p. 716, ch. 355, § 1.]

Application by foreign issuer

Sec. 6. If the application be filed for or on behalf of an issuer organized under the laws of any other state, territory, or government, or domiciled in any other state than Texas, such application shall also contain a certificate executed by the proper officer of such state, territory or government dated not more than thirty (30) days prior to the date of filing of the application showing that such issuer is authorized to transact business in such state, territory or government, and is not delinquent in any taxes or assessments required to be paid to such state, territory or government. Such applicant shall also by written instrument duly executed by an executive officer thereof, under proper resolution of its board of directors, and authenticated and attested by the seal of said issuer, appoint the Secretary of State of Texas irrevocably its true and lawful attorney upon whom all process in any action or proceeding against it arising out of any transaction subject to this Act may be served with the same effect as if such issuer were organized or created under the laws of this state and had been lawfully served with process therein. It shall be the duty of the Secretary of State, whenever he shall have been served with any process as is herein provided, to forward same by United States mail to the home office of such issuer. [As amended, Acts 1947, 50th Leg., p. 716, ch. 355, § 2.]

Protection to subscribers to preorganization certificates

Sec. 7. In the event any dealer as defined herein shall sell or offer for sale any preorganization certificate or receipts, or shall in any manner solicit subscriptions to or in any proposed corporation, trust or joint stock company proposed to be formed, the Secretary of State may require, if he deems it necessary to protect the interests of prospective subscribers or certificate holders, the dealer so offering such securities for sale to deposit all moneys and funds received from the sale thereof, except such amounts thereof as the Secretary of State may have under this Act allowed as preorganization expenses and commissions for the sale of such security, to be deposited in a trust account in some bank or trust company doing business in the State of Texas, until such time as such proposed company shall have sold the minimum amount of capital to authorize it to begin business in Texas, at which time the bank or trust company shall transfer such funds to the proposed corporation and its executive officers for the purpose of permitting it to undertake its business. In the event such proposed company as herein defined shall fail within two (2) years to sell the minimum amount of capital necessary for the beginning of business in Texas, the bank or trust company shall return to the subscribers that portion of the funds that had been deposited under such preorganization agreement. At the time of making the deposits, as herein provided for, the dealer or issuer shall furnish to such bank or trust company the names of the persons purchasing or subscribing for such securities, and the amount of money paid in by each.

The total expenses, including organization expenses and all commissions paid to salesmen of any proposed company, as herein defined, shall not exceed twenty (20) per cent of the total amount of capital sought to be employed in such proposed company.

Secretary of State to examine application; grant or denial

Sec. 8. Upon the filing of an application, it shall be the duty of the Secretary of State to examine the same and the papers and documents filed therewith. If he finds that the proposed plan of business of the applicant appears to be fair, just and equitable, and that the securities which it proposes to issue and the methods to be used by it in issuing and disposing of the same are not such as will work a fraud upon the purchaser thereof, the Secretary of State shall issue to the applicant a permit authorizing it to issue and dispose of such securities. Should the Secretary of State find that the proposed plan of business of the applicant appears to be unfair, unjust or inequitable, he shall deny the application for a permit and notify the applicant in writing of his decision. Any issuer, as the same is defined herein, who is dissatisfied with any ruling or decision of the Secretary of State, may file within ten (10) days thereafter, an application for a hearing before the Secretary of State, who shall, within ten (10) days after the receipt of such application, set said hearing at such time and place as he may fix, and shall give said applicant ten (10) days notice of such hearing. Such applicant may appeal from any ruling or decision made at such hearing in the same manner and in the same form as is hereinafter provided for appeals by or on behalf of dealers, and the rules applicable thereto and the relief to be had shall be the same.

Permit, form and contents; term and renewals

Sec. 9. Every permit shall be in such form as the Secretary of State may prescribe, and shall recite in bold type that the issuance thereof is permissive only, and does not constitute a recommendation or endorsement of the securities permitted to be issued. Such permit shall be for a period of one (1) year only, provided, however, that if the securities authorized to be sold are not sold within one (1) year from the date of issuance, a renewal application shall be filed with the Secretary of State. Such renewal application shall recite the total number of shares sold in Texas and elsewhere, total number of shares outstanding, and a detailed balance sheet showing the assets and liabilities of the issuer, and such other information as the Secretary of State may require. If satisfied that the business of the issuer has been conducted fairly, justly and equitably, the Secretary of State shall issue to the applicant a renewal permit, which shall be for a period of one (1) year and shall be in such form as the Secretary of State may prescribe. All applications for renewals must be made before the expiration date of the permit under which the issuer is operating; otherwise, all the terms and conditions required for the issuance of an original permit must be met. The Secretary of State shall charge such fees for the issuance of permits to sell securities as are hereinafter provided.

Use of permit to aid sale of securities forbidden

Sec. 10. It shall be unlawful for any dealer or issuer, agent or salesman, to use a permit authorizing the issuance of securities in connection with any sale or effort to sell any security.

Papers filed with Secretary of State as public records open to inspection

Sec. 11. All information, papers, documents, instruments and affidavits required to be filed by this Act with the Secretary of State shall be deemed public records of this State, and shall be open to the inspection and examination of any purchaser or prospective purchaser of said securities or the agent or representative of such purchaser or prospective purchaser; and the Secretary of State shall give out to any such purchaser or prospective purchaser or his agent or representative any information required to be filed with him under the provisions of this section, or any other part of this Act, and shall furnish any such purchaser, prospective purchaser, or his agent or representative, requesting it, certified copies of any and all papers, documents, instruments and affidavits filed with him under the provisions of this section or of any part of this Act. No action at law for damages shall lie against the Secretary of State or any employee thereof on account of any information herein required or permitted to be given.

Registration of persons selling, dealers or agents

Sec. 12. Except as provided in Section 3 of this Act, no person, firm, corporation or dealer shall, directly or through agents or salesmen, offer for sale, sell or make a sale of, any securities in this State without first being registered as in this Act provided. No salesman or agent shall, in behalf of any dealer, sell, offer for sale, or make sale of, any securities within this State unless registered as a salesman or agent of a registered dealer under the provisions of this Act. A list of dealers, agents and salesmen registered under the provisions of this Act shall, at all times, be kept by the Secretary of State and be open to the public.

Method of registration

Sec. 13. A dealer to be registered must submit sworn application therefor to the Secretary of State, which shall be in such form as the Secretary of State may determine and which shall state the principal place of business of the applicant wherever situated; the location of the principal place of business, and all branch offices in this State, if any; the name or style of doing business and the address of the dealer; the names, residences and business addresses of all persons interested in the business as principals, officers, directors, or managing agents, specifying as to each his capacity and title; the general plan and character of business of such applicant and the length of time during and the places at which the dealer has been engaged in business. Such application shall also contain such additional information as to applicant's previous history, record, associations and present condition as may be required by the Secretary of State, or as is necessary to enable the Secretary of State to determine whether the sale of any security proposed to be issued or dealt in by such applicant would be fraudulent or would result in fraud. Each application shall be accompanied by certificates or other evidences satisfactory to the Secretary of State, establishing the good repute in business of the applicant, his directors, officers, copartners, or principals. If the applicant is a corporation organized under the laws of any other State or Territory or Government or shall have its principal place of business therein, it shall accompany the application with a copy of its articles of incorporation and all amendments thereto, certified by the proper officer of such State, or Government, and of its regulations and by-laws; if a limited partnership, either a copy of its articles of copartnership or a verified statement of its plan of doing business; and if an unincorporated association or organization under the laws of any other State, Territory or Government, or having its principal place of business therein, a copy of its articles of association, trust agreement or other form of organization. It shall be the duty of the Secretary of State to prepare, immediately, proper forms to be used by applicants under the terms of this Section, and the Secretary of State shall furnish copies thereof to all persons desiring to make application to be registered as a dealer.

Registration certificates

Sec. 14. If the Secretary of State is satisfied that the applicant is of good business repute, and that the proposed plan of business of the applicant is not unfair, unjust or inequitable, and upon the applicant filing a written consent to service as and when required by Section 15 of this Act, and upon the payment of the fees required by Section 35 of this Act, the Secretary of State shall register the applicant and issue to it or him a registry certificate, stating the principal place of business and address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers, directors or managing agents, and the fact that the dealer has been registered for a current calendar year as a dealer in securities. Pending final disposition of an application, the Secretary of State may, for special cause shown, grant temporary permission, revocable at any time and subject to such terms and conditions as the Secretary of State may prescribe, to transact business as a dealer under this Act. Any dealer acting under such a temporary permission shall be considered a registered dealer for all purposes of this Act.

Consent of foreign company or nonresident to suit in state

Sec. 15. Every company organized under the laws of any other state, or having its principal office therein, and every non-resident individual, shall file with its or his application a written consent, irrevocable, that actions growing out of any transaction subject to this Act may be commenced against it or him, in the proper court of any county of this State in which the cause of action may arise, or in which the plaintiff may reside, by a service of process upon the Secretary of State as its or his agent, and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if due service had been made upon the person or company itself according to the laws of this or any other State, and such instrument shall be authorized by the seal of such corporation, or by the signature of all the members of such co-partnership, or by the signature of the president and secretary of the association, if it is a corporation or association, and shall be accompanied by a duly certified copy of the resolutions of the board of directors, trustees, or managers of the corporation authorizing the said secretary and president to execute the same.

Hearing by Secretary of State after notice refusing registration

Sec. 16. If the Secretary of State declines or fails to so register the applicant, he shall immediately give notice of the fact to the applicant, and upon request from such applicant filed within ten (10) days after the receipt of such notice, shall fix a time and place for hearing of which ten (10) days notice shall be given to such applicant and to other persons interested or protesting to offer evidence relating to the dealer's application. In each such case, the Secretary of State shall fix the time for such hearing on a date within thirty (30) days from receipt of the request for the particular hearing provided the time of hearing may be continued from time to time on consent of the applicant. If satisfied, as aforesaid as a result of said hearing, the Secretary of State shall thereupon register the dealer.

Form of certificates

Sec. 17. The certificate shall be in such form as the Secretary of State may determine. Any changes in the

personnel of a partnership or in the principals, officers, directors or managing agents of any dealer shall be immediately certified under oath to the Secretary of State and any change in the certificate necessitated thereby may be made at any time, upon written application setting forth the fact necessitating the change. Upon the issue of the amended certificates, the original certificate and the certified copies thereof outstanding shall be promptly surrendered to the Secretary of State.

Registration of agents or salesmen of dealers

Sec. 18. Upon written application by a registered dealer, and upon satisfactory evidence as to the good repute of the proposed agents or salesmen and qualification, the Secretary of State shall register as agents or salesmen of such dealer, such persons as the dealer may request. The application shall be in such form as the Secretary of State may prescribe and shall state the residences and addresses of the persons whose registration is requested, together with such information as to such agent's or salesman's previous history, record and associations as may be required by the Secretary of State. Such application shall also be signed and sworn to by the agent or salesman for whom registration is requested. The Secretary of State shall issue to such dealer, to be retained by such dealer for each person so registered, a registration certificate, stating his name and residence, the address of the dealer and the fact that he is registered for the current calendar year as an agent or salesman of the dealer. The certificate shall be in such form as the Secretary of State shall determine. Upon application by the dealer, the registration of any agent or salesman shall be cancelled.

Annual registration; renewals

Sec. 19. All registrations shall expire at the close of the calendar year, but new registrations for the succeeding year shall be issued upon written application and upon payment of the fees as hereinafter provided, without filing of further statements or furnishing any further information unless specifically requested by the Secretary of State. Applications for renewals must be made not less than thirty (30) nor more than sixty (60) days before the 1st of January of the ensuing year. All applications for renewals received otherwise shall be treated as original applications; provided, that if any applicant is registered after December 1st of any year, he may immediately apply for a renewal of his registration for the ensuing year.

Sales by authorized persons

Sec. 20. Any registered dealer, and any registered agent or salesman of a registered dealer, and any person or company named in the registration certificate, may sell, offer for sale or delivery, or solicit subscriptions to or orders for, or dispose of or undertake to dispose of, or invite offers for, securities in this State.

Display or advertisement of fact of registration unlawful

Sec. 21. It shall be unlawful for any dealer, agent or salesman to use the fact of his registry, by public display or advertisement, except as hereinafter expressly provided, or the registry certificate or any certified copy thereof, in connection with any sale or effort to sell any security.

Posting certificate of authority

Sec. 22. Immediately upon receipt of the dealer's registry certificate, issued pursuant to the authority of this Act, the dealer named therein shall cause such certificate to be posted and at all times conspicuously displayed in such dealer's principal place of business, if one is maintained in this State, and shall likewise forthwith cause a duplicate of such certificate to be posted and at all times conspicuously displayed in each branch office located within this State.

Unlawful to sell securities without registration or temporary permit

Sec. 23. Except with reference to exempt transactions provided for in Section 3 of this Act, it shall be unlawful for any dealer, agent or salesman to sell any securities or to issue or publish within this State any circular, advertisement, pamphlet, prospectus, program, or other matter in connection therewith, concerning any security or securities which such dealer handles or proposes to sell until such dealer shall have been registered or temporary permission obtained as in this Act provided; provided however, that any such circular, advertisement, pamphlet, prospectus, program, or other matter in connection therewith may include the names of non-registered dealers who have participated with registered dealers in the original purchase or underwriting of such securities without being deemed to be in violation of this Act, but if the names of non-registered dealers are included thereon, then such circular, advertisement, pamphlet, program or other matter in connection therewith shall bear a legend thereon in plain and legible type, stating that such securities are being offered within the State of Texas only by such persons whose names are subscribed thereon as are registered dealers within the State of Texas. Unless the same has reference to an exempt transaction provided for in Section 3 of this Act, or refers to any of the securities hereinafter expressly exempted from this provision, it shall be unlawful for any dealer, agent or salesman to issue or publish within this State any circular, advertisement, pamphlet, prospectus, or other matter in connection therewith concerning any security or securities to be sold or offered for sale in this State unless the name of the dealer is subscribed thereto or printed thereon and unless a true copy of such circular, advertisement, pamphlet, prospectus or program, or other matter in connection therewith has first been filed in the office of the Secretary of State by the person or company about to issue or publish the same or has been deposited in a United States Post Office, properly enclosed in an envelope addressed to the Secretary of State at Austin, Texas, with the postage duly prepaid thereon; provided, however, that in the case of an advertisement to be published in a newspaper or other periodical, a copy of such advertisement taken from said publication may be mailed to the Secretary of State within twenty-four (24) hours after the first publication thereof; provided, further, that when offered for sale, or sold, or dealt in by a registered salesman of a registered dealer, this provision shall have no application to any security included within any of the following classes:

(a) Any security issued or guaranteed by the United States or by any territory or insular possession thereof, or by the District of Columbia, or by any State or municipal corporation or political subdivision or agency thereof having the power of taxation or assessment.

(b) Any security issued or guaranteed by any foreign government with which the United States is at the time of the sale, or offer of sale thereof, maintaining diplomatic relations, or by any State, province or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time it is offered for sale in this State as a valid obligation by such foreign government or by such State, province, or political subdivision thereof issuing the same, provided however, that such securities must be on the list approved by the Securities and Exchange Commission of the United States.

(c) Any security issued by and representing an interest in or a direct obligation of a national bank, or of a governmental agency created or existing by an Act of the Congress of the United States other than corporations created or existing under the Code of Laws for the District of Columbia or under the Code

of Laws for any territory or possession of the United States.

(d) Any security issued or guaranteed either as to principal, interest, or dividend, by a corporation owning or operating a railroad or any other public service utility; provided, that such corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by the Railroad Commission of Texas, or by a public commission, board of officers, having like powers, of the Government of the United States, or of any State, Territory, or insular possession thereof, or of the District of Columbia, or of the Dominion of Canada, or any province thereof; also equipment trust certificates or equipment notes or bonds based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock mortgages, leased or sold to or furnished for the use of or upon a railroad or other public service utility corporation, provided that such corporation is subject to regulation or supervision as above; or equipment trust certificates, or equipment notes or bonds where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, or of any State, Territory or insular possession thereof, or of the District of Columbia, or the Dominion of Canada, or any province thereof, to secure the payment of such equipment trust certificates, bonds or notes.

(e) Any security issued and sold by a domestic corporation without capital stock and not organized and not engaged in business for profit.

(f) Securities which at the time of sale have been fully listed upon the New York Stock Exchange, the Chicago Stock Exchange, the Boston Stock Exchange, or upon any other recognized and responsible stock exchange which has been previously approved by the Secretary of State as hereinafter in this Section provided, and also all securities senior to, or if of the same issues, upon a parity with any securities so listed or represented by subscription rights which have been so listed, or evidence of indebtedness guaranteed by any company any stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect and only so long as the exchange upon which such securities are so listed remains approved under the provisions of this Section, application for approval by the Secretary of State may be made by any organized stock exchange in such manner and upon such forms as may be prescribed by the Secretary of State, but no approval of any such exchange shall be given unless the facts and data supplied with the application shall be found to establish:

(1) That the requirements for the listing of securities upon the exchange so seeking approval are such as to effect substantially the reasonable protection to the public now existing in the case of exchanges herein approved.

(2) That the governing constitution, by-laws, and/or regulations of such exchanges shall require:

1st: An adequate examination into the affairs of the issuer of the securities which are to be listed before permitting trading therein.

2nd: That the issuer of such securities, so long as they be listed, shall periodically prepare, make public and furnish promptly to the exchange, appropriate financial, income and profit and loss statements.

3rd: Securities listed and traded in on such exchange to be restricted to those of ascertained, sound asset and/or income value.

4th: A reasonable surveillance of its members, including a requirement for periodical financial statements and a determination of the financial responsibility of its members and the right and obligation in the governing body of such exchange to suspend and/or expel any member found to be financially embarrassed or irresponsible or found to have been guilty of misconduct in his business dealings, or conduct prejudicial to the rights or interests of his customers.

The approval of any such exchange by the Secretary of State shall be made only after a reasonable hearing and investigation, and shall be by an order of approval upon a finding of fact substantially in accordance with the requirements hereinabove provided. The Secretary of State, upon ten (10) days' notice and hearing, shall have power at any time to withdraw approval theretofore granted by him to any such stock exchange, and thereupon securities so listed upon such exchange shall be no longer entitled to the benefit of such exemption except upon the further order of said Secretary of State again approving such exchange.

(g) Any security issued or guaranteed by and/or representing an interest in or a direct obligation of a state bank or trust company incorporated under the laws of and subject to the examination, supervision and control of any state or territory of the United States or any insular possession thereof; or issued or guaranteed by any building and loan association or savings institution or by any insurance company under the supervision or control of the Banking or Insurance Department of this State.

(h) Negotiable promissory notes or commercial paper issued in good faith and in the usual course of carrying on and conducting the business of the issuer, provided that such notes or commercial paper mature in not more than twelve (12) months from the date of issue.

(i) Notes, bonds, or other evidence of indebtedness or certificates of ownership which are equally and proportionately secured without reference or priority of one over another, and which, by the terms of the instrument creating the lien, shall continue to be so secured by the deposit with a trustee of recognized responsibility approved by the Secretary of State of any of the securities specified in subsections (a) and (b), or of any of the securities, other than stock, specified in subsection (d) of this Section 23, such deposited securities, if of the classes described in subsections (a) and (b) hereof, having an aggregate par value of not less than one hundred and ten (110) per cent of the par value of the securities thereby secured, and if of the class specified in subsection (d) hereof, having an aggregate par value of not less than one hundred and twenty-five (125) per cent of the par value of the securities thereby secured.

Lists of securities filed with Secretary of State on request; notice and hearing as to questioned securities

Sec. 24. The Secretary of State may, in the exercise of reasonable discretion hereunder, at any time, require a dealer to file with the Secretary of State a list of securities which he has offered for sale or has advertised for sale within this State during the preceding six (6) months, or which he is at the time offering for sale or advertising, or any portion thereof. No dealer, agent, or salesman shall sell any securities or issue or publish within this State any circular, advertisement, prospectus, program, or other matter in the nature thereof, after notice in writing has been given him by the Secretary of State that, in the Secretary of State's opinion, the same contains any statement that is false or misleading, or otherwise likely to deceive a reader thereof, or that the sale of such security would be unfair, unjust or inequitable, or fraudulent, provided, however, that in each case covered by such notice in writing the dealer, agent or salesman to whom such notice is given shall be entitled to a hearing and an appeal as provided for in this Act. The fact that the Secretary of State may give such notice in writing with reference to any specified security or securities shall not affect, limit or impair the right of any dealer, agent or salesman to whom any such notice is given to continue to issue, offer for sale and sell other securities in accordance with the provisions of this Act. Upon receipt of any such notice in writing the dealer, agent or salesman

to whom such notice is given shall have the right to demand an immediate hearing with reference thereto, and the Secretary of State shall, upon request, set a time within thirty (30) days from receipt of such request and fix the place for such hearing and give notice thereof not less than seven (7) days in advance to the dealer, agent or salesman making the request for the hearing. Should the final decision of the Secretary of State, as a result of such hearing and given at the conclusion thereof, reverse the former opinion of the Secretary of State, forming the basis for such notice in writing, then the dealer, agent or salesman may proceed to offer for sale, sell and deal in the security or securities involved and to use the advertisement, prospectus, circular program or other matter in the same manner as if such notice had not been given. Should the final decision of the Secretary of State, as a result of such hearing and given at the conclusion thereof, confirm the former opinion of the Secretary of State, forming the basis for such notice in writing, then the dealer, agent or salesman may proceed to effect an appeal to the courts in the manner provided generally in this Act for similar appeals.

Revocation of registration of dealers on hearing

Sec. 25. If the Secretary of State at any time has reason to believe any dealer has in any way violated, or is violating, or about to violate any of the provisions of this Act, or has been guilty of any fraud or fraudulent practice, then the Secretary of State may, after hearing, and having reasonable cause to believe the dealer has been guilty of such offense, revoke said dealer's registration. Notice of the time and place of any such hearing shall be sent to such dealer at least seven (7) days prior thereto. The dealer shall not be regarded as registered under the provisions hereof until restored to registration by the Secretary of State, either on the Secretary of State's own initiative or upon the order of the court, as in this Act hereinafter provided. In case of revocation, all registration certificates shall at once be surrendered to the Secretary of State upon request. The revocation of the dealer's registration shall constitute a revocation of the registration of any agent or salesman of the dealer's, and notice of its operation on such agent's or salesman's registration shall be forthwith sent by the Secretary of State to each of such agents and salesmen.

Revocation of registration of agents or salesmen

Sec. 26. If the Secretary of State at any time has reason to believe any salesman or agent of any dealer has in any way violated or is violating, or is about to violate any of the provisions of this Act, or has been guilty of any fraud or fraudulent practice, then the Secretary of State may, after hearing, and having reasonable cause to believe that the agent or salesman has been guilty of such offense, revoke said agent's or salesman's registration. Notice of the time and place of such hearing shall be sent to such dealer and to such agent or salesman at least seven (7) days prior thereto. The agent or salesman shall not be regarded as registered under the provisions hereof until restored to registration by the Secretary of State, either on the Secretary of State's own initiative or upon the order of the court as in this Act hereinafter provided. In case of revocation as a result of proceedings under this Section, or in case of the revocation of an agent's or salesman's registration as a result of proceedings against a dealer under Section 25 hereof, in either such event, all agents' or salesmen's registration certificates shall at once be surrendered to the Secretary of State upon request.

Notices by registered mail

Sec. 27. Any notice required by this Act shall be sufficient if sent by registered mail addressed to the dealer, agent or salesman, as the case may be, at the address designated in the application for registration. All testimony taken at any hearing before the Secretary of State shall be reported stenographically and a full and complete record shall be kept of all proceedings had before the Secretary of State on any hearing or investigation.

All decisions of the Secretary of State shall be in writing signed by the Secretary of State, and shall fully state the grounds therefor.

Petition to District Court of Travis County on complaint of decision of Secretary of State

Sec. 28. Any dealer, salesman or agent, aggrieved by any decision of the Secretary of State may file within thirty (30) days thereafter in the District Court of Travis County, Texas, a petition against the Secretary of State, officially as defendant, alleging therein in brief detail the action and decision complained of and praying for a reversal thereof and for an order directing the Secretary of State to register the applicant. Upon service of a summons upon the Secretary of State, returnable within ten (10) days from its date, the Secretary of State shall, on or before the return day, file an answer in which he shall allege, by way of defense, the grounds for his decision. The Secretary of State shall also, on or before the return day of such summons, certify to said District Court the record of the proceedings to which the petition refers. Such record shall include the testimony taken therein, the finding of fact, if any, of the Secretary of State, based upon such testimony, a copy of all orders made by the Secretary of State in the proceedings, and a copy of the action or decision of the Secretary of State which the petition calls upon the Court to reverse. The cost of preparing and certifying such record shall be paid to the Secretary of State by the petitioner and taxed as a part of the cost in the case, to be paid as directed by the court upon the final determination of the case.

Upon the filing of the Secretary of State's answer, the case before the District Court of Travis County shall be at issue, without further pleadings, and upon application of either party and upon due notice given, the case shall be advanced and heard without further delay. Mere technical irregularities in the procedure of the Secretary of State shall be disregarded.

The case shall be heard upon the record certified to the court by the Secretary of State, and the court may consider such other evidence as in its discretion may be necessary to properly determine the issues involved. If the court reverses the decision of the Secretary of State, it may require that officer to register an applicant.

From the decision of the District Court an appeal may be taken to the Court of Civil Appeals by either party as in other cases, and no bond shall be required by the Secretary of State.

A judgment sustaining the refusal of the Secretary of State to grant or renew a registration shall not bar, after one year, a new application by the plaintiff for registration, nor shall a judgment in favor of the plaintiff prevent the Secretary of State from thereafter revoking or refusing to renew such registration for any proper cause which may thereafter accrue or be discovered. The court shall have full power to dispose of all costs.

Subpœnas or other process in investigations by Secretary of State

Sec. 29. The Secretary of State may require, by subpœna or summons issued by the Secretary of State, addressed to the sheriff or any constable, the attendance and testimony of witnesses and the production of any books, accounts, records, papers and correspondence or other records or indices showing the names and addresses of the stockholders (except such books of account as are necessary to the continued conduct of the business, which books the Secretary of State shall have

the right to examine or cause to be examined at the office of the concern and to require copies of such portion thereof as may be deemed necessary touching the matter in question, which copies shall be verified by affidavit of an officer of such concern and shall be admissible in evidence as provided in Section 31 hereof), relating to any matter which the Secretary of State has authority by this Act to consider or investigate, and for this purpose the Secretary of State may sign subpœnas, administer oaths and affirmations, examine witnesses and receive evidence, provided however, that all information of every kind and nature contained therein shall be treated as confidential by the Secretary of State and shall not be disclosed to the public except under order of court, but nothing in this section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Secretary of State. In case of disobedience of any subpœna, or of the contumacy of any witness appearing before the Secretary of State, the Secretary of State may invoke the aid of the District Court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpœnaed to obey the subpœna or give evidence, or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

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

Each witness required to attend before the Secretary of State shall receive, for each day's attendance, the sum of Two Dollars ($2), and shall receive in addition the sum of ten (10) cents for each mile traveled by such witness by the usual route going to and returning from the place where his presence is required. All disbursements made in the payment of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses incident to the administration and enforcement of this Act as hereinafter provided for.

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

Penal provision

For section 30 of this Act, see Pen.Code, art. 1083a.

Certified copies of papers filed with Secretary of State as evidence

Sec. 31. Copies of all papers, instruments, or documents filed in the office of the Secretary of State certified under the seal of the Secretary of State, shall be admitted to be read in evidence in all courts of law and elsewhere in this State in all cases where the original would be admitted in evidence; provided that in any proceeding in the court having jurisdiction, the court may, on cause shown, require the production of the originals.

In any prosecution, action, suit or proceeding before any of the several courts of this State based upon or arising out of or under the provisions of this Act, a certificate under the seal of State, duly signed by the Secretary of State, showing compliance or non-compliance with the provisions of this Act respecting compliance, or non-compliance with the provisions of this Act by any dealer or salesman, shall constitute prima facie evidence of such compliance or of such non-compliance with the provisions of this Act, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce the provisions of this Act.

Construction

Sec. 32. Nothing herein contained shall limit or diminish the liability of any person or company, or of its officers or agents thereof, now imposed by law to prevent the prosecution of any person or company, or of its officers or agents thereof, for the violation of the provisions of any other statute.

Suits and injunction by Attorney General against fraudulent practices; jurisdiction

Sec. 33. Whenever it shall appear to the Secretary of State either upon complaint or otherwise, that in the issuance, sale, promotion, negotiation, advertisement or distribution of any securities within this State, including any security embraced in the subsections of Section 23, and including any transaction exempted under the provisions of Section 3, any person or company shall have employed or employs, or is about to employ any device, scheme or artifice to defraud or to obtain money or property by means of any false pretense, representation or promise, or that any such person or company shall have made, makes or attempts to make in this State fictitious or pretended purchases or sales of securities or shall have engaged in or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities which is in violation of law or which is fraudulent or which has operated or which would operate as a fraud upon the purchaser, any one or all of which devices, schemes, artifices, fictitious or pretended purchases, or sales of securities, practices, transactions and courses of business are hereby declared to be and are hereafter referred to as fraudulent practices; or that any person or company is acting as dealer or salesman within this State without being duly registered as such dealer or salesman as provided in this Act, the Secretary of State and Attorney General may investigate, and whenever he shall believe from evidence satisfactory to him that any such person or company has engaged in, is engaged in, or is about to be engaged in any of the practices or transactions heretofore referred to as and declared to be fraudulent practices, or is selling or offering for sale any securities in violation of this Act or is acting as a dealer or salesman without being duly registered as provided in this Act, the Attorney General may, on request by the Secretary of State, and in addition to any other remedies, bring action in the name and on behalf of the State of Texas against such person or company and any other person or persons heretofore concerned in or in any way participating in or about to participate in such fraudulent practices or acting in such violation of this Act to enjoin such person or company and such other person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this Act. In any such court proceedings, the Attorney General may apply for and on due showing be entitled to have issued the Court's subpoena requiring the forthwith appearance of any defendant and his employees, salesmen or agents and the production of documents, books and records as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. The District Court of any county wherein it is shown that the acts complained of have been or are about to be committed, shall have jurisdiction of any action brought under this Section, and this provision shall be superior to any provision fixing the jurisdiction and/or venue with regard to suits for injunction. No bond for injunction shall be required of the Secretary of State or Attorney General in any such proceeding.

Sales in violation of law voidable; action by purchaser; limitations

Sec. 33a. Every sale or contract of sale of any security made in violation of any provision of this

Chapter shall be voidable at the election of the purchaser, who shall be entitled to recover from the seller in an action at law, upon tender to the seller of the security sold, in proper form for transfer, together with the amount of all dividends, interest, and other income and distributions received by the purchaser from or upon such security, the full amount paid by such purchaser for such security, with interest from the date of purchase; provided that any action by a purchaser to enforce any right or liability based upon any sale made in violation of any provision of this Chapter or any Acts predecessor thereto or amendatory thereof or upon any misrepresentation made in connection with such sale, shall be commenced within two (2) years after the purchaser thereof has knowledge that such sale was made in violation of any provision of this Chapter or Acts predecessor thereto or amendatory thereof or upon a misrepresentation, or within two (2) years after such purchaser, by the exercise of ordinary care, should have discovered that such sale was made in violation of this Act or Acts predecessor thereto or amendatory thereof or upon a misrepresentation, and not thereafter; provided, however, that any existing cause of action so arising and not now barred by limitation may be commenced at any time prior to the expiration of four (4) months after the effective date of this Act. [Added Acts 1941, 47th Leg., p. 593, ch. 363, § 1.]

Actions for commissions; allegations and proof of compliance

Sec. 33b. No person or company shall bring or maintain any action in the courts of this State for the collection of a commission or compensation for services rendered in the sale or purchase of securities, as that term is herein defined, without alleging and proving that such person or company was duly licensed under the provisions hereof and the securities so sold or purchased were duly registered under the provisions hereof at the time the alleged cause of action arose, provided, however, that this Section or provision of this Act shall not apply to the exempt transactions set forth in Section 3 of this Act or to the sale and purchase of securities listed in Section 23 of this Act, when sold by a registered dealer. [Added Acts 1941, 47th Leg., p. 593, ch. 363, § 2.]

Administration and enforcement by Secretary of State and Attorney General

Sec. 34. The administration of the provisions of this Act shall be vested in the Secretary of State. It shall be the duty of the Secretary of State and the Attorney General to see that its provisions are at all times obeyed and to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof. The Secretary of State shall at once lay before the District or County Attorney of the proper county any evidence which shall come to his knowledge of criminality under this Act. In the event of the neglect or refusal of such attorney to institute and prosecute such violation, the Secretary of State shall submit such evidence to the Attorney General, who is hereby authorized to proceed therein with all the rights, privileges and powers conferred by law upon district or county attorneys, including the power to appear before grand juries and to interrogate witnesses before such grand juries. To aid the Secretary of State in carrying out the provisions of this Act, there is hereby created the office of the Securities Commissioner of Texas, who shall be appointed by the Secretary of State for a term coextensive with the term of the office of the Secretary of State. The Securities Commissioner, as herein created, shall draw an annual salary not exceeding Three Thousand Six Hundred Dollars ($3,600), and shall perform the duties of the present Blue Sky Commissioner in the enforcement of the provisions of this Act as directed by the Secretary of State.

Fees

Sec. 35. The Secretary of State shall charge and collect the following fees and shall daily pay all fees received into the State Treasury:

(a) For the filing of any original or renewal application of a dealer, Twenty-five ($25.00) Dollars;

(b) For each and every registration certificate issued to a dealer whether on an original or renewal application, Ten ($10.00) Dollars;

(c) For the filing of any original or renewal application for each salesman, Ten ($10.00) Dollars;

(d) For each and every registration certificate issued to each salesman, Five ($5.00) Dollars;

(e) For each and every registration certificate issued to a dealer or salesman after the first day of July of any year, one-half of the fee provided in subsections (b) and (d) herein, whichever is applicable;

(f) For the filing of any original or renewal application of an issuer to sell or dispose of stock, Five ($5.00) Dollars;

(g) For each and every permit issued to an issuer, a fee of one-tenth of one per centum of the aggregate amount of securities described and proposed to be sold in this state based upon the price at which such security is to be offered to the public;

(h) For each and every renewal permit issued to an issuer, Five ($5.00) Dollars;

(i) For copies of any papers filed in the office of the Secretary of State, or for the certification thereof, the Secretary of State shall charge such fees as the Secretary of State is now authorized to charge in similar cases;

(j) For the filing of any original or renewal application of a dealer of any instrument representing any interest in or under an oil, gas or mining lease, fee, or title, a fee of Twelve ($12.00) Dollars;

(k) For each and every registration certificate issued to a dealer under the terms of subsection (i) shall pay a fee of Five ($5.00) Dollars. [As amended Acts 1937, 45th Leg., p. 811, ch. 401, § 1; Acts 1947, 50th Leg., p. 716, ch. 355, § 3.]

Fees paid to State Treasurer; use for administration of act

Sec. 36. Upon and after the effective date of this Act, all moneys derived from fees, assessments or charges under this Act shall be paid by the Secretary of State into the State Treasury for safekeeping, and shall, by the State Treasurer, be placed in a separate fund to be available for the use of the Secretary of State in the administration of this Act upon requisition of the Secretary of State. All such moneys so paid into the State Treasury are hereby specifically appropriated to the Secretary of State for the purpose of paying the salaries and expenses of all persons employed or appointed as provided herein for the administration of this Act, and all other expenses necessary and proper for the administration of this Act, including equipment and maintenance of any supplies for such offices or quarters as the Secretary of State may occupy, and necessary traveling expenses of the Secretary of State and the Attorney General or persons authorized to act for either when performing duties hereunder at the request of the Secretary of State. Provided, however, in no event shall the expenditure for the administration of this Act exceed Sixty-five Thousand Dollars ($65,000) for any one fiscal year.

It is further provided that the compensation of all persons employed for the administration of this Act shall be in line with salaries paid other State officials and employees holding similar positions, and doing similar work; and, after August 31, 1937, all expenditures for the administration of this Act shall be in the amounts and for the purposes fixed by the Legislature in the General Appropriation Bill.

At the end of the fiscal year any unused portion of said funds in said special account shall be set over and paid into the General Revenue Fund.

The Comptroller shall, upon requisition of the Secretary of State, from time to time draw warrants upon the State Treasurer for the amounts specified in such requisition, not exceeding, however, the amount in such fund at the time of making of any requisition therefor. [As amended Acts 1937, 45th Leg., p. 811, ch. 401, § 2; Acts 1939, 46th Leg., p. 615, § 1.]

Partial invalidity

Sec. 37. The provisions of this Act are severable, and in the event that any provision thereof should be declared void or unconstitutional, it is hereby declared that the remaining provisions would have been enacted notwithstanding such judicial determination of the invalidity of any particular provision or provisions in any respect, and said Sections shall remain in full force and effect.

Repeals; saving as to existing proceedings

Sec. 38. That the Act known as the "Blue Sky Law of Texas" as embraced in Articles 579 to 600, inclusive, Revised Civil Statutes of Texas, 1925, and Articles 1071 to 1083, inclusive, Penal Code, 1925, be and the same are hereby repealed; provided, however, that all permits and exemption certificates issued by the Secretary of State pursuant to said law prior to the effective date of this Act shall be valid during the period for which they were issued unless sooner revoked by the Secretary of State for any cause for which the Secretary of State is authorized by this Act to revoke a certificate of registration hereunder; and provided, further, that all agreements entered into by or under the direction of the Secretary of State pursuant to said Blue Sky Law for the deposit in escrow of securities or moneys, together with all prosecutions and legal or other proceedings begun under the provisions of said law and not completed at the time of the taking effect of this Act, shall continue and remain in full force and effect, notwithstanding the passage of this Act. All moneys appropriated for the administration of said Blue Sky Law and remaining in the Treasury at the time of taking effect of this Act are hereby appropriated to the Secretary of State to be used by the Secretary of State for the purposes specified in Section 36 of this Act. [Acts 1935, 44th Leg., p. 255, ch. 100.]

TITLE 20—BOARD OF CONTROL

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2. Division of Public Printing 607
3. Purchasing Division 631
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CHAPTER 1.—GENERAL PROVISIONS

Art.
601. Appointment.
602. Organization of Board.
603. General duties.
604. New divisions.
605. Qualifications and salary.
606. Suits and injunctions.

Article 601. Appointment.—The State Board of Control shall consist of three citizens of this State, one to be biennially appointed for a term of six years by the Governor with the advice of the Senate, the classification to remain as now constituted by law. Any member of the Board may at any time be dismissed by the Governor for good cause, the reasons for such dismissal to be specified and filed with the Secretary of State. The members of the Board shall be public officers and shall take the official oath, and each shall give bond in form prescribed by the Attorney General in the sum of fifty thousand dollars payable to and to be approved by the Governor, conditioned for the faithful performance of his duties. [Acts 1919, p. 323.]

Art. 602. Organization of Board.—The Board shall elect one of its number Chairman, and two members shall always be necessary for the consideration of any question. They shall keep minutes of their proceedings recorded in a book provided for that purpose. They may employ a secretary and such other clerks, stenographers, auditors, book-keepers and clerical help as may be necessary in the administration of their department, within the limits of the appropriations that may be made for the work of the Board, which shall in no case be exceeded. They shall occupy appropriate rooms in the Capitol, and may purchase such equipment and stationery as may be necessary. The Board shall be entitled to traveling expenses when absent from Austin on official business. [Id.]

Art. 603. General duties.—The Board shall administer the laws relating to the various departments, boards, institutions and public officers of the government herein named, and perform the additional duties and exercise the additional functions provided for in this title, and may combine under it the following subdivisions of its work:

1. Division of Public Printing.
2. Division of Purchasing.
3. Division of Auditing.
4. Division of Design, Construction and Maintenance.
5. Division of Estimates and Appropriations.
6. Division of Eleemosynary Institutions.
7. And such other divisions of its work as it may find necessary in the administration of its duties. [Id.]

Art. 604. New divisions.—The Board may from time to time create such other divisions of its work as may be necessary, and appoint chiefs of such divisions, but no person shall be appointed chief of any division who has had less than five years actual experience immediately preceding his appointment in the work or a profession similar to that to which he is assigned by the Board. [Id.]

Art. 605. Qualifications and salary.—Wherever certain qualifications are prescribed for an office or any employment or appointment by the Board and certain years of experience are required, the existence of such years of experience and such qualifications as a fact shall be a prerequisite to the assignment of such officer, appointee or employé to occupy such position, and the payment of his compensation by the accounting officers of this State and the State Treasurer. The Comptroller may refuse to issue his warrant to any person occupying any office or position of employment with the Board, where he shall find that such person is disqualified as provided in this article, and the State Treasurer may refuse to pay any warrant issued to such person. The party claiming the right to the issuance of such warrants and the payment thereof, may bring a mandamus suit against either of such officers in the Supreme Court as in other cases. [Id.]

Art. 606. Suits and injunctions.—Mandamus suits may be brought in the Supreme Court against the board, but no other suit shall be brought against the Board of any other character, except in the District Court of Travis County. No temporary injunction shall ever issue against the Board except upon notice and hearing. [Id.]

CHAPTER 2.—DIVISION OF PUBLIC PRINTING

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607. Chief of Division.
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Article 607. Chief of Division.—The Board shall appoint a chief of the Division of Public Printing who shall be a practical competent printer, who has had not less than five years experience in a commercial printing office, including the duties of estimator. [Acts 1919, p. 323.]

Art. 608. Contracts.—The Board of Control shall contract for a term of not exceeding two years with responsible persons, firms, corporations, or associations of persons, who shall be residents of Texas, for supplying to the state all printing, binding, stationery and supplies of like character for all departments, institutions and boards, save and except such work as may be done at the various educational and eleemosynary institutions.

For printing, binding, stationery and supplies of a like character estimated to cost One Hundred ($100.00) Dollars or more the contract shall be let to the lowest and most responsible bidder after public advertising of such proposed letting for once a week for four consecutive weeks in at least six newspapers of general circulation in this state. No two of such papers shall be published in the same county.

For printing, binding, stationery and like supplies estimated to cost less than One Hundred ($100.00) Dollars, the Board of Control shall be vested with authority and discretion to invite bids by mail from recognized printing firms without public advertising of such proposed lettings, which bids shall be let to the lowest and best responsible bidder.

The Board of Control may reject any and all bids; the reason therefor shall be entered in full in the minutes of the Board of Control and shall be open to inspection of the public at all times. New contracts shall be made in the same manner as hereinbefore provided. [Acts 1919, p. 323; Acts 1943, 48th Leg., p. 207, ch. 126, § 1.]

Art. 609. Printing at School for Deaf.—Any public printing and binding for the State may be executed by the Texas School for the deaf without regard to any contract with an individual to do the public printing thereof. [Acts 1919, p. 323.]

Art. 610. Rules for bids.—The Board may establish rules and regulations in advertising for bids for printing and stationery supplies in such manner as in its judgment will best serve the State.

Any bidder shall be allowed to bid on either any or all of the items to be contracted for. The Board may define, itemize and group any class in advertising for bids and awarding contracts, in such manner as shall give the State the most efficient service. [Id.]

Art. 611. Separate contracts.—The Board shall have authority to determine to which bidder the several classes of work shall be awarded. It may let the contract for the several classes of printing to separate bidders, and in calling for proposals, it shall be specified that bids for stationery and office supplies shall be separate and distinct from the bids for printing. [Id.]

Art. 612. Quantity of reports, etc.—The Board shall order such quantity of all reports, documents, messages, journals and laws to be published as it may deem necessary, not more than five thousand of such reports. [Id.]

Art. 613. Bidder's bond.—All bids or proposals shall be accompanied by a bond or certified check in such sum as the Board of Control may require, and such requirement shall be stated in the advertisement or invitation calling for bids. [Acts 1919, p. 323; Acts 1943, 48th Leg., p. 207, ch. 126, § 2.]

Art. 614. Contractor's bond.—When any bid shall have been accepted, the Board shall require of the successful bidder a bond in an amount to be fixed by the Board, conditioned that the contractor will comply with all the terms and conditions of contract. Said bond shall have two or more good and sufficient sureties, or shall be made by a surety company authorized to do business in Texas. The Attorney General shall, when requested by the Board, file suit against any contractor for breach of contract. [Acts 1919, p. 323.]

Art. 615. Accounts: regular.—All accounts for printing done, or stationery furnished, except for the Legislature when in session, shall be audited in the following manner: The accounts shall be verified by the affidavit of the contractor that it is true and correct, that the amount of work charged for has actually been performed, or the actual amount of stationery and supplies have been delivered, and that the prices charged in the account are in accordance with the stipulations of the contract. The account shall be accompanied by a sample of the work done, and a receipt from the department to which the goods were delivered. The account shall be examined by the Chief of the Division of Public Printing, and, when certified by him as correct, approved by the department to which delivery was made. After having been thus examined and approved, the Comptroller shall issue his warrant for payment of account out of funds appropriated for that purpose. [Acts 2d C. S. 1919, p. 303.]

Art. 616. Accounts: Legislative.—All accounts for printing done, or stationery used, in either house of the Legislature, shall before being approved by the Legislature be presented to the Chief of Division of Public Printing for his certificate that the printing or binding for stationery is charged for at the rate of the current contract, and such account when approved by the committee on public printing of either house of the Legislature, shall authorize the Comptroller to draw his warrant to pay such account out of the contingent fund. [Id.]

Art. 617. Abrogation of contracts.—The contracts for printing and for stationery herein provided for may be abrogated by the Legislature when in session, or by the Board of Control with the consent of the Governor or Comptroller when the Legislature is

not in session, if the contractor shall fail to perform the work or furnish the supplies in accordance with the law and with his contract as promptly as the exigencies of the public service demand. [Id.]

Art. 618. New contracts.—Should all bids on any contract be rejected, or the successful bidder fail to execute bond as provided herein, or should the contract be abrogated, the Board shall let a new contract in the manner provided herein. The Board may in its discretion make such temporary arrangement to meet the emergency as the public interest may demand. [Id.]

Art. 619. Reporters' stationery.—The Board shall furnish the reporters for the Supreme Court and the Court of Criminal Appeals with the necessary stationery for the performance of their duties. [Id.]

Art. 620. Judicial reports.—The Board shall from time to time cause the decisions of the Supreme Court and the Court of Criminal Appeals to be printed and bound in the manner provided by law. [Id.]

Art. 621. [1575–1579] Printing of reports.—As fast as the Chief of the Printing Division shall receive the manuscript copy of reported cases from the court reporter, he shall cause the same to be printed at the printing office of the Deaf and Dumb Asylum of Texas, with proper index tables of cases cited and of cases reported; or should the Board find that the work of printing and binding the reports can be done more speedily and more economically by contract, or that ample material and means to carry out the provisions hereof are not readily obtainable, it shall at once let the printing and binding of the reports out by contract, require security for the performance of the work, and delivery to the State of electrotype plates. [Acts 1882, p. 71; Acts 1919, p. 60.]

Art. 622. [1577] [964] Specifications or reports.—The Board shall have one thousand copies of each volume of the decisions of said Courts printed and bound. Each volume shall contain not less than seven nor more than eight hundred pages; and pages shall be twenty-six ems pica wide and forty-six ems pica long. The type used shall be long prima [1] and minion of the same size used in Volume 23, Wallace's United States Supreme Court Reports; the lines shall be leaded with not thicker than eight to pica leads. The paper, press work and binding shall be the same style and at least equal in quality in every respect with the volumes of Moore & Walker's Reports heretofore published. The volumes containing the Supreme Court decisions shall be styled "The Texas Reports," and shall be so styled on the title page and back, and the volumes shall be numbered. The name of the reporter may be printed on the back of each volume. [Id.]

[1] So in enrolled bill. Should probably read "primer."

Art. 623. Bids: advertisements.—The Board shall invite bids upon proposals advertised by the Board in the manner provided by the Board, and it shall not be confined to the residents of this State. The lowest responsible bidder shall be awarded the contract. The Board may reject any and all bids. [Acts 1919, p. 60.]

Art. 624. Contracts: terms.—The Board may fix all conditions, provisions and details of such contracts concerning the printing, binding, publication and sale of such reports, and demand such security from the contractor as will secure the performance of such contract. Such contracts shall be for a term of six years' duration at a time; and may provide for the printing and binding of delayed manuscripts of said reports. [Id.]

Art. 625. Renewal contracts.—The Board may provide from time to time by separate contracts under similar conditions, for renewal contracts in the event of forfeiture or for other reasons, and in order to facilitate the prompt printing and binding of said reports. [Id.]

Art. 626. Price of reports. The price of such reports furnished by the contractor to the legal profession and to the public of this State shall not exceed the contract price fixed by said contract. The number of volumes delivered to the State for its use shall not exceed three hundred of each volume of said reports. [Id.]

Art. 627. Extra copies.—The contract shall also provide that the contractor shall keep on hand a sufficient number of volumes of said reports, or make such arrangements as to enable the legal profession and the public in this State to obtain from the contractor such reports at the price fixed in the contract. [Id.]

Art. 628. Printing plates.—The Board shall determine whether electrotype or stereotype plates of said reports are to be made, and shall regulate the use thereof. The ownership of such plates, together with the copyright of the reports, shall remain in this State. [Id.]

Art. 629. Interest in contracts.—No member or officer of any department of the State Government shall be in any way interested in any contract which shall be let under the provisions of this law. [Id.]

Art. 630. Contracts: approval.—All contracts made under the provisions of this law shall be subject to the approval of the Governor, the Secretary of State and the Comptroller, as required by Article 16, Section 21, of the Constitution. [Id.]

Art. 630a. State contracts for printing laws.

Award of contract; provisions; appropriation

Sec. 1. The Board of Control shall, at the opening of each regular session of the Texas Legislature, award a special contract for printing the general and special laws and resolutions to be passed by each regular or special session of the current Legislature, said contract to be separate and apart from all other contracts for public printing. The General and Special Laws shall be printed in separate volumes upon order of the Board of Control. The contracts for said printing shall be prepared by the Board of Control and shall provide such penalties as will assure the delivery of said laws within the contract time limit. A special stipulation shall be included in such contract providing that the printer shall produce at least forty-eight pages per day from the time the last copy is furnished him by the State. Binding time shall be allowed of not less than eight thousand sections of thirty-two's each day after the printing is completed, according to the foregoing schedule. The printer shall be required to begin delivery of completed books within a reasonable time after the printing is completed and binding commenced, which limit shall be set out in the call for bids made by the Board of Control. An appropriation shall be made by the Legislature to pay the cost of compiling, indexing and printing all such laws and resolutions.

Reading proofs; warrant dependent on compliance with section

Sec. 2. There shall also be placed in said contract a stipulation requiring the printer to have the proof read and corrected as provided herein, before submitting such proof to the State. The printer shall have such proof read by a competent proof reader and copy holder, and the discovered errors shall be corrected and a revised proof submitted to the State. While the proofs are in the hands of the State the time shall not be charged against the contractor doing the work, and he shall be allowed extension of time in which to deliver the finished product equal to the number of days the proofs are withheld from him by the State. The Comptroller shall not issue a warrant to

the printer in payment for the printing of such laws and resolutions unless and until the printer, if an individual, or if a corporation, partnership, or association, the vice-president, secretary or manager of same has made a sworn affidavit that he has complied with this Section.

Printing under direction of Secretary of State; time for furnishing copy

Sec. 3. Such laws and resolutions shall be compiled and printed under the direction of the Secretary of State, who shall within twenty-six days, excluding Sundays, after adjournment of the Legislature furnish the printer all copy therefor, the delivery of the first copy to the printer to begin as the bills are signed by the Governor; provided that copy for the index shall be given to the printer within five days after the printer has furnished all page proofs of the laws to the Secretary of State.

Officers furnished printed laws

Sec. 4. The Secretary of State shall distribute the printed laws of each session of the Legislature to the following named officers; he shall mail or distribute in person one free copy to the Governor, three copies to each of the heads of all Departments and one copy to each of the judges of the several courts throughout the State; one copy to each district and county attorney in the State and one copy to each member of the Legislature. [Acts 1929, 41st Leg., 2nd C.S., p. 151, ch. 76.]

Section 5 of this Act repeals all conflicting laws and parts of laws.

Art. 630b. Official reports printed only with consent of Governor or Board of Control.—That hereafter any report or reports required by Law to be made by any State Officer, Board or Department of this State shall be made as directed by Law except the same shall not be printed unless with the advice and consent of the Governor or Board of Control. A typewritten or similar copy of said report shall be given to the Governor and Board of Control and State Auditor and State Library. [Acts 1931, 42nd Leg., p. 104, ch. 69, § 1.]

Section 2 repeals all conflicting laws or parts of laws.

CHAPTER 3.—PURCHASING DIVISION

Art.
631. Chief of Division.
632. Term of office, etc.
633. Interest in contracts.
634. Departmental supplies.
634¼. Cancellation of outstanding orders.
634½. Contracts with State Prison Board.
634a. Bids on public contracts.
Sec.
1. Copy of proposal; mailing list of contractors.
2. Bidders other than those on mailing list.
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634a—1. Motor vehicles, tires and tubes purchased for school districts receiving state aid.
635. Bidder's affidavit.
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641. May dispense with storekeeper.
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661. Equipment: specifications.
662. Local dealers.
663. Appropriations.
664. Rules.
664—1. Surplus war materials, purchase of.

Article 631. Chief of Division.—The Board may appoint a Chief of its Division of Purchasing, who shall have had not less than five years experience immediately preceding his appointment, as a purchaser for a department store or wholesale establishment of recognized standard and successful experience, and no other person shall be eligible for such position. [Acts 1919, p. 323.]

Art. 632. Term of office, etc.—Said chief shall hold his office for a term of two years from the date of his qualification, and until his successor is appointed and qualified. He shall not receive, directly or indirectly, any extra compensation in the way of commission or otherwise, nor shall he collect or be paid his salary or any part thereof while he is in any manner indebted to the State, or in arrears in his accounts and reports as such agent. [Acts 1899, p. 138; Acts 1915, p. 193.]

Art. 633. Interest in contracts.—Neither said chief nor any member of the Board nor any employé or appointee of the Board shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies or articles of any kind to any of the institutions or departments of this State, or with any person, firm or corporation who is interested in or in any manner connected with any kind of contract with this State or any of its institutions and departments. Neither shall said agent accept or receive from any person, firm or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation or contract for future reward or compensation from any such party. [Id.]

Art. 634. Departmental supplies.—The Board of Control shall purchase all the supplies used by each Department of the State Government, including the State Prison System, and each eleemosynary institution, Normal school, Agricultural and Mechanical College, University of Texas, and each and all other State Schools or Departments of the State Government heretofore or hereafter created. Such supplies to include furniture and fixtures, technical instruments and books, and all other things required by the different departments or institutions, except strictly perishable goods. [Acts 1919, p. 323; Acts 1929, 41st Leg., 2nd C.S., p. 30, ch. 17.]

Art. 634¼. Cancellation of outstanding orders.—The State Board of Control may cancel outstanding orders for supplies, which are made by authority of Article 634, Revised Civil Statutes, Texas, 1925, under the following conditions:

(1) When Federal law, rule, or regulation makes delivery of such supplies impossible, within a reasonable length of time.

(2) When any agency of the State requests the cancellation of such order, with the approval of the contractor.

(3) When such cancellation is deemed to be in the best interest of the State. [Acts 1947, 50th Leg., p. 169, ch. 106, § 1.]

Art. 634½. Contracts with State Prison Board.—The Board of Control is hereby authorized to make contracts with the State Prison Board for the purchase of supplies, equipment and materials for use by other State institutions, including food, supplies, clothing, shoes, metal utensils and appliances, furniture and fixtures, and any and all other supplies or agricultural or manufactured products, binding, other labor for use of the State in any of its Departments, Commissions, Boards, Offices, or eleemosynary or educational institutions, including any and all supplies, equipment, material or labor purchased or used by, or for the State, under the direction of the Board of Control. [Acts 1929, 41st Leg., 2nd C.S., p. 30, ch. 17, § 1a.]

Art. 634a. Bids on public contracts.

Copy of proposal; mailing list of contractors

Sec. 1. The Board of Control shall in all public contracts to be let or awarded by it invite bids and furnish proposals to those desirous of bidding on such forms as it may deem proper. Said Board may place any person, firm or corporation so desiring on a State mailing list which said list shall entitle said holder to a copy of the proposal on any contract that is to be let. To be entitled to receive such State mailing list, said holder shall first pay in advance an annual service charge, to be determined by the Board of Control, which same shall not be less than Five ($5.00) Dollars nor more than Seven Dollars and Fifty ($7.50) Cents.

Bidders other than those on mailing list

Sec. 2. Where any bidder or prospective bidder, other than those appearing on said State mailing list, desires to bid on any contract to be let by said Board, he shall pay such amount for the proposal or proposals furnished to him, as said Board may determine is just and necessary; provided, however, in the event said Board finds that a service charge may work a hardship on some particular bidder or class of bidders, it may forego such charge and shall be authorized to furnish such proposals.

Disposition of funds

Sec. 3. All amounts collected from the annual service charge of those on the State mailing list or from proposals furnished shall be deposited in the State Treasury, in the name of the "State Board of Control Special Service Account," and enough of said funds so collected shall be used by said Board and paid out as other funds are to defray all necessary expenses and charges in connection with the making and furnishing of said proposals. [Acts 1933, 43rd Leg., p. 602, ch. 199.]

Art. 634a—1. Motor vehicles, tires and tubes purchased for school districts receiving state aid.—All motor vehicles including buses and bus bodies, tires and tubes, purchased for or by any school district receiving aid under the terms of any equalization act which seeks to equalize educational advantages, shall be purchased by and through the Board of Control. And no such school district or its officers or employees shall have the power to purchase for such school district any of such items except in those instances wherein an emergency requires an immediate purchase thereof, to be reported to and approved by the Board of Control.

Such motor vehicles, including buses and bus bodies, tires and tubes, shall be purchased on competitive bids under such rules and regulations as may be made by the Board of Control. Such purchases shall be made on requisition of any such school district. Requisitions, if for the purchase of motor vehicles, buses or bus bodies, must be presented to and receive the approval of the County Board of Trustees. Requisitions for the purchase of tires and tubes must be presented to and approved by either the County Board or the County Superintendent.

Any such school district making requisitions for purchase of the above articles, or any of them, shall, when sending in the requisition therefor, include therewith a general description of the article desired, and shall certify the Funds that will be available to pay therefor.

Any such school district financially unable to comply with the foregoing requirement to make immediate payment for any motor vehicles, including buses and bus bodies, purchased by it, may, subject to the provisions hereof, issue interest-bearing time warrants in amounts sufficient to make such purchase, any law to the contrary notwithstanding. Such warrants shall mature in serial installments not more than five (5) years from their dates of issue, and shall bear interest at a rate of not to exceed six per centum (6%) per annum. Such warrants shall upon maturity be payable out of any available Funds of such school district in the order of their maturity dates. No such warrants shall be issued or sold unless and until the same have been approved by the County Board of School Trustees; and said Board shall, upon application of such school district, inquire into the financial condition and needs of such district, and shall not approve the issue of such warrants unless in its opinion said district is in need of the equipment it desires to purchase and will be able with the resources in prospect to liquidate said warrants at their maturity. After such approval by the Board, above-mentioned, said warrants may be issued and sold by such districts at not less than their face value, and the proceeds thereof used to provide the Funds required for such purchase as herein provided. Full records of all warrants issued and sold shall be kept by the County Superintendent and reported to the Board of Control. Such warrants shall be entitled to first and prior payment out of any available Funds of such district as they become due. If such school district has an old bus or other equipment which is to be replaced by the purchases under the provisions of this Act, the Board shall investigate the proposed disposition of such old bus equipment and shall not approve the issuance of any warrants for the purpose of buying a new bus or equipment unless and until it is satisfied that such old bus or equipment, including buses, may be traded in upon the purchase of new equipment, as the Board of Control may provide.

In addition to the above, the provisions of this Section and Article shall apply to the purchase, if any, of all motor vehicles, buses, bus bodies, tires and tubes purchased in whole or in part with any Funds appropriated in any Act seeking to equalize educational advantages.

The Board of Control shall have the power to make any rules or adopt any regulations to effectuate the purpose of this Article. The State Superintendent shall make such rules and shall require such reports or affidavits as are necessary to show that any school district receiving aid under any equalization law is complying herewith; and any district failing to comply with this Article shall be ineligible for aid for the then current school year.

The provisions of this Article shall become effective September 1, 1947, save and except that as to the purchase of motor vehicles, including buses and bus bodies, such shall become effective September 1, 1948. [Added Acts 1947, 50th Leg., p. 401, ch. 228, art. XIV.]

Acts 1947, 50th Leg., p. 401, ch. 228, article XIV contained an introductory clause which read as follows: "It is hereby declared to be the public policy of the State that all school districts receiving aid under any equalization bill which seeks to equalize educational advantages in

the State, shall purchase all motor vehicles, including buses and bus bodies, and motor vehicle tires and tubes through the Board of Control under competitive bidding in order that savings may be made which will make it possible to provide adequate compensation for the teachers of such school districts, and otherwise equalize educational advantages; to carry out such policy and as a part of this Act and also as an amendment to Chapter 3 of Title 20, Revised Civil Statutes, 1925, such Chapter 3 of Title 20 of the Revised Civil Statutes of Texas of 1925 is amended hereby by the addition of a new Article thereto, to be known as Article 634(a-1) and reading as follows:"

Article XIV of the 1947 Act further provided:

"If for any reason this Section or Article or any part thereof should be invalid or ineffective as an amendment to Chapter 3, Title 20, Revised Civil Statutes, 1925, nevertheless this entire Section and Article is enacted as, and shall remain in full force and effect as a part of this Act; and the Board of Control, the Department of Education, all school districts affected thereby, as well as all officers of the State, County, and such school districts must comply with all terms thereof, as a condition precedent to the granting to or receiving by any school district otherwise eligible of any aid hereunder. And no motor vehicles, including buses and bus bodies, tires, and tubes shall be purchased by any school district receiving aid under this Act, except in the manner and under the terms of this Article and Section. Should any word, clause, phrase, sentence, or portion of this Article or Section be invalid such shall in no way affect the remaining portion thereof, but such remaining portion shall continue in full force and effect.

"The Board of Control may expend such amounts for salaries, maintenance, postage, telephone, telegraph, supplies, equipment and contingent expense as may be needed to effect the purposes of this Article or Section, within the limits of the appropriation made herein for such purposes."

Articles I-XII, XV-XVII of Acts 1947, 50th Leg., p. 401, ch. 228, made an appropriation for the equalization of educational opportunities and provided for the distribution and expenditure of such appropriation.

Art. 635. Bidder's affidavit.—The bidder for the contract for such supplies shall be required to file with his respective bids an affidavit stating that neither the affiant nor the firm, corporation, partnership nor institution represented by the affiant, or anyone acting for such firm, corporation or institution, has within twelve months past violated any law of this State relating to trusts or monopolies. The Attorney General shall prepare the form of such affidavit which shall embrace each phase of the statutes of Texas forbidding trusts and monopolies, and shall also provide that neither the affiant nor the firm, corporation or partnership represented by him has communicated directly or indirectly the bid made by such person, firm or corporation bidding, to any competitor bidding on said contract, or any person engaged in such line of business or any other person. [Acts 1919, p. 323.]

Art. 636. Storekeepers.—The superintendent of each educational and eleemosynary institution placed by law under the management and control of the Board of Control, shall, with the consent of the Board, appoint one storekeeper and accountant for each of said institutions, who shall hold office for two years from the date of qualification, or until their successors shall have qualified, unless sooner removed by the Board. Where the magnitude of an institution is not sufficient to employ a storekeeper and accountant, the superintendent shall perform that service. [Acts 1899, p. 138; Acts 1915, p. 193.]

Art. 637. Bond.—Each storekeeper or accountant shall, before entering upon the performance of his duties, make and file with the Comptroller a bond in the sum of ten thousand dollars, payable to the State, conditioned for the full, faithful, accurate and honest performance of his duties, and approved by the Governor. [Id.]

Art. 638. Acts prohibited.—No such storekeeper or accountant shall sell or in any way be concerned in the sale of any merchandise, supplies or other articles to any such institution, or have any interest in any contract therewith, or with any other institution or department of the State government. [Id.]

Art. 639. Reports.—Such storekeeper or accountant shall keep the Board constantly informed as to the amount and character of supplies on hand and the amount and character required in order to keep the institution provided for. They shall make reports to the Board on or before the tenth day of each month, showing the total amount of the appropriation, the total amount expended, and the balance unexpended on the first day of each month. They shall also furnish any other information respecting such matters as the Board may request. [Id.]

Art. 640. Surplus supplies.—When any institution accumulates an amount of supplies on hand in excess of its needs, and another institution is in need of such supplies, the Board shall be authorized to transfer any of such supplies from the institution having such excess to such institution in need of such supplies, and the debit and credit shall be made on the basis that such supplies can be purchased in the open market at the time of the transfer, when it is less than the cost under the general contract for such supplies for the fiscal year, otherwise the debit and credit shall be made on the basis of the general contract price for that year. [Id.]

Art. 641. May dispense with storekeeper.—Any educational institution may dispense with the position of storekeeper and appoint some person at such institution to receive such supplies, and make the reports required of storekeepers. [Id.]

Art. 642. Supply contracts.—The Board shall contract for all supplies, merchandise and articles of every description needed for the maintenance and operation of such institutions, except those supplies designated as perishable, and supplies of a special character, as books for libraries and supplies for the laboratories and laboratory work and instruction, and any special supplies for instruction, demonstration and research for educational institutions, to be designated as "Special Supplies for Educational Institutions." The Board shall base its contracts upon estimates to be furnished the Board by the superintendents, by the first day of April of each year, for the entire year. [Id.]

Art. 643. Notice and limits.—All such contracts shall be made after full notice by advertisement once a week for not less than four weeks in at least four of the leading papers of this State, to be selected by the Board. Such contracts shall be made within the limits of the appropriations made by the Legislature for such purposes, regard being had to the appropriations for each institution. [Id.]

Art. 644. Requisites of bids.—The Board shall advertise for sealed bids or proposals to furnish the aggregate of the articles and supplies as estimated by such institutions, naming the articles and supplies and the quantities and character required. All such bids and proposals shall, when required by the Board, be accompanied by samples or designs furnished by the bidder, and shall be for the entire period of one year. Such supplies, articles and merchandise shall be delivered at such times and in such quantities to such institutions, as the Board may designate. [Id.]

Art. 645. Short term contracts.—If the Board at any time discovers that they can purchase the same supplies for less money than for any one year by buying the same for a less length of time, they shall make such purchases for a shorter length of time, not less than for three months. [Id.]

Art. 646. May reject bids.—The Board shall in all cases reserve the right to reject or accept any or all bids, or reject in part if it prefers, and in such case they may buy in the open market until a satisfactory bid is offered. [Id.]

Art. 647. Equal bids.—The terms and conditions, and the period for which such bids or proposals are invited shall be clearly stated in the advertisement. When the same article is estimated for by two or more institutions, but of different brands or grades, such articles shall be purchased so as to produce uniformity in use by each institution, and other things being equal, supplies offered by bidders who have an established local business, shall have preference. [Id.]

Art. 648. Equipment.—Furniture or equipment for educational institutions shall be such as is especially adapted or designed for such institutions. [Id.]

Art. 649. Bond or security.—All bids or proposals shall be accompanied by a bond or certified check in such sum as the Board may require. Such requirement shall be stated in the advertisements calling for bids. [Id.]

Art. 650. Separate bids.—The Board may advertise for the various articles and supplies needed either separately or all together, and may accept a bid for the same to be furnished either separately or all by one bidder. Preference shall be given, all things being equal, to State products. [Id.]

Art. 651. Opening of bids.—All bids shall be opened on the date and at the place specified in the advertisement. The opening and inspection of bids shall be made by the Board in the presence of the Governor and the Comptroller. [Id.]

Art. 652. Quality of goods.—The supplies and articles furnished under all bids and contracts shall be such as called for by requisition of the superintendents of the several institutions. Each article shall be equal to the sample which is required with the accompanying bid. [Id.]

Art. 653. Misrepresentation.—If supplies delivered under contract are not equal to the sample, the superintendent shall refuse to accept them. [Id.]

Art. 654. Estimates.—The estimates upon which advertisements and contracts are made shall as near as practicable state the quantity and quality of the articles and supplies needed. [Id.]

Art. 655. Invoice: affidavit.—The contractor or seller shall in all cases append an affidavit stating that the invoice is correct and that it corresponds in every particular to the supplies furnished and shipped. [Id.]

Art. 656. Invoice: delivery.—Invoices of all supplies shall be furnished in triplicate by the contractor or seller at the time of delivery of said supplies, one of which shall be sent to the storekeeper of the institution to which the supplies are sent. [Id.]

Art. 657. Invoice: check of goods.—As soon as supplies are received and examined by the storekeeper of the institution to which the same were shipped, if they check with the invoices transmitted and the samples by which the supplies were sold, he shall transmit to the Board of Control the original invoices and duplicate with his certificate thereon that the supplies received correspond in every particular with the invoice and with the samples by which they were sold. If the Board finds such invoice to be correct, it shall approve and transmit the same to the Comptroller. [Id.]

Art. 658. Invoice: payment.—When such invoice so approved by such storekeeper and by the Board of Control, shall be approved by the Comptroller, he shall draw his warrant upon the State Treasury for the amount due on the invoice or for so much thereof as has been allowed, and it shall be charged against the institution. [Id.]

Art. 659. Contract bond.—When any bid has been accepted, the Board shall require of the successful bidder a bond payable to the State with good and sufficient sureties in a sum not less than one-third the amount of the bid, conditioned that the bidder will faithfully and accurately execute the terms of the contract into which he has entered. Said bond shall be filed in the office of the Comptroller, and recoveries may be had thereon until exhausted. [Id.]

Art. 660. Purchase without contract.—In case of emergency, and where articles are necessary and needed by any institution, and it is impracticable to include them in the annual contract, the superintendent shall make a requisition for same to the Board of Control; and the Board may forthwith purchase such article in the open market. [Id.]

Art. 661. Equipment: specifications.—Furniture or equipment for educational institutions shall be of the particular kind and make as requisitioned by such institution and approved by the Board. [Id.]

Art. 662. Local dealers.—Preference shall be given to dealers in cities or towns in the county in which said institution is located, conditioned that the articles purchased shall be equal in price and quality to articles which can be purchased elsewhere. [Id.]

Art. 663. Appropriations.—All purchases by contract or otherwise, as herein authorized, shall be in accordance with such appropriations as shall be made by the Legislature for the support of the several institutions respectively. [Id.]

Art. 664. Rules.—The Board shall frame and transmit to each institution a system of rules and regulations for the purchase of such supplies as have been designated by them as perishable and as special supplies for educational institutions, and to which, conformity by all institutions is hereby required. [Id.]

Art. 664—1. Surplus war materials, purchase of.—The Board of Control of the State of Texas is hereby authorized and directed to purchase for any county or any other political subdivision of this State such surplus war materials or surplus goods, merchandise, equipment or other wares from the Federal Government or its agencies as may be offered for sale by them, provided said county or other political subdivision shall request the Board of Control to make such purchase, and provided they shall deposit with the Board of Control sufficient funds to cover payment therefor. [Acts 1945, 49th Leg., p. 271, ch. 199, § 1.]

CHAPTER 4.—PUBLIC BUILDINGS AND GROUNDS DIVISION

Art.
665. Custodianship of State property.
665a. Storage of records and archives outside Capitol Building; proviso as to American Legion.
666. Sale of personal property of State when unfit or not needed.
666a. Lease of public grounds; approval of Attorney General; disposition of funds.
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Art.
678. State cemetery.
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1. Membership; appointment; term.
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678b. Purchase and custody of old French embassy building.
678c. State Courts Building; State Office Building; location and construction; garage; underpass and tunnel connecting with State Capitol; purchase of additional building.
678d. Vending stands operated by blind persons on state property; licenses.

Article 665. Custodianship of State property.—The State Board of Control shall have charge and control of all public buildings, grounds and property of the State, and is the Custodian of all public personal property, and is charged with the responsibility to properly care for and protect such property from damage, intrusion or improper usage, and the Board is expressly directed to take any steps necessary to protect any public buildings against any existing or threatened fire hazards. And the Board shall be authorized to provide for the allocation of space in any of the public buildings to the departments of the State Government and for the uses authorized by law to have and occupy space in the State buildings, and shall be authorized to make any repairs to any such buildings or parts thereof necessary to the serviceable accommodation of the uses to which such buildings or space therein may be allotted. Provided the Board of Control shall not be understood to have or exercise any authority to direct the allotment of space in any public building in any manner calculated to increase the operations of any department or use beyond the discharge of duties devolved by provision of law. Said Board of Control shall remove all occupants of all committee rooms in the Capitol and keep them free for Legislative work. Provided, however, that the allocation of any space affecting the quarters of either House of the Legislature, must have the approval of the Speaker of the House of Representatives or the Lieutenant Governor, the approval being for the quarters allocated to the particular House affected. [Acts 1884, p. 60; Acts 1919, p. 326; G.L. vol. 9, p. 592; Acts 1930, 41st Leg., 5th C.S., p. 209, ch. 63, § 1.]

Art. 665a. Storage of records and archives outside Capitol Building; proviso as to American Legion.—The State Board of Control is hereby authorized and empowered to make such arrangements as it may deem necessary for the safe storage outside the Capitol Building of such records and archives as now prevent the better utilization of space in said Building. Provided that the American Legion shall not be moved from their quarters unless and until other suitable quarters are arranged for them. [Acts 1930, 41st Leg., 5th C.S., p. 209, ch. 63, § 1a.]

Transfer of records of state Agencies from Texas Confederate Home for Men.

Acts 1943, 48th Leg., p. 108, ch. 80, approved and effective March 25, 1943, directed the Railroad Commission of Texas, the Texas Library and Historical Commission, the Bureau of Labor Statistics, the Industrial Accident Board, the Vocational Rehabilitation Division and other departments of the Department of Education, the Secretary of State, the State Department of Public Welfare, the State Comptroller of Public Accounts, the State Board and Department of Health, and any other agency of the Government to move all records and property in their custody from the Texas Confederate Home for Men; directed the examination of records and a list made thereof to be submitted to the Texas Library and Historical Commission for examination; directed such Commission to acquire such records as were wanted by them within five (5) days after delivery of such list; directed all such departments and agencies of the Government to transfer useless records not wanted by the Texas Library and Historical Commission to State Board of Control for sale or destruction; and declared an emergency.

Art. 666. Sale of personal property of State when unfit or not needed.—All personal property belonging to the State, regardless of where it is located, under the control of any department, commission, board, or other State agency, with the exception of State Eleemosynary Institutions, colleges, institutions of higher learning, and the Texas Prison System, when it shall become unfit for use, or be no longer needed, shall be placed under the jurisdiction of the State Board of Control, and the State Board of Control may sell such property after advertising it not less than four (4) days in a newspaper in the county wherein the property is located. Provided, however, that if no newspaper is published in the county wherein the property is located, notice of sale setting out the time and place of sale and the property to be sold shall be posted in three (3) public places, one being in the courthouse in the county wherein the property is located. Provided, however, that if the value of such personal property is less than One Hundred Dollars ($100) and not sufficient to justify the cost of advertisement in newspapers as outlined above, the State Board of Control may sell such property in any manner that it deems for the best interest of the State. The money from the sale of such property, less the expense of advertising the sale, shall be deposited in the State Treasury to the credit of the department, commission, board, or other State agency, which transferred the property to the State Board of Control. The credit to such department, commission, board, or other State agency shall be made to the fund from which such property could be purchased.

The State Board of Control shall make a written report to the Comptroller after each sale. The report shall include the following items:

1. Name of the newspaper and the dates of advertisement of notice of sale; or if posted, the date and place of posting.
2. Each article received.
3. The price for which each article was sold.
4. The name and address of the person to whom each article was sold.

This report shall be signed by the Board of Control and a member of the department, commission, board or State agency having control of the property before sale. [Acts 1884, p. 60; Acts 1919, p. 326; G.L. vol. 9, p. 592; Acts 1943, 48th Leg., p. 272, ch. 171, § 1; Acts 1947, 50th Leg., p. 492, ch. 289, § 1.]

Section 2 of the amendatory Act of 1947 read as follows: "Any property which has become unfit for use, or no longer needed, when placed under the jurisdiction of the State Board of Control by any department, commission, board, or other State agency, including State Eleemosynary Institutions, colleges, institutions of higher learning, and the Texas Prison System, may be transferred by the State Board of Control to any institution, department, commission, board, or other State agency in need of same, and the proper debit and credit shall be made on the basis that such property can be purchased in the market at the time of the transfer, if a market exists, and if not, at its actual or intrinsic value as set by the State Board of Control. The State Comptroller shall, upon information furnished by the State Board of Control, debit the appropriation of the State agency receiving such transferred property, from which such property could have been purchased, and credit the fund from which such property could have been purchased, to the State agency that transferred such property to the State Board of Control, provided, however, that the provisions of this Section shall not apply to property acquired from the Federal Government and transferred from one eleemosynary institution to another, and the sale of supplies manufactured by the Texas Prison System, and provided further, that any State agency may offer such property which has become unfit for use, or no longer needed as a trade-in on new property of the same type when such exchange is for the best interest of the State."

Art. 666a. Lease of public grounds; approval of Attorney General; disposition of funds.—Sec. 1. All public grounds belonging to the State of Texas under the charge and control of the State Board of Control, when in the wisdom of the Board should be leased for agricultural or commercial purposes, may be leased by said Board for the above stated purposes, after lease proposal shall have been advertised once a week for four (4) consecutive weeks in at least two (2) newspapers, one (1) of which shall be published in the city where the property is located, or the nearest daily paper thereto, and the other in some paper with statewide circulation; provided, that such lease shall be subject to the approval of the Attorney General of Texas, both as to substance and as to form. The money derived from the lease of such property, less the expense for advertising and leasing, shall be deposited in the State Treasury to the credit of the General Revenue Fund; provided, however, that if land leased belongs to any eleemosynary institution, that money must be deposited to the credit of said institution in the same manner that the special fund is now deposited or may hereafter be ordered deposited by the Legislature.

Sec. 2. The Board of Control shall adopt proper forms and regulations, rules and contract, as will, in its best judgment, protect the interest of the State. The Board may reject any and all bids. All laws and parts of laws in conflict herewith are hereby repealed. [Acts 1931, 42nd Leg., p. 189, ch. 110.]

Art. 666a—1. Sale of State property purchased with funds of Game, Fish and Oyster Commission.—Sec. 1. All property belonging to the State purchased from funds appropriated to the State Game, Fish and Oyster Commission, when it shall become unfit for use or shall be no longer needed, shall be sold by the State Board of Control at public auction, after advertising it for not less than fifteen (15) days prior to date of any sale, in two newspapers published in the county where sale of such property is made.

Sec. 2. The money from the sale of any such property, less the expense of advertising and selling, shall be deposited in the State Treasury to the credit of the fund out of which the purchase money for the property sold, was paid. [Acts 1935, 44th Leg., p. 661, ch. 276.]

Art. 666b. Rental space for government agencies or departments, obtaining.—Section 1. Hereafter all departments and agencies of the State Government, when rental space is needed for carrying on the essential functions of such agencies or departments of the State Government, shall submit to the State Board of Control a request therefor, giving the type, kind, and size of building needed, together with any other necessary description, and stating the purpose for which it will be used and the need therefor.

Sec. 2. The State Board of Control, upon receipt of such request, and if the money has been made available to pay the rental thereon, and if, in the discretion of the Board such space is needed, shall forthwith advertise in a newspaper, which has been regularly published and circulated in the city, or town, where such rental space is sought, for bids on such rental space, for the uses indicated and for a period of not to exceed two years. After such bids have been received by the State Board of Control at its principal office in Austin, Texas, and publicly opened, the award for such rental contract will be made to the lowest and best bidder, and upon such other terms as may be agreed upon. The terms of the contract, together with the notice of the award of the State Board of Control will be submitted to the Attorney General of Texas, who will cause to be prepared and executed in accordance with the terms of the agreement, such contract in quadruplicate; one of which will be kept by each party thereto, one by the State Board of Control, and one by the Attorney General of Texas. The parties to such contract will be the department or agency of the government using the space as lessee and the party renting the space as lessor.

Sec. 3. Within thirty days after the effective date of this Act, all departments and agencies of the State Government at this time leasing or renting space from any person, firm, or corporation whomsoever, will cause to be prepared and delivered to the State Board of Control in Austin, Texas, a copy of any written rental or lease agreement now in force and current, or any statement of any oral understanding upon which any lease or rental public funds are being expended, if such action has not already been taken.

Sec. 4. Should any rental or lease agreement be sought by any agency or department of the State Government, involving an expenditure of less than One Hundred Dollars ($100) per annum or any rental or lease agreement be sought involving a rental period of not exceeding four (4) months and involving a total expenditure of Two Hundred Dollars ($200) or less, the Board of Control is authorized to waive the requirements of this Act. [Acts 1943, 48th Leg., p. 385, ch. 258; Acts 1945, 49th Leg., p. 225, ch. 168, § 1.]

Art. 667. Charge of Capitol.—The Board, during the recess of the Legislature, shall have charge and control of the halls, chambers, and committee rooms of the State Capitol Building except as hereinafter provided. Before the assembling of each session of the Legislature, the Board shall prepare the different rooms for the use of the Legislature. [Acts 1884, p. 60; Acts 1919, p. 326; G.L. vol. 9, p. 592.]

Art. 668. Use of rooms in Capitol as bedrooms.—No room, apartment or office in the State Capitol Building shall be used at any time by any person as a bedroom or for any private purposes whatever. This article shall not apply to the rooms occupied by the judges of the Supreme Court and the Courts of Civil and Criminal Appeals on the third and fourth floors of the Capitol, nor to the offices and living quarters occupied by the Lieutenant Governor and the Speaker of the House of Representatives on the second floor of the Capitol Building. [Acts 1884, p. 60; Acts 1919, p. 326; G.L. vol. 9, p. 592; Acts 1943, 48th Leg., p. 2, ch. 2, § 1.]

Art. 669. Shall inspect Public Buildings, etc.—The Board shall frequently inspect all the public buildings and property of the State at the Capitol, and all other buildings and property of the State at such regular intervals as may be necessary for the Board to keep constantly informed of the condition of the same. [Acts 1884, p. 60; Acts 1919, p. 326; G. L. vol. 9, p. 592.]

Art. 670. Improvements and repairs.—The Board shall prepare plans and specifications for improvement and repairs to public buildings or property of the State, and shall superintend through its division of public buildings and grounds, the construction of said work when such supervision is not otherwise especially provided for by law. [Id.]

Art. 671. Inspection of plans and specifications.—The Board shall inspect all plans and specifications for the public buildings and the additions thereto to be constructed for the State before such plans and specifications are adopted. The Board may reject any and all such plans and specifications, and it shall have full and final superintendence over all buildings, structures or additions thereto that may be constructed for the State. [Id.]

Art. 672. Inspection of material and workmanship.—The Board shall carefully examine and inspect the material and workmanship of each building, structure and addition thereto built for the State out of brick or stone or substitutes therefor, and shall see that the same are constructed in accordance with the contract plans and specifications therefor. The

work, workmanship and the material thereof shall be subject to the approval of the Board. [Id.]

Art. 673. Shall make needed improvements.—When needed improvements or repairs for respective buildings and offices are called to the attention of the Board by the heads of such departments or offices, the Board shall provide for such repairs or improvements, and they shall be made under its direction. [Id.]

Art. 674. Maintenance of sewers.—The Board shall give special attention to the effective maintenance of the State sewers and their connections in the use of the public buildings, and shall see that such sewerage and connections at all times be kept in a sanitary condition, and that the gas and water pipes with their connections and appliances are maintained in working order, ready at any time for immediate use. [Id.]

Art. 675. Copy of plans.—The Board shall prepare and keep in its offices a copy of the plans of all public buildings and improvements thereto under its charge showing the exact location of all water, gas and sewerage pipes. [Id.]

Art. 676. Shall report to Governor.—The Board shall biennially on December 1st make a report to the Governor showing all improvements and repairs that have been made with an itemized account of receipts and expenditures, and showing the condition of all property under its control with an estimate of needed improvements and repairs. [Id.]

Art. 677. State parks.—All State parks shall be under the control and custody of the Board, and all laws relating to the same shall be executed and administered by the Board. [Id.]

Art. 678. State cemetery.—The Board shall control, superintend and beautify the grounds of the State Cemetery. They shall preserve the grounds and everything pertaining thereto and protect the property from depreciation and injury. They shall procure and erect, at the head of each grave which has no permanent monument, an obelisk of marble upon which shall be engraved the name of the dead therein buried. [Id.]

Art. 678a. Board of Mansion Supervisors.

Membership; appointment; term

Sec. 1. There is hereby created the "Board of Mansion Supervisors." Said Board shall consist of three members, and one of the three shall be Chairman. The Chairman and other members of the Board shall be appointed by the Governor. The Chairman shall be appointed for an unexpired term ending January 1, 1936, one member shall be appointed for an unexpired term ending January 1, 1934, and one member shall be appointed for an unexpired term ending January 1, 1932, or until their successors are appointed and qualified. Thereafter, the Governor shall appoint such Chairman and members for terms of six years.

Semiannual meetings

Sec. 2. Said Board of Mansion Supervisors shall hold regular semi-annual meetings in January and July of each year on dates to be specified by the Board and may hold such special meetings at such times and places as the Board may deem necessary and proper. It shall require two members of said Board to constitute a quorum.

Rules and regulations; records

Sec. 3. Said Board of Mansion Supervisors is hereby authorized to make such rules and regulations for the conduct of its work as may be deemed necessary. Said Board of Mansion Supervisors shall keep a record of all proceedings and official acts.

Plans and designs for repairs; report to Board of Control

Sec. 4. It shall be the duty of said Board, from time to time, to make plans and designs for repairs to the Governor's Mansions, conforming to the style of architecture of the original building, and for such rehabilitation, renovation, repairing, beautifying and decorating generally of Mansion and the grounds adjacent thereto, as in their judgment may be deemed proper and expedient. It shall also be the duty of the Board to study the need of furniture, fixtures, equipment and interior decoration of the Mansion. The Board shall, on or before September 1, 1932, and each two years thereafter, submit a report to the Board of Control, embodying their recommendations and an estimate of the cost. The Board of Control shall incorporate in the biennial budget, under the head of "Mansion and Grounds," the requests of said Board of Mansion Supervisors and the recommendation of the Board of Control on such requests. The Board may, from time to time, submit reports with their recommendations to the Legislature.

Consent to removal of equipment; visitation

Sec. 5. The furniture, fixtures and equipment belonging to the State and now situated in the Mansion shall not be taken therefrom and no changes shall be made in said furniture, fixtures and equipment without the consent of the Board of Mansion Supervisors and the Board of Control. The Board of Mansion Supervisors, or any member thereof, shall have the authority to visit the Mansion and grounds at any reasonable time. [Acts 1931, 42nd Leg., p. 855, ch. 363.]

Art. 678b. Purchase and custody of old French embassy building.—Section 1. There is hereby appropriated all moneys now in the Texas Centennial Commission funds if and when available to apply on the purchase of the French Embassy building and all properties therein.

Sec. 2. Said property to consist of Embassy building and two and one-half (2½) acres out of the Southeast part of Outlot No. 1, in Division B, City of Austin, Texas, facing easterly on San Marcos Street, with line commencing at the intersection of San Marcos and Ninth Streets and running southerly with the West line of San Marcos Street to an alley between Seventh and Ninth Streets.

Sec. 3. Said building is hereby set aside for the uses and purposes of the Daughters of the Republic of Texas, and the said Daughters of the Republic of Texas be and the same are hereby authorized to take full charge of said building and use of the same as they may see proper. The property of the said French Embassy shall be the property of the State, and the title of said property shall remain in custody of the Board of Control. [Acts 1945, 49th Leg., p. 455, ch. 286.]

Art. 678c. State Courts Building; State Office Building; location and construction; garage; underpass and tunnel connecting with State Capitol; purchase of additional building.—Section 1. There may be constructed two (2) office buildings and a garage during the biennium ending August 31, 1947. Said buildings shall be located on any State owned property lying south and adjacent to the Capitol grounds as more fully described herein.

Sec. 2. Such buildings shall be constructed under the supervision of the State Board of Control with the assistance of a Legislative and Business Council, composed of a member of the House to be appointed by the Speaker, a member of the Senate, appointed by the Lieutenant-Governor, the Speaker of the House, the Attorney General, and the Lieutenant-Governor.

Sec. 3. Such buildings shall be of fireproof construction and shall be provided with modern improvements, particularly air-conditioning, proper light, heat, and ventilation, and other necessary utilities.

Sec. 4. One of said buildings shall be designed to accommodate the Supreme Court of Texas and its Commission of Appeals; the Court of Criminal Appeals of Texas and its Commission of Appeals; the State's Attorney before the Court of Criminal Appeals; the Court of Civil Appeals, Third District; the Attorney General of Texas; and such other offices as space therein will permit. This building shall be known as the "State Courts Building."

Sec. 5. The other of said buildings shall be designed and constructed for office space only, except the ground floor which shall be designed to care for tenants engaged in such businesses as will best accommodate the needs of State officers and employees; especially, the drug, cafe, and barber business. The name of this building shall be the "State Office Building."

Sec. 6. The "State Courts Building" shall be located on the lot of land now occupied by the Walton Building. Said lot more particularly described as follows:

The west half of the north one-half (½) of Block 123, as shown on the Original Plot of the City of Austin.

Sec. 7. The "State Office Building" shall be placed on the lot described as follows:

North one-half (½) of Block 124 as shown by the Original Plot of the City of Austin. Said one-half (½) block is bounded on the west by Colorado Street, on the North by Eleventh Street, on the east by Congress Avenue.

Sec. 8. An underpass and tunnel shall be constructed between each of said new buildings and connecting with the basement of the State Capitol.

Sec. 9. A garage shall be constructed that will accommodate not less than five hundred (500) cars, on the west end of the property upon which is located the "State Office Building." Said garage shall be so constructed that it will have an entrance on two (2) streets.

Sec. 10. None of the spaces provided for business of any kind or character, including the garage above provided for, shall ever be operated in the name of the State of Texas, but same will be rented to the highest bidder for cash, payable monthly in advance, upon such terms and conditions as may be prescribed by the State Board of Control.

Sec. 11. In addition to the purposes and intention of this bill as hereinabove set out, it is the further legislative intent and purpose that the construction provided for shall be a part of the postwar building program, to the end that employment will be made available to returning ex-servicemen and women, and it is herein specifically provided that honorably discharged men and women from the armed forces of this State and Nation will be given priority of employment in the construction of such buildings, and that the contract, or contracts, and all sub-contracts for the construction thereof, will so specifically provide.

Sec. 17. The State Board of Control is hereby authorized to negotiate as soon as possible for the purchase for the State of Texas the Tribune Building in the City of Austin, Texas, and the real estate upon which said building is located, as well as all other land and improvements pertaining thereto, or used in connection therewith for parking purposes or for any other purpose, from the owners thereof, at a cost not to exceed the estimate fixed, after due appraisal by the State Engineers, and only then upon the approval of a majority of the following: The Speaker of the House, a Member of the House to be selected by the Speaker of the House, the Lieutenant Governor, a Member of the Senate to be selected by the Lieutenant Governor, the Attorney General of Texas, and the Chairman of the Board of Control.

Sec. 18. The contract for the purchase of said real estate by the State Board of Control under the provisions of this Act shall be prepared by the Attorney General of the State of Texas upon such terms as may be legally agreed on by the parties to the sale. It shall be the duty of the State Board of Control to require of the owner of such premises the preparation and delivery of an abstract of title of any property sought to be purchased and to submit the same to the Attorney General of Texas for examination, and the contract for purchase shall be conditioned upon the merchantability of title as evidenced by a written opinion of the Attorney General, and none of the funds provided for in this Act shall be paid until such title is declared to be good and merchantable and a legal transfer made, all as approved by the Attorney General. [Acts 1945, 49th Leg., p. 536, ch. 325.]

Sections 12–16 and 19 of the Act made appropriations for various purposes specified and sections 20, 21 read as follows:

"Sec. 20. The Board of Control is authorized, in the event such a procedure is economically advisable, to rent space on the ground floor and in the basement for commercial business upon open bids for same.

"Sec. 21. The purchase price for the said Tribune Building, real estate and land shall be paid out of the funds appropriated and provided for in and in the manner set out in House Bill No. 818 of the Regular Session of the Forty-ninth Legislature (Laws 1945, ch. 262, p. 409) and provided further that the sum for the cost of the two office buildings as described in this Act shall be appropriated out of and provided in the manner set out in House Bill No. 818 of the Regular Session of the Forty-ninth Legislature."

Art. 678d. Vending stands operated by blind persons on state property; licenses.—Section 1. For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and for stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons under the provisions of this Act shall be authorized to operate vending stands on any State property, or State controlled property where, in the discretion of the head of the department or agency in charge of its maintenance, vending stands may be properly and satisfactorily operated.

Sec. 2. (a) The Commission shall:

(1) Make surveys of opportunities for the operation by blind persons of vending stands on State property;

(2) The Commission shall issue licenses to blind persons who are citizens of the State of Texas for the operation of vending stands on State property or on any other property which may be assigned to the Commission for the sale of newspapers, periodicals, confections, tobacco products, soft drinks, ice cream, wrapped foods, and such other articles as may be approved for each such property by the head of the department or agency or by the custodian in charge of the maintenance thereof and the Commission; provided, however, that nothing in this Act shall be construed as prohibiting the Commission from selecting blind persons for the operation within the State of such other types of business enterprises as the Commission may define as suitable for operation by blind persons under the provisions of this Act.

(b) The Commission shall, in issuing licenses for the operation of vending stands, give preference to those blind persons who are in need of employment. Such licenses shall be limited to applicants who are blind within the meaning of this Act and are qualified to operate such vending stands. All licenses shall be revocable by the Commission for the failure of operators of vending stands to conform to rules and regulations authorized by the Commission.

(c) The Commission is authorized to select the location for such vending stand and the type of vending stand to be provided. Such agency where the vending stand is to be located may make alterations in the property necessary to provide suitable space and facilities for the proper operation of the vending stand.

Sec. 3. The Commission under the provisions of this Act shall be required:

(a) To cooperate with any department or custodian of any property where the stand is to be located;

(b) To provide for each licensed blind person such a vending stand, equipment, and adequate initial stock of suitable articles to be vended therefrom as may be necessary; and shall design equipment which will harmonize with any other fixtures which may be located on the same property where the vending stand is to be established; provided, however, that the ownership of equipment for vending stands shall remain the property of the Commission;

(c) In accordance with the rules and regulations as may be promulgated by the Commission, it shall set aside or cause to be set aside from the proceeds of the operation of the vending stands such funds as may be necessary for the purposes of (1) insuring a sufficient amount of initial stock and/or material for the operators and for the maintenance of equipment; (2) providing to such licensees such supervisory services and expenses incident thereto as may be necessary to carry out the purposes of this Act, and to use these funds primarily for these purposes.

Sec. 4. The Commission shall make such reports in such form and containing such information as the State Auditor may from time to time require and to comply with such provisions that the State Auditor may from time to time find necessary to assure the correctness and verification of such reports.

Sec. 5. The Commission shall, in employing such additional personnel as may be necessary, give preference to blind persons who are capable of discharging the required duties.

Sec. 6. When used in this Act:

(a) The term "blind person" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees. Such blindness shall be certified by a duly licensed physician skilled in the diseases of the human eye.

(b) The term "State property" means buildings, land, or other property owned by or leased to the State government, and buildings and other property owned by or leased to the State.

(c) The term "Commission" as used in this Act means the State Commission for the Blind. [Acts 1947, 50th Leg., p. 62, ch. 47, § 1.]

CHAPTER 5.—DIVISION OF DESIGN AND CONSTRUCTION

Art.
679. Chief of division.
680. May employ experts.
681. Shall design public buildings.
682. Shall design parks, etc.
683. Shall furnish schools expert, etc.
684. Shall inspect plans, etc.
685. Assistants appointed.
686. Salaries of assistants.
687. One per cent to Treasurer.

Article 679. Chief of division.—The Board may select a chief of its division of design, construction and maintenance who shall be an architect of not less than five years experience next preceding his selection in the actual design, superintendency and construction of buildings. [Acts 1919, p. 326.]

Art. 680. May employ experts.—The Board may employ experts of masonry, plumbing, electrical construction, landscape gardening, and such other experts as may be necessary, as assistants to the chief of this division. [Id.]

Art. 681. Shall design public buildings.—The Board, through the chief of such division, shall design all public buildings erected at the expense of the State where designing is not otherwise provided for by law or by the appropriation bill, but in no instance shall plans or designs be adopted by the head of any department, board, institution, school or prison system of the State unless such design and plans have been approved by the Board. [Id.]

Art. 682. Shall design parks, etc.—The Board acting through such division shall design appropriate parks for each institution, school of the State, or prison system, which design shall be carried out by the head of such institution, school or prison system unless otherwise provided by law. [Id.]

Art. 683. Shall furnish schools expert, etc.—The Board through such division shall furnish any school, institution, department of the State, or prison system, on request, an expert to design and superintend any construction for landscape gardening provided for. [Id.]

Art. 684. Shall inspect plans, etc.—Where the contract price is twenty-five thousand dollars or more, the board shall inspect all plans and specifications for public buildings and structures and additions thereto that are to be constructed for and by the counties, municipalities and other political subdivisions of the State, and shall aid the commissioners court, city commission, board of aldermen, city manager, school board, committee board or other person or persons having in charge the preparation for construction of such public buildings, or structures or additions for such counties, cities, municipalities or other superintendence over all such buildings, structures or addition for such counties, cities, municipalities, and other political subdivisions, according to the terms of the contract. [Acts 1915, p. 253.]

Art. 685. Assistants appointed.—When the conditions require it, the Board may appoint not more than three assistants to the Chief of the Division of Design, Construction and Maintenance. Such assistants shall be skilled practical mechanics in the respective trades which enter into the construction of public buildings, and must have had at least ten years practical experience in their respective trade [1] next prior to their appointment. [Id.]

[1] Probably should read "trades."

Art. 686. Salaries of assistants.—The salary of each assistant shall not exceed eighteen hundred dollars per year, payable in equal monthly installments. They shall also receive their actual necessary travelling expenses while engaged in the actual performance of their duties. The Board shall not employ at any time more assistants than the fees which shall be collected under the provisions of this law shall be sufficient to pay. Expenses shall only be paid upon itemized sworn accounts, approved by the Board. The Board may discontinue the service of any assistant at its pleasure. [Id.]

Art. 687. One per cent to Treasurer.—The governing body of a city, county or political subdivision shall pay into the State Treasury one per cent of the estimated cost or contract price of each building or addition thereto to be constructed by such county, city or other political subdivision, immediately before beginning the work on such building, and the State Treasurer shall hold such sum for the purpose of defraying the salaries and other necessary expenses which may be incurred by the Board of Control in the performance of its duties as required by this Act, and such sum shall be paid out by the State Treasurer upon warrants issued by the Comptroller. [Id.]

CHAPTER 6.—DIVISION OF ESTIMATES AND APPROPRIATIONS

Art.
688. Estimates submitted.
689. Shall investigate estimates, etc.
689a. Board of Control to cooperate with State Highway Commission.
689a—1. Governor as chief budget officer.
689a—2. Board of Control to furnish forms and blanks.

Art.
689a—3. State auditor's report to Governor; State agencies records.
689a—4. Hearings by Governor in preparation of budget.
689a—5. Governor's recommendations concerning budget.
689a—6. Printed copies of budget transmitted to Legislative members and committees.
689a—7. Budget bills of appropriations submitted by Governor; hearings on bills.
689a—8. Budget bill not to include per diem and mileage of members of Legislature.
689a—9. County budget; county judge as budget officer.
689a—10. County budget filed with clerk of county court.
689a—11. Commissioners' court to hold hearings and approve budget in certain counties, transmission to State Comptroller.
689a—12. County officers to furnish information to county judge.
689a—13. Budget officers and preparation of budget in cities and towns.
689a—14. Budget filed with clerk of city or town.
689a—15. Hearings on city or town budgets, approval and filing.
689a—16. Municipal officers to furnish information to mayor or city manager.
689a—17. Independent school district budget; president of board of trustees as budget officer; approval and filing.
689a—18. Common school districts budgets; county superintendent as budget officer; approval and filing.
689a—19. Penal provision.
689a—20. Construction.
689b. Validating tax levies in counties of 27,000 to 28,000 failing to comply with Uniform Budget Law.

Article 688. Estimates submitted.—The head of each department, school, institution, and of the prison system, and the head of any of the divisions or departments of government for which appropriations are made by the Legislature, shall submit to the State Board of Control, not later than October 15th of each year preceding the regular biennial session of the Legislature, an itemized account of all items of expenses for the preceding two years, and an estimate of the appropriations required by such department, school or institution or by the prison system for the regular biennial appropriation made by the Legislature which estimate shall be submitted, itemized in such manner as the Governor may require. [Acts 1919, p. 327; Acts 1931, 42nd Leg., p. 339, ch. 206, § 1.]

Section 21 of Acts 1931, repeals all conflicting laws and parts of laws and provides that if any section is declared invalid, the remainder shall not be affected thereby.

Art. 689. Shall investigate estimates, etc.—The Board of Control shall inspect the properties, equipment and facilities of the various agencies of the government for which appropriations are to be made either before or after such estimates are submitted, and consider the same and give hearings on estimates of those who have submitted the same, and shall obtain information from every available source including the reports from its auditors and examiners. After such hearings, the Board shall make up an appropriation budget, said budget shall be completed by the Board of Control and transmitted to the Governor not later than November 1st of the year immediately preceding the meeting of the regular biennial session of the Legislature. The Board of Control shall so prepare the budget as to show the expenditures on the same lines with the appropriated amounts for the respective items, and in such form and with such other itemization as the Governor may prescribe. The list of appropriations shall be shown for the three (3) years preceding the years for which appropriations are sought and recommended for the ensuing biennium, and the expenditures shall be shown for the first two (2) of the last above mentioned years. The budget shall also show the amounts requested by the various agencies of the government and the amounts recommended by the Board of Control for each of the years of the ensuing biennium and a blank space shall be left opposite each recommendation of the Board of Control wherein the Governor shall insert the amount which he recommends for each item contained in the budget. The Governor and the Governor-elect shall have the right to sit with the Board of Control on any and all of its budget hearings, and all hearings held by the Board of Control while considering budget for the various departments, institutions and agencies of the State Government shall be open to the public. [Acts 1919, p. 327; Acts 1931, 42nd Leg., p. 339, ch. 206, § 1.]

Art. 689a. Board of Control to cooperate with State Highway Commission.—That the Board of Control cooperate with the State Highway Commission in equipping said Highway Motor Patrol so as to eliminate from the operation of said Highway Motor Patrol the rental costs in providing equipment for said Motor Patrol to transport the instruments and facilities to be used in making such tests and in weighing commercial motor vehicles. [Acts 1933, 43rd Leg., p. 975, H.C.R. #21.]

The joint resolution, cited to the text, omitting the whereas provisions read as follows: "Resolved by the House of Representatives, the Senate concurring, That the State Highway Commission, be requested to squip said Highway Patrol with facilities and instruments necessary for enforcing all of said highway laws, including scales and brake testing machines, as the Highway Commission may deem necessary and proper, and that said State Highway Patrol be instructed by said State Highway Commission to enforce all of said motor vehicle laws without favor or partiality to any class or persons using the said highways; provided, however, that before any such instruments are purchased, the Legislature shall make provision therefor in the Appropriation Bills. Be it further Resolved, * * *".

Art. 689a—1. Governor as chief budget officer.—The Governor is hereby made the chief budget officer of the State. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 2.]

Art. 689a—2. Board of Control to furnish forms and blanks.—The State Board of Control is hereby authorized and directed to prepare all forms and blanks upon which requests for appropriations from the Legislature shall be prepared; provided that before such forms and plans are put into use they must be approved by the Governor; and provided further than when so approved, the State Board of Control shall furnish the proper forms to all those divisions, departments, officers, boards, commissions and agencies of every character of the State Government which are seeking appropriations from the Legislature; and the State Board of Control shall require that all requests for appropriations be submitted on the approved forms. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 3.]

Art. 689a—3. State auditor's report to Governor; State agencies' records.—On or before the 1st day of October of the year immediately preceding the regular biennial session of the Legislature, the State Auditor shall secure, compile and submit to the Governor a report containing the following information:

(1) An itemized, complete, financial balance sheet for the State at the close of the preceding fiscal year.

(2) An estimate of the maximum amount of revenue which may become available for appropriation by the Legislature during the ensuing biennium for which appropriations are to be made, the purpose of said statement from the State Auditor being to place in the hands of the Governor the maximum amount of rev-

enue which the State could collect during each of the ensuing appropriation years, from all sources, under existing tax laws.

(3) The State Auditor and the heads of any other agencies of government, shall also furnish to the Governor such other information as the Governor may request.

(4) All agencies of the government, for which appropriations are made, shall keep their records in such a manner that immediately upon the close of the fiscal year they can list the amounts of all the contracts for purchases which they have made, but which remain unpaid at the close of the fiscal year; and such agencies shall accurately list in the expenditure columns of the budget sheets supplied them the combined total of their expenditures and the amounts of these unpaid purchase contracts of each of the items for which appropriations were made. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 4.]

Art. 689a—4. Hearings by Governor in preparation of budget.—Upon the receipt of the preliminary budget prepared by the State Board of Control to cover various State departments and institutions the Governor shall proceed to give personal consideration to such budget, and the Governor may, if he so desires, hold additional public hearings on any and all estimates to be included in the budget. At all such hearings, heads of departments, institutions or other agencies of the government seeking appropriations may appear, and if so desired, the Governor shall have the right to require them to appear to give further information concerning requested appropriations; and any taxpayer shall have the right to be present at any and all such public hearings and to participate in the discussion concerning any item proposed to be included in the budget under consideration. The Governor shall preside and conduct all such hearings, or if unable for any reason to conduct such hearings, the Governor may authorize the Chairman of the State Board of Control to preside at such hearing and represent him. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 5.]

Art. 689a—5. Governor's recommendations concerning budget.—Based on information submitted to the Governor in the preliminary budget prepared by the Board of Control and on such other information as the Governor may have secured through public hearings and reports from the State Auditor, and from other sources, the Governor shall proceed to enter in the columns reserved for that purpose on said preliminary budget his own recommendation on each proposed item of said budget. The Governor's recommendation on each item in said budget shall represent his own conclusion and judgment as to the amount which should be appropriated for each of said items, and if the Governor believes that an item should be entirely eliminated he will so indicate by leaving the column blank opposite the recommendation of the Board of Control. When the Governor has completed his examination of and recommendations concerning the budget he shall return it to the Board of Control, and the Board of Control shall, on or before December 15th of the year immediately preceding the regular biennial session of the Legislature, mail to each person who will be a member of the next Legislature, to the heads of each department, institution, or other agency included in such budget, a copy of the budget as prepared, including the amounts recommended for each item contained in said budget by the Board of Control and also the amounts recommended by the Governor. The Board of Control shall also cause to be printed such extra copies of the budget as in their judgment are necessary for public distribution. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 6.]

Art. 689a—6. Printed copies of budget transmitted to Legislative members and committees.—Within five (5) days after the beginning of each regular session of the Texas Legislature, the Board of Control shall transmit to all members of the Legislature printed copies of the budget and the Appropriations Committee in the House and the Finance Committee in the Senate, may, if they so desire, begin preliminary committee hearings on the budget without waiting for the submission of the budget bills. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 7.]

Art. 689a—7. Budget bills of appropriations submitted by Governor; hearings on bills.—Within thirty (30) days after the beginning of each regular session of the Texas Legislature the Governor shall prepare and submit printed copies of budget bills of appropriation to the Speaker of the House of Representatives, to the Lieutenant Governor and to each member of the House and Senate, provided that in years when a newly elected Governor other than the then Governor is to be inaugurated that the budget bill of appropriations shall be prepared by the incoming Governor and shall be transmitted to the Legislature within twenty (20) days from the date he takes the oath of office. In carrying out the provisions of this section the Governor shall submit to all members of the Legislature five (5) separate budget bills as follows:

(a) Eleemosynary appropriation bill which shall include all appropriations which the Governor desires to recommend for the eleemosynary institutions of the State for the ensuing biennium;

(b) Departmental appropriation bill, which shall include all appropriations which the Governor desires to recommend for all departments of the State government for the ensuing biennium;

(c) Educational appropriation bill which shall include all appropriations for all educational institutions of the State which the Governor desires to recommend for the ensuing biennium;

(d) Judiciary appropriation bill which shall include all appropriations which the Governor desires to recommend for the judiciary for the ensuing biennium;

(e) Deficiency and emergency appropriation bill which bill shall include all appropriations which the Governor desires to recommend that the Legislature make as emergency and efficiency appropriations.

In preparing the above referred to appropriation bills the Governor shall itemize all appropriations included in said bills in the same manner as provided for in the budget.

All of said budget bills referred to above shall be transmitted to the Legislature at the same time, and when so transmitted the Governor shall accompany these bills with a special budget message, which message shall show the current assets, liabilities, surplus or deficit of the State at the close of the last preceding fiscal year, as well as the total amount of money which may reasonably be expected to be available from all sources under existing tax laws to meet legislative appropriations during the current year and the ensuing biennium. The above referred to message from the Governor shall be submitted in printed form and a copy of said message furnished to each member of the Legislature.

Upon receipt of the budget bills from the Governor, the Lieutenant-Governor in the Senate and the Speaker in the House may, if they so desire, cause such bill to be introduced in the Senate and in the House of Representatives; or the Budget Bill may be introduced by any member of the House or the Senate, and hearing on the budget bill shall be conducted before the Appropriation Committee of the House and the Finance Committee of the Senate. All heads of departments, commissions, institutions or other agencies of the government requesting appropriations, shall have a right to appear before either of these committees in behalf of the appropriation requested. Likewise, any taxpayer in the State shall have the right to be present and to be heard at the hearing on any proposed

appropriation. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 8.]

Art. 689a—8. Budget bill not to include per diem and mileage of members of Legislature.—The budget and budget bill so to be prepared and submitted by the Governor shall not have included therein any appropriations for the per diem and mileage of the members of the Legislature, nor the necessary expenses of the Legislature, and nothing herein contained shall affect any such appropriations. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 9.]

Art. 689a—9. County budget; county judge as budget officer.—The County Judge shall serve as budget officer for the Commissioners' Court in each county, and during the month of July of each year he, assisted by the County Auditor or by the County Clerk, shall prepare a budget to cover all proposed expenditures of the county government for the succeeding year. Such budget shall be carefully itemized so as to make as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes for the preceding year. The budget must also be so prepared as to show as definitely as possible each of the various projects for which appropriations are set up in the budget, and the estimated amount of money carried in the budget for each of such projects. The budget shall also contain a complete financial statement of the county, showing all outstanding obligations of the county, the cash on hand to the credit of each and every fund of the county government, the funds received from all sources during the previous year, the funds available from all sources during the ensuing year, the estimated revenues available to cover the proposed budget and the estimated rate of tax which will be required. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 10.]

Art. 689a—10. County budget filed with clerk of county court.—When the County Judge has completed the budget for the county, a copy of it shall be filed with the clerk of the County Court, and it shall be available for the inspection of any taxpayer. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 11.]

Art. 689a—11. Commissioners' court to hold hearings and approve budget in certain counties, transmission to State Comptroller.—The Commissioners' Court in each county shall each year provide for a public hearing on the county budget—which hearing shall take place on some date to be named by the Commissioners' Court subsequent to August 15th and prior to the levy of taxes by said Commissioners' Court. Public notice shall be given that on said date of hearing the budget as prepared by the County Judge will be considered by the Commissioners' Court. Said notice shall name the hour, the date and the place where the hearing shall be conducted. Any taxpayer of such county shall have the right to be present and participate in said hearing. At the conclusion of the hearing, the budget as prepared by the County Judge shall be acted upon by the Commissioners' Court. The Court shall have authority to make such changes in the budget as in their judgment the law warrants and the interest of the taxpayers demand. When the budget has been finally approved by the Commissioners' Court, the budget, as approved by the Court shall be filed with the Clerk of the County Court, and taxes levied only in accordance therewith, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the Court. Except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget, may from time to time be authorized by the Court as amendments to the original budget. In all cases where such amendments to the original budget is made, a copy of the order of the Court amending the budget shall be filed with the Clerk of the County Court, and attached to the budget originally adopted.

The County Judge shall, after the adoption of the county budget and prior to October 15th of each year, file with the State Comptroller at Austin, Texas, a true and correct summarized statement of the adopted budget, which statement shall show the total amount adopted for each of the several divisions of the county's activities and outstanding obligations together with true and exact copies of any revenue estimates, financial statements and balance sheets required to be contained in said budgets, and the correctness of said copies shall be sworn to by the County Judge and County Auditor, and in counties which have no County Auditor, by the County Clerk. The State Comptroller shall note the date on which statements are filed with him, and preserve them for not less than two (2) years after the October 1st filing date. Provided, however, that in all counties of this State containing a population in excess of three hundred and fifty thousand (350,000), according to the last preceding United States census, the provisions hereof shall not apply to the making of such county budgets, and in such counties all matters pertaining to the county budget shall be governed by existing law. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 12.]

Art. 689a—12. County officers to furnish information to county judge.—In the preparation of the budget, the County Judge shall have authority to require any officer of the county to furnish such information as may be necessary for the County Judge to have in order that the budget covering the expenditures of the county may be properly prepared. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 13.]

Art. 689a—13. Budget officers and preparation of budget in cities and towns.—The Mayor of every incorporated city, town or village shall serve as the budget officer for the Board of Commissioners or Council of such city, town or village, except that any such city or town as shall have a City Manager form of Government, the City Manager shall serve as the budget officer. Such Mayor or City Manager shall prepare each year a budget to cover all proposed expenditures of the Government of said city or town for the succeeding year. Such budget shall be carefully itemized so as to make as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes for the preceding year. The budget must also be so prepared as to show as definitely as possible each of the various projects for which appropriations are set up in the budget, and the estimated amount of money carried in the budget for each of such projects. The budget shall also contain a complete financial statement of the city, town or village, showing all outstanding obligations of such city, town or village, the cash on hand to the credit of each and every fund, the funds received from all sources during the previous year, the funds available from all sources during the ensuing year, the estimated revenue available to cover the proposed budget, and the estimated rate of tax which will be required.

If a city or town in this State has already set up in its charter definite requirements which provide for the preparation each year of a budget of all expenditures of said city and a public hearing on said budget, then the charter provisions of said city as to the time of public hearings and the method of preparation of the budget shall govern, provided that when said budget has been finally prepared and approved, that a copy of said budget, together with all amendments thereto, shall be filed with the County Clerk and with the State Comptroller at Austin, Texas, the same as this Act requires other budgets to be filed. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 14.]

Art. 689a—14. Budget filed with clerk of city or town.—Said budget so to be prepared by such Mayor or City Manager shall be filed with the Clerk of such city, town or village not less than thirty (30) days prior to the time the Board of Commissioners or Council of such city, town or village makes its tax levy for the current fiscal year, and such budget shall be available for the inspection of any taxpayer. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 15.]

Art. 689a—15. Hearings on city or town budgets, approval and filing.—The Board of Commissioners or Council of every such city, town or village, shall each year provide for a public hearing on such budget, which hearing shall take place on some date to be fixed by such Board of Commissioners or Council, not less than fifteen days subsequent to the time such budget is filed as provided in Section 15 hereof, and prior to the time said Board of Commissioners or Council of such city, town or village makes its tax levy. Public notice of the hour, date and place of such hearing shall be given, or caused to be given by such Board of Commissioners, or Council, and any taxpayer of such city, town or village shall have the right to be present and participate in such hearing. At the conclusion of such hearing, the budget as prepared by the Mayor or City Manager shall be acted upon by the said Board of Commissioners or Council. The Board of Commissioners, or Council shall have the authority to make such changes in the budget as in their judgment the law warrants and the best interests of the taxpayers of such city, town or village demands. When the budget has been finally approved by such Board of Commissioners, or Council, the budget as so approved shall be filed with the Clerk of such city, town or village, and taxes levied only in accordance therewith, and no expenditure of the funds of such city, town or village shall thereafter be made except in strict compliance with such adopted budget, except that in case of grave public necessity, emergency expenditures to meet unusual and unforeseen conditions, which could not, by reasonable diligent thought and attention, have been included in the original budget, may from time to time be authorized by such Board of Commissioners, or Council, as amendments to the original budget. In all cases where such amendment to the original budget is made, a copy of the order or resolution of the Board of Commissioners or Council amending such budget shall be filed with the Clerk of such city, town or village, and attached to the budget originally adopted. Immediately after the adoption of said budget or any amendment thereto, the Mayor or City Manager, as the case may be, shall file or cause to be filed, a true copy of said approved budget, and all amendments thereto, in the office of the County Clerk of the County in which said municipality is situated, and with the State Comptroller at Austin. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 16.]

Art. 689a—16. Municipal officers to furnish information to mayor or city manager.—In the preparation of the budget the Mayor or City Manager shall have authority, to require any officer or board of such city, town or village to furnish such information as may be necessary for the Mayor or City Manager to have in order that the budget covering the expenditures of such city, town or village may be properly prepared. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 17.]

Art. 689a—17. Independent school district budget; president of board of trustees as budget officer; approval and filing.—The president of the Board of School Trustees in each independent school district, is hereby expressly designated as the budget officer for such district. As soon as the Treasurer or other officer of such school district receives notice of the state apportionment of public school funds to said district, and not later than August 20th, the president of such School Board of Trustees shall prepare a budget covering all proposed expenditures for the current fiscal year, itemized in detail according to purpose of expenditure. When such budget is prepared, a meeting of such Board of Trustees shall be called for the purpose of adopting a budget, and five days public notice of said meeting shall be given. Any taxpayer of the district may be present and participate in the hearing. It shall be the duty of said Board of Trustees at said meeting to adopt a budget to cover all expenditures for said independent school district for the current fiscal year. When so adopted it shall be the duty of the president of the Board of Trustees to file a copy of said budget in the office of the County Clerk of the county, or counties in which said district is situated. No public funds of said independent school district shall be expended in any manner other than as provided for in the budget adopted by the said Board except that the said Board of Trustees of such independent school district shall have authority to adopt a supplementary emergency budget to cover necessary unforeseen expenses of the district; and when so adopted, copies of any and all supplemental budgets shall be filed with the County Clerk of the county, or counties in which said district is situated, and with the State Comptroller at Austin. In the preparation of the budget, the president of such Board of Trustees shall be authorized to designate, if he so desires, the superintendent of schools of the district, or any other member of the Board as a deputy budget officer of the district, to assist him in the preparation of said budget. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 18.]

Art. 689a—18. Common school districts budgets; county superintendent as budget officer; approval and filing.—The County Superintendent of Schools is hereby designated as the budget officer for each common school district of such county. Immediately after the County Superintendent receives notice of the apportionment made by the State Board of Education to the common school districts of the county, he shall prepare a budget for each common school district in the county, which budget must be itemized in detail according to the purpose of expenditure, and must cover insofar as possible all expenditures proposed for the current year. When so prepared, the budget for each common school district shall be submitted to the Board of Trustees in each district for approval, and when so approved by such Board of Trustees, and by the County Superintendent, it shall be filed in the office of the County Superintendent; and no expenditure shall be made in the district except as provided for in the budget, except it be in the case of unforeseen emergency; and in each such instance, a supplemental budget may be approved in the same manner as the original budget and a copy of the supplemental budget filed with the original budget. Copies of all budgets, when finally approved by the County Superintendent and the trustees of the various common school districts in the county shall be filed with the County Clerk. At any time during the process of the preparation of the budget any taxpayer shall have the right to file with the County Superintendent or with the Board of Trustees of any district, any statement or protest which he may desire to file, concerning any item of expenditure proposed for the current year; and such statement or protest shall be given due consideration by the County Superintendent, or by the Board of Trustees in their final action upon the adoption of the budget. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 19.]

Art. 689a—19. Penal provision.

Section 20 of this Act being a penal provision is classified as Pen.Code, art. 414b.

Art. 689a—20. Construction.—Nothing contained in this Act shall be construed as precluding the Legislature from making changes in the budget for State purposes or prevent the County Commissioners' Court

from making changes in the budget for county purposes or prevent the governing body of any incorporated city or town from making changes in the budget for city purposes, or prevent the trustees or other school governing body from making changes in the budget for school purposes; and the duties required by virtue of this Act of State, County, City and School Officers or Representatives shall be performed for the compensation now provided by law to be paid said officers respectively. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 20a.]

Art. 689b. Validating tax levies in counties of 27,000 to 28,000 failing to comply with Uniform Budget Law.—That the failure of the Commissioners Court of any county having a population of not less than twenty-seven thousand (27,000) and not more than twenty-eight thousand (28,000) according to the next preceding Federal Census to comply with the provisions of Articles 688 and 689, Chapter 6, Title 20, Revised Civil Statutes, 1925, as amended, known as the Uniform Budget Law shall not invalidate any tax levies made by such Court, and all outstanding warrants or scrip issued by such counties are hereby validated and declared to be the legal obligations of such counties, provided such warrants or scrip are within the Constitutional limits applicable thereto. [Acts 1935, 44th Leg., 1st C.S., p. 1583, ch. 395, § 1.]

CHAPTER 7.—DIVISION OF ELEEMOSYNARY INSTITUTIONS

Art.
690. Division chief.
691. Superintendents elected.
692. Oath of office.
693. General powers and duties.
693a. Eminent domain, exercise of power of.
693b. Transfer of funds of one eleemosynary institution to another; act ineffective after August 31, 1945.
694. Requisitions by the Board.
695. Rules and regulations.

Article 690. Division chief.—The Board may employ a chief in the division of eleemosynary institutions who shall be an acting practicing surgeon, and who shall have been actively engaged in the practice of the profession for not less than ten years immediately preceding his appointment. Such physician shall be one of generally recognized eminence in his profession. [Acts 1919, p. 328.]

Art. 691. Superintendents elected.—The Board shall elect a superintendent for each institution under its control. Each superintendent shall have had special advantages and practical experience in the management of the class of persons committed to his charge. The term of office shall be two years, subject to removal by the Board for good cause. [Id.]

Art. 692. Oath of office.—Each superintendent shall take the official oath and within twenty days after receiving notice of appointment, enter into bond in the sum of ten thousand dollars, payable to the state of Texas, to be approved by the Governor, and conditioned for the faithful performance of all the duties of said office. Such bond and oath shall be filed in the office of the Comptroller, and shall not become void on first recovery thereon, but may be sued upon until the full penalty is recovered.

Art. 693. General powers and duties.—The Board of Control shall have power:

1. To make rules and regulations for the government of the State eleemosynary institutions, not inconsistent with the constitution and laws.
2. To appoint all officers and employés of such institutions and fix their salaries and wages.
3. To discharge, upon the recommendation of the superintendent, any officer, employé or inmate.
4. To appoint assistant physicians, stewards, matrons and apothecaries.
5. To make all contracts and necessary arrangements for the erection of buildings or improvements upon the grounds of the institutions.
6. To examine and approve or reject any vouchers or accounts of the superintendents.
7. It shall exercise a careful supervision over the general operations of such institutions and control the expenditures, and direct the manner in which their revenue shall be disbursed.
8. It may take and hold in trust any gift or devise of real or personal estate for the benefit of such institution and apply the same as the donor or devisor may direct.
9. The Board shall maintain an effective inspection of each institution placed under its control and management, for which purpose a representative of the Board shall visit each institution once every month, and members of the Board shall visit each of such institutions at least once a year, at the time and in the manner as the board may prescribe by its rules or by-laws.
10. The general result of such inspection, with suitable suggestions, shall be inserted in a report detailing the past year's operations and the actual state of the institutions, which the Board shall make to the Legislature in January of each alternate year, accompanied by the report of the medical superintendents and stewards.
11. The Board shall keep a book in which shall be noted by the member making the visit to the institution, the date of his visit, the condition of the house, patients, and premises with such remarks of commendation or censure as may be considered by the member as pertinent, and each member shall sign the same. [Acts 1883, p. 103; Acts 1919, p. 326–7; G. L. vol. 9, p. 49.]

Art. 693a. Eminent domain, exercise of power of.—The State Board of Control is hereby vested with the power of eminent domain, and in the exercise of said power shall have the right to condemn and may institute, maintain and prosecute suits in the name of the State of Texas for the purpose of securing lands and property necessary to the operation of any and all State Eleemosynary Institutions, State Hospitals and other institutions under the control and jurisdiction of said Board of Control following the procedure applicable to the condemnation of lands by counties, or by railroads, or any other method authorized by law, and it is hereby made the duty of the Attorney General to aid and assist the State Board of Control in the institution and prosecution of condemnation suits. [Acts 1943, 48th Leg., p. 50, ch. 46, § 1.]

Art. 693b. Transfer of funds of one eleemosynary institution to another; act ineffective after August 31, 1945.

This article was Acts 1943, 48th Leg., p. 119, ch. 89, became ineffective by its terms Aug. 31, 1945.

Art. 694. Requisitions by the Board.—All moneys appropriated by the Legislature for the erection of buildings or the making of improvements upon the grounds of an institution shall be subject to requisition by the Board of Control for the amount actually necessary to pay for such building or improvements; but no money shall be paid except it be upon estimate of completed work furnished by the contractor and approved by the architect. In no case shall more than three-fourths of the actual cost of building or improvements be paid until the work is completed and accepted. [Acts 1899, p. 318; Acts 1919, p. 326–7.]

Art. 695. Rules and regulations.—The Board may adopt such regulations as it deems proper and necessary for the payment of expenses other than salaries of officers, the purchase of supplies and such other expenditures as may be regulated by law; but

under such regulations no money appropriated shall be drawn from the Treasury except upon vouchers specifying in detail the exact purpose for which the same is needed, certified as true and correct by the superintendent and approved by the Board. [Acts 1883, p. 103; G. L. vol. 9, p. 49.]

CHAPTER 7A.—DIVISION OF CHILD WELFARE

Art.
695a. Child Welfare Division.

Sec.
1. Creation; Chief, appointment and salary; assistants and salaries.
2. Duties of division as to protection of defective, illegitimate and dependent children.
3. Expenditures of funds.
4. County welfare board; appointment by Commissioners' Court.
5. Cooperation of agencies.
6, 7. Penal provisions.
8. Transfer of agencies.
9. Investigations by Board before issuing charters.
10. Visitations by Chief of Division.
11. Custody of children in State institutions vested in Board.
12. Appointment of guardians.

Art. 695a. Child Welfare Division.[1]

Creation; Chief, appointment and salary; assistants and salaries

Sec. 1. That there be and is hereby created the Division of Child Welfare in the Board of Control. The Board of Control shall employ a Chief in the Division of Child Welfare, who shall be qualified by adequate education, training, and experience. The experience shall be deemed sufficient if the person appointed shall have had five or more years of practical experience in Child Welfare work preceding such appointment, whose salary shall not exceed $3600.00, and shall not be allowed more than two assistants at a salary not to exceed $2400.00 each for any one year. Such assistants as shall be deemed necessary to carry out the provisions of this Act shall be appointed by the Division Chief with the approval of the Board of Control.

1 Abolished, duties and functions transferred to Department of Public Welfare, see art. 695e.

Duties of division as to protection of defective, illegitimate and dependent children

Sec. 2. It shall be the duty of the Board to promote through the Child Welfare Division the enforcement of all laws for the protection of defective, illegitimate, dependent, neglected and delinquent children; to co-operate to this end with Juvenile Courts and all licensed Child Health and Child Placement Agencies of a public or private character; and to take the initiative in all matters involving the interest of such children where adequate provision therefor has not already been made. Especial attention shall be given by the Child Welfare Division to the dissemination of information through bulletins and visits where practicable to all agencies, private and public, operating under the provisions of this Act or any other Acts that have been passed or shall be passed affecting the welfare of the classes of children described in this section.

Expenditure of funds

Sec. 3. The salaries, traveling expenses, office expense, and all other necessary expenses incurred by the Child Welfare Division in carrying out the provisions of this Act, shall be paid by vouchers drawn on the Treasury of the State of Texas, after said accounts have been approved by the Board of Control. Provided no State funds shall be expended by said division for any of these purposes or any other purpose in carrying out the provisions of this Act unless same shall have been specifically appropriated therefor by the Legislature.

County welfare board; appointment by Commissioners' Court

Sec. 4. The Commissioners' Court of any county may appoint in said county seven persons, resident therein, who shall serve without compensation and hold office during the pleasure of the Commissioners' Court, who shall constitute a Child Welfare Board for the County, which Child Welfare Board shall select its own chairman. The Child Welfare Board shall perform such duties as may be required of it by the said Commissioners' Court and Board of Control in furtherance of the purposes of this Act. The County Commissioners' Court of any county may remove any member of such County Welfare Board for just cause.

Cooperation of agencies

Sec. 5. The Board of Control, through said County Welfare Board, shall work in conjunction with the County Commissioners' Court, Juvenile Boards, and all other officers and agencies whose purpose is for the protection of the children described herein, and the Board of Control is hereby authorized to use and allot any funds, that may be specifically appropriated for such purposes, by the Legislature, that may be necessary in jointly establishing and maintaining, together Juvenile Board or other County or City Board or other agency, homes, schools, and institutions for the care, protection, education and training of the class of children sought to be protected by the provisions hereof.

Penal provisions

Secs. 6, 7. See Pen.Code, art. 606a.

Transfer of agencies

Sec. 8. The licensing, visiting and inspection of all agencies required under Chapter 204, Page 444 of the General and Special Laws of the Regular Session of the 41st Legislature 1929,[1] now required by the State Board of Health, shall be and is hereby transferred to and made a part of the duties of the Division of Child Welfare of the State Board of Control.

1 Article 4442a; Pen.Code, art. 701a.

Investigations by Board before issuing charters

Sec. 9. No charters shall be issued hereinafter by the Secretary of State to any person, association, corporation, whether operating for charity or revenue, in any way having to do with the solicitation of funds for or the handling of children through nurseries, boarding house, child placing agencies or other place for the care or custody of children under sixteen (16) years of age without an investigation first having been made by the Board of Control concerning such application and a recommendation made by said Board thereto.

Visitations by Chief of Division

Sec. 10. It shall be the further duty of the Chief of the Division of Child Welfare to visit and study conditions in the eleemosynary institutions maintained by State appropriations for the care and custody of defective, illegitimate, dependent, neglected and delinquent children, namely:—The State Orphans Home at Corsicana, Texas; the Home for Dependent and Neglected Children at Waco; the Girls' Training School at Gainesville, Texas; the Juvenile Training School at Gatesville, Texas; the Austin State School, Austin, Texas, and the Colored Orphans Home at Gilmer, Texas, and to make recommendations as to the policy of management of these Institutions and outline a program for each of these Institutions so that these various types of children shall receive the best possible training in contemplation of their earliest discharge from said institution.

Custody of children in State institutions vested in Board

Sec. 11. All delinquent, dependent, illegitimate and other minor children who are now in institutions owned or managed by the State of Texas, or any political subdivision thereof, not wards of a court, are hereby declared to be charges of the State of Texas unless said confinement be under sentence for some penal offense, or unless the respective parents of said children shall remove the same therefrom within sixty (60) days from the effective date hereof, and the exclusive possession and custody of said children shall be vested in the Board of Control. When any child shall be found by a District Court to be dependent, neglected, or abandoned by the parents or custodians thereof the Board of Control may take possession and custody of the same, and if upon thirty days' notice to any parent or custodian of said child it is not shown to the satisfaction of tne County Child Welfare Board or other agency selected by the Board of Control, that such child can be cared for by such person, the Board of Control may assign said child to an institution of the State, or some other institution, for a period of thirty days, and if within that time such parent or other person has not qualified himself to take charge of said child then the guardianship of said child may be assigned to any person or institution that the District Court may deem fit and capable of supporting, maintaining, and educating such child. Provided however, that in no case shall a dependent child be taken from his parents without their consent unless after diligent effort has been made to avoid such separation the same shall be found by the Court needful and necessary in order to prevent serious detriment to the welfare of such child.

Appointment of guardians

Sec. 12. The transfer of the custody and guardianship of children as provided for herein shall not affect the estate of such minor, but guardians therefor shall be appointed as now provided by law, provided that preference shall be given to legally appoint and constitute guardians of the persons of such children as provided herein over the parent or parents who have relinquished, voluntarily or involuntarily, the guardianship of said children. [Acts 1931, 42nd Leg., p. 323, ch. 194.]

Section 13 of the Act of 1931 provides that if any provision is declared unconstitutional, such holding shall not affect the remaining provisions.

Abolition of Division of Child Welfare. Section 9 of the Public Welfare Act of 1939, Acts 1939, 46th Leg., p. 544, read as follows:

"a. All of the rights, powers, and duties heretofore conferred by law on the Division of Child Welfare of the Board of Control, when not otherwise in conflict with any of the provisions of this Act, are hereby continued in full force and effect, and are hereby transferred to, and conferred upon, the State Department of Public Welfare as created by this Act, and shall be held, exercised, and performed by the State Department under the provisions of this Act and the several Acts now in force, and any amendment or amendments thereto which might be made. To effectuate this purpose the Division of Child Welfare, records, and physical properties are transferred to the State Department and placed under its supervision, and the Division of Child Welfare of the State Board of Control is hereby abolished.

"b. All of the rights, powers, and duties heretofore conferred by law upon the Texas Relief Commission, not otherwise in conflict with any of the provisions of this Act, are hereby continued in full force and effect, and are hereby transferred to, and conferred upon, the State Department of Public Welfare as created by this Act, and shall be held, exercised, and performed by the State Department under the provisions of this Act, and the several Acts now in force, and any amendment or amendments thereto which might be made. To effectuate this purpose, the records, and physical properties of the Texas Relief Commission are transferred to the State Department of Public Welfare and placed under its supervision, and the Texas Relief Commission, as referred to in Chapter 30, of the Acts of 1935 [article 842e; Penal Code, art. 107f] is hereby abolished.

"c. All of the rights, powers, and duties heretofore conferred by law upon the Texas Old Age Assistance Commission, when not otherwise in conflict with any of the provisions of this Act, are hereby continued in full force and effect, and are hereby transferred to, and conferred upon the State Department of Public Welfare as created by this Act, and shall be held, exercised, and performed by the State Department under the provisions of this Act, and the several Acts now in force, and any amendment or amendments thereto which might be made. To effectuate this purpose, the records and physical properties are hereby transferred to the State Department and placed under its supervision, and the Texas Old Age Assistance Commission is hereby abolished.

"d. Provided, that no provision of this Act shall in any manner interfere with the powers and functions of the Vocational Rehabilitation Division of the Department of Education, the State Commission for the Blind, or the Division of Maternal and Child Health of the State Health Department, or the Juvenile Boards of any of the counties authorized by Title 82, Revised Civil Statutes as amended [articles 5119 et seq.]."

The Public Welfare Act of 1939, supra, was amended and re-enacted by the Public Welfare Act of 1941, Acts 1941, 47th Leg., p. 914, ch. 562, incorporated in article 695c. For duties and functions of the State Department of Public Welfare with reference to child welfare services, see sections 4 and 5 of article 695c.

Transfer of child welfare services to Department of Public Welfare, see, also, article 695e.

TITLE 20A—BOARD AND DEPARTMENT OF PUBLIC WELFARE

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695b. [Repealed.]
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45. Partial invalidity; severability of act.
695d. Time limit for presentation of disbursing orders for relief issued before October, 1936.
695e. Transfer of child welfare services from State Board of Control to Department of Public Welfare.
695f. Child Welfare Service Fund.

Art. 695b. [Repealed by Acts 1939, 46th Leg., p. 544, § 47.]

Article derived from Acts 1937, 45th Leg., p. 880, ch. 435, constituted the Public Welfare Act of 1937 and created a State Division of Public Welfare within the Board of Control. For Public Welfare Act of 1941, see art. 695c.

Art. 695c. Public Welfare Act of 1941.

Definitions

Section 1. As used in this Act:

(1) "State Board" means the State Board of Public Welfare.

(2) "State Department" means the State Department of Public Welfare.

(3) "Executive Director" means Executive Director of the State Department of Public Welfare.

(4) "Public Welfare" means and includes all forms of public assistance and specific services provided for in this Act.

(5) "Old Age Assistance" means money payments to needy aged individuals.

(6) "Aid to Dependent Children" means money payments with respect to a needy dependent child or needy dependent children.

(7) "Aid to the Blind" means money payments to blind individuals who are needy.

(8) "Child Welfare Services" means services for children provided for in this Act.

(9) "Applicant" means an individual who has applied for assistance under this Act.

(10) "Recipient" means an individual who is receiving assistance under the provisions of this Act.

State Department of Public Welfare

Sec. 2. (1) There is hereby created a State Department of Public Welfare which shall consist of a State Board of Public Welfare, an Executive Director, and such other officers and employees as may be required to efficiently carry out the purposes of this Act. The State Board of Public Welfare shall be composed of three (3) members to be appointed by the Governor of the State of Texas with the advice and consent of the Senate on the basis of demonstrated interest in, and knowledge of, public welfare and who have had experience as an executive or administrator; the term of one member to expire January 20, 1943, the term of one member to expire January 20, 1945, and the term of one member to expire January 20, 1947; provided, however, that the present members of the State Board of Public Welfare who have previously been appointed by the Governor and confirmed by the Senate shall continue to hold office for the terms to which they have been appointed. The Governor shall designate which appointee he desires to fill each term and vacancies shall be filled for any unexpired term by appointment by the Governor with the advice and consent of the Senate. On January 20, 1943, and biennially thereafter, one member of said Board shall be appointed for a full term of six (6) years, and each member of said Board shall hold office until his successor has been appointed and has qualified by taking the oath of office. The State Board of Public Welfare shall have its office in Austin, Texas, in such building as shall be designated and approved by the State Board of Control.

(2) At the first meeting of the members of said Board, after their appointment and biennially thereafter upon the appointment of a new member thereof, one of the members thereof shall be elected Chairman to preside over all meetings of such Board, and two (2) members thereof shall constitute a quorum for the transaction of business.

(3) The members of the State Board of Public Welfare shall receive their actual expenses while engaged in the performance of their duties and a per diem of Ten Dollars ($10) per day for not exceeding sixty (60) days for any fiscal year.

Executive Director of State Department; qualifications; appointment

Sec. 3. (1) The Board shall select and appoint, with the advice and consent of two thirds of the membership of the Senate, an Executive Director of the Department of Public Welfare, who shall be the executive and administrative officer of the State Department and shall discharge all administrative and executive functions of the State Department. Such person so selected and appointed shall be not less than thirty-five (35) years of age at the date of his appointment, and shall have been a resident citizen of the State of Texas for at least ten (10) years preceding the date of his appointment, and shall not have been an occupant of any elective State office at the time of his appointment, nor have occupied any elective State office during the six (6) months next preceding the date of his said appointment. He shall be a person of demonstrated executive ability and extensive experience in public welfare administration, or shall have had experience as an executive or administrator, and shall serve at the pleasure of the State Board. Provided, however, that the present Executive Director who has previously been appointed by the State Board and confirmed by the Senate shall continue to hold office for such period of time as may be determined by the State Board.

(2) The Board shall be responsible for the adoption of all policies, rules, and regulations for the government of the State Department of Public Welfare.

(3) The Board, its agents, representatives, and employees shall constitute the State Department of Public Welfare and whenever, by any of the provisions of this Act, or of any other Act, any right, power, or duty is imposed or conferred on the State Department of Public Welfare, the right, power, or duty so imposed or conferred shall be possessed and exercised by the Executive Director unless any such right, power, or duty is specifically delegated to the duly appointed agents or employees of such department, or any of them, by this Act or by an appropriate rule, regulation, or order of the State Board.

Duties and functions of State Department

Sec. 4. The State Department shall be charged with the administration of the welfare activities of the State as hereinafter provided. The State Department shall:

(1) Administer aid to needy dependent children, assistance to needy blind, and administer or supervise general relief;

(2) Administer or supervise all child welfare service, except as otherwise provided for by law;

(3) Administer assistance to the needy aged;

(4) Cooperate with the Federal Social Security Board, created under Title 7 of the Social Security Act enacted by the Seventy-fourth Congress and approved August 14, 1935,[1] and any amendment thereto, and with any other agency of the Federal Government in any reasonable manner which may be necessary to qualify for Federal Aid for assistance to persons who are entitled to assistance under the provisions of that Act, and in conformity with the provisions of this Act, including the making of such reports, in such forms and containing such information as the Federal Social Security Board or any other proper agency of the Federal Government may, from time to time, require, and comply with such requirements as such Board or agency may, from time to time, find necessary to assure the correctness and verifications of such reports;

(5) Assist other departments, agencies and institutions of the local State and Federal Governments, when so requested and cooperate with such agencies when expedient, in performing services in conformity with the purposes of this Act;

(6) Fix the fees to be paid to ophthalmologists or physicians skilled in treatment of diseases of the eye for the examination of applicants for, and recipients of, assistance as needy blind persons;

(7) Establish and provide such method of local administration as is deemed advisable, and provide such personnel as may be found necessary for carrying out in an economical way the administration of this Act; provided, however, that all employees of the Department shall have been residents of the State of Texas for a period of at least four (4) years next preceding their appointment. To serve in an advisory capacity to such local administrative units as may be established, there may be also established local advisory boards of public welfare, which boards shall be of such size, membership, and experience as may be determined by the Executive Director of the Department of Public Welfare to be essential for the accomplishment of the purposes of this Act not in conflict with or duplication of other laws on this subject;

(8) Carry on research and compile statistics relative to the entire Public Welfare Program throughout the State, including all phases of dependency, delinquency, and related problems, and develop plans in cooperation with other public and private agencies for the prevention as well as treatment of conditions giving rise to public welfare problems;

(9) Have authority, any provision of law to the contrary notwithstanding, to dismiss without notice any person employed in the administration of this Act upon receipt of notice of a determination by the United States Civil Service Commission that such person has violated the provisions of the Act of Congress entitled an "Act to prevent pernicious political activities" as amended[2] (U.S.C., Title 18, Section 61a) and that such violation warrants the removal of such person from his employment;

(10) Have authority to establish by rule and regulation a Merit System for persons employed by the State Department of Public Welfare in the administration of this Act; and shall provide by rule and regulation for the proper operation and maintenance of such Merit System on the basis of efficiency and fitness, and may provide for the continuance in effect of any and all actions heretofore taken in pursuance of the purposes of this subsection. The State Department is empowered and authorized to adopt regulations that may be necessary to conform to the Federal Social Security Act approved March 14, 1935, as amended,[3] and shall have the power and authority to provide for the maintenance of a Merit System in conjunction with any Merit System applicable to any other State agency or agencies operating under the said Social Security Act as amended.

The Social Security Board shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods.

It is further provided that if any Merit Council is set up under authority of this Act the members and the executive head thereof shall be appointed subject to the confirmation of two thirds of the Senate.

(11) The Council shall provide for a preference in every State Department in this State (under which the Council has supervision) to all honorably discharged soldiers, sailors, nurses, and marines from the army and navy of the United States in the late Spanish-American and Philippine Insurrection Wars and the late World War when the United States of America was engaged in war against the Imperial Government of Germany and its allies and who are and have been residents or citizens of the State of Texas for a period of ten (10) years and who are competent and fully qualified shall be entitled to preference in appointments and employment; provided further that they shall receive a credit of five (5) points to be added to their merit ratings.

1 42 U.S.C.A. §§ 901–904.
2 18 U.S.C.A. § 61 et seq.
3 42 U.S.C.A. § 301 et seq.

Divisions in State Department

Sec. 5. There shall be created in the State Department of Public Welfare the following Divisions: a Division of Child Welfare, a Division of Audits and Accounts, a Division of Research and Statistics, and such other Divisions as the Executive Director may find necessary for effective administration. The Executive Director shall have the power to allocate and reallocate functions among the Divisions within the Department and have the power and authority, subject to classification, to select, appoint, and discharge such assistants, clerks, stenographers, auditors, bookkeepers, and clerical assistants as may be necessary in the administration of the duties imposed upon the State Department of Public Welfare within the limits of the appropriations that may be made for the work of said Department.

State Department as agency of state; social security

Sec. 6. The State Department is hereby designated as the State agency to cooperate with the Federal Government in the administration of the provisions of Title I,[1] Title IV,[2] Part 3 of Title V,[3] and Title X,[4] of the Federal Social Security Act and of the provisions of such other titles of the Federal Social Security Act as may be added thereto, from time to time, in the event no other State agency is by law designated to cooperate with the Federal Government in the administration of the provisions of such title, or titles, as may be added to the Social Security Act and the Department is directed to enact and promulgate such rules and regulations as may be necessary to effect the cooperation as herein outlined and designated. The State Department is hereby authorized and directed to cooperate with the proper departments of the Federal Government and with all other departments of the State and local governments in the enforcement and administration of such provisions of the Federal Social Security Act and any amendments thereto and the rules and regulations issued thereunder, and in compliance therewith, in the manner prescribed in this Act or as otherwise provided by law.

1 42 U.S.C.A. §§ 301–306.
2 42 U.S.C.A. §§ 601–606.
3 42 U.S.C.A. § 721.
4 42 U.S.C.A. §§ 1201–1206.

State Department as agency of state; distribution of Federal surplus commodities and other Federal resources

Sec. 7. The State Department is hereby designated as the State agency to cooperate with the Federal Government in the proper administration and distribution of Federal surplus commodities and any other Federal resources now on hand and available, or that may be provided in the future. The State Department is hereby designated as the State agency to administer or supervise referrals and certifications to the Works Project Administration, the National Youth Administration and the Civilian Conservation Corps. The State Department may cooperate with any city or county in any manner deemed necessary for the proper operation of these programs.

State Department as agency of state; dependent children

Sec. 8. The State Department is hereby designated as the agency to cooperate with the Children's Bureau of the United States Department of Labor in:

(1) Establishing, extending, and strengthening, especially in predominantly rural areas, public welfare services for the protection and care of homeless, dependent, and neglected children in danger of becoming delinquent; and

(2) Developing State services for the encouragement and assistance of adequate methods of community child welfare organization and paying part of the cost of district, county or other local child welfare services in areas predominantly rural and in other areas of special need; and as may be determined by the rules and regulations of said State Department; and

(3) Developing such plans as may be found necessary to effectuate the services contemplated in this Section, and to comply with the rules and requirements of the Children's Bureau of the United States Department of Labor issued and prescribed in conformity with, and by virtue of the Federal Social Security Act as amended.[1]

[1] 42 U.S.C.A. § 301 et seq.

Powers and functions not affected

Sec. 9. No provision of this Act shall in any manner interfere with the powers and functions of the Vocational Rehabilitation Division of the Department of Education, the State Commission for the Blind, or the Division of Maternal and Child Health of the State Health Department, or the Juvenile Boards of any of the counties authorized by Title 82, Revised Civil Statutes of Texas, as amended.[1]

[1] Articles 5119 et seq.

Budget

Sec. 10. The Executive Director shall prepare and submit to the Board, for its approval, a biennial budget of all funds necessary to be appropriated by the Legislature for the State Department for the purposes of this Act, including in such budget an estimate of all Federal funds which may be allotted to this State by the Federal Government for the purposes of the State Department. The budget so prepared shall by the State Board be submitted to and filed with the Board of Control in the form and manner and within the time prescribed by law.

Reports

Sec. 11. The Executive Director shall prepare annually a full report of the operation and administration of the State Department, together with such recommendations and suggestions as he may deem advisable, and such reports shall be submitted to the State Board not later than the first day of October of each year. The State Board, in turn, shall submit a report to the Governor and the Legislature.

Blind persons; assistance to

Sec. 12. Assistance shall be given under the provisions of this Act to any needy blind person who:

(1) Is over the age of twenty-one (21) years; and

(2) Whose vision, with correctional glasses, is insufficient for use in an occupation for which sight is essential; and

(3) Who has resided in this State for five (5) years during the nine (9) years immediately preceding the date of application, and who has resided in this State continuously for one (1) year immediately preceding the date of application; and

(4) Is not at the time of receiving such aid an inmate of any public institution; and

(5) Who is not publicly soliciting alms in any part of this State. The term "publicly soliciting" shall be construed to mean the wearing, carrying, or exhibiting the signs denoting blindness, or the carrying of receptacles for the reception of alms, or the doing of the same by proxy, or be begging from house to house or on any public street, road, or thoroughfare within the State; and

(6) Who has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health; and

(7) Who is a citizen of the United States.

Blind persons; exceptions to aid

Sec. 13. No aid to needy blind persons shall be given under the provisions of this Act to any individual for any period with respect to which he is receiving Old Age Assistance.

Blind persons; amount of assistance

Sec. 14. The amount of assistance which shall be given under the provisions of this Act to any individual as aid to the blind shall be determined by the State Department through its district or county agencies in the county or district in which the needy blind person resides with due consideration to the income and other resources of such blind person and in accordance with the rules and regulations of the State Department. The amount of assistance given shall provide such blind person with a reasonable subsistence compatible with decency and health, within the limitations and provisions of the Constitution of Texas as are now provided, or may hereafter be provided.

Blind persons; application for assistance

Sec. 15. No application for assistance as a needy blind person shall be approved until the applicant shall have been examined by an ophthalmologist or physician skilled in treatment of diseases of the eye and who is licensed to practice medicine in Texas, and who has been approved by the State Department to make such examination. The examining ophthalmologist or physician shall certify, in writing upon forms prescribed by the State Department, as to the cause, diagnosis, and prognosis, and shall make recommendations as to the medical and surgical treatment. The State Department shall adopt a reasonable fee schedule for such examinations. Such fees shall be paid out of the funds appropriated to the State Department for the purpose of assistance to needy blind persons under the provisions of this Act or for administrative expense.

Blind persons; reexamination of eyes; rules and regulations

Sec. 16. Every recipient of aid to the blind shall submit to a reexamination of his eyesight at least once every two (2) years, unless excused therefrom by the State Department. The State Department shall promulgate such rules and regulations stating in terms of ophthalmic measurements, the amount of visual acuity which an applicant or recipient may have and still be eligible for assistance under this Act.

Dependent children; assistance; eligibility

Sec. 17. Aid to dependent children shall be given under the provisions of this Act with respect to any dependent child. "Dependent Child" is any individual:

(1) Who is a citizen of the United States; and

(2) Who has resided in this State for a period of at least one (1) year immediately preceding the date of the application for assistance; or was born within the State one (1) year immediately preceding the date of application, and whose mother has resided in the State for a period of at least one (1) year immediately preceding the birth of such child; and

(3) Who is under the age of fourteen (14) years; and

(4) Who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent; and

(5) Who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home; and

(6) Who has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.

Dependent children; amount of assistance

Sec. 18. The amount of assistance which shall be given under the provisions of this Act with respect to any needy dependent child shall be determined by the State Department through its district or county agencies in the district or county in which the dependent child resides with due consideration to the income and other resources of such child and in accordance with the rules and regulations of the State Department. The amount of assistance given shall provide such dependent child with a reasonable subsistence compatible with decency and health, within the limitations and provisions of the Constitution of Texas as are now provided, or may hereafter be provided.

Dependent children; assistance when living with relatives

Sec. 19. When the investigation discloses that a child in whose behalf application for assistance has been made is a needy dependent child as defined in this Act, and that such child is living, or will live, with one or more of the relatives prescribed in this Act, assistance may be allowed for the support of such child if other provisions of this Act are complied with.

Old age assistance; persons eligible

Sec. 20. Old Age Assistance shall be given under the provisions of this Act to any needy person:

(1) Who has attained the age of sixty-five (65) years; and

(2) Who is a citizen of the United States; and

(3) Who has resided in the State of Texas for five (5) years or more within the last nine (9) years preceding the date of his application for assistance and has resided in the State of Texas continuously for one (1) year immediately preceding the application; and

(4) Who is not at the time of receiving assistance an inmate of a public institution; and

(5) Who has not sufficient income or other resources to provide a reasonable subsistence compatible with health and decency. Provided that in consideration of income and resources actually available to applicant the State Agency shall not evaluate income and resources which may be available only to relatives of applicant. Income and resources to be taken into consideration shall be known to exist and shall be available to the applicant. An applicant for old age assistance shall not be denied assistance because of the existence of a child or other relative, except husband or wife, who is able to contribute to the applicant's support, and no inquiry shall be made into the financial ability of said child or other relative, except husband or wife, in determining applicant's eligibility. The applicant's child or other relative, except husband or wife, is to be treated by the State Department in the same way as any person not related to the applicant; any aid or contributions to the applicant from such child or other relative, except husband or wife, must actually exist in fact, or with reasonable certainty, be available in the future to constitute a resource to the applicant.

(6) An applicant for old age assistance shall not be denied assistance because of the ownership of a resident homestead, as the term "resident homestead" is defined in the Constitution and Laws of the State of Texas.

Old age assistance; amount of assistance

Sec. 21. The amount of assistance which shall be given under the provisions of this Act to any individual as old age assistance shall be determined by the State Department through its district or county agencies in the county or district in which the needy aged person resides with due consideration to the income and other resources of such aged person and in accordance with the rules and regulations of the State Department. A voluntary statement by any child or other relative, except husband or wife, as to the amount and kind of aid or assistance he is contributing or expects to contribute to an applicant for old age assistance shall be accepted by the State Department as prima facie evidence of the availability and amount of such contribution; provided, however, that actual contributions to the applicant must be considered by the State Department. The amount of assistance given shall provide such aged person with a reasonable subsistence compatible with decency and health, within the limitations and provisions of the Constitution of Texas as are now provided, or may hereafter be provided.

Seasonal or occasional employment during war

Sec. 21a. Provided, however, that until the United States of America has concluded and entered into treaties of peace with all of the nations with whom she is now at war, commonly referred to as the Axis Powers, no grant of assistance to any recipient of old age assistance who is already on the rolls or who may hereafter be placed on said rolls, and is already receiving old age assistance, shall be reduced or revoked by reason of the fact that any such needy recipient may derive or receive other and additional income to take care of his additional needs above his grant, from seasonal or occasional employment, until and unless such needy recipient shall receive more than Two Hundred Fifty ($250.00) Dollars of outside and additional income during a calendar year; provided said recipient of old age pension reports his said employment, in writing, to the local office of Public Welfare, giving the name and address of his employer or employers at the end of each month, and giving the amount of his earnings during the month just passed. Provided further, that neither the State Department of Public Welfare nor any of its district or county agencies in the county or district in which the needy aged person resides shall give any consideration to any such income received by recipients of old age assistance up to the amount of Two Hundred Fifty ($250.00) Dollars that is actually derived and received in payment for labor actually performed or services rendered during a calendar year.

It is the declared purpose of this section to encourage recipients of old age assistance to aid in overcoming the great shortage of manpower during this great war emergency by performing necessary labor when and wherever possible without being faced with the possibility of having pensions reduced, or being

removed from the pension rolls altogether. [Added Acts 1943, 48th Leg., p. 708, ch. 393, § 1.]

Applications for assistance

Sec. 22. Application for old age assistance, aid to the blind, and aid to dependent children under the provisions of this Act shall be made in the manner and in the form prescribed by the rules and regulations of the State Department. Such application may contain a statement of the amount of property, both personal and real, in which the applicant has an interest and of all income which the applicant may have at the time of the filing of the application, and such other information as may be required by the State Department.

Investigations and determinations by State Department

Sec. 23. Whenever the State Department shall receive an application for old age assistance, aid to the blind or aid to dependent children as provided under this Act, the State Department shall:

(1) Make an investigation and record of the circumstances of the applicant in order to ascertain the facts supporting the application and to obtain such other information as it may require.

(2) After completion of its investigation, determine whether the applicant is eligible for assistance under the provisions of this Act, the type and amount of assistance, the date on which such assistance shall begin, and the manner in which payment shall be made. All applicants shall be promptly notified of the final action taken by the State Department.

Reinvestigations

Sec. 24. All assistance granted under the provisions of this Act to any needy aged person, needy blind person or with respect to any dependent child shall be reconsidered as frequently as may be required by the rules of the State Department. After such reconsideration as the State Department may deem necessary or may require, the amount of assistance may be changed, or the assistance may be entirely withdrawn if the State Department finds that the recipient's circumstances have altered sufficiently to warrant such action. The State Department may at any time cancel and revoke assistance or it may suspend assistance for such period as it may deem proper, upon the grounds of ineligibility of the recipient under the provisions of this Act. Whenever assistance is thus withdrawn, revoked, suspended, or in any way changed, the State Department shall at once notify the recipient of such decision. If at any time during the continuance of public assistance the recipient thereof becomes possessed of income or resources in excess of the amount previously reported by him, it shall be his duty to notify the State Department of this fact immediately on the receipt or possession of such additional income or resources.

Appeal to State Department from local unit

Sec. 25. (1) In the event that an application for public assistance by a needy blind person, a needy aged person, or with respect to a needy dependent child, is not acted upon by the local unit of administration within a reasonable time after the filing of such an application, or is denied in whole, or in part, or any award of assistance is modified or cancelled, or an applicant or recipient is dissatisfied with any action or failure to act on the part of the local administrative unit, the applicant or recipient shall have the right to appeal to the State Department and shall be granted a reasonable notice and opportunity for a fair hearing before the State Department.

(2) Within a reasonable time prior to an applicant's or recipient's appeal hearing he, or his authorized agent, shall be fully advised of the information contained in his record on which action was based if a request for such information is made in writing, and no evidence of which the applicant or recipient is not informed shall be considered by the State Department as the basis for a decision after a hearing.

Method of assistance payments

Sec. 26. All assistance payments provided for under the terms of this Act shall be paid by vouchers or warrants drawn by the State Comptroller on the proper accounts of a "State Department of Public Welfare Fund"; for the purpose of permitting the State Comptroller to properly draw and issue such vouchers or warrants, the State Department of Public Welfare shall furnish the Comptroller with a list of or roll of those entitled to assistance from time to time, together with the amount to which each recipient is entitled. When such vouchers or warrants have been drawn they shall be delivered to the Executive Director of the State Department of Public Welfare, who in turn shall supervise the delivery of same to the persons entitled thereto.

Funds created; State Treasurer custodian

Sec. 27. (1) For the purposes of carrying out the provisions of this Act, the Old Age Assistance Fund, the Blind Assistance Fund, and the Children Assistance Fund as provided for in House Bill No. 8, Acts of the Forty-seventh Legislature, Regular Session,[1] are hereby made separate accounts of the "State Department of Public Welfare Fund" as created by this Act. Provided, that all moneys in the separate accounts of the State Department of Public Welfare Fund shall be expended only for the purposes of carrying out the provisions of this Act, and for the purposes for which said separate accounts were created or appropriated.

(2) The State Treasurer is hereby designated as the custodian of any and all money which may be received by the State of Texas (which the State Department of Public Welfare is authorized to administer), from any appropriations made by the Congress of the United States, for the purpose of cooperating with the several provisions of the Federal Social Security Act,[2] and all money received from any other source; and the State Treasurer is hereby authorized to receive such money, pay it into the proper fund or the proper account of the General Fund of the State Treasury, provided for the proper custody thereof, and to make disbursements therefrom upon the order of the State Department and upon warrant of the State Comptroller of Public Accounts.

1 Article 7083a.
2 42 U.S.C.A. § 301 et seq.

Proration of assistance grants

Sec. 28. If at any time State Funds are not available to pay all grants of assistance in full as authorized in this Act, said grants shall be prorated as the State Board of Public Welfare may direct.

Non-transferability of assistance; exemptions; death of recipient before warrant is cashed

Sec. 29. Old age assistance, aid to the blind, or aid to dependent children as provided for under the provisions of this Act shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under the provisions of this Act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any insolvency law; the provision of this Act providing for old age assistance, aid to the blind, and aid to dependent children shall not be construed as a vested right in the recipient of such assistance; provided, however, in case any person who is an approved recipient of old age assistance, aid to the blind, or aid to dependent children, living on the first day of any month, or living at the date of the issuance of the check, or living at the date of the mailing of the check, and entitled to assistance for that month, dies before the check issued for such assistance, for the month in

which the death occurs, has been endorsed or cashed by recipient, the amount of said check may be paid to any person determined by the Department of Public Welfare to have been responsible for the caring of the recipient at the time of his death and responsible for the payment of obligations incurred; the County Judge of the county wherein the recipient died will endorse the check payable only to the person whom the Department of Public Welfare has determined was responsible for the care of the recipient at the time of the latter's death and who is responsible for the payment of obligations incurred by the recipient; the State Department of Public Welfare shall adopt reasonable rules and regulations prescribing a method of payment and limitations of such payments in such cases and the manner of ascertaining the person entitled to receive the same; provided, however, that payments to recipients under the above provisions shall be made only in such manner and to such extent as are permissible under and consistent with the laws and regulations governing the disbursement of funds received through the Federal Social Security Board. And provided further, that all old age assistance, aid to the blind, and aid to dependent children warrants not cashed, as provided by this Act, within a reasonable time after issuance may be cancelled by the State Comptroller upon proper authorization of the State Department of Public Welfare. [As amended Acts 1943, 48th Leg., p. 439, ch. 297.]

Unlawful acts; penalties

Sec. 30. Any person or persons charged with the duty or responsibility of administering, disbursing, auditing, or otherwise handling the grants, funds, or moneys, provided for in this Act, and who shall misappropriate any such grants, funds, or moneys or who shall by deception or fraud to any other person wrongfully distribute the grants, funds, or moneys provided for in this Act, shall be deemed guilty of a felony and shall, upon conviction, be confined in the State Penitentiary for a term of not less than two (2) nor more than seven (7) years.

Officers and employees of State Department; unlawful acts; penalty

Sec. 31. No officer or employee of the State Department shall use his official authority or influence or permit the use of the programs administered by the State Department for the purpose of interfering with an election or affecting the results thereof or for any political purpose. No such officer or employee shall take any active part in political management or in political campaign or participate in any political activity, except that he shall retain the right to vote as he may please and express his opinion as a citizen on all political subjects. No such officer or employee shall solicit or receive, nor shall any such officer or employee be obliged to contribute or render, any service, assistance, subscriptions, assessments, or contributions for any political purpose. Any officer or employee of the State Department violating this Section shall be subject to discharge or suspension or such other disciplinary measures as may be provided by the rules and regulations of the State Department.

Attorneys fees

Sec. 32. It shall be unlawful for any attorney at law, or attorney in fact, or any other person, firm or corporation whatsoever, representing any applicant or recipient of assistance to the aged, to the needy blind, or to any needy dependent child, or for any child welfare service with respect to any application before the State Department, or any of its agents, to charge a fee for his services in excess of Ten Dollars ($10) in aiding or representing any such applicant before the State Department, or for any other service in aiding such applicant to secure assistance or service. It shall likewise be unlawful for any person, firm or corporation, to advertise, hold himself out for or solicit the procurement of assistance or service.

Disclosure of information prohibited; names of recipients

Sec. 33. (1) It shall be unlawful, except for purposes directly connected with the administration of general assistance, old age assistance, aid to the blind, or aid to dependent children, and in accordance with the rules and regulations of the State Department, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of, or names of, or any information concerning, persons applying for or receiving such assistance, directly or indirectly derived from the records, papers, files, or communications of the State Department or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

(2) The rule-making power of the State Department shall include the power to establish and enforce reasonable rules and regulations governing the custody, use, and preservation of the records, papers, files, and communications of the State Department and its local offices. Wherever, under provisions of law, names and addresses of recipients of public assistance are furnished to or held by any other agency or department of government, such agency or department of government shall be required to adopt regulations necessary to prevent the publication of lists thereof or their use for purposes not directly connected with the administration of public assistance.

Fraudulent assistance; penalty

Sec. 34. Whoever obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a wilfully false statement or representation or by impersonation, or by other fraudulent means:

(1) Assistance, services, or treatment to which he is not entitled;

(2) Assistance, services, or treatment greater than that to which he is justly entitled;

(3) Or, with intent to defraud, aids or abets in buying, or in any way disposing of the property of a recipient of assistance without the consent of the State Department, or whoever violates Section 32 or Section 33 of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined any sum not more than One Hundred Dollars ($100) or be imprisoned for not less than six (6) months, nor more than two (2) years, or be both so fined and imprisoned.

Purpose of act; construction

Sec. 35. The purpose of this Act is to inaugurate a program of social security and to provide necessary and prompt assistance to the citizens of this State who are entitled to avail themselves of its provisions. This Act shall be liberally construed in order that its purposes may be accomplished as equitably, economically, and expeditiously as possible.

Assistance grants subject to repeal, etc.

Sec. 36. All assistance granted under the provisions of this Act shall be deemed to be granted and to be held subject to the provisions of any amending or repealing Act that may hereafter be passed, and no recipient shall have any claims for compensation or otherwise by reason of his assistance being affected in any way by any amending or repealing Act.

Oaths and acknowledgments

Sec. 37. The local representatives of the Department, who are charged with the duty of investigating and determining the eligibility of applicants for assistance under the provisions of this Act, are authorized to administer oaths and take acknowledgments concerning all matters relating to the administration of this Act. No seal shall be required of such rep-

resentatives of the Department in attesting to oaths administered or acknowledgments taken, but said representatives shall officially sign said oaths or acknowledgments, showing with such signature their position and title. In this connection, these local representatives of the Department, for the purposes of the administration of this Act, shall have the same authority as is now had by Notaries Public coextensive with the limits of the State of Texas.

Saving clause

Sec. 38. None of the provisions of this Act shall change, amend, alter or impair any of the provisions of House Bill No. 1059, Acts of the Forty-seventh Legislature, Regular Session.[1]

[1] Acts 1941, 47th Leg., p. 815, ch. 505.

Responsibility of counties and municipalities not affected

Sec. 39. No provision of this Act is intended to release the counties and municipalities in this State from the specific responsibility which is currently borne by those counties and municipalities in support of public welfare, child welfare, and relief services. Such funds which may hereafter be appropriated by the counties and municipalities for those services may be administered through the county or district offices of the State Department, and if so administered, shall be devoted exclusively to the services in the county or municipality making such appropriation.

County Child Welfare Boards continued

Sec. 40. County Child Welfare Boards established or hereinafter appointed in conformity with Section 4, Acts of 1931, Forty-second Legislature, page 323, Chapter 194,[1] shall function and/or continue to function as provided therein, and the Commissioners Court of any county may appropriate funds from its general funds, or any other available fund, for the administration of such County Child Welfare Boards and provide for services to and support of children in need of protection and/or care.

[1] Article 695a, § 4.

Recipient moving out of state

Sec. 41. Any person who is receiving assistance under the provisions of this Act and who moves out of and does not reside in the State shall, by virtue of that fact, be deemed ineligible to receive assistance in this State except that temporary absence from the State for such periods of time, and for such reasons as the State Department shall approve, shall not be deemed to interrupt the residence of the recipient.

Persons attaining age 65; other public relief

Sec. 42. No person, who has attained the age of sixty-five (65), and who is not receiving old age assistance, shall by reason of his age, be disbarred from receiving other public relief and care.

Short title

Sec. 43. This Act shall be known and may be cited as "The Public Welfare Act of 1941."

Repeals

Sec. 44. Article II of House Bill No. 8, Acts, Forty-fourth Legislature, Third Called Session,[1] is hereby repealed.

Sec. 45. House Bill No. 26, Acts, Forty-fourth Legislature, Second Called Session,[2] is hereby repealed.

Sec. 46. Senate Bill No. 9, Acts, Forty-sixth Legislature, Regular Session,[3] is hereby repealed.

[1] Articles 6243—3 to 6243—21 and Pen.Code, art. 427e.
[2] Article 6243—1 and Pen.Code, art. 427d.
[3] Articles 6243—5, 6243—6.

Partial invalidity; severability of act

Sec. 47. If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act or the application thereof to any person or circumstances is held invalid, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity. [Acts 1939, 46th Leg., p. 544; Acts 1941, 47th Leg., p. 914, ch. 562, § 1.]

Section 46 of the Public Welfare Act of 1939 repealed all conflicting laws. Section 47 repealed article 695b.

Section 40 of Acts 1939, 46th Leg., p. 544, prior to amendment and re-enactment of the entire act by Acts 1941, 47th Leg., p. 914, ch. 562, § 1, effective July 2, 1941, was amended by Acts 1941, 47th Leg., p. 815, ch. 505, § 1, effective June 14, 1941, to read as follows: "It is provided that grants of aid and assistance may be made to any needy blind person found to be eligible for such aid under the provisions of this Act immediately upon the allocation of funds to the 'Blind Assistance Fund' as created by House Bill No. 8, Acts of the Forty-seventh Legislature, Regular Session [Article 7083a]; and that grants of aid and assistance may be made for destitute and dependent children found to be eligible under the provisions of this Act immediately upon the allocation of funds to the 'Children Assistance Fund' as created by House Bill No. 8, Acts of the Forty-seventh Legislature, Regular Session [Article 7083a]. To put these provisions into effect, there are hereby appropriated all funds allocated to said 'Blind Assistance Fund' for the purpose of providing and administering assistance to the needy blind under the provisions of this Act; and, there are hereby appropriated all funds allocated to said 'Children Assistance Fund' for the purpose of providing and administering assistance to dependent and destitute children under the provisions of this Act. The State Department is hereby authorized and directed to integrate the administration of aid to the blind and aid for dependent children with all other programs and activities of the department in such manner as is necessary for proper, economical, and efficient administration."

See, also, notes under article 695a.

Art. 695d. Time limit for presentation of disbursing orders for relief issued before October, 1936.—Section 1. Any person having a claim against the State of Texas based on any disbursing order issued for general or transient relief purposes by the Texas Relief Commission or The Texas Relief Commission Division of the State Board of Control,[1] or any of their authorized representatives, agents or employees, prior to October, 1936, shall, within six (6) months from the effective date of this Act, present the same to the State Department of Public Welfare for approval and payment, and failure to do so shall forever bar any claim based thereon against the State of Texas.

[1] Transfer of functions to State Department of Public Welfare, see notes under article 695a.

Sec. 2. Any person to whom a check was issued by the Texas Relief Commission or the Texas Relief Commission Division of the State Board of Control, or any of their authorized representatives, agents or employees, prior to July 1, 1936, for relief purposes, or his heirs, assigns or legal representatives, shall present the same to the State Department of Public Welfare for approval and payment within six (6) months from the effective date of this Act, and failure to do so shall forever bar any claim against the State of Texas evidenced by said check or upon the claim to satisfy which said check was given. [Acts 1941, 47th Leg., p. 798, ch. 496.]

Art. 695e. Transfer of child welfare services from State Board of Control to Department of Public Welfare.—All of the functions and duties which were designated as being the responsibility of the State Board of Control and/or the Division of Child Welfare of the State Board of Control as expressed in Chapter 194, Page 323, Acts of the Forty-second Legislature, Regular Session, 1931, being Article 695A of Vernon's Texas Civil Statutes, including Article 606A, Sections 6 and 7, of Vernon's Texas Penal Code, and the duties and functions of the State Health Department as described in Chapter 204, Page 444, of the General and Special Laws of the Regular Session of the Forty-first Legislature, 1929, and being Article 4442A of Vernon's Texas Civil Statutes are hereby transferred to the State Department of Public Welfare, save and except where they apply to the

child wards of the State of Texas who are being cared for and educated in the eleemosynary schools of the State. The expressed purpose of this Act is to correct a defective transference of duties and responsibilities which relate to children and which may be classed as child welfare services, which transference was attempted in Senate Bill No. 36, Acts of the Forty-sixth Legislature, Regular Session;[1] and all duties, responsibilities, and functions set out in these Sections of the law are expressly transferred to the Department of Public Welfare. [Acts 1945, 49th Leg., p. 297, ch. 215, § 1.]

1 Article 695c.

Art. 695f. Child Welfare Service Fund.—There is hereby created in the Treasury a special fund to be known as the "Child Welfare Service Fund" for the purpose of administering Child Welfare Services transferred to the State Department of Public Welfare by Senate Bill No. 36, Acts of the 46th Legislature, Regular Session, 1939, as amended and reenacted by the Public Welfare Act of 1941, House Bill No. 611, Acts of the 47th Legislature, Regular Session,[1] as same now exists or may hereafter be amended, or such services as otherwise prescribed by law. [Acts 1945, 49th Leg., p. 322, ch. 236, § 1.]

1 Article 695c.

Sections 2 to 4 of the Act of 1945 related to the allocation, appropriation and transfer of funds.

Sections 5 and 6 of the Act of 1945 read:

"Sec. 5. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed.

"Sec. 6. If any Section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares it would have passed such remaining portions despite such invalidity."

TITLE 21—BOND INVESTMENT COMPANIES

Art.
696. Deposit.
697. Default of deposit.
698. Receiver.
699. Interchange of deposit.
700. Return of deposit.

Article 696. [1309] Deposit.—Each corporation, company or individual, doing business in this State as a bond investment company, or company to place or sell bonds, certificates or debentures on the partial payment or installment plan, shall deposit with the State Treasurer, in cash or securities approved by said Treasurer, the sum of five thousand dollars, and shall deposit semi-annually with said Treasurer, in cash or securities, to be approved by said officer, ten per cent of all net premiums received until the sum deposited amounts to one hundred thousand dollars. [Acts 1897, p. 118; G. L. vol. 10, p. 1172.]

Art. 697. [1310] Default of deposit.—If any such domestic corporation, shall fail, for sixty days after its organization, to make with the State Treasurer the deposit required by this title, it shall be considered to have forfeited its charter; and the Attorney General shall upon information thereof, bring suit in the name of the State to have such charter or certificate of incorporation declared forfeited, and the court, upon so finding, shall declare such charter forfeited and appoint a receiver for such company, whose duty it shall be, under the order of the court, to distribute to the shareholders the assets of the company. The court shall out of such assets make equitable compensation for the receiver. [Id.]

Art. 698. [1311] Receiver.—In case of the failure of any such company, the district court of the county in which the principal office is located, upon the application of one or more shareholders, shall appoint a receiver for such company, whose duty it shall be to wind up its affairs, liquidate its debts, and distribute its assets, using therefor, upon the order of the court, the deposit previously made with the State Treasurer to secure the shareholders. Said Treasurer is authorized to pay out such deposit upon the warrant of the Comptroller in accordance with requisitions made upon the Comptroller by said receiver, approved by the court. [Id.]

Art. 699. [1312] Interchange of deposit.—On request of any such company, the State Treasurer is authorized to permit such company to interchange cash for the securities or securities for the cash deposited by such company under the provisions of this title with said Treasurer, such securities always to be approved by said Treasurer on the written advice of the Attorney General. [Acts 1901, p. 282.]

Art. 700. [1313] Return of deposit.—If any such company shall cease to do business in this State and satisfy the Comptroller and the Attorney General that it has no liabilities in this State, the Comptroller shall issue his warrant to the State Treasurer; and said Treasurer upon such warrant of the Comptroller, shall return to such company the cash or securities deposited by it under the provisions of this title. [Id.]

TITLE 22—BONDS—COUNTY, MUNICIPAL, ETC.

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CHAPTER 1.—GENERAL PROVISIONS AND REGULATIONS

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Article 701. [605] Shall hold election.—The bonds of a county or an incorporated city or town shall never be issued for any purpose unless a proposition for the issuance of such bonds shall have been first submitted to the qualified voters who are property tax payers of such county, city or town. [Acts 1899, pp. 103 and 258.]

Art. 702. Question submitted.—In all cases when the governing body of a county, city or town shall order an election for the issuance of the bonds of the county, city or town or of any political subdivision or defined district of a county, such body shall at the same time submit the question of whether or not a tax shall be levied upon the property of such county, city or town, political subdivision or defined district for the purpose of paying the interest on the bonds and to create a sinking fund for the redemption of the bonds.

Art. 703. [606] Submission of proposition.—The proposition to be submitted shall distinctly specify:

1. The purpose for which the bonds are to be issued;
2. The amount thereof;
3. The rate of interest;
4. The levy of taxes sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity;
5. The maturity date, or that the bonds may be issued to mature serially within any given number of years not to exceed forty. [Id. Acts 1899, p. 258; Acts 1st C. S. 1921, p. 37.]

Art. 704. [607] Time of election—Notice of election.—The time and place or places of holding said election shall be designated in the election order, and such election shall be held not less than fifteen (15) nor more than thirty (30) days from the date of such order. Notice of said election shall be given by posting a substantial copy of the election order in each of the election precincts of such county, city, or town, and also at the county courthouse if for a county election and at the city hall if for a city or town election. Such notice shall also be published on the same day in each of two (2) successive weeks in a newspaper of general circulation published within said county, city, or town, the date of the first publication to be not less than fourteen (14) days prior to the date set for said election. The provisions of this Article shall control over any city charter provisions to the contrary. Except as herein provided, the manner of holding said election shall be governed by the laws governing general elections. [Acts 1899, p. 258; Acts 1935, 44th Leg., 1st C.S., p. 1558, ch. 382, § 1.]

Validating Acts:

Acts 1939, 46th Leg., Spec.L., p. 999, validated bonds issued by cities in counties of 27,400 to 27,500 to be paid solely from the revenues derived from the operation of a municipal light and power distribution system.

Acts 1939, 46th Leg., Spec.L., p. 1003, validated bonds of any city of 50,000 to 100,000, operating under a home rule charter, payable from the levy of ad valorem taxes.

Art. 705. [606] Form of ballot.—All voters desiring to support the proposition shall have written or printed upon their ballots the words "For the issuance of bonds," and those opposed, the words "Against the issuance of bonds." [Acts 1899, p. 258.]

Art. 705a. Cancellation of unsold bonds of cities or towns; election.—Section 1. Any incorporated city or town in this State, including cities incorporated under the Home Rule Provisions of the Constitution and Laws of Texas, which has heretofore or may hereafter vote in favor of or execute bonds which have been or may be unsold for a period of ten (10) or more years after the same have been or may be executed, may revoke and cancel such bonds at an election called by the governing body of any such city or town upon its own motion or upon petition of not less than ten per cent (10%) of the qualified property taxpaying voters voting in the last preceding city election, shall order an election to determine whether or not such bonds shall be revoked or cancelled. None but qualified taxpaying voters may vote at such an election. Such election shall be ordered and held on a date stated in such order not less than twenty (20) nor more than thirty (30) days from the date of such order and notice thereof shall be given for fifteen (15) days before such election by publication of the notice thereof in some newspaper published in such city or town and such election shall be held and conducted in the same manner and form as required in elections to authorize the issuance of such bonds. Those voting to revoke and cancel such bonds shall have written or printed on their ballot: "FOR revocation of the bonds"; and those voting not to revoke or cancel such bonds shall have written or printed on their ballot: "AGAINST revocation of the bonds."

Sec. 2. The result of such election, whether favorable to the cancellation of such bonds or not, shall be duly recorded by the governing body of said city or town, and the returns thereof and the result duly entered on record in the minutes of said governing body, and in the event the result of such election for the cancellation and revocation of such bonds shall show that a majority of the qualified resident property taxpaying voters of such city or town, voting at such election, have voted for the cancellation and revocation of such unsold bonds, the governing body shall cancel and burn all such executed bonds, and forward to the Comptroller a certified copy of the minutes showing such revocation, cancellation and destruction. The Comptroller shall thereupon cancel the registration of said bonds on the records of his office.

Sec. 3. When said bonds have been destroyed the governing body of such city or town shall readjust the existing tax levies in such city or town by an amount equal to that levied or proposed to be levied for interest and sinking fund accounts of the bonds to be cancelled.

Sec. 4. After deducting any claims properly chargeable against such taxes, the unexpended part of all taxes that have been collected, with the view to the sale of such bonds as destroyed, shall be refunded to the taxpayers ratably upon order of the governing

body. The City Treasurer shall take and file proper receipts for all funds so refunded.

Sec. 5. Nothing in this Act shall be construed as invalidating any bond election or any bonds which have been sold by such city or town. [Acts 1947, 50th Leg., p. 675, ch. 340.]

Art. 706. [611] [878] Maturity dates.—Bonds may be issued to mature serially within any given number of years not to exceed forty, within the discretion of the governing body issuing the same. [Acts 1893, p. 112; G. L. vol. 10, p. 542,]

Art. 707. [616] [918a] Interest and sinking fund.—When the issuance of bonds has been authorized, the governing body of a county or town shall provide for the levy and collection of a tax annually sufficient to pay the annual interest and provide a sinking fund for the payment of the bonds at maturity. Such bonds shall bear a rate of interest not exceeding six per cent. [Acts 1893, p. 84; G. L. vol. 10, p. 514.]

Art. 708. [617] [918b] Sale price.—Bonds shall never be sold at less than their par value and accumulated interest, exclusive of commissions. [Id.]

Art. 708a. Authorizing sale of securities to Reconstruction Finance Corporation.—Whenever any county, district, city or town, or other municipality or defined subdivision of this State shall own bonds or other securities, or warrants, notes or other obligations or evidences of indebtedness of any other county, district, city or town, or other municipality or defined subdivision of this State, the same may be sold to the Reconstruction Finance Corporation or any other agency of the United States of America or department of the Federal Government at such price, whether or not less than the par or face amount thereof, as shall seem to the governing body of the seller to be reasonable and for the best interests of the seller. [Acts 1935, 44th Leg., p. 705, ch. 301, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 708b. Defense bonds and other United States obligations; investment of bond proceeds by political subdivisions.—That any political subdivision of the State of Texas which heretofore has issued and sold bonds and is unable to obtain labor and materials to carry out the purpose for which the bonds were issued may invest the proceeds of such bonds now on hand in defense bonds or other obligations of the United States of America; provided, however, that whenever war time or any other regulations shall permit such political subdivisions to acquire the necessary labor and materials, the obligations of the United States in which said proceeds are invested shall be sold or redeemed and the proceeds of said obligations shall be used for the purpose for which the bonds of any such political subdivision were authorized. [Acts 1943, 48th Leg., p. 211, ch. 131, § 2.]

Section 1 of the act of 1943 is set out as article 2543b.

Art. 708b—1. Bond proceeds not usable because of labor and material shortages; investment in United States obligations.—Any political subdivision of the State of Texas which heretofore has issued and sold bonds and is unable to obtain labor and materials to carry out the purpose for which the bonds were issued may invest the proceeds of such bonds now on hand in government bonds or other obligations of the United States of America; provided, however, that whenever regulations shall permit such political subdivisions to acquire the necessary labor and materials, the obligations of the United States in which said proceeds are invested shall be sold or redeemed and the proceeds of said obligations shall be used for the purpose for which the bonds of any such political subdivision were authorized. [Acts 1947, 50th Leg., p. 388, ch. 216, § 2.]

Section 1 of the Act of 1947 is set out as article 2543b—1.

Art. 709. [619] [918d] Examination of bonds, etc.—Before any bonds shall be offered for sale, the county judge or the mayor, as the case may be, shall forward the bonds to the Attorney General, together with a certified copy of the order or ordinance levying the tax to pay the interest and provide a sinking fund, and a statement of the total bonded indebtedness of the county, city or town, including the series of bonds proposed, together with the amount of the assessed value of the property of the county, city or town for purposes of taxation as shown by the last official assessment of such county, city or town. Such county judge or mayor shall also furnish the Attorney General with any additional information he may require. [Acts 1893, p. 84; G.L. vol. 10, p. 514.]

Art. 710. [620] [918e] Registration.—When said bonds have been examined and certified by the Attorney General, they shall be registered by the Comptroller in a book kept for that purpose. [Id.; Acts 1901, p. 16.]

Art. 711. [621] [469] [423] Special registration.—The Comptroller shall indorse his certificate of registration on each city bond so registered, and at the request of the mayor, give his certificate to the amount of bonds so registered to date. [Acts 1875, p. 113; G. L. vol. 8, p. 506.]

Art. 712. [622] [918e] Certificate of approval.—The certificate of the Attorney General to the validity of such bonds shall be preserved of record. [Acts 1893, p. 84; Acts 1901, p. 16; G. L. vol. 10, p. 542.]

Art. 713. [623] [918e] Shall cancel old bonds.—In the case of funding or refunding bonds, the Comptroller shall not register the same until the original bonds are presented to him for cancellation. [Id.]

Art. 714. [624] [918e] Requisites of cancellation.—After registration of the new bonds, the Comptroller shall cancel the old, and deliver the new bonds to the proper party or parties. The old bonds may be presented for cancellation in installments, and a like amount of the new bonds registered and delivered as herein provided. [Id.]

Art. 715. [625] [918f] Evidence of validity.—Such bonds, after receiving the certificate of the Attorney General, and having been registered in the Comptroller's office, shall be held in every action, suit or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligations. In every action brought to enforce collection of such bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of its validity, together with the coupons attached thereto. The only defense which can be offered against the validity of such bonds shall be forgery or fraud. This article shall not be construed to give validity to any such bonds as may be issued in excess of the limit fixed by the Constitution, or contrary to its provisions. [Id.]

Art. 716. Validity of certain bonds.—No bonds or coupons legally and lawfully issued and signed by the duly authorized officers of any county, city, town, political subdivision, defined district, water improvement district or water control district or any school district of this State, shall ever be held invalid by reason of the fact that at the time of the actual delivery of such bonds to a purchaser, such bonds or coupons had been signed or executed by different officers acting in the same capacity or when such bonds or coupons had been signed or executed by officers who had succeeded other officers who had executed or signed a part of said bonds or coupons, nor shall any such bonds ever

be held invalid by reason of the fact that at the time of the actual delivery of such bonds to the purchaser, the respective persons who had signed such bonds or coupons, or any part thereof, may have been replaced in their respective offices by other persons after the signing of such bonds or coupons or any part thereof and before the delivery thereof, and any officer acting in the same official capacity as his predecessor, shall have the same right to complete the execution of such bonds and their issuance in the manner and form as provided by law and to the same extent as did his predecessor and it shall be lawful for the official board or managing body of any such political subdivision or district to select in the manner provided by law another official or person in whom may be vested the authority and duty of the execution of such bonds and/or coupons and of issuing such bonds and completing the record in respect thereto, provided, however, such action or actions shall be set forth in the records of said subdivision or district. [Acts 2nd C.S. 1923, p. 60; Acts 1929, 41st Leg., 3d C.S., p. 237, ch. 6, § 1.]

Art. 716a. Validating municipal bond issues.—Sec. 1. This Act may be cited as "The 1935 Validating Act."

Sec. 2. The following terms, whenever used or referred to in this Act, shall have the following meaning:

(a) The term "public body" means a Water Control and Improvement District, Water Improvement District, Irrigation District, Conservation and Reclamation District, Navigation District, Road District, School District, County, City or Incorporated town of this State.

(b) The term "bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, or including all instruments or obligations payable from a special fund.

Sec. 3. All bonds heretofore issued for the purpose of financing or aiding in the financing of any work, undertaking or project by any public body to which any loan or grant has heretofore been made by the United States of America through the Federal Emergency Administrator of Public Works for the purpose of financing or aiding in the financing of such work, undertaking or project, including all proceedings for the authorization and issuance of such bonds, and the sale, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings, or in such sale, execution or delivery; and such bonds are and shall be binding, legal, valid and enforceable obligations of such public body.

Sec. 4. Provided however, that the provisions of this Act shall not be construed as validating any such proceedings, or bonds or other obligations issued by virtue thereof, where the validity of any such proceedings or obligations or bonds issued thereunder has been contested or attacked in any pending suit or litigation. [Acts 1935, 44th Leg., 1st C.S., p. 1561, ch. 384.]

See, also, article 725a, post.

Art. 716b. Validating county bond issues and elections between June 19 and August 17, 1936.—All proceedings heretofore had by the governing bodies of all counties, between June 19, 1936 and August 17, 1936, both inclusive, in the State of Texas in connection with the issuance of bonds for any purpose, including the orders for and notices of elections, the conduct and returns of elections, and the canvassing of such returns of such elections, and the bonds heretofore or hereafter issued pursuant thereto, are hereby in all things fully validated, confirmed, approved and legalized, including among others, instances wherein there have been irregularities in the calling of elections and the giving of notice of elections, notwithstanding the fact that the election order designated a time for holding the election on a day more than thirty (30) days from the date of such order, and notwithstanding the fact that the notice of election was posted within such county instead of having been both posted and published in a newspaper of general circulation, and notwithstanding the fact that both such irregularities have occurred in connection with the same election. All bonds issued pursuant to such proceedings, when approved by the Attorney General of the State of Texas, registered in the office of the Comptroller of Public Accounts, and delivered to the purchasers thereof, shall constitute valid and binding obligations of such county. All tax levies made by such governing bodies for the purpose of paying the principal of and interest on such bonds, are hereby in all things validated, confirmed, approved and legalized.

Provided, however, that the provisions of this Act shall not apply to any such proceedings or obligations issued thereunder, the validity of which is being contested or attacked in any suit or litigation pending at the time this Act becomes effective, or that may be filed sixty (60) days after the effective date hereof and shall not validate any levy, assessment of valuation made or placed on any property where any suit, as aforementioned, shall be or shall have been filed within the time aforementioned. [Acts 1936, 44th Leg., 3rd C.S., p. 2098, ch. 504, § 1.]

Art. 717. [608] Exceptions.—The first three articles of this chapter shall not apply to funding bonds issued, or to be issued, for the funding of any valid outstanding bonds of a county, town or city; nor to any bond issue for a sum less than two thousand dollars, when issued for the purpose of repairing buildings or structures for the building of which bonds are allowed to be issued. [Acts 1899, p. 258.]

Art. 717a. Refunding indebtedness of unorganized counties since organized.

Issuance of refunding bonds; taxes and sinking fund

Sec. 1. That the Commissioners Court of any organized county in this State which was unorganized at the time [1] taking the next preceding United States Census, and which had a population of less than one hundred at the time of said census, is authorized and empowered to fund into the bonds of any such county such legal indebtedness of the county which is evidenced by the legally issued and outstanding warrants and scrip of such county issued for any purpose, as authorized by law, and which indebtedness existed on January 1st 1929. Said refunding bonds may be issued by the Commissioners court of any such county, payable serially or otherwise, within a period of time not exceeding forty years as the court may direct, and shall bear interest at a rate of not more than six per cent per annum, payable annually or semiannually; the rate of interest and payment dates to be determined by the Commissioners Court of such counties, to be issued in such denominations as may be prescribed by the Commissioners Court of such counties. At the time of the passage of an order of the Commissioners Court, authorizing the issuance of such bonds, it shall be the duty of the Commissioners Court of such counties to levy an annual Ad Valorem tax on all taxable property within the county sufficient to provide for the payment of the interest on such bonds and to create a sinking fund with which to pay the

principal thereof as it matures; and in such cases it shall not be necessary to submit the question of the issuance of said refunding bonds to a vote of the people. The Commissioners Court of such counties are [2] authorized to issue said bonds in exchange for like amounts of the outstanding warrants or scrip of said counties as existed on January 1st 1929. Said bonds, when executed shall be approved by the Attorney General of the State of Texas and shall be registered by the Comptroller as in the case of other legally authorized refunding bonds.

[1] So in enrolled bill. Word "of" should probably be inserted.
[2] So in enrolled bill. Should probably read "is."

Limitation on warrants or indebtedness

Sec. 2. From and after the taking effect of this act, it shall be unlawful for the Commissioners Court of any county coming within the provisions of this act to issue or cause to be issued any warrants, scrip, or evidence of indebtedness, or to create any debt against the road and bridge fund of such county, except as authorized by this act, in excess of the current revenues of said county road and bridge purposes; provided that in case of great calamity or urgent public necessity, said court may issue warrants against the road and bridge fund in excess of the current revenues for the purpose of repairing roads and building bridges occasioned by such calamity or urgent public necessity, but in no instance shall such warrants exceed the limitations provided by the constitution and laws of this State; and provided further that no warrant shall be issued for such purposes until first authorized by order passed by said court, and provided further that said order shall recite fully the necessity therefor and particularly specify the several purposes for which said warrants are to be issued, which said order shall be published at least one time in some newspaper published in said county before said warrants are issued. If no newspaper is being published in said county, then in some newspaper in an adjoining county nearest the county seat of said county. [Acts 1929, 41st Leg., p. 503, ch. 240.]

Section 3 of this Act repeals all conflicting laws and parts of laws general and special.

Art. 717a—1. Refunding indebtedness of counties of 100,000 or more; taxes; sinking fund.—Section 1. The Commissioners Court of any county in this State, having a population of one hundred thousand (100,000) inhabitants, or more, according to the last preceding Federal Census, shall have the power to issue bonds for the purpose of refunding any and all outstanding indebtedness of such county, chargeable against the General Fund which existed on April 30, 1941. Items of indebtedness as of said date, in the form of scrip or time warrants, either or both, may be included in such refunding bond issue. Such refunding bonds may be issued by the Court payable serially, or otherwise, within a period of time not exceeding thirty (30) years as the Court may direct, and shall bear interest at a rate not to exceed five (5) per centum per annum, interest payable annually or semiannually as may be determined by the Court; provided, however, that the amount of bonds issued under this Act shall never reach an amount where a tax of Five (5) Cents on the one hundred dollars valuation of property will not pay current interest and provide a sinking fund sufficient to redeem them at maturity; and, provided further, that said refunding bonds shall have been first authorized by a majority vote cast by the duly qualified property taxpaying voters voting at an election held for that purpose.

Sec. 2. That said Commissioners Courts are further authorized and empowered to levy (within the maximum rate hereinabove prescribed) a tax upon all real and personal property situated in such county, out of the tax of Twenty-five (25) Cents authorized for county purposes by Section 9 of Article 8 of the Constitution of Texas, sufficient to pay the principal of and interest on such bonds, if voted or authorized as herein provided, and no bonds shall be issued under this Act until a tax levy, as herein provided, shall have been made, and when said levy shall have been so made, the same shall continue in force until the whole amount of the principal of and interest on such bonds shall have been fully paid.

Sec. 3. The general laws relative to county refunding bonds, not in conflict with the provisions of this Act, shall apply to the issuance, approval, and certification, and the registration of the bonds provided for in this Act.

Sec. 4. If any section, clause, or phrase of this Act is held to be unconstitutional, such decision shall not affect the remaining portion of this Act. [Acts 1941, 47th Leg., p. 793, ch. 492.]

Art. 717b. Borrowing from Federal Agencies.—Any governmental agency and/or municipality of the State of Texas, heretofore authorized to borrow money from the Reconstruction Finance Corporation under Acts of the 43rd Legislature and prior Acts, is also authorized to borrow money in accordance with the provisions of the several Acts of the 43rd Legislature and prior Acts from any other Federal Agency now or to be hereafter created. [Acts 1933, 43rd Leg., p. 601, ch. 198, § 1.]

Art. 717c. Counties authorized to borrow from Federal Agencies and to levy tax to repay indebtedness.

Borrowing and receiving grants authorized; restrictions

Sec. 1. All counties in this State acting by and through their respective Commissioners Courts may borrow money and/or receive grants of money from the Federal Emergency Administrator of Public Works or any other Federal agency that may be provided for similar purposes under the terms and provisions, and in accordance with the provisions of the Act of the Congress of the United States commonly known as the "National Industrial Recovery Act." [1] Provided that all actions taken by the Commissioners Courts in carrying out the provisions of this Act shall be done in accordance with, and subject to all the restrictions of Chapter 163 of the Acts of the Forty-second Legislature,[2] and nothing in this Act shall be construed as repealing any of the provisions of House Bill No. 312, passed by the Regular Session of the Forty-second Legislature.

[1] Act June 16, 1933, ch. 90, 48 U.S.Stat. 195.
[2] Article 2368a.

Security for repayment

Sec. 2. When any such money is borrowed as authorized and provided in Section 1 hereof for any purpose for which counties in this State may create an indebtedness and levy a tax to pay such indebtedness under the Constitution and laws of this State the repayment of such loan by such county making the loan may be secured in the following manner:

(a) Such county or counties may sell or pledge its bonds to the United States of America acting through the Federal Emergency Administrator of Public Works or other Federal Agency at not less than par value and accrued interest; and/or

(b) Such counties may issue their negotiable warrants or certificates of indebtedness and sell the same to the United States of America acting through the Federal Emergency Administrator of Public Works or other Federal Agency at not less than par value and accrued interest; and/or

(c) Such counties may convey the site on which any county project is located to the United States of America acting through the Federal Emergency Administrator of Public Works or other Federal Agency and lease

said county project from the United States of America acting through such Administrator or other Federal Agency at such rental as will repay such loan within the time agreed upon, at which time title to such project shall vest in such county. [As amended Acts 1935, 44th Leg., 1st C.S., p. 1653, ch. 423, § 1.]

Bonds or security approved by Attorney General; contest of validity

Sec. 3. In all instances where the Federal Emergency Administrator of Public Works or other Federal Agency delivers to any county officer or agent authorized to receive the same the consideration or money for which the security provided for herein is given and such money is so received such counties may not thereafter contest the validity of any such security except for fraud or forgery; provided, however, that such bonds or other security herein provided for is first approved by the Attorney General of the State of Texas, whose duty it shall be to pass upon any such security to be given by any such county to the Federal Emergency Administrator of Public Works or other Federal Agency.

Expiration date

Sec. 4. Any contract or agreement made and entered into by any such county under the authority and provisions of this Act shall be valid and in full force and effect for the period of time provided for in said contract and agreement made by such county. [As amended Acts 1935, 44th Leg., 1st C.S., p. 1653, ch. 423, § 3.]

Construction as to existing law

Sec. 5. The provisions of this Act shall be cumulative of any existing laws; provided, however, that the provisions of this Act shall apply wherever there is any conflict with any other law or laws during the period of the existence of this Act. [Acts 1933, 43rd Leg., 1st C.S., p. 298, ch. 109.]

Acts 1935, 44th Leg., 1st C.S., p. 1653, ch. 423, § 3, amended sections 2 and 4 of this article.

Section 2 of Acts 1935 declared all warrants or certificates of indebtedness issued under subdivision (b), Section 2 of Chapter 109, Acts of the First Called Session of the Forty-third Legislature and payable to the Federal Emergency Administrator of Public Works negotiable instruments and negotiable within the Uniform Negotiable Instruments Act.

Art. 717d. Validating county bonds for road construction and tax levies.—Section 1. Where, under authority of Section 52, of Article 3, of the Constitution of the State of Texas, a two-thirds majority of the resident property taxpayers, being qualified electors of any county voting on the proposition, having voted at an election held in such county called by the County Commissioners' Court of such county, in favor of the issuance of bonds of such county and the levy of a tax upon the taxable property therein for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof for the construction, maintenance and operation of macadamized, graveled or paved roads or turnpikes, or in aid thereof within such county, the canvass of said vote, revealing such majority having been recorded in the minutes of said County Commissioners' Court, and where thereafter the County Commissioners' Court of each such county, by order adopted and recorded in its minutes, authorized the issuance of such bonds of such county, prescribed the date and maturity thereof and rate of interest the bonds were to bear, the place of payment of principal and interest, and providing for the levy of a tax upon the valuation of taxable property in each such county according to the value thereof as fixed for State and County purposes, sufficient to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity, and such bonds were approved by the Attorney General of the State of Texas and thereafter issued and delivered, each such election and all acts and proceedings had and taken in connection therewith by such County Commissioners' Court in respect of such bonds, levy of taxes, construction, maintenance and operation of macadamized, graveled or paved roads or turnpikes, or in aid thereof, are hereby legalized, approved and validated; and such bonds are hereby validated and constitute the legal obligations of such county. Any such county bonds heretofore voted and authorized, as aforesaid, and not yet issued, may be issued and delivered by order of the County Commissioners' Court of such county when approved by the Attorney General of the State of Texas and such bonds shall constitute the valid and binding obligation of such county.

Sec. 2. Taxes, sufficient to pay the principal of and interest upon such bonds, so levied for such purpose upon the valuation of taxable property in such County, according to the value of taxable property as determined for State and County purposes, are hereby found and fixed as the amount to be raised in each such county, and constitute the basis for such taxation, and the assessment and levy of such taxes is hereby validated and legalized; and such taxes, in an amount sufficient to pay the principal of and interest upon such bonds now outstanding, or hereafter issued, as aforesaid, shall be annually assessed and collected according to the value of taxable property as fixed for State and County taxes, by the County Commissioners' Court of each such county and express authority so to do is hereby delegated and granted to such courts.

Sec. 3. Such orders, and all other orders adopted by such County Commissioners' Court in respect of such bonds and taxes, as the same appear upon the record of such court, or copies thereof duly certified, are hereby constituted legal evidence of such orders, and shall be authority for such court to annually levy, assess and collect taxes in an amount sufficient to pay the principal of and interest upon such bonds as the same mature and become due, such taxes to be levied and assessed upon the value of taxable property in such county as fixed for state and county taxes.

Sec. 4. The legislature hereby exercises the authority upon it conferred by Section 52, of Article 3, of the Texas Constitution, and confirms and ratifies the acts and proceedings of such courts in respect of such election, authorization, issuance and delivery of such bonds, the levy of taxes to pay principal thereof and interest thereon, with like effect, as though at the time or times said acts and proceedings were done or had, there existed statutory authority for the doing thereof. Provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law. [Acts 1937, 45th Leg., p. 12, ch. 12.]

Art. 717e. Validating bonds and proceedings of Water Improvement districts, Drainage districts, and other districts and cities, towns, etc., issued for loans or grants by Federal Agencies.—Section 1. This Act may be cited as "The 1939 Validating Act."

Sec. 2. As used in this Act:

(a) The term "public body" includes a Water Control and Improvement District, Water Improvement District, Irrigation District, Conservation and Reclamation District, Drainage District, Levee District, Navigation District, Road District, School District, County, City or Incorporated Town or Village of this State.

(b) The term "bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific

revenues, income or property of a public body, or including all instruments or obligations payable from a special fund.

Sec. 3. All bonds heretofore issued for the purpose of financing or aiding in the financing of any work, undertaking or project by any public body to or for the benefit of which, any loan or grant or both has been made heretofore by the United States of America through the Federal Emergency Administration (or Administrator) of Public Works or the Reconstruction Finance Corporation for the purpose of financing or aiding in the financing of such work, undertaking or project, or for the purpose of funding or refunding previously existing indebtedness, including all proceedings for the authorization and issuance of such bonds, the provisions made for the payment thereof, and the sale, execution and delivery thereof, are hereby validated notwithstanding any lack of previous legislative authorization to such public body, or the governing body thereof, to issue such bonds, or to sell, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings, or in such sale, execution or delivery; and such bonds are and shall be binding, legal, valid and enforceable obligations of such public body. All bonds heretofore authorized for such purposes by an election or by action of the governing body of a public body to or for which a loan or grant, or both has been made by the United States of America through the Federal Emergency Administration (or Administrator) of Public Works, or the Reconstruction Finance Corporation, shall, when issued (and when approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts if such approval and registration are authorized by statute) be binding legal, valid and enforceable obligations of such public body, notwithstanding any lack of previous legislative authorization, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings, or in the execution, sale or delivery thereof.

Sec. 4. Provided, however, that the provisions of this Act shall not be construed as validating any such proceedings, or bonds or other obligations issued by virtue thereof, where the validity of any such proceedings, or obligations or bonds issued thereunder has been contested or attacked in any suit or litigation instituted prior to the delivery of such bonds to the Federal Emergency Administration of Public Works or the Reconstruction Finance Corporation, and pending at the time this Act becomes effective. [Acts 1939, 46th Leg., p. 687.]

CHAPTER 2.—COURTHOUSE, JAIL AND OTHER BONDS

Art.
718. County issues authorized.
719. Requisite vote.
720. Term of bonds.
721. Interest on bonds.
722. Limit of issue.
723. Interest and sinking fund.
724. Bonds to be signed, etc.
725. Substitution of bonds.
725a. The 1935 Validating Act.

Article 718. [610] [877] County issues authorized.—After having been authorized as provided in Chapter One of this title, the commissioners court of a county may lawfully issue the bonds of said county for the following purposes:

1. To erect the county courthouse and jail, or either;

2. To purchase suitable sites within the county and construct buildings thereon to provide homes or schools for dependent and delinquent boys and girls or for either;

3. To establish county poor houses and farms in the county;

4. To purchase and construct bridges for public purposes within the county or across a stream that constitutes a boundary line of the county;

5. To improve and maintain the public roads in the county.

When the commissioners court shall deem it advisable to issue bonds for both the purchase or construction of bridges and improvement and maintenance of the public roads, both questions may be submitted and voted on as one proposition. [Acts 1903, C. S. p. 9; Acts 1893, p. 112; Acts 1911, p. 204; Acts 1921, p. 98; G.L. vol. 10, p. 542.]

Art. 719. [605] Requisite vote.—If a majority of the property tax paying voters voting at such election shall vote in favor of the proposition, then such bonds shall be thereby authorized and shall be issued by the commissioners court. [Acts 1899, pp. 103 and 258.]

Art. 720. [611] [878] Term of bonds.—All bonds issued under this chapter shall run not exceeding forty years, and may be redeemable at the pleasure of the county at any time after five years after the issuance of the bonds, or after any period not exceeding ten years, which may be fixed by the commissioners court. [Acts 1893, p. 112; G. L. vol. 10, p. 542.]

Art. 721. [612] [879] Interest on bonds.—Such bonds shall draw interest at a rate not exceeding six per cent. per annum, payable annually or semi-annually within the discretion of the governing body. Interest shall be evidenced by attached coupons. [Id.]

Art. 722. [613] [880] Limit of issue.—The issue of bonds under this Chapter shall be based upon the taxable values of the County according to the last approved assessment, and shall be limited as follows: Courthouse Bonds shall be limited to an amount not exceeding two per cent of said taxable values; Jail Bonds shall be limited to an amount not exceeding one and one-half per cent of said taxable values; Joint Courthouse and Jail Bonds shall be limited to an amount not exceeding three and one-half per cent of said taxable values; Bridge Bonds shall be limited to an amount not exceeding one and one-half per cent of said taxable values. In determining the amount of the bonds of the respective kinds to be issued, previous indebtedness for said several purposes shall be considered. The total indebtedness of any County for the purposes provided in this Chapter, shall not be increased by any issue of bonds to a sum exceeding five per cent of its said taxable values. [Acts 1893, p. 112; G. L. vol. 10, p. 542; Acts 3rd C.S., 1920, p. 97; Acts 1931, 42nd Leg., p. 77, ch. 50, § 1, and Acts 1931, 42nd Leg., p. 336, ch. 203, § 1.]

Art. 723. [614] [881] Interest and sinking fund.—The commissioners court shall levy annual ad valorem taxes sufficient to pay the interest on said bonds and create a sinking fund for their redemption; which shall not exceed for courthouse and jail bonds, one-fourth of one per cent; for bridge or road and bridge bonds, fifteen cents on each one hundred dollars. [Acts 1893, p. 112; G. L. vol. 10, p. 542.]

Provided that when the principal and all interest on said bonds are fully paid, in the event there is any surplus remaining in the Sinking Fund, not in excess of One Thousand ($1,000.00) Dollars, said remaining surplus not used in the full payment of the principal and interest on said bond or bonds may be used by the county for maintaining and repairing the courthouse and jail and the roads and bridges of said county, as may be determined by the Commissioners Court. [Added Acts 1947, 50th Leg., p. 436, ch. 241, § 1.]

Art. 724. [615] [882] Bonds to be signed, etc.—The bonds shall be signed by the county judge and countersigned by the county clerk and registered by the county treasurer before delivery. The county

treasurer shall keep an account of the amount of principal and interest paid on each, and no bond shall be sold at less than its par value and accrued interest, exclusive of commissions. [Acts 1893, p. 112; G. L. vol. 10, p. 542.]

Art. 725. [657] Substitution of bonds.—Where bonds have been legally issued, or may be hereafter issued for any purpose authorized in this chapter, new bonds in lieu thereof bearing the same or a lower rate of interest may be issued, in conformity with existing law, and the commissioners court may issue such bonds to mature serially or otherwise, not to exceed forty years from their date. [Acts 1901, p. 16; Acts 1893, p. 112; G. L. vol. 10, p. 542.]

Art. 725a. The 1935 Validating Act.—Sec. 1. This Act may be cited as "The 1935 Validating Act."

Sec. 2. The following terms, wherever used or referred to in this Act, shall have the following meaning:

(a) The term "public body" means any county within the State of Texas.

(b) The term "bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, or including all instruments or obligations payable from a special fund.

Sec. 3. All bonds heretofore issued for the purpose of financing or aiding in the financing of any work, undertaking or project by any public body to which any loan or grant has heretofore been made by the United States of America through the Federal Emergency Administrator of Public Works for the purpose of financing or aiding in the financing of such work, undertaking or project, including all proceedings for the authorization and issuance of such bonds, and the sale, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than Constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, execute or deliver the same, and notwithstanding any defects or irregularities (other than Constitutional) in such proceedings, or in such sale, execution or delivery; and such bonds are and shall be binding, legal, valid and enforceable obligations of such public body. [Acts 1935, 44th Leg., p. 534, ch. 224.]

See, also, article 716a, ante.

CHAPTER 3.—PUBLIC ROAD BONDS

1. COUNTY AND DISTRICT BONDS

Art.
726–752. [Repealed.]
752a. Power to issue road bonds; surplus in sinking fund.
752b. Bond elections.
752c. Establishment of road districts.
752c—1. Abolishment of dormant road districts.
752cc. Road district including portion of previous road district containing other improvement district.
752d. Petition for election.
752e. Hearing and determination.
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752f—1. Election in political subdivision or road district.
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752i. Maturity dates and interest rate.
752j. Sale of bonds and disposition of proceeds.
752k. Ad valorem tax levy.
752l. County assessments.
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752n. Duties of assessor and collector.
752o. Duties of custodian and depositary of proceeds.
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1. COUNTY AND DISTRICT BONDS

Articles 726–752. [Repealed by Acts 1926, 39th Leg., 1st C.S., p. 23, ch. 16, § 30.]

Section 31 of the repealing act contained a saving clause, as follows: "Nothing in this Act shall be construed as invalidating any bond elections previously ordered or held within and for any county in this state or any political subdivision or defined district of any county under the provisions of Chapter 2, Title 18, Revised Statutes of 1911, and amendments thereto, or Chapter 3, Title 22, Revised Statutes, 1925, or under authority of any special county road law."

Art. 752a. Power to issue road bonds; surplus in sinking fund.—Any county, or any political subdivision of a county, or any road district that has been or may hereafter be created by any General or Special Law, is hereby authorized to issue bonds for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, in any amount not to exceed one-fourth of the assessed valuation of the real property of such county or political subdivision or road district, and to levy and collect ad valorem taxes to pay the interest on such bonds and provide a sinking fund for the redemption thereof. Such bonds shall be issued in the manner hereinafter provided and as contemplated and authorized by Section 52, of Article 3, of the Constitution of this State. The term "Political Subdivision," as used in this Act, shall be construed to mean any commissioner's precinct or any justice precinct of a county, now or hereafter to be created and established. Provided when the principal and all interest on said bonds are fully paid, in the event there is any surplus remaining in the sinking fund, said remaining surplus not used in the full payment of the principal and interest on said bond or bonds may be used by the county, political subdivision of the county, or any local district that has been or may hereafter be created by any general or special law for the purpose of the construction, maintenance, and operation of macadamized, graveled or paved roads and turnpikes or in the aid thereof as may be determined by the Commissioners Court of any county or the officials of any political subdivision of a county or any said road district. [Acts 1926, 39th Leg., 1st C.S., p. 23, ch. 16, § 1; Acts 1943, 48th Leg., p. 198, ch. 116, § 1.]

Section 31 of the Act of 1926, read as follows: "Nothing in this Act shall be construed as invalidating any bond elections previously ordered or held within and for any county in this state or any political subdivision or defined district of any county under the provisions of Chapter 2, Title 18, Revised Statutes of 1911, and amendments thereto, or Chapter 3, Title 22, Revised Statutes, 1925, or under authority of any special county road law."

Art. 752b. Bond elections.—Upon the petition of fifty resident property taxpaying voters of any county, the commissioners' court of such county, at any Regular or Special Session thereof, shall order an election to be held in such county to determine whether or not the bonds of such county shall be issued for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, and whether or not taxes shall be levied on all taxable property of said county, subject to taxation, for the purpose of paying the interest on said bonds and to provide a sinking fund for the redemption thereof at maturity. The election order and notice of election shall state the purpose for which the bonds are to be issued, the amount thereof, the rate of interest, and that ad valorem taxes are to be levied annually on all taxable property within said county sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 2.]

Art. 752c. Establishment of road districts.—The County Commissioners' Courts of the several counties of this State may hereafter establish one or more road districts in their respective counties, and may or may not include within the boundaries and limits of such districts, villages, towns and municipal corporations, or any portion thereof, and may or may not include previously created road districts and political subdivisions or precincts that have voted and issued road bonds pursuant to section 52 of Article 3, of the Constitution, by entering an order declaring such road district established and defining the boundaries thereof. Provided that nothing in this Act shall be construed so as to prevent the creation of defined road districts and the issuance of bonds of said districts in counties having outstanding county-wide road bonds, and said defined road districts may be created in such counties in the manner provided by statute for the creation of defined road districts and issuing the bonds thereof. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 3; Acts 1927, 40th Leg., 1st C. S., p. 250, ch. 92, § 1.]

Art. 752c—1. Abolishment of dormant road districts.—When any road district in any county in this State shall have paid off and discharged all of the bonds issued and sold by said road district, or when an election to issue bonds in such road district shall have failed by a vote of the people and such road district has issued no bonds, and no further election has been held in such road district for a period of one year from date of its creation, or when the bonds issued by such road district have been assumed and exchanged for county bonds under the Compensation Bond Statutes, Chapter 16, page 23, General Laws, Thirty-ninth Legislature, First Called Session, 1926,[1] and in the opinion of the Commissioners Court of such county such road district has become dormant and there exists no further necessity for such road district, the Commissioners Court of any county is hereby authorized by an order duly passed abolishing such road district, to abolish such road district, and it shall thereafter cease to exist. [Acts 1941, 47th Leg., p. 206, ch. 147, § 1.]

1 Articles 752a–752w, 767a–767d.

Art. 752cc. Road district including portion of previous road district containing other improvement district.—If any road district, a portion of which is proposed to be incorporated into a new road district, should embrace the whole or any part of any levee improvement district, drainage district, or other improvement district created under any law passed pursuant to Section 52, Article 3, of the Constitution of this State, the territory covered by such other district and other territory adjacent thereto may be excluded from the district sought to be created, but except as herein specifically permitted, no fractional part of a previously created road district shall be included within the limits of the road district created under the provision of this Act, and such excluded territory shall continue to bear and pay its proper proportion or any existing debt created for the construction of macadamized, graveled, or paved roads and turnpikes or in aid thereof, but shall not pay any portion of any debt created for said purposes after such territory is excluded from the district. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 3a; Acts 1927, 40th Leg., 1st C. S., p. 201, ch. 75, § 1.]

Art. 752d. Petition for election.—Where any political subdivision, or any road district, desires to issue bonds, there shall be presented to the Commissioners' Court of the county in which such subdivision or district is situated, a petition signed by fifty or a majority of the resident property taxpaying voters of said subdivision or road district praying such court to order an election to determine whether or not the bonds of such subdivision or district shall be issued to an amount stated for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, and whether or not taxes shall be levied on all taxable property within said subdivision or district in payment thereof. Upon presentation of such petition, it

shall be the duty of the court to which it is presented to fix a time and place at which such petition shall be heard, which date shall be not less than fifteen nor more than thirty days from the date of the order. The clerk of said court shall forthwith issue a notice of such time and place of hearing, which notice shall inform all persons concerned of the time and place of hearing and of their right to appear at such hearing and contend for or protest the ordering of such bond election. Such notice shall state the amount of bonds proposed to be issued, and shall describe such political subdivision or road district by its name or number, and shall describe the boundaries thereof as such boundaries are described and defined in the order of the Commissioners' Court establishing such subdivision or district. The clerk shall execute said notice by posting true copies thereof in three public places within such subdivision or road district and one at the court house door of the county. Said notice shall be posted for ten days prior to the date of said hearing. Said notice shall also be published in a newspaper of general circulation in the subdivision or district, if a newspaper is published therein, one time, and at least five days prior to such hearing. If no newspaper is published in such subdivision or district, then such notice shall be published in some newspaper published in the county, if there be one. The duties herein imposed upon the clerk may be performed by said clerk in person or by deputy, as provided by law for other similar duties. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 4.]

Art. 752e. Hearing and determination.—At the time and place set for the hearing of the petition, or such subsequent date as may then be fixed, the court shall proceed to hear such petition and all matters in respect of the proposed bond election. Any person interested may appear before the court in person or by attorney and contend for or protest the calling of such proposed bond election. Such a hearing may be adjourned from day to day and from time to time, as the court may deem necessary. If upon the hearing of such petition, it be found that the same is signed by fifty or a majority of the resident property tax paying voters of such subdivision or road district, and that due notice has been given, and that the proposed improvements would be for the benefit of all taxable property situated in such subdivision or road district, then such court may make and cause to be entered of record upon its minutes an order directing that an election be held within and for such subdivision or road district at a date to be fixed in the order, for the purpose of determining the questions mentioned in such petitions; provided, however, that such court may change the amount of the bonds proposed to be issued, if, upon the hearing such change be found necessary or desirable. The proposition to be submitted at such election shall specify the purpose for which the bonds are to be issued, the amount thereof, the rate of interest, and that ad valorem taxes are to be levied annually on all taxable property within said district or subdivision sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 5.]

Art. 752f. Notice of election.—If the proposed issue of bonds and levy of taxes is for the entire county, notice of the election shall be given by publication in a newspaper published in such county, for three successive weeks, if there be one. In addition thereto, for three weeks prior to said election, notice shall be posted by the county clerk at four public places in the county, one of which shall be the courthouse door. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 6.]

Art. 752f–1. Election in political subdivision or road district.—If the proposed issue of bonds and levy of taxes is for a political subdivision or road district, notice of such election shall be given by publishing in a newspaper in the subdivision or district for three successive weeks, and by posting notices in at least three public places in such subdivision or district and at the courthouse door of the county. If no newspaper is published therein, then such published notice shall be given in some newspaper published in the county, if there be one. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 7.]

Art. 752f–2. Place of holding election in subdivisions.—The commissioners' court shall determine the time and place or places of holding such election, and the date of such election shall be not less than thirty days from the date of making the order of election. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 8.]

Art. 752g. Manner of holding election.—The manner of holding such election and canvassing and making returns thereof, shall be governed by the General Laws of this State when not in conflict with the provisions of this Act.[1] [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 9.]

[1] This article, articles 752a–752f, ante, and 752h–752w, 767a–767d, post.

Art. 752h. Issuance of bonds.—If at such election two-thirds of the property tax paying voters, voting at such election, cast their ballots in favor of the issuance of bonds, the Commissioners' Court shall, as soon thereafter as practicable, issue said bonds on the faith and credit of said county, or political subdivision or road district, as the case may be. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 10.]

Art. 752i. Maturity dates and interest rate.—Such bonds shall mature not later than thirty years from their date, except as herein otherwise provided; they shall be issued in such denominations, and payable at such time or times as may be deemed most expedient by the Commissioners' Court, and shall bear interest not to exceed five and one-half per cent per annum. The general laws relative to county bonds, not in conflict with the provisions of this Act,[1] shall apply to the issuance, approval and certification, the registration, the sale and payment of the bonds provided for in this Act. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 11.]

[1] This article, articles 752a–752h, ante, and 752j–752w, 767a–767d, post.

Art. 752j. Sale of bonds and disposition of proceeds.—After approval and registration as provided by law relative to other bonds, such bonds shall continue in the custody and control of the Commissioners' Court of the county in which they were issued, and shall be by said court sold to the highest and best bidder for cash, either in whole or in parcels, at not less than their par value, and the purchase money therefor shall be placed in the county treasury of such county to the credit of the available road fund of such county, or of such political subdivision or road district of such county, as the case may be. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 12.]

Art. 752k. Ad valorem tax levy.—Before such bonds shall be put on the market, the County Commissioners' Court of the county in which such election was held, shall levy an ad valorem tax sufficient to pay the interest on such bonds and to provide a sinking fund to pay the bonds at maturity. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 13.]

Art. 752l. County assessments.—When such bonds are issued on the faith and credit of the county, the taxes herein authorized shall be assessed and collected in the same manner as now provided by law for the assessment and collection of other county taxes. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 14.]

Art. 752m. District and subdivision assessments.—When such bonds are issued for and on the faith and credit of a political subdivision or road district, such taxes shall be assessed and collected in the same manner as is now provided by law for the as-

sessment and collection of common school district taxes. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 15.]

Art. 752n. Duties of assessor and collector.—The tax assessor and tax collector of the county wherein such taxes have been levied, shall assess and collect the same in the manner and at the time as other taxes; and when so collected, the tax collector shall pay them to the county treasurer as other taxes are paid. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 16.]

Art. 752o. Duties of custodian and depositary of proceeds.—The county treasurer is custodian of all funds collected by virtue of this law, and shall deposit them with the county depository in the same manner as county funds are deposited. It shall be the duty of the county treasurer to promptly pay the interest and principal as it becomes due on such bonds out of the funds collected and deposited for that purpose. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 17.]

Art. 752p. Disbursement of proceeds by county treasurer.—The purchase money for such county bonds shall be paid out by the county treasurer upon warrants drawn on the available road fund, issued by the county clerk, countersigned by the county judge, upon certified accounts approved by the Commissioners' Court of the county; and the purchase money for such bonds issued on the faith and credit of a political subdivision or road district shall be paid out by the county treasurer upon warrants drawn on the available road fund thereof, issued by the county clerk, countersigned by the county judge, and approved by the Commissioners' Court. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 18.]

Art. 752q. Expenses.—The expense incurred in surveying the boundaries of a political subdivision or road district, and other expenses incident to the issuance of bonds of such subdivision or district, shall be paid from the proceeds of the sale of the bonds of the subdivision or district issuing the same. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 19.]

Art. 752r. Districts and subdivisions bodies corporate.—Any road district, or any political subdivision accepting the provisions of this Act, shall be a body corporate and may sue and be sued in like manner as counties; provided, however, that no such road district or political subdivision shall ever be held liable for torts. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 20.]

Art. 752s. Classification of county bonds.—When the road bonds have been issued by a county as a whole, such bonds shall be known and designated as "——— County Road Bonds," taking the name of the county issuing the same, and shall express on their face that they are issued under authority of Section 52, of Article 3, of the Constitution of Texas, and laws enacted pursuant thereto. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 21.]

Art. 752t. Classification of subdivision bonds.—If the proposition to issue the road bonds of a political subdivision or road district is adopted, such bonds shall express on their face: The State of Texas, the name of the county, the number or corporate name of the subdivision or district issuing such bonds, and they shall be designated as "Road Bonds," and express on their face that they are issued under authority of Section 52, of Article 3, of the Constitution of Texas, and laws enacted pursuant thereto. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 22.]

Art. 752u. Powers of county commissioner.—The County Commissioner in whose Commissioners' precinct such political subdivision or road district is located, shall be ex officio road superintendent of said subdivision or district with power to contract in behalf of such subdivision or district in an amount not to exceed fifty dollars, which shall be approved by the Commissioners' Court. All contracts exceeding the sum of fifty dollars shall be awarded by the entire court. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 23.]

Art. 752v. Award of contracts.—Before the Commissioners' Court shall let a contract for work in a county or road district or subdivision, bids shall be invited by publishing an advertisement in a newspaper published in such county, and outside of the county, if the Commissioners' Court deems it advisable to do so. All contracts shall be awarded to the lowest and best bidder. Any or all bids may be rejected. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 24.]

Art. 752w. Certain counties may avail.—Any county operating under the provisions of special road tax law may take advantage of any of the provisions of this Chapter.[1] [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 29.]

[1] This article, articles 752a–752v, ante, and 767a–767d, post.

Art. 752x. Refunding bonds.—That the Commissioners' Courts of the several counties in Texas shall have authority to refund any Road Bonds that have been issued or that may hereafter be issued by authority of any law enacted pursuant to Section 52 of Article 3 of the Constitution of Texas, when such Road Bonds have been issued for and on behalf of a political subdivision or defined district or consolidated district in such county. Such refunding bonds shall be made to mature serially over a period not exceeding forty years from their date, as may be determined by the Commissioners' Court, and they may be made to bear interest at the same or a lower rate than the original bonds which are being refunded. The Commissioners' Court shall have authority to pass all appropriate orders to properly carry out such refunding. When providing for such refunding, the Commissioners' Court shall provide for the levy of ad valorem taxes on all taxable property in the political subdivision, or defined district or consolidated district, as the case may be, sufficient to pay the current interest on such refunding bonds and to pay the principal as it matures. [Acts 1929, 41st Leg., 2nd C.S., p. 149, ch. 74, § 1.]

Art. 752y. Bonds validated; tax levy.—That all road bonds heretofore voted and authorized by any political subdivisions, or by any road district, in accordance with the provisions and requirements of Section 52 of Article 3 of the Texas Constitution, and which bonds have not yet been issued and sold, are hereby validated, and the Commissioners' Court of the county including such political subdivision or road district, shall have the power, and is hereby expressly authorized, to make and enter any and all orders and provisions necessary for the purpose of issuing and selling the bonds so authorized to be issued by the qualified electors of such political subdivision or road district, and such court is hereby further expressly authorized to levy general ad valorem taxes on all taxable property situated in such political subdivision or road district as such taxable property appears upon the assessment rolls for State and county taxes, in amount sufficient to pay the interest on such bonds and the principal thereof at maturity, and such bonds, when approved by the Attorney General, registered by the State Comptroller and delivered shall be the general direct and binding obligations of such political subdivision or road district issuing the same.

It is hereby expressly found that the property in all political subdivisions and road districts the bonds of which are validated by this act, will be benefited by the improvements proposed to be made with the proceeds of said bonds to an amount not less than the taxes which will be levied against said property for the purpose of paying principal of and interest on said

bonds. [Acts 1932, 42nd Leg., 3rd C.S., p. 106, ch. 41, § 1.]

Art. 752y—1. County road bonds validated.—In all instances wherein counties, acting by and through their Commissioners' Courts, have heretofore lawfully sold a part, or parts, of an issue of road bonds theretofore approved by the Attorney General of the State of Texas at a price of not less than their par value, and the purchase money therefor shall have been placed in the County Treasury of such County in accordance with the provisions of the Acts of the Thirty-Ninth Legislature, at its First Called Session, Chapter 16, Section 12,[1] and thereafter such counties, acting through their Commissioners' Courts, have permitted certain bonds of said issue or issues still owned and held by such counties to be exchanged for bonds of such issue or issues theretofore lawfully sold, and under such circumstances that such counties actually receive bonds of the same issue or issues in identical amounts as the bonds surrendered by any such county in such exchange or exchanges, the acts of said counties, by and through their respective Commissioners' Courts, in permitting such exchanges, in surrendering said bonds in said exchange or exchanges, and in receiving for the use and benefit of said counties the bonds in exchange, are in all things hereby authorized, confirmed and validated; that the bonds thus delivered by any such county have been delivered in accordance with law and that any such county received full value therefor; that the bonds thus received by any such county in exchange for said bonds are the property of said county and subject to sale and resale in accordance with law; provided, however, that no provisions of this Act shall apply wherein a county depository or treasury was designated to act as such, and was, at the time of the transfer or exchange of such bonds, located in some county other than the county in which the bonds were originally voted. [Acts 1934, 43rd Leg., 2nd C.S., p. 130, ch. 61, § 1.]

[1] Article 752j, ante.

Validating bond issues, see articles 716a, 725a, ante.

Section 2 of this Act, repeals all conflicting laws and parts of laws in so far as they conflict with this act.

Art. 752y—2. Refunding road bonds in counties lands of which are purchased for reforestation.—The Commissioners Court of any county wherein the United States Government has or shall hereafter purchase or has designated a purchase unit of at least twenty-five (25) per cent in area of the land in said county for reforestation and other purposes may, with the consent of the Board of County and District Road Indebtedness and the holders of at least eighty (80) per cent of the bonds hereinafter described, refund, under the provisions of existing law, the road bonds of any such county or of any road district or political subdivision thereof, which bonds participate in the County and Road District Highway Fund, into one or more series of refunding bonds and may provide that the eligibility of the bonds being refunded shall be distributed among the various series of refunding bonds in such amounts, or none, as may be agreed upon; provided that the eligibility, in dollars and cents, of bonds whose owners do not agree to such distribution shall not be affected thereby. [Acts 1937, 45th Leg., p. 371, ch. 181, § 1.]

Art. 752y—3. Unissued road bonds validated.—Section 1. All road bonds heretofore voted and authorized together with the levy of a tax to redeem them by a two-thirds (⅔) majority vote of the qualified taxpaying voters under authority of Section 52, Article 3, of the Constitution of the State of Texas, but which bonds are unissued and unsold, in all or any road districts or political subdivisions in any county in the State of Texas which embraces within its boundaries all or any portion of a previously created road district or road districts which has or have outstanding road bonds issued under authority of Section 52, Article 3, of the Constitution of the State of Texas, but for which said outstanding road bonds of such included district or districts no compensation bonds were voted, authorized or issued by the road district or political subdivision so embracing said road district, districts or portions thereof, are hereby in all things validated; and all proceedings had by the Commissioners Court of any county including such road district or political subdivision the bonds of which are hereby validated, in calling the election, the conduct of the election, canvassing returns of election and all other proceedings incident to the authorization of said bonds, are hereby legalized, approved and validated; and said Commissioners Court and each of them is hereby authorized and empowered to proceed in the issuance of said bonds in the manner provided by law for the issuance of road district bonds in ordinary road districts and just as though there were no former road districts or parts thereof covering any of the territory embraced within the boundaries of the road district or political subdivision the bonds of which are validated hereby; and the said Commissioners Court of said counties respectively are hereby respectively authorized to levy, assess and collect ad valorem taxes on all taxable property situated in such road districts or political subdivision in amounts sufficient to pay the interest on said bonds and the principal thereof at maturity; and such bonds, when approved by the Attorney General, registered by the State Comptroller, and sold and delivered according to law, shall constitute general direct and binding obligations of such road district or political subdivision issuing the same.

Sec. 2. Nothing herein contained shall be construed as impairing, releasing or in any manner affecting the debt or lien, or the validity thereof, evidenced by any legally outstanding road bonds issued by any road district or road districts, all or any part of which is embraced within the boundaries of such road district or political subdivision the bonds of which are validated hereby, but all such bonds so outstanding shall be and remain the debt and obligation of the district issuing them in the first instance, and the Commissioners Court of each of such counties containing such road district is hereby expressly authorized and empowered to continue to levy, assess and collect ad valorem taxes upon the taxable property situated in such road districts, as originally created, in the manner provided by law for the payment of all principal and interest to mature on said outstanding bonds, the same as if such road district or road districts or portions thereof had never been embraced within the boundaries of the subsequently created road district or political subdivision.

Sec. 3. It is hereby expressly found and declared that all property situated in the road districts or political subdivisions, the bonds of which are validated hereby, including all or any portion of road districts which are included in the same, will be benefited by the improvements proposed to be made with the proceeds of the bonds herein validated to an amount not less than the amount of the taxes which will be levied and collected against said property for the purpose of paying the principal and interest on the bonds herein validated. [Acts 1947, 50th Leg., p. 379, ch. 213.]

2. COMPENSATION BONDS

Arts. 753—767. [Repealed by Acts 1926, 39th Leg., 1st C.S., p. 23, ch. 16, § 30.]

For Acts 1926, 39th Leg., 1st C.S., p. 23, ch. 16, relating to compensation bond issue, see articles 767a to 767d, post.

For Acts 1931, 42nd Leg., 2nd C.S., p. 58, ch. 36, relating to bond issue by road district, see articles 767e to 767g, post.

See, also, note to article 752a, ante.

Art. 767a. Compensation bond issue.—Whenever in any political subdivision or road district in any county bonds have been issued under the authority of

any general or special law enacted pursuant to Section 52, of Article 3, of the Constitution, and thereafter bonds are voted by the entire county for the purposes hereinafter authorized, such political subdivisions or road districts first issuing bonds may be fully and fairly compensated by the county in an amount equal in value to the amount of district bonds issued by such districts, and which shall be done in the form and manner hereinafter prescribed:

(1) It shall be the duty of the Commissioners' Court, upon the presentation of a petition signed by two hundred and fifty resident property taxpaying voters of the county, whether residing in such road district or districts, or not, to order an election under the provisions of this Act to determine whether or not the bonds of such county shall be issued for road construction purposes as authorized by subdivisions 3 and 4 of this section.

(2) Such county bonds to be issued in such an amount as may be stated in the order of the Commissioners' Court, but within the limitations of the constitutional and statutory provisions; and at such election there shall also be submitted to the resident property taxpaying voters of the county the question as to whether or not a tax shall be levied upon the property of said county, subject to taxation, for the purpose of paying the interest on said bonds and to provide a sinking fund for the redemption thereof.

(3) When such road district or districts have by the requisite vote of the qualified property taxpaying voters thereof authorized, the issuance of bonds, and the same have not been issued and sold, or, if sold and the proceeds have not been expended at the time the election is to be ordered for the entire county, then the proposed county bonds shall be issued for the following purpose: "The issuance of county bonds for the construction of district roads and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, throughout such county." If the proposition to issue such county bonds for said purpose shall receive the necessary favorable vote as is now provided by law, and said bonds shall have been approved and issued, then so much of the bonds so issued by the county as may be necessary to fairly and fully compensate such road district or districts shall be set aside by the Commissioners' Court for that purpose; provided, that in the event such district bonds have not been issued and sold, then so much of the bonds so issued by the county as may be necessary to fairly and fully compensate such road district or districts shall be set aside for that purpose, and the same shall be sold and the proceeds applied to the construction, maintenance and operation of the roads within and for such road district or districts as contemplated by the election or elections theretofore held within and for such road district or districts, and such unsold district bonds shall thereupon become totally void, and it shall be the duty of the Commissioners' Court of such county to immediately cancel and destroy such unsold district bonds; provided, however, that in the event such district bonds have been sold, then an exchange of a like amount of said county bonds may be made with the holder or holders of said district bonds as provided by subdivision 1 of Section 26, of this Act,[1] but if the Commissioners' Court should find that such exchange cannot be made, then so much of the county bonds as may be necessary shall be transferred and placed to the credit of the interest and sinking fund account of such road district or districts in conformity with the procedure prescribed by subdivision 2 of Section 26 hereof.

(4) Where such road district or districts have issued bonds for the construction of public roads therein and the proceeds derived from the sale of the bonds have been applied to the construction of roads within and for such districts, then such district roads may be merged into and become a part of the general county system of public roads and such road district or districts shall be fully and fairly compensated by the county in an amount equal in value to the amount of bonds outstanding against such road district or districts at the time the bonds are issued by the county, and the proposed county bonds shall be issued for the following purpose: "The issuance of county bonds for the purchase of district roads and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, throughout such county." In the event the proposition to issue such county bonds shall receive the necessary favorable vote as is now provided by law, and said bonds shall have been approved and issued, then so much of the bonds so issued by the county as may be necessary for that purpose shall be set aside and exchanged for a like amount of outstanding district bonds, or the same may be transferred and placed to the credit of such road district or districts for the purpose of paying and retiring such district bonds as the same may mature. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 25.]

[1] Article 767b, post.

See note to article 752a, ante, for general saving section of Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16.

See article 752w, ante, as to what counties may take advantage of Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16.

Art. 767b. Exchange of bonds.—If the proposition to issue such county bonds shall receive the necessary favorable vote as is now provided by law, and said bonds shall have been approved and issued, the taxes theretofore levied and collected in any road district or districts shall from that date be dispensed with as hereinafter provided, and the bonds so set apart by the Commissioners' Court shall be used exclusively for the purpose of constructing the roads in any such subdivisions or districts or for the purpose of purchasing or taking over the improved roads in any such subdivisions or districts, as the case may be. The exchange of such county bonds for such outstanding district bonds shall be made in one of the following methods, to wit:

(1) An exchange of said bonds may be made with the holder or holders of any outstanding district bonds. The agreement for such exchange shall be evidenced by order of the Commissioners' Court authorizing the same and by the written consent of the holder or holders of such district bonds, properly signed and acknowledged, as provided for the acknowledgment of written instruments by the laws of this State, which said order of the Commissioners' Court, written agreement properly executed by the holder or holders of such district bonds, together with the county bonds to be given in exchange, shall be presented to and approved by the Attorney General of the State and shall bear his certificate of approval before the exchange is finally consummated. When such exchange of county bonds for district bonds shall have been consummated, it shall be the duty of the Commissioners' Court to cancel and destroy said district bonds, and thereafter no tax shall ever be levied or collected therefor under the original election in such subdivisions or districts and the sinking funds then on hand to the credit of any such subdivisions or districts shall be passed to the sinking fund account of the county.

(2) In the event the exchange of the county bonds for the outstanding district bonds cannot be made as hereinabove provided for, it shall then be the duty of the Commissioners' Court, at as early a date as practicable, to deposit with the county treasurer for the credit of the interest and sinking fund account of such road district or districts an amount of county bonds equal in value to the amount of outstanding district bonds. The order of the Commissioners' Court authorizing the deposit of county bonds for the credit of the interest and sinking fund account of such road district or districts, together with the county bonds so authorized to be deposited, shall be presented to

and approved by the Attorney General of the State and shall bear his certificate of approval before such deposit of county bonds shall be made and credit passed to such road district or districts; provided, however, that such county bonds before deposited shall have printed or written across the face thereof the word "Non-negotiable" and shall further recite that they are deposited to the credit of the interest and sinking fund account of the road district therein named as a guarantee for the payment of the outstanding district bonds that have not been exchanged, and the coupons annexed to such county bonds so deposited shall have written or printed thereon the word "Non-negotiable." After such county bonds shall have been deposited for the credit of the interest and sinking fund accounts of any such road district or districts the sinking fund then on hand to the credit of such road district or districts shall be passed to the credit of the sinking fund account of the county and the Commissioners' Court shall no longer levy and collect the taxes provided for under the original election for said bonds in such road district or districts, but in lieu thereof the said court shall, from the taxes levied for the purpose of providing the necessary interest on the county bonds hereinabove provided for, pay annually the interest on said county bonds deposited for the credit of such road district or districts, detaching the coupon therefor, and said payment of interest shall be passed to the credit of the interest account of such road district or districts as the owner or owners of said county bonds, and the funds so realized by said road district or districts shall be used by the Commissioners' Court for the purpose of paying the interest on all such outstanding district bonds. It shall also be the duty of the Commissioners' Court to set aside annually, from the taxes levied to provide the necessary sinking fund for such county bonds, the necessary sinking fund for the retirement of said county bonds and upon maturity of said county bonds the Commissioners' Court shall pay said bonds in full and said payments shall be passed to the credit of the sinking fund of such road district or districts and the funds so realized by said road district or districts shall be used by the Commissioners' Court to pay in full all outstanding district bonds. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 26.]

Art. 767c. Issuance, form and requisites of compensation bonds.—The county bonds issued for the purpose contemplated in subdivisions three and four of Section 25 [1] hereof, shall be issued in similar denominations, bearing the same rate of interest, having the same date or dates of maturity and with similar options of payment as the outstanding district bonds, it being the intent hereof that said county bonds shall in every respect be similar to said district bonds, except they shall be county obligations instead of district obligations, and shall be dated on a date after the date of the election at which they were authorized; and the county bonds issued in excess of the amount required to exchange, offset and retire said outstanding district bonds shall be issued and sold in the manner now provided by law and may mature serially or otherwise at the discretion of the Commissioners' Court and may run for a term not to exceed forty years and such bonds shall bear not more than five and one-half per cent interest per annum, and the proceeds thereof shall be credited to the available road fund of the county and shall be expended by the Commissioners' Court in constructing, maintaining and operating macadamized, graveled, or paved roads and turnpikes, or in aid thereof, throughout such county. The issuance and sale of the bonds herein authorized and the levy and collection of taxes therefor shall be conducted as now required by law on other county bonds, except as herein otherwise provided; and provided further that the necessary expense incident to the issuance of said bonds may be paid out of the proceeds from the sale thereof. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 27.]

[1] Article 767a, ante.

Art. 767d. Previously created districts and subdivisions.—Where any road district created under the provisions of this Act [1] includes within its limits any previously created road district, or any political subdivision or precinct, having at such time road bond debts outstanding, such included district or subdivision shall be fully and fairly compensated by the new district in an amount equal to the amount of the bonds outstanding against such included subdivision or district, and which shall be done in the form and manner prescribed for the issuance of county bonds under Sections 25 to 27, inclusive of this Act,[2] except the petition shall be signed by fifty or a majority of the resident property taxpaying voters of the new district, and the bonds proposed to be issued shall be for the purchase or construction of roads in the included subdivisions or districts and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 28.]

[1] This article and articles 752a–752w, 767a–767c, ante.
[2] Articles 767a–767c, ante.

Art. 767e. Bond issue by road district including previously created road district or political subdivision.—Where any road district includes within its limits a portion of any previously created road district, or portion of any political subdivision or precinct, pursuant to authority of Section 1, Chapter 75, of the General Laws passed by the Fortieth Legislature, at its First Called Session, in 1927,[1] and which previously created road district, political subdivision or precinct, as the case may be, had road bond debts outstanding, power and authority is hereby conferred upon the newly created road district to issue bonds for the purchase of the roads within the previously created district, subdivision or precinct, and further construction of macadamized, graveled or paved roads and turnpikes in such subsequently created road district, and which said bonds shall be authorized and issued in the form and manner prescribed in Sections 25 to 28, inclusive, of Chapter 16, of the General Laws passed by the Thirty-Ninth Legislature, at its First Called Session, in 1926; [2] provided, however, that nothing herein shall be construed as affecting or impairing the obligation or indebtedness evidenced by the outstanding bonds of the previously created district, subdivision or precinct, but such indebtedness shall remain chargeable against the territory which voted the same. [Acts 1926, 39th Leg., 1st C.S., p. 23, ch. 16, § 28–A, added Acts 1931, 42nd Leg., 2nd C.S., p. 58, ch. 36, § 1.]

[1] Article 752cc, ante.
[2] Articles 767a to 767d, ante.

Art. 767f. Bond issues and elections therefor validated.—That where, under authority of Section 52, Article 3, of the Constitution of the State of Texas, a two-thirds majority of the resident property tax-payers, being qualified electors of any road district, embracing portions of any previously created road district, subdivision or precinct, and which district was created in conformity with the provisions and requirements of Section 1, Chapter 75, of the General Laws passed by the Fortieth Legislature, at its First Called Session, in 1927,[1] voting on the proposition, having voted at an election held in such road district in favor of the issuance of bonds, for the purchase of roads within the road district, subdivision or precinct, portions of which were and are included within the new district, and also voting on the proposition of the further construction of roads within the new district, and the levy of taxes in payment of said bonds, the canvass of said vote revealing such two-thirds majority having been recorded in the minutes of the County Commissioners' Court, and where,

thereafter, the County Commissioners' Court of the County in which such road district is situated, by orders adopted and recorded in its minutes, authorized the issuance of such bonds, prescribed the date and maturity thereof and rate of interest the bonds were to bear, the place of payment of principal and interest, providing for the levy of taxes upon taxable property in each such road district sufficient to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity; and providing further that territory of any such district, subdivision or precinct not included in the newly created road district shall continue to bear and pay its proper proportion of the outstanding road bond debts thereof, and such bonds were approved by the Attorney General and registered by the Comptroller of the State of Texas, each such election, and all acts and proceedings had and done in connection therewith by the County Commissioners' Court in respect of such bonds and the levy of taxes, are hereby legalized, approved and validated, and all bonds voted, or issued, thereunder, are validated and declared to be the legal and binding obligations of such several districts, according to their terms; and power and authority is hereby expressly conferred upon the Commissioners' Court of the County in which any such district is situated, to adopt all orders and to do all acts necessary in the issuance or sale of any unissued or unsold bonds of any such district; provided, that the manner of issuing the district compensation bonds for any such districts shall be the same as that provided for the issuance of other district and County compensation bonds; provided, further, that nothing in this Act shall be construed as impairing, releasing, or in any manner affecting the lien evidenced by outstanding bonds on any portion of any road district, subdivision or precinct, not included within the limits of the subsequently created road district, authorizing or issuing the bonds for the purchase of roads from the previously created district, subdivision or precinct, but such excluded territory shall continue to bear and pay its proper proportion of any such existing debt and, provided further, that any such subsequently created road district shall assume only that portion of the outstanding bonded indebtedness of the previously created district, subdivision or precinct, in the same ratio that the assessed valuation of the property of any such previously created road district, subdivision or precinct (and which property is included in the subsequently created district), bears to the assessed valuation of the property situated within the original boundaries of any such previously created road district, subdivision or precinct. [Acts 1926, 39th Leg., 1st C.S., p. 23, ch. 16, § 28–B, added Acts 1931, 42nd Leg., 2nd C.S., p. 58, ch. 36, § 1.]

[1] Article 752cc, ante.

Art. 767g. Commissioners' Court authorized to levy tax to pay road district bonds.—That taxes, in an amount sufficient to pay the principal of, and interest upon, any such bonds now outstanding, or hereafter issued, as aforesaid, shall be annually assessed and collected according to the value of taxable property as fixed for State and County taxes, by the County Commissioners' Court of each County in which any such district, subdivision or precinct is situated, and express authority so to do is hereby delegated and granted to such Commissioners' Courts. [Acts 1931, 42nd Leg., 2nd C.S., p. 58, ch. 36, § 2.]

3. CONSOLIDATED DISTRICTS

Arts. 768–778. [Repealed by Acts 1926, 39th Leg., 1st C.S., p. 23, ch. 16, § 30.]

3a. DISTRICTS IN ADJOINING COUNTIES

Art. 778a. Power to issue bonds.—That, pursuant to authority conferred by Section 52, of Article 3, of the Constitution, any number of adjoining counties within this State are hereby empowered and authorized to issue bonds in any amount not to exceed one-fourth of the assessed valuation of the real property of the territory included within such counties, and to levy and collect annually ad valorem taxes to pay the interest upon such bonds and to provide a sinking fund for the redemption thereof, for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof. The phrase "any number of adjoining counties" as used in this Act,[1] shall be construed to mean "two or more counties contiguous to each other." [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 1.]

[1] This article and articles 778b–778p, post.
Section 17 of this Act provided that if any part thereof is held invalid, such holding shall not affect the remainder.

Art. 778b. Procedure prescribed.—In the event the qualified property taxpaying voters residing within two or more adjoining counties desire to combine such counties into one defined road district, for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, it shall be lawful for them to do so by following the procedure prescribed in the subsequent sections of this Act.[1] [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 2.]

[1] Articles 778c–778p, post.

Art. 778c. Petition for road district.—The petition for the creation and establishment of a defined road district composed of two or more adjoining counties, shall be signed by not less than fifty qualified voters and property taxpayers in each county. A separate petition for the establishment of said district shall be presented to the commissioners' court of each county in said proposed district. The following proceedings shall be had in each county:

(1) Each petition shall describe in general terms the road or roads proposed to be constructed, and in like general terms the cities, towns and villages, if any, to be connected by such road or roads, and shall name each county proposed to be included within such road district. Each petition shall request the commissioners' court to order an election to determine whether said county shall be included in the proposed road district;

(2) Upon presentation of each petition, it shall be the duty of the court to which it is presented, to fix a time such petition shall be heard, and the date of hearing shall be not less than fifteen nor more than thirty days from the date of the order, and the place of hearing shall be the regular meeting place of the commissioners' court in the county courthouse;

(3) The county clerk shall forthwith issue notice of such time and place of hearing, which notice shall inform all persons concerned of the time and place of hearing, and of their right to appear at such hearing and contend for or protest the ordering of such election. Such notice shall set forth in substance the contents of the petition, and shall give the name of each county proposed to be included within the road district. The clerk shall execute said notice by posting true copies thereof in five public places, within the county, to-wit: One copy at the courthouse door, and one copy in each commissioners' precinct. Said notice shall be posted for ten days prior to the date of such hearing. Said notice shall also be published in a newspaper of general circulation, published in the county one time, and at least five days prior to such hearing; provided, however, that if no newspaper is published in the county, then the posting of the notice as hereinabove directed, shall be sufficient. The duties herein imposed upon the clerk, may be performed by said clerk in person, or by deputy, as provided by law for similar duties;

(4) At the time and place set for the hearing of the petition or such subsequent date as may then be fixed,

the court shall proceed to hear such petition and all matters in respect of the proposed road district. Any person interested may appear before the court in person, or by attorney, and contend for or protest the creation of the proposed road district. Such hearing may be adjourned from day to day, and from time to time, as the court may deem necessary. If upon the hearing of such petition, it be found that the same is signed by fifty of the resident property taxpaying voters of the county, and that due notice thereof has been given, and that the creation of the proposed district by the consolidation of such county with the other counties named in the proceedings, would be for the benefit of all taxable property situated in such county, then such court may make and cause to be entered of record upon its minutes, an order directing that an election be held within such county at a date to be fixed in the order, but not less than fifteen nor more than thirty days from the date of the election order. Notice of such election shall be given in the same manner and for the same time required for notices of the hearing on the petition. Provided, however, that the elections shall be held in each county on the same date;

(5) The manner of holding such election and canvassing and making the returns thereof, shall be governed by the General Laws of this State, when not in conflict with the provisions of this Act; [1]

(6) When the election for the creation of the district has been held, the officers named by the commissioners' courts of the different counties to hold the election in their respective counties, shall make returns of the election to the commissioners' courts of their respective counties, and return all ballot boxes to the clerk of the commissioners' court of the county. It shall be the duty of the commissioners' court of each county in the proposed road district, upon receiving the returns of the election, to canvass the same and certify the result of the election in the county to the county judge of the county having the largest number of inhabitants, as shown by the last Federal census. Upon receipt of the returns of the election in the different counties of the district, the county judge designated to canvass the vote, shall canvass such vote and certify the result to each county in the proposed district. If the votes cast in each and all counties show a majority in favor of the consolidation of such counties into a defined road district, the commissioners' court of each county shall thereupon declare such defined road district created, and such district shall be known as ———— Counties Road District of Texas, enumerating the counties embraced within such district in alphabetical order. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 3.]

[1] This article, articles 778a, 778b, ante, and 778d–778p, post.

Art. 778d. Directors of district.—The county judges and county commissioners of the counties composing such district shall be ex-officio directors of such district, and they shall have the same power and authority with reference to the management of the affairs of said district as commissioners' courts have in respect of road districts wholly within one county. Said district when so formed, shall be a defined district within the meaning of the Constitution, and a body corporate. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 4.]

Art. 778e. Purchasing improved roads.—Such road district may or may not purchase or take over improved roads already constructed by any county or other road district included therein; provided, that in the event it is determined to take over or purchase such improved roads, then the same shall be done in conformity with the procedure prescribed by Section 25 et seq., of Chapter 16, of the General Laws passed by the Thirty-ninth Legislature, at its First Called Session, in 1926,[1] except that no petition shall be necessary. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 5.]

[1] Article 767a et seq., ante.

Art. 778f. Bond election.—After the creation of any such road district, the commissioners' court of the counties included therein, at a joint meeting held in the county having the largest number of inhabitants, as shown by the last Federal census, may order an election to be held within such district at a time not less than thirty days from the date of said order, at which election there shall be submitted this proposition:

"Shall the ——— Counties Road District of Texas, be authorized to issue the bonds of said district in the total sum of ——— dollars ($——), and to levy annually ad valorem taxes on all taxable property in said district to pay the interest on said bonds and create a sinking fund to redeem the principal at maturity, for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, within said district.

"The roads to be constructed from the proceeds of the sale of said bonds, and the amount apportioned to each road is as follows:

"(Here set out the road or roads as described in the order and notice of the election to determine the creation of the district, and the amount to be expended on each such road or roads.)"

In the event it is proposed to purchase or take over the improved roads already constructed by an included county, or any included road district, then the election order shall be in conformity with the provisions of Section 25, of Chapter 16, of the General Laws passed by the Thirty-ninth Legislature, at its First Called Session, in 1926.[1] [Acts 1927, 40th Leg., 1st C.S., p. 218, ch. 80, § 6.]

[1] Article 767a, ante.

Art. 778g. Notice of election and declaring result.—After such election order has been passed at such joint meeting of the commissioners' courts, as the ex-officio directors of said road district, a certified copy thereof shall be transmitted to the county clerk of each county within such district. Thereupon, the commissioners' court of each county, at a regular or special session held in their respective counties, shall give notice of such proposed bond election to be held on the date named in the order of the courts passed at such joint meeting. Each election notice shall state the time and place of holding such election, and shall also state in substance the contents of such election order, and all other proceedings in respect of the question so submitted shall be in accordance with the provisions of Chapter 16, of the General Laws, passed by the Thirty-ninth Legislature, at its First Called Session, in 1926,[1] relative to county road bond elections. The commissioners' courts of such counties as ex-officio directors of said road district, shall by order declare the result, and the county judge shall certify the result to the county judge of the county having the largest population. If at such election two-thirds of the property taxpaying voters of each county, voting at such election cast their ballots in favor of the issuance of the bonds, the commissioners' court of each county, as soon after the declaration of the result as practicable, shall pass all such orders that may be necessary in the issuance of such bonds and the levy of taxes in payment thereof. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 7.]

[1] Articles 752a et seq., ante.

Art. 778h. Maturity dates, interest and proceeds.—The General Laws relative to county road bonds authorized pursuant to Section 52, of Article 3, of the Constitution, shall apply to the authorization and issuance, approval and certification, the registration, the sale and payment, of the bonds provided for in this Act,[1] except as herein otherwise provided. Such bonds shall mature not later than

forty years from their date, and shall bear interest not to exceed six per cent per annum. The necessary expense incident to the issuance of said bonds may be paid out of the proceeds from the sale thereof. Upon the issuance and sale of the bonds provided for herein, the commissioners' court of each county may pass all such orders that may be necessary, setting aside so much of the proceeds derived from the sale of such bonds as the ex-officio directors of said road district may deem necessary to be used for the maintenance, repair and upkeep of the roads of such district. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 8.]

[1] This article, articles 778a–778g, ante, and 778i–778p, post.

Art. 778i. Bond tax.—The amount of the bond tax to be levied annually shall be determined by the commissioners' courts of the respective counties before the period at which the annual levy of taxes is made in the counties composing said district, and the proportion of the tax levied against the property in each of the counties, respectively, shall be levied by the commissioners' court of such county at the same time and in the same manner that other taxes in such counties are levied, and the levy and collection thereof shall be governed by the same laws that govern the levy and collection of county taxes. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 9.]

Art. 778j. Issuance of bonds.—Said bonds shall be issued as nearly as may be in form now in use in this State in the issuance of county bonds, except that said bonds shall be issued in the name of the district, and shall be signed by the county judges of the several counties composing said district, and countersigned by the county clerks of such counties, with the seals of the commissioners' courts of such counties impressed thereon, and such bonds shall be attested by the treasurer or depository of said district. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 10.]

Art. 778k. Sale of bonds.—The commissioners' courts of the counties embraced in such district, at a joint meeting held in the county having the largest number of inhabitants, as shown by the last Federal census, shall advertise such bonds for sale, and the advertisement or notice of such proposed sale, shall be published in a newspaper of general circulation published in the district, one time, and at least ten days before the time fixed for such sale. The commissioners' courts shall convene in joint meeting on the date specified in such published notice for the sale of said bonds, and which joint meeting shall be held in the county having the largest number of inhabitants, for the purpose of considering bids for the purchase of such bonds. Said courts shall have the right to reject any and all bids. Such bonds shall be sold by said courts, at such joint meeting, to the highest and best bidder for cash, either in whole or in parcels, at not less than their par value. The purchase money therefor shall be placed in the treasury or depository of said district to the credit of the available road fund of such district. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 11.]

Art. 778*l*. Meetings of Commissioners' Courts.—Any joint meeting of the courts may be adjourned from day to day and from time to time, as such courts may deem necessary and advisable. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 12.]

Art. 778m. Bond records.—The county commissioners' courts for each county included within such district shall provide a well bound book in which a list of said bonds shall be kept by the county clerk of each county, showing their numbers, amount, rate of interest, date of issue, when due, where payable, and said books shall be public records in each county. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 13.]

Art. 778n. Warrants.—The purchase money for such bonds shall be paid out by the treasurer or depository, of such district, upon warrants drawn on the available road fund issued by the county clerk of the county having the largest number of inhabitants, but such warrants shall be countersigned by the county judge of each county situated within the road district, and no such warrant shall be issued except in payment of certified accounts approved by the commissioners' court of each county. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 14.]

Art. 778*o*. Treasurer or depository of district.—The treasurer or depository of such district shall be any bank, banking corporation or individual banker resident in such district, and such treasurer or depository shall be selected by the commissioners' courts of the counties included within such district, at joint meetings held for that purpose in the county having the largest number of inhabitants. The treasurer or depository shall be governed by the same laws and shall be subject to the same penalties as are provided by law for depositories of county funds; provided, before any such treasurer or depository shall be entitled to receive any funds of the district, it shall give bond to the district with a corporate surety company as surety, which is authorized to do business in the State of Texas, in an amount equal to the funds so deposited, conditioned upon the safe-keeping of such funds and paying of the same. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 15.]

Art. 778p. Change of roads.—The commissioners' court of any such county shall have authority to change any road or roads designated in the petition to create such road district, provided, it shall be found at the hearing on such petition that such change is necessary and practicable, and would be a public benefit, and would be beneficial to all taxable property in the county. Nothing in this Act[1] shall be construed as requiring any commissioners' court to grant a petition for the establishment of such road district, if at the hearing herein provided for it be found that it would not be beneficial to the taxable property in the county to include such county within the proposed road district. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 16.]

[1] This article and articles 778a–778*o*, ante.

4. GENERAL PROVISIONS

Art. 779. Investment of sinking fund.—The Commissioners Courts may invest sinking funds accumulated for the redemption and payment of any bonds issued by such county, political subdivision, road district, or defined district thereof, in bonds of the United States, of Texas, or any county in this State, or any school district or road district of this State, or any incorporated city or town of this State; or in bonds of the Federal Farm Loan Bank system, or in war-savings certificates, and certificates of indebtedness issued by the Secretary of the Treasury of the United States. No such bonds shall be purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created. [Acts 1917, p. 464; Acts 1941, 47th Leg., p. 899, ch. 552, § 1.]

Section 2 of the amendatory Act of 1941 repealed conflicting laws.

Art. 780. Interest on investments.—All interest on such investments shall be applied to the sinking fund to which it belongs, and the use of such funds for any other purpose shall be considered a diversion thereof and punished as provided by article 94 of the Penal Code. [Id.]

Arts. 781–784. [Repealed by Acts 1926, 39th Leg., 1st C.S., p. 23, ch. 16, § 30.]

For Acts 1932, 42nd Leg., 3rd C.S., p. 94, ch. 31, relating to cancellation or revocation of unsold road bonds; election; readjusting tax levies, see article 784a, post.

See, also, note to article 752a, ante.

Art. 784a. Cancellation or revocation of unsold road bonds.

Election

Sec. 1. In the event any road bonds voted or issued or any portion of such road bonds voted or authorized by a county, political subdivision or defined district of the county, remain unsold at the time of passage of this Act, then the Commissioners' Court may upon its own motion or upon petition of not less than fifty (50) or a majority of the qualified property taxpaying voters thereof, as shown by the records of the county tax collector, shall order an election to determine whether or not such road bonds shall be revoked or cancelled. Such election shall be ordered, held and conducted in the same form and manner as that at which such bonds were originally authorized.

Record of result of election; method of cancellation

Sec. 2. The result of such election, whether favorable to the cancellation of such bonds or not, shall be duly recorded by the Commissioners' Court, and the returns thereof and the result duly entered of record in the minutes of said Court, and in the event the result of such election for the cancellation and revocation of such unsold bonds shall show that two-thirds of the qualified resident property taxpaying voters of such county, political subdivision or defined district of such county, voting at such election, have voted for the cancellation and revocation of such unsold bonds, the Commissioners' Court shall cancel and burn all such bonds, and forward to the Comptroller a certified copy of the minutes showing such destruction and cancellation. The Comptroller shall thereupon cancel the registration of said bonds on the records of his office.

Readjustment of tax levies

Sec. 3. When said bonds have been destroyed the Commissioners' Court shall readjust the existing tax levies in such county, political subdivision or defined district thereof by an amount equal to that levied or proposed to be levied for the interest and sinking fund accounts of the bonds to be cancelled.

Refunds to taxpayers

Sec. 4. After deducting the compensation of the Tax Assessor, Tax Collector and County Treasurer, and any other claims properly chargeable against such taxes, the unexpended part of all taxes that have been collected, with a view to the sale of such bonds as destroyed, shall be refunded to the taxpayers ratably upon order of the Commissioners' Court. The county treasurer shall take and file proper receipts for all funds so refunded.

Expenses

Sec. 5. The expense of holding any such election shall be paid out of the General Fund of the county.

Other bond elections or bonds not affected

Sec. 6. Nothing in this Act shall be construed as invalidating any bond election or any bonds which have been sold by such county, political subdivision or defined district thereof. [Acts 1932, 42nd Leg., 3rd C. S., p. 94, ch. 31.]

Art. 784b. Election for repurchase and cancellation of bonds.

Petition; conduct of election

Sec. 1. In the event unexpended and unpledged money realized from the sale of any road bonds voted or issued by any county, political subdivision or defined district of the county, remains to the credit of said county, political subdivision or defined district voting or issuing said bonds, the commissioners' court upon petition of not less than fifty (50) of the qualified property tax paying voters thereof as shown by the records of the County Tax Collector, shall order an election to determine whether or not such road bonds to the extent of the unexpended and unpledged money remaining to the credit of such county, political subdivision or defined district of the county shall be repurchased and upon such repurchase, cancelled and revoked. Such election shall be ordered, held and conducted in the same manner and form as that at which said bonds were originally authorized.

Record of result of election

Sec. 2. The result of such election, whether favorable to the repurchase, cancellation and revocation of such bonds or not, shall be duly recorded by the commissioners' court and the result thereof duly entered in the records of said court, and in the event the result of such election for the repurchase, cancellation and revocation of such bonds shall show that two-thirds of the qualified resident property taxpaying voters of such county, political subdivision or defined district of such county voting at such election have voted for the repurchase, cancellation and revocation of bonds theretofore sold, the commissioners' court shall be authorized to advertise for and purchase said outstanding bonds from the holders thereof and upon completion of said purchase shall cancel and burn all such bonds so purchased and forward to the Comptroller of Public Accounts a certified copy of the minutes showing such purchase, destruction and cancellation. The Comptroller shall thereupon cancel the registration of said bonds on the records of his office to the extent of the amount so repurchased, cancelled and destroyed.

Expenses paid from general funds

Sec. 3. The expense of holding any such election shall be paid out of the general funds of the county.

Prior bond elections or bonds not invalidated

Sec. 4. Nothing in this Act shall be construed as invalidating any bond election or bonds which have been sold by such county, political subdivision or defined district thereof. [Acts 1933, 43rd Leg., 1st C.S., p. 289, ch. 105.]

CHAPTER 4.—VIADUCTS, BRIDGES, ETC.

Art.
785. May order election.
786. Survey and estimate.
787. Submission of resolution.
788. Conduct of election.
789. Ballot.
790. Issue of bonds.
791. Limit of issue.
792. Tax levy.
793. Court may contract.
794. Maintenance fund.
795. Rules and regulations.

Article 785. [642] May order election.—The county commissioners court of any county having a population in excess of fifty thousand inhabitants according to the last United States census, may in their discretion, order an election to determine the propriety of a bond issue to provide for the construction and maintenance of causeways, viaducts, bridges and approaches across any river and bottoms within the limits of such county, irrespective of any municipal boundaries. [Acts 1909, p. 46.]

Art. 786. [643] Survey and estimate.—The commissioners court of such county shall, prior to ordering any such election, provide for preliminary surveys and estimates for such work, and shall prescribe in the election order the amount and terms of such bond issue. [Id.]

Art. 787. [644] Submission of resolution.—The resolution providing for such election shall be recorded in the minutes of the commissioners court and shall be submitted to the property owning qualified voters of said county as a proposition at a regular or special election which may be ordered by said court for

that purpose. If a majority of the votes cast shall be for such resolution, the same shall be deemed to be adopted. [Id.]

Art. 788. [645] Conduct of election.—Such election shall be governed in all respects by the laws governing elections in this State, and the returns made and canvassed in the same manner, and the results declared by proclamation of the county judge of said county. Such proclamation shall be posted in at least three public places in said county, and at the option of the county judge, published in some newspaper in said county. [Id.]

Art. 789. [647] Ballot.—Those desiring to vote for the resolution shall have written or printed on their ballots the words "For the Resolution to Issue Bonds to ....." (here insert purpose of the proposed bond issue as set forth in said resolution), and those desiring to vote against the resolution shall have written or printed on their ballots the words "Against the Resolution to Issue Bonds to ....." (here insert such purpose of the proposed bond issue, as set forth in said resolution). Such ballots shall be written or printed on plain white paper, with black ink or pencil, and shall contain no distinguishing mark or device, except as above provided. [Id.]

Art. 790. [648] Issue of bonds.—If the resolution be voted, the commissioners court, under the supervision and direction of the Comptroller, shall prepare and execute the bonds of the county accordingly. They shall bear interest not exceeding five per cent payable annually, and be redeemable in not less than five nor more than forty years from the date thereof. The time of maturity shall be expressed on the face of the bonds. Such bonds shall be registered or enrolled as other county bonds, and shall not be sold or negotiated at less than their par value. [Id.]

Art. 791. [648] Limit of issue.—In no case shall bonds be issued under this chapter for a greater sum than that a levy of five cents of the one hundred dollars property valuation of said county will yield sufficient revenue to pay the interest as it accrues, and create a sinking fund sufficient to pay the principal of such bonds at maturity. [Id.]

Art. 792. [649] Tax levy.—When bonds are issued under the provisions of this chapter, the commissioners court shall levy an annual ad valorem tax on all property of the county, which shall be used only for the purpose of paying interest on said bonds and creating a sinking fund to pay the principal. [Id.]

Art. 793. [650] Court may contract.—The commissioners court may contract with individuals, firms or corporations for the use of such causeways, viaducts, bridges and approaches, or constructing and maintaining and using tracks, telegraph lines or other such privileges, but shall make no exclusive nor preferential contracts, and before executing any such contracts, shall give notice by posting at the courthouse door and in three other public places in said county the full terms and nature of such proposed contracts. [Id.]

Art. 794. [651] Maintenance fund.—Revenues that may accrue from any contract or contracts so made may be applied to the maintenance and repair of such structure or structures; and such court may make adequate provision for such maintenance and repair. In the event the revenues accruing from the use of any such structure shall exceed the expenditures for its maintenance and repair, such excess shall be applied to the road and bridge fund of the county. [Id.]

Art. 795. [652] Rules and regulations.—The commissioners court may make rules for the use of any structure erected under the provisions of this chapter, and provide for the enforcement thereof. [Id.]

Acts 1934, 43rd Leg., 4th C.S., p. 78, ch. 32, passed as a general law, though in fact a special law relating to the construction of a free bridge across the Neches river was repealed by Acts 1941, 47th Leg., p. 822, ch. 509, § 10.

CHAPTER 5.—FUNDING, REFUNDING AND COMPROMISES

Art.
796. In case of storms, etc.
797. Regulation of bonds.
798. Order of commissioners court.
799. Classification of issues.
800. Apportionment of taxes.
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1. Eligible cities.
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Sec.
1. Eligible cities; issuance of refunding bonds.
2. Maturity; interest; options; bonds as special obligations.
3. Books and accounts; "net revenues"; rates; rentals; charges; reserve; lien.
4. Required clause; transcript of proceedings.
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6. Law as cumulative; conflicting.
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802c. Refunding bonds of certain cities operating utilities.
Sec.
1. Eligible cities.
2. Refunding bonds authorized; proceedings under Municipal Bankruptcy Act authorized; pledge of revenues from utilities.
3. Amount of bonds; procedure; registration.
4. Form of bonds; exemptions from certain charter provisions.
5. Law cumulative; conflicting provisions.
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Sec.
1. Issuance.
2. Maturity; interest rate.
3. Tax levy to pay bonds and interest.
4. Approval and registration.
5. Outstanding indebtedness validated.
6. Debt burden not increased.
7. Act cumulative; conflicting provisions.
8. Certificate of necessity of improvement.

Art.
802e. Validation of refunding bonds of cities and proceedings therefor.
802f. Wharf and terminal facility bonds of cities or towns, bonds to redeem; subrogation.

Article 796. [660] In case of storms, etc.—Any county or any city incorporated under the general laws which may suffer great destruction or damage of property or depreciation of the value of taxable property from storms, floods or other disasters, may fund, refund, compromise or settle its valid outstanding bonded and floating indebtedness. [Acts 1901, S. S. p. 18.]

Art. 797. [661] Regulation of bonds.—For such purpose, the bonds of the county or city may be issued by the governing body without a vote of the tax payers in denominations of not less than one hundred, nor more than one thousand dollars each, for an amount sufficient to consummate such compromise or settlement, not to exceed the amount unpaid on the outstanding indebtedness. Such bonds may be exchanged for bonds or other evidences of outstanding indebtedness of such county or city, or may be sold and the proceeds applied in the purchase of outstanding bonds or the payment of outstanding floating indebtedness, and may be exchanged or sold from time to time in such amounts as may be required for refunding said outstanding bonds and funding or settling said floating debts. [Id.]

Art. 798. [662] Order of commissioners court.—Before issuing such bonds, and not later than two years after the disaster, the governing body of the county or city shall, by an order or ordinance, entered on the minutes, recite the nature and date of such disaster, the taxable value of the remaining property subject to taxation in said city or county as shown by the first approved assessment roll of such county or city made after such disaster, and the amount of bonds that will be sufficient to fund, refund or settle the outstanding bonded and floating indebtedness of such county or city, stating also, the amount of new bonds that will be required for refunding or settling each outstanding issue of bonds, and the amount of new bonds necessary to fund or settle the outstanding indebtedness charged against each particular fund. [Id.]

Art. 799. [663] Classification of issues.—Separate classes of bonds shall be issued to refund or settle, respectively, each separate issue of outstanding bonds, and to fund or settle, respectively, the indebtedness against each particular fund. [Id.]

Art. 800. [664–5–6] Apportionment of taxes.—The court or council shall determine and record in the minutes the proportion of the several annual ad valorem taxes authorized by law that can be applied, respectively, in payment of the interest and sinking funds of the several classes of bonds without depriving the city or county of the funds which will be required to meet the necessary current annual expenses of such county or city. A levy in proportion to such excess or excesses beyond the amount required for current annual expenses may be made to pay the interest and sinking fund, respectively, of the said several classes of bonds. The constitutional limitation as to the rates and purposes of the several taxes shall not be exceeded nor disregarded. [Id.]

Art. 801. [667 to 672] Requisites of bonds.—The court, or city council, shall also by order or ordinance, prescribe the form and the classes of said bonds, and provide for the issuance thereof, at such dates as may be expedient. Such bonds may be made payable at any date deemed expedient by the commissioners court or city council, not later than forty years from the date of the execution, and provision may be made for their redemption after five years, or after such longer period as may be deemed expedient. Said bonds shall bear interest as stipulated and specified in coupons attached thereto, not to exceed four per cent per annum. Said bonds shall be issued under and subject to all requirements of chapter one of this title, which are not in conflict with the requirements and provisions of this chapter, and shall be signed by the county judge or mayor, and attested by the county or city clerk, as the case may be. [Id.]

Art. 802. [673–4–5–6–7] Registration and sale.—When examined and certified by the Attorney General, said bonds shall be registered by the Comptroller without requiring the old bonds, warrants or other evidence of indebtedness to be presented to him for cancellation. Said bonds shall be delivered to the county or city treasurer, and said officer shall register said bonds in a book kept for that purpose, and said bonds may thereafter be sold or exchanged for not less than their face value and accrued interest. Before delivery of the bonds, the date of the sale or exchange thereof shall be indorsed and certified on the bonds by the county judge or mayor, whose signature shall be attested by the county or city clerk. [Id.]

Art. 802a. Funding indebtedness representing difference between wages paid and wages required to be paid to firemen and policemen by cities of over 75,000 population.—Section 1. All cities within the State of Texas, whether incorporated under General Law or Special Law or operating under charters adopted under the provisions of Article XI, Section 5, of the Constitution of Texas, with a population of more than seventy-five thousand (75,000) enumerated by the preceding United States Census, shall have the power to fund by ordinance enacted by the governing body the whole or any part of any legal debt of said city, which debt is the difference between the wages paid or to be paid the firemen and the policemen, and the wages required to be paid the firemen and the policemen by the terms of Senate Bill No. 89, passed and approved the 19th day of April, A. D. 1937, by the Forty-fifth Legislature of Texas, at the Regular Session,[1] and which debt accrued or will have accrued before the 31st of May, A.D. 1939, and to issue negotiable bonds with or without coupons, bearing interest at an annual rate as provided by the Charter of the City which issues the said obligations. The proceeds from the sale of such bonds shall be used exclusively for the purpose of paying the debt which may be legally due such firemen and policemen.

Sec. 2. Articles 709 to 715 and Article 4398 of the Revised Statutes of Texas for 1925 shall apply to all bonds issued under this Act.

Sec. 3. The provisions of this Act shall be cumulative of all laws on this subject, and wherever the provisions of this Act are in conflict with any existing law or laws on this subject, the provisions hereof, in so far as same are in conflict with any existing law or laws, shall govern and control. [Acts 1939, 46th Leg., p. 98.]

[1] Penal Code, art. 1583.

Art. 802b—1. Home rule cities without specified utilities authorized to issue funding bonds or warrants.—Section 1. The governing body of any city or town operating under its special charter adopted under the Home Rule Amendment to the Constitution, having outstanding as of January 1, 1939, unpaid and delinquent indebtedness against its General Fund, whether in the form of scrip warrants, warrants or notes, or in either or all of such forms, in an amount exceeding thirty-three and one-third (33-⅓%) per cent of its current tax levy for General Fund purposes, and which did not, on said date, own any one of the following utilities from which it could derive revenues: water system, sanitary sewer system, electric lighting system, or natural gas distribution system, is hereby authorized to issue funding bonds or funding warrants for the purpose of funding any such

items which constitute legal indebtedness of such city. No election nor notice of intention to issue such funding bonds or warrants shall be required. If funding bonds are issued they shall be issued in the manner prescribed by Article 717 of the Revised Civil Statutes for the issuance of refunding bonds.

Sec. 2. Such funding bonds or warrants shall mature serially, or otherwise, not to exceed thirty (30) years from their date and shall bear a rate of interest not to exceed five (5%) per cent per annum, payable annually or semi-annually.

Sec. 3. When said funding bonds or warrants are issued it shall be the duty of the governing body of such city to levy a tax sufficient to pay the principal and interest thereon as such principal and interest mature.

Sec. 4. If funding bonds are issued they shall be submitted to the Attorney General of the State of Texas for his examination and approval in the same manner and with the same effect as is provided in Article 709 to 715, both inclusive, of the Revised Civil Statutes of 1925, and shall be registered by the Comptroller of Public Accounts as is provided in said Articles.

Sec. 5. All such outstanding indebtedness is hereby validated, provided that the provisions of this section shall not be applicable to any such items of indebtedness which may be in litigation at the time this Act becomes effective.

Sec. 6. This Act shall be cumulative of all other laws on the subject, but in the event any of its provisions are in conflict with any existing laws the provisions hereof shall prevail and be effective to the extent of such conflict. [Acts 1939, 46th Leg., p. 103.]

Art. 802b—2. Refunding bonds supported by ad valorem tax or by pledge of income of specified utilities; issuance by cities operating under charters authorized.

Eligible cities

Section 1. This Act shall be applicable to any city operating under a charter either adopted or amended by vote of the people which owns and operates its waterworks and sanitary sewer systems, and the principal amount of whose bond and time warrant indebtedness is in an aggregate amount exceeding forty (40) per cent of the assessed valuation of the property in such city according to the latest approved official tax rolls. Any such city, for the purposes of this Act, shall be an eligible city.

Classes of refunding bonds authorized; prerequisites

Sec. 2. Any eligible city is authorized to issue refunding bonds of two classes. One class of its refunding bonds, which may be in one or more series, shall not be supported by an ad valorem tax but by a pledge to the payment of the principal and interest thereof of all or a stipulated part of the net income from the operation of its waterworks system or its sewer system, or both, and by a deed of trust or a mortgage upon such systems, and by a grant to the purchaser, under sale or foreclosure thereunder, a franchise to operate the systems and property so purchased for a term of not over twenty (20) years after purchase, subject to all laws regulating same then in force. The other class, which may be in one or more series, shall be supported by an ad valorem tax levied at a rate or in an amount sufficient to pay the interest thereon and the principal at maturity. Such city shall designate the several issues or parts of issues of outstanding bonds or time warrants, or both, eligible to be refunded by the issuance of the respective classes of its refunding bonds, provided, however, that bonds and warrants which were issued for waterworks or sewer purposes shall be refunded into the class which is secured by the revenues from, and deed of trust or mortgage upon such systems, and all other bonds and warrants shall be refunded in the class of bonds payable from ad valorem taxes. No such city shall be authorized to exercise the additional powers conferred by this Act unless it obtains a reduction in the principal amount of its indebtedness to the extent of not less than fifteen (15) per cent, and unless it obtains a reduction in the average interest rate of its refunded indebtedness so that the average interest rate borne by its two classes of refunding bonds shall be not more than three (3) per cent per annum. Such city shall not be permitted to deliver refunding bonds of said two classes unless and until it shall have obtained consent to such refunding by the holders of at least sixty-six and two-thirds (66⅔) per cent of aggregate principal amount of its outstanding indebtedness, which sixty-six and two-thirds (66⅔) per cent shall include not less than one hundred (100) per cent of the revenue bonds outstanding against said system or systems, or unless such refinancing plan shall have been made effective in composition proceedings instituted by such city under Title 11, Chapter 9, of the United States Code and amendments thereto.[1]

Before any income from such utility or utilities shall be used to pay the principal and interest of said refunding bonds, the expenses of operation and maintenance shall have first been provided substantially in accordance with the provisions of Article 1113 of the Revised Civil Statutes of Texas of 1925, as amended, which is applicable to the income of an encumbered utility system or encumbered utility systems. When such city issues refunding bonds under the provisions of this law, it shall be the duty of the city, after making said pledge of such utility income, to establish and maintain utility rates adequate to yield revenues sufficient to operate and maintain said utility system or systems and to fulfill the city's pledge of such income.

[1] 11 U.S.C.A. §§ 401–404.

Revenue bonds, refund of

Sec. 3. Such city also shall refund, par for par, all of its outstanding revenue bonds which are secured by a pledge of the revenues of either or both of such systems, and bonds issued to refund such revenue bonds may be included in any refunding issues under the class secured by the pledge of utility revenues authorized by this Act.

Form; registration; procedure

Sec. 4. The refunding bonds issued under this Act shall be fully negotiable and shall be issued in the same manner as refunding bonds for the purpose of taking up outstanding bonds issued under the provisions of Title 22 and Title 28 of the 1925 Revised Civil Statutes of Texas and amendments thereto; no notice of intention to issue refunding bonds and no election for the issuance of such bonds shall be required. No such refunding bonds shall be registered in the office of the Comptroller and delivered by him unless and until he shall have received and cancelled in lieu thereof bonds or time warrants in the proportion prescribed in the ordinances authorizing the issuance of such refunding bonds, and in accordance with this Act. The procedure prescribed in Articles 709 to 715 of the Revised Civil Statutes of Texas, 1925, in reference to examination and approval of the bonds by the Attorney General, their registration by the Comptroller, and the effect of approval by the Attorney General shall be applicable to bonds issued under this law.

Law as cumulative; conflicting laws

Sec. 5. This law shall be cumulative of all other laws on the subject. In the event that any provisions of this Act conflict with or are inconsistent with the provisions of any other law, general or special, or with the provisions of the charter of any such eligible city, the provisions of this Act shall take precedence over such conflicting or inconsistent provisions and shall prevail. [Acts 1941, 47th Leg., p. 43, ch. 32.]

Art. 802b—3. Cities of 35,000 to 45,000 under Special or Home Rule Charters may issue notes to fund or refund warrants.—Section 1. All cities in this State, operating under a Special or Home Rule Charter and having a population of not less than thirty-five thousand (35,000) nor more than forty-five thousand (45,000), according to the last preceding Federal Census, are hereby authorized and empowered to issue notes for the purpose of funding or refunding outstanding and unpaid warrants drawn against the General Fund for general operating expenses, subject to the limitations and provisions contained hereinafter in this Act.

Sec. 2. Before any city of the classification prescribed in Section 1 hereof may avail itself of the provisions of said Section, the governing body of such city shall order an election on the question of whether or not the governing body shall be authorized to issue notes for the purpose of funding or refunding outstanding and unpaid warrants drawn against its General Fund. Such election shall be held, and notice thereof given, and the results thereof declared, in the same manner as prescribed by General Law on the question of the issuance of municipal bonds. Only qualified electors, who own taxable property in such city and who have duly rendered same for taxation, shall be allowed to vote at such election.

Sec. 3. In the event such election results favorably to the issuance of such notes, the governing body of such city shall have the authority to pass all appropriate ordinances and resolutions to effect their issuance. The notes so authorized shall mature serially over a period not exceeding ten years from their date, and may bear interest not exceeding five (5) per cent per annum and may be redeemable at the pleasure of the governing body. The full faith and credit of such city may be pledged to the payment of such notes and the interest thereon. Provided, however, that only such general fund warrants issued during the calendar year prior to the calendar year in which such funding or refunding operation is performed may be funded or refunded by the issuance of such notes; and provided further, that all warrants drawn against the General Fund during the calendar year in which such funding or refunding operation takes place and all warrants drawn against the General Fund in subsequent years in which such funding or refunding takes place shall be paid out of current funds appropriated for that purpose and shall never be funded or refunded. [Acts 1941, 47th Leg., p. 163, ch. 120.]

Art. 802b—4. Exposition and Convention Hall or Coliseum bonds, refunding; cities over 100,000.

Eligible cities; issuance of refunding bonds

Section 1. This Act shall be applicable to any city of over one hundred thousand (100,000) population according to the last preceding Federal Census, which owns and operates an Exposition and Convention Hall or Coliseum against which there are outstanding revenue bonds issued for the construction thereof, and which owns and operates an unencumbered natural gas distribution system which serves the inhabitants of all or a part of such city. Any such city, for the purposes of this Act, shall be an "eligible" city.

Any eligible city is authorized, without an election and without notice of intention to issue such bonds, to issue refunding bonds for the purpose of taking up and in lieu of its outstanding revenue bonds issued for the purpose of financing the construction of its Exposition and Convention Hall or Coliseum, and may secure said refunding bonds by a pledge of the net revenues from the operation of such Exposition and Convention Hall or Coliseum, and by the net revenues from the operation of its natural gas distribution system; provided that the revenues from its natural gas distribution system shall not be pledged as security for such refunding bonds unless such refunding bonds are issued to bear an interest rate lower than the rate borne by said outstanding revenue bonds.

Maturity; interest; options; bonds as special obligations

Sec. 2. The bonds issued under this Act shall mature serially within a period of time not exceeding thirty (30) years from their date. The governing body of such city shall prescribe the interest rates, maturities and any options of redemption prior to maturity of such bonds. Such bonds which constitute special obligations of the issuing city, shall never be considered indebtedness of such city or town, but solely a charge upon the revenues pledged for the payment of such bonds, and shall never be reckoned in determining the power of such city to issue tax supported bonds for any purpose authorized by law.

Books and accounts; "net revenues"; rates; rentals; charges; reserve; lien

Sec. 3. Whenever the income of such Exposition and Convention Hall or Coliseum and of such natural gas distribution system shall be encumbered as authorized in this Act it shall be the duty of the city to establish and maintain separate books and accounts for each of the properties whose income shall have been pledged. The total revenues remaining after providing for payment of reasonable operating, maintenance, depreciation, replacement, improvement, necessary expansion and repair charges, resulting from the operation of the encumbered Exposition and Convention Hall or Coliseum shall constitute "net revenues." The total revenues remaining after providing for payment of reasonable operating, maintenance, depreciation, replacement, improvement, necessary expansion and repair charges, resulting from the operation of the encumbered natural gas distribution system shall constitute "net revenues." The ordinance authorizing such revenue bonds shall prescribe the conditions under which such revenues may be used to pay depreciation, replacement, improvement and necessary expansion charges. It shall be the duty of any city issuing bonds under the provision of this Act to fix and maintain rates, rentals, and charges in the instance of each such encumbered property to assure receipt of income sufficient to pay reasonable operating, maintenance, improvement, necessary expansion and repair charges in connection with the proper operation of such property and to assure net revenues from the property or properties encumbered sufficient to pay the principal and interest of such bonds according to their tenor and effect, and to establish and maintain a reasonable reserve in the interest and sinking fund to be provided for such bonds. The requirement for a "reasonable reserve" shall be satisfied by establishing and maintaining in the Interest and Sinking Fund, in addition to requirements for a given calendar year, money sufficient to pay the principal and interest scheduled to mature and accrue during the succeeding calendar year. After such reserve account shall have been established and so long as it shall remain intact and while there are no delinquencies of principal or interest on any of the outstanding bonds, such city may use the pledged revenues in excess of such requirements for any other lawful purpose. The pledging of the revenues as authorized herein shall not constitute a lien on the physical properties of the Exposition and Convention Hall or Coliseum or of the Natural Gas Distribution System.

Required clause; transcript of proceedings

Sec. 4. Every contract and bond, or other evidence of indebtedness, issued pursuant to this Act

shall contain substantially the following clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." It shall be the duty of the officials of any such city to file with the Attorney General of the State of Texas a proper transcript of proceedings authorizing the issuance of such refunding bonds and evidencing the pledge of revenues from which the principal and interest of said bonds are to be paid, and to deliver to the Attorney General the executed refunding bonds. It shall be the duty of the Attorney General to approve such record and said bonds when issued in accordance with this law.

Registration of bonds: defenses

Sec. 5. After said bonds have been examined and approved by the Attorney General they shall be registered by the Comptroller and delivered in exchange for a like principal amount of said original revenue bonds. After receiving the approval by the Attorney General and having been registered in the office of the Comptroller of Public Accounts, said bonds shall be held in every action, suit or proceeding in which their validity is or may be brought into question, valid and binding obligations. In every action brought to enforce collection of such bonds the certificate of approval by the Attorney General or a duly certified copy thereof shall be received in evidence of the validity of such bonds. The only defense which can be offered against the validity of such bonds shall be forgery or fraud.

Law as cumulative; conflicting laws

Sec. 6. This law shall be cumulative of all other laws on the subject. In the event that any provisions of this Act conflict with or are inconsistent with the provisions of any other law, general or special, or with the provisions of the charter of any such eligible city, the provisions of this Act shall take precedence over any such conflicting or inconsistent provisions. [Acts 1941, 47th Leg., p. 652, ch. 395.]

Art. 802b—5. Home rule or special charter cities and towns; bonds to pay existing judgments authorized.—Section 1. The governing body of any city or town operating under a special charter granted by the Legislature or adopted or amended pursuant to the Home Rule Amendment to the Constitution, having outstanding as of January 1, 1943, against its General Fund unpaid judgments or judgment in an amount exceeding fifty (50) per cent of its general fund revenue derivable from ad valorem taxes levied for the fiscal year within which the bonds hereinafter authorized are directed to be issued, bearing interest at a rate of five (5) per cent or more per annum, shall be authorized to order an election for the purpose of submitting to the resident qualified property taxpaying voters thereof, the proposition of the issuance and sale of its bonds to provide funds for the payment of such judgment or judgments and the levy of a tax sufficient to pay the principal and interest as it matures.

Sec. 2. Such bonds shall be authorized, issued and sold in the manner prescribed in the General Law relating to the issuance and sale of bonds by cities and towns, shall mature serially or otherwise in not to exceed twenty (20) years from their date and shall bear interest not to exceed four (4) per cent per annum, payable annually or semiannually.

Sec. 3. When said bonds are issued it shall be the duty of the governing body of such city to levy a tax sufficient to pay the principal and interest thereon as such principal and interest mature.

Sec. 4. Before such bonds are sold they shall be submitted to the Attorney General of the State of Texas for his examination and approval in the same manner and with the same effect as is provided in Articles 709 to 715, both inclusive, of the Revised Civil Statutes of Texas of 1925, and shall be registered by the Comptroller of Public Accounts as provided in said Articles.

Sec. 5. No bonds shall be delivered until the judgment or judgments for the payment of which such bonds are authorized has or have been released and such release of judgment is delivered to the city.

Sec. 6. All such judgments are hereby declared to be final and conclusive, and the evidences of obligations upon which such judgments were obtained are hereby validated and declared to be general obligations of such city, provided that this Section shall not be applicable to any such judgments from which an appeal is now pending or to obligations which may be in litigation at the time this Act becomes effective.

Sec. 7. No provision in the charter of any such issuing city relating to the authorization, issuance and sale of bonds shall be applicable to the bonds issued hereunder but the provisions of this Act shall prevail.

Sec. 8. This law shall be cumulative of all other laws on the subject. In the event any of the provisions of this Act conflict with, or are inconsistent with, the provisions of any other law, general or special, or with a provision of the charter of any such city, the provisions of this Act shall take precedence over such conflicting or inconsistent provisions and shall prevail. [Acts 1943, 48th Leg., p. 26, ch. 23.]

Art. 802c. Refunding bonds of certain cities operating utilities.

Eligible cities

Section 1. This Act shall be applicable to cities operating under charters either adopted or amended by vote of the people, which own and operate waterworks, electric light and sanitary sewer systems, and whose outstanding bond and time warrant indebtedness, including accrued and unpaid interest thereon, exists in an aggregate amount of not less than thirty-five (35) per cent of the assessed valuation of the property in such city according to the latest approved official tax rolls. Any such city for the purposes of this Act shall be an "eligible" city.

Refunding bonds authorized; proceedings under Municipal Bankruptcy Act authorized; pledge of revenues from utilities

Sec. 2. Any eligible city is authorized to issue refunding bonds for the purpose of taking up all or any part of its outstanding indebtedness evidenced by bonds or interest-bearing time warrants, or both, regardless of whether such indebtedness is in its original form or has been funded, or refunded, in whole or in part, such refunding bonds to bear interest at a rate or rates to be determined by the governing body of said city, not exceeding the average rate or rates of interest borne by the indebtedness to be refunded, and no election shall be required as a condition precedent to the issuance of the said refunding securities. In the event not less than seventy-five (75) per cent of the total amount of its outstanding indebtedness is refunded in accordance with the provisions of this Act, by consent of the holders of such portion of such indebtedness, or under a plan of composition confirmed or to be confirmed by the Court in proceedings instituted by such city under Title 11, Chapter 9, of the United States Code,[1] and amendment thereto, which proceedings by any such city are hereby expressly authorized, the governing body of such eligible city, in addition to the levying of a tax to pay the principal and interest of said refunding bonds, is authorized to pledge to the payment of such principal and interest, a designated annual amount or a designated proportion of the net revenues from the operation of any one or more of the utility systems owned and operated by said city, which pledge shall

remain in full force and effect so long as any part of the principal or interest of said refunding bonds is outstanding and unpaid. For the purposes of this Act the expression "net revenues" shall mean the gross revenues of such system or systems after the payment of the reasonable and necessary expenses of operation, maintenance, and collection of income, including salaries and wages of employees of such utility or utilities, the setting aside of a five (5) per cent (of such gross income) reserve for replacements, depreciations, and obsolescence, and for the construction of such extensions and additions as may be determined by the governing body to be reasonably necessary and economically justified. When such city issues refunding bonds under the provisions of this law it shall be the duty of the city, after making said pledge of such utility revenues, to establish and maintain utility rates adequate to yield revenues sufficient to operate and maintain said utility systems and to fulfill the city's pledge of said utility revenues.

[1] 11 U.S.C.A. §§ 401–404.

Amount of bonds; procedure; registration

Sec. 3. The refunding bonds authorized in this Act may be issued in an amount not exceeding the combined amount of outstanding principal, matured interest coupons, and accrued interest on said original securities and shall mature at such time or times as the governing body may prescribe. The procedure of the issuance of said refunding bonds shall be that which is prescribed in the Statutes for the issuance of refunding bonds to take up outstanding bonds.

Such refunding bonds shall be registered by the Comptroller of Public Accounts in exchange for and upon cancellation of such original indebtedness after they shall have been approved by the Attorney General, and when so registered shall have all of the elements of protections of bonds approved by the Attorney General of Texas under the provisions of Articles 709 to 715, both inclusive, of the Revised Civil Statutes of 1925.

Form of bonds; exemptions from certain charter provisions

Sec. 4. Refunding Bonds issued under this Act shall be fully negotiable coupon bonds payable to bearer, constituting general obligations of the issuing city, and the holders thereof shall succeed to all the privileges of the holders of the indebtedness constituting the basis of the Refunding Bonds except as modified and changed by the express terms of the proceedings employed in the refunding operation. No provisions in the charter of any such issuing city shall be applicable to the Refunding Bonds thus to be issued but the provisions of this Act and other General Laws shall prevail as to said Refunding Bonds. Particularly, and without limiting the generality of the foregoing, said Refunding Bonds shall be exempt from any charter provision restricting the interest rate to be borne by said bonds, limiting the maximum tax rate which may be levied to pay the principal and interest thereof, restricting the place of payment, restricting the recovery of interest upon defaulted principal and interest coupons, requiring the registration of said bonds, requiring notice of intention as a condition precedent to the right to bring suit on said bonds or coupons, or requiring an election thereon.

Law cumulative; conflicting provisions

Sec. 5. This law shall be cumulative of all other laws on the subject. In the event that any provisions of this Act conflict with, or are inconsistent with, the provisions of any other law, general or special, or with the provision of the charter of any such eligible city, the provisions of this Act shall take precedence over such conflicting or inconsistent provisions and shall prevail. [Acts 1941, 47th Leg., p. 132, ch. 103.]

Utility Improvement Revenue Bonds

Sec. 5. (a) Whenever a city shall have issued refunding bonds under the provisions of this law as passed originally or under any amendments thereof supported by a tax levy and by a pledge of a designated portion of the net revenues from the operation of one or more of its utility systems and so long as any part of such indebtedness is outstanding either as refunded originally or as again subsequently refunded, it may refund such indebtedness and it is further authorized and empowered to issue its fully negotiable coupon bonds, hereinafter called "Utility Improvement Revenue Bonds," from time to time, to finance repairs, replacements, extensions and improvements of and to one or more of its utility systems, payable from and secured as to principal and interest by a pledge of the net revenues only of any or all of said utility systems, provided that so long as any refunding bonds issued under the provisions of Chapter 103, Acts of the Regular Session of the Forty-seventh Legislature of Texas remain outstanding and unpaid, either as refunded originally or as again subsequently refunded, the pledge of the net revenues securing such Utility Improvement Revenue Bonds shall be of equal dignity with the pledge securing such refunding bonds, provided further, that while any of such refunding bonds are outstanding no Utility Improvement Revenue Bonds shall be issued except to the extent expressly permitted by the ordinance authorizing such outstanding refunding bonds and in no event shall Utility Improvement Revenue Bonds be issued in an amount and under terms which would cause the aggregate amount of all annual pledges, securing the refunding bonds and Utility Improvement Revenue Bonds to exceed sixty-six and two-thirds per cent (66⅔%) of the average net revenues of such utility systems for the three (3) completed fiscal years next preceding.

(b) Such Utility Improvement Revenue Bonds may be issued to mature serially or otherwise not more than forty (40) years from their date, with or without option of prior redemption as may be determined by the governing body, the terms of which option, if any, shall be prescribed in the authorizing ordinance and in the bonds, bearing interest at not exceeding five per cent (5%) per annum. No such Utility Improvement Revenue Bonds shall be issued until authorized at an election for such purpose called and held in the manner provided in Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, for the issuance of bonds by cities.

(c) When Utility Improvement Revenue Bonds shall have been issued hereunder they shall constitute special obligations of such city and such bonds shall never be a debt of the city, but solely a charge upon the pledged revenues and shall never be reckoned in determining the power of the city to incur obligations payable from taxation. The bonds hereby authorized shall contain substantially the following provision:

The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation.

(d) The term "net revenues" as used herein shall mean the amount of gross revenues of the city's utility systems remaining after deducting:

(1) Expense of operation of said systems and collection of the income, including salaries and wages of employees thereof;

(2) Maintenance and repair of same;

(3) Five per cent (5%) of gross income therefrom as a reserve for depreciation and obsolescence, which sum may be invested in bonds of such city, the State of Texas, or the United States of America, and which reserve may be used for repairing damage caused by wars, riots, floods, hurricanes, fires, or acts of God

or other causes not within the control of the governing body of the city;

(4) Cost of such extensions and repairs, as in the judgment of the governing body are necessary to keep the utility systems in operation and render adequate service to the city and its inhabitants or such as may be necessary to meet some physical accident or condition which would otherwise impair the efficient operation of the utility system;

(e) When any such bonds shall have been authorized and issued as herein permitted it shall be the duty of the governing body of the city, enforceable by any bondholder through mandamus or through any other method, to fix and maintain rates for services rendered by any and all of the city's utility systems sufficient to pay all operating and maintenance expenses, depreciation, replacement and betterment charges and to assure payment of the interest and principal of all of such Refunding Bonds and Utility Improvement Revenue Bonds;

(f) Before any such Utility Improvement Revenue Bonds are sold they shall be submitted to and approved by the Attorney General in the manner and with the effect provided in Articles 709 to 715, both inclusive, Revised Civil Statutes of Texas, 1925, as amended and except as prescribed in this Act said bonds shall be executed and issued in the manner provided by the charter of the city. [Added Acts 1947, 50th Leg., p. 78, ch. 54, § 1.]

Acts 1947, 50th Leg., p. 78, ch. 54, added a new section, to be known as section 5, without mentioning or affecting a former section 5, relating to cumulative effect and repealing conflicting laws, which appeared in the original act.

Sections 2 and 3 of the act of 1947 read as follows:

"Sec. 2. That in each instance wherein prior to the effective date of this Act any such city has passed or adopted any ordinance or resolution calling an election for the purpose of authorizing any such Utility Improvement Revenue Bonds and pursuant to such ordinance or resolution, an election has been held which has resulted favorably to the issuance of any such bonds, and the returns thereof have been duly canvassed and the result duly determined by the governing body of any such city, such proceedings and such elections are hereby validated and such city is hereby authorized to proceed with the authorization, issuance and sale of such bonds as though this Act had been in full force and effect prior to the time such actions and proceedings were taken by any such city, provided that this Act shall not be construed as validating any such proceedings or any such bonds the validity or regularity of which is being questioned in litigation in a court of proper jurisdiction and which litigation is pending at the time this Act becomes effective.

"Sec. 3. This law shall be cumulative of all other laws on the subject and in the event any provisions of this Act conflict with or are inconsistent with the provisions of any other law, general or special, or with the provisions of the charter of any such city, the provisions of this Act shall take precedence over such conflicting or inconsistent provisions and will prevail."

Art. 802d. Refunding bonds of cities whose streets link state highways.

Issuance

Section 1. The governing body of any city or town in this State whose street or streets form a connecting link between State Highways, having outstanding as of the effective date of this Act, unpaid and delinquent indebtedness against its general fund, whether in the form of scrip warrants, warrants or notes, or in either or all of such forms, and which cannot derive revenues for general fund operating purposes from any publicly owned utilities at this time, is hereby authorized to issue funding or refunding bonds for the purpose of funding any such items which constitute legal indebtedness of such city or town. No election nor notice of intention to issue such funding or refunding bonds shall be required. If funding or refunding bonds are issued they shall be issued in the manner prescribed by Article 717 of the Revised Civil Statutes of Texas, 1925, for the issuance of refunding bonds.

Maturity; interest rate

Sec. 2. Such funding or refunding bonds shall mature serially or otherwise, not to exceed thirty (30) years from their date and shall bear a rate of interest not to exceed five (5) per cent per annum, payable annually or semiannually.

Tax levy to pay bonds and interest

Sec. 3. When said funding or refunding bonds are issued it shall be the duty of the governing body of such city or town to levy a tax sufficient to pay the principal and interest thereon as such principal and interest mature.

Approval and registration

Sec. 4. If funding or refunding bonds are issued they shall be submitted to the Attorney General of the State of Texas for his examination and approval in the same manner and with the same effect as is provided in Articles 709 to 715, both inclusive, of the Revised Civil Statutes of Texas, 1925, and shall be registered by the Comptroller of Public Accounts as is provided in said Articles.

Outstanding indebtedness validated

Sec. 5. All such outstanding indebtedness is hereby validated, provided that the provisions of this Section shall not be applicable to any such items of indebtedness which may be in litigation at the time this Act becomes effective.

Debt burden not increased

Sec. 6. This Act shall not be interpreted so as to authorize an increase in the debt burden of any such city or town.

Act cumulative; conflicting provisions

Sec. 7. This Act shall be cumulative of all other laws on the subject, but in the event any of its provisions are in conflict with any existing laws the provisions hereof shall prevail and be effective to the extent of such conflict.

Certificate of necessity of improvement

Sec. 8. If funding or refunding bonds are issued such city or town shall furnish to the Attorney General, at the time of submission of the bond transcript, a certificate of the necessity of such street improvement by the State Highway Department. [Acts 1941, 47th Leg., p. 937, ch. 566.]

Art. 802e. Validation of refunding bonds of cities and proceedings therefor.—Wherever any city, pursuant to election and to ordinance adopted by the governing body thereof, has heretofore issued bonds of the city for any corporate purpose and where such bonds have been purchased from the holders thereof for the bond and sinking funds of such city and have been paid for with money taken from such funds, and where such bonds have been cancelled, through error or otherwise, and where the governing body of such city has heretofore adopted an ordinance authorizing the issuance of the refunding bonds of such city for the purpose of refunding the indebtedness so represented, the proceedings authorizing such refunding bonds are hereby validated and confirmed and the bonds to be issued pursuant to such proceedings are validated and confirmed and shall, when duly issued, constitute the valid and legally binding obligations of such city in accordance with their terms. Each such city is authorized to do all things necessary to complete the issuance of such bonds and, within constitutional limitations, is hereby required to levy such taxes as may be necessary and fully sufficient to assure the prompt payment of principal of and interest on such bonds. [Acts 1947, 50th Leg., p. 227, ch. 131, § 1.]

Art. 802f. Wharf and terminal facility bonds of cities or towns, bonds to redeem; subrogation.—Section 1. Whenever any city or town in this state incorporated under general law or having a special charter, has outstanding unpaid revenue bonds

issued for the purchase price, in whole or in part, of the wharf and terminal facilities, or an interest therein, theretofore purchased by such city or town, which bonds are subject to call and redemption prior to their maturity and are secured by an encumbrance on such wharf and terminal facilities, or an interest therein, and a pledge of the revenues thereof, such city or town, subject to the below prescribed requirements, conditions and restrictions, through its governing body, may, for the purpose of redeeming such revenue bonds, issue negotiable bonds of such city or town in an aggregate principal amount not greater than the aggregate principal amount of the revenue bonds redeemed and the interest thereon accrued to the date of redemption and having an interest rate less than the interest rate of the revenue bonds redeemed, and may make provision for the payment of the bonds issued under authority of this Act, by annual levies of taxes to pay the interest thereon and provide a sinking fund to pay them at maturity; provided, however, that no such bonds shall be issued under authority of this Act unless the issuance thereof, and the levy of annual taxes to provide for the payment of the interest thereon and create a sinking fund with which to pay them at maturity, shall have been authorized at an election called and conducted under the provisions of Chapter 1, Title 22 of the Revised Civil Statutes of the State of Texas and laws amendatory thereof and supplementary thereto which shall govern the issuance of all bonds issued under the authority herein given.

Sec. 2. Any city or town which may redeem its outstanding revenue bonds in the manner prescribed in Section 1 hereof, shall thereupon become subrogated to the rights of the holders of the bonds so redeemed insofar as payments from the revenues of the wharf and terminal facilities are concerned, and be entitled to have paid into its general fund from such revenues like amounts as would have been payable on the bonds redeemed had the same remained outstanding; but such rights on the part of such city or town shall in nowise limit any encumbrance on the properties securing any other outstanding revenue bonds secured by such encumbrance, nor shall such encumbrance in anywise inure to the benefit of such city or town, or in anywise be enforcible by it, but shall remain in full force for the sole benefit of the holders of any unpaid revenue bonds whose rights to enforce such encumbrance shall remain superior to the right of such city or town to payments from the revenues of the wharf and terminal facilities properties above prescribed. Nor shall anything herein contained be deemed as affecting the right of any such city or town to payments from such revenues provided to be made by the terms of any contract under which its revenue bonds may have been issued, but such contract right on the part of such city or town shall remain unaffected, and payments to which such city or town is entitled thereunder shall be made in addition to the payments above prescribed in this section. [Acts 1947, 50th Leg., p. 683, ch. 345.]

CHAPTER 6.—RECLAMATION AND IRRIGATION BONDS

Art.
803. Power to issue.
804. Order for election.
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807. Election.
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Article 803. Power to issue.—For the purpose of constructing and maintaining pools, lakes, reservoirs, dams, canals and waterways for irrigation purposes or in aid thereof, or purchasing any such improvements already existing and adding thereto and paying incidental expenses connected therewith, counties may issue bonds not to exceed one fourth of the assessed valuation of its real property and levy and collect necessary taxes to pay the interest and provide a sinking fund for the redemption thereof. [Acts 1923, p. 264.]

Art. 804. Order for election.—Upon the petition of fifty or more resident property taxpaying voters of a county for an election upon the question of issuing bonds under the provisions of Section 52, Article 3, or Section 59 of Article 16 of the State Constitution, the commissioners court shall at a regular or special session thereof, order an election to determine whether or not the bonds of such county shall be issued in an amount not to exceed one fourth of the assessed valuation of the real property of such county for the purposes stated in the preceding article, and whether or not a tax shall be levied upon the property of said county for the purpose of paying the interest on such bonds and providing a sinking fund for the redemption thereof. [Id.]

Art. 805. Amount of bonds, etc.—The amount of bonds proposed to be issued, with the rate of interest thereon not to exceed six per cent per annum, payable annually or semi-annually, and the date of maturity, shall be stated in the petition, in the order for the election, and in the notice therefor; or such order and notice may provide that the bonds may bear interest at a rate to be fixed by the commissioners court, not to exceed six per cent per annum, payable annually or semi-annually, and that the bonds may mature at such times as may be fixed by the commissioners court, serially or otherwise, not to exceed forty years from their date. [Id.]

Art. 806. Limit of indebtedness.—Where such county contains any district or districts organized under Section 52 of Article 3, or Section 59 of Article 16 of the State Constitution, the percentage of indebtedness of any such district based upon its assessed valuation of real property in the district, together with the percentage of the proposed county indebtedness based upon the assessed valuation of the real property of the county as shown by the last approved assessment rolls of such district and of the county, shall never exceed in any one or more of such districts, or in the county, twenty-five per cent of the assessed valuation of real property of such district or districts, or of such county. [Id.]

Art. 807. Election.—These rules shall govern the conduct and holding of such election:

1. Only resident property taxpayers who are qualified electors of the county shall be allowed to vote in such election, and a two-thirds vote shall be necessary to carry the proposition submitted thereat.

2. The ballots to be used at such election shall have written or printed thereon the words "For the issuance of the bonds and levy of tax in payment thereof," and "Against the issuance of the bonds and levy of tax in payment thereof." The commissioners court shall furnish the ballots for each of the polling places.

3. The election order shall fix the time of holding said election and shall designate the polling place or places in each voting precinct in the county where

said election shall be held, and shall name a presiding judge, a judge and two clerks for each polling place, or may name more election officers for any polling place if the court considers it necessary.

4. A copy of the election order signed by the county judge shall serve as proper notice of said election, and one copy shall be posted at each polling place and one at the courthouse door for at least full twenty days prior to the date of the election, and shall also be published in a newspaper published in said county for three consecutive weeks prior to the date of said election, the first publication to be full twenty-one days before the date of the election.

5. The manner of conducting said election shall be governed by the election laws of this State, except as otherwise herein provided.

6. Immediately after the election the presiding judge at each polling place shall make returns of the result of the election showing the total number of votes cast, the number cast for and against the proposition, and he shall deliver such returns to the county clerk who shall keep them in a safe place and deliver them to the commissioners court, who shall at a regular or special session, canvass said returns and declare the result of said election by order entered upon the minutes of the court. [Id.]

Art. 808. Order of issuance.—If the issuance of the bonds and levy of the tax have been so adopted, the commissioners court, at a regular term thereof, shall make and enter an order directing the issuance of the bonds authorized, and in said order shall provide for the levy and collection of a tax annually sufficient to pay the annual interest thereon, payable at such place or places as provided in said order, and to redeem such bonds at maturity. [Id.]

Art. 809. Additional bond issue.—If bonds have been authorized to be issued, or have been issued as herein provided, and if the commissioners court of such county shall consider it necessary to make any modifications in any of the proposed improvements, or shall determine to purchase or construct further or additional improvements and issue additional bonds, or purchase additional property in order to carry out the purposes of the project, or to best serve the interests of the county, such findings shall be entered of record, and an order for an election shall be entered and notice thereof given, and such election shall be held and the result thereof declared, in accordance with the provisions of this chapter, and if the result of such election be in favor of the issuance of such additional bonds, the commissioners court may order such additional bonds to be issued in the manner herein provided. [Id.]

Art. 810. May issue notes.—Whenever a county shall have constructed or purchased improvements and the same shall be damaged so that it may be necessary to raise funds to repair such damage, the county may issue bonds to raise such funds in the manner provided in this chapter, or may issue its notes therefor. Such notes shall run not to exceed twenty years and bear interest not to exceed six per cent per annum payable annually or semi-annually. [Id.]

Art. 811. Shall order election.—Before such notes are issued, the commissioners court shall order an election and give notice thereof, as required for elections upon bond issues, stating the purpose for which they are to be issued, the time they are to run, the rate of interest, and the time and place or places of election. [Id.]

Art. 812. Ballot, etc.—The ballots for such election shall have written or printed thereon "For the issuance of notes," and "Against the issuance of notes." Such election shall be held and returns made and canvassed as provided herein for bond elections. If a two-thirds majority of those voting at such election voted in favor of the issuance of such notes, the commissioners court may issue and sell same for the benefit of said county and the purpose or purposes for which authorized. [Id.]

Art. 813. Requisites of issuance.—The commissioners court shall pass and enter an order directing and authorizing the issuance of the notes, and in said order provisions shall be made for the levy and collection of a tax annually sufficient to pay the current interest and provide a sinking fund for the payment of the principal at maturity. Said notes may be issued to mature serially or otherwise, as may be provided in the election order and notice of election. The limitation of indebtedness hereinbefore provided shall also apply to the issuance of such additional bonds and such notes. [Id.]

Art. 814. Issuance of bonds and notes.—All bonds and notes issued under the provisions of this chapter shall be issued in the name of the county, and such bonds shall be designated "..... County Water Improvement Bonds," and such notes shall be designated "..... County Water Improvement Notes," and shall be signed by the county judge, countersigned by the county clerk and registered by the county treasurer, and the seal of the commissioners court shall be impressed thereon, and may be in such denominations as may be fixed by the commissioners court. [Id.]

Validating bond issues, see articles 716a, 725a, ante.

Art. 815. May exchange bonds.—The commissioners court may exchange bonds for property or in payment of the contract price for work to be done in the construction of said improvements. [Id.]

Art. 816. Sale of bonds and notes.—The commissioners court shall sell or exchange such bonds and notes on the best terms and for the best obtainable price, not less than their par value. When the bonds or notes are sold, the proceeds shall immediately be delivered to the county treasurer. [Id.]

Art. 817. Other counties may avail.—Any county desiring to issue bonds in accordance with the provisions of this chapter, shall bring an action in the district court of such county, or in the district court of Travis County, to determine the validity of such bonds in the manner provided for the validation of Water Improvement District Bonds in Chapter 2 of the Title "Water" [1] and each provision of said chapter relative to such suit, the duties of the Attorney General and Comptroller, the judgment to be rendered, the effect of such judgment, and other matters connected therewith, shall apply to the validation of such county bonds. [Id.]

1 Article 7622 et seq.

Art. 818. Special powers.—Counties operating under the provisions of this chapter are hereby empowered to own and construct reservoirs, dams, levees, wells, canals and other improvements, and to acquire the necessary rights-of-way and other lands by purchase or by condemnation in the manner provided for the condemnation of right-of-way by railroad companies, and to do, construct, purchase and acquire all other works and improvements required for the proper and efficient irrigation of the lands in such county. [Id.]

Art. 819. Special fund.—The commissioners court shall annually levy a tax sufficient to pay the current interest on such bonds and to pay the principal thereof as the same becomes due, and said tax shall be assessed and collected as other county taxes, and when collected shall constitute a special fund and shall not be diverted or used for any other purpose than in this article provided. [Id.]

Art. 820. Control of system.—The commissioners court shall have and exercise the control and management of the affairs and operation of the irrigation system of such county to the same extent and in the manner provided in Chapter 2 of the Title "Wa-

ter,"[1] as conferred upon the directors of Water Improvement Districts, and said court shall exercise all of the powers relative to the control, management, affairs and operation of such county irrigation system as such directors have under the provisions of said chapter, and all the provisions of said chapter relative to the control, management, affairs and operation of Water Improvement Districts shall apply to the control, management, affairs and operation of such county irrigation system. [Id.]

[1] Article 7622 et seq.

Art. 821. Other improvements.—Any county authorized under the provisions of this chapter, may issue bonds for the improvement of rivers, creeks and streams to prevent overflow and for all necessary drainage purposes in connection therewith, and bonds proposed to be issued for the combined purposes stated in this chapter, or for any two of said purposes, shall be treated and deemed as for one purpose and may be voted upon as one proposition. [Id.]

Art. 822. What counties may avail.—The terms of this chapter shall apply to such counties as may have been relieved from the payment of taxes for a term of years by act of the Legislature under and by virtue of the provisions of Section 10, Article 8, of the State Constitution. [Id.]

CHAPTER 6A.—NAVIGATION AID BONDS

Art.
822a. Power to issue.
822b. Eminent domain.
822c. Elections and order for issuance.
822d. Bonds and warrants.
822e. Right of way and conveyance to United States.
822f. Bonds by coastal counties for canal purposes.

Article 822a. Power to issue.—Sec. 1. Any county in this State may, upon a vote of a two-thirds majority of the resident property tax payers voting thereon, who are qualified electors of such county, at an election held hereunder as hereinafter provided, in addition to all other debts, issue bonds or warrants or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such county, and levy and collect such taxes to pay the interest thereon, and provide a sinking fund for the redemption thereof, as herein provided, for the purpose of navigation, or in aid of navigation, by securing right-of-way and necessary dumping privileges for any canal or water-way, authorized to be constructed under any Act of the United States Congress now in force, or hereafter enacted, and shall have the power, after any right-of-way and necessary dumping privileges have been secured, to convey same to the Government of the United States, if necessary to do so to aid in any navigation by waterways, or canals. [Acts 1927, 40th Leg., p. 129, ch. 84, § 1.]

Art. 822b. Eminent domain.—Sec. 2. Any county in this State shall have the right of eminent domain for the purpose of carrying out the authority granted in Section 1 of this Act.[1]

Sec. 3. Said county shall have the right in lieu of exercising its right to eminent domain, as hereinbefore provided, to permit the Government of the United States to exercise its right of eminent domain, and lend its credit in guaranteeing the Government of the United States to pay such judgment or assessment of damages, as may be entered against said Government of the United States, for the value of such property as it may condemn for such right-of-way and necessary dumping privileges. [Acts 1927, 40th Leg., p. 129, ch. 84.]

[1] Article 822a, ante.

Art. 822c. Elections and order for issuance.—Sec. 4. The commissioners' court of any county in this State may, upon its own motion, and shall, upon a petition presented to it by twenty-five of the resident property tax payers therein, at a regular or special term of said court, order an election for the purpose of determining as to whether or not said county shall issue bonds or warrants, or otherwise lend its credit for the purpose of navigation or in aid thereof, by securing the necessary right-of-way for the purposes indicated in Section 1 hereof;[1] said election order shall describe as near as may be, the navigation purposes, or the aid thereto proposed, or the right-of-way and necessary dumping privileges, necessary to be secured and the amount of bonds or warrants, or extent of credit proposed to be authorized for such purposes; and if bonds or warrants are to be issued, their maturity dates and the rate of interest; and if it is proposed to lend the credit of the county in lieu of the issuance of bonds or warrants, said election order shall state the manner in which said credit is proposed to be used, and the extent thereof, and the terms and conditions thereof. Twenty days notice of the holding of said election shall be given by publication in some newspaper published at the county seat of said county, and by posting in three public places in the county, one of which, shall be at the county seat.

Sec. 5. The ballots for said election shall have printed thereon, the words and none other: "For the issuance of bonds (or warrants) or (loaning of credit) and levy of a tax in payment thereof," and "Against the issuance of bonds (or warrants) or (loaning of credit) and the levy of a tax in payment thereof."

Sec. 6. If the proposition submitted to the voters of said county is at said election, adopted by them, the commissioners' court shall enter the same in the minutes of said court, setting out the date of election, the notice of election, the result of the election, together with an order providing for the issuance of such bonds, or warrants, stating the amount thereof, the maturities thereof, and the rate of interest, and at the same time levy a tax sufficient to pay the interest of said bonds or warrants, and providing a sinking fund sufficient to liquidate same at maturity, or as the case may be, setting out the mode and manner and conditions under which it is determined at said election to lend its credit and the extent thereof.

Sec. 7. If, at said election, the credit of the county is to be used otherwise than by the issuance of bonds or warrants, and in such manner as that its use creates a debt against the county, the commissioners' court shall, at a regular or special term thereof, at the time of the entering of said order, authorizing the use of said credit and the creation of said debt, levy a tax sufficient to pay said debt, or such amount thereof, as may mature during the current year, and shall from year to year, levy a tax sufficient to liquidate same as it accrues. [Acts 1927, 40th Leg., p. 129, ch. 84.]

[1] Article 822a, ante.

Art. 822d. Bonds and warrants.—Sec. 8. All bonds or warrants issued under the provisions of this Act[1] shall be issued in the name of the county; shall be signed by the county judge and attested by the county clerk under the seal of the commissioners' court; they shall be issued in such denominations and payable at such time, or times, not to exceed forty years from their date as may be deemed most expedient by the court, and shall bear interest not to exceed 6% per annum. All bonds shall be approved by the attorney general and registered by the comptroller as other county bonds are approved and registered; all bonds or warrants shall be sold by the commissioners' court on the best terms and for the best price possible, but for not less than face par value and accrued interest, and all moneys received therefor, shall be paid to the county treasurer, and by him placed to the credit of the navigation fund of such county, and paid out on warrants, as other county funds are disbursed.

Sec. 9. When bonds or warrants have been voted, the commissioners' court shall levy and cause to be assessed and collected annually, taxes sufficient to pay the interest on such bonds, and to provide a sinking fund to redeem the same at maturity, and if the credit of the county is used otherwise than by the issuance of bonds and warrants, in such a way as that a debt against the county is created, said court shall levy and cause to be assessed and collected annually a tax sufficient to pay said indebtedness as and when it accrues. The sinking fund of said bonds or warrants, shall be invested as the sinking fund of other county bonds are invested. [Acts 1927, 40th Leg., p. 129, ch. 84.]

[1] This article, articles 822a–822c, ante, and 822e, post. Validating bond issues, see articles 716a, 725a, ante.

Art. 822e. Right of way and conveyance to United States.—Sec. 10. When right-of-way and necessary dumping privileges have been secured by such county under the provisions hereof, either by purchase, condemnation, or donation, such county shall have the right, and is hereby authorized to convey said right-of-way and necessary dumping privileges to the Government of the United States by deed executed as other deeds by counties are required to be executed.

Sec. 11. The purpose of this Act being to grant authority to the counties of Texas to issue bonds, warrants or otherwise lend their credit to acquire and convey to the United States Government, the necessary right-of-way for waterways or navigable canals, the construction of which has been, or may be, authorized by the Government of the United States; the cost of construction and maintenance of which, is to be borne by the Government of the United States, and for no other purpose, and the provisions of this Act [1] shall be liberally construed for the purpose of carrying out such intent. [Acts 1927, 40th Leg., p. 129, ch. 84.]

[1] This article and articles 822a–822d, ante.
Section 12 of this Act, repeals chapter 41, passed by the Fortieth Legislature at its regular session.

Art. 822f. Bonds by coastal counties for canal purposes.—The right of eminent domain is hereby conferred upon all counties adjacent to the Gulf of Mexico of the State of Texas, for the purpose of condemning and acquiring land, right of way or easement or dumping ground privileges in land, private or public, except property used for cemetery purposes, where said land, right of way, easement or dumping ground privilege is necessary in the construction of an intra-coastal canal.

All such condemnation proceedings shall be instituted under the direction of the Commissioners' Court, and in the name of the county, and the assessing of damages shall be in conformity to the Statutes of the State of Texas for condemning and acquiring of right of way by railroads. Provided, that no appeal from the finding and assessment of damages by the Commissioners appointed for that purpose shall have the effect of causing the suspension of work by the county or the Government of the United States, in connection with which the land, right of way, easement, etc., is sought to be acquired; and provided, further, that in case of appeal counties shall not be required to give bond, nor shall they be required to give bond for costs.

In all of the counties of this State adjacent to the Gulf of Mexico, the Commissioners' Courts are authorized to issue time warrants bearing interest at a rate not exceeding six per cent (6%) per annum, to be used for the purpose of purchasing or paying for lands for right of way and easement and dumping ground purposes for an intra-coastal canal. The lands needed may be acquired by direct purchase or by payment after condemnation proceedings. [Acts 1931, 42nd Leg., p. 834, ch. 347, § 1; Acts 1931, 42nd Leg., 1st C. S., p. 7, ch. 4, § 1.]

CHAPTER 7.—MUNICIPAL BONDS

Art.
823. May issue bonds.
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825. Signature.
826. Shall provide for tax.
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827a. Payment of warrants and vouchers previously issued.
828. May compromise debts.
829. Exceptions.
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831. Liquidation.
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833. Payment of taxes with bonds.
834. Further compromise.
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835a. [Repealed.]
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835e. Bonds validated.
835e—1. Refunding bonds of home rule cities validated.
835e—2. Fire-fighting equipment bonds validated.
835f. Sale of bonds or obligations by municipal or political subdivisions to Reconstruction Finance Corporation or Federal Agency.
835g. Use for other purposes of bond monies dedicated to specific public improvement in certain cities and towns; election authorizing transfer.

Article 823. May issue bonds.—Any city or town may issue its coupon bonds for such sum as it may deem expedient for the purpose of the construction or purchase of public buildings, waterworks, sewers, and other permanent improvements within the city limits, and for the construction and improvement of the roads, bridges, and streets of such city or town. This article includes building sites and buildings for the public free schools and institutions of learning within such cities and towns which assume the exclusive control of their public free schools and institutions of learning. Such bonds shall bear interest not to exceed six per cent per annum and shall become due and payable serially or otherwise not to exceed forty years from their date and may be payable at such place as may be fixed by ordinance. [Acts 1921, p. 13.]

Art. 824. Limitations.—The limitations now provided by law upon the bonds that such cities may issue shall not apply to bonds issued under this law. [Id.]

Art. 825. Signature.—All bonds issued by a city or town shall be signed by the mayor and countersigned by the city secretary. [Id.]

Art. 826. Shall provide for tax.—The governing body, when the issuance of bonds has been authorized, shall provide for the levy and collection of a tax annually sufficient to pay the annual interest and provide a sinking fund for the payment of such bonds and all other outstanding bonds of such city or town issued since September 25, 1883. [Id.]

Art. 827. [890] [465] [419] Funding of debt.—The governing body shall pass all necessary ordinances to provide for funding the whole or any part of the existing debt of the city or any future debt by cancelling the evidences thereof, and issuing to the holders or creditors, notes, bonds or treasury warrants, with or without coupons, bearing interest at any annual rate not to exceed six per cent. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 827a. Payment of warrants and vouchers previously issued.—The towns and cities, organized under and governed by the General Laws of the State of Texas, may renew, extend and pay war-

rants and vouchers executed and delivered for the purpose of securing funds and for the purpose of borrowing funds for the use of such towns and cities prior to June 1, 1932, and all extensions and renewals thereof; provided that the provisions hereof shall apply only where such funds received and borrowed, and used by such towns and cities prior to June 1, 1932, do not exceed the total sum of Eight Thousand ($8,000.00) Dollars. Such warrants and vouchers may be so issued to bear interest at the rate of not to exceed six per cent (6%) per annum and may be so issued without the necessity of the approval thereof by the Attorney General and without the necessity of a registration thereof by the Comptroller, and may be made payable within one year from date of the issuance or more than one year; taxes may be levied and used to provide for the payment thereof; providing, however, that nothing herein shall affect any pending litigation. [Acts 1937, 45th Leg., p. 304, ch. 159, § 1.]

Art. 828. [891] [471] May compromise debts.—The governing body, by their resolution or ordinance, by referring to this law and adopting the same, are authorized to compromise and fund any existing valid indebtedness issued by the city or town, whether bonded or floating, and the coupons due upon the bonded debt. For such purpose, they are authorized to issue new bonds in denominations of not less than fifty nor more than one thousand dollars, in their discretion, with interest coupons payable annually, to become due and payable in not exceeding thirty years, and to bear interest not to exceed six per cent per annum. [Acts 1887, p. 50; G. L. vol. 9, p. 848.]

Art. 829. [892] [472] Exceptions.—No compromise shall be made by which any debt shall be funded when such debt is barred by the statutes of limitations. [Id.]

Art. 830. [896] [479] Liquidation board.—Whenever a compromise of the debt of any city or town shall be so affected, and the bonds are delivered to the creditors, a board of liquidation consisting of five reputable citizens of such city or town shall forthwith be appointed and organized in the manner following:

1. One each shall be appointed by the mayor of the city or town, the city counsel, the Governor, any district judge of the district in which such city or town is situated, and the holders of said indebtedness or a majority of them, and each shall fill vacancies in the office of their respective appointee in said board.

2. In case of failure, neglect or refusal of any or all of said officers to appoint a member of said board or to fill vacancies therein, then the holders of said bonds or any one or more of them may apply to any district court of the district in which such town or city is situated, or to the judge thereof in vacation, for the appointment of the members necessary to complete said board, and said court or judge shall make such appointment.

3. The members of said board shall serve without compensation, and shall hold office for four years. Each member of said board shall take an oath to faithfully perform the duties of his office. A majority of said board shall be a quorum to transact business. [Id.]

Art. 831. [896] [479] Liquidation.—These rules shall govern the handling and disposition of all moneys coming under the control of the board as herein provided:

1. Said board shall select some solvent depository for such moneys, for whose acts they shall be responsible, and shall, in writing, signed by them, notify the tax collector of said city or town, of said selection.

2. Said collector shall thereupon deposit at the close of business of each day one-half of all moneys collected by him for the twenty-four hours next preceding, on account of all the taxes of whatever nature levied by said city or town, with the said depository, whose receipt therefor shall be an acquittance of said collector.

3. The collector shall be liable on his official bond for any failure to promptly make such deposits and for ten per cent per month of such amounts in addition thereto as penalty, which sums may be recovered by said board in a suit therefor, which they shall promptly institute.

4. Whenever the total of said deposits shall equal the annual interest on said bonds, it shall be lawful for the collector to discontinue said deposits until he shall be notified in writing by said board that said deposits are reduced below that sum.

5. Said funds shall be subject to said board and shall be applied by it to the payment, first of the interest on the said bonds as they mature, secondly, to the payment of the principal thereof, and thirdly, to the payment of interest of any valid bonds issued by such city and not embraced in any issue of bonds issued under the provisions of this law, and fourthly, to the payment of the principal of bonds of the character last referred to on the maturity of the same.

6. The members of said board shall be liable for the prompt payment of interest out of said funds, and in case of failure or refusal, they shall in addition be liable to ten per cent of the amount of such interest as damages to be recovered by any person aggrieved thereby.

7. Whenever there shall be in the hands of such depository a sufficient sum to pay two per cent of the principal of said bonds in addition to one year's interest, said board shall use the same in the purchase of outstanding bonds as provided by law, and such bonds when so purchased shall be returned to the city council together with all coupons which have been paid.

8. Expenses incurred by the board in advertising for purchasers of bonds shall be paid out of said funds.

9. Said board shall make semi-annual reports to the city council of its acts and of all receipts and disbursements of money coming under their control. [Id.]

Art. 832. [897] [477] State tax laws.—Whenever such compromise shall be entered into and accepted in good faith, either by the holders of the present bonds or by any persons purchasing new bonds, as herein provided, all laws now or hereafter in force for the assessment and collection of State taxes shall also be in force and apply to the assessment and collection of taxes levied to meet the interest and sinking fund of said new bonds; and in any suit instituted to enforce the payment of said bonds or coupons against any such city or town, no defense either in law or equity, shall be admitted in any court of this State, except such as originated upon, or subsequent to, the issuance of such new bonds. [Id.]

Art. 833. [900] [473] Payment of taxes with bonds.—The new bonds thus issued by a city or town shall be exempt from the payment of all taxes levied by such city or town. The taxes levied to pay such new bonds may be paid with the bonds or coupons thereof if matured. Said coupons and bonds shall only be received in payment of taxes which have been levied for the purpose of paying such bonds and coupons. [Id.]

Art. 834. [901] [481] Further compromise.—Cities and towns may compromise and liquidate their indebtedness and issue bonds therefor under such conditions as are prescribed in this title conferring such authority on counties, cities and towns, and as may be otherwise provided by law. [Id.]

Art. 835. [883] [482] Harbor bonds.—When necessary therefor, cities which border on the Gulf of Mexico may issue the coupon bonds of such cities to bear interest at not exceeding five per cent per annum for the purpose of improving or aiding the improve-

ment of their harbors and the bars at the entrance thereof in such amounts as may be deemed necessary not to exceed the limit of indebtedness fixed by their respective charters, and may appropriate for such purpose money out of any surplus fund which may be on hand at any time, and when any bonds may be on hand, the issuance of which has been made for other purposes and may not be needed for such purpose. Such surplus bonds may be sold and the proceeds used for such improvements. [Acts 1883, p. 48; G. L. vol. 9, p. 354.]

Art. 835a. [Repealed by Acts 1931, 42nd Leg., p. 33, ch. 26, § 1.]

The article repealed was Acts 1929, 41st Leg., 2nd C.S., p. 80, ch. 46.

Art. 835b. [Repealed by Acts 1931, 42nd Leg., p. 771, ch. 309, § 8]

This article as enacted by Acts 1930, 41st Leg., 4th C.S., p. 82, ch. 43, was held invalid as "local law" within prohibition of Const. art. 3, § 56. See City of Fort Worth v. Bobbitt, 121 T. 14, 36 S.W.2d 470, affirmed 121 T. 14, 41 S.W.2d 228.

Art. 835c. Hospital sites in cities and counties.—Any city or county in this State, acting by or through the governing body of such city or Commissioners Court of such county, may issue negotiable bonds of the city or county, as the case may be, and levy taxes for the sinking fund of such bonds, and the levying of such taxes being in accordance with Chapter 1, Title 22, of the Revised Civil Statutes, of 1925,[1] which bonds may be sold and the proceeds thereof shall be applied to condemnation or purchase, either or both, of lands to be used for hospital purposes; and which lands when so acquired, or if such city or county shall already own land or sites that are suitable and adequate for hospital purposes, then such lands so owned, may be by such city or county donated to the State of Texas or the United States of America for hospital purposes, where the State of Texas or United States of America has or may agree to erect and maintain hospitals thereon; or if any such city or county has in its general fund sufficient funds for the acquisition of such property, same may be diverted and applied for such use; provided also that such city or county may stipulate for and agree to accept a nominal award as full compensation for such lands in any condemnation proceeding, including proceedings pending when this Act becomes effective, instituted by the State of Texas or the United States of America for the acquisition of such lands for hospital purposes; provided further that all such donations or contracts to make such donations made or entered into by and between any city or county in this State and the United States of America prior to the date of the approval of this Act, whether consummated by voluntary conveyance, condemnation proceedings, or otherwise, be and the same are fully and completely validated, ratified, and confirmed; and provided further that nothing in this Act shall be construed by any city or county to exceed the limits of indebtedness placed upon it under the Constitution. [Acts 1930, 41st Leg., 5th C.S., p. 125, ch. 10, § 1; Acts 1939, 46th Leg., p. 381, § 1.]

[1] Article 701 et seq.

Art. 835d. [Unconstitutional.]

This article (Acts 1931, 42nd Leg., p. 771, ch. 309; Acts 1931, 42nd Leg., Sp.L., p. 162, ch. 74), authorizing assessment certificates or mechanic lien agreements in cities over 100,000, was held invalid in City of Fort Worth v. Bobbitt, 121 T. 14, 41 S.W.(2d) 228, as creating "debt" against city in violation of Const. art. 11, §§ 5 and 7.

Art. 835e. Bonds validated.—That all proceedings had prior to March 1, 1935, by the governing bodies of all independent school districts, cities and towns, including home rule cities, in the State of Texas in the issuance and sale of bonds, to aid in financing any undertaking for which a loan or grant has been made by the United States through the Federal Emergency Administration of Public Works, or any other agency, department or division of the Government of the United States of America are hereby in all things fully validated, confirmed, approved and legalized and all bonds issued thereunder are hereby declared to be the valid and binding obligations of such independent school districts, cities or towns, and all bonds which were prior to March 1, 1935, authorized but not yet issued shall, when delivered and paid for, constitute valid and binding obligations of such independent school district, city or town. All tax levies made by such governing bodies for the purpose of paying the principal of and interest on such bonds, notes or warrants are hereby in all things validated, confirmed, approved and legalized. Provided that this Act shall not validate any bonds now in litigation. [Acts 1935, 44th Leg., p. 147, ch. 60, § 1.]

Art. 835e—1. Refunding bonds of home rule cities validated.—Section 1. In each instance wherein any city operating under a special charter, either adopted by vote of the people or granted by the Legislature and thereafter amended by vote of the people, which allocates its permitted taxing power to specified purposes at fixed rates for each such purpose, has passed an ordinance or ordinances authorizing the issuance of refunding bonds to refund all of the outstanding bonds of such city, and said refunding bonds and bonds to be refunded thereby have been approved by the Attorney General of the State of Texas, the proceedings had by such city in authorizing the issuance of said refunding bonds and the tax levied to pay the principal and interest thereof are hereby validated, and said refunding bonds, when registered by the Comptroller of Public Accounts in exchange for the bonds to be refunded thereby are hereby validated, notwithstanding the fact that one or more issues of such refunding bonds or of the bonds refunded thereby may have been authorized and issued for the purpose of refunding bonds originally payable from such separate tax allocations, and the taxes levied to pay the principal and interest of such refunding bonds are hereby validated and shall not be affected by any provisions of such charter requiring allocation of such taxes to such specific purposes.

Sec. 2. The provisions of this Act shall not be construed as validating any bonds, the validity of which is being questioned in litigation pending at the time this Act becomes effective. [Acts 1939, 46th Leg., p. 699.]

Art. 835e—2. Fire-fighting equipment bonds validated.—Section 1. All bonds heretofore voted and authorized by any city for the purpose of equipping fire stations or purchasing firefighting equipment, including all proceedings and the authorization and issuance thereof are hereby validated, ratified, approved, and confirmed notwithstanding the lack of charter or statutory power of such city or the governing body thereof to authorize and issue such bonds; and such bonds when approved by the Attorney General of the State of Texas, and sold and delivered for not less than par and accrued interest, shall be binding, legal, valid, and enforceable obligations of such cities.

Sec. 2. Provided, however, that the provisions of this Act shall not be construed as validating any such proceedings or bonds issued pursuant thereto the validity of which has been contested or attacked in any suit or litigation pending at the time this Act becomes effective. [Acts 1947, 50th Leg., p. 250, ch. 146.]

Art. 835f. Sale of bonds or obligations by municipal or political subdivisions to Reconstruction Finance Corporation or Federal Agency.—That all counties, municipalities, and political subdivisions of this State, which may own bonds or any other obligations or evidences of indebtedness, of an irrigation, levee, drainage, or school district of this

State, or of any County, Municipality, or other political subdivisions thereof, or that may own any other kind of municipal bonds or evidences of indebtedness, are hereby authorized to sell, compromise or exchange the same to, or with, the Reconstruction Finance Corporation or any other agency of the Federal Government, at less than par and/or at a price which may seem just and fair and agreed upon by the owners of such securities, provided, that in all such sales, exchanges or compromises, the bonds, obligations, securities, or evidences of debt so acquired by such Reconstruction Finance Corporation, or other agency of the Federal Government, shall never become a charge against the irrigation, levee, drainage, or school district, or the county or municipality issuing same, for more than the amount paid therefor by said Reconstruction Finance Corporation or other agency of the Federal Government, plus interest at the rate provided for in such securities. The privilege of purchasing, compromising or exchanging such bonds, obligations, or evidences of indebtedness for less than par value, shall only apply to purchases, compromises, or exchanges made by the Reconstruction Finance Corporation, or by any other agency of the Federal Government, acting through its own representative or through the district, county, municipality or political subdivision obligated to pay such securities. [Acts 1935, 44th Leg., p. 54, ch. 18, § 1.]

Art. 835g. Use for other purposes of bond monies dedicated to specific public improvement in certain cities and towns; election authorizing transfer.—Section 1. All cities and towns in this State having a population of not less than 15,100 and not more than 15,250, according to the last preceding Federal Census, which have the exclusive control of the schools within its limits, are hereby expressly authorized to utilize bond monies on hand, which have heretofore been authorized by the Council of said City, for public improvements of whatsoever character within said city, for the use and benefit of the public schools within such city or any purpose authorized by City Commission. Provided that before any such transfer shall be authorized the question of the transfer shall be submitted to the property tax paying voters of said city at an election to be held in accordance with the provisions of the law which were followed in issuing the bonds originally. And no such transfer shall be made unless a majority of the legally qualified voters of said City vote in favor of such transfer. Provided further, that this law shall not apply in any case wherein the funds are being expended upon the public works for which they were voted. It is expressly provided that it shall only apply in case the public improvement for which the bonds were originally issued have never been commenced.

Sec. 2. The City Council, by following the procedure set out in Section 1, is hereby authorized to repurchase and cancel such bonds, if in their discretion the same is for the benefit of the property tax paying voters of the municipality. [Acts 1937, 45th Leg., 2nd C.S., p. 1865, ch. 2.]

CHAPTER 8.—SINKING FUNDS—INVESTMENTS, ETC.

Art.
836. Investments.
837. Secondary investments.
837a. Investment of sinking funds of county or navigation district in counties in excess of 190,000.
838. Annual report.
839. Disbursements.
840. Penalties.
841. Recovery.
842. Federal Farm Loan Bonds.
842a. Securities issued by Federal Agencies; exchange by Building and Loan Associations of bonds with shareholders.
842a—1. Obligations wholly or partly insured by United States or state, investment in.

Article 836. [698] Investments.—The legally authorized governing body of any county, city or town, or the trustees of any school district or school community, may invest their respective sinking funds for the redemption and payment of the outstanding bonds of such county, city or town, or community, in bonds of the United States, war-savings certificates, and certificates of indebtedness issued by the Secretary of the Treasury of the United States, and in bonds of Texas, or any county of this State, or of any incorporated city or town. No such bonds shall be purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created. [Acts 1905, p. 25; Acts 1918, 4th C. S., p. 164.]

Art. 837. [698] Secondary investments.—In the event a governing body is unable to purchase securities of the character mentioned in the preceding article, which mature at a date prior to the time of maturity of the bonds for the payment of which such sinking fund was created, then they may invest such funds in the bonds of any school district or school community authorized to issue bonds, under the same restrictions as provided in the preceding article. [Id.]

Art. 837a. Investment of sinking funds of county or navigation district in counties in excess of 190,000.—This Article shall apply only to and in counties having a population in excess of 190,000 according to the last preceding or any future Federal Census. Investments of sinking funds of any county and Navigation District shall be made in the manner provided by Article 837 and the terms governing the purchase of any securities authorized by this Chapter, shall be reflected by appropriate minutes of the governing body with a complete description of the securities purchased. Upon receipt of said securities and payment therefor the same shall be forthwith delivered to the Depository and in the event there is no Depository, then to the Treasurer of the county, who shall arrange for said securities to be placed in a safety deposit vault or other secure place if no safety deposit vault is available, and the contract of arrangement shall provide simultaneous or joint access to said securities by the Treasurer and the County Auditor. A written record of the securities purchased and deposited in said safety deposit box shall be maintained therein, and shall at all times reflect the condition of the investments. A copy of such record shall be maintained by the Depository. Access to said box shall be only in the presence of the above named officials and officers of the Depository. The bond of the Depository shall secure said securities.

The County Auditor shall prescribe the system of accounts for said security record and the type of reports necessary thereto, and shall not less than once in each six months audit the same and count the securities in said safety deposit vault, and file a report thereof with the governing body of said county or Navigation District respectively, and also with the Depository. The duties herein imposed are official duties and are within the terms of the official bonds of the officers named who shall be responsible for the safe deposit and withdrawal of said securities. No securities shall be withdrawn from said safety deposit box except upon the written order of the Commissioners' Court, recorded in its minutes, a copy of which shall be furnished the Depository and the County Auditor. [Acts 1937, 45th Leg., p. 193, ch. 101, § 1.]

Section 2 of the Act of 1937 repealed conflicting laws.

Art. 838. [699] Annual report.—The County Treasurer of each county and the Treasurer of each city, Common and Independent School District Road District, Irrigation and Drainage District, and any

other political subdivision having the power to issue bonds or other evidences of debt, shall make an annual report to the State Comptroller on the first day of August, showing the condition of the Interest and Sinking Fund for each set of bonds, warrants, scrip warrants and amounts due banks of said county, city or district outstanding on the thirtieth day of June of each year, which said report shall be made under oath, and shall show:

1. All outstanding indebtedness of each such City, County, Common and Independent School District, Road District, Irrigation and Drainage District, and any other political subdivision having the power to issue bonds or other evidences of debt, including bonds, warrants, scrip warrants and amounts due banks, giving date when issued, the amount of each set of bonds, warrants, scrip warrants and amounts due banks, the rate of interest they bear and when they mature;

2. The tax levy in force to provide for the Interest and Sinking Fund on each set of bonds and the interest payable on all warrants and other indebtedness.

3. The amount on hand to the credit of the Interest and Sinking Fund of each set of said bonds, showing whether in cash or securities;

4. The amount received by the said Fund since last report, and from what source;

5. The disbursements from said Fund since last report, and for what purpose;

6. The amount of said bonds redeemed since last report, and the amount still outstanding.

Provided, however, that such Treasurers shall not be required to include in said Report an account of warrants and other evidences of debt which will become due before the 31st day of December of the year for which the report is made. [Acts 1899, p. 45; Acts 1931, 42nd Leg., p. 385, ch. 230, § 1.]

Art. 839. [700] Disbursements.—No city or county treasurer shall honor any draft upon the interest and sinking fund provided for any of the bonds of such city or county, nor pay out nor divert any of the same, except for the purpose of paying the interest on such bonds or for redeeming the same, or for investment in such securities as may be provided by law. [Acts 1899, p. 45.]

Art. 840. [701] Penalties.—Any treasurer who shall fail to make the reports provided for in the third article of this chapter, or who shall divert said fund or apply said fund for any other purpose than as permitted by the preceding article, shall be subject to a penalty of not less than five hundred nor more than one thousand dollars, to be recovered by the State, and in addition thereto, shall be liable for the amount of such fund so diverted. [Id.]

Art. 841. [702] Recovery.—The Comptroller, whenever the reports of any treasurer show that he has diverted said funds, or when he shall fail to make such reports, shall notify the Attorney General or the district attorney of the district in which such treasurer resides, or county attorney in counties in which there is no district attorney provided for by law, of the fact, who shall thereupon institute suit against such treasurer and his official bondsmen for the amount of such penalty and of said fund so diverted. The amount of such penalty so recovered shall be paid into the State Treasury, and the amount of the diverted fund so recovered shall be paid into the county or city treasury to the credit of the fund from which it was so diverted. [Id.]

Art. 842. Federal Farm Loan bonds.—All bonds issued under and by virtue of the Federal Farm Loan Act, approved by the President of the United States, July 17, 1916,[1] shall be a lawful investment for all fiduciary and trust funds in this State, and may be accepted as security for all public deposits where deposits of bonds or mortgages are authorized by law to be accepted. Such bonds shall be lawful investments for all funds which may be lawfully invested by guardians, administrators, trustees and receivers, for saving departments of banks incorporated under the laws of Texas, for banks, savings banks and trust companies chartered under the laws of Texas, and for all insurance companies chartered or transacting business under the laws of Texas, where investments are required or permitted by the laws of this State. [Acts 1917, p. 122.]

[1] 12 U.S.C.A. § 641 et seq.

Art. 842a. Securities issued by Federal Agencies; exchange by Building and Loan Associations of bonds with shareholders.—Hereafter, all mortgages, bonds, debentures, notes, collateral trust certificates, and other such evidences of indebtedness, issued or that hereafter may be issued under the terms and provisions of the National Housing Act, approved by the President of the United States on June 27, 1934, as amended [1] and as may hereafter be amended, and all "insured accounts" issued or that may hereafter be issued by any institution insured under the provisions of Title IV of the National Housing Act, approved June 27, 1934, as amended [2] and as may hereafter be amended, or any evidences of indebtedness or accounts that may be issued or insured by any lawful agency created thereunder, all mortgages, bonds, debentures, notes, collateral trust certificates, or other such evidences of indebtedness, which have been or which may hereafter be issued by the Federal Home Loan Bank Board, or any Federal Home Loan Bank, or the Home Owners' Loan Corporation, or by the Federal Savings and Loan Insurance Corporation, or by the Reconstruction Finance Corporation, or by the Federal Farm Loan Board, or by any Federal Land Bank, or by any National Mortgage Association, or by any entity, corporation or agency, which has been or which may be created by or authorized by any Act, which has been enacted or which may hereafter be enacted by the Congress of the United States, or by any amendment thereto, which has for its purpose the relief of, refinancing of or assistance to owners of mortgaged or encumbered homes, farms, and other real estate, and the improvement or financing or the making of loans on any real property, shall hereafter be lawful investments for all fiduciary and trust funds in this State, and may be accepted as security for all public deposits where deposits of bonds or mortgages are authorized by law to be accepted. Such mortgages, bonds, debentures, notes, collateral trust certificates and other such evidences of indebtedness, insured accounts shall be lawful investments for all funds which may be lawfully invested by guardians, administrators, trustees, and receivers, for building and loan associations, savings departments of banks, incorporated under the laws of Texas, for banks, savings banks and trust companies, chartered under the laws of Texas, and all insurance companies of every kind and character, chartered or transacting business under the laws of Texas, where investments are required or permitted by the laws of this State; providing further that where such mortgages, bonds, debentures, notes, collateral trust certificates, and other such evidences of indebtedness are issued against and secured by promissory notes, or other obligations, the payment of which is secured in whole or in part, by mortgage, deed of trust, or other valid first lien upon real estate situated in Texas, or where such mortgages, bonds, debentures, notes, collateral trust certificates, or other such evidences of indebtedness are acquired, directly or indirectly, in exchange for or in substitution of notes, or other obligations, secured by mortgage, deed of trust, or other valid first lien upon real estate situated in Texas, or where such "insured accounts" are issued by building and loan associations chartered under the laws of Texas or by Federal Savings and Loan Associations domiciled in Texas, then such mortgages, bonds, debentures, notes,

collateral trust certificates or other such evidences of indebtedness, "insured accounts", so issued and so secured, or so acquired or insured, shall be regarded for investment purposes by insurance companies as "Texas Securities", within the meaning of the laws of Texas governing such investments.

The provisions of this Act shall be cumulative of all other provisions of the Civil Statutes of the State of Texas, affecting the investment of funds or moneys by fiduciaries, guardians, administrators, trustees and receivers, building and loan associations, savings departments of banks, incorporated and doing business under the laws of Texas, commercial banks, savings banks and trust companies, chartered and doing business under the laws of Texas, insurance companies of any kind and character, chartered and transacting business under the laws of Texas, and all corporate creatures, organized and doing business under the laws of Texas.

It is hereby declared to be the legislative intent to enact a separate provision of this Act independent of all other provisions, and the fact that any phrase, sentence, or clause of this Act shall be declared unconstitutional, shall in no event affect the validity of any of the provisions hereof. [Acts 1933, 43rd Leg., p. 406, ch. 160, § 1; Acts 1935, 44th Leg., p. 33, ch. 12, § 1; Acts 1935, 44th Leg., p. 90, ch. 31, § 1; Acts 1941, 47th Leg., p. 1356, ch. 618, § 1.]

1 48 Stat. 1246.
2 12 U.S.C.A. §§ 1724–1730.
See, also, articles 416, ante, and 2298, 2547, 4180, post.

Art. 842a—1. Obligations wholly or partly insured by United States or state, investment in. —Savings and loan associations, banks, insurance companies, and other corporations or other organizations, similar or dissimilar, are hereby authorized to lend, and to buy and sell for their own account, obligations in which except as to value of property and dignity of lien thereon securing the obligation it is otherwise lawful for such investor to invest its own funds, (by direct loan or by purchase), if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States or by this State; or, if not so wholly insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States or by this State, does not exceed the amount permissible under the law of this State, and meets the requirements thereof as to value of property and dignity of lien thereon, provided; further authorizing that any such lender may make an unsecured loan not exceeding Five Hundred Dollars ($500), if at least one-half thereof is guaranteed pursuant to the Servicemen's Readjustment Act of 1944.1 [Acts 1945, 49th Leg., p. 315, ch. 230, § 1.]

1 38 U.S.C.A. § 693 et seq.
Section 2 of the Act of 1945 related to partial invalidity.

CHAPTER 9.—STATE RELIEF BONDS

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18. Cooperation with Federal Relief Agency.
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842f. Refunding Texas Relief Bonds, First Series.

Article 842b. Issuance of tax exempt bonds authorized.

Form and requisites; interest rate

Sec. 1. In conformity with the provisions of Section 51-A, Article 3, of the Constitution of the State of Texas, the Legislature of the State of Texas hereby issues Five Million, Five Hundred Thousand ($5,500,000.00) Dollars of bonds.

a. Such bonds are issued on the faith and credit of the State of Texas, but the redemption of any such bonds or the payment of interest thereon shall be made from sources other than a tax on real property and the indebtedness as evidenced by such bonds shall never become a charge against or lien upon any property, real or personal within this State. The bonds shall be known and designated as TEXAS RELIEF BONDS—First Series.

b. Such bonds shall be numbered consecutively, beginning with Number One and shall be in denominations of One Hundred ($100.00) Dollars each or such multiples thereof as may be determined by the Texas Bond Commission hereinafter created, aggregating, however, the sum of Five Million, Five Hundred Thousand ($5,500,000.00) Dollars.

c. They shall be dated October 15, 1933, and the principal of said bonds mature as follows:

$500,000.00 on October 15, 1935
$525,000.00 on October 15, 1936
$550,000.00 on October 15, 1937
$575,000.00 on October 15, 1938
$600,000.00 on October 15, 1939
$625,000.00 on October 15, 1940.
$650,000.00 on October 15, 1941
$700,000.00 on October 15, 1942
$775,000.00 on October 15, 1943

provided, however, that any amount of said bonds may be redeemed by the State, at its option, at any time on or after October 15, 1938.

d. They shall bear interest at the rate of four per cent (4%) per annum, payable semi-annually on April 16th and October 15th of each year, the first interest being due and payable on April 15, 1934.

e. The principal and interest shall be payable in lawful money of the United States upon presentation and surrender of bonds or proper coupons at the office of the Treasurer of the State of Texas at Austin, Texas.

f. They shall be exempt from taxation by the State, County, municipal or quasi municipal corporation, or any political subdivision of the State or any county.

g. Each bond shall be signed by the Governor, attested by the Secretary of State, under the seal of the State of Texas, countersigned by the State Comptroller of Public Accounts, approved as to form by the Attorney General of Texas and registered by the State Treasurer of Texas. The facsimile signatures of the Governor, Secretary of State and the State Comptroller of Public Accounts may be lithographed on the interest coupons of said bonds.

h. The form of said bonds, which shall have interest coupons attached to them, and the printing and/or engraving of same shall be provided for by the Commission and after being printed and/or engraved, signed, attested and countersigned by the proper officials, they shall be immediately deposited with the State Treasurer of Texas for registration and safe keeping. It shall be the duty of said officer to keep a record of said bonds so deposited with him in a special book procured and kept for that purpose. He shall also keep a record of any and all bonds delivered by him to the Texas Bond Commission for sale as hereinafter provided.

Texas Bond Commission

Sec. 2. For the purpose of selling such bonds and of performing such other duties as may be hereinafter imposed upon it, there is hereby created an official commission for the State of Texas, to be known as the "Texas Bond Commission," to be composed of three members as follows:

The Comptroller of Public Accounts, the State Treasurer, and the Attorney General, who shall serve without additional compensation.

Immediately upon the effective date of this Act, said Commission shall meet and elect one of its members as Chairman and another as Secretary, and the Secretary shall keep the minutes of all proceedings of the Commission in a book to be kept as a public record in the archives of his office. The Commission shall meet at any and all times as may be necessary to carry out the provisions hereof and the purposes for which it was created, upon the call of the Chairman or of any two members of the Commission.

Sale of bonds on application of Texas Relief Commission

Sec. 3. The sale of Five Million, Five Hundred Thousand ($5,500,000.00) Dollars of Texas Relief Bonds by the Texas Bond Commission is hereby authorized in the following manner:

The Texas Relief Commission, which is hereinafter provided for, shall make application to the Texas Bond Commission for the sale of such part of said Five Million, Five Hundred Thousand ($5,500,000.00) Dollars of bonds as, in its judgment, is needed to procure State money necessary for the relief of the unemployed and needy for a period of two months, and upon the filing of said application said Texas Bond Commission, shall sell the amount of bonds so requested by the Texas Relief Commission. For further periods, upon application of the Texas Relief Commission, said Texas Bond Commission is hereby directed to sell additional bonds, but the amount sold at any one time shall not exceed the amount, which is necessary to provide State funds sufficient to care for the needy and unemployed for a period of two months. Upon the sale by the Texas Bond Commission of any

portion of the Five Million, Five Hundred Thousand ($5,500,000.00) Dollars of Texas Relief Bonds as herein provided for, the said Bond Commission shall by order provide that the bonds shall mature over a period of nine years beginning with October 15, 1935 and in the same proportion as set out in Sub-section-c of Section 2 hereof. The order of the Bond Commission fixing the maturities shall be entered upon the minutes of the Commission. In no event shall the total amount of the bonds sold under authority of this Act exceed a total face value of Five Million, Five Hundred Thousand ($5,500,000.00) Dollars. No bond as provided for hereunder shall be sold from and after the 15th day of September, A. D. 1935. It is further provided that no officer or officers, board, commission, or any person whatsoever shall borrow from any government, or from any source, or permit advances of any amount whatsoever, for any of the purposes stated in Section 51-A, Article III of the Constitution in anticipation of the future issuance of bonds, and any such loan or advance shall be void and shall create no obligation against the State of Texas; and any officer of the State of Texas, or any officer or member of any Board or Commission of the State of Texas, participating in such attempted loan or advance shall be deemed guilty of high crimes and misdemeanors. Provided that loans and advances may be secured from the Federal Government to be paid out of the proceeds of the Five Million, Five Hundred Thousand ($5,500,000.00) Dollars of bonds hereby issued but not out of or against any other bonds than said Five Million Five Hundred Thousand ($5,500,000.00) Dollars of bonds.

Sale of bonds on competitive bidding

Sec. 4. The bonds authorized to be sold by this Act shall be sold by the Texas Bond Commission at a time and place to be designated by the Bond Commission and after advertisement published in three (3) newspapers of general public circulation in the State of Texas, which publication shall be made for at least once each week for two (2) consecutive weeks prior to the day said bonds are offered for sale, the advertisements specifying date, amount and maturities of the bonds, the rate of interest and such other provisions as the said Commission may deem proper. The sale shall be made upon sealed bids filed with the Secretary of said Bond Commission and accompanied by such earnest payment as the Bond Commission may direct, provided, however, that no bonds shall be sold for less than par and accrued interest. The said Bond Commission shall reserve the right to reject all bids, but in the event a bid is accepted, the State Treasurer, on order of the Texas Bond Commission, is directed to deliver said bonds to the purchasers when he shall have received for the credit of the State of Texas, current funds of the United States to the extent of the highest bid made for said bonds, which shall in no event be less than par and accrued interest. In event the Bond Commission rejects all bids, it shall be the duty of the Bond Commission to readvertise said bonds as above provided and again offer same for sale in the manner above provided. The Texas Bond Commission may also sell at private sale to the Reconstruction Finance Corporation or to any other governmental agency other than such agencies as are specifically prohibited from purchasing same by the provisions of this Act, the entire amount of bonds offered for sale by the Bond Commission on any particular date, or any part thereof, and it shall not be necessary as a prerequisite of its purchase of such bonds that the Reconstruction Finance Corporation or such other agency of government offering to buy said bonds shall make a sealed bid as required of persons and private concerns, and it shall not be necessary as a prerequisite of its purchase of said bonds that the Reconstruction Finance Corporation or other governmental agency file with the Bond Commission the earnest payment above referred to as required of persons and private concerns; provided, however, that the Bond Commission shall not sell to the Reconstruction Finance Corporation or other governmental agency any of said bonds at a price less than the par value thereof and accrued interest thereon. No Commission, directly or indirectly, shall be allowed upon the sale of said bonds or any of them.

The funds other than accrued interest received from the sale of said bonds shall be credited to the State Treasurer to a fund to be known as the "Relief Bond Fund." Any amounts received as accrued interest from the sale of said bonds shall be placed to the credit of a fund designated as "The Texas Relief Bond Sinking Fund." Both of said funds may be deposited in accordance with the depository laws of the State of Texas for the deposit of other State funds.

Investment of certain public funds in Relief Bonds prohibited

Sec. 5. No bonds sold by the Texas Bond Commission under the terms of this Act shall ever be purchased by, for, on account of, or out of the permanent fund of the University of Texas, Public Free School Fund, Highway Fund or any other fund now existing under the control of or for the use and maintenance of any institution of higher education in Texas or the public school system of this State or any eleemosynary institution of the State, or the sinking funds of any county in this State.

Disbursements by warrants of Comptroller of Public Accounts

Sec. 6. The funds belonging to the "Relief Bond Fund" shall be disbursed by warrants drawn by the Comptroller of Public Accounts on said fund in the payment of allocations made and approved by the Texas Relief Commission, which approval shall be reflected by the minutes of the Texas Relief Commission, signed by its Chairman and attested by its Secretary, and filed with the Comptroller of Public Accounts; provided that such warrants shall be issued by the Comptroller of Public Accounts against vouchers signed by the Director or someone authorized by him in writing to sign for the Director and countersigned by the Secretary of the Texas Relief Commission or by someone authorized by him in writing to countersign said vouchers by the Secretary, in amounts not exceeding in the aggregate the amount allocated to any payee, by the Texas Relief Commission as evidenced by its minutes as signed, attested and filed as hereinbefore provided.

Sinking fund

Sec. 7. Any and all bonds, as well as all interest thereon issued and sold under authority and direction of this Act, shall be redeemed in the following manner:

Each year after this Act becomes operative and until the bonds herein provided for have been retired, the State Treasurer of the State of Texas as he receives any and all moneys obtained for the use and benefit of the General Revenue Fund of the State of Texas, other than any tax on real property shall annually set up a special and separate fund, in anticipation of, and sufficient to meet, all interest and maturity requirements on said bonds for the fiscal year succeeding, which said fund shall be deposited to the credit of the "Texas Relief Bond Sinking Fund." Said Texas Relief Bond Sinking Fund shall be kept by said State Treasurer as a special fund, out of which the interest of said bonds shall be paid, and out of which said bonds shall be redeemed, and the same is hereby appropriated for the purpose of paying the interest and principal of the bonds authorized by this Act, it being the intention of the Legislature to set apart and preserve an adequate fund to pay off and discharge the principal and interest of said obligation as and when the same becomes due and payable.

And there is hereby specially appropriated for the years ending August 31, 1934, and August 31, 1935, an amount for each of said years out of said "Texas

Relief Bond Sinking Fund" equivalent to the amount of interest maturing on any and all outstanding bonds during each of said years, and the State Treasurer is hereby directed to make payment of said interest as it matures during each of said years upon presentation of coupons evidencing such.

Unsold bonds to be destroyed

Sec. 8. If on the twenty-sixth of August, A. D. 1935, all of the bonds which have been issued herein have not been sold, it shall be the duty of the State Treasurer in the presence of the other two members of the Commission to destroy by burning any unsold bonds and any interest coupons appended thereto, and after said bonds have been destroyed by burning as above provided, it shall be the duty of said members of said Commission to make a certificate in writing to the effect that said bonds were destroyed in accordance with the provisions of this law and giving the date on which said bonds were destroyed by the State Treasurer, and file said certificate in the office of the Secretary of State of Texas. As bonds mature and are paid they shall be forthwith destroyed and report of such filed in like manner.

Transfer of proceeds of bonds to sinking fund

Sec. 9. If at the time the Texas Relief Commission has ceased to function as a body there shall remain with the State Treasurer any sums of money which have been derived from the sale of any of said bonds, it shall be the duty of said State Treasurer to transfer said money out of said special account to the Texas Relief Bond Sinking Fund.

Proceeds of sale of bonds appropriated to Relief Commission

Sec. 10. The proceeds of the sale of any and all bonds not to exceed Five Million, Five Hundred Thousand ($5,500,000.00) Dollars under this Act sold as herein provided, during each of the years of the biennium ending August 31, 1935, are hereby appropriated to the Texas Relief Commission for the said biennium, for the purposes and subject to the restrictions as set forth in this Act. The expense for printing, lithographing and/or engraving the bonds, as well as all expense incident to the sale thereof, shall be paid out of said funds. [Acts 1933, 43rd Leg., 1st C.S., p. 118, ch. 37.]

Section 11 created the Texas Relief Commission (Art. 5190a, post), sections 12 to 19 were repealed by Acts 1934, 43rd Leg., 3rd C.S., p. 59, ch. 34, § 39 (Art. 842d, § 39, post), sections 20 and 21 were penal provisions (Pen.Code art. 107c, repealed), and section 22 provided that any decision that any section, clause or sentence of this act is unconstitutional should not affect the remainder.

The Texas Relief Commission referred to in this article was abolished by Acts 1934, 43rd Leg., 3rd C.S., p. 59, ch. 34, § 12 (see article 842d) and its powers and duties transferred to the State Board of Control. By Acts 1939, 46th Leg., p. 544 (see article 695c), the powers and duties were transferred to the Department of Public Welfare.

Art. 842c. Unsold Relief Bonds cancelled.

Texas Relief Bonds, First Series

Sec. 1. The Legislature of the State of Texas hereby cancels any unsold Texas Relief Bonds, First Series, issued under the authority of Chapter 37, Acts 1st Called Session 43rd Legislature;[1] but bonds

No. 1	to	No. 250,	incl.
" 501	"	" 762	"
" 1026	"	" 1300	"
" 1576	"	" 1863	"
" 2151	"	" 2450	"
" 2751	"	" 3062	"
" 3376	"	" 3700	"
" 4026	"	" 4375	"
" 4726	"	" 5113	"

of this series having been sold and delivered, are not canceled, but are declared to be valid and binding obligations of the State.

[1] Articles 842b, ante, and 5190a, post.

Texas Relief Bonds, Second Series

Sec. 2. In conformity with the provisions of Section 51-a, Article 3, of the Constitution of the State of Texas, the Legislature of the State of Texas hereby issued Seven Million Seven Hundred Fifty Thousand Dollars ($7,750,000.00) of bonds.

A. Such bonds are issued on the faith and credit of the State of Texas, but the redemption of any such bonds or the payment of interest thereon shall be made from sources other than a tax on real property, and the indebtedness as evidenced by such bonds shall never become a charge against or lien upon any property, real or personal, within this State. The bonds shall be known and designated as "Texas Relief Bonds, Second Series."

B. Such bonds shall be numbered consecutively, beginning with Number One, and shall be in denominations of Fifty Dollars ($50.00) and One Hundred Dollars ($100.00) each and such multiples of One Hundred Dollars as may be determined by the Texas Bond Commission, aggregating, however, the sum of Seven Million, Seven Hundred Fifty Thousand Dollars ($7,750,000.00).

C. They shall be dated March 1, 1934, and the principal of said bonds shall mature as follows:

$800,000.00 on March 1, 1936.
$850,000.00 on March 1, 1937.
$900,000.00 on March 1, 1938.
$950,000.00 on March 1, 1939.
$1,000,000.00 on March 1, 1940.
$1,050,000.00 on March 1, 1941.
$1,075,000.00 on March 1, 1942.
$1,125,000.00 on March 1, 1943.

D. They shall bear interest at the rate of four and a half per cent (4½%) per annum, payable semi-annually on March 1, and September 1, of each year, the first interest being due and payable on September 1, 1934.

E. The principal and interest shall be payable on the maturity date thereof in lawful money of the United States upon presentation and surrender of bonds or proper coupons at the office of the Treasurer of the State of Texas, at Austin, Texas.

F. They shall be exempt from taxation by the State, or by any county, municipal, or quasi-municipal corporation, or any political subdivision in or of the State or of any county.

G. Said bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas including funds of every character which can be deposited by the State of Texas, and shall be eligible to secure the deposit of any and all public funds of all counties, cities, or political subdivisions thereof and of Public Corporations of every character within the State of Texas; and said bonds shall be lawful and sufficient security for said deposits to the extent of one hundred per cent (100%) of the face amount of said relief bonds when accompanied by all unmatured coupons appurtenant thereto. This provision shall take precedence over all laws and parts of laws in conflict herewith, and all laws and parts of laws in conflict with this provision are hereby repealed to the extent of such conflict. The provisions of this subsection shall also apply to all bonds issued and sold under Chapter 37, Acts of the 1st Called Session of the 43rd Legislature.[1]

H. Said bonds shall be approved as to form by the Attorney General of the State of Texas, and after such approval each of said bonds shall be signed by the Governor, attested by the Secretary of State, under the seal of the State of Texas, and registered by the State Comptroller of Public Accounts, and the lithographing of the fac simile signature of such officers on the coupons shall be sufficient for such purpose.

I. Said bonds shall have interest coupons attached to them, and the form, printing and/or engraving of said bonds shall be provided for by the Commission,

and after being printed and/or engraved, signed, attested, and registered by the proper officials, the bonds shall be immediately deposited with the State Treasurer of Texas for registration and for safe-keeping. It shall be the duty of said officer to keep a record of said bonds so deposited with him in a special book procured and kept for that purpose. Said bonds shall be subject to registration in the name of the holder as to principal, on books kept for that purpose in the office of the Comptroller of Public Accounts, as evidenced by the endorsement upon the back thereof, and after such registration the principal thereof shall be payable only to the registered owner, his legal representatives or assigns. After being registered such bonds may again be made payable to bearer by endorsement thereon, and such bonds shall continue subject to registration and to payment to bearer at the option of the holder. The coupons attached to said bonds shall be and continue payable to bearer.

[1] Articles 842b, ante, and 5190a, post.

Sale of Bonds by Texas Bond Commission

Sec. 3. The Texas Relief Bonds, herein issued, shall be sold by the Texas Bond Commission, heretofore created by Chapter 37,[1] Acts 1st Called Session of the 43rd Legislature, in the following manner:

The Texas Relief Commission, as created by said Chapter 37, Acts 1st Called Session of the 43rd Legislature, shall make application to the Texas Bond Commission for the sale of such part of said Seven Million, Seven Hundred Fifty Thousand Dollars ($7,750,000.00) of bonds as, in its judgment, is needed to procure State money necessary for the relief of the unemployed and needy, and upon the filing of said application, said Texas Bond Commission shall sell the amount of bonds so requested by the Texas Relief Commission. Upon further application of the Texas Relief Commission, said Texas Bond Commission is hereby directed to sell additional bonds in the amount so applied for. Upon the sale by the Texas Bond Commission of any part of the Seven Million, Seven Hundred Fifty Thousand Dollars ($7,750,000.00) of Texas Relief Bonds, as herein provided for, the said Bond Commission shall by order provide that said installment of bonds shall mature over a period of eight (8) years beginning with March 1, 1936, and shall mature approximately in the same proportions as set out in subsection "C" of Section 2, hereof. The order of the Bond Commission designating the maturities shall be entered upon the minutes of the Commission. In no event shall the total amount of the bonds sold under authority of this Act exceed a total face value of Seven Million, Seven Hundred Fifty Thousand Dollars ($7,750,000.00). No bonds, as provided for hereunder, shall be sold from and after the fifteenth day of September, A. D. 1935. It is further provided that no officer, or officers, board, commission, or any person whatever shall borrow from any government, or from any source, or permit advances of any amount whatsoever, for any of the purposes stated in Section 51-a, Article 3, of the Constitution, in anticipation of the future issuance of bonds, and any such loan or advance shall be void, and shall create no obligation against the State of Texas, and any officer of the State of Texas or any officer or member of any board or commission of the State of Texas participating in such attempted loan or advance shall be guilty of high crimes and misdemeanors.

[1] Articles 842b, ante, and 5190a, post.

Sale of bonds on advertisement and competitive bidding

Sec. 4. The bonds authorized to be sold by this Act shall be sold by the Texas Bond Commission at a time and place to be designated by the Bond Commission, and, after advertisement, published in three (3) newspapers of general public circulation in the State of Texas, which publication shall be made once at least one week prior to the day said bonds are offered for sale, the advertisements specifying date, amount, and maturities of the bonds, the rate of interest, and such other provisions as the said Commission may deem proper. Said Commission may in its discretion publish a similar advertisement in one newspaper of general circulation outside the State of Texas. Offers for said bonds shall be made upon sealed bids filed with the Secretary of said Bond Commission and accompanied by such earnest payment as the Bond Commission may direct; the said Bond Commission shall reserve the right to reject all bids, but in the event a bid is accepted, the State Treasurer, on order of the Texas Bond Commission, is directed to deliver said bonds to the purchasers when he shall have received, for the credit of the State of Texas, current funds of the United States to the extent of the highest bid made for said bonds, which shall in no event be less than par and accrued interest. In the event bids are not received for the purchase of all or any part of said offer of bonds or in the event the Bond Commission rejects all bids for any or all of said offer of bonds said Commission may readvertise said bonds as above provided, or may in its discretion proceed to sell at private sale all or any part of same to the Reconstruction Finance Corporation, or to any other governmental agency or to any person, firm or corporation for cash and in such manner as provided by the Bond Commission, provided, however, that none of said bonds shall be sold for a price less than the par value thereof and accrued interest thereon. No commission, directly or indirectly, shall be allowed upon the sale of said bonds or any of them.

The funds other than accrued interest and/or premiums received from the sale of said bonds shall be credited by the State Treasurer to the "Relief Bond Fund." Any amounts received as accrued interest and/or premiums from the sale of said bonds shall be placed to the credit of a fund designated as "The Texas Relief Bond Sinking Fund, Second Series." Both of said funds shall be deposited in accordance with the depository laws of the State of Texas for the deposit of other State funds.

Redemption and retirement of bonds

Sec. 5. Texas Relief Bonds, First and Second Series, shall be redeemed and retired in the following manner:

In obedience to Section 51-a of Article 3 of the Constitution, which places upon the Legislature the duty to make such appropriations as are necessary to pay the interest and principal of such bonds as the same becomes due, there is hereby appropriated out of the General Revenue Fund of the State of Texas and/or from funds which would accrue to the General Revenue Fund of the State of Texas, accruing from sources other than a tax on real property, for each and every year that any Texas Relief Bonds, First Series, are outstanding, a sum sufficient to pay the principal and interest on such bonds as the same accrues or becomes due. From and after the effective date of this Act and until all Texas Relief Bonds, First Series, have been retired, the Treasurer of the State of Texas, as he receives any and all moneys (from sources other than taxes on real property) for the use and benefit of, and which under the present law would go to the General Revenue Fund of the State shall, first, before such moneys go into the General Revenue Fund, annually set up out of such moneys a special and separate fund in anticipation of and sufficient to meet all interest and maturity requirements on said bonds for the fiscal year next succeeding, which said fund shall be deposited to the credit of "Texas Relief Bonds Sinking Fund, First Series." Said "Texas Relief Bonds Sinking Fund, First Series," shall be kept by said State Treasurer as a separate fund out of which the interest on said Texas Relief Bonds, First Series, shall be paid, and out of which said bonds shall be redeemed and retired as they become due, and the same is here-

by appropriated for each and every year while such bonds or any of them are outstanding, for the purpose of paying the interest and principal of said bonds as the same accrues or becomes due, it being the intention of the Legislature, and the Legislature hereby does set apart, preserve and appropriate an adequate fund to pay off and discharge the principal and interest of said bonds as and when the same becomes due and payable.

In obedience to Section 51-a of Article 3 of the Constitution which places upon the Legislature the duty to make such appropriations as are necessary to pay the interest and principal of such bonds as the same becomes due, there is hereby appropriated out of the General Revenue Fund of the State of Texas, and/or from funds which would accrue to the General Revenue of the State of Texas, accruing from sources other than a tax on real property, for each and every year that any Texas Relief Bonds, Second Series, are outstanding, a sum sufficient to pay the principal and interest on such bonds as the same accrues or becomes due. From and after the effective date of this Act and until all Texas Relief Bonds, Second Series, have been retired, the Treasurer of the State of Texas, as he receives any and all moneys (from sources other than taxes on real property) for the use and benefit of, and which under the present law would go to the General Revenue Fund of the State shall first, before such moneys go into the General Revenue Fund, annually set up out of such moneys a special and separate fund in anticipation of and sufficient to meet all interest and maturity requirements on said bonds for the fiscal year next succeeding, which said fund shall be deposited to the credit of "Texas Relief Bonds Sinking Fund, Second Series." Said Texas Relief Bonds Sinking Fund, Second Series, shall be kept by said State Treasurer as a separate fund out of which the interest on said Texas Relief Bonds, Second Series, shall be paid, and out of which said bonds shall be redeemed and retired as they become due, and the same is hereby appropriated for each and every year while such bonds or any of them are outstanding, for the purpose of paying the interest and principal of said bonds as the same accrues or becomes due; it being the intention of the Legislature, and the Legislature hereby does set apart, preserve and appropriate an adequate fund to pay off and discharge the principal and interest of said bonds as and when the same becomes due and payable.

Interest payment

Sec. 6. The State Treasurer is hereby directed to pay the interest and principal of said Texas Relief Bonds, First and Second Series, as and when the same become due from the respective funds set aside for that purpose.

Bonds unsold after August 1, 1935 to be destroyed

Sec. 7. If, on the twenty-sixth of August, A. D. 1935, all of the bonds which have been issued herein have not been sold, it shall be the duty of the State Treasurer, in the presence of the other two members of the Commission, to destroy by burning any unsold bonds and any interest coupons appended thereto. After said bonds shall have been destroyed by burning as above provided, it shall be the duty of said members of said Commission to make a certificate in writing to the effect that said bonds were destroyed in accordance with the provisions of this law, giving the date on which said bonds were so destroyed by the State Treasurer, and file said certificate in the office of the Secretary of State of the State of Texas. As the bonds mature and are paid they shall be forthwith destroyed and report thereof filed in like manner. The bonds canceled in Section 1 of this Act shall be forthwith burned by the State Treasurer and report thereof filed in the manner hereinabove provided.

Transfer of proceeds to sinking fund

Sec. 8. If at the time the Texas Relief Commission has ceased to function as a body there shall remain with the State Treasurer any sums of money which have been derived from the sale of any of said bonds, it shall be the duty of said State Treasurer to transfer said money out of said special account to the "Texas Relief Bond Sinking Fund, Second Series."

Suits authorized on defaulted bonds

Sec. 9. Any owner or holder of any of the bonds herein issued, or any owner or holder of any of the bonds heretofore issued by the Legislature shall, in the event of default in the payment of said bonds, or of any interest payment thereon, have the right to institute a suit, or suits, in any Court of competent jurisdiction in Travis County, Texas, for the purpose of enforcing the payment thereof. Service of the process on the Attorney General shall be sufficient in any such suit against the State.

Appropriation of proceeds of bonds

Sec. 10. The proceeds of the sale of any and all bonds sold under the provisions of this Act are hereby appropriated to the Texas Relief Commission for the biennium, ending August 31, 1935, for the purposes and subject to the restrictions as set forth in this Act.

Administration of proceeds of bonds

Sec. 11. The funds derived from the sale of the bonds herein issued shall, except as herein otherwise specifically provided, be administered by the same agencies, in the same manner and for the same purposes as provided for in Chapter 37, Acts of the 1st Called Session of the 43rd Legislature.[1]

[1] Articles 842b, ante, and 5190a, post.

Disbursements by warrants of Comptroller

Sec. 12. The funds belonging to the "Relief Bond Fund" shall be disbursed by warrants drawn by the Comptroller of Public Accounts on said fund in the payment of allocations made and approved by the Texas Relief Commission, which approval shall be reflected by the minutes of the Texas Relief Commission, signed by its Chairman, and attested by its secretary, and filed with the Comptroller of Public Accounts. In case of emergency the Commission may authorize the disbursement of funds by the director under such rules and regulations as may be promulgated by the Commission and as may be evidenced by the minutes of said Commission; provided that such warrants shall be issued by the Comptroller of Public Accounts against vouchers signed by the Director, or by someone authorized by him in writing, and countersigned by the secretary of the Texas Relief Commission, or by someone authorized by him in writing, in amounts not exceeding in the aggregate the amount allocated by the Texas Relief Commission, to any payee, as evidenced by its minutes as signed, attested, and filed, as hereinbefore provided.

Appropriation for expenses

Sec. 13. Out of the funds herein appropriated there shall be paid the expense for printing, lithographing and/or engraving the bonds, and the signing of same as well as all expenses incident to the sale thereof and the purchase of the books and supplies incident to keeping the records therefor.

There is hereby appropriated out of the General Revenue the sum of One Thousand, Two Hundred Dollars ($1,200.00) for the year ending August 31, 1934, and Two Thousand, Four Hundred Dollars ($2,400.00), or as much thereof as is necessary for the year ending August 31, 1935, for salary of one record clerk in the office of State Comptroller.

There is also hereby appropriated out of the General Revenue Fund of the State of Texas the sum of Five Thousand Dollars ($5,000.00) for the year ending August 31, 1934, and Ten Thousand Dollars ($10,-

000.00), or as much thereof as is necessary for the year ending August 31, 1935, for the State Auditor's department for the purpose of auditing the expenditure of the Texas Relief Commission and furnishing each member of the Legislature and the press a quarterly statement of such expenditures. [Acts 1934, 43rd Leg., 2nd C.S., p. 31, ch. 15.]

Sections 14 to 19 were repealed by Acts 1934, 43rd Leg., 3rd C.S., p. 59, ch. 34, § 39 (Art. 842d, § 39, post), sections 20 and 21 were penal provisions (Pen.Code art. 107d, repealed) and section 22 provided that if any section were held unconstitutional such holding should not affect the remaining portions of the act.

The Texas Relief Commission referred to in this article was abolished by Acts 1934, 43rd Leg., 3rd C.S., p. 59, ch. 34, § 12 (see article 842d), and its powers and duties transferred to the State Board of Control. By Acts 1939, 46th Leg., p. 544 (see article 695c), the powers and duties were transferred to the Department of Public Welfare.

Art. 842d. Texas Relief Bonds, Third Series.

Issuance; form and requisites; exemption

Sec. 1. In conformity with the provisions of Section 51-a, Article 3, of the Constitution of the State of Texas, the Legislature of the State of Texas hereby issues Six Million Dollars ($6,000,000.00) of bonds. Said bonds shall be designated "Texas Relief Bonds, Third Series."

A. Such bonds are issued on the faith and credit of the State of Texas and are general obligations of the State, and the principal and interest of said bonds are payable from all moneys received by the State, except revenues derived from ad valorem taxes on real property, provided that the indebtedness as evidenced by said bonds shall never become a charge against or lien upon any property, real or personal, within this State.

B. Such bonds shall be numbered consecutively, beginning with Number One, and shall be in such denominations as shall be designated by the Texas Bond Commission, aggregating Six Million Dollars ($6,000,000.00).

C. They shall be dated October 15, 1934, and the principal of said bonds shall mature as follows:

$787,000 on October 15, 1935
555,000 on October 15, 1936
580,000 on October 15, 1937
620,000 on October 15, 1938
631,000 on October 15, 1939
660,000 on October 15, 1940
690,000 on October 15, 1941
720,000 on October 15, 1942
757,000 on October 15, 1943

D. They shall bear interest at a rate to be fixed by the Texas Bond Commission not to exceed four and one-fourth per cent (4¼%) per annum, payable semi-annually on April 15th and October 15th of each year, the first interest being due and payable on April 15, 1935.

E. The principal and interest shall be payable on the maturity dates thereof in lawful money of the United States of America in such funds as on the respective maturity dates shall be legal tender for debts due to the United States of America upon presentation and surrender of bonds or proper coupons at the office of the Treasurer of the State of Texas, at Austin, Texas.

F. They shall be exempt from taxation by the State of Texas or by any county, municipal or quasi-municipal corporation or by any other political subdivision in or of the State or of any county thereof.

G. Said bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas including funds of every character which can be deposited by the State of Texas, and shall be eligible to secure the deposit of any and all public funds of all counties, cities, or political subdivisions thereof and of public corporations of every character within the State of Texas; and said bonds shall be lawful and sufficient security for said deposits to the extent of one hundred per cent (100%) of the face amount of said relief bonds when accompanied by all unmatured coupons appurtenant thereto. This provision shall take precedence over all laws and parts of laws in conflict herewith, and all laws and parts of laws in conflict with this provision are hereby repealed to the extent of such conflict.

H. Said bonds shall be approved as to form and validity by the Attorney General of the State of Texas, and each of said bonds shall be signed by the Governor, attested by the Secretary of State, under the seal of the State of Texas, and registered by the State Comptroller of Public Accounts, and the lithographing of the facsimile signature of such officers on the coupons shall be sufficient for such purpose.

I. Said bonds shall have interest coupons attached to them, and the form, printing, lithographing and/or engraving of said bonds shall be provided for by the Texas Bond Commission, in installments or otherwise, and after being printed, lithographed and/or engraved, signed, attested, and registered by the proper officials, the bonds shall be immediately deposited with the State Treasurer of Texas for registration and for safekeeping. It shall be the duty of said officer to keep a record of said bonds so deposited with him in a special book procured and kept for that purpose. Said bonds shall be subject to registration in the name of the holder as to principal, on books kept for that purpose in the office of the Comptroller of Public Accounts, as evidenced by the endorsement upon the back thereof, and after such registration the principal thereof shall be payable only to the registered owner, his legal representatives or assigns. After being registered such bonds may again be made payable to bearer by endorsement thereon, and such bonds shall continue subject to registration and to payment to bearer at the option of the holder. The coupons attached to said bonds shall be and continue payable to bearer.

Sale by Texas Bond Commission

Sec. 2. The Texas Relief Bonds, herein issued, shall be sold by the Texas Bond Commission, heretofore created by Chapter 37, Acts of the First Called Session of the Forty-third Legislature,[1] in the following manner:

The State Board of Control shall make application to the Texas Bond Commission for the sale of such part of said Six Million Dollars ($6,000,000.00) of bonds as, in its judgment, is needed to procure State money necessary for the relief of the unemployed and needy, and upon the filing of said application, said Texas Bond Commission shall sell the amount of bonds so requested by the State Board of Control. Upon further application of the State Board of Control, said Texas Bond Commission is hereby directed to sell additional bonds in the amount so applied for. Upon the sale by the Texas Bond Commission of any part of the Six Million Dollars ($6,000,000.00) of Texas Relief Bonds, as herein provided for, the said Bond Commission shall by order provide that said installment of bonds shall mature over a period of nine (9) years beginning with October 15, 1935, and shall mature approximately in the same proportions as set out in subsection "C" of Section 1 hereof. The order of the Bond Commission designating the maturities shall be entered upon the minutes of the Commission. In no event shall the total amount of the bonds sold under authority of this Act exceed a total principal amount of Six Million Dollars ($6,000,000.00). No bonds, as provided for hereunder, shall be sold from and after the twenty-sixth day of August, 1935. It is further provided that no officer, or officers, board, commission, or any person whatever shall borrow from any government, or from any source, or permit advances of any amount whatsoever, for any of the purposes stated in Section 51-a, Article 3, of the Constitution, in anticipation of the future issuance of bonds, and any such loan or advance shall be void, and shall create no

obligation against the State of Texas, and any officer of the State of Texas or any officer or member of any board or commission of the State of Texas participating in such attempted loan or advance shall be guilty of high crimes and misdemeanors.

[1] Sections 842b, ante, and 5190a, post.

Method of selling bonds

Sec. 3. The bonds authorized to be sold by this Act shall be sold by the Texas Bond Commission at a time and place to be designated by the Bond Commission, and, after advertisement, published in three (3) newspapers of general public circulation in the State of Texas, which publication shall be made once, at least one (1) week prior to the day fixed for the sale of the bonds, the advertisements specifying date, amount, and maturities of the bonds, the rate of interest, and such other provisions as the said Commission may deem proper, provided that the notice of sale shall contain proper provisions offering said bonds on basis of different and various rates of interest, none of which shall exceed a rate of four and one-fourth per cent (4¼%) per annum. Said Commission may in its discretion publish a similar advertisement in one (1) newspaper of general circulation outside the State of Texas. Offers for said bonds shall be made upon sealed bids filed with the Secretary of said Bond Commission and accompanied by such earnest payment as the Bond Commission may direct; the said Bond Commission shall reserve the right to reject all bids, but in the event a bid is accepted, the State Treasurer, on order of the Texas Bond Commission, is directed to deliver said bonds to the purchasers when he shall have received, for the credit of the State of Texas, current funds of the United States in the amount of the accepted bid for said bonds, which shall in no event be less than par and accrued interest. In the event bids are not received for the purchase of all or any part of said offer of bonds or in the event the Bond Commission rejects all bids for any or all of said offer of bonds said Commission may readvertise said bonds as above provided, or may in its discretion proceed to sell at private sale all or any part of same to the Reconstruction Finance Corporation, or to any other governmental agency or to any person, firm or corporation for cash and in such manner as shall be provided for by the Bond Commission, provided, however, that none of said bonds shall be sold for a price less than the par value thereof and accrued interest thereon. No commission, directly or indirectly, shall be allowed upon the sale of said bonds or any of them.

The funds other than accrued interest and/or premiums received from the sale of said bonds shall be credited by the State Treasurer to the "Relief Bond Fund." Any amounts received as accrued interest and/or premiums from the sale of said bonds shall be placed to the credit of a fund designated as "The Texas Relief Bond Sinking Fund, Third Series." Both of said funds shall be deposited in accordance with the depository laws of the State of Texas for the deposit of other State Funds.

Redemption of bonds

Sec. 4. Texas Relief Bonds, Third Series, shall be redeemed and retired in the following manner:

In obedience to Section 51-a of Article 3 of the Constitution which places upon the Legislature the duty to make such appropriations as are necessary to pay the interest and principal of such bonds as the same become due, there is hereby appropriated out of all revenues received from all sources except from taxes on real property, for each and every year that any Texas Relief Bonds, Third Series, are outstanding, a sum sufficient to pay the principal and interest on such bonds as the same becomes due. From and after the effective date of this Act and until all Texas Relief Bonds, Third Series, have been retired, the Treasurer of the State of Texas, as he receives any and all moneys (from sources other than taxes on real property) for the use and benefit of, and which under the present law would go to the General Revenue Fund of the State shall first, before such moneys go into the General Revenue Fund, annually set up out of such moneys a special and separate fund in anticipation of and sufficient to meet all interest and maturity requirements on said bonds for the fiscal year next succeeding, which said fund shall be deposited to the credit of "Texas Relief Bonds Sinking Fund, Third Series." In event the revenues thus received by the Treasurer shall be insufficient to meet said anticipated maturities of principal and interest, there is hereby appropriated from revenues received from all sources other than from taxes on real property, not otherwise specifically appropriated by the Constitution, sufficient money to meet said anticipated maturities of principal and interest, and the Treasurer is hereby ordered to place said additional moneys in said Sinking Fund. Said Texas Relief Bonds Sinking Fund, Third Series, shall be kept by said State Treasurer as a separate fund out of which the interest on said Texas Relief Bonds, Third Series, shall be paid, and out of which said bonds shall be redeemed and retired as they become due, and the same is hereby appropriated for each and every year while such bonds, or any of them, are outstanding, for the purpose of paying the interest and principal of said bonds as the same becomes due; it being the intention of the Legislature, and the Legislature hereby does set apart, preserve and appropriate an adequate fund to pay off and discharge the principal and interest of said bonds as and when the same become due and payable.

Payments of interest by State Treasurer

Sec. 5. All duties imposed on the Treasurer in Section 4 hereof in reference to the "Texas Relief Bonds, Third Series," and the appropriation made to pay the principal and interest thereof, are likewise effective as to "Texas Relief Bonds, First Series" and "Texas Relief Bonds, Second Series." The State Treasurer is hereby directed to pay the interest and principal of said Texas Relief Bonds, First, Second and Third Series, as and when the same become due.

Destruction of unsold bonds

Sec. 6. If, on the twenty-sixth day of August, A. D. 1935, any of the bonds which have been authorized herein have not been sold, it shall be the duty of the State Treasurer, in the presence of the other two members of the Bond Commission, to destroy by burning any unsold bonds and all interest coupons appended thereto. After said bonds shall have been destroyed by burning, as above provided, it shall be the duty of said members of said Commission to make a certificate in writing to the effect that said bonds were destroyed in accordance with the provisions of this law, giving the date on which said bonds were so destroyed by the State Treasurer, and file said certificate in the office of the Secretary of State of the State of Texas. As the bonds mature and are paid they shall be forthwith destroyed and report thereon filed in like manner.

Transfer of unused funds by State Treasurer

Sec. 7. If, at the time the State Board of Control ceases to administer the duties imposed by this Act, there shall remain with the State Treasurer any sums of money which have been derived from the sale of any of said bonds, it shall be the duty of said State Treasurer to transfer said money out of said special account to the "Texas Relief Bond Sinking Fund, Third Series."

Suit on bonds in default

Sec. 8. Any owner or holder of any of the bonds herein issued, in the event [1] default in the payment of said bonds, or of any interest payment thereon, shall have and is hereby granted, the right to institute a suit, or suits, against the State of Texas in any court of competent jurisdiction in Travis County, Texas, for

the purpose of enforcing payment thereof. Service of the process on the Attorney General shall be sufficient in any such suit against the State.

[1] So in enrolled bill. Word "of" should probably be inserted.

Appropriation to State Board of Control

Sec. 9. The proceeds of the sale of any and all bonds sold under the provisions of this Act are hereby appropriated to the State Board of Control for the purposes and subject to the restrictions as set forth in this Act.

Payment of expenses

Sec. 10. Out of the fund herein appropriated there shall be paid the expense for printing, lithographing and/or engraving the bonds, and the signing of same as well as all expenses incident to the sale thereof and the purchase of the books and supplies incident to keeping the record therefor.

Allocation of funds

Sec. 11. [Repealed by Acts 1935, 44th Leg., p. 79, ch. 30, § 22.]

Texas Relief Commission abolished and relief funds to be distributed by State Board of Control

Sec. 12. The Texas Relief Commission as created by Chapter 37, Acts of the First Called Session of the Forty-third Legislature of Texas [1] shall be and the same is hereby abolished, set aside and shall be held for naught, and in lieu thereof and to take its place in the administration of relief funds obtained by either the sale of State bonds or Federal funds or from any other source, the distribution, regulation and disposal of any of said funds shall be placed in the hands of the State Board of Control and it shall have direct supervision of the said funds, their allocation, and distribution to the different counties, political subdivision and individuals in this State. It shall succeed to and is hereby granted all the powers and privileges granted to such Texas Relief Commission, and is hereby charged with the duties heretofore imposed by law upon such Commission, and all of said powers, privileges and duties shall be and the same are hereby imposed upon the State Board of Control. The Texas Relief Commission shall be an additional subdivision of the State Board of Control and shall be separate and apart from the other divisions of its work for the administration of the additional duties prescribed by this Act. The State Board of Control shall appoint a Chief of the Texas Relief Commission Division who shall be a citizen of this State and who shall be known as the Director of The Texas Relief Commission Division of the State Board of Control, and whose qualifications shall be such as in the opinion of the State Board of Control, regardless of previous experience, qualify him to perform the duties as prescribed by law and see that the laws of the State affecting relief are enforced, and the Board of Control shall also appoint an Assistant Director, a secretary and an Auditor for the Division. All of the above named employees shall be placed under a bond in the amount of Twenty-five Thousand Dollars ($25,000.00) each conditioned for the faithful performance of their duties. All premiums shall be payable out of relief funds. Said bonds shall be approved as to form by the Attorney General and as to solvency by the Board of Insurance Commissioners.

[1] Articles 842b, ante, and 5190a, post.

Relief Commission Division of Board of Control; powers and duties

Sec. 13. The Board of Control shall provide for such other employees as it may from time to time determine necessary, and the Director of the Relief Commission Division of the Board of Control, under the orders of the Board of Control, shall have the power to hire such necessary assistants as such Board of Control shall deem proper; and shall have supervision and control over all county boards of relief throughout the State, and shall do all and everything deemed proper and necessary in order to furnish needed relief to such persons as may be entitled thereto in this State in conformity with the provisions of this Act and other laws not in conflict therewith.

Compensation of members of Board of Control and employees

Sec. 14. [Repealed by Acts 1935, 44th Leg., p. 79, ch. 30, § 22.]

County Relief Boards

Sec. 15. County Relief Boards are hereby created in each county and shall consist of five (5) members. The members of these county boards shall be appointed by the Board of Control, and their duties shall be in an advisory capacity and shall not be administrative. Upon their selection by the Board of Control they shall be promptly notified by the Secretary of said Relief Commission Division and shall meet from time to time upon call of the chairman and advise with the county administrator in all matters pertaining to county relief. County Boards shall serve without compensation. Provided that in all counties of the State in which there is located a city with a population of One Hundred Thousand (100,000) or more, according to the last preceding Federal census, such county relief Board shall consist of seven (7) members.

The members of the present county relief boards shall continue to act in the capacity above outlined until a new board is appointed as above set forth. In case of removal, failure to qualify, resignation or death of any member of any county board, his successor shall be appointed in the same manner as herein provided.

County administrators and other necessary employees for carrying on relief in the several counties shall be appointed by the State Board of Control. The salaries of all such employees shall be fixed by the State Board of Control. Said county administrators and their employees shall be subject to removal by the State Board of Control.

Where practicable, the State Board of Control may authorize the employment of a county administrator to act as administrator for two or more counties and to set up such rules and regulations which will administer relief efficiently under such arrangement.

Use of organization of Texas Relief Commission

Sec. 16. Upon the passage of this Act, the Board of Control may utilize the present set-up throughout its entirety for a sufficient length of time until they can organize the Texas Relief Commission Division as contemplated herein, and shall have the power to utilize the whole force, organization, and general set-up of the Texas Relief Commission as it existed prior to the passage of this Act, until they can organize such Division of said Board of Control.

Board of Control charged with administration of relief; Federal funds

Sec. 17. The Board of Control shall be expressly charged with the proper administration of the funds provided for in this Act and of the relief problems arising thereunder and shall dispose of all property and equipment heretofore and hereafter purchased for use in distributing relief funds and in the administration of this Act and expend the proceeds therefrom as herein provided, and this Act and said Chapter 37, Acts of the First Called Session of the Forty-third Legislature,[1] and said Chapter 15, Acts of the Second Called Session of the Forty-third Legislature,[2] shall in all respects, save as to the provisions for the payment of said bonds, cease, and shall be in all respects repealed and become null and void as of May 1, 1935; provided, however, that the agencies charged with the duty of expending Federal funds in the State of Texas may direct the expenditure of said Federal funds through the State Board of Control and the set-up herein authorized, but without expense or obligation on the part of the State of Texas. Only those who are

bona fide resident citizens of the State of Texas shall be employed to perform any of the functions hereby authorized. Said Board of Control shall adopt strict rules and regulations to be faithfully observed by case workers to the end that those who can obtain work or provide at least a part of their keep shall do so under penalty of permanent removal from any and all classes of relief; and a list of the names of all persons receiving relief hereunder shall be open for inspection as other public records.

[1] Articles 842b, ante, and 5190a, post.
[2] Article 842c, ante.

County relief projects

Sec. 18. [Repealed by Acts 1935, 44th Leg., p. 79, ch. 30, § 22.]

Allocation of funds for city and county hospitals

Sec. 19. [Repealed by Acts 1935, 44th Leg., p. 79, ch. 30, § 22.]

Reports to Legislature

Sec. 20. The Board of Control is directed to make a report and recommendation to the Regular Session of the Forty-fourth Legislature on or before March 15, 1935, as to the permanent rehabilitation of persons on the relief rolls of the State of Texas.

Temporary relief by County Administrator

Sec. 21. The County Administrator may place persons temporarily upon the relief rolls of his county if the necessity creates an emergency.

Discharge of employees for political activity

Sec. 22. Any case worker, county administrator or other employee engaged under the provisions of this Act who shall engage himself in the political interest of any candidate or who shall attempt to influence any voter on any political issue, shall be immediately discharged upon being proved guilty of such activity and shall never again be the beneficiary of the funds authorized by this Act, either as an employee or as a relief subject.

Persons refusing employment to be denied further relief

Sec. 23. If and when it has been shown that employment at the prevailing wage scale of the county has been offered a person who is physically able to work who is upon the relief rolls and that said person has refused to accept such employment at the prevailing wage scale, it shall then be the duty of the County Administrator to refuse further relief to said person and in addition thereto, shall notify the State Board of Control of the name, address, and circumstances of such case.

Cooperation with Federal relief agency

Sec. 24. The Board of Control is hereby directed to seek the co-operation of the Federal relief agency so that changes may be procured in the Federal rules and regulations applicable to the expenditure of Federal funds and funds expended and contributed to jointly by this State and the Federal Government; said changes to be procured so that the relief funds can be more economically and judiciously expended, and so that the relief program will not hamper the recovery of the farming, ranching and industrial activities of this State.

Percentage for hospital services

Sec. 25. [Repealed by Acts 1935, 44th Leg., p. 79, ch. 30, § 22.]

Percentage for indigent tubercular patients

Sec. 26. The State Board of Control is hereby authorized to use not to exceed three per cent (3%), or so much thereof as may be necessary, of the proceeds of the Texas Relief Bonds, herein authorized, for the hospitalization of indigent tubercular patients who are on the relief rolls in recognized established tuberculosis sanatoria (other than in the State Tuberculosis Sanatorium) within this State; provided that the applications and requirements for relief hereunder shall conform to those for admission to the State Sanatorium, save and except, that the prohibition against negro patients shall not apply to this Act, and the superintendent of the State Tuberculosis Sanatorium, subject to the approval of the State Board of Control, is authorized, empowered, and directed to select and designate such sanatoria for the treatment of such patients, and to enter into contracts with such sanatoria for the care of such patients; provided further, the amount authorized to be expended for services, including board, laundry, room, medicines and medical attention, shall not exceed the sum of Two Dollars and Fifty Cents ($2.50) per day per patient. Provided, further, that of the funds herein allocated there is appropriated the sum of Five Thousand Dollars ($5,000.00), or so much thereof as may be necessary, to be expended under the direction of the Superintendent of the State Tuberculosis Sanatorium for an assistant or assistants and clerical help and to pay office and traveling expenses necessary for the purpose of carrying this Act into effect.

Allocation for State Sanatorium

Sec. 27. [Repealed by Acts 1935, 44th Leg., p. 79, ch. 30, § 22.]

Percentage for distribution of food and clothing

Sec. 28. The State Board of Control is hereby authorized to use not to exceed one per cent (1%), or so much thereof as may be necessary, of the proceeds of the Texas Relief Bonds for the purpose of distributing food and/or clothing supplied by any agency of the Federal and/or State governments, in instances where the Federal government will not bear the cost of such distribution.

Distribution of Federal funds

Sec. 29. In the event Federal funds alone are to be distributed by this agency herein created, then the Board of Control shall have the power to accept such funds and administer and distribute same.

Relief to bona fide residents

Sec. 30. Provided that no funds derived from the sale of the bonds issued shall be disbursed to or expended for the benefit of any citizen who has not been a bona fide resident of the State of Texas for a period of one (1) year, immediately preceding application for relief, provided this shall not apply to an infant under the age of one (1) year.

Disbursements by warrants of Comptroller of Public Accounts

Sec. 31. The funds belonging to the "Relief Bond Fund" shall be disbursed by warrants drawn by the Comptroller of Public Accounts on said fund in the payment of allocations made and approved by the State Board of Control, which approval shall be reflected by the minutes of the Board of Control, signed by its Chairman, and attested by its Secretary provided for herein, and filed with the Comptroller of Public Accounts. In case of emergency the Board of Control may authorize the disbursement of funds by the Director under such rules and regulations as may be promulgated by the Board of Control and as may be evidenced by the minutes of said Board of Control; provided that such warrants shall be issued by the Comptroller of Public Accounts against vouchers signed by the Director, or by someone authorized by him in writing, and countersigned by the Secretary, as herein provided, or by someone authorized by him in writing, in amounts not exceeding in the aggregate the amount allocated by the Board of Control, to any payee, as evidenced by its minutes as signed, attested, and filed, as hereinbefore provided.

Rules and regulations for purchase of supplies

Sec. 31-a. The Board of Control is hereby directed to promulgate rules and regulations for the purchase of supplies for relief and requirement for bids on same.

Nepotism prohibited

Sec. 32. [Repealed by Acts 1935, 44th Leg., p. 79, ch. 30, § 22.]

Enforcement of Act and provision for efficient service

Sec. 33. The Board of Control is hereby directed to make such rules and regulations as may be necessary properly to enforce this Act, and shall have authority, in the event some division should become overloaded, to transfer or change employees from one position to another in the same division, or to cause to be changed employees from one division to another, as in their judgment would cause more efficient service to be rendered.

Penal provisions

Secs. 34–36. See Pen.Code, art. 107e.

Cooperation with State agencies

Sec. 37. The State Board of Control is hereby authorized to co-operate with other agencies and/or departments of the State Government in formulating plans for other feasible work relief projects. The State Reclamation Engineer, State Board of Water Engineers, State Forester, all State Educational Institutions and other departments and agencies of the State government are hereby instructed and required to co-operate with the State Board of Control in formulating plans for work projects and it is their duty to furnish said Board of Control all information and data and to provide all technical reports desired concerning any matter under the control of such departments, provided, however, in no event shall any of the funds derived from the sale of bonds be used for the purpose of securing any technical reports which may be supplied by any existing department of the State Government.

Records

Sec. 38. All records, papers, accounts, data, books and documents belonging to the present Texas Relief Commission shall be turned over to the State Board of Control, and all such records, papers, accounts, data, books and documents shall be kept by the Texas Relief Commission Division of the State Board of Control and shall become a part of the records of said Texas Relief Commission Division of the State Board of Control. At the expiration date of this Act, all records of the Texas Relief Commission Division of the State Board of Control shall be delivered to and be preserved by the Secretary of State as public records.

Majority vote in Board of Control

Sec. 38-a. The Board of Control in carrying out the provisions of this Act shall act by majority vote.

Repeals

Sec. 39. Subsections 1, 2, 3, 4, and 6 of Section 11, and all of Sections 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of Chapter 37, Acts of the First Called Session of the Forty-third Legislature,[1] and all of Sections 14, 15, 16, 17, 18, 19, 20 and 21 of Chapter 15, Acts of the Second Called Session of the Forty-third Legislature [2] are hereby repealed.

[1] Article 5190a, subsections 1–4, 6, post; article 842b, sections 12–19, ante, Penal Code, article 107c.

[2] Article 842c, sections 14–19, ante and Penal Code, article 107d.

Partial invalidity

Sec. 40. If any Section, clause or sentence in this Act should ever be held to be unconstitutional, such holding shall not affect the remaining portions hereof. [Acts 1934, 43rd Leg., 3rd C.S., p. 59, ch. 34.]

The Texas Relief Commission referred to in this article was abolished by Acts 1934, 43rd Leg., 3rd C.S., p. 59, ch. 34, § 12 (see article 842d), and its powers and duties transferred to the State Board of Control. By Acts 1939, 46th Leg., p. 544 (see article 695c), the powers and duties were transferred to the Department of Public Welfare.

Art. 842e. Texas Relief Bonds, Fourth Series.

Issuance; form and requisites; exemption

Sec. 1. In conformity with the provisions of Section 51-a, Article 3, of the Constitution of the State of Texas, the Legislature of the State of Texas hereby issues Three Million, Five Hundred Thousand Dollars ($3,500,000.00) of bonds. Said bonds shall be designated "Texas Relief Bonds, Fourth Series".

A. Such bonds are issued on the faith and credit of the State of Texas and are general obligations of the State, and the principal and interest of said bonds are payable from all monies received by the State, except revenues derived from ad valorem taxes on real property, provided that the indebtedness as evidenced by said bonds shall never become a charge against or lien upon any property, real or personal, within this State.

B. Such bonds shall be numbered consecutively, beginning with Number One, and shall be in such denominations as shall be designated by the Texas Bond Commission, aggregating Three Million Five Hundred Thousand Dollars ($3,500,000.00).

C. They shall be dated April 1, 1935, and the principal of said bonds shall mature as follows:

$387,750.00 on April 1, 1936
$400,750.00 on April 1, 1937
$414,750.00 on April 1, 1938
$428,750.00 on April 1, 1939
$443,750.00 on April 1, 1940
$458,750.00 on April 1, 1941
$474,750.00 on April 1, 1942
$490,750.00 on April 1, 1943

D. They shall bear interest at a rate to be fixed by the Texas Bond Commission not to exceed four per cent (4%) per annum, payable semi-annually on April 1st and October 1st of each year, the first interest being due and payable on October 1, 1935.

E. The principal and interest shall be payable on the maturity dates thereof in lawful money of the United States of America in such funds as on the respective maturity dates shall be legal tender for debts due to the United States of America upon presentation and surrender of bonds or proper coupons at the office of the Treasurer of the State of Texas, at Austin, Texas.

F. They shall be exempt from taxation by the State of Texas or by any county, municipal or quasi-municipal corporation or by any other political subdivision in or of the State or of any county thereof.

G. Said bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, including funds of every character which can be deposited by the State of Texas, and shall be eligible to secure the deposit of any and all public funds of all counties, cities, or political subdivisions thereof and of public corporations of every character within the State of Texas; and said bonds shall be lawful and sufficient security for said deposits to the extent of one hundred per cent (100%) of the face amount of said relief bonds when accompanied by all unmatured coupons appurtenant thereto. This provision shall take precedence over all laws and parts of laws in conflict herewith, and all laws and parts of laws in conflict with this provision are hereby repealed to the extent of such conflict.

H. Said bonds shall be approved as to form and validity by the Attorney General of the State of Texas, and each of said bonds shall be signed by the Governor, attested by the Secretary of State, under the seal of the State of Texas, and registered by the State Comptroller of Public Accounts, and the lithographing of the facsimile signature of such officers on the coupons shall be sufficient for such purpose.

I. Said bonds shall have interest coupons attached to them, and the form, printing, lithographing and/or engraving of said bonds shall be provided for by the Texas Bond Commission, in installments or otherwise, and after being printed, lithographed, and/or engraved,

signed, attested, and registered by the proper officials, the bonds shall be immediately deposited with the State Treasurer of Texas for registration and for safe-keeping. It shall be the duty of said officer to keep a record of said bonds so deposited with him in a special book procured and kept for that purpose. Said bonds shall be subject to registration in the name of the holder as to principal, on books kept for that purpose in the office of the Comptroller of Public Accounts, as evidenced by the endorsement upon the back thereof, and after such registration the principal thereof shall be payable only to the registered owner, his legal representatives or assigns. After being registered such bonds may again be made payable to bearer by endorsement thereon, and such bonds shall continue subject to registration and to payment to bearer at the option of the holder. The coupons attached to said bonds shall be and continue payable to bearer.

Sale by Texas Bond Commission

Sec. 2. The Texas Relief Bonds, herein issued, shall be sold by the Texas Bond Commission, heretofore created by Chapter 37, Acts of the First Called Session of the Forty-third Legislature,[1] in the following manner:

The State Board of Control shall make application to the Texas Bond Commission for the sale of such part of said Three Million Five Hundred Thousand Dollars ($3,500,000.00) of bonds, as, in its judgment, is needed to procure State money necessary for the relief of the unemployed and needy, and upon the filing of such application, said Texas Bond Commission shall sell the amount of bonds so requested by the State Board of Control. Upon further application of the State Board of Control, said Texas Bond Commission is hereby directed to sell additional bonds in the amount so applied for. Upon the sale by the Texas Bond Commission of any part of the Three Million Five Hundred Thousand Dollars ($3,500,000.00) of Texas Relief Bonds, as herein provided for, the said Bond Commission shall by order provide that said installment of bonds shall mature over a period of eight (8) years beginning with April 1, 1936, and shall mature approximately in the same proportions as set out in Subsection "C" of Section 1 hereof. The order of the Bond Commission designating the maturities shall be entered upon the minutes of the Commission. In no event shall the total amount of the bonds sold under authority of this Act exceed a total principal amount of Three Million Five Hundred Thousand Dollars ($3,500,000.00). No bonds, as provided for hereunder, shall be sold from and after the 26th day of August, 1935. It is further provided that no officer, or officers, board, commission, or any person whatever shall borrow from any government, or from any source, or permit advances of any amount whatsoever, for any of the purposes stated in Section 51-a, Article 3 of the Constitution, in anticipation of the future issuance of bonds, and any such loan or advance shall be void, and shall create no obligation against the State of Texas, and any officer of the State of Texas or any officer or member of any board or commission of the State of Texas participating in such attempted loan or advance shall be guilty of high crimes and misdemeanors.

[1] Articles 842b, ante, and 5190a, post.

Method of selling bonds

Sec. 3. The bonds authorized to be sold by this Act shall be sold by the Texas Bond Commission at a time and a place to be designated by the Bond Commission, and, after advertisement, published in three (3) newspapers of general public circulation in the State of Texas, which publication shall be made once, at least one (1) week prior to the day fixed for the sale of the bonds, the advertisements specifying date, amount, and maturities of the bonds, the rate of interest, and such other provisions as the said Commission may deem proper, provided that the notice of sale shall contain proper provisions offering said bonds on basis of different and various rates of interest, none of which shall exceed a rate of four per cent (4%) per annum. Said Commission may in its discretion publish a similar advertisement in one (1) newspaper of general circulation outside the State of Texas. Offers for said bonds shall be made upon sealed bids filed with the Secretary of said Bond Commission and accompanied by such earnest payment as the Bond Commission may direct; the said Bond Commission shall reserve the right to reject all bids, but in the event a bid is accepted, the State Treasurer, on order of the Texas Bond Commission is directed to deliver said bonds to the purchasers when he shall have received, for the credit of the State of Texas, current funds of the United States in the amount of the accepted bid for said bonds, which shall in no event be less than par and accrued interest. In the event bids are not received for the purchase of all or any part of said offer of bonds or in the event the Bond Commission rejects all bids for any or all of said offer of bonds, said Commission may readvertise said bonds as above provided, or may, in its discretion proceed to sell at private sale all or any part of same to the Reconstruction Finance Corporation, or to any other governmental agency or to any person, firm or corporation for cash and in such manner as shall be provided for by the Bond Commission, provided, however, that none of said bonds shall be sold for a price less than the par value thereof and accrued interest thereon. No commission, directly or indirectly, shall be allowed upon the sale of said bonds or any of them.

The funds other than accrued interest and/or premiums received from the sale of said bonds shall be credited by the State Treasurer to the "Relief Bond Fund". Any amounts received as accrued interest and/or premiums from the sale of said bonds shall be placed to the credit of a fund designated as "The Texas Relief Bond Sinking Fund, Fourth Series". Both of said funds shall be deposited in accordance with the depository laws of the State of Texas for the deposit of other State Funds.

Redemption of bonds

Sec. 4. Texas Relief Bonds, Fourth Series, shall be redeemed and retired in the following manner:

In obedience to Section 51-a of Article 3 of the Constitution which places upon the Legislature the duty of making such appropriations as are necessary to pay the interest and principal of such bonds as the same become due, there is hereby appropriated out of all revenues received from all sources except from taxes on real property, for each and every year that any Texas Relief Bonds, Fourth Series, are outstanding, a sum sufficient to pay the principal and interest on such bonds as the same becomes due. From and after the effective date of this Act and until all Texas Relief Bonds, Fourth Series, have been retired, the Treasurer of the State of Texas, as he receives any and all monies (from sources other than taxes on real property) for the use and benefit of, and which under the present law would go to the General Revenue Fund of the State shall first, before such monies go into the General Revenue Fund, annually set up out of such monies a special and separate fund in anticipation of and sufficient to meet all interest and maturity requirements on said bonds for the fiscal year next succeeding, which said fund shall be deposited to the credit of "Texas Relief Bonds Sinking Fund, Fourth Series". In event the revenues thus received by the Treasurer shall be insufficient to meet said anticipated maturities of principal and interest, there is hereby appropriated from revenues received from all sources other than from taxes on real property, not otherwise specifically appropriated by the Constitution, sufficient money to meet said anticipated maturities of principal and interest, and the Treasurer is hereby ordered to place said additional monies in the said Sinking Fund. Said Texas Relief Bonds Sinking Fund, Fourth Series,

shall be kept by said State Treasurer as a separate fund out of which the interest on said Texas Relief Bonds, Fourth Series, shall be paid, and out of which said bonds shall be redeemed and retired as they become due, and the same is hereby appropriated for each and every year while such bonds, or any of them are outstanding, for the purpose of paying the interest and principal of said bonds as the same become due; it being the intention of the Legislature, and the Legislature hereby does set apart, preserve and appropriate an adequate fund to pay off and discharge the principal and interest of said bonds as and when the same become due and payable.

Destruction of unsold bonds

Sec. 5. If, on the 26th day of August, A. D. 1935, any of the bonds which have been authorized herein have not been sold, it shall be the duty of the State Treasurer, in the presence of the other two (2) members of the Bond Commission, to destroy by burning any unsold bonds and all interest coupons appended thereto. After said bonds shall have been destroyed by burning, as above provided, it shall be the duty of said members of said Commission to make a certificate in writing to the effect that said bonds were destroyed in accordance with the provisions of this law, giving the date on which said bonds were so destroyed by the State Treasurer, and file said certificate in the office of the Secretary of State of the State of Texas. As the bonds mature and are paid, they shall be forthwith destroyed and report thereon filed in like manner.

Transfer of unused funds by State Treasurer

Sec. 6. If, at the time the State Board of Control ceases to administer the duties imposed by this Act, there shall remain with the State Treasurer any sums of money which have been derived from the sale of any of said bonds, it shall be the duty of said State Treasurer to transfer said money out of said special account to the "Texas Relief Bond Sinking Fund, Fourth Series."

Suit on bonds in default

Sec. 7. Any owner or holder of any of the bonds herein issued, in the event of default in the payment of said bonds, or of any interest payment thereon, shall have and is hereby granted, the right to institute a suit, or suits, against the State of Texas, in any court of competent jurisdiction in Travis County, Texas, for the purpose of enforcing payment thereof. Service of the process on the Attorney General shall be sufficient in any such suit against the State.

Appropriations to State Board of Control

Sec. 8. The proceeds of the sale of any and all bonds sold under the provisions of this Act are hereby appropriated to the State Board of Control for the purpose and subject to the restrictions as set forth in this Act.

Payment of expenses

Sec. 9. Out of the fund herein appropriated there shall be paid the expense of printing, lithographing, and/or engraving the bonds, and the signing of same as well as all expenses incident to the sale thereof and the purchase of the books and supplies incident to keeping the record therefor.

Expenditure of balances of previously sold bonds

Sec. 10. The State Board of Control is authorized and empowered to expend from any unexpended balance all the cash proceeds of the sale of any Texas Relief Bonds heretofore sold and remaining available on effective date of this Act, the sum not to exceed Seven Hundred Fifty Thousand Dollars ($750,000.00) for the remainder of the month of March, and Seven Hundred Fifty Thousand Dollars ($750,000.00) for the month of April, 1935, provided that any and all sums not expended during the months of March and April may be expended by the State Board of Control during any succeeding month or months.

Expenditure limited

Sec. 11. Provided that the State Board of Control is prohibited from expending more than Four Hundred Thousand Dollars ($400,000.00) per month for the months of May, June, July, August, September, October and November, and Seven Hundred Thousand Dollars ($700,000.00) for the month of December, 1935. Provided further, that any and all of such funds not expended during the month for which allocated may be expended by the State Board of Control during each succeeding month or months.

Extension of powers and duties of Relief Commission Division of State Board of Control

Sec. 12. (a) That all of the rights, powers, and duties of the Relief Commission Division of the State Board of Control, as defined and conferred by Chapter 34, Acts of the Third Called Session of the Forty-third Legislature,[1] are in all things hereby confirmed and extended; it not being the intention of the Legislature, by this Act, to affect or repeal those Sections of said Chapter 34, not herein expressly changed or repealed.

(b) The State Board of Control shall be expressly charged with the administration and expenditure of the funds derived from the sale of bonds herein issued and of the relief problems arising thereunder. They shall dispose of all property and equipment heretofore and hereafter purchased for use in distributing relief funds, which funds shall be used for the relief of unemployables; provided, however, said funds may, in the discretion of the Board of Control, be used also for the relief of the employables; provided, the Board of Control shall require the employment of competent persons who are on relief for the administration of said relief in preference to persons who are not on relief in order that these funds may be used most economically.

(c) The State Board of Control and the agencies herein provided for may also direct the expenditure of said funds if such agencies are required by the Federal Government, without expense or obligation, however, on the part of the State of Texas. Only those who are bona fide resident citizens of the State of Texas shall be employed to perform any of the functions hereby authorized. Said Board of Control shall adopt strict rules and regulations to be faithfully observed by case workers to the end that those who can obtain work or provide at least a part of their keep shall do so under penalty of permanent removal from any and all classes of relief; and a list of the names of all persons receiving relief hereunder shall be open for inspection as other public records.

(d) The Board of Control shall use not less than One Hundred Thousand Dollars ($100,000.00) of the three per cent (3%) authorized in Section 26 of Chapter 34, Acts of the Third Called Session of the Forty-third Legislature, for the purpose of building and equipping a permanent building or buildings at the State Sanatorium at Sanatorium, Texas. The Board of Control may contract as now provided by General Law for the construction of said building and shall require the contractor to use all Texas labor and preference shall be given to laborers who may be eligible for relief in Texas. The building or buildings, when completed, shall be used under the direction of the Board of Control.

(e) The State Board of Control is hereby authorized to use not to exceed four per cent (4%), or so much thereof as may be necessary, of the proceeds of the Texas Relief Bonds herein authorized for the hospitalization of indigent tubercular patients who are on the relief rolls in recognized established tuberculosis sanatoria (other than in the State Tuberculosis Sanatorium) within this State; provided that the applications and requirements for relief hereunder shall conform to those for admission to the State Sanatorium, save and except that the prohibition against negro patients shall not apply to this Act, and the Superintendent of the

State Tuberculosis Sanatorium, subject to the approval of the State Board of Control, is authorized, empowered and directed to select and designate such sanatoria for the treatment of such patients and to enter into contracts with such sanatoria for the care of such patients; provided, further, that the amount authorized to be expended for services, including board, laundry, room, medicine and medical attention shall not exceed the sum of Two Dollars and Fifty Cents ($2.50) per day per patient; providing further, that of the funds herein allocated there is appropriated the sum of Two Thousand Five Hundred Dollars ($2,500.00), or so much thereof as may be necessary, to be expended under the direction of the Superintendent of the State Tuberculosis Sanatorium, for an assistant or assistants and clerical help and to pay office and traveling expenses necessary for the purposes of carrying this Act into effect; provided further, that the Board of Control may continue the hospitalization of such patients in such recognized established tuberculosis sanatoria and pay for such hospitalization out of any remaining available Texas Relief Funds until funds from the sale of the Texas Relief Bonds, Fourth Series, are available and said funds so expended shall be deducted from the four per cent (4%) herein authorized to be expended for said purpose out of the proceeds from the sale of Texas Relief Bonds, Fourth Series, so that in no event shall said sum so expended for said purpose exceed four per cent (4%) of the proceeds from the sale of Texas Relief Bonds, Fourth Series; and in the event that relief funds are not available prior to the receipt of funds from the sale of Texas Relief Bonds, Fourth Series, for such purposes then and in that event, the said Board of Control is hereby authorized to continue the hospitalization of such indigent tubercular patients in said recognized established tuberculosis sanitoria until said funds from the sale of Texas Relief Bonds, Fourth Series, are available and to pay for such hospitalization of said patients from the proceeds from the sale of said Texas Relief Bonds, Fourth Series, after said funds are available, provided that in no event shall the sum so expended exceed four per cent (4%) of the proceeds from the sale of said Texas Relief Bonds, Fourth Series.

(f) The Board of Control is hereby directed to use two and one-half per cent (2½%) or so much thereof as may be necessary, of the proceeds of the Texas Relief Bonds herein authorized for the payment of hospital services, and such services shall be available to persons who are eligible for relief under the terms of this Act, in need of hospital services and who are unable to bear such expense. Provided, however, that the amount authorized to be expended for such purposes shall not exceed Two Dollars and Fifty Cents ($2.50) per day per patient. Such hospitalization shall be authorized only in cases where special care is essential to the preservation of life and health, and the same cannot be otherwise adequately secured.

(g) The Board of Control is hereby authorized and empowered to use any funds that it may receive from the Federal Government, or any agency thereof, and any equipment and supplies therefrom, for the purpose of processing and preserving for human use or consumption any food or clothing products for use by the citizens of this State eligible for relief granted under the laws of this State and under such rules and regulations as may be prescribed by the said Board of Control.

(h) The State Board of Control is hereby authorized to use not to exceed one per cent (1%) or so much thereof as may be necessary, of the proceeds of the Texas Relief Bonds for the purpose of distributing food and/or clothing supplied by any agency of the Federal and/or State Governments, in instances where the Federal Government will not bear the cost of such distribution.

[1] Article 842d, ante and Penal Code, art. 107c.

Relief to bona fide citizens

Sec. 13. Provided that no funds derived from the sale of the bonds issued shall be disbursed to or expended for the benefit of any citizen who has not been a bona fide resident of the State of Texas for a period of two (2) years immediately preceding application for relief.

Method of disbursement of Relief Bond Fund

Sec. 14. The funds belonging to the "Relief Bond Fund" shall be disbursed by warrants drawn by the Comptroller of Public Accounts on said fund in the payment of allocations made and approved by the State Board of Control, which approval shall be reflected by the minutes of the Board of Control, signed by its Chairman, and attested by its Secretary provided for herein, and filed with the Comptroller of Public Accounts. In case of emergency the Board of Control may authorize the disbursements of funds by the Director under such rules and regulations as may be promulgated by the Board of Control and as may be evidenced by the minutes of said Board of Control; provided that such warrants shall be issued by the Comptroller of Public Accounts against vouchers signed by the Director, or by someone authorized by him in writing, and countersigned by the Secretary, as herein provided, or by someone authorized by him in writing, in amounts not exceeding in the aggregate the amount allocated by the Board of Control, to any payee, as evidenced by its minutes as signed, attested, and filed as hereinbefore provided.

Compensation of members of Board of Control and employes

Sec. 15. Each member of the Board of Control shall receive in addition to the salary now provided by law, the sum of One Hundred Dollars ($100.00) per month beginning March 1, 1935, but only for so long a time as there may be funds available from the herein provided for funds, and relief therefrom is being administered in this State, payable in the same manner as the present compensation is paid out of the funds herein provided for, as well as the necessary traveling and other expenses of such members and employees of the Relief Commission Division of the Board of Control. The Board of Control shall pay the employees herein provided for and heretofore provided for such funds as compensation as the said Board may deem just and proper, and may hire and discharge such administrative officer and employees from time to time as they deem best for the interest of the people.

Discharge of workers for political activity

Sec. 16. Any case worker, county administrator or other employee engaged under the provisions of this Act who shall engage himself in the political interest of any candidate or who shall attempt to influence any voter on any political issue, shall be immediately discharged upon being proved guilty of such activity and shall never again be the beneficiary of the funds authorized by this Act, either as an employee or as a relief subject.

Refusal of relief to able persons declining work

Sec. 17. If and when it has been shown that employment at the prevailing wage scale of the county has been offered a person who is physically able to work who is upon the relief rolls and that said person has refused to accept such employment at the prevailing wage scale, it shall then be the duty of the County Administrator to refuse further relief to said person and in addition thereto, shall notify the State Board of Control of the name, address and circumstances of such case. Provided, the Board of Control may appoint and discharge in any county where relief is administered a grievance committee to be composed of three (3) reputable citizens who shall serve without compensation and whose duties shall be to hear and consider grievances and shall make reports with recommenda-

tions to the Board of Control. A copy of each such report shall immediately be filed with the Chairman of the County Relief Board.

Cooperation with Federal Relief Agency

Sec. 18. The Board of Control is hereby directed to seek the co-operation of the Federal Relief Agency so that changes may be procured in the Federal Rules and Regulations applicable to the expenditure of Federal funds and funds expended and contributed to jointly by this State and the Federal Government; said changes to be procured so that the relief funds can be more economically and judiciously expended, and so that the relief program will not hamper the recovery of the farming, ranching, and industrial activities of this State.

Penal provisions

For sections 19 and 20 of this article, see Pen.Code, art. 107f.

Partial invalidity

Sec. 21. If any section, clause or sentence in this Act should ever be held to be unconstitutional, such holding shall not affect the remaining portions hereof.

Repeals

Sec. 22. Sections 11, 14, 18, 19, 25, 27 and 32 of Chapter 34, Acts of the Third Called Session of the Forty-third Legislature,[1] be and are hereby repealed. [Acts 1935, 44th Leg., p. 79, ch. 30.]

[1] Article 842d, sections 11, 14, 18, 19, 25, 27 and 32.

Art. 842f. Refunding Texas Relief Bonds, First Series.—Section 1. The Texas Bond Commission heretofore created by Chapter 37, Acts of the First Called Session of the Forty-third Legislature of Texas,[1] is hereby authorized to refund the Texas Relief Bonds, First Series, heretofore issued and sold under the provisions of Section 51a, Article III, of the Constitution of Texas, upon the terms and conditions hereinafter set out.

Sec. 2. Said Texas Bond Commission is hereby authorized to exercise the option to redeem Texas Relief Bonds, First Series, which option is provided for in the aforesaid Chapter 37, and may issue refunding bonds in lieu of so many of said Texas Relief Bonds, First Series, as may be outstanding and unpaid with the funds provided by said Chapter 37 for the payment thereof. Said Texas Bond Commission shall also be authorized to enter into a fiscal agency contract for the purpose of calling said First Series Bonds and refunding the same at a lower rate of interest; and said contract may provide that when the bonds of said First Series are called for redemption the fiscal agent shall provide the money with which to pay the principal and accrued interest thereon to the date of call, and said Bonds and coupons shall be delivered to the fiscal agent to be exchanged by him for refunding bonds upon the terms and conditions provided in said contract; provided that no commission or fee shall be paid, nor shall any discount be allowed, to said fiscal agent, but said contract may provide for the sale of said refunding bonds to said fiscal agent. Notice of intention to issue said refunding bonds shall be published once a day for three consecutive days, the date of the first publication to be at least two weeks prior to the date of the execution of said fiscal agency contract, said publication to be made in three newspapers of general circulation in the State of Texas. The contract as fiscal agent shall be awarded to that person, group of persons, corporation, or group of corporations, submitting the best bid for said refunding bonds, which said bids shall be received under seal by the said Texas Bond Commission on a date set by said Texas Bond Commission and stated in said notice by publication. All expenses in connection with the refunding of said bonds shall be paid by said fiscal agent.

Sec. 3. The refunding bonds described in Section 2 hereof shall be known as the "Texas Relief Refunding Bonds, First Series," shall be dated as of the date of call for said outstanding and unpaid bonds of said First Series, which shall be determined by the Texas Bond Commission, shall bear interest at not to exceed 2% per annum, payable semi-annually, and shall mature in serial annual installments in amounts to be determined by said Texas Bond Commission, but no bond shall mature beyond October 15, 1943, and said bonds shall be payable at the office of the State Treasurer in Austin, Texas. Each of said bonds shall be signed by the Governor, attested by the Secretary of State under the seal of the State of Texas, and registered by the State Comptroller of Public Accounts, and the lithographing of the facsimile signatures of such officers on the coupons shall be sufficient for such purpose.

Sec. 4. Said Texas Bond Commission is hereby authorized to do any and all things necessary to carry out the purpose of this Act, to enter into said fiscal agency contract, and to issue and deliver said refunding bonds. The provisions of said Chapter 37 in regard to the "Texas Relief Bond Sinking Fund," and the payment of principal and interest on said Texas Relief Bonds, First Series, shall apply with full force and effect to said Texas Relief Refunding Bonds, First Series, and there is hereby appropriated for the years ending August 31, 1940, and August 31, 1941, an amount for each of said years out of said "Texas Relief Bond Sinking Fund" equivalent to the amount of principal and interest maturing in each of said years respectively, and the State Treasurer is hereby directed to make payment of said principal and interest as each matures during each of said years upon presentation of bonds and coupons in evidence thereof. The Texas Bond Commission shall be continued as such until all Texas Relief Bonds of all series, and all interest thereon have been fully paid, and all of said bonds have been cancelled, and the record of said cancellation placed upon the Minutes of said Commission. [Acts 1939, 46th Leg., p. 539.]

[1] Article 842b, § 2.

TITLE 23—BRANDS AND TRADE MARKS

Art.
843. Trade mark of another.
844. Trade mark for dairymen.
845. Marks not to be similar.
846. Injunction.
847. Prima facie evidence of ownership.
848. Record for dairymen.
849. May assign.
850. Infringement enjoined.
851. Trade mark filed, etc.
851—A. Cancellation and withdrawal from registration of abandoned trade marks; notice.
851—B. Registration by another of abandoned trade marks, devices, etc.

Article 843. [1392] [918a] Trade mark of another.—All manufacturers or dealers in carbonated goods, mineral waters, soda water, or other beverage, or manufacturers of medicine or other compound requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade marks, or other designation of ownership or proprietorship, is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels for [1] containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a fac simile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks; and the act of so filing and causing to be recorded by the county clerk and publishing, shall operate as a trade mark, secur-

ing to the said manufacturer the full protection of the law as a trade mark, entitling the said manufacturer to the sole and exclusive use in Texas of said mark, name or device; for which service the clerk shall be allowed the sum of one dollar, to be paid by the party having such brands, etc., recorded. It is hereby declared to be unlawful for any person or persons, corporate or otherwise, other than the proprietor, or by his written consent, to fill, for the purpose of traffic, or for sale, with any compound whatever, any box, syphon, bottle or other container so marked, recorded in the office of the county clerk, and published as provided in this article, or to deface, erase, obliterate, cover up or otherwise remove or cancel any such mark or device. [Acts 1893, p. 125; Acts 1901, p. 288; G. L. vol. 10, p. 555.]

[1] So in enrolled bill. Should probably read "or."

Art. 844. Trade mark for dairymen.—Any person, firm or corporation engaged in the dairying business, or in the distribution or sale of milk requiring the use of bottles, may file in the office of the county clerk of the county in which it is expected such person, firm or corporation will sell or distribute milk, a fac simile or description of the name or names, trade name, mark or design used by such person, firm or corporation for advertising purposes, and cause such fac simile or description to be published in a public newspaper published in such county for three successive weeks, and the act of filing and publication shall operate to secure to such dairyman, milk distributor or milk dealer, sole and exclusive right to use in said county or counties said name or names, trade name, mark or design. [Acts 1921, p. 161.]

Art. 845. Marks not to be similar.—No name or names, trade name, mark or design shall be filed by the county clerk as aforesaid that could probably be mistaken for a name or names, trade name, mark or design already of record. [Id.]

Art. 846. Injunction.—Any person, firm or corporation having adopted a name or names, trade name, mark or design, as provided herein, may proceed by suit to enjoin the use of said name, or names, trade name, mark or design by any other person, firm or corporation, and all courts having jurisdiction thereof shall grant injunction to restrain the unlawful use thereof. [Id.]

Art. 847. Prima facie evidence of ownership.—Any person, firm or corporation engaged in the dairying business or the sale or distribution of milk, who shall have filed with the county clerk of the county in which they may be engaged in the distribution or sale of milk, a name or names, trade name, mark or design as herein provided, may cause to be engraved, etched, blown in or impressed or otherwise produced upon the bottles owned by said person, firm or corporation such name or names, trade name, mark or design, and when such name or names, trade name, mark or design is so impressed upon a bottle, such bottle shall be prima facie the property of the person, firm or corporation which may appear upon the record of the office of the county clerk of such county to be the owner of such name or names, trade name, mark or design either as the original owner or transferee, as herein provided. [Id.]

Art. 848. Record for dairymen.—Upon the filing with the county clerk of such fac simile or description, as herein provided, the county clerk shall record the same in a well-bound book and index the same under the name of each owner and also under the trade name, and shall furnish to such owner a certificate containing a description of same, which said certificate shall be prima facie evidence that the person or persons therein named is the owner of said name or names, trade name, mark or design. The clerk shall be paid a fee of one dollar for recording such trade mark or name. [Id.]

Art. 849. May assign.—Any owner of a name or names, trade name, mark or design recorded as herein provided who desires to convey or assign same shall do so by written assignment duly acknowledged, and filed with said county clerk, which said assignment shall refer to the book and page where said original is recorded, and the clerk shall upon the filing of said assignment, record and index same as an original and note on the margin the fact of the assignment and refer to the book and page where such assignment is recorded, and furnish to such assignee a certificate of ownership. The clerk shall receive for recording such transfer, such fees as are now provided by law for similar services. [Id.]

Art. 850. [705] [318c] Infringement enjoined.—Every person, association or union of workingmen, incorporated or unincorporated, having adopted a label, trade mark, design, device, imprint or form of advertisement, as aforesaid, may proceed by suit to enjoin the wrongful manufacture, use, display or sale of any such label, trade mark, design, device, imprint or form of advertisement, and the manufacture, use, display or sale of any such counterfeit or imitation; any court having jurisdiction thereof may grant an injunction to restrain such manufacture, use, display or sale, and shall award the plaintiff in such suit such damages resulting from such wrongful manufacture, use, display or sale as by him may have been sustained. Where such association or union is not incorporated, suits under this law may be commenced and prosecuted by any officer or member of such association or union in his own name, for himself and for the use and benefit of such association or union. [Acts 1895, p. 108; G. L. vol. 10, p. 838.]

Art. 851. [706] [318d] Trade mark filed, etc.—Every person, association or union of workingmen, incorporated or unincorporated, that has heretofore or shall hereafter adopt a label, trade mark, design, device, imprint or form of advertisement, shall file the same in the office of the Secretary of State by leaving two fac simile copies, with the Secretary of State, and said Secretary shall return to such person, association or union so filing the same, one of said fac simile copies along with and attached to a duly attested certificate of the filing of same, for which he shall receive a fee of one dollar. Such certificate of filing shall in all suits and prosecutions under this chapter be sufficient proof of the adoption of such label, trade mark, design, device, imprint or form of advertisement, and of the right of such person, association or union to adopt the same. No label, trade mark, design, device, imprint or form of advertisement shall be filed as aforesaid that would probably be mistaken for a label, trade mark, design, device, imprint or form of advertisement already of record. No person, or association shall be permitted to register as a label, trade mark, design, device, imprint or form of advertisement any emblem, design or resemblance thereto that has been adopted or used by any charitable, benevolent or religious society or association, without their consent. [Id.]

Art. 851—A. Cancellation and withdrawal from registration of abandoned trade marks; notice.—Whenever it is brought to the attention of, or becomes known to, the Secretary of State that any label, trade-mark, design, device, imprint or form of advertisement heretofore or hereafter filed with the office of the Secretary of State pursuant to the provisions of Article 851 of the Revised Civil Statutes of Texas of 1925, by any person, Association, or Union of working men, incorporated or unincorporated, has been abandoned or the use thereof has been discontinued for more than three years, it shall be the duty of the Secretary of State to cancel and annul such filing and withdraw the same from registration, after first giving to the registrant, or any assignee of record thirty days' notice of the intention so to do, which notice shall be

by registered United States mail addressed to the last known address of the person, Association or Union of working men, incorporated or unincorporated, filing the same or any assignee thereof. [Acts 1931, 42nd Leg., p. 89, ch. 56, § 1.]

Art. 851—B. Registration by another of abandoned trade marks, devices, etc.—Whenever any person, Association, private Corporation, or Union of working men, incorporated or unincorporated, shows to the satisfaction of the Secretary of State that any label, trade-mark, design, device, imprint or form of advertisement theretofore registered under the provisions of Article 851 of the Revised Civil Statutes of Texas, has been abandoned and the use thereof has been discontinued for more than three years, such label, trade-mark, design, device, imprint or form of advertisement may upon due application made to the Secretary of State, by any person, Association, private Corporation or Union of working men, incorporated or unincorporated, showing that it has adopted such label, trade-mark, design, device, imprint or form of advertisement, be duly registered to such applicant under the provisions of Article 851 of the Revised Civil Statutes of Texas of 1925, after the giving of notice by the Secretary of State, as required by Article 851-A, with the same force and effect as though said label, trade-mark, design, device, imprint or form of advertisement had never theretofore been registered under said Act. [Acts 1931, 42nd Leg., p. 89, ch. 56, § 1.]

TITLE 24—BUILDING AND LOAN ASSOCIATIONS

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Article 852. Articles of Association.—Any number of persons, not less than five, who are residents of this State, desiring to organize a building and loan association for the purpose of building and improving homesteads, removing incumbrances therefrom, and loaning money to the members thereof, may, by complying with the provisions of this title, and entering into articles of association, become a corporate body. Said articles of association shall be signed by persons associating and acknowledged before some person authorized by the laws of this State to take acknowledgments to deeds, and shall set forth:

1. The name assumed by the association, which shall not be the name assumed by any other association incorporated under this law, nor so similar as to be likely to mislead.
2. The purpose for which the association is formed.
3. The amount of its authorized capital stock; and the number of shares into which it is divided; the par value of each share; and the number of shares subscribed for, which shall not be less than fifty in number.
4. The names of the incorporators; their respective residences and the number of shares subscribed by each.
5. The term of its corporate existence, which shall not exceed fifty years.
6. The name of the town, city or village in which such association is to be located. [Acts 1st C. S. 1913, p. 72.]

Art. 853. Organization.—When executed as aforesaid, said articles of association shall be approved by, and filed with the Secretary of State, and a copy thereof, duly authenticated under the hand and seal of State, shall be delivered to the Commissioner of Insurance, who shall file the same in his office, and a like copy thereof shall be recorded in the office of the clerk of the county court of the county in which the principal office of such association is located, whereupon the persons named in the article of association, their associates and successors, shall become a corporate body for the period for which they were organized, and shall exercise such powers as are herein granted, and such other powers as are necessary to enable such association to carry out the purpose of its organization, not inconsistent with the provisions of this law. Before such association shall proceed to business it shall adopt by-laws for the regulation and management of its business. Said by-laws shall not become operative until a copy thereof, duly certified by the president and secretary of the association shall have been approved by and filed with the Commissioner, and when so approved and filed the said Commissioner shall issue his certificate of such approval and filing and thereupon said association may proceed to do business. The provisions of this law shall not apply to loan corporations heretofore incorporated under the laws of Texas loaning money on real estate, or improvements thereon, in cities of this State of more than thirty thousand inhabitants and not requiring the borrowers to be members thereof, or holders of such shares in such corporations, and which have been doing business for as long as ten years prior to the passage of this Act. [Id. sec. 2.]

Art. 854. Directors.—The corporate powers of every building and loan association heretofore organized under the laws of this State, or which may be incorporated under this title, shall be exercised by a board of directors of not less than five members, who shall elect from their own number the officers of the association. The mode of electing members of said board of directors and officers and their respective terms of office shall be prescribed in the by-laws. [Id. sec. 3.]

Art. 855. Bond of Officers.—The secretary and treasurer of such association, and all other officers who sign and endorse checks, or who have charge of money or securities of such association, shall, before entering upon the duties of their office, each give such bond for the faithful performance of the same as shall be required and approved by the board of directors. Additional sureties or such increase of said bond as they may deem necessary, may be required at any time by the board of directors. Directors shall not be accepted as sureties on such bonds, and shall be individually liable for any loss sustained through their negligence or failure to comply with any provision of this article. [Id. sec. 4.]

Art. 856. Capital stock and shares.—The authorized capital stock of such association shall be divided into shares having a par value of not less than twenty-five dollars, nor more than two hundred dollars each, payable in periodical installments, called dues, not exceeding two dollars per month on each share; provided, that the by-laws may provide for the advance payment of installment dues and for which there may be issued an advance payment certificate. The shares may be issued in series, or at any time as the by-laws shall determine and subscriptions therefor shall be made payable to the association. Said shares shall be deemed personal property, transferable on the books of the association in the manner prescribed in the by-laws, and shall be paid off and retired as the by-laws shall direct. Every share shall be subject to a lien for the payment of unpaid dues and such other charges as may be lawfully incurred thereon under the provisions of this title. The by-laws may prescribe the manner of enforcing such lien. New shares may be issued in lieu of shares matured, withdrawn, retired or forfeited. At no time shall the shares issued and in force exceed the aggregate number of shares into which the authorized capital stock is divided as designated in the articles of the association. Any building and loan association heretofore or hereafter incorporated under the laws of this State, may, by a resolution adopted by a two-thirds vote of shares represented and voted at any annual meeting, or at any meeting called for that purpose, increase its authorized capital stock and shares, or amend its articles of association or by-laws, in any manner not inconsistent with the provisions of this title. No such increase of capital stock nor amendments shall have effect until a copy of such resolution, certified by the president and secretary of such association, shall be filed, approved and recorded in the same manner as is provided in the second article of this title for the filing and recording of original articles of association or by-laws, in any manner not inconsistent with the provisions of this title. [Id. sec. 5.]

Art. 857. Loans and security.—At such times as the by-laws shall designate, not less frequently than once a month, the board of directors shall hold meetings, at which the funds in the treasury applicable for loans shall be loaned to the members who, in open competition, shall bid the highest premium for priority of right to a loan; or in lieu thereof, such funds may be loaned either with or without premium, as the borrower may, in writing agree to pay, in which case the priority of right to a loan shall be decided by the priority of the application therefor. The manner in which said premium may be paid shall be prescribed in the by-laws. No loans shall be made by such association to any one not a member thereof, except as hereinafter provided, nor to any member for an amount greater than the par value of the shares held by such member. Borrowers shall be required to give real estate security, unincumbered except by the prior liens held by such association, accompanied by a transfer and pledge to the association of the shares borrowed upon as collateral security for the payment of the loan. No loan made upon real estate security shall exceed in amount two-thirds of the appraised valuation of such real estate. The shares of such association may be received as security for the loan of an

amount not to exceed ninety per cent of the withdrawal value of such shares. Subject to the approval of the Commissioner, the number of payment of dues, interest and premium required from the borrowing stockholder to pay off his loan and secure a release of his incumbrance may be limited to such a definite number as the by-laws may provide. When the funds in the treasury applicable for loans shall accumulate and be in excess of the amount required for loans to members, they may be loaned to non-members upon real estate securities unincumbered by prior liens in an amount not to exceed fifty per cent of the appraised value of such securities, or may be invested in such securities as are authorized to be accepted by saving banks in this State, but at no time shall such loans and investments exceed twenty per cent of the assets. [Id. sec. 6.]

Art. 858. Right to loan forfeited.—If the borrower neglects to offer security satisfactory to the board of directors within the time prescribed by the by-laws, his or her right to the loan shall be forfeited, and he or she shall be charged with interest or premium, if any, for one month, together with any expense incurred and the money appropriated for such loan may be reloaned at the next or any subsequent meeting. Whenever a borrowing shareholder shall be in arrears in the payment of dues, interest or premium for more than four months, the board of directors may, at their discretion, declare the pledged shares forfeited, and the whole amount of the loan due and payable, and its collection, together with the arrears of interest, premium and fines, may be enforced by proceedings upon the security held by the association, in accordance with law. The withdrawal value of the pledged shares, at the time of the commencement of the foreclosure proceedings shall be credited upon the loan. [Id. sec. 7.]

Art. 859. Repayment of loan.—Any borrowing shareholder desiring to repay his loan shall have the privilege of doing so at any time, by giving the association thirty days written notice of such intention. The borrower shall be charged with the amount of the original loan, together with all the arrearages of interest, premium and fines and other legal charges, and shall be given credit for the withdrawal value of his shares pledged as security; and the balance shall be received by the association in full satisfaction of said loan. In cases where the premium is deducted from the loan in a gross sum, and the borrower repays the loan before the expiration of the tenth year from the date upon which said loan was made, such borrower shall be given credit for one-tenth of the premium paid for every year of the said ten years then unexpired. Any borrower desiring to retain his or her shares and membership may repay his loan without claiming credit for the withdrawal value of said shares whereupon said shares shall be retransferred to him or her, and shall be free from any claim by reason of said loan. [Id. sec. 8.]

Art. 860. Withdrawal value.—By the term "withdrawal value" as used herein is meant: The then value of the stock at the time indicated in the connection in which the words are used, less the lawful charges against such shares in favor of the corporation. [Id sec. 9.]

Art. 861. Lienholder may purchase.—Any loan or building association incorporated by or under this title is hereby authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate upon which such association may have or hold any mortgage, lien or other incumbrance, or in which said association may have an interest for the purpose of collecting any debt due it, or for the protection of its interest in such real estate, and may sell, convey, lease or mortgage, at pleasure to any person or persons whomsoever the real estate so purchased to the highest bidder after advertising same in some local paper for four consecutive weeks. [Id. sec. 11.]

Art. 862. Extension of time of corporation.—Any loan or building association incorporated under this or any prior law, may extend the duration of time for which said association was organized by a vote of two-thirds of the capital stock of such association represented and voting at any annual meeting of the stockholders of such association, or at any special meeting called for that purpose; thereupon the board of directors shall transmit a copy of the proceedings of such annual meeting or of such special meeting, duly attested, to the Secretary of State, who shall make a duly authenticated copy thereof, as provided in the third article of this title, certifying to the extension of time of such corporation, and the same shall be filed with the Commissioner and recorded as provided in said third article. Any building and loan association incorporated under any prior law, and extending the duration of the time for which it was incorporated, in the manner herein provided, shall be deemed as incorporated under and be invested with all the power given in this title, the same as though such corporation had been originally incorporated under it. [Id. Sec. 12.]

Art. 863. Financial statement.—Each association formed under the provisions of this title shall, at the close of its first year's operations, and annually at the same period in each year thereafter publish in at least one newspaper published in the place where its principal office may be located, or if no newspaper be published in such place, then in a newspaper published nearest such place, a concise statement, verified by the oaths of its president and secretary, showing the actual financial condition of the association, and the amount of its property and liabilities, specifying the same particularly. [Id. Sec. 13.]

Art. 864. Commissioner to supervise.—The Commissioner of Insurance shall have supervision of all building and loan associations doing business in this State, and shall be charged with the execution of the laws of this State relating to such association. During the absence or disability of the Commissioner his chief clerk or deputy shall be authorized to perform all the duties relating to the control and supervision of such association and the execution of the laws above described. [Id. Sec. 14.]

Art. 865. Statement to commissioner.—Every building and loan association doing business in this State shall, on the first day of January of each year, or within sixty days thereafter, file with the Commissioner a full and detailed statement of its financial condition on the 31st day of the preceding December, and the business transacted during the preceding year within this State. Said statement shall set forth the amount and character of its assets, liabilities, receipts and disbursements, and shall contain such other information, and be in such form as said Commissioner may prescribe, and shall be subscribed and sworn to by the secretary and treasurer of such association. Any such association refusing or neglecting to file the annual statement herein required within the period hereinbefore prescribed shall forfeit five dollars per day for each and every day such statement shall be withheld, and the Commissioner may maintain an action in the name of the State to recover such penalty, which, upon its collection, shall be paid into the State Treasury. The Commissioner shall within thirty days after such neglect or refusal to file such annual statement investigate the affairs of the association, and if found in a failing condition, take charge of its affairs. [Id. Sec. 15.]

Art. 866. Examination by commissioner.—Once in each year, or oftener, if in the opinion of the Commissioner it shall be necessary, the Commissioner shall make or cause to be made, an examination in-

to the affairs of all building and loan associations doing business in this State. Such examination shall be full and complete, and in making the same the examiner shall have access to, and may compel the production of all books, papers and moneys, etc., of the association under examination, and may examine any officer of such association or any other person connected therewith, as to its business and affairs. The Commissioner may appoint such special examiners as may be necessary to carry out the provisions of this title. Such examiner shall be paid at the rate of eight dollars per day; they shall also receive necessary traveling expenses connected with the duties of their office, which shall be paid by the State Treasurer on the warrant of the Commissioner and the approval of the Governor. The expense incurred and services, other than examinations, performed especially for such associations shall be paid in full by such associations. [Id. Secs. 16, 25.]

Art. 867. Liquidation.—Whenever it shall appear to the Commissioner that the affairs of any such association are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, such Commissioner shall at once notify the board of directors of such association, giving them twenty days in which to restore its affairs to a safe and sound condition, or to discontinue its illegal practices. If after twenty days such restoration shall not have been made, or such illegal practices shall have not been discontinued, said Commissioner may order one of the examiners appointed to examine such association, or a special examiner appointed for that purpose, to take possession of all books, records and assets of every description of such association and hold and retain possession of the same pending the further proceedings hereinafter specified. Should the board of directors, secretary or person in charge of such association refuse to permit the said examiner to take possession aforesaid, said Commissioner shall communicate such fact to the Attorney General, whereupon the Attorney General shall at once institute such proceedings as may be necessary to place such examiner in immediate possession of the property of such association. Upon taking possession of the effects of the association as aforesaid, said examiner shall prepare a full and true statement of the affairs and conditions of such association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues and claims belonging to it, and may pay the immediate and reasonable expense of his trust. Said examiner shall be required to execute to the Commissioner a good and sufficient bond to be approved by such Commissioner, conditioned for the faithful discharge of his duties as custodian of such association. The Commissioner shall, within fifteen days next after said examiner has acquired possession of the property of such association, convene a special meeting of the shareholders for the purpose of considering and acting upon the examiner's report of the affairs and conditions of such association as found by him from his examination thereof. The shareholders may, at said special meeting, by votes of those owning two-thirds of the shares in force, resolve to go into liquidation and for that purpose may, by a majority vote of those present elect from their number a receiver and fix his compensation. The compensation to be allowed a receiver under this title shall be an amount reasonable in proportion to the value of the property of the association, and in no event shall exceed $2500.00 per annum. A copy of said resolution duly certified by the presiding officer and secretary of said special meeting, together with the name and address of the receiver thus elected, shall be filed with the Commissioner. Said receiver shall be charged with a proper distribution of the assets, the discharge of all liabilities and final closing up of the business of such association. Before he shall enter upon the duties of his office, he shall be required to execute to the association a good and sufficient bond, conditioned for the faithful discharge of his duties, which shall be approved by and filed with said Commissioner. Upon the election and qualification of said receiver as aforesaid, the examiner shall, when so ordered by the Commissioner, turn over and deliver to said receiver all the books, papers and effects of every description in his hands belonging to such association. Said receiver shall, upon the completion of said duties intrusted to him, prepare a statement to that effect, reciting therein that all of the liabilities of such association have been completely discharged as far as its assets will permit and its assets and property distributed among all the persons entitled thereto. Said statement shall be subscribed and sworn to by said receiver and filed with the Commissioner, and a notice of such dissolution shall be published for three successive weeks in a newspaper published in the county wherein the principal office of such association is located. Upon the filing of said statement and making publication as aforesaid, such association shall be deemed dissolved. [Id. Sec. 17.]

Art. 868. Injunction.—If after having called a meeting of the stockholders as herein provided, the Commissioner shall find that liquidation by the shareholders cannot be had or consummated, he shall communicate such fact, together with a statement of the condition of the association to the Attorney General, who shall thereupon institute the necessary proceedings to enjoin such association from doing any further business, and for the appointment of a receiver therefor. [Id. Sec. 18.]

Art. 869. Forfeiture of shares.—If a shareholder be in arrears in the payment of dues upon unpledged shares, the board of directors may, if the shareholder fails to pay the amount of arrears within thirty days after notice, declare said shares forfeited. The withdrawal value of said shares at the time of forfeiture shall be ascertained and paid to such stockholder upon such notice as the by-laws may prescribe. Fines for the non-payment of dues, interest or premium shall not exceed one per cent per month on each dollar in arrears. [Id. Sec. 19.]

Art. 870. Expense and reserve fund.—The gross earnings of every building and loan association shall be ascertained at least once in each year, from which shall be deducted a sufficient amount to meet the operating expenses of such association, and from said earnings only shall such expenses be paid. From the balance of the earnings there shall be set aside at least one per cent annually as a reserve fund, until such fund reaches five per cent of the outstanding loans, at which rate it shall thereafter be maintained and held by annual appropriations from the earnings. From said reserve fund shall be paid all losses sustained by said association from depreciation of securities or otherwise. After providing for expenses of the association, and the reserve fund as aforesaid, the residue of such earnings shall be transferred and apportioned to the credit of the shareholders as the association by its by-laws shall provide. [Id. Sec. 20.]

Art. 871. Consolidation.—At the annual meeting, or at any meeting called for that purpose, any two or more building and loan associations organized under the laws of this State may by two-thirds of the vote of all shareholders of each of the different associations resolve to consolidate into one upon such terms as shall be mutually agreed upon by the directors of such associations. Any shareholder not consenting to such consolidation shall be entitled to receive the withdrawal value of his stock in settlement, or, if a borrower, to have such value applied in part settlement of his loan. Such consolidation shall not take effect until a copy of said resolution, certified by a majority of the board of directors of each association, shall be filed with the Secretary of State and

with the Commissioner and recorded in the manner hereinbefore provided. [Id. Sec. 21.]

Art. 872. Dissolution.—At the annual meeting, or at any meeting called for that purpose, any building and loan association of this State may, by a vote of shareholders owning two-thirds of the shares in force, resolve to liquidate and dissolve the corporation. In order to facilitate such dissolution, the board of directors may, if they deem desirable, sell and transfer the mortgage securities and other property of such association to another corporation, person or persons, subject, however, to the vested and accrued rights of the mortgagors. Before said resolution shall have effect, a copy thereof, certified by the president and secretary of such association, together with an itemized statement of its assets and liabilities, sworn to by a majority of the directors, shall be filed with the Commissioner. After filing a copy of the resolution as aforesaid, it shall be unlawful for such association to issue stock or make any loans, but all of its income and receipts in excess of actual expense of management shall be applied to the discharge of liabilities. [Id. Sec. 22.]

Art. 873. Report of Commissioner.—The Commissioner shall annually, at the earliest possible date after the statements of such associations are received, make a report to the Governor of the general conduct and condition of all building and loan associations doing business in this State, including the information contained in such statements, arranged in tabular form together with such suggestions as he may deem expedient. There shall be printed of said report as many copies as the Commissioner shall deem necessary. [Id. Sec. 24.]

Art. 874. Foreign association.—Foreign building and loan associations doing business in this State shall conduct the same in accordance with the laws of this State governing domestic building and loan associations, and shall comply with all requirements of said laws except as herein provided. [Id. Sec. 26.]

Art. 875. Certificate of authority.—No foreign building and loan association shall do any business in this State until it shall procure from the Secretary of State a certificate of authority to do so. To procure such certificate of authority such foreign association shall comply with the following provisions:

1. It shall file with the Secretary of State a certified copy of its articles of incorporation, a copy of its by-laws and rules governing it, and its certificates and all printed matter issued by it, together with a statement of its financial condition such as is required annually from all building and loan associations organized under the laws of this State.

2. It shall file with the Secretary of State a written instrument, properly executed, agreeing that any summons or process of any court in this State may issue against it from any county in this State, and when served upon the Secretary of State, shall be accepted irrevocably as a valid service upon such foreign association. The Secretary of State shall mail a copy of such legal process served upon him to the home office of such foreign association, and the Secretary of State shall, within six days, certify to the court from which such summons or process issued, the fact of such mailing. The plaintiff shall for each process so served pay to the Secretary of State, at the time of such service, a fee of two dollars, which shall be recovered by the plaintiff as a part of the taxable costs if he prevail in the suit.

3. It shall deposit with the Secretary of State one hundred thousand dollars, either in cash or bonds of the United States, or bonds of any State in the United States, or bonds of any county or municipal corporation in the State of Texas, or mortgages, being first liens on improved and productive real estate located within this State, and worth at least twice the amount of the liens, or furnish surety company bond in said sum of one hundred thousand dollars; which securities or surety company bond shall be approved by the Secretary of State. Said deposit shall be held as security for all claims of residents of this State against such foreign associations, and shall be liable for all judgments or decrees thereon; and said securities shall not be released until all shares of such foreign associations held by residents of this State shall have been fully redeemed and paid off, and its contracts and obligations to residents of this State shall have been fully performed and discharged. Such foreign associations may collect and use the interest on any securities so deposited, so long as it fulfills its obligations and complies with the provisions of this title. It may also exchange them for other securities of equal value, if satisfactory to the Secretary of State. If the business of such associations be solely that of lending money in this State, and it sells none of its stock except where loans are actually made on real estate in this State for the full amount of the stock so sold, and made at the time of the sale of such stock, then in such event the provisions of this title requiring a deposit or bond of one hundred thousand dollars shall not apply. [Id. Sec. 27.]

Art. 876. Custody of securities.—All such securities deposited with the Secretary of State shall be immediately deposited by him with the State Treasurer, who, with his sureties, shall be responsible for the safe keeping thereof. The State Treasurer shall deliver such certificates only upon the written order of the Secretary of State. [Id. Sec. 28.]

Art. 877. Statement of foreign association.—Whenever such foreign association has complied with the provisions of this title, the Secretary of State shall so certify to the Commissioner, and thereupon such foreign association, shall also furnish to said Commissioner a full and complete financial statement of its affairs duly sworn to by its president and secretary, together with such other information as said Commissioner may require, which said report shall be filed annually thereafter. If the Commissioner is satisfied that such association is in sound financial condition and shall be satisfied that such foreign association is conducting its business in accordance with the laws of this State, and shall regard it safe, reliable and entitled to public confidence, he shall so certify to the Secretary of State, who shall issue certificate of authority and renewals of such certificate of authority upon the payment of the fees as herein provided. [Id. Sec. 29.]

Art. 878. Judgment against foreign association.—If at any time any shareholder of such foreign association residing in this State, shall recover judgment against such foreign association, which after thirty days shall not have been satisfied, the State Treasurer, upon an order from the Secretary of State, shall appropriate from the cash deposited with him by such association as herein provided, if any, or shall proceed to sell at the current market value, sufficient of the bonds, or collect sufficient of the mortgage securities deposited with him to satisfy the amount of such judgment, together with five per cent for his services and expense. Before ordering the State Treasurer to so proceed, the Secretary of State shall be served with an affidavit by the plaintiff or his attorney, setting forth the recovery of judgment, and that same has remained unpaid for thirty days, and that no proceedings are pending for appeal or reversal of the same. Such foreign association after notice of the service of such affidavits, shall not transact any new business in this State until any deficiency of securities caused by the necessity of satisfying such judgments shall have been made good by further deposit of similar securities with the Secretary of State. [Id. Sec. 31.]

Art. 879. Examination of same.—Every foreign building and loan association doing business in this

State shall be subject to the same examinations as are building and loan associations organized under the laws of this State. The expense of all examinations of such foreign associations shall be paid by the association examined, and the money so received shall be paid into the State Treasury. It shall not be necessary for such examination to be made but once in each year. Such expense shall only include the necessary traveling expenses of such examiner and the sum of eight dollars per day, for each day actually required in making such examinations. [Id. Sec. 32.]

Art. 880. Revoking certificate.—Should the Secretary of State find, upon examination, that such foreign association does not conduct its business in accordance with law, or that the affairs of such foreign associations are in an unsound condition, or if such foreign association refuses to permit examination to be made, he may revoke the certificate of authority granted such foreign association to do business in this State. Upon the revocation of such certificate of authority, the Secretary of State shall mail a notice thereof to the home office of such foreign association, and cause a similar notice to be published in at least one newspaper published in the city of Austin. After publication of said notice it shall be unlawful for any agent of such foreign association to receive any further payments on shares from stockholders residing in this State, except payment on shares on which a loan has been made. [Id. Sec. 33.]

Art. 881. Penalty.—No foreign building and loan association shall be permitted to do business in this State unless the provisions of this title are fully complied with. All contracts made by such foreign associations while in default shall be absolutely void. Any such association violating any provision of this title, or failing to comply with any of its provisions, shall be subject to a penalty of not less than one hundred nor more than five hundred dollars, such penalty to be recovered by an action in the name of the State of Texas, and upon the collection thereof, the same shall be paid into the State Treasury. [Id. sec. 34.]

Art. 881a—1. Building and loan associations defined.—A building and loan association, as contemplated by this Act,[1] is any association or corporation heretofore or hereafter formed, created or organized which is chartered under any building and loan law, and/or is principally in the business of assisting its members to buy, improve or build homes, or to remove incumbrances therefrom, and which accumulates the funds thus loaned through the issuance or sale of its own shares. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 1.]

[1] This article and articles 881a—2 to 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.
Sections 20, 68–75 of this Act, being penal provisions are published as Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—2. Commissioner to investigate.—When any persons shall file a proposed charter or articles of agreement as is elsewhere herein provided, if it appears to the satisfaction of the Banking Commissioner of Texas that the minimum capital required has been paid in cash into the treasury of the association upon subscriptions for shares, the Banking Commissioner of Texas shall ascertain from the best sources at his command, and by such investigation as he may deem necessary, the expense of such investigation to be paid by the incorporators, whether the character, responsibility and general fitness of the persons named in the articles of incorporation are such as to command confidence and warrant belief that the business of the proposed building and loan association will be honestly and efficiently conducted in accordance with the intent and purpose of this Act,[1] and whether the public convenience and advantage will be promoted by allowing such proposed building and loan association to be incorporated and engaged in business, and whether the population in the neighborhood of such place and in the surrounding country affords a reasonable promise of adequate support for the proposed building and loan association. If it shall be satisfied concerning the several matters specified, the Banking Commissioner of Texas shall issue under his official seal a certificate reciting in substance the filing in its office of the articles of incorporation; that such articles conform to all requirements of the law, and that they have been approved, whereupon the persons named in the articles of association, their associates and successors, shall become a corporate body for the period for which they were organized, and shall exercise such powers as are herein granted, and such other powers as are necessary to enable such association to carry out the purpose of its organization, not inconsistent with the provisions of this Act,[1] but before such association shall proceed to do business it shall adopt and have approved by the Banking Commissioner of Texas by-laws for the regulation and management of its business, not inconsistent with the provisions herein provided. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 2.]

[1] This article, articles 881a—1, ante, and 881a—3 to 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—3. Rejection of application for charter.—If the Banking Commissioner of Texas shall not be satisfied by such examination that it is expedient and desirable to permit such proposed building and loan association to engage in business, it shall endorse upon each copy of the articles of incorporation the word "refused", with the date of such endorsement, together with the reason for such refusal, and shall forthwith return one copy of such articles of incorporation to the proposed incorporators from whom the same was received, and such refusal shall be conclusive unless the incorporators within thirty days of the issuance of such notice of refusal shall apply to the District Court of Travis County, Texas (which court shall have jurisdiction of such case) for a writ of mandamus to compel the filing of such charter and granting of a permit to do business. Appeals shall lie from the decree of the District Court in the same manner as appeals in other mandamus cases are allowable and taken in this State. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 3.]

Art. 881a—4. Proceed to business.—When the Banking Commissioner of Texas shall have approved the organization certificate and the proposed by-laws and shall have issued the certificate of such approval and filing, it shall then issue a certificate of authority to do business, providing that when any building and loan association holding a charter under the laws of this State shall fail to commence business within six months from the date of the issuance of the certificate of authority, such association shall ipso facto be dissolved and its certificate of incorporation shall be null and void, without further executive or judicial action. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 4.]

Art. 881a—5. Fees to accompany charter application.—At the time of filing application for charter the incorporators shall pay to the Banking Commissioner of Texas, the sum of twenty-five dollars for filing the articles of association and the by-laws; and thereafter, for filing amendments to the articles of incorporation or to the by-laws, or any other paper, the sum of five dollars; for making and certifying copies of articles of association, by-laws or any other paper required to be filed, twenty cents per folio of one hundred words; provided, however, that the Banking Commissioner of Texas may require a reasonable deposit to be made by the incorporators for the purpose of defraying the expenses of the investigation authorized in Section 2 of this Act.[1] [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 5.]

[1] Article 881a—2, ante.

Art. 881a—6. Franchise tax.—Every domestic building and loan association shall pay to the State

Treasurer, through the Banking Commissioner of Texas, an annual franchise tax of ten dollars. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 6.]

Art. 881a—7. Supervision and control; fiscal agents, acting as.—The Banking Commissioner of Texas shall have supervision over and control of all building and loan associations doing business in this state (except Federal Savings & Loan Associations organized under and by virtue of the Home Owners' Loan Act of 1933 [1] passed by the Congress of the United States), and shall be charged with the execution of the laws of this state relating to such associations. No building and loan association shall be subject to any visitorial powers other than such as is authorized by this Act [2] or vested in the courts of justice, it being the intent of this Act to confer exclusive visitorial powers upon the Banking Commissioner, the Building and Loan Supervisor and the examiners appointed by the Banking Commissioner; provided, however, that any association which is a member of a Federal Home Loan Bank or which is insured by the Federal Savings & Loan Insurance Corporation may be examined by the examiners of these Federal instrumentalities as provided by law. All such building and loan associations shall be deemed and are hereby declared to be instrumentalities and agencies of the State Government and shall be charged with the duty and responsibility to act as fiscal agents for the state when requested to do so. If and when an association is a member of a Federal Home Loan Bank, it shall have power to act as fiscal agent of the United States, and, when designated for that purpose by the Secretary of the Treasury, it shall perform, under such regulations as he may prescribe, all such reasonable duties as fiscal agent of the United States as he may require, and shall have power to act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality. The Banking Commissioner shall appoint a Building and Loan Supervisor, who shall, during the absence or inability of the Commissioner or under the instructions and direction of the Commissioner, exercise the powers and perform the duties of the Commissioner relative to the supervision of building and loan associations and the enforcement of the provisions of this Act relating to such associations; and such appointee shall have had not less than two (2) years' actual experience in the operation and management in an executive position of a building and loan association, or shall have had not less than eighteen (18) months' actual experience in the supervision of building and loan associations, or, not less than two (2) years' experience in the employ of a building and loan association and not less than two (2) years' actual experience as a Building and Loan Examiner, or not less than five (5) years' actual experience as a building and loan examiner.

He shall likewise appoint such building and loan examiners as in his judgment may be necessary to examine at proper and suitable intervals all building and loan associations under his supervision, which said examiners shall have had not less than one (1) year's actual experience in the accounting division of a building and loan association, or shall have had not less than two (2) years' actual experience in examining building and loan associations. He shall appoint such other employees as may be necessary to properly and adequately supervise the building and loan associations under his supervision, who are fitted and qualified by training and experience to perform the duties they are required to perform. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 7; Acts 1939, 46th Leg., p. 76, § 1; Acts 1943, 48th Leg., p. 482, ch. 323, § 1.]

[1] 12 U.S.C.A. §§ 1461-1468.

[2] Articles 881a—1 to 881a—68; Pen.Code arts. 1136a—1 to 1136a—9.

Section 2 of the Act of 1943 provided that a holding of partial invalidity should not affect the remainder of the act.

Section 3 repealed articles 881a—37a to 881a—37c.

Art. 881a—8. Annual statement to be filed.—Every building and loan association doing business within this State shall, on the first day of January of each year, or within sixty days thereafter, file with the Banking Commissioner of Texas, a full and detailed statement of its financial condition on the 31st. day of the preceding December, and the business transacted during the preceding year. Said statement shall set forth the amount and the character of its assets, liabilities, income and expense, and shall contain such other information, and be in such form as the Banking Commissioner of Texas may prescribe, and shall be sworn to by the president and the secretary or treasurer of such association; and such report shall show the number and amount of loans outstanding upon its books in each different town or city in which the property securing such loans is situated. Any such association refusing or neglecting to file the annual statement herein required within the time specified shall forfeit five dollars per day for each and every day such statement shall be withheld, and the Banking Commissioner of Texas may maintain an action in the name of the State to recover such penalty, which upon its collection, shall be paid into the State Treasury. Within thirty days after such refusal to file such annual statement the Banking Commissioner shall cause to be investigated the affairs of the association, at the expense of such association and, if found in a failing condition, take charge of its affairs, as provided in Section 13 of this Act.[1] [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 8.]

[1] Article 881a—13, post.

Art. 881a—9. Fees to accompany statement.—At the time of the filing of its annual statement, every domestic building and loan association shall be required to pay to the Treasurer, through the Banking Commissioner of Texas, fees, which are in lieu of examination fees, based upon its gross assets in amounts not exceeding figures calculated in accordance with the following schedule:

Those with assets less than		$ 250,000.00	pay	$ 57.00
$ 250,000.00	to	500,000.00	pay	82.00
500,000.00	to	750,000.00	pay	115.00
750,000.00	to	1,000,000.00	pay	153.00
1,000,000.00	to	1,250,000.00	pay	191.00
1,250,000.00	to	1,500,000.00	pay	230.00
1,500,000.00	to	1,750,000.00	pay	268.00
1,750,000.00	to	2,000,000.00	pay	306.00
2,000,000.00	to	2,500,000.00	pay	383.00
2,500,000.00	to	3,000,000.00	pay	460.00

For associations with assets from Three Million ($3,000,000.00) Dollars to Six Million ($6,000,000.00) Dollars in size add Fifty-seven ($57.00) Dollars for each million in excess of Three Million ($3,000,000.00) Dollars; for associations with assets over Six Million ($6,000,000.00) Dollars add Twenty-three ($23.00) Dollars for each million in excess of Six Million ($6,000,000.00) Dollars. Such fees, together with any other fees, penalties or revenues collected by the Commissioner pursuant to the provisions of this Chapter or pursuant to other laws of this State relative to corporations under the supervision of the Banking Department shall be paid by the Commissioner to the State Treasurer who shall deposit the same to the credit of the General Revenue Fund. The expenses of supervision, examination and of the Commissioner in enforcing the provisions of this Act [1] shall be paid upon the certificate of the Commissioner by warrant of the Comptroller upon the State Treasury. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 9; Acts 1943, 48th Leg., p. 482, ch. 323, § 1.]

[1] Articles 881a—1 to 881a—68; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—10. Examinations.—The Banking Commissioner of Texas shall annually, or oftener if it is deemed advisable, either in person or through duly

appointed representatives, make a thorough and complete examination of every building and loan association doing business in this State, and for that purpose shall have the right of access to the offices and to all books and records of said company wherever the same may be kept, and also shall have the right to require the officers, employees or agents of such company, or any person connected therewith, to answer under oath any interrogatories addressed to them pertinent to the business of such company, and any willful false swearing shall be deemed perjury and be punishable as such. The Examiner shall make a report of his findings and file the same in the office of the Banking Commissioner of Texas and the Commissioner shall furnish a copy of such report to the association examined. Such examiner shall report any violation of law or any unauthorized or unsound practices of such association. He shall be paid such salary or fee for examinations, not to exceed fifteen dollars per day, as shall be authorized by the Banking Commissioner of Texas, which salary or fee and traveling expenses shall be paid out of the fees accumulated under Section 9.[1] [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 10.]

[1] Article 881a—9, ante.

Art. 881a—10a. Joint Examinations.—Any regulatory or other public authority or officer of this State required, authorized, or permitted to examine any institution which is a member of a Federal Home Loan Bank or which is insured by Federal Savings and Loan Insurance Corporation, may, in lieu of making any such examination, accept an examination of any such institution made by the Federal Home Loan Bank Board, a Federal Home Loan Bank, or Federal Savings and Loan Insurance Corporation, or may examine any such institution in conjunction with the Federal Home Loan Bank Board, a Federal Home Loan Bank, or Federal Savings and Loan Insurance Corporation. Any such regulatory or other public authority or officer may make available to the Federal Home Loan Bank Board, the Federal Home Loan Bank in which an association holds membership, and Federal Savings and Loan Insurance Corporation, any information furnished to, or obtained by, and all or any part of any report of any examination of any such institution made by any such regulatory or other public authority or officer. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 10a; added Acts 1939, 46th Leg., p. 76, § 1.]

Art. 881a—11. Prolonged audit.—The annual fees provided for in Section 9 of this Act[1] entitle each domestic Building and Loan Association to one examination by the Banking Commissioner of Texas. If in any case the conditions existing in any such Association are found to be such as to necessitate an additional examination or a prolonged audit and investigation and revaluation of real estate in order to ascertain the true status of its affairs, the whole expense of such additional examination or such prolonged examination and reappraisement shall be defrayed by such Association. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 11; Acts 1931, 42nd Leg., p. 320, ch. 191, § 1.]

[1] Article 881a—9.

Art. 881a—12. Accounting system; appraisal record.—Every association shall keep its books in such form as to accurately show its assets and liabilities, income and disbursements, in detail, and showing the appraised values in ink of the real estate security held in connection with each loan and signed in each case by the appraiser, officer or committee charged with making such estimated valuations. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 12.]

Art. 881a—13. Illegal, unauthorized, unsafe, or fraudulent practices—Remedies.—In case the Banking Commissioner of Texas shall find, upon examination or from other evidence, that any building and loan association is conducting its business, in whole or in part, contrary to law, or failing to comply with the law, that its assets are less than its liabilities, including all its capital stock, or is conducting its business in an unsafe, un-authorized or fraudulent manner, the Banking Commissioner of Texas shall, by an order in writing addressed to the president of such association, direct attention thereto and order compliance with the law, and that the assets be increased to equal liabilities, and in case such association shall refuse or neglect to comply with any such order lawfully made, or in case any such association is insolvent or in danger of insolvency, or its assets are impaired, then the Banking Commissioner of Texas shall annul its certificate of authority and may begin an action to revoke the charter of such association and for the appointment of a receiver thereof and the winding up of its affairs. Any action begun under this Section shall be brought in the county where such association has its principal place of business, and in the name of the State of Texas on relation of the Banking Commissioner of Texas, and shall be prosecuted by the Attorney General. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 13.]

Art. 881a—14. Report of the Attorney General.—Should the Banking Commissioner of Texas find, upon examination, that the affairs of any such association are in unsound condition and that the interests of the public demand the dissolution of such association and the winding up of its business, it shall so report to the Attorney General, who shall institute the proper proceedings for that purpose. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 14.]

Art. 881a—15. Refusal to permit examination.—The refusal of any such association to permit the examination of its affairs as authorized by this Act[1] shall be sufficient cause for institution of proceedings to wind up its affairs, and to forfeit the charter and liquidate the association by receivership as permitted by the laws of this state. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 15.]

[1] This article, articles 881a—1 to 881a—14, ante, and 881a—16 to 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—16. Remedies cumulative—liquidation.—The rights and remedies given by the two preceding sections are cumulative of each other, but no involuntary liquidation of any association shall be accomplished except as above provided; that is to say, at the suit of the Attorney General on information and request of the Banking Commissioner of Texas; provided:

(a) In the event it shall be determined by the court having jurisdiction, that an association should be wound up and its affairs liquidated, and shall so order, then the Banking Commissioner of Texas shall be forthwith charged with the duty to take possession of such association, its assets and affairs, collect its claims, pay its debts and obligations and distribute its remaining assets to those lawfully entitled thereto and report such proceedings from time to time and finally to the court for its approval;

(b) The procedure as to such liquidation shall in all respects comply with the procedure now existing, or hereafter provided by law for the liquidation of State Banking Institutions, so far as such proceedings are applicable;

(c) In the event no provision of law is applicable in any given case, or instance, then the Commissioner shall adopt such reasonable proceaure as will in his sound judgment expedite such liquidation and winding up in a fair and equitable manner;

(d) Any person aggrieved by any order, ruling or act whatsoever in the progress of such liquidation, shall have the right of appeal to the court having jurisdiction for a review of such order, ruling or act. Such review shall be by petition by complainant and answer by the Commissioner and shall be tried de novo and judgment required as in other civil cases. An appeal shall lie from such judgment as in other civil cases;

(e) No appeal for review shall be permitted to the court unless the petition therefor be filed within twenty (20) days from the order, ruling or act complained of;

(f) The Commissioner shall perform the duties here imposed as a part of his official duties as Banking Commissioner of Texas, without other compensation than the salary fixed by law, but he shall be authorized to employ all such special agents, attorneys, assistants and help, and incur such expenses as may be reasonable and necessary, and to fix the compensation and amount thereof, subject to the approval of the court from time to time as reported by the Commissioner, such compensation and expenses to be paid out of the funds of such association being liquidated; provided, however, the Commissioner may appoint the general manager of the Federal Savings and Loan Insurance Corporation as his agent in the liquidation of any association being liquidated where the association's shares or share accounts are insured by the Federal Savings and Loan Insurance Corporation;

(g) The Commissioner shall also pay to the State Treasurer of Texas for the General Fund of the State, from the funds of such association in liquidation, a sum or sums of money in lieu of examination fees equal to the estimated examination fees for the period of such liquidation had such association not closed;

(h) Upon approval of the final report of liquidation by the Commissioner, said report shall be presented to the court and the court shall enter such order, judgment and decree as may be necessary. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 16; Acts 1939, 46th Leg., p. 76, § 1.]

Art. 881a—17. Fiscal year; financial statements.—The fiscal year for each domestic building and loan association authorized to do business in this State shall be the same as the calendar year. On the first day of January and on the first day of July of each year, or within thirty days after such dates, such association shall publish, in at least one newspaper published in the place where its principal office may be located, or, if no newspaper be published in such place, then in a newspaper published nearest such place, a financial statement showing the condition of such company at the close of business on the previous December 31 and June 30, upon such form as may be prescribed by the Banking Commissioner of Texas; such printed statement to be verified by the oaths of the president and the secretary or treasurer; one copy of the newspaper containing such financial statement to be furnished to the Banking Commissioner of Texas within five days after publication and one copy to be recorded in the minute book of the board of directors of such association. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 17.]

Art. 881a—18. Communications from Banking Commissioner of Texas.—Each official communication directed by the Banking Commissioner of Texas, or one of his examiners or deputies, to a building and loan association or an officer thereof, relating to an investigation or examination conducted by the Banking Commissioner of Texas or containing suggestions or recommendations as to the conduct of the business of the association, shall be submitted by the officer receiving it to the board of Directors at the next meeting of the board and noted in the minutes of the meetings of such board. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 18.]

Art. 881a—19. Report to Governor.—The Banking Commissioner of Texas shall annually, at the earliest possible date after the statements of all building and loan associations are received, make a report to the Governor, of the general conduct and condition of all building and loan associations doing business in this State, including the information contained in such building and loan associations' annual statements, arranged in tabular form, together with such suggestions as it may deem expedient. The Banking Commissioner of Texas shall have printed as many copies of such report as in his judgment may be necessary. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 19; Acts 1941, 47th Leg., p. 346, ch. 188, § 1.]

Section 20 of the 1929 Act being a penal provision is published as Pen.Code, art. 1136a—9.

Art. 881a—20. Extension of time of corporation.—Any building and loan association incorporated under this or any prior law may extend the duration of time for which said association was organized by a vote of two-thirds of the capital stock of such association represented and voting at any annual meeting of the stockholders of such association or at any special meeting called for that purpose; thereupon the Board of directors shall transmit a copy of the proceedings of such annual meeting or of such special meeting, duly attested, to the Banking Commissioner of Texas, who shall make a duly authenticated copy thereof, certifying to the extension of time of such corporation. Any building and loan association incorporated under any prior law, and extending the duration of the time for which it was incorporated in the manner herein provided, shall be deemed as incorporated under and be invested with all the power given in this Act [1] the same as though such corporation had been originally incorporated under it. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 21.]

[1] This article, articles 881a—1 to 881a—19, ante, and 881a—21 to 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—21. Bonds of officers and employees.—Every officer, director, employee, or agent handling or having the custody or charge of funds, securities, books or records belonging to such association, shall, before entering upon the discharge of his duties, give a good and sufficient bond in such sum as may be fixed by the board of directors of any such building and loan association conditioned upon the payment to the association of such pecuniary loss as the association may sustain for money or other valuable securities embezzled, wrongfully abstracted or willfully misapplied by any such officer or employee in the course of his employment as such or in the course of his employment in any other position in such association, whether he be assigned, appointed, elected, re-elected or temporarily assigned to said position. Such bond shall be made by a surety corporation authorized to do business as such in this State. The form and amount of such bond and the solvency of such surety corporation shall be subject to the approval of the Banking Commissioner of Texas; provided that in lieu of individual bonds, a blanket bond covering all active officers and employees of such association may be executed, subject to the same provisions as to approval of surety, amount and form specified herein. The board of directors may require any other bond or bonds in addition to that herein required, at their discretion. Officers of associations who do not handle the association's funds or securities or draw a salary shall not be required to give bond. Bonds shall be executed in duplicate—original and one copy shall be filed with the Banking Commissioner of Texas; the other copy shall be retained by an officer or custodian of the association. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 22; Acts 1939, 46th Leg., p. 76, § 1.]

Amendment by Laws 1939, 46th Leg., p. 74, § 1, see art. 881a—21, post.

Section 2 of amendatory Act of 1939 repealed all conflicting laws.

Art. 881a—21. Bonds of officers and employees.—Every officer, director, employee, or agent handling or having the custody or charge of funds, securities, books or records belonging to such associa-

tion, shall, before entering upon the discharge of his duties, give a good and sufficient bond in such sum as may be fixed by the board of directors of any such building and loan association conditioned upon the payment to the association of such pecuniary loss as the association may sustain for money or other valuable securities embezzled, wrongfully abstracted or wilfully misapplied by any such officer or employee in the course of his employment as such or in the course of his employment in any other position in such association, whether he be assigned, appointed, elected, re-elected or temporarily assigned to said position. Such bond shall be made by a surety corporation authorized to do business as such in this State.

The amount of such bond and the solvency of such surety corporation shall be subject to the approval of the Banking Commissioner of Texas, and such bond shall be made upon forms prepared by the Banking Commissioner of Texas; provided, that in lieu of individual bonds, a blanket bond covering all active officers and employees of such association may be executed, subject to the same provisions as to approval of surety, amount and form specified herein. The board of directors may require any other bond or bonds in addition to that herein required, at their discretion. Officers of associations who do not handle the association's funds or securities or draw a salary shall not be required to give bond. Bonds shall be executed in duplicate, original, and one copy shall be filed with the Banking Commissioner of Texas; the other copy shall be retained by an officer or custodian of the association; provided, such bond shall not be required of any officer or employee of any Building and Loan Association which carries fidelity insurance upon such officer or employee in an amount and upon conditions approved by the Banking Commissioner. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 22; Acts 1939, 46th Leg., p. 74, § 1.]

Amendment by Laws 1939, 41st Leg., 2nd C.S., p. 76, § 1, see art. 881a—21, ante.

Art. 881a—21a. Reorganization.—Any Building and Loan Association heretofore or hereafter organized under the laws of this State shall have the power in any special meeting called for that purpose to reorganize the association, so as to provide:

(a) for the transaction of its future business under the laws of this State relating to Building and Loan Associations, or

(b) for reincorporation of the association as a Federal Savings and Loan Association, or

(c) for the creation of another organization, organized under State or Federal laws, to which shall be transferred part of the assets, properties, engagements and funds of the association voting to reorganize as to that part of its assets and properties.

If such plan of reorganization shall provide for the creation of a new association, and that a part or all of the assets of the association to be reorganized be transferred to the new organization, the assets so transferred shall constitute its original paid in capital, and the owners of any interest in the association being reorganized shall have their pro-rata interest in the new association.

In either instance, in order to perfect such reorganization, the terms and conditions thereof shall first have been approved by the Banking Commissioner of the State of Texas; the privilege of reorganization is likewise extended to Building and Loan Associations that are now or may hereafter be in the course of voluntary or involuntary liquidation, where the terms and conditions of the plan of reorganization, if the association sought to be reorganized is being conducted under a receivership, are also approved by the court in which the receiver was appointed.

And in either instance, in order to perfect such reorganization, a vote of two-thirds of the shares of the members of the association shall be necessary. No such meeting shall be called for such purpose nor shall such plan be submitted to the share-holders unless and until the plan shall have first been approved and adopted by a majority of the directors of such association, called for the purpose of considering the adoption of such plan, notice of such meeting shall be given by mailing such notice from the home office of such association to each shareholder at least thirty days prior to the date of such meeting in a sealed envelope, postage paid, addressed to the share-holder at the last known address and such meeting shall be otherwise provided for and conducted as shall be provided in such plan; in addition to sending out notice as provided for mail in this Section to the shareholders of such association, notice of the proposed reorganization shall be advertised for four weeks consecutively at least once a week in a newspaper published and circulated in the municipality in which the association is located, which advertisement shall be signed by the secretary of the association and shall state the time and place and the purpose for which such meeting is called; provided, however that shareholders may vote in person, by proxy or by mail and that all votes shall be cast by ballot and the Banking Commissioner or any examiner, deputy, assistant deputy or clerk so designated by said Banking Commissioner, shall supervise and direct the method and procedure of said meeting and appoint adequate inspectors to conduct the voting of such meeting, who shall have the power to determine all questions of the verification of the ballots, the ascertainment of the validity thereof, the qualification of the voter and the canvass of the vote and to certify to the Banking Commissioner and to the association the result thereof and with respect thereto shall act under such rules and regulations as shall be prescribed by the Banking Commissioner; that all necessary expenses incurred by the Banking Commissioner shall be paid by the association as certified to by him. The plans of reorganization may provide for reincorporation under the existing corporate name, or under a different name, and in addition to all other lawful provisions may provide for the exchange of shares in the association for shares of the same or a different class in the reorganized association, and may fix the time or times prior to which notice of withdrawal of such shares so issued in exchange for shares in the association being reorganized shall not be given, and if the withdrawal of such shares is so postponed, such fact shall be printed or stamped upon the face of the certificates and/or pass books evidencing shares to be so issued. The reorganization of such Building and Loan Association shall not prejudice the right of any creditor of any such association to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of or prejudiced in any right of action then existing against the officers or directors of said association for any neglect or misconduct; all obligations to any such prior association shall inure to the benefit of the reorganized association and enforceable by it and in its name, and demands, claims and rights of action against any such association may be enforced against it as fully and completely as they might have been enforced theretofore; and all deeds, notes, mortgages, contracts, judgments, transactions and proceedings whatsoever theretofore made, received, entered into, carried on or done by such association before such reincorporation shall be as good, valid, and effectual in law as though such association had continued to operate under its original certificate of incorporation.

No reorganization shall be deemed perfected until the resolution, certified by a majority of the board of directors of such association, or by the receiver, shall be filed with the Banking Commissioner of the State of Texas, and recorded in the same manner provided for amendments to charters; and provided further, in order that equity may be done all members of such association, in the event of reorganization, merger, con-

solidation or liquidation of an association, all pending withdrawal applications shall be cancelled. And provided further, that in the event of reorganization under a Federal Act, where all of the assets of the Building and Loan Association being reorganized are to be converted, merged or consolidated into or with the new corporation, the Texas charter of such Building and Loan Association shall be cancelled and held for naught, upon the completion of the reorganization plan. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 21–A, added Acts 1932, 42nd Leg., 3rd C.S., p. 34, ch. 18, § 2; Acts 1935, 44th Leg., p. 159, ch. 68, § 1.]

Section 8 of Acts 1932, provides that if any provision of the act is declared unconstitutional, such decision shall not affect the remainder of the act.

Art. 881a—22. Married women and minors may subscribe and invest.—Married women and minors may subscribe for and purchase and become the owners of shares or share accounts in any building and loan association organized under the laws of this State, or in any Federal savings and loan association domiciled in this State, and may hold, pledge, hypothecate, control, transfer, and withdraw the same in all respects as a feme sole, or as a person who has reached his majority, without the consent or joinder of the husband of the married woman, or without the necessity of the appointment of a guardian for such minor. Any payment to a married woman or a minor by any such building and loan association in connection with said shares or share accounts shall be valid and binding on all parties, and a receipt or acquittance signed by a married woman without the joinder of her husband or by a minor, shall be a valid and sufficient release and discharge of any such association for any payment on such shares or share accounts, or delivery of rights of such married woman or minor.

Provided, that in the case of a minor, if any parent or guardian of such minor should not desire the minor to have authority to pledge, hypothecate, control, transfer and withdraw the shares or the value thereof, such fact may be made known to the association in writing, duly acknowledged by an executive of the association, in which event the right to pledge, hypothecate, control, transfer and withdraw the same during the minority of such minor shall not be exercised except with the joinder of such parent or guardian. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 23; Acts 1939, 46th Leg., p. 76, § 1.]

Art. 881a—23. Joint shares.—Shares or share accounts issued by any building and loan association organized under the laws of this State, or by any Federal savings and loan association domiciled in this State, in the name of two or more persons, or to two or more persons or the survivor of either, may be withdrawn on the signature of either party to whom such shares or share accounts were issued, and no recovery shall be had against such association for amounts so paid. When shares or share accounts are issued in the name of two or more persons or in the name of their survivor, the survivor or either party shall have power to act in all matters relating to such shares or share accounts, whether the other person or persons named in such shares or share accounts be living or dead. Such a joint account shall create a single membership in such association, and the repurchase or withdrawal value of shares or share accounts issued in joint names and dividends thereon, or other rights relating thereto, may be paid or delivered in whole or in part, to any of such persons who shall make requests therefor, whether the other person or persons be living or dead. The payment or delivery to any such person, on a receipt or acquittance signed by any such person, to whom any such payment or any such delivery of rights is made, shall be a valid and sufficient release and discharge of any such association for the payment or delivery so made. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 24; Acts 1939, 46th Leg., p. 76, § 1.]

Art. 881a—24. Trust funds.—Administrators, executors, guardians, trustees or other fiduciaries, may in such capacity for a named beneficiary, acquire and hold shares or share accounts in any building and loan association organized under the laws of this State, or in any Federal savings and loan association domiciled in this State, and shall have the same rights and be subject to the same obligations, privileges and remedies as other shareholders and members. Administrators, executors, guardians, trustees, or other fiduciaries, may invest funds in their hands, as such, for a named beneficiary, in the obligations of any Federal Home Loan Bank, or in the obligations of the Federal Savings and Loan Insurance Corporation. Provided, that where under the laws of Texas, administrators, executors, guardians, trustees and other fiduciaries are required to obtain an order of the probate court to make investments, then such order shall be entered by the probate court before such fiduciaries are authorized to make the investments provided for in this section.

Any Texas corporation, including any insurance company organized under the laws of this State, or any insurance company doing business in this State under a permit, may invest any of its funds in the shares or share accounts of any building and loan association organized under the laws of this State, or in the shares or share accounts of any Federal savings and loan association domiciled in this State, and any such investments made by insurance companies shall be eligible investments for tax reducing purposes under Article 7064 and Article 4769 of the Revised Civil Statutes of 1925, as amended. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 25; Acts 1939, 46th Leg., p. 76, § 1.]

Art. 881a—25. Restrictions as to loans.—No building and loan association shall (1) make a mortgage loan to an officer or director of such association, either directly or indirectly, unless such loan be first approved unanimously by the Board of Directors, such approval to be recorded by aye and nay vote in the minutes of the meeting of the Board; (2) make loans exceeding in the aggregate five thousand dollars to one borrower upon real estate security if the assets of the association do not exceed fifty thousand dollars; nor shall any such association make loans exceeding in the aggregate ten thousand dollars to one borrower upon real estate security if the assets of such association exceed fifty thousand dollars but do not exceed two hundred thousand dollars; nor shall any such association make loans exceeding in the aggregate twenty thousand dollars to one borrower upon real estate security if the assets of such association exceed two hundred thousand dollars but do not exceed five hundred thousand dollars, and provided further that no building and loan association shall at any time make loans in the aggregate in excess of fifty thousand dollars to one borrower unless such loan or loans in excess of fifty thousand dollars shall be not more than one-half of one per cent. of the assets of such association; (3) take a mortgage loan or loans upon real estate which is not secured by a first and prior lien upon the property described in such mortgage, unless every prior lien or encumbrance thereon is owned by it, and no such prior mortgage, lien or encumbrance shall be sold, transferred or assigned by such association until every subsequent mortgage, lien or encumbrance owned by it shall have been fully paid and satisfied; (4) make a loan upon real estate security unless the borrower furnishes to such association a satisfactory abstract of title for such real estate showing good title to such real estate in the borrower, or unless the borrower furnishes a policy of title insurance of a title insurance company authorized to insure titles in this State; (5)

make a loan upon real estate unless the improvements thereon are insured against loss by fire, lightning, tornado and windstorm to the satisfaction of the board of directors; (6) fail to record forthwith in the office of the proper recording officer of the county in which the real estate security accepted by such association is located every mortgage and every assignment of a mortgage taken by any such association, such mortgage or assignment, after recording, to be kept in the permanent files of such association, subject to the examination of the state examiner, until the loan is fully discharged; (7) assign any note or mortgage given by members thereof, belonging to any such association, unless approved by the board of directors. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 26.]

Art. 881a—26. Restrictions on taking, holding and conveying real estate.—Every parcel of real estate acquired by any such association shall be sold by it within five years of the date on which it shall have been acquired unless (a) there shall be a building thereon occupied by it as an office; or (b) the Banking Commissioner of Texas on application of the board of directors shall have extended the time within which such sale shall be made. Any association by resolution of its Board of Directors may sell, convey, issue, improve, repair, mortgage, or exchange for other real estate any real property lawfully acquired by it; such sales or exchange to be effected on such terms and conditions as the board may consider appropriate and advantageous in each case provided, however, if such exchange involves the payment by the association of any difference in value, such transaction must be approved by a unanimous vote of the Directors present at the meeting to which such transaction is presented; and provided, further, that any association in partial or full payment and settlement of the price and consideration of any sales made of real estate belonging to it, and acquired by foreclosure or otherwise, may accept the unpledged shares of said association at a value not greater than the withdrawal value of such shares; and provided further, that the sale price of such real estate shall not be less than the book value thereof; and provided further, that a correct and accurate list, together with street address and description of all the real estate owned by the Association, upon which it is willing to accept its own shares in partial or full payment of the sales price therefor, shall be kept in the home office of the Association and be open to the inspection of any shareholder of such Association at any time during the regular hours of business of such Association, and provided, further, that whenever the aggregate of real property acquired by the Association in satisfaction of debts previously contracted in the course of its business by foreclosure, or otherwise, becomes a burdensome asset, the board of directors, acting with the approval of the Banking Commissioner and under such rules as may be prescribed by him, may segregate such real estate assets of the association and convey them in trust or to a holding corporation, reducing the share liability of the Association in a total amount equal to the total book value of the real property so conveyed and distributing to all of the members trust certificates or shares in the holding company, as the case may be, for their proportionate interest in such real property, in the manner as provided in Section 57 of this act relating to the reduction of liability to members. No building and loan association shall enter or at any time carry on its books the real estate and building or buildings thereon, used by it as a place of business, at a valuation exceeding their actual cost to such association, unless such additional valuation has been specifically approved in writing by the Banking Commissioner of Texas. No real estate taken by such association in satisfaction of debts previously contracted in the course of its business or purchased at sales under judgments, decrees or mortgages held by it shall be entered or carried on its books at a value in excess of the amount due the association, including principal, interest, premium, advances of taxes and insurance, attorney's fees and court costs, less the withdrawal value of the shares pledged as security for such debt, unless permanent improvements have been made thereon and the value of the property as improved shall have been determined by a written appraisal made in accordance with the manner governing original appraisals as specified in Section 12,[1] of this Act. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 27; Acts 1932, 42nd Leg., 3rd C.S., p. 34, ch. 18, § 3.]

[1] Article 881a—12.

Art. 881a—27. Restrictions as to deposit accounts.—No building and loan association shall carry or have upon its books at any time any demand, commercial or checking account, or any credit to be withdrawn upon the presentation of any negotiable check or draft, and all investment moneys received by any such association shall represent a payment made upon shares of stock or share accounts; provided, however, that such associations may accept money from members to be used for the purpose of paying taxes, assessments and insurance premiums on the property on which the association has a lien. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 28; Acts 1939, 46th Leg., p. 76, § 1.]

Art. 881a—28. Existing associations.—All Texas building and loan associations, now or hereafter organized, and all foreign associations, now or hereafter organized to do business in Texas, shall continue their corporate existence and power and be subject to the provisions of this Act[1] in like manner as corporations which are incorporated hereunder. [Acts 1929, 41st Leg., 2nd C. S., p. 100, ch. 61, § 29.]

[1] This article, articles 881a—1 to 881a—27, ante, and 881a—29 to 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—29. Articles of association.—Any number of persons, not less than five (5), who are citizens of this state, desiring to incorporate a building and loan association may, by complying with the provisions of this Act[1] and entering into articles of association, become a corporate body. Such articles of association shall be signed by the persons associating and acknowledged before some person authorized by the laws of this state to take acknowledgments to deeds, and shall set forth:

1. The name assumed by the association, which shall not be the name assumed by any other association incorporated under this law, nor so similar as to be liable to mislead. The name of the associations hereafter chartered shall contain the words "building and loan association", or "savings and loan association", or "savings association", or "savings institution", and associations heretofore chartered may by amendment to their charter change the name of their association so as to provide for such terminology. [As amended Acts 1945, 49th Leg., p. 95, ch. 66, § 1.]

2. The purpose or purposes for which the association is formed, and which may include any or all of the powers given by law to building and loan associations and, which purpose may state "to form and conduct a savings and loan association under the laws of Texas" which will be deemed to give such associations so formed all of the powers expressly and impliedly given to such associations under the Building and Loan Laws of Texas as now existing and may be hereafter amended, and all incidental powers necessary to exercise its specific powers.

3. The name of the city, town or village and the county wherein the principal place of the business of the association is to be located, and which must be within the State of Texas.

4. The amount of its authorized capital stock, which shall be divided into shares of the maturity or

par value of not less than One Hundred ($100.00) Dollars each.

5. The names of the incorporators; their respective occupations and residence address, and a statement of the number of shares subscribed by each, and the amount of cash payment made upon such shares or share accounts by each.

6. The amount of capital actually paid in which shall in no event be less than One Thousand ($1,000.00) Dollars if the home office of the association is located in a town having a population of less than ten thousand inhabitants, and which shall not be less than Two Thousand ($2,000.00) Dollars if the home office of the association is located in a city having a population of more than ten thousand and less than fifty thousand inhabitants, and which shall not be less than Ten Thousand ($10,000.00) Dollars if the home office of the association is located in a city having a population of more than fifty thousand and less than one hundred and fifty thousand inhabitants, and which shall not be less than Twenty-five Thousand ($25,000.00) Dollars if the home office of the association is located in a city having a population of one hundred and fifty thousand or more inhabitants. The population of all towns and cities for the purpose of fixing the minimum paid-in capital stock of the association under this section shall be ascertained by reference to the last preceding Federal Census. All payments for shares or share accounts of required paid-up capital stock must be in lawful money of the United States and must be in the custody of the persons named as the first board of directors.

7. The term of corporate existence which shall not exceed fifty (50) years but which period may be extended as provided in this Act. [As amended Acts 1943, 48th Leg., p. 482, ch. 323, § 1.]

8. The number of directors of the association, which shall not be less than five (5) nor more than twenty-one (21), and associations authorized by their articles of incorporation or by-laws to issue Permanent Reserve Fund Stock, may provide in their articles of incorporation or by-laws that all or at least a majority of the Board of Directors shall be elected from the shareholders holding Permanent Reserve Fund Stock. The incorporators named as directors must possess the qualifications of directors specified in Section 33 of this Act.[2] The number of directors may be changed from time to time within the limits above prescribed, without amendment to its charter, by resolution adopted at any regular meeting of shareholders, or any special meeting of shareholders called for the purpose, which resolution shall be spread on the minutes of the meeting, and a certified copy shall be filed with the Banking Commissioner, for which filing no fee shall be charged. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 30; Acts 1939, 46th Leg., p. 76, § 1; Acts 1943, 48th Leg., p. 482, ch. 323, § 1; Acts 1947, 50th Leg., p. 348, ch. 196, § 1.]

[1] Articles 881a—1 to 881a—68; and Pen.Code, arts. 1136a—1 to 1136a—9.
[2] Article 881a—32.

Art. 881a—30. Application for charter.—When articles of incorporation of associations are regularly executed as herein provided, they shall be presented to the Banking Commissioner of Texas together with the by-laws of the association, and must be accompanied by the fees provided herein. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 31.]

Art. 881a—31. Amendment of charter.—Any building and loan association heretofore or hereafter incorporated under the laws of this State may, by a resolution adopted by a two-thirds vote of shares represented and voted at any annual meeting, or at any meeting called for that purpose, increase its authorized capital stock or amend its articles of association or by-laws in any manner not inconsistent with the provisions of this Act.[1] No such increase of capital stock nor amendments to the articles of incorporation or to the by-laws shall have effect until a copy of such resolution, certified by the President and Secretary of such association, shall be filed approved and recorded in the manner as is provided in this law. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 32.]

[1] This article, articles 881a—1 to 881a—30, ante, and 881a—32 to 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—32. Directors—Qualifications; removal by Banking Commissioner.—The corporate powers of every building and loan association heretofore organized under the laws of this State, or which may be incorporated under this Act, shall be exercised by a board of directors, who shall elect the officers of the association. The By-Laws of every building and loan association may prescribe other qualifications for directors, but no person shall be eligible to election as a director unless he is the owner in good faith and in his own right on the books of the association of shares upon which at least Two Hundred ($200.00) Dollars in cash has been paid; and if the association be one located in a town or city having a population of more than twenty thousand (20,000) and less than one hundred thousand (100,000) inhabitants there must have been at least Five Hundred ($500.00) Dollars paid in on the shares held by him; and if the association be one located in a town or city having a population of more than one hundred thousand (100,000) inhabitants there must have been at least One Thousand ($1,000.00) Dollars paid in on the shares held by him, and such amounts shall not be reduced by withdrawal or pledge for a loan with the association, or in any other manner so long as he remains a director of the association. Provided, however, any person who is the owner in good faith and in his own right on the books of the association shares upon which Two Hundred ($200.00) Dollars in cash has been paid, shall be eligible to election as a director in an association having assets of less than Three Hundred Fifty Thousand ($350,000.00) Dollars, regardless of the location of the association, and such amount shall not be reduced by withdrawal or pledge for a loan with the association, or in any other manner so long as he remains a director of the association. Every director, who if after his election as such ceases to be the owner in his own right of the necessary qualifying shares, or who shall pledge or hypothecate with such association of which he is a director, the shares necessary to qualify him as such director, shall thereby vacate his office. The Banking Commissioner of Texas may remove any officer or director of any such building and loan association for just cause specified by him and after ten (10) days notice in writing to such person. Any officer or director so notified of the intention of the Commissioner and feeling himself aggrieved by such removal shall have a right to apply to the District Court of his residence, for a writ of injunction to restrain such removal, as in ordinary injunction cases. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 33; Acts 1931, 42nd Leg., p. 53, ch. 36, § 1.]

Art. 881a—33. Neglecting to elect officers.—No building and loan association created under this Act shall cease or expire from neglect on the part of the corporation to elect officers or directors at the time mentioned in their by-laws, and all directors and officers elected by such corporation shall hold their offices until their successors are duly elected and qualified. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 34.]

[1] This article, articles 881a—1 to 881a—32, ante, and 881a—34 to 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—34. Membership; liability; capital definition; lien on accounts.—A member of a building and loan association shall be any person, persons, firm, co-partnership, association or corporation owning any of the shares of stock or share accounts

of a building and loan association, or holding a certificate of membership as a borrower from any such building and loan association. The manner of voting and the extent of the voting privilege shall be provided in the by-laws of each association, and voting may be by proxy. In the consideration of all questions requiring action by the members the by-laws may provide that each shareholder shall be entitled to cast one vote for each share owned or may provide that each shareholder shall be entitled to cast one vote for each One Hundred ($100.00) Dollars, or fraction thereof, of the withdrawal value of his shares; and each holder of a share account shall be permitted to cast one vote for each One Hundred ($100.00) Dollars, or fraction thereof, of the participation value of his share account. A borrowing member shall be entitled, as a borrower, to cast one vote, and to cast the number of votes to which he may be entitled as the holder of shares or a share account. Membership shall continue until such shares or share accounts have matured and been paid, withdrawn, transferred, retired, or forfeited, or until the loan has been completely repaid. The payments made to any such association upon shares issued by it shall be called "dues." The capital of an association shall consist of the aggregate of accumulated payments actually made upon the shares and upon share accounts by its members, plus dividends credited to such shares and accounts, either individually or by series, less repurchase and withdrawal payments. The capital shall be accumulated only by payments by members upon shares and share accounts and earnings on accounts, as provided in this Act.[1] It shall be unlawful for any association to represent itself as having, either by newspaper advertising, letter, circular, or otherwise, a greater capital than that herein described. The value of the participation in the capital of each share or share account held by a member shall be the aggregate of payments made upon such share or share account, plus dividends credited thereto, less repurchase or withdrawal payments, or other lawful charges. Every share issued by such association shall have a paid-up or matured or par value of not less than One Hundred ($100.00) Dollars each. No preference between shareholders and/or accountholders shall be created with respect to the payment of withdrawals or the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding up of an association except such preference as has been created by the Building and Loan Act where associations issue or have issued and have outstanding reserve fund or permanent shares. No association shall have the power to contract with respect to the capital or participation in the capital in a manner inconsistent with the provisions of this Act. The members of an association shall not be responsible for any losses which its capital shall not be sufficient to satisfy, and the shares or share accounts shall not be subject to assessment, nor shall the members be liable for any unpaid installments on their share subscriptions. To secure loans to members, an association shall have a lien, without further agreement or pledge, upon all accounts owned by the borrower. Upon default upon any loan, the association may, without any notice to, or consent of the borrower, cancel on its books all or any accounts owned by the borrower and apply the value of such accounts in payment on account of the loan. An association may by written instrument waive its lien in whole or in part. Any association may take the pledge of an account or accounts of the association owned by a member other than the borrower as additional security for any loan secured by an account or by an account and real estate, or as additional security for any real estate loan. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 35; Acts 1939, 46th Leg., p. 76, § 1.]

[1] Articles 881a—1 to 881a—68 and Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—35. Nature of association.—Every building and loan association shall be either permanent or serial in character. A permanent association may issue shares at any time and credit and pay dividends thereon as earned and declared, as may be provided in the by-laws. A serial association shall issue its installment shares in series and credit the dividends apportioned to such shares by series; but no additional shares shall be issued in any series after a dividend has been credited thereto unless the person to whom such shares shall be issued shall pay therefor the book value of such shares at the last declaration of dividends plus the dues payable thereon since such declaration, with accrued interest. Dividends credited by serial associations upon other classes of shares issued by it may be credited in the pass-books of its members. Shares which have not been transferred to the association as security for the repayment of a loan shall be called "free" shares. Shares that have been so transferred shall be called "pledged" shares. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 36.]

Art. 881a—36. Classes of shares.—All building and loan associations, when provided in its by-laws, may issue different classes of shares, stock, share accounts and investment certificates as provided herein:

(a) Installment shares, (1) with participation in all dividends that may be declared by such association, and upon which a regular payment of dues of not less than Twenty-five (25¢) Cents or more than Two ($2.00) Dollars per One Hundred ($100.00) Dollars share per month shall be made at stated periods expressed by its by-laws, until such shares reach their matured value, or are withdrawn, retired or forfeited; (2) or with no participation in such dividends, the dues being payable thereon in regular amounts at stated periods, expressed by its by-laws, and being immediately or at stated periods applied, in reduction of a debt due to the association from the holder thereof in accordance with a direction given by him.

(b) Thrift or optional-payment shares, which shall participate in the dividends apportioned by the association and shall be credited therewith at a rate not less than 60% of the rate of dividend apportioned and credited to installment shares, as the by-laws shall provide, and upon which dues shall be paid in such sums and at such times as the holder thereof may elect until the shares reach their matured value, are withdrawn or retired.

(c) Advance-payment, accumulative or prepaid shares upon which a single payment of dues to the amount of 50% or more of the maturity value of such shares shall be paid at the time the shares are issued. The dividends on these shares shall not exceed the dividends apportioned and credited to installment shares, and the whole or a part of the dividends apportioned to these shares shall be credited to them until such shares are matured, withdrawn or retired. Any balance of such dividend not so credited shall be paid in cash to the holder of such shares, at regular dividend paying periods.

(d) Fully-paid or income shares upon which a single payment of dues amounting to the par or maturity value shall be paid at the time when such shares are issued. The dividends on these shares shall be paid in cash at a rate not exceeding at any time the rate at which dividends are apportioned and credited to installment shares, and providing that agreements may be entered into by and between any such association and any of its members holding fully paid or income shares, as the by-laws shall provide, whereby said members waive participation in the general profits of such association.

(e) Juvenile shares may be issued in the name of any minor. Such shares shall be held for the exclusive right and benefit of the minor and free from the control or lien of any other persons. The dues paid upon these shares, together with the dividends

credited thereto, may be withdrawn in whole or in part by the person in whose name they were issued during his minority and his receipt or acquittance shall be a valid and sufficient release and discharge to the association for such accumulated dues together with the dividends credited thereon, or any part thereof. Juvenile shares shall not be subject to any membership or withdrawal fees of any nature, or to fines for failure to pay dues punctually, nor shall the holder thereof be required to make regular or specific payments. Such shares shall not be chargeable with losses of any kind nor shall they entitle the holder to vote at any meeting of the shareholders. Such shares may be credited with dividends at a rate not less than 60% of the rate of dividends apportioned and credited to installment shares, as the by-laws shall provide. The matured value of all the juvenile shares issued by an association shall not exceed in the aggregate at the time of issue 25% of the aggregate matured value of existing shares of all other classes.

(f) Reserve fund or permanent stock, which when sold may not be withdrawn, except as hereafter provided, until after all liabilities of the association have been satisfied in full, including the withdrawal value of all other types or classes of shares and share accounts, and which may receive as dividends all the earnings of the association after expenses have been paid and the dividends declared by the directors upon other classes of shares and share accounts have been paid or credited; which such stock if allowed by the by-laws must be fully paid for in advance, and against which the association may not make any loans; and which fully paid reserve fund or permanent stock must at all times be at least 3% of the gross assets of the association, but not less than Twenty-five Thousand ($25,000.00) Dollars, but which shall not be required to exceed Two Hundred Fifty Thousand ($250,000.00) Dollars; provided that associations whose shares are insured by the Federal Savings and Loan Insurance Corporation may retire in whole or in part such reserve fund or permanent stock heretofore issued, when such association is authorized to do so by a majority vote of its members, provided that the basis of such retirement shall have been approved by the Banking Commissioner of Texas, and provided further that no such association shall be authorized to retire its reserve fund or permanent stock until a consent to such retirement upon the part of the Federal Savings and Loan Insurance Corporation has been filed in writing with the Banking Commissioner of Texas.

(g) Share accounts may be issued by associations subject to provisions of this Act.[1] Share accounts of One Hundred ($100.00) Dollars or multiples thereof, shall be known as "investment share accounts". All other share accounts shall be known as "savings share accounts". Payments upon share accounts shall be called "share payments". Share account holders are deemed to be members of the association in which they hold accounts in the same manner and to the same proportionate extent as are shareholders, and no creditor and debtor status or preference in earnings or assets is authorized to be created by the authority to issue share accounts, but the status of "member" shall continue until such share accounts have been withdrawn and paid, transferred or retired. The participation value in the share capital of each share account held by a member shall be the aggregate of payments made upon such share account and dividends credited thereto, less repurchase or withdrawal payments. "Savings share accounts" shall be entitled to the same rate of dividends as may be paid by the association upon Thrift or Optional share accounts, and "investment share accounts" shall be entitled to the same rate of dividend paid by the association upon fully paid or income shares. Dividends to those holding savings share accounts and those holding investment share accounts shall be provided for at the same time dividends are declared for the different classes of shares provided for in this section.[2]

(h) Such other and different classes of shares, stock or investment certificates as may be provided in its by-laws, but only after the by-laws provisions applying thereto have been specially approved by the Banking Commissioner of Texas. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 37; Acts 1939, 46th Leg., p. 76, § 1; Acts 1943, 48th Leg., p. 482, ch. 323, § 1.]

1 Articles 881a—1 to 881a—68 and Pen.Code, arts. 1136a—1 to 1136a—9.

2 This article.

Art. 881a—37. Investment of funds.—Subject to the provisions of this Act,[1] any building and loan association may invest the funds received by it, as follows:

1. In loans to its members on the sole security of its shares and share accounts. No such loan shall exceed 90% of the withdrawal value of the shares or share accounts owned or otherwise pledged by the borrower. No such loan shall be made for more than 50% of the withdrawal value of the shares pledged as security when an association has applications filed for withdrawal which have been on file and unpaid for more than ninety (90) days.

2. (a) In real estate loans to members secured by a mortgage, deed of trust or other instrument creating and/or constituting a first lien on improved real estate situated in this state. Borrowers shall be required to execute their note or obligation payable directly to the association and such loans shall be repayable in monthly installments sufficient to amortize the same paying off interest and principal in not less than five (5) nor more than twenty-five (25) years, which monthly installments shall be applied first to the interest due on the unpaid balance of the debt, and the remainder of the payment to the unpaid principal thereof until the same is paid in full; (b) Instead of such direct reduction loan, the association may require the borrower to subscribe an amount of shares having a maturity value equal to the amount of the loan, and take a note or obligation of the borrower to mature upon the maturity of such shares, and shall require a monthly payment sufficient to pay the interest on the note and estimated to mature the shares within the time specified, and in such case, the association shall have a lien on such shares to secure the debt, and upon the maturity of the shares shall transfer the amount to the credit thereof in extinguishment of the debt and shall cancel and relinquish the security; provided, that subject to the approval of the Commissioner, the number of payments of dues, interest and premium required from the borrowing shareholder to pay off his loan and secure a release may be limited to such a definite number as the by-laws provide.

No loan made to a member under the provisions of this sub-section shall exceed 65% of the appraised valuation of the real property securing the loan unless the loan is secured by a first mortgage upon real property upon which there is located a dwelling or dwellings for not more than four families, or combination dwellings of such type and business property, in which event the loan may be made in an amount not in excess of 80% of the appraised valuation of such real property. Associations having a loan secured by a first lien upon real property may make further and additional loans secured by liens subsequent to their own first lien upon the same security, subject to the requirements and limitations heretofore provided for original loans. In each instance where money is advanced an appraisal shall at that time be made in writing by an appraiser or committee of appraisers selected and appointed by the Board of Directors of the Association, which appraisal report shall state the conservative value of the real property and improvements separately,

and such report shall be filed as a permanent record of such association.

Associations may pay taxes, assessments, insurance premiums, and other similar charges for the protection of its interests in property on which it has loans, and may carry such advances upon its books as an asset of the association, and charge and collect interest upon such advances, and such association shall have a good and valid lien against such real property and shares of the association owned by the borrower to secure the payment of the funds so advanced; or such payments may be added to the unpaid balance of the loan as of the first of the month in which such payments are made.

No premium for real estate loans may be charged unless provided for in the by-laws and the amount to be collected agreed to be paid in writing by the borrower.

3. In loans and advances of credit and obligations representing loans and advances of credit as are insured by the Federal Housing Administrator or the Federal Housing Administration pursuant to any and all of the provisions of the National Housing Act, approved June 27, 1934, as amended [2] or as may hereafter be amended, or any substitute therefor; and, further, associations may make any loans for the purposes of aiding members to purchase or to construct residential properties or to repair, maintain, modernize or improve such properties if such loans be guaranteed or insured by the United States or any instrumentality thereof. Associations are authorized and empowered to contract for and to obtain and to accept such insurance or guarantees.

4. In loans to members secured by the pledge of the association's share or share accounts, either participating or non-participating, which shares or share accounts through the payment of weekly or monthly dues or share payments contracted to be made thereupon shall equal the amount of the loan to the member; provided, the aggregate of the unpaid principal of all loans directly made to any one member of the association under the provisions of Sub-division 4 hereof shall not exceed at any time the sum of Three Hundred ($300.00) Dollars, if at the time of making the loan or loans the association shall be one having assets less than One Million ($1,000,000.00) Dollars and which shall not exceed at any time in any other authorized association the sum of One Thousand ($1,000.00) Dollars, that such loans shall be payable when the shares or share accounts equal the amount of the loan, maturity of which shall not exceed eighteen (18) months from its date and which note may bear interest not in excess of the lawful contract rate, which may be deducted in advance. Such associations may charge reasonable fees for investigation, appraisal, service, collection or other costs incident to the application or the loan, which fees may not be higher than those permitted to be collected by persons, firms, or corporations by the provisions of the laws of this state now in effect or as may hereafter be amended or enacted relating to or regulating the charges that may be made by any person, firm or corporation authorized to make this character of loan. The association may take such additional security as they may deem necessary or proper. The aggregate total amount of the unpaid principal of loans held by any association at any one time as authorized by Sub-division 4 hereof shall be included within the amount and shall not exceed the prescribed limitation placed upon the aggregate amount of funds authorized to be invested by any association under the provisions of Sub-division 5-d of this section; and provided, further, that where such association is an "insured" association subject to the provisions of Title IV of the National Housing Act, approved June 27, 1934, as amended,[3] before any such association may make loans authorized under Sub-division 4 hereof, prior permission in writing must be given by the Federal Savings and Loan Insurance Corporation, Washington, D. C. and a copy of such permission filed with the Banking Commissioner of Texas.

5. If at any time an association has funds in its treasury applicable for loans and investments, which funds are deemed to be in excess of the amount needed for types of loans and investments hereinbefore enumerated, and for the payment of matured shares and withdrawal requests, such association may invest its funds: (a) without limit as to amount in the obligations of the United States of America, of this state, of any Federal instrumentality if such obligations be unconditionally guaranteed as to principal and interest by the United States, in stock of the Federal Home Loan Bank of which it is a member and obligations of the Federal Home Loan Banks and the Federal Savings and Loan Insurance Corporation; (b) in loans secured by a first lien upon improved real property situated in this state which may be either amortized monthly loans within the maximum period of maturity and the maximum ratio of loan to appraised value prescribed in Sub-paragraph 2 hereof; or which may be term loans or loans providing for other methods of payment than amortized monthly installments and which may not provide a longer period of maturity than five (5) years from the date of the loan and, which such loans shall not exceed 60% of the conservative appraised value of the real property securing the loan, the value in all cases to be determined in the manner provided in this Act. In any case where an association is authorized to loan money upon property, or by a lien upon such property, it is authorized to loan money upon first mortgages or other first liens upon such property; (c) in the stock or obligations of any National Mortgage Association, created under the National Housing Act, as amended or as may hereafter be amended, the obligations of the Home Owners' Loan Corporation, the Reconstruction Finance Corporation, the Federal Land Banks, or in the obligations of any state in the Union that has not within the last ten (10) years previous to making such investment defaulted in the payment of any part of either principal or interest thereof; and subject to the rules and regulations promulgated by the Banking Commissioner of Texas in the following obligations and securities: in bonds, interest bearing notes or other obligations issued under due authority of law, in payment for permanent improvements made, bearing a fixed rate of interest, and payable within a definite number of years, or over a series of years, of any city, county, town or school district, or other subdivision of the state, now organized, or which may hereafter be organized, and which is now or may hereafter be authorized to issue bonds under the Constitution and laws of this state, which has not defaulted in the payment of any part of either principal or interest thereof within five (5) years previous to making such investments; in first mortgage bonds of any steam or electric railroad, or other public utility corporation, domiciled in this or any other state of the Union, the annual net earnings of which steam or electric railroad, or public utility corporation, equaled during the last five (5) years twice the annual interest charges on the entire funded indebtedness of such corporation; and in other bonds, notes, certificates and obligations, when such investments are specifically approved by the Banking Commissioner of Texas as a proper investment for the building and loan association seeking to make the investment; (d) in short term loans to and in the shares of other building and loan associations incorporated under this Act and of Federal Savings and Loan Associations located in this state, such loans and investments to be made only after prior approval by the Banking Commissioner. Provided, further, that the aggregate amount

of funds invested by any association in the loans and securities authorized under Sub-division 4, Sub-divisions 5-b, 5-c, and 5-d, and Sub-division 6-d of this section shall at no time exceed 25% of the gross assets of the association.

6. In real property as follows: (a) Any building and loan association having assets of Five Hundred Thousand ($500,000.00) Dollars or more may, with the approval of the Banking Commissioner, permanently invest a portion of its funds in the purchase of lands and the erection of buildings for the purpose of providing offices for the transaction of its business from portions of which, not required for its own uses, a revenue may be derived, provided that the amount so invested shall not exceed 5% of all other assets of the association; (b) such real property as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business; (c) such real property as it shall purchase at sales under foreclosure at any sheriff's or other judicial sale, or at any other sale, public or private, upon which property the association may have or hold any mortgage lien, or other encumbrance or in which the association may have any interest for the purpose of collecting any debt due it, and/or for the protection of its interest in such real property; (d) and such association may purchase the fee simple title to real property upon which improvements have been erected out of the proceeds of a loan which is secured by an obligation and mortgage, authorized, created and insured under provisions of the National Housing Act, approved June 27, 1934, as amended and as may hereafter be amended, and which obligation and mortgage is in compliance with the rules and regulations prescribed by the Federal Housing Administrator, provided, that at the time of such purchase there is a valid lease in effect creating a leasehold interest in such land and improvements thereon, which lease has a term of at least twenty (20) years from date of the note and complies with all requirements, terms, conditions, rules and regulations of the Federal Housing Administrator.

Real property may be acquired and sold in accordance with the provisions of Section 27 hereof,[4] provided, that when sold by the association under a "Contract of Sale" the amount due the association under terms of the contract may be entered and carried as an asset upon its books, but at no time shall the contract be considered as having an asset value greater in amount than the sales price agreed upon in the contract, or greater in amount than the value at which such property sold was permitted to be carried upon the books of the association in accordance with the provisions of Section 27 hereof, whichever value is less; provided, that the provisions of Section 27 and such other laws of this state as relate to the acquisition, handling and disposition of real property by building and loan associations shall not be deemed to apply to the authority granted by Sub-section 6-d herein.

7. A reasonable amount in furniture and fixtures necessary for the conduct of the association's business against which must be charged annually a sufficient depreciation, and which annual depreciation shall not be less than 10% of the original cost of such furniture and fixtures.

No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credit may be made by building and loan associations, or prescribing or limiting the amount of monthly payment of dues upon installment shares of such associations, or prescribing the form of note or lien, or in any wise governing or limiting the action of the association in proceeding with the maturing of obligations in default and the acquisition of, possession and title to property securing such obligations, or limiting or prescribing the amount that may be loaned to any one borrower or relating to the acquisition, handling or disposition of real property by such associations shall be deemed to apply to the authority granted herein under Sub-divisions 3, 4, and 6-d; and provided further that the Banking Commissioner of the State of Texas is hereby authorized to prescribe additional regulations applying to the making of loans, advancing of credit, and purchase of obligations and real property, as authorized under Sub-divisions 4 and 6-d of this section, and limiting the total investment of such associations, if in his judgment the protection of investors requires such additional regulations, and notice of the order fully setting out such additional regulations shall be given by registered mail to each building and loan association operating under this Act at least thirty (30) days prior to the effective date of such order; and after the effective date so provided, it shall thereafter be unlawful for any association to exercise the authority herein given, without full compliance with such additional regulations.

8. Nothing herein shall be construed as preventing or restricting the deposit of cash funds of the association with any State or National Banking Association or with the Federal Home Loan Bank in which such association holds membership.

All notes and mortgages taken by the association shall be deemed to obligate the maker to the performance of and compliance with the provisions of this Act and by-laws of the association relating to the payment of loans, premium, interest, dues, fees and fines, although the same may not be fully expressed therein; and all borrowers of a building and loan association shall be deemed and held to be members thereof, and shall be permitted to cast the number of votes for each share held or subscribed as may be provided in the charter and by-laws of the association, but shall nevertheless be entitled to cast a vote in all matters for action by members whether they hold any shares or not.

Nothing herein shall be construed as preventing or restricting an association in order to protect itself from the loss upon a loan or investment previously made, from acquiring ownership of, or otherwise taking and holding, any kind of property or security, whether real or personal.

Every association eligible to become a member of a Federal Home Loan Bank under the provisions of the Act of Congress known as the "Federal Home Loan Bank Act", approved July 22, 1932, as amended[5] and as may hereafter be amended, is authorized to do all things as may be required or permitted under said Act, or any amendment thereto, in order to obtain, continue, or terminate such membership; and to assume all the duties, obligations, responsibilities and liabilities and become entitled to all of the benefits provided in said Act, as amended, and as may hereafter be amended; and

Every association eligible for insurance under the provisions of Title IV of the National Housing Act, approved June 27, 1934, as now or hereafter amended, is authorized to do all things necessary to obtain, continue, or terminate such insurance, and every action heretofore taken by any such association in connection with such insurance is hereby ratified and confirmed. All associations having the insurance protection provided by Title IV of the National Housing Act are hereby designated as "insured associations".

Any provisions of this Act to the contrary notwithstanding, any building and loan association which is chartered by the State of Texas and operating under the provisions of this Act may make any loan or investment which such association could make were it incorporated and operating as a Federal Savings and Loan Association with its domicile in this state. If the loan or investment hereby authorized is an enlargement of powers granted by this Act,

then such loans and investments may be made subject to rules and regulations promulgated by the Banking Commissioner of Texas. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 38; Acts 1932, 42nd Leg., 3rd C.S., p. 34, ch. 18, § 4; Acts 1935, 44th Leg., p. 159, ch. 68, § 2; Acts 1943, 48th Leg., p. 482, ch. 323, § 1.]

1 Articles 881a—1 to 881a—68; Pen.Code, arts. 1136a—1 to 1136a—9.
2 12 U.S.C.A. §§ 1701-1742.
3 12 U.S.C.A. §§ 1724-1730.
4 Article 881a—26.
5 12 U.S.C.A. §§ 1421-1449.

Art. 881a—37a. Loans pursuant to Servicemen's Readjustment Act.—Any building and loan association organized under the laws of this state may make loans pursuant to the provisions of Sections 500, 501, 504 and 505 of Chapter V, Title III of the Act of Congress, entitled "Servicemen's Readjustment Act of 1944"[1], approved by the President on June 22, 1944, and all amendments thereto, as well as any and all regulations that have been heretofore promulgated and all regulations that may be hereafter promulgated under the provisions of said sections of said Act of Congress. Such building and loan associations are authorized and empowered to contract for, and obtain such insurance or guaranty of the payment of such loans, advancements or investments as may be provided for in such sections of such Act or any amendments thereto, or under any regulation promulgated thereunder. Such building and loan associations may invest any of their funds, in such loans, credits or obligations without limitation as to amount loaned to any one borrower, or period of maturity, under the provisions of Sections 500, 501, 504 and 505 of Chapter V, Title III of said Act of Congress, and under all amendments thereto, as well as under any and all regulations that have been heretofore promulgated or that may be hereafter promulgated under the provisions of said Sections of said Act of Congress. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 38a, added Acts 1945, 49th Leg., p. 28, c. 18, § 1.]

1 38 U.S.C.A. §§ 693-697e.

An earlier section 38a, added to Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, by Acts 1939, 46th Leg., p. 76, § 1, relating to loans secured by shares and to limitation on amount of loans, effective until Sept. 1, 1943, was repealed by Acts 1943, 48th Leg., p. 482, ch. 323, § 3, effective May 14, 1943.

Arts. 881a—37b, 881a—37c. [Repealed by Acts 1943, 48th Leg., p. 482, ch. 323, § 3.]

The articles repealed were Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, §§ 38b, 38c, added Acts 1939, 46th Leg., p. 76, § 1; Acts 1941, 47th Leg., p. 346, ch. 188, § 2.

Art. 881a—38. Foreclosure.—Whenever any borrower shall be in arrears or in default in the performance of any of the obligations legally imposed upon him by an association or by the terms of his note, mortgage, deed of trust or other evidence of indebtedness, and such arrearage or such default shall continue for the period of two months, the board of directors may, at their discretion, declare the pledge shares forfeited and the whole amount of the loan due and payable, and its collection, together with arrears of interest, premium and fines, may be enforced by proceedings upon the security held by the association in accordance with law. The withdrawal value of the pledged shares or bonds at the time of the commencement of foreclosure proceedings shall be credited upon the loan. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 39.]

Art. 881a—39. Repayment of loans.—Mortgage loans may be prepaid in accordance with the by-laws of the association and in accordance with the terms of the note and mortgage, provided, the borrower shall pay the principal due thereon (less the withdrawal value of the shares transferred as security therefor), loan expenses, the premium due and the interest accrued at the time of such repayment, and all sums advanced by the association for taxes, assessments, or insurance premiums, with interest thereon; and in addition thereto any penalty for prepayment in part or in full agreed upon in the note or mortgage or prescribed by the by-laws but which, in the case of mortgages insured by the Federal Housing Administrator, may not be in excess of that permitted by the rules and regulations of the Federal Housing Administration and which, in the case of other mortgage loans, shall not exceed 5% of the amount of such anticipatory payment. Any borrower desiring to retain the shares may repay his loan without claiming credit for the withdrawal value of such shares, whereupon such shares shall be retransferred to the borrower and shall be free from any claim by reason of said loan. If any such association is in process of either voluntary or involuntary liquidation, the payments made by such borrower, plus credited dividends, less any lawful fees, fines, penalties or advances owing by such member on his shares of stock, shall be applied on the indebtedness owing by such borrower, who shall have the same time for payment at the same rate of interest as would have been required if said association were not in liquidation. Provided, however, that all building and loan associations may rewrite any loan heretofore or hereafter made in such manner as to reduce the rate of interest which the borrower has theretofore obligated himself to pay if authorized by the board of directors. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 40; Acts 1930, 41st Leg., 5th C.S., p. 193, ch. 51, § 1; Acts 1935, 44th Leg., p. 159, ch. 68, § 3; Acts 1943, 48th Leg., p. 482, ch. 323, § 1.]

Art. 881a—40. Operating contracts.—No building and loan association may hereafter make an operating or management contract with any person except with the express approval and consent of the Banking Commissioner of Texas, nor shall any existing contract be extended, renewed or transferred without such consent and approval. But nothing herein shall be held to validate or invalidate any existing contract. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 41.]

Art. 881a—41. Dividends and reserve.—The gross earnings of every building and loan association shall be ascertained at least semi-annually, from which shall be deducted a sufficient amount to meet the operating expenses of such association, and from said earnings only shall such expenses be paid. If the reserve fund shall not equal five (5%) per cent of the capital at the time of each apportionment of profits, hereinafter provided, the directors shall, before apportioning profits, set aside, as a reserve fund, not less than five (5%) per cent of the net profits accruing since last prior apportionment, and shall continue to do so until said fund shall amount to at least five (5%) per cent of the capital of the association. Said reserve fund shall at all times be available to meet losses arising from any source, including depreciation of securities. After providing for the expenses and obligations of the association and the reserve fund as aforesaid, the residue of such earnings shall on June 30th and December 31st of each year, and at such other times as the by-laws provide, be transferred and apportioned to the credit of the shareholders and share account holders as the association by its by-laws shall provide. All shareholders and accountholders of the same class or series shall participate equally in dividends prorata to the participation value of their respective accounts; provided that no association shall be required to pay or credit dividends on accounts of Five ($5.00) Dollars or less. Payments of net earnings to shareholders and share accountholders are "dividends" and shall not be referred to as "interest." Except as herein provided, dividends shall be declared on the withdrawal value or participation value of each share or share account at the beginning of the dividend period plus payments thereon made during the dividend period

(less amounts withdrawn or repurchased and filed for withdrawal or repurchase, which for dividend purposes shall be deducted from the value of the account at the last previous dividend period) computed at the dividend rate for the time invested; provided that the date of investment shall be the date of the actual receipt by the association of a payment on an account, except that the board of directors may fix a date, which shall not be later than the tenth of the month, for determining the date of investment. The reserve fund of not less than five (5%) per cent of the net profits accruing since last prior apportionment herein required to be provided may be considered identical with, and not supplemental to, the reserves required to be set up by insured associations by the Federal Savings and Loan Insurance Corporation. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 42; Acts 1939, 46th Leg., p. 76, § 1.]

Art. 881a—42. Undivided profits; investment of reserve and undivided profits.—It shall be lawful for a building and loan association, in addition to the contingent reserve fund herein provided for, to hold in its fund of undivided profits such sum as the Board of Directors may, from time to time, deem necessary or wise; provided, however, that such undivided profits of any association shall at no time exceed three per cent of the total resources of the association, and that if such undivided profits shall exceed three per cent of the resources of such association, the Board of Directors shall declare such extra dividend regularly apportioned in accordance with the by-laws. The Board of Directors are authorized and empowered to invest all reserve funds and undivided profit funds in the same manner and in the same class of securities as is provided in this act for all other funds of such association. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 43.]

Art. 881a—43. Power to borrow money.—Building and loan associations may borrow money for any of its corporate purposes when authorized by proper resolution of its Board of Directors, such loans not to exceed, however, twenty per cent of the acccumulated capital and in no event to exceed five hundred thousand dollars, unless such excess loan over twenty per cent or over $500,000.00 be first approved by the Banking Commissioner of Texas; provided, however, that any loans made by such Association from the Federal Home Loan Bank or from the Reconstruction Finance Corporation or from any other corporation or agency established under authority of the United States Government (except National Banks) may be consummated by such association without obtaining the approval of the Banking Commissioner regardless of the restrictions fixed by this Act. No loan, except such as may be made from the Federal Home Loan Bank or from the Reconstruction Finance Corporation or similar Federal agency, shall be made for a longer period than two years. Associations are authorized and empowered to assign and pledge its notes, mortgages or other property, and to repledge the shares of stock pledged as collateral security (without securing the consent of the owner thereto), as security for the repayment of its indebtedness for money borrowed. Any pledges or other lawful holder of any note or other evidence of indebtedness due to an association, shall have the right to enforce, in his own name or in the name of the Association, all appropriate remedies to enforce collection, whether or not the stock described in connection with said note be held by such pledgee or holder. Any obligation incurred or loan made by an association shall constitute a claim against the corporate assets, and shall be payable in advance of, and by preference over, all claims or rights of the shareholders in any of the assets of said association, and shall prime and outrank particularly any demand or application for the withdrawal or cancellation of all classes of shares in said association. No association shall have authority to issue its own bonds or debentures against its mortgage loans. Such association may issue its evidence of indebtedness therefor; and such association may borrow from and lend to like associations upon the approval of the Board of Directors of both the borrowing and lending associations, together with the approval of the Banking Commissioner of Texas. Whenever the Banking Commissioner of Texas shall deem any indebtedness incurred under the provisions of this section other than that owing to the Federal Home Loan Bank, the Reconstruction Finance Corporation or any other governmental agency to be detrimental to the interest of the shareholders of any such association, he shall notify such association to reduce its indebtedness to such amount as shall be considered reasonable, giving such association a reasonable time in which to effect such reduction of indebtedness. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 44; Acts 1932, 42nd Leg., 3rd C.S., p. 34, ch. 18, § 5.]

Art. 881a—44. Membership fee.—No association authorized to do business in this state is authorized to charge in excess of two per cent of the par or maturity value of each $100.00 share of stock issued as a membership fee, a cancellation fee or a withdrawal fee, and provided that this limitation of charge shall apply to any fee or premium by whatsoever name called or designated, provided, however, the stipulated monthly payment upon any investment share upon which a membership or withdrawal fee may be charged shall not be less than 50 cents per $100.00 share; and provided further that any domestic building and loan association in business on January 1, 1929, which does not solicit stock subscriptions in a territory other than the county of the home office or at a distance greater than fifty miles from the town or city of its home office may charge, in lieu of the $2.00 per $100.00 membership fee. (but not in addition thereto), a monthly service charge of not to exceed 5c per $100.00, providing said association is at the time of the passage of this Act[1] making such charge, and provided further, that such association if making such charge shall be limited in its expense disbursement for general operating purposes to such monthly expense receipts and shall not use interest profits for expense purposes. Each association doing business in this state shall cause to be printed, stamped or written upon the application for membership and stock, the application for a loan, and upon the stock certificate and the pass book, the amount of the membership fee, cancellation or withdrawal fee and premium applying to such transaction, if any, calculated in dollars; and provided, further, that any building and loan association doing business in this state which may undertake to guarantee either the rate of dividend or the time of maturity of its investment shares or certificates, must submit the form of such shares or certificates to the Banking Commissioner of Texas for approval; and such form shall not be approved if any of the terms contained therein violate the provisions of this Act, or if the withdrawal values expressed therein provide for the forfeiture of any sums paid in upon such investment shares or certificates to a greater amount than the $2.00 per $100.00 maturity value of such shares or certificates as provided in this section, and which withdrawal value must also give the holder the benefit of accrued interest or dividend up to the time of withdrawal at the rate, compounded semi-annually, expressed in said investment shares or certificates. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 45.]

[1] This article, articles 881a—1 to 881a—43, ante, and 881a—45 to 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—45. Refund on failure to grant loan.—Any resident of this state who may be induced to purchase stock in any building and loan associa-

tion upon the representation that he will obtain a loan of money secured by real estate from such association, and shall, at the time of subscribing for such stock or within a reasonable time thereafter, apply for such loan in writing to an agent or to the home office of such building and loan association, shall, upon complying with all the by-laws, rules and regulations of such association, which are not in conflict with this Act,[1] be entitled to a loan of money not to exceed the par value of his stock in such association. If such association shall not, within one hundred and twenty days from the date of such application for loan from such stockholder, close up such loan and pay over the proceeds thereof to such borrower, less the expenses therein mentioned, then and in that event such association shall pay back to such proposed borrowing stockholder all money paid for stock of such association, without deduction for membership, cancellation or withdrawal fees. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 46.]

[1] This article, articles 881a—1 to 881a—44, ante, and 881a—46 to 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—46. Withdrawals.—No building and loan association shall permit any member to withdraw any portion of his investment in excess of $100.00 in any one month without thirty days written notice to the association, and any withdrawal must be made subject to the provisions of the by-laws with respect thereto, providing, however, that whenever the association has on hand idle funds it may pay same out to its members when and as may be determined by the Board of Directors, and provided in by-laws approved by the Banking Commissioner of Texas. The withdrawing shareholder or the legal representative of any deceased shareholder, when funds are on hand applicable to his request for withdrawal, shall be paid the amount of the withdrawal value of the shares, provided, that upon withdrawal of shares pledged to the association for a stock loan, the association shall first deduct therefrom the indebtedness due the association, and withdrawals in excess of $100.00 shall be paid in the order of their filing except as hereinafter provided, and it shall be the duty of the secretary or other officer discharging such duties to enter upon each notice the order and date of filing. Not more than one-half of the "net receipts" of the association in any month shall be applied to the payment of withdrawals and maturities without the consent of the board of directors. By the term "net receipts" is meant the cash receipts of the association obtained from dues, investments, interests, loans repaid to the association, premiums, fees, fines and all other receipts (except borrowed money), less disbursements for all expenses necessary and incidental to doing business, expenses of maintaining and improving foreclosed property, including the payment of taxes and insurance thereon, the payment or renewal of obligations and the creation of reserves needed for the payment of cash dividends.

Whenever the net receipts so made applicable to listed withdrawals and maturities are not sufficient to pay such requests so listed, the Board of Directors may, from time to time, fix maximum amounts to be paid upon each application during any one month; provided that full payment may be made at any time to members whose entire interest in the association amounts to not exceeding $100.00; providing further, that the Board of Directors may, from time to time, provide that all listed requests for withdrawals shall be paid out of funds made available on a pro rata basis, or, with the approval of the Commissioner of Banking may provide that all funds available for withdrawals shall be apportioned and paid pro rata to all shareholders of the association irrespective of the order of filing.

Notwithstanding the existence of a withdrawal list, the board of directors, as long as there are debts owing by the association, may use all or any part of the funds and current receipts for the payment of such debts; provided, however, that after allowance for due and past due indebtedness of the Association, one-half of the "net receipts" of the Association in any one month shall be applied to the payment of withdrawals and maturities when there are maturities or requests for withdrawals on file.

After filing notices of withdrawal provided herein, the withdrawing member shall be entitled, if so provided in the by-laws, to the dividends credited to the same class of shares until the final payment of his shares is made, and membership in the association shall remain unimpaired so long as any accumulation remains to his credit. The existence of a withdrawal list shall not prevent the making of new loans to new or continuing members, and the board of directors, in its discretion, may borrow money to be used solely for the purpose of making mortgage loans to the members of the Association, in which event all of such amount of borrowed money may be exclusively used for the purpose borrowed.

The by-laws and all certificates of shares of stock in any building and loan association operating under the provisions of this title shall expressly provide that withdrawals of subscriptions or funds in said association shall be paid only as and when funds are available out of receipts and income for the purpose. Such association shall not hold out as an inducement to the public or members thereof to purchase share or shares of such stock that such funds may be withdrawn at a time certain upon notice of the shareholder's intention to withdraw such funds. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 47; Acts 1932, 42nd Leg., 3rd C.S., p. 34, ch. 18, § 6.]

Art. 881a—47. Defining withdrawal value.—The "Withdrawal Value" of shares, as that term is used in this Act, shall be the sum of all payments made on the shares, and remaining credited thereto, plus all dividends, if any, credited or allocated thereto on the books of the Association prior to the date of the filing of notice of withdrawal, less all fines, membership fees, withdrawal fees or other unpaid charges; provided that a reasonable portion of the dividends previously credited to the shares or of the earning previously allocated to the shares, upon cancellation and withdrawal of such shares before maturity, may be retained by the Association and deducted from the withdrawal value of the shares, if the by-laws of the association definitely so provide. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 48; Acts 1932, 42nd Leg., 3rd C.S., p. 34, ch. 18, § 7.]

Art. 881a—48. Matured shares.—Whenever the dues and dividends credited to the shares of any shareholder in any such association shall equal their matured value such shares shall be deemed to have "matured", the payment of dues thereon shall cease, and the holder shall be entitled to withdraw and receive in payment therefor the withdrawal value in accordance with the provisions of Section 47 of this Act.[1] For the purpose of maturing shares, a special dividend may be credited between dividend dates to shares nearly matured at the same rate at which the last periodical dividend was credited, provided the earnings for the current dividend period justify such special dividend. If not withdrawn upon maturity, the shares shall be considered and treated as Fully Paid Shares and shall be entitled to receive dividends at the equivalent rate declared and paid on fully paid shares of the association; and the holder of matured shares remains a member and shareholder of the association until his matured shares are withdrawn from the association. [Acts 1929, 41st Leg., p. 100, ch. 61, § 49; Acts 1943, 48th Leg., p. 482, ch. 323, § 1.]

[1] Article 881a—46.

Art. 881a—49. Forfeiture and retirement of shares.—If a shareholder be in arrears in the payment of dues upon unpledged shares, the board of direc-

tors may, if the shareholder fails to pay the amount of arrears within sixty days after notice, declare said shares forfeited. Fines for the non-payment of dues, interest or premium shall not exceed one per cent per month on each dollar in arrears. The withdrawal value of such shares at the time of forfeiture shall be ascertained and paid to such shareholder upon the surrender of the certificate and passbook. The board of directors may retire all classes of free shares, enforcing the withdrawal of same, provided, however, that the by-laws of such association shall clearly state the manner in which such withdrawals shall be enforced; and provided, also, that the holders thereof shall be paid the full withdrawal value of the shares. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 50.]

Art. 881a—50. Transfer of shares.—Shares shall be non-negotiable and payments on shares made by any association to the holders of record shall be a full discharge thereof. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 51.]

Art. 881a—51. Conveying property mortgaged to association.—The conveyance or transfer of property mortgaged to a building and loan association shall unless otherwise expressly stated in the instrument of conveyance, act as a transfer also of the shares of such association securing said loan. If a borrowing member of any building and loan association shall convey the title to any property upon which such borrowing member has given to the association a mortgage lien, without the purchaser assuming the payment of the indebtedness to the association thereby accrued, the board of directors may, in their discretion, declare the entire indebtedness due and proceed to the collection of the debt in the manner provided by the by-laws of such association and by this Act.[1] [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 52.]

[1] This article, articles 881a—1 to 881a—50, ante, and 881a—52 to 881a—68, post; Pen. Code, arts. 1136a—1 to 1136a—9.

Art. 881a—52. Member not disqualified to take acknowledgments or proof of written instrument.—No notary public or other public officer qualified to take acknowledgments or proofs of written instruments shall be disqualified from taking the acknowledgment or proof of an instrument in writing in which a building and loan association is interested, by reason of his membership or stockholding in or employment by the building and loan association interested in such instrument, and any such acknowledgment heretofore taken are hereby validated. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 53.]

Art. 881a—53. Tax assessment of association.—Each building and loan association incorporated under the laws of Texas and Federal savings and loan associations domiciled in this state, shall hereafter be required to render for state, county and municipal taxation, all of its real estate as other real estate is rendered. The personal property of each such building and loan association shall be valued as other personal property is valued for assessment in this state, and shall be rendered by such association in the following manner:

1. Each such association shall render for state, county and municipal taxation in the city and in the county where its home office is located, its office furniture and fixtures;

2. From the total valuation of each such association's entire assets shall be deducted the following:

(a) All the debts of every kind and character owed by such association;

(b) All tax free securities owned by such association;

(c) The book value of all of its shares outstanding;

(d) The reserves and undivided profits authorized by law;

(e) The assessed value of its furniture and fixtures;

(f) The assessed value of all real estate owned by the association; and the remainder, if any there be, shall be taxable as personal property against each such association. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 54; Acts 1947, 50th Leg., p. 488, ch. 285, § 1.]

Art. 881a—54. Consolidation.—At the annual meeting or at any meeting called for that purpose, any two or more Building and Loan Associations organized under the laws of this State or any one or more Building and Loan Associations organized under the laws of this State and any Federal Savings and Loan Association may by vote of two-thirds of all shareholders of each of the different associations, resolve to consolidate into one association under either the State or Federal laws upon such terms as shall be mutually agreed upon by the directors of such associations; or any such association may transfer its engagements, funds and property to any other such association either State or Federal upon such terms as may be agreed upon by its board of directors, when approved by two-thirds of all the shares of all members convened in special meeting for that purpose, the notice sent to each member of record specifically stating the object of the meeting; if such notice shall state affirmatively the terms upon which such consolidation is contemplated and shall state that any member not present at the meeting in person or by representative will be regarded as having voted for the transfer or consolidation, such absent member shall be counted as being among the required two-thirds affirmative vote; but such transfer shall not prejudice the right of any creditor of any such association to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of or prejudiced in any right of action then existing against the officers or directors of said association for any neglect or misconduct; providing that the reorganized association shall be liable for all obligations to stockholders of the associations existing prior to such consolidation, and providing, further, that no consolidation or transfer provided herein shall take effect until the terms and conditions have been approved by the Banking Commissioner of Texas, and until a copy of the resolution, certified by a majority of the board of directors of each association, shall be filed with said Banking Commissioner of Texas, and recorded in the same manner hereinbefore provided for amendments to charters. Provided further, that in the event the association, or associations, are to operate under a Federal Act after their consolidation, the Texas charter of any such association or associations shall be cancelled and held for naught upon the completion of the consolidation. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 55; Acts 1935, 44th Leg., p. 159, ch. 68, § 4.]

Art. 881a—54-A. Conversion.—1. Any Building and Loan Association chartered and operating under the laws of the State of Texas, by whatever name or style it may be designated, eligible to become a Federal Savings and Loan Association under any Federal Act, may convert itself into a Federal Savings and Loan Association by following the procedure hereunder outlined.

(a) At any regular meeting of the shareholders of any such association, or at any special meeting of the shareholders of such association, in either case called to consider such action and held in accordance with the laws governing such associations, such shareholders, by an affirmative vote of two-thirds of all the shares of all members convened, either in person or by proxy, at the meeting for that purpose, the notice sent to each member of record stating specifically the object of the meeting, may declare by resolution the determination to convert the said association into a Federal Savings and Loan Association.

(b) A copy of the minutes of such meeting of the shareholders verified by the affidavit of the President, or Vice-President and of the Secretary, of the meeting shall be filed within ten (10) days after said meeting with the Banking Commissioner of the State of

Texas. Such verified copy of the minutes of such meeting, when so filed, shall be prima facie evidence of the holding of such meeting and the action of the shareholders with reference to the conversion of the association into a Federal Savings and Loan Association.

(c) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of the shareholders, such association shall take such action as may be necessary to make it a Federal Savings and Loan Association and within ten days after receipt of the Federal Charter there shall be filed in the office of the Banking Commissioner of the State of Texas a copy of said charter issued to such association, by the Federal Home Loan Bank Board, or a certificate showing the organization of such association as a Federal Savings and Loan Association, certified by, or in behalf of, the Federal Home Loan Bank Board. Upon the filing of such instrument such association shall cease to be a State Building and Loan Association and its Texas charter shall automatically be cancelled and held for naught, and said association shall thereafter be a Federal Savings and Loan Association.

(d) At the time when such conversion becomes effective, as hereinabove provided, said association shall cease to be supervised by this State and all the property of such association, including all of its right, title, and interest in and to all property of every kind and character, whether real, personal or mixed, shall immediately by operation of law and without any conveyance or transfer whatever, and without any further act or deed, continue to be vested in said association under its new name and style as a Federal Savings and Loan Association and under its new jurisdiction; and said Federal Savings and Loan Association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a State Association and said Federal Savings and Loan Association at the time of the taking effect of such conversion, shall continue responsible for all of the indebtedness of said State Association to the same extent as though said conversion had not taken place; it being expressly declared that the said Federal Savings and Loan Association shall be a mere continuation of the said State Association under a new name and new jurisdiction, and such revision of its corporate structure as may be necessary for its proper operation under said new jurisdiction.

2. Any Federal Savings and Loan Association chartered and operating under a Federal Act, otherwise eligible to become a State Building and Loan Association, may convert into a State Association in accordance with Federal laws and subject to examination and approval by the Banking Commissioner of the State of Texas. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 55-a as added Acts 1935, 44th Leg., p. 159, ch. 68, § 5.]

Section 6 of Acts 1935 provided that if any part of the Act should be adjudged to be invalid such judgment should not affect, impair or invalidate the remainder of the Act.

Art. 881a—55. Voluntary liquidation.—At the annual meeting or at any meeting called for that purpose, any Building and Loan Association of this State may, by a vote of shareholders, owning two-thirds of the voting shares in force, resolve to liquidate and dissolve the corporation; providing, that before such resolutions shall take effect, a copy thereof, certified to by the president and the secretary of such Association, together with an itemized statement of its assets and liabilities, sworn to by a majority of its Board of Directors shall be filed with the Banking Commissioner of Texas. When the Banking Commissioner of Texas has approved such resolution it shall thereafter be unlawful for such Association to issue stock or make any loans, but all its income and receipts in excess of actual expense of management shall be applied to the discharge of its liabilities; and the officers of the Association, under the direction of its Board of Directors and under the supervision of the Banking Commissioner shall thereupon proceed to liquidate the affairs of the Association and reduce the assets thereof to cash and distribute the same among the shareholders in proportion to the withdrawal value of the holdings of each shareholder at the time of the passage of the resolution to dissolve.

Provided, however, that the plan of the liquidation, including contemplated expenses and the sale of any or all of its assets shall have the approval of the Banking Commissioner or his authorized representative before any expenses are incurred or any sale or sales are made, and any and all expenses incurred by the Banking Commissioner or his duly authorized representative shall be paid from the assets of the Association. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 56; Acts 1931, 42nd Leg., p. 331, ch. 198, § 1.]

Art. 881a—56. Reduction of liability to members.—Whenever the losses of any building and loan association, resulting from depreciation in value of its securities or otherwise, exceed its contingent reserve fund, undivided profits and current earnings, so that the estimated value of its assets is less than the total amount due its members, the Banking Commissioner of Texas upon petition of such building and loan association, may order a reduction of its liability to its members, except upon juvenile shares, in such manner as to distribute the loss equitably among such members. If thereafter, such association shall realize from such assets a greater amount than was fixed in the order of reduction, such excess shall be divided among members whose credits were so reduced, but to the extent of such reduction only. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 57.]

Art. 881a—57. Foreign building and loan associations.—Foreign building and loan associations may do business in this State in accordance with the laws of this State governing building and loan associations; provided, however, that said inhibition and subsequent requirements as to deposit of securities or surety bond by foreign corporations as provided in Section 59 [1] shall not be held to apply to a foreign association whose domicile is in a city of a population of five thousand or more adjoining the State of Texas and the business of which association in Texas is confined to the county to which such city adjoins. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 58.]

1 Article 881a—58.

Art. 881a—57a. Rights, powers, exemptions and immunities of association and its shareholders.—Every Federal Savings and Loan Association incorporated under the provisions of Home Owners' Loan Act of 1933, as now or hereafter amended,[1] domiciled in the State of Texas, and the holders of shares or accounts issued by any such association shall have all the rights, powers, and privileges, and shall be entitled to the same exemptions and immunities to which building and loan associations organized under the laws of this State and holders of the share or share accounts of such associations are entitled. [Acts 1929, 41st Leg., 2nd C.S., p. 100, c. 61, § 58a; added Acts 1939, 46th Leg., p. 76, § 1.]

1 12 U.S.C.A. §§ 1461-1468.

Art. 881a—58. Certificate of authority.—No foreign building and loan association shall do any business in this State until it has procured from the Banking Commissioner of Texas a certificate of authority to do so, and no certificate of authority shall be issued until the said Commissioner shall be satisfied that the requirements of this law have been fully met by such company. Before such certificate of authority shall be issued such foreign building and loan association shall comply with the following provisions:

(1) It shall file with the Banking Commissioner of Texas a certified copy of its articles of incorporation, a copy of its by-laws and rules governing it, and of its certificates and all printed matter issued by it, together with a statement of financial condition such as is required semi-annually from all building and loan associations organized under the laws of this State. (2) It shall file with the Banking Commissioner of Texas written instrument, properly executed, agreeing irrevocably that any summons or process of any court in this state may issue against it from any county in this state, and, when served upon the Banking Commissioner of Texas, shall be accepted as valid service upon such foreign association; provided, however, that the Banking Commissioner of Texas shall mail a copy of such legal process served upon its Chairman to the home office of such foreign association, and the Banking Commissioner of Texas shall, within six days, certify to the Court from which such summons or process issued the fact of such mailing. The plaintiff shall for each process so served pay to the Banking Commissioner of Texas at the time of such service a fee of two dollars, which shall be recovered by the plaintiff as a part of the taxable costs if he prevail in the suit. (3) It shall deposit with the Banking Commissioner of Texas One Hundred Thousand Dollars in cash or bonds of the United States, or bonds of any state of the United States, or bonds of any county or municipal corporation in the state of Texas, or mortgages being first liens on improved and productive real estate located within this state and worth at least twice the amount of the liens, which securities shall be approved in advance by the Banking Commissioner of Texas. The Banking Commissioner of Texas shall have authority to require such associations to deposit additional securities, and to order a change in any of the securities so deposited, at any time. Such deposit shall be held as security for all claims of residents of this state against such foreign association, and shall be liable for all judgments or decrees thereon; and said securities shall not be released until all its obligations to residents of this state shall have been fully performed and discharged. Such foreign associations may collect and use the interest on any securities so deposited, so long as it fulfills its obligations and complies with the provisions of this Act.[1] It may also exchange them for other securities of equal value, if satisfactory to the Banking Commissioner of Texas. Any foreign building and loan association may, in lieu of the deposit of securities, as herein provided, deposit with the Banking Commissioner of Texas a surety company bond in the sum of One Hundred Thousand ($100,000.00) Dollars, which bond shall be conditioned for the payment of any judgment entered against such foreign building and loan association, by any court of competent jurisdiction in this state, in favor of any resident of this state. Such judgment creditor shall have the right to bring suit on such bond in his own name in the county in which such judgment is rendered, and any resident of this state, having a claim against such foreign building and loan association may bring suit in his own name against such surety company, by joining such surety company with such foreign building and loan association as parties defendant. If the business of such association in this State be solely that of lending money in this State, and it sells none of its stock in this State except where loans are actually made on real estate in this State for the full amount of the stock so sold, and made at the time of the sales of such stock, then in such event, the provision of this section, requiring a deposit or bond of One Hundred Thousand Dollars shall not apply. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 59.]

[1] This article, articles 881a—1 to 881a—57, ante, and 881a—59 to 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—59. Securities to be deposited with State Treasurer.—All such securities deposited with the Banking Commissioner of Texas, shall be immediately deposited by them with the State Treasurer who, with his sureties, shall be responsible for the safe keeping thereof. The State Treasurer shall deliver such securities only upon the written order of the Banking Commissioner of Texas. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 60.]

Art. 881a—60. Certificate to foreign associations.—Whenever such foreign association has complied with the provisions of this Act,[1] and has furnished a full and complete statement of its financial affairs duly sworn to by its president and secretary, and said financial status of such association has been verified by an examination of its assets and its records for the purpose of ascertaining whether the same meet the requirements of this law, said examination to be made by the Banking Commissioner of Texas, or his duly authorized representative, for which examination the said foreign association shall pay in the same manner as hereinafter specified for regular examinations, the Banking Commissioner of Texas, if he be satisfied that such association is in sound financial condition, and that it is conducting its business in accordance with the laws of this State, and if he shall regard such association as safe, reliable and entitled to public confidence, he shall issue certificate of authority to such association to do business in this State upon the payment of fees as herein provided. Provided, that the Banking Commissioner of Texas may accept, in its discretion, a report of an examination of the affairs of such company made by a supervising officer of its own state under lawful authority. Such certificate shall be for the period of one year and must be renewed each year. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 61.]

[1] This article, articles 881a—1 to 881a—59, ante, and 881a—61 to 881a—68, post; Pen.Code, art. 1136a—1 to 1136a—9.

Art. 881a—61. Fees to be paid.—All foreign building and loan associations shall pay to the Banking Commissioner of Texas, the following fees, which shall be paid to the State Treasurer as hereinbefore provided, to-wit: For filing each application for admission to do business in this State, fifty dollars; for each certificate of authority and annual renewal of the same twenty-five dollars; and an annual franchise tax of two hundred and fifty dollars. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 62.]

Art. 881a—62. In event of unsatisfied judgments.—If at any time any borrower from such foreign association residing in this State shall recover judgment against such foreign association and which after thirty days shall not have been satisfied, the State treasurer, upon an order from the Banking Commissioner of Texas, shall proceed to sell at current market value, sufficient of the bonds, or collect sufficient of the mortgage securities deposited with him to satisfy the amount of such judgment, together with five per cent for his services and expense; provided, that before ordering the State Treasurer to dispose of such securities as aforesaid, the Banking Commissioner of Texas, shall be served with an affidavit by the plaintiff or his attorney, setting forth the recovery of judgment, and that the same has remained unpaid for thirty days; and that no proceedings are pending for appeal or reversal of the same; provided, further, that such foreign association after notice of the service of such affidavits, shall not transact any new business in this state until any deficiency of securities caused by the necessity of satisfying such judgments shall have been made good by further deposit of similar securities with the Banking Commissioner of Texas. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 63.]

Art. 881a—63. Examinations.—Every foreign building and loan association doing business in this State shall be subject to the same examinations as are building and loan associations organized under the

laws of this State; provided, that the expense of all examinations of such foreign associations shall be paid by the association examined, upon bill approved by the Banking Commissioner of Texas; provided it shall not be necessary for such examination to be made but once in each year; provided, further, that such expense shall only include necessary traveling expenses of such examiner and the sum of not more than twenty-five dollars per day for each day actually required in making such examinations. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 64.]

Art. 881a—64. Certificate of authority may be revoked.—Should the Banking Commissioner of Texas find, upon examination, that such foreign association does not conduct its business in accordance with law, or that the affairs of such association are in unsound condition, or if such foreign association refuses to permit examination to be made, it may revoke the certificate of authority granted such foreign association to do business in this State, provided that upon revocation of certificate of authority, the Banking Commissioner of Texas, shall mail a notice thereof to the home office of such foreign association and cause a similar notice to be published in at least one newspaper, published in the city of Austin. After publication of said notice it shall be unlawful for any agent of such foreign association to transact any business in this State, except to receive payments to apply on loan contracts then in effect. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 65.]

Art. 881a—65. Contracts deemed made in this state.—Any contract made by any foreign association with any citizen of this State shall be deemed and considered a Texas contract, and shall be so construed by all the courts of this State according to the laws thereof. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 66.]

Art. 881a—66. Compliance with provisions of act essential.—No foreign building and loan association shall be permitted to do business in this State unless all the provisions of this Act [1] are fully complied with and all contracts made by such foreign building and loan associations while in default shall be absolutely void. Any building and loan association organized under the laws of a sister state upon being granted a permit to do business in Texas shall, while said permit is in force, enjoy all of the rights and privileges granted to building and loan associations organized under the laws of Texas and the stock of such foreign building and loan associations admitted to do business in Texas shall be eligible for purchase and investment the same as the stock of building and loan associations organized under the laws of Texas. All of the rules and regulations, and all the terms and conditions herein contained applicable to the operation of domestic companies, are hereby expressly made applicable to foreign companies under this Act. Any such association violating any of the provisions of this Act, or failing to comply with any of its provisions, shall be subject to a fine of not less than One Hundred ($100.00) Dollars nor more than Five Hundred ($500.00) Dollars, such fine to be recovered by an action in the name of the State of Texas in any court of competent jurisdiction and, upon the collection thereof, the same shall be paid into the State Treasury. Foreign building and loan associations that are duly authorized to do a building and loan business in this State at the time of the taking effect of this Act shall have sixty (60) days from the date on which this Act takes effect to comply with the provisions of this Act as set forth in Section 59;[2] provided, however, that the Banking Commissioner may, in his discretion, grant to any such association such extension of time as may, in his discretion, seem necessary or proper. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 67; Acts 1939, 46th Leg., p. 87, § 1.]

[1] Articles 881a—1 to 881a—68; Pen.Code, arts. 1136a—1 to 1136a—9.
[2] Article 881a—58.

Art. 881a—67. Restrictions to use name "Building and Loan".—No person, firm, company, association, copartnership, or corporation, either domestic or foreign, unless he or it is lawfully authorized to do business in this State under the provisions of this Act,[1] and is actually engaged in carrying on a building and loan business in this state under the provisions of this Act, shall hereafter transact business under any name or title which contains the term "building and loan" nor use any sign or circulate or use any letterhead, billhead, circular, or paper whatever, or advertise in any manner, which indicates that his or its business is the character or kind of business carried on or transacted by a building and loan association, or which is calculated to lead the public to believe that his or its business is that of a building and loan association. Upon action brought by the Banking Commissioner of Texas, injunction will also lie to restrain any person, firm, company, copartnership, corporation, or agent thereof from continuing to violate any provisions of this Section. [Acts 1929, 41st Leg., 2nd C.S., p. 100. ch. 61, § 76.]

[1] This article, articles 881a—1 to 881a—66, ante, and 881a—68, post; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—68. Repealing conflicting acts.—All acts and parts of Acts in conflict herewith be and the same are hereby repealed, provided, however, that corporations organized and now operating under the existing building and loan laws of this State shall continue their corporate existence and powers subject to all other provisions of this Act.[1] It is provided further that in case any section or clause, sentence, paragraph or part of this Act shall for any reason be adjudged by any court of competent or final jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act but shall be confined in its operation to the section, clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 77.]

[1] This article and articles 881a—1 to 881a—67, ante; Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 881a—69. Authorizing investment of funds in Federal Home Loan Bank.—That any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, Fraternal Benefit Associations and Societies, or savings bank, or any Loan Company organized under the provisions of Chapter 275 of the Acts of the Regular Session of the 40th Legislature,[1] now organized or hereafter to be organized, which is eligible to become a member of a Federal Home Loan Bank, in compliance with the provisions of the Act of Congress known and cited as the "Federal Home Loan Bank Act" [2] shall be and is hereby fully authorized and empowered to subscribe for the stock of the Home Loan Bank for the district in which it is located, and to invest its funds in such stock, for the purpose and to the extent required by the provisions of the Federal Home Loan Bank Act for the qualification of members therein. [Acts 1932, 42nd Leg., 3rd C.S., p. 32, ch. 17, § 1.]

[1] Article 1303b.
[2] 12 U.S.C.A. §§ 1421–1449.

TITLE 25—CARRIERS

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1. DUTIES AND LIABILITIES

Article 882. [707] [319] [277] At common law.—The duties and liabilities of carriers in this State and the remedies against them, shall be the same as are prescribed by the common law except where otherwise provided by this title.

Art. 883. [708] [320] [278] Liability fixed; notice of claim may be required.—Railroad companies and other common carriers of goods, wares and merchandise, for hire, within this State, on land, or in boats or vessels on the waters entirely within this State, shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation, or in any other manner whatever. No special agreement made in contravention of this Article shall be valid; provided, however, that a requirement of notice or claim, consistent with the provisions of Article 5546 of the Revised Civil Statutes of Texas, 1925, as a condition precedent to the enforcement of any claim for loss, damage and delay, or either or any of them, whether inserted in a bill of lading or other contract or arrangement for carriage, or otherwise provided, shall be valid and is not hereby prohibited. [Act Dec. 4, 1863, p. 7; G.L. vol. 5, p. 661; Acts 1941, 47th Leg., p. 805, ch. 500, § 1.]

Art. 883(a). Declaration of value; rates based on value; evidence.—No specialized motor carrier or other carrier for hire, including the carriers referred to in said Article 883, shall be required to accept for transportation household goods, personal effects or used office furniture and equipment, unless the shipper or owner thereof or his agent shall first declare in writing the reasonable value thereof. The carrier shall not be liable in damages for an amount in excess of such declared value for the loss, destruction or damage of such property. The Railroad Commission shall establish adequate rates consistent with such declared values to be assessed and collected by such carriers. If the Railroad Commission fails to establish such rates, then in that event such carriers are authorized to collect reasonable transportation charges consistent with the declared value of such property. [Acts 1947, 50th Leg., p. 563, ch. 327, § 1.]

Section 3 of the Act of 1947 repealed conflicting laws.

Art. 883b. Declaration of value as evidence.—The declaration of value by the shipper shall not be admissible as evidence in any court action unless the carrier at the time of acceptance of such shipment had or provided and maintained in force insurance in a solvent company authorized to do business in Texas, or bonds, in an amount equal to such declared value to protect the owner of such shipment against loss or damage thereto; provided, however, this requirement as to insurance or bonds shall not apply to steam or electrical railways. [Acts 1947, 50th Leg., p. 563, ch. 327, § 2.]

Art. 884. [709] [321] [279] Must carry goods.—Upon the tender of the legal or customary rates of freight on goods offered for transportation, to a common carrier other than a railroad, such carrier shall receive and transport such goods, provided his vehicle or vessel has capacity safely to carry the goods so offered on the trip or voyage then pending, and such goods are of the kind usually carried upon such vehicle or vessel, and are offered at a reasonable time. Any common carrier refusing to transport goods as above provided or to take the same in the order presented, shall be liable in damages to the party injured, by reason of such refusal, and shall also be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered in each case by the owner of the goods in the county where the wrong is done or where the common carrier resides. [Acts 1860, p. 39; G. L. vol. 4, p. 1401; 1895, Sen. Jour. p. 478.]

This article was repealed as to railroads by the Act of April, 1887, amending article 4227, Revised Statutes 1879 (article 6360 of Revised Civil Statutes 1925). Railway Co. v. Kay, 85 T. 558, 22 S.W. 665; Railway Co. v. Bailey, 4 App.C.C. § 68, 15 S.W. 203; St. Louis & S. W. Ry. Co. v. Kay, Civ.App., 23 S.W. 91.

Art. 885. [710] [322] [280] Must give bill of lading.—Common carriers, when they receive goods for transportation, shall give to the shipper, when it is demanded, a bill of lading, or written receipt stating the quantity, character, order and condition of the goods; and such goods shall be delivered in like order and condition to the consignee, the unavoidable wear and tear [1] and deterioration in due course of transportation only, excepted. Any such common carrier failing to deliver goods as herein required shall be liable to the party injured for his damages, as at common law; and on refusal to execute and deliver a bill of lading or written receipt shall be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered as in the preceding article. [Id.]

[1] R.S.1925 is incorrect at this point and reads "tare."

Art. 886. [711] [323] [281] Liability as a warehouseman, etc.—Railroad companies and other common carriers having depots and warehouses for storing goods shall be liable as warehousemen are at common law for goods and the care of the same stored at such depots or warehouses before the commencement of the trip or voyage on which said goods are to be transported. They shall be liable as common carriers from the commencement of the trip or voyage until the goods are delivered to the consignee at the point of destination. The trip or voyage shall be considered as having commenced from the time of the signing of the bill of lading, and the liability of the common carrier shall attach, as at common law, from and after such signing. [Id.]

Art. 887. [712] [324] [282] Diligence in delivery.—If the carrier at the point of destination shall use due diligence to notify the consignee, and the goods are not taken by the consignee, and have in consequence to be stored in the depots or warehouses of the common carriers, they shall thereafter only be liable as warehousemen. [Id.]

Art. 888. [713] [325] [283] Shall ship in order.—Where common carriers receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are

received, the first received to be first forwarded, without giving the preference to one over another. For failure to do so, they shall be liable for all losses occurring while the goods remain, and for all damages occasioned or in any wise resulting from the delay. [Id.]

Art. 889. [714] [326] [284] Care of animals.—A common carrier who conveys live stock of any kind shall feed and water the same during the time of conveyance and until the same is delivered to the consignee or disposed of as provided in this title, unless otherwise provided by special contract. Any carrier who shall fail to so feed and water said live stock sufficiently shall be liable to the party injured for his damages, and shall be liable also to a penalty of not less than five nor more than five hundred dollars, to be recovered by the owner of such live stock in any county where the wrong is done or where the common carrier resides.

Art. 889a. Blind persons accompanied by "Seeing Eye" dogs, transportation of; admittance to hotels, inns, etc.—Section 1. Any blind person who is a passenger on any common carrier, motor vehicle, railroad train, motor bus, street car, boat, or any other public conveyance or mode of transportation operating within the State of Texas, shall be entitled to have with him as his "Seeing-Eye," a dog specially trained for that purpose, without being required to pay an additional charge therefor; provided said "Seeing-Eye" dog shall be securely muzzled, by its owner, and that the common carrier shall designate where said dog shall ride when being so carried or conveyed.

Sec. 2. Blind persons and their "Seeing-Eye" dogs shall not be denied admittance to any hotel, tourist cabin, public inn, or any other similar place because of such "Seeing-Eye" dogs.

Sec. 3. Any person or persons, firm, association, or corporation, or the agent of any person, firm, association, or corporation who shall violate the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200). [Acts 1943, 48th Leg., p. 696, ch. 387.]

Section 2 of this article is unconstitutional because the provisions thereof are not indicated by caption of act providing that blind persons with seeing-eye dogs shall be permitted on common carriers and prohibiting denial of entry of such dogs. Boyd v. State, 148 Cr.R. 171, 186 S.W.2d 257.

2. BILLS OF LADING.

Art. 890. [715] Who shall issue.—All railroad companies, steamship companies and other common carriers, or receivers thereof, except express companies and pipe line companies, upon the receipt of freight for transportation shall issue bills of lading therefor, and authenticate, validate or certify such bills of lading, when the same shall be demanded by the shipper, in accordance with the provisions of this title. [Acts 1910, 4th C. S. p. 138.]

Art. 891. [716] Requisites.—Each bill of lading issued by a common carrier to which the provisions of this law apply for an intrastate shipment shall contain, and each bill of lading issued by such carrier for interstate or foreign shipment may contain, within the written or printed terms in addition to the other requirements of this law, the following:

1. The date of its issuance;
2. The name of the person from whom the goods have been received;
3. The place where the goods have been received;
4. The place to which the goods are to be transported;
5. A statement of whether the goods will be delivered to a specific person or the order of a specific person;
6. A description of the goods or the package containing them, which may, however, be in terms such as the Railroad Commission may approve;
7. The signature of the carrier or the duly authorized agent of the carrier; said bill of lading shall be so signed with pen and ink, and the person signing the same shall attach his signature below all written, printed or stamped matter contained in said bill of lading, except the words, "Authorized Agent of ....." (stating the name of his principal), which shall appear below his signature.
8. The carrier may insert in a bill of lading any other terms and conditions; provided such terms and conditions shall not be contrary to law or public policy or the orders promulgated by the Railroad Commission. No language shall be inserted in any bill of lading having the effect of limiting or avoiding any provision of this law. When any form of bill of lading has been approved by the Interstate Commerce Commission and has been adopted by any carrier and made a part of its tariff, then said bill of lading, as to interstate and foreign shipments, shall be a sufficient compliance with this article. [Id.]

Art. 892. [717] Definitions.—A bill of lading in which it is stated that the goods are consigned or destined to a specific person is a "straight" bill of lading. A bill of lading in which it is stated that the goods are consigned to the order of any person named in such bill of lading, is an "order" bill of lading. Order bills of lading shall not be issued in sets or in duplicate, but copies thereof may be issued. Such copies shall have written or printed across the face thereof: "Copy—Not Negotiable." [Id.]

Art. 893. [718] Agent's certificate.—The carriers affected by this law shall keep posted for public inspection in some conspicuous place in the station or place where freight is received, an instrument of writing authorizing the agent of such carrier, or person authorized to act for such carrier selected for such purpose, to execute, sign and issue bills of lading; and the agent or person so authorized to act for said carrier, so selected, shall attach his signature to such instrument in the same manner that he signs bills of lading. [Id.]

Art. 894. [719] Validity of bills.—Each bill of lading issued by the authorized agent of any carrier or receiver thereof, affected by this law, shall be held to be the act and deed of such carrier or receiver thereof, and the principal shall be liable thereon in accordance with the terms thereof. When any such bill of lading shall be validated, authenticated or certified in accordance with the rules and regulations herein provided for, and as the Railroad Commission may prescribe in accordance with the provisions of this law, and in the hands of an innocent holder for value, it shall be incontestable as to the matters and things therein set forth. [Id.]

Art. 895. [720] Failure to deliver on order.—A carrier which delivers goods for which an "order" bill of lading has been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel said bill of lading shall be liable for the failure to deliver the goods to any one who, for value, in good faith, purchases such bill of lading, whether the purchaser acquired title to the bill of lading before or after the delivery of the goods by the carrier, notwithstanding such delivery was made to the person entitled thereto, except when goods are sold to satisfy the carrier's lien, and except when compelled to do so by legal process. [Id.]

Art. 896. [721] Partial delivery.—A carrier which delivers part of the goods for which an "order" bill of lading has been issued, and fails to take up and cancel the bill of lading, or to place plainly upon the bill of lading a statement that a portion of the goods had been delivered, with a description which may be

in general terms, either of the goods or packages that had been so delivered, or of the goods or packages which still remain in the carrier's possession, shall be liable for the failure to deliver all of the goods specified in the bill of lading to any one who for value and in good faith purchases it, whether such purchaser acquires title to the bill of lading before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto, except when goods are sold to satisfy the carrier's lien, and except when compelled to do so by legal process. [Id.]

Art. 897. [722] Loss of order bill.—When an "order" bill of lading shall have been lost or destroyed, a court of competent jurisdiction, in term time or vacation, may order the delivery of the goods upon satisfactory proof of such loss or destruction, and upon the giving of a bond with good and sufficient sureties approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill of lading remaining outstanding. The court in its discretion may also order the payment of the carrier's reasonable costs and counsel fees. The delivery of the goods under an order of court as provided in this article, shall not relieve the carrier from liability to a person to whom the order bill of lading has been or shall be negotiated for value, and without notice of the proceedings or the delivery of the goods. Nothing herein shall prevent the carrier from delivering the property covered by such lost bill of lading to any party claiming the same, on such terms as such party and the carrier may agree upon. [Id.]

Art. 898. [723] Not liable when.—The carrier shall not be liable under this law where the property has been replevied or levied upon or taken from the possession of the carrier by other legal process, or has been lawfully sold to satisfy the carrier's lien, or in case of the sale or disposition of perishable, hazardous or unclaimed goods, in accordance with law. [Id.]

Art. 899. [724] Railroad Commission.—The Railroad Commission shall adopt and prescribe forms, terms and conditions for the authentication, certification or validation of bills of lading issued by common carriers referred to in the first article of this subdivision, and regulate the manner and method of their issuance, and take such steps as it may deem necessary to carry this law into effect. It shall have authority to amend, alter and modify, from time to time, as it may deem expedient, any regulation which may be adopted by it in accordance with the provisions of this subdivision, after giving due notice thereof to all carriers interested and to the public. [Id.]

3. DISPOSITION OF UNCLAIMED GOODS

Art. 900. [725] [327] [285] Unclaimed freight.—When any freight or baggage has been conveyed by a common carrier to any point in this State, and shall remain unclaimed for the space of three months at the office or depot nearest or most convenient to destination, and the owner, whether known or not, fails within that time to claim such freight or baggage, or to pay the proper charges if there be any against it, it shall be lawful for such common carrier to sell such freight or baggage at public auction, offering each article separately as consigned or checked. [Acts 1874, p. 203; G. L. vol. 8, p. 205.]

Art. 901. [726] [328] [286] Sale.—Thirty days' notice of the time and place of sale, and a descriptive list of the packages to be sold, with names and numbers or marks found thereon, shall be posted in three public places in the county where the sale is to be made and on the door of the depot or warehouse if any, where the goods are, and notice shall also be given in at least one newspaper in the county, if any be published therein, for thirty days before sale. Out of the proceeds of such sale, the carrier shall deduct the proper charges on such freight or baggage, including costs of storing and costs of sale, and hold the overplus, if any, to the order of the owner any time within five years, on proof of ownership made by the claimant or his duly authorized agent or attorney. [Id.]

Art. 902. [728] [330] [288] Sale of live stock.—If any live stock remains unclaimed for the space of forty-eight hours after its arrival at the place of its destination, the carrier may sell the same at public auction after giving five days' notice of the time and place of such sale, as prescribed in the preceding article and apply the proceeds as prescribed in said article, after deducting reasonable expenses for keeping, feeding and watering said live stock from the time of its arrival at the place of its destination until disposed of as herein provided. [Id.]

Art. 903. [729] [331] [289] Perishable property.—If any perishable property remains unclaimed after arrival of[1] its place of destination until in danger of depreciation the carrier shall sell the same at public auction, after giving five days' notice of the time and place of sale, as prescribed in the second preceding article and apply the proceeds as prescribed in said article. [Id.]

[1] So in enrolled bill. Should probably read "at."

Art. 904. Data kept.—In each sale under the three preceding articles the carrier shall keep an account of such sale and the expense thereof proportioned to each article sold, a copy of the notice and a copy of the sale bill. [Id.]

4. CONNECTING LINES OF COMMON CARRIERS

Art. 905. [731] "Connecting lines."—All common carriers in this State over whose transportation lines, or parts thereof, is transported any freight, baggage or other property received by either of such carriers for shipment or transportation between points in this State, on a contract for carriage recognized, acquiesced in, or acted upon by such carriers shall, with respect to the undertaking and matter of such transportation be considered and construed to be connecting lines. Such lines shall be deemed and held to be agents of each other, each the agent of the others, and all the others the agents of each, and shall be deemed and held to be under a contract with each other and with the shipper, owner and consignee of such property for the safe and speedy transportation of such property from point of shipment to destination; and such contract as to the shipper, owner and consignee of such property shall be deemed and held to be the contract of each of such common carriers. The provisions of this law shall apply whether the route of such freight, baggage or other property be chosen by the owner or his agents, or by the initial carrier to whom such property is delivered. In any suit brought hereunder, the rights, duties and liabilities of the parties shall be determined by the initial contract executed by and between the owner, shipper or his or her duly authorized agents and the initial carrier, unless it be proved that a subsequent contract supported by a valuable consideration moving to the owner or shipper, in addition to that of the initial contract, was executed by such owner, shipper or his or their duly authorized agents with a subsequent connecting carrier handling the shipment, and the transportation of a caretaker shall not be deemed to be such valuable consideration. In any court of this State, any bill of lading, waybill, receipt, check or other instrument issued by either of such carriers, or other proof showing that either of them has received such freight, baggage or other property for shipment or transportation, shall constitute prima facie evidence of the subsistence of the relations, duties and liabilities of such carrier as herein provided, notwithstanding any stipulation or attempted stipulation to the contrary by such carrier,

or either of them, and any stipulation contained in any contract contrary to any provision of this law shall be void. [Acts 1895, p. 186; Acts 1919, p. 320.]

Art. 906. [732] Recovery by shipper.—For any damage or injury to, or loss or delay of, any freight, baggage or other property, sustained anywhere during the transportation over connecting lines or either of them, as contemplated and defined in the preceding article, either or all of such connecting carriers, as the person or persons sustaining such damage may elect to sue therefor in this State, shall be held liable to such person or persons. The provisions of law allowing an apportionment of damage shall not be applicable to suits brought by such person or persons under the provisions of this subdivision except upon the plaintiff's request. Any carrier or carriers held liable under the provisions hereof shall be entitled in a subsequent action to recover the amount of any loss, damage or injury it has been required to pay hereunder, from the carrier or carriers through whose negligence the loss, damage or injury was sustained, together with all costs of suit; and for the purpose of such recovery, it shall only be necessary that the carrier against whom judgment was had, show which carrier or carriers caused the loss or damage and produce satisfactory evidence that the judgment rendered against it has been paid, and in such action between the carriers, the provisions of law allowing an apportionment of damage shall be applicable. [Id.]

5. PROTECTING MOVEMENT OF COMMERCE

Art. 907. Protecting commerce.—If at any time the movement of commerce by common carriers of this State or any of them is interfered with in violation of the provisions of Chapter 10, Title 14 of the Penal Code. and the Governor, after investigation, becomes convinced that the local authorities were failing to enforce the law, either because they were unable or unwilling to do so, the Governor shall, in order that the movement of commerce may not be interfered with, forthwith issue his proclamations declaring such conditions to exist and describing the area thus affected. Each article of said Title of the Penal Code is made a part hereof. [Acts 4th C. S. 1920, p. 8.]

Art. 908. Governor's jurisdiction.—Upon the issuance of the proclamation provided for in the preceding article, the Governor shall exercise full and complete police jurisdiction of the area described in the proclamation whether the same be all within or partly within, or partly without the limits of any incorporated city or county; the exercise of said police jurisdiction by the Governor as above set out, shall supersede all police authority by any and all local authority, provided that the Governor shall not disturb the local authorities in the exercise of police jurisdiction. at any place outside the district described in his proclamation. [Id.]

Art. 909. Arrests.—No peace officer of this State shall be permitted to make arrests after the Governor's proclamation has become effective, in the territory embraced by such proclamation, except officers acting under the authority of the Governor under the provisions of this law. Persons arrested within the district shall be delivered forthwith to the proper authorities for trial. [Id.]

Art. 910. Rangers used.—The provisions of this law shall be effective without a declaration of martial law. The State Rangers may be used in the enforcement of the provisions of this law. If a sufficient number of Rangers are not available, the Governor is authorized to employ any number of men to be designated as special Rangers and such men shall have all the power and authority of the regular Rangers, and shall be paid the same salary as the Rangers are paid, and such salaries shall be paid out of the appropriation made to the executive office for the payment of rewards and the enforcement of the law.

Art. 911. Scope of law.—Nothing in this law shall be construed as limiting the power and authority of the Governor to declare martial law and to call forth the militia for the purpose of executing the law, when in the judgment of the chief executive it is deemed necessary so to do. This law shall be construed as cumulative of the existing laws of this State, and shall not be held to repeal any of the same except where in direct conflict herewith. [Id.]

6. REGULATION OF MOTOR BUS TRANSPORTATION

Art. 911a. Motor bus transportation and regulation by railroad commission.

Definitions

Sec. 1 (a). That the term "Corporation" when used in this Act[1] means a corporation, company, association, or joint stock association.

(b) The term "Person" when used in this Act means an individual, firm or co-partnership.

(c) The term "Motor Bus Company" when used in this Act means every corporation or persons as herein defined, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled passenger vehicle not usually operated on or over rails, and engaged in the business of transporting persons for compensation or hire over the public highways within the State of Texas, whether operating over fixed routes or fixed schedules, or otherwise; provided further, that the term "Motor Bus Company" as used in this Act shall not include corporations or persons, their lessees, trustees, or receivers, or trustees appointed by any court whatsoever, insofar as they own, control, operate, or manage motor propelled passenger vehicles operated wholly within the limits of any incorporated town or city, and the suburbs thereof, whether separately incorporated or otherwise.

(d) The term "Public Highway" when used in this Act means every street, road, or highway in this State.

(e) The term "Highway Commission" when used in this Act means the Board of Highway Commissioners of the State of Texas.

(f) The term "Commission" when used in this Act means the Railroad Commission of the State of Texas. [As amended Acts 1929, 41st Leg., 1st C.S., p. 196, ch. 78, § 1.]

[1] This article and Pen.Code, art. 1690a.
Motor carriers, see article 911b, post.

Common carriers

Sec. 2. All motor-bus companies, as defined herein, are hereby declared to be "common carriers" and subject to regulation by the State of Texas, and shall not operate any motor propelled passenger vehicle for the regular transportation of persons as passengers for compensation or hire over any public highway in this State except in accordance with the provision of this Act,[1] provided, however, that nothing in this Act or any provision thereof shall be construed or held to in any manner affect, limit, or deprive cities and towns from exercising any of the powers granted them by Chapter 147, pages 307 to 318 inclusive, of the General Laws of the State of Texas, passed by the Thirty-third Legislature, or any amendments thereto.

[1] This article and Pen.Code, art. 1690a.

Certificates of convenience and necessity

Sec. 3. It is hereby declared that when existing transportation facilities on any highway in this State do not provide passenger service which the Commission shall deem adequate to provide for public convenience on such highway, then such inadequacy of service shall be considered as creating a condition wherein the public convenience and necessity require the designation of, and provision for, additional service

on such highway, and it shall be the duty of the Commission to issue certificate or certificates as herein provided, if in the opinion of said Commission the issuance of such certificate will promote the public welfare.

Regulations by Commission

Sec. 4. (a) The Commission is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate the public service rendered by every motor bus company operating over the highways in this State, to fix or approve the maximum, or minimum, or maximum and minimum, fares, rates or charges of, and to prescribe all rules and regulations necessary for the government of, each motor bus company; to prescribe the routes, schedules, service, and safety of operations of each such motor bus company; to acquire the filing of such annual or other reports and of such other data by such motor bus company as the Commission may deem necessary.

(b) The Commission is hereby vested with authority to supervise, control and regulate all terminals of motor bus companies, including the location of facilities and charges to be made motor bus companies for the use of such terminal, or termini; provided, that the Commission shall have no authority to interfere in any way with valid contracts existing between motor bus companies and the owner or owners of motor bus terminals at the time of the passage of this Act.[1]

(c) [Repealed by Acts 1941, 47th Leg., p. 245, ch. 173, § 2.]

(d) The Commission is further authorized and empowered to supervise and regulate motor bus companies in all other matters affecting the relationship between such motor bus companies and the traveling public that may be necessary to the efficient operation of this law.

(e) It shall be unlawful for any motor bus company to sell any tickets for the transportation of passengers within this State over any motor bus line at any rates other than the rates authorized and approved by the Commission under the terms of this law; and it shall be unlawful for any booking agency or brokerage concern, directly or indirectly, to sell tickets for the transportation of passengers over any motor bus line, and no motor bus company shall honor any ticket, or transport any passenger on any ticket so sold by any booking agency or brokerage concern.

(f) The Commission in prescribing and adopting routes and dealing with all other matters affecting the physical operation and control of motor bus companies over the public highways, under the power and authority of this Act, shall give due and proper consideration in forming its conclusions, and prescribing its orders and regulations to the general highway laws of this State, and to the orders, regulations, ordinances, or recommendations of the Highway Commission of Texas, or the Commissioners' Courts of any county or counties, or the local government of any municipality, through or between which the routes for such motor bus companies are prescribed and adopted. [As amended Acts 1929, 41st Leg., 1st C.S., p. 196, ch. 78, § 2.]

[1] This article and Pen.Code, art. 1690a.

Application for certificate or permit; temporary permits

Sec. 5. No motor-bus company shall hereafter regularly operate for the transportation of persons as passengers for compensation or hire over the public highways of this State without first having obtained from the Commission under the provisions of this Act [1] a certificate or permit declaring that the public convenience and necessity require such operation; provided, however, that when it appears to the satisfaction of the Commission that any motor-bus company making application for a certificate or permit is operating and has been continuously operating a motor-propelled passenger vehicle service in good faith, over the particular highways designated in said application for certificate or permit, for a period commencing January 11th, 1927, or prior thereto, said motor-bus company, shall upon application be granted a temporary permit to operate just as said company shall have been operating during said period and no more; said temporary certificate or permit shall become permanent without notice and hearing before the Commission unless a protest shall be filed with the Commission as provided herein; and in the event protest is filed to the application of such motor-bus company then said temporary certificate or permit shall continue in effect until said application and protest is heard and decided upon by the Commission, and said hearing and decision shall be had and rendered by the Commission as speedily as possible.

At any time within thirty days after the day this Act shall take effect anyone affected by the granting of said certificate or permit may file with the Commission, a protest against said certificate or permit becoming or being made permanent, but such protest to be considered by the Commission must be filed within the specified thirty days and shall be in writing, and the author or authors of said protest shall supply the applying motor-bus company with a copy of same, setting forth in reasonable detail the reasons for said protest. In the event of protest to any application of any existing motor-bus company, hearing upon such application and protest shall be had and decision rendered as provided for all other applications.

In all other matters the holders of temporary or permanent certificates or permits obtained in this manner shall be subject to all of the provisions of this Act

Any right, privilege, permit, or certificate held, owned or obtained by any motor-bus company under the provisions of this Act may be sold, assigned, leased or transferred, or inherited; provided, however, that any proposed sale, assignment, lease or transfer shall be first presented in writing to the Commission for its approval or disapproval and the Commission may disapprove such proposed sale, assignment, lease, or transfer if it be found and determined by the Commission that such proposed sale, assignment, lease or transfer is not made in good faith or that the proposed purchaser, assignee, lessee or transferee is not able or capable of continuing the operation of the equipment proposed to be sold, assigned, leased or transferred, in such manner as to render the service demanded by the public necessity and convenience on and along the designated route.

Provided, however, that any right, privilege, permit or certificate held, owned or obtained by any Motor Bus Company under the provisions of this Act or owned or obtained by any assignee or transferee of any such Motor Bus Company shall be taken and held subject to the right of the State at any time to limit, restrict or forbid the use of the Streets and Highways of this State to any owner or holder of such right, privilege, permit or certificate.

[1] This article and Pen.Code, art. 1690a.

Commission to determine necessity for service

Sec. 6. The Commission is hereby vested with power and authority, and it is hereby made its duty upon the filing of an application for a certificate of public convenience and necessity, to ascertain and determine under such rules and regulations as it may promulgate, after considering existing transportation facilities on such highway, the service rendered and capable of being rendered thereby, and the demand for, or need of additional service, if there exists a public necessity for such service, and if public convenience will be promoted by granting said application and permitting the operating of motor vehicles on the highways designated in such application, as a common carrier for hire.

Interference with general use of highways; refusal because of existing railroad transportation

Sec. 7. The Commission shall also ascertain and determine if a particular highway or highways designated in said application are of such type of construction or in such state of repair, or subject to such use as to permit of the use sought to be made by the applicant, without unreasonable interference with the use of such highway or highways by the general public for highway purposes. And if the Commission shall determine, after hearing that the service rendered or capable of being rendered by existing transportation facilities or agencies on such highways is reasonably adequate, or that public convenience on such highways would not be promoted by granting of said application and the operation of motor vehicles on the public highways therein designated, or that such highway or highways are not in such state of repair, or are already subject to such use as would not permit of the use sought to be made by the applicant without unreasonable interference with the use of such highway or highways by the general public for highway purposes, then in either or any of such event said application may be denied and said certificate refused, otherwise the application shall be granted and the certificate issued upon such terms and conditions as said Commission may impose and subject to such rules and regulations as it may thereafter prescribe.

The Railroad Commission shall have no power in any event to refuse an application for a certificate of convenience and necessity on the ground that there are existing railroad or interurban railroad transportation facilities sufficient to serve the transportation needs of the territory involved.

In determining whether or not a certificate should be issued, the Commission shall give weight and due regard to (1) probable permanence and quality of the service offered by the applicant, (2) the financial ability and responsibility of the applicant and its organization and personnel (3) the character of vehicles and the character and location of depots or termini proposed to be used, and (4) the experience of the applicant in the transportation of passengers and the character of the bond or insurance proposed to be given to insure the protection of its passengers and the public.

The Commission shall have the power and authority to grant temporary certificates to meet emergencies and shall have the power to make special rules and regulations to meet special conditions in different localities and for such time as in its judgment may be deemed expedient and best for the public welfare.

Contents of application

Sec. 8. No application for certificate shall be considered by said Commission except that it shall be reduced to writing and set forth the following facts:

(a) It shall contain the name and address of the applicant, and the names and addresses of its officers, if any, and shall give full information concerning the financial condition and physical properties of the applicant.

(b) The complete route or routes over which the applicant desires to operate, together with a brief description of each vehicle which the applicant intends to use, including the seating capacity thereof.

(c) A proposed time schedule and a schedule of rates showing the passenger fares to be charged between the several points or localities to be served.

(d) It shall be accompanied by a plat or map showing the route or routes over which the applicant desires to operate, on which plat or map shall be delineated the line or lines of any existing transportation company or companies over the highways serving such territory, with the names and addresses of the owner or owners thereof, and shall point out the inadequacy of existing transportation facilities or service, and shall specify wherein additional facilities or service are required and would be secured by the granting of said application.

(e) Every application for a certificate of convenience and necessity shall be accompanied by a filing fee in the sum of Twenty-five ($25.00) Dollars, which fee shall be in addition to other fees and taxes, and such fees shall be retained by the Commission whether the certificate of convenience and necessity be granted or not.

(f) Every application filed with the Commission for an order approving the lease, sale, or transfer of any certificate of convenience and necessity, or stock of any corporation owning or controlling a "motor bus company" shall be accompanied by a filing fee in the sum of Twenty-five ($25.00) Dollars, which fee shall be in addition to the other fees and taxes, and shall be retained by the Commission whether the lease, sale, or transfer of the certificate of convenience and necessity, or stock of any corporation owning or controlling a "motor bus company" is approved or not, such fee to be paid by the purchaser.

(g) No stock of any corporation owning and operating any "motor bus company" shall be sold or transferred without first securing the approval of the Commission as provided for certificates of convenience and necessity, in Section 5 of House Bill No. 50, the same being Chapter 270 of the Acts of the Regular Session of the 40th Legislature of the State of Texas, 1927,[1] and this paragraph shall be cumulative of that section, provided that the provisions of this sub-section shall apply only to those cases where the proposed sale will change the controlling interest in such motor bus company. [As amended Acts 1929, 41st Leg., 1st C.S., p. 196, ch. 78, § 3.]

[1] Section 5 of this article.

Hearing on application at Austin; notice

Sec. 9. Upon the filing of said application the Commission shall fix a time and place for hearing, and the place of hearing shall be the city of Austin, Texas, unless otherwise ordered by said Commission. Notice of the filing of said application, and the time and place of hearing shall be given by mail not less than ten days exclusive of the day of mailing before such hearing, addressed to the owner or owners of existing transportation facilities over the highways, serving such territory as applicant seeks to serve, as well as to the Highway Commission of the State of Texas, the County Judge or Judges of the Counties and to the Mayor of any incorporated city or town, through which such motor carriers seek to operate.

Appearance by parties including Highway Commission; suspension or revocation of certificate

Sec. 10. The hearing shall be conducted under such rules and regulations as the Commission may prescribe, and all parties interested, including the Highway Commission of this State, may appear either in person or by counsel, and present such evidence and argument as they may desire and as the Commission may deem pertinent, in favor of or against the granting of said application. It shall be the duty of the Highway Commission of this State, upon the request of the Commission to furnish any and all information that it has at its command relating to the highway or highways designated in such application as well as such other information as said Commission may deem pertinent to the granting or refusal of such application. After such hearing, and such investigation as the Commission may make of its own motion, it shall be the duty of said Commission to either refuse said application and certificate, or to grant said application and issue said certificate, in whole or in part, upon such terms and conditions as it may impose, and subject to such rules and regulations as it may thereafter prescribe.

The Commission, at any time by its order duly entered after hearing had upon notice to the holder of any certificate granted under this Act [1] and an oppor-

tunity given such holder to be heard, at which hearing it shall be proven to the satisfaction of the Commission that such certificate holder has discontinued operation or has violated or refused or neglected to observe any of its proper orders, rates, fares, rules, or regulations, may suspend, revoke, alter or amend any certificate issued under the provisions of this Act, provided that the holder of such certificate shall have the right of appeal as provided herein.

[1] This article and Pen.Code, art. 1690a.

Liability and property damage insurance; protection of employees

Sec. 11. The Commission shall, in the granting of any certificate to any motor bus company for regularly transporting persons as passengers for compensation or hire, require the owner or operator to first procure liability and property damage insurance from a company licensed to make and issue such insurance policy in the State of Texas covering each and every motor propelled vehicle while actually being operated by such applicant. The amount of such policy or policies of insurance shall be fixed by the Commission by general order or otherwise, and the terms and conditions of said policy or policies covering said motor vehicle are to be such as to indemnify the applicant against loss by reason of any personal injury to any person or loss or damage to the property of any person other than the assured and his employees. Such policy or policies shall furthermore provide that the insurer will pay all judgments which may be recovered against the insured motor bus company based on claims for loss or damage from personal injury or loss of or injury to property occurring during the term of the said policy or policies and arising out of the actual operation of such motor bus or busses, and such policy or policies shall also provide for successive recoveries to the complete exhaustion of the face amount thereof, and that such judgment will be paid by the insurer irrespective of the solvency or insolvency of the insured. Such liability and property damage insurance as required by the Commission shall be continuously maintained in force on each and every motor propelled vehicle while being operated in common carrier service. In addition to the insurance hereinabove set forth, the owner or operator shall also protect his employees by taking out workmen's compensation insurance either as provided by the Workmen's Compensation Laws of the State of Texas or in a reliable insurance company approved by the Railroad Commission of the State of Texas. The taking out of such indemnity policy or policies shall be a condition precedent to any operation and such policy or policies as required under this Act,[1] shall be approved and filed with the Commission and failure to file and keep such policy or policies in force and effect as provided herein shall be cause for the revocation of the certificate and shall subject the motor bus company so failing to the penalties prescribed herein.

[1] This article and Pen.Code, art. 1690a.

Identification plates on busses

Sec. 11-A. It shall be unlawful for any motor bus company, as hereinbefore defined, to operate any motor bus within this State unless there shall be displayed and firmly fixed upon the front of such bus an identification metal plate to be furnished by the Commission. Each of such plates shall be so designed as to identify the vehicle on which same is attached as being a motor bus authorized to operate under the terms of this law, and the rules and regulations of the Commission, and said plate shall bear the number given to said vehicle by the Commission, and such other marks of identification as may be necessary. The identification plates provided for herein shall be in addition to the regular license plates required by law. It shall be the duty of the Commission to provide such plates and each motor bus operating in this State shall display one of said plates within sixty days after this Act takes effect, and such plates shall be issued annually thereafter and attached to each motor bus not later than September first of each year. The Commission is authorized to collect from the applicant a fee of One ($1.00) Dollar for each plate so issued and said fee shall be deposited in the State Treasury to the credit of the "Motor Transportation Fund." [As added Acts 1929, 41st Leg., 1st C.S., p. 196, ch. 78, § 4.]

Commission to hear applications and complaints presented; attendance of witnesses

Sec. 12. The Commission shall have the power and authority under this Act[1] to hear and determine all applications of motor-bus companies; to determine complaints presented to it by motor-bus companies, by any public official or by any citizen having an interest in the subject matter of the complaint, or it may institute and investigate any matter pertaining to automobile passenger transportation for compensation or hire upon its own motion. The Commission or any member thereof, or authorized representative of the Commission, shall have the power to compel the attendance of witnesses, swear witnesses, take their testimony under oath, make record thereof, and if such record is made under the direction of a Commissioner, or authorized representative of the Commission a majority of the Commission may upon the record render judgment as if the case had been heard before a majority of the members of the Commission. The Commission shall have the power and authority under this Act to do and perform all necessary things to carry out the purpose, intent, and provisions of this Act, whether herein specifically mentioned or not, and to that end may hold hearings at any place in Texas which it may designate.

[1] This article and Pen.Code, art. 1690a.

Per diem and mileage of witnesses

Sec. 13. Each witness who shall be summoned to appear before the Commission or a Commissioner or authorized representative outside the county of his residence shall receive for his attendance the same per diem and fees as now provided for witnesses in attendance on district courts of this State in criminal cases; such fees and mileage shall be ordered paid upon proper voucher, sworn to by such witness and approved by the Commission or the Chairman thereof, out of the monies and funds arising under this Act;[1] provided that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any motor-bus or other transportation company involved in or concerning which the investigation or hearing on account of which he is called shall relate, and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. All process issued by the Commission for summoning witnesses or other purposes shall be directed to the sheriff or any constable of any county in the State of Texas and any sheriff or constable of any county in this State shall promptly execute any subpœna or other document directed to him by the Commission and shall receive such fees for this service as is now paid for like services in the district courts of this State, such payment to be made on accounts properly verified and approved by the Commission or the Chairman thereof out of the fund provided in this Act.

[1] This article and Pen.Code, art. 1690a.

Penal provision

Sec. 14. See Penal Code, art. 1690a.

Minimum bus fees; payment to State Treasurer

Sec. 15. For the purpose of defraying the expense of administering this Act,[1] every motor bus company now operating, or which shall hereafter operate in

this State, shall, in addition to other fees and charges provided for by law, at the time of the issuance of a certificate of convenience and necessity, as provided herein, and annually thereafter, on or between September 1st and September 15th of each calendar year, pay a special minimum fee of Ten ($10.00) Dollars for each motor propelled vehicle, and a further fee, computed on the basis of One ($1.00) Dollar per passenger set for the rated passenger capacity of the vehicle, or vehicles used.

If the certificate of convenience and necessity herein referred to is issued after the month of September of any year, the fees paid shall be proportionate to the remaining portion of the year ending August 31st following, but in no case less than one-fourth the annual fee. In case of emergencies or unusual temporary demands for transportation, the fee for additional motor propelled vehicles for less periods shall be fixed by the Commission in such reasonable amount as may be prescribed by general rule or temporary order.

All fees accruing hereunder and all fines and penalties collected under the provisions of this Act shall be payable to the State Treasurer at Austin, Texas, and shall, by the State Treasurer be deposited in the State Treasury at Austin and credited to the fund to be known and designated as the "Motor Transportation Fund," and out of which all warrants for expenditures necessary in administering and enforcing this Act shall be paid. [As amended Acts 1929, 41st Leg., 1st C.S., p. 196, ch. 78, § 6.]

[1] This article and Pen.Code, art. 1690a.

Commission may employ experts, assistants, etc.; expenses from motor transportation fund

Sec. 16. The Commission shall have power to employ and appoint from time to time such experts, assistants, and other help, in addition to its present force, as may be deemed necessary to enable it at all times to properly administer and enforce this Act.[1] Such persons and employees of the Commission shall be paid for the services rendered such sums as may be fixed and prescribed by the Commission in monthly installments, and such salaries, wages and all fees that may be paid to witnesses and officers shall be paid out of the motor transportation fund by the State Treasurer on warrant of the Comptroller of Public Accounts on order or voucher approved by the Commission or the Chairman thereof. All actual and necessary traveling expenses of the members of the Commission and employees shall also be paid out of the said motor transportation fund in the same manner as salaries, wages, and fees when such accounts shall have been itemized and sworn to by the Commission or employee incurring the expense and approved by the Commission or the Chairman thereof.

If the amount or total of such gross receipts collected under the provisions of this Act shall not be sufficient during any annual period to pay such salaries, costs, charges, fees, and expenses, then the deficit shall be paid by the State Treasurer out of any funds not otherwise appropriated. Until sufficient funds have accrued to said motor transportation fund for the payment of expenses, fees, etc. as provided herein, said expenses shall be paid by the State Treasurer out of any funds not otherwise appropriated, such sum to be paid out of the general revenue not to exceed the sum of Five Thousand Dollars ($5,000.00), and said sum is hereby appropriated. Any surplus remaining in the motor transportation fund at the end of any fiscal year, after paying all such salaries, accounts, fees, and charges and after deducting such amount as may be contracted to be paid and incurred and such sum as may be reasonably estimated by the Commission for its use pending further collection of fees shall be paid over to the general revenue fund.

[1] This article and Pen.Code, art. 1690a.

Review of decisions of Commission by district court, Travis County

Sec. 17. If any such auto transportation company, association, corporation, or other party at interest be dissatisfied with any decision, rate, charge, rule, order, act, or regulation adopted by the Commission, such dissatisfied person, association, corporation, or party may file a petition setting forth the particular objection to such decision, rate, charge, rule, order, act, or regulation, or to either or all of them in the district court in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in a said court; either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending; provided, that if the court be in session at the time such right of action accrues the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this section the burden of proof shall rest upon the plaintiff who must show by the preponderance of evidence that the decisions, rates, regulations, rules, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them. The Commission shall not be required to give any appeal bond in any cause arising hereunder and no injunction shall be granted against any order of the Commission without hearing unless it shall clearly appear that irreparable injury will be done the complaining party if the injunction is not granted.

Ten days as reasonable notice

Sec. 18. Whenever notice is required in this Act[1] to be given ten days exclusive of the day of service and return shall be considered as reasonable notice; provided, that in case of emergency the Commission may hear any cause or complaint on less than ten days notice.

[1] This article and Pen.Code, art. 1690a.

Office provided by Board of Control

Sec. 19. The State Board of Control is hereby authorized and directed to set aside such additional office space in the Capitol at Austin as may be deemed necessary by the Commission for the proper performance of its added duties as herein defined. [Acts 1927, 40th Leg., p. 399, ch. 270.]

Acts 1929, 41st Leg., 1st C.S. p. 196, ch. 78, amended sections 1, 4, 8, 15 of this article and added section 11-A.

Section 20 of Acts 1927, 40th Leg., p. 399, ch. 270, repeals all conflicting laws and parts of laws, and section 21 provides that if any provision is held invalid such holding shall not affect the remaining provisions.

Section 7 of Acts 1929, 41st Leg., 1st C.S., p. 196, ch. 78, repeals all conflicting laws and parts of laws and section 8 provides that if any provision is held unconstitutional, such decision shall not affect the validity of the remainder. Section 5 being an amendment of the Pen. Code is published as art. 1690a thereof.

This article is unconstitutional when applied to interstate commerce. Hi-Ball Transit Co. v. Railroad Commission of Texas, D.C., 27 F.2d 425.

Art. 911b. Motor carriers and regulation by Railroad Commission.

Definitions

Sec. 1. When used in this Act unless expressly stated otherwise:

(a) The term "person" means and includes an individual, a firm, co-partnership, corporation, company, an association or a joint stock association.

(b) The term "Commission" means the Railroad Commission of the State of Texas.

(c) The term "Highway Commission" means the Board of Highway Commissioners of the State of Texas.

(d) The term "public highway" means every street, road or highway in this State.

(e) The term "certificate" means certificate of public convenience and necessity issued under this Act.

(f) The term "permit" means the permit issued to contract carriers under the terms of this Act.

(g) The term "motor carrier" means any person, firm, corporation, company, co-partnership, association or joint stock association, and their lessees, receivers or trustees appointed by any Court whatsoever owning, controlling, managing, operating or causing to be operated any motor-propelled vehicle used in transporting property for compensation or hire over any public highway in this State, where in the course of such transportation a highway between two or more incorporated cities, towns or villages is traversed; provided, that the term "motor carrier" as used in this Act shall not include, and this Act shall not apply to motor vehicles operated exclusively within the incorporated limits of cities or towns.

(h) The term "contract carrier" means any motor carrier as hereinabove defined transporting property for compensation or hire over any highway in this State other than as a common carrier. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 1.]

(i) "Specialized motor carrier" means any person owning, controlling, managing, operating, or causing to be operated any motor-propelled vehicle used in transporting, over any public highway in this State, over irregular routes on irregular schedules, for compensation and for the general public with specialized equipment, property requiring specialized equipment in the transportation and handling thereof; provided, that the term "specialized motor carrier" as used in this Act shall not apply to motor vehicles operated exclusively within the incorporated limits of cities or towns; and, provided further the term "specialized motor carrier" as used herein shall include those carriers who engage or desire to engage exclusively in the transportation of livestock, livestock feedstuff, grain, farm machinery, timber in its natural state, milk, wool, mohair, or property requiring specialized equipment as that term is hereinafter defined, or any one, or more, of the foregoing named commodities.

For the purpose of this Act, the term "specialized equipment" includes, but is not limited to block and tackle, hoists, cranes, windlasses, gin poles, winches, special motor vehicles, and such other devices as are necessary for the safe and proper loading or unloading of property requiring specialized equipment for the transportation and handling thereof.

For the purpose of this Act, the term "property requiring specialized equipment" is limited to (1) oil field equipment, (2) household goods and used office furniture and equipment, (3) pipe used in the construction and maintenance of water lines and pipe lines, and (4) commodities which by reason of length, width, weight, height, size, or other physical characteristic require the use of special devices, facilities, or equipment for their loading, unloading, and transportation.

For the purpose of this Act, the term "oil field equipment" means and includes machinery, materials, and equipment incidental to or used in the construction, operation, and maintenance of facilities which are used for the discovery, production, and processing of natural gas and petroleum, and such machinery, materials, and equipment when used in the construction and maintenance of pipe lines. [As amended Acts 1941, 47th Leg., p. 713, ch. 442, § 2.]

Terms "Motor Carrier" and "Contract Carrier" not to include what

Sec. 1a (1) Provided, however, that the term "Motor Carrier" and the term "Contract Carrier" as defined in the preceding section shall not be held to include:

(a) Any person having a regular, separate, fixed, and established place of business, other than a transportation business, where goods, wares, and merchandise are kept in stock and are primarily and regularly bought from the public or sold to the public or manufactured or processed by such person in the ordinary course of the mercantile, manufacturing, or processing business, and who, merely incidental to the operation of such business, transports over the highways of this State such goods of which such person is the bona fide owner by means of a motor vehicle of which such person is the bona fide owner; nor

(b) Any person transporting farm implements, livestock, livestock feedstuffs, dairy products, horticultural products, floral products, agricultural products, timber in its natural state, or wool and mohair of which such person is the bona fide owner on a vehicle of which he is the bona fide owner to and from the area of production and to and from the market or place of storage thereof; provided, however, if such person (other than a transportation company) has in his possession under a bona fide consignment contract livestock, wool, mohair, milk and cream, fresh fruits and vegetables, or timber in its natural state under contract, as an incident to a separate, fixed, and established business conducted by him the said possession shall be deemed ownership under this Act.

(c) Where merely incidental to a regular, separate, fixed, and established business, other than a transportation business, the transportation of employees, petroleum products, and incidental supplies used or sold in connection with the wholesale or retail sale of such petroleum products from the refinery or place of production or place of storage to the place of storage or place of sale and distribution to the ultimate consumer, in a motor vehicle owned and used exclusively by the marketer or refiner, or owned in whole or in part and used exclusively by the bona fide consignee or agent of such single marketer or refiner; as well as where merely incidental to a regular, separate, fixed, and established business, other than a transportation business, the transportation of petroleum, employees, material, supplies, and equipment for use in the departments of the petroleum business by the bona fide owner thereof in a vehicle of which he is the bona fide owner; bona fide consignee or agent as used herein being hereby defined and construed, for the purpose of this Act, to mean a person under contract with a single principal to distribute petroleum products in a limited territory and only for such single principal; nor

(d) Any utility company using its own equipment transporting its own property over the highways.

(2) The term "person" as used in this Act shall include persons, firms, corporations, companies, co-partnerships, or associations or joint stock associations (and their receivers or trustees appointed by any Court whatsoever). [Added Acts 1941, 47th Leg., p. 463, ch. 290, § 1.]

Private motor vehicle owners

Sec. 1b. Any person who transports goods, wares, or merchandise under the circumstances set forth in the foregoing Section 1a so as to be excluded by the terms of said Section from the definition of "motor carrier" or "contract carrier" shall be deemed to be a private motor vehicle owner; and such use of the highways by such private motor vehicle owners, as herein defined, shall be construed as use of the highways for the general public and not the use of such highways for the carrying on the business of transporting property for compensation or hire. [Added Acts 1941, 47th Leg., p. 463, ch. 290, § 1.]

Motor busses, see article 911a, ante.

Compliance with act by motor carriers

Sec. 2. No motor carrier, as defined in the preceding section, shall operate any motor-propelled vehicle for the purpose of transportation or carriage of property for compensation or hire over any public highway in

the State except in accordance with the provisions of this Act; provided, however, that nothing in this Act or any provision thereof shall be construed or held to in any manner affect, limit or deprive cities and towns from exercising any of the powers granted them by Chapter 147, Pages 307 to 318, inclusive of the General Laws of the State of Texas, passed by the 33rd Legislature, or any amendments thereto. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 2.]

Certificate of convenience and necessity

Sec. 3. No motor carrier shall, after this Act goes into effect, operate as a common carrier without first having obtained from the Commission, under the provisions of this Act, a certificate of public convenience and necessity pursuant to a finding to the effect that the public convenience and necessity require such operation. No motor carrier shall, after this Act goes into effect, operate as a contract carrier without first having obtained from the Commission a permit so to do, which permit shall not be issued until the applicant shall have in all things complied with the requirements of this Act. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 3.]

Supervision and regulation by Commission

Sec. 4. (a) The Commission is hereby vested with power and authority and it is hereby made its duty to supervise and regulate the transportation of property for compensation or hire by motor vehicle on any public highway in this State, to fix, prescribe or approve the maximum or minimum or maximum and minimum rates, fares and charges of each motor carrier in accordance with the specific provisions herein contained, to prescribe all rules and regulations necessary for the government of motor carriers, to prescribe rules and regulations for the safety of operations of each of such motor carriers, to require the filing of such monthly, annual or other reports and other data of motor carriers as the Commission may deem necessary, to prescribe the schedules and services of motor carriers operating as common carriers, and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public whether herein specifically mentioned or not.

(b) [Repealed by Acts 1941, 47th Leg., p. 245, ch. 173, § 2.]

(c) The Commission is further authorized and empowered, and it shall be its duty, to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the shipping public that may be necessary in the interest of the public.

(d) The Commission is further authorized and empowered, and it shall be its duty, to supervise and regulate motor carriers in all matters whether specifically mentioned herein or not so as to carefully preserve, foster and regulate transportation and to relieve the existing and all future undue burdens on the highways arising by reason of the use of the highways by motor carriers, adjusting and administering its regulations in the interests of the public.

The Commission, in prescribing and adopting rules and regulations and in forming its conclusions and in prescribing its orders, shall invite the Highway Commission's opinion on the condition of the public highways involved and the ability of said highways to carry the existing and proposed additional traffic, and the Commission shall give due and proper consideration to the orders, regulations, ordinances or recommendations of the Highway Commission of Texas; provided, however, nothing herein contained shall be deemed to restrict the powers of the Highway Commission under existing laws. The Commission shall also give due and proper consideration to the recommendations of the Commissioners' Courts of the several Counties and to the recommendations of the local government of any municipality through or between which motor carriers operate. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 4.]

Commission to issue certificates of convenience and necessity; assignment or sale of certificate

Sec. 5. No motor carrier shall hereafter operate as a common carrier for the transportation of property for compensation or hire over the public highways of this State without first having obtained from the Commission, under the provisions of this Act, a certificate declaring that the public convenience and necessity requires such operation; provided, however, the Commission shall, without application or hearing when this Act goes into effect, issue all motor carriers then operating lawfully under permanent certificates of public convenience and necessity heretofore issued to them. certificates in lieu of the certificates issued under the terms of the former law covering the same routes that said common carrier shall have been operating over, and no more.

Any certificate held, owned or obtained by any motor carrier operating as a common carrier under the provisions of this Act may be sold, assigned, leased, transferred or inherited; provided, however, that any proposed sale, lease, assignment or transfer shall be first presented in writing to the Commission for its approval or disapproval, and the Commission may disapprove such proposed sale, assignment, lease or transfer if it be found and determined by the Commission that such proposed sale, assignment, lease or transfer is not in good faith or that the proposed purchaser, assignee, lessee or transferee is not able or capable of continuing the operation of the equipment proposed to be sold, assigned, leased or transferred in such manner as to render the services demanded by the public necessity and convenience on and along the designated route, or that said proposed sale, assignment, lease or transfer is not best for the public interest; the Commission, in approving or disapproving any sale, assignment, lease or transfer of any certificate, may take into consideration all of the requirements and qualifications of a regular applicant required in this Act and apply same as necessary qualifications of any proposed purchaser, assignee, lessee or transferee; provided, however, that in case a certificate is transferred that the transferee shall pay to the Commission a sum of money equal to ten per cent (10%) of the amount paid as a consideration for the transfer of the certificate, which sum of ten per cent (10%) shall be deposited in the State Treasury to the credit of the Highway Fund of the State; provided further, that any certificate obtained by any motor carrier or by any assignee or transferee shall be taken and held subject to the right of the State at any time to limit, restrict or forbid the use of the streets and highways of this State to any holder or owner of such certificate. Every application filed with the Commission for an order approving the lease, sale or transfer of any certificate of convenience and necessity shall be accompanied by a filing fee in the sum of Twenty-five Dollars ($25.00), which fee shall be in addition to the other fees and taxes and shall be retained by the Commission whether the lease, sale or transfer of the certificate of convenience and necessity is approved or not. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 5.]

Certificates of convenience and necessity; issuance to specialized motor carrier; application; filing fee

Sec. 5a. (a) The Commission is hereby given authority to issue upon application and hearing as provided in this Act, to those persons who desire to engage in the business of a "specialized motor carrier," certificates of convenience and necessity in the manner and under the terms and conditions as provided in this Act.

Any certificate held, owned, or obtained by any motor carrier operating as a "specialized motor

carrier" under the provisions of this Act, may be sold, assigned, leased, transferred, or inherited; provided, however, that any proposed sale, lease, assignment, or transfer shall be first presented in writing to the Commission for its approval or disapproval, and the Commission may disapprove such proposed sale, assignment, lease, or transfer if it be found and determined by the Commission that such proposed sale, assignment, lease, or transfer is not in good faith or that the proposed purchaser, assignee, lessee, or transferee is not able or capable of continuing the operation of the equipment proposed to be sold, assigned, leased, or transferred in such manner as to render the services demanded by the public necessity and convenience in the territory covered by the certificate, or that said proposed sale, assignment, lease, or transfer is not best for the public interest; the Commission, in approving or disapproving the sale, assignment, lease, or transfer of any certificate, may take into consideration all of the requirements and qualifications of a regular applicant required in this Act and apply same as necessary qualifications of any proposed purchaser, assignee, lessee, or transferee; provided however, that in case a certificate is transferred that the transferee shall pay the Commission a sum of money equal to ten (10) per cent of the amount paid as a consideration for the transfer of the certificate, which sum of ten (10) per cent shall be deposited in the State Treasury to the credit of the Highway Fund of the State; provided further, that any certificate obtained by any motor carrier or by any assignee or transferee shall be taken and held subject to the rights of the State at any time to limit, restrict, or forbid the use of the streets and highways of this State to any holder or owner of such certificate. Every application filed with the Commission for an order approving the lease, sale, or transfer of any certificate of convenience and necessity shall be accompanied by a filing fee in the sum of Twenty-five Dollars ($25), which fee shall be in addition to the other fees and taxes and shall be retained by the Commission whether the lease, sale, or transfer of the certificate of convenience and necessity is approved or not.

(b) No motor carrier shall transport oil field equipment, household goods, used office furniture and equipment, livestock, milk, livestock feedstuff, grain, farm machinery, timber in its natural state, wool or mohair, on any highway in this State unless there is in force with respect to such carrier and such carrier is the owner or lessee of a certificate of convenience and necessity issued pursuant to a finding and containing a declaration that a necessity requires such operation or a contract carrier permit issued by the Commission, authorizing the transportation of such commodity or commodities; providing that nothing herein shall modify, restrict, or add to, the authority of the common carrier motor carriers operating under certificates of convenience and necessity issued by the Commission, nor shall any person who now holds or who may hereafter hold a certificate of convenience and necessity to operate as a common carrier be granted any certificate of convenience and necessity to operate as a Specialized Motor Carrier; provided further that any person to whom a "Special Commodity" permit for the transportation of any or all of said commodities had been issued under the provisions of Section 6, paragraph (d), Article 911b, Title 25, Revised Civil Statutes of the State of Texas, 1925, as amended, if such "Special Commodity" permit shall have been in force and effect on January 1, 1941, and if such person or predecessor in interest may desire to continue in the business of a motor carrier of such commodity or commodities shall file an application for a certificate of convenience and necessity under the terms of this Act within sixty (60) days after the effective date hereof, it shall be the duty of the Commission to issue without further proof a certificate authorizing the operation as a "Specialized Motor Carrier" for the transportation of such commodity or commodities covered by the "Special Commodity" permit held by the applicant, which "Specialized Motor Carrier" certificate shall be issued to the applicant and include all the rights and privileges granted under said "Special Commodity" permit.

(c) The Commission shall have no jurisdiction to consider, set for hearing, hear, or determine any application for a certificate of convenience and necessity authorizing the operation as a "specialized motor carrier" or any other common carrier except as provided in the preceding paragraph unless the application shall be in writing and set forth in detail the following facts:

1. It shall contain the name and address of the applicant, who shall be the real party at interest, and the names and addresses of its officers if any, and shall give full information concerning the financial condition and physical properties of the applicant.

2. The commodity or commodities or class or classes of commodities which the applicant proposes to transport and the specific territory or points to, or from, or between which the applicant desires to operate, together with the description of each vehicle which the applicant intends to use.

3. It shall be accompanied by a map, showing the territory within which, or the points to or from or between which, the applicant desires to operate, and shall contain a list of any existing transportation company or companies serving such territory, and shall point out the inadequacy of existing transportation facilities or service, and shall specify wherein additional facilities or service are required and would be secured by the granting of said application.

(d) Before any such application shall be granted, the Commission shall hear, consider and determine said application in accordance with Sections 8, 9, 11, 12, 13, 13a, 14, and 15 of Chapter 277, Acts of the Forty-first Legislature, Regular Session, as amended (Article 911b, Revised Civil Statutes of the State of Texas, 1925, as amended), and if the Commission shall find any such applicant entitled thereto, it shall issue certificate hereunder on such terms and conditions as is justified by the facts; otherwise said application shall be denied. The Commission shall have no authority to grant any application for a certificate of convenience and necessity authorizing operation as a "Specialized Motor Carrier" or any other common carrier unless it is established by substantial evidence (1) that the services and facilities of the existing carriers serving the territory or any part thereof are inadequate; (2) that there exists a public necessity for such service, and (3) the public convenience will be promoted by granting said application. The order of the Commission granting said application and the certificate issued thereunder shall be void unless the Commission shall set forth in its order full and complete findings of fact pointing out in detail the inadequacies of the services and facilities of the existing carriers, and the public need for the proposed service. Likewise, the Commission shall have no authority to grant any contract carrier application for the transportation of any commodities in any territory or between any points where the existing carriers are rendering, or are capable of rendering, a reasonably adequate service in the transportation of such commodities.

(e) Except where otherwise provided, applications for and holders of certificates of public convenience and necessity, as provided for in this Section, shall be subject to all of the provisions of the Act relating to common carriers by motor vehicle.

(f) Every application for a certificate of public convenience and necessity under this Section shall be accompanied by a filing fee in the sum of Twenty-five Dollars ($25), which fee shall be in addition to

other fees and taxes, and shall be retained by the Commission whether certificate of convenience and necessity is granted or not.

(g) For the purpose of defraying the expense of administering this Act, every motor carrier operating as a "specialized motor carrier" in this State shall at the time of the issuance of a certificate of convenience and necessity to him, and annually thereafter on or between September 1st and September 15th of each calendar year, pay a special fee of Ten Dollars ($10) for each motor-propelled vehicle operated or to be operated by such motor carrier in the carriage of property. If the certificate of convenience and necessity herein referred to is issued after the month of September of any year, the fee paid shall be prorated to the remaining portion of the year ending August 31st following, but in no case less than one-fourth the annual fee. In case of emergency or unusual temporary demands for transportation the fee for additional motor-propelled vehicles for less period shall be fixed by the Commission in such reasonable amounts as may be prescribed by general rule or temporary order.

(h) It shall be unlawful for any "specialized motor carrier" as hereinbefore defined, to operate any motor vehicle within this State unless there shall be displayed and firmly fixed upon the front and rear of such vehicle an identification plate to be furnished by the Commission. Each of such plates shall be designed so as to identify the vehicle on which the same is attached as being a vehicle authorized to operate under the terms of this Act; said plate shall bear the number given to the vehicle by the Commission and such other marks of identification as may be necessary. The plates for vehicles operated by "specialized motor carriers" shall be different in design to the plates for common carrier vehicles and the plates for contract carrier vehicles. The identification plates provided for herein shall be in addition to the regular license plates provided by law. It shall be the duty of the Commission to provide these plates and each motor vehicle operating in this State shall display such plates as soon as the same are received, and such plates shall be issued annually thereafter and attached to each motor vehicle not later than September 1st of each year, or as soon thereafter as possible. The Commission shall be authorized to collect from the applicant a fee of One Dollar ($1) for each pair of plates so issued, and all fees for such plates shall be deposited in the State Treasury to the credit of the Motor Carrier Fund. [Added Acts 1941, 47th Leg., p. 713, ch. 442, § 4.]

Application for permits; special permits; specialized motor carrier certificates; transfer or sale of permits

Sec. 6. (a) No motor carrier now operating as a contract carrier or that may hereafter desire to engage in the business of a contract carrier shall so operate until it shall have received a permit from the Commission to engage in such business and such permit shall not be issued until the applicant shall have in all things complied with the requirements of this Act; nor shall such permit be issued unless the character of business being done or to be done by the applicant strictly conforms with the definition of a contract carrier. The Commission shall have the power to suspend for ten (10) days any existing permit after notice and hearing and to revoke any existing permit when it appears that such permit holder has disobeyed or violated any provision of this Act or of General Laws regulating motor vehicles or violated any rule or regulation of the Commission authorized by this Act.

(b) No application for a permit shall be considered by the Commission unless it be reduced to writing and set forth the following facts:

(1) It shall contain the name and address of the applicant and the names and addresses of its officers, if any, and shall give full information concerning the financial condition and physical properties of the applicant.

(2) The application shall set forth the nature of the transportation in which the applicant wishes to engage stating substantially the territory to be covered by the operation and including the condition and character of the roads over which the transportation is to be performed.

(3) It shall give a description of each vehicle which the applicant intends to use, including weight and size of vehicle and its carrying capacity.

(c) No application for permit shall be granted by the Commission until after a hearing nor shall any such permit be granted if the Commission shall be of the opinion that the proposed operation of any such contract carrier will impair the efficient public service of any authorized common carrier or common carriers then adequately serving the same territory; provided, however, any person now lawfully operating as a Class "B" operator in this State who may desire to continue in the business of a motor carrier shall file an application for a permit or certificate under the terms of this Act within thirty (30) days after the effective date hereof and it shall be the duty of the Commission to determine such applications forthwith and such applicants may, subject to the provisions of this Act and to the orders, rules, rates and regulations of the Commission continue to operate as motor carriers pending the determination by the Commission of such application.

(d) The Railroad Commission is hereby given authority to issue upon application to those persons who desire to engage in the business of transporting for hire over the highways of this State livestock, mohair, wool, milk, livestock feedstuff, household goods, used office furniture and equipment, oil field equipment, timber in its natural state, farm machinery and grain, "Specialized Motor Carrier" certificates when it is shown by substantial evidence that there exists (1) a public necessity for such service, and that (2) public convenience will be promoted by the granting of said application.

Such certificates shall be granted upon such terms, conditions and restrictions as the Railroad Commission may deem proper, and said Railroad Commission is authorized to make rules and regulations governing such operations, keeping in mind the protection of the highways and the safety of the traveling public.

Provided that the order of the Commission granting said application, and the certificate issued thereunder shall set forth in its order findings of fact pointing out the inadequacies of the service of the existing carriers and the public need for such proposed service. [Acts 1931, 42nd Leg., p. 480, ch. 277, § 6; Acts 1937, 45th Leg., p. 651, ch. 321, § 1; Acts 1941, 47th Leg., p. 713, ch. 442, § 3.]

(e) Any permit held, owned, or obtained by any motor carrier operating under the provisions of Subsection (d) of this Section may be sold, assigned, leased, transferred, or inherited; provided, however, that any proposed sale, lease, assignment, or transfer shall be first presented in writing to the Commission for its approval or disapproval and the Commission may disapprove such proposed sale, assignment, lease, or transfer if it be found and determined by the Commission that such proposed sale, assignment, lease, or transfer is not in good faith or that the proposed purchaser, assignee, lessee, or transferee is not capable of continuing the operation of the equipment proposed to be sold, assigned, leased, or transferred in such a manner as to render the services demanded in the best interest of the public; the Commission in approving or disapproving any sale, assignment, lease, or transfer of any permit may take into consideration all of the requirements and qualifications of a regular applicant required in this Section, and apply same as necessary qualifications of any pro-

posed purchaser, assignee, lessee, or transferee; provided, however, that in case a permit is transferred that the transferee shall pay to the Commission a sum of money equal to ten (10) per cent of the amount paid as a consideration for the transfer of the permit which sum of ten (10) per cent shall be deposited in the State Treasury to the credit of the Highway Fund of the State; provided, further, that any permit obtained by any motor carrier or by any assignee or transferee shall be taken and held subject to the right of the State at any time to limit, restrict, or forbid the use of the streets and highways of this State to any holder or owner of such permit. Every application filed with the Commission for an order approving the lease, sale, or transfer of any permit shall be accompanied by a filing fee in the sum of Ten Dollars ($10) which fee shall be in addition to other fees and taxes and shall be retained by the Commission whether the lease, sale, or transfer of the permit is approved or not. [Added Acts 1937, 45th Leg., p. 645, ch. 316, § 1.]

(f) Any contract carrier permit held, owned, or obtained by any motor carrier operating under the provisions of Section 6 may be sold, assigned, leased, transferred, or inherited; provided, however, that any proposed sale, lease, assignment, or transfer shall be first presented in writing to the Commission for its approval or disapproval and the Commission may disapprove such proposed sale, assignment, lease, or transfer if it be found and determined by the Commission that such proposed sale, assignment, lease, or transfer is not in good faith or that the proposed purchaser, assignee, lessee, or transferee is not capable of continuing the operation of the equipment proposed to be sold, assigned, leased, or transferred in such a manner as to render the services demanded in the best interest of the public; the Commission in approving or disapproving any sale, assignment, lease, or transfer of any permit may take into consideration all of the requirements and qualifications of a regular applicant required in this Section, and apply same as necessary qualifications of any proposed purchaser, assignee, lessee, or transferee; provided, however, that in case a permit is transferred that the transferee shall pay to the Commission a sum of money equal to ten (10) per cent of the amount paid as a consideration for the transfer of the permit which sum of ten (10) per cent shall be deposited in the State Treasury to the credit of the Highway Fund of the State; provided, however, that any permit obtained by any motor carrier or by any assignee or transferee shall be taken and held subject to the right of the State at any time to limit, restrict, or forbid the use of the streets and highways of this State to any holder or owner of such permit. Every application filed with the Commission for an order approving the lease, sale, or transfer of any permit shall be accompanied by a filing fee in the sum of Ten Dollars ($10) which fee shall be in addition to other fees and taxes and shall be retained by the Commission whether the lease, sale, or transfer of the permit is approved or not. [Added Acts 1939, 46th Leg., p. 89, § 1.]

Rules and regulations for contract carriers

Sec. 6-aa. The Commission is hereby vested with power and authority and it is hereby made its duty to prescribe rules and regulations covering the operation of contract carriers in competition with common carriers over the highways of this State and the Commission shall prescribe minimum rates, fares and charges to be collected by such contract carriers which shall not be less than the rates prescribed for common carriers for substantially the same service. [As added Acts 1931, 42nd Leg., p. 480, ch. 277, § 6.]

Permits not granted as contract carrier to person operating as common carrier

Sec. 6-bb. No application for permit to operate as a contract carrier shall be granted by the Commission to any person operating as a common carrier and holding a certificate of convenience and necessity, nor shall any application for certificate of convenience and necessity be granted by the Commission to any person operating as a contract carrier nor shall any vehicle be operated by any motor carrier with both a permit and a certificate. [As added Acts 1931, 42nd Leg., p. 480, ch. 277, § 6.]

Hours of labor

Sec. 6-cc. No motor carrier operating in whole or in part in this State under a certificate or permit issued by the Railroad Commission of Texas, or any officer or agent of such motor carrier, shall require or knowingly permit any truck driver or his helper to drive or operate a truck for a period longer than ten (10) consecutive hours; and whenever such driver or helper shall have been continuously on such duty for ten (10) hours, he shall be relieved and shall not be required or knowingly permitted to again go on duty until he has had at least eight (8) consecutive hours off duty; and no such driver or helper who has been on such duty ten (10) hours in the aggregate in any twenty-four hour period, shall be required or knowingly permitted to continue or again go on duty without having had at least eight (8) consecutive hours off duty; and venue for prosecution under this Section shall lie in any county where said offense or any part of same is committed; provided that in cases of emergency caused by the Act of God, or any other emergency over which the operator has no control, the foregoing restrictions as to hours shall not apply. [As added Acts 1931, 42nd Leg., p. 480, ch. 277, § 6; Acts 1941, 47th Leg., p. 86, ch. 71, § 6.]

Fee for each motor vehicle operated

Sec. 7. For the purpose of defraying the expenses of administering this Act every motor carrier operating as a contract carrier shall, at the time of the issuance of a permit to him and annually thereafter on or between September 1st and September 15th of each calendar year pay a special fee of Ten Dollars ($10.00) for each motor vehicle operated or to be operated by such motor carrier. If the permit herein referred to is issued after the month of September of any year the fee paid shall be prorated to the remaining portion of the year ending August 31st following, but in no case less than one-fourth (¼) the annual fee. Provided, that no person now authorized by law to operate as a Class "A" or Class "B" motor carrier, and who has paid annual vehicle fees required by law of the holders of certificates or permits for the year ending September 1, 1931, shall be required to pay any additional vehicle fees or additional fees incident to the issuance of certificates or permits required in this Act, for the year ending September 1, 1931, in lieu of those now required by law. Every application for a permit shall be accompanied by a filing fee in the sum of Ten Dollars ($10.00) which fee shall be in addition to other fees and taxes and shall be retained by the Commission whether the permit be granted or not. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 7.]

Commission to determine if necessity exists for service

Sec. 8. The Commission is hereby vested with power and authority, and it is hereby made its duty upon the filing of an application for a certificate of public convenience and necessity to ascertain and determine under such rules and regulations as it may promulgate, after considering existing transportation facilities, and the demand for, or need of additional service, if there exists a public necessity for such service, and if public convenience will be promoted by granting said application and permitting the operating of motor vehicles on the highways designated in such application as a common carrier for hire. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 8.]

Interference with general use of highways

Sec. 9. The Commission shall ascertain and determine if a particular highway or highways designated in an application for a certificate of public convenience and necessity are of such type of construction or in such state of repair, or subject to such use as to permit of the use sought to be made by the applicant, without unreasonable interference with the use of such highways by the general public for highway purposes. And if the Commission shall determine, after hearing, that the service rendered by existing transportation facilities or agencies is reasonably adequate, or that public convenience would not be promoted by granting of said application, and the operation of motor vehicles on the public highways therein designated, or that such highway or highways are not in such state of repair, or are already subject to such use as would not permit of the use sought to be made by the applicant without unreasonable interference with the use of such highways by the general public for highway purposes then in either or any of such events said application may be denied and said certificate refused, otherwise the application shall be granted and the certificate issued upon such terms and conditions as said Commission may impose and subject to such rules and regulations as it has or may thereafter prescribe.

In determining whether or not a certificate should be issued to a motor carrier, the Commission shall give weight and due regard to:

(1) Probable permanence and the quality of service offered by the applicant.

(2) The financial ability and responsibility of the applicant and its organization and personnel.

(3) The character of vehicles and the character and location of depots or termini proposed to be used.

(4) The experience of the applicant in the transportation of property and the character of the bond or insurance proposed to be given to insure the protection of the public. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 9.]

Contents of written application

Sec. 10. No application for a certificate of public convenience and necessity shall be considered by said Commission unless it be in writing and set forth the following facts:

(1) It shall contain the name and address of the applicant and the names and addresses of its officers, if any, and shall give full information concerning the financial condition and physical properties of the applicant.

(2) The complete route or routes over which the applicant desires to operate, together with the description of each vehicle which the applicant intends to use.

(3) A proposed schedule of service and a schedule of rates to be charged between the several points or localities to be served.

(4) It shall be accompanied by a plat or map showing the route or routes over which the applicant desires to operate, on which plat or maps shall be delineated the line or lines of any existing transportation company or companies serving such territory, and shall point out the inadequacy of existing transportation facilities or service, and shall specify wherein additional facilities or service are required and would be secured by the granting of said application.

The Commission, in prescribing and adopting rules and regulations and in forming its conclusions and in prescribing its orders, shall invite the Highway Commission's opinion on the conditions of the public highways involved and the ability of said highways to carry the existing and proposed additional traffic, and the Commission shall give due and proper consideration to the orders, regulations, ordinances or recommendations of the Highway Commission of Texas; provided, however, nothing herein contained shall be deemed to restrict the powers of the Highway Commission under existing laws. The Commission shall also give due and proper consideration to the recommendations of the Commissioners' Courts of the several Counties and to the recommendations of the local government of any municipality through or between which motor carriers operate. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 10.]

Hearing at Austin; notice to existing owners and to Highway Commission

Sec. 11. Upon the filing of said application for a certificate or permit, the Commission shall fix a time and place for hearing, and the place of hearing shall be in the City of Austin, Texas, unless otherwise ordered by the Commission. Notice of the filing of said application, and the time and place of hearing, shall be given by mail not less than ten (10) days, exclusive of the day of mailing before such hearing, addressed to the owner or owners of existing transportation facilities serving such territory as applicant seeks to serve, as well as to the Highway Commission of the State of Texas, the County Judge or Judges of the counties and to the mayor of any incorporated city or town through which such carrier seeks to operate. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 11.]

Rules for hearing; appearance by interested persons and Highway Commission; revocation of permit

Sec. 12. (a) The hearing on an application for certificate or permit shall be conducted under such rules and regulations as the Commission may prescribe, and the parties interested, including the Highway Commission of this State, may appear either in person or by counsel and present such evidence and argument as they may desire and as the Commission may deem pertinent, in favor of or against the granting of such application. It shall be the duty of the Highway Commission, upon request of the Commission, to furnish information relating to the highway or highways designated in such application, as well as such other information as the Commission may deem pertinent to the hearing. After hearing and such investigation as the Commission may make, it shall be the duty of the Commission to grant or refuse the application, and, in any contested hearing, the Commission shall, along with its order, file a concise written opinion setting forth the facts and grounds for its action, and such opinion shall be admissible as evidence on any appeal taken therefrom; upon request of any party at interest in a contested hearing of any nature, the proceedings shall be taken down and reported by a reporter under the direction of the Commission.

(b) The Commission at any time after hearing, had, upon notice to the holder of any certificate or permit and after opportunity given such holder to be heard, may by its order revoke, suspend or amend any certificate or permit issued under the provisions of this Act, where in such hearing the Commission shall find that such certificate or permit holder has discontinued operation or has violated, refused or neglected to observe the Commission's lawful orders, rules, rates or regulations or has violated the terms of said certificate or permit; provided, that the holder of such certificate or permit shall have the right of appeal as provided in this Act. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 12.]

Bonds or insurance to cover loss or damages; protection to employees

Sec. 13. Before any permit or certificate of public convenience and necessity may be issued to any motor carrier and before any motor carrier may lawfully operate under such permit or certificate as the case may be, such motor carrier shall file with the Commission bonds and/or insurance policies issued by some insurance company including mutuals and reciprocals or bonding company authorized by law to transact business in Texas in an amount to be fixed by the Commission under such rules and regulations as it

may prescribe, which bonds and insurance policies shall provide that the obligor therein will pay to the extent of the face amount of such insurance policies and bonds all judgments which may be recovered against the motor carrier so filing said insurance policies and bonds, based on claims for loss or damages from personal injury or loss of, or injury to property occurring during the term of said bonds and policies and arising out of the actual operation of such motor carrier; and such bonds and policies shall also provide for successive recoveries to the complete exhaustion of the face amount thereof and that such judgments will be paid by the obligor in said bonds and insurance policies irrespective of the solvency or insolvency of the motor carrier; provided, however, such bonds and policies shall not cover personal injuries sustained by the servants, agents or employees of such motor carrier. Provided further, that in the event the insured shall abandon his permit or certificate and leave the state, a claimant, asserting a claim within the provisions of said bonds or policies, may file suit against the sureties executing such bond or the company issuing such policies in a court of competent jurisdiction without the necessity of making the insured a party to said suit. Provided, however, that the Commission shall not require insurance covering loss of or damage to cargo in amount excessive for the class of service to be rendered by any motor carrier. Each such motor carrier shall, on or before the date of the expiration of the term of any policy or bond so filed by him, file a renewal thereof, or new bonds or policies containing the same terms and obligations of the preceding bonds and policies, and shall each year thereafter on or before the expiration date of the existing bonds and policies, file such renewal policies and bonds so as to provide continuous and unbroken protection to the public having legal claims against such motor carrier; and in the event such renewal bonds and policies are not so filed, the Commission, after notice to the motor carrier, and hearing, may, within its discretion if it shall find and determine that the ends of justice will be better subserved thereby, cancel such permit or certificate for failure to furnish and provide such bonds or insurance as herein required. The Commission may accept in lieu of the filing of the original policies of insurance, a certificate of insurance, in such form as may be prescribed by the Commission, which certificate, when filed with the Commission, will bind the obligor thereunder and satisfy the requirements of this section as if the original policies of insurance had been filed.

Each motor carrier shall also protect his employees by taking out workmen's compensation insurance, either as provided by the Workmen's Compensation Laws of the State of Texas, or in a reliable insurance company authorized to write workmen's compensation insurance approved by the Commission. [Acts 1929, 41st Leg., 2nd C.S., p. 38, ch. 24; Acts 1931, 42nd Leg., p. 480, ch. 277, § 13; Acts 1933, 43rd Leg., p. 135, ch. 65; Acts 1945, 49th Leg., p. 637, ch. 360, § 1.]

Commission to approve equipment

Sec. 13a. The Commission is vested with power and authority, and it is hereby made its duty, to approve or disapprove the nature and character of the equipment to be used under any permit or certificate and the amount and character of tonnage which may be hauled thereunder on any motor vehicle, trailer or semi-trailer used under such permit or certificate and in approving the amount and character of tonnage to be hauled on any such vehicles, trailers or semi-trailers under any permit or certificate, it may fix the number and size of boxes, packages, barrels or bales of any particular commodity to be transported on any such vehicles, trailers or semi-trailers under such permit or certificate, and the method of loading such boxes, packages, barrels or bales of such commodity on the motor vehicle, trailers and semi-trailers to be used under such permit or certificate; provided, however, said Commission shall not authorize the use of any equipment of greater dimensions than otherwise permitted by law, nor any tonnage of greater weight than otherwise permitted by law.

Provided, that if this section is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that this section be declared unconstitutional; provided further, that if this Act or any section, subsection, sentence, clause or phrase thereof is held to be unconstitutional and invalid by reason of the inclusion of this section, the Legislature hereby declares that it would have passed this Act and any such section, subsection, sentence, clause or phrase thereof without this section. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 14.]

Accounts to be kept; reports to Commission

Sec. 13b. The Commission is hereby vested with power and authority and it is hereby made its duty to require all motor carriers to keep a set of accounts strictly in accordance with such classification of accounts and rules in respect thereto as may be established by the Commission and to file reports and such other data as the Commission may deem necessary, and which said accounts shall be open to the inspection of the Commission or its representatives at all times. [As added Acts 1931, 42nd Leg., p. 480, ch. 277, § 15.]

Commission to hear applications, complaints, and compel attendance of witnesses; examiner to hear applications assigned by commission and report thereon

Sec. 14(a). The Commission shall have the power and authority under this Act to hear and determine all applications of motor carriers; to determine complaints presented to it by such carrier, by any public official, or by any citizen having an interest in the subject matter of the complaint, or it may institute and investigate any matter pertaining to motor carriers upon its own motion. The Commission, or any member thereof, or authorized representative or Examiner of the Commission, shall have power to compel the attendance of witnesses, swear witnesses, take their testimony under oath, make record thereof, and if such record is made under the direction of a Commissioner, or authorized representative or Examiner of the Commission, a majority of the Commission may, upon the record, render judgment as if the case had been heard before a majority of the members of the Commission. The Commission shall have the power and authority under this Act to do and perform all necessary things to carry out the purpose, intent, and provisions of this Act, whether herein specifically mentioned or not, and to that end may hold hearings at any place in Texas which it may designate.

(b). To expedite the hearing and disposition of applications, the Examiner or authorized representative of the Commission shall have authority under orders of the Commission to hear applications which may be assigned to him by the Commission; after the hearing of an application has been concluded by such representative or Examiner, it shall be his duty promptly to make a written report to the Commission recommending disposition of said application. Such report and recommendation shall be accompanied by a brief narrative statement of the evidence, and shall contain such other information as such representative or Examiner may think advisable, or as may be required by the Commission. Unless required by the Commission, it shall not be necessary for the reporter to transcribe said evidence in full, but it shall be sufficient to make a brief narrative statement giving the correct summary of such evidence; provided, however, the Commission shall have the authority to require

said evidence, or any part thereof, to be transcribed in full if deemed advisable or necessary. [As amended Acts 1937, 45th Leg., p. 505, ch. 255, § 1.]

Per diem and mileage of witnesses; process to sheriff

Sec. 15. Every witness who shall be summoned to appear before the Commission, or a Commissioner or authorized representative outside the county of his residence shall receive for his attendance the same per diem and fees as now provided for witnesses in attendance in District Courts of this State in criminal cases; such fees and mileage shall be *order* [1] paid upon proper voucher, sworn to by such witness and approved by the Commission or the chairman thereof out of the monies or funds arising under this Act; provided that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any motor carrier involved or concerning which the investigation or hearing on account of which he is called, shall relate, and no witnesses furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. All process issued by the Commission for summoning witnesses or other purposes shall be directed to the sheriff or any constable of any county in the State of Texas, and any sheriff or constable of any county in this State shall promptly execute any subpœnas or other documents directed to him by the Commission and shall receive such fees for this service as is now paid for like services in the District Courts of this State, such payment to be made on accounts properly verified and approved by the Commission or the chairman thereof out of the fund provided in this Act.

[1] So in enrolled bill. Should probably read "ordered."

Motor carrier may submit names of witnesses

Sec. 15a. Provided that any motor carrier at interest in any hearing may submit to the Commission the names and addresses of witnesses which he or it desires to use in such hearing, and it shall be the duty of the Commission to summon such witnesses. [As added Acts 1931, 42nd Leg., p. 480, ch. 277, § 16.]

Penal provision

Sec. 16. See Pen.Code, art. 1690b.

Filing fee accompanying application

Sec. 17. (a) For the purpose of defraying the expense of administering this Act, every common carrier [1] motor carrier now regularly operating, or which shall hereafter regularly operate in this State, shall at the time of the issuance of a certificate of convenience and necessity, unless otherwise provided herein, and annually thereafter, on or between September 1st and September 15th of each calendar year, pay a special fee of ten dollars ($10), for each motor propelled vehicle operated or to be operated by such motor carrier in the carriage of property. If the certificate of convenience and necessity herein referred to is issued after the month of September of any year the fee paid shall be prorated to the remaining portion of the year ending August 31st following, but in no case less than one-fourth (¼) the annual fee. In case of an emergency or unusual temporary demands for transportation the fee for additional motor propelled vehicles for less period shall be fixed by the Commission in such reasonable amounts as may be prescribed by general rule or temporary order. Every application for a certificate of convenience and necessity shall be accompanied by a filing fee in the sum of Twenty-five ($25.00) Dollars, which fee shall be in addition to other fees and taxes and shall be retained by the Commission whether the certificate of convenience and necessity be granted or not. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 18.]

(b) Every application filed with the Commission for an order approving the lease, sale or transfer of any certificate of convenience and necessity shall be accompanied by a filing fee in the sum of Twenty-five ($25.00) Dollars, which fee shall be in addition to the other fees and taxes and shall be retained by the Commission whether the lease, sale or transfer of the certificate of convenience and necessity is approved or not.

(c) All fees except the fee provided in Section 5 of this Act accruing under the terms of this Act and all fines and penalties collected under the provisions of this Act shall be payable to the State Treasury at Austin and credited to a fund to be known and designated as the "Motor Carrier Fund," which fund is appropriated for the purpose of carrying out the terms of this Act and out of which all warrants and expenditures necessary in administering and enforcing this Act shall be paid.

[1] So in enrolled bill. Words "common carrier" should probably be omitted.

Identification plates on motor vehicles

Sec. 18. It shall be unlawful for any motor carrier as hereinbefore defined to operate any motor vehicle within this State unless there shall be displayed and firmly fixed upon the front and rear of such vehicle an identification plate to be furnished by the Commission. Each of such plates shall be designed so as to identify the vehicle on which the same is attached as being a vehicle authorized to operate under the terms of this law; said plate shall bear the number given to the vehicle by the Commission and such other marks of identification as may be necessary. The plates for common carrier vehicles and the plates for contract carrier vehicles shall be different in design. The identification plates provided for herein shall be in addition to the regular license plates required by law. It shall be the duty of the Commission to provide these plates and each motor vehicle operating in this State shall display such plates as soon as the same are received and such plates shall be issued annually thereafter and attached to each motor vehicle not later than September 1st of each year, or as soon thereafter as possible. The Commission shall be authorized to collect from the applicant a fee of one dollar ($1) for each pair of plates so issued, and all fees for such plates shall be deposited in the State Treasury to the credit of the "Motor Carrier Fund." [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 19.]

Reciprocity

Sec. 18a. Motor carriers of property for hire residing or domiciled outside of the State of Texas, who have authority from the Interstate Commerce Commission to transport property for hire to, from or between points in Texas, and whose operations in this State are limited to the transportation of property for hire in interstate or foreign commerce only under such authority, shall not be required to pay the special fees provided for in Sections 7, 17(a), 18 and subparagraphs (g) and (h) of Section 5a(a) of this Act; provided, however, this exemption from the payment of said fees shall not apply unless the States in which such foreign motor carriers reside or are domiciled shall likewise extend to motor carriers residing or domiciled in Texas exemption from the payment of the same or similar fees or expenses in their respective States; such exemptions from the payment of such fees in Texas shall be effective when the governmental agency or the authorized representative thereof of such foreign States having jurisdiction over the operations of motor carriers for hire shall certify in writing to the Railroad Commission of Texas that the exemption from the payment of such fees and expenses by such Texas carriers has been granted, and is in full force and effect. Provided, further, however, that this exemption shall not apply to the payment of filing fees for applications for certificates or permits to operate in this State.

Nonresident motor carriers coming within the exemptions herein provided for shall not be required to display upon the vehicles operated in this State under the provisions of such exemption, identification plates issued by the Railroad Commission of Texas, and the Commission shall not be required to furnish such carriers with such plates. [Added Acts 1947, 50th Leg., p. 455, ch. 257, § 1.]

Commission may employ experts, assistants, etc.; expenses paid from motor carrier fund

Sec. 19. (a) The Commission shall have power to employ and appoint from time to time such experts, assistants, and other help, in addition to its present force, as may be deemed necessary to enable it at all times to properly administer and enforce this Act. Such persons and employees of the Commission shall be paid for the service rendered such sums as may be fixed and prescribed by the Commission in monthly installments, and no employee of the Commission shall ask or receive any fee from any person for the taking of acknowledgments or any other service except as herein provided, and such salaries, wages and all fees that may be paid to witnesses and officers shall be paid out of the Motor Carrier Fund by the State Treasurer on warrants of the Comptroller of Public Accounts on order or voucher approved by the Commission or the Chairman thereof. All actual and necessary traveling expenses of the members of the Commission and employees shall also be paid out of said Fund in the same manner as salaries, wages and fees when such accounts shall have been itemized and sworn to by the Commission or employee incurring the expenses and approved by the Commission or the Chairman thereof.

(b) If the amount of total fees collected under the provisions of this Act shall not be sufficient during any annual period to pay such salaries, costs, charges, fees, and expenses, then the deficit shall be paid by the State Treasurer out of any fund not otherwise appropriated. Until sufficient funds have accrued to said Motor Carrier Fund for the payment of expenses, fees, etc., as provided herein, said expenses shall be paid by the State Treasurer out of any funds not otherwise appropriated, such sum to be paid out of the General Revenue not to exceed the sum of Five Thousand Dollars ($5000.00), and said sum is hereby appropriated. Any surplus remaining in the Motor Carrier Fund at the end of any fiscal year, after paying such salaries, accounts, fees and charges and after deducting such amounts as may be contracted to be paid and incurred and such sums as may be reasonably estimated by the Commission for its use pending further collection of fees, shall be paid over to the General Revenue Fund. [As amended Acts 1931, 42nd Leg., p. 480, ch. 277, § 20.]

Review of decisions of Commission by district court of Travis County; appeals

Sec. 20. If any motor carrier or other party at interest be dissatisfied with any decision, rate, charge, rule, order, act, or regulation adopted by the Commission, such dissatisfied person, association, corporation, or party after failing to get relief from the Commission may file a petition setting forth the particular objection to such decision, rate, charge, rule, order, act or regulations, or to either or all of them in the District Court in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedenee in said Appellate Court over all causes of a different character therein pending; provided, that if the court be in session at the time such right of action accrues the suit may be filed during such term and stand ready for trial after ten days' notice. In all trials under this section the burden of proof shall rest upon plaintiff, who must show by the preponderance of evidence that the decisions, rates, regulations, rules, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them. The Commission shall not be required to give any appeal bond in any cause arising hereunder and no injunction shall be granted against any order of the Commission without hearing unless it shall clearly appear that irreparable injury will be done the complaining party if the injunction is not granted.

Ten days as reasonable notice

Sec. 21. Whenever notice is required in this Act to be given ten days exclusive of the day of service and return shall be considered as reasonable notice; provided, that in case of emergency the Commission may hear any cause or complaint on less than ten days' notice.

Board of Control to provide office space

Sec. 22. The State Board of Control is hereby authorized and directed to set aside such additional office space in the Capitol at Austin as may be deemed necessary by the Commission for the proper performance of its added duties as herein defined.

Cancellation of certificate

Sec. 22a. Any certificate of public convenience and necessity shall be cancelled by the Commission if the owner or owners thereof shall in any manner avoid, fail or refuse to pay any gasoline or other tax imposed by law on such business. [Acts 1929, 41st Leg., p. 698, ch. 314.]

General policy

Sec. 22b. Declaration of Policy. The business of operating as a motor carrier of property for hire along the highways of this State is declared to be a business effected with the public interest. The rapid increase of motor carrier traffic, and the fact that under existing law many motor trucks are not effectively regulated, have increased the dangers and hazards on public highways and make it imperative that more stringent regulation should be employed, to the end that the highways may be rendered safer for the use of the general public; that the wear of such highways may be reduced; that discrimination in rates charged may be eliminated; that congestion of traffic on the highways may be minimized; that the use of the highways for the transportation of property for hire may be restricted to the extent required by the necessity of the general public, and that the various transportation agencies of the State may be adjusted and correlated so that public highways may serve the best interest of the general public. [Added Acts 1931, 42nd Leg., p. 480, ch. 277, § 21.]

Repeal of conflicting laws; construction

Sec. 23. All laws and parts of laws in conflict herewith are hereby expressly repealed. Provided, however, that nothing in this act shall be construed as giving legislative sanction to any act that would violate the provisions of the Anti-Trust Laws of Texas. Acts 1929, 41st Leg., p. 698, ch. 314; Acts 1931, 42nd Leg., p. 480, ch. 277, § 22.

Section 2 of the amendatory Act of 1947, section 3 of the amendatory Act of 1941, and section 2 of the amendatory Act of 1937 repealed conflicting laws.

Section 2 of the amendatory Act of 1941 and section 23 of the amendatory Act of 1931 provided that partial invalidity should not affect the validity of the remaining portions of the act.

Art. 911c. [Unconstitutional.]

This article, derived from Acts 1935, 44th Leg., p. 746, ch. 325, §§ 1-9, regulating and licensing transportation agents, was held unconstitutional by the Court of Criminal Appeals in Ex parte Talkington, 132 Cr.R. 361, 104 S.W.2d 495, as arbitrary, unreasonable abridgment of citizens' rights and privileges and invasion of their liberty to engage in lawful business, because of unreasonable requirements, impossible to perform, not fairly applicable, and prohibitive.

Section 10 of Acts 1935, 44th Leg., p. 746, ch. 325, was a penal provision. See Pen.Code, art. 1690c.
Section 11 of Acts 1935, 44th Leg., p. 746, ch. 325, repealed all conflicting laws and section 12 provided that if any section was declared unconstitutional, it should not affect the remainder.

Art. 911d. Regulation of motor bus ticket brokers.

Definitions

Section 1. (a) That the term "corporation" when used in this Act means a corporation, company, association or joint stock association.

(b) The term "person" when used in this Act means an individual, firm, or co-partnership.

(c) The term "motor bus company" when used in this Act means every corporation or person as herein defined, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor propelled passenger vehicle, not usually operated on or over rails, and engaged in the business of transporting persons for compensation or hire over the public highways within the State of Texas, under certificates of public convenience and necessity issued by the Railroad Commission of Texas, whether operating over fixed routes or fixed schedules or otherwise; provided further, that the term "motor bus company" as used in this Act shall not include corporations or persons, their lessees, trustees, or receivers, or trustees appointed by any court whatsoever, insofar as they own, control, operate, or manage motor propelled passenger vehicles operated wholly within the limits of any incorporated municipal corporation, town or city and suburbs thereof, whether separately incorporated or otherwise.

(d) The term "Commission" when used in this Act means the Railroad Commission of the State of Texas.

(e) The term "broker" as used in this Act shall mean any person, firm, corporation or association of persons whatsoever, who or which, as principal or agent, shall for compensation, sell or offer for sale, transportation for passengers of any character, or who or which make any contract, agreement, or arrangement to provide, furnish, or arrange for such transportation, directly or indirectly, whether by selling of tickets or of information, or the introduction of parties where a consideration is received or otherwise, or who or which shall hold himself or itself out by advertisement, solicitation or otherwise as one who sells, provides, procures, contracts, or arranges for such transportation, information or introduction; provided, however, the term "broker" shall not apply to or include any such person, firm, corporation or association of persons whatsoever unless and until the Railroad Commission of Texas, after notice and hearing, shall have determined, from credible and competent evidence introduced before it or before some person authorized by present laws to conduct hearings for it, that such person, firm, corporation or association of persons has so conducted himself or itself in the course of the acts, transactions and things mentioned in this Sub-section (e) as to bring about a reasonably continuous or customary competition with one or more "motor bus companies," holding one or more certificates of convenience and necessity, duly and properly issued by the Railroad Commission of Texas under Chapter 270, General Laws Fortieth Legislature, 1927, as amended at the First Called Session of the Forty-first Legislature and any and all present and future amendments thereto;[1] provided however, a carrier of passengers by rail shall never be considered a broker.

(e½) The Railroad Commission of Texas shall have and it is hereby given the power and authority, either upon motion of any interested person or upon its own motion to investigate through a public hearing any person, firm, corporation or association of persons thought to be or charged with being a "broker" as that term is defined herein and to make a determination of the fact question as to whether said status of "broker" actually exists.

The person, firm, corporation, or association of persons sought to be so investigated shall be given at least ten (10) days notice by mail of such hearing and all motor bus companies probably or possibly affected by the asserted competition of such person, firm, corporation or association of persons shall likewise be given the same character of notice by mail and shall be given an opportunity to be heard; and, in addition, the owner or owners of all other existing passenger transportation facilities serving all or a portion of the territory thought to be or charged with being served by the person, firm, corporation, or association of persons under investigation shall be given the same character of written notice and, they along with any other interested party, shall be given an opportunity to be heard. The notice mentioned shall be not less than ten (10) days exclusive of the day of mailing.

Before the Commission determines that a person, firm, corporation or association of persons is a "broker" as that term is defined herein, it shall make findings, based on competent and credible testimony that the said person, firm, corporation or association of persons has customarily or with reasonable continuity brought about competition in the transportation of persons for hire between one or more motor bus companies, which have theretofore been duly and properly issued one or more certificates of public convenience and necessity, on the one hand, and other motor vehicles, not so certificated, on the other hand.

(f) The term "license" as used herein means a license issued to a broker.

[1] Article 911a and Pen.Code, art. 1690a.

Certain sales prohibited

Sec. 2. It shall be unlawful for any broker or anyone else to sell any ticket or tickets for the transportation of passengers within this State over any motor bus company's line at any rates other than the rates legally authorized and approved by the Commission.

Broker's license required

Sec. 3. No broker shall for compensation sell or offer for sale, transportation for passengers of any character, nor make any contract, agreement, or arrangement to provide, procure, furnish, or arrange for such transportation, directly or indirectly, whether by the selling of tickets, or of information, or the introduction of parties where a consideration is received or otherwise, nor shall hold himself or itself out by advertisement, solicitation, or otherwise as one who sells, provides, procures, contracts or arranges for such transportation or information unless such broker holds a broker's license issued by the Railroad Commission of Texas authorizing such activities; provided further that the provisions hereof shall not apply to transportation of passengers on steamship lines operating between ports of this State and ports of the United States and ports of any foreign company, and transportation of passengers of any authorized carrier or carriers operating in either interstate or intrastate transportation; and provided further that nothing herein contained shall in any manner affect the rights of private individuals as a mere incident to travel who are not brokers to enter into agreements or arrangements for transportation on a share-expense plan where in such negotiations or arrangements the services of an unlicensed broker, as herein defined, do not intervene or are not used.

License, to whom issued, etc.

Sec. 4. A broker's license may be issued to any qualified applicant therefor upon application to the Commission in such form as the Commission shall prescribe, authorizing the whole or any part of the operation covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the services proposed and to conform to the requirements, rules and regulations of the Commission promulgated hereunder, and within the limits hereof, and that the proposed service to the extent authorized by the license, is, or will be consistent with the public interest; otherwise, such application shall be denied. Any broker in bona fide operation when this Act takes effect shall have a period of thirty (30) days thereafter within which to apply for a broker's license, and if such application be filed such broker, if in bona fide operation when this Act takes effect may continue such operation under such rules and regulations, as the Commission may prescribe within the limits of this Act, until such application be by the Commission determined.

Nature and effect of license

Sec. 5. The license herein provided for shall be personal in nature and shall not be sold, transferred, nor assigned. No broker shall be authorized to have more than one place of business, the location of which shall be designated in the license as issued by the Commission and no broker shall be authorized to change the location of his business without the approval of the Commission. If the broker dies, discontinues business for a period of thirty (30) days, or removes from the county where such license was issued, the license shall immediately become void and shall be by the Commission cancelled.

Tariff rates applicable to brokers

Sec. 6. All brokers in transporting or causing to be transported passengers on the highways of Texas shall be bound by the tariffs, fares and rates approved of by the Railroad Commission of Texas covering the transportation for hire of persons over the highways of Texas; and shall not, directly or indirectly, transport or cause to be transported over State Highways any person at a greater or lesser fare or rate than that approved of by the Commission save and except that any broker shall be allowed a reasonable brokerage for his services but said brokerage and all details and particulars in connection therewith, including who shall pay such brokerage, shall be first approved of by the Commission.

Rules and regulations

Sec. 7. The Commission shall have power, after proper notice and hearing, in a manner hereinafter more particularly set forth, to make, adopt and enforce any reasonable rules and regulations, and to enforce the same, which may be necessary in assisting it to determine just who are and who are not brokers and in enforcing observance of its duly authorized and approved rates, tariffs and fares and in inspecting and approving brokerage charges to be charged by brokers for their services as such and in seeing to it that passengers are not transported in vehicles and under circumstances wherein and whereunder they are unprotected against injury and damage to person and property during such transportation or as a proximate result thereof and in assisting it in otherwise exercising the powers expressly given it or necessarily implied from and by this Act.

Broker's bond

Sec. 8. Each broker, prior to the issuance of any license to him, shall file a bond or other security with the Commission and shall procure its approval of the same conditioned in such fashion that the State of Texas, through its Attorney General or any District or County Attorney, may proceed against said bond or other security and the principals and sureties thereon for a recovery of all money representing the difference between the money actually paid by any and all persons for such transportation arranged for by the broker, on the one hand, and the money which should have been paid under the applicable tariffs, rates and fares theretofore approved of by the Commission, on the other hand, plus a penalty of Twenty-five ($25.00) Dollars for each person so transported at the instigation of the broker at a lesser or greater charge or fare than the Commission's duly and properly approved tariff, rate or fare; and further conditioned in such fashion that the Attorney General or any District or County Attorney may similarly proceed for a recovery of all money representing the difference between the money actually collected by said broker as for his brokerage, on the one hand, and the money which should have been collected by him as for brokerage under the Commission's duly approved rate of brokerage, on the other hand, plus a penalty of Twenty-five ($25.00) Dollars on each passenger connected with the broker, but with respect to whom the broker failed, refused or neglected to collect the proper brokerage previously fixed or approved of by the Commission. All money recovered, either as differences between money actually collected and that which should have been collected as penalties under this Section 8, shall become the property of, and be owned by, the State of Texas, as a penalty and not as a forfeiture.

Vehicles to be bonded for damages due to injuries

Sec. 9. No broker shall have any part in transporting, or causing to be transported, any person, for hire, over the highways of Texas, except in a vehicle and under circumstances wherein and whereunder such passenger and his heirs, his estate and his beneficiaries are fully protected by security, bond or insurance, to be approved by the Commission, against damage, loss and injury resulting from loss of or damage to property possessed by such passenger during such transportation, or as a proximate result thereof; and, as well, against damage, loss and injury resulting from such passenger's personal injury or death during such transportation; or as a proximate result thereof; and, if any such passenger, his heirs, his estate or his beneficiaries, be damaged or injured in his person or rights or property as a result of such passenger's being transported in such unprotected manner, then those entitled to a recovery by reason of such unprotected transportation, in the event they cannot make themselves whole by proceeding against the actual hauler or carrier, shall be entitled to proceed against the broker, insurer, bond or other security and the principal and sureties thereon to the extent necessary to make them and each of them whole; and each broker's bond, insurance or other security shall be so conditioned; and each broker shall be required to furnish or renew such insurance, bond or other security as may be, and to the extent necessary from time to time, and as may be ordered by the Commission to effectuate all of the protection for the State and for such other persons as are mentioned in this Section; and such insurance, bond or other security shall be further conditioned in such fashion that, if and when any passenger, through no fault of his own, has not been carried over the route called for by the agreement with the broker, or has not been carried all of the way to the destination agreed upon with the broker, then the party or parties injured or damaged by such deviation from route or by such failure to carry the passenger through to his destination, in the event they cannot make themselves whole by proceeding against the actual hauler or carrier, shall be fully protected by, and shall be allowed to proceed against, the broker, insurance, bond or other security

and the insurer, principal or sureties thereon to the extent necessary to make the injured or damaged party or parties whole.

Powers of Commission concerning rules, etc.

Sec. 10. The Railroad Commission of Texas shall have and it is hereby given power and authority to adopt, approve, promulgate and enforce rules and regulations to the extent necessary, and only to the extent necessary, to aid and assist it in carrying out the express and necessary implied powers granted it by this Act; but before adopting, approving, promulgating or enforcing any such rules and regulations, a copy thereof shall be sent by mail to each person, firm, corporation and association of persons known or thought by the Commission to have an interest in the subject matter of such rules and regulations; and in addition such proposed rules and regulations shall be published on three successive days in a daily newspaper of general circulation in each of the Cities of San Antonio, Houston, Dallas, Fort Worth, El Paso, Texarkana, Amarillo and Brownsville, Texas, and in each such notice and publication the Commission shall give all interested persons, firms, corporations and associations of persons express notice that it intends to adopt, approve, promulgate, and enforce such proposed rules and regulations and that a public hearing will be held thereon in Austin, Texas, at a given hour and date, for the purpose of hearing any and all objections thereto and any and all evidence and statements and arguments in regard thereto and for the purpose of making any and all necessary changes, eliminations and amendments in and to such published and proposed rules and regulations; and in such notices and publications all interested parties shall be given notice to be and appear at the given time and place for the purpose of such a hearing. At any and all such hearings the Commission shall give all interested parties an opportunity to present evidence, statements and arguments for and against the adoption of the proposed rules and regulations. And the Commission shall adopt or reject such rules and regulations, in whole or in part, as it shall deem proper; but its action shall be reasonable, and shall be based upon the substantial effect of the record made at such hearing, or upon the substantial effect of its other records of which it may take notice under present laws. The hearing contemplated shall be held at least ten (10) days from the mailing of the notices exclusive of the day of mailing, and at least ten (10) days from the appearance of the last notice in said newspapers or either of them.

Broker's records

Sec. 11. Each and every broker shall keep an accurate record of each and every contract, agreement, or arrangement for transportation which he or it may make with every person traveling, or desiring to travel, with whom the broker may contract or arrange transportation, on such form and containing such information as the Commission may prescribe and require. Such record shall be open to inspection to any sheriff, constable, County or District Attorney, and to any officer, agent, inspector, or other employee of the Railroad Commission at all times. Such records shall not be destroyed until after the expiration of three (3) years, and then only after an order of the Commission authorizing the destruction thereof.

Hearing and fee for license

Sec. 12. No application for a broker's license shall be granted until after hearing thereof, notice of which shall be given to all motor bus companies serving the territory proposed to be served by applicant, and to the County Judge and District and County Attorney of the county in which applicant resides, at least ten (10) days prior to the date of such hearing, at which hearing any interested party may appear and be heard. Each application for a broker's license shall be accompanied by a filing fee of Twenty-five ($25.00) Dollars, which shall be payable to the State Treasurer at Austin, and shall be by the State Treasurer deposited in the State Treasury and credited to the fund known and designated as the "Motor Transportation Fund," and be used in administering this Act. Each person, firm, corporation, or association of persons holding a broker's license under the terms of this Act, shall on the first day of January of each and every year that such license is in effect, pay to the State Treasurer a fee of Twenty-five ($25.00) Dollars, which shall be deposited in and become a part of the General Revenues of the State; and such brokers shall not be authorized to transact any business in any calendar year until such fee is paid, and if not paid on or before the first day of March of any year, such license shall be automatically cancelled.

Powers of Commission, in general

Sec. 13. The Commission shall have the power and authority under this Act to hear and determine all applications of brokers for a license; to determine complaints presented to it by brokers, by any public official or by any citizen having an interest in the subject matter of the complaints; or it may institute an investigation in any matter pertaining to brokers upon its own motion. The Commission, or any member thereof, or authorized representative of the Commission, shall have the power to compel the attendance of witnesses, swear witnesses, take their testimony under oath and make a record thereof, and if such record is made under the direction of a Commissioner, or authorized representative of the Commission, a majority of the Commission may, upon the record, render judgment as if the case had been heard before a majority of the members of the Commission. The Commission shall have the power and authority under this Act to do and perform all necessary things to carry out the purpose, intent, and provisions of this Act, and to that end may hold hearings at any place in Texas which it may designate.

Review of Commission's orders or decisions

Sec. 14. The applicant for a broker's license, any motor bus company, or any other interested person, if he or it be dissatisfied with any decision, rule, order, act, or regulation adopted by the Commission, such dissatisfied person, association, corporation, or party may file a petition setting forth the particular objection to such decision, rule, order, act or regulation, or to either or all of them in the district court of the plaintiff's residence or principal place of business, against said Commission as defendant. Said action shall have precedence over all other causes on the docket, of a different nature, and shall be tried and determined as other civil causes in said court; either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause, and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending; provided, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this Section, the burden of proof shall rest upon the plaintiff, who must show by the preponderance of the evidence that the decisions, regulations, rules, orders, and acts are unreasonable and unjust to it or them. The Commission shall not be required to give any appeal bond in any cause arising hereunder, and no injunction shall be granted against any order of the Commission without hearing, unless it shall clearly appear that irreparable injury will be done the complaining party if the injunction is not granted.

Violation of act; penalty

Sec. 15. Any person, corporation, or any officer, agent, servant, or employee of any such corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of this Act, or any rule, regulation, order or decree of the Commission promulgated under the terms of this Act, shall be guilty of a misdemeanor; and upon conviction thereof, shall be punished by a fine of not less than One Hundred ($100) Dollars and not to exceed Two Hundred ($200) Dollars, and the violations occurring on each day shall each constitute a separate offense. Any authorized inspector for the Railroad Commission, and all law enforcement officers of the State, shall have power and authority, and it shall be their duty, to make arrests for the violation of any of the provisions of this Act.

See, also, Penal Code, art. 1690d.

Cancellation of license

Sec. 16. The Railroad Commission may in its discretion, after ten days notice and a hearing, cancel any license issued under the provisions of this Act for the violation of this or any other statute of this State, the violation of any lawful order, rule or regulation promulgated by the Commission under authority hereof, or for any failure of any broker to discharge any and all claims or demands of any member of the public for which such broker may be legally liable, by reason of any act of such broker in selling, providing, procuring, contracting, or arranging for such transportation, information, or introduction under the terms of this Act.

Repeal of conflicting laws

Sec. 17. All laws and parts of laws in conflict herewith are expressly repealed.

Severability

Sec. 18. If any Section, sub-section, clause, sentence, or phrase of this Act is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of the Act. The Legislature hereby declares that it would have passed this Act and each Section, subsection, clause, sentence, or phrase thereof, irrespective of the fact that any one or more of the Sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Declaration of Policy

Sec. 19. The Legislature finds that there has grown up in this State a type of business in which transportation is sold or arranged for in various forms, consisting of the selling or giving of information with respect to travel and transportation, the introduction of parties, and various other methods and practices, which interferes with and obstructs the functions of the Railroad Commission of Texas in connection with its control of motor bus companies holding certificates of public convenience and necessity issued by said Commission, and which is hazardous and dangerous to the public health, morals and general welfare, and that passengers are often stranded by drivers of cars to whom they had paid money for transportation, and other fees or commissions, for being brought into contact with the drivers of such cars, and that this often occurs when such passengers are far from home and friends and left to complete their journey any way they can; that passengers after beginning a journey are often required to pay additional money or buy supplies in order to complete their journey; that passengers are often carried over long and circuitous routes contrary to representations made to them; that there has developed a class of irresponsible persons who operate automobiles from place to place with no destination and no motive except to transport persons as passengers for hire, who have no insurance to protect a passenger for personal injury or loss or damage to property, and who are unable to respond in damages; that passengers are subjected to indignities and insults; that irregularities and abuses require the regulations and policing of broker's operations, and that such regulation is necessary in the interest of the health, moral and general welfare of the people of this State. [Acts 1939, 46th Leg., p. 672.]

Art. 911e. [Unconstitutional.]
This article, Acts 1941, 47th Leg., p. 606, ch. 375, regulating transportation agents, was held unconstitutional by the Court of Criminal Appeals in Ex parte Garland, 142 Cr.R. 414, 154 S.W.2d 834.

TITLE 26—CEMETERIES

Art.
912a—1. Definitions.
912a—2. Operation of cemeteries unlawful unless provisions complied with.
912a—3. Payment, receipt, and disbursement of filing fees.
912a—4. Powers and Duties of Enforcement Officers.
912a—5. Authority to Corporations.
912a—6. Rights of lot owners in cemeteries operated by nonprofit corporations.
912a—7. Meeting to organize nonprofit cemetery corporations.
912a—8. No crematory without provision for completion of permanent disposition.
912a—9. Acquisition of property.
912a—10. Dedication.
912a—11. Dedication supreme until removed by Court.
912a—12. Sale of property for interment purposes and property rights.
912a—13. Inalienable by interment; rights of co-owners.
912a—14. Rules and regulations.
912a—15. Establishment of perpetual care.
912a—16. Requirements of perpetual care cemeteries.
912a—17. Investment of perpetual care funds.
912a—18. Special care.
912a—19. Cemeteries placed in receivership.
912a—20. Duty of interring and right to control disposition of remains.
912a—21. Records of interments.
912a—22. Removals.
912a—23. May contract pecuniary indebtedness but all liens subordinate to dedication.
912a—24. Location of cemetery.
912a—25. Abatement of nuisances.
912a—26. Police power to sexton.
912a—27. Constitutionality.
912-930a. [Repealed.]
930a—1. Feed pens or slaughter pens near cemetery a nuisance; injunction; old abandoned or neglected cemeteries; abatement of nuisances in certain counties.
930b-931b. [Repealed.]

Art. 912a—1. Definitions.—Words used in this Act in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; "writing" includes "printing" and "typewriting"; "oath" includes "affirmation." When used in this Act,[1] the following terms shall, unless the context otherwise indicates, have the following respective meanings:

The term "cemetery", within the meaning of this title, is hereby defined as a place dedicated to and used and intended to be used for the permanent interment of the human dead. It may be either a burial park, for earth interments; a mausoleum for vault or crypt interments, a crematory, or crematory and columbarium for cinerary interments, or a combination of one or more thereof.

The term "perpetual care cemetery" shall mean a cemetery for the benefit of which a perpetual care fund shall have been established in accordance with the provisions of this Act.

The term "nonperpetual care cemetery" shall mean a cemetery for the benefit of which no perpetual care fund has been established in accordance with the provisions of this Act.

The term "perpetual care" shall mean to keep the sod in repair, to keep all places where interments have been made in proper order, and to care for trees and shrubs, providing for the administration of perpetual care funds in instances wherein those administering such funds fail or refuse to act.

"Burial Park" means a tract of land which has been dedicated to the purposes of and used, and intended to be used, for the interment of the human dead in graves.

"Grave" means a space of ground in a burial park intended to be used for the permanent interment in the ground of the remains of a deceased person.

"Mausoleum" means a structure or building of most durable and lasting fireproof construction used, or intended to be used, for the permanent interment in crypts and vaults therein of the remains of deceased persons.

"Crypt" or "Vault" as herein used means the chamber in a mausoleum of sufficient size to inter the uncremated remains of a deceased person.

"Columbarium" means a structure or room or other space in a building or structure of most durable and lasting fireproof construction or a plot of earth, containing niches, used, or intended to be used, to contain cremated human remains.

"Crematory" means a building or structure containing one or more furnaces used, or intended to be used, for the reduction of bodies of deceased persons for cremated remains.

"Crematory and columbarium" means a building or structure of most durable and lasting fireproof construction containing both a crematory and columbarium, used, or intended to be used, for the permanent interment therein by inurnment of the remains of deceased persons.

"Niche" is a recess in a columbarium, used, or intended to be used, for the permanent interment of the cremated remains of one or more deceased persons.

"Lot" or "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association, or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and shall apply with like effect to one, or more than one, adjoining grave; one, or more than one, adjoining crypts or vaults; or one, or more than one, adjoining niches.

"Temporary receiving vault" as herein used means a vault in a structure of most durable and lasting construction used and intended to be used for the temporary deposit therein for a reasonable time only of the remains of a deceased person.

"Interment" means the permanent disposition of the remains of a deceased person by cremation, inurnment, entombment or burial.

"Cremation" as herein used means the interment of a body of a deceased person by reduction to cremated remains in a crematory and the deposit of the cremated remains in a grave, vault, crypt, or niche.

"Inurnment" means placing the cremated remains in an urn and permanently depositing the same in a niche.

"Entombment" means the permanent interment of the remains of a deceased person in a crypt or vault.

"Remains" means the body of a deceased person.

"Cremated remains" means remains of a deceased person after incineration in a crematory.

"Cemetery business," "cemetery businesses" and "cemetery purposes" are herein used interchangeably and shall mean any and all business and purposes requisite or necessary for or incident to establishing, maintaining, managing, operating, improving, and conducting a cemetery and the interring of the human dead, and the care, preservation and embellishment of cemetery property.

The terms "cemetery association" and "association" are herein used interchangeably and shall mean any corporation now or hereafter organized, or any association not operated for a profit, which is or shall be authorized by its articles to conduct any one or more or all of the businesses of a cemetery.

"Directors" as herein used, means the board of directors, board of trustees, or other governing body of the cemetery association.

The term "plot owner," "owner," or "lot proprietor" as used herein means any person in whose name a burial plot stands, as owner of the exclusive right of sepulture therein, in the office of the association, or who holds from such association a conveyance of the exclusive right of sepulture, or a certificate of ownership of the exclusive right of sepulture, in a particular lot, plot, or space. [Acts 1945, 49th Leg., p. 559, ch. 340, § 1.]

1 Articles 912a—1 to 912a—27 and Pen.Code, art. 705b—1. Section 27 of the Act of 1945 being a penal provision is published as Pen.Code, art. 705b—1.

Section 29 repealed articles 912–930a, 930b-931b, Pen. Code arts. 705a, 715, and all conflicting laws and parts of laws.

Art. 912a—2. Operation of cemeteries unlawful unless provisions complied with.—The operation of any perpetual care cemetery within this State shall hereafter be unlawful unless such cemetery shall comply with all applicable provisions of this Act. The operation of any cemetery as a perpetual care, permanent maintenance, or free care cemetery shall hereafter be unlawful unless such cemetery shall have created and shall maintain a perpetual care fund in accordance with the provisions of this Act.[1]

Each perpetual care cemetery as defined in this Act shall file in its office, and as well in the office of the Secretary of State, a statement in duplicate which shall contain the following information:

(1) Amount of principal of the perpetual care funds.

(2) Total amount invested in bonds and other securities, the total amount of cash on hand not invested, and such other items which shall actually show the financial condition of the trust.

(3) Number of square feet of grave space, and number of crypts, and number of niches disposed of under perpetual care, prior to and subsequent to March 15, 1934, each separately set forth.

(4) Number of square feet of grave space, and number of crypts, and number of niches sold or disposed of subsequent to March 15, 1934, for which the minimum amounts of perpetual care as provided by this Act have not been paid into the perpetual care fund.

All of the information appearing on said statements shall be verified by the President and Secretary, or two principal officers of the cemetery corporation. All the information appearing on said statements shall be revised and so posted and filed annually, on or before March first of each year.

Within thirty (30) days after the filing of the aforesaid statement in the office of the Secretary of State, a true copy thereof shall be published in at least one newspaper of general circulation in the county in which said cemetery is located.

Upon the failure of any perpetual care cemetery to file with the Secretary of State on or before March first of each year the statement of its perpetual care funds as required hereby, or to pay the filing fee required by this Act, its corporate charter shall be subject to forfeiture, and such failure to report shall be prima-facie evidence that the cemetery's perpetual care fund does not conform to the requirements of

law; it shall be the duty of the Secretary of State to immediately report the same to the Banking Commissioner of Texas; the Banking Commissioner of Texas shall notify the Attorney General of Texas, who shall proceed to institute suit as required by the provisions of this Act.

It is provided, however, that the provisions of this Article shall not apply to any family, fraternal or community cemetery, or any association of cemetery lot owners not operated for profit, or any religious corporation, church, religious society, or denomination, or corporation solely administering the temporalities of any religious denomination, society or church, now existing or hereafter organized. [Acts 1945, 49th Leg., p. 559, ch. 340, § 2; Acts 1947, 50th Leg., p. 372, ch. 210, § 1.]

1 Articles 912a—1 to 912a—27, Pen.Code, art. 705b—1.

Art. 912a—3. Payment, receipt, and disbursement of filing fees.—At the time of the filing of the statement in duplicate of its perpetual care fund each cemetery filing same which serves a city, the population of which is twenty-five thousand (25,000) inhabitants or less according to the last preceding Federal census, shall pay to the Secretary of State each year a filing fee of Ten Dollars ($10); and each cemetery filing same which serves any city the population of which is greater than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal Census, shall pay to the Secretary of State each year a filing fee of Twenty-five Dollars ($25). The Secretary of State shall receive and account for all such filing fees and shall pay the same at the end of the month in which received to the State Treasurer who shall keep such moneys in a separate fund to be known as the "Cemetery Perpetual Care Enforcement Fund." Such fund shall be paid out only on warrant of the State Comptroller or the State Treasurer upon itemized vouchers approved by the Banking Commissioner of Texas. All moneys in the "Cemetery Perpetual Care Enforcement Fund" are hereby specifically appropriated for the use of the Banking Commissioner of Texas in the administration and enforcement of the laws relating to the operation of perpetual care cemeteries and to the creation, investment and expenditure of cemetery perpetual care funds. The Banking Commissioner of Texas may make expenditures from said fund for any purpose which in his opinion is reasonably necessary for the proper enforcement of the laws relating to the operation of perpetual care cemeteries and the creation, investment and expenditure of cemetery perpetual care funds, and for investigations either on his own initiative or on complaints made by others, with reference to the operation of perpetual care cemeteries and the creation, investment and expenditure of cemetery perpetual care funds. [Acts 1945, 49th Leg., p. 559, ch. 340, § 3.]

Art. 912a—4. Powers and duties of enforcement officers.—It shall be the duty of the Secretary of State to deliver to the Banking Commissioner of Texas annually on or before March fifth of each year the duplicate of each cemetery perpetual care fund statement filed in the office of the Secretary of State on or before March first of each year, together with a current list of all corporations operating perpetual care cemeteries. The Banking Commissioner shall on or before April fifteenth of each year examine each such statement and shall on or before May first of each year certify to the Secretary of State that he has made such examination, certifying whether such statement complies with the requirements of this Act,[1] which certificate the Secretary of State shall immediately attach to the original of such statement on file in his office.

The Banking Commissioner of Texas shall have authority to require as often as he deems necessary that the custodian of any cemetery perpetual care fund make under oath a detailed report of the condition of said fund, setting forth a detailed description of the assets of said fund, a description of the securities held by said fund, a description of any property upon which any such security constitutes a lien, the cost of acquisition of any such security, the market value of any security at the time of its acquisition, the current market value thereof, the status thereof with reference to default, that the same are not in any way encumbered by debt, that none of the assets of said cemetery perpetual care fund constitute loans to the cemetery for which the funds were established, or to any officer or director thereof and any other information he deems pertinent. When the Banking Commissioner of Texas finds that a cemetery perpetual care fund does not conform to the requirements of law, or when the custodian of said fund fails to make within thirty (30) days after request a report to the Banking Commissioner of Texas of the condition of said fund, the Banking Commissioner of Texas shall notify the custodian of the cemetery perpetual care fund, the cemetery for the benefit of which said fund is established, and the Attorney General of Texas thereof, and it shall be the duty of the Attorney General of Texas to institute within ninety (90) days after the receipt of such notice, unless he shall prior to that time be notified by the Banking Commissioner of Texas that such failure to conform to the requirements of law or to report has been corrected, suit or quo warranto proceedings in the District Court of any county of this State in which such cemetery is operated, for the forfeiture of the charter of the cemetery corporation if such cemetery has failed to meet the requirements of this Act, and for the dissolution of its corporate existence. If the custodian of such trust fund shall fail to meet the requirements of this Act, then it shall be the duty of the Attorney General of Texas to apply to the District Court of the County, in which such cemetery is operating and for which it has created a permanent trust fund, for proper legal writs to require a report of the perpetual care fund of said cemetery, and if the same has been misappropriated by such custodian, and not being handled as required by law, to have a Receiver appointed by the Court to take custody of said trust funds for the benefit of the cestui que trust; said Receiver is hereby vested with full power to file such suits against such defaulting trustee as may be necessary to require a full accounting and restoration of such endowment funds and turn the residue over to such trustee as the cemetery corporation shall select, in conformity with this Act as the new custodian of its endowment funds; and for such purposes venue is hereby conferred upon the District Courts of this State. [Acts 1945, 49th Leg., p. 559, ch. 340, § 4; Acts 1947, 50th Leg., p. 372, ch. 210, § 2.]

1 Articles 912a—1 to 912a—27 and Pen.Code, art. 705b—1.

Art. 912a—5. Authority to corporations.—Corporations may hereafter be formed for the purpose of establishing, managing, maintaining, improving, and/or operating cemeteries and conducting any one or more or all of the businesses of a cemetery, including the selling of lots or parts of lots for burial purposes. Such corporations shall be formed either as nonprofit corporations organized by cemetery lot owners, or as private corporations to be operated for profits, but not as both. The charter of each such corporation hereafter formed shall specifically state whether such corporation is to be a nonprofit corporation organized by cemetery lot owners, or whether such corporation is to be a private corporation to be operated for profit. The charter of each such corporation shall also specifically state whether the same is to operate a perpetual care or a nonperpetual care cemetery. It shall hereafter be unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this State except by

means of a corporation duly organized for such purpose; provided, however, that the provisions of this Section shall not apply to any corporation heretofore chartered by the State of Texas to operate a cemetery, which under its charter, by laws, or its dedication has heretofore provided for the creation of a perpetual care fund, and is maintaining the same in accordance with its trust agreement and the provision of this Act,[1] and any such corporation may continue to operate a perpetual care cemetery in the same manner as if it had been incorporated under this Section without the necessity of amending its corporate charter, and provided further that the provisions of this Act shall not apply to any family, fraternal, or community cemetery not exceeding ten (10) acres in area, or any association of cemetery lot owners not operated for profit, or any religious corporation, church, religious society, denomination, corporation solely administering the temporalities of any religious denomination, society or church, now existing or hereafter organized, or any public cemetery belonging to the State, or any county, city or town within the State. [Acts 1945, 49th Leg., p. 559, ch. 340, § 5; Acts 1947, 50th Leg., p. 372, ch. 210, § 3.]

[1] Articles 912a—1 to 912a—27 and Pen.Code, art. 705b—1.

Art. 912a—6. Rights of lot owners in cemeteries operated by nonprofit corporations.—All owners of lots purchased of any nonprofit cemetery corporation shall become members thereof and be entitled to vote in the election of its officers and upon any other matters to the same extent as stockholders in other corporations. Each owner of a lot or lots embraced in any cemetery operated by a nonprofit cemetery corporation shall be a shareholder in any corporation to which the land may belong and shall be entitled to all rights and privileges of a shareholder, whether the title to the lot or lots was acquired from the corporation or was owned before its organization. Nonprofit cemetery corporations organized by cemetery lot owners shall have the power to divide the land of the cemetery into lots and subdivisions for cemetery purposes and to tax the property for the purpose of its general improvement and upkeep. [Acts 1945, 49th Leg., p. 559, ch. 340, § 6.]

Art. 912a—7. Meeting to organize nonprofit cemetery corporations.—When it is desired to create a nonprofit corporation organized by cemetery lot owners to receive title to lands theretofore dedicated to cemetery purposes, notice of the time and place of meeting shall be published in a newspaper in the county, if there be one, for thirty (30) days prior thereto; and written notices shall be posted at and upon such cemetery for thirty (30) days prior to the time fixed for said meeting. When the lot owners uniting in the formation of said nonprofit corporation shall assemble, the majority of those present and voting shall decide on the question of incorporation, and the conveyance of the land to such nonprofit corporation. Such meeting shall select the board of directors to be named in the charter, which must consist of cemetery lot owners alone. [Acts 1945, 49th Leg., p. 559, ch. 340, § 7.]

Art. 912a—8. No crematory without provision for completion of permanent disposition.—No crematory shall be constructed, established, or maintained except within a burial park, nor unless there be in connection therewith in the same fireproof building or structure or in a separate fireproof building within the same cemetery or burial park within which the same is situated or in said cemetery, either a columbarium amply equipped for the permanent deposit therein of cremated remains of the bodies cremated thereat, or plot of ground or a mausoleum wherein the cremated remains may be placed in completion of the permanent interment thereof, and all cremated remains not removed for permanent deposit elsewhere shall be permanently interred in either a grave, crypt, or niche within thirty (30) days after the date of such cremation. [Acts 1945, 49th Leg., p. 559, ch. 340, § 8.]

Art. 912a—9. Acquisition of property.—Cemetery associations, whether incorporated or unincorporated, may take by purchase, donation or devise, property, consisting of lands, mausoleums, crematories and columbariums, and/or other property within which the permanent interment of the dead shall be authorized by law. Such cemetery association may execute a declaration acknowledged by the president and secretary or other authorized officer or officers, so as to entitle it to be recorded, describing said property and declaring its intention to use said property or any part thereof for interment purposes, which declaration it may file for record in the office of the County Clerk of the county wherein the property is situated, and from the date of such filing the same shall be constructive notice of the use for which such property is intended. Such property may also be acquired by condemnation proceedings and the acquisition of such property is hereby declared to be for a public purpose. [Acts 1945, 49th Leg., p. 559, ch. 340, § 9.]

Art. 912a—10. Dedication.—Every cemetery association, from time to time as its property may be acquired for interment purposes, shall:

(a) In case of land, survey and subdivide such land into sections, blocks, lots, avenues, walks and/or other subdivisions; make a good and substantial map or plat thereof showing said sections, lots, avenues, walks and/or other subdivisions, with descriptive names or numbers; and/or

(b) In case of a mausoleum and/or crematory and columbarium, make a good and substantial map or plat thereof on which shall be delineated the sections, hall, rooms, corridors, elevators and/or other divisions thereof with their descriptive names and numbers; and shall file such map or plat in the office of the County Clerk of the county in which such property or some part thereof is situated, and shall also file for record in such County Clerk's office a written certificate or declaration of dedication of the property delineated, on said plat or map, dedicating the same exclusively to cemetery purposes. Such certificate or declaration shall be in such form as the directors or officers may prescribe, and shall be subscribed by the president or vice president and the secretary of the association, or such other person or persons as the board of directors may authorize, and acknowledge so as to entitle it to be recorded; and upon the filing of said plat and the filing of said certificate for record, the dedication of said property shall be complete for all the purposes of this Act,[1] and thereafter such property shall be held, occupied and used exclusively for a cemetery and for cemetery purposes. Provided, however, that when reservation is made therefor in the certificate or declaration of dedication, any part or subdivision of the property so mapped and platted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat thereof filed, so long as such change does not disturb the remains of any deceased person interred therein. Such filed map and recorded declaration shall constitute and be constructive notice to all persons of the dedication of such property to interment purposes.

It shall be the duty of the County Clerk of the county in which such map or plat is filed to number and file such map or plat and to index the same in the general map index, giving reference to date of filing and number so that the same may be easily found, for which service the recorder shall receive a fee of One Dollar ($1).

It shall also be the duty of the County Clerk of the county in which such declaration of dedication is filed to record the same in the deed records of said county and index the same in the general index for which

service the recorder shall receive a fee of One Dollar ($1). [Acts 1945, 49th Leg., p. 559, ch. 340, § 10.]

1 Articles 912a—1 to 912a—27 and Pen.Code, art. 705b—1.

Art. 912a—11. Dedication supreme until removed by Court.—After such property is so dedicated to cemetery purposes, neither the dedication nor the title to the exclusive right of sepulture of a plot owner, shall ever be affected by the dissolution of the association, or by nonuser on its part, or by alienations of the property, or by any encumbrances thereon, or by forced sale under execution or otherwise, and such dedication shall not be deemed or held invalid as violating any existing laws against perpetuities or the suspension of the power of alienation of title to or use of property, but such dedication is hereby expressly permitted and shall be deemed to be in respect for the dead, a provision for the disposition of the bodies of deceased persons, and a duty to, and for the benefit of, the general public; and said property shall be held and used exclusively for cemetery purposes, unless and until the dedication shall be removed by an order and decree of the district Court of the county in which the same is situated, in a proceeding brought therefor by the governing body of the city, if said cemetery is within, or within five (5) miles from, the city limits of any city of more than twenty-five thousand (25,000) inhabitants according to the last preceding Federal census, or by the district attorney, if said cemetery is not within, or within five (5) miles of, the city limits of a city of more than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal census, or by the owner of property so situated that its value is affected by said cemetery, upon notice and proof satisfactory to the Court that all bodies have been removed therefrom, or that no interments were made therein, and that the same is no longer used or required for interment purposes; or until the maintenance of said cemetery is enjoined or abated as a nuisance as hereinafter provided for. After such dedication and so long as said property shall remain dedicated to cemetery purposes, no railroad, street, road, alley, pipe line, telephone, telegraph, or electric line, or other public utility or thoroughfare whatsoever shall ever be laid out through, over, or across any part thereof, without the consent of the directors of the cemetery association owning or operating the same, or of not less than two-thirds of the owners of burial plots therein, and all of such property, including road, alleys, and walks therein, shall be exempt from public improvements assessments, and all public taxation, and shall not be liable to be sold on execution or applied in payment of debts due from individual owners of burial plots therein. [Acts 1945, 49th Leg., p. 559, ch. 340, § 11.]

Art. 912a—12. Sale of property for interment purposes and property rights.—After filing the map or plat and recording the certificate or declaration of dedication, but not prior thereto, and subject to its rules and regulations and/or to such limitations, conditions, and restrictions, as may be inserted in or by reference made a part of the instrument of conveyance, the cemetery association may sell and convey the exclusive right to sepulture in the burial plots to purchasers. No license of any kind or character shall be required of any person, firm or corporation on account of or to authorize the sale of lots, graves or interment space in any dedicated cemetery. All lots, sections, or parts thereof, the use of which has been so conveyed by certificate of ownership as a separate plot, shall be indivisible except with the consent of the cemetery association, or as shall be provided by law. All conveyances of such exclusive right of sepulture made by the cemetery association shall be signed by the president or the vice president and secretary or other officers authorized by the cemetery association. All lots, plots, and burial space in which the exclusive right of sepulture has been conveyed shall be presumed to be the sole and separate property of the person or persons named as grantee in the instrument of conveyance; provided, however, that the wife or husband shall have a vested right of interment of his or her body in any burial plot in which the exclusive right of sepulture has been conveyed to the other, which right shall continue as long as he or she shall remain the wife or husband of the plot owner or shall be his or her wife or husband at the time of such plot owner's demise. No conveyance or other action without the joinder therein or by written consent attached thereto shall divest such husband or wife of such vested right of interment; provided, however, that a final decree of divorce between them shall terminate such vested right of interment unless it shall be otherwise provided by such decree of divorce.

A vested right of interment as in this section provided may be waived and shall be terminated upon the interment elsewhere of the remains of a person entitled thereto under this section. [Acts 1945, 49th Leg., p. 559, ch. 340, § 12.]

Art. 912a—13. Inalienable by interment; rights of co-owners.—Whenever an interment is made in a burial plot in which the exclusive right of sepulture has been conveyed to an individual owner and said owner dies without making specific disposition of such burial plot in his will, or by a written declaration filed and recorded in the office of the cemetery association, upon the death of such owner the exclusive right of sepulture in the whole of such burial plot thereby becomes inalienable and such burial plot shall be held as the family burial plot of the owner, in which one grave, niche or crypt may be used for the owner's interment, one for the surviving husband or wife, if any, of the owner who by law has a vested right of interment therein, and in those remaining, if any, the parents and/or children of such deceased owner, in the order of need, may be interred without the consent of any person claiming any interest therein. In the event there shall be no parent or child surviving such deceased person, the right of interment therein shall vest in the heirs-at-law of said deceased owner in the order in which they are specified by the statutes of descent and distribution. Any surviving wife or husband, and any parent, child or heir of such deceased owner may waive his or her right to interment in said plot in favor of any other relative of such deceased owner, or of his wife, and upon such waiver the body of the person in whose favor the waiver is made may be interred therein.

If no interment shall have been made in a burial plot in which the exclusive right of sepulture has been conveyed to an individual owner by the association, or if all bodies shall have been lawfully removed therefrom, in the absence of the specific disposition thereof by the owner's last will and testament, the exclusive right of sepulture in the whole of said burial plot, except the one grave, niche, or crypt which must be reserved to the surviving husband or wife of the owner, shall upon the death of said owner descend in regular line of succession to the heirs-at-law of the owner.

When there are two (2) or more owners of a burial plot, or of rights of interment therein, such owners may designate one or more persons to represent said plot and file written notice of such designation with the cemetery association; in the absence of such notice or of written objection to its so doing, the cemetery association shall not be liable to any owner for interring or permitting an interment therein upon the request or direction of any registered co-owner of such plot. [Acts 1945, 49th Leg., p. 559, ch. 340, § 13.]

Art. 912a—14. Rules and regulations.—The cemetery association may make, adopt and enforce rules and regulations for the use, care, control, management, restriction, and protection of its cemetery, and of all parts and subdivisions thereof; for restricting and limiting the use of all property within its cemetery; for regulating the uniformity, class, and kind of

all markers, monuments, and other structures within said cemetery and subdivisions thereof and/or prohibiting the erection of monuments, markers and/or other structures in or upon any and/or all portions of such property; for regulating and/or preventing monuments, effigies and structures within any and/or all portions of the cemetery grounds and for the removal thereof; for regulating or preventing the introduction and/or care of plants or shrubs within such grounds; for the prevention of interment in any part thereof of a body not entitled to interment therein; for preventing the use of burial plots for purposes violative of its restrictions; for regulating the conducts of persons and preventing improper assemblages therein; and for all other purposes deemed necessary by the board of directors for the proper conduct of the business of the association and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery was organized; and from time to time may amend, add to, revise, change and/or modify such rules and regulations. Such rules and regulations shall be plainly printed or typewritten and maintained subject to inspection in the office of the association or in such place or places within the cemetery as the directors may prescribe. The directors may prescribe penalties for the violation of any rule or regulation which penalties may be recoverable by the association in a civil action. [Acts 1945, 49th Leg., p. 559, ch. 340, § 14.]

Art. 912a—15. Establishment of perpetual care.—Every cemetery association or municipality or other political subdivision which has established and is now maintaining, operating and/or conducting a perpetual care cemetery, and every association which shall hereafter establish, maintain, operate and/or conduct, a perpetual care cemetery within this State pursuant to this Act,[1] shall establish with a trust company or a bank with trust powers, no two (2) of the directors of which shall be directors of the cemetery association for the benefit of which such fund is established, an endowment fund of which the income only can be used for the general perpetual care of its cemetery and to place its cemetery under perpetual care; provided however, that if there is no trust company or bank with trust powers, qualified and willing to accept such trust funds at the regular fees established by the Texas Trust Act,[2] located within the county within which such cemetery association, municipality or other political subdivision is located, then and only then, such endowment fund may be established with a Board of Trustees composed of three (3) or more persons, no two (2) of the trustees of which shall be directors of such cemetery association. The principal of such fund for perpetual care shall never be voluntarily reduced, but shall maintain inviolable and shall forever be maintained separate and distinct by the trustee or trustees from all other funds. Any such trustee or trustees and the perpetual care trust operated by them shall in all respects be governed by the provisions of the Texas Trust Act. The principal of such fund shall be invested, from time to time reinvested, and kept invested as required by law for the investment of such funds, and the net income arising therefrom shall be used solely for the general care and maintenance of the property entitled to perpetual care in the cemetery for which the fund is established, and shall be applied in such manner as the Board of Directors may from time to time determine to be for the best interest of the cemetery for which such fund is established, but shall never be used for the improvement or embellishment of unsold property to be offered for sale. In the event the Board of Directors shall fail to generally care for and maintain that portion of the cemetery entitled to perpetual care, as hereinbefore provided, any five (5) or more lot owners in said cemetery whose lots are entitled to perpetual care shall have the right by suit for mandatory injunction or for a Receiver to take charge of and expend said net income, filed in the District Court of the county in which the cemetery is located, to compel the expenditure either by the Board of Directors or by such Receiver of the net income from the perpetual care fund for the purpose hereinabove set forth.

In establishing its perpetual care fund the association may from time to time adopt plans for the general care, maintenance and embellishment of its cemetery. If the cemetery originally sold cemetery lots without provision for perpetual care, it shall have the right to accept deposits from such lot owners for the purpose of establishing perpetual care endowment on those lots, provided said deposits meet the requirements hereof, such deposits to be placed in trust in conformity with the requirements of this Article.

A cemetery association which has established a perpetual care fund may also take, receive, and hold therefor and as a part thereof or as an incident thereto any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it therefor.

The perpetual care fund authorized by this Section and all sums paid therein or contributed thereto are, and each thereof is hereby, expressly permitted and shall be and be deemed to be for charitable and eleemosynary purposes. Such perpetual care shall be deemed to be a provision for the discharge of a duty due from the person or persons contributing thereto to the persons interred and to be interred in the cemetery and likewise a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming places of disorder, reproach, and desolation in the communities in which they are situated. No payment, gift, grant, bequest, or other contribution for such general perpetual care shall be or be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating said trust, nor shall said fund or any contribution thereto be or be deemed to be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

Each perpetual care cemetery shall deposit in its perpetual care fund an amount equivalent to such amount as may have been stipulated in any contract under which perpetual care property was sold prior to March 15, 1934, plus a minimum of twenty cents (20¢) per square foot of ground area sold or disposed of as perpetual care property after March 15, 1934, until such fund reaches a minimum of One Hundred Thousand Dollars ($100,000), after which each such cemetery shall deposit an amount equivalent to a minimum of ten cents (10¢) per square foot of ground area sold or disposed of as perpetual care property after March 15, 1934, until September 3, 1945. After September 3, 1945, each such cemetery shall deposit an amount equivalent to a minimum of twenty cents (20¢) per square foot of ground area sold or disposed of as perpetual care property after said date. A minimum of Fifteen Dollars ($15) per each crypt interment right sold or disposed of as perpetual care property, for mausoleum interment, and a minimum of Five Dollars ($5) per each niche interment right sold or disposed of as perpetual care property for columbarium interment subsequent to March 15, 1934, shall also be placed in such perpetual care trust. Such minimum requirements shall apply to all property in which the exclusive right of sepulture has been sold and paid for, whether used for interment purposes or not.

The deposit of such funds in the perpetual care fund shall be made within thirty (30) days after the receipt of the final purchase price of each lot, grave, crypt, or niche sold as property entitled to perpetual care. No cemetery shall hereafter operate as a perpetual care, permanent maintenance, or free care cemetery until the provisions hereof are complied

with. [Acts 1945, 49th Leg., p. 559, ch. 340, § 15; Acts 1947, 50th Leg., p. 372, ch. 210, § 4.]

1 Articles 912a—1 to 912a—27 and Pen.Code, art. 705b—1.
2 Articles 7425b—1 to 7425b—47.

Art. 912a—16. Requirements of perpetual care cemeteries.—Each perpetual care cemetery as defined in this title shall post in a conspicuous place in the office and/or offices where sales are conducted or if there be no office, in a conspicuous place at or near the entrance of the cemetery or administration building, and readily accessible to the public, a sign which shall contain the following information in the order and manner set forth below:

(a) "Perpetual Care Cemetery"—which shall appear in a minimum of forty-eight (48) point black type.

(b) Names of officers and directors of the cemetery and the name of the bank or trust company entrusted with care of perpetual care funds.

Each perpetual care cemetery shall include in each conveyance of the exclusive right of sepulture, certificate of ownership, or sales contract executed by it, the following statement: "This cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Perpetual care means to keep the sod in repair and all places where interments have been made in order and to care for trees and shrubs planted by the cemetery." [Acts 1945, 49th Leg., p. 559, ch. 340, § 16.]

Art. 912a—17. Investment of perpetual care funds.—Perpetual care funds shall not be used for any other purpose than to provide through the income only therefrom the perpetual care stipulated in the resolution, bylaw, or other action or instrument by which the fund was created or established, and it shall be the duty of the duly appointed trustee to invest, reinvest and keep such funds invested in such securities or assets as are or shall hereafter comply with the provisions of the Texas Trust Act [1] in so far as the same may govern the investment of trust funds by the trustees thereof. No such investment shall be made without the written approval of either an active officer of the cemetery association or of a majority of its directors, and no such investment shall be made except at the prevailing market value of the securities at the time of the acquisition thereof. [Acts 1945, 49th Leg., p. 559, ch. 340, § 17.]

1 Articles 7425b—1 to 7425b—47.

Art. 912a—18. Special care.—The trustee of any cemetery perpetual care fund may also take and hold any property bequeathed, granted, or given to it in trust to apply the principal, or proceeds, or income therefrom to either or all of the following purposes: To the improvement or embellishment of such cemetery, or any part thereof, or any lot therein, to the erection, renewal, repair or preservation of any monuments, fence, building or other structure in such cemetery; to the planting, cultivation of trees, shrubs, or plants in or around such cemetery, or any part thereof; for the special care or ornamenting of any burial plot, lot, section or building or any portion thereof in said cemetery or to any other purpose or use not inconsistent with the purpose for which such cemetery was established or is being maintained. Not exceeding seventy-five (75) per cent of the proceeds or income therefrom shall be devoted to keeping up and beautifying the private blocks, lots or structures for the upkeep of which the bequest, grant, or gift is made. At least twenty-five (25) per cent of such proceeds or income shall be devoted to the general upkeep and beautifying of the cemetery in which such lots, blocks, or structures are located.

Persons desiring to provide a fund for maintaining and keeping up and beautifying private blocks, lots, or structures in any nonperpetual care cemetery in this State, may do so by setting aside for such purposes a reasonable sum of money or property and by providing by written instrument which shall recite the terms of the trust for a trustee (which shall be a trust company or a bank with trust powers, operating within this State) to handle and invest said sum or property and spend the proceeds or income therefrom as follows: Not exceeding seventy-five (75) per cent of the net income or proceeds therefrom shall be devoted to keeping up and beautifying the private blocks, lots, or structures, designated in the instrument, the portion of such income or proceeds not expended annually as set out above, the amount to be not less than twenty-five (25) per cent of such income or proceeds as are spent annually, shall be devoted to the general upkeep and beautification of the cemetery in which blocks, lots, or structures are located. Such trust and the administration thereof shall not be regarded and held to be a perpetuity, but as a provision for the discharge of a duty due from the person founding such trust to the persons interred upon such blocks or lots and to the public. [Acts 1945, 49th Leg., p. 559, ch. 340, § 18.]

Art. 912a—19. Cemeteries placed in receivership.—Whenever any perpetual care cemetery within this State shall be placed in receivership the receiver shall, from and out of the proceeds of the liquidation thereof, make such deposits in the perpetual care fund established for said cemetery as shall be necessary to meet the minimum requirements for perpetual care funds provided by law, and any deficit in said perpetual care fund below said minimum requirements shall be a preferred claim against any assets in the possession of the receiver, and shall take precedence over all claims other than vendor's liens on the cemetery property. [Acts 1945, 49th Leg., p. 559, ch. 340, § 19.]

Art. 912a—20. Duty of interring and right to control disposition of remains.—The right to control the disposition of the body of a deceased person, unless other directions shall have been made therefor by the deceased, shall be vested in, and the duty of interment (and the liability for the reasonable cost of the interment) of such deceased person shall devolve upon, his or her surviving wife or husband, or if there be no surviving wife or husband they shall vest in and devolve upon the surviving child or children of deceased, or if there be no surviving husband or wife or child of deceased, they shall vest in and devolve upon the surviving parent or parents of such deceased, or if there be no surviving husband, or wife or child or parent of such deceased, they shall vest in and devolve upon the person or persons respectively in the next degrees of kindred in the order named by the laws of Texas as entitled to succeed to the estate of said deceased.

In all other cases, the disposition of the body and the duty of interment shall devolve upon the coroner conducting the inquest upon the body of the deceased, if any such inquest is held, and if there be no inquest they shall devolve upon the county in which the death occurs; provided, further, that any person representing himself as knowing the facts who shall sign any order or statement, other than a death certificate, for the purpose of procuring the interment of any remains shall be deemed to warrant the identity of the person whose remains are sought to be interred or cremated, and shall be personally and individually liable for all damage occasioned thereby or resulting directly or indirectly therefrom. [Acts 1945, 49th Leg., p. 559, ch. 340, § 20.]

Art. 912a—21. Records of interments.—A record shall be kept of every interment in a cemetery

showing the date the body was received, the date of interment, the name and age of the person interred, when these particulars can be conveniently obtained, and the plot and the grave, the niche, crypt, or vault therein, in which such interment was made. No remains, either cremated or uncremated, of any deceased person shall be removed from any cemetery, except upon written order of the health department having jurisdiction, or of the county Court of any county in which such cemetery is situated. A duplicate copy of which order shall be maintained as a part of the records of such cemetery. It shall be the duty of any person and/or persons, removing any remains from any cemetery, to keep and maintain a true and correct record showing the date such remains were removed, the name and age of the person removed, when these particulars can be conveniently obtained, and the place to which the same were removed, and the cemetery and the plot therein in which such remains were buried; if there be disposition of such remains other than interment, a record shall be made and kept of such disposition. Such person or persons shall deliver to the cemetery association operating the cemetery from which such remains were removed, a true, full, and complete copy of such record. [Acts 1945, 49th Leg., p. 559, ch. 340, § 21.]

Art. 912a—22. Removals.—The remains of a deceased person interred in a plot in a cemetery may be removed therefrom with the consent of the cemetery association and the written consent of the surviving wife or husband, or if there is no surviving husband or wife, then of the children; or if there is no surviving husband or wife nor children, then of the parents of the deceased, or should there be no surviving husband or wife nor children nor parent, then of the brothers and/or sisters of the deceased. If the consent of any such person or of the association cannot be obtained, permission by the county court of the county where the cemetery is situated shall be sufficient. Notice of application to the Court for such permission must be given, at least ten (10) days prior thereto, personally, or at least fifteen (15) days prior thereto if by mail, to the cemetery association, and to the persons not consenting and to every other person or association on whom service of notice may be required by the Court. This provision shall not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by the cemetery association from a plot for which the purchase price is past due and unpaid, to some other suitable place. Neither shall this provision apply to the disinterment of remains upon order of Court or coroner. [Acts 1945, 49th Leg., p. 559, ch. 340, § 22.]

Art. 912a—23. May contract pecuniary indebtedness but all liens subordinate to dedication.—Cemetery associations shall in the conduct of their business have the right to contract such pecuniary obligations as may be required, and may secure the same by mortgage, deed of trust or otherwise upon their property. Provided, that all mortgages, deeds of trust and other liens of whatsoever nature, hereafter contracted, placed or incurred upon property which has been and was at the time of the creation or placing of such lien, dedicated as a cemetery as in this Act [1] authorized and provided, or upon property which shall afterwards, with the consent of the owner of any such mortgage, trust deed or lien, be dedicated to cemetery purposes as authorized by this title, shall in nowise or at all affect or defeat the dedication thereof, but such mortgage, deed of trust, or other lien shall be subject and subordinate to such dedication and any and all sales made upon foreclosure thereof shall be subject and subordinate to the dedication of such property to cemetery purposes. [Acts 1945, 49th Leg., p. 559, ch. 340, § 23.]

[1] Articles 912a—1 to 912a—27 and Pen.Code, art. 705b—1.

Art. 912a—24. Location of cemetery.—It shall be unlawful for any person, company, corporation, or association to establish or use for burial purposes any graveyard or cemetery, or any mausoleum and/or cemetery except in a cemetery heretofore established and operating, located within, or within less than one (1) mile from, the incorporated line of any city of not less than five thousand (5,000) nor more than twenty-five thousand (25,000) inhabitants according to the last preceding Federal Census, or within, or within less than two (2) miles from, the incorporated line of any city of not less than twenty-five thousand (25,000) nor more than fifty thousand (50,000) inhabitants according to the last preceding Federal Census, or within, or within less than three (3) miles from, the incorporated line of any city of not less than fifty thousand (50,000) nor more than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, or within, or within less than four (4) miles from, the incorporated line of any city of not less than one hundred thousand (100,000) nor more than two hundred thousand (200,000) inhabitants, according to the last preceding Federal Census, or within, or within less than five (5) miles from, the incorporated line of any city of not less than two hundred thousand (200,000) inhabitants, according to the last preceding Federal Census; provided that where cemeteries have heretofore been used and maintained within the limits hereinabove set forth, and additional lands are required for cemetery purposes, land adjacent to said cemetery may be acquired by the cemetery association operating such cemetery, to be used as an addition to such cemetery, and the use of said additional land for such purposes shall be exempt from the provisions of this Section. [Acts 1945, 49th Leg., p. 559, ch. 340, § 24.]

Art. 912a—25. Abatement of nuisances.—The maintenance or location and use of any graveyard or cemetery in violation of the provisions of this title are declared to be a nuisance, and the governing body of the city, if said cemetery is within, or within less than five (5) miles from, a city of more than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal census, or the district attorney, if said cemetery is not within, or within five (5) miles of, a city of more than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal Census; or any person owning a residence in or near the town or city in which, or in such proximity as specified in Section 24 [1] hereof to which, such graveyard or cemetery is located, may maintain an action in the Courts to abate such nuisance and to enjoin its continuance, and if it appears that said nuisance exists or is threatened in violation of this Act,[2] a perpetual injunction shall be granted against parties guilty of such nuisance. Whenever any old cemetery for which a perpetual care and endowment fund has not been regularly and legally established, is so neglected as to be offensive to the inhabitants of the section surrounding same, it may likewise be abated and its continuance enjoined. If such cemetery be located within the city limits of an incorporated city or town, the governing body thereof may authorize the removal of all bodies, monuments, tombs, etc., therein to a perpetual care cemetery as defined in this Act. [Acts 1945, 49th Leg., p. 559, ch. 340, § 25.]

[1] Article 912a—24.
[2] Articles 912a—1 to 912a—27 and Pen.Code, art. 705b—1.

Art. 912a—26. Police power to sexton.—The sexton, superintendent or other person in charge of a cemetery shall have, and is hereby granted, all

and equal powers, functions, duties and authority granted by law to a police officer within the city in which such cemetery is located, or if such cemetery be located outside of a city, to a constable and/or sheriff of the county or counties wherein the same is situated, for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the State and the ordinances of such city, and he shall be charged with the enforcement thereof within the cemetery over which he has charge, and within such radius of the same as shall be necessary to protect the cemetery property. [Acts 1945, 49th Leg., p. 559, ch. 340, § 26.]

Art. 912a—27. Constitutionality.—If any section, subsection, sentence, clause, word or phrase of this Act is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Act, which are hereby declared distinct and severable. The Legislature hereby expressly declares that it would have passed this Act and each section, subsection, sentence, clause, word and phrase irrespective of the fact that any one or more section, subsection, sentence, word, or phrase be declared unconstitutional. [Acts 1945, 49th Leg., p. 559, ch. 340, § 28.]

Arts. 912—930a. [Repealed by Acts 1945, 49th Leg., p. 559, ch. 340, § 29.]

For derivation of these articles, see Historical Note under Articles 912-930a of Vernon's Annotated Texas Civil Statutes.

Art. 930a—1. Feed pens or slaughter pens near cemetery in certain counties a nuisance; injunction; old abandoned or neglected cemeteries; abatement of nuisances.—Section 1. In all counties in this State with a population of five hundred and twenty-five thousand (525,000) or more, the maintenance or location of feed pens for hogs, cattle, and horses, or slaughter pens, or of slaughter houses within five hundred (500) feet of any established cemetery is declared to be a nuisance, and the owner of said cemetery, or any of the lot owners therein, may maintain an action in the Courts to abate such nuisance and to enjoin its continuance, and if it appears that such nuisance exists or is threatened in violation of this Act, a perpetual injunction shall be granted against the parties guilty of such nuisance.

Sec. 2. In all counties in this State with a population of five hundred and twenty-five thousand (525,000) or more, when an old abandoned, and neglected cemetery for which no perpetual care and endowment fund has been regularly and legally established, is abated as a nuisance, either the Court abating same and enjoining its continuance or the city council of the city in which said cemetery is located, may authorize the removal of all bodies, monuments, tombs, etc., therein to a perpetually endowed cemetery as defined under the laws of the State of Texas; provided however, that if there exists within said county no perpetual care cemetery which under its rules and regulations will permit the interment of the bodies of the persons which are to be removed, the said bodies, monuments, tombs, etc., may be removed to a nonperpetual care cemetery which has provided for assessments for the future care of said cemetery. [Acts 1941, 47th Leg., p. 424, ch. 253.]

Arts. 930b—931b. [Repealed by Acts 1945, 49th Leg., p. 559, ch. 340, § 29.]

TITLE 27—CERTIORARI

1. CERTIORARI TO THE COUNTY COURT

Art.
932. Certiorari to county court.
933–940. [Repealed.]

2. CERTIORARI TO JUSTICES' COURTS

Art.
941. Certiorari to justices' court.
942–959. [Repealed.]
960. Appeals and writs of error.

1. CERTIORARI TO THE COUNTY COURT

Article 932. [733] [332] [290] Certiorari to county court.—Any person interested in the estate of a decedent or ward may have the proceedings of the county court therein revised and corrected at any time within two years after such proceedings were had, and not afterward. Persons non compos mentis, infants and femes covert shall have two years after the removal of their respective disabilities within which to apply for such revision and correction. [Acts March 16, 1848, p. 106, G. L. vol. 3, p. 106.]

Arts. 933—940. [Repealed.]

Corresponding provisions, see Rules 344-351, Vernon's Texas Rules of Civil Procedure.

2. CERTIORARI TO JUSTICES' COURTS

Art. 941. [742] [341] [299] Certiorari to justices' court.—After final judgment in a justice court in any cause except in cases of forcible entry and detainer, the cause may be removed to the county court by writ of certiorari (or if the civil jurisdiction has been transferred from the county to the district court, then to the district court,) in the manner hereinafter directed. [Acts 1879, p. 125; G. L. vol. 8, p. 1425.]

Arts. 942—959. [Repealed.]

Corresponding provisions, see Rules 575-591, Vernon's Texas Rules of Civil Procedure.

Art. 960. [761] [360] [318] Appeals and writs of error.—Appeals and writs of error from the judgments of the county or district court, in cases of certiorari from justice courts, shall be allowed, subject to such rules and limitations as apply in cases appealed from justices' courts.

TITLE 28—CITIES, TOWNS AND VILLAGES

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CHAPTER 1.—CITIES AND TOWNS

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974d—1. Validation of incorporation of cities of 600 to 2000 inhabitants.
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Article 961. [762–3] May adopt this title.—Any incorporated city, town or village in this State containing six hundred inhabitants or over, however legally incorporated, and any incorporated city, town or village of whatever population containing one or more manufacturing establishments within the corporate limits, may accept the provisions of this title relating to cities and towns, in lieu of any existing charter, by a two-thirds vote of the council of such city, town or village, had at a regular meeting thereof, and entered upon the journal of their proceedings, and a copy of the same signed by the mayor and attested by the clerk or secretary under the corporate seal, filed and recorded in the office of the county clerk in which such city, town or village is situated, and the provisions of this title shall be in force, and all acts heretofore passed incorporating said city, town or village which may be in force by virtue of any existing charter, shall be repealed from and after the filing of said copy of their proceedings, as aforesaid. When such city, town or village is so incorporated as herein provided, the same shall be known as a city or town, subject to the provisions of this title relating to cities and towns, and vested with all the rights, powers, privileges and immunities and franchises therein conferred. The provisions of this title shall not apply to any city, town or village until such provisions have been accepted by the council in accordance with this article. [Acts 1875, p. 113; G. L. vol. 8, p. 485; Acts 1881, p. 115; G. L. vol. 9, p. 207; Acts 1885, p. 57; G. L. vol. 9, p. 667; Acts 1915, p. 64; Acts 1919, p. 110.]

Art. 961a. Validation of adoption of provision of title.—In every instance wherein an incorporated city, town, or village has attempted to accept the provisions of Title 28 of the Revised Civil Statutes of Texas of 1925, as provided in Article 961 of the Revised Civil Statutes of Texas of 1925, and has included in the ordinance or resolution accepting the benefits of said Title, a declaration or finding to the effect that such city, town, or village contains one or more manufacturing establishments within its corporate limits, and has filed a copy of such resolution or ordinance for record in the office of the County Clerk of the county within which such city, town, or village is situated, the action of such city, town, or village is hereby authorized, ratified, confirmed, and validated, and each such city, town, or village is declared to have all of the powers of cities and towns, as provided in said Title, and all corporate actions taken by such cities, towns, and villages after such attempted compliance with said Article, and which could have been

lawfully performed by a city or town having the powers under said Title, are hereby authorized, ratified, and confirmed; provided however, that the provisions of this Act shall not be construed as applicable to cities, towns, or villages, wherein any such attempted adoption of such powers is in litigation at the time this Act becomes effective. [Acts 1935, 44th Leg., 2nd C.S., p. 1713, ch. 444, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 961b. Validation of adoption of provisions of title.—In every instance wherein an incorporated city, town, or village in all counties having a population of more than forty-six thousand, one hundred (46,100) and less than forty-six thousand, two hundred (46,200), according to the last preceding Federal Census, has attempted to accept the provisions and benefits of Title 28 of the Revised Civil Statutes of Texas of 1925, and has filed a copy of the resolution or ordinance accepting such Title for record in the office of the County Clerk of the county within which such city, town, or village is situated, the action of such city, town, or village is hereby authorized, ratified, confirmed, and validated; and each such city, town, or village is declared to have all the powers of cities and towns as provided in said Title; and all corporate actions taken by such cities, towns, and villages after the passage of such ordinances or resolution accepting the benefits of said Title, and which could have been lawfully performed by a city or town having the powers under said Title, are hereby authorized, ratified, confirmed, and validated; and all proceedings heretofore had by the governing bodies of all such cities, towns, and villages in the issuance and sale of bonds, to aid in financing any project and/or projects for which a loan or grant has been made or applied for to the United States through the Federal Emergency Administrator of Public Works or any agency, department, or division of the Government of the United States of America, are herein in all things fully validated, confirmed, approved, and legalized; and all such bonds issued thereunder are hereby declared to be the valid and binding obligations of such cities and towns; and all such bonds which have been heretofore authorized but not yet issued or sold shall, when delivered and paid for, constitute valid and binding obligations of such cities and towns. All tax levies made by such governing bodies for the purpose of paying the principal of and interest on such bonds are hereby in all things validated, confirmed, approved and legalized. [Added Acts 1939, 46th Leg., Spec.L., p. 1001, § 1.]

Section 2 of the Act of 1939 provided that the provisions of such Act should not apply to any such proceedings or obligations thereunder where the validity thereof had been contested in any suit or pending litigation.

Art. 961b—1. Town or village under commission form of government having $500,000 taxable property may adopt this title.—Section 1. Any town or village heretofore incorporated under the provisions of Chapter 12 of Title 28 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, and having an assessed valuation for taxable purposes of Five Hundred Thousand ($500,000.00) Dollars or more, according to its latest approved tax rolls, notwithstanding any limitation contained in Article 1163 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, is hereby authorized to adopt the powers of cities and towns in the manner specified in Article 961 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, notwithstanding any limitation contained in said Article as to minimum population or as to the inclusion of manufacturing establishments; and, after having adopted such powers, any such municipality shall be known as a city or town, and shall be vested with all of the rights, powers, privileges, immunities and franchises conferred or imposed on cities or towns by the laws contained in Title 28 of the Revised Civil Statutes of Texas, 1925, and amendments thereto.

Sec. 2. This Act shall be cumulative of all other laws, but, in the event any of its provisions shall conflict with the provisions of any other law, the provisions hereof shall prevail to the extent of such conflict. [Acts 1939, 46th Leg., p. 91.]

Art. 962. [764] [383] [342] General powers.—All the inhabitants of each city, town or village so accepting the provisions of this title shall continue to be a body corporate, with perpetual succession, by the name and style by which such city, town or village was known before such acceptance, and as such they and their successors by that name shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises possessed and enjoyed by the same at the time of said acceptance, and those hereinafter granted and conferred, and shall be subject to all the duties and obligations pertaining to or incumbent on the same as a corporation at the time of said acceptance, and may ordain and establish such acts, laws, regulations and ordinances, not inconsistent with the Constitution and laws of this State, as shall be needful for the government, interest, welfare and good order of said body politic and under the same name shall be known in law, and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatever, may take, hold and purchase, lease, grant and convey such real and personal or mixed property or estate as the purposes of the corporation may require, within or without the limits thereof; and may make, have and use a corporate seal and change and renew the same at pleasure. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 963. [765–6] Not affected by this title.—All property, real, personal or mixed, belonging to any city accepting the provisions of this title, is hereby vested in the corporation created by this title, and the officers of said corporation, in office at the date of its acceptance, shall continue in the same, until superseded in conformity with the provisions of this title. All rights, actions, fines, penalties and forfeitures in suits or otherwise, which have accrued under the laws heretofore in force, shall be vested in and prosecuted by the corporation hereby created. No suit pending shall be affected by the passage and acceptance of this title, but the same shall be prosecuted or defended as the case may be, by the corporation hereby created. [Id.]

Art. 964. [767] [571] [500] Cemetery lots exempt.—The cemetery lots which have, and may hereafter be laid out and sold for said city for private places of burial shall, with their appurtenances, be forever exempt from taxes, executions, attachments or forced sales. [Id.]

Art. 965. [773] [384] [343] City limits.—The bounds and limits of said municipality shall be and remain the same as fixed and defined by the provisions of the act of incorporation, substituted by the provisions of this Title; provided, that said limits of said corporation may be hereafter extended by adding additional territory to the same, whenever the majority of the qualified electors of said territory shall indicate a desire to be included within the limits of said corporation in the manner provided in Article 974 of this Title; or by ordinance of the governing body of said municipality, duly passed and spread upon the minutes thereof, describing by metes and bounds such additional territory added thereto, provided that this provision shall apply only to those cities where the additional territory so added is owned

by such municipalities. [Acts 1875, p. 113; G.L. vol. 8, p. 485; Acts 1935, 44th Leg., p. 237, ch. 96, § 1.]

Art. 966. [774] [385] May incorporate.—Any city or town containing six hundred inhabitants or over may be incorporated as such, with all the powers, rights, immunities and privileges mentioned and described in the provisions of this title relating to cities and towns, in the manner described in Chapter 11 of this title for incorporating towns and villages, except that the application to become incorporated shall be signed by at least fifty electors, residents of such city or town, and except that when an election is held according to the provisions of such chapter the words "towns and villages" shall be construed to mean "cities and towns." When the entry by the county judge, provided in article 1139 is made with reference to a city or town of six hundred inhabitants and over, such city or town shall be vested with all the rights and privileges of such cities conferred by this title. [Acts 1881, p. 63; G. L. vol. 9, p. 155; Acts 1881, p. 115; G. L. vol. 9, p. 207; Acts 1915, p. 64.]

Art. 966a. Validation of incorporation of cities and towns of 5,000 or less.—Section 1. All cities and towns in Texas of five thousand (5,000) inhabitants or less heretofore incorporated and/or attempted in good faith to be incorporated under the General Laws of Texas, whether under the aldermanic form of government or under the commission form of government, and which have in good faith functioned as incorporated cities and towns since the date of such incorporation or attempted incorporation, are hereby in all respects validated, as of the date of such incorporation or attempted incorporation; and the incorporation of such cities and towns shall not be held invalid on account of irregularities in the petition for election, order for election, notice of election, returns of election, order declaring result of election, or on account of the incorporation election having been ordered and/or the returns thereof canvassed and result declared by a person exercising the functions and/or performing the duties of County Judge without lawful authority so to do, or on account of other irregularities in the incorporation proceedings.

Sec. 1-a. Provided however, that this Act shall have no effect upon any suit or suits pending at this time in the Courts of this State which involve such cities and towns, nor upon any suit involving such cities and towns which may be filed within ninety (90) days from the effective date of this Act.

Sec. 2. All governmental proceedings performed in good faith by the governing bodies of such cities and towns since their incorporation or attempted incorporation, respectively, are hereby in all respects validated as of the respective dates of such proceedings, and such governmental proceedings shall be effective the same as if such cities and towns had been regularly incorporated in the first instance. [Acts 1941, 47th Leg., p. 33, ch. 19.]

Art. 967. Cities of the Republic.—Any city, town or village, within this State, incorporated under any law, general or special, of the Republic of Texas, regardless of the extent of the boundaries thereof, or the number of its population, may accept the provisions of Chapters 1 to 10, both inclusive, of this title, in lieu of any existing charter created by any such law of the Republic of Texas, by a two-thirds vote of the council of such city, town or village; which action by the council shall be held at a regular meeting thereof and entered upon the journal of their proceedings, and a copy of the same signed by the mayor and attested by the clerk or secretary under the corporate seal, filed and recorded in the office of the clerk of the county court of the county in which such city, town or village is situated, and the provisions of said Chapters 1 to 10 both inclusive, of this title shall be in force, and all acts theretofore passed incorporating said city, town or village, which may be in force by virtue of any existing charter shall be repealed from and after the filing of said copy of their proceedings as aforesaid, when such city, town or village is so incorporated as herein provided, the same shall be known as a city or town, subject to the provisions of this title, vested with all the rights, powers, privileges, immunities and franchises therein conferred. [Acts 1917, p. 85.]

Art. 968. Effect of acceptance.—All the inhabitants of each city, town or village so accepting the provisions of chapters 1 to 10 of this title, shall continue to be a body corporate, with perpetual succession, by the name and style by which such city, town or village was known before the acceptance of the provisions of such law, and as such they and their successors by that name shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises possessed and enjoyed by the same at the time of the acceptance of the provisions of such title and those herein granted and conferred, and shall be subject to all the duties and obligations pertaining to or incumbent on the same as a corporation at the time of the acceptance of the provisions of such title, and may ordain and establish such acts, laws, regulations and ordinances not inconsistent with the Constitution and laws of this State, as shall be needful for the government, interest, welfare and good order of said body politic, and, under the same name, shall be known in law, and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatever, may take, hold and purchase, lease, grant and convey such real and personal or mixed property or estate as the purposes of the corporation may require, within or without the limits thereof; and may make, have and use a corporate seal and change and renew the same at pleasure. [Id.]

Art. 969. Property rights.—All property, real, personal or mixed, belonging to any such city, town, or village so incorporated under and by virtue of any law of the Republic of Texas, general or special, accepting said title, is hereby vested in the corporation thus created, and the council of such city, town or village is hereby authorized and empowered to sell and alienate such property and to appropriate the proceeds of such sale to the acquisition or construction, maintenance or operation of a water, sewer, gas and electric light and power system, or any one or more of such systems, within or without the limits of such city or town, or for any other public improvement within said city or town, as the council thereof may determine. [Id.]

Art. 969a. Lease of islands or submerged lands by certain cities.—Section 1. Any city of more than forty-three thousand (43,000) inhabitants according to the last preceding United States Census located in a county in this State of less than one hundred thousand (100,000) inhabitants according to such Census to which city the Republic of Texas, or the State of Texas has heretofore granted any island, flats or other submerged lands be, and is hereby granted power and authority to execute leases for periods of time not to exceed ninety-nine (99) years for portions of such island, flats or other submerged lands as may from time to time be determined by the governing body of such city.

Section 2. Every such lease shall specify the purposes for which the same is made and provide a maximum period of five (5) years within which the lessee shall exercise the rights and privileges granted. [Acts 1929, 41st Leg., p. 197, ch. 82; Acts 1941, 47th Leg., p. 1353, ch. 616, § 1.]

Art. 969b. Property outside corporate limits, acquiring for certain purposes; cities and towns in counties over 350,000.

Application; purposes of acquisition; procedure

Section 1. Any incorporated city or town in this State incorporated under general or special law or authorized to have or having a Charter under the provisions of the Constitution of Texas or the Statutes and being situated in a county, which has a population of more than three hundred and fifty thousand (350,000) inhabitants according to the Federal Census next preceding the exercise of the power hereby granted shall have and is hereby granted the power separately or jointly with any other city, town, cities or towns, in the same county, or jointly with any other city, town, cities or towns and the county, within which such city or town is situated, to receive and acquire through gift or dedication and to acquire by purchase without condemnation or by condemnation, any property in this State located inside or outside of the corporate limits of such city or town, for the following purposes, which are declared to be public purposes: parks, hospitals, the extension, improvement and enlargement of its water system, including riparian rights, water supply reservoirs, standpipes, watersheds, dams, the laying, building, maintenance and construction of water mains and the laying, erection, establishment or maintenance of any necessary appurtenances or facilities which will furnish to the inhabitants of the city an abundant supply of wholesome water; for sewage plants and systems; rights of way for water and sewer lines; play grounds, airports, and landing fields, incinerators, garbage disposal plants, streets, boulevards and alleys or other public ways, and any right of way needed in connection with any property used for any purpose hereinabove named, and to exercise Police Power within the territory so acquired.

The procedure to be followed in condemnation proceeding hereunder and authorized herein shall be in accordance with the provisions of the State law with reference to eminent domain. The provisions of Title 52 of the Revised Civil Statutes of Texas (1925) shall apply to such proceedings, or such proceedings may be under any other State law now in existence or that hereafter may be passed governing and relating to the condemnation of land for public purposes by a city.

Maintenance, improvement and operation of property

Sec. 2. Such city or town and such city, town, cities, towns and counties are hereby empowered to maintain, improve and operate the property so acquired and all improvements thereon and to sell or lease all or any part of the property and improvements so acquired and shall have full and ample power to jointly manage, control and operate such property so owned by two or more such political subdivisions, by entering into any contracts with each other on terms mutually agreeable.

Negotiable warrants and bonds of city or county; taxes

Sec. 3. For the purpose of condemning or purchasing, either or both, lands to be used and maintained as provided in Section 1 hereof, and improving and equipping the same for such use, the governing body of any city or the Commissioners Court of any county, falling within the terms of such Section, may issue negotiable warrants and bonds of the city or of the county, as the case may be, and levy taxes to provide for the interest and sinking funds of any such warrants and bonds so issued, the authority hereby given for the issuance of such warrants and bonds and levy and collection of such taxes to be exercised in accordance with the provisions of the Revised Civil Statutes of Texas of 1925 with the amendments thereto.

Improvement and maintenance

Sec. 4. The political subdivision or subdivisions acquiring property under this Act is and are hereby expressly authorized and empowered to improve, maintain and conduct the same for the purposes hereby authorized and to make and provide thereon all necessary or fit improvements and facilities and to fix such reasonable charges for the use thereof as the governing body or bodies or governing bodies of the city, town, cities or towns acquiring property or making improvements under the provisions of this Act shall determine by mutual agreement and are granted ample Police Power to make and enforce rules and regulations governing the use thereof as the interested governing bodies shall determine by ordinance.

Special tax

Sec. 5. In addition to and exclusive of any taxes which may be levied for the interest and sinking fund of any bonds issued under the authority of this Act, the governing body of any such city or town and the Commissioners Court of any county, falling within the terms hereof, may and is hereby empowered to levy and collect a special tax for the purpose of improving, operating, maintaining and conducting any property which such city or county may acquire under the provisions of this Act, and to provide all suitable structures, and facilities therein. Provided that nothing in this Act shall be construed as authorizing any city or county to exceed the limits of indebtedness placed upon it under the Constitution.

Contracts; expenditure of public funds

Sec. 6. Any city or town acquiring any property under the authority of the foregoing section shall also be authorized to make any contract and to expend its public funds in the joint or several operation and maintenance of any of the municipal functions authorized by this Act.

Act as cumulative

Sec. 7. This Act shall be deemed to be cumulative of all other laws and Charter Provisions relating to the same subject.

Partial invalidity

Sec. 8. In case any section, clause, sentence, paragraph, provision or part of this Act shall for any reason be adjudged by any Court of competent or final jurisdiction to be invalid such judgment shall not affect, impair or invalidate the remainder of this Act but shall be confined in its operation to the section, clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered. [Acts 1943, 48th Leg., p. 564, ch. 335.]

Art. 969c. Cemeteries.

City or town as trustee

Section 1. Any incorporated or chartered city or town within the State of Texas, owning, operating, or having control of any cemetery or cemetery property, shall have the power and authority to act as a permanent trustee for the perpetual care and upkeep of the lots and graves in such burial grounds. Any city or town desiring to act as such trustee may do so by the passage of an ordinance or resolution, signifying its willingness and intention to act as such trustee, by the majority of its governing board, council, or aldermen; and upon the passage of said ordinance or resolution and the acceptance of such trust, as herein provided for, the same shall become perpetual.

Rules and regulations; deposit of funds required; certificate

Sec. 2. Said cities and towns shall have the right, power, and authority to make reasonable rules and

regulations as such trustee, to receive gifts, grants, and donations from any source, and to also fix the amounts necessary for the permanent care and upkeep of individual graves or family lots. Any person desiring to have a city or town, now acting or which may hereafter desire to act as such trustee for the permanent care and upkeep of such graves and burial lots, to act as trustee for him or those deceased persons in whom he has an interest or to whom he may feel attached, shall have the right to deposit such amount or funds as may be required by the said city or town for this purpose; and the acceptance by the said city or town of the funds required for such purpose shall constitute a permanent and perpetual trust fund for the burial lot or grave or graves so designated. Upon the acceptance by said city or town of such trust, its Secretary, Clerk or Mayor shall issue a certificate to the person or persons advancing such funds or money, which said certificate shall recite the purpose, the amount advanced and by whom, and the location, as nearly as possible, of the lot, grave or burial place, and such further information and designation as said city or town may deem proper.

Record book

Sec. 3. Any city or town acting as such trustee shall keep a permanent and well-bound record book in which shall be kept in alphabetical order the names of all persons advancing funds, the amount advanced, the purpose for which such advancement was made, names and locations, in so far as possible, of lots and graves, the condition and status of the trust imposed, and such further information as said city or town may deem proper.

Investment of funds

Sec. 4. Said cities and towns shall have the right, power, and authority to invest and reinvest all funds advanced to it for the purposes herein set forth in interest-bearing bonds or securities of a municipality, state, or the federal government. At all times the interest, revenue, or other accrual or increase of the funds advanced for specific lots, graves, or burial places, shall be first used for the maintenance, care, and upkeep, in a first class condition, of the particular lot, graves, or burial place for which the advancement and donation was originally made. However, in the event of the accrual of a reasonable excess of revenue from such specific fund and the accumulation of a greater amount than is necessary for the faithful accomplishment of the trust and purpose herein provided for, such excess may, in the discretion of such trustee, be used to beautify the whole cemetery or burial grounds generally; but at no time shall any part of the original or principal amount first advanced and donated for the care, upkeep, and maintenance of specific lots, graves, and burial places, ever be used by such trustee. This original amount or fund shall forever remain and be kept intact as a principal trust fund.

Certificates

Sec. 5. All certificates issued by such city or town shall be issued in the name of the said city or town to the trustee or person who makes the advancement of funds or money as herein provided for; and such certificate holder shall have the right, upon the payment of the proper cost or recording fee, to have such certificate recorded in the Deed Records of the county in which such cemetery is located; and it shall be the duty of all county clerks in the State of Texas to file, index, and record such certificates in the deed records of the county in which such cemetery is situated.

Care for graves by individuals

Sec. 6. None of the rights, powers, and duties herein provided for shall deprive any person having an interest in a grave or burial lot, or kinship within the third degree by affinity or consanguinity to those there interred, from beautifying or caring for the same individually or at his own expense, under such reasonable rules and regulations as said city or town may provide.

Successor on failure of trustee to act

Sec. 7. In the event that any city or town should, after having engaged upon and accepted the trust herein provided for, renounce such trust, or fail to refuse to act further as such trustee, as herein provided for, then the district judge or highest trial judge of the county in which such cemetery is located shall appoint a suitable successor or trustees, whenever the occasion demands or a vacancy occurs, to act in lieu of said city or town and to carry out and faithfully execute the trust herein provided for.

Budget; tax

Sec. 7a. Such city or town may include in its annual budget such sum as may be deemed necessary for maintenance and upkeep of such cemetery and shall have power or authority to assess and collect an ad valorem tax upon all the property within such city or town not to exceed Five (5) Cents on the One Hundred Dollars ($100) valuation of all the property so assessed for maintenance and upkeep of such cemetery, regardless whether such cemetery is located within or without the boundary of corporate limits of such city or town.

Act as cumulative; partial invalidity

Sec. 8. This Act shall be cumulative of all existing laws; but its intention is that the trust herein provided for shall not fail for any reason and, if any section or part hereof is invalid, then the remainder shall not in any way be affected or held to be invalid. [Acts 1945, 49th Leg., p. 194, ch. 148.]

Art. 970. To adjust boundaries.—Whenever there shall exist within the boundaries of any such city, town or village accepting said provisions, territory to the extent of at least ten acres contiguous, uninhabitated [uninhabited] and adjoining the lines of such city or town, the mayor and council of such city or town shall, within one year from the filing in the office of the county clerk of the action of the council accepting the provisions of this law, or as soon thereafter as practicable, and before they shall levy any taxes for said city or town by ordinance duly passed, discontinue said territory as a part of said city or town and shall redefine the bounds and limits of such city or town so that they shall conform as nearly as practicable to the requirements of article 971, and when said ordinance has been duly passed, the clerk shall enter an order to that effect on the minutes or records of the city or town council; and from and after the entry of such order, said territory shall cease to be a part of said city or town; provided that should there be situated within the said territory, so discontinued, any property of any description belonging to said city or town, the title to said property, so situated, shall remain in such city or town and may be sold, alienated and disposed of by such city or town, the same as if it were situated within the bounds and limits of such city or town. [Acts 1917, p. 85.]

Art. 971. [777] Territorial boundaries.—No city or town in this State shall be hereafter incorporated under the provisions of the general charter for cities and towns contained in this title with a superficial area of more than two square miles, when such town or city has less than two thousand inhabitants, nor more than four square miles when such city or town has more than two thousand and less than five thousand inhabitants, nor more than nine square miles, when such city or town has more than five and less than ten thousand inhabitants. The mayor and board of aldermen, immediately after they qualify as such officers, shall pass an ordinance causing an actual sur-

vey of the boundaries of such town to be made according to the boundaries designated in the petition for incorporation and the field notes thereof recorded in the minute book of such town or city, and also in the record books of deeds in the county in which such city or town is situated. [Acts 1895, p. 17; G. L. vol. 10, p. 747.]

Art. 972. [778] Territory relinquished.—The mayor and the board of aldermen of any town or city in this State heretofore incorporated under Title 18 of the Revised Civil Statutes of 1895 of this State, and whose boundaries have been established so as to include more territory than is specified in the preceding article, shall immediately cause a resurvey of the boundaries of such city or town to be made, so as not to include more territory than is provided for in the preceding article; such resurvey to be made and the field notes thereof to be recorded as provided in said article. [Id.]

Art. 973. [780] Discontinuing territory.—Whenever there exists within the corporate limits of any city or town organized under the general laws within this State territory to the extent of at least ten acres, contiguous, uninhabited and adjoining the lines of any such city or town, the mayor and city or town council may by ordinance duly passed, discontinue said territory as a part of said city or town; and when said ordinance has been duly passed, the mayor shall enter an order to that effect on the minutes or records of the city or town council; and, from and after the entry of such order, said territory shall cease to be a part of said city or town. [Acts 1895, p. 178; G. L. vol. 10, p. 909.]

Art. 974. [781] [574] Adjoining inhabitants.—When a majority of the inhabitants qualified to vote for members of the State legislature of any territory adjoining the limits of any city incorporated under, or accepting the provisions of, this title, to the extent of one-half mile in width, shall vote in favor of becoming a part of said city, any three of them may make affidavit to the fact to be filed before the mayor, who shall certify the same to the city council of said city. The said city council may, by ordinance, receive them as part of said city; from thenceforth the territory so received shall be a part of said city; and the inhabitants thereof shall be entitled to all the rights and privileges of other citizens, and bound by the acts and ordinances made in conformity thereto and passed in pursuance of this title. [Acts 1875, p. 156; G. L. vol. 8, p. 528.]

Art. 974a. Platting and recording subdivisions or additions.

Plats required

Sec. 1. Hereafter, every owner of any tract of land situated within the corporate limits or within five miles of the corporate limits of any city in the State of Texas which contains twenty-five thousand inhabitants or more, according to the Federal Census of 1920, or any subsequent Federal Census, who may hereafter subdivide the same in two or more parts for the purpose of laying out any subdivision of any such town, or city, or any addition thereto, or any part thereof, or suburban lots or building lots, or any lots, and streets, alleys, parks or other portions intended for public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be made which shall accurately describe all of the subdivision of such tract or parcels of land, giving dimensions thereof, and the dimensions of all the streets, alleys, squares, parks, or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.

Acknowledgment of plats

Sec. 2. That every such plat shall be duly acknowledged by owners or proprietors of the land, or by some duly authorized agent of said owners or proprietors, in the manner required for the acknowledgment of deeds; and the said plat, subject to the provisions contained in this Act,[1] shall be filed for record and be recorded in the office of the County Clerk of the County in which the land lies.

Approval of plat or plan by Planning Commission or governing body; record

Sec. 3. That it shall be unlawful for the County Clerk of any county in which such land lies to receive or record any such plan, plat or replat, unless and until the same shall have been approved by the City Planning Commission of any city affected by this Act,[1] if said city have a City Planning Commission and if it have no City Planning Commission, unless and until the said plan, plat, or replat shall have been approved by the governing body of such city. If such land lies outside of and within five miles of more than one city affected by this Act, then the requisite approval shall be by the City Planning Commission or Governing Body, as the case may be, of such of said cities having the largest population. Any person desiring to have a plan, plat or replat approved as herein provided, shall apply therefor to and file a copy with the Commission or governing body herein authorized to approve same, which shall act upon same within thirty days from the filing date. If said plat be not disapproved within thirty days from said filing date, it shall be deemed to have been approved and a certificate showing said filing date and the failure to take action thereon within thirty days from said filing date, shall on demand be issued by the City Planning Commission or Governing Body, as the case may be, of such city, and said certificate shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. If the plan, plat, or replat is approved, such Commission or governing body shall indicate such finding by certificate endorsed thereon, signed by the Chairman or presiding officer of said Commission or governing body and attested by its Secretary, or signed by a majority of the members of said Commission or Governing Body. Such Commission or governing body shall keep a record of such applications and the action taken thereupon, and upon demand of the owners of any land affected, shall certify its reasons for the action taken in the matter.

Indorsement of approval of plat by Planning Commission or governing body

Sec. 4. If such plan or plat, or replat shall conform to the general plan of said city and its streets, alleys, parks, playgrounds and public utility facilities, including those which have been or may be laid out, and to the general plan for the extension of such city and of its roads, streets and public highways within said city and within five miles of the corporate limits thereof, regard being had for access to and extension of sewer and water mains and the instrumentalities of public utilities, and if same shall conform to such general rules and regulations, if any, governing plats and subdivisions of land falling within its jurisdiction as the governing body of such city may adopt and promulgate to promote the health, safety, morals or general welfare of the community, and the safe, orderly and healthful development of said community (which general rules and regulations for said purposes such cities are hereby authorized to adopt and promulgate after public hearing held thereon), then it shall be the duty of said City Planning Commission or of the governing body of such city, as the case may be, to endorse approval upon the plan, plat or replat submitted to it.

Vacation of plat or plan; procedure

Sec. 5. That any such plan, plat or replat may be vacated by the proprietors of the land covered thereby at any time before the sale of any lot therein by a written instrument declaring the same to be vacated, duly executed, acknowledged and recorded in the same office as the plat to be vacated, provided the approval of the City Planning Commission or governing body of such city, as the case may be, shall have been obtained as above provided, and the execution and recordation of such shall operate to destroy the force and effect of the recording of the plan, plat or replat so vacated. In cases where lots have been sold, the plan, plat or replat, or any part thereof, may be vacated upon the application of all the owners of lots in said plat and with the approval, as above provided, of the City Planning Commission or governing body of said city, as the case may be. The County Clerk of the county in whose office the plan or plat thus vacated has been recorded shall write in plain, legible letters across the plan or plat so vacated the word "Vacated," and also make a reference on the same to the volume and page in which said instrument of vacation is recorded.

Improvement to effect dedication

Sec. 6. The approval of any such plan, plat, or replat shall not be deemed an acceptance of the proposed dedication and shall not impose any duty upon such city concerning the maintenance or improvement of any such dedicated parts until the proper authorities of said city shall have made actual appropriation of the same by entry, use or improvement.

Penal provision

Sec. 7. see Pen.Code article 427b.

Approval prior to connection of public utilities

Sec. 8. Unless and until any such plan, plat or replat shall have been first approved in the manner and by the authorities provided for in this Act,[1] it shall be unlawful within the area covered by said plan, plat or replat for any city affected by this Act, or any officials of such city, to serve or connect said land, or any part thereof, or for the use of the owners or purchasers of said land, or any part thereof, with any public utilities such as water, sewers, light, gas, etc., which may be owned, controlled or distributed by such city.

Disapproval

Sec. 9. If any such plan, plat or replat is disapproved by the City Planning Commission or governing body of such city, as the case may be, such disapproval shall be deemed a refusal by the city of the offered dedication shown thereon.

Adoption in cities of less than 25,000

Sec. 10. The benefits of the provisions of this law shall apply to, and the terms thereof extend to, any city in the State of Texas now or hereafter having less than twenty-five thousand inhabitants, as above defined, if and when the governing body thereof shall submit the question of the adoption or rejection hereof to a vote of the qualified voters of said city, either at a general election in said city or at a special election called for the purpose by said city, and if and when same shall have been adopted at such election by a majority vote of the qualified voters of said city voting at such election, said election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city, but said governing body is hereby empowered to order said election and to prescribe the time and manner of holding the same. Said body shall canvass and determine the result of said election, and if a majority of the voters voting upon the question of the adoption of said law at such election shall vote to adopt the same, the result of said election shall by said governing body be entered upon their minutes, and thereupon all terms hereof shall be applicable to and govern such city adopting the same. A certified copy of said minutes shall be prima facie evidence of the result of such election and the regularity thereof, and the facts therein recited shall in all courts be accepted as true. [Acts 1927, 40th Leg., p. 342, ch. 231.]

[1] This article and Pen.Code, article 427b.

Section 11 of this Act provides, that if any provision or part of the Act is held invalid such holding shall not affect the remaining provisions, and section 12 repeals all conflicting laws or parts of laws to the extent of such conflict.

The extraterritorial provisions of this article, providing for approval of maps or plats of subdivisions by authorities of cities and towns of 25,000 inhabitants or more if land is situated within corporate limits of such municipalities or within five miles thereof, were repealed by 1931 amendment of article 6626 requiring approval of such map or plat by commissioners' court before recording. Trawalter v. Schaefer, 142 T. 521, 179 S.W.2d 765.

Art. 974b. Validating elections in cities of 3,000 to 6,000 for extension of corporate limits.

Cities affected

Sec. 1. This Act shall affect all incorporated cities in the State of Texas having a population of not less than three thousand (3,000) and not more than six thousand (6,000) inhabitants according to the last preceding Federal Census.

Elections validated

Sec. 2. All elections, election orders, election proceedings and city ordinances annexing adjacent territory to, or extending and prescribing the corporate limits of, any incorporated city having a population of not less than three thousand (3,000) and not more than six thousand (6,000) inhabitants, as shown by the last preceding Federal Census, shall be and the same are hereby validated and confirmed.

Ordinances validated

Sec. 3. The city ordinances of all cities in the class described in the foregoing section fixing and prescribing the corporate limits extended by the annexation or attempted annexation of adjacent territory are hereby validated and confirmed.

Extension of limits validated

Sec. 4. In every instance wherein a city coming under the provision of this Act has attempted to extend its corporate limits under statutes providing for the annexation of adjoining territory, all actions, resolutions, elections, ordinances, proceedings and contracts held, made or passed, in reference thereto, or pursuant thereto, are hereby confirmed, ratified and validated, irrespective of any irregularities, and in like manner as if said annexation had been done under legislative authority previously given. [Acts 1934, 43rd Leg., 2nd C.S., p. 73, ch. 25.]

Art. 974c. Validating annexation of adjacent territory.—That all elections, election orders, election proceedings, affidavits and city ordinances heretofore had, subsequent to August 24, 1935, annexing adjacent territory or extending and prescribing the corporate limits of any incorporated city, incorporated and functioning under the General Laws of the State of Texas under the Commission Form of Government are hereby in all things fully validated, confirmed, approved, and legalized irrespective of any irregularities or omissions in such ordinances or in any petitions, elections, affidavits, or other proceedings purporting to authorize the passage of such ordinances. [Acts 1935, 44th Leg., 2nd C.S., p. 1708, ch. 440, § 1.]

Art. 974c—1. Cities and towns of 5000 or less; validation of annexation of territory.—Section 1. This Act shall affect and apply to all cities and towns incorporated under the General Laws of this State and having a population of five thousand (5,000) inhabitants or less, according to the last preceding Federal Census.

Sec. 2. All elections, election orders, election proceedings, petitions and ordinances annexing territory to or extending and prescribing the corporate limits of any incorporated city or town having a population of five thousand (5,000) inhabitants or less according to the last preceding Federal Census, shall be and the same are hereby validated and confirmed.

Sec. 3. The ordinances of all cities and towns in the class described in the foregoing Section fixing and prescribing the corporate limits extended by the annexation or attempted annexation of adjacent territory are hereby validated and confirmed.

Sec. 4. In every instance wherein a city or town coming under the provisions of this Act has attempted to extend its corporate limits under Statutes providing for the annexation of adjoining territory, all actions, resolutions, elections, ordinances, proceedings and contracts held, made or passed, in reference thereto, or pursuant thereto, are hereby confirmed, ratified and validated, irrespective of any irregularities, as fully and completely as if said actions had been taken and happened under legislative authority previously given.

Sec. 5. The areas and boundaries of all cities and towns affected by this Act as the same have been extended or attempted to be extended by annexation or any other action are hereby in all things ratified. [Acts 1943, 48th Leg., p. 700, ch. 389.]

Section 6 of the Act of 1943 provided that the Act should not affect the validity of the annexation to or extension of the boundaries of any city or town involved in litigation.

Art. 974d. Validation of incorporation of cities of 600 to 2000 inhabitants incorporated since January 1, 1935.—All cities and towns in this State having more than six hundred (600) and less than two thousand (2,000) inhabitants which have heretofore incorporated under the General Laws of Texas, Title 28, Revised Civil Statutes of Texas, 1925,[1] and which are or may be invalid by reason of having included within their corporate limits lands not used for strictly town purposes, but which cities and towns do not include more than two (2) square miles of territory, are hereby declared to be duly and legally incorporated, and the boundaries of such cities as set forth in their incorporation proceedings are hereby expressly authorized and validated; that all actions, proceedings, and elections done or had in connection with the incorporation or attempted incorporation of such cities and towns are in all things validated; and all subsequent acts of such cities and towns, done or performed as a city or town, are hereby validated and declared as binding as if said cities had been duly and legally incorporated. The provisions of this Act shall apply only to cities and towns incorporated since January 1, 1935. [Acts 1937, 45th Leg., p. 569, ch. 280, § 1.]

[1] Articles 961–1269j.

Art. 974d—1. Validation of incorporation of cities of 600 to 2000 inhabitants.—Section 1. All cities and towns in Texas of more than six hundred (600) and less than two thousand (2,000) inhabitants, heretofore incorporated and/or attempted to be incorporated under the General Laws of Texas, Title 28, Revised Civil Statutes of Texas, 1925,[1] whether under the aldermanic form of government or under the commission form of government, and which have functioned as incorporated cities and towns since the date of such incorporation, are hereby in all respects validated, as of the date of such incorporation or attempted incorporation; and the incorporation of such cities and towns shall not be held invalid on account of irregularities in the petition for election, order for election, notice of election, returns of election, order declaring result of election, or other incorporation proceedings.

Sec. 2. All governmental proceedings performed by the governing bodies of such cities and towns since their incorporation or attempted incorporation, respectively, are hereby in all respects validated as of the respective dates of such proceedings, and such governmental proceedings shall be effective the same as if such cities and towns had been regularly incorporated in the first instance.

Sec. 3. The provisions of this bill shall affect no city or town now in litigation. [Acts 1941, 47th Leg., p. 232, ch. 162.]

[1] Articles 961–1269j.

Art. 974e. Procedure for annexation of unoccupied lands to cities or towns of 4,190 to 4,250 population.—The owner or owners of any land and/or territory, which is vacant and without residents, contiguous and adjacent to any city in this State having a population of not less than four thousand one hundred and ninety (4,190) inhabitants, and not more than four thousand two hundred and fifty (4,250) inhabitants, according to the last preceding Federal Census, may by petition in writing to the governing body of such city request the annexation of such contiguous and adjacent land and territory, describing the same by metes and bounds. The governing body of such city or town shall thereafter, and not less than five and not more than thirty days after the filing of such petition, hear such petition and the arguments for and against the same, and grant or refuse such petition as such governing body may see fit. If such governing body shall grant such petition, the said governing body by proper ordinance may receive and annex such territory as a part of said city. Thereafter the territory so received and annexed shall become a part of said city, and the said land and any future inhabitants thereof shall be entitled to all the rights and privileges of other citizens of such city; and shall be bound by the acts and ordinances of such city.

Sec. 2. No such petition for annexation of such contiguous and adjacent territory shall be received and acted upon by such governing body of such city unless and until each and every person and corporation having any interest in such land and territory sought to be annexed, shall have executed the petition hereinabove mentioned and duly acknowledged same as provided for acknowledgments for deeds. If such petition shall be granted and the ordinance hereinabove mentioned adopted by such governing body, a certified copy of such ordinance together with a copy or a duplicate of such petition duly acknowledged as required for deeds by each and every person or corporation having an interest in such land, shall be filed in the office of the county clerk of the county in which such city is situated. [Acts 1937, 45th Leg., p. 1052, ch. 447, § 1.]

Art. 974e—1. Procedure for annexation of unoccupied lands to cities or towns of 1251 to 1259 population.—Section 1. The owner or owners of any land and/or territory, or the Board of Trustees of any school or schools which occupy such territory, which is vacant and without residents, contiguous and adjacent to any city in this State having a population of not less than twelve hundred fifty-one (1251) and not more than twelve hundred fifty-nine (1259) inhabitants, according to the last preceding Federal Census; may by petition in writing to the governing body of such city request the annexation of such contiguous and adjacent land and territory, describing the same by metes and bounds. The governing body of such city or town shall thereafter, and not less than five (5) and not more than thirty (30) days after the filing of such petition, hear such petition and the arguments for and against the same, and grant or refuse such petition as such governing body may see fit. If such governing body shall grant such petition, the said governing body by proper ordinance may receive and annex such territory as a part of said city. Thereafter the territory so received and annexed

shall become a part of said city, and the said land and any future inhabitants thereof shall be entitled to all the rights and privileges of other citizens of such city; and shall be bound by the acts and ordinances of such city.

Sec. 2. No such petition for annexation of such contiguous and adjacent territory shall be received and acted upon by such governing body of such city unless and until each and every person and corporation having any interest in such land and territory sought to be annexed, shall have executed the petition hereinabove mentioned and duly acknowledged same as provided for acknowledgments of deeds. If such petition shall be granted and the ordinance hereinabove mentioned adopted by such governing body, a certified copy of such ordinance together with a copy or a duplicate of such petition duly acknowledged as required for deeds by each and every person or corporation having an interest in such land, shall be filed in the office of the county clerk of the county in which such city is situated. [Acts 1939, 46th Leg., Spec.L., p. 519.]

Art. 974e—2. Procedure for annexation of unoccupied lands to cities of 20,520 to 20,540 population.—Section 1. The owner or owners of any land and/or territory, or the Board of Directors of any University or College, which occupies such territory, which is vacant and without residents contiguous and adjacent to any city in this State having a population of not less than twenty thousand five hundred and twenty (20,520) nor more than twenty thousand five hundred and forty (20,540) inhabitants, according to the last preceding Federal Census, may by petition in writing to the governing body of such city request the annexation of such contiguous and adjacent land and territory, describing the same by metes and bounds. The governing body of such city or town shall thereafter, and not less than five (5) and not more than thirty (30) days after the filing of such petition, hear such petition and the arguments for and against the same, and grant or refuse such petition as such governing body may see fit. If such governing body shall grant such petition, the said governing body by proper ordinance may receive and annex such territory as a part of said city. Thereafter the territory so received and annexed shall become a part of said city, and the said land and any future inhabitants thereof shall be entitled to all the rights and privileges of other citizens of such city; and shall be bound by the acts and ordinance of such city.

Sec. 2. No such petition for annexation of such contiguous and adjacent territory shall be received and acted upon by such governing body of such city unless and until each and every person and corporation having any interest in such land and territory sought to be annexed, shall have executed the petition hereinabove mentioned and duly acknowledged same as provided for acknowledgments of deeds. If such petition shall be granted and the ordinance hereinabove mentioned adopted by such governing body, a certified copy of such ordinance together with a copy or a duplicate of such petition duly acknowledged as required for deeds by each and every person or corporation having an interest in such land, shall be filed in the office of the county clerk of the county in which such city is situated. [Acts 1939, 46th Leg., Spec.L., p. 520.]

Art. 974e—3. Procedure for annexation of unoccupied lands to cities of 14,100 to 14,950 population.—Section 1. The owner or owners of any land or territory, which is vacant and without residents, contiguous and adjacent to any city in this State having a population of not less than fourteen thousand, one hundred (14,100) inhabitants and not more than fourteen thousand, nine hundred and fifty (14,950) inhabitants, according to the Federal Census last preceding the exercise of the power herein granted, may by petition in writing to the governing body of such city request the annexation of such contiguous and adjacent land and territory, describing the same by metes and bounds. The governing body of such city or town shall thereafter, not less than five (5) and not more than thirty (30) days after the filing of such petition, hear such petition and the arguments for and against the same and grant or refuse such petition as such governing body may see fit. If such governing body shall grant such petition the said governing body by proper ordinance may receive and annex such territory as a part of said city. Thereafter the territory so received and annexed shall become a part of said city, and the said land and any future inhabitants thereof shall be entitled to all the rights and privileges of other citizens of such city, and shall be bound by the acts and ordinances of such city.

Sec. 2. No such petition for annexation of such contiguous and adjacent territory shall be received and acted upon by such governing body of such city unless and until each and every person and corporation owning each part of such land and territory sought to be annexed shall have executed the petition hereinabove mentioned and duly acknowledged same as provided for acknowledgments for deeds. If such petition shall be granted and the ordinance hereinabove mentioned adopted by such governing body, a certified copy of such ordinance together with a copy or a duplicate of such petition duly acknowledged as required for deeds by the owners of such land shall be filed in the office of the County Clerk of the county in which such city is situated. [Acts 1941, 47th Leg., p. 423, ch. 252.]

Art. 974e—4. Procedure for annexation of unoccupied lands to cities of 1,583 to 1,602 population.—Section 1. The owner or owners of any land and/or territory, which is vacant and without residents, contiguous and adjacent to any city in this State having a population of not less than one thousand, five hundred and eighty-three (1,583) inhabitants and not more than one thousand, six hundred and two (1,602) inhabitants, according to the last preceding Federal Census, may by petition in writing to the governing body of such city request the annexation of such contiguous and adjacent land and territory, describing the same by metes and bounds. The governing body of such city or town shall thereafter, and not less than five (5) and not more than thirty (30) days after the filing of such petition, hear such petition and the arguments for and against the same, and grant or refuse such petition as such governing body may see fit. If such governing body shall grant such petition, the said governing body by proper ordinance may receive and annex such territory as a part of said city. Thereafter the territory so received and annexed shall become a part of said city, and the said land and any future inhabitants thereof shall be entitled to all the rights and privileges of other citizens of such city; and shall be bound by the acts and ordinances of such city.

Sec. 2. No such petition for annexation of such contiguous and adjacent territory shall be received and acted upon by such governing body of such city unless and until each and every owner of such land and territory sought to be annexed shall have executed the petition hereinabove mentioned and duly acknowledged same as provided for acknowledgments for deeds. If such petition shall be granted and the ordinance hereinabove mentioned adopted by such governing body, a certified copy of such ordinance together with a copy or a duplicate of such petition duly acknowledged as required for deeds by each and every owner of such land, shall be filed in the office of the County Clerk of the county in which

such city is situated. [Acts 1941, 47th Leg., p. 432, ch. 264.]

Art. 974e—5. Procedure for annexation of unoccupied lands to cities or towns of 900 to 920 population.—Section 1. The owner or owners of any land and/or territory, or the Board of Trustees of any public school, which occupies such territory, which is vacant and without residents contiguous and adjacent to any city in this State having a population of not less than nine hundred (900) nor more than nine hundred and twenty (920) inhabitants, according to the last preceding Federal Census, may by petition in writing to the governing body of such city request the annexation of such contiguous and adjacent land and territory, describing the same by metes and bounds. The governing body of such city or town shall thereafter, and not less than five (5) and not more than thirty (30) days after the filing of such petition, hear such petition and the arguments for and against the same, and grant or refuse such petition as such governing body may see fit. If such governing body shall grant such petition, the said governing body by proper ordinance may receive and annex such territory as a part of said city. Thereafter the territory so received and annexed shall become a part of said city, and the said land and any future inhabitants thereof shall be entitled to all the rights and privileges of other citizens of such city; and shall be bound by the acts and ordinance of such city.

Sec. 2. No such petition for annexation of such contiguous and adjacent territory shall be received and acted upon by such governing body of such city unless and until each and every person and corporation having any interest in such land and territory sought to be annexed, shall have executed the petition hereinabove mentioned and duly acknowledged same as provided for acknowledgments of deeds. If such petition shall be granted and the ordinance hereinabove mentioned adopted by such governing body, a certified copy of such ordinance together with a copy or a duplicate of such petition duly acknowledged as required for deeds by each and every person or corporation having interest in such land, shall be filed in the office of the County Clerk of the county in which such city is situated. [Acts 1941, 47th Leg., p. 1417, ch. 650.]

Art. 974e—6. Cities of 3,944 to 3,964, procedure for annexation of unoccupied lands to.—Section 1. The owner or owners of any land and/or territory, or the Board of Trustees of any public school, which occupies such territory, which is vacant and without residents, contiguous and adjacent to any city in this state having a population of not less than three thousand nine hundred and forty-four (3,944) nor more than three thousand nine hundred and sixty-four (3,964) inhabitants, according to the last preceding Federal Census, may by petition in writing to the governing body of such city request the annexation of such contiguous and adjacent land and territory, describing the same by metes and bounds. The governing body of such city or town shall thereafter, and not less than five (5) and not more than thirty (30) days after the filing of such petition, hear such petition and the arguments for and against the same, and grant or refuse such petition as such governing body may see fit. If such governing body shall grant such petition, the said governing body by proper ordinance may receive and annex such territory as a part of said city. Thereafter the territory so received and annexed shall become a part of said city, and the said land and any future inhabitants thereof shall be entitled to all the rights and privileges of other citizens of such city; and shall be bound by the acts and ordinance of such city.

Sec. 2. No such petition for annexation of such contiguous and adjacent territory shall be received and acted upon by such governing body of such city unless and until each and every person and corporation having any interest in such land and territory sought to be annexed, shall have executed the petition hereinabove mentioned and duly acknowledged same as provided for acknowledgments of deeds. If such petition shall be granted and the ordinance hereinabove mentioned adopted by such governing body, a certified copy of such ordinance together with a copy or a duplicate of such petition duly acknowledged as required for deeds by each and every person or corporation having interest in such land, shall be filed in the office of the County Clerk of the county in which such city is situated. [Acts 1945, 49th Leg., p. 147, ch. 97.]

Art. 974f. Annexation of streets, highways, and alleys by cities and towns of 1245 to 1260; procedure.—All cities and towns within the State of Texas, having a population of not less than twelve hundred and forty-five (1245) and not more than twelve hundred and sixty (1260), according to the last preceding census, may, by ordinance duly passed and enacted by the governing bodies of such cities and towns, after the same shall have been advertised as provided by Article 1013 of the Revised Civil Statutes of 1925, annex streets, highways, and alleys adjacent to the city limits of such cities and towns, and incorporate such highways, streets, and alleys within the corporate limits of such cities and towns. [Acts 1941, 47th Leg., p. 1417, ch. 649, § 1.]

Art. 975. [782] [575] Segregating territory.—Whenever fifty qualified voters of any territory within the limits of any incorporated town shall sign and present a petition to the mayor of such city, praying that such territory, setting the same out by metes and bounds, be declared no longer a part of such town, the mayor thereof shall order an election within thirty days thereafter to be held at the different voting precincts of said town; and if a majority of the legal voters of said town voting at such election cast their votes in favor of discontinuing said territory as a part of said town, the mayor of said city shall declare such territory no longer a part of said city, and shall enter an order to that effect on the minutes or records of the city council; and from and after the date of such order, said territory shall cease to be a part of said town; provided, no city or town shall thus be reduced to a less area than one square mile or one mile in diameter around the center of the original corporate limits. [Acts 1883, p. 99; G. L. vol. 9, p. 405.]

Art. 976. [783] [576] Liable for debts.—Whenever any territory shall withdraw as above provided, and such city or town shall at the time of such withdrawal owe any debts by bond or otherwise, such withdrawing territory shall not be released from the payment of its pro rata of such indebtedness; but it shall be the duty of said city council to continue to levy an ad valorem tax each year on the property of such territory of the same rate as is levied upon other property of such city, until the taxes collected from said territory shall equal its pro rata share of the indebtedness of said city or town at the time of the withdrawal. The taxes so collected shall be charged only with the cost of levying and collecting the same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the inhabitants of said territory from paying in full, at any time, their pro rata share of the indebtedness of said city. [Id.]

CHAPTER 2.—OFFICERS AND THEIR ELECTION

Art.
977. City officials.
978. Election.
979. Ward election of councilmen.

Art.
980. Hours of election.
981. Returns.
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983. Installation of officers.
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985. Rejection of votes.
986. Tie vote.
987. Qualifications of officers.
988. Limitations of councilmen.
989. Vacancy.
990. Special election.
991. Mayor pro tempore.
992. Change of wards.

Article 977. [784] [387] [344] City officials.—The municipal government of the city shall consist of a city council composed of the mayor and two aldermen from each ward, a majority of whom shall constitute a quorum for the transaction of business, except at called meetings, or meetings for the imposition of taxes, when two-thirds of a full board shall be required, unless otherwise specified, provided that where the city or town is not divided into wards, the city council shall be composed of the mayor and five aldermen, and the provisions of this title relating to proceedings in a ward shall apply to a whole city or town. Other officers of the corporation shall be a treasurer, an assessor and collector, a secretary, a city attorney, a marshal, city engineer, and such other officers and agents as the city council may from time to time direct. The office of treasurer, assessor and collector, city attorney, and city engineer may be dispensed with by an ordinance to that effect, and the powers and duties herein prescribed for such officers may be conferred by the council upon other officers. The above named officers shall be elected by the qualified electors of the city for a term of two years. [Acts 1881, p. 115; G. L. vol. 9, p. 208.]

Art. 978. [785] [388] [345] Election.—An election shall be held annually in each ward of said city on the first Tuesday in April, at such places as the city council may direct, and of which thirty days notice shall be given. Such election shall be ordered and notice thereof shall be given, and the election officers and supervisors appointed, as provided by article 2951. The presiding officers and judges must be qualified voters in the city. The city council shall provide for their compensation, and by ordinance, regulate and define their powers and duties. [Id.; Acts 1st C. S. 1905, p. 533.]

Acts 1937, 45th Leg., p. 256, ch. 133, validated elections in cities of 4,190 to 4,250 and all actions and proceedings and contracts taken or made in pursuance thereof.

Art. 979. [786] [389] [346] Ward Election of Councilmen.—At the first election under this title there shall be elected a mayor, and two aldermen from each ward, one of whom shall hold office for one year, and the other for two years from the date of their election, to be determined by lot at the first regular meeting after said election. At each annual election thereafter there shall be elected one alderman from each ward, who shall hold office for two years. If the city or town is not divided into wards, the city council may determine by ordinance what number of aldermen shall go out of office in one year, and the manner of deciding which shall hold for the long term and which for the short term. [Acts 1895, p. 8, G. L. vol. 10, p. 783.]

Art. 980. [787] [390] [347] Hours of election.—The ballots of each ward shall be taken separately, the polls being opened in each ward for one day only, from eight o'clock a. m. until six o'clock p. m., with the privilege of a recess from 12 o'clock to one o'clock. If the polls are not promptly opened for the reception of votes at eight o'clock a. m., the time thus lost shall be extended beyond the hour of six p. m. so as to secure the full period of nine hours to vote. [Id.]

Art. 981. [787] [390] [347] Returns.—On closing the polls, the managers of the election shall immediately proceed to count and cast up the votes for each candidate and certify and sign the returns in duplicate, one of which shall be sealed and returned by the presiding officer for future use as a reference in the case of a contested election; the other shall be sealed with the name of the presiding officer written across the seals, and by the presiding officer, or in his absence or inability by one of the judges or clerks, delivered in open session to the city council as soon as practicable. The officer delivering the same shall make oath before the mayor or one of the aldermen that the returns by him delivered have not been altered or opened since being signed and sealed as aforesaid. [Id.]

Art. 982. [787] [390] [347] Shall declare result.—The city council shall immediately open the returns from each ward, casting up the votes of the wards, and the persons receiving the highest number of votes for the respective offices shall be declared elected. In the first election held hereunder, the two persons from the same ward receiving the highest number of votes in the city for aldermen of the wards for which they are candidates shall be declared elected aldermen of such wards. If the city council fails to meet and declare the results of such election, the mayor shall discharge that duty. [Acts 1875, p. 113; Id.; G. L. vol. 8, p. 485.]

Art. 983. [787] [390] [347] Installation of officers.—The newly elected officers may enter upon their duties on the fifth day thereafter, Sundays excepted. If any such officer fails to qualify within thirty days after his election, his office shall be deemed vacant, and a new election held to fill the same. The city council-elect shall meet at the usual place of meeting on the fifth day, Sundays excepted, after their election or as soon thereafter as possible, and be installed under the provisions of this title. [Id.]

Art. 984. [789] [392] [349] Election managers.—The election managers shall be sworn well and truly to conduct the election, without partiality or prejudice, and agreeably to law, and according to the best of their skill and understanding. Such oath shall be administered by the mayor or any justice of the peace. The presiding officers and judges thus qualified shall have power to administer oaths necessary to the performance of their official duties. [Id.]

Art. 985. [789] [392] [349] Rejection of votes.—When any person offering a vote shall be objected to by any one qualified to vote at such election, the managers shall examine him on oath touching the points objected to; and, if he fails to establish his qualification to their satisfaction his vote shall be rejected. [Id.]

Art. 986. [791] [394] [350] Tie vote.—If in any election there is a tie between two or more candidates for the same office, all of whom cannot be elected, the city council shall declare such election void as between such candidates only, and immediately order a new election for the office, giving not less than five days notice thereof. [Id.]

Art. 987. [792] [395] [351] Qualifications of officers.—No person shall be eligible to the office of mayor unless he is a qualified elector and has resided twelve months next preceding the election within the city limits. To be eligible for aldermen, one must reside in the ward from which he may be elected at the time of his election. If any alderman removes from the ward in which he was elected, his office shall be deemed vacant. [Id.]

Art. 988. [793] [566] [495] Limitations of councilmen.—No member of the city council shall hold any other employment or office under the city

government until [1] he is a member of said council, unless herein otherwise provided. No member of the city council, or any other officer of the corporation, shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the city treasury, or by an assessment levied by an ordinance or resolution of the city council, nor be the surety of any person having a contract, work or business with said city, for the performance of which security may be required, nor be the surety on the official bond of any city officer. [Acts 1875, p. 154; G. L. vol. 8, p. 526.]

[1] So in enrolled bill. Should probably read "while."

Art. 989. [797] [396] [352] Vacancy.—In case of a vacancy from any cause in the office of mayor or alderman, the city council shall order a new election to fill such vacancy. All special elections shall be conducted as is herein provided for in the annual election. In all special elections to fill vacancies, ten days notice shall be sufficient. In case of a vacancy in any other office in the city, the mayor or acting mayor shall fill such vacancy by appointment, to be confirmed by the city council. [Acts 1887, p. 41; G. L. vol. 9, p. 839.]

Art. 990. [798–9] Special election.—Whenever a vacancy occurs by resignation or otherwise, in the municipal offices of any incorporated city or town in this State, so that the vacancy cannot be filled under the charter of said city or town, or under the laws of this State now in force, then the commissioners court of said county in which said town or city is situated, upon a petition of not less than twenty-six tax paying voters living in such city, shall order an election to be held to fill such vacancy, giving notice of not less than ten days in the usual manner provided for such elections, which shall be held in like manner as similar elections and the officers so elected shall in like manner be qualified and installed. [Acts 1875, p. 159; G. L. vol. 8, p. 485; G. L. vol. 10, p. 1213.]

Art. 991. [801] [399] [355] Mayor pro tempore.—At the first meeting of each new council, or as soon thereafter as practicable, one of the aldermen shall be elected president pro tempore, who shall hold his office for one year. In case of the failure, inability or refusal of the mayor to act, the president pro tempore shall perform the duties and receive the fees and compensation of the mayor. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 992. [802] [553] [482] Change of wards.—The wards of each city accepting the provisions of this title shall be and remain unchanged by its acceptance. The city council shall have power from time to time to cause a division of said city to be made into as many wards as they may deem necessary, and for the good of the inhabitants of said city, and may change the boundaries of the same. No such division or change shall be made unless it be done at least three months preceding the city election next ensuing; and said wards so established shall contain as far as practicable an equal number of voters. [Acts 1875, p. 151; G. L. vol. 8, p. 523.]

CHAPTER 3.—DUTIES AND POWERS OF OFFICERS

Art.
993. Oath.
994. Duties of mayor.
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996. Powers of the mayor.
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999. Marshal, duties, etc.
1000. Secretary, duties, etc.
1001. Treasurer, duties, etc.
1002. Control of officers.
1003. Qualifications of appointee.
1004. Officer disqualified.
1005. Resignation of officers.
1006. Removal of officers.

Article 993. [803] [400] [356] Oath.—Every person elected or appointed to fill an office under this title shall, before entering upon the duties of his office, take and subscribe the official oath. The city council by ordinance may require such additional oath as it may deem best calculated to secure faithfulness in the performance of their duties by such officers. [Acts 1875, p. 118; G. L. vol. 8, p. 490.]

Art. 994. [804] [401] [357] Duties of mayor.—The mayor shall be the chief executive officer of said corporation, and shall be active at all times in causing the laws and ordinances of said city to be duly executed and put in force. He shall inspect the conduct of all subordinate officers in the government thereof, and, shall cause all negligence, carelessness and other violations of duty to be prosecuted and punished. He shall have power, if in his judgment the good of the city may require it, to summon meetings of the city council; and he shall communicate to that body such information and recommend such measures as may tend to the improvement of the finances, the police, health security, cleanliness, comfort, ornament and good government of said city. [Acts 1881, p. 115; G. L. vol. 9, p. 207.]

Art. 995. [805] [402] [358] Special police force.—Whenever the mayor deems it necessary, in order to enforce the laws of the city, or to avert danger, or to protect life or property, in case of riot or any outbreak or calamity or public disturbance, or when he has reason to fear any serious violation of law or order, or any outbreak or any other danger to said city, or the inhabitants thereof, he shall summon into service as a special police force, all or as many of the citizens as in his judgment may be necessary. Such summons may be by proclamation or other order addressed to the citizens generally, or those of any ward of the city, or subdivision thereof, or may be by personal notification. Such special police force while in service, shall be subject to the orders of the mayor, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city. [Acts 1875, p. 119; G. L. vol. 8, p. 491.]

Art. 996. [806] [403] [359] Powers of the mayor.—The mayor shall have power to administer oaths of office. He shall have authority in case of a riot or any unlawful assemblage, or with a view to preserve peace and good order in said city, to order and enforce the closing of any theatre, ball room, or other place of resort, or public room or building, and may order the arrest of any person violating in his presence, the laws of this State, or any ordinance of the city. He shall perform such other duties and possess and exercise such other power and authority as may be prescribed and conferred by the city council. [Id.]

Art. 997. [807] [404] [360] Ordinances and resolutions.—All ordinances and resolutions adopted by the council shall, before they take effect, be placed in the office of the city secretary; and the mayor shall sign those he approves. Such as he shall not sign, he shall return to the city council with his objections thereto. Upon the return of any ordinance or resolution by the mayor, the vote by which the same was passed shall be reconsidered. If, after such reconsideration, a majority of the whole number of aldermen agree to pass the same, and enter their votes on the journal of their proceedings, it shall be in force. If the mayor shall neglect to approve or object to any such proceedings for a longer period than three days after the same shall be placed in the secretary's office as aforesaid, the same shall go into effect. [Id.]

Art. 998. [808] Police Officers.—The city or town council in any city or town in this State, incorporated under the provisions of this title may, by ordinance, provide for the appointment, term of office and qualifications of such police officers as may be deemed necessary. Such police officers so appointed shall receive a salary or fees of office, or both, as shall be fixed by the city council. Such council may, by ordinance, provide that such police officers shall hold their office at the pleasure of the city council, and for such term as the city council directs. Such police officers shall give bond for the faithful performance of their duties, as the city council may require. Such officers shall have like powers, rights and authority as are by said title vested in city marshals. [Acts 1907, p. 299.]

Art. 999. [809] [407] [363] Marshal, duties, etc.—The marshal of the city shall be ex-officio chief of police, and may appoint one or more deputies which appointment shall only be valid upon the approval of the city council. Said marshal shall, in person or by deputy, attend upon the corporation court while in session, and shall promptly and faithfully execute all writs and process issued from said court. He shall have like power, with the sheriff of the county, to execute warrants; he shall be active in quelling riots, disorder and disturbance of the peace within the city limits and shall take into custody all persons so offending against the peace of the city and shall have authority to take suitable and sufficient bail for the appearance before the corporation court of any person charged with an offense against the ordinance or laws of the city. It shall be his duty to arrest, without warrant, all violators of the public peace, and all who obstruct or interfere with him in the execution of the duties of his office or who shall be guilty of any disorderly conduct or disturbance whatever; to prevent a breach of the peace or preserve quiet and good order, he shall have authority to close any theatre, ball room or other place or building of public resort. In the prevention and suppression of crime and arrest of offenders, he shall have, possess and execute like power, authority, and jurisdiction as the sheriff. He shall perform such other duties and possess such other powers and authority as the city council may by ordinance require and confer, not inconsistent with the Constitution and laws of this State. The marshal shall give such bond for the faithful performance of his duties as the city council may require. He shall receive a salary or fees of office, or both, to be fixed by the city council. The governing body of any city or town having less than three thousand inhabitants according to the preceding Federal census, may by an ordinance, dispense with the office of marshal, and at the same time by such ordinance confer the duties of said office upon any peace officer of the county, but no marshal elected by the people shall be removed from his office under the provisions of this article. [Acts 1875, p. 122; G. L. vol. 8, p. 494; Acts 1901, p. 114.]

Art. 1000. [810] [408] [364] Secretary, duties, etc.—The city secretary shall attend every meeting of the city council, and keep accurate minutes of the proceedings thereof in a book to be provided for that purpose, and engross and enroll all laws, resolutions and ordinances of the city council, keep the corporate seal, take charge of and preserve and keep in order all the books, records, papers, documents and files of said council, countersign all commissions issued to city officers, and licenses issued by the mayor, and keep a record or register thereof, and make out all notices required under any regulation or ordinance of the city. He shall draw all the warrants on the treasurer and countersign the same and keep an accurate account thereof in a book provided for the purpose. He shall be the general accountant of the corporation, and shall keep in books regular accounts of the receipts and disbursements for the city, and separately, under proper heads, each cause of receipt and disbursement, and also accounts with each person including officers who have money transactions with the city, crediting accounts allowed by proper authority and specifying the particular transaction to which such entries apply. He shall keep a register of bonds and bills issued by the city, and all evidence of debt due and payable to it, noting the particulars thereof, and all facts connected therewith, as they occur. He shall carefully keep all contracts made by the city council; and he shall perform all such other duties as may be required of him by law, ordinance, resolution or order of the city council. He shall receive for his services an annual salary payable at stated periods, and such additional fees as the city council may allow. [Id.]

Art. 1001. [811] [409] [365] Treasurer, duties, etc.—The treasurer shall give bond in favor of the city in such amount, and in such form as the city council may require, with sufficient security to be approved by the city council, conditioned for the faithful discharge of his duties. He shall receive and securely keep all moneys belonging to the city, and making all payments for the same upon the order of the mayor, attested by the secretary under the seal of the corporation. No order shall be paid unless the said order shall show upon its face that the city council has directed its issuance, and for what purpose. He shall render a full and correct statement of his receipts and payments to the city council, at their first regular meeting in every quarter and whensoever, at other times, he may be required by them so to do. At the end of every half year he shall cause to be published, at the expense of the city, a statement showing the amount of receipts and expenditures for the six months next preceding, and the general condition of the treasury. He shall do and perform such other acts and duties as the city council may require. He shall receive such compensation as the city council shall fix. [Id.]

Art. 1002. [812] [411] [367] Control of officers.—The city council shall have power from time to time to require other and further duties of all officers whose duties are herein prescribed, and to define and prescribe the powers and duties of all officers appointed or elected to any office under this title whose duties are not herein specially mentioned, and fix their compensation. They may also require bonds to be given to the said corporation by all officers for the faithful performance of their duties. The city council shall provide for filling vacancies in all offices, not herein provided for. In all cases of vacancy, the same shall be filled only for the unexpired term. [Id.]

Art. 1003. [794] [562] [491] Qualifications of appointee.—No person other than an elector resident of the city shall be appointed to any office by the city council. [Id.]

Art. 1004. [800] [565] [494] Officer disqualified.—Any officer who has been intrusted with the collection or custody of funds belonging to a city who shall be in default to said city, shall thereafter be incapable of holding any office under said city, until the amount of his defalcation shall have been fully paid to said city, with ten per cent interest. [Id.]

Art. 1005. [795] [563] [492] Resignation of officers.—Resignation by any officer authorized by this title to be elected or appointed shall be made to the city council in writing, subject to their approval and acceptance. Any appointee of the mayor may present his written resignation to that officer for his action. [Id.]

Art. 1006. [796] [564] [493] Removal of officers.—The city council shall have power to remove any officer for incompetency, corruption, misconduct or malfeasance in office, after due notice and an opportunity to be heard in his defense. The city council shall also have power at any time to remove any of-

ficer of the corporation elected by them, by resolution declaratory of its want of confidence in said officer; provided, that two-thirds of the aldermen elected vote in favor of said resolution. [Id.]

CHAPTER 4.—THE CITY COUNCIL

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Article 1007. [813] [412] [368] Presiding officer.—The mayor shall preside at all meetings of the city council, and shall have a casting vote, except in elections. If he and the president pro tem are absent, any alderman may be appointed to preside. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1008. [814] [413] [369] Meetings.—Petitions and remonstrances may be presented to the council in writing only. The city council shall hold stated meetings at such times and places as they shall by resolution direct. The mayor, of his own motion, or on the application of three aldermen, may call special meetings, by notice to each member of said council, the secretary and city attorney, served personally or left at their usual place of abode. The council shall determine the rules of its proceedings and be the judge of the election and qualification of its own members, and may compel the attendance of absent members and punish them for disorderly conduct. [Id.]

Art. 1009. [815] [567] [496] Attendance of officers.—Each alderman shall be fined three dollars for each meeting which he fails to attend, unless on account of his own sickness or that of his family. Any member of the city council remaining absent for three regular consecutive meetings of the board, unless prevented by sickness, without first having obtained leave of absence at a regular meeting, shall be deemed to have vacated his office, and the mayor shall proceed to fill the vacancy in accordance with the charter. [Id.]

Art. 1010. [816] [569] [498] Salary of officers.—The city council shall, on or before the first day of January next preceding each election, fix the salary and fees of office of the mayor to be elected at the next regular election, and fix the compensation to be paid to the officers elected or appointed by the city council. The compensation so fixed shall not be changed during the term for which said officers shall be elected or appointed. [Id.]

Art. 1011. [817] [464] [418] Powers.—The city council shall have power to pass, publish, amend or repeal all ordinances, rules and police regulations, not contrary to the Constitution of this State, for the good government, peace and order of the city and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested by this title in the corporation, the city government or in any department or office thereof; to enforce the observance of all such rules, ordinances and police regulations, and to punish violations thereof. No fine or penalty shall exceed one hundred dollars. [Id.]

Art. 1011a. Grant of power for zoning.—For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body of cities and incorporated villages is hereby em-

powered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. [Acts 1927, 40th Leg., p. 424, ch. 283, § 1.]

Section 10 of this Act provides that if any section or part is held invalid, such holding shall not affect the remainder.

Art. 1011b. Districts.—For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this Act; [1] and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. [Acts 1927, 40th Leg., p. 424, ch. 283, § 2.]

[1] Articles 1011a–1011j.

Art. 1011c. Purposes in view.—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, and it is hereby provided that this Act [1] shall not enable cities and incorporated villages aforesaid to require the removal or destruction of property, existing at the time such city or incorporated village shall take advantage of this Act, actually and necessarily used in a public service business. [Acts 1927, 40th Leg., p. 424, ch. 283, § 3.]

[1] Articles 1011a–1011j.

Art. 1011d. Method of procedure.—The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality. [Acts 1927, 40th Leg., p. 424, ch. 283, § 4.]

Zoning Ordinances Validated. Acts 1941, 47th Leg., p. 656, ch. 397, § 1, effective 90 days after July 3, 1941, date of adjournment validated all zoning ordinances and amendments thereto heretofore passed by the legislative bodies of cities and incorporated villages, pursuant to the power given them by Chapter 283, Acts of the Fortieth Legislature.

Art. 1011e. Changes.—Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of 20 per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 200 feet therefrom, or of those directly opposite thereto extending 200 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearing and official notice shall apply equally to all changes or amendments. [Acts 1927, 40th Leg., p. 424, ch. 283, § 5.]

Art. 1011f. Zoning commission.—In order to avail itself of the powers conferred by this Act,[1] such legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a city plan commission already exists, it may be appointed as the zoning commission. [Acts 1927, 40th Leg., p. 424, ch. 283, § 6.]

[1] Articles 1011a–1011j.

Art. 1011g. Board of adjustment.—Such local legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this Act [1] may provide that the said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

The board of adjustment shall consist of five members, each to be appointed for a term of two years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this Act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the

hearing any party may appear in person or by agent or by attorney.

The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Act or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the the spirit of the ordinance shall be observed and substantial justice done.

In exercising the above mentioned powers such board may, in conformity with the provisions of this Act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 10 days after the filing of the decision in the office of the board.

Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings. [Acts 1927, 40th Leg., p. 424, ch. 283, § 7.]

[1] Articles 1011a–1011j.

Art. 1011h. Enforcement and remedies.—The local legislative body may provide by ordinance for the enforcement of this Act [1] and of any ordinance or regulation made thereunder. A violation of this Act or of such ordinance or regulation is hereby declared to be a misdemeanor, and such local legislative body may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this Act or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. [Acts 1927, 40th Leg., p. 424, ch. 283, § 8.]

[1] Articles 1011a–1011j.

Art. 1011i. Buildings for telephone service excepted.—The provisions of this Act [1] or of any ordinance of any city or town, enacted under the authority of this Act, shall not apply to the location, construction, maintenance or use of central office buildings of corporations, firms or individuals engaged in the furnishing of telephone service to the public, or to the location, construction, maintenance or use of any equipment in connection with such buildings or a part of such telephone system, necessary in the furnishing of telephone service to the public. [Acts 1927, 40th Leg., p. 424, ch. 283, § 8a.]

[1] Articles 1011a–1011j.

Art. 1011j. Conflict with other laws.—Wherever the regulations made under authority of this Act [1] require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this Act shall govern. Wherever the provisions of any other statute or local ordinance or regulation requires a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Act, the provisions of such statute or local ordinance or regulation shall govern. [Acts 1927, 40th Leg., p. 424, ch. 283, § 9.]

[1] Articles 1011a–1011j.

Art. 1011k. Neighborhood zoning areas in cities over 290,000.—The legislative body of any city having a population of more than 290,000 inhabitants according to the last preceding Federal Census, and which has adopted a comprehensive zoning ordinance under the law of the State of Texas, may by ordinance divide the city into such neighborhood zoning areas after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality. The Mayor of such

city, with the approval of its legislative body, may thereupon appoint for each of said areas a Neighborhood Advisory Zoning Council, consisting of five citizens residing in the area, who shall hold office for two years or until their successors are appointed and qualify. It shall be the duty of such Neighborhood Advisory Zoning Council to furnish to the Zoning Commission of such city information, advice and recommendations with respect to all applications filed with the Zoning Commission for changes in the zoning regulations of such city affecting property within said area. As soon as any such application is filed with the Zoning Commission of the city, the Zoning Commission shall furnish the Neighborhood Advisory Zoning Council for the area which would be affected by such application if granted with a copy thereof, and thereupon it shall be the duty of the Neighborhood Advisory Zoning Council to hold a public hearing in relation thereto, giving at least ten days notice of the time and place of such hearing by publication in an official paper or a paper of general circulation in such municipality, and at or before the hearing on such application before the Zoning Commission it shall be the duty of the Neighborhood Advisory Zoning Council to furnish and submit to the Zoning Commission such information, advice and recommendations with respect to such application as it deems proper. Overruling of any recommendation of the Neighborhood Advisory Zoning Council with respect to the disposition of such application shall require the vote of at least three-fourths (¾) of the members of the Zoning Commission present. [Acts 1945, 49th Leg., p. 202, ch. 155, § 1.]

Sections 2 and 3 of the Act of 1945 read as follows:
"Sec. 2. All statutes and parts of statutes in conflict with this Act are hereby repealed.
"Sec. 3. If any paragraph, sentence, clause, phrase or other part of this Act be held invalid for any reason, such holding shall, nevertheless, not affect the other portions of this Act, and such holding shall be restricted to the particular facts and circumstances of the case in which such holding is made."

Art. 1012. [818] [559] [488] Style of ordinances.—The style of all ordinances shall be "Be it ordained by the city council of the city of ....." (inserting the name of the city); but it may be omitted when published in the form of a book or pamphlet. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1013. [819–821] Publication of ordinances.—(1) Every ordinance imposing any penalty, fine or forfeiture shall, after the passage thereof, be published in every issue of the official paper for ten (10) days. If the official paper be published weekly, the publication shall be made in one issue thereof. Proof of such publication shall be made by the printer or publisher of such paper by affidavit filed with the city secretary, and shall be prima-facie evidence of such publication and promulgation of such ordinances in all courts of the State. Such ordinances shall take effect and be in force from and after the publication thereof, unless otherwise expressly provided. Ordinances not required to be published shall take effect from their passage, unless otherwise provided.

(2) In lieu of the publication required in Section (1) of this Article, the governing body may in its discretion provide for the publication of a descriptive caption or title, stating in summary the purpose of the ordinance and the penalty for violation thereof.

(3) Any town or city desiring to publish its ordinances in pamphlets or book form need not republish such ordinances as have been previously published. All such ordinances, where printed and published by authority of the city council, shall be admitted and received in all courts without further proof. [Acts 1875, p. 113; G.L. vol. 8, p. 485; Acts 1889, p. 4; G.L. vol. 9, p. 1032; Acts 1947, 50th Leg., p. 462, ch. 263, § 1.]

Art. 1014. [823] [568] May remit fines.—The city or town council shall have power to remit in whole or in part by a vote of two-thirds of the members present, any fine or penalty belonging to the city, which may be imposed or incurred under this title, or under any ordinance or resolution passed in pursuance thereof. [Id.]

Art. 1015. Other powers.—The governing body shall also have power:

1. Promotion of health.—To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

2. Quarantine regulations.—To make regulations to prevent the introduction of contagious disease into the city; to make quarantine laws for that purpose, and to enforce them within the city and within ten miles thereof.

3. Joint sanitary regulations.—To co-operate with the commissioners' court of the county in which the municipality is situated in making such improvements as may, by it and said court, be deemed necessary to improve the public health and promote efficient sanitary regulations, and to arrange for the construction of, and payment for, said improvements.

4. Hospitals.—To erect or establish one or more hospitals, and control and regulate the same, and to prohibit or to permit and regulate the establishment of private hospitals.

5. Food inspection, etc.—To regulate the inspection of beef, pork, flour, meal, salt and other provisions; to appoint weighers, gaugers and inspectors, and to prescribe their duties and regulate their fees.

6. Sale of bread.—To regulate the weight and quality of the bread to be sold or used within the city.

7. Butchers.—To make such rules and regulations in relation to butchers as they may deem necessary and proper.

8. Unclean establishments.—To compel the owner or occupant of any grocery, soap, tallow, or chandler establishment, or blacksmith shop, tannery, stable, slaughterhouse, sewers, privy, hide house or other unwholesome or nauseous house or place, to cleanse, remove or abate the same, as may be necessary for the health, comfort and convenience of the inhabitants.

9. Location of establishment.—To direct the location of business, tanneries, blacksmith shops, foundries, livery stables and any manufacturing establishments; to direct the location and regulate the management and construction of, restrain, abate and prohibit within the city limits, slaughtering establishments and hide houses or establishments for making soap, for steaming or rendering lard, tallow, offal and such other substances as may be rendered; and all other establishments or places where any nauseous, offensive or unwholesome business may be carried on.

10. Drains, sinks, etc.—To require the owner of private drains, sinks and privies to fill up, cleanse, drain, alter, relay, repair, fix or improve the same as may be ordered by any resolution or ordinance of said city; and in the event of any failure, neglect or refusal to comply with any such order, the party so failing shall be liable to fine. In the event of there being no person in the city on whom such order can be served, the city may have such work done and such improvements made on account of the owner thereof. All costs, charges and expenses shall be a lien on the property, on the filing of a memorandum by the mayor, under the seal of the corporation thereof, and recording the same with the clerk of the district court. The city may enforce said lien and institute suit in the corporate name and obtain judgment against said party for the amount so due as aforesaid in any court having jurisdiction.

11. Nuisances.—To abate and remove nuisances and to punish the authors thereof by fine, and to define and declare what shall be nuisances and authorize and direct the summary abatement thereof; and to abate all nuisances which may injure or affect the public health or comfort in any manner they may deem expedient.

12. Dead animals, etc.—To prevent any person from bringing, depositing or having within the limits of said city any dead carcass, or other offensive or unwholesome substance or matter, and to require the removal or destruction by any person who shall have placed or caused to be placed upon or near his premises, or elsewhere, of any substance or matter, filth, or any putrid or unsound beef, pork or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction thereof by some officer of the city, and to require the owner of any dead animal to remove the same to such place as may be designated.

13. Burial of dead, etc.—To regulate the burial of the dead; to purchase, establish and regulate one or more cemeteries; to regulate the registration of marriages; and to direct the returning and keeping of bills of mortality.

14. Driving animals in city.—To prevent, regulate and control the driving of cattle, horses and other animals into or through the city.

15. Dogs.—To tax, regulate or restrain and prohibit the running at large of dogs and to authorize their destruction when at large contrary to ordinances, and to impose penalties for violation of such ordinances.

16. Pounds.—To establish and regulate public pounds, and to regulate, restrain and prohibit the running at large of horses, mules, cattle, sheep, swine, and goats, and to authorize the distraining, impounding and sale of the same for the costs of the proceedings and the penalty incurred, and to order their destruction when they cannot be sold and to impose penalties on the owners thereof for the violation of any ordinance.

17. Breeding animals.—To pass necessary ordinances to prevent any person, corporation or association of individuals from keeping for breeding purposes a jack, bull or stallion within the corporate limits of such city or town.

18. Control of police.—To create, establish and regulate the police of the city; to appoint watchmen and policemen, and to prescribe their duties and powers and compensation.

19. Workhouses.—To erect and establish one or more workhouses or houses of correction, within or without the city limits, make all necessary rules and regulations therefor, and appoint all necessary keepers or assistants. In such workhouse or house of correction may be confined all vagrants and disorderly persons, who may be committed by the mayor or recorder, and any person who shall fail or refuse to pay the fine or costs imposed for any offense may, instead of being committed to jail, be kept therein.

20. Breach of peace, etc.—To prevent all trespasses, breaches of the peace and good order, assaults and batteries, fighting, quarreling, using abusive, obscene, profane or insulting language and all disorderly conduct, and punish all persons thus offending.

21. Public disturbances.—To suppress and prevent any riot, affray, noise, disturbance or disorderly assembly in any public or private place within the city.

22. Noises and annoyances.—To prohibit and restrain the firing of firecrackers, guns and pistols, use of velocipedes, or use of any pyrotechnic or any other amusements or practices tending to annoy persons passing in the streets or sidewalks, or to frighten horses or teams; to restrain and prohibit the ringing of bells, blowing of horns and bugles, crying of goods, and all other noises, practices and performances tending to the collection of persons on the streets and sidewalks, by auctioneers and others, for the purpose of business, amusement or otherwise.

23. Obstructions on public ways, etc.—To prevent the incumbering of the streets, alleys, sidewalks, and public grounds, with any vehicle whatsoever, boxes, lumber, posts, awnings, signs, or any other substance or material whatever, to compel persons to keep all weeds, filth or any kind of rubbish from the sidewalks and streets and gutters in front of their premises, and to compel the owners of property to fill up, grade, gravel and otherwise improve the sidewalks in front of same.

24. Dangerous buildings, etc.—To order, whenever in the opinion of the city council, any building, fence, shed, awning or any erection of any kind or any part thereof is liable to fall down and endanger persons or property, any owner or agent of the same, or any owner or occupant of the premises on which such building, shed, awning or other erection stands or to which it is attached, to take down and remove the same, or any part thereof, within such time as they may direct; and to punish by fine and imprisonment, or either, any neglect, failure or refusal to comply therewith. The city council shall have power to remove the same at the expense of the city, on account of the owner of the property or premises, and assess the expenses on the land on which it stood or to which it was attached, and shall, by ordinance, provide for such assessment, the mode and manner of giving notice and the means of recovering any such expenses.

25. Bridges, sewers, etc.—To establish, erect, construct, regulate and keep in repair, bridges, culverts, and sewers, sidewalks and crossways, and to regulate the construction and use of the same, and to abate any obstructions or encroachments thereon; and the cost of construction of sidewalks shall be defrayed by the owner of the lot, or part of lot or block, fronting on the sidewalk. The cost of any sidewalk constructed by the city shall be collected, if necessary, by the sale of the lot, or part of lot or block on which it fronts, together with the cost of collection, in such manner as the city council may by ordinance provide. A sale of any lot or part of lot or block to enforce collection of costs of sidewalks shall convey a good title to the purchaser. The balance of proceeds of such sale, after paying the amount due the city and costs of sale, shall be paid to the owner.

26. Street railways.—To compel street railway companies to keep their roads in repair, and to make them conform to the grades of the streets upon which their tracks may be laid, whenever said streets shall have been graded by the city, and to restrain the rate of speed and to compel such railroads to supply ample accommodation for the safe and convenient travel of the people on the street where their track may run. The city council may enforce these regulations by proper ordinances with suitable penalties.

27. Railway companies.—To direct and control the laying and constructing of railroad tracks, turnouts and switches, or prohibit the same in the streets, avenues and alleys, unless the same have been authorized by law, and the location of depots within the city; to require that railroad tracks, turnouts and switches shall be so constructed as to interfere as little as possible with the ordinary travel and use of streets, avenues and alleys and that sufficient space shall be left on either side of a track for the safe and convenient passage of teams, carriages and other vehicles, and persons; to require railroad companies to keep in repair the streets, avenues or alleys through which their track may run, and, if ordered by the city council, to construct and keep in repair, suitable crossings at the intersection of streets, avenues and alleys, and ditches, sewers and culverts, when the city council shall deem it necessary; to direct the use and regulate the speed of locomotive engines in said city, or to prevent and prohibit the use or running of the same within the city.

28. Unsafe driving.—To prevent, prohibit and suppress horse-racing, immoderate riding or driving in the streets; to compel persons to fasten their horses or other animals attached to vehicles, or otherwise, while standing or remaining in the streets.

29. Light and gas.—To provide for lighting the streets and erecting lamp posts therein, and regulating the lighting thereof, and from time to time create, alter or extend lamp districts, to exclusively regulate, direct and control the laying and repairing of the gas pipes

and gas fixtures in the streets, alleys, sidewalks and elsewhere.

30. Water system.—To provide, or cause to be provided, the city with water; to make, regulate and establish public wells, pumps and cisterns, hydrants and reservoirs in the streets or elsewhere within said city or beyond the limits thereof, for the extinguishment of fires and the convenience of the inhabitants, and to prevent the unnecessary waste of water. Any city or town owning, or that may hereafter own, its water system and plant, shall not lease or sell the same without first submitting the question of such proposed lease or sale to a vote of the qualified voters who are property taxpayers of such town or city as shown by the last preceding tax rolls, at a general election, or at one held for that especial purpose, nor unless a majority of those voting shall vote in favor thereof. Before submitting such question to a vote as aforesaid, the proposed contract of lease or sale shall be distinctly set forth in the form of an ordinance or contract, and shall be filed with the city or town secretary or clerk at least twenty days prior to the day of the election, and shall at all times be subject to inspection by the people of such city.

31. Market house.—To establish or erect, or cause to be established or erected, markets and market houses; designate, control and regulate market places and privileges; inspect and determine the mode of inspecting meat, fish, vegetables and all produce and every article and thing therein brought for sale.

32. Parks, etc.—To provide for inclosing, regulating and improving all public grounds and cemeteries belonging to the city, and to direct and regulate the planting and preserving of ornaments and shade trees in the streets, sidewalks or public grounds.

33. Libraries.—To establish a free library in such city or town; to adopt rules and regulations for the proper management thereof, and to appropriate such part of the revenues of such city or town for the management and increase of such free library as the municipal government of such city or town may determine.

34. Street car taxes.—To assess and collect the ordinary municipal taxes upon street railways.

35. Trade taxes.—To tax all trades, professions, occupations and callings, the taxing of which is not prohibited by the Constitution of this State; which tax shall not be construed to be a tax on property.

36. Chauffeurs, porters, etc.—To license, tax and regulate hackmen, draymen, omnibus drivers and drivers of baggage wagons, porters, and all others pursuing like occupations, with or without vehicles, and prescribe their compensation, and provide for their protection and make it a misdemeanor to attempt to defraud them of any legal charge for services rendered, and to regulate, license and restrain runners for railroads, stages and public houses.

37. Peddlers, theaters, etc.—To license, tax and regulate or suppress and prevent hawkers, peddlers, pawnbrokers and keepers [1] or other exhibitions, shows and amusements.

38. Circuses, etc.—To license, tax or regulate theaters, circuses, the exhibitions of common showmen, shows of any kind, and the exhibition of natural and artificial curiosities, caravans, menageries and musical exhibitions and performances.

39. Licenses and fees.—To authorize the proper officer of the city to grant and issue licenses, and to direct the manner of issuing and registering thereof, and the fees to be paid therefor. No license shall be issued for a longer period than one year, and shall not be assignable except by permission of the city council.

40. Finances and property.—To manage and control the finances and all property, real and personal and mixed, belonging to the corporation.

41. Appropriations.—To appropriate money, and provide for the payment of debts and expenses of the city.

42. Special funds.—To provide by ordinance special funds for special purposes, and to make the same disbursable only for the purpose for which the fund was created. Any officer of the city misappropriating said special fund shall be deemed guilty of malfeasance in office, and shall, on complaint of any one interested in said funds misappropriated, be removed from office, and be incapable thereafter to hold any office in said city.

43. Improvements.—To appropriate so much of the revenues of the city emanating from whatever source, for the purpose of retiring and discharging the accrued indebtedness of the city, and for the purpose of improving the public markets and streets, erecting and conducting city hospitals, city hall, waterworks, and so forth, as they may from time to time deem expedient; and in furtherance of these objects, to borrow money upon the credit of the city.

[1] So in enrolled bill. Words "of theatrical" should probably be inserted.

Art. 1015a. Condemnation of lands for parks.—In case of the condemnation of land for laying out, establishing or enlarging any parks, parkways or pleasure grounds by any city in Texas which now has or may hereafter have a population of 12,000 or more inhabitants, the governing body of said city may, by ordinance, provide that the cost of such land and improvements shall be paid for, wholly or in part to an extent not exceeding the special benefits received by the property owners owning property in the vicinity thereof and benefited thereby, and may fix liens against said property so benefited to the extent same is specially benefited, provided, however, no assessments nor liens shall hold against homestead property so designated under existing laws and the procedure for and manner of assessing and collecting said benefits against and from said property owners and their said property shall be the same as that authorized by law in such city in which such proceedings are had in connection with the opening or widening of streets. Such assessments may be made payable in not exceeding sixteen (16) installments, the last maturing in not over fifteen (15) years, and may bear interest at not more than eight per cent (8%) per annum. [Acts 1927, 40th Leg., p. 433, ch. 288, § 1.]

Section 2 of this Act provides that the act shall be in addition to and cumulative of any powers now or hereafter conferred by law on such cities.

Art. 1015b. Ordinances for segregation of races.—Sec. 1. That the power and authority is hereby conferred upon the Cities of Texas to provide by suitable ordinance for the segregation of negroes and whites in any such city and to withhold permits to build or construct a house to be occupied by white people in negro communities inhabited by negroes as defined by ordinance and to withhold building permits to any negro to establish a residence on any property located in a white community inhabited by white people as defined by ordinance.

Sec. 2. That it shall be lawful for negroes and whites to enter into mutual covenants or agreements concerning their respective residence and the power and authority is conferred upon the governing body of any city to pass suitable ordinances requiring the observance of any such agreement.

Sec. 3. That the governing authorities of any such city shall have the full power to define the negro race, negro community, white race and white community.

Sec. 4. That the governing authorities of any such city shall have full power to enforce the observance of any ordinance passed leading to or providing for the segregation of the races and to require the observance thereof by appropriate penalties. [Acts 1927, 40th Leg., p. 154, ch. 103.]

Section 5 of this Act repeals all laws in conflict therewith.

Art. 1015c. Parks and recreation projects.

Purchase and encumbrance

Sec. 1. All cities and towns, including Home Rule cities, in the State of Texas, shall have power to build and purchase, to mortgage and encumber any of the hereinafter named project and/or projects, to wit: parks and/or swimming pools, golf courses, golf course club houses, ball parks, fairgrounds, exposition buildings, airports, and the land upon which the same are situated, either or all, and the income therefrom and everything pertaining thereto acquired or to be acquired and to evidence the obligation therefor by the issuance of bonds, notes or warrants, and to secure the payment of funds to purchase same or funds with which to construct and equip the same; and as additional security therefor, by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereunder, a franchise to operate the projects herein enumerated and properties so purchased for a term of not over twenty (20) years after purchase, subject to all laws regulating same then in force. No such obligation of any such project and/or projects shall ever be a debt of said city or town, but solely a charge upon the properties of the project and/or projects so encumbered, and shall never be reckoned in determining the power of any such city or town to issue any bonds for any purpose authorized by law.

Election to authorize sale

Sec. 2. None of the projects named in Section 1 of this Act, nor the land upon which the same are situated, shall ever be sold until such sale is authorized by a majority vote of the qualified voters of such city or town; nor shall the same be encumbered for more than Five Thousand Dollars ($5000), except for purchase money, or funds with which to construct and equip the same or to refund any existing indebtedness lawfully created, until authorized in like manner. Such vote in either case shall be ascertained at an election, which election shall be held and notice thereof given as is provided in the case of the issuance of municipal bonds by such cities and towns, provided that no election shall be necessary for the encumbering of golf courses, golf course club houses, fairgrounds, airports and exposition buildings and the land upon which the same are situated, where encumbrances of any such project and/or projects has or have already been authorized at the time of the passage of this Act by a majority vote of the qualified voters at an election held for such purpose.

Validation of bonds or warrants

Sec. 3. All proceedings heretofore had by the governing bodies of all cities and towns, including Home Rule cities, in the State of Texas in the issuance and sale of bonds, notes and warrants or other obligations to aid in financing any of such project and/or projects for which a loan or grant has been made or applied for the United States through the Federal Emergency Administrator of Public Works or any agency, department or division of the Government of the United States of America are herein in all things fully validated, confirmed, approved and legalized, and all such bonds, notes or warrants or other obligations issued thereunder are hereby declared to be the valid and binding obligation of said cities or towns and all such bonds, notes or warrants or other obligations which have been heretofore authorized but not yet issued, shall, when delivered and paid for, constitute valid and binding obligations of such cities or towns, and any election heretofore held in such cities and towns, including Home Rule cities, in which the qualified votes of any such city or town have authorized the mortgage or encumbrance of any such project and/or projects named in this Act and the ground on which the same was to be erected, is hereby in all things fully validated, ratified, confirmed, approved, and legalized.

Records and accounts; penalty

Sec. 4. It shall be the duty of the mayor of such cities or towns to install and maintain, or cause to be installed and maintained, a complete system of records and accounts showing the free service rendered, and the value thereof, and showing separately the amounts expended and/or set aside for operation, salaries, labor, materials, repairs, maintenance, depreciation, replacements, extensions, interest and the creation of a sinking fund to pay off such bonds and indebtedness.

It shall likewise be the duty of the superintendent or manager of such project and/or projects to file with the mayor of such cities or towns, not later than February 1st, a detailed report of the operations of such project and/or projects for the year ending January 1st preceding, showing the total sum of money collected and the balance due, as well as the total disbursements made and the amounts remaining unpaid as the result of operation of such project and/or projects during such calendar year.

Failure or refusal on the part of the mayor to install and maintain, or cause to be installed and maintained, such system of records and accounts within ninety (90) days after the completion of such project and/or projects, or on the part of such superintendent or manager, to file or cause to be filed such report, shall constitute a misdemeanor and, on conviction thereof, such mayor or superintendent or manager shall be subject to a fine of not less than One Hundred Dollars ($100), nor more than One Thousand Dollars ($1,000); and any taxpayer residing within such city or town, or holder of such indebtedness, shall have the right, by appropriate civil action in the District Court of the county in which such city or town is located, to enforce the provisions of this Act. [Acts 1935, 44th Leg., 2nd C.S., p. 1741, ch. 453.]

Art. 1015d. Acquisition of gas systems and distribution of gas by cities.—Section 1. Any city (or), town, or village, whether created by general or special law, including cities operating under the Home Rule Amendment to the State Constitution, which is served neither by an artificial gas distribution system nor by a natural gas distribution system, privately owned or owned by said city, may acquire either by purchase, construction, or otherwise a system designed to prepare, to make available, and to distribute to the inhabitants of the city who may subscribe for such service, artificial gas useful for fuel and lighting purposes, manufactured and compounded substantially in the following manner: liquefied butane, a by-product obtained in the manufacture of gasoline from natural gas, is mixed with a proper proportion of propane, resulting in a liquefied gas capable of being transported in tank cars or otherwise to storage tanks, whence it may be drawn and mixed by automatically controlled mixing machines and released into gas storage tanks, said mixture then being suitable for distribution in mains and laterals to consumers, or manufactured and compounded in any other manner which will result in making available for distribution in mains and laterals, an economically useful gas for domestic and commercial fuel and lighting uses. [As amended Acts 1937, 45th Leg., p. 567, ch. 278, § 1.]

Sec. 2. The provisions of Articles 1111 to 1118, inclusive, of Revised Civil Statutes of 1925 with all amendments thereto are hereby adopted by reference as prescribing the procedure to be used by such cities and towns in acquiring such gas systems, and in making and evidencing their obligations to pay for same out of revenues pledged for the purpose, in encumbering said systems, in operating said systems and in reference to the enforcement of such obligations to the extent that such provisions are not in conflict with

the provisions of this Act, as fully as if all of said provisions were copied herein, including that provision that every contract, note or other evidence of indebtedness issued or under this law shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Sec. 3. In letting contracts for construction of such systems and in providing for the issuance of revenue bonds, notes or warrants under authority of this Act, the applicable provisions of Chapter 163, Acts of the Regular Session of the Forty-second Legislature,[1] known as "The Bond and Warrant Law of 1931" are hereby adopted as the procedure to be followed under this Act insofar as said provisions have reference to revenue bonds, notes and warrants.

Sec. 4. This Act shall be cumulative of all existing laws and the powers herein conferred shall be considered as in addition to powers now possessed by cities of the class included in this Act. [Acts 1935, 44th Leg., 2nd C.S., p. 1866, ch. 473.]

[1] Article 2368a, post.

Art. 1015e. Licensing dealers in motor vehicles or accessories.—Section 1. The power and authority is hereby conferred upon all cities and towns of Texas, whether incorporated under general or special law, to provide suitable ordinance, for the regulation, supervision, control and licensing of all persons, firms or corporations engaged, primarily or incidentally, in the sale, barter or exchange of motor vehicles, or parts thereof or accessories thereto within the corporate limits of such city, and to fix penalties for the violation thereof; provided that all sums of money collected from such dealers shall be used by the city for the enforcement hereof, and for the enforcement of all provisions of the law regulating the sale, theft or exchange of motor vehicles or parts, or accessories thereto and for no other purpose.

Sec. 2. In case any section, subdivision, paragraph, or sentence of this Act is declared unconstitutional the validity of the remainder of this Act shall not be affected thereby. [Acts 1937, 45th Leg., p. 404, ch. 203.]

Art. 1015f. Motor vehicles, regulation of operation by cities of 230,000 to 232,000 inhabitants.

Ordinances authorized

Section 1. All Cities and Towns in the State of Texas, whether incorporated under General or Special Law, including Home Rule Cities, having a population in excess of 230,000 and not exceeding 232,000 inhabitants, according to the last preceding or any future Federal Census, shall have and they are hereby given the power and authority to pass an ordinance or ordinances:

(a) Requiring all residents of said City, including corporations having their principal office or place of business in said City, owning a motor vehicle used for the transportation of persons or property, to have each and every such motor vehicle tested and inspected and to comply with such requirements, as may be imposed by said ordinance, not more than four times in each calendar year;

(b) Requiring that other and additional tests and inspections may be required of all such motor vehicles involved in any wreck, collision, or accident before the same may be operated on the streets, alleys, or other public thoroughfares of said City after said wreck, collision, or accident;

(c) Requiring as a condition precedent to the right to use the streets, alleys, or other public thoroughfares of said City that such motor vehicles operated thereupon shall have been tested and inspected, shall have been approved by said testing and inspecting authorities, including the State Highway Patrol, and shall have complied with all provisions of said ordinance;

(d) Authorizing City Patrolmen and State Highway Patrolmen in uniform to stop without warrant such drivers of motor vehicles as may fail to comply with said ordinance and issue to the violators such traffic violation tickets as may be provided under said ordinance;

(e) Providing a penalty subject to the limitations of Article 1011 of the Revised Civil Statutes of the State of Texas for the violation of any of the terms of said ordinance.

Testing stations

Sec. 2. Said Cities shall be and they are hereby authorized to acquire, establish, erect, equip, improve, enlarge, repair, operate, and maintain motor vehicle testing stations and to pay for the same out of the fees charged for testing and inspecting said motor vehicles.

Fees for testing and inspecting vehicles

Sec. 3. Said Cities shall have and they are hereby given power and authority to prescribe and collect a fee, not to exceed One ($1.00) Dollar per year per vehicle, for the testing and inspecting of each such motor vehicle. All fees so collected to be placed in a separate fund, out of which costs and expenses in connection with, or growing out of the acquisition, establishment, erection, equipping, improvement, enlargement, repairing, operating, and maintaining said testing stations, and automotive and Safety Education programs, may be paid.

Financing purchase of testing stations

Sec. 4. Said Cities shall have and they are hereby given power and authority to pay for such testing stations and the equipping, maintaining, and operating thereof out of past or future earnings of said stations, and may mortgage and encumber said stations and everything pertaining thereto acquired, to secure the payment of funds to construct the same or any part thereof, or to erect, equip, improve, enlarge, repair, operate, or maintain said stations. No such mortgage or encumbrance shall ever be a debt of such City, but solely a charge upon the properties so mortgaged or encumbered, and shall never be reckoned in determining the power of such City to issue bonds for any purpose authorized by law. Said Cities may borrow money and issue warrants to finance in whole or in part the cost of the acquisition, erection, equipping, improvement, enlargement, or repair of said stations and to pledge for the punctual payment of said warrants and interest thereon all or any part of the fees or other receipts derived from the operation of such stations.

Partial invalidity

Sec. 5. If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act, or the application thereof to any person or circumstance, is held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity or unconstitutionality.

Not applicable to vehicles operating under certificate from Railroad Commission

Sec. 5a. Nothing herein or in any ordinance passed pursuant hereto shall apply to motor vehicles, trailers, or semitrailers operated under a certificate or permit from the Railroad Commission of Texas. [Acts 1937, 45th Leg., p. 750, ch. 368.]

Section 6 of the Act of 1937 repealed all conflicting laws.

Art. 1015g. Toll bridges over international boundary rivers, powers respecting.

Acquisition

Section 1. Any city or town in this State now or hereafter incorporated under the General Laws

of this State, and not having a special charter granted by the Legislature of this State, and not having a charter adopted or amended under the Home Rule provisions of the Constitution and Statutes of this State, and having located within its corporate limits or outside its corporate limits but within a distance of two (2) miles from such corporate limits thereof, a toll bridge over a river between the State of Texas and the Republic of Mexico shall have power to acquire any such toll bridge, with its rights and franchises and appurtenant properties, by purchase thereof from the owner or owners thereof; either by purchase of the properties, as such, or, if such toll bridge is owned by a private corporation, either by purchase from it of the properties, as such, or by purchasing the capital stock of such corporation from the owner or owners of such stock, either all of the outstanding capital stock of such corporation or a sufficient amount thereof as required under the law for the dissolution and liquidation of such corporation, and immediately liquidating such corporation, paying the debts and obligations or liabilities thereof, and winding up its business and affairs, and causing conveyance of its properties to said city or town, taking the title to such stock either in the name of such city or town or in the name of a trustee therefor, and voting or causing such stock to be voted to carry out and accomplish such purposes, and all in such manner and to such effect as to vest title to such toll bridge, with its rights and franchises and appurtenant properties, in such city or town; and to thus purchase and acquire any such properties or stock of such corporation, from the owner or owners thereof, for such price, upon such terms and conditions, and upon such covenants and agreements in respect thereto, and to make and enter into such contracts and agreements with such owner or owners therefor, in respect thereto, and to accomplish the purposes of this Act, as may be agreed upon by and between such owner or owners and the Governing Body of any such city or town, the action of the latter being expressed by Ordinance, all as consistent with and subject to the provisions of this Act.

General powers after acquiring bridge

Sec. 2. Any such city or town thus acquiring any such toll bridge shall have power to maintain and operate same, and to own, hold, and control the same, and to make or cause to be made any repairs, improvements, replacements, extensions, or additions thereto, and to renew or extend any franchises therefor, and to obtain new or additional franchises therefor, and to do any and all things required or that may be proper or necessary to the maintenance and operation thereof, and conduct of the business thereof, and of rendering the services thereof to the public and to the patrons of said toll bridge; and to such end and for such purposes shall have power to make and enter into, and to carry out, observe, and perform, any and all contracts, agreements, and undertakings, of any and every kind, required by the United States of America or any of its departments, officers, or governmental agencies, or the public authorities thereof; or required by the Republic of Mexico, or any of its departments, officers, or governmental agencies, or the public authorities thereof.

Tolls and charges

Sec. 3. Any such city or town thus acquiring any such toll bridge shall have power, to be exercised by its Governing Body as expressed by Ordinance, to fix and to enforce and collect tolls and charges for the use thereof, and for the passage or transportation of persons or property, passengers, vehicles, freight and commodities, over and across such toll bridge. Such tolls and charges shall be fixed from time to time by the Governing Body of any such city or town, and collected under its direction, in accordance with the provisions and requirements of any permits or franchises granted or extended by any governmental authority in respect of or applicable thereto; and, subject to the provisions and requirements of any such permits or franchises, shall be just and reasonable and non-discriminatory, as determined by such Governing Body of any such city or town, and with no free service until the bonds herein provided to be issued to acquire such properties, together with the interest thereon, and all duties and obligations incident thereto or arising therefrom are first fully paid, met, and discharged; and, subject to the provisions and requirements of any such permits and franchises, shall be sufficient to produce revenues adequate:

(a) to pay all expenses necessary to the maintenance and operation of such toll bridge, and to comply with the requirements and make all payments necessary under the provisions of any such permits and franchises therefor;

(b) to pay the interest on and the principal of all bonds issued under this Act when and as the same shall become due and payable;

(c) to pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds, and payable out of such revenues, when and as the same shall become due and payable; and

(d) to fulfill the terms of any agreements made with the holders of such bonds and/or with any person in their behalf;

(e) out of the revenues which may be received in excess of those required for the purposes specified in subparagraphs (a), (b), (c), and (d) above, the Governing Body of any such city or town may in its discretion establish a reasonable depreciation and emergency fund, or retire (by purchase and cancellation or redemption) bonds issued under this Act, or apply the same to accomplish any of the purposes of this Act;

(f) it is the intention of this Act that the tolls and charges herein provided for shall not be in excess of what may be necessary to fulfill the obligations imposed by this Act. Nothing herein shall be construed as depriving the State of Texas of its power to regulate and control tolls and charges to be collected for such purposes, or to provide for bridges over any such river to be used free of any tolls or charges, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds issued hereunder that the State will not limit or alter the power hereby vested in any such city or town or the Governing Body thereof to establish and collect such fees and charges as will produce revenues sufficient to pay the items specified in subparagraphs (a), (b), (c), and (d) of this Section 3 of this Act, or exercise its powers in any way to impair the rights or remedies of the holders of the bonds, or of any person in their behalf, until the bonds, together with the interest thereon, with interest on unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and all other obligations of any such city or town in connection with such bonds are fully met and discharged.

Definition of toll bridge with its rights and franchises and appurtenant properties; acquisition of all or part

Sec. 4. The term "toll bridge, with its rights and franchises and appurtenant properties" is hereby defined to mean and include the physical properties of any such bridge, together with and including all permits, grants, franchises, rights, and privileges, of every kind granted or extended by the United States of America, or the Congress thereof, or any department, officer, agency, or governmental authority thereof; or by the Republic of Mexico, or the Congress thereof, or any department, officer, agency,

or governmental authority thereof; or by any State or municipality or political subdivision of either or both said two (2) Nations; for or in relation to or in respect of the construction, maintenance, or operation of any such toll bridge; or the collection of tolls and charges for the uses thereof; and including all lands, rights of way, easements, leasehold, contractual or other interest of any kind in any lands in either or both said two (2) Nations, held or used or in any manner incident to or for the construction, maintenance, or operation of such bridge, or the approaches thereto, or for the use or occupancy of any buildings, structures, appurtenances, appliances, roads, streets, parks, grounds, or conveniences or facilities of any kind, related or in any manner incident thereto; and including all buildings, structures, appurtenances, appliances, equipment, conveniences and facilities, of every kind, held or used or in any manner incident to or for the construction, maintenance, and operation of said bridge; and including all leases and contracts of every kind for the use or occupancy of any such lands, buildings, structures, conveniences, appliances and facilities; and including all rights and properties of every kind incident to or used for the construction, maintenance, or operation of any such toll bridge; each and all whereof shall be construed as included within the meaning of such term "toll bridge, with its rights and franchises and appurtenant properties" as such term is used in this Act; provided, however, that any such city or town, in exercising the powers herein granted, may acquire by purchase as herein provided, all or any part of any such toll bridge, that is, either the entire bridge or only that part thereof which is situated in the State of Texas; and either all or any part of or any of the respective such grants, permits, franchises, rights, contracts, privileges, easements, leases, lands, rights of way, buildings, structures, appurtenances, appliances, equipment, facilities, and other interests and items above enumerated, as included within the meaning of such term "toll bridge, with its rights and franchises and appurtenant properties" as used in this Act; as the Governing Body of any such city or town may, in its discretion, determine and deem best.

Parks, recreation grounds, camps, quarters, accommodations and facilities

Sec. 5. Any such city or town acquiring any such toll bridge shall have the power, in connection with the maintenance and operation thereof, to acquire lands and a site or sites for the purpose either within or without the corporate limits of such city or town, within territory adjacent to said city or town or to said toll bridge, and to construct, maintain, and operate parks, recreation grounds and facilities, camps, quarters, accommodations and facilities, for the use and convenience of the public; and to fix and to enforce and collect fees, rentals, and charges, for the use thereof, which shall be just and reasonable and nondiscriminatory, as determined by and fixed from time to time by the Governing Body of such city or town; and to make and enforce reasonable rules and regulations therefor; and to manage, control, govern, police, and regulate the same.

Borrowing money; grants from United States or agencies

Sec. 6. Any such city or town, to accomplish the purposes of this Act, shall have power to borrow money from any person or corporation, and, without limitation of the generality of the foregoing, to borrow money and accept grants from the United States of America, or from any corporation or agency created by the United States of America or designated or empowered to act as an agency thereof, and, in connection with any such loan or grant, to enter into such agreements as the United States of America or such agency or corporation may require in respect or in relation thereto.

Issuance of bonds

Sec. 7. Any such city or town shall have the power to accomplish the purposes of this Act, to issue, sell and deliver, its negotiable bonds; which bonds or the proceeds of the sale thereof may be used to purchase and acquire from the owner or owners thereof any such toll bridge, with its rights and franchises and appurtenant properties, or such part or portion thereof as may be purchased by any such city or town as herein provided for, either by purchase of the properties, as such, or by using such bonds or the proceeds of the sale thereof for the purchase from the owner or owners thereof of the stock of any corporation owning such toll bridge and for the liquidation and winding up of the business and affairs of such corporation and paying the debts and obligations or liabilities thereof, and all in such manner and to such effect as to vest title to such toll bridge, with its rights and franchises and appurtenant properties, or such part or portion thereof as may be purchased, in said city or town as provided for herein; and which bonds may be exchanged for property or sold as herein provided; to accomplish any of the purposes of this Act as herein provided.

Mortgages or pledges

Sec. 8. Any such city or town shall have the power, in respect to any such bonds issued in pursuance of the provisions of this Act to accomplish any of the purposes of this Act, to mortgage or pledge all or any part of or any interest in any such toll bridge, with its rights and franchises and appurtenant properties, or any of the properties acquired or to be acquired with such bonds or the proceeds of the sale thereof; and all or any part of the gross or net revenues thereafter received by said city or town from or in respect of any such properties so acquired or to be acquired by said city or town with such bonds or the proceeds of the sale thereof; to secure the payment of the principal of and interest on such bonds, and of the sinking fund or reserve fund payments agreed to be made in respect of such bonds; and to make and enter into such covenants and agreements with the purchasers of such bonds or any person in their behalf in respect thereto and for securing the payment thereof and for providing rights and remedies to the owners and holders of such bonds or to any person in their behalf, as the Governing Body of any such city or town may in its discretion approve and determine and provide by an Ordinance or Ordinances adopted for such purposes; all in accordance with the provisions of this Act.

Amount, denominations and terms of bonds

Sec. 9. Any such bonds issued by any such city or town in pursuance of and to accomplish the purposes of this Act, shall be in such aggregate principal amount or amounts, of such denominations, bearing such date or dates, of such maturities, bearing interest at such rate or rates, not exceeding six (6) per cent per annum, payable annually or semi-annually on such respective dates, in such form, containing such terms, provisions, and conditions, either coupon or registered, with such registration privileges, such provisions for the call or redemption thereof before maturity, payable at such place or places within or without the State of Texas, as the Governing Body of any such city or town may in its discretion approve and determine and provide by an Ordinance or Ordinances adopted for such purposes; all in accordance with the provisions of this Act.

Sale or exchange of bonds

Sec. 10. Any such bonds issued by any such city or town in pursuance of and to accomplish the purposes of this Act, may either be:

(a) sold for cash, at public or private sale, at such price or prices as the Governing Body of any such city or town shall determine, provided, that the interest cost of the money received therefor, computed to maturity in accordance with standard bond tables in general use by banks and insurance companies, shall not exceed six (6) per cent per annum; or,

(b) may be issued on such terms as the Governing Body of any such city or town shall determine in exchange for property of any kind, real, personal or mixed, or any interest therein, which the Governing Body of such city or town shall determine to be proper and necessary to accomplish any of the purposes of this Act; or,

(c) may be issued in exchange for like principal amounts of any other bonds of such issue, matured or unmatured.

Deposit of proceeds

Sec. 11. If such bonds are sold for cash, the proceeds of the sale of such bonds shall be deposited in such depository and shall be paid out pursuant to such terms and conditions, as may be agreed upon between the Governing Body of such city or town and the purchasers of such bonds.

Negotiability; exemption from taxation; investment in bonds

Sec. 12. Any such bonds issued by any such city or town in pursuance of and to accomplish the purposes of this Act, shall constitute negotiable instruments under the Negotiable Instruments Act of this State; and are hereby exempted from any and all State, county, municipal, and other taxation under the laws of this State; and shall be legal investments for banks, trust companies, and insurance companies organized under the laws of this State.

Application of other laws

Sec. 13. The provisions of Articles 1111 to 1118, inclusive of the Revised Civil Statutes of Texas of 1925, as amended, and of the Bond and Warrant Law of 1931, as amended,[1] shall apply to and govern the purchase of any such properties by any such city or town, in pursuance of the provisions of this Act, and the issuance, sale, and delivery of any such bonds, and manner of securing the payment thereof, and in respect to the enforcement of such obligations, and the rights and remedies of the owners and holders of such bonds or of any person acting in their behalf, in respect to the maintenance and operation of the properties acquired in pursuance of this Act, and in respect to the accomplishment of all the purposes of this Act; except as herein specifically provided for and prescribed by the terms of this Act; and except that none of the limitations and restrictions contained in or imposed by Sections 2, 3, and 4 of said Bond and Warrant Law of 1931, as amended, shall apply to or govern any such purchase of any such properties or issuance of any such bonds by any such city or town; and except that, as is hereby expressly provided, any such city or town may purchase any such properties and issue any such bonds, and may use such bonds or the proceeds of the sale thereof for the purchase of any such properties or to accomplish any of the purposes of this Act, by action of its Governing Body as expressed by Ordinance authorizing and effecting same, and without the necessity of any referendum, and without the necessity of calling or holding any election to authorize any such action, and without the necessity of giving or publishing any notice of intention to acquire any such properties or to issue any such bonds, and without the necessity of advertising or calling for any competitive bids in respect thereto; and provided that in the event there is any conflict between the provisions of this Act and the provisions of said Articles 1111 to 1118, inclusive, Revised Civil Statutes of Texas of 1925, as amended, or the provisions of said Bond and Warrant Law of 1931, as amended, or the provisions of any other applicable Act or law, the provisions of this Act shall control; and, in all events, all specific provisions of this Act shall control.

[1] Article 2368a.

Taxes or assessments; pledge of credit; not authorized

Sec. 14. Nothing in this Act shall authorize any such city or town, acting in pursuance hereof or to accomplish any of the purposes hereof, to levy or collect any taxes or assessments therefor or in respect thereto, or to pledge the credit of the State in any manner; or to issue or to sell or deliver any bonds or to create any obligations of any kind or to incur any liabilities of any kind or to make or enter into any contracts or agreements of any kind, to be paid or performed or met or discharged out of or from any taxes or assessments.

How powers exercised

Sec. 15. All powers, rights, privileges and functions, conferred by this Act upon any such city or town shall be exercised by and through the Governing Body thereof as expressed by an Ordinance or Ordinances duly adopted to authorize and effectuate the same. No referendum and no election by the voters of any such city or town shall be necessary or required to authorize the exercise of any such powers, rights, privileges, or functions, or the doing of any act or thing to accomplish the purposes of this Act.

Application of other laws

Sec. 16. This Act shall constitute full authority for the authorization and issuance of bonds hereunder and no other Act or law with regard to the authorization or issuance of obligations, or the deposit of the proceeds thereof, in any way impeding or restricting the carrying out of the acts and things herein authorized to be done shall be construed as applying thereto or to any acts or proceedings taken hereunder and acts or things done pursuant hereto, and for the accomplishment of the purposes of this Act.

Cumulative character

Sec. 17. This Act shall be cumulative of all other Acts and laws; and the powers, rights, privileges, and functions hereby conferred on any such city or town, shall not prevent the exercise by any such city or town of any and all other powers, rights, privileges, or functions conferred upon any such city or town by any other Act or law now existing or hereafter enacted.

Liberal construction

Sec. 18. This Act and all of the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

Partial invalidity

Sec. 19. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby. [Acts 1945, 49th Leg., p. 397, ch. 258.]

Art. 1016. [854] [419] [375] Streets and alleys, etc.—Any incorporated city or town containing not more than five thousand population in this State shall have the exclusive control and power over the streets, alleys, and public grounds and highways of the city, and to abate and remove encroachments or obstructions thereon; to open, alter, widen, extend, establish, regulate, grade, clean and otherwise improve said streets; to put drains or sewers therein, and pre-

vent incumbering thereof in any manner, and to protect same from encroachment or injury; and to regulate and alter the grade of premises; to require the filling up and raising of same; and such city council shall also have power to alter or vacate the alley in any block of ground in the city upon written application of the owner of the block, or if there be more than one owner of such block, then upon the written application of all owners thereof uniting in such application; such alley so vacated shall thereupon revert to and become the property of the owner of the block of which it was a part, or if more than one, then to the owners of the adjoining lots therein, each extending to the center of the alley so vacated. [Acts 1889, p. 1; Acts 1913, p. 326; Acts 1917, p. 351; G. L. vol. 9, p. 1029.]

Art. 1017. Sale of parks, land for buildings and abandoned streets, etc.; disposition of proceeds.—The governing body of any incorporated city or town in this State, however incorporated, may sell and convey any land or interest in land owned, held or claimed as public square, park or site for city hall or other municipal building, and abandoned parts of streets and alleys, together with all improvements on any such property owned by any such city or town. The proceeds of any such sale shall be used only for the acquisition and improvement of property for the same uses as that so sold. Provided, however, that the title of any purchaser of such property for a valuable consideration shall not be impaired by reason of the failure of such governing body to so apply said funds. Such sales shall be made by an ordinance passed by such governing bodies which shall direct the execution of conveyance by the mayor or city manager of any such city or town. [Acts 1913, p. 326; Acts 1947, 50th Leg., p. 151, ch. 88, § 1.]

Art. 1018. Use by railway, etc.—The charter, or any amendment thereto, may authorize the governing body to close for the exclusive use temporarily or perpetually by any railroad company or other corporation having power of eminent domain, any part or parts, of any street or streets, alley or alleys, and to ratify and confirm any prior ordinances closing any street or streets, alley or alleys, or any part or parts thereof, for the use of any railroad company or any such other corporation. [Id.]

This article and articles 1019 and 1020, post, in so far as permitting surrender by city of legislative powers and duties, have been held invalid in Bowers v. City of Taylor, 24 S.W.(2d) 816, den'g reh 16 S.W.(2d) 520, under Const. art. 1, § 17, prohibiting irrevocable or uncontrollable grants of special privileges or immunities.

Art. 1019. Special election.—No public square or park shall be sold, and no street or alley, nor part or parts of any street or alley closed, until the question of such sale or closing has been submitted to a vote of the qualified voters of the city or town, and approved by a majority of the votes cast at such election. [Id.]

As to partial invalidity, see note under article 1018, ante.

Art. 1020. Towns so empowered.—The provisions of the three preceding articles shall be enforced in towns or cities under five thousand population, or cities over five thousand population which have no special charter, and in towns or cities incorporated under this title, and in cities or towns incorporated under any special law. The power authorized by this article may be conferred upon the governing body by vote of the qualified voters as provided in the preceding article. [Id.]

As to partial invalidity, see note under article 1018, ante.

Art. 1021. [876] [577] [504] Interest on indebtedness.—No indebtedness of any character whatever, hereafter incurred by said corporation shall draw a higher rate of interest than six per cent per annum. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1022. [885 to 888] Audit board.—With the consent of the governing body, the mayor of each city or town incorporated under the general laws, shall at the first meeting of said body in January of each year appoint three resident citizens of said city or town who shall constitute a board of examiners of the finances of said city or town. Such examiners shall proceed to examine the books and accounts of each officer of said city or town, and make a sworn true report of the financial condition thereof to said governing body as soon as practicable and not later than the first meeting of said body in March of each year. The annual report of said board shall be passed upon by said governing body and spread upon the minutes of their meeting at the first regular meeting after the return of such report. Such examiners shall receive for their services such compensation as said governing body shall fix for every day actually employed in their investigations, not to exceed fifteen days in each year, which shall be paid by order of said body. [Acts 1905, p. 41; G. L. vol. 10, p. 771.]

Art. 1023. [889] [556] [485] Financial statement.—The city council shall, at least ten days before the expiration of each municipal year, cause to be published in a city newspaper a correct and full statement of the receipts and expenditures from the date of the last annual report, together with the sources from which the funds were derived, and showing for what purpose disbursed, the condition of the treasury, together with such information as may be necessary to a full understanding of the financial condition of the city. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1024. [899] [480] Receiver appointed.—A city or town so situated as is herein set forth, which fails to effect a compromise of its debts, or pending the negotiation of a compromise, shall be permitted, on its application setting forth its financial condition and insolvency, to have the district court of the county in which said city or town is situated, take charge of the collection and appropriation of all taxes levied and assessed by said city or town, except so much thereof as is necessary to pay the current expenses of the city or town; and to that end, said court, or the judge thereof in vacation, shall appoint a receiver or make the assessor and collector of said city or town its receiver to collect and pay into a named depository all taxes levied by said city or town for the payment of its debts; and said courts shall decide all questions of priority between conflicting claimants of said funds, and shall provide for the ratable and equitable distribution of said funds among all creditors entitled thereto. But it shall not be lawful for any court to appoint a receiver of or concerning any city or town except upon the voluntary application of such city or town. [Acts 1887, p. 50; G. L. vol. 9, p. 848.]

Art. 1024a. Relief to municipalities and taxing districts under Federal Bankruptcy Laws.—That all municipalities, political subdivisions and taxing districts in this State which have power to incur indebtedness, either through action of their own governing bodies or through action of the governing bodies of counties or cities in which such political subdivisions or taxing districts are included, are hereby authorized to proceed under all laws enacted by the Congress of the United States under the Federal Bankruptcy powers, which laws have for their object the relief of municipal indebtedness, including H.R. 5950 of the Seventy-Third Congress, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, and acts amendatory thereof and supplementary thereto," approved May 24, 1934, and the officials and governing bodies of such municipalities, political subdivisions and taxing districts are authorized to adopt all proceedings and to do any and all acts necessary or convenient to fully avail such municipalities, political subdivisions and taxing dis-

tricts of the provisions of such Acts of Congress. [Acts 1935, 44th Leg., p. 293, ch. 107, § 1.]

[1] 11 U.S.C.A. §§ 301–303.

Art. 1024b. Composition with creditors under Federal Bankruptcy Laws.—All municipalities, political subdivisions, and taxing districts in this State as defined in Section 81, Chapter 657, Acts of the Seventy-fifth Congress of the United States, 50 Statutes at Large, Page 654, 11 U.S.C.A. Sec. 401, which have power to incur indebtedness, either through action of their own governing bodies or through action of the governing bodies of counties or cities in which such political subdivisions or taxing districts are included, are hereby authorized to proceed under all laws that have been heretofore enacted by the Congress of the United States under the Federal Bankruptcy powers to effect a plan for the composition of their indebtedness, and the officials and governing bodies of such municipalities, political subdivisions, and taxing districts are authorized to adopt all proceedings and to do any and all acts necessary to fully avail such municipalities, political subdivisions, and taxing districts of the provisions of such Acts of Congress, but this Act shall not apply to any bond or bonds while held by the permanent school fund of Texas. [Acts 1939, 46th Leg., p. 70, § 1.]

This act, authorizing municipalities, political subdivisions, and taxing districts to effect a plan for the composition of their indebtedness under the provisions of the Federal Bankruptcy laws, but providing that the statute should not apply to any bonds while held by permanent school fund of Texas, violated constitutional requirement that no bill shall contain more than one subject which shall be expressed in its title, and hence was void. Mission Independent School District v. State of Texas, C.C.A., 116 F.2d 175, certiorari denied 61 S.Ct. 839, 313 U.S. 562, 85 L.Ed. 1522.

Art. 1025. [902] [555] [484] Official paper.—The city council shall, as soon as may be after the commencement of each municipal year, contract, as they may by ordinance or resolution determine, with a public newspaper of the city as the official paper thereof, and to continue as such until another is elected, and shall cause to be published therein all ordinances, notices and other matters required by this title or by the ordinance of the city to be published. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

CHAPTER 5.—TAXATION

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Article 1026. [923] [484] Power to levy.—The governing body of any city or town in this State having a population of five thousand or less shall have power by ordinance to levy, assess and collect such taxes as such governing body may determine, not to exceed for any one year one and one-half per cent of the taxable property of such city or town, for current expenses and for the purpose of construction or the purchase of public buildings, water works, sewers, and other permanent improvements, within the limits of such city or town, and for the construction and improvement of the roads, bridges and streets of such city or town within its limits. [Acts 1921, p. 12.]

Art. 1027. [924] [485] Ad valorem tax.—The governing body of any incorporated city or town having a population of not more than five thousand inhabitants, shall have power, by ordinance, to levy and collect an annual ad valorem tax of not exceeding one and one-half per cent on the one hundred dollars valuation of taxable property within such city or town for the erection, construction or purchase of public buildings, streets, sewers and other permanent improvements within the limits of such city or town. Within the meaning of this article shall be included building sites and buildings for public free schools and institutions of learning within those cities and towns which have or may assume the exclusive control and management of public free schools and institutions of learning within their limits. [Acts 1885, p. 99; G. L. vol. 9, p. 719; Constitutional Amendment 1921.]

Acts 1932, 42nd Leg., 3rd C.S., p. 113, ch. 45, § 1, validates all levies of ad valorem taxes and declares them enforceable the same as though they had been made originally in compliance with the law or special charters under which the cities operate.

Art. 1027a. Validating ad valorem tax levies in towns of 1200 in certain counties.—All levies for ad valorem taxes heretofore made by the governing bodies of any incorporated city or town in this State which are void and unenforceable because such levies were made and adopted by resolution, motion or other informal action instead of having been made by ordinance, or which are void and unenforceable because of the failure of the governing bodies of such incorporated city or town to appoint the proper and statutory Board of Equalization, as required by the laws of this State, or where the City Council, City Commission or other governing body of such incorporated city or town have acted as a Board of Equalization in the fixing of the valuation of taxable property for ad valorem taxes within any such incorporated city or town, and which levies are otherwise legally enforceable are hereby validated and that same are hereby declared enforceable the same as though they had been made and adopted originally by ordinance duly passed and as heard before a properly and legally appointed Board of Equalization; provided that the provisions of this Act shall be applied only to those incorporated cities and towns having a population of less than twelve hundred (1200) inhabitants and situated in counties of this State having a population of thirty-four thousand, one hundred and fifty-six (34,156) to thirty-four thousand, three hundred (34,300) according to the last preceding United States Census. [Acts 1935, 44th Leg., p. 532, ch. 222, § 1.]

Art. 1027a—1. Cities and towns under 1200; assessments and valuations validated, budget hearings validated.—All acts of the governing bodies of all cities and towns in this State, having a population of not more than twelve hundred (1200) according to the last Federal Census, heretofore done, performed or attempted to be done in connection with the making of assessments, providing for valuations, equalization hearings, notices of budget hearings, adoption of budgets, adoption of tax rates and tax rolls and any and all other acts necessary or required in providing the assessment, valuation and collection of city taxes, heretofore had or done by the governing bodies of said cities and towns, are hereby ratified and validated in all respects as though they had been duly and legally made in the first instance, and all taxes, either real, personal or both, heretofore levied, assessed and charged against any person, by any such governing bodies in all cities and towns having a population of not more than twelve hundred (1200) according to the last Federal Census are hereby declared to be valid and binding tax obligations of said individuals and same shall be collectible under the laws of this State providing for the collection of delinquent taxes with penalty and interest.

This Act shall not have the effect of validating any tax levy unless the same shall be made by a duly constituted governing body acting in the fair and reasonable exercise of its taxing power, nor shall any levy be validated if it should be unreasonable, discriminatory or otherwise apply or affect any person, firm or individual in a confiscatory manner. All taxes validated herein shall be uniform as to persons and classes of property, and any person shall have full recourse to courts of law for the enforcement of his legal rights against discriminatory or confiscatory taxes notwithstanding the validating provisions hereof. [Acts 1947, 50th Leg., p. 1015, ch. 433, § 1.]

Section 2 of the Act of 1947 read as follows: "Nothing in this Act shall validate or otherwise affect any of the matters mentioned in the foregoing Section 1 where same is involved in litigation pending on the effective date of this Act."

Art. 1027b. Validation of ad valorem tax levies in cities of 1100 to 1250.—All levies for ad valorem taxes heretofore made by the governing bodies of any incorporated city or town in this State which are void and unenforceable because such levies were made and adopted by resolution, motion or other informal action instead of having been made by ordinance, or which are void and unenforceable because of the failure of the governing bodies of such incorporated city or town to appoint the proper and Statutory Board of Equalization, as required by the laws of this State, or where the City Council, City Commission or other governing body of such incorporated city or town has acted as a Board of Equalization in the fixing of the valuation of taxable property for ad valorem taxes within any such incorporated city or town, and which levies are otherwise legally enforceable are hereby validated and that the same are hereby declared enforceable the same as though they had been made and adopted originally by ordinance duly passed and/or as heard before a properly and legally appointed Board of Equalization; provided that the provisions of this Act shall be applied only to those incorporated cities and towns in this State having a population of not less than eleven hundred (1100) and not more than twelve hundred and fifty (1250) inhabitants, according to the last preceding United States Census. [Acts 1935, 44th Leg., p. 332, ch. 123, § 1.]

Art. 1027c. Validation of ad valorem tax levies in incorporated cities and towns.—Sec. 1. All levies for ad valorem taxes heretofore made by the governing body of any incorporated city or town in this State which are void and unenforceable because such levies were made and adopted by resolution, motion, or other informal action instead of having been made by ordinance or which are void and unenforceable because of the failure of the governing bodies of such incorporated city or town to appoint the proper and Statutory Board of Equalization, as required by the laws of this State, or where the City Council, City Commission, or other governing body of such incorporated city or town has acted as a Board of Equalization in the fixing of the valuation of taxable property for ad valorem taxes within any such incorporated city or town and which levies are otherwise legally enforceable are hereby validated and that same

are hereby declared enforceable the same as though they had been made and adopted originally by ordinance duly passed and as heard before a properly and legally appointed Board of Equalization.

Sec. 2. The provisions of this Act shall not be construed as validating any such levies for ad valorem taxes, and/or proceedings incident thereto, where the validity of such levy, and/or proceedings incident thereto, have been attacked or contested in any pending suit or litigation. [Acts 1935, 44th Leg., 2nd C.S., p. 1740, ch. 452.]

Art. 1027d. Validation of ad valorem tax levies in cities and towns of 3305 to 3445.—All levies and assessments of ad valorem taxes heretofore made by the governing body of any city or town incorporated in this State, which are unenforceable because such levies were made and adopted by resolution, motion or other informal action, instead of having been made by ordinance as required by law; and all assessments of taxes or assessments of property within the limits of any such city or town in this State subject to taxation under the laws of this State, for taxation under such resolution, motion or other informal action, which are insufficient because of the failure of such governing body to appoint the proper and statutory Board of Equalization, as required by law, and which are insufficient or unenforceable on account of technical irregularities in the manner of preparing the books and reports of the assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Board of Equalization acting for such city or town which are irregular or insufficient because the reports of such equalization were adopted and accepted orally or by other informal action, are each and all hereby validated, ratified, approved, confirmed, and declared enforceable the same as though such levies and assessments of taxes had been made and adopted originally by the proper order, motion or resolution, duly passed, entered of record and signed by the proper officials of such governing body, and the same as though such assessments of property within such city or town for taxation purposes had been made in due and complete form, time and manner, and the same as though said equalizations and the reports of the Boards of Equalization acting for such city or town had been made in due and regular form, time and manner, and adopted and accepted in due and regular form. Provided, however, that the terms of this Act shall apply only to incorporated cities and towns having a population of not less than three thousand three hundred five (3,305) inhabitants, and not more than three thousand four hundred forty-five (3,445) inhabitants, according to the last preceding Federal Census; and provided, further, that this Act shall not affect any suit or suits pending in any Court in this State on the effective date of this Act. [Acts 1936, 44th Leg., 3rd C.S., p. 2090, ch. 500, § 1.]

Art. 1027e. Validation of ad valorem tax levies in cities and towns of 3000 to 4000.—Section 1. All levies for ad valorem taxes heretofore made by the governing body of any incorporated City or Town in this State which are void and unenforceable because such levies were made and adopted by resolution, motion, or other informal action instead of having been made by ordinance or which are void and unenforceable because of the failure of the governing bodies of such incorporated City or Town to appoint the proper and statutory Board of Equalization, as required by the laws of this State, or where the City Council, City Commission, or other governing body of such incorporated City or Town has acted as a Board of Equalization in the fixing of the valuation of taxable property for ad valorem taxes within any such incorporated City or Town and which levies are otherwise legally enforceable are hereby validated and that same are hereby declared enforceable the same as though they had been made and adopted originally by ordinance duly passed and as heard before a properly and legally appointed Board of Equalization; provided that the provisions of this Act shall be applied only to those incorporated Cities and Towns in this State having a population of not less than three thousand (3,000), and not more than four thousand (4,000) according to the last preceding United States Census.

Sec. 2. The provisions of this Act shall not be construed as validating any such levies for ad valorem taxes, and/or proceedings incident thereto, where the validity of such levy, and/or proceedings incident thereto, have been attacked or contested in any pending suit or litigation. [Acts 1937, 45th Leg., p. 183, ch. 98.]

Art. 1027f. Validation of ad-valorem tax levies in cities and towns of 1245 to 1255 population.—All levies and assessments of ad valorem taxes heretofore made by the governing body of any incorporated city or town in this State, which are voidable or unenforceable because such levies were made and adopted by resolution, motion or other informal action, instead of having been made by order, as required by the Statutes of this State; and all assessments of taxes or assessments of property within the limits of any incorporated city or town in this State, subject to taxation under the laws of this State, for taxation under such resolution, motion, or other informal action, which are insufficient because of the failure of such governing body to appoint the proper and statutory Board of Equalization, as required by law, and which are insufficient, and voidable, or unenforceable on account of technical irregularities in the manner of preparing the books and reports of the assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Board of Equalization acting for any such incorporated city or town, which are irregular or insufficient because the reports of such equalizations were adopted and accepted orally, or by other informal action; and the acts of making such equalizations were made orally or informally or in incomplete form, are each and all hereby validated, ratified, approved, confirmed, and declared enforceable, the same as though such levies and assessments of taxes had been made and adopted originally by the proper order, motion or resolution, duly passed, entered of record and signed by the proper officials of such governing body, and the same as though such assessments of property within such incorporated cities or towns for taxation purposes had been made in due and complete form, and the same as though said equalizations and the reports of each of the Boards of Equalization acting for said incorporated cities or towns had been made in due and regular form, and adopted and accepted in due and regular form; and all levies, assessments and equalizations of ad valorem taxes heretofore made in such cities or towns which are insufficient or unenforceable because of the failure of the governing body or any officer of such city or town to prepare, have public hearings on and file a budget are hereby validated and declared enforceable the same as though the budgets had been made, heard and filed; provided that the provisions of this Act shall be applied only to those incorporated cities and towns having a population of not less than twelve hundred forty-five (1245), and not more than twelve hundred fifty-five (1255), according to the last preceding United States census. Provided, however, that this Act shall not affect any suit now pending in any Court of this State. [Acts 1937, 45th Leg., 2nd C.S., p. 1883, ch. 14, § 1.]

Art. 1027g. Validation of ad valorem tax levies in cities and towns of 3,450 to 3,455 population.—Section 1. All levies and assessments of ad valorem taxes heretofore made by the governing body of any incorporated city or town in this State having a population of not less than three thousand four hundred fifty (3,450) inhabitants nor more than three thousand four hundred fifty-five (3,455) inhabitants according to the last Federal Census, which are void or unenforceable because such levies were made and adopted by resolution, motion, or other informal action, instead of having been made by ordinance, as required by the Statutes of this State, and all assessments of property within the limits of any incorporated city or town in this State, subject to taxation under the laws of this State, for taxation under such resolution, motion, or other informal action, made by the Tax Assessor and Collector of any such incorporated city or town, which are void or unenforceable because of irregularities in the manner of assessing such property or preparing the assessment rolls and reports, and all ad valorem taxes levied and assessed against property within the limits of any incorporated city or town in this State, subject to taxation under the laws of this State, which are void or unenforceable because of irregularities in the manner any such Tax Assessor and Collector prepared the current tax rolls, or because of the failure of any such Tax Assessor and Collector to prepare the current tax rolls as required by the Statutes of this State, are each and all hereby ratified, validated, approved, confirmed, and declared enforceable, the same as though such levies and assessments of ad valorem taxes had been made and adopted originally by proper ordinance, duly passed, entered of record and signed by the proper officers of such governing body, and the same as though such assessments of property within such incorporated cities or towns for taxation purposes had been made in due and complete form and manner, and the same as though such assessment rolls and current tax rolls had been made and prepared in due and complete form and manner as required by the Statutes of this State.

Sec. 2. The provisions of this Act shall not be construed as validating any such levies and assessments for ad valorem taxes, and/or proceedings incident thereto, where the validity of such levy and assessment, and/or proceedings incident thereto, have been attacked or contested in any pending suit or litigation. [Acts 1939, 46th Leg., Spec.L., p. 995.]

Art. 1027h. Validation of levies of ad valorem taxes in cities or towns in counties of 19,070 to 19,200.—Section 1. All levies for ad valorem taxes heretofore made by the governing body of any city or town in this State, which are void and unenforceable because such levies were made and adopted by resolution, motion, or other informal action instead of having been made by ordinance as is required by the Statutes of the State, and which are otherwise legally enforceable, are hereby validated, and the same are hereby declared to be legally enforceable the same as though originally levied and assessed in strict conformity with the procedure prescribed therefor by law.

Sec. 2. This Act shall apply only in those counties having a population of not less than nineteen thousand and seventy (19,070) and not more than nineteen thousand, two hundred (19,200), according to the Federal Census for the year 1940.

Sec. 3. This Act shall not affect nor in any manner apply to suits pending for the enforced collection of taxes or for any other purpose. [Acts 1941, 47th Leg., p. 606, ch. 374.]

Art. 1027i. Validation of ad valorem tax levies in all cities and towns for certain purposes.—All levies for ad valorem taxes heretofore made by the governing bodies of any incorporated city or town in this State for current expenses, maintenance of public free schools, and for interest and sinking funds to pay bonded obligations heretofore authorized by the electorate, which levies are void and unenforceable because such levies were made and adopted by resolution, motion, or other informal action instead of having been made by ordinance, or because made and adopted prior to final approval of the annual budget of any such city or town, or because made and adopted at a time when the tax rolls were not actually before the governing bodies of any such city or town, and which levies are otherwise legally enforceable, are hereby ratified, confirmed, and validated, and such levies are hereby declared enforceable the same as though they had been adopted originally by ordinance in strict compliance with all requirements of the law; provided this Act shall not apply to levies the validity of which has been attacked in any litigation pending in Court at the time this Act becomes effective. [Acts 1941, 47th Leg., p. 857, ch. 533, § 1.]

Art. 1028. Ad valorem tax in large cities.—The governing body of any city in this State having more than five thousand inhabitants, unless otherwise provided in its special charter granted by the Legislature or adopted by the people, shall have power by ordinance to levy, assess and collect such taxes as such governing body may determine, not to exceed for any one year two and one-half per cent of the taxable property of such city, for current expenses and for the purpose of construction or the purchase of public buildings, water works, sewers, and other permanent improvements, and for the construction and improvement of the roads, bridges and streets of such city, within its limits. [Acts 1921, p. 12.]

All ad valorem tax levies by resolution instead of by ordinance validated, except as to cities and towns in counties having a population of less than 30,000, by Acts 1927, 40th Leg., p. 263, ch. 184, § 1.

Acts 1933, 43rd Leg., p. 626, ch. 210, validated tax levies in cities and towns in counties of 12,375 to 12,445 where the levies were made by resolution, motion or other informal action instead of having been made by ordinance or which were void for other specified reasons.

Acts 1932, 42nd Leg., 3rd C.S., p. 113, ch. 45, § 1, also validated all levies of ad valorem taxes and declared them enforceable the same as though they had been made originally in compliance with the law or special charters under which the cities might operate.

Art. 1028a. Validation of levies of ad valorem taxes in certain cities, towns and school districts.—That all levies and assessments of ad valorem taxes heretofore made by the governing body of any independent school district or city or town in this State, in counties having a population of not less than twenty-two thousand, four hundred and fifty (22,450), and not more than twenty-two thousand, eight hundred and fifty (22,850), and all cities having a population of not less than eleven thousand, four hundred (11,400), and not more than eleven thousand, five hundred (11,500), according to the last preceding Federal Census, not in excess of the limit now provided by law, which are void or unenforceable because such levies were made and adopted by resolution, motion or other informal action, instead of having been made by order, as required by the Statutes of this State; and all assessments of taxes or assessments of property within the limits of any such independent school district or city or town in this State, subject to taxation under the laws of this State for taxation under such resolution, motion or other informal action, which are insufficient because of the failure of such governing body to appoint the proper and statutory Board of Equalization, as required by law, and which are insufficient and void, and unenforceable on account of technical irregularities in the manner of preparing the books and reports of the assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Board of Equalization acting for any such independent school

district or city or town which are irregular or insufficient because the reports of such equalization were adopted and accepted orally, or by other informal action; and/or the acts of making such equalization were made orally or informally or in incomplete form, are each and all hereby validated, ratified, approved, confirmed, and declared enforceable, the same as though such levies and assessments of taxes had been made and adopted originally by the proper order, motion or resolution, duly passed, entered of record, and signed by the proper officials of such governing body, and the same as though such assessments of property within such independent school district or city or town for taxation purposes had been made in due and complete form, and the same as though such equalizations and the reports of each of the Boards of Equalization acting for said independent school districts or city or town had been made in due and regular form, and adopted and accepted in due and regular form. Provided, however, that this Act shall not affect any suit or suits pending at the time same becomes effective, which have been filed for the collection of taxes by any independent school district or city or town in this State; and provided further, that this Act shall not validate any valuation placed upon property by any Board of Equalization or any Tax Assessor where such property had been valued in excess of its reasonable cash market value, or where such property has been discriminated against as to value or placed upon the rolls at a higher value than property of like kind, or at a greater percentage of its value than other property assessed for taxation by such Independent School District or city or town in which located. [Acts 1935, 44th Leg., p. 540, ch. 228, § 1.]

Art. 1029. Retirement of indebtedness.—To meet the interest and sinking fund on all indebtedness legally incurred prior to the adoption of the constitutional amendment of September 25, 1883, regarding the power of cities and towns to levy and collect taxes, etc., the governing body of the following cities and towns shall have power by ordinance to levy, assess and collect an annual ad valorem tax sufficient therefor:

1. Of any city or town having a population of five thousand or less.

2. Of any city having more than five thousand inhabitants, unless otherwise provided in the special charter granted by the Legislature or adopted by the people. [Acts 1921, p. 12.]

Art. 1030. [927] [489] [428] Poll tax; when prerequisite to voting.—The City Council shall have power to levy and collect an annual poll tax, not to exceed One Dollar ($1) of every inhabitant of said city over the age of twenty-one (21) and under sixty (60) years, those persons exempt by law from paying the State poll tax excepted, who is a resident thereof at the time of such annual assessment; provided that said poll tax levied by the City Council shall not be made a prerequisite to voting in any election in this State except in city elections. [Acts 1875, p. 113; G.L. vol. 8, p. 485; Acts 1931, 42nd Leg., p. 377, ch. 223, § 1; Acts 1941, 47th Leg., p. 156, ch. 117, § 1.]

Art. 1031. [928–9] Occupation tax.—The city council shall have the power to levy and collect taxes, commonly known as licenses, upon trades, professions, callings and other business carried on; and each person and firm engaging in the following trades, professions, callings and business, among others, shall be liable to pay such license tax; every person or firm keeping a ball alley, or nine or ten-pin alley; every person or firm selling goods, wares and merchandise at public auction; every merchandise or cotton broker or commission merchant; every person or firm pursuing the occupation of hawker or peddler of goods or any article whatever; but this enumeration shall not be held to deprive the city council of the right to levy and collect other license taxes, and from other persons and firms under the general authority herein granted.

Art. 1032. [930] [492] [431] Power to collect tax.—Nothing herein shall prevent the city council from collecting the license, and each license tax provided for by this title. Each establishment shall be liable to said license tax; and any person or firm pursuing occupations, business, avocations or calling subject to said tax shall pay on each. No license shall extend to more than one establishment, or include more than one occupation, avocation, business or calling. [Acts 1875, p. 113; G.L. vol. 8, p. 485.]

Art. 1033. [931] [493] [432] Power to assess tax.—The city council shall have power to provide by ordinance for the assessing and collecting of said taxes, and to determine when taxes shall be paid by corporations, and when by the individual corporators. No tax shall be levied unless by consent of two-thirds of the aldermen elected. [Id.]

Art. 1034. [932] [494] [433] Collection of license tax.—The license tax shall be collected by the assessor and collector, and shall be paid to that officer by each person and firm owing such license and before engaging in any trade, profession, business, calling, avocation or occupation subject to said tax. This article shall apply to all persons owning any license and failing to pay the same. The city council may collect said license tax by suit under such rules as they may provide by ordinance. Said taxes, commonly known as licenses, shall not be construed to be a tax on property within the meaning of the provisions of this title. [Id.]

Art. 1035. [933] [554] [483] License revoked.—In any case where, by any provision of this title, or by an ordinance passed in pursuance thereof, a person is required to obtain a license for any calling, occupation, business or avocation, and has by the recorder been adjudged guilty of violating any city ordinance in relation thereto, the recorder, in addition to a fine, may institute proceedings to suspend or revoke the license so granted. [Id.]

Art. 1036. [934] [495] [434] "Real estate."—The term real estate or property as used in this law shall be held to include lots, lands, and all buildings or machinery and structures of every kind erected upon and affixed to the same. [Id.]

Art. 1037. [935] [496] [435] "Personal estate."—The term personal estate or property as used in this law shall be held to include all household furniture, money, goods, capital, chattels, public stocks and stocks of corporations, moneyed or otherwise, and generally all property which is not real. [Id.]

Art. 1038. [936] [497] [436] Exemptions.—The city council may, by ordinance, provide for the exemption from taxation of such property as they may deem just and proper. [Id.]

Art. 1039. [936] [497] [436] Special taxes.—Nothing in this chapter shall be construed to prevent the city council from imposing, levying and collecting special taxes and assessments for the improvement of the avenues, streets and alleys, as hereinafter provided. [Id.]

Art. 1040. [937] [498] [437] Indebtedness.—The city council may also levy, assess and collect taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken. All such taxes shall be assessed and collected separately from those levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor. Such taxes may be paid in coupons, bonds or other indebtedness for the payment of which such tax may have been levied. [Const. art. 11, sec. 6.]

Art. 1041. [938] [499] [438] Powers of council.—The city council may provide, by ordinance, for the prompt collection of all taxes assessed, levied and imposed under this title, and is authorized to sell or cause to be sold real as well as personal property, and may make such rules and regulations, and pass all ordinances as they may deem necessary to the levying, laying, imposing, assessing and collecting of any tax herein provided. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1042. [939] [500] [439] Further powers.—The city council may by ordinance, regulate the manner of making out tax lists or inventories and appraisements of property therein, and prescribe the oath that shall be administered on such rendition of property, and to prescribe how and when property shall thus be rendered, and to prescribe the number and form of assessment rolls, and fix the duties and powers of the assessor and collector, and adopt such measures as they deem advisable to secure the assessment of all property within the limits of said city, and collect the tax thereupon. [Id.]

Art. 1042a. Ordinances authorizing assessors, or assessors and collectors to prescribe assessment forms, lists, and rolls; cities and towns of 230,000 to 250,000.—All cities and towns in the State of Texas whether incorporated under General or Special Law, including Home Rule Cities, having a population in excess of two hundred and thirty thousand (230,000) and not more than two hundred and fifty thousand (250,000), according to the last preceding or any future Federal Census, shall have and they are hereby given the power and authority, any law to the contrary notwithstanding, to pass an ordinance or ordinances:

(a) Empowering the assessor of taxes, or the assessor and collector of taxes, as the case may be, to prescribe assessment forms, lists, or statements for rendering or listing property for taxation by the taxpayer in such city or town, which said assessment forms, lists, or statements shall provide and contain sufficient space and appropriate headings as will make possible their use as a combination assessment-roll-tax-roll, which are now required by law to be made separately, and to provide for the binding of such assessment-roll-tax-roll lists, forms, or statements, into one series of rolls, alphabetically arranged, without reference as to whether such listing or rendering is made by the taxpayer or by the assessor-collector. [Acts 1937, 45th Leg., 2nd C.S., p. 1896, ch. 22, § 1.]

Art. 1042b. Assessment and collection of taxes in cities, towns, villages, drainage districts, and other districts.

County assessor and collector as assessor and collector for city, town etc.

Section 1. Any incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district in the State of Texas is hereby authorized by ordinance or by proper resolution to authorize the County Assessor of the county in which said incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district is located to act as Tax Assessor for said incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district or authorize the Tax Collector of the county in which said incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district is situated to act as Tax Collector for said incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district.

Duties of Tax Assessor

Sec. 2. When an ordinance or proper resolution is passed, making available the services of the County Tax Assessor to such incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district, it shall be the duty of the said Tax Assessor of the county in which such incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district is situated to assess the taxes for said incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district and perform the duties of Tax Assessor for said incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district according to the ordinances and resolutions of said incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district, and according to law.

Duties of Tax Collector

Sec. 3. When an ordinance or proper resolution is passed availing such incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, or navigation districts of the services of the County Tax Collector, it shall be the duty of said Tax Collector of the county in which said incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, or navigation districts are situated to collect the taxes and assessment for said incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, or navigation districts and turn over as soon as collected to the respective proper depository of said incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, or navigation districts, or other authority authorized to receive such taxes or assessments, all taxes or moneys collected for said incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, or navigation districts according to the ordinances or resolutions of said incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, or navigation districts, and according to law, less his fees hereinafter provided for, and shall perform the duties of Tax Collector of said incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, or navigation districts.

Valuation

Sec. 4. The property in said incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, or navigation districts taking advantage of this Act shall be assessed at the same value as it is assessed for county and State purposes.

Compensation of County Assessor and County Collector

Sec. 5. When the County Assessor and County Collector are required to assess and collect the taxes in any incorporated city, town or village, drainage district, water control and improvement district, water improvement district, or navigation district, they shall respectively receive for such services an amount to be agreed upon by the governing body of such incorporated cities, towns or villages, drainage districts, water control and improvement districts, water improvement districts, or navigation districts, and the Commissioners Court of the county in which such incorporated cities, towns or villages, drainage dis-

tricts, water control and improvement districts, water improvement districts, or navigation districts are situated not to exceed one per cent of the taxes so collected. [Acts 1939, 46th Leg., p. 652; Acts 1941, 47th Leg., p. 404, ch. 235, § 1.]

Art. 1043. [940] [501] [440] Rendition, fiscal year.—Each person, partnership and corporation owning property within the limits of the corporation shall, between January first and April first of each year, hand to the city assessor and collector a full and complete sworn inventory of the property possessed or controlled by him, her or them, within said limits on the first day of January of the current year. If the fiscal year of a municipal corporation runs otherwise than the calendar year, such corporation may by ordinance require said inventory to be made as of the first day of such fiscal year, in which case the inventory shall be handed to the city assessor and collector within the first three months of the fiscal year. [Acts 1875, p. 113; G.L. vol. 8, p. 485; Acts 1934, 43rd Leg., 3rd C.S., p. 50, ch. 27, § 1.]

Art. 1044. [941] [410] [366] Assessor and collector.—The assessor and collector shall make up the assessment of all property taxed by the city, and make duplicate rolls thereof, and on completion of the rolls, shall deliver one of them to the city secretary. He shall collect all the taxes due the city, and in the event of the non-payment of any taxes, shall proceed to sell the property to raise the amount of taxes so due; and shall in performance of his duties, observe the provisions of this title, and the ordinances of the city relating thereto. He shall give a good bond in such amount and form as the city council may prescribe. The council may require a new bond whenever they deem the existing bond insufficient; and when such bond is required, he shall perform no official act until said bond shall be given and approved. He shall at the end of every week, pay to the treasurer all money by him collected, and shall report to the city council at the first meeting in every month all money so collected and paid and perform all such other duties in such manner as the council may prescribe. The assessor and collector is authorized to require the owners of all property subject to taxation to render a correct account of the same under oath, to be administered by him. He shall receive such compensation as may be allowed by the city ordinances. [Acts 1875, p. 113; G.L. vol. 8, p. 485.]

Art. 1044a. City councils and trustees of independent school districts authorized to fix compensation of tax assessors and collectors in counties of 43,030 to 43,040 population.—Section 1. The City Councils of all cities and towns within this State may at their option increase the compensation of city tax assessors and collectors in any sum not to exceed Three Hundred Dollars ($300) per annum in addition to the amount that is now allowed as compensation to tax assessors and collectors of said cities and towns.

Sec. 2. The trustees of any independent school district within said counties may at their option increase the compensation of tax assessors and collectors of taxes of said independent school districts in addition to the amount now paid not to exceed the sum of Three Hundred Dollars ($300) per annum in all counties with a population of not less than forty-three thousand and thirty (43,030) and not more than forty-three thousand and forty (43,040), according to the last Federal Census. [Acts 1937, 45th Leg., 2nd C.S., p. 1994, ch. 66.]

Section 3 of the Act of 1937 repealed all conflicting laws.

Art. 1045. [942] [502] [442] List of personal property.—The assessor and collector shall make out a list of all personal property which has not been given in for assessment according to the provisions of this title, and assess the same in the name of the owner, if he be known; if not, then it shall be assessed by description of the property and as unknown owner. The value of such property shall be determined by the board of equalization. The same may be sold as in other cases, if the tax be not paid in the time prescribed by law. [Id.]

Art. 1046. [943] [503] [443] Unrendered property.—The assessor and collector, at the expiration of the time fixed by ordinance for the rendition of property shall ascertain such property in the city subject to taxation as has not been rendered; and the same shall be by him presented to the board of equalization for valuation by said board; and the same shall be by him entered in a supplement to the assessment roll as unknown, specifying the year for which said tax is not paid within the time prescribed by law; said property shall be sold at the same time and with like effect as other property. [Id.]

Art. 1047. [944] [504] [444] Back taxes.—Whenever the assessor and collector shall ascertain that any taxable property, real or personal, has not been assessed for any previous year, he shall assess the same in a supplement to his next assessment roll, at the same rate under which such property should have been assessed for such year, stating the year for which such property should have been assessed; and the taxes thereon shall be collected in the same manner as other assessments. In any case where any party has omitted to render property for taxation for any former year or years, and such taxes have not been paid, such party shall give such property in for assessment for the years thus omitted and pay such taxes; and the assessor and collector shall enter all such property in a supplement to his next assessment roll, under the head of payments for former years. [Id.]

Art. 1048. [945–955] Equalization board.—The councils of cities and towns incorporated under the General Laws shall within their discretion act as a Board of Equalization. Said councils of such cities and towns shall annually at their first meeting or as soon thereafter as practical exercise such discretion, and if they so determine they shall have the authority to appoint three (3) commissioners, each a qualified voter, a resident, and property owner of the city or town for which he is appointed who shall be styled the Board of Equalization. At the same meeting said council shall by ordinance fix the time for the meeting of such Board. Before said Board enters upon its duties, it shall be sworn to faithfully and impartially discharge all duties incumbent upon it by law as such Board. [Acts 1887, p. 152; G.L. vol. 9, p. 950; Acts 1937, 45th Leg., 2nd C.S., p. 1946, ch. 46, § 1.]

Art. 1049. [946] [506] Meetings of board.—The board of equalization shall convene annually, at the time so fixed to receive all the assessment lists, or books of the assessor of their city, for examination, correction, equalization, appraisement, and approval. At each meeting of said board the city secretary shall act as secretary therefor. [Acts 1887, p. 152; G.L. vol. 9, p. 950.]

Art. 1050. [947] [507] Shall value property.—The board of equalization shall cause the assessor to bring before them, at the time so fixed all the assessment lists or books of the assessor of their city for their examination. Said board shall have power to send for persons and papers, to swear persons who testify, to ascertain the value of such property; and, if they are satisfied it is too high, they shall lower it to its proper value; and if too low, they shall raise the value of such property to a proper figure. Said board shall also have power to correct any errors that may appear on the assessor's lists or books. [Id.]

Art. 1051. [948] [508] Complaint.—Any person may file with said board at any time before the final action of said board a complaint as to the as-

sessment of his or any other person's property, and said board shall hear said complaint. Said complainant shall have the right to have witnesses summoned in sustaining said complainant[1] as to the insurance on said property, or the rents and profits it may bring to the holder thereof.

1 Probably should read "complaint."

Art. 1052. [949] [509] Unrendered property appraisal.—The city assessor, when he delivers to said board his lists and books, shall also furnish a certified list of the names of all persons who either refuse to swear or qualify or to sign the oath as required by law, together with a list of the property of such persons situated within the corporate limits of their city, as made by him through other information. The board shall examine said lists and appraise the property so listed by the assessor. [Id.]

Art. 1053. [950] [510] Notice to owners.—In all cases where the board of equalization shall raise the value of any property appearing on the lists or books of the assessor, they shall, after having examined such lists or books and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said board to give written notice to the owner of such property or to the person rendering the same of the time to which said board has adjourned, and that such owner or person rendering said property may at that time appear and show cause why the value of said property should not be raised. Such notice may be served by depositing the same, properly addressed and postage paid, in the city post office. [Id.]

Art. 1054. [951–953] Shall lower values.—The board of equalization shall meet at the time fixed in said order of adjournment, and shall hear all persons the value of whose property has been raised. If said board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value. The action of said board at said meeting shall be final, and shall not be subject to revision by said board or by any other tribunal. [Id.]

Art. 1055. [952] [512] Approval of rolls.—The board of equalization, after it has finally examined and equalized the value of all property on the assessor's lists or books, shall approve said lists or books and return them, together with the lists that he may make up therefrom his general rolls as required by law; and when said general rolls are so made up, the board shall meet again to examine and approve said rolls. [Id.]

Art. 1056. [954] [514] Compensation of board.—The members of the board of equalization and the city secretary, while acting as secretary of said board, shall receive such pay for their services, to be allowed by the city council, as said council may deem just. [Id.]

Art. 1057. [956] [516] [445] Collection of taxes.—The assessor and collector, after the completion of the assessment roll, shall proceed to collect the taxes therein mentioned within the time, and give such notice as may be prescribed by the city council, and shall call once upon every person taxed, or on the agent or attorney of such person and demand the payment of the tax charged upon his or her person or property, if the person is to be found, and if not, then a written demand, specifying the amount of taxes due, left at the residence of some adult member of the family, shall be sufficient demand. If any person thus owing taxes has no residence, office or place of business, and no agent in the city or town known to the assessor and collector, then said demand shall not be necessary, and the ordinary published notice required by ordinance shall be sufficient. [Acts 1875, p. 115; G. L. vol. 8, p. 485.]

Art. 1058. [957] [517] [446] Tax sale.—If any person shall fail to pay the taxes imposed on him and his property within the time prescribed by the ordinances of the city, the assessor and collector shall, by virtue of his tax list and assessment roll, levy upon so much of the property subject to taxation belonging to such person as may be sufficient to pay his taxes and shall give notice of the time and place of the sale by advertisement (if not unknown property), of the property and amount of taxes, costs and fees due thereupon. Such notice shall be published in some newspaper published in said city. At the expiration of the time stated in such notice and on the day therein specified, the assessor and collector shall proceed to sell such property at public auction at some public place in said city designated in said notice. When real estate is offered for sale, the least amount of such real estate shall be sold as will be sufficient to bring the amount of the taxes, penalties and costs due by said delinquent. Should a less amount than the whole tract levied upon be sold, the assessor and collector shall, in making his deed to the purchaser, begin at a corner of said tract or parcel of land and designate the same as nearly as possible in a square so that the remaining portion will be affected to as little advantage as possible. [Acts 1875, p. 113; G. L. vol. 485.]

Art. 1059. [958] [518] [447] Effect of deed.—The assessor and collector shall, when any property has been sold for the payment of taxes, make, execute, and deliver a deed for said property to the person purchasing the same, and such deed shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the premises thereby conveyed of the following facts:

1. That the land or lot or portions thereof conveyed was subject to taxation or assessment at the time the same was advertised for sale, and had been listed or assessed in the time or manner required by law.

2. That the taxes or assessment were not paid at any time before the sale.

3. That the land, lot, or portion thereof conveyed had not been redeemed from the sale at the date of the deed, and shall be conclusive evidence of the following facts:

(a) That the land, lot or portion thereof sold was advertised for sale in the manner and for the length of time required by law.

(b) That the property was sold for taxes or assessments as stated in the deed.

(c) That the grantee in the deed was the purchaser.

(d) That the sale was conducted in the manner prescribed by law.

And in all controversies and suits involving the title to land claimed and held under and by virtue of such deed, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat said title, either that the land was not subject to taxation at the date of the sale, that the taxes or assessment had been paid, that the land had never been listed or assessed for taxation and assessment, as required by this title, or some ordinance of the city, or that the same had been redeemed according to the provisions of this title, and that such redemption was made for the use and benefit of the person having the right of redemption under the law; but no person shall be permitted to question the title acquired by the said deed without first showing that he, or the person under whom he claims title, had title to the land at the time of the sale, or that the title was obtained after the sale; provided, however, that the owner of such property shall have the right to redeem the same at any time within two years of the day and date of the sale thereof, upon payment to the purchaser of double the amount of taxes for which the same was sold, together with the costs of such sale and double the amount of all taxes paid by the pur-

chaser since such sale. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

The requirement of the payment of taxes before making a defense against a void claim of title under a tax sale is unconstitutional. Eustis v. Henrietta, 91 T. 325, 43 S.W. 259.

Art. 1060. [958] [518] [447] Personal property.—The assessor and collector shall have power to levy upon any personal property to satisfy any tax imposed by this title. All taxes shall be a lien upon the property upon which they are assessed, and in case any property levied upon is about to be removed out of the city, the assessor and collector shall proceed to take into his possession so much thereof as will pay the taxes assessed and the costs of collection. [Id.]

Art. 1060a. Application to school district and municipal corporations of all provisions of Title 122 pertaining to assessment and collection.—That all of the provisions of Title 122,[1] of the Revised Civil Statutes of Texas, of 1925, be, and the same are made available in so far as same may be applicable and necessary to all school districts and municipal corporations organized under any general or special law of this State and which have power and authority to levy and collect their own taxes, and that each of such corporations shall have the benefit of all liens and remedies for the security and collection of taxes due them as is provided in said Title in the case of taxes due the State and County. [Acts 1935, 44th Leg., p. 666, ch. 281, § 1.]

1 Articles 7041–7359.

Art. 1061. [959] [519] [448] May continue sale.—If, from any cause, the sale of property levied upon or seized for taxes shall not take place at the time first appointed, the assessor and collector shall appoint some other time, give like notice, and proceed to sell such property as prescribed in the first instance. If said property levied upon or seized for taxes cannot be sold on the day advertised, such sale may be postponed from day to day until completed, of which postponement the assessor and collector shall give verbal notice at the expiration of sale each day. [Acts 1875, p. 113; G.L. vol. 8, p. 485.]

Art. 1062. [960] [520] [449] Failure to sell.—If, at any sale of real or personal property or estate for taxes, no bid shall be made for any parcel of land, or any goods and chattels, the same shall be struck off to the city, and the city shall receive, in the corporate name, a deed for said property, and shall be vested with the same right as other purchasers at such sale, and may sell and convey the same. [Id.]

Art. 1063. [961] [5198] [4760] Laws applicable.—The provisions of Chapter 8 Title 122,[1] in reference to the seizure and sale of real and personal property for taxes, penalties and costs due thereon, shall apply as well to tax collectors for towns and cities as for tax collectors for counties. Tax collectors for cities and towns shall be governed, in selling real and personal property, by the same rules and regulations in all respects as to time, place, manner and terms and making deeds as are provided for tax collectors for counties, except as in this chapter otherwise provided. [Acts 1876, p. 259; G. L. vol. 8, p. 1095.]

1 Articles 7245–7298.

Art. 1064. [962] [521] [450] One year redemptions.—If the real estate of an infant, feme covert, or lunatic be sold under this title, the same may be redeemed at any time within one year after such disability be removed. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1065. [963] Two year redemptions.—All lands sold under and by virtue of decree and judgment of court or as otherwise provided by law, for taxes due any incorporated city or town within this State, may be redeemed by the owner or owners thereof within two years from the date of deed, upon the payment to the purchaser, or his assigns, of double the amount so paid, including costs of court. The purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of deed. [Acts 1899, p. 50.]

Art. 1066. [964] [522] [452] Payment of taxes.—Taxes levied to defray the current expenses of the city government, and all license and occupation tax levied, and all fines, forfeitures, penalties and other dues accruing to cities, shall be collectible only in current money. [Const. art. 11, sec. 4.]

Art. 1066a. Taxes levied by counties and other political subdivisions not included in determining power of home rule city or town to levy taxes.—Section 1. The taxes levied by any county, any political subdivision of a county, any number of adjoining counties, any political subdivision of the State, or any defined district under or by virtue of Article 3, Section 52 of the Constitution of the State of Texas, shall not be reckoned in determining the power of any city or town to levy city taxes, irrespective of whether such city or town is located wholly or partly within such county, number of adjoining counties, political subdivision, or defined district, or whether such political subdivision or defined district be included wholly or partly within such city.

Sec. 2. In case of conflict between this Act and any city charter or any special law constituting the charter of a city, the provisions of this Act shall prevail.

Sec. 3. Provided, however, that this Act shall not apply except as to cities and towns acting under a home rule charter and which has, prior to the effective date of this Act, attempted to amend its charter and which at the time of said Charter amendment election did not own any of the following utilities from which it could derive revenue: water system, sanitary sewer system, electric light system or natural gas distribution system.

Sec. 4. Provided, however, that the provisions of this Act shall not in any manner validate any obligations issued by any such city or town, the validity of which obligations is in litigation at the time this Act becomes effective. [Acts 1939, 46th Leg., p. 94.]

Art. 1066b. Assessor, collector and equalization board acting for included municipality or district.

Ordinance or resolution; valuation; Board of Equalization

Section 1. Any incorporated city, town or village, independent school district, drainage district, water control and improvement district, water improvement district, navigation district, road district, or any other municipality or district in the State of Texas, located entirely within the boundaries of another municipality or district is hereby empowered, to authorize, by ordinance or resolution, the Tax Assessor, Board of Equalization and Tax Collector of the municipality in which it is located to act as Tax Assessor, Board of Equalization and Tax Collector respectively for the municipality or district so availing itself for the services of said officers and Board of Equalization.

The property in said municipality or district utilizing the services of such Assessor, Board of Equalization and Collector shall be assessed at the same value as it is assessed for taxing purposes by the municipality or district the services of whose officers and Board of Equalization are being utilized.

When the ordinance or resolution is passed making available their services, said Assessor shall assess the taxes for and perform the duties of Tax Assessor for the municipality or district so availing it-

self of his services; the said Board of Equalization shall act as and perform the duties of a Board of Equalization for said municipality or district so availing itself of its services, and said Collector shall collect the taxes and assessments for, and turn over as soon as collected to the depository of said municipality or district or to such other authority as is authorized to receive such taxes and assessments, all taxes or money, so collected, and shall perform the duties of Tax Collector of said municipality or district so availing itself of his services.

In all matters pertaining to such assessments and collections the said Tax Assessor, Board of Equalization and Tax Collector shall be, and hereby are, authorized to act as and shall perform respectively the duties of Tax Assessor, Board of Equalization and Tax Collector of, and according to the ordinances and resolutions of the municipality or district so availing itself of their services, and according to law.

Compensation

Sec. 2. When the Tax Assessor, Board of Equalization, and Tax Collector of any municipality or district have been authorized by ordinance or resolution to act as and perform the duties, respectively, of Tax Assessor, Board of Equalization and Tax Collector of another municipality or district included within its boundaries, such included municipality or district shall pay the municipality or district, the services of whose officers and Board of Equalization are being utilized, for said services and for such other incidental expense as are necessarily incurred in connection with the rendering of such services, such an amount as may be agreed upon by the governing bodies of said two municipalities or districts.

Revocation of authority

Sec. 3. Whenever any municipality or district shall have authorized the Tax Assessor, Board of Equalization and Tax Collector of another municipality or district to act as its Tax Assessor, Board of Equalization and Tax Collector, respectively, it may thereafter revoke and withdraw said authority by ordinance or proper resolution in the same manner in which such authority was conferred, and thereafter the municipality or district so revoking such authority shall assess, equalize and collect its taxes in the manner in which same were assessed, equalized and collected before said authority was granted.

Attorney to collect delinquent taxes

Sec. 4. Whenever the governing body of any municipality or district taking advantage of this Act, shall deem it necessary or expedient, said governing body may contract with any competent attorney to enforce or assist in the enforcement of the collection of any of its delinquent taxes and the attorney with whom such contract has been made is hereby fully empowered and authorized to file and push to a speedy conclusion all suits for collection of delinquent taxes, under any contract as herein above specified, and such attorney is hereby fully empowered and authorized to proceed in such suits without the joinder and assistance of the regular attorney or attorneys of said municipality or district.

Act as cumulative; partial invalidity

Sec. 5. The provisions of this Act shall be cumulative of and in addition to all other rights and remedies to which any such municipalities and districts may be entitled, but as to any proceedings under this Act, if any part or portion of this Act be in conflict with any part or portion of any law of the State, the terms and provisions of this Act shall govern as to such proceedings. [Acts 1945, 49th Leg., p. 610, ch. 351.]

CHAPTER 6.—FIRE PREVENTION.

Art.
1067. Frame building regulations.
1068. Fire regulations.
1069. Fire department.
1070. May destroy buildings.
1070a. Uniform fire hose couplings and hydrant outlets.

Article 1067. [965] [523] [453] Frame building regulations.—The city council may prohibit the erection, building, placing, moving or repairing of wooden buildings within such limits of the city as it may designate and prescribe, in order to guard against the calamities of fire; and may within said limits prohibit the moving or putting up of any wooden building from without said limits, and may also prohibit the removal of any wooden building from one place to another within said limits, and may direct that all buildings within the limits so designated as aforesaid, shall be made or constructed of fire-proof materials, and may prohibit the rebuilding or repairing of wooden buildings within the fire limits when the same shall have been damaged to the extent of fifty per cent of the value thereof, and may prescribe the manner of ascertaining such damage; and may declare any dilapidated building to be a nuisance and direct the same to be repaired, removed or abated in such manner as they shall direct; to declare all wooden buildings in the fire limits which they deem dangerous to contiguous buildings, or in causing or promoting fires, to be nuisances, and require and cause the same to be removed in such manner as they shall prescribe. [Acts 1875, p. 143; G. L. vol. 8, p. 515.]

Art. 1068. [966 to 975] Fire regulations.—The city council shall have power:

1. To prevent and prohibit the dangerous condition of chimneys, flues, fire-places, stove pipes, ovens or other apparatus used in or about any building or manufactory, and to cause the same to be removed or placed in a secure and safe condition.

2. To prevent the deposit of ashes where they would be liable to produce fire, or in any wooden box or barrel, or within any wooden building, and to appoint officers to enter into any building or inclosure to examine and discover whether the same are in a dangerous state, and to cause such as may be dangerous to be put in a safe condition.

3. To require the inhabitants to keep and provide as many fire buckets and ladders, or other means to reach the roof as they shall prescribe, and to regulate the use thereof in times of fire.

4. To compel the owners or occupants of houses or other buildings to have scuttles in the roofs and stairs or ladders leading to the same.

5. To regulate or prevent the carrying on of manufactories and works dangerous in promoting or causing fires; to prohibit or regulate the building and erection of cotton presses and sheds.

6. To regulate or prevent and prohibit the use of fireworks and firearms.

7. To direct, control or prohibit the keeping and management of houses or any buildings for the storing of gun powder and other combustible, explosive or dangerous materials within the city; to regulate the keeping and conveying of the same.

8. To regulate and prescribe the manner and to order the building of parapet and party walls.

9. To authorize the mayor, officers of fire companies or any officer of said city to keep away from the vicinity of any fire all idle, disorderly or suspicious persons, and arrest and imprison the same, and compel all officers of the city and all other persons to aid in the extinguishment of fires and in the preservation of property exposed to danger thereat, and in preventing theft.

10. And generally to establish such regulations for the prevention and extinguishment of fires as the city council may deem expedient. [Id.]

Art. 1069. [976] [534] [464] Fire department.—The city council may procure fire engines and other apparatus for the extinguishment of fires, and have control thereof, and provide engine houses for preserving the same; and shall have power to organize fire, hook and ladder, hose and ax companies and fire brigades. The companies so organized, the chief engineer and such assistant engineers as may be provided for, shall constitute the fire department. Each company may elect its own members and officers. The engineers shall be chosen as said department may determine, subject to the approval of the city council, who shall define the duties of said officers and pass such ordinances as they may deem proper for the welfare of said department. All officers so elected and approved shall be commissioned by the mayor. Said companies may adopt their own constitution and by-laws, not inconsistent with this title or the city ordinances. Said department shall take the care and management of the engines and other implements and apparatus provided and used for fighting fire, and their powers and duties shall be prescribed and defined by the city council. [Id.]

Art. 1070. [977–8] May destroy buildings.—When any building in the city is on fire, it shall be lawful for the chief or acting chief engineer, with the concurrence of the mayor, to direct such building, or any other building which they may deem hazardous and likely to take fire and communicate to other buildings, to be torn down or blown up or destroyed, and no action shall be maintained against any person or against the city therefor. Any person interested in any such building so destroyed or injured may, within six months, and not thereafter, apply in writing to the city council to assess and pay the damage he has sustained, and, if the city council and the claimant cannot agree on the terms of adjustment, then the application of such claimant shall be referred to three commissioners, one to be appointed by the claimant, one by the city council and the third by both. Said commissioners shall be qualified voters and owners of real estate in the city. They shall be sworn faithfully to execute their duty according to the best of their ability, shall have power to subpœna and swear witnesses and shall give all parties a fair and impartial hearing, and give notice of the time and place of meeting. They shall take into account the probabilities of the building being destroyed by fire if it had not been so destroyed, and the loss of insurance upon said property, if any, caused by destroying the same, and may report that no damage should equitably be allowed to such claimant. Whenever a report shall be made and finally confirmed for the appraising of said damages, a compliance with the terms thereof by the city council shall be deemed a full satisfaction of said damages. [Id.]

Art. 1070a. Uniform fire hose couplings and hydrant outlets.—Sec. 1. That after this Act takes effect all fire department hose couplings and fire hydrant hose outlets now in service or which may hereafter be installed in this State, except those which are commonly known as the large steamer or pumper outlets shall be provided with an uniform thread conforming to the following specifications, to-wit:

Inside diameter of male thread 2.5 inches.

Outside diameter of finished male thread 3.0625 inches.

Diameter at root of finished male thread 2.8715 inches.

Pitch diameter of male thread 2.9670 inches.

Clearance between male and female thread .03 inches.

Total length of threaded male end one inch.

Flat at top and valley of thread .01 inch.

Pitch or number of threads per inch 7.5.

Pattern—60 degree V thread. Female end cut ⅛ inch shorter than male end for endwise clearance. Outer ends of male and female threads terminated by the "Higbee Cut," to avoid crossing and mutilation of otherwise finely drawn out thread. Outer end of male thread left blank ¼ inch.

Sec. 2. The State Fire Insurance Commission of Texas shall have full supervision over the work necessary to be done in carrying out the provisions of this Act, and that department shall employ competent mechanics and provide all necessary equipment, tools and appliances and proceed with said work, and complete it at the earliest date circumstances will permit.

Sec. 3. The State Fire Insurance Commission shall notify all property owners having equipment for fire protection purposes which it may be necessary for a fire department to use in putting out fire, of the changes necessary to meet the requirements of this Act, and shall render such assistance as may be available in converting their equipment to conform to said requirements.

Sec. 4. The sum of $5,000 or such part thereof as may be necessary, is hereby appropriated out of any money in the State Treasury not otherwise appropriated for the fiscal year ending August 31, 1928, and $5,000 or such part thereof as may be necessary, is hereby appropriated out of any money in the State Treasury not otherwise appropriated for the fiscal year ending August 31, 1929, to be used for the purchase of equipment, tools and appliances, and for salaries and traveling expenses and all other necessary expenses of mechanics, in carrying out the provisions of this Act. [Acts 1927, 40th Leg., p. 380, ch. 257.]

CHAPTER 7.—SANITARY DEPARTMENT

Art.
1071. Health officers.
1072. Regulation of disease, etc.
1073. Public conveyances.
1074. Shall report disease.
1075. Physician, powers.
1076. Sewerage, etc.
1077. Plumbing inspector.
1078–1081. [Repealed.]

Article 1071. [979] [537] [467] Health officers.—The city council shall appoint a health officer, and as many health inspectors as they may deem necessary, and shall prescribe, by ordinance, the powers and duties and compensation of the same. [Acts 1909, p. 340.]

Art. 1072. [980] [538] [468] Regulation of disease, etc.—The city council may take such measures as they may deem effectual to prevent the entrance of any pestilence, contagious or infectious diseases into the city; to stop, detain and examine for that purpose any person coming from any place infected, or believed to be infected, with such disease; to establish, maintain and regulate pesthouses or hospitals at some place within or not exceeding five miles beyond the city limits; to cause any person who shall be suspected of being infected with any such disease to be sent to such pesthouse or hospital; to remove from the city or destroy any furniture, wearing apparel, or property of any kind which shall be suspected of being tainted or infected with pestilence, or which shall be likely to pass into such a state as to generate or propagate diseases; to abate all nuisances of every description which are or may become injurious to the public health, in any manner that they deem expedient; and from time to time to do all acts, which they deem expedient; to preserve health and suppress disease in the city. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1073. [981] [539] [469] Public conveyances.—The owner, driver, conductor or person in charge of any stage, railroad car or public conveyance which shall enter the city, knowingly having on board any person sick of a malignant fever, or pestilential, contagious or infectious disease, unless such person become[1] sick on the way and could not be left, shall, within three hours after the arrival of such sick person, report in writing the facts, with the name of such person and the house where he was put down in the city, to the health officer. [Id.]

1 Probably should read "became."

Art. 1074. [983] [541] [471] Shall report disease.—Every keeper of a hotel, boarding or lodging house in the city, in which any inmate thereof shall be sick with any infectious or pestilential disease, shall upon such fact coming to his knowledge, forthwith report the same to the health officer. Every physician in the city shall report, under his hand, to the officer above named, the name, residence and disease of every patient whom he shall have sick of any infectious or pestilential disease, within six hours after he shall have visited such patient. [Id.]

Art. 1075. [985] [543] [473] Physician, powers.—The health officer may be authorized by the council, when the public interest requires, to exercise for the time being such of the powers and perform such of the duties of the chief of police as the city council may direct, and is authorized to enter all houses and other places, private or public, at all times, in the discharge of such duties, having first asked permission of the owners or occupants. The city council shall have power to punish, by fine, any neglect or refusal to observe the orders and regulations of the health officer. [Id.]

Art. 1076. [986] Sewerage, etc.—Every city in this State, however organized, having underground sewers or cesspools, shall pass ordinances regulating the tapping of said sewers and cesspools, regulating house draining and plumbing. [Acts 1897, p. 236; Acts 1909, p. 162; G. L. vol. 10, p. 1290.]

Art. 1077. [990] Plumbing inspector.—In any such city where there is no city inspector of plumbing provided for by special charter, the governing body shall elect such inspector of plumbing, who shall hold office for such time as fixed by such board. Such inspector of plumbing may be the city engineer, if the board sees fit to elect him. [Id.]

Arts. 1078–1081. [Repealed by Acts 1947, 50th Leg., p. 192, ch. 115, § 16.]

CHAPTER 8.—STREETS AND ALLEYS

Art.
1082. Powers of council.
1083. Estimates of cost.
1084. Execution on property.
1085. Suit.
1085a. Freeways in cities of 175,000 or more.
1085b. Private purposes, use of streets and sidewalks for.

Article 1082. [999] [544] [474] Powers of council.—The city council shall be invested with full power and authority to grade, gravel, repair, pave or otherwise improve any avenue, street or alley, or any portion thereof, within the limits of said city, whenever, by a vote of two-thirds of the aldermen present, they may deem such improvement for the public interest; provided, the city council pay one-third and the owner of the property two-thirds thereof, except at the intersection of streets, from lot to lot across the streets either way shall be paid for by the city alone. Said costs shall be assessed on the property fronting on said street so improved, to be collected in equal annual payments, not less than five in number. All moneys collected from these assessments shall be appropriated exclusively to the payment of the bonds issued for the payment of the cost of said improvement. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1083. [1000] [545] [475] Estimates of cost.—Whenever the city council shall determine to make any such improvement, they shall cause an estimate to be made of the probable cost thereof by the city engineer, or by some other officer of the city, or by a committee of three aldermen; and such engineer or other officer or committee shall also report a full list of all lots or fractional lots, giving number and size of the same, and the number of the block in which situated, and the names of the owners thereof, if known, and such other information as may be required by the city council; and if there be a lot or fractional lot the owner of which is not known, the same shall be entered on said list as unknown. The officer or committee aforesaid shall enter on said list, opposite each lot or fractional lot lying and being on each side of the street, avenue or alley so to be improved as aforesaid, one-third of the estimated expense for such work or improvement on such avenue, street or alley fronting, adjoining or opposite such lot or fractional lot; and, on the acceptance and approval of said report and list by the city council, said amount shall be imposed, levied and assessed as taxes, and shall be a lien upon the property until the payment of the same. [Id.]

Art. 1084. [1001] [546] [476] Execution on property.—After such action on the part of the city council, such officer or committee shall give such notice as may be required by ordinance, of said tax being due and within what time payable, and shall begin to collect the same. After the expiration of the period for payment of said tax, said officer or committee shall levy on so much of any property on said list on which said tax has not been paid as will be sufficient to pay the same, and the same notice of sale as is required in sales for other tax shall be given. If said tax is not paid before the day of sale, said officer or committee shall sell property in the name and under the circumstances, and to the extent and subject to the same conditions which may be provided by ordinance for the sale of real estate in the city, charged with the payment of taxes imposed by said corporation. Said officer or committee shall execute a deed to the purchaser at any such sale; and all other provisions of this title in reference to a deed drawn by the assessor and collector shall apply to the deed herein provided for. [Id.]

Art. 1085. [1002] [547] [477] Suit.—In addition to the authority granted to the city council to collect said assessment of taxes, they shall have the additional remedy of instituting suit in the corporate name for the recovery against any owner of the property for the amount due for any such work so made as aforesaid. They shall provide by resolution or ordinance under the provision of this title, for carrying out and executing the powers in this chapter conferred, and may adopt necessary resolutions, ordinances and regulations. [Id.]

Art. 1085a. Freeways in cities of 175,000 or more.—Section 1. In all incorporated cities and towns containing more than one hundred and seventy-five thousand (175,000) inhabitants according to the last preceding or any future Federal Census, the governing body thereof may do any and all things necessary to lay out, acquire and construct any section or portion of any street within its jurisdiction as a freeway, and to make any existing street a freeway.

Sec. 2. "Freeway" means a street in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access.

Sec. 3. The governing body of any such city or town is authorized to close any street within its jurisdiction at or near the point of its intersection with any freeway, or to make provision for carrying any street over or under or to a connection with the freeway, and may do any and all things on such street as may be necessary therefor.

No existing public street shall be converted into a freeway except with the consent of the owners of abutting lands or the purchase or condemnation of their right of access thereto, provided, however, nothing herein shall be construed as requiring the consent of the owners of the abutting lands where a street is constructed, established or located for the first time as a new way for the use of vehicular and pedestrian traffic.

Sec. 4. If any section, sub-section, sentence, clause, or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed the Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that one or more of the sections, sub-sections, sentences, clauses, or phrases be declared unconstitutional. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict. [Acts 1943, 48th Leg., p. 27, ch. 24; Acts 1943, 48th Leg., p. 470, ch. 314, § 1; Acts 1945, 49th Leg., p. 420, ch. 266, § 1.]

Art. 1085b. Private purposes, use of streets and sidewalks for.—Incorporated cities and towns in the State of Texas shall have the power and authority to grant the use of a portion of the streets and sidewalks of such cities and towns for private purposes, for such consideration and upon such terms as they may prescribe; provided such use shall not interfere with the public use of such streets and sidewalks, or create any hazardous or dangerous condition thereon. [Acts 1947, 50th Leg., p. 715, ch. 353, § 1.]

CHAPTER 9.—STREET IMPROVEMENTS

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Art. 1086. [1006–7] Powers of city.—Towns, cities and villages, incorporated under either general or special law, which shall accept the benefits of this chapter as herein provided, shall have power to improve any highway within their limits, by filling, grading, raising, paving or repaving the same in a permanent manner, or by the construction or reconstruction of sidewalks, curbs and gutters, or by widening, narrowing or straightening the same, and to construct necessary appurtenances thereto, including sewers and drains, and cities having a population of less than fifteen thousand (15,000) inhabitants according to the last preceding or any future Federal census and which have levied the maximum rate of tax permitted by law, shall have the power to construct and install sanitary sewers and all of the provisions and authority of this chapter pertaining to highway improvement shall likewise apply to the construction and installation of sanitary sewers. "City" when used herein (except when otherwise provided above) shall include all incorporated towns, cities and villages, and the term "highway" shall include any street, avenue, alley, highway, or public place or square, or portion thereof, dedicated to public use. Provided that before any proposal to construct sanitary sewers hereunder shall be put into effect the Governing Body of any city shall be presented by a petition signed by two-thirds (⅔) of the abutting property owners to be affected requesting the Governing Body of the city to make such improvements. [Acts 2nd C.S., 1909, p. 402; Acts 1945, 49th Leg., p. 317, ch. 232, § 1.]

Art. 1087. [1008] Order for improvements.—The Governing Body of any city shall have power to order the improvement of any highway therein, or part thereof, and in cities having a population of less than fifteen thousand (15,000) inhabitants according to the last preceding or any future Federal census and which have levied the maximum rate of tax permitted by law, to order the construction and installation of sanitary sewers, and to select the materials and methods of such improvement, and to contract for the construction of such improvements in the name of the city, and to provide for the payment of the cost of such improvements out of any available funds of the city. [Acts 2nd C.S., p. 402; Acts 1945, 49th Leg., p. 317, ch. 232, § 2.

Art. 1088. [1009] Costs.—The cost of making such improvements may be wholly paid by the city, or partly by the city and partly by the owners of the property abutting thereon. In no event shall more than three-fourths of the cost of any improvement, except sidewalks and curbs, be assessed against such property owners or their property. The whole cost of construction of sidewalks and curbs in front of any property may be assessed against the owner thereof or his property. [Acts 2nd C.S.1909, p. 402.]

Art. 1089. [1010] Assessments, railway.—Subject to the terms hereof, the governing body of any city shall have the power to assess against the owner of any railroad or street railroad occupying any highway ordered to be improved, the whole cost of the improvement between or under the rails or tracks of said railroad or street railroad and two feet on the outside thereof, and shall have power, by ordinance, to levy a special tax upon said railroad, or street railroad, and its roadbed, ties, rails, fixtures, rights and franchise, which tax shall constitute a lien thereon superior to any other lien or claim, except State, county and municipal taxes, and which may be enforced, either by sale of said property in the manner provided by law in the collection of ad valorem taxes by the city, or by suit against the owner. The ordinance levying said tax shall prescribe when same shall become due and delinquent, and the method of enforcing the same. [Id.]

Art. 1090. [1011] Assessment and certificates.—Subject to the terms hereof, the governing body shall have power by ordinance to assess the whole cost of constructing sidewalks or curbs, and not to exceed three-fourths of the cost of any other improvement, against the owners of property abutting on such improvement and against their abutting property benefited thereby, and to provide for the time and terms of payment of such assessments and the rate of interest payable upon deferred payments thereon, which rate shall not exceed eight per cent per annum, and to fix a lien upon the property and declare such assessments to be a personal liability of the owners of such abutting property; and such governing body shall have the power to cause to be issued in the name of the city, assignable certificates declaring the liability of such owners and their property for the payment of such assessments and to fix the terms and conditions for such certificate. If any such certificate shall recite that the proceedings with reference to making such improvements have been regularly had in compliance with law, and that all prerequisites to the fixing of the assessment lien against the property described in said certificate and fixing the personal liability of the owner have been performed, such certificate shall be prima facie evidence of the facts so recited. The ordinance making such assessments shall provide for the collection thereof, with costs and reasonable attorney's fees, if incurred. Such assessments shall be secured by, and constitute a lien on said property, which shall be the first enforcible claim against the property against which it is assessed, superior to all other liens and claims, except State, county and municipal taxes. [Id.]

Art. 1090a. Validating assessment ordinances and liens in certain cities.—Sec. 1. This Act shall affect all cities in the State of Texas having a population of more than one hundred thousand (100,000) according to the last preceding United States Census.

Sec. 2. In every instance where a city, coming under the provisions of this Act, has attempted to fix a lien upon property by assessment ordinance for the improvement and paving of streets, highways and boulevards, where the State, County and Federal Governments have contributed to the cost of such improvement, requiring the impounding of funds by such city for the purpose of guaranteeing its portion of the cost of such paving and improvements, all actions, resolutions, order, ordinances and proceedings taken, made or passed in reference thereto, or pursuant thereto, are hereby confirmed, ratified and validated, and the lien attempted to be fixed by said assessment ordinance is a valid and subsisting lien against the property assessed irrespective of any irregularities or defects in the proceeding and in like manner as if said assessment had been authorized in the first instance. [Acts 1931, 42nd Leg., p. 802, ch. 327.]

Section 3 of this Act repeals all conflicting laws and parts of laws and section 4 provides that if any provision is held unconstitutional, such decision shall not affect the remaining provisions.

Art. 1091. [1012] Exempt property.—Nothing herein shall be construed to empower any city to fix a lien by assessment against any property exempt by law from sale under execution; but the owner of such exempt property shall nevertheless be personally liable for the cost of improvements constructed in front of his property, which may be assessed against him. The fact that any improvement is omitted in front of exempt property shall not invalidate the lien of assessments made against other property on the highway improved, not so exempt. [Acts 1909, 2nd C.S., p. 402.]

Art. 1092. [1012] Enforcement of lien.—The lien created against any property, or the personal liability of the owner thereof, may be enforced by suit or by sale of the property assessed in the same manner as may be provided by law for the sale of property for ad valorem city taxes. The recital in any deed made pursuant to such sale, that all legal prerequisites to said assessment and sale have been complied with, shall be prima facie evidence of the facts so recited and shall in all courts be accepted without further proof. [Id.]

Art. 1093. [1013] Notice of hearing.—No assessment of any part of the cost of such improvement shall be made against any property abutting thereon or its owner, until a full and fair hearing shall first have been given to the owners of such property, preceded by a reasonable notice thereof given to said owners, their agents or attorneys. Such notice shall be by advertisement inserted at least three times in some newspaper published in the city, town or village where such tax is sought to be levied, if there be such a paper there, if not, then in the nearest to said city, town or village, of general circulation in the county in which said city is located, the first publication to be made at least ten days before the date of the hearing. The governing body may provide for additional notice cumulative of notice by advertisement. [Id.]

Art. 1094. [1013] Hearing.—Said hearing shall be before the governing body of such cities, at which such owners shall have the right to contest the said assessment and personal liability, and the regularity of the proceedings with reference to the improvement, and the benefit of said improvement to their property, and any other matter relating thereto. No assessment shall be made against any owner of abutting property or his property in any event in excess of the actual benefit to such owner in the enhanced value of his property, by means of such improvement, as ascertained at such hearing. The governing body of any city making improvements under the terms hereof shall, by ordinance, adopt rules and regulations providing for such hearings to property owners, and for giving reasonable notice thereof. [Id.]

Art. 1095. [1014] Reassessment.—The governing body of any city shall be empowered to correct any mistake or irregularity in any proceedings with reference to such improvement, or the assessment of the cost thereof against abutting property and its owners, and in case of any error or invalidity, to reassess against any abutting property and its owner the cost or part of the cost of improvements, subject to the terms hereof, not in excess of the benefits in en-

hanced value of such property from such improvement, and to make reasonable rules and regulations for a notice to and hearing of property owners before such reassessment. [Id.]

Art. 1096. [1015] Owner may sue.—Any property owner, against whom or whose property any assessment or reassessment has been made, shall have the right within twenty days thereafter, to bring suit to set aside or correct the same, or any proceeding with reference thereto, on account of any error or invalidity therein. But thereafter such owner, his heirs, assigns or successors, shall be barred from any such action, or any defense of invalidity in such proceedings or assessments or reassessments in any action in which the same may be brought in question. [Id.]

Art. 1097. Special reassessment.—In any case in which the public funds of a city or town may have been or may hereafter be expended, or its vouchers or certificates issued to any contractor, or any contract made therewith, for the special improvement, raising or lowering the grade of, opening, straightening, widening, paving, constructing or grading of any street, avenue, alley, sidewalk, gutter or public way, or any part thereof, and if for any reason, no part of the cost of such improvement has been borne by the abutting property or paid by the owner or owners thereof, either because an attempted assessment and enforcement thereof for the same was erroneous or void, or was so declared in any judicial proceeding, the governing body shall have the power to proceed at any time to specially assess or reassess, such abutting property with such amount of the cost of such improvement as it deems proper, but in no event shall the amount exceed the special benefits such property receives therefrom by enhanced value thereto, the amount of such special benefits to be determined on a basis of the condition of such improvement as it exists at the time of such assessment or reassessment. [Acts 2nd C. S. 1919, p. 105.]

Art. 1098. Notice, etc.—No such assessment or reassessment, shall be made without at least ten days written notice and an opportunity to be heard on such question of special benefits given to the owner or owners of such abutting property. Such notice may be served either personally or by publication in some newspaper of general circulation, published in said city or town; and the governing body of any such city or town shall have power to provide for all procedure, rules and regulations necessary or proper for such notice and hearing and to levy, assess and collect such assessment or reassessment. [Id.]

Art. 1099. Special lien.—Such assessment, or reassessment shall constitute a lien upon such abutting property and a personal charge against the owner or owners thereof, which amount shall not be construed as becoming due, or having become due, before such assessment or reassessment is properly made in accordance with the provisions of this law. [Id.]

Art. 1100. Time limit.—Such assessment or reassessment as hereinbefore provided shall be begun within three years after the completion of improvements contiguous to the property against which assessment or reassessment is made, and not thereafter. In cases of reassessments where the question of validity of the original assessment may be, or may have been, in litigation, the period of time during which it was in litigation shall not be considered in computing said period of limitation. [Id.]

Art. 1101. Amount of assessment.—Any such assessment or reassessment made by the governing body of any city or town with less than five thousand inhabitants may equal the entire cost of sidewalk, curb and gutter, and the cost of any street improvement, exclusive of street intersections, and such governing body of such town in making such assessment or reassessment, shall follow the procedure prescribed in articles 1082 and 1083 in so far as applicable, but no such assessment or reassessment shall be made in excess of the special benefits in enhanced value conferred thereby on the property abutting such improvement, or until the owner or owners of such property shall have had notice, as provided above, and opportunity to contest such issue before such governing body under such rules and regulations as it may, by ordinance, prescribe. [Id.]

Art. 1102. Enforcible when.—Such assessment, or reassessment, shall be due and payable in equal annual installments not less than five in number; provided that the owner of such property shall have the right to appeal from the decision of the governing board to any court of competent jurisdiction within twenty days after such reassessment shall have been made, and upon failure to do so in said period, such assessment shall be final and conclusive upon such owner and property. [Id.]

Art. 1103. Effect of law.—The provisions of the six preceding articles relating to special assessments or reassessments are cumulative of all powers heretofore granted to any city or town either by general or special law; and all charter provisions of all cities and towns in this State heretofore adopted relative to the subject covered by this law are hereby validated. [Id.]

Art. 1104. [1016] Adoption of provisions.—The benefits of the provisions of this article and Articles 1086 to 1096, both inclusive, and Article 1105 shall apply to any city, and the terms thereof extend to the same, when the governing body thereof shall submit the question of the adoption or rejection hereof to a vote of the resident property taxpayers, who are qualified voters of said city, at a special election called for the purpose by said city. Said election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city, but said governing body is hereby empowered, and it shall be their duty on the written petition of one hundred qualified voters of said city, by resolution, to order said election, and prescribe the time and manner of holding the same. Said body shall canvass and determine the results of such election. If a majority of the voters voting upon the question of the adoption of said article, at such election, shall vote to adopt the same, the result of the election shall be entered by said governing body upon their minutes, and thereupon all the terms of said articles shall be applicable to and govern such city adopting the same. A certified copy of said minutes shall be prima facie evidence of the result of such election and the regularity thereof. When the provisions of said articles have been adopted by any city, the governing body thereof shall have full power to pass all ordinances or resolutions necessary or proper to give full force and effect thereto and to every part thereof. [Acts 2nd C. S. 1909, p. 402.]

Art. 1105. [1017] Provisions cumulative.—The provisions of Articles 1086 to 1096, both inclusive, and Article 1104 and of resolutions or ordinances passed pursuant thereto shall be cumulative of and in addition to existing laws pertaining to the making of such improvements. In any case in which a conflict may exist or arise between the provisions of said articles and the provisions of any law granting a special charter to any city in this State, the provisions of such special charter shall control. [Id.]

Art. 1105a. Establishing building lines on streets.

"Street" defined

Sec. 1. The word "street" as used in this Act, means any public highway, boulevard, parkway, square or street, or any part or side of any of the same.

Building lines authorized

Sec. 2. It shall hereafter be lawful for any city which now has, or may hereafter have population of fifteen thousand (15,000) or more inhabitants, to establish building lines on any public street or highway, or part thereof in such city.

Ordinance or resolution; effect

Sec. 3. The Legislative Body of any such city desiring to establish a building line may do so by adopting a resolution or ordinance describing the street, highway or part thereof to be affected, and the location of the building line or lines, and except as herein otherwise provided, by following the same procedure as that authorized by law in such city for the acquiring of land for the opening of streets. After the establishment of any such line, no building or other structures shall be erected, reconstructed or substantially repaired, and no new buildings or other structure, or part thereof, shall be erected or re-erected within said lines so established.

Condemnation proceedings

Sec. 4. The procedure for instituting and conducting the condemnation proceedings to condemn the easements and interests necessary to be taken and acquired to establish a building line under the authority of this Act, and to assess and collect benefits against property owners and their property abutting on or the vicinity of said building line arising out of the establishment of said building line, shall be the same as that authorized by law in such city in connection with the opening of streets. In the condemnation of any tract where the ownership of or interests in said tract is in controversy or is unknown, the award may be made in bulk as to such tract, and paid into court for the use of the parties owning or interested therein, whoever they may be, as their interests may appear. The award and findings of the Special Commissioners when filed with the Judge of the County Court, or other court having jurisdiction over the condemnation proceedings, shall be final, and shall be made the judgment of said court. Compensation shall be due and payable upon rendition of the judgment by the court adopting the award.

Time for conformance; removal of structures within line

Sec. 5. Whenever and wherever a building line shall be established under authority of this Act, all structures extending within such building lines shall be required to conform to the new line within a period of not more than twenty-five (25) years from the time of establishing said lines; such time to be provided in the ordinance providing for the establishment of such line. At any time, however, before or after the expiration of the time so fixed, the proper municipal authorities shall have the power to proceed in the manner then provided by law relating to condemnation proceedings by such cities to remove all structures and to condemn any property then within such line, and to assess benefits against property owners and their property benefited thereby, provided, however, that all owners of property so affected shall receive due notice and hearing in the manner then provided by law in the determination of the additional damages then sustained by the removal of such structures or the taking of land then within the building line and in the determination of benefits to be assessed against property owners affected and their property affected.

Act as cumulative

Sec. 6. This Act shall be in addition to and cumulative of any powers now or hereafter conferred by law on such cities. [Acts 1927, 40th Leg., p. 415, ch. 276.]

Art. 1105b. Street improvements and assessments in cities having more than 1000 inhabitants.

Power to make improvements

Sec. 1. That cities, towns and villages incorporated under either general or special law, including those operating under special charter, or amendments of charter adopted pursuant to the Home Rule provisions of the Constitution, shall have power to cause to be improved, any highway, within their limits by filling, grading, raising, paving, repaving, and repairing in a permanent manner, and by constructing, reconstructing, repairing and realigning curbs, gutters and sidewalks, and by widening, narrowing and straightening, and by constructing appurtenances and incidentals to any of such improvements, including drains and culverts, which power shall include that of causing to be made any one or more of the kinds or classes of improvements herein named or any combination thereof, or of parts thereof.

Cities over 285,000; improvements on highway or road outside limits

Sec. 1a. Any city mentioned in Section 1 and having a population in excess of two hundred and eighty-five thousand (285,000) inhabitants according to the last preceding or any future Federal Census may make the improvements named in Section 1 hereof on any highway or road without the limits of such city if such improvements do not extend more than one hundred and fifty (150) feet from the limits of such city. [Added Acts 1939, 46th Leg., p. 104, § 1.]

Definitions

Sec. 2. That the term "city" whenever used herein shall include all incorporated cities, town and villages; that the term "governing body" whenever used herein, includes the governing or legislative bodies of all incorporated town, cities and villages, whether known as councils, commissions, boards of commissioners, common councils, boards of aldermen, city councils, or by whatever name such bodies may be known or designated under general or special laws or charters. That whenever the term "highway" is used herein it shall include any street, avenue, alley, highway, boulevard, drive, public place, square, or any portion or portions thereof, including any portion that may have or may be left wholly or partly unimproved in connection with other street improvements heretofore or hereafter made. The term "improve" or "improvements" when used herein shall include the kinds and classes of improvements, with incidents and appurtenances thereto, and any portions or combinations thereof, or of parts thereof, hereinabove mentioned, liberally construed. That whenever the term "cost" or "costs of improvements" or similar terms are used herein, same shall include expenses of engineering and other expenses incident to construction of improvements, in addition to the other costs of the improvements.

Powers of governing body

Sec. 3. That the governing body of any city shall have power to determine the necessity for, and to order, the improvement of any highway, highways, or parts thereof within such city, and to contract for the construction of such improvements in the name of the city, and to provide for the payment of the cost of such improvements by the city, or partly by the city and partly by assessments as hereinafter provided.

Cost of improvement; estimate for assessment in part on abutting property

Sec. 4. That the cost of such improvements may be wholly paid by the city, or partly by the city and partly by property abutting upon the highway or portion thereof ordered to be improved, and the owners of such property, but if any part of the cost is to be paid by such abutting property and the owners, then before

any such improvements are actually constructed, and before any hearing herein provided for is held, the governing body shall prepare, or cause to be prepared, an estimate of the cost of such improvements, and in no event shall more than all the cost of constructing, reconstructing, repairing and realigning curbs, gutters and sidewalks, and nine-tenths of the remaining cost of such improvements as shown on such estimate be assessed against such abutting property and owners thereof.

Special tax on street railways for improvement of area occupied

Sec. 5. If improvements be ordered constructed in any part of the area between and under rails, tracks, double tracks, turn outs and switches, and two feet on each side thereof, of any railway, street railway, or interurban, using, occupying, or crossing any such highway, portion or portions thereof, ordered improved, then the Governing Body shall have power to assess the whole cost of the improvements in such area against such railway, street railway, or interurban, and shall have power, by ordinance, to levy a special tax upon such railway, street railway, or interurban, and its road-bed, ties, rails, fixtures, rights and franchises, which tax shall constitute a lien thereon superior to any other lien or claim except State, County, and City ad valorem taxes, and which may be enforced either by sale of said property in the manner provided by law for the collection of ad valorem taxes by the city, or by suit in any court having jurisdiction. The ordinance levying such tax shall prescribe the time, terms and conditions of payment thereof, and the rate of interest, not to exceed 8% per annum, and same, if not paid when due, shall be collectible, together with interest, expenses of collection and reasonable attorney's fees, if incurred. The Governing Body shall have power to cause to be issued assignable certificates in evidence of any such assessments as hereinafter provided.

Assessments on abutting property; certificates

Sec. 6. Subject to the terms hereof, the governing body of any city shall have power by ordinance to assess all the cost of constructing, reconstructing, repairing, and realigning, curbs, gutters, and sidewalks, and not exceeding nine-tenths of the estimated cost of such improvements, exclusive of curbs, gutters, and sidewalks, against property abutting upon the highway or portion thereof ordered to be improved, and against the owners of such property, and to provide the time, terms, and conditions of payment and defaults of such assessments, and to prescribe the rate of interest thereon not to exceed eight (8) per cent per annum. Any assessment against abutting property shall be a first and prior lien thereon from the date improvements are ordered, and shall be a personal liability and charge against the true owners of such property at said date, whether named or not. The governing body shall have power to cause to be issued in the name of the city assignable certificates in evidence of assessments levied declaring the lien upon the property and the liability of the true owner or owners thereof whether correctly named or not and to fix the terms and conditions of such certificates.

If any such certificate shall recite substantially that the proceedings with reference to making the improvements therein referred to have been regularly had in compliance with the law and that all prerequisites to the fixing of the assessment lien against the property described in said certificate and the personal liability of the owner or owners thereof have been performed, same shall be prima facie evidence of all the matters recited in said certificate, and no further proof thereof shall be required. In any suit upon any assessment or reassessment in evidence of which a certificate may be issued under the terms of this Act it shall be sufficient to allege the substance of the recitals in such certificate and that such recitals are in fact true, and further allegations with reference to the proceedings relating to such assessment or reassessment shall not be necessary.

Such assessments shall be collectable with interest, expense of collections, and reasonable attorney's fee, if incurred, and shall be first and prior lien on the property assessed, superior to all other liens and claims except State, county, school district, and city ad valorem taxes, and shall be a personal liability and charge against said owners of the property assessed. [As amended Acts 1937, 45th Leg., p. 904, ch. 439, § 1.]

Assessment apportioned under front foot plan unless inequitable

Sec. 7. The part of the cost of improvements on each portion of highway ordered improved which may be assessed against abutting property and owners thereof shall be apportioned among the parcels of abutting property and owners thereof, in accordance with the Front Foot Plan or Rule provided that if the application of this rule would, in the opinion of the Governing Body, in particular cases, result in injustice or inequality, it shall be the duty of said Body to apportion and assess said costs in such proportion as it may deem just and equitable, having in view the special benefits in enhanced value to be received by such parcels of property and owners thereof, the equities of such owners, and the adjustment of such apportionment so as to produce a substantial equality of benefits received and burdens imposed.

No lien on property exempt; personal liability of owner; enforcing lien

Sec. 8. Nothing herein shall empower any city, or its governing body, to fix a lien against any interest in property exempt, at the time the improvements are ordered, from the lien of special assessment for street improvements, but the owner or owners of such property shall nevertheless be personally liable for any assessment in connection with such property: The fact that any improvement, though ordered, is omitted in front of property, any interest in which is so exempt, shall not invalidate the lien or liability of assessments made against other property.

The lien created against any property and the personal liability of the owner or owners thereof may be enforced by suit in any court having jurisdiction, or by sale of the property assessed in the same manner as may be provided by law or charter in force in the particular city for sale of property for ad valorem city taxes.

Notice and hearing; contents of notice

Sec. 9. No assessment herein provided for shall be made against any abutting property or its owners, nor against any railway, street railway or interurban, or owner, until after notice and opportunity for hearing as herein provided, and no assessment shall be made against any abutting property or owners thereof in excess of the special benefits of such property, and its owners in the enhanced value thereof by means of such improvements as determined at such hearing. Such notice shall be by advertisement inserted at least three times in some newspaper published in the city where such special assessment tax is to be imposed, if there be such a paper; if not, then the nearest to such city of general circulation in the county in which such city is located; the first publication to be made at least ten days before the date of the hearing. If any such notice shall describe in general terms the nature of the improvements for which assessments are proposed to be levied and to which such notice relates, shall state the highway, highways, portion or portions thereof to be improved, shall state the estimated amount or amounts per front foot proposed to be assessed against the owner or owners of abutting prop-

erty and such property on each highway or portion, with reference to which hearing mentioned in the notice is to be held, and shall state the estimated total cost of the improvements on each such highway, portion or portions thereof, and if the improvements are to be constructed in any part of the area between and under rails and tracks, double tracks, turn-outs, and switches, and two feet on each side thereof of any railway, street railway or interurban, shall also state the amount proposed to be assessed therefor, and shall state the time and place at which such hearing shall be held, then such notice shall be sufficient, valid and binding upon all owning or claiming such abutting property, or any interest therein, and upon all owning or claiming such railway, street railway, or interurban, or any interest therein. Such hearing shall be by and before the governing body of such city and all owning any such abutting property, or any interest therein, and all owning any such railway, street railway, or interurban, or any interest therein, shall have the right, at such hearing, to be heard on any matter as to which hearing is a constitutional prerequisite to the validity of any assessment authorized by this Act, and to contest the amounts of the proposed assessments, the lien and liability thereof, the special benefits to the abutting property and owners thereof by means of the improvements for which assessments are to be levied, the accuracy, sufficiency, regularity and validity of the proceedings and contract in connection with such improvements and proposed assessments, and the governing body shall have power to correct any errors, inaccuracies, irregularities, and invalidities, and to supply any deficiencies, and to determine the amounts of assessments and all other matters necessary, and by ordinance to close such hearing and levy such assessments before, during or after the construction of such improvements, but no part of any assessment shall be made to mature prior to acceptance by the city of the improvements for which assessment is levied.

Anyone owning or claiming any property assessed, or any interest therein, or any railway, street railway, or interurban assessed, or any interest therein, who shall desire to contest any such assessment on account of the amount thereof, or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract with reference thereto, or with reference to such improvements, or on account of any matter or thing not in the discretion of the governing body, shall have the right to appeal therefrom and from such hearing by instituting suit for that purpose in any court having jurisdiction within fifteen (15) days from the time such assessment is levied; and anyone who shall fail to institute such suit within such time shall be held to have waived every matter which might have been taken advantage of at such hearing, and shall be barred and estopped from in any manner contesting or questioning such assessment, the amount, accuracy, validity, regularity and sufficiency thereof, and of the proceedings and contract with reference thereto and with reference to such improvements for or on account of any matter whatsoever. And the only defense to any such assessment in any suit to enforce the same shall be that the notice of hearing was not published or did not contain the substance of one or more of the requisites therefor herein prescribed, or that the assessments exceed the amount of the estimate, and no words or acts of any officer or employee of the city, or member of any governing body of the city, other than the action of the governing body shown in its written proceedings and records shall in any way affect the force and effect of the provisions of this Act.

Changes in proceedings; procedure

Sec. 10. The governing body of the city shall have power to provide for changes in plans, methods or contracts for improvements, or other proceedings relating thereto, but any change substantially affecting the nature or quality of any improvements shall only be made when it is determined by two-thirds vote of the governing body that it is not practical to proceed with the improvement as theretofore provided for, and if any such substantial change be made after any hearing has been ordered or held then unless the improvement be abandoned altogether a new estimate of cost shall be made and a new hearing ordered, and held, and new notices given, all with like effect and in like manner as herein provided for original notices and hearings. Changes in or abandonment of improvements must be with the consent of such person, firm or corporation as may have contracted with the city for the construction thereof, if any such contract has been entered into, and in case of abandonment of any particular improvement an ordinance shall be passed which shall have the effect of cancelling any assessments theretofore levied therefor, and all other proceedings relating thereto.

Assessments against parcels owned jointly

Sec. 11. Assessments against several parcels of property may be made in one assessment when owned by the same person, firm, corporation or estate, and property owned jointly by one or more persons, firms or corporations, may be assessed jointly.

Powers of governing body

Sec. 12. Said governing body shall have power to carry out all the terms and provisions of this Act and to exercise all the powers thereof, either by resolution, motion, order or ordinance, except where ordinance is specifically prescribed, and such governing body shall have power to adopt, either by resolution or ordinance, any and all rules or regulations appropriate to the exercise of such powers, the method and manner of ordering and holding such hearings, and the giving of notices thereof.

Correction of assessments; reassessment certificates

Sec. 13. In case any assessment shall for any reason whatsoever be held or determined to be invalid or unenforceable, then the governing body of such city is empowered to supply any deficiency in proceedings with reference thereto and correct any mistake or irregularity in connection therewith, and at any time to make and levy reassessments after notice and hearing as nearly as possible in the manner herein provided for original assessments, and subject to the provisions hereof with reference to special benefits. Recitals in certificates issued in evidence of reassessments shall have the same force as provided for recitals in certificates relating to original assessments.

Appeal

Sec. 14. Anyone owning or claiming any property or interest in any property against which such reassessment is levied shall have the same right of appeal as herein provided in connection with original assessments, and in the event of failure to appeal within fifteen (15) days from the date of such reassessment, the provisions hereinabove made with reference to waiver, bar, estoppel, and defense shall apply to such reassessment. [Acts 1927, 40th Leg., 1st C. S., p. 489, ch. 106.]

Section 15 of this Act provides that the act shall not repeal Rev. St. 1925, articles 1086–1096, 1104, 1105, and shall not repeal any charter or law, but shall exist as alternative provisions and that any city which may adopt or amend its charter under the Home Rule provision may provide therein for any of the provisions thereof as part of or as alternative to any charter provision, and provides further that the act shall not apply to cities not having more than one thousand inhabitants, and section 16 provides that if any section or part is held invalid, such holding shall not affect the remainder.

CHAPTER 10.—PUBLIC UTILITIES

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1. CITY OWNED UTILITIES

Article 1106. Appropriation of revenue.—The governing body of any city or town in this State, whether operating under special charter or under general law, may appropriate and apply the net revenues of its water works system or other public utility system, service or enterprise to the payment of the sinking fund and interest due by said city or town on the bonded indebtedness incurred on account of said system, service or enterprise, producing such revenues in the following manner:

1. Whenever said governing body desires to take advantage of the provisions of this article it shall at the end of its fiscal year, and before the passage of any ordinance levying taxes for that year, appropriate and set aside out of the net revenues such sums for such purpose only as such governing body shall deem to the best interest of the city or town.

2. Where the sums so set aside and appropriated shall be sufficient to pay in full the amounts needed for such sinking fund and interest for the fiscal year in which said revenues are produced, it shall not be thereafter necessary for the governing body to levy any tax for such sinking fund or interest for which this appropriation is made; but when said sums so appropriated shall not be sufficient to meet the required amounts for such sinking fund and interest, then the governing body shall include in the general tax ordinance for that year a tax sufficient to meet the deficiency in such sinking fund and interest allowance for that year. Nothing herein shall authorize said city or town to exceed the authorized tax limit. [Acts 1917, p. 355.]

Art. 1107. [1003] [548] Condemnation of property.—An incorporated city or town shall have the right of eminent domain to condemn private property for either of the following purposes:

1. To open, change or widen any public street, avenue, or alley.

2. To construct water mains, or supply reservoirs, or standpipes for water works or sewers.

3. To establish thereon one or more hospitals or pesthouses, within or without the limits of such city or town.

4. To construct and maintain sewer pipes, mains and laterals and connections and also private property upon which to maintain vats, filtration pipes and other pipes, and which to use and occupy as a place for ultimate disposition of sewage in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for successful operation of such sewer system, and when it also be made to appear that such sewer system is beneficial to the public use, health, and convenience.

5. Construct, maintain, and operate municipal airports within or without the limits of such city or town.

6. To dig or drill water wells or well upon or produce water from or construct pump stations or reservoirs thereon, whether within or without the city limits. [Acts 1909, p. 9; Acts 1931, 42nd Leg., p. 417, ch. 250, § 1; Acts 1941, 47th Leg., p. 267, ch. 181, § 1.]

7. To open and lengthen streets and alleys; to secure space for the erection of public buildings or space to relieve crowded conditions, within or without the limits of such city or town; provided, however, that the provision of this sub-section 7 shall apply only to incorporated cities or towns having a population of less than two thousand (2,000) inhabitants as shown by the last preceding or any future Federal Census. [Added Acts 1945, 49th Leg., p. 255, ch. 189, § 1.]

See, also, article 1269b, post.
Cities of less than five thousand population, see article 1109b, post.

Art. 1108. [769 to 722 [1]] Public utilities.—Any town or city in this State which has or may be chartered or organized under the general laws of Texas, or by special Act or charter, and which owns or operates waterworks, sewers, gas or electric lights, shall have the power and right:

1. To own land for such purposes within or without the limits of such town or city.

2. To purchase, construct and operate water, sewer and gas and electric light systems inside or outside of such towns or city limits, and regulate and control same in a manner to protect the interests of such town or city.

3. To extend the lines of such systems outside of the limits of such towns or cities and to sell water, sewer, gas, and electric light and power privileges or service to any person or corporation outside of the limits of such towns or cities, or permit them to connect therewith under contract with such town or city under such terms and conditions as may appear to be for the best interest of such town or city; provided that no electric lines shall, for the purposes stated in this section, be extended into the corporate limits of another incorporated town or city. [As amended Acts 1935, 44th Leg., p. 496, ch. 207, § 1; Acts 1937, 45th Leg., p. 806, ch. 397, § 1.]

4. To prescribe the kind of water or gas mains or sewer pipes and electric appliances within or beyond the limits of such town or city, and to inspect the same and require them to be kept in good order and condition at all times and to make such rules and regulations and prescribe penalties concerning same, as shall be necessary and proper. [Acts 1909, p. 159.]

1 Numbers 769 to 722 should be 769-772.

Art. 1108a. Electric properties partly in Texas and partly in New Mexico.—Section 1. Where any city in Texas is now or hereafter being supplied with electricity by means of a privately owned electric plant and system, part of which, including facilities for the generation and transmission of electricity distributed in part to the inhabitants of said city, is located in the State of New Mexico, such city is hereby authorized to acquire, own and operate such electric plant and system in whole or in part, and in order to pay for the cost of such acquisition to issue the revenue bonds of such city in the manner now provided for the issuance of revenue bonds by cities under the general laws of Texas, and the revenue bonds so issued shall be fully negotiable instruments for all purposes.

Sec. 2. That any city so acquiring an electric plant and system is authorized to sell electricity either at retail or wholesale for distribution in the State of New Mexico and to enter into such contracts and agreements in that connection as may be provided by the governing body thereof.

Sec. 3. That the provisions of this Act are severable, and if any of its provisions shall be held to be invalid by any court of competent jurisdiction, the remaining provisions shall remain fully effective, it being hereby expressly declared to be the legislative intent that this Act would have been adopted had any such invalid provision not been included therein. [Acts 1943, 48th Leg., p. 301, ch. 195.]

Art. 1109. Waterworks.—These rules shall govern incorporated cities having more than one thousand inhabitants according to its preceding Federal census and owning and operating their own waterworks systems for the purpose of supplying the inhabitants thereof with water for fire protection or domestic consumption and the users of the city:

1. They may proceed in accordance with the provisions of this article independently of and without reference to any other applicable law or charter provision, present or future, except as hereinafter provided, which said law or charter provisions shall remain in force as alternate methods.

2. Subject to the terms hereof, any such city may by purchase, gift or devise, or by the exercise of the right of eminent domain, acquire and own in fee simple or otherwise public or private lands and property including riparian rights, within or without the city limits or within any county in this State.

3. To furnish any such city an adequate and wholesome supply of water, any such city may exercise the right of eminent domain to acquire and condemn either public or private lands or property for the extension, improvement or enlargement of its waterworks system, including water supply reservoirs, riparian rights, stand pipes, water sheds, the construction of water supply reservoirs, wells or artesian wells and dams and the construction, building, erection or establishment of any necessary appurtenances or facilities which will furnish to the inhabitants of the city an abundant supply of wholesome water.

4. Any such city shall also have all the powers conferred upon water improvement districts or water control and preservation districts under the statutes now or hereafter existing providing for the exercise of the right of eminent domain, and shall have all the powers conferred by general law authorizing cities and towns to exercise the right of eminent domain.

5. Any such city may acquire the fee simple title to any land or property when same is expressed in the resolution ordering said condemnation proceedings by the governing body.

6. The term "city" or "cities" as used herein shall include all incorporated towns and cities acting hereunder. [Acts 1923, p. 29.]

Art. 1109a. Mortgage of water system; extension or enlargements.

Power to mortgage; acquisition of additions; franchise to foreclosure purchaser

Sec. 1. All cities having more than one hundred and sixty thousand (160,000) inhabitants shall have power to issue bonds or notes therefor, and to secure payment thereof, to morgage and encumber any such water system, and the incomes thereof and everything pertaining thereto.

And to purchase or otherwise acquire additions to, or extensions or enlargements of any such water systems, or additional water powers, riparian rights, or repair of such systems, or either of them; all cities having more than one hundred and sixty thousand (160,000) inhabitants shall have power to issue bonds and notes therefor, and to secure payment thereof, to mortgage and encumber such additions, extensions, enlargements, additional water powers, riparian rights, the income therefrom, and everything pertaining thereto, either separately or with such systems, or either of them.

And as additional security therefor, by the terms of such encumbrance, may grant to the purchaser, or purchaser under any sale or foreclosure thereunder, a franchise to operate the system and properties so purchased, for a term not over twenty (20) years after such purchase, subject to all laws regulating the same then in force.

Operating expense first lien on income; rates; priorities; agreements as to payment

Sec. 2. Whenever the income of any water system, and sewer systems and sewage disposal plants and systems, shall be encumbered under this Act, the expense of operating and maintenance, including all salaries, labor, materials, interest, repairs, and extensions, necessary to render efficient service, and every proper item of expense shall always be a first lien and charge against such income. The rates charged for services furnished by any of said systems shall be equal and uniform, and no free service shall be allowed, except in the discretion of the governing body, for city public schools, or buildings and institutions operated by such city, and there shall be charged and collected for such services a sufficient rate to pay for all operating, maintenance, depreciation, replacement, betterment and interest charges, and for an interest and sinking fund sufficient to pay any bonds or notes issued to purchase, construct or improve any such system or any outstanding indebtedness against same.

Where bonds or notes are issued hereunder, and at the time of the authorization of such bonds or notes in the manner hereinafter prescribed, there are then outstanding other bonds, notes or obligations payable from the revenues of the water system, and sewer systems and sewage disposal plants and systems, the additional bonds or notes may nevertheless be issued, but shall be issued in such manner that they are in all respects subordinate to each issue of bonds, notes or obligations then outstanding. Each series of bonds or notes issued hereunder shall, as to lien on the revenues and physical properties of the water system, and sewer systems and sewage disposal plants and systems, be subordinate to each series of bonds, notes or obligations theretofore issued and remaining outstanding.

Subject to the terms and provisions hereof, the governing body of the city, in authorizing the issuance of bonds and notes hereunder, may enter into such agreements and covenants with respect to the manner of payment of such bonds and notes, and the application of the revenues of the water system, and sewer systems and sewage disposal plants and systems, as it may deem fit, provided, however, that no such bond, warrant or note shall ever be a general obligation of such city, and it shall be proper for the governing body to apply surplus revenues of the system not needed for the payment of principal of and interest on such bonds and notes, and not needed for the payment of operating and maintenance expenses, to the payment of any notes, warrants or other obligations the proceeds of which were used for the purpose of improving, repairing, adding to or extending the waterworks system, and sewer systems and sewage disposal plants and systems. [As amended Acts 1939, 46th Leg., p. 99, § 2.]

Bonds as charge on property incumbered

Sec. 3. All cities acquiring a water system, or any addition, improvement or extension thereto, under this Act, may borrow money on the security of the plant, or addition or extension, so acquired, or owned, for the purpose of paying the purchase price and for the addition, improvement and extension thereof, and may issue bonds, notes or other obligations to evidence the moneys so borrowed, which bonds, notes or other obligations shall have the characteristics of negotiable instruments under the law merchant. Every contract, bond, or note executed or issued under this Act shall contain this clause "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." No such obligation shall ever be a debt of such city, but solely a charge upon the properties so encumbered, and shall never be reckoned in determining the power of such city to issue bonds for any purpose authorized by law.

Management during incumbrance

Sec. 4. The management and control of any such system or systems during the time same are encumbered, may by the terms of such encumbrance be placed in the hands of the city council of such city; but if deemed advisable may be placed in the hands of a board of trustees to be named in such encumbrance, consisting of not more than five (5) members, one of whom shall always be the mayor of such city; and the compensation of such trustees shall be fixed by such contract, but shall never exceed five per cent (5%) of the gross receipts of any such systems in any one year. The terms of office of such board of trustees, their powers and duties, the manner of exercising same, the election of their successors, and all matter pertaining to their organization and duties may be specified in such contract of encumbrance; but in all matters where such contract is silent, the laws and rules governing the council of such city shall govern said board of trustees so far as applicable. Said city council or board of trustees having such management and control shall have power to make rules and regulations governing the furnishing of service to patrons and for the payment for same, and providing for discontinuance of such service to those failing to pay therefor when due until payment is made; and such city council shall have power to provide penalties for the violation of such rules and regulations and for the use of such service without the consent or knowledge of the authorities in charge thereof, and to provide penalties for all interference, trespassing or injury to any such systems, appliances or premises on which same may be located.

Default in payments; procedure

Sec. 5. Any contract of encumbrance under this Act may name, or provide for the selection of a trustee to make sale upon default in the payment of the principal or interest according to the terms of such contract, and for the selection of his successor, if disqualified or failing to act, and may provide for collection fees not exceeding five per cent (5%) of the principal; but no collection fees shall accrue, and no foreclosure proceedings shall be begun in any court or through any trustee, and no option to mature any part of such obligation, because of default in payment of any installment of principal shall be exercised until ninety (90) days written notice shall be given to each member of the city council of such city and to each member of such board of trustees, if any, that payment has been demanded and default made, which notice shall date from the sending of a letter to each person to be notified, by registered mail, postage and registration fees prepaid, and addressed to them at the post office in such city; and if the installments of principal and interest then due shall be paid before the expiration of said ninety (90) days, together with the interest prescribed in such contract, not exceeding ten per cent (10%) per annum, from the date of default until the date of payment, it shall have like effect as if paid on the date same was originally due.

Property included in incumbrance; Attorney General to approve bonds; submission to voters

Sec. 6. In the encumbrance of any properties under this Act such city may encumber any such water systems, and sewer systems and sewage disposal plants and systems, or any extensions, additions or enlargements thereof, singly or together, and may or may not include in such encumbrance the franchise provided for, and may omit or include in said encumbrances the whole or any part of the properties mentioned in Section 1 of this Act; but no such system shall ever be sold until such sale is authorized by a majority vote of the qualified property taxpayers of such city, or under the terms of any such mortgage or encumbrance, such vote where necessary to be ascertained at an election, of which notice shall have been given in like manner as in cases of the issuance of municipal bonds by such cities.

All bonds and notes issued hereunder shall be submitted to the Attorney General for examination, and upon his approval thereof, shall be registered by the State Comptroller in a book kept for that purpose, and the Comptroller shall endorse his certificate of registration on each such bond or note.

Bonds or notes may be issued under the provisions hereof and the revenues or physical properties of the water system, and sewer systems and sewage disposal plants and systems, encumbered as security for the payment of such bonds and notes; such bonds or notes shall not be issued, however, until such issuance has been authorized by a majority vote of the qualified electors who own taxable property in the city where said election is being held, and who have duly rendered said property for taxation, such electors voting only in the precinct of their residence, and voting on such proposition un-

der the Constitution and Laws of Texas. Such election shall be called and held in the manner provided for the calling and holding of other bond elections in such city. No other notices need be published or opportunities for the filing of petitions granted despite the provisions of any other Statute or of the charter of any such city. [As amended Acts 1939, 46th Leg., p. 99, § 3.]

Prior proceedings validated; proviso as to cities of 290,000.

Sec. 7. All proceedings heretofore had by cities having more than one hundred and sixty thousand (160,000) inhabitants, in the acquisition of any water systems, and the encumbrance of same, within the authority given by this Act, be and the same are hereby approved and ratified.

Provided, that in cities having a population of more than two hundred and ninety thousand (290,000) according to the last preceding Federal census, the governing body thereof shall have the power to borrow money and issue bonds or notes which shall be fully negotiable within the meaning and for all purposes under the negotiable instrument law; said bonds and notes to be payable solely out of the income of such system or any extensions, replacements, betterments, additions or improvements which, in the judgment of the governing body of such city, are necessary to render adequate service and to pledge and use the income of such system for payment of such bonds or notes and such determination by such governing body shall be conclusive and any ordinance pledging or encumbering such rents, income or revenues shall be deemed a part of the contract of said city with the holders of such bonds or notes, and

Provided, further, that the election called for in Section 6 hereof shall not be necessary in said cities having a population of more than two hundred and ninety thousand (290,000) inhabitants according to the last preceding Federal census, to authorize the issuance of bonds or notes payable solely out of the income of said system, and

Provided, further, that all obligations of said last mentioned cities authorized under Section 1 of this Act shall be submitted to the Attorney General of Texas for his examination and when such bonds have been examined and certified as legal obligations of such cities by said Attorney General they shall be registered by the Comptroller of Texas in a book kept for such purposes, and the Comptroller shall endorse his certificate of registration upon each of such obligations.

Provided, further, that nothing in this Act, however, shall repeal or affect any other legislation pertaining to the same or similar subjects, but shall be cumulative of all Acts granting the power to all cities and towns, including home rule cities, operating under Title 28 of the Revised Civil Statutes of 1925, and it is not intended to limit or impair any power given by any other of such acts, nor shall any other Act be deemed to limit or impair the power of any city under this Act. [Acts 1925, 39th Leg., p. 154, ch. 33; Acts 1933, 43rd Leg., 1st C.S., p. 113, ch. 36, § 1.]

Section 4 of the amendatory act of 1939, repeals all conflicting laws.

See, also, article 1118a, post.

Art. 1109a—1. Validation of waterworks Revenue Refunding Bonds and Sewer System Revenue Refunding Bonds.—All Waterworks System Revenue Refunding Bonds and all Sewer System Revenue Refunding Bonds heretofore authorized, issued, exchanged, and delivered by cities in Texas operating under the provisions of Special Charters and which refunding bonds have been heretofore validated and confirmed by a final decree of a United States District Court in Texas, be, and the same are hereby in all things ratified, validated, and confirmed, and such refunding bonds so authorized, issued, exchanged, and delivered, shall hereafter be and constitute valid and binding obligations upon the revenues of such systems. [Acts 1937, 45th Leg., 2nd C.S., p. 1999, ch. 69, § 1.]

Art. 1109a—2. Warrants for completion of waterworks extensions and improvements.—Section 1. In each instance where a city heretofore has issued and sold bonds for the purpose of extending and improving its waterworks system, and the governing body thereof finds and determines that the proceeds from such bonds will not be sufficient to complete such extensions and improvements according to plans and specifications heretofore approved by the governing body, and that such extensions and improvements must be completed immediately in order to afford adequate fire protection and to protect the public health, the governing body is hereby authorized to issue interest-bearing time warrants to pay for the completion of the extensions and improvements. Such warrants may be issued without the prerequisite of an election and without giving notice of intention to issue warrants.

Sec. 2. In the event of conflict between any of the provisions of this Act and any provisions of a city charter, the provisions of this Act shall prevail. Provided, however, that no city shall issue warrants under this law to a greater amount than Thirty Thousand ($30,000.00) Dollars, that such warrants shall bear not more than four (4%) per cent interest, and shall mature in not to exceed five (5) years from their date, and provided further that no ordinance, authorizing the issuance of such warrants, shall be passed after ninety (90) days after the effective date of this Act; but the limitations contained in this sentence shall not restrict the authority conferred by any of the provisions of Section 6 of the Bond and Warrant Law of 1931.[1] [Acts 1941, 47th Leg., p. 550, ch. 347.]

[1] Article 2368a.

Art. 1109b. Eminent domain.—Incorporated cities and towns shall have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary and to take any private property within or without the city limits for any of the following purposes, to wit:

To have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary and to take any private property within or without the city limits for any of the following purposes, to wit: City halls, police stations, jails, calaboose, fire stations, libraries, school houses, high school buildings, academies, hospitals, sanatariums, auditoriums, market houses, reformatories, abattoirs, railroad terminals, docks, wharves, warehouses, ferries, ferry landings, elevators, loading and unloading devices, shipping facilities, piers, streets, alleys, parks, highways, boulevards, speedways, playgrounds, sewer systems, storm sewers, sewage disposal plants, drains, filtering beds and emptying grounds for sewer systems, reservoirs, water sheds, water supply sources, wells, water and electric light systems, gas plants, cemeteries, crematories, prison farms, and to acquire lands with and without the city for any other municipal purposes that may be deemed advisable.

The power herein granted for the purpose of acquiring private property shall include the power of the improvement and enlargement of the water works, including water supply, riparian rights, stand pipes, water sheds, the construction of supply reservoirs, parks, squares, and pleasure grounds, public wharves and landing places for steamers and other crafts, and for the purpose of straightening or improving the channel of any stream, branch or drain, or the straightening or widening or extension of any street, alley, avenue or boulevard. That, in all cases where the city seeks to exercise the power of eminent domain, it shall be controlled, as nearly as practicable, by the law governing the condemna-

tion of property of railroad corporations in this State, the city taking the position of the railroad corporations in any such case; that the power of eminent domain hereby conferred shall include the right of the governing authority, when so expressed, to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes. [Acts 1925, 39th Leg., p. 344, ch. 137, § 1; Acts 1945, 49th Leg., p. 379, ch. 243, § 1.]

Art. 1109c. Eminent domain by cities or towns and independent school districts for playgrounds and other purposes.

Condemnation proceedings

Sec. 1. All cities and towns in Texas, and all independent school districts having 150 scholastics or more, whether created under general or special laws, shall have the power by the exercise of the right of eminent domain, to acquire the fee simple title to real property for the purpose of supplying playgrounds, sites upon which to build school houses, and for such other purposes as may be necessary for such schools within any such city or town or independent school district.

In all such condemnations, the trial and all other proceedings, including the assessing of damages, shall be in conformity to the statutes of the State of Texas for condemning and acquiring property by railroads. Whenever final judgment is rendered in any such condemnation, the plaintiff therein shall be awarded the fee simple title to the property condemned, and such plaintiff thereupon shall acquire, and shall thereafter have, hold and possess such property in fee simple title, with full power over the same including the right of alienation.

Possession pending suit

Sec. 2. If the plaintiff in any condemnation proceeding should desire to enter upon and take possession of the property sought to be condemned pending suit, it may do so at any time after the award of the commissioners, upon the following conditions, to-wit:

First: It shall not be required to give any bond whatsoever, but it shall pay to the defendant the amount of damages awarded or adjudged against it by the Commissioners or deposit the same in money in Court subject to the order of the defendant, and also pay the costs awarded against it.

Second: If on an appeal from the award of the Commissioners the judgment shall exceed the amount of the award, plaintiff in the event it shall have previously taken possession of the property condemned, shall pay such judgment and costs that may be awarded against it, within sixty (60) days from the date of the final judgment in the case and, upon its failure so to do, the Court shall upon application of the defendant inquire what damages, if any, have been suffered by the defendant by reason of the temporary possession by plaintiff, and order the same paid out of the award so deposited in Court and order a writ of possession for the property in favor of the defendant, but if the final judgment on any such appeal shall be less than the amount of the award of the Commissioners, the Court shall adjudge the excess to be returned to the plaintiff.

Third: If the cause should be appealed from the decision of the County Court, the appeal shall be governed by the law governing appeals in other cases; except the judgment of the County Court shall not be suspended thereby. [Acts 1929, 41st Leg., p. 370, ch. 168.]

Section 3 of this Act repeals all conflicting laws and parts of laws and provides that it shall be cumulative of all laws on the subject of eminent domain by cities or towns and independent school districts in so far as such laws do not conflict herewith.

See, also, article 2905, post.

Playgrounds outside cities, see articles 6081d, 6081e, post.

Art. 1109d. Cities and towns authorized to contract with Water Improvement or Water Control and Improvement District for water supply.

Duration of contracts

Section 1. Any city or town in this state may contract with any Water Improvement District or Water Control and Improvement District deriving its powers from Article XVI, Section 59, of the Constitution of Texas and any such District may contract with any such City or Town, for supplying water to said City. Such contract may run for such length of time as may be agreed upon between the Board of Directors of said District and the governing body of said City, not to exceed 30 years from the date of the contract, but said contract may also provide that it shall run until all warrants, notes or bonds, issued by such District for the acquisition of facilities necessary or convenient to enable the District to supply the City with water, have been paid in full.

Payment for water out of water system revenues exclusively

Sec. 2. Payment for water so supplied shall be made out of the water system revenues of such city or town, and the District shall never have the right to demand payment out of moneys raised or to be raised by taxation, and payments under the contracts herein authorized may be secured by a first lien on, and an irrevocable pledge of the revenues of said water system.

Election approving contract; notice of election-ballots

Sec. 3. Provided, however, that no such contract shall become binding until approved by a majority vote of the qualified electors in such City or Town at an election held for that purpose. Such election may be called by the governing body of the city on its own motion. Notice of such election shall be published in a newspaper of general circulation published in such City or Town once each week for two consecutive weeks the first of which publications shall be at least ten full days prior to the day set for the election, provided, that if no newspaper is published in such City or Town, notice of said election shall be given by posting notice thereof in each of the voting precincts of such City or Town and one at the City Hall. The notice of election shall state the date upon which the same shall be held, and shall state the proposition to be voted upon in such form as the governing body shall prescribe, but the notice need not set out the contract at length, or detail its provisions. For ten days next, preceding the election the proposed contract shall be on file in the office of the City Secretary and may be examined by any person. The governing body of the City shall prescribe the form of the ballots.

General election law to govern elections; qualification of electors; returns

Sec. 4. Except as otherwise provided in this Act, said election shall be conducted according to the general election law. Only qualified electors who own taxable property in the City and who have duly rendered the same for taxation, shall be qualified to vote. Returns of said election shall be made to the governing body of the city.

Canvass of returns; effect of election

Sec. 5. The governing body shall canvass the returns of said election as soon as practicable. If a majority of the votes cast at such election are in favor of approving the contract, the contract shall at once become binding and effective; if a majority of the votes are against the contract, the contract shall not become effective.

Construction or acquiring of canals, reservoirs, basins, pipelines, filtration plants, and other equipment and supplies

Sec. 6. Any such district may construct, or otherwise acquire and equip, such canals, reservoirs, basins, pipelines, conduits, filtration, and aeration plants, and all other equipment and supplies, and may acquire by purchase, eminent domain, or otherwise all such property as is necessary or convenient for the purpose of supplying water to a city as provided herein.

Issuance of warrants, notes, or bonds; refunding or reissuing bonds

Sec. 7. Any such District may issue warrants, notes or bonds to provide for the acquisition of the facilities necessary or convenient for supplying water to such city or town, and to secure such warrants, notes or bonds by a pledge of the revenues to be derived under any such contract then in existence or thereafter to be made for supplying water to such city or town. Where tax supported bonds hereafter are voted for such purpose, such bonds may be issued, secured by the pledge of such tax levy and by the pledge of such revenues or by either of such pledges. In instances where tax supported bonds have been voted heretofore in any such district but all or part thereof have not yet been sold, such unsold bonds may be issued and sold and the proceeds or any part thereof may be used for such purpose without the necessity of another election, and in such instances the District may secure such bonds by a levy of such taxes and by a pledge of the revenues to be derived under any such contract for supplying water either then in existence or thereafter to be made, or may secure said bonds by either of such methods. Bonds of such Districts heretofore voted may be refunded or re-issued without an election and such refunding or re-issued bonds may be secured as in this section provided.

Partial invalidity

Sec. 8. In the event any provision of this Act shall be in conflict with any other law the provisions of this Act shall be effective. [Acts 1937, 45th Leg., 2nd C.S., p. 1879, ch. 12.]

Art. 1110. Waterworks right of way.—To acquire rights of way for digging or excavating canals, laying mains or pipe lines for the purpose of conducting water through the same into the cities or towns for the use of the public, incorporated cities and towns owning their own waterworks system shall have the right of eminent domain to condemn private property for public use in and outside of the city or town limits of such cities or towns. [Acts 1915, p. 166.]

Art. 1110a. Issuance of revenue bonds against which judgment is entered.—Section 1. This Act shall be applicable to any city or town against which a judgment shall have been entered or may be entered hereafter because of purchase or construction money expended or advanced, awarding the plaintiff any properties theretofore used by the city as if a part of the city's waterworks system, or requiring it to pay to plaintiff an amount of money equivalent to the value of, or in lieu of the surrender of such property, whether or not requiring it to pay a rental for use and detention of such property. Any such city or town, acting through its governing body, may, subject to compliance with the provisions of the Bond and Warrant Law of 1931 with reference to the publication of notice for a period of fourteen days and affording an opportunity to the qualified voters of such city or town to file a petition for a referendum election upon such question and the favorable outcome of such election if thus required, repurchase from such plaintiff or plaintiff's successor in title, the properties involved, or pay the money judgment awarded against it or acquire needed property in lieu of such property, and may issue revenue bonds for such purposes, conditioned that the holder thereof shall never have the right to demand payment thereof out of moneys raised or to be raised by taxation, and payable out of the revenues of its system which shall include all properties and everything pertaining thereto then owned or thereafter acquired, hereinafter called the "system," and within the discretion of the governing body of such city, further secured by a lien upon the properties constituting the system and a lien upon and grant of a franchise to operate such system, in the event of sale of such system after default in the payment of such Revenue Bonds or interest thereon. The ordinance authorizing such Revenue Bonds may pledge all or any designated part of the net revenues of such system to the payment of such Revenue Bonds. Except as otherwise provided in this Act, such Revenue Bonds shall be issued in accordance with Article 1111 and Articles 1113 to 1118, both inclusive, of the Revised Civil Statutes of Texas as amended.

Sec. 2. After Revenue Bonds shall have been issued under Section 1 of this Act, so secured by the pledge of the revenues of such system, and whether or not secured by a lien upon the properties constituting the system and franchise, nevertheless the city may thereafter while all or a part of said bonds are still outstanding issue additional revenue bonds secured by a pledge of the net revenues of such system and by a lien similar to that, if any, securing the outstanding revenue bonds, for improvements, extensions, repairs, or replacements of and to the system, or for any or all of said purposes, to the extent and in the manner expressly permitted by the ordinance or ordinances authorizing such previously authorized and outstanding revenue bonds. Such additional revenue bonds shall be issued only after an authorizing election on the question shall have been held in the manner prescribed by Chapter 1 of Title 22 of the Revised Civil Statutes of Texas, 1925. If and when such revenue bonds are subsequently issued in accordance with the limitations contained in the ordinance or ordinances authorizing the revenue bonds previously issued under authority of Section 1 of this Act, they shall be secured by a pledge of the revenues of such system and lien upon the properties constituting the system and upon the franchise of equal dignity with the pledge and liens securing such outstanding revenue bonds.

Sec. 3. Within the discretion of the governing body of such city or town, revenue bonds issued either under Section 1 of Section 2 of this Act and which are made available for such purpose, may be refunded by the same issue or several issues of refunding bonds, provided that the interest cost to the city is not increased by the refunding of such bonds.

Sec. 4. Before any revenue bonds are delivered under the provisions of this Act they shall be submitted to and approved by the Attorney General, and shall be registered by the Comptroller of Public Accounts in the manner and with the effect provided in Articles 709 to 715, both inclusive, of the Revised Civil Statutes of Texas of 1925, pertaining to the issuance by cities of tax supported bonds. [Acts 1945, 49th Leg., p. 605, ch. 349.]

2. ENCUMBERED CITY SYSTEM

Art. 1111. Powers.—All cities and towns including Home Rule Cities operating under this title shall have power to build and purchase, to mortgage and encumber their light systems, water systems, sewer systems, or sanitary disposal equipment and appliances, or natural gas systems, parks and/or swimming pools, either, or all, and the franchise and income thereof and everything pertaining thereto acquired or to be acquired and to evidence the obligation therefor by the issuance of bonds, notes or warrants, and to secure the payment of funds to purchase same; or to purchase additional water powers, riparian rights, or to build, improve, enlarge, extend

or repair such systems, or any one of them, including the purchase of equipment and appliances for the sanitary disposal of excreta and offal, and as additional security therefor, by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereunder, a franchise to operate the systems and properties so purchased for a term of not over twenty (20) years after purchase, subject to all laws regulating same then in force. No such obligation of any such systems shall ever be a debt of such city or town, but solely a charge upon the properties of the system so encumbered, and shall never be reckoned in determining the power of any such city or town to issue any bonds for any purpose authorized by law. [Acts 1911, p. 230; Acts 1927, 40th Leg., p. 276, ch. 194; Acts 1932, 42nd Leg., 3rd C.S., p. 96, ch. 32; Acts 1933, 43rd Leg., p. 320, ch. 122.]

Acts 1934, 43rd Leg., 3rd C.S., p. 35, ch. 19, relative to the disposition of the revenue of public utility systems owned by cities with a population of not less than 8700 nor more than 8,800, though passed as a general law relates to only one city.

Art. 1112. Vote, etc.—No such light, water, sewer, or natural gas systems, parks and/or swimming pools, shall ever be sold until such sale is authorized by a majority vote of the qualified voters of such city or town; nor shall same be encumbered for more than Five Thousand ($5,000.00) Dollars, except for purchase money, or to refund any existing indebtedness lawfully created, until authorized in like manner. Such vote in either case shall be ascertained at an election, which election shall be held and notice thereof given as is provided in the case of the issuance of municipal bonds by such cities and towns. [Acts 1911, p. 230; Acts 1927, 40th Leg., p. 276, ch. 194; Acts 1932, 42nd Leg., 3rd C.S., p. 96, ch. 32; Acts 1933, 43rd Leg., p. 320, ch. 122.]

Art. 1113. Income; expenses a lien; rates; records; reports; penalty.—Whenever the income of any light, water, sewer, or natural gas systems, parks and/or swimming pools, shall be encumbered under this law, the expense of operation and maintenance, including all salaries, labor, materials, interest, repairs and extensions necessary to render efficient service and every proper item of expense shall always be a first lien and charge against such incomes. Provided, that only such repairs and extensions, as in the judgment of the governing body of such city or town, are necessary to keep the plant or utility in operation and render adequate service to such city or town and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the original securities, shall be a lien prior to any existing lien. The rates charged for services furnished by any such system shall be equal and uniform, and no free service shall be allowed except for city public schools or buildings and institutions operated by such city or town. There shall be charged and collected for such services a sufficient rate to pay all operating, maintenance, depreciation, replacement, betterment and interest charges, and for interest and sinking fund sufficient to pay any bonds issued to purchase, construct or improve any such systems or any outstanding indebtedness against same. No part of the income of any such system shall ever be used to pay any other debt, expense, or obligation of such city or town except payments made in lieu of ad valorem taxes previously paid by the private owners of the plants or systems mentioned above until the indebtedness so secured shall have been finally paid.

It shall be the duty of the Mayor of such city or town to install and maintain, or cause to be installed and maintained, a complete system of records and accounts showing the free service rendered, and the value thereof, and showing separately the amounts expended and/or set aside for operation, salaries, labor, materials, repairs, maintenance, depreciation, replacements, extensions, interest, and the creation of a sinking fund to pay off such bonds and indebtedness.

It shall likewise be the duty of the superintendent or manager of such plant to file with the Mayor of such city or town, not later than February first, a detailed report of the operations of such plant for the year ending January first preceding, showing the total sums of money collected and the balance due, as well as the total disbursements made and the amounts remaining unpaid as the result of operation of such plant during such calendar year.

Failure or refusal on the part of the Mayor to install and maintain, or cause to be installed and maintained, such system of records and accounts within ninety (90) days after the completion of such plant, or on the part of such superintendent or manager, to file or cause to be filed such report, shall constitute a misdemeanor and, on conviction thereof, such Mayor or superintendent or manager shall be subject to a fine of not less than One Hundred Dollars ($100), nor more than One Thousand Dollars ($1,000); and any taxpayer or holder of such indebtedness residing within such city or town shall have the right, by appropriate civil action in the District Court of the County in which such city or town is located, to enforce the provisions of this Act as amended. [Acts 1911, p. 230; Acts 1927, 40th Leg., p. 276, ch. 194; Acts 1932, 42nd Leg., 3rd C. S., p. 96, ch. 32; Acts 1933, 43rd Leg., p. 320, ch. 122; Acts 1943, 48th Leg., p. 220, ch. 139, § 1.]

Partial Repeal. Section 6 of Acts 1941, 47th Leg., p. 421, ch. 251, authorizing the issuance of refunding bonds by cities of 525,000 or over, read as follows: "All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict, and particularly that expression contained in Article 1113, Revised Civil Statutes of Texas which reads, 'No part of the income of any such system shall ever be used to pay any other debt, expense or obligation of such city or town, until the indebtedness so secured shall have been finally paid,' is hereby specially repealed."

Art. 1114. Notes, etc.—Every contract, bond, note or other evidence of indebtedness issued or included under this law shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Where bonds are issued hereunder, they may be presented to the Attorney General for his approval as is provided for the approval of municipal bonds issued by such cities or towns. In such case, the bonds shall be registered by the State Comptroller as in the case of other municipal bonds. [Acts 1911, p. 230; Acts 1933, 43rd Leg., p. 320, ch. 122.]

Art. 1114a. Self-liquidating.—Projects financed in accordance with this law are hereby declared to be self liquidating in character and supported by charge other than by taxation. [Acts 1933, 43rd Leg., p. 320, ch. 122.]

Art. 1114b. Conflicting laws repealed.—All laws and parts thereof, in conflict herewith, are hereby repealed to the extent of the conflict, and this law shall take precedence over all conflicting city charter provisions. [Acts 1933, 43rd Leg., p. 320, ch. 122.]

Art. 1114c. Ordinances, resolutions, and securities validated.—The actions of all cities and towns and of all officials in passing ordinances, adopting resolutions, executing securities and delivering securities to accomplish the objects permitted under this Act are hereby expressly authorized and validated in like manner as if this law had been effective at the time of such actions, subject to the provisions of Section 5. [Acts 1933, 43rd Leg., p. 320, ch. 122.]

Art. 1114d. Validation of bonds for swimming pools.—Section 1. All bonds heretofore voted and issued or heretofore voted and not yet issued by any city or town in this State for the purpose of constructing swimming pools in said city or town, are

hereby in all things validated, confirmed, and ratified as though they had been legally authorized in the first instance.

Sec. 2. The provisions of this Act shall not operate to validate any bonds or bond elections which, at the time of the effective date of this Act, are involved in litigation, or the validity of which said bonds or bond elections may be attacked in any suit or litigation instituted within thirty (30) days after the effective date of this Act. [Acts 1937, 45th Leg., 2nd C.S., p. 1968, ch. 56.]

Art. 1115. Control.—The management and control of any such system or systems during the time they are encumbered, may by the terms of such encumbrance, be placed in the hands of the city council of such town, or may be placed in the hands of a board of trustees to be named in such encumbrance, consisting of not more than five members, one of whom shall be the mayor of such city or town. The compensation of such trustees shall be fixed by such contract, but shall never exceed five per cent of the gross receipts of such systems in any one year. The terms of office of such board of trustees, their powers and duties, the manner of exercising same, the election of their successors, and all matters pertaining to their organization and duties may be specified in such contract of encumbrance. In all matters where such contract is silent, the laws and rules governing the council of such city or town shall govern said board of trustees so far as applicable. [Acts 1911, p. 230.]

Control in Cities of 6,700–6,900

Acts 1941, 47th Leg., p. 674, ch. 416, provided that the management and control of any electric light, gas, water, or sewer system owned by any city of 6700–6900, shall, so long as any of revenue bonds issued shall be outstanding and unpaid, be placed in the hands of a Board of Trustees.

Art. 1116. Rules.—The city council or board of trustees having such management and control shall have the power to make rules and regulations governing the furnishing of service to patrons and for the payment of the same, and providing for the discontinuance of such service failing to pay therefor when due until payment is made. The city council shall have power to provide penalties for the violation of such rules and regulations and for the use of such service without the consent or knowledge of the authorities in charge thereof, and to provide penalties for all interference, trespassing or injury to any such systems, appliances or premises on which same may be located. [Id.]

Art. 1117. Default.—A contract of encumbrance may provide for the selection of a trustee to make sale upon default in the payment of the principal or interest according to the terms of such contract, and for the selection of his successor if disqualified or failing to act, and for collection fees not exceeding five per cent of the principal. [Id.]

Art. 1118. Notice.—No collection fees shall accrue, and no foreclosure proceedings shall be begun in any court or through any trustee, and no option to mature any part of such obligation because of default in payment of any installment of principal or interest shall be exercised until ninety days written notice shall be given to each member of the city council of such city or town and to each member of such board of trustees, if any, that payment has been demanded and default made, which notice shall date from the sending of a prepaid registered letter to each person to be notified, addressed to them at the post office in such city or town. If the installments of principal and interest then due shall be paid before the expiration of said ninety days, together with the interest prescribed in such contract, not exceeding ten per cent per annum, from the date of default until the date of payment, it shall have like effect as if paid on the date the same was originally due. [Id.]

Art. 1118a. Mortgage of gas, water, light or sewer systems by cities and towns.

Power to encumber; obligation not a debt

Sec. 1. All cities and towns owning and operating their light systems and gas systems or water systems and gas systems or sewer and gas systems shall have power to mortgage and encumber any one or more of its gas, water, light or sewer systems and the franchise and income thereof and everything pertaining thereto acquired or to be acquired, to secure the payment of funds to purchase any one of same or to purchase additional water powers, riparian rights, or to build, improve, enlarge, extend or repair said systems or any one of said systems and as additional security therefor by the terms of such encumbrance may grant to the purchaser under sale or foreclosure thereunder a franchise to operate the system and properties so encumbered for a term not over twenty years after such purchase, subject to all laws regulating same then in force. No such obligation shall ever be a debt of such city or town, but solely a charge upon the properties so encumbered and shall never be reckoned in determining the power of such city or town to issue any bonds for any purpose authorized by law. Nothing herein shall be construed as prohibiting any such city or town from mortgaging and encumbering any one or more of said systems for the purpose of purchasing, building, improving, enlarging, extending, repairing or reconstructing another one or more of said systems and purchasing necessary land and other properties in connection therewith in the discretion of the governing body thereof.

Vote required for sale or mortgage

Sec. 2. No such system or systems shall ever be sold until such sale is authorized by a majority vote of the qualified voters of such city; nor shall same be encumbered for more than Five Thousand ($5,000.00) Dollars except for purchase money or to refund any existing indebtedness or for repair or reconstruction, unless authorized in like manner. Such vote where required shall be ascertained at an election of which notice shall be given in like manner as and which shall be held in like manner as in the cases of the issuance of municipal bonds by such city.

Prior act inapplicable until June 1, 1934

Sec. 2a. That notwithstanding any of the provisions of House Bill No. 312, Chapter 163, Acts of the 42nd Legislature, 1931,[1] the requirements of said House Bill No. 312, Acts 42nd Legislature, 1931, Chapter 163, with reference to notice, competitive bids, and the right to referendum, shall not apply to cities and towns acting under the authority conferred in this Act, until after June 1, 1934, instead of until after June 1, 1932, as provided in House Bill No. 312, Chapter 163, Acts 42nd Legislature, 1931. [As added Acts 1932, 42nd Leg., 3rd C.S., p. 46, ch. 20, as amended Acts 1933, 43rd Leg., p. 106, ch. 53.]

1 Article 2368a.

Operating expenses as first lien on income; rates

Sec. 3. Whenever the income of any system or systems shall be encumbered under this law, the expense of operation and maintenance, including all salaries, labor, materials, interest, repair and extensions necessary to render efficient service and every proper item of expense shall always be a first lien and charge against such incomes. The rates charged for services furnished for any such system shall be equal and uniform and no free service shall be allowed except for city public schools or buildings and institutions operated by such city. There shall be charged and collected for such service a sufficient rate to pay for all operating, maintenance, depreciation, replacement, betterment and interest charges and for inter-

est and sinking fund sufficient to pay any bonds issued to purchase, construct or improve any such systems or of any outstanding indebtedness against same.

Bond recital

Sec. 4. Every contract, bond or note issued or executed under this law shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Management pending incumbrance

Sec. 5. The management and control of any such system or systems during the time they are encumbered shall by the terms of such encumbrance be placed in the city council or other governing body of said city. Such city council or other governing body shall have the power to make rules and regulations governing the furnishing of service to patrons and for the payment of same and providing for the discontinuance of such service, failing to pay therefor when due until payment is made. Such governing bodies shall have power to provide penalties for the violation of such rules and regulations and for the use of such service without the consent or knowledge of the authorities in charge therefor and to provide penalties for all interference, trespassing or injury to any such system or systems, appliances or premises on which same may be located.

Default in payment; procedure

Sec. 6. A contract of encumbrance may provide for the selection of a trustee to make sale upon default in the payment or [1] the principal or interest according to the terms of such contract and for the selection of his successor if disqualified or failing to act and for collection fees not exceeding five (5%) per cent of the principal. Such encumbrance shall provide that in the event of default and sale under foreclosure and the granting of a franchise to operate the system or systems and properties so purchased for a term of not over twenty years, as hereinbefore provided, that said city at any time during any stipulated time during said franchise, not to exceed periods of five (5) years during said time, shall have the right and privilege to repurchase said system or systems upon reasonable terms and at reasonable prices, to be set forth together with said optional periods of redemption in said encumbrance agreement and in said franchise.

[1] So in enrolled bill. Session Laws read "of."

Notice of default

Sec. 7. No collection fees shall accrue, and no foreclosure proceedings shall be begun in any court or through any trustee, and no option to mature any part of such obligation because of default in payment of any installment of principal or interest shall be exercised until ninety days written notice shall be given to each member of the city council of such city or town that payment has been demanded and default made, which notice shall date from the sending of a prepaid registered letter to each person to be notified, addressed to them at the post office in such city or town. If the installments of principal and interest then due shall be paid before the expiration of said ninety days, together with the interest prescribed in such contract, not exceeding ten (10%) per cent per annum, from the date of default until the date of payment, it shall have like effect as if paid on the date the same was originally due.

Property included in incumbrance

Sec. 8. In the encumbrance of any properties under this Act such city may encumber any such systems singly or together for the benefit and to secure funds for any one or more of said systems and may omit or include in said encumbrance the whole or any part of the properties mentioned in Section 1 of this Act.

Income applied to incumbrance

Sec. 9. No part of the income of any such system or systems so encumbered shall ever be used to pay any other debt, expense or obligation of such city except a debt, expense or obligation of the system or systems encumbered or the system or systems for which said encumbered system or systems was so encumbered until the indebtedness so secured shall have been finally paid. [Acts 1931, 42nd Leg., p. 783, ch. 314.]

See, also, Article 1109a, ante.

Section 9a of this Act, repeals acts 1931, 42nd Leg. Spec. L., p. 129, ch. 51, §§ 1-9 relating to the same matter in cities of 27,000 and not more than 28,000 inhabitants.

Art. 1118a—1. Moneys in lieu of school taxes; payment from current revenue of existing public utility acquired and financed through revenue bonds.—Section 1. Whenever any city or town, including home rule cities, is situated wholly or partially in a school district, or in which there is situated wholly or partially a school district, after the effective date of this law, shall acquire a public utility or utilities then existing, and finances the purchase thereof through the issuance of revenue bonds, and such public utility property, within its territorial limits is at the time subject to taxation for the benefit of any school district, the governing body of any such city or town in issuing revenue bonds for the purchase price thereof, may expressly provide in any indenture of trust, mortgage or other lien instrument evidencing the obligation of such city or town in respect of the purchase price of such utility or utilities, for the payment annually from the income of such utility or utilities, a sum in amount equivalent to the average annual taxes assessed in behalf of such school district upon the properties of such utility or utilities for the five (5) years immediately preceding the year in which such utility or utilities shall be acquired by such city or town; provided, however, that by mutual agreement of the board of trustees of such school district and the governing body of such city or town, provision may be made for the payment annually of a sum in lieu of school taxes as shall be deemed adequate and just under all the circumstances of the case, due consideration being given to the needs of such school district. The obligation thus assured by any such city or town, including home rule cities, to make such payment to a school district in lieu of ad valorem property school taxes shall constitute a proper item of operating expense, which together with other operating expenses shall always be a first lien and charge against the income of such encumbered utility or utilities.

Sec. 2. The obligation of any such city or town to pay any such school district moneys in lieu of taxes as provided in the encumbrance agreement shall be and constitute an "expense or obligation" of such system or systems as such terms are used in statutes authorizing the acquisition of such public utilities and the issuance of revenue bonds for the purchase thereof, and such obligations shall extend to and bind any and all cities or towns, including home rule cities, purchasing or otherwise acquiring any such then existing public utility or utilities, in accordance with the provisions of such encumbrance agreements or mutual agreements as authorized in Section 1 of this Act.

Sec. 3. The obligation of any such city or town, including home rule cities, as fixed in such indenture or encumbrance, shall not be impaired or affected, modified or released, by the release or discharge of such encumbrance, and such city or town, including home rule cities, shall continue while such city or town shall own and operate any such public utility to pay to any such school district annually from the revenues thereof such amount as a sum in amount equivalent to the average annual taxes assessed in behalf of such

school district upon the properties of such utility or utilities for the five (5) years immediately preceding the year in which such utility or utilities shall be acquired by such city or town, including home rule cities; provided, however, that from and after the date of release or discharge of such encumbrance the board of trustees of any such school district and the governing body of such city or town may by mutual agreement from time to time provide for the payment annually from the revenues of such utility or utilities owned and operated by such city or town of such sum or sums in lieu of school taxes as shall be deemed adequate and just under all the circumstances of the case, due consideration being given to the needs of such school district.

Sec. 4. This Act shall apply solely to purchases or acquisitions, subsequent to the effective date hereof, of then existing public utilities made by any city or town of this state, including home rule cities, and shall not apply to or in any wise affect any purchase or acquisition of a public utility or utilities of whatsoever character acquired by any such city or town prior to the effective date of this Act. Cities and towns, including home rule cities, shall be authorized to operate under the provisions of this Act in acquiring existing public utilities under any and all laws of the state permitting the acquisition of existing public utilities through the issuance of revenue bonds, including Articles 1111 to 1113, inclusive, of the 1925 Revised Civil Statutes of the State of Texas and amendments thereto, and including Chapter 314, Acts of the Regular Session of the 42nd Legislature and amendments thereto.[1] [Acts 1943, 48th Leg., p. 398, ch. 269.]

[1] Article 1118a.

Art. 1118b. Bonds and proceedings validated.

Bonds issued in connection with public utilities validated

Sec. 1. That where the governing body of any city or town, owning and operating its light system and gas system, or water system and gas system, or sewer system and gas system, has authorized and/or issued bonds to purchase any one of such systems or to purchase additional water powers, riparian rights, or to build, improve, enlarge, extend or repair said systems, or any one of said systems, under authority of Chapter 314, of the General Laws passed by the 42nd Legislature, at its Regular Session in 1931,[1] and as security therefor has mortgaged and encumbered any one or more of its gas, water, light or sewer systems and the franchise and income thereof, and everything pertaining thereto, acquired or to be acquired, the ordinance or ordinances of such governing body, prescribing the date and maturity of such bonds, the rate of interest the same were to bear, the place of payment of principal and interest, and appropriating revenues of any such system or systems to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity, having been recorded in the minutes or records of such governing body, and where the mortgage or indenture on the properties comprising such system or systems, to secure payment of said bonds, has been duly executed by the proper officers of said city, and the trustee therein named, and recorded in the proper deed of trust and mortgage records of the county or counties in which are situated the properties of such system or systems so mortgaged and encumbered, and such bonds having been heretofore approved by the Legal Department of the Reconstruction Finance Corporation in Washington, D. C., both as to legality and as being eligible for loan under the Act of Congress authorizing loans to municipalities to aid in financing projects which are self-liquidating in character, known as "Emergency Relief and Construction Act of 1932," [2] all acts and proceedings had and done in connection therewith by the governing body and/or the mayor, city secretary, city treasurer or any other officers of such city or town, and the trustee named in such mortgage or indenture in respect of such bonds, the appropriation and pledge of revenues of any such system or systems, and/or the mortgage or indenture on the properties of any such system or systems to secure payment of such bonds are hereby ratified, confirmed, legalized, approved and validated.

[1] Article 1118a, ante.
[2] Act of July 21, 1932, c. 520, 47 Stat. 709.

Sale of bonds validated

Sec. 2. That sale of said bonds, or any parcel or installment thereof, by the governing body of any such city or town, is hereby ratified, confirmed, legalized, approved and validated, and such bonds, so sold and delivered, are hereby legalized and validated, and constituted the legal obligations upon the properties of such city or town so encumbered in accordance with the terms and provisions of such recorded mortgage or indenture.

Issuance of bonds not previously delivered

Sec. 3. In event any of said bonds, or any parcel or installment thereof, have not been sold, issued, delivered, or put into circulation, power and authority is hereby expressly conferred upon and delegated to the governing body of any such city or town, the mayor, city secretary, city treasurer or other proper officer thereof, and the trustee named in such mortgage or indenture, to discharge and perform all acts and duties necessary in the issuance or sale and delivery of such bonds, and such governing body is hereby further authorized to adopt all other and further orders, resolutions or ordinances necessary in the issuance, sale, delivery and payment of said bonds, or any parcel or installment thereof. [Acts 1933, 43rd Leg., p. 517, ch. 167.]

Art. 1118c. Order of appropriation of revenues of municipal public utility systems.

Application

Section 1. In making up the annual appropriation of the income and revenue of any waterworks system, electric light plant or system, sewer system, or other public utility system, service, or enterprise now or that may be hereafter owned and operated by any city or town having a population of twelve thousand, four hundred and ten (12,410) inhabitants or less, according to the last preceding Federal Census, and owning and operating its municipal light system and municipal waterworks system in this State, the governing body thereof shall first make provision for the maintenance and operating expenses of such system, service, or enterprise, and shall then make provision for payment of principal and interest of any indebtedness outstanding against such system, service, or enterprise, and may then make such appropriations as the remaining income and revenue of such system, service, or enterprise may justify, to be appropriated among the respective departments of the municipal government, or otherwise appropriated for public uses, as such governing body may deem best; provided this Act shall not apply to municipally owned utilities or enterprises, the income from which has heretofore been pledged to secure payment of bonds or other indebtedness.

No restrictions on bonds payable from other than taxation

Sec. 2. Nothing in this Act shall restrict the power and authority of any such city or town to issue bonds, notes, or warrants, payable from revenues other than taxation, for the purposes, in the manner, and under the restrictions and limitations provided by the laws of this State relative to the issuance of such obligations; and all the provisions of such laws shall apply to and govern such city or town and the governing authorities thereof, except as herein otherwise provided.

Application to cities of 12,410 or less

Sec. 3. The benefits of this Act shall apply to any city or town having a population of twelve thousand, four hundred and ten (12,410) inhabitants or less, according to the last preceding Federal Census, and owning and operating its municipal light system and municipal waterworks system and the terms thereof extend to the same, when the governing body thereof shall submit the question of the adoption or rejection hereof, to a vote of the resident property taxpayers who are qualified voters of said city or town at a special election called for the purpose by the governing body of said city or town. And said election shall be held as nearly as possible in compliance with the laws with reference to regular municipal elections in said city or town; but said governing authority is hereby empowered by resolution to order said election and prescribe the time and manner of holding the same. Said body shall canvass and determine the result of such election and if a majority of the voters voting upon the question of the adoption of this Act at such election, shall vote to adopt the same, the result of the election shall by said governing body be entered upon their minutes, and thereupon all the terms hereof shall be applicable to and govern such city or town adopting the same; provided, that nothing in this Act shall ever be construed to repeal or modify any of the provisions of Article 1112, of the Revised Civil Statutes of Texas, of 1925. [Acts 1934, 43rd Leg., 4th C.S., p. 49, ch. 18; Acts 1937, 45th Leg., 2nd C.S., p. 2008, ch. 74.]

Art. 1118d. Bonds validated.—Sec. 1. All bonds heretofore issued, authorized by ordinance to be issued and/or attempted to be issued under authority of Articles 1111 to 1118, both inclusive, of the Texas Revised Civil Statutes of 1925, as amended by Acts 1933, Forty-third Legislature, Page 320, Chapter 122, for the purpose of improving and extending an existing municipal sewer system by any and all cities operating under charters adopted or amended under the provisions of Article 11, Section 5, of the Constitution of the State of Texas, having a population in excess of one hundred thousand (100,000) inhabitants according to the last preceding United States Census, and which bonds are payable exclusively out of revenues of such sewer system, and are secured only by a pledge of such revenues, and which bonds are to be issued, delivered and sold to the United States of America under existing contracts, are in all respects validated.

Sec. 2. All orders, ordinances and resolutions of the governing bodies of such cities authorizing or attempting to authorize the issuance of such bonds, or any of the same, are in all respects validated. [Acts 1934, 43rd Leg., 4th C.S., p. 69, ch. 27.]

Art. 1118e. Bonds, notes and warrants validated.—Sec. 1. That any provision of any other law to the contrary notwithstanding, all bonds, notes or warrants heretofore issued, or which have been authorized but not yet issued, or which may be hereafter issued under the provisions of Articles 1111 to 1118, inclusive, of the Revised Civil Statutes of Texas for 1925, including all Amendments thereto to aid in financing any undertaking or project for which a loan or grant has been made by the United States through the Federal Emergency Administration of Public Works, are hereby declared to be negotiable instruments and they shall be fully negotiable within the meaning of and for all the purposes of the Uniform Negotiable Instruments Act of this State.

Sec. 2. Provided, however, that the provisions of this Act shall not be construed as validating any proceedings authorizing the issuance of any such bonds, notes or warrants, or any bonds, notes or warrants issued by virtue thereof where the validity of such proceedings, and bonds, notes or warrants issued thereunder has been contested or attacked in any pending suit or litigation. [Acts 1935, 44th Leg., 1st C.S. p. 1559, ch. 383.]

Art. 1118f. Validating revenue bonds.—Sec. 1. That all proceedings heretofore had by the governing bodies of all cities and towns, including home rule cities, in the State of Texas, in the issuance and sale of revenue bonds, notes or warrants issued under the provisions of Articles 1111 to 1118, Revised Civil Statutes of Texas of 1925, as amended, to aid in financing any undertaking, for which a loan or grant has been made by the United States through the Federal Emergency Administrator of Public Works, or any other agency or department of the Government of the United States, are hereby in all things fully validated, confirmed, approved and legalized, and any such bonds, notes or warrants heretofore sold, or heretofore authorized but not yet delivered, are in all things fully validated, confirmed and approved, and such bonds, notes or warrants are hereby declared to be the valid and binding special obligations of such cities or towns payable from sources other than taxation. All orders, resolutions and ordinances authorizing the issuance of any such revenue bonds and setting aside and pledging the revenues of any light system, water system, sewer system or sanitary disposal equipment system, natural gas system, parks or swimming pools, either or all are hereby in all things validated, confirmed and approved, and the fact that any city or town in the issuance and sale of any such obligations or in the pledging of the revenue of any of said systems to the payment of such obligations failed or neglected or lacked the power to do all things necessary to make said obligations legal shall in nowise impair such obligations nor the pledge of such revenues but same are in all things validated, confirmed and approved.

Sec. 2. Provided however, that the provisions of this Act shall not apply to any such proceedings, or any obligations issued thereunder, the validity of which has been contested or attacked in any pending suit or litigation. [Acts 1935, 44th Leg., 1st C.S., p. 1562, ch. 385.]

Art. 1118g. Validating bonds for public works.—Sec. 1. That all proceedings heretofore had by the governing bodies of all cities and towns, including home rule cities, in the State of Texas in the issuance and sale of bonds, to aid in financing any undertaking for which a loan or grant has been made by the United States through the Federal Emergency Administrator of Public Works, or any other agency, department or division of the Government of the United States of America are hereby in all things fully validated, confirmed, approved and legalized and all bonds issued thereunder are hereby declared to be the valid and binding obligations of such cities or towns, and all bonds which have been heretofore authorized for said purpose but not yet issued shall, when delivered and paid for, constitute valid and binding obligations of such city or town. All tax levies made by such governing bodies for the purpose of paying the principal of and interest on such bonds, notes or warrants are hereby in all things validated, confirmed, approved and legalized.

Sec. 2. Provided however, that the provisions of this Act shall not apply to any such proceedings, or obligations issued thereunder, where the validity thereof has been contested or attacked in any suit or pending litigation. [Acts 1935, 44th Leg., 1st C.S., p. 1564, ch. 386.]

Art. 1118h. Validating bonds of cities of over 15,000 population.—Section 1. All bonds heretofore authorized by the necessary vote of the qualified voters of all cities of more than fifteen thousand (15,000) population according to the last preceding Federal Census and all bond elections held in such cities for the purpose of voting such bonds wherein the necessary majority of the voters voted in favor there-

of are hereby validated insofar as any irregularities in following the requirements of the provisions of the General Law that such election shall be held not more than thirty (30) days from the time of such election order are concerned; and irregularities in following the requirements of city charters as to time in the calling and holding of such elections shall not in any manner affect the validity of said bonds, but same shall, if otherwise valid, when approved by the Attorney General and registered by the Comptroller of Public Accounts and sold for not less than par and accrued interest, be a valid subsisting indebtedness of said cities.

Sec. 2. Provided, however, that the provisions of this Act shall not apply to any such proceedings or to any bonds issued thereunder, the validity of which has been contested or attacked in any pending suit or litigation, or in any suit or litigation which may be instituted within sixty (60) days after the effective date of this Act. [Acts 1937, 45th Leg., p. 5, ch. 5.]

Art. 1118i. Validating bonds of cities in counties of less than 80,000 and more than 70,000.—In all cases where any city in the State of Texas which operates under the General Laws of Texas and which city is located in any county having a population of less than 80,000 and more than 70,000 according to the last preceding United States Census and is not operating pursuant to a home rule charter and which such city has heretofore and subsequent to the enactment of Chapter 382,[1] Acts of the First Called Session of the Forty-fourth Legislature of Texas, 1935, submitted to the qualified electors of said city the question of the issuance of the bonds of such city pursuant to the provisions of Articles 1111 et seq., of the Revised Civil Statutes of the State of Texas, said bonds to be payable solely from the revenues derived from operation of the city's waterworks system, and where a majority of the qualified voters of said city voting at said election on said proposition has voted in favor of the issuance of such bonds and in favor of pledging the revenues of said system for the payment of such bonds, said election and all proceedings heretofore had in connection with the calling and holding of said election and in connection with the authorization and sale of such bonds are hereby validated, ratified and confirmed, despite any irregularity which may have occurred therein or despite any failure to observe any of the pertinent laws of the State of Texas, and said city is hereby authorized to complete its proceedings for the authorization and delivery of such bonds and to deliver such bonds upon receipt of the purchase price thereof, and such bonds when approved by the Attorney General, registered by the State Comptroller of Public Accounts, sold at not less than par and accrued interest and delivered are hereby declared to be and shall be the valid and legal obligations of said city in accordance with the terms thereof, and shall be paid as to both principal and interest from the revenues of the waterworks system of said city in accordance with the provisions of the proceedings so authorizing the bonds. Provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued there under, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law. [Acts 1937, 45th Leg., p. 14, ch. 13, § 1.]

[1] Article 704.

Art. 1118j. Validating bonds and proceedings for loans or grants from Federal government in cities and towns of not over 3,000 population.—Section 1. All proceedings heretofore had by the governing bodies of all cities and towns, having a population of not more than three thousand (3,000), according to the preceding Federal Census, in the issuance and sale of Revenue bonds, notes or warrants issued under the provisions of Articles 1111 to 1118, Revised Civil Statutes of Texas, as amended, to aid in financing any undertaking, for which a loan or grant has been made by the United States through the Public Works Administration, or any other agency or department of the Government of the United States, in which the only objection to the validity of said bonds is that such election was ordered and notice thereof given under the provisions of Article 704, Revised Civil Statutes of 1925 prior to the amendment of October 1935, are hereby in that respectively validated, confirmed, approved and legalized, and any such bonds, notes or warrants heretofore sold, or heretofore authorized but not yet delivered, are in all things fully validated, confirmed and approved, and such bonds, notes or warrants are hereby declared to be the valid and binding special obligations of such cities and towns of said population payable from sources other than taxation. All orders, resolutions and ordinances authorizing the issuance of any such revenue bonds by said cities and towns of said population, and setting aside and pledging the revenues of any light system, water system, sewer system or sanitary disposal equipment system, either or all are hereby in all things validated, confirmed and approved, and legalized.

Sec. 2. Provided, however, that the provisions of this Act shall not apply to any such proceedings, or obligations issued thereon, where the validity thereof has been contested or attacked in any suit or pending litigation. [Acts 1937, 45th Leg., p. 595, ch. 298.]

Art. 1118j—1. Validation of bond proceedings in cities or towns over 5,000 to help finance improvements for which loan or grant from Federal government was made.—Section 1. All proceedings heretofore had by the governing bodies of all cities and towns in the State of Texas operating under the provisions of the General Laws of Texas and having a population of more than five thousand (5,000), and wherein it has become necessary to supplement funds providing for the erection of certain public improvements for which a loan or grant has been made by any agent or agency of the United States Government, by the issuance and sale of additional bonds to aid in the financing of such certain public improvements, including the orders and notices of elections, the conduct and returns of elections, and the canvassing of such returns of such elections, are hereby in all things fully validated, confirmed, approved, and legalized, including among others, instances wherein there have been irregularities in the giving of notice of elections, notwithstanding the fact that the notice of election was not published on the same day in each of two successive weeks, and all bonds issued thereunder are hereby declared to be the valid and binding obligations of such cities or towns, and all tax levies made by such governing bodies for the purpose of paying the principal of and interest on such bonds are hereby in all things validated, confirmed, approved, and legalized.

Sec. 2. Provided, however, that the provisions of this Act shall not apply to any such proceedings or obligations issued thereunder, where the validity thereof has been contested or attacked in any suit or pending litigation. [Acts 1941, 47th Leg., p. 602, ch. 370.]

Art. 1118j—2. Validation of sewer system bond proceedings in cities and towns of not over 3000—Section 1. All proceedings heretofore had by the governing bodies of all cities and towns having a population of not more than three thousand (3,000), according to the preceding Federal Census, in submitting to the qualified electors, during the year 1941, the question of the issuance of the bonds of any such cities and towns pursuant to the provisions of Articles 1111 to 1118 of the Revised Civil Statutes of Texas, 1925, as amended, said bonds to be payable solely from the revenues derived from the operation of the sanitary

sewer system, and where a majority of the qualified voters of any such city or town voting at said election on said proposition has voted in favor of the issuance of any such bonds and in favor of pledging the revenues of said system, or the mortgaging of said system, or by both pledging of the revenues and the mortgaging of said system, for the payment of such bonds, said election or elections and all proceedings heretofore had in connection with the calling and holding of said election or elections and the canvassing of the returns thereof, are hereby validated, ratified and confirmed, despite any irregularity which may have occurred therein, and said cities or towns are hereby authorized to complete the proceedings for the authorization, issuance and delivery of such bonds upon receipt of the purchase price thereof, and such bonds when approved by the Attorney General, registered by the State Comptroller of Public Accounts, sold at not less than par and accrued interest and delivered are hereby declared to be and shall be the valid and legal obligations of any such city or town in accordance with the terms thereof, and shall be paid as to both principal and interest from the revenues of such sanitary sewer system in accordance with the provisions of the proceedings so authorizing the bonds.

Sec. 2. Provided, however, that the provisions of this Act shall not apply to any such proceedings, or obligations issued thereon, where the validity thereof has been contested or attacked in any suit or litigation which is pending at the time this Act takes effect. [Acts 1943, 48th Leg., p. 417, ch. 284.]

Art. 1118k. Validating bonds in cities of over 160,000 population.—All bonds heretofore authorized by the necessary vote of the qualified voters of all cities of more than one hundred sixty thousand (160,000) population according to the last preceding Federal Census and all bond elections held in such cities for the purpose of voting such bonds wherein the necessary majority of the voters voted in favor thereof are hereby validated insofar as any irregularities in following the requirements of the provisions of the General Law that such election shall be held not more than thirty (30) days from the time of such election order and that notice of such election shall be published on the same day of each of two (2) successive weeks in a newspaper, the date of the first publication to be not less than fourteen (14) days prior to the date set for the election, are concerned; and irregularities in following the requirements of city charters as to time in the calling and holding of such elections shall not in any manner affect the validity of such bonds, but same shall, if otherwise valid, when approved by the Attorney General and registered by the Comptroller of Public Accounts and sold for not less than par and accrued interest, be a valid subsisting indebtedness of said cities. [Acts 1937, 45th Leg., 1st C.S., p. 1749, ch. 5, § 1.]

Art. 1118l. Validating bonds and bond elections in cities and towns of 2601 to 2632 population.—Section 1. All bonds heretofore authorized by the necessary vote of the qualified voters of all cities and towns having less than two thousand six hundred thirty-two (2632) population and more than two thousand six hundred one (2601) population according to the last preceding Federal Census, and all elections held in such cities and towns for the purpose of voting such bonds wherein the necessary majority of the voters voted in favor thereof are hereby validated, ratified, confirmed and legalized insofar as any irregularities in following the requirements of the provisions of the general law governing the form of election order, notice, ballot and canvassing of returns of such elections are concerned; and, if such bonds are valid in other respects, when same are approved by the Attorney General and registered by the Comptroller of Public Accounts and sold for not less than par and accrued interest, shall constitute valid and binding obligations of said cities and towns.

Sec. 2. Provided, however, that the provisions of this Act shall not apply to any such proceedings or to any bonds issued thereunder the validity of which is being contested or attacked in any suit pending at the time this Act takes effect. [Acts 1937, 45th Leg., 1st C.S., p. 1755, ch. 10.]

Art. 1118m. Validating waterworks revenue bond elections and bonds in cities and towns of 989 to 1,039 in counties of 98,650 to 98,750.—In all instances wherein cities and towns having a population of not more than one thousand and thirty-nine (1,039), and not less than nine hundred and eighty-nine (989), according to the last preceding Federal Census, located in counties having a population of not more than ninety-eight thousand, seven hundred and fifty (98,750) and not less than ninety-eight thousand, six hundred and fifty (98,650), according to the last preceding Federal Census, have heretofore held elections, attempting to comply with the provisions of Articles 1111 to 1118 of the Revised Civil Statutes of Texas of 1925, as amended, for the issuance of waterworks revenue bonds, and have failed to comply with the requirements as to publication and posting of notice of such election, and where such elections have been held resulting in a vote sufficient under the law to authorize the issuance of said bonds, such elections are hereby validated and the bonds thus authorized, when duly approved by the Attorney General and registered by the Comptroller of Public Accounts of the State of Texas, shall constitute valid and binding special obligations of such cities; provided that the provisions of this Section shall not have the effect of validating any elections or the bonds to be issued pursuant thereto which are in litigation at the time of the passage of this Act, or which may be brought into litigation within ninety (90) days after the effective date of this Act. [Acts 1939, 46th Leg., Spec.L., p. 1004, § 1.]

Art. 1118n. Bonds authorized by elections during 1938 in cities or towns not owning certain utilities.—Section 1. All bonds heretofore authorized by the necessary vote of the qualified voters of all cities or towns and all bond elections held in such cities or towns for the purpose of voting such bonds wherein the necessary majority of the voters voted in favor thereof, and all orders, resolutions, and ordinances passed or attempted to be passed by the governing body of such cities or towns as shown by the minutes of such governing body, are hereby validated.

Sec. 2. Provided, however, that this Act shall not apply except as to bonds authorized by elections held during the year 1938 in cities or towns which at the time of the holding of such election did not own any of the following utilities from which it could derive revenue: water system, sanitary sewer system, electric light system, or natural gas distribution system.

Sec. 3. Provided further, however, that provisions of this Act shall not apply to any such proceedings or any bonds issued thereunder, the validity of which has been contested or attacked in any pending suit or litigation. [Acts 1939, 46th Leg., p. 698.]

Section 4 of the Act of 1939 repealed Acts 1939, 46th Leg., Leg.Sess., Spec.R., p. 1009, approved May 11, 1939, which contained provisions similar to those of this article.

Art. 1118n—1. Validating bonds for waterworks and sewer systems in cities operating under general law.—Section 1. Where any city in this State which operated under the general law and does not have a home-rule charter has heretofore submitted to the qualified electors thereof propositions for the issuance of the bonds of such city for the purpose of constructing a waterworks system and a sewer system, such bonds to be payable only from the net revenues of such waterworks system and sewer system

and secured by a joint mortgage on the properties of such systems, and such propositions have been declared to have carried, and such city has through ordinances adopted by its governing body authorized the issuance of such bonds and prescribed the details thereof and has thereafter reduced the amount of bonds to be so issued and has submitted to the qualified electors thereof propositions for the issuance of the bonds of such city payable from ad valorem taxes for the purpose of constructing a waterworks system and a sewer system, the amount of tax bonds to be so issued being equal to the amount of revenue bonds originally authorized and theretofore determined not to be issued, and such propositions have been declared to have carried, all of the proceedings heretofore had by such city, including all proceedings had and acts done in connection with the calling and holding of the election on the revenue bonds, the proceedings of the governing body authorizing the issuance of such bonds, the indenture authorized and executed to secure such bonds, the ordinance authorizing the issuance of such bonds, the proceedings had reducing the amount of the revenue bonds, the supplemental indenture authorized or executed for the purpose of reducing the amount of such issue, and the proceedings had in connection with the calling and holding of the election on the question of the issuance of the ad valorem tax bonds, despite any failure or failures in such proceedings to comply with the provisions of the pertinent statutes, are hereby ratified, validated and confirmed.

Sec. 2. The governing body of each such city is authorized to adopt all proceedings necessary or desirable to complete the issuance of the revenue bonds and the ad valorem tax bonds so authorized, to make such changes as it may consider desirable in the existing proceedings and in the details of the bonds as they have been authorized by the existing proceedings, and to do everything necessary to the issuance of revenue bonds and ad valorem tax bonds in the amounts so authorized and to secure the revenue bonds by mortgage on the properties of the water and sewer systems, in all respects as provided by the statutes relating to the issuance of such bonds.

Sec. 3. The revenue bonds and ad valorem tax bonds of any such city when delivered and paid for pursuant to such existing proceedings, as such proceedings may hereafter be altered or amended, shall be and are hereby declared to be valid and binding obligations of such city in accordance with the terms thereof.

Sec. 4. All proceedings heretofore had in connection with the incorporation of any such city are hereby validated, ratified and confirmed and every such city is hereby declared to be a legally incorporated and subsisting municipal corporation of the State of Texas operating under the provisions of Title 28 of the Revised Civil Statutes of 1925.

Sec. 5. Where any such city has not yet levied taxes on the taxable property in such city, but where the City Tax Assessor has prepared an unrendered roll for any year, using as the basis for such roll the valuation of the taxable property in said city as taken from state, county or school district rolls for such year, and where the governing body of the city has approved such roll and has fixed the percentage basis of assessed valuation to actual valuation, the assessed valuation of taxable property in such city as so determined is hereby declared to be the true and correct assessed valuation of taxable property in such city for such year and such assessment roll is declared to be and is authorized to be used as the basis for the imposition of taxes in such city until the assessed valuation of taxable property in such city for the succeeding year has been determined. [Acts 1939, 46th Leg., p. 691.]

Section 6 of the Act of 1939 repealed all conflicting laws.

Art. 1118n—2. Validating revenue and ad valorem tax bonds and proceedings for waterworks and sewer systems in other than home-rule cities.—Section 1. Where any city in this State which operates under the General Law and does not have a home-rule charter has heretofore submitted to the qualified electors thereof propositions for the issuance of the bonds of such city for the purpose of constructing a waterworks system and a sewer system, such bonds to be payable only from the net revenues of such waterworks system and sewer system and secured by a joint mortgage on the properties of such systems, and such propositions have been declared to have carried, and such city has through ordinances adopted by its governing body authorized the issuance of such bonds and prescribed the details thereof and has thereafter reduced the amount of bonds to be so issued and has submitted to the qualified electors thereof propositions for the issuance of the bonds of such city payable from ad valorem taxes for the purpose of constructing a waterworks system and a sewer system, the amount of tax bonds to be so issued being equal to the amount of revenue bonds originally authorized and theretofore determined not to be issued, and such propositions have been declared to have carried, all of the proceedings heretofore had by such city, including all proceedings had and acts done in connection with the calling and holding of the election on the revenue bonds, the proceedings of the governing body authorizing the issuance of such bonds, the indenture authorized and executed to secure such bonds, the ordinance authorizing the issuance of such bonds, the proceedings had reducing the amount of the revenue bonds, the supplemental indenture authorized or executed for the purpose of reducing the amount of such issue, and the proceedings had in connection with the calling and holding of the election on the question of the issuance of the ad valorem tax bonds, despite any failure or failures in such proceedings to comply with the provisions of the pertinent Statutes, are hereby ratified, validated, and confirmed.

Sec. 2. The governing body of each such city is authorized to adopt all proceedings necessary or desirable to complete the issuance of the revenue bonds and the ad valorem tax bonds so authorized, to make such changes as it may consider desirable in the existing proceedings and in the details of the bonds as they have been authorized by the existing proceedings, and to do everything necessary to the issuance of revenue bonds and ad valorem tax bonds in the amounts so authorized and to secure the revenue bonds by mortgage on the properties of the water and sewer systems, in all respects as provided by the Statutes relating to the issuance of such bonds.

Sec. 3. The revenue bonds and ad valorem tax bonds of any such city when delivered and paid for pursuant to such existing proceedings, as such proceedings may hereafter be altered or amended, shall be and are hereby declared to be valid and binding obligations of such city in accordance with the terms thereof.

Sec. 4. All proceedings heretofore had in connection with the incorporation of any such city are hereby validated, ratified, and confirmed and every such city is hereby declared to be a legally incorporated and subsisting municipal corporation of the State of Texas operating under the provisions of Title 28 of the Revised Civil Statutes of 1925.

Sec. 5. Where any such city has not yet levied taxes on the taxable property in such city, but where the City Tax Assessor has prepared an unrendered roll for any year, using as the basis for such roll the valuation of the taxable property in said city as taken from State, county, or school district rolls for such year, and where the governing body of the city has approved such roll and has fixed the percentage basis of assessed valuation to actual valuation, the assessed

valuation of taxable property in such city as so determined is hereby declared to be the true and correct assessed valuation of taxable property in such city for such year and such assessment roll is declared to be and is authorized to be used as the basis for the imposition of taxes in such city until the assessed valuation of taxable property in such city for the succeeding year has been determined. Provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law, or which may be filed within thirty (30) days after this Act becomes a law. [Acts 1939, 46th Leg., p. 695.]

Section 6 of the Act of 1939 repealed all conflicting laws.

Art. 1118n—3. Refunding bonds, issuance by cities operating under general law and owning waterworks or sewer system.

Eligible cities

Section 1. This Act shall be applicable to any city or town operating under the General Law relating to cities and towns, and which does not operate under a special or home rule charter, and which owns and operates either its waterworks or its sanitary sewer system, or both, and the principal amount of whose bond and time warrant indebtedness is in an aggregate amount exceeding thirty (30) per cent of the assessed valuation of the property in such city according to the latest approved official tax rolls. Any such city for the purpose of this Act shall be an "eligible" city.

Refunding bonds authorized; prerequisites; utility rates

Sec. 2. Any eligible city is authorized to issue refunding bonds to be supported by an ad valorem tax and by a pledge to the payment of the principal and interest thereof, of all or a stipulated part of the net income from the operation of its waterworks system or its sewer system, or both. No such city shall be authorized to exercise the additional powers conferred by this Act unless it obtains a reduction in the principal amount of its indebtedness to the extent of not less than twenty-five (25) per cent. Such city shall not be permitted to deliver such refunding bonds unless and until it shall have obtained consent to such refunding by the holders of at least sixty-six and two-thirds (66⅔) per cent of aggregate principal amount of its outstanding indebtedness which sixty-six and two-thirds (66⅔) per cent shall include not less than one hundred (100) per cent of the revenue bonds, if any, outstanding against said system or systems, or unless such refinancing plan shall have been made effective in Composition proceedings instituted by such city under Title 11, Chapter 9 of the United States Code and Amendments thereto.[1]

Before any income from such utility or utilities shall be used to pay the principal and interest of said refunding bonds the expenses of operation and maintenance shall have first been provided substantially in accordance with the provisions of Article 1113 of the Revised Civil Statutes of Texas, 1925, as amended, which is applicable to the income of encumbered utility systems. When such city issues refunding bonds under the provisions of this law it shall be the duty of the city after making said pledge of such utility income to establish and maintain utility rates, which, together with taxes levied for the payment of such bonds, will be adequate to yield revenues sufficient to operate and maintain said utility system or systems and to fulfill the city's pledge of such income.

Revenue bonds, refunding of

Sec. 3. Such city also shall refund par for par, all of its outstanding revenue bonds which are secured by a pledge of the revenues of either or both of such systems, if any such revenue bonds are outstanding, and bonds issued to refund such revenue bonds may be included in any such refunding issue, authorized by this Act.

Negotiability; registration; approval

Sec. 4. The refunding bonds issued under this Act shall be fully negotiable and shall be issued in the same manner as refunding bonds for the purpose of taking up outstanding bonds issued under the provisions of Title 22 [2] and Title 28 [3] of the 1925 Revised Civil Statutes of Texas and amendments thereto. No notice of intention to issue refunding bonds and no election for the issuance of such bonds shall be required. No such refunding bonds shall be registered in the office of the Comptroller and delivered by him unless and until he shall have received and cancelled in lieu thereof bonds or time warrants in the proportion prescribed in the ordinances authorizing the issuance of such refunding bonds, and in accordance with this Act. The procedure prescribed in Articles 709 to 715 of the Revised Civil Statutes of Texas, 1925, in reference to examination and approval of the bonds by the Attorney General shall be applicable to bonds issued under this Act.

Act as cumulative; conflicting laws

Sec. 5. This Act shall be cumulative of all other laws on the subject. In the event that any provisions of this Act conflict with, or are inconsistent with the provisions of any other law, general or special, the provisions of this Act shall take precedence over such conflicting or inconsistent provisions and shall prevail. [Acts 1941, 47th Leg., p. 388, ch. 729.]

1 11 U.S.C.A. § 401 et seq.
2 Article 701 et seq.
3 Article 961 et seq.

Art. 1118n—4. Redemption of outstanding waterworks revenue bonds; additional revenue bonds.

Eligible cities

Section 1. This Act shall be applicable to any city having a charter, adopted or amended by a vote of the people, with power to levy an ad valorem tax of Two Dollars and Fifty Cents ($2.50) on the One Hundred Dollars ($100) of assessed valuation, which city has outstanding tax-supported indebtedness equal to fifteen per cent (15%) or more of its assessed valuation, and has outstanding bonds payable from its waterworks revenues all of which will become subject to redemption within two (2) years after passage of the ordinance authorizing additional bonds as hereinafter provided. Any such city is hereinafter sometimes called an "eligible city."

Deposit in state treasury of amount of outstanding waterworks revenue bonds

Sec. 2. An eligible city shall have the right to deposit in the office of the State Treasurer of the State of Texas a sum of money equal to the principal amount of its said outstanding and unpaid waterworks revenue bonds plus the amount of interest which will accrue on each of said bonds calculated to the date on which it may be redeemed and the amount of contract premium if any, and concurrently with such deposit shall pay to the State Treasurer for his services and to reimburse him for his expenses in performing his duties under this Act a sum of money equivalent to one-eighth (⅛) of one per cent (1%) of the principal amount of said bonds and one fourth (¼) of one per cent (1%) of the interest to accrue on all of said bonds, and an additional amount of money sufficient to pay the charges of the bank or trust company at which the principal and interest of said bonds are payable for its services in paying such principal and interest. The State Treasurer may rely on a certificate by such city as to the amount of the charges made by such bank or trust company. At the same time such

city shall deliver to the State Treasurer a certified copy of the ordinance authorizing said revenue bonds, or a certified excerpt therefrom, showing clearly the amounts and the date or dates on which interest is due on such bonds, the date when the principal becomes subject to redemption, and the name and address of the bank or trust company at which such principal and interest must be paid. It shall be the duty of the State Treasurer to accept such deposits, payments, and instruments, and safely to keep and use such money for the purposes set forth in this Act and for no other purpose, and no part of such money except that in payment for his services and to reimburse his expenses in performing such services shall be used by or for the State of Texas or for any creditor of the State of Texas, nor shall such money be commingled with any other money.

State Treasurer to forward money to bank where bonds are payable

Sec. 3. It shall be the duty of the State Treasurer not less than fifteen (15) days before such interest is due according to the tenor and effect of said bonds, and the principal becomes redeemable, to forward by registered mail to the bank or trust company where the principal of and interest on such bonds are payable, an amount sufficient to pay such principal and interest and premium if any, and to pay the service charges of such bank or trust company. The State Treasurer shall notify such bank or trust company to forward to him bonds and coupons thus cancelled, and after he shall have made a record of their payment and cancellation shall forward such cancelled bonds and coupons to such city.

Additional revenue bonds

Sec. 4. When an eligible city shall have deposited and paid into the office of the State Treasurer the money and shall have done the things required under Section 2 it shall have authority to issue additional revenue bonds, securing them by a pledge of the revenue from the operation of its waterworks system or of its waterworks and sewer systems, in such manner as is authorized by Articles 1111 to 1118 of the Revised Civil Statutes of Texas, 1925, as amended, and for the purposes authorized in said Articles, and for the purpose of providing money to enable the city to comply with Section 2 of this Act. The deposit authorized by Section 1 hereof to be made with the State Treasurer shall be made prior to or concurrently with the sale and delivery of the new bonds authorized by this Act, but all other proceedings relating to the authorization and issuance of such bonds may be had prior to the making of such deposit. No revenue bonds shall be issued under authority of this Section 5 unless they shall have been authorized at an election held in such city in accordance with the provisions of Article 704 of the Revised Civil Statutes of Texas, 1925, as amended by Chapter 382, Acts of the First Called Session of the Forty-fourth Legislature. It is especially provided that regardless of any provisions to the contrary contained in the law under which such new revenue bonds are to be issued, they shall constitute a first charge on the income of the waterworks system or waterworks and sewer systems, after the payment of the expense of maintenance and operation of such system or systems subject only to any payments which must be made to the State Treasurer from such income to prevent any default in principal of or interest on such outstanding revenue bonds, for the benefit of which such deposit shall have been made with the State Treasurer. The right of the holders of said outstanding revenue bonds to have any deficiency paid out of such income shall remain unimpaired.

Additional or subsequent waterworks revenue bonds

Sec. 5. Regardless of any provisions to the contrary contained in the law or laws under which such new revenue bonds shall be issued, so long as any of said new revenue bonds are outstanding no additional revenue bonds secured by a pledge of the revenues of the system shall be issued thereafter except in accordance with limitations prescribed in the ordinance authorizing the revenue bonds first to be issued by such city pursuant to this Act; but it shall be lawful for such city to authorize and issue additional or subsequent waterworks revenue bonds provided that they are issued in all respects in conformity with and subject to limitations contained in such ordinance.

Withdrawal of deposits from state treasury

Sec. 6. After an eligible city has made the deposits and payments required under Section 2, at any time it may withdraw from the State Treasury the amount of money, both principal and interest, deposited on account of any bond by exhibiting to the State Treasurer said bond duly cancelled, whereupon the State Treasurer shall make a proper record of the payment and cancellation of such bond.

Rights of holders of bonds to surrender bonds

Sec. 7. At any time after an eligible city shall have made the deposits and payments required under Section 2, the holder of any such bond, irrespective of its maturity date, shall have the right to surrender such bond to the State Treasurer and shall receive therefor a sum equivalent to all money then remaining on deposit with the State Treasurer, made on account of such surrendered bond. Whereupon such bond shall be duly cancelled by the State Treasurer, and delivered or forwarded to such city.

Approval of record and bonds by Attorney General

Sec. 8. When an eligible city shall have duly authorized the issuance of its revenue bonds, and the record pertaining thereto shall have been presented to the Attorney General of Texas, it shall be the duty of the Attorney General to approve such record and thereafter when such new revenue bonds are presented to him, to approve such bonds subject to the making of the deposit provided in Section 2 hereof. After such record and bonds have been approved by the Attorney General and after such bonds have been registered in the office of the Comptroller of Public Accounts, they shall be held for all purposes to be fully negotiable instruments and shall, according to their tenor and effect, be valid and binding revenue obligations of such city and shall be incontestable for any cause from and after such registration.

Bond of State Treasurer

Sec. 9. The bond or bonds given by the State Treasurer under Article 4368 to secure the faithful execution of the duties of his office (except such special bonds as may have been given to protect funds of the United States Government) and any and all other bonds which may have been given by the State Treasurer shall be construed as protecting all moneys and securities deposited or placed with the State Treasurer under this Act.

Act cumulative

Sec. 10. This Act is cumulative of all other Acts on the subject, but to the extent that its provisions are inconsistent or in conflict with the provisions of other laws, the provisions of this Act shall be controlling.

Partial invalidity

Sec. 11. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. [Acts 1947, 50th Leg., p. 1032, ch. 446.]

Art. 1118o—1. Validating acts and proceedings of cities in borrowing money from Federal Agencies to repair or extend dam for waterworks system.—In all cases where any city or town in this State has borrowed money from The Reconstruction Finance Corporation or any other agency of the United States Government, for the purpose of making repairs and extensions, or either, to a dam comprising a part of the waterworks system of said city or town, which the city or town has agreed to repay out of the revenues of said waterworks system, all acts performed by the city officials and all proceedings had by the governing bodies of such cities or towns in connection therewith are hereby validated, and all money so borrowed by such city or town together with the interest thereon at the rate stipulated in such proceedings is hereby declared to be a legal obligation of such city or town, payable out of the revenues of its waterworks system. The fact that a vacancy existed in the office of Mayor during all or any part of such proceedings, or the fact that other revenue obligations were then and are now outstanding against such system shall not affect the obligations and proceedings hereby validated. [Acts 1939, 46th Leg., p. 694, § 1.]

Art. 1118p. Refunding bonds in counties of 525,000 or more; payment from water or sewer revenues.

Issuance of new revenue bonds; franchise to foreclosure purchaser

Section 1. This Act shall apply only in counties that have a population of five hundred and twenty-five thousand (525,000) or more, according to the last Federal Census. Any city or town that has issued bonds, warrants, notes, or other obligations payable from the revenues of the water systems and/or sewer systems and/or sewage disposal plants of such city or town, all or a portion of which bonds, warrants, notes, or other obligations are outstanding, may issue new bonds of such city or town payable from the net revenues of the water systems and/or sewer systems and/or sewage disposal plants of such city or town for the purpose of refunding such outstanding bonds, warrants, notes, or other obligations and for the purpose of further building, improving, enlarging, extending, and/or repairing such systems, or any one of them, and may pledge the net revenues thereof to pay the interest on and principal of such refunding and further construction bonds, and in the discretion of the governing body of such city or town, may mortgage and encumber the physical properties of such system or systems, as the case may be, for that purpose, and grant a franchise to the purchaser under foreclosure to operate such system or systems, as the case may be, for a period of not exceeding twenty (20) years after purchase, subject to all the laws regulating the same then in force.

Designation; maturity; interest

Sec. 2. Such new bonds may be called ———— Refunding and Further Construction Bonds, and may be made to mature serially or otherwise as the governing body of such city or town may direct not more than thirty (30) years from their date, and may bear interest at not exceeding five (5) per cent per annum; provided such new bonds shall not bear a higher rate of interest than the bonds, warrants, notes, or other obligations that are refunded thereby.

Election

Sec. 3. Before the bonds herein authorized are issued, they shall be authorized by a majority vote of the duly qualified property taxpaying voters of such city or town at an election ordered and held for that purpose, which election shall be ordered and held in the same manner as required by law for holding elections to authorize the issuance of tax supported bonds.

Approval by Attorney General; registration

Sec. 4. Such bonds and the record authorizing the same shall be submitted to the Attorney General of Texas and approved by him, substantially the same as is required in the issuance of tax supported bonds. When such bonds shall have been approved by the Attorney General, they shall be turned over to the Comptroller of the State of Texas and by him registered in the following order:

First, the portion of such new bonds equal in principal amount to the outstanding bonds, warrants, notes, and other obligations that are being refunded thereby, shall be registered only upon surrender and cancellation of such outstanding bonds, warrants, notes, and other obligations that are being refunded thereby, until all of such outstanding bonds, warrants, notes, and other obligations shall have been surrendered and cancelled.

Second, after all such outstanding revenue bonds, warrants, notes, and other obligations of such city or town shall have been surrendered and cancelled, and an equal amount of such new bonds registered and delivered in lieu thereof, then the balance of such new bonds shall be registered by the Comptroller and delivered to the Mayor of such city or town, or upon his order, and may be sold by the governing body of such city or town and the proceeds thereof expended in further building, improving, enlarging, extending, and/or repairing such system or systems, as the case may be.

Act as cumulative; repeal of conflicting laws only

Sec. 5. This Act is cumulative, and in addition to all other statutes authorizing the issuance of revenue bonds of cities and towns, and is intended to repeal only such laws and parts of laws as are in conflict herewith.

Repeal

Sec. 6. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict, and particularly that expression contained in Article 1113, Revised Civil Statutes of Texas which reads, "No part of the income of any such system shall ever be used to pay any other debt, expense or obligation of such city or town, until the indebtedness so secured shall have been finally paid," is hereby specially repealed. [Acts 1941, 47th Leg., p. 421, ch. 251.]

3. CITY REGULATION

Art. 1119. [1018] Rates prescribed, etc.—The governing body of all incorporated cities and towns in this State incorporated under the General Laws thereof shall have the power to regulate, by ordinance, the rates and compensation to be charged by all persons, companies, or corporations using the streets and public grounds of said city or town, and engaged in furnishing water, gas, telephone, light, power, or sewerage service to the public, and also to prescribe rules and regulations under which such commodities shall be furnished, and service rendered, and to fix penalties to enforce such charges, rules, and regulations. The governing body shall not prescribe any rate or compensation which will yield more than a fair return upon the fair value of the property used and useful in rendering its service to the public, but which return in no event shall ever exceed eight (8) per cent per annum. [Acts 1907, p. 217, § 1; Acts 1937, 45th Leg., p. 274, ch. 144, § 1.]

The amendatory act 1931, 42nd Leg., p. 380, ch. 226, § 1, was held invalid in Texas-Louisiana Power Co. v. City of Farmersville (Com.App.) 67 S.W.(2d) 235, rev'g (Civ.App.) 55 S.W.(2d) 195.

Art. 1120. [1020] Protective ordinances, etc.—The governing body shall have power to pass such ordinances as they may deem proper to protect any said company, corporation or person, in the free enjoyment of all their rights and franchises, to protect any interference with their property or privileges,

and to prevent the free or unauthorized use or waste of the water or other commodity or service furnished. [Acts 1907, p. 217, § 3.]

Art. 1121. [1021] Reports.—Any such company, corporation or person who may be engaged in furnishing to the inhabitants of any such city or town any water, light, gas or sewerage service, shall, on or before the first day of March of each year, file with the mayor of such city or town a written report sworn to by the manager, secretary or president of such corporation, by a member of such company, and by any such person, which shall show:

1. The amount of any lien or mortgage upon the properties composing such plant;
2. All other indebtedness pertaining to such enterprise and the consideration therefor;
3. The actual cost of the visible physical properties, date when installed and the present value thereof, and herein the lands, machinery, buildings, pipes, poles, circuits, mains shall each be treated separately;
4. The annual cost of operating such plant, showing separate items, the amount paid for actual salaries, amount paid for labor of all kinds, fixed charges, including interest, taxes and insurance, giving each separately, amount paid for fuel, for extension and repairs, giving each separately, and particularizing the extension and repairs the cost of maintenance, amount paid for damages, claim or suits for damages, identifying each claim or suit, amount paid for miscellaneous expenses, and, if any machinery or equipment is abandoned, worn out or its use discontinued within the preceding year, the same shall be stated, the original cost, and the present value thereof shall be given;
5. The report shall give the gross earnings from any such plant, including revenues from every source whatever, stating items separately, amount received by each department. [Id.]

Art. 1122. [1022] Penalties.—Any such corporation, or any member of such company, or any such person mentioned in this chapter, who shall for thirty days wilfully refuse or fail to report in the manner provided by this chapter, shall forfeit and pay to any such city or town the sum of one hundred dollars per day for each and every day during which it shall continue in default; or, if any such corporation, or company, or person, shall file any report, knowing that the same does not truly report the facts about the matters mentioned therein, it shall forfeit and pay to such city or town the sum of two hundred and fifty dollars for each such wilfully false report. Such forfeitures and penalties shall be recovered at the suit of such city or town brought in the county where such city or town is located. [Id.]

Art. 1123. [1023] City owned plants.—The governing body of any city or town incorporated under the general laws shall have the power where such city or town owns the plant, to regulate by ordinance, the rates and compensation to be charged the public by such city or town for water, sewerage, gas, electricity or other fluid or substance used for lights, heat or power, to establish and operate necessary plants for the manufacture, generation or production thereof, and to sell and distribute the same to the public within the corporate limits. [Id.]

Art. 1124. Rates in certain cities.—Any city having a special charter or a charter adopted or amended under the provisions of chapter 13 of this title,[1] and having authority under its charter to determine, fix and regulate the charges, fares or rates of compensation to be charged by any person, firm or corporation enjoying a franchise in said city, shall in determining, fixing and regulating such charges, fares or rates of compensation, base the same upon the fair value of the property of such person, firm or corporation devoted to furnishing service to such city, or the inhabitants thereof, and not upon any stocks or bonds issued or authorized to be issued, by, or any other indebtedness of, such person, firm or corporation. No city shall be responsible for, concerned with, authorize, approve or have jurisdiction over, the issuance or sale of any stocks or bonds by any such person, firm or corporation, but the issuance and sale thereof shall be governed solely by the Constitution and laws of this State applicable thereto. [Acts 1st C. S. 1921, p. 152.]

[1] Articles 1165–1182f.

Art. 1124a. Official reading of meters.

Sec. 1. That hereafter any consumer or user of electric power, current, natural or artificial gas furnished by any private concern in any city, town or village in this State on complaint made to the city Commissioners or city council of any city, town or village within this State, shall have the right to have any meter which measures the amount of electricity or gas installed by the person furnishing said electrical current or gas for the purpose of ascertaining what amount to charge him for the use thereof, examined, read and tested by the agents, servants and employees of the city commissioners or city council, as the case may be; said agents, servants and employees being hereby given the right to break the seal, and examine, read and test the various meters and similar devices, in company with an agent of the furnisher of said electrical power, current and gas, if said furnisher desire its representative to be present, if not, then such examination to be had without him but three days' notice shall be given to all persons, firms or corporations furnishing said electricity or gas of said test.

Sec. 2. The word "meter" as used in this Act applies to any instrument, apparatus or machine used for measuring electric currents or gas and recording the results obtained.

Sec. 3. The words "person" and "furnisher" used in this Act refer to any corporation, association, partnership or individual engaged in furnishing electricity, electric current, electrical power or gas for consumption for hire in cities.

Sec. 4. That on demand of [1] said city council or city commissioners shall furnish the complaining consumer with a detailed report of the result of their reading, examination and testing of said meters or other said measuring devices for electrical current, or gas as hereinbefore referred to, said report to state whether or not said meter or measuring device is functioning properly, is in good condition, and the amount of electrical current, power or gas used by the consumer for any period of time preceding of not more than one year, such period to be designated by the consumer in his complaint hereinbefore mentioned. [Acts 1927, 40th Leg., p. 71, ch. 47.]

[1] So in enrolled bill. Word "of" should probably be omitted.

Section 6 of this Act provides that the Act shall not affect any special charter granted any city, town or village, and section 7 provides that if any section or part shall be declared invalid the decision shall not affect the remainder.

4. JUDICIAL REGULATION

Art. 1125. [1025] Excessive rates.—All extortionate and unreasonable rates charged by public utility corporations, as hereinafter defined, are hereby declared to be unlawful; and the district courts of this State are hereby vested with jurisdiction and full power and authority to regulate, prevent and abolish the same; and said courts are given the power and authority whenever the public interest may require, to fix and establish rates for the service and products of all public utility corporations, and whenever the public interest may require and to carry out the provisions herein conferred, said courts are hereby expressly authorized to issue injunctions, quo warranto, and all other writs for the purpose of carrying out and making effective the purposes of this chapter, and said writs shall be governed by the rules and regulations now prescribed by law. No proceeding shall be begun in the

district court having for its purpose the fixing or [1] rates of public utility corporations until and unless the city council of the city or town desiring to invoke the power herein conferred upon the district courts shall comply with the provisions of the succeeding article. [Acts 1905, p. 348.]

[1] So in enrolled bill. Should probably read "of."

Art. 1126. [1026] Complaint.—If the city council of any city or town incorporated under the general laws of this State, shall desire to invoke the power of the district court granted in the preceding article, such council shall, by a two-thirds vote of all the members elected to said council, pass a resolution setting forth the matters complained of, naming the corporation against which the complaint is made, and in a general way the reasons for such complaint, and shall cause a copy of the same to be delivered to the president, vice president or secretary of said corporation, or cause to be left a copy of said resolution at the principal office of such corporation. [Id.]

Art. 1127. [1027] Suit.—If, within twenty days after the said corporation has been furnished with a copy of the resolution of the city council, the wrongs complained of shall not be corrected to the satisfaction of the city council, a petition setting forth the wrongs and grievances complained of, and stating the relief sought, may be filed in the name of the city or town as plaintiff against the corporation as defendant in any district court of the county in which such city or town may be situated. Process shall be issued upon said petition, and be served upon such corporation as now provided by law in civil cases. The case shall be set for trial in the same manner as other civil cases, except that it shall have precedence over all cases of a different character filed in such court as to the time of trial. Process shall issue in said cause in the same manner as process may issue in civil cases. The right of trial by jury of the issues involved shall also be given upon the demand of either party. [Id.]

Art. 1128. [1028] Trial.—Upon the trial of the cause, the court or jury, in arriving at a decision as to whether or not the rates complained of are reasonable or extortionate, and in fixing the rates, shall consider the cost of construction of the plant of the public utility corporation against which the petition is filed, the cost of the operation of such plant, its maintenance and repairs, the fixed charges that may be against the corporation, amount invested in such plant, and such other matters as may be material to the issues. The court trying the same shall have the power to order the corporation to make profert of its books and records for inspection in court in determining the question in issue. After a full hearing of all the evidence adduced, the court or jury shall have power, and it shall be their duty to fix the rates which may be charged by such public utility corporation; provided, that the rates fixed must be sufficient to yield such public utility company not less than ten per cent upon the investment, and the same shall continue in force for a period of three years. The rates fixed shall be entered of record upon the minutes of the court, and shall be held conclusive, as reasonable, fair and just, and shall remain for three years as the rates to be charged by such corporation, unless changed or modified by the judgment of said district court, or by the appellate courts to which either of the parties to said suit may appeal, or have writ of error. [Id.]

Art. 1129. [1029] Appeal.—If either party to the suit shall be dissatisfied with the decision of the court and the rate thereby established, an appeal may be taken by either party to the proper court of civil appeals, and said appeal shall be at once returnable to said court of civil appeals, and shall have precedence in such court of all cases of a different character therein pending. The parties to said suit may apply to the Supreme Court for a writ of error. [Id.]

Art. 1130. [1030] Enforcement.—When the final judgment is rendered in any cause fixing the rates to be charged by said corporation, the court rendering such judgment shall order in its decree the enforcement of the same; and is authorized and empowered to provide in its decree that, if the same is not obeyed according to the terms thereof, the said corporation shall forfeit its charter if the same be a domestic corporation, or its permit to do business in this State if the corporation be a foreign corporation. If said order or decree be violated, it shall be the duty of the Attorney General, or county or district attorney, under the direction of the Attorney General, to institute suit in the district court of the county in which such corporation may have its principal office, or in Travis County, for the forfeiture of the charter of such corporation, or the cancellation of its permit, as the case may be, and, if said charter be forfeited or permit canceled, the offending corporation shall thereafter be prohibited from carrying on its business within this State. [Id.]

Art. 1131. [1031] Corporations affected.—The public utilities included within the meaning of this subdivision are defined to be water companies furnishing water to the public; gas companies furnishing gas to the public, electric light or power companies furnishing light or power to the public; telephone companies furnishing telephones to the public; sewerage companies conducting sewerage for the public, whether said companies are incorporated under the laws of this or a foreign State. [Id.]

Art. 1132. [1032] Cities affected.—Any city within this State, incorporated under a special law, may at its option, avail itself of the provisions of this subdivision, but the same shall be cumulative of any other method which may now be provided in such special charter, and this law shall not repeal any provisions of such special charters. [Id.]

CHAPTER 11.—TOWNS AND VILLAGES

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Art. 1133. [1033] [579] [506] May be incorporated.—When a town or village contains more than two hundred (200) and less than ten thousand (10,000) inhabitants, it may be incorporated as a town or village in the manner prescribed in Chapter 11, Title 28, of the Revised Civil Statutes of Texas, 1925, and all amendments thereto. [Acts 1881, p. 63; G.L. vol. 9, p. 155; Acts 1897, p. 193; G.L. vol. 10, p. 1247; Acts 1915, p. 130; Acts 1941, 47th Leg., p. 68, ch. 55.]

Section 2 of the act of 1941 provides that the act is cumulative of other laws and that the provisions thereof shall prevail over any conflicting laws.

Section 3 of the act of 1941 provides that partial invalidity shall not affect the remaining provisions.

Cities and towns incorporated under Rev. St. 1925, Title 28, having 600 inhabitants or over, validated by Acts 1927, 40th Leg., p. 79, ch. 55, § 1.

Art. 1134. [1034] [580] [507] Mode of incorporation.—If the inhabitants of such town or village desire to be so incorporated, at least twenty residents thereof, who would be qualified voters under the provisions of this chapter, shall file an application for that purpose in the office of the county judge of the county in which the town or village is situated, stating the boundaries of the proposed town or village, the name by which it is to be known when incorporated, and accompany the same with a plat of the proposed town or village including therein no territory except that which is intended to be used for strictly town purposes. If any town or village be situated on both sides of a line dividing two counties, application may be made to the county judge of either county in which a portion of said town or village is located, in manner and form as herein provided. A new election shall not be ordered in less than one year. [Acts 1889, p. 5; G. L. vol. 9, p. 1033.]

Art. 1134a. Incorporation of cities and towns validated.

Irregularities not invalidating incorporation

Sec. 1. All cities and towns in Texas of five thousand (5000) inhabitants or less, heretofore incorporated and/or attempted in good faith to be incorporated under the General Laws of Texas, whether under the aldermanic form of government or under the commission form of government, and which have in good faith functioned as incorporated cities and towns since the date of such incorporation or attempted incorporation, are hereby in all respects validated, as of the date of such incorporation or attempted incorporation; and the incorporation of such cities and towns shall not be held invalid on account of irregularities in the petition for election, order for election, notice of election, returns of election, order declaring result of election, or other incorporation proceedings.

Governmental proceedings validated

Sec. 2. All governmental proceedings performed in good faith by the governing bodies of such cities and towns since their incorporation or attempted incorporation, respectively, are hereby in all respects validated as of the respective dates of such proceedings, and such governmental proceedings shall be effective the same as if such cities and towns had been regularly incorporated in the first instance.

Inapplicable to city or town in litigation

Sec. 3. The provisions of this bill shall affect no city or town now in litigation. [Acts 1933, 43rd Leg., p. 125, ch. 58.]

Art. 1134b. Validating incorporation of cities of 600 or over.—That all cities and towns of six hundred inhabitants or more which have heretofore attempted to accept the provisions of Title XXVIII [1] and to become incorporated cities and towns of six hundred inhabitants or more under the General Laws of Texas, and have failed to comply with all the requirements of said General Laws, or which are not included within the literal meaning of those cities which are authorized to accept the provisions of said general laws, and all towns and villages incorporated under Chapter 14 [2] or Chapter 11 [3] of Title XXVIII of the Revised Civil Statutes of 1925, and which now have six hundred inhabitants or more, and which have heretofore attempted to accept the provisions of Title XXVIII and to become incorporated cities of six hundred inhabitants or more, but which said cities have from and after the dates of their several attempted incorporations and their several efforts to accept the provisions of said Title XXVIII, have exercised the functions of cities of the class named, and were by the State of Texas recognized as such cities, are hereby declared to be cities of six hundred inhabitants; and the several acts whereby they attempted to accept the provisions of said law are hereby in all things validated; and that all subsequent acts of said cities and towns done and performed as a city of six hundred inhabitants or more, after they had attempted to accept the provisions of said law, as aforesaid, are hereby validated and declared to be as binding as if said cities had been duly and legally incorporated; provided, that nothing herein shall be construed as validating any act of said cities or the councils thereof, unless the same were authorized by the General Laws of the State under which they were attempting to act at the several dates when said acts were done; and provided, further, that the provisions of this article shall not validate the act of any town or city in adding additional territory to such city or town without the consent of such inhabitants so added to such city or town. [Acts 1927, 40th Leg., p. 79, ch. 55, § 1.]

1 Article 961 et seq.
2 Article 1183 et seq.
3 Article 1133 et seq.

Art. 1134c. Validation of incorporation of cities and towns between 200 and 10,000.—Section 1. All cities and towns in Texas of more than two hundred (200) and less than ten thousand (10,000) inhabitants heretofore incorporated or attempted to be incorporated under the General Laws of Texas, Title 28, Revised Civil Statutes of Texas, 1925,[1] and Senate Bill 144, passed by the Forty-seventh Legislature, Regular Session, 1941,[2] whether under the aldermanic form of government or the commission form of government, and which have functioned as incorporated cities and towns since the date of such incorporation, are hereby in all respects validated as of the date of such incorporation or attempted incorporation; and the incorporation of such cities and towns shall not be held invalid by reason of the fact that the election may have been ordered by the Commissioners Court instead of the County Judge, nor shall such incorporation be held invalid on account of irregularities in the petition for election, order of election, notice of election, returns of election, order declaring result of election, or other incorporation proceedings.

Sec. 2. All governmental proceedings performed by the governing bodies of such cities and towns since their incorporation, or attempted incorporation, respectively, are hereby in all respects validated as of the respective dates of such proceedings, and such governmental proceedings shall be effective the same as if such cities and towns had been regularly incorporated in the first instance.

Sec. 3. The provisions of this Act shall affect no city or town now in litigation. [Acts 1943, 48th Leg., p. 688, ch. 381.]

1 Articles 961–1269*l*.
2 Article 1133.

Art. 1135. [1035] Adjoining territory added.—Whenever a majority of the inhabitants, who are qualified voters of any territory adjoining the limits of any town or village incorporated hereunder, shall vote in favor of becoming a part of said town or village, any three of them may make affidavit to such fact and file such affidavit with the mayor of said town or village, and such mayor shall certify the same

to the council of said town or village. Thereupon, such council may, by ordinance, receive such inhabitants as a part of said town or village. Thenceforth the territory so received shall be a part of said town or village and the inhabitants shall be entitled to all the rights and privileges of other citizens and bound by all the acts and ordinances made in conformity thereto and passed in pursuance of this chapter; provided, that the area of no town or village shall ever exceed that of cities or towns, as provided for in chapter one of this title. [Acts 1903, p. 116.]

Art. 1136. [1036–7] Election order.—If satisfactory proof is made that the town or village contains the requisite number of inhabitants, the county judge shall make an order for holding an election on a day therein stated and at a place designated within the town or village for the purpose of submitting the question to a vote of the people. He shall appoint an officer to preside at the election, who shall select two judges and two clerks to assist in holding it. After a previous notice of ten days, by posting advertisement thereof at three public places in the town or village, the election shall be held in the manner prescribed for holding elections in other cases.

Art. 1137. [1038] [583] [510] Qualifications of electors.—Every person who has attained the age of twenty-one years and who has resided within the limits of the proposed town for the six months next preceding and is a qualified elector under the laws of this State, shall be entitled to vote at the election.

Art. 1138. [1039] [584] [511] Ballots.—On each ticket the voter must write or cause to be written or printed, "corporation" or "no corporation."

Art. 1139. [1040–41] Returns.—If a majority of the votes are cast in favor of incorporation the officers holding the election shall make return thereof to the county judge within ten days after the same was held. The county judge shall, within twenty days after the receipt thereof make an entry upon the records of the commissioners court that the inhabitants of the town or village are incorporated within the boundaries thereof; which boundaries shall also be designated in the entry. A certified copy of such entry, together with the plat of the town or village, shall thereupon be recorded in the proper record of deeds of such county. [Acts 1897, p. 193; G. L. vol. 10, p. 1247.]

Art. 1139a. Validating the incorporation of certain cities and towns.—That where, in any city or town heretofore incorporated or attempted to be incorporated under the General Laws of Texas, the petition calling for an election for the purpose of incorporating any such city or town, the order of the County Judge ordering such election, the notice, or notices of such election, the order of the County Judge declaring the result of such election, by inadvertence, oversight, or mistake, contained an incorrect description by metes and bounds of the territory incorporated or here attempted to be incorporated as such city or town, or where any other such irregularity in the proceedings for such incorporation was had, and where the governing body of such city or town has entered an ordinance correcting and setting forth the true field notes of the territory so incorporated or attempted to be incorporated, or where such ordinance has been entered correcting any other such irregularity in the proceedings for the incorporation of such city or town, and where such city or town has been acting or operating as an incorporated city or town, such incorporation, and any and all ordinances correcting the field notes, or any other irregularity of the proceedings has [1] for incorporation, are hereby in all things ratified, confirmed and validated and such cities or towns are hereby declared to be legally and validly incorporated. [Acts 1931, 42nd Leg., 1st C.S., p. 79, ch. 36, § 1.]

[1] Should probably be "had"

Art. 1140. [1042] [587] [514] Powers of corporation.—When the entry mentioned in the preceding article has been made, the town shall be invested with all the rights incident to such corporation under this chapter, and shall have power to sue and be sued, plead and be impleaded, and to hold and dispose of real and personal property, provided such real property is situated within the limits of the corporation.

Art. 1141. [1043–4] Election of officers.—The county judge shall immediately order an election for a mayor, a marshal and five aldermen. No person shall be eligible to any of said offices unless he possess the requisites provided by this chapter for persons qualified to vote hereunder.

Art. 1142. [1045] [590] [517] Commission.—The county judge shall, immediately after the returns have been made, commission the candidate who received the highest number of votes for the office of mayor, and shall deliver certificates of election to the other officers elected. [R. S. 1879, p. 517.]

Art. 1143. [1046] [591] [518] Term of office.—The mayor, aldermen and all other officers elected at the first election under this chapter, regardless of the time of such first election, shall hold their offices until their successors shall have been duly elected and qualified at the next succeeding annual election, according to the provisions of the succeeding article. [Acts 1873, p. 99; G. L. vol. 7, p. 551.]

Art. 1144. [1047] [592] [519] Annual election.—The annual election of officers of all towns and villages incorporated under the provisions of this chapter shall take place on such day as may be fixed by law for municipal elections throughout the towns and cities of the State. Should no such uniform day be fixed, then the elections herein provided for shall take place on the first Tuesday in April of each year. The mayor, or in case of his inability or refusal to act, any two aldermen, shall order such annual election by notices posted for at least ten days at three public places within the corporate limits. The returns of such election shall be made to the town or village council, and certificates of election given by the mayor or person acting as such to the persons elected to the various offices of such corporation. [Id.]

Art. 1145. [1048] [593] [520] Quorum may pass by-laws.—The mayor shall be the president of the board of aldermen and shall, with three of the aldermen, constitute a quorum for the transaction of business; and the quorum shall have power to enact such by-laws and ordinances not inconsistent with the laws and constitution of this State as shall be deemed proper for the government of the corporation.

Art. 1146. [1049 to 1055] Powers of aldermen.—The board of aldermen shall:

1. Have power to levy and collect an occupation tax of not more than one-half of the amount levied by the State; also to levy taxes on persons and property, real and personal, within the corporation, subject to taxation by the laws of this State; but the tax on persons and property shall not, in any one year, exceed the rate of one-fourth of one per cent on the one hundred dollars valuation.

2. Have and exercise exclusive control over the streets, alleys and other public places within the corporate limits; provided, that, with the consent of the board of aldermen, where streets are continuations of public roads, the commissioners court shall have power to construct bridges and other improvements thereon which facilitate the practicability of travel on said streets.

3. Have the power to cause the male inhabitants between the ages of twenty-one and forty-five years,

except ministers of the gospel actually engaged in the discharge of their duties, to work on the streets and public alleys not to exceed five days in any one year, or furnish a substitute, or a sum of money, not to exceed one dollar for each day's work demanded, to employ such substitute.

4. Prevent, as far as practicable, any nuisances within the limits of the corporation, and cause such as exist to be removed at the expense of the person by whom they were occasioned or upon whose property they may be found.

5. Have power to prescribe the fine to be imposed by the mayor for the violation of any by-laws or ordinance, which shall in no case exceed one hundred dollars; but no fine shall be imposed except upon the verdict of a jury, should the defendant demand a trial by jury.

6. Fill, for the unexpired term, any vacancy which may occur in any office created by this chapter or by the board of aldermen under its provisions, such vacancy to be filled by the acting aldermen.

7. Have power to appoint such officers, other than those mentioned in this chapter, as shall be deemed necessary to carry out the provisions of the same, to prescribe their duties and to fix their compensation; and shall also have power to dismiss them at any time and appoint others in their stead.

8. Prescribe the bonds and security which the marshal and such other officers as may be appointed shall give, which shall be executed and approved by the mayor, before the marshal or other officer shall enter upon the discharge of his duties, said bond to be payable to the corporation.

9. Have power to appoint another marshal or officer in the place of the one so elected or appointed if the bond required in the preceding paragraph is not given within five days after the marshal is elected or appointed.

10. The board of aldermen may establish markets and may do whatever else may be necessary to give effect to the provisions of this chapter.

Art. 1147. [1056–7] Powers of marshal.—The marshal shall have the same power within the town that constables shall have within their precincts, and shall be entitled to the same fees. He shall discharge all other duties that may be prescribed by the by-laws and ordinances, not inconsistent with the laws of this State, and shall receive therefor such fees as may be fixed by the board. He shall assess and collect the corporation tax, and if the same be not voluntarily paid, he shall have power to make the collection in the same manner and with like effect as is prescribed in chapter 5 of this title for collection of taxes in cities, so far as applicable.

Art. 1148. [1058–9–61] Tax sales.—When any property shall be liable to assessment for corporation taxes, and the owner is unknown, such property shall be valued by the marshal and assessed by its description, stating that the owner of the property is unknown; unless the taxes are paid, the property shall be sold for the payment thereof, as nearly as may be in the manner in which such property when duly rendered is required to be sold, and the sale shall be equally valid. Real estate sold for taxes due the corporation may be redeemed as provided in chapter 5 of this title. Where the purchaser does not reside within the limits of the corporation, the estate may be redeemed by making the payment into the treasury of the corporation for the benefit of the purchaser.

Art. 1149. [1066–7] Condemnation for highways.—Any town or village in this State, incorporated under this chapter or by special charter, shall have the right, and they are hereby empowered, to condemn the right of way and roadbed of any railway company whose roadbed runs within the corporate limits of such town or village, when deemed necessary and so declared, by a majority vote of the board of aldermen, for the purpose of opening, widening or extending the streets of such town or village; provided, there are less than four railroad tracks. Failing to agree on the damages to be paid therefor, the mayor shall prepare a statement in writing showing the point on said railroad right of way where said street is desired to be opened, widened or extended, giving the width and length of that portion of the right of way of the railroad sought to be condemned, and describing it so that it can be clearly identified, the object for which it is sought to be condemned, the name and style of the railway company, and file the same with the county judge of the county in which such town or village is situated, whereupon proceedings shall be had to condemn said right of way. [Acts 1897, p. 216; G. L. vol. 10, p. 1270.]

Art. 1150. [1069] Commissioners court may condemn.—County commissioners shall have the right, upon petition of twenty freeholders of any community, or unincorporated town or city, to condemn roadbed of railroads for the same purpose mentioned in the preceding article. [Id.]

Art 1151. [1068] Crossings: duty of railroad.—Every railroad company in this State shall place and keep that portion of its roadbed and right of way over or across which any public street of any incorporated town or village may run, in proper condition for the use of the traveling public; and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed, by the town marshal of such town or village, it shall be liable to a penalty of twenty-five dollars for each week such railroad may fail or neglect to comply with the requirements of this article, recoverable in any court having jurisdiction of the amount involved, in a suit in the name of such town or village. [Id.]

Art. 1152. [1060] [611] [538] Publication of ordinances.—No ordinance or by-laws shall be enforced until it has been published at least ten days in three public places in the town, or in a newspaper if one be published in the corporation. [R. S. 1879, [§] 538.]

Art. 1153. [1062–3] Amendment of charter.—Towns and villages heretofore incorporated by the Congress of the Republic or the Legislature of this State may, by a resolution of the board of aldermen and a two-thirds vote of the voters at an election held therefor, amend their charters in any particular not in conflict with the constitution of this State or the Revised Statutes. In order to amend the charter of any town or village, it shall be necessary, before said amendment shall go into effect, for the board of aldermen to adopt a resolution setting forth the amendment; and a certified copy of the same shall be approved by the Attorney General and recorded in the office of the Secretary of State before the same shall take effect. [Acts 1881, p. 83; G. L. vol. 9, p. 175.]

CHAPTER 12.—COMMISSION FORM OF GOVERNMENT

Art.
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Article 1154. [1070] Petition.—Whenever ten per cent of the qualified voters of any incorporated city or town having a population of over five hundred and less than five thousand inhabitants incorporated under the provisions of this title [1] or any previous general law, or hereafter incorporated under any general law, or of any incorporated town or village having a population of more than five hundred and less than one thousand inhabitants incorporated under chapter 11 of this title or any previous general law, or hereafter incorporated under any general law, shall petition in writing the mayor of said city, town or village requesting that an election be ordered to determine whether such city, town or village shall adopt the commission form of government, the mayor shall order an election in such city, town or village, to determine whether or not the commission form of government shal be adopted. Thirty days notice of such election shall be given by publishing such notice in some newspaper therein if there be one, and if none, then by posting notices of same at three public places in such town, city or village. [Acts 1909, p. 189; Acts 1913, p. 36; Acts 1921, p. 123.]

[1] Article 1133 et seq.

Art. 1155. [1070] Unincorporated towns.—If any unincorporated city or town in this State, having a population of over five hundred and less than five thousand inhabitants, or any unincorporated town or village in this State having a population of more than two hundred and less than one thousand inhabitants, shall desire to be incorporated under the commission form of government as herein provided, an election to determine whether such incorporation may be had shall be called by the county judge of the county under the provisions herein governing incorporated cities and towns, and incorporated towns and villages, and notice of such election shall be given as herein provided, and if satisfactory proof is made that the city or town or village contains the requisite number of inhabitants, the county judge shall make an order for holding an election on a day therein stated, and at a place designated within the city or town or village, for the purpose of submitting the question to a vote of the people. [Id.]

Art. 1156. [1071] Ballot.—The ballots to be used in said election shall have written or printed thereon "For Commission" or "Against Commission." [Acts 1909, p. 189; Acts 1913, p. 36.]

Art. 1157. [1072] Election.—The mayor or county judge, as the case may be, shall appoint two judges of election, one of which shall be designated as the presiding judge, and two clerks, to hold said election. The election shall be held and governed by the general laws of this State except as herein otherwise provided, and the returns shall be made to the mayor or the county judge, as the case may be within five days after said election shall have been held. If a majority of the votes cast are "For Commission," then the mayor or county judge shall enter an order to that effect upon the minutes of the city council, or board of aldermen, or of the commissioners court, and after the entry of said order said incorporated city or town or village shall be under the commission form of government, and said unincorporated city or town, or unincorporated town or village, shall be incorporated and under the commission form of government. [Id.]

Art. 1158. [1073] Officers.—At such election there shall be elected two commissioners, who shall serve until the first Tuesday in April following, and in said unincorporated cities and towns, and unincorporated towns and villages, there shall at such elections be elected a mayor and two commissioners, who shall serve until the first Tuesday in April following. The mayor of the incorporated cities and towns, and incorporated towns and villages, adopting the commission form of government shall continue to hold his office for the term for which he was elected. The term of office of the mayor and commissioners, except the first elected under the provisions hereof, shall be two years, and they shall be elected on the first Tuesday in April every two years. [Id.]

Art. 1159. [1073] Vacancies.—In case of the death or the resignation of the mayor or commissioners, the others shall fill the place by appointment, provided, that shall a vacancy occur from death, resignation, or failure to qualify, or any other cause, of the mayor and one commissioner at the same time, or of two commissioners at the same time, the vacancy shall be filled by special election called by the county judge of the county, upon notice for the time, and subject to all the regulations herein for the original election; the result of said election shall be certified by the county judge to the clerk of said commission, and shall be entered upon the minutes. [Id.]

Art. 1160. [1073] Shall supersede council.—In incorporated cities and towns and incorporated towns and villages, adopting the commission form of government under the provisions hereof, the members of the city council, and board of aldermen shall hold their offices until the commissioners elected hereunder shall have qualified, and after such qualification, the officers of the city council, and board of aldermen shall be abolished, and the mayor and commissioners herein provided for shall constitute the "Board of Commissioners" of said city or town, or town or village. [Id.]

Art. 1161. [1074] Officers appointed.—Said "Board of Commissioners" shall appoint a competent person to be clerk, who shall also be treasurer and assessor and collector of taxes of such city or town, or town or village. He shall before entering upon the duties of his office, enter into a good and sufficient bond in double the estimated amount of annual revenues of such city or town or of such town or village, said estimate to be made by the "Board of Commissioners" and said bond to be approved by the said board and filed and recorded in the minutes thereof. Said clerk shall be invested and charged with and shall exercise all the power, rights and duties conferred upon and imposed by the general laws, upon the clerk, treasurer, assessor and collector of taxes, of cities and towns, or towns and villages, as the case may be. The board shall also have the authority to appoint a city attorney and such police force and such other officers as they may deem necessary, and fix the salary or other compensation to be received by such clerk, and by such officers, and define their duties, and at any time may abolish any office which it creates, and may discharge any officer, clerk or employé which it appoints. [Id.]

Art. 1162. [1074] Bond of officers.—The mayor and each commissioner shall enter into a bond in the sum of three thousand dollars each, conditioned for the faithful performance of the duties of their office; said bond of the officers, first elected hereunder, shall be approved within twenty days after the entry upon the minutes of the city council, or board of aldermen or the commissioners court, as the case may be, by the county judge of the county in which such city or town, or town or village is located, and to be payable to said city or town or town or village for its use and benefit. All subsequent bonds of officers elected hereunder shall be approved by the "Board of Commissioners." [Id.]

Art. 1163. [1075] Commissioners, duties, etc.—The "Board of Commissioners" of all incorporated and unincorporated cities or towns or towns and villages of over five hundred and less than five thousand inhabitants incorporated under or adopting the commission form of government under the provisions of this chapter, shall have all of the authority and powers, and be subject to all of the duties granted and conferred under Chapters 1 to 10 both inclusive of this

title,[1] except where same may conflict with some provision of this chapter. In incorporated and unincorporated towns and villages of more than two hundred and not more than five hundred inhabitants, adopting or incorporated under the commission form of government hereunder, the "Board of Commissioners" shall have all authority and powers conferred under Chapter 11 of this title [2] except where the same may be in conflict with some provision contained herein. [Id.; Acts 1921, p. 123.]

1 Article 961 et seq.
2 Article 1163 et seq.

Art. 1164. [1076] Meetings and salary.—Said Board shall hold at least one regular monthly meeting, and the mayor or two (2) commissioners may call as many special meetings as may be necessary to attend to the municipal business. Each commissioner and said mayor shall receive for his service Five Dollars ($5) per day for each regular meeting, and Three Dollars ($3) per day for each special meeting. The mayor or any commissioner shall not receive pay for more than five (5) special meetings in any one month. In lieu of such per diem said "Board of Commissioners" of any such town or city with not less than two thousand (2,000) population, may fix the salary to be received by the mayor and commissioners, not to exceed the sum of Twelve Hundred Dollars ($1200) per year for said mayor and Six Hundred Dollars ($600) per year for each commissioner.

In lieu of such per diem said "Board of Commissioners" of any such town or city containing less than two thousand (2,000) population, according to the last preceding Federal Census, may fix salary to be received by the mayor not to exceed the sum of Six Hundred Dollars ($600) per year. [Acts 1913, p. 36; Acts 1937, 45th Leg., p. 658, ch. 326, § 1.]

Art. 1164a. Incorporations validated.—In all cities and towns heretofore incorporated, or attempted to be incorporated, under the provisions of Chapter 12, Title 28, Revised Civil Statutes of Texas, 1925, which have functioned as incorporated cities and towns since the date of incorporation, or attempted incorporation, and the boundaries of which have been defined by the Board of Commissioners of such cities and towns, by ordinance duly adopted and placed in the Minutes of such Board of Commissioners, the incorporation of such cities and towns to include the exact territory described in said ordinance so adopted, be and the same is hereby validated, ratified, approved, and confirmed; and the boundaries of said cities and towns as defined in such ordinance shall control and prevail over the boundaries set forth in the incorporation proceedings of such cities and towns. [Acts 1945, 49th Leg., p. 540, ch. 326, § 1.]

CHAPTER 12A.—CITY-MANAGER PLAN

Art.
1164a—1. Adoption of city-manager plan.
1164a—2. Definition.
1164a—3. Adoption of Act; election; petition.
1164a—4. Appointment of city manager; salary.
1164a—5. Powers and term of manager.
1164a—6. Qualifications of manager.
1164a—7. All officers to be appointive.
1164a—8. Abandonment of city-manager plan; petition; election.
1164a—9. Duties of governing body upon abandonment of city-manager.
1164a—10. Conduct of elections.

Art. 1164a—1. Adoption of city-manager plan.—Any incorporated city, town or village in this State incorporated under the General Laws, having a population of less than five thousand (5,000) inhabitants according to the last preceding or any future Federal Census, may vote upon the question of adopting a city-manager plan of government as in this Act [1] provided. [Acts 1943, 48th Leg., p. 615, ch. 356, § 1.]

1 Articles 1164a—1 to 1164a—10.

Art. 1164a—2. Definition.—The word "city" where used in this Act [1] shall mean any city, town or village incorporated under the General Laws of this State, having a population of less than five thousand (5,000) inhabitants according to the last preceding or any future Federal Census. [Acts 1943, 48th Leg., p. 615, ch. 356, § 2.]

1 Articles 1164a—1 to 1164a—10.

Art. 1164a—3. Adoption of Act; election; petition.—Before the provisions of this Act [1] shall apply to and become operative in any city of this State, it shall be submitted to a vote of the legally qualified electors of such city for adoption, and shall receive a majority of all the votes cast thereon at such election. Provided, however, that upon the filing of a petition with the city clerk, signed by not less than twenty (20) per cent of the total number of legally qualified electors voting for mayor at the last preceding city election, requesting the mayor to call a special election for the adoption of this Act, it shall be the duty of the mayor within ten (10) days after the filing of such petition, to issue a proclamation calling a special election for such purpose, and such election shall be held within thirty (30) days after the filing of such petition. Such proclamation shall state that the election is called in order to submit this Act for adoption, and shall be signed by the mayor and attested by the city clerk, and shall be published in some newspaper of general circulation within the city for one time not less than ten (10) days preceding said election. Such proclamation shall be posted in at least five (5) conspicuous places within such city not less than ten (10) days preceding such election.

The ballots used for the submission of such question shall be substantially as follows:

FOR the governing body of the city of (naming the city) appointing a city manager and fixing by ordinance the salary of such manager.

AGAINST the governing body of the city of (naming the city) appointing a city manager and fixing by ordinance the salary of such manager. [Acts 1943, 48th Leg., p. 615, ch. 356, § 3.]

1 Articles 1164a—1 to 1164a—10.

Art. 1164a—4. Appointment of city manager; salary.—If a majority of all votes cast at such election shall be in favor of the appointment of a city manager, then the governing body of such city shall within sixty (60) days after such election appoint a city manager and by ordinance shall fix his salary. [Acts 1943, 48th Leg., p. 615, ch. 356, § 4.]

Art. 1164a—5. Powers and term of manager.—If such city has authorized by vote, as in this Act [1] provided, the appointment of a city manager, then after the appointment of such city manager as herein provided, the administration of the city's business shall be in the hands of such manager. The manager shall be appointed by the governing body and shall hold office at the pleasure of the governing body. The governing body shall be responsible for the manager's efficient administration of the city's business. The governing body by ordinance may delegate to and confer upon such manager such additional powers and duties as in their judgment may be proper for the efficient administration of the city affairs. [Acts 1943, 48th Leg., p. 615, ch. 356, § 5.]

1 Articles 1164a—1 to 1164a—10.

Art. 1164a—6. Qualifications of manager.—The manager shall be chosen solely upon the basis of administrative ability. Choice shall not be limited by any resident qualifications. The manager shall give bond for the faithful performance of his duties, in such amount as may be provided by ordinance. [Acts 1943, 48th Leg., p. 615, ch. 356, § 6.]

Art. 1164a—7. All officers to be appointive.—When a majority of the voters have adopted the provisions of this Act[1] as set out in Section 3,[2] thereafter all officers of such city except members of the governing body shall be appointed as may be provided by ordinance; provided that any officer who has been elected by a vote of the people shall be allowed to serve until the expiration of his term of office. [Acts 1943, 48th Leg., p. 615, ch. 356, § 6a.]

[1] Articles 1164a—1 to 1164a—10.
[2] Article 1164a—3.

Art. 1164a—8. Abandonment of city-manager plan; petition; election.—Any such city which has authorized the appointment of a city manager as in this Act[1] provided may abandon such city-manager plan at any time after any such city has elected to come under the provisions of this Act, and on the filing of a petition with the city clerk signed by not less than twenty (20) per cent of the total number of legally qualified electors voting for mayor at the last preceding city election, requesting the mayor to call a special election for the abandonment of the city-manager form of government, it shall be the duty of the mayor within ten (10) days after the filing of such petition, to issue a proclamation calling a special election for such purpose, and such election shall be held within thirty (30) days after the filing of such petition. Such proclamation shall state that the election is called in order to submit the question of the abandonment of the city-manager plan of government as previously adopted by such city, and such proclamation shall be published as provided in Section 3 of this Act.[2]

The ballots used for the submission of such question shall be substantially as follows:

FOR abandoning the city-manager plan of government in the city of (naming the city).

AGAINST abandoning the city-manager plan of government in the city of (naming the city). [Acts 1943, 48th Leg., p. 615, ch. 356, § 7.]

[1] Articles 1164a—1 to 1164a—10.
[2] Article 1164a—3.

Art. 1164a—9. Duties of governing body upon abandonment of city-manager plan.—If a majority of all the votes cast at such election shall be in favor of the abandonment of the city-manager plan, then the governing body of such city shall within sixty (60) days after such election discharge the city manager, and shall then assume the powers and duties delegated to such governing body under the existing laws, in the same manner and to the same extent as though the provisions of this Act[1] had never been adopted. [Acts 1943, 48th Leg., p. 615, ch. 356, § 8.]

[1] Articles 1164a—1 to 1164a—10.

Art. 1164a—10. Conduct of elections.—Such elections as may be provided for or authorized by this Act[1] shall be called, held and conducted as near as practical the same as other city elections except as otherwise provided in this Act. [Acts 1943, 48th Leg., p. 615, ch. 356, § 9.]

[1] Articles 1164a—1 to 1164a—10.

CHAPTER 13.—HOME RULE

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Article 1165. May change charter.—Cities having more than five thousand inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature. No charter or any ordinances passed under said charter shall contain any provision inconsistent with the Constitution or general laws of this State; said cities may levy, assess and collect such taxes as may be authorized by law, or by their charters; but no tax for any purpose shall ever be lawful for any one year which shall exceed two and one-half per cent of the taxable property of such city, and no debt shall ever be created by any city unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent thereon. No city charter shall be altered, amended or repealed oftener than every two years. The governing body of such city may, by two-thirds votes of its members, or upon petition of ten per cent of the qualified voters of said city, shall provide by ordinance for the submission of the question, "shall a commission be chosen to frame a new charter." [Acts 1913, p. 307.]

Art. 1166. Requisites of submission.—The ordinance providing for the submission of such question shall require that it be submitted at the next regular municipal election, if one should be held, not less than thirty nor more than ninety days after the passage of said ordinance; otherwise it shall provide for the submission of the question at a special election to be called and held not less than thirty days nor more than ninety days after the passage of said ordinance and the publication thereof in some newspaper published in said city. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the city at large of a charter commission of not less than fifteen members, nor more than one member for each three thousand inhabitants, provided, that a majority of the qualified voters, voting on said question shall have voted in the affirmative. [Id.]

Art. 1167. Submission of charter.—The charter so framed by said commission shall be submitted to the qualified voters of said city at an election to be held at a time fixed by the charter commission not less than forty nor more than ninety days after the completion of the work of the charter commission; provision for which shall be made by the governing body of the city in so far as not prescribed by the general law. Not less than thirty days prior to such election, the governing body shall cause the city clerk or city secretary to mail a copy of the proposed charter to each qualified voter in said city as appears from the tax collector's rolls for the year ending January 31st, preceding said election. In preparing the charter the commission shall, as far as practicable, segregate each subject so that the voter may vote "Yes" or "No" on the same. [Id.]

Art. 1168. First election.—Where the legislative or governing authority of any city, or where any mass meeting has selected a charter committee or charter commission, or where the mayor of any city has appointed a charter committee which has proceeded with the formation of a charter for said city, the provisions hereof as to the selection of the charter commission shall not apply to the first charter election to be held in said city under the terms of this law.

Art. 1169. Adoption of charter.—If such proposed charter is approved by a majority of the qualified voters, voting at said election, it shall become the charter of said city until amended or repealed. No charter shall be considered adopted until an official order has been entered upon the records of said city by the governing body thereof declaring the same adopted. [Id.]

Art. 1170. Amendments.—When the governing body desires to submit amendments to any existing charter and in the absence of such petition, said body may, on its own motion, and shall upon the petition of at least ten per cent of the qualified voters of said city, submit any proposed amendment or amendments to such charter. The ordinance providing for the submission of any proposed amendment shall make the same provisions for holding the election and publishing notice thereof as provided in the second article of this chapter. The governing body of said city shall cause the city clerk or city secretary to mail a copy of the proposed amendment or amendments to every qualified voter in said city as appears from the tax collector's rolls for the year ending January 31st, preceding said election. Every amendment submitted must contain only one subject, and in preparing the ballot for such amendment, it shall be done in such manner that the voter may vote "Yes" or "No" on any amendment or amendments without voting "Yes" or "No" on all of said amendments. Each such proposed amendment, if approved by the majority of the qualified voters voting at said election, shall become a part of the charter of said city. No amendment shall be considered adopted until an official order has been entered upon the records of said city by the governing body thereof declaring the same adopted. [Id.]

Art. 1171. Notice of intention.—No ordinance shall be passed submitting an amendment or amendments until twenty days' notice has been given of such intention by publication for ten days in some newspaper published in said city. By "twenty days" is meant from the first date said notice is published. [Id.]

Art. 1172. Other issues.—Nothing in this chapter shall prevent the qualified voters of any city of over five thousand inhabitants from adopting any charter or amendment thereto, and at the same time electing officers under such charter or amendment. [Id.]

Art. 1173. Certification.—Upon the adoption of any such charter or amendment to any existing charter as provided herein, the mayor or chief executive officer exercising like or similar powers, of any such city, as soon as practicable, after the adoption of any such charter or amendment, shall certify to the Secretary of State an authenticated copy under the seal of the city, showing the approval by the qualified voters of any such charter or amendment, and the Secretary of State shall thereupon file and record the same in a separate book to be kept in his office for such purpose. [Id.]

Art. 1174. Registration.—The city secretary of any such city or officer exercising like or similar powers, upon the adoption and approval of any such charter or any amendment thereof by the qualified voters as herein provided, shall record at length upon the records of the city, in a separate book to be kept in his office for such purpose, any such charter, or amendment so adopted. When such charter or any amendment thereof shall be so recorded, it shall be deemed a public act and all courts shall take judicial notice of same and no proof shall be required of same. All cities may institute and prosecute suits without giving security for cost and may appeal from judgment without giving supersedeas or cost bond. [Id.]

Art. 1174a. Validating charter or charter amendments.—That each charter, and amendment to a charter adopted by any city or[1] more than five thousand inhabitants in this State, or where such city has amended or attempted to amend or adopt such charter, since the enactment of Chapter 147, Acts of the Regular Session of the Thirty-Third Legislature of the State of Texas, 1913, relating to home rule, as well as all amendments and proceedings had under the same and all bonds issued under any amendment where the said bonds have been approved by the Attorney General and registered with the Comptroller, are hereby fully validated, ratified and confirmed and are hereby declared to be in full force and effect as if adopted in strict compliance with all of the requirements of said Chapter 147, Acts of the Thirty-Third Legislature, and the General Laws of Texas relating thereto, and this act shall take effect and be in force from and after its passage. [Acts 1925, 39th Leg., p. 187, ch. 50, § 1; Acts 1929, 41st Leg., p. 324, ch. 149, § 1.]

[1] So in enrolled bill. Should probably read "of."

Acts 1941, 47th Leg., p. 416, ch. 246, validated the incorporation of the city of Uvalde.

Art. 1174b. Validation of annexation proceedings of home rule cities.—Sec. 1. All elections, election orders, election proceedings and city ordinances annexing adjacent territory to, or extending and prescribing the corporate limits of, any Home Rule City that has adopted a charter under Article Eleven (11), Section Five (5), of the Constitution of Texas, and the provisions of Chapter 147, Acts of the Regular Session of the 33rd Legislature of the State of Texas, 1913, but which City did not in fact have a population of five thousand according to the 1920 Federal Census, be and the same are hereby validated and confirmed.

Sec. 2. The city ordinances of all Home Rule Cities in the class described in the foregoing Section fixing and prescribing the corporate limits extended by the annexation or attempted annexation of adjacent territory are hereby validated. [Acts 1930, 41st Leg., 5th C.S., p. 139, ch. 16.]

Art. 1174c. Validating annexation of adjacent territory.—Section 1. All elections, election orders, election proceedings, city ordinances and amendments to charters annexing adjacent territory to, or extending and prescribing the corporate limitations of any home rule city that has adopted a charter under Article 11, Section 5, of the Constitution of the State of Texas, and the provisions of Chapter 147, Acts of the Regular Session of the Thirty-third Legislature of the State of Texas, 1913, and Article 1175 of Vernon's Annotated Texas Statutes, by which said city did not in fact have separate elections and separate election boxes for the city voters and the territory to be annexed, and did not comply with other requirements of the law, be and the same are hereby validated and confirmed.

Sec. 2. The city ordinances and charter amendments of all home rule cities in the class described in the foregoing section, fixing and prescribing the corporate limits extended by the annexation or attempted annexation of adjacent territory are hereby validated. [Acts 1936, 44th Leg., 3rd C.S., p. 2102, ch. 506.]

Art. 1174d. Validation of annexation proceedings in Home Rule cities of 8,920 to 9,580 population.—All ordinances and proceedings and all actions, proceedings, and contracts taken or made in pursuance thereof, heretofore undertaken by virtue of Article 1175, Revised Civil Statutes of Texas of 1925, providing for the extension of the corporate limits of Home Rule cities by any city which at such time was acting under a Home Rule charter, and which such ordinances, actions, proceedings, and contracts were undertaken prior to April 1, 1930, are hereby ratified and confirmed, and such extensions of the city limits of such cities so undertaken, as well as all proceedings and contracts taken or made in pursuance thereof and the exercise of dominion and governmental functions over such added territory by extension shall be deemed and held valid in all respects and to the same extent as if done under legislative authority previously given. The provisions of this Act shall apply only to cities having a population of not less than eight thousand, nine hundred and twenty (8,920) nor more than nine thousand, five hundred and eighty (9,580), according to the last preceding Federal Census. [Acts 1937, 45th Leg., 2nd C.S., p. 1904, ch. 27, § 1.]

Art. 1175. Enumerated powers.—Cities adopting the charter or amendment hereunder shall have full power of local self-government, and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

1. The creation of a commission, aldermanic or other form of government; the creation of offices, the manner and mode of selecting officers and prescribing their qualifications, duties, compensation and tenure of office.

2. The power to fix the boundary limits of said city, to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city, according to such rules as may be provided by said charter.

3. To hold by gift, deed, devise or otherwise any character of property, including any charitable or trust fund; to plead and be impleaded in all courts, and to act in perpetual succession as a body politic.

4. To provide that no public property or any other character of property owned or held by said city shall be subject to any execution of any kind or nature.

5. To provide that no fund of the city shall be subject to garnishment, and the city shall never be required to answer in any garnishment proceedings.

6. To provide for the exemption from liability on account of any claim for any damages to any person or property, or to fix such rules and regulations governing the city's liability as may be deemed advisable.

7. To provide for the levying of any general or special ad valorem tax for any purpose not inconsistent with the Constitution of this State.

8. To provide for the mode and method of assessing taxes, both real and personal, against any person and corporation, including the right to assess the franchise of any public corporation using and occupying the public streets or grounds of the city, separately from the tangible property of such corporation.

9. To provide for the collection of all taxes, including the right to impose penalties for delinquent taxes.

10. The power to control and manage the finances of any such city; to prescribe its fiscal year and fiscal arrangements; the power to issue bonds upon the credit of the city for the purpose of making permanent public improvements or for other public purposes in the amount and to the extent provided by such charter, and consistent with the Constitution of this State; provided, that said bonds shall have first been authorized by a majority vote by the duly qualified property tax-paying voters voting at an election held for that purpose. Thereafter all such bonds shall be submitted to the Attorney General for his approval, and the Comptroller for registration, as provided by law, provided that any such bonds after approval, may be issued by the city, either optional or serial or otherwise as may be deemed advisable by the governing authority. Whenever any city has heretofore been authorized, under any special charter, creating such city, to issue any bonds by the terms of such charter, the provisions of this chapter shall not be construed to interfere with the issuance of any such bonds under the provisions of any charter under which such bonds were authorized.

11. To have the exclusive right to own, erect, maintain and operate water works and water works system for the use of any city, and its inhabitants, to regulate the same and have power to prescribe rates for water furnished and to acquire by purchase, donation or otherwise, suitable grounds within and without the limits of the city on which to erect any such works and the necessary right of way, and to do and perform whatsoever may be necessary to operate and maintain the said water works or water works system and to compel the owners of all property and the agents of such owners or persons in control thereof to pay all charges for water furnished upon such property and to fix a lien upon such property for any such charges. To provide that all receipts from the water works may, in its discretion, constitute a separate or sacred fund which shall be used for no other purpose than the extension, improvement, operation, maintenance, repair and betterment of said water works system or water works supply, and to provide for the pledging of any such receipts and revenues for the purpose of making any of such improvements, and the payment of the principal and providing an interest and sinking fund for any bonds issued therefor under such regulations as may be provided by the charter adopted by such city.

12. To prohibit the use of any street, alley, highway or grounds of the city by any telegraph, telephone, electric light, street railway, interurban railway, steam railway, gas company, or any other character of public utility without first obtaining the consent of the governing authorities expressed by ordinance and upon paying such compensation as may be prescribed and upon such condition as may be provided by any such ordinance. To determine, fix and regulate the charges, fares or rates of any person, firm or corporation enjoying or that may enjoy the franchise or exercising any other public privilege in said city and to prescribe the kind of service to be furnished by such person, firm or corporation, and the manner in which it shall be rendered, and from time to time alter or change such rules, regulations and compensation; provided that in adopting such regulations and in fixing or changing such compensation, or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying the franchise shall be considered unless[1] proof that the same have been actually issued by the corporation for money paid and used for the development of the corporate property, labor done or property actually received in accordance with the laws and Constitution of this State applicable thereto. In order to ascertain all facts necessary for a proper understanding of what is or should be a reasonable rate or regulation, the governing authority shall have full power to inspect the books and compel the attendance of witnesses for such purpose.

[1] Word "on" probably should be inserted.

13. To buy, own, construct within or without the city limits and to maintain and operate a system or systems, of gas, or electric lighting plant, telephone, street railways, sewerage plants, fertilizing plants, abattoir, municipal railway terminals, docks, wharfs, ferries, ferry landings, loading and unloading devices and shipping facilities, or any other public service or public utility, and to demand and receive compensation for service furnished for private purpose or otherwise, and to exercise the right of eminent domain as hereinafter provided for the appropriation of lands, rights of way or anything whatsoever that may be proper and necessary to efficiently carry out said objects. Any city shall have the power to condemn the property of any person, firm or corporation now conducting any such business and for the purpose of operating and maintaining any such public utilities and for the purpose of distributing such service throughout the city or any portion thereof; provided that any city may adopt by its charter any such rules and regulations as it may deem advisable for the acquiring and operation of any such public utilities.

14. To manufacture its own electricity, gas, or anything else that may be needed or used by the public; to purchase and make contracts with any person or corporation for the purchasing of gas, electricity, oil or any other commodity or article used by the public and to sell the same to the public upon such terms as may be provided by the charter.

15. To have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary; to take any private property within or without the city limits for any of the following purposes; city halls, police stations, jails, calaboose, fire stations, libraries, school houses, high school buildings, academies, hospitals, sanitariums, auditoriums, market houses, reformatories, abattoirs, railroad terminals, docks, wharves, warehouses, ferries, ferry landings, elevators, loading and unloading devices, shipping facilities, piers, streets, alleys, parks, highways, boulevards, speedways, playgrounds, sewer systems, storm sewers, sewerage disposal plants, drains, filtering beds and emptying grounds for sewer systems, reservoirs, water sheds, water supply sources, wells, water and electric light systems, gas plants, cemeteries, crematories, prison farms, and to acquire lands within and without the city for any other municipal purposes that may be deemed advisable. The power herein granted for the purpose of acquiring private property shall include the power of the improvement and enlargement of the water works, including water supply, riparian rights, stand pipes, water sheds, the construction of supply reservoirs, parks, squares and pleasure grounds, public wharves, and landing places for steamers and other crafts, and for the purpose of straightening or improving the channels of any stream, branch or drain, or the straightening, widening or extension of any street, alley, avenue or boulevard. The power of eminent domain hereby conferred shall include the

right of the governing authority, when so expressed, to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes.

16. To have exclusive dominion, control, and jurisdiction in, over and under the public streets, avenues, alleys, highways and boulevards, and public grounds of such city and to provide for the improvement of any public street, alleys, highways, avenues or boulevards by paving, raising, grading, filling or otherwise improving the same and to charge the cost of making such improvement against the abutting property, by fixing a lien against the same, and a personal charge against the owner thereof according to an assessment specially levied therefor in an amount not to exceed the special benefit any such property received in enhanced value by reason of making such improvement, and to provide for the issuance of assignable certificates covering the payments for said cost, provided that the charter shall apportion the cost to be paid by the property owners and the amount to be paid by the city, and provided further, that all street railways, steam railways, or other railways, shall pay the cost of improving the said street between the rails and tracks of any such railway companies and for two feet on each side thereof. The city shall have the power to provide for the construction and building of sidewalks and charge the entire cost of constructing of said sidewalks, including the curb, against the owner of abutting property, and to make a special charge against the owner for such cost and to provide by special assessment a lien against such property for such cost; to have the power to provide for the improvement of any such sidewalk or the construction of any such curb by penal ordinance and to declare defective sidewalks to be a public nuisance. The power herein granted for making street improvements and assessing the cost by special assessment in the manner herein stated shall not be construed to prevent any city from adopting any other method or plan for the improvement of its streets, sidewalks, alleys, curbs, or boulevards, as it may deem advisable by its charter.

17. To open, extend, straighten, widen any public street, alley, avenue or boulevard and for such purpose to acquire the necessary lands and to appropriate the same under the power of eminent domain and to provide that the cost of improving any such street, alley, avenue or boulevard by opening, extending and widening the same shall be paid by the owners of property specially benefited whose property lies in the territory of such improvement and to provide that the cost shall be charged by special assessment and that a personal charge shall be made against any owner for the amount due by him and to provide for the appointment by the county judge or other officer exercising like or similar powers, of three special commissioners for the purpose of condemning the said lands and for the purpose of apportioning the said cost, which apportionment of said cost shall be specially assessed by the governing authorities against the owners and the property of the owners lying in the territory so found to be specially benefited in enhanced value by said special commissioners. The city shall pay such portion of such cost as may be determined by the said special commissioners, provided the same shall never exceed one third the cost, and the property owners and their property shall be liable for the balance of the same as may be apportioned by said commissioners. The city may issue assignable certificates for the payment of any such cost against such property owners and may provide for the payment of any such cost in deferred payments, to bear interest at such rate as may be prescribed by the charter not to exceed eight per cent. The city may adopt any other method for the opening, straightening, widening or extending of its streets as herein provided for as may be deemed advisable, and charge the cost of same against the property and the owner specially benefited in enhanced value and lying in the territory of said improvement, that its charter may provide. The authority to adopt any other method shall include the manner of appointing commissioners, the manner of giving notice and the manner of fixing assessments or providing for the payment of any such improvement.

18. To control, regulate and remove all obstructions or other encroachments or encumbrances on any public street, alley or ground, and to narrow, alter, widen or straighten any such streets, alleys, avenues or boulevards, and to vacate and abandon and close any such streets, alleys, avenues or boulevards, and to regulate and control the moving of buildings or other structures over and upon the streets or avenues of such city.

19. Each city shall have the power to define all nuisances and prohibit the same within the city and outside the city limits for a distance of five thousand feet; to have power to police all parks or grounds, speedways, or boulevards owned by said city and lying outside of said city; to prohibit the pollution of any stream, drain or tributaries thereof, which may constitute the source of water supply of any city and to provide for policing the same as well as to provide for the protection of any water sheds and the policing of same; to inspect dairies, slaughter pens and slaughter houses inside or outside the limits of the city, from which meat or milk is furnished to the inhabitants of the city.

20. To license, operate and control the operation of all character of vehicles using the public streets, including motorcycles, automobiles or like vehicles, and to prescribe the speed of the same, the qualification of the operator of the same, and the lighting of the same by night and to provide for the giving bond or other security for the operation of the same.

21. To regulate, license and fix the charges or fares made by any person owning. operating or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets and alleys of the city.

22. To regulate the location and control the conduct of theaters, moving picture shows, ten pin alleys, vaudeville shows, and all places of public amusements.

23. To license any lawful business, occupation or calling that is susceptible to the control of the police power.

24. To license, regulate, control or prohibit the erection of signs or bill boards as may be provided by charter or ordinance.

25. To provide for the establishment and designation of fire limits and to prescribe the kind and character of buildings or structures or improvements to be erected therein, and to provide for the erection of fire proof buildings within certain limits, and to provide for the condemnation of dangerous structures or buildings or dilapidated buildings or buildings calculated to increase the fire hazard, and the manner of their removal or destruction.

26. To divide the city in zones or districts, and to regulate the location, size, height, bulk and use of buildings within such zones or districts, and to establish building lines within such zones or districts or otherwise, and make different regulations for different districts and thereafter alter the same. The governing authorities may be authorized by their charter to create a commission or board for the purpose of carrying out the powers of this section, or may provide for the creation of a board of appeals or review for the purpose of hearing and deciding on appeals from and reviewing any order, requirement, decision or determination of the governing authorities in carrying out the powers and authority herein conferred; provided the authority and power herein conferred

shall never be construed to be a limitation of any other power and authority conferred in this chapter.

27. To provide for police and fire departments.

28. To provide for a health department and the establishment of rules and regulations protecting the health of the city and the establishment of quarantine stations, and pest houses, emergency hospitals and hospitals, and to provide for the adoption of necessary quarantine laws to protect the inhabitants against contagious or infectious diseases.

29. To provide for a sanitary sewer system and to require property owners to make connections with such sewers with their premises and to provide for fixing a lien against any property owner's premises who fails or refuses to make sanitary sewer connections and to charge the cost against said owner and make it a personal liability. To provide for fixing penalties for a failure to make sanitary sewer connections.

30. The power to require water works corporations, gas companies, street car companies, telephone companies, telegraph companies, electric light companies or other companies or individuals enjoying a franchise now or hereafter from the city, to make and furnish extensions of their service to such territory as may be required by the charter.

31. Provided that in all cities of over twenty-five thousand inhabitants, the governing body of such city, when the public service of such city may require the same, shall have the right and power to compel any street railway or other public utility corporation to extend its lines of service into any section of said city not to exceed two miles, all told, in any one year.

32. To provide for the establishment of public schools and public school system in any such city, and to have exclusive control over same and to provide such regulations and rules governing the management of same as may be deemed advisable; to levy and collect the necessary taxes, general or special, for the support of such public schools and public school system.

33. Whenever any city may determine to acquire any public utility using and occupying its streets, alleys, and avenues as hereinbefore provided, and it shall be necessary to condemn the said public utility, the city may obtain funds for the purpose of acquiring the said public utility and paying the compensation therefor, by issuing bonds, notes or other evidence of indebtedness and shall secure the same by fixing a lien upon the said properties constituting the said public utility so acquired by condemnation or purchase or otherwise; said security shall apply alone to said properties so pledged; and such further regulations may be provided by any charter for the proper financing or raising the revenue necessary for obtaining any public utilities and providing for the fixing of said security.

34. To enforce all ordinances necessary to protect health, life and property, and to prevent and summarily abate and remove all nuisances and to preserve and enforce the good government, order and security of the city and its inhabitants. [Acts 1913, p. 307; Acts 1921, p. 169.]

Art. 1175a. Extension of corporate limits by certain cities validated.—That all ordinances and proceedings, and all actions, proceedings and contracts, taken or made in pursuance thereof, of any city having a population of one hundred thousand and under one hundred fifty thousand, as shown by the preceding Federal Census, which have been, heretofore, passed under and in accordance with Article 1175, Revised Statutes 1925, providing for the extension of the corporate limits of such city, are hereby ratified and confirmed, and such extensions and actions, proceedings and contracts, taken or made in pursuance thereof, shall be deemed and held valid in all respects and to the same extent as if done under Legislature [Legislative] authority, previously given. [Acts 1929, 41st Leg., p. 386, ch. 176, § 1.]

Art. 1175b. Inspection and test of motor vehicles.

Ordinances authorized

Section 1. All cities and towns in the State of Texas, whether incorporated under general or special law, including home rule cities, having a population in excess of two hundred and ninety thousand (290,000) inhabitants, according to the last preceding or any future Federal Census, shall have and they are hereby given the power and authority to pass an ordinance or ordinances;

(a) Requiring all residents of said city, including corporations having their principal office or place of business in said city, owning a motor vehicle used for the transportation of persons or property, or both, and all persons using the streets, alleys, or other public thoroughfares of said city upon which to operate a motor vehicle, to have each and every such motor vehicle tested and inspected and to comply with such requirements, as may be imposed by said ordinance, not more than four times in each calendar year;

(b) Requiring that other and additional tests and inspections may be required of all motor vehicles involved in any wreck, collision, or accident before the same may be operated on the streets, alleys, or other public thoroughfares of said city after said wreck, collision, or accident;

(c) Requiring as a condition precedent to the right to use the streets, alleys, or other public thoroughfares of said city that motor vehicles operated thereupon shall have been tested and inspected, shall have been approved by said testing and inspecting authorities, and shall have complied with all provisions of said ordinance;

(d) Providing a penalty subject to the limitations of Article 1011 of the Revised Civil Statutes of the State of Texas for the violation of any of the terms of said ordinance.

Testing stations

Sec. 2. Said cities shall be and they are hereby authorized to acquire, establish, erect, equip, improve, enlarge, repair, operate, and maintain motor vehicle testing stations and to pay for the same out of the fees charged for testing and inspecting said motor vehicles.

Fees

Sec. 3. Said cities shall have and they are hereby given power and authority to prescribe and collect a fee, not to exceed One Dollar ($1) per year per vehicle, for the testing and inspecting of each such motor vehicle. All fees so collected to be placed in a separate fund, out of which costs and expenses in connection with, or growing out of the acquisition, establishment, erection, equipping, improvement, enlargement, repairing, operating, and maintaining said testing stations, and automotive and Safety Education programs, may be paid.

Payment for testing station; encumbrance; borrowing money

Sec. 4. Said cities shall have and they are hereby given power and authority to pay for such testing stations and the equipping, maintaining, and operating thereof out of past or future earnings of said stations, and may mortgage and encumber said stations and everything pertaining thereto acquired, to secure the payment of funds to construct the same or any part thereof, or to erect, equip, improve, enlarge, repair, operate, or maintain said stations. No such mortgage or encumbrance shall ever be a debt of such city, but solely a charge upon the properties so mortgaged or encumbered, and shall never be reckoned in determining the power of such city to issue bonds for any purpose authorized by law. Said cities may borrow money and issue warrants to finance in whole or in part the cost of the acquisition, erection, equipping, improvement, enlargement, or repair of said stations and to pledge for the punctual payment of said warrants and

interest thereon all or any part of the fees or other receipts derived from the operation of such stations.

Partial invalidity

Sec. 5. If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act, or the application thereof to any person or circumstance, is held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity or unconstitutionality.

Vehicles operated under permits

Sec. 5a. Nothing herein or in any ordinance passed pursuant hereto shall apply to motor vehicles, trailers or semitrailers operated under a certificate or permit from the Railroad Commission of Texas.

Repeal

Sec. 6. All laws and parts of laws in conflict herewith shall be and the same are hereby repealed to the extent of said conflict only. [Acts 1937, 45th Leg., p. 194, ch. 102.]

Art. 1175c. Vacancies in offices in cities over 384,000.—In case of vacancy from any cause in any elective office of any Home Rule City in this state having a population of three hundred eighty-four thousand (384,000) inhabitants or more according to the last preceding or any future Federal Census, where the charter of such city does not, at such time, provide for the filling of such vacancy, the city council or governing body of such city, by majority vote, shall appoint someone to fill such vacancy for the unexpired term; and pending such appointment such governing body may appoint someone temporarily, for not more than sixty (60) days, to hold such office, which person or persons, as the case may be, shall be qualified in like manner as is then required of the elective official. Provided, however, that whenever any such city holds an election to vote upon proposed amendments to its charter, it shall at such time submit a proposed amendment thereto providing a method for filling any vacancy to elective offices which are not now provided for in said charter. [Acts 1945, 49th Leg., p. 77, ch. 54, § 1.]

Art. 1175d. Water supply systems; easements over highways in certain Home Rule Cities.—The City Commission of all Home Rule Cities of this State, having a population of not less than thirty-one thousand (31,000) and not more than thirty-two thousand, five hundred (32,500) inhabitants, according to the last preceding Federal Census, shall have and such Cities are hereby granted easements on and over all public highways and county roads in the county in which such City is situated, for the purpose of constructing, laying and maintaining water pipe lines which constitute a part of the water supply system operated by said Cities. Provided, however, that on all State highways such water pipe lines shall be laid at such place and in such manner as may be approved by the State Highway Engineers, and all such water pipe lines to be laid on any county road shall be laid in such manner and as may be approved by the County Engineer of such county; provided further, such water pipe lines shall not be laid in any manner that will unreasonably interfere with the use of such highways and public roads. Provided further that such lines shall be laid parallel to and in reasonably close proximity with the outer edge of the right of way of such State highway or public road, except that such lines may be laid across such highway or public road in the manner to be approved by the engineers of the aforesaid; and provided further that said lines shall be laid deep enough under the ground that the said pipe lines will not interfere with the grading or other use required by the Highway Department or the County Commissioners. [Acts 1947, 50th Leg., p. 392, ch. 220, § 1.]

Art. 1176. Further powers.—The enumeration of powers hereinabove made shall never be construed to preclude, by implication or otherwise, any such city from exercising the powers incident to the enjoyment of local self-government, provided that such powers shall not be inhibited by the State Constitution. [Acts 1913, p. 307.]

Art. 1176a. Code of Civil or Criminal ordinances in cities over 5,000.

Power to codify; effect

Section 1. Any city of this State having a population of more than five thousand (5,000) according to the last preceding Federal Census, whether incorporated under General or Special Law, shall have the power to codify its civil and criminal ordinances and adopt a civil and criminal code of ordinances, together with appropriate penalties for the violation thereof, which said code when adopted shall have the force and effect of an ordinance regularly enacted with the usual prerequisite of law. [As amended Acts 1937, 45th Leg., 2nd C.S. p. 2004, ch. 71, § 1; Acts 1941, 47th Leg., p. 1352, ch. 614, § 1; Acts 1945, 49th Leg., p. 179, ch. 138, § 1.]

Ordinances changed without separate amendment or repeal

Sec. 2. That should it become necessary in the codification of such ordinances, both civil and criminal, to change, alter or repeal any portion thereof or to change the terminology of any ordinances heretofore adopted, such change being occasioned by a change in the form of government and the redesignation of offices and officers, then such city is hereby expressly authorized to amend, omit or repeal the same and to change the terminology to conform to its present form of government without the necessity of re-enacting, repealing or amending any such ordinance separately incorporated in said code.

Adoption of code

Sec. 3. That upon the codification of said code of civil and criminal ordinances, such city is authorized to adopt such code by the enactment of an ordinance and upon the adoption thereof, the City Secretary shall record said code as adopted in the ordinance records of such city, and thereafter such record shall serve as a record of the ordinances so codified and it shall not be necessary in establishing the content of any particular ordinance so codified to go beyond said record.

Publication of adopting ordinance

Sec. 4. That the ordinance adopting such code shall be published in the official publication of such city, or in a newspaper published in the city or county, as now provided by law, provided, however, that if any such city operates under a special charter or special law which provides for the publication of ordinances both civil and criminal, then in that event such city shall comply with such special provision of its charter in publishing such adopting ordinance. The code, when so adopted, shall become effective immediately upon and after its passage and it shall not be necessary to publish said code in any publication whatsoever.

Printed code as evidence of enactment of particular ordinance

Sec. 5. That any such city may cause a copy of such code, duly authenticated and approved under the signature of the mayor and attested by the city secretary, to be printed under the direction of the governing body, and when so printed it shall be admitted in evidence without further proof and shall be prima facie evidence in all courts of the existence and regular enactment of such particular ordinance.

Subdivision of Code into chapters, articles, sections, etc.

Sec. 6. That the code may be subdivided into chapters, titles, articles and/or sections within the discretion of the governing body making such codification and providing for its adoption. [Acts 1935, 44th Leg., p. 418, ch. 168.]

Art. 1176b—1. Publication of ordinances enacted by Home Rule cities.—Section 1. Hereafter all ordinances passed by Home Rule Cities in the State of Texas organized and operating under the provisions of the Home Rule Amendment to the Constitution of the State of Texas, and under Title 28, Chapter 13 of the Revised Civil Statutes of Texas, 1925,[1] may be published as provided by the Charters of such Cities, however, as an alternative method of publication the governing body may publish a descriptive caption or title stating in summary the purpose of the ordinances and the penalty for violation thereof; and in the event the Charter of any Home Rule City makes no provision for the method of publication, a full text of the ordinance may be published at least twice in the official newspaper of the City, or in lieu thereof a descriptive caption or title stating in summary the purpose of the ordinance and the penalty for violation thereof may be published.

Sec. 2. The provisions of this Act shall be cumulative of all laws on this subject and wherever the provisions of this Act are in conflict with any existing law or laws on this subject, the provisions hereof, in so far as same are in conflict with any existing law or laws, shall govern and control. [Acts 1939, 46th Leg., p. 112; Acts 1947, 50th Leg., p. 463, ch. 264, § 1.]

[1] Articles 1165–1182e.

Art. 1176b—2. Validation of ordinances of Home Rule cities published in compliance with charters.—All Ordinances heretofore passed by Home Rule Cities organized and operating under the provisions of Home Rule Amendment to the Constitution of the State of Texas, and under the provisions of Title 28, Chapter 13, Revised Civil Statutes of Texas, 1925,[1] where such Ordinances have been passed in compliance with the provisions of the charters of said cities and have been duly published, as required by such charters, be and the same are hereby validated, ratified and confirmed, and are hereby declared to be in full force and effect, in so far as the required publication is concerned, as if published in strict compliance with all of the requirements of the General Laws of the State of Texas; provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, nor to ordinances passed and published in violation of the method and procedure prescribed in said charters, the validity of which has been contested or attacked in suit or litigation which is pending at the time this Act becomes a law, or which may be filed within ninety (90) days after this Act becomes a law; provided further, that any person, whose rights are adversely affected by an ordinance hereafter enacted in violation of said charter, shall be entitled to injunctive relief in any court of competent jurisdiction upon proper application and satisfactory proof. [Acts 1939, 46th Leg., p. 693, § 1.]

[1] Articles 1165–1182e.

Art. 1177. Former powers.—All powers heretofore granted any city by general law or special charter are hereby preserved to each of said cities, and the power so conferred upon such cities, either by special or general law, is hereby granted to such cities when embraced in and made a part of the charter adopted by such city; and until the charter of such city as the same now exists is amended and adopted, it shall be and remain in full force and effect. [Acts 1913, p. 307.]

Art. 1178. Vested rights.—The adoption of any charter hereunder or any amendment thereof shall never be construed to destroy any property, action, rights of action, claims, and demands of any nature or kind whatever vested in the city under and by virtue of any charter theretofore existing or otherwise accruing to the city, but all such rights of action, claims or demands shall vest in and inure to the city and to any persons asserting any such claims against the city as fully as though the said charter or amendment had not been adopted hereunder. The adoption of any charter or amendment hereunder shall never be construed to affect the right of the city to collect by special assessment any special assessment heretofore levied under any law or special charter for the purpose of paving or improving any street, highway, avenue or boulevard of any city, or for the purpose of opening, extending, widening, straightening or otherwise improving the same, nor affect any right of any contract or obligation existing between the city and any person, firm or corporation for the making of any such improvements. For the purpose of collecting any such special assessment and carrying out of any such contract, the provisions of all charters shall be continued in force. [Id.]

Art. 1179. Improvement districts.—Such city shall have the power to create and establish improvement districts, to levy, straighten, widen, enclose or otherwise improve any river, creek, bayou, stream or other body of water or streets or alleys, and to drain, grade, fill and otherwise protect and improve the territory within its limits, and shall have power to issue bonds for making such improvements, such improvement districts to be created and established agreeably to the general laws of this State providing for the creation of such improvement districts, and the issuance of such bonds shall be governed by the powers a city possesses in the matter of issuing bonds. [Id.]

Art. 1180. Private improvements.—Such city shall further have the power to straighten, widen, levy, enclose, or otherwise improve any river, creek, bayou, stream, or other body of water, or streets or alleys and to drain, grade, fill and otherwise protect and improve the territory within its limits and to provide that the cost of making any such improvements shall be paid for by the property owners owning property in the territory specially benefited in enhanced value by reason of making such improvements, and a personal charge shall be made against such owners as well as a lien shall be fixed by special assessment against any such property, and the city may issue assignable certificates or negotiable certificates, as it deems advisable, covering such cost, and may provide for the payment of such cost in deferred payments and fix the rate of interest not to exceed eight per cent, and may provide for the appointment of special commissioners or otherwise for the making or levying of said special assessment, or may provide that the same shall be done by the governing authorities, and that such rules and regulations may be adopted for a hearing and other proceedings had as may be provided by said charter. [Id.]

Art. 1180a. Improvement of streams within boundaries by certain cities.

Cities which may make improvements; power conferred

Sec. 1. Any City having a population in excess of 150,000 people and less than 240,000 people, according to the last or any succeeding Federal Census, shall have and exercise the power and right to straighten, widen, levee, restrain or other wise control or improve any river, creek, bayou, stream or other body of water, and to grade or fill land and otherwise protect life and property within the boundaries of such City, meaning hereby to confer the power to amend or abate any harmful excess of water, either constant or periodic, by any and all mechan-

ical means, and, to that end, may provide and pay the cost of any such improvement, or any part thereof, in the manner and form provided by Articles 1179 and 1180, Revised Civil Statutes of 1925, or the cost of any such improvement, or any part thereof, may be provided in any other manner or form lawful to be exercised by any such City under the Constitution of Texas and not expressly prohibited by the Charter of any such City.

Additional powers

Sec. 2. Any such City, in addition to the power declared in Subdivision 1 of this Article, shall have these further specific powers, viz:

a. To contribute to the cost, upkeep, replacement, alteration, extension, maintenance and operation of any works or improvements contemplated hereby, when such improvements are to be provided and/or operated by another.

b. To solicit and receive from another contribution to the cost of any such improvements and/or the alteration, enlargement, operation and maintenance thereof, when such works are to be provided and operated by any such City.

c. To purchase, or otherwise acquire and take over any such improvements, and/or the maintenance or the operation thereof, any one or all, and, electively and when so contracted, to assume any outstanding bond debt or other debt secured by lien, which debt does not bear interest at a rate greater than six per cent per annum, and which debt may have been incurred in order to provide any such works and improvements. It is the intent hereof that this provision shall supercede and control any provision of a City Charter not in conformity hereto, but it is expressly provided that nothing herein contained shall be held to create indebtedness exceeding the limit for debt appropriately fixed by Law; provided no such city, in purchasing or acquiring any such improvements, or the right to maintain and control the properties of such levee or improvement district, shall assume any bonded indebtedness outstanding and owing by such levee or improvement district, unless and until such city shall have first been authorized to do so by an election, at which such question of assuming any indebtedness and/or maintenance shall be first submitted to, and adopted by, the qualified property-tax-paying voters of said city.

d. To enter into contract with another whereby any such City may, jointly with another or independently, do any one or all of the things by this Act intended.

Powers available to all Bodies Politic

Sec. 3. It is the intent hereof that any and all Bodies Politic which are subsidiary Governmental Agencies of the State, and otherwise having appropriate powers, may avail themselves of the provisions hereof and enter into contract one with another in order to accomplish the purpose of this Article.

Power to provide money

Sec. 4. Any such City and/or any other Body Politic and Corporate, which, under contract with a City having power hereunder, may seek to exercise the powers established by this Article, shall have the further power to provide the money required to construct, maintain and operate improvements hereunder, either separately or jointly under contract with another, in any manner lawful under the Constitution of Texas, and not expressly inhibited by the Charter and/or Statutory Act under which any such City or other contracting Body Politic may have its being.

Construction

Sec. 5. The word "another" or "others" as used herein shall be understood to include both the singular and the plural and shall be understood to include a City, a County, A Levee District, a Water Control and Improvement District, a Water Improvement District, a Navigation District and every other Body Politic under the Laws of Texas having Statutory powers concerning the control of harmful excess of water. [Acts 1931, 42nd Leg., p. 831, ch. 345.]

Art. 1180b. Self-liquidating recreational improvements.

Powers granted to certain cities; encumbrances

Sec. 1. That all cities having two hundred and thirty thousand (230,000) or more inhabitants according to the last preceding Federal Census, shall have the power to purchase and own, build, maintain, operate, mortgage and encumber health and recreational establishments, parks, playgrounds, hotels, bathhouses, bathing pools or facilities, and any and all other installations or establishments necessary or desirable as a part of health and recreational resorts, parks, or playgrounds, or any of them either, and the income therefrom and to provide, maintain, operate, and encumber such projects and facilities acquired by gift, devise, grant, or otherwise by such cities, and to evidence the obligations therefor by bonds, notes or warrants and to secure the payment of funds to purchase same with such instruments of pledge or mortgage as may be deemed to be desirable; or to remodel, rebuild, renovate, maintain and repair such health and recreational establishments, parks, playgrounds, hotels, bathhouses, bathing pools or facilities, and any and all other installations or establishments necessary or desirable as a part of such projects, or any of them. Provided, however, that such cities are prohibited from mortgaging or encumbering any property now owned by such cities, and the rights and privileges hereby conferred upon such cities shall only authorize such cities to mortgage and encumber property acquired by such cities after the date of the passage of this Act. No such obligation on any such project shall ever be a debt of such city, but solely a charge upon the property and revenue of the project or projects so encumbered, and shall never be reckoned in determining the power of any such city to issue any bonds for any purpose authorized by law.

Acts as to notice, competitive bids, etc., inapplicable

Sec. 2. That the provisions of House Bill No. 312, Chapter No. 163, Acts of the Forty-second Legislature, 1931,[1] with reference to notice, competitive bids and the right to referendum shall not apply to cities issuing "revenue bonds" under the authority conferred in this Act.

[1] Article 2368a.

Encumbrance of income; operating expenses as prior lien

Sec. 3. Whenever the income to be derived from the operation of any such project or projects shall be encumbered under this law, the expense of operation and maintenance, including all salaries, labor, materials, interest, repairs, and extensions necessary to properly maintain said project or projects, and every proper item of expense, shall always be a first lien and charge against such income. The rate of rental and concession charges for the use of the various installations, facilities and establishments of such project or projects shall be determined by the governing body of such project and no free service or rental shall ever be allowed. Rental and concession charges shall be charged and collected for the use of the various installations, facilities and establishments of such project or projects in an amount sufficient to pay operating and maintenance expenses, depreciation, replacements, salaries and interest charges, and to provide interest and sinking funds to pay the amount of any bonds issued to purchase, construct, maintain or improve any such project as herein enumerated or allowed, or any outstanding indebtedness against such projects, or any of them, and such charges shall be in accordance with the require-

ments of the Governmental Agency or Agencies lending or furnishing funds in aid thereof.

Contents of contracts, bonds, etc.

Sec. 4. Every contract, bond, warrant and note issued or executed under this law shall contain this clause:

"The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Management and control by governing body

Sec. 5. The management and control of any such health and recreational establishments, parks, playgrounds, hotels, bathhouses, bathing pools or facilities, and any and all other installations or establishments necessary or desirable as a part of such project during the time that they are encumbered shall be, by the terms of such encumbrance, placed in the City Council or the Mayor and City Commissioners or other governing body as said city shall establish therefor. The City Council, Mayor and City Commissioners or the governing body of the project that shall be so established by the city shall have power to make rules and regulations governing the use and rental of said various installations, facilities, premises and establishments of such project or projects and for the payment of said rentals and concession charges. Such governing body shall have the power to provide penalties for the violation of such rules and regulations and for the use of such project or projects of the facilities or equipment thereof without the consent or knowledge of the authorities in charge thereof and to provide penalties for all interference, trespassing, or injury to any such project or projects or premises on which same may be located.

Trustee under incumbrance

Sec. 6. A contract of encumbrance may provide for the selection of a trustee to make sale upon the default of principal or interest or violation of the terms and conditions of such contract and for the selection of his successor or successors if the original trustee of any substitute trustee should become disqualified or fail or refuse to act, and for attorneys' fees in amount not exceeding ten (10) per cent of the principal unpaid.

Foreclosure procedure

Sec. 7. No collection fees shall accrue, and no foreclosure proceedings shall be begun in any Court or through any trustee, and no option to mature any part of any such obligation because of any default in payment of any installment of principal or interest or violation of the terms and conditions of such pledge or loan shall be exercised until ninety (90) days written notice shall be given to the City Council, Mayor and City Commissioners, or other governing body of such city, of the default claimed, which notice shall date from the sending of a prepaid registered letter to each person to be notified, addressed to them at the post office in such city. If the default claimed shall have been cured before the expiration of said ninety (90) days, it shall have like effect as if no default has occurred or been claimed.

Application of income

Sec. 8. No part of the income of any such project or projects so encumbered shall be used to pay any other debt, expense, or obligation of such city until the indebtedness so secured shall have been finally paid. [Acts 1935, 44th Leg., 2nd C.S., p. 1848, ch. 470.]

Art. 1181. Franchises.—No charter or any amendment thereof framed or adopted under this charter, shall ever grant to any person, firm or corporation any right or franchise to use or occupy the public streets, avenues, alleys or grounds of any such city, but the governing authority of any such city shall have the exclusive power and authority to make any such grant of any such franchise or right to use and occupy the public streets, avenues, alleys, and grounds of the city. If, at any time, before any ordinance granting a franchise takes effect, a petition shall be submitted to the governing authority signed by five hundred of the bona fide qualified voters of the city, then the governing body shall submit the question of granting such franchise to a vote of the qualified voters of the city, at the next succeeding general election. [Acts 1913, p. 307.]

Art. 1182. Franchise election.—Such election shall occur within twelve months from the date such ordinance takes effect. If such election shall not occur within the said twelve months, then such ordinance may be submitted, if petitioned therefor as before provided, at a special election to be called by the governing body therefor. Whenever said ordinance is submitted at any election, notice thereof shall be published at least twenty days successively in a daily newspaper in said city prior to the holding of said election. The ballot used at said election shall briefly describe the franchise to be voted on and the terms thereof and shall contain the words "For the granting of a franchise" and "Against the granting of a franchise." If a majority of those voting at said election shall vote in favor of granting a franchise, the governing body upon canvassing the returns shall so declare and said franchise shall take effect in accordance with its terms. No franchise shall extend beyond the period fixed for its termination. [Id.]

Art. 1182a. Annexation of additional territory.

Election

Sec. 1. Whenever the City Commission of any City within this State, acting under and by virtue of any Charter adopted under Home Rule Amendment Article 11, Section 5, of the Constitution of this State, shall initiate or order an election for the extension of the territorial limits of said city, to be submitted to the legally qualified property tax paying voters residing within the territorial limits of said city, to determine whether or not the adjacent territory desired to be annexed shall be included within the territorial limits of said city, said City Commissioners shall at the same time order an election to be held at some convenient place within said city limits, so that the legally qualified property tax paying voters residing in the territory contiguous to said city and proposed to be annexed, may appear and cast their vote for the purpose of determining whether a majority of the legally qualified property tax paying voters residing in said territory proposed to be annexed, favor the annexation of said territory proposed to be annexed.

Ballots for election

Sec. 2. Whenever an election for the annexation of additional territory is held in accordance with the provisions of the foregoing section, said City Commissioners, when ordering such election for the annexation of said territory, shall prepare for the legally qualified property tax paying voters, printed ballots containing the following propositions to be voted on thereat:

"For annexation of additional territory and assumption by the city of all bonded indebtedness and flat rates owing to such water control and improvement district on the territory to be annexed and the levying and collecting of a tax on all property within the city limits sufficient to pay off and discharge said bonded indebtedness and flat rates."

"Against annexation of additional territory and assumption by the city of all bonded indebtedness and flat rates owing to such water control and improvement district on the territory to be annexed and the levying and collecting of a tax on all property within the city limits sufficient to pay off and discharge said bonded indebtedness and flat rates."

Assumption of indebtedness of annexed territory

Sec. 3. If, at any election to be held under the provisions hereof, a majority of the legally qualified tax paying voters residing within the territorial limits of such city, and those residing within the territorial limits proposed to be annexed, shall each vote in favor of the annexation of such additional territory, said city shall thereby assume all of said bonded indebtedness and flat rates on the territory thus annexed and due such Irrigation District, Water Improvement District or Water Control and Improvement District, or either of them, and shall from thence forth out of the taxes collected on the territory thus annexed pay to said Irrigation District, Water Improvement District or Water Control and Improvement District, said bonded indebtedness and flat rates, owing to such district, or either of them, as same become due and payable, and no city thus annexing such territory shall be entitled to collect any taxes due it from the property owners within the territory annexed until said City shall pay such bonded indebtedness and flat rates, for the current year same become due and payable, and present to said property owner a receipt showing that said City has paid the same.

The order of election must give the metes and bounds of the territory to be annexed, and said metes and bounds shall be include[1] and made a part of the ordinance calling for the election.

The election herein provided for shall be ordered by the City Commissioners and the returns canvassed and the results declared as is provided by law for other elections pertaining to said City.

Said ordinance for the election must provide for separate elections and must be issued and public notice given thereof as in other city elections, and provided further that if a majority of the legally qualified property tax paying voters residing within the territorial limits of said city or if a majority of the legally qualified property tax paying voters residing within the territory desired to be annexed shall not be in favor of such annexations then such annexations shall not be made.

1 Probably should read "included."

Powers additional to charter provisions

Sec. 4. Provided further, however, that nothing in this Act shall be held or construed to repeal or nullify any charter provision of any city of over one hundred thousand inhabitants according to the last United States census, operating under Article 11, Section 5 of the Constitution providing for the annexation of additional territory by ordinance, but shall be construed as an additional power and cumulative of the said charter provisions. [Acts 1929, 41st Leg., p. 251, ch. 110.]

Section 5 of this Act repeals all conflicting laws and parts of laws. Section 6 declares that if any section is held invalid, such decision shall not affect the remaining section.

Special laws 1931, p. 280, ch. 143, validates the extension of the corporate limits of cities of more than 2500 inhabitants since the enactment of Acts 1929, 41st Leg., c. 110, and all proceedings in regard to extension of city limits.

Art. 1182b. Annexation of adjacent territory including water district or towns.

Cities which may annex territory

Sec. 1. In all cities having a population of more than One Hundred Fifty Thousand (150,000) and less than One Hundred Sixty Thousand (160,000) at the time of the taking of the Federal Census of 1920 and operating under a special charter or the Home Rule Act, the power to provide for the annexation of additional territory lying adjacent to said city according to such provisions as may be provided by said charter is hereby expressly granted, recognized, ratified and confirmed.

Annexation authorized

Sec. 2. Said cities may annex territory which includes one or more fresh water supply districts, organized under authority of Section 59 of Article 16 of the Constitution of the State of Texas whether organized under general or special law; also which includes cities and towns of less than five thousand (5,000) inhabitants operating under the general law.

Property of annexed territory vested in city

Sec. 3. In the event such district or districts, or incorporated cities and towns are included in the annexed territory, it shall be the duty of the Governing Board of said City annexing such territory to adopt a resolution or pass an ordinance providing that all physical property belonging to said fresh water supply district or districts, or cities and towns so annexed, shall thereafter be vested in said city, provided that prior to the passage of any ordinance or resolution of the city annexing territory including fresh water supply district or districts, or incorporated cities and towns of under five thousand (5,000) inhabitants, the Board of Commissioners of such city annexing such territory, shall have been presented with an application for such annexation from the governing authority of such fresh water supply district or districts, or cities and towns of under five thousand (5,000) inhabitants included in the territory to be annexed.

Assumption of indebtedness by city

Sec. 4. The ordinance or resolution passed or adopted by the governing board of said City shall provide that all bonded indebtedness of said fresh water supply district or districts and all legal indebtedness of such cities and towns, as provided herein, be assumed by said City. Immediately upon the passage of such resolution or ordinance the corporate existence of said fresh water supply district or districts, or cities and towns so annexed will have legally terminated and the outstanding bonds and interest unpaid thereon of said fresh water supply district or districts, and the legal indebtedness of such cities and towns, shall be paid by said City as they mature and accrue. [Acts 1929, 41st Leg., 1st C.S., p. 65, ch. 30.]

Art. 1182c. Validating annexation by cities of fresh water supply districts.

Cities in which proceedings validated

Sec. 1. That in each instance when there has been presented to the governing body of any city having a population of 150,000 or more a petition by the supervisors of any Fresh Water Supply District theretofore organized under Title 128, Chapter 4, Vernon's Revised Civil Statutes of 1925, or said Chapter 4 as amended,[1] asking that the territory therein described, including such Fresh Water Supply District, be annexed to such city, and the governing body of such city has adopted an ordinance annexing such territory to such city, including such Fresh Water Supply District, said ordinance and all proceedings had in connection with its adoption and with said annexation of territory are hereby validated and legalized.

1 Article 7881 et seq.

Assumption of indebtedness

Sec. 2. That in each instance when the governing body of any such city has provided by ordinance for the annexation of territory, including any such Fresh Water Supply District, to such city and has provided in said ordinance that all outstanding legal indebtedness and all outstanding bonds and interest unpaid thereon of any such Fresh Water Supply District shall be assumed and paid by said city, such outstanding indebtedness and all such outstanding bonds and interest unpaid thereon are hereby declared to be the legal indebtedness of said city and for the payment thereof such city is authorized to levy taxes upon all taxable property therein, provided that this Act shall apply only on bonds or indebtedness of any Fresh Water Supply District, authorized and created pursuant to the approving vote of a majority of the qualified property

taxpaying voters of any such District; and provided, further, that this Act shall not operate to abolish or impair any of the contractual rights of the holders of said bonds or other evidences of indebtedness issued or incurred by such Fresh Water Supply District. [Acts 1931, 42nd Leg., Spec. L., p. 351, ch. 171.]

Section 3 of this Act makes its provisions applicable only to petitions filed and ordinances adopted prior to its effective date.

Art. 1182c—1. Cities which have annexed territory within water control and improvement or supply districts.

Application

Section 1. This Act shall apply to all cities which have been, or hereafter may be, created by the consolidation of two (2) or more home rule cities where one or more of said cities so consolidated has heretofore annexed, or hereafter may annex, all or any part of the territory within one or more water control and improvement districts or fresh water supply districts which districts were organized in areas urban or industrial in nature but not at the time of creation within the limits of any incorporated city or town, for the primary purpose of providing such municipal functions as the supply of fresh water for domestic or commercial uses, the furnishing of sanitary sewer service, garbage collection and disposal, or fire protection, any or all. Such consolidated cities shall succeed to the powers, duties, assets and obligations of such district or districts in the manner and to the extent hereinafter provided.

Taking over assets and liabilities; contracts

Sec. 2. When all of the territory within any such district is so annexed, such city shall take over all properties and assets, shall assume all debts, liabilities and obligations and shall perform all functions and services of such district and after such annexation such district shall be abolished. When less than all of the territory within any such district is so annexed, the governing authorities of such city and district shall be authorized to enter into contracts in regard to the division and allocation of duplicate and over-lapping powers, functions and duties between such agencies and in regard to the use and disposition of the properties, assets, debts and obligations of such district. Such contracts may extend for such period of time not exceeding thirty (30) years as may be stipulated therein and shall be subject to amendment, renewal or termination by mutual consent of such governing bodies. No such contract shall contain any provision impairing the obligation of any existing contract of such city or district.

In the absence of such contract, such district shall be authorized to continue to exercise all the powers and functions which it was empowered to exercise and perform prior to such annexation and the city shall not duplicate services rendered by the district within the district's boundaries.

Taxes to pay bonds; refunding bonds or warrants

Sec. 3. When any district bonds, warrants or other obligations payable in whole or in part from ad valorem taxes have been assumed by such city, the governing body of such city shall thereafter levy and cause to be collected upon all taxable property within such city, taxes sufficient to pay principal of, and interest on, such bonds, warrants or obligations as they respectively become due and payable. Such city shall be authorized to issue its refunding bonds or warrants to refund any bonds, warrants or other obligations, including unpaid earned interest thereon, so assumed by it. Such refunding bonds or warrants shall be issued in the manner provided in the Bond and Warrant Law of 1931, as heretofore or hereafter amended, provided that it shall not be necessary to give any notice of intention to issue such refunding bonds or warrants and no right of referendum thereon shall be available.

Outstanding obligations

Sec. 4. When all of the territory within such a district has been annexed as hereinabove provided and in cases where such district has outstanding bonds, warrants or other obligations payable from the net revenues from the operation of any utility system or properties, such city shall nevertheless take over and operate such system or properties and shall apply the net revenues from the operation thereof to the payment of such outstanding district revenue bonds, warrants or other funded obligations in all respects as though the district had not been abolished. If such city does not itself have outstanding revenue bonds, warrants or other obligations payable from, and secured by a pledge of, the net revenues of its own utility system or properties of like kind, such city may, at its option, combine such utility system or properties acquired from such district with its own similar utility system or properties and in such case the net revenues of the combined system or properties shall automatically be pledged to the payment of principal of, and interest on, any such assumed bonds, warrants or other obligations so secured.

If such city does have outstanding bonds, warrants or other funded obligations payable from, and secured by a pledge of, the net revenues of the city's said utility system or properties of like kind, then, until the refunding hereinafter authorized has been accomplished, the city shall continue to operate former properties of the district separate and apart from any similar properties of the city and shall not commingle in any way the revenues of such several systems. Such city shall faithfully perform all duties, functions and obligations imposed by law or by contract upon the governing body of such district in regard to the outstanding bonds, warrants or other obligations payable from the revenues of such former district's utility system or properties and shall likewise, separate and apart, perform all duties, functions and obligations imposed upon such city in connection with its own revenue bonds, warrants or other obligations; provided that over-head expenses may be allocated between any two (2) or more such systems or properties in direct proportion of the gross income of each.

Revenue refunding bonds

Sec. 5. Any such city shall have authority to issue revenue refunding bonds in its own name for the purpose of refunding outstanding district revenue bonds, warrants or other obligations (including unpaid accrued interest thereon) assumed by such city and shall also have authority to combine any number of different issues of both district and city revenue bonds, warrants or other obligations into one series of revenue refunding bonds and pledge the net revenues of such utility systems or properties to the payment of such refunding bonds as the governing body shall deem proper. The provision of Articles 1111 to 1118, Vernon's Texas Civil Statutes, as amended, shall apply to such revenue refunding bonds except as otherwise provided herein and provided that no election for the issuance of such bonds shall be necessary.

Newly incorporated cities or towns

Sec. 6. When any city or town is newly incorporated over all or any part of the territory within a water control and improvement district or a fresh water supply district, the governing body may adopt an ordinance making the provisions of this Act applicable to such city or town and, upon the adoption of such an ordinance by a vote of not less than two-thirds (⅔) of the entire membership of such governing body, the provisions of this Act shall thereafter be applicable to such city or town and to such districts situated in whole or in part therein.

Partial invalidity

Sec. 7. If any clause, phrase, sentence, paragraph, section or provision of this Act or the application

thereof to any particular person or thing, is held to be invalid, such invalidity shall not affect the remainder of this Act or the application thereof to any other person or thing. [Acts 1947, 50th Leg., p. 223, ch. 128.]

Art. 1182d. Validating relinquishment of territory.—That the Legislature of the State of Texas hereby validates, ratifies and approves all ordinances, relinquishing, discontinuing, and segregating any territory within the corporate limits of any Home Rule City in this state, having a population of more than twenty thousand (20,000) inhabitants and less than twenty-one thousand (21,000) inhabitants, according to the last preceding Federal census; which city has adopted a charter under Article 11, Section 5, of the Constitution of the State of Texas and the provisions of Chapter 147, Acts of the Regular Session of the 33rd Legislature of the State of Texas, passed in 1913. [Acts 1934, 43rd Leg., 3rd C.S., p. 53, ch. 30, § 1.]

Acts 1934, 43rd Leg., 3rd C.S., p. 102, ch. 51, relative to the mortgaging of abattoirs in cities with a population of not more than 9,080 and not less than 9,070, though enacted as a general law, in fact relates to only one city.

Art. 1182e. Exposition or convention halls in cities of 290,000.

Powers granted; obligation not a debt

Sec. 1. That all cities having two hundred and ninety thousand (290,000) or more inhabitants according to the last preceding Federal Census shall have the power to build and purchase, mortgage and encumber exposition and convention halls, or either, and the income thereof and to evidence the obligations therefor by bonds, notes or warrants and to secure the payment of funds to purchase same; or to remodel, rebuild, renovate and repair such exposition and convention halls, or either. No such obligation of any such exposition and convention halls shall ever be a debt of such city, but solely a charge upon the property of the exposition and convention hall so encumbered, and shall never be reckoned in determining the power of any such city to issue any bonds for any purpose authorized by law.

Provisions as to notice and competitive bids inapplicable until after January 1, 1936

Sec. 2. That notwithstanding any of the provisions of House Bill No. 312, Chapter No. 163, Acts of the 42nd Legislature, 1931, the requirements of said House Bill No. 312, Chapter No. 163, Acts of the 42nd Legislature, 1931,[1] with reference to notice, competitive bids and the right to referendum shall not apply to cities acting under the authority conferred in this Act until after January 1, 1936, instead of June 1, 1932, as provided in House Bill No. 312, Chapter No. 163, Acts of the 42nd Legislature, 1931.

1 Article 2368a.

Lien on income; rates for use

Sec. 3. Whenever the income to be derived from the operation of any exposition and convention hall shall be encumbered under this law, the expense of operation and maintenance including all salaries, labor, materials, interest, repairs, and extensions necessary to properly maintain said exposition and convention hall and every proper item of expense shall always be a first lien and charge against such income. The rate for the use of said exposition and convention hall shall be determined by the governing body of such city and no free service or rental shall ever be allowed. There shall be charged and collected for the use of such exposition and convention hall a sufficient rental to pay all operating, maintenance, depreciation, replacements, betterments, and interest charges and for interest and sinking fund to pay any bonds issued to purchase, construct or improve any such exposition and convention hall or of any outstanding indebtedness against it.

Provision to be inserted in contract, bond or note

Sec. 4. Every contract, bond, or note issued or executed under this law shall contain this clause:

"The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Governing body to manage

Sec. 5. The management and control of any such exposition and convention halls during the time that they are encumbered shall be, by the terms of such encumbrance, placed in the city council or other governing body of said city. The city council or other governing body shall have power to make rules and regulations governing the use and rental of said exposition and convention halls and for the payment of said rentals. Such governing body shall have the power to provide penalties for the violation of such rules and regulations and for the use of such exposition and convention halls without the consent or knowledge of the authorities in charge thereof and to provide penalties for all interference, trespassing, or injury to any such exposition and convention halls or premises on which same may be located.

Provision for trustee

Sec. 6. A contract of encumbrance may provide for the selection of a Trustee to make sale upon the default of principal or interest or otherwise according to the terms of such contract and for the selection of his successor, if disqualified or failing to act, and for collection of fees not exceeding five (5) per cent of the principal. If such contract provides for the appointment of a Receiver, the Trustee, in the event of any default in the payment of principal and interest or otherwise under such contract, continuing for a period of thirty (30) days, may apply to the proper Court for the appointment of a Receiver. A Receiver so appointed may, subject to the order of the Court, enter and take possession of the properties and operate and maintain them and apply the net revenue to the liquidation of the debt. The Receiver may maintain and operate the properties and may use or rent any part of the properties for any purpose consistent with the continued use of the major part as an exposition and convention hall or, if so authorized by the Court, may rent all the properties for any lawful use, and all of such properties shall continue to be free from taxation until the indebtedness secured thereby is fully paid. The Receiver may rent any part or all of such properties to the city, and the city may lease the same from the Receiver. All rights of the Receiver and of any lessees or other persons holding under him shall cease when the indebtedness is paid or if the Trustee, in the exercise of its powers, shall sell the properties, provided that the Trustees may agree with any lessee of the properties from the Receiver not to sell the property during the term of his lease; provided also that if the principal of all the bonds shall not have been declared due or if such declaration being made shall have been annulled under the provisions of the contract of encumbrance, the rights of the Receiver may be terminated and the Receiver discharged by remedy or waiver of the default and upon application to the Court, and in such event the rights of any lessee from the Receiver shall be subject to adjudication and may be terminated or adjusted by the Court. [As amended Acts 1937, 45th Leg., p. 614, ch. 307, § 1.]

Validation of proceedings, mortgages, and bonds

Sec. 6-a. Any proceedings taken by any such city under such Act and any mortgage or bonds heretofore authorized reciting the authority of such Act are hereby in all respects validated and confirmed as fully for all purposes as though duly and legally taken and authorized under such Act as now amended. [Added Acts 1937, 45th Leg., p. 614, ch. 307, § 2.]

Notice to governing body prior to foreclosure or action

Sec. 7. No collection fees shall accrue, and no foreclosure proceedings shall be begun in any Court or through any trustee, and no option to mature any part of any such obligation because of any default in payment of any installment of principal or interest shall be exercised until ninety (90) days written notice shall be given to each member of the city council or other governing body of such city that payment has been demanded and default made which notice shall date from the sending of a prepaid registered letter to each person to be notified, addressed to them at the post office in such city. If the installments of principal and interest then due shall be paid before the expiration of said ninety (90) days together with the interest prescribed in such contract, not exceeding ten (10) per cent per annum, from the date of default until the date of payment, it shall have like effect as if paid on the date when same was originally due.

Income not to be used for other debts

Sec. 8. No part of the income of any such exposition and convention hall so encumbered shall ever be used to pay any other debt, expense, or obligation of such city until the indebtedness so secured shall have been finally paid. [Acts 1935, 44th Leg., 1st C.S., p. 1655, ch. 425.]

Art. 1182f. Validating certain tax proceedings.—Section 1. All elections, election orders, election proceedings, and city ordinances by which any city or town having a home rule charter has attempted to amend said charter so as to eliminate any requirement in said charter that any portion of the annual ad valorem tax levied in said city or town shall be provided for or set apart for the use of the Public Free Schools in said city or town, which election resulted in a majority of the votes cast being favorable to the amendment of said charter, shall be deemed and held valid in all respects and to the same extent as if each and all things done by said city or town in attempting to amend said charter had been done and performed in strict compliance with law, and each such charter amendment so adopted or attempted to be adopted are hereby fully validated, ratified, and confirmed, and are hereby declared to be in full force and effect as if adopted in strict compliance with all the requirements of the laws of the State of Texas and the charters of such cities and towns.

Sec. 2. Further provided that this Act shall only apply to cities and towns acting under a home rule charter and which charter sought to be amended provided that a portion of the annual ad valorem taxes levied shall be set apart for the use of the Public Free Schools; and further provided that this Act shall not apply to such cities and towns unless, prior to the voting of said amendment, the control of the Public Free Schools in such cities and towns had been separated from the jurisdiction of said cities and towns and such Public Free Schools were at the time of the holding of such election being operated under the control and jurisdiction of an independent school district. [Acts 1939, 46th Leg., p. 700.]

Section 3 of the Act of 1939 repealed Acts 1939, 46th Leg., Sp.L. 1007, approved and effective May 15, 1939, which contained provisions identical with those of this article with the exception of the cities and towns to which it applied. Section 4 provided that the Act should not apply to any proceedings the validity of which had been attacked in any pending suit.

CHAPTER 14.—CITIES ON NAVIGABLE STREAMS

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Article 1183. Extension of limits.—The city council of all cities situated along or upon navigable streams in this State, and acting under special charters, may extend the limits of said city for the limited purposes named in the four succeeding articles, so as to include in said city the said navigable streams and the land lying on both sides thereof for a distance of twenty-five hundred feet from the thread of said stream to a distance of twenty miles or less in an air line from the ordinary boundaries of said city, either above or below the boundaries of said city, or both, by the passage of an ordinance extending the boundaries of said city to include the territory aforesaid, being a strip five thousand feet wide, and twenty miles, more or less, in length, or so much thereof as the city council may consider advisable to add to the limits of said city. [Acts 1913, p. 47.]

Art. 1184. Powers.—The city council of said city shall have the right, power and authority to secure land within the territory so added to said city by purchase, condemnation or gift, for the improvement of the navigation of said navigable streams or waters either by the United States or by said city, or by any navigation or other improvement district, and for the purpose of establishing and maintaining wharves, docks, railway terminals, side tracks, warehouses or any other facilities or aids whatsoever to either navigation or wharves. In all condemnation proceedings under this law the same procedure shall apply that now applies in condemnation of land by cities for the purchase of streets. [Id.]

Art. 1185. Status of territory.—For the purposes specified, the corporate limits of said cities shall, upon passage of said ordinance, be extended from the existing limits so as to include all the land added to said city by said ordinance. Such city shall have no right to tax the property over which such boundaries are extended, unless such property is within the line and within the limits of the general city boundaries or limits. [Id.]

Art. 1186. Regulation.—After the passage of the ordinance adding said territory to said city, said city shall have and exercise the fullest and most complete power of regulation of navigation and of wharfage and of wharfage rates and of all facilities, conveniences and aids to wharfage or navigation consistent with the Constitution of this State, and shall further have authority by criminal ordinances or otherwise, to police the navigation of said waters and the use of said wharves and facilities and aids to wharfage and navigation. [Id.]

Art. 1187. Restrictions.—The power granted in the four preceding articles shall not authorize the extension of the territory of any city for the limited purposes named so as to include any land which is already part of any other city or town corporation whether incorporated under the general laws or under special law, or any land at the time belonging to any other city or town. [Id.]

Art. 1187a. Construction of bridges over navigable waters.

Powers granted; wharves, piers, etc.; sale or lease

Sec. 1. Any city in this State, whether organized and operating under general law or under special charter granted by the Legislature of the State of Texas or under charter adopted or amended under Section 5 of Article 11 of the Constitution of the State of Texas, which city is situated within the territorial limits of a navigation district organized under the general laws of the State of Texas and having a deep water port located within the limits of said city, may within such city purchase, construct, own, maintain and operate a bridge or bridges over or across any stream, inlet or arm of the Gulf of Mexico or entrance canal to said port connecting up any of the public streets, highways or other thoroughfares of said city and improve, enlarge or repair the same. Any such city may purchase, construct, own, maintain, operate or lease any wharf, pier, pavilion, and/or boat house and dams and dykes and spillways with roads and bridges thereon or thereover for the purpose of creating a fresh water supply for domestic, irrigation and other purposes within such navigation district, or within the county or counties adjacent to such fresh water basin and may acquire, reclaim, reconstruct, or fill in any submerged lands along its water front, may build and construct sea walls, breakwaters or other shore protection to protect its water front of said city, may provide for and construct water mains, gas mains, storm sewers, sanitary sewers, sidewalks, streets, or other like improvements in connection with such reconstructed or reclaimed properties and may operate, repair and otherwise maintain the same. And any such city reconstructing or reclaiming any such property may rent, lease or sell the same, or grant franchises for the use of any such reconstructed or reclaimed property and apply the income therefrom in accord with this Act, and may dredge out, construct, reconstruct, maintain and operate any channel in connection with any such deep water port in aid of navigation within said city and subject to the provisions of this Act.

Ordinances for operation of bridges

Sec. 2. Any such city may enact all necessary, appropriate and reasonable ordinances providing rules and regulations for the operation of any such bridge or bridges and concerning the manner in which traffic shall move over and across any such bridge or bridges not inconsistent with the General Laws of the State.

Construction of act

Sec. 3. This Act shall be construed as cumulative authority for the purposes named herein, and as to the manner and form of issuance of any revenue bonds for any such purpose or purposes, and shall not be construed to repeal any existing laws with respect thereto, it being the purpose and intent of this Act to create an additional and alternate method for the purposes named herein.

Estimating cost of improvement

Sec. 4. Whenever the governing body of such city shall determine to acquire, construct, improve, enlarge, extend or repair any such bridge or bridges, and/or reclaim or reconstruct, improve, repair, or extend any such dams, dykes and spillways with roads and bridges thereon and thereover, sea walls, breakwaters, shore protection or water mains, gas mains, storm sewers, sanitary sewers, sidewalks, streets, wharfs, piers, pavilions, or other like improvements in any such reconstructed or reclaimed area or territory, it shall first cause an estimate to be made of the cost thereof, and thereafter it shall then cause a notice to be published in such city in a newspaper of general circulation once each week for four (4) consecutive weeks stating in said notice the following:

(1) The contemplated improvement;

(2) The estimated cost thereof;

(3) The use or disposition of the reclaimed lands, if any;

(4) The amount and location of lands to be reclaimed, if any;

(5) The time when the ordinance authorizing said improvements and the issuance of the bonds shall be passed or acted upon (which shall be not less than twenty days after the last publication of said notice); and

(6) Reference shall be made to the right of referendum, as provided for in the next succeeding paragraph.

If by the time set for action upon said ordinance, which shall be not less than twenty (20) days after the last publication of the notice provided for herein, as many as one hundred (100) of the qualified voters of such city whose names appear on the last approved tax rolls as property taxpayers, petition the city council or governing body of such city in writing to submit to a referendum vote the question as to the making of such improvements and the issuance of such bonds for such purposes, then such city, city council or governing body shall not be authorized to make said improvements or issue said bonds unless the proposition making such improvements and issuing such bonds for such purposes is sustained by a majority of the votes cast at such election for such purpose. The law in reference to elections for the issuance of city bonds as contained in Chapters 1 and 2, Title 22, Revised Statutes of 1925,[1] shall govern in so far as consistent with the provisions of this Act. If such petition is not so filed with the city secretary, or clerk, then the city council or governing body may proceed with the improvements and may issue said bonds, but in the absence of such petition, the city council or governing body may at its discretion submit such question to a vote of the people.

[1] Article 701 et seq.

Bonds for improvement

Sec. 5. For the purpose of acquiring, constructing, improving, enlarging, extending or repairing any such bridge or bridges, and/or for the purpose of acquiring, constructing, reclaiming, reconstructing, repairing or improving any such dams, dykes and spillways with roads and bridges thereon and thereover sea walls, breakwaters, shore protection, water mains, gas mains, storm sewers, sanitary sewers, sidewalks, streets and other like improvements in such reconstructed or reclaimed area or territory, any one or all, any such city may borrow money and issue its negotiable bonds, provided that no such bonds shall be issued unless and until authorized by an ordinance which shall set forth a brief description of the contemplated improvement, the estimated cost thereof, the amount, the maximum rate of interest, time and place of payment and other details in connection with the issuance of such bonds. Such bonds shall bear interest at the rate of not more than six per centum (6%) per annum payable semiannually or otherwise, and shall be payable at such times, not exceeding forty-five (45) years from their date, and at such place or places as shall be prescribed in the ordinance providing for their issuance. The bonds and coupons shall be executed in such manner and shall be substantially in the form provided in the authorizing ordinance. Such bonds shall be sold in such manner and upon such terms as the governing body shall deem for the best interest of the city. In no event shall any of the bonds be sold on a basis to yield more than six per centum (6%) per annum from the date of sale to the date of average maturity of the bonds sold, provided, however, that in any contract for the purchase or construction of any such project or projects as hereinbefore described, or for the improvement, enlargement, extension, reclamation, reconstruction or repair of the same, provision may be made that payment therefor may be made in such bonds. Such bonds and their coupons may be made payable in lawful money of the United States of America, or in gold coin of or equal to the standard of weight and fineness existing on the date thereof. Such bonds shall mature annually and the first installment thereof shall be made payable not less than two (2) years nor more than five (5) years from the date of such bonds. No such installment shall be more than two and one-half times as great in amount as the smallest prior installment of the same issue. If all of the bonds of an issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. The principal of and interest upon such bonds shall be payable solely from the income and revenues derived from the operation of the bridge or bridges, sea walls, breakwaters, shore protection, water mains, gas mains, storm sewers, sanitary sewers, sidewalks, streets and other like improvements including rentals or other charges received from any reclaimed or reconstructed area or territory for the acquisition, construction, improvement, reconstruction, reclamation, enlargement, extension or repair of which the same are issued; provided, however, that where any such city acquires or constructs a bridge or bridges under authority of this Act, and in connection therewith acquires or constructs any sea wall, breakwaters or other shore protection and reclaims or reconstructs any submerged area or territory and constructs therein or thereon any water mains, gas mains, storm sewers, sanitary sewers, sidewalks, streets or other like improvements, any such city may, as additional security for the payment of any bonds issued for the acquisition or construction of any such bridge or bridges, pledge any income or revenues derived from any such projects, and additionally secure the payment of any such bonds with a mortgage on any such project or projects or reclaimed area as hereinafter provided. No bond or coupon issued pursuant to this Act shall constitute an indebtedness of such city within the meaning of any State constitutional or statutory limitation. No such obligation shall ever be reckoned in determining the power of such city to issue any bonds for any purpose authorized by law. It shall be plainly stated on the face of each such bond and coupon that the same have been issued under the provisions of this Act and that it does not constitute an indebtedness of such city within any state constitutional or statutory limitation, and that the holder of such bond shall never

have the right to demand payment of such obligation out of any funds raised or to be raised by taxation.

Security for payment of bonds

Sec. 6. As security for the payment of the principal of and interest on such bonds, such city may mortgage and encumber any part, parts or all of the properties and facilities for the acquisition, construction, reconstruction, reclamation, repair or improvement of the same such bonds were issued, and may provide in such mortgage or encumbrance for a grant to the purchaser under sale or foreclosure thereunder of a franchise to operate the properties and facilities so encumbered for a term of not over twenty (20) years after such purchase, subject to all laws regulating same then in force. The ordinance authorizing the issuance of such bonds shall contain a substantial description of the franchise which is to appear in the mortgage.

Provision of mortgage as to foreclosure

Sec. 7. The mortgage or encumbrance shall provide for a trustee to enforce foreclosure and the city shall have the option at any five (5) year period within said twenty (20) years after purchase of properties designated in the franchise to repurchase said properties under reasonable terms and reasonable prices, to be set forth in said mortgage or encumbrance, but this limitation shall not extend to any reclaimed area acquired by individual purchasers.

Management of encumbered property

Sec. 8. The management and control of any such properties and/or facilities so encumbered, during the time they are so mortgaged and encumbered, shall be in the hands of the governing body of the city, except as otherwise provided in Section 29 of this Act. The provisions of this Section and Section 29 hereof shall not apply when there has been a sale on foreclosure under the mortgage in this Act provided for.

Bonds as legal investments

Sec. 9. The bonds issued under the provisions of this Act are legal investments for executors, administrators, trustees and other fiduciaries and for savings banks and insurance companies organized under the laws of this State.

Bonds exempt from taxation

Sec. 10. Bonds and interest coupons issued hereunder are hereby exempted from any and all State, county, municipal and other taxation whatsoever under the laws of the State of Texas, and it shall be plainly stated on the face of each such bond as follows:

"The principal of and interest on this bond are exempted from any and all State, county, municipal and other taxation whatsoever under the laws of the State of Texas."

Bonds as negotiable instruments

Sec. 11. Bonds issued under the provisions of this Act shall have all of the qualities of negotiable instruments under the law merchant and the Negotiable Instruments law.[1]

[1] Article 5932 et seq.

Deposit of proceeds of bonds

Sec. 12. The governing body of any such city issuing any such bonds shall, where practicable, require that the proceeds of the sale of bonds issued under the provisions of this Act be deposited in a special account or accounts in a bank or banks which are members of the Federal Reserve System, and shall require, in so far as practicable, that each such deposit be secured by direct obligations of the United States Government having an aggregate market value at least equal to the sum at the time on deposit, or, in any event, the proceeds shall be deposited in some bank or other depository, either within or without the State, which will secure such deposit satisfactorily to said governing body.

Use of proceeds of bonds solely for improvements

Sec. 13. All moneys received from any such bonds shall be used solely for the acquisition, construction, improvement, reclamation, reconstruction, enlargement, extension or repair of the project or projects for which issued including not more than five per centum (5%) for engineering, legal and other expenses and discounts incident thereto; provided, however, that such moneys may be used also to advance the payment of interest on such bonds during the first three (3) years following the date of such bonds to not more than the contract rate of interest. Provided, that any unexpended balance of the proceeds of the sale of any such bonds remaining after the completion of the project for which issued shall be put immediately into the Bond and Interest Redemption Fund for such bonds, and the same shall be used only for the payment of the principal of the bonds, or, in the alternative, to acquire outstanding bonds of the general issue from which the proceeds were derived, by purchase of such bonds at a price (exclusive of accrued interest) not exceeding the face amount thereof. Any bonds so acquired by purchase shall be cancelled and shall not be reissued.

Validity of signatures to bonds

Sec. 14. In case any of the officers whose signatures or countersignatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

Payment for services rendered city

Sec. 15. The reasonable cost and value of any service rendered to any such city by any such project or projects shall be charged against the city and shall be paid for monthly or otherwise, as the service accrues, from the current funds, or from the proceeds of taxes which such city, within constitutional limitations, is hereby authorized and required to levy in an amount sufficient for the purpose, and such funds, when so paid, shall be accounted for in the same manner as other revenues of such project or projects.

Additional bonds for extension of projects

Sec. 16. Any city acquiring, constructing, reconstructing, reclaiming, improving, enlarging or repairing any project or projects as aforesaid pursuant to the provisions of this Act, may, at the time of the authorization of such bonds for any such purpose or purposes, provide in the authorizing ordinance for additional bonds for extensions and permanent improvements, which additional bonds may be issued and be negotiated from time to time as such proceeds for such purpose may be necessary. Such bonds, when so negotiated, shall have equal standing with the bonds of the same issue.

Refunding bonds

Sec. 17. Where a city has outstanding any bonds issued under the provisions of this Act, it may thereafter issue and negotiate new bonds on such terms as the governing body of such city shall deem advisable for the purpose of providing for the payment of any such outstanding bonds. Such new bonds shall be designated "refunding bonds," and shall be secured to the same extent and shall have the same source of payment as the bonds which have been thereby refunded.

Rates or charges for services

Sec. 18. Rates or other charges for services and facilities afforded by the project and for sales of reclaimed area shall be sufficient to provide for the payment of the interest upon and principal of all such

bonds as and when the same become due and payable, to create a Bond and Interest Redemption Fund therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the project or projects necessary to preserve the same in good repair and working order, to build up a reserve for depreciation of the project or projects, and to build up a reserve for improvements, betterments and extensions thereto other than those necessary to maintain the same in good repair and working order, as herein provided. Such rates and/or charges shall be fixed and revised from time to time so as produce these amounts, and the governing body shall covenant and agree in the ordinance authorizing the issuance of such bonds, and on the face of each bond at all times to maintain such rates and/or charges for services furnished by such project or projects as shall be sufficient to provide for the foregoing.

Cost of operation as first lien on income

Sec. 19. The reasonable cost of administration and operation and the reasonable expense of maintaining such project or projects in good repair and working order shall be a first lien and charge against the income and revenues derived from the operation of such project or projects, superior to the lien of the mortgage or encumbrance on such project or projects.

Operation and maintenance account

Sec. 20. Out of the gross income and revenues of such project or projects there should be first set aside into an account to be known as the "Operation and Maintenance Account" monthly or oftener if necessary, sums sufficient to meet the cost and expenses set forth in Section 18 hereof. After provision for the "Operation and Maintenance Account" the ordinance authorizing the issuance of such bonds shall make provision for a "Bond and Interest Redemption Fund" into which there shall be set aside monthly or oftener if necessary such portion of the gross income and revenues of such project or projects as shall be sufficient to pay when due the principal of and interest upon the bonds provided, however, that in the segregation and separation of such gross income and revenues the governing body of the city may prescribe a reasonable excess amount to be placed in said Bond and Interest Redemption Fund from time to time during the earlier years of maturities of such bonds so as thereby to produce and provide a reserve fund for contingencies to meet any possible deficiencies therein in maturities of future years.

Ordinance to determine fiscal year

Sec. 21. The ordinance authorizing the issuance of such bonds shall definitely determine whether such project or projects shall be operated upon a calendar, operating or fiscal year basis and the dates of the beginning and ending of same.

Disposition of surplus

Sec. 22. The governing body of such city may make adequate and suitable provision for the disposition of any surplus accumulations in the Operation and Maintenance Account, or Depreciation Account, by causing same to be transferred to the Bond and Interest Redemption Fund, invested, or otherwise disposed of.

Provision for redemption of bonds before maturity

Sec. 23. The governing body of the city authorizing the bonds under the provisions of this Act may make provision for any such bonds to be called for payment on any interest payment date before maturity provided that the city shall have on hand in its Bond and Interest Redemption Fund sufficient moneys not otherwise appropriated or pledged, in excess of the interest and principal requirements within the next two succeeding calendar, operating or fiscal years.

Construction as not prohibiting use of available incomes and revenues

Sec. 24. Nothing in this Act shall be construed to prohibit the city, county or the State from appropriating and using any part of its available income and revenues derived from any source, other than in case of the city, from the operation of such project or projects, in paying any immediate expenses of operation or maintenance of any such project or projects or otherwise aiding in financing any part of the construction of said bridge or bridges, or reclaiming any submerged area or territory herein described.

Projects not subject to regulation by State agencies

Sec. 25. Rates of the city charged for services and/or facilities furnished by any such project or projects shall not be subject to supervision or regulation by any State bureau, board, commission or other like agency or instrumentality thereof; provided however, that the functions, powers and duties of the State Board of Health shall remain unaffected by this Act.

Separate books and records to be kept

Sec. 26. Any city issuing bonds under the provisions of this Act shall install and maintain proper books of record and account (Separate entirely from other records and account of such city) in which full and correct entries shall be made of all dealings or transactions of or in relation to the properties, business and affairs of the project or projects and the same shall be open for examination and inspection by any tax payer, user of the services furnished by the project or projects, or any holder of the bonds issued under the provisions of this Act, or any one acting for or on behalf of such tax payer, user of the services of the project or projects, or bond-holder.

Construction as not authorizing impairing other obligations

Sec. 27. Nothing in this Act shall be construed as authorizing any city to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention hereof being to authorize the pledging, setting aside and segregation of income and revenues as aforesaid only where consistent with outstanding obligations of such city.

Borrowing from Federal agencies

Sec. 28. Any such city mentioned in Section 1 of this Act, in addition to the powers conferred under this Act, is hereby granted and shall hereafter have the power to borrow money from the Federal Government or any of its agencies created for the purpose of making such loan, for the purpose of constructing and maintaining said bridge and the other improvements herein provided for and to mortgage and encumber said properties and facilities and the net revenues and income from the operation thereof and everything pertaining thereto acquired or to be acquired to secure the payment of the funds necessary to said construction and improvement and as additional security therefor by the terms of such encumbrance may pledge and encumber the net income and revenues from the operation of all of said properties and facilities and may provide in such encumbrance for a grant to the purchaser under a sale or foreclosure thereunder of a franchise to operate the property and facilities so encumbered for a term of not over twenty (20) years after such purchase, subject to all laws regulating same then in force.

Permit from Navigation and Canal Commissioners

Sec. 29. Anything in this Act to the contrary notwithstanding, no such bridge shall be constructed, maintained or operated over any entrance channel to any port operated by any navigation district without a permit from the Navigation and Canal Commissioners of such District and all plans and specifications for said bridge shall be subject to the joint approval of the governing bodies of the city and district.

Whenever any said toll bridge is constructed, maintained and operated over and across any entrance channel into a deep water port under the provisions of this Act, the Navigation and Canal Commissioners of the Navigation District governing said port shall have the power to prescribe reasonable rules and regulations for the operation of said bridge in aid of navigation and shall have and exercise direct control over the operation of the mechanical facilities of said bridge, providing for the clearance of the channel for the ingress and egress of vessels to said deep water port and to employ and direct all agencies in the management and operation of same, and said facilities shall be maintained and operated under the direct control and direction of said Navigation and Canal Commissioners; provided, that said Commissioners may appropriate and use any available revenues of said District in defraying part of the cost of operation and maintenance of any bridge or bridges constructed hereunder. No city shall have the power to construct, maintain or operate any such bridge over any such entrance channel to any such deep water port except in conformity with this section.

County appropriation authorized

Sec. 30. Any county in which any such city is situated is hereby authorized to appropriate to any such city for use in constructing any such bridge or bridges, or reclaiming or reconstructing any such submerged area or territory, or constructing seawall or breakwater protection for its waterfront, any available revenues of such county, and any such county is authorized to appropriate and apply any part of its available income and revenues to the operation and maintenance of any such project or projects.

Appropriations by State Highway Department

Sec. 31. The State Highway Department of the State of Texas, with the approval of the Governor may appropriate and apply any available revenues of such department to aid in the construction, operation and maintenance of any bridge or bridges acquired or constructed under the provisions of this Act, together with any approaches thereto, or the acquisition of any properties in connection with or in furtherance thereof.

Partial invalidity

Sec. 32. The invalidity of any section, sentence, clause, paragraph or portion of this Act shall not affect the validity of the remainder of this Act. [Acts 1933, 43rd Leg., p. 774, ch. 231.]

Section 33 of this Act repeals all conflicting laws and parts of laws.

Art. 1187a—1. Bonds for International Bridge across Rio Grande validated—additional bonds for repairs and improvements.—Section 1. This Act shall be applicable to any City operating under its Special Charter or Home Rule Charter, which has amended such Charter by a vote of the people so as to authorize the issuance of negotiable revenue bonds for the purpose of providing funds for paying the cost of the acquisition of the part of an International Bridge situated within the United States of America and extending from such City across the Rio Grande.

Sec. 2. All bonds authorized by the governing body of any such City for the purpose of acquiring the part of the International Bridge which is situated within the United States of America and which extends from such City across the Rio Grande, and which bonds are payable solely from the revenues derived from tolls charged for the use of such bridge are hereby validated, and when such bonds are approved by the Attorney General of the State of Texas, registered by the Comptroller of Public Accounts, sold and delivered, they shall constitute valid, binding and negotiable obligations of such City payable only from the revenues pledged for their payment. The governing body of any such City within its discretion, is empowered to authorize and issue additional negotiable revenue bonds for the purpose of repairing and improving such bridge in an amount not exceeding ten per cent (10%) of the amount of the revenue bonds issued to acquire such property. [Acts 1947, 50th Leg., p. 91, ch. 62, § 1.]

Art. 1187b. Revenue bonds for certain purposes in certain cities authorized.

Purposes for which bonds may be issued

Sec. 1. Any city in this State, whether organized and operating under General Law or under Special Charter granted by the Legislature of the State of Texas, or under charter adopted or amended under Section 5 of Article 11 of the Constitution of the State of Texas, which city is situated within the territorial limits of a navigation district organized under the General Laws of the State of Texas, and having a deep water port located within the limits of said navigation district, is hereby authorized and empowered to issue its negotiable bonds, notes, or warrants, payable from revenues other than taxation, for either one or any or all of the following purposes, to-wit:

(a) The construction, maintenance, and operation of a toll bridge or toll bridges over and across, or a tube, underpass, or tunnel under any stream, inlet, or arm of the Gulf of Mexico, or entrance channel to such port connecting up any of the public streets and thoroughfares of, or in, and to said city;

(b) The construction, maintenance, and operation, and/or extension of a sewage disposal plant within or without the limits of said city;

(c) The construction, maintenance, and/or extension, or improvement of sanitary sewer lines and/or storm sewer lines within or without the limits of said city;

(d) The construction, maintenance, and/or extension or improvement of water mains or water lines from the source of water supply of said city to any part of said city or within said city as may be found necessary by the governing body thereof;

(e) The acquisition, reclamation, reconstruction, elevation, and filling in of any submerged or lowlands along the water front of said city, and the construction of sidewalks, streets, and gas lines within the territory or area so acquired and/or reclaimed;

(f) The construction, maintenance, and/or extension or improvement of seawalls, breakwaters or other shore protections to protect the water front of said city;

(g) The construction, reconstruction, maintenance, operation and dredging out of any channel or boat basin in connection with any such deep water port;

(h) The construction, maintenance, replacement, and operation of a basin and boat slips, dry docks, boat service stations, walls, piers, wharfs, and structures in connection with such boat basin and slips. [As amended Acts 1935, 44th Leg., 1st C.S., p. 1639, ch. 417, § 1.]

Bonds as charge on revenues of improvements

Sec. 2. No such bonds, notes or warrants shall ever evidence any debt or obligation of such city, but shall be solely a charge upon the revenues and/or properties and improvements pledged to secure their payment, and shall never be reckoned in determining the power of such city to issue bonds, or otherwise lend its credit, for any purposes authorized by law.

Pledge of revenues for payment of bonds, notes or warrants

Sec. 3. Any and all bonds, notes or warrants, as well as interest thereon, issued under authority of this Act, shall be redeemed or paid by an appropriation or pledge of all revenues derived from either one or all of the improvement projects herein authorized, and/or tolls collected from the operation of any existing bridge

or bridges, if such tolls are so authorized, as hereinafter provided, and payment of such bonds, notes or warrants may be additionally secured by a mortgage on any such improvement project or projects, including any toll bridge or toll bridges and reclaimed lands; it being the intent hereof to authorize and to provide that all sources of income and revenue derived from any one or more of such improvement projects may be pledged and applied to the payment of the obligation or obligations issued for the purpose of constructing and providing for another one or more of such improvement projects; provided, that said city may provide for the construction, maintenance and operation of all of the improvement projects enumerated in Section 1 of this Act, and improvements in connection therewith, by the issuance and sale of one series of bonds, notes or warrants in the discretion of the governing body thereof.

Election for issuance

Sec. 4. Any and all bonds, notes or warrants authorized by this Act shall never be issued unless a proposition for the issuance of such bonds, notes or warrants, as the case may be, shall have been first submitted to the qualified voters who are property taxpayers of such city. The method of ordering and holding such election shall be governed by the laws of this State regulating elections for the issuance of city bonds under Chapters 1 and 2, Title 22, Revised Statutes of 1925. If at such election a majority of the property taxpaying voters, voting at such election, cast their ballots in favor of the issuance of the bonds, notes or warrants, as the case may be, the governing body of said city, shall as soon thereafter as practicable, issue said bonds, notes or warrants.

Maturity and denominations

Sec. 5. Such bonds, notes or warrants shall mature not later than thirty years from their date; they shall be issued in such denominations, and payable at such time or times as may be deemed most expedient by the governing body of such city, and shall bear interest not to exceed six per cent (6%) per annum. The General Laws relative to city bonds, not in conflict with the provisions of this Act, shall apply to the issuance, approval, certification and registration, and the sale of the bonds, notes or warrants provided for in this Act.

Contents of bonds; Attorney General's approval

Sec. 6. Each bond, note or warrant issued under authority of this Act shall contain this clause:

"The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

All bonds, notes or warrants issued hereunder shall be presented to the Attorney General for his approval as is provided for the approval of municipal bonds issued by cities or towns; and in event such bonds, notes or warrants are approved by the Attorney General, they shall be registered by the State Comptroller as in the case of municipal bonds.

Borrowing from Federal agencies

Sec. 7. Any such city is hereby further expressly authorized and empowered to borrow money from the Government of the United States, from the Federal Emergency Administration of Public Works, and any and all other agencies of the Government of the United States, which now are or hereafter may be authorized to make loans to public corporate bodies and municipalities, or from any person, firm, or corporation, and which loans may be made on such terms and in such amounts as may be agreed upon between the Government of the United States or its lending agency, or such person, firm, or corporation, and the governing body of such city; and any and all such loans shall be evidenced by negotiable bonds, notes, or warrants issued under the provisions of this Act in cases where the project or projects are to be financed pursuant to the provisions of this Act. [As amended Acts 1935, 44th Leg., 1st C.S., p. 1639, ch. 417, § 3.]

Destruction of existing bridges or other structures

Sec. 8. Power and authority is hereby conferred upon the governing body of any such city to remove or demolish any existing bridge or other structure owned and operated by said city, if in the discretion of such governing body the removal or the demolishing of such bridge or structure may be necessary in carrying out to completion any one or more of the improvement projects herein authorized.

Eminent domain

Sec. 9. The right of eminent domain is hereby expressly conferred upon any such city operating under the provisions of this Act, for the purpose of enabling such city to acquire the fee simple title, easement or right-of-way to, over and through any and all lands, water, or lands under water, private or public (except land and property used for cemetery purposes), within or without the limits of any such city, necessary in the constructing and maintaining of either one or all of the improvements herein authorized. In the event of the condemnation, or the taking, damaging or destroying of any property for such purposes, the city shall pay to the owner thereof adequate compensation for the property taken, damaged or destroyed. All such compensation and damages adjudicated in any condemnation proceedings, and all damages which may be done to the property of any person or corporation in the construction of any such improvement project, shall be paid out of funds derived from the sale of bonds, notes or warrants issued under the provisions of this Act. All procedure with reference to condemnation, the assessment of and estimating of damages, payment, appeal, the entering upon the property pending the appeal, etc., shall be in conformity with the procedure prescribed in Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of 1925, and any amendments thereto.

Conversion of existing bridges into toll bridges

Sec. 10. Whenever the governing body of any such city finds that it will not be necessary and/or practicable to construct any toll bridge or toll bridges under authority of Subdivision (a) of Section 1 of this Act, then in that event any existing bridge or bridges owned and/or operated by any such city over and across any such stream, inlet or arm of the Gulf of Mexico, or such entrance channel to such port, connecting up any of the public streets and thoroughfares of or in and to such city, may be by ordinance converted into a toll bridge or toll bridges, and the governing body of such city is hereby authorized to assess and collect such tolls for the use of any such bridge or bridges as within its judgment are reasonable and sufficient in amount, together with other income and revenues derived from the improvement projects, to pay the principal of and interest on all bonds, notes or warrants issued under the provisions of this Act as the same shall mature; provided, however, that all such tolls or charges so collected shall be placed in the interest and sinking fund account created for the purpose of paying the interest on and principal of all bonds, notes or warrants issued under the provisions of this Act, and such tolls or charges shall be applied to no other purpose; and, provided further, that the authority to assess and collect such bridge tolls and the irrevocable application of the same to the payment of bonds, notes or warrants issued under the provisions of this Act shall be authorized at the election to be ordered by the governing body of such city to determine whether or not any such bonds, notes or warrants shall be issued and sold.

Execution of mortgages or deeds of trust

Sec. 11. Before such bonds, notes or warrants shall be put on the market the Mayor and the person acting as City Treasurer or Finance Commissioner, pursuant to authority conferred by ordinance of the governing body, may execute a proper indenture, mortgage or deed of trust, making effective the mortgage lien on the properties pledged or mortgaged to secure payment of the principal of and interest on such bonds, notes or warrants, naming in such indenture, mortgage or deed of trust a bank or banking institution, with trust powers, and such indenture, mortgage or deed of trust shall be placed of record in the proper Deed of Trust and Mortgage Records of the county or counties in which any of such mortgaged properties may be situated, and may provide in such indenture, mortgage or deed of trust for a grant to the purchaser under sale or foreclosure thereunder, a franchise to operate the properties so encumbered for a term of not over twenty (20) years after such purchase, subject to all laws regulating same then in force; provided, however, that the city shall have the option at any five (5) year period within said twenty (20) years after purchase of the properties designated in the franchise, to repurchase said properties under reasonable terms and at reasonable prices, to be set forth in said mortgage or encumbrance, but this option shall not extend to any lands or properties in the reclaimed area which may be acquired from the city by individual purchasers.

Costs of administration and operation as lien

Sec. 12. The reasonable costs of administration and operation and the reasonable expense of maintaining such project or projects in good repair and working order shall be a first lien and charge against the income and revenues derived from the operation of such project or projects, superior to the lien of the indenture, mortgage or deed of trust on such project or projects.

Operation and maintenance account; sinking funds

Sec. 13. Out of the gross income and revenues of such project or projects, there shall be first set aside into an account to be known as the "Operation and Maintenance Account" monthly, or oftener if necessary, sums sufficient to meet the costs and expense set forth in Section 12 hereof. After provision for the "Operation and Maintenance Account," the ordinance authorizing the issuance of such bonds, notes or warrants shall make provision for a "Special Interest and Sinking Fund Account" into which there shall be set aside monthly, or oftener if necessary, such portion of the gross income and revenues of either one or all of such project or projects as shall be sufficient to pay when due the principal of and interest on the bonds, notes or warrants.

Revenues applied to payment of bonds

Sec. 14. No part of the income and revenues of either one or all of such project or projects shall be used or devoted to any purpose or purposes, save and except the purposes prescribed in Sections 12 and 13, hereof, so long as such notes, bonds or warrants shall be outstanding and unpaid; and the use or payment of such income and revenues, or any part thereof, for any other purpose shall be a diversion thereof and punishable as provided by Article 94 of the Penal Code of this State, Revision of 1925.

Permits for bridges

Sec. 15. No such bridge shall be constructed, maintained or operated over any entrance channel to any port operated by any navigation district without a permit from the Navigation and Canal Commissioners of such District and all plans and specifications for said bridge shall be subject to the joint approval of the governing bodies of the city and district. Whenever any said toll bridge is constructed, maintained and operated over and across any entrance channel into a deep water port under the provisions of this Act, the Navigation and Canal Commissioners of the navigation district governing said port shall have the power to prescribe reasonable rules and regulations for the operation of said bridge in aid of navigation and shall have and exercise direct control over the operation of the mechanical facilities of said bridge, providing for the clearance of the channel for the ingress and egress of vessels to said deep water port and to employ and direct all agencies in the management and operation of same, and said facilities shall be maintained and operated at the expense of said city but under the direct control and direction of said navigation and canal commissioners. No city shall have the power to construct, maintain or operate any such toll bridge over any such entrance channel to any such deep water port except in conformity with this section.

Construction against repeal of existing law

Sec. 16. This Act shall not be construed to repeal any existing laws with respect thereto, it being the purpose and intent of this Act to create an additional and alternative method for the purposes named herein.

Bridge defined; toll bridges

Sec. 16a. That wherever the word "bridge" or the word "bridges" appears in said Senate Bill No. 43, Chapter 17,[1] passed at the Second Called Session of the Forty-third Legislature of the State of Texas, the same shall be construed to mean and include the words "tube, underpass, or tunnel," and said Act, in authorizing the construction, maintenance, and operation of a toll bridge or toll bridges over and across any stream, inlet, or arm of the Gulf of Mexico, or entrance channel to such port connecting up any of the public streets or thoroughfares of or in and to said city, the same shall likewise authorize the construction, maintenance, and operation of a tube, underpass, or tunnel under any stream, inlet, or arm of the Gulf of Mexico, and entrance channel to such port connecting up any of the public streets or thoroughfares of or in and to said city, and the authority contained in said Chapter 17, passed at the Second Called Session of the Forty-third Legislature of the State of Texas, shall in all things authorize the construction, maintenance, and operation of a tube, underpass, or tunnel, and empower such city to charge tolls sufficient to pay from such revenues all bonds, notes, or warrants issued for the purposes enumerated in said Act. [As added Acts 1935, 44th Leg., 1st C.S., p. 1639, ch. 417, § 2.]

[1] This article.

Partial invalidity

Sec. 17. If any section, sub-section, sentence, clause or phrase of this Act is held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act. [Acts 1934, 43rd Leg., 2nd C.S., p. 48, ch. 17.]

Acts 1935, 44th Leg., 1st C.S., p. 1639, ch. 417 amended sections 1, 7 and added section 16a to this article.

Art. 1187c. Municipal fish markets; bonds secured by pledge of properties.

Powers granted; obligation not a debt

Sec. 1. That any City in this State with a population of over one thousand (1,000) people located on the Coast of Texas, or on any Gulf, Bay or Inlet, or within five (5) miles thereof, and in which commercial fishing and shrimping is an established industry, shall have the power to purchase and/or build a municipal fish market for the purpose of encouraging, developing and standardizing the fishing and shrimping industry, which among other services shall have sanitary facilities and equipment for cleaning, pack-

ing, shucking, canning and cold storage of shrimp, oysters and other sea food, and any such city shall have the right to borrow money, (and subject to the restrictions prescribed in Section 2 hereof to borrow money and to accept grants, either or both, from the United States of America or any agency thereof), for the purpose of building, purchasing or acquiring a municipal fish market and the necessary real property to be used as a site therefor; that any such city shall have the power to procure the funds for such purpose by issuing bonds or revenue notes for such purpose, and to secure the payment of such revenue bonds or revenue notes by mortgaging the physical properties so acquired, or to be acquired, and pledging the net revenues received therefrom, and by the terms of the encumbrance may grant to the purchaser under sale or foreclosure a permit to operate the same subject to such laws as may then be in force regulating the operation of such industry, or may secure the revenue bonds or notes by pledge of revenues without a mortgage of the physical properties; such revenue bonds or revenue notes shall bear interest at a rate fixed by the governing body of such city not to exceed six per cent (6%) per annum, and shall mature serially in such installments as may be fixed by said governing body within forty (40) years from their date, and at the option of the holder, may be registered as to principal only. Such obligations as may be incurred under the terms of this Act shall never be a debt of such city but solely a charge upon the property so encumbered and the revenues therefrom, and such obligation shall never be reckoned in determining the power of such city to issue any bonds for purpose authorized by law.

Conditions precedent to loans or grants from United States

Sec. 2. No such city shall have authority to accept a loan and grant, either or both, from the United States of America or any agencies thereof, for such purpose, except subject to the following conditions:

(a) The construction of the market must be approved by the Health Department of the State of Texas, as conducive to the health of the people of the State who consume food products from Texas Coast waters;

(b) The construction of the market must be approved by the Game, Fish and Oyster Commission, as feasible, and of economic importance to the fishing industry generally, in the entire district to be served by the market, as distinguished from the local or civic benefits to be derived therefrom by such city, and that the economic need for such project is not already adequately met by some other or similar institution accessible to the district to be served;

(c) Any such market shall be and shall remain subject to such rules and regulations as to health and sanitation as shall be prescribed by the State Health Department and by all agencies and departments of the United States of America having power to impose such rules and regulations.

Bonds and notes negotiable

Sec. 3. All revenue bonds and all revenue notes issued hereunder shall be considered and held to be negotiable under the Negotiable Instruments Law heretofore enacted by the Legislature of the State of Texas.

Disposition of revenues

Sec. 4. The expense of operating and maintaining any such market including all salaries, labor, materials and repairs necessary to permit such market to render efficient service shall always be a first lien and charge against the revenues received from its operation. All of the gross revenues from the operation of such market, after the payment of such maintenance and operating expenses shall be pledged and used exclusively to the payment of the principal and interest of such bonds or notes. Provided if in the judgment of the governing body of such city it is necessary to extend or enlarge such market, the city is authorized to make a junior pledge of the revenues of such market and of the extension to be constructed. In the event such subsequent pledge is made it shall be inferior in all respects to the pledge theretofore made, and the city may issue such junior revenue bonds or notes having interest rates, maturities and covenants as herein prescribed for the first issue of such bonds or notes. The city shall establish, deposit and secure the special funds to facilitate the payment of the principal and interest of all of such bonds and/or notes. It is the intent of this Act that all of the revenues from the operation of such market, after paying maintenance and operating expenses shall be used for debt service, and the surplus if any shall be used to buy in and cancel such revenue bonds or revenue notes before maturity or in the alternative shall be invested in such securities as shall be prescribed in the contracts under which money for such construction of such market may be furnished to the city.

Law governing notice, referendum and competitive bidding

Sec. 5. Cities and towns building municipal fish markets under the provisions of this Act shall be governed by the provisions of Article 2368-a Revised Civil Statutes of Texas, with reference to notice, right of referendum and competitive bidding.

Bonds not payable from taxation

Sec. 6. Any and all revenue bonds and revenue notes issued pursuant to the provisions of this Act shall have stamped or printed thereon the following: "The holder hereof shall never have the right to demand payment out of any funds raised or to be raised by taxation." [Acts 1934, 43rd Leg., 3rd C.S., p. 39, ch. 22.]

Art. 1187d. Municipalities authorized to encumber abattoirs.

Cities to which Act applies

Sec. 1. All cities situated not more than one hundred (100) miles from the Gulf of Mexico, and not more than fifty (50) miles from any stream forming an international boundary, shall have power to mortgage and encumber their abattoirs and everything pertaining thereto acquired, or to be acquired, to secure the payment of funds to construct the same, or to build, improve, enlarge, extend, repair or construct any kind or character of permanent improvements, including buildings and other structures, and as additional security therefor, by the terms of such mortgage or encumbrance, may grant to the purchaser under sale or foreclosure thereunder a franchise to operate such abattoirs, and the improvements thereof, for a term of not over thirty (30) years after such purchase, subject to all laws regulating the same then in force. No such obligation shall ever be a debt of such city, but solely a charge upon the properties so mortgaged or encumbered, and shall never be reckoned in determining the power of such city to issue any bonds for any purpose authorized by law.

Pledge of income

Sec. 2. All cities situated not more than one hundred (100) miles from the Gulf of Mexico, and not more than fifty (50) miles from any stream forming an international boundary, shall have power to pledge the income from their abattoirs and everything pertaining thereto acquired, or to be acquired, to secure the payment of funds to construct the same or to build, improve, enlarge, extend, repair or construct any kind or character of permanent improvements including buildings and other structures, and as additional security therefor, by the terms of such pledge may grant to the purchaser under sale or foreclosure thereunder a franchise to operate such abattoirs and the improvements thereof for a term of not over thirty (30) years after such purchase, subject to all laws regulating the same then in force. No such obliga-

tion shall ever be a debt of such city, but solely a charge upon the properties so mortgaged or encumbered, and shall never be reckoned in determining the power of any such city to issue any bonds for any purpose authorized by law.

Notes or warrants issued without referendum

Sec. 3. Such cities shall have the power to issue notes or warrants in any sum not to exceed the sum of Fifty Thousand Dollars ($50,000.00), for such purposes without submitting such proposition to a vote of the qualified taxpaying voters. This law shall take precedence over all conflicting city charter provisions.

Repeals

Sec. 4. All laws and parts of laws in conflict herewith are hereby expressly repealed to the extent in conflict herewith.

Partial invalidity

Sec. 5. If any section, portion, clause, or part of this Act be invalid or unconstitutional, the same shall not affect any remaining parts of this Act and it is expressly hereby declared that the Legislature would have passed such remaining parts of this Act with such invalid or unconstitutional section, portion, clause or part omitted. [Acts 1934, 43rd Leg., 4th C. S., p. 53, ch. 21.]

Art. 1187e. Boat houses and boat piling protections.

Power to borrow or accept grants

Sec. 1. All cities having a population of not more than twenty-eight thousand (28,000) inhabitants, nor less than twenty-seven thousand (27,000) inhabitants, according to the next preceding Federal Census, shall have power to borrow money and/or accept grants from the Federal government or any of its agencies, or from any other source or sources, to build, purchase, construct, enlarge, mortgage and encumber their boat-houses and boat piling protections and wharfs, docks, walks, ways, walls, bulkheads and fills in connection therewith, to secure the payment of funds to construct the same, or to build, improve, enlarge, extend, purchase, repair or construct any kind or character of such permanent improvements, including boat-houses and boat piling protections,[1] wharfs, docks, walks, ways, walls, bulkheads and fills in connection therewith, and as additional security therefor, by the terms of such mortgage or encumbrance, may grant to the purchaser under sale or foreclosure thereunder a franchise to operate such structures, and the improvements thereof, for a term of not over thirty (30) years after such purchase, subject to all laws regulating the same then in force. No such obligation shall ever be a debt of such city, but solely a charge upon the properties so mortgaged or encumbered, and the net revenues therefrom, and shall never be reckoned in determining the power of such city to issue any bonds for any purpose authorized by law.

[1] Word "and" probably omitted.

Pledge of income

Sec. 2. All such cities enumerated in Section one hereof shall have power to pledge the income from their said structures and everything pertaining thereto acquired, or to be acquired, built or improved, to secure the payment of funds to construct the same or to build, purchase, improve, enlarge, extend, repair or construct any kind or character of permanent improvements including buildings and other structures, and as additional security therefor, by the terms of such pledge may grant to the purchaser under sale or foreclosure thereunder a franchise to operate such structures and the improvements thereof for a term of not over thirty (30) years after such purchase, subject to all laws regulating the same then in force. No such obligation shall ever be a debt of such city, but solely a charge upon the properties so mortgaged or encumbered, and the net revenues therefrom, and shall never be reckoned in determining the power of any such city to issue any bonds for any purpose authorized by law.

Notes or warrants; issuance

Sec. 3. Such cities shall have the power to issue notes or warrants in any sum not to exceed the sum of Two Hundred Thousand Dollars ($200,000.00) for such purposes without submitting such proposition to a vote of the qualified taxpaying voters. This law shall take precedence over all conflicting city charter provisions.

Obligations as charge on property

Sec. 4. Such obligations as may be incurred under the terms of this Act shall never be a debt of such city or town but solely a charge upon the property so encumbered and the net revenues therefrom, and such obligation shall never be reckoned in determining the power of such city or town to issue any bonds for a purpose authorized by law.

Article 2638a inapplicable

Sec. 5. Cities and towns building the structures authorized under the provisions of this Act shall not be governed by the provisions of Article 2368-a, Revised Civil Statutes of Texas, of 1925, with reference to notice, right of referendum and competitive bidding.

Indorsement of bonds or warrants

Sec. 6. Any and all revenue warrants and bonds issued pursuant to the provisions of this Act, shall have stamped or printed thereon the following: "The holder hereof shall never have the right to demand payment out of any funds raised or to be raised by taxation."

Repeals

Sec. 7. All laws and parts of laws in conflict herewith are hereby expressly repealed to the extent in conflict herewith.

Partial invalidity

Sec. 8. If any section, portion, clause or part of this Act be invalid or unconstitutional, the same shall not affect any remaining parts of this Act, and it is expressly hereby declared that the Legislature would have passed such remaining parts of this Act with such invalid or unconstitutional section, portion, clause or part omitted. [Acts 1934, 43rd Leg., 4th C.S., p. 73, ch. 30.]

CHAPTER 15.—CONSOLIDATION OF CITIES

Art.
1188. Authority.
1188—(a). Consolidation of cities, towns or villages under 5000 with cities over 5000.
1189. Petition.
1190. Election.
1191. "Consolidation."
1192. Registration.
1193. Merger.
1193a. Validating extension of corporate limits of certain cities and towns.
1193b. Validating extension of limits of certain cities.

Article 1188. Authority.—When two (2) or more incorporated towns or cities in this State adjoining and contiguous to each other in the same county shall be desirous of being consolidated, it shall be lawful for them to adopt or amend their respective charters or Articles of Incorporation so as to consolidate under one government and take the name of the largest city, unless provided otherwise at the time of such consolidation, in the manner and subject to the provisions of Chapter 15, Title 28, Revised Civil Statutes of 1925. [Acts 1917, p. 71; Acts 1941, 50th Leg., p. 261, ch. 155, § 1.]

Art. 1188—(a). Consolidation of cities, towns or villages under 5000 with cities over 5000.—Upon complying with the provisions hereinafter prescribed in this Chapter, any city, town or village of less than five thousand (5,000) population according to the last preceding Federal Census may be consolidated under one government with an adjoining and contiguous city having a population of more than five thousand (5,000) inhabitants according to the last preceding Federal Census, when both of said municipalities are situated in the same county having a population of more than three hundred thousand (300,000) inhabitants according to the last preceding Federal Census.

This section is hereby declared retroactive to the following extent: All petitions purporting to be signed by qualified voters and presented to the governing body and all ordinances, resolutions, notices, declarations or other acts by the governing body of any city, town or village coming within the applicable provisions of this section, purporting to be in compliance with the statutory provisions contained in Chapter 15 of Title 28, Revised Civil Statutes of 1925; and any notice, declaration, certificate or other act required to be done or purporting to have been done by any Mayor, Councilman, Commissioner, Alderman, City Secretary or City Clerk in compliance with the statutory requisites of Chapter 15 of Title 28, Revised Civil Statutes of 1925, shall have the same legal effect as if there had then existed a law authorizing each act to have been done and authorizing cities, towns and villages of less than five thousand (5,000) population to consolidate. Any election held prior to the enactment of this Act submitting the question of consolidation to the qualified voters of cities or towns authorized to consolidate by this Act, shall in all things be deemed a legal and valid election as if this law had been in existence on the date of such election; provided the requirements of law applicable to consolidation of cities and towns have otherwise been complied with. [Added Acts 1945, 49th Leg., p. 71, ch. 50, § 1.]

Section 2 of the Act of 1945 read as follows:
"If any section, subsection, sentence, clause or phrase of this Act is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion of this Act."

Art. 1189. Petition.—Whenever as many as one hundred qualified voters of each of said cities shall petition the governing body of their respective cities to order an election for the purpose of voting on the consolidation of such cities into one city, said bodies may, at their next regular meeting order an election to be held at the usual voting places in the cities, on the same day, not less than thirty days after such order is made. If said petitions be signed respectively, however, by qualified electors equal to fifteen per cent of the total vote cast at the last preceding general election for city officials in each of said cities, next preceding the filing of said petitions, the respective governing bodies shall, within ten days after the receipt thereof, order an election to be held. [Id.]

Art. 1190. Election.—The governing body of each of said cities shall appoint from among the qualified voters of their respective cities, judges and clerks of said elections, and such elections shall be conducted under the ordinances of said cities, and in conformity with the general laws of this State. All persons voting at such election in favor of consolidation shall have written or printed on their ballots the words "For Consolidation," and all persons voting at such election not in favor of consolidation shall have written or printed on their ballots the words, "Against Consolidation." [Id.]

Art. 1191. "Consolidation."—The term "consolidation," as used in this chapter, means the adoption by the smaller cities of the charter and name of the larger of said cities, and the amendment of the charter of the larger cities so as to include in its boundaries the territory of the smaller city or cities so consolidated with it. [Id.]

Art. 1192. Registration.—If a majority of the qualified voters at said election in each of said cities shall vote in favor of consolidation, the mayor or chief executive officer exercising like or similar powers of each of said cities as soon as practicable after the returns of said election have been made, shall certify to the Secretary of State an authenticated copy under the seal of the said cities showing the approval of the qualified voters of the consolidation of the two cities. The Secretary of State shall thereupon file and record the same in a separate book to be kept in his office for such purpose. The returns of such election shall be recorded at length in the record books of the respective cities, and the consolidation of such cities shall be held thereupon to be consummated. [Id.]

Art. 1193. Merger.—After the consummation of such consolidation, all record books, public property, money on hand, credits, accounts and all other assets of the smaller of the annexed cities shall be turned over to the officers of the larger city, who shall be retained in office as the officials of the consolidated city during the remainder of their respective terms, and by such consolidation the offices existing in the smaller municipality shall be abolished and declared vacant, and the persons holding such offices shall not be entitled after the consummation of such consolidation, to further remuneration or compensation. All outstanding liabilities of the two cities so consolidated shall be assumed by the consolidated city. Whenever at the time of any such consolidation the respective cities shall have on hand any bond funds voted for public improvements not already appropriated or contracted for, such money shall be kept in a separate fund and devoted to public improvements in the territory for which such bonds were voted, and shall not be diverted to any other purpose. [Id.]

Art. 1193a. Validating extension of corporate limits of certain cities and towns.—Sec. 1. That this Act shall affect all cities in the State of Texas having a population of not less than 11,000 and not more than 11,500, according to the 1920 United States Census, and which are located in counties situated on a boundary of the State of Texas.

Sec. 2. In every instance wherein a city coming under the provisions of this Act has attempted to extend its corporate limits by including all of the territory of an adjoining city of less than 5,000 population, and has attempted to accomplish such extension of boundaries under Statutes providing for the consolidation of cities of more than 5,000 population, and/or in every instance wherein said extension of territory was attempted under Charter provisions which provide for the annexation of adjoining territory without reference to the fact that the adjoining territory is included in an incorporated city, all actions, resolutions, elections and ordinances taken, held, made or passed in reference thereto or pursuant thereto, are hereby confirmed, ratified and validated irrespective of any irregularities, and in like manner as if said consolidation or annexation had been authorized in the first instance. [Acts 1930, 41st Leg., 4th C.S., p. 2, ch. 2.]

Art. 1193b. Validating extension of limits of certain cities.—That all ordinances and proceedings, and all actions and proceedings and contracts, taken or made in pursuance thereof, of any city having a population of more than twenty-five hundred (2500) inhabitants as shown by the last preceding Federal Census, which have been heretofore passed since the passage of Chapter 110 of the 41st Legislature of the State of Texas of 1929,[1] providing for the extension of corporate limits of such city, are hereby ratified and confirmed, such extensions and actions, proceedings and contracts, taken or made in pursuance thereof,

shall be deemed and held valid in all respects to the same extent as if done under legislative authority, previously given. [Acts 1931, 42nd Leg., Spec.L., p. 280, ch. 143, § 1.]

1 Article 1182a.

CHAPTER 16.—CORPORATION COURT

Art.
1194. Creation of court.
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Sec.
1. Establishment.
2. Jurisdiction.
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5. Conflicting laws repealed.
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Article 1194. [903] Creation of court.—There is hereby created and established in each of the incorporated cities, towns, and villages of this State, a court to be known as the "Corporation Court." [Acts 1899, p. 40.]

Art. 1195. [904] Jurisdiction.—A corporation court shall have jurisdiction within the territorial limits of the city, town or village, in all criminal cases arising under the ordinances of the said city, town or village, and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such territorial limits. [Id.]

Art. 1196. [905] Judge or recorder.—Such court shall be presided over by a judge to be known as the "recorder" who, in cities, towns or villages incorporated under special charter shall be selected under the provisions of the charter concerning the election or appointment of the judge to preside over the municipal court. All such provisions are hereby made applicable to the recorder herein provided for. [Id.]

Art. 1197. [905] Judge in other cities.—In cities, towns and villages, not incorporated under special charter, the mayor shall be ex-officio recorder of the "corporation court," unless the governing body shall by ordinance authorize the election of a recorder, in which case a recorder shall be elected in the same manner and for the same time as the mayor is elected. [Id.]

Art. 1198. [906] Term of office.—Wherever in any such city, town or village, the office of the presiding magistrate of the municipal court therein shall not have expired when the recorder is elected, the recorder first elected shall hold his term of office corresponding to the unexpired term of said magistrate; and every two years thereafter such recorder shall be elected for a term of two years. [Id.]

Art. 1199. [906] Vacancy.—A vacancy in the office of recorder or clerk of the court in any city, town or village, shall be filled by the governing body for the unexpired term only. [Id.]

Art. 1200. [907] Clerk.—A clerk for said corporation court shall be elected by the governing body of each such city, town or village, at the same time at which the recorder is elected; but it may be provided by ordinance that the city secretary shall be ex-officio clerk of the said court, who may be authorized to appoint a deputy with the same power as the secretary. Such clerk shall hold his office for two years. In case of ex-officio clerk, he shall hold his office during his term as city secretary. The clerk shall keep minutes of the proceedings of the said court, issue all process, and generally perform all the duties of the clerk of a court as prescribed by law for a county clerk in so far as the same may be applicable. [Id.]

Art. 1200a. Two corporation courts authorized in cities having over 250,000 population.

Establishment; judges

Section 1. All incorporated cities of this State having a population in excess of two hundred and fifty thousand (250,000), according to the latest preceding United States census, may, by an ordinance legally adopted, provide for the establishment of two (2) Corporation Courts. The Mayor of any such city shall have the power to appoint two (2) or more Judges for such Corporation Courts and designate the seniority of the Judges, with the confirmation of the governing body of the city, so that either or both Courts may be in concurrent or continuous session, either day or night. [As amended Acts 1947, 50th Leg., p. 226, ch. 130, § 1.]

Jurisdiction

Sec. 2. Each of such Corporation Courts, when established, shall have and exercise concurrent jurisdiction within the corporate limits of the city establishing them, and such jurisdiction shall be the same as is now or hereafter may be conferred upon all Corporation Courts by the General Laws of this State.

Ordinance; provisions authorized

Sec. 3. The governing body of the city establishing such Courts may provide by ordinance:

(1) Prescribe the qualifications of the persons to be eligible to appointment as Recorder of said Court or Courts.

(2) That such Courts and the Recorders thereof may transfer cases from one Court to another, and that any Recorder of any of such Courts may exchange benches and preside over any of such Courts.

(3) That there shall be a Corporation Court Clerk who shall be Clerk for all of such Corporation Courts, together with such number of deputies as may be needed.

(4) That complaints shall be filed with such Corporation Court Clerk in such manner as to provide for an equal distribution of cases among such Courts.

Procedure

Sec. 4. Except as modified by the terms of this Act, the procedure before such Courts and appeals therefrom shall be governed by the General Law applicable to all Corporation Courts.

Conflicting laws repealed

Sec. 5. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only, and this Act shall supersede any provisions of any special charters of cities which are contrary to the terms hereof.

Partial invalidity

Sec. 6. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be

unconstitutional, the validity of the remaining portions shall not be affected thereby, it being the intent of the Legislature in adopting this Act that no portion shall become inoperative by reason of the invalidity of any other portion. [Acts 1939, 46th Leg., p. 92.]

Acts 1947, 50th Leg., p. 226, ch. 130, in the title of the Act and in the enacting clause for section 1, purported to amend entire article 1200a, but the body of the Act seems to effect an amendment of section 1 only of article 1200a.

Section 2 of the Act of 1947 repealed conflicting laws and provided that the act should supersede any provisions of any special charters of cities which were contrary to the terms thereof.

Section 3 of the Act of 1947 provided that if any part was unconstitutional, the validity of the remaining portions should not be affected thereby.

Art. 1200b. Home Rule cities of 31,000 to 32,500 may establish two corporation courts.

Establishment

Section 1. All Home Rule cities of this State having a population of more than thirty-one thousand (31,000) and not more than thirty-two thousand, five hundred (32,500) inhabitants according to the 1940 Federal Census, may, by an ordinance legally adopted, provide for the establishment of two (2) corporation Courts.

Jurisdiction

Sec. 2. Each of such corporation Courts, when established, shall have and exercise concurrent jurisdiction within the corporate limits of the city establishing them, and such jurisdiction shall be the same as is now or hereafter may be conferred upon all corporation Courts by the General Laws of this State.

Ordinance; provisions authorized

Sec. 3. The governing body of the city establishing such Courts may provide by ordinance:

(1) Prescribe the qualifications of the persons to be eligible to appointment as Recorder of said Court or Courts, one of which shall be designated the City Judge.

(2) Such courts and the Recorder thereof may transfer cases from one Court to another, and that any recorder of any such Court may exchange benches and preside over any of such Courts.

(3) There shall be a corporation Court Clerk who shall be Clerk for all of such corporation Courts together with such number of deputies as may be needed.

Procedure

Sec. 4. Except as modified by the terms of this Act, the procedure before such Courts and appeals therefrom shall be governed by the General Law applicable to all corporation Courts.

Conflicting laws repealed

Sec. 5. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only and this Act shall supersede any charter provision of such cities which are contrary to the terms hereof.

Partial invalidity

Sec. 6. If any section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, the validity of the remaining portions shall not be affected thereby, it being the intent of the Legislature in adopting this Act that no portion shall become inoperative by reason of the invalidity of any other portion. [Acts 1947, 50th Leg., p. 287, ch. 177.]

CHAPTER 17.—CONDEMNATION FOR HIGHWAYS

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Article 1201. Cities empowered.—Cities having more than one thousand inhabitants under the preceding Federal census may proceed in accordance with the provisions hereof, independently of and without reference to any other applicable law or charter provision, present or future, which, however, shall remain in force as alternative methods. The term "city" or "cities" used herein shall include all incorporated towns and cities acting hereunder. [Acts 1923, p. 4.]

Art. 1202. Powers.—Subject to the terms hereof, the governing body of a city may lay out, open, establish, widen, straighten, or extend any highway within its limits, and purchase, condemn, and take property therefor. The cost of property purchased, taken or damaged, and costs of condemnation and making assessments hereinafter referred to, and of the enforcement, collection, sale or realization into money of assessments or certificates, together with all other costs of making such improvements, may be paid wholly from any fund of the city available therefor, or wholly from the fund created by said assessments, or partly from each of said funds. The governing body shall have power to assess part or all of such costs against the owners of property abutting or in the vicinity of such improvements specially benefited thereby, and against said property, and to collect, enforce, sell or realize said assessments into money. The term "highway" shall include any street, avenue, boulevard, alley, public place or square, dedicated or to be dedicated to public use. [Id.]

Art. 1203. Further powers.—Cities may purchase by agreement with the owner any property, all or part of which in the opinion of the governing body is necessary for the making of improvements under the terms hereof, and pay for same out of any fund available. Cities may sell and convey any part of such property not appropriated to such improvement on such terms and for such consideration as they may see fit, and the proceeds shall become a part of a special fund out of which the cost of improvements provided for herein may be defrayed and shall be used for no other purpose, but only the cost of property actually appropriated to such improvement shall be included in any assessment made under the provisions hereof. [Id.]

Art. 1204. Resolution.—When the governing body shall determine to proceed hereunder it shall so

declare by resolution which may state the nature and extent of the improvement to be made and the limits thereof, and may describe the parcel or parcels of land proposed to be taken or condemned by any description substantially identifying the same, or by lot or block number, or number of front feet, or by the name of the owner, or if owned by an estate, the name thereof. No mistake or omission of said resolution shall invalidate it, and its passage shall be conclusive of the public use and necessity of the proposed improvement. [Id.]

Art. 1205. Survey.—Upon passage of such resolution, the city engineer or engineer designated by the governing body shall prepare and submit to said body a plat showing the nature and limits of the proposed investments,[1] the boundaries thereof, and the points between which it is proposed to establish the same, and the property through which it is to be extended, which is to be taken or condemned therefor, and shall in writing report the estimated total cost of said improvement, and of each parcel of property to be condemned or acquired. The governing body shall examine said plat and report and correct errors therein, if any, but no error or omission shall invalidate the same, or any proceeding had thereafter pursuant thereto. [Id.]

[1] So in enrolled bill. Should probably read "improvements."

Art. 1206. Condemnation commission.—(a) No property shall be taken without just compensation first made to the owner. If the amount of said compensation shall not be agreed upon, the governing body shall cause to be prepared, on behalf of the city, a statement in writing containing a description of the parcel or parcels of property sought to be taken, the names of the owner or owners thereof, if known, and the purpose for which said property is sought to be taken. The statement shall be filed with the Judge of a County Court at Law, if such Court exists in the county where the property is situated, otherwise with the County Judge of such county. Upon filing the statement the Judge shall forthwith, in term time or vacation, appoint a Commission consisting of three disinterested freeholders of said county who are qualified voters to assess the damages to accrue to said owners, or other interested parties, by reason of condemnation of said property.

In event of the death, disability, refusal to act, incapacity for any reason, or absence for more than thirty days from said county of any Commissioner appointed, at any time, the Judge shall forthwith appoint a new Commissioner or Commissioners having the qualifications herein prescribed, who shall succeed to and exercise all the powers and duties of the Commissioner or Commissioners originally appointed, and vacancies so caused in said Commission shall be so filled by the Judge whenever they occur. But all proceedings of said Commissioners prior to said vacancy shall be valid and it shall not be necessary for the Commissioners then qualified and acting to again do any Act or take any proeeeding already done or performed, but said Commissioners shall proceed after the filling of said vacancy and take all steps and do all things provided to be done hereunder as if no such vacancy had occurred.

(b) The clerk, secretary, or recording officer of the city, or the said Commission itself, shall give written notice to the owners of property proposed to be taken or damaged and to all persons having any interest in or lien upon said property, of a hearing before said Commission, which notice shall state the time and place of hearing, and may contain a brief statement of the nature and extent of the proposed improvement, and a description of the property proposed to be taken; such description may be by lot and block number, front feet, the name of the owner or owners, or by any other description which will substantially identify said property. Notice of said hearing shall be given by publication in a newspaper of general circulation in the county in which the property is situated, not less than three separate days, the first publication to be not less than ten days prior to the date of hearing. Notice by publication shall be valid and binding upon the real and true owners of property and all persons having an interest in or lien upon the same, if it shall generally notify them to appear and be heard, without specifically designating said parties by name, and no error or mistake in the name of any person to whom said notice is directed shall invalidate the same. Said notice shall also be served by delivering to said owners, lienholders, or interested parties, if residents of the county where said property is situated, or to their agent or attorney, or if a minor to the Guardian thereof, a copy of said notice. The person serving said notice shall make and file with the clerk, secretary or recording officer of the city a return in writing thereon, stating when and how he served said notice. The governing body may provide for other and additional notice, but notice by publication shall in all cases be valid and binding, whether other notice is given or not. The governing body may provide for and cause to be given, in accordance with due process of law, any other and additional notice of any other hearing which may become or be deemed necessary upon the vacation of the office of a Commissioner and appointing of a new one, or for any other reason, and to provide for such hearings and the nature and effect thereof, and to cause as many and different hearings to be held in the course of condemnation proceedings as may be deemed necessary. Said Notices, and the return thereon, shall be filed with the city and preserved in its records.

(c) Hearings shall be adjourned and shall be kept open until all parties interested and appearing shall be fully heard. All owners, interested parties, or lienholders shall have the right to appear at said hearings in person or by agent or attorney, and be heard as to the value of property proposed to be taken or as to the damages to property not taken, resulting from the improvement, or as to the legality or regularity of the proceedings or any right of said owners and other parties. All objections or contests shall be in writing and filed with said Commission. When all parties have been heard the Commission shall close the hearing and find the damages due owners, lienholders, or others interested, for property taken or damaged, and shall in their findings apportion between them the amounts payable to each, and shall date and sign a report in writing, in duplicate, one of which reports shall be filed with the clerk, secretary or recording officer of the city, and one with the Clerk of the Court by whose Judge the Commission was appointed.

All proceedings of the governing body with reference to such condemnation, as well as all notices issued in connection therewith, returns thereof, orders, reports, and other proceedings of the Commission, and certified copies of all orders or proceedings of any Judge or Court with reference thereto, may be recorded in the Minutes of said governing body, and said record, or certified copies, thereof, and the original shall be prima facie evidence of the truth of all facts therein recited.

(d) Any party affected by the decision of said Commission who shall be dissatisfied therewith, shall, within ten days after the filing of said report with said Judge, file in his Court in opposition thereto, setting forth in writing the particular cause or causes of objection, and thereupon the adverse party or parties shall be cited and said cause shall be tried and decided as other civil causes in said Court. If no objections are filed with said Judge within said time, he shall cause the said report to be entered in the Minutes of his Court and make the same the judgment

thereof, and may issue the necessary process to enforce the same.

Upon the expiration of said time for filing objections, the findings of said Commission shall become final and binding upon the parties, their heirs, successors and assigns, and shall not thereafter be questioned in any proceeding.

(e) Said Commissioners shall each be entitled to receive as compensation not exceeding Ten ($10.00) Dollars for every day employed by them in the performance of their duties. [Acts 1923, p. 4; Acts 1930, 41st Leg., 5th C.S., p. 236, ch. 75, § 1.]

Section 2 of Acts 1930, provides that the provisions of this article, articles 1201–1205, ante, and 1207–1220, post, shall continue in force for the completion of proceedings heretofore commenced or initiated thereunder.

Art. 1207. Statutes applicable.—The applicable provisions of the laws relating to eminent domain are made a part of this law, and shall apply to proceedings hereunder, and all parties shall proceed in accordance with and be governed by said articles, unless otherwise herein provided. The city shall not be required to execute the bond referred to in said laws. [Acts 1923, p. 4.]

Art. 1208. Errors.—The governing body, said commission and judge before whom condemnation proceedings are pending, shall take all steps and do all things proper to correct any error, invalidity or irregularity in any proceeding with reference thereto, and shall do so at the instance of any interested party. No error or omission in said proceedings shall invalidate the same, but any proceeding may be corrected, taken again, or adjourned, until such corrections are made or omissions supplied. [Id.]

Art. 1209. Assessments.—Whenever the governing body shall order the making of any improvement herein referred to, it may then or thereafter at any time provide by resolution that all or part of the costs thereof, as defined in the third article of this chapter, shall be assessed against said property abutting said proposed improvement, or in the vicinity thereof, and the owners thereof specially benefited thereby, together with reasonable attorney's fees and all costs incurred in the collection of said assessments, and shall have power to apportion the same among the owners of said property, and may designate the property proposed to be assessed, or the district within which property will be benefited and within which assessments may be made, provided no assessment shall be made against any property, or its owner, in excess of the special benefits thereto in the enhanced value thereof from said improvement. No assessments shall be made against any property exempt from execution, but the owner shall be personally liable and assessed therefor. [Id.]

Art. 1210. Lien.—Assessments shall constitute a prior lien upon the property to all others, except ad valorem taxes, and shall relate back and take effect as of the date of the resolution ordering the same. [Id.]

Art. 1211. Notice of assessment.—No assessment shall be made against owners of property benefited, or their property, until after a reasonable opportunity to be heard shall have been given them, lienholders, and others interested, before such governing body, or the commission hereafter referred to, preceded by a reasonable notice thereof, published three times prior to said hearing in some newspaper of general circulation in the city, the first publication to be not less than ten days prior to said hearing, and the names of owners, lienholders, and others interested need not be specifically set out in said notice, but the parcel or parcels of land proposed to be assessed shall be briefly described in said notice, either by lot and block, number, front feet, or by any other description reasonably identifying the same, or by reference to any plat, report or record filed in connection with said proceedings. The governing body or commission shall have power to give other and additional notice, but said published notice shall be sufficient. [Id.]

Art. 1212. Hearing.—At said hearing said owners, lienholders, and other interested parties shall have the right to contest in writing said assessments, the special benefits, irregularities or invalidities thereof, or any prerequisite thereto, and to produce testimony in support of said contests, and the governing body or said commission shall determine the amounts, if any, to be assessed. [Id.]

Art. 1213. Assessments levied.—The governing body shall make assessments by ordinance. Said assessments may be enforced by suit brought by the city for the benefit of any holder and owner of such assessments, or of the certificates issued thereon, or brought by such holder and owner; or by the sale of the property assessed in the same manner as near as possible as is provided for the sale of real estate for municipal taxes. Assessments may be made payable in not exceeding sixteen installments, the last maturing in not over fifteen years, and may bear interest at not over eight per cent per annum. [Acts 1923, p. 4; Acts 1927, 40th Leg., p. 334, ch. 227, § 1.]

Art. 1214. Assessment commission.—At the time of or after the passage by the governing body of the resolution ordering such assessments, it shall have power in its discretion to declare that said hearing to property owners and other interested parties shall be had before the commissioners then or thereafter appointed to make condemnations, or before their successors are appointed should a vacancy occur, and thereupon such commission shall cause to be given the notice or notices provided in the third preceding article, and it shall have all the powers conferred by this law upon such governing body, and shall do all things with reference to said assessments which said governing body is hereby empowered to do, except as herein expressly provided. If said hearing shall be before said commission, it shall report in writing its findings to the governing body, which shall examine said report, and, if found correct, approve the same, and shall by ordinance assess against the owners and their property found to be benefited by said improvements, the amounts found to be properly chargeable against them. [Acts 1923, p. 4.]

Art. 1215. Certificates.—The city may issue assignable certificates, payable to the city, or to the purchaser thereof, declaring the liability of owners and their property for the payment of assessments, and may fix the terms, time of payment, the conditions of default, and maturity thereof. [Id.]

Art. 1216. Suit on certificate.—The allegations of such recitals of such certificates in any suit brought for the enforcement thereof, shall be a sufficient allegation of all proceedings had by said governing body with reference to the making of said improvements and the assessment of the cost thereof, and of all prerequisites to the said assessment, and shall be deemed sufficient to permit proof of said proceedings and prerequisites without the necessity of alleging and setting forth the same in the pleadings, by caption, substantially or in full. [Id.]

Art. 1217. Reassessments.—No error in any proceeding hereunder, or in the description of property, or in the name of the owner, shall invalidate an assessment, which shall nevertheless be in effect as against the real and true owner and his property. Whenever the governing body is advised of such error it shall correct the same, and shall at the request of any interested party reassess any owner or property erroneously assessed, after lawful notice and hearing and in accordance with benefits as herein provided as to original assessments, and may fix the time and terms of payment of said sums so reassessed, and is-

sue assignable certificates evidencing the same as herein provided as to original assessments. The right to make said reassessments shall continue until the expiration of six years from the date of the ordinance making the original assessment. But if the same shall have been resisted or brought in question in any action at law, the time consumed in said action shall be excluded in computing said term of six years. In making such reassessments it shall not be necessary to do any act, or take any step, or again perform any prerequisite already legally done or performed with reference to the original assessment, but the governing body may in its discretion proceed without again taking steps already validly taken or performed provided no reassessment shall be made until after the notice and hearing and in accordance with benefits, as herein provided. [Id.]

Art. 1218. Deficiency assessments.—If after any assessment has been made hereunder, if by means of an increased award of compensation for property taken or damaged in condemnation proceedings hereunder, or on appeal from the award of said commission, or for any other reason, the amount assessed and apportioned between the property owners benefited shall be found insufficient to defray all the costs of the improvement as herein defined, the governing body may, in its discretion, assess the deficiency against owners of property benefited, and their property, and apportion same among them, after the hearing and notice herein provided and after complying with each provision hereof applicable to original assessments; or said deficiency assessments may be made after notice and hearing before said commission in the manner provided in the fourth preceding article and assignable certificates evidencing said assessment may be issued by the city. [Id.]

Art. 1219. Suit.—Any property owner against whom or whose property an assessment or reassessment has been made, may, within ten days thereafter bring suit to set aside or correct the same, or any proceeding with reference thereto on account of any error or invalidity therein, but thereafter such owner, his heirs, assigns, or successors shall be barred from such action or any defense of invalidity in such proceedings or assessment or reassessment, in any action in which the same may be brought into question. [Id.]

Art. 1220. Enforcement of law.—The governing body shall have power to pass any ordinance or resolution, or to adopt rules and regulations, or to take any steps proper to give full legal effect to every part of this chapter. No assessment or reassessment shall be affected or invalidated in any manner by any error, omission or invalidity in any proceeding of the city hereunder with reference to the making of any improvement herein provided for, or with reference to the taking or condemnation of any property therefor, or with reference to determining and paying damages for property taken or damaged, but regardless thereof, and regardless of the fact that at the date of said assessments said improvements may not have been completed, the said assessments shall be in all things valid and binding. [Id.]

Art. 1220a. Notices of assessments for street improvements.

"Street" defined

Sec. 1. That the term "street" as used herein, shall include any street, avenue, alley, highway, boulevard, drive, public place, square or any portion or portions thereof.

Filing notice of assessment

Sec. 2. That whenever the Governing Body of any city, town or village shall, by resolution, ordinance or other proceedings, order, direct or provide or determine it to be necessary that any street be improved in any manner, then if it is proposed that all or any part of the cost of such improvements be levied or assessed and made a lien on property abutting thereon, there shall be filed with the County Clerk of the county or counties in which such property is situated, a notice signed in the name of such city, town or village by its Clerk, Secretary or Mayor or other officer performing the duties of such. Such notice shall meet all requirements of this Act when it shows substantially that the Governing Body of such city, town or village has ordered, directed or otherwise provided or determined it to be necessary that such street be improved and shall give the name thereof with the two cross streets or other approximate lengthwise limits between which same is to be or has been improved, or shall otherwise identify or designate same and shall state that a portion of the cost of such improvement is to be or has been specially assessed as a lien upon property abutting thereon. It is specially provided that one notice may embrace and include any number of streets or improvements.

Notice designating property subject to lien

Sec. 3. If it is proposed that all or any part of the cost of improving any such street be assessed as a lien on any property other than that abutting thereon, then a notice so signed shall be filed with the Clerk of the county or counties in which such property affected is situated, and such notice in such cases shall designate the property proposed to be assessed or the district within which assessments have been or may be made or shall otherwise identify the property against which a lien is proposed to be assessed.

Requisites of notice; filing

Sec. 4. It shall not be necessary that any notice required by this Act give details or that it be sworn to or acknowledged, and same may be filed at any time and the County Clerk with whom any such notice is filed shall record same in the records of mortgages or deeds of trust and shall index same in the name of the city, town or village and in the name or other designation of the street or streets to the improvement of which the notice relates.

Time of taking effect of lien

Sec. 5. That in all instances coming within the purview of this Act the lien of any assessment or reassessment upon the property assessed or re-assessed shall take effect and be in force at and from the filing of the notice herein provided for and not before such filing and substantial compliance with the provisions of this Act shall be sufficient.

No retroactive effect

Sec. 6. That this Act shall not apply to or in any wise affect special assessments or re-assessments or liens fixed nor to any assessments, re-assessments or liens for any such improvements ordered, directed or provided for prior to the time this Act takes effect.

Other laws superseded as to time liens take effect

Sec. 7. That this Act shall supersede all other parts of laws with reference to the time that liens of any assessments or re-assessments shall take effect. [Acts 1930, 41st Leg., 5th C.S., p. 147, ch. 21.]

CHAPTER 18.—ARTIFICIAL LIGHTING SYSTEM

Art.
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1230. Statement.
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1234. Lien.
1235. Suit.
1236. Proceedings.
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Article 1221. May install.—Incorporated cities or towns of more than five thousand inhabitants under the preceding Federal census for the purpose of making local public street improvements by installing and maintaining special lighting systems in said cities or portions thereof, may proceed in accordance with the provisions of the next succeeding nineteen articles, independently of and without reference to any other applicable law or charter provisions, present or future, except as herein provided for, which said law or charter provision shall remain in force as alternative methods. The term "city" or "cities," as used herein, shall include all incorporated cities and towns acting hereunder. [Acts 2d C. S. 1923, p. 16.]

Art. 1222. Petition.—Subject to the terms hereof, whenever a petition is filed with the governing body setting forth that a certain street, streets, or portions thereof not less than one block, naming and describing the same, or certain districts composed of streets, highways, boulevards or alleys, should be specially illuminated, and that an additional system is necessary for that purpose, and stating that such illumination thereof will be a public improvement and will be conducive to the public welfare, and is signed by a majority of the owners of property abutting on said street, streets or portions thereof, and praying that the governing body of such city specially illuminate such street, streets or portion thereof, and construct, install, equip and maintain additional system of street lights for that purpose, the governing body shall proceed in the manner hereinafter set out. [Id.]

Art. 1223. Plans.—The petitioning property owners may provide in said petition plans and specifications together with the kind of poles and lights and other material necessary to properly install said special lighting system, or such part of same as they desire to specify, and the governing body in that instance may order the same or any part thereof used in the construction of said system. If the kind specified in said petition is not available, the governing body shall use material of like kind and quality to that specified in said petition. Said body may reject any or all of said plans and specifications and have same prepared as hereinafter provided for. [Id.]

Art. 1224. Resolution.—The governing body shall have power, by resolution, to order the making of the public improvements mentioned herein, or any of them, by a majority vote, without first being petitioned to do so by the abutting property owners as hereinbefore provided, and the passage of such resolution shall be conclusive of the public necessity and the benefits thereof, and no notice of such action by the governing body shall be requisite to its validity. Such resolution shall in general terms, set forth the nature and extent of the improvements or improvement to be made, the street, streets or portions thereof to be illuminated, the material or materials with which the improvements are to be constructed, and the method or methods under which the cost of such improvements are to be paid. Such resolution shall be passed whether the improvements are made with or without the petition of the abutting property owners. [Id.]

Art. 1225. Specifications.—Upon the passage of the resolution by the governing body as hereinbefore provided, it shall be the duty of the city engineer, or the official of the city whose duties most nearly correspond to that of city engineer, to forthwith prepare plans and specifications for the said improvement, which, when completed, shall be submitted to the governing body for its approval.

Art. 1226. Bids.—When the plans and specifications have been approved and adopted by the governing body, it shall be the duty of the city secretary, or other officer as may be designated by the governing body, to at once advertise for sealed bids for the construction of such improvements in accordance with the specifications. Such advertisement shall be inserted in a daily paper of general circulation in the city concerned, and shall state the time within which the bids may be received as prescribed by the governing body, which shall not be less than ten and not more than fifteen days from the insertion of said advertisement. Bids shall be filed with the city secretary, or such other officer as the governing body may designate, and shall be opened and read at a public meeting of the governing body. Such body shall have the right to accept such bids as it shall deem most advantageous to the abutting property owners concerned in the improvement, or may reject any and all bids. No bid shall be amended, changed or revised after being filed. [Id.]

Art. 1227. Contract.—When the bids for such improvements have been accepted by the governing body, the city shall enter into a contract with the contractor or contractors to whom the work has been let for the performance thereof, which contracts shall be executed in the name of the city by its chief executive and attested by the city secretary, or such other officer as may be designated by the governing body, with the corporate seal. [Id.]

Art. 1228. Assessments.—The city shall have power to assess the whole cost of installing and completing the improvements provided for herein, both for labor and material, against the owners of property abutting upon the street, streets or portions thereof, upon which said improvements are to be constructed, and who are specially benefited thereby, and shall have power to fix a lien against such property to secure the payment of the proportion of such costs assessed against the owners of such property. In no event shall costs be assessed against such owners or their property, or their personal liability therefor finally determined until after the hearing hereinafter mentioned, and after the adjustment of equities between such owners. The cost assessed against any property or the owner thereof, shall not exceed the amount of the special benefit in enhanced value which such property shall receive from such improvement. [Id.]

Art. 1229. Mode of assessment.—The portion of the costs of such improvements which may be assessed against any such property or its owners, shall be in proportion as the frontage of the property of each owner is to the whole frontage of the property on the street, streets or portions thereof abutting on the special lighting system, and such cost shall be apportioned in accordance with what is commonly known as the frontage or front foot rule; provided that if the application of this rule would, in the opinion of the governing body in particular cases be unjust or unequal, it shall be the duty of said body to assess and apportion said costs in such proportion as it may deem just and equitable, having in view the specific benefit in enhanced value to be received by each owner of such property, the equities of such owners and the adjustment of such apportionment, so as to produce a substantial equality of the benefits received by and the burdens imposed upon each owner. [Id.]

Art. 1230. Statement.—The contract or contracts for such improvements having been executed and approved by the governing body, the city engineer,

or the officer of the city whose duties most nearly correspond to that of city engineer, shall prepare a written statement which shall contain the names of such persons, firms, corporations or estates as may own property abutting on the section to be improved, the number of front feet owned by each, and describing the property owned by each, either by lot and block number, or otherwise so describing such property as may be sufficient to identify same; and such statement shall contain an estimate of the total cost of the improvement, the amount per front foot to be assessed against abutting property and its owners, and the total estimated amount to be assessed against each owner. Such statement shall be submitted to the governing body whose duty it shall be to examine same and correct any errors that may appear therein, but no error, omission or mistake in said statement shall in any manner invalidate any assessment made, or lien or claim of personal liability fixed thereunder. [Id.]

Art. 1231. Notice of hearing.—When the statement shall have been examined and approved by the governing body, it shall declare by resolution, and directing notice thereof to be given to the owners aforesaid by publication for teh consecutive days in a daily newspaper of general circulation in the city where the improvement is to be made; but if there be no daily newspaper in such place, then the governing body shall give such notice to such owners by registered mail at least ten days before the time set for the hearing as hereinafter provided. The notice shall state the time and place of the hearing and the street, streets or portions thereof to be improved, with a general description of such improvements and a statement of the amount per front foot proposed to be assessed against the property, and a notice to all such property owners and all persons interested to appear at such hearing. It shall not be necessary to include in such notice a description of any property or the name of the owner, but such notice shall nevertheless be binding and conclusive upon all owners of property, or persons interested in or having a lien or claim thereon. [Id.]

Art. 1232. Hearing.—On the day set out in the notice for the hearing, not less than ten days from the date of such notice, or at any time thereafter before the close of the hearing, any person, firm or corporation interested in any property which may be claimed to be subject to assessment for the purpose of paying the cost of the improvement, in whole or in part, shall be entitled to a hearing before the governing body as to all matters affecting said property, or the benefits thereto, or such improvements, or any claim of liability, or objection to the making of said improvements, or any invalidity or irregularity in any proceeding with reference to making said improvements, or any other objection thereto. Such person, firm, or corporation shall file their objections in writing, and thereafter the governing body shall hear and determine the same, and all persons interested shall have full opportunity to produce evidence and witnesses and appear in person or by attorney; and a full and fair hearing thereof shall be given by such governing body, which hearing may be adjourned from time to time without further notice. The governing body shall have the power to inquire into and determine all facts necessary to the adjudication of such objections and the ascertainment of the special benefits to such owners by reason of the contemplated improvements; and shall render such judgment or order in each case as may be just and proper. Any objection to the irregularity of the proceedings with reference to the making of such improvements as herein provided, or to the validity of any assessment or adjudication of personal liability against such property or the owners thereof, shall be deemed waived unless presented at the time and in the manner herein specified. [Id.]

Art. 1233. Order of assessments.—When the hearing above mentioned has concluded, the governing body shall, by ordinance, assess against the several owners of the property abutting on the street, streets or portions thereof, such proportionate part of the cost of improvements as said body shall have adjudged against the respective owners and their property. Said ordinance shall fix a lien upon such property and declare the respective owners thereof to be personally liable for the respective amounts to be assessed; and shall state the time and manner of payment of such assessment; and said governing body may order that the said assessments shall be payable in installments, and prescribe the amount, time and manner of payment of such installments, which, except as hereinafter provided, shall not exceed six, and the last payment shall not be deferred beyond five years from the completion of such improvement and its acceptance by the city. The said ordinance shall also prescribe the rate of interest to be charged upon deferred payments, not to exceed seven per cent per annum; and may provide for the maturity of all deferred payments and their collection upon default of any installment of principal or interest. [Id.]

Art. 1234. Lien.—Each property owner shall have the privilege of discharging the whole amount assessed against him, or any installment thereof, at any time before maturity, upon payment thereof with accrued interest. The fact that more than one parcel of land, the property of one owner or jointly owned by two or more persons, firms or corporations, have been assessed together in one assessment, shall not invalidate the same or any lien thereon, or any claim of personal liability thereunder. The cost of any such improvement assessed against any property or owner thereof, together with all costs and reasonable attorneys fees when incurred, shall constitute a personal claim against such property owner, and shall be secured by a lien on such property superior to all other liens, claims, or titles, except city, county and State taxes, and such personal liability may be enforced by suit in any court of competent jurisdiction. In any suit brought under this article, it shall be proper to join as defendants two or more property owners who are interested in any single improvement or any single contract for such improvement. The person or persons who own property at the date of any ordinance providing for the assessment thereof, shall be severally and personally liable for their respective portions of the said assessment. The lien of such improvements shall revert back and take effect as of the date of the original resolution ordering the improvement, and the passage of such resolution shall operate as notice of such lien to all persons. Any error or mistake in such ordinance in the name of the owner of the property assessed, shall not invalidate the lien or personal liability thereby created, but the same shall nevertheless exist against the real and true owner of such property as if correctly described. [Id.]

Art. 1235. Suit.—At any time within ten days after the hearing herein provided for has been concluded, any person or persons having an interest in any property which may be subject to assessment under this law, or otherwise having any financial interest in such improvement or improvements or in the manner in which the cost thereof is to be paid, who may desire to contest on any ground the validity of any proceeding that may have been had with reference to the making of such improvements or the validity in whole or in part of any assessment or lien or personal liability fixed by said proceedings, may institute suit for that purpose in any court of competent jurisdiction. Any person who shall fail to institute such suit in said period of ten days, or who shall fail to diligently prosecute such suit in good faith to final judgment, shall be forever barred from making any such contest or defense in any other action, and this estoppel shall bind their heirs, successors, administra-

tors and assigns. The city and the person or persons to whom the contract has been awarded shall be made defendants in such suit, and any other proper parties may be joined therein. [Id.]

Art. 1236. Proceedings.—There shall be attached to the plaintiff's petition an affidavit of the truth of the matters therein alleged, except such matters as are alleged on information and belief, that said suit is brought in good faith and not to injure or delay the city or the contractor or any owner of real estate abutting on the improvement. Unless the provisions of this article are complied with by the plaintiff or plaintiffs, such suit shall be dismissed on motion of any defendant and in that event plaintiff or plaintiffs shall be barred and estopped to the same extent as if suit had not been brought. In any case where a suit is brought as above provided, then the performance of the work may be suspended at the election of either the city or contractor until such suit shall be finally determined in the court of original jurisdiction or any appellate court to which the same may be taken by appeal or writ of error. Every appeal or writ of error shall be perfected within thirty days from the adjournment of the term of court of original jurisdiction at which final judgment was rendered in such suit; and no appeal or writ of error to review the judgment of said court may thereafter be taken or sued out by either party. Any such suit shall be entitled to precedence in the courts of this State, both of original and appellate jurisdiction, and shall be heard and determined as promptly as practicable. [Id.]

Art. 1237. Certificates.—The governing body may provide that for the cost, which is assessed against the abutting property and its owners, the contractor to whom the work may be let shall look only to such property owners and their property, and that the city shall be relieved of liability for such cost. The governing body may also authorize assignable certificates against abutting property or property owners. The recital in such certificates that the proceedings with reference to making such improvements have been regularly had in compliance with the terms of this law, and all prerequisites to the fixing of this lien and the claim of personal liability evidenced by such certificate, have been performed, shall be prima facie evidence of the facts so recited, and no other proof thereof shall be required, but in all courts the said proceedings and prerequisites shall, without further proof, be presumed to have been had or performed. Such certificates shall be executed by the chief executive of the city, and attested with the corporate seal by the city secretary or such other officer as may be designated by the governing body. [Id.]

Art. 1238. Public improvements.—The governing body, if it deems it to be more advantageous to the public, provided public funds are available therefor, may order by resolution the making of any local public improvement by installing a special lighting system as contemplated herein, and for such purpose shall prescribe the district composed of the street or streets, highways, boulevards or alleys, or any portion thereof, that are sought to be improved by the establishment and maintenance of such special lighting system. Specifications shall be prepared therefor under the direction of the governing body and bids shall be invited upon the same as provided herein for making such local improvements. Contracts shall be let as provided herein for making contracts in other cases. A hearing shall be accorded to all property owners owning property abutting upon the streets in such districts to be improved by the said lighting system, and the cost of the same shall be assessed against such property in the same manner as provided herein in other cases; a special lien shall be created against the abutting property and the owners thereof shall be personally liable as is provided herein in all other cases. The cost of making the said improvement shall be paid out of any available funds of the city which may be provided by said body. The amount of the cost of making such improvements so paid by the city to the contractor shall be reimbursed to the city by the property owners whose property is assessed in the manner provided for herein. All proceedings relative to making the assessments and issuing assignable certificates shall apply as far as practicable to the procedure to be followed in making the public improvements under the terms of this article. [Id.]

Art. 1239. General powers.—The governing body may provide additional rules and regulations governing hearings and the issuance of notices therefor as may be deemed advisable in order to afford a full hearing to all property owners concerning the assessments levied or to be levied against them on account of the special benefits received from the improvements so ordered. Such body may use such money as is at its disposal to assist in the financing of the public improvements herein provided for. [Id.]

Art. 1240. Control.—After the public improvements provided for in the preceding nineteen articles have been completed and the job accepted by the city, the same shall become the property of the city, and the city shall maintain the same at its own expense, as a part of its regular lighting system. [Id.]

CHAPTER 19.—ABOLITION OF CORPORATE EXISTENCE

Art.
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Article 1241. [1077] Authority.—Cities and towns incorporated under the general laws and cities and towns of ten thousand inhabitants or less chartered under special law, including those which may have heretofore accepted the provisions of Chapter 1 of this title, may abolish their corporate existence in the manner hereinafter provided. [Acts 1895, p. 166; G. L. vol. 10, p. 896.]

Art. 1242. [1078] Petition.—When one hundred of the property tax-payers, who are qualified voters of any such city or town, desire the abolishment of such corporation, they may petition the county judge to that effect, who shall thereupon order an election to be held in such city or town, as in the case of its incorporation. If a majority of the property taxpayers, who are qualified voters, of any such city or town is less than one hundred in number, then the county judge shall order an election as above provided upon the presentation to him of a petition signed by a majority of the tax payers of such city or town, who are qualified voters thereof. [Acts 1899, p. 245.]

Art. 1243. [1079] Requisites of abolition.—All persons who are legally qualified voters of the State and county in which such an election is ordered, and are resident property taxpayers in the city or town where such election is to be held, as shown by the last assessment roll of such city or town, shall be entitled to vote at such election. If a majority of such voters voting at such election shall vote to abolish such corporation, the county judge shall declare such corporation abolished, and enter an order to that effect upon the minutes of the commissioners court, and from the date of such order, said corporation shall cease to exist. [Acts 1895, p. 166; G. L. vol. 10, p. 896.]

Art. 1244. [1080] Receiver.—In all cases where any city or town having theretofore had a valid corporate existence, under the laws of this State, has abolished said corporate existence in the manner provided by law, and in all cases where any city or town having a valid corporate existence under such laws may hereafter abolish their corporate existence, any creditor of any such city or town may apply to the judge of the district court of the district in which such city or town may be situated, for the appointment of a receiver for said corporation. After having posted up in at least three public places in the county where such city or town is located, one of which shall be in said city or town, written notice stating the substance of the application, when and before whom the same will be heard, such judge in term time or vacation, may appoint a suitable person as such receiver for such corporation, and shall fix the amount of bond to be given by such receiver in at least double the probable amount of the indebtedness or value of the property of such town or city, conditioned for the faithful performance of his duties as such officer, and for the paying over and delivery of all money and property coming into his hands as such receiver, to the parties entitled to receive same, such bond to be approved by the judge making the appointment; and same, together with order of appointment, shall be filed with, and recorded in, the minutes of said court by the district clerk of the county where such city or town is situated. Receivers appointed under the provisions of this chapter shall receive such compensation as the court may allow. [Acts 1905, p. 325.]

Art. 1245. [1081] Duties of receiver.—A receiver appointed under the preceding article, after having given the required bond, and after having same duly filed and recorded, shall take charge of all the real and personal property, including moneys, minute books, ordinances, etc., except such property as pertains to the public free schools or devoted exclusively to public use, and shall return an inventory of all such property, money, books, etc., so received by him to the next succeeding term of the district court for the county in which such city or town is situated; and, for the purpose of securing such property, money, books, etc., he may, under the order of said court, or the judge thereof in vacation, bring suit against any person in possession of such property, books, or moneys, or indebted to said city or town, the same as such city or town could were it still incorporated. [Id.]

Art. 1246. [1082] Claim.—Any person, firm or corporation, having any claim against such city or town, shall within six months from the appointment of said receiver, present to him a statement of the amount of such claim, duly verified, which, if he finds correct, he will mark allowed, and file same in the district court; and at its next regular term, if no protest be filed, said claim shall be approved by said court and shall thereafter be considered a valid debt against such city or town. [Id.]

Art. 1247. [1082] Notice of claim.—No such claim or account against such city shall be allowed or approved by the receiver without notice of the presentment thereof first having been given, by publication in some newspaper, if any, in the town or city where same is filed or presented, for four consecutive weeks, and in case there be no newspaper published in such town or city, then by posting notice of the presentment of such claim at the courthouse door of the county in which said town or city is situated, for four weeks prior to the allowance of said claim or account. Such notice, whether published or posted, shall state the name and residence of the creditor, the amount and date of said claim and account, and for what purpose incurred. [Id.]

Art. 1248. [1082] Adjustment.—If such receiver finds any claim so presented to him unjust, in whole or in part, he shall endorse his finding thereon, and return same to the claimant, who may file same with the district court, if he desires to accept the findings of the receiver, and such claim for the amount allowed by the receiver may be acted upon by said court as other claims. [Id.]

Art. 1249. [1082] Contest, suit.—In case any protest by any taxpayer of said city or town be filed against any claim in said court, together with a bond to be approved by said court, that he will pay all costs of suit in case said claimant established his claim in full in any State court in which he may sue thereon, then such district court shall refuse to approve such claim until it shall have been established by judgment, recovered thereon in a State court of competent jurisdiction. Such suit to establish such claim or any claim disallowed in part or in whole, may be brought against the receiver, who shall make all legal defense against such claim. The court trying said claim is hereby authorized to hear and consider any material defense that may be or may have been urged against said claim, except that of limitation, though such claim, prior thereto, may have been reduced to judgment, but such judgment shall be considered, upon such trial, as prima facie evidence of the justness of such a claim. [Id.]

Art. 1250. [1082] Judgment and costs.—Any judgment recovered against such receiver upon a claim against such city or town shall be allowed by the receiver and approved by the district court wherein the receivership is pending. In all suits upon claims wherein protest and bond were filed in the district court, the claimant shall be liable for the costs of the suit, unless he recovers judgment for the full amount for which he asked the approval of the said district court. In suits upon claims rejected in part by the receiver, the claimant shall be liable for the costs of the suit, unless he establishes his claim for a greater amount than was allowed by the receiver. [Id.]

Art. 1251. [1083] Limitation.—Limitations shall not run, begin to run or be plead against any claim against such city or town at any time prior to six months after the appointment of such receiver. [Id.]

Art. 1252. [1084] Certain dissolutions.—No receiver shall be appointed for any such city or town whose corporate existence was dissolved prior to July 17, 1905, where the application therefor was not filed in said court within two years from and after July 10, 1905. [Id.]

Art. 1253. [1085] Suits barred.—No suit shall be brought against such receiver upon any claim, against the allowance of which a protest has been filed, as herein provided for, at any time after six months from the date of filing such protest, nor after the expiration of six months from the date of the disallowance of any such claim in whole or in part, where the claim has not been filed in the district court, after such disallowance as hereinbefore provided. [Id.]

Art. 1254. [1086] Payment of claims.—The district court of the county in which such town or city is situated, and in which such receivership is pending, shall provide for the payment of all claims legally established against such city or town, and determine the

priority of any claims and order the sale of all property in the hands of the receiver subject to sale for such purpose, and direct such receiver to pay such claims. If the money and proceeds of property are insufficient to pay such indebtedness, then said court, at the request of any creditor, at the first regular term of said court in each year, shall levy a tax upon all the property and real and personal estate situated within the limits of said city or town, as previously incorporated, on the first day of the preceding January, not exempt from taxation under the Constitution and laws of this State, sufficient to discharge the indebtedness, but not to exceed the rate allowed by existing law for such purposes in incorporated cities and towns. [Id.]

Art. 1255. [1087] Collection of tax, etc.—Whenever the district court, having jurisdiction in the premises, has or may order the assessment and collection of taxes for the payment of the indebtedness of such town, or city, the tax assessor for the county in which such town or city is situated, shall assess the taxes so ordered in like manner as taxes in rural school districts. The county tax collector for such county shall collect such taxes in like manner as taxes in rural school districts. This article shall not repeal any part of Articles 1245 to 1250 inclusive. For the services rendered under this article, the assessor and collector shall receive the same compensation as for like services for the assessment and collection of taxes in rural school districts; and said collector shall pay such taxes when collected, to the receiver of such city or town. [Id.; Acts 1909, p. 68.]

Art. 1256. [1088] Delinquent taxes.—Suits may be brought by the receivers against delinquents, and a lien shall exist upon all property for such taxes, the same as though the corporate existence of such city or town had never been abolished, and such levy and assessment had been made by its council and assessor. [Acts 1905, p. 327.]

Art. 1257. [1090–1–2] Prior claims.—The compensation of the receiver, together with all court costs and expenses, shall constitute a prior claim against such city or town, and shall be first paid out of any money on hand or collected. In case of taxation the money collected each year shall be paid pro rata upon all claims according to their priorities until all claims established and all costs and expenses are fully paid. On final settlement of such receivership, any money or property left on hand shall be turned over by the receiver to the trustees or other officers in charge of the public free school the district of which is wholly situated within the boundaries of such city or town for the benefit of such school, but if there be no public free school the district of which is within the boundaries of said city or town, then the money or property left on hand shall be turned over to the county in which said city or town is situated, the money to be placed in the general fund of such county, and property to be used for the benefit of such county. [Acts 1905, p. 327; Acts 1933, 43rd Leg., p. 768, ch. 227.]

Section 2 of Acts 1933, repeals all conflicting laws and parts of laws.

Art. 1258. [1093] Public schools.—Where the public free schools of such city or town are under the management of trustees appointed or elected by the voters of the city or town, or by the city or town council, at the time its incorporation is abolished under the provisions of this chapter, such trustees shall have the management of said schools for the remainder of the term for which they were appointed or elected, subject to the supervision of the commissioners court, unless such city or town shall sooner become incorporated for school purposes only. [Acts 1895, p. 166.]

Art. 1259. [1094] School taxes.—All taxes for municipal or school purposes which shall have been levied prior to the date of the abolishment of such corporation, and which shall not have been paid, shall be collected by the receiver, together with such penalties and interest as may be due; but the portion of such taxes levied for the purpose of maintaining the public free schools of said city or town shall be paid over by said receiver to the trustees of the public free schools of said city or town and applied by them for the purpose for which they were levied. [Acts 1895, p. 166; Acts 1933, 43rd Leg., p. 768, ch. 227.]

Section 2 of Acts 1933, repeals all conflicting laws and parts of laws.

Art. 1260. [1095] Public buildings.—When any corporation is abolished under the provisions of this chapter, and shall at the time of any such abolishment own any public buildings, public parks, public works or other property, and the same shall not have been sold or disposed of as provided in this chapter, the same shall be managed and controlled by the commissioners court of such county for the purpose to which same were originally used and intended; and, for this purpose, the commissioners court shall have and exercise, with reference thereto, the powers originally conferred by charter upon the mayor and aldermen of such city. [Acts 1895, p. 166.]

Art. 1261. [1096] [615] [540] Abolition of towns.—When twenty-five of the qualified voters of any incorporated town or village shall desire the abolishment of such corporation they may petition the county judge to that effect, who shall thereupon order an election to be held in such town or village, as in the case of its incorporation; and, if there be a majority of the voters of said corporation, voting at such election in favor of abolishing such corporation, the county judge shall declare the corporation abolished, and enter an order to that effect upon the minutes of the commissioners court. From and after the date of such order, the said corporation shall cease to exist. Nothing in this chapter shall be construed to repeal or otherwise affect any laws now upon the statutes of this State providing for the incorporation of towns and villages for school purposes; said towns and villages having not less than two hundred inhabitants. [Acts 1897, p. 194.]

Art. 1262. When corporation ceases to function.—When any corporation is abolished, or if any de facto corporation has been or shall be declared void by any court of competent jurisdiction, or if the same shall cease to operate and exercise the functions of such corporation or de facto corporation, when such corporation or de facto corporation has indebtedness outstanding, then the officers of such corporation, in office at the time of such dissolution, or at the time such corporation ceases to operate and exercise the functions of such corporation, shall take charge of the property of the corporation and sell and dispose of same, and shall settle the debts due by the corporation, and for said purpose shall have power to levy and collect a tax from the inhabitants of said city, town or village in the same manner as the said corporation. In the event of their failure or refusal to do so, and upon the petition of any number of the citizen taxpayers of such corporation or of the holders of the evidences of indebtedness of such corporation or de facto corporation, to the proper court within this State having jurisdiction in the county in which such dissolved or de facto corporation shall have been situated, the judge of said court shall appoint three trustees to take charge of such property and dispose of same and settle the debts of such corporation or de facto corporation, and for said purpose the said trustees so appointed shall be vested with all the powers herein given to the officers of such corporation. [Acts 1923, p. 309.]

Art. 1263. Action for debt.—The holder of any indebtedness against any municipal corporation which has or may be dissolved in any way provided in the

preceding article, including dissolution of a de facto corporation by a court of competent jurisdiction, may maintain a suit in the proper court within this State having jurisdiction in the county in which such dissolved or de facto corporation shall have been situated, to establish said indebtedness against said municipal corporation, and service may be had on such dissolved corporation by serving the citation upon any person who was the mayor, secretary or treasurer of said corporation or pretended to act as such, at the time of its dissolution, and judgment may be rendered in such suit in favor of the holder of such indebtedness against such municipal corporation as fully as if it had not been dissolved or its organization declared void. The status of such city, town or village shall be and remain the same in so far as it affects the holders of its indebtedness, until such indebtedness has been paid. [Id.]

CHAPTER 20.—MISCELLANEOUS PROVISIONS

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Article 1264. Current expenses.—Any incorporated city or town in this State, whether incorporated under the general laws of this State, or incorporated by special charter adopted in the manner provided by law, and having a population of 161,000 or more according to the preceding Federal census, may, through its governing body, provide for the payment of its current expenses for any current fiscal year, or for any portion of such fiscal year, by the issuance of warrants drawn against the current revenues of said city or town for such fiscal year, in the manner following:

1. Such warrants shall be dated and numbered consecutively as they are issued, and shall become a lien upon the revenues of said city or town for such fiscal year, available for the payment thereof, and shall be paid consecutively according to their respective dates and numbers as funds for the payment thereof become available.

2. If no funds are available to pay such warrants at the time of their issuance, the governing body may provide for the payment of interest upon such warrants, or may provide for the payment of a discount thereon. Such interest or discount shall never exceed an amount equal to six per cent per annum upon the face of such warrants for the period of time intervening between the date of their issuance and the time of their payment.

3. In no event shall the governing body provide for the issuance of warrants upon which interest or discount is to be paid, in excess of eighty per cent of the estimated revenues of said city or town for such fiscal year, after the deduction of all interest upon the bonded indebtedness of such city or town to be paid out of the revenues for such fiscal year, and such sums as may be required to be paid into any sinking fund or into any special fund or any special trust fund of said city or town out of its revenues for such fiscal year. [Acts 1st C. S. 1921, p. 25.]

Art. 1265. Extension of limits.—Any city having a population of 100,000 and under 150,000 as shown by the preceding Federal census, shall have the power and authority to amend its charter so as to extend its boundary limits by annexing additional territory adjacent and contiguous to such city, where the territory so annexed does not include any incorporated city or town having more than five thousand inhabitants according to the preceding Federal census. Such extension shall be effected in the manner following:

1. The governing body of such city may, upon its own motion, and shall upon the petition of at least ten per cent of the qualified voters of said city as shown by the preceding general election, submit such proposed amendment to a vote of the qualified voters of such city, which election shall be held as provided by chapter 13 of this title.[1]

[1] Article 1165 et seq.

2. If such amendment is adopted by a majority of those voting at such election, and such annexed territory shall include any incorporated city or town of five thousand inhabitants or less, then, from and after the adoption of such amendment, the incorporation of such city or town of five thousand inhabitants or less shall be abolished and shall cease to exist, and all record books, public property, public buildings, money on hand, credit accounts and other assets of the annexed incorporated city or town shall become the property of said larger city and shall be turned over to the officers thereof, and by such annexation, the offices existing in the smaller municipality shall be abolished and the persons holding such offices shall not be entitled to further remuneration or compensation; and all legal outstanding liabilities of such smaller city shall be assumed by the enlarged city.

3. Whenever such annexed city or town shall have on hand any bond funds for public improvement and not already appropriated or contracted for, such money shall be kept in a separate special fund and de-

voted to public improvements in the territory for which such bonds were voted, and shall not be diverted or used for any other purpose.

4. After such annexation, all claims, fines, debts and taxes due or payable to the annexed city or town shall thereupon become due and payable to said larger city and shall be collected by it. If taxes for the current year shall have been duly assessed prior to said annexation, then the amount so assessed shall remain as the amounts due and payable from the inhabitants of such annexed city or town for such current year.

5. Providing however that nothing in this Article shall be held or construed to repeal or nullify any charter provision of any city of over 100,000 and under 150,000 inhabitants, according to the preceding Federal census, operating under Article 11, Section 5 of the Constitution providing for the annexation of additional territory by ordinance but shall be construed as an additional power and cumulative of the said charter provisions, and all such charter provisions in effect at the time of the original passage of this Article are hereby ratified and confirmed and declared to be in full force and effect. [Acts 1st C.S. 1921, p. 153; Acts 1929, 41st Leg., 2nd C.S., p. 131, ch. 63, § 1.]

Art. 1266. Discontinuing territory.—Whenever there exists within the corporate limits of any city in this State of 150,000 or more population according to the preceding Federal census located in a county having a population according to such census in excess of 205,000, whether such city was organized by special law, home rule charter, or general laws of this State, territory to the extent of at least three acres contiguous, unimproved and adjoining the lines of any such city, the governing body of any such city may, by ordinance duly passed, discontinue said territory as a part of any such city. When said ordinance has been duly passed, the governing body shall cause to be entered an order to that effect on the minutes or records of such city; and from and after the entry of such order, said territory shall cease to be a part of such city. [Acts 3rd C. S. 1923, p. 166.]

Art. 1267. Oil and mineral lands.—Cities and towns chartered or organized under the general laws of Texas, or by special Act or charter, which may own oil or mineral lands, shall have the power and right to lease such oil or mineral lands for the benefit of such town or city, but shall not lease for such purposes any street or alley or public square in said town or city, or any land therein dedicated by any person to public uses in such town or city; and no well shall be drilled within the thickly settled portion of any city or town, nor within two hundred feet of any private residence. [Acts 1919, p. 183.]

Art. 1268. Sale or lease of franchise.—Any individual, association or corporation now or hereafter organized under the laws of this State, including any municipal corporation of this State, engaged in manufacturing, producing, supplying or selling electricity, natural or artificial gas, steam, or water, or owning or operating any street railway within any incorporated city, town or village within this State, where the rates charged for such service are subject to regulation under authority of the laws of this State, may, by a majority vote of the qualified voters thereof having been first obtained at an election held for that purpose, lease, sell or otherwise dispose of its entire plant or business or any part thereof, to any other individual, association or corporation which, at the time of said sale, lease or other disposition of said plant or business or any part thereof, is doing, or has authority to do, a like business in said incorporated city, town or village. Nothing herein shall authorize any corporation to engage in any kind of business not authorized by its charter. [Acts 1915, p. 131.]

Art. 1269. [Repealed by Acts 1929, 41st Leg., p. 667, ch. 299, § 1.]

Art. 1269a. Municipal Bands.—That the word "band" as used in this Act shall mean a band composed of such musical instruments as are recognized in the standard instrumentation established for the use of United States Army Bands. [Acts 1925, 39th Leg., ch. 22, p. 82, § 1.]

Art. 1269b. Same subject—establishment and maintenance.—That any incorporated city or town in this State is authorized to establish and maintain a band in such city or town, and to appropriate such part of the revenues of such city or town for the maintenance and operation of such band as the governing body of such city or town may determine. It is provided, however, that the total amount of such appropriation for any one year shall not exceed three mills for each one dollar of taxable value of property within such city or town. [Acts 1925, 39th Leg., ch. 22, p. 82, § 2.]

Art. 1269c. Same subject—election.—That it shall be the duty of the governing body of any city or town within this State, upon a written petition signed by a number of property tax paying voters in such city or town equal to at least ten per cent of the total number of votes cast at the last regular municipal election, to submit to the qualified property tax paying voters within such city or town, at an election for that purpose, the question of whether or not a band shall be established and maintained by such city or town. Such elections shall be held as nearly as possible in accordance with the law in reference to regular elections in said city or town, but said governing body is hereby empowered by resolution to order such elections and prescribe the form of ballot for use therein and the time and manner of holding the same. Such governing body shall canvass and determine the result of such elections in the manner provided by law for canvassing and returning the results of general elections held therein, and the result of the election shall be entered upon the minutes of said governing body. If the majority of the voters voting upon said question at such election shall vote to establish and maintain a band, the governing body shall thereupon proceed to establish, and thereafter maintain, such band. [Acts 1925, 39th Leg., ch. 22, p. 82, § 3.]

Art. 1269d. Same subject—subsequent elections.—That the governing body of any city or town shall upon similar petition as provided in Section 3 of Chapter 22 of the General Laws of the 39th Legislature, Regular Session, 1925, cause subsequent elections to be held for the purpose of determining whether or not a band shall be established and maintained by a city or town; or where any city or town has been previously authorized to establish and maintain a band, at an election held for that purpose, whether or not the establishment and maintenance of said band by said city or town shall be abrogated. If at an election held to abrogate the establishment and maintenance of a band by a city or town, a majority of the voters voting at such an election shall vote in favor of the proposition to abrogate the establishment and maintenance of a band, the governing body of said city or town shall thereupon discontinue said band and the maintenance thereof. Said elections shall be held and conducted in the same manner as provided in Section 3 of Chapter 22 of the General Laws of the 39th Legislature, Regular Session, 1925, but no two of such elections shall be held within the same city or town within a period of less than two (2) years. [Acts 1925, 39th Leg., p. 82, ch. 22, § 4; Acts 1933, 43rd Leg., p. 185, ch. 86.]

Art. 1269e. Same subject—ordinances.—When it shall be determined to establish and maintain a band in any city or town, the governing body thereof shall have full power to pass all ordinances and resolutions to enable such city or town to maintain such band, and in addition thereto such governing body shall elect a non-partisan citizen commission of not more than five

nor less than three members whose duty it shall be to negotiate contracts and formulate rules and regulations and do all things necessary or proper to establish, control and maintain said band. [Acts 1925, 39th Leg., ch. 22, p. 83, § 5.]

Art. 1269f. Same subject—charters affected.—That this Act shall not modify or in any manner affect any special charter which has been heretofore granted by the Legislature, nor any charter heretofore adopted by the voters of any city or town. [Acts 1925, 39th Leg., ch. 22, p. 83, § 6.]

Art. 1269g. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 209, ch. 83, § 4a.]

The article repealed was Acts 1929, 41st Leg., p. 614, ch. 281. See article 1269h, post, also, article 1107, ante.

Art. 1269h. Airports, maintenance and operation.

Acquisition; sale or lease

Section 1. A—That the governing body of any incorporated city in this State may receive through gift or dedication, and is hereby empowered to acquire, by purchase without condemnation or by purchase through condemnation proceedings, and thereafter maintain and operate as an airport, or lease, or sell, to the Federal Government, tracts of land either within or without the corporate limits of such city and within the county in which such city is situated, and the Commissioners' Court of any county may likewise acquire, maintain and operate for like purpose tracts of land within the limits of the county.

B—That the governing body of any incorporated city in this State may receive through gift or dedication, and is hereby empowered to acquire by purchase without condemnation, and thereafter maintain and operate as an airport, or lease, or sell to the Federal Government, tracts of land without the county in which such city is situated, provided said tracts are not within five (5) miles of another incorporated city that has a population of more than fifteen hundred (1500) people, according to the last preceding Federal Census.

C—That the governing body of any incorporated city in this State may, and is hereby empowered, to acquire through condemnation proceedings, tracts of land located without the county in which said city is located, provided said tracts of land are within six (6) miles of the county boundary of the county in which said city is located, and are not within five (5) miles of another incorporated city having a population in excess of fifteen hundred (1500) people, according to the last preceding Federal Census; and that said city may thereafter maintain and operate as an airport, or lease, or sell, said tracts to the Federal Government; provided, however, that the grant herein made to acquire land through condemnation proceedings, without the county in which said city is located, shall expire on December 31, 1942, but that tracts of land acquired prior to that date, and under the authority of this Act, may continue to be operated, leased, or sold, as provided in this Act.

D—In addition to the power herein granted the Commissioners Courts of the several counties of this State are hereby authorized to lease any airport that has been or may be acquired by the county, as herein provided, to any incorporated city or municipality within such county, or to the Federal Government, or to any other person, firm or corporation for the purpose of maintaining and operating an airport; and providing further that any incorporated city having acquired land for an airport, or an airport, under the authority of this Act shall have the right to lease said land or airport to the county in which such incorporated city is located. [As amended Acts 1947, 50th Leg., p. 473, ch. 273, § 1.]

E—In addition to the power which it may now have, the Commissioners Court of any county, or the governing body of any incorporated city in this State, shall have the power to sell, convey or lease all or part of any airport or property connected therewith, heretofore established or that may be hereafter established; also any land which has been or may be acquired under the provisions of this Act, to the United States of America for any purpose necessary for National Defense, or for air mail purposes or any other public purpose; or to the State of Texas or any branch of the State Government which may be authorized to own or operate airports, and to any person, firm or corporation. The Commissioners Court and governing body of any incorporated city shall promulgate rules and regulations for the use of any such airports. [As amended Acts 1941, 47th Leg., p. 65, ch. 51, § 1; Acts 1941, 47th Leg., p. 169, ch. 142, § 1; Acts 1947, 50th Leg., p. 473, ch. 273, § 1.]

Bond issues and tax

Sec. 2. (a) For the purpose of condemning or purchasing, either or both, lands to be used and maintained as provided in Section 1 hereof, and improving and equipping the same for such use, the governing body of any city or the Commissioners Court of any county, falling within the terms of such Section, may issue negotiable bonds of the city or of the county, as the case may be, and levy taxes to provide for the interest and sinking funds of any such bonds so issued, the authority hereby given for the issuance of such bonds and levy and collection of such taxes to be exercised in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of 1925.[1]

(b) In addition to the powers herein granted, the Commissioners Courts of counties having a population of not less than fifteen thousand (15,000) and not more than fifteen thousand, two hundred and fifty (15,250), according to the last preceding Federal Census, are hereby authorized to issue time warrants for the purposes herein stated, but the Commissioners Court of any such county proposing to issue such warrants shall comply with the provisions of Chapter 163, Acts of the Forty-second Legislature,[2] with reference to notice to issue such warrants and with reference to the levy and collection of taxes in payment thereof, and the right to referendum election therein shall apply. [As amended, Acts 1941, 47th Leg., p. 1345, ch. 609, § 1.]

1 Article 701 et seq.
2 Article 2368a.

Management by city or Commissioners' Court; nonliability for injuries

Sec. 3. Any Air Port acquired under and by virtue of the terms of this Act shall be under the management and control of the governing body of the city or the Commissioners' Court of the county acquiring the same, which is hereby expressly authorized and empowered to improve, maintain and conduct the same as an Air Port, and for that purpose to make and provide therein all necessary or fit improvements and facilities and to fix such reasonable charges for the use thereof as such governing body or Commissioners' Court shall deem fit, and to make rules and regulations governing the use thereof. All proceeds from such charges shall be devoted exclusively to the maintenance, up-keep, improvement and operation of such Air Port and the facilities, structures, and improvements therein, and no city or county shall be liable for injuries to persons resulting from or caused by any defective, unsound or unsafe condition of any such Air Port, or any part thereof, or thing of any character therein or resulting from or caused by any negligence, want of skill, or lack of care on the part of any governing Board or Commissioners' Court, officer, agent, servant or employee or other person with reference to the construction, improvement, management, conduct, or maintenance of any such Air Port or any structure, improvement, or thing of any character whatever, located therein or connected therewith.

Special tax for maintenance or operation

Sec. 4. That in addition to and exclusive of any taxes which may be levied for the interest and sinking fund of any bonds issued under the authority of this Act, the governing body of any city or the Commissioners' Court of any county, falling within the terms hereof, may and is hereby empowered to levy and collect a special tax not to exceed for any one year five cents on each One Hundred Dollars for the purpose of improving, operating, maintaining and conducting any Air Port which such city or county may acquire under the provision of this Act, and to provide all suitable structures, and facilities therein. Provided that nothing in this Act shall be construed as authorizing any city or county to exceed the limits of indebtedness placed upon it under the Constitution. [Acts 1929, 41st Leg., 1st C.S., p. 209, ch. 83.]

Section 4a of Act of 1941, 41st Leg., 1st C.S., p. 209, ch. 83, repeals all conflicting laws and parts of laws.

Section 2 of the Amendatory Act of 1941, p. 1345, ch. 609, provided that the Act should not repeal any law already in existence but that any such existing law should remain in full force and effect.

Section 2 of the amendatory Act of 1941, p. 196, ch. 142, provided that partial invalidity should not affect the remaining portions.

Provision in section of this article exempting cities from liability for injuries to persons caused by negligence of their operating agents is unconstitutional, but invalidity of this provision does not render entire act invalid. Christopher v. City of El Paso, Civ.App., 98 S.W.2d 394, error dismissed.

Art. 1269h—1. Validating bonds issued to acquire lands for airports by cities and counties.— In instances wherein elections have been held or called prior to the effective date of this Act bonds otherwise issued in accordance with law and for purposes permitted under said Chapter 83, Acts of the First Called Session of the Forty-first Legislature,[1] are hereby validated, notwithstanding the fact that the proceeds from the sale of said bonds either have been used or may be used to purchase lands for airport purposes, which together with lands already owned by any such city for airport purposes will exceed six hundred and forty (640) acres; provided, however, that this Section shall not apply to any bonds the validity of which has been attacked in any litigation pending at the time this Act becomes effective. [Acts 1941, 47th Leg., p. 79, ch. 64, § 1.]

1 Article 1269h.

Art. 1269i. Mortgage of airports for improvements.

Cities to which applicable

Sec. 1. All cities having a population of more than One Hundred and Sixty Thousand (160,000) inhabitants according to the last preceding federal census shall have power to mortgage and encumber their airports and everything pertaining thereto acquired, or to be acquired, to secure the payment of funds to purchase the same or to build, improve, enlarge, extend, repair or construct any kind or character of permanent improvements, including buildings, repair shops and other structures, and, as additional security therefor, by the terms of such mortgage or encumbrance, may grant to the purchaser under sale or foreclosure thereunder a franchise to operate such airport and the improvements situated thereon for a term of not over thirty (30) years after such purchase, subject to all laws regulating the same then in force. No such obligation shall ever be a debt of such city, but solely a charge upon the properties so mortgaged or encumbered, and shall never be reckoned in determining the power of such city to issue any bonds for any purpose authorized by law.

Pledge of income

Sec. 2. All cities having a population of more than One Hundred and Sixty Thousand (160,000) inhabitants according to the last preceding federal census shall have power to pledge the income from their airports and everything pertaining thereto acquired, or to be acquired, to secure the payment of funds to purchase the same or to build, improve, enlarge, extend, repair or construct any kind or character of permanent improvements including buildings, repair shops and other structures, and, as additional security therefor, by the terms of such pledge may grant to the purchaser under sale or foreclosure thereunder a franchise to operate such airport and the improvements situated thereon for a term of not over thirty (30) years after such purchase, subject to all laws regulating the same then in force. No such obligation shall ever be a debt of such city, but solely a charge upon the properties so mortgaged or encumbered, and shall never be reckoned in determining the power of any such city to issue any bonds for any purpose authorized by law.

Notes or warrants issued without referendum

Sec. 3. Such cities shall have the power to issue notes or warrants in any sum not to exceed the sum of One Hundred Thousand Dollars ($100,000.00) for such purposes without submitting such proposition to a vote of the qualified taxpaying voters. This law shall take precedence over all conflicting city charter provisions.

Repeals

Sec. 4. All laws and parts of laws in conflict herewith are hereby expressly repealed to the extent in conflict herewith.

Partial invalidity

Sec. 5. If any section, portion, clause, or part of this Act be invalid or unconstitutional, the same shall not affect any remaining part or parts of this Act and it is expressly hereby declared that the Legislature would have passed such remaining parts of this Act with such invalid or unconstitutional section, portion, clause or part omitted. [Acts 1934, 43rd Leg., 2nd C.S., p. 72, ch. 24.]

Art. 1269j. Additional powers of certain cities.

Acquisition; bonds; rates; pledges; definition

Section 1. In addition to the powers which it may now have, any City having a population of more than forty thousand (40,000) inhabitants, according to the last preceding Federal Census, shall have power (a) to own, maintain and operate an airport, either within or without, or partially within and partially without, the corporate limits of such city; (b) to construct, acquire by gift, purchase, lease or the exercise of the right of eminent domain, improve, enlarge, extend or repair any airport, and to acquire by gift, purchase, lease or the exercise of the right of eminent domain, lands or rights in land in fee simple in connection therewith; (c) to borrow money and issue its bonds or warrants to finance in whole or in part the cost of the acquisition, construction, improvement, enlargement, extension or repair of any airport; (d) to prescribe and collect rates, fees, rents, tolls or other charges for the service and facilities afforded by such airport; and (e) to pledge to the punctual payment of said warrants and interest thereon all or any part of the income, rents, revenues, tolls or other receipts derived from the operation of such airport, in addition to the taxes which shall be levied annually, for the payment of the principal and interest on such warrants. An airport within the meaning of this Act shall include all lands and buildings or other improvements necessary or convenient in the establishment and operation of an airport, and shall include such lands and improvements as are necessary to assemble or manufacture aircraft for military or naval uses, or for any other governmental purpose, and to provide housing and office space for employees necessary or incidental to such purposes. [As amended Acts 1941, 47th Leg., p. 67, ch. 54, § 1.]

Form and contents of warrants

Sec. 2. Warrants may be authorized to be issued under this Act by ordinance which may be adopted at the same meeting at which it is introduced by a majority of all the members of the governing body of the city then in office and shall take effect immediately upon adoption. Such warrants shall bear interest at such rate or rates not exceeding five (5) per centum per annum, payable semi-annually, may be made payable to bearer, may be in one or more series, may bear such date or dates, may be in such denomination or denominations, may be payable in such medium of payment, at such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such ordinance or subsequent ordinance may provide. Said warrants shall mature annually in such amounts so that the aggregate amount of principal and interest falling due in each year shall be substantially equal over a period not to exceed thirty (30) years from their date. Said warrants shall be sold at public or private sale at not less than par. Said warrants shall be negotiable instruments within the meaning of the Negotiable Instruments Law[1] of this State. Said warrants bearing the signature of the officers in office at the date of the signing thereof shall be valid and binding obligations notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers of the city issuing the same.

1 Article 5932 et seq.

Limitation on the amount of warrants which may be issued

Sec. 3. No city shall issue any warrants pursuant to this Act in an aggregate amount in excess of One Hundred and Twenty-five Thousand Dollars ($125,000).

No election necessary

Sec. 4. No election shall be necessary to authorize the issuance of warrants pursuant to this Act, but the city shall comply with the provisions of Chapter 163, Acts of the Forty-second Legislature,[1] with reference to bidders and notice of intention to issue such warrants and the right to referendum therein specified shall apply.

1 Article 2368a.

Tax levy

Sec. 5. Whenever any city shall issue warrants pursuant to this Act, a tax sufficient to pay when due the principal and interest on such warrants shall be levied annually and assessed, collected and paid in like manner with other taxes of such city, provided, however, that if such warrants are payable from taxes and additionally secured by a pledge of the income, rents, revenues, tolls, and other receipts derived from the operation of the airport for which such warrants were issued, the tax to be levied and assessed by such city may be reduced by the amount of money on hand pledged to the payment of the principal and interest of such warrants.

Charges for use of airport

Sec. 6. The governing body of a city issuing warrants pursuant to this Act shall prescribe by ordinance and collect reasonable rates, fees, tolls, rentals or other charges for the service and facilities furnished by the airport for which such warrants have been issued. The rates, fees, tolls, rentals or other charges so prescribed shall be such as will produce revenues sufficient (a) to pay when due all warrants and interest thereon, for the payment of which such revenues shall have been pledged, including reserves therefor; (b) to provide for all expenses of operation and maintenance of such airport, including reserves therefor.

Sale or lease of airport

Sec. 7. The governing body of the City shall have the power to sell, convey, or lease all or any portion of such airports heretofore established, or that may be hereafter established, to the United States of America for the purpose of air mail or any other public purpose, including the purpose of runways for the landing of aircraft, the assembling or manufacture of aircraft or aircraft parts, or any other purpose deemed by the Government of the United States necessary for the national defense, or to the State of Texas or any branch of the State Government, or to any municipality for any such purpose, or to any other person, firm or corporation to carry out any necessary or incidental purpose; and that such governing body shall provide rules and regulations for the proper use of any such airports, whether used for pleasure, experiment, exhibition, commercial purpose, or for the national defense. [As amended Acts 1941, 47th Leg., p. 67, ch. 54, § 1.]

Airport a public purpose

Sec. 8. The acquisition and operation of an airport are hereby declared to be a public purpose and a matter of public necessity.

Approval of Attorney General

Sec. 9. Said warrants shall be presented to the Attorney General for examination and if he approves the same they shall be registered in the office of the State Comptroller. Such warrants after receiving the certificate of the Attorney General and having been registered in the Comptroller's office, shall be held in each action, suit or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligations. The only defense which can be offered against the validity of such warrants shall be forgery or fraud. In each action brought to enforce collection of such warrants the certificate of the Attorney General, or a duly certified copy thereof shall be admitted and received in evidence of the validity of such warrant or warrants together with the coupons attached thereto.

Construction of Act

Sec. 10. The powers conferred by this Act shall be in addition and supplemental to the powers conferred by any other law, including any charter provision. In so far as the provisions of this Act are inconsistent with the provisions of any other law, including any charter provision, the provisions of this Act shall be controlling. If any provision of this Act, or the application of such provisions to any person, body or circumstance shall be held invalid, the remainder of the Act, or the application of such provision to persons, bodies, or circumstances other than as to which it is held invalid, shall not be affected thereby. [Acts 1935, 44th Leg., p. 364, ch. 132.]

Art. 1269j—1. Validating interest bearing time warrants issued to finance airports or airport improvements by cities having over 285,000 population.—All interest-bearing time warrants heretofore authorized by ordinance of the governing body of any city in Texas having a population of two hundred and eighty-five thousand (285,000) or more according to the latest United States Census, issued or authorized to be issued in payment or part payment for the construction of administration buildings, hangars, and hangar doors for its airport and/or to improve, enlarge, extend, or repair its airport, are hereby validated, ratified, and legalized, and such warrants shall not be invalid on account of irregularities in the notice to bidders, and shall not be invalid because the notice to bidders did not contain notice that it was the intention of the governing body to pay for such improvements and the contracts therefor by the issuance of time warrants. The contracts for such improve-

ments and payment therefor by the issuance of interest-bearing time warrants shall not be invalid on account of the notice to bidders not containing a clause to the effect that it was the intention to pay for such improvements and the contracts therefor by the issuance of interest-bearing time warrants and stating the maximum amount, interest rate, and maximum maturity date of such contemplated warrants. This Act shall apply to such warrants and the contracts on which they are based whether such warrants shall have been completely issued, or whether they have been authorized by ordinance and not as yet completely issued; and in so far as they have not as yet been completely issued, the governing body of such city is authorized in due course to complete the issuance thereof. [Acts 1939, 46th Leg., Spec.L., p. 1006, § 1.]

Art. 1269j—2. [Repealed by Acts 1947, 50th Leg., p. 784, ch. 391, § 16.]

The article repealed was Acts 1939, 46th Leg., p. 95. Acts 1947, 50th Leg., p. 784, ch. 391, §§ 1–15 are set out as articles 46e—1 to 46e—15.

Art. 1269j—3. Investments by political subdivisions of state in Defense Bonds or other United States obligations.—All political subdivisions of the State of Texas which have balances remaining in their accounts at the end of any fiscal year may invest such balances in Defense Bonds or other obligations of the United States of America; provided, however, that when such funds are needed the obligations of the United States in which such balances are invested shall be sold or redeemed and the proceeds of said obligations shall be deposited in the accounts from which they were originally drawn. [Acts 1943, 48th Leg., p. 481, ch. 321, § 1.]

CHAPTER 21.—HOUSING

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Art. 1269k. Housing Authorities Law.

Short title

Section 1. This Act may be referred to as the "Housing Authorities Law."

Finding and declaration of necessity

Sec. 2. It is hereby declared: (a) that there exist in the State insanitary or unsafe dwelling accommodations and that persons of low income are forced to reside in such insanitary or unsafe accommodations; that within the State there is a shortage of safe or sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the residents of the State and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and

safety, fire and accident protection, and other public services and facilities; (b) that these slum areas cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, through the operation of private enterprise, and that the construction of housing projects for persons of low income (as herein defined) would therefore not be competitive with private enterprise; (c) that the clearance, replanning, and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of State concern; that it is in the public interest that work on such projects be commenced as soon as possible in order to relieve unemployment which now constitutes an emergency; and the necessity in the public interest for the provisions hereinafter enacted; is hereby declared as a matter of legislative determination.

Definitions

Sec. 3. The following terms, wherever used or referred to in this Act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Authority" or "Housing Authority" shall mean any of the public corporations created by Section 4 of this Act.

(b) "City" shall mean any city.

"The City" shall mean the particular city for which a particular housing authority is created.

(c) "Governing Body" shall mean the Council or Commission of the city.

(d) "Mayor" shall mean the Mayor of the city or the officer thereof charged with the duties customarily imposed on the Mayor or executive head of the city.

(e) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(f) "Area of operation" shall include the city and the area within five (5) miles of the territorial boundaries thereof; provided, however, that the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city as herein defined.

(g) "Federal Government" shall include the United States of America, the United States Housing Authority, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(h) "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary facilities, or any combination of these factors, are detrimental to safety, health, and morals.

(i) "Housing Project" shall mean any work or undertaking: (1) to demolish, clear, or remove buildings from any slum area; such work or undertaking may embrace the adaption of such area to public purposes, including parks or other recreational or community purposes; or (2) to provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes; or (3) to accomplish a combination of the foregoing. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements and all other work in connection therewith.

(j) "Persons of low income" shall mean families or persons who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding.

(k) "Bonds" shall mean any bonds, notes, interim certificates, debentures, or other obligations issued by the authority pursuant to this Act.

(l) "Real Property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.

(m) "Obligee of the authority" or "obligee" shall include any bondholder, trustee, or trustees for any bondholder, or lessor demising to the authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal Government when it is a party to any contract with the authority.

Creation of Housing Authorities

Sec. 4. In each city (as herein defined) of the State there is hereby created a public body corporate and politic to be known as the "Housing Authority" of the city; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such city. The governing body may upon its own motion, or shall upon the filing of a petition signed by one hundred (100) qualified voters and residents of the city, make a determination as to whether or not there is need for an authority to function in the city.

The governing body shall adopt a resolution declaring that there is need for a housing authority in the city, if it shall find (a) that insanitary or unsafe inhabited dwelling accommodations exist in such city or (b) that there is a shortage of safe or sanitary dwelling accommodations in such city available to persons of low income at rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space, and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above enumerated conditions exist in the city. A copy of such resolution duly certified by the clerk shall be admissible in evidence in any suit, action, or proceeding.

Appointment, qualifications, and tenure of commissioners

Sec. 5. When the governing body of a city adopts a resolution as aforesaid, it shall promptly notify the

Mayor of such adoption. Upon receiving such notice, the Mayor shall appoint five (5) persons as commissioners of the authority created for said city. Two (2) of the commissioners who are first so appointed shall be designated to serve for terms of one year and the remaining commissioners shall be designated to serve for terms of two (2) years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of two (2) years except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city for which the authority is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expense, including traveling expenses, incurred in the discharge of his duties.

The powers of each authority shall be vested in the commissioners thereof in office from time to time. Three (3) commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number. The Mayor shall designate which of the commissioners appointed shall be the first chairman, but when the office of the chairman of the authority thereafter becomes vacant, the authority shall select a chairman from among its commissioners. An authority shall select from among its own commissioners a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the city or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

Interested commissioners or employees

Sec. 6. No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he immediately shall disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

Removal of commissioners

Sec. 7. For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the Mayor, but a commissioner shall be removed only after he shall have been given a copy of the charges at least ten (10) days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk.

Powers of authority

Sec. 8. An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules, and regulations, not inconsistent with this Act, to carry into effect the powers and purposes of the authority.

(b) Within its area of operation: to prepare, carry out, acquire, lease, and operate housing projects; to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this Act or in any other provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with the requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the Federal Government may have attached to its financial aid of the project.

(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and (subject to the limitations contained in this Act) to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure insurance or guarantees from the Federal Government of the payment of any debts or parts thereof (whether or not incurred by said authority) secured by mortgages on any property included in any of its housing projects.

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled.

(f) Within its area of operation: to investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning, and reconstructing of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the State or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies, and experimentation on the subject of housing.

(g) Acting through one or more commissioners or other person or persons designated by the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the State or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, or safety or welfare.

(h) To exercise all or any part or combination of powers herein granted. No provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to an authority unless the Legislature shall specifically so state.

Operation not for profit

Sec. 9. It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income, and receipts of the authority from whatever sources derived) will be sufficient (a) to pay, as the same become due, the principal and interest on the bonds of the authority; (b) to meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and (c) to create (during not less than the six (6) years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve.

Rentals and tenant selection

Sec. 10. In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(a) It may rent or lease the dwelling accommodations therein only to persons of low income and at rentals within the financial reach of such persons.

(b) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

(c) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an aggregate annual income in excess or five (5) times the annual rental of the quarters to be furnished such person or persons except that in the case of families with three (3) or more minor dependents such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to the occupants, of heat, water, electricity, gas, cooking range, and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this or the preceding section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof or acquire title thereto through foreclosure proceedings, free from all the restrictions imposed by this or the preceding section.

Co-operation between authorities

Sec. 11. Any two (2) or more authorities may join or co-operate with one another in the exercise of any or all of the powers conferred hereby for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects located within the area of operation of any one or more of said authorities.

Eminent domain

Sec. 12. An authority shall have the right to acquire by the exercise of the power of eminent domain any interest in real property, including a fee simple title thereto, which it may deem necessary for its purposes under this Act after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in Articles 3264 to 3271, both inclusive, Revised Civil Statutes of Texas, 1925, and Acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the city, the county, the State, or any political subdivision thereof may be acquired without its consent. [As amended, Acts 1941, 47th Leg., p. 926, ch. 563, § 1.]

Planning, zoning, and building laws

Sec. 13. All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated. In the planning and location of any housing project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.

Bonds

Sec. 14. An authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An authority may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable; (a) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds, or with such proceeds together with a grant from the Federal Government in aid of such project; (b) exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such bonds; or (c) from its revenues generally. Any of such bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project, projects, or other property of the authority.

Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of an authority (and such

bonds and obligations shall so state on their face) shall not be a debt of the city, the county, the State or any political subdivision thereof and neither the city nor the county, nor the State or any political subdivision thereof shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes.

Bonds or legal investments

Sec. 14-A. [Repealed by Acts 1939, 46th Leg., p. 427, § 2.]

Form and sale of bonds

Sec. 15. Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding six (6) per centum per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

The bonds may be sold at not less than par at public sale held after notice published once at least five (5) days prior to such sale in a newspaper having a general circulation in the city or the county and in a financial newspaper published in the City of New York, New York, provided, however, that such bonds may be sold at not less than par to the Federal Government at private sale without any public advertisement.

In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this Act shall be fully negotiable.

In any suit, action, or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character and said project shall be conclusively deemed to have been planned, located, and constructed in accordance with the purposes and provisions of this Act.

Provisions of bonds, trust indentures, and mortgages

Sec. 16. In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

(a) To pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or may thereafter come into existence.

(b) To mortgage all or any part of its real or personal property, then owned or thereafter acquired.

(c) To covenant against pledging all or any part of its rents, fees, and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.

(d) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed, or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon, and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(e) To covenant (subject to the limitations contained in this Act) as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(f) To prescribe procedure, if any, by which the terms of any contract with bond holders may be amended or abrogated, the amount of bonds of holders of which must consent thereto and the manner in which such consent may be given.

(g) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(h) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To vest in a trustee or trustees or the holder of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession and use, operate, and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

(j) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts, or things may not be enumerated herein.

Certificate of Attorney General

Sec. 17. Any authority may submit to the Attorney General of the State any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the Attorney General, it shall be the duty of the Attorney General to examine into and pass

upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this Act and are otherwise regular in form and if such bonds when delivered and paid for will constitute binding and legal obligations of such authority enforceable according to the terms thereof, the Attorney General shall certify in substance upon the back of each of said bonds that it is issued in accordance with the Constitution and laws of the State of Texas.

Remedies of an obligee of authority

Sec. 18. An obligee of an authority shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action, or proceeding at law or in equity to compel said authority and the commissioners, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this Act.

(b) By suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said authority.

Additional remedies conferrable by authority

Sec. 19. An authority shall have power by its resolution, trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right (in addition to all rights that may otherwise be conferred) upon the happening of an event of default as defined in such resolution or instrument, by suit, action, or proceeding in any Court of competent jurisdiction:

(a) To cause possession of any housing project or any part thereof to be surrendered to any such obligee.

(b) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the Court shall direct.

(c) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

Exemption of property from execution sale

Sec. 20. All real property of an authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be a charge or lien upon its real property; provided, however, that the provisions of this Section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, or revenues.

Aid from Federal Government

Sec. 21. In addition to the powers conferred upon an authority by other provisions of this Act, an authority is empowered to borrow money or accept grants or other financial assistance from the Federal Government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the Federal Government, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this Act to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal Government in the undertaking, construction, maintenance, or operation of any housing project by such authority.

Tax exemption and payments in lieu of taxes

Sec. 22. The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes and special assessments of the city, the county, the State or any political subdivision thereof; provided, however, that in lieu of such taxes or special assessments, an authority may agree to make payments to the city or the county or any such political subdivision for improvements, services, and facilities furnished by such city, county, or political subdivision for the benefit of a housing project, but in no event shall such payments exceed the estimated cost to such city, county, or political subdivision of the improvements, services, or facilities to be so furnished.

Reports

Sec. 23. At least once a year, an authority shall file with the clerk a report of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this Act.

Housing authorities in counties

Sec. 23a. In each county of the State there is hereby created a public body corporate and politic to be known as the "Housing Authority" of the county; provided, however, that such housing authority shall not transact any business or exercise its powers hereunder until or unless the Commissioners Court of such county, by proper resolution shall declare at any time hereafter that there is need for a housing authority to function in such county, which declaration shall be made by such Commissioners Court for such county in the same manner and subject to the same conditions as the declaration of the governing body of a city required by Section 4 of the Housing Authorities Law for the purpose of authorizing a housing authority created for a city to transact business and exercise its powers (except that the petition referred to in said Section 4 shall be signed by one hundred qualified voters and residents of such county).

The commissioners of a housing authority created for a county may be appointed and removed by the Commissioners Court of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the Mayor, and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof, within the area of operation of such housing authority as hereinafter defined, shall have the same functions, rights, powers, duties, immunities, privileges, and limitations provided for housing authorities created for cities and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities were applicable to housing authorities created for counties; provided, that for such purposes the term "Mayor" or "governing body" as used in the Housing Authorities Law shall be construed as meaning "Commissioners Court", and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context; and pro-

vided further that a housing authority created for a county shall not be subject to the limitations provided in clause (c) of Section 10 of the Housing Authorities Law with respect to housing projects for farmers of low income.

The area of operation of a housing authority created for a county shall include all of the county in which it is created except that portion of the county which lies within the territorial boundaries of any city. [Added, Acts 1941, 47th Leg., p. 926, ch. 563, § 2.]

Creation of regional housing authority

Sec. 23b. If the Commissioners Court of each of two (2) or more contiguous counties by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise powers and other functions herein prescribed for a housing authority in such counties, a public body corporate and politic to be known as a regional housing authority shall thereupon exist for all of such counties and exercise its powers and other functions in such counties; and thereupon each county housing authority created for each of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided; provided that the Commissioners Court of a county shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any obligations outstanding unless first, all obligees of such county housing authority and parties to the contracts, bonds, notes, and other obligations of such county housing authority agree with such county housing authority to the substitution of such regional housing authority in lieu of such county housing authority on all such contracts, bonds, notes, or other obligations; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided; and provided further that when the above two (2) conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations, and property of such county housing authority shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they may have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed with the clerk of the county where such real property is, provided that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The Commissioners Court of each of two (2) or more contiguous counties shall by resolution declare that there is a need for one regional housing authority to be created for all of such counties to exercise powers and other functions herein prescribed in such counties, if such Commissioners Court finds (and only if it finds) (a) that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford and (b) that a regional housing authority would be a more efficient or economical administrative unit than the housing authority of such county to carry out the purposes of the Housing Authorities Law in such county.

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have become created as a public body corporate and politic and to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the Commissioners Court of each of the counties creating the regional housing authority declaring the need for the regional housing authority. Each such resolution shall be deemed sufficient if it declares that there is need for the regional housing authority and finds in substantially the foregoing terms (no further detail being necessary) that the conditions enumerated above in (a) and (b) exist. A copy of such resolution of the Commissioners Court of a county, duly certified by the county clerk of such county, shall be admissible in evidence in any suit, action, or proceeding. [Added, Acts 1941, 47th Leg., p. 926, ch. 563, § 2.]

Area of operation of regional housing authorities

Sec. 23c. The area of operation of a regional housing authority shall include all of the counties for which such regional housing authority is created and established except that portion of the counties which lies within the territorial boundaries of any city.

The area of operation of a regional housing authority shall be increased from time to time to include one or more additional counties not already within a regional housing authority (except such portion or portions of such additional county or counties which lie within the territorial boundaries of any city) if the Commissioners Court of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the Commissioners Court of each such additional county or counties each adopt a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolutions, the county housing authority created for each such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided; provided, however, that such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any obligations outstanding unless first, all obligees of any such county housing authority and parties to the contracts, bonds, notes, and other obligations of any such county housing authority agree with such county housing authority and the regional housing authority to the substitution of such regional housing authority in lieu of such county housing authority on all such contracts, bonds, notes, or other obligations; and second, the commissioners of such county housing authority and the commissioners of such regional housing authority adopt resolutions consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided; and provided further that when the above two (2) conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, agreements, obligations, and property of such county housing authority shall be in the name of and vest in such regional housing authority, all obligations of such county

housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they may have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed with the clerk of the county where such real property is, provided that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The Commissioners Court of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the Commissioners Court of each such additional county or counties shall by resolution declare that there is a need for the addition of such county or counties to the regional housing authority, if (a) the Commissioners Court of each such additional county or counties finds that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford and (b) the Commissioners Court of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority and the Commissioners Court of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit to carry out the purposes of this Housing Authorities Law if the area of operation of the regional housing authority shall be increased to include such additional county or counties.

In connection with the issuance of bonds or the incurring of other obligations, a regional housing authority may covenant as to limitations on its right to adopt resolutions relating to the increase of its area of operation.

In determining whether dwelling accommodations are unsafe or insanitary under this or the preceding Section, the Commissioners Court of a county shall take into consideration the safety and sanitation of dwellings, the light and air space available to the inhabitants of such dwellings, the degree of overcrowding, the size and arrangement of the rooms and the extent to which conditions exist in such dwellings which endanger life or property by fire or other causes.

No governing body of a county shall adopt any resolution authorized by this or the preceding Section unless a public hearing has first been held. The clerk of such county shall give notice of the time, place, and purpose of the public hearing at least ten days prior to the day on which the hearing is to be held, in a newspaper published in such county, or if there is no newspaper published in such county, then in a newspaper published in the State and having a general circulation in such county. Upon the date fixed for such public hearing an opportunity to be heard shall be granted to all residents of such county and to all other interested persons. [Added, Acts 1941, 47th Leg., p. 926, ch. 563, § 2.]

Commissioners of regional housing authority

Sec. 23d. When a regional housing authority has been created as provided above, the Commissioners Court of each county included in such regional housing authority shall thereupon appoint one person as a commissioner of the regional housing authority. When the area of operation of a regional housing authority is increased to include an additional county or counties as provided above, the Commissioners Court of each county shall thereupon appoint one additional person as a commissioner of the regional housing authority. The Commissioners Court of each such county shall thereafter appoint each person to succeed such commissioner of the regional housing authority. A certificate of the appointment of any such commissioner shall be filed with the clerk of the county, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. If a regional housing authority includes only two counties, the commissioners of such authority appointed by the Commissioners Court of such counties shall appoint one additional commissioner to such authority. The commissioners of such authority appointed by the Commissioners Court of such counties shall likewise appoint each person to succeed such additional commissioner; provided that the term of office of such person begins during the terms of office of the commissioners appointing him; and provided further that no person shall be appointed to succeed such additional commissioner in the event the area of operation of the regional housing authority is increased to include more than two counties. A certificate of the appointment of any such additional commissioner of such regional housing authority shall be filed with the other records of the regional housing authority and shall be conclusive evidence of the due and proper appointment of such additional commissioner. The commissioners of a regional housing authority shall be appointed for terms of two (2) years except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified, except as otherwise provided herein.

For inefficiency or neglect of duty or misconduct in office, a commissioner of a regional housing authority may be removed by the Commissioners Court appointing him, or in the case of the commissioner appointed by the commissioners of the regional housing authority, by such commissioners; provided that such commissioner shall be removed only after he shall have been given a copy of the charges against him at least ten (10) days prior to the hearing thereon and provided that such commissioner shall have had an opportunity to be heard in person or by counsel. In the event of the removal of a commissioner by the Commissioners Court appointing him, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk of the county; and in the case of the removal of the commissioner appointed by the commissioners of the regional housing authority, such record shall be filed with the other records of the regional housing authority.

The commissioners appointed as aforesaid shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require. A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes. [Added, Acts 1941, 47th Leg., p. 926, ch. 563, § 2.]

Powers of regional housing authority

Sec. 23e. Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties, privileges, immunities and

limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities in the same manner as though all the provisions of law applicable to housing authorities created for cities or counties were applicable to regional housing authorities; provided, that for such purposes the term "Mayor" or "governing body" as used in the Housing Authorities Law shall be construed as meaning "Commissioners Court" and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context; and provided further that a regional housing authority shall not be subject to the limitations provided in clause (c) of Section 10 of the Housing Authorities Law with respect to housing projects for farmers of low income. A regional housing authority shall have power to select any appropriate corporate name. [Added, Acts 1941, 47th Leg., p. 926, ch. 563, § 2.]

Rural housing projects

Sec. 23f. County housing authorities and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income. In connection with such projects, any such housing authority may enter into such leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this Act. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this Section shall be construed as limiting any other powers of any housing authority. [Added, Acts 1941, 47th Leg., p. 926, ch. 563, § 2.]

Housing applications by farmers

Sec. 23g. The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a county housing authority or a regional housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income. Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income. [Added, Acts 1941, 47th Leg., p. 926, ch. 563, § 2.]

Farmers of low income defined

Sec. 23h. "Farmers of low income," as used in this Act, shall mean persons or families who at the time of their admission to occupancy in a dwelling of a housing authority: (1) live under unsafe or insanitary housing conditions; (2) derive their principal income from operating or working upon a farm; and (3) had an aggregate average annual net income for the three years preceding their admission that was less than the amount determined by the housing authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing, without overcrowding. [Added, Acts 1941, 47th Leg., p. 926, ch. 563, § 2.]

Severability

Sec. 24. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances, other than those as to which it is held invalid, shall not be affected hereby.

Act controlling

Sec. 25. In so far as the provisions of this Act are inconsistent with the provisions of any other law, the provisions of this Act shall be controlling. [Acts 1937, 45th Leg., p. 1144, ch. 462; Acts 1937, 45th Leg., 2nd C.S., p. 1924, ch. 41, § 1.]

Acts 1939, 46th Leg., p. 685, effective 90 days after June 21, 1939, date of adjournment, validated the establishment and organization of housing authorities pursuant to the provisions of the Housing Authorities Law (Chapter 462, Regular Session of the Forty-fifth Legislature, as amended by House Bill Number 102, Second Called Session of the Forty-fifth Legislature, and any amendments thereto), together with all proceedings, acts, and things theretofore undertaken, performed or done with reference thereto.

Section 3 of the amendatory Act of 1941, 47th Leg., p. 926, ch. 563, provided that the powers conferred by that act should be in addition and supplemental to the powers conferred by any other law.

Art. 1269k—1. Housing Bonds Legal Investments and Security.

Purpose

Section 1. Notwithstanding any restrictions on investments contained in any laws of this State, the State and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the Housing Authorities Law (Chapter 462, Regular Session of the Forty-fifth Legislature, as amended by House Bill No. 102, Second Called Session of the Forty-fifth Legislature, and amendments thereto) [1] or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States Government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits; it being the purpose of this Act to authorize all persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations; provided, however, that nothing contained in this Act shall be construed as relieving any person, firm, or corporation from any duty of exercising reasonable care in selecting securities.

1 Article 1269k.

Severability

Sec. 3. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of this Act, or the application thereof to any person or circumstances, are held invalid, the remainder of the Act and the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Act controlling

Sec. 4. In so far as the provisions of this Act are inconsistent with the provisions of any other law, the provisions of this Act shall be controlling. [Acts 1939, 46th Leg., p. 427.]

Section 2 of Act 1939, repeals article 1269k, § 14-A.

Art. 1269k—2. Validation of establishment and acts of housing authorities.

Establishment and organization

Section 1. The establishment and organization of housing authorities pursuant to the provisions of the Housing Authorities Law (House Bill Number 821, Chapter 462, page 1144, Regular Session of the Forty-fifth Legislature, as amended by House Bill Number 102, Chapter 41, page 1924, Second Called Session of the Forty-fifth Legislature, as amended by House Bill Number 834, Chapter 1, page 427, Regular Session of the Forty-sixth Legislature, and any amendments thereto),[1] together with all proceedings, acts, and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

1 Article 1269k.

Contracts and undertakings

Sec. 2. All contracts, agreements, obligations, and undertakings of housing authorities heretofore entered into relating to financing or aiding in the development, construction, maintenance, or operation of any housing project or projects or to obtaining aid therefor from the United States Housing Authority, including (without limiting the generality of the foregoing) loan and annual contributions, contracts, and leases with the United States Housing Authority, agreements with municipalities or other public bodies (including agreements which are pledged or authorized to be pledged for the protection of the holders of any notes or bonds issued by housing authorities or which are otherwise made a part of the contract with such holders of notes or bonds) relating to cooperation and contributions in aid of housing projects, payments (if any) in lieu of taxes, furnishing of municipal services and facilities, and the elimination of unsafe and unsanitary dwellings, and contracts for the construction of housing projects, together with all proceedings, acts, and things heretofore undertaken, performed or done with reference thereto, are hereby validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority.

Notes and bonds

Sec. 3. All proceedings, acts, and things heretofore undertaken, performed or done in or for the authorization, issuance, sale, execution, and delivery of notes and bonds by housing authorities for the purpose of financing or aiding in the development or construction of a housing project or projects, and all notes and bonds heretofore issued by housing authorities are hereby validated, ratified, confirmed, approved, and declared legal in all respects, notwithstanding any defect or irregularity therein or any want of statutory authority. [Acts 1941, 47th Leg., p. 900, ch. 554.]

Art. 1269k—3. Validation of acts, bonds, contracts, etc., of housing authorities in counties of 90,000 to 100,000; national defense activities.—Section 1. The acts of any housing authority created by and organized pursuant to the "Housing Authorities Law" of the State of Texas, and which is located in any county in Texas having a population of not less than ninety thousand (90,000) and not more than one hundred thousand (100,000), according to the last preceding Federal Census, in undertaking the development and administration of housing projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, whom the housing authority determines would not otherwise be able to secure safe and sanitary dwellings within the vicinity thereof, are hereby validated, ratified, approved, and confirmed in all respects.

Sec. 2. All bonds, notes, contracts, agreements, and obligations of housing authorities created by and organized pursuant to the "Housing Authorities Law" of the State of Texas, and which are located in any county in Texas having a population of not less than ninety thousand (90,000) and not more than one hundred thousand (100,000), according to the last preceding Federal Census, heretofore issued or entered into relating to financing or undertaking (including cooperating with or acting as agent of the Federal Government in) the development or administration of any housing project to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, are hereby validated, ratified, approved, confirmed, and declared enforceable in all respects. [Acts 1941, 47th Leg., p. 1301, ch. 576.]

Art. 1269k—4. Projects by housing authorities to make available dwellings for persons in national defense activities.

Declaration of necessity

Section 1. It is hereby found and declared that the national defense program involves large increases in the military forces and personnel in this State, a great increase in the number of workers in already established manufacturing centers, and the bringing of a large number of workers and their families to new centers of defense industries in the State; that there is an acute shortage of safe and sanitary dwellings available to such persons and their families in this State, which impedes the national defense program; that it is imperative that action be taken immediately to assure the availability of safe and sanitary dwellings for such persons, to enable the rapid expansion of national defense activities in this State and to avoid a large labor turnover in defense industries which would seriously hamper their production; that the provisions hereinafter enacted are necessary to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, which otherwise would not be provided at this time; and that such provisions are for the public use and purpose of facilitating the national defense program in this State. It is further declared to be the purpose of this Act to authorize housing authorities to do any and all things necessary or desirable to secure the financial aid of the Federal Government, or to cooperate with or act as agent of the Federal Government, in the expeditious development and the administration of projects to assure the availability, when needed, of safe and sanitary dwellings for persons engaged in national defense activities.

Time limit for initiation of development; rights and powers of authority; definitions

Sec. 2. Any housing authority may undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, whom the housing authority determines would not otherwise be able to secure safe and sanitary dwellings within the vicinity thereof; but no housing authority shall initiate the development of any such project pursuant to this Act after December 31, 1943.

In the ownership, development or administration of such projects, a housing authority shall have all the rights, powers, privileges and immunities that such authority has under any provision of law relating to the ownership, development or administration of slum clearance and housing projects for persons of low income, in the same manner as though all the provisions of law applicable to slum clearance and housing projects for persons of low income were applicable to projects developed or administered to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this Act; and housing projects developed or administered hereunder shall constitute "housing projects" under the

Housing Authorities Law, as that term is used therein; provided, that during the period (herein called the "National Defense Period") that a housing authority finds (which finding shall be conclusive in any suit, action or proceeding) that within its area of operation (as defined in the Housing Authorities Law), or any part thereof, there is an acute shortage of safe and sanitary dwellings, which impedes the national defense program in this State, and that the necessary safe and sanitary dwellings would not otherwise be provided when needed for persons engaged in national defense activities, any project developed or administered by such housing authority (or by any housing authority cooperating with it) in such area pursuant to this Act, with the financial aid of the Federal Government (or as agent for the Federal Government as hereinafter provided), shall not be subject to the limitations provided in Section 10 and the second sentence of Section 9 of the Housing Authorities Law;[1] and provided further, that, during the National Defense Period, a housing authority may make payments in such amounts as it finds necessary or desirable for any services, facilities, works, privileges or improvements furnished for or in connection with any such projects. After the National Defense Period, any such projects owned and administered by a housing authority shall be administered for the purposes and in accordance with the provisions of the Housing Authorities Law.

[1] Article 1269k.

Cooperation with Federal Government; sale of project to Federal Government

Sec. 3. A housing authority may exercise any or all of its powers for the purpose of cooperating with, or acting as agent for, the Federal Government, in the development or administration of projects by the Federal Government, to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, and may undertake the development or administration of any such project for the Federal Government. In order to assure the availability of safe and sanitary housing for persons engaged in national defense activities, a housing authority may sell (in whole or in part) to the Federal Government, any housing project developed for persons of low income but not yet occupied by such persons; such sale shall be at such price and upon such terms as the housing authority shall prescribe, and shall include provision for the satisfaction of all debts and liabilities of the authority relating to such project.

Cooperation with Federal Government by other state public bodies

Sec. 4. Any state public body, as defined in the Housing Cooperation Law (House Bill No. 820, Regular Session of the 45th Legislature, page 1141, as amended by House Bill No. 103, Second Called Session of the 45th Legislature, page 1940,[1] and any additional amendments thereto) shall have the same rights and powers to cooperate with housing authorities, or with the Federal Government, with respect to the development or administration of projects, to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, that such state public body has pursuant to such Law for the purpose of assisting the development or administration of slum clearance or housing projects for persons of low income.

[1] Article 1269*l*.

Bonds as security for public deposits and as legal investments

Sec. 5. Bonds or other obligations issued by a housing authority for a project developed or administered pursuant to this Act, shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, bodies and officers, as bonds or other obligations issued pursuant to the Housing Authorities Law[1] for the development of a slum clearance or housing project for persons of low income.

[1] Article 1269k.

Validation of bonds, notes, contracts, and obligations

Sec. 6. All bonds, notes, contracts, agreements and obligations of housing authorities heretofore issued or entered into relating to financing or undertaking (including cooperating with or acting as agent of the Federal Government) in the development or administration of any project to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, are hereby validated and declared legal in all respects, notwithstanding any defects or irregularities therein, or any want of statutory authority.

Act as independent authorization

Sec. 7. This Act shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, as provided in this Act, and for a housing authority to cooperate with, or act as agent for, the Federal Government in the development or administration of similar projects by the Federal Government. In acting under this authorization, a housing authority shall not be subject to any limitations, restrictions or requirements of other laws (except those relating to land acquisition) prescribing the procedure or action to be taken in the development or administration of any public works, including slum clearance and housing projects for persons of low income, or undertakings or projects of municipal or public corporations or political subdivisions, or agencies of the State. A housing authority may do any and all things necessary or desirable to cooperate with, or act as Agent for, the Federal Government, or to secure financial aid, in the expeditious development or in the administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities, and to effectuate the purposes of this Act.

Definitions

Sec. 8. (a) "Persons engaged in national defense activities," as used in this Act, shall include: enlisted men in the military and naval services of the United States and employees of the War and Navy Departments assigned to duty at military or naval reservations, posts or bases; and workers engaged, or to be engaged, in industries connected with, and essential to, the national defense program; and shall include the families of the aforesaid persons who are living with them.

(b) "Persons of low income," as used in this Act, shall mean persons or families who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(c) "Development" as used in this Act, shall mean any and all undertakings necessary for the planning, land acquisition, demolition, financing, construction or equipment in connection with a project (including the negotiations or award of contracts therefor), and shall include the acquisition of any project (in whole or in part) from the Federal Government.

(d) "Administration," as used in this Act, shall mean any and all undertakings necessary for management, operation or maintenance, in connection with any project, and shall include the leasing of any project (in whole or in part) from the Federal Government.

(e) "Federal Government," as used in this Act, shall mean the United States of America or any

agency or instrumentality, corporate or otherwise, of the United States of America.

(f) The development of a project shall be deemed to be "initiated", within the meaning of this Act, if a housing authority has issued any bonds, notes or other obligations with respect to financing the development of such project of the authority, or has contracted with the Federal Government, with respect to the exercise of powers hereunder, in the development of such project of the Federal Government for which an allocation of funds has been made prior to December 31, 1943.

(g) "Housing Authority", as used in this Act, shall mean any housing authority established or hereafter established pursuant to the Housing Authorities Law (House Bill No. 821, Regular Session of the 45th Legislature, page 1144, as amended by House Bill No. 102, Second Called Session of the 45th Legislature, page 1924, as amended by Section 2 of House Bill No. 834, Regular Session of the 46th Legislature, page 427, and any additional amendments thereto).[1]

1 Article 1269k.

Powers additional and supplemental

Sec. 9. The powers conferred by this Act shall be in addition, and supplemental, to the powers conferred by any other law, and nothing contained herein shall be construed as limiting any other powers of a housing authority.

Partial invalidity

Sec. 10. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. [Acts 1941, 47th Leg., p. 799, ch. 497.]

Art. 1269*l*. Housing Co-operation Law.

Short title

Section 1. This Act may be referred to as the "Housing Cooperation Law."

Finding and declaration of necessity

Sec. 2. It has been found and declared in the Housing Authorities Law that there exist in the State unsafe and insanitary housing conditions and a shortage of safe and sanitary dwelling accommodations for persons of low income; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; and that the public interest requires the remedying of these conditions. It is hereby found and declared that the assistance herein provided for the remedying of the conditions set forth in the Housing Authorities Law constitutes a public use and purpose and an essential governmental function for which public moneys may be spent and other aid given; that it is a proper public purpose for any State Public Body to aid any housing authority operating within its boundaries or jurisdiction or any housing project located therein, as the State Public Body derives immediate benefits and advantages from such an authority or project; and that the provisions hereinafter enacted are necessary in the public interest.

Definitions

Sec. 3. The following terms, whenever used or referred to in this Act shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Housing authority" shall mean any housing authority created pursuant to the Housing Authorities Law of this State.

(b) "Housing project" shall mean any work or undertaking of a housing authority pursuant to the Housing Authorities Law or any similar work or undertaking of the Federal Government.

(c) "State Public Body" shall mean any city, town, county, municipal corporation, commission, district, authority, other subdivision or public body of the State.

(d) "Governing Body" shall mean the council, Commissioners Court, board, or other body having charge of the fiscal affairs of the State Public Body.

(e) "Federal Government" shall mean the United States of America, the United States Housing Authority, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

Co-operation in undertaking housing projects

Sec. 4. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any State Public Body may upon such terms, as it may determine:

(a) Dedicate, sell, convey or lease any of its property to a housing authority or the Federal Government;

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it is otherwise empowered to undertake;

(d) Plan or replan, zone or re-zone any part of such State Public Body; make exceptions from building regulations or ordinances; any city or town also may change its map;

(e) Enter into agreements, (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a housing authority or the Federal Government respecting action to be taken by such State Public Body pursuant to any of the powers granted by this Act; and

(f) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing projects.

(g) Purchase or legally invest in any of the bonds of a housing authority and exercise all of the rights of any holder of such bonds.

(h) With respect to any housing project which a housing authority has acquired or taken over from the Federal Government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation, and other protection, no State Public Body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction.

(i) In connection with any public improvements made by a State Public Body in exercising the powers herein granted, such State Public Body may incur the entire expense thereof. Any law or Statute to the contrary notwithstanding, any sale, conveyance, lease, or agreement provided for in this Section may be made by a State Public Body without appraisal, public notice, advertisement, or public bidding.

Further cooperation in undertaking housing projects

Sec. 4-a. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any State Public Body may upon such terms as it may deter-

mine: (a) enter into agreements with respect to the exercise by such State Public Body of its powers relating to the repair, elimination or closing of unsafe, insanitary or unfit dwellings; and (b) cause services to be furnished to the housing authority of the character which it is otherwise empowered to furnish.

Contracts for payments for services

Sec. 5. In connection with any housing project located wholly or partly within the area in which it is authorized to act, any State Public Body may contract with a housing authority or the Federal Government with respect to the sum or sums (if any) which the housing authority or the Federal Government may agree to pay during any year or period of years, to the State Public Body for the improvements, services and facilities to be furnished by it for the benefit of said housing project, but in no event shall the amount of such payments exceed the estimated cost to the State Public Body of the improvements, services or facilities to be so furnished; provided, however, that the absence of a contract for such payments shall in no way relieve any State Public Body from the duty to furnish, for the benefit of said housing project, customary improvements and such services and facilities as such State Public Body usually furnished without a service fee.

Loans to housing authority

Sec. 6. When any housing authority which is created for any city, becomes authorized to transact business and exercise its powers therein, the governing body of the city shall immediately make an estimate of the amount of money necessary for the administrative expenses and overhead of such housing authority during the first year thereafter, and shall appropriate such amount to the authority out of any moneys in such city treasury not appropriated to some other purposes. The moneys so appropriated shall be paid to the authority as a loan. Any city located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend money to the authority or to agree to take such action. The housing authority, when it has money available therefor, shall make reimbursements for all such loans made to it.

Procedure for exercising powers

Sec. 7. The exercise by a State Public Body of the powers herein granted may be authorized by resolution of the governing body of such State Public Body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolutions may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted.

Supplemental nature of act

Sec. 8. The powers conferred by this Act shall be in addition and supplemental to the powers conferred by any other law.

Severability

Sec. 9. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. [Acts 1937, 45th Leg., p. 1141, ch. 461; Acts 1937, 45th Leg., 2nd C.S., p. 1940, ch. 42, § 1.]

CHAPTER 22.—CIVIL SERVICE

Art.
1269m. Firemen's and Policemen's Civil Service in cities over 10,000.

Sec.
1. Creation of firemen's and policemen's civil service.
2. Definitions.
3. Firemen's and policemen's civil service commission.
4. Organization of commission.
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FIREMEN AND POLICEMEN

Art. 1269m. Firemen's and Policemen's Civil Service in cities over 10,000.

Creation of firemen's and policemen's civil service

Section 1. There is hereby established in all cities in this State having a population of ten thousand (10,000) or more inhabitants, according to the last preceding Federal Census, and having a paid Fire Department and Police Department, a Firemen's and Policemen's Civil Service.

Definitions

Sec. 2. By the term "Fireman" is meant any member of the Fire Department who draws compensation for his service as a member of said Department. By the term "Policeman" is meant any member of the Police Department who draws compensation for his services as a member of said Department. By the term "Commission" as used herein is meant the Firemen's and Policemen's Civil Service Commission. The term "Director" means Director of Firemen's and Policemen's Civil Service.

Firemen's and policemen's civil service commission

Sec. 3. There is hereby established in all such cities a Firemen's and Policemen's Civil Service Commission, which shall consist of three (3) members, to be selected as follows: Members of the Commission shall be appointed by the chief executive of any such city, and such appointment shall be confirmed by the City Council or legislative body of any such city before any such appointments shall be effective. Of the first three (3) Commissioners so selected under

the provisions of this Act to comprise the Commission, one (1) shall be appointed for a term of one (1) year, one (1) shall be appointed for a term of two (2) years, and one (1) shall be appointed for a term of three (3) years. Thereafter the term of office of each Commissioner shall be for three (3) years, or until a successor is appointed, confirmed, and qualified. Any such vacancies in said Commission, caused by death, resignation, or otherwise, or by failure of any appointee to qualify within ten (10) days after appointment, shall be filled in the manner hereinabove specified, and such appointment shall be for the unexpired term of the retiring Commissioner of the appointee failing to qualify.

All such Commissioners shall be of good moral character, resident citizens of the particular city for which they are appointed, shall have resided in said city for a period of more than three (3) years, shall each be over the age of twenty-five (25) years, and shall not have held any public office within the preceding three (3) years.

It is provided however, that in all such cities which have in existence a Civil Service Commission, that said Civil Service Commission shall constitute the Firemen's and Policemen's Civil Service Commission of that city, but said Commissioner shall administer the Civil Service of Firemen and Policemen in accordance with this law.

It is further provided that in any such city which has in existence a Civil Service Commission, the appointment of members to such Civil Service Commission shall be made in conformity with provisions of this Act, after the expiration of presently existing term or terms of the members comprising such Civil Service Commission and, if necessary, in such cities having staggered terms of membership on such Civil Service Commission, the first appointment made under the provisions of this Act shall be made for terms of such number of years less than three (3) as will cause a staggered or rotating system of terms to conform with the provisions of this Act.

Organization of commission

Sec. 4. The Commissioners shall within ten (10) days after the qualification of the membership, and annually thereafter during the month of January, elect a Chairman and a Vice-chairman.

Powers of commission

Sec. 5. Two (2) members of the said Commission shall constitute a quorum to transact business. The Commission shall make such rules and regulations for the proper conduct of its business as it shall find necessary and expedient, provided that no rules or regulations shall ever be adopted which will permit the appointment or employment of any person without good moral character; or any person unfit mentally or physically; or any person incompetent to discharge the duties of such appointment or employment. Such rules and regulations shall prescribe what shall constitute cause for removal or suspension of Firemen or Policemen, but no rule for the removal or suspension of such employees shall be valid unless it involves one or more of the following grounds:

Conviction of a felony or other crime involving moral turpitude; violations of the provisions of the charter of said city; acts of incompetency; neglect of duty; discourtesy by said employee to the public or to fellow employees while said employee is in line of duty; acts of said employees showing a lack of good moral character; drinking of intoxicants while on duty, or intoxication while off duty; or whose conduct was prejudicial to good order; refusal or neglect to pay just debts; absence without leave; shirking duty, or cowardice at fires; violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

Director of civil service

Sec. 6. There is hereby created the office of Director of Firemen's and Policemen's Civil Service, which shall be filled by the appointment of the Commission of some person meeting the same requirements as hereinabove provided for members of the Commission. Said Director may be either a member of the Commission, another employee of said city, or some other person. The legislative body of such city shall determine what salary, if any, shall be paid to such Director. Said Director shall at all times, be subject to removal by the Commission. He shall serve as Secretary to the Commission, and shall perform all such work incidental to the Firemen's and Policemen's Civil Service as may be required of him by the Commission.

It is provided, however, that in those cities which have a duly and legally constituted Director of Civil Service, by whatever name he may be called, said Director shall be the Director of the Firemen's and Policemen's Civil Service, but he shall administer civil service pertaining to Firemen and Policemen in accordance with this Law.

Office space

Sec. 7. The City Council or governing body of any such city shall provide adequate and suitable office space for the conduct of the business of the Commission.

Classification of firemen and policemen

Sec. 8. The Commission shall provide for the classification of all Firemen and Policemen. Such classification shall be provided by ordinance of the City Council, or legislative body. Said City Council, or legislative body, shall prescribe by ordinance, the number of positions of each classification.

Firemen and Policemen shall be classified as above provided, and shall be under civil service protection except the Chief or head of such Fire Department or Police Department, by whatever name he may be known.

Said Chiefs or Department heads shall be appointed by the Chief Executive, and confirmed by the City Council or legislative body except in cities where the Department heads are elected.

Examination for eligibility lists

Sec. 9. The Commission shall make provisions for open, competitive, and free examinations for persons making proper application and meeting the requirements as herein prescribed and as provided by the Commission in its rules and regulations for positions on an eligibility list, from which such vacancies in the Fire Department and Police Department shall be filled.

Such examinations shall, in addition to questions of general knowledge, provide for a thorough inquiry into the applicant's knowledge of and qualifications for fire fighting and work in the Fire Department, or for police work and work in the Police Department.

An applicant who has served in the armed services of the United States and who received an honorable discharge shall receive five (5) points in addition to his competitive grade.

Appropriate physical examination shall be required.

That all police officers coming under this Act must be able intelligently to read and write.

Method of filling positions

Sec. 10. When a vacancy occurs in the Fire Department or Police Department, the Fire Chief or head of the Fire Department or the Police Chief or head of the Police Department shall request in writing from the Commission the names of suitable persons from the eligibility list, and the Director shall certify to the chief executive of said city, the names of three (3) persons having the highest grades on the eligibility list, and the said chief executive shall thereupon make an

appointment from said three (3) names. The appointment shall be of the person with the highest grade, except there be a valid reason why such appointment should be given to the one making the second or third highest grade. Whenever such appointment is made of one not holding the highest grade, such reasons shall be reduced to writing and filed with the Commission, and there shall be set forth plainly and clearly good and sufficient reasons why said appointment was not made to the person holding the highest grade in the event the one holding the third highest grade shall receive the appointment. In the event the person holding the highest is not certified for the appointment, he shall be furnished with a copy of the reasons therefor as filed with the Commission, and in the event the one having the third highest grade is appointed a copy of such reasons shall also be furnished to the one holding the second highest grade. This Section shall be limited by the other provisions hereof relating to promotions.

Certification of employees

Sec. 11. Whenever a person is certified and appointed in the said Fire Department or Police Department, the Director shall forward a record of the person so certified and appointed to the Fire Chief or head of the Department or Police Chief or head of that Department, forward a similar copy to the chief executive, and retain a copy in the civil service files. The record shall show: The date notice of examination was posted, date on which person certified took examination to be placed on eligibility list, name of person or persons conducting examination, relative position of person on eligibility list, date when person certified took physical examination, name of physician making examination, with information as to whether or not applicant was accepted or rejected, date on which request for filling such vacancy was made, date on which applicant was notified to report for duty and date on which his pay is to start. If the Director shall willfully fail to comply with any provisions of this Section, it shall be the duty of the Commission to forthwith remove him from office. The failure however, of the Director of Civil Service to comply with any of the provisions of this Section shall in no way impair the civil service standing of any employee.

Probationary and full-fledged firemen and policemen

Sec. 12. A person who has received appointment to the Fire Department or Police Department hereunder, shall serve a probationary period of six (6) months. During such probationary period, it shall be the duty of the Fire Chief or head of the Fire Department or Police Chief or head of the Police Department to discharge all Firemen or Policemen whose appointments were not regular, or not made in compliance with the provisions of this Act, or of the rules or regulations of the Commission, and to eliminate from the pay rolls any such probationary employee. When Firemen or Policemen, however, have served the full probationary period, they shall automatically become full-fledged civil service employees, shall have full civil service protection, the regularity of their appointment shall be presumed, and in any civil service hearing involving the removal or suspension of such employees, the sole inquiries shall be as to the truth or falsity of the specific charges filed against said employees by the Department head, as to the sufficiency of said charges, and as to what punishment, if any, should be administered. All positions in the Fire Department, except that of Chief or head of the Department, and in the Police Department, except that of Chief or head of that Department, shall be classified by the Commission and the positions filled from the eligibility lists as provided herein.

All offices and positions in the Fire Department or Police Department shall be established by ordinance of the City Council or governing body, provided, however, if the officer or employee shall have been permitted to serve the six (6) months probationary period, the service of said officer or employee shall ipso facto constitute the creation of the said position or office under a civil service classification.

Notice of examinations

Sec. 13. Ten (10) days in advance of any entrance examination or examination for promotion, the Commission shall cause to be posted on a bulletin board located in the main lobby of the City Hall, and the office of the Commission, and in plain view, a notice of such examination, and said notice shall show the position to be filled or for which examination is to be held, with date, time and place thereof, and in case of examination for promotion, copies of such notice shall be furnished in quantities sufficient for posting in the various stations or subdepartments in which position is to be filled. No one under eighteen (18) years of age shall take any entrance examination, and thirty-five (35) years shall be the maximum age for entrance into the Fire Department or Police Department.

Promotions

Sec. 14. The Commission shall make rules and regulations governing promotions, and in such rules and regulations shall make due provisions for extra credit for seniority. The Commission shall provide for promotional examination and for the creation of promotional eligibility lists. Said promotional examinations shall relate to the knowledge and qualifications of the applicant as to fire fighting and to work of the Fire Department, and as to police work and the work of the Police Department. The Commission shall adopt rules and regulations allowing a reasonable number of points for efficiency, which may be considered in the grading of applicants in examinations for a higher position or promotion in rank. Promotions shall be made from the three (3) having the highest grade on said particular promotional eligibility list as it provided for original appointments set forth in Section 10 hereof. No person shall be eligible for promotion unless he has served in such Department for at least two (2) years immediately preceding the date of such promotional examination, in the next lower position to that for which such examination is to be held, and no person with less than four (4) years actual service in such Department shall be eligible for promotion to the rank of Captain. The appointment of the Chief or head of the Fire Department or the Chief or head of the Police Department shall be made from the personnel of the Departments. In all cities having a population of ten thousand (10,000) or more inhabitants, according to the last preceding Federal Census, and having a paid Fire Department or Police Department, no one shall be appointed as the Chief or head of such Departments who has not had at least five (5) years immediate actual service in some Fire Department or Police Department within the State of Texas. The Chief or head of the Fire Department or Police Department shall be appointed by the chief executive of said city, and shall be confirmed by the City Council or legislative body.

Civil service rights of department head

Sec. 15. When the services of the Chief or head of the Fire Department or Police Department are terminated as such and he is removed as such Department head, he shall be reinstated in the Department and placed in a position no lower than the rank he held at time of appointment, and he shall retain all rights of seniority in the Department; provided, that should such Department head be charged with an offense in violation of civil service rules, and be dismissed from the public service, or be discharged from his position, he shall have the same rights and privileges of a hearing before the Commission, and in the same manner and under the same conditions as may classified employees, and if the Commission should find such

charges to be untrue, or unfounded, said employee shall thereupon immediately be restored to the Department as above provided, and said employee shall enjoy all the rights and privileges thereunder according to seniority, and shall be paid his full salary for the time of suspension.

Indefinite suspensions

Sec. 16. The Chief or head of the Fire Department or Police Department of the city government shall have the power to suspend indefinitely any officer or employee under his supervision or jurisdiction for the violation of civil service rules, but in every such case the officer making such order of suspension shall, within forty-eight (48) hours thereafter, file a written statement with the Commission, giving the reasons for such suspension, and immediately furnish a copy thereof to the officer or employee affected by such act, said copy to be delivered in person to such suspended officer or employee by the said Department head. Said order of suspension shall inform the employee that he has ten (10) days after receipt of a copy thereof, within which to appeal to the Commission. Any officer or employee in the Fire or Police Department so suspended shall have the right to appeal, hold an inquiry, and within ten (10) days after such inquiry render a decision stating whether or not the suspended employee shall be permanently or temporarily dismissed from the Fire Department or Police Department or be restored to his former position or status in the classified service in the Department. In the event that such suspended employee is restored to the position or class of service from which he was suspended, such employee shall receive full compensation at the rate of pay provided for the position or class of service from which he was suspended, for the actual time lost as a result of such suspension. All hearings of the Commission in case of such suspension shall be public.

The written statement above provided to be filed by the Department head with the Commission, shall not only point out the civil service rule alleged to have been violated by the suspended employee, but shall contain the alleged acts of the employee which the Department head contends are in violation of civil service rules. It shall not be sufficient for the Department head merely to refer to the provisions of the rules alleged to have been violated and in case the Department head does not specifically point out the act or acts complained of on the part of such employee, it shall be the duty of the Commission promptly to reinstate him. In any civil service hearing hereunder, the Department head is hereby restricted to his original written statement and charges, which shall not be amended, and no act or acts may be complained of by said Department head which did not happen or occur within six (6) months immediately preceding the date of suspension by the Department head. No employee shall be suspended or dismissed by the Commission except for violation of the civil service rules, and except upon a finding by the Commission of the truth of the specific charges against such employees.

In the event the Commission orders that such suspended employee be restored to his position as above provided, it shall be the duty of the Department head immediately to reinstate him as ordered and in event the Department head fails to do so, the employee shall be entitled to his salary just as though he had been regularly reinstated.

In the event such Department head wilfully refuses to obey the orders of reinstatement of the Commission, and such refusal persists for a period of ten (10) days, it shall be the duty of the chief executive or legislative body of the city to discharge such Department head from his employment with the city.

The Commission may punish for contempt any Department head who willfully refuses to obey any lawful order of reinstatement of the Commission, and such Commission shall have the same authority herein to punish for contempt as has the Justice of the Peace.

Procedure before commission

Sec. 17. In order for a Fireman or Policeman to appeal to the Commission, it shall only be necessary for him to file within ten (10) days with the Commission a statement denying the truth of the charge as made, or a statement taking exception to the legal sufficiency of such charges and asking for a hearing by the Commission. In all hearings, of every kind and character, the employee shall have the right to be represented by counsel, the witnesses may be placed under the rule. All such hearings shall be public. The Commission shall have the authority to issue subpoenas for the attendance of witnesses.

Appeal to district court

Sec. 18. In the event any Fireman or Policeman is dissatisfied with the decision of the Commission, he may, within ten (10) days after the rendition of such final decision, file a petition in the District Court, asking that his order of suspension or dismissal be set aside, that he be reinstated in the Fire Department or Police Department, and such case shall be tried de novo. Such cases shall be advanced on the docket of the District Court, and shall be given a preference setting over all other cases.

Demotions

Sec. 19. Whenever the head of the Fire Department or Police Department may desire the demotion to a lower rank of an officer or employee under his supervision or jurisdiction, such Department head may recommend in writing to the Commission that such employee be so demoted, giving his reasons therefor, and requesting that the Commission make such order of demotion, furnishing a true copy of such recommendation immediately, in person, to the employee to be affected by such demotion. Said Commission shall have the authority to refuse to grant said request for demotion. If, however, said Commission feels that probably cause exists for said demotion, they shall give such employee ten (10) days advance written notice to appear before them at a time and place specified in said written notice to the employee, and said employee shall have the right to a full and complete public hearing upon such proposed demotion. The Commission shall not demote any employee without such hearing.

Disciplinary suspensions

Sec. 20. The head of either the Fire or Police Department shall have the power to suspend any officer or employee under his jurisdiction or supervision for disciplinary purposes, for reasonable periods, not to exceed fifteen (15) days; provided, that in every such case, the Department head shall file with the Commission within forty-eight (48) hours, a written statement of action, and the Commission shall have the power to investigate and to determine whether just cause exists therefor. In the event the Department head fails to file said statement with the Commission within forty-eight (48) hours, the suspension shall be void and the employee shall be entitled to his full salary. The Commission shall have the power to reverse the decision of the Department head and to instruct him immediately to restore such employee to his position. In the event such Department head refuses to obey the order of the Commission, then the provisions with reference to salaries of the employees and to the discharge of the Department head as well as the other provisions of Section 16, pertaining to such refusal of the Department head, shall apply.

Reduction of force-reinstatement list

Sec. 21. In the event that any position in the Fire Department or Police Department is vacated or abolished by ordinance of the City Council, or legislative body, the employee holding such position shall be de-

moted to the position next below the rank of the position so vacated or abolished; provided that when any position or positions of equal rank may be abolished or vacated, the employee or employees with the least seniority in the said rank shall be the one or ones who are demoted. In the event positions in the lowest classifications are abolished or vacated, and it thereby becomes necessary to dismiss employees from the Department, the employee with the least seniority shall be dismissed, but such employees as are involuntarily separated from the Department without charges having been filed against them for violation of civil service rules, shall be placed on the reinstatement list in order of their seniority. The reinstatement list shall be exhausted before appointments are made from the eligibility list. Appointments from reinstatement list shall be in the order of seniority. Those who shall have been on any such reinstatement list for a period of three (3) years shall be dropped from such list but shall be reinstated upon request from the Commission.

Political activities

Sec. 22. Employees in the Fire Department or Police Department shall not be permitted to take an active part in any political campaign of another for an elective position of the city. The term active part means making political speeches, passing out cards, or other political literature, writing letters, signing petitions, actively and openly soliciting votes and making public derogatory remarks about candidates for such elective positions.

Publishing of rules

Sec. 23. The Commission shall cause to be published all rules and regulations which may be promulgated by it, and shall publish classification and seniority lists for each Department, and such rules and regulations and lists shall be made available upon demand.

Status of present employees

Sec. 24. Firemen or Policemen in the actual service of each city affected hereby, at the time of the final passage of this Act, and entitled to civil service classification, shall enjoy the status of civil service employees without having to take any competitive examinations for the position occupied at the time, provided such Firemen and Policemen have been in the service of said city for more than six (6) months.

Penalties

Sec. 25. Any chief executive of such city who shall willfully fail or refuse to appoint the Civil Service Commissioners provided for in Section 3 hereof, within sixty (60) days after this Act becomes effective, shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars ($100) nor more than Two Hundred Dollars ($200), and each day of delinquency in making said appointment shall constitute a separate offense. Any chief executive or any other city official who willfully fails or refuses to put this Act into operation, or who shall willfully attempt to obstruct the operation and enforcement of this Act, shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars ($100) nor more than Two Hundred Dollars ($200) for each offense.

The provisions of this Section shall not be deemed in conflict with the provisions of Section 16, but the exception as stated therein shall apply herein.

Sick and injury leaves of absence

Sec. 26. Permanent and temporary employees in the classified service shall be allowed a total of sick leave with full pay computed upon a basis of one full working day allowed for each full month employed in a calendar year, with an extra day added for each four (4) months, so as to total fifteen (15) working days to an employee's credit each twelve (12) months.

Employees shall be allowed to accumulate fifteen (15) working days or sick leave with pay in one calendar year.

Sick leave with pay may be accumulated to a total not exceeding ninety (90) days, with the privilege of an extension of sick leave in case of exhaustion of time, providing that the said employee can conclusively prove that such illness was incurred while in performance of his duties.

In the event that an employee of the Fire or Police Department for any reason leaves the classified service he shall remain on the pay roll until his accumulated sick leave is all used.

Provided that all such cities coming under the provisions of this Act shall provide injury leaves of absence with full pay for periods of time commensurate with the nature of injuries received while in line of duty for at least one (1) year. At the expiration of said one-year period, the City Council or governing body may extend such injury leave, at full or reduced pay, provided that in cities that have a Firemen's or Policemen's Pension Fund, that if said injured employee's salary should be reduced below sixty per cent (60%) of his regular monthly salary, said employee shall be retired on pension until able to return to duty.

Firemen or policemen prohibited from striking

Sec. 27. It shall be unlawful from and after the passage of this Act for any Fireman or Policeman, coming under the provisions of this Act, to engage in any strike against the agency of the government by which they are employed.

Firemen or Policemen, coming under the provisions of this Act, who shall violate any of the provisions of this Act, shall be guilty of a misdemeanor and shall, after conviction, be fined not less than Ten Dollars ($10) or more than One Hundred Dollars ($100), or by confinement in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

And in addition to such fine and imprisonment, any Fireman or Policeman who has been convicted of the violation of the provisions of this Section of this Act shall thereby be automatically released and discharged from such Police or Fire Department and shall thereafter be ineligible to receive any pay or compensation out of any public funds provided for the support of such Police or Fire Department.

Adoption of Act by vote

Sec. 27(a). Provided, however, that the provisions of this Act shall not apply to any city unless first determined at an election which shall be called within ninety (90) days from the effective date of this Act, to be held in accordance with the State Law and the City Charter, at which the adoption or rejection of this Act shall be submitted at such election; if at such election a majority of the people voting shall favor the adoption of the provisions of this Act, it shall thereafter become the duty of said governing body to put into effect the provisions of this Act. In the event a majority of the voters in any such election reject the adoption of this Act, then such matter shall not be resubmitted to the electors for a period of one year; and thereafter, the same may be resubmitted upon a petition signed by qualified voters in said city in number not less than five per cent (5%) of the total number voting in the last preceding city election, upon the filing of which the city governing body shall again resubmit the question of the adoption or rejection of this Act.

Repeal of provisions in city by vote

Sec. 27(b). In any city in which the provisions of this Act have been in effect for a period of five (5) years, if a petition of ten per cent (10%) of the quali-

fied voters of such city shall be presented to the governing body of such city to call an election for the repeal of the provisions of this Act, then and in that event, the governing body of such city shall call an election of the qualified voters to determine if they desire the repeal of such provisions. Should a majority of the qualified voters so vote to repeal the provisions of this Act, then the provisions shall become null and void as to such city.

Repeal and saving clause

Sec. 28. This Act shall supersede all other civil service pertaining to Firemen and Policemen in the cities covered hereby. If any section, paragraph, portion, sentence, line, phrase, clause, or word of this Act should be held to be unconstitutional or invalid, then such unconstitutionality or invalidity of any other section, paragraph, portion, sentence, line, phrase, or word hereof, and it is hereby declared to be the legislative intent that each and all of the said portions as above specified that are not held to be unconstitutional or invalid, shall be and remain in full force and effect, just as though said unconstitutional or invalid portions, if any, were eliminated from the text of this Act. [Acts 1947, 50th Leg., p. 550, ch. 325.]

TITLE 29—COMMISSIONER OF DEEDS

Art.
1270. Appointment.
1271. Oath.
1272. Seal.
1273. Authority.

Article 1270. [1097] [618] [542] Appointment.—The Governor is authorized to biennially appoint and commission one or more persons in each or any of the other states of the United States, the District of Columbia, and in each or any of the territories of the United States, and in each or any foreign country, upon the recommendation of the executive authority of said state, District of Columbia or territory or foreign country to serve as commissioner of deeds. Such commissioner shall hold office for two years. [Acts 1885, p. 98; G. L. vol. 9, p. 718.]

Art. 1271. [1098] Oath.—Such commissioner, before he shall proceed to perform any duty under and by virtue of this title, shall take and subscribe an oath or affirmation, before the clerk of any court of record in the city, county or country in which such commissioner may reside, well and faithfully to execute and perform all the duties of such commissioner under the laws of this State; which oath or affirmation, certified to by the clerk under his hand and seal of office, shall be filed in the office of the Secretary of State in this State. [Acts 1846, p. 187; G. L. vol. 2, p. 1493.]

Art. 1272. [1102] [623] [547] Seal.—Every such commissioner shall provide for himself a seal with a star of five points, in the center, and the words, "Commissioner of the State of Texas," engraved thereon, which seal shall be used to certify all the official acts of such commissioner; and without the impress of said seal upon any instrument, or to certify any act of such commissioner, said act shall have no validity in this State. [Act Dec. 31, 1861, p. 21; G. L. vol. 5, p. 465.]

Art. 1273. [1097] [618] [542] Authority.—The commissioner of deeds shall have the same authority as to taking acknowledgments and proofs of written instruments, administering oaths, and taking depositions to be used or recorded in this State, as is conferred by law upon a notary public of this State. [Acts 1885, p. 98; G. L. vol. 9, p. 718.]

TITLE 29A—COMMISSIONERS ON UNIFORM LAWS

Art. 1273a. Uniform State Laws, Commissioners on; term; duties.—Section 1. That within thirty (30) days after the passage of this Act the Governor shall appoint not more than five (5) and not less than three (3) Commissioners to the National Conference of Commissioners on Uniform State Laws, who shall be members of the Bar of this State in good standing and learned in the law, and upon the death, resignation, or refusal to serve of any of the Commissioners so appointed, the Governor shall make an appointment to fill the vacancy so caused, such new appointment to be for the unexpired term of the original appointee.

Sec. 2. That each of said Commissioners shall hold office for a term of four (4) years, and until their successors are duly appointed. Said Commissioners shall receive no compensation for their services as Commissioners.

Sec. 3. That it shall be the duty of said Commissioners to attend the annual meetings of the National Conference of Commissioners on Uniform State Laws and of its Sections, and they shall do all in their power to promote uniformity in State laws, upon all subjects where uniformity may be deemed desirable and practicable. Said Commissioners shall, at the beginning of each Biennial Session of the Legislature of this State, make a report to the Governor and their recommendations to the Legislature. [Acts 1941, 47th Leg., p. 655, ch. 396.]

TITLE 30—COMMISSION MERCHANTS

1. COMMISSION MERCHANTS

Art.
1274. "Commission Merchant" defined.
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1. COMMISSION MERCHANTS

Article 1274. [3826] "Commission Merchant" defined.—Any person, firm or corporation pursuing, or who shall pursue the business of selling produce, or goods, wares or merchandise of any kind upon consignment for a commission, shall be held to be a commission merchant. [Acts 1907, p. 61.]

Art. 1275. [3827] Bond of.—Every commission merchant shall make bond in the sum of three thousand dollars, with a solvent surety company doing business in this State or with two or more good and sufficient sureties, who are residents of this State, and who shall make affidavit that they in their own right, over and above all exemptions, are worth the full amount of the bond they sign as sureties, payable to the county judge of each county in which such commission merchant maintains an office, and to the successors in office of such county judge as trustees for all persons who may become entitled to the benefits of this subdivision; conditioned that such commission merchant will faithfully and truly perform all agreements and contracts entered into with consignors for said produce, goods, wares or merchandise, will promptly receive and sell such produce, goods, wares or merchandise, and will on receipt of such produce, goods, wares or merchandise class the same, and if such class as made by such commission merchant is not as high as that made and sent to him by the consignor, he (the commission merchant) will immediately notify the consignor of such fact and of the class made by him; and, as soon as sold will send to the consignor a full and complete account of sales of same, giving an itemized account thereof, and the price received, the dates of sales, and shall, within five days after said produce, goods, wares or merchandise are sold, send to the consignor the full amount received for the same, less the commission due said commission merchant under the contract of assignment, such bond to be approved by the county judge of the county in which said commission merchant maintains an office, and by said judge filed for record in the county clerk's office as chattel mortgages are now authorized to be filed by law. [Acts 1907, p. 61; Acts 1913, p. 178.]

Art. 1276. [3828] Suits on bond.—Such bond shall be made and filed for record in each county in which such commission merchant maintains an office, and in which county suits may be maintained upon such bond by any person claiming to have been damaged by a breach of its condition. Said bond shall not become void upon the first recovery thereon, but may be sued upon until the amount thereof is exhausted. When said bond by suits of recovery has been reduced to the sum of fifteen hundred dollars, said commission merchant shall be required to enter into a new bond in the sum of three thousand dollars as required in the first instance. Said new bond shall be liable for all future contracts, agreements or consignments thereafter entered into by said commission merchant and consignor of such produce, cotton, sugar, goods, wares or merchandise, and upon failure of said commission merchant to give said new bond as above required, he shall cease doing business in this State. [Id.]

Art. 1277. [3829] [2432] Unlawful interest in sales.—No factor or commission merchant to whom any cotton, sugar, produce or merchandise of any kind is consigned for sale on commission or otherwise, shall purchase the same or reserve any interest whatever therein upon the sale of same, either directly or indirectly, in his own name or in the name or through the instrumentality of another, for his own benefit or for the benefit of another, or as a factor or agent of any other person, without express written license from the owner or consignor of such cotton, sugar, produce or other merchandise, or some person authorized by him, under a penalty of forfeiture of one-half the value of cotton, sugar, produce or other merchandise so purchased or sold, to be recovered by the owner of the same by suit in the county where the sale took place, or wherein the offending party resides. [Acts 1860, p. 82; G. L. vol. 4, p. 1444.]

Art. 1278. [3830] [2433] Account of sales.—Upon the shipment of any produce, cotton, sugar, goods, wares or merchandise, consigned for sale to any factor or commission merchant, it is hereby made his duty that such commission merchant will faithfully and truly perform all agreements and contracts entered into with consignors for said produce, cotton, sugar, goods, wares and merchandise; that said commission merchant will promptly receive and sell such produce, cotton, sugar, goods, wares or merchandise, in accord with the contract of consignment and will on receipt of such produce, cotton, sugar, goods, wares or merchandise class the same, and if such class as made by such commission merchant is not as high as that made and sent to him by the consignor, he, (the commission merchant) will immediately notify the consignor of such fact and of the class made by him and as soon as sold will send to the consignor a full and complete account of sales of same, giving an itemized account thereof, and the price received, the dates of sales, and shall, within five days after said produce, cotton, sugar, goods, wares or merchandise are sold, send to the consignor the full amount received for the same, less the commission due said commission merchant under the contract of consignment; and if cotton, sugar, or other produce sold by weight, the weight of same in gross, and the tare allowed, and be accompanied by the certificate or memorandum, signed by the weigher who weighed the same, of the weight and condition as required by law, and upon failure of said commission merchant to comply with any one of the provisions of this article, he and the bondsmen required by this subdivision shall be liable for all actual damages incurred by the consignor by reason thereof, and in addition thereto a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by the consignor in a suit filed for said actual damages and for said penalty. [Acts 1913, p. 178.]

Art. 1279. [3831] [2434] False charges.—No commission merchant or factor shall be permitted to make any charge for mending or patching, or roping bales, or for cooperage or repairing bales, or for labor, or hauling, or cartage, or for storage, marking or weighing, unless the same has been actually done; and, in case of any such charge, a bill of particulars shall be rendered notwithstanding any usage or custom to the contrary to make such charge, by rate or average; and the person offending against any provision of this article shall be liable to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by suit by the owner or consignor. [Acts 1860, p. 82; G. L. vol. 4, p. 1444.]

Art. 1280. Duties of shipper.—Each consignor of produce, goods, wares, or merchandise in this State consigning produce goods, wares, or merchandise to commission merchants to be sold on commission shall, when he consigns such produce, goods, wares or mer-

chandise, send to such commission merchant a written statement in which such consignor shall state the amount, the quality or class, the condition of such produce, goods, wares or merchandise so consigned, and if said merchant, on receipt of same, fails to promptly notify said consignor of any objection he may have to the class, quality or quantity so consigned, then such statement shall be prima facie evidence of the fact that said consignment of such produce, goods, wares or merchandise is truly stated in said statement by the consignor to said commission merchant. When such produce, goods, wares or merchandise is received by said commission merchant, such merchant shall give to the agent of the railroad or other carrier so delivering such produce, goods, wares or merchandise, a receipt for same which receipt shall state the quality, quantity, grade and condition of such produce, goods, wares or merchandise, and said agent of the railroad or other carrier shall keep such receipt on file in his office subject to the inspection of any one interested in such shipment, for six months from the date of such receipt. [Acts 1913, p. 278.]

2. LIVE STOCK COMMISSION MERCHANTS

Art. 1281. Live stock commission merchant.—Any person, firm or corporation, who shall pursue the business of selling live stock, cattle, cows, calves, bulls, steers, hogs, sheep, goats, mules, horses, jacks, and jennets or any of them, upon consignment for a commission or other charges, or who shall solicit consignment of live stock as a commission merchant or agent, or who shall advertise or hold himself out to be such, shall be deemed and held to be a live stock commission merchant within the meaning of this subdivision and subject to all the provisions and penalties herein prescribed. [Acts 1921, p. 175.]

Art. 1282. To make bond.—All live stock commission merchants before they shall engage in said business within this State, are hereby required to make bond in an amount hereinafter specified, signed by a solvent surety company authorized to do business in this State and having a paid up capital of not less than five hundred thousand dollars, which said bond shall be payable to the county judge of the county in which such commission merchant has his principal office or place of business, and to his successors in office, as trustee for all persons who may become entitled to the benefits of this law, such bond to be filed by such county judge in the office of the county clerk of the county in which such commission merchant has his principal office or place of business, and in which county suits shall be instituted for any illegal breaches of said bond. [Id.]

Art. 1283. Conditions and amount of bond.—Said bond shall be conditioned that such livestock commission merchant will faithfully obey and carry out all the terms and provisions of this law, and will faithfully and truly perform all agreements entered into with all the consignors, owners or those holding valid liens on said livestock with respect to receiving, handling, selling and making remittances and payments of the net proceeds thereof to the said named parties, or to the person, firm or corporation to whom said consignors, owners or valid lien holders shall direct such payments to be made; and said bond shall further provide and shall be conditioned that such commission merchant shall within forty-eight hours of the sale of live stock so consigned, excluding the day of sale, Sunday, and holidays, remit the net proceeds thereof to the parties rightfully entitled to receive the same, or to such person, firm or corporation to whom such parties shall direct the payment to be made, or shall within forty-eight hours of the sale of such live stock for said parties at interest deposit to the credit of such parties their respective interest in the net proceeds thereof in some State or National Bank in the city or town where such livestock commission merchant has his principal office or place of business, if requested by any or all of the said parties at interest to do so. The amount of such bond shall be not less than the nearest multiple of One Thousand ($1,000) Dollars above the average amount of sales and/or purchases of live stock by such live stock commission merchants during two business days, based on the total number of the business days, and the total amount of such sales and/or purchases in the preceding twelve (12) months, or in such part thereof in which such livestock commission merchant did business, if any. For the purpose of this computation, three hundred eight (308) shall be deemed the number of business days in a year. In any case, however, the amount of bond shall be not less than Two Thousand ($2,000) Dollars; and when the sales and/or purchases, calculated as hereinbefore specified, exceed Fifty Thousand ($50,000) Dollars as to any particular livestock commission merchant, the amount of the bond need not exceed Fifty Thousand ($50,000) Dollars plus ten (10%) per cent of the excess. Any person, firm or corporation who has not heretofore engaged in the business of a livestock commission merchant shall give bond in an amount adequate to cover the probable volume of business to be done by such merchant, the amount of bond to be fixed by the County Judge of the county in which such livestock commission merchant has his principal office or place of business. After such livestock commission merchant, his successors or assigns, has engaged in such business for a period of twelve (12) months, then, the amount of such bond shall be determined as otherwise provided in this Act. Whenever in the judgment of the County Judge of the county in which such commission merchant has his principal office or place of business, the condition of the business of any such livestock commission merchant is such as to render his bond inadequate, such bond, upon notice, shall be increased to an adequate amount as determined by such County Judge. In case two or more livestock commission merchants are the employees or agents solely of the same principal, they may be covered by a single bond in an amount based on their combined purchases and/or sales determined in accordance with this Act. In any other case, two or more livestock commission merchants may be covered by a single bond; provided, however, that the amount of such combined bond shall be not less than the aggregate sum of individual bonds, determined in accordance with this Act. All surety bonds, or their equivalents, shall contain a provision requiring that at least ten (10) days' prior notice in writing be given to the County Judge of the county in which such commission merchant has his principal office or place of business by the party terminating such bonds or equivalents, in order to effect their termination. [Acts 1921, p. 175; Acts 1934, 43rd Leg., 2nd C.S., p. 96, ch. 41, § 1.]

Art. 1284. Duty of court, judge.—The county judge shall carefully scrutinize said bond when tendered and if satisfied therewith approve said bond. No bond shall be approved by him which is not in the amount prescribed by this law, and conditioned as required by this law and executed by such surety company. The data as to such surety company shall be first duly certified to the said county judge by a certificate to that effect issued by the Commissioner of Insurance. [Acts 1921, p. 175.]

Art. 1285. Bond recorded.—Said bond together with the sworn statement made to the county judge by the applicant seeking the approval of the same and setting forth the average daily sales of such applicant for the twelve months period next prior thereto, shall, as soon as practicable after the approval of said bond by the county judge, be filed for record in the county clerk's office in the county where the principal business of said commission merchant is to be carried on, and shall be recorded at length and properly indexed in a well-bound book kept for that purpose, to be labeled "Bonds of Live Stock Commission Merchants"

and shall also file and securely retain in the archives of his office said original bond and sworn statement. Said clerk shall immediately upon the recording and indexing of said bond and statement furnish to the person, firm or corporation filing the same a correctly certified copy thereof. It is also made the duty of said commission merchant to procure said certified copy from said clerk at the earliest practicable date after the filing and recording thereof. [Id.]

Art. 1286. Deposit of proceeds.—If the proceeds of any live stock sold by said live stock commission merchant shall become involved in a dispute between contending claimants or if said live stock commission merchant is notified that other parties are asserting rights to said proceeds, or any part thereof, in opposition to the claim of those shipping said stock to said commission merchant, said live stock commission merchant shall deposit the amount of said net proceeds involved in such contention in some State or National bank in the town or city where said live stock commission merchant has his principal place of business, and promptly notify all interested parties of his said action in the premises; whereupon no further liability as to such funds so deposited shall accrue or continue as to said live stock commission merchant, either personally or on his bond. [Id.]

Art. 1287. Suit on bond.—The bond provided for by this law may be sued upon and recovery had thereon by any persons claiming to have been damaged by a breach of its conditions. Said bond shall not become void upon the first recovery thereon but may be sued upon until the amount thereof is exhausted. Upon a reduction of said bond by recoveries thereon to the extent of one-half thereof said live stock commission merchant shall be required forthwith to make and file a new bond conditioned as in the third article of this subdivision so as to restore said bond to the required amount. If it shall come to the knowledge of the county judge that the surety company making such bond has become insolvent or is not financially able to make the said bond ample and sufficient in the opinion of said judge, then said officer shall notify said commission merchant to execute a new bond as herein provided for; whereupon it shall be the duty of such commission merchant to make a new bond the same as originally required by the provisions of this law. [Id.]

Art. 1287a. Live stock auction commission merchants.

Definition; application

Section 1. Any person, firm, or corporation pursuing, or who shall pursue the business of selling livestock, cattle, cows, calves, bulls, steers, hogs, sheep, goats, mules, horses, jacks, and jennies, or any of them, at auction, upon consignment for a commission or other charges, or who shall solicit consignments of livestock as a commission merchant or agent, or who shall advertise or hold himself out to be such shall be deemed and held to be a livestock auction commission merchant within the meaning of this subdivision and subject to all the provisions and penalties herein prescribed.

Provided, however, that in all counties in this State containing a population of not less than one hundred and ninety thousand (190,000) nor more than two hundred thousand (200,000) according to the last preceding Federal Census, the limitations and conditions imposed by this Act shall not apply to any person, firm, corporation, or association of persons pursuing the business of selling mules, horses, jacks, and jennies. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1963, ch. 53, § 1.]

Bond required

Sec. 2. All such livestock auction commission merchants, before they shall engage in said business within the State, are hereby required to make bond in an amount specified hereinafter, signed by a solvent surety company authorized to do business in this State, and having a paid up capital of not less than Five Hundred Thousand Dollars ($500,000), which said bond shall be payable to the County Judge of the county in which such commission auction merchant has his principal office or place of business, and to his successor in office, as trustee for all persons who may become entitled to the benefit of this Law, such bond to be filed by said County Judge in the office of the County Clerk of the county in which such commission auction merchant has his principal office or place of business, and in which suit shall be instituted for any illegal breaches of said bond.

Conditions of bond

Sec. 3. Said bond shall be conditioned that such livestock commission auction merchant shall faithfully obey and carry out all the terms and provisions of this Law, and will faithfully and truly perform all agreements entered into with all the consignors, owners, or those holding valid lien on said livestock with respect to receiving, handling, selling, and making remittances and payments of the net proceeds thereof to said named parties, or to the person, firm, or corporation to whom said consignor, owner, or valid lien holder shall direct such payments to be made; and said bond shall further provide and shall be conditioned that said auction commission merchant shall, within forty-eight (48) hours of a sale of the livestock so consigned, including the day of sale, Sundays, and holidays, remit the net proceeds thereof to the parties rightfully entitled to receive the same, or to such person, firm, or corporation to whom such parties shall direct the payment to be made, or shall, within forty-eight (48) hours of a sale of such livestock for said parties at interest, deposit to the credit of such parties their respective interests in the net proceeds thereof in some State or National Bank in the city, town, or county where such livestock commission merchant has his principal office or place of business, if requested by any or all of said parties at interest to do so. The amount of such bond shall be in the sum of One Thousand Dollars ($1,000). Said bond shall further provide that the person, firm, or corporation executing the same shall keep a true and accurate record of the description of all such livestock so sold at auction, which record shall be subject to be inspected by any citizen of Texas, which shall give a description of such livestock by color, probable age, and the marks and brands, if any there be, and the location of said marks and brands. Said livestock commission merchant executing such bond shall make quarterly report of such livestock so sold, giving the name of the consignor or person purporting to own the same, together with his address and the name and address of the person or persons purchasing the same. All such surety bonds shall contain a provision requiring that at least ten (10) days prior notice in writing be given to the County Judge of the county in which such commission auction merchant has his principal office or place of business by the party terminating such bond, in order to effect its termination.

Approval of bond by county judge

Sec. 4. The County Judge shall carefully scrutinize such bond when tendered and, if satisfied therewith, shall approve said bond. No bond shall be approved by him which is not in the amount prescribed by this Law and conditioned as required by this Act and executed by such surety company.

Bond filed in office of county clerk

Sec. 5. Said bond shall be, as soon as practicable, after the approval of same by the County Judge, filed

for record in the office of the County Clerk in the county where the principal business of said commission auction merchant is to be carried on, and shall be recorded at length and properly indexed in a well bound book kept for that purpose, to be labeled "Bonds of Livestock Auction Commission Merchants." It is also made the duty of such auction commission merchant to procure a certified copy of such bond from the said County Clerk at the earliest practicable date, after the filing and recording thereof.

Deposit of proceeds of sale in case of dispute between claimants

Sec. 6. If the proceeds of any livestock so sold at auction by said livestock auction commission merchant shall become involved in a dispute between contending claimants, or if said livestock auction commission merchant is notified that some other party or parties are asserting right to said proceeds, or any part thereof, in opposition to the claim of those consigning said stock to said commission auction merchant, said livestock auction commission merchant shall deposit the amount of such net proceeds involved in such contention in some State or National Bank in the town, city, or county where said livestock commission merchant has his principal place of business and promptly notify all interested parties of his said action in the premises, whereupon no further liability as to such funds so deposited shall accrue or continue as to said livestock auction commission merchant or on his bond.

Suits on bond

Sec. 7. The bond provided for by this Law may be sued upon and recovery had thereon by any person claiming to have been damaged by a breach of its condition. Said bond shall not become void upon the first recovery thereon, but may be sued upon until the amount thereof is exhausted. Upon a reduction of said bond by recovery thereon, to the extent of one-half thereof, said livestock auction commission merchant shall be required forthwith to make and file a new bond, conditioned as in the third Article of this Subdivision, so as to restore said bond to the required amount. If it shall come to the knowledge of the County Judge that the surety company making such bond has become insolvent, or is not financially able to make said bond ample and sufficient in the opinion of said County Judge, then said officer shall notify said livestock auction commission merchant to execute a new bond as therein provided for; whereupon it shall be the duty of such livestock auction commission merchant to make a new bond the same as originally required by the provisions of this Law.

Persons included as commission merchants

Sec. 8. Any person, firm, or corporation who pursues the business of selling livestock, cattle, cows, calves, bulls, steers, hogs, sheep, goats, mules, horses, jacks, and jennies, or any of them, upon consignment at auction for a commission or other charges, or who solicits consignments of livestock as an auction commission merchant or agent, or who advertises and holds himself out to be such, shall be held to be a livestock auction commission merchant within the meaning of this Chapter. [Acts 1937, 45th Leg., p. 387, ch. 192.]

Sections 9–12 of Act 1937, 45th Leg., p. 387, ch. 192, being penal provisions, are published as Pen.Code, art. 1125a.

3. AGRICULTURAL COMMODITIES, COMMISSION MERCHANTS, DEALERS, AND BROKERS

Art. 1287—1. General provisions.

Definitions and miscellaneous provisions

Section 1. 1. This Act shall be known and may be cited as the Agricultural Protective Act.

2. As used in this Act, unless otherwise apparent from the context:

(a) The present tense includes the past and future tenses; and the future, the present.

(b) The masculine gender includes the feminine and neuter.

(c) The singular number includes the plural; and the plural, the singular.

(d) "Department" means the Department of Agriculture of the State of Texas.

(e) "Commissioner" means the Commissioner of Agriculture of the State of Texas.

(f) "Section" means the Section of this Act unless some other Act is specifically mentioned.

(g) "County" includes city and county.

(h) "Person" includes individual, partnership, firm, corporation, company, or association.

(i) "Sell" includes "offer for sale," "expose for sale," "have in possession for sale," "exchange," "barter," or "trade."

3. Any person in whom the enforcement of any provision of this Act is invested has the power of a peace officer as to such enforcement.

4. The District or County Attorney of any county in which a violation of any provision of this Act occurs shall, upon request of any enforcing officer or other interested person, prosecute such violation.

5. Unless a different penalty is expressly provided, a violation of any provision of this Act is a misdemeanor.

6. Whenever any notice, report, statement, or record is required by this Act, it shall be in writing unless it is expressly provided that it may be oral.

7. Whenever any notice, report, statement, or record is required by this Act to be kept or made in writing, it shall be in the English language.

8. Whenever any power or authority is given by any provision of this Act to any person, it may be exercised by any deputy, inspector, or agent duly authorized by him unless it is expressly provided that it shall be exercised in person.

9. As used in this Act the word "shall" is mandatory and the word "may" is permissive.

10. The Commissioner may enter upon any premises to inspect the same or any plant, appliance or thing therein.

11. The Commissioner is hereby authorized to promulgate and adopt rules and regulations for carrying out those provisions of this Act which he is directed and authorized to administer or enforce.

Produce dealers

Sec. 2. (a) As used in this Act the term "person" includes any individual, firm, partnership, corporation or association of persons.

(b) The term "producer" means any person engaged in the business of growing or producing any farm product.

(c) The word "vegetables" and/or the words "agricultural commodities" and/or the words "farm products," when used in this Act shall mean any and/or all of the following enumerated commodities: Asparagus, Beans (string, wax, or green), Beets (bunched or topped), Broccoli (Italian sprouting), Cabbage (for sauerkraut), Cantaloupes, Carrots (bunched or clipped), Cauliflower, Celery (rough), Corn (green), Cucumbers, (slicing), Dewberries and Blackberries, Eggplant, Endive or Escarole or Chicory, Garlic, Kale, Lettuce, Melons (Honey Ball and Honey Dew), Mustard Greens, Okra, Onions, Parsley, Peaches, Pears, Peas (fresh), Peppers (sweet), Potatoes, Potatoes (sweet), Radishes, Romaine, Shallots, Spinach, Strawberries, Tomatoes (fresh), Turnips (bunched or topped), or Rutabagas, Turnip Greens, and Watermelons.

(d) The term "consignor" includes any person who delivers to any commission merchant, dealer, or broker or the agent of any commission merchant, dealer,

or broker any farm products for handling, sale, or resale.

(e) The term "commission merchant" means any person who shall receive on consignment or solicit from the producers thereof any farm product within the terms of this Act for sale on commission on behalf of this producer, or who shall accept any farm product in trust from the producer thereof for the purpose of resale, or who shall sell or offer for sale on commission any farm product, or who shall in any way handle for the account of, or as an agent of, the producer thereof any farm product.

(f) The term "dealer" means any person other than a commission merchant who for the purpose of resale at wholesale obtains from the producer thereof possession or control of any farm product, except by payment to the producer, at the time of obtaining such possession or control, of the full agreed price of such commodity.

(g) The term "broker" means any person engaged in the business of soliciting or negotiating the sale of any farm product.

(h) The term "agent" means any person who on behalf of any commission merchant, or dealer, or broker receives, contracts for, or solicits any farm product from a producer thereof or who negotiates the consignment or purchase of any farm product on behalf of any commission merchant, dealer, or broker.

(i) The term "commissioner" means the Commissioner of Agriculture of the State of Texas.

Exclusions

Sec. 3. This Act does not apply to or include:

(a) Any cooperative organization, operating under and by virtue of the laws of this State, or of any other State, or the District of Columbia, or the United States, or the agents of such organizations in the performance of their duties as such, except as to that portion of the activities of such organization, or agent as involves the handling or dealing in the farm products of non-members of such organization.

(b) Any person or exchange buying farm products for the purpose of reselling the same in dried, canned, or other preserved form.

(c) Any person who is engaged in the business of selling farm products as a retailer. It is expressly provided that any individual, partnership, corporation, company, or association of persons which is engaged in the business as a buying agency for more than three retail outlets is not a retailer within the purview of this Act. A retailer within the meaning of this Act is any person who purchases farm products in small quantities for resale to the consumer.

Licensing

Sec. 4. No person shall act as a commission merchant, dealer, broker, or agent without having obtained a license as provided in this Act. Every person acting as a commission merchant, dealer, broker, or agent as herein defined, shall file an application with the commissioner for a license to transact the business of commission merchant, dealer, broker, and/or agent and such application shall be accompanied by the license fee herein provided for each specified class of business. Separate applications shall be filed for each class of business.

Such application shall in each case state the full name of the person applying for such license, and if the applicant be a firm, partnership, corporation, or association of persons, the full name of each member of such firm, or the names of the officers of such corporation or association or company shall be given in the application. Such application shall further state the principal business address of the applicant in the State of Texas and elsewhere and the name or names of the person or persons authorized to receive and accept service of citation and legal notice of all kinds for the applicant. Such applicant shall further satisfy the Commissioner of his or its character, responsibility, and good faith in seeking to carry on the business stated in the application in the manner and form to be provided by the Commissioner.

In addition to the general requirements applicable to all classes of applications as in this Section set forth, the following requirements shall apply to the class of application noted:

(1) Commission Merchants: Each application shall include a schedule of commissions and charges for services, and such designated commissions and charges shall not be changed nor verified for the license period, except by written contract between the parties.

(2) Agents. Each application shall include such information as the Commissioner may consider proper or necessary, and shall include the name and address of applicant and the name and address of each commission merchant, dealer, or broker represented or sought to be represented by said agent, and the written endorsement or nomination of such commission merchant, dealer, or broker. The Commissioner shall thereupon issue to such applicant a license entitling the applicant to conduct the business described in the application at the place named in the application for a year from the date thereof, or until the same shall have been revoked for cause. The Commissioner may also issue to each agent a card, or cards, which shall bear the signature of such agent and his principals, separate cards being required for each principal. Any agent shall show said card or cards upon the request of any interested person. Fraud or misrepresentation in making any application shall ipso facto work a revocation of any license granted thereunder. All indicia of the possession of a license shall be at all times the property of the State of Texas and each licensee shall be entitled to the possession thereof only for the duration of said license.

For filing the applications herein described, each applicant must pay a fee as follows:

(a) Commission merchants: Twenty-five Dollars ($25) each year.

(b) Dealers: Twenty-five Dollars ($25) each year.

(c) Brokers: Twenty-five Dollars ($25) for each year.

(d) Agents: One Dollars ($1) for each year.

Any person who shall have been licensed as a commission merchant, shall, upon application, be licensed also as a dealer and/or as a broker as defined herein without payment of further fees, and shall thereupon conform to the parts of this Act regulating the business of a dealer and/or broker. Any person who has applied for and receives a license as a dealer, or broker in the manner and upon payment of the fee herein set forth may apply for and secure a license as a commission merchant in addition to the license issued to him as such dealer or broker, without payment of further fee and upon further complying with those parts of this Chapter regulating the licensing of a commission merchant.

The Commissioner shall publish in pamphlet form at least once each calendar year and may publish as often as he thinks necessary a list of all licensed commission merchants, dealers, brokers, and agents, together with all necessary rules and regulations concerning the enforcement of this Act. Each licensed commission merchant, dealer, broker, or agent shall post his license, or a copy thereof, in his office or place of business in plain view of the public. All license fees collected under the provisions of this Act shall be paid into the State Treasury and shall be kept by the State Treasurer in a separate fund to be known as the Agricultural Protective Act Fund and the same shall be expended in carrying out the provisions of this Act.

Bonding

Sec. 5. Before any license is issued to any commission merchant, dealer, or broker, such commission

merchant, dealer or broker shall execute and deliver to the Commissioner a surety bond in the sum of Five Thousand Dollars ($5,000), executed by the applicant as principal and by a surety company qualified and authorized to do business in this State as surety. Said bond shall be conditioned upon compliance with the provisions of this Act and upon the faithful and honest handling of farm products in accordance with the terms of this Act. Said bond shall be to the State in favor of every consignor or producer of farm products. Any consignor or producer of farm products claiming to be injured by the fraud, deceit, or wilful negligence of any commission merchant, dealer, or broker, may bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud, deceit, or wilful negligence, or the failure to comply with the provisions of this Act. Any case of failure by a commission merchant, dealer, or broker to pay consignor, or producer creditors for farm products received from said consignor, or producer, to be sold, the Commissioner shall proceed forthwith to ascertain the names and addresses of all consignor, or producer creditors of such commission merchant, dealer, or broker, together with the amounts due and owing to them and each of them by such commission merchant, dealer, or broker and shall request all such producer, or consignor creditors to file a verified statement of their respective claims with the Commissioner. Thereupon the Commissioner shall bring an action on the bond in behalf of such producer, or consignor creditors. Upon any action being commenced on said bond, the Commissioner may require the filing of a new bond and immediately upon the recovery in any action upon such bond such commission merchant, dealer, or broker shall file a new bond and upon failure to file the same within ten (10) days in either case, such failure shall constitute grounds for the suspension or revocation of his license.

Enforcement

Sec. 6. Enforcement. For the purpose of enforcing the provisions of this Act the Commissioner is authorized to receive verified complaints against any person assuming or attempting to act as such, and upon receipt of such verified complaint, shall have full authority to make any and all necessary investigations relative to the said complaint. He shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities in which any produce is kept, stored, handled, or transported. He shall have full authority to administer oaths and to take testimony thereunder; to issue subpœnas requiring the attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles, or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders or subpœnas of said Commissioner shall be guilty of contempt and shall be certified to a court of competent jurisdiction for punishment for such contempt; copies of records, inspection certificates, certified reports, and all papers on file in the office of the Commissioner shall be prima facie evidence of the matters therein contained.

The Commissioner of his own motion may, or upon the verified complaint of any interested person shall investigate, examine, or inspect any transaction involving solicitation, receipt, sale, or attempted sale of farm products by any person or persons acting or assuming to act as a commission merchant, dealer, broker, or agent; failure to make proper and true account of sales and settlement thereof as in this Act required; the intentional making of false statement as to condition and quantity of any farm products received, or in storage; the intentional making of false statements as to marketing conditions; the failure to make payment for farm products within the time required by this Act; or investigate, examine, or inspect any and all other injurious transactions, and in furtherance of any such investigation, examination, or inspection, the Commissioner or any authorized representative may examine that portion of the ledgers, books, accounts, memoranda, and other documents, farm products, scales, measures, and other articles and things used in connection with the business of such person relating to the transactions involved. When a producer or consignor of farm products fails to obtain settlement satisfactory to him in any transaction after having notified the consignee, a verified complaint may be filed with the Commissioner who shall undertake to effect a settlement, and in the event that he shall fail to effect such settlement, he shall cause a copy of such complaint, together with a notice of the time and place and hearing of such complaint, to be served personally or by mail upon such person. Such service shall be made at least ten (10) days before the hearing, which shall be held in the city or town in which, or closest to which, is situated the business location of the licensee or in which the transaction complained of is said to have occurred. At the time and place appointed for such hearing, the Commissioner, or his agents, shall hear the parties to such complaint and shall enter a decision either dismissing such complaint or specifying the facts established on such hearing. A copy of such decision shall be furnished each, every, and all the respective parties thereto.

The Commissioner may refuse to grant a license and may revoke or suspend any license, as the same may require, when he is satisfied of the existence of any of the following facts:

(1) That fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale, or storage of, or for the rendering of any service in connection with the handling, sale, or storage of any farm products.

(2) That the applicant or licensee has failed or refused to render a true account of sale, or to make a settlement thereon, or to pay for farm products received within the time and in the manner required by this Act.

(3) That the applicant, or licensee, directly or indirectly, has purchased for his or its own account farm products received by him upon consignment without prior authority from consignor, or producer, together with price fixed by consignor, or producer, or without promptly notifying the consignor or producer of such purchase. This shall not prevent any commission merchant from checking the account of sales, in order to close the day's business, miscellaneous lots or parcels of farm products remaining unsold, if such commission merchant shall forthwith enter such transaction on his account of sales.

(4) That the applicant, or licensee, has individually made any false or misleading statements as to the conditions of the market for any farm products.

(5) That the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the producer or consignor.

(6) That a commission merchant to whom any consignment is made has reconsigned to another commission merchant, for the purpose of receiving, collecting, or charging by such means, more than one commission for making the sale thereof for the consignor, unless by consent of such consignor.

(7) That the licensee, or applicant, has failed or refused to file with the Commissioner a schedule of his charges for services in connection with produce handled on account of or as an agent of another; that the applicant, or licensee, has indulged in any unfair practice.

Previous violation by the applicant or by any person connected with him, or it, of any of the provi-

sions of this Chapter shall be good and sufficient ground for denial of a license.

Any action of the Commissioner with reference to the granting of, or the refusal to grant, or to renew any license, or with reference to the revocation or suspension of any license granted under the provisions of this Chapter may be reviewed by any court of competent jurisdiction, but pending final determination of any such review, in the case of the revocation or suspension of any person licensed hereunder, such license shall be deemed in full force and effect pending the expiration of the license period or the final determination of such proceeding, whichever is first in point of time.

Every commission merchant, dealer, or broker having received any farm products for sale as such commission merchant, dealer, or broker, shall promptly make and keep a correct record showing in detail the following with reference to the handling, sale, or storage of such farm products:

(a) Name and address of the consignor.

(b) The date received.

(c) The condition and quantity upon arrival.

(d) Date of such sale for account of consignor.

(e) The price for which sold.

(f) An itemized statement of the charges to be paid by consignor in connection with the sale.

(g) The names and addresses of the purchasers if said commission merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, directly or indirectly, as holder of the other's corporate stock, as co-partner, as lender or borrower of money to or from the other, or otherwise.

(h) A lot number or other identifying mark for each consignment shall be or shall appear on all sales tags or other essential records needed to show what the produce actually sold for.

(i) Any claim or claims which may have been or may be filed by the commission merchant, dealer, or broker against any person for overcharges or for damages resulting from the injury or deterioration of such farm products by the act, negligence, or failure of such person and such records shall be open to the inspection of the Commissioner and the consignor of farm products in whom such claim or claims are made.

When requested by his consignor, a commission merchant, dealer, or broker shall, before the close of the next business day following the sale of any farm products consigned to him, transmit or deliver to the owner or consignor of the farm products a true written report of such sale, showing the amount sold and the selling price. Remittance in full of the amount realized from such sales, including all collections, overcharges, and damages, less the agreed commission and other charges, together with a complete account of sale, shall be made to the consignor within ten (10) days after receipt of the moneys by commission merchant, dealer, or broker, unless otherwise agreed in writing. In the account, the names and addresses of purchasers need not be given as required except as required in Subdivision (g) of Section 6.

Every commission merchant, dealer, or broker shall retain a copy of all records covering each transaction, for a period of one (1) year from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the commissioner and/or the consignor, or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment, or consignment of farm products, the department shall furnish upon the payment of a reasonable fee therefor by the requesting party, a certificate establishing the condition, quality, grade, pack, quantity, or weight of such lot, shipment, or consignment. Such certificate shall be prima facie evidence in all Courts of this State as to the recitals thereof. The burden of proof shall be upon the commission merchant, dealer, or broker to prove the correctness of his accounting as to any transaction which may be questioned.

When any dealer, commission merchant, or broker causes a producer, seller, or owner, or agent of such producer, seller, or owner, to part with the control or possession of any farm products or vegetable or agricultural commodity, as defined in this Act, by means of any agreement under which such producer, seller, or owner, or agent of such producer, seller, or owner, has waived the right to demand the purchase price as and when he parts with control or possession of such agricultural commodity, the contract for the handling, purchase of, or sale of such agricultural commodity as between the dealer, commission merchant, or broker, and the producer, seller, or owner, or the agent of such producer, seller, or owner, shall be evidenced in writing in duplicate, such writing shall contain the details of such transaction, including the price to be paid by such dealer, commission merchant, or broker, and the time and manner of payment of such price. In the event the contract, or writing, does not specify a time and manner of settlement, then the dealer, commission merchant, or broker shall settle therefor within thirty (30) days from and after the delivery of such agricultural commodity, or commodities, into the control or possession of such dealer, commission merchant, or broker, by producer, seller, or owner, or agent of such producer, seller, or owner, and the dealer, commission merchant, or broker, shall then truly account to and pay over to said producer, seller, or owner, or the agent of such producer, seller, or owner, the full amount called for by such contract or writing, including any minimum price guaranteed by dealer, commission merchant, or broker.

Any sale of farm products made by a commission merchant for less than the current market price with any person with whom he has any financial connection, directly or indirectly, as owner of its corporate stock, as co-partner, or otherwise, or any sale out of which any commission merchant receives directly or indirectly any portion of the purchase price other than the commission provided for under the schedule required to be filed with the commissioner by virtue of the terms of this Act, shall be prima facie evidence of fraud within the meaning of this Act.

Penalties

Sec. 7. Any person is guilty of a misdemeanor and is punishable by a fine of not more than One Thousand Dollars ($1,000), or by imprisonment in the county jail for not more than one (1) year or by both, who assumes or attempts to act as a commission merchant, dealer, broker, or agent without a license, or who, being a commission merchant, dealer, or broker:

(a) Imposes false charges for handling or service in connection with farm products.

(b) Fails or refuses to supply and/or deliver to a producer, seller, or owner, or the agent of such producer, seller, or owner, a memoranda or contract in writing in any transaction whereby such producer, seller, or owner, or the agent of such producer, seller, or owner, has waived the right to demand the purchase price as and when such producer, seller, or owner, or the agent of such producer, seller, or owner, parts with the control or possession of any agricultural commodity or commodities, or fails to account promptly, correctly, fully, and properly and to make settlement therefor as herein provided.

(c) Intentionally makes false or misleading statement or statements as to market conditions.

(d) Makes fictitious sales or is guilty of collusion to defraud the producer.

(e) Directly or indirectly purchases for his own account goods received by him upon consignment without prior authority from the consignor, or fails promptly to notify the consignor of such purchases, if any, on his own account. This clause does not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of farm products remaining unsold, if such commission merchant, dealer, or broker forthwith enters such transaction on his account of sales.

(f) Intentionally makes false statement or statements as to the grade, condition, markings, quality, or quantity of goods received, shipped, or packed in any manner.

(g) Fails to comply in every respect with the terms and provisions of this Act. Civil suits and criminal prosecutions arising by virtue of any of the provisions of this Chapter may be commenced and tried in either the county in which the products were received by the commission merchant or within the county in which the principal place of business of the commission merchant is located, or within the county in which the violation of this Chapter occurred.

Act applicable only to Texas Citrus Fruit Zone

Sec. 8. The terms of this Act shall apply only to the Texas Citrus Fruit Zone, as said area is defined in Section 1 of House Bill No. 553, Chapter 230,[1] General Laws of Texas, Regular Session Forty-second Legislature, and shall not apply to any other section of the State.

1 Reference should be to Chapter 350, Pen.Code, art. 1700a—2.

Anti-Trust Laws unaffected

Sec. 8a. Provided, however, nothing in this Act shall alter, repeal, change or modify the Anti-Trust Laws of this State and in the event any Section or Subsection of this bill shall conflict with the provisions of the Anti-Trust Laws, either Civil or Criminal, said Section or Subsection shall fall and the Anti-Trust Laws, both Civil and Criminal, shall stand.

Persons excepted from act

Sec. 8b. The provisions of this Act shall not apply to any person, firm or corporation paying for such commodities in lawful currency of the United States at the time of purchase.

Administration of Act; salaries and expenses; Agricultural Protective Fund

Sec. 9. The administration of this Act and of House Bill No. 99,[1] Regular Session Forty-fifth Legislature shall be by and under the direction of the Commissioner of Agriculture, who is hereby authorized to appoint a director, two assistant directors, and such inspectors and other assistants as may be necessary to the proper enforcement of this Act, and of House Bill No. 99, Acts Regular Session Forty-fifth Legislature; provided that the salary of said director shall not exceed Three Hundred ($300.00) Dollars per month, that of the two assistant directors not to exceed Two Hundred ($200.00) Dollars per month each, and that of inspectors not to exceed One Hundred Fifty ($150.00) Dollars per month each, and that of stenographers not to exceed the salary fixed by the Legislature for stenographers in the various State Departments. All salaries, travelling expenses of director, assistants and inspectors, and all other expenses incident to the enforcement of this Act and of House Bill No. 99, Regular Session Forty-fifth Legislature, shall be paid out of funds received by the Commissioner in fees and otherwise from the enforcement of this Act, and from the enforcement of House Bill No. 99, Regular Session Forty-fifth Legislature, provided that all moneys received by the Commissioner, through the enforcement of these two Acts shall be deposited in the State Treasury where same shall be set up by the Comptroller and the Treasurer in a Special Fund to be known as the Agricultural Protective Act Fund, which shall be a continuing fund, and all expenditures made by the Commissioner in the administration of this Act, and of House Bill No. 99, Regular Session Forty-fifth Legislature, shall be for accounts approved by him and upon warrants drawn by the Comptroller on the State Treasurer against said Agriculture Protective Act Fund. [Acts 1937, 45th Leg., p. 926, ch. 443; Acts 1937, 45th Leg., 1st C.S., p. 1776, ch. 16, § 1.]

1 Article 118b and Penal Code, art. 1700a—3.
Section 10 of Acts 1937, 45th Leg., p. 926, ch. 443, provided that partial invalidity should not affect the validity of the remaining portions of the Act.

Art. 1287—2. Persons handling both citrus fruits and vegetables; one bond and one license fee.—Any person who comes within any of the classifications set out in either House Bill No. 99,[1] Acts Regular Session Forty-fifth Legislature or House Bill No. 557,[2] Acts Regular Session Forty-fifth Legislature, wherein a surety bond of Five Thousand ($5,000.00) Dollars is required by him by that classification, shall be permitted to give one Five Thousand ($5,000.00) Dollars surety bond, so worded as to guarantee faithful performance of all the provisions of both House Bill No. 99, Acts Regular Session Forty-fifth Legislature and House Bill No. 557, Acts Regular Session Forty-fifth Legislature, such bond to be in such form as the Commissioner of Agriculture may prescribe, and any person who elects to give one surety bond of Five Thousand ($5,000.00) Dollars to guarantee faithful performance under both of said Acts shall be liable for only one license fee of Twenty-five ($25.00) Dollars, and his license shall reflect the fact that he is licensed thereby to handle both citrus fruits and vegetables. [Acts 1937, 45th Leg., 1st C.S., p. 1776, ch. 16, § 3.]

1 Article 118b and Pen.Code, art. 1700a—3.
2 Article 1287—1.

TITLE 31—CONVEYANCES

Art.
1288. Instrument of conveyance.
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1291. When an estate deemed a fee simple.
1292. Form of conveyance.
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1296. Estates in futuro.
1297. Implied covenants.
1298. Incumbrances include what.
1299. Conveyance of separate lands of wife.
1300. Conveyance of homestead.
1301. Failing as a conveyance.

Article 1288. [1103] [624] [548] Instrument of conveyance.—No estate of inheritance or freehold, or for a term of more than one year, in lands and tenements, shall be conveyed from one to another, unless the conveyance be declared by an instrument in writing, subscribed and delivered by the party disposing of the same, or by his agent thereunto authorized by writing. [Act Feb. 5, 1840; P. D. 671; G. L. vol. 2, p. 327.]

Art. 1289. [1104] [625] [549] Notice.—A conveyance, such as is described in the preceding article, shall not be good and effectual against a purchaser in good faith, without notice thereof and for a valuable consideration, nor against any creditor, unless such conveyance be acknowledged by the party

who shall have signed or delivered it, or proved, in the manner required by law, and before some officer authorized by law to take such acknowledgment or proof, and be filed for record with the clerk of the county in which the land, or a part thereof, is situated. [Id.]

Art. 1290. [1105] [626] [550] Partial conveyances.—All alienations of real estate, made by any person purporting to pass or assure a greater right or estate than such person may lawfully pass or assure, shall operate as alienations of so much of the right and estate in such lands, tenements or hereditaments as such person might lawfully convey; but shall not pass or bar the residue of said right or estate purporting to be conveyed or assured; nor shall the alienation of any particular estate on which any remainder may depend, whether such alienation be by deed or will, nor shall the union of such particular estate with the inheritance by purchase or by descent, so operate as to defeat, impair or in any wise affect such remainder. [Id.]

Art. 1291. [1106] [627] [551] When an estate deemed a fee simple.—Every estate in lands which shall thereafter [hereafter] be granted, conveyed or devised to one although other words heretofore necessary at common law to transfer an estate in fee simple be not added, shall be deemed a fee simple, if a less estate be not limited by express words or do not appear to have been granted, conveyed or devised by construction or operation of law. [Id.]

Art. 1292. [1107] [628] [552] Form of conveyance.—The following form, or the same in substance, shall be sufficient as a conveyance of the fee simple of any real estate with a covenant of general warranty, viz.:

"The State of Texas,
"County of.....

"Know all men by these presents, That I, ..., of the ..... (give name of city, town or county), in the state aforesaid, for and in consideration of ..... dollars, to me in hand paid by ....., have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said ....., of the.....(give name of city, town or county), in the state of ....., all that certain ..... (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said ..... his heirs or assigns forever. And I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said ....., his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

"Witness my hand, this ..... day of ....., A. D. 19....

"Signed and delivered in the presence of .....

..... [Id.]

Art. 1293. [1108] [629] [553] Other forms and clauses valid.—No person shall be obliged to insert the covenant of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter to be made, that may be deemed proper and advisable by the purchaser and seller; and other forms not contravening the laws of the land shall not be invalidated. [Id.]

Art. 1294. [1109] [630] [554] Must be witnessed or acknowledged.—Every deed or conveyance of real estate must be signed and acknowledged by the grantor in the presence of at least two credible subscribing witnesses thereto; or must be duly acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration. [R. S. 1879, 554.]

Art. 1295. [1110] [631] [555] Conveyance by authorized officer.—Every conveyance of real estate by a commissioner, sheriff or other officer legally authorized to sell, under or by virtue of a decree or judgment of any court within this State, shall be good and effectual to pass the absolute title to such real estate to the purchaser thereof; but nothing herein shall be construed to affect the right, title or interest of any person or persons other than the parties to such conveyance, decree or judgment, and those claiming under them. [Id.]

Art. 1296. [1111] [632] [556] Estates in futuro.—An estate or freehold or inheritance may be made to commence in futuro, by deed or conveyance, in like manner as by will. [Id.]

Art. 1297. [1112] [633] [557] Implied covenants.—From the use of the word "grant" or "convey," in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs or assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from incumbrances.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Art. 1298. [1113] [634] [558] Incumbrances include what.—The term "incumbrances" includes taxes, assessments and all liens upon real property.

Art. 1299. [1114] [635] [559] Conveyance of separate lands of wife.—The husband and wife shall join in the conveyance of real estate, the separate property of the wife; and no such conveyance shall take effect until the same shall have been acknowledged by her privily and apart from her husband before some officer authorized by law to take acknowledgments to deeds for the purpose of being recorded, and certified to in the mode pointed out in articles 6605 and 6608. [Acts 1897, p. 41; G. L., vol. 10, p. 1095.]

Art. 1300. [1115] [636] [560] Conveyance of homestead.—The homestead of the family shall not be sold and conveyed by the owner, if a married man, without the consent of the wife. Such consent shall be evidenced by the wife joining in the conveyance, and signing her name thereto, and by her separate acknowledgment thereof taken and certified to before the proper officer, and in the mode pointed out in articles 6605 and 6608. [Id.]

Art. 1301. [1116] [637] [561] Failing as a conveyance.—When an instrument in writing, which was intended as a conveyance of real estate, or some interest therein, shall fail, either in whole or in part, to take effect as a conveyance by virtue of the provisions of this chapter, the same shall nevertheless be valid and effectual as a contract upon which a conveyance may be enforced, as far as the rules of law will permit.

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CHAPTER 1.—PURPOSES

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Article 1302. [1121] [642] [566] Purposes.—The purposes for which private corporations may be formed are:

1. The support of public worship.

2. The support of any benevolent, charitable, educational or missionary undertaking.

2A. Charitable corporations may be created for the purpose, or purposes, of owning and operating non-profit cooperative hospitals, and for the purpose of providing a suitable place in the immediate locality where members and families of members of such corporations may obtain medical, dental, health, surgical, nursing, hospitalization, and related services and benefits. [Added Acts 1945, 49th Leg., p. 102, ch. 70, § 1.]

Section 2 of the Act of 1945, which added subd. 2A, provided that corporations authorized by the provisions of the act could not be created in cities or towns of more than 2500. Section 3 provided that a decision holding the act partially invalid shall not affect the remaining portions of the act.

3. The support of any literary and scientific undertaking; the maintenance of a library, or promotion of painting, music and other fine arts.

4. The protection of women and children and the prevention of cruelty to animals.

5. The protection and preservation and propagation of fish, oysters and game.

6. The erection and maintenance of sanitoriums, with the right to acquire and own lands and town lots; to improve, cultivate, rent and alienate same; to erect storage dams and otherwise develop irrigation on such lands; to erect, acquire and maintain hotels and bath houses on its property; and in conjunction therewith, to erect and maintain training schools and outdoor sports on its property for the training and pleasure of its patients and their families; to maintain and carry on such industrial enterprises in conjunction therewith as shall be necessary to furnish employment to the patients therein and their families; provided such corporation shall not own or control more land than is necessary for the actual conduct and control of a sanitarium. [Acts 1897, p. 191; Acts 1913, p. 114; G. L. vol. 10, p. 1245.]

7. The encouragement of agriculture and horticulture by associations for the maintenance of public fairs and exhibitions of stock and farm products.

8. To grow, sell and purchase seeds, plants, trees, etc., for agricultural, horticultural and ornamental purposes, and to purchase and lease all lands necessary for that purpose.

9. To support and maintain bicycle clubs, and other innocent sports. [Acts 1897, p. 189; G. L. vol. 10, p. 1243.]

10. To establish and maintain fishing, hunting and boating clubs; to protect, preserve and propagate fish and game; to purchase and own such lands and bodies of water as may be desirable in connection therewith; to erect suitable improvements thereon; and to raise such live stock for profit only as the preserves of the club will maintain. [Acts 1907, p. 291.]

11. To construct and maintain a telegraph and telephone line.

12. To engage in radio telegraphy and telephony and wireless telegraphy and telephony, with authority to own, lease, conduct, maintain and operate all the necessary plants, equipment and facilities thereto pertaining. [Acts 1923, 3rd C. S. p. 171.]

13. To supply water to the public.

14. To manufacture and supply gas, light, heat and electric motor power, or either of them to the public by any means.

15. Private corporations may be created for, or after being created, may be so amended as to include two or more of the following purposes: To construct or purchase and maintain mills and gins; to manufacture and supply to the public by any means, ice, gas, light, heat, water and electric motor power, or either, in connection with such mills and gins, or either; to harvest grain, or to harvest and thresh grain; provided, that the authorized capital stock of any corporation authorized by this subdivision shall not exceed two hundred and fifty thousand dollars. [Acts 1903, p. 227.]

16. The authorized capital stock of corporations created under or authorized by subdivision 88 hereof which shall include irrigation and any one or more of the other purposes named herein shall not exceed one million dollars; the authorized capital stock of corporations created under or authorized by this subdivision which shall include water works for the supply of water to the public or municipalities, and any one or more of the other purposes named, except irrigation, shall not exceed five hundred thousand dollars; and the authorized capital stock of corporations so authorized for any two or more of the purposes named herein, except irrigation and water works, or the supply of water to the public, shall not exceed two hundred thousand dollars. [Acts 1907, pp. 291, 294; Acts 1913, p. 352.]

17. To manufacture ice and non-intoxicating beverages, and in connection therewith, to operate a general storage business; provided, that no beverage of any kind prohibited by any law of this State from being manufactured, sold or stored, shall be so manufactured, sold, stored or in any manner kept in the possession of any company so incorporated. [Acts 1st C. S. 1921, p. 151.]

18. To manufacture and sell denatured alcohol and its by-products. [Acts 1907, p. 291; Acts 1935, 44th Leg., 1st C.S., p. 1542, ch. 371, § 1.]

19. To construct and maintain establishments for the preserving and canning of fruits, vegetables and fish.

20. To grow and sell fruits, vegetables and tobacco. [Acts 1901, p. 70.]

21. To establish and carry on a dairy and creamery business. [Acts 1897, p. 192; G. L. vol. 10, p. 1245.]

22. To raise, buy and sell live stock.

23. To construct and maintain stock yards and pens.

24. To construct and maintain establishments for slaughtering, refrigerating, canning, curing and packing meat, and to lend or advance money by such establishments on any class of live stock.

25. To grow and sell sugar cane with the right to make and refine sugar, molasses, and all by-products of sugar cane and to sell the same. [Acts 1905, p. 28.]

26. To conduct and carry on a general apiary business, and in connection therewith, to manufacture bee hives and bee keepers' supplies, and purchase and sell such goods, wares and merchandise used, manufactured and produced in such business. [Acts 1907, p. 11.]

27. To gather and harvest cotton; provided that the capital stock of such corporation shall not exceed fifty thousand dollars. [Acts 1911, p. 28.]

28. To grow, prepare for market, and sell rice, with power to construct, maintain and operate such dams, reservoirs, lakes, wells, canals, flumes, laterals, and other appurtenances as may be necessary or convenient for the purpose of irrigating. [Acts 1905, p. 28.]

29. To construct and maintain sewers.

30. To construct, maintain and operate canals, drains and ditches outside the corporate limits of cities and towns in any county in Texas. [Acts 1897, p. 109; Acts 1893, p. 109; Acts 1888, S. S. p. 1; Acts 1887, p. 40; Acts 1885, p. 59; G. L. vol. 9, pp. 679, 838, 999; G. L. vol. 10, pp. 539, 1163.]

31. To excavate, maintain and operate drainage ditches, canals, and flumes with power to condemn lands necessary for the right of way and machinery plants for such drainage ditches, canals and flumes. [Acts 1897, p. 192; G. L. vol. 10, p. 1245.]

32. To construct, maintain and operate canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and for conserving, storing, conducting and transferring water to all persons entitled to the use of the same for irrigation, mining, milling, manufacturing, the development of power to cities and towns for waterworks, and for stock-raising. [Acts 1917, p. 224.]

33. To construct and maintain water power.

34. To transact any manufacturing or mining business, and to purchase and sell goods, wares and merchandise used for such business.

35. To construct steam and electric plows for breaking, cultivating and draining lands.

36. To store, transport, buy and sell oil, gas, salt, brine and other mineral solutions and liquified minerals; also sand and clay for the manufacture and sale of clay products. [Acts 1899, p. 202; Acts 1915, p. 259; Acts 1935, 44th Leg., p. 296, ch. 110, § 1.]

37. To establish and maintain an oil business with authority to contract for the lease and purchase of the right to prospect for, develop and use coal and other minerals, petroleum and gas; also the right to erect, build and own all necessary oil tanks, cars and pipes necessary for the operation of the business of the same. [Acts 1897, p. 188; G. L. vol. 10, p. 1242; Acts 1915, p. 225.]

38. To establish and maintain a drilling business, with authority to own and operate drilling rigs, machinery, tools and apparatus necessary in the boring,

or otherwise sinking of wells in the production of oil, gas, or water, or either, and the purchase and sale of such goods, wares and merchandise used for such business. [Acts 1919, p. 8.]

39. To purchase and sell goods, wares and merchandise, and agricultural and farm products.

40. To buy and sell goods, wares and merchandise of any description, by wholesale or wholesale and retail, with a capital stock of not less than twenty thousand dollars; provided, such wholesale and retail business shall not be conducted apart or in separate establishments.

41. To do a general advertising business. [Acts 1911, p. 28.]

42. To transact a printing or publishing business, and in connection therewith to sell goods, wares and merchandise of a stationery and blank book manufacturing business.

43. To erect and maintain market houses and market places.

44. Corporations may be created for one or more of the following purposes, namely: For the drilling and operating of mineral water wells and the manufacturing of mineral crystals from said water and other by-products from mineral water, and to produce and sell goods, wares and merchandise used for such business, and/or to establish, maintain, erect, and repair a hotel, office building, opera and play-house, department house or steam laundry. [Acts 1907, p. 291; Acts 1897, p. 189; G.L. vol. 10, p. 1241; Acts 1934, 43rd Leg., 4th C.S., p. 33, ch. 8, § 1.]

44a. To own, lease, operate, and manage hotels and tourist courts and to own the stocks, bonds, and other securities of hotel and tourist court corporations. [Added Acts 1943, 48th Leg., p. 249, ch. 150, § 1.]

45. To design, purchase and sell steel and iron and other metal products and the manufacture of any or all of such products, and to design, sell, construct and erect engineering and architecture[1] structures, and to contract for the construction and erection of such structures. [Acts 1915, p. 175.]

[1] So in enrolled bill. Should probably read "architectural".

46. To contract for the erection, construction, or repair of any building, structure or improvement, public or private, and erect, construct or repair same or any part thereof, and to acquire, own, prepare for use any materials for said purposes. [Acts 1919, p. 65.]

47. To erect or repair any building or improvement, and to accumulate and lend money for said purposes, and to purchase, sell and subdivide real property in towns, cities and villages and their suburbs not extending more than two miles beyond their limits and to accumulate and lend money for that purpose. [Acts 1897, p. 189; G. L. vol. 10, p. 1241.]

48. To accumulate and lend money without banking or discounting privileges.

49. For any one or more of the following purposes: To accumulate and lend money, purchase, sell and deal in notes, bonds and securities, but without banking and discounting privileges; to act as trustee under any lawful express trust committed to them by contract and as agent for the performance of any lawful act. [Acts 1919, p. 134.]

50. To subscribe for, purchase, invest in, hold, own, assign, pledge and otherwise deal in and dispose of shares of capital stock, bonds, mortgages, debentures, notes and other securities, obligations, contracts and evidences of indebtedness of foreign or domestic corporations not competing with each other in the same line of business; provided the powers and authority herein conferred shall in no way affect any provision of the anti-trust laws of this State. [Acts 1921, p. 265.]

51. To take and promote stock in manufacturing companies and corporations.

52. To organize exchanges, with authority to deal in the stocks of mining companies.

53. To organize cotton exchanges, chambers of commerce and boards of trade, with power to provide and maintain suitable rooms for the conduct of their business, and to establish and maintain uniformity in the commercial usages of cities and towns, to acquire, preserve and disseminate valuable business information, and to adopt rules, regulations and standards of classification, which shall govern all transactions connected with the cotton trade, and with other commodities where standards and classifications are required, and generally to promote the interest of trade and increase the facilities of commercial transactions. [Acts 1899, p. 58.]

54. To establish and maintain clearing house associations, with power to provide and maintain suitable rooms for the conduct of their business, and to establish and maintain uniformity in the commercial usages among the members of such associations, to authorize any National Banking Association, and any State Bank, Bank and Trust Company, or Trust Company incorporated under the laws of the State of Texas or any private bank to become members thereof; to acquire, preserve, disseminate and exchange between the members of such associations, or by the members of such associations through said clearing house associations, of valuable business information, and credit information upon the borrowers or customers of said members of such clearing house associations; to adopt rules, regulations, and standards of conduct governing the members of such associations; to employ clearing house examiners, to contract for the compensation of such examiners, to provide for the employment of assistants for such examiners; to adopt rules governing the assessment of members of such associations for the payment of expenses so incurred; to adopt and prescribe rules and regulations governing the admission of members of such associations, and their expulsion therefrom, to join with one or more such associations in other cities in the establishment and maintenance of a system of clearing house examinations of the members of such associations; and to adopt, promulgate and establish such rules and regulations governing the members of such associations as will, in the judgment of a majority of the members of such associations, contribute to the solvency and safety of the members of such associations and the protection of the depositors of the members of such associations. [As amended Acts 1927, 40th Leg., p. 287, ch. 200, § 1.]

55. To accept, guarantee, enforce, become surety upon, buy, sell, contract with reference to, or otherwise deal in acceptances, bills of exchange, bills of lading and warehouse and other receipts growing out of or to be used in aid of the transportation, warehousing, distribution, or financing, in either domestic or foreign trade, of readily marketable, staple, non-perishable, agricultural products, and so executed or supported as to be secured upon or to represent such products in amounts at least equal in clear market value to the amount of the financial undertaking of such corporations upon or on account of such instruments; to buy, sell, indorse, contract with reference to, or otherwise deal in acceptances of approved banking corporations, not secured upon nor representing any such products, but eligible for rediscount to, or for purchase in, the open market by Federal Reserve Banks. [Acts 2nd C. S. 1919, p. 21.]

56. To make, compile and own abstracts of titles to lands, and liens of all character on any property, or any other abstracts of records in this State, or county thereof, required by law.

57. To guarantee titles to lands and indemnify the holders thereof against losses by reason of defects in titles. [Acts 1907, p. 292.]

58. To guarantee and assure the validity of bills of lading and other contracts. [Id.]

59. To audit books, accounts and transactions of persons, firms or corporations, private, public or municipal.

60. To construct and maintain any species of roads and bridges in connection therewith.

61. To construct, build, acquire, own, operate and maintain toll roads within this State. [Acts 1913, p. 143.]

62. To construct, operate, and maintain causeways, or causeways and bridges, which may be used for any mode of travel and transportation, with the right to demand, receive and collect charges as fares or tolls.

63. To construct and maintain a bridge or ferry which may be used for any or all modes of travel and transportation.

64. To establish and maintain garages with authority to purchase, sell, store, house, rent, operate, repair and otherwise deal in automobiles and other motor vehicles and their accessories, gasoline, and oils necessary to the operation of motor vehicles. The right to operate shall not conflict with any ordinance of any incorporated city or town in which they shall operate. [Acts 1919, p. 7.]

65. To conduct a livery and transfer business with auto and horse drawn vehicles, and for the sale of such vehicles. [Acts 1913, p. 174.]

66. To establish and maintain a line of stages.

67. To construct or acquire with power to maintain and operate, street railways and suburban railways and belt lines of railways within and near cities and towns, for the transportation of freight and passengers, with power also to construct, own and operate union depots, and to buy, own, sell and convey right of way upon which to construct railroads. [Acts 1897, p. 189; Acts 1903, p. 62; G. L. vol. 10, p. 1241.]

68. To construct, acquire, maintain and operate lines of electric gas or gasoline, denatured alcohol, or naptha motor railways within and between any cities or towns, and interurban railways within and between cities and towns, in this State, for the transportation of freight or passengers, or both. [Acts 1897, p. 188; G. L. vol. 10, p. 1242; Acts 1903, p. 204; Acts 1909, 2nd C. S. p. 396; Acts 1913, pp. 67, 349; Acts 1917, p. 390.]

69. To transport goods, wares and merchandise, or any valuable thing.

70. To construct railroads and bridges for railroad companies.

71. To build, maintain and operate a line of railroads to mines, gins, quarries, manufacturing plants and mills.

72. The construction, operation and maintenance of terminal railways. [Acts 1907, p. 300; Acts 1905, p. 211; Acts 1897, p. 188; Acts 1917, p. 134; G. L. vol. 10, p. 1242.]

73. To build and navigate steamboats and vessels and to carry persons and property therein.

74. The building, constructing and repairing boats, ships and vessels for use in and for the navigation of rivers, lakes, streams and seas, with power to build, construct, maintain and operate such docks, dry docks, marine railways, wharves and other appurtenances as may be necessary for the accomplishment of such purpose. [Acts 1917, p. 246.]

75. To construct harbors and canals on the coast of the Gulf of Mexico.

76. To improve rivers and other waterways in this State, and to render the same navigable for steam vessels and other water craft, with the authority to charge and collect tolls for the navigation of such rivers and waterways.

77. To establish a transportation business with power to buy, construct, lease, own, operate and maintain and convey all kinds of steamships, vessels and other water craft, and to navigate the same between all parts of the globe, and upon rivers, and to construct, buy, lease, own, maintain, operate and convey warehouses, docks, and wharves, and to buy, lease, receive, own, hold, and enjoy real and personal property necessary in the transaction of its business; to receive, purchase, hold, use and convey such rights, privileges, franchises and property, and to exercise beyond the jurisdiction of this State such power as may be granted to or conferred upon it by any foreign government, state or municipality; to have officers and agents, and to maintain offices at all points at which the company may do business; to act as principal or agent in buying and selling merchandise in all foreign countries; to carry passengers, freight, express and mail. [Acts 1897, p. 191; G. L. vol. 10, p. 1245.]

78. To construct, build and manufacture aeroplanes, including all classes of flying machines, to buy, sell and otherwise deal therein, and to operate, or have operated any such machines for the purpose of carrying passengers and freight, or either, including United States mail, from and to any point in this State, and subject to the laws thereof, to and from any point in any State of the United States, or any foreign country, with the right to acquire, by purchase or otherwise, and to maintain all necessary starting and lighting grounds and fields. [Acts 1919, p. 9.]

79. To engage in international trade and to purchase and sell products of the farm, ranch, orchard, mine and forest. [Acts 1921, p. 227.]

80. To do business in any State or foreign country:

(a) The establishment of land companies to buy, own, sell and convey real estate and minerals, and engage in mining, agriculture and stock raising.

(b) Doing a general business in merchandise and manufactures.

(c) The acquisition, construction, maintenance, operating and owning of power and illuminating plants, and systems of every character.

(d) The acquisition, construction, maintenance, operating and owning of urban and other lines of railway and all other kinds of transportation and communication.

(e) The improvement of harbors and rivers, and the acquisition, construction, ownership, and operation of canals, irrigation work, wharves and warehouses, and all kinds of machinery, tools and materials used for all the purposes enumerated in this subdivision. Any corporation organized hereunder shall only own such real estate in this State as may be necessary for its office. For every charter granted hereunder which may include more purposes than are contained in any one paragraph of this subdivision, a separate franchise fee or tax shall be paid to this State for the additional purposes for which such corporation is organized. [Acts 1897, p. 191; G. L. vol. 10, p. 1245; Acts 1901, p. 70.]

81. To construct or purchase or purchase and maintain mills, gins, cotton compresses, grain elevators, wharves, and public warehouses for the storage of products and commodities, and the purchase, sale and storage of products and commodities by grain elevator and public warehouse companies; the loan of money by such elevator and public warehouse companies; and to act as general commercial brokers and as custom brokers in the United States and foreign countries. [Acts 3rd C. S. 1920, p. 27.]

82. To construct, purchase, maintain and operate warehouses at one or more places in this State for the storage of products of the soil, with authority to issue negotiable receipts therefor; provided such corporation shall, by provisions of its charter, or amendment thereof, limit the amount of its capital stock that may be owned or controlled directly or indirectly by one stockholder, and the number of votes that may be cast in any stockholder's meeting by one stockholder

to not exceeding one thousand dollars of its capital stock. [Acts 1907, p. 291.]

83. To organize laborers, working men, wage earners, and farmers to protect themselves in their various pursuits; provided however, no charter shall be issued hereafter to laborers, working men, or wage earners, or amendment granted to a charter of a corporation previously created to organize laborers, working men, or wage earners, or that may be hereafter created hereunder to organize laborers, working men, or wage earners, by the Secretary of State to any person, association or corporation, for such purposes without an investigation first having been made by the Commissioner of Labor Statistics concerning such application, and a favorable recommendation made thereon by said Commissioner to the Secretary of State. It is expressly provided that no investigation or recommendation by the Commissioner of Labor Statistics shall be required or made of applications from farmers for a charter. [Acts 1897, p. 191; Acts 1941, 47th Leg., p. 350, ch. 190, § 1.]

84. To promote immigration.

85. To organize and maintain volunteer fire companies.

86. To conduct the business of undertaker and embalmer. [Acts 1901, p. 70.]

87. To maintain a public or private cemetery or crematory.

See, also, article 919, ante.

88. Private corporations may be created for, or, after being created, may so amend their charters as to include two or more of the following purposes, namely: The supply of water to the public for irrigation, power, municipal or domestic purposes; the manufacture of and supply of ice to the public; the generation of and supply of gas, electric light and motor power to the public; the manufacture, supply and sale of carbonated water to the public; the operation of cottonseed oil mills and the operation of cotton compresses; provided, that corporations including more than one of the purposes named in this Article shall pay the franchise tax provided by law for each of the purposes so included in their charter or amendments thereto. [Acts 1925, p. 188.] [39th Leg., ch. 51, § 1.]

89. Corporations may be formed for the purpose of engaging in the poultry business and to buy and sell poultry of all kinds with the right to acquire and own all property necessary to conduct such business. [Acts 1927, 40th Leg., p. 17, ch. 11, § 1.]

90. Private corporations may be formed for the purpose of engaging in the business of operating, conducting and maintaining a cafeteria or cafeterias, with authority to own, lease and operate all plants, equipment and facilities necessary, incident or pertaining thereto. The right to operate shall not conflict with any ordinance of any incorporated city or town in which such business shall be operated. [Acts 1927, 40th Leg., p. 17, ch. 11, § 1.]

91. Corporations may be created to establish, support and maintain automobile clubs for the mutual benefit and protection of automobile operators, with power to acquire and own all property incidental to such business. Nothing in this Act shall be construed as legalizing corporations to write insurance as agents. [Acts 1929, 41st Leg., p. 102, ch. 47, § 1.]

91a. Private corporations may be created for the purpose of improving lands situated within Water Control and Improvement Districts, Water Improvement Districts, Levee Improvement Districts, Drainage Districts and to that end such corporations may own, improve, subdivide or sell such lands in the same manner that individuals may do for the purposes included in the Acts creating said districts. [Acts 1929, 41st Leg., p. 110, ch. 54, § 1.]

91b. Private corporations may be created for the purpose of acquiring lands owned by private corporations and/or Trust Estates, operating by and through Trustees under Declaration of Trust, and acquired on or before March 1, 1931, from which the timber has been cut and removed, wholly or in part, for lumbering purposes, and such corporations, when so created, shall be authorized to acquire, own, subdivide, encumber, improve and sell such lands, the same as individuals may do. [Acts 1931, 42nd Leg., p. 116, ch. 74, § 1.]

Section 2 of this Act, repeals conflicting laws but provides that it shall not be construed as affecting articles 166 and 167, ante.

92. Royalty Corporations. Corporations may be formed to acquire, bring together, hold, dispose of and deal in royalty and other interests in minerals, and to manage, control and exploit said mineral interests, and to collect the revenue arising therefrom. [Acts 1930, 41st Leg., 5th C.S., p. 144, ch. 19, § 1.]

93. Private corporations may be created for, or after being created, charters may be amended to include the supplying of water and sewerage service to the public. [Acts 1931, 42nd Leg., p. 41, ch. 32, § 1.]

The Legislature numbered this subdivision 89, which number was added by Acts 1927, 40th Leg., p. 17, ch. 11, § 1.

94. Corporations may be created to establish, maintain and operate orchestras, theatrical acts and concert attractions. [Acts 1931, 42nd Leg., p. 414, ch. 247, § 1.]

95. Corporations may be created for, or after being created, charters may be amended to include the construction, maintenance, and operation of radio broadcasting equipment and stations. [Acts 1933, 43rd Leg., p. 278, ch. 108.]

95a. Corporations may be formed for the purpose of dealing in agricultural commodities, poultry, dairy products, and livestock, and shall have power and authority to buy, sell, and deal in such agricultural commodities, poultry, dairy products, and livestock; to slaughter such livestock, to refrigerate, can, cure, render, pack, and sell meat, and to prepare such commodities and their by-products for market and to sell the same; to finance the carrying and orderly marketing of such agricultural commodities, poultry, dairy products, and livestock; to operate cold storage plants, warehouses, and locker plants; to manufacture, purchase, and sell ice and non-intoxicating beverages; to buy and sell foodstuffs and beverages of every kind and character; and the transaction of all business heretofore set out. Any corporation heretofore organized for the purpose of the manufacture and the sale of ice to the public may engage, under its existing charter, in any of the businesses hereinabove set out. [Added Acts 1947, 50th Leg., p. 533, ch. 313, § 1.]

Former subd. 95a was Acts 1933, 43rd Leg., p. 529, ch. 172, § 1; repealed by Acts 1947, 50th Leg., p. 533, ch. 313, § 1.

95b. [Repealed by Acts 1947, 50th Leg., p. 533, ch. 313, § 1.]

The subdivision repealed was Acts 1933, 43rd Leg., p. 529, ch. 172, § 2.

96. Private corporations may be created under the General Laws of this State by the voluntary association of three (3) or more persons for the purpose of authorizing, creating, and operating a general detective agency to furnish detectives to make investigations and reports of same to the proper persons, to guard, watch and protect property of industrial plants, business institutions and residential properties in this State; providing, however, no such corporation shall be created with less than Ten Thousand Dollars ($10,000.00) capital stock, and providing further that no such corporation shall be incorporated as herein provided, nor shall any permit be issued to any foreign corporation until such corporation shall have executed a good and sufficient surety bond or insurance policy (in the event of a bond to be signed by some good solvent bonding company authorized to do business in this State, and in the event of an insurance policy to be executed by some good solvent insurance company

authorized to do business in this State) and deliver the same to the Secretary of State. Said surety bond or insurance policy shall be in the sum of Ten Thousand Dollars ($10,000.00) and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may be recovered against said detective agency by reason of the wrongful or illegal acts of its servants, officers, agents or employees committed by them in the course of their employment. Said surety bond or insurance policy shall further be conditioned that such person so injured shall have the right to sue directly upon such surety bond or insurance policy in their own name, and the same shall be subject to successive suits for recovery until a complete exhaustion of the face amount thereof. Each such detective agency shall, on or before the date of the expiration of the terms of any surety bond or insurance policy so filed by such agency file a renewal thereof, or a new surety bond or insurance policy containing the same terms or obligations of the preceding surety bond or policy, and shall each year thereafter, on or before the expiration date of the existing surety bond or insurance policy, file such renewal surety bond or insurance policy so as to provide continuous security to persons so injured, and in the event any such detective agency fails to execute any surety bond or insurance policy in the first instance, or to execute any renewal surety bond or insurance policy, or to file the same with the Secretary of State as provided herein, it shall constitute grounds for the forfeiture of the charter of a domestic corporation and the permit of a foreign corporation in a suit to be instituted at the instance of the Attorney General. Nothing herein shall be construed to authorize the agents, servants, officers or employees of such corporation to have the power of peace officers in this State unless such power be conferred thereon under the provisions of some other law of this State. [Acts 1933, 43rd Leg., p. 418, ch. 163.]

97. Corporations may be created for the purpose of constructing, maintaining, and operating pneumatic tubes for the purpose of conveying mail, newspapers, and packages under, over, or on the ground. [Acts 1933, 43rd Leg., p. 543, ch. 174.]

98. Corporations may be formed to establish, maintain, operate and engage in the business of cleaning, pressing and dyeing clothing and other materials. [Acts 1935, 44th Leg., p. 489, ch. 202, § 1.]

99. Private corporations may be created for the purpose of producing, mining, manufacturing, buying, and selling of building materials of all kinds. [Acts 1937, 45th Leg., p. 140, ch. 73, § 1.]

100. Corporations may be created for the purpose of providing for the registration, preservation of the purity of the blood, and improvement in the breeding of any species or class of livestock, and to keep, maintain, and publish in suitable form the history, record, and pedigree thereof. [Acts 1937, 45th Leg., p. 654, ch. 323, § 1.]

101. Corporations may be created for the purpose of purchasing and owning patents with all rights incidental thereto, and to manufacture products and processes thereunder, and to market, sell, and distribute such products, and license dealers to use such processes in prescribed territories on a royalty basis. [Acts 1937, 45th Leg., p. 654, ch. 323, § 1.]

102. Corporations may also be created for the purposes of providing for the mutual protection of members of voluntary Nonprofit Livestock Associations and to promote generally the welfare of the livestock industry in the State and Nation. [Acts 1937, 45th Leg., p. 654, ch. 323, § 1.]

103. Corporations may be formed to establish, maintain, operate and engage in the business of grading, constructing terraces and drainage structures and all other forms of dirt construction work. [Acts 1937, 45th Leg., p. 475, ch. 239, § 1.]

104. Corporations may be formed for the purpose of processing and scouring wool, hair, and mohair, for profit, and shall have the power and authority to buy and sell wool, hair, and mohair, and to own, operate, and maintain processing and scouring plants. [Added Acts 1939, 46th Leg., p. 127, § 1.]

Another subd. 104 was added by Acts 1939, 46th Leg., p. 123, § 16, see post.

104. Corporations may be created as charitable, benevolent and non-profit corporations to furnish hospital services to its members. [Added Acts 1939, 46th Leg., p. 123, § 16.]

Another subd. 104 was added by Acts 1939, 46th Leg., p. 127, § 1, see ante.

105. Corporations may be created for one or more of the following purposes, namely: Religious, Charitable, Literary, Scientific or Educational. [Acts 1945, 49th Leg., p. 119, ch. 81, § 1.]

Another subd. 105 was added by Acts 1947, 50th Leg., p. 1002, ch. 422, § 1, see post.

Section 2 of the Act of 1945 repealed all conflicting laws.

105. Corporations may be formed for the protection and advancement of the professional interests of persons licensed to practice law, the advancement of justice and the science of jurisprudence, the encouragement of cordial intercourse among lawyers, and the improvement of the relations between the Bench and Bar and the public; and when so formed shall have power to provide and maintain suitable buildings for the conduct of their activities; to acquire, preserve and maintain law libraries and periodicals of interest to lawyers; to adopt codes of ethics and standards of conduct governing the members of such associations; and to adopt and prescribe rules and regulations governing membership in such associations. [Added Acts 1947, 50th Leg., p. 1002, ch. 422, § 1.]

Another subd. 105 was previously added by Acts 1945, 49th Leg., p. 119, ch. 81, § 1. See ante.

Section 2 of the Act of 1947 read as follows: "Any Bar Association or literary society incorporated under existing law may amend its charter to conform to the terms hereof, and thereupon may exercise the powers here authorized."

106. Corporations may be created for the purpose of operating a general commissary business, and to buy, sell, and otherwise deal in goods, wares, merchandise, and equipment incident to such business. [Added Acts 1947, 50th Leg., p. 489, ch. 286, § 1.]

107. Corporations may be created for the purpose of acting as general commercial brokers and as customs brokers in the United States and foreign countries; to act as principal or agent in buying and selling merchandise in all foreign countries, and to do general export and import business to and from the United States. [Added Acts 1947, 50th Leg., p. 774, ch. 383, § 1.]

Art. 1302a. Corporations for owning abstract plants, insuring titles, lending money and dealing in securities, and acting as trustees, etc.; regulation by Insurance Commissioners.

Purposes

Sec. 1. Private corporations may be created for the following named purposes;

(1) To compile and own, or to acquire and own records or abstracts of title to lands and interests in lands; and to insure titles to lands or interests therein, both in Texas and other states of the United States, and indemnify the owners of such lands, or the holders of interests in or liens on such lands, against loss or damage on account of incumbrances upon or defects in the title to such lands or interests therein.

Such corporations may also exercise the following powers by including same in the charter when filed originally, or by amendment:

(2) Make and sell abstracts of title in any counties of Texas or other states.

(3) To accumulate and lend money, to purchase; sell or deal in notes, bonds and securities, but without banking privileges.

(4) To act as trustee under any lawful trust committed to it by contract or will, appointment by any court having jurisdiction of the subject matter as trustee, receiver or guardian and as executor or guardian under the terms of any will and as any administrator of the estates of decedents under the appointment of the court. [Acts 1929, 41st Leg., p. 77, ch. 40.]

Capital stock; investment in abstract plants

Sec. 2. All corporations created and/or operating under the provisions of this law must have a paid up capital of not less than One Hundred Thousand ($100,000.00) Dollars. Any corporation organized hereunder having the right to do a title insurance business may invest as much as fifty (50%) per cent, of its capital stock in an abstract plant or plants, provided the valuation to be placed upon such plant or plants shall be approved by the Board of Insurance Commissioners of this State; provided, however, that if such corporation is not doing a trust business as provided in Section 1, Article 4 of the Act hereby amended, and maintains with the Commissioner of Insurance the deposit of One Hundred Thousand ($100,000.00) Dollars, in securities as provided in Section 6 of the Act hereby amended, such of its capital in excess of fifty (50%) per cent, as deemed necessary to its business by its Board of Directors may be invested in abstract plants; and provided further that no such corporation may hereafter acquire more than one abstract plant in any one county and shall not hereafter acquire any plant in any county in this State having a population of less than ninety thousand (90,000) according to the last preceding Federal census. [Acts 1929, 41st Leg., p. 77, ch. 40; Acts 1933, 43rd Leg., p. 750, ch. 222.]

Operation under rules prescribed by Board of Insurance Commissioners

Sec. 3. Corporations so formed as well as foreign corporations and those created under Subdivision 57, Article 1302 of the Revised Statutes of 1925, or under Chapter 18, Title 78, Revised Statutes of 1925, or any other law insofar as the business of either may be a title insurance business, shall operate in Texas under the control and supervision and under such uniform rules and regulations as to forms of policies and underwriting contracts and premiums therefor, as may be from time to time prescribed by the Board of Insurance Commissioners of Texas; and no Texas or foreign corporation whether incorporated under this Act or any other law of the State of Texas shall be permitted to issue any title policy or mortgage certificate or underwriting contract on Texas property other than under this Act and under such rules and regulations. No policy of title insurance or[1] guarantee of any character on Texas titles shall be issued or valid unless written by a corporation complying with all provisions of and authorized or qualified under this Act. Before any rate provided for herein shall be fixed or changed, reasonable notice shall issue, and a hearing afforded to the companies affected by this Act. Every company doing business under this Act shall file with the Board of Insurance Commissioners the form of guarantee certificate, mortgage policy or any policy of title insurance before the same shall be issued, and the form must be approved by the Board, and be uniform as to all companies. Under no circumstances may any company use any form until after the same shall have been approved by the Board.

The Board of Insurance Commissioners shall have the right and it shall be its duty to fix and promulgate the rates to be charged by corporations created or operating hereunder for premiums on policies or certificates and underwriting contracts. The rate fixed by the Board shall be reasonable to the public and nonconfiscatory as to the company. For the purpose of collecting data on which to determine the proper rates to be fixed, the Board shall have the right to require the companies operating in Texas to submit such information in such form as it may deem proper, all information as to loss experience, expense of operation, and other material matter for its consideration.

Rates when once fixed shall not be changed[2] until after a public hearing shall be had by the Board, after proper notice sent direct to all companies interested in writing this business, and after public notice in such manner as to give fair publicity thereto for two weeks in advance. The Board must call such hearing to consider rate changes at the request of a company writing title insurance, or if the Board thinks that a change in rates may be proper. Any company or other person interested, feeling injured by any action of the Board with regard to rates, shall have the right to file a suit in the District Court of Travis County, within thirty days after the Board has made such order, to review the action, in which suit the Court may enter a judgment correcting the Board's order and fixing such rates as may be proper, or affirming the action of the Board. Under no circumstances shall any rate of premium be charged for policies or underwriting contracts different from those fixed and promulgated by the Board, or those fixed in a final judgment of the Court as herein provided. [Acts 1929, 41st Leg., p. 77, ch. 40.]

[1] So in enrolled bill. Session Laws read "of."
[2] So in enrolled bill. Session Laws read "charged."

Guarantee of mortgages prohibited

Sec. 3–A. Corporations, domestic or foreign, operating under this Act shall not have the right to guarantee the payment of mortgages which cover real estate in Texas, and if any such corporation shall do so it shall forthwith forfeit and surrender its permit to do business.

Foreign corporations subject to same rules as domestic corporations

Sec. 4. Corporations organized under the laws of any other State shall be permitted to do business in this State on exactly the same basis and subject to the same rules, regulations and prices and supervision as fixed for Texas corporations.

Forfeiture of rights

Sec. 5. Any foreign or domestic corporation issuing any form of policy or underwriting contracts or charging any premium rates to the public on either owners' or mortgagees' certificates or underwriting contracts on Texas properties other than forms and rates prescribed by the Board of Insurance Commissioners, hereunder, shall forfeit its right to do business in Texas; but this shall not be construed as intended to require the charge made by one title insurance company, qualified to do business under this Act and doing a general title insurance business for the public in this State, for reinsuring or underwriting all or any part of the business of another such company, to be the same as the charge to the public.

Deposits with State Treasury

Sec. 6. All corporations, domestic and foreign, writing title or mortgagee policies or underwriting contracts must at all times, have and keep on deposit with the State Treasury or such other depository as may be named by such corporation and approved by the Board of Insurance Commissioners, either cash or First Mortgage notes or such other securities as are now admissible for investment by Life Insurance Companies under the Laws of this State, to an amount equal to one-fourth of the authorized capital of such corporation; provided however that such deposit shall in no event exceed the sum of $100,000.00.

Filing fees and franchise taxes; exception of domestic corporations from premium taxes

Sec. 7. The General Laws applicable to payment of filing fees and franchise taxes of corporations having a capital stock are hereby made applicable to corporations coming under the provisions of this Act. Domestic corporations operating under this Law shall not be required to pay premium taxes.

Charters filed with Board of Insurance Commissioners

Sec. 8. The Charter of corporations incorporated hereunder, and the amendments thereto, shall be filed with the Board of Insurance Commissioners, which said Board shall collect from the said companies filing fees and franchise taxes required under the law.

Certificate of authority to transact business

Sec. 9. The Board of Insurance Commissioners after having satisfied itself by such investigation as it may deem proper with reference to the payment of capital stock and the value of the assets offered in payment thereof (the expense of which examination shall be borne by the company), shall issue to such company a certificate of authority to transact the characters of business provided for herein, which said certificate shall expire on the first of June next succeeding. Thereafter on or before the first of June and after the filing of the annual report herein required of each company, the said Board, upon being satisfied that the laws applicable to such companies have been complied with, shall issue a certificate of authority to said company to conduct such business until June 1st of the ensuing year. No company domestic or foreign shall transact business under this Act unless it shall hold a valid certificate of authority.

Reserves of title insurance companies

Sec. 10. Every company doing a title insurance business under the provisions of this Act shall set aside annually as a reserve 5% of its gross premiums so collected, before any dividends are paid, the totals of such reserve shall never be required to exceed a total reserve of $100,000.00. Such reserve must be maintained separately and apart from the capital of the company, and shall be invested in such securities as are admissible for investment by life insurance companies under the Laws of this State. Funds accumulated under this provision shall never be used for the payment of any obligation other than those connected with title insurance, and, in the event of the insolvency of a company, the fund, hereby provided shall be used to protect title insurance policy holders even though there be no accrued title insurance claims and even though there be unpaid obligations of other sorts.

Limitation of liability under policy; reinsurance

Sec. 11. No company operating under the provisions of this Act shall issue any policy of title insurance involving a contingent liability on said policy of more than fifty per cent of the capital stock and surplus of the company, unless the excess shall be simultaneously reinsured in some other responsible company qualified to do business in Texas. Such company may reinsure any or all of its business provided the reinsuring company shall be qualified to do business in Texas and the reinsuring contract shall be first approved by the said Board.

No impairment of capital stock

Sec. 12. The capital stock of every company operating under the provisions of this Act must be maintained intact over and above all of its outstanding liabilities, except contingent liabilities on policies of title insurance, and if such company shall permit the impairment of its capital stock, it shall not transact any further business of any sort until such time as it shall have made good its impairment and received permission of the Board of Insurance Commissioners to resume operations.

If such impairment shall be permitted to remain for a period of time up to six months, said Board of Insurance Commissioners shall immediately require the reinsurance of the outstanding policy or policies of any such concern and a liquidation of its assets and the winding up of its business.

Companies engaging in other characters of business subject to regulation of Board of Insurance Commissioners

Sec. 13. If any company operating under the provisions of this Law shall engage in the characters of business described in subdivisions (2) and (3) in the first Section hereof in such manner as might bring it within the provision of any other regulatory Statute now or hereafter to be in force within the State of Texas, all examination and regulation shall be exercised by the Board of Insurance Commissioners rather than any other State agency which may be named in such other laws, so long as such corporation engages in the title guaranty or insurance business.

Annual statements to Board of Insurance Commissioners; examinations

Sec. 14. Every company, domestic and/or foreign, operating under the provisions of this Act shall, upon or before the first of March each year, file with the Board of Insurance Commissioners a verified statement, in such form as the Board may require, setting forth the statement of the business done by it during the preceding year, and the condition of its affairs as of December 31st preceding. It shall be the duty of the Board of Insurance Commissioners, biennially or oftener, if it shall be deemed advisable, in person or through a duly appointed representative, to make a thorough examination of the company's books and affairs and the transactions in which it is engaged at the expense of said company, for which purpose the said Board, or its representative, shall have access to the books and records of the said company and shall have the right to interrogate and require answer under oath from any officer, agent or employee of the said company concerning any matters pertaining to the business thereof.

Regulations as to use of "Trust" in title

Sec. 15. Corporations chartered or operating under the provisions of this Act may use in their corporate name the words "Title and Trust Company" but they shall not use the word "Trust" alone, and where the word "Trust" appears, then in letter-heads and literature used by them they shall print the words, "Without Banking Privileges."

Application by foreign companies for permit or certificate of authority

Sec. 16. Any foreign corporations desiring to transact the character of business provided for in this Act in this State shall make an application for permit or certificate of authority to the Board of Insurance Commissioners in such form as the Board shall prescribe and shall submit a financial statement showing its condition in such form as the Board shall prescribe.

Unimpaired capital of foreign corporation

Sec. 17. No such foreign corporation shall be permitted to do business in this State unless it shall show from its financial statement, and such other examination as the Board may desire to make, an unimpaired capital of at least One Hundred Thousand Dollars.

Foreign corporations to file power of attorney with Board of Insurance Commissioners

Sec. 18. Each such foreign corporation engaged in doing or desiring to do business in this State shall file with the Board of Insurance Commissioners an irrevocable power of attorney, duly executed, con-

stituting and appointing the Life Insurance Commissioner and his successors in office, or any officer or Board which may hereafter be clothed with the powers and duties now devolving upon said Commissioner, its duly authorized agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this State, by any person, or by or to or for the use of the State of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service, and such appointment, agency and power of attorney shall, by its terms and recitals, provide that it shall continue and remain in force and effect so long as such company continues to do business in this State or to collect premiums of insurance from citizens of this State, and so long as it shall have outstanding policies in this State, and until all claims of every character held by the citizens of this State, or by the State of Texas, against such company, shall have been settled. Said power of attorney shall be signed by the President or a Vice-President and the Secretary of such company, whose signature shall be attested by the seal of the company; and said officer signing the same acknowledge its execution before an officer authorized by the Laws of this State to take acknowledgments. The said power of attorney shall be embodied in, and approved by, a resolution of the Board of Directors of such company, and a copy of such resolution duly certified to by the proper officer of said company, shall be filed with the said power of attorney in the office of the Commissioner, and shall be recorded by him in a book kept for that purpose, there to remain a permanent record of the said department.

Citation in suits filed with Commissioner mailed to general manager or agent of company

Sec. 19. Whenever the said Commissioner shall accept service or to be served with citation in any suit pending against any title insurance company in this State, he shall immediately enclose the copy of the citation served upon him, or a substantial copy thereof, in a letter properly addressed to the general manager or general agent of the company against whom such service is had, if it shall have a general manager or general agent within this State, and if not, then to the home office of the company, and shall forward the same by registered mail, postage prepaid. No judgment by default shall be taken in any such cause until after the expiration of at least ten days after the general agent or general manager of such company, or the company at its home office as the case may be, shall have received such copy of such citation; and the presumption shall obtain, until rebutted, that such notice was received by such agent or company in due course of mail after being deposited in the mail in Austin.

Revocation of certificate of authority

Sec. 20. If any corporation, domestic or foreign, while holding a certificate of authority to transact business in this State, shall fail or refuse to comply with any of the provisions or requirements of this Act, the Board of Insurance Commissioners, upon ascertaining this fact, shall notify such company by actual notice in writing delivered to an executive officer of such company, of his intention to revoke its certificate of authority to transact business in this State at the expiration of thirty days after the mailing of such registered letter, or the date upon which such actual notice is served. If such provisions or requirements are not fully complied with upon the expiration of said thirty days, it shall be the duty of said Board to revoke the certificate of authority of such company. In case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one year, and until it shall have fully and in good faith complied with all such provisions and requirements of this Act. Any company feeling itself aggrieved by the action of the Board in revoking its certificate of authority to do business in this State may bring suit against it in Travis County to annul and vacate the order revoking such certificate.

Rebates or discounts prohibited; division of premiums with local abstract company

Sec. 21. No commissions, rebates, discounts, or other device shall be paid, allowed or permitted by any company, domestic or foreign, doing the business provided for in this Act, relating to title policies or underwriting contracts; provided this shall not prevent any title company from appointing as its representative in any county any person, firm or corporation owning and operating an abstract plant in such county and making such arrangements for division of premiums as may be approved by the Board of Insurance Commissioners.

Filing fees and occupation tax; exemption of foreign companies from franchise tax

Sec. 22. Any corporation organized and incorporated under the laws of any other state, territory or country for the purpose of transacting a title insurance or title guaranty business shall be required to pay the same filing fees and occupation tax as any foreign casualty company is required to pay in order to procure a permit to do business in Texas. Such foreign title companies will not be required to pay a franchise tax.

Existing companies to continue business subject to this act

Sec. 23. From and after the passage of this Act no corporation shall be chartered under Subdivision 57, Article 1302, Revised Statutes of Texas, 1925, but all corporations heretofore incorporated and now doing business in Texas, shall be permitted to continue in business and shall be subject to all the provisions of this Act and such companies shall have six months within which to comply with the requirements of this Act with reference to investments and deposits. Stockholders in a company acting hereunder shall not be liable in the event of default in the payment of any debt or liability of such company beyond their subscription for such stock unless such company shall have charter power to do a trust and fiduciary business under Subdivisions 3 and 4 hereof of Section No. 1 hereof; in which later event, if default shall be made in the payment of any debt or liability contracted by such company each stockholder of such corporation, as long as he owns shares therein and for twelve months after the date of the transfer thereof shall be personally liable for all debts of such corporation, existing at the date of such transfer, or at the date of such default to an additional amount equal to the par value of such shares. [As amended Acts 1931, 42nd Leg., p. 449, ch. 269, § 1.]

Forfeiture of charter or permit for failure to comply with conditions

Sec. 24. The terms and provisions of this Act are conditions upon which corporations doing the business provided for herein may continue to exist, and failure to comply with any of them or a violation of any of the terms of this Act shall be proper cause for revocation of the permit and forfeiture of charter of a domestic corporation or the permit of a foreign corporation. [Acts 1929, 41st Leg., p. 77, ch. 40.]

Gross premiums tax; separate fund; expenditure

Sec. 24a. To defray the expense of carrying out the provisions of Chapter 40, Acts of the Forty-first Legislature, Regular Session, 1929, Page 77, as amended (Article 1302a, Vernon's Texas Statutes),

the State of Texas shall assess and collect not exceeding an additional one per cent (1%) of the gross premiums collected by every insurer on all Title Insurance premiums according to the reports made to the Board of Insurance Commissioners as required by law. Said taxes when collected shall be deposited with the State Treasurer to the credit of a special fund to be designated as the Title Insurance Fund, which fund shall be kept separate and apart from all other funds and moneys in his hands, to be used for the sole purpose of administering this Act; and to be expended only on warrants issued by the Comptroller upon vouchers drawn by the Board of Insurance Commissioners, such vouchers to be accompanied by itemized sworn statements of the expenditures, and to be in addition to all taxes now imposed, or which may hereafter be imposed, not in conflict with this Section of this Act. Should there be an unexpended balance at the end of any year in said fund, the Board shall reduce the assessment for the succeeding year so that the amount produced and paid into the Treasury will not exceed the amount necessary for the current year to pay all expenses of maintaining the division of the Board of Insurance Commissioners administering the law. [Added Acts 1945, 49th Leg., p. 383, ch. 245, § 1.]

Provision of section of this article for review of title insurance rates fixed by insurance commissioners is unconstitutional as authorizing court to exercise legislative power, but invalidity of such provision does not render remainder of act invalid. Daniel v. Tyrrell & Garth Inc. Co., 127 T. 213, 93 S.W.2d 372.

Art. 1302b. Dealing in and canning fruits and vegetables.

Cold storage plants; financing deals

Section 1. Corporations may be formed for the purpose of dealing in fruits, fruit juices, and vegetables produced in the United States and shall have power and authority to buy and sell fruits, fruit juices, and vegetables; to prepare the same for market; to preserve and can the same; to own and operate cold storage plants and warehouses in connection with such business; and to finance the carrying and orderly marketing of such fruits, fruit juices, and vegetables; and the transaction of all business heretofore set out.

Operation of airplanes for dusting and spraying orchards, vegetables and crops

Sec. 2. Corporations may be formed with the right to acquire and to own, lease, operate, or have operated airplanes, including all classes of flying machines, for the purpose of dusting and spraying orchards, vegetables, and crops of whatsoever character with insecticides, and to buy and sell such insecticides as an incident thereto, with the right to acquire by purchase or otherwise or maintain all necessary starting and lighting grounds and fields and workshops.

Act cumulative

Sec. 3. This Act shall be cumulative of all other laws heretofore enacted creating new purposes for which corporations may be formed and not since repealed. [Acts 1937, 45th Leg., p. 783, ch. 383.]

Art. 1302c. National reunions and conventions of fraternal orders—Formation of corporations for.—Section 1. Corporations may be formed for the purpose of planning, holding, financing, and conducting the national reunion and convention of any recognized fraternal order when held within the State of Texas, and exercising control over all matters pertaining to such reunion and convention.

Sec. 2. The Secretary of State is authorized to charge for the use of the State, upon the filing of each such charter, a filing fee of not to exceed Ten ($10.00) Dollars. [Acts 1939, 46th Leg., p. 128.]

Art. 1302d. Livestock, poultry and by-products; feeds, fertilizers, insecticides, fungicides, soaps and cleaners.—Section 1. Corporations may be formed in the manner provided by General Law, to exercise either or both of the following powers:

(a) To buy livestock, poultry, and products of ranch, farm, dairy and creamery, and the by-products thereof, and manufacture, process, and sell such products and by-products;

(b) To buy, manufacture, and sell feeds, fertilizers, insecticides, fungicides, soaps and cleansers. [As amended Acts 1947, 50th Leg., p. 431, ch. 237, § 1.]

Sec. 1a. Any corporation which has heretofore adopted in its charter or in its permit to do business in Texas the powers enumerated in Section 1 of House Bill No. 375, Chapter 252, Acts of the Regular Session of the 49th Legislature, shall have and may exercise the powers enumerated in Section 1 of this Act. [Acts 1947, 50th Leg., p. 431, ch. 237, § 1.]

Sec. 2. Any corporation which includes in its charter or any amendment thereto both of the powers named in Section 1(a) and (b) hereof shall pay the franchise tax provided by law for each of said powers or purposes. No corporation authorized under the provisions of this Act shall be permitted to own or operate more than one establishment or business under the same charter without paying the chain store tax provided in Chapter 400, Acts of the First Called Session of the Forty-fourth Legislature, as amended,[1] on each such establishment or place of business from which it makes sales of any such products or by-products. This Section shall not apply to associations organized under Chapter 8, Title 93, of the Revised Civil Statutes of Texas of 1925, controlling Marketing Associations. [Acts 1945, 49th Leg., p. 390, ch. 252.]

1 Pen.Code, art. 1111d.

Art. 1302e. "Commissary business" defined.—A general commissary business as referred to in this Act[1] shall be construed to mean the furnishing of boarding service, including meals and bedding, as well as supplies, equipment and provisions to employees of any person, firm or corporation, including those engaged in the railroad business, lumber or logging business, contracting or construction business, and oil or mining business, but not limited to such types of businesses, under a contractual arrangement between the commissary firm and the owner or operator of the business whose employees are served by it; and it shall also be construed to mean the furnishing of such services, supplies, equipment and provisions to persons employed or stationed at military camps or posts; provided, however, it shall not be construed to mean the furnishing of such services, supplies, equipment and provisions to the general public. [Acts 1947, 50th Leg., p. 489, ch. 286, § 1.]

1 Article 1302, subd. 106 and this article.

Art. 1302f. Fighting fires and blowouts in oil and gas wells, formation of corporations for.—Section 1. Corporations may be created for the purpose of fighting fires and blowouts in oil wells and gas wells and oil and gas wells.

Sec. 2. Corporations organized under or having a permit to do business in the State of Texas under Subdivision 36 or 37 or 38 of Article 1302, or Chapter 15 of Title 32 of the Revised Civil Statutes of Texas, 1925, may, in addition to their other powers, subscribe for, own and vote stock in corporations created under Section 1 of this Act.

Sec. 3. If any section, clause or phrase of this Act is held to be unconstitutional, such decision shall not affect the remaining portion of this Act. [Acts 1947, 50th Leg., p. 954, ch. 408.]

Section 4 of the Act of 1947 repealed conflicting laws.

CHAPTER 2.—CREATION OF CORPORATIONS

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Article 1303. [1120] [641] [565] May create.—Private corporations may be created by the voluntary association of three or more persons for the purposes authorized by law and in the manner hereinafter mentioned. [Acts 1874, p. 120; G. L. vol. 8, p. 122; Act 1897, p. 188; P. D. 5935; G. L. vol. 10, p. 1242.]

Art. 1303a. Corporations for handling animals for menageries.—Private corporations may be created under the general laws of this State by the voluntary association of three or more persons for the purpose of owning, raising, selling and leasing animals used in circuses, menageries and zoos, and to buy, lease, own, build, construct, repair and sell wagons, chariots, harnesses, cages and other equipment necessary to and used in the operation of raising and handling animals used in circuses, menageries and zoos, and to own and lease such lands and construct such buildings and improvements as may be necessary for the accomplishment of such purpose. [Acts 1927, 40th Leg., p. 266, ch. 187, § 1.]

Art. 1303b. Corporations to deal in securities without banking or insurance privileges.—A private corporation may be formed for any one or more of the following purposes, without banking or insurance privileges: to accumulate and loan money; to sell and deal in notes, bonds and securities; to act as Trustee under any lawful express trust committed to it by contract or will, or under appointment of any court having jurisdiction of the subject matter, and as agent for the performance of any lawful act; to subscribe for, purchase, invest in, hold, own, assign, pledge and otherwise deal in and dispose of shares of capital stocks, bonds, mortgages, debentures, notes and other securities or obligations, contracts and evidences of indebtedness of foreign or domestic corporations not competing with each other in the same line of business; to borrow money or issue debentures for carrying out any or all purposes above enumerated. Provided that the power and authority herein conferred shall in no way affect any of the provisions of the anti-trust laws of this state. [Acts 1927, 40th Leg., p. 414, ch. 275, § 1; Acts 1945, 49th Leg., p. 96, ch. 67, § 1.]

Act authorizing investment of funds in stock of Federal Home Loan Bank, see article 881a—69, ante.

Art. 1304. [1122] [643] [567] Charter.—A charter must be prepared setting forth:

1. The name of the corporation;
2. The purpose for which it is formed;
3. The place or places where its business is to be transacted;
4. The term for which it is to exist;
5. The number of directors or trustees, and the names and residences of those who are appointees for the first year;
6. The amount of its capital stock, if any, and the number of shares into which it is divided. [Acts 1874, p. 120; G.L. vol. 8, p. 122; Acts 1897, p. 188; P.D. 5935; G.L. vol. 10, p. 1242.]

Art. 1304a. Veteran corporations; use of name; forfeiture of charters.—Sec. 1. That the Secretary of State shall not hereafter issue to any corporation, any charter using in the name thereof any of the following words either in the singular or the plural: "Veteran", "Legion", "Foreign", "Spanish", "Disabled", "War", "World War", or any abbreviations of such word, or words, of the same or similar meanings, without the written approval filed with the application for charter of some Congressionally recognized Veteran's organization, in whose name any such quoted word appears, and if there be no Congressionally recognized organization in whose name the prohibited word appears, then it shall be necessary to secure the written permission of either the State Commander of the American Legion, or Disabled American Veterans of the World War, Veterans of Foreign Wars of the United States, or the United Spanish War Veterans, Veterans of Foreign Wars or Veterans of the Spanish-American War.

Sec. 2. That the charter of any corporation, that has heretofore been granted a charter in the State of Texas, in the name of which any such quoted word or initial shall appear, shall be forfeited and canceled without judicial ascertainment by reason of this Act, on the expiration of sixty (60) days from the effective date of this Act, unless it amends its name in the manner provided by law, so that its name will not contain any of the above prohibited words, or abbreviations of such words, or file within said sixty (60) days written permission to use such name, in the manner set forth in Section 1 hereof. [Acts 1935, 44th Leg., p. 416, ch. 167.]

Art. 1305. [1123] [644] [568] Acknowledgment.—It must be subscribed by three or more persons, two of whom must be citizens of this State, and must be acknowledged by them, before an officer duly authorized to take acknowledgments of deeds. [Acts 1887, p. 103; Acts 1919, p. 246; G. L. vol. 9, p. 901.]

Art. 1306. [1123] [644] [568] Female incorporators.—Charters may be subscribed by married women who may be stockholders, officers and directors thereof; and their acts, contracts and deeds as such stockholders, officers and directors shall be as binding and effective for all the purposes of said corporation as if they were males. The joinder and consent of the husband and privy examinations separate and apart from him shall not be required. [Id.]

Art. 1307. [1124] [679] [603] Notice by firm.—Whenever any banking, mercantile or other business firm desires to become incorporated without a change of the firm name, such firm shall, in addition to the notice of dissolution required at Common Law, give notice of such intention to become incorporated, for at least four (4) consecutive weeks in some newspaper published at the seat of State Government, and in the County in which such firm has its principal business office, if there be a newspaper in such County, and, if not, then in some newspaper published in some adjoining County; provided, however, that such notice shall only be published one (1) day in each week during the said four (4) weeks. Until such notice has been so published for the full period above named, no change shall take place in the liability of such firm or the members thereof.

Sec. 2. All notices required to be given by Article 1307 heretofore, in which publication has been made once each week for four (4) consecutive weeks, is hereby validated and legalized. [Acts 1887, p. 103; Acts 1919, p. 246; G.L. vol. 9, p. 901; Acts 1931, 42nd Leg., p. 190, ch. 111.]

Art. 1308. [1125–1126–1127] Capital stock.—Before the charter of a private corporation created for profit can be filed by the Secretary of State, the full amount of its authorized capital stock must be in good faith subscribed by its stockholders and fifty per cent thereof paid in cash, or its equivalent in other property or labor done, the product of which shall be worth to the company the actual value at which it was taken or at which the property was received. The affidavit of those who executed the charter shall be furnished to the Secretary of State, showing:

1. The name, residence and postoffice address of each subscriber to the capital stock of such company;
2. The amount subscribed by each, and the amount paid by each;
3. The cash value of any property received, giving its description, location and from whom and the price at which it was received;
4. The amount, character and value of labor done, from whom, and price at which it was received. [Acts 1901, p. 18; Acts 1897, p. 192; Acts 1907, p. 309; G. L. vol. 10, p. 246.]

Art. 1309. [1128] [642] Further evidence.—If the Secretary of State is not satisfied, he may, at the expense of the incorporators, require other satisfactory evidence before he shall be required to receive, file and record such charter. [Id.]

Art. 1310. [1129] [642] Corporations exempt.—Corporations created under subdivisions 48, 67, 68, 71, 72 of Article 1302; corporations formed for the construction, purchase and maintenance of mills and gins, having a capital stock of not exceeding fifteen thousand dollars; mutual building and loan associations; corporations formed for the construction, purchase, maintenance and operation of cotton mills; and waterworks, ice plants, electric light plants and cotton warehouses in cities of less than ten thousand inhabitants, are exempt from the provisions of the two preceding articles. [Id. 3d C. S. 1920, p. 86.]

Art. 1311. [1130] [642] Exempt corporations: stock.—The stockholders of all private corporations such as are designated in the preceding article, with an authorized capital stock under the provisions of this chapter, shall be required to pay in at least one hundred thousand dollars in cash of their authorized capital stock, or to subscribe at least fifty per cent and pay in at least ten per cent of their authorized capital, before they shall be authorized to do business in this State. [Acts 1907, p. 309.]

Art. 1312. [1224] [714] [638] No capital stock.—No society, association, company, corporation or institution that does not have a capital stock is required in its charter to make any statement of the amount of capital stock or amount of each share; but it will suffice if the charter contains the other statements required, and also an estimate of the value of the goods, chattels, lands, rights and credits owned by the corporation.

Art. 1313. [1130–1–2] Filing charter.—When the stockholders of any company shall furnish satisfactory evidence to the Secretary of State of a compliance with the provisions of this Chapter, said officer shall receive, and file the charter of such company in said office, upon application and the payment of all fees provided therefor, and give his certificate showing the filing of such charter and authority to do business thereunder. The charter shall thereupon be filed in the office of the Secretary of State who shall retain the original on file in said office. A copy of the charter, certified under the great seal of the State, shall be evidence of the creation of the corporation. The existence of the corporation shall date from the filing of the charter in the office of the Secretary of State. The certificate of the Secretary of State shall be evidence of such filing. [Acts 1874, p. 121, § 9; P.D. 5940; G.L. vol. 8, p. 123; Acts 1929, 41st Leg., p. 530, ch. 255, § 1.]

Art. 1314. [1133–4–5] Amendments.—Any private corporation organized or incorporated for any purpose mentioned in this title, may amend or change its charter or act of incorporation by filing, authenticated in the same manner as the original charter, such amendments or changes with the Secretary of State. A corporation created by special Act of the Legislature shall also file with said officer its original charter and such amendments thereto or changes therein, if any, as have been made by special Act of the Legislature; and the same shall be recorded by the Secretary of State, followed by the proposed amendments or changes thereof. Such amendments or changes shall take effect and be in force from the date of the filing thereof. The certificate of the Secretary of State shall be evidence of such filing. No amendment or change violative of the Constitution or laws of this State or any provision of this title or which so changes the original purpose of such corporation as to prevent the execution thereof, shall be of any force or effect. [Acts 1874, sec. 10, p. 120; G. L. vol. 8, p. 122; Acts 1903, p. 227.]

Art. 1315. [1136] [651] Renewal of charter.—Corporations created for the support of benevolent, charitable, educational or missionary undertakings, the support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts, whose charter has expired by limitation, may revive such charter with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the date of the expiration of its said charter, by filing, with the consent of a majority of its stockholders, a new charter under the provisions of this chapter, reciting therein such original privileges and immunities and rights of property, and by filing therewith a certified copy of such original expired charter. [Acts 1874, p. 120; G. L. vol. 8, p. 122; Acts 1883, p. 98; G. L. vol. 9, p. 404; Acts 1907, p. 301; Acts 1909, p. 226; P. D. 5942.]

Art. 1315(a). Extension of charters of private corporations by Secretary of State.—Subject to a finding by the Secretary of State as hereinafter provided, any private corporation organized or incorporated for any purpose or purposes authorized under this Title, at any time within ten (10) years prior to the expiration of its charter, or any extension thereof, may extend such charter and the corporate existence of such corporation for an additional period of not to exceed fifty (50) years from the expiration date of the original charter, or any extension thereof, with all the privileges, powers, immunities, right of succession by its corporate name, and rights of property, real and personal, exercised and held by it at such expiration date, to the same intents and purposes as upon original incorporation. The manner of extending any such charter shall be by a resolution in writing, adopted at any annual or special meeting of stockholders called for that purpose by stockholders holding a majority of the shares of capital stock of such corporation then outstanding, such resolution to specify the period of time for which the charter is extended, and a copy of such resolution, duly certified by the secretary of the corporation, under the corporate seal, shall be filed and recorded in the office of the Secretary of State. Upon the adoption of such resolution and the filing of

a certified copy thereof with the Secretary of State, together with payment of the filing fee herein prescribed, the charter and corporate existence of such corporation may be extended for the additional period of time recited in such resolution. The filing fee to be paid for any such extension of a charter shall be such fee as said corporation would be required under the Statutes of Texas to pay in the event it was then applying for a new charter instead of extending its then existing charter.

Such extensions, however, may be made only in instances where the Secretary of State shall have found, after proper investigation, that such corporation is solvent and its capital unimpaired. [Acts 1937, 45th Leg., p. 368, ch. 179, § 1.]

Art. 1315(b). Corporations included; ten year period defined.—The provisions of Article 1315 (a) shall extend to and include all private corporations incorporated under the general laws of Texas. The period of ten (10) years prior to the expiration of the charter or any extension thereof referred to in Article 1315(a) shall include the period of time during which such corporation may have continued its existence under the provisions of Article 1389 of the Revised Civil Statutes of 1925. [Acts 1937, 45th Leg., 1st C.S., p. 1773, ch. 14, § 1.]

Art. 1315(c). Corporations without capital stock; extension of charters.—Section 1. Any corporation, except a banking corporation, organized and operating under the laws of this State, without capital stock, may, within the last twelve (12) years before the expiration of its charter have same extended by applying to the Secretary of State in the form and manner hereinafter outlined. The application for extension shall be made under oath by the President and Secretary of such corporation; shall be accompanied by a Resolution adopted by the membership, at a regular or special meeting, called for that purpose, by a majority vote of the members voting and a sworn statement of the President and Secretary that said corporation is solvent, giving its assets and liabilities. And any untrue statements as to the solvency and/or assets and liabilities of such corporation shall be sufficient grounds for the forfeiture of the charter of such corporation or extension thereof. The application for extension shall contain the following information:

(a) The name and address of the corporation.

(b) The date of issue, term and expiration date.

(c) The kind of business in which engaged.

(d) The period of time for which the charter is extended, which period shall not exceed fifty (50) years.

(e) A remittance in the same amount required to amend the charter.

When these requirements have been met, and if the Secretary of State, after a thorough examination which must be paid for by applicant, finds such corporation to be solvent, the Secretary of State may issue a certificate showing that the charter is extended, which certificate shall become a part of the charter for all necessary purposes. Provided that any corporation that is refused an extension of its charter by the Secretary of State shall have the right to bring suit in a court of competent jurisdiction to determine if it is solvent and entitled to an extension of its charter and the trial shall be on the merits and without regard to the proceedings had before the Secretary of State. Provided further that in the event of litigation involving the extension of any charter, it shall be automatically continued in force until final judgment in the case.

Sec. 2. This Act shall be cumulative of all laws or parts of laws not in conflict herewith, and all laws or parts of laws in conflict herewith are hereby repealed. [Acts 1943, 48th Leg., p. 219, ch. 138.]

Art. 1316. [1137] [651] Consolidation.—Any two or more of such corporations may revive and consolidate their charters under a new corporate name, or under the name of either, with all privileges, immunities and rights of property, real and personal, enjoyed by each at the date of the expiration of their several charters, by, in like manner, filing a charter, which shall recite the facts of consolidation, accompanied by certified copies of said original charters; provided the provisions thereof shall not be construed to relieve any corporation from the payment of occupation taxes, now or hereafter required by law. [Acts 1874, p. 120; G.L. vol. 8, p. 122; Acts 1883, p. 98; G.L. vol. 9, p. 404; Acts 1907, p. 301; Acts 1909, p. 226; P.D. 5942.]

Art. 1316a. Consolidation of corporations having capital stock of not more than $200,000.—Section 1. Two (2) and not more corporations, neither of which has more than Two Hundred Thousand Dollars ($200,000) of outstanding capital stock, organized under the laws of the State of Texas for one or more of the purposes specified in Subdivision 81 of Article 1302 of the Revised Civil Statutes of Texas of 1925, or any amendment thereof, may enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the amount and character of its capital stock, the number of its directors (not less than three), the names and residences of those who are appointees until the first annual meeting thereafter, and the time and place of the first annual meeting and election. If such agreement is approved by the vote of persons holding a majority of shares of stock of each corporation, present in person or by proxy, at a regular meeting of each said corporation or at a special meeting called for that purpose, the directors named in the agreement shall sign and acknowledge as incorporators articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under and by virtue of Subdivision 81 of Article 1302 of the Revised Civil Statutes of Texas of 1925.

Sec. 2. The articles of consolidation shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized for the purposes specified under Subdivision 81 of Article 1302. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording and shall have issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be and become a body corporate, with all the powers of a corporation as if originally organized thereunder. No consolidation hereunder shall be approved or given effect if it tends to create in any manner a trust or monopoly, and nothing herein shall affect, modify, or repeal any provision or effect of Title 126, Revised Civil Statutes of Texas of 1925, relating to trusts and/or monopolies.

Sec. 3. In the event said consolidation of such corporations shall not increase the taxable capital over the combined amount of the taxable capital as set out in Article 7084, as amended, of the corporations so consolidated and upon which a franchise tax has been duly paid by said corporations to the Secretary of State for the current year, then in such event no further franchise tax shall be payable until the next regular payment date, as provided in Title 122, Chapter 3, of the Revised Civil Statutes of Texas of 1925, but in the event that said consolidation of such corporations as provided in Sections 1 and 2 of this Act shall provide for an increase in the taxable capital of the proposed corporation over the combined taxable capital of the corporation so consolidated upon which franchise tax had been already duly paid for the current year by such corporations, then in such event, upon the approval of said consolidation by the Secretary of State, a supplemental franchise tax shall be paid by said corporation as required in Article 7090 of the Revised Civil Statutes of Texas of 1925, in the case of an increase in the taxable capital of any domestic or foreign corporation. [Acts 1939, 46th Leg., p. 129.]

Art. 1317. [1138] [675] [599] Ostensible corporation: debt.—No person who assumes an obligation to an ostensible corporation as such, shall resist the enforcement of such obligation, on the ground that there was in fact no such corporation, until that fact shall have been adjudged in a direct proceeding had for that purpose.

Art. 1318. [1139] [650] [574] Legislative authority.—All charters or amendments to charters, under the provisions of this chapter, shall be subject to the power of the Legislature to alter, reform or amend the same. [Act April 23, 1874, p. 120; G. L. vol. 8, p. 122.]

CHAPTER 3.—GENERAL PROVISIONS

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Article 1319. [1117–18–19] Corporations classified.—Corporations are either public or private. A public corporation is one which has for its object the government of a portion of the State. Private corporations are of three kinds:

1. Religious.
2. For charity or benevolence.
3. For profit. [Acts 1874, p. 120; G.L. vol. 8, p. 122.]

Art. 1320. [1140] [651] [575] General powers.—Every private corporation as such has power:

1. To have succession by its corporate name for the period limited in its charter, not to exceed fifty years, and when no period is limited, for twenty years.
2. To maintain and defend judicial proceedings.
3. To make and use a common seal.
4. To purchase, hold, sell, mortgage or otherwise convey such real estate and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real, personal, or mixed, or [1] shall be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or belonging to, the corporation.
5. To appoint and remove subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.
6. To make by-laws not inconsistent with existing laws, for the management of its property, the regulation of its affairs and the transfer of its stock.
7. To enter into any obligation or contract essential to the transaction of its authorized business.
8. To increase or diminish, by a vote of its stockholders cast as its by-laws may direct, the number of its directors or trustees, such number, however, to be not less than three. [Acts 1874, p. 120; G.L. vol. 8, p. 122; Acts 1907, p. 301; Acts 1909, p. 225; Acts 1923, p. 261; Acts 1929, 41st Leg., p. 303, ch. 140, § 1.]

[1] So in enrolled bill. Should probably read "as".

Art. 1321. [1162] [653] [577] May borrow money.—Corporations may borrow money on the credit of the corporation and may execute bonds or promissory notes therefor and may pledge the property and income of the corporation. [Acts 1874, p. 120; G. L. vol. 8, p. 122; Acts 1883, p. 98; G. L. vol. 9, p. 404; Acts 1917, p. 66.]

Art. 1321a. Construction of provision as to exclusive right of trustee to sue.—That provisions of deeds of trust, indentures, mortgages, assignments

and transfers of property executed to secure the payment of bonds, debentures or other obligations, issued thereunder, vesting in the Trustees named therein the exclusive right to institute any and all suits, at law or in equity, necessary or proper to enforce the covenants and agreements therein made, or to liquidate the trust therein created, and denying to the holders of such bonds, debentures and obligations the right to institute or prosecute such suit or suits, or to liquidate such trust until after a failure or refusal of such trustee so to do, upon request made in the manner provided for therein, shall not be construed as agreements to oust the Courts of this State of their rightful jurisdiction, nor as agreements against the public policy of this State. [Acts 1931, 42nd Leg., p. 738, ch. 288, § 1.]

Art. 1322. [1173] [676] [600] Conveyances.—Any corporation may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or vice-president or presiding member or trustee of said corporation, or in common form without seal by its attorney in fact where the instrument constituting such attorney in fact is executed in said manner first mentioned. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. [Acts 1905, p. 230; Acts 1939, 46th Leg., p. 133, § 1.]

Art. 1323. [1153] [655] [579] Directors: quorum.—A majority of the directors or trustees shall constitute a quorum and be competent to fill vacancies in the board and to transact all business of the corporation. An annual election shall be held for directors or trustees at such time and place as the by-laws of the corporation may require. Provided that any corporation, formed under Subdivisions 1, 2, 3, and 7 of Chapter 1, Title 32 of the Revised Civil Statutes of Texas of 1925,[1] may elect all or a part of its directors for terms not exceeding five (5) years. [Acts 1874, p. 120, § 15; P.D. 5946; Acts 1927, 40th Leg., p. 349, ch. 235, § 1; Acts 1939, 46th Leg., p. 131, § 1; Acts 1939, 46th Leg., p. 132, § 1.]

1 Article 1302.

Art. 1324. [1157] [659] [583] Failure to elect officers.—Should an election for directors not be held on the day appointed by the by-laws of any corporation organized under any law of this State, such corporation shall not, for that reason, be deemed to be dissolved. It shall be lawful on any other day to hold a meeting and elect its directors or trustees, in such manner as shall be prescribed by the by-laws thereof. [Acts 1874, p. 120, § 19; P.D. 5950.]

Art. 1325. [1154] [656] [580] Officers.—The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer and such other officers as they may deem necessary for the corporation. [Acts 1874, p. 120, § 16.]

Art. 1326. [1155] [657] [581] By-laws.—The directors may adopt by-laws for the government of the corporation. Such by-laws may be altered, changed or amended by a majority vote of the stockholders at any election or special meeting ordered for that purpose by the directors or trustees, on a written application of a majority of the stockholders or members. [Acts 1874, p. 120, § 17.]

Art. 1327. [1159] [661] [585] Directors' powers.—The directors shall have the general management of the affairs of the corporation, and may dispose of the residue of the capital stock at any time remaining unsubscribed, in such manner as the by-laws may prescribe. [Id., sec. 21.]

Art. 1328. [1160] [662] [586] Records.—They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions. Their books and records shall at all reasonable times be open to the inspection of any stockholder. [Id.]

Art. 1329. [1161] [663] [587] Dividends.—They shall, when required by one-third of the stockholders, present written reports of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation as they shall deem expedient, or as the by-laws may prescribe. [Id.]

Art. 1330. [1145] [652] [576] Increase of Capital Stock.—The Board of Directors or other managing officers of a corporation may increase its authorized capital stock, including the issuance of preferred stock, which stock shall have such rights, powers, privileges and preferences as are now authorized by law, when empowered to do so by a two-thirds vote of all of its outstanding stock with voting privileges, at a special or regular meeting called for that purpose by complying with the provisions of Article 1308, and/or Article 1538-D, as the case may be. Par value stock, issued or unissued, may be converted into preferred stock in the same manner and subject to the same limitations as no par stock may be so converted under Article 1538-H, Revised Civil Statutes of 1925.

Upon such increase or conversion of stock being made in accordance with such provisions and certified to the Secretary of State by the Directors, and, if the increase has been made in accordance with law, he shall file such certificate; and thereupon, the same shall become a part of the capital stock of such corporation. Such certificate shall be filed and recorded in the same manner as the charter. All preferred stock heretofore authorized to be issued, or issued, or stock converted into preferred shares, by vote of two-thirds of the outstanding stockholders, is hereby ratified, legalized and validated. [Acts 1874, p. 120, § 12; Acts 1893, p. 123; G.L. vol. 10, p. 553; Acts 1931, 42nd Leg., p. 78, ch. 51, § 1.]

Section 2 of Acts 1931, repeals all conflicting laws and parts of laws and provides that if any part is held invalid, such decision shall not affect the remainder.

Art. 1331. [1151] [652] Unpaid increase.—In case of failure by the stockholders to pay the unpaid portion of an increase of stock within two years from the date of the filing of the certificate of increase in the office of the Secretary of State, the charter of such company shall be forfeited, and the provisions of Articles 1339 to 1343 inclusive, shall govern the same as in case of the creation of a corporation. [Acts 1907, p. 311.]

Art. 1332. [1152] [652] Decrease of capital.—A corporation may decrease its capital stock by such amount as its stockholders may decide, by a two-thirds vote of all its outstanding stock, in like manner as is required for an increase. No such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company, or any stockholder thereof. Such decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such corporation, giving therein all its assets and liabilities, with names and postoffice addresses of all creditors and amount due each; and the Secretary of State may require, as a condition precedent to the filing of such certificate of decrease, that the debts of such corporation be paid or reduced. [Id.]

Art. 1333. Reduction: voting.—Whenever any corporation shall reduce its capital stock, and by reason thereof fractional shares of its stock shall be issued to or held by any of its stockholders, the holder of any such fractional share shall be entitled to vote the same at any meeting of the stockholders in accordance with the proportionate or ratable value of such shares. [Acts 1919, p. 173.]

Art. 1334. [Repealed by Acts 1943, 48th Leg., p. 722, ch. 397, § 25.]

The article repealed was amended by Acts 1939, 46th Leg., p. 134, § 1.

Art. 1335. [1169] [667] [591] Payment of stock.—The board of directors of any corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner, and in such installments, as may be required by the by-laws. [Acts 1874, p. 120; P.D. 5955.]

Art. 1336. [1170] [668] [592] Stock forfeited.—If any stockholder shall neglect to pay any installment as required by the board of directors, the directors may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors have caused a written notice to be served on him personally, or by depositing the same in the postoffice, properly directed to him at the postoffice nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same, his stock and all previous payments thereon will be forfeited for the use of the company. Such notice may be served at least thirty days previous to the day on which such payment is required to be made. [Id.]

Art. 1337. [1171] [669] [593] May sue members.—All bodies corporate may sue for, recover and receive from their respective members all arrears or other debts, dues or demands owing to them, in like mode, manner and form as they might sue for, recover and receive the same from any person not a member of their body. [Id.]

Art. 1338. [1141] [642] Unpaid stock.—The stockholders of all corporations chartered under the provisions of the preceding chapter shall, within two years from the date of the filing of such charter, pay in the unpaid portion of the capital stock of such company; proof of which shall, within said time, be made to the Secretary of State, in the manner provided in said articles, for the filing of charters. [Acts 1907, p. 309.]

Art. 1339. [1142] [642] Default of payment.—In cases of the failure to pay the unpaid portion of capital stock, and to make proof thereof to the Secretary of State within two years from the date of the filing of the charter, the charter of such company shall become forfeited. Such forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the ledger kept in his office relating to such corporations the word, "forfeited," giving the date and reason therefor. [Id.]

Art. 1340. [1143] [642] Forfeiture notice.—The Secretary of State shall notify such corporation by mailing to the postoffice named as its principal place of business, or to any other place of business of such corporation, addressed in its corporate name, a written or printed statement of the date and fact of such forfeiture. A record of the date and fact of such notice shall be kept by such officer. [Id.]

Art. 1341. [1143] [642] Redemption.—The stockholders of any such corporation whose charter has been so forfeited, who shall within six months from the date of such forfeiture and not thereafter, pay in full the unpaid capital of such company and furnish to the Secretary of State proof of such fact as required herein, and in addition, shall pay the Secretary of State as fees belonging to his office, the sum of five dollars per month for each month and fractional part thereof between the date of forfeiture and settlement, shall be relieved from such forfeiture; and said officer shall write on the margin of said ledger the word "revived," giving the date thereof. [Id.]

Art. 1342. [1144] [642] Avoidance of forfeiture.—The stockholders of any such company shall have the right, at any time within two years from the date of filing of the charter, to make payment of the unpaid portion of the capital stock, to reduce the same so that by reduction, or reduction and payment, the full amount of the capital stock authorized by such reduction shall be paid, and thus avoid a forfeiture of the charter. No creditor of said company shall in any wise be prejudiced by such reduction of its capital stock in any claim or cause of action such creditor may have against such company or any stockholder or officer thereof. [Id.]

Art. 1343. [1144] [642] Failure to revive.—If the stockholders fail to cause the charter powers of said corporation to be revived, the affairs of such company shall be administered and wound up as on dissolution. [Id.]

Art. 1344. [552] Liable for debt.—If default shall be made in the payment of any debt or liability contracted by a trust, guaranty or surety company, each stockholder thereof, as long as he owns shares therein, and for twelve months after the date of a transfer thereof, shall be personally liable for all debts of such corporation existing at the date of such default or transfer, to an amount double the par value of such shares. [Acts 1905, S. S. p. 511.]

Art. 1345. [1198] [671] [595] Stockholders' liability.—If execution has issued against the property of a corporation, except a railway or a religious or charitable corporation, and there cannot be found any property whereon to levy such execution, then the execution may be issued against any of the stockholders to an extent equal to the amount of the stock unpaid. No execution shall issue against any stockholder, except upon an order of the court in which the suit or other proceeding was instituted, made in open court upon motion after a reasonable written notice to the person or persons sought to be charged. Upon such motion, such court may order execution to issue accordingly; or the plaintiff in execution may proceed by action to charge the stockholders with the amount of his judgment, in accordance with the liability of the stockholders. [Acts 1874, p. 120; G. L. vol. 8, p. 122.]

Art. 1346. [1199] [672] [596] Lists of stockholders.—The secretary or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney, with the name and place of residence of each stockholder as far as known, and the amount of stock held by each, as shown by such books. [Id.]

Art. 1347. [1200] [670] [594] Directors' liability.—If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all debts of the corporation which thereafter, during the time such directors respectively remain in office, shall be contracted. The amount for which they shall be so liable shall not exceed the amount of such dividend. If any director is absent at the time of declaring the dividend, or shall object thereto at the time such dividend is declared and shall file his objections in writing with the secretary or other officer of the corporation having charge of the books, he shall be exempt from said liability. [Id.; Acts 1871, 2nd C. S. p. 66; Acts 1893, p. 123; G. L. vol. 7, p. 68; vol. 10, p. 553.]

Art. 1348. [1165] [665] [589] Indebtedness.—No corporation, domestic or foreign, doing business in this State shall create any indebtedness whatever except for money paid, labor done which is rea-

sonably worth at least the sum at which it was taken by the corporation, or property actually received reasonably worth at least the sum at which it was taken by the corporation. [Acts 1907, p. 312.]

Art. 1349. [1164] [665] [589] Acts prohibited.—No corporation, domestic or foreign, doing business in this State, shall employ or use its stock, means, assets or other property, directly or indirectly for any purpose whatever other than to accomplish the legitimate business of its creation, or those purposes otherwise permitted by law; provided that nothing in this Article shall be held to inhibit corporations from contributing to any bona fide association, incorporated or unincorporated, organized for purely religious, charitable or eleemosynary activities, or to commercial or industrial clubs or associations or other civic enterprises or organizations not in any manner nor to any extent directly or indirectly engaged in furthering the cause of any political party, or aiding in the election or defeat of any candidate for office, or aiding in defraying the expenses of any candidate for office, or defraying or aiding in defraying the expenses of any political campaign, or political headquarters, or aiding or assisting the success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof. [Acts 1917, p. 25; Acts 1943, 48th Leg., p. 311, ch. 202, § 1.]

Art. 1350. [Repealed by Acts 1941, 47th Leg., p. 789, ch. 491, § 1.]

Art. 1351. [1167] Penalty.—Any corporation which shall violate any provision of Article 1348 or Article 1349, Revised Civil Statutes of Texas, 1925, shall on proof thereof in any Court of competent jurisdiction, forfeit its charter, permit or license, and all rights and franchises which it holds under, from or by virtue of the laws of this State.

Whenever it appears that the money, assets, property, or funds of a corporation have been issued, paid out, or used, in violation of any provision of said Articles 1348 or 1349, by any agent, attorney, director or officer of such corporation, it shall be considered the act of the corporation, unless, within one year from the date of such violation it has caused to be entered, through its board of directors on its records in this State, an order repudiating the wrong and permanently dismissing from its service all persons directly or indirectly connected with such violations. [Acts 1907, p. 312; Acts 1941, 47th Leg., p. 789, ch. 491, § 2.]

Art. 1352. Political contributions.—(a) No corporation, domestic or foreign, and no officer, director, stockholder, employee or agent, acting in behalf of any corporation, shall directly or indirectly give, pay, expend or contribute or promise to give, pay, expend or contribute any money or thing of value in order to aid or hinder the nomination or election of any person to public office in this State or any district, municipality, or political subdivision thereof, or in order to influence or affect the vote on any question to be voted upon by the qualified voters of this State or any district, municipality, or political subdivision thereof, provided, however, that:

(b) In any election in this State or any district, municipality, or political subdivision thereof, wherein the question to be voted upon directly affects the granting, refusing, existence or value of any franchise granted to a corporation which has the right of eminent domain, such corporation may present facts and arguments to the voters bearing upon such question by any lawful means of publicity and pay the expense thereof; provided, however, that all such means of publicity employed shall contain a clear statement that the same are sponsored and paid for by such corporation; and the use of any such means of publicity by such corporation which do not contain such statement shall subject such corporation to the penalties hereinafter provided. Provided that nothing in this subsection shall be construed as permitting any such corporation to directly or indirectly give, pay, expend, or contribute or promise to give, pay, expend, or contribute any money or thing of value in order to aid or hinder the nomination or election of any person to any public office in this State.

(c) If any corporation authorized by Section (b) hereof, or if any person, partnership or association makes any expenditure or incurs any obligation directly or indirectly for the purpose of influencing an election of the character described in Section (b) hereof, it shall be the duty of such corporation, person, partnership or association to file with the governing body of the political subdivision in which such election is held and also with the Secretary of State by mail, not more than ten (10) days nor less than five (5) days before the date of such election and also within ten (10) days after the date of such election, itemized, verified accounts correctly showing as of the date of filing, the amounts of money and description and value of all things given, paid, expended and contributed and the names of the recipients thereof and all amounts of money and description and value of all things promised or obligated to be given, paid, expended and contributed, and the names of the promisees thereof, by such corporation, person, firm or association, in connection with such election; all such accounts to be verified under oath by an officer of such corporation, or by such person or member of the partnership or association as the case may be; provided, however, that no such corporation, person, partnership or association may give, pay, expend, contribute or promise to give, pay, expend or contribute money and things of value of the total amount exceeding Seven Hundred and Fifty Dollars ($750), or exceeding Twenty-five Dollars ($25) for each one hundred population of the district, municipality or political subdivision according to the last preceding Federal Census in which such election is held, whichever amount is greater; provided further that such amounts expended may not, in fixing rates to be charged by such corporation, be charged as operating cost or capital. Any corporation, person, partnership or association failing to file the accounts as provided herein or filing an account which is false in any material respect, or violating the limitation on expenditures provided herein, shall be subject to the penalties hereinafter provided, but in no event shall any such corporation be authorized to spend more than Ten Thousand Dollars ($10,000) in any one election.

(d) Any corporation which shall violate any provision of this Article shall be subject to a penalty of not less than Five Thousand Dollars ($5,000) nor more than One Hundred Thousand Dollars ($100,000) to be recovered by a suit in the name of the State of Texas by the Attorney General or by any County or District Attorney, under his authority, in any District Court in Travis County or in the county or counties where such election is held. The Attorney General or any other party to a suit brought under this Article shall have the right to subpoena witnesses and compel their attendance as provided in the Statutes of Texas relating to criminal cases. Any corporation which shall by final judgment have been found guilty of violating any provision of this Article, shall thereafter, for any subsequent violation of any provision of this Article be subject to a penalty of not less than Fifty Thousand Dollars ($50,000) nor more than Two Hundred Thousand Dollars ($200,000), and in addition to other penalties, its charter or permit to do business in Texas may be forfeited upon suit of the Attorney General, if in the judgment of the Court before whom the litigation is pending, the public interest requires it. No penalties which may be paid hereunder, shall, in

fixing rates to be charged by such corporation, be charged as operating cost or capital. Any person, partnership or association which shall violate any provision of Section (c) hereof shall be subject to a penalty of not more than Five Thousand Dollars ($5,000) to be recovered in a suit in the name of the State of Texas by the Attorney General or any County or District Attorney under his authority in any District Court in Travis County or in the county or counties where such election is held. [Acts 1907, p. 169; Acts 1941, 47th Leg., p. 789, ch. 491, § 3.]

Art. 1353. [1146] Watering stock.—No corporation shall issue any stock whatever, except for money paid, labor done which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received reasonably worth at least the sum at which it was taken by the company. Any corporation which violates any provision of this article shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, as the case may be, and all rights and franchises which it holds under, from, or by virtue of the laws of this State. [Acts 1907, p. 309.]

Art. 1354. [1147] Suit.—When any corporation has issued and has outstanding any stocks or bonds given or issued for any purpose, other than money paid to, labor done for, or property actually received by the corporation, the Attorney General when convinced that the facts exist which authorize the action, shall institute quo warranto or other appropriate judicial proceedings in Travis County or in any other county of this State where such corporation may be sued, to have such stocks or bonds issued in violation of the Constitution or laws of Texas, cancelled, expunged, and held for naught.

Within the meaning of the above, is included any bond or stock given in renewal, or in lieu of, any originally issued for purposes other than those mentioned above, also any issued by any corporation with which the corporation originally issuing any such stock or bonds has merged or been consolidated and given by said issuing corporation in the place of those originally issued for purposes other than as mentioned above. [Id.]

Art. 1355. [1148] Avoidance of suit.—If any suit authorized under the preceding article has been instituted, the same shall be dismissed at the cost of the defendant, or if not instituted, no action shall be brought, if the defendant corporation shall surrender, or cause to be surrendered, to the court, or to the Railroad Commission of Texas, for destruction, all such illegal stocks and bonds complained of, with proper and legal releases thereof, suitably executed for record, with such other written evidences and documents as may be necessary to show that such stocks or bonds are no longer outstanding against the corporation. [Id.]

Art. 1356. [1149] Remedies cumulative.—The rights and remedies given by the two preceding articles are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment, or collection of fines, forfeitures and penalties. [Id.]

Art. 1357. [1172] [674] [598] Misnomer.—No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, devise, or bequest to the same. [Acts 1907, p. 312.]

Art. 1358. [1174] [673] [597] Principal office.—Each corporation or joint stock company of every description, whether organized and acting under a special charter or general law of this State, shall keep its principal office within this State. [Acts 1905, p. 230.]

Art. 1358—1. Uniform Stock Transfer Act; how title transferred.—Title to a certificate and to the shares represented thereby can be transferred only:

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby; or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable, although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the book of the corporation or shall be registered by a registrar or transferred by a transfer agent. [Acts 1943, 48th Leg., p. 722, ch. 397, § 1.]

Section 25 of the Act of 1943 repealed article 1334 and all other conflicting laws.

Art. 1358—2. Powers of persons lacking full legal capacity and of fiduciaries not enlarged.—Nothing in this Act[1] shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney. [Acts 1943, 48th Leg., p. 722, ch. 397, § 2.]

1 Articles 1358—1 to 1358—26.

Art. 1358—3. Corporation not forbidden to treat registered holder as owner.—Nothing in this Act[1] shall be construed as forbidding a corporation:

(a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner; or

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares. [Acts 1943, 48th Leg., p. 722, ch. 397, § 3.]

1 Articles 1358—1 to 1358—26.

Art. 1358—4. Title derived from certificate extinguishes title derived from separate document.—The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and terminate if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document. [Acts 1943, 48th Leg., p. 722, ch. 397, § 4.]

Art. 1358—5. Persons who may effectually deliver certificate.—The delivery of a certificate to transfer title in accordance with the provisions of Section 1,[1] is effectual, except as provided in Section 7,[2] though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title. [Acts 1943, 48th Leg., p. 722, ch. 397, § 5.]

1 Article 1358—1.
2 Article 1358—7.

Art. 1358—6. Indorsement effectual notwithstanding fraud, duress, mistake, revocation, death, incapacity or lack of consideration.—The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in Section 7,[1] though the indorser or transferor:

(a) Was induced by fraud, duress or mistake, to make the indorsement or delivery; or

(b) Has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate; or

(c) Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate; or

(d) Has received no consideration. [Acts 1943, 48th Leg., p. 722; ch. 397, § 6.]

1 Article 1358—7.

Art. 1358—7. Rescission of transfer.—If the indorsement or delivery of a certificate:

(a) Was procured by fraud or duress; or

(b) Was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of a certificate was made:

(c) Without authority from the owner; or

(d) After the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

(1) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful; or

(2) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it. [Acts 1943, 48th Leg., p. 722, ch. 397, § 7.]

Art. 1358—8. Rescission of transfer as affecting subsequent transfer by transferee in possession to good faith purchaser.—Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby. [Acts 1943, 48th Leg., p. 722, ch. 397, § 8.]

Art. 1358—9. Delivery of unindorsed certificate imposes obligation to endorse.—The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. [Acts 1943, 48th Leg., p. 722, ch. 397, § 9.]

Art. 1358—10. Attempted transfer without delivery as promise to transfer.—An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts. [Acts 1943, 48th Leg., p. 722, ch. 397, § 10.]

Art. 1358—11. Warranties on transfer of certificate or assignment of secured claim.—A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants:

(a) That the certificate is genuine;

(b) That he has a legal right to transfer it; and

(c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim. [Acts 1943, 48th Leg., p. 722, ch. 397, § 11.]

Art. 1358—12. Holder of certificate as security, by accepting payment of debt, does not warrant genuineness or value.—A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby. [Acts 1943, 48th Leg., p. 722, ch. 397, § 12.]

Art. 1358—13. Attachment or levy; new certificates.—No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it. [Acts 1943, 48th Leg., p. 722, ch. 397, § 13.]

Art. 1358—14. Creditor's remedies to reach certificate.—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certiticate 1 or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. [Acts 1943, 48th Leg., p. 722, ch. 397, § 14.]

1 Probably should read "certificate".

Art. 1358—15. Lien or restriction must be stated on certificate.—There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate. [Acts 1943, 48th Leg., p. 722, ch. 397, § 15.]

Art. 1358—16. Alteration of certificate.—The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby. [Acts 1943, 48th Leg., p. 722, ch. 397, § 16.]

Art. 1358—17. Lost or destroyed certificate.—Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceed-

ings or of the issuance of the new certificate. [Acts 1943, 48th Leg., p. 722, ch. 397, § 17.]

Art. 1358—18. Law governing in cases not provided for by Act.—In any case not provided for by this Act,[1] the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. [Acts 1943, 48th Leg., p. 722, ch. 397, § 18.]

[1] Articles 1358—1 to 1358—26.

Art. 1358—19. Construction of act.—This Act[1] shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [Acts 1943, 48th Leg., p. 722, ch. 397, § 19.]

[1] Articles 1358—1 to 1358—26.

Art. 1358—20. Indorsement.—A certificate is endorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is endorsed though it has not been delivered. [Acts 1943, 48th Leg., p. 722, ch. 397, § 20.]

Art. 1358—21. Owner of certificate.—The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect. [Acts 1943, 48th Leg., p. 722, ch. 397, § 21.]

Art. 1358—22. Act inapplicable to building and loan associations.—It is expressly provided that this Act[1] shall not apply to shares, share accounts, certificates or pass books issued by a building and loan association organized under the laws of this state nor to shares, share accounts, certificates or pass books issued by a building and loan association organized under the laws of any state that is doing business in Texas, nor to shares, share accounts, certificates or pass books issued by a Federal Savings and Loan Association domiciled in this state. That the repealing section of this Act shall not be construed as repealing any section, part or parcel of the 1929 Building and Loan Code, as amended,[2] nor any Act of the Legislature pertaining to building and loan associations. [Acts 1943, 48th Leg., p. 722, ch. 397, § 22.]

[1] Articles 1358—1 to 1358—26.
[2] Articles 881a—1 to 881a—68 and Pen.Code, arts. 1136a—1 to 1136a—9.

Art. 1358—23. Definitions.—(1) In this Act,[1] unless the context or subject matter otherwise requires:

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this Act.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this Act.

"State" includes state, territory, district and insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this Act, when it is in fact done honestly, whether it be done negligently or not. [Acts 1943, 48th Leg., p. 722, ch. 397, § 23.]

[1] Articles 1358—1 to 1358—26.

Art. 1358—24. Existing certificates not affected.—The provisions of this Act[1] apply only to certificates issued after the taking effect of this Act. [Acts 1943, 48th Leg., p. 722, ch. 397, § 24.]

[1] Articles 1358—1 to 1358—26.

Art. 1358—25. Short title.—This Act[1] may be cited as the Uniform Stock Transfer Act. [Acts 1943, 48th Leg., p. 722, ch. 397, § 26.]

[1] Articles 1358—1 to 1358—26.

Art. 1358—26. Partial invalidity.—If any part, section, subsection, paragraph, sentence, clause, phrase, or word in this Act[1] shall be held by any court to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity. [Acts 1943, 48th Leg., p. 722, ch. 397, § 27.]

[1] Articles 1358—1 to 1358—26.

CHAPTER 4.—LANDS

Art.
1359. Conditions of purchase.
1360. Sale of surplus.
1361. Liquidation.
1362. Corporations prohibited.
1363. Town lot corporations.
1364. Escheat proceedings.
1365. Disposition of penalties.

Article 1359. [1175] Conditions of purchase.—No private corporation shall be permitted to purchase any lands under any provision of this chapter, unless the lands so purchased are necessary to enable such corporation to do business in this State, or except where such land is purchased in due course of business to secure the payment of debt. [Acts 1893, p. 36; Acts 1897, p. 48; G. L. vol. 10, pp. 466, 1102.]

Art. 1360. [1176] Sale of surplus.—All private corporations authorized by the laws of Texas, to do business in this State, whose main purpose is not the acquisition or ownership of lands, which have or may acquire by lease, purchase or otherwise more land than is necessary to enable them to carry on their business, shall, within fifteen years from the date said land may be acquired, in good faith sell and convey in fee simple all lands so acquired which are not necessary for the transaction of their business. [Id.]

Art. 1361. [1178] Liquidation.—Any lands acquired by corporations in payment of debts due such corporations shall be sold and conveyed as herein provided, within fifteen years from the date of the acquisition of such land. [Id.]

Art. 1362. [1177] Corporations prohibited.—No private corporation heretofore or hereafter chartered or created whose main purpose of business is the acquisition or ownership of land by purchase, lease or otherwise, shall hereafter be permitted to acquire any land within this State by purchase, lease or otherwise. [Id.]

Art. 1363. [1179] Town lot corporations.—Nothing in this chapter shall be construed to prohibit the lease, purchase, sale or subdivision of real property within incorporated towns, cities or villages, and their

suburbs not extending more than two miles beyond their corporate limits, by corporations whose charters authorize them to lease, purchase, sell and subdivide real estate, within towns, cities and villages, and their suburbs, whether their suburbs be stated to be measured from the limits merely, or the corporate limits, of such towns, cities and villages. All such corporations now existing, or which may be hereafter created shall be authorized to lease, sell or subdivide real property in any unincorporated city, town or village, or the suburbs thereof, within this State, not exceeding two miles in any direction from the courthouse, or depot nearest the center of such city, town or village, or from the center thereof, if there be no courthouse or depot. [Id.]

Art. 1364. [1180] Escheat proceedings.—All corporations holding lands contrary to the provisions of this law shall hold the same subject to forfeiture and escheat proceedings. The Attorney General, or any district or county attorney, when either of them has reason to believe that any corporation is holding lands in violation of this law, shall institute suit in the name of the State of Texas, in Travis County, or in any county in Texas where such corporation may have an agent, or in any county where any part of the land may be situated, against such corporation, as is provided for the escheat of estates of deceased persons dying without devise thereof and having no heirs. [Acts 1893, p. 36; G. L. vol. 10, p. 466.]

Art. 1365. [1181] Disposition of penalties.—If it be determined upon the trial of said suit that lands are held contrary to this law, the court trying said cause shall enter judgment condemning such lands and ordering them to be sold as under execution, the proceeds of such sale to be first applied to the payment of costs of such suit, and the balance to be paid into the State Treasury subject to be paid to the stockholders, or persons entitled to receive the same as owners, upon proper proof made within twelve months from date of sale. If the legal representatives of such corporation fail to claim the said balance of money realized on sale of said land, then it shall escheat to the State and be applied to the available school fund. The court trying said cause shall allow the attorney representing the State a reasonable fee, to be taxed as cost in the suit. In no case shall the State be liable for costs or fees unless it is successful in said suit. [Id.]

CHAPTER 5.—BOOKS, RECORDS, ETC.

Art.
1366. Examination.
1367. Request to examine.
1368. Authority to examine.
1369. Disclosures.
1370. Penalty.
1371. Provisions cumulative.

Article 1366. [1187] Examination.—Every corporation, domestic or foreign, doing business in Texas, shall permit the Attorney General or any of his authorized assistants or representatives, to make examination of all the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of said corporation as often as he may deem necessary. [Acts 1907, p. 34.]

Art. 1367. [1187] Request to examine.—A written request shall be made to the president or other officer of said corporation at the time the Attorney General or his assistants desire to examine the business of said corporation. It shall be the duty of the officer or agent of any corporation to whom said request is presented to immediately permit the Attorney General, or his authorized assistant or representative to inspect and examine all the said books, records and other documents of said corporation. [Id.]

Art. 1368. [1188] Authority to examine.—The Attorney General, or any of his assistants or representatives when authorized by the Attorney General, has the power and authority to make investigation into the organization, conduct and management of any corporation authorized to do business within this State, and has authority to inspect and examine any of its said books, records and other documents, and take such copies thereof as in his judgment may show or tend to show that said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this State. [Id.]

Art. 1369. [1188] Disclosures.—The Attorney General, or his authorized assistants or representatives shall not make public, or use said copies or any information derived in the course of said examination of said records or documents, except in the course of some judicial proceedings in which the State is a party, or in a suit by the State to cancel the permit or forfeit the charter of such corporation, or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws. [Id.]

Art. 1370. [1189–1190] Penalty.—Any foreign corporation doing business in Texas under a permit granted under the laws of this State, or any officer or agent thereof, or any domestic corporation which shall fail or refuse to permit the Attorney General, or his authorized representative or representatives, to examine or take copies of any of its said books, records, and other documents whether same be situated within this or any other State within the United States, shall thereby forfeit its right to do business in this State; and its permit or charter shall be canceled or forfeited. [Id.]

Art. 1371. [1192] Provisions cumulative.—The provisions of this chapter shall be cumulative of all other laws now in force in this State, and shall not be construed as repealing any other means afforded by law for securing testimony or inquiring into the charter rights and privileges of corporations. [Id.]

CHAPTER 6.—LIENS FOR FINES, ETC.

Art.
1372. Law violations.
1373. Lien, notice.
1374. Abatement of suit.
1375. Receiver.
1376. Rights of State.
1377. Foreclosure.
1378. Law cumulative.

Article 1372. [1193] Law violations.—Whenever any domestic or foreign corporation in this State shall violate any law of this State, including the law against trusts, monopolies and conspiracies or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this State at the time of such violation, or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and for costs of suit and costs of collection. [Acts 1907, p. 175.]

Art. 1373. [1193] Lien, notice.—The State of Texas shall have a lien on all such property from the date that suit shall be instituted by the Attorney General or district or county attorney acting under his direction, in any court of competent jurisdiction within this State, for the purpose of forfeiting the charter or canceling the permit of such corporation, or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture, shall constitute notice of such lien. [Id.]

Art. 1374. [1194] Abatement of suit.—Any action or cause of action for any fine, forfeiture or

penalty that the State of Texas has, or may have, against any corporation chartered under the laws of this or any other state, territory or nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter or permit. [Id.]

Art. 1375. [1194] Receiver.—Whenever a corporation, against which the State has instituted suit for forfeiture of its charter or cancellation of its permit or for fines or penalties, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state for the forfeiture of its charter, the court in this State in which such suit is pending shall appoint a receiver for the property and business of such corporation within this State, or that may come or be brought within this State during such receivership; or the court may, in any case wherein the State is suing any such corporation for the forfeiture of its charter, or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation whenever the interest of the State may seem to require such action. [Id.]

Art. 1376. [1194] Rights of State.—The State shall have the right to writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by this law; and all property not otherwise exempt by law that may come into the possession of any receiver appointed under any provision of this chapter, shall be subject to the lien herein created, and for the payment of any such fine or penalty. [Id.]

Art. 1377. [1195] Foreclosure.—The Attorney General or any district or county attorney acting under his direction, may bring suit in the name of this State for the foreclosure of such lien. In case the suit for foreclosure is brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such corporation for the forfeiture of its charter or cancellation of its permit or for penalties or fines, service may be had upon any person within this State who acted and was acting as agent of any such corporation in this State at the time of such dissolution or forfeiture of charter or cancellation of permit. [Id.]

Art. 1378. [1196] Law cumulative.—The rights and remedies given by this law shall be construed as cumulative of all other laws in force in this State, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, penalties and forfeitures. [Id.]

CHAPTER 7.—INSOLVENT CORPORATIONS

Art.
1379. Unlawful to operate.
1380. Attorney General to sue.
1381. Liquidation.
1382. May dismiss action.
1383. Suit to dissolve.
1384. Permission to sue.
1385. Examination and notice.
1386. Provisions cumulative.

Article 1379. [1201] Unlawful to operate.—It shall be unlawful for any insolvent corporation, domestic or foreign, to do business in this State, or to exercise or retain any franchise or permit or charter granted from or by this State. [Acts 1907, p. 341.]

Art. 1380. [1202] Attorney General to sue.—The Attorney General, when convinced that any corporation is insolvent, shall institute quo warranto or other appropriate proceedings to forfeit its charter or cancel its permit. [Id.]

Art. 1381. [1202] Liquidation.—Each district and county attorney shall bring and prosecute the proceedings mentioned in the preceding article whenever directed so to do by the Attorney General. The court trying said cause, after the corporation has been shown to be insolvent, may, in its discretion, appoint a receiver or receivers for said corporation and all its properties, with full power to settle its affairs, collect its outstanding debts and divide the moneys and other properties belonging to said company among the stockholders thereof, after paying the debts due and owing by such corporation, and all expenses incident to the judicial proceedings and receivership. The court may continue the existence of such corporation for three years, and for such further reasonable time as may be necessary to accomplish the objects and purposes of this law. [Id.]

Art. 1382. May dismiss action.—If any suit authorized by this chapter has been instituted, the same shall be dismissed at the cost of the defendant; or, if not instituted, the same shall not be begun, if the defendant corporation, through its stockholders, shall pay off its indebtedness or reduce the same by paying, so that it is relieved of insolvency. [Id.]

Art. 1383. [1203] Suit to dissolve.—Stockholders of any insolvent corporation who own twenty-five per cent of its stock, or creditors of any such insolvent corporation who own twenty-five per cent of its indebtedness, may institute and prosecute a suit for the dissolution of such corporation. [Id.]

Art. 1384. [1203] Permission to sue.—Before such petition is filed by the Attorney General, or under his authority, or by the stockholders or creditors, as provided herein, leave therefor shall be first granted by the judge of the court in which the proceeding is to be instituted. [Id.]

Art. 1385. [1203] Examination and notice.—On presentation of such petition, before granting leave to sue, the judge shall carefully examine the same; and he may also require an examination into the facts; and if it shall be made to appear with reasonable certainty from said petition, or from the petition and facts, that the relief sought should be granted, the judge may grant such relief. On an application for the appointment of a receiver, the corporation proceeded against shall have ten full days notice prior to the day set for the hearing. [Id.]

Art. 1386. [1204] Provisions cumulative.—The rights and remedies given by this chapter are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, forfeitures and penalties. [Id.]

CHAPTER 8.—DISSOLUTION OF CORPORATIONS

Art.
1387. How dissolved.
1388. Liquidation by officers.
1389. Extension of existence.
1390. Effect of dissolution.*
1391. Suit on claim.*
1392. May sue stockholders.
1393. Apportionment of debt.
1394. Forced apportionment.
1395. Extent of liability.

Article 1387. [1205] [680] [604] How dissolved.—A corporation is dissolved:

1. By the expiration of the time limited in its charter.

2. By a judgment of dissolution rendered by a court of competent jurisdiction.

3. Where four-fifths in interest of all the stock outstanding shall vote in favor of a dissolution at a stockholders' meeting called for that purpose on notice signed by a majority of the directors, stating time,

place and object of the meeting, served personally or by mail at least thirty days next before the meeting. If, at said meeting, four-fifths in interest of all the stockholders of said company shall consent in writing to the dissolution of the corporation, such written consent, together with a list of the directors and officers of the company, giving postoffice address and place of residence of each, certified by the president and secretary and treasurer as a true and correct action of the stockholders, shall be filed with the Secretary of State.

4. When, without a stockholders' meeting, all the stockholders of the corporation consent in writing to a dissolution, the same shall be certified to as above and filed with the Secretary of State. When any such certificate is filed with the Secretary of State, he shall issue a certificate that such consent has been filed and that the corporation is dissolved; and said officer shall so note on the ledger in his office.

5. By forfeiture of its charter without judicial ascertainment under any special provision of law.

6. Where a corporation created under this title or a general law of Texas shall fail to commence active operations within three years after filing its charter with the Secretary of State.

7. Whenever a corporation upon proper judicial ascertainment is found to be insolvent. [Acts 1907, p. 311.]

Art. 1388. [1206–7] Liquidation by officers.—Upon the dissolution of a corporation, unless a receiver is appointed by some court of competent jurisdiction, the president and directors or managers of the affairs of the corporation at the time of its dissolution shall be trustees of the creditors and stockholders of such corporation, with power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them after paying all just and reasonable expenses; and for this purpose they may in the name of such corporation, sell, convey and transfer all real and personal property belonging to such company, collect all debts, compromise controversies, maintain or defend judicial proceedings, and exercise full power and authority of said company over such assets and property. Said trustees shall be severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands. [Id.; Acts 1919, 2nd C. S., p. 140.]

Art. 1389. [1206] [682] [606] Extension of existence.—The existence of every corporation may be continued for three years after its dissolution from whatever cause, for the purpose of enabling those charged with the duty, to settle up its affairs. In case a receiver is appointed by a court for this purpose, the existence of such corporation may be continued by the court so long as in its discretion it is necessary to suitably settle the affairs of such corporation. [Id.]

Art. 1390. [1206] [682] [606] Effect of dissolution.*—The dissolution of a corporation shall not operate to abate, nor be construed as abating any pending suit in which such corporation is a defendant, but such suit shall continue against such corporation and judgment shall be rendered as though the same were not dissolved. [Id.]

* *Repealed in part, Rules of Civil Procedure, Rule 483.*

Art. 1391. [1206] [682] [606] Suit on claim.*—When no receiver has been appointed for said corporation, suit may be instituted on any claim against said corporation, as though the same had been dissolved,[1] and service of process may be obtained on the president, directors, general manager, trustee, assignee, or other person in charge of the affairs of the corporation at the time it was dissolved, and judgment may be rendered as though the corporation had not been dissolved, and the assets of said corporation shall be liable for the payment of such judgment just as if said corporation had not been dissolved. [Id.]

1 Clause "had been dissolved" probably should read "had not been dissolved".

* *Repealed in part, Rules of Civil Procedure, Rule 160.*

Art. 1392. [1208] [684] [608] May sue stockholders.—If a corporation, except a railway, charitable or religious corporation, be dissolved leaving debts unpaid, suit may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the corporation in such suit; and if judgment be rendered and execution satisfied, any defendant may sue all who were stockholders at the time of dissolution for the recovery of the portion of such debt for which they were liable.

Art. 1393. [1208] [684] [608] Apportionment of debt.—Execution upon such judgment shall direct the collection to be made from the property of each stockholder respectively. If any number of stockholders defendants in the case shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved.

Art. 1394. [1209] [685] [609] Forced apportionment.—Any stockholder who pays more than his due proportion of any debt of the corporation may, by suit, compel contribution from the other stockholders.

Art. 1395. [1210] [686] [610] Extent of liability.—No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock.

CHAPTER 9.—RELIGIOUS, CHARITABLE AND EDUCATIONAL

1. RELIGIOUS AND CHARITABLE

Art.
1396. Powers.
1396a. Meetings outside state by religious, charitable, benevolent or educational corporations.
1397. Secular affairs.
1398. Spiritual affairs.
1399. Lodges.
1400. Lodges: charter.
1401. Lodges: trustees.
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2. EDUCATIONAL

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1. RELIGIOUS AND CHARITABLE

Article 1396. [1212] [713] [637] Powers.—Any religious society, charitable, benevolent, literary or social association (other than colleges, universities, academies or seminaries), and any military or fire

company, may, by the consent of a majority of its members become a body corporate under this title, electing directors or trustees, and performing such other things as are directed in the case of other corporations; and when so organized shall have all the powers and privileges, and be subject to all the restrictions in this title contained, for the objects named in the charter, and shall have the same power to make by-laws for the regulation of their affairs as other corporations. [Acts 1899, p. 236.]

Art. 1396a. Meetings outside state by religious, charitable, benevolent or educational corporations.—Corporations organized under the laws of this State for religious, charitable, benevolent, or educational purposes (other than colleges, universities, academies, or seminaries), in addition to all other powers and privileges now conferred by the laws of this State, may hold meetings of members, delegates, representatives or messengers and elect officers and trustees within or without the State of Texas. [Acts 1945, 49th Leg., p. 105, ch. 73, § 1.]

Art. 1397. [1158] [660] [584] Secular affairs.—The secular affairs of a religious corporation shall be under the control of a board of trustees, to be elected by the members of such corporation; and the title to all property of any such corporation shall vest in such trustees. [Acts 1907, p. 311.]

Art. 1398. [1213] [713] [637] Spiritual affairs.—The directors or trustees of any corporation under this title shall not usurp or exercise the functions of any officer in charge of the spiritual affairs of any society. [Acts 1899, p. 236.]

Art. 1399. [1214] Lodges.—The grand lodge of Texas, Ancient, Free and Accepted Masons, the Grand Royal Arch Chapter of Texas, the Grand Commandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders organized for charitable or benevolent purposes may, by the consent of their respective bodies expressed by a resolution or otherwise, become bodies corporate under this title. [Id.]

Art. 1400. [1215–18] Lodges: charter.—The incorporation of any such grand lodge shall include all of its subordinate lodges, or bodies holding warrant or charter under such grand body, and each of such subordinate bodies shall have all the rights of other corporations under and by the name given it in such warrant or charter issued by the grand body to which it is attached, such rights being provided for in the charter of the grand body. Such subordinate bodies shall, at all times, be subject to the jurisdiction and control of their respective grand bodies, and subject to have their warrants or charters revoked by such grand body. [Id.]

Art. 1401. [1216] Lodges: trustees.—Such grand bodies and their subordinates may elect their own trustees or directors, or name certain of their officers as such, and perform such other acts as are directed or provided by law in the case of other corporations, and shall have power to make constitutions and by-laws for the government of their affairs. [Id.]

Art. 1402. [1217] Lodges: property.—Such orders, grand and subordinate, shall have the right to acquire and hold such lands and personalty as may be necessary or convenient for sites upon which to erect buildings for their use and occupancy, and for homes and schools for their widows, orphans or aged or decrepit or indigent members, and to sell or mortgage the same, such conveyances to be executed by the presiding officer, attested by the secretary with the seal. The power and authority of such subordinate bodies to sell or to mortgage shall be subject to such conditions as may be from time to time prescribed or established by the grand body to which the subordinate is attached. [Id.]

Art. 1403. [1219] Lodges: demise.—Upon the demise of any subordinate body so incorporated, all property and rights existing in such subordinate body shall pass to, and vest in, the grand body to which it was attached, subject to the payment of all debts due by such subordinate body; but the grand body shall never be liable for any sum greater than the actual cash value of the effects of such subordinate actually received by it, or its authority. [Id.]

Art. 1404. [1220] Lodges: loans.—Any grand body incorporated under this subdivision shall have the right and authority to loan any funds held and owned by it for charitable purposes, for the endowment of any of its institutions, or otherwise, and may secure such loans by taking and receiving liens on real estate, or in such other manner as it may elect. Upon sale of any real estate under such lien, such grand body may become the purchaser thereof, and hold title thereto. [Id.]

Art. 1405. [1221] Lodges: duration.—Any grand body incorporating under this subdivision may provide in its charter for the expiration of its corporate powers at the end of any given number of years; or it may provide in its charter for its perpetual existence, and by its corporate name have perpetual succession of the officers and members. [Id.]

Art. 1406. [1222] Existing lodge.—Any such grand body or subordinate body now having a valid chartered existence may continue under its present charter, or reincorporate under this subdivision. [Id.]

Art. 1407. [1223] Lodges: tax.—Bodies incorporated under this subdivision shall not be subject to, or required to pay a franchise tax. [Id.]

Art. 1408. May affiliate.—Boards of trustees of religious, charitable, educational or eleemosynary institutions may be affiliated with, elected and controlled by a convention, conference or association organized under the laws of this State or another State, whether incorporated or unincorporated, whose membership is composed of representatives, delegates, or messengers from any church or other religious association. [Acts 1923, p. 171.]

Art. 1409. Property rights.—Any religious, charitable, educational or eleemosynary institution organized under the laws of this State may acquire, own, hold, mortgage and dispose of and invest its funds in real and personal property in this State for the use and benefit and under the discretion of, and in trust for, such electing, controlling and parent body in furtherance of the purposes of the organization of the member institution. This article shall not apply to corporations organized for profit. [Id.]

2. EDUCATIONAL

Art. 1410. [1225] [707] [631] Faculty.—The president, professors or principals shall constitute the faculty in academy, college or university corporations, and shall have power to enforce the rules and regulations enacted by the directors or trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary. [Acts 1874, p. 135; G. L. vol. 8, p. 137.]

Art. 1411. [1226] [708] [632] Powers of trustees.—The directors or trustees named in the charter of any college, academy, university or other corporation to promote education, and their successors, may make all necessary by-laws, elect and employ officers, provide for filling vacancies, appoint and remove professors, teachers, agents, etc., and fix their compensation, confer degrees, and do and perform all necessary acts to carry into effect the objects of the corporation. [Id.]

Art. 1412. [1227] [709] [633] Property.—Such corporations may procure, to be used as a part of the course of education, shops, tools and machin-

ery, land for agricultural purposes and necessary buildings for carrying on their mechanical and agricultural operations. [Id.]

Art. 1413. [1228] [710] [634] Conversion of property.—Any such corporation may when a majority of its stockholders consent thereto, convert its property, except when held upon some special trust, into stock or scholarships, and file a certificate of their action, as required in the case of an increase of capital stock of a corporation. [Id.]

Art. 1414. [1229] [711] [635] Directors' liability.—The directors of any such corporation, whose property is held not as stock, but upon trust or devise, donation, gift or subscription, shall not contract debts beyond the means of the corporation. If they do contract debts to a larger amount, they shall be held individually liable for the same, after the means of the corporation are exhausted. [Id.]

Art. 1415. [1230] [712] [636] Removal.—Any such corporation, may by a vote of three-fourths of the directors, or if the same is owned in shares of stock, then by three-fourths of the stockholders, change the location and name of the institution, and transfer the effects thereof to the place of the new location, or may apply the property thereof to other purposes of education than those named in the original charter filed with the Secretary of State.

Art. 1415a. Regulating commercial colleges.—Sec. 1. Any person, partnership, association of persons or any corporation which may desire to open a Commercial College, or to establish a branch college or school in this State for the purpose of teaching bookkeeping, stenography, typing, telegraphy, and other courses which are usually taught in Commercial Colleges, before commencing business, must secure a permit from the Secretary of State of the State of Texas authorizing such person, partnership, association of persons, or corporations to open and to conduct such Commercial College or branch college or school. The application for such permit shall state specifically the name of such person, partnership, association of persons or corporation, and give the name and address of the person, the name and address of each member of the partnership, the name and address of each person forming the association, or the name of the corporation, and of each director and officer of such corporation.

Sec. 2. Before the Secretary of State shall issue such permit, the person, partnership, association of persons or corporation shall execute a bond in the sum of ten thousand dollars, signed by a solvent guaranty company authorized to do business in the State of Texas, payable to the County Judge of the County in which such college, or branch college or school will be located, and conduct its business conditioned that the principal in said bond will carry out and comply with each and all contracts, either verbal or written, made and entered into by said college, or branch college or school, acting by and through its officers or agents, with any student who desires to enter such college and to take any course in commercial training, and to pay back to such student all amounts collected for tuition and fees in case of failure on the part of the parties obtaining a permit from the Secretary of State to open and conduct a Commercial College or branch college or school, to comply with its contracts to give the instruction contracted for, and for the full period evidenced by such contract. Such bond shall be filed with the county clerk of the county in which the College or branch college or school executing the bond is located and recorded by such Clerk in a book provided for that purpose.

Sec. 3. In any and all cases where the party receiving the permit from the Secretary of State fails to comply with any contract made and entered into with any student or with the parents or guardians of such student, such student or his parents or guardian shall have a cause of action against the sureties on the bond executed as herein provided for the full amount of the payments made to such person, with 10% interest from the date of the payment of said amount, and for reasonable attorney's fees for instituting and prosecuting such suit. Any court of competent jurisdiction in the county in which the college or branch college or school is located shall have venue to try and prosecute such suits.

Sec. 5. The provisions of this Act shall not apply to any University, College or regular High School which has heretofore adopted or which may hereafter adopt one or more commercial courses nor to any Commercial College heretofore established, provided the tuition fees and charges, if any made by such University, Commercial College, College or regular High School, shall be collected by their regular officers in accordance with the rules and regulations prescribed by the Regents or Board of Trustees of such University, Commercial College, College or High School.

Sec. 6. All persons, partnerships, associations of persons which are non-residents of Texas, or corporations organized and chartered under the laws of any other State, must comply with the provisions of this Act before such can open and conduct a Commercial College or branch college or school in the State of Texas. [Acts 1929, 41st Leg., p. 523, ch. 250.]

Section 4 of this Act is a penal provision published as Pen.Code, art. 301a. Section 7 provides that if any section is held invalid, the remainder shall nevertheless remain in effect.

CHAPTER 10.—PUBLIC UTILITIES

1. TELEGRAPH

Art.
1416. Public ways: use.
1417. Right of way.
1418. Competitor: rights.
1419. Interstate lines.
1420. Consolidations.
1421. Consolidation; powers.
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1. TELEGRAPH

Article 1416. [1231] [698] [622] Public ways: use.—Corporations created for the purpose of constructing and maintaining magnetic telegraph lines, are authorized to set their poles, piers, abutments, wires and other fixtures along, upon and across any of the public roads, streets and waters of this State, in such manner as not to incommode the public in the use of such roads, streets and waters. [Acts 1874, p. 132; G. L. vol. 8, p. 134.]

Art. 1417. [1332] [699] [623] Right of way.—They may also enter upon any lands owned by private persons or by a corporation, in fee or less estate, for the purpose of making preliminary surveys and examinations with a view to the erection of any telegraph line, and from time to time appropriate so much of said lands as may be necessary to erect such poles, piers, abutments, wires and other necessary fixtures for a magnetic telegraph, and to make such changes of location of any part of said lines as may from time to time be deemed necessary, and shall have a right of access to construct said line, and when erected, from time to time as may be required, to repair the same, and shall have the right of eminent domain to obtain the right of way and condemn lands for the use of the corporation. [Id.]

Art. 1418. [1233] [700] [624] Competitor: rights.—No corporation shall have power to contract with any owner of land for the right to erect and maintain a telegraph line over his lands to the exclusion of the lines of other companies. [Id.]

Art. 1419. [1234] [701] [625] Interstate lines.—Any corporation created as herein provided may construct, own, use and maintain any line or lines of telegraph, whether wholly within, or wholly or partly beyond the limits of this State. [Id.]

Art. 1420. [1234] [701] [625] Consolidations.—They shall have power to lease or attach to their line or lines other telegraph lines, by lease or purchase, and may join with any other corporation or association in constructing, leasing, owning, using or maintaining their line or lines, upon such terms as may be agreed upon between the directors or managers of the respective corporations, and may own and hold any interest in such line or lines, or may become lessees thereof on such terms as the respective corporations may agree. [Id.]

Art. 1421. [1236] [703] [627] Consolidation: powers.—Any telegraph company organized under the laws of this State may, at any regular meeting of the stockholders thereof, by vote of persons holding a majority of shares of the stock of such company, unite or consolidate with any other company or companies organized under the laws of the United States or of any State or territory, by the consent of the company with which it may consolidate or unite; and such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title, and be subject to the same liabilities. [Id.]

Art. 1422. [1235] [702] [626] Municipal regulation.—The corporate authorities of any city, town or village through which the line of any telegraph corporation is to pass, may, by ordinance or otherwise, specify where the posts, piers or abutments shall be located, the kind of posts that shall be used, the height at which the wires shall be run; and such company shall be governed by the regulations thus prescribed. After the erection of said telegraph lines, the corporate authorities of any city, town or village shall have power to direct any alteration in the erection or location of said posts, piers or abutments, and also in the height at which the wires shall run, having first given such company or its agents opportunity to be heard in regard to such alteration. [Id.]

2. TELEPHONE AND TELEGRAPH

Art. 1423. Consolidations.—Any person, firm or corporation organized under the laws of Texas owning a local telephone exchange, whether wholly within or partly beyond the State limits, shall have power to purchase and may join with any other individual, firm or corporation in constructing, leasing, owning, using or maintaining any other local telephone exchange, upon such terms as may be agreed upon between such persons, or the directors or managers of the respective corporations, and may own and hold any interest in such local telephone exchange or may become lessees thereof on such terms as the respective persons, firms or corporations may agree. In case of the purchase, lease or acquisition of one local telephone exchange by a company owning another when both systems are operating in the same incorporated city or town, the consent of such city or town shall be secured. [Acts 1913, p. 92.]

Art. 1424. Consolidation: mode.—Any telephone company organized under the laws of Texas owning a local telephone exchange may at any regular meeting of the stockholders thereof by vote of persons holding a majority of shares of the stock of such company, unite or consolidate such local exchange with the local exchange of any other company or companies organized under the laws of the United States, or of any State or territory, by the consent of the company with which it may so consolidate or unite. Such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title, and be subject to the same liabilities. Where two or more local exchanges are operating in the same incorporated city or town, the consent of such city or town shall be secured for such consolidation. [Id.]

Art. 1425. Consolidation: rates.—In case of the purchase, lease, acquisition or consolidation of one local telephone exchange with another, when both systems are operating in the same incorporated city or town, the rates charged for local telephone service after such consolidation shall not exceed the rate charged by the company charging the lowest rates in

such city or town at the time of such purchase, lease, acquisition or consolidation, unless authorized by such city or town. [Id.]

Art. 1426. [1237] Transfer of messages.—All companies and corporations that own or operate telephone or telegraph lines for the purpose of transmitting messages from one point to another, are hereby required to arrange for conversations or transfer of messages as hereinafter provided. [Acts 1907, S. S. p. 462.]

Art. 1427. [1238] Telephone connections.—All persons, companies, firms or corporations doing a telephone business in this State shall be compelled to make physical connections between their toll line at common points, for the transmission of messages or conversations from one line to another. Such connection shall be made through the switchboard of such persons, companies, firms or corporations, if any is maintained at such points, so that persons so desiring may converse from points on one of such lines to points on another. [Id.]

Art. 1428. [1239] Telegraph connections.—Each telegraph company or person, firm, corporation or association engaged in the business of accepting and transmitting messages to and from different points in this State, where the use of a telegraph instrument or instruments is necessary in the conduct of such business, shall, if there be any other persons, firm, corporation or association engaged in such business at the same point or in the same town, city or village, provide means whereby all messages conveyed to such points over the lines of any such companies shall be transferred to the lines of either or all other such companies engaged in such business at such common points, and transmitted to their final destination; and such facilities shall be provided as will guarantee the transfer of such messages in compliance with the provisions of this subdivision. [Id.]

Art. 1429. [1239] Transfers excepted.—In no case shall any message be transferred from one line to another against the will of the company first handling the same, when it is possible for such company to deliver said message direct to the party for whom it is intended by way of the line or lines operated and owned by said company. No telegraph or telephone company shall, under the provisions of this subdivision be compelled to receive from the wires or lines of any other telegraph or telephone company and convey to its final destination any message originating at any point on its own lines. [Id.]

Art. 1430. [1240] Transfer hearing.—The city council in incorporated cities, and the commissioners court at points where there is no city council, shall on application of one hundred resident citizens, or upon its own motion, hear such evidence as they think necessary, and upon a final hearing they shall determine whether or not it would be necessary for public convenience, and just to the telephone or telegraph companies, to make such connection or arrange for the transfer of messages; whereupon they shall enter of record their findings, and shall also set out in their order the conditions upon which such arrangements for conversation or transfer of messages shall be made, and shall decide what proportion of expense shall be paid by each of said connecting lines. [Id.]

Art. 1431. [1241] Penalty.—Whenever the city council or commissioners court shall enter an order in compliance with Arts. 1428 and 1429 requiring telephone or telegraph companies to arrange for conversation or transfer of messages, it shall be compulsory on said company to arrange for such conversation or transfer of messages, and failing to do so, they shall forfeit to the State of Texas on suit by the county or district attorney, the sum of ten dollars for each day they so neglect. The penalty herein assessed shall not be operative against a company which is prevented from making connections as herein required, through the fault or omission of another company, so long as such fault or omission shall cause such failure on its part to so connect. [Id.]

Art. 1432. [1241] Appeals.—Any company ordered to arrange for conversations or to transfer messages between its line and another line as herein provided, shall have the right to appeal from such order to the court having jurisdiction over said matter, and the court shall, if it shall find that appellant had reasonable grounds for prosecuting such appeal, suspend the penalty herein provided for until such appeal is finally determined. [Id.]

3. WATER

Art. 1433. [1004–1282] Privileges.—Any water corporation shall have power to sell and furnish such quantities of water as may be required by the city, town or village where located, for public or private buildings, or for other purposes; and such corporation shall have power to lay pipes, mains and conductors for conducting water through the streets, alleys, lanes and squares in any such city, town or village, with the consent of the governing body thereof, and under such regulations as it may prescribe. When deemed necessary to preserve the public health, any company or corporation chartered under the laws of this State for the purpose of constructing water works or furnishing water supply to any city or town, shall have the right of eminent domain to condemn private property necessary for the construction of supply reservoirs or standpipes for water work. [Acts 1874, p. 134; G. L. vol. 8, p. 136; Acts 1909, p. 8.]

Art. 1434. [1283] [706] [630] Contracts.—The governing body of any city, town or village in which any water corporation shall exist, is hereby authorized to contract with any such corporation for supplying with water the streets, alleys, lots, squares and public places in any such city, town or village. [Acts 1874, p. 134; G. L. vol. 8, p. 136.]

Art. 1434a. Water supply or sewer service corporations.

Formation of corporation

Section 1. On and after the passage of this Act, three or more persons who are citizens of the State of Texas, may form a corporation for the purpose of furnishing a water supply or sewer service, or both, to towns, cities, private corporations, individuals, and military camps and bases, and may provide in the charter of such corporation that no dividends shall ever be paid upon the stock and that all profits arising from the operation of such business shall be annually paid out to cities, towns, corporations, and other persons who have during the past year transacted business with such corporation, in direct proportion to the amount of business so transacted, provided that no such dividends shall ever be paid while any indebtedness of the corporation remains unpaid and, provided also, that the Directors of such corporation may allocate to a sinking fund such amount of the annual profits as they deem necessary for maintenance, upkeep, operation, and replacements. [As amended Acts 1941, 47th Leg., p. 666, ch. 407, § 1.]

Withdrawal of water from Guadalupe or Comal rivers, or tributaries or springs

Sec. 1-a. It shall be unlawful for any person, firm, association, or corporation to withdraw any water from the Guadalupe River or Comal River or any tributaries of such rivers or springs emptying into such rivers, or either of them, for the purpose of transporting such water to any point or points located outside of the natural watersheds of such rivers.

Any such withdrawal or attempted withdrawal of water from said rivers, springs, and/or tributaries may

be enjoined in a suit for injunction brought by any person, municipality, or corporation owning riparian rights in or along said rivers. The venue of such suits shall be in the District Court of the county where such withdrawal or attempted withdrawal occurred. [Added Acts 1941, 47th Leg., p. 666, ch. 407, § 1.]

Contracts with Federal Agencies

Sec. 2. The said corporation is hereby vested with power to negotiate and contract with any and all Federal Government agencies including, without exclusion because of enumeration, the Emergency Conservation Acts, Public Works Acts, Self-Liquidating Acts, Housing Unit Acts, Colonization Acts, Conservation Acts, Emergency Relief and Reconstruction Acts, and the Reconstruction Finance Corporation Act of January 22, 1932, Acts of the Seventy-second Congress of the United States of America, First Session, and with others, for the acquisition, construction, and/or maintenance of such project and improvements; to obtain money from such Federal Government agency or other sources for the purpose of financing said acquisition, and encumber the properties so acquired or constructed and the income, fees, rents, and other charges thereafter accruing to the said corporation in the operation of said properties; and to evidence the transaction by the issuance of bonds, notes, or warrants to secure the funds so obtained. But it is hereby expressly provided that the bonds, notes, and/or warrants so issued shall not constitute general obligation or indebtedness of the said corporation, but shall represent solely a charge upon specifically encumbered properties and the revenue therefrom, as herein provided. [As amended Acts 1941, 47th Leg., p. 666, ch. 407, § 2.]

Application for charter to Secretary of State; board of directors

Sec. 3. The persons applying for a charter for such corporation shall make application to the Secretary of State in the manner now provided by law for private corporations and in the name designated for such corporation shall use the words "Water Supply Corporation". Each holder of stock in such corporation shall be given a certificate which shall entitle him to one vote in the conduct of the affairs of the corporation and each incorporator shall be a member of the Board of Directors which shall be a permanent body. Upon the death or resignation of a member of the Board of Directors his stock in such corporation shall be cancelled and a successor elected by a majority vote of the directors remaining. The application for charter shall name all the members of the Board of Directors. The number of directors may be increased from time to time by charter amendment but there shall never be more than twenty one members of said Board.

Acquisition of water supply; operation of plants and equipment; eminent domain

Sec. 4. Such Water Supply Corporations shall have the right to purchase, own, hold and lease and otherwise acquire water wells, springs and other sources of water supply, to build, operate and maintain pipe lines for the transportation of water, to build and operate plants and equipment necessary for the distribution of water and to sell water to towns, cities and other politicial subdivisions of the State of Texas, to private corporations and to individuals. Such corporations shall have the right of eminent domain to acquire rights-of-way and shall have the right to use the rights-of-way of the public highways of the State for the laying of pipe lines under supervision of the State Highway Commission.

Annual election of officers, salaries

Sec. 5. Upon the issuance of a charter and annually thereafter on the First Tuesday in January the Board of Directors shall elect a President, a Vice-President, and a Secretary-Treasurer and shall require of such officers bonds for the faithful performance of their duties. The salaries of all the officers of said corporation except that of the Secretary-Treasurer and of the Manager whose salary is hereinafter referred to, shall not exceed Five Thousand ($5,000.00) Dollars per year. The salary of the Secretary-Treasurer shall be fixed by the Board of Directors at a sum commensurate with the duties required of him.

Manager elected by board of directors

Sec. 6. The business of the corporation shall be handled under the direction of the Board of Directors, by a manager to be elected by a majority vote of the Board and he shall be employed at a salary to be fixed by the Board of Directors.

Board of directors may employ counsel

Sec. 7. The Board of Directors may employ counsel to represent said corporation and may by agreement with him fix an annual retainer and the fees to be paid for his services and said Board of Directors may if they deem it necessary employ additional counsel from time to time.

Depository for funds

Sec. 8. The Board of Directors shall select as depository for the funds of said corporation, a National Bank within the State of Texas and shall require of said depository such bond as the Board deems necessary for the protection of said corporation; and such funds as the Board of Directors may from time to time allocate to a sinking fund for replacement, amortization of debts and the payment of interest which shall not be required to be expended within the year in which the same is deposited, shall be invested in bonds or other evidence of indebtedness of the United States of America or deposited at interest in such National Bank in a Savings account. [Acts 1933, 43rd Leg., 1st C.S., p. 202, ch. 76.]

4. GAS AND LIGHT

Art. 1435. Powers.—Gas, electric current and power corporations shall have power to generate, make and manufacture, transport and sell gas, electric current and power to individuals, the public and municipalities for light, heat, power and other purposes, and to make reasonable charges therefor; to construct, maintain and operate power plants and substations and such machinery, apparatus, pipes, poles, wires, devices and arrangements as may be necessary to operate such lines at and between different points in this State; to own, hold and use such lands, right of way, easements, franchises, buildings and structures as may be necessary for the purpose of such corporation. [Acts 1911, p. 228.]

Preventing competition, see article 7428a, post

Art. 1436. Right of way.—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, right of way, easements and property of any person or corporation, and shall have the right to erect its lines over and across any public road, railroad, railroad right of way, interurban railroad, street railroad, canal or stream in this State, any street or alley of any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town. Such lines shall be constructed upon suitable poles in the most approved manner and maintained at a height above the ground of at least twenty-two feet; or pipes may be placed under the ground, as the exigencies of the case may require. [Id.]

Art. 1437. Finances.—Such corporation shall have the right to borrow money, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any of the purposes of such corporation, and shall possess all the rights and powers of corporations for

profit in this State, whenever the same may be applicable. [Id.]

Art. 1438. Discrimination.—It shall be unlawful for any such corporation to discriminate against any person, corporation, firm, association or place, in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances. [Id.]

5. SEWERAGE

Art. 1439. [1284] Eminent domain.—Every company or corporation incorporated under the laws of this State for the purpose of owning, constructing or maintaining a system of sewerage in any city or town in this State, shall be empowered by the exercise of the right of eminent domain, to condemn private property through which to lay, construct and maintain sewer pipes, mains and laterals, and connections, and also private property upon which to maintain vats, filtration pipes and other pipes, such property to be used and occupied as a place for ultimate disposition of sewage, in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for the successful operation of such sewer system, and when it also be made to appear that such sewer system is beneficial to the public use, health or convenience. The right of condemnation herein permitted shall not be invoked nor exercised within the corporate limits of the city or town, except as permitted or required by the city or town granting franchise to the company or corporation seeking the right of condemnation. [Acts 1899, p. 263.]

6. DEPOSITS

Art. 1440. Deposits for installing service.—Every person, firm, company, corporation, receiver or trustee engaged in the furnishing of water, light, gas or telephone service which requires the payment on the part of the user of such service [1] a deposit of money as a condition precedent to furnishing the same, shall pay six per cent interest per annum on such deposit to the one making same, or to his heirs or assigns, from the time of such deposit, the same to be paid on the first day of January of each year or sooner if such service be discontinued. When such service is discontinued, such deposit, together with any unpaid interest thereon, or such part of such deposit and unpaid interest, not consumed in bills due for such service, shall be returned to such depositor, his heirs or legal representatives. [Acts 2nd C. S. 1923, p. 101.]

[1] So in enrolled bill. The word "of" should probably be inserted.

7. REPORTS

Art. 1441. [1182] Corporations subject.—Every corporation within this State owning, leasing or operating in this State, in cities or towns of over twenty-five hundred population according to the preceding Federal census, a street railway, electric light or power plant furnishing light or power to the public, gas plant furnishing gas to the public, water plant furnishing water to the public, and sewerage company furnishing sewerage to the public, shall annually on or before the first day of March, file the report hereinafter provided with the Secretary of State, upon blank forms to be furnished by said officer. [Acts 1905, p. 40.]

Art. 1442. [1182] Report.—The report shall show the following facts:

1. The authorized capital stock of such corporation, the amount of such stock that has actually been issued, and how much of such stock actually issued is common, and how much preferred, and how much is due upon unpaid stock.
2. The bonded indebtedness of such corporation, and how many bonds have been actually sold, and the price of such sale, the rate of interest upon such bonds, and when such bonds mature.
3. Any other fixed lien or mortgage upon such property, and the amount thereof.
4. The floating indebtedness of such corporation, including all bills payable of whatever nature.
5. The value of the visible tangible property of such corporation, giving separate values of lands, machinery, buildings, tracks and equipment, and in gross, all bills receivable and cash on hand.
6. The annual cost of operating such corporation, showing under separate items: (a) amount paid for salaries; (b) amount paid for labor; (c) fixed charges including interest, taxes and insurance, giving each separately; (d) amount paid for fuel; (e) amount paid for extensions, repairs and maintenance, giving each separately; (f) amount paid for claims or suits for damages; (g) amount paid for miscellaneous expenses.
7. The annual gross earnings of such corporation, including revenues from every source, showing by separate items amount received by departments, such as amount received for light, sewerage, power, water, gas, street railway fares and tickets. [Id.]

Art. 1443. [1183] Additional reports.—Such corporations shall also make to the Secretary of State, upon blanks furnished by him, reports as to the price charged the public for sewerage, gas, water, light, power, and the price charged per passenger upon street railways, and if such corporations have contracts with cities or towns for furnishing water or light, then, the amount of such charge. [Id.]

Art. 1444. [1184] Sworn reports.—All reports provided for in this subdivision shall be under oath, and shall be made by any officer of the corporation having knowledge of the facts, or its general manager or superintendent. [Id.]

Art. 1445. [1185] Registration.—A true sworn copy of the reports required by this subdivision shall be filed annually on or before the first day of March with the Mayor of the city or town where the corporation has its principal place of business; and there shall also be filed at the same time a true sworn copy of said reports with the county clerk of the county in which such corporation has its principal place of business; and the same shall be by said clerk delivered to the commissioners court. Such reports shall be recorded in a properly indexed book, to be kept for that purpose, and open to the inspection of the public at all times. [Id.]

Art. 1446. [1186] Penalty.—Any corporation which shall for thirty days willfully fail or refuse to file such reports in the manner provided by this subdivision shall forfeit and pay to the State one hundred dollars for each day during which it shall continue in default; which shall be recovered by suit by the Attorney General. [Id.]

8. MISCELLANEOUS PROVISIONS

Art. 1446a. Disruption of gas, electric or water service by picketing, threats or intimidation; injunction; damaging property; conspiracy.

Declaration of policy

Section 1. It is hereby declared the policy of this state that continuous service by public utilities furnishing electric energy, natural or artificial gas, or water to the public is absolutely essential to the life, health and safety of all of the people, and that the wilful interruption or stoppage of such services by any person or group of persons is a public calamity which cannot be endured. "Utilities" as herein defined are dedicated to the service of the public, and the primary duty of such a utility, its management and employees, is the maintenance of continuous and adequate service at all times in order that the safety and health of the people may be protected

against the danger inherent in the disruption or cessation of such service. All courts and all administrative agencies of this state are enjoined to recognize this policy and in particular, to interpret and to apply this Act in accordance with such policy.

"Public utility" and "utility" defined

Sec. 2. When used in this Act, the term "public utility" or "utility" shall mean and include the following:

(a) Any private corporation doing business in Texas, and having the right of eminent domain, and engaged in the business of generating, transmitting or distributing electric energy to the public; or

(b) Any private corporation doing business in Texas, and having the right of eminent domain, and engaged in the business of producing, transmitting, or distributing natural or artificial gas to the public; or

(c) Any private corporation doing business in Texas, and having the right of eminent domain, and engaged in the business of furnishing water to the public; or

(d) Any state agency, authority, subdivision or municipality engaged in the business of furnishing any of the above described services to the public.

Picketing unlawful when; intimidation, etc.

Sec. 3. It shall be unlawful for any person or persons to picket the plant, premises or any part of the property of a public utility, as defined herein, with the intent to disrupt the service of such utility or to prevent the maintenance thereof, or if such picketing has the effect of disrupting the service or preventing the maintenance thereof. It shall be unlawful for any person or persons to intimidate, threaten or harrass any employee of such utility with the intention of disrupting its service or preventing the maintenance thereof, or if such intimidation, threats or harassment has the effect of disrupting the service of such utility, or preventing the maintenance thereof.

Restraining order; venue of suit

Sec. 4. When any utility, as defined herein, shall present a verified petition to the Judge of any District Court, alleging that within such judicial district a person or persons are violating the provisions of Section 3 of this Act, or are threatening to violate said provisions, and that such violation or threatened violation will prevent or interfere with the maintenance of adequate water service or electric or gas service, and describes the acts done or committed which are in violation of said Section 3, or the threatened acts which, if committed, will violate the provisions thereof, it shall be the duty of the Judge to forthwith inquire into the matter, and if it appears that the provisions of Section 3 are being violated, or that there is a threat to violate said provisions, he shall immediately issue an order restraining such person or persons, their agents, and all parties acting with them from committing any acts or doing any of the things prohibited by the provisions of Section 3 hereof, said restraining order to become effective when the plaintiff shall have filed with the clerk of said court a good and sufficient bond to cover such court costs as may reasonably accrue in connection with the case, the amount of which cost bond shall be fixed by the court. The cause shall be docketed and tried as in the case of other suits for writs of injunction, except that no judgment rendered therein shall be superseded pending appeal. The venue of suits of this character shall be in any District Court in any judicial district in which the violation or threat to violate the provisions of Section 3 hereof may occur, and the various District Judges shall have full authority to enforce all orders and writs of injunction issued to protect the life, health and safety of the public.

Damaging or destroying building or equipment; "sabotage" defined

Sec. 5. Any person who shall wilfully damage or destroy any building, equipment, machinery or facility used in furnishing utility service by any utility as defined in Section 2 hereof, or who interferes with, or commits any act of sabotage affecting any machinery, equipment, or facilities of any such utility for the purpose of disrupting the service provided by such utility, or for the purpose of preventing the maintenance of such service, shall be guilty of a felony, and, upon conviction, shall be punished by confinement in the state penitentiary for not less than two (2) years, nor more than five (5) years.

The word "sabotage" as used in this Act shall be construed to include any intentional tampering with, obstructing, breaking, damaging, changing or in any way interfering with any building, machinery, structure, wires, poles, towers, pumps, pipe lines, meters, switches, transformers, or any other equipment or property of any sort used by a utility as defined herein in furnishing water, gas, or electric service.

Agreement or plan to violate Section 5

Sec. 5-a. If any two or more persons shall enter into any agreement, compact, or plan to violate any of the provisions of Section 5 of this Act, or any agreement, compact, or plan to persuade, induce or employ some person to violate the provisions of said section, every person participating in such agreement, compact or plan shall be guilty of a felony, and, upon conviction, shall be punished by confinement in the state penitentiary for not less than two (2) nor more than five (5) years. In order that such offense be complete, it shall not be necessary that an overt act be committed pursuant to such agreement, compact or plan. The provisions of this section shall be cumulative of other statutes relating to conspiracy.

Duties of executive department

Sec. 6. In accordance with the declared policy of this state, as set out in Section 1 hereof, it shall be the duty of the Governor, and of the Executive Department under his direction, to exercise all of the powers available under the constitution and laws of the state to protect the public from the dangers incident to stoppage or interruption in water, electric or gas utility service in any place in Texas, because of a violation of any of the provisions of this Act.

Right not to work not limited

Sec. 7. Nothing in this Act shall be construed as a limitation upon the right of any employee of a public utility to quit work and to leave the premises of his employer at any time he chooses so to do, or to refuse to report for work when he so desires.

Partial invalidity

Sec. 8. If any section, subsection, paragraph, sentence or clause of this Act shall be held invalid, unconstitutional or inoperative, such holding shall not affect the validity of the remaining portions of the Act; but the remainder of the Act shall be given effect as if such invalid, unconstitutional or inoperative portion had not been included, and the Legislature hereby declares that it would have passed the remainder of the Act regardless of the inclusion or exclusion of such portion. [Acts 1947, 50th Leg., p. 142, ch. 84.]

CHAPTER 11.—ROADS

Art.
1447. Charter.

TOLL ROADS

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1464. Rules and rates.
1465. Use of road.

Article 1447. Charter.—The charter of a road company, in addition to the information required by article 1304, shall state: First, the kind of road intended to be constructed: Second, the places from and to which the road is intended to be run: Third, the counties through which it is intended to be run: Fourth, the estimated length of the road. [Acts 1874, p. 120; G. L. vol. 8, p. 122.]

TOLL ROADS

Art. 1448. Toll road: incorporation.—Any number of persons, not less than five, being subscribers to the stock, may organize themselves into a corporation for the purpose of constructing, building, acquiring, owning, operating and maintaining toll roads within this State by complying with the requirements of this subdivision. No corporation, except one chartered under the laws of this State, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any toll road within this State. [Acts 1913, p. 143.]

Art. 1449. Charter.—The persons proposing to form a toll road corporation shall adopt and sign articles of incorporation, which shall contain, in addition to the general requirements, the following:

1. The terminal points, and the intermediate counties through which it is intended to construct the toll road;

2. The names and places of residence of the several persons forming the association for incorporation; and

3. In what officers the management and control of the corporation shall be vested. [Id.]

Art. 1450. Examination.—The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, who shall carefully examine the same; and, if he finds them to be in accordance with the provisions of this subdivision, and not in conflict with the laws of the United States or of this State, he shall attach thereto a certificate to that effect. [Id.]

Art. 1451. Registration.—When said articles have been examined and certified, the same shall be filed in the office of the Secretary of State, accompanied by the affidavit of at least three of the directors named in such articles. Such affidavit shall state that the entire amount of the capital stock of such proposed corporation has been in good faith subscribed, and that fifty per cent of the amount subscribed has been actually paid to the directors named in such articles; and the Secretary of State shall cause such affidavit and articles to be recorded in his office, and shall attach a certificate of the fact of such record to said articles, and return the same to such corporation. [Id.]

Art. 1452. Duration.—No toll road corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time, for periods not longer than fifty years, in the manner provided for the renewal of railroad corporations. [Id.]

Art. 1453. Charter amendments.—Any toll road corporation may amend or change its articles of incorporation in the manner provided by law for railroad corporations. [Id.]

Art. 1454. Powers.—Every toll road corporation organized hereunder shall have the right to construct, build, acquire, own, operate and maintain toll roads between any points within this State. [Id.]

Art. 1455. Use of State lands.—Every such corporation shall have the right of way for its line of road through and over any land belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land. [Id.]

Art. 1456. Private lands.—Every toll road corporation shall have the right to cause such examination and survey for its proposed road to be made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damage that may be occasioned thereby. [Id.]

Art. 1457. Road construction.—Every such corporation shall have the right to lay out its road, not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of its road, and to cut down any standing trees that may be in danger of falling upon or obstructing such road, making compensation in the manner provided by law. [Id.]

Art. 1458. Railroad crossings.—Every such corporation shall have the right to construct its road across any railroad, street railroad or interurban line within this State, which it may intersect or touch; provided that it shall properly fence such crossings, and restore, in other respects, the property thus intercepted or crossed, to its former state. [Id.]

Art. 1459. Public way crossings.—Every such corporation shall have the right to construct its own road across any stream of water, water course, street, highway, plank road, turnpike or canal, which the route of said road shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike or canal thus intersected or touched, to its former state; or to such state as not to unnecessarily impair its usefulness, and shall keep such crossings in repair. [Id.]

Art. 1460. Openings.—Every such corporation which may fence its right of way, may be required to make openings or crossings through its fence and over its roadbed every five miles thereof, in the manner provided by law with reference to railroad corporations. [Id.]

Art. 1461. Culverts, etc.—In no case shall any toll road corporation construct its road without first constructing the necessary culverts or sluices, as the natural lay of the land requires, for the necessary drainage thereof. [Id.]

Art. 1462. Obstruction of streams.—Nothing in this chapter shall be construed to authorize the erection of any bridge or any other obstruction across or over any stream of water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed, so as to prevent the navigation of such stream of water. [Id.]

Art. 1463. Eminent domain.—Every toll road corporation shall have and enjoy all of the rights, privileges and immunities conferred by and be subject to each provision of the law relating to the exercise of the right of eminent domain. [Id.]

Art. 1464. Rules and rates.—Every toll road corporation shall have the power to promulgate, by its board of directors, all necessary and reasonable rules and regulations relating to the manner in which traffic shall move over any toll road operated by it, and to refuse the use of such road to any person who shall fail or refuse to abide by such rules and regulations; and shall be empowered to fix and charge tolls for the use of such roads; provided, that such rules and regulations shall not be contrary to law, and that the rate to be charged for each class of vehicle shall be the same to all in each of such classes. [Id.]

Art. 1465. Use of road.—No such corporation shall have the right arbitrarily to refuse the use of such road to any person who shall offer to pay the regular toll therefor, except that such corporation shall be authorized to refuse to permit such road to be used by any vehicle which shall render the same unduly hazardous to the patrons of said road or damaging to the surface thereof, or to any person who shall fail or refuse to abide by the reasonable and necessary traffic regulations promulgated by such corporation. [Id.]

CHAPTER 12.—BRIDGES, FERRIES AND CAUSEWAYS

1. CAUSEWAYS

Art.
1466. Authority to build.
1467. Statement of location.
1468. Priority.
1469. Condemnation of approaches.
1470. Land under water.
1471. Lease of right of way.
1472. Lessee may issue bonds.
1473. Causeway corporations.

2. BRIDGES AND FERRIES

1474. Bridge charter.
1475. Rights of corporation.
1476. Toll rate.
1477. Owner's liability.

1. CAUSEWAYS

Article 1466. Authority to build.—Any person, corporation or association of persons, hereinafter called the owner, may purchase, build, construct, own, maintain and operate a combination bridge, dam, dike, causeway and roadway across any arm of the Gulf of Mexico or inlet thereof, or any of the saltwater bays, wholly within the limits of this State, to provide a causeway, roadway or highway for vehicles, teams, pedestrians, railroads, and for every character of inland transportation. [Acts 1913, p. 331.]

Art. 1467. Statement of location.—Within ninety days after the commencement of construction of such structure, said owner shall file for record with the clerk of the county where the greater part of such structure is situated, a sworn statement showing the location of said proposed structure, the name of the same, the size of the same, the name of the stream, bay or arm of the gulf or inlet thereof, or salt water bay over which it is to be built, the time when the work was commenced and the name of the owner, together with a map showing the location of said structure. [Id.]

Art. 1468. Priority.—The claimant's right to build said structure will relate back to the time of so filing said statement and map, and the first in time shall be the first in right. The filing of said statement and map shall be considered as taking "formal action." [Id.]

Art. 1469. Condemnation of approaches.—Said claimant may acquire by purchase or by the exercise of the right of eminent domain, all necessary approaches to said structure that said claimant deems necessary. [Id.]

Art. 1470. Land under water.—The land under water to be occupied by such structure and approaches thereto is hereby granted absolutely to said claimant, and five hundred feet more on each side of such structure is also granted with the right only to dredge therefrom or beyond same for material for causeways if required in construction and maintenance. [Id.]

Art. 1471. Lease of right of way.—Such owner may lease the right of way over said structure to cities and towns for public utilities owned and operated by them, and to corporations for the constructions by such corporations of railroad tracks over which steam and electric trains and cars may be operated for the transportation of freight and passengers; such right not to be granted in such way as to obstruct or interfere with the use of such structure for pedestrians, teams and vehicles, or to permit a monopoly. Said lease to railroad corporations shall be for such time and on such terms and conditions as the Railroad Commission of Texas may prescribe. Said railroad companies shall only charge for the use of said tracks as a part of the mileage according to statutory rates and the general laws of Texas. [Id.]

Art. 1472. Lessee may issue bonds.—Any corporation so contracting for the right of way over any part of said structure shall have the right to make and enter into any contract with said owner subject to the approval of the Railroad Commission, for the payment to said owner of all sums of money due thereunder, and for this purpose may issue and sell its bonds to the extent of the amount of such corporation's obligations to the said owner. No such bonds shall be issued by any railroad company or other corporation without first obtaining the permission, order and approval of the Railroad Commission. [Id.]

Art. 1473. Causeway corporations.—Corporations may be formed and chartered under the provisions of this law and of this title for the purposes stated in article 1466 hereof. All such corporations shall have full power and authority to make contracts with other persons or corporations conveying to said persons or corporations the right of easement or user of any portion of any such structure, and shall have full power and authority to charge, demand and receive reasonable and just tolls and charges for the use of said portions of said bridge, causeway or roadway, and the same shall be equal, just and uniform to all persons, corporations, cities and towns as herein provided, without discrimination as to the amount charged or delay in handling same. Any such corporation shall be subject to the regulation and control of the Railroad Commission as to all the powers and provisions of this law. [Id.]

2. BRIDGES AND FERRIES

Art. 1474. [1122] [643] [567] Bridge charter.—The charter of a bridge or ferry company, in addition to the general information required by law, shall state the stream intended to be crossed by the bridge or ferry. [Acts 1874, p. 122; G. L. vol. 8, p. 124.]

Art. 1475. [1279] [718] [642] Rights of corporation.—Whenever any person shall file with the Secretary of State any article of association for the erection and maintenance of a bridge or ferry, it shall not be lawful for any other toll-bridge or toll-ferry, to be established on the same stream within the limits specified in said article; provided, that said limits shall not extend more than three miles above and three miles below said bridge or ferry. This article shall not be construed to prohibit bridges and ferries at the crossings of any road on such stream within such limits, declared, either before or after the erection of such bridge or ferry, to be a public road by the

commissioners court of the county in which such crossing is situated. [Acts 1874, p. 139; G. L. vol. 8, p. 141.]

Art. 1476. [1280] [719] [643] Toll rate.—All charges or tolls for crossing any bridge or ferry shall be regulated by the commissioners court by an order made at a regular term, and spread upon the minutes of said court, as provided in the case of other bridges and ferries. [Id.]

Art. 1477. [1281] [720] [644] Owner's liability.—All persons or corporate companies owning any toll bridge or ferry shall be liable for all damages caused by neglect, delay or the insufficiency of their bridge or ferry boat, which damages may be recovered by suit therefor. [Id.]

CHAPTER 13.—CHANNEL AND DOCK

Art.
1478. Purposes.
1479. Powers.
1480. Docks: powers.
1481. Further powers.
1482. Rate control.

Article 1478. [1249] [721] Purposes.—This chapter includes corporations created for the purpose of constructing, owning and operating deep water channels from the waters of the Gulf of Mexico along and across any of the bays on the coast of this State to the mainland, for the purposes of navigation and transportation, and for the construction, owning and operating of docks on the coast of this State for the protection and accommodation of ships, boats and all kinds of vessels for navigation, and their cargoes. [Acts 1887, p. 91; G. L. vol. 9, p. 889.]

Art. 1479. [1250] [722] Powers.—Every such channel corporation shall, in addition to the powers herein conferred, have power:

1. To cause such examination and survey for its proposed channel to be made as may be necessary to the selection of the most advantageous route for such purpose, by its officer, agents or servants; to enter upon any of the waters of such bays and upon any of the lands of this State, or of any person.

2. To take and hold voluntary grant of real estate and other property as shall be made to it to aid in the construction and maintenance of its deep water channel and works pertinent thereto.

3. To construct its channel across, along, through, or upon, any of the waters of the bays within the jurisdiction of this State, and so far into the main land as may be necessary to reach a place for its docks that will afford security from cyclones, storms, swells or tidal waves, with such depth as may suit its convenience and the wants of navigation, not less than five feet, and a width of not less than forty feet.

4. To furnish to vessels and boats adapted to the purpose, facilities for navigating in and along the entire length of its channel, and to charge and collect a toll therefor, to be prescribed by its by-laws, in no case to exceed one cent per barrel bulk of the capacity of each vessel for each mile of the length of its channel used by the vessel going either way.

5. To borrow such sums of money as may be necessary for constructing, finishing, or operating its channel, and to issue and dispose of its bonds, for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid; provided, that damages for any property appropriated by such corporation shall be assessed and paid for as is provided for in case of railroads.

6. To enter upon and condemn and appropriate any lands of any persons or corporation that may be necessary for the uses and purposes of such channel corporation. No damages shall be assessed against or paid by it for any portion of the route of the channel embraced within and covered by the waters of any bay or lake on the coast of this State, nor for any portion of any island belonging to the State that may be requisite and necessary to the construction and successful operation of its channel; and provided, that its right of way shall not be less than the actual width of its channel, and not more than seven hundred feet in width on each side of its channel. When the land sought to be condemned is arable land, such right of way shall not extend farther than six hundred feet on each side of the channel from the edge or boundary of said channel.

7. To construct, own, and operate its channel so far into the waters of the Gulf of Mexico as may be necessary to obtain an adequate depth of water at its gulf entrance to facilitate the ingress and egress of such vessels as may navigate the same, in so far as this State may have the power to grant such right, which shall be in subordination to that of the United States government, in so far as that government has the constitutional power to control the same. [Acts 1874, p. 134; G. L. vol. 8, p. 136; Acts 1887, p. 91; G. L. vol. 9, p. 889; Acts 1895, p. 185; Acts 1897, p. 19; G. L. vol. 10, pp. 915, 1073.]

Art. 1480. [1251] [723] Docks: powers.—Every such dock corporation shall in addition to the powers heretofore conferred, have power:

1. To purchase, take and hold such land or real estate as shall be necessary for the construction and operation of its docks, approaches, entrances, moorings and ways, and the construction, use and enjoyment of such warehouses, stores and sheds as may be necessary to the receiving and discharging of freights, goods, wares and merchandise, and the proper protection and preservation thereof. No such dock corporation shall ever have the right or power to take or condemn to its use any private property without the free consent of the owner thereof, expressed by a sufficient deed in writing.

2. To construct its dock or docks in such manner and of such size and depth as it may deem proper to suit the convenience of such vessels as may see fit to use and occupy the same, and to collect from the vessels using the same, or from their masters, owners or consignees, such sum for the use thereof as may be authorized by its by-laws and agreed to by such masters, owners or consignees.

3. To borrow such sums of money as may be necessary for constructing, completing or operating its dock or docks, and to issue and dispose of its bonds for such amount borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid. [Acts 1887, p. 91; G. L. vol. 9, p. 889.]

Art. 1481. [1252] [724] Further powers.—Every such corporation shall, in addition to the powers heretofore conferred, have power:

1. To purchase, take and hold such land or real estate as shall be necessary for the construction, maintenance and operation of its harbor approaches, entrances, and ways thereto, and the construction of wharves, piers and warehouses.

2. To construct, own and maintain its harbor by building piers and breakwaters so far into the gulf as may be necessary to obtain sufficient depth of water to facilitate the ingress and egress, and the safety while in port of such vessels as may enter the same, in so far only as the State may have power to grant such right, which, however, shall be exercised subject and in subordination to the government of the United States, in so far as it may have constitutional power to control the same.

3. To provide facilities to vessels and boats entering its harbor, for anchorage, receiving and discharging cargoes and passengers, and to charge and collect fair and reasonable tolls and wharfage therefor, to be prescribed by its by-laws.

4. To borrow money in such amounts and on such terms as may be necessary for constructing and finish-

ing or operating its harbor or piers, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate franchises to secure the payment of any debt contracted for the purposes aforesaid. [Id.]

Art. 1482. [1253] [725] Rate control.—All rates, tolls or charges made by any corporation formed under the provisions of this chapter, shall be subject to the right of the Legislature from time to time to alter, revise, change or amend the same. [Id.]

CHAPTER 14.—DEEP WATER

Art.
1483. Powers.
1484. Frontage.
1485. Application.
1486. Survey.
1487. Deferred payments.
1488. Forfeiture.
1489. Harbor facilities.
1490. Rate control.
1491. Railroad facilities.
1492. Effect of law.
1493. Other railroads.
1494. Shall file release.

Article 1483. [1254] [726] Powers.—Any corporation organized under the laws of Texas which is now authorized or which may hereafter be authorized by an Act of Congress of the United States to construct, own, operate or maintain, with private capital, a deep water harbor, navigable channel, docks or wharves on the Gulf Coast of Texas, shall be permitted to purchase from this State, at two dollars per acre, so much of any public lands, islands, shore or shallow bays belonging to this State, as may be situated within one-half mile from any point or points on the construction works of any jetties or any such deep water channel leading into the main harbor from the open sea. In no case shall such strip or body of land be more than one-half mile in width. Such company or corporation may also purchase from the State, at the same price per acre, any lands, shores, islands or shallow bays within one-fourth mile of each side of every navigable channel that such company or corporation may construct through or across such shallow bays in the prosecution of such work. [Acts 1891, p. 166; G. L. vol. 10, p. 168.]

Art. 1484. [1255] [727] Frontage.—Any such company or corporation owning in whole or in part any lands fronting or abutting upon any shallow bays in which any such work is being constructed, may purchase at the same price per acre any lands, shores or shallow bays adjoining and lying in front of such lands; provided, that such purchase shall not extend into such bay so as to include land covered with water having an average depth of more than three and one-half feet at mean low tide. The purchases under the provisions of this article shall not extend a greater distance along the front of the survey on the shore than three miles, nor a greater distance into the bay than one-half mile. The islands known as Tolly Island and Lydia Ann Islands, situated in Aransas Bay, shall not be subject to purchase hereunder. One-half of the proceeds of the sale of the lands provided for herein shall belong to the permanent free school fund of this State. [Id.]

Art. 1485. [1256] [728] Application.—All applications of a purchaser to buy under the foregoing articles shall be made in writing to the Land Commissioner, accompanied by one-fifth of the purchase money, and also a copy of the Act of Congress authorizing the construction of such deep water harbor, navigable channel, docks or wharves, and a complete plat or map showing the location and design of such improvements. Said map shall show the public lands, shores, islands and shallow bays applied for, and the depth of such shallow bays in feet, determined by actual survey, or as shown by the United States coast survey map. [Id.]

Art. 1486. [1257] [729] Survey.—Upon the payment of one-fifth of the purchase money, the Land Commissioner shall issue a receipt therefor, and attach thereto a copy of the application and plat filed by said purchaser. Said receipt shall be sufficient authority to the proper county surveyor to survey the lands shores, islands or shallow bays sold. [Id.]

Art. 1487. [1257] [729] Deferred payments.—The remainder of the purchase money may be paid at any time within five years after the date of first payment. Deferred payments shall bear interest at the rate of five per cent per annum. If the purchaser of any island, shallow water bay, land, or either, under these articles, shall fail to pay the annual interest upon any part of the purchase money when such interest shall become due, or if such purchaser shall fail to pay the principal when the same shall become due, then all rights acquired under such purchases shall be forfeited, with all payments made thereon, without any judicial ascertainment of such forfeiture; and the Land Commissioner shall indorse upon the contract of purchase that the same is forfeited, whereby all rights so acquired shall be forfeited and revert to the State. [Id.]

Art. 1488. [1257] [729] Forfeiture.—If any such corporation, within five years from the date of the filing of its charter, shall fail to conform to the Act of Congress in prosecuting such work, or if such corporation shall fail to secure twenty feet of water at low tide upon the bars and other obstructions between the main harbor and the Gulf of Mexico, or if such corporation shall fail to maintain said twenty feet of water continuously for two years thereafter, then in any such case all islands, lands, shallow bays and other rights acquired under this chapter shall be forfeited and shall revert to and vest in the State of Texas. [Id.]

Art. 1489. [1258] [730] Harbor facilities.—Any such corporation may construct, own and maintain upon the Gulf Coast of Texas, in connection with its deep water harbor and navigable channels, docks and wharves and navigable channels for the accommodation of commerce, and such corporation may charge, demand and receive reasonable and just tolls and charge for the use of such docks and wharves, but such navigable channels so constructed shall forever remain open and free to all vessels without fee or charge. [Id.]

Art. 1490. [1258] [730] Rate control.—The tolls and charges for the use of said docks and wharves shall be equal, just and uniform to all vessels, persons and corporations, without discrimination as to amount charged or delay in handling the same. Such tolls and charges shall be under the control of the Legislature, and until otherwise directed by the Legislature, shall be subject to control and regulation by the Railroad Commission, under the rules prescribed for the regulations of railroads, so far as applicable. [Id.]

Art. 1491. [1258] [730] Railroad facilities.—Any railroad, or other means of transportation, which may be constructed between the mainland and any deep water harbor or channel shall be a public highway. All rates and charges for the transportation of freights and passengers thereon shall be subject to the control and regulation of the Railroad Commission as a railroad. Such railroad or other means of transportation shall receive from each ship, boat and vessel, or from the wharf on which the same is discharged, all freights and passengers, and transport and deliver them to the consignee, or any connecting line of railroad, without discrimination as to charges or delay in transportation and delivery, and shall in like manner receive from every person and from every connecting line of railroad, all freight and passengers, and trans-

port and deliver the same to each and every ship, boat, vessel, person or corporation for delivery to such ship, boat or vessel on like equal and just terms, without discrimination as to charges and delay in transportation or delivery thereof. [Id.]

Art. 1492. [1258] [730] Effect of law.—Nothing herein shall be construed to affect any rights acquired before the enactment of this law. The acceptance of the provisions herein, or the exercise of any rights or privileges granted herein, by said corporation, or any person or corporation holding under the same, shall be deemed and held to be a contract with the State. Any wilful violation of these provisions, or the doing of any act herein prohibited, shall work a forfeiture of all rights acquired hereunder, so far as then held or claimed by the person or corporation guilty of such violation. [Id.]

Art. 1493. [1259] [731] Other railroads.—The privileges and rights granted herein shall never be exercised so as to in any way hinder or interfere with the completion of any railroad heretofore chartered to be built to and upon Harbor Island, in and upon the location designated in such charter; nor with any such railroads acquiring and controlling all necessary depot grounds, wharf grounds and deep water fronts that it may or could have acquired legally had not this law been enacted. [Id.]

Art. 1494. [1260] [732] Shall file release.—Before any rights can vest in any corporation by virtue of any purchase of public lands, islands, shores or shallow bays, the said corporation shall file with the Secretary of State a release to the State of Texas of all claim or right to have its tolls or charges imposed for any use to be made of such property or structures thereon regulated by any Act of Congress now existing or hereafter to be passed. [Id.]

CHAPTER 15.—OIL, GAS, SALT, ETC.

Art.
1495. Purposes.
1496. Powers.
1497. Right of condemnation.
1498. Fiscal powers.
1499. Oil and gas.
1500. Oil pipe lines.
1501. Separate corporations.
1502. Ownership of stock.
1503. Private pipe line.
1504. Effect of law.
1505. Discrimination.
1506. Additional powers.
1507. Fuller's earth pipe lines.

Article 1495. [1303] Purposes.—This Chapter embraces corporations created for the purpose of storing, transporting, buying and selling oil, gas, salt brine and other mineral solutions and liquified minerals; also sand and clay for the manufacture and sale of clay products; and the production of oil and gas. [Acts 1899, p. 202; Acts 1915, p. 259; Acts 1935, 44th Leg., p. 296, ch. 110, § 2.]

Art. 1496. [1305] Powers.—Such corporations shall have power:

1. To store and transport oil, gas, brine and other mineral solutions and liquified minerals, and also sand, clay and clay products, and to make reasonable charges therefor. [As amended Acts 1935, 44th Leg., p. 296, ch. 110, § 3.]

2. To buy, sell and furnish oil and gas for light, heat and other purposes; to lay down, construct, maintain and operate pipe lines, tubes, tanks, pump stations, connections, fixtures, storage houses and such machinery, apparatus, devices and arrangements as may be necessary to operate such pipes and pipe lines between different points in this State.

3. For the transportation of sand and clay, corporations shall have the right to construct, maintain and operate aerial tramways, a system consisting of wire cables supported by wooden, concrete or steel towers, over which buckets or carriers are propelled; and may own such connections, fixtures, guy lines and all necessary devices, storage houses and such machinery, apparatus and arrangements as may be necessary to operate such aerial tramways between different points in this State.

4. To own, hold, use and occupy such lands, right of way, easements, franchises, buildings and structures as may be necessary to the purposes of such corporation. [Acts 1899, p. 202; Acts 1915, p. 259; Acts 1935, 44th Leg., p. 296, ch. 110, § 3.]

Art. 1497. [1306] Right of condemnation.—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, right of way, easements and property of any person or corporation. Such corporation shall have the right to lay its pipes and pipe lines across and under any public road or highway, or under any railroad, railroad right of way, street railroad, canal or stream in this State, and to lay its pipes and pipe lines across or along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town. No pipe lines shall be laid parallel with and on any public highway, closer than fifteen feet from the improved section thereof, except with the approval and under the direction of the commissioners court of the county in which such highway is located. Said pipes and pipe lines shall be so buried and covered as not to interfere with the use and occupancy of such road, highway, street or alley by the public, or use and occupancy of such railroad or street railroad by the owner or owners thereof. Such pipes or pipe lines shall not pass through or under any cemetery, church or college, school house, residence, business, or storehouse, or through or under any building in this State, except by the consent of the owner or owners thereof. All such pipes and pipe lines, when same shall pass through or over the cultivated or improved lands of another, shall be well buried under ground at least twenty inches under the surface, and such surface shall be properly and promptly restored by such corporation unless otherwise consented to by the owners of such land. When such pipes and pipe lines shall be laid over or along any uncultivated or unimproved lands of another, and such lands shall thereafter become cultivated or improved, such pipes or pipe lines shall be buried by said corporation as herein provided for cultivated lands, within a reasonable time after notice by the owner of such lands, or his agent, to said corporation or any agent thereof. [Acts 1899, p. 202; Acts 1915, p. 259; Acts 1919, p. 272.]

Art. 1498. [1307] Fiscal powers.—Such corporation shall have the right to borrow money, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this state whenever the same may be applicable to corporations of this character. [Acts 1899, p. 202; Acts 1915, p. 259; Acts 1917, p. 54; Acts 1943, 48th Leg., p. 230, ch. 146, § 1.]

Section 2 of the amendatory Act of 1943 read as follows: "No notes, bonds or other evidence of indebtedness heretofore issued by corporation organized under Chapter 15 of Title 32, Revised Civil Statutes of Texas, (1925) nor any mortgages, liens, or indentures securing same, shall be invalid by reason of such notes, bonds or other evidence of indebtedness being in excess of the limitation heretofore provided in Article 1498, Revised Civil Statutes of Texas, (1925)."

Art. 1499. [1307] Oil and gas.—Such corporation may also engage in the oil and gas producing business, prospecting for and producing oil and gas and owning and holding lands, leases and other property for said purposes and subject to the provisions of Chapter 4 of this title. No corporation shall exercise

these powers while owning or operating oil pipe lines in this State. [Acts 1899, p. 202; Acts 1915, p. 259; Acts 1917, p. 54.

Art. 1500. [1307] Oil pipe lines.—Any corporation heretofore or hereafter organized under this chapter, and owning or operating oil pipe lines in this State, shall separately incorporate such oil lines, with the consent of a majority in amount of its stockholders and subject to the restrictions hereinafter imposed, whereupon, in addition to other powers which it may possess, it shall then acquire the right and power to engage in said oil and gas producing business. [Id.]

Art. 1501. [1307] Separate corporations.—Such separate incorporation shall be accomplished by the organization of another pipe line corporation under this chapter and the sale and conveyance to it of such oil pipe lines of the organizing company. In case of the ownership also of oil pipe lines beyond the borders of this State, additional pipe line corporations may be organized outside of this State, and such oil pipe lines located outside of Texas may be sold and conveyed to them. In every case herein provided for, the organizing company may subscribe for and own the capital stock of the organized pipe line corporation without being precluded from engaging in said oil and gas producing business. [Id.]

Art. 1502. [1307] Ownership of stock.—In lieu of engaging directly in the oil and gas producing business in any State or country, a corporation organized under this chapter and authorized to engage in said producing business may own the stock of other corporations engaged therein, provided that it shall not own the stock of more than one producing corporation, or one pipe line corporation, organized under the laws of this or any other single State. No corporation organized in any other state or country shall be permitted to own or operate oil pipe lines or engage in the oil producing business in this State when the stock of such corporation is owned in whole or in part by a corporation organized under this chapter. [Id.]

Art. 1503. [1307] Private pipe line.—Nothing in this chapter shall preclude the ownership or operation by any corporation, of private pipe lines in and about its refineries, fields or stations, even though such corporation may be engaged in the producing business. [Id.]

Art. 1504. [1307] Effect of law.—No provision of the six preceding articles shall be construed as limiting, modifying or repealing any part of the law regulating oil pipe lines, or as authorizing any ownership or transaction, the effect of which would be to substantially lessen competition or to violate any law of this State prohibiting trusts and monopolies and conspiracies in restraint of trade or to violate any provision of the anti-trust laws of this State. [Id.]

Art. 1505. [1308] Discrimination.—It shall be unlawful for any corporation organized under this Chapter to discriminate against any person, corporation, firm, association or place in the charge for such storage or transportation, or in the service rendered; but it shall receive, store or transfer oil or gas, salt, mineral solutions and liquified minerals, sand and clay for any person, corporation, firm or association upon equal terms, charges and conditions with all other persons, corporations, firms or associations for like service. [Acts 1899, p. 202; Acts 1915, p. 259; Acts 1935, 44th Leg., p. 296, ch. 110, § 4.]

Art. 1506. Additional powers.—Corporations organized under this chapter which shall file with the Secretary of State a duly authorized acceptance of the provisions of this law, are hereby declared to have, in addition to the powers enumerated in this chapter, the power to carry on the business therein authorized outside of as well as within this State; to own and operate refineries, casing and treating plants, sales offices, warehouses, docks, ships, tank cars and vehicles necessary in the conduct of their business; and to cause the formation of corporations outside of this State, not exceeding one in any state, territory or foreign country, whose purposes and powers exercised shall be only those conferred by law upon the forming or holding corporation as incorporated under the laws of Texas, and own and hold the stock of such corporation when the effect of such formation or stock holding is not substantially to lessen competition or otherwise to violate laws prohibiting trusts and monopolies and conspiracies in restraint of trade. [Acts 1915, p. 82.]

Art. 1507. Fuller's earth pipe lines.—Every person, firm, corporation, limited co-partnership, joint stock association or associations of any kind whatsoever owning, operating or managing any pipe line, or any part of any pipe line within this State for the transportation of fuller's earth for the public for hire, are declared to be common carriers, and shall have the right and power of eminent domain, and may condemn the necessary rights of way, easements, and sites, under the same terms and subject to the same conditions as are conferred by articles 1497 and 6022, on like persons, natural or otherwise, owning, operating or managing crude petroleum pipe lines. [Acts 1919, p. 272.]

CHAPTER 16.—WASTE WATER CORPORATIONS

Art.
1508. Purposes.
1509. Powers.
1510. Condemnation.
1511. Services.
1512. Ownership of stock.

Article 1508. Purposes.—Corporations may be created for the purpose of gathering, storing, and impounding water containing salt or other substances [produced] in the drilling and operation of oil and other wells, and to prevent the flow thereof into streams at times when the latter may be used for irrigation. [Acts 4th C. S. 1918, p. 122.]

Art. 1509. Powers.—Such corporations, in addition to the general powers conferred by law upon private corporations, may acquire, own, and operate ditches, canals, pipe lines, levees, reservoirs, and their appliances appropriate for the gathering, impounding or storage of such water and for the protection of such reservoirs from inflow or damage by surface waters. [Id.]

Art. 1510. Condemnation.—Such corporation shall have power to condemn lands and rights necessary for the purposes of such corporation; and also to cross with their ditches, canals, and pipe lines under any highways, canals, pipe lines, railroads, and tram or logging roads; conditioned that the use thereof be not impaired longer than essential to the making of such crossings. No right is conferred to pass through any cemetery or under any residence, school house or other public building, nor to cross any street or alley of any incorporated city or town without the consent of the authorities thereof. [Id.]

Art. 1511. Services.—In the localities in which they operate and to the extent of the facilities provided, such corporations shall serve all producers of such waters in the gathering, impounding, and storage of such waters, in proportion to the needs of such producers at fair and reasonable charges, and without discrimination between such producers under like conditions. [Id.]

Art. 1512. Ownership of stock.—Corporations interested in the proper disposition of such waters may subscribe for, own, and vote stock in the corporations which may be created hereunder. [Id.]

CHAPTER 17.—TRUST COMPANIES AND INVESTMENTS

Art.
1513. Trust companies.

AGRICULTURAL FINANCE CORPORATIONS

1514. Purposes.
1515. "Agricultural products."
1516. Assets and liabilities.
1517. Limit of indebtedness.
1518. Ownership of stock.
1519. Regulation.

LOAN AND BROKERAGE COMPANIES

1520–1524. [Repealed.]
1524a. Corporations for loaning money and dealing in bonds and securities without banking and discounting privileges; regulations.
Sec.
1. Application; acting as agent; capital.
2. Examinations by Banking Commissioner, expenses.
3. Forfeiture of charter for refusal to submit to examination.
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7. Regulations as to sale of securities.
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10. Application to foreign corporations.
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1524e. Regulation by municipalities or counties.
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1524g. Rules and regulations to be prescribed and plans approved.
1524h. Appeal from order fixing rate of return.
1524i. Loans from Reconstruction Finance Corporation.
1524j. Anti-trust laws not affected.
1524k. Restraining violation of orders, rules or regulations; punishment for violation of injunction.

Article 1513. Trust companies.—Every trust company organized under the laws of the State with a capital of not less than five hundred thousand dollars shall, in addition to all other powers conferred by law, have the power to purchase, sell, discount and negotiate with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, stocks, bonds, securities, including the obligations of the United States or of any States thereof; to issue debentures, bonds and promissory notes, to accept bills or drafts drawn upon it, but in no event having liabilities outstanding thereon at any one time exceeding five times its capital stock and surplus; provided, however, that with the consent in writing of the Banking Commissioner they may have outstanding at any one time ten times the capital stock and surplus; and generally to exercise such powers as are incidental to the powers conferred by this article. [Acts 3rd C. S. 1920, p. 90.]

AGRICULTURAL FINANCE CORPORATIONS

Art. 1514. Purposes.—This subdivision embraces private corporations formed for the purpose of dealing in acceptances and other receipts growing out, or to be used in aid, of the transportation, warehousing, distribution, or financing, in either domestic or foreign trade, of readily marketable, staple, non-perishable, agricultural products; and for dealing in acceptances of banking corporations not secured upon nor representing any such products. [Acts 2nd C. S. 1919, p. 21.]

Art. 1515. "Agricultural products."—By ready marketable, staple, non-perishable agricultural products are meant those classes of agricultural products which are subject to such constant dealing in ready markets as to make their values easily and definitely ascertainable and realizable on short notice, and which are not ordinarily subject to substantial depreciation in quality within the period of immaturity of the obligations which they secure, or by which they are represented. [Id.]

Art. 1516. Assets and liabilities.—The total liabilities to any corporation chartered under this law of any such banking corporation, on account of any such unsecured acceptances, shall at no time be permitted to exceed ten per cent of the unimpaired capital of such corporation. Each such corporation shall invest and keep invested in obligations of the United States, Texas, or political sub-divisions or incorporated cities of Texas, not less than one-half of its paid in capital. Such corporation shall have an unauthorized [1] capital stock of not less than five hundred thousand dollars which shall not be reduced by amendment to less than such sum. [Id.]

[1] So in enrolled bill. Should probably read "authorized".

Art. 1517. Limit of indebtedness.—No such corporation shall enter into any contract or contracts of acceptances, guaranty, indorsement or suretyship when its obligation thereon in connection with its entire existing obligations and indebtedness primary or secondary, fixed or contingent, shall exceed five times its then unimpaired capital and surplus, unless previously authorized in writing by the Banking Commissioner so to do, in which case it may enter into such contract not to exceed the limit so fixed by such Commissioner, in no case to exceed ten times its said capital and surplus. Those obligations, to pay which at maturity, any such corporation has been furnished funds by other parties liable thereon, need not be considered in determining the amount of its existing obligations and indebtedness hereunder. All such contracts and obligations entered into in violation of this article shall be unenforceable against such corporation. Nothing herein shall prevent the enforcement of any such prohibited obligations by any holder who has acquired the same in due course, for value, before maturity, and without notice of its infirmity. [Id.]

Art. 1518. Ownership of stock.—Any private corporation formed under this title, and any banking corporation or trust company, except savings banks, may hold stock in corporations created hereunder, and in corporations chartered under the laws of the United States or in any State thereof, and principally engaged in financing domestic or foreign trade in any such agricultural products, in amounts not to exceed in the aggregate, ten per cent of the capital and surplus of such private corporation, banking or trust company, nor to exceed ten per cent of the capital stock of such corporation in which such stock is to be held. No banking corporation or trust company shall acquire stock in such corporation without express written authorization therefor from the Banking Commissioner, under such rules and regulations as he may provide, except in payment of debt. If it shall acquire same in payment of debt, it shall promptly dispose of same unless expressly permitted to retain same by such commissioner. [Id.]

Art. 1519. Regulation.—Such corporations shall be subject at all times to the supervision and control of the Banking Commissioner, and shall conform to all lawful regulations of such Commissioner. No such

corporation shall begin business until authorized to do so by such Commissioner after satisfactory showing made that such corporation has complied with the law, and thereafter it shall make reports to such Commissioner and be subject to such periodical visitations and examinations under his direction, and shall pay fees therefor, all as in the case of State banking corporations. Said Commissioner shall have such powers with reference to taking charge of such corporations, liquidating same, and for like causes as are possessed by him with reference to State banks. [Id.]

LOAN AND BROKERAGE COMPANIES

Arts. 1520–1524. [Repealed by Acts 1931, 42nd Leg., p. 280, ch. 165, § 11.]

Art. 1524a. Corporations for loaning money and dealing in bonds and securities without banking and discounting privileges; regulations.

Application; acting as agent; capital

Sec. 1. This Act shall embrace corporations heretofore created and hereafter created having for their purpose or purposes any or all of the powers now authorized in Subdivisions 48, 49 or 50 of Article 1302, Revised Civil Statutes of Texas, 1925, and heretofore or hereafter created having in whole or in part any purpose or purposes now authorized in Chapter 275, Senate Bill Number 232 of the General and Special Laws of the Regular Session of the 40th Legislature. No such corporation shall act as agent or trustee in the consolidation of or for the purpose of combining the assets, business or means of other persons, firms, associations or corporations, nor shall such corporation as agent or trustee carry on the business of another. No such corporation shall offer for sale or sell its bonds, notes, certificates, debentures or other obligations unless it shall have an actual paid in capital of not less than Ten Thousand ($10,000.00) Dollars.

Examinations by Banking Commissioner, expenses

Sec. 2. The Banking Commissioner of Texas shall examine or cause to be examined such corporations annually or oftener if he deems it necessary. Said corporation shall pay the actual traveling expenses, hotel bills, and all other actual expense incident to such examination and a fee not exceeding Twenty-five Dollars ($25) per day per person engaged in such examination. If such corporation had not sold in Texas its bonds, notes, certificates, debentures, or other obligations and does not offer for sale or sell in Texas its bonds, notes, certificates, debentures or other obligations, the Banking Commissioner of Texas, in lieu of an examination shall accept a financial statement made on such form, containing such information as he desires. Such fees, together with any other fees, penalties or revenues collected by the Commissioner pursuant to the provisions of this Act or pursuant to other laws of this State relative to corporations under the supervision of the Banking Department, shall be paid by the Commissioner to the State Treasurer to the credit of the General Revenue Fund. The expenses of examination and of the Commissioner in enforcing the provisions of this Act shall be paid upon the certificate of the Commissioner by warrant of the Comptroller upon the State Treasury. [As amended Acts 1943, 48th Leg., p. 126, ch. 96, § 1.]

Forfeiture of charter for refusal to submit to examination

Sec. 3. Refusal on the part of any such corporation to submit to an examination by the Banking Commissioner of Texas, or his representatives, or the withholding of information from the Banking Commissioner of Texas, or his representatives, shall constitute grounds for forfeiture of the charter of such corporation at the suit of the Attorney General upon the request of the Banking Commissioner of Texas.

Annual publication of statement of financial condition

Sec. 4. Such corporation that has sold in Texas its bonds, notes, certificates, debentures or other obligations or is offering for sale in Texas its bonds, notes, certificates, debentures or other obligations, shall publish in some newspaper of general circulation in the county where it has its principal place of business, on or before the 1st day of February each year a statement of its condition on the previous 31st day of December, in such form as may be required by the Banking Commissioner of Texas showing under oath its assets and liabilities and shall file a copy of such statement with the Banking Commissioner of Texas, together with a fee of Twenty-five dollars ($25) for filing. Provided, however, that the Banking Commissioner may, for good cause shown, extend the time of publication and filing not more than sixty (60) days.

Such corporation that has not sold in Texas its bonds, notes, certificates, debentures or other obligations and does not offer for sale or sell in Texas its bonds, notes, certificates, debentures or other obligations, shall file with the Banking Commissioner of Texas on or before the 1st day of February of each year a statement of its condition on the previous 31st day of December, in such form as may be required by the Banking Commissioner of Texas showing under oath its assets and liabilities, together with a fee of Ten Dollars ($10) for filing, which report when so filed, shall not be open to the public but shall be for the information of the Banking Commissioner and his employees. Provided, however, that the Banking Commissioner may, for good cause shown, extend the time of publication and filing not more than sixty (60) days. The Banking Commissioner, or his authorized assistants or representatives, shall not make public the contents of said report, or any information derived therefrom, except in the course of some judicial proceedings in this State. [Acts 1937, 45th Leg., p. 405, ch. 204, § 1; Acts 1939, 46th Leg., p. 135, § 1; Acts 1943, 48th Leg., p. 125, ch. 95, § 1.]

Penalty for failure to publish statement

Sec. 5. If any such corporation shall fail to comply with Section 4 of this Act in the manner and within the time required, such failure shall subject such corporation to a penalty of not less than Two Hundred ($200.00) Dollars nor more than One Thousand ($1,000.00) Dollars, which shall be collected at the suit of the Attorney General if not paid within thirty (30) days after February first of each year. A second failure to publish or file such statement, as so required, shall be grounds for forfeiture of the charter of said corporation at the suit of the Attorney General upon request of the Banking Commissioner of Texas.

Penalty for publication of false statement

Sec. 6. Any officer, director, or stockholder of any corporation affected by the provisions of this Act, or any person acting for any such corporation, who shall write, print, publish or advertise in any manner, any false statement pertaining to the financial condition of such corporation, shall be fined not less than One Hundred ($100.00) Dollars, nor more than Five Hundred ($500.00) Dollars, or be confined in jail not less than three nor more than twelve months, or both such fine and imprisonment.

Regulations as to sale of securities

Sec. 7. All bonds, notes, certificates, debentures, or other obligations sold in Texas by any corporation affected by a provision of this Act shall be secured by securities of the reasonable market value, equaling at least at all times the face value of such bonds, notes, certificates, debentures, or other obligations. If such corporation sells in Texas, bonds, notes, certificates, debentures, or other obligations upon which it receives

installment payments, such bonds, notes, certificates, debentures and other obligations shall be secured at all times by securities having the reasonable market value equal to the withdrawal or cancellation value of such obligations outstanding. Said securities shall be placed in the hands of a corporation having trust powers approved by the Banking Commissioner of Texas as Trustee under a trust agreement, the terms of which shall be approved in writing by the Banking Commissioner of Texas, or at the option of any such corporation which sells in Texas, bonds, notes, certificates, debentures, or other obligations upon which it receives installment payments, such corporation may upon application to, and approval by, the Banking Commissioner of Texas deposit securities having a reasonable market value equal to the withdrawal or cancellation value of such obligations outstanding with the State Treasurer of Texas in lieu of such deposits with a Trustee as set forth hereinabove, provided that, in the event such deposit is made with the State Treasurer of Texas in lieu of such Trustee: (1) Such corporation shall file a certified statement of reserve liability and detailed list of securities so deposited, semi-annually with the Banking Commissioner of Texas, which certification shall be made by a Certified Public Accountant, who shall be approved by and be satisfactory to the Banking Commissioner. The corporation shall pay a fee of Fifteen Dollars ($15) for filing each such statement. (2) Said securities shall be deposited with the State Treasurer under a trust agreement, the terms of which shall be approved by the Banking Commissioner.

It is further provided that if any corporation, transacting business under this Act, shall have heretofore deposited securities with a corporation having trust powers under a trust agreement as provided hereinabove desires to avail itself of the option to deposit securities with the State Treasurer of Texas in lieu of such Trustee, it shall first secure a written certificate from the Banking Commissioner of Texas approving said securities on deposit with the Trustee as being eligible and sufficient for deposit with the State Treasurer, and it shall file a copy of said certificate with the State Treasurer of Texas, and with the said Trustee whereupon said Trustee shall deliver said securities so approved to the State Treasurer of Texas together with the trust agreement and/or agreements relating thereto, who shall issue his receipt therefor to said Trustee, furnishing a copy thereof to the corporation owning the same, which said receipt of the State Treasurer of Texas shall fully and finally relieve, acquit, and discharge the said Trustee of all responsibility and liability under such trust agreement, and/or agreements, whereupon said State Treasurer shall be considered as, and be substituted as, Trustee instead and in the place of the original Trustee.

In the event that the Banking Commissioner approves part of said securities with the said Trustee as being sufficient and eligible for deposit with the State Treasurer, but does not approve all of said securities with said Trustee, and/or in the event there is a deficiency of securities with said Trustee, the corporation owning said securities and desiring to avail itself of its option of depositing said securities with the State Treasurer, shall deposit with the State Treasurer of Texas a sufficient amount of eligible securities as defined herein securing the approval of the Banking Commissioner of Texas as to said securities so that the amount of securities so deposited together with the amount of securities with said Trustee that are approved by the Banking Commissioner as being eligible and sufficient have the reasonable market value equal to the withdrawal or cancellation value of such obligations then outstanding. Whereupon the said Trustee shall, as hereinabove set forth, deliver to the State Treasurer of Texas the securities in its hands, taking the receipt of the State Treasurer therefor, and in such case such Trustee shall be fully and finally relieved, acquitted, and discharged of all responsibility and liability under such trust agreement, and/or agreements.

Any such corporation which sells in Texas, bonds, notes, certificates, debentures or other obligations upon which it receives installment payments, which upon the effective date of this Act has securities deposited with a Trustee hereunder, may, with the written consent of the Banking Commissioner continue under said trust agreement, and/or agreements as to bonds, notes, certificates, debentures or other obligations already sold in Texas upon which it receives installment payments, and avail itself of the option to deposit such securities as to future sales of said obligations with the State Treasurer of Texas by complying with this Act in the same manner that a corporation hereafter organized would be required to comply with this Act.

All trust agreements hereafter made as to any securities placed with the State Treasurer under this Act shall provide that such securities may be substituted with securities of equal value by the filing by the corporation with the State Treasurer of a certificate of authorization to do so from the Banking Commissioner of Texas, and that any of said securities may be withdrawn by the corporation from the State Treasurer by the filing with the State Treasurer of a certificate issued by the Banking Commissioner that the withdrawing of the particular securities is authorized by the Banking Commissioner, and that its withdrawal will not reduce the amount of securities below the amount required by this Act. Provided, that before selling or offering for sale on the installment plan in Texas any such bonds, notes, certificates, debentures, or other obligations, such corporation shall file with the Banking Commissioner specimen copies of such bonds, notes, certificates, debentures or other obligations. Unless within sixty (60) days after the filing of any such specimen copy the Banking Commissioner issues a notice to such corporation of a hearing to determine whether such instrument is fraudulent, unreasonable or inequitable, or has an unreasonable or inequitable cash surrender value, the same shall be deemed to have been approved by the Banking Commissioner. But if, after hearing pursuant to notice issued within said period of sixty (60) days, the Banking Commissioner should find and determine that any such bond, note, certificate, debenture, or other obligation is either fraudulent, unreasonable, or inequitable, or has an unreasonable or inequitable cash surrender value, such corporation shall have no right to sell or offer for sale in the State of Texas such bond, note, certificate, debenture or other obligation so found to be fraudulent, unreasonable, or inequitable, or has an unreasonable or inequitable cash surrender value. Provided, that any such corporation may have such finding reviewed in the District Court of Travis County, Texas, by filing suit against the Banking Commissioner in such Court at any time within sixty (60) days after receiving notice of such finding. In such suit such corporation shall be entitled to a trial de novo on the issues on which the Banking Commissioner shall have made such adverse findings. If as the result of such trial the issues shall be determined favorably to such corporation, the adverse findings of the Banking Commissioner shall have no further binding force or effect; and in that event, the right to sell such notes, bonds, or other obligations may be protected by injunction issued in said cause. Provided, that either party shall have the right of appeal according to statutes governing appeals in civil cases. Provided further that the requirements contained herein obligating corporations selling notes, bonds, certificates, debentures, or other obligations, whether in single payment or on the installment plan, to secure said issuance and sale by securities of a reasonable market

value equal to the face of single payment certificates or to the withdrawal or cancellation value of installment payment certificates, shall not apply to corporations having a minimum capital of Fifty Thousand Dollars ($50,000), where such sales are made to debtors who are at the time indebted to the issuer; conditioned the face amount sold shall not exceed the amount of the then debt of purchaser to issuer; and further conditioned the bonds, notes, certificates, debentures and other obligations sold in Texas provide for maturity of the indebtedness at a date not later than the final maturity date of the indebtedness of purchaser to issuer; and conditioned further that the issuance and sale of such certificates, whether collateralized or not, shall obligate the Banking Commissioner of Texas to make examinations to the same extent as if collateral were required.

All cash or securities left with the State Treasurer in compliance with Article 696, Revised Civil Statutes of 1925, shall be considered as part of the collateral required under this section.

All bonds, notes, certificates, debentures, or other obligations, sold or offered for sale in Texas by such corporation shall definitely describe the character of collateral securing the payment of such obligation.

In the event any such corporation shall sell or offer for sale in Texas, any bonds, notes, certificates, debentures, or other obligations without complying with this section, such conduct shall constitute grounds for the forfeiture of its charter and for receivership at the suit of the Attorney General which suit shall be brought upon the request of the Banking Commissioner of Texas. [As amended Acts 1937, 45th Leg., p. 405, ch. 204, § 2; L.1945, 49th Leg., p. 263, ch. 194, § 1.]

Bonds required of officers

Sec. 8. Every officer, director, employee or agent of such corporation whose bonds, notes, certificates, debentures or other obligations have been sold and are outstanding, or such corporation that is offering for sale its bonds, notes, certificates, debentures or other obligations, who handles or has the custody of funds, books or records belonging to such corporation, shall, before entering upon the discharge of his duties, give a good and sufficient bond in the sum as shall be fixed by the board of directors of such corporation, conditioned for the faithful performance of his duties and such pecuniary loss as the association may sustain for money or other securities embezzled wrongfully, abstracted or willfully misapplied by any such officer or employee in the course of his employment as such, or in the course of his employment in any other position in such corporation. Such bond shall be made by a surety company authorized to do business in this State. The terms, amount of the bond and the solvency of said surety company shall be subject to the approval of the Banking Commissioner of Texas; provided, such bond shall not be required of any officer, director, employee or agent of any corporation which carries fidelity insurance upon such officer, director, employee or agent in an amount and upon conditions approved by the Banking Commissioner. [As amended Acts 1939, 46th Leg., p. 136, § 1.]

Forfeiture of charter on impairment of capital

Sec. 9. If upon examination of such corporation that has sold and has outstanding its bonds, notes, certificates, debentures or other obligations, or of such corporation that is offering for sale its bonds, notes, certificates, debentures or other obligations, it shall appear that the assets of such corporation are less than its liabilities, including its capital stock, the Banking Commissioner of Texas shall notify it thereof in writing and if such corporation shall not, within thirty days from the receipt of said notice, restore and make good such impairment of its capital, then it shall be the duty of the Attorney General upon request of the Banking Commissioner of Texas to file suit for the forfeiture of the charter of such corporation and the appointment of a receiver to wind up its affairs. Or, if it shall appear from such examination that such corporation has exceeded its corporate powers or has been guilty of unlawful act or acts, or is failing to comply with this Act, said Banking Commissioner of Texas shall give notice to such corporation to cease such act or practices and to conduct its business in accordance with law and its charter powers. Failure or refusal to comply with the notice of the Banking Commissioner of Texas within 30 days from receipt of said notice shall constitute grounds for the forfeiture of the charter of such corporation at the suit of the Attorney General upon request of the Banking Commissioner of Texas.

Application to foreign corporations

Sec. 10. The provisions of this Act shall apply to foreign corporations who have heretofore been granted permission to do business in Texas and who may hereafter be granted permission to do business in Texas and having as their purpose or purposes any part of the provisions set out in Section One of this Act. Every foreign corporation having such a permit to do business in this State shall be subject to the examination of the Banking Commissioner of Texas in the same manner and under the same terms and conditions as examination of domestic corporations. In lieu of such examinations, the Banking Commissioner of Texas may, in his discretion, accept reports of examination made by the supervising authority of the State in which the home office of such foreign corporation is domiciled. Failure to comply with this Act shall constitute grounds for forfeiture of the permit of such foreign corporation to do business in this State at the suit of the Attorney General upon request of the Banking Commissioner of Texas.

Construction of act

Sec. 12. None of the provisions of this Act, except that portion of Section 4 requiring the filing of financial statements, shall apply to sales made by any corporation affected by this Act, except sales by such corporations of bonds, notes, certificates, debentures or other obligations issued by and that are direct obligations of the corporation selling or offering the same for sale. The words "bonds", "notes", "certificates", "debentures", and "other obligations", as used in this Act, shall not be construed to cover or include notes executed by corporations to banks and other financial institutions for money borrowed by such corporations for use in the usual course of its business. [Acts 1931, 42nd Leg., p. 280, ch. 165.]

Application of examination provisions

Sec. 13. The provisions of this Act requiring or authorizing an examination by the Banking Commissioner of Texas shall not apply to a corporation whose only written obligations outstanding consist of notes or other instrument evidencing a debt payable to a stockholder of the debtor corporation or notes or other instrument evidencing a debt payable to any bank, insurance company or other financial institutions. [Added Acts 1945, 49th Leg., p. 309, ch. 224, § 1.]

Section 11 of this Act repeals articles 1520 to 1524 and provides that if any provision is held invalid, such decision shall not affect the remainder.

Section 2 of the amendatory Act of 1939, 46th Leg., p. 135, and of the amendatory Act of 1939, 46th Leg., p. 136, repealed conflicting laws.

Art. 1524b. Housing corporations authorized. —Corporations may be formed wholly for the purpose of providing housing for families of low income and/or for reconstruction of slum areas, provided such corporations are regulated by state or municipal law, as hereinafter provided as to rents, charges,

capital structure, rate of return and areas and methods of operation. [Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 1.]

Art. 1524c. Application for incorporation.—Applications for charters for corporations, the creation of which are authorized under the provisions of this Act, in addition to requirements now prescribed by law, must be accompanied by a certificate executed by the officials of the governing body of the municipality in which said corporation contemplate owning or operating any properties certifying that the capital structure thereof and the plans and specifications of the proposed building has the approval of such governing body, provided, that where said corporation contemplates the owning or operating of properties situated outside the corporate limits of any organized town, city or village, then the certification herein referred to shall be executed by the Commissioners' Court of any county in which it is contemplated to own and/or operate properties within the scope of this Act. Such certificate shall not be binding upon the Secretary of State who shall proceed to file or refuse to file the charter in accordance with the provisions of existing laws. [Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 2.]

Art. 1524d. Powers; fees and taxes.—Any corporation organized under the provisions of this Act shall have, except as herein provided, all the powers of private domestic corporations which have been heretofore organized under the provisions of the laws of the State of Texas, and shall pay all fees and taxes which are required to be paid by private domestic corporations organized and/or existing under the laws of the State of Texas. [Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 3.]

Art. 1524e. Regulation by municipalities or counties.—The rents, charges, capital structure, rate of return and areas and method of operation of any corporation organized under the provisions of Section 1 hereof shall be regulated, as hereinafter provided, by the governing body of any municipality or county where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village in which said corporation owns and operates any property. Should any such corporation own and operate properties in more than one municipality, the governing body of each municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village in which property of the corporation is situated, shall regulate in the manner prescribed by this Act the rents, charges, rate of return and area and method of operation of the property located within the territorial limits of such municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village, provided the governing body of a county shall not have the jurisdiction of regulation of property of such corporation situated within the corporate limits of a town, village, or city. [Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 4.]

Art. 1524f. Rate of return restricted.—The governing body fixing the rate of return for a corporation organized under the provisions of Section 1 of this Act shall not fix such rates of return to yield a net amount in excess of eight (8%) per cent upon the invested capital of such corporation. [Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 5.]

Art. 1524g. Rules and regulations to be prescribed and plans approved.—Such governing body may establish rules and regulations governing its procedure for hearings in fixing or amending orders or ordinances fixing the rents, charges, rate of return and areas and methods of corporations organized under the provisions of Section 1 hereof, and before any building is erected by such corporation, the detailed plans and specifications thereof, must be approved by the governing body of the municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village in which such building is to be erected. [Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 6.]

Art. 1524h. Appeal from order fixing rate of return.—Any corporation organized and existing under and by virtue of provisions of Section 1 hereof, which shall be dissatisfied with any rents, charges, rate of return and area and method of operation which is fixed or may be fixed or may be changed by any governing body, may, by giving to such governing body ten (10) days notice by registered mail of its intention thereof, appeal to any district court of the county wherein the property which is affected is situated. The appeal shall be perfected by filing suit in the district court of the county in which the property is situated within ten (10) days after the giving of such notice, and the filing of such suit shall suspend the order, rule, regulation, or ordinance from which the appeal is perfected. The municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village shall be defendant in said suit. The trial shall be de novo, and Court, upon a hearing, shall, by its judgment, regulate the rents, charges, rate of return, areas and method of operation of the corporation. [Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 7.]

Art. 1524i. Loans from Reconstruction Finance Corporation.—Any corporation created under the provisions of this Act, in addition to the powers herein granted, shall have full power and authority to do all things necessary to secure loans from the Reconstruction Finance Corporation under the rules and regulations prescribed by said Reconstruction Finance Corporation. [Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 8.]

Art. 1524j. Anti-trust laws not affected.—Provided that nothing in this Act shall in anywise affect or nullify the Anti-trust laws of this State. [Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 9.]

Art. 1524k. Restraining violation of orders, rules or regulations; punishment for violation of injunction.—If any agent, servant, officer or employee of any corporation created under the provisions of this Act shall wilfully violate any order, rule, regulation or ordinance fixing rents, charges, rate of return, areas and method of operation, the District Court of the County in which the property of such corporation is situated, upon application of the governing body of the municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village wherein the corporation owns property or upon application of any Labor Inspector employed by the State of Texas when authorized to so act by the Commissioner of Labor Statistics of the State of Texas, may issue during its term or in vacation a temporary writ of injunction restraining such agents, servants, officers or employees from any violation of such order, rule, regulation or ordinance and which temporary writ of injunction may be made permanent upon notice and hearing in the manner now provided by law. No bond shall be required before issuing any such temporary or permanent injunction and if any such injunction is violated by the agents, servants, officers or employees of said corporation, the Court, in addition to its power to punish for contempt, may order that the building of such corporation shall not be used or occupied for any period not to exceed one year but the Court shall permit said building to be occupied or used if the owner, lessee, tenant or occupant thereof shall give

bond with sufficient surety to be provided by the Court in the sum of not less than Five Hundred ($500.00) Dollars nor more than One Thousand ($1,000.00) Dollars, payable to the Judge of said Court, conditioned that said corporation, its agents, servants, officers or employees will thereafter comply with the orders, rules, regulations or ordinances which have been or may be promulgated, fixing the rents, charges, or rate of return, areas and methods of operation of said corporation and that it will pay all fines and costs that may be assessed in contempt proceedings against its agents, servants, officers and employees for the violation of any writ of injunction existing, or which may thereafter be issued. [Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 10.]

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Article 1525. [1262–3–4–5–6–7] Drainage.—Corporations chartered for the purpose of constructing, maintaining and operating canals, drains and ditches outside of the corporate limits of cities and towns in any county in Texas shall:

1. Have power for the purpose of drainage, to acquire lands for the purpose of its business or in payment of stock or drainage rights, and to hold and dispose of such lands and all other property.

2. Alienate within fifteen years from the date of acquiring same all lands acquired by such corporations, subject to judicial forfeiture, except lands used for the construction, maintenance and operation of drains, ditches and laterals.

3. Have power to make contracts for the permanent drainage of any tract of land and the charges therefor, said charges to be subject to the control of the Legislature; and the rights therein shall be secured by a lien expressly given upon the lands, other than homesteads, benefited by said drain or canal.

4. Have the right to borrow money for the construction, maintenance and operation of its ditches, canals and laterals, and to issue bonds and mortgage its franchises to secure the payment of any debts contracted for the same.

5. Report to the commissioners court of the county wherein constructed, all drains and canals so constructed by such corporations, such report to be approved by said court. [Acts 1897, p. 109; G. L. vol. 10, p. 1163.]

Art. 1526. Irrigation and waterpower.—Corporations organized to construct, maintain and operate canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and for conserving, storing, conducting and transferring water to all persons entitled to the use of same for irrigation, mining, milling, manufacturing, the development of power, to cities and towns for waterworks, and for stockraising, shall have power to acquire lands by voluntary donation or purchase in payment of stock or bonds or water rights; and to hold, improve, subdivide and dispose of all such land and other property. Such corporations may elect directors or trustees to hold office for a period of three years, and may provide for the election of one-third in number thereof each year. [Acts 1917, p. 224.]

Art. 1527. International trading corporations.—Corporations created for the purpose of engaging in international trading and the purchase and

sale of the products of the farm, ranch, orchard, mine and forest shall be empowered to pledge, borrow, hypothecate and receive in trust for the purpose of sale any and all products of the farm, ranch, and orchard, and shall be authorized to buy, sell and exchange raw products of the farm, ranch, orchard, mine and forest, and to take in payment therefor finished products of whatever kind and character that they may determine at a fair, equitable and just valuation. Such corporations shall have power to charter, lease, construct or purchase necessary vessels, ships, docks, wharves, and warehouses for the conduct of their business; to pool products of the farm in the sale of same; to hypothecate or pledge the credit of such corporations for the products so received under contract for the necessary funds with which to market same; to borrow money as other business corporations and to lend the same upon products that they may be engaged in the sale of, either as owner, agent, consignee, or commission merchant. They shall have generally and specially all the rights, powers and privileges belonging to a corporation engaging in international trading. Such corporations shall have authority to receive in payment of capital stock, manufacturing establishments, and the stocks and bonds of same at a fair and just valuation, and to so receive the products of the farm, ranch and orchard. Whenever property is received in payment for capital stock, the Secretary of State shall appoint a board of appraisers who are familiar with the valuations of such property so taken in payment for capital stock to appraise same and furnish him with a sworn statement of the valuations of the property so taken in payment for capital stock. On receipt of same he shall approve, file and record the charter of such corporation. A majority of the stock shall in all instances be owned by citizens of the United States, and a majority of the officers and directors thereof shall in all instances be citizens of the United States and of this State. Nothing in this article shall prevent citizens of foreign countries from becoming stockholders in such corporations, but the control of such corporations shall never in any instance be vested in citizens of other countries than the United States. Violation of any provision herein as to the control of stock of such corporation shall be sufficient for the Secretary of State to cancel the charter of said corporation and same shall be placed in the hands of a receiver as provided by law. [Acts 1921, p. 227.]

Art. 1528. Ice companies.—Corporations organized or chartered under the laws of this State for the manufacture of ice shall also be authorized to engage in and transact the business of buying, selling and refrigerating poultry and poultry products, and buying, selling, canning and refrigerating fruits, produce and dairy products. [Acts 1913, p. 267.]

Art. 1528a. State Housing Law.

Short title

Sec. 1. This Act shall be known as the "State Housing Law."

State agencies and instrumentalities

Sec. 2. It is hereby declared that it is necessary in the public interest to make provision for housing for families of low income, and that, the providing of such housing being now otherwise impossible, it is essential that provision be made for the investment of private and public funds at low interest rates, the acquisition at fair prices of adequate parcels of land and the construction of new housing facilities under public supervision in accord with proper standards of sanitation and safety, at a cost which will permit their rental or sale at prices which families of low income can afford to pay. Therefore, there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the state for the purpose of attaining the ends herein recited, and their necessity in the public interest is hereby declared a matter of legislative determination.

State Housing Board

Sec. 3. There is hereby created a State Board of Housing of the State of Texas. The Texas Rehabilitation and Relief Commission is hereby designated as the State Housing Board of the State of Texas, and shall perform all duties imposed by the Legislature as hereinafter provided: and insofar as its responsibilities and duties have to do with the State Housing Law the Texas Rehabilitation and Relief Commission shall continue to exist as the State Housing Board until its duties and obligations shall have ceased to exist.

Definition

Sec. 4. Definition: The term board as used in this Act shall mean the Texas Rehabilitation and Relief Commission.

Conditions of approval of housing projects by Board

Sec. 5. No housing project proposed by a limited dividend housing corporation incorporated under this Act shall be undertaken, and no building or other construction shall be placed under contract or started without the approval of the board. No housing project shall be approved by the board unless:

(a) It shall appear practicable to rent or sell the housing accommodations to be created at prices not exceeding those prescribed by the board. No such project shall be approved in contravention of any zoning or building ordinance in effect in the locality in which designated areas are located.

(b) There shall be submitted to the board a financial plan in such form and with such assurances as the board may prescribe to raise the actual cost of the lands and projected improvements by subscriptions to or the sale of the stock, income debentures and mortgage bonds of such corporation. Whenever reference is made in this Act to cost of projects or of buildings and improvements in projects, such cost shall include charges for financing and supervision approved by the board and carrying charges during construction required in the project including interest on borrowed, and, where approved by the board, on invested capital.

(c) There shall be such plans of site development and buildings as show conformity to reasonable standards of health, sanitation, safety and provisions for light and air, accompanied by proper specifications and estimates of cost. Such plans and specifications shall not in any case fall below the requirements of the health, sanitation, safety and housing laws of the state and shall meet superior requirements if prescribed by local laws and ordinances.

(d) The corporation agrees to accept a designee of the board of housing as a member of the board of directors of said corporation.

(e) If required by the board, the corporation shall deposit all moneys received by it as proceeds of its mortgage bonds, notes, income debentures, or stock, with a trustee which shall be a banking corporation authorized to do business in the State of Texas and to perform trust functions, and such trustee shall receive such moneys and make payment therefrom for the acquisition of land, the construction of improvements and other items entering into cost of land improvements upon presentation of draft, check or order signed by a proper officer of the corporation and, if required by the board, countersigned by the said board or a person designated by it for said purpose. Any funds remaining in the custody of said trustee after the completion of the said project and payment or arrangement in a manner satisfactory to the board for payment in full thereof shall be paid to the corporation.

Investigation of housing companies

Sec. 6. The board shall have power to investigate into the affairs of limited dividend housing companies, incorporated under this Act, and into the dealings, transactions or relationships of such companies with other persons. Any of the investigations provided for in this Act may be conducted by the board or by a committee to be appointed by the board consisting of one or more members of the board. Each member of the board or a committee thereof shall have power to administer oaths, take affidavits and to make personal inspections of all places to which their duties relate. The board or a committee thereof shall have power to subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in this Act, and to examine them in relation to any matter it has power to investigate, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the board or excused from attendance.

Powers of Board

Sec. 7. The board is hereby empowered to (a) study housing conditions and needs throughout the state to determine in what areas congested and unsanitary housing conditions constitute a menace to the health, safety, morals, welfare and reasonable comfort of the citizens of the state, (b) prepare programs for correcting such conditions, (c) collect and distribute information relating to housing, (d) investigate all matters affecting the cost of construction or production of dwellings, (e) study means of securing economy in the construction and arrangement of buildings, (f) recommend and approve the areas within which or adjacent to which the construction of housing projects by limited dividend housing companies may be undertaken, and (g) cooperate with local housing officials and planning commissions or similar bodies in cities and other localities in developments of projects they at any time may have under consideration.

Consolidation of projects

Sec. 8. The board may permit the consolidation of two or more approved projects or the extension or amendment of any approved project or the consolidation of any approved project with a proposed project. In any of these events, the consolidation project shall be treated as an original project, and an application shall be submitted as in the case of an original project and rents may be averaged throughout the consolidated or extended project. The board may likewise permit or decline to permit any limited dividend corporation to organize and operate more than one project or to take over any project heretofore approved by the board and to operate it independently of other projects of the corporation.

Supervision and regulation of operation of housing companies

Sec. 9. In pursuance of its power and authority to supervise and regulate the operations of limited dividend housing companies incorporated under this Act the board may:

(a) Order any such corporation to make, at its expense, such repairs and improvements as will preserve or promote the health and safety of the occupants of buildings and structures owned or operated by such corporations.

(b) Order all such corporations to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the board or by the terms of any project approved by the board, or to refrain from doing any acts in violation thereof.

(c) Examine all such corporations and keep informed as to their general condition, their capitalization and the manner in which their property is constructed, leased, operated or managed.

(d) Either through its members or agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus and devices of any such corporation, examine all books, contracts, records, documents and papers of any such corporation and by subpoena duces tecum compel the production thereof.

(e) In its discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such companies and to prescribe by order accounts in which particular outlays and receipts shall be entered, charged or credited.

(f) Require every such corporation to file with the board an annual report setting forth such information as the board may require verified by the oath of the President and General Manager or Receiver if any thereof or by the person required to file the same. Such report shall be in the form, cover the period and be filed at the time prescribed by the board. The board may further require specific answers to questions upon which the board may desire information and may also require such corporations to file periodic reports in the form covering the period and at the time prescribed by the board.

(g) From time to time make, amend and repeal rules and regulations for carrying into effect the provisions of this Act.

Maximum rentals or purchase price

Sec. 10. The board shall fix the maximum rental or purchase price to be charged for the housing accommodations furnished by such corporation. Such maximum rental or purchase price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by said corporations, as hereinafter prescribed, and such rental or purchase price shall be subject to revision by the board from time to time. The payments to be made by such corporation shall be (a) all fixed charges, and all operating and maintenance charges and expenses which shall include taxes, assessments, insurance, amortization charges in amounts approved by the board to amortize the mortgage indebtedness in whole or in part, depreciation charges if, when and to the extent deemed necessary by the board; reserves, sinking funds and corporate expenses essential to operation and management of the project in amounts approved by the board. (b) A dividend not exceeding the maximum fixed by this act upon the stock of the corporation allotted to the project by the board. (c) Where feasible in the discretion of the board, a sinking fund in an amount to be fixed by the board for the gradual retirement of the stock, and income debentures of the corporation to the extent permitted by this act.

Letting, subletting or assignment of leases of apartments in such buildings or structures at greater rentals than prescribed by the order of the board are prohibited and all such leases will be void for all purposes.

Reorganization of companies

Sec. 11. (1) Reorganization of limited dividend housing companies shall be subject to the supervision and control of the board and no such reorganization shall be had without the authorization of such board.

(2) Upon all such reorganizations the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness shall be such as is authorized by the board which, in making its determination, shall not exceed the fair value of the property involved.

Actions by board against housing companies

Sec. 12. Whenever the board shall be of the opinion that any such limited dividend housing company is

failing or omitting, or about to fail or omit to do anything required of it by law or by order of the board and is doing or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the board, or which is improvident or prejudicial to the interests of the public, the lienholders or the stockholders, it may commence an action or proceeding in the District Court of the county in which the said company is located, in the name of the board for the purpose of having such violations or threatened violations stopped and prevented by mandatory injunction. The board shall begin such action or proceeding by a petition and complaint to the said District Court, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding twenty days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

In case of default in answer or after answer the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties in order to make its order or judgment effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a mandatory injunction be issued as prayed for in the petition and complaint or in such modified or other form as the court may determine will afford appropriate relief.

Acquisition of property for projects

Sec. 13. When the board shall have approved a project for the construction of housing accommodations presented to it by a limited dividend housing company, such company may undertake the acquisition of the property needed for said project. Such property may be acquired by gift, bequest or purchase or, in the case of limited dividend housing companies.

The board may expressly except from its certificate hereunder any part of the property proposed to be acquired as unnecessary to the plan. The approval by the board of the project shall be deemed in any proceeding to acquire land by appropriation as sufficient evidence of the necessity of the appropriation and a duly certified copy of the certificate of the board shall be conclusive evidence as to the matters lawfully certified therein in any appropriation proceeding.

Incorporation

Sec. 14. Any number of natural persons, not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging and filing in the office of the Secretary of State, articles of incorporation, hereinafter called "articles," setting forth the information required by the general corporation act of the state, except as herein modified or changed.

(a) The purposes for which a limited dividend housing company is to be formed shall be as follows: To acquire, construct, maintain and operate housing projects when authorized by and subject to the supervision of the board of housing.

(b) The shares of which the capital shall consist shall have a par value.

(c) Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose and that it shall remain at all times subject to the supervision and control of the board or of other appropriate state authority; that all real estate acquired by it and all structures erected by it, shall be deemed to be acquired for the purpose of promoting the public health and safety and subject to the provisions of the state housing law and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock, together with cumulative dividends at the rate of six (6%) per centum per annum, and that any surplus in excess of such amount if said company shall be dissolved, shall revert to the State of Texas.

(d) The provisions of the general corporation act, as hereafter from time to time amended, shall apply to limited dividend housing companies, except where such provisions are in conflict therewith.

Dividend rate

Sec. 15. No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of six (6%) per centum per annum except that when in any preceding year dividends in the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years.

Stock and bond issues for property or money actually received

Sec. 16. No limited dividend housing company incorporated under this act shall issue stock, bonds or income debentures, except for money, services or property actually received for the use and lawful purpose of the corporation. No stock, bonds or income debentures shall be issued for property or services except upon a valuation approved by the board of housing and such valuation shall be used in computing actual or estimated cost.

Income debenture certificates

Sec. 17. The articles of incorporation may authorize the issuance of income debenture certificates bearing no greater interest than six (6%) per centum per annum. After the incorporation of a limited dividend housing company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the board of housing for such income debenture certificates, whose face value shall not exceed the par value of the stock exchanged therefor.

Limitation of powers

Sec. 18. No limited dividend housing company incorporated shall under this Act:

(1) Acquire any real property or interest therein unless it shall first have obtained from the board a certificate that such acquisition is necessary or convenient for the public purpose defined in this act.

(2) Sell, transfer, assign or lease any real property without first having obtained the consent of the board, provided, however, that leases conforming to the regulations and rules of the board and for actual occupancy by the lessees may be made without the consent of the board. Any conveyance, incumbrance, lease or sublease made in violation of the provisions of this section and any transfer or assignment thereof shall be void.

(3) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than six (6%) per centum per annum.

(4) Issue its stock, debentures and bonds covering any project undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the board and interest and other carrying charges during construction.

(5) Mortgage any real property without first having obtained the consent of the board.

(6) Issue any securities or evidences of indebtedness without first having obtained the approval of the board.

(7) Use any building erected or acquired by it for other than housing purposes, except that when permitted by law the story of the building above the cellar or basement and the space below such story may be used for stores, commercial, cooperative or community purposes, and when permitted by law the roof may be used for cooperative or community purposes.

(8) Charge or accept any rental, purchase price or other charge in excess of the amounts prescribed by the board.

(9) Enter into contracts for the construction of housing projects, or for the payments of salaries to officers or employees except subject to the inspection and revision of the board and under such regulations as the board from time to time may prescribe.

(10) Voluntarily dissolve without first having obtained the consent of the board.

(11) Make any guaranty without the approval of the board.

Bonds and mortgages subject to Board's approval

Sec. 19. Any company formed under this act may, subject to the approval of the board, borrow funds and secure the repayment thereof by bonds and mortgage or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto, may create a first or senior lien and a second or junior lien upon the real property embraced in any project. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the board, including the right to assignment of rents and entry into possession in case of default; but the operation of the housing projects in the event of such entry by mortgagee or receiver shall be subject to the regulations of the board under this act. Provisions for the amortization of the bonded indebtedness of companies formed under this act shall be subject to the approval of the board.

Surplus earnings

Sec. 20. The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in subdivisions (a), (b) and (c) of Section 10 of this act shall be subject to the approval of the board. The amount of such surplus shall not exceed fifteen (15%) per centum of the outstanding capital stock and income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend housing company, the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued and unpaid dividends of interest, less any payment or distributions theretofore made other than by dividends provided in Section 15, and any remaining surplus or other undistributed earnings shall be paid into the general fund of the State of Texas, or shall be disposed of in such other manner as the board may direct and the Governor may approve.

Rentals reduced after payments of charges

Sec. 21. If in any calendar or fiscal year the gross receipts of any company formed hereunder should exceed the payments or charges specified in Section 10, the sums necessary to pay dividends, interest accrued or unpaid on any stock or income debentures, and the authorized transfer to surplus, the balance shall, unless the board of directors with the approval of the board of housing shall deem such balance too small for the purposes, be applied to the reduction of rentals.

Board as party in foreclosures

Sec. 22. (1) In any foreclosure action the board shall be made a party defendant; and such board shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the board. Foreclosure shall not be decreed unless the court to which application therefor is made shall be satisfied that the interests of the lienholder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding, the court shall be authorized to make an order increasing the rental to be charged for the housing accommodations in the project involved in such foreclosure, or appoint a receiver of the property or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in the next succeeding paragraph of this section, be sold to a limited dividend housing corporation organized under this act, provided such corporation shall bid and pay a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise the property shall be sold free of all restrictions imposed by this act.

(2) Notwithstanding the foregoing provision of this section, wherever it shall appear that a corporation, subject to the supervision either of the state insurance department or state banking department, or the federal government or any agency or department of the federal government, shall have loaned on a mortgage which is a lien upon any such property such corporation shall have all the remedies available to a mortgagee under the laws of the State of Texas, free from any restrictions contained in this section, except that the board shall be made a party defendant and that such board shall take all steps necessary to protect the interests of the public and no costs shall be awarded against it.

Purchase of property of other housing corporations

Sec. 23. Before any limited dividend housing corporation incorporated under this act shall purchase the property of any other limited dividend housing corporation, it shall file an application with the board in the manner hereinbefore provided as for a new project and shall obtain the consent of the board to the purchase and agree to be bound by the provisions of this act, and the board shall not give its consent unless it is shown to the satisfaction of the board that the project is one that can be successfully operated according to the provisions of this act.

Notice to Board of sales under judgments

Sec. 24. In the event of a judgment against a limited dividend housing corporation in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such corporation except upon sixty days' written notice to the board. Upon receipt of such notice the board shall take such steps as in its judgment may be necessary to protect the rights of all parties.

Fees of Board

Sec. 25. The board may charge and collect for a limited dividend housing corporation, incorporated under this act, reasonable fees in accordance with rates to be established by the rules of the board for the examination of plans and specifications and the supervision of construction in an amount not to exceed one-half of one per cent of the cost of the project; for the holding of a public hearing upon application of a housing corporation an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; for any examination or investigation made upon application of a housing corporation and for any act done by the board, or any of its employees, in performance of their duties under this act an amount reasonably calculated

to meet the expense of the board incurred in connection therewith. In no event shall any part of the expenses of the board ever be paid out of the state treasury. The board may authorize a housing corporation to include such fees as part of the cost of a project, or as part of the charges specified in Section 10 of this act pursuant to rules to be established by the board.

Partial invalidity

Sec. 26. The provisions of this act shall be severable and if any of its provisions shall be held to be unconstitutional the decision so holding shall not be construed to affect the validity of any of the remaining provisions of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein.

Corporate existence

Sec. 27. The corporate existence of any corporation authorized hereunder shall not extend beyond twenty-five years from the date of incorporation, and promptly upon such termination the corporation shall be liquidated and its assets distributed as provided herein, unless the Incorporation Board, by approval of the State Board of Housing, should grant an extension for an additional period of time. [Acts 1933, 43rd Leg., p. 751, ch. 223.]

RURAL ELECTRIFICATION

Art. 1528b. Electric Cooperative Corporation Act.

Short title

Section 1. This Act may be cited as the "Electric Cooperative Corporation Act."

Definitions

Sec. 2. In this Act, unless the context otherwise requires:

(1) "Corporation" means a corporation organized pursuant to the provisions of this Act;

(2) "Board" means a board of directors of a corporation organized under this Act;

(3) "Member" means the incorporators of a corporation and each person thereafter lawfully admitted to membership therein;

(4) "Federal agency" includes the United States of America and any department, administration, commission, board, bureau, office, establishment, agency, authority, or instrumentality of the United States of America heretofore or hereafter created;

(5) "Person" includes any natural person, firm, association, corporation, business trust, partnership, Federal agency, State or political subdivision thereof or any body politic;

(6) "Acquire" means and includes construct, acquire by purchase, lease, devise, gift, or other mode of acquisition;

(7) "Obligations" include bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness issued by a corporation;

(8) "Rural area" means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough, having a population in excess of fifteen hundred (1,500) inhabitants, and includes both the farm and non-farm population thereof.

Purpose

Sec. 3. Cooperative, non-profit, membership corporations may be organized under this Act for the purpose of engaging in rural electrification by any one or more of the following methods:

(1) The furnishing of electric energy to persons in rural areas who are not receiving central station service;

(2) Assisting in the wiring of the premises of persons in rural areas or the acquisition, supply, or installation of electrical or plumbing equipment therein;

(3) The furnishing of electric energy, wiring facilities, electrical or plumbing equipment, or services to any other corporation organized under this Act or to the members thereof.

Powers of corporation

Sec. 4. Each corporation shall have power:

(1) To sue and be sued, complain and defend, in its corporate name;

(2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;

(3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;

(4) To generate, manufacture, purchase, acquire, and accumulate electric energy and to transmit, distribute, sell, furnish, and dispose of such electric energy to its members only, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, and transmission and distribution lines or systems necessary, convenient, or useful;

(5) To assist its members only to wire their premises and install therein electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character, and in connection therewith and for such purposes, to purchase, acquire, lease, sell, distribute, install, and repair electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character and to receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness;

(6) To furnish to other corporations organized under this Act, or to the members thereof, electric energy, wiring facilities, electrical and plumbing equipment, and services convenient or useful;

(7) To acquire, own, hold, use, exercise, and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate, and in any manner dispose of franchises, rights, privileges, licenses, rights of way, and easements necessary, useful, or appropriate;

(8) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein;

(9) To borrow money and otherwise contract indebtedness, to issue its obligations therefor, and to secure the payment thereof by mortgage, pledge, or deed of trust of all or any of its property, assets, franchises, revenues, or income;

(10) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets;

(11) To have and exercise the power of eminent domain for the purpose and in the manner provided by the condemnation laws of this State for acquiring private property for public use, such right to be paramount except as to property of the State, or of any political subdivision thereof;

(12) To accept gifts or grants of money, services, or property, real or personal;

(13) To make any and all contracts necessary or convenient for the exercise of the powers granted in this Act;

(14) To fix, regulate, and collect rates, fees, rents, or other charges for electric energy and any other facilities, supplies, equipment, or services furnished by the corporation;

(15) To conduct its business, and have offices within or without this State;

(16) To elect or appoint officers, agents, and employees of the corporation, and to define their duties and fix their compensation;

(17) To make and alter by-laws, not inconsistent with the articles of incorporation or with the laws of

this State for the administration and regulation of the affairs of the corporation;

(18) To do and perform, either for itself or its members, or for any other corporation organized under this Act, or for the members thereof, any and all acts and things, and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized.

Incorporators

Sec. 5. Any three or more natural persons of the age of twenty-one (21) years or more, residents of this State, may act as incorporators of a corporation to be organized under this Act by executing articles of incorporation as hereinafter provided in this Act.

Articles of incorporation

Sec. 6. (a) The articles of incorporation shall state:

(1) The name of the corporation, which name shall include the words "Electric Cooperative" and the word "Corporation," "Incorporated," "Inc.," "Association," or "Company" and the name shall be such as to distinguish it from any other corporation organized and existing under the laws of this State;

(2) The purpose for which the corporation is formed;

(3) The names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of members, or until their successors are elected and qualify;

(4) The number of directors, not less than three (3), to be elected at the annual meetings of members;

(5) The address of its principal office and the name and address of its agent upon whom process may be served;

(6) The period of duration of the corporation, which may be perpetual;

(7) The terms and conditions upon which persons shall be admitted to membership and retain membership in the corporation, but if expressly so stated the determination of such matters may be reserved to the directors by the by-laws;

(8) Any provisions, not inconsistent with law, which the incorporators may choose to insert, for the regulation of the business and the conduct of the affairs of the corporation.

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

Prohibition on use of words "electric cooperative"

Sec. 7. The words "Electric Cooperative" shall not be used in the corporate name of corporations organized under the laws of this State, or authorized to do business herein, other than those organized pursuant to the provisions of this Act.

Execution, filing, and recording of articles of incorporation

Sec. 8. When the incorporators of any corporation shall furnish satisfactory evidence to the Secretary of State of a compliance with the provisions of this Act, said officer shall receive, file, and record the articles of incorporation of such corporation in his office, upon application and payment of all fees therefor, and give a certificate showing the recording of such articles and authority to do business thereunder. The articles shall thereupon be filed in the office of the Secretary of State, who shall record same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the articles, or of the record thereof, certified under the Great Seal of the State, shall be evidence of the creation of the corporation. The existence of the corporation shall date from the filing of the articles in the office of the Secretary of State. The certificate of the Secretary of State shall be evidence of such filing.

Renewal of articles of incorporation

Sec. 9. Any corporation organized under this Act, whose articles of incorporation have expired by limitation, may revive such articles with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the time of the expiration of its said articles, by filing with the consent of a majority of its members, new articles of incorporation under the provisions of this Act, reciting therein such original privileges, immunities, and rights of property, and by filing therewith a certified copy of such original expired articles.

Organization Meeting

Sec. 10. After the issuance of the certificate of incorporation, an organization meeting shall be held, at the call of a majority of the incorporators, for the purpose of adopting by-laws and electing officers and for the transaction of such other business as may properly come before the meeting. The incorporators calling the meeting shall give at least three (3) days' notice thereof by mail to each incorporator, which notice shall state the time and place of the meeting but such notice may be waived in writing.

By-laws

Sec. 11. The power to make, alter, amend, or repeal the by-laws of the corporation shall be vested in the Board of Directors. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

Qualification of members

Sec. 12. All persons in rural areas proposed to be served by a corporation, who are not receiving central station service, shall be eligible to membership in a corporation. No person other than the incorporators shall be, become, or remain a member of a corporation unless such person shall use or agree to use electric energy or, as the case may be, the facilities, supplies, equipment, and services furnished by a corporation. A corporation organized under this Act may become a member of another such corporation and may avail itself fully of the facilities and services thereof.

Meetings of members

Sec. 13. (a) Meetings of members may be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the principal office of the corporation in this State.

(b) An annual meeting of the members shall be held at such time as may be provided in the by-laws. Failure to hold the annual meeting at the designated time shall not work forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president, by the Board of Directors, or a majority thereof, by a petition signed by not less than one-tenth of all the members or by such other officers or persons as may be provided in the articles of incorporation or the by-laws.

Notice of members' meetings

Sec. 14. Written or printed notice stating the place, day, and hour of the meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary, or the officers or persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be

deemed to be delivered when deposited in the United States mails in a sealed envelope addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. Notice of meetings of members may be waived in writing.

Voting by members

Sec. 15. Each member present shall be entitled to one and only one vote on each matter submitted to a vote at a meeting of members, but voting by proxy or by mail may be provided for in the by-laws.

Certificate of membership

Sec. 16. When a member of a corporation has paid the membership fee in full, a certificate of membership shall be issued to such member. Memberships in the corporation and the certificates shall be non-transferable. The certificate of membership shall be surrendered to the corporation upon the resignation, expulsion, or death of the member. Except for debts lawfully contracted between him and the corporation, no member shall be liable for the debts of the corporation to an amount exceeding the sum remaining unpaid on his membership fee.

Quorum of members

Sec. 17. Unless otherwise provided in the articles of incorporation, a majority of the members present, in person or represented by proxy, shall constitute a quorum for the transaction of business at a meeting of members, but if voting by mail is provided for in the by-laws, members so voting shall be counted as if present.

Board of directors

Sec. 18. The business and affairs of a corporation shall be managed by a Board of Directors, not less than three (3) in number, which shall exercise all the powers of the corporation except such as are conferred upon the members by this Act, by the articles of incorporation or by the by-laws of the corporation. The by-laws may prescribe qualifications for directors.

Election, qualification, and compensation of directors

Sec. 19. The directors, other than those named in the certificate of incorporation to serve until the first annual meeting of members, shall be elected annually, or as otherwise provided in the by-laws, by the members. The directors shall be members of the corporation and shall be entitled to such compensation and reimbursement for expenses actually and necessarily incurred by them as may be provided in the by-laws.

Vacancies

Sec. 20. Any vacancy occurring in the Board and any directorship to be filled, shall be filled as provided in the by-laws by persons who shall serve until directors may be regularly elected as provided for in this Act.

Quorum of directors

Sec. 21. A majority of the Board shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the by-laws. The act of the majority of the directors, present at a meeting at which a quorum is present, shall be the act of the Board, unless the act of a greater number is required by the articles of incorporation or the by-laws.

Directors' meetings

Sec. 22. Meetings of the Board, regular or special, shall be held at such place and upon such notice as the by-laws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Officers, agents, and employees

Sec. 23. (a) The Board shall elect from its number a president, a vice-president, a secretary, and a treasurer, but the same person may be elected to the office of secretary and treasurer. The powers and duties of the foregoing officers, as well as their term of office and compensation shall be provided for in the by-laws.

(b) The Board shall appoint such other officers, agents, and employees as it deems necessary and fix their powers, duties, and compensation.

(c) Any officer, agent, or employee elected or appointed by the Board, may be removed by it whenever in its judgment the best interests of the corporation will be served.

Executive committee

Sec. 24. Any corporation may, by its by-laws, provide for an executive committee to be elected from and by its Board of Directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the by-laws may prescribe, but the designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by this Act.

Non-profit operation

Sec. 25. (a) Each corporation shall be operated without profit to its members but the rates, fees, rents, or other charges for electric energy and any other facilities, supplies, equipment, or services furnished by the corporation shall be sufficient at all times.

(1) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal of and interest on the obligations issued or assumed by the corporation in the performance of the purpose for which it was organized, and

(2) For the creation of reserves.

(b) The revenues of the corporation shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter to such reserves for improvement, new construction, depreciation, and contingencies as the Board may from time to time prescribe.

(c) Revenues not required for the purposes set forth in Sub-section (b) of this Section shall be returned from time to time to the members on a pro rata basis according to the amount of business done with each during the period, either in cash, in abatement of current charges for electric energy, or otherwise as the Board determines; but such return may be made by way of general rate reduction to members, if the Board so elects.

Amendment of articles of incorporation

Sec. 26. A corporation may amend its articles of incorporation by an affirmative vote of a majority of the members who are present in person or by proxy at any regular meeting of such members, or at any special meeting that has been called for that purpose in the manner provided by the by-laws of such corporation. Notice to the members of such regular or special meeting shall state the general nature of each proposed amendment to be presented and voted upon at the meeting. No valid action shall be had or taken at any such regular or special meeting unless such regular or special meeting is attended by not less than five per cent (5%) of the members either in person or by proxy. The power to amend shall include the power to accomplish any desired change in the provisions of its articles of incorporation and to include any purpose, power, or provision which would be authorized to be included in original articles of incorporation if executed at the time the amendment

is made. Articles of amendment signed by the president or vice-president, and attested by the secretary, certifying to such amendment and its lawful adoption shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act; and as soon as the Secretary of State shall have accepted the articles of amendment for filing and recording, and issued a certificate of amendment, the amendment or amendments shall be in effect, and the certificate of the Secretary of State shall be evidence of such filing. [As amended Acts 1947, 50th Leg., p. 215, ch. 123, § 1.]

Consolidation

Sec. 27. (a) Any two or more corporations may enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, not less than three (3), the time of the annual meeting and election, and the name of at least three (3) persons to be directors until the first annual meeting. If such agreement is approved by the votes of a majority of the members of each corporation, present in person or by proxy at any regular meeting, or at any special meeting, of its members called for that purpose, the directors named in the agreement shall sign and acknowledge as incorporators articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under this Act.

(b) The articles of consolidation shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording and issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be and become a body corporate, with all of the powers of a corporation as originally organized hereunder.

Dissolution

Sec. 28. (a) Any corporation may dissolve by majority vote of the members, present in person or by proxy at any regular meeting, or at any special meeting, of its members called for that purpose. A certificate of dissolution shall be signed by the president or vice-president and attested by the secretary, certifying to such dissolution and stating that they have been authorized to execute and file such certificate by votes cast in person or by proxy by a majority of the members of the corporation. A certificate of dissolution shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act and as soon as the Secretary of State shall have accepted the certificate of dissolution for filing and recording and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

(b) Such corporation shall, however, continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed pro rata among the members of the corporation at the time of the filing of the certificate of dissolution.

(c) Any corporation which purports to have been incorporated or re-incorporated under this Act but which has not complied with all of the requirements for legal corporate existence may nevertheless file a certificate of dissolution in the same manner as a validly existing corporation. The certificate of dissolution, in such case, may be authorized by a majority of the incorporators or directors at a meeting called by any incorporator upon ten (10) days' notice mailed to the last known post-office address of each incorporator or director, and held at the principal office of the corporation named in the articles of incorporation.

Fees

Sec. 29. The Secretary of State shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, Ten Dollars ($10).

(2) Filing of articles of amendment and issuing a certificate of amendment, Two Dollars and Fifty Cents ($2.50).

(3) Filing articles of consolidation and issuing a certificate with respect thereto, Ten Dollars ($10).

(4) Filing articles of dissolution, Two Dollars and Fifty Cents ($2.50).

Exemption from excise taxes—license fee

Sec. 30. Corporations formed hereunder shall pay annually, on or before May first, to the Secretary of State, a license fee of Ten Dollars ($10) and such corporations shall be exempt from all other excise taxes of whatsoever kind or nature.

Limited exemption from securities act

Sec. 31. Whenever any corporation organized under this Act shall have borrowed money from any Federal agency, the obligations issued to secure the payment of such money shall be exempt from the provisions of the Texas Securities Act, (Chapter 100, Acts of the Forty-fourth Legislature, Regular Session), or any Acts amendatory thereof, nor shall the provisions of said Act apply to the issuance of membership certificates.

Defectively organized corporations

Sec. 32. In the event any corporation has filed defective articles of incorporation or has failed to do all things necessary to perfect its corporate organization, it may, nevertheless, file corrected articles of incorporation or amend the original articles and do and perform all acts and things necessary in the premises for the correction of such defects. The action so taken shall be valid and binding upon all persons concerned and the capacity of such corporation to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary in the premises shall not be questioned.

Act extended to existing corporations

Sec. 33. Any existing cooperative or nonprofit corporation or association, organized under any other law of this State, for the purpose of engaging in rural electrification, may, by a majority vote of the members present in person or by proxy at a meeting called for that purpose, amend its articles of incorporation so as to comply with this Act.

Construction of act

Sec. 34. This Act shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

Separability of provisions

Sec. 35. If any provision of this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Act complete in itself

Sec. 36. This Act is complete in itself and shall be controlling. The provisions of any other law of this

State, except as provided in this Act, shall not apply to a corporation organized, or in process of organization, under this Act. [Acts 1937, 45th Leg., p. 161, ch. 86.]

Section 2 of the Act of 1947 amending section 26 provided that partial invalidity should not affect the remainder of the Act.

CHAPTER 19.—FOREIGN CORPORATIONS

Art.
1529. Permit.
1530. Stock.
1531. Affidavit.
1532. Rights under permit.
1533. Property rights.
1533a. Voting stock and participating in management of domestic corporation.
1534. Disposal of property.
1535. Evidence.
1536. Penalties.
1537. Amendments to charter.
1538. Corporations exempt.

Article 1529. [1314—20] Permit.—Any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other State, or of any territory of the United States, or of any municipality of such State or territory, or of any foreign government, sovereignty or municipality, desiring to transact or solicit business in Texas, or to establish a general or special office in this State, shall file with the Secretary of State a duly certified copy of its articles of incorporation; and thereupon such official shall issue to such corporation a permit to transact business in this State for a period of ten years from the date of so filing such articles of incorporation. If such corporation is created for more than one purpose, the permit may be limited to one or more purposes. [Acts 1889, p. 87; Acts 1901, p. 18; G. L. vol. 9, p. 1115.]

This article and the following articles are void in so far as placing restrictions upon interstate commerce. Shapleigh Hardware Co. v. Keeland Bros., Civ.App., 60 S.W. 2d 510.

Art. 1530. [1314] [745] Stock.—Before such permit is issued such corporation shall show to the satisfaction of the Secretary of State that at least one hundred thousand dollars in cash of their authorized capital stock has been paid in, or that fifty per cent of their authorized capital stock has been subscribed, and at least ten per cent thereof paid in. [Id.]

Art. 1531. [1315] Affidavit.—Before a permit is issued to such corporation, its president, vice president, secretary or treasurer, or two of the directors thereof, shall make and file in the office of the Secretary of State an affidavit stating that such corporation is not a trust or organization in restraint of trade in violation of the laws of this State, has not, within twelve months next preceding the making of such affidavit, become or been a party to any trust agreement of any kind which would constitute a violation of any anti-trust law of Texas existing at the date of such affidavit, and has not within that time, entered into or been in any wise a party to, any combination in restraint of trade within the United States, and that no officer of such corporation has, within the knowledge of affiant, within such time and on behalf of such corporation or for its benefit, made any such contract, or entered into or become a party to any such combination in restraint of trade. The jurat of the officer making such affidavit shall be attested by his official signature and seal of office. [Acts 1909, C. S. p. 267; Id.]

Art. 1532. [1317] [745] Rights under permit.—Such corporations, on obtaining such permit, shall have and enjoy all the rights and privileges conferred by the laws of this State on corporations organized under the laws of this State. [Acts 1897, p. 167; G. L. vol. 10, p. 1221.]

Art. 1533. Property rights.—Such corporations shall be authorized to hold, purchase, sell, mortgage or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and to take, hold and convey such other property, real, personal, or mixed, as may be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to, the corporation. [Id.]

Art. 1533a. Voting stock and participating in management of domestic corporation.—That when any foreign corporation without a permit to do business in this State lawfully owns or may lawfully own or acquire stock in Texas corporation, it shall not be unlawful for such foreign corporation to vote said stock and participate in the management and control of the business and affairs of such Texas corporation, as other stockholders, subject to all laws, rules and regulations governing Texas corporations, and especially subject to the provisions of the Anti-trust Laws of the State of Texas. [Acts 1925, 39th Leg., ch. 185, p. 455, § 1.]

Art. 1534. Disposal of property.—Such corporations shall alienate all real property so acquired not necessary for its purposes, within fifteen years from the time of acquisition; and shall alienate all real estate acquired for the purposes of such corporation within fifteen years from the expiration of the time for which the permit is issued, or, if such permit be renewed or such corporation be otherwise authorized to carry on business in Texas, then such real estate shall be alienated within fifteen years from the expiration of such renewal or authorization. If such corporation shall cease to carry on business in Texas, it shall alienate all such real estate so acquired by it, within fifteen years from the time of such cessation. [Acts 1897, p. 167; G.L. vol. 10, p. 1221.]

Art. 1535. [1321] [749] Evidence.—Either the original permit or certified copies thereof by the Secretary of State shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the Secretary of State to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter. [Acts 1889, p. 87.]

Art. 1536. [1318] [746] Penalties.—No such corporation can maintain any suit or action, either legal or equitable, in any Court of this State upon any demand, whether arising out of contract or tort, unless at the time such contract was made, or tort committed, the corporation had filed its articles of incorporation under the provisions of this Chapter. If any corporation shall transact intrastate business in Texas without first having obtained a permit under the provisions of this Chapter such corporation shall forfeit to the State of Texas not less than One Hundred ($100.00) Dollars nor more than Five Thousand ($5,000.00) Dollars for each month or fraction thereof it shall transact such business without a permit as required hereunder, to be recovered in a suit to be brought by the Attorney General in Travis County, Texas, and the State shall have a lien on all properties of the corporation for said penalties and any corporation may be enjoined by the Attorney General when transacting such business without a permit as required hereunder. [Acts 1889, p. 87; Acts 1931, 42nd Leg., p. 264, ch. 158, § 1.]

Art. 1537. Amendments to charter.—Each foreign corporation, after a permit has been granted it to do business in this State, shall immediately file with the Secretary of State a certified copy of any amendment or supplement to its original articles of incorporation when any such amendment or supplement to its

original articles of incorporation is filed in the state territory or foreign country under whose laws such corporation is incorporated. [Acts 1919, p. 81.]

Art. 1538. [1319] [747] Corporations exempt.—The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating or maintaining any railway, or to such corporations as are required by law to procure certificates of authority to do business from the Commissioner of Insurance or from the Banking Commissioner. [Acts 1897, p. 167; G. L. vol. 10, p. 1221.]

CHAPTER 19A.—NON-PAR CORPORATIONS

Art.
1538a. Non-par stock.
1538b. Statement on face.
1538c. Consideration for stock.
1538d. Shall file with Secretary of State.
1538e. Certificate by directors.
1538f. Fees.
1538g. Value of shares.
1538h. May amend charter.
1538i. [Repealed.]
1538j. Stock to be subscribed.
1538k. Forfeiture of charter.
1538*l*. Blue sky law.
1538m. Constitutionality.

Article 1538a. Non-par stock.—Upon the organization, under the laws of this State, of any private corporation for profit, other than corporations authorized to conduct a banking or insurance business, or upon the amendment of the charter in the manner now or hereafter provided by law of any private corporation for profit organized under the laws of this State other than corporations authorized to conduct a banking or insurance business, provision may be made for the issuance of shares of its stock without nominal or par value. Every such share shall be equal in all respects to every other such share, except that the charter or any amendment thereof may provide that such shares should be divided into different classes, the shares of each class to have such preferences, designations, rights, privileges and powers and be subject to such restrictions, limitations and qualifications as shall be stated in the charter or any amendment thereof. Any law of this State requiring that the par value of shares of stock of a corporation be stated in any certificate, report, or other instrument or paper shall be complied with by stating, in respect to shares without nominal or par value, that such stock is without par value, and wherever the amount of stock is required to be stated, the number of such shares without nominal or par value shall be stated and that such shares are without nominal or par value. [Acts 1925, 39th Leg., p. 236, ch. 77, § 1.]

Art. 1538b. Statement on face.—Every certificate issued for shares of stock without nominal or par value shall have plainly stated on its face the number of shares which it represents and the class thereof, and shall not set forth any par value or value in dollars of such shares. No such certificate shall express or state thereon any rate of dividend, preference as to assets in liquidation, or price at which such shares may be redeemed except in dollars and cents per share. [Acts 1925, 39th Leg., p. 236, ch. 77, § 2.]

Art. 1538c. Consideration for stock.—Corporations may issue and dispose of their authorized shares having no nominal or par value for such consideration as may be prescribed in the original charter or any amendment thereof; or, if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting duly called and held for that purpose, or by the board of directors when acting under general or special authority granted by the stockholders, or by the board of directors when acting under general authority conferred by the original charter or any amendment thereof; such consideration to be in the form of money paid, labor done or property actually received. Any and all shares without nominal or par value issued for the consideration prescribed or fixed in accordance with the provisions of this section shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments. [Acts 1925, 39th Leg., p. 236, ch. 77, § 3.]

Art. 1538d. Shall file with Secretary of State.—Corporations authorizing the issuance of shares of its [1] stock without nominal or par value shall furnish to, and file with, the Secretary of State at the time of filing the charter or amendment to a charter authorizing the issuance of such stock a certificate authenticated by the incorporators as to original charter, and by a majority of the directors as to any amendment thereof, in the manner required by the laws of this State as to an original charter of incorporation, setting forth the following:

(a) The number of shares with a par or face value and the number of shares without nominal or par value that may be issued by the corporation and the classes, if any, into which such shares are divided.

(b) The par or face value of shares other than the shares which it is stated are to be without nominal or par value.

(c) That all stock having a par or face value, if any, has been in good faith subscribed, and fifty per cent thereof paid in, in cash, property or labor done.

(d) The number of shares without nominal or par value subscribed and the actual consideration received by the corporation for such shares; and upon receiving such certificate it shall be the duty of the Secretary of State, on payment of office fees and franchise tax due, to file and record the charter, or amendment thereof, of such corporation and to give his certificate showing the record thereof, provided, however, the stockholders of any corporation authorizing the issuance of shares of its stock without nominal or par value shall be required, in good faith, to subscribe and pay for at least ten per cent of the authorized shares to be issued without nominal or par value before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without par or nominal value; provided further that in no event the amount so paid shall be less than $25,000.00. [Acts 1925, 39th Leg., p. 236, ch. 77, § 4.]

[1] So in enrolled bill. Word "its" should probably be omitted.

Art. 1538e. Certificate by directors.—In the event the original charter or any amendment to a charter of a corporation authorizing the issuance of shares of stock without nominal or par value does not prescribe the consideration for which such shares, other than those subscribed and paid for at the time of the filing of the charter or any amendment to a charter, shall be issued, then, within ninety (90) days after the issuance of any such shares, the corporation shall file, with the Secretary of State a certificate, authenticated by a majority of the directors in the manner required by the laws of this State as to an original charter of incorporation, setting forth the number of such shares so issued and the actual consideration received by the corporation for such shares. [Acts 1925, 39th Leg., p. 236, ch. 77, § 5.]

Art. 1538f. Fees.—Any corporation authorizing the issuance of shares of its stock without nominal or par value shall be required to pay to the Secretary of State, for the use of the State, fees as follows:

(a) The fees now or hereafter provided by the laws of this State as to any shares of its stock having a par or face value; and

(b) as to any shares of its stock without nominal or par value a fee of fifty dollars for the first ten thousand dollars of actual consideration received by the corporation for any such shares issued, provided, that if the actual consideration received by said corporation shall exceed ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars, or fractional part thereof, of actual consideration received by it; and, provided further, that any shares without nominal or par value not subscribed and paid for at the time of filing said original charter or amendment to a charter shall for the sole and only purpose of computing the filing fees, be assumed to have the same value per share as that for which the shares actually subscribed and sold were issued so that the filing fees, as fixed herein, shall be paid upon the entire authorized number of shares to be issued without nominal or par value; which said fees shall be paid to the Secretary of State at the time of filing the charter or any amendment thereof, provided, that if, after payment of the fees herein provided, the corporation should thereafter issue shares of its stock without nominal or par value, which said shares were not subscribed, paid for, or issued, when the fees thereon were paid for a consideration or value per share in excess of the value such shares were assumed to have when the charter or amendment to a charter was filed, then said corporation, at the time of filing the certificate showing the actual consideration received by it for said shares so subsequently sold and issued, shall pay further or additional fees at the rates herein stipulated, upon such excess value or consideration; provided that the aggregate fees to be paid by a corporation as prescribed in this Section 6 shall never exceed the sum of twenty-five hundred dollars ($2500). [Acts 1925, 39th Leg., p. 236, ch. 77, § 6.]

Art. 1538g. Value of shares.—The certificate required by this Act to be filed setting forth the value received by a corporation for the shares of its stock without nominal or par value which it may issue shall not be construed as fixing any value upon such shares, but said certificate shall be for the sole and only purpose of furnishing the Secretary of State a basis upon which to compute the filing fees and franchise tax to be paid upon said shares without nominal or par value. [Acts 1925, 39th Leg., p. 236, ch. 77, § 7.]

Art. 1538h. May amend charter.—Any private corporation for profit, other than corporations authorized to conduct a banking or insurance business, except as herein stated, having authorized shares with par or face value or shares without nominal or par value, or both, may, by vote of the holders of a majority of its outstanding stock, entitled to vote at any annual meeting or at any special meeting called and held for the purpose, amend its charter as follows:

(a) So as to change its shares of stock with par or face value, or any class or classes thereof, into the same number or into a large or smaller number of shares without nominal or par value; or

(b) So as to change its shares of stock without nominal or par value or any class or classes thereof, into the same number or into a larger or smaller number of shares with par or face value, provided that all the provisions of Article 1308 with reference to subscription to and payment for capital stock have first been complied with; and further provided that any capital stock, legal reserve life insurance company with the approval of the Life Insurance Commissioner, may amend its charter in the manner set out above so as to change its shares of stock without nominal or par value into the same, or a larger or smaller number of shares, with par or face value, or into the same, or a larger or smaller number of shares without nominal or par value, or so as to increase or decrease the total amount paid in for its stock, whether with or without nominal or par value, to any amount not less than One Hundred Thousand Dollars ($100,000.00); and provided further that, in case any such insurance company reduces the amount paid for its capital stock without nominal or par value to less than Two Hundred and Fifty Thousand Dollars ($250,000.00), the amount of the reduction below Two Hundred and Fifty Thousand Dollars ($250,000.00) may be used only for the payment of excess war mortality claims if and when approved by the Life Insurance Commissioner, and if not used for that purpose, shall be placed in a permanent surplus fund for the protection of the policyholders, or, by amendment, returned to the company's capital.

(c) Provided that all its shares in any one class shall be changed on the same basis, or so as to change its shares without nominal or par value, or any class or classes thereof, into shares of par or face value or into a larger or smaller number of shares without nominal or par value provided that all shares in any one class shall be changed on the same basis; and provided further that except as herein provided, that the preferences, rights, limitations, privileges and restrictions granted or imposed with respect to any shares of outstanding stock shall not be impaired, diminished or changed without the consent of the holder thereof. Whenever any such amendment shall be made effective, all the shares with par or face value of the class or classes specified in said amendment shall be deemed for all purposes to have been converted, on the basis in said amendment stated, shares without nominal or par value of the class or classes specified, and all of the shares without nominal or par value changed into shares with par or face value or changed into a larger or smaller number of shares without nominal or par value shall be deemed for all purposes to have been converted, on the basis in said amendment stated, into such class or classes of shares with par or face value or into such larger or smaller number of shares without nominal or par value, and the corporation shall, in writing, notify all holders of shares of stock of the class or classes affected and shall thereafter, whenever any certificate for any such shares is presented for transfer or exchange, cancel the same, and in its place, issue, on the basis in said amendment stated, a new certificate, which shall conform to the provisions of Article 1538b hereof, or the applicable insurance statutes, as the case may be. [Acts 1925, 39th Leg., p. 236, ch. 77, § 8; Acts 1945, 49th Leg., p. 104, ch. 72, § 1.]

Art. 1538i. [Repealed by Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68, § 1.]

Art. 1538j. Stock to be subscribed.—Corporations authorizing the issuance of shares of its [1] stock without nominal or par value are exempt from the provisions of Articles 1308 to 1311, inclusive, and of Article 1338 of the Revised Civil Statutes,[2] provided that no original charter nor any amendment to a charter which provides for stock having a nominal or par value shall be filed or recorded by the Secretary of State until the full amount of all such authorized capital stock having a par value shall have been subscribed, and fifty per cent thereof paid, and proof thereof made in the manner provided in said Articles 1308 to 1311, inclusive; and provided further, that the provisions of said Article 1338 as to the payment of the unpaid portion of capital stock shall apply to the payment of the unpaid portion of any stock which has a nominal or par value. [Acts 1925, 39th Leg., p. 236, ch. 77, § 10.]

[1] So in enrolled bill. Word "its" should probably be omitted.

[2] The Revised Civil Statutes above referred to are the Revised Civil Statutes of 1925.

Art. 1538k. Forfeiture of charter.—Any corporation authorized to issue shares of its stock without nominal or par value which shall fail or refuse to make and file within the time provided, any certificate or report required by this Act to be made and filed

shall thereupon forfeit and pay to the State a penalty of not less than five dollars nor more than one hundred dollars for each and every day, during which it shall continue in default, which penalty shall be recovered by suit in a court of competent jurisdiction by the Attorney General of Texas; and upon proof in said suit that such corporation has not then filed the certificate or report required to be filed by it, said corporation shall forfeit its charter and all rights and franchises which it holds under, from, or by virtue of, the laws of this State. [Acts 1925, 39th Leg., p. 236, ch. 77, § 11.]

Art. 1538*l***. Blue sky law.**—The privileges and powers conferred by this chapter shall be deemed to be in addition to any and all powers and authority conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to corporations of this State; provided, that nothing in this chapter shall be construed to in any way exempt the sale of such par value stock or non par value stock from the operation and control of the Blue Sky Law of this State as the same now exists or may hereafter be amended. [Acts 1925, 39th Leg., p. 236, ch. 77, § 12.]

Art. 1538m. Constitutionality.—Should any provision of this Act be held invalid, the validity of the other provisions shall not be affected or impaired thereby. [Acts 1925, pp. 236–240.] [39th Leg. ch. 77, § 13.]

TITLE 33—COUNTIES AND COUNTY SEATS

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CHAPTER 1.—CREATION OF COUNTIES

Art.
1539. Legislature may create counties.
1540. Area required.
1541. Division of exterior territory.
1542. Created out of other counties.
1543. Line of new county.
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1545. Existing counties reduced.
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1557. Application.
1558. Notices of election.
1559. Question to be voted upon.
1560. Law governing such elections.
1561. Returns of election.
1562. Subsequent election.

Article 1539. [1331] [756] [651] Legislature may create counties.—The Legislature shall have power to create counties for the convenience of the people. [Const. art. 9, sec. 1.]

Art. 1540. [1332] [757] [652] Area required.—In the territory of the State exterior to the counties now existing, no new county shall be created with a less area than nine hundred square miles in a square form unless prevented by pre-existing boundary lines. If the State lines render this impracticable in border counties, the area may be less. [Id.]

Art. 1541. [1333] [758] [653] Division of exterior territory.—The territory referred to in the preceding article may at any time, in whole or in part, be divided into counties in advance of population, and attached for judicial and land surveying purposes to the most convenient organized county. [Id.]

Art. 1542. [1334] [759] [654] Created out of other counties.—Within the territory of any county or counties now existing no new county shall be created with less area than seven hundred square miles. No such county now existing shall be reduced to a less area than seven hundred square miles. [Id.]

Art. 1543. [1335] [760] [655] Line of new county.—No new county shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may, in whole or in part be taken. [Id.]

Art. 1544. [1336] [761] [656] County from existing county.—Counties of less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. [Id.]

Art. 1545. [1337] [762] [657] Existing counties reduced.—Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. [Id.]

Art. 1546. [1338] [763] [658] Liability of new county.—When any part of a county is stricken off and attached to, or created into another county, the part stricken off shall be obligated to pay its proportion of all existing liabilities of the county from which it was taken, in such manner as the law shall provide. [Id.]

Art. 1547. [1339] [764] Pro rata of indebtedness.—Any county which has been or may hereafter be created by the Legislature out of any other county or counties, shall be held liable for its proportion of all the liabilities of the county or counties from which it was taken, existing at the date of its creation as such new county, according to the proportionate value of the property in the excised territory, and the value of the property remaining in the old county. A suit to recover the same may be brought in the district court by the parent county, either in such parent county, or in the newly created county; and the court shall have power to make any order or render any judgment necessary to carry out and satisfy its decree therein. The provisions of this article shall not apply to any county, the claims against which have already been placed before courts having jurisdiction thereof and tried or dismissed under laws that were at such time constitutional. [Acts 1893, p. 124; G. L. vol. 10, p. 554.]

Art. 1548. [1340] [765] Apportionment of indebtedness.—Where any suit has been, or shall be, brought to enforce payment of the indebtedness created by the parent county or counties, or for the pro rata share of the excised territory, the assessment rolls of the parent county or counties for the year in which such new county was created shall be conclusive evidence of the property and value thereof remaining in the parent county, and in the excised territory at the date of the creation of such new county; provided that when the new county was organized and made assessment rolls for the same year as that in which it was created, such rolls shall be taken as conclusive evidence of the property therein and the taxable values thereof at the date of the creation of such new county, and the assessment rolls of the parent

county for the same year shall be conclusive evidence of the property and the value thereof remaining in the parent county at the date of the creation of such new county. [Id.]

Art. 1549. [1341] [765a] Suits and special tax.—All suits brought under this law shall be given precedence upon the dockets of the courts. If the plaintiff shall recover, the commissioners court of the newly created county shall levy a special tax on all property in the territory taken from the plaintiff county sufficient to pay off the judgment, and, if the first levy be insufficient, to make said levy annually till said judgment is satisfied, and the judgment of the court shall order said commissioners court to make such levies. [Id.]

Art. 1550. [1342] [766] Non-residents to pay.—The Comptroller shall assess and collect from the non-residents of unorganized counties such rate of taxation, to pay the pro-rata share of the debt due by such unorganized county, as the commissioners court of the parent county shall levy on property in said parent county to pay such debt, and a certified statement of the commissioners court making the levy in the parent county, giving the amount of the levy, shall be authority for his action. [Acts 1889, p. 136; G. L. vol. 9, p. 1164.]

Art. 1551. [1343] [767] When territory added.—When the territory taken is added to and made a part of an organized county, the commissioners court of such county shall levy and have collected on all property in such territory a tax sufficient to pay their pro-rata of the indebtedness, said tax not to exceed the constitutional limit; and the commissioners court of the county to which any unorganized county may be attached for judicial purposes shall levy and have collected on all property in such unorganized county owned or held by resident citizens a tax for the purpose of paying such indebtedness. [Id.]

Art. 1552. [1344] [768] Tax for pro-rata indebtedness.—When any county has organized, the commissioners court of such county shall levy and have collected on all property in this county such rate of taxation to pay the pro rata share of the debt due by such county as the commissioners court of the parent county shall levy on property in said parent county to pay such debt. [Id.]

Art. 1553. [1346] [770] County bonds held by school funds.—When any new county has been created wholly out of an existing county, if any bonds were legally issued by the parent county prior to the severance of a part of its territory, such of said bonds and the coupons due thereon as are held by the school fund of this State shall be apportioned by the Comptroller between the parent county and the new county on the basis now provided by law. [Acts 1891, p. 39; G. L. vol. 10, p. 41.]

Art. 1554. [1347] [771] Levy of tax for debt.—The commissioners court of the parent county, or of any county created out of the parent county, which has now or may hereafter be organized, shall levy and have collected on all property in such county a tax to pay such county's pro-rata share of the debt. The commissioners court of a county to which any unorganized county may be attached for judicial purposes shall levy and have collected on all property in said unorganized county owned by resident citizens thereof a tax for the purpose of paying said county's part of the debt. It shall be the duty of the Comptroller to assess and collect on all property in such unorganized counties owned by non-residents, a tax to pay said counties' pro rata part of said debt. Nothing herein shall be held to authorize the levy and collection of any tax in excess of that now allowed by the Constitution of this State. [Id.]

Art. 1555. [1348] [772] [659] Detachment by vote.—No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change has been submitted to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each. [Const. art. 9.]

Art. 1556. [1349] [773] [660] Election ordered.—An election for such purpose shall be ordered by the county judge, or county judges of the county or counties from which it is proposed to detach any proportion [1] thereof, or to attach any portion thereto, upon the written application of not less than fifty qualified voters of said county or counties.

[1] So in enrolled bill. Should probably read "portion."

Art. 1557. [1350] [774] [661] Application.—Such application shall designate particularly by metes and bounds, the portion of the territory proposed to be detached, and shall show the number of square acres contained within said bounds, and the number of square acres remaining in the county or counties from which it is proposed to detach such part or parts, and the distance on a direct line of the county seat of any such county or counties from the nearest boundary line of the territory which it is proposed shall be detached.

Art. 1558. [1351] [775] [662] Notices of election.—The notices of such election shall contain substantially the boundaries and statements contained in the application, and in order of election.

Art. 1559. [1352] [776] [663] Question to be voted upon.—The question to be voted upon at such election shall be, for or against the proposition, and the ballots shall be, "For the proposition," or "Against the proposition."

Art. 1560. [1353] [777] [664] Law governing such elections.—Such election shall be governed by the law governing other elections so far as applicable, and not in conflict with any provisions of this chapter.

Art. 1561. [1354] [778] [665] Returns of election.—The returns of such election shall be made to the county judge or county judges of the county or counties in which the election takes place; and such judge or judges shall estimate the vote and make duplicate statements of the same, and shall officially certify to such statements, and one of said statements, together with a copy of the application so certified, he shall seal in an envelope, writing his name across the seal, and endorsing upon the package "Election returns of ——— County," and direct and transmit the same by mail or other safe conveyance to the Speaker of the House of Representatives at the seat of government, in time for the same to be received as early as practicable during the next session of the Legislature.

Art. 1562. [1355] [779] [666] Subsequent election.—When any such election has been held in a county, and the proposition to detach a portion thereof has been defeated, no other election for the same purpose shall be ordered or held within five years thereafter.

CHAPTER 2.—ORGANIZATION OF COUNTIES

Art.
1563. Old county shall organize new one.
1564. Election to be ordered when and by whom.
1565. County commissioners may act.
1566. Unorganized county.
1566a. Appraisers of taxable property in unorganized counties.
1567. Disorganized counties.
1568. Organization of attached county.
1569. Certificates of election.
1570. Delivery to new officers.
1571. Elections in unorganized counties.

Article 1563. [1356] [780] [667] Old county shall organize new one.—Whenever any new county shall hereafter be established, the commissioners court of the county from which the territory of such new county, or the greater part thereof was taken, at least one month previous to the general election next after such new county shall have been established shall lay off and divide such new county into convenient precincts for the election of justices of the peace and other precinct officers, defining particularly the boundaries of such precincts; and shall also designate convenient places in such new county where elections shall be held, and shall cause a record thereof to be made by the clerk. A copy thereof shall be transmitted to the county judge of such new county when elected. [Act March 20, 1848, p. 284; P. D. 1063; G. L. vol. 3, p. 284.]

Art. 1564. [1357] [781] [668] Election to be ordered when and by whom.—It shall be the duty of the county judge of every county from which any new county has been so taken at least one month previous to the general election of county officers next after such new county has been established, to order an election to be held in such new county on [1] said general election day, for all county officers authorized to be elected by the people of such new county, and to appoint a presiding officer for each place designated in such new county, for holding elections; such order of elections shall specify the number of precincts, their boundaries, and the officers to be elected in such county. Such presiding officers shall hold such elections in accordance with the laws regulating elections, and shall make their returns to the county judge who ordered such election, who shall open and examine such returns and give certificates to the persons elected. [Id.]

[1] So in enrolled bill. R.S.1925 is probably incorrect, reading "or".

Art. 1565. [1358] [782] [669] County commissioners may act.—In any case where the office of county judge shall be vacant, any two of the county commissioners shall be authorized to perform each duty required of the county judge under this chapter. [Id.]

Art. 1566. [1359] [783] [670] Unorganized county.—Until a new county is legally organized, the territory thereof shall remain in all respects subject to the county from which the same has been taken. [Id.]

Art. 1566a. Appraisers of taxable property in unorganized counties.—Sec. 1. That the sum of Two Thousand ($2,000.00) Dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated out of any funds in the State Treasury, not otherwise appropriated, to each of the counties in this State to which an unorganized county is attached for judicial purposes, to be used by said county through its Commissioners' Court for the employment of a skilled appraiser, with the consent and approval of the Comptroller of Public Accounts of the State of Texas, to assist in the appraisal of taxable property situated in any such unorganized county, of which fund herein provided for, not exceeding One Thousand ($1,000.00) Dollars, shall be available for each calendar year, for each such county, for the years 1927 and 1928.

Sec. 2. After said appraiser has completed his work of the appraisal of the properties in the unorganized county, he shall make a report in duplicate to the Commissioners' Court of the county to which such unorganized county is attached for judicial purposes, stating therein in detail the values placed upon all classes of property by him in said unorganized county.

Sec. 3. After the Commissioners' Court has finally passed on the values fixed by said appraiser in his report, they shall certify their action to the Comptroller of Public Accounts, furnishing him with a duplicate of the report filed by the appraiser, and showing the action of the court had thereon, together with a certificate showing the extent of the services performed by the appraiser, and the value thereof, which shall be authority for the Comptroller to draw his warrant in favor of said appraiser for the amount shown to be due. [Acts 1927, 40th Leg., 1st C. S., p. 199, ch. 74.]

Art. 1567. [1360] [784] [671] Disorganized counties.—All legally organized counties that, from any cause, may have lost, or may hereafter lose, their county organization, shall be, for all judicial and surveying purposes, and for the registration of deeds, mortgages and all other instruments that are now, or may hereafter be, required or permitted by law to be recorded attached to the organized county whose county seat is nearest to the county seat of such disorganized county, and so remain attached until such disorganized county shall again be legally organized. [Act Nov. 5, 1866, p. 90; G. L. vol. 5, p. 1008.]

Art. 1568. [1361] [785] [672] Organization of attached county.—When any unorganized or disorganized county has been attached to another county for judicial or other purposes, and desires to be organized or reorganized, a petition expressing such desire, signed by not less than seventy-five qualified voters residing in such county, may be presented to the commissioners court of the county to which such unorganized or disorganized county is attached, and thereupon said court shall proceed without delay to the organization or reorganization of such county in the same manner as hereinbefore provided for the organization of new counties. [Act May 1, 1874, p. 188; Acts 1918, 4th C. S. p. 17; G. L. vol. 8, p. 189.]

Art. 1569. [1362] [786] [673] Certificates of election.—The county judge of the county conducting the organization of another county shall issue certificates of election to the officers elected in such organized or reorganized county, and approve the bonds of such officers. [Act May 1, 1874, p. 188; G. L. vol. 8, p. 189.]

Art. 1570. [1363] [787] [674] Delivery to new officers.—All officers of the county from which a new county has been created or to which any such newly organized or reorganized county has been attached, and all other persons who may have in their possession any books, records, maps, or other property belonging to such newly organized or reorganized county, shall deliver the same to the proper officers of such newly organized or reorganized county within five days after such officers have been legally qualified.

Art. 1571. [1364] [788] [675] Elections in unorganized counties.—Where a county is not organized and there is no officer in the same authorized by law to organize such county, the county judge of the nearest county which is organized may order elections for county officers in any such county, and appoint the presiding officers and managers and clerks of election. [Acts March 26, 1848; P. D. 3624.]

CHAPTER 3.—CORPORATE RIGHTS AND POWERS

Art.
1572. County a body corporate.
1573. Suits against.
1574. Jurors.
1575. Execution against county.
1576. Validity of deed, etc.
1577. Sale of real estate.
1578. Contracts with a county valid.
1579. Suits on writings by county.
1580. Agents to contract for county.
1581. Costs in suit against county.
1581a. County Home Rule Charters; Adoption. Ineffective, see art. 1606a, § 21.
1581b. Additional law enforcement officers.
1581c. Relinquishing to donors lands donated to county for county purposes.

Article 1572. [1365] [789] [676] County a body corporate.—Each county which now exists or which may be hereafter established, shall be a body corporate and politic. [P. D. 1044.]

Art. 1573. [1366] [790] [677] Suits against.—No county shall be sued unless the claim upon which such suit is founded shall have first been presented to the commissioners court for allowance, and such court shall have neglected or refused to audit and allow the same, or any part thereof. [P. D. 1045.]

Art. 1574. [1367] [791] [678] Jurors.—In any suit instituted by or against any county, the inhabitants of the county so suing or being sued may if otherwise competent, be jurors or witnesses. [P. D. 1049.]

Art. 1575. [1368] [792] [679] Execution against county.—No execution shall be issued on any judgment against any county. When a judgment is rendered against a county the commissioners court of such county shall settle and pay such judgment in like manner and pro rata as other similar claims are settled and paid by said court. [P. D. 1050.]

Art. 1576. [1369] [793] [680] Validity of deed, etc.—All deeds, grants and conveyances heretofore or hereafter made and duly acknowledged, or proven, and recorded as other deeds of conveyance, to any county, or to the courts or commissioners of any county, or any other person or persons, by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to vest in such county in fee simple or otherwise all such right, title, interest and estate as the grantor in any such instrument had at the time of the execution thereof in the lands conveyed and was intended thereby to be conveyed. [P. D. 1051.]

Art. 1577. [1370] [794] [681] Sale of real estate.—The commissioners court may, by an order to be entered on its minutes, appoint a commissioner to sell and dispose of any real estate of the county at public auction. The deed of such commissioner, made in conformity to such order for and in behalf of the county, duly acknowledged and proven and recorded shall be sufficient to convey to the purchasers all the right, title, and interest and estate which the county may have in and to the premises to be conveyed. Nothing contained in this article shall authorize any commissioners court to dispose of any lands given, donated or granted to such county for the purpose of education in any other manner than shall be directed by law. [P. D. 1052.]

Art. 1578. [1371] [795] [682] Contracts with a county valid.—Any note, bond, bill, contract, covenant, agreement or writing, made or to be made, whereby any person is or shall be bound to any county, or to the court or commissioners of any county, or to any other person or persons, in whatever form, for the payment of any debt or duty or the performance of any matter or thing to the use of any county, shall be valid and effectual to vest in said county any right, interest and action which would be vested in any person if any such contract had been made directly with him. [P. D. 1053.]

Art. 1579. [1372] [796] [683] Suits on writings by county.—Suits may be begun and prosecuted on such notes, bonds, bills, contracts, covenants, agreements, and writings, in the name of such county, or in the name of the person to whom they were made, for the use of the county, as fully and as effectually as any person may or can sue on like instruments made to him. [P. D. 1054.]

Art. 1580. [1373] [797] [684] Agents to contract for county.—The commissioners court may appoint an agent or agents to make any contract on behalf of the county for the erection or repairing of any county buildings, and to superintend their erection or repairing, or for any other purpose authorized by law. The contract or acts of such agent or agents, duly executed and done, for and on behalf of the county, and within his or their powers, shall be valid and effectual to bind such county to all intents and purposes. [P. D. 1055.]

Acts 1933, 43rd Leg., p. 11, ch. 9, relates to the appointment of a purchasing agent in counties of 100,000 to 150,000 having a city of population in excess of 100,000, and being applicable only to Tarrant County is a special law.

Acts 1933, 43rd Leg., p. 110, ch. 55 as amended by Acts 1937, 45th Leg., p. 599, ch. 301, was passed as a general law, but is in fact applicable to Tarrant county only.

Acts 1947, 50th Leg., p. 491, ch. 288 provides for the appointment of a purchasing agent in counties of 140,000 to 338,000.

Acts 1943, 48th Leg., p. 382, ch. 257, §§ 4–7, relates to the appointment of a county purchasing agent in counties of 140,000 to 220,000 in which the Federal government had authorized the construction of large synthetic rubber plants.

Acts 1947, 50th Leg., p. 491, ch. 288 relates to the appointment of a purchasing agent in counties of 140,000 to 338,000.

Art. 1581. [1374] [798] [685] Costs in suit against county.—When the plaintiff in any suit against a county shall fail to recover a greater amount than the commissioners court of such county shall have allowed to such plaintiff on the presentation of his claim to such court, such plaintiff shall pay all costs of such suit. [P. D. 1056.]

Art. 1581a. County Home Rule Charters; Adoption. [Ineffective, see Art. 1606a, § 21. post.]

This article, (Acts 1933, 43rd Leg., p. 784, ch. 232) which was adopted in anticipation of the amendment to Const. art. IX, section 3 (adopted Aug. 26, 1933) providing for County Home Rule, was made ineffective by Acts 1933, 43rd Leg., 1st C.S. p. 249, ch. 91, § 21, set out as article 1606a, § 21 of this title, which provides that this article "shall not have effect after the instant at which this Act may be in effect, but all procedures taken thereunder (relating to the formulation, circulation, presentation and prosecution of petitions, including all orders and notices of commissioners courts relative to such petition conventions held or other acts done) hereby are validated, to the same effect as though the same had been done hereunder."

Art. 1581b. Additional law enforcement officers.—Section 1. In all counties in this state having five thousand (5,000) or more cattle, sheep and goats rendered for taxation, such counties may employ certain additional law enforcement officers as hereinafter provided.

Sec. 2. To aid in the enforcement of all penal laws of this state, and ferreting out and detecting any violation thereof, the Commissioners Court of counties having five thousand (5,000) or more cattle, sheep, and goats rendered for taxation may, if they deem it necessary, and are hereby authorized to, employ in addition to the officers now provided for by law as many other competent and discreet persons as in the judgment of said court is necessary, and shall fix the compensation; provided, however, no such person, or persons, shall be paid in excess of Five ($5.00) Dollars per day, while in actual service. Such court shall designate the duties to be performed by all such persons and shall require them to make monthly reports in writing to said court as to the manner in which they have performed such duties.

Sec. 3. If the Commissioners Court of several counties shall determine that it would be more economical and efficient to employ one or more men to serve the several counties, they may do so; provided, however, that the individual or individuals employed shall receive the compensation set out in Section 2 of this Act and that the salary and expenses of such officer or officers shall be pro-rated among the counties. [Acts 1943, 48th Leg., p. 389, ch. 262.]

Art. 1581c. Relinquishing to donors lands donated to county for county purposes.—Section 1. Commissioners Courts of the respective counties in this State are authorized and empowered to abandon and relinquish to the donors of such lands and

their successors in the title, all lands donated to their county for county seats, courthouses and other county purposes, in all cases where such land has been abandoned and not used for more than forty (40) years for the purpose of such donation, at the date of the order of such Court abandoning and relinquishing the same, provided, however, that the provisions of this Act shall not apply unless it is shown that such donors and their successors in title have been in actual continuous, open, peaceful and adverse possession of such lands for a period of forty (40) years next preceding the order of such court abandoning, relinquishing or conveying of such realty by the Commissioners Court.

Sec. 2. All orders and judgments of the respective Commissioners Courts in this State abandoning or conveying or relinquishing lands which had been conveyed to their respective counties for county seat, courthouse or other county purpose, heretofore made, in cases where such land has not been used for the purpose of its donation for more than forty (40) years are hereby validated.

Sec. 3. Commissioners Courts of the respective counties in this State are authorized and empowered to reconvey and relinquish to the donors of such land, or to their successors in the title, all lands which were donated and conveyed to any such counties for county seat, county court, or other county purposes, which lands have been or may be abandoned and unused for such county purpose for a period of more than forty (40) years, as for failure of consideration of such grant to any such county. [Acts 1947, 50th Leg., p. 378, ch. 212.]

CHAPTER 4.—COUNTY LINES

Art.
1582. Survey made.
1583. Marking boundary.
1584. Natural objects.
1585. Notice to other counties.
1586. Oath and bond of surveyors.
1587. Return and record of field notes.
1588. Absence of surveyor.
1589. Land Commissioner to direct survey.
1590. Division of expense.
1591. Suit to establish boundary.
1592. Marking line on map.
1592a. Gulfward boundary lines of counties bordering on gulf.

Article 1582. [1375] [799] Survey made.—Whenever it appears to the satisfaction of the county court of any county, or notice shall be given such court by the Land Commissioner that the boundary or any part thereof, of the county is not sufficiently definite and well defined, such court shall appoint an experienced and competent practical surveyor, whose duty it shall be to ascertain by actual survey the boundary, or any part thereof, of said county, and to make and establish the lines and corners in the manner herein prescribed. The court, in the order making the appointment, shall specify the line or lines to be run, and the corners to be established and marked; and shall in all things conform to the law defining the boundaries of said county. [Acts 1879, p. 137; G. L. vol. 8, p. 1437.]

Art. 1583. [1376] [800] Marking boundary.—The initial corners of the surveys herein provided for shall be designated by posts, mounds or stone monuments; the posts shall be of hewn cedar, cypress or bois d' arc, at least eight inches in diameter, five feet long, and set in the ground not less than three feet; the mounds shall be of stone when practicable, otherwise of earth, and not less than two feet high; at the end of each mile in said boundary a like post, mound or stone monument shall be established; the initial corners shall be described on the post or monument established there. [Id.]

Art. 1584. [1377] [801] Natural objects.—In the field notes of the survey of the lines ordered to be run, the surveyor shall give accurate description of all prominent natural objects crossed by, or adjacent to said lines, as well as of the corners and lines of surveys on or near said boundaries. [Id.]

Art. 1585. [1378] [802] Notice to other counties.—The court making such order shall cause a copy thereof to be sent to the county courts of the counties interested in such boundary, stating the time and place, which time shall not be later than twenty days after the meeting of the county court of the county notified, for the commencement of the survey; and such notice shall be given at least ten days before the meeting of said county court; and the court so notified shall appoint an experienced and competent practical surveyor to proceed at the time and place to assist in running and establishing such line. [Id.]

Art. 1586. [1379] [803] Oath and bond of surveyors.—Such surveyors shall take the oath of office prescribed by law for county surveyors, and shall, before entering upon the duties herein prescribed, enter into bond in the sum of one thousand dollars, with two or more sureties to be approved by the county judge, payable to the county judge or his successors in office, conditioned for the faithful performance of his duty. [Id.]

Art. 1587. [1380] [804] Return and record of field notes.—When the line shall have been surveyed and marked as herein provided, it shall be the duty of the surveyor to make due return of the field notes and map to the county court; which field notes and map shall be recorded by the clerk, and a certified copy thereof returned to the general land office. [Id.]

Art. 1588. [1381] [805] Absence of surveyor.—If either of the surveyors appointed to run and mark such line shall fail to attend at the time and place appointed, the one in attendance shall proceed alone to perform the duties assigned and make his report to the county court of the county employing him, which being approved by such court, shall be recorded as evidence of the line in question. The line so surveyed and marked shall thereafter be regarded as the true boundary line between the counties. [Id.]

Art. 1589. [1382] [806] Land Commissioner to direct survey.—If the surveyors above provided for fail to agree as to the true boundary line between their respective counties, the facts of such disagreement, with a full statement of the questions at issue between them, shall be by them reported to the Land Commissioner, who shall examine the disputed matter at once; and from such data as the maps and archives of his office furnish, shall designate to such surveyors the line to be run stating at what specific point they shall begin and to what specific point they shall run, adhering as nearly as possible to the line designated in the act creating such county line, which instructions shall be authority for said surveyors to run such line. The line so run as above directed shall thereafter be the true dividing line between said counties. [Id.]

Art. 1590. [1383] [807] Division of expense.—The expense of surveying and marking such line shall be divided between the counties interested, in proportion to the frontage of each county upon the line, and paid for by each county as proportioned. The surveyors appointed as herein provided shall receive for their services three dollars per mile for each mile run. The expense of establishing the posts, mounds, or stone monuments shall be paid by the counties interested, and they shall be erected under the supervision and direction of the surveyor. [Id.]

Art. 1591. [1385] Suit to establish boundary.—Notwithstanding any preceding article of this chapter, any county in this State may bring suit against any adjoining county or counties, for the pur-

pose of establishing the boundary line between them. Such suit shall be brought in the district court of the county in an adjoining judicial district whose boundaries are not affected by the suit, and whose county seat is nearest the county seat of the county suing. Said court shall try said cause as other causes, and shall have jurisdiction to determine where such boundary line is located, and, if necessary, shall order the same to be remarked and resurveyed. If, in the trial of any such cause, it is found that the boundary line between the counties involved has never been established and marked, or if marked has become indefinite and undefined, said court shall have power to re-establish the same and order it marked. Any boundary line so established by such judgment shall thereafter be regarded as the true boundary line between the counties in question; provided, that if it shall be found in any such cause that the boundary line in question has been heretofore established under the law then in force, the same shall be declared to be the true line, and shall be resurveyed and established as such. [Acts 1897, p. 222; G. L. vol. 10, p. 1276.]

Art. 1592. [1386] Marking line on map.—It shall be unlawful for the Land Commissioner to mark, fix or place on any of the maps in said office any contested county line at any definite point thereon, until a certified copy of the final judgment of the court is filed in the General Land Office, together with a certified copy of the field notes of the line so established by such judgment. [Id.]

Art. 1592a. Gulfward boundary lines of counties bordering on Gulf.—Section 1. The gulfward boundary lines of all of the counties of this state bordering on the coast line of the Gulf of Mexico are hereby fixed and declared to be the continental shelf in the Gulf of Mexico.

Sec. 2. The Commissioner of the General Land Office is hereby authorized and directed to have the area between the coast line of the Gulf of Mexico and the continental shelf compiled and platted, and fix and locate the boundary lines between the several coastal counties from the coast line to the continental shelf. The boundary lines from the coast line to the continental shelf between the counties shall be fixed and located by the Commissioner of the General Land Office in accordance with established engineering practice. The legal description of the boundary lines as fixed between the counties from the coast line to the continental shelf shall be filed and recorded in the office of the county clerk of the county affected thereby.

Sec. 3. All of the areas within the extended boundaries of said counties as provided in this Act shall become a part of the Public Free School Lands and Domain and shall be subject to the Constitutional and Statutory provisions of this state pertaining to the use, distribution, sale and lease of Public Free School Lands of this state.

Sec. 4. If any section, provision, or part whatsoever of this Act should be held to be void as in violation of the Constitution, it shall not affect the validity of the remaining portions thereof, it being the express intention that the Legislature would have passed the bill without the presence of the section or part thereof to be invalid. [Acts 1947, 50th Leg., p. 490, ch. 287.]

CHAPTER 5.—COUNTY SEATS

Art.
1593. Election for county seats.
1594. Vote necessary.
1595. Election for removal of.
1596. Proceedings for removal of county seat.
1597. Geographical center.
1598. Who may vote and form of ballot.
1599. Election.
1600. County seats removed, when.
1601. Subsequent election.
1602. Courts shall hold at seat.
1603. Buildings to be provided.
1604. Place of holding court.
1605. Location of offices; branch offices discretionary with commissioner court; bonds of deputies.
1605a. Branch office buildings in counties having city of 20,000 outside county seat.

Article 1593. [1387] [809] Election for county seats.—In the organization of any county or counties now existing, or hereafter created by the Legislature, it shall be the duty of the county judge holding the election in such county for county officers thereof to order an election for the location of a county seat therein, which shall be conducted in the same manner as that regulating the election of the officers of such new county. The place receiving a majority of all the votes cast by the electors voting on the location of such county seat shall thereafter be the county seat of such county, subject to be removed as other county seats. When any county has been organized, and no county seat has been located, the county judge of such county shall order an election for the location of a county seat. [Acts 1883, p. 82; G. L. vol. 9, p. 388.]

Art. 1594. [1388] [810] Vote necessary.—No county seat first established in a newly organized county shall be located at any point more than five miles from the geographical center of any county in this State, unless by a two-thirds vote of all the electors voting on the subject in said county. [Acts 1881, p. 67; G. L. vol. 9, p. 159.]

Art. 1595. [1389] [811] Election for removal of.—No county seat situated within five miles of the geographical center of any county shall be removed except by a vote of two-thirds of all the electors in said county voting on the subject; nor shall any county seat be removed from a point more than five miles from the geographical center of any county to any other point more than five miles from such center, nor from a point within five miles of the geographical center to any other point within five miles of such center, except by a two-thirds vote of all the electors in said county voting on the subject. No person shall be allowed to vote except he be a bona fide citizen of the county in which he offers to vote. A majority of said electors, however, voting at such election may remove a county seat from a point more than five miles from the geographical center of the county to a point within five miles of such center; in either event the center to be determined by a certificate from the Land Commissioner. [Acts 1879, p. 84; G.L. vol. 8, p. 1384; Acts 1927, 40th Leg., 1st C.S. p. 7, ch. 5, § 1; Acts 1929, 41st Leg., p. 343, ch. 160, § 1.]

Art. 1596. [1390] [812] Proceedings for removal of county seat.—When it becomes desirable to remove the county seat of any county, the county judge of said county, upon the written application of not less than one hundred freeholders and qualified voters, who are resident citizens of said county shall make a written order upon the minutes of said commissioners court for the holding of an election at various voting precincts in said county on a day therein named, which shall not be less than thirty nor more than sixty days from date of order, for the purpose of submitting the question to the electors of said county. When a county seat has been established for more than ten years, it shall require two hundred freeholders and qualified voters to make said application. In counties having less than three hundred and fifty legal voters, to be determined by the number of votes cast at the last preceding general election such application may be made by one hundred resident freeholders and

qualified voters of said county. When a county seat has been established for more than forty years, it shall require a majority of the resident freeholders and qualified voters of said county to make the application, said majority to be ascertained by the county judge from the assessment rolls thereof. In counties having not more than 150 qualified voters, such application shall be held sufficient when it shall have been signed by a majority of the resident freeholders and qualified voters of said county, said majority to be ascertained by the county judge from the assessment rolls thereof. In the event of the failure, refusal or inability of the county judge to perform any duty imposed upon him by this article such duty may be performed by any two county commissioners of the county. [Acts 1893, p. 164; Acts 1919, 2nd C. S. p. 77.]

Art. 1597. [1391] [813] Geographical center.—The Land Commissioner, upon being notified by the county judge that a proposition is submitted to the people of his county, or that it is desirable on the part of the people thereof, that the center of such county shall be designated, preliminary to the removal of any county seat, shall from the maps, surveys and other data on file in his office, designate the center of such county, and shall certify the same to such county judge, who shall cause the same to be spread upon the records of deeds of his county. [Acts 1879, p. 84; G. L. vol. 8, p. 1354.]

Art. 1598. [1392] [814] Who may vote and form of ballot.—All persons who are qualified voters under the Constitution and laws of the State shall be entitled to vote at said election. On each ticket, the voter shall write or cause to be written or printed: "For removal to ....." (inserting the name of the place); or, should the voter be in favor of the county seat remaining where it is, he shall write or cause to be written or printed on his ticket: "For remaining at ....." (inserting the name of the place.) [Id.]

Art. 1599. [1393] [815] Election.—The county judge or commissioners shall order said election in each voting precinct in said county, which shall be conducted as near as may be, as elections for county officers. The officers holding the elections shall make return thereof to the authority ordering said election within ten days after the same was held, who shall then proceed to open said returns and count the same, and declare the result, which shall be entered upon the records of said commissioners court, and shall also state the name of the place from which, and the name of the place to which, the same is removed. A certified copy of such entry shall thereupon be recorded in the proper record deeds of such county. [Id.]

Art. 1600. [1394] [816] County seats removed, when.—When such entry has been made, the county seat, if the election be held to move the county seat from a point within five miles of the geographical center, to a point more or less than five miles from the geographical center, or from a point more than five miles from the geographical center, to any other point more than five miles from such center, shall be removed to the place receiving the votes of two-thirds of all the electors voting on the subject; and such place shall thereafter be the county seat of such county. If the election be held to move the county seat from a point more than five miles from the geographical center to a point within five miles of such center, then the county seat shall be moved to the place receiving a majority of all the electors in the county voting at such election, and such place shall thereafter be the county seat of such county. [Acts 1879, p. 84; G.L. vol. 8, p. 1354; Acts 1927, 40th Leg., 1st C.S., p. 7, ch. 5, § 2; Acts 1929, 41st Leg., p. 343, ch. 160, § 2.]

Art. 1601. [1395] [817] Subsequent election.—Whenever an election for the location or removal of a county seat has been voted on by the electors of any county, and the question settled, it shall not be lawful for a like application to be made for the same purpose within ten (10) years thereafter. Provided that an application may be made and an election held to remove the county seat from a location more than five (5) miles from a railroad operating as a common carrier, to a location on a railroad within two (2) years thereafter; and further provided that no county seat of any county in the State of Texas shall be moved from its present location until all bonds, warrants, and evidence of debt of every kind, character, and description issued by said county and incurred for the construction of existing courthouse or courthouses, shall have been paid in full provided that the provisions of this Act shall not apply to counties where the county seat is at the time of the passage of this Act located more than fifteen (15) miles air-line from a railroad. [Acts 1879, p. 84; G.L. vol. 8, p. 1354; Acts 1927, 40th Leg., p. 264, ch. 185; Acts 1933, 43rd Leg., p. 328, ch. 128.]

Acts 1933, 43rd Leg., p. 328, ch. 128 purporting, in its title, to amend this article so as to require all indebtedness against court house to be paid in full before the county seat can be moved held invalid in so far as increasing from five to ten years the time in which an election for removing a county seat could not be held after a prior election for that purpose, on ground subject was not embraced in title of act as required by Const. art. 3, § 35. Rutledge v. Atkinson, Civ.App., 101 S.W.2d 376.

Art. 1602. [1396] [818] [704] Courts shall hold at seat.—All terms of the district, county and commissioners court shall be held at the county seat.

Art. 1603. [1397] [819] [705] Buildings to be provided.—The county commissioners court of each county, as soon as practicable after the establishment of a county seat, or after its removal from one place to another, shall provide a court house and jail for the county, and offices for county officers at such county seat and keep the same in good repair. [R. S. 1879; (Art.) 705.]

Art. 1604. [1398] [820] Place of holding court.—Until the county seats of new counties are established, as required under this chapter, the courts of such new counties shall be held at such place as may be appointed by the commissioners court of such county. [Acts 1879, p. 84; G. L. vol. 8, p. 1354.]

Art. 1605. [1399] Location of offices; branch offices discretionary with commissioner court; bonds of deputies.—The County Judge, Sheriff, Clerks of the District and of the County Courts, County Treasurer, Assessor and Collector of Taxes, County Surveyor and County Attorney of the several counties of this State, shall keep their offices at the county seats of their respective counties; provided, however, that in all counties having a city or cities, other than the county seats, within their boundaries, having a population of five thousand (5,000) and over, and in counties of over three hundred fifty thousand (350,000), according to the last Federal Census, the Assessor and Collector of Taxes when authorized by Order of the Commissioners' Court may maintain a branch office in said city or cities, and may appoint one or more Deputies for said offices, and the salaries to be paid said Deputies together with the office rent and other expenses incidental to maintaining said offices shall be considered as a part of the necessary expenses of the Assessor and Collector of Taxes and shall be paid in the manner now provided by law for the payment of the expenses of the Assessor and Collector of Taxes; and provided further that in all counties having a population of more than seventy-four thousand (74,000), according to the last Federal Census, and containing one or more cities or towns, other than the county seat, which has in excess of one thousand (1,000) inhabitants, according to the last

Federal Census, said Tax Assessor and Collector with the consent and approval of the Commissioners' Court may maintain a branch office and may appoint a Deputy Tax Collector in each such town or city, who shall have the right to collect taxes from all persons who desire to pay their taxes to him, and to issue a valid receipt therefor. Such Deputy shall enter into such bond, payable to the County Judge of the County, as the Tax Assessor and Collector and Commissioners' Court of the county may require. The period of time such branch offices shall be maintained, and the salary of such Deputy Collector and the period of time he shall hold such office shall be fixed by the Commissioners' Court and such Deputy Collector shall be subject to all of the terms and provisions of the law relating to Deputy Tax Collectors. The Tax Collector shall remain liable on his bonds for all taxes collected by such Deputy, and nothing herein shall be construed as a limitation on the liability of the bonds of either the Tax Collector or such Deputy. Nothing contained herein shall be construed as making it mandatory upon the Assessor and Collector of Taxes and the Commissioners' Courts of such counties to maintain such branch offices and appoint such Deputies, but the establishment of such branch offices and the appointment shall wholly be within the discretion of the Commissioners' Courts of such counties. When such branch office or offices are established and a Deputy or Deputies are appointed hereunder, the salary or salaries to be paid and expense necessary to maintain said office or offices shall be considered as a part of the necessary expenses of the Assessor and Collector of Taxes, and shall be paid as now provided by law for the payment of the expenses of the Assessor and Collector of Taxes. [Acts 1925, p. 508; Acts 1931, 42nd Leg., p. 819, ch. 338, § 1; Acts 1937, 45th Leg., p. 63, ch. 39, § 1.]

Art. 1605a. Branch office buildings in counties having city of 20,000 outside county seat.—Sec. 1. In all counties having a city or cities other than the county seat within their boundaries, of a population of twenty thousand (20,000) and over, according to the last Federal Census, the Commissioners Court of each said county shall have the power and authority to provide, maintain, and repair an office building and/or jail in the same manner as such Commissioners Court may now provide for and maintain a courthouse and jail at the county seat, and upon the acquisition or construction of such office building, the Commissioners Court may authorize, in the same manner as authorized by Article 1605, the maintaining of branch offices in each of said cities, except the District Clerk, County and District Judges, County Clerk, and County Treasurer, provided that all officers shall keep all original records at the county seat, and deputies may be provided as authorized in Article 1605. The Commissioners Court shall have the care and custody of such buildings and may place such limitations as it may see fit on the authorization and maintenance of branch offices. [As amended Acts 1933, 43rd Leg., p. 101, ch. 49, § 1.]

Sec. 2. Said office building and/or jail may be provided for, maintained and repaired by the issuance of bonds as is provided by Chapters 1 and 2, Title 22, Revised Civil Statutes, 1925, and all amendments thereto, or to provide, maintain, and repair the same through the issuance of evidences of indebtedness in the same manner as courthouses and jails at the county seats, and the taxes may be levied therefor in the same manner and subject to the same limitations as for courthouses and jails at the county seat; provided, however, that no such office building and/or jail shall cost more than One Hundred Fifty Thousand Dollars ($150,000.00). [As amended Acts 1933, 43rd Leg., p. 101, ch. 49, § 1.]

Sec. 3. All acts of the Commissioners Court in any such county ordering an election or elections on the question of the issuance of bonds for the purpose of purchasing a site and erecting and equipping an office building for county officers and a jail in any city other than the county seat of such county, declaring the result of such election or elections, in levying taxes therefor, and all bonds issued and now outstanding, and all bonds heretofore voted for such purpose but not yet issued, are in all things confirmed, approved and validated. The fact that by inadvertence or oversight any act of the Commissioners Court or other county official was omitted in ordering an election or elections, or in declaring the result thereof, or in levying the tax for such bonds, shall in no way invalidate any of such proceedings or any bonds heretofore issued or that have heretofore been voted but not yet issued, but the same shall in all things and respects be deemed valid. [Acts 1931, 42nd Leg., p. 810, ch. 333; Acts 1933, 43rd Leg., p. 101, ch. 49, § 1.]

Acts 1933, 43rd Leg., p. 101, ch. 49, § 1, amended sections 1 and 2 of this article and added section 3 to this article.

CHAPTER 6.—COUNTY BOUNDARIES

Article 1606. [1400] [822] Boundaries as established, adopted, and acts creating continued in force.—The county boundaries of the counties in this State as now recognized and established are adopted as the true boundaries of such counties, and the acts creating such counties and defining the boundaries are continued in force.

Jim Hogg County. Acts 1945, 49th Leg., ch. 60, p. 84, amended Acts 1913, 33rd Leg., p. 133, ch. 73 creating Jim Hogg County, so as to clearly define the location of the east line of Jim Hogg County, which is a common boundary to both Jim Hogg and Brooks Counties.

CHAPTER 7.—COUNTY HOME RULE

Art.
1606a. County Home Rule.

Sec.
1. Purpose of act.
2. Precinct and county conventions; delegates to select Charter Drafting Commission.
3. Qualifications of petitioners and electors; notice.
4. Form and requisites of petition; qualifications of petitioners; number of signatures required.
5. Calling precinct charter conventions; designation of time and place for precinct and county conventions.
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15. Adoption of charter; amendments; majority of votes cast outside cities and towns necessary for adoption.
15a. Majority of votes cast outside cities and towns necessary for adoption.
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Art.
1606a. County Home Rule—Cont'd.
Sec.
18. Constitutional rights and powers of counties recognized.
19. Charter provisions ineffective against state's governmental powers.
20. Partial unconstitutionality.
21. Proceedings under Anticipatory Enabling Act validated.

Art. 1606a. County Home Rule.

Purpose of Act

Sec. 1. The purpose of this Act is to provide an enabling Act under the recent Constitutional Amendment adopted and known as Section 3 of Article 9 of the Constitution of the State of Texas, hereinafter sometimes referred to as "the Amendment," in order that the counties coming within the provision of such article may adopt, upon a vote of the qualified resident electors of such counties, a Home Rule Charter in accordance with the terms and provisions of such portion of the Constitution.

Precinct and county conventions; delegates to select Charter Drafting Commission

Sec. 2. This Act shall apply to any qualified county of Texas, desiring to adopt a Home Rule Charter under the powers, and within the limitations, expressed by Section 3 of Article IX of the Constitution of Texas; and, the people of any qualified county who may desire to move for the adoption of a county charter, under such Constitutional provisions, shall proceed thereto by calling a convention in each voting precinct of the county for the purpose of choosing a delegate and an alternate delegate to a county wide convention; which convention shall be charged with the duty to select a Charter Drafting Commission to be composed of persons considered capable of drafting, or to give aid in drafting, a charter deemed to conform to the will and needs of the qualified resident electors of the county; and, to be subject to rejection or adoption by vote of the people of the county; all to be done in keeping with the provision of said amendment and under the procedural safeguards by this Act provided.

Qualifications of petitioners and electors; notice

Sec. 3. All persons hereinafter referred to as the signers of petitions, as participating in precinct or county conventions and as voting in elections, to be held hereunder, shall be understood to mean resident qualified electors of the affected county. Where the publication of notice is required, unless otherwise provided as to a given case, such notice shall be given by publication in one or more newspapers, having general circulation in the county, at least one day in each of two (2) consecutive weeks, and to give not less than fourteen (14) days from the first day of such publication to the day of any proposed act to which such notice may relate, excluding the day of first publication and the day of the proposed act. The mailing of notice, as later in this Act may be required, unless otherwise provided as to a given case, shall be given by depositing in the United States Mail written notice properly stamped and appropriately addressed to the person or persons proper to have notice of a given matter, giving advice of the time and place at which any given proposed act is to be considered or done. Not less than two (2) nor more than ten (10) business days (to be exclusive of the day of the mailing of the notice and the day of a proposed act) may run between the mailing of such notice and any desired meeting for the performance of an act to be done hereunder, all as hereinafter will be required; provided, however, calls for meetings of the Charter Drafting Commission (hereinafter provided for) shall be as established by it, as being reasonable, fitting and necessary.

Form and requisites of petition; qualifications of petitioners; number of signatures required

Sec. 4. Proponents of the adoption of a county charter hereunder, subject to the further provisions of this Section, may procure and present to the commissioners' court of the county (hereinafter designated as the "Court") one or more petitions, bearing the true date upon which the circulation thereof began, seeking the calling of precinct and county conventions (as hereinafter provided for), and identical petitions signed by different qualified persons shall be considered as one petition. Only persons who are resident qualified voters of the county, owning real estate subject to the county's tax, may validly sign the petitions hereby provided for. The minimum number of signatures required upon such petitions shall be determined upon the county population basis, as given in the Federal Census issued next prior to the date of a given petition, and to be as follows: Counties of five thousand (5,000) population or under, one hundred (100); counties of five thousand and one (5,001) to ten thousand (10,000), two hundred (200); counties of ten thousand and one (10,001) to twenty-five thousand (25,000), three hundred (300); counties of twenty-five thousand and one (25,001) to seventy-five thousand (75,000), four hundred (400); counties of seventy-five thousand and one (75,001) to one hundred fifty thousand (150,000), five hundred (500); counties of one hundred fifty thousand and one (150,001) or more, six hundred (600). Any form of petition which indicates the desire to proceed for adoption of a Home Rule Charter for the county (which hereinafter may be referred to as the "Charter"), under said Section 3 of Article IX of the Constitution shall be sufficient. Upon the delivery of such petition it shall be the duty of the clerk of said court to mark the day of filing thereon, and thereafter, as soon as may be done, to record the same in the minutes of the court as a part of the order which the court must enter in compliance with the petition.

Calling precinct charter conventions; designation of time and place for precinct and county conventions

Sec. 5. At the first meeting of the court after the filing of any such petition, or at any time not to exceed ten (10) days after the filing of such petition, it shall be the duty of the court to enter its order to execute said petition by calling a precinct charter convention (hereinafter provided for) in each voting precinct of the county, as defined and designated at the time any such petition may bear date, for the purpose of selecting one delegate and an alternate from each precinct to participate in a county convention (hereinafter provided for). The court's call shall fix the time for holding such precinct conventions, for a time not less than twenty (20) days nor more than thirty (30) days after the date of the calling order, and shall fix the time for the holding of the county convention for a time not less than ten (10) days nor more than twenty (20) days after the time set for holding precinct conventions.

The call shall designate for each precinct a place therein for the holding of its convention and shall specify the time for opening such conventions at ten (10) o'clock of the morning. Such call also shall specify a place in the county seat (preferably a designated room in the county courthouse) for the holding of the county convention, and shall designate an opening hour therefor not earlier than ten (10) o'clock of the morning and not later than two (2) o'clock of the afternoon.

Form of notice calling precinct charter convention; publication; errors

Sec. 6. The form of the call provided for in Section 5 hereof shall be in form substantially as follows:

NOTICE

State of Texas,
County of ———.

To Each Resident Qualified Elector of This County:

Complying with a petition seeking the adoption of a County Home Rule Charter, filed with the county commissioners' court of this county on the ——— day of ———, 19—, we issue and publish this call for precinct conventions and a county convention to provide a commission to draft a proposed charter to be submitted to a vote of the qualified electors of this county. You respectively hereby are notified to be present at ten (10) o'clock in the morning on the ——— day of ———, 19—, at the place hereinafter designated for the county voting precinct in which you may reside, for the purpose of participating in a precinct convention for the election of one delegate and one alternate to represent your precinct in a county convention to be held in (name place, city or town and designate the place therein) and to convene at ——— o'clock —m., on the ——— day of ———, 19—.

In the precinct convention each qualified person present and participating (to exclude all persons who are not qualified voters residing in the precinct) shall be entitled to one vote each on each question presented, and all questions shall be determined by a majority of the votes cast. Organization shall be effected by choice of a temporary chairman and a temporary secretary, to be followed by selection of a permanent chairman and a permanent secretary. The procedure shall be under Robert's Rules of Order or other orderly procedure. All votes save those incident to organization shall be by written ballot. The convention by majority vote, will choose one delegate and one alternate to participate in the county convention, both of whom must reside in the county voting precinct to be represented by them. When the delegate and the alternate shall have been chosen, the chairman and the secretary of the convention, in the presence of the convention shall sign the credentials of the delegate and the alternate, both of whom shall countersign the credentials for identification, if required by the county convention. The credentials shall be sufficient if in form substantially as follows:

———, ———, 19—.

To County Convention:

This certifies to you that ——— (whose post office address is ———), as delegate, and ——— (whose post office address is ———), as alternate, will be authorized to represent precinct number ——— in your proceeding.

Chairman. Secretary.

Countersigned:

Delegate. Alternate Delegate.

The credentials so executed shall be placed in an envelope bearing the secretary's name written across the closed seal, and delivered by the delegate, or the alternate, to the temporary secretary of the county convention at the time of its convening. Whereupon, the persons so certified shall be entitled to represent your precinct in the county convention. The official county voting precinct numbers and the respective places for holding the several precinct conventions follow, viz.:

Precinct No. (Here Designate)	Place of Convention. (Here Designate)

Commissioners' Court of ——— County, Texas.

Attest: By ———
County Judge.

Clerk
(Seal.)

Said notice, as soon as may be done, shall be published as provided in Section 3 of this Act. No error in the form of the notice or the printing thereof which is not harmfully misleading, after the exercise of reasonable diligence to know the truth, shall invalidate the call for the conventions.

Precinct convention

Sec. 7. The precinct convention shall be held, organized and shall proceed to a conclusion as specified in the convention call written in Section 6 hereof.

County convention; procedure

Sec. 8. The county convention shall convene at the time and place designated in the call therefor (or other wellknown adequate place, if it be not convenient to occupy the place originally designated), and shall proceed to temporary organization as provided for precinct conventions. The temporary chairman shall call for the presentation of credentials of delegates and their alternates, whereupon the temporary chairman and temporary secretary, in the presence of all persons present who may desire to supervise, shall open the credentials and shall prepare a written permanent roll of all persons shown by the credentials to be authorized to participate in the further proceedings of the convention. The convention shall then proceed to permanent organization by electing a permanent chairman and secretary. Upon the roll shall be noted those delegates (and alternates for absent delegates) who may be present for participation in the convention. Procedure shall be in accordance with Robert's Rules of Order. The presence at roll call for the opening session of the convention of fifty-one (51), or more, per centum of the total number of authorized delegates shall constitute a quorum for the conduct of business during such session and until final adjournment and dissolution of the convention.

All questions shall be decided by a majority of the votes cast thereon. An alternate shall be permitted to participate in the proceedings of the convention only in the absence or non-participation of the delegate for whom such alternate was chosen. All votes other than votes on organization shall be by written ballot bearing the voter's name and precinct number. The respective yeas and nays upon every question shall be recorded by name in the presence of the convention, the result of each ballot shall be declared to the convention in an audible voice and shall be recorded in the convention's journal, in a manner showing each issue decided by each ballot taken. The convention may recess from time to time, but may not adjourn, until the work is ended; provided that, the time and place for resuming its session after a recess thereof shall be announced prior to such recess, or written notice of reassembly given as provided in Section 3 of this Act. The business of the convention shall be dispatched with all possible diligence, and no compensation or expense shall be allowed to any member of the convention.

Manner of choosing Charter Drafting Commission and number of members

Sec. 9. (a) When the convention shall have been organized, the members, by ballot shall determine whether the Charter Drafting Commission (which hereinafter may be referred to as the "Commission") to be chosen shall consist of three (3), five (5), seven (7), nine (9), eleven (11), thirteen (13) or fifteen (15) members. This having been determined, the chairman of the convention, from the membership of the convention, shall appoint a nominating committee of five (5) persons, who shall retire and prepare a list, alphabetically arranged, of proposed members of the commission to be chosen, which list shall bear twice as many names of persons as there are to be members of the Drafting Commission, and regional representation may properly be made a consideration in the nominations. The persons to be named by the nominating committee may or may not be members of the convention, but they shall be persons deemed to have peculiar fitness for the drafting of, or to aid in the drafting of, a charter to control the county government.

(b) When the nominating committee shall have reported, they shall be discharged and the secretary of the convention will furnish to each present member of the convention a true copy of the nominations, together with a ballot slip on which shall be written the number of names to be voted for. From the names nominated by the committee, each voting member of the convention shall select from those nominated persons (equal in number to the membership of the Drafting Commission) preferred by the voting member for service on the commission, indicating the choice by crossing out the names of those nominated persons not preferred by the voter. There may be as many ballots as are required to obtain a majority vote for a number of nominees equal to the membership of the Drafting Commission. Those persons receiving in consecutive order from high to low, the highest number of votes shall be elected for service: In case of a tie vote, balloting shall continue until the tie is broken. The results of each ballot shall be tallied and canvassed by the secretary, in the presence of the convention and the result audibly declared. The Drafting Commission so chosen shall be given their written credentials, signed by the chairman and secretary of the convention. Written minutes of all proceedings of the convention shall be kept in a journal, audibly read in the presence of the convention, and if found without majority sustained objection, they shall be approved and signed by the chairman and the secretary of the convention (safely to be preserved for disposition as later in this Act is provided), and thereupon the convention shall be adjourned, subject to recall only as hereinafter is provided for.

Journals

Sec. 10. The County Charter Convention and the Charter Drafting Commission each shall cause to be kept a daily journal correctly reflecting their respective proceedings, and showing the yea and nay votes on all substantive questions, which shall be adequately identified in the journals. These journals must be preserved as permanent records and filed as archives in the records of the administrative body of the county, as hereinafter provided for.

Drafting Commission; rules; vacancy in office; procedure

Sec. 11. (a) Within ten (10) days after their election the Drafting Commission shall convene at some convenient time and place in the county seat, known in advance to all members of the commission, for organization, which shall be as for organization of a precinct convention. The commission may adopt all necessary reasonable rules to control notice of meetings and its procedure, save that, attendance of a majority of the commission's membership shall be required to constitute a quorum for business, and all questions shall be decided by a majority vote of those members in attendance. So long as there be not vacancies to destroy a lawful quorum of the commission, it lawfully may transact its business and perform its duties; however, in case of a vacancy of a membership either through inability or failure or refusal of a member to act, the commission may certify the vacancy to the commissioners' court, whereupon it shall become the duty of the court to fill the vacancy on the commission by a majority supported order entered of record in its minutes.

(b) The Drafting Commission shall be empowered to employ one clerk, who shall be a competent stenographer and who shall fill the office of secretary of the commission. The commission shall be authorized to make reasonable compensation to its secretary, but not, in any event, to exceed Six Dollars ($6.00) per day of actual service, and ratably for a fraction of a day. The commission shall be authorized to incur all other reasonable expense, necessary to facilitate its work, but not in any event to exceed Three Dollars ($3.00) per day (exclusive of the cost to publish notices, as required by this Act) for the full period from the first meeting day of the commission until it may have been discharged. The expenses so incurred, and the cost to publish the notices by this Act required, shall be paid under orders signed by the chairman and the secretary of the Drafting Commission, addressed to the commissioners' court of the county, and, if the vouchers accompanying such orders be found to support the same, it shall be the duty of the court promptly to make payment thereof by warrants drawn on the county's General Fund, whether budgeted therein, or not. No member of the Drafting Commission shall have compensation for service on the commission.

(c) The Drafting Commission shall diligently pursue its labors and at a time not less than sixty (60) days nor more than one hundred and eighty (180) days after their organization, they shall have prepared a complete proposed county charter. It shall be the duty of the secretary of the commission, at all reasonable times, to make available to any interested person the minutes of any prior meeting of the commission and any written proposals pending before the commission.

(d) In the preparation of the charter, any complete section thereof may be written in two (2) alternate and elective forms, for submission to a vote of the people. The proposed charter having been completed, there shall be written at the end thereof the words, "We hereby recommend the adoption of the foregoing proposed charter, subject to such later revisions as may grow out of our public hearings hereon," to be followed by the date of the certificate and the signatures of at least a majority of the Drafting Commission: Substantial compliance as to form of the certificate shall be deemed sufficient.

(e) In case a Charter Drafting Commission, from any cause whatever, fails to complete a proposed charter hereunder, within the time limit hereinbefore specified, such commission shall automatically expire, and, upon the written request of any ten (10) signers of the original petition for the adoption of a county charter, it shall be the duty of the county judge to reconvene the county convention by giving the written notice specified in Section 3 of this Act. The convention being reassembled shall proceed to the selection of a Charter Drafting Commission of the number originally fixed, in the same manner as provided for selection of the membership of the defaulting commission. The substitute commission shall proceed in time and manner as provided for the original commission. Further, in such case, the secretary of the defaulting commission shall safely keep all records of the prior commission and deliver the same to the substitute commission, or its secretary. This procedure to remedy default of a commission may be exercised as many times as may be necessary to procure the submission of a charter to the electorate.

(f) When a proposed charter has been completed and certified, the Drafting Commission, within ten (10) days shall cause the same to be published in full, in the manner provided in Section 3 of this Act. Said publication further shall provide for five (5) or more public hearings before the commission, the first of which must be not less than fourteen (14) days nor more than twenty (20) days after the first publication of the notice. The time and place of each proposed hearing shall be stated in the notice, and all of the same must be held within thirty (30) days after the date of the first hearing. At such hearings all qualified resident electors of the county may appear and be heard to express their views in an orderly manner, within Robert's Rules of Order, and such other reasonable limitations as the commission may adopt for the timely, efficient and orderly disposition of business. When said public hearings have been concluded, the commission, within ten (10) days, shall make such revision of the proposed charter as by them may be deemed for the betterment thereof.

Form of charter election report and notice to Commissioners' Court; amendments

Sec. 12. Within five (5) days after a proposed county charter finally has been approved for submission to the qualified electors of the county, it shall be the duty of the Charter Drafting Commission to prepare its report announcing the conclusion of its labors and to make requisition for the holding of a charter election hereunder, which shall be addressed to the commissioners' court of the county and filed with said court within said five (5) days. Such report and requisition in form shall be substantially as follows:

To the Honorable Commissioners' Court of ——— County, Texas:

We present herewith two (2) true and certified multiples of a proposed charter to provide for the government of this county, as provided for by Section 3, Article IX, of the Constitution of Texas. We also transmit to you the journals of proceedings of the county convention and of this Charter Drafting Commission. By law, you are required to safely keep said proposed charter and said journals as permanent records, in the archives of the county, where they at all reasonable times shall be open to inspection by the public.

We hereby request that, and under the provisions of an Act of the Legislature of Texas to provide proceedings for adopting Home Rule Charters for counties it now is required that, you by order (to be entered of record in your minutes; to which one copy of the proposed charter shall be attached as an exhibit, and as part thereof) will call an election submitting said proposed charter to a vote of the qualified electors of this county for adoption or rejection, as their votes may determine, under the provisions of said Section 3, Article IX, of the Constitution.

This we pray you to do in time, manner, form and after due execution of all appropriate formalities required by the applicable law.

Executed in ———, Texas, on this, the ——— day of ——— A. D. 19—, by the undersigned, who constitute a majority, or more, in number of the Charter Drafting Commission of this county.

Substantial conformity to the foregoing form shall be deemed sufficient, and the same may be amended, as a matter of right, to cure any substantive defect therein.

Charter election; procedure

Sec. 13. (a) In compliance with the notice and request provided for by Section 12 hereof, an appropriate order shall be entered by the court at a time within ten (10) days after said request is delivered to the court. Upon delivery of such request, the clerk of the court shall endorse on the presented proposed charter, and accompanying request the day and hour of the receipt of the same.

(b) By said order the court shall call an election, in which no other question may be submitted to the electors. Said election shall be held at a time not less than thirty (30) days nor more than forty (40) days after the entry of the court's order therefor.

(c) Publication of notice of said election, the holding thereof, the canvass of the returns and the declaration of the results thereof (save in those things peculiarly appropriate to the object of the election, and which peculiar matters are specifically provided for herein), shall be had, done and performed in accordance with the then effective provisions of the law regulating the holding of general elections in the State of Texas. Those additional things required and deemed peculiarly appropriate to such election are as follows, viz:

1. There shall be printed as many copies of the proposed charter as there were voters in the last preceding general election in the county, plus twenty-five per centum (25%) thereof, which copies on or before the second day succeeding the first publication of the notice of the election, shall be placed, for distribution, on request, to qualified voters of the county, at each polling place designated in the notice of election.

2. The notice of the election shall contain a full copy of the proposed charter and to include alternate and elective provisions, if any such have been submitted to the electorate, which distinct and alternate provisions shall be printed in the order given them in the proposed charter.

3. Ballots at least equal to one and one-half the vote cast in the last general election in the county shall be provided for the charter election. Distribution thereof to voting precincts changed or created later than the last general election held in the county shall be according to an estimate of the vote to be cast therein at the charter election. To each of the precincts remaining as at the last general election there shall be distribution of ballots approximately equal to one and one-half times the votes cast therein at the last general election. After the day upon which a petition for submitting a proposal to adopt a county home rule charter, or to amend the same, is started in circulation (the commissioners' court being advised thereof by writing filed with its clerk), no county voting precinct may be redefined, consolidated or created, until a time subsequent to the election called for by the petition so filed.

4. There shall be printed on said ballots, exclusive of all other things, the following, viz:

"County Home Rule Charter Ballot for Adoption of Charter
or
Against Adoption of Charter"

Next there shall be printed in full thereon elective alternate charter provisions which may have been submitted for determination by the electors; and, in case any such elective charter provisions have been submitted, the same shall be printed in full on the ballot, in the forward progressive order in which they appear in the proposed charter. Indication of the will of the voter shall be by crossing out those propositions or provisions which are not favored. In case a voter crosses out both of two related alternate provisions, or if the voter fails to cross out one of two related alternate charter provisions, the vote to adopt or reject the charter shall nevertheless be counted on that issue.

5. No proposal to consolidate or merge the government of a governmental agency or entity, or any division or function thereof, with the government of the county for administration thereby, shall be voted on at an election held for the original adoption of a charter hereunder. However, it is provided that any such charter may contain provision whereby such consolidations may be submitted to the voters of the county.

Canvassing returns and declaring results of election; contest procedure

Sec. 14. The canvassing of the returns and the declaring of the result of the election shall be by the commissioners' court of the county and the charter drafting commission jointly sitting as a board for such purpose and the result as declared shall be spread on the minutes of the commissioners' court. Contest of an election held hereunder may judicially be determined as is, or may be, provided by the laws of Texas relating to contest of general elections, subject to these conditions, viz.:

(a) Written notice of such contest must be filed with the commissioners' court and with the clerk of the county charter commission within ten (10) days after the declaration of the result.

(b) In case of such notice, within five (5) days the members of the commissioners' court and the charter drafting commission shall reassemble as a joint board of review, for the public opening of those ballot boxes

as to which the notice of proposed contest has specified exception, examination and recount of the ballots cast in each such voting precinct, revision, if any be required, in the tally sheets from the respective precincts in which error in the tally or returns, or illegal voting, may have been specified in the notice of proposed contest. Matters not specified in such notice of contest may not be inquired into by the board, nor later reviewed by a court. The board may hear evidence, subpœna witnesses and enforce their attendance by attachment to be issued by the clerk of any court of record on request of the board, and administer oaths to witnesses. The hearing shall be concluded as speedily as may be consistent with the object of the hearing. Having concluded the taking of evidence, the board publicly shall revise or reaffirm the tally to conform to their findings of the truth, and enter of record in the minutes of the commissioners' court their redeclaration of the result of the election. Thereupon the ballots shall be appropriately resealed in the boxes from which they were taken and, or, otherwise preserved as required by the general applicable law. A certified copy of the findings of the joint board of review must be received in evidence in any judicial proceeding contesting an election held hereunder, and shall constitute prima facie proof of the correctness of the declaration of the result of the election, as recorded by the joint board of review.

(c) The time consumed in re-examination of the returns by the Joint Board of Review, as herein provided for, shall not be computed in determining the time within which a petition initiating an election contest in a court of appropriate jurisdiction must be filed. Such time shall be computed from the day on which the Joint Board of Review announce their decision.

(d) Upon performance of the duties hereinbefore prescribed for the Charter Drafting Commission, without other or further act, it shall be dissolved, subject only to its right to designate one of its members to be a special fiscal agent, with the duty to terminate all pecuniary business matters which have been incident to the performance of the duties of the commission, to procure payment of all outstanding lawful accounts created by the commission, in the manner provided in subdivision (b) of Section 11 of this Act.

Adoption of charter; amendments; majority of votes cast outside cities and towns necessary for adoption

Sec. 15. If the election results in a Constitutional majority of the votes cast in the election being for tne charter, the same shall be declared to be adopted and to be in effect after such procedures, at such time and under such conditions, as may be provided for in the adopted charter. If the proposal to adopt a charter be defeated in any such election, no other proposal for the adoption of a charter for the county hereunder may be initiated at a time less than twelve (12) months next succeeding the day of the defeat of the prior proposal. However, in case a charter adopted for a given county does not provide a time limitation (which may not exceed two (2) years) for a time at which such charter may be amended, and any home rule charter adopted hereunder may be amended at any time.

Majority of votes cast outside cities and towns necessary for adoption

Sec. 15a. No county home rule charter may be adopted by any county save upon a favoring vote of the resident qualified electors of the affected county. In elections submitting to the voters a proposal to adopt a charter the vote cast by the qualified electors residing within the limits of all the incorporated cities and towns of the county shall be separately kept and collectively counted and the votes of the qualified electors of the county who do not reside within the limits of any incorporated city or town likewise shall be separately kept and separately counted, and unless there be a favoring majority of the votes cast within and a favoring majority of the votes cast without such collective cities and towns, the charter shall not be adopted.

Effect of amendment on designation of administrative body

Sec. 16. In case there be adoption of a county home rule charter providing for an administrative body styled other than a "Commissioners' Court," and, or, "County Judge" (as a member of the court), and thereafter there be occasion to proceed for the amendment of such charter, the quoted designations, as they appear in this Act shall be held to conform to the appropriately related designations as contained in the charter.

Expenses of proponents

Sec. 17. In case there be not available to a given county funds to liquidate the expenses incurred because of the exercise of power under this Act, the proponents of a proposed charter may, in writing filed with the court, designate a fiscal agent through whom the proponents may pay all such lawful and proper expenses as may accrue, preserving proper vouchers therefor. Upon presentation of the itemized verified account of such expenses, accompanied by the appropriate vouchers, the commissioners court may approve or disapprove the same, or approve the part thereof found to be proper, and on such approval the court shall pay the same to the designated fiscal agent, or his successor, as soon as money lawfully may be applied thereto, and any other law to the contrary shall be without effect. The county shall have no responsibility for the restitution of such money by the fiscal agent to the several contributing proponents, as their several interests may be.

Constitutional rights and powers of counties recognized

Sec. 18. Nothing in this Act contained is intended to deny to the counties of Texas any right or power which in the absence of this Act might lawfully be enjoyed and exercised under the provisions of said Section 3 of Article IX, of the Constitution. On the contrary, all such rights and powers hereby are expressly recognized.

Charter provisions ineffective against state's governmental powers

Sec. 19. Nothing in this Act contained shall be construed to authorize county charter provisions which would impair the operation of the General Laws of the State relating to the judicial, tax, fiscal, educational, police, highway and health systems of the State, or any department of the State's superior government; and, no charter provision having such vice may have effect as against the State.

Partial unconstitutionality

Sec. 20. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by any invalid provision, if any.

Proceedings under Anticipatory Enabling Act validated

Sec. 21. The anticipatory enabling Act passed at the Regular Session of the Forty-third Legislature (known as Chapter 232 of the General Laws of the Regular Session of the Forty-third Legislature) shall not have effect after the instant at which this Act may be in effect, but all procedures taken thereunder (relating to the formulation, circulation, presentation and prosecution of petitions, including all orders and notices of commissioners courts relative to such petition conventions held or other acts done) hereby are validated, to the same effect as though the same had been had and done hereunder. [Acts 1933, 43rd Leg., 1st C.S., p. 249, ch. 91.]

See article 1581a, ante.

TITLE 34—COUNTY FINANCES

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1. GENERAL PROVISIONS

Article 1607. [1401–2–6–52] Finance ledger.—Each commissioners court shall procure a well-bound ledger and index, to be known as the finance ledger, and shall cause to be entered therein a full and orderly statement of the condition of the county finances. The county clerk shall open and keep in said book an account with each officer of the county, district or State, who may be authorized or required by law to receive or collect all money or other property for the use of, or belonging to the county, and shall state at the top of each page of said account the name of such officer and his office. The clerk shall keep such other accounts as may be necessary to carry out the purposes of this title, and shall conveniently index each. And items shall be entered daily under their respective heads. All reports and vouchers shall be filed with said clerk and carefully preserved, and briefly noted in the proper account upon the ledger. Said finance ledger shall be at all times subject to the inspection of the public. [Acts 1893, p. 160; G. L. vol. 10, p. 590.]

Art. 1608. [1403] [824a] [935a] Quarterly statement.—Said clerk shall balance each account so kept, and make a sworn tabular statement at each regular term of the commissioners' court for the three months preceding the month when such court meets in regular session, to be presented to said court during the second day of its term, specifying therein the names of the creditors of said county, and the items of indebtedness, with their respective dates of accrual, and also the names of persons to whom moneys have been paid, with the amounts paid each, the names of persons from whom moneys have been received, with the date of receipt and for what account received, during the quarter for which such statement is prepared; said statement shall also separately show the amount to the credit or debit of each fund. [Id.]

Art. 1609. [1404] Exhibit published.—Immediately after the first regular term of said court in each year said clerk shall publish once in some weekly newspaper published in his county, or if there be no paper published therein, then by posting four copies of such exhibit, one in each commissioners precinct, one of which shall be at the court house door, the other three at public places in such precincts, an exhibit showing the aggregate amount paid out of each fund for the four preceding quarters, and the balance to the credit or debit of each fund; also the amount of indebtedness of said county, with their respective dates of accrual, and to whom and for what due; also the amount to the debit or credit of each officer or other persons with whom an account is kept. The cost for publishing the same shall be paid by order of said court out of the general fund of the county. [Id.]

Art. 1610. [1407–12] Account with tax collector.—The accounts of the tax collector shall be kept as follows: A separate account shall be kept for each separate fund that may be upon the tax rolls; each account shall state the name of the collector, the character of the fund entered therein, and the year for which the same is assessed; and the taxes assessed for each year shall be kept separate and distinct.

Art. 1611. [1408] [827] [938] Receipts for tax rolls.—Whenever the tax rolls are ready for delivery to the tax collector, the court or officer having control of the same shall take from the collector a written receipt for the same, specifying the amount therein assessed and due the county, stating separately the amount assessed to each fund, and shall deliver said receipt to the county clerk, who shall charge the collector with the amount stated in said receipt in the proper account; and said amounts shall be treated as debts due the county by the collector.

Art. 1612. [1409] [828] [939] Collector's credits.—The collector shall discharge said indebtedness within the time prescribed by law, by filing with said clerk receipts for the same, as follows:

1. The commission due the collector.
2. The assessor's receipt for commissions due such assessor, if any, are to be paid by the county.
3. Proper vouchers for such payments as he may be required to pay out of any money on hand.
4. The county treasurer's receipt for the money paid into the treasury.

Art. 1613. [1410–11] Indigent and delinquent tax accounts.—The collector shall make separate lists of the indigent and delinquent taxpayers, showing their names, and the amount due by each taxpayer. The court shall carefully examine said list, and shall make an order and enter the same upon its minutes, stating the names and amounts that are adjudged uncollectible; and the collector shall have credit for the amounts included in said order in the proper accounts, only after said order has been made and entered.

Art. 1614. [1413] [832] [943] Shall deliver tax rolls to successor.—On leaving office the tax collector shall deliver to his successor the tax rolls in his possession, and shall receive from his successor a written receipt for the amount of taxes due on the tax rolls so delivered, specifying the amount of each fund and each year separately, and also the amount due on the indigent and delinquent list; and deliver said receipts to the county clerk, who shall enter those allowed by the court to the credit of the collector presenting them, and shall charge the amounts so credited to the successor in office of such collector, in the proper accounts.

Art. 1615. [1414–15–16–17–18] Occupation tax.—Said collector shall collect all occupation taxes due the county without assessment and give the party paying the tax a written receipt, stating his name, the occupation paid for, the time such occupation is to be pursued, and the amount collected for the State and for the county. On presentation of such receipt, the county clerk shall issue to the payee therein a license in the name of the State or county or both, in accordance with the tax so paid, authorizing said payee to pursue such occupation during the time for which the tax is paid. The clerk shall keep an occupation tax account with the collector of the county, in which he shall charge the collector with all licenses issued for the county. The collector shall have credit in said account for his commissions, and the amount paid into the treasury upon filing the proper receipt of the county treasurer with such clerk. Said clerk shall, at the end of every month, make two reports, one of licenses issued on taxes paid to the State which he shall forward to the Comptroller by mail; the other of licenses issued on taxes paid to the county and file the same in his office. Such reports shall recite the information contained in the tax collector's receipt for such tax, and shall be dated and signed under the clerk's official seal.

Art. 1616. [1419–20] Account with sheriff.—An account shall be kept with the sheriff charging him with all judgments, fines, forfeitures and penalties, payable to and rendered in any court of the county, the collection of which he is by law made

chargeable. The sheriff may free himself from liability from such charge, by:

1. Producing the receipt of the county treasurer showing the payment of such judgment, fine, forfeiture or penalty.

2. Showing to the satisfaction of the commissioners court that the same cannot be collected, or that the same has been discharged by imprisonment or labor, or by escape, without his fault or neglect, and obtaining an order from said court allowing the same.

Art. 1617. [1421] [840] [951] Officers to report collections.—Each district clerk, county clerk, county judge, county treasurer, sheriff, district and county attorney, constable and justice of the peace, who shall collect or handle any money for the use of the county, shall make a full report to the commissioners court, at each regular term thereof, of all fines imposed and collected and all judgments rendered and collected for the use of the county, and all jury fees collected in their respective courts in favor of, or for the use of the county; and at the same time present their receipts and vouchers showing what disposition has been made of the money collected, fines imposed and judgments rendered. Said court shall carefully examine said reports, receipts and vouchers and, if found correct, shall cause the clerk to enter the same on the finance ledger, and, if found to be incorrect, shall summon said officer before them, and have the same corrected. Said reports, receipts, and vouchers shall be filed in the county clerk's office. [Acts 1887, p. 36; G. L. vol. 9, p. 834.]

Art. 1618. [1422] [841] [952] Collections: form of report.—The reports required by the preceding article shall state fully:

1. The name of the party fined and the amount of the fine, or the name of the party against whom judgment was rendered and the amount of such judgment.

2. The style and number of the cases in which fines have been imposed or judgments rendered, and the date thereof.

3. The amount of jury fees collected, and the style and number of the case in which each jury fee was collected and from whom collected.

Art. 1619. [1423] [842] [953] Accounts of justice.—Fines imposed and judgments rendered by justices of the peace shall be charged against the justice imposing or rendering the same. He may discharge said indebtedness by filing with the county clerk the treasurer's receipt for the amount thereof, or by showing to the satisfaction of the commissioners court that he has used due diligence to collect the same without avail, or that the same have been satisfied by imprisonment or labor.

Art. 1620. [1424–5] Report of attorneys.—The district attorney of each district shall, at each term of the district court for each county in his district, make a report to the county clerk, of all moneys received by him since the last term of the district court for such county for the use of such county. Each county attorney shall make a similar report to the said clerk at the end of each month.

Art. 1621. [1426] [845] Judgment sold.—Whenever the proceeds of any judgment revert to and belong to any county, if the principal and sureties thereon are insolvent so that under any existing process of law said judgment or any part thereof cannot be collected, the commissioners court is hereby constituted a board to dispose of such judgment, and may offer for sale, by such advertising as it deems necessary and to the best interests of the county, all the right of the county to such judgment. If the amount bid on same at public sale shall not be deemed sufficient, said court shall refuse to accept the same, and shall dispose of said judgment in any manner deemed most advantageous to the interest of the county. Upon sale said court shall make a proper assignment of said judgment to the purchaser. [Acts 1st C. S. 1879, p. 9; G. L. vol. 9, p. 40.]

Art. 1622. [1427–8] Collections: report to clerk.—When any officer collects money belonging to, and for the use of, any county, he shall, except where otherwise provided in this title, forthwith report the same to the proper county clerk stating fully from whom collected, the amount collected, the time when collected, and by virtue of what authority or process collected. On making such report, such amount shall be charged to such officer, and he may discharge himself therefrom by producing the receipt of the proper county treasurer therefor.

Art. 1623. [1429–30] Estray account.—When an application to estray an animal is filed with the county clerk, said clerk shall keep an estray account on the debit side of said finance ledger showing, the date of the application, the name of the person estraying, and a brief description of the animal to be estrayed. The amount of such charge shall be left blank until said person shall file his account of the sale thereof. Upon the filing of said account, the net amount due the county from such sale shall be entered in the blank. When the receipt of the county treasurer is presented to the clerk, showing any amount paid into the treasury on account of such sale, the same shall be entered on the credit side of the account, showing the date, name of payer, amount paid and a brief description of the estray, and such amount shall be charged on the debit side of the county treasurer's account.

Art. 1624. [1431] [850] [960] Account with county treasurer.—An account with the county treasurer shall be kept in said ledger, in which such treasurer shall be charged separately with the amount of each fund for which he gives a receipt to the sheriff, collector, or other person paying the same into the treasury; and such treasurer shall have credit for all moneys paid out by him, when the commissioners court has approved his reports of the same and for his legal commissions.

Art. 1625. [1432–6–7] Claim registers.—Each county treasurer shall keep a well-bound book in which he shall register all claims against his county in the order of presentation, and if more than one is presented at the same time he shall register them in the order of their date. He shall pay no such claim or any part thereof, nor shall the same, or any part thereof, be received by any officer in payment of any indebtedness to the county, until it has been duly registered in accordance with the provisions of this title. All claims in each class shall be paid in the order in which they are registered.

Art. 1626. [1433] [852] [962] Claims classified.—Claims against a county shall be registered in three classes, as follows:

1. All jury scrip and scrip issued for feeding jurors.

2. All scrip issued under the provisions of the road law or for work done on roads and bridges.

3. All the general indebtedness of the county, including feeding and guarding prisoners, and paupers' claims.

Art. 1627. [1434–5] Registering claims.—Said treasurer shall enter each claim in the register, stating the class to which it belongs, the name of the payee, the amount, the date of the claim, the date of registration, the number of such claim, by what authority issued, and for what service the same was issued, and shall write on the face of the claim its registration number, the word, "registered," the date of such registration, and shall sign his name officially thereto.

Art. 1628. [1438] [857] [967] Classification of county funds.—The funds received by the county treasurer shall be classed as follows, and shall

be appropriated, respectively, to the payment of all claims registered in the first, second and third classes:

1. All jury fees, all money received from the sale of estrays, and all occupation taxes.

2. All money received under any of the provisions of the road and bridge law, including the penalties recovered from railroads for failing to repair crossings, and all fines and forfeitures.

3. All money received, not otherwise appropriated herein or by the commissioners court. [Const. art. 16, sec. 24.]

Art. 1629. [1439] [858] [968] Other classes of funds.—The commissioners court may cause such other accounts to be kept, creating other classes of funds, as it may deem proper, and require the scrip to be issued against the same and registered accordingly.

Art. 1630. [1440] [859] [969] Transfer of funds.—The commissioners court by an order to that effect may transfer the money in hand from one fund to another, as it may deem necessary and proper, except that the funds which belong to class first shall never be diverted from the payment of the claims registered in class first, unless there is an excess of such funds.

Art. 1630a. Road and bridge fund set aside from other funds in certain counties; budgeting of fund.—In all counties having a population of fifty thousand, nine hundred and fifty (50,950) to fifty-one thousand, one hundred (51,100), inclusive, according to the last preceding Federal Census, the Commissioners Court shall annually set aside from all other county funds the Road and Bridge Fund and shall budget this Road and Bridge Fund into three (3) equal amounts, and the total expenditures from the Road and Bridge Fund for any four-month period of the fiscal year may not exceed one-third of the annual budget; provided that nothing in this Act shall be construed as repealing or affecting the Uniform Budget Law, County Budgets, being Sections 10, 11, 12, and 13 of House Bill No. 768, Acts of 1931, Forty-second Legislature, page 339, Chapter 206.[1] [Acts 1941, 47th Leg., p. 720, ch. 445, § 1.]

[1] Articles 689a—9 to 689—12.

Art. 1631. [1441–2] Report of claims.—At the end of each month the county treasurer shall file in the office of the county clerk a report showing the total amount of claims registered by him during said months stating each class separately. He shall enter the same upon the ledger under the head of "Registered indebtedness of the county," keeping a separate account of each class of indebtedness, and, from the reports of the treasurer of disbursements made, credit said accounts with the total amount of vouchers of each class of claims paid.

Art. 1632. [1443] [862] [972] Receipt of payee.—The county treasurer or any other officer disbursing money for the county, or receiving county claims in payment of dues of any kind, shall require the party receiving payment of, or credit for the same, his agent or attorney, to receipt in writing upon the face of such claim for the amount so paid or received thereon.

Art. 1633. [1444–5] Report of claims collected.—Every officer who shall collect any fine, penalty, forfeiture, judgment, tax or other indebtedness due the county in claims against the county, shall keep a descriptive list of such claims, and shall when he reports such collection, file with his report a list stating the party in whose favor each claim was issued, the class and register number thereof, the name of the party paying in such claim, and the amount received, and for what purpose received. Such claims and report shall be turned over to the county treasurer who shall give a proper receipt for the same, and he shall file said list with his report in the office of the county clerk.

Art. 1634. [1446] [865] [975] Accounts of treasurer.—The county treasurer shall keep accurate detailed accounts showing all the transactions of his office. And all warrants by him paid off shall be punched at the time he pays them; and the vouchers relating to and accompanying each report shall be presented to the commissioners court with the corresponding report, when said court shall compare the vouchers with the report, and all proper vouchers shall be allowed and the treasurer credited with the amount thereof. [Acts 1889, p. 6; G. L. vol. 9, p. 6.]

Art. 1635. [1447] [866] [976] Claim canceled.—When a claim presented as a voucher has been found by the court to be correct, the court shall cause the same to be canceled by writing or stamping upon the fact[1] thereof the word, "canceled," and the clerk shall attest the same by his official signature.

[1] So in enrolled bill. Should probably read "face."

Art. 1636. [1448–9–50] To inspect treasurer's accounts.—When the commissioners court has compared and examined the quarterly report of the treasurer, and found the same correct, it shall cause an order to be entered upon the minutes of the court, stating the approval thereof, and reciting separately the amount received and paid out of each fund by the treasurer since the preceding treasurer's quarterly report, and the balance of such fund, if any, remaining in the treasurer's hands and the court shall cause the proper credit to be made in the accounts of the treasurer, in accordance with said order. Said court shall actually inspect and count all the actual cash and assets in the hands of the treasurer belonging to the county at the time of the examination of his said report. Prior to the adjournment of each regular term of the court, the county judge and each commissioner shall make affidavit that the requirements of this article have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in said county treasurer's quarterly report made by said treasurer to said court, and held by him for the county, have been fully inspected and counted by them giving the amount of said money and other assets in his hands. Such affidavits shall be filed with the county clerk and recorded in the minutes of said court the term at which the same were filed; and the same shall be published in some newspaper published in the county if there be a newspaper published in the county, for one time. [Acts 1897, p. 27; G. L. vol. 10, p. 1081.]

Art. 1637. [1451] [868] [978] To examine finance accounts.—The commissioners court shall, at each regular term, examine all accounts and reports relating to the finances of the county, and compare the same with the vouchers accompanying them, and cause such corrections to be made as are necessary, in order to make said accounts and reports correct, and shall cause all orders made by them, appertaining to said accounts and reports, to be properly entered upon the minutes of said court and noted upon said accounts and reports.

Art. 1638. [1453–4] Finance committee.—At each term of the district court, the district judge, upon request of the grand jury, may appoint a committee consisting of three citizens of the county, men of good moral character and intelligence, and experienced accountants, to examine into the condition of the finances of the county. Said committee shall examine all the books, accounts, reports, vouchers and orders of the commissioners court relating to the finances of the county that have not been examined and reported upon by a previous committee; count all the money in the office of the county treasurer belonging to the county, and make such other examination as it deems necessary and proper in order to ascer-

tain the true condition of the finances of the county. The court shall, if necessary, upon the application of said committee, send for persons and evidence to aid in such investigation.

Art. 1639. [1455] [872] [982] Report of committee.—Said committee shall, at the earliest practicable day after its appointment, make to said district court a detailed written report stating whether the books and accounts required to be kept by the provisions of this title are correctly kept in accordance with said provisions, and setting forth fully the condition of the finances of the county, the state of each officer's account, and specifying all irregularities, omissions and malfeasance of any kind that they may discover. Said report shall be signed and sworn to by said committee and filed in the office of the district clerk, and the attention of the grand jury called thereto as soon after the filing of the same as practicable.

Art. 1640. [1456] [873] [983] Pay of committee.—Said committeemen shall each be entitled to receive for their services three dollars for each day, not to exceed five days, that they may be engaged in the performance of their duties as such, to be paid out of the county treasury upon the certificate of the district judge stating the number of days served.

Art. 1641. Audit by accountant.—Any commissioners court, when in its judgment an imperative public necessity exists therefor, shall have authority to employ a disinterested, competent and expert public accountant to audit all or any part of the books, records, or accounts of the county; or of any district, county or precinct officers, agents or employés, including auditors of the counties, and all governmental units of the county, hospitals, farms, and other institutions of the county kept and maintained at public expense, as well as for all matters relating to or affecting the fiscal affairs of the county. The resolution providing for such audit shall recite the reasons and necessity existing therefor such as that in the judgment of said court there exists official misconduct, willful omission or negligence in records and reports, misapplication, conversion or retention of public funds, failure in keeping accounts, making reports and accounting for public funds by any officer, agent or employé of the district, county or precinct, including depositories, hospitals, and other public institutions maintained for the public benefit, and at public expense; or that in the judgment of the court, it is necessary that it have the information sought to enable it to determine and fix proper appropriation and expenditure of public moneys, and to ascertain and fix a just and proper tax levy. The said resolution may be presented in writing at any regular or called session of the commissioners court, but shall lie over to the next regular term of said court, and shall be published in one issue of a newspaper of general circulation published in the county; provided if there be no such newspaper published in the county, then notice thereof shall be posted in three public places in said county, one of which shall be at the court house door, for at least ten days prior to its adoption. At such next regular term said resolution shall be adopted by a majority vote of the four commissioners of the court and approved by the county judge. Any contract entered into by said commissioners court for the audit provided herein shall be made in accordance with the statutes applicable to the letting of contracts by said court, payment for which may be made out of the public funds of the county in accordance with said statutes. The authority conferred on county auditors contained in this title as well as other provisions of statutes relating to district, county and precinct finances and accounts thereof shall be held subordinate to the powers given herein to the commissioners' court. [Acts 1923, p. 170.]

Art. 1641a. Public accountant in certain counties.—In counties of a population of not less than 298,000 and not more than 355,000, according to the last Federal Census, that the Grand Jury of any County or the State Auditor when in the judgment of either, an imperative public necessity exists therefor, shall have authority to employ a disinterested, competent and expert public accountant for the same purposes authorized by Article 1641, or for any other necessary purpose; provided, however, that same shall not be made more than once every two years, except for the purposes of supplementing any audit theretofore made. The same notice shall be given as provided in the preceding Article, one week prior to the making of said contract with such Auditor, and the same shall be paid for out of the general funds of said County. [Acts 1931, 42nd Leg., p. 842, ch. 353, § 1.]

Art. 1641b. Independent audit of finances and offices in counties of 40,000 to 100,000.—Section 1. At any term of the District Court of any county in this State upon request of the grand jury of such county, the district judge of such Court shall appoint an auditor, who shall be of good moral character and intelligence and an experienced accountant, to examine into the condition of the finances of said county. Said auditor shall examine all the books, accounts, reports, vouchers and orders of the Commissioners Court relating to the finances of the county, or such part thereof as may be ordered and directed by said district judge. Said auditor shall count all the money in the office of the county treasurer belonging to the county and make such other examination as he deems necessary and proper, or as may be ordered by said district judge in order to ascertain the true condition of the finances of the county. The Court shall, if necessary, upon the application of such auditor, summons witnesses and compel their attendance and require such witnesses to give such testimony as said auditor may desire; and said judge shall require the production of all books, records and any other evidence that such auditor may request or desire to aid in such investigation; and the said district judge shall have authority to punish for contempt any person violating any of the said orders of said district judge or any process issued under the provisions of this Act.

Sec. 2. Said auditor shall, at the earliest practicable date after his appointment, make to the said District Court a detailed written report stating the true condition of the finances of said county and whether the books and accounts required to be kept by the provisions of law, are correctly kept in accordance with said provisions, and setting forth fully the condition of the finances of the county, and the state of each officer's account included within the scope and provisions of the order of said district judge; and shall point out and specify all irregularities, omissions and malfeasance of any kind that he may discover. Said report shall be signed and sworn to by said auditor and filed in the office of the district clerk of said county and the attention of the grand jury shall be called thereto as soon after the filing of said report as practicable.

Sec. 3. Said auditor shall be entitled to receive for his services a sum not to exceed Twenty-five Dollars ($25) per day for the time that may be reasonably required in the performance of his duties under the provisions hereof. Said sum shall be paid out of the county treasury upon the certificate of the district judge, stating the number of days served and the total amount due such auditor as herein provided.

Sec. 3a. This Act shall apply in counties having not less than forty thousand (40,000) population nor more than one hundred thousand (100,000) population, according to the last preceding Federal Census. [Acts 1947, 50th Leg., p. 957, ch. 411.]

Art. 1642. [1457–8] Requisites of report.—All reports required under any provision of this title shall be in writing and sworn to by the officer making the same, before some officer authorized to administer oaths; and all such monthly reports shall be filed within five days after the end of each month.

Art. 1643. [1459] [876] [986] Warrants attested.—All warrants or scrip issued against the county treasurer by any judge or court shall be signed and attested by the clerk or judge of the court issuing the same, under his official seal. No justice of the peace shall have authority to issue warrants against the treasury for any purpose whatever, except as provided in the Code of Criminal Procedure.

Art. 1644. [1405] Compensation of clerk.—The clerk shall receive annually as compensation for the labor performed in keeping the finance ledger and making the quarterly statement required by this title, the sum of five dollars for each one thousand dollars tax assessed as due the county, to be paid quarterly on order of the commissioners court out of the general fund of the county; provided, the same be not less than one hundred nor more than two hundred and fifty dollars per annum. [Acts 1893, p. 160; G. L. vol. 10, p. 590.]

Art. 1644a. Expenses of survey for drainage, etc., or water control.—In any county in this State having taxable values of two hundred ninety million dollars or more, according to the latest approved tax rolls of the county, the Commissioners' Court may spend not to exceed $15,000.00 in any one year out of the general fund of the county for the purpose of making a preliminary engineering survey relating to drainage, reclamation, conservation, levee improvement, or water control. [Acts 1929, 41st Leg., p. 342, ch. 159, § 1.]

Art. 1644b. Authorizing counties to purchase property to satisfy claims.—Sec. 1. That any county in this State whose population according to the last preceding United States Census did not exceed Fifteen Thousand (15,000) having at the time of the passage of this Act, any claim for money against any person, partnership, corporation, joint stock or other association, and whose claim shall amount to at least fifty (50%) per cent of all the claims against such debtor, and the property of such person, partnership, corporation, joint stock or other association shall be sold, within two years from the date this Act shall become effective, under any proceedings in bankruptcy, receivership, or in any other judicial proceeding whatever, and the Commissioners' Court of such county shall be of the opinion that it is necessary or advisable, in the protection of the interests of such county so to do, the said Commissioners' Court be, and is hereby authorized to purchase any or all of the property of such debtor or debtors so sold, within two years from the date this Act shall become effective, when offered for sale by any trustee in bankruptcy, receiver, or by any other officer under the order of any court for such price as the Commissioners' Court may deem advisable and for the best interests of the county, and to have such property by said trustee in bankruptcy, receiver, or other judicial officer conveyed and transferred to the county.

Sec. 2. The Commissioners' Court of any such county is hereby expressly authorized and empowered to borrow money on the credit of the county, and to execute or cause to be executed the obligations of the county therefor, for the purpose of making such purchase or purchases; and it is further expressly authorized to pledge, hypothecate or mortgage any property so purchased to secure the payment of all sums so borrowed.

Sec. 3. The said Commissioners' Court is hereby expressly granted the full power and authority to determine upon what terms, for what length of time and at what rate of interest said sums shall be borrowed.

Sec. 4. Said Commissioners' Court is further hereby expressly authorized to liquidate all assets so purchased for the use and benefit of the county, in any manner that a private individual might liquidate such assets, and to sell and convey all or any of the properties so acquired, either for cash or upon credit, for such length of time and at such rate of interest as said court may deem advisable and to sue upon any obligations so acquired or contracted to said county, and to pay any and all expenses and costs incurred in connection with all or any of the foregoing matters from said property or the proceeds of the sale or liquidation thereof, the net proceeds received by said county to be paid to and for the use and benefit of the respective funds of the county to which said original claim belonged pro rata. [Acts 1933, 43rd Leg., p. 620, ch. 206.]

Validation of purchases, see article 1644d, post.

Acts 1931, 42nd Leg., 2nd C.S. p. 40, ch. 22, effective September 30, 1931, formerly classified as this article was similar in all respects to this Act, but expired by its own limitation within two years from its enactment.

Art. 1644c. Counties, cities, and other subdivisions of state authorized to borrow money from Federal Agencies.—Sec. 1. All counties of this State in which there has been damage to public and private property from a tropical hurricane during the year, 1933, and cities, towns, independent school districts, common school districts, water improvement districts, water control and improvement districts, navigation districts, drainage districts, and any and all other public municipal corporations, organized and existing under the Constitution and Laws of this State located in such counties; and all private corporations, created under the Laws of Texas, providing for corporations without capital stock, and the share holders of which are prohibited from receiving any income of any kind from such corporation, are hereby expressly authorized and empowered to borrow money, and to receive grants and other aid from the Government of the United States, from the Federal Emergency Administrator of Public Works, the Reconstruction Finance Corporation, the Federal Reserve Banks, and any and all other agencies of the Government of the United States, which now are or hereafter may be authorized to make such loans or grants on such terms and in such amounts as may be agreed upon with the lending agency.

Sec. 2. The several counties, cities, towns, and other public municipal corporations above enumerated and described, are further hereby expressly authorized and empowered to issue warrants or other obligations of such counties, cities, towns or other public municipal corporations, in evidence of money borrowed from the government of the United States or from its agencies, which warrants or obligations may draw interest at any rate not to exceed six per centum (6%) per annum, and may be payable within such time and on such terms as may be agreed upon between the lending agency and the public municipal corporation to which the loan is made; and such counties, cities, towns, and other public municipal corporations are further expressly authorized to pledge the taxes and/or revenues provided for such counties, cities, towns, and other public municipal corporations, under the Constitution and Laws of this State, in payment of such loans made to them by the Government of the United States, or any agency of such Government. Provided, however, that the powers to issue warrants or other obligations by the governing boards of the public municipal corporations herein enumerated or referred to shall be contingent upon an affirmative authorizing vote by a majority of the qualified voters voting in an election called for that purpose under conditions set forth in the statutes governing special elections, except where the warrants or other evidences of obligations are issued for funds to be used to repair damage caused by any tropical hurricane during the year 1933.

Sec. 3. All funds granted or lent to counties, cities, towns, or other public municipal corporations of this State by the Government of the United States or any agency of such Government shall be administered by the officers of such public municipal corporation in the same manner that construction and maintenance funds of such corporations are required to be administered under the Constitution and Laws of this State.

Sec. 4. All funds granted or lent to non-profit corporations by the Government of the United States, or any agency of such Government, shall be administered by the officers of such non-profit corporation in accordance with its by-laws and under such rules and regulations as the lending agency may prescribe; and may be lent by such corporations to persons, firms, and corporations that have been injured or damaged by a tropical hurricane during the year, 1933. [Acts 1933, 43rd Leg., 1st C.S., p. 327, ch. 118.]

Art. 1644d. Validation of purchasers by counties to satisfy claims.—All purchases, pursuant to Legislative enactment of the property of any debtor or debtors, at any sale under any proceedings in bankruptcy, receivership or in any other judicial proceeding whatever, heretofore made by any county in this State whose population did not exceed fifteen thousand (15,000) according to the last United States Census, and which had a claim or claims for money against any such person, partnership, corporation, joint stock or other associations, amounting to at least fifty (50) per cent of all the claims against such debtor, and where the Commissioners Court of any such county has deemed it necessary or advisable to so purchase said property to protect the interest of such county, and all conveyances, transfers and assignments to any such county of real and personal property so purchased, and the liquidation of such assets by the Commissioners Court of any such county heretofore done, and all sales, conveyances, transfers and assignments of real and personal property, oil, gas and mineral leases, and other transfers, conveyances and assignments made by any such county to any and all purchasers in connection therewith, whether such sales were made at public or private sale, be and the same are here and now in all things fully and completely validated, ratified and confirmed. [Acts 1935, 44th Leg., p. 231, ch. 94, § 1.]

2. COUNTY AUDITOR

Art. 1645. [1460] Appointment in certain counties; term of office; compensation.—In any county having a population of thirty five thousand (35,000) inhabitants, or over, according to the last preceding Federal Census, or having a tax valuation of Fifteen Million ($15,000,000.00) Dollars or over, according to the last approved tax roll, there shall be biennially appointed an auditor of accounts and finances, the title of said officer to be County Auditor, who shall hold his office for two (2) years and who shall receive as compensation for his services to the county as such County Auditor, an annual salary of not more than the annual salary allowed or paid the Assessor and Collector of Taxes in his county, and not less than the annual salary allowed such County Auditor under the general law provided in Article 1645, Revised Civil Statutes, as said Article existed on January 1, 1940, such salary of the County Auditor to be fixed and determined by the District Judge or District Judges making such appointment and having jurisdiction in the county, a majority ruling, said annual salary to be paid monthly out of the general fund of the county. The action of said District Judge or District Judges in determining and fixing the salary of such County Auditor shall be made by order and recorded in the minutes of the District Court of the county, and the Clerk thereof shall certify the same for observance to the Commissioners' Court, which shall cause the same to be recorded in its minutes; after the salary of the County Auditor has been fixed by the District Judge or District Judges, no change in such salary shall thereafter become effective until the beginning of the next ensuing fiscal year of the county. Provided however, any increase in the salary of any such County Auditor, over and above the annual salary allowed such County Auditor under the general law provided in Article 1645, as said Article existed on January 1, 1940, shall only be allowed or permitted with the express consent and approval of the Commissioners' Court of the county whose County Auditor is affected or may be affected by the provisions of this Act; such consent and approval of such Commissioners' Court shall be made by order of such Court and recorded in the minutes of the Commissioners' Court of such county. [Acts 1905, p. 381; Acts 1907, p. 315; Acts 1915, p. 203; Acts 1917, p. 337; Acts 1923, p. 391; Acts 1927, 40th Leg., 1st C.S., p. 104, ch. 35, § 1; Acts 1929, 41st Leg., 1st C.S., p. 62, ch. 28, § 1; Acts 1931, 42nd Leg., 2nd C.S., p. 29, ch. 15, § 1; Acts 1937, 45th Leg., 1st C.S., p. 1826, ch. 45, § 3; Acts 1939, 46th Leg., Spec.L., p. 595, § 1; Acts 1941, 47th Leg., p. 1331, ch. 601, § 1.]

Amendment by Acts 1941, 47th Leg., p. 229, ch. 160, § 1, see article 1645, post.

Section 3 of the amendatory Act of 1941, ch. 601, read as follows: "All laws or parts of laws which are in conflict herewith are hereby expressly repealed: provided, however, that this Act shall not in any way repeal or affect Senate Bill 173, passed at the Regular Session of the 47th Legislature, 1941 [Art. 1645a—7], and provided, further, that this Act shall not in any way repeal or affect Sections 1 and 2, Chapter 81, Acts of the Regular Session of the 45th Legislature, 1937, page 151 [Arts. 3912e—1, 3912e—2], or Article 1672, Revised Civil Statutes of 1925, or Article 8245, Revised Civil Statutes of 1925, as amended by Section 1 of Chapter 119, Acts of the Regular Session, 44th Legislature."

Art. 1645. [1460] Appointment of county auditor in certain counties; compensation; duties.—In any county having a population of thirty-five thousand (35,000) inhabitants, or over, according to the preceding Federal Census, or having a tax valuation of Fifteen Million Dollars ($15,000,000), or over, according to the last approved tax rolls, there shall be biennially appointed an Auditor of Accounts and Finances, the title of said officer to be County Auditor, who shall hold his office for two (2) years, and who shall receive as compensation for his services One Hundred and Twenty-five Dollars ($125) for each million dollars, or major portion thereof on the assessed valuation, the annual salary to be computed from the last approved tax rolls; said annual salary from county funds shall not exceed Three Thousand, Six Hundred Dollars ($3,600). Provided, that in all counties of not less than ten thousand, three hundred and eighty (10,380) inhabitants and not more than ten thousand, three hundred and ninety (10,390) inhabitants according to the 1940 Federal Census, the Commissioners Courts thereof shall have the power to determine whether an Auditor for such county is a public necessity in the dispatch of the county's business, and such Commissioners Court may enter an order so stating whether such county shall or shall not have such Auditor, and if such Court determines that a necessity exists for such Auditor, it may appoint such County Auditor, who shall qualify and perform all the duties required of a County Auditor in this State, and such Commissioners Court shall have the power to discontinue such office of County Auditor at any time that it shall determine that it is not a public necessity. Provided, that in all counties of not less than thirty-five thousand (35,000) inhabitants nor over thirty-seven thousand (37,000) inhabitants, according to the 1920 Federal Census, the salary shall not be less than Two Thousand, Four Hundred Dollars ($2,400) annually, said salary to be paid monthly out of the General Revenue of the county up-

on an order of the Commissioners Court. Provided, further, that in counties having more than two hundred thousand (200,000) population and not more than three hundred thousand (300,000) population, according to the last Federal Census where there is a city and county hospital to care for the city and county patients, and where a financial record for such hospital must be kept and reports made to the city and county, the Auditor shall, in addition to the regular duties performed by him as required by law, keep such financial record of such hospital, and make such report to the executive bodies of the city and county, the Mayor and City Commissioners for the city, and the County Judge and County Commissioners for the county, and shall receive for such additional services rendered in compiling the necessary reports and records, and keeping such financial record, an additional sum of One Thousand, Two Hundred Dollars ($1,200) per annum payable monthly, out of the fund created for said hospital. [Acts 1905, p. 381; Acts 1907, p. 315; Acts 1915, p. 203; Acts 1917, p. 337; Acts 1923, p. 391; Acts 1927, 40th Leg., 1st C.S., p. 104, ch. 35, § 1; Acts 1929, 41st Leg., 1st C.S., p. 62, ch. 28, § 1; Acts 1931, 42nd Leg., 2nd C.S., p. 29, ch. 15, § 1; Acts 1937, 45th Leg., 1st C.S., p. 1826, ch. 45, § 3; Acts 1939, 46th Leg., Spec. L., p. 595, § 1; Acts 1941, 47th Leg., p. 229, ch. 160, § 1.]

Amendment by Acts 1941, 47th Leg., p. 1331, ch. 601, § 1, see article 1645, ante.

Section 2 of the amendatory Act of 1941 provided that partial invalidity should not affect the remaining portions of the Act.

Art. 1645a. County auditors in counties of 19,150 to 19,175, inhabitants.—In any county having a population of not less than nineteen thousand, one hundred and fifty (19,150) nor more than nineteen thousand, one hundred and seventy-five (19,175) according to the last preceding Federal Census, there shall be biennially appointed an auditor of accounts and finances, the title of said officer to be "County Auditor," who shall hold his office for two (2) years and who shall receive as compensation for his services the sum of Eighteen Hundred Dollars ($1800) per annum payable in equal monthly installments out of the General Fund of the county upon order of the Commissioners Court. [Added Acts 1937, 45th Leg., p. 606, ch. 305, § 1.]

Another article 1645a was added by Acts 1937, 45th Leg., p. 639, ch. 313, § 1, but such article is designated as 1645a—1 for the purpose of clarity.

Art. 1645a—1. County auditors in certain counties to act as purchasing agents; compensation; auditors for school districts.—In all counties having a population of not less than twenty-four thousand, one hundred and twenty-five (24,125) nor more than twenty-four thousand, one hundred and fifty (24,150), according to the last preceding Federal Census, and employing a County Auditor, said County Auditor, in addition to the regular duties performed by him as required by law, shall act as Purchasing Agent for the county, and such Auditor shall receive as compensation for such additional services as Purchasing Agent the sum of Six Hundred Dollars ($600) annually, payable in twelve (12) equal monthly installments, such compensation to be in addition to that allowed by law for such Auditor, and to be payable out of the General Revenue of such county. Provided that in all counties having a population of not less than forty-three thousand (43,000) and not more than forty-three thousand, one hundred (43,100) according to the last preceding Federal Census, and employing a County Auditor, said County Auditor, in addition to the regular duties performed by him as required by law, shall act as Purchasing Agent for the county, and such Auditor shall receive as compensation for such additional services as Purchasing Agent the sum of Six Hundred Dollars ($600) annually, payable in twelve (12) equal monthly installments, such compensation to be in addition to that allowed by law for such Auditor, and to be payable out of the General Revenue of such county. Provided, further, that in all counties having a population in excess of sixty-five thousand (65,000) inhabitants according to the last preceding Federal Census, and having a tax valuation of not more than Forty Million Dollars ($40,000,000), according to the last approved tax rolls, and containing at least two incorporated cities of more than thirteen thousand, five hundred (13,500) population each, according to the last preceding Federal Census, such Auditor shall, in addition to his regular duties as Auditor, constitute the Purchasing Agent of such county when so directed by order of the Commissioners Court of such county, and such Auditor shall receive as compensation for such additional services as Purchasing Agent a sum not to exceed Nine Hundred Dollars ($900) annually, payable in twelve (12) equal monthly installments, and such compensation shall be in addition to that allowed by law for such Auditor, and payable out of the General Revenue of such county. [Added Acts 1937, 45th Leg., p. 639, ch. 313, § 1; Acts 1939, 46th Leg., Spec.L., p. 600, § 1.]

The Act of 1937, cited to the text, purported to amend article 1645, ante, by "adding a section to be known as Article 1645a," as set out in this article. In view of fact that the Legislature had already designated a new section as article 1645a, the text of this amendment is designated as article 1645a—1. See note to article 1645a.

Art. 1645a—2. County auditor's office in counties of 28,700 to 29,000 abolished; county auditors in counties of 27,545 to 27,555 population.—Section 1. No county having a population of not less than twenty-eight thousand seven hundred (28,700), nor more than twenty-nine thousand (29,000), according to the last preceding, or any future Federal Census, shall have a county auditor, and the office of county auditor is hereby abolished, in any and all such counties, and the duties of the office of county auditor, in any such counties, shall be performed by such other officers of the county, as may be provided by General Law.

Sec. 1-a. In any county having a population of not less than twenty-seven thousand five hundred forty-five (27,545), nor more than twenty-seven thousand five hundred fifty-five (27,555), according to the last preceding Federal Census, there shall be biennially appointed an auditor of accounts and finances, the title of said officer to be "County Auditor," who shall hold his office for two (2) years and who shall receive as compensation for his services not less than Eighteen Hundred ($1800.00) Dollars nor more than Twenty-four Hundred ($2400.00) Dollars per annum payable in equal monthly installments out of the General Fund of the county upon order of the Commissioners' Court. [Acts 1937, 45th Leg., 1st C.S., p. 1778, ch. 17.]

Art. 1645a—3. Appointment of county auditors in counties of 20,100 to 20,150 population and less than $15,000,000 tax valuation.—Section 1. In any county having a population of not less than twenty thousand, one hundred (20,100) nor more than twenty thousand, one hundred and fifty (20,150), according to the last preceding Federal Census, and having a tax valuation of less than Fifteen Million Dollars ($15,000,000), according to the last approved tax roll, if the Commissioners Court of such county shall determine that an auditor is a public necessity in the dispatch of the business of the county, such Commissioners Court may enter an order so stating and may appoint an auditor of accounts and finances, the title of said office to be "County Auditor," who shall qualify and perform all the duties required of County Auditors in this State, and who shall receive as compensation for his services a salary not to exceed Eighteen Hundred Dollars ($1800) annually; said salary to be set by the Commissioners Court and to be

paid monthly out of the General Revenue of the county upon order of the Commissioners Court; provided the Commissioners Court may by its order discontinue such office at any time it may find such office is not a public necessity. [Acts 1937, 45th Leg., 2nd C.S., p. 1951, ch. 50, § 1.]

Art. 1645a—4. Salary of Auditor in certain counties.—In all Counties containing a population of not less than fifty-one thousand seven hundred seventy-nine (51,779), nor more than fifty-two thousand (52,000) according to the last preceding Federal Census, the County Auditor shall receive a salary of not more than Four Thousand ($4,000.00) Dollars per annum, payable in equal monthly installments upon order of the Commissioners' Court. [Added Acts 1939, 46th Leg., Spec.L., p. 598, § 1.]

Art. 1645a—5. Auditors in counties of 33,200 to 33,600.—In every county in this State having a population of not less than thirty-three thousand two hundred (33,200) and not more than thirty-three thousand six hundred (33,600), according to the last preceding Federal Census, the District Judge having jurisdiction in such county shall, if such reason be good and sufficient, appoint a County Auditor as provided in Article 1646, of the Revised Civil Statutes of Texas, of 1925, and said Auditor shall receive a salary of Twenty-seven Hundred ($2700.00) Dollars per year, which salary is hereby fixed, and same shall be paid in the same manner as other county officers are paid in said counties. [Acts 1939, 46th Leg., Spec.L., p. 594, § 1; Acts 1941, 47th Leg., p. 844, ch. 519, § 1.]

Art. 1645a—6. County auditors in counties of 14,850 to 14,920 population; qualification; salary.—Section 1. From and after the effective date of this Act in all counties in this State having a population of not less than fourteen thousand, eight hundred and fifty (14,850), and not more than fourteen thousand, nine hundred and twenty (14,920), according to the last preceding Federal Census, or any subsequent Federal Census, the Commissioners Court in such counties, if they shall determine that an Auditor is a public necessity in the dispatch of the county business, and shall enter an order upon the minutes of said Court, fully setting out the reasons and necessities for such Auditor, and shall cause said order to be certified to the District Judge having jurisdiction in the counties hereinabove set out, said Judge shall, if such reasons be considered good and sufficient, appoint a County Auditor as provided in Article 1647 of the Revised Civil Statutes of Texas of 1925, and upon the appointment by said Judge of such Auditor, such Auditor shall qualify by taking the oath of office and giving the bond as now provided in Article 1649 of the Revised Civil Statutes of Texas of 1925.

Sec. 2. When the Auditor, as hereinabove provided, shall have qualified by taking the oath and giving the bond, as provided in Section 1 hereof, he shall be authorized to perform all the duties now required of Auditors generally in counties of this State, as provided in Title 34 of the Revised Civil Statutes of Texas, 1925, and amendments thereto not in conflict herewith, and shall receive a salary not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum, said salary to be paid in equal monthly installments and shall be paid from the County General Fund, of such counties, the Jury Fund, the Road and Bridge Fund, the Permanent Improvement Fund, in proportion and on the percentage of levies made for each respective Fund, and in proportion that such levies bear to the total salary of such Auditor.

Sec. 3. This Act shall be deemed cumulative of all general provisions now authorizing the employment of Auditors, and it is not intended by this Act to repeal any law, or parts of law, not in conflict herewith. [Acts 1939, 46th Leg., Spec.L., p. 591.]

Art. 1645a—7. Abolition of office of county auditor in counties of 25,500 to 25,610.—No County having a population of not less than twenty-five thousand five hundred fifty (25,550), nor more than twenty-five thousand six hundred ten (25,610), according to the last preceding or any future Federal Census, shall have a County Auditor, and the office of County Auditor is hereby abolished in any and all such Counties, and the duties of the office of County Auditor in such Counties shall be performed by such other officers of the County, as may be provided by General Law. [Acts 1941, 47th Leg., p. 36, ch. 22, § 2.]

Section 1 of Acts 1941, 47th Leg., p. 36, ch. 22 repealed Acts 1941, 47th Leg., p. 23, ch. 12, abolishing the office of county auditor in counties of 25,470 to 25,915.

Art. 1645a—8. County auditors in counties of 25,450 to 25,500; appointment; compensation; term of office.—In any county having a population of not less than twenty-five thousand, four hundred and fifty (25,450) nor more than twenty-five thousand, five hundred (25,500) according to the last preceding Federal Census, there shall be biennially appointed an auditor of accounts and finances, the title of said officer to be "County Auditor," who shall hold his office for two (2) years and who shall receive as compensation for his services the sum of Eighteen Hundred Dollars ($1800) per annum payable in equal monthly installments out of the General Fund of the county upon order of the Commissioners Court. [Acts 1941, 47th Leg., p. 721, ch. 447, § 1.]

The act of 1941, cited to the text, purports to amend article 1645, Revised Civil Statutes of 1925, as amended, by adding a new section.

Art. 1645b. County auditor's salary in counties of 42,100 to 42,500.—In all counties containing a population of not less than forty-two thousand, one hundred (42,100) nor more than forty-two thousand, five hundred (42,500) according to the Federal Census of 1930, the County Auditor shall receive a salary not less than Three Thousand, Six Hundred ($3,600) per annum, payable in equal monthly installments upon order of the Commissioners Court. [Acts 1937, 45th Leg., p. 158, ch. 84, § 1.]

Art. 1645c. Compensation of county auditors in counties of 49,010 to 49,100 population.—In every county in this State having a population of not less than forty-nine thousand, ten (49,010) nor more than forty-nine thousand, one hundred (49,100) inhabitants according to the last preceding United States Census, the compensation of each County Auditor shall be Three Thousand Dollars ($3,000) per annum to be paid in equal monthly installments out of funds of said county. [Acts 1937, 45th Leg., p. 852, ch. 420, § 1.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 1645c—1. Compensation of county auditors in counties of 77,700 to 131,000 population.—In all counties of this State having a population of not less than seventy-seven thousand six hundred (77,600) inhabitants nor more than one hundred thirty-one thousand (131,000) inhabitants, according to the last Federal Census, as same now exists or may hereafter exist, and having an assessed valuation of not less than Forty-five Million and One Dollars ($45,000,001.00) nor more than Sixty-three Million Five Hundred Thousand Dollars ($63,500,000.00), according to the last approved tax rolls, as same now exists or may hereafter exist, the County Auditor shall receive an annual salary from county funds of Forty-two Hundred Dollars ($4200.00) to be paid in equal monthly installments out of the general revenues of the county. [Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24, § 4; Acts 1939, 46th Leg., Spec.L., p. 599, § 1.]

Section 2 of the act of 1939 provided that partial invalidity should not affect the remaining provisions and section 3 repealed conflicting laws.

The Act of 1937, purported to amend article 1645, by "adding a section thereto to be known as Article 1645c."

As there is already another article designated by such number (Acts 1937, 45th Leg., p. 852, ch. 420, § 1) the Act of 1937 appears herein as art. 1645c—1.

Art. 1645c—2. Compensation of County Auditors in counties of 24,900 to 25,000.—From and after the effective date of this Act in all counties having a population according to the last Federal Census of not less than twenty-four thousand, nine hundred (24,900) and not more than twenty-five thousand (25,000), the County Auditors of such counties shall receive an annual salary of Two Thousand, Four Hundred Dollars ($2,400), to be paid in twelve (12) equal monthly installments out of the general fund of such counties. [Acts 1941, 47th Leg., p. 120, ch. 93, § 1.]

Art. 1645d. Compensation of county auditors in counties of 39,100 to 39,200 population.—In all counties in this State having a population of not less than thirty-nine thousand, one hundred (39,100), nor more than thirty-nine thousand, two hundred (39,200), according to the last preceding United States Census, the County Auditor shall receive a salary of Three Thousand, Six Hundred Dollars ($3,600) per annum, payable in twelve (12) equal monthly installments out of the General Funds of said county. [Acts 1937, 45th Leg., 2nd C.S., p. 1908, ch. 29, § 1.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 1645d—1. Compensation of county auditors in counties of 45,000 to 50,000 population.—In all counties in this State having a population of not less than forty-five thousand (45,000) inhabitants nor more than fifty thousand (50,000) inhabitants, according to the last Federal Census, as same now exists or may hereafter exist, the County Auditor shall receive an annual salary from county funds of Four Thousand Dollars ($4000) to be paid in equal monthly installments out of the general revenues of the county. [Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24, § 5.]

Art. 1645d—2. Compensation of county auditors in counties of 49,100 to 51,000 population.—In all Counties in this State having a population of not less than forty-nine thousand one hundred (49,100) and not more than fifty-one thousand (51,000) inhabitants according to the 1930 Census of the United States, the County Auditor shall receive a salary of Four Thousand ($4,000.00) Dollars per annum, to be paid in equal monthly installments out of the General Revenues of the County. [Added Acts 1939, 46th Leg., Spec.L., p. 597, § 1.]

Art. 1645d—3. Compensation of county auditor in counties of 27,250 to 27,490 population.—From and after the effective date of this Act in all counties having a population according to the last Federal Census of not less than twenty-seven thousand, two hundred and fifty (27,250) and not more than twenty-seven thousand, four hundred and ninety (27,490), the County Auditor of such counties shall receive an annual salary of Two Thousand, Four Hundred Dollars ($2,400) to be paid in twelve (12) equal monthly installments out of the general fund of such counties. [Acts 1939, 46th Leg., Spec.L., p. 593, § 1.]

Art. 1645d—4. [Repealed by Acts 1943, 48th Leg., p. 458, ch. 307, § 1.]

The article repealed was Acts 1941, 47th Leg., p. 724, ch. 450, § 1.

Art. 1645e. Compensation of county auditors in counties of 190,000 to 200,000 population.—In every county in this State having a population of not less than one hundred and ninety thousand (190,000) nor more than two hundred thousand (200,000) inhabitants according to the last preceding United States Census, the compensation of each County Auditor shall be Forty-eight Hundred Dollars ($4800) per annum to be paid in equal monthly installments out of funds of said county. [Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24, § 1.]

Section 2 of the Act of 1937 is published as article 1645f, section 3 as article 1645g and section 5 as 1645d—1. Section 6 repealed all conflicting laws.

Art. 1645e—1. Compensation of county auditors in certain counties.—In every county in this State having a population of less than thirty-three thousand (33,000), according to the last preceding Federal Census, and having assessed property valuation of more than Eighty Million Dollars ($80,000,000), according to the last approved tax rolls, the compensation of each County Auditor shall not exceed Four Thousand, Two Hundred Dollars ($4,200); and in every county in this State having a population of not less than thirty-four thousand, one hundred and forty-five (34,145), nor more than thirty-four thousand, one hundred and sixty (34,160), according to the last preceding Federal Census, the County Auditor shall not receive more than Three Thousand Dollars ($3,000) per year; that in every county in this State having a population of not less than forty-six thousand, one hundred and seventy-nine (46,179), nor more than forty-nine thousand, and twenty (49,020), according to the last preceding Federal Census, the compensation of each County Auditor shall be Three Thousand Dollars ($3,000) per annum; and providing that in counties having a population of not less than forty-eight thousand, six hundred (48,600), nor more than forty-nine thousand (49,000), according to the last preceding Federal Census, the compensation of each County Auditor shall be Three Thousand, Six Hundred Dollars ($3,600); such salaries to be payable in equal monthly installments. [Acts 1937, 45th Leg., 2nd C.S., p. 1902, ch. 25, § 1.]

Art. 1645e—2. Compensation of County Auditors in Certain Counties.—In all counties in this State having a population of not less than twenty-four thousand, five hundred (24,500) and not more than twenty-four thousand, seven hundred (24,700) inhabitants, according to the last preceding Federal Census, and having an assessed valuation in excess of Twenty Million Dollars ($20,000,000) according to the last preceding approved tax roll of such counties, the County Auditor shall receive as compensation for his services a salary of One Hundred and Fifty Dollars ($150) for each One Million Dollars ($1,000,000) or major portion thereof on the assessed valuation of said county, such annual salary to be computed from the last approved tax roll, and to be paid in twelve (12) monthly installments or in the same manner as other county officers are paid in said counties. [Added Acts 1941, 47th Leg., p. 544, ch. 339, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 1645f. Additional duties of county auditors in counties of 190,000 to 200,000 population having city and county hospital.—In counties having more than one hundred and ninety thousand (190,000) and not more than two hundred thousand (200,000) inhabitants according to the last Federal Census where there is a city and county hospital to care for the city and county patients, and where a financial record for such hospital must be kept and reports made to the city and county, the Auditor shall, in addition to the regular duties performed by him as required by law, keep such financial record of such hospital, and make such report to the executive bodies of the city and county, the Mayor and City Councilmen for the city, and the County Judge and County Commissioners for the county. [Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24, § 2.]

Art. 1645g. Audits and reports respecting certain monies by county auditors in counties of 320,000 to 350,000 population.—All County Auditors in counties having a population of more than

three hundred and twenty thousand (320,000) and less than three hundred and fifty thousand (350,000) persons by the last preceding Federal Census or any future Federal Census are hereby authorized, empowered and directed to make a complete audit of any and all monies, property or funds of whatsoever kind or character received, expended or disposed of in any manner by the Superintendent of Public Instruction, the County Board of Trustees and/or County Superintendent of Schools in any such county. A copy of the auditor's report shall be filed with the Commissioners Court and with the County or District Attorney at the end of each fiscal year. [Acts 1937, 45th Leg., 1st C.S., p. 1798, ch. 24, § 3.]

Art. 1645h. County Auditor as Purchasing Agent in counties of 41,680 to 42,000; salary.—In all counties having a population according to the last preceding Federal Census of not less than forty-one thousand, six hundred and eighty (41,680) inhabitants and not more than forty-two thousand, one hundred (42,100) inhabitants, the County Auditor, in addition to the regular duties performed by him as now required by law, shall act as Purchasing Agent for the County, and shall receive a salary of Thirty-seven Hundred and Fifty Dollars ($3750) per annum, payable in twelve (12) equal monthly installments out of the General Revenues of the county. [Acts 1941, 47th Leg., p. 386, ch. 217, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 1646. Auditors for other counties.—When the Commissioners' Court of a county not mentioned and enumerated in the preceding Article shall determine that an Auditor is a public necessity in the dispatch of the county business, and shall enter an order upon the minutes of said Court fully setting out the reason for and necessity of an Auditor, and shall cause such order to be certified to the District Judge or District Judges having jurisdiction in the county, said Judge or Judges shall, if said reason be considered good and sufficient, appoint a County Auditor as provided in the preceding Article, who shall qualify and perform all the duties required of County Auditors by the laws of this State, and who shall receive as compensation for his services as County Auditor an annual salary of not more than the annual total compensation and/or salary allowed or paid the Assessor and Collector of Taxes in his county, and not less than the annual salary allowed such County Auditor under the General Law provided in Article 1645, Revised Civil Statutes, as said Article existed on January 1, 1940, such salary of the County Auditor to be determined and fixed by the District Judge or District Judges having jurisdiction in the county, a majority thereof ruling, said annual salary to be paid monthly out of the general fund of the county. The action of said District Judge or District Judges in determining and fixing the salary of the County Auditor shall be made by order and recorded in the minutes of the District Court of the county, and the Clerk thereof shall certify the same for observance to the Commissioners' Court which shall cause the same to be recorded in its minutes; after the salary of the County Auditor has been fixed by the District Judge or District Judges, no change in such salary shall thereafter become effective until the beginning of the next ensuing fiscal year of the county; provided, however, any increase in the salary of any such County Auditor, over and above the annual salary allowed such County Auditor under the general law provided in Article 1645, as said Article existed on January 1, 1940, shall only be allowed or permitted with the express consent and approval of the Commissioners' Court of the county whose County Auditor is affected or may be affected by the provisions of this Act; such consent and approval of such Commissioners' Court shall be made by order of such Court and recorded in the minutes of the Commissioners' Court of such County. Provided, said District Judge or District Judges shall have the power to discontinue the services of a County Auditor as provided for in this Article at any time after the expiration of one (1) year from the appointment, when it is clearly shown that such Auditor is not a public necessity, and his services are not commensurate with his salary. [Acts 1917, p. 338; Acts 1929, 41st Leg., p. 687, ch. 308, § 1; Acts 1941, 47th Leg., p. 1331, ch. 601, § 2.]

Acts 1939, 46th Leg., p. 144, § 1, as amended Acts 1945, 49th Leg., p. 93, ch. 65, § 1, provides that the county auditor in counties over 225,000 shall serve as budget officer for the Commissioners Courts, requires him to prepare a budget, specifies its contents, provides for a hearing on the budget and contains numerous other provisions in regard to the budget. It also requires monthly reports on the financial condition of the county.

Art. 1646a. County auditors.—The commissioners' court of any county under twenty-five thousand population according to the last United States census may make an arrangement or agreement with one or more other counties whereby all counties, parties to the arrangement or agreement, may jointly employ and compensate a special auditor or auditors for the purposes specified in Articles 1645 and 1646. The county commissioners' court of every county affected by this article may have an audit made of all the books of the county, or any of them, at any time they may desire whether such arrangements can be made with other counties or not; provided the district judge or grand jury may order said audit if either so desires. [Acts 1925, p. 220.] [39th Leg. ch. 67, § 1.]

Art. 1647. [1461] Appointment.—The district judges having jurisdiction in the county, shall appoint the county auditor at a special meeting held for that purpose, a majority ruling; provided, that if a majority of such judges fail to agree upon the selection of some person as auditor, then either of said judges shall certify such fact to the Governor, who shall thereupon appoint some other district judge to act and vote with the aforesaid judges in the selection of such auditor. The action shall then be recorded in the minutes of the district court of the county and the clerk thereof shall certify the same to the commissioners court, which shall cause the same to be recorded in its minutes together with an order directing the payment of the auditor's salary. [Acts 1905, p. 381; Acts 1915, p. 182.]

Art. 1648. [1462] Qualification.—Said auditor shall be a citizen of the county of at least two years residence, and must be a man of unquestionable good moral character and intelligence, thoroughly competent in public business details; and he must be a competent accountant of at least two years experience in auditing and accounting. The judges making such appointment must first carefully investigate and consider the qualifications of said person. If no such qualified citizen of the county can be procured, said judges may appoint a qualified citizen from another county. [Acts 1905, p. 381.]

Art. 1649. [1463] Bond and oath.—The auditor shall, within twenty days of his appointment, and before he enters upon the duties of his office, make a bond with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the county judge, conditioned for the faithful performance of his duties, to be approved by the commissioners court. He shall also take the official oath and an additional one in writing, stating that he is in every way qualified under the provisions and requirements of this title, and giving fully the positions of private or public trust he has heretofore held, and the length of service under each. He shall further include in his oath that he will not personally be interested in any contract with the county. [Acts 1905, p. 381.]

Art. 1650. [1464–5–6] Organization.—The County Auditor of any county of this State may, at any time, with the consent of the District Judge or District Judges having jurisdiction as hereinafter provided, appoint a first assistant and other assistants who shall be authorized to discharge such duties as may be assigned to them by the County Auditor and provided for by law. In counties where only one assistant is appointed, such assistant shall be authorized to act for the County Auditor during his absence or unavoidable detention with respect to such duties as are required by law of the County Auditor. In counties in which more than one assistant shall be appointed, the County Auditor may designate the assistant who shall be authorized to act for him during his absence or unavoidable detention. All of said assistants shall take the usual oath of office for faithful performance of duty and may be required to give such bond as the County Auditor may determine, which bond shall be paid for by the county and shall run in favor of the county and of the County Auditor as their interest may appear.

The County Auditor shall prepare a list of the number of deputies sought to be appointed, their duties, qualifications and experience, and the salaries to be paid each, and shall certify the list to the District Judge, or in the event of more than one District Judge in the county, to the District Judges, and the District Judge or the District Judges shall then carefully consider the application for the appointment of said assistants and may make all necessary inquiries concerning the qualifications of the persons named, the positions sought to be filled and the reasonableness of the salaries requested, and if, after such consideration, the District Judge, or in the event of more than one District Judge, a majority of the District Judges shall approve the appointments sought to be made or any number thereof, he or they shall prepare a list of the appointees so approved and the salaries to be paid each and certify said list to the Commissioners Court of said county. The Commissioners Court shall thereupon order the amount paid from the General Fund of said county upon the performance of the services; and said Court shall appropriate adequate funds for the purpose; provided that the total number of assistants allowed to any county under this Article shall not exceed two (2) assistants in counties having less than fifty thousand (50,000) inhabitants, one assistant in counties having not less than fifty-three thousand, nine hundred and thirty-six (53,936), and not more than fifty-four thousand (54,000) inhabitants according to the last preceding Federal Census, four (4) assistants in counties having between fifty thousand (50,000) and one hundred thousand (100,000) inhabitants, six (6) assistants in counties having between one hundred thousand (100,000) and one hundred and fifty thousand (150,000) inhabitants, ten (10) assistants in counties having between one hundred and fifty thousand (150,000) and two hundred and seventy-five thousand (275,000) inhabitants, and fifteen (15) assistants in counties having more than two hundred and seventy-five thousand (275,000) inhabitants, in each instance according to the last preceding or any future Federal Census, exclusive in each instance of the first assistant, and such temporary assistants as may be needed in cases of bona fide emergencies, the number of such temporary assistants, their salaries and the duration of employment to be recommended by the County Auditor but to be determined by the District Judge or by a majority of the District Judges as the occasion may require, provided in counties having three hundred and thirty thousand (330,000) inhabitants or more according to the last preceding or any future Federal Census in like manner the Judges of the District Courts may authorize the appointment of additional regular assistants when in their judgment a necessity exists therefor. The County Auditor shall have the right to discontinue the services of any assistant employed in accordance with the provisions of this Article, but no assistant shall be employed except in the manner herein provided. The District Judge or District Judges giving consent to the Auditor to appoint an assistant or assistants shall annually have the right to withdraw such consent, and change the number of assistants permitted.

The County Auditor shall be authorized to provide himself with all necessary ledgers, books, records, blanks, stationery, equipment, telephone and postage at the county's expense, but all purchases thereof shall be made in the manner provided for by law. [Acts 1905, p. 381; Acts 1935, 44th Leg., p. 763, ch. 333, § 1.]

Section 2 of Acts 1935, repeals all conflicting laws and parts of laws, excepting article 1673, as amended, post, and section 3 provides that if any part or section is held invalid, it shall not affect the remainder.

Art. 1651. [1467–73] General duties.—The auditor shall have a general oversight of all the books and records of all the officers of the county, district or State, who may be authorized or required by law to receive or collect any money, funds, fees or other property for the use of, or belonging to, the county; and he shall see to the strict enforcement of the law governing county finances. [Acts 1905, p. 381.]

Art. 1652. School ledger.—The auditor shall install in his office a school ledger showing an accurate account of all funds received and disbursed by the common school districts of his county; a bond register showing all the school bonds issued by the common school districts of his county, their rate of interest, date issued and maturity date; and he shall also keep an interest and sinking fund account of such school bonds. [Acts 1917, p. 337.]

Art. 1653. [1468] To examine accounts.—He shall have continual access to and shall examine all the books, accounts, reports, vouchers and other records of any officer, the orders of the commissioners court, relating to finances of the county, and all vouchers given by the trustee of all common school districts of the county and shall inquire into the correctness of same. [Acts 1905, p. 381.]

Art. 1654. [1469–70–71] To examine reports.—All reports of collections of money for the county required to be made to the commissioners court shall also be carefully examined and reported on by him. He shall at least once in each quarter check the books and examine all the reports of the tax collector, the treasurer and all other officers, in detail, verifying the footings and correctness of same, and shall stamp his approval thereon, or note any differences, errors or discrepancies. He shall carefully examine the quarterly report of the treasurer, of all the disbursements, together with the canceled warrants which have been paid, and shall verify the same with the register of warrants issued as shown on the books of the auditor. [Id.]

Art. 1655. [1472–4–5] To count cash.—The auditor, without giving any notice beforehand, shall examine fully into the condition of, or inspect and count the cash in the hands of the county treasurer, or in the bank in which he may have placed same for safe keeping, not less than once in each quarter, and oftener if desired, and shall see that all balances to the credit of the various funds are actually on hand in cash, and that none of said funds are invested in any manner, except as the law may authorize. [Id.]

Art. 1656. [1476–7] To prescribe forms and rules.—He shall prescribe and prepare the forms to be used by all persons in the collection of county revenues, funds, fees and all other moneys, and the mode and manner of keeping and stating their accounts, and the time, mode and manner of making their reports to the auditor, also the mode and manner of making their annual report of office fees collected and disbursed, and the amount refunded to the county in excess of

those allowed under the general fee bill law. He shall have power to adopt and enforce such regulations not inconsistent with the constitution and laws, as he may deem essential to the speedy and proper collection, checking and accounting of the revenues and other funds and fees belonging to the county. [Id.]

Art. 1656a. County Auditor in certain counties to prescribe accounting system; deposit of funds in county depository.—The County Auditor in counties having a population of one hundred ninety thousand (190,000) or more according to the last preceding or any future Federal Census shall prescribe the system of accounting for the county and the forms to be used by the District Clerk, the District Attorney and all county and precinct officers and by all persons in the collection and disbursement of county revenues, funds, fees, and all other moneys collected in an official capacity whether belonging to the county, its subdivisions or precincts, or to, or for the use or benefit of, any person, firm, or corporation; he shall prescribe the mode and manner in which the District Clerk, the District Attorney and all county and precinct officers shall keep their accounts, and he shall have the power to require all officers to furnish monthly, annual, or other reports under oath of all moneys, taxes, or fees of every nature received, disbursed, or remaining on hand; and in connection with such reports he shall have the right to count the cash on hand with such officer, or to verify the amount on deposit in the bank in which such officer may have placed the same for safekeeping. He shall have the power to adopt and enforce such regulations not inconsistent with the Constitution and laws as he may deem essential to the speedy and proper collection and checking of, and accounting for, the revenues and other funds and fees belonging to the county or to any person, firm, or corporation for whom any of said officers may have made collections, or for whose use or benefit they may have received or may hold such funds. All of the fees, commissions, funds, and moneys herein referred to shall be turned over to the County Treasurer by such officer as collected, and such money shall be deposited in the county depository in a special fund to the credit of such officer and draw interest for the benefit of the county, which funds, when so deposited in such depository, shall be secured by the bond of such depository. Thereafter the officer may draw checks on the County Treasurer to disburse said funds in the payment of salaries and expenses authorized by law or in payment to the county or to the persons, firms, or corporations to whom said funds may belong. The Treasurer and the depository shall make no payment unless such check is countersigned by the County Auditor. The deposit of funds in the County Treasury shall not in any wise change the ownership of any fund so deposited except to indemnify said officer and his bondsmen or other owners of such funds for such funds during the period of deposit with the county. At the close of any fiscal year or accounting period now or hereafter fixed by law, the County Auditor shall audit, adjust, and settle the accounts of such officer. In the event the County Auditor shall be unable to obtain proper reports or an adequate accounting from any District Attorney, District Clerk, county or precinct officer as herein provided, either during or after his term of office, the County Auditor shall have authority to enforce an accounting thereof, and to take such steps at the expense of the county as are necessary in his judgment to protect the interests of the county or of the persons, firms, or corporations entitled to such funds. [Acts 1933, 43rd Leg., p. 217, ch. 98; Acts 1935, 44th Leg., p. 330, ch. 122, § 1.]

Section 2 of Acts 1935, repeals all conflicting laws and parts of laws and provides that if any portion is held invalid the remaining portion shall operate as valid.

Art. 1656b. Reports to County Auditor by county and district clerks as to trust funds; countersigning checks.—In all counties having a population of one hundred ninety thousand (190,000) or more, according to the last preceding or any future Federal Census, and in which the Commissioners Court may have provided, or shall hereafter provide, for a depository for the trust funds of the County Clerk and of the District Clerk, said officers shall each make to the County Auditor in such form as he may prescribe such monthly or other reports under oath as he may require to reflect properly all trust funds received and disbursed by such officer, including all moneys remaining on hand at the time of such report. All checks issued for the disbursement of said funds shall be issued in accordance with the laws providing for trust fund depositories and such checks shall be submitted to the County Auditor for his countersignature prior to delivery or payment, and said County Auditor shall countersign said checks only upon written evidence of the order of the Judge of the Court in which said funds have been deposited, authorizing the disbursement of such funds. [Acts 1933, 43rd Leg., p. 217, ch. 98.]

Art. 1656c. State Comptroller of Public Accounts to prescribe uniform system of accounts.—Sec. 1. The State Comptroller of Public Accounts shall prescribe and prepare the forms to be used by all county officials in the collection of county revenues, funds, fees, and other moneys, and in the disbursement of all funds, and shall prescribe the mode and manner of keeping and stating their accounts, which forms shall be so prepared, as in the judgment of the Comptroller will meet the needs of counties of different sizes in the State.

Sec. 2. In order that a modern and uniform system of accounts, properly suited to the needs of the counties in keeping their financial records may be prescribed, the Comptroller is hereby authorized and directed to make a survey and study of the financial records, reports, books and forms now in use by the counties of this State and to make such revisions and prescribe such forms as he may deem necessary. [Acts 1933, 43rd Leg., 1st C.S., p. 183, ch. 66.]

Art. 1657. [1478] Deposits.—All deposits that are made in the county treasury shall be upon a deposit warrant issued by the county clerk in triplicate; said warrants shall authorize the treasurer to receive the amount named, for what purpose, and to which fund the same shall be applied. The treasurer shall retain the original; and the duplicate shall be signed and returned to the county clerk for the county auditor and the triplicate signed and returned to the depositor. The auditor shall then enter same upon his books, charging the amounts to the county treasurer and crediting the party depositing same. The treasurer shall not, under any circumstances, receive any money in any other manner than that named herein. [Acts 1905, p. 381.]

Art. 1658. [1479] Bids for supplies.—Bids shall be asked for all supplies of stationery, books, blanks, records, and other supplies for the various officers for which the county is required to pay, and the purchase made from the lowest bidder, after filing said bid with the auditor for record. [Id.]

Art. 1659. [1480] Bids for material.—Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners court, has submitted the lowest and best bid. The county auditor shall advertise for a period of two weeks in at least one daily newspaper, published and circulated in the county, for such supplies and material according to specifications, giving in detail what is needed. Such advertisements shall state where the specifications are to be found, and shall give the time and place for receiving such bids. All such competi-

tive bids shall be kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners court; and when the bids received are not satisfactory to the said judge or county commissioners, the auditor shall reject said bids and re-advertise for new bids. In cases of emergency, purchases not in excess of one hundred and fifty dollars may be made upon requisition to be approved by the commissioners court, without advertising for competitive bids. [Id.; Acts 1921, p. 185.]

Art. 1660. [1481–2–3] Approval of claims.—All claims, bills and accounts against the county must be filed in ample time for the auditor to examine and approve same before the meetings of the commissioners court. No claim, bill or account shall be allowed or paid until it has been examined and approved by the county auditor. The auditor shall examine the same and stamp his approval thereon. If he deems it necessary, all such accounts, bill, or claims must be verified by affidavit touching the correctness of the same. The auditor is hereby authorized to administer oaths for the purposes of this law. [Acts 1905, p. 381.]

Art. 1661. [1484–5] Requisites of approval.—He shall not audit or approve any such claim unless it has been contracted as provided by law, nor any account for the purchase of supplies or materials for the use of said county or any of its officers, unless, in addition to other requirements of law, there is attached thereto a requisition signed by the officer ordering same and approved by the county judge. Said requisition must be made out and signed and approved in triplicate by the said officers, the triplicate to remain with the officer desiring the purchase, the duplicate to be filed with the county auditor, and the original to be delivered to the party from whom said purchase is to be made before any purchase shall be made. All warrants on the county treasurer, except warrants for jury service, must be countersigned by the county auditor. [Id.]

Art. 1662. [1486] Register of warrants.—He shall keep a register of all warrants issued by the judges or the district or county clerks on the county treasurer, and their dates of payment by the treasurer. Such clerks or judges shall daily furnish the auditor an itemized report specifying the warrants that have been issued, their numbers, their several amounts, the names of the persons to whom payable, and for what purpose, on forms prepared by the auditor. [Id.]

Art. 1663. [1487–8] Accounts with officers.—He shall keep an account with each person named in the preceding articles and in doing so he shall relieve the county clerk of keeping the finance ledger. His books shall show the detailed items of the indebtedness against all of said officers and the manner of discharging same. He shall require all persons who shall have received any moneys belonging to the county, or having the disposition or management of any property of the county to render statements to him. [Id.]

Art. 1664. [1489–90] General accounts.—He shall keep a general set of books showing all the transactions of the county relating to accounts, contracts, indebtedness of the county, and its receipts and disbursements of all kinds, and shall make tabulated reports of said funds and accounts for each regular meeting of the commissioners court. [Id.]

Art. 1665. [1491] Reports to commissioners.—He shall make quarterly and annual reports to the Commissioners Court, and District Judge, or Judges, of his county, setting forth all the facts of interest, and showing the aggregate amounts received and disbursed out of each fund, the condition of each account on the books, the amount of bonded and other indebtedness of the county, together with such other information and suggestions as he may deem proper or said Commissioners Court may require. Said annual report shall be made to include all transactions during the year ending December 31st of each year, and shall be completed and filed at a regular or special term of the Commissioners Court in the following February, and a copy of all of such reports shall be filed with the District Judge, or Judges, of said county. [Acts 1905, p. 381; Acts 1933, 43rd Leg., p. 378, ch. 149.]

Art. 1666. [1492–3–4] Budget.—He shall prepare an estimate of all the revenues and expenses, and annually submit it to the commissioners court, which court shall carefully make a budget of all appropriations to be set aside for the various expenses of the county government in each branch and department. He shall open an account with each appropriation in said budget, and all warrants drawn against same shall be entered to said account. He shall carefully keep an oversight of same to see that the expenses of any department do not exceed said budget appropriations, and keep said court advised of the condition of said appropriation accounts from time to time. [Acts 1905, p. 381.]

Acts 1939, 46th Leg., p. 144, § 1, as amended by Acts 1945, 49th Leg., p. 93, ch. 65, § 1 provides for a budget system in counties over 225,000. Section 2 of such acts repealed conflicting laws.

Art. 1667. Improvement district finances.—In all counties which have or may have a County Auditor and containing a population of one hundred ten thousand (110,000) or more, as shown by the preceding Federal Census, and in all counties having a population of not less than thirty-eight thousand (38,000) nor more than thirty-eight thousand three hundred fifty (38,350), according to the last Federal Census, and in which counties there exists or in which there may be created any improvement, navigation, drainage, or road or irrigation district, or any other character of district having for its purpose the expenditure of public funds for improvement purposes, or for improvements of any kind whether derived from the issuance of bonds or through any character of special assessment, the County Auditor shall exercise such control over the finances of said district as hereinafter provided. [Acts 1915, p. 17; Acts 1931, 42nd Leg., 2nd C.S., p. 62, ch. 38; Acts 1933, 43rd Leg., p. 364, ch. 140; Acts 1939, 46th Leg., Spec.L., p. 610, § 1; Acts 1941, 47th Leg., p. 841, ch. 516, § 1.]

Section 2 of Acts 1935, 44th Leg., p. 314, ch. 118, § 1 of which amended article 8120, provides that nothing in the Act of 1935 should in any manner repeal or modify the provisions of this article and articles 1670, 1671, 1673.

Section 2 of the amendatory act of 1941 repealed all conflicting laws and parts of laws.

Art. 1668. Improvement districts: supplies.—All purchases for supplies and materials, and all contracts for labor on behalf of any such districts shall be made in accordance with the law governing such districts, provided, that the commissioners or other governing body be authorized, without the taking of bids in cases of emergency to make purchases or contracts not to exceed the sum of fifty dollars, upon requisition signed by at least two members of the governing body of such district. A requisition shall be issued therefor, executed in triplicate, one copy to be delivered to the person or corporation from whom the purchase is made, one to be delivered to the county auditor, and one to remain on file with the governing body of such district before any purchase shall be made. [Acts 1915, p. 17.]

Art. 1669. Improvement districts: expenditures.—All bills for supplies, materials, labor, work or anything necessary to the carrying out of the purpos-

es of any such district shall be contracted in accordance with the law creating and governing such district, except as may be otherwise provided herein. The proper officers of said districts shall file all bills with the county auditor before payment, and he shall audit and approve the same, provided said bills have been contracted in accordance with law and are found by him to be correct, and no bill shall be paid until the same has been audited and approved by the county auditor as provided by this article. All warrants in payment of bills of any such districts shall be drawn and signed in accordance with the law governing the issuance of warrants of such district, and shall be countersigned by the county auditor, and no treasurer or other depository of any such districts shall pay out any money except upon warrants so duly countersigned. He shall countersign warrants for the investment of funds only when invested in the manner authorized by law. He shall keep an accurate account of all balances on hand in the various district funds. [Id.]

Art. 1670. Improvement districts: forms; regulation of collections and disbursements.—The county auditor, in counties having a population of 330,000 or more, as shown by the last preceding Federal Census, or which may hereafter have such population, shall be required to prescribe the accounting system for all navigation, drainage, and other improvement districts in such county and to revise such systems from time to time when he shall deem it necessary. He shall prescribe the forms to be used by the officers and employees of such districts in the payment of all bills, the collection and disbursement of moneys, the keeping of accounts, and he shall prescribe the time, mode, and manner of making reports to the auditor of collections, disbursements, and statistics. The county auditor shall have the power to adopt such regulations not inconsistent with the Constitution and Laws of this State as he may deem essential to the speedy and proper collection of, and accounting for, the revenues of such districts, and the checking of their disbursements. He shall make monthly and annual reports similar in all respects to those required of him concerning county finances. [Acts 1915, p. 17; Acts 1933, 43rd Leg., p. 544, ch. 175, § 1.]

This article not affected by amendment to article 8120, see note to article 1667.

Art. 1671. Improvement districts: reports.—The county auditor shall check all reports required by law to be filed by any district officer, and within thirty days after the filing thereof shall make a detailed report to the commissioners court showing his finding thereon and the condition of such district as shown by said report, and as shown by the records of his office. He shall keep a set of books, showing all receipts and expenditures of the funds of such districts. It shall not be lawful for the treasurer or other depository to receive money for said district without executing proper receipts upon forms to be provided by the county auditor. All books, accounts, records, bills and warrants in the possession of any officer of any such district, or in the possession of any other person legally charged with their custody, shall at all times be subject to the inspection of the county auditor.

This article not affected by amendment to article 8120, see note to article 1667.

Art. 1672. Improvement districts: compensation.—The county auditor shall receive for his services in auditing the affairs of such districts, such compensation as the commissioners court may prescribe, which shall be paid by the county out of the general fund and repaid to the county by such districts by warrants drawn upon the proper funds of such district. In such counties which have or may have as many as five such districts, the compensation allowed the county auditor for his services on behalf of such districts shall be not less than the sum of twelve hundred dollars per annum, to be prorated among the districts in such proportion as the commissioners court may determine. [Acts 1915, p. 17.]

Repealed by Acts 1935, 44th Leg., p. 316, ch. 119, § 2, insofar as same relates to navigation districts having cities of 100,000 or more.

Art. 1673. Pay of assistants.—In all counties having a population of 330,000 or more, as shown by the preceding Federal Census, the county auditor is authorized to apply to the district judges of his county for such assistants as may be needed by him to enable him to properly keep the financial accounts of such districts, and to audit their receipts and disbursements, and to make such reports as are required by law, or as may be necessary. Said application shall be made under oath, stating the necessity for such assistants and the salaries authorized. The district judges shall hear such application and designate the number of assistants to be allowed and their rates of pay. Such assistants shall take the usual oath of office and shall be paid from the funds of the navigation district or from the funds of the other improvement districts, as may be designated in the order of the district judges allowing such assistants. [Acts 1915, p. 17; Acts 1933, 43rd Leg., p. 544, ch. 175, § 2.]

This article not affected by amendment to article 8120, see note to article 1667.

Art. 1674. [1495] Provisions controlling.—The provisions of this subdivision are cumulative, and, where conflicting with any existing law, the provisions of this subdivision shall control. [Acts 1905, p. 381.]

Art. 1675. [1496] County clerk's duties.—Where the provisions of this subdivision impose upon the auditor like duties as are required of the county clerk, the provisions of this law shall prevail, and to such extent only is the county clerk relieved of his duties. [Id.]

Art. 1676. [1497] Removal of auditor.—An auditor appointed under the provisions of law, who has been sufficiently proven guilty of official misconduct, or has proven to be incompetent to faithfully discharge the duties required of him, after due investigation by the same power which appointed him, may be removed, and his successor appointed. [Id.]

Art. 1676a. Auditors in certain counties: duties, powers, reports.—Sec. 1. In all counties having a County Auditor and containing a population of not less than seventy-five thousand (75,000), and not more than eighty thousand (80,000), as shown by the last preceding Federal Census, and in which there are Navigation Districts, Water Improvement Districts and Water Control and Improvement Districts, the County Auditor shall not exercise control over the finances and affairs of such Navigation Districts, Water Improvement Districts, and Water Control and Improvement Districts (or other districts created for improvement or conservation purposes, which are not administered by the Commissioners Court of such counties), but he shall annually, between July 1st and October 1st, carefully audit all books, accounts, records, bills and warrants of any such District for the year ending the 30th of June preceding, and file his report of such audit with the County Clerk of such county.

Sec. 2. The officers and directors of each such District shall, on or before the 10th of each month, make and file with the County Auditor a report in writing, authenticated by such officers and directors, showing the total amount of moneys collected for and expended from the various funds of such District for the calendar month next preceding.

Sec. 3. The method of audit hereby provided for Navigation Districts, Water Improvement Districts, Water Control and Improvement Districts, and all

other Districts created for improvement and conservation purposes in counties containing a population of not less than seventy-five thousand (75,000), nor more than eighty thousand (80,000), as shown by the last preceding Federal Census, and not directly administered by the Commissioners Court of such counties, shall supersede all other provisions for auditing the receipts and expenditures of such districts otherwise prescribed by law, and all laws and parts of laws in conflict herewith are hereby repealed.

Sec. 4. Only the provisions of this Act and of Articles 1672 and 1673 shall apply in counties having a population of not less than seventy-five thousand (75,000), and not more than eighty thousand (80,000), according to the last preceding Federal Census, which contain Navigation Districts, Water Improvement Districts, and Water Control and Improvement Districts.

Sec. 5. If any provision of this Act is held to be unconstitutional or otherwise invalid, same shall not affect the validity of any other provision hereof. [Acts 1933, 43rd Leg., p. 306, ch. 118.]

Art. 1676b. Auditors in counties of 83,000 to 83,350 having navigation districts and other districts.—Section 1. In all counties having a County Auditor and containing a population of not less than eighty-three thousand (83,000) and not more than eighty-three thousand, three hundred and fifty (83,350), as shown by the last preceding Federal Census, and in which there are Navigation Districts, Water Improvement Districts, and Water Control and Improvement Districts, the County Auditor shall not exercise control over the finances and affairs of such Navigation Districts, Water Improvement Districts, and Water Control and Improvement Districts (or other districts created for improvement or conservation purposes, which are not administered by the Commissioners Courts of such counties), but he shall annually, between July 1st and October 1st, carefully audit all books, accounts, records, bills, and warrants of any such district for the year ending the 30th of June preceding, and file his report of such audit with the County Clerk of such county.

Sec. 2. The officers and directors of each such district shall, on or before the 10th of each month, make and file with the County Auditor a report in writing, authenticated by such officers and directors, showing the total amount of moneys collected for and expended from the various funds of such district for the calendar month next preceding.

Sec. 3. The method of audit hereby provided for Navigation Districts, Water Improvement Districts, Water Control and Improvement Districts, and all other districts created for improvement and conservation purposes in counties containing a population of not less than eighty-three thousand (83,000), nor more than eighty-three thousand, three hundred and fifty (83,350), as shown by the last preceding Federal Census, and not directly administered by the Commissioners Courts of such counties, shall supersede all other provisions for auditing the receipts and expenditures of such districts otherwise prescribed by law, and all laws and parts of laws in conflict herewith are hereby repealed.

Sec. 4. Only the provisions of this Act and of Articles 1667, 1672, and 1673 of the Revised Civil Statutes of Texas of 1925 shall apply in counties having a population of not less than eighty-three thousand (83,000), and not more than eighty-three thousand, three hundred and fifty (83,350), according to the last preceding Federal Census, which contain Navigation Districts, Water Improvement Districts, and Water Control and Improvement Districts.

Sec. 5. If any provision of this Act is held to be unconstitutional, or otherwise invalid, same shall not affect the validity of any other provision hereof. [Acts 1941, 47th Leg., p. 409, ch. 238.]

TITLE 35—COUNTY LIBRARIES

1. COUNTY FREE LIBRARIES

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1. COUNTY FREE LIBRARIES

Article 1677. Authority to establish.—The commissioners court of any county may establish, maintain, and operate within their respective counties, county free libraries in the manner and with the functions prescribed in this title. The said court shall also have the power and authority to establish in cooperation with another county or counties a joint free county library for the benefit of the co-operative counties. [Acts 2nd C. S. 1919, p. 219.]

Art. 1678. Territory.—The commissioners court of any county may establish county free libraries for that part of such county lying outside of the incorporated cities and towns already maintaining free public libraries and for such additional parts of such counties as may elect to become a part of or to participate in such county free library system. On their own initiative, or when petitioned to do so by a majority of the voters of that part of the county to be affected,

said court shall proceed to establish and provide for the maintenance of such library according to the further provisions of this title. The county library shall be located at the county seat in the court house, unless more suitable quarters are available. [Id.]

Art. 1679. Tax for maintenance.—The Commissioners Courts are hereby authorized to set aside annually from the General Tax Fund, or the Permanent Improvement Fund of the county, as the said Court may determine, sums for the maintaining of free county libraries and for the erection of permanent improvements and the securing of land for free county libraries, but not to exceed ten cents (10¢) on the One Hundred Dollars ($100) valuation of all property in such county outside of all incorporated cities and towns already supporting a free public library, and upon all property within all incorporated cities and towns already supporting a free library, and upon all property within all incorporated cities and towns already supporting a free public library which have elected to become a part of such free library systems provided in Title 35 of the Revised Civil Statutes, for the purpose of maintaining county free libraries and for purchasing property therefor. [Acts 2nd C.S. 1919, p. 219; Acts 1947, 50th Leg., p. 765, ch. 378, § 1.]

Art. 1680. Gifts and bequests.—The commissioners court is authorized and empowered to receive on behalf of the county any gift, bequest, or devise for the county free library, or for any branch or subdivision thereof. The title to all property belonging to the county free library shall be vested in the county, but where the gifts or bequests shall be made for the benefit of any branch or branches of the county free library, such gifts or bequests shall be administered as designed by the donor. [Acts 2nd C.S.1919, p. 219.]

Art. 1681. Existing libraries.—In any county where a farmers' county library has been established as provided by former laws the same shall continue to operate as a farmers' county library, unless a county free library shall be established as provided for in this title, in which case the former shall merge with and become a part of the latter. [Id.]

Art. 1682. Board of examiners.—A commission is hereby created to be known as the State Board of Library Examiners, consisting of the State Librarian, who shall be ex-officio chairman of the Board; the Librarian of the State University, who shall be an ex-officio member; and three other well trained librarians of the State who shall at first be selected by the State Librarian and the Librarian of the State University. The term of each shall be for six years, one of the appointive members retiring every two years. His successor shall be chosen by the remaining members of the Board in executive session. The members of said board shall receive no compensation for their services except actual and necessary traveling expenses paid out of the State library fund. Said Board shall arrange for an annual meeting and for such other meetings as may be necessary in the pursuance of its duties. Said board shall pass upon the qualifications of all persons desiring to become county librarians in the State of Texas, and may in writing adopt rules and regulations not inconsistent with the law for its government and for carrying out the purposes of this title. [Id.]

Art. 1683. County librarian.—Upon the establishment of a county free library the Commissioners Court shall biennially appoint a County Librarian who shall hold office for a term of two (2) years subject to removal for cause after a hearing by said Court. No person shall be eligible to the office of County Librarian unless prior to his appointment he has received from the State Board of Library Examiners a certificate of qualification for office; and when any County Librarian has heretofore received a certificate of qualification for office from the State Board of Library Examiners, and has served as County Librarian for any county in this State, said Librarian may be employed or reemployed by any county as Librarian without further examination and issuance of certificate from said State Board of Library Examiners. The County Librarian shall, prior to entering upon the duties of his office, file with the County Clerk the official oath and make a bond upon the faithful performance of his duties with sufficient sureties approved by the County Judge of the county of which the Librarian is to be the County Librarian, in such sum as the Commissioners Court may determine. [Acts 2nd C.S. 1919, p. 219; Acts 1935, 44th Leg., p. 115, ch. 41, § 1.]

Art. 1684. Salary and expenses.—The salary of the librarian and assistants shall be fixed by said court at the time they fix the salary of the appointive county officers. The county librarian and assistants shall be allowed actual and necessary traveling expenses incurred in the business of the library. [Acts 2nd C.S. 1919, p. 219.]

Art. 1685. Duty of librarian.—The librarian shall endeavor to give an equal and complete service to all parts of the county through branch libraries and deposit stations in schools and other locations where suitable quarters may be obtained, thus distributing printed matter, books, and other educational matter as quickly as circumstances will permit. The county librarian shall have the power to make rules and regulations for the county free library, to establish branches and stations throughout the county, to determine the number and kind of employés of such library, and, with the approval of the commissioners' court, to appoint and dismiss such employés. The county librarian shall, subject to the general rules adopted by the commissioners' court, build up and manage according to accepted rules of library management, a library for the people of the county and shall determine what books and other library equipment shall be purchased. [Id.]

Art. 1686. Report of librarian.—The librarian of each county library shall, on or before the first day of October in each year, report to the commissioners court and to the State Librarian the operation of the county library during the year ending August 31st preceding. Such report shall be made on blanks furnished by the State Librarian, and shall contain a statement of the condition of the library, its operation during the year, and such financial and book statistics as are kept in well regulated libraries. [Id.]

Art. 1687. Supervision of library.—The county library shall be under the general supervision of the commissioners court. Such libraries shall also be under the supervision of the State Librarian, who shall, from time to time, either personally or by one of his assistants, visit the county free libraries and inquire into their condition, advising with the librarians and said court and rendering such assistance in all matters as he may be able to give. [Id.]

Art. 1688. Use of library.—Any white person of such county may use the county free library under the rules and regulations prescribed by the commissioners court and may be entitled to all the privileges thereof. Said court shall make proper provision for the negroes of said county to be served through a separate branch or branches of the county free library, which shall be administered by custodian of the negro race under the supervision of the county librarian. [Id.]

Art. 1689. Funds for library.—All funds of the county free library shall be in the custody of the county treasurer, or other county official, who may discharge the duties commonly delegated to the county treasurer. They shall constitute a separate fund to be known as the county free library fund, and shall

not be used for any other purposes except those of a county free library. Each claim against the county free library shall be authorized and approved by the county librarian, or in his absence from the county, by his assistant. It shall then be acted upon in the same manner as are all other claims against the county. [Id.]

Art. 1690. Joinder with city.—After the establishment of a county free library the governing body of any incorporated city or town in the county, maintaining a free public library, may notify the commissioners court that such city or town desires to become a part of the county free library system, and thereafter such city or town shall be a part thereof, and its inhabitants shall be entitled to the benefits of such county free library, and the property within such town or city shall be included in computing the amount to be set aside as a fund for county free library purposes. [Id.]

Art. 1691. Contract with city.—The commissioners court wherein a county free library has been established under the provisions of this title, shall have full power and authority to enter into contracts with any incorporated city or town maintaining a public free library, and such incorporated city or town shall through its governing body, have full power to enter into contracts with such county to secure to the residents of such incorporated city or town the same privileges of the county free library as are enjoyed by the residents of such county outside of such incorporated city or town, or such privileges as may be agreed upon in such contract, upon such consideration to be named in the contract as may be agreed upon, the same to be paid into the county library fund, and thereupon the residents of such incorporated city or town shall have the same privileges with regard to said county free library as are had by the residents of such county outside of such incorporated city or town, or such privileges as may be agreed upon by contract. [Id.]

Art. 1692. Withdrawal of city.—The governing body of such incorporated city or town may at any time after two years notify the commissioners court that such city or town no longer desires to be a part of the county free library system and thereafter such city or town shall cease to participate in the benefits of such county free library system, and the property situated in said city or town shall no longer be assessed in computing the fund to be set aside for county free library purposes. The governing body of such city or town shall give the commissioners court six months notice and publish at least once a week for six successive weeks prior to either giving or withdrawing such notice in a county newspaper designated by the governing body, and circulated throughout such city or town, notice of such contemplated action, giving date and place of meeting at which such contemplated action is proposed to be taken. [Id.]

Art. 1693. Contract with another county.—The commissioners court of any county, wherein a county free library has been established under the provisions of this title, shall have full power and authority to enter into contracts or agreements with the commissioners court of any other county to secure to the residents of such other county such privileges of such county free library as may, by such contract, be agreed upon, the same to be paid into the county free library fund, and thereupon the inhabitants of such other county shall have the privilege of such county free library as may by such contract be agreed upon; and the commissioners court shall have full power and authority to enter into a contract with the commissioners court of another county wherein a county free library has been established, under the provisions of this title and shall have power to provide for and to set aside a county free library fund, in the manner already set out, for the purpose of carrying out such contract. But the making of such contract shall not bar the commissioners court of such county from establishing a county free library therein, and upon the establishment of such county free library such contract may be terminated upon such terms as may be agreed upon by the parties thereto, or may continue for the term thereof. [Id.]

Art. 1694. Contract with established library.—Instead of establishing a separate county free library, upon petition of a majority of the voters of the county, the commissioners court may contract for library privileges from some already established library. Such contract shall provide that such established library shall assume the functions of a county free library within the county with which the contract is made, including incorporated cities and towns therein, and shall also provide that the librarian of such established library shall hold or secure a county librarian's certificate from the State Board of Library Examiners. Said court may contract to pay annually into the library fund of said established library such sum as may be agreed upon, to be paid out of the county library fund. Either party to such contract may terminate the same by giving six months notice of intention to do so. Property acquired under such contract shall be subject to division at the termination of the contract upon such terms as are specified in such contract.

Art. 1695. Combined counties.—Where found to be more practicable, two or more adjacent counties may join for the purposes of this law and establish and maintain a free library under the terms and provisions above set forth for the establishment and maintenance of a county free library. In such cases the combined counties shall have the same powers and be subject to the same liabilities as a single county as provided in this law. The commissioners courts of the counties which have combined for the establishment and maintenance of a free library shall operate jointly in the same manner as does the commissioners court of a single county in carrying out the provisions of this law. If any county desires to withdraw from such combination it shall be entitled to a division of property in such proportion as agreed upon in the terms of combination at the time such joint action was taken. [Id.]

Art. 1696. Termination of library.—A county free library may be disestablished upon petition of a majority of the voters of that part of the county maintaining a county free library, asking that said library system be no longer maintained. The commissioners court upon the termination of existing contracts shall call in all books and movable property of the defunct county free library, and have same inventoried and stored under lock and seal in some dry and suitable place in the county court house. [Id.]

2. LAW LIBRARY

Art. 1697. Establishment of library.—A county law library may be established at the county seat by the commissioners court of any county containing a city of over 160,000 population according to the preceding Federal census. [Acts 1st C. S. 1921, p. 21.]

Art. 1698. Appropriation for library.—The commissioners court of any such county may establish and provide for the maintenance of such law library on its own initiative and appropriate therefor the sum of $20,000.00 or such part thereof as it deems necessary, and shall appropriate each [year] such sum as may be necessary to properly maintain and operate such library. [Id.]

Art. 1699. Rules and regulations.—Said court may make all rules and regulations necessary or proper for the establishment, maintenance, operation

and use of said library not in conflict with the laws of this State. [Id.]

Art. 1700. Custodian.—Upon the establishment of a county law library the commissioners court shall employ a custodian or custodians of such library, who shall receive such pay as said court may fix. Each custodian shall execute a bond in the sum fixed by the court payable to and to be approved by the county judge of said county, conditioned that such custodian will faithfully perform his duties. [Id.]

Art. 1701. Gifts and bequests.—The commissioners court may receive on behalf of the county any gift or bequest for such library. The title to all such property shall be vested in the county. Where any gift or bequest is made with certain conditions, and accepted by the county, these conditions shall be administered as designated by the donor. [Id.]

Art. 1702. Funds of library.—All funds of such library shall be in custody of the county treasurer of such county. They shall be a separate fund and shall be used for no purpose other than for such library. Each claim against the county law library shall be acted upon in like manner as other claims against the county. [Id.]

Art. 1702a. [Repealed by Acts 1943, 48th Leg., p. 297, ch. 192, § 4.]

The article repealed was Acts 1931, 42nd Leg., Spec.L., p. 457, ch. 236, § 1; Acts 1941, 47th Leg., p. 521, ch. 317, § 1.

Art. 1702a—1. County law libraries in certain counties; management.—Section 1. For the purpose of establishing and maintaining a "County Law Library" for each county coming within the terms of this Act there shall be charged as costs, and taxed, collected, and paid as other costs, the sum of One ($1.00) Dollar in each civil case, except suits for delinquent taxes, hereafter filed in every County or District Court, in each county having eight (8) or more District Courts and three (3) or more County Courts including County Courts at Law. Provided, however, that in no case shall the county be liable for said cost in any civil cases. Such costs shall be collected by the Clerk of the respective Courts, and when collected shall be paid to the County Treasurer, to be kept by him in a separate fund to be known as the "County Law Library Fund"; such fund shall be administered by the Commissioners Court for the purchase, lease or maintenance of a law library, and furniture and equipment necessary thereto, in a place convenient and accessible to the Judges and litigants in such courts, and for the payment of salaries to employees to be appointed by the Commissioners Court; the Commissioners Court of counties affected by this Act shall make rules for the use of books in said library, and shall provide suitable space and shelving for housing same.

The salary of the custodian or librarian and such other employees or assistants as may be necessary shall be fixed by the Commissioners Court and shall be paid out of the funds collected under this Act.

The Commissioners Court of such counties may vest the management of such library in a committee to be selected by the Bar Association of such county, but the acts of such committee shall be subject to the approval of the Commissioners Court.

Sec. 2. The Provisions of this Act may be adopted by any county in this state having five (5) or more District Courts, by the passage of a Resolution to that effect by the Commissioners Court of such county at a regular session thereof with all members of such Court present.

Sec. 3. If any part or parts of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such invalid part or parts thereof would be so declared unconstitutional. [Acts 1943, 48th Leg., p. 297, ch. 192.]

Section 4 of the act of 1943 repealed article 1702a and all conflicting laws.

Art. 1702b. County law libraries in certain counties.—Section 1. For the purpose of establishing "County Law Libraries" there shall be taxed, collected, and paid as other costs the sum of One Dollar ($1) in each case, Civil or Criminal, except suit for delinquent taxes, hereafter filed in every county and/or District Court, Civil or Criminal, in each county now or hereafter having three (3) or more District Courts, one of which sits and has jurisdiction in not less than two (2) other counties and none of which have more than four (4) terms a year; provided, however, that in no event shall the county be liable for said costs in any Civil or Criminal case, such costs shall be collected by the Clerk of the respective Courts in said counties and when collected, shall be paid by him to the County Treasurer to be kept by him in a separate fund to be known as the "County Law Library Fund"; such funds shall be administered by the Commissioners Court for the purchase and maintenance of a law library and the furniture and equipment necessary thereto in a place convenient and accessible to the Judges and litigants of such counties and for the payment of a salary to a librarian to be appointed by the Commissioners Court; provided, however, that said counties shall not use the funds collected under the provisions of this Act for any other purposes except the purposes above indicated. The Commissioners Court of counties affected by this Act shall make rules for the use of books in said library and provide space for housing same.

The salary of the custodian or librarian herein provided for shall be fixed by the Commissioners Court and shall be paid out of the funds collected under this Act.

Sec. 2. This Act shall not have the effect of repealing or modifying any Act now in force respecting the establishment and maintenance of County Law Libraries in any county in this State but such Acts shall remain in full force and effect as to counties affected thereby. [Acts 1937, 45th Leg., p. 602, ch. 303.]

Art. 1702b—1. County law libraries in counties of 11,300 to 12,500 population and fulfilling certain other requirements; County Law Library Fund.—For the purpose of establishing "County Law Libraries" there shall be taxed, collected, and paid as other costs in the sum of One Dollar ($1) in each case, civil or criminal, except suits for delinquent taxes hereafter filed in every County and/or District Court in each county now having an area of not less than one thousand, one hundred and thirty (1,130) and not more than one thousand, five hundred (1,500) square miles, and with a population according to the last Federal Census of not less than eleven thousand, three hundred (11,300) and not more than twelve thousand, five hundred, (12,500), and whose county seat is in a city of not less than two thousand, two hundred (2,200) and not more than three thousand (3,000) according to the last Federal Census; provided, however, that in no event shall the County be liable for said cost in any civil or criminal case. Such cost shall be collected by the Clerk of the respective Courts in said county, and when collected shall be paid by him to the County Treasurer to be kept by him in a separate fund to be known as the "County Law Library Fund." Such funds shall be administered by the Commissioners Court for the purchase and/or maintenance of a law library, and the furniture and equipment necessary thereto, the same to be placed in convenient and accessible quarters for the use of Judges and litigants of such counties.

For the purpose of protecting said libraries as hereinabove set out, the Commissioners Court may provide if necessary for a custodian or librarian appointed by said Commissioners Court, and may fix salaries

therefor, providing, however, that the counties come under the provisions of this Act and shall not use the funds collected for any other purposes except the purposes above set out.

The Commissioners Court of counties affected by this Act shall make rules for the use of books in said libraries and provide space for housing the same. The salaries for custodian or librarian here provided for shall be fixed by the Commissioners Court and be paid out of the funds collected under this Act. [Acts 1939, 46th Leg., Spec.L., p. 614, § 1.]

Section 2 of the Act of 1939 repeal or modify any Act then in force regarding the establishment and maintenance of county libraries.

Art. 1702b—2. County law libraries in counties of 50,000 to 78,000; County Law Library Fund.—Section 1. The Commissioners Courts of all counties within this State, having a population of not less than fifty thousand (50,000) inhabitants nor more than seventy-eight thousand (78,000) inhabitants, according to the last preceding Federal Census, and in which there is located no Court of Civil Appeals, shall have the power and authority, by first entering an order for that purpose, to provide for, maintain and establish a county law library.

Sec. 2. For the purpose of establishing "County Law Libraries" after the entry of such order, there shall be taxed, collected, and paid as other costs the sum of One Dollar ($1) in each case, civil or criminal, except suits for delinquent taxes, hereafter filed in every County or District Court; provided, however, that in no event shall the county be liable for said costs in any case. Such costs shall be collected by the Clerks of the respective Courts in said counties and paid by said Clerk to the County Treasurer to be kept by said Treasurer in a separate fund to be known as the "County Law Library Fund." Such fund shall be administered by said Courts for the purchase and maintenance of a law library in a convenient and accessible place, and said fund shall not be used for any other purpose.

Sec. 3. Said Courts are granted all necessary power and authority to make this Act effective, to make reasonable rules in regard to said library and the use of the books thereof, and to carry out the terms and provisions of this Act. [Acts 1939, 46th Leg., Spec.L., p. 612.]

Section 4 of the Act of 1939 provided that such Act should not repeal or modify existing law.

Art. 1702b—3. Law libraries in counties of 75,000 to 95,000; County Law Library Fund.—Section 1. The Commissioners Courts of all counties within this State having a population of not less than seventy-five thousand (75,000) inhabitants nor more than ninety-five thousand (95,000) inhabitants, according to the last preceding Federal Census, and in which there is located no Court of Civil Appeals, shall have the power and authority, by first entering an order for that purpose, to provide for, maintain and establish a County Law Library.

Sec. 2. For the purpose of establishing County Law Libraries after the entry of such order, there shall be taxed, collected, and paid as other costs, the sum of One Dollar ($1) in each civil case, except suits for delinquent taxes, hereafter filed in every County or District Court; provided, however, that in no event shall the county be liable for said costs in any case. Such costs shall be collected by the Clerks of the respective Courts in said counties and paid by said Clerks to the County Treasurer to be kept by said Treasurer in a separate fund to be known as the "County Law Library Fund." Such Fund shall be administered by said Courts for the purchase and maintenance of a Law Library in a convenient and accessible place, and said Fund shall not be used for any other purpose.

Sec. 3. Said Courts are granted all necessary power and authority to make this Act effective, to make reasonable rules in regard to said Library and the use of the books thereof, and to carry out the terms and provisions of this Act. [Acts 1945, 49th Leg., p. 229, ch. 173; Acts 1947, 50th Leg., p. 543, ch. 320, § 1.]

Section 4 of the Act of 1945 provided that the Act should not modify or repeal any existing law.

Art. 1702b—4. Law libraries in counties of 30,000 to 39,000; County Law Library Fund; rules.—Section 1. The Commissioners Courts of all counties within this state, having a population of not less than thirty thousand (30,000) inhabitants nor more than thirty-nine thousand (39,000) inhabitants, according to the last preceding Federal Census, and in which there is located no Court of Civil Appeals, shall have the power and authority by first entering an order for that purpose, to provide for, maintain and establish a county law library.

Sec. 2. For the purpose of establishing county law libraries after the entry of such order, there shall be taxed, collected, and paid as other costs the sum of One Dollar ($1.00) in each civil case, except suits for delinquent taxes, hereafter filed in every County or District Court; provided, however, that in no event shall the county be liable for said costs in any case. Such costs shall be collected by the clerks of the respective courts in said counties and paid by said clerk to the county treasurer to be kept by said treasurer in a separate fund to be known as the "County Law Library Fund." Such fund shall be administered by said courts for the purchase and maintenance of a law library in a convenient and accessible place, and said fund shall not be used for any other purpose.

Sec. 3. Said courts are granted all necessary power and authority to make this Act effective, to make reasonable rules in regard to said library and the use of the books thereof, and to carry out the terms and provisions of this Act. [Acts 1945, 49th Leg., p. 230, ch. 174.]

Section 4 of the Act of 1945 provided that the Act should not repeal or modify any existing law.

Art. 1702b—5. Law libraries in counties of 50,420 to 50,430; County Law Library Fund; salaries; management.—For the purpose of establishing a "County Law Library" there shall be taxed, collected, and paid as other costs the sum of One Dollar ($1) in each civil case except suit for delinquent taxes, hereafter filed in every County or District Court, in each county having two (2) or more District Courts and one (1) or more County Courts including County Courts at Law, and having a population of not less than fifty thousand, four hundred and twenty (50,420) and not more than fifty thousand, four hundred and thirty (50,430) according to the 1940 Census for the State of Texas. Provided, however, that in no case shall the county be liable for said costs in any civil case. Such costs shall be collected by the Clerk of the respective Courts, and when collected shall be paid to the County Treasurer, to be kept by him in a separate fund to be known as the "County Law Library Fund"; such fund shall be administered by the Commissioners Court for the purchase, lease or maintenance of a Law Library, and furniture and equipment necessary thereto, in a place convenient and accessible to the Judges and litigants of such county, and for the payment of salaries to employees to be appointed by the Commissioners Court; the Commissioners Court of counties affected by this Act shall make rules for the use of books in said library, and shall provide suitable space and shelving for housing same.

The salary of the custodian or librarian and such other employees or assistants as may be necessary shall be fixed by the Commissioners Court and shall be paid out of the funds collected under this Act.

The Commissioners Court of such counties may vest the management of such library in a committee to be selected by the Bar Association of such county, but the acts of such committee shall be subject to the

approval of the Commissioners Court. [Acts 1947, 50th Leg., p. 475, ch. 275, § 1.]

Art. 1702b—6. Law libraries in counties of 145,000 to 250,000; County Law Library Fund; rules.—Section 1. The Commissioners Courts of all counties within this State having a population of not less than one hundred and forty-five thousand (145,000) inhabitants nor more than two hundred and fifty thousand (250,000) inhabitants, according to the last preceding or any future Federal Census, and in which there is located a Court of Civil Appeals, shall have the power and authority, by first entering an order for that purpose, to provide for, maintain and establish a County Law Library.

Sec. 2. For the purpose of establishing County Law Libraries after the entry of such order, there shall be taxed, collected, and paid as other costs, the sum of One Dollar ($1) in each civil case, except suits for delinquent taxes, hereafter filed in every County or District Court; provided, however, that in no event shall the county be liable for said costs in any case. Such costs shall be collected by the clerks of the respective Courts in said counties and paid by said clerks to the County Treasurer to be kept by said Treasurer in a separate fund to be known as the "County Law Library Fund." Such fund shall be administered by said Courts for the purchase and maintenance of a Law Library in a convenient and accessible place, and said Fund shall not be used for any other purpose.

Sec. 3. Said Courts are granted all necessary power and authority to make this Act effective, to make reasonable rules in regard to said Library and the use of the books thereof, and to carry out the terms and provisions of this Act. [Acts 1947, 50th Leg., p. 764, ch. 377.]

Art. 1702c. Law libraries in certain counties.—Section 1. The Commissioners' Court of all counties within this State, where said counties contain in excess of fifty-three thousand five hundred (53,500) and less than fifty-seven thousand (57,000) inhabitants shall have the power and the authority by an order for that purpose to provide for, maintain and establish a County Law Library.

Sec. 2. Said library shall be established and maintained by a trial fee which shall be assessed and collected as a part of the court costs in all cases filed in the County or District Courts in such counties and said trial fee which may not exceed One ($1.00) Dollar in any case, shall be provided for by an order of the said Court, the amount of same shall be fixed by the said Court and an order to such effect be spread upon the Commissioners' Court Minutes in said Counties.

Sec. 3. Said Commissioners' Court is granted all necessary power and authority to make this Act effective and to carry out the terms and provisions hereof. [Acts 1939, 46th Leg., Spec.L., p. 611.]

Art. 1702d. Law libraries in counties of 80,000 to 225,000; library fund.—Section 1. The Commissioners Courts of all counties within this State, having a population of not less than eighty thousand (80,000) inhabitants nor more than two hundred and twenty-five thousand (225,000) inhabitants, according to the last preceding Federal Census, and in which there is located no Court of Civil Appeals, shall have the power and authority, by first entering an order for that purpose, to provide for, maintain and establish a county law library.

Sec. 2. For the purpose of establishing "County Law Libraries" after the entry of such order, there shall be taxed, collected, and paid as other costs the sum of One Dollar ($1) in each case, civil or criminal, except suits for delinquent taxes, hereafter filed in every County or District Court; provided however, that in no event shall the county be liable for said costs in any case. Such costs shall be collected by the Clerks of the respective Courts in said counties and paid by said Clerk to the County Treasurer to be kept by said Treasurer in a separate fund to be known as the "County Law Library Fund." Such fund shall be administered by said Courts for the purchase and maintenance of a law library in a convenient and accessible place, and said fund shall not be used for any other purpose.

Sec. 3. Said Courts are granted all necessary power and authority to make this Act effective, to make reasonable rules in regard to said library and the use of the books thereof, and to carry out the terms and provisions of this Act.

Sec. 4. This Act shall not have the effect of repealing or modifying any existing law in regard to county law libraries; but such Acts shall remain in full force and effect as to all counties affected thereby; and this Act shall be cumulative. [Acts 1941, 47th Leg., p. 1315, ch. 589.]

TITLE 36—COUNTY TREASURER

Art.
1703. Election and term.
1704. Bond.
1704—A. Premium on bond; payment by commissioners' courts of certain counties.
1705. New bond.
1706. Office declared vacant.
1707. Vacancy, how filled.
1708. Appointee: oath and bond.
1709. Moneys belonging to county.
1710. Accounts.
1711. Report to commissioners court.
1712. Deliver money, etc., to successor.
1713. Shall not pay out money, except.
1714. To examine dockets, accounts, etc.

Article 1703. [1499] [919] [987] Election and term.—A county treasurer shall be elected at each regular general election for a term of two years. [Const. art. 16, sec. 44; Acts 1876, p. 199; G. L. vol. 8, p. 1035.]

Art. 1704. [1500] [920] [988] Bond.—The county treasurer before entering upon the duties of his office, and within twenty days after he has received his certificate of election, shall give a bond payable to the county judge of his county, to be approved by the commissioners court, in such sum as such court may deem necessary, conditioned that such treasurer shall faithfully execute the duties of his office and pay over according to law all moneys which shall come into his hands as county treasurer, and render a true account thereof to said court at each regular term of said court. [Acts 1846, p. 338; P. D. 1096; G. L. vol. 2, p. 1644.]

Art. 1704—A. Premium on bond; payment by commissioners' courts of certain counties.—In every county in the State of Texas having a population of not less than nineteen thousand ten (19,010), nor more than nineteen thousand seventy (19,070), and not less than twenty-three thousand eight hundred (23,800), nor more than twenty-four thousand (24,000), and not less than fifty-four thousand (54,000), nor more than fifty-four thousand five hundred (54,500), according to the last preceding Federal Census, the Commissioners' Court of such counties is hereby authorized to pay out of the General Funds of such counties the premium on the official surety bond now required of such County Treasurers. [Added Acts 1941, 47th Leg., p. 1316, ch. 590, § 1.]

Section 2 of the Act of 1941 repealed conflicting laws and section 3 provided that partial invalidity should not affect the remaining parts of the Act.

Art. 1705. [1501] [922] [990] New bond.—The commissioners court, whenever they may consider the bonds, or either of the bonds, of a county treasurer, from any cause, insufficient or doubtful, shall require such treasurer to give another bond or bonds,

or to give additional bond or bonds, as the case may be.

Art. 1706. [1502] [823] [991] Office declared vacant.—If the person elected treasurer fails to give the bonds required by this title and take the official oath within twenty days after receiving his certificate of election, it shall be the duty of the county judge to declare the said office vacant; and, should a treasurer fail to give another or an additional bond or bonds when required to do so, as provided in the preceding article, within twenty days after notice of such requirement, he shall be removed from said office in the manner provided by law.

Art. 1707. [1503] [924] [992] Vacancy, how filled.—In case of vacancy in the office of the county treasurer, the commissioners court of the county in which such vacancy occurs shall fill such vacancy by appointment, such appointment to be made by a majority vote of the commissioners present, at a regular or special term of such court. Such appointment shall continue in force until the next general election. [Acts 1876, p. 217; G. L. vol. 8, p. 1053.]

Art. 1708. [1504] [925] [993] Appointee: oath and bond.—The person appointed to fill the vacancy, as provided in the preceding article, shall, before entering upon the discharge of the duties of such office, and within twenty days after he has been notified of such appointment, take the oath and give the bonds required, as in the case of an election to such office. [Id.]

Art. 1709. [1505] [926] [994] Moneys belonging to county.—The county treasurer shall receive all moneys belonging to the county from whatever source they may be derived, and pay and apply the same as required by law, in such manner as the commissioners court of his county may require and direct. [Acts 1846, p. 338; G. L. vol. 2, p. 1644; P. D. 1097.]

Art. 1710. [1506] [927] [995] Accounts.—The county treasurer shall keep a true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, and of the debts due to and from his county; and direct prosecutions according to law for the recovery of all debts that may be due his county, and superintend the collection thereof. [Id.; P. D. 1098.]

Art. 1711. [1507] [928] [996] Report to commissioners court.—He shall render a detailed report at every regular term of the commissioners court of his county of all the moneys received and disbursed by him, of all debts due to and from his county, and of all other proceedings in his office, and shall exhibit to said court at every such term all his books and accounts for their inspection and all vouchers relating to the same, to be audited and allowed. [Id.; P. D. 1099.]

Art. 1712. [1508] [929] [997] Deliver money, etc., to successor.—He shall deliver the moneys, securities, and all other property of the county in his hands, together with all documents, instruments of writing, papers and books belonging to, or for the use of the county, to his successor in office, and perform all such other acts as may be required of him by said commissioners court. [Id.; P. D. 1100.]

Art. 1713. [1509] [930] [998] Shall not pay out money, except.—The county treasurer shall not pay any money out of the county treasury except in pursuance of a certificate or warrant from some officer authorized by law to issue the same; and, if such treasurer shall have any doubt of the legality or propriety of any order, decree, certificate or warrant presented to him for payment, he shall not pay the same, but shall make report thereof to the commissioners court for their consideration and direction. [P. D. 1101.]

Art. 1714. [1510] [931] [999] To examine dockets, accounts, etc.—He shall examine the accounts, dockets and records of the clerks, sheriff, justices of the peace, constables and tax collector of his county, for the purpose of ascertaining whether any moneys of right belonging to his county are in their hands which have not been accounted for and paid over according to law, and shall report the same to the commissioners court at their next term, to the end that suit may be instituted for the recovery thereof. [Id.; P. D. 1102.]

Counties of 10,065–10,075.

Acts 1941, 47th Leg., p. 389, ch. 220, provided that in counties of 10,065 to 10,075, according to preceding Federal Census, and containing a city of 6,459, county treasurer should audit books of all county officers and should receive not to exceed $2000 per year.

TITLE 37—COURT—SUPREME

Chap.		Art.
1.	Judges	1715
2.	Clerk, Employés and Reporter	1718
3.	Terms and Jurisdiction	1726
4.	Writ of Error	1739
5.	Proceedings in the Supreme Court	1755
6.	Judgment	1766
7.	Commission of Appeals	1781

CHAPTER 1.—JUDGES

Art.
1715. Judges.
1716. Qualifications.
1717. Disqualification.

Article 1715. [1512–13] Judges.—The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall be a quorum. The concurrence of two judges shall be necessary to the decision of a case. One Justice of said Court shall biennially be elected for a term of six years, the classification to be as now constituted by law. In case of a vacancy in the Supreme Court, the Governor shall fill such vacancy until the next general election, and at such election the vacancy for the unexpired term shall be filled by election by the qualified voters of the State. [Const. art. 5, sec. 2; Acts 1892, p. 19; G. L. vol. 10, p. 383.]

Art. 1716. [1514] [935] [1003] Qualifications.—No person shall be eligible to be a Justice of the Supreme Court, unless he be, at the time of his election, at least thirty years of age, a citizen of the United States and of this State, and has been a practicing lawyer or a judge of a court in this State, or such lawyer and judge together, at least seven years. [Id.]

Art. 1717. [1516–17] Disqualification.—When the Court or any two of its members shall be disqualified to hear and determine any cause in said Court, or when the Judges of said Court shall be equally divided in opinion by reason of the absence or disqualification of one of its members, the same shall be certified by the presiding Judge to the Governor who shall immediately commission the requisite number of persons possessing the qualifications prescribed for Judges of the Supreme Court to try and determine said cause. [Const. art. 5, sec. 11; Acts May 12, 1846; P. D. 1575; G. L. vol. 2, p. 1561.]

CHAPTER 2.—CLERK, EMPLOYÉS AND REPORTER

Art.
1718. Appointment of clerk.
1719. Vacancy in vacation.
1720. Duties of clerk.

Art.
1721. Deputy clerks.
1722. Library; transfer of books to University Law School library.
1723. Stenographers and bailiff.
1724. Reporter.
1725. Reports.

Article 1718. [1530–32] Appointment of Clerk.—The Supreme Court shall appoint for a term of four years one clerk who shall reside at Austin. Such appointment shall be recorded in the proceedings of the Court. Such appointee shall first give bond in the sum of five thousand dollars, to be approved by the Court, payable to the Governor and conditioned for the faithful performance of the duties of his office. He may be removed by the Court for neglect of duty or misconduct in office, after ten days' previous notice of the motion specifying the particular charges of negligence or misconduct in office preferred, and the Court shall determine the law and facts. The Court may whenever necessary appoint a clerk pro tempore. [Acts 1892, p. 19; G. L. vol. 10, p. 383.]

Art. 1719. [1531] [951] [1018] Vacancy in vacation.—If the office of clerk becomes vacant in vacation, an appointment shall be made by the Chief Justice and one of the Associates. The appointee shall give the prescribed bond and oath, the bond to be approved by any judge of the Court. Such appointment shall continue until a regular appointment shall be made. [Acts 1846, p. 250; G. L. vol. 2, p. 1557.]

Art. 1720. [1532 to 1535] Duties of clerk.—The clerk shall:

1. Collect and pay into the State Treasury all fees and costs collected by him over and above the salaries allowed him and his deputies, under rules prescribed by the Comptroller and approved by the Judges of the Supreme Court and recorded in the minutes of the Court.

2. Procure a seal for the use of the Court, which shall have a star of five points, with the words, "Supreme Court of the State of Texas" engraved thereon.

3. File and carefully preserve the transcripts of all records certified to said Court, and all papers relative thereto, and shall docket all causes in the order in which the Court shall direct, and shall faithfully record the proceedings and decisions of said Court, and certify its judgments to the courts from which the cases were brought.

Art. 1721. [1536] [1023] Deputy clerks.—When authorized by the Court by an order recorded in the minutes, the clerk may appoint three deputies, who may discharge the duties required by Law of the clerk, and who shall give bond in like sum and conditions required by the clerk, to be approved by the Court. The compensation of such deputies shall be unanimously agreed upon by the Judges and their action recorded in the Minutes of the Court, such compensation not to exceed Two Thousand Dollars a year for each of said deputies, to be paid out of the fees collected by the clerk of the Supreme Court. The court in its discretion may dispense with the services of one or more of such deputies, temporarily or permanently. [Acts 1903, p. 115; Acts 1929, 41st Leg., p. 468, ch. 218, § 1.]

Art. 1722. [1537–8] Library; transfer of books to University Law School library.—(a) The library of the Supreme Court shall be open to the public under such rules as the Court may prescribe. The books shall not be removed from the library room, except by the Judges of the Courts and by members of the Legislature during its sessions, upon their receipt for the same. The clerk of the Supreme Court shall be librarian in charge of the library of said Court. The Chief Justice shall appoint an assistant librarian who may also act as marshal for said Court when required by the Court. The assistant librarian shall have immediate charge of the library and shall keep it open, except Sundays and holidays, from eight A. M. to five P. M., and shall make catalogs of the books and keep them in order.

(b) The Supreme Court of Texas is authorized to transfer any books, papers, or publications located in and belonging to the Supreme Court library in the State Capitol, from such library to the library of the Law School of the University of Texas. Such transfer shall be made only on the unanimous vote of the Justices of such Court. The Court by a majority vote may recall any books, papers, or publications transferred by authority of this Act. [Acts 1892, p. 19; G. L. vol. 10, p. 383; Acts 1st C.S.1905, p. 462; Acts 1943, 48th Leg., p. 106, ch. 78, § 1.]

Art. 1723. [1520–39] Stenographers and bailiff.—The Court may appoint not more than three stenographers, at a salary to be fixed by the Court, not exceeding one hundred and fifty dollars per month, and may appoint a bailiff to attend the sitting of the Court. [Acts 1915, p. 119.]

Art. 1724. [1572–74] Reporter.—The Court shall appoint to serve at the will of the Court one or more licensed attorneys to report the decisions of the Supreme Court. The reporter shall obtain from the proper clerk the records of cases to be reported, with the briefs and opinions therein, as soon as such cases are finally disposed of and the opinions are recorded, which shall be returned after the report thereof is completed. He shall under the direction of the Court, without delay, prepare for publication such decisions with appropriate syllabus and statements when necessary, with proper index, table of cases cited and cases reported, and shall, from time to time, deliver the same to the Board of Control for publication. [Acts 1919, p. 60.]

Art. 1725. [1575–77] Reports.—The Court shall designate the cases to be reported; and only those designated shall be reported and published. Only the main propositions made in the briefs and considered by the Court in the opinion, with the authorities cited in support of such propositions, shall be incorporated in the report. Each volume shall be copyrighted in the name of the reporter, who shall immediately on delivery of the edition transfer and assign the same to the State. It shall be electrotyped, and the plates shall be owned by the State and preserved by the Board of Control. [Id.]

CHAPTER 3.—TERMS AND JURISDICTION

Art.
1726. Terms of Supreme Court.
1727. Adjournment.
1728. Appellate jurisdiction.*
1729. Writ of error or certificate.
1730. Court to make rules.
1731. Rules of practice.
1731a. Rules of practice; power of Supreme Court in civil judicial proceedings.
Sec.
1. Repeal of practice and procedure laws.
2. Supreme Court to make rules for practice and procedure.
3. Supreme Court to file list of laws repealed by its rules.
4. Rules to be published with Supreme Court reports.
5. Severability of this Act.
1732. Jurisdictional facts.
1733. May issue writs.
1734. May issue mandamus, etc.
1735. To issue only by Supreme Court.
1735a. Mandamus to officers of political parties.
1736. May punish for contempt.
1737. Habeas corpus.
1738. Transfer of causes.
1738a. Direct appeals in injunction cases involving validity of statute or administrative order.

Article 1726. [1518] [937] [1005] Terms of Supreme Court.—The Supreme Court shall hold one term each year at the city of Austin, commencing on the first Monday in October, and ending on the last Saturday in the next June. [Acts 1892, p. 19; G. L. vol. 10, p. 383; Const. art. 5, sec. 2.]

Art. 1727. [1519] [938] [1010] Adjournment.—The Court may adjourn from day to day, or for such period as it deems necessary to the ends of justice and the determination of the business before them; and there shall be no discontinuance of any suit, process or matter returned to, or pending in, the Supreme Court, although a quorum of the Court may not be in attendance at the commencement or on any other day of the term. If a sufficient number of the judges shall not attend on any day of the term, any judge of the Court, or the bailiff attending, may adjourn the Court from time to time. [Acts 1846, p. 254; P. D. 1574; G. L. vol. 2, p. 1560.]

Art. 1728. [1521] [940] [1011] Appellate jurisdiction.*—The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, extending to all questions of law arising in the following cases when same have been brought to the Courts of Civil Appeals from final judgment of trial courts:

1. Those in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

2. Those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own, or of another Court of Civil Appeals, or of the Supreme Court upon any such question of law.

3. Those involving the construction or validity of statutes necessary to a determination of the case.

4. Those involving the revenues of the State.

5. Those in which the Railroad Commission is a party.

6. In any other case in which it is made to appear that an error of substantive law has been committed by the Court of Civil Appeals which affects the judgment, but excluding those cases in which the jurisdiction of the Court of Civil Appeals is made final by statute.

In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court shall refuse the application; in all cases where the judgment of the Court of Civil Appeals is a correct one but the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, it shall dismiss the case for want of jurisdiction.

Provided further that in cases of conflict named in Subdivision 2 above, the Supreme Court may, in its discretion, refuse the writ of error where the court is in agreement with the decision of the Court of Civil Appeals in the case in which the application is filed; and in cases of such conflict with a previous opinion of the Supreme Court, the Supreme Court may, in its discretion, without the necessity of granting the writ and hearing the case, reverse and remand the same on the application for writ of error. [Acts 1892, p. 19; Acts 1913, p. 107; Acts 1917, p. 140; G. L. vol. 10, p. 383; Acts 1927, 40th Leg., p. 214, ch. 144, § 1.]

* *Repealed in part Rules of Civil Procedure, Rule 483.*

Art. 1729. [1522] [941] [1011] Writ of error or certificate.—All causes mentioned in the preceding article may be carried to the Supreme Court either by writ of error or by certificate from the Court of Civil Appeals, but the Court of Civil Appeals may certify any question of law arising in any such case at any time they may choose, whether before or after the decision of the case in said Court. [Acts 1892, p. 19; Acts 1895, p. 145; Acts 1913, p. 107; Acts 1917, p. 140; G. L. vol. 10, pp. 383, 875.]

Art. 1730. [1523] [944] [1011] Court to make rules.—The Supreme Court shall from time to time make and promulgate suitable rules, forms and regulations for carrying into effect the articles in this title relating to the jurisdiction and practice of said Court. [Acts 1892, p. 19; G. L. vol. 10, p. 383.]

Art. 1731. [1524] [947] [1014] Rules of practice.—The Court may make and enforce all necessary rules of practice and procedure, not inconsistent with the law, for the government of said Court and all other courts of the State, so as to expedite the dispatch of business in said courts. [Id.]

Art. 1731a. Rules of practice; power of Supreme Court in civil judicial proceedings.

Repeal of practice and procedure laws

Section 1. In order to confer upon and relinquish to the Supreme Court of the State of Texas full rule-making power in civil judicial proceedings, all laws and parts of laws governing the practice and procedure in civil actions are hereby repealed, such repeal to be effective on and after September 1, 1941. Provided, however, that no substantive law or part thereof is hereby repealed.

Supreme Court to make rules for practice and procedure

Sec. 2. The Supreme Court is hereby invested with the full rule-making power in the practice and procedure in civil actions. Such rules shall not abridge, enlarge or modify the substantive rights of any litigant. Such rules, after promulgation by the Supreme Court, shall be filed with the Secretary of State and a copy thereof mailed to each elected member of the Legislature on or before December 1st immediately preceding the next Regular Session of the Legislature and shall be reported by the Secretary of State to the Legislature, and, unless disapproved by the Legislature, such rules shall become effective upon September 1, 1941; provided, however, the Supreme Court may, from time to time after September 1, 1941, promulgate any specific rule or rules or any amendment or amendments to any specific rule or rules and make the same effective, except as hereinafter provided, at such time as the Supreme Court may deem expedient in the interest of a proper administration of justice, the same to remain in effect unless and until disapproved by the Legislature. Any such specific rule or rules, or any such amendment or amendments to any specific rule or rules, shall be filed by the Clerk of the Supreme Court with the Secretary of State, and a copy thereof mailed by the said Clerk to each registered member of the State Bar of Texas, at least sixty (60) days before the effective date thereof, and reported by the Secretary of State to the next succeeding Regular Session of the Legislature in the same manner as hereinabove provided.

Supreme Court to file list of laws repealed by its rules

Sec. 3. At the time it files the rules, the Supreme Court shall file with the Secretary of State a list of all articles or sections of the General Laws of the State of Texas, and parts of articles and sections of such General Laws, which, in its judgment, are repealed by Section 1 of this Act. Such list giving the construction of the Supreme Court as to the General Laws and parts of laws repealed by Section 1 shall constitute, and have the same weight and effect, as any other decision of the Supreme Court.

Rules to be published with Supreme Court reports

Sec. 4. Such rules shall be published in the official reports of the Supreme Court; and the Supreme Court is authorized to adopt such method as

it may deem expedient for the printing and distributing of such rules.

Severability of this Act

Sec. 5. If any sentence, paragraph or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other sentence, paragraph or section hereof, and the Legislature hereby expressly declares that it would have passed such remaining sentences, paragraphs, and sections despite such invalidity. [Acts 1939, 46th Leg., p. 201.]

Amendments to Rules Prior to April 1, 1941:
Acts 1941, 47th Leg., p. 66, ch. 53, effective March 6, 1941, vested the Supreme Court with the power to make amendments or changes, prior to April 1, 1941, in the rules of practice and procedure in civil actions which it had filed with the Secretary of State and which were to be effective September 1, 1941.

Art. 1732. [1525] [945] [1011] Jurisdictional facts.—It shall have the power upon affidavit or otherwise, as the Court may determine, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. [Acts 1892, p. 19; G. L. vol. 10, p. 383.]

Art. 1733. [1526] May issue writs.—The Supreme Court or any Justice thereof, shall have power to issue writs of procedendo, certiorari and all writs of quo warranto or mandamus agreeable to the principles of law regulating such writs, against any district judge, or Court of Civil Appeals or judges thereof, or any officer of the State Government, except the Governor. [Id.; Acts 1913, p. 107; Acts 1917, p. 140.]

Art. 1734. [1528] [949] [1016] May issue mandamus, etc.—Said Court or any judge thereof in vacation may issue the writ of mandamus to compel a judge of the district court to proceed to trial and judgment in a cause agreeably to the principles and usages of law, returnable to the Supreme Court on or before the first day of the term, or during the session of the same, or before any judge of the said Court as the nature of the case may require. [P. D. 1579.]

The clauses of this article attempting to confer appellate power upon any judge of the Supreme Court are void, but such clauses will not defeat the apparent purpose of the Legislature to confer jurisdiction of the court. Kleiber v. McManus, 66 T. 48, 17 S.W. 249.

Art. 1735. [5732] [4861] To issue only by Supreme Court.—The Supreme Court only shall have power, authority or jurisdiction to issue the writ of mandamus or injunction or any other mandatory or compulsory writ or process against any of the officers of the executive departments of the government of this state and also the Board of County and District Road Indebtedness to order or compel the performance of any act or duty which, by the laws of this state, they, or either of them, are authorized to perform, whether such act or duty be judicial, ministerial or discretionary. [Acts 1881, p. 7; Acts 1917, p. 141; Acts 1943, 48th Leg., p. 354, ch. 232, § 1.]

Art. 1735a. Mandamus to officers of political parties.—The Supreme Court, or any Court of Civil Appeals, shall have power, or authority, or jurisdiction, to issue the Writ of Mandamus, or any other mandatory or compulsory Writ or Process, against any Chairman or member of any Executive Committee, or primary committee, or primary election officer, of any political party, to compel the performance, in accordance with the laws of this State, of any duty imposed upon them, respectively, by law. If it appear to the Court that delay will not prove injurious to either party, and that justice may be subserved thereby, it may cause notice of the application for any such Writ or Process, and of the time fixed for considering the same, to be given the opposite party, in such manner as it may direct. This Act shall be cumulative of all other laws affecting its subject matter. Provided that any petition for any such writ pertaining to a nomination for any state office presented to any Court of Civil Appeals shall be presented to the Court of Civil Appeals of the district in which the Chairman of the State Executive Committee of the party affected, resides, and any petition for any such writ pertaining to a nomination for any District or County or precinct office shall be presented to a Court of Civil Appeals in which such district or a portion thereof or such county or precincts is located. [Acts 1930, 41st Leg., 4th C.S., p. 4, ch. 4, § 1.]

This article in so far as it attempts to confer upon the Supreme Court the power to issue "any other mandatory or compulsory writ or process" save the writ of mandamus is in violation of Const. art. 5, § 3, limiting original jurisdiction of Supreme Court to the issuance of writs of quo warranto and mandamus. See Love v. Wilcox, 119 T. 256, 28 S.W.(2d) 515.

Art. 1736. [1527] [948] May punish for contempt.—The Supreme Court shall have power to punish any person for a contempt of such Court according to the principles and usages of law in like cases, not to exceed a fine of one thousand dollars and imprisonment in jail not exceeding twenty days. [Acts 1846, p. 255; P. D. 1577; G. L. vol. 2, p. 1561.]

Art. 1737. [1529] Habeas corpus.—The Supreme Court or any of the Justices thereof, either in term time or in vacation, may issue writs of habeas corpus in any case where any person is restrained in his liberty by virtue of any order, process or commitment issued by any court or judge on account of the violation of any order, judgment or decree theretofore made, rendered or entered by such court or judge in any civil cause. Said Court or any Justice thereof, either in term time or in vacation, pending the hearing of application for such writ, may admit to bail any person to whom the writ of habeas corpus may be so granted. [Acts 1905, p. 20.]

Art. 1738. [1587] Transfer of causes.—The Supreme Court shall, as early as practicable after the 1st day of January and the 1st day of June of each year, equalized, as nearly as practicable, the amount of business upon the dockets of the several Courts of Civil Appeals as of the close of business on the 31st day of December and the 31st day of May of each year by directing the transfer of cases from such of said Courts as may have the greater amount of business upon their dockets to those having a less amount of business. Said Court may, at any other time, order cases transferred from one Court of Civil Appeals to another, when, in the opinion of the Supreme Court, there is good cause for such transfer. And the Courts of Civil Appeals to which such cases shall be transferred shall have jurisdiction over all such cases so transferred, without regard to the District in which the cases were originally tried and returnable upon appeal. Provided that the Justices of the Court to which such cases are transferred shall, after due notice to the parties or their counsel, hear oral argument on such cases at the place from which the cases have been originally transferred. Provided further, that there shall be but one sitting for oral argument at the place from which cases are transferred for each equalization, and all cases so transferred at any one equalization must be orally argued at such sitting, or at the regular place of sitting of the Court to which said cases are transferred. All opinions, orders and decisions in such transferred cases shall be delivered, entered and rendered at the place where the Court to which such cases are transferred regularly sits as the law provides. The actual and necessary traveling and living expenses of the Justices of said Courts in hearing oral argument at the place from which such cases are transferred shall be borne by the State, and for payment thereof the Legislature shall make appropriation. [Acts 1895, p. 79; G.L. vol. 10, p. 809; Acts 1909, p. 88; Acts 1927, 40th Leg., p. 115, ch. 76, § 1; Acts 1927, 40th Leg., 1st C.S., p. 148, ch. 51, § 1; Acts 1933, 43rd Leg., p. 380, ch. 151, § 1; Acts 1941, 47th Leg., p. 762, ch. 476, § 1.]

Art. 1738a. Direct appeals in injunction cases involving validity of statute or administrative order.—From and after January 1, 1944, appeals may be taken direct to the Supreme Court of this State from any order of any trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality or unconstitutionality of any statute of this State, or on the ground of the validity or invalidity of any administrative order issued by any State Board or Commission under any statute of this State. It shall be the duty of the Supreme Court of this State to prescribe the necessary rules of procedure to be followed in perfecting such an appeal. [Acts 1943, 48th Leg., p. 14, ch. 14, § 1.]

CHAPTER 4.—WRIT OF ERROR

Art.
1739–1747. [Repealed.]
1748. Designation of Civil Appeals Justices.
1749. Justices to assemble.
1750. Effect of granting or denying writ.
1751. Disqualification of Justice.
1752. Supreme Court may also act.
1753. Powers.
1754. Expenses of designated Justices.

Arts. 1739–1747. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 467, 469, 468, 473, 471, 482, 485.

Art. 1748. Designation of Civil Appeals Justices.—The Chief Justice of the Supreme Court or any two Justices thereof may, by a writing recorded in the minutes of the Supreme Court, designate three of the Justices of the Courts of Civil Appeals to act as hereinafter provided. Such powers may be exercised from time to time in the same manner as long as reason therefor may exist, and the personnel of the designated Justices of the Courts of Civil Appeals may be changed as often as may be advisable, by relieving one, or more, and designating another, or others, in order to interfere as little as possible with the work of the Courts of Civil Appeals. Not more than one Justice shall be designated to serve at any one time from any one of these courts. [Acts 1917, p. 142.]

Art. 1749. Justices to assemble.—The Justices of the Courts of Civil Appeals so designated, upon receiving notice thereof, shall assemble together at the State Capitol and take up, consider and act upon applications for writs of error as may be so referred to them, by granting, refusing or dismissing the same in accordance with the practice of the Supreme Court; and then such designated Justices may make such orders and give such directions, incidental to the consideration and disposition of the application. [Id.]

Art. 1750. Effect of granting or denying writ.—The granting of an application shall admit the cause into the Supreme Court to be proceeded with by the Court as provided by law. The refusal or dismissal of an application shall have the effect of denying the admission of the cause into the Supreme Court, except that motions for rehearing may be made to such designated Justices in the same way as such motions to the Supreme Court have been heretofore allowed. The refusal or dismissal of any application shall not be regarded as a precedent or authority. [Id.]

Art. 1751. Disqualification of Justice.—No one of such Justices shall participate in acting upon an application in a cause decided during his incumbency by the court of which he is a member. [Id.]

Art. 1752. Supreme Court may also act.—The Supreme Court shall still have power to act upon applications for writs of error, when deemed by it expedient. In any cause in which the Judges of the Courts of Civil Appeals shall have disagreed or shall have declared void a statute of the State, the application for writ of error shall be passed upon by the Supreme Court. [Id.]

Art. 1753. Powers.—The powers herein conferred upon the Justices of the Supreme Court and of the Courts of Civil Appeals are declared to be incidental to the offices held by them respectively. [Id.]

Art. 1754. Expenses of designated Justices.—Such designated Justices shall have all actual and necessary expenses incurred in the discharge of such additional duties, paid out of the State Treasury from warrants drawn by the Comptroller, upon itemized accounts of such expenses, verified by the affidavit of the claimant. [Id.]

CHAPTER 5.—PROCEEDINGS IN THE SUPREME COURT

Art.
1755–1759. [Repealed.]
1760. Death of parties no abatement.
1761–1765. [Repealed.]

Arts. 1755–1759. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 497, 476, 418, 477, 478.

Art. 1760. [1549] [973] [1044] Death of parties no abatement.—If any party to the record in a cause pending in the Supreme Court dies after the writ of error has been served and before such cause has been decided by the Supreme Court, such cause shall not abate by such death; but the court shall proceed to adjudicate such cause and render judgment therein as if all the parties thereto were living, and such judgment shall have the same force and effect as if rendered in the life time of all the parties thereto. [Acts 1893, p. 89; Acts 1899, p. 170.]

Arts. 1761–1765. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 488, 515–517.

CHAPTER 6.—JUDGMENT

Arts. 1766–1780. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 501–514.

CHAPTER 7.—COMMISSION OF APPEALS

Articles 1781–1788. [Expired.]

Articles 1781–1800 provided for the appointment of a Board of Arbitration and Appeals styled the Commission of Appeals. By the express terms of art. 1800 as amended in 1925, the Commission of Appeals expired the last Saturday in June 1931. Abolition of Commission of Appeals, see Const. art. 5, § 2.

Arts. 1789–1791. [Repealed.]

The corresponding provisions in the Rules of Civil Procedure, Rules 521 and 522, were repealed effective Feb. 1, 1946. Abolition of Commission of Appeals, see Const. art. 5, § 2.

Arts. 1792–1798. [Expired.]

See note to articles 1781–1788.

Art. 1799. [Repealed.]

The corresponding provision in the Rules of Civil Procedure, Rule 518, was repealed effective Feb. 1, 1946. Abolition of Commission of Appeals, see Const. art. 5, § 2.

Art. 1800. [Expired.]

See note to articles 1781–1788.

Art. 1800a. [See Const. art. 5, § 2 as amended Aug. 25, 1945.]

Const. art. 5, § 2, as amended Aug. 25, 1945, in effect, abolished the Commission of Appeals and provided that the "judges of the Commission of Appeals who may be in office at the time this amendment takes effect shall become Associate Justices of the Supreme Court and each shall continue in office as such Associate Justice of the Supreme Court until January 1st next preceding the expiration of the term to which he has been appointed and until his successor shall be elected and qualified."

TITLE 38—COURT OF CRIMINAL APPEALS

Art.
1801. Judges.
1802. Presiding judge.
1803. Disqualification of judge.
1804. Term of court
1805. Seal of court.
1806. May ascertain facts.
1807. Mandate.
1808. Clerk.
1809. Deputy clerk.
1810. Reporter and reports.
1811. State Prosecuting Attorneys.
1811a. Commission of Criminal Appeals.
1811b. Term of office.
1811bb. Vacancy filled by Court of Criminal Appeals.
1811c. Approval of opinions.
1811d. Salaries of Commissioners and stenographers.

Article 1801. [1652] [1044] Judges.—The Court of Criminal Appeals shall consist of three judges, two of whom shall be a quorum. The concurrence of two judges shall be necessary to a decision of said court. Said judges shall have the same qualifications as judges of the Supreme Court. At each biennial general election one judge for said court shall be elected for a term of six years, the division into classes to remain as now provided by law. [Acts 1892, p. 34.]

Art. 1802. [1654] [1046] Presiding judge.—The judges of said court shall choose a presiding judge from their number at such times as they deem proper. All writs and processes issuing from said court shall bear test in the name of said presiding judge and the seal of the court. [Id.]

Art. 1803. [1655] [1047] Disqualification of judge.—When any member thereof shall be disqualified under the Constitution and laws of this State to hear and determine any case in said court, the same shall be certified to the Governor who shall immediately commission a person learned in the law to act instead. [Id.]

Art. 1804. [1658] [1050] Term of court.—Said court shall hold one term each year at the city of Austin, commencing on the first Monday in October of each year, and shall continue until the last Saturday in June next succeeding. [Acts 1909, p. 51.]

Art. 1805. [1666] [1059] Seal of court.—The court shall use a seal having thereon a star with five points with the words, "Court of Criminal Appeals of Texas" engraved thereon. [Id.]

Art. 1806. [1661] [1054] May ascertain facts.—Said court shall have power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

Art. 1807. [1669] [1062] Mandate.—When the court from which an appeal has or may be taken has been or shall be deprived of jurisdiction over any case pending such appeal, and when such case has or may be determined by the Court of Criminal Appeals. the mandate of said appellate court shall be directed to the court to which jurisdiction has been, or may be, given over such case. [Id.]

Art. 1808. [1162–3–4] Clerk.—Said court shall appoint a clerk for said court, who shall:

1. Hold his office for four years unless sooner removed by the court for good cause, entered in its minutes.

2. Take and subscribe the official oath and give the same bond to be approved by said court as may be required of the clerk of the Supreme Court.

3. Perform as such clerk the like duties and be subject to the same liabilities as may be required of or prescribed for the clerk of the Supreme Court.

See, also, article 1836c, post.
Compensation of clerk, see article 1836a, post.
Copy of opinion furnished clerk of lower court and attorneys, see article 1836b, post.

Art. 1809. Deputy clerk.—The court, or such clerk with the approval of the court, may designate any stenographer employed by said court to act as deputy clerk during the absence, illness or disability of said clerk. Such stenographer shall receive no extra compensation for such services, and shall discharge the duties of the clerk in the name of his principal as deputy clerk, signing his name after that of said principal as deputy clerk. [Acts 1923, p. 17.]

Art. 1810. [1667–8] Reporter and reports.—Said court shall appoint a reporter of such of its decisions as the law requires to be published, and may remove him for inefficiency or neglect of duty. The clerk shall deliver to the reporter the original opinions when recorded and the record in each case to be reported, taking receipt therefor, and the reporter shall return them when he finishes using them. The volumes of such decisions shall be numbered in continuation of the present reports, styled Texas Criminal Reports, and be printed and disposed of in like manner as the reports of the Supreme Court.

Art. 1811. State Prosecuting Attorneys.—The Court of Criminal Appeals shall appoint an attorney to represent the State in all proceedings before said Court, to be styled "State Prosecuting Attorney," who shall take and subscribe the official oath, hold office for a term of two (2) years and until his successor is appointed and qualified, and who shall have had at least five (5) years experience as a practicing attorney in this State in criminal cases. All the duties and matters incumbent upon, or in any manner incident or relative to the office of "Assistant State Prosecuting Attorney," as now provided by law, are hereby transferred to, and made additional to those now provided by law for the State Prosecuting Attorney. For cause the Court of Criminal Appeals shall have power to remove from office State Prosecuting Attorneys. [Acts 1923, p. 335; Acts 1931, 42nd Leg., p. 234, ch. 139, § 1.]

Art. 1811a. Commission of Criminal Appeals.—The Court of Criminal Appeals of this State shall appoint a Commission to be composed of two attorneys-at-law, having those qualifications fixed by the laws and Constitution of this State for the Judges of the Court of Criminal Appeals of Texas, which Commission shall be for the aid and assistance of said Court in disposing of the business before it; and such Commission shall discharge such duties as may be assigned it by the said Court. Each member of said Commission shall receive for his services such salary as is now or may hereafter be provided by law. Two stenographers for said Commission shall be appointed by the Court. [Acts 1925, 39th Leg., ch. 95, p. 269, § 1; Acts 1927, 40th Leg., p. 56, ch. 40, § 2; Acts 1934, 43rd Leg., 3rd C.S., p. 14, ch. 9, § 1.]

Art. 1811b. Term of office.—The present members of the Commission shall continue in office until the expiration of the terms for which each of them has been appointed, which said terms expire July 1, 1935, and July 1, 1939. On July 1, 1935, the Court of Criminal Appeals shall appoint one Commissioner to succeed the member whose term expires on that date to serve until July 1, 1939. On July 1, 1939, and thereafter every two years the Court of Criminal Appeals shall appoint two Commissioners for terms of two years each. [Acts 1925, 39th Leg., p. 269, ch. 95, § 2; Acts 1927, 40th Leg., p. 56, ch. 40, § 3; Acts 1929, 41st Leg., p. 297, ch. 137, § 1; Acts 1934, 43rd Leg., 3rd C.S., p. 14, ch. 9, § 2.]

Art. 1811bb. Vacancy filled by Court of Criminal Appeals.—In case of a vacancy on said Commission in aid of the Court of Criminal Appeals of Texas by the death, resignation, or removal of any member

thereof, it shall be the duty of the Court of Criminal Appeals to fill the same by appointment, and the person so appointed shall continue in office for the unexpired portion of the term for which the Commissioner so vacating his office has been appointed. [Acts 1934, 43rd Leg., 3rd C.S., p. 14, ch. 9, § 3.]

Art. 1811c. Approval of opinions.—All opinions of said Commissioners shall be submitted to the Court of Criminal Appeals and shall receive the approval of said Court, or a majority of them, before handed down as opinions of said Court, and when so approved and handed down, shall have the same weight and legal effect as if originally prepared and handed down by said Court of Criminal Appeals of Texas. [Acts 1925, 39th Leg., ch. 95, p. 269, § 3; Acts 1927, 40th Leg., p. 56, ch. 40, § 4; Acts 1934, 43rd Leg., 3rd C.S., p. 14, ch. 9, § 4.]

Art. 1811d. Salaries of Commissioners and stenographers.—The salaries of the two Commissioners, stenographers and other expenses essential to carry on the work of the Commission of Appeals in aid of the Court of Criminal Appeals shall be paid out of the appropriation made to take care of the salaries and expenses of the present Commission as it now exists. [Acts 1925, 39th Leg., ch. 95, p. 270, § 4; 1934, 43rd Leg., 3rd C.S., p. 14, ch. 9, § 5.]

TITLE 39—COURTS OF CIVIL APPEALS

Chap.		Art.
1.	Terms and Jurisdiction	1812
2.	Clerks and Employés	1827
3.	Proceedings	1837
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CHAPTER 1.—TERMS AND JURISDICTION

Art.
1812. Three justices.
1813. Election and term of office; Special Commissioner appointed when justice disabled or called into active military service.
1814. Qualifications of judges.
1815. Special judge.
1816. Terms of court.
1817. Location of courts.
1818. Adjournment.
1819. Jurisdiction defined.
1820. Judgment conclusive on facts.
1821. Judgment conclusive on law.
1822. Inquiry into jurisdiction.
1823. Writs of mandamus, etc.
1824. May mandamus district courts.
1825. [Repealed.]
1826. May punish for contempt.

Article 1812. [1580] [987] Three Justices.—Each Court of Civil Appeals shall consist of a Chief Justice and two Associate Justices. A majority shall be a quorum for the transaction of business, and the concurrence of two Justices shall be necessary to a decision. [Acts 1st C. S. 1892, p. 25; G. L. vol. 10, p. 389.]

Art. 1813. [1581] [988] Election and term of office; Special Commissioner appointed when justice disabled or called into active military service.—(a) The Justices of each Court of Civil Appeals shall be elected at the general election by the qualified voters of their respective districts. Upon their qualification, after the first election after the creation of any Court of Civil Appeals, the Justices shall draw lots for the terms of office; those drawing number one (1) shall hold for the term of two (2) years; those drawing number two (2) shall hold for a term of four (4) years; and those drawing number three (3) shall hold office for six (6) years. Each of said offices shall be filled by election at the next general election before the respective terms expire; and the person elected shall thereafter hold his office for six (6) years.

(b) After any Justice of any Court of Civil Appeals has become totally disabled to discharge any of the duties of his office, by reason of illness, physical or mental, and has remained in such condition continuously for a period of not less than one (1) year, and if it is probable that such illness will be permanent, and is of such a nature that it will probably continue to incapacitate such Justice for the balance of his term of office, it shall be the duty of the other two Justices of the Court of which such incapacitated Justice is a member to certify such facts to the Governor. Upon receipt of such certificate by the Governor, he shall make proper investigation touching the matters therein contained and if he shall determine that the facts contained in such certificate are true, and that a necessity exists therefor, he shall forthwith appoint a Special Commissioner having the requisite qualifications of a member of such Court to assist the same. Such Special Commissioner, when so appointed, may sit with such Court, hear arguments on submitted cases, and write opinions thereon if directed to do so by the Court; and said opinions, if adopted by the Court, shall become thereupon the opinions of the Court.

(c) The Commissioner herein provided for, when appointed by the Governor, shall receive the same compensation as the regular Justices of the Court of Civil Appeals, and he shall serve until the death or expiration of the term of the disabled member; provided that in no event shall the term of service continue for a longer time than two (2) years under the same appointment; and provided further, that in the event the disabled Justice shall recover from his disability, the term of such Special Commissioner shall immediately end. In the event of such recovery two (2) Justices of said Court shall certify such fact to the Governor, and such certificate shall be conclusive evidence of the recovery of said disabled Justice.

(d) Whenever any Justice of any Court of Civil Appeals is called or ordered into the active military service of the United States, it shall be the duty of the other two Justices of the Court of which such Justice is a member, to certify that fact to the Governor. Upon receipt of such certificate by the Governor, he shall make proper investigation touching the matters therein contained, and if he shall determine that the facts contained in such certificate are true, and that a necessity exists therefor, he shall forthwith appoint a Special Commissioner having the requisite qualifications of a member of such Court to assist the same. Such Special Commissioner, when so appointed, may sit with such Court, hear arguments on submitted cases, and write opinions thereon if directed to do so by the Court; and said opinions, if adopted by the Court, shall become thereupon the opinions of the Court.

(e) Such Special Commissioner, when so appointed by the Governor, shall receive the same compensation as the regular Justices of the Court of Civil Appeals, and shall serve until the Justice who has been so called or ordered into the active military service, of the United States is discharged from such military service, or until the expiration of the term of office of such Justice; provided that in no event shall the term of service of such Special Commissioner continue for a longer period than two (2) years under the same appointment; and provided further that when such Justice so called or ordered into the active military service of the United States is discharged from such active military service, the term of such Special Commissioner shall immediately end. When the active military service of such Justice shall have terminated,

the other two Justices of such Court of Civil Appeals shall certify that fact to the Governor, and their certificate shall be conclusive evidence of the facts so certified.

(f) Nothing in this Act shall be considered as giving any two (2) members of any Court of Civil Appeals, or the Governor, the power or authority to remove or suspend any member of the Court of Civil Appeals from office, or to in any manner interfere with him in his Constitutional rights and powers. [Acts 1st C.S. 1892, p. 25; G.L. vol. 10, p. 389; Acts 1936, 44th Leg., 3rd C.S. p. 2108, ch. 509, § 1; Acts 1937, 45th Leg., p. 297, ch. 154, § 1; Acts 1941, 47th Leg., p. 170, ch. 123, § 1.]

Section 2 of the amendatory Acts of 1937 and 1941 provided that in case of partial invalidity it was the legislative intent to pass constitutional portions notwithstanding.

Art. 1814. [1582] [989] Qualifications of Judges.—No person shall be eligible to the office of Justice of a Court of Civil Appeals, unless he be at the time of his election thirty years of age or over, a resident of the district from which he is elected, and has been a practicing lawyer or a judge of a court of this State, or such lawyer and judge together, at least seven years. [Acts 1st C.S.1892, p. 25; G.L. vol. 10, p. 389.]

Art. 1815. [1584] [1021] Special judge.—If all or any two members of any Court of Civil Appeals shall be disqualified to determine any cause in such court, that fact shall be certified to the Governor, who shall immediately commission the requisite number of persons, learned in the law, to try and determine said cause. [Id.]

Art. 1816. [1585] Terms of Court.—The term of each Court of Civil Appeals of the State of Texas shall begin on the first Monday in October of each year and shall continue in session until the first Monday in October the next succeeding year; provided that the Justices of each of said Courts shall be permitted to take a vacation of eight weeks during each year at such time as the Court may fix, during which period the Court shall not be adjourned but shall be in recess and may be called together by the Chief Justice or by the two Associate Justices in case business requiring immediate disposal should arise. [Acts 1897, p. 132; G. L. vol. 10, p. 1186; Acts 1927, 40th Leg., p. 120, ch. 79, § 1; Acts 1927, 40th Leg., 1st C. S., p. 147, ch. 50, § 1.]

Art. 1817. [1586] [993] Location of courts.—A Court of Civil Appeals shall be held at the following places, respectively:

1. In the First Supreme Judicial District, in the City of Galveston.
2. In the Second Supreme Judicial District, in the City of Fort Worth.
3. In the Third Supreme Judicial District, in the City of Austin.
4. In the Fourth Supreme Judicial District, in the City of San Antonio.
5. In the Fifth Supreme Judicial District, in the City of Dallas. [Acts 1892, S. S. p. 25; G. L. vol. 10, p. 389.]
6. In the Sixth Supreme Judicial District, in the City of Texarkana. [Acts 1907, p. 324.]
7. In the Seventh Supreme Judicial District, in the City of Amarillo. [Acts 1911, p. 269; Acts 1915, p. 121.]
8. In the Eighth Supreme Judicial District, in the City of El Paso. [Id.]
9. In the Ninth Supreme Judicial District, in the City of Beaumont. [Id.]
10. In the Tenth Supreme Judicial District, in the City of Waco. [Id.; Acts 1923, p. 152.]
11. The Eleventh Supreme Judicial District in the City of Eastland. [Acts 1925, p. 258.]
12. The cities of Beaumont, Waco and Eastland, respectively, shall furnish and equip suitable rooms for the Court of Civil Appeals therein, and for the justices thereof, without cost or expense to the State. [Id.]

Art. 1818. [1588] [955] Adjournment.—Such courts may adjourn from day to day or for such time as they may deem proper. If a quorum is not present at the first or any day of the term, any judge of the court or the bailiff thereof may adjourn the court from time to time until a quorum shall be in attendance, but the court shall not be finally adjourned for the term. [Acts 1895, p. 79; G. L. vol. 10, p. 809.]

Art. 1819. [1589] [996] Jurisdiction defined.—The appellate jurisdiction of the Courts of Civil Appeals shall extend to all civil cases within the limits of their respective districts of which the District Courts and County Courts have or assume jurisdiction when the amount in controversy or the judgment rendered shall exceed One Hundred Dollars exclusive of interest and costs. [Acts 1895, p. 79; G.L. vol. 10, p. 809; Acts 1929, 41st Leg., p. 68, ch. 33, § 1.]

Art. 1820. [1590] [996] Judgment conclusive on facts.—The judgments of the Courts of Civil Appeals shall be conclusive in all cases on the facts of the case. [Acts 1895, p. 79; G.L. vol. 10, p. 809.]

Art. 1821. [1591] [996] Judgment conclusive on law.—The judgments of the Courts of Civil Appeals shall be conclusive on the law and facts, nor shall a writ of error be allowed thereto from Supreme Court in the following cases to wit:

1. Any civil case appealed from the County Court or from a District Court, when, under the Constitution, a County Court would have had original or appellate jurisdiction to try it, except in probate matters, and in cases involving the Revenue Laws of the State or the validity or construction of a Statute, or cases involving conflicts between decisions of the Courts of Civil Appeals or between a decision of a Court of Civil Appeals and a decision of the Supreme Court.
2. All cases of slander.
3. All cases of divorce.
4. All cases of contested elections of every character other than for State officers, except where the validity of a Statute is questioned by the decision.
5. In all appeals from interlocutory orders appointing receivers of trustees, or such other interlocutory appeals as may be allowed by law.
6. In all other cases as to law and facts, except where appellate jurisdiction is given to the Supreme Court, and not made final in said Courts of Civil Appeals. [Acts 1st C.S. 1892, p. 25; Acts 1923, p. 110; Acts 1929, 41st Leg., p. 68, ch. 33, § 1.]

Art. 1822. [1593] [998] Inquiry into jurisdiction.—Said court shall have power, upon affidavit or otherwise as by the courts may be thought proper, to ascertain such matters of fact as may be necessary to the proper exercise of their jurisdiction. [Acts 1st C.S. 1892, p. 25; Acts 1923, p. 110.]

Art. 1823. [1592] [997] Writs of mandamus, etc.—Said courts and the judges thereof may issue writs of mandamus and all other writs necessary to enforce the jurisdiction of said courts. [Id.]

See, also, article 1735a, ante.

Art. 1824. [1595] [1000] May mandamus district courts.—Said Courts or any Judge thereof, in vacation, may issue the writ of Mandamus to compel a Judge of the District or County Court to proceed to trial and judgment in a cause, returnable as the nature of the case may require. [Acts 1st C.S. 1892, p. 25; Acts 1923, p. 110; Acts 1929, 41st Leg., p. 68, ch. 33, § 1.]

Art. 1825. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 394.

Art. 1826. [1594] [999] May punish for contempt.—They may punish any person for a contempt of said courts, not to exceed one thousand dollars fine or imprisonment not exceeding twenty days. [Acts 1st C.S.1892, p. 25; G.L. vol. 10, p. 389.]

CHAPTER 2.—CLERKS AND EMPLOYÉS

Art.
1827. Appointment of clerk.
1828. Bond.
1829. Removal.
1830. Seal of court.
1831. Records and judgments.
1832. Librarian.
1833. Deputy clerks.
1834. Disposition of costs.
1835. Report of costs collected.
1836. Stenographers.
1836a. Compensation of clerk, deputy and stenographer.
Sec.
1. Additional compensation to clerk or deputy.
1a. Purchase of law books from fees.
1836b. Copy of opinion to clerk of lower court and attorneys.
1836c. Appellate court opinions to be furnished trial courts.

Article 1827. [1596–7] Appointment of clerk.—Each Court of Civil Appeals shall appoint for a term of two years one clerk who shall reside at the place of holding Court. If the office becomes vacant in vacation, the appointment shall be made by the Chief Justice and one Associate. Each appointment shall be noted in the minutes of the Court. Whenever the necessity occurs, the Court may appoint a clerk pro tem. [Acts 1st C. S. 1892, p. 25.]

Art. 1828. [1596] Bond.—The clerk shall first make a bond for five thousand dollars payable to the Governor, conditioned for the faithful performance of the duties of his office, to be approved by any judge of his court. [Id.]

Art. 1829. [1598] [1003] Removal.—The clerk may be removed by the court for neglect of duty or malfeasance in office on motion specifying the particular charge preferred. In such case the court shall determine the law and the facts after having given such clerk ten days previous notice of the hearing. [Id.]

Art. 1830. [1599] [1004] Seal of court.—Each clerk shall procure a seal for the use of the court, which shall have a star of five points with "Court of Civil Appeals of the State of Texas" engraved thereon. [Id.]

Art. 1831. [1600–1] Records and judgments.—Each clerk shall file and carefully preserve all records certified to his court and all papers relative thereto; docket all causes in the order in which they are filed; record the proceedings of said court, except opinions, and certify their judgments to the proper courts. He shall annually have bound in one or more volumes, to be preserved a permanent record, the original opinions of the judges of said court, shall number the pages thereof consecutively, prepare and attach to each volume an index showing the style, number and page where each opinion is found, also prepare a general index showing the volume and page where each opinion can be found; the expense of which shall be paid out of the fund provided by the Legislature for the purchase of record books for said court.

He shall, after ascertaining that, any case filed in said court has been finally disposed of for a period of ten years, destroy all records filed in said court in connection therewith. [Acts 1st C.S. 1892, p. 25; Acts 1929, 41st Leg., p. 540, ch. 263, § 1.]

Amendatory Act entitled as prescribing duties of court clerks regarding preservation of records held unconstitutional in so far as providing for disposal thereof. Gulf Production Co. v. Garrett (Com.App.) 24 S.W.(2d) 389.

Art. 1832. [1603–4] Librarian.—Each clerk shall be librarian in charge of the library of his court, and shall take charge of, keep in good order and make catalogs of the books thereof. [Acts 1st C.S. 1892, p. 25.]

Art. 1833. [1602] [1007] Deputy clerks.—Each clerk may appoint one chief deputy. With the approval of the court he may appoint additional deputies who shall be paid out of the fees collected by the clerk, not to exceed one hundred dollars a month. Each deputy shall give bond to the clerk for the faithful discharge of his duty. [Id.]

Art. 1834. Disposition of costs.—Each clerk of a Court of Civil Appeals shall collect and pay into the State Treasury all costs collected by him, under such regulations as the Comptroller may prescribe and the judges of said Court approve. [Acts 1919, p. 129.]

Art. 1835. [1605] [1010] Report of costs collected.—Each clerk shall, within ten days after the first day of January and July, make a sworn report to his court showing the amount of costs collected by him during the previous six months, the causes in which the same were collected, and the disposition made of such costs. This report shall be filed and recorded in the minutes of said court. [Acts 1st C. S. 1892, p. 25.]

Art. 1836. [1606] [1012] Stenographers.—Each court may appoint one stenographer who shall be sworn to keep secret all matters which may come to his knowledge as such stenographer, and who shall give bond for two thousand dollars payable to the State of Texas, conditioned for the faithful performance of his duties, to be approved by the Chief Justice of said Court. [Acts 2nd C. S. 1919, p. 100.]

Art. 1836a. Compensation of clerk, deputy and stenographer.

Additional compensation to clerk or deputy

Section 1. Each clerk of a Court of Civil Appeals, and clerk of the Court of Criminal Appeals, each chief deputy clerk, and each stenographer in the office of any such clerk shall receive such compensation, in addition to the salary prescribed by law, as the court may allow, to be paid from fees collected by the clerk of said court, but in no event shall the salary plus the additional compensation exceed the following:

Clerk	$4,000.00 per year
Chief Deputy Clerk	200.00 per month
Stenographer	1,800.00 per year

Provided, however, that the Clerk or Chief Deputy Clerk may be allowed by the Court for any year the Supreme Court directs, the transfers of cases from said Court to other Courts, as provided by law, additional compensation for the extra services that may be rendered incidental to said transfer, a sum not exceeding $300.00 per year to be paid monthly from the fees collected by the Clerk of said Court, who is hereby authorized to pay same if and when approved by the Court of Civil Appeals and the Court of Criminal Appeals. All fees collected by the clerk of said court, or said Chief Deputy Clerk, or stenographer in excess of said salaries shall be paid over to the State Treasurer for the General Revenue Fund.

Purchase of law books from fees

Sec. 1-a. The Clerks of the Courts of Civil Appeals shall be and are hereby authorized to purchase additional law books for the use of said Courts out of the fees collected by said Courts; such expenditures shall not exceed annually the specific amounts of such fees additionally authorized for such purpose in the General Appropriation Acts of the Legislature made biennially for the support and maintenance of the Judiciary Department of the State Government. Pro-

vided, however, that all such fees collected by any clerk or other officer of any Court of Civil Appeals within this State shall be deposited in the State Treasury to the credit of the court so collecting and depositing same, and the expenditures out of said fund for the foregoing purposes shall be upon a warrant drawn upon the State Treasury by the State Comptroller, as may be provided for in the General Appropriation Bill for the Judiciary of this State. [Acts 1929, 41st Leg., p. 233, ch. 98; Acts 1935, 44th Leg., p. 287, ch. 104, § 1.]

Art. 1836b. Copy of opinion to clerk of lower court and attorneys.*—It shall be the duty of the Clerk of each Court of Civil Appeals, as soon as any opinion is rendered by the Court of Civil Appeals, to immediately mail free of charge, a copy of said opinion, to the clerk of the court from which the appeal was taken, one copy for appellant and one for appellee. The Clerk of the Court of Criminal Appeals shall upon the delivery of a decision furnish one copy of such opinion to the appellant's attorney and when requested by State Attorney one copy of opinion free of charge to him. [Acts 1929, 41st Leg., p. 233, ch. 98, § 2.]

* *Repealed insofar as article relates to Civil Appellate Courts, Rules of Civil Procedure, Rule 456.*

Art. 1836c. Appellate court opinions to be furnished trial courts.*—Sec. 1. That hereinafter it shall be the duty of the Clerk of each of the Courts of Civil Appeals, the Court of Criminal Appeals, and the various Commissions of Appeals, and the Clerk of the Supreme Court, within three days after the rendition of a decision by such Court, to mail to the Judge before whom the case was tried in the Trial Courts, a legible and clear copy of the opinion rendered by such Appellate Court.

Sec. 2. For such duty the Clerk of the Civil Appellate Courts shall receive a fee not to exceed $1.00, which such fee shall be charged as costs in the Appellate Court. [Acts 1930, 41st Leg., 4th C.S., p. 86, ch. 45.]

* *Repealed insofar as article relates to Civil Appellate Courts by Rules of Civil Procedure, Rule 456.*

CHAPTER 3.—PROCEEDINGS

Art.
1837, 1839. [Repealed.]
1839. Time to file transcript.
1840. [Repealed.]
1840—A. Amendment of appeal bonds.*
1841–1849. [Repealed.]
1850. Death does not abate.

Arts. 1837, 1838. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 372.

Art. 1839. [1608] [1015] Time to file transcript.—In appeal or writ of error the appellant or plaintiff in error shall file the transcript and statement of facts with the Clerk of the Court of Civil Appeals within sixty (60) days from the final judgment or order overruling motion for new trial, or service of the writ of error; provided, by motion filed before, at, or within a reasonable time, not exceeding fifteen (15) days, after the expiration of such sixty-day period, showing good cause to have existed within such sixty-day period, why said transcript and statement of facts could not be so filed, the Court of Civil Appeals may permit the same to be thereafter filed upon such terms as it shall prescribe. [Acts 1st C.S. 1892; G.L. vol. 10, p. 389; Acts 1931, 42nd Leg., p. 100, ch. 66; Acts 1933, 43rd Leg., p. 142, ch. 67; Acts 1939, 46th Leg., p. 58, § 1.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rule 386.

Art. 1840. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 430.

Art. 1840—A. Amendment of appeal bonds.*—When an appeal has been or shall be taken from the judgment of any of the courts of this State by filing a bond or entering into a recognizance within the time prescribed by law in such cases, and it shall be determined by the court to which appeal is taken that such bond or recognizance is defective in form or substance; such Appellate Court may allow the appellant to amend such bond or recognizance by filing a new bond on such terms as the court may prescribe. [Acts 1931, 42nd Leg., p. 315, ch. 187, § 1.]

* *Repealed in so far as article relates to Civil Appellate Courts, Rules of Civil Procedure, Rule 430.*

Arts. 1841–1849. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 374, 387, 389, 402, 410–412, 414.

Art. 1850. [1618] [1026] Death does not abate.—If any party to the record in a cause pending in a Court of Civil Appeals shall die after the appeal bond is filed and approved or after the writ of error has been served, and before the cause has been decided, such cause shall not abate, but the court shall proceed to adjudicate the case and render judgment therein as if all parties thereto were still living. Such judgment shall have the same force and effect as if rendered in the lifetime of all the parties thereto. [Acts 1st C.S.1892, p. 30.]

CHAPTER 4.—CERTIFICATION OF QUESTIONS

Art.
1851. [Repealed.]
1851a. Trial judge may certify question of constitutionality of law to Court of Civil Appeals; procedure.
1852–1855. [Repealed.]

Art. 1851. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 461.

Art. 1851a. Trial judge may certify question of constitutionality of law to Court of Civil Appeals; procedure.

Cases in which question may be certified

Sec. 1. In any case hereafter pending in any District or County Court in this State, wherein the constitutionality of any law or any order, rule or regulation of any officer, board, or other State Commission is attacked as being violative of either the State or Federal Constitution, and wherein a decision on the same is material to the deciding of said case finally on its merits, the Judge of said Court shall have the power and authority to certify any such question or questions of law involved in said case directly to the Court of Civil Appeals in said District before trial on the merits for its decision.

Incorporation of pleadings in certificate

Sec. 2. The trial court, in certifying such question or questions, may incorporate in such certificate any or all of the pleadings of the parties therein, and in the event all of the pleadings are not set forth therein, then upon the certification of such question either party may have the right to file in the Court of Civil Appeals or the Supreme Court a certified copy of any such pleadings for the consideration of the Court.

Certification of questions to Supreme Court

Sec. 3. In order to expedite the final determination of such questions with dispatch, the Court of Civil Appeals may forthwith certify said question or ques-

tions immediately to the Supreme Court, as provided by Article 1758 of the Revised Civil Statutes of 1925, and other Articles relating to certifying questions to the Supreme Court. When the Supreme Court, on receiving such record, shall render an opinion thereon, such opinion shall be final and shall be the law on the question involved until overruled by it, or otherwise abrogated by law. After the questions are decided the Supreme Court and the Court of Civil Appeals shall notify the Court of Civil Appeals and the trial court respectively. Either of said Appellate Courts shall give such time as it may deem advisable for the filing of briefs.

Trial may be held in abeyance

Sec. 4. The trial court may hold the trial of said case in abeyance until its questions have been certified and answered. Provided, however, that such trial court, if it so desires, may hold hearing on general and special demurrers involving questions of the constitutionality of any such law, order, rule, or regulation and an appeal be perfected in the same manner and time as provided by law for appealing from the granting or denying of a temporary injunction, and upon perfecting such appeal to the Court of Civil Appeals, such Court may immediately certify such questions to the Supreme Court, as hereinbefore provided, and the trial court may hold such trial in abeyance pending the determination of such questions, and if the Court of Civil Appeals shall fail to certify any such question to the Supreme Court, then such case may be carried to the Supreme Court by writ of error or appeal, as in cases where temporary injunctions are denied or granted.

Precedence over other cases

Sec. 5. All such appeals and certified questions shall be given precedence over all other cases as now provided by law. The law and the rules of the various courts in reference to certifying questions by the Court of Civil Appeals to the Supreme Court and taking appeals from orders granting or denying temporary injunctions shall govern and control where not in conflict with the provisions hereof.

Application to pending causes

Sec. 5a. This Act shall not apply to any cause pending on the effective date hereof unless the parties each and all agree in writing to the certification to the Appellate Court and the agreement approved by the trial judge. [Acts 1933, 43rd Leg., p. 147, ch. 71.]

Provision permitting certified questions to Courts of Civil Appeals and Supreme Court calling for advisory action only, and requiring no judgment or decree upon which appellate power of revisory courts may act, held unconstitutional. Morrow v. Corbin, 122 T. 553, 62 S.W.(2d) 641.

Provision authorizing certified questions from district courts to Court of Civil Appeals and from latter to Supreme Court, issued prior to any judgment or decree from which appeal might lie from district court to Court of Civil Appeals, held void. Wright v. San Jacinto Trust Co., 122 T. 582, 62 S.W.(2d) 652.

Arts. 1852–1855. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 462–464, 479.

CHAPTER 5.—JUDGMENT OF THE COURT

Arts. 1856–1872. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 434–450.

CHAPTER 6.—CONCLUSIONS OF FACT AND LAW

Arts. 1873–1876. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 451, 453–455.

CHAPTER 7.—REHEARING

Arts. 1877–1880. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 458, 460.

CHAPTER 8.—WRIT OF ERROR TO SUPREME COURT

Art.
1881–1883. [Repealed.]
1883a. Transferred to Article 2249a.

Arts. 1881–1883. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 471, 472.

Art. 1883a. [Transferred to Article 2249a.]

Article was Acts 1939, 46th Leg., p. 59, now set out under article 2249a.

TITLE 40—COURTS—DISTRICT

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CHAPTER 1.—THE JUDGE

Art.
1884. Election and qualification.
1885. Disqualification.
1886. Record of agreement.
1887. Special judge, when.
1888. Voting for special judge.
1889. Election for special judge.
1890. Failure of officers to act.
1891. Record of the election.
1892. Effect of such record.
1893. Other elections for special judge.

Article 1884. [1671–1672] Election and qualification.—For each judicial district there shall be elected at the general election for a term of four years a judge who shall be at least twenty-five years of age, a practicing attorney or a judge of a court in this State for four years and a resident of the district in which he is elected for two years next before his election. He shall reside in his district during his term of office. [Const., art. 5, sec. 7; art. 16, sec. 17.]

Art. 1885. [1676] [1069] Disqualification.—No change of venue shall be necessary because of the disqualification of a district judge, but he shall immediately certify his disqualification to the Governor, whereupon the Governor shall designate some district judge in an adjoining district to exchange and try such case or cases, and he shall notify both of said judges of such order; and such judges shall exchange districts for the purpose of disposing of such case or cases. If said judges be prevented from exchanging districts, the parties or their counsels may agree upon an attorney of the court for the trial thereof, and failing to agree, such fact shall be certified to the Governor by the district judge, or the special judge, whereupon the Governor shall appoint a person legally qualified to act as judge in the trial of the case. [Acts 1st C. S. 1897, p. 39; Acts 1915, p. 86; G. L. vol. 10, p. 1479.]

Art. 1886. [1677] [1070] Record of agreement.—Whenever a special judge is agreed upon for the trial of a particular cause, the clerk shall enter in the minutes of the court, as a part of the proceedings in such cause, a record showing:

1. That the judge of the court was disqualified to try the cause; and

2. That such special judge (naming him) was, by consent agreed upon by the parties to try the cause; and

3. That the oath prescribed by law has been duly administered to him. [Acts 1897, S. S. p. 39; Acts 1876, p. 141; G. L. vol. 8, p. 976; G. L. vol. 10, p. 1479.]

Art. 1887. [1678] [1071] [1094] Special judge, when.—Should the judge of a district court on the first or any future day of a term, fail or refuse to hold the court, the practicing lawyers of the court present may elect from among their number a special

judge who shall hold the court and proceed with the business thereof. [Acts 1876, p. 140; G. L. vol. 8, p. 976.]

Art. 1888. [1679] [1072] [1095] Voting for special judge.—Such election shall be by ballot, and each practicing lawyer in attendance at such court shall be entitled to participate in such election and shall be entitled to one vote. A majority of the votes of the lawyers participating shall be necessary to the election of such special judge. [Id.]

Art. 1889. [1680] [1073] [1096] Election for special judge.—The election shall be conducted as follows: The sheriff or constable shall make proclamation at the court house door that the election of a special judge of the court is about to be made by the practicing lawyers present; the clerk shall then make a list of the practicing lawyers present; and such lawyers shall then organize and hold the election. [Id.]

Art. 1890. [1681] [1074] [1097] Failure of officers to act.—Should the sheriff, constable, and clerk, or either of them, fail or refuse to act, the said practicing lawyers may nevertheless proceed to organize themselves into such electoral body, and appoint a sheriff and clerk pro tempore to do the duties of such officers respectively. [Id.]

Art. 1891. [1682] [1075] [1098] Record of the election.—The clerk shall enter upon the minutes of the court a record of the election of such special judge, showing:

1. The names of all the practicing lawyers present and participating in such election.
2. The fact that the public proclamation was made at the court house door that such election was about to take place.
3. The number of ballots polled at such election and the number polled for each person, and the result of the election.
4. That the oath prescribed by law has been duly administered to the special judge. [Id.]

Art. 1892. [1683] [1076] [1099] Effect of such record.—The record of such proceedings, substantially complying with the requirements of the law, shall be conclusive evidence of the election and qualification of such special judge. [Id.]

Art. 1893. [1684] [1077] [1100] Other elections for special judge.—Like elections may be held from time to time during the term of the court to supply the absence, failure or inability of the judge, or of any special judge, to perform the duties of the office. [Id.]

CHAPTER 2.—DISTRICT CLERK

Art.
1894. Election and power.
1895. Vacancy.
1896. Clerk pro tem.
1897. Bond and oath.
1898. Deputies.
1899. To record proceedings.
1900. Report of fines and jury fees.
1901. Custody and care of records—removal of records—deposit in museum.
1902. Indexes to judgments.
1903. Joint clerk.
1904. Use of court seal.
1905. Seal of the court.

Art. 1894. [1685] [1078] [1100] Election and power.—A clerk of the district court of each county shall be elected at each general election for a term of two years. Each such clerk shall have power to administer oaths and affirmations required in the discharge of their official duties, to take the depositions of witnesses, and generally to perform all such duties as are or may be imposed upon them by law. [Const. art. 5, § 9; art. 16, § 17; Acts 1929, 41st Leg., p. 572, ch. 277, § 1.]

Art. 1895. [1686] [1079] [1101] Vacancy.—Whenever a vacancy occurs in the office of district clerk, it shall be filled by the district judge of such county; and such appointee shall give bond and qualify and may hold his office until the next general election. Where a vacancy occurs in a county having two or more district courts, the vacancy shall be filled by the judges of such courts; and if they fail to agree, the Governor, upon the certificate of such judges, shall order a special election to fill such vacancy. [Const. art. 5, § 9; art. 16, § 17; Acts 1876, p. 233; Acts 1891, p. 5; G.L. vol. 8, p. 1069.]

Art. 1896. [1687–8] Clerk pro tem.—Where a district clerk is a party to any pending or proposed suit, motion or proceeding in his court, the district judge in whose court the same may be pending or proposed, shall, on application of any person interested, or on his own motion, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. Such temporary clerk shall take an oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the State of Texas, in an amount to be fixed by the judge and to be approved by him, conditioned for the faithful performance of his duties under such appointment. Such appointee shall perform each duty required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed. [Acts 1887, p. 102; G. L. vol. 9, p. 900.]

Art. 1897. [1689] [1082] [1102] Bond and oath.—Each district clerk, before entering upon his official duties, shall give bond, to be approved by the Commissioners court of the county, payable to the Governor, in the sum of five thousand dollars, conditioned for the faithful discharge of the duties of his office, and shall also take and subscribe the official oath which shall be indorsed upon the bond. Such bond and oath shall be filed and recorded in the office of the county clerk. [Acts 1846, p. 203; P. D. 500; G. L. vol. 2, p. 1510.]

Art. 1898. [1690–92] Deputies.—The district clerk may, in writing, under his hand and the seal of his court, appoint one or more deputies. The appointment shall be recorded in the office of the county clerk. Such deputies shall take the official oath, and shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person. If the clerk does not reside at the county seat he shall have a deputy residing there. [Acts 1846, p. 203; P.D. 500; G.L. vol. 2, p. 1510; Acts 1929, 41st Leg., p. 277, ch. 123, § 1.]

Art. 1899. [1694] [1087] [1107] To record proceedings.—Such clerks shall keep a fair record of all the acts done, and proceedings had, in their respective courts; enter all judgments of the court, under direction of the judge, and keep a record of all executions issued and the returns thereon, in record books to be kept for the purpose.

Art. 1900. [1696] [1089] [1109] Report of fines and jury fees.—On the last day of each term of the court, the clerk shall make a written statement showing all moneys received by him for jury fees and fines, with the name of each party from whom received, up to the date of such statement, and since his previous statement; and also the name of each juror who has served at such term, the number of days he served, and the amount due him for such services. Such statement shall be examined, corrected, approved, and signed by the presiding judge. Such statement, when so approved and signed shall be recorded in the minutes of the court. [Acts 1846, p. 206; P. D. 4014; G. L. vol. 2, p. 1511.]

Art. 1901. [1700] [1093] [1112] Custody and care of records—removal of old records—deposit in museum.—District Clerks shall have the custody of records pertaining to or lawfully deposited in their offices and shall carefully attend to the arrangement and preservation of the same; provided however, that records dated before 1860 in counties having a population of not less than ninety-eight thousand, two hundred and ten (98,210) and not more than ninety-nine thousand, two hundred and ten (99,210) according to the last preceding Federal Census may be removed under the following conditions:

That upon the application of the curator of any museum located in the county where the records are deposited, said museum to be maintained and operated by or in connection with a recognized higher educational institution of learning and upon the proper substitution of certified copies by the curator making application to the District Clerk, said records may be removed and placed in the care and custody of such curator, or his successor, all of which shall be without expense to the State. [Acts 1846, p. 206; P.D. 502; Acts 1939, 46th Leg., p. 219, § 1.]

Art. 1902. [1701] [1094] [1113] Indexes to judgments.—They shall provide and keep in well bound books, as part of the records, full and complete alphabetical indexes of the names of the parties to all suits filed in their courts; showing in full the names of all the parties, indexed and cross-indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. [Acts 1876, p. 25.]

Art. 1903. [1703] [1096] Joint Clerk.—In counties having a population of less than eight thousand persons, according to the preceding federal census, only one clerk shall be elected. He shall take the oath and give the bond required of clerks of both the district and county courts, and shall have the powers and perform the duties of such clerks respectively. [Const. art. 5, sec. 20; Acts 1879, p. 47; Acts 1927, 40th Leg., p. 73, ch. 49, § 1.]

Art. 1904. [1704] [1097] [1116] Use of court seal.—When a joint clerk has been elected, he shall, in performing the duties of district clerk use the seal of said court to authenticate his official acts as clerk of the district court.

Art. 1905. [1729] [1122] [1131] Seal of the court.—Each district court shall be provided with a seal, having engraved thereon a star of five points in the center and the words, "District Court of ..... County, Texas." The impress of which shall be attached to all process, except subpœnas, issued out of such court, and shall be kept by the clerk and used to authenticate his official acts. [Acts 1846, p. 201; P. D. 1411; G. L. vol. 2, p. 1508.]

CHAPTER 3.—POWERS AND JURISDICTION

Art.
1906. Original jurisdiction.
1906a. Computation of amount in controversy where parties properly joined.
1907. Matters of probate.
1908. Over commissioners court.
1909. General jurisdiction.
1910. Motions against sheriffs, attorneys, etc.
1911. May punish for contempt.
1912. Judgments transferred and enforced.
1913. Other jurisdiction.
1914. To grant all remedial writs.
1915. Powers in vacation.
1916. May alternate, etc.
1917 Appointing attorney.
1918. [Repealed.]

Article 1906. [1705] [1098] [1117] Original jurisdiction.—The district court shall have original jurisdiction in civil cases of:

1. Suits in behalf of the State to recover penalties, forfeitures and escheats.
2. Cases of divorce and dissolution of marriage.
3. Suits to recover damages for slander or defamation of character.
4. Suits for the trial of title to land and for the enforcement of liens thereon.
5. Suits for trial of right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars.
6. Suits, complaints or pleas, without regard to any distinction between law and equity, when the matter in controversary [controversy] shall be valued at or amount to five hundred dollars exclusive of interest.
7. Contested elections. [Const., Art. 5.]

Art. 1906a. Computation of amount in controversy where parties properly joined.—Where two or more persons originally and properly join in one suit, the suit for jurisdictional purposes shall be treated as if one party were suing for the aggregate amount of all their claims added together, exclusive of interest and cost; provided that this statute shall not prevent jurisdiction from attaching on any other ground. Provided further, that the passage of this Act shall not affect any pending litigation. [Acts 1945, 49th Leg., p. 543, ch. 329, § 1.]

Art. 1907. [1706] [1099] [1118] Matters of probate.—District courts shall have appellate jurisdiction and general control in probate matters over the county courts, for appointing guardians, granting letters testamentary and of administration, probating wills, settling accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates. The district court shall also have such original jurisdiction and general control over executors, administrators, guardians and minors as provided by law. [Const., art. 5, sec. 8; Acts 1846, p. 200; P. D. 1406; Amendment 1891.]

Art. 1908. [1706] [1099] [1118] Over commissioners court.—Such court shall also have appellate jurisdiction and general supervisory control over the commissioners court, with such exceptions and under such regulations as may be prescribed by law. [Id.]

Art. 1909. [1706] [1099] [1118] General jurisdiction.—Such court shall have general original jurisdiction over all causes of action, for which a remedy or jurisdiction is not provided by law or the constitution, and such other jurisdiction, original and appellate as may be provided by law. [Const., art. 5, sec. 8; Acts 1846, p. 22; P. D. 1406.]

Art. 1910. [1707] [1100] [1119] Motions against sheriffs, attorneys, etc.—The district court shall have power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys, collected under the process of said court, or other defalcation of duty in connection with such process and of motions against attorneys for moneys collected by them and not paid over. [Acts 1846, p. 201, sec. 5; P. D. 1408; G. L. vol. 2. P. 1507.]

Art. 1911. [1708] [1101] [1120] May punish for contempt.—The district court may punish any person guilty of contempt of such court by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days. [Acts 1846, p. 201; P. D. 1409; G. L. vol. 2, p. 1507.]

Art. 1912. [1711] [1105] Judgments transferred and enforced.—When a district clerk shall receive from the county clerk a certified copy of a judgment rendered in any civil or criminal case

in the county court where the civil and criminal jurisdiction, or either, of the county court has been transferred to the district court, he shall immediately record such judgments in the minutes of the district court; and the said district court shall enforce said judgments by execution or otherwise, as other judgments rendered in said district court are enforced. [Acts 1879, p. 11; G. L. vol. 8, p. 847.]

Art. 1913. [1712] [1106] [1122] Other jurisdiction.—Subject to the limitations stated in this chapter, the district court is authorized to hear and determine any cause which is cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. [Acts 1846, p. 201; P. D. 1410; G. L. vol. 2, p. 1507.]

Art. 1914. [1713] [1107] [1123] To grant all remedial writs.—Judges of the district courts may either in term time or in vacation, grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. [Acts 1846, p. 200; P. D. 1407; G. L. vol. 2, p. 1507.]

Art. 1915. [1714] Powers in vacation.—Judges of the district courts may in vacation, by consent of the parties, exercise all powers, make all orders, and perform all acts, as fully as in term time, and may, by consent of the parties, try any civil case, except divorce cases, without a jury and enter final judgment. All such proceedings shall be conducted under the same rules as if done in term time; and the right of appeals and writ of error shall apply as if the acts had been done in term time. [Acts 1909, S. S. p. 352.]

Art. 1916. [1715] [1108] [1124] May alternate, etc.—A judge of the district court may hold court for or with any other district judge; and the judges of such courts may exchange districts whenever they deem it expedient. [Acts 1846, p. 202; P. D. 1418; G. L. vol. 2, p. 1509.]

Art. 1917. [1716] [1109] [1125] Appointing attorney.—Judges of district courts may appoint counsel to attend to the cause of any party who makes affidavit that he is too poor to employ counsel to attend to the same. [Id.; P. D. 1414.]

Art. 1918. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 20.

CHAPTER 4.—TERMS OF COURT

Art.
1919. Terms of court.
1919a. Terms of district court in unorganized county being organized.
1920. Special terms.
1921. Summoning juries.
1922. [Repealed.]
1923. Extension of term.
1924. Extension in certain counties.
1925. Effect of extension.
1926. [Repealed.]

Article 1919. [1718] [1111] [1127] Terms of court.—Each judge of the district courts shall hold the regular terms of his court at the county seat of each county in the district twice in each year, unless additional terms should be prescribed by law, and shall hold such special terms as may be required by law. [Const. art. 5, sec. 7.]

Art. 1919a. Terms of district court in unorganized county being organized.—Whenever any unorganized county within this State has become organized or may hereafter become organized, there being no time fixed by law for holding District Court in such counties, the District Judge in whose Judicial District such county is situated shall fix times to hold at least two terms of court each year in each of such counties, by a written declaration, to be forwarded by the District Judge to the District Clerk of the County, and by him spread on the minutes of the District Court. When the times are so fixed they shall not be changed, except by an act of the Legislature. [Acts 1927, 40th Leg., p. 132, ch. 85, § 1.]

Section 2 of this Act, repeals all conflicting laws and parts of laws.

Art. 1920. [1720–3] Special terms.—Whenever a district judge deems it advisable to hold a special term of the district court in any county in his district, such special term may be held; and such judge may convene such term at any time which may be fixed by him. Such district judge may appoint jury commissioners, who may select and draw grand and petit jurors in accordance with the law. Such jurors may be summoned to appear before such district court at such time as may be designated by the judge thereof. In the discretion of the district judge, a grand jury need not be drawn or empaneled. No new civil cases can be brought to a special term of the district court. [Const. art. 5, sec. 7; Acts 1879, p. 42; Acts 1905, p. 116; G. L. vol. 8, p. 879.]

Art. 1921. [1724] [1118] Summoning juries.—The juries for a special term shall be summoned in accordance with the law regulating juries at regular terms of court. At a special term all proceedings may be had in any case which could be had at any regular term of such court. All process issued to a previous regular term or to such special term, and all orders, judgments and decrees, and all proceedings had in any case, civil or criminal, which would be lawful if had at a regular term, shall have the same force and effect; and any proceeding had may be appealed from as if the case were tried at a regular term. [Id.]

Art. 1922. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 19.

Art. 1923. [1726] Extension of term.—Whenever a district court shall be in the midst of the trial of a cause when the time for the expiration of the term of said court arrives, the judge presiding shall have the power and may, if he deems it expedient, extend the term of said court until the conclusion of such pending trial. The extension of such term shall be shown in the minutes of the court before they are signed. If the term is extended as herein provided, no term of court in any other county shall fail because thereof, but the term of court therein may be opened and held as provided by law when the district judge fails to appear at the opening of a term of court. [Acts 1909, p. 114.]

Extension of period for which grand jurors shall sit in counties over 500,000, see Crim.Code Proc. art. 338a.

Art. 1924. Extension in certain counties.—A district court in a judicial district composed of more than one county and having terms of court fixed by law in counties in which there is a city of one hundred and thirty-five thousand population, or over, according to the preceding Federal census, may, by an order of the judge thereof made and entered of record in the minutes of said court, have any of such terms of court in such last described counties extended for such length of time as such judge may deem advisable for the transaction of the business of such court. [Acts 1923, p. 25.]

Art. 1925. Effect of extension.—If any term of court is extended as provided in the preceding article, no term of such court as fixed by law shall fail, but same shall be opened and held as provided by law. When a new term shall run concurrently in time and in the same county with an extended term, the minutes of both such terms may be recorded together during the time such terms so run concurrently. While such

new term is open, each entry made in the minute records of said court, during such time shall be presumed to be the minutes of proceedings of such new term unless otherwise shown in such minutes. [Id.]

Art. 1926. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 114.

TITLE 41—COURTS—COUNTY

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CHAPTER 1.—THE COUNTY JUDGE

Art.
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1934a—11. Stenographer or secretary in counties of 5,575 to 5,875; salary.

Article 1927. [1731] [1124] [1133] Election and qualification.—A county judge who shall be well-informed in the law of this State shall be elected in each county by the qualified voters thereof, at each general election, and shall hold his office for two years. [Const. art. 5, sec. 15; art. 16, sec. 17; Acts 1876, p. 17, sec. 1; G. L. vol. 8, p. 853.]

Art. 1928. [1732] [1125] [1134] Bond.—The county judge shall, before entering upon the duties of his office, execute a bond payable to the treasurer of his county to be approved by the commissioners court of his county, in a sum of not less than one thousand nor more than ten thousand dollars, the amount to be fixed by the commissioners court, conditioned that he will pay over to the person or officer entitled to receive it, all moneys that may come into his hands as county judge, and that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not vote or give his consent to pay out county funds except for lawful purposes. [Acts 1883, p. 50; Acts 1923, p. 13; G. L. vol. 9, p. 356.]

Art. 1929. [1733] [1126] [1135] Absence from office.—He shall attend at his office from day to day, and not absent himself from the county or the State without the permission of the commissioners court, to be entered on its minutes, nor shall he be absent with such permission for a longer period than ninety days. [Acts 1883, p. 8; G. L. vol. 9, p. 314.]

Art. 1930. [1737] [1130] Special county judge.—When a judge of the county court is disqualified, the parties may, by consent, appoint a proper person to try such case. [Acts 1893, p. 75.]

Art. 1931. [1738] [1131] Governor may appoint special judge.—Whenever a judge of the county court is disqualified to try a civil case pending in the county court, and the parties shall fail at the first term of the court to agree upon a special judge, the judge shall certify his disqualification to the Governor and the failure to agree upon another to try the same, whereupon the Governor shall appoint some person, learned in the law to try such case. [Id.]

Art. 1932. [1738] [1131] Special judge in probate matter.—When a county judge is disqualified to act in any probate matter, he shall forthwith certify his disqualification therein to the Governor, whereupon the Governor shall appoint some person to act as special judge in said case, who shall act from term to term until such disqualification ceases to exist. A special judge so appointed shall receive the same compensation as is now or may hereafter be provided by law for regular judges in similar cases, and the Commissioners' Court shall, at the beginning of each fiscal year, include in the budget of the county, a sufficient sum for the payment of the special judge or judges appointed by the Governor to act for the regular county judge. [Acts 1893, p. 75; Acts 1939, 46th Leg., p. 187, § 1.]

Art. 1933. [1739] [1132] Appointment by wire.—Whenever the county judge or the special judge shall be disqualified from trying a case, the parties or their counsel may agree upon an attorney for the trial thereof; and, if they shall fail to agree upon an attorney at or before the time it is called for trial, or if the trial of the case is pending and the county judge should become unable to act, or is absent, and a special judge is selected who is disqualified to proceed with the trial, and the parties then fail to select or agree upon a special judge who is qualified, the county judge or special judge presiding shall certify the fact to the Governor immediately, whereupon the Governor shall appoint a special judge, qualified to try same. Such appointment may be made by telegram or otherwise. The special judge shall proceed to the trial or disposition of such case. Any special judge agreed upon or appointed to try cases shall receive the same pay for his services as is provided by law for county judges. [Acts 1893, p. 75.]

Art. 1934. [1741–2] Election of judges.—If a county judge fails to appear at the time appointed for holding the court, or should he be absent during the term or unable or unwilling to hold the court, a special county judge may be elected in like manner as is provided for the election of a special district judge. The special county judge so elected shall have all the authority of the county judge while in the trial and disposition of any case pending in said court during the absence, inability, or such refusal of the county judge. Similar elections may be held at any time during the term, to supply the absence, failure or inability of the county judge, or any special judge, to perform the duties of the office. When a special county judge shall have been so elected, the clerk shall enter upon the minutes of the court, a record such as is provided for in like cases in the district court. [Acts 1897, p. 7.]

Art. 1934a. Stenographer or clerk for County Judge in certain counties.—In any county in this State of less than one hundred thousand inhabitants according to the United States census of nineteen hundred twenty, which county contains a city, of more than forty-three thousand inhabitants according to said census, the County Judge shall be allowed to employ a stenographer or clerk at a salary not exceeding one Hundred Twenty-five Dollars per month, such salary to be paid monthly by the county by warrants drawn on the general county fund. Such stenographer or clerk shall be subject to removal at the will of such County Judge. [Acts 1929, 41st Leg., p. 296, ch. 136, § 1.]

Art. 1934a—1. County judge to employ stenographer or clerk, salary.—Sec. 1. In any county of this State of less than one hundred thousand inhabitants, wherein is situated a city having an actual population of 38,489 inhabitants or more, the County Judge shall ascertain the population of any city in his county necessary to be ascertained under this Act by making application to the mayor of any such city for a certificate as to the population of such city. It shall be the duty of any such mayor to ascertain by some reasonable, accurate estimate the population of any such city and his certificate to same under oath shall authorize the County Judge to assume its correctness and act upon the information contained in such certificate in making any appointment of a stenographer or clerk under this Act. The population of the county shall be based on the latest United States Census for the purposes of this Act.

Sec. 2. In any county in this State of less than 100,000 inhabitants wherein is situated a city having a population of 38,489 inhabitants so certified by the mayor of the town, as provided in Section 1, hereof, the County Judge shall be allowed to employ a stenographer or clerk at a salary not exceeding One hundred and Twenty-five ($125.00) Dollars per month, such salary to be paid monthly by the County by warrants drawn on the general county fund, under orders of the Commissioners Court of such county. Such stenographer or clerk shall be subject to removal at the will of such County Judge. [Acts 1929, 41st Leg., 2nd C.S., p. 156, ch. 79.]

Art. 1934a—2. Stenographer or clerk for county judge in counties of 43,000 to 43,100.—In any county in this State whose population, as shown by the last Federal Census Report, is between forty-three thousand (43,000) and forty-three thousand, one hundred (43,100) inhabitants, the County Judge shall be allowed to employ a stenographer or clerk at a salary of One Hundred Dollars ($100) per month, such salary to be paid monthly by county warrants drawn on the General County Fund, or the County Road and Bridge Fund, or both, under orders of the Commissioners Court of such county. Such stenographer or clerk shall be subject to removal at the will of such County Judge. [Acts 1935, 44th Leg., p. 334, ch. 125, § 1.]

Art. 1934a—3. Stenographer to county judge in counties of less than 20,000; salary.—In any county in this State whose population as shown by the last preceding Federal Census is less than twenty thousand (20,000) inhabitants, and whose property valuation according to the approved tax rolls for the preceding calendar year is in excess of Fifty Million Dollars ($50,000,000) the County Judge shall be, and is hereby, authorized to employ a stenographer or Clerk at a salary not to exceed One Hundred and Twenty-five Dollars ($125) per month, such salary to be paid monthly by county warrants drawn on the County General Fund or the County Road and Bridge Fund, or both, under the orders of the Commissioners Court of such county. Such stenographer or Clerk shall be subject to removal at the will of such County Judge. [Acts 1935, 44th Leg., p. 739, ch. 320, § 1.]

Art. 1934a—4. Stenographer for county judge in counties of 15,140 to 15,160.—In any county in this State whose population as shown by the last preceding Federal Census is not more than fifteen thousand one hundred and sixty (15,160) and not less than fifteen thousand one hundred and forty (15,140) inhabitants, the County Judge shall be, and is hereby, authorized to employ a stenographer or clerk at a salary of One Hundred ($100.00) Dollars per month, such salary to be paid monthly by county warrants drawn on the county General Fund or the County Road and Bridge Fund, or both, under the orders of the Commissioners' Court of such county. Such stenographer or clerk shall be subject to removal at the will of such County Judge. [Acts 1937, 45th Leg., p. 376, ch. 185, § 1.]

Art. 1934a—5. Stenographer for county judge in counties of 6,685 to 7,015 population; salary.—In any county in this State whose population as shown by the last preceding Federal Census is not more than seven thousand and fifteen (7,015) and not less than six thousand, six hundred and eighty-five (6,685) inhabitants, the County Judge shall be, and is hereby, authorized to employ a stenographer or secretary at a salary to be determined by the Commissioners Court, such salary to be paid monthly by county warrants drawn on the County General Fund or the County Road and Bridge Fund, or both, under the orders of the Commissioners Court of such county. Such stenographer or secretary shall be subject to removal at the will of such County Judge. [Acts 1939, 46th Leg., Spec.L., p. 747, § 1.]

Art. 1934a—6. Stenographer for county judge in counties of 7,680 to 7,700; salary.—In any county in this State whose population as shown by the last preceding Federal Census of 1930 is not more than seven thousand, seven hundred (7,700) and not less than seven thousand, six hundred and eighty (7,680) inhabitants, the County Judge shall be and is hereby authorized to employ a stenographer or clerk at a salary not exceeding One Hundred Dollars ($100) per month, such salary to be paid monthly by county warrants drawn on the County General Fund or the County Road and Bridge Fund, or both, under the orders of the Commissioners Court of such county. Such stenographer or clerk shall be subject to removal at the will of such County Judge. [Acts 1939, 46th Leg., Spec.L., p. 746, § 1.]

Art. 1934a—7. Stenographer or clerk for County Judge in counties of 10,399 to 10,499.—In any county in this State with a population of not more than ten thousand, four hundred and ninety-nine (10,499) and not less than ten thousand, three hundred and ninety-nine (10,399) inhabitants, according to the last preceding Federal Census, the County Judge shall be and is hereby authorized to employ a stenographer or a clerk at a salary of not to exceed One Hundred Dollars ($100) per month. Such salary is to be paid monthly by county warrants drawn on the county General Fund, the county Salary Fund, or the Road and Bridge Fund, or either of them, on the orders of the Commissioners Court of such county. Such a stenographer or clerk shall be subject to removal at the will of such County Judge. [Acts 1939, 46th Leg., Spec.L., p. 748, § 1; Acts 1941, 47th Leg., p. 724, ch. 451, § 1.]

Amendment by Laws 1941, p. 39, ch. 27, § 1, see article 1934a—7, post.

Counties of 10,380 to 10,390

Acts 1941, 47th Leg., p. 143, ch. 108, § 1 authorized the County Judge in any county of 10,380 to 10,390 to employ a stenographer or clerk at $100 per month.

Art. 1934a—7. Stenographer or clerk for County Judge in counties of 7,700 to 7,800, and 13,199 to 13,299; salary.—In any County in this State with a population of not more than seven thousand eight hundred (7,800), and not less than seven

thousand seven hundred (7,700), and in Counties having not more than thirteen thousand two hundred ninety-nine (13,299) inhabitants and not less than thirteen thousand one hundred ninety-nine (13,199) inhabitants, according to the last preceding Federal Census, the County Judge with the approval of the Commissioners' Court shall be and is hereby authorized to employ a stenographer or a clerk at a salary of not to exceed One Hundred ($100.00) Dollars per month. Such salary is to be paid monthly by County Warrants drawn on the County General Fund, the County Salary Fund, or the Road and Bridge Fund, or either of them, on the orders of the Commissioners' Court of such County. Such a stenographer or clerk shall be subject to removal at the will of such County Judge. [Acts 1939, 46th Leg., Spec.L., p. 748, § 1; Acts 1941, 47th Leg., p. 39, ch. 27, § 1.]

Amendment by Laws 1941, p. 724, ch. 451, see article 1934a—7, ante.

Art. 1934a—8. Stenographer or clerk for county judge in counties of 11,710 to 11,720 and 38,400 to 38,500; salary.—Any county in this State having a population, as shown by the last preceding Federal Census of 1940, of not more than eleven thousand seven hundred twenty (11,720) and not less than eleven thousand seven hundred ten (11,710) inhabitants, and of not more than thirty-eight thousand five hundred (38,500) and not less than thirty-eight thousand four hundred (38,400) inhabitants, the County Judge shall be and is hereby authorized to employ a stenographer or clerk at a salary not exceeding Seventy-five ($75.00) Dollars per month, such salary to be paid monthly by county warrants drawn on the County General Fund or the County Road and Bridge Fund, or both, under the orders of the Commissioners' Court of such county. Such stenographer or clerk shall be subject to removal at the will of such County Judge. [Acts 1941, 47th Leg., p. 780, ch. 484, § 1.]

Art. 1934a—9. Stenographer or clerk for county judges and district and county clerks in counties of 2,825 to 2,900 and 6,100 to 6,150; salary.—In any county in this State whose population as shown by the last preceding Federal Census is not less than two thousand, eight hundred and twenty-five (2,825) and not more than two thousand, nine hundred (2,900) and in counties having not less than six thousand, one hundred (6,100) and not more than six thousand, one hundred and fifty (6,150) inhabitants, the County Judges and County and District Clerks are, and are hereby, authorized to employ a stenographer or secretary at a salary to be determined by the Commissioners Court, such salary to be paid monthly by county warrants drawn on the County General Fund or the County Road and Bridge Fund, or both, under the orders of the Commissioners Court of such county. Such stenographer or secretary shall be subject to removal at the will of such County Judge or County or District Clerk. [Acts 1941, 47th Leg., p. 739, ch. 459, § 1.]

Art. 1934a—10. Stenographer or clerk for county judges in counties of 7500 to 17,500; salary.—In any county in this State whose population as shown by the last preceding Federal census is not more than seventeen thousand, five hundred (17,500) and not less than seven thousand, five hundred (7,500), the County Judge may, with the approval of the Commissioners Court, employ a stenographer or clerk at a salary not exceeding One Hundred and Twenty-five Dollars ($125) per month, such salary to be fixed by the Commissioners Court and paid monthly by county warrants drawn on the County General Fund under the orders of the Commissioners Court of such county. [Acts 1945, 49th Leg., p. 304, ch. 220, § 1.]

Art. 1934a—11. Stenographer or secretary in counties of 5,575 to 5,875; salary.—In any county of this state whose population as shown by the last preceding Federal Census is not more than five thousand eight hundred seventy-five (5,875) and not less than five thousand five hundred seventy-five (5,575) inhabitants, the County Judge shall be, and is hereby, authorized to employ a stenographer or secretary at a salary to be determined by the Commissioners Court, such salary to be paid monthly by county warrants drawn on the County General Fund or the County Road and Bridge Fund, or both, under the orders of the Commissioners Court of such county. Such stenographer or secretary shall be subject to removal at the will of such County Judge. [Acts 1947, 50th Leg., p. 273, ch. 166, § 1.]

CHAPTER 2.—COUNTY CLERK

Art.
1935. Election and power.
1936. Clerk pro tem.
1937. Bond and oath.
1938. Deputies.
1939. Armed forces or Auxiliaries, records of official discharges from.
1939a. Certified copies of records furnished free to members of armed forces, auxiliaries, maritime service and merchant marine.
1940. Clerk of commissioners court.
1941. Recorders.
1942. Custody of records.
1943. Keep record of proceedings.
1944. Index to judgments.
1945. Other dockets, indexes, etc.
1946. Report fines and jury fees.
1947. Jury fees and fines.
1948. Shall use seal.

Art. 1935. [1743] [1133] [1142] Election and power.—A clerk of the county court of each county shall be elected at each general election for a term of two years. Each such clerk shall be authorized to issue all marriage licenses, to administer all oaths and affirmations, and to take affidavits and depositions to be used as provided by law in any of the courts. [Const. art. 5, § 20; art. 16, § 17; Acts 1929, 41st Leg., p. 571, ch. 276, § 1.]

Art. 1936. [1745—6] Clerk pro tem.—Where a county clerk shall be a party to any motion or proceeding in his court, the county judge shall, on his own motion, or on application of any person interested, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. The person so appointed shall take the oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the State of Texas, in such amount as may be required by the judge, to be approved by him, and conditioned for the faithful performance of his duties under such appointment. The person so appointed shall perform all the duties required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed. [Acts 1887, p. 102; G. L. vol. 9, p. 900.]

Art. 1937. [1747] [1137] [1144] Bond and oath.—Each county clerk shall, before entering upon the duties of his office give bond with two or more good and sufficient sureties, to be approved by the commissioners court of the county, payable to the Governor in a sum to be fixed by the commissioners court, not less than two thousand nor more than ten thousand dollars conditioned for the safekeeping of the records and the faithful discharge of the duties of his office, and further conditioned that said clerk will pay over to his county all moneys illegally paid to him out of the county funds, as voluntary payments or otherwise. Said clerk shall also take and subscribe the official oath which shall be indorsed upon the bond, and the bond and oath so taken and approved shall be recorded in the county clerk's office, and deposited in the office of the clerk of the district court. A certified copy of such bond may be put in suit in the name of the Governor

for the use of the party injured. [Acts 1876, p. 10; G. L. vol. 8, p. 846; Acts 1923, p. 24.]

Art. 1938. [1748–9–50] Deputies.—The county clerk may in writing, appoint one or more deputies under his hand and the seal of his court, which shall be recorded in the office of such clerk, and shall be deposited in the office of the district clerk. Deputies shall take the official oath and shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person. When the clerk does not reside at the county seat, he shall have a deputy residing there. [Acts 1876, p. 10; P. D. 500; G. L. vol. 8, p. 846.]

Art. 1939. Armed forces or Auxiliaries, records of official discharges from.—Each County Clerk shall record in a well-bound book the official discharge of each member of the Armed Forces of the United States of America or the Armed Force Reserve of the United States of America or the Auxiliary of either Armed Forces of the United States of America or the Armed Force Reserve of America who have served in the Armed Forces of the United States of America since 1916. There shall be no charge made for the recording and keeping of these records. [Acts 1919, p. 154; Acts 1943, 48th Leg., p. 187, ch. 107, § 1.]

Art. 1939a. Certified copies of records furnished free to members of armed forces, auxiliaries, maritime service and merchant marine.—Article 1. Any person, his guardian, or his dependents or heirs at law who is eligible to make a claim against the Government of the United States of America as a result of service in the Armed Forces of the United States of America, or the services auxiliary thereto, including the Maritime Service and the Merchant Marine, shall upon the request therefor by such person, his guardian, or his dependents, or heirs at law, be furnished without cost a certified and authenticated copy or copies of any instrument, public record or document necessary to prove or establish such claim, which is in the custody or on file in the office of County Clerks, District Clerks and other public officials of this State, by such officials. Provided, the issuance of such certified or authenticated copy or copies by such officials shall not be considered in determining the maximum fee of such offices.

Art. 2. The rights conferred by this Act shall extend to any person, his guardian or his dependents, or heirs-at-law who are eligible by reason of service heretofore or hereafter rendered in the Armed Forces of the United States of America, or the services auxiliary thereto, including the Maritime Service and the Merchant Marine, when such person, his guardian, or his dependents, or heirs-at-law are eligible to make claim against the Government of the United States of America as a result of such service. [Acts 1939, 46th Leg., p. 321; Acts 1943, 48th Leg., p. 267, ch. 166, §§ 1, 2; Acts 1945, 49th Leg., p. 587, ch. 346, § 1.]

Section 2 of the Act of 1945 repealed all laws and parts of laws in conflict therewith to the extent of the conflict only.

Section 3 of the acts of 1939 and 1943 repeals all conflicting laws and parts of laws.

Art. 1940. [1753] [1143] [1150] Clerk of commissioners court.—They shall be ex-officio clerks of the commissioners court.

Art. 1941. [1754] [1144] [1151] Recorders.—They shall be ex-officio recorders for their several counties, and as such shall record in suitable books to be procured for that purpose all deeds, mortgages and other instruments required or permitted by law to be recorded; they shall be the keepers of such record books, and shall keep the same properly indexed, arranged and preserved. [Id.]

Art. 1942. [1755] [1145] [1152] Custody of records.—They shall be keepers of the records, books, papers and proceedings of their respective courts in civil and criminal cases and in matters of probate, and see that the same are properly indexed, arranged and preserved, and shall perform such other duties in that behalf as may be by law imposed on them. [Id.]

Art. 1943. [1756] [1146] [1153] Keep record of proceedings.—They shall keep a fair record of all the acts done and proceedings had in their respective courts, and enter all judgments of the court, under the direction of the judge, and shall keep a record of each execution issued, and of the returns thereon. [Id. P. D. 504.]

Art. 1944. [1757] [1147] [1154] Index to judgments.—They shall provide and keep in their respective offices, as part of the records thereof, full and complete alphabetical indexes of the names of the parties to all suits filed in their courts, which indexes shall be kept in well bound books, and shall state in full the names of all the parties to such suits, which shall be indexed and cross indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. [Acts 1876, p. 25; G. L. vol. 8, p. 861.]

Art. 1945. [1758] [1148] [1155] Other dockets, indexes, etc.—The clerk shall keep such other dockets, books and indexes as may be required by law; and all books, records and filed papers belonging to the office of county clerks shall at all reasonable times be open to the inspection and examination of any citizen, who shall have the right to make copies of the same. [Acts 1905, p. 114.]

Art. 1946. [1759] [1149] [1156] Report fines and jury fees.—On the last day of each term of the county court, the clerk shall make a written statement showing all moneys received by him for jury fees and fines since his last statement, with the names of the parties from whom received; and the name of each juror who has served at such term; the number of days he served, and the amount due him for such service. Such statement shall be examined and corrected by the presiding judge, and be approved and signed by him. When so approved and signed it shall be recorded in the minutes of the court. [Acts 1876, p. 23; G. L. vol. 8, p. 859.]

Art. 1947. [1760] [1150] [1157] Jury fees and fines.—The clerk shall pay to the county treasurer all jury fees and fines received by him to the use of the county.

Art. 1948. [1762] [1153] [1160] Shall use seal.—Where in any county a joint clerk shall have been elected, he shall, in performing the duties of county clerk, use the seal of said court to authenticate his official acts as such clerk.

CHAPTER 3.—POWERS AND JURISDICTION

Art.
1949. Exclusive original jurisdiction.
1950. Concurrent original jurisdiction.
1951. No jurisdiction.
1952. Appellate jurisdiction.
1953. Certiorari to justice courts.
1954. Motions against officers.
1955. To punish for contempt.
1956. Law and equity powers.
1957. To grant remedial writs.
1958. Appointing attorneys.
1959. Additional authority.
1960. Changed jurisdiction; eminent domain.

Article 1949. [1763] [1154] [1161] Exclusive original jurisdiction.—The county court shall have exclusive original jurisdiction in civil cases when the matter in controversary [controversy] shall exceed

in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest. [Const. art. 5, sec. 16; Acts 1876, p. 172; G. L. vol. 8, p. 1008.]

Art. 1950. [1764] [1155] [1162] Concurrent original jurisdiction.—The county court shall have concurrent jurisdiction with the district court when the matter in controversy shall exceed five hundred and not exceed one thousand dollars, exclusive of interest. [Id.]

Art. 1951. [1766] [1157] [1164] No jurisdiction.—The county court shall not have jurisdiction of any suit to recover damages for slander or defamation of character, nor of suits of the recovery of lands, nor suits for the enforcement of liens upon land, nor of suits in behalf of the State for escheats, nor of suits for divorce, nor of suits for the forfeiture of the charters of corporations and incorporated companies, nor of suits for the trial of the right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars. [Id.]

Art. 1952. [1767] [1158] [1165] Appellate jurisdiction.—The county court shall have appellate jurisdiction in civil cases over which the justice courts have original jurisdiction when the judgment appealed from or the amount in controversy shall exceed twenty dollars, exclusive of costs. [Id.]

Art. 1953. [1768] [1159] [1166] Certiorari to justice courts.—The county court shall also have jurisdiction in cases brought up from the justice courts by certiorari.

Art. 1954. [1769] [1160] [1167] Motions against officers.—The county court may hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with such process. [Acts 1876, p. 23; G. L. vol. 8, p. 859.]

Art. 1955. [1770] [1161] [1168] To punish for contempt.—The county court may punish, by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days, persons guilty of contempt of such court. [Acts 1846, p. 200; P. D. 1409; G. L. vol. 2, p. 1506.]

Art. 1956. [1771] [1169] Law and equity powers.—Subject to the limitation stated in this chapter, the county court is authorized to hear and determine any cause which is cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. [Id.; P. D. 1410.]

Art. 1957. [1772] [1163] [1170] To grant remedial writs.—The county judge, either in term time or vacation, may grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. [Const. art. 5, sec. 16; Acts 1876, p. 19; G. L. vol. 8, p. 855.]

Art. 1958. [1773] [1164] [1171] Appointing attorneys.—The county judge may appoint counsel to attend to the cause of any party who makes affidavit that he is too poor to employ counsel to attend to the same. [Acts 1846, p. 200, sec. 11; P. D. 1414; G. L. vol. 2, p. 1506.]

Art. 1959. [1774] [1165] [1172] Additional authority.—The county court and the county judge shall also have such authority as may be vested in them by law.

Art. 1960. [1775] [1166] Changed jurisdiction; eminent domain.—Where the jurisdiction of a county court has been taken away, altered or changed by existing laws, the same shall remain as established, until otherwise provided by law. Jurisdiction shall obtain in all matters of eminent domain over which the county courts have jurisdiction by the general laws of this State. [Acts 1885, p. 77; G. L. vol. 9, p. 697.]

CHAPTER 4.—TERMS OF COURT

Art.
1961. Terms of court.
1962. Other terms.
1963. Probate business.
1964. Judge failing to appear.

Art. 1961. [1776] [1167] Terms of court.—The County Court shall hold at least four terms for both Civil and Criminal business annually, and such other terms each year as may be fixed by the Commissioners' Court. After having fixed the times and number of the terms of a County Court, they shall not change the same until the expiration of one year. Until, or unless otherwise provided, the term of the County Court shall be held on the first Monday in February, May, August and November, and may remain in session three weeks; provided said court shall be open at all times for the transaction of probate business. [Const. art. 5, § 29; Acts 1929, 41st Leg., 1st C.S., p. 107, ch. 48, § 2.]

Art. 1962. [1176–1177] Other terms.—The commissioners court may, at a regular term thereof, by an order entered upon its records, provide for more terms of the county court for the transaction of civil, criminal and probate business, and fix the times at which each of the four terms required by the Constitution, and the terms exceeding four, if any, shall be held, not to exceed six annually, and may fix the length of each term. When the number of the terms of the county court has been fixed, the court shall not change the order before one year from the date of entry of the original order fixing such terms. [Acts 1885, p. 53.]

Art. 1963. [1776] [1167] Probate business.—Said court shall dispose of probate business either in term time or vacation under such regulations as may be prescribed by law. [Id.]

Art. 1964. [1178] [1169] Judge failing to appear.—If the county judge fails to appear at the time appointed for holding his court and no election of a special judge is had, the sheriff of the county, or, in his default, any constable of the county, shall adjourn the court from day to day for three days. If the judge should not appear on the fourth day and no special judge is elected, the sheriff or constable as the case may be, shall adjourn the court until the next regular term thereof. [Acts 1846, p. 200; P. D. 1412; G. L. vol. 2, p. 1506.]

CHAPTER 5.—MISCELLANEOUS PROVISIONS

Art.
1965. Minutes.
1966. Seal of the court.
1967. [Repealed.]
1968. When case is transferred.
1969. Jurisdiction taken away.
1969a—1. Exchange of judges in county courts at law and county criminal courts in counties of over 300,000 population.
1970. County courts at law.

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER.

DALLAS COUNTY AT LAW NO. 1

1970—1. Creation.
1970—2. Name of county court of Dallas county at law changed.
1970—3. Jurisdiction of said court.
1970—4. Jurisdiction retained by county court of Dallas county.

Art.
1970—5. Terms of county court of Dallas county, at law; practice, etc.
1970—6. Judge to be elected when, etc.; qualifications; term.
1970—7. Bond and oath of judge.
1970—8. Special judge elected or appointed, how.
1970—9. May issue writs.
1970—10. Clerk of; seal; sheriff to attend when, etc.
1970—11. Appointment of jury commissioners; selection, etc., of juries.
1970—12. Vacancy in office of judge, how filled.
1970—13. Fees and salary of judge.
1970—14. Salary of county judge of Dallas county.

DALLAS COUNTY AT LAW NO. 2

1970—15. County Court of Dallas County, at Law, No. 2, created.
1970—16. Jurisdiction.
1970—17. Courts how designated; transfer of cases.
1970—18. Jurisdiction of other county courts.
1970—19. Power to issue writs.
1970—20. Terms of court.
1970—21. Judge; qualifications; salary.
1970—22. Special judge.
1970—23. Jurors.
1970—24. Vacancy.
1970—25. Transfer of cases.
1970—26. Qualifications of judges.
1970—27. Holding court for or with other judge.
1970—28. Terms of court.
1970—29. Current term of county court at law No. 2; effect of change of terms.
1970—30. Oath of office; bond; fees.
1970—31. Salaries of judges of county courts at law.

TARRANT COUNTY COURT AT LAW OF TARRANT COUNTY

1970—32. Creation.
1970—33. Jurisdiction of said court.
1970—34. Jurisdiction of criminal cases.
1970—35. Jurisdiction retained by county court of Tarrant county.
1970—36. Both courts may issue writs.
1970—37. Terms, practice, etc., of county court of Tarrant county for civil cases.
1970—38. Judge to be elected when, etc.; qualifications; term; vacancies how filled.
1970—39. Bond and oath of judge.
1970—40. Special judge elected or appointed how.
1970—41. Clerk of; seal; sheriff to attend when, etc.
1970—42. Selection, etc., of juries by the two courts jointly.
1970—43. Fees; salary of judge of county court of Tarrant county for civil cases.
1970—44. Removal of judge.
1970—45. Salary of county judge of Tarrant county.

TARRANT COUNTY AT LAW NO. 1

1970—46. Court created.
1970—47. Jurisdiction.
1970—48. Same; juvenile and probate matters.
1970—49. Issuance of writs.
1970—50. Terms of court; practice.
1970—51. Judge.
1970—52. Same; bond and oath.
1970—53. Special judge.
1970—54. Clerk; seal; sheriff.
1970—55. Fees; salary.
1970—56. Removal of judge.
1970—57. Shorthand reporter.
1970—58. Transfer of causes.
1970—59. Cases filed in either county court at law or county court for civil cases.
1970—60. Transfer of cases.
1970—61. Fees and salaries of judges.
1970—62. Designations of courts.

BEXAR COUNTY AT LAW NO. 1

Art.
1970—63. Creation.
1970—64. Jurisdiction of said court.
1970—65. Jurisdiction retained by county court of Bexar county.
1970—66. Both courts may issue writs.
1970—67. Terms, practice, etc.
1970—68. Judge to be elected when, etc.; qualifications; term.
1970—69. Bond and oath of judge.
1970—70. Special judge elected or appointed how.
1970—71. Clerk of; seal; sheriff to attend when, etc.
1970—72. Selection, etc., of juries.
1970—73. Vacancies in office of judge, how filled; appointment of first judge.
1970—74. Fees; salary of judge.
1970—75. Removal of judge.

HARRIS COUNTY AT LAW

1970—76. Creation.
1970—77. Name changed; seal.
1970—78. Change of name not to affect court, except, etc.; judges, officers, process and returns.
1970—79. Jurisdiction of said court.
1970—80. Jurisdiction continued, etc.; additional jurisdiction; appeals; criminal jurisdiction, etc.
1970—81. Jurisdiction retained by county court of Harris county.
1970—82. Both courts may issue writs.
1970—83. Terms, practice, etc.
1970—84. Terms of court.
1970—85. Judge to be elected, when; qualifications; term.
1970—86. Bond and oath of judge.
1970—87. Special judge.
1970—88. Clerk; seal; sheriff to attend when, etc.
1970—89. Vacancy in office of judge, how filled, etc.
1970—90. Fees; salary of judge.
1970—91. Salary of county judge of Harris county.
1970—92. [Repealed.]
1970—93. Transfer of misdemeanor criminal cases.
1970—94. [Repealed.]
1970—94a. Exchange of judges; powers.
1970—94b. Court reporter; salary.

HARRIS COUNTY AT LAW NO. 2

1970—95. Court created.
1970—96. Jurisdiction; criminal and civil; clerk's dockets and fees.
1970—97. [Repealed.]
1970—98. Qualifications of judge; appointment; oath; bond; fees and salary.
1970—98a. Official court reporter; compensation.
1970—98b. Clerk in civil and criminal matters.
1970—99. Clerk; fees.
1970—100. Seal.
1970—101. Sheriffs and constables.
1970—102. Special judge.
1970—103. [Repealed.]
1970—104. [Repealed.]
1970—105. Terms.
1970—106. Transfer of cases.
1970—106a. Exchange of judges.
1970—107. [Repealed.]
1970—108. Practice.
1970—109. Process in transferred cases.
1970—110. [Repealed.]

JEFFERSON COUNTY AT LAW

1970—111. County court of Jefferson county at law created.
1970—112. Jurisdiction.
1970—113. Jurisdiction of other courts.
1970—114. Terms of court.
1970—115. Election of judge; tenure; qualifications.

Art.
1970—116. Appointment of judge.
1970—117. Disqualification of judge.
1970—118. Issuance of writs.
1970—119. Clerk, seal, and sheriff.
1970—120. Selection of jurors.
1970—121. Vacancy in office of judge.
1970—122. Salary of judge; fees collected and accounted for.
1970—123. Appeals from lower courts.
1970—124. Fees of County Judge.
1970—125. Special judge; election; compensation.
1970—126. Act not repealed.

EL PASO COUNTY AT LAW

1970—127. Court created.
1970—128. Jurisdiction.
1970—129. Jurisdiction.
1970—130. Power to issue writs.
1970—131. Terms of court.
1970—132. Appointment of judge; election; qualifications of judge.
1970—133. Bond and oath of judge.
1970—134. Special judge.
1970—135. Clerk; seal; sheriff.
1970—136. Official shorthand reporter; appointment; term of office; oath; duties.
1970—136a. Reporter for county court.
1970—137. Juries.
1970—138. Compensation of judge.
1970—139. Removal of judge.
1970—140. Salary of county judge.
1970—141. Repeal; partial invalidity of act.

EASTLAND COUNTY AT LAW

1970—142 to 1970—152. [Unconstitutional.]

WICHITA COUNTY AT LAW

1970—153 to 1970—166. [Repealed.]
1970—166a. Jurisdiction of Wichita County Court at Law transferred to Wichita County Court.
1970—166b. Jurisdiction in civil cases transferred to District Courts.

TEXARKANA COURT AT LAW

1970—167 to 1970—189. [Unconstitutional.]

ARMSTRONG COUNTY COURT

1970—190. Armstrong county court; concurrent jurisdiction with justice court.
1970—191. Jurisdiction as county court.
1970—192. Appeal; amount in controversy.
1970—193. Jurisdiction of justices' courts not affected; appeal.
1970—194. Laws repealed.

CASTRO COUNTY COURT

1970—195. Castro county court; jurisdiction of court.
1970—196. Appellate jurisdiction.
1970—197. May issue writs.
1970—198. Jurisdiction of probate court.
1970—199. Forfeiture, etc., of bonds and recognizances in criminal cases.
1970—200. Jurisdiction of misdemeanors; appellate jurisdiction.
1970—201. District court has no longer jurisdiction of certain cases.
1970—202. District clerk to deliver transcripts, etc.
1970—203. Motions against sheriffs and other officers; contempts; other powers.
1970—204. Terms of court.

COCHRAN AND COLORADO COUNTY COURTS

1970—205. Jurisdiction of county court of Cochran and Colorado counties.

Art.
1970—206. Other jurisdiction.
1970—207. Appeals and writs of error.
1970—208. Jurisdiction of justices of the peace; appeals.

DEAF SMITH, PARMER, RANDALL, CASTRO AND LUBBOCK COUNTY COURTS

1970—209. Deaf Smith, Parmer, Randall, Castro and Lubbock county courts; jurisdiction of court.
1970—210. Same subject.
1970—211. Writs of error to court of civil appeals.
1970—212. Jurisdiction of justices of the peace, etc.
1970—213. Laws repealed.

HARRISON COUNTY COURT

1970—214. Jurisdiction of county court of Harrison county.
1970—215. Jurisdiction in civil cases.
1970—216. Judgments heretofore rendered in county court; executions, etc.
1970—217. Laws repealed.
1970—218. Appellate jurisdiction in civil cases, etc.
1970—219. May grant writs.
1970—220. District court not to have jurisdiction when.
1970—221. Clerk of district court to make transcripts in cases in which jurisdiction is given to county court, etc.
1970—222. Motions against sheriffs and other officers, etc.; contempts; other powers.
1970—223. May fix terms of court.

HOCKLEY AND COCHRAN COUNTY COURTS

1970—224. County Court of Hockley and Cochran counties, jurisdiction.
1970—225. Other jurisdiction.
1970—226. Appeals and writs of error.
1970—227. Jurisdiction of justices of the peace; appeals.

JASPER COUNTY COURT

1970—228. Jasper county court; jurisdiction in civil cases.
1970—229. Appellate jurisdiction in civil cases.
1970—230. May grant writs.
1970—231. Jurisdiction of probate court.
1970—232. Forfeited bonds, etc., in criminal cases.
1970—233. Jurisdiction of certain misdemeanors; appellate jurisdiction.
1970—234. Jurisdiction of district court.
1970—235. District clerk to deliver transcripts, etc., to county clerk.
1970—236. Motions against sheriffs and other officers; contempts; other powers.
1970—237. Terms of court.

KENDALL COUNTY COURT

1970—238. Jurisdiction of county court of Kendall county.
1970—239. Jurisdiction of District court.
1970—240. County clerk to make transcripts in cases transferred to district court, etc.
1970—241. Judgments heretofore rendered in county court; executions, etc.

LUBBOCK AND BURLESON COUNTY COURTS

1970—242. Jurisdiction of county court of Lee and Burleson counties.
1970—243. Other jurisdiction.
1970—244. Appeals and writs of error.
1970—245. Jurisdiction of justices of the peace; appeals.

OLDHAM COUNTY COURT

Art.
1970—246. Oldham county court; jurisdiction in civil cases.
1970—247. Appellate jurisdiction in civil cases.
1970—248. May grant writs.
1970—249. Jurisdiction of probate court.
1970—250. Forfeited bonds, etc., in criminal cases.
1970—251. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.
1970—252. Jurisdiction of district court.
1970—253. District clerk to deliver transcripts, etc., to county clerk.
1970—254. Motions against sheriffs and other officers; contempts; other powers.
1970—255. Terms of court.

REAGAN COUNTY COURT

1970—256. Reagan county court; jurisdiction; transfer of cases.
1970—257. Judgments not effected; executions thereon.
1970—258. Jurisdiction of district court.
1970—259. County court; concurrent jurisdiction with justices of the peace.
1970—260. Appeals and writs of error.
1970—261. Jurisdiction of justices of the peace; appeals.

STONEWALL COUNTY COURT

1970—262. Stonewall county court; jurisdiction in civil cases.
1970—263. Other jurisdiction.
1970—264. Appeals and writs of error to court of civil appeals.
1970—265. Jurisdiction of justices of the peace; appeals.

SUTTON COUNTY COURT

1970—266. Sutton county court; original civil jurisdiction.
1970—267. Appellate jurisdiction in civil cases.
1970—268. May grant writs.
1970—269. Probate jurisdiction.
1970—270. Forfeited bonds and recognizances.
1970—271. Jurisdiction of misdemeanors; appellate jurisdiction in criminal cases.
1970—272. Jurisdiction of district court.
1970—273. Transcripts of pending cases; entry of cases in county court.
1970—274. Motions against officers; contempts; other powers.
1970—275. Terms of court.

WHEELER COUNTY COURT

1970—276. Wheeler county court; jurisdiction in civil cases.
1970—277. Appellate jurisdiction in civil cases.
1970—278. May grant writs.
1970—279. Jurisdiction of probate court.
1970—280. Forfeited bonds, etc., in criminal cases.
1970—281. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.
1970—282. Jurisdiction of district court.
1970—283. District clerk to deliver transcripts, etc., to county clerk.
1970—284. Motions against sheriffs and other officers; contempts; other powers.
1970—285. Terms of court.

ZAPATA COUNTY COURT

1970—286. Zapata county court; jurisdiction in civil cases.
1970—287. Appellate jurisdiction in civil cases.
1970—288. Power to grant writs, etc.
1970—289. Jurisdiction of probate court.
1970—290. Forfeited bonds, etc., in criminal cases.
1970—291. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.
1970—292. Jurisdiction of district court.
1970—293. District clerk to deliver transcripts, etc., to county clerk.
1970—294. Motions against sheriffs and other officers; contempts; other powers.
1970—295. Terms of court.

EDWARDS COUNTY COURT

1970—296. Edwards county court; act repealed.

SHELBY COUNTY COURT

1970—297. Shelby County Court; jurisdiction restored.

McLENNAN COUNTY AT LAW

1970—298. [Repealed.]
1970—298a. Jurisdiction of McLennan County Court at Law transferred to McLennan County Court; Salary of Judge.

HARRISON COUNTY COURT

1970—299. Jurisdiction of County Court of Harrison County.

EDWARDS COUNTY COURT

1970—300. Changing jurisdiction of county court of Edwards County.

BEXAR COUNTY AT LAW NOS. 1 AND 2

1970—301. County courts at Law Nos. 1 and 2 Bexar County.

MENARD COUNTY COURT

1970—302. Jurisdiction and time for holding Menard County Court.

STERLING COUNTY COURT

1970—303. Jurisdiction and time for holding Sterling County Court.
1970—303a. Jurisdiction of Sterling County Court diminished; civil and criminal causes transferred to District Court.

IRION COUNTY COURT

1970—304. Jurisdiction and time for holding Irion County Court.

CAMERON COUNTY AT LAW

1970—305. County court at law Cameron County created.

BOWIE COUNTY COURT

1970—306. Jurisdiction of Bowie County Court diminished.

KERR COUNTY COURT

1970—307. Jurisdiction and time for holding county court of Kerr County.

WASHINGTON COUNTY COURT

1970—308. Jurisdiction of Washington County Court.

OFFICIAL SHORTHAND REPORTERS

1970—309. Reporters and compensation.

PARTICULAR COUNTY COURTS

1970—310. Other acts creating or affecting jurisdiction of particular county courts.

POTTER COUNTY AT LAW

1970—311. Jurisdiction of Potter County Court at Law diminished; transfer of causes to County Court and Justice Court.

GILLESPIE COUNTY COURT

Art.
1970—312. Jurisdiction of County Court of Gillespie County increased.

DUVAL COUNTY COURT

1970—313. Jurisdiction of County Court of Duval County increased.

RED RIVER COUNTY COURT

1970—314. Red River county court; jurisdiction—District Court of Red River County; jurisdiction.

COLLINGSWORTH COUNTY COURT

1970—315. Jurisdiction of County Court of Collingsworth increased.

STERLING COUNTY COURT

1970—316. Jurisdiction of county court of Sterling County increased.

CROSBY AND FISHER COUNTY COURTS

1970—317. Crosby and Fisher County Courts, civil jurisdiction increased.

GILLESPIE COUNTY COURT

1970—318. Gillespie County Court; probate jurisdiction conferred; civil and criminal jurisdiction diminished.

KENDALL COUNTY COURT

1970—319. County court of Kendall county; civil and criminal jurisdiction.

GLASSCOCK COUNTY COURT

1970—320. Glasscock County Court; civil and criminal jurisdiction diminished.

STEPHENS COUNTY COURT

1970—321. Stephens County Court; civil and criminal jurisdiction diminished.

MARION COUNTY COURT

1970—322. County court of Marion County; jurisdiction in criminal matters; fees of county judge.

1970—322a. County court of Marion County; exclusive jurisdiction of certain criminal matters.

PANOLA COUNTY COURT

1970—323. [Repealed.]

1970—323a. Panola County Court; Panola District Court; jurisdiction; transfer of dockets.

TRAVIS COUNTY COURT

1970—324. County Court at Law of Travis County created.

OFFICIAL INTERPRETERS

1970—325. Official interpreters for County Courts at Law.

NAVARRO COUNTY COURT

1970—326. County court of Navarro County; probate jurisdiction; jurisdiction.

1970—327. [Repealed.]

MORRIS COUNTY COURT

1970—328. County court of Morris County; jurisdiction.

POWERS

Art.
1970—329. Judge of County Court at Law in counties under 500,000 may act for County Judge in certain cases.

TITUS COUNTY COURT

1970—330. Titus County Court; jurisdiction diminished district court's jurisdiction; prosecutor in misdemeanor cases.

FRANKLIN COUNTY COURT

1970—331. Franklin county; jurisdiction of courts; duties and fees of county attorney.

GRAYSON COUNTY COURT

1970—332. Grayson county; County Court at Law created; jurisdiction; terms; judge; prosecutor; writs; clerk.

HILL COUNTY COURT

1970—333. Hill county; jurisdiction of courts; clerk's duties.

KENT COUNTY OURT

1970—334. Kent county; concurrent jurisdiction of county court with Justices' Courts.

Article 1965. [1779–1780] [1170] [1175] Minutes.—The Minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, and if necessary be corrected, and signed in open Court by the County Judge. Each Special Judge shall sign the Minutes of such proceedings as were had before him; provided the Probate Minutes of said Court shall be approved and signed by the presiding Judge on the first day of each month, except, however, that if the first day of the month falls on a Sunday, then such approval shall be entered on the preceding day. [Acts 1846, p. 200; G.L. vol. 2, p. 1506; Acts 1929, 41st Leg., 1st C.S., p. 107, ch. 48, § 3; Acts 1939, 46th Leg., p. 188, § 1.]

Art. 1966. [1781] [1172] [1177] Seal of the court.—Each county court shall be provided with a seal, having engraved thereon a star of five points in the center, and the words, "County Court of ..... County, Texas," the impress of which shall be attached to all process, except subpœnas, issued out of such court, and shall be used to authenticate the official acts of the clerk and of the county judge. [Acts 1846, p. 200; G.L. vol. 2, p. 1506.]

Art. 1967. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 107, ch. 48, § 4.]

Section 4 of Acts 1929, repeals all conflicting laws.

Art. 1968. [1784] [1175] [1180] When case is transferred.—Whenever a cause shall be transferred from the county court to the district court, the clerk shall immediately make out a transcript of all the proceedings had in said cause in the county court, and shall transmit the same, duly certified as such, together with a bill of the costs which have accrued in said court, and all the original papers in the cause, to the clerk of the district court. [Acts 1876, p. 19; G. L. vol. 8, p. 855.]

Art. 1969. [1785] [1176] Jurisdiction taken away.—Each clerk of the county court where the civil and criminal jurisdiction, or either, of the county courts has been transferred to the district court, shall make out a certified copy of all judgments remaining unsatisfied, which have been rendered in civil or criminal cases in the county court, and transmit the same to the clerk of the district court of their respective counties. [Acts 1879, p. 10; G. L. vol. 9, p. 42.]

Art. 1969a—1. Exchange of judges in county courts at law and county criminal courts in counties of over 300,000 population.—In any county in this State having a population in excess of three hundred thousand (300,000), according to the last preceding Federal Census, and in which there may be now, or at any future time, one or more county courts at law and one or more county criminal courts, the judges of such county criminal courts and such county courts at law may hold court for or with one another; to the extent necessary to enable the judge of any such county criminal court to hold court for or with the judge of any such county court at law, the same civil jurisdiction is hereby conferred on such county criminal court as now exists or may hereafter be conferred upon the county courts at law under the Constitution and laws of this State. [Acts 1939, 46th Leg., Spec.L., p. 618, § 1.]

Art. 1970. County courts at law.—All county courts at law and all similar courts by whatever name known, which now exist, shall be continued in force, together with their organization, jurisdiction, duties, powers, procedure and emoluments that now exist by law, until otherwise changed by law.

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

Dallas County at Law No. 1

Art. 1970—1. Creation.—There is hereby created a court to be held in Dallas county, to be called the "County Court of Dallas County, at Law." [1] [Acts 1907, p. 115, sec. 1.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, post.

Art. 1970—2. Name of county court of Dallas county at law changed.—The County Court of Dallas County at Law shall hereafter be known and designated as the County Court of Dallas County at Law No. 1. The judge and all officers of the County Court of Dallas County at Law shall continue as such respective officers of the County Court of Dallas County at Law No. 1, and all of the jurisdiction and powers of the County Court of Dallas County at Law and of the judges thereof, shall be preserved and continued as the County Court of Dallas County at Law No. 1. No change in the organization of the County Court of Dallas County at Law is effected hereby except the change of name, nor shall this section in anyway effect [1] any case pending in said court. All process issued out of the County Court of Dallas County at Law before this Act takes effect, and all bonds executed and recognizances entered of record in said court shall bind the parties for their appearance or to fulfill the obligation of such bonds and recognizances in the County Court of Dallas County at Law and the acts of the judge thereof, shall be as valid and binding as before this Act takes effect, and remain unaffected thereby. All pleadings, process, writs, bonds and recognizances in the County Court of Dallas County at Law may be amended at any time under the direction of the judge, to conform to this change in name. [Acts 1923, 38th Leg., ch. 24, § 1.]

[1] So in enrolled bill. Should probably read "affect".

Art. 1970—3. Jurisdiction of said court.—The County Court of Dallas County at Law [1] shall have original and concurrent jurisdiction with the County Court of Dallas County in all matters and causes, civil and criminal, original and appellate, over which, by the general laws of the State, county courts have jurisdiction, except as provided in Section 3 of this Act; [2] but this provision shall not affect jurisdiction of the commissioners court, or of the county judge of Dallas county as the presiding officer of such commissioners court, as to roads, bridges, and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners court or the judge thereof. [Acts 1907, p. 115, sec. 2; Acts 1917, ch. 115, sec. 1.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.
[2] Article 1970—4, post.
Jurisdiction. See article 1970—16, post.

Art. 1970—4. Jurisdiction retained by county court of Dallas county.—The County Court of Dallas County shall retain, as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons; and to apprentice minors as provided by law; and the said court, or the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court; and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the State. The county judge of Dallas county shall be the judge of the County Court of Dallas County. All ex officio duties of the county judge shall be exercised by the said judge of the County Court of Dallas County except in so far as the same shall, by this Act, be committed to the judge of the County Court of Dallas County, at Law.[1] [Acts 1907, p. 115, sec. 3; Acts 1917, ch. 115, sec. 2.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970—5. Terms of county court of Dallas county, at law; practice, etc.—The terms [1] of the county court of Dallas county, at law,[2] and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Dallas county, at law, shall be held as now established for the terms of the county court of Dallas county, until the same may be changed in accordance with the law. [Acts 1907, p. 115, sec. 4.]

[1] Terms of court. See article 1970—28, post.
[2] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970—6. Judge to be elected when, etc.; qualifications; term.—There shall be elected in said county, by the qualified voters thereof, at each general election, a judge of the county court of Dallas county, at law,[1] who shall be well informed in the laws of the State, who shall hold his office for two years, and until his successor shall have duly qualified. [Id. sec. 5.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.
Additional qualifications. See article 1970—26, post.

Art. 1970—7. Bond and oath of judge.—The judge of the county court of Dallas county, at law,[1] shall execute a bond [2] and take the oath of office as required by the law relating to county judges. [Id. sec. 6.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.
[2] Provision for bond superseded by article 1970—30, post.

Art. 1970—8. Special judge elected or appointed, how.—A special judge of the county court of Dallas county, at law,[1] may be appointed or elected as provided by laws relating to county courts and to the judges thereof. [Id. sec. 7.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970—9. May issue writs.—The county court of Dallas county, at law,[1] or the judges thereof,

shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said court, or of any other court or tribunal inferior to said court. [Id. sec. 8.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970—10. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Dallas county shall be the clerk of the county court of Dallas county, at law.[1] The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words "County Court of Dallas County, at Law;" the sheriff of Dallas county shall, in person or by deputy, attend the said court when required by the judge thereof. [Id. sec. 9.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970—11. Appointment of jury commissioners; selection, etc., of juries.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors, shall be exercised by the county court of Dallas county, at law.[1] [Id. sec. 10.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970—12. Vacancy in office of judge, how filled.—Any vacancy in the office of the judge of the county court of Dallas county, at law,[1] may be filled by the commissioners' court of Dallas county until the next general election. [Id. sec. 11.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970—13. Fees and salary of judge.—The judge of the county court of Dallas county, at law,[1] shall collect the same fees as are now established by law relating to county judges, all of which shall be by him paid monthly into the county treasury, and he shall receive an annual salary of three thousand dollars per annum,[2] payable monthly, to be paid out of the county treasury by the commissioners' court. [Id. sec. 12.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.
[2] Now $5,000. See article 1970—31, post. See, also, article 1970—30, post, relative to fees.

Art. 1970—14. Salary of county judge of Dallas county.—The county judge of Dallas county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary, for the ex-officio duties of his office, as may be allowed him by the commissioners' court, not less than twelve hundred dollars per year. [Id. sec. 13.]

Dallas County at Law No. 2

Art. 1970—15. County Court of Dallas County, at Law, No. 2, created.—There is hereby created a court to be held in Dallas county, Texas, to be known and designated as the "County Court of Dallas County, at Law, No. 2." [Acts 1917, ch. 101, sec. 1.]

Art. 1970—16. Jurisdiction.—The County Court of Dallas County at Law, No. 2, shall have exclusive concurrent civil and criminal jurisdiction of all cases, original and appellate, over which by the laws of the State of Texas, the existing County Court of Dallas County at Law,[1] of Dallas county, Texas, would have original and appellate jurisdiction; provided all civil and criminal cases appealed from the several justice's courts of Dallas county shall be by the county clerk, filed in the County Court of Dallas County, at Law, and the County Court of Dallas County, at Law, No. 2, alternately as said appealed cases are received by said clerk from the several justices of the peace in said county, except in cases wherein the judge of either of said courts, at law, has granted the writ of certiorari, in which case the same shall be docketed in the court so granting said writ, and shall not be transferred from said court. [Id. sec. 2.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970—17. Courts how designated; transfer of cases.—The County Court of Dallas County at Law [1] shall be known and designated as the "A" Court and the County Court of Dallas county at Law, No. 2, shall be known and designated as the "B" Court. The county clerk shall number consecutively all cases filed in said courts, affixing immediately following the number of all cases falling in the County Court of Dallas County, at Law, the letter "A," and immediately following the number of all cases falling in the County Court of Dallas County, at law, No. 2, the letter "B," and he shall make up the trial docket of each of said courts with respect to said numbers. The judge of either of said courts shall have the power to transfer to the other court any case pending upon the docket of his court, except in cases where the writ of certiorari has been granted; provided there shall never be transferred from the docket of one of said courts to that of the other a sufficient number of cases to reduce the number of cases on the docket of the court from which said case was transferred to a less number than the number of cases pending upon the docket of the court to which the same is transferred, without the consent of the judge to which said case is transferred. It shall be the duty of the judge to whose court said case is transferred to receive and try the case, and he shall not have the power to retransfer the same back to the court from which it came except he be disqualified to try the same, in which case it shall be his duty to retransfer the said case. [Id. sec. 3.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970—18. Jurisdiction of other county courts.—Nothing in this Act shall be construed as in anywise altering or changing the present jurisdiction provided by law of the County Court of Dallas County, at Law,[1] nor of the County Court of Dallas County, except that the jurisdiction of the County Court of Dallas County at Law, is hereby made concurrent with the jurisdiction of the County Court of Dallas County, at Law, No. 2, as relates to the civil and criminal jurisdiction of said County Court of Dallas County at Law, as prescribed by the laws of the State of Texas. [Id. sec. 4.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970—19. Power to issue writs.—The said County Court of Dallas County, at Law, No. 2, or the judge thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas, and all other writs and process necessary to the enforcement of its jurisdiction; and also power to punish for contempts under such provisions as are or may be provided by the general laws governing county courts throughout the State. [Id. sec. 5.]

Art. 1970—20. Terms of court.—The terms [1] of the County Court of Dallas County, at Law, No. 2, and the practice therein and appeals and writs of error therefrom, shall be as prescribed by the law relating to the county courts. The terms [1] of the County Court of Dallas County, at Law, No. 2, shall be held five times each year on the second Monday in January, March, May, September and November, and each term of said court shall extend over a period of two months; provided, further there shall be a term of said court convened by the judge thereof not later than two weeks after he has qualified as such, as

provided by law, and such term when so convened, shall continue until the beginning of the ensuing term, as provided herein. [Id. sec. 6.]

[1] As to terms of court, see article 1970—28, post.

Art. 1970–21. Judge; qualifications; salary.—There shall be elected in said county by the duly qualified voters thereof at each general election a judge of the County Court of Dallas County, at Law, No. 2, who shall be a licensed attorney in this State, well informed in the laws of the State, who shall have resided in, and been actively engaged in the practice of law in Dallas county for a period of not less than four years prior to such general election, who shall hold his office for two years and until his successor shall be duly qualified. The judge of said court shall receive a salary of three thousand ($3,000.00) dollars per annum,[1] payable monthly out of the county treasury by the commissioners' court. [Id. sec. 7.]

[1] Now $5,000. See article 1970—31, post.
Additional qualifications for the judges are prescribed by article 1970—26, post.

Art. 1970–22. Special judge.—A special judge of the County Court of Dallas County, at Law, No. 2, may be appointed or elected as provided for by the laws relating to county courts and the judges thereof. [Id. sec. 8.]

Art. 1970–23. Jurors.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the county Court of Dallas County, at Law, No. 2. [Id. sec. 9.]

Art. 1970–24. Vacancy.—Any vacancy in the office of the County Court of Dallas County, at Law, No. 2, shall be filled by the commissioners' court of Dallas county until the next regular election. [Id. sec. 10.]

Art. 1970–25. Transfer of cases.—It shall be the duty of the judge of the County Court of Dallas County, at Law,[1] to immediately transfer from the docket of the County Court of Dallas County, at Law, to the docket of the County Court of Dallas County, at Law, No. 2, one-half of the civil cases pending upon said docket, which shall be done by beginning with the oldest case pending upon the docket of his court and transferring every second case without reference to whether any particular case be pending upon the jury or non-jury docket of said court. [Id. sec. 12.]

[1] Name changed to County Court of Dallas County at Law No. 1. See article 1970—2, ante.

Art. 1970–26. Qualifications of judges.—The judge of the County Court of Dallas County at Law No. 1 and the judge of the County Court of Dallas County at Law No. 2, shall each be a licensed attorney, well informed in the law, who shall have resided in and been actively engaged in the practice of law in Dallas County, or been judge of a court therein, for a period of at least four years prior to the general election at which he is elected. [Acts 1923, 38th Leg., ch. 24, § 2.]

Art. 1970–27. Holding court for or with other judge.—The judge of the County Court of Dallas County at Law No. 1, and the judge of the County Court of Dallas County at Law No. 2, may hold court for or with one another. [Acts 1923, 38th Leg., ch. 24, § 3.]

Art. 1970–28. Terms of court.—The terms of the County Court of Dallas County at Law No. 1, shall be held six times each year, on the first Monday in January, March, May, July, September and November and each term shall continue to the commencement of the following term. The terms of the County Court of Dallas County at Law No. 2, shall be held six times each year on the first Monday in February, April, June, August, October and December, and each term shall continue to the commencement of the following term. [Acts 1923, 38th Leg., ch. 24, § 4.]

This article partly supersedes articles 1970—5 and 1970—20, ante.

Art. 1970–29. Current term of county court at law No. 2; effect of change of terms.—The term of the County Court of Dallas County at Law No. 2, current at the time of the taking effect of this Act, shall continue until the commencement of the following term as fixed by this Act. All process issued out of said court before this Act takes effect is hereby made returnable to the terms of this court as fixed by this Act. All bonds heretofore executed and recognizances entered of record in said court shall bind the parties for their appearance or to fulfill the obligation of such bonds and recognizances at the terms of the said court as fixed by this Act. All process heretofore returned, as well as all bonds, and recognizances heretofore taken in this court, and all judgments, writs and decrees thereof, shall be as valid as if no change had been made in the time of the holdings of this court. [Acts 1923, 38th Leg., ch. 24, § 5.]

Art. 1970–30. Oath of office; bond; fees.—The judge of the County Court of Dallas [1] at Law No. 1, and the judge of the County Court of Dallas County at Law No. 2, shall each take the oath of office prescribed by the law relating to county judges, but no bond shall be required of them. They shall be enabled to collect the same fees as are stipulated by law relating to county judges, all of which shall be collected by the county clerk of Dallas County, paid by him monthly into the county treasury of Dallas County, in accordance with the orders of the commissioners' court. [Acts 1923, 38th Leg., ch. 24, § 6.]

[1] So in enrolled bill. Word "County" should probably be inserted.
This article partly supersedes articles 1970—7, 1970—13, ante.

Art. 1970–31. Salaries of judges of county courts at law.—The Judge of the County Court of Dallas County at Law No. 1 and the Judge of the County Court of Dallas County at Law No. 2 shall each receive a salary of Five Thousand Dollars ($5,000.00) per annum, payable monthly, out of the Treasury of Dallas County, under the orders of the Commissioners' Court and said Judges shall devote their entire time to the duties of their offices, and shall not engage in the practice of law while in office. [Acts 1923, 38th Leg., ch. 176, § 1; Acts 1929, 41st Leg., 1st C.S., p. 60, ch. 26, § 1.]

This article partly supersedes articles 1970—13 and 1970—21, ante.

County Court at Law of Tarrant County

Art. 1970–32. Creation.—There is hereby created a court to be held in Tarrant county, Texas, to be known and designated as the "County Court of Tarrant County for Civil Cases." [1] [Acts 1909, p. 48, sec. 1.]

[1] Name changed to County Court at Law No. 2 of Tarrant County, Texas. See article 1970—62, post.
Office of Judge of County Court at Law No. 1 of Tarrant County abolished and County Court at Law No. 2 to be known as County Court at Law of Tarrant County, see Code of Crim.Proc., art. 52—87a4.

Art. 1970–33. Jurisdiction of said court.—The county court of Tarrant county for civil cases [1] shall have jurisdiction of all civil matters and causes, original and appellate, over which by the general laws of the state of Texas, the county court of said county would have jurisdiction, except as provided in article 1801; and all civil cases pending in the county court of said county, other than probate matters, and such as are provided in said article, shall be, and the same are hereby, transferred to the county court of Tarrant county for civil cases; and all civil writs and process heretofore issued by, or out of, said county court, other than those pertaining to matters over which by said article jurisdiction remains in the county court of Tarrant county be and the same are hereby made returnable to the county court of Tarrant county for

civil cases. The jurisdiction of the county court of Tarrant county for civil cases, and of the judge thereof, shall extend to all matters of eminent domain of which jurisdiction has heretofore vested in the county court of Tarrant county, or the judge thereof; but this provision shall not affect the jurisdiction of the commissioners' court or of the county judge of Tarrant county as the presiding officer of said court as to roads, bridges and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners' court or of the judge of the county court of Tarrant county. [Id. sec. 2.]

[1] See note under art. 1970—32.
Additional powers are conferred by article 1970—34, post.

Art. 1970—34. Jurisdiction of criminal cases.—In addition to the jurisdiction heretofore conferred by law upon the County Court of Tarrant County for Civil Cases,[1] of Tarrant County, Texas, and the judge thereof, the said County Court of Tarrant County for Civil Cases shall have jurisdiction within Tarrant County of all criminal matters and causes, original and appellate, over which the County Court at Law of Tarrant County now has jurisdiction, and the jurisdiction of said courts, over such matters, within said county, shall be concurrent, provided, that the jurisdiction of the County Court of Tarrant County shall remain as now fixed by law, and be in no wise affected by this Act. [Acts 1925, 39th Leg., ch. 206, p. 679, § 1.]

[1] See note under art. 1970—32.

Art. 1970—35. Jurisdiction retained by county court of Tarrant county.—The county court of Tarrant county shall retain, as heretofore the jurisdiction of all criminal cases, its jurisdiction as a juvenile court, its jurisdiction in matters pertaining to liquor licenses, forfeitures and bonds, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of administrators, executors and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and shall apprentice minors as provided by law. The county judge of Tarrant county shall be the judge of the county court of Tarrant county; and all ex officio duties of the county judge shall be exercised by the said judge of the county court of Tarrant county, except in so far as the same shall, by this chapter, be committed to the judge of the county court of Tarrant county for civil cases.[1] [Acts 1909, p. 48, sec. 3.]

[1] See note under art. 1970—32.

Art. 1970—36. Both courts may issue writs.—Both the said county court of Tarrant county and the county court of Tarrant county for civil cases,[1] or either of the judges thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said courts, and also power to punish for contempts under such provisions as are, or may be, provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said courts, or of any court or tribunal inferior to said courts. [Id. sec. 4.]

[1] See note under art. 1970—32.

Art. 1970—37. Terms, practice, etc., of county court of Tarrant county for civil cases.—The terms of the county court of Tarrant county for civil cases,[1] and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by law relating to the county courts. The terms of the county court of Tarrant county for civil cases shall be held not less than four times each year; and the commissioners' court of Tarrant county shall fix the time at which said court shall hold its terms, until the same may be changed according to law. [Id. sec. 5.]

[1] See note under art. 1970—32.

Art. 1970—38. Judge to be elected when, etc.; qualifications; term; vacancies how filled.—At each general election there shall be elected by the qualified voters of Tarrant county a judge of the county court of Tarrant county for civil cases,[1] who shall be well informed in the laws of this state, who shall hold his office for two years, and until his successor shall have been duly elected and qualified: provided, that no person shall be eligible for judge of the county court of Tarrant county for civil cases, unless he shall be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state, or a judge of a court in this state, for four years next preceding his election, and who shall have resided in the county of Tarrant for two years next preceding his election. All vacancies in said office shall be filled by appointment by the governor until the next general election thereafter. [Id. sec. 6.]

[1] See note under art. 1970—32.
The provision of this article that all vacancies in the office of judge of the county court for civil cases in Tarrant County shall be filled by governor, conflicts with Const. art. 4, § 12 and art. 5, § 28. State v. Valentine, Civ.App., 198 S.W. 1006.

Art. 1970—39. Bond and oath of judge.—The judge of the county court of Tarrant county for civil cases [1] shall execute a bond and take the oath of office as required by the law relating to county judges. [Id. sec. 7.]

[1] See note under art. 1970—32.

Art. 1970—40. Special judge elected or appointed how.—A special judge of the county court of Tarrant county for civil cases [1] may be appointed or elected as provided by law relating to county courts and to the judges thereof. [Id. sec. 8.]

[1] See note under art. 1970—32.

Art. 1970—41. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Tarrant county shall be the clerk for the county court of Tarrant county for civil cases.[1] The seal of said court shall be the same as that provided for county courts, except that the seal shall contain the words, "County Court of Tarrant County for Civil Cases." The sheriff of Tarrant county shall, in person or by deputy, attend the court when required by the judge thereof. [Id. sec. 9.]

[1] See note under art. 1970—32.

Art. 1970—42. Selection, etc., of juries by the two courts jointly.—The jurisdiction and authority now vested by law in the county court of Tarrant county for the selection and service of jurors shall be exercised by the two courts jointly and not separately. [Id. sec. 10.]

Art. 1970—43. Fees; salary of judge of county court of Tarrant county for civil cases.—The judge of the county court of Tarrant county for civil cases [1] shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury; and he shall receive a salary of three thousand dollars annually,[2] to be paid monthly out of the county treasury by the commissioners' court. [Id. sec. 11.]

[1] See note under art. 1970—32.
[2] Now $5,000. See article 1970—61, post.

Art. 1970—44. Removal of judge.—The judge of the county court of Tarrant county for civil cases [1] may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state. [Id. sec. 12.]

[1] See note under art. 1970—32.

Art. 1970—45. Salary of county judge of Tarrant county.—The county judge of Tarrant county shall hereafter receive from the county treasury in addition to the fees allowed him by law, such a salary, for the ex officio duties of his office, as may be allowed him by the commissioners' court. [Id. sec. 13.]

Tarrant County at Law No. 1

Art. 1970—46. Court created.—That there shall be created a court to be held in Tarrant County, Texas, to be known and designated as the "County Court at Law" of Tarrant County, Texas.[1] [Acts 1921, 37th Leg., ch. 28, § 1.]

[1] See note under art. 1970—32.

County Court at Law No. 1 Abolished. Acts 1947, 50th Leg., ch. 337, appearing as Code Crim.Proc. arts. 52—87a1 to 52—87a10a, which creates the Criminal District Court No. 2 of Tarrant County, provides, in Art. 52—87a4, for the transfer of civil and criminal cases pending in the County Courts at Law in Tarrant County and provides for the abolishment of the office of Judge of the County Court at Law No. 1 of Tarrant County. It also provides that the County Court at Law No. 2 shall be known as the County Court at Law of Tarrant County.

Art. 1970—47. Jurisdiction.—The County Court at Law of Tarrant County, Texas, shall have exclusive jurisdiction within said county of all criminal matters and causes, original and appellate, that is now vested in the County Courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas, except as provided in Section 3 of this Act;[1] and said County Court at Law shall have and exercise, in civil matters and causes, concurrent and equal jurisdiction with the County Court of Tarrant County for civil cases, said concurrent jurisdiction to extend to all causes and matters of which jurisdiction has heretofore vested in the County Court of Tarrant County for civil cases, or the judge thereof. [Id., § 2.]

[1] Article 1970—48, post.
This court abolished. See notes under arts. 1970—32, 1970—46.

Art. 1970—48. Same; juvenile and probate matters.—The County Court of Tarrant County shall retain exclusively as heretofore its jurisdiction as a juvenile court, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, and grant letters testamentary and of administration, settle accounts of administrators, executors and guardians; transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of the estates of deceased persons; and of apprenticed minors as provided by law. The County Judge of Tarrant County shall be the judge of the County Court of Tarrant County, Texas, and all ex-officio duties of the County Judge shall be exercised by the said judge of the said County Court, except insofar as the same shall, by this Act, be committed to the judge of the County Court at Law of Tarrant County, Texas,[1] and except such as have heretofore been conferred upon the judge of the County Court of Tarrant County for civil cases.[2] [Id., § 3.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Texas. See article 1970—62, post.
[2] Name changed to County Court at Law No. 2 of Tarrant County, Texas. See article 1970—62, post.
This court abolished. See notes under arts. 1970—32, 1970—46.

Art. 1970—49. Issuance of writs.—The County Court at Law of Tarrant County, Texas,[1] or the judge thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said court; and also power to punish for contempt under such provisions as are or may be provided by the General Laws governing County Courts throughout the State, and issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said court or of any court or tribunal inferior to said court. [Id., § 4.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Texas. See article 1970—62, post.
This court abolished. See note under art. 1970—46.

Art. 1970—50. Terms of court; practice.—The terms of the County Court at Law of Tarrant County, Texas,[1] and the practice therein and appeals and writs of error therefrom shall be as prescribed by law relating to the County Courts. The terms of said County Court at Law shall be held not less than four times each year and the Commissioners' Court of Tarrant County, Texas, shall fix the time at which said court shall hold its terms, until the same may be changed according to law. [Id., § 5.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Texas. See article 1970—62, post.
This court abolished. See note under art. 1970—46.

Art. 1970—51. Judge.—As soon as may be after the passage of this Act, there shall be appointed by the Governor, in accordance with law, and subject to the confirmation of the Senate, a judge of the County Court at Law hereby created, who shall be well informed in the laws of the State and who shall hold his office until the next succeeding general election and until his successor shall have duly qualified. The judge of said court elected at any general election shall hold office for two years and until his successor shall have duly qualified: provided, that no person shall be eligible for judge of said court unless he shall be a citizen of the United States and of this State, who shall have been a practicing lawyer of this State or a judge of a court in this State for four years next preceding his appointment or election, and who shall have resided in the county of Tarrant for two years next preceding his appointment or election. [Id., § 6.]

This court abolished. See note under art. 1970—46.

Art. 1970—52. Same; bond and oath.—The judge of the County Court at Law of Tarrant County, Texas,[1] shall execute a bond and take the oath of office as required by the law relating to County Judges. [Id., § 7.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Texas. See article 1970—62, post.
This court abolished. See note under art. 1970—46.

Art. 1970—53. Special judge.—A special judge of the County Court at Law of Tarrant County, Texas,[1] may be appointed or elected as provided by the laws relating to County Courts and to the judges thereof. [Id., § 8.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Texas. See article 1970—62, post.
This court abolished. See note under art. 1970—46.

Art. 1970—54. Clerk; seal; sheriff.—The county Clerk of Tarrant County, Texas, shall be the clerk of the County Court at Law of Tarrant County, Texas.[1] The seal of said Court shall be the same as provided for County Courts except that the seal shall contain the words "County Court at Law, Tarrant County, Texas." The sheriff of Tarrant County shall, in person or by deputy, attend said court when required by the judge thereof. [Id., § 9.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Texas. See article 1970—62, post.
This court abolished. See note under art. 1970—46.

Art. 1970—55. Fees; salary.—The judge of the County Court at Law of Tarrant County, Texas, and the judge of the County Court of Tarrant County for civil cases, shall collect the same fees provided by law for County Judges in similar cases, all of which shall be paid by them monthly into the County Treasury and the judge of each said courts, shall receive a salary of $4,000[1] annually, to be paid monthly out of the County Treasury by the Commissioners' Court. [Id., § 10.]

[1] Now $5,000. See article 1970—61, post.
This court abolished. See notes under arts. 1970—32, 1970—46, 1970—62.

Art. 1970—56. Removal of judge.—The judge of the County Court at Law of Tarrant County, Texas,[1] may be removed from office in the same manner and for the same causes as any other County Judge may be removed under the laws of this State. [Id., § 11.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Texas. See article 1970—62, post.
This court abolished. See note under arts. 1970—46, 1970—62.

Art. 1970—57. Shorthand reporter.—For the purpose of preserving a record in all cases for the information of the court, jury and parties, the judge of the County Court at Law of Tarrant County, Texas,[1] shall appoint an official shorthand reporter, who shall be well skilled in his profession, shall be a sworn officer of the court and shall hold his office at the pleasure of the court; and the provisions of Chapter eleven of Title 37 of the Revised Civil Statutes of Texas of 1911 relating to the appointment of stenographers for the District Courts shall, and it is hereby made to apply in all its provisions, insofar as they are applicable to the official shorthand reporter herein authorized to be appointed, and said reporter shall be entitled to the same fees and salaries and shall perform the same duties and shall take the same oath as are in said Chapter eleven of Title 37 provided for the stenographers of District Courts of this State, and also be governed by any other laws covering the stenographers of the District Courts of this State; provided, that the official shorthand reporter of said court shall not be required to take the testimony in cases where neither party litigant nor the judge demands it; but where the testimony is taken by said reporter a fee of three dollars shall be taxed by the clerk as costs in the case. Said reporter shall also as far as practicable, act as the official shorthand reporter of the County Court of Tarrant County for civil cases. [Id., § 12.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Texas. See article 1970—62, post.
This court abolished. See note under arts. 1970—46, 1970—62.

Art. 1970—58. Transfer of causes.—As soon as may be after this Act takes effect, the Clerk of the County Court of Tarrant County, Texas, shall transfer to the docket of the County Court at Law of Tarrant County, Texas,[1] all of the criminal cases then pending in the County Court of Tarrant County. The clerk shall note such transfers when made on the minutes of the County Court of Tarrant County, Texas. Thereafter, all new criminal cases filed in said county and coming within the jurisdiction of the County Court shall be placed on the docket of said County Court at Law. Until such time as the Commissioners' Court shall direct, no civil cases shall be filed in or transferred to said County Court at Law; but when directed to do so by said Commissioners' Court, the clerk of said county shall transfer from the docket of the County Court of Tarrant County for civil cases [2] to the docket of said County Court at Law a sufficient number of civil cases to equalize the dockets of said two courts, and shall thereafter place new civil cases, as they are filed, on the docket of said County Court at Law in a ratio to be prescribed by said Commissioners' Court, which ratio may be changed or modified from time to time by order of said Commissioners' Court. [Id., § 13.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Tex. See article 1970—62, post.
[2] Name changed to County Court at Law No. 2 of Tarrant County, Texas. See article 1970—62, post.
Superseded in part by articles 1970—59 and 1970—60, post.
This court abolished. See notes under arts. 1970—32, 1970—46, 1970—62.

Art. 1970—59. Cases filed in either county court at law or county court for civil cases.—Upon the passage and taking effect of this Act civil and criminal cases, within jurisdiction of such courts, may be originally filed in either the County Court at Law of Tarrant County, Texas,[1] or the County Court of Tarrant County for Civil Cases.[2] [Acts 1925, 39th Leg., ch. 206, p. 679, § 2.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Texas. See article 1970—62, post.
[2] Name changed to County Court at Law No. 2 of Tarrant County, Texas. See article 1970—62, post.
This court abolished. See notes under arts. 1970—32, 1970—46, 1970—62.

Art. 1970—60. Transfer of cases.—Whenever the judges of the County Court of Tarrant County for Civil Cases,[1] or the judge of the County Court at Law,[2] may deem it expedient to the transaction of the public business, he may transfer any cause pending in the court over which he presides to the docket of said other court, and the written order upon the minutes of either of said courts so transferring such case, signed by the judge thereof making the transfer, shall be authority for the clerk of such courts to make transfer. Provided, further, that the commissioners' court of said county may, within its discretion, direct the clerk of said courts to transfer from the docket of either of said courts any case or cases pending thereon to the docket of such other court, and thereupon the court to which the transfer may be made shall have jurisdiction to hear and determine such cause or causes as though the same had been originally filed therein. [Acts 1925, 39th Leg., ch. 206, p. 679, § 3.]

[1] Name changed to County Court at Law No. 2 of Tarrant County, Texas, see article 1970—62, post.
[2] Name changed to County Court at Law No. 1 of Tarrant County, Texas. See article 1970—62, post.

Art. 1970—61. Fees and salaries of judges.—The judge of the County Court at Law [1] and the judge of the County Court of Tarrant County for Civil Cases,[2] respectively, shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by them monthly into the county treasury, the judges of said courts shall each receive a salary of $5,000.00 annually, to be paid monthly out of the county treasury by the commissioners' court of Tarrant County, Texas. [Acts 1925, 39th Leg., ch. 206, p. 679, § 4.]

[1] Name changed to County Court at Law No. 1 of Tarrant County, Tex. See article 1970—62, post.
[2] Name changed to County Court at Law No. 2 of Tarrant County, Tex. See article 1970—62, post.

Art. 1970—62. Designations of courts.—From and after the passage and the taking effect of this Act the said County Court at Law of Tarrant County shall be known and designated as the "County Court at Law No. 1" of Tarrant County, Texas, and the said County Court of Tarrant County for Civil Cases shall be known and designated as the "County Court at Law No. 2" of Tarrant County, Texas. [Acts 1925, 39th Leg., ch. 206, p. 680, § 5.]

County Court at Law No. 1 abolished and name of County Court at Law No. 2 changed to County Court at Law of Tarrant County, see Code of Crim.Proc. art. 52.
Office of Judge of County Court at Law No. 1 of Tarrant County abolished and County Court at Law No. 2 to be known as County Court at Law of Tarrant County, see Code Crim.Proc., art. 52—87a4.

Bexar County at Law No. 1

Art. 1970—63. Creation.—That there is hereby created a court to be held in Bexar county, Texas, to be called the "County Court of Bexar County for Civil Cases." [1] [Acts 1911, p. 15, sec. 1.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Art. 1970—64. Jurisdiction of said court.—The county court of Bexar county for civil cases [1] shall have exclusive jurisdiction of all civil matters and causes, original and appellate, over which, by the general laws of the State of Texas, the county court of said county would have jurisdiction, except as provided in section 3 of this Act,[2] and all civil cases other than probate matters, and such as are provided in section 3 of this Act, be, and the same are hereby transferred to the county court of Bexar county

for civil cases; and all civil writs and processes, heretofore issued by or out of said county court, other than pertaining to matters over which, by section 3 of this Act, jurisdiction remains in the county court of Bexar county, be, and the same are hereby made returnable to the county court of Bexar county for civil cases. [Id. sec. 2.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.
[2] Article 1970—65, post.

Art. 1970—65. Jurisdiction retained by county court of Bexar county.—The county court of Bexar county shall retain, as heretofore, the jurisdiction of all criminal cases, the forfeiture of bonds in criminal cases and all proceedings in relation thereto; of all cases of eminent domain; the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of administrators, executors and guardians; transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law. The county judge of Bexar county shall be the judge of the county court of Bexar county, and all ex officio duties of the county judge shall be exercised by the said judge of the county court of Bexar county, except in so far as the same shall, by this Act, be committed to the judge of the county court of Bexar county for civil cases.[1] The county judge of Bexar county shall retain authority to try all applications for liquor licenses, and shall approve all liquor bonds as may be provided by law. He shall also retain jurisdiction of the juvenile court. [Id. sec. 3.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Art. 1970—66. Both courts may issue writs.—The said county court of Bexar county for civil cases [1] or the judge thereof, shall have the power to issue writs of injunctions, sequestration, attachment, garnishment, certiorari, supersedeas, mandamus, and all other writs necessary to the enforcement of the jurisdiction of said court; and also power to punish for contempt under such provisions as are or may be provided by the general law governing county courts throughout the state, and to issue writs of habeas corpus in cases within the jurisdiction of said court. [Id. sec. 4.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Art. 1970—67. Terms, practice, etc.—The terms of the county court of Bexar county for civil cases,[1] and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Bexar county for civil cases [1] shall be held as follows: Beginning on the first Mondays in January, March, May, July, September and November of each year, and may continue until the business thereof is disposed of. [Id. sec. 5.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Art. 1970—68. Judge to be elected when, etc.; qualifications; term.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the county court of Bexar county for civil cases,[1] who shall be learned in the laws of the state, who shall hold his office for two years, and until his successor shall have been duly qualified. [Id. sec. 6.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Art. 1970—69. Bond and oath of judge.—The judge of the county court of Bexar county for civil cases [1] shall execute a bond in the sum of $5,000.00, and take the oath of office as required by the law relating to county judges. [Id. sec. 7.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Art. 1970—70. Special judge elected or appointed how.—A special judge of the county court of Bexar county for civil cases [1] may be appointed or elected as provided by laws relating to county courts, and to the judges thereof. [Id. sec. 8.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Art. 1970—71. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Bexar county shall be the clerk of the county court of Bexar county for civil cases.[1] The seal of said court shall be the same as that provided for county courts, except that the seal shall contain the words "County Court of Bexar County for Civil Cases." The sheriff of Bexar county shall in person or by deputy attend the court when required by the judge thereof. [Id. sec. 9.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Art. 1970—72. Selection, etc., of juries.—The jurisdiction and authority now vested by law in the county court of Bexar county for the selection and service of jurors shall be exercised by each of the two courts within their jurisdiction. [Id. sec. 10.]

Art. 1970—73. Vacancies in office of judge, how filled; appointment of first judge.—Any vacancy in the office of the judge of the court created by this Act may be filled by the commissioners court of Bexar county until the next general election. The commissioners court of Bexar county shall, as soon as may be, after this Act shall take effect, appoint a judge of the county court of Bexar county for civil cases,[1] who shall serve until the next general election, and until his successor shall be duly elected and qualified. [Id. sec. 11.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Art. 1970—74. Fees; salary of judge.—The judge of the county court of Bexar county for civil cases [1] shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury, and he shall receive a salary of three thousand dollars ($3,000.00) annually, to be paid monthly out of the county treasury by the commissioners court. The county judge of Bexar county shall receive in addition to the other fees allowed by law, a salary for the ex officio duties of his office of not less than $100.00 per month. [Id. sec. 12.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Art. 1970—75. Removal of judge.—The judge of the county court of Bexar county for civil cases [1] may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state. [Id. sec. 13.]

[1] Name changed to County Court at Law No. 1 of Bexar County, Texas. See article 1970—301, post.

Harris County at Law

Art. 1970—76. Creation.—That there is hereby created a court to be held in Harris county, to be called the county court of Harris county for civil cases.[1] [Acts 1911, p. 4, sec. 1.]

[1] Name changed to County Court at Law of Harris County, Texas. See article 1970—77, post.

Art. 1970—77. Name changed; seal.—The county court of Harris county for civil cases shall hereafter be known as the county court at law of Harris county, Texas, and the seal of said court shall hereafter be the same as that provided by law for county courts, except that the seal shall contain the words:

"County Court at Law of Harris County, Texas." [Acts 1913, p. 10, sec. 1.]

Superseding part of article 1970—76, ante.

Art. 1970—78. Change of name not to affect court, except, etc.; judges, officers, process and returns.—The change in the name of said court shall in no way or manner, other than is provided in this Act, affect the officers or judge of said court, their compensation or tenure of office, and shall, in no way or manner, affect the process of said court already issued. The judge and officers now serving said county court of Harris county for civil cases, shall continue to serve said court under its changed name to the same effect to all things as if the name had not been changed All process heretofore issued out of said county court for civil cases and all returns thereon shall in all things be treated and considered as if the name of said court had not been changed. [Id. sec. 2.]

Art. 1970—79. Jurisdiction of said court.—The county court of Harris county for civil cases [1] shall have jurisdiction in all civil matters and causes, original and appellate, over which, by the general laws of the state of Texas, the county court of said county would have jurisdiction, except as provided in section three (3) of this Act,[2] and all civil cases other than probate matters and such as are provided in section three (3) of this Act, be and the same are hereby transferred to the county court of Harris county for civil cases, and all civil writs and processes heretofore issued by or out of said county court other than pertaining to matters over which, by section three (3) of this Act, jurisdiction remains in the county court of Harris county be and the same are hereby made returnable to the county court of Harris county for civil cases. The jurisdiction of the county court of Harris county for civil cases and of the judge thereof shall extend to all matters of eminent domain of which jurisdiction has been heretofore vested in the county court of Harris county or in the county judge thereof, but this provision shall not effect the jurisdiction of the commissioners court or of the county judge of Harris county as the presiding officer of such commissioners court, as to roads, bridges, and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners court or the judge thereof. [Acts 1911, p. 4, sec. 2.]

[1] Name changed to County Court at Law of Harris County, Texas. See article 1970—77, ante.
[2] Article 1970—81, post.
Additional powers are conferred by article 1970—80, post.

Art. 1970—80. Jurisdiction continued, etc.; additional jurisdiction; appeals; criminal jurisdiction, etc.—The County Court at Law of Harris County, Texas, shall have all the jurisdiction heretofore conferred upon it under the name of the County Court of Harris County for civil cases, and its judge shall have all the powers heretofore conferred upon the judge of the County Court of Harris County for civil cases; provided, however, that said court shall have no jurisdiction over any of those [1] matters the jurisdiction over which is vested exclusively in the County Court of Harris County or the judge thereof. [Acts 1913, p. 10, § 3; Acts 1929, 41st Leg., p. 44, ch. 16, § 1.]

[1] So in enrolled bill. Session Laws read "these."

Art. 1970—81. Jurisdiction retained by county court of Harris county.—The county judge [1] of Harris county shall retain as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business pertaining to deceased persons, and to hear and determine all matters affecting juvenile offenders, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and shall have jurisdiction to hear and determine all matters relating to or arising out of the granting or revoking of liquor licenses, and all matters appertainng thereto; and to apprentice minors as provided by law. and the said court, or the judge thereof, shall have the power to issue writs of injunctions, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court, and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the state; but said county court of Harris county shall have no other jurisdiction, civil or criminal. The county judge of Harris county shall be the judge of the county court of Harris county, and all ex officio duties of the county judge shall be exercised by the said judge of the county court of Harris county, except in so far as the same shall by this Act be committed to the judge of the county court of Harris county for civil cases.[2] [Acts 1911, p. 4, sec. 3.]

[1] So in enrolled bill. Should probably read "court".
[2] Name changed to County Court at Law of Harris County, Texas. See article 1970—77, ante.

Art. 1970—82. Both courts may issue writs.—Both the said county court of Harris county and the county court of Harris county for civil cases [1] or either of the judges thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said courts; and also power to punish for contempts under such provisions as are or may be provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said courts or of any court or tribunal inferior to said courts. [Id. sec. 4.]

[1] Name changed to County Court at Law of Harris County, Texas. See article 1970—77, ante.

Art. 1970—83. Terms, practice, etc.—The terms [1] of the county court of Harris county for civil cases,[2] and the practice therein and appeals and writs of error therefrom shall be as prescribed by laws relating to county courts. The terms of the county court of Harris county for civil cases shall be held as now established for the terms of the county court of Harris county until the same be changed in accordance with the law. [Id. sec. 5.]

[1] Terms of court. See article 1970—84, post.
[2] Name changed to County Court at Law of Harris County, Texas. See article 1970—77, ante.

Art. 1970—84. Terms of court.—Said court shall hold six terms a year, beginning respectively on the first Monday in January, in March, in May, in July, in September, and in November of each year, and each term shall continue until the business is disposed of. [Acts 1913, p. 10, sec. 7.]

Art. 1970—85. Judge to be elected, when; qualifications; term.—There shall be elected in said County by the qualified voters thereof, at each general election, a judge of the County Court at Law of Harris County, Texas, who shall have been a duly licensed and practicing member of the bar of this State for not less than five years, and who shall hold his office for two years and until his successor shall have duly qualified. Any vacancy occurring in the office of judge of said County Court at Law of Harris County, Texas, shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election. [Acts 1911, p. 4, § 6; Acts 1929, 41st Leg., p. 44, ch. 16, § 3.]

See article 1970—78, ante.

Art. 1970—86. Bond and oath of judge.—The judge of the county court of Harris county for civil cases,[1] shall execute a bond and take the oath of office

as required by the law relating to county judges. [Acts 1911, p. 4, § 7.]

[1] Name changed to County Court at Law of Harris County, Texas. See article 1970—77, ante.

Art. 1970—87. Special judge.—A special judge of the county court of Harris county for civil cases [1] may be appointed or elected as provided by law relating to county courts and to the judges thereof. [Id. sec. 8.]

[1] Name changed to County Court at Law of Harris County, Texas. See article 1970—77, ante.

Art. 1970—88. Clerk; seal; sheriff to attend when, etc.—The county clerk of Harris county shall be the clerk of the county court of Harris county for civil cases.[1] The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words "County Court of Harris County for Civil Cases." The sheriff of Harris county shall, in person or by deputy, attend the said court when required by the judge thereof. [Id. sec. 10.]

[1] Name changed to County Court at Law of Harris County, Texas. See article 1970—77, ante.

Art. 1970—89. Vacancy in office of judge, how filled, etc.—Any vacancy in the office of the judge of the court created by this Act may be filled by the commissioners court of Harris county until the next general election. The commissioners court shall, as soon as may be after this Act shall take effect, appoint a judge of the county court of Harris county for civil cases [1] who shall serve until the next general election and until his successor shall be duly elected and qualified. [Id. sec. 11.]

[1] Name changed to County Court at Law of Harris County, Texas. See article 1970—77, ante.

Art. 1970—90. Fees; salary of judge.—The judge of the County Court at Law of Harris County, Texas, shall receive a salary of five thousand, five hundred dollars per annum, to be paid out of the county treasury by the Commissioners Court, in equal monthly installments. [Acts 1911, p. 4, § 12; Acts 1929, 41st Leg., p. 44, ch. 16, § 4.]

Additional compensation. See article 1970—94, post.

Art. 1970—91. Salary of county judge of Harris county.—The county judge of Harris county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary for the ex officio duties of his office as may be allowed him by the commissioners court not less than fifteen hundred dollars per year. [Acts 1911, p. 4, § 13.]

Article 3895 repealed the provision of the act creating the county court which allowed the commissioners to fix ex officio compensation for the county judge. Ward v. Harris County, Civ.App., 209 S.W. 792.

This article, in so far as it attempts to increase the salary of the county judge of Harris County over that fixed by the general law for county judges in other counties in the same class, violates Const. art. 3, § 56. Ward v. Harris County (Civ.App.) 209 S.W. 792.

Art. 1970—92. [Repealed by Acts 1929, 41st Leg., p. 44, ch. 16, § 7.]

Art. 1970—93. Transfer of misdemeanor criminal cases.—All misdemeanor criminal actions now pending in said County Court at Law of Harris County, Texas, as well as criminal cases on appeal to said County Court at Law of Harris County, Texas, shall immediately upon the taking effect of this Act, be transferred to the County Court at Law No. 2 of Harris County, Texas, and the same are hereby so transferred, and upon said County Court at Law No. 2 of Harris County, Texas, is hereby conferred jurisdiction of such criminal actions and criminal proceedings. And all civil actions and proceedings now pending originally or upon appeal to said County Court at Law No. 2 of Harris County, Texas, shall immediately upon taking effect of this Act, be transferred to the County Court at Law of Harris County, Texas, and the same are hereby so transferred, and upon said County Court at Law of Harris County, Texas, is hereby conferred jurisdiction of such civil actions and civil proceedings. [Acts 1913, p. 10, § 5; Acts 1929, 41st Leg., p. 44, ch. 16, § 2.]

Art. 1970—94. [Repealed by Acts 1929, 41st Leg., p. 44, ch. 16, § 7.]

Art. 1970—94a. Exchange of judges; powers.—In case of disqualification, an over-crowded docket, sickness, or absence from the county, of either of the judges of said County Courts at Law of Harris County, they may exchange benches, and said judge of said County Court at Law of Harris County, Texas, when so exchanging benches with said judge of said County Court at Law No. 2 of Harris County, Texas, shall have all power and jurisdiction of said last named court and of the judge thereof while so exchanging benches; and in like manner said judge of said County Court at Law No. 2 of Harris County, Texas, shall have all the power and jurisdiction of said last named court and of the judge thereof while so exchanging benches. [Acts 1929, 41st Leg., p, 44, ch. 16, § 5.]

Art. 1970—94b. Court reporter; salary.—That said Judge of the County Court at Law, of Harris County, may appoint and discharge an Official Court Reporter in the same manner as such a reporter is appointed or discharged by the District Courts, and who shall receive the same salary as the Reporters of the District Courts of Harris County, Texas, the same to be paid by the County Treasurer out of the General Fund of the County, and in addition to said salary the compensation for transcript fees as provided by law. [Acts 1929, 41st Leg., p. 44, ch. 16, § 6; Acts 1933, 43rd Leg., 1st C.S., p. 152, ch. 52, § 1.]

Harris County at Law No. 2

Art. 1970—95. Court created.—There is hereby created a court to be held in Harris County, Texas, to be called the "County Court at Law No. 2 of Harris County, Texas." [Acts 1915, 1st C. S., ch. 8, sec. 1.]

Art. 1970—96. Jurisdiction; criminal and civil; Clerk's dockets and fees.—Said County Court at Law No. 2 of Harris County, Texas, shall have, and it is hereby granted the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the Constitution and laws of Texas, and shall have appellate jurisdiction in all appeals in criminal cases from Justice Courts and Corporation Courts within Harris County, and the Judges of said Court shall have the same powers, rights, and privileges as to criminal matters as are or may be vested in the Judges of County Courts having criminal jurisdiction; provided that said Court shall have no jurisdiction over any of those matters which is now vested exclusively in the County Court of Harris County, or in the Judge thereof.

Said County Court at Law No. 2 of Harris County, Texas, and the Judge thereof shall have, and is hereby granted the same jurisdiction and powers in civil actions or proceedings that is now or may be by law conferred upon and vested in the County Court at Law of Harris County, Texas, and the Judge thereof; the Clerk of said last named Court shall also be the Clerk of said County Court at Law No. 2 of Harris County, Texas, in civil matters; and shall file each fifth civil action or proceeding filed in said Courts in said County Court at Law No. 2, beginning with the first civil action or proceeding divisible by five without any remainder, and so on with each succeeding civil action or proceeding so divisible; and said Clerk shall keep separate dockets for each of said Courts; and shall tax the Official Court Reporter's fee of Three Dollars ($3.00) as costs; in civil actions in each of said

Courts in like manner as said fee of Three Dollars ($3.00) is taxed in civil cases in the District Courts, and each of the Judges of said County Courts at Law may transfer civil actions or proceedings from his respective court to the other court by a simple entry to that effect upon the docket, and the said County Court at Law of Harris County, Texas, and the Judge thereof, shall have the power and authority to transfer to the said County Court at Law No. 2 of Harris County, Texas, any civil action or proceeding pending in said County Court at Law of Harris County, Texas, on its docket at the effective date of this Act, in order that the now over crowded civil docket of said Court may be relieved, and said County Court at Law No. 2 of Harris County, Texas, and the Judge thereof, shall have jurisdiction to hear and determine said civil matters, and render and enter the necessary and proper orders, decrees, and judgments therein. The civil jurisdiction of the County Court at Law of Harris County, Texas, shall not in anywise be impaired or affected by this Act. [Acts 1915, 1st C.S. ch. 8, § 2; Acts 1929, 41st Leg., p. 57, ch. 24, § 1; Acts 1934, 43rd Leg., 3rd C.S., p. 4, ch. 3, § 1.]

Art. 1970—97. [Repealed by Acts 1929, 41st Leg., p. 57, ch. 24, § 4.]

Art. 1970—98. Qualifications of judge; appointment; oath; bond; fees and salary.—At each general election, there shall be elected a judge of the County Court at Law No. 2 of Harris County, Texas, who shall have been a duly licensed and practicing member of the bar of this state for not less than five years, and who shall hold his office for two years and until his successor shall have been duly qualified; and he shall receive a salary of five thousand, five hundred dollars per annum, to be paid out of the county treasury by the Commissioners' Court in equal monthly installments; but such judge shall not collect any fee from the county for disposing of any criminal case, as provided in the Code of Criminal Procedure of Texas, Said Court or the judge thereof shall have the power to issue writs of habeas corpus in criminal misdemeanor cases, and all writs necessary to the enforcement of its jurisdiction. The civil jurisdiction of the County Court at Law of Harris County shall not in anywise be impaired or affected by this Act. Any vacancy occurring in the office of the judge of said County Court at Law No. 2 of Harris County, Texas, shall be filled by the Commissioners' Court of Harris County, the appointee thereof to hold office until the next succeeding general election. [Acts 1915, 1st C.S. ch. 8, § 4; Acts 1929, 41st Leg., p. 57, ch. 24, § 2.]

Art. 1970—98a. Official court reporter; compensation.—That the Judge of County Court at Law No. 2 of Harris County, Texas, shall appoint an Official Shorthand Reporter for such Court, who shall be well skilled in his profession and shall be a sworn officer of the Court and shall hold his office at the pleasure of the Court and all of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended and as the same may hereafter be amended and all other provisions of the law relating to "Official Court Reporters" shall and is hereby made to apply in all its provisions, in so far as they are applicable to the Official Shorthand Reporter herein authorized to be appointed, and in so far as they are not inconsistent with the provisions of this Act, and such Official Shorthand Reporter shall be entitled to the same compensation as applicable to Official Shorthand Reporters in the District Courts of Harris County, Texas, paid in the same manner that compensation of Official Shorthand Reporters of the District Courts of Harris County is paid. [Acts 1934, 43rd Leg., 3rd C.S., p. 4, ch. 3, § 2.]

Art. 1970—98b. Clerk in civil and criminal matters.—The County Clerk of Harris County, Texas, shall act as and be the Clerk of said County Court at Law No. 2 of Harris County, Texas, in civil matters and the District Clerk of Harris County, Texas, shall act as and be the Clerk of the County Court at Law and of said County Court at Law No, 2 of Harris County, Texas, in criminal matters. [Acts 1934, 43rd Leg., 3rd C.S., p. 4, ch. 3, § 3.]

Art. 1970—99. Clerk; fees.—The county clerk of Harris County shall be the clerk of said County Court at Law No. 2 of Harris County in civil matters and causes; and shall receive and collect the same fees which he now receives and collects as clerk of the County Court at Law of Harris County, Texas. The clerk of the Criminal District Court of Harris County, Texas, shall be clerk of said County Court at Law No. 2 in all criminal matters and causes, and shall receive and collect such fees as he now receives and collects in criminal matters as clerk of the County Court at Law of Harris County. [Acts 1915, 1st C.S., ch. 8, § 5.]

Art. 1970—100. Seal.—The seal of the County Court at Law No. 2 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seal shall contain the words "County Court at Law Number Two of Harris County, Texas," and said seal shall be judicially noticed. [Id. sec. 6.]

Art. 1970—101. Sheriffs and constables.—The sheriff of Harris County, either in person or by deputy, shall attend said court when required by the judge thereof; and the various sheriffs and constables of this State executing process issued out of said court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts. [Id. sec. 7.]

Art. 1970—102. Special judge.—A special judge of said court may be appointed or elected in the manner and instances now or hereafter provided by the law relating to county courts and the judges thereof. [Id. sec. 8.]

Art. 1970—103. [Repealed by Acts 1929, 41st Leg., p. 57, ch. 24, § 4]

Art. 1970—104. [Repealed by Acts 1929, 41st Leg., p. 57, ch. 24, § 4]

Art. 1970—105. Terms.—The terms of the court hereby created shall begin on the first Monday of the months of June, August, October, December, February and April of each year. The sessions of said court shall be held in such place as may be provided therefor by the Commissioners Court of Harris County. [Acts 1915, 1st C. S., ch. 8, § 11.]

Art. 1970—106. Transfer of cases.—All civil actions or civil proceedings now pending in said County Court at Law No. 2 of Harris County, Texas, as well as all civil actions or civil proceedings on appeal to said court, shall immediately upon the taking effect of this Act, be transferred to the County Court at Law of Harris County, Texas, and the same are hereby so transferred, and upon said County Court at Law of Harris County, Texas, is hereby conferred jurisdiction of such civil actions and civil proceedings; and all criminal actions and criminal proceedings now pending in said County Court at Law of Harris County, shall, immediately upon the taking effect of this Act, be transferred to the County Court at Law No. 2 of Harris County, Texas, and the same are hereby so transferred, and upon said County Court at Law No. 2 of Harris County, Texas, is hereby conferred jurisdiction of said criminal actions and criminal proceedings. [Acts 1915, 1st C. S., ch. 8, § 12; Acts 1929, 41st Leg., p. 57, ch. 24, § 3.]

Art. 1970—106a. Exchange of judges.—The judges of the said County Court at Law of Harris County, Texas, and the County Court at Law No. 2 of Harris County, Texas, may exchange benches as is or may be provided in the laws relating to the

County Court at Law of Harris County, Texas. [Acts 1929, 41st Leg., p. 57, ch. 24, § 5.]

Art. 1970—107. [Repealed by Acts 1929, 41st Leg., p. 57, ch. 24, § 4]

Art. 1970—108. Practice.—The practice in said County Court at Law No. 2, and in cases of appeal and writs of error therefrom and thereto, shall be the same as is now, or may hereafter be prescribed for county courts. [Acts 1915, 1st C.S., ch. 8, § 14.]

Art. 1970—109. Process in transferred cases.—All process issued out of the County Court at Law of Harris County, Texas, prior to the time when the clerk thereof shall transfer cases from the docket of said courts, as provided in Section 12 of this Act,[1] in cases transferred as therein provided, shall be returned to and filed in the court hereby created, and shall be equally as valid and binding upon parties to such transferred cases as though such process had been issued out of the County Court at Law No. 2 of Harris County, Texas. Likewise, in cases transferred by the judges of either of said courts, as provided in Section 13 of this Act,[2] all process extant at the time of such transfer shall be returned to and filed in the court to which such transfer is made, and shall be as valid and binding as though originally issued out of the court to which such transfer may be made. [Id. sec. 15.]

[1] Article 1970—106, ante.

[2] Article 1970—107, ante.

Art. 1970—110. [Repealed by Acts 1929, 41st Leg., p. 57, ch. 24, § 4]

Jefferson County at Law

Art. 1970—111. County Court of Jefferson County at Law created.—There is hereby created a court to be held in Beaumont, Jefferson County, Texas, to be called the County Court of Jefferson County at Law. [Acts 1915, ch. 29, sec. 1.]

Art. 1970—112. Jurisdiction.—The County Court of Jefferson County at Law shall have jurisdiction in all matters and cases, civil and criminal, original and appellate, over which by the general laws of the State the County Court of said County would have jurisdiction, except as hereinafter provided in Section 3 of this Act,[1] and all cases pending in the County Court of said County other than probate matters such as are provided in Section 3 of this Act shall be and the same are hereby transferred to the County Court of Jefferson County at Law, and all writs and process, civil and criminal, heretofore issued by or out of said County Court, other than those pertaining to matters which are hereby exempt by this Act that are to remain in the County Court of Jefferson County, shall be and the same are thereby made returnable to the County Court of Jefferson County at Law. The jurisdiction of the County Court of Jefferson County at Law, and to [2] the Judge thereof, shall extend to all matters of eminent domain of which jurisdiction as [3] heretofore vested in the County Court or in the County Judge; but this provision shall not affect the jurisdiction of the Commissioners Court or the County Judge of Jefferson County as the presiding officer of said Commissioners Court as to roads, bridges and public highways, or matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof. [Acts 1915, ch. 29, sec. 2; Acts 1919, ch. 27, sec. 2.]

[1] Article 1970—113, post.

[2] So in enrolled bill. Should probably read "of".

[3] So in enrolled bill. Should probably read "was".

Art. 1970—113. Jurisdiction of other courts.—The County Court of Jefferson County shall retain, as heretofore, the general jurisdiction of the Probate Court and all jurisdiction conferred by law now over probate matters; and the Court herein created shall have no other jurisdiction than that named in this Act, and the County Court of Jefferson County as now and heretofore existing shall have all jurisdiction which it now has, save and except that which is given the County Court of Jefferson County, at Law, in this Act, but the County Court as now existing shall have no other jurisdiction, civil or criminal. The County Judge of Jefferson County shall be the Judge of the County Court of said county, and all ex-officio duties of the County Judge shall be exercised by said Judge of the County Court of Jefferson County, except in so far as the same shall by this Act be committed to the County Court of Jefferson County at Law. [Acts 1915, ch. 29, sec. 3; Acts 1919, ch. 27, sec. 3.]

Art. 1970—114. Terms of court.—There shall be twelve terms of the County Court of Jefferson County at Law held annually and the practices therein and the appeals and the writs of error thereto and therefor shall be as prescribed by the laws relating to County Courts. The said terms of the County Court of Jefferson County at Law, shall be held as follows: Beginning on the first Monday of the first month after this Act shall become effective and shall continue in session until the last Saturday in said month when it shall adjourn, and open again on the first Monday in the next month and shall continue in session until the last Saturday in said month, and so on during the entire year, and the terms thereof shall be held at the Courthouse of Jefferson County, Texas. [Acts 1915, ch. 29, sec. 4; Acts 1919, ch. 27, sec. 4.]

Art. 1970—115. Election of judge; tenure; qualifications.—There shall be elected in Jefferson County by the qualified voters thereof at each general election a Judge of the County Court of Jefferson County at Law, who shall be well informed in the laws of the State, and who shall hold his office for two years and until his successor shall have been duly elected and qualified. No person shall be elected judge of said Court who has not been a resident citizen of Jefferson County, Texas, for at least two years prior to his election, and shall possess all of the qualifications for the office that are now required by the general laws of the State for County Judges. [Acts 1915, ch. 29, sec. 5; Acts 1919, ch. 27, sec. 5.]

Art. 1970—116. Appointment of judge.—When this Act shall become effective the present Judge of the County Court of Jefferson County at Law, shall continue to be the Judge of said Court and shall hold his office until the next general election of county officers or until his successor is elected and qualified. [Acts 1915, ch. 29, sec. 7; Acts 1919, ch. 27, sec. 7.]

Art. 1970—117. Disqualification of judge.—When the Judge of the County Court of Jefferson County at Law, is disqualified to try any case pending in the County Court of Jefferson County at Law, the parties or their attorneys in such a case may agree on the selection of a Special Judge to try such case, but if the parties or their attorneys fail to agree upon the selection of a Special Judge to try such case, it shall be the duty of the Judge of the County Court of Jefferson County at Law, to certify to the Governor that he is disqualified to try such case and the failure of the parties or their attorneys to agree upon the selection of a Special Judge to try such a case. Whereupon, the Governor shall proceed to appoint a Special Judge, learned in the law, to try such case. [Acts 1915, ch. 29, sec. 8; Acts 1919, ch. 27, sec. 8.]

Art. 1970—118. Issuance of writs.—The County Court of Jefferson County at Law, or the Judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas and all writs necessary to the enforcement of jurisdiction of said Court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said Court, or of any other Court in said county of inferior jurisdiction to said County Court at Law. [Acts 1915, ch. 29, sec. 9; Acts 1919, ch. 27, sec. 9.]

Art. 1970—119. Clerk, seal, and sheriff.—The County Clerk of Jefferson County, Texas, shall be the Clerk of the County Court of Jefferson County at Law, and the Seal of said Court shall be the same as provided by law for County Courts, except the Seal shall contain the words "County Court of Jefferson County at Law," and the Sheriff of Jefferson County, Texas, shall, in person, or by deputy, attend such Court when required by the Judge thereof, and the County Clerk of Jefferson County, Texas, is hereby authorized and directed to appoint a deputy, who shall be acceptable to the Judge of said Court to specially attend the sessions of said Court and to attend to all matters pertaining to the County Court of Jefferson County at Law and said deputy shall receive a salary not to exceed the maximum salary paid other deputies in the County Clerk's office with the rating of head of a department, said salary to be paid out of the County Treasury of Jefferson County upon order of the Commissioners Court of said County. For the purpose of preserving a record in any matter or proceeding heard in said Court for the information of the Court, Jury, or Parties, the Judge of said Court is hereby authorized to appoint an official shorthand reporter for such Court, who shall be well skilled in his profession, who shall be a sworn officer of the Court and shall hold his office at the pleasure of the Court, and the provisions of Chapter 13, of Title 40, of the Revised Civil Statutes of Texas, of 1925, relating to the appointment of a stenographer for the District Courts shall apply, in all its provisions in so far as applicable, to the official shorthand reporter herein authorized to be appointed by the Judge of said Court, and such reporter shall be entitled to the same fees and shall perform the same duties as provided in said Title, except in addition to the lawful fees for transcribing testimony and preparing statement of facts he shall receive a salary of One Hundred, Twenty-five Dollars ($125) per month, which salary shall be paid monthly out of the County Treasury of said County, upon order of the Commissioners Court. [Acts 1915, ch. 29, § 10; Acts 1919, ch. 27, § 10; Acts 1931, 42nd Leg., p. 750, ch. 295; Acts 1933, 43rd Leg., Spec. L., p. 49, ch. 42; Acts 1935, 44th Leg., p. 395, ch. 153, § 1.]

Section 2 of Laws 1935 provides that if any portion is held invalid the remainder shall operate as valid.

Acts 1935, 44th Leg., p. 542, ch. 229, reads as follows: "Section 1. That the Official Shorthand Reporter of the County Court of Jefferson County at Law, Jefferson County, Texas, shall, from and after the passage and taking effect of this Act, be entitled to receive a salary of Two Thousand, Four Hundred Dollars ($2,400), annually, in addition to the compensation for transcript fees as provided by law. Said salary shall be paid monthly by the Commissioners Court of the County, out of the General Fund of the County, or, in the discretion of the Commissioners Court, out of the Jury Fund of said County, upon certificate of the Judge of said County Court at Law."

Art. 1970—120. Selection of jurors.—The Jurisdiction or authority now vested by law in the District Courts of this State for the drawing, selection and service of jurors shall be exercised by the County Court of Jefferson County at Law, provided a panel of not exceeding twenty-four jurors shall be drawn for any one week of said Court, and juries selected in the trial of any case shall not exceed six. [Acts 1915, ch. 29, sec. 11; Acts 1919, ch. 27, sec. 11.]

Art. 1970—121. Vacancy in office of judge.—Any vacancy in the office of the Judge of the County Court of Jefferson County at Law, may be filled by the County Commissioners Court, and when so filled the Judge shall hold office until the next general election and until his successor is elected and qualified. [Acts 1915, ch. 29, sec. 12; Acts 1919, ch. 27, sec. 12.]

Art. 1970—122. Salary of judge; fees collected and accounted for.—The Judge of the County Court of Jefferson County at Law, shall receive a salary of Forty-five Hundred Dollars ($4500) per annum, to be paid out of the County Treasury of Jefferson County, Texas, on order of the Commissioners Court of said County, and said salary shall be paid monthly in equal installments. The Judge of the County Court of Jefferson County at Law shall assess the same fees as are now prescribed by law relating to County Judges' fees, all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection, no part of which shall be paid to the said Judge, but he shall draw a salary as above specified in this Section. [Acts 1915, ch. 29, § 13; Acts 1919, ch. 27, § 13; Acts 1931, 42nd Leg., p. 750, ch. 295; Acts 1933, 43rd Leg., Spec.L., p. 49, ch. 42; Acts 1937, 45th Leg., p. 776, ch. 377, § 1.]

Section 2 of this Act read as follows:

"Sec. 2. All laws or parts of laws, in conflict herewith are hereby repealed as to those portions of such law, or laws, as are in conflict herewith."

The title to the amending act of 1931 cites ch. 27 of Acts 1931, 42nd Leg., for amendment instead of ch. 295. Section 2 contains the provision that if any portion of the act is held invalid, such holding shall not invalidate the remainder.

Art. 1970—123. Appeals from lower courts.—All cases appealed from the Justices Courts and Recorders Courts in Jefferson County, Texas, shall be made direct to the County Court of Jefferson County at Law, under the provisions heretofore governing such appeals. [Acts 1915, ch. 29, sec. 14; Acts 1919, ch. 27, sec. 14.]

Art. 1970—124. Fees of County Judge.—The County Judge of Jefferson County, at the time this Act goes into effect, shall receive the same compensation in ex-officio salary and fees as he would have received had this Act, creating the County Court of Jefferson County at Law, not been enacted, said Compensation to be computed and allowed and ordered paid by the Commissioners Court of said County out of the general fund of said county. [Acts 1915, ch. 29, sec. 15; Acts 1919, ch. 27, sec. 15.]

Art. 1970—125. Special judge; election; compensation.—Should the Judge of the County Court of Jefferson County at Law on the first or any future day of a term, fail or refuse to hold the Court, a majority of the practicing attorneys present in said Court shall proceed to elect from among their number a Special Judge in the same manner prescribed by law for the election of Special Judges of County Courts; and such Special Judge shall be entitled to receive a fee of Three Dollars ($3.00) for each case tried by him, the same to be paid by the County Treasurer upon the order of the Commissioners' Court of Jefferson County, Texas. [Acts 1919, ch. 27, § 16; Acts 1933, 43rd Leg., 1st C.S., p. 3, ch. 3, § 1.]

Art. 1970—126. Act not repealed.—Nothing in this Act shall be construed in any manner to affect or repeal the Court at Law, created for the city of Port Arthur in Jefferson County, Texas, passed by the Fourth Called Session of the Thirty-fifth Legislature and known as House Bill No. 112. [Acts 1919, ch. 27, § 16a.]

Acts 1935, 44th Leg., p. 542, ch. 229, provided that the Official Shorthand Reporter of the County Court of Jefferson County at Law, Jefferson County, should receive a salary of Two Thousand, Four Hundred Dollars ($2,400), annually, in addition to the compensation for transcript fees as provided by law.

El Paso County at Law

Art. 1970—127. Court created.—There is hereby created a court to be held in El Paso county, Texas, to be known and designated as the "El Paso County Court at Law." [Acts 1917, ch. 93, sec. 1; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

The enrolled bill of Acts 1927, 40th Leg., p. 270, ch. 191, § 1, contained the article numbers 1811—133 to 1811—145a of Vernon's Civ.St.Supp.1922, instead of the parallel article numbers of Rev.Civ.St.1925, 1970—127 to 1970—141 which are retained for uniformity.

Art. 1970—128. Jurisdiction.—The El Paso County Court at Law shall have jurisdiction of all

civil matters and causes, original and appellate over which by the General Laws of the State of Texas the County Court of said county would have jurisdiction, except as provided in Section 3, of this Act;[1] and the El Paso County Court at Law of said county shall have jurisdiction in all criminal matters and causes, original and appellate over which by the General Laws of this State the County Court has jurisdiction, except as provided in Section 3, of this Act (Art. 1811—135)[1]; and all civil and criminal writs and processes heretofore issued by and out of said County Court be, and the same are hereby made returnable to the El Paso County Court at Law of El Paso County, Texas. The jurisdiction of El Paso County Court at Law and the judge thereof shall extend to all matters of eminent domain of which jurisdiction has heretofore rested in the County Court of El Paso County, Texas, or the judge thereof, but this provision shall not effect[2] the jurisdiction of the Commissioners' Court or the County Judge of El Paso County as presiding judge of said court as to roads, bridges and public highways and matters of eminent domain which are now within the jurisdiction of the Commissioners' Court or of the judge of the County Court of El Paso County, Texas. [Acts 1917, ch. 93, sec. 2; Acts 1918, 4th C. S., ch. 14, sec. 1; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

[1] Article 1970—129, post.
[2] So in enrolled bill. Should probably read "affect."

Art. 1970—129. Jurisdiction.—The County Court of El Paso County, Texas, shall retain, as heretofore, its jurisdiction as a juvenile court, its jurisdiction in matters pertaining to liquor licenses, forfeitures and bonds and the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots and lunatics, persons non compos mentis and drunkards, grant letters testamentary and of administration, settle accounts with administrators, executors and guardians, transact all business pertaining to deceased persons, and to apprentice minors as provided by law. The County Judge of El Paso County, Texas, shall be the Judge of the County Court of El Paso County, Texas, and all ex-officio duties of the County Judge shall be exercised by said Judge of the said County Court of El Paso County, except in so far as the same shall by this Act[1] be committed to the Judge of the El Paso County Court at Law. [Acts 1917, ch. 93, sec. 3; Acts 1918, 4th C. S., ch. 14, sec. 2; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

[1] This article, articles 1970—127, 1970—128, ante, and 1970—130 to 1970—135, 1970—137 to 1970—140, post.

Art. 1970—130. Power to issue writs.—Both the said County Court of El Paso County, and the El Paso County Court at Law or either of the judges thereof shall have the power to issue writs of injunction, sequestration, attachments, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said courts; and also power to punish for contempt under such provisions as are, or may be provided by the general laws governing county courts throughout the State, and to issue writs of habeas corpus, in cases where the offense charged is within the jurisdiction of said courts or of any court or tribunal inferior to said courts. [Acts 1917, ch. 93, sec. 4; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—131. Terms of court.—The terms of the El Paso County Court at Law and the practice therein and appeals and writs of error therefrom shall be, as prescribed by law relating to county courts. The terms of the El Paso County Court at Law shall be held not less than four times each year, and the commissioners court of El Paso county shall fix the time at which said court shall hold its terms, until the same shall be changed according to law. [Id. sec. 5; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—132. Appointment of judge; election; qualifications of judge.—The Governor shall appoint some suitable person who is a resident citizen of El Paso county as judge of the El Paso County Court at Law, as herein constituted, who shall hold such office until the next general election after his appointment, and until his successor shall have been elected and qualified, and all vacancies in said office shall also be filled by appointment by the Governor until the next general election thereafter. At the first general election in said county and at each general election thereafter there shall be elected by the qualified voters a judge of the El Paso County Court at Law, who shall be well informed in the laws of this State, who shall hold his office for two years and until his successor shall have been duly elected and qualified; provided that no person shall be eligible for judge of the El Paso County Court at Law by election, unless he shall be a citizen of the United States and of this State; who shall have been a practicing lawyer of this State or a judge of a court in this State for at least four years next preceding his election, and who shall have resided in the county of El Paso for two years next preceding his election. [Id. sec. 6; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—133. Bond and oath of judge.—The judge of the El Paso County Court at Law shall execute a bond and take the oath of office as required by law relating to county judges. [Id. sec. 7; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—134. Special judge.—A special judge of the El Paso County Court at Law may be appointed or elected as provided by laws relating to county courts and the judges thereof. [Id. sec. 8; Acts 1927, 40th Leg. p. 270, ch. 191, § 1.]

Art. 1970—135. Clerk, seal; sheriff.—The county clerk of El Paso county shall be the clerk of the El Paso County Court at Law; the seal of said court shall be the same as that provided for county courts, except that the seal shall contain the words "El Paso County Court at Law." The sheriff of El Paso county shall, in person or by deputy attend the court when required by the judge thereof. [Id. sec. 9; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—136. Official shorthand reporter; appointment; term of office, oath; duties.—For the purpose of preserving a record in all cases for the information of the court, jury and parties, the Judge of the County Court at Law of El Paso county, Texas shall appoint an official shorthand reporter for such court, who shall be well skilled in his profession, shall be a sworn officer of the court and shall hold his office at the pleasure of the court and the provisions of Chapter Eleven of Title 37 of the Revised Civil Statutes of Texas of 1911 relating to the appointment of stenographers for the district courts, shall and it is hereby made to apply in all its provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed by the Judge of the County Court at Law of El Paso County, Texas and he shall be entitled to the same fees and shall perform the same duties and shall take the same oath as are in said Chapter Eleven of Title 37 provided for the stenographers of district courts of this State, and also be governed by any other laws covering the stenographers of district courts of this State, and in addition thereto receive a salary of Eighteen Hundred ($1,800.00) dollars annually, to be paid monthly out of the County Treasury upon order of the Commissioners' Court. [Acts 1918, 4th C. S., ch. 14, sec. 3; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—136a. Reporter for county court.—For the purpose of preserving a record of all hearings had before the County Judge of El Paso County, Texas; for the information of the court and parties that may be interested therein, the Judge of the County

Court of El Paso County, Texas, shall appoint an official shorthand reporter for such court who shall be well skilled in his profession, shall be a sworn officer of the court, and shall hold office at the pleasure of the County Judge, and all provisions of the Civil Statutes of the State of Texas, relating to the appointment of stenographers for district courts, shall, and it is hereby made and applied in all its provisions in so far as they are applicable to the official shorthand reporter herein authorized to be appointed by the County Judge of El Paso County, Texas, and such shorthand reporter shall receive a salary of Twelve Hundred ($1,200.00) dollars annually, to be paid monthly out of the County Treasury of El Paso County upon orders of the Commissioners' Court. [Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—137. Juries.—The jurisdiction and authority now vested by law in the County Court of El Paso County, for the selection and service of jurors shall be exercised by each of said courts, but juries summoned for either of said courts may by order of the judge of the court in which they are summoned be transferred to the other court for service therein and may be used therein as if summoned for the court to which they may be thus transferred. [Acts 1917, ch. 93, sec. 10.]

Art. 1970—138. Compensation of judge.—The Judge of the County Court at Law of El Paso County, Texas, shall be entitled to the following compensation for his services as Judge of the County Court at Law; there shall be taxed and collected by the El Paso County Court at Law the same fees provided by the law for County Judges in similar cases, all of which shall be paid by the Clerk monthly into the County Treasury and the Judge of said Court shall receive a salary of Fifty-five Hundred Dollars ($5500) annually, to be paid monthly out of the Treasury upon the order of the Commissioners Court. [Acts 1917, ch. 93, § 11; Acts 1918, 4th C.S., ch. 14, § 4; Acts 1927, 40th Leg., p. 270, ch. 191, § 1; Acts 1947, 50th Leg., p. 27, ch. 20, § 1.]

Section 2 of the Act of 1947 repealed all conflicting laws.

Art. 1970—139. Removal of judge.—The judge of the El Paso County Court at Law may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this State. [Acts 1917, ch. 93, sec. 12; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—140. Salary of county judge.—The county judge of El Paso county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary, for the ex officio duties, not exceeding in the aggregate of fees and salary that which the existing laws provide for. [Id. sec. 13; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—141. Repeal; partial invalidity of act.—All laws and parts of laws in conflict herewith be, and the same are hereby repealed, and it is further enacted that if any of the provisions of this Act shall be held void or in conflict with any provisions of the Constitution of this State the fact that such provisions may be held void shall in no wise affect any other provisions of this Act. [Acts 1918, 4th C. S., ch. 14, sec. 5; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Eastland County at Law

Arts. 1970—142 to 1970—152. [Unconstitutional.]

These articles, being Acts 1919, 2nd C.S., ch. 16, §§ 1-11, creating County Court at Law for Eastland County, were held unconstitutional and void in toto, in State v. Gillette's Estate (Com.App.) 10 S.W.(2d) 984, rev. (Civ.App.) 286 S.W. 261.

Acts 1929, 41st Leg., p. 181, ch. 79, §§ 1-4, validates all orders, judgments and proceedings of the county court at law for Eastland County and provides that if any section thereof is held invalid, such decision shall not affect the remaining sections.

Wichita County at Law

Arts. 1970—153 to 1970—166. [Repealed by Acts 1933, 43rd Leg., Spec. L., p. 86, ch. 65]

See article 1970—166a, post.

Art. 1970—166a. Jurisdiction of Wichita County Court at Law transferred to Wichita County Court.—Immediately upon the taking effect of this Act, as provided for in Section 2,[1] all jurisdiction of all matters and causes, civil and criminal, original and appellate, which is now within the jurisdiction of the County Court of Wichita County at Law will at once be transferred to, conferred upon, and will vest in the County Court of Wichita County and all powers heretofore existing in the County Court of Wichita County at Law are hereby, with the effective date of this Act, conferred on the County Court of Wichita County, and all powers now and heretofore existing in the Judge of the County Court of Wichita County at Law are hereby, upon the effective date of this Act, conferred on the County Judge of Wichita County, and all cases pending at the effective date of this Act in the County Court of Wichita County at Law shall be and the same are hereby, on said effective date, transferred to the County Court of Wichita County, and all writs and processes, civil and criminal, issued by or out of the County Court of Wichita County at Law prior to the effective date of this Act, shall be and the same are hereby made returnable to the County Court of Wichita County as fully and effectively as if they had been originally issued out of said County Court. The County Clerk of Wichita County shall, upon the effective date of this Act, transfer all matters and causes, civil and criminal, original and appellate, then in the County Court of Wichita County at Law to the County Court of Wichita County. [Acts 1933, 43rd Leg., Spec. L., p. 86, ch. 65, § 1—A.]

[1] Section 2 of Acts 1933, 43rd Leg., Spec.L., p. 86, ch. 65, provided that this Act shall have no force and shall not disturb the operation of the County Court of Wichita County at Law until and after January 1, 1935.

Art. 1970—166b. Jurisdiction in civil cases transferred to District Courts.—Sec. 1. That the County Court of Wichita County shall retain and continue to have and exercise the general criminal jurisdiction, both original and appellate, the general jurisdiction in matters of eminent domain, and the general jurisdiction of Probate Courts, and all jurisdiction other than in civil matters, jurisdiction of which is here conferred on the District Courts of Wichita County, Texas, now or hereafter conferred upon such County Court by the Constitution and Laws of the State, and shall retain all jurisdiction and power to issue all writs necessary to the enforcement of its jurisdiction, and to punish contempts; but said County Court shall have no civil jurisdiction, except as to final judgments referred to in Section 2 hereof.

Sec. 2. That the District Courts having jurisdiction in said Wichita County shall have and exercise jurisdiction in all matters and cases of a civil nature, whether the same be of original jurisdiction or of appellate jurisdiction, over which, by the General Laws of the State of Texas now existing and hereinafter enacted, the County Court of said County would have had jurisdiction, and that all pending civil cases be and the same are hereby transferred to the District Court for the Eighty-ninth Judicial District of Texas, sitting in Wichita County, Texas, and all writs and process heretofore issued by or out of said County Court in said civil cases be and the same are hereby made returnable to the next term of the District Court, in and for the Eighty-ninth Judicial District of Texas, sitting in Wichita County, Texas. Provided, however, that there shall not be transferred to said District Courts jurisdiction over any judgments, even in civil cases, rendered prior to the time this Act takes effect and which have become final, but as to such judgments the said County Court shall retain jurisdiction for

the enforcement thereof by execution, order of sale, or other appropriate process. Provided further, however, that as to any civil case on appeal from said County Court, should a judgment be entered by the Court of Civil Appeals or the Supreme Court remanding the case for a new trial or for further proceedings, same shall be remanded to one of the District Courts having jurisdiction in Wichita County, Texas, and all jurisdiction in respect to said particular case shall thereafter vest in the District Courts sitting in and having jurisdiction of Wichita County, Texas.

Sec. 3. That the fact that the cases of which the District Courts are given jurisdiction have been transferred by this Act to the District Court in and for the Eighty-ninth Judicial District shall not be construed to limit the jurisdiction of the other District Courts sitting in and having jurisdiction in said County, but the said District Court in and for the Eighty-ninth Judicial District shall have power to transfer any or all of said cases to said other District Courts, under the applicable provisions of the laws governing the transfer of cases among said District Courts, and all applicable provisions of law in regard to the transfer and retransfer governing cases now pending in said District Courts shall govern the cases so transferred, as well as cases subsequently filed under the jurisdiction here conferred upon said District Courts; and that, as to cases subsequently filed, same may be filed in either of said District Courts which are here given jurisdiction thereof.

Sec. 4. That the Clerk of the County Court of said Wichita County be and is hereby required, within twenty (20) days after this Act takes effect, to file with the Clerk of the District Court of said County, all original papers in cases here transferred to the said District Courts, and all Judges' dockets and certified copies of any interlocutory judgment or other order entered in the Minutes of the County Court in said cases so transferred, and the District Clerk shall immediately docket all such cases on the docket of the said District Court for the Eighty-ninth Judicial District of Texas, and all such cases shall stand on the docket of said Court in the same manner and place as each stands on the docket of the County Court. Provided, further, that it shall not be necessary that the District Clerk refile any papers theretofore filed by the County Clerk, nor shall he receive any fees for the filing of same, but papers in said case bearing the file mark of the County Clerk, prior to the time of said transfer shall be held to have been filed in the case as of the date filed without being refiled by the District Clerk. Said County Clerk in cases so transferred shall accompany the papers with a certified bill of cost, and against all cost deposits, if any, the County Clerk shall charge accrued fees due him, and the remainder of the deposit he shall pay to the District Court as a deposit in the particular case for which same was deposited. Credit shall also be given the litigants for all jury fees paid in the County Court. [Acts 1935, 44th Leg., p. 113, ch. 40.]

Texarkana Court at Law

Arts. 1970—167 to 1970—189. [Unconstitutional]

These articles, being Acts 1923, 38th Leg., ch. 69, creating Texarkana Court at Law, were held unconstitutional in Turner v. Tucker, 113 T. 434, 258 S.W. 149.

Armstrong County Court

Art. 1970—190. Armstrong county court; concurrent jurisdiction with justice court.—That the county court of Armstrong county shall have and exercise original concurrent jurisdiction with the justices courts in all civil matters which by the general laws of this state is conferred upon justices courts. [Acts 1913, p. 60, sec. 1.]

Art. 1970—191. Jurisdiction as county court.—Said county court shall also have and exercise such jurisdiction over and pertaining to all matters and things and proceedings as by the general laws of this state is conferred upon county courts. [Id. sec. 2.]

Art. 1970—192. Appeal; amount in controversy.—No appeal or writ of error shall be taken to the court of civil appeals from any final judgment of said county court in civil cases of which said court has appellate or original concurrent jurisdiction with the justices courts where the judgment or amount in controversy does not exceed one hundred dollars exclusive of interests and costs. [Id. sec. 3.]

Art. 1970—193. Jurisdiction of justices' courts not affected; appeal.—This Act shall not be construed to deprive the justices' courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said court over such matters as are specified in section 1 of this Act,[1] nor shall this Act be construed to deny the right of appeal from the justices' courts to the said county court in any case originally brought in the justices' courts where the right of appeal now exists by law. [Id. sec. 4.]

[1] Article 1970—190, ante.

Art. 1970—194. Laws repealed.—All laws and parts of laws in conflict with the provisions of this Act, be, and the same are hereby repealed. [Id. sec. 5.]

Castro County Court

Art. 1970—195. Castro county court; jurisdiction of court.—That the county court of Castro county shall hereafter have exclusive original jurisdiction in civil cases wherein the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest, and shall have concurrent jurisdiction with the district court of said county when the amount in controversy shall exceed five hundred dollars, and not exceed one thousand dollars, exclusive of interest. [Acts 1913, p. 26, sec. 1.]

Art. 1970—196. Appellate jurisdiction.—Said county court shall have appellate jurisdiction in civil cases over which the justice courts have original jurisdiction when the judgment of the court, appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest and costs, and said county court shall have power to hear and determine cases brought up from the justices courts by certiorari, under the provisions of the title of the Revised Civil Statutes of 1911, relating thereto. [Id. sec. 2.]

Art. 1970—197. May issue writs.—The county judge of said county shall have authority either in term time or in vacation, to grant writs of injunction, sequestration, mandamus, garnishment, attachment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the constitution has not exclusively conferred the power on the district court or judge thereof. [Id. sec. 3.]

Art. 1970—198. Jurisdiction of probate court.—The said court shall have and exercise the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business pertaining to the estate of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards; including the partition, settlement and distribution of estates of deceased persons and to apprentice minors as provided by general law and to issue all writs necessary for the enforcement of its jurisdiction and decrees. [Id. sec. 4.]

Art. 1970–199. Forfeiture, etc., of bonds, and recognizances in criminal cases.—Said county court shall have jurisdiction in the forfeiture and judgment of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Id. sec. 5.]

Art. 1970–200. Jurisdiction of misdemeanors; appellate jurisdiction.—Said county court shall have original jurisdiction of all misdemeanors, except involving official misconduct and except misdemeanors in which the highest penalty that may be imposed by the law is a fine without imprisonment that does not exceed two hundred dollars, and said court shall have appellate jurisdiction with trials de novo in criminal cases in which the justices of the peace and other inferior tribunals of said county have original jurisdiction. [Id. sec. 6.]

Art. 1970–201. District court has no longer jurisdiction of certain cases.—The district court of said county shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct, and shall no longer have jurisdiction of cases in which the county court of said county by provisions of this Act has original or appellate jurisdiction. [Id. sec. 7.]

Art. 1970–202. District clerk to deliver transcripts, etc.—It shall be the duty of the district clerk of said county within thirty days after this Act shall take effect to make full and complete transcripts of orders on the criminal and civil dockets then pending before the district court of said county, of which cases by the provisions of this Act original and appellate jurisdiction is given to the said county court, and to deliver said transcripts, together with the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the respective dockets for trial by said court. [Id. sec. 8.]

Art. 1970–203. Motions against sheriffs and other officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with said process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and shall also have all the other powers and jurisdiction conferred on county courts by the constitution and general laws of this state. [Id. sec. 9.]

Art. 1970–204. Terms of court.—The terms of said court shall commence on the fourth Monday in February, and on the fourth Monday in May, and on the fourth Monday in August, and on the fourth Monday in November of each year, and shall continue in session for each term until the business may be disposed of; provided that the county commissioners court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Id. sec. 10.]

Cochran and Colorado County Courts

Art. 1970–205. Jurisdiction of county court of Cochran and Colorado counties.—The county court of Cochran County and Colorado County shall have and exercise original concurrent jurisdiction with the justice courts in all civil matters which by the General Laws of this State is conferred upon a justice of the peace courts. [Acts 1925, 39th Leg., ch. 40, p. 172, § 1.]

Art. 1970–206. Other jurisdiction.—Such county court shall also have and exercise such jurisdiction over and pertaining to all matters, things and proceedings, as is by the General Laws of this State conferred upon county courts. [Acts 1925, 39th Leg., ch. 40, p. 172, § 2.]

Art. 1970–207. Appeals and writs of error.—No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said county court in civil cases of which said court has appellate jurisdiction or original concurrent jurisdiction with the justice courts where the judgment or amount in controversy does not exceed one hundred dollars exclusive of interest and costs. [Acts 1925, 39th Leg., ch. 40, p. 172, § 3.]

Art. 1970–208. Jurisdiction of justices of the peace; appeals.—Nothing in this Act shall be construed to deprive the justice courts of jurisdiction now conferred upon them by law or in any manner to impair or alter their jurisdiction, but only to give original concurrent jurisdiction to said county court over such matters as are specified in Article 1 of this Act; nor shall this Act be construed to deny the right of appeal from the justice courts to said county court in any case originally brought in any justice court where the right of appeal now exists by General Law [Acts 1925, 39th Leg., ch. 40, p. 172, § 4.]

Deaf Smith, Parmer, Randall, Castro and Lubbock County Courts

Art. 1970–209. Deaf Smith, Parmer, Randall, Castro and Lubbock county courts; jurisdiction of court.—That the county court of Deaf Smith, Parmer, Randall, Castro, and Lubbock counties and the unorganized counties of Bailey and Lamb shall have and exercise original concurrent jurisdiction with the justices courts in all civil matters which by the general laws of this state is conferred upon justices courts. [Acts 1911, p. 171, sec. 1.]

Art. 1970–210. Same subject.—Said county court shall also have and exercise such jurisdiction over and pertaining to all matters and things and proceedings as by the general laws of this state is conferred upon county courts. [Id. sec. 2.]

Art. 1970–211. Writs of error to court of civil appeals.—No appeal or writ of error shall be taken to the court of civil appeals from any final judgment of said county court in civil cases of which said court has appellate or original concurrent jurisdiction with the justices court where the judgment or amount in controversy does not exceed one hundred dollars exclusive of interests and costs. [Id. sec. 3.]

Art. 1970–212. Jurisdiction of justices of the peace, etc.—This Act shall not be construed to deprive the justices court of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said court over such matters as are specified in section 1 of this Act,[1] nor shall this Act be construed to deny the right of appeal from the justices courts to the said county court in any case originally brought in the justices court where the right of appeal now exists by law. [Id. sec. 4.]

[1] Article 1970—209, ante.

Art. 1970–213. Laws repealed.—All laws and parts of laws in conflict with the provisions of this Act, be, and the same are hereby, repealed. [Id. sec. 5.]

Harrison County Court

Art. 1970–214. Jurisdiction of county court of Harrison county.—The county court of Harrison county shall have and exercise the general jurisdiction of a probate and criminal court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle the accounts of executors, administrators and guardians, transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the partition, settlement and distribution of

estates of deceased persons, and to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its jurisdiction; to punish contempt under such provisions as are now or may be provided by general law governing county courts throughout the State, and said county court of Harrison county shall have jurisdiction over all criminal causes and criminal matters of which county courts have jurisdiction under the existing laws or laws hereafter enacted; but the said county court of Harrison county shall not have any jurisdiction over civil causes or civil actions whatsoever.[1] [Acts 1911, p. 95, sec. 1.]

[1] Provision as to jurisdiction superseded by Articles 1970—215 and 1970—218 to 1970—223, post.

Art. 1970—215. Jurisdiction in civil cases.—That the county court of Harrison county shall hereafter have exclusive original jurisdiction in civil cases wherein the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest, and shall have concurrent jurisdiction with the district court of said county, when the amount in controversy shall exceed five hundred dollars, and not exceed one thousand dollars, exclusive of interest. [Acts 1913, p. 103, sec. 1.]

Superseding a part of article 1970—214, ante. This article also superseded Acts 1911, p. 95, § 2, transferring to the district court of Harrison county jurisdiction of all civil matters and causes over which the county court of that county theretofore had jurisdiction. Acts 1911, p. 95, § 3, providing for transfer of pending causes from the county to the district court, to carry out the provisions of section 2, is rendered obsolete by this article.

Art. 1970—216. Judgments heretofore rendered in county court; executions, etc.—That this Act shall not be construed to in any wise or manner affect judgments heretofore rendered by said county court of Harrison county pertaining to matters and causes which by section 2 of this Act [1] are transferred to the district court of said county, but the county clerk of said county shall issue all executions and orders of sale, and proceedings thereunder, and his act in so doing shall be valid and binding to all intents and purposes, the same as if no change had been made as by section 2 therein contemplated. [Acts 1911, p. 95, sec. 4.]

[1] Acts 1911, p. 95, superseded by Article 1970—215, ante.

Art. 1970—217. Laws repealed.—That all laws and parts of laws in conflict herewith be and the same are hereby repealed. [Id. sec. 5.]

Art. 1970—218. Appellate jurisdiction in civil cases, etc.—Said county court shall have appellate jurisdiction in civil cases over which justices courts have original jurisdiction, when the judgment of the court appealed from, or the amount in controversy, shall exceed twenty dollars, exclusive of interest and costs, and said county court shall have power to hear and determine cases brought up from the justices courts by certiorari, under the provisions of the title of the Revised Civil Statutes of 1895 relating thereto. [Acts 1913, p. 103, sec. 2.]

Art. 1970—219. May grant writs.—The county judge of said county shall have authority, either in term time or in vacation, to grant writs of injunction, sequestration, mandamus, garnishment, attachment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have the power to issue writs of habeas corpus in all cases in which the constitution has not exclusively conferred the power on the district court or judge thereof. [Id. sec. 3.]

Art. 1970—220. District court not to have jurisdiction when.—The district court of said county shall no longer have jurisdiction of cases in which the county court of said county by provisions of this Act has original or appellate jurisdiction. [Id. sec. 4.]

Superseding contradictory provision in article 1970—214, ante.

Art. 1970—221. Clerk of district court to make transcripts in cases in which jurisdiction is given to county court, etc.—It shall be the duty of the clerk of the district court of said county within thirty days after this Act shall take effect to make full and complete transcripts of orders on the civil docket then pending before the district court of said county, of which cases by the provisions of this Act exclusive original or appellate jurisdiction is given to the said county court, and to deliver said transcripts, together with the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the docket for trial by said court, and a certified bill of costs in each case, and all such cases shall be immediately docketed by the county court, as appearance cases for the next succeeding term, and all civil cases shall be docketed and disposed of in the same manner as if the same had been originally filed in and triable in said county court, and all process in civil cases now issued and returnable to said district court shall be returnable to said county court. [Id. sec. 5.]

Art. 1970—222. Motions against sheriffs and other officers, etc.; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court, for failure to pay over moneys collected under process of said court, or other defalcation of duty in connection with such process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days any person guilty of contempt of said court, and shall also have all the other powers and jurisdiction conferred on county courts by the Constitution and general laws of this State. [Id. sec. 6.]

Art. 1970—223. May fix terms of court.—The county commissioners' court of said county may hereafter fix the terms of said court whenever it may be deemed necessary. [Id. sec. 7.]

Hockley and Cochran County Courts

Art. 1970—224. County court of Hockley and Cochran counties; jurisdiction.—The county court of Hockley County and the unorganized county of Cochran shall have and exercise original concurrent jurisdiction with the justices' courts in all civil matters which by the general laws of this State is conferred upon said justice of the peace courts. [Acts 1923, 38th Leg., ch. 96, § 1.]

Art. 1970—225. Other jurisdiction.—Said county court shall also have and exercise such jurisdiction over and pertaining to all matters, things and proceedings as is by the general laws of this state conferred upon county courts. [Acts 1923, 38th Leg., ch. 96, § 2.]

Art. 1970—226. Appeals and writs of error.—No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said county court in civil cases of which said court has appellate jurisdiction or original concurrent jurisdiction with the justices' court where the judgment or amount in controversy does not exceed one hundred dollars exclusive of interest and costs. [Acts 1923, 38th Leg., ch. 96, § 3.]

Art. 1970—227. Jurisdiction of justices of the peace; appeals.—Nothing in this Act shall be construed to deprive the justices' courts of the jurisdiction now conferred upon them by law or in any manner to impair or alter their jurisdiction, but only to give original concurrent jurisdiction to said county court over such matters as are specified in Section 1 of this Act; nor shall this Act be construed to deny the right of appeal from the justices' court to said county court in any case originally brought in any justice court where the right of appeal now exists by General Law. [Acts 1923, 38th Leg., ch. 96, § 4.]

Jasper County Court

Art. 1970—228. Jasper county court; jurisdiction in civil cases.—That the county court of Jasper county shall hereafter have exclusive original jurisdiction in civil cases wherein the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest, and shall have concurrent jurisdiction with the district court of said county, when the amount in controversy shall exceed five hundred dollars, and not exceed one thousand dollars exclusive of interest. [Acts 1911, p. 11, sec. 1.]

Art. 1970—229. Appellate jurisdiction in civil cases.—Said county court shall have appellate jurisdiction in civil cases over which justices courts have original jurisdiction, when the judgment of the court appealed from, or the amount in controversy, shall exceed twenty dollars, exclusive of interest and costs, and said county court shall have power to hear and determine cases brought up from the justices courts by certiorari, under the provisions of the title of the Revised Civil Statutes, of 1895, relating thereto. [Id. sec. 2.]

Art. 1970—230. May grant writs.—The county judge of said county shall have authority, either in term time or in vacation, to grant writs of injunction, sequestration, mandamus, garnishment, attachment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the constitution has not exclusively conferred the power on the district court or judge thereof. [Id. sec. 3.]

Art. 1970—231. Jurisdiction of probate court.—That said court shall have and exercise the general jurisdiction of a probate court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators, and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the partition, settlement and distribution of estates of deceased persons; and to apprentice minors as provided by general law and to issue all writs necessary for the enforcement of its jurisdiction and decrees. [Id. sec. 4.]

Art. 1970—232. Forfeited bonds, etc., in criminal cases.—Said county court shall have jurisdiction in the forfeiture and judgment of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Id. sec. 5.]

Art. 1970—233. Jurisdiction of certain misdemeanors; appellate jurisdiction.—Said county court shall have exclusive original jurisdiction of all misdemeanors, except misdemeanors involving official misconduct and except misdemeanors in which the highest penalty that may be imposed by the law is a fine without imprisonment, that does not exceed two hundred dollars, and said court shall have appellate jurisdiction with trial de novo in criminal cases in which justices of the peace and other inferior tribunals of said county have original jurisdiction. [Id. sec. 6.]

Art. 1970—234. Jurisdiction of district court.—The district court of said county shall no longer have jurisdiction of misdemeanors except misdemeanors involving official misconduct, and shall no longer have jurisdiction of cases in which the county court of said county by provisions of this Act have [1] original or appellate jurisdiction. [Id. sec. 7.]

[1] So in enrolled bill. Should probably read "has".

Art. 1970—235. District clerk to deliver transcripts, etc., to county clerk.—It shall be the duty of the district clerk of said county within thirty days after this Act shall take effect to make full and complete transcripts of orders on the criminal and civil dockets, then pending before the district court of said county, of which cases by the provisions of this Act original and appellate jurisdiction is given to the said county court, and to deliver said transcripts, together with the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the respective dockets for trial by said court. [Id. sec. 8.]

Art. 1970—236. Motions against sheriffs and other officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs, and other officers of the court, for failure to pay over moneys collected under the process of said court or other defalcation of duty in connection with such process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and shall also have all other powers and jurisdiction conferred on county courts by the constitution and general laws of this state. [Id. sec. 9.]

Art. 1970—237. Terms of court.—The terms of said court shall commence on the third Monday in February, and on the third Monday in May, and on the third Monday in August, and on the third Monday in November of each year, and shall continue in session for each term until the business may be disposed of; provided that the county commissioners court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Id. sec. 10.]

Kendall County Court

Art. 1970—238. Jurisdiction of county court of Kendall county.—That the county court of Kendall county shall have and exercise the general jurisdiction of probate courts, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts as [of] executors, administrators, and guardians and transact all business appertaining to estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including partition, settlement and distribution of estates of deceased persons, and to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its own jurisdiction, to punish contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state, but the said county court of the said Kendall county shall have no other jurisdiction, civil or criminal whatsoever. [Acts 1911, p. 30, sec. 1.]

For Acts 1915, 34th Leg., 1st C.S., ch. 27, p. 55, restoring and extending civil and criminal jurisdiction of the county court of Kendall county, see art. 1970—319.

Art. 1970—239. Jurisdiction of district court.—That the district court of Kendall county shall have and exercise jurisdiction in all civil and criminal matters and causes over which, by the law of this state, the county court of said county would have jurisdiction, original or appellate, except as provided in section 1 of this Act, all causes, other than probate matters and such as are provided by section 1 of this Act,[1] be and the same are hereby transferred to the district court of Kendall county, and all writs and processes relating to any civil or criminal matters included in the subject matter of jurisdiction prescribed in section 1 of this Act, issued by or out of the said county court of Kendall county, be and the same are hereby made returnable to the next term of the district court of said county after this Act takes effect. [Id. sec. 2.]

[1] Article 1970—237, ante.
See note under art. 1970—238.

Art. 1970—240. County clerk to make transcripts in cases transferred to district court, etc.—That the county clerk of Kendall county be, and he is hereby required, within thirty days after this Act takes effect, to make a full and complete transcript of all entries upon his civil and criminal docket heretofore made in cases which, by section 2 of this Act,[1] are required to be transferred to the district court of said county, together with all the papers to such cause pertaining, a certified bill of costs in each case, and all such cases shall immediately be docketed by the district court as appearance for the next succeeding term, and all criminal cases shall be docketed and disposed of in the same manner as if the same had been originally triable in said district court, and all process now issued and returnable to said county court shall be returnable to said district court. [Id. sec. 3.]

[1] Article 1970—238, ante.
See note under art. 1970—238.

Art. 1970—241. Judgments heretofore rendered in county court; executions, etc.—That this Act shall not be construed to, in any anywise or in any manner, affect judgments heretofore rendered by said county court of Kendall county pertaining to matters and causes which by section 2 of this Act [1] are (returnable) [2] to the district court of said county, but the county clerk of said county shall issue all executions and orders of sale, and proceedings thereunder shall be as valid and binding to all intents and purposes as though the change had not been made as by section 2 therein contemplated. [Id. sec. 4.]

[1] Article 1970—239, ante.
[2] So in enrolled bill.
See note under art. 1970—238.

Lee and Burleson County Courts

Art. 1970—242. Jurisdiction of county court of Lee and Burleson Counties.—The county court of Lee and Burleson Counties shall have and exercise original concurrent jurisdiction with the justice's courts in all civil matters which by the General Laws of this State is conferred upon said justice of the peace courts. [Acts 1925, 39th Leg., ch. 151, p. 359, § 1.]

Art. 1970—243. Other jurisdiction.—Said county court shall also have and exercise such jurisdiction over and pertaining to all matters, things and proceedings as is by the General Laws of this State conferred upon county courts. [Acts 1925, 39th Leg., ch. 151, p. 360, § 2.]

Art. 1970—244. Appeals and writs of error.—No appeal or writ of error shall be taken to the court of Civil Appeals from any final judgment of said county court in civil cases of which said court has appellate jurisdiction or original concurrent jurisdiction with the justice's court where the judgment or amount in controversy does not exceed one hundred dollars, exclusive of interest and costs. [Acts 1925, 39th Leg., ch. 151, p. 360, § 3.]

Art. 1970—245. Jurisdiction of justices of the peace; appeals.—Nothing in this Act shall be construed to deprive the justice's courts of the jurisdiction now conferred upon them by law or in any manner to impair or alter their jurisdiction, but only to give original concurrent jurisdiction to said county court over such matters as are specified in Section 1 of this Act; nor shall this Act be construed to deny the right of appeal from the justice's court to said county court in any case originally brought in any justice court where the right of appeal now exists by General Law. [Acts 1925, 39th Leg., ch. 151, p. 360, § 4.]

Oldham County Court

Art. 1970—246. Oldham county court; jurisdiction in civil cases.—That the county court of Oldham county shall hereafter have exclusive original jurisdiction in civil cases wherein the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest, and shall have concurrent jurisdiction with the district court of said county when the amount in controversy shall exceed five hundred dollars, and not exceed one thousand dollars, exclusive of interest. [Acts 1911, p. 122, sec. 1.]

Art. 1970—247. Appellate jurisdiction in civil cases.—Said county court shall have appellate jurisdiction in civil cases over which justices courts have original jurisdiction when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest and costs, and said county court shall have power to hear and determine cases brought up from the justices courts by certiorari, under the provisions of the title of the Revised Civil Statutes of 1895 relating thereto. [Id. sec. 2.]

Art. 1970—248. May grant writs.—The county judge of said county shall have authority either in term time or in vacation, to grant writs of injunction, sequestration, mandamus, garnishment, attachment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the constitution has not exclusively conferred the power on the district court or judge thereof. [Id. sec. 3.]

Art. 1970—249. Jurisdiction of probate court.—That said court shall have and exercise the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business pertaining to the estate of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards; including the partition, settlement and distribution of estates of deceased persons, and to apprentice minors as provided by general law and to issue all writs necessary for the enforcement of its jurisdiction and decrees. [Id. sec. 4.]

Art. 1970—250. Forfeited bonds, etc., in criminal cases.—Said county court shall have jurisdiction in the forfeiture and judgment of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Id. sec. 5.]

Art. 1970—251. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.—Said county court shall have original jurisdiction of all misdemeanors, except involving official misconduct and except misdemeanors in which the highest penalty that may be imposed by the law is a fine without imprisonment that does not exceed two hundred dollars, and said court shall have appellate jurisdiction with trial de novo in criminal cases in which justices of the peace and other inferior tribunals of said county have original jurisdiction. [Id. sec. 6.]

Art. 1970—252. Jurisdiction of district court.—The district court of said county shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct, and shall no longer have jurisdiction of cases in which the county court of said county by provisions of this Act has original or appellate jurisdiction. [Id. sec. 7.]

Art. 1970—253. District clerk to deliver transcripts, etc., to county clerk.—It shall be the duty of the district clerk of said county within thirty days after this Act shall take effect to make full and complete transcripts of orders on the criminal and civil dockets then pending before the district court of said county, of which cases by the provisions of this Act original and appellate jurisdiction is given to the said county court, and to deliver said transcripts, together

with the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the respective dockets for trial by said court. [Id. sec. 8.]

Art. 1970—254. Motions against sheriffs and other officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court or other defalcation of duty in connection with such process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and shall also have all other powers and jurisdiction conferred on county courts by the constitution and general laws of this state. [Id. sec. 9.]

Art. 1970—255. Terms of court.—The terms of said court shall commence on the fourth Monday in February, and on the fourth Monday in May, and on the fourth Monday in August, and on the fourth Monday in November of each year, and shall continue in session for each term until the business may be disposed of; provided that the county commissioners court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Id. sec. 10.]

Reagan County Court

Art. 1970—256. Reagan county court; jurisdiction; transfer of cases.—Hereafter the county court of Reagan County in this State, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by general law for county courts. Any and all cases pending in the district court of Reagan County, which under the law after the taking effect of this Act should be pending in the county court of Reagan County, be and the same are hereby transferred to the county court of Reagan County, and all writs and processes relating to any such cases are hereby made returnable to the next term of the county court of Reagan County. The district clerk of Reagan County shall make the proper transfer of all cases hereinbefore provided for to be transferred, and shall make proper entry of such transfer upon his docket, and shall deliver over to the county clerk all necessary papers and files. [Acts 1923, 38th Leg., ch. 21, § 1.]

Art. 1970—257. Judgments not affected; executions thereon.—This Act shall not be construed to in any wise, or in any manner, affect judgments heretofore rendered by the district court pertaining to matters and causes which by this Act are made returnable to the county court, and the clerk of the district court of said county shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act. [Acts 1923, 38th Leg., ch. 21, § 2.]

Art. 1970—258. Jurisdiction of district court.—The jurisdiction of the district court of Reagan County shall be such as is provided by the Constitution and General Laws of this State consistent with the change in the jurisdiction of the county court herein made. [Acts 1923, 38th Leg., ch. 21, § 3.]

Art. 1970—259. County court; concurrent jurisdiction with justices of the peace.—The county court of Reagan County shall, in addition to the civil and criminal jurisdiction conferred upon county courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the justices courts in all civil matters which by the General Laws of this State is conferred upon justices' courts. [Acts 1923, 38th Leg., ch. 21, § 4.]

Art. 1970—260. Appeals and writs of error.—No appeal or writ of error shall be taken to the Court of Civil Appeals from any [1] final judgment of said county court in civil cases of which courts has appellate or original concurred [2] jurisdiction with the justices courts where the amount in controversy does not exceed one hundred dollars, exclusive of interest and costs. [Acts 1923, 38th Leg., ch. 21, § 5.]

[1] So in enrolled bill. Acts 1923 reads "an".
[2] So in enrolled bill. Should be "concurrent".

Art. 1970—261. Jurisdiction of justices of the peace; appeals.—This Act shall not be construed to deprive the justices' courts of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said county court over such matters as are specified in Section 4 of this Act, nor shall this Act be construed to deny the right of appeal from the justice court to said county court in any case originally brought in the justice court where the right of appeal now exists by law. [Acts 1923, 38th Leg., ch. 21, § 6.]

Stonewall County Court

Art. 1970—262. Stonewall county court; jurisdiction in civil cases.—That the county court of Stonewall county shall have and exercise original concurrent jurisdiction with the justices courts in all civil matters which by the general laws of this State is conferred upon justices' courts. [Acts 1913, p. 86, sec. 1.]

Art. 1970—263. Other jurisdiction.—Said county court shall also have and exercise such jurisdiction over and pertaining to all matters and things and proceedings as by the general laws of this state is conferred upon county courts. [Id. sec. 2.]

Art. 1970—264. Appeals and writs of error to court of civil appeals.—No appeal or writ of error shall be taken to the court of civil appeals from any final judgment of said county court in civil cases of which said court has appellate or original concurrent jurisdiction with the justice's court where the judgment or amount in controversy does not exceed one hundred dollars, exclusive of all interests and costs. [Id. sec. 3.]

Art. 1970—265. Jurisdiction of justices of the peace; appeals.—This Act shall not be construed to deprive the justices' courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said court over such matters as are specified in section 1 of this Act,[1] nor shall this Act be construed to deny the right of appeal from the justices' courts to the said county court in any case originally brought in the justice's court where the right of appeal now exists by law. [Id. sec. 4.]

[1] Article 1970—261, ante.

Sutton County Court

Art. 1970—266. Sutton county court; original civil jurisdiction.—That the county court of Sutton County shall hereafter have exclusive original jurisdiction in civil cases where the matter in controversy shall exceed in value two hundred dollars and shall not exceed five hundred dollars, exclusive of interest, and that it shall have concurrent jurisdiction with the district court of said county when the matter in controversy shall exceed five hundred dollars and not exceed one thousand dollars. [Acts 1923, 38th Leg., ch. 30, § 1.]

Art. 1970—267. Appellate jurisdiction in civil cases.—Said county court shall have appellate jurisdiction in civil cases over which justice's courts of said county have original jurisdiction when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest, and said county court shall have the power to hear and determine cases brought up from the justice's courts by certiorari under the provisions of law relating thereto. [Acts 1923, 38th Leg., ch. 30, § 2.]

Art. 1970—268. May grant writs.—The county judge of said county shall have authority, either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, garnishment, attachment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the Constitution and laws have not exclusively conferred the power on the district judge or district court thereof. [Acts 1923, 38th Leg., ch. 30, § 3.]

Art. 1970—269. Probate jurisdiction.—Said court shall have, as now, the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, and common drunkards, grant letters of [1] testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons; apprentice minors as provided by law; and to issue all writs necessary to the enforcement of its jurisdiction, orders, and decrees; and generally to exercise all the powers in probate matters conferred upon such courts by the Constitution and laws of the State. [Acts 1923, 38th Leg., ch. 30, § 4.]

[1] So in enrolled bill. Word "of" should probably be omitted.

Art. 1970—270. Forfeited bonds and recognizances.—Such courts shall have jurisdiction in the forfeiture of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Acts 1923, 38th Leg., ch. 30, § 5.]

Art. 1970—271. Jurisdiction of misdemeanors; appellate jurisdiction in criminal cases.—Said court shall have and exercise exclusive jurisdiction of all misdemeanors except misdemeanors involving official misconduct, and except misdemeanors in which the highest penalty that may be imposed by law is a fine, without imprisonment, that does not exceed two hundred dollars; and said court shall have appellate jurisdiction of criminal cases in which justice's courts and other inferior tribunals of said county have original jurisdiction. [Acts 1923, 38th Leg., ch. 30, § 6.]

Art. 1970—272. Jurisdiction of district court.—The district court of said county shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct, and shall no longer have jurisdiction of civil cases of which the county court of said county by provisions of this Act has original or appellate jurisdiction. [Acts 1923, 38th Leg., ch. 30, § 7.]

Art. 1970—273. Transcripts of pending cases; entry of cases in county court.—It shall be the duty of the district clerk of said county, within thirty days after this Act shall take effect to make full and complete transcript of orders on the criminal and civil dockets then pending before the district court of said county, of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said county court, and to file said transcript, together with the original papers in each case, in the county court of said county, and the county clerk shall enter said cases on the respective dockets of said county court as appearance cases for trial by said court. [Acts 1923, 38th Leg., ch. 30, § 8.]

Art. 1970—274. Motions against officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcations of official duty in connection with said process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and all other powers and jurisdictions conferred on county courts by the Constitution and general laws of the State of Texas. [Acts 1923, 38th Leg., ch. 30, § 9.]

Art. 1970—275. Terms of court.—The terms of said court shall commence on the third Monday in February, and on the third Monday in May, and on the third Monday in August, and on the third Monday in November of each year and shall continue in session for six weeks at each term, or until the business may be disposed of; provided that the county commissioners' court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Acts 1923, 38th Leg., ch. 30, § 10.]

Wheeler County Court

Art. 1970—276. Wheeler county court; jurisdiction in civil cases.—That the county court of Wheeler county shall hereafter have exclusive original jurisdiction in civil cases wherein the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest, and shall have concurrent jurisdiction with the district court of said county when the amount in controversy shall exceed five hundred dollars, and not exceed one thousand dollars, exclusive of interest. [Acts 1911, p. 130, sec. 1.]

Art. 1970—277. Appellate jurisdiction in civil cases.—Said county court shall have appellate jurisdiction in civil cases over which justices courts have original jurisdiction when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest and costs, and said county court shall have power to hear and determine cases brought up from the justice courts by certiorari, under the provisions of the Title of the Revised Civil Statutes of 1895 relating thereto. [Id. sec. 2.]

Art. 1970—278. May grant writs.—The county judge of said county shall have authority, either in term time or in vacation, to grant writs of injunction, sequestration, mandamus, garnishment, attachment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the constitution has not exclusively conferred the power on the district court or judge thereof. [Id. sec. 3.]

Art. 1970—279. Jurisdiction of probate court.—That said court shall have and exercise the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards; including the partition, settlement and distribution of estates of deceased persons; and to apprentice minors as provided by general law, and to issue all writs necessary for the enforcement of its jurisdiction and decree. [Id. sec. 4.]

Art. 1970—280. Forfeited bonds, etc., in criminal cases.—Said county court shall have jurisdiction in the forfeiture and judgment of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Id. sec. 5.]

Art. 1970—281. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.—Said county court shall have exclusive original jurisdiction of all misdemeanors except misdemeanors involving official misconduct and except misdemeanors in which the highest penalty that may be imposed by the law is a fine without imprisonment, that does not exceed two hundred dollars, and said court shall have appellate jurisdiction with trial de novo in criminal cases in which justices of the peace and other inferior

tribunals of said county have original jurisdiction. [Id. sec. 6.]

Art. 1970—282. Jurisdiction of district court.—The district court of said county shall no longer have jurisdiction of misdemeanors except misdemeanors involving official misconduct, and shall no longer have jurisdiction of cases in which the county court of said county by provisions of this Act has original or appellate jurisdiction. [Id. sec. 7.]

Art. 1970—283. District clerk to deliver transcripts, etc., to county clerk.—It shall be the duty of the district clerk of said county within thirty days after this Act shall take effect to make full and complete transcripts of orders on the criminal and civil dockets, then pending before the district court of said county, of which cases by the provisions of this Act original and appellate jurisdiction is given to the said county court, and to deliver said transcripts, together with the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the respective docket for trial by said court. [Id. sec. 8.]

Art. 1970—284. Motions against sheriffs and other officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court, for failure to pay over moneys collected under the process of said court or other defalcations of duty in connection with such process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and shall also have all other powers and jurisdiction conferred on county courts by the constitution and general laws of this state. [Id. sec. 9.]

Art. 1970—285. Terms of court.—The terms of said court shall commence on the fourth Monday in February, and on the fourth Monday in May, and on the fourth Monday in August, and on the fourth Monday in November of each year, and shall continue in session for each term until the business may be disposed of; provided, that the county commissioners court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Id. sec. 10.]

Zapata County Court

Art. 1970—286. Zapata county court; jurisdiction in civil cases.—That the county court of Zapata county shall hereafter have exclusive original jurisdiction in civil cases where the matter in controversy shall exceed in value two hundred dollars and shall not exceed five hundred dollars, exclusive of interest, and that it shall have concurrent jurisdiction with the district court of said county when the matter in controversy shall exceed five hundred dollars and not exceed one thousand dollars. [Acts 1913, p. 83, sec. 1.]

Art. 1970—287. Appellate jurisdiction in civil cases.—Said county court shall have appellate jurisdiction in civil cases over which justice's courts of said county have original jurisdiction when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest, and said county court shall have the power to hear and determine cases brought up from the justice's courts by certiorari under the provisions of law relating thereto. [Id. sec. 2.]

Art. 1970—288. Power to grant writs, etc.—The county judge of said county shall have authority either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, garnishment, attachment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the constitution and laws have not exclusively conferred the power on the district judge or district court thereof. [Id. sec. 3.]

Art. 1970—289. Jurisdiction of probate court.—Said court shall have, as now, the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, and common drunkards, grant letters testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons; apprentice minors as provided by law; and to issue all writs necessary to the enforcement of its jurisdiction, orders, and decrees; and generally to exercise all the powers in probate matters conferred upon such courts by the constitution and laws of the state. [Id. sec. 4.]

Art. 1970—290. Forfeited bonds, etc., in criminal cases.—Such court shall have jurisdiction in the forfeiture of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Id. sec. 5.]

Art. 1970—291. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.—Said court shall have and exercise exclusive jurisdiction of all misdemeanors, except misdemeanors involving official misconduct, and except misdemeanors in which the highest penalty that may be imposed by law is a fine, without imprisonment, that does not exceed two hundred dollars; and said court shall have appellate jurisdiction of criminal cases in which justice's courts and other inferior tribunals of said county have original jurisdiction. [Id. sec. 6.]

Art. 1970—292. Jurisdiction of district court.—The district court of said county shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct, and shall no longer have jurisdiction of civil cases of which the county court of said county, by the provisions of this Act, has original or appellate jurisdiction. [Id. sec. 7.]

Art. 1970—293. District clerk to deliver transcripts, etc., to county clerk.—It shall be the duty of the district clerk of said county, within thirty days after this Act shall take effect, to make full and complete transcript of orders on the criminal and civil dockets then pending before the district court of said county, of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said county court, and to file said transcript together with the original papers in each case, in the county court of said county, and the county clerk shall enter said cases on the respective dockets of said county court as appearance cases for trial by said court. [Id. sec. 8.]

Art. 1970—294. Motions against sheriffs and other officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcations of official duty in connection with said process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and all other powers and jurisdictions conferred on county courts by the constitution and general laws of the state of Texas. [Id. sec. 9.]

Art. 1970—295. Terms of court.—The terms of said court shall commence on the third Monday in February, and on the third Monday in May, and on the third Monday in September, and on the third Monday in November of each year, and shall continue in session for three weeks at each term, or until the business may be disposed of; provided, that the county commissioner's court of said county may hereafter

change the terms of said court whenever it may be deemed necessary. [Id. sec. 10.]

Edwards County Court

Art. 1970—296. Edwards county court; act repealed.—That Chapter 30 of the General Laws of the Regular Session of the Thirty-seventh Legislature be and the same is hereby repealed, and any and all laws which now stand repealed by reason of said Chapter 30 are hereby revived. [Acts 1923, 38th Leg., ch. 61, § 1.]

Shelby County Court

Art. 1970—297. Shelby County Court; jurisdiction restored.—Chapter 8 of the General Laws of the Fourth Called Session of the Thirty-sixth Legislature is hereby repealed, and hereafter the county court of Shelby County, Texas, shall have the same jurisdiction and shall be subject to the same provisions as county courts generally throughout the State under the General Laws of the State of Texas.

The jurisdiction of the district court in Shelby County is hereby conformed to the change herein made of the jurisdiction of the county court, and hereafter said district court shall have the same jurisdiction as district courts under the Constitution and General Laws. It shall be the duty of the district clerk of said county within thirty days after this Act shall take effect to make full and complete transcripts of all orders on the civil and criminal dockets in cases then pending before the district court of said county of which cases by the provisions of this Act original or appellate jurisdiction is given to said county court, and to deliver said transcripts together with all original papers and a certified bill of costs in each case to the county clerk of said county and said county clerk shall take charge of said transcripts and papers and file the same and enter said cases on the proper docket. All process heretofore issued from the district court of said court [1] in cases transferred under this Act to the county court shall be returnable to the first term of the county court, and all civil cases transferred shall be entered as appearance cases upon the docket of said county court. [Acts 1925, 39th Leg., ch. 89, p. 263, § 1.]

[1] So in enrolled bill. Should probably read "county".

McLennan County at Law

Art. 1970—298. [Repealed by Acts 1933, 43rd Leg., Spec. L., p. 110, ch. 83, § 1.]

The article repealed was Acts 1927, 40th Leg., p. 118, ch. 78; Acts 1927, 40th Leg., 1st C.S., p. 225, ch. 82.

Art. 1970—298a. Jurisdiction of McLennan County Court at Law transferred to McLennan County Court; Salary of Judge.—Sec. 2. All jurisdiction of all matters and causes, civil and criminal, original and appellate, which is now within the jurisdiction of the County Court at Law of McLennan County, is hereby transferred and conferred on the County Court of McLennan County, and all powers heretofore residing in said County Court at Law of McLennan County are hereby conferred on the County Court of McLennan County, and all powers heretofore residing in the Judge of the County Court at Law of McLennan County are hereby conferred on the County Judge of McLennan County, and all cases now pending in the County Court at Law of McLennan County, shall be, and the same are hereby transferred to the County Court of McLennan County, and all writs and processes, civil and criminal heretofore issued by or out of the County Court at Law of McLennan County, or the County Court of said County, shall be and the same are hereby made returnable to the County Court of McLennan County.

Sec. 3. The Judge of the County Court of McLennan County shall assess such fees as are or may be established by law relating to county judges, all of which shall be collected by the clerk of said court, and be by him paid monthly into the County Treasury, and the judge of said County Court shall receive an annual salary of Three Thousand ($3000.00) Dollars, per year to be paid out of the County Treasury by the Commissioners' Court, provided that said Commissioners' Court may, if and when it sees fit, by order duly entered on the minutes of said Court, pay the County Judge of McLennan County a larger amount of salary, but not to exceed Three Thousand Six Hundred ($3600.00) Dollars, per year, all to be paid monthly out of the County Treasury and from the general fund of said County. [Acts 1933, 43rd Leg., Spec. L., p. 110, ch. 83.]

Harrison County Court

Art. 1970—299. Jurisdiction of County Court of Harrison County.—Sec. 1. Hereafter the County Court of Harrison County, Texas, shall have the same jurisdiction and shall be subject to the same provisions as County Courts generally throughout the State, under the Constitution and General Laws of the State of Texas.

Sec. 2. The Jurisdiction of the District Court of the Seventy-first Judicial District of Texas is hereby conformed to the change herein made of the County Court of Harrison County, and hereafter said District Court shall have the same jurisdiction as District Courts generally throughout the State as provided and conferred by the Constitution and General Laws of the State of Texas. [Acts 1927, 40th Leg., p. 150, ch. 99.]

Section 3 of this Act, repeals all conflicting laws and parts of laws.

Edwards County Court

Art. 1970—300. Changing jurisdiction of county court of Edwards county.—Sec. 1. Hereafter the county court of Edwards County shall have no civil or criminal jurisdiction and shall have jurisdiction in probate matters only. The civil and criminal jurisdiction heretofore vesting in said county court is hereby transferred to the district court of said county.

Sec. 2. It shall be the duty of the county clerk of said county within thirty days after this Act shall take effect to make a full and complete transcript of all orders on the civil and criminal docket in said county court in all civil and criminal matters, and shall transfer the same together with all other papers and records in connection with such cases and matters, to the clerk of the district court of said county. Said county clerk shall also prepare certified bills of costs in each such case and deliver the same to said district clerk, and the district clerk shall take charge of such transcripts, papers and cost bills and file and enter the same in said cases on the proper docket. All process heretofore issued from the county court in said county in cases transferred by this Act to the district court shall be returnable to the first term of the district court after this Act takes effect, and all cases transferred by this Act shall be entered as appearance cases upon the docket of the district court. [Acts 1927, 40th Leg., p. 333, ch. 226.]

Bexar County at Law Nos. 1 and 2

Art. 1970—301. County courts at Law Nos. 1 and 2 Bexar County.—Sec. 1. From and after the passage and taking effect of this Act the county court of Bexar County for civil cases shall be known and designated as the "County Court at Law No. 1, of Bexar County, Texas." The present judge and all officers of the county court of Bexar County for civil cases shall continue as such respective judge and officers of the County Court at Law No. 1, of Bexar County, Texas, until the expiration of their present terms of office and until their successors shall have been duly elected or appointed and qualified.

Sec. 2. From and after the passage and taking effect of this Act the county court of Bexar County for criminal cases shall be known and designated as the

"County Court at Law No. 2, of Bexar County, Texas." The present judge and all officers of the county court of Bexar County for criminal cases shall continue as such respective judge and officers of the County Court at Law No. 2, of Bexar County, Texas, until the expiration of their present terms of office and until their successors shall have been duly elected or appointed and qualified.

Sec. 3. Said County Court at Law No. 1, of Bexar County, Texas, and the judge thereof, shall have and exercise the same jurisdiction, original and appellate, heretofore conferred on said county court of Bexar County for civil cases, and the judge thereof, and in addition thereto, shall have jurisdiction within Bexar County, Texas, of all such subject matters and causes, original and appellate, over which the county court of Bexar County for criminal cases has heretofore had jurisdiction; and the authorized jurisdiction of said courts, namely, the County Court at Law No. 1, of Bexar County, Texas, and the County Court at Law No. 2, of Bexar County, Texas, over all such matters, within said county, shall be concurrent.

Sec. 4. Said County Court at Law No. 2 of Bexar County, Texas, and the judge thereof, shall have and exercise the same jurisdiction, original and appellate heretofore conferred on said county court of Bexar County for criminal cases, and the judge thereof, and in addition thereto, shall have jurisdiction within Bexar County, Texas, of all such subject matters and causes, original and appellate, over which the county court of Bexar County for civil cases has heretofore had jurisdiction; and the authorized jurisdiction of said courts, namely, the County Court at Law No. 1, of Bexar County, Texas, and the County Court at Law No. 2, of Bexar County, Texas, over all such matters, within said county, shall be concurrent.

Sec. 5. From and after the passage and taking effect of this Act, civil and criminal cases, within the jurisdiction of said courts, may be filed in either the County Court at Law No. 1, of Bexar County, Texas, or in the County Court at Law No. 2 of Bexar County, Texas.

Sec. 6. Whenever the judge of said County Court at Law No. 1, or the judge of said County Court at Law No. 2 of Bexar County, Texas, may deem it advisable or expedient he may transfer any case or cases pending in the court over which he presides to the other of said county courts at law, and the written order upon the minutes of said court so transferring such case, signed by the judge thereof making the transfer, shall be authority for the clerk of said court to make such transfer.

Sec. 7. It shall be the duty of the judge of the County Court at Law No. 1 of Bexar County, Texas, as soon as practicable after the passage and taking effect of this Act to transfer as aforesaid from the docket of said court to the docket of said County Court at Law No. 2 of Bexar County, Texas, approximately one-half of the civil cases pending upon said docket, which shall be done by transferring every alternate case without reference to whether any particular case be pending upon the jury or nonjury of said court; provided, this section is directory in nature.

Sec. 8. It shall be the duty of the judge of the County Court at Law No. 2 of Bexar County, Texas, as soon as practicable after the passage and taking effect of this Act, to transfer as aforesaid from the docket of said court to the docket of said County Court at Law No. 1, of Bexar County, Texas, approximately one-half of the criminal cases pending upon said docket, which shall be done by transferring every alternate case without reference to whether any particular case be pending upon the jury or nonjury docket of said court; provided, this section is directory in nature.

Sec. 9. The Judges of the two County Courts at Law of Bexar County, Texas, may at any time exchange benches, and may at any time sit and act for and with each other in any civil or criminal case, matter or proceeding now and hereafter pending in either of the said County Courts at Law of Bexar County, Texas; and any and all such acts thus performed by the Judge of the County Court at Law No. 1, of Bexar County, Texas, or by the Judge of the County Court at Law No. 2, of Bexar County, Texas, shall be valid and binding upon all parties to such cases, matters and proceedings. [As amended Acts 1937, 45th Leg., p. 45, ch. 33, § 1.]

Sec. 10. All writs, processes, judgments and decrees, civil and criminal, heretofore issued by or out of the said county court of Bexar County for civil cases or the said county court of Bexar County for criminal cases, as well as all bonds and recognizances taken in either of said courts, and all other acts and proceedings had therein, shall be as valid and enforceable and binding as if no change had been made in the name, designation, jurisdiction or time of the holding of either of said courts, and each and all of the same are, respectively, hereby made returnable and effective in that one of said county courts at law which shall have jurisdiction of the cause in conformity with the terms and provisions of this Act.

Sec. 11. The Judges of the County Courts at Law, Nos. 1 and 2, of Bexar County, Texas, shall each take the oath of office prescribed by the Constitution of Texas, but no bond shall be required of either of said Judges. The Judge of the County Court at Law No. 1, of Bexar County, Texas, shall receive an annual salary of Six Thousand ($6,000.00) Dollars, and the Judge of the County Court at Law No. 2, of Bexar County, Texas, shall receive an annual salary of Six Thousand ($6,000.00) Dollars. Said salary shall be paid to each of said Judges in equal monthly installments out of the General Fund of Bexar County, Texas, by warrants drawn upon the County Treasury of said county upon orders of the Commissioners' Court of Bexar County, Texas. [As amended Acts 1933, 43rd Leg., Spec.L., p. 61, ch. 50, § 1; Acts 1935, 44th Leg., p. 715, ch. 309, § 1; Acts 1937, 45th Leg., p. 33, § 2; Acts 1939, 46th Leg., Spec.L., p. 617, § 1.]

Sec. 12. The County Court of Bexar County, Texas, and the Judge thereof shall have and retain the same jurisdiction, powers, fees, and perquisites of office as conferred on said County Court of Bexar County, or the Judge thereof, at and before the time of the passage and taking effect of this Act; and this Act shall in no wise affect said County Court. Provided, however, that the maximum fees of the office of the County Judge shall not exceed Six Thousand, Five Hundred Dollars ($6,500.00), even though more than one person may perform the duties of said County Judge, in which case the total shall be divided in accordance with services performed. Provided, however, that a County Judge shall not draw a salary amounting to more than Five Thousand Dollars ($5,000.00) per annum and providing that no more than the aggregate sum of Fifteen Hundred Dollars ($1500.00) shall be paid in any one (1) year to special judges for said county. [As amended Acts 1933, 43rd Leg., Spec. L., p. 61, ch. 50, § 2.]

Sec. 13. The County Court at Law No. 1, of Bexar County, Texas, shall hold six terms of court each year commencing on the first Monday in January, March, May, July, September and November, and each term shall continue until the business shall have been disposed of; and the County Court at Law No. 2, of Bexar County, Texas, shall hold six terms of court each year, commencing on the first Monday in February, April, June, August, October and December, and each term shall continue until the business shall have been disposed of; provided, no term of either of said courts shall continue beyond the date fixed for the commencement of its new term, except upon an order

entered on its minutes during the term extending the term for any particular causes therein specified.

Sec. 14. Special judges may be appointed or elected for either or both of the County Courts at Law of Bexar County, Texas, and in the same manner as may now or hereafter be provided by the general laws of this state relating to the appointment and election of a special judge or judges of the several district and county courts of this state; and every such special judge thus appointed or elected for either of said two courts shall receive for the services he may actually perform as such special judge the same amount of pay which the regular judge of said court would be entitled to receive for such services. The amount to be paid to such special judge shall be paid out of the general fund of Bexar County, Texas, by warrants drawn upon the county treasury of said county upon orders of the Commissioners' Court of Bexar County, Texas; but no part of the amount paid to any special judge shall be deducted from or paid out of the salary of either of the regular judges of said respective County Courts at Law. [As amended Acts 1937, 45th Leg., p. 45, ch. 33, § 3.]

Sec. 15. The County Clerk of Bexar County, Texas, shall be the clerk of the County Court at Law No. 1, of Bexar County, Texas, and also the clerk of the County Court at Law No. 2, of Bexar County, Texas. The seal of said courts shall be the same as provided by law for County Courts, except that the seal of the County Court at Law No. 1, of Bexar County, Texas, shall contain the words "County Court at Law No. 1, of Bexar County, Texas", and the seal of the County Court at Law No. 2, of Bexar County, Texas, shall contain the words "County Court at Law No. 2, of Bexar County, Texas." The County Clerk of Bexar County, Texas, shall, upon the taking effect of this Act or as soon thereafter as may be possible, appoint a deputy for each of the said County Courts at Law; provided, however, that the persons thus appointed must be acceptable to the respective judges of said courts, and such appointment for each of said courts must be confirmed in writing by the Judge thereof before it becomes effective. The said two deputies thus appointed shall, before assuming their respective duties, take the oath of office prescribed by the Constitution of Texas, Article 16, Section 1 thereof; and the County Clerk of Bexar County, Texas, shall have the power and authority to require said deputies to furnish bonds in such amount, conditioned and payable as may be prescribed by said clerk or provided by law. The said two deputies shall act in the name of their principal and they, and each of them, may do and perform all such official acts as may be lawfully done and performed by the said County Clerk in person; and it shall be the duty of each of said two deputies to attend all sessions of the County Court at Law of Bexar County, Texas, to which he has been appointed, and perform such services in and for said courts as are usually performed by the County Clerk and their deputies in the several County Courts of this State; and said two deputies shall also perform any and all other services that may from time to time be assigned them by the Judges of said courts. The County Clerk of Bexar County, Texas, and his several deputies, including the two deputies to be appointed for said courts as hereinabove provided, shall, in all cases, both civil and criminal, pending in said courts when this Act takes effect, and also in all such cases thereafter filed in said courts, tax and assess and collect the same fees and costs, and in the same manner, as now provided by law for the County Courts of this state and the Judges thereof in similar cases; and all such fees and costs, when collected by said County Clerk and his several deputies, as well as any and all other sums of money received by said County Clerk and his deputies in their official capacity, shall by said Clerk and deputies be deposited in such fund, or paid to the proper person or persons entitled to the same, and in the manner, as may be provided by law. The said two deputies to be appointed for said two courts are authorized to act for one another in any matter pertaining to the clerical business of said courts, and it shall be their duty to thus act for one another when requested to do so by the Judges of said Courts or by the said County Clerk; but such deputies acting for one another shall not be entitled to receive, nor shall they receive, any additional compensation. The said two deputies shall, from and after their said appointment, confirmation and qualification, as herein provided, continue as such respective deputies at the pleasure of the Judges of said courts; and should either of said Judges for any reason whatsoever not further desire the services of said deputy clerk, the County Clerk of Bexar County, Texas, shall, upon request of such Judge or Judges, appoint another deputy for such court or courts, such appointment, however, to be made in the manner as hereinabove provided. In the event of a vacancy caused by any reason whatsoever the County Clerk of Bexar County, Texas, shall immediately appoint another deputy for the court in which a vacancy may occur, such appointment, however, shall be with written approval and confirmation of the Judge of the court in which a vacancy may occur. The salary of the deputy clerk appointed for each of the said County Courts at Law of Bexar County, Texas, shall be determined and fixed by the respective Judges of said courts in any amount not exceeding Two Thousand Five Hundred ($2,500.00) Dollars annually; said annual salaries to be paid to said deputy clerks in equal monthly installments out of such fund of Bexar County, Texas, as provided by law for the payment of the salaries of the several deputies of the County Clerk of Bexar County, Texas, and such payment of said salaries shall be made in the manner provided by law. However, before such monthly salaries are paid to said deputies the Judges of said courts shall cause to be filed with the County Clerk of Bexar County, Texas, or with the proper officer of said county, a written statement, signed by said Judges, certifying that said two deputies have performed the services required of them and that they are entitled to receive their said salaries, and such salaries of said deputies shall be paid to them only upon such certificate being signed and filed by said Judges. Provided that nothing contained in this section of this Act is intended to change or alter the duties and powers that have heretofore been and are now being exercised by the County Clerk of Bexar County, Texas, except as herein specifically and expressly stated. [As amended Acts 1937, 45th Leg., p. 45, ch. 33, § 4.]

Sec. 15–A. The Sheriff of Bexar County, Texas, shall, by and through deputies to be appointed as hereinafter provided, attend all sessions of the County Court at Law No. 1, of Bexar County, Texas, and the County Court at Law No. 2, of Bexar County, Texas; and the Sheriff of Bexar County, Texas, shall, upon the taking effect of this Act, or as soon thereafter as may be possible, appoint one deputy for each of the said County Courts at Law of Bexar County, Texas; provided, however, that the persons thus appointed as such deputies must be acceptable to the Judges of said courts, and said appointments for each of said courts must be approved and confirmed in writing by the Judge of said court before same becomes effective. The said deputy sheriffs shall, before assuming their respective duties, take the oath of office prescribed by the Constitution of Texas, Article 16, Section 1 thereof; and the Sheriff of Bexar County, Texas, shall have the power and authority to require said deputies to furnish bonds in such amount, conditioned and payable as may be prescribed

by said Sheriff or provided by law. The said two deputies shall act in the name of their principal and they may do and perform all such official acts as may be lawfully done and performed by the Sheriff of Bexar County, Texas, in person. The said two deputies shall, from and after their said appointment, confirmation and qualification, as hereinabove provided, continue as such respective deputies at the pleasure of the Judges of said courts; and should either of said Judges, for any reason whatsoever, not further desire the services of said deputy sheriffs, the Sheriff of Bexar County, Texas, shall, upon request of such Judge, appoint another deputy for such court, such appointment, however, to be made in the manner as hereinabove provided. It shall be the duty of the said two deputies, who are to be appointed as herein provided, to attend all sessions of the said two courts and also perform and render such services in and for said courts, and for the Judges thereof, as are usually and generally performed and rendered by Sheriffs and their deputies in and about the several district and county courts throughout this state, and including the serving of any and all process, subpœnas, warrants and writs of any and all kinds and nature, in both civil and criminal cases, matters and proceedings; and it shall be the duty of said deputy sheriffs to also perform and render any and all other services that may from time to time be assigned them, or to either of them, by the Judges of said courts. The said two deputies shall have, possess and enjoy the same rights, powers, authority and privileges that the Sheriffs and their deputies throughout this state now or may hereafter have, possess and enjoy. The said deputy sheriff of the said County Court at Law No. 1, of Bexar County, Texas, and the said deputy sheriff of the said County Court at Law No. 2, of Bexar County, Texas, are authorized and empowered to act for one another, and it shall be their duty to so act for one another when required to do so by either of the Judges of said courts or by said Sheriff; but said deputies thus acting for one another shall not be entitled to receive, nor shall they receive, any additional compensation. The Sheriff of Bexar County, Texas, shall, in the event of a vacancy caused by any reason whatsoever, immediately appoint another deputy for such court in which a vacancy may occur, such appointment, however, to be subject to the approval and written confirmation of the Judge of the court in which such vacancy may exist. The salary of the said deputy appointed for each of said County Courts at Law of Bexar County, Texas, shall be determined and fixed by the Judge of said court in any sum not exceeding Two Thousand Five Hundred ($2,500.00) Dollars annually. The said annual salaries to be paid to said two deputies, when fixed by said Judges as herein provided, shall be paid to them in equal monthly installments out of such fund of Bexar County, Texas, as provided by law for the payment of the salaries of the several deputies of the Sheriff of Bexar County, Texas, and such payment of said salaries shall be made in the manner provided by law. However, before such monthly salaries are paid to said deputy sheriffs the Judges of said courts shall cause to be filed with the Sheriff of Bexar County, Texas, or with the proper officer of said county, a written statement, signed by said Judges, certifying that said two deputies have performed and rendered the services required of them and that they are entitled to receive their said salaries. Provided that nothing contained in this section of this Act is intended to change or alter the duties and powers of the Sheriff of Bexar County, Texas, except as herein specifically and expressly stated. [Acts 1927, 40th Leg., p. 26, ch. 22, § 15–A, added Acts 1937, 45th Leg., p. 45, ch. 33, § 5.]

Sec. 16. The term of the County Court at Law No. 1, of Bexar County, Texas, current at the time of the taking effect of this Act shall continue until the commencement of the next following term of said court, in the month as fixed by this Act, in the year 1927, or until any earlier adjournment thereof. All process issued out of said court before this Act takes effect, and not theretofore returnable, or returnable on some special date, is hereby made returnable to the terms of court as fixed by this Act. All bonds heretofore executed in said court shall bind the parties to fulfill the obligation of such bonds at the terms of court, and to that one of said county courts at law having jurisdiction of the cause, in conformity with this Act. All writs and process heretofore issued and returned, as well as all bonds heretofore taken in said county court of Bexar County for civil cases, and all judgments, writs and decrees thereof, shall be as valid and binding, and enforceable, as if no change had been made in the jurisdiction or the time of the holdings of said court, or in the name and designation of said court.

Sec. 17. The term of the County Court at Law No. 2, of Bexar County, Texas, current at the time of the taking effect of this Act, shall continue until the commencement of the next following term of said court in the month as fixed by this Act, in the year 1927, or until any earlier adjournment thereof. All process issued out of said court before this Act takes effect, and not theretofore returnable, or returnable on some special date, is hereby made returnable to the terms of court as fixed by this Act. All bonds and recognizances heretofore executed and taken in said court shall bind the parties to fulfill the obligations of such bonds and recognizances at the terms of court, and to the one of said county courts at law having jurisdiction of the cause, in conformity with this Act. All writs and processes heretofore issued and returned, as well as all bonds and recognizances heretofore executed and taken in said county court of Bexar County for criminal cases, and all judgments and writs and decrees thereof shall be as valid and binding and enforceable as if no change had been made in the jurisdiction or the time of the holdings of said court, or in the name and designation of said court.

Sec. 18. There shall be appointed by the county attorney of said county, in addition to the assistants now provided by law, one special assistant, for the purpose of conducting the duties of his office in said courts. Such assistant county attorney shall be paid a salary of three thousand ($3,000.00) dollars annually, in equal monthly installments, by said county, upon warrants drawn against the general fund by orders of the commissioners court.

Sec. 19. For the purpose of preserving a record in all cases for the information of the court, jury and parties, the judge of the County Court at Law No. 2, of Bexar County, Texas, may appoint an official shorthand reporter for said court who shall be well skilled in his profession, shall be a sworn officer of the court, and shall hold his office at the pleasure of the court; and the provisions of the law relating to the appointment of stenographers for the district courts of this State shall, and they are hereby made to apply in all their provisions, in so far as they are applicable, to the official shorthand reporter herein authorized to be appointed, and said reporter shall be entitled to the same fees and salary, and shall perform the same duties, and shall take the same oath as now provided by the General Laws of this State covering the stenographers of the district courts of this State; and in all cases pending in said County Court at Law No. 2, of Bexar County, Texas, at the time of the passage and taking effect of this Act, and in all civil cases that may hereafter be filed in said court in which an answer has been filed or may be filed, and also in all other cases, civil and criminal, where either party litigant, or the court, should require the official shorthand reporter to take down the testimony, a stenographer's fee of three ($3.00) dollars shall be taxed by the clerk of said court

as costs in this case, the same to be in addition to all other costs, and said fee, when so collected by said clerk, shall be by him paid into the treasury of Bexar County in the same manner as now required of district clerks under similar circumstances.

Sec. 20. The Act of the Legislature of the State of Texas, enacted by the Thirty-second Legislature, Regular Session, known as House Bill No. 111, Chapter 10, approved February 20, 1911, found on pages 15, 16 and 17, of the Session Laws of said Legislature, creating the county court of Bexar County for civil cases, and each provision of said Act, and the amendment to said Act passed by the Thirty-eighth Legislature of the State of Texas, known as House Bill No. 367, found on pages 73 and 74, of the Session Laws of the said Legislature, authorizing the appointment of an official shorthand reporter for said court, shall, except in so far as in conflict herewith, remain in full force and effect, and apply to the County Court at Law No. 1, of Bexar County, Texas.

Sec. 21. The Act of the Legislature of the State of Texas, enacted by the Thirty-fourth Legislature, Regular Session, known as Senate Bill No. 323, Chapter 39, approved March 5, 1915, as found on pages 78, 79, 80 and 81, of the Session Laws of said Legislature, creating the county court of Bexar County for criminal cases, and each provision of said Act, shall, except in so far as in conflict herewith, remain in full force and effect, and apply to the County Court at Law No. 2, of Bexar County, Texas. [Acts 1927, 40th Leg., p. 26, ch. 22.]

Sec. 21–A. The terms of office of the Judge of the County Court at Law No. 1, of Bexar County, Texas, and of the Judge of the County Court at Law No. 2, of Bexar County, Texas, shall be two years. The present Judge of each of said courts shall continue as such Judge thereof until the expiration of his present term of office, and until his successor shall have been duly elected or appointed and qualified, as hereinafter provided. At the next general election to be held within this state and in Bexar County, Texas, after the taking effect of this Act, to-wit, the first Tuesday in the month of November, A. D. 1938, and every two years thereafter, at each general election, there shall be elected by the qualified voters of said county a Judge of each of said courts, both of whom shall be well informed in the laws of this State, and who shall hold their respective offices for a term of two years and until their successors shall have been duly elected or appointed and qualified; provided, however, that no person shall be eligible for Judge of either the said County Court at Law No. 1, of Bexar County, Texas, or the said County Court at Law No. 2, of Bexar County, Texas, unless he shall be a citizen of the United States and of this state, and shall have been a practicing lawyer of Bexar County, Texas, for at least four years next preceding his election, or is or has been a Judge of a court in this State. Should there be a vacancy in the office of Judge of either of said courts such vacancy shall be filled by appointment by the Commissioners' Court of Bexar County, Texas, and the person or persons thus appointed shall hold such office until their successor, or successors, who shall be elected at the next general election to be held in Bexar County, Texas, after such appointment, shall have qualified according to law; and the person thus appointed shall have the qualifications hereinbefore specified for a Judge of said courts. [Acts 1927, 40th Leg., p. 26, ch. 22, § 21–A, added Acts 1937, 45th Leg., p. 45, ch. 33, § 6.]

Sec. 21–B. The practice in said County Courts at Law of Bexar County, Texas, shall be the same as prescribed by laws relating to County Courts. Appeals and writs of error may be taken from judgments and orders of said two County Courts at Law of Bexar County, Texas, and from judgments and orders of the Judges thereof, in civil and criminal cases, and in the same manner as now is, or may hereafter be, prescribed by laws relating to appeals and writs of error from judgments and orders of the County Courts throughout this state, and the respective Judges thereof, in similar cases. And appeals may be taken from interlocutory orders of the said two County Courts at Law appointing a receiver, and also from orders of the said two County Courts at Law overruling a motion to vacate or an order appointing a receiver; provided, however, that the procedure and manner in which such appeals from interlocutory orders are taken shall be governed by the laws relating to appeals from similar orders of the District Courts throughout this state. [Acts 1927, 40th Leg., p. 26, ch. 22, § 21–B, as added Acts 1937, 45th Leg., p. 45, ch. 33, § 7.]

Acts 1935, 44th Leg., p. 477, ch. 193, a special act related to court reporter for county court at law of Bexar County.

Section 22 of Acts 1927, repealed all conflicting laws and parts of laws and provided that if any part was held invalid, such holding should not affect the remainder.

Section 8 of Acts 1937, 45th Leg., p. 45, ch. 33, expresses in substance the legislative intent merely to amend sections 9, 11, 14, and 15 and add sections 15A, 21A, and 21B, to the above act and provides that if any section is held invalid, such invalidity shall not affect the remainder of the act. Section 9 repeals all conflicting laws and parts of laws.

Section 2 of the Act of 1939 amending section 11 of this article repeals all conflicting laws.

Court reporter

Acts 1935, 44th Leg., p. 477, ch. 193, authorizes the judge of each County Court at Law of Bexar County, Texas, Civil and Criminal, to appoint an official Court Reporter for the Court at a salary of not less than Two Thousand, Four Hundred Dollars ($2,400) per annum, nor more than Three Thousand Dollars ($3,000) per annum. It provides that such Court Reporters shall receive as fees for making transcripts of the evidence in Civil and Criminal cases the sum of fifteen (15) cents per one hundred (100) words when made in question and answer form, and twenty (20) cents per one hundred (100) words when made in narrative form, and no charge shall be made in any case for the first duplicate copy, and provides that all provisions relating to the duties of official Court Reporters in District Courts shall govern.

Menard County Court

Art. 1970–302. Jurisdiction and time for holding Menard County Court.—Sec. 1. Hereafter the County Court of Menard County, Texas, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by the General Laws for county courts.

Sec. 2. This Act shall not be construed to in anywise, or in any manner affect judgments heretofore rendered by the District Court pertaining to matters and causes which, by this Act are made returnable to the County Court, and the Clerk of the District Court of said county shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act.

Sec. 3. The jurisdiction of the District Court of Menard County shall be such as provided by the Constitution and General Laws of this State, consistent with the change in jurisdiction of the County Court herein made.

Sec. 4. The County Court of Menard County shall, in addition to the civil and criminal jurisdiction conferred upon County Courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the Justices Courts in all criminal and civil matters which, by the General Laws of this State, is conferred upon Justice Courts.

Sec. 5. No appeal or writ of error shall be taken to the Court of Civil Appeals from a final judgment of said Court in civil cases, of which Court has appellate, original or concurrent jurisdiction with the Justices Courts, where the amount in controversy does not exceed one hundred dollars, exclusive of interest and costs.

Sec. 6. This Act shall not be construed to deprive the Justices Courts of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said county court over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal from the Justice Court to said County Court in any case originally brought in the Justice Court, where the right of appeal exists under the Constitution and General Laws of the State.

Sec. 7. It shall be the duty of the District Clerk of Menard County, Texas, within thirty days after this Act shall take effect, to make full and complete transcripts of orders on the criminal and civil dockets then pending before the District Court of said County of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said County Court and to file said transcript, together with the original papers in each case in the County Court of said County and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 8. The terms of said Courts shall commence on the first Monday in January, and on the first Monday in May and on the first Monday in August and the first Monday in November of each year and each of said terms shall continue in session for six weeks, or until the business may be disposed of; provided, that the County Commissioners' Court of said County may hereafter change the terms of said Court whenever it may be deemed necessary by said Commissioners' Court. [Acts 1927, 40th Leg., 1st C. S., p. 112, ch. 38.]

Section 9 of Acts 1927, repealed all conflicting laws and parts of laws relating to Menard County.

Sterling County Court

Art. 1970—303. Jurisdiction and time for holding Sterling County Court.—Sec. 1. Hereafter the County Court of Sterling County, Texas, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by the General Laws for county courts.

Sec. 2. This Act shall not be construed to in anywise, or in any manner affect judgments heretofore rendered by the District Court pertaining to matters and causes which, by this Act are made returnable to the County Court, and the Clerk of the District Court of said county shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act.

Sec. 3. The jurisdiction of the District Court of Sterling County shall be such as provided by the Constitution and General Laws of this State, consistent with the change in jurisdiction of the County Court herein made.

Sec. 4. The County Court of Sterling County shall, in addition to the civil and criminal jurisdiction conferred upon County Courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the Justices Courts in all criminal and civil matters which, by the General Laws of this State, is conferred upon Justice Courts.

Sec. 5. No appeal or writ of error shall be taken to the Court of Civil Appeals from a final judgment of said Court in civil cases, of which Court has appellate, original or concurrent jurisdiction with the Justices Courts, where the amount in controversy does not exceed one hundred dollars, exclusive of interest and costs.

Sec. 6. This Act shall not be construed to deprive the Justices Courts of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said County Court over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal from the Justice Court to said County Court in any case originally brought in the Justice Court, where the right of appeal exists under the Constitution and General Laws of the State.

Sec. 7. It shall be the duty of the District Clerk of Sterling County, Texas, within thirty days after this Act shall take effect, to make full and complete transcripts of orders on the criminal and civil dockets then pending before the District Court of said County of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said County Court and to file said transcript, together with the original papers in each case in the County Court of said County and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 8. The terms of said Courts shall commence on the first Monday in January, and on the first Monday in May and on the first Monday in August and the first Monday in November of each year and each of said terms shall continue in session for six weeks, or until the business may be disposed of; provided, that the County Commissioners' Court of said County may hereafter change the terms of said Court whenever it may be deemed necessary by said Commissioners' Court. [Acts 1927, 40th Leg., 1st C. S., p. 25, ch. 14.]

Section 9 of Acts 1927, repealed all conflicting laws and parts of laws relating to Sterling County.

Art. 1970—303a. Jurisdiction of Sterling County Court diminished; civil and criminal causes transferred to District Court.—Sec. 1. The county court of Sterling County shall have and exercise the general jurisdiction of a probate court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle the accounts of executors, administrators and guardians, transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the partition, settlement and distribution of estates of deceased persons, and to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its own jurisdiction; to punish contempt under such provisions as are now or may be provided by general law governing county courts throughout the State, but the said county court of Sterling county shall have no other jurisdiction, civil or criminal, whatsoever.

Sec. 2. That the District Court of Sterling county shall have and exercise jurisdiction in all civil and criminal matters and causes over which, by the laws of this State, the county court of said Sterling County would have jurisdiction, except as provided in Section 1 of this Act; all causes, other than probate matters and such as are provided by Section 1 of this Act, be and the same are hereby transferred to the District Court of Sterling County, and all writs and process relating to any civil or criminal matters included in the subject matter of jurisdiction prescribed in Section 1 of this Act, issued by or out of said County Court of Sterling County, be and the same are hereby made returnable to the next term of the District Court of said county after this Act takes effect.

Sec. 3. That the county clerk of Sterling County be and he is hereby required, within thirty days after this Act takes effect, to make a full and complete transcript of all entries upon his civil and criminal docket heretofore made in cases which by Section 2 of this Act, are required to be transferred to the District Court of said County, together with all the papers pertaining to such case, a certified bill of costs in each case and all such cases shall be immediately docketed by the District Court as appearance cases for the next succeeding term, and all criminal cases shall be docketed and disposed of in

the same manner as if the same had been originally filed in and triable in said District Court, and all process now issued and returnable to said County Court shall be returnable to said District Court.

Sec. 4. That this Act shall not be construed to in anywise or manner affect judgments heretofore rendered by said County Court of Sterling County pertaining to matters and causes which by Section 2 of this Act are transferred to the District Court of said county, but the County Clerk of said county shall issue all executions, and orders of sale, and proceedings thereunder, and this Act in so doing shall be valid and binding to all intents and purposes, the same as if no change had been made as by Section 2 therein contemplated. [Acts 1933, 43rd Leg., Spec.L., p. 63, ch. 52.]

Section 5 of Acts 1933, 43rd Leg., Spec.L., p. 63, ch. 52, repealed all conflicting laws and parts of laws.

Irion County Court

Art. 1970–304. Jurisdiction and time for holding Irion County Court.—Sec. 1. Hereafter the County Court of Irion County, Texas, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by the General Laws for County Courts.

Sec. 2. This Act shall not be construed to in anywise, or in any manner affect judgments heretofore rendered by the District Court pertaining to matters and causes which by this Act are made returnable to the County Court, and the Clerk of the District Court of said county shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act.

Sec. 3. The jurisdiction of the District Court of Irion County shall be such as provided by the Constitution and General Laws of this State, consistent with the change in jurisdiction of the County Court herein made.

Sec. 4. The County Court of Irion County shall, in addition to the civil and criminal jurisdiction conferred upon County Courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the Justices Courts in all criminal and civil matters which, by the General Laws of this State, is conferred upon Justice Courts.

Sec. 5. No appeal or writ of error shall be taken to the Court of Civil Appeals from a final judgment of said Court in Civil cases, of which Court has appellate, original or concurrent jurisdiction with the Justices Courts, where the amount in controversy does not exceed one hundred dollars, exclusive of interest and costs.

Sec. 6. This Act shall not be construed to deprive the Justices Courts of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said County Court over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal from the Justice Court to said County Court in any case originally brought in the Justice Court, where the right of appeal exists under the Constitution and General Laws of the State.

Sec. 7. It shall be the duty of the District Clerk of Irion County, Texas, within thirty days after this Act shall take effect, to make full and complete transcripts of orders on the criminal and civil dockets then pending before the District Court of said County, of which cases by the provisions of this Act, original and appellate jurisdiction is given to said County Court and to file said transcript, together with the original papers in each case in the County Court of said County and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 8. The terms of said Courts shall commence on the first Monday in January, and on the first Monday in May, and on the first Monday in August and the first Monday in November of each year, and each of said terms shall continue in session for six weeks, or until the business may be disposed of; provided, that the County Commissioners' Court of said County may hereafter change the terms of said Court whenever it may be deemed necessary by said Commissioners' Court. [Acts 1927, 40th Leg., 1st C. S., p. 24, ch. 13.]

Section 9 of Acts 1927, repealed all conflicting laws and parts of laws relating to Irion County.

Cameron County at Law

Art. 1970–305. County court at law Cameron county created.—Sec. 1. There is hereby created a court to be held in Brownsville, Cameron County, Texas, which shall be known as the County Court of Cameron County at Law.

Sec. 2. The County Court of Cameron County at Law shall have and exercise the jurisdiction in all matters and cases, civil and criminal, original and appellate, over which by the general laws of the State, the County Court of said County would have jurisdiction except as herein provided in Section 3 of this Act, and all cases pending in the County Court of said County, other than probate matters such as are provided in Section 3 of this Act, at the time this Act shall become effective, shall be and the same are hereby transferred to the County Court of Cameron County at Law, and all writs and process, civil and criminal, heretofore issued by or out of the said County Court, other than those pertaining to matters which are hereby exempt from this bill that are to remain in the County Court of Cameron County at Law shall be and the same is hereby made returnable to the County Court of Cameron County at Law.

Sec. 3. The County Court of Cameron County at Law shall have and exercise original concurrent jurisdiction with the Justice Courts in all civil and criminal matters which by the general laws of this State is conferred upon Justice Courts.

Sec. 4. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said County Court of Cameron County at Law in Civil cases of which said court has appellate or original concurrent jurisdiction with the Justice Court, where the judgment or amount in controversy does not exceed One Hundred Dollars ($100.00) exclusive of interest and costs.

Sec. 5. This Act shall not be construed to deprive the Justice Courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said County Court of Cameron County at Law over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal to the County Court of Cameron County at Law from the Justice Court where the right of appeal to the County Court now exists by law. The jurisdiction of the County Court of Cameron County at Law, and the Judge thereof, shall extend to all matters of eminent domain of which jurisdiction has heretofore vested in the County Court of Cameron County or in the County Judge; but this provision shall not affect the jurisdiction of the Commissioners' Court nor of the County Judge of Cameron County as the presiding officer of said Commissioners' Court as to roads, bridges, and public highways, or matters of eminent domain which are now in the jurisdiction of the Commissioners' Court or the Judge of the County Court of Cameron County.

Sec. 6. The County Court of Cameron County shall retain as heretofore, the general jurisdiction of the Probate Court and all jurisdiction now conferred by law over probate matters; and the court herein created shall have no other jurisdiction than that named in this bill, and the County Court of Cameron County

as now and heretofore existing shall have all jurisdiction which it now has, save and except that which is given the County Court of Cameron County at Law in this bill, but the County Court as now existing shall have no other jurisdiction, civil or criminal. The County Judge of Cameron County shall be the Judge of the County Court of said County, and all ex-officio duties of the County Judge shall be exercised by said Judge of the County Court of Cameron County, except in so far as the same shall by this bill be committed to the County Court of Cameron County at Law.

Sec. 7. The terms of the County Court of Cameron County at Law, and the practice therein, and the appeals and writs of error therefrom shall be as prescribed by the laws relating to County Courts. The terms of the County Court of Cameron County at Law shall be held in the court house of Cameron County, and begin on the first Monday in February, April, June, August, October and December of each year, and shall continue in session for eight weeks each term.

Sec. 8. There shall be elected in Cameron County by the qualified voters thereof at each general election a Judge of the County Court of Cameron County at Law who shall be well informed in the laws of the State, and who shall hold his office for two years, and until his successor shall have been duly elected and qualified. No person shall be elected Judge of said court who has not been a resident citizen and practicing attorney of Cameron County, Texas, for at least one year prior to his election, and shall possess all of the qualifications for the office that are now required by the general laws of the State for County Judge, before entering upon the duties.

Sec. 9. The County Attorney of Cameron County shall represent the State in all prosecutions pending in said County Court of Cameron County at Law, and shall be entitled to the same fee as now prescribed by law for such prosecutions in the County Courts.

Sec. 10. As soon as this bill becomes effective the Governor shall appoint a Judge of the County Court of Cameron County at Law, who shall hold his office until the next general election.

Sec. 11. In the case of the disqualification of the Judge of the County Court at Law of any case pending in his court, the County Judge shall sit in such case and the parties or their attorneys may agree on the selection of a special Judge to try such case or cases; and in default of such agreement a majority of the practicing lawyers of Cameron County shall elect a Judge to try such cases where the County Judge at Law is disqualified.

Sec. 12. The County Court of Cameron County at Law, or the Judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas and all writs necessary to the enforcement of jurisdiction of said court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said court, or of any other court in said county of inferior jurisdiction to said County Court at Law.

Sec. 13. The County Clerk of Cameron County, Texas, shall be the clerk of the County Court of Cameron County at Law, and the seal of said court shall be the same as that provided by law for County Courts, except the seal shall contain the words "County Court of Cameron County at Law," and the Sheriff of Cameron County shall in person or by deputy attend said court when required by the judge thereof, and the County Clerk of Cameron County, Texas, is hereby authorized, if it becomes necessary, in his judgment, to appoint a deputy to specially attend to the matters pertaining to the County Court of Cameron County at Law, and said deputy shall be allowed a salary of one hundred dollars per month.

Sec. 14. The jurisdiction or authority now vested by law in the County Court for the appointment of jury commission and selection and service of jurors shall be exercised by the County Court of Cameron County at Law and all petit jurors for criminal [1] under existing laws at the time this act takes effect, shall be as valid as if no change had been made, and the persons constituting such juries shall be required to appear and serve at the next ensuing terms of said courts as fixed by this act, and their acts as jurors shall be as valid and legal as if they had served as jurors in the court for which they were originally drawn.

[1] So in enrolled bill. The word "cases" should probably be inserted.

Sec. 15. Any vacancy in the office of the Judge of the County Court of Cameron County at Law may be filled by the Commissioners' Court, and when so filled the Judge shall hold office until the next general election and until his successor is elected and qualified.

Sec. 16. The judge of the County Court of Cameron County at Law shall receive a salary of not less than Twenty-five hundred dollars ($2,500.00) per annum, nor more than Thirty hundred ($3,000.00) dollars per annum at the discretion of the Commissioners' Court, to be paid out of the County Treasury of Cameron County, Texas, on the order of the Commissioners' Court of said County, and said salary shall be paid monthly in equal installments. The Judge of the County Court of Cameron County at Law shall assess the same fees as are now prescribed by law relating to the County Judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, no part of which shall be paid to the said Judge, but he shall draw the salary as above specified in this section.

Sec. 17. All cases appealed from the Justice Court and other inferior courts in Cameron County, Texas, shall be made direct to the County Court of Cameron County at Law, under the provisions heretofore governing such appeals.

Sec. 18. The judge of the County Court of Cameron County at Law may be removed from office in the same manner and for the same causes as any County Judge may be removed under the laws of this State. [Acts 1927, 40th Leg., 1st C. S., p. 167, ch. 59.]

Bowie County Court

Art. 1970–306. Jurisdiction of Bowie County Court diminished.—Sec. 1. That the County Court of Bowie County shall have and exercise the general jurisdiction of probate courts, shall probate wills, appoint guardians of minors, idiots, lunatics, persons [1] non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the partition, settlement and distribution of estates of deceased persons, and to apprentice minors as prescribed by law, and to issue all writs necessary to the enforcement of its jurisdiction, and to punish contempts under such provisions as are or may be provided by general law governing County Courts throughout the State; but said County Court shall have no other jurisdiction, civil or criminal.

Sec. 2. That the District Courts of said County shall have and exercise jurisdiction in all matters and causes, civil and criminal, over which, by General Laws of the State of Texas, the County Court of said County would have jurisdiction, except as provided in Section 1 of this Act, and that all cases other than probate matters and such as are provided in Section 1 of this Act be and the same are hereby transferred to the District Courts of said County, and all writs and process, civil and criminal, heretofore issued by or out of said County Court, other than those appertaining to matters over which by Section 1 of this Act jurisdiction is given to the County Court of said

County, be and the same are hereby made returnable to the next term of the District Courts in and for said County.

Sec. 3. That the Clerk of the County Court of said Bowie County be and he is hereby required, within twenty days after this Act takes effect, to file with the Clerk of the District Court of said County all original papers in all of said causes, both civil and criminal, and all dockets and orders and proceedings had in all such causes, and said District Clerk shall immediately docket all of such causes on the docket or dockets of the District Courts of said County, and all of such causes, both civil and criminal shall stand on the dockets of said District Courts in the same manner and place as each individual case stood on the docket of the County Court of said County. [Acts 1927, 40th Leg., 1st C. S., p. 19, ch. 9.]

[1] So in enrolled bill. Session Laws omit word "persons".

Section 4 of Acts 1927, repealed all conflicting laws and parts of laws.

Kerr County Court

Art. 1970—307. Jurisdiction and time for holding county court of Kerr County.—Sec. 1. That the County Court of Kerr County shall hereafter have exclusive original jurisdiction in civil cases where the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars exclusive of interest, and that it shall have concurrent jurisdiction with the District Court of said County when the matter in controversy shall exceed five hundred dollars and not exceed one thousand dollars.

Sec. 2. Said County Court shall have appellate jurisdiction in civil cases over which Justice's Courts of said County have original jurisdiction when the judgment of the Court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest, and said County Court shall have the power to hear and determine cases brought up from the Justice's Courts by certiorari under the provisions of law relating thereto.

Sec. 3. The County Judge of said County shall have authority either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, garnishment, attachment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said Court, and shall also have power to issue writs of habeas corpus in all cases in which the Constitution and laws have not exclusively conferred the power on the District Judge or District Court thereof.

Sec. 4. Said Court shall have, as now, the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, and common drunkards, grant letters testamentary and of administration; settle accounts of executors, administrators, and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons; apprentice minors as provided by law; and to issue all writs necessary to the enforcement of its jurisdiction, orders, and decrees; and generally to exercise all the powers in probate matters conferred upon such courts by the Constitution and laws of the State.

Sec. 5. Such Court shall have jurisdiction in the forfeiture of all bonds and recognizances taken in criminal cases of which said Court has original or appellate jurisdiction.

Sec. 6. Said Court shall have and exercise exclusive jurisdiction of all misdemeanors, except misdemeanors involving official misconduct, and except misdemeanors in which the highest penalty that may be imposed by law is a fine, without imprisonment, that does not exceed two hundred dollars; and said Court shall have appellate jurisdiction of criminal cases in which Justice Courts and other inferior tribunals of said County have original jurisdiction.

Sec. 7. The District Court of said County shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct, and shall no longer have jurisdiction of civil cases of which the County Court of said County, by the provisions of this Act, has original or appellate jurisdiction.

Sec. 8. It shall be the duty of the District Clerk of said County, within thirty days after this Act shall take effect, to make full and complete transcript of orders on the criminal and civil dockets then pending before the District Court of said County, of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said County Court, and to file said transcript together with the original papers in each case, in the County Court of said County, and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 9. The said Court shall also have the power to hear and determine all motions against sheriffs and other officers of the Court for failure to pay over moneys collected under the process of said Court, or other defalcations of official duty in connection with said process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the County jail not exceeding three days, any person guilty of contempt of said Court, and all other powers, and jurisdictions conferred on County Courts by the Constitution and General Laws of the State of Texas.

Sec. 10. The terms of said Court shall commence on the first Monday in February, and on the first Monday in May, and on the first Monday in August, and on the first Monday in November, in each year, and shall continue in session for three weeks at each term, or until the business may be disposed of; provided, that the County Commissioners' Court of said County may hereafter change the terms of said Court whenever it may be deemed necessary. [Acts 1927, 40th Leg., 1st C. S., p. 254, ch. 96.]

Section 11 of Acts 1927, repealed all conflicting laws and parts of laws relating to Kerr County.

Washington County Court

Art. 1970—308. Jurisdiction of Washington County Court.—Sec. 1. The county court of Washington County shall have and exercise original concurrent jurisdiction with the justices' courts in all civil matters which by the general laws of this State is conferred upon said justice of the peace courts.

Sec. 2. Said county court shall also have and exercise such jurisdiction over and pertaining to all matters, things and proceedings as is by the General Laws of this State conferred upon county courts.

Sec. 3. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said county court in civil cases of which said court has appellate jurisdiction or original concurrent jurisdiction with the justices' court where the judgment or amount in controversy does not exceed one hundred dollars exclusive of interest and costs.

Sec. 4. Nothing in this Act shall be construed to deprive the justices' courts of the jurisdiction now conferred upon them by law or in any manner to impair or alter their jurisdiction, but only to give original concurrent jurisdiction to said county court over such matters as are specified in Section 1 of this Act; nor shall this Act be construed to deny the right of appeal from the Justices' court to said county court in any case originally brought in any justice court where the right of appeal now exists by General law. [Acts 1929, 41st Leg., p. 542, ch. 265.]

Section 5 of this Act repeals all conflicting laws and parts of laws.

Official Shorthand Reporters

Art. 1970—309. Reporters and compensation.—That the Official Shorthand Reporters of the County Courts at Law of each county having a population of not less than 202,000 and not more than 203,000,

according to the 14th Census of the United States of the year 1920, shall, from and after the passage and taking effect of this Act, be entitled to receive the same fee allowed the Official Shorthand Reporters of the District Courts, and, in addition thereto, shall be entitled to receive a salary of Two Thousand Five Hundred ($2,500.00) Dollars, annually, to be paid in equal monthly installments by said county by warrants drawn from the general funds thereof, out of the County Treasury by the orders of the Commissioners' Court. [Acts 1929, 41st Leg., 2nd C.S., p. 19, ch. 14, § 1.]

Particular County Courts

Art. 1970—310. Other acts creating or affecting jurisdiction of particular county courts.—

Angelina—Jurisdiction restored: Acts 1893, March 21, ch. 34, p. 31
Atascosa—Jurisdiction increased: Acts 1915, March 22, ch. 88, p. 141.
Bailey—Jurisdiction increased: Acts 1911, March 20, ch. 93, p. 171.
Bandera—Jurisdiction diminished: Acts 1881, Feb. 25, ch. 19, p. 13.
Bee—Jurisdiction increased: Acts 1903, March 26, ch. 62, p. 88.
Blanco—Jurisdiction diminished: Acts 1881, Feb. 9, ch. 6, p. 3.
Bosque—Jurisdiction diminished: Acts 1881, March 26, ch. 60, p. 64.
Brazoria—Jurisdiction restored: Acts 1881, March 30, ch. 71, p. 74.
Brazos—Jurisdiction diminished: Acts 1887, March 26, c. 74, p. 55 and restored as to civil jurisdiction Acts 1889, April 3, ch. 73, p. 82.
Brewster—Jurisdiction restored: Acts 1889, Feb. 21, ch. 9, p. 6.
Brown—Jurisdiction restored: Acts 1881, March 30, ch. 71, p. 74.
Burnet—Jurisdiction restored: Acts 1885, March 24, ch. 49, p. 47.
Callahan—Jurisdiction restored: Acts 1881, March 30, ch. 71, p. 74.
Camp—Jurisdiction restored: Acts 1895, April 26, ch. 65, p. 91.
Cameron—Jurisdiction diminished: Acts 1931, April 9, ch. 307, p. 769.
Carson—Jurisdiction restored: Acts 1919, July 15, 2d C. S., ch. 17, p. 37.
Cass—Jurisdiction diminished: Acts 1879, July 8, C. S., ch. 25, p. 21.
Chambers—Jurisdiction restored: Acts 1905, April 12, ch. 79, p. 111.
Coke—Jurisdiction restored: Acts 1901, March 29, ch. 37, p. 47.
Coleman—Jurisdiction restored: Acts 1881, March 30, ch. 71, p. 74.
Comal—Jurisdiction diminished: Acts 1883, March 16, ch. 35, p. 24.
Comanche—Jurisdiction restored: Acts 1883, April 9, ch. 66, p. 55.
Concho—Jurisdiction restored: Acts 1909, April 7, 1st C. S., ch. 5, p. 268.
Coryell—Jurisdiction restored: Acts 1887, March 25, ch. 68, p. 47.
Crockett—Jurisdiction diminished: Acts 1909, 90 days after March 13, date of adjournment, 1st C. S., ch. 31, p. 351.
Dawson—Jurisdiction increased: Acts 1915, March 22, ch. 88, p. 141.
Delta—Jurisdiction restored: Acts 1895, March 12, ch. 27, p. 32.
Dickens—Jurisdiction increased: Acts 1915, March 15, ch. 59, p. 108.
Dimmitt—Jurisdiction restored: Acts 1905, 90 days after April 15, date of adjournment, ch. 92, p. 136.
Donley—Jurisdiction restored: Acts 1889, March 21, ch. 53, p. 48.
Duval—Jurisdiction diminished: Acts 1899, Jan. 31, ch. 3, p. 2.
Erath—Jurisdiction restored: Acts 1885, March 31, ch. 109, p. 103.
Falls—Jurisdiction diminished: Acts 1917, March 20, ch. 89, p. 243.
Franklin—Jurisdiction restored: Acts 1905, Feb. 9, ch. 10, p. 12.
Frio—Jurisdiction restored: Acts 1907, March 18, ch. 25, p. 40.
Gaines—Jurisdiction increased: Acts 1915, March 22, ch. 88, p. 141.
Garza—Jurisdiction increased: Acts 1915, March 22, ch. 88, p. 141.
Gillespie—Jurisdiction diminished: Acts 1881, Feb. 25, ch. 19, p. 13.
Goliad—Civil jurisdiction increased: Acts 1895, April 15, ch. 45, p. 57.
Gray—Jurisdiction diminished: Acts 1905, Jan. 25, ch. 5, p. 3.
Greer—Jurisdiction restored: Acts 1889, March 21, ch. 53, p. 48.
Gregg—Jurisdiction restored: Acts 1895, Feb. 15, ch. 8, p. 6.
Grimes—Jurisdiction restored: Acts 1885, Feb. 10, ch. 10, p. 11.
Hamilton—Jurisdiction restored: Acts 1893, March 13, ch. 24, p. 22.
Hansford—Jurisdiction restored: Acts 1917, Feb. 13, ch. 19, p. 31.
Hardin—Jurisdiction restored: Acts 1897, March 20, ch. 31, p. 28.
Hartley—Jurisdiction restored: Acts 1903, 90 days after April 1, date of adjournment, ch. 46, p. 64.
Haskell—Jurisdiction increased: Acts 1919, 90 days after March 19, date of adjournment, ch. 33, p. 55.
Hemphill—Jurisdiction increased: Acts 1915, March 22, ch. 125, p. 192.
Henderson—Jurisdiction restored: Acts 1883, Feb. 3, ch. 26, p. 14, and Acts 1909, 90 days after March 13, date of adjournment, ch. 37, p. 80.
Hidalgo—Jurisdiction restored: Acts 1903, March 26, ch. 62, p. 88.
Houston—Jurisdiction restored: Acts 1883, April 13, ch. 87, p. 84.
Hutchinson—Jurisdiction diminished: Acts 1905, Jan. 31, ch. 8, p. 8.
Karnes—Jurisdiction restored: Acts 1903, 90 days after April 1, date of adjournment, ch. 14, p. 20.
Kimble—Jurisdiction increased: Acts 1931, April 16, ch. 320, p. 793.
King—Jurisdiction restored: Acts 1903, 90 days after April 1, date of adjournment, ch. 46, p. 64.
Lamb—Jurisdiction increased: Acts 1911, 90 days after March 11, date of adjournment, ch. 93, p. 171.
Lampasas—Jurisdiction restored: Acts 1897, May 7, ch. 127, p. 181.
La Salle—Jurisdiction diminished: Acts 1889, March 27, ch. 97, p. 109.
Leon—Jurisdiction restored: Acts 1897, April 3, ch. 80, p. 103.
Liberty—Jurisdiction restored: Acts 1895, April 15, ch. 44, p. 55.
Lipscomb—Jurisdiction restored: Acts 1907, March 13, ch. 17, p. 28.
Live Oak—Jurisdiction restored: Acts 1887, March 25, ch. 68, p. 47.
Llano—Jurisdiction restored: Acts 1885, March 24, ch. 49, p. 47.
Lynn—Jurisdiction increased: Acts 1915, March 22, ch. 88, p. 141.
McCulloch—Jurisdiction restored: Acts 1901, 90 days after April 9, date of adjournment, ch. 82, p. 216.
McMullen—Jurisdiction increased: Acts 1915, March 22, ch. 88, p. 141.
Marion—Jurisdiction diminished: Acts 1897, March 11, ch. 36, p. 38.
Mason—Jurisdiction diminished: Acts 1887, March 26, ch. 73, p. 54.
Matagorda—Jurisdiction restored: Acts 1903, Jan. 30, ch. 5, p. 5.
Medina—Jurisdiction restored: Acts 1895, April 15, ch. 44, p. 55.
Mills—Jurisdiction restored: Acts 1907, April 15, ch. 101, p. 199.
Mitchell—Jurisdiction increased: Acts 1919, 90 days after March 19, date of adjournment, ch. 11, p. 15.
Montgomery—Jurisdiction restored: , Acts 1885, March 24, ch. 49, p. 47.
Morris—Jurisdiction diminished: Acts 1883, Feb. 9, ch. 11, p. 6.
Nacogdoches—Jurisdiction restored: Acts 1891, March 10, ch. 23, p. 24.
Navarro—Jurisdiction restored: Acts 1881, March 12, ch. 37, p. 28.
Newton—Jurisdiction restored: Acts 1905, May 9, ch. 126, p. 312.
Nueces—Jurisdiction diminished: Acts 1930, 90 days after March 20, date of adjournment, 5th C. S., ch. 69, p. 224.
Ochiltree—Jurisdiction restored: Acts 1909, 90 days after March 13, date of adjournment, ch. 63, p. 115.
Orange—Jurisdiction restored: Acts 1897, March 31, ch. 74, p. 92, and Acts 1903, March 6, ch. 29, p. 41.
Palo Pinto—Jurisdiction restored: Acts 1881, March 30, ch. 71, p. 74.
Panola—Jurisdiction restored: Acts 1887, March 25, ch. 68, p. 47.
Parker—Jurisdiction restored: Acts 1883, Feb. 3, ch. 26, p. 14.
Pecos—Jurisdiction restored: Acts 1883, April 9, ch. 66, p. 55.
Polk—Jurisdiction restored: Acts 1903, March 7, ch. 33, p. 46.
Potter—Creating County Court at law: Acts 1931, March 17, ch. 303, p. 760.
Presidio—Jurisdiction restored: Acts 1883, April 9, ch. 66, p. 55.
Real—Jurisdiction diminished: Acts 1917, March 1, ch. 53, p. 92.
Red River—Jurisdiction restored: Acts 1883, Feb. 3, ch. 26, p. 14.

Roberts—Jurisdiction restored: Acts 1905, 90 days after April 15, date of adjournment, ch. 79, p. 111.
Robertson—Jurisdiction diminished: Acts 1917, March 26, ch. 96, p. 256.
Sabine—Jurisdiction restored: Acts 1905, 90 days after April 15, date of adjournment, ch. 98, p. 146.
San Augustine—Jurisdiction restored: Acts 1909, March 5, ch. 32, p. 71.
San Jacinto—Jurisdiction restored: Acts 1907, March 21, ch. 34, p. 55.
San Patricio—Jurisdiction restored: Acts 1893, April 28, ch. 65, p. 85.
San Saba—Jurisdiction restored: Acts 1903, March 10, ch. 35, p. 51.
Schleicher—Jurisdiction increased: Acts 1931, March 6, ch. 298, p. 754.
Scurry—Jurisdiction increased: Acts 1919, July 15, 2d C. S., ch. 13, p. 39.
Starr—Jurisdiction restored: Acts 1903, March 26, ch. 62, p. 88.
Stephens—Jurisdiction restored: Acts 1881, March 30, ch. 71, p. 74.
Taylor—Jurisdiction restored: Acts 1881, March 30, ch. 71, p. 74.
Terry—Jurisdiction increased: Acts 1915, March 22, ch. 88, p. 141.
Throckmorton—Jurisdiction restored: Acts 1887, March 25, ch. 68, p. 47.
Titus—Jurisdiction restored: Acts 1901, 90 days after April 9, date of adjournment, ch. 78, p. 201, and Acts 1905, 90 days after April 15, date of adjournment, ch. 45, p. 56.
Tom Green—Jurisdiction restored: Acts 1883, April 9, ch. 66, p. 55.
Travis—Jurisdiction restored: Acts 1891, March 25, ch. 56, p. 75.
Trinity—Jurisdiction restored: Acts 1905, Jan. 25, ch. 6, p. 5.
Tyler—Jurisdiction restored: Acts 1893, March 8, ch. 16, p. 12.
Uvalde—Jurisdiction restored: Acts 1883, Feb. 8, ch. 26, p. 14.
Webb—Jurisdiction diminished: Acts 1893, Feb. 11, ch. 9, p. 5.
Wharton—Jurisdiction restored: Acts 1893, March 13, ch. 24, p. 22.
Wilson—Jurisdiction restored: Acts 1889, March 16, ch. 46, p. 41.
Yoakum—Jurisdiction increased: Acts 1915, March 22, ch. 88, p. 141.
Young—Jurisdiction restored: Acts 1885, March 24, ch. 49, p. 47.

Potter County at Law

Art. 1970—311. Jurisdiction of Potter County Court at Law diminished; transfer of causes to County Court and Justice Court.—Sec. 2. All causes of action pending in the County Court of Potter County at Law on the effective date of this Act over which the County Court of Potter County would have had jurisdiction under general law had it not been for the creation of said County Court of Potter County at Law, are hereby transferred to the County Court of Potter County, and all process, writs, and bonds, civil and criminal, issued in said causes prior to and executed subsequent to the taking effect of this Act, shall be returnable to the County Court of Potter County. And all bonds executed and recognizances entered into in the County Court of Potter County at Law shall bind the parties for their appearance and to fulfill the obligations of such bonds and recognizances at the terms of the County Court of Potter County; and all process of every nature heretofore issued and returned or executed prior to the taking effect of this Act and returned before or after the taking effect of this Act, as well as all bonds and recognizances heretofore or hereafter taken or entered into in the County Court of Potter County at Law, shall all likewise be as valid and binding in the County Court of Potter County as they would have been in the County Court of Potter County at Law had this Act not been passed.

Sec. 3. All causes of action pending in the County Court of Potter County at Law over which any Justice Court of Potter County would have had jurisdiction under general law had it not been for the creation of said County Court of Potter County at Law, shall be and the same are hereby transferred to the proper Justice Court, and all process, writs, and bonds, civil and criminal, issued prior to and/or executed subsequent to the taking effect of this Act out of such causes, shall be and the same are hereby made returnable to the proper Justice Court. And all bonds executed and recognizances entered into in the County Court of Potter County at Law in such cases shall bind the parties for their appearance and to fulfill the obligations of such bonds and recognizances at the terms of the proper Justice Court to which said causes are hereby transferred, and all process of every nature whatsoever issued in said causes as well as all bonds and recognizances, shall all likewise be valid and binding in such Justice Court as they would have been in the County Court of Potter County At Law had this Act not been passed. [Acts 1933, 43rd Leg., Spec.L., p. 65, ch. 54.]

Section 1 of Acts 1933, 43rd Leg., Spec.L., p. 65, ch. 54, repealed Acts 1931, 42nd Leg., Spec.L., p. 137, ch. 56, creating the County Court of Potter County at Law.

Gillespie County Court

Art. 1970—312. Jurisdiction of County Court of Gillespie County increased.—Sec. 1. Hereafter the County Court of Gillespie County, Texas, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by the General Laws for county courts.

Sec. 2. This act shall not be construed to in anywise or in any manner affect judgments heretofore rendered by the District Court pertaining to matters and causes which by this Act are made returnable to the County Court, and the Clerk of the District Court of said county shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act.

Sec. 3. The jurisdiction of the District Court of Gillespie County shall be such as provided by the Constitution and General Laws of this State, consistent with the change in jurisdiction of the County Court herein made.

Sec. 4. The County Court of Gillespie County shall, in addition to the civil and criminal jurisdiction conferred upon County Courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the Justices Courts in all criminal and civil matters which, by the General Laws of this State, is conferred upon Justice Courts.

Sec. 5. No appeal or writ of error shall be taken to the Court of Civil Appeals from a final judgment of said County Court in civil cases, of which said Court has appellate, original or concurrent jurisdiction with Justices Courts, where the amount in controversy does not exceed One Hundred Dollars ($100.00) exclusive of interest and costs.

Sec. 6. This Act shall not be construed to deprive the Justices Court of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said County Court over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal from the Justice Court to said County Court in any case originally brought in the Justice Court where the right of appeal exists under the Constitution and General Laws of the State.

Sec. 7. It shall be the duty of the District Clerk of Gillespie County, Texas, within thirty (30) days after this Act shall take effect, to make full and complete transcripts of orders on the criminal and civil docket then pending in the District Court of said County of which cases, by the provisions of this Act, original or appellate jurisdiction is given to said County Court and to file said transcript, together with the original papers in each case in the County Court of said County and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 8. The terms of said County Court of Gillespie County shall commence on the first Monday in January, first Monday in April, first Monday in July

and first Monday in October each year and each of said terms shall continue in session for three weeks, or until the business may be disposed of; providing that the Commissioners Court of said County may hereafter change the terms of said Court and the length of the terms whenever it may be deemed necessary by said Commissioners Court. [Acts 1933, 43rd Leg., Spec.L., p. 84, ch. 64.]

Section 9 of Acts 1933, 43rd Leg., Spec.L., p. 84, ch. 64, repealed all conflicting laws and parts of laws in so far as they related to Gillespie County.

Duval County Court

Art. 1970—313. Jurisdiction of County Court of Duval County increased.—Sec. 1. The county court of Duval County shall, from and after the passage of this Act have, as now, general jurisdiction of the probate court and generally exercise all powers in probate matters conferred upon such courts by the Constitution and laws of the State, and keep and maintain all jurisdiction which it now has and exercises in all civil matters.

Sec. 2. Said court shall also have and exercise exclusive jurisdiction of all misdemeanors, except misdemeanors involving official misconduct, and except misdemeanors in which the highest penalty which may be imposed by law is a fine without imprisonment and does not exceed Two Hundred ($200) Dollars, and shall have appellate jurisdiction of all criminal cases in which justice courts and other inferior tribunals of said county have original jurisdiction, and the district court of said county shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct.

Sec. 3. That Chapter 3, of the General Laws of the Regular Session of the Twenty-sixth Legislature be, and the same is hereby repealed.

Sec. 4. The district clerk of Duval County is hereby required within thirty days after this Act takes effect, to make a full and complete transcript of all entries upon the criminal docket of said court in cases now pending therein, which, under this Act, are now within the jurisdiction of the county court, and shall transfer all such cases, together with the papers pertaining thereto, and a certified bill of the costs in each case, to the county clerk of Duval County, and all such cases shall be immediately docketed by the county clerk; all such cases so transferred from the district court to the county court shall stand on the docket of said court as appearance cases for the next succeeding term and shall be docketed and disposed of in the same manner as if same had been originally filed in the county court and all processes now issued and returnable to said district court shall be returnable to said county court; all processes heretofore issued by the district court in said cases as well as all bonds and recognizances heretofore taken in the district court shall be as valid as though no change had been made as to the jurisdiction of said respective courts, and all bonds executed and recognizances entered in said district court shall bind the parties for their appearance to the next term of the county court after this law becomes effective.

Sec. 5. This Act shall not be construed to in any manner affect judgments heretofore rendered by the district court of Duval County in causes, which by this Act, are transferred to the county court of said county, and the district clerk of said county shall issue all executions and orders of sale and the proceedings thereunder shall be as valid and binding to all intents and purposes as though this Act had not been passed. [Acts 1933, 43rd Leg., 1st C.S., p. 163, ch. 60.]

Section 6 of Acts 1933, 43rd Leg., 1st C.S., p. 163, ch. 60, repealed "all laws and parts of laws" apparently intending to repeal all conflicting laws and parts of laws.

Red River County Court

Art. 1970—314. Red River County Court; jurisdiction—District Court of Red River County; jurisdiction.—Section 1. That the County Court of Red River County, Texas, shall have and exercise the general jurisdiction of Probate Courts, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons, and to apprentice minors as prescribed by law, and to exercise jurisdiction over all matters of eminent domain over which the County Courts have jurisdiction under the General Laws of this State; and to issue all writs necessary to the enforcement of its jurisdiction, and to punish contempts under such provisions as are, or may be, provided by General Law governing County Courts throughout the State; and said County Court shall also have original concurrent jurisdiction with the District Court of said County in all criminal cases of which County Courts throughout the State, under the General Laws of the State, have original jurisdiction; but said County Court shall have no other jurisdiction, civil or criminal.

Section 2. That the District Court of said County shall have and exercise jurisdiction in all matters and causes, civil or criminal, over which by General Laws of the State of Texas, the County Court of said County shall have jurisdiction; and that said District Court shall have exclusive appellate jurisdiction over all criminal cases appealed from the Justice Courts of said County; and that all criminal cases, now on the docket of the County Court of Red River County, Texas, which have been appealed from the Justice Courts of said County be, and the same are, hereby transferred to the District Court of said County; and writs and processes heretofore issued out of or by said County Court in such cases be, and the same are, hereby made returnable to the next term of the District Court of said County.

Section 3. That the Clerk of the County Court of Red River County, Texas, be, and he is hereby, required, within ten (10) days after this Act becomes effective, to make full and complete transcripts of all of the entries on his criminal docket heretofore made in those criminal cases which have been appealed from Justice Courts of said County, which by Section 2 hereof are transferred to the District Court of said County, and file the same, together with all original papers of all of said causes and proceedings, with the Clerk of the District Court of said County; and all of such causes under this Act transferred to the District Court shall be immediately docketed by the Clerk of said Court and shall stand on the docket of said Court as other cases which have been originally filed in the District Court of said County. [Acts 1936, 44th Leg., 3rd C.S., p. 2087, ch. 498; Acts 1937, 45th Leg., p. 1135, ch. 457, § 1; Acts 1939, 46th Leg., p. 196, § 1.]

Section 2 of the amendatory act of 1939 repealed all conflicting laws.

Collingsworth County Court

Art. 1970—315. Jurisdiction of County Court of Collingsworth increased.—Section 1. The County Court of Collingsworth County shall have and exercise original concurrent jurisdiction with the justice courts in all civil matters which by the General Laws of this State is conferred upon said justice of the peace courts.

Sec. 2. Said County Court of Collingsworth County shall also have and exercise such jurisdiction over and pertaining to all matters, things and proceedings as is by the General Laws of this State conferred upon county courts.

Sec. 3. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment in said County Court in civil cases of which said court has appellate jurisdiction, or original concurrent jurisdiction with the justice's court where the judgment or amount in controversy does not exceed One Hundred ($100.00) Dollars, exclusive of interest and costs.

Sec. 4. Nothing in this Act shall be construed to deprive the justice courts of the jurisdiction now conferred upon them by law, or in any manner to impair or alter their jurisdiction, but only to give original concurrent jurisdiction to said county court over such matters as are specified in Section 1 of this Act; nor shall this Act be construed to deny the right of appeal from the justice's court to said county court in any case originally brought in a justice court where the right of appeal now exists by general law. [Acts 1937, 45th Leg., p. 375, ch. 184.]

Section 5 of the Act of 1937 repealed conflicting laws.

Sterling County Court

Art. 1970—316. Jurisdiction of Sterling County increased.—Section 1. Hereafter the County Court of Sterling County, Texas, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by the General Laws for county records.

Sec. 2. This Act shall not be construed to in anywise, or in any manner affect judgments heretofore rendered by the District Court pertaining to matters and causes which by this Act are made returnable to the County Court, and the Clerk of the District Court of said County shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act.

Sec. 3. The jurisdiction of the District Court of Sterling County shall be such as provided by the Constitution and General Laws of the State, consistent with the change in jurisdiction of the County Court herein made.

Sec. 4. The County Court of Sterling County shall, in addition to the civil and criminal jurisdiction conferred upon County Courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the Justices Courts in all criminal and civil matters which, by the General Laws of this State, is conferred upon Justices Courts.

Sec. 5. No appeal or writ of error shall be taken to the Court of Civil Appeals from a final judgment of said Court in civil cases, of which Court has appellate, original, or concurrent jurisdiction with the Justices Courts where the amount in controversy does not exceed One Hundred Dollars ($100), exclusive of interest and costs.

Sec. 6. This Act shall not be construed to deprive the Justices Courts of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said County Court over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal from the Justice Court to said County Court in any case originally brought in the Justice Court, where the right of appeal exists under the Constitution and General Laws of this State.

Sec. 7. It shall be the duty of the District Clerk of Sterling County, Texas, within thirty (30) days after this Act shall take effect to make full and complete transcripts of orders on the criminal and civil dockets then pending before the District Court of said County of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said County Court and to file said transcript, together with the original papers in each case, in the County Court of said County and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 8. The terms of said Courts shall commence on the first Monday in January, and on the first Monday in May, and on the first Monday in August, and the first Monday in November of each year, and each of said terms shall continue in session for six weeks, or until the business may be disposed of; provided that the County Commissioners Court of said County may hereafter change the terms of said Court whenever it may be deemed necessary by said Commissioners Court.

Sec. 9. All laws and parts of laws in conflict with this Act are hereby expressly repealed in so far as they relate to Sterling County, Texas. [Acts 1937, 45th Leg., p. 266, ch. 140; Acts 1937, 45th Leg., p. 362, ch. 176.]

The 45th Legislature, at its regular session in 1937, enacted two separate Acts, both cited to the text, relating to the jurisdiction of the County Court of Sterling County, reading verbatim the same. The provisions of the two Acts being identical, the text of one only is set out and both Acts are cited as credits to the text.

Crosby and Fisher County Courts

Art. 1970—317. Crosby and Fisher County Courts, civil jurisdiction increased.—Section 1. That the County Courts of Crosby and Fisher Counties shall have and exercise original concurrent jurisdiction with the Justices Courts in all civil matters which by the General Laws of this State is conferred upon Justices Courts.

Sec. 2. Said County Courts shall also have and exercise such jurisdiction over and pertaining to all matters and things and proceedings as by the General Laws of this State is conferred upon County Courts.

Sec. 3. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said County Courts in civil cases of which said Courts have appellate or original concurrent jurisdiction with the Justices Courts where the judgment or amount in controversy does not exceed One Hundred Dollars ($100), exclusive of interests and costs.

Sec. 4. This Act shall not be construed to deprive the Justices Courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said Courts over such matters as are specified in Section 1 of this Act, nor shall this Act be construed to deny the right of appeal from the Justices Courts to the said County Courts in any case originally brought in the Justices Courts where the right of appeal now exists by law. [Acts 1937, 45th Leg., p. 771, ch. 372.]

Section 5 of the Act of 1937 repealed conflicting laws.

Gillespie County Court

Art. 1970—318. Gillespie County Court; probate jurisdiction conferred; civil and criminal jurisdiction diminished.—Section 1. That hereafter the County Court of Gillespie County, Texas, shall have and exercise the general jurisdiction of a Probate Court; shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle accounts of executors, administrators, and guardians and transact all business pertaining to estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition and distribution and settlement of estates of deceased persons; and to apprentice minors as required by law and all matters of eminent domain over which the County Courts have jurisdiction under the General Laws of this State; and to issue all writs necessary to the enforcement of its jurisdiction; and to punish contempt under such provisions as are, or may be pro-

vided by General Law covering County Courts throughout the State; but said County Court shall have no other jurisdiction, civil or criminal.

Sec. 2. That the District Court or Courts of said County shall have and exercise jurisdiction in all matters and causes, civil and criminal, over which, by the General Laws of this State, the County Court would have jurisdiction, except as provided in Section 1 of this Act and excepting all causes and matters, civil and criminal, over which by the General Laws of the State, the Justice Courts of said County would have jurisdiction; and that all causes, other than probate matters and such as are provided in Section 1, be and the same are hereby transferred to the District Court or Courts of said County; and writs and processes, civil and criminal, heretofore issued out or by said County Court other than those pertaining to matters which by Section 1 of this Act, jurisdiction is given to the County Court, be and the same are hereby made returnable to the next term of the District Court or Courts of said County.

Sec. 3. That the Clerk of the County Court of Gillespie County, Texas, be and he is hereby required immediately after this Act becomes effective, to make full and complete transcripts of all the entries on his dockets, civil and criminal, heretofore made in causes, which by Section 2 are transferred to the District Court or Courts of said County, and file the same, together with all original papers of all of said causes and proceedings with the Clerk of the District Court or Courts of said County which shall include all judgments, both civil and criminal, that remain uncollected and not satisfied; and for the purpose of carrying into effect this Act, the Court having jurisdiction of such matters shall have full and ample power to enforce the same by issuing execution or other process required by law and all of such causes under this Act transferred to the District Court, shall be immediately docketed by the Clerk of said Court, and shall stand on the dockets of said Courts as appearance cases for the next term of said Court; for each of said transcripts, the County Clerk shall receive Twenty-five (25) Cents per one hundred (100) words, and Fifty (50) Cents for certificate thereto to be taxed against the party cast in the suit, if a civil suit and if criminal, against the defendant if convicted.

Sec. 4. This Act shall not be construed in any wise or in any manner as affecting judgments rendered by the County Court pertaining to matters and causes which by this Act are made returnable to the District Court but the Clerk of the District Court of said County shall issue all executions and orders of sale and proceedings thereunder shall be as valid and binding to all intents and purposes as though the change had not been made in this Act. [Acts 1937, 45th Leg., p. 1136, ch. 458.]

Kendall County Court

Art. 1970—319. County court of Kendall county; civil and criminal jurisdiction.—Section 1. That the County Court of Kendall County shall hereafter have exclusive original jurisdiction in civil cases where the matter in controversy shall exceed in value two hundred dollars ($200.00) and shall not exceed five hundred dollars ($500.00) exclusive of interest and shall have concurrent jurisdiction with the district court of said county when the matter in controversy shall exceed five hundred dollars ($500.00) and not exceed one thousand dollars ($1,000.00).

Sec. 2. Said county court shall have appellate jurisdiction in civil cases over which justices' court have original jurisdiction when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars ($20.00), and said county court shall have power to hear and determine cases brought up from the justice's court by certiorari under the provisions of the title of the Revised Civil Statutes relating thereto.

Sec. 3. The county judge of said county shall have authority, either in term time or vacation, to grant writs of mandamus, injunction, sequestration, garnishment, attachment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the Constitution has not exclusively conferred the power on the district court or judge thereof.

Sec. 4. Said county court shall have jurisdiction in the forfeiture and judgment of all bonds and recognizances taken in criminal cases of which criminal cases said court has jurisdiction.

Sec. 5. Said county court shall have exclusive original jurisdiction of all misdemeanors, except misdemeanors involving official misconduct, and except cases in which the highest penalty of fine that may be imposed under the law may not exceed two hundred dollars, and said courts shall also have appellate jurisdiction in criminal cases of which justices of the peace and other inferior tribunals of said county have jurisdiction.

Sec. 6. The District Court of Kendall County shall no longer have jurisdiction of cases of which the county court of said county by the provisions of this Act has exclusive original or appellate jurisdiction, and it shall be the duty of the clerk of the district court of said county within thirty days from the passage of this Act to make a full and complete transcript of all orders on his dockets in cases now pending before said district court of which cases by the terms of this Act exclusive jurisdiction is given to the county court, and to deliver said transcripts, together with the original papers and a certified bill of costs, to the clerk of said county court, and said county clerk shall enter said case or cases on his dockets for trial by said county court.

Sec. 7. The county court of said county shall hereafter hold its regular terms for civil and criminal business as provided in the Constitution and General Laws of the State, and process heretofore issued from the district court of said county in cases to be transferred under this Act to the county court shall be returnable to the first term of the county court, and all civil cases transferred shall be entered as appearance cases upon the dockets of said county court.

Sec. 8. The county court of said Kendall County shall have, as now, the general jurisdiction of probate courts for the probate of wills, appointments of guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, and for the issuance of letters testamentary and administration, settlement of accounts of administrators and guardians and the settlement of distribution of decedent's estates, and the apprenticeship of minors, and all other necessary powers conferred by law on courts of probate.

Sec. 9. That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed. [Acts 1915, 34th Leg., 1st C.S., p. 55, ch. 27.]

Glasscock County Court

Art. 1970—320. Glasscock County Court; civil and criminal jurisdiction diminished.—Section 1. The County Court of Glasscock County shall have and exercise the general jurisdiction of a Probate Court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle the accounts of executors, administrators, and guardians, transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons, and to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its own jurisdiction; to punish contempt under such pro-

visions as are now or may be provided by General Law governing County Courts throughout the State, but the said County Court of Glasscock County shall have no other jurisdiction, civil or criminal, whatsoever.

Sec. 2. That the District Court of Glasscock County shall have and exercise jurisdiction in all civil and criminal matters and causes over which, by the laws of this State, the County Court of said Glasscock County would have jurisdiction, except as provided in Section 1 of this Act; all causes other than probate matters and such as are provided by Section 1 of this Act be and the same are hereby transferred to the District Court of Glasscock County, and all writs and process relating to any civil or criminal matters included in the subject matter of jurisdiction prescribed in Section 1 of this Act, issued by or out of said County Court of Glasscock County, be and the same are hereby made returnable to the next term of the District Court of said County after this Act takes effect.

Sec. 3. That the County Clerk of Glasscock County be and he is hereby required, within thirty (30) days after this Act takes effect, to make a full and complete transcript of all entries upon his civil and criminal docket heretofore made in cases which by Section 2 of this Act are required to be transferred to the District Court of said County, together with all the papers pertaining to such cases, a certified bill of costs in each case, and all cases shall be immediately docketed by the District Court as appearance cases for the next succeeding term, and all criminal cases shall be docketed and disposed of in the same manner as if the same had been originally filed in and triable in said District Court, and all process now issued and returnable to said County Court shall be returnable to said District Court.

Sec. 4. That this Act shall not be construed to in anywise or manner affect judgments heretofore rendered by said County Court of Glasscock County pertaining to matters and causes which by Section 2 of this Act are transferred to the District Court of said County, but the County Clerk of said County shall issue all executions, and orders of sale, and proceedings thereunder, and this Act in so doing shall be valid and binding to all intents and purposes, the same as if no change had been made as by Section 2 therein contemplated. [Acts 1939, 46th Leg., p. 191.]

Section 5 of the Act of 1939 repealed all conflicting laws.

Stephens County Court

Art. 1970—321. Stephens County Court; civil and criminal jurisdiction diminished.—Section 1. That the County Court of Stephens County shall retain and continue to have and exercise the general jurisdiction in matters of eminent domain, and the general jurisdiction of Probate Courts, and all jurisdiction other than in civil and criminal matters, jurisdiction of which is here conferred on the District Court of Stephens County, Texas, now or hereafter conferred upon such County Court by the Constitution and Laws of the State, and shall retain all jurisdiction and power to issue all writs necessary to the enforcement of its jurisdiction, and to punish contempts; but said County Court shall have no civil or criminal jurisdiction, except as to final judgments referred to in Section 2 hereof.

Sec. 2. That the District Court having jurisdiction in said Stephens County shall have and exercise jurisdiction in all matters and cases of a civil and criminal nature, whether the same be of original jurisdiction or of appellate jurisdiction, over which, by the General Laws of the State of Texas now existing and hereinafter enacted, the County Court of said County would have had jurisdiction, and that all pending civil and criminal cases be and the same are hereby transferred to the District Court for the Ninetieth Judicial District of Texas, sitting in Stephens County, Texas, and all writs and process heretofore issued by or out of said County Court in said civil or criminal cases be and the same are hereby made returnable to the next term of the District Court, in and for the Ninetieth Judicial District of Texas, sitting in Stephens County, Texas. Provided, however, that there shall not be transferred to said District Court jurisdiction over any judgments, even in civil or criminal cases, rendered prior to the time this Act takes effect and which have become final, but as to such judgments the said County Court shall retain jurisdiction for the enforcement thereof by execution, order of sale, or other appropriate process. Provided further, however, that as to any civil or criminal case on appeal from said County Court, should a judgment be entered by the Court of Civil Appeals or the Supreme Court, or the Court of Criminal Appeals, remanding the case for a new trial or for further proceedings, same shall be remanded to the District Court of Stephens County, Texas, and all jurisdiction in respect to said particular case shall thereafter vest in the District Court sitting in and having jurisdiction of Stephens County, Texas.

Sec. 3. That the County Attorney of Stephens County, Texas, shall represent the State in all misdemeanor cases before the District Court of Stephens County, Texas, and shall receive therefor the same fees to which he would be entitled under the law as County Attorney had said cases been tried in the County Court.

Sec. 4. That the Clerk of the County Court of said Stephens County be and is hereby required, within twenty (20) days after this Act takes effect, to file with the Clerk of the District Court of said County, all original papers in cases here transferred to the said District Court, and all Judges' dockets and certified copies of any interlocutory judgment or other order entered in the Minutes of the County Court in said cases so transferred, and the District Clerk shall immediately docket all such cases on the docket of the said District Court for the Ninetieth Judicial District of Texas, and all such cases shall stand on the docket of said Court in the same manner and place as each stands on the docket of the County Court. Provided, further, that it shall not be necessary that the District Clerk refile any papers theretofore filed by the County Clerk, nor shall he receive any fees for the filing of same, but papers in said case bearing the file mark of the County Clerk, prior to the time of said transfer, shall be held to have been filed in the case as of the date filed without being refiled by the District Clerk. Said County Clerk in cases so transferred shall accompany the papers with a certified bill of cost, and against all cost deposits, if any, the County Clerk shall charge accrued fees due him, and the remainder of the deposit he shall pay to the District Court as a deposit in the particular case for which same was deposited. Credit shall also be given the litigants for all jury fees paid in the County Court. [Acts 1939, 46th Leg., p. 198.]

Marion County Court

Art. 1970—322. County court of Marion County; jurisdiction in criminal matters; fee of county judge.—Section 1. In addition to the jurisdiction heretofore conferred by law upon the County Court of Marion County, Texas, and the County Judge of Marion County, Texas, the said County Court shall have jurisdiction within Marion County of all criminal matters and causes of misdemeanor over which the District Court of Marion County, Texas, now has jurisdiction, and the jurisdiction of said Courts over such matters shall be concurrent, provided that the jurisdiction of the District Court of Marion County, Texas, shall be and remain as now fixed by law and be in nowise affected by this Act; and provided further, that the jurisdiction hereby conferred upon the County Judge of Marion County, Texas, shall extend to and only to those cases in which

pleas of guilty are entered by the defendant in any cases of misdemeanor filed in said Court.

Sec. 2. The County Judge of Marion County, Texas, shall receive a fee of Three Dollars ($3) for each and every case tried before him in which a plea of guilty is entered, and the fees of the other officers of the Court shall be and remain as is now provided by the laws of this State. [Acts 1939, 46th Leg., p. 194.]

Art. 1970—322a. County court of Marion County; exclusive jurisdiction of certain criminal matters.—Section 1. In addition to the jurisdiction heretofore conferred by law upon the County Court of Marion County, Texas, and the County Judge of Marion County, Texas, the said County Court shall have exclusive jurisdiction within Marion County, Texas, for all of the criminal matters of the grade of misdemeanor over which the District Court of Marion County, Texas, now has jurisdiction.

Sec. 3. The County Judge of Marion County, Texas, shall receive a fee of Three ($3.00) Dollars for each and every misdemeanor case tried before him, and the fees of the other officers of the court shall be and remain as is now provided by the laws of this state. [Acts 1947, 50th Leg., p. 214, ch. 121.]

Section 2 of the Act of 1947 requires the Clerk of the District Court of Marion County, to file with the Clerk of the County Court, all the original misdemeanor cases, judges' dockets and certified copies of any interlocutory judgments or other orders entered in the minutes of the District Court in said causes so transferred; and requires the County Clerk of Marion County, Texas, to immediately docket all such cases on the docket of the District Court.

Section 7 of the Act of 1947 repealed article 1970—323 and all conflicting laws or parts of laws.

Panola County Court

Art. 1970—323. [Repealed by Acts 1947, 50th Leg., p. 42, ch. 31, § 7.]

The repealed article was Acts 1941, 47th Leg., p. 31, ch. 18.

Art. 1970—323a. Panola County Court; Panola District Court; jurisdiction; transfer of dockets.—Section 1. The County Court of Panola County, Texas, from and after the effective date of this Act, shall have and exercise jurisdiction in all probate, civil and criminal matters, as provided in the Constitution of the State of Texas and the general law governing county Courts throughout the State.

Sec. 2. That the District Court of Panola County, Texas, shall have and exercise the general jurisdiction, both original and appellate, in all civil and criminal matters and causes, as provided in the Constitution of the State of Texas and in the general law governing the jurisdiction of district Courts throughout the State.

Sec. 3. All causes pending in the County Court of Panola County and in the District Court of Panola County, the jurisdiction of which is changed by this Act, shall be and the same are hereby transferred in conformity with the provisions of this Act to the Court having jurisdiction of such cause under the provisions hereof, and all writs and process relating to such causes which have been issued by or out of either of said Courts shall be and the same are hereby made returnable to the next term of the Court having jurisdiction of said cause under the provisions of this Act.

Sec. 4. This Act shall not be construed to in anywise or in any manner affect judgments heretofore rendered by the District Court of Panola County pertaining to matters and causes which by this Act are made returnable to the County Court of Panola County, and the Clerk of the District Court of said County shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act.

Sec. 5. This Act shall not be construed to in anywise or in any manner affect judgments heretofore rendered by the County Court of Panola County pertaining to matters and causes which by this Act are made returnable to the District Court of Panola County, and the Clerk of the County Court of said County shall issue all executions and orders of sale and proceedings thereunder which shall be as valid and binding to all intents and purposes as though the change had not been made as directed by this Act.

Sec. 6. The clerks of the respective Courts shall transfer the dockets of all cases the jurisdiction of which is changed by the provisions of this Act to the Court having such jurisdiction after the effective date of this Act, and shall transfer all Court papers and do such other things as may be necessary to fully transfer all said causes and matters to the Court having jurisdiction of same under the provisions of this Act. [Acts 1947, 50th Leg., p. 42, ch. 31.]

Section 7 of the Act of 1947 repealed article 1970—323 and all conflicting laws.

Travis County Court

Art. 1970—324. County Court at Law of Travis County created.—Section 1. That there is hereby created a Court to be held in Austin, Travis County, Texas, to be called the County Court at Law of Travis County, Texas.

Sec. 2. The County Court at Law of Travis County shall have and exercise the jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of the State the County Court of said County would have jurisdiction, except as provided in Section 3 of this Act; and all cases pending in the County Court of said County, other than probate matters, and matters of eminent domain and such as are provided in Section 3 of this Act, shall be and the same are hereby transferred to the County Court at Law of Travis County, and all writs and process, civil and criminal heretofore issued by or out of the County Court of said County, other than those pertaining to matters over which by Section 3 of this Act jurisdiction remains in the County Court of Travis County, shall be and the same are hereby made returnable to the County Court at Law of Travis County. The jurisdiction of the County Court at Law of Travis County and of the Judge thereof shall extend to all matters of which jurisdiction has heretofore vested in the County Court or in the County Judge, except probate matters and matters of eminent domain; but this provision shall not affect the jurisdiction of the Commissioners Court or of the County Judge of Travis County as the presiding officer of such Commissioners Court, as to roads, bridges, and public highways, and matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof.

Sec. 3. The County Court of Travis County shall have and retain, as heretofore, jurisdiction in matters of eminent domain and the general jurisdiction of the Probate Court and all jurisdiction now conferred by law over probate and eminent domain matters; and the Court herein created shall have no other jurisdiction than that named in this Act, and the County Court of said County as now existing shall have no jurisdiction over matters civil or criminal. The County Judge of Travis County shall be the Judge of the County Court of said County, and all ex officio duties of the County Judge shall be exercised by said Judge of the County Court of Travis County, except in so far as the same shall by this Act be committed to the County Court at Law of Travis County.

Sec. 4. The terms of the County Court at Law of Travis County shall be held in the Courthouse of Travis County as follows, to wit: Beginning on the first Mondays in January, March, May, July, September, and November in each year, and each term of said Court shall continue in session for eight (8) weeks. The practice in said Court, and appeals and writs of error therefrom, shall be as prescribed by the laws relating to County Courts.

Sec. 5. There shall be elected in Travis County by the qualified voters thereof, at each general election, a Judge of the County Court at Law of Travis County, who shall be a qualified voter in said County, and who shall be a regularly licensed attorney at law in this State, and who shall be a resident of Travis County, Texas, and shall have been actively engaged in the practice of law for a period of not less than four (4) years next preceding such general election, who shall hold his office for two (2) years, and until his successor shall have been duly elected and qualified.

Sec. 6. The Judge of the County Court at Law of Travis County shall execute a bond and take the oath of office as required by law relating to County Judges.

Sec. 7. A Special Judge of the County Court at Law of Travis County may be appointed or elected as provided by law relating to County Courts and to the Judges thereof, who shall receive the sum of Ten Dollars ($10) per day for each day he so actually serves, to be paid out of the general fund of the County by the Commissioners Court.

Sec. 8. Any vacancy in the office of the Judge of the County Court at Law of Travis County shall be filled by the Commissioners Court, and when so filled, the Judge shall hold office until the next general election and until his successor is elected and qualified. The Commissioners Court of Travis County shall as soon as this Act becomes effective appoint a Judge of the County Court at Law of Travis County, who shall serve until the next general election and until his successor shall be duly elected and qualified, and shall provide suitable quarters for the holding of said Court.

Sec. 9. In the case of the disqualification of the Judge of the County Court at Law of Travis County to try any case pending in his Court, the parties or their attorneys may agree on the selection of a Special Judge to try such case or cases where the Judge of the County Court at Law of Travis County is disqualified.

Sec. 10. The Judge of the County Court at Law of Travis County may be removed from office in the same manner and for the same causes as any other County Judge may be removed under the Laws of this State.

Sec. 11. When either party to a civil case pending in the County Court or County Court at Law applies therefor, the Judge thereof shall appoint a competent stenographer, if one be present, to report the oral testimony given in such case. Such stenographer shall take the oath required of official Court reporters, and shall receive not less than Five Dollars ($5) per day, to be taxed and collected as costs. In such cases the provisions of this title with respect to the preparation of the statement of facts, the time to be allowed therefor, and for the presentation to the opposite party, and the approving and filing thereof by the Court, shall apply to all statements of facts in civil cases tried in said Courts, and all provisions of law governing statement of facts and bills of exception to be filed in District Courts and the use of same on appeal, shall apply to civil cases tried in said Courts.

Sec. 12. The County Court at Law of Travis County, and the Judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of said Court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said Court, or of any other Court in said County of inferior jurisdiction to said County Court at Law of Travis County.

Sec. 13. All cases appealed from the Justice Courts and other inferior Courts in Travis County, Texas, shall be made direct to the County Court at Law of Travis County, under the provisions heretofore governing such appeals.

Sec. 14. The County Clerk of Travis County, Texas, shall be the Clerk of the County Court at Law of Travis County. The seal of said Court shall be the same as that provided by law for County Courts, except the seal shall contain the words "County Court at Law of Travis County." The Sheriff of Travis County shall in person or by deputy attend the said Court when required by the Judge thereof. The County Attorney of Travis County shall represent the State in all prosecutions pending in said County Court at Law of Travis County, and he shall be entitled to the same fee as now prescribed by law for such prosecutions in the County Courts.

Sec. 15. The jurisdiction and authority now vested by law in the County Court of Travis County, for the drawing, selection, and service of jurors shall be exercised by said Court, but juries summoned for either of said Courts may by order of the Judge of the Court in which they are summoned be transferred to the other Court for service therein and may be used therein as if summoned for the Court to which they may be thus transferred.

Sec. 16. From and after the passage of this Act the Judge of the County Court at Law of Travis County shall receive a salary of Four Thousand, Eight Hundred Dollars ($4,800) per annum, to be paid out of the County Treasury on the order of the Commissioners Court, and said salary shall be paid monthly in equal installments. The Judge of the County Court at Law of Travis County shall assess the same fees as are now prescribed or may be established by law, relating to the County Judge's fees, all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection, no part of which shall be paid to the said Judge, but he shall draw the salary as above specified in this Section. [Acts 1941, 47th Leg., p. 188, ch. 136; Acts 1943, 48th Leg., p. 312, ch. 203, § 1.]

Official interpreters

Art. 1970—325. Official interpreters for County Courts at Law.—Section 1. The judge of the County Court at Law of any county having a County Court at Law, is authorized to appoint an official interpreter for such County Court at Law. And the County Commissioners shall by resolution fix the salary of said official interpreter and provide for the payment of such salary, and shall prescribe the duties of such official interpreter.

Sec. 2. The judge of the County Court at Law shall have authority to terminate such employment of such interpreter at any time.

Sec. 3. The official interpreter so appointed by the judge of the County Court at Law shall take the constitutional oath of office, and in addition thereto shall make oath that as such official interpreter he will faithfully interpret all testimony given in the County Court at Law, and which oath shall suffice for his service as official interpreter of such court in all cases before such court during his term of office. [Acts 1941, 47th Leg., p. 357, ch. 195.]

Navarro County Court

Art. 1970—326. County Court of Navarro County; jurisdiction.—Section 1. The County Court of Navarro County shall have and exercise the general jurisdiction of a Probate Court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle the accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons pending in such courts; to conduct lunacy hearings; to apprentice minors, as provided by law; and to issue all writs necessary for the enforcement of its own jurisdiction; to punish contempt under such provision as now or may be provided for by General Law governing County Courts through-

out the State; but neither said County Court of Navarro County, nor the Judge thereof, shall have any jurisdiction over matters of eminent domain, or other original civil jurisdiction; and the said County Court of Navarro County shall have criminal jurisdiction under such provisions as are now or may be provided for by General Law governing County Courts throughout the State; and said County Court shall have such appellate jurisdiction, save as to eminent domain, as is now or may hereafter be given it by law; provided, however, that all future statutes pertaining to probate matters enacted by the Legislature of the State of Texas, shall be operative in said Navarro County, as fully as though this statute had not been enacted.

Sec. 2. That the District Court of Navarro County and the presiding judge thereof shall have and exercise original jurisdiction in matters of eminent domain and in all civil matters and causes over which, by the laws of this State, the County Court of Navarro County would have had original jurisdiction, but for the provisions set out in Section 1 of this Act; all causes, other than probate matters, criminal matters and cases appealed from the Justice of the Peace Courts, as are provided in Section 1 of this Act shall be and the same are hereby transferred to the District Court of Navarro County, and all writs and process relating to such civil matters and causes included in the subject matter of jurisdiction prescribed in this Act, issued by or out of said County Court of Navarro County be and the same are hereby made returnable to the next term of the District Court of said County after this Act takes effect.

Sec. 3. That the County Clerk of Navarro County be and he is hereby required, within thirty days after this Act takes effect, to make a full and complete transcript of all entries upon his civil docket heretofore made in cases which by Section 2 of this Act are required to be transferred to the District Court of said County, to prepare a certified bill of costs in each case, and to transmit the same together with all the papers pertaining to such cases to the Clerk of the District Court of said county; all such cases shall be immediately docketed by the District Clerk as appearance cases for the next succeeding term of such District Court, and all process now issued and returnable to said County Court shall be returnable to said District Court.

Sec. 4. That this Act shall not be construed to in anywise or manner affect final judgments heretofore rendered by said County Court of Navarro County pertaining to matters and causes which by Section 2 of this Act are transferred to the District Court of said County; but such County Court shall retain jurisdiction to enforce said final judgments and the County Clerk of said County shall issue all writs of execution and orders of sale, and proceedings thereunder, and his act in so doing shall be valid and binding to all intents and purposes, the same as if no change had been made as set out in Section 2. [Acts 1941, 47th Leg., p. 553, ch. 350.]

Section 5 of the Act of 1941 repealed all conflicting laws.

Art. 1970—327. [Repealed by Acts 1943, 48th Leg., p. 689, ch. 38, § 6.]

The repealed article was Acts 1941, 47th Leg., p. 631, ch. 380.

Morris County Court

Art. 1970—328. County court of Morris County; jurisdiction.—Section 1. In addition to the jurisdiction heretofore conferred by law upon the County Court of Morris County, Texas, and the County Judge of Morris County, Texas, the said County Court shall have jurisdiction within Morris County of all criminal matters and causes of misdemeanor over which the District Court of Morris County, Texas, now has jurisdiction, and the jurisdiction of said courts over such matters shall be concurrent; provided that the jurisdiction of the District Court of Morris County, Texas, shall be and remain as now fixed by law and be in nowise affected by this Act; and provided further, that the jurisdiction hereby conferred upon the County Judge of Morris County, Texas, shall extend to and only to those cases in which pleas of guilty are entered by the defendant in any cases of misdemeanor filed in said court.

Sec. 2. The County Judge of Morris County, Texas, shall receive a fee of Three ($3.00) Dollars for each and every case tried before him in which a plea of guilty is entered, and the fees of the other officers of the Court shall be and remain as is now provided by the laws of this state. [Acts 1943, 48th Leg., p. 411, ch. 278.]

Powers

Art. 1970—329. Judge of County Court at Law in counties under 500,000 may act for County Judge in certain cases.—Section 1. That the Judge of any County Court at Law in any county having a population of less than five hundred thousand (500,000) inhabitants according to the last preceding, or any future Federal Census, may act for the County Judge of the county in any juvenile, lunacy, probate and condemnation proceeding or matter and also may perform for the County Judge any and all other ministerial acts required by the laws of this State of the County Judge, during the absence, inability or failure of the County Judge for any reason to perform such duties; and any and all such acts thus performed by the Judge of the County Court at Law, while acting for the County Judge, shall be valid and binding upon all parties to such proceedings or matters the same as if performed by the County Judge. Provided that the powers thus given the Judges of the County Courts at Law of this State shall extend to and include all powers of the County Judge except his powers and duties in connection with the transaction of the business of the county, as presiding officer of the Commissioners Court and as the budget officer for the Commissioners Court.

Sec. 2. That the absence, inability or failure of the County Judge to perform any of the duties hereinabove set forth shall be certified by the County Judge or the Commissioners Court to the Judge of any such County Court at Law, and when such certification is for the purpose of conferring powers to do some judicial act, such certificate shall be spread upon the minutes of the appropriate Court.

Sec. 3. That notwithstanding the additional powers and duties conferred upon the Judges of the County Courts at Law of this State no additional compensation or salary shall be paid to them, but the compensation or salary of such Judges of the County Courts at Law shall remain the same as now, or as may be hereafter, fixed by law.

Sec. 4. That it is not intended by this Act to repeal any law providing for the election and/or appointment of a special County Judge, but this Act shall be cumulative of, and in addition to, such law or laws.

Sec. 5. That if any part, section, subsection, paragraph, sentence, clause, phrase, or word, of this Act shall be held by the Courts to be unconstitutional or invalid, such holding shall not in any manner affect the validity of the remaining portions of this Act. [Acts 1943, 48th Leg., p. 689, ch. 382.]

Section 6 of the Act of 1943 repealed article 1970—327.

Titus County Court

Art. 1970—330. Titus County Court; jurisdiction diminished; district court's jurisdiction; prosecutor in misdemeanor cases.—Section 1. The County Court of Titus County shall retain and continue to have and exercise the general jurisdiction in matters of eminent domain, general jurisdic-

tion of probate courts, and all other jurisdiction now or hereafter conferred by the Constitution and laws of this State, except as is hereinafter provided, and shall retain all jurisdiction and power to issue all writs necessary to the enforcement of its jurisdiction, and to punish contempts; but said County Court shall have no civil jurisdiction and no criminal jurisdiction except jurisdiction to receive and enter pleas of guilty in misdemeanor cases, and except as to final judgments referred to in Section 2, hereof.

Sec. 2. The District Court having jurisdiction in Titus County shall have and exercise jurisdiction in all matters and cases of a civil nature and in all matters of a criminal nature, except as to such jurisdiction that the County Court has to receive and enter pleas of guilty in misdemeanor cases as is provided in Section 1 hereof, whether the same be of original jurisdiction or of appellate jurisdiction, over which, by the general laws of the State of Texas now existing and hereinafter enacted the County Court of said County would have had jurisdiction and all pending civil and criminal cases be, and the same are, hereby transferred to the District Court having jurisdiction in Titus County, Texas, and all writs and process heretofore issued by or out of said County Court in all pending civil or criminal cases be, and the same are hereby made returnable to the District Court sitting in Titus County, Texas. However, there shall not be transferred to said District Court jurisdiction over any judgments, either in civil or criminal cases, rendered prior to the time this Act takes effect and which have become final, but as to such judgments the said County Court shall retain jurisdiction for the enforcement thereof by all appropriate process.

Sec. 3. The County Attorney of Titus County shall represent the State in all misdemeanor cases before the District Court of Titus County, and shall receive therefor the same fees to which he would be entitled under the law as County Attorney had said cases been tried in the County Court.

Sec. 4. The Clerk of the County Court of Titus County is, and he is hereby required within twenty (20) days after this Act takes effect to file with the Clerk of the District Court of said County all original papers in cases here transferred to the said District Court, and all Judge's dockets and certified copies of any interlocutory judgment, or other order entered in the minutes of the County Court in said cases so transferred; and the District Clerk shall immediately docket all such cases on the docket of the District Court of Titus County in the same manner and place as each stands on the docket of the County Court. It shall not be necessary that the District Clerk refile any papers theretofore filed by the County Clerk, nor shall he receive any fees for the filing of the same, but papers in said case bearing the file mark of the County Clerk, prior to the time of said transfer, shall be held to have been filed in the case as of the date filed without being refiled by the District Clerk. Said County Clerk in cases so transferred shall accompany the papers with a certified bill of cost and against all cost deposits, if any, the County Clerk shall charge accrued fees due him, and the remainder of the deposit he shall pay to the District Clerk as a deposit in the particular case for which the same was deposited. Credit shall also be given the litigants for all jury fees paid in the County Court. [Acts 1945, 49th Leg., p. 225, ch. 169.]

Franklin County Court

Art. 1970—331. Franklin county; jurisdiction of courts; duties and fees of county attorney.—Section 1. The County Court of Franklin County, Texas, shall retain and continue to have and exercise the general jurisdiction in matters of eminent domain, general jurisdiction of probate Courts, and all other jurisdiction now or hereafter conferred by the Constitution and laws of this State, except as is hereinafter provided, and shall retain all jurisdiction and power to issue all writs necessary to the enforcement of its jurisdiction, and to punish contempts; but said County Court shall have no civil jurisdiction and no criminal jurisdiction except jurisdiction to receive and enter pleas of guilty in misdemeanor cases, and except as to final judgments referred to in Section 2 hereof.

Sec. 2. The District Court having jurisdiction in Franklin County, Texas, shall have and exercise jurisdiction in all matters and cases of a civil nature and in all matters of a criminal nature, except as to such jurisdiction that the County Court has to receive and enter pleas of guilty in misdemeanor cases as is provided in Section 1 hereof, whether the same be of original jurisdiction or of appellate jurisdiction, over which, by the General Laws of the State of Texas now existing and hereinafter enacted, the County Court of said County would have had jurisdiction and all pending civil and criminal cases be and the same are hereby transferred to the District Court having jurisdiction in Franklin County, Texas, and all writs and process heretofore issued by or out of said County Court in all pending civil or criminal cases be and the same are hereby made returnable to the District Court sitting in Franklin County, Texas. However, there shall not be transferred to said District Court jurisdiction over any judgments, either in civil or criminal cases, rendered prior to the time this Act takes effect and which have become final, but as to such judgments the said County Court shall retain jurisdiction for the enforcement thereof by all appropriate process.

Sec. 3. The County Attorney of Franklin County shall represent the State in all misdemeanor cases before the District Court of Franklin County, Texas, and shall receive therefor the same fees to which he would be entitled under the law as County Attorney had said cases been tried in the County Court.

Sec. 4. The Clerk of the County Court of Franklin County, Texas, is and he is hereby required within twenty (20) days after this Act takes effect to file with the Clerk of the District Court of said County all original papers in cases here transferred to the said District Court, and all judges' dockets and certified copies of any interlocutory judgment, or other order entered in the minutes of the County Court in said cases so transferred; and the District Clerk shall immediately docket all such cases on the docket of the District Court of Franklin County, Texas, in the same manner and place as each stands on the docket of the County Court. It shall not be necessary that the District Clerk refile any papers theretofore filed by the County Clerk, nor shall he receive any fees for the filing of the same, but papers in said case bearing the file mark of the County Clerk, prior to the time of said transfer, shall be held to have been filed in the case as of the date filed without being refiled by the District Clerk. Said County Clerk in cases so transferred shall accompany the papers with a certified bill of cost; and against all cost deposits, if any, the County Clerk shall charge accrued fees due him, and the remainder of the deposit he shall pay to the District Clerk as a deposit in the particular case for which the same was deposited. Credit shall also be given the litigants for all jury fees paid in the County Court. [Acts 1945, 49th Leg., p. 316, ch. 231.]

Grayson County Court

Art. 1970—332. Grayson county; County Court at Law created; jurisdiction; terms; judge; prosecutor; writs; clerk.—Section 1. There is hereby created a Court to be held in Sherman, Grayson County, Texas, which shall be known as the County Court at Law of Grayson County.

Sec. 2. The County Court at Law of Grayson County shall have and exercise the jurisdiction in all matters and cases, civil and criminal, original and appellate, over which by the General Laws of the State, the County Court of said County would have jurisdiction except as herein provided in Section 3 of this Act, and all cases pending in the County Court of said County, other than probate matters such as are provided in Section 3 of this Act, at the time this Act shall become effective, shall be and the same are hereby transferred to the County Court at Law of Grayson County, and all writs and process, civil and criminal, heretofore issued by or out of the said County Court other than those pertaining to matters which are hereby exempt from this Act that are to remain in the County Court of Grayson County shall be and the same are hereby made returnable to the County Court at Law of Grayson County.

Sec. 3. The County Court at Law of Grayson County shall have and exercise original concurrent jurisdiction with the Justice Courts in all civil and criminal matters which by the General Laws of this State are conferred upon Justice Courts.

Sec. 4. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said County Court at Law of Grayson County in civil cases of which said Court has appellate or original concurrent jurisdiction with the Justice Court, where the judgment or amount in controversy does not exceed One Hundred Dollars ($100) exclusive of interest and costs.

Sec. 5. This Act shall not be construed to deprive the Justice Courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said County Court at Law of Grayson County over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal to the County Court at Law of Grayson County from the Justice Court where the right of appeal to the County Court now exists by law. The jurisdiction of the County Court at Law of Grayson County, and the Judge thereof, shall extend to all matters of eminent domain of which jurisdiction has heretofore vested in the County Court of Grayson County or in the County Judge; but this provision shall not affect the jurisdiction of the Commissioners Court nor of the County Judge of Grayson County as presiding officer of said Commissioners Court as to roads, bridges, and public highways, or matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge of the County Court of Grayson County.

Sec. 6. The County Court of Grayson County shall have and retain, as heretofore, the general jurisdiction of the Probate Court and all jurisdiction now conferred by law over probate matters, and the Court herein created shall have no other jurisdiction than that named in this Act, and the County Court of Grayson County as now and heretofore existing shall have all jurisdiction which it now has, save and except that which is given the County Court at Law of Grayson County in this Act, but the County Court now existing shall have no jurisdiction over other matters, civil or criminal. The County Judge of Grayson County shall be the Judge of the County Court of said County, and all ex officio duties of the County Judge shall be exercised by said Judge of the County Court of Grayson County, except in so far as the same shall by this Act be committed to the County Court at Law of Grayson County.

Sec. 7. The terms of the County Court at Law of Grayson County, and the practice therein, and the appeals and writs of error therefrom shall be as prescribed by the laws relating to County Courts. The terms of the County Court at Law of Grayson County shall be held in the Courthouse of Grayson County, and shall begin on the first Monday in February, April, June, August, October and December of each year, and shall continue in session until the Saturday before the first Monday in April, June, August, October, December and February of each year.

Sec. 8. There shall be elected in Grayson County by the qualified voters thereof at each general election a Judge of the County Court at Law of Grayson County, who shall be a qualified voter in said County, and who shall be a regularly licensed attorney at law in this State, and who shall be a resident of Grayson County, Texas, and shall have been actively engaged in the practice of law for a period of not less than one (1) year next preceding such general election, who shall hold such office for two (2) years and until his successor shall have been duly elected and qualified.

Sec. 9. The County Attorney of Grayson County shall represent the State in all prosecutions pending in said County Court at Law of Grayson County, and shall be entitled to the same fee as now prescribed by law for such prosecutions in the County Courts.

Sec. 10. As soon as this Act becomes effective the Governor shall appoint a Judge of the County Court at Law of Grayson County, who shall hold his office until the next general election.

Sec. 11. In the case of the disqualification of the Judge of the County Court at Law in any case pending in this Court, the County Judge shall sit in such case, or, the parties or their attorneys may agree on the selection of a Special Judge to try such case or cases; and in default of such agreement a majority of the practicing lawyers of Grayson County shall elect a Judge to try such cases where the County Judge at Law is disqualified.

Sec. 12. The County Court at Law of Grayson County, or the Judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of said Court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said Court, or of any other Court in said County of inferior jurisdiction to said County Court at Law.

Sec. 13. The County Clerk of Grayson County shall be the Clerk of the County Court at Law of Grayson County, and the Seal of said Court shall be the same as that provided by law for County Courts, except the Seal shall contain the words "County Court at Law of Grayson County."

Sec. 14. The jurisdiction or authority now vested by law in the County Court for the selection and service of jurors shall be exercised by the County Court at Law of Grayson County and all petit jurors for all civil and criminal cases under existing laws at the time this Act takes effect, shall be as valid as if no change had been made and the persons constituting such juries shall be required to appear and serve at the next ensuing terms of said Courts as fixed by this Act, and their acts as jurors shall be as valid as if they had served as jurors in the Court for which they were originally drawn.

Sec. 15. Any vacancy in the office of the Judge of the County Court at Law of Grayson County may be filled by the Commissioners Court, and when so filled the Judge shall hold office until the next general election and until his successor is elected and qualified.

Sec. 16. The Judge of the County Court at Law of Grayson County shall receive a salary of not less than Three Thousand, Six Hundred Dollars ($3,600) per annum nor more than Four Thousand, Two Hundred Dollars ($4,200) per annum at the discretion of the Commissioners Court to be paid out of the County Treasury of Grayson County, Texas, on the order of the Commissioners Court of said County, and said

salary shall be paid monthly in equal installments. The Judge of the County Court at Law of Grayson County shall assess the same fees as are now prescribed by law relating to the County Judge's fee, all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection, no part of which shall be paid to the said Judge, but he shall draw the salary as above specified in this Section.

Sec. 17. All cases appealed from the Justice Court and other inferior Courts in Grayson County, Texas, shall be made direct to the County Court at Law of Grayson County, under the provisions heretofore governing such appeals.

Sec. 18. The Judge of the County Court at Law of Grayson County may be removed from office in the same manner and for the same causes as any County Judge may be removed under the laws of this State.

Sec. 19. All laws and parts of laws in conflict herewith, if any, are hereby repealed.

Sec. 20. If any part, section, paragraph, sentence, or clause contained in this Act shall be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portion of this Act, and the Legislature hereby declares that it would have passed such remaining portion despite such invalidity. [Acts 1947, 50th Leg., p. 219, ch. 126.]

Hill County Court

Art. 1970—333. Hill county; jurisdiction of courts; clerk's duties.—Section 1. The County Court of Hill County shall have and exercise the general jurisdiction of a probate Court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle the accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement and distribution of estates of deceased persons pending in such Court; to conduct lunacy hearings; to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its own jurisdiction; to punish contempt under such provisions as now or may be provided for by General Law governing County Courts throughout the State, but neither said County Court of Hill County nor the Judge thereof shall have any jurisdiction over matters of eminent domain, or other original civil jurisdiction, or other original criminal jurisdiction, or appellate civil jurisdiction, or other appellate criminal jurisdiction; provided, however, that all future Statutes pertaining to probate matters enacted by the Legislature of the State of Texas, shall be operative in said Hill County as fully as though this Statute had not been enacted.

Sec. 2. That the District Court of Hill County and the presiding Judge thereof shall have and exercise original jurisdiction in matters of eminent domain and that the District Court of Hill County, Texas, and the presiding Judge thereof shall have and exercise original and appellate jurisdiction in all civil and criminal matters and causes over which by the laws of this State the County Court of Hill County would have had original or appellate jurisdiction, but for the provisions set out in Section 1 of this Act; all causes, other than probate matters, as are provided in Section 1 of this Act shall be and the same are hereby transferred to the District Court of Hill County, and all writs and process relating to such civil and criminal matters and causes included in the subject matter of jurisdiction prescribed in this Act, issued by or out of said County Court of Hill County be and the same are hereby made returnable to the next term of the District Court of said County after this Act takes effect. Provided further, however, that as to any civil or criminal case on appeal from said County Court, should a judgment be entered by the Court of Civil Appeals or the Supreme Court, or the Court of Criminal Appeals, remanding the case for a new trial or for further proceedings, same shall be remanded to the District Court of Hill County and all jurisdiction in respect to said particular case shall thereafter vest in the District Court of Hill County, Texas.

Sec. 3. That the County Clerk of Hill County be and is hereby required, within thirty (30) days after this Act takes effect to file with the Clerk of the District Court of said County all original papers in cases here transferred to the said District Court and all Judges' dockets and certified copies of any interlocutory judgment or other order entered in the minutes of the County Court in said cases so transferred, and the District Clerk shall immediately docket all such cases on the docket of the said District Court for Hill County, Texas, and all such cases shall stand on the docket of said Court in the same manner and place as each stands on the docket of the County Court. Provided further that it shall not be necessary that the District Clerk refile any papers theretofore filed by the County Court, but papers in said case bearing the file mark of the County Clerk prior to the time of the said transfer shall be held to have been filed in the case as of the date filed without being refiled by the District Clerk. Said County Clerk in cases so transferred shall accompany the papers with a certified bill of cost, and against all cost deposits, if any, the County Clerk shall charge accrued fees due him and the remainder of the deposit he shall pay to the District Court as a deposit in the particular case for which same was deposited. Credit shall be given litigants for all jury fees paid in the County Court.

Sec. 4. That this Act shall not be construed to in anywise or manner affect final judgments heretofore rendered by said County Court of Hill County pertaining to matters and causes which by Section 2 of this Act are transferred to the District Court of said County; but such County Court shall retain jurisdiction to enforce said final judgments and the County Clerk of said County shall issue all writs of execution and orders of sale and proceedings thereunder and his act in so doing shall be valid and binding to all intents and purposes the same as if no change had been made as set out in Section 2.

Sec. 5. That all laws and parts of laws in conflict herewith be and the same are hereby repealed. [Acts 1947, 50th Leg., p. 470, ch. 271.]

Kent County Court

Art. 1970—334. Kent county; concurrent jurisdiction of county court with Justices' Courts.—Section 1. The County Court of Kent County, shall have and exercise concurrent jurisdiction with the Justices' Courts in all civil matters, which, by the General Laws of this State, is conferred upon Justices' Courts.

Sec. 2. Said County Court shall also have and exercise such jurisdiction over and pertaining to all matters and things and proceedings as by the General Laws of this State is conferred upon the County Court.

Sec. 3. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said County Court in civil cases of which said Court has appellate or original concurrent jurisdiction with the Justice Court where the amount in controversy does not exceed One Hundred Dollars ($100) exclusive of interest and costs.

Sec. 4. This Act shall not be construed to deprive the Justice Courts of the jurisdiction now conferred upon them by law, but only to give concurrent original

jurisdiction to said County Court over such matters as are specified in Section 1 of this Act, nor shall this Act be construed to deny the right of appeal from the Justice Court to said County Court in any case originally brought in the Justice Court where the right of appeal now exists by law. [Acts 1947, 50th Leg., p. 791, ch. 392.]

Section 5 of the Act of 1947 repealed all conflicting laws.

TITLE 42—COURTS—PRACTICE IN DISTRICT AND COUNTY

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CHAPTER 1.—INSTITUTION, PARTIES AND VENUE

1. INSTITUTION OF SUITS

Art.
1971–1974. [Repealed.]

2. SUITS AGAINST NON-RESIDENTS

1975. Actions maintainable.
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3. PARTIES TO SUITS

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1985. For wife's debts, etc.
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4. VENUE

1995. Venue, general rule.
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1. INSTITUTION OF SUITS

Arts. 1971–1974. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 6, 22, 24, 25.

2. SUITS AGAINST NON-RESIDENTS

Art. 1975. [2172] [1504] Actions maintainable.—Persons claiming a right to or interest in property in this State may bring and prosecute to final decree, judgment or order, actions against non-residents of this State, or persons whose place of residence is unknown, or who are transient persons, who claim an adverse estate, or interest in, or who claim any lien or incumbrance on said property, for the purpose of determining such estate, interest, lien, or incumbrance, and granting the title to said property, or settling the lien or incumbrance thereon. [Acts 1893, p. 77; G. L. vol. 10, p. 507.]

Art. 1976. [2173] [1504] Actual possession not necessary.*—Such action as provided for in Article 1975, Title 42, Chapter 1, of the 1925 Revised Civil Statutes, of the State of Texas, may be maintained by any such person whether or not he is in actual possession of such property. Service on the defendant or defendants may be made by publication as is now or may be hereafter provided by law for publication of citation against such defendants, or by service of notice of the character and in the manner provided for by Articles 2037 and 2038, of Title 42, Chapter 3, of the 1925 Revised Civil Statutes, of the State of Texas. [Acts 1893, p. 77; G.L. vol. 10, p. 507; Acts 1934, 43rd Leg., 4th C.S., p. 68, ch. 26, § 1.]

* *Repealed in part, Rules of Civil Procedure, Rule 811.*

Arts. 1977–1979. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 810, 812, 813.

3. PARTIES TO SUITS

Art. 1980. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 33.

Art. 1981. [1836] [1197] [1201] By executors, etc.—Suits for the recovery of personal property, debts or damages, and suits for title or possession of lands, or for any right attached to, or growing out of the same, or for injury or damage done thereto, may be instituted by executors, administrators or guardians appointed in this State; and judgment in such cases shall be conclusive, but may be set aside by any person interested for fraud or collusion on the part of such executor or administrator. [Acts 1846, p. 363; P. D. 1447; G. L. vol. 2, p. 1669.]

Art. 1982. [1837] [1198] [1202] For lands against decedents.—In every suit against the estate of a decedent involving the title to real estate, the executor or administrator, if any, and the heirs shall be made parties defendant. [Acts 1870, p. 173; G. L. vol. 6, p. 347; P. D. 5697.]

Art. 1983. [1839] [1200] [1204] For wife's separate property.—The husband may sue either alone or jointly with his wife for the recovery of the separate property of the wife; and, in case he fails or neglects so to do, she may sue alone by authority of the court. [Acts 1840, p. 3; G. L. vol. 2, p. 177; P. D. 4636.]

Art. 1984. [1840] [1201] [1205] Against husband and wife for necessaries.—The husband and wife shall be jointly sued for all debts contracted by the wife for necessaries furnished herself or children, and for expenses which may have been incurred by the wife for the benefit of her separate property. [Acts 1848, p. 77; G. L. vol. 3, p. 78; P. D. 4643.]

Art. 1985. [1841] [1202] [1206] For wife's debts, etc.—The husband shall be joined in suits for separate debts and demands against the wife, but no personal judgment shall be rendered against the husband. [Acts 1846, p. 363; G. L. vol. 2, p. 1669; P. D. 9.]

Art. 1986. [1842] [1203] [1207] Several obligors to contract.—The acceptor of a bill of exchange, or a principal obligor in a contract, may be sued either alone or jointly with any other party who may be liable thereon; but no judgment shall be rendered against a party not primarily liable on such bill or other contract, unless judgment be also rendered against such acceptor or other principal obligor, except where the plaintiff may discontinue his suit against such principal obligor as hereinafter provided. [Id.; Acts 1840, p. 144; G. L. vol. 2, p. 318; P. D. 1426, 1448–9.]

Art. 1987. [1843] [1204] [1208] Parties conditionally liable.—The assignor, indorser, guarantor and surety upon a contract, and the drawer of a bill which has been accepted, may be sued without suing the maker, acceptor or other principal obligor, when the principal obligor resides beyond the limits of the State, or where he cannot be reached by the ordinary process of law, or when his residence is unknown and cannot be ascertained by the use of reasonable diligence, or when he is dead, or actually or notoriously insolvent.

Arts. 1988–1990. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 34–36.

Art. 1991. [1847] [1207] Suit in name of State.—Whenever an official bond is made payable to the State of Texas, or any officer thereof, and a recovery thereon is authorized by, or would inure to the benefit of parties other than the State, suit may be brought on such bond in the name of the State alone for the benefit of all parties entitled to recover thereon. [Acts 1891, p. 86; G.L. vol. 10, p. 314.]

Arts. 1992, 1993. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 7, 37.

Art. 1994. [2167–71] May appear by next friend.—Minors, lunatics, idiots or non compos mentis who have no legal guardian may sue and be represented by "next friend" under the following rules:

1, 2. [Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1). See Rule 44, Vernon's Texas Rules of Civil Procedure.]

3. In such cases when a judgment is recovered for money or other personal property the value of which does not exceed five hundred dollars, the court may by order entered of record, authorize such next friend or other person to take charge of such money or other property for the use and benefit of the plaintiff when he has executed a proper bond in a sum at least double the value of the property, payable to the county judge, conditioned that he will pay said money with lawful interest thereon or deliver said property and its increase to the person entitled to receive the same when ordered by the court to do so, and that he will use such money or property for the benefit of the owner under the direction of the court.

4. The judge of the court in which the judgment is rendered upon an application and hearing, in term time or vacation, may provide by decree for an investment of the funds accruing under such judgment. Such decree, if made in vacation, shall be recorded in the minutes of the succeeding term of the court.

5. The person who takes such money or property shall receive such compensation as the court may allow and shall make such disposition thereof as the court may order; and he shall return such money or property into court upon the order of the court.

6. If any person has an interest in such recovery, the court may hear evidence as to such interest, and order such claim, or such part as is deemed just, to be paid to whoever is entitled to receive the same. [Acts 1893, p. 3; G. L. vol. 10, p. 433; Acts 1909, p. 176.]

4. VENUE

Art. 1995. [1830] [1194] [1198] Venue, general rule.—No person who is an inhabitant of this State shall be sued out of the county in which he has his domicile except in the following cases:

1. Married women.—A married woman may be sued in the county in which her husband has his domicile. [Acts 1863, p. 10; G. L. vol. 5, p. 664; Acts 1889, p. 48; G. L. vol. 9, p. 1075; P. D. 1423; Acts 1913, p. 424.]

2. Transient persons.—A transient person may be sued in any county in which he may be found.

3. Non-residents; residence unknown.—If one or all of several defendants reside without the State or if their residence is unknown, suit may be brought in the county in which the plaintiff resides.

4. Defendants in different counties.—If two or more defendants reside in different counties, suit may be brought in any county where one of the defendants resides. The transfer or assignment of a note or chose in action shall not entitle any subsequent holder to sue thereon in any other county than that in which such suit could have been prosecuted if no assignment or transfer had been made.

5. Contract in writing.—If a person has contracted in writing to perform an obligation in a particular county, expressly naming such county, or a definite place therein, by such writing, suit upon or by reason of such obligation may be brought against him, either in such county or where the defendant has his domicile. [As amended Acts 1935, 44th Leg., p. 503, ch. 213, § 1.]

Section 2 of Acts 1935, 44th Leg., p. 503, ch. 213, repeals all conflicting laws and parts of laws.

6. Executors, administrators, etc.—If the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which he represents, the suit may be brought in the county in which such estate is administered.

7. Fraud and Defalcation.—In all cases of fraud, and in all cases of defalcation by public officers, suit may be brought in the county where the fraud was committed or where the defalcation occurred, or any of such suits may be brought where the defendant has his domicile. [As amended Acts 1927, 40th Leg., 1st C. S., p. 197, ch. 72, § 1.]

8. Attachment, sequestration, etc.—A suit for damages resulting from the suing out of a writ of attachment or sequestration, or for levying any such writ, may be brought in the county from which such writ was issued, or in any county where such levy was made in whole or in part.

9. Crime or Trespass.—A suit based upon a crime, offense, or trespass may be brought in the county where such crime, offense, or trespass was committed, whether committed by the defendant or by his agent or representative, or in the county where the defendant has his domicile. [As amended Acts 1947, 50th Leg., p. 739, ch. 366, § 1.]

10. Personal property.—Suit for the recovery of personal property may be brought in any county where the property may be or where the defendant resides.

11. Inheritances.—If the defendant has inherited an estate concerning which the suit is commenced, suit may be brought in the county where such estate principally lies.

12. Lien.—A suit for the foreclosure of a mortgage or other lien may be brought in the county where the property or any part thereof subject to such lien is situated.

13. Partition.—Suits for the partition of land or other property may be brought in the county where such land or other property, or a part thereof, may be, or in the county in which one or more of the defendants reside, or in the county of the residence of any defendant who may assert an adverse claim to or interest in such property, or seeks to recover the title to the same. Nothing herein shall be construed to fix venue of a suit to recover the title to land. [Id.; Acts 1919, p. 152.]

14. Lands.—Suits for the recovery of lands or damages thereto, or to remove incumbrances upon the title to land, or to quiet the title to land, or to prevent or stay waste on lands, must be brought in the county in which the land, or a part thereof, may lie.

15. Breach of warranty.—Suits for breach of warranty of title to lands may be brought in any county where either vendor resides, and all other vendors may be joined in the same suit.

16. Divorce.—Suits for divorce shall be brought in the county in which the plaintiff shall have resided for six months next preceding the bringing of the suit.

17. Injunctions.—Suits to enjoin the execution of a judgment or to stay proceedings in any suit shall be brought in the county in which such judgment was rendered or in which such suit is pending.

18. Revision of probate.—Suits to revise the proceedings of the county court in matters of probate must be brought in the district court of the county in which such proceedings were had.

19. Suits against counties.—Suits against a county shall be brought within such county.

20. Heads of departments.—Suits for mandamus against the head of any department of the State Government shall be brought in Travis County.

21. Corporations: charters.—Suits brought by the State for the purpose of forfeiting the charter of a private corporation chartered by Act of the Legislature, or organized under the laws of this State, and for the purpose of canceling the permit authorizing a foreign corporation to transact business in this State, and for the purpose of restraining corporations from exercising powers not conferred upon them by the laws of this State, and for the purpose of preventing persons from engaging in business in this State contrary to the laws thereof, may be brought in Travis County.

22. Railway lands.—Suits on behalf of the State to forfeit land fraudulently or colorably alienated by railway companies in fraud of the rights of the State, under the laws granting lands to railway companies, shall be brought in Travis County.

23. Corporations and Associations.—Suits against a private corporation, association, or joint stock company may be brought in the county in which its principal office is situated; or in the county in which the cause of action or part thereof arose; or in the county in which the plaintiff resided at the time the cause of action or part thereof arose, provided such corporation, association or company has an agency or representative in such county; or, if the corporation, association, or joint stock company had no agency or representative in the county in which the plaintiff resided at the time the cause of action or part thereof arose, then suit may be brought in the county nearest that in which plaintiff resided at said time in which the corporation, association or joint stock company then had an agency or representative. Suits against a railroad corporation, or against any assignee, trustee or receiver operating its railway, may also be brought in any county through or into which the railroad of such corporation extends or is operated. Suits against receivers of persons and corporations may also be brought as otherwise provided by law. [As amended Acts 1943, 48th Leg., p. 350, ch. 228, § 1.]

Section 2 of the Act of 1943 provides that the Act shall not affect pending litigation.

24. Carriers.—Suits arising from damage or loss to any passenger, freight, baggage or other property, by reason of its transportation, or contract in relation thereto, in whole or in part by one or more common carriers or the assignees, lessees, trustees or receivers thereof, operating or doing business as such in this State, or having agents or representatives in this State, may be brought against one or more of those so doing business, in any county where either does business or has an agent or representative.

25. Railway personal injuries.—Suits against railroad corporations, or against any assignee, trustee or receiver operating any railway in this State, for damages arising from personal injuries, resulting in death or otherwise, shall be brought either in the county in which the injury occurred, or in the county in which the plaintiff resided at the time of the injury. If the defendant railroad corporation does not run or operate its railway in, or through, the county in which the plaintiff resided at the time of the injury, and has no agent in said county, then said suit shall be brought either in the county in which the injury occurred, or in the county nearest that in which the plaintiff resided at the time of the injury, in which the defendant corporation runs or operates its road, or has an agent. When an injury occurs within one-half mile of the boundary line dividing two counties, suit may be brought in either of said counties. If the plaintiff is a nonresident of this State then such suit shall be brought in the county in which the injury occurred, or in the county in which the defendant railroad corporation has its principal office. [As amended Acts 1947, 50th Leg., p. 104, ch. 71, § 1.]

26. Railroad wages.—Suits by mechanics, laborers and operatives, for their wages due by railroad companies, may be instituted and prosecuted in any county in this State where such labor was performed, or in which the cause of action, or part thereof, accrued, or in the county in which the principal office of such railroad company is situated.

27. Foreign corporations.—Foreign corporations, private or public, joint stock companies or associations, not incorporated by the laws of this State, and doing business within this State, may be sued in any county where the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated; or, when the defendant corporation has no agent or representative in this State, then in the county where the plaintiffs or either of them, reside.

28. Insurance.—Suits against fire, marine or inland insurance companies may also be commenced in any county in which the insured property was situated. Suits on policies may be brought against any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health and accident insurance company, in the county where the home office of such company is located, or in the county where loss has occurred or where the policyholder or beneficiary instituting such suit resides.

28a. Fraternal benefit societies and statewide mutual assessment companies.—In all actions brought against Fraternal Benefit Societies and/or Statewide Mutual Assessment Companies, regardless of the plan upon which they operate and whether incorporated or not, growing out of or based upon any alleged right or claim or loss or proceeds due, arising from or predicated upon any policy or contract issued or made by such Fraternal Benefit Society and/or Statewide Mutual Assessment Companies, venue shall lie in the county where the policyholder or beneficiary instituting such suit resides or in the county of the principal office of such association or where such cause of action arose. [As added Acts 1931, 42nd Leg., p. 251, ch. 150, § 1.]

29. Libel or slander.—A suit for damages for libel or slander shall be brought, and can only be maintained, in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county where the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff. [Acts 1919, p. 138.]

29a. Two or more defendants.—Whenever there are two or more defendants in any suit brought in any county in this State and such suit is lawfully maintainable therein under the provisions of Article 1995 as to any of such defendants, then such suit may be maintained in such county against any and all necessary parties thereto. [As added Acts 1927, 40th Leg., 1st C.S., p. 197, ch. 72, § 2.]

30. Special venue.—Whenever in any law authorizing or regulating any particular character of action, the venue is expressly prescribed, the suit shall be

commenced in the county to which jurisdiction may be so expressly given.

Subd. 29a held intended to repeal Subd. 4. Citizens National Bank of Waco v. Del Rio Bank & Trust Co., Civ. App., 11 S.W.2d 242; Oakland Motor Car Co. v. Jones, Civ.App., 29 S.W.2d 861, mandamus den. 121 T. 405, 48 S.W.2d 982; Duvall v. Boyer, Civ.App., 35 S.W.2d 181; Chain Investment Co v. First Nat. Bank, Civ.App., 135 S.W.2d 192; Kelly v. Lobit, Civ.App., 142 S.W.2d 301.

Section 2 of the act of 1947, amending section 9, and section 2 of the act of 1943, amending section 23, provided that such acts should not apply to pending suits.

Section 3 of the act of 1947, amending section 9, repealed all conflicting laws.

Art. 1996. [1834] [1195] [1199] When water course or highway is boundary.—Where any part of a river, water course, highway, road or street is the boundary line between two counties, the several courts of each of said counties shall have concurrent jurisdiction in all cases over such parts of said river, water course, highway, road or street as shall be the boundary of such county in the same manner as if such parts of said river, water course, highway, road or street were within the body of such county.

CHAPTER 2.—PLEADING

1. PLEADING IN GENERAL

Art.
1997–2002. [Repealed.]
2002a. Filing pleadings; copy delivered to adverse party or to clerk; withdrawal.
2002b. Filing pleadings; several adverse parties; number of copies furnished.
2002c. Failure to furnish copy of pleadings to adverse party; contempt of court.

2. PLEADINGS OF THE PLAINTIFF

2003–2005. [Repealed.]

3. PLEADINGS OF THE DEFENDANT

2006. [Repealed.]
2007. Plea of privilege.
2008. Hearing on plea.*
2009–2020. [Repealed.]

1. PLEADING IN GENERAL

Arts. 1997—2002. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure; Rules 45, 52, 53, 60, 61, 63, 93, 737.

Art. 2002a. Filing pleadings; copy delivered to adverse party or to clerk; withdrawal.—Whenever any party files a pleading of any character, he shall at the same time either deliver to the adverse party, or deposit with the Clerk for the adverse party, a copy of such pleading, which copy shall not be filed by the Clerk. All filed pleadings shall remain at all times in the Clerk's office or in the Court or in custody of the Clerk, except that the Court may by order entered on the Minutes allow a filed pleading to be withdrawn for a limited time whenever necessary, on leaving a certified copy on file. The party withdrawing such pleading shall pay the costs of such order and certified copy. [Acts 1939, 46th Leg., p. 203, § 1.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rules 72, 75.

Art. 2002b. Filing pleadings; several adverse parties; number of copies furnished.—If there is more than one adverse party and the adverse parties are represented by different attorneys, one copy of such pleading shall on request be furnished to each attorney representing the adverse parties, but a firm of attorneys associated in the case shall count as one. Not more than four (4) copies of any pleading shall be required to be furnished to adverse parties and they shall be delivered to the first four (4) applicants entitled thereto. After a copy of a pleading is furnished to an attorney or deposited with the Clerk for him, he cannot require another copy of the same pleading to be furnished to him. [Acts 1939, 46th Leg., p. 203, § 2.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rule 72.

Art. 2002c. Failure to furnish copy of pleadings to adverse party; contempt of court.—If any party fails to furnish the adverse party with a copy of any pleading in accordance with this provision, he may be required to do so by order of the Court on motion made and notice given, and if he fails to comply with any such order within five (5) days after its date, he may be punished as for contempt of Court, and a certified copy may be ordered to be furnished by the Clerk and the costs thereof charged to the party who had failed to comply with the order to furnish the same. [Acts 1939, 46th Leg., p. 203, § 3.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rule 73.

2. PLEADINGS OF THE PLAINTIFF

Arts. 2003–2005. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 79, 84, 92.

3. PLEADINGS OF THE DEFENDANT

Art. 2006. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 81, 82.

Art. 2007 [1903] Plea of privilege.—A plea of privilege to be sued in the county of one's residence shall be sufficient if it be in writing and sworn to, and shall state that the party claiming such privilege was not, at the institution of such suit, nor at the time of the service of process thereon, nor at the time of filing such plea, a resident of the county in which suit was instituted and shall state the county of his residence at the time of such plea, and that "no exception to exclusive venue in the county of one's residence provided by law exists in said cause"; and such plea of privilege when filed shall be prima facie proof of the defendant's right to change of venue; provided that such plea shall not be construed to embrace any of the matters set forth in the Revised Civil Statutes, Article 2010. If the plaintiff desires to controvert the plea of privilege, he shall within five days after appearance day file a controverting plea under oath, setting out specifically the fact or facts relied upon to confer venue of such cause on the court where the cause is pending. [Acts 1907, p. 248; Acts 1917, p. 388; Acts 1939, 46th Leg., p. 204, § 1.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rule 86.

Art. 2008. [1903] Hearing on plea.*—Upon the filing of such controverting plea, the judge or jus-

tice of the peace shall note on same a time for a hearing on the plea of privilege. Such hearing, unless the parties agree upon the date, shall not be had until a copy of such controverting plea, including a copy of such notation thereon, shall have been served on each defendant, or his attorney, for at least ten days exclusive of the day of service and the date of hearing, after which the court shall promptly hear such plea of privilege and enter judgment thereon. Either party may appeal from the judgment sustaining or over-ruling the plea of privilege, and if the judgment is one sustaining the plea of privilege and an appeal is taken, such appeal shall suspend the transfer of the venue and a trial of the cause pending the final determination of such appeal. [Acts 1907, p. 248; Acts 1917, p. 388.]

* *Repealed in part, Rules of Civil Procedure, Rules* 385, 87.

Arts. 2009–2020. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 84, 88, 89, 92, 93, 95–97, 535.

CHAPTER 3.—CITATION

Art.
2021–2026. [Repealed.]
2027. Against counties.
2028. Against cities and towns, etc.
2029. Against corporations and joint stock associations.
2030. Receiver of railroad company.
2031. Foreign corporations.
2031—1. Construction of act.
2031a. Power of attorney designating resident for service of process; penalty for failure to file.
Sec.
1. Power of attorney required.
2. Requirements.
3. Resident agent; service upon Secretary of State, when.
4. Service upon Secretary of State, manner of.
5. Failure to file power of attorney and designate agent.
6. Statutes not repealed; application.
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2032. Foreign railway corporations.
2033. Against partners.
2033a. Service on local representative of nonresident individual or partnership supplying public utility service.
2033b. Service of process on agent or clerk in office in county other than residence of principal.
2033c. Effect of service.
2034–2039. [Repealed.]
2039a. Citation of nonresident motor vehicle owner by serving Highway Commissioner.
Sec.
1. Acceptance of benefits of highways deemed equivalent to appointment of agent, service.
2. Forwarding process; notice; return.
3. Return.
4. Certificate of chairman of Highway Commission.
5. Judgment by default.
6. Continuance or postponement.
2040. Unknown heirs or stockholders of defunct corporation.*
2041. [Repealed.]
2041a. Suits against unknown owners or claimants of interest in land; citation by publication.
2042–2050. [Repealed.]

Arts. 2021–2026. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 90, 101, 104–106.

Art. 2027. [1858] [1220] [1221] Against counties.—In suits against a county, the citation shall be served on the county judge of such county. [Id. p. 320; P. D. 1048; G. L. vol. 2, p. 1626.]

Art. 2028. [1859] [1221] [1222] Against cities and towns, etc.—In suits against an incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof. [Acts 1854, p. 53; P. D. 1430; G. L. vol. 3, p. 1497.]

Art. 2029. [1860] [1222] [1223] Against corporations and joint stock associations.—In suits against any incorporated company or joint stock association, the citation may be served on the President, Vice President, Secretary, Cashier, Assistant Cashier, or Treasurer of such company or association, or upon the local agent of such company or association in the county where the suit is brought, or by leaving a copy of the same at the principal office of the company during office hours. If neither the President, Vice President, Secretary, Assistant Secretary, Cashier, Assistant Cashier, or Treasurer reside in the county in which suit is brought, and such company or association has no agent in the county, then the citation may be served upon any agent representing such company, corporation, or association in the State. [Acts 1854, p. 53; G.L. vol. 3, p. 1497; P.D. 1430; Acts 1874, pp. 31, 108; G.L. vol. 8, pp. 34, 110; Acts 1887, p. 119; G.L. vol. 9, p. 917; Acts 1903, p. 66; Acts 1933, 43rd Leg., p. 327, ch. 127.]

Art. 2030. [1860] [1222] [1223] Receiver of railroad company.—In suits against receivers of railroad companies, service may be had either upon the receiver, the general or division superintendent, or any agent of the receiver who resides in the county in which suit is brought. If there be no agent of the receiver in the county in which suit is brought, then service may be had upon any agent of the receiver in the State. [Acts 1854, p. 53; G.L. vol. 3, p. 1497; P.D. 1430; Acts 1874, pp. 31, 108; G.L. vol. 8, pp. 34, 110; Acts 1887, p. 119; G.L. vol. 9, p. 917; Acts 1903, p. 66.]

Art. 2031. [1861] [1223] Foreign corporations.—In any suit against a foreign corporation, joint stock company or association, or acting corporation or association, pending or hereafter filed in this State, to which any foreign corporation is a party or is to be made a party, process may be served on the President, Vice-President, Secretary, Treasurer, General Manager, or upon any local or travelling agent or travelling salesman of such corporation, joint stock company or association, or acting corporation or association in this State. [Acts 1885, p. 79; Acts 1919, p. 181; G.L. vol. 9, p. 699; Acts 1935, 44th Leg., 2nd C.S., p. 1688, ch. 431, § 1.]

Art. 2031—1. Construction of act.—Nothing herein contained shall be construed as repealing any Statute in this State in reference to service of process on foreign corporations, but this Act shall be construed and held cumulative of all existing statutes, and service of process in all suits against foreign corporations may be had as is provided for herein or by any other method provided by law. [Acts 1935, 44th Leg., 2nd C.S., p. 1688, ch. 431, § 2.]

Art. 2031a. Power of attorney designating resident for service of process; penalty for failure to file.

Power of attorney required

Section 1. No foreign corporation shall transact or do any business in this State without first having filed in the office of the Secretary of State a power of attorney designating some individual who is a resident citizen of this State, as its service agent, upon whom process may be served in all suits, proceedings and causes of action, pending or hereafter filed in this State, in

which said foreign corporation is a party or is to be made a party.

Requirements

Sec. 2. The power of attorney required by this Act shall, in addition to stating the name and address of the agent, also stipulate that said agent is appointed as the corporation's service agent in Texas, and that said foreign corporation consents to the service of process upon said agent and that he shall be deemed as the service agent of said corporation for all intents and purposes as contemplated by the Statutes requiring such designation and appointment; said power of attorney shall be acknowledged by the President or Vice President, attested by the Secretary and acknowledged in manner and in form as is required in the acknowledgment of deeds in the State of Texas; said power of attorney shall, when executed, be filed in the office of the Secretary of State and shall become a part of the records in said office.

Resident agent; service upon Secretary of State, when

Sec. 3. Such foreign corporation that shall transact or do any business in this State shall have and keep continually some resident agent, empowered as aforesaid, during all the time such corporation shall transact or do any business within this State, and service of any process, pleading, notice or other paper upon him shall be taken and held as due service on said corporation. Such corporation may change its agent from time to time by filing and recording with the Secretary of State a new appointment, stating the change of such agent or stating his change of address within the State of Texas; and in the event such foreign corporation shall withdraw from this State or cease to transact or do any business herein, it shall continue to keep and maintain such agent within this State upon whom service of process, pleadings and papers may be made, until the statutes of limitation shall have run against anyone bringing an action against said corporation, which accrued prior to its withdrawal from this State. In case such agent cannot be found at the address given in said power of attorney, or in case said corporation shall revoke the authority of its designated agent or fail to keep and maintain such agent within this State, after its withdrawal from this State and prior to the time when the statutes of limitation would have run against causes of action accruing against it, then and in that event, service of process, pleading and papers of such actions may be made upon the Secretary of State of the State of Texas, and the same shall be held as due and sufficient service upon such corporation.

Service upon Secretary of State, manner of

Sec. 4. Whenever process against a foreign corporation is served upon the Secretary of State, said service shall be made by delivering to the Secretary of State, or to the Assistant Secretary of State, duplicate copies of such process, and there shall also be delivered to the Secretary of State, or Assistant Secretary of State, a statement of the address of the home office of such corporation to which notice and a copy of such process shall be sent, whereupon service of such process upon such corporation shall be deemed to be complete and shall constitute valid service on such corporation. Upon receipt of such process the Secretary of State shall forthwith forward to said corporation by registered mail a copy of such process; provided, however, that failure of the Secretary of State to give such notice or to mail copies of such process shall not affect the validity of said service. The certificate of the Secretary of State, under his official seal, of such service shall be competent and sufficient proof thereof. The Secretary of State shall keep a record of all process served upon him and shall record therein the time of said service and his action in respect thereto.

Failure to file power of attorney and designate agent

Sec. 5. If any corporation which is required by the terms of this Act to file the power of attorney and designate a service agent and to keep and maintain such agent or his successor within this State at the address designated in such power of attorney as provided by this Act, shall fail to do so, then and in such event:

(a) Each of its acts in this State shall, as to it, be unlawful and void and none of such acts shall, as to it, be valid; and it shall be incapable in this State of receiving the benefit of exercising in its behalf or enjoying any right, power, privilege or immunity that shall not already have accrued, provided that none of its acts done subsequently to the filing of such a power of attorney, though such filing be late, shall be affected by the foregoing provisions, nor in case of such late filing shall the incapacity affected by the foregoing provisions apply to any right, power, privilege or immunity that shall have wholly arisen and accrued after such filing.

(b) Such corporation shall be incapacitated to maintain any suit or legal proceedings in any Court in this State upon any demand whether arising out of contract or tort.

(c) Such corporation shall be liable to the State of Texas in the penal sum of Two Hundred Dollars ($200), per month for each and every month in which it shall have so failed to file any such power of attorney, same to be recoverable by the Attorney General in the name of the State of Texas, in any Court of competent jurisdiction in Travis County, Texas.

(d) Such corporation, by doing any act within this State, shall be deemed to have appointed the Secretary of State and his successors in office, to all intents, effects and purposes as if it had duly executed such power of attorney.

Statutes not repealed; application

Sec. 6. Nothing herein contained shall be construed as repealing any Statute in force in this State in reference to service of process on foreign corporations, or in reference to the qualifying of such corporations to do business in this State, or in reference to the liability of such corporation for penalties for violating the laws of this State, but this Act shall be cumulative of all existing Statutes. Service of process in all suits against foreign corporations may be had as is now provided by law, or as provided in this Act, or by all such methods. The terms of this Act shall also apply to suits and action for penalties against such corporations by this State or its officers.

Partial invalidity

Sec. 7 If any paragraph, section or subsection of this Act shall be held or deemed invalid or unconstitutional, such invalid or unconstitutional part or parts shall not in any manner affect the remaining paragraph, section or subsection, but all such remaining parts shall be held to be expressive of the wish of the Legislature, regardless of the invalidity of any paragraph, section or subsection hereof. [Acts 1933, 43rd Leg., p. 606, ch. 202; Acts 1943, 48th Leg., p. 673, ch. 376, § 1.]

Art. 2032. [1862] Foreign railway corporations.—Service may also be had on foreign railway corporations by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations where one is a foreign railway corporation, and the other a domestic corporation, if said conductor handles and operates trains over such foreign and domestic corporation's tracks across the State line of Texas and on the track of the domestic corporation within this State or upon any agent who has an office in Texas who sells tickets or makes contracts for the transportation of passengers or property over any line of railway, or part thereof,

of such foreign railway corporation or company. Conductors who are engaged in handling trains and employed by a foreign railway corporation and a domestic corporation, and who operate such trains across the State line of Texas, and agents engaged in selling tickets or making contracts for the transportation of property, are hereby designated as agents of such foreign corporation or companies upon whom service of citation may be had. [Acts 1905, p. 30; Acts 1919, p. 288.]

Art. 2033. [1863] [1224] [1224] Against partners.—Citation served upon one member of a partnership or firm shall be sufficient to authorize a judgment against the firm and the partner actually served. [Acts 1858, p. 110; P. D. 1514; G. L. vol. 4, p. 982.]

Art. 2033a. Service on local representative of nonresident individual or partnership supplying public utility service.—In suits against individuals and partnerships engaging in supplying gas, water, electricity or other public utility service to villages, towns, or cities in Texas, where such individuals or members of such partnerships reside out of the State of Texas, citation may be served upon the local agent, representative, superintendent or person in charge of the business of such individuals or partnerships. [Acts 1931, 42nd Leg., p. 209, ch. 122, § 1.]

Art. 2033b. Service of process on agent or clerk in office in county other than residence of principal.—When an individual, partnership or unincorporated association (either being referred to herein as principal, whether one or more) has, for the transaction or doing of any business in Texas, an office, place of business, or agency in any county other than that in which the principal resides, service of citation or other civil process to bind any such principal, may be made on any agent or clerk employed in such office, place of business or agency, in all suits or actions growing out of or connected with such business and brought in the county in which such office, place of business or agency is located; and the provisions hereof shall apply as well to non-residents of the state as to non-residents of such county; and shall also apply to cases where a principal, though claiming or alleged to be a resident of the county wherein is located such office, place of business or agency, has not been found in such county for service on him of process in such suit, in which case, if the officer making return of the process unexecuted shall certify in such return that after diligent search and inquiry a principal cannot be found and served, then process in such suit to any succeeding term of court may be served on such clerk or agent as is herein provided for in case of non-residents of such county; but provided that nothing herein shall prevent or interfere with the application of the articles of the statutes relating to venue of suits. [Acts 1935, 44th Leg., 2nd C.S., p. 1759, ch. 463, § 1.]

Section 3 of this Act reads as follows: "That if any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or other circumstances shall not be affected."

Art. 2033c. Effect of service.—Such service of process, made in the manner herein provided, shall have the same effect as if made personally on the principal and shall especially have effect to subject all non-exempt property in Texas of the principal so served to the jurisdiction and judgment of the court in such suit; but provided that no default judgment shall be rendered on service so obtained until after twenty days after the date of such service, and provided further that the method of service afforded by this Act shall be cumulative. [Acts 1935, 44th Leg., 2nd C.S., p. 1759, ch. 463, § 2.]

Arts. 2034–2039. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 100, 106–109.

Art. 2039a. Citation of nonresident motor vehicle owner by serving Highway Commissioner.

Acceptance of benefits of highways deemed equivalent to appointment of agent; service

Sec. 1. The acceptance by a non-resident of this State or the acceptance by his agent, servant or employee, of the rights, privileges and benefits of the public highways or public streets of this State as evidenced by him or his agent, servant or employee operating a motor vehicle or motorcycle on any such public highway or public street, shall be deemed equivalent to an appointment by such non-resident and of his agent, servant or employee, of the Chairman of the State Highway Commission of this State, or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against said non-resident, his agent, servant or employee, growing out of any accident or collision in which said non-resident, his agent, servant or employee may be involved while operating a motor vehicle or motorcycle on such public highway or public street either in person or by his agent, servant or employee, and said acceptance or operation shall be a signification of the agreement of said non-resident, or his agent, servant or employee that any such process against him or against his agent, servant or employee, served upon said Chairman of the State Highway Commission, or his successor in office, shall be of the same legal force and validity as if served personally:

Service of such process shall be made by leaving a certified copy of the process issued in the hands of the Chairman of the State Highway Commission in Texas at least twenty days prior to the return date thereof, to be stated in said process, and such service shall be sufficient upon said non-resident, his agent, servant or employee, provided, however, that notice of such service and a copy of the process be forthwith sent by registered mail by the Chairman of the State Highway Commission to the non-resident defendant, his agent, servant or employee.

Forwarding process; notice; return

Sec. 2. It shall be the duty of the Chairman of the State Highway Commission of the State of Texas, upon being served with process as provided in Section 1 of this Act, to immediately enclose copy of the process served upon him in a letter properly addressed to the defendant, or to his agent, servant or employee, and shall forward the same by registered mail, postage prepaid. If and in the event notice of service of the process upon the Chairman of the State Highway Commission cannot be effected by registered mail or if the person to whom it is addressed refuses to accept or receive the same, then the plaintiff may cause the defendant to be served with a notice of the fact that the process has been served upon the Chairman of the State Highway Commission, stating the date of the service thereof, which notice shall also be accompanied with a certified copy of the process so served upon said Chairman of the State Highway Commission. Such notice may be served by any disinterested person competent to make oath of the fact by delivering to the person to be served in person a true copy of such notice, together with a certified copy of the process served upon the Chairman of the State Highway Commission. The return of service in such case shall be endorsed on or attached to the original notice stating when it was served and upon whom it was served and it shall be signed and sworn to by the party making such service before any person authorized by the statutes of this State to make affidavit under the hand and official seal of such officer.

Return

Sec. 3. The officer serving such process upon the Chairman of the State Highway Commission, shall in his return state the day and hour of the service upon the Chairman of the State Highway Commission of such process and such other facts as are now required to be made in his return as in the case of service of citations generally.

Certificate of chairman of Highway Commission

Sec. 4. The Chairman of the State Highway Commission shall upon request of a party and upon the payment of a fee of One ($1.00) Dollar, certify to the court out of which said process is issued or in which any suit or action may be pending against such nonresident, its agent, servant or employee, the occurrence or performance of any of the duties, acts, omissions, transactions or happenings contemplated or required by this Act, including the wording of any registered letter received, and his certificate, as well as the wording of said registered letter receipt, shall be accepted as prima facie evidence and proof of the statements contained therein.

Judgment by default

Sec. 5. No judgment by default shall be taken in any such cause or action, suit or proceeding, until after the expiration of at least twenty days after such process shall have been served upon the Chairman of the State Highway Commission as herein provided, and the presumption shall obtain, unless rebutted, that such process was transmitted by the Chairman of the State Highway Commission and received by the defendant after being deposited in the mail by the Chairman of the State Highway Commission.

Continuance or postponement

Sec. 6. The court in which the action or proceeding is pending shall have the right to continue or postpone said action or proceeding, as may be necessary to afford the defendant reasonable opportunity to defend the action. [Acts 1929, 41st Leg., p. 279, ch. 125; Acts 1933, 43rd Leg., p. 145, ch. 70.]

Art. 2040. [1875] [1236] [1236] Unknown heirs or stockholders of defunct corporation.*— Where property in this State has been granted or has accrued to the heirs as such, of any deceased person, or to the stockholders of defunct corporation, any party having a claim or cause of action against them relative to such property, if their names be unknown to him, may bring an action against them, their heirs or legal representatives, describing them as the heirs of such named ancestor or unknown stockholder of such corporation. If the plaintiff, his agent, or attorney, shall make oath that the names of such heirs or stockholders are unknown to the affiant, the clerk shall issue a citation for such heirs or stockholders, addressed to the sheriff or any constable of the county in which such suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the officer to summon the defendant by making publication of such citation as provided in the preceding article. [Acts 1866, p. 125; G. L. vol. 5, p. 1043; Acts 1848, p. 106; G. L. vol. 3, p. 106; P. D. 5460; Acts 1917, p. 23; Acts 1919, p. 168.]

* *Repealed in part, Rules of Civil Procedure, Rule* 111.

Art. 2041. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 114, 115.

Art. 2041a. Suits against unknown owners or claimants of interest in land; citation by publication.—Sec. 1. When land in this State or any interest of any kind in land has been or may hereafter be conveyed, or any lease or contract with reference to land made by written instrument (a) to any person or persons as trustee or trustees and in the conveyance or instrument constituting source of title or claim of title the names of the persons taking or holding the equitable or beneficial title are not disclosed and are unknown, or (b) to any association, joint stock company or partnership, in an association, company or firm name, without disclosing the names of the members, shareholders or partners or persons owning interests in such association, company or firm, and such association, joint stock company or partnership shall thereafter be dissolved and the names of the persons holding or acquiring title to such lands after dissolution are not disclosed in such instrument and are unknown; in each of such cases any person claiming ownership of or any interest in such lands or having a claim or cause of action against such unknown owners or claimants relative to such property, may bring action or actions against such unknown owners or claimants as such. The provisions hereof shall apply to conveyances made to all character and kinds of companies, associations and organizations, and in which conveyance the names and identity of the persons taking and holding the beneficial or equitable title are not disclosed and are unknown; provided, however, that if the grantee in such conveyance is shown therein to be a corporation or if the grantee be known to be a corporation, in such event this Act shall not apply, but the rights of action shall be governed by Article 2040 of Revised Civil Statutes; but if the character of the organization as whether incorporated or unincorporated is not shown in such conveyance and such facts are unknown, then suit brought under the provisions of this Act against the unknown owners or claimants of property under such conveyance shall be sufficient to give the Court jurisdiction over such unknown owners or claimants regardless of whether the named grantee is in fact a corporation or unincorporated. [Acts 1931, 42nd Leg., p. 369, ch. 216.]

Secs. 2, 3. [Repealed.]

See Rules of Civil Procedure, Rules 112, 113.

Sections 2 and 3 derived from Acts 1931, 42nd Leg., p. 369, ch. 216, §§ 2, 3 related to who could be made parties and provided for a citation for service upon all persons claiming any title or interest in such land under the conveyance.

Arts. 2042–2050. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 116–124.

CHAPTER 4.—COSTS AND SECURITY THEREFOR

Art.
2051–2071. [Repealed.]
2072. No security required.
2072a. Banking commissioner and Board not required to give security.
2073, 2074. [Repealed.]
2075. Taxing stenographer's fees; reporting argument of counsel.
2076. Taxing interpreters' fees.
2077. [Repealed.]

Arts. 2051–2071. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 125–139, 141–146.

Art. 2072. [768–2054–5] No security required.—No security for costs shall be required of the State or of any incorporated city or town in any action, suit or proceeding, or of an executor, administrator or guardian appointed by a court of this State in any suit brought by him in his fiduciary character.

Art. 2072a. Banking commissioner and Board not required to give security.—That hereafter neither the Banking Commissioner of Texas nor the State Banking Board shall be required to give any cost bonds in trial courts in cases to which they may be a party in their official capacities, nor shall they be required to give any cost bond on appeal or supersedeas bond on appeal, or writ of error, in any civil case

which they may be prosecuting, or defending in their official capacities. [Acts 1927, 40th Leg., p. 203, ch. 135, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 203, ch. 135, repeals all conflicting laws and parts of laws.

Arts. 2073, 2074. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 147, 148.

Art. 2075. [1927] Taxing stenographer's fees; reporting argument of counsel.—The clerks of all courts having official reporters shall tax as costs in each civil case where an answer is filed, and a record or any part thereof is made of the evidence in said case by the official reporter, except suits to collect delinquent taxes, a stenographer's fee of Three Dollars ($3.00). Said fee shall be paid as other costs in the case, and paid by said clerk, when collected, into the General Funds of the county in which said court sits; provided, however, that no stenographer's fee shall be taxed as costs in any civil case where no record or any part thereof is made of the evidence in the case by the official reporter. Provided further that in all cases where a fee is authorized to be paid by this Act, the said official court reporter shall be required to report argument of counsel, when requested by either side, and said court reporter shall in no case charge for such services more than Five Dollars ($5.00), provided further that in case said report of argument is required to be transcribed then said court reporter may charge the amount per page as is now allowed for transcribing any other part of said record. [Acts 1911, p. 264; Acts 1943, 48th Leg., p. 120, ch. 90, § 1.]

Art. 2076. Taxing interpreters' fees.—In each civil suit wherein the services of an interpreter are used, three dollars shall be charged and collected as part of the costs as interpreters' fees, to be paid when collected into the general funds of the county. [Acts 4th C. S. 1918, p. 26.]

Art. 2077. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 149.

CHAPTER 5.—ABATEMENT AND DISCONTINUANCE OF SUIT

Art.
2078–2087. [Repealed.]
2088. Discontinuance as to principal obligor.
2089. [Repealed.]
2090. Discontinuance as to defendants served, etc.
2091. [Repealed.]

Arts. 2078–2087. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 150–153, 155–159, 161.

Art. 2088. [1897] [1257] [1257] Discontinuance as to principal obligor.—Where a suit is discontinued as to the principal obligor, no judgment can be rendered therein against an indorser, guarantor, surety or drawer of an accepted bill who is jointly sued, unless it is alleged and proved that such principal obligor resides beyond the limits of the State, or in such part of the same that he cannot be reached by the ordinary process of law, or that his residence is unknown and cannot be ascertained by the use of reasonable diligence, or that he is dead or actually or notoriously insolvent. [Acts 1846, p. 363; P. D. 1449, 1426, 225.]

Art. 2089. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 162.

Art. 2090. [1899] [1259] [1259] Discontinuance as to defendants served, etc.—When it would not operate to the prejudice of the other defendants the court may permit the plaintiff to discontinue his suit as to one or more of several defendants who were served with process, or who have answered, but no such discontinuance shall, in any case, be allowed as to a principal obligor, except in the cases provided for in the second preceding article.

Art. 2091. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 154.

CHAPTER 6.—CERTAIN DISTRICT COURTS

Art.
2092. Rules of practice and procedure.
2093. [Repealed.]
2093a. [Repealed.]
2093b. [Repealed.]
2093c. Assignment clerk in certain counties having less than 500,000 population.
2093d. Presiding Judge and Assignment Clerk in 28th, 94th and 117th Judicial Districts.

Art. 2092. Rules of practice and procedure.—The following rules of practice and procedure shall govern and be followed in the Civil District Courts in counties having two (2) or more District Courts with civil jurisdiction only, whose terms continue three (3) months or longer and in all civil litigation in counties having five (5) or more District Courts with either civil or criminal jurisdiction or both civil and criminal jurisdiction:

1. Citation. Citations issued for personal service in the county in which the suit is pending shall command the officer to summon the defendant to appear and answer the plaintiff's petition at or before ten o'clock a. m. of the Monday next following the expiration of the twenty-five (25) days from the date of citation and shall be executed and returned by the officer twenty (20) days after date of issuance.

2. Execution and Return. Citations or notices issued for personal service on a defendant to appear at or before ten o'clock a. m. of the Monday next after the expiration of fifty-five (55) days from the date the citation or notice is issued, shall be executed or served on or before thirty-five (35) days from the date of issue and shall be made returnable thirty-five (35) days after such date.

3. Out-County Citation. Citation for defendants alleged to reside or be outside of the county in which the suit is pending, but within this State, shall be directed to the Sheriff or any constable of the county where the defendant is alleged to reside or be and shall command him to summon the defendant to appear and answer the plaintiff's petition at or before ten o'clock a. m. of the Monday next following the expiration of thirty (30) days from the date the citation is issued and shall be executed and returned to the officer within twenty (20) days after the date of issue.

4. Time for Appearance. Citations or notices issued for personal service on a defendant alleged to reside or be outside of the State but within the United States, shall notify the defendant to appear at or before ten o'clock a. m. of the Monday next after the expiration of fifty-five (55) days from the date the citation or notice is issued and shall be executed or served on or before thirty-five (35) days from the date of issue and shall be made returnable thirty-five (35) days after date of issue.

5. Citation Shall Specify Day. In each of said cases the citation or notice shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and if any defendant so served does not appear and answer at or before the time specified in such citation or notice, judgment by default may be rendered against such defendant.

6. Citation by Publication. If citation is to be served by publication it shall be returnable forty-two (42) days after the date of issue and shall command the defendant to appear at or before ten o'clock a. m. of the Monday next following the expiration of forty-two (42) days after the citation was issued, and shall specify the day of the week, the day of the month and the

time of day the defendant is required to appear and answer, and shall be served by being published in the manner and for the length of time required by law for citations by publication in the same kind of cases or matters in other District Courts at the time the publication is made and the first publication shall be at least twenty-eight (28) days before the return day of the citation.

7. Service in Foreign Country. If citation is issued to be served personally on any defendant or party in any foreign country it shall be made returnable at such time as the plaintiff or person procuring its issuance shall direct, which shall not be less than thirty (30) days nor more than one hundred and twenty (120) days after the date of issue and shall notify and command the defendant or person to be served to appear and answer at or before ten o'clock a. m. of the Monday next following the expiration of twenty (20) days after the return day of the citation or notice and shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and shall be served on or before the return day, and if any defendant so served does not appear and answer at or before the time specified in the citation or notice, judgment by default may be rendered against such defendant.

8. Where Citation or Service is Quashed. If the citation or service thereof is quashed on motion of the defendant, such defendant shall be deemed to have entered his appearance at ten o'clock a. m. on the Monday next after the expiration of twenty (20) days after the day on which the citation or service is quashed, and such defendant shall be deemed to have been duly served so as to require him to appear and answer at that time, and if he fails to do so, judgment by default may be rendered against him.

9. Writs of Attachment. Writs of attachment shall be executed immediately after their issuance. Every such writ shall be made returnable, on or before ten o'clock a. m. of the Monday next after the expiration of fifteen (15) days from the issuance of the writ, and the officer executing the writ shall return the same at or before that time with his action indorsed thereon or attached thereto, signed by him officially, showing how he has executed the writ.

10. Writs of Garnishment. Writs of garnishment shall be executed immediately after their issuance and every such writ shall command the officer to summon the garnishee to appear at or before ten o'clock a. m. of the Monday next following the expiration of twenty-five (25) days from the date the writ was issued and the writ shall specify when and where the garnishee is required to answer and the officer receiving the writ of garnishment shall within fifteen (15) days after the issuance of the writ make his return showing how he has executed the writ.

11. Failure of Garnishee to Answer. If the garnishee fails to make answer to the writ on or before ten o'clock a. m. of the Monday next following the expiration of twenty-five (25) days from the date of the writ, he shall be in default and it shall be lawful for the Court, at any time after judgment shall have been rendered against the defendant, to render judgment by default against such garnishee for the full amount of such judgment against the defendant, with all accruing interest and costs. The plaintiff in garnishment shall have fifteen (15) days after the garnishee's answer is filed within which to controvert the same if he so desires.

12. Other Writs and Process. All other writs and process not expressly otherwise provided for in this Article and which under the general law are now returnable to the first day of the next term of Court after the issuance thereof, and which require the defendant or person served to appear on the first day of the next succeeding term, shall be returnable fifteen (15) days after the date thereof and shall be executed and returned at or before the expiration of fifteen (15) days from the date thereof and shall require the defendant or party served to appear and answer at or before ten o'clock a. m. of the Monday next after the expiration of twenty-five (25) days after such writ or process was issued, and all such writs or process shall so specify.

13. Appealed Cases. In cases appealed to said District Courts from inferior Courts, the appeal, including transcript, shall be filed in the District Court within thirty (30) days after the rendition of the judgment or order appealed from, and the appellee shall enter his appearance on the docket or answer to said appeal on or before ten o'clock a. m. of the Monday next after the expiration of twenty (20) days from the date the appeal is filed in the District Court.

14. Pleas of Privilege. Pleas of privilege shall be filed at or before the time the defendant is required to answer and a contest thereof if any, shall be filed within twenty (20) days after the appearance day, and if a contest is filed, the same shall, when filed, be set for hearing by the Court within not exceeding thirty (30) days after being filed and shall be determined by the Court within not exceeding ten (10) days after the date for which the same is set unless postponed or continued without prejudice, by order or leave of the Court, by agreement of the parties, and shall not be postponed longer than sixty (60) days after being filed unless by order of the Court entered by agreement of the parties.

15. Amended Pleadings. Whenever any party files a pleading of any character, he shall at the same time either deliver to the adverse party, or deposit with the Clerk for the adverse party, a copy of such pleading, which copy shall not be filed by the Clerk. All filed pleadings shall remain at all times in the Clerk's office or in the Court or in custody of the Clerk, except that the Court may by order entered on the Minutes allow a filed pleading to be withdrawn for a limited time whenever necessary on leaving a certified copy on file. The party withdrawing such pleading shall pay the costs of such order and certified copy.

16. Where More Than One Adverse Party. If there is more than one adverse party and the adverse parties are represented by different attorneys, one copy of each pleading shall on request be furnished to each attorney representing the adverse parties, but a firm or attorneys associated in the case shall count as one. Not more than four (4) copies of any pleading shall be required to be furnished to adverse parties and they shall be delivered to the first four (4) applicants entitled thereto. After a copy of a pleading is furnished to an attorney or deposited with the Clerk for him, he cannot require another copy of the same pleading to be furnished to him.

17. Failure to Furnish Copy. If any party fails to furnish the adverse party with a copy of any pleading in accordance with this Article, he may be required to do so by order of the Court on motion made and notice given, and if he fails to comply with any such order within five (5) days after its date, he may be punished for contempt of Court, and the Court may order the Clerk to furnish a certified copy, the costs thereof to be charged against the party who failed to comply with the order to furnish it.

18. Setting Cases for Trial, Etc. On the first Monday in each calendar month the Judge of each Court may, and as far as practicable shall, set for trial during the calendar month next after the month during which the setting is made, all contested cases which are requested to be set, and by agreement of the parties, or on motion of either party, or on the Court's own motion with notice to the parties, the Court may set any case for trial at any time so as to allow the parties reasonable time for preparation. Non-contested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.

18a. Assignment Clerks. In all counties having a population of more than three hundred thousand (300,000) inhabitants and less than three hundred and fifty thousand (350,000) inhabitants, according to the preceding Federal Census, a majority of the District Judges of the District Courts with civil jurisdiction only may appoint an Assignment Clerk to serve under the Presiding Judge of said District Courts in the setting and disposing of cases on the general Jury Docket. The salary of said Clerk shall be fixed by the Commissioners Court of the county and paid in monthly installments on voucher approved by the Presiding Judge of said Courts. His appointment shall be for a term of two (2) years, but he shall be subject to dismissal by a majority of said Judges for inefficiency or misconduct.

19. Postponement or Continuance. Cases may be postponed or continued by agreement with the approval of the Court, or upon the Court's own motion or for cause. When a case is called for trial and only one party is ready, the Court may for good cause either continue the case for the term or postpone and reset it for a later day in the same or succeeding term.

20. Cases May Be Reset. A case that is set and reached for trial may be postponed for a later day in the term or continued and reset for a day certain in the succeeding term on the same grounds as an application for continuance would be granted in other District Courts. After any case has been set and reached in its due order and called for trial two (2) or more times and not tried, the Court may dismiss the same unless the parties agree to a postponement or continuance but the Court shall respect written agreements of counsel for postponement and continuance if filed in the case when or before it is called for trial unless to do so will unreasonably delay or interfere with other business of the Court.

21. Exchange and Transfer. The Judges of such Courts may, in their discretion, exchange benches or districts from time to time, and may transfer cases and other proceedings from one Court to another, and any of them may in his own courtroom try and determine any case or proceeding pending in another Court without having the case transferred, or may sit in any other of said Courts and there hear and determine any case there pending, and every judgment and order shall be entered in the Minutes of the Court in which the case is pending and at the time the judgment or order is rendered, and two (2) or more Judges may try different cases in the same Court at the same time, and each may occupy his own courtroom or the room of any other Court. The Judge of any such Court may issue restraining orders and injunctions returnable to any other Judge or Court, and any Judge may transfer any case or proceeding pending in his Court to any other of said Courts, and the Judge of any Court to which a case or proceeding is transferred shall receive and try the same, and in turn shall have power in his discretion to transfer any such case to any other of said Courts and any other Judge may in his courtroom try any case pending in any other of such Courts.

22. Cases Transferred to Judges not Occupied. When the Judge of any such Court shall become disengaged, he shall notify the Presiding Judge, and the Presiding Judge shall transfer to the Court of the disengaged Judge the next case which is ready for trial in any of said Courts. Any Judge not engaged in his own Court may try any case in any other Court.

23. Judge Disqualified. If a Judge of any Court is disqualified in any case pending in his Court, and his disqualification is certified to the Governor, the Governor may require the Judge of any other of such Courts to exchange benches or districts with the disqualified Judge, and may, at any time, require any of such Judges to exchange districts with each other or with any other District Judge. In case of the absence, sickness, or disqualification of any Judge, any other of said Judges may hold Court for him or may transfer from his Court to any other of said Courts any case or proceeding then pending in the Court of said absent, sick, or disqualified Judge and in such circumstances the practicing lawyers of the Court may elect a special Judge of said Court in the same manner as provided in Chapter 1 of Title 40 of the Revised Civil Statutes of 1925,[1] and such special Judge when so elected shall have and exercise all the powers and duties which the regular Judge of said Court could have and exercise.

[1] Articles 1812–1826.

24. Judge May Hear Only Part of Case. Any Judge may hear any part of any case or proceeding pending in any of said Courts and determine the same, or may hear and determine any question in any case, and any other Judge may complete the hearing and render judgment in the case.

25. Any Judge May Hear Dilatory Pleas, Etc. Any Judge may hear and determine demurrers, motions, petitions for injunction, applications for appointment of receivers, interventions, pleas of privilege, pleas in abatement, all dilatory pleas, motions for new trial and all preliminary matters, questions and proceedings and may enter judgment or order thereon in the Court in which the case is pending without having the case transferred to the Court of the Judge acting, and the Judge in whose Court the case is pending may thereafter proceed to hear, complete, and determine the case or other matter, or any part thereof, and render final judgment therein. Any judgment rendered or action taken by any Judge in any of said Courts in the county shall be valid and binding.

26. Selection of Presiding Judge. The Judges of such Courts shall twice a year, in January and July, select one of their number as Presiding Judge and may at any time cancel and annul such selection and select any other Judge as Presiding Judge. Each such proceeding shall be by majority vote. Each Judge shall enter on his Minutes an order reciting the selection of the Presiding Judge. The Presiding Judge may assign any case in his Court or any of such Courts in the county to any other Judge or Court, or may assign any Judge to try any case in any of the Courts, and the Judge in whose Court an assigned case is pending shall transfer the case to the Court to which it is assigned, and the Judge of the Court to which it is assigned shall receive and try the case, and such Judge shall hold any other Court or try any case which he is requested by the Presiding Judge to try.

27. Judges May Make Rules. The Judges may by a majority vote make rules for the calling of the docket, for the setting and postponement of cases, for the hearing and acting upon motions, questions of law, applications for injunctions and receivers, and for classifying and distributing cases and for having one calendar for all set cases in all Courts and for prescribing when the different Courts shall have jury trials and when they shall have nonjury trials, and such other rules as they deem advisable to facilitate the dispatch of business. All rules made by said Judges shall be adopted by order of each Judge and spread upon the Minutes of his Court, but such rules shall not be inconsistent with any rule adopted or prescribed by the Supreme Court, nor in conflict with any law of this State.

28. Motion for New Trial. A motion for new trial filed during one term of Court may be heard and acted on at the next term of Court. If a case or other matter is on trial or in process of hearing when the term of Court expires, such trial, hearing, or other matter may be proceeded with at the next term of the Court. No motion for new trial or other motion or plea shall be considered as waived or overruled, because not acted on at the term of Court at which it was filed, but may be acted on at the succeeding term or at any time which the Judge may fix or to which it may have been postponed or continued by agreement of the parties with leave of the Court. All motions and amended

motions for new trials must be presented within thirty (30) days after the original motion or amended motion is filed and must be determined within not exceeding forty-five (45) days after the original or amended motion is filed, unless by written agreement of the parties in the case, the decision of the motion is postponed to a later date.

29. Time to File Motion for New Trial. A motion for new trial where required shall be filed within ten (10) days after the judgment is rendered or other order complained of is entered, and may be amended by leave of the Court at any time before it is acted on within twenty (20) days after it is filed.

30. Judgment Final, When. Judgments of such civil District Courts shall become as final after the expiration of thirty (30) days after the date of judgment or after a motion for a new trial is overruled as if the term of Court had expired. After the expiration of thirty (30) days from the date the judgment is rendered or motion for new trial is overruled, the judgment cannot be set aside except by bill of review for sufficient cause, filed within the time allowed by law for the filing of bills of review in other District Courts.

31. Appeal Bonds Filed, When. In appeals from such civil District Courts the appeal bond shall be filed within thirty (30) days after the judgment or order appealed from is rendered, if no motion for new trial is filed, and if a motion for new trial is filed, the appeal bond shall be filed within thirty (30) days after the motion for new trial is overruled. In such appeals the statement of facts and bills of exception shall be filed within ninety (90) days after the judgment is rendered if there is no motion for new trial, but if there is a motion for new trial then ninety (90) days after motion for new trial is overruled. When a statement of facts or bills of exception is presented to the adverse party, or his attorney, it shall be returned within five (5) days signed by the attorney of such adverse party if found correct, and if found incorrect shall be returned within that time with a written statement of the objections thereto. [Acts 1923, p. 215; Acts 1929, 41st Leg., p. 476, ch. 222, § 1; Acts 1930, 41st Leg., 5th C.S., p. 227, ch. 70, § 1; Acts 1934, 43rd Leg., 3rd C.S., p. 58, ch. 33, § 1; Acts 1935, 44th Leg., p. 636, ch. 249, § 1; Acts 1939, 46th Leg., p. 205, § 1.]

Repeal by Rules of Civil Procedure. Subdivisions 1–18, 19–22, 24–31 of this article were included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rules 330, 114, 116, 122.

Art. 2093. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 331.

Arts. 2093a, 2093b. [Repealed.]

The articles repealed were Acts 1935, 44th Leg., p. 289, ch. 105 and Acts 1939, 46th Leg., p. 218, § 1.

Art. 2093c. Assignment Clerk in certain counties having less than 500,000 population.—In all counties having a population of less than five hundred thousand (500,000) inhabitants according to the last preceding or any future Federal Census, and having eight (8) District Courts, two (2) of which are Criminal District Courts, and four (4) County Courts, of which two (2) are County Courts at Law and one is a County Criminal Court, a majority of the Judges of the District Courts with civil jurisdiction may appoint an Assignment Clerk to serve under the Presiding Judge of said District Courts in the setting and disposing of cases on the general jury docket. The salary of said clerk shall be fixed by the Commissioners Court of the county and paid in monthly installments on voucher approved by the Presiding Judge of said Courts; provided, however, that such salary shall not exceed Two Thousand, Seven Hundred Dollars ($2,700) per annum. His appointment shall be for a term of two (2) years, but he shall be subject to dismissal by a majority of said Judges for inefficiency or misconduct. [Acts 1941, 47th Leg., p. 156, ch. 118, § 1.]

Art. 2093d. Presiding Judge and Assignment Clerk in 28th, 94th and 117th Judicial Districts.—The Judges of the three (3) District Courts included within the provisions of this Act may from time to time, as they may see fit, elect a Presiding Judge, who shall attend to the administration of this Act[1] and the setting and assignment of cases in said Courts, in accordance with this Act, and in all other matters not provided for by this Act or some other Law or Rules of Civil Procedure. Such Presiding Judge shall be elected by said Judges for such term as they see fit. A majority of the Judges of the District Courts within the provisions of this Act may appoint an Assignment Clerk to serve said Courts in Nueces County under the Presiding Judge of said District Courts in the setting and disposing of cases on the general docket. Such Assignment Clerk shall perform such duties as are assigned to him by said Judges in connection with the setting and disposing of cases. The salary of such Clerk shall be set by the Commissioners Court of Nueces County and paid in monthly installments out of the General Fund or the Jury Fund of such County, as the Commissioners Court may provide, on voucher approved by the Presiding Judge of said Courts; provided, such salary shall not exceed Three Thousand Dollars ($3,000) per annum. The appointment shall be for a term of two (2) years, but he shall be subject to dismissal by a majority of said Judges for inefficiency or misconduct. [Acts 1947, 50th Leg., p. 776, ch. 385, § 4.]

[1] Articles 199(23), (94) (117) and this article.
Sections 1, 2 and 3 of Acts 1947, 50th Leg., p. 776, ch. 385 amended prior laws relating to the terms of the District Court in the 28th, 94th and 117th Judicial Districts. See Art. 199(28) (94) (117).

CHAPTER 7.—THE JURY

1. JURIES IN CERTAIN COUNTIES

Art.
2094. Selecting names for wheel.
2095. Cards put in wheel.
2096. Cards drawn from wheel.
2097. List certified.
2098. List delivered to clerk.
2099. Cards to be used again.
2100. Loss of wheel.
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1. JURIES IN CERTAIN COUNTIES

Art. 2094. [5151] Selecting names for wheel.—Between the first and fifteenth days of August of each year, in each county having a population of at least fifty-eight thousand or having therein a city containing a population of at least twenty thousand, as shown by the preceding Federal Census, the Tax Collector or one of his deputies, together with the Tax Assessor or one of his deputies, together with the Sheriff or one of his deputies, and the County Clerk or one of his deputies, and the District Clerk or one of his deputies, shall meet at the court house of their county and select from the list of qualified jurors of such county as shown by the tax lists in the Tax Assessor's office for the current year, the jurors for service in the District and County Courts of such county for the ensuing year in the manner hereinafter provided. [Acts 1907, p. 269; Acts 1911, p. 150; Acts 1929, 41st Leg., p. 89, ch. 43, § 1.]

Art. 2095. [5152–3] Cards put in wheel.—Said officers shall write the names of all men who are known to be qualified jurors under the law, residing in their respective counties, on separate cards of uniform size and color, writing also on said cards, whenever possible, the post office address of each juror so selected, except that in counties of one hundred fifty thousand population, or over, as shown by the preceding Federal census, the commissioner's court shall provide a sum necessary, not exceeding three hundred ($300.00) dollars in any one year, for the payment of such typist and other expenses as may be necessary, who shall, under the direction and supervision of the district clerk, type the names and addresses of said qualified voters upon the cards as herein described. The cards containing said names shall be deposited in a circular hollow wheel, to be provided for such purpose by the Commissioner's Court of the county. Said wheel shall be made of iron or steel and shall be so constructed as to freely revolve on its axle; and shall be kept locked at all times, except when in use as hereinafter provided, by the use of two separate locks, so arranged that the key to one will not open the other lock; and said wheel, and the clasps thereto attached into which the locks shall be fitted, shall be so arranged that said wheel cannot be opened unless both of said locks are unlocked at the time the wheel is opened. The keys to such locks shall be kept, one by the sheriff and the other by the district clerk. The sheriff and the clerk shall not open such wheel, nor permit the same to be opened by any person, except at the time and in the manner and by the persons herein specified; but said sheriff and clerk shall keep such wheel, when not in use, in a safe and secure place, where the same cannot be tampered with. [Acts 1907, p. 269; Acts 1929, 41st Leg., p. 263, ch. 116, § 1.]

Art. 2096. [5154] Cards drawn from wheel.—Not less than ten days prior to the first day of a term of court, the district clerk or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the district judge, if the jurors are to be drawn for the district court, or the clerk of the county court, or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the county judge, if the jurors are to be drawn for the county court, shall draw from the wheel containing the names of jurors, after the same has been well turned so that the cards therein are thoroughly mixed, one by one the names of thirty-six jurors, or a greater or less number where such judge has so directed, for each week of the term of the district or county courts for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks for such term or terms for which jurors will be required. At such drawing, no person other than those above named shall be permitted to be present. The officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person. [Acts 1907, p. 269.]

Art. 2097. [5155] List certified.—The several lists of names so drawn, shall be certified under the hand of the clerk or the deputy doing the drawing, and the district or county judge in whose presence said names were drawn from the wheel, to be the list drawn by said clerk for the said several weeks, and shall be sealed up in separate envelopes indorsed, "List of petit jurors for the ——— week of the ——— term of the ——— court of ——— county," (filling in the blanks properly) and the clerk doing the drawing shall write his name across the seals of the envelopes and shall then immediately deliver the same to the judge in whose presence such names were drawn, or to his successor in office in case such judge dies before such delivery can be made to him. [Id.]

Art. 2098. [5156] List delivered to clerk.—The judge shall deliver such envelopes to the clerk, or one of his deputies, and shall in his discretion instruct the clerk to indorse on any of such envelopes that the jury for that week shall be summoned for some other day than Monday of said week, and the judge shall, at the same time, administer to the clerk and to each of his deputies an oath in substance as follows: "You and each of you do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law, nor communicate to any one the name or names of the men appearing on any of the jury lists, that you will not, directly or indirectly, converse or communicate with any one selected as juror concerning any

case pending for trial in this court at its next term. So help you God." [Id.]

Art. 2099. [5157] Cards to be used again.—When the names are drawn for jury service, the cards containing such names shall be sealed in separate envelopes, indorsed, "Cards containing the names of jurors for the ——— week of the ——— term of the ——— court of ——— county," (filling in the blanks properly); and said envelopes shall be retained securely by the clerk, unopened, until after the jury has been impaneled for such week; and, after such jurors so impaneled have served four or more days, the envelopes containing the cards bearing the names of the jurors for that week shall then be opened by the clerk, or his deputy, and those cards bearing the names of men who have not been impaneled and who have not served as many as four days, shall be immediately returned to the wheel by the clerk, or his deputy; and the cards bearing the names of the men serving as many as four days shall be put in a box provided for that purpose for the use of the officers who shall next select the jurors for the wheel. [Id.]

Art. 2100. [5158] Loss of wheel.—If the wheel containing the names of jurors be lost or destroyed, with the contents thereof, or if all the cards in said wheel be drawn out, such wheel shall immediately be refurnished, and cards bearing the names of jurors shall be placed therein immediately in accordance with this law, and the judge desiring jurors for a regular or special term of his court may have the same selected in accordance with the general jury laws if such new wheel cannot be furnished in time to comply with the provisions of the jury wheel law. [Id.]

Art. 2101. Interchangeable juries.—The provisions of this article shall be applicable only to such counties of this State as may now maintain three or more district courts, or in which three or more district courts may be hereafter established. A criminal court in any county with jurisdiction in felony cases shall be considered a district court within the meaning of this article. The "Interchangeable Jury Law" shall not apply to a selection of jurors in lunacy cases or in capital cases.

1. Jury Wheel Law governs.—The provisions of the seven preceding articles, commonly known as the "Jury Wheel Law", shall remain in full force in the counties which may be governed by this law, except as modified by the special provisions of this law.

2. Organization and supervision.—In each county under this law, the district judges shall meet together and determine approximately the number of jurors that are reasonably necessary for jury service in all the county courts at law, county courts and district courts of such county, for each week during the time said courts may hold during the year, and shall thereupon order the drawing of such number of jurors from the wheel for each of said weeks, said jury to be known as the general panel of jurors for service in all such courts of such county for the respective weeks for which they are designated to serve. A majority of said district judges are authorized to act in carrying out the provisions of this law; they may increase or diminish the number of jurors to be selected for any week, and shall order said jurors drawn for as many weeks in advance of service as they deem proper. From time to time they shall designate the judge to whom the general panel shall report for duty, and said judge, for such time as he is chosen to so act shall organize said juries and have immediate supervision and control of them. The said jurors so limited in number shall, after being regularly drawn from the wheel, be served by the sheriff to appear and report for jury service before said judge so designated, who shall hear the excuses of the said jury and swear them in for service for the week that they are to serve to try all cases that may be submitted to them in any of said courts.

3. Used interchangeably.—Said jurors, when impaneled shall constitute a general panel for the week, for service as jurors in all county and district courts in said county, and shall be used interchangeably in all of the said courts. In the event of a deficiency of said jurors at any given time to meet the requirement of all said courts, the judge having control of said general panel for the week shall order such additional jurors to be drawn from the wheel as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no further needed. Resort to the wheel shall be had in all cases to fill out the general panel, except where waived by the parties or their attorneys; provided that by written agreement entered into by all parties to any cause or suit, or the attorney of record in such suit or cause filed therein, the sheriff or other officer in attendance upon said court, may summon the jury needed, or any part of same, in such cause or suit by talesmen, without resorting to the jury wheel, and in such cause or suit said jurors so selected shall be paid as if regularly drawn from the jury wheel. [Acts 1917, p. 147; Acts 4th C. S. 1918, p. 136.]

Art. 2102. Jury quarters.—The commissioners court of each such county shall set apart for the use and convenience of said general panel some room or place in or near the court house, which shall be comfortably furnished and fitted up for them to stay when not required for actual jury service. Said quarters shall be occupied by said panel when not in service and they shall remain in or conveniently near thereto so as to be at all times subject to duty in any court when called for, without delaying the proceedings of such court. The sheriff shall assign one of his deputies to look after the said panel, call them when needed by the judges, provide for their wants and to have general custody and control of them when not in actual service. [Acts 1917, p. 147.]

Art. 2103. Reducing number in general panel.—When it becomes necessary to diminish the general panel for the week of its selection on account of lack of work in any court or for any other cause, the judge having supervision of said jury for the week shall designate the number to remain. He shall cause the clerk to draw from the names of the general panel the number required, and those jurors whose names are so drawn shall continue in service for the remainder of the week and the others excused. [Acts 1917, p. 147; Acts 4th C. S. 1918, p. 136.]

Art. 2103a. County Judges and Judges of County Courts-at-Law in certain counties; drawing additional jurors.—In all counties having two or more County Courts-at-Law, when a panel of jurors shall not have been drawn for any week by one of the District Judges under Article 2101, or when the number of jurors drawn shall be deemed insufficient by the County Judge or either of the Judges of the County Courts-at-Law, the County Judge or Judge of either County Courts-at-Law may order the drawing of such additional jurors from the jury wheel for service in either of such courts for designated weeks as the trials in such courts may reasonably require. Such jurors when drawn shall be available for service in either of such courts. All of the provisions of law now otherwise governing the drawing of jurors for the week in the courts in such counties by the District Judges shall govern so far as applicable, except as herein otherwise expressly provided. The County Judge and the Judge of any of the County Courts-at-Law shall concurrently have the same authority with respect to determining and remedying a deficiency in the number of jurors in their courts as is now conferred on the Judge having control of the general panel for the week by Section 3 of Article 2101, Re-

vised Statutes of 1925. [Acts 1947, 50th Leg., p. 214, ch. 122, § 1.]

2. JURY COMMISSIONERS

Art. 2104. [5122–23–24] Appointment of jury commissioners.—The District Judge shall at each term of the District Court appoint not less than three (3), nor more than five (5) persons to perform the duties of Jury Commissioners, and shall cause the sheriff to notify them of their appointment, and when and where they are to appear. Such Commissioners shall receive as compensation for each day or part thereof they may serve as such Commissioners, the sum of Four Dollars ($4), and who shall possess the following qualifications:

1. Be intelligent citizens of the county and able to read and write.

2. Be qualified jurors and freeholders in the county.

3. Be residents of different portions of the county.

4. Have no suit in said Court which requires the intervention of a jury.

5. The same person shall not act as Jury Commissioner more than once in the same year. [Acts 1876, p. 79; G.L. vol. 8, p. 915; Acts 1929, 41st Leg., p. 71, ch. 37, § 1; Acts 1947, 50th Leg., p. 141, ch. 83, § 1.]

Acts 1929, 41st Leg., 1st C.S., p. 176, ch. 67, which, by section 17 thereof, repealed this article as to counties of 16,775 and not more than 17,000 population, was declared unconstitutional as discriminatory by the Court of Criminal Appeals in Randolph v. State, 117 Cr.R. 80, 36 S.W.2d 484.

Art. 2105. [5125] [3148] [3020] Failure to attend.—One appointed jury commissioner who without reasonable excuse fails or refuses to attend and perform the duties required shall be fined by the court not less than twenty-five nor more than one hundred dollars. [Id.]

Repealed in part. See note under article 2104, ante.

Art. 2106. [5126] [3149] [3021] Oath of jury commissioners.—When the appointees appear before the court, the judge shall administer to them the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a juryman concerning the merits of any case to be tried at the next term of this court until after such cause may be tried or continued, or the jury discharged." [Id.]

Repealed in part. See note under article 2104, ante.

Art. 2107. [5128–29–30–31] Duties of jury commissioners.—The Judge shall instruct said Commissioners as to their duties and designate to them the number of weeks for which they shall select petit jurors, and the number for each week. They shall retire in charge of the sheriff to some suitable room and be kept free from intrusion during their session, and shall not separate until they complete their duties. The clerk shall furnish them with all necessary stationery, and with a list of those appearing from the records of the Court to be exempt or disqualified from serving on the petit jury at each term, and shall also deliver to them the envelope required by law for the placing therein of the names selected, and take their receipt therefor showing whether or not the seal remained unbroken. The last assessment roll of the county shall be furnished them by the legal custodian of the same. [Acts 1876, p. 79; G.L. vol. 8, p. 915; Acts 1943, 48th Leg., p. 175, ch. 100, § 1.]

Repealed in part. See note under article 2104, ante.

Art. 2108. [5127] [3150] [3022] Failure to get jury.—If from any cause, the jury commissioners should not be appointed at the time prescribed, or should fail to select jurors as required, or should the panels selected to be set aside, or the jury lists returned into the court be lost or destroyed, the court shall forthwith proceed to supply a sufficient number of jurors for the term, and when deemed necessary may appoint jury commissioners for that purpose. [Acts 1876, p. 79; G.L. vol. 8, p. 915.]

Repealed in part. See note under article 2104, ante.

Art. 2109. [5132–3–4] Jury commissioners for county court.—The county court shall, at its first term after the last day of December and the last day of June of each year, appoint three jury commissioners for said court, having the same qualifications as jury commissioners for the district court. The same proceedings shall be had in the county court by its officers and said commissioners to procure jurors as are required by this title for similar proceedings in the district court, except as modified by the provisions of this article.

1. Oath.—The oath to be administered to said commissioners shall be: "You swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, communicate with any one selected by you as a juryman concerning the merits of any case to be tried by this court within the next six months, until said case shall have been tried or otherwise disposed of."

2. To select jurors.—Said commissioners shall select jurors for all the terms of the county court to be held within six months after the adjournment of the first week of said court after the dates first named. The county judge shall designate the number of jurors to be so selected for each term and week. [Acts 1876, p. 81; G. L. vol. 8, p. 917; Acts 1884, p. 27; G. L. vol. 9, p. 559.]

Repealed in part. See note under article 2104, ante.

Art. 2110. [5135] [3158] Selecting jurors.—The jury commissioners shall select from the citizens of the different portions of the county, liable to serve as jurors, one hundred persons, or a greater or less number if so directed by the court, free from all legal exceptions, of good moral character, of sound judgment, well-informed, and, so far as practicable, able to read and write, to serve as petit jurors at the next term, if in the district court, and for the next six months, if in the county court, and shall write the names of such persons on separate pieces of paper, as near the same size and appearance as may be, and fold the same so that the names cannot be seen. [Id.]

Repealed in part. See note under article 2104, ante.

Art. 2111. [5136] [3159] [3031] Drawing jurors.—The names of the persons so written and folded shall be deposited in a box, and after being well shaken and mixed, the commissioners shall draw therefrom the names, one by one, of thirty-six persons, or a greater or less number where the judge has so directed, for each week of the term of the district court or terms of the county court for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks of such term or terms for which juries will be required. [Id.]

Repealed in part. See note under article 2104, ante.

Art. 2112. [5138–39] Certified lists delivered; filing.—The several lists of names drawn shall be certified under the hands of the Commissioners to be the lists drawn by them for the said several weeks and shall be sealed in separate envelopes endorsed "List No. ——— of the petit jurors drawn on the ——— day of ———, 19———, for the ——— Court of ——— County," (filling

in the blanks properly and numbering the envelopes consecutively from one up) and the Commissioners shall write their names across the seals of the envelopes and deliver them to the Judge, who shall deliver them to the Clerk or to one of his deputies in open court, and the Clerk shall then immediately file same away in some safe and secure place in his office. [Acts 1876, p. 81; G.L. vol. 8, p. 917; Acts 1884, p. 27; G.L. vol. 9, p. 559; Acts 1943, 48th Leg., p. 175, ch. 100, § 1.]

Repealed in part. See note under article 2104, ante.

Art. 2113. [5140–41] Oath to clerk and deputies.—The judge shall at the same time administer to the clerk and each of his deputies an oath in substance as follows: "You do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law; that you will not directly or indirectly, converse or communicate with any one selected as a juror concerning any case pending for trial in this court at its next term," if in the district court; or if in the county court, "within the next six months." If for any reason such oath should not be administered to any of the deputies, or should the clerk subsequently appoint a deputy, the clerk shall administer to such deputy a like oath. [Acts 1876, p. 81; G. L. vol. 8, p. 917; Acts 1884, p. 27; G. L. vol. 9, p. 559.]

Repealed in part. See note under article 2104, ante.

Art. 2114. [5142–3–4–5] List sent to county court.—The district court commissioners shall make out for the use of the county court commissioners a complete list of the names of all persons selected by them as grand and petit jurors, and shall place said list in an envelope and seal the same and write their names across the seal; and shall address said envelope to the jury commissioners of the county court of the proper county and shall deliver the same to the district judge in open court. The judge shall immediately deliver said envelope to the county clerk or one of his deputies, at the same time administering to him this oath: "You do solemnly swear that you will, to the best of your ability, safely keep this envelope and that you will neither open the same nor allow it to be opened, except as provided by law; and that you will cause it to be delivered to the jury commissioners of the county court next hereafter appointed in and for this county." At the first term of the county court thereafter held, at which jury commissioners are appointed, said clerk shall deliver said envelope to the jury commissioners or one of them appointed at said term, and take a receipt therefor; and said receipt shall state whether the seal of said envelope be broken or not. After the jury commissioners appointed by said court have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as a juror by said commissioners. [Id.]

Repealed in part. See note under article 2104, ante.

Art. 2115. [5146–7–8–9] List sent to district court.—The jury commissioners for the county court shall make out for the use of the jury commissioners of the district court a complete list of the names of all persons selected by them as jurors, and shall place said list in an envelope and seal the same, and write their names across the seal, and address said envelope to the jury commissioners of the district court of the proper county, and shall deliver the same to the county judge in open court. The county judge shall immediately deliver said envelope to the district clerk, or one of his deputies, at the same time administering to him this oath: "You do solemnly swear that you will, to the best of your ability, safely keep this envelope and that you will neither open the same nor allow it to be opened, except as provided by law, and that you will cause it to be delivered to the jury commissioners of the district court next hereafter appointed in and for this county." At the first term of the district court thereafter held, said clerk shall deliver said envelope to the jury commissioners or one of them appointed at said term, and take a receipt therefor showing whether the seal of said envelope be broken or not. After the jury commissioners appointed at said term of the district court have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as juror by said commissioners. [Id.]

Repealed in part. See note under article 2104, ante.

Art. 2116. [5150] [3173] [3045] Shall destroy lists.—The jury commissioners in both the district and county courts, before leaving the apartment in which they have selected jurors, shall destroy said list of names, and it shall be unlawful for them, or any of them, to make known to any person the name of any juror on said lists. [Id.]

Repealed in part. See note under article 2104, ante.

Art. 2116a. [Unconstitutional.]

The article, Acts 1929, 41st Leg., 1st C.S., p. 63, ch. 29; by Acts 1931, 42nd Leg., p. 820, ch. 339, was declared unconstitutional by the Court of Criminal Appeals as a special law in violation of Const. art. 3, § 56. See Smith v. State, 120 Cr.R. 431, 49 S.W.2d 739.

Art. 2116b. [Unconstitutional.]

The article, Acts 1929, 41st Leg., 1st C.S., p. 176, ch. 67, §§ 1–14, was declared unconstitutional by the Court of Criminal Appeals as being discriminatory. See Randolph v. State, 117 Cr.R. 80, 36 S.W.2d 484.

Sections 9-11 of this article were repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1).

Art. 2116c. Selection and summoning jurors; counties having two or more district courts.

Application; "district court" defined

Sec. 1. The provisions of this Article shall be applicable only to such counties in this State wherein two (2) or more District Courts shall have been created and maintained, or in which two (2) or more District Courts may hereafter be created and maintained. A District Court holding in any such county for the whole or any part of a year, and a Criminal Court in any county with jurisdiction in felony cases only, or concurrent jurisdiction in felony cases and civil cases, shall be considered a District Court within the meaning of this Article. This Article shall not apply to the selection of Jurors in lunacy cases nor in felony cases when the penalty of death may be assessed, nor to the selection of Grand Jurors.

Supervision by judges

Sec. 2. A majority of the Judges for the District and County Courts of any such county are authorized to act in carrying out the provisions of this law. From time to time they shall elect one of their number as the presiding Judge, who for such time as he is so chosen to act, and until his successor has been elected by a majority vote of the above named Judges, shall have immediate supervision over the selection of and the control of the general Jury panel as herein provided for, and shall perform such other duties as are herein set forth.

Meeting of judges; determining number of jurors necessary; appointment of jury commission

Sec. 3. In each County under this law, the Judges of the District and County Court shall meet together every two (2) months, or at such times as they may agree upon, and determine approximately the number of Jurors that are reasonable and necessary for Jury service in all of the District and County Courts of such county, for each week during a period of two (2) months, beginning ten (10) days after the date of such meeting, or for as many weeks in advance as they deem proper. After agreeing upon the number of weeks and upon the number of Jurors necessary for each of said weeks, the presiding Judge shall appoint a Jury Commission in accordance with and under the provisions

of the already existing General Laws governing the appointment of a Jury Commission, and with the same qualifications as are therein stated, who shall proceed to select the number of Jurors for each of the weeks designated by the presiding Judge, said Jurors to be selected by said Jury Commission in the mode and manner, and with the same qualifications, as is now fixed by existing Statute. The said Jury, so limited in number for each of said weeks, after having been regularly selected by said Jury Commission, shall be served by the Sheriff, or any other officer authorized under the law to serve Jurors, to appear and report for Jury service before the said presiding Judge, so designated, for the week for which it has been selected. Said Jury shall be known as the general panel of Jurors for service in all of the District and County Courts of such County, for the respective weeks for which they are designated to serve. Said Jurors, after being summoned shall report for Jury service before the presiding Judge [1] shall organize said panel, hear the excuses of said Jurors and swear them in for service for the week they have been selected, to try all cases that may be submitted to them in any of said Courts.

[1] So in enrolled bill. Word "who" should probably be inserted.

Panel used in all courts; additional jurors

Sec. 4. Said Jurors, when impaneled, shall constitute a general panel for the week for service as Jurors in all the County and District Courts of said county, and shall be used interchangeably in all of said Courts. In the event of a deficiency of said Jurors at any time to meet the requirements of all of said Courts, the presiding Judge, having control of said general panel for the week, shall cause the Sheriff, any Deputy or any peace officer in attendance upon his Court, to summon such additional Jurors as may be sufficient to meet the emergency, in the manner now prescribed for the selection of additional Jurors. But such Jurors shall act only as special Jurors and shall be discharged as soon as their services are no longer needed.

Summoning additional jurors

Sec. 5. If in the judgment of the presiding Judge an insufficient number of Jurors have been summoned for the week, he may, in his discretion, order the Sheriff, any Deputy or any other peace officer attending his Court, to summon the necessary number of additional Jurors to meet the requirements of all the Courts for said week, said additional Jurors to be summoned as is now provided by law.

Presiding judge to supply jurors on request of judge

Sec. 6. When it becomes necessary to diminish the general panel selected for any given week, on account of lack of work in any Court, or for any other cause, the presiding Judge, having supervision of said Jury for the week, shall designate the number to remain. He shall cause the Clerk to draw from the names of the general panel the number required, and those Jurors whose names are so drawn shall continue in service for the remainder of the week, but the others shall be excused.

Judge desiring jurors to request presiding judge

Sec. 7. When any District or County Judge of such county desires Jurors for Jury service in his Court, he shall make request to the presiding Judge for the number of Jurors desired, and such presiding Judge shall immediately supply him with the number requested from the general panel. If for any reason there are not a sufficient number of Jurors remaining on the general panel to comply with such request, the presiding Judge shall direct the Sheriff, any Deputy or other peace officer in attendance upon his Court to summon additional Jurors necessary to meet the requirement, the same to be summoned in the manner now prescribed by law.

Drawing requested jury from general panel

Sec. 8. Any party, or his attorney of record, to a suit, for the trial of which a Jury has so been requested, may, before announcement of ready, if he desires, make written request to the Judge before whom such case is to be tried, to have the requested Jury drawn from the general panel, or from the number remaining thereon. Such request shall be presented to the presiding Judge and he shall cause the names of all Jurors on the general panel or of the remaining Jurors thereon, to be written on separate slips of paper, and such slips of paper to be placed in a proper container, and have the District Clerk draw therefrom a sufficient number of names to constitute the necessary number requested. The names of the Jurors so drawn shall then report to the requesting Judge, and the Jury to try such case shall be selected therefrom as is now provided by law.

Accommodations for general panel

Sec. 9. The Commissioners Court of each such county shall set apart for the use and convenience of said general panel some room or place in or near the Courthouse, which shall be comfortably furnished and fitted up for them to stay when not required for actual Jury service. Said quarters shall be occupied by said panel when not in service and they shall remain in or conveniently near thereto so as to be at all times subject to duty in any Court when called for without delaying the proceedings of such Court. The Sheriff shall assign one of his Deputies to look after the said panel, call them when needed by the Judges, provide for their wants and to have general custody and control of them when not in actual service.

Act cumulative

Sec. 10. The provisions of this Act shall be cumulative of and in addition to the methods now authorized by General Laws for the selection of a Jury panel in the counties herein named, and the adoption of the method herein provided shall be entirely optional with and in the discretion of a majority of the District and County Judges of any such county coming under the terms of this law. But when the method herein set forth for the selection of the general Jury panel shall be adopted by a majority of the District and County Judges in any such county, then the provisions of this Act shall be binding on all of the District and County Courts holding in said county and each Court shall abide thereby, until changed by a majority of such Judges.

Partial invalidity

Sec. 11. If any section, paragraph, or provision of this Act be held or declared unconstitutional, or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this Act, but the same shall remain in full force and effect. [Acts 1935, 44th Leg., 2nd C.S., p. 1744, ch. 454.]

Art. 2116d. Service by sheriff, defined; service by registered mail.—The phrase, "Served by the Sheriff to appear and report for jury service," as used in Chapter 7,[1] Title 42, Revised Statutes of 1925, of the State of Texas, shall mean verbal service upon the juror by the Sheriff, unless the Judge drawing the jury shall direct the Sheriff to make service by United States registered mail.

In the event the Judge drawing the jury directs the Sheriff to make service by United States registered mail, it shall be sufficient if the summons to report for jury service states the time and place when said juror is to report, and if same be mailed in the United States mail by registered letter to the juror at the address shown by the card placed in the jury wheel, or the address shown by the last assessment roll of the County, and if said letter be

received by some person authorized by the United States mails to receive said letter. The return receipt of the United States Post Office Department showing said letter was received by said juror, or by some person authorized by the United States Post Office Department to receive same for him, shall be deemed prima facie evidence that the juror actually received such notice. [Acts 1937, 45th Leg., p. 677, ch. 338, § 1.]

1 Articles 2094–2151.

Art. 2116e. Summoning jurors in capital cases in counties of 25,000 population or more; verbally or by registered mail.—In counties having therein a city of twenty-five thousand (25,000) or more population, as shown by the last preceding Federal Census, jurors summoned in capital cases shall be served verbally by the sheriff to appear, or if so ordered by the judge drawing said jury, shall be served by the sheriff by registered mail to appear.

In the event the Judge drawing the jury directs the sheriff to make service by registered United States mail, it shall be sufficient if the summons to report for jury service states the time and place where said juror is to report, and if same be mailed in the United States mail by registered letter to the juror at the address shown by the card placed in the jury wheel, and if said letter be received by some person authorized by the United States mails to receive said letter. The return receipt of the United States Post Office Department showing said letter was received by said juror, or by some person authorized by the United States Post Office Department to receive same for him, shall be deemed prima facie evidence that the juror actually received such notice. [Acts 1937, 45th Leg., p. 678, ch. 339, § 1.]

3. JURY FOR THE WEEK

Art. 2117. [5159–60] Summoning jurors.—At any time when the Judge of the County or District Court needs a jury for any particular week of such Court, he shall notify the Clerk of such Court to open the next consecutive unopened list of jurors in his possession, and shall direct him as to the date for which such jurors shall be summonsed. Such notice shall be given to the Clerk within a reasonable time prior to the time when such jurors are to be summonsed. The Clerk shall immediately note on the list the date for which the jurors are to be summonsed, and deliver said list to the sheriff. On receipt of such list, the sheriff shall immediately notify the several persons named therein to be in attendance on Court on the date so designated by the Judge. [Acts 1876, p. 171; G.L. vol. 8, p. 1007; Acts 1943, 48th Leg., p. 175, ch. 100, § 1.]

Art. 2118. [5165–6–7–8–9] Jury for the week.—On Monday, or other day, of each Court week, when a jury has been summoned and there are jury trials, the Court shall select a sufficient number of qualified jurors, in his discretion, to serve as jurors for the week. Such jurors shall be selected from the names included in the jury list for the week, if there be the requisite number of such in attendance who are not excused by the Court, but if such number be not in attendance at any time, the Court shall direct the sheriff to summon a sufficient number of qualified men to make up the requisite number of jurors, provided that in counties governed by the jury wheel law, sufficient names of qualified jurors, whom the sheriff will summon, shall be drawn from the jury wheel for jury trials in the district and county Courts, under order of the Court, to fill the panel for the week, unless the parties in any cause, in writing duly filed, or by stipulation in open Court noted of record, waive the said use of the jury wheel, and all said extra jurors summoned in either way shall be discharged when their services are no longer needed. The Court may adjourn the whole number of jurors for the week or any part thereof, to any subsequent day of the term, but the jurors shall not be paid for the time they may stand adjourned. [Acts 1876, p. 171; G.L. vol. 8, p. 1007; Acts 1945, 49th Leg., p. 314, ch. 229, § 1.]

Acts 1929, 41st Leg., 1st C.S., p. 176, ch. 67, which by section 17 thereof, repealed this article as to counties of 16,775 and not more than 17,000 population, was declared unconstitutional as discriminatory by the Court of Criminal Appeals in Randolph v. State, 117 Cr.R. 80, 36 S.W.2d 484.

Art. 2119. [5170] [3184] [3056] Oath to sheriff for talesmen.—Whenever it may be necessary to summon jurors who have not been selected by jury commissioners under the provisions of this title, the court shall administer to the sheriff and each of his deputies the following oath: "You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any juryman touching any case pending for trial; and that you will not by any means attempt to influence, advise or control any juryman in his opinion in any case which may be tried by him. So help you God." [Acts 1876, p. 171; G. L. vol. 8, p. 1007.]

Art. 2120. [5171] [3185] [3057] Excuses of jurors.—The court may hear any reasonable sworn excuse of a juror, and may release him entirely or until some other day of the term. [Id.]

Art. 2121. [5172] [3186] [3058] Defaulting juror.—Any defaulting juror lawfully notified who without reasonable excuse fails to be in attendance on the court in obedience to such notice shall be fined not less than ten nor more than one hundred dollars. [Id.]

Art. 2122. [5218–19–20] Pay of jurors.—Each Juror in the district or county court or county court at law shall receive Four Dollars ($4) for each day or fraction of a day that he attends court as such juror, to be paid out of the jury fund of the county. Check drawn by Clerk of the District Court of the County on the Jury Fund may be transferred by endorsement and delivery and shall be receivable at par from the holder for all county taxes. The same per diem shall be paid to all persons responding to the process of the court but who are excused by the court from jury service for any cause, after being tested on their voir dire. [Acts 1866, p. 201; G.L. vol. 5, p. 1119; Acts 1919, p. 35; Acts 1945, 49th Leg., p. 371, ch. 239, § 3.]

Section 1 of the Act of 1945 amends Crim.Code of Procedure, art. 625, section 2 amends act 1056, section 4 repeals art. 1057.

4. THE JURY IN COURT

Art. 2123. [5173] [3187] [3059] Right to jury.—The right to trial by jury shall remain inviolate, subject to the following rules and regulations. [Const. art. 1, sec. 15.]

Arts. 2124–2132. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 216-222.

Art. 2133. [5114–15–16] Qualifications.—All men over twenty-one years of age are competent jurors, unless disqualified under some provision of this chapter. No man shall be qualified to serve as a juror who does not possess the following qualifications:

1. He must be a citizen of the State and of the county in which he is to serve, and qualified under the constitution and laws to vote in said county; provided, that his failure to pay poll tax as required by

law shall not be held to disqualify him for jury service in any instance.

2. He must be a freeholder within the State, or a householder within the county.

3. He must be of sound mind and good moral character.

4. He must be able to read and write, except in cases provided for in the succeeding article.

5. He must not have served as a juror for six days during the preceding six months in the district court, or during the preceding three months in the county court.

6. He must not have been convicted of felony.

7. He must not be under indictment or other legal accusation of theft or of any felony. Whenever it shall be made to appear to the court that the requisite number of jurors able to read and write cannot be found within the county, the court may dispense with the exception provided for in the fourth subdivision and the court may in like manner dispense with the exception provided for in the fifth subdivision, when the county is so sparsely populated as to make its enforcement seriously inconvenient. [Acts 1905, p. 207; G. L. vol. 8, p. 914.]

Art. 2134. [5117] [3141] [3012] Disqualification.—The following persons shall be disqualified to serve as jurors in any particular case:

1. Any witness in the case.

2. Any person interested, directly or indirectly, in the subject matter of the suit.

3. Any person related by consanguinity or affinity within the third degree to either of the parties to the suit.

4. Any person who has a bias or prejudice in favor of or against either of the parties.

5. Any person who has sat as a petit juror in a former trial of the same, or of another case, involving the same questions of fact. [Acts 1876, p. 83; G. L. vol. 8, p. 914.]

Art. 2135. [5118] [3142] [3013] Jury service.—All competent jurors are liable to jury service, except the following persons:

1. All persons over sixty years of age.

2. All civil officers of this State or the United States, other than first and second class postmasters. [As amended Acts 1931, 42nd Leg., p. 375, ch. 221, § 1.]

3. All ministers of the gospel engaged in the active discharge of their ministerial duties.

4. All physicians and attorneys engaged in actual practice.

5. All publishers of newspapers, school masters, druggists, undertakers, telegraph operators, railroad station agents, ferrymen, and all millers engaged in grist, flouring and saw mills.

6. All presidents, vice-presidents, conductors, engineers and firemen of railroad companies when engaged in the regular and actual discharge of their respective positions.

7. Any person who has acted as a jury commissioner within the preceding twelve months.

8. [Repealed by Acts 1931, 42nd Leg., p. 375, ch. 221, § 3.]

9. In cities and towns having a population of one thousand (1,000) or more inhabitants, according to the last preceding United States Census, the active members of organized fire companies, not to exceed twenty (20) to each one thousand (1,000) of such inhabitants; provided that this exemption shall apply to volunteer members of fire companies, whether there are paid firemen or not. [As amended Acts 1931, 42nd Leg., p. 375, ch. 221, § 2; Acts 1933, 43rd Leg., 1st C. S., p. 291, ch. 106, § 1.]

10. Agents and patrolmen engaged in the Forestry Protection work employed by the State Department of Forestry, when engaged in the regular and actual discharge of their duties. [Acts 1876, p. 83; G.L. vol. 8, p. 914; Acts 1927, 40th Leg., p. 88, ch. 63, §§ 1, 2.]

Acts 1931, 42nd Leg., p. 375, ch. 221, amended subdivisions 2 and 9 of this article, and repealed subdivision 8. Acts 1933, 43rd Leg., 1st C.S., p. 291, ch. 106, amended subdivision 9.

Art. 2136. [5119] [3143] Where several fire companies in one town.—If there be more than one organized fire company in such town or city, the whole number of exemptions provided under Subdivision Ten of the preceding article shall be equally divided between such companies. Before such exemption of any of such fire company shall be made available, the members to be exempted shall be selected by their respective companies; and their names shall be handed in to the clerks of the district and county courts, respectively, by the chief of the fire department of such city or town, or in case there be no such officer, then by the foreman of the company. [Acts 1876, p. 83; G.L. vol. 8, p. 914.]

Art. 2137. [5121] Filing of exemptions.—All persons summoned as jurors in any court of this State, who are exempt by statutory law from jury service, may, if they so desire to claim their exemptions, make oath before any officer authorized by law to administer oaths, or before the officers summoning such persons, stating their exemptions, and file said affidavit at any time before the convening of said court with the clerk of said court, which shall constitute sufficient excuse without appearing in person. [Acts 1907, p. 216.]

Arts. 2138–2151. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 223–225, 227–229, 231–236.

The articles 2141, 2146 and 2150 were previously repealed by Acts 1929, 41st Leg., 1st C.S., p. 176, ch. 67, § 17 as to counties of 16,775 and not more than 17,000 population, was declared unconstitutional as discriminatory by the Court of Criminal Appeals in Randolph v. State, 117 Cr.R. 80, 36 S.W.2d 484.

CHAPTER 8.—TRIAL OF CAUSES

1. APPEARANCE AND PROCEDURE

Art.
2152–2166. [Repealed.]

2. CONTINUANCE AND CHANGE OF VENUE

2167, 2168. [Repealed.]
2168a. Attendance on Legislature.
2169–2172. [Repealed.]
2172a. County in which case filed liable for juror's pay on change of venue; exceptions.
2173, 2174. [Repealed.]

3. THE TRIAL

2175–2183. [Repealed.]

4. CHARGE OF THE COURT

2184–2190. [Repealed.]

5. CASE TO JURY

2191. Number of jurors.
2192–2198. [Repealed.]
2199. Disagreement as to evidence.
2200, 2201. [Repealed.]

6. VERDICT

2202–2207. [Repealed.]

7. FINDINGS BY COURT

2208–2210. [Repealed.]

1. APPEARANCE AND PROCEDURE

Arts. 2152–2166. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 172–175, 237–241, 243, 244, 247–249.

2. CONTINUANCE AND CHANGE OF VENUE

Arts. 2167, 2168. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 251, 252.

Art. 2168a. Attendance on Legislature.—In all suits, either civil or criminal, or in matters of probate, pending in any court of this State at any time within ten (10) days of a date when the Legislature is to be in session, or at any time the Legislature is in session, it shall be mandatory that the court continue such cause if it shall appear to the court, by affidavit, that any party applying for such continuance, or any attorney for any party to such cause, is a member of either branch of the Legislature, and will be or is in actual attendance on a session of the same. Where a party to any cause is a member of the Legislature, his affidavit need not be corroborated. On the filing of such affidavit, the court shall continue the cause until ten (10) days after the adjournment of the Legislature and such affidavit shall be proof of the necessity for such continuance, and such continuance shall be deemed one of right and shall not be charged against the party receiving such continuance upon any subsequent application for continuance. It is hereby declared to be the intention of the Legislature that the provisions of this section shall be deemed mandatory and not discretionary. [Acts 1929, 41st Leg., p. 17, ch. 7, § 1; Acts 1941, 47th Leg., p. 69, ch. 56, § 1.]

Repeal by Rules of Civil Procedure. This article, as to civil actions, was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rule 254.

Arts. 2169–2172. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 255, 257–259.

Art. 2172a. County in which case filed liable for juror's pay on change of venue; exceptions.—Sec. 1. In any Civil case which has been filed in one county and removed by change of venue to another county and tried therein by a Jury, the county in which such case was filed shall be liable for the pay of jurors incurred in the trial thereof.

Sec. 2. The County Commissioners of each county, at each regular meeting, shall ascertain whether, since the last regular meeting, any Civil case has been tried by jury upon change of venue from any other county. If they find such to be the case, they shall make out an account against the county in which said case was originally filed showing the number of days the jury in such case was employed in the trial thereof, and setting forth the amount paid for such jury service. Such account shall then be certified to as correct by the County Judge of such county, under his hand and seal, and be, by him, forwarded to the county in which said case was originally filed; and said account shall be paid from the Jury fund of said county made liable therefor by this Act.

Sec. 3. This Act shall not apply to any Civil case transferred by reason of the Order of any Court based upon a plea of privilege filed in said case. [Acts 1931, 42nd Leg., p. 131, ch. 88.]

Arts. 2173, 2174. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 260, 261.

3. THE TRIAL

Arts. 2175–2183. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 164, 236, 262–265, 269, 270.

4. CHARGE OF THE COURT

Arts. 2184–2190. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 271–273, 275–277, 279.

5. CASE TO JURY

Art. 2191. [5214–16] Number of jurors.—The jury in the district courts shall be composed of twelve men; but the parties may by consent agree, in a particular case, to try with a less number. In county courts the jury shall be composed of six men.

Arts. 2192–2198. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 280–286.

Art. 2199. [1963–4] Disagreement as to evidence.—If the jury disagree as to the statement of any witness, they may, upon applying to the Court, have read to them from the Court Reporter's notes that part of such witness' testimony on the point in dispute; but if there be no such Reporter, or if his notes cannot be read to the jury, the Court may cause such witness to be again brought upon the stand and the Judge shall direct him to repeat his testimony to the point in dispute, and no other, and as nearly as he can in the language used on the trial; and on their notifying the Court that they disagree as to any portion of a deposition or other paper not carried with them in their retirement, the Court may, in like manner, permit such portion of said deposition or paper to be again read to the jury. [As amended Acts 1939, 46th Leg., p. 213, § 1.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rule 287.

Arts. 2200, 2201. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 288, 289.

6. VERDICT

Arts. 2202–2207. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 290–295.

7. FINDINGS BY COURT

Arts. 2208–2210. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 296, 300, 307.

CHAPTER 9.—JUDGMENTS AND REMITTITUR

1. JUDGMENTS

Art.
2211. [Repealed.]
2212. Contribution between tort feasors.
2213. [Repealed.]
2214. May pass title.
2215–2218. [Repealed.]
2218a. [Unconstitutional.]
2218b. [Expired.]
2219–2222. [Repealed.]
2223. Against partners.
2224. Contract to waive or confess.
2225. [Repealed.]
2226. Attorney's fees.

2. REMITTITUR AND CORRECTION

2227–2231. [Repealed.]

1. JUDGMENTS

Art. 2211. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure Rule 301.

Art. 2212. Contribution between tort feasors.—Any person against whom, with one or more others, a judgment is rendered in any suit on an action arising out of, or based on tort, except in causes wherein the right of contribution or of indemnity, or of recovery, over, by and between the defendants is given

by statute or exists under the common law, shall, upon payment of said judgment, have a right of action against his co-defendant or co-defendants and may recover from each a sum equal to the proportion of all of the defendants named in said judgment rendered to the whole amount of said judgment. If any of said persons co-defendant be insolvent, then recovery may be had in proportion as such defendant or defendants are not insolvent; and the right of recovery over against such insolvent defendant or defendants in judgment shall exist in favor of each defendant in judgment in proportion as he has been caused to pay by reason of such insolvency. [Acts 1917, p. 360.]

Art. 2213. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 49.

Art. 2214. [1998] [1338] [1338] May pass title.—Where the judgment is for the conveyance of real estate, or for the delivery of personal property, the decree may pass the title to such property without any act to be done on the part of the party against whom the judgment is rendered. [Acts 1846, p. 363; P. D. 1481; G. L. vol. 2, p. 1669.]

Arts. 2215–2218. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 302, 303, 308, 309.

Art. 2218a. [Unconstitutional.]

This article, derived from Acts 1933, 43rd Leg., p. 198, c. 92, providing for elimination of action on note after sale of real estate security and process to enforce deficiency judgment was held unconstitutional in Langever v. Miller, 124 T. 80, 76 S.W.2d 1025, 96 A.L.R. 836 as impairing the obligation of contracts and as a legislative exercise of judicial power.

Art. 2218b. [Expired.]

This article constituted Acts 1933, 43rd Leg., p. 225, ch. 102, a Moratorium Act, which by the terms of section 11 thereof, expired May 1, 1934. See Mountain Townsite Co. v. Cooper, 123 T. 603, 73 S.W.(2d) 90.

Acts 1934, 43rd Leg., 2nd C.S., p. 2, ch. 2, was a temporary act providing for stay of execution and foreclosure sales.

Acts 1934, 43rd Leg., 2nd C.S., p. 42, ch. 16, a temporary act generally known as the Moratorium Law, was held invalid by the Supreme Court as impairing obligation of contracts, in Travelers' Insurance Co. v. Marshall, 124 T. 45, 76 S.W.(2d) 1007, 96 A.L.R. 802.

Arts. 2219–2222. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 310–313.

Art. 2223. [2006] [1347] [1346] Against partners.—Where the suit is against several partners jointly indebted upon contract, and the citation has been served upon some of such partners but not upon all, judgment may be rendered therein against such partnership and against the partners actually served, but no personal judgment or execution shall be awarded against those not served. [Acts 1858, p. 110; P. D. 1514; G. L. vol. 4, p. 982.]

Art. 2224. [2008] [1349] [1347] Contract to waive or confess.—No acceptance of service and waiver of process, nor entry of appearance in open court, nor a confession of judgment shall be authorized in any case by the contract or writing sued on, or any other instrument executed prior to the institution of such suit, nor shall such acceptance or waiver be made until after suit brought. [Acts 1885, p. 33; G. L. vol. 9, p. 653.]

Art. 2225. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 314.

Art. 2226. [2178–9] Attorney's fees.—Any person having a valid claim against a person or corporation for personal services rendered, labor done, material furnished, overcharges on freight or express, lost or damaged freight or express or stock killed or injured, may present the same to such person or corporation or to any duly authorized agent thereof; and if, at the expiration of thirty days thereafter, the claim has not been paid or satisfied, and he should finally obtain judgment for the full amount thereof as presented for payment to such person or corporation, he may also recover, in addition to his claim and costs, a reasonable amount as attorney's fees, not to exceed twenty dollars, if represented by an attorney. [Acts 1909, p. 93; Acts 1923, p. 312.]

2. REMITTITUR AND CORRECTION

Arts. 2227–2231. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 315–319.

CHAPTER 10.—NEW TRIALS AND ARREST OF JUDGMENT

Arts. 2232–2236. [Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)].

Corresponding provisions, see Rules of Civil Procedure, Rules 320, 326–329.

CHAPTER 11.—BILLS OF EXCEPTION AND STATEMENT OF FACTS

Art.
2237. When taken; rules.
2238–2241. [Repealed.]
2241a. Return of bills of exceptions and statement of facts by attorney.
2241b–2245. [Repealed.]
2246. Time of filing.
2247, 2247a. [Repealed.]
2248. Successor to trial judge.

Art. 2237. [2058–67] When taken; rules.—If either party during the progress of a cause is dissatisfied with any ruling, opinion or other action of the Court, he may except thereto at the time the said ruling is made, or announced or such action taken, and at his request time shall be given to embody such exceptions in a written bill. The preparation and filing of bills of exceptions shall be governed by the following rules:

1. No particular form of words shall be required in a bill of exception; but the objection to the ruling or action of the Court shall be stated with such circumstances, or so much of the evidence as may be necessary to explain, and no more, and the whole as briefly as possible.

2. Where the statement of facts contains all the evidence requisite to explain the bill of exception evidence need not be set out in the bill; but it shall be sufficient to refer to the same as it appears in the statement of facts.

2a. All objections to the admission or exclusion of evidence and exceptions to the ruling of the Court upon the admission or exclusion of evidence or other matters may be shown by the official stenographer's transcript of the evidence, known as a statement of facts in question and answer form, all as hereinafter provided in Article 2239, and no formal bill of exception to the admission or exclusion of evidence or to any of the Court's rulings shall be required where the matters complained of, the objections, the Court's rulings, and exceptions thereto clearly appear of record in said transcript of evidence, or statement of facts in question and answer form; provided, however, that in any case where such matters do not clearly appear of record the parties may, if they so desire, prepare and have approved and filed, as otherwise provided by law, a formal bill of exception.

3. The ruling of the court in the giving, refusing or qualifying of instructions to the jury shall be regarded as approved unless excepted to.

4. Where the ruling or other action of the Court appears otherwise of record, no bill shall be necessary to reserve an exception thereto; and all motions and answers thereto, the orders thereon and any exceptions shown in such orders shall, for the purpose of this Article, be considered a part of the record with-

out the necessity of bills of exception, provided that if testimony is heard upon a motion, such testimony may be preserved only by bill of exception or in the statement of facts.

5. The party taking a bill of exception shall reduce the same to writing and present it to the Judge for his allowance and signature.

6. The Judge shall submit such bill to the adverse party or his counsel, if in attendance on the Court, and if found to be correct, the Judge shall sign it without delay and file it with the Clerk.

7. If the Judge finds such bill incorrect, he shall suggest to the party or his counsel, such corrections as he deems necessary therein, and if they are agreed to, he shall make such corrections, sign the bill and file it with the Clerk.

8. Should the party not agree to such corrections, the Judge shall return the bill to him with his refusal indorsed thereon, and shall prepare, sign and file with the Clerk such bill of exception, as will, in his opinion, present the ruling of the court as it actually occurred.

9. Should the party be dissatisfied with said bill filed by the Judge, he may, upon procuring the signatures of three respectable by-standers, citizens of this State, attesting to the correctness of the bill as presented by him, have the same filed as part of the record of the cause; and the truth of the matter in reference thereto may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the papers of the cause, within ten days after the filing of said bill and to be considered as a part of the record relating thereto.

10. This Act shall not serve to repeal other laws regarding or dispensing with exceptions or bills of exception. [Acts 1846, p. 391; G.L. vol. 2, p. 1697; Acts 1913, p. 113; Acts 1931, 42nd Leg., 1st C.S., p. 75, ch. 34, § 1; Acts 1939, 46th Leg., p. 215, § 1.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rule 372.

Arts. 2238–2241. [Repealed.]

Art. 2241a. Return of bills of exceptions and statement of facts by attorney.—Whenever within the sixty (60) days that are provided by law for filing bills of exceptions and statements of fact in the trial court, the appellant or his attorney shall present bills of exceptions and statements of fact to the appellee or his attorney for the purpose of procuring an agreement thereto as provided in Articles 2239 and 2240, it shall be the duty of the appellee and his attorney to return to the appellant or his attorney the bills of exceptions and statements of fact within ten (10) days after having received said bills of exceptions and statements of fact, with his approval or disapproval of the same. The failure of the attorney for appellee to return such statements of fact or bills of exceptions within such ten-day period shall entitle the appellant to have such bills of exceptions and statements of fact approved by the court without having first obtained the approval thereof by the attorney for appellee. [Acts 1927, 40th Leg., p. 67, ch. 44, § 1; Acts 1939, 46th Leg., p. 214, § 1.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941.

Arts. 2241b–2245. [Repealed.]

Art. 2246. [2073] Time for filing.—When an appeal is taken from a judgment rendered in a civil cause tried in either the District Court, County Court, or County Court at Law, the party appealing shall have fifty (50) days after final judgment or order overruling motion for new trial, if such motion is filed, or perfection of writ of error, within which to prepare and file his statement of facts and bills of exception in the Trial Court.

Sec. 2. Upon application of the party appealing, the Judge of the Court may, in termtime or vacation, for good cause shown, extend the time for filing such statement of facts and bills of exception; but the time shall not be extended in any case so as to delay the filing thereof beyond the time for filing the transcript, bills of exceptions, and statement of facts in the Court of Civil Appeals, as prescribed by law, or as such time has been extended by said Court. [Acts 1931, 42nd Leg., p. 100, ch. 67; Acts 1939, 46th Leg., p. 217, § 1.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rule 381.

Arts. 2247, 2247a. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 297, 298.

Art. 2248. [2076] Successor to trial judge.—Any judge of a district or county court whose term of office expires before the adjournment of the term of such court at which a cause may be tried, or during the period prescribed for the filing of the statement of facts and bills of exception, or conclusions of law and fact, may approve such statement of facts and bills of exception, or file such findings of fact and conclusions of law in such cause, as provided in this title, and where any such judge shall die before the time for such approval or filing, the same may be approved or filed by his successor, as provided by article 2288.

CHAPTER 12.—APPEAL AND WRIT OF ERROR

Art.
2249. To Court of Civil Appeals.
2249a. Party participating in actual trial; writ of error review by Court of Civil Appeals.
2250. Appeal from interlocutory order.
2251. Appeals in injunctions.
2252–2254. [Repealed.]
2255. Writ of error sued out.
2256–2275. [Repealed.]
2276. No bond required.
2276a. Exemption from appeal bond of water improvement and other districts.
2277. If party dies.
2278–2282. [Repealed.]
2283–2285. [Repealed.]

Article 2249. To Court of Civil Appeals.—An appeal or Writ of Error may be taken to the Court of Civil Appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every final judgment of the county court in civil cases in which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hundred dollars exclusive of interest and costs. [Acts 1925, p. 45.] [39th Leg., ch. 18, § A; Acts 1927, 40th Leg., p. 75, ch. 52, § 1.]

Article 2249a providing that no party participating in actual trial of case shall be entitled to review by Court of Civil Appeals on writ of error and repealing all conflicting laws, expressly repealed this article to extent that it applied to any such party. Rudco Oil & Gas Co. v. Lemasters, Civ.App., 146 S.W.2d 806, error dismissed.

Art. 2249a. Party participating in actual trial; writ of error review by Court of Civil Appeals.—Section 1. No party who participates either in person or by his attorney in the actual trial of the case in the trial court shall be entitled to review by the Court of Civil Appeals through means of writ of error.

Sec. 2. All laws and parts of laws, insofar as they conflict with this Act, are repealed. Writ of error shall continue to be available under the rules and regulations of the law to a party who does not participate in the trial of the case in the trial court. [Acts 1939, 46th Leg., p. 59.]

Art. 2250. [2079] Appeal from interlocutory order.—An appeal shall lie from an interlocutory order of the District, County Court at Law, or County Court:

1. Appointing a receiver or trustee in any cause.
2. Overruling a motion to vacate an order appointing a receiver or trustee in any case. [Acts 1917, p. 379; Acts 1943, 48th Leg., p. 456, ch. 305, § 1.]

Art. 2251. [2080] Appeals in injunctions.—Appeals from orders of the district and county courts granting or dissolving temporary injunctions shall lie in the cases and in the manner provided in the title "Injunctions."

Arts. 2252–2254. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 352, 353, 356.

Art. 2255. [2086] [1389] [1389] Writ of error sued out.—The writ of error, in cases where the same is allowed, may be sued out at any time within six months after the final judgment is rendered. [Acts 1892, p. 42; G. L. vol. 10, p. 406; Acts 1919, p. 136.]

Arts. 2256–2275. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 359, 360, 356, 361, 362, 354, 355, 363, 357, 358, 364–368.

Art. 2276. [2105–6] No bond required.—Neither the State of Texas, nor any county in the State of Texas, nor the Railroad Commission of Texas, nor the head of any department of the State of Texas, prosecuting or defending in any action in their official capacity, shall be required to give bond on any appeal or writ of error taken by it, or either of them, in any civil case.

Executors, administrators and guardians appointed by the courts of this State shall not be required to give bond on any appeal or writ of error taken by them in their fiduciary capacity. [Acts 1848, p. 106; G. L. vol. 3, p. 106; P. D. 1503; Acts 1897, p. 27; G. L. vol. 10, p. 1081; Acts 1909, S. S. p. 284.]

Art. 2276a. Exemption from appeal bond of water improvement and other districts.—No water improvement district, nor any water control and improvement district, nor any water control and preservation district, nor any levee improvement district, nor any drainage district, organized under the laws of this State, prosecuting or defending in any action in its official capacity, shall be required to give bond on any appeal or writ of error taken by it, or either of them, in any civil case. [Acts 1933, 43rd Leg., p. 131, ch. 62, § 1.]

Section 2 of Acts 1933, 43rd Leg., p. 131, ch. 62, repeals all conflicting laws and parts of laws.

Art. 2277. [2107] [1409] [1409] If party dies.—In case of the death of any party entitled to an appeal or writ of error, the same may be taken by his executor, administrator or heir.

Arts. 2278–2282. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 380, 378.

Art. 2283. [Repealed by Acts 1935, 44th Leg., p. 225, ch. 90, § 2.]

Article superseded as to time for filing briefs in Court of Civil Appeals, see article 1848, ante, and Johnson v. Town of Refugio (Civ.App.) 56 S.W.(2d) 674.

Arts. 2284, 2285. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 369.

CHAPTER 13.—GENERAL PROVISIONS

1. MISCELLANEOUS

Art.
2286. [Repealed.]
2287. Neglect by officers.
2288, 2289. [Repealed.]
2290. Deposits pending suit.
2291, 2292. [Repealed.]

2. RECEIVERS

2293. Appointment.
2293a. Appointment for church or congregation.
2294. Qualifications.
2294a. Member of church or congregation.
2295. Quo warranto.
2296. Oath and bond.
2297. Receiver's power.
2297a. Receiver of church or congregation.
2298. Investing funds.
2299. Application of funds.
2300. Discharge of receiver.
2301. When property subject to execution.
2302. Judgments first lien on property.
2303. Persons liable for debts.
2304. Effect of discharge.
2305. Property liable for debts.
2306. Outstanding liabilities at discharge.
2307. Liability of receiver and person to whom property is delivered.
2308. Receiver to give bond on appeal.
2309. Deposit of railroad funds.
2310. Suit by or against.
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2312. Venue to appoint.
2313. Jurisdiction to appoint.
2314. Inventory by receiver.
2315. Where there are betterments, etc.
2316. Preference claims.
2317. Receivership of corporation limited; certain corporations excepted.
2318. Application for receiver.
2319. Rules of equity shall govern.
2320. [Repealed.]
2320a. Reorganization and adjustment of affairs of debtors.
2320b. Receiver for undivided mineral interest owned by absentee of unknown address.

3. OFFICIAL COURT REPORTER

2321. Appointment and examination.
2322. Oath.
2323. Deputy reporter.
2324. Duty of reporter.
2324a. Powers as to depositions, commissions, oaths and affidavits.
2325. Fees.
2326. Compensation.
2326a. Expenses and manner of payment.
2326b. Reporters in judicial district, salary.
2326c. Salaries of reporters in Judicial Districts; exception of certain districts.
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2326d—1. Salaries in districts of four or more counties with valuations of $230,000,000.
Sec.
1. Minimum salaries; increase.
2. Traveling expenses.
3. Payment of salary; taxable valuations as basis.
4. Salary for 1945.
5. Partial invalidity.
2326e. Salaries of reporters in counties over 290,000.

Art.
2326f. Salary of court reporter in certain districts.
2326g. Salaries of official shorthand reporters in District and County Courts at Law in counties over 225,000.
2326g—1. Salaries of official shorthand reporters in District and County Courts at Law in counties of 225,000 to 398,000.
2326h. Apportionment of expenses and salaries of reporters among several counties.
2327. In county court.
2327A. [Repealed.]
2327a—1. Apportionment of reporter's salary among counties.
2327b. County court reporter in counties of 40,905 to 41,000 population.
2327b—1. County court reporter in counties of 22,100 to 22,500 population.

4. MANDAMUS

2328. [Repealed.]

5. ADVISORY JUDICIAL COUNCIL

2328a. Advisory judicial council, membership, duties.
Sec.
1. Purpose.
2. Classes of members.
3. Ex officio members.
4. Appointive members.
5. Duties of council.
6. Powers of council.
7. Compensation limited to traveling and necessary expenses.
8. Partial invalidity.

1. MISCELLANEOUS

Art. 2286. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 15.

Art. 2287. [2183] [1455] [1451] Neglect by officers.—Any clerk, sheriff, or other officer who neglects or refuses to perform any duty required of him under any provision of this title shall be liable to damages at the suit of any person injured, and may be punished for contempt of court. [Acts 1846, p. 363; G. L. vol. 2, p. 1669.]

Arts. 2288, 2289. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 18, 77.

Art. 2290. [2164—5—6] Deposits pending suit.—The officer having custody of any money, debt, script, instrument of writing, or other article paid or deposited in court during the progress of any cause to abide the result of any legal proceeding, shall seal up in a secure package the identical money or other article so received and deposit it in some safe or bank vault, keeping it always accessible and subject to the control of the court; and he shall also keep in his office as a part of the records thereof a correct itemized statement of such deposit, on what account received, and the disposition made of the same. When his term of office expires, such officer shall turn over to his successor all of such trust funds and other property and the record book thereof, taking his receipt therefor. This article shall not exempt any officer or his surety from any liability on his official bond for any neglect or other default in regard to said property. [Acts 1876, p. 7; G. L. vol. 8, p. 843.]

Arts. 2291, 2292. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 21, 172.

2. RECEIVERS

Art. 2293. [2128] [1465] Appointment.—Receivers may be appointed by any judge of a court of competent jurisdiction of this State, in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim; or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed or materially injured; or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt.

3. In cases where a corporation is insolvent or in imminent danger of insolvency; or has been dissolved or has forfeited its corporate rights.

4. In all other cases where receivers have heretofore been appointed by the usages of the court of equity. [Acts 1887, p. 119; G. L. vol. 9, p. 917; Acts 1889, p. 55; G. L. vol. 9, p. 1083.]

Art. 2293a. Appointment for church or congregation.—Sec. 1. That the judge of any district court, or other court having jurisdiction, is hereby authorized and required in term, time, or on vacation, to appoint a receiver or receivers for any defunct or disorganized church or congregation when the fact of such condition is brought to the attention of such court by an application for the appointment of a receiver or receivers for such defunct or disorganized church or congregation.

Sec. 5. The term "church or congregation" is meant to refer to a local congregation of believers in Christ, and not to a denomination or communion as a whole.

Sec. 6. The terms "defunct or disorganized" are meant to apply to an organization which formerly maintained regular forms of work and worship in a given community such as the Bible School, Communion Services, Preaching Services, etc., a regular interval [1], and which has ceased to function in these and similar capacities as a church for a period of one or more years. [Acts 1927, 40th Leg., p. 68, ch. 45.]

[1] So in enrolled bill. Should probably read "intervals".

For sections 2, 3 and 4 of Acts 1927, 40th Leg., p. 68, ch. 45, see articles 2294a, 2297a and 4331a, post.

Art. 2294. [2129—30] Qualifications.—A receiver for property within or partly within and partly without this State must, when appointed, be a bona fide citizen and qualified voter of this State, and if so qualified and appointed he shall keep and maintain actual residence in this State during the pendency of such receivership; if not so qualified, his appointment as such receiver shall be void in so far as the property within this State is concerned. No party, attorney, or any person interested in any way in an action for the appointment of a receiver shall be appointed receiver therein. [Acts 1887, p. 119; G.L. vol. 9, p. 917; Acts 1889, p. 55; G.L. vol. 9, p. 1083.]

Art. 2294a. Member of church or congregation.—That the receiver or receivers appointed for any such defunct or disorganized church or congregation, shall be a member or members of an active church or congregation of like faith and order, or shall be a recognized missionary or ecclesiastical body of like faith and order, denomination or communion; and in case any such denomination or communion of like faith and order, shall have a State Missionary Society, or shall hereafter appoint, elect or organize, or cause to be appointed, elected or organized, such a State Missionary Society, and shall authorize the same to act as a receiver or trustee for such denomination or communion, then such State Missionary Society, or other similar organization so formed and named, shall be appointed

to serve as receiver or trustee by said court. [Acts 1927, 40th Leg., p. 68, ch. 45, § 2.]

Art. 2295. [2131] [1468] Quo warranto.—Where a domestic corporation owning property in this State shall have a receiver of such property appointed who is not a bona fide citizen and qualified voter of this State, said corporation shall thereby forfeit its charter; and the Attorney General shall at once prosecute a suit by quo warranto against said corporation so offending to forfeit its charter. The court trying the cause shall forfeit the charter of said corporation upon proof that a person has been appointed receiver of its property situated in this State who is not so qualified. [Acts 1887, p. 119; G.L. vol. 9, p. 917; Acts 1889, p. 55; G.L. vol. 9, p. 1083.]

Art. 2296. [2132] [1369] Oath and bond.—When a receiver is appointed, he shall, before he enters upon his duties, be sworn to perform them faithfully, and shall execute a good and sufficient bond, to be approved by the court appointing him, in the sum fixed by the court, conditioned that he will faithfully discharge his duty as receiver in the action (naming it) and obey the orders of the court therein. [Acts 1887, p. 120.]

Art. 2297. [2133] [1470] Receiver's power.—The receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to receive rents, collect, compound for, compromise demands, make transfers, and generally to do such acts respecting the property as the court may authorize. [Id.]

Art. 2297a. Receiver of church or congregation.—That it shall be the duty of such trustee or trustees when so appointed, to take charge of all property, real, personal or mixed, and choses in action, belonging to such defunct or disorganized church or congregation and administer the same under the direction of the court making the appointment, for the best interest of such defunct or disorganized church or congregation; and where necessary to preserve the property, to sell the same under the order of said court; and in case said court shall be of the opinion that said church or congregation may not be revived or reorganized within a reasonable time, it shall be the duty of said court to order all of said property sold at public or private sale, and the proceeds received from such sale or sales shall be turned over and delivered to said trustee or trustees to be used by them for a church or congregation, denomination or communion or organization of like faith and order. [Acts 1927, 40th Leg., p. 68, ch. 45, § 3.]

Art. 2298. [2134] [1471] Investing funds.—The funds in the hands of a receiver may be invested upon interest by order of the court, but no such order shall be made except upon consent of all the parties to the action. [Acts 1887, p. 120.]

See, also, Article 842a, ante.

Art. 2299. [2135] [1472] Application of funds.—All moneys that come into the hands of a receiver as such receiver shall be applied as follows, to the payment:

1. Of all court costs of the suit.
2. Of all wages of employés due by the receiver.
3. Of all debts due by the receiver for materials and supplies purchased during receivership by the receiver for the improvement of the property in his hands as receiver.
4. Of all debts due for betterments and improvements done during receivership to the property in his hands as such receiver.
5. Of all claims and accounts against the receiver on contracts made by the receiver during the receivership, and of personal injury claims and claims for stock against said receiver accruing during said receivership, and all judgments rendered against said receiver for personal injuries and for stock killed.
6. Of all judgments recovered against persons or corporations in suits brought before the receiver in the action.

As to all money coming into the hands of a receiver which are the earnings of the property in his hands, said claims shall have a preference lien on the same, and the receiver shall pay the same on the claims against him in the order of preference named above, and the court shall see that he does so. [Id.]

Art. 2300. [2136] [1473] Discharge of receiver.—If a receiver is discharged pending suits against him for causes of action growing out of and arising during the receivership, the cause of action shall not abate, but may be prosecuted to final judgment against the receiver; and the plaintiff may make the party or corporation to whom the receiver has delivered the property a party to the suit. If judgment is finally rendered in favor of the plaintiff against the receiver, the court shall also enter judgment in favor of the plaintiff against the party to whom the property was delivered by the receiver. [Id.]

Art. 2301. [2137] [1472] When property subject to execution.—Where there is a judgment against a receiver and he shall have in possession moneys subject to the payment of such judgment, and the plaintiff owning the judgment shall apply to the court appointing the receiver for an order to pay said judgment, and if said court should refuse to order said judgment paid, when there is money in the hands of said receiver subject to the payment of the judgment, then the court rendering the judgment shall order an execution to issue on said judgment against said receiver upon the filing by the plaintiff in the court where the judgment was rendered an affidavit reciting that the plaintiff had applied to the court appointing the receiver for an order for said receiver to pay said judgment, and that it was shown to the court that there was money in the hands of the receiver at that time which was subject to the payment of the judgment, and that said court refused to order him to pay the judgment. Said execution when so issued shall be levied upon any property in the hands of the receiver and the same shall be sold as under ordinary execution; and a sale of the property will convey the title of the same to the purchaser. [Id.]

Art. 2302. [2138] [1475] Judgments first lien on property.—All judgments rendered against a receiver for causes of action arising during the receivership shall be a lien upon all property in the hands of the receiver superior to the mortgage lien. If the property should be turned back into the possession of the party or corporation owning same at the time of the appointment of a receiver, or any one for them, or to their assigns or purchasers, the party or corporation so receiving said property from said receiver shall take said property charged with all of the unpaid liabilities of the receiver occurring during the receivership, to the value of the property delivered by the receiver. [Id.]

Art. 2303. [2139] [1476] Persons liable for debts.—If a receiver is discharged by the court before all of the liabilities of the receiver arising during the receivership are settled in full, then the person, persons, or corporation to whom the receiver delivers the property that was in his hands as receiver shall be liable to the persons having claims against said receiver for the full amount of the liabilities. [Id.]

Art. 2304. [2140] [1477] Effect of discharge.—The discharge of a receiver shall not work an abatement of the suit against a receiver nor in any way affect the right of the party to sue the receiver if he sees proper. [Id.]

Art. 2305. [2141] [1478] Property liable for debts.—When property has been returned to the

original owner without any sale of said property, such owner shall be liable for all of the unpaid liabilities of the receiver in causes of action arising out of and during the receivership, and the plaintiff may make such owner to whom the property was delivered a party defendant along with the receiver; and, if judgment is rendered against the receiver upon a cause of action arising out of and during the receivership, then the court shall also, at the same time, render judgment against such defendants for the amount so found for plaintiff; and plaintiff shall have the right to foreclose his lien on the property so returned. [Id.]

Art. 2306. [2142] [1479] Outstanding liabilities at discharge.—If at the date of the discharge of a receiver there exists against him any judgments or unpaid claims not sued on which arose during the receivership, then such claims and judgments shall be a preference lien on all of the property that was in the receiver's hands as such at said date superior to the mortgage lien; and the person or corporation to whom the receiver has delivered such property shall be liable for such claims and judgments to the value of such property. [Id.]

Art. 2307. [2143] [1480] Liability of receiver and person to whom property is delivered.—Any person having a claim against a receiver not sued on at the date of the discharge of the receiver, shall have the right to sue said receiver, either alone or jointly, with the person or corporation to whom the receiver delivered said property that was in his hands as such receiver; and, if any judgment is rendered against said receiver, a judgment shall also be rendered against the person or corporation for the same amount that is rendered against the receiver, not to exceed the value of the property so received by said person or corporation. [Id.]

Art. 2308. [2144] [1481] Receiver to give bond on appeal.—In a suit against a receiver, if the receiver desires to appeal or apply for a writ of error from judgment rendered against him, before such appeal or writ of error shall be perfected or allowed, such receiver shall enter into bond with two or more good and sufficient sureties, to be approved by the clerk of the court or justice of the peace, payable to the appellee or the defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such receiver shall prosecute his appeal or writ of error with effect; and, in case the judgment of the court to which such appeal or writ of error be taken shall be against him, that he will perform its judgment, sentence, or decree, and pay all such damages and costs as said court may award against him. If the judgment of the appellate court shall be against such receiver, judgment shall, at the same time, be entered against the sureties on his said bond, and execution thereon may issue against such sureties within twenty days after such judgment is rendered. [Id.]

Art. 2309. [2145] [1482] Deposit of railroad funds.—When a line of railroad operated by a receiver lies wholly within this State, all money which comes into the hands of the receiver, whether from operating the road or otherwise, shall be kept and deposited in such place within this State as the court may direct, until properly disbursed; but, if any portion of the road lies in another State, the receiver shall be required to deposit in this State at least such share of the funds in his hands as is proportioned to the value of the property of the company within this State.

Art. 2310. [2146] [1483] Suit by or against.—When property within the limits of this State has been placed in the hands of a receiver who has taken charge of such property, such receiver may, in his official capacity, sue or be sued in any court of this State having jurisdiction of the cause of action, without leave of the court appointing him. If judgment is recovered against said receiver, the court shall order said judgment paid out of any funds in the hands of said receiver as such receiver. [Id.]

Art. 2311. [2147] [1484] Venue of suit against.—Actions may be brought against the receiver of the property of any person where said person resides; and against receivers of a corporation in the county where the principal office of said corporation may be located, and against receivers of railroad companies in any county through or into which the road is constructed. Service of summons may be had upon the receiver, or upon the general or division superintendent of the road, or upon any agent of said receiver who resides in the county where the suit is brought.

Art. 2312. [2150] [1488] Venue to appoint.—If the property sought to be placed in the hands of a receiver is a corporation whose property lies within this State, or partly within this State, then the action to have a receiver appointed shall be brought in this State in the county where the principal office of said corporation is located. [Acts 1887, p. 120; Acts 1927, 40th Leg., p. 20; ch. 13, § 1.]

Art. 2313. [2149] [1487] Jurisdiction to appoint.—When a person resides in this State and a receiver is applied for, or if the property sought to be placed in the hands of a receiver is situated within the limits of this State, no court other than one within the limits of this State, shall have power to appoint any receiver of said property. [Acts 1887, p. 120.]

Art. 2314. [2148] [1486] Inventory by receiver.—The receiver as soon after his appointment as possible, shall return to the court appointing him a true and correct inventory of all property received by him as such receiver. [Id.]

Art. 2315. [2151] [1489] Where there are betterments, etc.—When a receiver of a corporation has, under the order of the court appointing him, made improvements upon the property and purchased rolling stock, machinery, and made other improvements whereby the value of the property of said corporation has been increased, or has extended a road, or acquired any property in connection with said road, and has paid for same out of the current receipts of the corporation that came into his hands as receiver, then, if there be any floating debts against said corporation, said corporation shall be made to contribute to the floating indebtedness to the full value of the money so spent by said receiver as aforesaid. When there are liens of any kind upon the property of said corporation in the hands of such receiver, and said property is sold under the order of the court, and said liens foreclosed, then the court appointing such receiver, if there be any unpaid debts or judgments, or claims against the corporation itself, shall detain in the hands of the clerk of the court money to the full value of the improvements made by the receiver of the property sold, and pay the same over to whoever has or may have a claim, debt, or judgment against said corporation; and the court, in ordering the sale of the property, shall require sufficient cash to be paid in at date of sale to cover the full value of the improvements so made by said receiver out of the current funds received by him from the property while receiver. [Id.]

Art. 2316. [2152] [1490] Preference claims.—All judgments, claims, or causes of action when determined, existing against any corporation at the time of the appointment of a receiver, shall be paid out of the earnings of such corporation while in the hands of the receiver, to the exclusion of mortgage action; and the same shall be a lien on such earnings. [Id.]

Art. 2317. [2153] [1491] Receivership of corporation limited; certain corporations excepted.—No corporation shall be administered in any court more than three years from the date of such appointment except as hereinafter provided; and within three years such court shall wind up the affairs of such corporation, unless prevented by litigation, or unless, at said time, the Receiver shall be conducting and operating the affairs of such corporation as a going concern, in which event the court, upon application, by proper order entered upon the minutes, after hearing held after due notice to all attorneys of record, may extend, from time to time, such receivership for such term and upon such conditions as in its judgment the best interests of all parties concerned may require; provided, that no continuance of a receivership shall be for more than five years additional to the original three years; and provided further, that corporations organized and existing under Section 68 of Article 1302, Chapter 1 of Title 32, and under Title 112, of Revised Civil Statutes of Texas, shall not be subject to the above provision limiting receiverships to five additional years, but as to such exempted corporations, the time in which to close any such receivership shall be determined by the court, and it may extend the same, from time to time, for such additional period or periods of time as it may determine. [Acts 1887, p. 120; Acts 1933, 43rd Leg., p. 58, ch. 29; Acts 1935, 44th Leg., p. 297, ch. 111, § 1; Acts 1935, 44th Leg., p. 698, ch. 298, § 1; Acts 1937, 45th Leg., p. 222, ch. 119, § 1.]

Art. 2318. [2154] [1492] Application for receiver.—No receiver of a joint stock or incorporated company, co-partnership or private person shall ever be appointed on the petition of such joint stock or incorporated company, partnership or person. A stockholder or stockholders of such joint stock or incorporated company may have his or their action against such company, and may have a receiver appointed as in ordinary cases. Nothing herein shall prevent a member of any co-partnership from having a receiver appointed whenever a cause of action arises between the co-partners. [Acts 1887, p. 120.]

Art. 2319. [2155] [1493] Rules of equity shall govern.—In all matters relating to the appointment of receivers, and to their powers, duties and liabilities, and to the powers of the court in relation thereto, the rules of equity shall govern whenever the same are not inconsistent with any provision of this chapter and the general laws of the State. [Id.]

Art. 2320. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 171.

Art. 2320a. Reorganization and adjustment of affairs of debtors.—The District Courts of this State having civil jurisdiction shall, in addition to and cumulative of the jurisdiction and powers now vested in them, have and exercise original jurisdiction in proceedings for the relief of debtors, as hereinafter provided.

1. Definitions.—The following terms shall mean: "Debtor" shall mean any person, firm, association or corporation engaged in any business or occupation whatsoever for which a petition for relief under this Act is filed; "creditor" shall mean any holder of a claim of whatever character against the debtor or his or its property, including claims under executory contracts; "claims" shall mean debts, securities, other than capital stock, liens, or other interests of whatever character; "securities" shall mean evidence of indebtedness, either secured or unsecured, shares of capital stock, certificates of beneficial interest therein, and certificates of beneficial interest in property; "stockholders" shall mean the owners and holders of certificates of stock, of whatever character, in the debtor, including the holders of voting trust certificates; "debt" shall mean any claim of whatever character against the debtor or its property, including claims under executory contracts.

2. Reorganization and debt adjustments.—Any debtor may file a petition, or an answer or intervention in any proceeding now or hereafter pending in any court of this State against or involving such debtor, stating that the debtor is in danger of insolvency, or that notwithstanding his, its or their assets exceed the liabilities, nevertheless such assets are frozen and cannot be liquidated so as to meet the obligations of the debtor in the due course of business without undue sacrifice of its assets, or such other facts as may exist showing the need for relief under this act, and that the debtor desires to effect a plan of reorganization and/or adjustment of its debts. Upon the filing of such pleading, the court shall have exclusive jurisdiction of the debtor and his, its, or their property and shall have and exercise all powers not inconsistent with this Act, which may or could be exercised in an equity receivership in the courts of this State. In filing such pleading, such debtor may act through any person thereunto duly authorized or through any person thereunto duly authorized by such majority of its stockholders, board of directors, person or persons owning such business or property. Upon the filing of such pleading, the judge may appoint one or more receivers, trustees, or other custodians and require such notice to stockholders, creditors, and/or other parties at interest as, in the opinion of the judge, may be necessary and proper, and may have and exercise the same powers with respect to said debtor, and the property, and the rights of all parties at interest, as in receivership proceedings under the laws of this State, consistent with this Act. And if proceedings under this Act be instituted in a pending receivership, whether such receiver was appointed before or after the passage of this Act, affecting business conducted before or after passage of this Act, the judge may likewise retain, discharge, or remove the receiver, or other custodian, appoint temporary or permanent others, and a reorganization had thereunder the same as in other cases. The debtor, manager, or any representative of debtor familiar with the business of debtor, may act in any capacity whatsoever when so authorized by the court.

3. A plan of reorganization and/or adjustment may be filed by any stockholder or group of stockholders owning as much as fifty-one per cent (51%) of the business or property, or, if a corporation, fifty-one per cent (51%) of the capital stock of such corporation, whether common or preferred; or by any creditor or group of creditors owning as much as eighty-five per cent (85%) of the total amount of claims against such debtor; or by the debtor, as hereinabove provided; or by the receiver or other custodian, if appointed; or such plan of reorganization and adjustment may be proposed, changed or modified by the judge, taking into consideration the proposals filed in said proceedings, if any, and the benefit of the interested parties, and the conservation and preservation of the debtor's assets and properties to the end that the debtor's occupation or business shall be continued as a live going institution, and employer, and provide labor and employment.

A plan of reorganization and/or adjustment within the meaning of this Act may be effected either through the person owning the business or within the old corporate organization or structure, or may be effected through the organization of a corporation, and may include any or all of the following provisions: (a) if, in the opinion of the judge, a feasible plan of reorganization of the debtor may be effected, without jeopardizing the solvency and welfare of debtor or affecting his or its usefulness as an employer, by setting aside a part of debtor's assets or property to creditors, then, upon satisfactory proof that the value of such assets is reasonably of sufficient value to sat-

isfy the value of the claims of such creditors, the court may designate and set aside such assets to the creditors, and thereupon the creditors shall look only to such assets or property so designated and set aside for the satisfaction of their claims; (b) modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character, or otherwise; (c) modifying or altering the claims of interest holders or stockholders generally, or any class of them, either through the issuance of new securities of any character, or otherwise; (d) shall provide in respect of each class of stockholders adequate protection for the realization by them of the value of their equity, if any, in the property of the debtor dealt with by the plan, either, as provided in the plan by a sale of the property at not less than a fair price, or by appraisal and payment in cash of the value either of their stock or of the securities allotted to such stockholders under the plan, if any shall be so allotted, or by such method as will do substantial justice to such stockholders under the circumstances of the particular case to be determined in the sound discretion of the judge; (e) shall provide in respect of each class of creditors adequate protection for the realization by them of the value of their interests, claims, or liens, if the property affected by such interests, claims, or liens is dealt with by the plan, either as provided in the plan, by the transfer or sale of such property by the debtor subject to such interests, claims, or liens, or by a sale free of such interests, claims, or liens, at not less than a fair price, and the transfer of such interests, claims, and liens to the proceeds of such sale, or by appraisal and payment either in cash of the value either of such interests, claims, or liens, or of the securities allotted to such interests, claims, or liens under the plan, if any shall be so allotted, or by such method as will, in the opinion of the judge, under the circumstances of the particular case, equitably and fairly provide such protection; (f) may specify what claims, if any, are to be paid in cash in full; (g) shall provide adequate ways and means for the execution of the plan of reorganization and/or adjustment, which may deal with all or any part of the property of such debtor in any manner; (h) or the judge may cause any plan to be effected regardless of how it affects the interested parties, if neither the debtor or any of the creditors who have not been satisfied do not protest such plan upon notice having been given that upon a certain date said plan will be adopted; such protest must be under oath showing the unfairness of the plan and proof in support thereof made, and the court shall require any protestant to make a deposit to insure his bearing the expense of and any damages incurred by such protest. No judge shall have the right to confirm such plan, if protested as above, if the same is violative of the laws of the State or of the United States.

4. The judge may limit the time within which objections to such plan of reorganization and/or adjustment may be made under any plan, and such objections, if any, shall be determined by the judge, after hearing, upon notice to the parties interested. And the judge shall approve such reorganization and/or adjustment, if satisfied that: (a) such plan is fair and equitable and does not discriminate in favor of or against any class of creditors or stockholders, and is feasible for the purposes of this Act; (b) that the applicable requirements of this Act and of the plan of reorganization and/or adjustment have been complied with; (c) that all amounts to be paid in respect to the administration of such estate during the proceeding have been duly authorized, disclosed, and approved by the judge as reasonable; (d) that the debtor, and every corporation, issuing securities or acquiring property under the plan, is authorized by its charter and the laws of this State, upon confirmation of the plan, to take all necessary action to carry out the plan and effect the purposes of this Act. The court may authorize the issuance of certificates of indebtedness to protect and operate the property and business of any debtor at any time.

5. Upon confirmation of any plan, the debtor or any corporation organized for the purpose of carrying out the plan, shall have full power and authority to, and shall, put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and control of the judge, and the court may direct the receiver or other custodian, if appointed, the debtor, and all other proper and necessary parties, to make any transfer or conveyance necessary or proper to carry out the plan and the orders of the judge relative thereto, and may direct the debtor to join in any such transfer or conveyance made by any such other party or parties. Upon the termination of the proceedings, a final decree shall be entered discharging the receiver or custodian, if any, making such provisions as may be equitable by way of injunction or otherwise, and discharging the debtor from his or its debts and liabilities, and terminating all rights of interested parties except as provided in the plan, and closing the case. Upon reorganization, the court may retain jurisdiction of the case as long as it may deem necessary. The provisions of the plan of reorganization and/or adjustment, and the order of confirmation thereof, shall be binding upon: (a) the debtor; (b) all stockholders thereof; and (c) all creditors, secured or unsecured, whether or not affected by the plan, and whether or not their claims shall have been filed, and if filed, whether or not approved, and all other interested parties. An appeal may be taken from any confirmation.

6. In all proceedings hereunder, the courts shall keep in mind the broad purpose of this Act, to the end that the estate of the debtor and its going concern value shall be preserved and rehabilitated, and in particular, that its usefulness as an employer of labor shall be conserved.

7. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, or the application thereof to other persons or circumstances, shall not be affected thereby.

8. Where applicable, and except where in conflict herewith, Title 42, Chapter 13, Part 2, Revised Civil Statutes 1925, as amended, dealing with receivers and receiverships, shall govern proceedings under this Act.

9. This Act shall be cumulative of all other Acts relating to the subject matter. [Acts 1934, 43rd Leg., 3rd C.S., p. 43, ch. 24, § 2.]

Section 1 of this Act declared the legislative policy in relieving the emergency and for reference to the Act as "Act for the Reorganization of Distressed Debtors."

This article held unconstitutional as impairing obligation of contract. Cattle Raisers Loan Co. v. Doan, Civ. App., 86 S.W.2d 252, error denied 127 T. 1, 86 S.W.2d 1082.

Art. 2320b. Receiver for undivided mineral interest owned by absentee of unknown address. —Section 1. In an action filed in the District Court by any person, firm or corporation having, claiming or owning an undivided mineral interest in any tract of land in the State of Texas, in which it is made to appear that one or more of the defendants in such action are nonresidents of the State of Texas, or persons whose place of residence is unknown and who have absented themselves for at least five (5) years successively next preceding the filing of said action, and who have, claim or own an undivided mineral interest in said land and have not paid taxes on said mineral interests or rendered same for taxes within said five-year period, the District Court shall have power to appoint a receiver of said undivided mineral interest owned by such defendant, provided a duly verified petition is filed and satisfactory proof is made that the plaintiff or plaintiffs have made diligent but unsuccessful effort to locate such defend-

ants, and that the plaintiff or plaintiffs will suffer substantial damage or injury unless such receiver is appointed.

Sec. 2. Such receiver, under the orders of the court, shall have power and authority to execute and deliver to a lessee a mineral lease on such outstanding mineral interest, upon such terms and conditions as may be prescribed by the court, and the moneys, if any, paid to such receiver, after the payment of the court costs, shall be by him deposited in the registry of the court for the use and benefit of such nonresident or unknown owners, and thereupon, the court may immediately discharge such receiver, and any future payments paid under such mineral lease shall be paid directly into the registry of the court and impounded for the use and benefit of such nonresident and unknown owners.

Sec. 3. This Act shall not have the effect of altering or changing any laws now in effect relating to suits for the removal of cloud from title or the appointment of receivers under any other law, but is cumulative thereof.

Sec. 4. The provisions of this Act shall apply only to such tracts of land wherein the ownership of the minerals thereunder is divided among ten (10) or more separate owners, as revealed by duly recorded mineral conveyances of record at the time of the institution of the suit; and further, the provisions of this Act shall apply only where at least fifty per cent (50%) in interest of the total mineral ownership in any such tract is duly before the court and represented in person or by attorneys of record in said suit. [Acts 1945, 49th Leg., p. 449, ch. 281.]

3. OFFICIAL COURT REPORTER

Art. 2321. [1920–21] Appointment and examination.—Each district and criminal district judge shall appoint an official court reporter who shall be a sworn officer of the court and shall hold his office during the pleasure of the court. Before any person is so appointed, the judge shall assign three attorneys practicing in said court to examine said applicant as to his competency as follows: The applicant shall, in the presence of such committee, write at the rate of at least one hundred and seventy-five words per minute for five consecutive minutes from questions and answers submitted to him, not counting the words "question" and "answer," and shall transcribe the same with accuracy. If the applicant passes this test satisfactorily a majority of the committee shall furnish him with a certificate of that fact, which shall be filed among the records of the court and be recorded by the clerk in the minutes thereof. As to subsequent appointments, the presentation of a certified copy from said clerk of said certificates shall be prima facie evidence of the applicant's competency. No examination by any committee shall be required of an applicant who has been official stenographer of any district court in this State for not less than two years prior to his application. [Acts 1911, p. 264.]

Sixteenth Judicial District

Acts 1941, 47th Leg., p. 366, ch. 204, provided for the appointment by the District Judge of the Sixteenth Judicial District of Texas, composed of the Counties of Cooke and Denton, or the District Judge of the Judicial District of which the Counties of Cooke and Denton are a part thereof, of an official shorthand reporter for such District.

Art. 2322. [1922] Oath.—Said reporter in addition to taking the official oath shall subscribe to an oath to be administered to him by the district clerk to the effect that he will well and truly in an impartial manner keep a correct record of all evidence offered in each case reported by him, together with the objections and exceptions made by the parties to such suit, and the rulings and remarks of the court in passing upon the admissibility of testimony. [Id.]

Art. 2323. [1928] Deputy reporter.—In case of illness, press of official work, or unavoidable disability of the official shorthand reporter to perform his duties in reporting proceedings in court, the judge of the court may, in his discretion, authorize a deputy shorthand reporter to act during the absence of said official shorthand reporter, and said deputy shorthand reporter shall receive, during the time he acts for said official shorthand reporter, the same salary and fees as the official shorthand reporter of said court, to be paid in the manner provided for the official shorthand reporter; but the said official shorthand reporter shall also receive his salary in full during said temporary disability to act. The necessity for a deputy official shorthand reporter shall be left entirely within the discretion of the judge of the court. [Acts 1925, p. 670.] [39th Leg., ch. 202, § 1.]

Art. 2324. [1923–4–6] Duty of reporter.—Each official court reporter shall:

Attend all sessions of the court, take full shorthand notes of all oral testimony offered in every case tried in said court, together with all objections to the admissibility of the evidence, the rulings and remarks of the court thereon, and all exceptions thereto.

Preserve all shorthand notes taken in said court for future use or reference for a full year, and furnish to any person a transcript in question and answer form or narrative form of all such evidence or other proceedings, or any portion thereof as such person may order, upon the payment to him of the fees provided by law.

When any party to any suit reported by any such reporter shall desire a transcript of the evidence in said suit, said party may apply for same and shall i[n]dicate whether he desires same in question and answer form or in narrative form. In the event such transcript should be ordered in question and answer form, then such reporter shall make the same up in duplicate in question and answer form, and shall receive as compensation therefor the sum of fifteen cents per hundred words for the original. In the event said transcript should be ordered made in narrative form, then such reporter shall make up same in duplicate in narrative form, and shall receive as compensation therefor the sum of twenty cents per hundred words for the original; provided, that in case any reporter charges more than the fees herein allowed he shall be liable to the person paying the same a sum equal to four times the excess so paid. [Acts 1925, p. 670.] [39th Leg., ch. 202, § 1.]

Art. 2324a. Powers as to depositions, commissions, oaths and affidavits.—Section 1. All official District Court reporters are authorized to take depositions of witnesses, and to receive, execute and return commissions, administer oaths and affidavits, in connection with such depositions, and make a certificate of such fact, and do all other things necessary in the taking of such depositions in accordance with existing laws.

Sec. 2. Said reporters shall have authority to perform the above mentioned acts only within any county within the judicial district that such reporter was appointed and serving in connection with his official business, in the State of Texas.

Sec. 3. This Act shall be cumulative of all existing laws providing for the method and manner of taking depositions. [Acts 1945, 49th Leg., p. 386, ch. 248.]

Art. 2325. [1925] Fees.—The official court reporter shall receive as fees for making a transcript of the evidence given in civil cases the sum of fifteen cents per one hundred words when made in question and answer form and twenty cents per one hundred words when made in narrative form. He shall also receive the sum of fifteen cents per one hundred words for preparing statements of facts. No charge shall be made in any case for duplicate copies. [Acts 1911, p. 264; Acts 3rd C. S. 1920, p. 88.]

Art. 2326. [1925] Compensation.—The official shorthand reporter of each Judicial District Court, civil or criminal, and the official shorthand reporter of each County Court at Law, civil or criminal, shall receive a salary of not less than Two Thousand, Four Hundred Dollars ($2,400) per annum and not more than Three Thousand, Seven Hundred and Fifty Dollars ($3,750) per annum. Said salary shall be fixed and determined by the District Judges of the Judicial Districts, civil or criminal, and the Judges of the County Court at Law, civil or criminal, who shall enter an order in the minutes of the Court, in each county of the district, which shall be a public record and open for public inspection, stating specifically the amount of salary to be paid said reporter. The District Judge shall file a copy of said order with each Commissioners Court of the District. The salary shall be in addition to the transcript fees and traveling and hotel expenses of official shorthand reporters, as is now provided by law.

The salary shall be paid monthly by the Commissioners Court of the county or counties in the Judicial Districts, civil or criminal, and the County Courts at Law, civil or criminal, out of any available fund of the county or counties that the Commissioners Court may desire to pay the same, according to Articles 2326H and 2327A.[1]

The provisions of this Act shall not apply to counties having a population of not less than two hundred and twenty thousand (220,000) nor more than three hundred and ninety thousand (390,000) inhabitants. [Acts 1925, p. 670, 39th Leg., ch. 292, § 1; Acts 1945, 49th Leg., p. 460, ch. 291, § 1.]

1 Article 2327A, now repealed.
Section 2 of the Act of 1945 provides that the Act is cumulative of all General and Special laws on the subject treated of and embraced in the Act when not in conflict therewith, but in case of conflict, in whole or in part, the Act shall control in so far as any conflict exists. It also repeals conflicting laws.
"Provided, however, this Act does not repeal nor amend Articles 2326A, 2326H, and 2327A of Chapter 13."

Art. 2326a. Expenses and manner of payment.—All official shorthand reporters and deputy official shorthand reporters of the District Courts of the State of Texas composed of more than one county, when engaged in the discharge of their official duties in any county in this State other than the county of their residence shall, in addition to the compensation now provided by law for their services, be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed the sum of Four Dollars per day for hotel bills, and not to exceed four cents a mile when traveling by railroad or bus lines, and not to exceed ten cents a mile when traveling by private conveyance in going to and returning from the place where such duties are discharged, traveling the nearest practical route. Such expenses shall be paid after the completion of each term of Court by the respective counties of the Judicial District for which they are incurred, each county paying the expenses incidental to its own Regular or Special Term of Court, and said expenses shall be paid to the official or deputy official shorthand reporter by the Commissioners' Court of the county, out of the general fund of the county, upon the sworn statement of the reporter, approved by the Judge.

Provided there shall not be paid to any such official shorthand reporter, or his deputy, more than Six Hundred Dollars in any one year under the provisions of this Act; provided further, that in districts containing two counties only, the expenses herein allowed shall never exceed Two Hundred Dollars per annum; in districts containing three counties only, the expenses herein allowed shall never exceed Three Hundred Dollars per annum; in districts containing four counties only, the expenses herein allowed shall never exceed Four Hundred Dollars per annum; in districts containing five or more counties the expenses herein allowed shall never exceed Six Hundred Dollars per annum.

The account for such services herein provided for shall be sworn to in duplicate by the reporter, and approved by the District Judge, and one copy of said account shall be filed by the reporter with the Clerk of the District Court of the county where the Judge of the District resides.

Whenever a special term of any District Court in this State is convened and the services of an additional official or deputy official shorthand reporter is required, then this Act shall also apply to said shorthand reporter so employed by the Judge of said special term, and all expenses as herein provided shall be allowed and paid said shorthand reporter so employed for said special term by the county wherein said special term is convened and held, and shall be in addition to the expenses herein provided for the official or deputy official shorthand reporter of the district.

Where the official or deputy official shorthand reporter does not reside in the Judicial District for which he or she is appointed, he or she shall only be entitled to traveling expenses from the time he or she reaches the County Line of any county in the Judicial District. Provided, however, that whenever any official or deputy official shorthand reporter is called upon to report the proceedings of any special term of Court, or on account of the sickness of any official shorthand reporter of any Judicial District, necessitating the employment of a shorthand reporter from some other county within the State, then the shorthand reporter so employed shall receive and be paid all actual and necessary expenses in going to and returning from the place where he or she may be called on to report the proceedings of any Regular or Special Terms of Court. [Acts 1929, 41st Leg., p. 112, ch. 56, § 1.]

Provided that in districts containing four (4) counties only with the population totaling in the aggregate not less than one hundred thousand (100,000) population and not more than one hundred thousand, one hundred and fifty (100,150) population, according to the last preceding Federal Census, the expenses herein allowed shall never exceed the sum of Six Hundred Dollars ($600) per annum. [Added Acts 1939, 46th Leg., Spec.L., p. 622, § 1.]

Article not repealed or amended, see note to Article 2326.
This article is not repealed in any way by Acts 1937, 45th Leg., p. 73, ch. 44, see article 2326d.

Art. 2326b. Reporters in judicial districts, salary.—The salary of the official shorthand reporter in each Judicial District in any county of this State which alone constitutes two or more Judicial Districts, in addition to the compensation for transcript fees as provided by law shall be $3,000.00 per annum, to be paid as the salary of other court reporters are paid, out of the general fund of the county. [Acts 1929, 41st Leg., p. 691, ch. 310, § 1.]

Art. 2326c. Salaries of reporters in Judicial Districts; exception of certain districts.—The official shorthand reporter of each Judicial District in this State and the official shorthand reporter of any County Court, either civil or criminal, in this State, where the compensation of such reporter of such County Court or Judicial District is not otherwise provided by special law, shall receive a salary of not more than Two Thousand Seven Hundred Dollars ($2,700.00) per annum, nor less than Two Thousand Four Hundred Dollars ($2,400.00) per annum, such salary to be fixed and determined by the District or County Judge respectively of the Court wherein such shorthand reporter is employed, in addition to the compensation for transcript fees as provided for by law. Said salary shall be paid monthly by the Commissioners Court of the county out of the General Fund of the county, or in the discretion of the Commissioners Court, out of the jury fund of said county, upon the certificate of the Judge of such District or County Court. In districts of this State composed of two or more coun-

ties, said salary shall be paid monthly by the counties of the District in proportion to the number of weeks provided by law for holding Court in the respective counties in the District; provided, that in a District where in any county the term may continue until the business is disposed of, each county shall pay in proportion to the time Court is actually held in such county.

The salary of the official shorthand reporter in each Judicial District in any county of this State with a population in excess of one hundred and fifty thousand (150,000) according to the last preceding Federal census and which alone constitutes two or more Judicial Districts, in addition to the compensation of transcript fees as provided by law, shall be Three Thousand Dollars ($3,000.00) per annum to be paid as the salaries of other court reporters are paid.

It is expressly provided, however, that the provisions of this Act shall not in any way apply to the official shorthand reporter in and for the 25th Judicial District, composed of the counties of Guadalupe, Gonzales, Colorado and Lavaca, nor shall this Act repeal Senate Bill 133,[1] Regular Session, 43rd Legislature; nor shall the provisions of this Act apply in any way to the official shorthand reporters in and for any Judicial District Court of Bexar County, civil or criminal, nor shall this Act repeal Senate Bill No. 315,[2] Regular Session, 43rd Legislature; nor shall the provisions of this Act apply to any official shorthand reporter in and for the 22nd Judicial District of Texas composed of the counties of Comal, Hays, Caldwell, Fayette and Austin. [Acts 1933, 43rd Leg., p. 595, ch. 195.]

1 Article 199—25 note.
2 Article 199—37 note.

Art. 2326d. Salaries of official shorthand reporters in districts composed of four counties.—The salary of the official shorthand reporter in each judicial district composed of four counties in this State, with the population of said four counties totalling in the aggregate, in excess of one hundred thousand (100,000) population according to the last preceding Federal Census, and which alone constitute one or more judicial districts, in addition to the compensation of transcript fees as provided by law, shall be Three Thousand Dollars ($3,000.00) per annum to be paid as the salaries of other court reporters are paid.

It is further expressly provided that nothing herein shall be construed as repealing Article 2326–A of 1925 Revised Civil Statutes of Texas as amended by Acts 1929, 41st Legislature, Chapter 56, page 112. [Acts 1937, 45th Leg., p. 73, ch. 44, § 1.]

Art. 2326d—1. Salaries in districts of four or more counties with valuations of $230,000,000.

Minimum salaries; increase

Section 1. The official Court Reporter in all Judicial Districts composed of four or more counties, where the aggregate total assessed valuations of all taxable property in the counties composing any of said Districts is not less than Two Hundred Thirty Million Dollars ($230,000,000.00) as shown by the approved tax rolls of the several counties composing any of said Judicial Districts for any year commencing January 1, 1945, shall, from and after the effective date of this Act, receive a minimum salary of Thirty-six Hundred Dollars ($3600.00) per annum, in addition to all traveling expenses, transcript fees and all other compensation now provided by law to be paid to the said official Court Reporters; and providing that the said salary shall be increased up to, but not to exceed, Five Thousand Dollars ($5,000.00) per annum in the following manner:

If the aggregate total assessed valuations of all taxable property in the several counties comprising any of said Judicial Districts shall exceed Two Hundred Thirty Million Dollars ($230,000,000.00), as shown by the approved tax rolls of the several counties comprising any of said Judicial Districts for any year commencing January 1, 1945, such salary of the official Court Reporter in each said District shall be increased for the year immediately succeeding the year in which such aggregate total valuations shall exceed Two Hundred Thirty Million Dollars ($230,000,000.00), as reflected by the approved tax rolls for said year; and such increase shall be at the rate of One Hundred Dollars ($100.00) per year for each increase in said aggregate total valuation of One Million Dollars ($1,000,000.00) or fractional part thereof.

Traveling expenses

Sec. 2. All traveling expenses now provided by law to be paid to the said official Court Reporters shall be paid quarterly by the county for which the same are incurred.

Payment of salary; taxable valuations as basis

Sec. 3. The salary of the official Court Reporter as herein fixed shall be paid monthly by the respective counties composing any of said Judicial Districts, and in the proportion that the taxable values in each county bear to the aggregate total taxable values of all the counties in each of said Districts. For the purpose of the allowed increase in the salary of the official Court Reporters as herein fixed, the tax rolls of each of the counties as approved by the Commissioners Court of each such county shall conclusively establish and shall be conclusively presumed to be the correct total taxable valuation. In determining the salary of the official Court Reporter for the year 1946, in any of said Judicial Districts, the taxable values of each county for the year 1945 shall serve as the basis for such determination. Thereafter the taxable valuations as shown by the approved tax rolls for each year shall serve as the basis for determining the salary of the said official Court Reporter for the ensuing year.

Salary for 1945

Sec. 4. The salary of the said official Court Reporters for the year 1945, commencing January 1, 1945, is hereby fixed at Thirty-six Hundred Dollars ($3600.00) per annum, payable monthly, commencing on the effective date of this Act; provided that all payments of salary to the said official Court Reporters under laws existing in the year 1945, and at the effective date of this Act, shall be deducted; that is to say, all payments made by the respective counties composing said Judicial Districts under existing laws for all months of 1945, until the effective date of the Act, shall be applied against the total annual salary of Thirty-six Hundred Dollars ($3600.00), as herein fixed, so that for the year 1945 the total salary of any such official Court Reporter shall amount to Thirty-six Hundred Dollars ($3600.00), and no more.

Partial invalidity

Sec. 5. If any section, sentence, clause, phrase, or part of this Act be held for any reason to be invalid, such invalidity shall not affect the remainder of this Act. [Acts 1945, 49th Leg., p. 430, ch. 272.]

Section 6 of the act of 1945 repealed all conflicting laws and parts of laws to the extent of the conflict only.

Art. 2326e. Salaries of reporters in counties over 290,000.—Section 1. The official shorthand reporter of each District Court, Criminal District Court and County Court-at-Law in each county in the State of Texas having a population in excess of two hundred and ninety thousand (290,000) inhabitants, according to the last preceding, or any future, Federal Census, shall receive a salary of Thirty-six Hundred Dollars ($3600) per annum in addition to the compensation for transcript fees as now provided by law. Said salary shall be paid monthly on approval of the Judge of such Court out of the General Fund,

Officers Salary Fund, or the Jury Fund, of each such County as may be determined by the Commissioners Court of any such County. [As amended Acts 1941, 47th Leg., p. 549, ch. 346, § 1; Acts 1945, 48th Leg., p. 103, ch. 71, § 1.]

Sec. 2.

Acts 1941, 47th Leg., p. 549, ch. 346, § 2, repealed section 2 of Acts 1937, 45th Leg., ch. 469, without reference to amendment of such section by Acts 1939, 46th Leg., Spec.L. p. 623, § 1. Section 2 of such Act of 1937 as amended in 1939, read as follows: "That the official shorthand reporter of each District Court, Criminal District Court, and County Court-at-Law in each county in the State of Texas having a population of more than two hundred and ninety thousand (290,000) and less than three hundred and twenty-five thousand (325,000) inhabitants, according to the last preceding or any future Federal Census, shall receive a salary of Thirty-six Hundred Dollars ($3600) per annum in addition to the compensation for transcript fees as provided by law. Said salary shall be paid monthly on approval of the Judge of such Court out of the Jury Fund of the county."

Sec. 3. If any section, sentence, clause, phrase or part of this Act be held invalid for any reason, such invalidity shall not affect the remainder of the Act.

Sec. 4. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. [Acts 1937, 45th Leg., p. 1177, ch. 469.]

Art. 2326f. Salary of court reporter in certain districts.—The salary and expenses of the official Court Reporter in each Judicial District in this State having four (4) or more counties, and having a population in excess of one hundred seven thousand five hundred (107,500) and/or any District having a population of eighty-six thousand nine hundred thirty-two (86,932), according to the latest United States Census may, within the discretion of the Commissioners' Court, be paid out of the Jury fund. [Acts 1939, 46th Leg., Spec.L., p. 620, § 1.]

Art. 2326g. Salaries of official shorthand reporters in District and County Courts at Law in counties over 225,000.—The Official Shorthand Reporter of each District Court and County Court at Law in each county in the State of Texas having a population in excess of two hundred and twenty-five thousand (225,000) according to the last preceding or any future Federal Census, shall receive a salary of Three Thousand, Six Hundred Dollars ($3,600) per annum, in addition to the compensation for transcription fees as provided by law. Said salary shall be paid monthly on approval of the Judge of such Court in the manner provided by law. [Acts 1943, 48th Leg., p. 335, ch. 215, § 1.]

Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Art. 2326g—1. Salaries of official shorthand reporters in District and County Courts at Law in counties of 225,000 to 398,000.—In all counties in this State having a population of not less than two hundred and twenty-five thousand (225,000) and not more than three hundred and ninety-eight thousand (398,000) inhabitants according to the last preceding or any future Federal Census, the salary of the Official Shorthand Reporter of each District Court and County Court at Law in any such county shall be Four Thousand, Two Hundred Dollars ($4,200) per annum, in addition to transcript and other fees allowed by law. The salary shall be paid out of the County General Fund in twelve (12) equal monthly installments on approval of the Judge of the Court in which the service is rendered. The Commissioners Court of the county out of whose funds the salary is paid may, if it so elects, order such payments to be made out of the Officers Salary Fund, or the Jury Fund, if the balance in those funds is sufficient for the purpose. [Acts 1947, 50th Leg., p. 256, ch. 151, § 1.]

Sections 2 and 3 of the Act of 1947 provided:

"Sec. 2. If any section, sentence, clause, phrase or part of this Act be held for any reason to be invalid, such invalidity shall not affect the remainder of this Act.

"Sec. 3. All laws or parts of laws fixing the salaries of Official Shorthand Reporters in any county having not less than two hundred and twenty-five thousand (225,000) and not more than three hundred and ninety-eight thousand (398,000) population according to the last preceding or any future Federal Census to the extent that they conflict with this Act are hereby repealed, but to the extent of the conflict only; it being intended that this Act shall control as to the amount of the salary in such counties over any classification by population of such counties heretofore made."

Art. 2326h. Apportionment of expenses and salaries of reporters among several counties.—In each Judicial District in this State in which the terms of Court do not operate on a continuous term basis and in which there is more than one county, the salaries and expenses of the official Court reporter shall be paid by the respective counties as provided herein. Each of the counties within such District shall pay that portion of the expenses and salaries of the official Court reporter which the population of the county, according to the last preceding Federal Census, bears to the total population of the counties comprising the Judicial District. [Acts 1943, 48th Leg., p. 482, ch. 322, § 1.]

Article not repealed or amended, see note to article 2326.

Art. 2327. [1932] In county court.—When either party to a civil case pending in the county court or county court at law applies therefor, the judge thereof shall appoint a competent stenographer, if one be present, to report the oral testimony given in such case. Such stenographer shall take the oath required of official court reporters, and shall receive not less than five dollars per day, to be taxed and collected as costs. In such cases the provisions of this title with respect to the preparation of the statement of facts, the time to be allowed therefor, and for the presentation to the opposite party, and the approving and filing thereof by the court, shall apply to all statements of facts in civil cases tried in said courts, and all provisions of law governing statement of facts and bills of exception to be filed in district courts and the use of same on appeal, shall apply to civil cases tried in said courts. [Acts 1911, p. 264.]

Art. 2327A. [Repealed by Acts 1947, 50th Leg., p. 565, ch. 329, § 1.]

The repealed article was Acts 1929, 41st Leg., 2nd C.S., p. 97, ch. 59, § 1; Acts 1937, 45th Leg., p. 576, ch. 286, § 1.

Art. 2327a—1. Apportionment of reporter's salary among counties.—Where any Judicial District in this State is composed of more than one county, and the District Court thereof has successive terms in either of such counties throughout the year, without more than two (2) days intervening between any of such terms, the salary of the official shorthand reporter of such District shall be paid by the several counties of the District, the same to be apportioned among such counties in proportion to their population according to the latest United States decennial census; provided that where such county is in two (2) different Judicial Districts, either one of which is composed of more than one county, in calculating such county's proportion of liability for the salary of the official shorthand reporter in any such District containing more than one county, such county's population shall be counted at one-half of its actual population as shown by the last preceding United States decennial census. [Acts 1943, 48th Leg., p. 283, ch. 179, § 1.]

Art. 2327b. County court reporter in counties of 40,905 to 41,000 population.—Section 1. In counties having a population of not less than forty thousand nine hundred and five (40,905) and not more than forty-one thousand (41,000) according to the last preceding Federal Census, there shall be and there is hereby created and established the office of court reporter of the County Court; such office to be called and known as the official Court Reporter of the County Court.

Sec. 2. In said counties the Judge of the County Court shall have the power to appoint an official court reporter for the County Court who shall possess the same qualifications, perform the same duties, as is now required of court reporters of the District Court and who shall hold the office of Court Reporter of the County Court for a term of two years from the date of such appointment or until his successor shall be appointed and qualified.

Sec. 3. Said official Court Reporter of said County Court shall be paid a salary of not to exceed Fifteen Hundred ($1500.00) Dollars per year payable in twelve equal monthly payments on the first of each month during the year, out of the General Fund of the County.

Sec. 4. The Clerk of the County Court shall tax as costs the sum of Three ($3.00) Dollars in each and every civil case filed in said court, on and after the passage and approval of this Act, in which an answer is filed. [Acts 1937, 45th Leg., 2nd C.S., p. 1873, ch. 8.]

Art. 2327b—1. County court reporter in counties of 22,100 to 22,500 population.—Section 1. In counties having a population of not less than twenty-two thousand, one hundred (22,100) and not more than twenty-two thousand, five hundred (22,500), according to the last preceding Federal Census, there shall be and there is hereby created and established the office of Court Reporter of the County Court; such office to be called and known as the Official Court Reporter of the County Court.

Sec. 2. In said counties the Judge of the County Court shall have the power to appoint an Official Court Reporter for the County Court, who shall possess the same qualifications, perform the same duties as are now required of Court Reporters of the District Court, and who shall hold the office of Court Reporter of the County Court for a term of two (2) years from the date of such appointment, or until his successor shall be appointed and qualified.

Sec. 3. Provided, however, that the Commissioners Court of the county wherein such appointment is made shall approve the person appointed by the Judge of the County Court of said county.

Sec. 4. Said Official Court Reporter of such county shall be paid a salary of not to exceed Twelve Hundred Dollars ($1200) per year, payable in twelve (12) equal monthly installments, on the first of each month during the year, out of the Jury Fund of the county. The amount of salary to be paid said Official Court Reporter shall be fixed by the Commissioners Court of such county. [Acts 1939, 46th Leg., Spec.L., p. 616.]

4. MANDAMUS

Art. 2328. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 694.

5. ADVISORY JUDICIAL COUNCIL

Art. 2328a. Advisory judicial council, membership, duties.

Purpose

Sec. 1. There is hereby created an advisory judicial council for the continuous study of and report upon the organization, rules, procedure and practice of the civil judicial system of this State, the work accomplished and the results produced by that system and its various parts, and methods for its improvement.

Classes of members

Sec. 2. The Council shall be composed of two classes of members, one designated as ex-officio, and the other as appointive.

Ex officio members

Sec. 3. The ex-officio members of the Council shall consist of the Chief Justice of the Supreme Court; two Justices of the Courts of Civil Appeals, to be designated by the Governor; two presiding judges of the judicial administrative districts, to be designated by the Governor; and the Chairman of the Senate and House Civil Judiciary Committees. The Chief Justice of the Supreme Court may designate some other Justice of that court to act in his stead as member of the Council. It shall be optional with each official member of the Council whether he will serve as such member. But where such official member accepts membership on the Council he shall be entitled to all the privileges of full membership thereon and be regarded and treated in every respect as a full member thereof so long as he continues a member thereof. The term of membership of an official member shall be for the term of office that qualified him for membership; and vacancies in the official membership however created shall be filled as in the first instance.

Appointive members

Sec. 4. The appointive members of the Council shall consist of seven lawyers, citizens of, and licensed to practice law under the laws of this State; and two laymen, citizens of this State, one of whom shall be by profession a journalist. Two of the lawyer members shall be appointed by the Governor from a list of eight qualified lawyers designated by the State Bar Association in such manner as such association may prescribe, and until otherwise prescribed by said Association, said list shall be selected by the governing board of said Association and certified to the Governor by the President and Secretary of the Association. The other appointive members of said Council shall be appointed by the Governor upon his own nomination. Three of said appointive members shall be appointed to serve until July 1, 1931; three until July 1, 1933; and three until July 1, 1935; and thereafter their successors shall be appointed for terms of six years. Vacancies in the appointive membership of said Council shall be filled as in the first instance for the unexpired term.

Five members of the Council shall constitute a quorum for the transaction of any business of the Council.

Duties of council

Sec. 5. It shall be the duty of the Council:

1. To make a continuous study of the organization of the civil courts; the rules and methods of procedure and the practice of the civil judicial system of the State; of the work accomplished, the results attained and the uniformity of the discretionary powers of the civil courts, to the end that procedure may be simplified, business expedited, and justice better administered.

2. To receive and consider suggestions from judges, public officers, members of the bar, and citizens, touching remedies for faults in the administration of civil justice.

3. To formulate methods for simplifying civil judicial procedure, expediting the transaction of civil judicial business, and correcting faults in the administration of civil justice.

4. To gather civil judicial statistics and other pertinent data from the several judges and other court officials of the State.

5. To make a complete detailed report, on or before December 1st of each year, to the Governor and to the Supreme Court, of all its proceedings, suggestions and recommendations, and such supplemental reports from time to time as the Council may deem advisable. All such reports shall be considered public reports and may be given to the press as soon as filed.

6. To make investigations and reports upon such matters, touching the administration of civil justice

as may be referred to the Council by the Supreme Court or the Legislature.

7. To hold one meeting in each calendar year, and such other meetings as may be ordered by the Council or under its authority, and at such time and place as may be designated by it or under its authority; provided, that the first meeting of said Council shall be held prior to October 6, 1929, upon call of its president.

Powers of council

Sec. 6. The Council shall have power:

1. To hold public meetings, require the attendance of witnesses and the production of books and documents, require reports from the several civil courts of this State, including courts not of record, as may be deemed necessary, to administer oaths and take testimony.

2. To elect from its membership a president and such other officers as it may deem advisable; provided the secretary need not be a member of the Council; and provided further that the Governor shall designate the first president whose duty it shall be to call the first meeting of the Council and appoint such committees as he may deem necessary for the proper organization of the Council, and serve until the Council elects his successor.

3. To make such rules and regulations as it may deem expedient for its government and that of its officers and committees; and to prescribe the duties of its officers and committees.

4. To appoint committees from its membership, and charge such committees with such of its duties and delegate to such committees such of its powers as it may deem proper.

Compensation limited to traveling and necessary expenses

Sec. 7. No member of the Council shall receive any compensation for his services as such member, but shall be paid his actual traveling and other necessary expenses incurred in the discharge of his duties as such member to be paid upon verified, itemized account approved by the President of the Council. The necessary clerical expenses of the Council and its officers and committee shall be paid in like manner.

Partial invalidity

Sec. 8. If any section or portion of any section of this Act shall for any reason be declared invalid, such invalidity shall not affect any other section or portion of section of this Act. [Acts 1929, 41st Leg., 1st C.S., p. 51, ch. 19.]

Acts 1929, 41st Leg., 1st C.S., p. 51, ch. 19, creating such advisory judicial council is in effect a re-enactment of Acts 1929, 41st Leg., p. 689, ch. 309, without reference thereto. Sections 1–4 of Acts 1929, 41st Leg., p. 689, ch. 309, designated the Chief Justice of the Supreme Court as president of the council and included in its membership an associate justice of the Supreme Court and the chief justice of each of the Courts of Civil Appeals. Acts 1929, 41st Leg., 1st C.S., p. 51, ch. 19, changed the designation as to membership, leaving the remainder of the act practically the same as the former law.

TITLE 43—COURTS—JUVENILE

Art.
2329. [Repealed.]
2330. "Dependent or neglected child."
2331. Who may institute proceedings.
2332. Citation.
2333. Hearing.
2334. Jury.
2335. Adjudication.
2336. Disposition of child.
2337. Custody of child.
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2338—1. Delinquent children; Juvenile court established in each county; jurisdiction.
Sec.
1. Transfer of cases; custody—purpose and basic principle.
2. Construction of the Act.
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4. Establishment of Juvenile Courts.
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7. Information, investigation, petition.
7-A. Venue.
8. Summons, notice, custody of the child.
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11. Release of child taken into custody.
12. Transfer from other courts.
13. Hearing, judgment.
13-A. Judgments for support; enforcement.
14. Modification of judgment, return of child to parents.
15. Records.
16. Physical and mental examination.
17. Place of detention.
18. Court Sessions.
19. Cooperation.
20. Contempt.
21. Appeals.
23. Constitutionality.
24. Existing laws, effect on; original jurisdiction of district court.

Art. 2329. [Repealed by Acts 1943, 48th Leg., p. 313, ch. 204, § 24.]

Art. 2330. [2184] "Dependent or neglected child."—The term "dependent child" or "neglected child" includes any child under sixteen years of age who is dependent upon the public for support or who is destitute, homeless or abandoned; or who has not proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill fame or with any vicious or disreputable person, or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child; or any such child whose parents or guardian permit it to use intoxicating liquor except for medicinal purposes or to become addicted to the use of such liquors, or permits it in or about any place where intoxicating liquors are sold. [Acts 1907, p. 135.]

Art. 2331. [2186] Who may institute proceedings.—Any person who is a resident of the county, having knowledge of a child in his county who appears to be a "dependent" or "neglected" child may file with the district clerk of his county a written petition, setting forth the facts constituting the child "dependent" or "neglected;" which petition shall be verified by the affidavit of the petitioner. It shall be sufficient, if the affidavit shall be upon information and belief. Such petition shall set forth the name of the parent or parents of such child, if known, and their residence; and if such child has no parent living, then the name and residence of the guardian of such child, if it has one. [Id.]

Art. 2332. [2187] Citation.—Upon the filing of such petition, the judge of said court shall fix the day and time for the hearing of such petition. If it appears that one or both of such parents, or guardian, if there be no parents, reside in said county, the clerk of said court shall immediately issue citation; which citation shall include a copy of the petition, which shall be served on such parent, parents, or guardian, if any, if either can be found in said county, not less than two days before the time fixed for said hearing, requiring them to appear on said day and hour to show cause, if any, why such child should not be declared by said court to be a "dependent" and "neglected" child. Such citation shall be served by the

sheriff or any constable of the county. If it appears from the petition that neither of said parents are living, or do not reside in said county and that said child has no guardian residing in said county, or in case one or both of said parents, or the guardian in case there be no parents, shall indorse on said petition a request that the child be declared a "dependent child," then the citation herein provided for shall not be issued; and the court may thereupon proceed to a hearing of the case. In case neither of the parents or guardian is found, then the court shall appoint some suitable person to represent said child in said cause. [Id.]

Art. 2333. [2188] Hearing.—Upon such hearing of such case the child shall be brought before said court; whereupon, the court shall investigate the facts, and ascertain whether the child is a "dependent child," its residence, and, as far as possible, the whereabouts of its parents or near adult relatives, when and how long the child has been maintained, in whole or in part, by private or public charity, the occupation of the parents, if living, whether they are supported by the public or have abandoned the child, and to ascertain, as far as possible, if the child is found dependent, the cause thereof. The court may compel the attendance of witnesses on such examination; and the clerk shall issue all process and the sheriff and other officers of the court shall serve the same as in other cases. The county attorney, when requested by the court, shall appear in any such examination in behalf of the petition. It shall be the duty of the county attorney of such county, upon the request of the court or any petitioner, to file a petition and to conduct any necessary proceedings in any case within the provisions of this title. [Id.]

Art. 2334. Jury.—Any person interested in any case under this title may appear therein and may be represented by counsel, and may demand a jury as in other cases. If no jury is demanded, it shall be deemed to have been waived. The judge of the court, of his own motion, may order a jury to try such case. [Id.]

Art. 2335. [2189] Adjudication.—Upon the hearing of such case, if the said child shall be found to be a dependent or neglected child, as defined herein, it shall be adjudged a "dependent child;" and an order may be entered making disposition of said child as to the court seems best for its moral and physical welfare. It may be turned over to the care and custody of any suitable person or any suitable institution in the county or State organized for the purpose of caring for "dependent children," and which is able and willing to care for same. And when such child is so turned over to the custody of such person or institution, such person or institution shall have the right to the custody of said child, and shall be at all times responsible for its education and maintenance, subject at all times to the order of the court. [Id.]

Art. 2336. Disposition of child.—In any case where the court shall award any dependent or neglected child to the care of any individual or institution in accordance with the provisions of this title, the child, unless otherwise ordered, shall become a ward and be subject to the guardianship of the institution or individual to whose care it is committed. Such institution or individual shall, with the consent of the court, have authority to place such child in a suitable family home, the head of such family being responsible for the maintenance and education of said child. Any institution or individual receiving any such child under the order of the court shall be subject to visitation or inspection by any person appointed by the court for such purpose; and the court, may at any time, require from any institution or person a report containing such information as the court shall deem proper or necessary, to be fully advised as to the care, education, maintenance and moral and physical training of the child, as well as the standing and ability of such institution or individual to care for such child. The court may change the guardianship of such child, if, at any time, it is made to appear to the court such change is to the best interest of the child. If, in the opinion of the court, the causes of the dependency of any child may be removed under such conditions or supervisions for its care, protection and maintenance as may be imposed by the court, so long as it shall be for its best interests, the child may be permitted to remain in its own home and under the care and control of its own parent, parents or guardian, subject to the jurisdiction and direction of the court; and when it shall appear to the court that it is no longer to the best interests of such child to remain with such parents or guardian, the court may proceed to a final disposition of the case. [Id.]

Art. 2337. Custody of child.—In case any child is adjudged to be dependent or neglected under this title then such parents or guardian shall thereafter have no right over or to the custody, services or earnings of said child except upon such conditions in the interest of such child as the Court may impose, or where, upon proper proceedings, such child may lawfully be restored to the parents or guardian.

It is further provided that the Juvenile Court in which the child has been adjudged dependent or neglected, may, after giving the parent or other responsible person a reasonable opportunity to be heard, adjudge that such parent or other responsible person shall pay in the manner directed by the Court such sum as will in whole or in part support such child whether or not the child is committed to the custody of his own parent or guardian, or whether to any other person, agency, or institution. The Court shall have full power to enforce said judgments for support by civil contempt proceedings after ten (10) days notice to such parent, guardian or other person responsible for the care and support of the child, of his or her, or of their failure or refusal to carry out the terms of such an order for support. The Court shall have power and authority to alter or change such judgments, or suspend the same, as the facts and circumstances and justice may require, upon notice to such parent as above provided for.

Any person interested in any such case may appear therein and may be represented by counsel, and may demand a jury as in other cases. If no jury is demanded, it shall be deemed waived. The Judge of the Court, of his own motion may order the jury to try such case. [Acts 1907, p. 135; Acts 1943, 48th Leg., p. 300, ch. 194, § 1.]

Section 2 of the Act of 1943 provides that a holding of partial invalidity shall not affect the remainder of the Act.

Art. 2338. [Repealed by Acts 1943, 48th Leg., p. 313, ch. 204, § 24.]

The article repealed was amended by Acts 1941, 47th Leg., p. 355, ch. 193, § 1.

Art. 2338—1. Delinquent children; juvenile court established in each county; jurisdiction.

Transfer of cases; custody—Purpose and basic principle

Section 1. The purpose of this Act is to secure for each child under its jurisdiction such care, guidance and control, preferably in his own home, as will serve the child's welfare and the best interest of the state; and when such child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents.

The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them.

Construction of the Act

Sec. 2. This Act shall be liberally construed to accomplish the purpose herein sought.

Definitions

Sec. 3. The word "court" means the "Juvenile Court." The word "Judge" means the Judge of the Juvenile Court. The term "delinquent child" means any female person over the age of ten (10) years and under the age of eighteen (18) years and any male person over the age of ten (10) years and under the age of seventeen (17) years:

(a) who violates any penal law of this state of the grade of felony;

(b) or who violates any penal law of this state of the grade of misdemeanor where the punishment prescribed for such offense may be by confinement in jail;

(c) or who habitually violates any penal law of this state of the grade of misdemeanor where the punishment prescribed for such offense is by pecuniary fine only;

(d) or who habitually violates any penal ordinance of a political subdivision of this state;

(e) or who habitually violates a compulsory school attendance law of this state;

(f) or who habitually so deports himself as to injure or endanger the morals or health of himself or others;

(g) or who habitually associates with vicious and immoral persons.

Establishment of Juvenile Courts

Sec. 4. There is hereby established as follows, in each county of the state, a court of record to be known as the Juvenile Court, having such jurisdiction as may be necessary to carry out the provisions of this Act.

In counties having juvenile boards, such boards may designate the County Court or one or more of the District Courts or Criminal District Courts to be the Juvenile Court or Courts for such county, and such designation may be changed from time to time by such juvenile boards. In all other counties the District Court or the County Court shall be the Juvenile Court as agreed between the judges of such respective courts, but until such time such County Court and District Court shall have concurrent jurisdiction in cases of children coming within the terms of this Act.

Said Criminal District Courts and the judges thereof shall have the same jurisdiction, powers, authority and duties as is now or may be conferred upon District Courts in regard to such children.

It is provided, however, that the jurisdiction, powers and duties thus conferred and imposed upon the established courts hereunder are super-added jurisdictions, powers and duties, it being the intention of the Legislature not to create hereby another office. Appeals from judgments of such Criminal District Courts shall be taken to the proper Court of Civil Appeals. [As amended Acts 1945, 49th Leg., p. 52, c. 35, § 1.]

Jurisdiction

Sec. 5. The Juvenile Court shall have exclusive original jurisdiction in proceedings governing any delinquent child, and such court shall be deemed in session at all times.

Nothing contained herein shall deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or when such custody is incidental to the determination of causes pending in such courts.

When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue under the jurisdiction of the court until he becomes twenty-one (21) years of age, unless discharged prior thereto; such continued jurisdiction shall, however, in no manner prejudice or constitute a bar to subsequent or additional proceedings against such child under the provisions of this Act.

Transfer

Sec. 6. A transfer may be made of cases from one Juvenile Court to another Juvenile Court where a child under the jurisdiction of one Juvenile Court has moved from one county to another, and where it is to the best interest of such child so to do. The Juvenile Court having jurisdiction of a child may transfer the case to the Juvenile Court of the county in which the child is presently residing, and shall send transcripts of records to the Judge of the other court, which shall be filed in the office of the clerk of such court.

Information, investigation, petition

Sec. 7. Any person may, and any peace officer shall, give to the Judge, County Attorney, or to the Probation Officer of the county, information in his possession that a child is within the provisions of this Act. Thereupon the Judge, the County Attorney or the Probation Officer shall make or have made, preliminary inquiry to determine whether the interests of the public or of the child require that further action be taken. If either the Judge or the County Attorney shall determine that formal jurisdiction should be acquired, the County Attorney shall prepare and file in the court, or any attorney may prepare and file in the court, a petition alleging briefly the facts which bring said child within the provisions of this Act, and stating: (1) the name, age and residence of the child; the names and residences, (2) of his parents, (3) of his legal guardian, if there be one; (4) of the person or persons having custody or control of the child; and (5) of the nearest known relative, if no parent or guardian can be found. If any of the facts herein required are not known by the petitioner, the petition shall so state. The proceedings shall be styled "In the matter of ————, a delinquent child".

Venue

Sec. 7-A. The petition referred to under Section 7 of this Act may be filed in the Juvenile Court of the county of residence of said child or of the county wherein the acts constituting said child a delinquent child were committed.

Summons, notice, custody of the child

Sec. 8. After a petition shall have been filed, and after such further investigation as the Judge may direct, unless the parties hereinafter named shall voluntarily appear, the court shall issue a summons reciting briefly the substance of the petition, and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the court at a time and place stated. If the person so summoned shall be other than the parent or guardian of the child, then the parent or guardian, or both, shall be notified of the pendency of the case and of the time and place appointed, by personal service before the hearing, if they reside within the jurisdiction of the court, except as hereinafter provided. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the Judge, is necessary.

If it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the Judge may cause to be endorsed upon the summons an order that the officer serving the same shall at once take the child into custody.

Service of summons

Sec. 9. Service of summons shall be made personally by a probation officer or peace officer by the delivery of attested copies thereof to the parent, guard-

ian, or person having custody of the child who is summoned; provided, that jurisdiction may be obtained by the court if the court is satisfied that said officer has made diligent effort to locate such person or persons and has been unsuccessful in locating said persons. It shall be sufficient to confer jurisdiction if service is effected at least two (2) days before the time fixed in the summons for the return thereof.

Failure to obey summons, warrant

Sec. 10. If any person summoned as herein provided shall, without reasonable cause, fail to appear, he may be proceeded against for contempt of court. In case the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the Judge that the servicing will be ineffectual, or the welfare of the child requires that he shall be brought forthwith into the custody of the court, a warrant may be issued against the child himself.

Release of child taken into custody

Sec. 11. Whenever any officer takes a child into custody, he may release said child to a parent, guardian, or any other person upon receipt of a written or oral promise of said person to assume complete responsibility for said child and to have him before the probation officer or the court at any time then, or subsequently, specified by said officer. If not so released, such child shall be placed in the custody of a probation officer or other person designated by the court or be taken immediately to the probation department, the court, or to the place of detention designated by the court. The court may make a general order designating such places of detention which may include private foster or boarding homes for children, or such other places of detention which to the court seem desirable. The County Commissioners Court may pay for boarding or foster home care for such children to be detained, or all children coming within the meaning of this Act whether prior to, or after the child has been adjudged a "delinquent child".

Any peace officer or probation officer shall have the right to take into custody any child who is found violating any law or ordinance, or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, welfare, or morals. The child shall forthwith be brought to the Judge, who shall order the child's release, or his temporary detention either in the compartment provided for the custody of juveniles, or by a suitable person or agency as in the judgment of the court may seem proper. If the child is ordered detained, the petition provided for herein shall be filed immediately. In every such case the said officer shall refer all such cases, together with information they have secured concerning the child, to the court or the probation department, and the case shall then be proceeded with as specified in this Act, provided that no child shall be taken before a Police Court or a Justice of Peace Court.

Transfer from other courts

Sec. 12. If during the pendency of a criminal charge or indictment against any person in any other court than a Juvenile Court, it shall be ascertained that said person is a female over the age of ten (10) years and under the age of eighteen (18) years, or is a male person over the age of ten (10) years and under the age of seventeen (17) years at the time of the trial for the alleged offense, it shall be the duty of such court to transfer such case immediately together with all papers, documents and testimony connected therewith to the Juvenile Court of said county. The court making such transfer shall order the child to be taken forthwith to the place of detention designated by the Juvenile Court, or to that court itself, or to release such child to the custody of a probation officer or any suitable person to appear before the Juvenile Court, or the probation department of said county at a time designated. The Juvenile Court shall thereupon proceed to set said case for hearing and to dispose of such case in the same manner as if it had been instituted in that court in the first instance.

Hearing, judgment

Sec. 13. The Judge may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any case the general public may be excluded. All cases involving children shall be heard separately and apart from the trial of cases against adults.

If no jury is demanded, the Judge shall proceed with the hearing. When the proceeding is with a jury, the verdict shall state whether the juvenile is a "delinquent child" within the meaning of this Act, and if the Judge or jury finds that the child is delinquent, or otherwise within the provisions of this Act, the court may by order duly entered proceed as follows:

(1) place the child on probation or under supervision in his own home or in the custody of a relative or other fit person, upon such terms as the court shall determine;

(2) commit the child to a suitable public institution or agency, or to a suitable private institution or agency authorized to care for children; or to place them in suitable family homes or parental homes for an indeterminate period of time, not extending beyond the time the child shall reach the age of twenty-one (21) years;

(3) make such further disposition as the court may deem to be for the best interest of the child, except as herein otherwise provided.

No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of a crime in any court. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court other than another Juvenile Court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment, or application.

Whenever the court shall commit a child to any institution or agency, it shall transmit with the order of commitment, a summary of its information concerning such child and give in the order of commitment the birth date of the child or attach thereto a certified copy of the birth certificate.

Judgments for support; enforcement

Sec. 13-A. It is further provided that the Juvenile Court in which the child has been adjudged delinquent, may, after giving the parent or other responsible person a reasonable opportunity to be heard, adjudge that such parent or other responsible person shall pay in the manner directed by the court such sum as will in whole or in part support such child whether or not the child is committed to the custody of his own parent or guardian, or whether to any other person, agency or institution. The court shall have full power to enforce said judgments for support by civil contempt proceedings after ten (10) days notice to such parent, guardian, or other person responsible for the care and support of the child, of his or her, or of their failure or wilful refusal to carry out the terms of such an order for support. The court shall have power and authority to alter or change such judgments, or suspend the same, as the facts and circumstances and justice may require, upon notice to such parent as above provided for.

Any person interested in any such case may appear therein and may be represented by counsel, and may demand a jury as in other cases. If no jury is demanded, it shall be deemed waived. The Judge of the court, of his own motion, may order the jury to try such a case.

Modification of judgment, return of child to parents

Sec. 14. An order of commitment made by the court in the case of a child shall be subject to modification or revocation from time to time.

A petition may be filed with the committing court requesting the reopening of the case of a child who has been committed by the court to the custody of an institution, agency or person; if the court is of the opinion that the best interest of the child will be served, it may at its discretion proceed to hear and determine the question at issue. It may thereupon order that such child be restored to the custody of its parents or guardian or be retained in the custody of the institution, agency or person; and may direct such institution, agency or person to make such other arrangements for the child's care and welfare as the circumstances of the case may require; or the court may make a further order or commitment.

Records

Sec. 15. Juvenile Court records shall not be inspected by persons other than probation officers or other officers of the Juvenile Court unless otherwise directed by the court.

Physical and mental examination

Sec. 16. The Court may cause any person coming under its jurisdiction to be examined by a physician, psychiatrist, or psychologist, appointed by the court. If it is determined that the child is either feeble-minded or mentally ill, it shall be the duty of the Judge of the Juvenile Court to proceed to have the necessary legal steps taken to have said child adjudged feeble-minded or insane.

Place of detention

Sec. 17. No female person over the age of ten (10) years and under the age of eighteen (18) years, or any male person over the age of ten (10) years and under the age of seventeen (17) years, shall be placed or committed to any compartment of any jail or lock-up in which persons over juvenile age are incarcerated or detained; but shall be placed in a room or ward separate and apart from that occupied by adults. The proper authorities of all counties shall provide suitable place of detention for such juveniles separate and apart from any jail or lock-up in which adults are confined. Said detention place may be in the same building housing adults, or in a building separate and apart from that where adults are confined.

Court Sessions

Sec. 18. Sessions of the court shall be held as the Judge shall from time to time determine. Suitable quarters shall be provided by the Commissioners Court of each county for the hearing of cases and for the use of the judge, the probation officer and other employees of the court.

Cooperation

Sec. 19. It is hereby made the duty of every county, town or municipal official or department, to render all assistance and co-operation within his or its jurisdictional power which may further the objects of this Act. All institutions or agencies to which the court sends any child are hereby required to give to the court or to any officer appointed by it, such information concerning such child as said court or officer may require. The court is authorized to seek the co-operation of all societies or organizations having for their objects the protection or aid of all children who come within the meaning of this Act.

Contempt

Sec. 20. Any person who wilfully violates, neglects or refuses to obey or perform any order of the court may be proceeded against for contempt.

Appeals

Sec. 21. An appeal may be taken by any party aggrieved to the Court of Civil Appeals, and the case may be carried to the Supreme Court by writ of error or upon certificate, as in other civil cases. Written notice of appeal shall be filed with the Juvenile Court within five (5) days after the entering of the order. An appeal, in the case of a child, shall not suspend the order of the Juvenile Court, nor shall it discharge the child from the custody of that court or of the person, institution or agency to whose care such child shall have been committed, unless that court shall so order. However, the appellate court may provide for a recognizance bond. If the appellate court does not dismiss the proceedings and discharge the child, it shall affirm or modify the order of the Juvenile Court and remand the child to the jurisdiction of the Juvenile Court for supervision and care, and thereafter the child shall be and remain under the jurisdiction of the Juvenile Court in the same manner as if such court had made said order without an appeal having been taken.

Constitutionality

Sec. 23. If any section, sub-division or clause of this Act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Act.

Existing laws, effect on; original jurisdiction of district court

Sec. 24-A. This Act shall in no wise alter or affect existing laws with reference to dependent or neglected children as that term is defined by Article 2330, Revised Civil Statutes, 1925, and the District Court only shall have original jurisdiction in all proceedings wherein it is sought to have a child adjudged to be a dependent or neglected child, and its findings in such cases shall be entered in a book kept for that purpose to be known as "Juvenile Record". [Acts 1943, 48th Leg., p. 313, ch. 204.]

Section 22 of the Act of 1943 read as follows: "Saving Clause. In all cases where the court has continuing jurisdiction of the children already adjudged delinquent, any of the Acts herein repealed shall continue in force as applicable to such children, and the provisions of such Statutes may continue to be exercised with reference to all such children where such jurisdiction has already attached."

Section 24 repealed arts. 2329, 2338 and Code of Criminal Procedure, arts. 1083–1093 and all conflicting laws and parts of laws.

TITLE 44—COURTS—COMMISSIONERS

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1. COMMISSIONERS COURTS

Article 2339. [2236] [1532] [1509] Election.—Each county shall be divided into four commissioners precincts, and one commissioner shall be elected biennially in each precinct, and each commissioner shall hold his office for two years. [Const. art. 5, sec. 18; Acts 1876, p. 51, sec. 3; G. L. vol. 8, p. 887.]

Art. 2340. [2239] [1535] [1512] Oath and bond.—Before entering upon the duties of their office, the county judge and each commissioner shall take the official oath, and shall also take a written oath that he will not be directly or indirectly interested in any contract with, or claim against, the county in which he resides, except such warrants as may issue to him as fees of office. Each commissioner shall execute a bond to be approved by the county judge in the sum of three thousand dollars, payable to the county treasurer, conditioned for the faithful performance of the duties of his office, that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not vote or give his consent to pay out county funds except for lawful purposes. [Acts 1923, p. 14.]

Art. 2341. [2240] [1536] [1513] Vacancy.—In case of vacancy in the office of commissioner, the county judge shall appoint some suitable person living in the precinct where such vacancy occurs, to serve as commissioner for such precinct until the next general election. [Acts 1876, p. 51; G. L. vol. 8, p. 887.]

Art. 2342. [2237] [1533] [1510] The Court.—The several commissioners, together with the county judge, shall compose the "Commissioners Court," and the county judge, when present, shall be the presiding officer of said court. [Const. art. 5, sec. 18; Acts 1876, p. 51; G. L. vol. 8, p. 887.]

Art. 2343. [2238] [1534] [1511] Quorum.—Any three members of the said court, including the county judge, shall constitute a quorum for the transaction of any business, except that of levying a county tax. [Id.]

Art. 2344. [2278] [1566] [1529] Seal.—Each commissioners court shall have a seal, whereon shall be engraved a star with five points, the words, "Commissioners Court, ——— County, Texas," (the blank to be filled with the name of the County) which seal shall be kept by the clerk of said court and used in authentication of all official acts of the court, or of the presiding officer or clerk of said court, in all cases where a seal may be necessary for the authentication of any of said acts. [Acts 1876, p. 53; G. L. vol. 8, p. 889.]

Art. 2345. [2279] [1557] [1530] The clerk.—The county clerk shall be ex-officio clerk of the commissioners court; and he shall attend upon each term of said commissioners court; preserve and keep all books, papers, records and effects belonging thereto, issue all notices, writs and process necessary for the proper execution of the powers and duties of the commissioners court, and perform all such other duties as may be prescribed by law. [Id.]

Art. 2346. [2280–1] [1558–9] [1531–2] Process.—All notices, citations, writs and process issued from said court shall be in the name of the "State of Texas," and shall be directed to the sheriff or any constable of a county and shall be dated and signed officially by the clerk, and shall have the seal of the court impressed thereon. All process of said court, when not otherwise directed by law shall be executed at least five days before the return day thereof, which return day shall be specified in the process. Subpœnas for witnesses may be executed and returned forthwith when necessary. [Id.]

Art. 2347. [2282] Notice posted.—Whenever the commissioners court shall be unable to secure the publication of any notice or report required by law in the manner and for the fee provided therefor, such notice or report may be made and published by posting one copy of such notice at the courthouse door, and one of said copies shall be posted at some public place in each commissioners precinct for thirty days prior to the next succeeding term of the commissioners court. No two such copies shall be posted in the same town or city. [Acts 1899, p. 39.]

Art. 2348. [2274–5] [1552–3] [1525–6] Regular terms.—The regular terms of the commissioners court shall be commenced and be held at the court house on the second Monday of each month throughout the year and may continue in session one week; provided the court need not hold more than one session each quarter if the business of the court does not demand a session. Any session may adjourn at any time the business of the court is disposed of. Special terms may be called by the county judge or

three of the commissioners, and may continue in session until the business is completed. [Acts 1876, p. 53; Acts 1911, p. 198; G. L. vol. 8, p. 889.]

Art. 2349. [2276–7] Minutes.—The court shall require the county clerk to keep suitable books in which shall be recorded the proceedings of each term of the court; which record shall be read and signed after each term by the county judge, or the member presiding and attested by the clerk. The clerk shall also record all authorized proceedings of the court between terms; and such record shall be read and signed on the first day of the term next after such proceedings occurred. [Id.]

Art. 2350. County commissioners salaries.—Section 1. In counties having the following assessed valuations, respectively, as shown by the total assessed valuations of all properties certified by the county assessor and approved by the Commissioners Court, for county purposes, for the previous year, from time to time, the County Commissioners of such counties shall each receive annual salaries not to exceed the amounts herein specified, said salaries to be paid in equal monthly instalments, at least one-half (½), and not exceeding three-fourths (¾), out of the Road and Bridge Fund, and the remainder out of the General Fund of the county; said assessed valuations and salaries applicable thereto being as follows:

Assessed Valuations	Salaries to be paid each Commissioner
Not to exceed $3,500,000.00, as provided at end of this Section.	
$ 3,500,001 and less than 6,000,000 not to exceed	$1,500.00
$ 6,000,001 and less than 9,000,000 not to exceed	$1,800.00
$ 9,000,001 and less than 10,000,000 not to exceed	$2,000.00
$ 10,000,001 and less than 12,000,000 not to exceed	$2,200.00
$ 12,000,001 and less than 20,000,000 not to exceed	$2,500.00
$ 20,000,001 and less than 30,000,000 not to exceed	$3,000.00
$ 30,000,001 and less than 75,000,000 not to exceed	$3,600.00
$ 75,000,001 and less than 120,000,000 not to exceed	$4,000.00
$120,000,001 and less than 140,000,000 not to exceed	$4,800.00
$140,000,001 and less than 400,000,000 not to exceed	$5,500.00
$400,000,001 and over not to exceed	$6,000.00

In counties having assessed valuation of less than Three Million, Five Hundred Thousand Dollars ($3.500,000) each Commissioner shall receive Five Dollars ($5) per day for each day served as Commissioner, and a like amount when acting as ex-officio road superintendent in his Commissioner's precinct, providing in no event shall his total compensation exceed Twelve Hundred Dollars ($1200) in any one year. Provided further, however, that in counties having National Forest Preserves and with less than Four Million, Five Hundred Thousand Dollars ($4,500,000) valuation that the salaries of said Commissioners shall not exceed Eighteen Hundred Dollars ($1800) per year. [Acts 1925, 39th Leg., p. 340, ch. 135, § 1; Acts 1927, 40th Leg., p. 435, ch. 290, § 1; Acts 1927, 40th Leg., 1st C.S., p. 138, ch. 46, § 1; Acts 1933, 43rd Leg., p. 727, ch. 216; Acts 1933, 43rd Leg., 1st C.S., p. 220, ch. 83, § 1; Acts 1935, 44th Leg., p. 1036, ch. 362, § 1; Acts 1945, 49th Leg., p. 280, ch. 204, § 1.]

Sec. 1a. The Commissioners Court in each county is hereby authorized to pay the actual traveling expenses incurred while traveling outside of the county on official county business never to exceed Three Hundred Dollars ($300) in any one year for each said official. [Acts 1945, 49th Leg., p. 280, ch. 204, § 1.]

Sec. 2. Provided that in any county in this State having a population of less than twenty thousand (20,000) inhabitants and which has a tax valuation of not less than Seventeen Million ($17,000,000.00) Dollars and not exceeding Twenty-five Million ($25,000,000.00) Dollars according to the last approved tax roll and with a total area of not less than nine hundred fifty (950) square miles and not exceeding nine hundred eighty (980) square miles, the compensation of each County Commissioner shall be Twenty-four Hundred ($2,400.00) Dollars per annum; and in counties having a population of not less than fifteen thousand five hundred fifty (15,550) nor more than fifteen thousand five hundred sixty (15,560) according to the last preceding Federal Census, and having an assessed valuation of not less than Twelve Million ($12,000,000.00) Dollars according to the last approved tax rolls, the salary of each County Commissioner shall be One Thousand Eight Hundred ($1,800.00) Dollars per annum, to be paid in twelve (12) equal installments as herein provided for in Article 2350 H; and in any county in this State having a population of not less than twenty-nine thousand two hundred ten (29,210) and not more than twenty-nine thousand six hundred thirty (29,630) according to the last preceding Federal Census, the salary of each County Commissioner shall be One Thousand Eight Hundred ($1,800.00) Dollars per annum, to be paid in twelve (12) equal installments as herein provided for in Article 2350 H. [Acts 1939, 46th Leg., Spec.L., p. 566, §§ 1, 2.]

The amendment by Acts 1945, ch. 204, did not mention the portion of this article which is set out as section 2, which was derived from Acts 1939, 46th Leg., Spec.L., p. 566, §§ 1, 2.

Section 4 of the act of 1945 repealed all conflicting laws and section 5 provides that if any section, clause, sentence, or other part of this Act shall for any reason be declared unconstitutional that shall not affect in any way the constitutionality of the remaining provisions hereof.

Art. 2350(1). Payment of salaries of County Commissioner and County Judge.—The salary of each County Commissioner and each County Judge may be paid wholly out of the County General Fund or, at the option of the Commissioners Court, may be paid out of the County General Fund and out of the Road and Bridge Fund in the following proportions: County Judge not to exceed seventy-five per cent (75%) of such salaries may be paid out of the Road and Bridge Fund, and the remainder out of the General Fund of the County, and each County Commissioner's salary may, at the discretion of the Commissioners Court, all be paid out of the Road and Bridge Fund; provided this section shall not apply except in counties where the constitutional limit of twenty-five cents (25¢) on the One Hundred Dollar ($100) valuation is levied for general purposes. [Acts 1945, 49th Leg., p. 280, ch. 204, § 2.]

Prior Act:
Acts 1935, 44th Leg., p. 1036, ch. 362, §§ 2, 3, provisions similar to those of this article and article 2350(2).

Art. 2350(2). Commissioners court to fix salaries of county commissioners.—The Commissioners Court at its first regular meeting after the effective date of this Act and thereafter at the first regular meeting of each year shall, by order duly made and entered upon the minutes of same Court, fix the salaries of the County Commissioners for such year, within the limits as provided for in this Act. [Acts 1945, 49th Leg., p. 280, ch. 204, § 3.]

Art. 2350(3). Repeals; salary of precinct commissioner in counties of 14,588 to 14,800.—All laws, both General and Special, or parts of laws, both General and Special, in conflict with the foregoing Act, be and the same are hereby expressly repealed; provided, however, that in all counties having a population of not less than fourteen thousand, five hundred and fifty (14,550) nor more than fourteen thousand, eight hundred (14,800), according to the last available Federal Census, as same now exists or may hereafter exist, each Precinct Commissioner shall be entitled to receive a salary not in excess of Three Thousand Dollars ($3,000) per annum, payable in equal monthly installments, and provided that in all counties having a population of not less than ninety-eight thousand (98,000), and not more than one hundred and twenty-five thousand (125,000), according to the last available Federal Census and each available Census thereafter, and a valuation of over Sixty Million Dollars ($60,000,000)

according to the last approved tax roll for county purposes, each Precinct Commissioner shall be entitled to receive a salary not in excess of Three Thousand Dollars ($3,000) per annum, payable in equal monthly installments. [Acts 1935, 44th Leg., p. 1036, ch. 362, § 4; Acts 1937, 45th Leg., p. 393, ch. 195, § 1; Acts 1939, 46th Leg., Spec.L., p. 570, § 2.]

Section 1 of the amendatory act of 1939, cited to the text, relating to salaries and expenses of county commissioner in counties of 77,600 to 131,000 population appears under article 2350m in note.

Section 3 provides that a holding of partial invalidity shall not affect the remainder of the Act.

Art. 2350(4). Salaries of commissioners in counties of 10,370 to 10,475 and other counties.—In all counties in this State having a population of not less than ten thousand, three hundred and seventy (10,370) and not more than ten thousand, four hundred and seventy-five (10,475), according to the last preceding Federal Census, County Commissioners shall receive an annual salary of One Thousand, Two Hundred Dollars ($1,200), payable in twelve (12) equal monthly installments out of such funds belonging to such counties as is now provided by law; in all counties having a population of not less than twenty-four thousand and sixty-five (24,065) and not more than twenty-four thousand, one hundred and eighty-five (24,185) according to the last preceding Federal Census, County Commissioners shall receive an annual salary of One Thousand, Eight Hundred Dollars ($1,800) payable in twelve (12) equal monthly installments out of such funds belonging to such counties as is now provided by law. In all counties having a population of not less than nine thousand, seven hundred and fifteen (9,715) and not more than ten thousand, and twenty (10,020) according to the last preceding Federal Census, County Commissioners shall receive an annual salary of Twelve Hundred Dollars ($1200) payable in twelve (12) equal installments out of such funds belonging to such counties as is now provided by law. Providing that the salaries and compensation of each of the County Commissioners in counties having a taxable valuation of not less than Forty-seven Million Dollars ($47,000,000) according to the last available approved tax rolls for such counties, and having a population of not more than seven thousand, eight hundred and forty-five (7,845) according to the last Federal Census, shall be not to exceed Three Thousand, Six Hundred Dollars ($3,600) per annum, payable in equal monthly installments. Providing that the salaries and compensation of the County Commissioners in counties with a taxable valuation of not less than Thirty Million Dollars ($30,000,000), and not more than Forty Million Dollars ($40,000,000), according to the tax rolls as prepared by the Assessor and Collector of Taxes of the respective counties for the preceding year, and having within their boundaries two (2) incorporated cities of more than thirteen thousand, five hundred (13,500) population each, according to the last preceding Federal Census, shall be not to exceed Two Thousand, Four Hundred Dollars ($2,400) annually, payable in equal monthly installments; and in addition to their regular salaries each of such Commissioners shall receive their actual and necessary expenses incurred in the conduct of their offices in an amount not to exceed Fifty Dollars ($50) per month, payable out of the Road and Bridge Fund of such counties on sworn claims, and approved by the County Auditor of such counties. Providing that in all counties in this State having a population of not less than forty-one thousand (41,000) and not more than forty-two thousand (42,000) according to the last preceding Federal Census, the County Commissioners shall, in addition to their regular salaries as now provided by law, receive their actual and necessary expenses incurred in the conduct of their offices in an amount not to exceed Fifty Dollars ($50) per month, payable out of the Road and Bridge Fund of such counties on sworn claims and approved by the County Auditor of such counties. [Added Acts 1937, 45th Leg., p. 565, ch. 277, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1881, ch. 13, § 1; Acts 1939, 46th Leg., Spec.L., p. 562, § 1.]

Art. 2350(5). Salaries of commissioners in counties of 49,100 to 51,000.—In all counties in this State having a population of not less than forty-nine thousand, one hundred (49,100) and not more than fifty-one thousand (51,000) according to the last preceding Federal Census, each County Commissioner, in addition to his regular salary as provided by Article 2350, shall be entitled to an allowance not to exceed the sum of Fifty Dollars ($50) per month, payable out of the Road and Bridge Fund for each Commissioner, in payment of his traveling, necessary and other legitimate expenses incident to the discharge of his official duties: All such claims shall be verified by such Commissioner and approved by the County Auditor and Commissioners Court. [Added Acts 1939, 46th Leg., Spec.L., p. 583, § 1.]

Art. 2350(6). Compensation and traveling expenses of commissioners in certain counties.—Section 1. Each County Commissioner acting as Road Commissioner and faithfully discharging the duties imposed upon him as such by law or by the Commissioners' Court, may, by order of the Commissioners' Court, be allowed, as compensation for such services in addition to his salary as such County Commissioner not to exceed the sum of One Hundred ($100.00) Dollars per month, to be paid monthly out of the Road and Bridge Fund of the County.

Sec. 2. The Commissioners' Court of such Counties may allow the Commissioners using their personal automobiles for traveling in the discharge of their duties as Road Commissioners not to exceed Four (4¢) Cents per mile actually and necessarily traveled by said Commissioner in his personal car in the discharge of such duties, said amount to be paid out of the Road and Bridge Fund of the Counties. An account for such expenses shall be submitted by each Commissioner monthly, and no such account shall be approved by the Commissioners' Court unless the Commissioner presenting said account shall make oath as to the number of miles actually and necessarily traveled by him in his personal car in discharging his duties as Road Commissioner, and that the account presented by him is just, due, and unpaid.

Sec. 3. The provisions of this Act shall apply only to Counties having an assessed valuation of not less than Twenty Million ($20,000,000.00) Dollars and a population of not more than three (3) persons per square mile. [Acts 1941, 47th Leg., p. 224, ch. 154.]

Art. 2350(7). Traveling expenses in counties under 25,200.—In all counties of this state having a population of less than twenty-five thousand two hundred (25,200) according to the last preceding Federal Census, the Commissioners Court of such counties is hereby authorized to allow each Commissioner the sum of not more than Twenty-five ($25.00) Dollars per month for traveling expenses while on official business in said counties. [Acts 1943, 48th Leg., p. 637, ch. 362, § 1.]

Art. 2350(8). Salaries of County Commissioners in counties over 140,000.—Section 1. In all counties in this state having a population in excess of one hundred forty thousand (140,000) according to the last preceding Federal Census or any future Federal Census, the County Commissioners in such counties shall each receive a salary of Forty-eight Hundred ($4,800.00) Dollars per annum and said salary shall be paid in equal monthly installments, three-fourths (¾) out of the Road and Bridge Fund and

one-fourth (¼) out of the General Fund of such counties.

Sec. 2. In all counties described in Section 1 hereof where more than fifty thousand (50,000) members of the armed forces of the United States are stationed in army camps, there exist conditions requiring additional work in building and maintaining lateral roads and requiring additional duties by County Commissioners that would not otherwise be required. Therefore the County Commissioners in such counties shall each receive a salary of Fifty-five Hundred ($5500.00) Dollars per annum, and said salary shall be paid in equal monthly installments, three-fourths (¾) out of the Road and Bridge Fund and one-fourth (¼) out of the General Fund of such counties. [Acts 1943, 48th Leg., p. 382, ch. 257.]

Sections 5 and 6 of the Act of 1943 repealed conflicting laws and provided that

If any part of the Act should be held to be unconstitutional, then all the Act was unconstitutional.

Acts 1943, p. 382, ch. 257 held unconstitutional as violating constitutional provision requiring that no bill shall contain more than one subject which shall be expressed in its title and as being a special law. Oakley v. Kent, Civ. App., 181 S.W.2d 919.

Art. 2350a. County commissioners' salaries.—Each county commissioner in each of the counties of of all judicial districts of Texas, composed of two counties as of date January 1, 1925, which said counties comprising such judicial districts had a total population of not less than thirty-five thousand nor more than forty-one thousand inhabitants, according to the last United States census, and which said counties have an aggregate area of not less than 1890 square miles according to the records of the General Land Office of Texas, may receive eighteen hundred ($1,800.00) per annum from the general funds of such counties, payable in twelve equal monthly installments, as compensation for all services rendered of whatsoever nature, whether in connection with the roads of the county, or in connection with other county business. [Acts 1925, 39th Leg., p. 229, ch. 72, § 1.]

Art. 2350b. [Unconstitutional.]

This article (Acts 1925, 39th Leg., p. 302, ch. 118, § 1), providing for salaries of county commissioners in counties coming within specified classification, was held invalid in its entirety as "special" or "local" legislation. See Womack v. Carson, 123 T. 260, 70 S.W.(2d) 416, den reh 123 T. 260, 65 S.W.(2d) 485, which aff (Civ.App.) 38 S.W.(2d) 184.

Art. 2350c. [6901a] Salary of county commissioners.—In all counties having an assessed valuation of all taxable properties of one hundred million ($100,000,000) dollars or more, based upon the approved tax rolls for the year 1923, the county commissioners shall devote their entire time to the duties required of them by law and such other duties as may be required of them by the commissioners' court of their respective counties, and may each receive a salary of three thousand six hundred ($3,600.00) dollars per annum, payable in equal monthly installments, and this salary shall be in lieu of all other fees and per diem of all kinds now allowed by law; provided that in all counties, having an assessed valuation of all taxable property of less than ten million ($10,000,000.00) dollars, based upon the approved tax rolls for the year 1923, the county commissioners of the several counties shall each receive five ($5.00) dollars per day for each day served as commissioner and when acting as ex-officio road supervisors of their precinct, they shall each receive five ($5.00) dollars for each day actually served in supervising the construction or repair of the public roads in their respective precincts; provided that each commissioner shall, in no event, receive more than one thousand ($1,000.00) dollars in any one year for such service. [Acts 1925, 39th Leg., p. 386, ch. 171.]

Art. 2350d. Salary in certain counties.—In every County in this State, having a population of not less than seventeen thousand (17,000) and not more than seventeen thousand, one hundred (17,100), according to the last available United States Census, the compensation of each County Commissioner, so long as the taxable values in said County shall exceed the sum of Six Million, Eight Hundred Thousand Dollars ($6,800,000) for the next preceding year, shall be Eighteen Hundred Dollars ($1800) per year, to be paid in equal monthly installments, fifty (50) per cent of which amount shall be paid out of the General Fund of the County, and fifty (50) per cent out of the Road and Bridge Fund of the County; provided that when such taxable values for the next preceding year shall fall below said sum, the salary of each County Commissioner shall be as provided in Article 2350 of the Revised Statutes of 1925. [Acts 1929, 41st Leg., p. 685, ch. 306, § 1; Acts 1931, 42nd Leg., Spec.L., p. 428, ch. 213; Acts 1933, 43rd Leg., p. 50, ch. 24; Acts 1937, 45th Leg., p. 171, ch. 87, § 1.]

Art. 2350e. Traveling expenses of county commissioners in certain counties.—In any county in this State having a population of not less than 13,300 and not more than 13,400 according to the last United States census, the Commissioners Court is hereby authorized to allow each commissioner the sum of $55.00 per month for traveling expenses and depreciation on his automobile. Each such commissioner shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county. This Act shall terminate and shall have no force or effect on and after January 1, 1931. [Acts 1929, 41st Leg., p. 241, ch. 106, § 1.]

Art. 2350f. Compensation in certain counties.—In any county having a tax valuation of Forty-Four Million ($44,000,000.00) Dollars and less than Forty-Seven Million ($47,000,000.00) Dollars, according to the approved tax rolls of 1928 on file in the office of the State Comptroller, the annual compensation to be paid the County Commissioners shall be Three Thousand ($3,000.00) Dollars. [Acts 1929, 41st Leg., 1st C. S., p. 240, ch. 98, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 2350g. Salaries in certain counties.—In each County of this State having a population of not less than 5300 and not more than 5375 according to the 1920 United States census, the salary of each County Commissioner shall be Fifty Dollars ($50.00) per month payable monthly out of the General County Fund from and after the first day of January, 1930, and up to said time the salaries shall remain the same as are now paid under the Special Road Law of the Counties falling within the class described in this section. [Acts 1929, 41st Leg., 2nd C.S., p. 94, ch. 56, § 1.]

Art. 2350h. Funds for payment of salaries of county commissioners and county judges.—The salary of each County Commissioner and each County Judge may be paid wholly out of the County General Fund or, at the option of the Commissioners Court, may be paid out of the County General Fund and out of the Road and Bridge Fund in the following proportions: County Judge not to exceed seventy-five per cent (75%) of such salaries may be paid out of Road and Bridge Fund, and the remainder out of the General Fund of the county, and each County Commissioner's salary may, at the discretion of the Commissioners Court, all be paid out of the Road and Bridge Fund; provided this Act shall not apply except in counties where the constitutional limit of twenty-five (25) cents on the One Hundred Dollars ($100.00) is levied for general purposes. [Acts 1930, 41st Leg., 4th C.S., p. 27, ch. 16; Acts 1930, 41st Leg., 5th C.S., p. 199, ch. 56, Acts 1933, 43rd Leg., p. 396, ch. 154.]

Art. 2350i. Salaries in counties having population of 7395 and not more than 7410.—That every county in the State of Texas having a population of not less than 7395, and not more than 7410,

according to the 1920 United States Census, and having taxable value as shown by the approved tax roll of 1929 amounting to not less than $8,145,000.00 and not more than $8,150,000.00, the compensation for each County Commissioner shall be $1,800.00 per year, to be paid in equal monthly installments out of the General County Fund or out of the County Road and Bridge Fund as the Commissioner's Court may elect; provided, that this compensation shall only apply in counties that are expending funds derived from the sale of bonds issued for the purpose of building hard surface roads, or in aid thereof, and that such compensation shall cease when such roads shall have been completed or when the bond funds shall have been exhausted. [Acts 1930, 41st Leg., 4th C.S., p. 44, ch. 24, § 1.]

Art. 2350j. Salaries in counties having population of 11,000 and not more than 11,015.—In every county in this State having a population of not less than 11,000, nor more than 11,015, according to the 1920 United States Census, and having a property valuation of not less than $8,252,800.00, and not more than $8,252,900.00, as shown by the approved tax rolls of 1929, the compensation of each county commissioner shall be $1,800.00 per year, to be paid in equal monthly installments out of the general county fund. [Acts 1930, 41st Leg., 4th C.S., p. 45, ch. 25, § 1.]

Art. 2350k. Travelling expenses in counties having population of 21,900 and not more than 22,000.—In any county in this State having a population of not less than 21,900 and not more than 22,000, according to the United States Census of 1920, the Commissioners' Court is hereby authorized to allow each Commissioner the sum of Twenty-five ($25.00) Dollars per month for traveling expenses while on official business. [Acts 1930, 41st Leg., 4th C.S., p. 86, ch. 44, § 1.]

Art. 2350l. Salaries in counties having population of 8090 and not more than 8109.—In all counties whose population according to the United States Census of 1920 is not less than 8090 and not more than 8109, the County Commissioners shall receive $5.00 per day for each day served as Commissioner and $5.00 per day when acting as Road Superintendent in his precinct, not to exceed the total sum of $500.00 in any one year. The compensation herein prescribed shall be in lieu of all other compensation now authorized by law for such Commissioners. [Acts 1930, 41st Leg., 5th C.S., p. 193, ch. 50, § 1.]

Art. 2350m. Salaries in other counties.

The following acts are special acts, each relating to only one county, though most of them were passed as general laws.

County having population of 76,000 to 78,001 and which has voted as much as $6,000,000 in road bonds and $1,000,000 in flood control bonds: $3,600. Sp. Laws 1931, p. 339, ch. 162.

Counties having population of 19,850 to 19,880: $2,500. Sp.Laws 1931, p. 454, ch. 234.

County having population of 6,320 and not less than 6,310. [Acts 1933, 43rd Leg., p. 172, ch. 79.]

Counties having population of 77,777 to 78,000, and counties having population of 64,000 to 65,000: $2,400. [Acts 1933, 43rd Leg., 1st C.S., p. 181, ch. 64.]

Counties having population of 24,233 to 24,333: $1,800; population of 46,180 to 46,181: $2,250; population of 49,016 to 49,017: $1,800; population of 12,750 to 12,800: $1,200; population of 17,000 to 19,000: $2,250; population of 14,588 to 14,800: $3,000; population of 60,000 to 70,000: $2,000; population of 77,700 to 78,000: $2,400; counties having a tax valuation of $23,284,100.00, and not more than $23,284,300.00, $1,920.00; counties having assessed valuation of more than $10,255,000.00 and less than $10,257,000.00, $1,500.00, and in counties with population of 160,000 to 200,000, $50.00 per month for traveling expenses. [Acts 1933, 43rd Leg., 1st C.S., p. 313, cl. 113.]

Counties having population of 22,296 to 22,580, $1,800. Counties having population of 9,962 to 10,000, $5.00 per day for each day served as Commissioner and when acting as Ex-Officio Road Superintendent in his precinct, the total salary not to exceed $1,000 in any one year for each commissioner. [Acts 1933, 43rd Leg., 1st C.S., p. 267, ch. 95.]

Counties having population of 30,290 to 30,390: $1,500; population of 17,600 to 17,700: $2,400. [Acts 1934, 43rd Leg., 3rd C.S., p. 88, ch. 43.]

Counties having population of 9,710 to 9,725: $1,200. [Acts 1935, 44th Leg., p. 533, ch. 223.]

Counties having a population of 24,200 to 24,500 and 12,200 to 12,300, $25 allowed for traveling expenses; population of 32,800 to 32,850, $50 for traveling expenses; population 19,175 to 19,200, $50 for traveling expenses. [Acts 1935, 44th Leg., 2nd C.S., p. 1711, ch. 443.]

Jackson County: $60 per month. [Acts 1941, 47th Leg., p. 537, ch. 332, § 1.]

Wharton County: $60. [Acts 1941, 47th Leg., p. 443, ch. 279, § 1.]

Counties of 3,300 to 3,400; 10,399 to 10,499: $50 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 573, § 1.]

Counties of 4,590 to 4,600: $25. [Acts 1941, 47th Leg., p. 444, ch. 280, § 1.]

Counties of 4,637 to 4,700; 5,660 to 5,675; 6,310 to 6,325; 8,590 to 8,625; 12,150 to 12,200; 18,430 to 18,450; 40,900 to 40,905: $25 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 574, § 1.]

Counties of 5,500 to 5,575 and 2,825 to 2,900: $50 for traveling expenses. [Acts 1941, 47th Leg., p. 390, ch. 221, § 1.]

Counties of 5,990 to 6,000: $25 for traveling expenses. [Acts 1941, 47th Leg., p. 524, ch. 321.]

Counties of 6,100 to 6,180; 9,400 to 9,600; $50 for traveling expenses. [Acts 1941, 47th Leg., p. 89, ch. 72.]

Counties of 6,650 to 7,000: $1,200. [Acts 1941, 47th Leg., p. 529, ch. 324, § 1.]

Counties of 10,270–10,275: $1,800. [Acts 1939, 46th Leg., Spec.L., p. 564.]

Counties of 10,325 to 10,350; 19,025 to 19,070; 23,900 to 23,950; 12,400 to 12,425: $35 for traveling expenses. [Acts 1941, 47th Leg., p. 829, ch. 511.]

Counties of 10,399 to 10,499: $50 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 573, § 1; Acts 1941, 47th Leg., p. 725, ch. 452.]

Counties of 12,471 to 12,520: $25 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 576.]

Counties of 12,725 to 12,825; 17,560 to 17,590; 23,650 to 23,700; 24,200 to 24,275; $35 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 575, § 1; Acts 1941, 47th Leg., p. 454, ch. 285, § 1.]

Counties of 14,901 to 14,920; 13,630 to 13,640: $1,800. [Acts 1939, 46th Leg., Spec.L., p. 565.]

Counties of 15,700 to 15,777: $40 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 577, § 1.]

Counties of 17,475 to 17,500: $1,800. [Acts 1941, 47th Leg., p. 92, ch. 76.]

Counties of 17,500 to 17,575: $30 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 578, § 1.]

Counties of 18,444 to 18,500 and from 12,344 to 12,400: $35 for traveling expenses. [Acts 1941, 47th Leg., p. 187, ch. 134, § 1.]

Counties of 19,150 to 19,175: $1,800. [Acts 1939, 46th Leg., Spec.L., p. 567.]

Counties of 20,050 to 20,150: $75 for traveling expenses. [Acts 1941, 47th Leg., p. 395, ch. 228, § 1.]

Counties of 20,300 to 20,460: $2,400. [Acts 1941, 47th Leg., p. 360, ch. 198.]

Counties of 20,480 to 20,550: $50. [Acts 1941, 47th Leg., p. 41, ch. 30.]

Counties of 20,566 to 20,598 and 11,940 to 12,000 and 21,700 to 22,400: $50 for traveling expenses. [Acts 1941, 47th Leg., p. 727, ch. 456.]

Counties of 20,630 to 20,650: $50. [Acts 1941, 47th Leg., p. 718, ch. 443.]

Counties of 22,100 to 22,500: $50 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 579, § 1.]

Counties of 24,900 to 25,000: $1,800. [Acts 1941, 47th Leg., p. 541, ch. 336.]

Counties of 25,450 to 25,500: $1,800. [Acts 1941, 47th Leg., p. 723, ch. 448.]

Counties of 27,059 to 27,150: $25 for traveling expenses. [Acts 1941, 47th Leg., p. 394, ch. 227.]

Counties of 27,250–27,490: $25 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 580.]

Counties of 27,545 to 27,555: $1,800. [Acts 1939, 46th Leg., Spec.L., p. 568.]

Counties of 29,760 to 29,960 and 7,951 to 8,000: $30 for traveling expenses. [Acts 1941, 47th Leg., p. 678, ch. 420.]

Counties of 30,017 to 30,200: $1,800. [Acts 1939, 46th Leg., Spec.L., p. 569, § 1.]

Counties of 30,360 to 30,400 and counties of 38,000 to 85,000: $50 for traveling expenses. [Acts 1941, 47th Leg., p. 542, ch. 337.]

Counties of 33,650 to 33,700: $75. [Acts 1941, 47th Leg., p. 63, ch. 49.]

Counties of 34,000 to 34,200: $35 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 581, § 1.]

Counties of 37,500 to 38,600: $35 for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 582.]

Counties of 38,000 to 38,325. [Acts 1941, 47th Leg., p. 433, ch. 265, § 1, repealed Acts 1945, 49th Leg., p. 552, ch. 337, § 1.]

Counties of 51,304 to 51,404: $50 per month for traveling expenses. [Acts 1941, 47th Leg., p. 391, ch. 222, § 1.]

Acts 1941, 47th Leg., p. 391, ch. 223, § 1, authorized the Commissioners Court in counties of 51,304 to 51,404 to

allow each Commissioner to purchase a pickup truck to be used in each respective precinct on official business.

Counties of 55,000 to 68,000 with assessed valuation of not less than $100,000,000: $50 per month for traveling expenses. [Acts 1941, 47th Leg., p. 531, ch. 327, § 1.]

Counties of 73,000 to 76,000 having $42,000,000 to $52,000,000 taxable valuation: $50 per month traveling expenses. [Acts 1941, 47th Leg., p. 141, ch. 106, § 1.]

Counties of 74,000 to 76,000: $50 per month for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 584, § 1.]

Counties of 77,600 to 131,000: $3,000. [Acts 1937, 45th Leg., p. 735, ch. 363, § 1; Acts 1939, 46th Leg., Spec.L., p. 570, § 1.]

Counties of 83,000 to 132,000: $50 per month for traveling expenses. [Acts 1941, 47th Leg., p. 546, ch. 341.]

Counties With Taxable Valuation of $51,100,000-51,400,000: $3,600. [Acts 1939, 46th Leg., Spec.L., p. 572.]

2. POWERS AND DUTIES

Art. 2351. [2241] [1537] [1514] Certain powers specified.—Each commissioners court shall:

1. Lay off their respective counties into precincts, not less than four, and not more than eight, for the election of justices of the peace and constables, fix the times and places of holding justices courts, and shall establish places in such precincts where elections shall be held; and shall establish justices precincts and justices courts for the unorganized counties as provided by law.

2. Establish public ferries whenever the public interest may require.

3. Lay out and establish, change and discontinue public roads and highways.

4. Build bridges and keep them in repair.

5. Appoint road overseers and apportion hands.

6. Exercise general control over all roads, highways, ferries and bridges in their counties.

7. Provide and keep in repair court houses, jails and all necessary public buildings.

8. Provide for the protection, preservation and disposition of all lands granted to the county for education or schools.

9. Provide seals required by law for the district and county courts.

10. Audit and settle all accounts against the county and direct their payment.

11. Provide for the support of paupers and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. By the term resident as used herein, is meant a person who has been a bona fide inhabitant of the county not less than six months and of the State not less than one year.

12. Provide for the burial of paupers.

13. Punish contempts by fine not to exceed twenty-five dollars or by imprisonment not to exceed twenty-four hours, and in case of fine, the party may be held in custody until the fine is paid.

14. Issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed by such court and to enforce its jurisdiction.

15. Said court shall have all such other powers and jurisdiction, and shall perform all such other duties, as are now or may hereafter be prescribed by law. [Const. art. 5; Acts 1876, p. 51; G. L. vol. 8, p. 887; Acts 1885, p. 89; G. L. vol. 9, p. 708; Acts 1911, p. 236.]

16. Said Court shall have the authority to use county road machinery and funds from the General Fund or Road and Bridge Funds in cleaning streams and in aiding flood control when such improvements are deemed to be of aid of the county in the maintenance and the building of county roads, in counties having a population of from nineteen thousand, eight hundred and fifty (19,850) to nineteen thousand, eight hundred and ninety-five (19,895) according to the last Federal Census. [Added Acts 1939, 46th Leg., Spec. L., p. 588, § 1.]

17. a. The Commissioners Court of each county of this State, in addition to the powers already conferred on it by law, is hereby empowered to create a revolving fund or funds and to make appropriations thereto out of the general revenue of such county; and such revolving fund shall be used by such county only in cooperation with the United States Department of Agriculture to aid and assist in carrying out the purposes and provisions of an Act of Congress of the United States pertaining to the distribution of commodities to persons in need of assistance, under the direction of the United States Department of Agriculture; provided, however, that the county shall have on hand at all times either the moneys appropriated to such revolving fund or funds or the equivalent thereof in stamps issued by the United States Department of Agriculture under the Food and/or Cotton Stamp Plan, which stamps are convertible into cash at any time.

b. In such counties of this State exercising the powers herein granted, an issuing officer shall be appointed to carry out the provisions of this Act and to administer the funds herein appropriated. Such issuing officer shall be a citizen of the State of Texas and appointed by the County Judge of such County subject to the approval of the Commissioners Court thereof. He shall be required to furnish a good and sufficient surety bond in such amount and upon such terms and conditions as may be required by the Commissioners Court and the United States Department of Agriculture. Such issuing officer shall receive a salary, to be paid out of the general fund or any other fund of the county, except constitutional funds, not otherwise appropriated, not to exceed Two Hundred Dollars ($200) per month, and may appoint such cashiers and other assistants as may be authorized by such Court. The premiums of all bonds which may be required of such issuing officer, cashiers or other assistants, shall be paid by the Commissioners Court out of any available funds therefor belonging to such county.

c. Provided however the powers herein granted to such counties may be exercised by two (2) or more counties in conjunction with each other and in cooperation with the United States Department of Agriculture. And when such powers are exercised by two (2) or more counties jointly, the County Judges of such counties shall appoint the issuing officer, fix such appointee's bond and to do all other things necessary to cooperate with the United States Department of Agriculture in the same and like manner as is herein granted to any one county of this State.

d. Provided that such Commissioners Courts of such counties may cooperate with any incorporated city or town within such county or counties on such conditions and requirements as may be promulgated by such Commissioners Court or Courts.

e. Whenever any county herein authorized to create such a revolving fund ceases to participate therein the issuing officer appointed under the provisions hereof shall forthwith reduce all stamps to their equivalent in money and return such moneys then on hand to the fund from which same was originally appropriated and render a full account of his administration thereof to the Commissioners Court or Courts as the case may be. [Added Acts 1941, 47th Leg., p. 204, ch. 146, § 1.]

Acts 1941, 47th Leg., p. 491, ch. 308, § 5(B), set out in note under Article 165a—4, provided that article 2372c should not be in any way repealed by the Act of 1941 amending article 165a—4, but that it should be expressly preserved in accordance with the terms of the Act of 1941. A similar provision was contained in section 17 of Acts 1939, 46th Leg., p. 7, which was omitted in the amendment of the Act of 1939 as a whole by the Act of 1941. See article 165a—4.

Section 2 of the Act of 1941 provides that a holding of partial invalidity shall not affect the validity of the remaining portions.

Laws 1933, 43rd Leg., p. 805, ch. 236, is a special law defining and providing the powers and duties of the Commissioners' Court in counties having a population of more than 300,000 and less than 350,000 with regard to public roads, bridges and viaducts.

Art. 2351a. Fire fighting equipment; purchase authorized in certain counties.

Bridges etc. protected

Section 1. The Commissioners Court in counties having a population of more than three hundred thousand (300,000) and less than three hundred and fifty thousand (350,000) inhabitants in accordance with the last preceding Federal Census, and in counties having a population of more than forty-eight thousand, five hundred (48,500) and less than forty-nine thousand (49,000) inhabitants, and in counties having a population of not less than twenty-two thousand and eighty-nine (22,089) nor more than twenty-two thousand, one hundred (22,100) inhabitants, and in counties having a population of more than six thousand, one hundred (6,100) and less than six thousand, one hundred and eighty (6,180) inhabitants in accordance with the last preceding Federal Census, shall have the authority to purchase fire trucks and other fire-fighting equipment by first advertising and receiving bids thereon as provided by law, to be used for the protection and preservation of bridges, county shops, county warehouses, and other property located without the limits of any incorporated city or town. [As amended Acts 1939, 46th Leg., Spec.L., p. 587, § 1; Acts 1941, 47th Leg., p. 107, ch. 85, § 1.]

Contracts with centrally located municipality for operation and maintenance

Sec. 2. The Commissioners Courts in such counties are empowered and authorized to enter into contracts with any centrally located municipality in the county for the operation and maintenance of said fire trucks and other fire-fighting equipment on such terms as the Commissioners Court may deem proper and expedient.

Provisions cumulative; partial invalidity

Sec. 3. The provisions of this Act are cumulative of all other laws other than special laws and if any section, subdivision, paragraph, sentence, or clause of this Act be held unconstitutional, the remaining portions thereof shall be valid. [Acts 1937, 45th Leg., p. 1127, ch. 453.]

Art. 2351a—1. Fire protection and fire fighting equipment in all counties; contracts; liability of municipalities for firemen's acts.—The Commissioners Court in all counties of this State shall be authorized to furnish fire protection and fire fighting equipment to the citizens of such county residing outside the city limits of any city, town, or village within the county and/or adjoining counties. The Commissioners Court shall have the authority to purchase fire trucks and other fire fighting equipment by first advertising and receiving bids thereon, as provided by law. The Commissioners Court of any county of this State shall also have the authority to enter into contracts with any city, town, or village within the county and/or adjoining counties, upon such terms and conditions as shall be agreed upon between the Commissioners Court and the governing body of such city, town, or village, for the use of the fire trucks and other fire fighting equipment of the city, town, or village. It is specifically provided that the acts of any person or persons while fighting fires, traveling to or from fires, or in any manner furnishing fire protection to the citizens of a county outside the city limits of any city, town, or village, shall be considered as the acts of agents of the county in all respects, notwithstanding such person or persons may be regular employees or firemen of a city, town, or village. No city, town, or village within a county and/or adjoining counties shall be held liable for the acts of any of its employees while engaged in fighting fires outside the city limits pursuant to any contract theretofore entered into between the Commissioners Court of the county and the governing body of the city, town, or village. Provided however, that any fire equipment purchased by any County shall be done only by a majority vote of property owning taxpayers and qualified voters of such county at a county-wide election called for such purpose. [Acts 1941, 47th Leg., p. 567, ch. 360, § 1.]

Art. 2351a—2. Fire fighting equipment; purchase authorized in counties of 350,000 to 450,000; contracts.—Section 1. The Commissioners Court in counties having a population of more than three hundred and fifty thousand (350,000) and less than four hundred and fifty thousand (450,000) inhabitants in accordance with the last preceding Federal Census shall have the authority to purchase fire trucks and other fire-fighting equipment by first advertising and receiving bids thereon as provided by law, to be used for the protection and preservation of bridges, county shops, county warehouses, and other property located without the limits of any incorporated city or town.

Sec. 2. The Commissioners Courts in such counties are empowered and authorized to enter into contracts with any centrally located municipality in the county for the operation and maintenance of said fire trucks and other fire-fighting equipment on such terms as the Commissioners Court may deem proper and expedient.

Sec. 3. The provisions of this Act are cumulative of all other laws other than special laws and if any section, subdivision, paragraph, sentence, or clause of this Act be held unconstitutional, the remaining portions thereof shall be valid. [Acts 1941, 47th Leg., p. 681, ch. 424.]

Art. 2351a—3. Fire fighting equipment; counties over 350,000; furnishing equipment to towns and villages having volunteer departments.

"County" defined

Section 1. The term "county" when used in this Act shall mean any county in Texas having a population of three hundred and fifty thousand (350,000) or more according to the last preceding Federal Census.

Authority to furnish equipment

Sec. 2. The Commissioners Court of the county is hereby authorized to and may furnish fire fighting equipment under the terms and provisions of this Act. It is the legislative intent and purpose that this Act be construed as permitting the Commissioners Court within their discretion to carry out the provisions of this Bill but the language in this Bill shall not be construed as being mandatory in nature.

Petition; contract

Sec. 3. The governing authorities of any incorporated town or village of the county, which has a volunteer fire department recognized by the Insurance Commission of the State of Texas, may, by an order or resolution, a majority voting in favor thereof, petition the Commissioners Court of the county to enter into a contract to furnish fire fighting equipment as provided in this Act. The Commissioners Court may enter into the contract and furnish the fire fighting equipment where the petitioners show the incorporated town or village is eligible to receive the service and benefit of such equipment by compliance with the terms of this Act.

Duty of commissioner's court

Sec. 4. When at least twenty-five (25) citizens, living in any unincorporated village, town or community, who have, or will organize within a reasonable time, a volunteer fire department recognized by the Insurance Commission of the State of Texas, and who are in all respects qualified to vote in a county bond election, petition the Commissioners Court for fire fighting equipment, it may be the duty of the Commissioners Court to enter into a contract and furnish such fire fighting

equipment, subject to and in accordance with the provisions of this Act.

"Fire fighting equipment" defined

Sec. 5. The term "fire fighting equipment" referred to herein shall mean a four hundred-gallon booster tank mounted on a suitable truck chassis, equipped with a front-end pump and other necessary appliances and equipment. Total initial cost of each unit of fire fighting equipment shall in no instance exceed the sum of Two Thousand Seven Hundred and Fifty Dollars ($2,750).

Provisions of contract

Sec. 6. The contract referred to herein shall provide and be conditioned that the county may furnish the fire fighting equipment for the use and benefit of the petitioners, subject to the agreement and understanding that the petitioners shall furnish a satisfactory place in which to keep and house the fire fighting equipment and pay at their own expense all of the costs of operation of said fire fighting equipment, and furnish the personnel to operate the same. The county shall be charged with the duty of keeping the fire fighting equipment in good working condition and shall be responsible for all replacements and repairs required. The Commissioners Court shall determine when repairs and replacements are necessary for such equipment. The Commissioners Court may provide for at least one emergency unit of fire fighting equipment to be used by the petitioners while the regular unit is being repaired or replaced by the Commissioners Court. The Court shall require that all repairs, including labor and materials, shall be made, in so far as possible, in the shops of the Commissioners, and the Commissioners Court shall have the power to designate any one or all of said shops for such purposes. The Commissioners Court may use trucks or other equipment, now on hand, if they are unable to acquire new trucks or other equipment for the purpose of building or equipping said fire fighting equipment.

The petitioners shall be charged with the safe keeping of the fire fighting equipment. They shall be responsible to the county for any loss of such equipment from theft. They shall be responsible to the county for any loss resulting to said fire fighting equipment assigned them by reason of any negligence of any officer, agent or employee of any incorporated town or village or of any one of the twenty-five (25) petitioners in an unincorporated village, town or community handling or operating such equipment.

Bond

Sec. 7. Before any unit of fire fighting equipment is delivered to any petitioners, they shall give bond with good and sufficient surety, payable to the county, in an amount to be fixed by the Commissioners Court, not to exceed the initial cost of the unit of fire fighting equipment, conditioned that they will pay to the county the amount of the actual loss to each unit of equipment, or any part thereof, resulting from theft or negligence as hereinafter provided.

"Petitioners" defined

Sec. 8. The term "petitioners" as used herein shall mean any governing body of any incorporated town or village of the county. It shall also mean and include the number of petitioners not less than twenty-five (25) authorized herein to petition the Commissioners Court for fire fighting equipment, who reside in an unincorporated town, village or community.

Location of equipment; inspection

Sec. 9. Said fire fighting equipment shall remain in the county and the Commissioners Court shall at all times have the right to inspect and examine said equipment and shall have the right to repossess the same upon noncompliance by the petitioners with the terms of this Act.

Contracts for use of equipment

Sec. 10. The Commissioners Court may have, and it is hereby granted, the power and authority to contract with any city or cities within said county for the use of fire fighting equipment and the use and service thereof by the fire department of such city or cities for the purpose of fighting fires outside the city limits of such city or cities, upon such terms and conditions as may be mutually agreed upon by such Commissioners Court and the governing authorities of such city or cities, and said Commissioners Court and it is hereby authorized and empowered to pay out of the General Fund of said county such compensation for such services as may be agreed upon as hereinabove provided.

Costs of administration

Sec. 11. The Court shall pay all costs of administering this Act out of the General Fund of the county. [Acts 1943, 48th Leg., p. 566, ch. 336.]

Section 12 of the Act of 1943 repealed all conflicting laws.

Art. 2351b—1. Fire protection; counties of less than 20,000 population authorized to contract for with municipalities.—The Commissioners Courts in counties having a population of less than twenty thousand (20,000), according to the last preceding Federal Census, and a property valuation of more than One Hundred Million Dollars ($100,000,000), according to the last approved county tax rolls, are authorized and empowered to enter into contracts and agreements with the governing bodies of municipalities within such counties for the purpose of furnishing fire protection within such counties, but outside the corporate limits of such municipalities, and to make appropriations for paying such municipalities for furnishing such fire protection. [Acts 1939, 46th Leg., Spec.L., p. 586, § 1.]

Section 2 of the Act of 1939 provides that the act is cumulative and that a holding of partial invalidity shall not affect the remaining portions.

Art. 2351b—2. Aid to State and Federal agencies.—From and after the date of passage of this Act the Commissioners Courts in all counties having a population of not less than twenty-two thousand and fifty (22,050) and not more than twenty-three thousand (23,000), according to the last preceding Federal Census, shall have the power and authority to provide for facilities and such financial aid as the said Commissioners Courts may deem necessary to Federal or State government agencies and bureaus having activities or maintaining projects within the county in which the said Commissioners Court is located. [Acts 1939, 46th Leg., Spec.L., p. 585, § 1.]

Art. 2351b—3. Resettlement or rural rehabilitation projects; agreements between Commissioners Courts and United States; payments in lieu of taxes.

Definitions

Section 1. The following definitions shall be applied to the terms used in this Act:

(1) "Agreement" shall mean contract and shall include renewals and alterations of a contract.

(2) "Political subdivision" shall mean any agency or unit of this State which is now, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied.

(3) "Services" shall mean such public municipal functions as are performed for property in, and for persons residing within, a political subdivision.

(4) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States located within a political subdivision and shall include the persons inhabiting such projects.

(5) "Governing body" shall mean the board, body, or persons in which the powers of a political subdivision as a body corporate, or otherwise, are vested.

Payments by United States in lieu of taxes, agreements for

Sec. 2. The Commissioners Court of any county in this State is hereby authorized and empowered (a) to make requests of the United States, for and on behalf of the county and political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for the payment of such sums in lieu of taxes as the United States may agree to pay, and (b) to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such political subdivisions for the benefit of a project, and for the payment by the United States to the county, in one or more installments, of sums in lieu of taxes.

Contents of agreements; notice to subdivision

Sec. 3. Each agreement entered into pursuant to Section 2 shall contain the names of the political subdivisions in whose behalf it is consummated and a statement of the proportionate share of the payment by the United States to which each political subdivision shall be entitled. The Commissioners Court shall immediately notify each political subdivision in whose behalf an agreement is entered into of the consummation thereof.

Filing agreement; receipts

Sec. 4. The Commissioners Court shall file one copy of any agreement for a payment of sums in lieu of taxes with the County Treasurer. On or before the date on which any payment of sums in lieu of taxes is due, the County Treasurer shall present a bill to the United States, in the name of the county, in the amount of such payment. Whenever such payment is received, the County Treasurer shall issue a receipt therefor in the name of the County.

Apportionment of payments received; acceptance

Sec. 5. Immediately after receiving a payment in lieu of taxes, the County Treasurer shall, without any deduction, apportion and pay it to the several political subdivisions in accordance with the agreement under which the payment was received, notwithstanding any other law controlling the expenditure of county funds. The acceptance by the governing body of a political subdivision of its share of a payment in lieu of taxes shall be construed as an approval of the agreement under which the payment was received. If any governing body shall refuse to accept a political subdivision's share of a payment in lieu of taxes, the County Treasurer shall refund the same, without any deduction, to the United States.

Powers of subdivisions to make agreements with United States

Sec. 6. If the United States declines to deal with a Commissioners Court with respect to any political subdivision whose jurisdictional limits are within or coextensive with the limits of the county, or in the event the jurisdictional limits of a political subdivision lie within more than one county, that political subdivision is authorized to make requests of the United States for such payments in lieu of taxes as the United States may agree to pay. Such political subdivision is hereby empowered to enter into agreements with the United States for the performance by the political subdivision of services for the benefit of a project and for the payment by the United States to the political subdivision, in one or more installments, of sums in lieu of taxes.

Amount of payments

Sec. 7. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to each political subdivision, for and on whose behalf an agreement is entered into, of performing services for the benefit of a project during the period of an agreement, after taking into consideration the benefits to be derived by each political subdivision from such project, but shall not be in excess of the taxes which would result to each political subdivision from such project for said period if the real property of the project within each political subdivision were taxable.

Deposit of moneys received

Sec. 8. All money received by a political subdivision pursuant to Sections 5 and 6 shall be deposited in such fund or funds as may be designated in the agreement; provided, however, that if the agreement does not make such designation, the money shall be deposited in such fund or funds as the governing body of such political subdivision shall by appropriate resolution direct.

Services to be furnished by political subdivisions for project

Sec. 9. No provision of this Act shall be construed to relieve any political subdivision of this State, in the absence of an agreement for payment of sums in lieu of taxes by the United States, as provided in this Act, of the duty of furnishing for the benefit of a project all services which the political subdivision usually furnished to property in, and to persons residing within, the political subdivision without a payment of sums in lieu of taxes. [Acts 1941, 47th Leg., p. 264, ch. 179.]

Art. 2351b—4. National forests, prorating receipts from federal government.—Whereas Congress has heretofore passed a law which provides that thereafter twenty-five per centum (25%) of all moneys received during any fiscal year from each national forest shall be paid at the end thereof by the Secretary of the Treasury to the State or Territory in which said forest is situated to be expended as the State or Territorial Legislature may prescribe for the benefit of the public schools and the public roads of the county or counties in which the national forest is situated, and whereas the Legislature of the State of Texas has not prescribed any method for prorating said funds, now, therefore, be it enacted that the Commissioners Courts of the counties in Texas in which such national forests are situated are hereby authorized to prorate all such funds received and to be received from the Federal Government for timber and all other income derived from such lands as follows:

Fifty per cent (50%) of such money received shall be allocated to the school districts in proportion to the area in said districts, and fifty per cent (50%) of same to the county for the benefit of the public roads in said county. Provided the Commissioners Court may transfer the fifty per cent (50%) received by said Court to the school districts. [Acts 1945, 49th Leg., p. 29, c. 19, § 1.]

Art. 2351c. Court houses and criminal court buildings; maintenance and operation employees under control of commissioners' courts in counties of over 500,000.—In all Counties having a population of more than five hundred thousand (500,000), according to the last preceding or any future Federal Census, all employees necessary to the repair, maintenance, and operation of all court houses and Criminal Court Buildings shall be under the direction and control of the Commissioners' Court. The Court may designate a building superintendent who shall appoint all necessary employees subject to confirmation by the Commissioners' Court. The Court shall have the right to discharge any such employee at any time for cause. Such appointments shall be in writing, shall be signed by the employee, state the nature of the duties to be performed, the period for which such employment is made, the hours to be worked, and the amount to be paid, and shall conform to the requirements and be subject to the limitations provided by Section 19, Chapter 465, Acts

of 1935, Second Called Session [1]. Such employments shall in no event extend beyond January 1st of the year succeeding the appointment, but may be renewed from year to year. The number of persons to be employed and the amounts to be paid shall be subject to the approval of the County Auditor. All laws regulating the making of employments, the accounting for funds, and all budget laws and regulations applicable in the Counties to which this Act applies shall apply to such employments, except insofar as in conflict with this Act, in which event this Act shall control. All employees, including jail guards, matrons, elevator operators and other such employees engaged in the operation of the jails in such Counties shall continue to be employed and discharged by the Sheriff in the manner now provided by law, and all employees necessary for the proper conduct of the jails or the safekeeping of the prisoners shall be subject to the exclusive direction and control of the Sheriff of such County. [Acts 1941, 47th Leg., p. 35, ch. 21, § 1.]

1 Article 3912e.

Art. 2352. [2242] [1538] May levy taxes.—Said court shall have the power to levy and collect a tax for county purposes, not to exceed twenty-five cents on the one hundred dollars valuation, and a tax not to exceed fifteen cents on the one hundred dollars valuation to supplement the jury fund of the county, and not to exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment to the Constitution, September 25, A. D. 1883, and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as in the Constitution otherwise provided. They may levy an additional tax for road purposes not to exceed fifteen cents on the one hundred dollar valuation of the property subject to taxation, under the limitations and in the manner provided for in Article 8, Sec. 9, of the Constitution and in pursuance of the laws relating thereto. [Const. art. 8, sec. 9; Amendment 1899.]

Road districts organized and bonds issued under laws held invalid by the United States Supreme Court in Browning v. Hooper, 46 S. Ct. 141, 269 U. S. 396, 70 L. Ed. 330, were validated by Acts 1926, 39th Leg., 1st C. S., p. 33, ch. 17.

Art. 2352a. County tax for advertising.—That in all counties in Texas having a population of at least 202,000 inhabitants and less than 210,000 inhabitants, as shown by the Census of 1920, a direct tax of not over five cents on the valuation of One Hundred Dollars may be authorized and levied by the Commissioners' Court of such county for the purpose of advertising said county and its county seat, provided that all such levy of taxes shall be submitted to the qualified tax-paying voters of the county and a majority vote shall be necessary to levy the taxes. [Acts 1930, 41st Leg., 5th C.S., p. 182, ch. 42, § 1.]

Art. 2352b. [Unconstitutional.]

This article [Acts 1935, 44th Leg., 1st C.S., p. 1541, ch. 390] held to be a local law applicable only to El Paso County and hence void as making an unreasonable classification bearing no relation to the object sought to be accomplished by the act. See, Miller v. El Paso County, 136 T. 370, 150 S.W.2d 1000.

Art. 2352c. County tax for advertising in counties of 40,000 to 50,000 population; Board of County Development.—Section 1. In all counties in this State having a population of not less than forty thousand (40,000) inhabitants and not more than fifty thousand (50,000) inhabitants, and containing a city having a population of not less than thirty thousand (30,000) inhabitants nor more than forty thousand (40,000) inhabitants, as shown by the last preceding Federal Census, a direct tax of not over five cents (5¢) on the valuation of One Hundred Dollars ($100) may be authorized and levied by the Commissioners Court of such county, for the purpose of advertising and promoting the growth and development of said county and its county seat; provided that before the Commissioners Court of any such counties shall be authorized to levy any tax for such purpose, the qualified taxpaying voters of the county shall by a majority vote authorize the Commissioners Court to thereafter levy annually a tax not to exceed five cents (5¢) on the one hundred dollars assessed valuation.

Sec. 2. The amount of money collected from such levy of taxes by the Commissioners Court of any such county shall be paid to the Board of County Development in twelve (12) monthly installments as collected. All moneys received by the Board of County Development from such tax shall be expended only for the purposes authorized by this Act, and such Board shall annually render an itemized account to the County Auditor of all receipts and disbursements.

Sec. 3. There is hereby created in such counties as may vote in favor of this tax a Board of County Development, which shall devote its time and efforts to the growth, advertisement, and development of any such county. The Board of County Development shall consist of five (5) members; two (2) to be appointed by the Commissioners Court of such counties, representative of the agricultural interest of such counties, and three (3) of whom shall be appointed by the Board of Directors of the Chamber of Commerce of the county seat of such county. Said members shall serve for a period of two (2) years from their appointment, without compensation, and until their successors are appointed and accept such appointment. Vacancies on such Board shall be filled in the same manner as the original appointments, and by the same agencies.

All members of such Board of County Development shall be qualified tax-paying voters of the county in which they are appointed to serve. [Acts 1939, 46th Leg., Spec.L., p. 966.]

Sections 2 and 3 of the amendatory Act of 1941, p. 905, ch. 558, provide that "The authority to levy the tax provided for is restricted to counties of more than one hundred thousand (100,000) and that a holding of partial invalidity shall not affect the remaining portions.

Art. 2352d. Appropriations for advertising by counties; Board of Development.

Appropriations

Section 1. All counties in the State of Texas may appropriate from the General Fund of said counties an amount not exceeding five (5) cents on the one hundred dollars assessed valuation, for the purpose of advertising and promoting the growth and development of such county; providing that before the Commissioners Court of any county may appropriate any sums for such purpose, the qualified taxpaying voters of said county shall, by a majority vote of the persons voting at such election, authorize the County Commissioners to thereafter appropriate not to exceed five (5) cents on the one hundred dollars assessed valuation.

Board of Development Fund; budget

Sec. 2. The amount of money approved by the Commissioners Court for the Board of Development shall constitute a separate fund to be known as the Board of Development Fund and shall not be used for any other purpose. Each claim against the Board of Development shall be authorized and approved by the Board of Development before presented for payment, and after such approval, shall be presented to the Commissioners Court and acted upon as all other claims against the Commissioners Court.

The Board of Development hereinafter provided for shall annually, in advance, prepare and submit to the Commissioners Court a budget for the ensuing year in the same manner as required of counties. The money appropriated annually shall be governed by

the discretion of the Commissioners Court, but in no event shall said sum be in excess of five (5) cents on the one hundred dollars assessed valuation.

Board of Development

Sec. 3. There is hereby created, in counties qualifying under this law, a Board of Development, which shall devote its time and effort for the purpose of advertising and promoting the growth and development of any such county. The Board of Development shall be authorized to expend any sums reasonably necessary to accomplish its purposes for personnel, rent, and materials, subject to the approval of the Commissioners Court.

The Board of Development shall consist of five (5) members, to be appointed by the Commissioners Court; said members shall serve for a period of two (2) years from their appointment, without compensation, and until their successors are appointed and accept said appointment. Vacancies on such Board shall be filled by the Commissioners Court in the same manner as the original appointment.

Law as cumulative; maximum appropriation

Sec. 4. This law shall be cumulative of all other laws authorizing counties to appropriate money, or to levy a tax for advertising and promotional purposes, and counties shall have the option of operating under any one applicable law, but in any event, the maximum amount of money which can be appropriated for such purpose shall not exceed the limits herein fixed.

Appropriations validated

Sec. 5. Any sums heretofore appropriated or expended for advertising or promotional purposes under any such previous Acts are hereby validated. [Acts 1941, 47th Leg., p. 341, ch. 186; Acts 1941, 47th Leg., p. 905, ch. 558, § 1.]

Section 2 of the act of 1941, p. 905, ch. 558 provided that the authority to levy the tax provided for therein should be restricted to counties of more than 100,000. Section 3 thereof provided that a holding of partial invalidity should not affect the remainder of the Act.

Art. 2353. [2243] [1539] [1516] Tax limit.—No tax levied for the purpose of paying debts incurred prior to the eighteenth day of April, A. D. 1876, shall exceed two and one-half mills on the dollar, and no tax levied for the erection or repair of public buildings shall exceed two and one-half mills on the dollar for any one year. [Const. art. 8, sec. 9; Amendment 1899.]

Art. 2354. [2244] [1540] [1517] When tax levied.—No county tax shall be levied except at a regular term of the court, and when all members of said court are present. [Id.]

Art. 2354a. [Expired.]

This article, [Acts 1943, 48th Leg., p. 381, ch. 256, § 2,] permitting levy by a quorum of the members of the Commissioners Court when any of the members of the court or the county judge were in active military service, was, by its terms effective only until May 1, 1945, and has expired.

Art. 2355. [2245–6] To fill vacancies.—The Court shall have power to fill vacancies in the office of: County Judge, County Clerk, Sheriff, County Attorney, County Treasurer, County Surveyor, County Hide Inspector, Assessor of Taxes, Collector of Taxes, Justices of the Peace, Constables, and County Superintendent of Public Instruction. Such vacancies shall be filled by a majority vote of the members of said Court, present and voting, and the person chosen shall hold office until the next general election. [As amended Acts 1927, 40th Leg., 1st C. S., p. 248, ch. 90, § 1.]

Art. 2356. [2252–3] Bridges in corporate limits.—Said court may erect bridges within the corporate limits of any city or town to the same extent and under the same conditions now prescribed by law for the construction of bridges outside the limits of any city or town. Said court and the governing body of any city or town may co-operate in the erection of a bridge within the corporate limits of a city or town, and jointly erect such bridge upon terms and conditions mutually agreed upon; and either or both the city and county may issue its bonds to pay its proportionate part of the debt by complying with the requirements of the law regulating the issuance of bonds by counties and cities and towns. [Acts 1895, p. 164; G. L. vol. 10, p. 894.]

Art. 2357. [2255] [1547] Shall keep in repair.—The commissioners court of counties owning bridges, situated within the corporate limits of cities and towns, shall keep the same in repair. This article shall not affect or diminish the liability of town and city corporations for injuries caused by defective condition of such bridges situated within the city limits. [Acts 1897, p. 212.]

Art. 2358. [2256] May contract for supplies.—The commissioners court by an order entered of record, may contract as hereinafter prescribed, with some suitable person or persons to supply the county with blank books, all legal blanks and stationery as may be required by law to be furnished the county officials. [Acts 1907, p. 252.]

Art. 2359. [2257] Bids advertised.—The commissioners court shall advertise, at least once in every two years, for sealed proposals to furnish blank books, legal blanks, stationery and such other printing as may be required for the county for the term of such contract, and shall receive separate bids for the different classes hereinafter designated. Such advertisement shall be made by the county clerk, who shall notify by registered letter, each newspaper and job printing house in the county, and at least three stationery and printing houses in the State, of the time said contract is to be awarded, and of the probable amount of supplies needed. [Id.]

Art. 2360. [2258] New bids advertised for.—Should supplies furnished by the successful bidder not be of the quality designated and provided for, then the commissioners court may declare such contract null and void, and from time to time advertise for sealed proposals as in the first instance, rejecting any or all bids as often as they may deem best. [Id.]

Art. 2361. [2260] Preference to local citizens.—All things being equal, contracts must be awarded to a citizen or taxpayer of the county in which the contract is let. [Id.]

Art. 2362. [2262] Stationery classified.—The stationery shall be divided into four classes: Class "A" shall embrace all blank books and all work requiring permanent and substantial binding. Class "B" shall embrace all legal blanks, letter heads and other printing, stationery and blank papers. Class "C" shall embrace typewriter ribbons, pens, ink, mucilage, pencils, penholders, ink stands and ware of like kind. Class "D" poll tax receipts and all election supplies of whatever nature and description, not furnished by the State. Each and every bid shall be upon a particular class, separate and apart from any other class. To the lowest bidder on each class shall be awarded the contract for all work of that class. [Id.]

Art. 2363. [2263] Bond with bid.—Each bid shall be accompanied by a bond of the bidder, with two or more good and sufficient sureties, conditioned that, should the contract be awarded to him, he will without delay, upon being notified of such award, enter into a written contract, according to law and with his proposal, and will give such bond as may be required for the faithful performance of said contract. [Id.]

Art. 2364. [2264] Unlawful interest in contract.—No member of the commissioners court or any county officer shall be, either directly or indirectly, interested in any such contract. [Id.]

Art. 2365. [2265] Contract made in open court.—All contracts shall be made in open court, with the lowest bidder, and all bids shall be spread in full on the minutes of the court.

Art. 2366. [2266] Contract and bond.—The successful bidder shall enter into a written contract with the court, and shall give bond in the sum of two hundred and fifty dollars for each class or contract, to be approved by the county judge, conditioned for the faithful compliance with his bid and with the law, and shall be made payable to the county judge or his successors in office. [Id.]

Art. 2367. [2268] Affidavit with bid.—The manager, secretary or other agent or officer of the bidder shall attach to each bid an affidavit to the effect that affiant has full knowledge of the relations of the bidder with the other firms in the same line of business and that the bidder is not a member of any trust, pool or combination of any kind and has not been for six months last past, directly or indirectly concerned in any pool or agreement or combination to control the price of supplies bid on, or to influence any person to bid or not to bid thereon. [Id.]

Art. 2368. [Repealed by Acts 1931, 42nd Leg., p. 269, ch. 163, § 10.]

See article 2368a, post.

Art. 2368a. Requiring governing advertising for bids by counties and cities.

Definitions

Sec. 1. The word "city" as used in this Act shall include all cities and towns incorporated under General or Special Laws, and all cities operating under charter adopted under the provisions of Article 11, Section 5, of the Constitution of Texas, unless especially excepted under the terms of this Act.

The term "governing body" as used in this Act shall include the governing body of every city, whether designated as "Board of Alderman," "City Council," "City Commission," or otherwise.

For the purposes of this Act the term "current funds," shall include money in the treasury, taxes in process of collection during such tax year, and all other revenues which may be anticipated with reasonable certainty during such tax year.

The term "bond funds" shall include money in the treasury already received from the sale of bonds, and the proceeds of bonds theretofore voted but not yet issued and delivered.

The term "time warrant" as used in this Act shall include any warrant issued by a city or county not payable out of current funds.

The short title of this Act shall be "Bond and Warrant Law of 1931."

Nothing in this Act shall be construed as to affect any bonds or warrants legally issued or authorized to be issued and for which a tax has been levied for the payment of interest and principal thereof, prior to the time when this Act shall become effective and under the laws existing at that time, nor as affecting the matters covered by House Bill No. 981,[1] Acts of the 42nd Legislature, Regular Session, provided that after June 1, 1932, the requirements of this Act with respect to notice, competitive bidding, and a referendum election shall also be complied with by all cities then acting under the provisions of said House Bill No. 981.

Competitive bidding for contracts for public works; advertisements

Sec. 2. No county acting through its Commissioners Court and no city in this State shall hereafter make any contract calling for or requiring the expenditure or payment of Two Thousand Dollars ($2,000) or more out of any fund or funds of any county or subdivision of any county creating or imposing an obligation or liability of any nature or character upon such county or any subdivision of such county, or upon such city, without first submitting such proposed contract to competitive bids. Notice of the time and place when and where such contract shall be let shall be published in such county (if concerning a county contract, or contract for such subdivision of such county) and in such city (if concerning a city contract) once a week for two (2) consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least fourteen (14) days prior to the date set for letting said contract, and said contract shall be let to the lowest responsible bidder. The Court and, or, governing body shall have the right to reject any and all bids, and said bidder shall be required to give good and sufficient bond in the full amount of the contract price, for the faithful performance of such contract, executed by some Surety Company authorized to do business in this State in accordance with the provisions of Article 5160, Revised Statutes of 1925, and amendments thereto. If there is no newspaper published in such county, the notice of the letting of such contract by such county shall be given by causing notice thereof to be posted at the County Courthouse door for fourteen (14) days prior to the time of letting such contract. If there is no newspaper published in such city, then the notice of the letting of such contract by such city shall be given by causing notice thereof to be posted at the City Hall for fourteen (14) days prior to the time of letting such contract. Provided, that in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens, or to preserve the property of such county or city, or when it is necessary to preserve or protect the public health of the citizens of such county or city, or in case of unforeseen damage to public property, machinery, or equipment, this provision shall not apply; and provided further, that it shall not be applied to contracts for personal or for professional services, nor to work done by such county or city and paid for by the day, as such work progresses.

Provisions in reference to notice to bidders, advertisement thereof, the furnishing of surety bonds by contractors and the manner of letting of contracts, as contained in the Special Charter of a city, if in conflict with the provisions of this Section, shall be followed in such city notwithstanding any other provisions of this Act.

Any and all such contracts or agreements hereafter made by any county or city in this State, without complying with the terms of this Section, shall be void, and shall not be enforceable in any Court of this State, and the performance of same and the payment of any money thereunder may be enjoined by any property taxpaying citizen of such county or city. Provided, however, that the provisions of this Act shall not apply to counties having a population of more than three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census. [As amended Acts 1947, 50th Leg., p. 283, ch. 173, § 1.]

Issuance of time warrants

Sec. 3. When it shall be the intention of the Commissioners' Court, or of the governing body, to issue time warrants for the payment of all or any part of the proposed contract, the notice to bidders required under Section 2 of this Act shall recite that fact, setting out the maximum amount of the proposed time warrant indebtedness, the rate of interest such time warrants are to bear, and the maximum maturity date thereof.

Referendum on bond issues

Sec. 4. If, by the time set for the letting of the contract, as many as ten per cent (10%) in number of the qualified voters of said county, or city, as the case may be, whose names appear on the last approved tax rolls as property taxpayers, petition the Commissioners' Court, or governing body, in writing to submit to a referendum vote the question as to the issuance of bonds for such purpose, then such Commissioners' Court, or governing body, shall not be authorized to make said expenditure, and shall not finally award said contract unless the proposition to issue bonds for such purpose is sustained by a majority of the votes cast at such election. The law in reference to elections for the issuance of city and county bonds as contained in Chapters 1 and 2, Title 22, Revised Statutes of 1925, shall govern in so far as consistent with the provisions of this Act. The law in reference to the issuance, approval, registration and sale of bonds as contained in Chapters 1 and 2, Title 22, Revised Statutes of 1925, shall govern insofar as consistent with the provisions of this Act. Provided, that all such bonds shall mature and be payable as provided herein for funding bonds.

If such petition is not so filed with the County Clerk, or the City Secretary or Clerk, then the Commissioners' Court or the governing body may proceed with the final award of the contract and with the issuance of said warrants, but in the absence of such petition, the Commissioners' Court or governing body may at its discretion also submit such question to a vote of the people.

Expenditures permissible without notice or referendum

Sec. 5. The notice required in Sections 2 and 3, and the right to referendum election defined in Section 4, shall not be applicable to expenditures payable out of current funds or bond funds, as above described, nor to additional expenditures by counties unless in excess of Five Hundred Dollars ($500.00) for each One Million Dollars ($1,000,000.00), or a part thereof, of taxable property in said county, according to the last approved tax rolls; provided, however, that in counties of a valuation of less than Six Million Dollars ($6,000,000.00), said restriction of Five Hundred Dollars ($500.00) for each One Million Dollars ($1,000,000.00) shall not apply, but in lieu thereof the maximum authorized warrants shall be Three Thousand Dollars ($3,000.00) annually; said Five Hundred Dollars ($500.00) for every One Million Dollars ($1,000,000.00) of property shall be the maximum amount of time warrants for all purposes to be issued by such county during the current calendar year, including the proposed expenditure, except in the counties of a valuation of less than Six Million Dollars ($6,000,000.00) as above provided; and provided further that no such warrants shall ever be issued by a county in excess of One Hundred Thousand Dollars ($100,000.00) for any one year, without the duty to give notice and the right to referendum provided in Section 3. If in excess of the maximum, the expenditure cannot be authorized until the expiration of the time for filing the petition for referendum vote has expired. The notice required and the right to referendum election defined in Sections 2, 3 and 4 shall not be applicable to expenditures payable out of the current funds or bond funds, as above described, nor to additional expenditures by cities unless in excess of Seven Thousand Five Hundred Dollars ($7,500.00) for cities having a population of five thousand (5,000) people, or less, as shown by the Federal Census immediately preceding; in excess of Ten Thousand Dollars ($10,000.00) for cities having a population of more than five thousand (5,000), and less than twenty-five thousand (25,000) as shown by the Federal Census immediately preceding; in excess of Twenty-five Thousand Dollars ($25,000.00) for cities having a population of more than twenty-five thousand (25,000) and less than fifty thousand (50,000), as shown by the Federal Census immediately preceding, and in excess of One Hundred Thousand Dollars ($100,000.00) for cities having a population of more than fifty thousand (50,000), as shown by the Federal Census immediately preceding. Said respective amounts above described shall be the maximum amounts of time warrants for all purposes to be issued by such cities during the current calendar year, without the duty to give notice and the right to referendum, provided in Sections 2, 3 & 4; otherwise, the expenditure cannot be authorized until the expiration of time for the filing of petition for referendum vote, has expired, including the proposed expenditure.

Provided, that in case of public calamity caused by fire, flood, storm, or to protect the public health, or in case of unforeseen damage to public property, machinery or equipment, the Commissioners' Court or the governing body may issue such time warrants as are necessary to provide for the immediate repair, preservation or protection of public property and the lives and health of the citizens of such county or city, irrespective of the limitations contained in this Section and the restrictions imposed by Sections 2, 3 and 4 hereof.

Improvements exempt from operation of act

Sec. 6. The provisions of Sections 2, 3 and 4 of this Act shall not apply to expenditures for, or relating to paving, drainage, street widening, and other public improvements, the cost of at least one-third of which is to be paid by or through special assessments levied on properties to be benefited thereby. The provisions of this Act shall not affect projects for public improvements theretofore lawfully authorized, or that may hereafter be lawfully authorized by a vote of the people, and where there may be a deficiency of funds to complete same in accordance with the plans and purposes authorized by the voters. The provisions of this Act shall not apply to bonds or warrants issued under Title 118, Revised Civil Statutes of 1925, pertaining to sea walls.

Provisions inapplicable to reconstruction or repair of court houses or jails

Sec. 6a. The provisions of Section 4 of the "Bond and Warrant Law of 1931" shall not apply to the issuance of warrants for the building, construction, reconstruction and/or repair of a court house and/or jail in any county where the court house has been torn down or demolished and where notice was given under Section 2 of said Bond and Warrant Law prior to the taking effect of this Act, and there was no county court house at the time such notice was published, but in such cases warrants may be issued for the building, construction, reconstruction and/or repair of court houses and/or jails, without notice, and no election shall be called upon any petition filed under Section 4 of said Bond and Warrant Law. All proceedings for the issuance of warrants, and all warrants issued or to be issued for any such purpose or purposes in any such case are hereby validated. [As added Acts 1935, 44th Leg., p. 105, ch. 35, § 1.]

Refunding indebtedness; procedure

Sec. 7. The Commissioners' Court of any county or the governing body of any city in the State of Texas may pass all necessary orders and ordinances to provide for funding or refunding the whole or any part of any legal debt of such county or city, by canceling evidences thereof and issuing to the holders or creditors, notes, bonds or treasury warrants, with or without coupons, bearing interest payable annually, or semi-annually, at a rate not to exceed six per cent (6%) per annum. The exercise of such authority shall be regulated as follows:

(a) Such Commissioners' Court and such governing bodies shall have the right at all times to issue refunding bonds for the refunding of any outstanding

bonds legally issued and outstanding matured interest on any legally issued outstanding bonds, subject to laws applicable to the issuance of refunding bonds and without the necessity of any notice or right to a referendum vote.

(b) Such Commissioners' Courts and governing bodies shall have the power to provide for funding the whole or any part of any legal debt of their respective counties or cities, existing at the time this Act becomes effective, except that which was created upon the condition that it should never become a charge upon the general revenues of such county or city, but canceling the evidences of such indebtedness and issuing to the holders or creditors, notes, bonds, or treasury warrants; provided that if funding bonds are delivered, the evidences of the original indebtedness shall be surrendered to the Comptroller of the State of Texas and cancelled by him prior to the registration of such funding bonds, and prior to their delivery to said holders or creditors.

(c) Such Commissioners' Courts and such governing bodies shall have the power to fund or refund any and all outstanding legal indebtedness, existing at the time this Act becomes effective, into notes or treasury warrants with or without coupons, in accordance with this Act and in accordance with the law as it exists at the time this Act becomes effective.

The funding bonds hereby authorized shall be payable serially not exceeding forty (40) years from the date thereof, unless the Commissioners' Court or governing body affirmatively adjudge that the financial condition of such county or city will not permit in such installment as will make the burden of taxation to support same, approximately uniform throughout the term of said bond issue. Such bonds shall be executed and issued in the same manner now provided by law for the execution and issuance of bonds to refund outstanding county or city bonds. Said bonds shall bear interest not exceeding six per cent (6%) per annum, and shall be approved by the Attorney General and registered by the State Comptroller in the same manner as other county or city refunding or funding bonds.

(d) After this Act becomes effective, no item of indebtedness thereafter issued, except bonds and matured coupons thereon, and except items of indebtedness to be issued under contracts made before this law becomes effective, shall be funded or refunded except in the manner hereinafter in this subsection prescribed, to-wit:

Notice of intention to issue such funding bonds, including a statement of the amount and purpose of such bonds, shall be published at least once a week for three (3) successive weeks in a newspaper of general circulation within such county, or within such city, as the case may be, at least thirty (30) days before the meeting of the Commissioners' Court or of the governing body, at which time it is proposed to issue such bonds. If no newspaper is published in such county or city, as the case may be, such notice may be posted at the Courthouse door of the county, or at the City Hall, as the case may be. At any time before the date fixed for the issuance of such bonds, not less than ten per cent (10%) of the qualified property taxpaying voters of the county, as shown by the records in the office of the County Tax Collector, or in the office of the City Tax Collector, as the case may be, may file a petition in the office of the County Clerk or City Secretary or Clerk, praying the Court or the governing body to order an election for the purpose of submitting the proposition to issue such bonds to a vote of the qualified property taxpaying voters of the county or city as the case may be. Upon the filing of such petition, such Court or governing body shall at the next meeting thereof, order an election to be held in such county or city to determine whether or not such funding bonds shall be issued as indicated in such petition.

The Commissioners' Court or governing body shall determine the time and the place or places of holding said election; and the manner of holding same shall be governed by the laws of the State regulating elections for the issuance of other county or city bonds under Chapters 1 and 2, Title 22, Revised Civil Statutes of 1925. If the proposition for the issuance of such bonds be sustained by a majority of the property taxpaying voters, voting at such election, then such bonds shall be authorized and shall be issued by such Commissioners' Court or governing body.

In the event no such petition is presented to the Commissioners' Court or governing body within the time hereinabove prescribed, no election on the proposition shall be required, and such Court or governing body shall then have the power to pass all necessary orders to provide for canceling or funding the indebtedness described in such published notice of intention to fund said debts, and may cancel the evidences thereof by issuing to the holders the necessary amount of funding bonds.

The funding bonds hereby authorized shall be payable serially not exceeding forty years from the date thereof, unless the Commissioners' Court or governing body affirmatively adjudge that the financial condition of such county or city will not permit, in such installments as will make the burden of taxation to support same, approximately uniform throughout the term of said bond issue. Such bonds shall be executed and issued in the same manner now provided by law for the execution and issuance of bonds to refund outstanding county or city bonds. Said bonds shall bear interest not exceeding six per cent (6%) per annum, and shall be approved by the Attorney General and registered by the State Comptroller in the same manner as other county or city refunding or funding bonds.

The Commissioners' Court of any county and the governing body of any city shall at all times have power without notice or the right to referendum to fund or refund any item of indebtedness created in accordance with the provisions of this Act to prevent or relieve a default or an impending default in the payment of principal or interest.

Tax levy for payment of bonds or warrants

Sec. 8. It is hereby made the duty of all Commissioners' Courts and of all governing bodies, as the case may be, to levy, and have assessed and collected, taxes sufficient to pay the interest as it accrues and the principal as it matures on all bonds and time warrants issued in accordance with the provisions of this Act. The same duties in reference to the levying, assessment and collection of taxes, as are imposed by the provisions of Chapters 1 and 2, of Title 22, Revised Civil Statutes of 1925, to assure the payment of taxes on bonds therein authorized, are imposed on said Commissioners' Courts and said governing bodies in reference to all bonds and time warrants issued in accordance with this Act; provided that if a tax, meeting the requirements of Article 11, Sections 5 and 7 of the Constitution shall have been levied to pay principal and interest thereon, any bond or warrant may thereafter be funded or refunded through the issuance of funding or refunding bonds or warrants irrespective of the fact that due to decline of property values or for other reasons, the City or County seeking to issue such funding or refunding bonds or warrants does not then have available taxing power sufficient to pay the principal and interest of such funding or refunding bonds or warrants. [As amended Acts 1937, 45th Leg., p. 179, ch. 95, § 1.]

Refunding inapplicable to utility bonds payable from revenues

Sec. 8a. Provided any city or town which has theretofore issued bonds, warrants, certificates, or other securities payable from revenues and income

of any utility or utilities owned by such city or town may fund, refund, or extend such bonds, warrants, certificates or other securities, without the necessity of complying with the referendum provisions hereof, provided such refunding does not increase the amount of such indebtedness, taking into consideration interest adjustments; provided, however, that no such bonds, warrants, certificates, or other securities payable from revenues, or from the income of any utility, which may be funded, refunded or extended by a city or town, shall ever be made a charge upon mon eys raised or to be raised by taxation.

Bonds issued in violation of act invalid

Sec. 9. Any warrant bond, funding bond, refunding bond or other evidence of debt or obligation created, or attempted to be created, by the County Commissioners' Court of any county, or the governing body of any city in this State, in violation of or contrary to the provisions of this Act, shall be void, and the payment thereof may be enjoined by any taxpaying citizen of such county, or any taxpaying citizen of such city, in any court of competent jurisdiction in such county.

Provided, however, that notwithstanding anything contained in this Act, Articles 709 to 715, inclusive, of the Revised Statutes of Texas for 1925, shall apply with full force and effect to all bonds, funding bonds and refunding bonds issued under this Act.

Application to special charter cities

Sec. 10. In all cities operating under Special Charter the provisions of this Act shall apply, providing for a referendum vote where the proposed expenditure is not payable out of current funds, or bond funds, and requires the issuance of time warrants in excess of the permitted amount. This Act shall not repeal provisions of Special Charters providing any additional rights to referendum elections. The rights, power and duties conferred on and imposed on all cities in reference to the issuance of funding or refunding bonds and warrants shall be applicable to all cities, irrespective of charter provisions to the contrary. All laws, General and Special, and parts of laws in conflict herewith are hereby expressly repealed. Article 2368, Revised Civil Statutes of 1925, is expressly repealed.

Mortgage of utility systems permissible

Sec. 11. Nothing herein shall be so construed as to preclude any city or town in this State, whether organized under General or Special Law or operating under Special Charter, from encumbering or mortgaging its light system, water system, sewer system or any other utility, either, both or all, and the franchise and the income thereof and everything pertaining thereto acquired or to be acquired, to secure the payment of funds to purchase same or to make or purchase extensions, additions, or improvements thereto, as contemplated in Articles 1111 to 1118, both inclusive, of the Revised Civil Statutes of Texas, 1925, with amendments thereto, or by valid provisions of the charter of such city or town, or by the provisions of Article 1175, Revised Civil Statutes of Texas, 1925, provided that in making such contracts or agreements or encumbrances and in issuing revenue bonds, warrants or other obligations to be paid out of the property and income from such system or systems, the governing body of such city or town shall comply with the provisions of this Act in regard to notice and competitive bids and the right to a referendum of such question.

Provided, however, that no competitive bids shall be required in case the municipality proposes to acquire an existing utility plant, and in such cases the voters shall be entitled to a referendum, only on the question of whether or not the utility shall be purchased, in the manner and under the conditions set forth in this Act.

Provided, further, that notwithstanding any provisions of this Act, and notwithstanding any provision of its Special Charter, if such city or town is acting under authority of House Bill No. 981,[1] passed by the Regular Session of the 42d Legislature, the requirements of this Act in reference to notice, competitive bids and the rights to referendum shall not apply until after June 1, 1932.

Inapplicable to warrants based or issued on current funds

Sec. 11a. Nothing contained in this Act shall be construed as requiring any city to give any notice as a condition precedent to issuing warrants payable out of current funds of said city and the issuance of any such warrants by any such city shall not be subject to the terms and provisions of this Act; provided, however, that at the time of the authorization of such warrants the Governing Body of the city, shall also pass an order setting aside such an amount of the current funds as will discharge the principal and interest of the warrants issued and based upon such current funds. And thereafter the so appropriated portion of such current funds shall not be used for any purpose other than to discharge said warrants. And no such warrants shall ever be refunded, but they must be discharged out of the designated funds. [Acts 1931, 42nd Leg., p. 269, ch. 163; Acts 1931, 42nd Leg., 1st C.S., p. 42, ch. 24, § 1.]

[1] Acts 1931, 42nd Leg., p. 783, ch. 314 (Art. 1118a, ante).
Section 12 of Acts 1931, 42nd Leg., p. 269, ch. 163, provided that if any section of the act is declared unconstitutional, such decision should not affect the remaining sections.
Section 2 of the Act of 1947 amending section 2 of this article repealed all conflicting laws.

Art. 2368b. Validating notes, bonds and warrant issues in certain cities.—Sec. 1. All findings and funding and refunding notes, bonds, warrants, time warrants and treasury warrants heretofore issued or authorized to be issued and attempted to be issued by any and all cities in the State, whether or not incorporated under General or Special Laws, and any and all cities operating under charters adopted under the provisions of Article 11, Section 5, of the Constitution of Texas, having a population in excess of One Hundred Seventy Five Thousand (175,000) according to the last preceding United States census, and which were heretofore issued, authorized to be issued, or attempted to be issued under authority of H.B. No. 312 [1] of the Forty-second Legislature, are in all respects validated.

Sec. 2. All orders of the governing bodies of such cities authorizing such issues of funding and refunding notes, bonds, warrants, time warrants and treasury warrants, or attempting to authorize the same, or any of the same, are in all respects validated.

Sec. 3. All orders of said governing bodies of said cities directing the levying and assessing of taxes to provide for the payment of interest and principal of such funding and refunding notes, bonds, warrants, time warrants and treasury warrants, as they respectively mature, are in all respects validated. [Acts 1931, 42nd Leg., 1st C.S., p. 85, ch. 40.]

[1] Acts 1931, 42nd Leg., p. 269, ch. 163 (Art. 2368a, ante).
See, also, article 835e, ante.
Relief to municipalities under Federal Bankruptcy Laws, see article 1024a, ante.

Art. 2368c. Validating proceedings as to funding warrants and bonds in cities of 11,000 and not less than 10,500.—All acts and proceedings of governing bodies of cities containing a population of not more than eleven thousand (11,000) nor less than ten thousand, five hundred (10,500), according to the last preceding Federal Census, in connection with the issuance of funding warrants and funding bonds heretofore authorized or attempted to be authorized, or heretofore issued or attempted to be issued, under the provisions of Chapter 163,[1] Acts Forty-second Legislature, Regular Session, are hereby in all things validated. The fact that by inadvertence or over-

sight any act of the officers of any such city was omitted shall in no wise invalidate such warrants or bonds. Provided that this Act shall not apply to any city whose bonds or warrants are the subject matter of litigation. [Acts 1935, 44th Leg., p. 482, ch. 196, § 1.]

[1] Article 2368a, ante.

Art. 2368d. Validation of funding and refunding securities issued by Commissioners' Court or Cities and Towns.—All actions heretofore taken by Commissioners' Courts and by the governing bodies of Cities and Towns in the authorization, execution, issuance and delivery of such funding and refunding bonds and such funding and refunding warrants, in attempted compliance with the provisions of Chapter 163, Acts of the Regular Session of the Forty-second Legislature[1] are hereby validated and all such funding and refunding securities issued pursuant to such actions are hereby validated; provided, however, that such validation shall not affect or in any wise apply to the subject matter of any litigation pending at the time this Act becomes effective, until such litigation is determined, finally, favorably to its validity, or until such litigation has been dismissed. [Acts 1937, 45th Leg., p. 179, ch. 95, § 2.]

[1] Article 2368a.

Art. 2368e. Validating notices to bidders on certain county projects and time warrants in payment.—In each instance wherein a county has given notice to bidders for the construction, improvement, or repair of any public building in the county and notice of intention to issue time warrants in which notice the maximum amount of time warrants stated does not exceed Sixty Thousand Dollars ($60,000), in payment for all or a part of the cost of such work, and such notice was published in a newspaper of general circulation in said county fourteen (14) days or more prior to the date therein set for receiving bids, and the second publication thereof is had before or after the effective date of this Act, and before the date set for receiving bids, such notice is hereby validated and declared to be legal and sufficient notice, notwithstanding the fact that such notice was not published for two (2) consecutive weeks, and the Commissioners Court is authorized to proceed with the making of a contract pursuant to such notice and the issuance of time warrants in payment therefor. Contracts made, and time warrants authorized in payment therefor, pursuant to such notice and prior to the effective date of this Act, are hereby validated.

Sec. 2. Provided that this Act shall not validate any warrants issued as herein described, the validity of which is attacked in any court of competent jurisdiction by suit pending therein at the time or within fifteen (15) days of the time this Act becomes effective. [Acts 1941, 47th Leg., p. 37, ch. 24; Acts 1941, 47th Leg., p. 125, ch. 97, § 1.]

Art. 2369. [2269] Commissioners may repeal order.—The commissioners court may, by order entered of record after contracts have been in force for the specified time in such contract, repeal said order. [Acts 1907, p. 252.]

Art. 2370. [2270] [1548] [1521] Buildings, etc. other than courthouse for courts and public business; leasing part; income; bonds or other evidence of indebtedness.—Section 1. The Commissioners Court of any county may, when necessary, provide buildings, rooms, or apartments at the county seat, other than the courthouse, for holding the sessions of the County Courts, District Courts, and for carrying on such other public business as may be authorized by the Commissioners Court, and may lease or rent such part of any such buildings, rooms, or apartments as may not be necessary for public use.

Sec. 2. Whenever any county in this State may have acquired a building (other than the courthouse) at the county seat which is used partly for public business and which is partly rented for private purposes, where such building was acquired by such county in settlement of an obligation owed to the county, and the Commissioners Court of such county desires to enlarge, remodel, renovate, add onto, repair, improve, or otherwise alter such building, and funds are not available for such purpose, the Commissioners Court of such county shall have the power to issue negotiable bonds, notes, warrants, or other evidences of indebtedness to secure funds for such purpose and to pledge, assign, encumber, and hypothecate the net income and revenues from the portion of such building which the Commissioners Court finds is not then and will not thereafter be necessary for public purposes. No such obligation so issued shall ever be a debt of such county but shall be solely a charge upon the income and revenue so encumbered and no such obligation shall ever be counted in determining the power of any such county to issue any bonds for any purpose authorized by law.

Sec. 3. No part of the income or revenue of any such building shall ever be used to pay any other debt, expense, or obligation of such county until the indebtedness so secured shall have been finally paid; provided that the expense of operation and maintenance including all salaries, labor, materials, interest, improvements, repairs, and extensions necessary to render efficient service and every proper item of expense shall always be a first lien and charge against such income and revenue and only such repairs and extensions as in the judgment of the Commissioners Court are necessary to keep the building in operation and render adequate service, or such as might be necessary to meet some physical accident or condition which would otherwise impair the original security, shall be a lien prior to the lien herein provided for.

There shall be charged and collected as rental for those parts of such building not used for public purposes, a sufficient amount to pay all operating, maintenance, depreciation, replacement, betterment, and interest charges, and expenses, and to create an interest and sinking fund sufficient to pay any securities issued hereunder.

Sec. 4. Each contract bond, warrant, note, or other evidence of indebtedness issued pursuant to this law shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Where bonds are issued hereunder, they may be presented to the Attorney General for his approval as is provided for the approval of municipal bonds issued by counties. In such case, upon approval, the bonds shall be registered by the State Comptroller as in the case of other municipal bonds. Projects financed in accordance with this law are hereby declared to be self-liquidating in character and supported by charge other than by taxation. Securities issued under the provisions hereof shall be subject to the applicable provisions of the Bond and Warrant Law of 1931 as amended (House Bill No. 312, Acts of 1931, Forty-second Legislature, page 269, Chapter 163, as amended [1]) except as same may be inconsistent herewith and under no circumstances shall any vote of the taxpayers be required upon any securities issued hereunder. [Acts 1876, p. 211; G.L. vol. 8, p. 1047; Acts 1941, 47th Leg., p. 643, ch. 388.]

[1] Article 2368a.

Art. 2371. Rest-room for women.—The Commissioners Court in each county in this State may maintain a rest room for women in the courthouse, or if for any reason a suitable rest room cannot be had in the courthouse, they may maintain a rest room at some convenient place near the courthouse.

The rest room may be comfortably furnished with lounge, chairs, mirror, lavatory, tables, and such other furnishings as may be needed to make the room attractive and comfortable for women who may be in attendance on the Court or who may for other reasons be in town.

The Commissioners Court may assist the business and professional men, the various women's clubs, and other organizations in paying the salary of a matron for the rest room; providing the County Judge shall appoint such matron with the consent of the Commissioners Court; providing that in counties having a population according to the last United States Census of less than twenty-five thousand (25,000), the expense and furnishing of the rest room shall not exceed One Hundred and Twenty-five Dollars ($125), nor shall the Commissioners Court expend more than Fifteen Dollars ($15) per month for the maintenance of the rest room, including the compensation paid by the county to the matron; counties having a population according to the last United States Census of more than twenty-five thousand (25,000) and less than fifty thousand (50,000) may expend not to exceed Two Hundred Dollars ($200) in furnishing a rest room and may expend for its maintenance not to exceed Twenty-five Dollars ($25) per month, including the compensation paid by the county to the matron; and those counties having more than fifty thousand (50,000) and less than two hundred and fifty thousand (250,000) population may expend in furnishing a rest room not to exceed Three Hundred Dollars ($300), and may expend for its maintenance, including the compensation paid by the county to the matron, any amount not to exceed Fifty Dollars ($50) per month; and those counties having a population of more than two hundred and fifty thousand (250,000) according to the last United States Census may expend in furnishing a rest room for women in the courthouse or in courthouse buildings or on courthouse property a sum not to exceed Three Hundred Dollars ($300) in furnishing such rest room, and may expend for its maintenance, including the compensation paid by the county to the matron, any amount not to exceed One Hundred Dollars ($100) per month. [Acts 1919, p. 159; Acts 2nd C.S.1919, p. 178; Acts 1937, 45th Leg., p. 555, ch. 275, § 1; Acts 1937, 45th Leg., 1st C.S., p. 1811, ch. 32, § 1.]

Art. 2372. Interpreters.—The Commissioners Courts of the various counties of this State are hereby authorized to pay for the services of interpreters employed by the various Courts within their respective counties a sum not to exceed Five Dollars ($5) per day, which is to be paid out of the General Funds of the county upon warrants issued by the respective Courts or clerks thereof in favor of the persons rendering such services; provided, however, that such interpreter shall be paid only for the time he is actually employed. [Acts 4th C.S.1918, p. 26; Acts 1937, 45th Leg., p. 201, ch. 106, § 1.]

Art. 2372a. [Repealed by Acts 1931, 42nd Leg., Spec.L. p. 1, ch. 1, § 1.]

Article repealed was Acts 1929, 41st Leg., p. 194, ch. 81.

Art. 2372b. Employment of dairying specialists.—The Commissioners' Court of Counties having not less than 72,900, and not more than 73,000 at the last regular Federal census in 1920, shall be empowered to employ dairying specialists at a total salary not to exceed $7,000.00 annually, said money to be paid out of the funds of said county. [Acts 1929, 41st Leg., 1st C.S., p. 56, ch. 22, § 1.]

Art. 2372c. Conservation of agricultural soils; use of road machinery.—Sec. 1. The widespread and rapid extension of soil erosion upon our agricultural and other lands, causing the irreparable [1] waste of soil fertility, and loss of productive power, must be recognized as the gravest menace to the continuing usefulness of this greatest of our natural resources; and as vitally affecting conditions fundamental in the economic well-being of the people.

Sec. 2. The State must recognize its responsibility, as the representative of the people, for the conservation of resources essential in the production of necessary agricultural products, and the promotion of the public welfare; and must provide, by uniform policies, for the cooperation in the discharge of such responsibility, of all constitutional subdivisions of the State.

Sec. 3. The Counties of the State are hereby declared to have the authority to employ, or permit to be employed, any road construction or other machinery or road equipment in the service of soil conservation and prevention of soil waste through erosion, whenever in the judgment of the County Commissioners' Court, entered upon the Minutes of the Court, such machinery or equipment is not demanded for the service of building and the upkeep of the roads of the County; and shall provide for compensation to the County Road Fund, or the road funds of any defined district or authorized subdivision in the County, for such employment of road equipment.

Sec. 4. In the public service of conserving the soil fertility of the lands of the County, the Commissioners' Courts shall have the authority to co-operate with the land owners and taxpayers of the County in all judicious efforts for the preservation of the productiveness of the soil from avoidable waste, and loss of productiveness of agricultural crops necessary to the public welfare, through permission to use the machinery and equipment that may be made available by the County for such purposes under written contract, and the County shall receive from such landowners and taxpayers compensation, upon such uniform basis as may be deemed equitable, and proper, for the co-operation extended and services rendered, all such compensation or funds to the County to be paid into the Road and Bridge Fund of the County; and the County Commissioners' Court may provide for payments from landowners and taxpayers of the County at such stated intervals and in such amounts, as and when the County taxes are collected, as may be equitable, for the use of the equipment for the protection of lands against continuing immeasurable injury through soil erosion; provided that the Commissioners' Court or representative thereof shall not go upon the land of any owner to improve, terrace, protect, or ditch such land until requested to do so in writing by such owner; and provided further, that the Commissioners' Court or representative thereof shall not be required to do such improving, terracing, protecting, and ditching unless such Court shall determine that such work is of some public benefit and said Court elects to do the work. [Acts 1931, 42nd Leg., p. 81, ch. 53.]

[1] So in enrolled bill. Session laws read "their reparable".

Art. 2372d. County horticultural and agricultural exhibits.—Section 1. All counties in the State acting by and through their respective Commissioners' Courts may provide for annual exhibits of horticultural and agricultural products, livestock and mineral products, and such other products as are of interest to the community. In connection therewith, such counties may also establish and maintain museums, including the erection of the necessary buildings and other improvements, in their own counties or in any other county or city in the United States, where fairs or expositions are being held.

Sec. 2. The Commissioners' Courts of the respective counties or the Commissioners' Courts of several counties may cooperate with each other and participate with local interests in providing for the erection of such buildings and other improvements as may be necessary to accomplish the purpose mentioned in Section 1, of this Act and for the assem-

bling, erecting, and maintaining of such horticultural and agricultural, livestock and mineral exhibits, and the expenses incident thereto.

Sec. 3. All incorporated cities, water improvement districts, and water control and improvement districts may cooperate with the Commissioners' Courts of such counties for the purposes stated in Section 1, and Section 2 of this Act and appropriate monies in providing for such exhibits, establishing and maintaining such museums, and in the erection of such buildings and improvements, and the assembling, erecting and maintaining of such horticultural, agricultural, livestock and mineral exhibits.

Sec. 4. Nothing herein contained shall be construed as repealing or modifying any of the provisions of Chapter 163, General Laws, Regular Session, Forty-second Legislature (known as House Bill 312),[1] nor as taking the provisions of this Act out of limitations of said Chapter 163. [Acts 1934, 43rd Leg., 4th C.S., p. 52, ch. 20; Acts 1936, 44th Leg., 3rd C.S., p. 2103, ch. 507, § 1.]

[1] Article 2368a, ante.

Section 2 of the Act of 1936 provided that partial invalidity should not affect the remainder of the Act and section 3 thereof repealed all conflicting laws.

Art. 2372d—1. Validation of warrants issued to construct exhibition buildings and bonds issued to fund such warrants.—Section 1. All warrants heretofore authorized and issued by the Commissioners Court of any County for the purpose of constructing a livestock and agricultural exhibition building within said County, where such livestock and agricultural exhibition building has been constructed, are hereby validated notwithstanding any objections other than constitutional that might be raised thereto and are hereby declared to be the valid and legal obligations of such County in accordance with the terms and provisions thereof.

Sec. 2. All bonds heretofore authorized by the Commissioners Court of any County for the purpose of funding any such warrants described in Section 1 hereof are hereby validated notwithstanding any objections other than constitutional that might be raised thereto, and any such County is hereby authorized to complete proceedings for the delivery of such bonds and to deliver such bonds, when approved by the Attorney General and registered by the State Comptroller of Public Accounts, in exchange for and upon the simultaneous payment and cancellation of such warrants as hereinabove described in Section 1, and said funding bonds when so delivered are hereby declared to be and shall be the valid and legal obligations of said County in accordance with the terms and provisions thereof; provided, however, that the provisions of this Act shall not apply to any warrants or bonds or proceedings therefor, the validity of which is being contested in any suit or litigation pending at the time this Act becomes a law. [Acts 1943, 48th Leg., p. 124, ch. 94.]

Art. 2372e. Buildings for canneries for unemployment relief.—Sec. 1. That County Commissioners Courts of this State be, and the same are hereby authorized to purchase materials for the purpose of aiding and cooperating with the agencies of the State and Federal Governments in the construction of buildings for the purpose of housing canneries and canning factories where appropriations have been or may hereafter be made out of the Federal and State Funds set aside for the relief of the unemployed and needy people in the State of Texas, and to pay for such materials out of the County's Permanent Improvement Fund.

Sec. 2. Nothing herein contained shall be construed as repealing or modifying any of the provisions of Chapter 163,[1] General Laws, Regular Session, Forty-second Legislature (known as House Bill 312), nor as taking the provisions of this Act out of limitations of said Chapter 163. [Acts 1934, 43rd Leg., 4th C.S., p. 58, ch. 24.]

[1] Article 2368a, ante.

Art. 2372e—1. Renting office space for administration of unemployment relief in counties of 48,900 to 49,000 population.—Section 1. The County Commissioners' Courts and the City Commission of any incorporated town within said County of this State are hereby authorized to lease or rent office space for the purpose of aiding and cooperating with the agencies of the State and Federal Governments engaged in the administration of relief of the unemployed and needy people of the State of Texas, and to pay the regular monthly utility bills for such offices, such as lights, gas and water; and when in the opinion of a majority of the Commissioners' Court of a county such office space is essential to the proper administration of such agencies of either the State or Federal Governments, said Courts are hereby specifically authorized to pay for same and for the regular monthly utility bills for such offices out of the County's General Fund by warrant as in the payment of other obligations of the County. The provisions of this Act shall apply to counties having a population of not less than forty-eight thousand nine hundred and not more than forty-nine thousand according to the last preceding Federal Census.

Sec. 2. All actions, proceedings, orders and contracts for such rental, lease or utility bills for such purposes as stated in Section 1 hereof, made and entered into by any Commissioners' Courts of this State, pursuant to which such service has been rendered, are hereby validated, confirmed and declared to be in full force and effect, notwithstanding any irregularity thereof prior to the enactment of this Act.

Sec. 3. If any part, section, paragraph, sentence, clause, phrase, or word contained in this Act shall ever be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions despite such invalidity. [Acts 1937, 45th Leg., 2nd C.S., p. 1829, ch. 5.]

Art. 2372e—2. Renting office space for administration of unemployment relief; cooperation with State and Federal agencies.—Section 1. The County Commissioners Courts and the City Commission of any incorporated town or city of this State are hereby authorized to lease, rent, or provide office space for the purpose of aiding and co-operating with the agencies of the State and Federal Governments engaged in the administration of relief to the unemployed or needy people of the State of Texas, and to pay the regular monthly utility bills for such offices, such as lights, gas, and water; and when in the opinion of a majority of a Commissioners Court of a county such office space is essential to the proper administration of such agencies of either the State or Federal Governments, said Court is hereby specifically authorized to pay for same and for the regular monthly utility bills for such offices out of the County's General Fund by warrants as in the payment of such other obligations of the county.

Sec. 2. All actions, proceedings, orders, and contracts for such rentals, lease, or utility bills for such purposes as stated in Section 1 hereof, made and entered into by any Commissioners Court of this State, pursuant to such services as have been rendered are hereby validated, confirmed, and declared to be in full force and effect, notwithstanding any irregularity thereof prior to the enactment of this Act.

Sec. 3. If any part, section, paragraph, sentence, clause, phrase, or word contained in this Act shall ever be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining

portions of this Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity. [Acts 1939, 46th Leg., p. 558.]

Art. 2372f. Pickup trucks, purchasing and maintaining in certain counties.—In any county in this State having a population of not less than sixty thousand, five hundred (60,500) nor more than sixty thousand, five hundred and twenty-five (60,525), and in any county having a population of not less than forty-three thousand, thirty-six (43,036), and not more than forty-three thousand, seventy-five (43,075), according to the last preceding Federal Census, the Commissioners Court is hereby authorized to allow each Commissioner to purchase a pickup truck to be used in each respective Precinct on official business and it shall be paid for out of the Road and Bridge Fund of the respective Commissioner's Precinct, and each Commissioner shall make under oath an account of his expenditures for such purpose. [Acts 1937, 45th Leg., p. 874, ch. 430, § 1.]

Art. 2372g. [Repealed by Acts 1945, 49th Leg., p. 82, ch. 58, § 4.]

The article repealed was Acts 1939, 46th Leg., p. 140.

Art. 2372g—1. Incapacitated employees; payment of salaries in counties of 290,000—500,000; vacations.—Section 1. From and after the effective date of this Act, in all counties in this State, having a population of not less than two hundred and ninety thousand (290,000), nor more than five hundred thousand (500,000) inhabitants, according to the last Federal Census and any future Federal Census, the Commissioners Courts shall provide for, and it shall be their duty to pay employees of such counties while incapacitated from duty on account of injury suffered or sustained while in the active and actual discharge of his or her duty to said county, upon the following basis and in the following manner, to wit: Where said employee suffers or sustains physical injury while in the actual discharge of his or her duties to the county, which renders said employee totally unfit for the discharge of such duties as may be imposed upon said employee by the Commissioners Court, then said Commissioners Court is hereby authorized and required to pay said employee not exceeding six (6) months pay upon the following basis: (a) The first three (3) months total incapacity, or any fractional part thereof, upon the basis of said employee's full and regular pay; (b) the last three (3) months total incapacity, or any fractional part thereof, if such incapacity should continue for said period, upon the basis of one-half (½) the regular pay of said employee.

Sec. 2. The Commissioners Courts of said counties and each of them shall inquire into any and all injuries of said employees before making any awards of money under this law, and it shall be the duty of said Commissioners Courts to examine witnesses, conduct hearings and subpœna witnesses for the purpose of determining the merits of each claim. The said Commissioners Courts are hereby specifically authorized to grant or refuse awards of money unto any employee, and are also given the right to make awards in any amount not exceeding the limits as set by this Act. Any employee feeling himself or herself aggrieved by the action of the Commissioners Court shall have the right of appeal to the Court having jurisdiction of the amount involved, provided said appeal is taken within ten (10) days after rendition of the judgment of the Commissioners Court of such county and said trial shall be de novo.

Sec. 3. The Commissioners Courts may grant vacations to employees in the actual employ of such counties not exceeding fourteen (14) days in any calendar year and, when such vacations are granted, all employees in actual employment of such counties shall be compensated for such vacation time as if actual service were being rendered under their employment. It being the purpose of this Act to grant reasonable vacation time during each calendar year for employees in the counties embraced within this Act. [Acts 1945, 49th Leg., p. 82, ch. 58.]

Section 4 of the Act of 1945 repealed article 2372g and all other conflicting laws and parts of laws.

Section 5 read as follows:

"Should any portion, section, sentence, clause, phrase or word in this Bill be unconstitutional or void, same shall in nowise affect and render invalid any other portion of this Act, and the Legislature declares that it would have passed and enacted all the remaining portions of this Act."

Art. 2372h. Hours of work, vacations, sick leave, hospitalization, etc., in counties of 500,000 or more; flood control districts; personnel system.

Rules and regulations; form of contract

Section 1. In all counties having a population of five hundred thousand (500,000) or more according to the last preceding or any future Federal Census, the Commissioners' Court of the county shall have authority to formulate in the manner hereinafter set out rules and regulations governing the hours of work, vacations, holidays, sick leave, medical care, hospitalization, compensation and accident insurance, and deductions for absences with reference to all persons whom this Act affects, and to establish for such persons classifications of positions and rates of compensation therefor, and to provide for the filing by the incumbents thereof of time, work, and statistical reports. The said rules and regulations when adopted as hereinafter provided shall apply to and govern all deputies, assistants, and employees of the county, or any flood control district lying wholly within the boundary lines of any such county, working under the Commissioners' Court or its appointees, and the deputies and assistants appointed by county and district officers pursuant to the provisions of Chapter 465, Acts of the 44th Legislature, 1935, Section 19, as amended,[1] where the salaries are paid from county or from the funds of any flood control district in said county, provided that nothing herein shall be construed as repealing said Chapter 465, supra., with respect to the authority of the county or district officers therein named to apply for appointment of deputies or assistants or the maximum amount or source of compensation which may be paid, but all such regulations with respect to deputies or assistants to such officers shall conform to laws now in effect or such as may hereafter be enacted by the Legislature and each county officer and each district officer, where the deputy or assistant or employee is authorized to be paid from county funds or funds of any flood control district within the county, shall continue to make appointments according to existing laws and shall designate the employee for each such position and shall direct and control the work or terminate the employment at the pleasure of such officer, as is now or as may be hereafter provided by law, it being the intention of this Act only to authorize the Commissioners' Court, in addition to the authority now vested in it by law, to formulate rules and regulations governing the hours of work, vacations, holidays, sick leave, medical care, hospitalization, compensation and accident insurance, and deductions for absences; to establish classifications of positions and salaries therefor; and to provide for filing of time, work, and statistical reports by such deputies, assistants, and employees, in the interests of efficiency and economy.

After appointment and approval thereof by the proper authority, all employments shall be placed in effect through written contracts of employment. Said court shall have the right to prescribe the form of contract of employment for its employees and employees of any said flood control district and for all employees of officers who are required to execute deputations under Chapter 465, Acts of the 44th Legislature, 1935, as amended,[1] and all officers whose deputies are

appointed subject to the approval of the Commissioners' Court shall be required to use such forms in the appointment of their deputies and assistants.

Contracts; hospital and insurance fund

Sec. 2. The Commissioners' Court of any such county shall have the right to provide in said contract of employment that deputies, assistants, and other employees of the county, its departments or officers, or of any flood control district within such county, whose compensation is payable from funds of any such county or flood control district therein, may receive hospitalization and medical care and treatment in any county or city-county operated hospitals located in such county under such rules, regulations, and conditions as said court may prescribe and shall be authorized to enter into contracts with the proper municipal authorities for that purpose. All such rules, regulations, and conditions adopted pursuant to the provisions of this Act and approved as provided herein, including those for hospitalization, medical care, and insurance, shall become a part of each deputation or contract of employment. The Commissioners' Court may provide in unusual cases for the expense of such hospital care in a private hospital and may provide for compensation, accident, hospital, or disability insurance, and for contributions for part payment from deputies, assistants, and employees. To provide for cases of hospitalization or medical attention in a county or city-county hospital, or private hospital when necessary, and for the payment of premiums for accident, disability, hospital, or compensation insurance, a fund shall be created to be known as "Hospital and Insurance Fund—County Employees," and there shall be credited to such fund agreed deductions made from the salaries or wages of deputies, assistants, and employees, and contributions from the county or flood control district, from which fund payments shall be authorized only for the purpose of expenses of hospital and medical care and the payment of premiums on accident, disability, or compensation insurance under the adopted rules and regulations, which claims shall be payable under existing laws in like manner as other county or flood control district claims. Any employee who shall be discharged or voluntarily leave the service of the county or flood control district for any reason shall have no further right in said hospital and insurance fund or any right to the further benefits of this Act, but said fund shall continue to be used for the benefit of all remaining employees of the county or flood control district. No contract of employment shall become effective as to any deputy, assistant, or employee as defined herein until the employment is made conformably to law and until the person employed shall have agreed in writing to the terms and conditions thereof. No deduction from the salary of any employee shall be made except he shall have consented in writing given at the time of his employment or at the effective date of the rules and regulations adopted pursuant to the provisions of this Act; provided any employee not contributing shall not receive any hospitalization or insurance benefits hereunder, but all other provisions hereof shall apply to him. In the event of the abandonment by the Commissioners' Court of the system herein authorized with respect to insurance and hospitalization, the balance remaining in the fund provided for shall thereupon be transferred to the county and to any flood control district participating, in proportion to the total contributions of each.

Personnel and equipment records

Sec. 3. Upon the occasion of each employment of each deputy, assistant, or employee whose salary or wages is paid in whole or in part from county or flood control district funds, the employing officer shall file in such form as may be prescribed by lawful authority and in addition to the other requirements of law, a statistical record which shall disclose, among other things, the date of employment, the rate of pay, nature of employment, business or personal history, the education record of employee, and his race, sex, color, age, place and date of birth, and previous experience, and other information essential to the keeping of proper personnel records. Each officer or department head of the county or any flood control district affected hereby shall file sworn pay rolls at the close of each month or oftener if authorized or required by law, which pay rolls shall show the names of each employee working under the officer in the department affected, the dates present or absent, time worked, rates of pay, and amounts due each deputy or assistant, and in addition thereto in cases of engineers and employees in the field engaged in road, flood control, or construction work, reports shall accompany said pay roll indicating the dates upon which the work was performed, the nature of the work, the road or project location, and such other information as may be needed for statistical or accounting purposes and said work reports shall be signed and shall accompany or be a part of each pay roll which pay roll in each case shall be signed and sworn to by the officer filing the same.

The county auditor shall install and maintain an adequate system of personnel and equipment records and shall prescribe the forms and systems necessary to carry out the provisions of this law and shall have authority to enforce the rules and regulations adopted. He shall be authorized annually to assemble statistics and make recommendations which may be incorporated in, printed, and distributed with and as a part of the annual report now required by law of said officer.

In the event of failure to file reports as provided in this Act or to furnish essential information as required, he may withhold payment of claims for salaries until such information has been given in the form and manner required. All contracts of employment shall be made in the manner and be governed by the laws now in effect, except as herein specifically provided. All the rules, regulations, and forms provided for in the Act shall be subject to the approval of the county auditor of the county.

Reports

Sec. 4. Each officer and employee of any county or its departments, or any county or district officer, or any employee of any flood control district in any such county affected by this Act who operates equipment purchased from and operated with public funds or personal equipment for which he is reimbursed by the county or flood control district for operation and maintenance charges shall file with each pay roll a report in writing showing the daily use to which each piece of equipment in his charge was put and the time and mileage run, the amount expended for repairs, the gasoline, oil, and grease purchased, and the roads, bridges, or projects concerning which the work was performed; and all said reports shall be in writing and signed and certified by the officer or employee actually using said equipment. In like manner each said officer or employee shall file reports of accidents involving equipment in his charge, giving the cause, damage, location, circumstances and persons and equipment involved. All such reports shall be on prescribed forms and shall be filed not later than the fifth day of the month succeeding the period of operation, and shall disclose all facts essential to a proper analysis of maintenance and operating costs and for statistical purposes.

Rules and regulations

Sec. 5. Before adopting any rules or regulations, or revising rules or regulations theretofore adopted in connection with the subject matter of this Act, the Commissioners' Court shall give at least fifteen (15) days' notice of such proposed adoption or revision of

rules or regulations by publishing a notice at least once in each week for two (2) successive weeks in some newspaper published in the county in which such rules, regulations, or revisions are to be made effective of its intention so to do, and that a hearing is to be held before said court at a fixed time and day to be specified in the notice. At the time and place fixed for hearing, any employee or taxpayer may appear to protest against the adoption of any such rule or regulation, or revision of existing rules. If sustained, the regulations shall be adjusted accordingly. Upon the adjustment or the overruling of protests, the court shall adopt the regulations and direct their recording upon its minutes, and upon approval thereof, as herein provided, they shall become effective on the date set out therein. The notice published shall contain a brief summary of the rules or regulations, or the amendments or changes therein, which it is proposed to make.

Persons subject to regulations

Sec. 6. Juvenile officers and probation officers appointed under the terms of Title 82, Revised Civil Statutes of 1925, as amended,[2] shall be subject to the provisions of such regulations hereinbefore provided, including those for retirement, to the extent that the juvenile board of any county affected by this Act may determine. In like manner, assistants to the county auditor appointed under the terms of Articles 1656a and 1673, Revised Civil Statutes of 1925, as amended, shall be subject to the provisions of such regulations hereinbefore provided for to the extent that the District Judges having jurisdiction in such counties affected by this Act may determine by a majority vote. The juvenile board in such counties may adopt the rules and regulations promulgated by the Commissioners' Court in accordance with the foregoing, and the District Judges having jurisdiction in said counties, a majority vote controlling, may adopt the rules and regulations promulgated by the Commissioners' Court in accordance with the foregoing; but such rules and regulations shall apply to such juvenile and probation officers and to the assistants of the county auditor in such counties, only in the manner and to the extent authorized by the action of the juvenile board or a majority of the district judges, as the case may be, by an order or orders entered in the minutes of the juvenile board when affecting juvenile and probation officers, and in the minutes of the District Courts when affecting the assistants to the county auditor; and said orders of adoption may, in like manner, be withdrawn or modified at any time. Provided further, that nothing herein shall change the provisions of said articles with respect to the time, method, and manner of appointment or discharge of the juvenile and probation officers and assistants to the county auditor, or the salaries authorized by law to be paid as set out in said articles, the provisions of which shall remain in full force and effect.

Effect of act

Sec. 7. The provisions of this Act shall be cumulative of any other laws upon the subject matter, but where in conflict with such other laws, this Act shall prevail.

Partial invalidity

Sec. 8. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portion of this Act shall not be affected thereby, it being the intent of the Legislature in adopting, and of the Governor in approving this Act, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation. [Acts 1941, 47th Leg., p. 754, ch. 472.]

[1] Article 3912e.
[2] Article 5119 et seq.

TITLE 45—COURTS—JUSTICE

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CHAPTER 1.—JUSTICES AND JUSTICE COURTS

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Article 2373. [2283] [1560] [1533] Election, bond and term of office.—The qualified voters of each justice precinct in this State, at each biennial election, shall elect one justice of the peace, styled in this title "justice," who shall hold his office for two years. Each justice shall give bond payable to the county judge in the sum of one thousand dollars, conditioned that he will faithfully and impartially discharge the duties required of him by law, and will promptly pay over to the party entitled to receive it, all moneys that may come into his hands during his term of office. [Acts 1885, p. 90; G. L. vol. 9, p. 710.]

Art. 2374. [2284–85] In unorganized counties.—The commissioners courts of counties to which unorganized counties are attached for judicial purposes may appoint a justice and a constable for each unorganized county attached to said county for judicial purposes, in accordance with the law authorizing such appointments in organized counties. Whenever, in any unorganized county, a necessity may exist for the appointment of more than one justice and constable, and one hundred qualified voters of said county shall petition the commissioners court of the organized county to which such unorganized county is attached for judicial purposes, asking the appointment of such officers, such commissioners court shall lay off and designate as many justice precincts in such unorganized county as may be necessary, not exceeding four, and such court may appoint one justice and one constable for each justice precinct in such unorganized county; and such justice precincts shall be legally constituted election precincts. [Acts 1879, p. 89; G. L. vol. 8, p. 1389; Acts 1885, p. 88; G. L. vol. 9, p. 708.]

Art. 2375. [2286] [1563] [1534] Two justices elected.—Where there is a city of eight thousand inhabitants or more in a justice precinct, two justices of the peace shall be elected. [Id.; Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2376. [2287] [1564] [1353] Commissioned.—Each justice of the peace shall be commissioned as justice of the peace of his precinct and ex

officio notary public of his county. [Const., art. 4, sec. 20; Acts 1876, p. 165; G. L. vol. 8, p. 1001.]

Art. 2377. [2289] [1566] [1537] Nearest justice to hold court.—Whenever there is a vacancy or the justice in any precinct shall be absent, or unable or unwilling to perform the duties of his office, the nearest justice in the county may temporarily perform the duties of the office. [Acts 1876, p. 164; G. L. vol. 8, p. 1001.]

Art. 2378. [2290] [1567] [1538] Disqualification.—No justice of the peace shall sit in a cause where he may be interested, or where he may be related to either party within the third degree by consanguinity or affinity. [Id., sec. 24.]

Art. 2379. Justice's office.—When the justice precinct where the courthouse of any county is located contains more than seventy-five thousand inhabitants, the commissioners court of said county shall provide and furnish a suitable place in such courthouse for such justice to hold court. [Acts 1919, p. 152.]

Art. 2380. [2298–99–2300–01] Term of court.—These rules shall govern as to the terms of court:

1. Each justice shall hold a term of his court for civil business once in each month, and may transact such business out of term time as may be authorized by law.
2. Each justice shall hold the regular term of his court at his office at such time as the commissioners court may prescribe.
3. The justice may hold court from day to day until all business shall be disposed of, or may adjourn the court or the trial of any case to a particular day.
4. If the regular term from any cause shall not be opened on the day fixed therefor by law, the court shall be considered adjourned until its next regular term. [Acts 1876, p. 157; G. L. vol. 8, p. 993; Acts 1881, p. 10; G. L. vol. 9, p. 102.]

Arts. 2381, 2382. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 523, 524.

Art. 2383. [2305–6] Custody of books, etc.—Each justice shall arrange and safely keep all dockets, books and papers transmitted to him by his predecessors, and all papers filed in any case in his court subject at all reasonable times to the inspection of any interested party. Any person having possession of dockets, books or papers belonging to the office of any justice shall deliver the same to such justice on demand. [Acts 1876, p. 156; G. L. vol. 8, p. 992.]

Art. 2384. [2307] [1584] [1555] Enforcing delivery.—If any person having such dockets, books or papers, refuses to deliver the same on such demand, he may, upon motion, be attached and imprisoned by order of the county judge in term time or vacation, until he shall make such delivery; but such motion shall be supported by affidavit, and three days' notice thereof shall be given to the party against whom such motion is made. [Id.]

Art. 2385. [2291] [1568] [1539] Jurisdiction.—Justice courts shall, in addition to their other powers and duties, have and exercise original jurisdiction in civil matters of all cases where the amount in controversy is two hundred dollars, or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts, and of cases of forcible entry and detainer, and to foreclose mortgages and enforce liens on personal property, where the amount in controversy is within their jurisdiction. [Const., art. 5, sec. 19; Acts 1876, p. 155; G. L. vol. 8, p. 991.]

Art. 2386. [2293–4–5–7] Other powers.—Justices of the peace shall also have power:

1. To punish any party guilty of a contempt of court by fine not to exceed twenty-five dollars and by imprisonment not exceeding one day.
2. To issue writs of attachment, garnishment and sequestration within their jurisdiction, the same as judges and clerks of the district and county courts.
3. To exercise jurisdiction over all other matters not hereinbefore enumerated that are or may be cognizable before a justice of the peace under any law of this State.
4. To proceed with all unfinished business of his office in like manner as if such business had been originally commenced before him.

Art. 2387. [2296] [1573] [1544] No jurisdiction.—Justice courts have no jurisdiction of suits in behalf of the State to recover penalties, forfeitures and escheats, of suits for divorce, of suits to recover damages for slander or defamation of character, suits for the trial of title to land, or of suits for the enforcement of liens on land. [Const. art. 5, sec. 8.]

Arts. 2388, 2389. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 525–527.

CHAPTER 2.—INSTITUTION OF SUIT

Art.
2390. Suits, where brought.
2391. Residence of a single man.
2392. Where there are two justices.
2393. If justice is disqualified.
2394–2398. [Repealed.]
2399. Special justice.
2400–2402. [Repealed.]

Article 2390. [2308] [1585] [1556] Suits, where brought.—Every suit in the justice court shall be commenced in the county and precinct in which the defendant or one or more of the several defendants resides, except in the following cases and such other cases as are or may be provided by law:

1. Cases of forcible entry and detainer must be brought in the precinct where the premises, or a part thereof, are situated.
2. Suits against executors, administrators and guardians as such must be brought in the county in which such administration or guardianship is pending, and in the precinct in which the county seat is situated.
3. Suits against counties must be brought in such county and in the precinct in which the county seat is situated.

In the following cases the suit may, at the plaintiff's option, be brought either in the county and precinct of the defendant's residence or in that provided in each exception:

4. Suits upon a contract in writing promising performance at any particular place, may be brought in the county and precinct in which such contract was to be performed, provided that in all suits to recover for labor actually performed, suit may be brought and maintained where such labor is performed, whether the contract for same be oral or in writing.
5. Suits for the recovery of rents may be brought in the county and precinct in which the rented premises, or a part thereof are situated.
6. Suits for damages for torts may be brought in the county and precinct in which the injury was inflicted.
7. Suits against transient persons may be brought in any county and precinct where such defendant is to be found.
8. Suits against non-residents of the State or persons whose residence is unknown, may be brought in the county and precinct where the plaintiff resides.
9. Suits for the recovery of personal property may be brought in any county and precinct in which the property may be.

10. Suits against private corporations, associations and joint stock companies may be brought in any county and precinct in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated.

11. Suits against railroad and canal companies, or the owners of any line of transportation vehicles of any character, for any injury to person or property upon the road, canal, or line of vehicles of the defendant, or upon any liability as a carrier, may be brought in any precinct through which the road, canal or line of vehicles may pass, or in any precinct where the route of such railroad, canal, or vehicle may begin or terminate.

12. Suits against fire, marine or inland insurance companies may be brought in any county and precinct in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may be brought in the county and precinct in which the persons insured, or any of them resided at the time of such injury or death.

13. Suits against the owners of a steamboat or other vessel may be brought in any county or precinct where such steamboat or vessel may be found, or where the cause of action arose or the liability was contracted or accrued. In every suit commenced in a county or precinct in which the defendants or one of them may reside, it shall be affirmatively shown in the citation or pleading, if any, that such suit comes within one of the exceptions named in this article. [Acts 1876, p. 154; Acts 1917, p. 321; G. L. vol. 8, p. 993.]

Art. 2391. [2309] [1586] [1557] Residence of a single man.—The residence of a single man is where he boards. [Acts 1876, p. 154.]

Art. 2392. [2310–11] Where there are two justices.—Where, in any one precinct, incorporated city or town there may be more than one justice of the peace, the suit may be brought before either of them. [Id.]

Art. 2393. [2312] [1589] [1560] If justice is disqualified.—If there be no justice qualified to try the suit in the proper precinct, the suit may be commenced before the nearest justice of the county who is not disqualified to try the same. [Id.]

Arts. 2394–2398. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 528–532.

Art. 2399. [2315] [1592] [1563] Special justice.—If a justice be disqualified from sitting in any civil case, or is sick or absent from the precinct, the parties to such suit may agree upon some person to try the case; and, should they fail to agree at the first term of the court after service is perfected, the county judge in whose county said case is pending, shall, upon the application of the justice in whose court said cause is pending, or upon the application of either party to said suit, appoint some person who is qualified to try said cause. The fact of the disqualification of the justice and the selection by agreement or appointment of some other person to try said cause shall be noted on the docket of said justice in said cause. [Acts 1895, p. 26; G. L. vol. 10, p. 756.]

Arts. 2400–2402. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 533, 534, 536, 541.

CHAPTER 3.—APPEARANCE AND TRIAL

Art.
2403–2412. [Repealed.]
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2414. Summoning jury.
2415. Jurors called.
2416. Excuses.
2417. Defaulting jurors.
2418. Talesmen.
2419–2427. [Repealed.]
2428. Jurors paid.

Arts. 2403–2412. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 541, 535, 537–540, 542, 543, 523, 554, 544, 545.

Art. 2413. [2342–43] Summons for jury.—Whenever at any term of a justice court there may be any jury cases pending for trial, the justice shall order the sheriff or constable to summon such number of legally qualified jurors as he may deem necessary, to attend as a jury before such justice at a day and place directed. The justice, on delivering such order to the officer, shall administer to him the following oath "You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any juryman, touching any case pending for trial; and that you will not, by any means, attempt to influence, advise or control any juryman in his opinion in any case which may be tried by him. So help you God." [Acts 1876, p. 80; G. L. vol. 8, p. 916.]

Art. 2414. [2344–45] Summoning jury.—The officer shall immediately summon the required number of jurors to appear before the justice at the day and place named. Such summons shall be by an oral notice by the officer to the juror that he is required to appear as a juror before such justice on the day and at the place named.

Art. 2415. [2346] [1623] [1593] Jurors called.—At the time fixed for taking up the jury cases, the justice shall proceed to call the names of the jurors so summoned.

Art. 2416. [2347] [1624] [1594] Excuses.—The court may hear any reasonable excuse of a juror, supported by oath, and may excuse him for the trial of any particular case, or for one or more days of the term.

Art. 2417. [2348] [1625] [1595] Defaulting jurors.—If any person so summoned as a juror shall fail or refuse to attend, the justice shall enter a fine nisi against him not exceeding five dollars, to the use of the county, to be made final, with costs, unless such person shall, after being cited to do so, show a good and sufficient excuse for such failure.

Art. 2418. [2349] [1626] [1596] Talesmen.—If the number of jurors present and not excused be less than six, or less than the justice shall deem necessary, he shall order the sheriff or constable to summon a sufficient number of other qualified jurors.

Arts. 2419–2427. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 546–553, 555.

Art. 2428. [2363] [1640] [1610] Jurors paid.—Before the verdict is rendered, the justice shall pay to each juror fifty cents out of the jury fee deposited in the case.

CHAPTER 4.—JUDGMENT AND NEW TRIAL

Arts. 2429–2444. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 556–570, 621.

CHAPTER 5.—EXECUTION

Art.
2445–2449. [Repealed.]
2450. [Repealed.]
2451. Dormant judgments.
2452, 2453. [Repealed.]

Arts. 2445–2449. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 621, 622, 629, 627, 628.

Art. 2450. [Repealed by Acts 1931, 42nd Leg., p. 392, ch. 238, § 1.]

Art. 2451. [2387] [1664] [1634] Dormant judgments.—If no execution is issued within ten (10) years after a judgment is rendered, the judgment shall become dormant, and no execution shall thereafter issue unless an execution shall have theretofore issued on such judgment within ten (10) years after a judgment is rendered. Where the first execution has issued within the ten (10) years after the rendition of a judgment, the judgment shall not become dormant unless ten (10) years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten (10) years after the issuance of the preceding execution. [Acts 1866, p. 118; P.D. 7005, 7007; G.L. vol. 5, p. 1036; Acts 1931, 42nd Leg., p. 394, ch. 240, § 1.]

Arts. 2452, 2453. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 635.

CHAPTER 6.—APPEAL AND CERTIORARI

Art.
2454. Appeal.
2455. To district court, when.
2456–2459. [Repealed.]
2460. Certiorari.

Article 2454. [2391] [1668] [1638] Appeal.—A party to a final judgment in any justice court may appeal therefrom to the county court where such judgment, or the amount in controversy, shall exceed twenty dollars exclusive of costs, and in such other cases as may be expressly provided by law. [Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2455. [2392] [1669] To district court, when.—In all counties in which the civil jurisdiction of the county courts has been transferred to the district courts, appeals and writs of certiorari may be prosecuted to remove a case tried before a justice of the peace to the district court, in the same manner and under the same circumstances under which appeals and writs of certiorari are allowed by general law to remove causes to the county court. [Acts 1879, p. 125; G. L. vol. 8, p. 1425.]

Arts. 2456–2459. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 571–574.

Art. 2460. [2398–99] Certiorari.—A cause tried before a justice, wherein the amount in controversy or the judgment exceeds twenty dollars, exclusive of costs, may be removed from such justice court to the county court by certiorari under the rules prescribed in the title and chapter relating thereto. Whenever a writ of certiorari to remove any cause from the justice court to the county court shall be served on any justice of the peace, he shall immediately make out a certified copy of the entries made on his docket, and of the bill of costs, as provided in case of appeals, and send same, together with the original papers in the cause, to the clerk of the county court in the manner and within the time prescribed in the preceding article.

TITLE 46—CREDIT ORGANIZATIONS

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1. RURAL CREDIT UNIONS

Article 2461. Credit union defined.—The credit union is hereby defined as a co-operative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident and productive purposes. The capital

stock of credit unions organized under the provisions of this title shall be divided into shares of Five Dollars ($5). Entrance fees of credit unions may be fixed by the Board of Directors. [Acts 1913, p. 162; Acts 1929, 41st Leg., p. 46, ch. 17; Acts 1947, 50th Leg., p. 760, ch. 375, § 1.]

Art. 2462. Loans and investments.—A credit union may receive the savings of its members in payment for shares or as deposits. It may borrow money in any amount not to exceed fifty per cent (50%) of its capital and surplus, as that term is herein defined. It may lend money to its members within the limits and subject to the restrictions provided by law, provided that ten per cent (10%) per annum be the maximum rate of interest on loans and such rate of interest shall include all charges of any nature. In the discretion of the Board of Directors, it may invest its surplus and accumulated funds in the obligations of the United States of America, of the State of Texas, or any political subdivision thereof, provided such subdivision has not, within the preceding five (5) years defaulted in the payment of any principal or interest on the obligations or class of obligations in which such investment is made; it may also invest such surplus and accumulated funds in shares of Building and Loan Associations approved by the Commissioner of Banking of the State of Texas; and it may make loans to other State and Federal credit unions, provided such investments in shares of Building and Loan Associations and loans to such credit unions shall never aggregate more than twenty-five per cent (25%) of the capital and surplus of such credit union making such investments and loans, nor shall any such loans be in excess of five per cent (5%) of capital and surplus of the lending union, in any of the above-named organizations and classes of securities. [Acts 1913, p. 162; Acts 1929, 41st Leg., p. 46, ch. 17; Acts 1939, 46th Leg., p. 221, § 1; Acts 1945, 49th Leg., p. 450, ch. 282, § 1; Acts 1947, 50th Leg., p. 760, ch. 375, § 2.]

Section 6 of the amendatory Act of 1939 provided that "if any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provisions hereof, and all other provisions shall remain valid and unaffected by any invalid portion, if any."

Art. 2463. May incorporate.—Ten (10) or more residents of this State may associate themselves together by articles of agreement and form a credit union and upon approval of the State Banking Board, may become a corporation upon complying with such provisions of the law regulating State banks as may be applicable to the transaction of business as herein authorized to be done. The State Banking Board may permit the formation of such corporation when it is satisfied that the proposed field of operation is favorable to the success of a credit union, and the standing of the proposed members is such as to give assurance that its affairs will be administered in accordance with the spirit of this Law, and said Board may investigate or cause to be investigated such matters when deemed by it necessary to assist it in its determination of such duties, the actual expenses of such investigation to be paid upon itemized statement thereof by the applicants for charter under this Law. If the charter is granted, the corporation shall reimburse said applicants for such payment. When permission for the formation of such corporation shall have been granted by the State Banking Board, the Banking Commissioner shall issue a charter to said credit union to do business in conformity with the provisions of this Title upon the payment of a charter fee of Ten Dollars ($10). [Acts 1913, p. 162; Acts 1929, 41st Leg., p. 46, ch. 17, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 168, ch. 85, § 1; Acts 1947, 50th Leg., p. 760, ch. 375, § 3.]

Art. 2464. Right to use name.—No persons, partnership, association or corporation, except corporations formed under the provisions of this law shall hereafter transact business under any name or title which contains the words "credit union", except those expressly authorized to be formed under the provisions of this law. [As amended Acts 1929, 41st Leg., p. 46, ch. 17.]

Art. 2465. Supervision; Credit Union Examiners; expenses.—Such Credit Union shall maintain such books and records as the Banking Commissioner may deem necessary. The Banking Commissioner shall cause each Credit Union to be examined at least once yearly, such examination to be made by (1) one or more Credit Union Examiners who shall be appointed by the Banking Commissioner and shall receive a salary of not exceeding Three Hundred ($300.00) Dollars per month, and shall receive all necessary traveling expenses, a sworn itemized account of which shall be rendered monthly by each Examiner and approved by the Commissioner; or by (2) the Deputy Commissioner, departmental examiner, any bank examiner, assistant bank examiner, building and loan supervisor, or building and loan examiner.

Each Credit Union examined shall pay an examination fee fixed by the Banking Commissioner not to exceed Twenty-five ($25.00) Dollars per day per person engaged in such examination. Such fees, together with any other fees, penalties or revenues collected by the Commissioner pursuant to the provisions of this Act or pursuant to other laws of this state relative to corporations under the supervision of the Banking Department, shall be paid by the Commissioner to the State Treasurer to the credit of the General Revenue Fund. The expenses of examination and of the Commissioner in enforcing the provisions of this Act shall be paid upon the certificate of the Commissioner by warrant of the Comptroller upon the State Treasury. [Acts 1913, p. 162; Acts 1929, 41st Leg., p. 46, ch. 17, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 168, ch. 85, § 1; Acts 1941, 47th Leg., p. 1399, ch. 634, § 1; Acts 1943, 48th Leg., p. 409, ch. 276, § 1.]

Art. 2466. By-laws.—The by-laws of the credit unions shall prescribe:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The conditions of residence or occupation which qualify persons for membership.
4. The par value of shares of capital stock.
5. The conditions on which shares may be paid in, transferred and withdrawn.
6. The conditions on which deposits may be received and withdrawn.
7. The method of receipting for money paid on account of shares or deposited.
8. The number of directors and number of members of the credit committee.
9. The duties of the several officers.
10. The fines, if any, which may be charged for failure to meet obligations of the association punctually.
11. The date of the annual meeting of members.
12. The manner in which the members shall be notified of meetings.
13. The number of members which shall be a quorum at meetings.
14. Such other regulations as may seem necessary.

[Acts 1913, p. 162; Acts 1929, 41st Leg., p. 46, ch. 17.]

Art. 2467. Approval of by-laws.—No such credit union shall receive deposits or payments on account of shares, or make any loans until its by-laws have been approved in writing by the Banking Commis-

sioner, nor shall any amendments to its by-laws become operative until they have been so approved. [Acts 1913, p. 162.]

Art. 2468. Meetings.—The fiscal year of every such association shall end at the close of business on the thirty-first day of December. The annual meeting of the association shall be held at such time and place as the by-laws prescribe. Special meetings may be held by order of the directors or of the supervisory committee. The clerk shall give notice of such special meetings upon written request of ten members. Notice of all meetings of the association shall be given in the manner prescribed by the by-laws. No person shall be entitled to vote who has not been a member for more than three months but this restriction shall not apply during the first twelve months of the existence of the association, nor shall any member vote by proxy or have more than one vote. At the annual meeting, the members shall upon recommendation of the board of directors declare dividends and fix the amount of entrance fee. At any meeting the members may decide upon any question of interest to the association, and upon appeal of two members may reverse the decisions of the credit committee or board of directors; and, by a three-fourths vote of those present, provided the notice of the meeting shall have specified the question to be considered, may amend the by-laws. [Id.]

Art. 2469. Board of Directors.—At the annual meeting the members shall elect a board of directors of not less than five members from which a credit committee of not less than three members may be selected. A supervisory committee of three members shall also be elected. No member of the Board of Directors shall be a member of the advisory committee, nor shall one person be a member of more than one of said committees. All members thereof, as well as all officers whom they elect, shall be sworn, and shall hold their several offices until others are elected and qualified in their stead. A record of every such qualification shall be filed and preserved with the records of the association. [Id.]

Art. 2470. Officers.—At their first meeting the board of directors shall elect from their number a president, a vice president, a clerk and a treasurer, who shall be the executive officers of the association. The board of directors shall have the general management of the affairs, funds and records of the association, and shall meet as often as may be necessary. It shall be their special duty:

1. To act upon all applications for membership.
2. To act upon the expulsion of members.
3. To fix the amount of surety bond which shall be required of each officer having custody of the funds.
4. To determine the rate of interest on loans.
5. To fill vacancies in the board of directors or in the credit committee of the association until the election and qualification of officers to fill said vacancies.
6. To make recommendations to meetings of the members relative to the amount of entrance fee; the maximum number of shares which may be held by, and the maximum amount which may be lent to, any one member; the dividend to be declared; amendments to the by-laws and any other matters which in their opinion, the members should decide. [Id.]

Art. 2471. Credit committee.—The credit committee shall approve every loan or advance made by the association. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired, and the security offered. No loan shall be made unless the credit committee is satisfied that it promises to benefit the borrower, nor unless it has received the unanimous approval of those members of said committee who were present when it was considered, nor if any member of said committee shall disapprove thereof; but applicant for a loan may appeal from the decisions of the credit committee to the board of directors. [Id.]

Art. 2472. Supervisory committee.—The supervisory committee shall inspect the securities, cash and accounts of the association and supervise the acts of its board of directors, credit committee, and officers. At any time, the supervisory committee, by unanimous vote, may suspend the credit committee or any officer elected by the board of directors, and by a majority vote may call a meeting of the shareholders to consider any violation of this title or of the by-laws, or any practice of the association which, in the opinion of said committee, is unsafe or unauthorized. Within seven days after the suspension of the credit committee the supervisory committee shall cause notice to be given of a special meeting of the members to take such action relative to such suspension as may seem necessary. The supervisory committee shall fill vacancies in their own number until the next annual meeting. [Id.]

Art. 2473. Capital and shares.—The capital of the association shall be unlimited in amount. Shares of capital stock may be subscribed for and paid in in such manner as the by-laws shall prescribe. [Id.]

Art. 2474. Shares and deposits.—Shares may be issued and deposits received in the name of a minor and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor or by his parent or guardian, and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. If no other notice of the existence and terms of such trust has been given in writing to the association, such shares or deposits may, upon the death of the trustees, be withdrawn by the person for whom the amount of such shares was paid in or for whom such deposit was made, or by his legal representatives. [Id.]

Art. 2475. Depositories.—The capital, deposits, and surplus funds of the Association shall be either lent to the members for such purposes and upon such security as the directors of the Credit Union shall approve, or deposited to the credit of the Association in State or National banks, and in savings banks, or trust companies, or in any agency now or to be provided, either by State or Federal Law, whose purpose is the orderly interchange of funds between Credit Unions, incorporated under the Laws of this State or under the Laws of the United States of America, located in this State; such depositories to be approved by the Banking Commissioner, or such funds may be lent as provided in Section 1 of this Act. [Acts 1913, p. 162; Acts 1939, 46th Leg., p. 221, § 2.]

Art. 2476. Repaying loan.—A borrower may repay the whole or any part of his loan on any day on which the office of the association is open for the transaction of business. For failure to pay the interest or any installment required by the terms of the loan, the borrower may be fined if the by-laws so prescribe. [Acts 1913, p. 162.]

Art. 2477. Conditions of loans.—No member of the Board of Directors or of the credit or supervisory committee shall receive any compensation for his services as a member of said Board or committee, nor shall any member of the Board of Directors or supervisory committee, either directly or indirectly, borrow from or become surety for any loan or advance made by the Association except in a sum not to exceed his holdings in the credit union as represented by shares thereof, or upon a vote of two-thirds (⅔) of the members of the credit union. No loan shall be granted except for productive or provident purposes or urgent needs, nor for a longer period than sixty (60) months, provided, however, that the

above limitation as to time shall not apply to loans made by any credit union pursuant to the provisions of the Servicemen's Readjustment Act of 1944 or any amendments thereto.[1] Loans to any one member shall not exceed Two Hundred Dollars ($200), or ten per cent (10%) of the capital and surplus, whichever shall be the larger. [Acts 1913, p. 162; Acts 1929, 41st Leg., p. 46, ch. 17, § 1; Acts 1939, 46th Leg., p. 221, § 3; Acts 1945, 49th Leg., p. 450, ch. 282, § 2; Acts 1947, 50th Leg., p. 760, ch. 375, § 4.]

1 38 U.S.C.A. § 693 et seq.

For section 6 of the Act of 1939, see note to article 2462.

Art. 2478. May expel member.—The board of directors may expel from the association any member who has not carried out his engagements with the association, or has been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this law or of the by-laws of the association, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt, or shall have deceived the association with regard to the use of borrowed money. No member shall be expelled until he has been informed in writing of the charges against him, and an opportunity has been given him, after reasonable notice, to be heard thereon. [Acts 1913, p. 162.]

Art. 2479. Liability to expelled member.—The amounts paid in on shares or deposited by members who have withdrawn or have been expelled, shall be paid to them, but in the order of withdrawal or expulsion, and only as funds therefor become available and after deducting any amounts due by said members to the association. Such expulsion shall not operate to relieve a member from any remaining liability to the association. [Id.]

Art. 2480. Audit.—Immediately before a meeting of the directors called to recommend the declaration of a dividend, the supervisory committee shall make a thorough audit of the receipts, disbursements, income, assets and liabilities of the association for the fiscal year, and shall make a full report thereon to the directors. Said report shall be read at the annual meeting and shall be filed and preserved with the records of the association. [Id.]

Art. 2481. Dividend.—At the annual meeting a dividend may be declared from income which has been actually collected during the fiscal year next preceding or during the months which have elapsed since the association began business, and which remains after the deduction of all expenses, and the amount required to be set apart as a guaranty fund. Such dividend shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled only to a proportional part of said dividend, calculated from the first day of the month following such payment in full. Dividends due to a member shall be paid to him in cash or credited to the account of partly paid shares for which he has subscribed. Dividends shall not exceed six per cent (6%) per annum. [Acts 1913; Acts 1945, 49th Leg., p. 450, ch. 282, § 3; Acts 1947, 50th Leg., p. 760, ch. 375, § 5.]

Art. 2482. Guaranty fund.—Immediately before the payment of each dividend, there shall be set apart as a guaranty fund, ten per cent (10%) of the net income which has accumulated during the fiscal year. Said fund and the investments thereof belong to the association and shall be held to meet contingencies or losses in its business. All entrance fees shall be added at once to the guaranty Fund. But upon recommendation of the Board of Directors, the members at an annual meeting may increase, and whenever said fund equals or exceeds ten per cent (10%) of the amount of capital stock actually paid in, may decrease the proportion of profits required by this Article to be set apart as a guaranty fund. [Acts 1913, p. 162; Acts 1945, 49th Leg., p. 450, ch. 282, § 4.]

Art. 2483. Dissolution.—At any meeting specially called to consider the subject, the members upon the unanimous recommendation of the board of directors may vote to dissolve the association, provided at least two-thirds of the members are present at such meeting, and provided that not more than ten members either in person or by written notice, object thereto. A committee of three shall thereupon be elected to liquidate the assets of the association, and each share of the capital stock, according to the amount paid in thereon, shall be entitled to its proportion of the proceeds after all debts of the association have been paid. [Acts 1913, p. 162.]

Art. 2484. Report to Commissioner.—Within thirty days after the last business day of December each year, every such association shall make to the Banking Commissioner a report in such form as he may prescribe, signed by the president, treasurer, and a majority of the supervisory committee who shall certify and make oath that the said report is correct according to their knowledge and belief. Said Credit Union shall pay to the Banking Commissioner at the time of the filing of this report the sum of Five ($5.00) Dollars, as a filing fee. Any such association that shall neglect to make the said report within the time herein prescribed shall forfeit to the State Five ($5.00) Dollars, for each day during which said neglect shall continue. The Banking Commissioner may, however, for good cause shown, extend the time of filing of said report not more than sixty days. All such associations shall be exempt from all franchise or other license tax; nor shall any intangible property of such associations be taxable by this state or any political subdivision thereof. [Acts 1913, p. 162; Acts 1929, 41st Leg., 2nd C.S., p. 168, ch. 85, § 1; Acts 1937, 45th Leg., p. 217, ch. 117, § 1; Acts 1939, 46th Leg., p. 221, § 4; Acts 1943, 48th Leg., p. 352, ch. 230, § 1.]

For section 6 of the Act of 1939, see note to article 2462.

Art. 2484a. "Capital and surplus," defined.—The term "capital and surplus" as used in this Act shall mean the aggregate of the paid-up shares of the members plus the total cash deposits of the members with the Credit Union less any and all outstanding obligations and liabilities of the Credit Union. [Acts 1939, 46th Leg., p. 221, § 5.]

For section 6 of the Act of 1939, see note to article 2462.

2. AGRICULTURAL AND LIVESTOCK POOLS

Art. 2485. May incorporate.—Any association of persons, which may include corporations duly chartered, State banks and trust companies, National banks and trust companies, and co-operative associations composed of persons engaged in producing or producing and marketing staple agricultural products or livestock, or both, may organize a pool for the purpose of borrowing and lending money on agricultural products or livestock, or both, for agricultural purposes, or for the raising, breeding, fattening or marketing of livestock. Any number of persons, not less than three, may incorporate for the purpose of growing, storing, preparing for the market, and marketing agricultural products, or for the purpose of growing, raising, fattening for the market, and marketing livestock, or for both such purposes, and may use any of such livestock or farm products, or both, as security, in financing such enterprises; and shall have all the privileges of a pooling organization in borrowing money to promote the business of such corporation. [Acts 2nd C. S. 1923, p. 82.]

Art. 2486. Definitions.—"Pools" as used in this title shall be held to mean agricultural financial pools and livestock financing pools; "agricultural products" shall be held to mean any or all products of the farm, orchard or dairy usually classed as agricultural prod-

ucts other than livestock; "livestock" shall be held to mean any herd of cattle, sheep, goats or swine; "margins" shall be held to mean additional security in money of legal tender of the United States. [Id.]

Art. 2487. May borrow.—Such pools shall have the right to borrow money, and to use as security for such borrowed funds, the security given by those borrowing money from such pooling organizations, and shall be authorized to co-operate with the Federal Reserve Banks and Federal Farm Loan Banks under the provisions of the Federal laws affecting farm credits. [Id.]

Art. 2488. May loan.—Such pools are authorized to lend money on agricultural products that are stored in bonded licensed warehouses and for which there is outstanding therefor a negotiable bonded warehouse receipt issued in accordance with the Uniform Warehouse Receipt Act.[1] They are also authorized to lend money to the owners of herds upon the terms and conditions as hereinafter provided, and such herds shall be permitted to remain in the possession of the owner or owners thereof, or in the possession of an agent or representative of the owner or owners. A mortgage against such herd, or shipping documents issued against such herds in transit, may be used as collateral for such loan. [Id.]

1 Article 5612 et seq.

Art. 2489. Loans and interest.—The interest charged on all such loans shall not exceed by more than one and one-half per cent the rate of interest charged such pooling institutions by the farm loan banks. No loans shall be made by any pooling organization to any person or association of persons, unless such person or association is engaged in producing, or producing and marketing, staple agricultural products, or livestock, upon which such loan is made. All such commodities, articles or things classed herein as agricultural products shall be insured with some stock insurance company authorized to do business in this State. Such insurance shall be for not less than the full amount of the loan. At no time shall a greater amount than seventy-five per cent of the market value of such commodities, articles or things on date of loan be loaned thereon. [Id.]

Art. 2490. Agents for borrowers.—Such pools shall have the right to act as agents for all borrowers in the sale of such commodities, articles or things on which loans have been made. The commissions charged for such service shall not exceed fifty cents per bale for cotton sold, and shall in all cases on all other commodities, articles or things be reasonable. Where such pools operate bonded and licensed warehouses, it shall have authority to make a charge for storage, for drawing and handling of samples and for insurance in addition to other charges as provided for herein. [Id.]

Art. 2491. Warehouses and concentration places.—All such pools are authorized to own, maintain, and operate bonded and licensed warehouses when such warehouses are deemed necessary in the conduct of said business, and to own or maintain concentration places, including railroad sidings. [Id.]

Art. 2492. Margins.—Such pools shall be authorized to demand margins, such as is necessary to keep the market value of any commodity, article or thing on which a loan has been made up to within seventy-five per cent of the value of such commodity, article or thing on date of loan at any time during the life of such loan, and shall have the right to sell any commodity, article or thing on which a loan has been made when the owner or owners thereof fail or refuse to put up or provide for such margin. All such margins shall be credited to the account of such borrower and same shall be taken into account when such loan or loans shall be liquidated. [Id.]

Art. 2493. Loan limit and liquidations.—Such pools are authorized to make loans as herein provided, the total of which shall at no time exceed ten times the total of the capital stock and surplus of such organizations. The borrower of any funds from such pool shall have the right to liquidate his loan at any time during the contract period thereof, upon full and satisfactory settlement of all claims against such borrower due such organization. [Id.]

Art. 2494. Bond.—Before engaging in business in this State, such pools shall furnish a good and sufficient bond, conditioned upon the faithful performance of its duties and responsibilities as a pooling organization, said bond to be for ten per cent of the capital stock of such pool. Such bonds shall be approved by the commissioners court of the county in which such pool is organized, or in which is located the home office of such pool. All such bonds shall be certified to the Commissioner of Agriculture who shall, upon receipt of such bond and after satisfying himself as to its genuineness, issue to such pool a certificate of authority to conduct a pool in accordance with the provisions of this law, upon the payment of a fee of ten dollars which shall be collected by said Commissioner and by him paid into the State Treasury. [Acts 2nd C.S., 1923, p. 82; Acts 1927, 40th Leg., p. 145, ch. 94, § 1.]

Art. 2495. Officers to furnish bonds.—The officers of such pools shall be a president, vice-president, and a secretary and treasurer, provided that the office of secretary and treasurer may be held by one person, and a board of directors, all of which shall be members of such pooling organization. The said board of directors shall elect a president, vice-president, secretary and treasurer from said board of directors, and such board shall be authorized to employ a manager and others to conduct the affairs of the pool. The secretary-treasurer and all officers in charge of the management shall be required to furnish to such pool, a good and sufficient bond conditioned upon the faithful performance of duty. Such bond shall be not less than five per cent of the total of the capital stock and surplus of said pool. The directors of any such pool shall not permit such persons to conduct the affairs of such pools when they have not so furnished bond. [Acts 2nd C.S., 1923, p. 82.]

Art. 2496. To file statement.—All such pools shall on the first of January, April, July and October of each year file with the Commissioner of Agriculture a sworn statement showing the amount of business done, the number of negotiable receipts on which loans have been made and the values of such commodities, the total of all such loans, the total of all the obligations of the pool, to whom due and the amount of interest being paid on same, the quantity or number of sales made for clients, the gross receipts of such sales, the amount of commissions charged thereon, and the number and value of all livestock mortgages and other securities. [Acts 2nd C.S., 1923, p. 82; Acts 1927, 40th Leg., p. 39, ch. 26, § 1.]

Art. 2497. Pools may use security.—All such pools shall be authorized to use such security or collateral held by them as security for loans made to such pooling organizations. When any loan due the pooling organization is satisfied, such organization shall deliver to the borrower a final receipt of settlement, and when any article, commodity or thing is sold, the negotiable warehouse receipt shall be delivered to the maker thereof, and cancelled in accordance with the provisions of the Warehouse Acts of this State. [Acts 2nd C.S., 1923, p. 82.]

Art. 2498. Term of loan.—The maximum term of any loan on agricultural products shall not exceed twelve months and no loans on livestock shall be for any term exceeding three years. Loans may be re-

newed conditioned upon new and agreed valuations of the commodity, article or thing, or upon additional security, or both. [Id.]

Art. 2499. Unlawful to dispose of receipt.—No person shall dispose of any negotiable bonded warehouse receipt placed with any bonded organization as security on loan, or to be held by such pool, pending the sale of any such commodity, article or thing represented by such receipt except as provided herein. [Id.]

3. MUTUAL LOAN CORPORATIONS

Art. 2500. Purpose.—Ten or more persons, five of whom shall be citizens of Texas, may organize corporations to aid their member stockholders in producing, or producing and marketing of staple agricultural products, or in acquiring, raising, breeding, fattening or marketing of livestock. [Acts 2nd and 3rd C. S. 1923, pp. 87, 174.]

Art. 2501. Powers.—Such corporations shall have power:

1. To accumulate and lend money to their member stockholders where such loans are made for the purposes provided for in the Federal "Agricultural Credits Act of 1923."

2. To lend money to their member stockholders where the money loaned is to be used for the production or production and marketing of staple agricultural products, or for the acquiring, raising, breeding, fattening or marketing of livestock, or the purchase of the capital stock of such corporations and in order to obtain the funds to loan their members, such corporations are authorized to purchase, sell, indorse and discount the notes of its member stockholders and by indorsement to become liable as principal makers thereof, where such notes are secured by warehouse receipts or shipping documents covering such agricultural products or chattel mortgages on livestock or by crop mortgages or other acceptable chattel mortgages or other acceptable security. [Id.]

Art. 2502. Capital stock.—Such corporations must have a fully paid up capital stock of not less than ten thousand dollars at the time of the filing of the articles of incorporation. Ten thousand dollars of such capital shall be kept intact and invested in securities approved by law for investments of saving banks. In the discretion of the organizers or board of directors, the capital stock may be divided into preferred and common stock, and in such case the articles of incorporation shall provide for the payment of dividends on preferred stock and for the retirement of both kinds of stock. Preferred stock shall be issued in such amount only as provided in the articles of incorporation. No dividends shall be paid on common stock until dividends provided to be paid on the preferred stock have been fully paid at the rate provided in the articles of incorporation. With the approval of the Banking Commissioner first obtained, any domestic corporation except a savings bank may invest any part of its funds in the preferred stock of such corporation.

Art. 2503. Ratio of capital to loans.—Such corporations shall automatically increase their capital stock at the rate of five (5) per cent of the amount of loans made by them to their member stockholders, and their articles of incorporation and by-laws shall so provide. Such corporations shall not make loans in excess of twenty (20) times their unimpaired capital stock represented by the part of their capital stock so automatically increased. [Acts 2nd and 3rd C.S.1923, pp. 87, 174; Acts 1937, 45th Leg., p. 592, ch. 296, § 1.]

Art. 2504. Articles of incorporation.—The articles of incorporation shall further provide: that each applicant for a loan or discount by such corporation shall become a subscriber of its common stock in an amount equal to at least five (5) per cent of the loan or discount applied for, to be fully paid for upon, or before, the closing of such loan or granting of such discount, provided the board of directors may waive such requirement if the borrower is already the owner of sufficient stock; and that the corporation may put[1] in, out of available funds, any outstanding stock at the book value thereof, as conclusively determined by the directors of such corporation. [Acts 2nd and 3rd C.S. 1923, pp. 87, 114; Acts 1937, 45th Leg., p. 592, ch. 296, § 1.]

[1] Probably should read "buy" as before the amendment of 1937.

Art. 2505. Semi-annual report.—On or before the tenth day of each January and July, such corporation shall file with the Secretary of State a report showing its true financial condition on the first days of January and July, and the amount of capital stock, both preferred and common, then outstanding, including that added by the automatic increase. Such corporations shall not pay a franchise tax. [Acts 2nd and 3rd C.S.1923, pp. 87, 114.]

Art. 2506. Liability of stockholders.—Except for debts lawfully contracted between a member stockholder and the corporation, no stockholder either preferred or common, shall be liable for the debts, contracts or engagements of the corporation beyond the par value of the stock owned by such stockholder, and the stock, both common and preferred, shall be nonassessable.

Art. 2507. Rate of interest.—No corporation organized under the provisions of this Chapter shall, in making loans to its members, or discounting notes of the members of such corporation, charge the member borrower in excess of three (3) per cent per annum of the rate of discount established and promulgated by the Farm Credit Administration for discounts made by the Federal Intermediate Credit Banks. [Acts 1925, 39th Leg., p. 221, ch. 68, § 1; Acts 1937, 45th Leg., p. 592, ch. 296, § 1.]

Art. 2507a. Amendatory act applicable existing corporations.—The provisions of this amendatory Act shall be applicable to all existing corporations as well as those hereafter organized and existing under the provisions of Articles 2500 to 2507, inclusive, of the Revised Civil Statutes of Texas, 1925, as amended, and such existing corporations may avail themselves of the provisions of this Act regardless of any existing liabilities of such corporations, and be it so enacted. [Acts 1937, 45th Leg., p. 592, ch. 296, § 2.]

4. CO-OPERATIVE CREDIT ASSOCIATIONS

Art. 2508. Purposes.—Ten or more persons, citizens of this State, who are engaged in the production, or production and marketing of staple agricultural products, or the raising, breeding, feeding, fattening or marketing of live stock, may organize private cooperative credit associations not for profit. [Acts 2nd C. S. 1923, p. 90.]

Art. 2509. Powers.—Such associations shall have the following powers:

1. To borrow for and lend money to its members only.

2. To discount or rediscount for its members only, and to purchase and sell the notes of its members, or such other evidences of indebtedness as may be discounted or rediscounted under the provisions of the Federal "Agricultural Credits Act of 1923," and under the terms, rules and regulations prescribed by the Federal Farm Loan Board, and to that end may indorse all bills, notes or other evidences of indebtedness of its members.

3. And to do such acts as are permitted to associations generally organized under the laws of this State where not in conflict herewith. [Id.]

Art. 2510. Capital stock.—Such associations may be organized with or without capital stock, but if organized to lend money secured by chattel mortgages on live stock, shall have a capital stock. Associations having a capital stock shall automatically increase the same at the rate of ten per cent of the amount of loans or discounts made by them to their stockholder members and such loans or discounts shall never exceed ten times the amount of their paid up unimpaired capital stock, and the articles of incorporation shall so provide. [Id.]

Art. 2511. Articles of incorporation.—In addition to the requirements prescribed by the general corporation law, the articles of incorporation shall provide: That loans shall not be obtained for, made to, or notes purchased of, or discount for any person or association other than a stockholder in such association; and that each applicant for a loan or discount by such association shall become a subscriber to its capital stock in an amount equal to ten per cent of the amount of the loan or discount applied for, to be fully paid for on or before the closing of such loan or granting of such discount. A filing fee of ten dollars shall accompany said articles of incorporation and be paid to the Secretary of State.

Art. 2512. Fees and reports.—Each such association, except those having a capital stock, shall pay an annual license fee of ten dollars, and all such associations shall be exempt from all franchise or other license tax. On or before the tenth days of January, April, July and October, those having a capital stock shall file with the Secretary of State with a fee of two dollars and fifty cents, accurate reports showing their financial condition and the amount of outstanding paid up capital stock as of the first of January, April, July and October. [Id.]

Art. 2513. Retirement of stock.—Whenever the debts and liabilities of such association are less than fifty per cent of its assets, and in the judgment of the directors the same may be done without impairment of the financial condition of such association, said board may authorize the buying in and purchase of its capital stock at the book value thereof as it may conclusively determine, and pay for it in cash within one year thereafter; provided the board may in its discretion retire pro rata such stock held by any member or group of members whose loans have been paid in whole or in part. [Id.]

5. FARMERS' CO-OPERATIVE SOCIETY

Art. 2514. May incorporate.—Private corporations may hereafter be incorporated for the purpose of enabling those engaged in agricultural pursuits to co-operate with each other for the purposes named in this subdivision. Only those engaged in agricultural pursuits can become incorporators of, or members of societies chartered under this law. Each corporation chartered hereunder shall contain as a part of its name these words, "Farmers' Co-operative Society". Persons not engaged in agricultural pursuits may be permitted to contribute an amount not in excess of one-third the outstanding working capital of the society. [Acts 1917, p. 432.]

Art. 2515. Purely local.—Corporations chartered hereunder shall be purely local in their character, shall confine their activities, business operations and membership to the community in which they are located, and in no event to extend beyond the territory surrounding the town, village or city designated as the place of business of the corporation. No public funds appropriated to any department of State government, or to any State institution shall be used in organizing any society or corporation mentioned in this subdivision. Corporations incorporated under this law may join with other corporations incorporated under this Act in establishing and maintaining joint agencies for the accomplishment of the purposes for which they are incorporated.

Art. 2516. Laws governing.—Those desiring to form corporations hereunder shall, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare and file their charters under the general corporation laws of this State, which said corporation laws shall govern them except where in conflict with the provisions of this subdivision. [Id.]

Art. 2517. Filing and recording charter.—The Secretary of State shall charge for filing charters and amendments to charters of corporations incorporated hereunder the sum of ten dollars for each charter and amendment thereof. Charters, amendments to charters and by-laws must be filed in the office of the Secretary of State and must before being filed, first be approved by the Attorney General. Copies of the charter and by-laws properly certified to by the Secretary of State shall also be filed in the office of the county clerk of the county in which it is located any society which is incorporated hereunder, but need not be recorded by the county clerk, but shall be kept by him subject to inspection of any person interested. The Secretary of State shall, in furnishing the corporation certified copies of charters, amendments and by-laws, furnish to the society two certified copies of each, one for the files of the society, and one to be filed in the office of the county clerk. [Id.]

Art. 2518. Statement to be made.—Corporations chartered hereunder shall be purely co-operative, and not for profit, and shall not be required to pay any annual franchise tax, but shall nevertheless make a statement of their assets and liabilities to the Secretary of State, showing the condition of their affairs, in such form as the Attorney General may prepare for the Secretary of State. Such societies may, by their directors, in accordance with their by-laws pass their profits to the surplus fund or divide the same among the members of the society in proportion to their respective contributions in cash to the working capital of the corporation and patronage of their members. [Id.]

Art. 2519. Assets.—Corporations chartered hereunder shall have property of not less than five hundred dollars in value, which may be cash, property or note[s] acceptable to the board of directors. No membership certificates shall be issued for subscriptions in the form of notes until such notes have been paid in full, principal and interest, and the holders of membership certificates for which cash or property has not been paid, while entitled to vote in the management of the affairs of the corporation, shall not be entitled to share in its dividends nor in a distribution of any assets until such notes are paid in full. However, they may become borrowers from the corporation under the provisions of this subdivision and the by-laws adopted hereunder. Such notes shall be construed to be valid subscription contracts, and shall be the property of the corporations chartered hereunder for any and all purposes. [Id.]

Art. 2520. Authority.—Corporations chartered under this law shall have authority to borrow money and discount notes to an aggregate amount not in excess of five times the working capital of the corporation; such corporations shall have the right to loan their funds to members only upon such terms and security, if any, as may be provided in their by-laws; they shall also have the right to act as the co-operative selling and purchasing agents of their members only, and may for their members sell any and all agricultural products, and for their members purchase machinery and all supplies of any kind or character, including the purchase of fire, live stock, hail, cyclone and storm insurance for its members; in the event of

purchasing insurance for its members, however, the corporation shall have authority to be, and shall be appointed and licensed as, the agent of the insurance companies, and the commissions so received by it shall be a part of the corporate funds of the company; they shall also have authority to own and operate such machinery and instrumentalities as may be necessary in the production, harvesting, and preparation for market of farm and ranch products. [Id.]

See, also, article 5742a, post.

Art. 2521. Membership.—Membership in societies incorporated under this law can be obtained only by election thereto at the time of organization of the society by the organizers thereof, or by the board of directors of such society when organized under such rules and limitations as may be made in the by-laws. Members shall each have one vote only in the management of the affairs of the corporation. Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed in the by-laws. In case of expulsion the society shall return to the member at such time as may be fixed in its by-laws an amount equal to the money value of the amount contributed by such member to the working capital of the society. [Id.]

Art. 2522. Withdrawal.—Membership certificates shall not be transferable, but members shall have the right of withdrawal under such rules and regulations as may be adopted by the society in its by-laws. In case of withdrawal the society may return to the member an amount equal to the money value of the amount contributed by him to the working capital of the society. [Id.]

Art. 2523. Liability of members.—Unless otherwise provided, the members of a corporation chartered hereunder shall not be responsible to the corporation or to its creditors, in excess of the membership shares subscribed by them, and when such shares are paid for their liability shall cease; provided that the association may, in its by-laws, make each member responsible for an additional amount equal to one hundred per cent of the shares owned by a member, payable upon assessment of the board of directors for the payment of the debts and obligations of the corporation; and may provide in like manner that members may waive their right to claim personal property exempt from seizure for debt as against debts and obligations due to the society. In all such instances such liability must be plainly provided for in the by-laws, which by-laws in this and all other instances must be signed by the member. [Id.]

Art. 2524. Publications.—Appropriate forms of charter, charter amendments, by-laws, rules and annual reports to the members and such other forms as may be necessary to make this law effective, shall be prepared by the Attorney General and filed with the Secretary of State, who shall cause same, together with a copy of this law, to be published and distributed among the citizens of the State who may be interested. [Id.]

TITLE 46A—DECLARATORY JUDGMENTS

Art.
2524—1. Uniform Declaratory Judgments Act.
Sec.
1. Scope.
2. Power to construe, etc.
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10. Costs.
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16. Short title.

Art. 2524—1. Uniform Declaratory Judgments Act.

Scope

Section 1. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

Power to construe, etc.

Sec. 2. Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a Statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, Statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

Before breach

Sec. 3. A contract may be construed either before or after there has been a breach thereof.

Executor, etc.

Sec. 4. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Enumeration not exclusive

Sec. 5. The enumeration in Sections 2, 3, and 4 does not limit or restrict the exercise of the general powers conferred in Section 1, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

Discretionary

Sec. 6. The Court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

Review

Sec. 7. All orders, judgments, and decrees under this Act may be reviewed as other orders, judgments, and decrees.

Supplemental relief

Sec. 8. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a Court having jurisdiction to grant the relief. If the application be deemed sufficient, the Court shall, on reasonable notice, require any adverse party whose

rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

Jury trial

Sec. 9. When a proceeding under this Act involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the Court in which the proceeding is pending.

Costs

Sec. 10. In any proceeding under this Act the Court may make such award of costs as may seem equitable and just.

Parties

Sec. 11. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the Statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General of the State shall also be served with a copy of the proceeding and be entitled to be heard.

Construction

Sec. 12. This Act is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.

Words construed

Sec. 13. The word "person," wherever used in this Act, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

Provisions severable

Sec. 14. The several Sections and provisions of this Act, except Sections 1 and 2, are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the Act invalid or inoperative.

Uniformity of interpretation

Sec. 15. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

Short title

Sec. 16. This Act may be cited as the Uniform Declaratory Judgments Act. [Acts 1943, 48th Leg., p. 265, ch. 164.]

TITLE 47—DEPOSITORIES

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CHAPTER 1.—STATE DEPOSITORIES

Art.	
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2527.	Application for deposits.
2528.	Acceptance.
2529.	Qualifications of depositories.
2529a.	Exemption of banks from furnishing security for deposits to extent deposits are insured.
2529b.	Pledge of bonds of Home Owners' Loan Corporation.
2530.	Deposit of securities.
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2532.	Placing deposits.
2533.	Centrally located depositories.
2534.	Withdrawals.
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2538–2543.	[Repealed.]
2543a.	Investment of funds by State Depository Board.
2543b.	Defense bonds and other United States obligations; investment of bond proceeds by state.
2543b—1.	Funds accumulated but not usable because of labor and material shortages; investment in United States obligations.

Article 2525. [2417] Depository Board.—The State Treasurer, as Secretary, together with the Attorney General and Banking Commissioner, shall constitute the State Depository Board. Said Board shall have the right and the power to make and enforce such rules and regulations governing the establishment and conduct of State Depositories and the handling of funds therein as the public interest may require, not inconsistent with the provisions of the laws governing such Depositories, which rules and regulations shall be in writing and entered upon the minutes of the Board. Said Board shall have the power to determine and designate the amount of State funds deposited by them in State Depositories that shall be "demand deposits" and what amount shall be "time deposits", and may contract with said Depositories in regard to the payment of interest on "time or demand deposits" not to exceed such rate as may be lawful under any Act of Congress and such rules and regulations as may be promulgated by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. The term "demand deposits", as used herein, shall mean any deposit which is payable on demand, and the term "time deposits", as used herein, shall mean any deposit with reference to which there is in force a contract that neither the whole nor any part of such deposit may be withdrawn by check or otherwise prior to the expiration of the period of notice which must be given in writing in advance of withdrawals. Whenever the word "Treasurer" is used in the Statutes it shall mean the State Treasurer, and the word "Board" shall mean the State Depository Board. [Acts 1923, p. 60; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Section 2 of the Act of 1937 made the act operative on and after August 1, 1937 and provided that all banks then designated as State Depositories should be required to file new applications and to be redesignated under this act. Section 3 repealed all conflicting laws, especially article 2539.

Art. 2526. [2418] Notice to banks.—The Treasurer on the second Tuesday in September, 1943 and on the second Tuesday in September of each odd numbered year thereafter, shall mail to each State and National Bank doing business in this state, a circular letter, stating the conditions to be complied with by applicants for designation as a state depository. The Treasurer shall keep on file in his office for the inspection of any person desiring to see the same a list of the banks to which letters have been sent. Designation of depositories shall be for a period of two years' time. If it develops that more depositories are

required at any time, the Board may send out notices to all State and National Banks notifying them that further applications for funds for the unexpired term will be accepted, or additional funds allotted to existing depositories upon application therefor. Said additional depositories shall comply with the same rules and conditions regarding all other depositories. [Acts 1923, p. 60; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1; Acts 1943, 48th Leg., p. 422, ch. 288, § 1.]

Art. 2527. [2419] Application for deposits.—The application of the bank applying for State funds shall state its amount of paid up capital stock and permanent surplus, and the maximum of State funds it will accept, accompanying same with a statement of the Bank's condition at the date of said application. Such application shall contain a provision that the books and accounts of such bank, if designated as a State Depository, shall be open at all times to the inspection of the Board, any member or any accredited representative thereof. All such applications shall be mailed to the Treasurer at Austin in time to reach his office on or before noon of the fifteenth day of October next succeeding. Applications received after said date may be considered at the option of the Board. [Acts 1923, p. 60; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Art. 2528. [2420] Acceptance.—When the Treasurer receives such application, he shall endorse thereupon the date of its receipt, and shall in November prepare three (3) lists giving the names of all applicants for funds and the amount applied for. One list shall be furnished each member of the Board. The Board shall meet on the first Monday in November thereafter, and consider said applications, giving approval to those applicants that are acceptable, and having the power to reject those whose management or condition, in the opinion of the Board, does not warrant the placing of State funds in their possession. No application for State funds shall be granted to any bank whose liabilities for borrowed money are in excess of its capital stock, but the Board may in its discretion, waive this provision. [Acts 1923, p. 60; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Art. 2529. [2423] Qualifications of depositories.—As soon as practicable after the Board shall have passed upon said applications, the Treasurer shall notify all banks whose applications have been accepted, of their designation as State Depositories of State funds. The Treasurer shall require each bank so designated to qualify as a State Depository on or before the 25th day of November next, by (a) depositing a depository bond signed by some surety company authorized to do business in Texas, in an amount equal to not less than double the amount of State funds allotted, such bond to be payable to the Treasurer and to be in such form as may be prescribed by the Board and subject to the approval of such Board; or (b) by pledging with the Treasurer any securities of the following kinds: bonds and certificates and other evidences of indebtedness of the United States, and all other bonds which are guaranteed as to both principal and interest by the United States; bonds of this State; bonds and other obligations issued by the University of Texas; warrants drawn on the State Treasury against the General Revenue of the State; bonds issued by the Federal Farm Mortgage Corporation, provided both principal and interest of said bonds are guaranteed by the United States Government; shares or share accounts of any building and loan association organized under the laws of this State, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation, and in the shares or share accounts of any Federal Savings & Loan Association domiciled in this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; Home Owners Loan Corporation Bonds, provided both principal and interest of said bonds are guaranteed by the United States Government, and such securities shall be accepted by the Board in an amount not less than five (5%) per cent greater than the amount of State funds which they secure; provided, that Texas Relief Bonds may be accepted at face value and without margin for the amount of State funds allotted, provided such State Relief Bonds have all unmatured coupons attached; bonds of counties located in Texas; road districts of counties in Texas; independent and common school districts located in Texas; and bonds issued by municipal corporations in Texas. All of such securities may be accepted by the Board, provided the aggregate amount thereof is not less than twenty (20%) per cent greater than the total amount of State funds that they secure; provided that the amount of all bonds and other obligations offered as collateral shall be determined by the Board on the basis of either their par or market value, whichever is less. The term "market value" as used herein shall mean the fair and reasonable prevailing price at which said bonds are being sold on the open market at the time of the appraisement of the securities by the Board; and the action of the Board in fixing the valuation of said bonds shall be final, and not subject to review.

No State, county, road district bond, independent or common school district or municipal bonds, or obligations of the Board of Regents of the University issued by the University of Texas, shall be accepted as collateral security unless they shall be approved by the Attorney General. All bonds accepted as collateral security shall be registered under the same rules and regulations as are required for bonds in which the Permanent School Funds are invested. Subject to the approval of the Board, a State Depository may secure its deposits of State funds in part by an acceptable surety bond and in part by acceptable collateral of the kind herein mentioned, and any losses sustained where a Depository has secured its deposits in part by collateral and in part by a surety bond, the loss may be enforced against either the collateral security or the surety bond. No warrant drawn on the State Treasury shall be accepted as collateral unless said warrants are accompanied by affidavits, sworn to by some officer of the bank offering said warrants, which said affidavits shall affirm that none of the warrants offered as collateral security were transferred or assigned by the original payees of said warrants, nor any of them, for a less consideration than ninety-eight (98%) per cent of the face value of said warrants, and that none of such warrants were obtained from the original payee by loaning money thereon at a rate of interest greater than eight (8%) per cent per annum. The Board shall have the power to reject any and all collateral or surety bonds tendered by a State Depository, without assigning any reason therefor, and its action in so doing shall be final and not subject to review. Notwithstanding the foregoing provisions requiring security for State funds deposited in State Depositories in the form of surety bond or collateral, security for such deposits shall not be required to the extent that said deposits are insured by the Federal Deposit Insurance Corporation under the provisions of Section 12b of the Federal Reserve Act as amended,[1] or as the same may hereafter be amended.

In the event the market value of the securities pledged by any Depository shall decrease to the point where the collateral value of said securities, as fixed by the Board, is less than the amount of said funds on deposit in said Depository, the Board

shall require additional security in order to equalize such depreciation.

When the collateral pledged by a State Depository to secure a deposit of State funds shall be in excess of the amount required under the provisions of this Act, the Treasurer may, subject to the approval of the Board, permit the release of any such excess. In the event the balance to the credit of the Treasurer on the books of such bank shall be thereafter increased, adequate security, as provided for in this Act, shall be deposited and maintained by such depository bank. [Acts 1923, p. 60; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1929, 41st Leg., p. 278, ch. 124; Acts 1933, 43rd Leg., p. 840, ch. 240; Acts 1933, 43rd Leg., p. 854, ch. 244; Acts 1934, 43rd Leg., 1st C.S., p. 215, ch. 80, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 133, ch. 63, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1; Acts 1939, 46th Leg., p. 255, § 1; Acts 1943, 48th Leg., p. 63, ch. 55, § 1.]

[1] 12 U.S.C.A. § 264.

Art. 2529a. Exemption of banks from furnishing security for deposits to extent deposits are insured.—Notwithstanding any provision of law of this State or of any political subdivision thereof requiring security for deposits in the form of collateral, surety bond or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of Section 12B [1] of the Federal Reserve Act, as amended, or any amendments thereto. [Acts 1935, 44th Leg., p. 442, ch. 180, § 1.]

[1] 12 U.S.C.A. § 264.
Section 2 of this Act repealed all conflicting laws and parts of laws.

Art. 2529b. Pledge of bonds of Home Owners' Loan Corporation.—From and after the effective date of this Act, all bonds of the Home Owners' Loan Corporation which are guaranteed both as to principal and interest by the United States Government may be pledged in lieu of personal bonds or surety bonds as security for public funds on deposit in any depository which is now authorized by law to pledge securities in lieu of personal or surety bonds. Provided that the provisions of this Act shall be cumulative and in addition to all existing laws relating to depository bonds. [Acts 1935, 44th Leg., p. 741, ch. 322, § 1.]

Art. 2530. [2426] Deposit of securities.—In the event the State Depository, as designated in the preceding Article, shall elect to deposit said pledged securities, above mentioned, with the State Treasurer, the said securities shall be delivered to the Treasurer and receipted for by him, and retained by him in the vaults of the State Treasury. Provided, however, that such bank so designated as depository shall have the option, instead of depositing said pledged securities with the State Treasurer, of depositing same with another State or National Bank situated in the State, subject to the approval of the Board; said securities to be held in trust by said custodian bank to secure funds deposited by the State Treasurer in the depository bank. Upon the receipt of said securities, said custodian bank shall immediately issue and deliver to the State Treasurer controlled trust receipts for said securities pledged to the State Treasurer. The security evidenced by such trust receipts shall be subject to inspection by the Board or its agents at any time deemed advisable by said Board. Said custodian bank shall have a capital stock and permanent surplus of not less than Five Hundred Thousand ($500,000.00) Dollars, and said bank designated as depository shall itself defray the charges, if any, of such custodian bank for accepting and holding said securities.

Subject to the approval of the Board, a State Depository may have the right to substitute one group of securities for another group of securities pledged with the State Treasurer, when and as such State Depository may desire to make such substitution, so long as the securities desired to be substituted by such bank shall come within the classification of securities acceptable under the terms of this Act.

If, in any case, or at any time, such bonds or other securities are not satisfactory security, in the opinion of the Board, for the deposits made under this Act, they may require such additional security to be given as will be satisfactory to them. Said Board shall, from time to time inspect such bonds and see that the same are actually kept in the vaults of the State Treasury and in said custodian banks. In the event that any State Depository shall fail to pay deposits or any part thereof on the check of the Treasurer, he shall have the power to forthwith realize upon such bonds or other securities deposited by said bank, and disburse the money arising therefrom, according to law, upon the warrants drawn by the Comptroller upon the funds for which said bonds or other securities were secured. Any bank making deposits of bonds or other securities with the Treasurer under the provisions of this Act may cause such bonds or other securities to be endorsed or stamped, as they may deem proper, so as to show that they are deposited as collateral and not transferable, except as herein provided.

Upon request of the owner or owners, the Treasurer or custodian bank may surrender interest coupons or other evidence of interest when due on securities deposited by depository banks, provided, said securities are ample to meet the requirements of the State.

Whenever any private bank now organized as provided for by the private banking laws of Texas should seek to become a depository for State funds or any other governmental agency, it shall agree in writing to submit itself to examination as to its solvency. [Acts 1923, p. 60; Acts 1933, 43rd Leg., p. 63, ch. 33; Acts 1934, 43rd Leg., 2nd C.S., p. 133, ch. 63, § 2; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Art. 2531. [2424] Failure to qualify.—In case any bank that has submitted an application for State funds shall fail to qualify within the time specified in this Act after being notified to do so, it shall forfeit its right to act as a depository for a period of one year, at the option of the Board. [Acts 1923, p. 60; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Art. 2532. [2425] Placing deposits.—After the depositories have qualified as provided in the preceding articles, it shall be the duty of the Treasurer to deposit the funds belonging to the State in such depositories, as far as practical on a fair percentage basis, and shall at all times keep such funds equitably prorated in proportion to the amount which each is entitled to receive by drawing warrants alternately thereon, or by apportioning the warrants so drawn, and after giving the notice required for the withdrawal of funds deposited to the credit of any "time deposits" in any State Depository or Depositories.

No depositories shall be entitled to keep on deposit State funds in an amount in excess of their paid up capital stock and permanent surplus. Any reduction in the capital stock and permanent surplus of any depository shall reduce correspondingly the amount of State funds which it can retain as a depository, and the Treasurer is authorized to withdraw from said depository any funds in excess of its capital and permanent surplus, provided, that where any depository shall pledge as security for State funds on deposit with it warrants drawn upon the State Treasury against the General Fund of this State as provided by Article 2529, and shall also make the proof required in such Article that such warrants were acquired by it as therein provided, then the limitation upon the amount of deposits that may be placed in said depository shall not apply, but the amount of

said funds to be deposited in said depository shall be determined by the State Depository Board.

If there be a surplus after the awards are made, the surplus shall be prorated among the applying banks.

Such provisions, however, shall not affect arrangements for clearing checks made by said Board with State Depositories as hereinafter provided.

All State Depositories shall collect all checks, drafts and demands for money so deposited with them by the Treasurer and when using due diligence shall not be liable on such collections until the proceeds thereof have been duly received by the Depository Bank, provided, that any expense incurred in collection thereof by the Depository which the Depository is not allowed or permitted to pay by reason of any Act of the Congress of the United States or any rule or regulation promulgated thereunder by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation shall be charged to and paid by the State Treasurer out of any moneys appropriated by the Legislature for that purpose.

If there should be at any time a surplus of State funds above the aggregate amount applied for by and allotted to State Depositories, the Treasurer, with the approval of the Board, is hereby authorized to deposit said surplus funds in the vaults of the State Treasury, or the Board shall have the power to deposit said surplus, or any part thereof with any one or more banks in such amounts and for such periods as it may deem advisable, and any bank receiving such deposits under this Article shall execute a bond or furnish collateral in the manner and form provided in Article 2529 under the conditions provided in said Article.

The State Depositories shall show in their statements, published according to law, the amount of State funds on deposit with them. [Acts 1923, p. 60; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Art. 2533. [2428] Centrally located depositories.—The Board shall designate one or more banks which have been selected as State Depositories in centrally located cities to be used for clearing checks and other obligations due the State, and the Treasurer shall keep sufficient moneys on deposit in the "demand deposits" account in said Depositories to meet all current claims upon the State, and all items received by the Treasurer for collection shall be deposited with such Depositories to be credited to the "demand deposits" account in said banks, and all checks drawn by the Treasurer for the payment of obligations due by the State may be drawn on such accounts in such Depositories or on the "demand deposits" account in other State Depositories so that the checks of the State may at all times pass current as cash. [Acts 1923, p. 60; Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1; Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Art. 2534. [2431] Withdrawals.—The funds on deposit with depositories shall be subject to withdrawal at any time by the Treasurer, except funds designated by the Board as "time deposits" which shall be withdrawn in the manner agreed upon in the contract under which such funds have been deposited. [Acts 1923, p. 60; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Art. 2535. [2429] Remittances.—All State Depositories shall remit free of charge, except such charges which depository is not allowed or permitted to pay by reason of any Act of the Congress of the United States or any rule or regulation promulgated thereunder by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation, to the Treasurer on his demand, all withdrawals of State funds as provided for in the preceding Article. All remittances to the Treasurer made by the State Depositories, or any person or persons may be in cash by registered and insured letter; by post office money order; express money order of any company authorized to do business in Texas, or by any bank draft on any bank in the following cities: Dallas, Fort Worth, Waco, Houston, Austin, Galveston and San Antonio. The liability of any State Depository or person sending the same shall not cease until the said money is actually received by the Treasurer. Any depository that refuses to remit for State items, or Treasury drafts, as above indicated, shall upon order of the Board forfeit its right to receive further deposits, and the Board shall have the right to withdraw all funds from said bank, which shall thereafter cease to be a State Depository. [Acts 1923, p. 60; Acts 1937, 45th Leg., p. 319, ch. 164, § 1.]

Art. 2536. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 2.]

Art. 2537. [2432] Cancellation of contracts.—Each State Depository shall have the right to cancel its depository contract upon accounting to the Treasurer for all funds deposited with it at any time by giving thirty days' notice in advance.

The Board shall have the right to terminate a contract with the depository at any time they deem it to the interest of the state to do so, upon giving the depository fifteen days' notice of such termination. The Treasurer shall discontinue making deposits in any bank when in the opinion of the Board the condition or management of the bank warrants such action on his part. [Acts 1923, p. 60; Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 1; Acts 1937, 45th Leg., p. 319, ch. 164, § 1; Acts 1943, 48th Leg., p. 422, ch. 288, § 1.]

Art. 2538. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1.]

Art. 2539. [Repealed by Acts 1937, 45th Leg., p. 319, ch. 164, § 3.]

The article repealed was amended by Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 1, which amendment made no reference to the repeal of this article by Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1.

Arts. 2540–2543. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, § 2.]

Acts 1933, 43rd Leg., 1st C.S., p. 231, ch. 89, does not mention the repeals of those articles by Acts 1927, 40th Leg., 1st C.S., p. 161, ch. 57, § 1.

Art. 2543a. Investment of funds by State Depository Board.—The State Depository Board is hereby authorized and empowered to invest the permanent funds of the Texas School for the Blind, Texas School for the Deaf, Austin State Hospital, State Orphans' Home and any other permanent funds the investment of which is not otherwise provided for, whenever such permanent funds shall have as much as One Thousand Dollars ($1000) of funds on deposit with the State Treasurer which are not invested, and it is hereby made the duty of the State Depository Board to invest such funds in the same class of bonds as are authorized for investment of the Permanent School Fund. [Acts 1931, 42nd Leg., p. 386, ch. 231, § 1.]

Art. 2543b. Defense bonds and other United States obligations; investment of bond proceeds by state.—Where the State of Texas has heretofore or hereafter accumulated funds for certain purposes and is unable to obtain labor or materials to carry out such purposes, such funds may be invested in defense bonds or other obligations of the United States of America; provided, however, that when war time or any other regulations shall permit the state to acquire the necessary labor and materials, the obligations of the United States in which said funds are invested shall be sold or redeemed and the proceeds of said obligations shall be used for

the purpose for which the funds were originally authorized or collected. [Acts 1943, 48th Leg., p. 211, ch. 131, § 1.]

Section 2 of the Act of 1943 is set out as article 708b.

Art. 2543b—1. Funds accumulated but not usable because of labor and material shortages; investment in United States obligations.—Where the State of Texas has heretofore or hereafter accumulated funds for certain purposes and is unable to obtain labor or materials to carry out such purposes, such funds may be invested in government bonds or other obligations of the United States of America; provided, however, that when other regulations shall permit the State to acquire the necessary labor and materials, the obligations of the United States in which said funds are invested shall be sold or redeemed and the proceeds of said obligations shall be used for the purpose for which the funds were originally authorized and collected. [Acts 1947, 50th Leg., p. 388, ch. 216, § 1.]

Section 2 of the Act of 1947 is set out as article 708b—1.

CHAPTER 2.—COUNTY DEPOSITORIES

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13. Transfer of funds to new depository.
14. Failure to select depository.

Art. 2544. [2440] Notice to banks.—The Commissioners Court of each county is hereby authorized and required at the February Regular Term thereof next following each general election to enter into a contract with any banking corporation, association or individual banker in such county for the depositing of the public funds of such county in such bank or banks. Notice that such contracts will be made by the Commissioners Court shall be published by and over the name of the County Judge, once each week for at least twenty (20) days before the commencement of such term in some newspaper published in said county; and if no newspaper be published therein, then in any newspaper published in the nearest county. In addition thereto, notice shall be published by posting same at the courthouse door of said county. [Acts 1905, p. 392; Acts 1907, p. 208; Acts 1917, p. 16; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Section 4 of the Act of 1937, article 2566a, provided that security for deposits should not be required to the extent covered by Federal Deposit Insurance. Section 5 provided that the Act should not become operative until August 1, 1937 and that all banks designated as depositories were required to file new applications and be redesignated. Section 5 also validated contracts made with depositories prior to the passage of the Act.

Art. 2545. [2441] Application by banks.—Any banking corporation, association or individual banker in such county desiring to be designated as county depository shall make and deliver to the County Judge an application applying for such funds and said application shall state the amount of paid up capital stock and permanent surplus of said bank and there shall be furnished with said application a statement showing the financial condition of said bank at the date of said application which shall be delivered to the County Judge on or before the first day of the term of the Commissioners Court at which the selection of the depositories is to be made. Said application shall also be accompanied by a certified check for not less than one-half of one per cent of the county's revenue for the preceding year as a guarantee of the good faith on the part of said bank, and that if said bank is accepted, as county depository, that it will enter into the bond hereinafter provided. Upon the failure of the banking corporation, association, or individual banker in such county that may be selected as depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages and the county judge shall readvertise for applications, if necessary, to obtain a county depository for said county. [Acts 1905, p. 392; Acts 1907, p. 208; Acts 1917, p. 16; Acts 1937, 45th Leg., p. 1292, ch. 484, § 1.]

Art. 2546. [2442] Selecting county depository.—It shall be the duty of the Commissioners Court at ten o'clock a. m. on the first day of each term at which banks are to be selected as county depositories, to consider all applications filed with the County Judge, cause such applications to be entered upon the minutes of the Court and to select those applicants that are acceptable and who offer the most favorable terms and conditions for the handling of such funds and having the power to reject those whose management or condition, in the opinion of the Court, does not warrant placing of county funds in their possession. The County Commissioners Court shall have the power to determine and designate the character and amount of county funds which will be deposited by it in said depositories that shall be "demand deposits" and what character and amount of funds shall be "time deposits," and may contract with said depositories in regard to the payment of interest on "time deposits" at such rate or rates as may be lawful under any Act of the Congress of the United States and any rule or regulations that may be promulgated by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. When the selection of a depository or depositories has been made, the checks of those applicants which have been rejected shall be immediately returned. The check or checks of the applicant or applicants whose applications are accepted shall be returned when said depository or depositories enter into and file the bond required by law and said bond has been approved by the Commissioners Court and the

State Comptroller, and not until such bond is filed and approved. The term "demand deposits," as used herein, shall mean any deposit which is payable on demand, and the term "time deposits," as used herein, shall mean any deposit with reference to which there is in force a contract, that neither the whole nor any part of such deposit may be withdrawn by check or otherwise prior to the expiration of the period of notice which must be given in writing in advance of withdrawals. [Acts 1905, p. 392; Acts 1907, p. 208; Acts 1917, p. 16; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2547. [2443] Bonds.—Within fifteen (15) days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker so selected, to qualify as county depository in one or more of the following ways, at the option of the Commissioners' Court:

(a) By executing and filing with the Commissioners' Court, a bond or bonds, payable to the County Judge and his successors in office, to be approved by both the Commissioners' Court and the Comptroller, and immediately thereafter filed in the office of the County Clerk of said county, said bond to be signed by not less than five (5) solvent sureties who shall own unencumbered real estate in this State not exempt from execution under the Constitution and laws of this State, of a value equal to, or in excess of, the amount of said bonds where there is more than one bond; said bond or bonds to be in an amount equal to the estimated highest daily balance of such county, as determined by the Commissioners' Court, such estimated daily balance to be in no event less than seventy-five (75%) per cent of the highest daily balance of said county for the next preceding year, less the amount of bond funds received and expended; provided, however, in the event that county funds derived from the sale of county securities during the term of such bond are deposited, such Commissioners' Court shall require additional bond and/or bonds, and/or pledge of securities equal to the amount of such additional county funds. The sureties shall file with the Commissioners' Court at the time of filing said bond or bonds, a statement containing a description of the unencumbered and nonexempt lands owned by them, sufficient to identify such lands on the ground, and such statement shall remain on file with the County Clerk and attached to such bond or bonds; and such statement shall contain a value of each tract of land so listed, together with the value of the improvements thereon.

(b) By having issued and executed by some solvent surety company or companies authorized to do business in the State of Texas, such bond or bonds, as provided by law, to be in the amount and payable as provided in subdivision (a) hereinabove, which said surety bond shall be approved by both the Commissioners' Court and the Comptroller, and filed in the office of the County Clerk of said county. Provided, however, such surety company or companies may be relieved of its or their obligation on thirty (30) days notice in writing to the Commissioners' Court, such bonding surety company or companies not to be relieved of any liability for loss sustained by the county prior to the expiration date of such bonds or bond; and provided further, in the event any surety company or companies shall ask to be relieved of such bond or bonds, such depository shall, previous to the termination date of such obligation of such surety company or companies, present further security acceptable to the County Commissioners' Court and the Comptroller, and filed in the office of the County Clerk of said county, for the securing of county funds in accordance with the provisions of this Act.

(c) In lieu of such personal bonds or surety bonds as above specified, said banking corporation, association or individual banker so selected as county depository, may pledge, and said depository bank is authorized to pledge with the Commissioners' Court for the purpose of securing such county funds, securities of the following kind, in an amount equal to the amount of such county funds on deposit in said depository bank, to-wit: bonds and notes of the United States, securities of indebtedness of the United States, and other evidences of indebtedness of the United States, when said evidences of indebtedness are supported by the full faith and credit of the United States of America, and other bonds or other evidences of indebtedness which are guaranteed as to both principal and interest by the United States Government, bonds of the State of Texas, or of any county, city, town, independent school district, common school district, or bonds issued under the Federal Farm Loan Act, or road district bonds, bonds, pledges or other securities issued by the Board of Regents of the University of Texas, bank acceptances of banks having a capital stock of not less than Five Hundred Thousand ($500,000.00) Dollars, notes or bonds secured by mortgages insured and debentures issued by the Federal Housing Administrator of the United States Government, shares or share accounts of any building and loan association organized under the laws of this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation, and in the shares or share accounts of any Federal Savings & Loan Association domiciled in this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; and bonds issued by municipal corporations in Texas, all said securities having a total market value equal to the amount of the depository bond; an amount of the following described securities not to exceed twenty-five (25%) per cent of the assessed value of the property in the county as shown by the certified tax roll for the preceding year, viz.: closed first mortgages on improved and unencumbered real estate situated in the State of Texas, provided such security so offered must be first approved by the Commissioners' Court; and before approving such a mortgage tendered as security for deposits, the Commissioners' Court shall require a written opinion by an attorney selected by the Court, showing that the lien so offered is superior to any and all other claims or rights in the property, and the Court shall also require that the improvements on each tract of real estate described in such mortgage be fully insured in some Stock Fire Insurance Company, or a Mutual Fire Insurance Company having One Hundred Thousand ($100,000.00) Dollars surplus in excess of all legal reserves and other liabilities, to be approved by the County Judge, with loss payable clause in favor of the County Judge, such mortgage as may be approved as acceptable security under the provisions of this Article shall be assigned to the County Judge by written instrument, duly acknowledged, and the same shall be placed of record forthwith in each county where any part of said real estate is situated; and as security for such deposits, unencumbered, improved real estate, subject to approval of Commissioners' Court, may be pledged directly by Deed of Trust executed to a trustee selected by the Commissioners' Court, with the County Judge as beneficiary; provided that the Court shall first require the written opinion of an attorney selected by the Court, showing that the lien offered as security for deposits is superior to any and all other claims or rights in the property; and provided further that the Court shall require that all improvements on any real estate, so pledged, be fully insured in a Stock Fire Insurance Company or a Mutual Fire Insurance Company having One Hundred Thousand ($100,000.00) Dollars surplus in excess of all legal reserves and other liabilities, approved by the County Judge, with loss payable clause in favor of the County Judge; and the Commissioners' Court shall investigate all real estate security and determine the value at which such real estate security as is herein described shall be accepted; provided that in no event shall such security be ac-

cepted as collateral at a value in excess of fifty (50%) per cent of the reasonable market value of the real property covered by such mortgages, except where such mortgages are insured or guaranteed by the Federal Housing Administrator of the United States; and such real estate security as herein described may be withdrawn and replaced by other real estate securities meeting the requirements of this Act, or any class of securities above enumerated, provided all such withdrawals, substitutions and replacements must be approved by the Commissioners' Court; and the County Judge shall execute such instruments as may be necessary to transfer to the depository or its order, all liens, so withdrawn, and said Commissioners' Court may accept said securities in lieu of such personal or surety bonds; and such securities so pledged by such depository bank shall be deposited as the Commissioners' Court may direct.

When the securities pledged by a depository bank to secure county funds shall be in excess of the amount required under the provisions of this Article, the Commissioners' Court shall permit the release of such excess; and when the county funds deposited with said depository bank shall for any reason, increase beyond the amount of securities pledged, said depository bank shall immediately pledge additional securities with the Commissioners' Court so that the securities pledged shall at no time be less than the total amount of county funds on deposit in said depository bank. The right of substitution of securities shall be granted to depositories, provided the securities substituted meet with the requirements of the law, and are approved by the Commissioners' Court. Upon the request of such depository bank, the Commissioners' Court shall surrender interest coupons or other evidence of interest, when due, on securities deposited with the Commissioners' Court by such depository bank, provided said securities remaining pledged are ample to meet the requirements of said Commissioners' Court. Such depository may secure said funds by one or more of the ways herein provided, at the option of the Commissioners' Court.

The condition of the personal bond or bonds, or contract for securities pledged, as hereinabove provided, shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon any "demand deposit" account in any depository by the county treasurer of the county, and all checks drawn upon any "time deposit" account, upon presentation, after the expiration of the period of notice required in the case of "time deposits"; and that said county funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county for which such depository is selected; and provided further, that upon reasonable notice to the Commissioners' Court, such county depository may change from time to time its method of securing such funds, so long as the same are at all times secured in the amount and manner specified herein.

Where separate bonds are given to secure county funds, each surety thereunder shall be liable only for such part of any loss sustained by failure of the depository, as the amount of each bond shall bear to the aggregate amount of all bonds and/or securities held by the county for protection of the funds covered by said bonds.

In the event of payment of a loss to the county by personal sureties or surety companies, said sureties shall be subrogated by the county in the amounts such payment bears to the deposit secured by them or it, at the time of default of the depository.

It shall be the duty of the Commissioners' Court to investigate and inquire into the solvency of each and every surety, on any personal bond or bonds so filed by such county depository, and accepted by the Commissioners' Court and approved as required by law, at least twice during each and every year such bonds are effective and in force; and for that purpose shall have authority to require each surety to render an itemized and verified financial statement, under oath, showing his true financial condition. If any such statement or statements indicate that any of said sureties have become insolvent, or their net worth depreciated below the amount required by law as such sureties, or if any of the assets listed are shown to be, or are known to be depreciated, or their value in any way impaired, then and in any such events, the Commissioners' Court shall require a new bond meeting fully the requirements of this law; and in case of a bond or bonds the sureties on which are required to own unencumbered and non-exempt real estate as herein provided, such statement shall show each tract of land owned by each surety and the value thereof; and if the statements provided for herein shall indicate that any of such lands have been disposed of or encumbered, and the value of the remaining unencumbered or non-exempt lands shall not be sufficient to meet the requirements of this law, then the said Commissioners' Court shall require a new bond, meeting fully the requirements of this law. The Commissioners' Court shall at any time it may deem necessary for the protection of the county, investigate and inquire into the solvency of any surety company or companies issuing a bond or bonds for any depository, and to investigate the value of any of the securities that may be pledged by such depository in lieu of the personal bond; and such Commissioners' Court may request any such depository if it deem advisable, to execute a new bond. If said new bond required by the Commissioners' Court for any reason as herein specified be not filed within five (5) days from the time of the service of a copy of said order upon said depository, the Commissioners' Court may proceed to the selection of another depository, in the same manner as provided for the selection of a depository at the regular time for such selection. Nothing in this law shall in any manner limit, restrict or prevent the Commissioners' Court from requiring any depository to execute a new bond at any time such Commissioners' Court may deem it necessary for the protection of the county. [Acts 1905, p. 393; Acts 1909, p. 165; Acts 1917, p. 17; Acts 1927, 40th Leg., p. 197, ch. 129; Acts 1929, 41st Leg., p. 33, ch. 11; Acts 1933, 43rd Leg., p. 40, ch. 19; Acts 1933, 43rd Leg., p. 137, ch. 66; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1; Acts 1943, 48th Leg., p. 70, ch. 58, § 1.]

Acts 1933, 43rd Leg., p. 223, ch. 101, referring to one county only.

Art. 2548. Additional bond.—Whenever, after the creation of a county depository, as by this Act provided, there shall accrue to the county or any subdivision thereof, any funds or moneys from the sale of bonds or otherwise, the Commissioners Court of such county at its first meeting after such special funds shall have come into the Treasury, or depository of such county, or so soon thereafter as may be practicable, may make written demand upon the duly accredited and established depository of the county for a special additional bond as such depository in a sum equal to the whole amount of such special fund, to be kept in force so long as such funds remain in such depository. Such extra or special bond may be cancelled and a new bond contemporaneously substituted therefor as such special fund may have been reduced. Such special bond shall at all times be sufficient in amount to cover such special fund then on hand. Upon the failure of such depository to furnish such additional bond within thirty (30) days from the date of such demand, the Commissioners Court may cause such special funds to be withdrawn, upon the draft of the county treasurer from such depository, and cause the same to be deposited in some solvent National bank or State bank whose combined capital stock and surplus is in excess of such special fund, and to leave the same or so much thereof as may not have been expended

with such National bank or State bank of last deposit, until such time that such county depository may have filed with the Commissioners Court the required additional bond, when such special fund or so much thereof as shall not have been expended shall be forthwith returned to and deposited with such county depository. The requiring of such additional or special bond shall be optional with such Commissioners Court. When a banking institution selected, qualified and acting as a county depository shall become insolvent and it shall become necessary to resort to the depository bond or bonds to collect the county and State funds deposited therein, payment shall be made to the county and State pro rata. [As amended, Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2548a. Pledge of State General Fund Warrants as security for deposited funds of county or school district in lieu of bonds.—Any banking corporation in the State of Texas selected as the depository bank for County Funds, or for the funds of any School District in Texas, including Common School Districts, Independent School Districts, Rural High School Districts, Consolidated School Districts, and any other School District in Texas, or funds of any State institution, shall be authorized to pledge General Fund Warrants of the State of Texas as securities for the purpose of securing such funds when, as otherwise provided by law, such banking corporations are authorized to pledge securities in lieu of personal bonds or surety bonds for the purpose of securing such Funds; provided, however, this privilege shall cease and be null and void whenever the deficit in the General Fund shall exceed Forty-two Million ($42,000,000.00) Dollars. [Acts 1941, 47th Leg., p. 100, ch. 82, § 1.]

Section 2 of the act of 1941 repealed all conflicting laws.

Art. 2549. [2444] Designating depository.—As soon as said bond be given and approved by the Commissioners Court, and the Comptroller, an order shall be made and entered upon the minutes of said Court designating such banking corporation, association or individual banker, as a depository for the funds of said county until sixty (60) days after the time fixed for the next selection of a depository; and thereupon, it shall be the duty of the county treasurer of said county immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, as well as all funds belonging to any district or other municipal subdivision thereof not selecting its own depository, and immediately upon receipt of any money thereafter, to deposit the same with said depository to the credit of said county, district and municipalities. It shall also be the duty of the tax collector of such county to deposit all taxes collected by him, or under his authority, for the State and such county and its various districts and other municipal subdivisions, in such depository or depositories, as soon as collected, pending the preparation of his report of such collection and settlement thereon. The bond of such county depository or depositories shall stand as security for all such funds. Upon such funds being deposited as herein required, the tax collector and sureties on his bond, shall thereafter be relieved of responsibility of its safekeeping. All county depositories shall collect all checks, drafts and demands for money so deposited with them by the county and when using due diligence shall not be liable on such collections until the proceeds thereof have been duly received by the depository bank, provided that any expense incurred in collection thereof by the depository, which the depository is not allowed or permitted to pay or absorb by reason of any act of Congress of the United States or any regulation by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation, shall be charged to and paid by the county. All money collected or held by any district, county or precinct officer in such county, or the officers of any defined district or subdivision in such county, including the funds of any municipal or quasi-municipal subdivision or corporation which has the power to select its own depository, but has not done so, shall be governed by this law, and shall be deposited in accordance with its requirements, and shall be considered in fixing the bond of such depository, and shall be protected by such bond; and all warrants, checks, and vouchers evidencing such funds shall be subject to audit and countersignature as now or hereafter provided by law. [Acts 1905, p. 393; Acts 1917, p. 19; Acts 1933, 43rd Leg., p. 604, ch. 201; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2550. [2445] Deposits not applied for.—If for any reason no applications are submitted by any banking corporation, association or individual banker to act as county depository or in case all applications shall be declined, then in any such case, the Commissioners Court shall have the power, and it shall be their duty to deposit the funds of the county with any one or more banking corporations, associations or individual bankers in the county or in the adjoining counties in such amounts and for such periods as may be deemed advisable by the Court. Any bank or banking concern receiving deposits under this Article shall execute a bond in the manner and form provided for depositories of county funds with all the conditions provided for same, the penalty of said bonds to be not less than the total amount of county funds deposited with such bank or banking concern. [Acts 1905, p. 393; Acts 1917, p. 19; Acts 1935, 44th Leg., p. 394, ch. 152, § 1; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2551. [2446] Clearing house to be selected.—When the funds of any county shall be deposited with two or more depositories, the Commissioners Court shall select and name by order one of said depositories to act as a clearing house for the others, at which all county warrants shall be finally paid. [Acts 1905, p. 393, § 26; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2552. [2447] Checks payable at county seat.—It shall be the duty of the depository or depositories to pay, upon presentment at the county seat of the county, or in the case of "time deposits" to pay upon presentment after the expiration of the period of notice agreed upon, all checks or warrants drawn by the county treasurer upon the funds of said county deposited with said depository or depositories, as long as such funds shall be in the possession of such depository subject to such checks or warrants. For every failure to pay such check or warrant at such county seat either upon presentment in case of "demand deposits," or upon presentment after the expiration of the period of notice required in the case of "time deposits" said depository or depositories shall forfeit and pay to the holder of such check ten per cent (10%) of the amount thereof; and the Commissioners Court shall revoke the order creating such depository or depositories. [Acts 1905, p. 393, § 27; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2553. [2448] Depository not located at county seat.—If any depository selected by the Commissioners Court be not located at the seat of such county, said depository shall file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid; and such depository shall cause every check to be paid upon presentation or upon presentation at the expiration of the period of notice in the case of "time deposits" at the place so designated so long as the said depository has sufficient funds to the

credit of said county applicable to its payment. [Acts 1905, p. 393, § 28; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2554. [2449] Warrants, how paid and charged.—It shall be the duty of the county treasurer upon the presentation to him of any warrant, check, voucher, or order drawn by the proper authority, if there be funds sufficient for the payment thereof on deposit in the account against which such warrant is drawn, to endorse upon the face of such instrument his order to pay the same to the payee named therein and to charge the same on his books to the fund upon which it is drawn. The county treasurer shall not make an endorsement upon any warrant, check, voucher, or order, upon any funds deposited with said depository or depositories which are designated as "time deposits" until after notice is duly given and the time has expired as required in the contract with said depository in designating said funds as "time deposits." It shall be the duty of such depository to make a detailed monthly statement to the Commissioners Court at each regular term of said Court showing the daily balances to the credit of each of the funds on deposit. In case any bonds, coupons, or other indebtedness of any county by the terms thereof are payable at any place other than the treasury of the county, nothing herein contained shall prevent the Commissioners Court of such county from causing the treasurer to place a sufficient sum at the place where such debts shall be payable at the time and place of their maturity, provided such payments shall be made in the manner prescribed by law. All checks or warrants issued or drawn by any officer under the provisions of this Act, shall be subject to all the laws and regulations providing for auditing and countersigning and all such laws and regulations are hereby continued in full force and effect. [Acts 1905, p. 393; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2555. [2450] May select at subsequent term.—If for any reason, no selection of a depository be made at the time provided by law, the Commissioners Court may, at any subsequent time after twenty (20) days' notice, select a depository or depositories in the manner provided for such selection at the regular time; and the depository or depositories so selected shall remain the depository or depositories until the next regular time for selecting a depository, unless the order selecting and naming such depository be revoked for lawful reasons. [Acts 1905, p. 393, § 30; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2556. [2451] New bond may be required.—If the Commissioners Court shall at any time deem it necessary for the protection of the county, it may require any depository to execute a new bond; and, if said new bond be not filed within five (5) days from the time of the service of a copy of said order upon said depository, the Commissioners Court may proceed to the selection of another depository in the manner provided for the selection of a depository at the regular time for such selection. [Acts 1905, p. 393, § 31; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2557. [2452] Liability of Treasurer.—The county treasurer shall not be responsible for any loss of the county funds through the failure or negligence of any depository; but nothing in this Act shall release any county treasurer for any loss resulting from any official misconduct or negligence on his part, nor from any responsibility for the funds of the county until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds by him. [Acts 1905, p. 393, § 32; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2558. [2458] Applications from adjoining counties.—If there be no bank or banks situated within the county that seeks to be designated as county depository, then in that event the Commissioners Court shall be authorized to advertise for applications from banks in adjoining counties or any other counties in this State in the manner provided by law of this State with reference to advertising in the counties desiring such depositories. When a depository has been selected by the Commissioners Court in the manner as provided herein, said depository shall, within five (5) days after notice of such designation and selection, file with county treasurer of such county a statement designating the place at said county seat where, and the person by whom all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid. [Acts 1905, p. 393, § 33; Acts 1933, 43rd Leg., p. 194, ch. 89; Acts 1937, 45th Leg., p. 1298, ch. 484, § 1.]

Art. 2558a. Depositories for trust funds in hands of county and district clerks.

Applications

Section 1. The Commissioners Court of each county is authorized and required at the February term thereof next following each general election to receive applications from any banking corporation, association or individual banker in such county as may desire to be selected as a depository for Trust Funds in possession of the County and District Clerks. Said applications shall be filed with the County Clerk on/or before ten o'clock a. m. on the first day of the term of Court at which said applications are to be received. Said application shall be accompanied by a certified check for not less than one-half of one per cent of the average daily balances of the amount of Trust Funds in the possession of the Clerks during the preceding calendar year which amount shall be determined by the County Clerk on/or before ten (10) days before the applications herein provided for are required to be filed, and a certified check accompanying the application as herein provided for in the amount so determined by the County Clerk shall be sufficient compliance with this provision, which certified check shall be a guarantee of the good faith on the part of the applicant, and that if his application is accepted the bond hereinafter provided for will be entered into. Upon the failure of the banking corporation, association or individual banker that may be selected as such depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages, and the county shall select another depository as hereinafter provided. In the event any application shall not be accepted, the certified check accompanying the same shall be returned. The check of the applicant whose application is accepted shall be returned when his bond is filed and approved by the Commissioners Court and not until such bond is filed and approved. It shall not be necessary for the county to advertise or give notice that applications will be received as provided by this Statute.

Entry of applications and selection of depository

Sec. 2. It shall be the duty of the Commissioners Court at ten o'clock a. m. on the first day of each term at which applications are required to be received to enter said applications on the minutes of the Court and to select a depository for the Trust Funds in the possession of County and District Clerks.

Qualification of depository

Sec. 3. Within thirty (30) days after the selection of such depository, it shall be the duty of the banking corporation, association, or individual banker so

selected to qualify in the same manner as now provided by law for the qualification of county depositories.

Entry of order designating depository; funds deposited; failure to select new depository

Sec. 4. As soon as said depository has qualified as provided by law and has been approved by the Commissioners Court, said Court shall make and enter an order upon the minutes, designating such banking corporation, association, or individual banker as County Depository for Trust Funds until the designation and qualification of a successor, and thereupon it shall be the duty of the County and District Clerks of such county to deposit all Trust Funds in their possession with said depository in the manner hereinafter provided; provided, in the event, a new depository has not been selected and qualified by April 15th succeeding the term of Court at which a depository is required to be selected as required by this Act, then the term of such depository shall end and all Trust Funds due or on deposit shall be paid to the Clerk in whose name the account is carried.

Advertisement for applications under certain conditions

Sec. 5. If for any reason there shall be submitted no application by any banking corporation, association or individual banker in the county, or in case there shall be no application for the entire amount of Trust Funds, or in the event all applications submitted have been rejected by the Commissioners Court, or in the event a depository selected has failed to qualify, or in the event that the depository shall become insolvent, or in the event a new depository has been selected on account of the failure of the regular depository to execute a new bond as hereinafter provided, then in either event, the Commissioners Court shall advertise for applications from any banking corporation, association, or individual banker within the State of Texas, and may select a depository, which depository shall qualify in the manner above provided. Notice of the selection of a depository as provided by this Act shall be published once each week for two (2) successive weeks in a newspaper of general circulation within the county, if there be such newspaper. If there is no newspaper published in the county, then the same shall be posted at the courthouse for said period. In the discretion of the Commissioners Court said notice may also be published in any newspaper outside of the county for the same length of time.

Provision for payment on presentment of checks; penalty

Sec. 6. It shall be the duty of the depository to provide for the payment at the county seat of the county upon presentment all checks drawn by the County or District Clerk upon the funds deposited in the name of such Clerk as long as such funds shall be in the possession of the depository subject to such checks. For every failure to pay such check at such county seat upon presentment, said depository shall forfeit and pay to the holder of such checks ten per cent (10%) of the amount thereof.

Depository not located at county seat

Sec. 7. If any depository selected by the Commissioners Court be not located at the seat of such county, said depository shall file with the County Clerk of such county, a statement designating the place at said county seat where, and the person, firm or corporation by whom, all the deposits may be received from the Clerks for such depository, and where and by whom in said county seat all checks drawn on such depository will be paid and such depository shall cause every check to be paid upon presentation at the place so designated so long as the said depository has sufficient funds to the credit of such funds applicable to their payment.

New bond

Sec. 8. If the Commissioners Court shall at any time deem it necessary for the protection of the Trust Funds, it may require any depository to execute a new bond. If said new bond is not filed within fifteen days from the time of the service of a copy of said order upon said depository, the Commissioners Court may proceed to the election of another depository in the manner provided for the selection of a depository as provided in this Act.[1]

County and District Clerks not responsible for loss of trust funds through depository's failure or negligence

Sec. 9. The County and District Clerks shall not be responsible for any loss of the Trust Funds through failure or negligence of any depository, but nothing in this Act[1] shall release any County or District Clerk for any loss resulting from any official misconduct or negligence on his part nor from any responsibility for such Trust Funds until a depository shall be selected and the funds deposited therein nor for any misappropriation of such funds by him. Upon the deposit in the legally selected depository of the Trust Funds by any County or District Clerk, such Clerk shall thereafter be relieved of the safekeeping of said funds.

Loss of deposit on account of insolvency of depository or other cause; liability of county

Sec. 10. In the event of the insolvency of any depository, or if for any reason, on account of the deposit of the Trust Funds with any depository, any part of said funds are lost, the county shall be liable to the person to whom any part of said Trust Funds is due for the full amount of said funds due such person.

Duty to deposit; Trust Fund Account

Sec. 11. Any County or District Clerk having the custody by law of any money that may have been deposited in court to abide the result of any legal proceeding, which amount is to be in his possession for a period longer than three (3) days, shall deposit the same in the county depository for Trust Funds, if there be such a depository. The funds deposited by the Clerk shall be carried as a Trust Fund account in the name of the Clerk making the deposit, and same shall be subject to withdrawal by the Clerk under the conditions set out in the succeeding paragraph of this Act.[1]

Withdrawal of deposits by check

Sec. 12. Except upon an order of the Judge of the Court in which funds have been deposited, no check shall be drawn on said depository for any part of said funds by the Clerk except for payment to the person or persons to whom the amount of said check is due. All checks drawn by the Clerks shall show the style and number of the proceeding in which said money was deposited with the Clerk.

Transfer of funds to new depository

Sec. 13. If at any time, a new depository has been selected and qualified, it shall be the duty of the County and District Clerks to transfer to the new depository all funds in said depository in the name of such Clerk and for this purpose a check may be drawn on such funds by such Clerks.

Failure to select depository

Sec. 14. In the event there has been no selection of a county depository for Trust Funds, each County

or District Clerk having the custody by law of any money, evidence of debt, script, instrument of writing, or other legal proceeding shall seal up in a secure package the identical money or other article received by him and deposit the same in some iron safe or bank vault. [Acts 1930, 41st Leg., 4th C.S., p. 21, ch. 14; Acts 1937, 45th Leg., p. 1298, ch. 484, § 2.]

1 This article and Pen.Code, art. 383a.
Section 15 of this Act, being a penal provision, is published as Pen.Code, art. 383a.

CHAPTER 3.—CITY DEPOSITORIES

Art.
2559. Council to take bids for depository.
2560. Award and bond.
2561. Designating depository, etc.
2562. Warrants and checks paid.
2563. May select at subsequent meeting.
2564. Liability of treasurer.
2565. Restrictions upon drawing.
2566. Definition of terms.
2566a. Security for deposits not required to extent covered by Federal Deposit Insurance.

Art. 2559. [2454] Council to take applications for depository.—The governing body of every city, town and village in the State of Texas, incorporated under either the General or Special Laws, including those operating under special charter or amendments of charter adopted pursuant to the "Home Rule" provisions of the Constitution, is authorized to receive applications for the custody of city funds from any banking corporation, association or individual banker doing business within the city, town or village that may desire to be selected as a depository of the city, town or village. The school funds, from whatever source derived of incorporated cities, is part of the city funds and is subject to the provisions of this Act. Notice that such applications will be received shall be published by the City Secretary not less than one (1) nor more than four (4) weeks before said meeting in some newspaper published in that city. Any banking corporation, association or individual banker doing business in the city, town or village desiring to apply to be designated as a depository of the funds of such city, town, or village shall deliver to the city secretary on/or before the day of such meeting designated by such published notice, its application for such funds. [Acts 1905, pp. 260, 395; Acts 1917, p. 132; Acts 1931, 42nd Leg., 1st C.S., p. 16, ch. 9, § 1; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

Acts 1905, p. 260, and p. 395, cited to the text, are separate acts.

Art. 2560. [2455] Award and bond.—Upon considering the applications submitted, the governing body shall select as the depository or depositories of such funds the banking corporations, association or individual banker or bankers offering the most favorable terms and conditions for the handling of such funds. The governing body of such city, town or village shall have the right to reject any and all applications and readvertise for any applications. The governing body of such city, town or village shall have the power to determine and designate the character and amount of city funds which will be deposited by it in said depositories that shall be "demand deposits" and what character and amount of funds shall be "time deposits"; and may contract with said depositories in regard to the payment of interest on "time deposits" at such rate or rates as may be lawful under any Act of Congress of the United States and any rule or regulations that may be promulgated by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. The term "demand deposits", as used herein, shall mean any deposit which is payable on demand, and the term "time deposits", as used herein, shall mean any deposit with reference to which there is in force a contract, that neither the whole nor any part of such deposit may be withdrawn by check or otherwise prior to the expiration of the period of notice which must be given in writing in advance of withdrawals. Within five (5) days after the selection of such depository or depositories, it shall be the duty of the banking corporation or corporations, association or associations, individual banker or bankers so selected to qualify as city depository, in one or more of the following ways, at the option of the governing body of such city, town or village:

(a) By executing and filing with the governing body, a bond or bonds, payable to the city, to be approved by the governing body, said bond to be signed by not less than five (5) solvent sureties who shall own unencumbered real estate in this State not exempt from execution under the Constitution and Laws of this State of a value equal to, or in excess of, the amount of said bond, or of a value equal to, or in excess of, the amount of said bonds when there is more than one (1) bond; and said bond or bonds shall in no event be for less than the total amount of the revenue of such city for the next preceding year for which said bond or bonds are made. The sureties shall file with the city at the time of filing said bond or bonds, a statement containing a description of the unencumbered and non-exempt lands owned by them sufficient to identify such lands on the ground; and such statement shall remain on file with the City Secretary, attached to such bond or bonds, which statement shall contain a fair estimate of the value of each tract of land so listed, together with the value of the improvements thereon.

(b) By having issued and executed by some solvent surety company or companies authorized to do business in the State of Texas, such bond or bonds, as provided by law, to be in the amount and payable as provided in subdivision (a) hereinabove, which said surety bond shall be approved by the governing body and filed with the City Secretary.

(c) By executing and filing with the governing body, a bond or bonds, in an amount and payable as provided in subdivision (a) hereinabove, to be approved by the governing body and filed with the City Secretary of such city; said bond or bonds to be signed by not less than five (5) solvent sureties, who shall prepare and file with the governing body, at the time of the filing of said bond, an itemized and verified financial statement, which shall show the aggregate net worth of all to be equal to, or in excess of, the amount of such bond or bonds as hereinabove provided for.

(d) In lieu of such personal bonds or surety bonds as above specified, said banking corporation or corporations, association or associations, individual banker or bankers so selected as the city depository, may pledge, and said depository is hereby authorized to pledge with the governing body of such city for the purpose of securing such city funds, securities of the following kind, in an amount equal to the amount of said city funds on deposit in said depository bank or banks, to-wit: United States Bonds, Certificates of Indebtedness of the United States, Treasury notes of the United States, and other evidences of indebtedness of the United States which are guaranteed as to both principal and interest by the United States Government, bonds of the State of Texas, or of any county, city, town, independent school district, common school district or other school districts in the State of Texas; or bonds issued under the Federal Farm Loan Act,[1] or road district bonds, bonds, pledges or other evidences of indebtedness issued by the Board of Regents of the University of Texas,

notes or bonds secured by mortgages insured and debentures issued by the Federal Housing Administrator of the United States Government; in shares or share accounts of any building and loan association organized under the laws of this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation, and in the shares or share accounts of any Federal Savings & Loan Association domiciled in this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; bank acceptances of banks having a capital stock of not less than Five Hundred Thousand ($500,000.00) Dollars, and bonds issued by municipal corporations in Texas; and said city may accept said securities in lieu of such personal or surety bonds, which securities so pledged shall be deposited as the governing body may direct. It is provided, however, that such securities so pledged shall be approved as to kind and value by the governing body.

When the securities pledged by the depository bank to secure city funds shall be in excess of the amount required under the provisions of this Act, the governing body of such city shall permit the release of such excess; and when the city funds deposited with such depository bank shall, for any reason, increase beyond the amount of securities pledged, said depository bank shall immediately pledge additional securities with the governing body so that the securities pledged shall at no time be of a value of less than the total amount of city funds on deposit in said depository bank. Provided, however, the determination of such value shall be in the discretion of the governing body whose decision shall be final and binding on such depository. The right of substitution of securities shall be granted to depositories, provided the securities substituted meet with the requirements of the law, and are approved by the governing body. Upon the request of such depository bank, the governing body shall surrender interest coupons or other evidence of interest, when due, on securities deposited with said governing body by such depository bank, provided said securities remaining pledged are ample to meet the requirements of this Act and of such governing body.

The condition of the personal bond or bonds, or surety company bond or contract, for securities pledged as hereinabove provided, shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon any "demand deposit" account in said depository, or upon presentation upon any "time deposit" after the expiration of the period of notice required in the case of "time deposits" by the City Treasurer of the city; and that said city funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county in which such city, town, or village is located.

It shall be the duty of the governing body to investigate and inquire into the solvency of each and every surety on any personal bond or bonds so filed by such city depository and accepted by the governing body and approved as required by law, at least twice during each and every year such bonds are effective and in force, and for that purpose shall have authority to require each surety to render an itemized and verified financial statement, under oath, showing his true financial condition. If any such statement or statements indicate that any of said sureties have become insolvent, or their net worth depreciated below the amount required by law as such sureties, or if any of the assets listed are shown to be, or are known to be depreciated, or their value in any way impaired, then and in any of such events, the governing body shall require a new bond meeting fully the requirements of this law; and in case of a bond or bonds, the sureties on which are required to own unencumbered and non-exempt real estate as herein provided, such statement shall show each tract of land owned by each surety and the value thereof; and if the statements provided for herein shall indicate that any of such lands have been disposed of, or encumbered, and the value of the remaining unencumbered or non-exempt lands shall not be sufficient to meet the requirements of this law, then the said governing body shall require a new bond meeting fully the requirements of this law. The governing body shall at any time it may deem necessary for the protection of the city, investigate and inquire into the solvency of any surety company or companies issuing a bond or bonds for any depository, and to investigate the value of any of the securities that may be pledged by such depository in lieu of the personal bond; and such governing body may require any such depository, if it deems advisable, to execute a new bond, or to deliver into pledge additional or other securities. If said new bond or securities required by the governing body for any reason, as herein specified, be not filed within five (5) days from the time of the service of a copy of said order upon said depository, the governing body may proceed to the selection of another depository in the same manner as provided for the selection of a depository at the regular time for such selection. Nothing in the law shall in any manner limit, restrict, or prevent the governing body from requiring any depository to execute a new bond, at any time such governing body may deem it necessary for the protection of the city. [Acts 1905, pp. 260, 396, § 35; Acts 1931, 42nd Leg., 1st C.S., p. 16, ch. 9, § 2; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3; Acts 1943, 48th Leg., p. 67, ch. 57, § 1.]

1 12 U.S.C.A. § 641 et seq.

Art. 2561. [2456] Designating depository, etc.—As soon as said bond shall be given and approved, an order shall be made by the council designating said banking corporation, association, or individual banker, as the depository of the funds of the city until the time fixed by this Act for another selection, and such order shall be entered upon the minutes. It shall be the duty of the city treasurer, immediately upon the making of said order, to transfer to said depository all the funds in his hands belonging to the city, and immediately upon the receipt of the money thereafter, he shall deposit the same with said depository to the credit of the city. If any banking corporation, association, or individual banker, after having been selected as such depository, shall fail to give bond within the time provided by this Act, then the selection of such banking corporation, association, or individual banker, as the depository of the city funds shall be set aside and be null and void, and the governing body shall, after the notice published in the manner hereinbefore provided, proceed to receive new applications and select another depository. [Acts 1905, pp. 261, 396, § 36; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

Art. 2562. [2457] Warrant and checks paid.—The city treasurer, upon presentation to him of any warrant drawn by the proper authority, if there shall be enough money in the depository belonging to the fund upon which said warrant is drawn and out of which the same is payable, shall draw his check as city treasurer upon the city depository in favor of the legal holder of said warrant; and to take up said warrant, and charge the same to the fund upon which it is drawn. In no case shall the city treasurer draw any check upon any fund in the city depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same, nor shall said city treasurer draw any check

upon any funds deposited with said depository or depositories which are designated as "time deposits" until after notice is duly given and the time has expired, as required in the contract with said depository in designating said funds as "time deposits". No money belonging to the city shall be paid out of the city depository, except upon checks of the city treasurer. All such checks shall be payable by said depository at its place of business in the city. In case any bonds or coupons or other indebtedness of the city are payable, by the terms of such bonds, coupons or other indebtedness, at any particular place other than the city treasury, nothing herein shall prevent the governing body from causing the treasurer to withdraw from the depository and to place at the place where such bonds, coupons or other indebtedness shall be payable at the time of their maturity, a sufficient sum to meet the same. [Acts 1905, pp. 261, 396, § 37; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

Art. 2563. [2458] May select at subsequent meeting.—If for any reason no selection of a depository is made at the time fixed by this Act, said governing body may, at any subsequent meeting, after notice published as hereinbefore provided, receive applications and select a depository in the manner herein set out, and the banking corporation, association, or individual banker so selected shall remain the depository until the next regular term for the selection of a depository unless the order selecting it be revoked for the causes specified in this Act. If the governing body shall at any time deem it necessary for the protection of the city, it may by resolution, require the depository to execute a new bond; and upon failure to do so within five (5) days after the service of a copy of the resolution on said depository, said body may proceed to select another depository in the manner hereinbefore provided. [Acts 1905, p. 261; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

Art. 2564. [2458] Liability of treasurer.—The City Treasurer shall not be responsible for any loss of the city funds through negligence, failure or wrongful act of such depository, but nothing in this Act shall release said treasurer from responsibility for any loss resulting from any official misconduct on his part nor from responsibility for the said funds at any time, when, for any reason, there shall be no city depository, nor until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds in any manner by him. [Acts 1905, pp. 261, 396, § 38; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

Art. 2565. [2459] Restrictions upon drawing.—No check shall be drawn upon the city depository by the treasurer, except upon a warrant signed by the mayor and attested by the secretary, except where cities are operating under charter provisions that provide for the drawing of checks or warrants on the depository or city funds in a different manner than is herein provided. No warrant shall be drawn by the mayor and secretary upon any of the special funds created for the purpose of paying the bonded indebtedness of said city, in the hands of the City Treasurer, or in the depository, for any purpose whatsoever other than to pay the principal or interest of said indebtedness, or for the purpose of investing said special fund according to law. No City Treasurer shall pay or issue a check to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose of paying interest due on said bonds, the principal of said bonds or for the purpose of making an investment of said funds according to law. The treasurer shall report to the council on or before its first regular meeting in July in each year, the amount of receipts and expenditures of the treasury, the amount of money on hand in each fund, and the amount of bonds falling due for redemption of which provision must be made; also the amount of interest to be paid during the next fiscal year, and such other reports as the existing law requires of him. [Acts 1905, pp. 262, 396, § 39; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

Art. 2566. [2460] Definitions of terms.—All provisions of this Act shall apply to towns and villages incorporated under the General Laws of Texas, as well as to cities so incorporated, and the terms "City Secretary," and "Secretary" shall be construed to include the clerk or secretary of such towns or villages; the term "City Treasurer" shall be construed to include the treasurer of such towns and villages and the term "city" shall be construed to include towns and villages. [Acts 1905, pp. 262, 396, § 40; Acts 1937, 45th Leg., p. 1298, ch. 484, § 3.]

Art. 2566a. Security for deposits not required to extent covered by Federal Deposit Insurance.—Notwithstanding any provisions of this Act[1] requiring securities for deposits in the form of collateral, surety bond or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of Section 12b of the Federal Reserve Act as amended, or any amendments thereto.[2] [Acts 1937, 45th Leg., p. 1298, ch. 484, § 4.]

[1] Articles 2544–2566.
[2] 12 U.S.C.A. § 264.
Acts 1905, p. 260, and p. 396, § 35, cited to the text, are separate acts.
Exemption, see article 2529a, ante.

CHAPTER 4.—SPECIAL DEPOSITORY

Art.
2567. Selection of special depository.
2568. For State funds.
2569. Selection optional.

Article 2567. Selection of special depository.—When any bank, which is a county, city or district depository of public funds under the laws of this State, suspends business or is taken charge of by the Comptroller of the currency or the Commissioner of Banking, as the case may be, the lawful county, city or district authorities, authorized to select the depository in the first instance, shall have the discretion and authority to select by contract a special depository for the public funds in such suspended bank. Such special depository shall assume the payment of the amount of public funds due by the suspended bank on the date of its suspension, including interest to that date, and shall pay the same to the lawfully designated public authority in accordance with the contract entered into by such special depository. The contract shall be for the performance of the agreement entered into between the proper public authorities designated above, and the special depository, and shall require the payment of the deposit in such installments as may be agreed upon, the last of which shall be paid not exceeding three years from the date of the contract. The installments, or the amount due, may be evidenced in the discretion of the contracting parties by negotiable certificates of deposit or cashier's checks, payable at specified dates, if made a part of the contract. The performance of the contract and the payment of funds described therein shall be secured by bond, or by several bonds in case of installments, to be given by the special depository with the same character of sureties as is required by regular depository bonds. The contracts and bonds of special depositories shall be approved by the authority

authorized by law to approve contracts and bonds of regularly selected depositories. The rate of interest which funds placed in a special depository hereunder shall bear shall be fixed by the contract, or such funds may, in the discretion of the contracting parties, be non-interest bearing. [Acts 1921, p. 68.]

Art. 2568. For State funds.—If any State funds are in the county depository which has failed, the amount thereof shall be ascertained by the Comptroller, who shall be authorized in his discretion to enter into a contract for the custody and payment of the same, with the special depository selected by the county authorities in the same manner that the county authorities are herein authorized so to do, and to take and approve contracts and bonds therefor. State funds thus placed in such special depository shall bear the average rate of interest received by the State on State funds placed with the regularly selected State depositories. [Id.]

Art. 2569. Selection optional.—Nothing in this chapter shall require the State, county, city or district authorities to select any special depository as herein permitted, but they may proceed by their lawful remedies against the failed bank, if, in their discretion, it is best for the public interest so to do. [Id.]

TITLE 48—DESCENT AND DISTRIBUTION

Art.
2570. Intestate leaving no husband or wife.
2571. Intestate leaving husband or wife.
2572. Distinction because of property's source.
2573. Whole and half blood.
2574. Corruption of blood or forfeiting estate.
2575. Persons not in being.
2576. Advancements brought into hotchpotch.
2577. Per capita and per stirpes.
2578. Community estate.
2579. Passes charged with debts.
2580. Jus accrescendi abolished.
2581. Illegitimate children.
2582. Bastards inherit from mother.
2583. Alienage no bar to inheritance.

Article 2570. [2461] [1688] [1645] Intestate leaving no husband or wife.—Where any person, having title to any estate or inheritance, real, personal or mixed, shall die intestate, it shall descend and pass in parcenary to his kindred, male and female, in the following course:

1. To his children and their descendants.

2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but if there be none such, then the whole estate shall be inherited by the surviving father or mother.

3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.

4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course: To the grandfather and grandmother in equal portions, but, if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants. [Act March 18, 1848, p. 129; P. D. 3419; G. L. vol. 3, p. 129; Act Jan. 18, 1840, p. 132; G. L. vol. 3, p. 306.]

Art. 2571. [2462] [1689] [1646] Intestate leaving husband or wife.—Where any person having title to any estate of inheritance, real, personal or mixed, shall die intestate as to such estate, and shall leave a surviving husband or wife, the estate of such intestate shall descend and pass as follows:

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased have neither surviving father nor mother nor surviving brothers and sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate. [P. D. 3422.]

Art. 2572. [2463] [1690] [1647] Distinction because of property's source.—There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and all the estate to which such intestate may have had title at the time of death shall descend and vest in the heirs of such person in the same manner as if he had been the original purchaser thereof; provided, however, that if such intestate was the legally adopted heir of another, and dies leaving no surviving husband or wife, and no children, then so much of his estate as was obtained by gift, devise or descent, from the person adopting him, shall descend to the person and his heirs who adopted such intestate. [Act March 20, 1861; G. L. vol. 5, p. 359.]

Art. 2573. [2464] [1691] [1648] Whole and half blood.—In cases before mentioned, where the inheritance is directed to pass to the collateral kindred of the intestate, if part of such collateral be of the whole blood, and the other part of the half blood only of the intestate, those of half blood shall inherit only half so much as those of the whole blood; but if all be of the half-blood they shall have whole portions. [Acts 1848, p. 129; P. D. 3424; G. L. vol. 3, p. 129.]

Art. 2574. [2465] [1692] [1649] Corruption of blood or forfeiting estate.—No conviction shall work corruption of blood or forfeiture of estate nor shall there be any forfeiture by reason of death by casualty; and the estate of those who destroy their own lives shall descend or vest as in the case of natural death. [Const. Bill of Rights, sec. 21; Id.]

Art. 2575. [2466] [1693] [1650] Persons not in being.—No right of inheritance shall accrue to any person whatsoever other than to children or lineal descendants of the intestate, unless they be in being and capable in law to take as heirs at the time of the death of the intestate. [Acts 1848, p. 129; P. D. 3423; G. L. vol. 3, p. 129.]

Art. 2576. [2467] [1694] [1651] Advancements brought into hotchpotch.—Where any of the children of a person dying intestate, or their issue, shall have received from such intestate in his lifetime any real, personal or mixed estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other distributees, such advancement shall be brought into hotchpotch with the whole estate, and such party returning such advancement shall thereupon be entitled to his proper portion of the whole estate; provided that it shall be sufficient to account for the value of the property so brought into hotchpotch at the time it was advanced. [P. D. 3426.]

Art. 2577. [2468] [1695] [1652] Per capita and per stirpes.—When the intestate's children, or brothers and sisters, uncles and aunts, or any other relations of the deceased standing in the first and same degree alone come into the partition, they shall take per capita, namely: by persons; and, when a part of them being dead and a part living, the descendants of those dead have right to partition, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. [Acts 1887, p. 49; G. L. vol. 9, p. 847.]

Art. 2578. [2469] [1696] [1653] Community estate.—Upon the dissolution of the marriage relation by death, all property belonging to the community estate of the husband and wife shall go to the survivor, if there be no child or children of the deceased or their descendants; but if there be a child or children of the deceased, or descendants of such child or children, then the survivor shall be entitled to one-half of said property, and the other half shall pass to such child or children, or their descendants. But such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. [Acts 1887, p. 76; G. L. vol. 9, p. 874.]

Art. 2579. [2470] [1697] [1654] Passes charged with debts.—In every case, the community estate passes charged with the debts against it. [P. D. 5498.]

Art. 2580. [2471] [1698] [1655] Jus accrescendi abolished.—Where two or more persons hold an estate, real, personal or mixed, jointly, and one joint owner dies before severance, his interest in said joint estate shall not survive to the remaining joint owner or joint owners, but shall descend to, and be vested in, the heirs or legal representatives of such deceased joint owner in the same manner as if his interest had been severed and ascertained. [Act March 18, 1848, p. 129; P. D. 3429; G. L. vol. 3, p. 129.]

Art. 2581. [2472] [1699] [1656] Illegitimate children.—Where a man, having by a woman a child or children, shall afterward intermarry with such woman, such child or children, if recognized by him, shall thereby be legitimated and made capable of inheriting his estate. The issue also of marriages deemed null in law shall nevertheless be legitimate. [P. D. 3427.]

Art. 2582. [2473] [1700] [1657] Bastards inherit from mother.—Bastards shall be capable of inheriting from and through their mother, and of transmitting estates, and shall also be entitled to distribute shares of the personal estates of any of their kindred, on the part of their mother, in like manner as if they had been lawfully begotten of such mother. [P. D. 3428.]

Art. 2583. [2474] [1701] [1658] Alienage no bar to inheritance.—In taking title to land by descent, it shall be no bar to a party that any ancestor through whom he derives his descent from the intestate, is or has been an alien. [P. D. 44, 45, 46.]

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CHAPTER 1.—UNIVERSITY OF TEXAS

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1. BOARD OF REGENTS

Article 2584. The government of the University.—The government of the University of Texas shall be vested in a Board of Regents composed of nine persons. They shall elect a chairman from their number who shall serve at the pleasure of the board. The State Treasurer shall be the treasurer of the University. The board shall have the right to make and use a common seal and may alter the same at pleasure. [Acts 1913, p. 191.]

Art. 2585. [2639] [3846] Powers.—They shall establish the departments of a first-class university, determine the offices and professorships, appoint a president, who shall, if they think it advisable, also discharge the duties of a professor, appoint the professors and other officers, fix their respective salaries; and they shall enact such by-laws, rules and regula-

tions as may be necessary for the successful management and government of the University; they shall have power to regulate the course of instruction and prescribe, by and with the advice of the professors, the books and authorities used in the several departments, and to confer such degrees and to grant such diplomas as are usually conferred and granted by universities.

Art. 2585a. Military and naval training at University.—The Board of Regents of the University of Texas is directed to request the War and Navy Departments of the United States of America to establish and maintain courses of military and naval training, qualifying men student graduates of such courses for reserve commission awards, as a part of its curriculum. The Board of Regents is authorized to enter into mutually agreeable contracts for such purposes.

The work of the students enrolling in such courses may be credited toward degree requirements under such regulations as the Board of Regents may prescribe.

No student of the University shall ever be required to take any portion of such training as a condition for entrance into the University or graduation therefrom. [Acts 1941, 47th Leg., p. 479, ch. 302, § 1.]

Art. 2586. [2640] [3848] May remove officers.—The regents shall have power to remove any professor, tutor or other officer connected with the institution, when, in their judgment, the interest of the University shall require it.

Art. 2587. [2641] [3849] Admission fee.—The fee of admission to the University shall never exceed thirty dollars. It shall be open to all persons of both sexes in this State on equal terms, without charge for tuition, under the regulations prescribed by the regents, and to all others under such regulations as the board of regents may prescribe. [Id.]

Art. 2588. [2649] [3854] Annual report.—The board of regents shall report to the State Board annually, and to each regular session of the Legislature, the condition of the University, setting forth the receipts and disbursements, the number and salary of the faculty, the number of students, classified in grades and departments, the expenses of each year, itemized, and the proceedings of the board and faculty fully stated. [Acts 1881, p. 80; G. L. vol. 9, p. 172.]

Art. 2589. [2651] [3856] Expenses.—The reasonable expenses incurred by the boards of regents and visitation in the discharge of their duties shall be paid from the available University fund.

Art. 2589a. Construction, equipment, and control of dormitories.—Sec. 1. That the Board of Regents of the University of Texas, are hereby authorized and empowered to acquire, without cost to the State of Texas, and accept title, subject to such conditions and limitations as may be prescribed and provided, seven boys dormitories, and a kitchen and dining hall building and grounds in connection therewith, within a radius of not more than one quarter of a mile from the present campus of said University, when the total cost, type of construction, and the capacity of said buildings, as well as the other plans and specifications, have been approved by them; that said Board of Regents are further authorized to make any contracts with reference to the collection and disposition of the revenues derived therefrom in the acquisition, management, and maintenance of said buildings, and upon acquisition thereof absolute control and management shall vest in said Board, subject to any conditions that may be provided in the grant; provided that the said seven dormitories and kitchen and dining hall shall be built of steel, concrete, brick, and/or rock, and fireproof, except the doors and windows, the buildings and land to cost not less than One Million Three Hundred Thousand ($1,300,000.00) Dollars. And the buildings are to accommodate not less than One Thousand (1000) students.

Sec. 2. On the acquisition of said buildings by the University of Texas the Board of Regents are hereby expressly authorized and empowered to make requisition for all furniture, furnishings, equipment, and appointments that may be necessary for the proper use and enjoyment of said buildings, which in no event, however, shall become permanent fixtures.

Sec. 3. The Board of Control of the State of Texas is hereby authorized to purchase and pay for the furnishings and equipment authorized to be purchased in Section 2 only after the buildings are accepted and acquired by the Board of Regents.

Sec. 4. The Board of Regents of the University of Texas is hereby authorized and empowered to adopt such rules and regulations as they may deem advisable, requiring any class or classes of students to reside in such dormitories, or other buildings as they may deem advisable. [Acts 1929, 41st Leg., p. 258, ch. 113.]

Section 5 of this Act declares that the invalidity of any part of the act shall not affect the remainder.

Art. 2589b. Bonds authorized to pay for completion of main building of University; contracts with federal government authorized.—Sec. 1. The Board of Regents of the University of Texas is hereby authorized to issue bonds in a sum not to exceed One Million Two Hundred Thousand ($1,200,000.00) Dollars to secure funds to be used, in connection with any other fund which may be available therefor, to complete the main building of the University of Texas, the library part thereof being already under construction; these bonds may be in amounts and of maturities to be determined by the Board, except that no bond may be payable more than fifteen years after date thereof; the bonds may draw interest at a rate to be determined by the Board; available University funds arising from grazing and other surface leases of University lands may be pledged to secure payment of the bonds.

Sec. 2. The said Board is authorized to make contracts with the United States Government or its agencies for the construction of dormitories to be paid for from rents and other receipts of operation. [Acts 1933, 43rd Leg., 1st C.S., p. 190, ch. 70.]

Art. 2589c. Construction and operation of hospital; compulsory group hospitalization fees payable by students.—The Board of Regents of The University of Texas is specifically authorized to build, equip, operate, and maintain a hospital, under the provisions of Chapter 5, Acts, Second Called Session, Forty-third Legislature, as amended,[1] and to levy and collect a compulsory group hospitalization fee from each student as a prerequisite to registration in The University of Texas, not to exceed Four Dollars ($4) for any one semester or for any one summer session. Such fee shall be in lieu of any and all other charges for hospitalization. Rules and regulations governing the operation of said hospital and the rights and privileges of students with respect to hospitalization shall be promulgated by the Board of Regents of The University of Texas. [Acts 1941, 47th Leg., p. 767, ch. 478, § 1.]

1 Article 2603c.

Art. 2589d. Texas Union, student fee for.—Section 1. The Board of Regents of the University of Texas is hereby authorized to levy a regular, fixed student fee not to exceed One Dollar ($1.00) per student for each semester of the long session and not to exceed Fifty Cents (50¢) per student for each term of the summer school, or any fractional part thereof, as may in their discretion be just and necessary,

for the sole purpose of operating, maintaining, and improving the Texas Union; provided, however, that the amount of this fee may be changed at any time within the limits hereinbefore fixed in order that sufficient funds to support the Union may be raised. Provided that any student who is exempted from the tuition fee shall be exempted from the union fee.

Sec. 2. The auditor of the University of Texas shall collect said fees provided for in Section 1 hereof and shall credit the money received from the said fees to an account known as the Student Union Fee Account.

Sec. 3. The money thus collected and placed in the said Student Union Fee Account shall be used for the purpose of operating and maintaining and improving the Texas Union and shall be placed under the control of and subject to the order of the Board of Directors of the Texas Union, which Board of Directors shall annually submit a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The Board of Regents shall make such changes in the budget as it deems necessary before approving the same, and shall then levy the student fees under the provisions of Section 1 in such amounts as will be sufficient to meet the budgetary needs of the Union, within the statutory limits herein fixed. [Acts 1945, 49th Leg., p. 115, ch. 78.]

2. FUNDS AND PROPERTIES

Art. 2590. [2626] [3836] Permanent fund.—The following shall constitute a permanent fund to be used for the benefit of the University of Texas:

1. All lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas under any previous law.

2. One million acres of the unappropriated public domain of the State set apart for that purpose by the present Constitution, and one million acres of land set apart by Act of April 10, 1883.

3. All bonds that have or may be purchased with the proceeds of the sale of University lands.

4. All proceeds of the sales of University lands that are or may be placed in the State Treasury.

5. All grants, donations and appropriations that may be made or received from any other source. [Const. art. 5,[1] secs. 10–15; Acts 1858, p. 148; G. L. vol. 4, p. 1020; P. D. 3573.]

[1] Probably should read "art. 7".

Art. 2591. [2627] [3837] Use.—Such portions of such funds as are in the possession of the State, or that may be received, shall be held in trust by the State for the use and maintenance of said University; and all such funds as are susceptible of investment, and that have not heretofore been invested, shall be invested for the benefit of such University in the manner provided in the Constitution and laws on that subject. [Id.]

Art. 2591a. Investment of permanent funds of University.

Bonds and obligations

Sec. 1. The Board of Regents of the University of Texas is authorized to invest the Permanent Fund of the University of Texas in:

1. Bonds of the State of Texas;

2. Bonds of the United States;

3. Bonds of counties of the State of Texas; school bonds of municipalities of the State of Texas; bonds of cities in the State of Texas;

4. Obligations and pledges issued by the Board of Regents of the University of Texas, or secured by such obligations and pledges for the construction of dormitories and other buildings for the University of Texas, in accordance with the terms hereinafter set forth in this Act.

Amount and conditions of investments

Sec. 2. No investment may be made in obligations or pledges of the University of Texas or of the Agricultural and Mechanical College of Texas, except to the amount and under the conditions hereinafter named, and this authority having been exercised, no additional bonds or pledges shall at any time be issued.

Attorney General's certificate as to validity of bonds as prima facie evidence; estoppel to question validity; safe-keeping of securities

Sec. 3. Whenever the Board of Regents shall have purchased bonds of any city, county or municipality, approved by the Attorney General of Texas, the certificate of the Attorney General attesting their validity, shall be admitted and received as prima facie evidence of the validity of such bonds; in all cases where the proceeds of the sale of any such bonds have been received by the proper officers of any such city, municipality or county, or by the party acting therefor in negotiating the sale thereof, such county, city or municipality shall thereafter be estopped from denying the validity of such bonds so issued and the same shall be held to be valid and binding obligations. Pending the construction of fire and burglary proof vaults in the Capitol building, the Board of Regents of the University of Texas and the State Treasurer shall rent for the safe-keeping of University securities a fire and burglary proof vault; no University securities shall be handled at the vault except in the presence of a representative of the Board of Regents designated by the Board and the Treasurer of the State or a representative designated by him.

Sale of bonds of permanent fund

Sec. 4. Bonds of the University Permanent Fund may, at the discretion of the Board of Regents, be sold and the proceeds reinvested for the Permanent Fund under the terms of this Act. If any bonds are sold at a premium the amount received in excess of par shall be credited to the Available University Fund to repay premiums on bonds heretofore purchased. In the case of any bonds bought under this Act, premium or discount shall be distributed over the life of the bonds.

Borrowing for campus improvements of main university; investment of permanent university fund in bonds

Sec. 5. During the period from the taking effect of this Act to December 31, 1933, the Board of Regents of the University of Texas is authorized to borrow amounts aggregating a sum not exceeding Four Million ($4,000,000.00) Dollars which, with such other sums as may be available therefor, shall be expended in improvements of the campuses at the Main University and at the Medical Branch, and the erection and equipment of buildings thereon, to include dormitories, a library, a dining hall, and needed additional class rooms and laboratories, and for extensions of the campus at the Main University in Austin, when authorized by act of the Legislature, which authority is hereby expressly given; the said campus extensions, to cost not to exceed Two Hundred Thousand ($200,000.00) Dollars, no part of which shall be expended for or applied to the purchase price of the land known as the Cavanaugh tract; provided that of said Two Hundred Thousand ($200,000.00) Dollars an amount not to exceed Sixty-Five Thousand ($65,000.00) Dollars may be expended for that property belonging to the Episcopal Church, Diocese of Texas, extending from Twenty-sixth street north to the Grace Hall property line and between Whitis and University avenues; and an amount not to exceed One Hundred and Thirty-Five Thousand ($135,000.00) Dollars may be expend-

ed for that property known as the Texas Wesleyan College property (Swedish Methodist College). The Permanent University Fund may be invested in obligations in the form of bonds which the Board of Regents is hereby authorized to issue to secure the funds necessary to carry out the purposes named. The amount hereby authorized to be invested in bonds issued by the Board of Regents of the University of Texas may be taken from the Permanent University Fund as it may accrue from oil royalties or from the proceeds of sales of United States bonds made in accordance with Section 4 hereof. The bonds issued shall be in amounts of Two Hundred and Fifty Thousand ($250,000.00) Dollars, each, except the last, which may be in the amount, or in a lesser amount; they shall be executed by the Board of Regents, acting by its Chairman, whenever during the period named funds to the amount of Two Hundred and Fifty Thousand ($250,000.00) Dollars have accrued, as indicated, from said Permanent Fund; and said bonds shall be of the date of said investment; they shall likewise be signed by the President of the University of Texas, and shall be registered by the Comptroller. The bonds may be paid before their maturity and shall have maturities as follows: No. 1 shall be payable on January 1, 1937; Nos. 3, 5, 7, 9, 11, 13, and 15, on January 1 of the years 1938 to 1944, respectively; No. 2 shall be payable July 1, 1937; and Nos. 4, 6, 8, 10, 12, 14, and 16, July 1 of the years 1938 to 1944, respectively. The bonds shall bear interest at the rate of 4 per cent per annum; the first payment of interest to be on January 1 of the year next succeeding the issue of the bond, and semi-annually thereafter on the first of July and the first of January of each year until paid. The bonds shall be and are hereby secured by the pledge of two-thirds of the Available University Fund accruing as interest on bonds held by the Permanent Fund during the period of six months next preceding the date of the maturity of the bond and by two-thirds of all Available University Funds thereafter so accruing, except so much thereof as may be apportioned to any particular bond of this series, and except that all bonds of this series shall equally be secured by such additional Available Fund.

The bonds may be in the following form:

The State of Texas

The University of Texas

No. ———

The Board of Regents of the University of Texas will pay to the Permanent University Fund of said University, ———— 1, 19— from the Available University Fund thereof the sum of Two Hundred and Fifty Thousand ($250,000.00) Dollars.

Two-thirds of the University Available Fund accruing as interest on bonds belonging to the Permanent University Fund during the six months next preceding the maturity of this bond is hereby pledged to secure payment of this bond; there is also pledged to secure payment hereof and all the other bonds of this series two-thirds of all Available University Funds thereafter accruing as interest on bonds of the Permanent University Fund not specifically pledged to secure a bond of this series.

The principal and interest of this bond are payable at the Treasury of the State of Texas.

Executed at Austin, Texas, this ——— day of ———, 193—.

Board of Regents of the University of Texas

By ————————————

Chairman

————————————

President of the University of Texas

Registered ——— day of ———— 193—.

————————————

Comptroller of the University of Texas

Borrowing for improvements of Agricultural and Mechanical College; investment of permanent university fund in bonds

Sec. 6. During the period from the taking effect of this Act to December 31, 1933, the Board of Directors of the Agricultural and Mechanical College of Texas is authorized to borrow amounts aggregating a sum not to exceed Two Million ($2,000,000.00) Dollars which (with such other sums as may be available therefor) shall be expended in improvements of the campus of the College and the erection and equipment of permanent buildings thereon for College uses and for extensions to the campus, of the Agricultural and Mechanical College of Texas when authorized by act of the Legislature, which authority is hereby expressly given; said campus extensions to cost not exceeding One Hundred Thousand ($100,000.00) Dollars. The Permanent University Fund may (and shall, at the request of the Board of Directors of the said Agricultural and Mechanical College) be invested in obligations in the form of bonds which the said Directors are hereby authorized to issue to secure the funds to carry out the purposes named. The amount hereby authorized to be invested in bonds issued by the Board of Directors of the Agricultural and Mechanical College may be taken from the Permanent University Fund as it may accrue from oil royalties or from the proceeds of sale of United States bonds made in accordance with Section 4 hereof. If with reference to any amount of Permanent University Fund on hand at any time accruing from said royalties or the proceeds of sales there should be insufficient to meet the requirements of the Board of Regents of the University of Texas, as indicated by Section 5 hereof, and the requirements of the Directors of the Agricultural and Mechanical College as here in this Section indicated, the available amount shall be apportioned two-thirds to the Board of Regents of the University of Texas and one-third to the Board of Directors of the Agricultural and Mechanical College. The bonds issued shall be in such amounts as shall be designated by the Board of Directors and shall be as of the date of the investment by the Board of Regents. They shall be executed by the said Board, acting by its Chairman. They shall likewise be signed by the President of the Agricultural and Mechanical College and shall be registered by the Accounting Officer of that Institution. The bonds may be paid before their maturity, and the maturities shall be fixed at the discretion of the Agricultural and Mechanical College not, however, later than July 1, 1944. No bonds shall be issued unless at the time of the issuance thereof the one-third apportioned to the Agricultural and Mechanical College of the Available University Fund arising from interest on said Permanent Fund from bonds purchased from royalties shall be sufficient to pay the interest and discharge the principal of the bonds at maturity. The bonds shall bear interest at the rate of four per cent per annum, the first payment of interest to be on January first of the year next succeeding the issue of the bond and semi-annually thereafter on the first of July and January of each year until paid. The bonds shall be and are hereby secured by the pledge of the one-third apportioned to the Agricultural and Mechanical College of the Available University Fund accruing as interest on bonds held by the Permanent Fund during the period from the issuance of said bonds until their maturity and payment. This provision, however, shall not prevent the use by the Directors of the said Agricultural and Mechanical College of any Available University Fund apportioned to said College in making the permanent improvements hereinbefore provided for which may not be needed to discharge the principal and interest on these bonds. The bonds may be in the following form:

The State of Texas

The Agricultural and Mechanical College of Texas
No. ———

The Board of Directors of the Agricultural and Mechanical College of Texas will pay to the Permanent University Fund of the University of Texas on ————, ————, 19—, from the Available University Fund apportioned to said Agricultural and Mechanical College the sum of ——— Dollars;

The one-third of the Available University Fund accruing as interest on bonds belonging to the Permanent University Fund apportioned to the Agricultural and Mechanical College is hereby pledged to secure payment of this bond.

The principal and interest of this bond is payable at the Treasury of the State of Texas.

Executed at ———— Texas, this ——— day of ————, 193—.

Board of Directors of the Agricultural and Mechanical College of Texas.

By ————————————
Chairman

————————————
President, Agricultural and Mechanical College of Texas

Registered ——— day of ————, 193—.

————————————
————————of Agricultural and Mechanical College of Texas.

[Acts 1931, 42nd Leg., p. 83, ch. 55.]

Art. 2592. [2643] Improvements.—The Board of Regents of the University of Texas and the Board of Directors of the Agricultural and Mechanical College of Texas shall, with the approval of the Legislature, expend the Available University Fund for the construction of buildings on the campuses of their respective institutions and for the extension and improvement of their campuses and for the equipment of buildings thereon in the proportions and amounts hereinafter indicated; and to pay interest and principal sufficient to retire any obligations which may be incurred by virtue of any pledges made by the respective institutions as herein provided; and the Board of Regents of the University of Texas shall expend of such Available University Fund so much thereof as may be appropriated by the Legislature for the administration of the University Lands and of the University Permanent Fund, such expenses to be apportioned between the two institutions in proportion to their receipts of Available University Funds under the terms of this Act. For the years beginning September 1, 1931, September 1, 1932, September 1, 1933, the sum of Two Hundred Thousand ($200,000.00) Dollars net shall accrue for each of said years of said Available University Fund to the Agricultural and Mechanical College of Texas and shall be expended by the Board of Directors of that institution for said Agricultural and Mechanical College purposes, and the Board of Regents of the University of Texas shall expend the balance of said Available Fund for said University of Texas purposes.

Beginning September 1, 1934, the Board of Directors of the Agricultural and Mechanical College of Texas shall so expend one-third of all the Available University Fund received from the Permanent University Fund arising from the 1,000,000 acres of land appropriated by the Constitution of 1876 and the land appropriated by the Act of 1883, except income from grazing leases on University lands (less its proportion of expenses of administration and excluding any expenses of administration from grazing leases), and the Board of Regents of the University of Texas shall so expend the balance of said Available Fund, including all the income from grazing leases on University lands (less its proportion of expenses of administration).

The Board of Directors of the Agricultural and Mechanical College of Texas shall have the right to pledge that part of the Available University Fund hereby placed at its command, and the Board of Regents of the University of Texas shall have the right to pledge that part of the Available University Fund placed at its command for not exceeding fifteen years to make the said funds immediately available. Any contract for expenditures of said interests and income for any purpose other than those named shall be void. No surface lease of said lands shall be made for a period of more than ten years. [Acts 1925, 39th Leg., p. 415, ch. 175; Acts 1931, 42nd Leg., p. 63, ch. 42, § 1.]

Buildings and Improvements for John Sealy Hospital at Galveston. Acts 1947, 50th Leg., p. 80, ch. 55, Eff. March 26, 1947, authorized the Board of Regents of The University of Texas and the Board of Directors of the Sealy and Smith Foundation for the John Sealy Hospital to pledge the income from the fund of Seven Hundred Thousand Dollars ($700,000), established by Chapter 4, Acts of the First Called Session of the Thirty-ninth Legislature (1926), page 10 of the compiled Special Laws of said Session, as a trust fund in connection with the John Sealy Hospital at Galveston, in order to make funds immediately available for the purpose of constructing and equipping buildings and other permanent improvements authorized the issuance of notes or bonds in anticipation of the collection of income, and validated contracts previously entered into.

Art. 2593. Contracts, how made.—All contracts, with architects, plan makers, landscapers, or draftsmen, or with any other person, firm or corporation of whatever name or designation shall be absolutely void unless same be approved by the signed written vote of a majority of said Board of Regents in regular or called meeting assembled, and provided further that all contracts for the construction or erection of such permanent improvements shall be absolutely void unless same are made after receiving sealed competitive bids after advertisement therefor by the president of the Board of Regents, for four consecutive weeks in one or more newspapers of general circulation in the State of Texas, and said bids considered and awards made to the lowest responsible bidder by the signed written vote of a majority of said Board of Regents, in a regular or called meeting assembled. Said bids and awards shall be made only after such publication.

Art. 2593a. Distribution of Funds.—The proceeds arising from activities which effect[1] lands belonging to the public free school fund or the permanent fund of the several asylums, shall be credited to the permanent funds of said respective institutions. All proceeds paid or collected from activities under this law affecting the lands belonging to the permanent fund of the University of Texas shall be credited by the State Treasurer to the available fund of such institution, and all such funds shall be held by the Board of Regents of the University in a special building fund and shall be expended only for the erection of buildings and equipping same, or for other permanent improvements. All proceeds arising from the activities affecting lands other than those belonging in the public free school fund, the University and the several asylums, shall be credited to the same fund. [Acts 1925, 39th Leg., p. 415, ch. 175, § 2.]

[1] Probably should read "affect".

Art. 2594. [2644] [3852] Expenditures.—All expenditures may be made by the order of the board of regents, and the same shall be paid on warrants from the Comptroller based on vouchers approved by the chairman of the board or by some officer of the University designated by him in writing to the Comptroller, and countersigned by the secretary of the board, or by some other officer of the University designated by said secretary in writing to the Comptroller. [Const. art. 5, secs. 10–15; Acts 1858, p. 148; G. L. vol. 4, p. 1020; P.D. 3573; Acts 1911, p. 99.]

Art. 2595. [2628–32] Donations.—Donations of property for the purpose of establishing or assisting in the establishment of a professorship or scholarship in the University or any of its branches, either temporarily or permanently, may be made and such donations will be governed by the following rules:

1. The legal title to the property shall be vested in a person or persons, body corporate, or the State of Texas, to be held in trust for said purpose under such directions, limitations and provisions as may be declared in writing in the donation not inconsistent with the objects and proper management of said institution or its branches.

2. The donor may declare and direct the manner in which the title to said property shall thereafter be transmitted from such trustee in continued succession, to be held and appropriated to the use aforesaid.

3. The donor may declare and direct the person or class of persons who shall receive the benefit of said donation and the manner of their selection.

4. Said declarations, directions and limitations shall not be inconsistent with the objects and proper management of said institution or its branches.

5. In case of failure to transmit the title to the property or to bestow its use in the manner as declared and directed in the donation, or should such uses, or either of them, become impracticable from the change of circumstances, the title to the property, unless otherwise expressly directed by the donor, shall vest in this State to be held in trust to carry into effect the purposes of the donation as nearly as may be practicable by such agencies as may be provided therefor.

6. The title to the property donated shall be received, and the trust conferred in the donation shall be assumed, subject to laws that may be passed and carried into effect from time to time which may be necessary to prevent the loss of, or damage to, the property donated, or an abuse or neglect of the trust so as to defeat, materially change, or prevent the objects of the donation.

7. Copies of such donation shall be filed with the board of regents of the University or the branch to which the donation applies, which board shall report the condition and management of the property and the manner in which the trust is being administered, as part of the matters reported pertaining to said institution. [Acts 1889, p. 143; G. L. vol. 9, p. 1117.]

Art. 2595a. Donations of tax delinquent lands; conditions; liens.—Section 1. The provisions of this Act shall apply to the University and to branches thereof, which branches may be situated in any City in the State of Texas having a population of not less than one hundred thousand and not more than one hundred and fifty thousand according to the last Federal Census.

Sec. 2. When the owners of any real estate situated in this State have not paid the taxes thereon for a period of three years and donate such land to the Board of Regents of the University of Texas for the use of the said University or any branch of the said University that may be designated by such donor, the said land may be accepted by the said Board of Regents upon the following terms, to be evidenced by a Resolution by said Board of Regents, to-wit:

First: The said lands must be assessed for taxation at least three times the amount of taxes due thereon.

Second: The said lands and the proceeds thereof shall be applied exclusively to the uses of the beneficiary school as a State owned and operated institution of higher education.

Third: Upon the Commissioners' Court of the County in which the lands, so donated, are situated, certifying to the Board of Regents its approval of such acceptance; and that the advantages to the people from accepting the donation exceed the benefit that would be derived from the sale of said lands at tax sale or under decree of Court.

Fourth: Upon City Council of the City or Town, if said lands be located within the limits of an incorporated City or Town, extending to the Board of Regents a certificate similar to the one herein required of Commissioners' Courts.

Fifth: The said lands, so accepted, shall be used exclusively for the University or the branch thereof as designated by the donor and shall be sold at such time, and under such conditions, and for such amounts as in the judgment of the Board of Regents are for the best interest of the beneficiary school. While held by the Board of Regents they may be leased or rented as to the said Board seems best; and while so held, shall not be liable for any tax and no claim therefor shall be asserted against the said Board nor the lands so accepted, nor shall any action be instituted to compel payment of any tax during the time the said lands, or the proceeds thereof, are held by the Board of Regents for the use and benefit of the University of Texas or the beneficiary college. [Acts 1937, 45th Leg., 2nd C.S., p. 1867, ch. 4.]

Art. 2596. [2633] [4263a] Control of lands.—The board of regents are invested with the sole and exclusive management and control of the lands set aside and appropriated to, or acquired by, the University of Texas, with the right to sell, lease and otherwise manage, control and use the same in any manner, and at such prices and under such terms and conditions as they deem best for the interest of the University, not in conflict with the State Constitution; provided, such land shall not be sold at a less price per acre than that at which the same class of other public lands may be sold under the statutes. [Acts 1895, p. 19; G. L. vol. 10, p. 749.]

Art. 2597. [2634] Control of mineral lands.—The board of regents are invested with the sole and exclusive management and control of all mineral lands within the domain appropriated, set aside or acquired by the University of Texas; and said board of regents is hereby empowered and authorized to sell, lease, manage and control said mineral lands belonging to said University as may seem best to them for the interest of the University; and they are further empowered with authority to explore and have explored and develop said mineral lands and to make any contract with any persons whomsoever for the exploration and development of said mineral lands, and pay the expenses for such exploration or development out of the proceeds of the lease or sale of said land. [Acts 1901, p. 266.]

Art. 2598. [2635] [4263b] Duty of Land Commissioner.—The Land Commissioner shall furnish to the board of regents complete and accurate maps and all other data necessary to show the location and condition of every tract of the University lands, and shall at all times furnish to said board such additional information as they may require, and render to said board such possible assistance as they shall request in the discharge of their duties. [Acts 1895, p. 19; G. L. vol. 10, p. 749.]

Art. 2599. [5439] Sales to railroad; application.—Any railroad company owning, operating or constructing a line of railway in this State, desiring to purchase any portion of the University land in this State except mineral lands under provisions of this and the three succeeding articles for the location and establishment thereon of town sites, depots, stations, yards, divisional terminals, shops, round houses or water stations shall file an application to purchase each tract so desired, supported by the affidavit of its president, vice-president or chief engineer which application shall:

1. Describe by metes and bounds or otherwise sufficient to satisfy the Board of Regents of the particular tract of land that it desires to purchase.

2. Show that said land is desired and needed by said railway company for some one or more of the purposes for which the sale of such lands are authorized by this article, and that it is the intention of said railway company to speedily use said land for such purposes.

3. Show that said application is not made for the use or benefit of any other person or corporation than the applicant nor in collusion with, or in the interest of any other person or corporation whatsoever.

4. Be accompanied by a plat and map, together with the field notes of each tract of land so applied for, if required. [Acts 1905, p. 58; Acts 1919, p. 312.]

Art. 2600. [5440] Railway sales; patent.—When any such application is so filed, said Board shall investigate the matter therein set forth; and, if after such investigation they shall be satisfied that the statements made in such application are true they shall then determine and fix the fair and reasonable value of such tracts of land, regardless of any lease thereon, unless the lessee shall have two hundred dollars worth of improvements thereon, in which event the consent of the lessee shall be first obtained, and shall advise the applicant of the price so fixed; and, if said railway company desires said land at the price so fixed, it shall pay therefor in cash to the State Treasurer the price so fixed by said Board of Regents, and the Treasurer shall give his receipt showing such payment, whereupon there shall be issued and delivered to the said railway company a patent for said tract or tracts of land, to be properly executed by the Governor and the Land Commissioner upon the payment of the patent fee therefor. [Acts 1903, p. 127.]

Art. 2601. [5441] Condition of sale.—All land purchased by or for any one railway company under the provisions of this law shall be sold subject to the following conditions and limitations:

1. If such land is desired for the purpose of the location and establishment thereon of depots, stations, yards, divisional terminals, shops or round houses, said railway company shall be permitted to purchase only such amount of land adjoining its line of road, tracks or right of way as may be necessary for the proper operation and maintenance of said railway which fact shall be determined by said board of regents, and if desired by them, they may for that purpose, have the advice and assistance of the engineer of the Railroad Commission of Texas.

2. If said land applied for be desired for water stations at points on or near said line of railway where it is necessary to construct and maintain a dam and reservoir for the impounding of rain water, for the use and operation of said railway, sufficient land may be sold for such purpose as may be necessary for the proper construction, preservation and maintenance of such water station, not to exceed six hundred and forty acres for each water station. Each tract sold for such purpose must be within three miles of the line of road of said railway company, and must be at least eight miles distant from any other tract sold to the same railway company for the same purpose; and, when said tract of land does not adjoin said line of road of said railway company, said railway shall have the right of way over any University lands for its water mains from its said water station to its line of railway.

3. If said land is sold for town site purposes, not exceeding three hundred and twenty acres shall be sold therefor, and such tract must be at least eight miles distant from any other tract of land sold for the same purpose to said railway company, and, after such sale, no other tract or tracts of land shall ever be sold to said railway company, or its assigns, for town site purposes, adjoining said tract sold for such purpose. All lands sold for town sites must either adjoin said railway tracks, line of road or right of way, or adjoin land sold under the provisions hereof to said railway company for depots, stations, yards, divisional terminals, shops or round houses. All such lands shall be in good faith placed upon the market for sale, and said railway company shall alienate the title to said lands so sold to said railway company within the term of ten years after acquiring title to same. [Acts 1905, p. 58.]

Art. 2602. [5443] Forfeiture.—If any railway company fails to use said land for the purpose for which the same was sold, within five years from the date of the patent for each tract of land sold, said land and all improvements thereon belonging to said railway company shall revert to the University fund. Whenever any land is sold to railway companies for the purpose mentioned in this chapter and shall be used for any other purposes than those mentioned in this chapter, then such land shall revert to the State. [Acts 1903, p. 127.]

Art. 2603. [5458–9] Right to lands; limitation.—Any person claiming the right to purchase or lease any lands belonging to the State University which have been sold or leased to any other person under any provision of the law authorizing the sale or lease of any such lands, shall bring his suit therefor within one year after the date of the award of such sale or lease and not thereafter. If no such suit has been instituted within said period it shall be conclusive evidence that each requirement of law with reference to the sale or lease of such land was complied with. Nothing in this article shall affect the State in any action or proceeding it may bring in respect to said lands. [Acts 1905, p. 35; Acts 1921, p. 118.]

Art. 2603a. Board for lease of oil and gas land.

Membership; definitions

Sec. 1. A Board is hereby created to consist of the Commissioner of the General Land Office and two members of the Board of Regents of the University of Texas, neither of whom is employed either directly or indirectly by any oil or gas company, nor is an officer or attorney thereof, to be selected by said Board of Regents, who shall perform the duties hereinafter indicated; the Board shall be known as "Board for Lease of University Lands." The term "Board" wherever it appears hereafter in this Act shall mean "Board for Lease of University Lands." The Board shall keep a complete public record of all its proceedings.

Surveys; field notes returned to General Land Office

Sec. 2. It is hereby made the duty of the Board to cause to be done such surveying or re-surveying of the blocks and subdivisions thereof of the University lands as may be necessary to enable the lines of the blocks and sections and fractional sections to be determined and identified and have such corners as may be necessary to that end permanently marked. When it is impracticable to establish such lines and corners as originally surveyed, or when such sections have not been actually surveyed on the ground, the blocks shall be surveyed or re-surveyed and divided into surveys of sections and fractional sections and as many corners thereof as may be necessary for the identification shall be permanently marked. The surveyors employed to do such surveying shall be approved by said Board. The field notes of such surveys shall be returned to the General Land Office, and when correct and in accordance with law, shall be approved by the Commissioner, filed in the General Land Office and become archives therein.

Sale of oil and gas

Sec. 3. The oil and gas in the University land shall be subject to sale on and after June 1, 1929, under the

regulations, at the times and on the terms provided herein, together with such rules and regulations as may be authorized herein to be adopted by the Board, but not inconsistent with the provisions of this Act.

Method of sale of oil and gas

Sec. 4. Whenever there shall be such demand for the purchase of oil and gas in any University land as will reasonably insure that said oil and gas may be sold advantageously, the Board shall place said oil and gas in said lands on the market in separate tracts of such area and extent as the Board may determine most suitable for the profitable marketing thereof, but in no event shall any tract in which oil and gas is offered for sale as a unit exceed an area of six thousand (6,000) acres. The sale of said oil and gas shall be made at public auction and shall be held in Austin, Texas, at any hour between ten o'clock A. M. and five o'clock P. M. The Board shall cause to be advertised a brief description of the lands upon which the oil and gas is proposed to be sold, such description to carry the block and survey numbers, or parts of surveys to be combined in one tract or unit; the method and the time and place of the sale; the primary term of the lease proposed to be executed thereon; the royalty to be paid; and such other matters as in the judgment of the Board are deemed advisable. The advertisement shall be made:

(a) By insertion in two or more papers of general circulation in this State;

(b) By mailing a copy thereof to the County Clerk and the County Judge in the county in which the land is situated;

(c) In addition to the two foregoing mandatory provisions, the Board in its discretion may cause said advertisement to be placed in oil and gas journals in and out of the State and to be mailed generally to such persons as they think might be interested. [As amended Acts 1931, 42nd Leg., p. 293, ch. 174, § 1; Acts 1937, 45th Leg., p. 280, ch. 148, § 1.]

Sale by competitive bids

Sec. 5. The oil and gas in each tract shall be offered for sale for a bonus in addition to the stipulated royalty. Each tract shall be offered separately. Each bid shall be subject to such royalty as is specified in the official advertisement preceding the sale, but in no event shall be less than one-eighth of the gross production of oil and gas in the land; and shall further be subject to the payment of an annual rental after the first year of not less than ten (10¢) cents per acre, payable each year in advance, unless the royalties received from such land during the preceding year shall equal or exceed the amount of the annual rental payment; and shall further be subject to the payment of a special fee equal to one (1%) per cent of the total sum bid, which special payment shall constitute a special fund from which the Board is hereby authorized and directed to defray the expenses of the sale, including the payment of the services of the auctioneer crying the sale. The highest bidder shall pay to the Board on the day of sale twenty-five (25%) per cent of the bonus bid, and the fee to defray the expenses herein provided, and the balance shall be paid on notification of the acceptance of the bid. [As amended Acts 1931, 42nd Leg., p. 293, ch. 174, § 2; Acts 1937, 45th Leg., p. 280, ch. 148, § 2.]

Payment to accompany bid; bid to indicate amount of royalty

Sec. 6. [Repealed by Acts 1937, 45th Leg., p. 280, ch. 148, § 3.]

Lease on acceptance of bid

Sec. 7. If any one of the bidders at the sale at public auction shall have offered a reasonable and proper price for any tract offered not less than the price fixed by the Board, the land advertised may be leased for oil and gas purposes under the terms of this Act and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. All bids may be rejected by the Board. [As amended Acts 1931, 42nd Leg., p. 293, ch. 174, § 4; Acts 1937, 45th Leg., p. 280, ch. 148, § 4.]

Execution of lease

Sec. 8. (a) If the Board shall determine that a satisfactory bid has been offered for said oil and gas, it will make an award to the bidder offering the highest price therefor, and a lease shall be executed by the Commissioner of the General Land Office, a duplicate copy of such lease to be filed in the General Land Office.

(b) The primary term of the lease, as determined by the Board prior to the promulgation of the advertisement, shall in no case exceed five (5) years, and each lease shall provide that the lease shall terminate at the expiration of its primary term, and shall provide that if oil and/or gas is being produced in paying quantities from the premises before termination of the primary term, said lease shall continue in force and effect as long as such oil and/or gas is being so produced. The lease shall include such additional provisions and regulations, not inconsistent with the provisions of this Act, as the Board may prescribe to preserve the interests of the State and safeguard the University funds.

(c) Whenever in the discretion of the Board it is to the best interest of the University and its Permanent Fund that production from any lease for a limited period of time should be prorated or reduced, the said Board is hereby given authority to execute the necessary contract or contracts with the lessee or lessees and their assignees to effectuate the same and to carry out the intention of this section. [As amended Acts 1931, 42nd Leg., p. 293, ch. 174, § 5; Acts 1937, 45th Leg., p. 280, ch. 148, § 5.]

Period of lease

Sec. 9. And in the event oil or gas is discovered in paying quantities on any tract covered by any such lease, then the lease as to such tract shall remain in force so long as oil and gas is produced in paying quantities from such tract, provided that the other provisions of this Act are complied with by the lessee. [As amended Acts 1931, 42nd Leg., p. 293, ch. 174, § 6.]

Assignments

Sec. 10. All rights purchased may be assigned in quantities of not less than forty acres, unless there be less than forty acres remaining out of the tract originally leased hereunder, in which case such lesser area may be assigned. All assignments shall be filed in the General Land Office within one hundred days after the date of the first acknowledgment thereof, accompanied by ten cents per acre for each acre assigned, and if not so filed and payment made the assignment shall be ineffective. All rights to any entire lease and to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated and filed in the Land Office accompanied by $1.00 for each area assigned, but such assignment shall not release the owners of any past due obligations theretofore accrued thereon. [As amended Acts 1931, 42nd Leg., p. 293, ch. 174, § 7.]

Royalty paid to University Permanent Fund; sworn statements by producer

Sec. 11. Royalty as stipulated in the sale shall be paid to the General Land office at Austin, Texas, for the benefit of the University Permanent Fund on or before the 20th day of each succeeding month for the preceding month during the life of the rights pur-

chased and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, receipt and discharges of all wells, tanks, pools, meters, pipe lines and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor, or any member of the Board of Regents of the University of Texas, or the representative of either.

Protection of adjacent lands from drainage

Sec. 12. In every case where the area in which the oil and gas sold shall be contiguous or adjacent to land not University land, the acceptance of the bid and the sale made thereby shall constitute an obligation on the owner thereof to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and gas is sold is contiguous to other University lands leased or sold, at a lesser royalty, the owner shall likewise protect the State from drainage from the land so leased or sold for a lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided herein for forfeitures.

Forfeiture; grounds

Sec. 13. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so determines, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeiture, the lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy, but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon all oil and gas produced upon the leased area and upon all rigs, tanks, pipe line, telephone lines and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of said lease.

Records filed in General Land Office; royalties credited to Permanent University Fund

Sec. 14. All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized, shall be filed in the General Land Office and constitute archives thereof. Payments hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer for deposit to the credit of the Permanent University Fund all bonus and royalty payments, and who shall transmit to the State Treasurer for deposit to the credit of the Available University Fund all payments for delay in drilling, all filing, assignment and relinquishment fees and all other payments, except the one (1%) per cent special fee payment for defraying the expenses of auction sales as provided for in Section 5 hereof; and who shall transmit to the Comptroller of the University of Texas the said special one (1%) per cent fee payment, which shall be disbursed by the said Comptroller for said purpose, after approval thereof by the Board. [As amended Acts 1937, 45th Leg., p. 280, ch. 148, § 6.]

Employment of geologist and mineralogist; salaries

Sec. 15. The Board is authorized to employ a geologist and a mineralogist who shall keep informed with reference to the minerals in University lands and all activities under this and previous leases and sales and shall report to the Board all information gained with reference thereto. The Board is also authorized to employ other necessary employees. The salaries of such employees shall be paid monthly, and no salary shall be paid in excess of Six Thousand ($6,000.00) Dollars per annum.

Expenses paid by Comptroller's warrants

Sec. 16. The expenses of executing the provisions of this Act shall be paid monthly by warrants drawn by the Comptroller on the State Treasurer, and for that purpose the sum of Twenty Thousand ($20,000.00) Dollars or as much thereof as may be necessary is hereby appropriated out of any money in the Treasury not otherwise appropriated until September 1, 1929.

Partial invalidity

Sec. 17. If any provision hereof should be held unconstitutional, the balance of the Act shall not be affected thereby.

Board to adopt forms, regulations, etc.; withdrawal of lands

Sec. 18. The Board shall adopt such forms and contracts and shall promulgate such rules and regulations not inconsistent with the terms of this Act, as in its judgment will best effectuate the purpose of this Act and best protect the University, its lands and the income therefrom. A majority of the Board shall have the power to act for the Board. The Board shall have the right to withdraw any lands advertised for lease prior to the hour fixed for receiving bids. Any and all, or parts of, laws in conflict with this Act are hereby repealed. [Acts 1929, 41st Leg., p. 616, ch. 282; Acts 1931, 42nd Leg., p. 293, ch. 174, § 8; Acts 1937, 45th Leg., p. 280, ch. 148, § 7.]

Section 9 of Acts 1931, 42nd Leg., p. 293, ch. 174, provides that if any provision is held invalid such decision shall not affect the remainder.

Section 8 of the Act of 1937 provided that a holding of partial invalidity should not affect the validity of the remaining portions.

Art. 2603b. Surveying and resurveying of University lands; employment of geologist and mineralogist authorized.—Sec. 1. It is hereby made the duty of the Board of Regents of the University of Texas to cause to be done such surveying or resurveying of the blocks and subdivisions thereof of the University lands as may be necessary to enable the lines of the blocks and sections and fractional sections to be determined and identified and have such cor-

ners as may be necessary to that end permanently marked. When it is impracticable to establish such lines and corners as originally surveyed, or when such sections have not been actually surveyed on the ground, the blocks shall be surveyed or resurveyed and divided into surveys of sections and fractional sections and as many corners thereof as may be necessary for the identification shall be permanently marked. The surveyors to do such surveying shall be employed by said Board. The field notes of such surveys shall be returned to the General Land Office, and when correct and in accordance with Law, shall be approved by the Commissioner of the General Land Office filed in the General Land Office and become archives therein.

Sec. 2. The Board of Regents is hereby authorized to employ a geologist and mineralogist, who shall keep informed with reference to the minerals in the University lands and all activities under leases and sales of the minerals therein, and shall report to the Board of Regents and to the Board for Lease of University Lands all information gained with reference thereto.

Sec. 3. The Board of Regents of the University of Texas shall have authority to employ and compensate such help as said Board may deem necessary in connection with performance of any duties under Chapter 282 of the General and Special Laws of the Regular Session of the 41st Legislature [1] or under this Act. The Board of Regents shall have all the powers and perform all the duties provided by Sections 2 and 15 of said Chapter, but the Board for Lease of University Lands as created by said chapter shall perform all the other duties provided therein. [Acts 1931, 42nd Leg., p. 130, ch. 87.]

1 Article 2603a.
Section 4 of this Act provides for an appropriation.

Art. 2603b—1. Surface leases in El Paso County.—The Board of Regents of the University of Texas is hereby authorized in its discretion to issue surface leases to any University lands located in El Paso County, Texas, at a price to be fixed by the Board of Regents of the University of Texas, where said lands are desired by the Federal Government or El Paso County for use in any flood control, reclamation or park project. No surface lease shall be issued for a term exceeding ninety-nine (99) years, and no surface lease so issued shall interfere with the full development of the minerals in and under the lands covered by any surface lease issued under this Act. [Acts 1935, 44th Leg., p. 1163, ch. 366, § 1.]

Art. 2603c. Borrowing from Federal Agencies and other sources, private or public, authorized.

Construction or acquisition of buildings through loans from federal agencies

Section 1. The Board of Regents of the University of Texas and its branches, and the Board of Directors of the Agricultural and Mechanical College, and its branches, and the Board of Directors of Texas Technological College, and the Board of Regents of the State Teachers College, and the Board of Regents of the Texas State College for Women, and the Board of Directors of the College of Arts and Industries are hereby severally authorized and empowered to construct or acquire through funds or loans to be obtained from the Government of the United States, or any agency or agencies thereof, created under the National Recovery Act,[1] or otherwise created by the Federal Government or from any other source private or public, without cost to the State of Texas, and accept title, subject to such conditions and limitations as may be prescribed by each of said Boards, dormitories, kitchens and dining halls, hospitals, libraries, student activity buildings, gymnasia, athletic buildings and stadia, and such other buildings as may be needed for the good of the institution and the moral welfare and social conduct of the students of such institutions when the total cost, type of construction, capacity of such buildings, as well as the other plans and specifications have been approved by the respective Governing Boards; provided, however, that the Legislature shall never make an appropriation out of the general fund of this State, either in the regular appropriation bill or in a supplemental or emergency appropriation bill, for the purpose of equipping or for the purpose of purchasing and installing any utility connections in any of the buildings erected under and by virtue of the provisions of this Act. [As amended Acts 1935, 44th Leg., 2nd C.S., p. 1752, ch. 459, § 1; Acts 1939, 46th Leg., p. 262, § 1.]

1 Act of June 16, 1933, c. 90, 48 Stat. 195.

Fees and charges; contracts respecting revenues

Sec. 2. That said Boards are further authorized to fix fees and charges for the use of the buildings erected under authority of the law amended by this Act. The charges to be made and the fees to be assessed against students using said buildings shall be in amounts deemed to be reasonable by the respective Boards, taking into consideration the cost of providing said facilities, the use to be made of them and the advantages to be derived therefrom by the students of the respective institutions; provided that the fee to be assessed against a student for the use of a library, or for the use of a student activity building, or for the use of a hospital, or for the use of a gymnasia, shall not exceed Four ($4.00) Dollars for any one of said purposes for any one semester or for any one summer session. The fees and charges thus fixed along with all other income therefrom shall be considered as revenue derived from the operation of the buildings thus constructed.

That said Boards are further authorized to make any contract with reference to the collection and disposition of the revenues derived from any building so constructed in the acquisition or construction, management, and maintenance of any building or buildings acquired hereunder. In reference to the acquisition of student activity buildings, stadia, gymnasia, and all character of athletic buildings, said Boards are authorized also to make contracts with reference to the collection and disposition of revenues to accrue to such respective institutions from activities, athletic events, and games in which said respective institutions participate away from said institutions, as well as at said institutions; and in anticipation of the collection of such revenues, and for the purpose of paying the cost of the construction or acquisition of said building or buildings and grounds, said Boards are severally empowered by resolution to authorize, sell, and deliver its negotiable bonds or notes from time to time and in such amount or amounts as it may consider necessary. The fees and charges so fixed for the use of any such building or buildings shall not be collected after payment in full shall have been completed for the building or buildings for which said fees shall be pledged. Thereafter the right of said respective Boards to fix charges and fees shall depend on laws other than this Act as hereby amended. Any bonds or notes issued hereunder shall bear interest at not to exceed six (6%) per cent per annum, and shall finally mature not more than forty years from date. [As amended Acts 1935, 44th Leg., 2nd C.S., p. 1752, ch. 459, § 2.]

Bonds or notes

Sec. 3. Subject to the above restrictions, each of said Boards is given complete discretion in fixing the form, conditions and details of such bonds or notes. Any bonds or notes issued hereunder shall not be an indebtedness of the State of Texas, but shall be payable solely from the revenues to be derived from the operation of said buildings; provided that such bonds

may be refinanced by the said Boards whenever such action is found by the Board to be necessary.

Provided, however, that the provisions of this Act shall not apply to any proceedings, levies, or to any bonds or warrants issued thereunder, the validity of which has been contested or attached in suit or litigation which is pending at the time this Act becomes a law, or which may be filed within thirty (30) days after this Act becomes a law. [As amended Acts 1939, 46th Leg., p. 263, § 1.]

Pledge of revenues; joint construction

Sec. 4. Each of said Boards is authorized and empowered to pledge all or a part of such revenues to the payment of such bonds or notes, and to enter such agreements regarding the imposition of sufficient charges and the collection, pledge and disposition of such revenues as it may deem proper. In all cases where existing buildings or structures are repaired or enlarged or to which additions are constructed, the board shall also have the power and are hereby authorized to pledge, incumber and/or, dispose of the net revenues of such existing buildings or structures as well as to pledge, incumber and/or dispose of the revenue derived from the additions or improvements to such structures.

Each of said boards is hereby authorized and empowered to enter into contracts with municipalities or school districts for the joint construction of museum, library buildings, or such other buildings as may be deemed necessary.

Each of said boards is hereby authorized and empowered to pledge the unused part of any revenues from self-liquidating buildings for the construction of any other buildings such board may deem necessary. Each of said boards is authorized and empowered to pledge the rentals of dormitories, cottages, or other income bearing property for the repair, enlargement, or construction of any other buildings such board may deem necessary. [As amended Acts 1935, 44th Leg., p. 65, ch. 23, § 1 and p. 491, ch. 204, § 1.]

Agreements

Sec. 5. Each of said boards is authorized to enter into agreements relating to the maintenance of a maximum percentage of occupancy of such dormitories.

Control and management

Sec. 6. Upon the acquisition, construction, or erection of such building or buildings, absolute control and management shall vest in the respective board of the institution of the building so constructed or acquired, subject to any condition that may be provided in the grant.

Building sites

Sec. 7. It is further provided that land owned by the State or any of said institutions may be used as building sites and ground for such buildings acquired under the provisions of this Act.

Acquisition of land

Sec. 8. Provided further that each of said boards is hereby authorized to acquire by gift or by purchase out of funds derived by pledging the revenues as herein provided such tracts of land, without cost to the State of Texas as may be necessary as building sites and grounds for the erection of such buildings.

Contracts

Sec. 9. Provided further that each of said boards may make such contracts as may be necessary to properly carry out the provisions of this Act.

Partial invalidity

Sec. 10. Should any part or section of this Act be held to be unconstitutional, it shall not affect any other section or part hereof.

Operation and effect of Act

Sec. 11. To the extent that this Act specifies the inclusion of the power to build libraries, student activities buildings, gymnasia, athletic buildings and stadia, it shall be considered as declaratory of the existing law which by the use of general terms already included the power to acquire said buildings. This Act shall not repeal any statute now in effect but shall be cumulative of all other statutes affecting said institutions, and shall not modify or abridge any powers now held by any of said institutions to control or pledge its funds, provided, however, that to the extent that the provisions of this Act may be in conflict with the provisions of any other law, including those of Chapter 237, Acts of the Fortieth Legislature,[1] Chapter 196, Acts of the Forty-third Legislature,[2] and Chapter 221, Acts of the Regular Session of the Forty-third Legislature,[3] the provisions of this Act shall take precedence and prevail, it being the intention of the Legislature to confer authority on the governing boards of said institutions to establish fees and charges to be made for the use of the buildings to be constructed under the law amended hereby, and to pledge said revenues as herein provided. [As amended Acts 1935, 44th Leg., 2nd C.S., p. 1752, ch. 459, § 3.]

Validation of contracts

Sec. 12. It is provided further that any contract or agreement heretofore entered into, or any application now pending for the acquisition, erection, construction, or equipment of any building by either of said boards is hereby authorized, ratified, validated, and confirmed. [Acts 1934, 43rd Leg., 2nd C.S., p. 14, ch. 5.]

[1] Article 2654a, post.
[2] Article 2654c, post.
[3] Article 2654d, post, and Pen.Code, Article 419b.

Sections 4 and 5 of Acts 1935, 44th Leg., 2nd C.S., p. 1752, ch. 459, read as follows:

"Sec. 4. All actions heretofore taken by said Boards in reference to the fixing of fees and charges for the use of such buildings, and all actions taken by said Boards in making contracts for the collection and disposition of such revenues and in reference to the pledging of such revenues, and all actions taken by said Boards in issuing bonds and notes to evidence the obligation to collect such revenues and apply same to the payment of such bonds and notes are hereby ratified and confirmed.

"Sec. 5. Should any section or part of a section of this Act be held to be unconstitutional, the remaining sections and parts of sections shall not be affected by such holding."

Acts 1935, 44th Leg., 1st C.S., p. 1557, ch. 381, § 1, validates bond issues.

Section 2 of the Act of 1939, p. 262 repealed conflicting laws.

Art. 2603c1. Validation of proceedings and bonds purchased by Federal Agencies.—Severally all the acts of the Board of Regents of the University of Texas, the Board of Directors of the Agricultural and Mechanical College of Texas, the Board of Directors of Texas Technological College, the Board of Regents of the State Teachers Colleges, the Board of Regents of the Texas State College for Women, and the Board of Directors of the Texas College of Arts and Industries, heretofore had in the authorization, issuance, and delivery of bonds, notes or warrants, evidencing loans made to accomplish purposes authorized under the provisions of Chapter 5, Acts of the Second Called Session of the Forty-third Legislature, and amendments thereto,[1] and all other laws of the State of Texas, relating to such bonds, notes or warrants, including the construction, acquisition and equipping of dormitories, kitchens and dining halls, hospitals, libraries, student activity buildings, gymnasia, athletic buildings and stadia, and other buildings, are hereby in all things validated. Any such bonds, notes or warrants heretofore issued, or that may be issued hereafter, pursuant to any order or resolution of any such Board of Directors or Board of Regents heretofore adopted, are in all things fully validated, and such

bonds, notes or warrants, the pledge of the revenues by any such Board of Directors or such Board of Regents to secure and assure the payment of such obligations, and the provisions and covenants as to rates and charges supporting such pledges, are in all things ratified, and such bonds, notes or warrants are hereby declared to be the valid and binding special obligations of such Board of Directors or such Board of Regents, to be paid out of revenues pledged and not otherwise obligations of such respective institutions. It is hereby made the duty of said Boards of Directors and of said Boards of Regents to fix, maintain and collect charges or rates, sufficient for a reasonable reserve and to pay the interest as it accrues and the principal as it matures of any such bonds, notes or warrants heretofore or hereafter authorized by such Boards.

Provided, however, that the provisions of this Act shall apply only to such bonds, notes, or warrants as have heretofore or may hereafter be purchased by the Government of the United States or some agency thereof, or which bonds, notes, or warrants are under contract of purchase by the Federal Government or any agency thereof. [Acts 1939, 46th Leg., p. 689, § 1.]

1 Article 2603c.

Art. 2603c2. Validation of proceedings and bonds purchased by Federal Agencies; duties of Boards.—Severally all the acts of the Board of Regents of the University of Texas, the Board of Directors of the Agricultural and Mechanical College of Texas, the Board of Directors of Texas Technological College, the Board of Regents of the State Teachers Colleges, the Board of Regents of the Texas State College for Women, and the Board of Directors of the Texas College of Arts and Industries, heretofore had in the authorization, issuance, and delivery of bonds, notes or warrants, evidencing loans made to accomplish purposes authorized under the provisions of Chapter 5, Acts of the Second Called Session of the Forty-third Legislature, and amendments [1] thereto, and all other laws of the State of Texas, relating to such bonds, notes, or warrants, including the construction, acquisition and equipment of dormitories, kitchens, and dining halls, hospitals, libraries, student activity buildings, gymnasia, athletic buildings and stadia, dormitories for help, laundries, and other buildings, are hereby in all things validated. Any such bonds, notes or warrants heretofore issued, or that may be issued hereafter, pursuant to any order or resolution of any such Board of Directors or Board of Regents heretofore adopted, are in all things fully validated, and such bonds, notes, or warrants, the pledge of the revenues by any such Board of Directors or such Board of Regents to secure and assure the payment of such obligations, and the provisions and covenants as to rates and charges supporting such pledges, are in all things validated, and such bonds, notes, or warrants are hereby declared to be the valid and binding special obligations of such respective Boards of Directors or Boards of Regents, secured by the revenues pledged and not otherwise. It is hereby made the duty of each such Board of Directors or Board of Regents to fix, maintain, and collect charges or rates, sufficient for a reasonable reserve and to pay the interest as it accrues and the principal as it matures of such bonds, notes, or warrants heretofore or hereafter authorized by such Board, as provided in the resolution authorizing such bonds, notes, or warrants. [Acts 1941, 47th Leg., p. 663, ch. 404, § 1.]

1 Article 2603c.

Art. 2603d. Board of Regents authorized to contract for completion of administration and library building.—Sec. 1. That subject to and in accordance with the terms hereof, the Board of Regents of the University of Texas, is hereby authorized and empowered to complete the construction, furnishing and equipment of the "main" or administration and library building of the University of Texas, a part thereof being already under construction.

Sec. 2. That in anticipation of the collection of the revenues hereinafter authorized to be pledged for the payment of the cost of the construction, furnishing and equipment of said building the Board of Regents is empowered by resolution to authorize, sell and deliver its negotiable interest bearing notes or bonds from time to time and in such amount or amounts not in excess of One Million Two Hundred Thousand ($1,200,000.00) Dollars, as it may consider necessary. Such notes or bonds shall be payable at such time or times not more than fifteen (15) years from the date thereof, and at such place or places, shall be in such form and denominations, shall bear such rate of interest not more than four (4%) per cent, and shall be sold for such price and in such manner as the Board of Regents by resolution shall determine. Any notes or bonds issued hereunder shall not be an indebtedness of the State of Texas, but shall be payable solely from the revenues to be derived by the University of Texas from grazing and other surface leases of lands heretofore set apart and appropriated for the endowment, establishment, maintenance and support of the University of Texas, and said Board is empowered to pledge all or part of such revenues to the payment of such notes or bonds, and to enter into such contracts and agreements with respect to the collection and disposition of such revenues as it may deem necessary or proper. Any such agreements or contracts entered into by the Board of Regents shall be binding in all respects upon such Board of Regents and its successors from time to time, in accordance with the terms of such agreements, and all of the provisions thereof shall be enforcible by appropriate proceedings at law or in equity, or otherwise.

Sec. 3. That the Board of Regents may use a part of the proceeds of the sale of any notes or bonds issued hereunder for the purpose of furnishing and equipping, in whole or in part, the building herein authorized to be constructed.

Sec. 4. That all revenues pledged hereunder for the payment of notes or bonds issued under the terms of this Act shall as collected be paid directly to the Comptroller of the University. The Board of Regents is authorized to select a depository bank as a place of deposit of such revenues and shall require adequate surety bonds or securities to be posted to secure the deposit of such revenues. Any depository bank or banks so selected are hereby authorized to pledge their securities to protect such funds. Separate accounts shall be kept on the books of the University showing the sources of all revenues so collected and the disposition made thereof.

Sec. 5. That all contracts or agreements heretofore entered into by the Board of Regents in furtherance of the purposes of this Act be and the same are hereby ratified, confirmed and validated in all respects as though this Act had been in effect at the time of the making of such contracts or agreements.

Sec. 6. That if any clause, section or part of this law shall be held to be invalid such invalidity shall have no effect on the remainder of the law, and that said remainder shall continue to be in full force and effect.

Sec. 7. That all laws or parts of laws, in conflict herewith, be and the same are hereby repealed. [Acts 1934, 43rd Leg., 2nd C.S., p. 94, ch. 40.]

Art. 2603e. State Cancer Hospital; Division of Cancer Research.

Establishment and control

Section 1. There are hereby established the Texas State Cancer Hospital and the Division of Cancer Research, which institutions, together with such sub-

stations as may be created pursuant hereto, shall be under the control and management of The University of Texas, which shall determine the location within this State of said Texas State Cancer Hospital, said Division of Cancer Research and such substations, and which shall have charge of all building plans, materials, furnishings, equipment, and other properties of or pertaining to said institutions or substations.

Superintendent; selection; qualifications

Sec. 2. The Board of Regents of The University of Texas shall select and employ a superintendent. Said superintendent, who shall be a physician possessing an M. D. Degree, and who shall have had, at least, five (5) years experience practicing medicine, shall have charge of the operation and conduct of said institution and such other powers, duties, and obligations as may be conferred upon him by said Board of Regents.

Medical staff

Sec. 3. The medical staff of said institution shall be selected and employed by the Board of Regents on the recommendation of the superintendent, and may be discharged in like manner.

Diagnostic and treatment substations

Sec. 4. The University of Texas may establish and maintain such diagnostic and treatment substations as may be deemed expedient from time to time, the location, erection, operation, and management thereof to be under the control and direction of The University of Texas, subject to the other provisions of this Act.

Such substations, together with the institutions established hereby, shall conform to the standards of the American College of Surgeons and the American Medical Association.

Purpose of institutions

Sec. 5. Said institutions, together with such substations as may be established pursuant hereto, shall be devoted to the diagnosis, teaching, study, prevention, and treatment of neoplastic and allied diseases.

Patients admitted

Sec. 6. The provisions of House Bill No. 326, Chapter 152, Acts of the Regular Session of the Forty-fifth Legislature,[1] in so far as the same are not in conflict with other provisions set out herein, shall govern and control with reference to the admittance of patients to such institutions and such substations, their support, and other matters relating thereto.

[1] Article 3196a.

Rules and regulations as to admitting patients

Sec. 7. Admission to said institutions and to said substations shall be subject to such rules and regulations as may be promulgated by the superintendent from time to time, which shall include written application from the patient or from the guardian of the patient or from some friend or relative of the patient. Such written application shall be upon such forms as may be prescribed by the superintendent and shall show the following:

1. Name of patient.
2. Sex of patient.
3. Age and nativity of patient.
4. A complete statement of the location, description, and value of any property, real or personal, owned, possessed, or held by the patient or by the guardian of the patient.
5. The name of all persons legally liable for the support of the patient, together with a complete statement of the location, description, and value of any property, real or personal, owned, possessed, or held by any such person.
6. The residence of the patient for a period of at least two (2) years next preceding the date of application.
7. The occupation, trade, profession, or employment of the patient.
8. The names and addresses of the parents, children, brothers, and sisters, and other responsible relatives, if any, of the patient.
9. The names, addresses, and ages of any relatives who are or who may have been similarly afflicted.
10. Such other and further information or statements as may be required by the superintendent.

Application for admission as patient

Sec. 8. Every application shall be accompanied by a written request from the attending physician of the patient requesting the admission of such patient, which shall be in such form as may be prescribed by the superintendent and shall show the following:

1. A statement from the physician that he has adequately examined the patient and that such patient has, or is suspected of having, a neoplasm or allied disease, together with a statement showing the duration of the disease, if known, and indicating any accompanying bodily disorder or disorders the patient may have at the time of application.
2. Such other and further information as may be required by the superintendent.

Prerequisites to admission as patient

Sec. 9. No person shall be admitted to said institutions or to said substations until the superintendent is satisfied that all requirements of this Act have been met, subject to such rules and regulations as may be promulgated by the superintendent from time to time governing the admission of patients thereto.

Minimum fees; schedule

Sec. 10. A schedule of minimum fees and charges shall be established hereunder by the superintendent, which shall conform to the fees and charges customarily made for similar services in the community in which such services are rendered.

Appropriation

Sec. 11. There is hereby appropriated from the General Revenue Fund of the State of Texas, from funds not otherwise appropriated, the sum of Five Hundred Thousand Dollars ($500,000), for the location, equipping, and for the establishing of a Cancer Research Laboratory and Hospital; and provided further that not more than Two Hundred and Fifty Thousand Dollars ($250,000) of said amount shall be used for building and equipment and the remainder of said amount here appropriated shall be used for the hiring of experts, for conducting research, study, experiments, treatment of persons affected by the disease of cancer, and maintenance of Hospital and equipment for the biennium beginning September 1, 1941.

Acceptance of gifts authorized

Sec. 12. The University of Texas is authorized hereby to accept in connection with said institutions or said substations grants or gifts of money from other than State sources.

Partial invalidity

Sec. 13. The fact that any word, phrase, clause, sentence, paragraph, or section of this Act may be declared unconstitutional or invalid by the Courts shall not affect the constitutionality or validity of the remainder thereof. [Acts 1941, 47th Leg., p. 878, ch. 548.]

Art. 2603f. Sites for Cancer Research Hospital and Dental College; sale of other property; School of Public Health; Preceptorial Training Center; gifts.—Section 1. The Board of Regents of The University of Texas is hereby authorized to select and to accept for and in behalf of the State of Texas for the use and benefit of The University of Texas title by proper conveyance or conveyances from the M. D. Anderson Foundation or other owner or owners thereof to all land within the boundaries of the plot of land designated in the City of Houston, Harris County, Texas, as "The Texas Medical Center" as the sites needed for the location, operation and maintenance thereon of the M. D. Anderson Hospital for Cancer Research, the Dental College of The University of Texas, a School of Public Health and a Preceptorial Training Center. Before title to said property can be accepted by said Board of Regents, however, the owner or owners of said land must furnish to said Board an abstract or other satisfactory certificate of title thereto, showing good and merchantable title, free of all liens, in the grantor named in said conveyances to the Board of Regents and said title thereof must first receive the written approval of the Attorney General of this State. The Board of Regents of The University of Texas, whenever it deems it advisable to do so, is hereby authorized to remove, locate, operate and maintain on said sites so selected and acquired the M. D. Anderson Hospital for Cancer Research and the Dental College of The University of Texas. As soon as the Dental College has been properly removed and located on said site as provided for herein, the said Board is further authorized to sell and convey, at either a public or private sale, the property belonging to the State of Texas and now used by said Dental College of The University of Texas in the City of Houston, Harris County, Texas, said sale to be either for cash or on credit as said Board may determine to be for the best interest of the State. The title to said real estate now used as a site for the Dental College of The University of Texas shall be conveyed to the purchaser by proper deed duly executed under the authority and direction of the Board of Regents and the title to any personal property so sold shall be passed to the purchaser by a proper bill of sale duly executed and delivered under the direction and by authority of said Board. The proceeds derived from the sale of any of said property as and when collected shall be used by said Board of Regents in the erection of additional buildings or other permanent improvements or for the equipment of said Dental College as said Board may determine to be for the best interest of said institution. The Board of Regents of The University of Texas is hereby authorized to establish and operate within the Texas Medical Center at Houston a school of Public Health and a Preceptorial Training Center.

Sec. 2. The Board of Regents of The University of Texas is hereby authorized to accept gifts or donations for the purposes of this Act. There is hereby reappropriated for each of the fiscal years of the biennium beginning September 1, 1947, and ending August 31, 1949, any unexpended balance remaining in the fund appropriated by Chapter 548 (H.B.No. 268), Acts, Regular Session, Forty-seventh Legislature,[1] to be used in connection with the establishment, equipping and operation of the M. D. Anderson Hospital for Cancer Research at Houston, Texas. [Acts 1947, 50th Leg., p. 509, ch. 300.]

[1] Article 2603e.

3. GENERAL PROVISIONS

Art. 2604. [2645] [3853] Non-sectarian.—No religious qualification shall be required for admission to any office or privilege in the University. No course of instruction of a sectarian character shall be taught therein. [Acts 1881, p. 80; G. L. vol. 9, p. 172.]

Art. 2605. [2650] [3855] Board of visitors.—The Legislature at each regular session shall appoint a board of visitors who shall attend the annual examinations of the University and its branches and report to the Legislature thereon. [Id.]

Art. 2606. [2652–4] Manuscript bonds.—The Governor is authorized and directed to have issued manuscript bonds of the State of Texas to be sold or exchanged at par for the permanent University fund at any time when there is on hand in cash any reasonable amount of such funds not less than five thousand dollars. Said bonds shall be of such denomination as the Governor may direct, shall be redeemable at the pleasure of the State, and shall bear five per cent interest payable annually at the State Treasury on the first day of March of each year. Said bonds shall recite the title and date of passage of the act of 1889, p. 81, shall be signed by the Governor and Treasurer and countersigned by the Comptroller, and shall be registered in the office of the State Treasurer. After said bonds have been registered, the Governor shall offer said bonds to the State Board as an investment for the permanent University fund then on hand in cash which are by law authorized to be invested. If the State Board takes said bonds, the Treasurer and Comptroller shall make the proper entry, showing the facts of the transaction and the necessary transfer of such fund on their books. If said board shall not take said bonds thus offered, the same shall be destroyed and cancelled and of no effect whatever. [Acts 1889, p. 81; G. L. vol. 9, p. 1109.]

Art. 2606a. State refunding bonds.

Form and requisites

Sec. 1. The Governor of the State of Texas is hereby authorized to have printed manuscript bonds of the State of Texas in convenient denominations to be determined by him for the purpose of refunding the principal of the bonds hereinafter mentioned. Said bonds shall be designated "State of Texas Refunding Bonds, Issue of 1934." Said bonds shall be numbered and dated as hereinafter indicated and shall bear the rate of interest hereinafter fixed, and shall become due and payable on the dates hereinafter shown. Interest paying dates on the various bonds authorized herein shall be fixed as hereinafter indicated. The form of such bonds shall be prepared by the Attorney General. Each of them shall be signed by the Governor and the Treasurer of the State of Texas and countersigned and registered by the Comptroller, and shall have the seal of Texas affixed thereto.

Purpose of issuance

Sec. 2. The bonds herein provided for are authorized for the purpose of redeeming and canceling the principal on all outstanding bonds of the State of Texas as is hereinafter shown and when the same shall have been printed, signed, sealed and registered in the manner required, shall be exchanged for the bonds hereinafter indicated.

Outstanding bonds

Sec. 3. Outstanding bonds of the State of Texas to be refunded and now held and owned by the Permanent Funds of Educational and Eleemosynary Institutions are as follows:

Number	Kind of Bond	Date	Int. Rate	Int. Payable	Maturity Date	Denomination	Total
		BY PERMANENT SCHOOL FUND					
1	Manuscript	11/11/1890	5%	3/1 & 9/1	11/11/20	81,000.	81,000.
3	"	1/15/1891	5%	3/1 & 9/1	1/15/21	11,000.	11,000.
10	"	3/17/1891	5%	3/1 & 9/1	3/17/21	8,000.	8,000.
11	"	8/31/1891	5%	3/1 & 9/1	8/31/21	7,500.	7,500.
1	"	3/1 /1894	4%	1/1 & 7/1	3/1 /34	229,500.	229,500.
11 to 20	Penitentiary R. R.	8/15/1909	5%	12/1	12/1 /29	10,000.	100,000.
							437,000
		BY PERMANENT UNIVERSITY OF TEXAS FUND					
2	Manuscript	11/11/1890	5%	3/1 & 9/1	11/11/20	20,000.	20,000.
12	"	8/31/1891	5%	3/1 & 9/1	8/31/21	1,900.	1,900.
5	"	3/1 /1894	5%	1/1 & 7/1	3/1 /34	152,000.	152,000.
							173,900
		BY LUNATIC ASYLUM PERMANENT FUND					
4	Manuscript	3/13/1891	5%	3/1 & 9/1	3/13/21	10,000.	10,000.
8	"	3/17/1891	5%	3/1 & 9/1	3/17/21	10,000.	10,000.
15	"	8/31/1891	5%	3/1 & 9/1	8/31/21	1,300.	1,300.
4	"	3/1 /1894	4%	1/1 & 7/1	3/1 /34	30,000.	30,000.
							51,300
		BY BLIND INSTITUTE PERMANENT FUND					
5	Manuscript	3/13/1891	5%	3/1 & 9/1	3/13/21	17,000.	17,000.
9	"	3/17/1891	5%	3/1 & 9/1	3/17/21	9,000.	9,000.
13	"	8/31/1891	5%	3/1 & 9/1	8/31/21	1,400.	1,400.
2	"	3/1 /1894	4%	1/1 & 7/1	3/1 /34	57,000.	57,000.
							84,400
		BY DEAF AND DUMB INSTITUTE PERMANENT FUND					
6	Manuscript	3/13/1891	5%	3/1 & 9/1	3/13/21	12,000.	12,000.
14	"	8/31/1891	5%	3/1 & 9/1	8/31/21	2,300.	2,300.
3	"	3/1 /1894	4%	1/1 & 7/1	3/1 /34	18,000.	18,000.
							32,300
		BY ORPHAN PERMANENT FUND					
7	Manuscript	3/13/1891	5%	3/1 & 9/1	3/13/21	8,000.	8,000.
16	"	8/31/1891	5%	3/1 & 9/1	8/31/21	600.	600.
							8,600
						GRAND TOTAL.....	$ 787,500

Each and all of the bonds enumerated and described in this Section shall be refunded. All bonds held by each eleemosynary or educational permanent fund bearing a particular rate of interest shall be refunded by the issuance of manuscript bonds bearing the same rate of interest. The Governor is hereby authorized to refund each and all of said bonds in such denominations as he shall deem best. Said bonds shall be payable serially not less than ten (10) years and not more than twenty (20) years from their date. Interest on the refunding bonds herein authorized shall be payable on the same dates each year as was heretofore provided in the bonds for which they are exchanged.

Registration by Comptroller; destruction of exchanged bonds

Sec. 4. After said refunding bonds have been prepared, signed and sealed the same shall be delivered to the State Comptroller of Public Accounts for registration by him and held by said Comptroller to be exchanged by him upon the delivery and surrender to him of a like amount of bonds for which said refunding bonds were issued. When the Comptroller shall have received the bonds now outstanding in exchange for refunding bonds, said outstanding bonds for which refunding bonds shall be exchanged shall be by him destroyed by burning the same in the presence of the State Treasurer and the Attorney General. When said bonds shall have been destroyed each of said officers shall sign a certificate to the effect that said bonds have been destroyed and file same with the Secretary of State of the State of Texas.

Audit of outstanding bonds

Sec. 5. It shall be the duty of the State Auditor and Efficiency Expert to inspect and audit all of the outstanding State bonds held by the various State funds as outlined in this Act and to submit his findings and recommendation to the Governor as to the respective amounts of outstanding indebtedness held by the various funds that will be necessary to be refunded under the terms of this Act. The State Treasurer is hereby directed and instructed to make the exchange of bonds herein provided for.

Expenses of printing

Sec. 6. The sum of Fifteen Hundred Dollars ($1500.00) or so much thereof as may be necessary, is hereby appropriated out of any money in the General Fund of the State Treasury not otherwise appropriated, to defray the expense of printing the man-

uscript refunding bonds herein authorized. The State Board of Control shall, when requested by the Governor, cause said bonds to be printed and pay the expense and cost of same in the manner prescribed by Statute. [Acts 1934, 43rd Leg., 2d C.S., p. 142, ch. 65.]

CHAPTER 2.—AGRICULTURAL AND MECHANICAL COLLEGE

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Article 2607. [2655] [3860] Branch of University.—The Agricultural and Mechanical College of Texas, located in Brazos County, and by the Constitution made and constituted a branch of the University of Texas, for instruction in agriculture, the mechanical arts and the natural science connected therewith, shall be managed and controlled as herein provided. [Const. art. 7, sec. 13; 12 U. S. Stat., p. 503; 14 Id., p. 203; Acts 1875, p. 72; P. D. 5693; G. L. vol. 8, p. 444.]

Art. 2608. [2656] [3861] Leading object.—The leading object of this College shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanical arts, in such manner as the legislature may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life. [12 U. S. Stat., p. 503; Act of Cong. July 2, 1862, sec. 4.]

Art. 2609. [2663] [3868] Free tuition.—There shall be maintained and instructed at said College annually, free of charge to them, three students from each senatorial district in this state, one of whom shall be appointed by the senator of such district, and the other two by the representatives thereof. One-half of said students so appointed shall be compelled to take an agricultural, and the other a mechanical, course of study, to be assigned by the president of said College. The Comptroller, on proper vouchers being filed in his office by the directors, is authorized to draw his warrant on the State Treasurer against any appropriation made for such purpose. [Id.]

Art. 2610. [2657–60] The Board of Directors.—The government of the Agricultural and Mechanical College shall be vested in a Board of Directors composed of nine persons. Said board shall elect from their number a president of the board, who shall call said board together for the transaction of business whenever he deems it expedient. The board shall have the right to make and use a common seal. [Acts 1881, p. 75; G. L. vol. 9, p. 167; Acts 1913, p. 191.]

Art. 2611. [2662] [3867] Certificate of appointment.—The Secretary of State shall forward a certificate to each director within ten days after his appointment, notifying him of the fact of such appointment, and, should any director so appointed and notified fail for ten days to give notice to the Governor of his acceptance, his appointment shall be deemed void, and his place filled as in case of vacancy. [Acts 1881, p. 75; G. L. vol. 9, p. 167.]

Art. 2612. [2661] [2866] Expenses of directors.—Said directors shall serve without compensation, but shall receive actual expenses incurred in attending said meetings or in the transaction of any business of the College imposed by said board. [Acts 1881, p. 75; G. L. vol. 9, p. 167.]

Art. 2613. [2664–2676] Powers and duties.—The Board of Directors is charged with the duties

and empowered to do and perform the acts hereinafter set forth as follows:

1. The board shall, when necessary, appoint the president and professors of the college and such other officers as, from time to time, they may think proper to keep the college in successful operation, and may from time to time abolish any office that is in their judgment unnecessary. [Acts 1875, p. 74; G. L. vol. 8, p. 446.]

2. The president and board shall employ an expert entomologist, one or more, as may be deemed necessary, whose duty it shall be to devise, if possible, means of destroying the Mexican boll weevil, boll worm, caterpillar, sharpshooter, chinch bug, peach bug, fly and worm and other insect pests and to perform the duties of professor of entomology in the college. [Acts 1899, p. 9.]

3. The board shall establish at and in connection with the said College a school or department for instruction in the theory and practical arts of grading, classing and determining the spinable value of cotton, whose main purpose shall be to train students in the theory and practical art of cotton classing in all its branches from the field to the factory. [Acts 1909, p. 220.]

4. The board shall also provide for a special summer school of at least two months each year for the training of special students who shall be admitted without an entrance examination and may make provisions for said summer school and purchase the necessary equipment, and generally do and perform all acts necessary to establish and maintain the same. [Id.]

5. The board shall establish at and in connection with the said College a school or department for instruction in the theory and practical art of textile and kindred branches of industry, whose main purpose shall be to train students in the theory and practice of cotton manufacturing in all its branches, from the raw cotton to the finished fabric, and shall do and perform all acts necessary to establish and maintain said school or department. [Acts 1903, p. 74; Acts 1909, p. 220.]

6. The board shall also, from time to time, make such by-laws, rules and regulations for the government of said College as they may deem necessary and proper for that purpose, and shall regulate the course of study, the rates of tuition, the manner of performing labor, and the kind of labor to be performed by the students of said College, and shall also prescribe the course of discipline necessary to enforce the faithful discharge of the duties of the professors, officers and students. [Acts 1875, p. 74; G. L. vol. 8, p. 446.]

7. The board shall require the teaching of elementary agriculture for teachers in the summer sessions. [Acts 1909, p. 221.]

8. The board shall employ a graduate civil engineer of said College having a practical and scientific knowledge of the conservation of moisture and soil fertility, who understands the practical art of terracing farm land to preserve the moisture and soil fertility and to prevent the washing away and the destruction of the properties of the soil, and who has had five years actual experience in terracing farm lands in some southern State. He shall receive a salary not exceeding two thousand dollars per annum, and shall make his headquarters at the College, where he shall instruct the students by lecture and practical demonstration, in the best method of such conservation and terracing so as to enable them to do the work successfully. He shall devote one-half of his time to such instruction, and the other half shall be spent in field work, giving practical demonstrations in terracing to farmers' institutes and other farmers' organizations, and the president of said College shall require him to go over the State upon the application of farmers desiring expert instruction in terracing farm lands, and in conserving the moisture and soil fertility. He shall be furnished with the necessary instruments and equipment for such demonstration and instruction. [Acts 1911, p. 155.]

9. All expenditures for the Agricultural and Mechanical College of Texas may be made by the order of the board of directors and the same shall be paid on warrants from the Comptroller based on vouchers approved by the president of the board of directors, or by some officer or officers of the College designated by him in writing to the Comptroller. [Acts 1915, p. 104.]

10. The board shall appoint a State Forester who shall be a technically trained forester of not less than two years' experience in professional forestry work. His compensation shall be fixed by said board at not to exceed three thousand dollars per annum, and he shall be allowed reasonable traveling and field expenses incurred in the performance of his official duties. He shall, under the general supervision of said board, have direction of all forest interest and all matters pertaining to forestry within the jurisdiction of this State. He shall appoint, subject to the approval and confirmation of said board, such assistants and employés as may be necessary in executing the duties of his office and the purposes of said board, their compensation to be fixed by said board. He shall take such action as may be deemed necessary by said board to prevent and extinguish forest fires, shall enforce all laws pertaining to the protection of forest and woodlands, and prosecute for any violation of such laws; and collect data relative to forest conditions. He shall prepare for said board annually a report on the progress and condition of State forestry work, and recommend therein plans for improving the State system of forest protection, management and replacement. He shall, upon request, under the sanction of the board of directors, and whenever he deems it essential to the best interest of the people of the State, co-operate with counties, towns, corporations or individuals in preparing plans for the protection, management and replacement of trees, woodlots and timber tracts, under an agreement that the parties obtaining such assistants pay at least the field expenses of the men employed in preparing said plans. The board of directors may co-operate with the Federal Forest Service under such terms as may seem desirable. [Acts 1915, p. 220.]

Sec. 10a. The State Forester may, when the enforcement of the provisions of this Act requires, name the following of his employees: Two District Foresters, four Division Patrolmen, and four Patrolmen, as peace officers, whose duties and powers shall not exceed the duties of the State Forester as set out in Section 10 hereof. The necessity of such appointments shall be certified to and approved by the board of directors. [Added, Acts 1941, 47th Leg., p. 855, ch. 530, § 1.]

11. Upon the recommendation of the Board of Directors, the Governor of this State is authorized to accept gifts of land to the State to be held, protected and administered by said Board as State forests, and to be used [1] as to demonstrate the practical utility of timber culture and water conservation and as game preserves. Such gifts may be upon such terms and conditions as shall be agreed upon between the grantors of the property and the Board of Directors of the Agricultural and Mechanical College of this State. The Board of Directors of the Agricultural and Mechanical College of Texas shall have the power to purchase lands in the name of the State, suitable chiefly for the production of timber as State forests, using for such purposes any special appropriation. All conveyances of any property either by gift or otherwise, shall be submitted to the Attorney General for approval as to form. [Acts 1915, p. 220; Acts 1929, 41st Leg., p. 126, ch. 61, § 1.]

[1] So in enrolled bill. Word "so" should probably be inserted.

12. When pine forest lands are sold to the State for the payment of taxes, interest, penalty and costs adjudged against such land, as provided in Article 7328, Revised Civil Statutes of Texas, 1925, as amended by Acts 1927, Fortieth Legislature, First Called Session, page 260, Chapter 99, Section 1, and not redeemed or resold as provided in said Article 7328, such lands shall be withdrawn from the market and shall be held, protected and administered by the Board of Directors of the Agricultural and Mechanical College as State forests; and the Board of Directors shall have the power to manage, use and improve such pine forest lands as fully and to the same extent as in the case of other forest lands held by it in accordance with the law. Forest lands, as used in this Act, shall include all lands upon which is growing pine timber of any material value and all cutover pine timber lands which may reasonably be expected to produce by reason of natural, or other methods of reforestation, another growth of pine timber of any material value upon them. [Acts 1935, 44th Leg., p. 720, ch. 312, § 1.]

Acts 1929, 41st Leg., p. 126, ch. 61, § 1, amended section 11 of this article, and Acts 1935, 44th Leg., p. 720, ch. 312, § 1, added section 12.

Acts 1935, 44th Leg., 1st C.S., p. 1548, ch. 376, related to loan of funds to Athletic Council of Agricultural and Mechanical College.

Art. 2613a. Reforestation.—All that certain several tracts and parcels of land lying and being situated in Cherokee County, Texas, near the town of Maydelle in said county and State, the several tracts consisting approximately of about two thousand one hundred and fifty (2150) acres of land more or less, now being owned by the State of Texas and the Prison Commission of the State of Texas, is hereby set aside for reforestization purposes to be used by the Agricultural and Mechanical College to demonstrate reforestization work. [Acts 1925, 39th Leg., ch. 204, p. 674, § 1.]

Art. 2613a—1. Permanent improvements authorized.—Sec. 1. The Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized to contract with persons, firms or corporations for the purchase of, or the acquisition of, or the erection of permanent improvements on or conveniently located in reference to the campus of said College, or to the campuses of any or all of its branch institutions, and to purchase, sell, or lease lands and other appurtenances for the construction of such permanent improvements provided that the State of Texas incurs no indebtedness under the contracts. [As amended Acts 1933, 43rd Leg., 1st C.S., p. 195, ch. 73, § 1.]

Sec. 2. Said Board of Directors is especially authorized to contract for the acquisition, purchase or erection of dormitories, athletic fields and stadiums, and in reference to the collection, control and disposition of the revenues derived from the operation or control of such dormitories, athletic fields and stadiums. The Board is authorized and directed to establish and maintain such schedule of rates, fees and charges for the use of the facilities afforded by its dormitories, and revenues from the athletic fields and stadiums, which rates, fees and charges shall be in an amount at least sufficient to pay the operating and maintenance charges thereof and to pay the principal and interest representing the indebtedness against said property and/or the revenues therefrom. The Board is authorized to pledge said revenues to the payment of revenue notes or revenue bonds and interest thereon, in the acquisition of such dormitory or dormitories and/or athletic fields or stadiums.

Sec. 3. The Board of Directors is especially authorized to make such contract or contracts in reference to the erection or acquisition of a stadium or improvements to or enlargement of the present stadium owned by the College, and in reference to the collection and disposition of the revenues received by the Department of Physical Education, and/or the Athletic Council of the College, including receipts from the sale of coupon books, gate receipts, and such other revenues as may accrue to such Athletic Council and/or Department of Physical Education. The Board of Directors shall be empowered and is hereby directed to see that rates, fees and charges are maintained by the Department of Physical Education and/or the Athletic Council of the College for coupon books, gate receipts and in all other revenues accruing to the Department of Physical Education and/or the Athletic Council of the College, which will be in an amount sufficient to pay the operating and maintenance charges of the Department of Physical Education and/or the Athletic Council, and to pay the principal and interest represented by the contract or contracts for the erection or acquisition of said permanent improvements thereto. The Board is authorized to pledge said revenues to the payment of revenue notes or revenue bonds, and interest thereon, represented by the contract for the erection or acquisition of said stadium or the erection of said permanent improvements thereto; provided, however, no indebtedness shall be incurred by or in behalf of the State of Texas, but only the revenues indicated in this section shall be pledged.

Sec. 4. Said Board of Directors is further authorized to sell, encumber or contract with reference to the divesting or encumbering of the title to any part of the campus or other property of said College or of its branch institutions as may be necessary in the construction or acquisition of dormitories except that no debt shall be created against said institution or the State of Texas. [As amended Acts 1933, 43rd Leg., 1st C.S., p. 195, ch. 73, § 1.]

Sec. 5. Said revenue notes or revenue bonds shall be examined and approved by the Attorney General of the State of Texas, and shall be registered in the office of the Comptroller of the State of Texas.

Sec. 6. On the acquisition of said dormitory or dormitories by the College or its branch institutions, the Board of Directors is hereby expressly authorized and empowered to make requisition for all furniture, furnishings, equipment and appointments that may be necessary for the proper use and enjoyment of said building or buildings, which in no event, however, will become permanent fixtures. The Board of Control of the State of Texas is hereby authorized to purchase and pay for the furnishings and the equipment authorized to be purchased in this Section but only after said building or buildings are accepted by the Board of Directors. [As amended Acts 1933, 43rd Leg., 1st C.S., p. 195, ch. 73, § 1.]

Sec. 7. The Board of Directors is hereby empowered to do any and all things necessary and/or convenient to carry out the purpose and intent of this law. [Acts 1929, 41st Leg., 2nd C.S., p. 162, ch. 82.]

Acts 1933, 43rd Leg., 1st C.S., p. 195, c. 73, amended sections 1, 4, 6, of this article.

Section 8 of this Act repeals all conflicting laws and parts of laws and provides if any part is declared invalid, the remainder shall be effective.

Section 2 of Acts 1933, 43rd Leg., 1st C.S., p. 195, ch. 73, repeals all conflicting laws and parts of laws and provides that if any part is declared invalid the remaining portions shall be effective.

Art. 2613a—2. Acceptance of donations for forestry purposes.—Sec. 1. That the Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized to accept gifts, donations or contributions of land suitable for forestry purposes and to enter into agreements with the Federal Government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the Board of Directors of the Agricultural and Mechanical College of Texas are desirable for State forests.

Sec. 2. When lands are acquired or leased under Section 1 of this Act, the Board of Directors of the

Agricultural and Mechanical College of Texas is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules and regulations as may be necessary to carry out the purposes of this Act.

Sec. 3. All revenues derived from lands now owned or later acquired under the provisions of this Act shall be segregated by the Board of Directors of the Agricultural and Mechanical College of Texas for use in the acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, net profits accruing from the administration of such lands shall be applicable for such purposes as the Legislature of the State of Texas may prescribe.

Sec. 4. Obligations for the acquisition of land incurred by the Board of Directors of the Agricultural and Mechanical College of Texas under the authority of this Act shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State.

Sec. 5. The Board of Directors of the Agricultural and Mechanical College of Texas shall have full power and authority to sell, exchange or lease State forest lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of State forests. Provided no sales or exchange of any such lands belonging to the State of Texas or the Agricultural and Mechanical College of Texas shall be made until such sale or exchange is authorized by the Legislature of the State of Texas. Provided however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into.

Sec. 6. All laws or parts of laws in conflict with any of the provisions of this Act are hereby repealed.

Sec. 7. If any paragraph, section, subsection or part of this Act shall ever be held to be unconstitutional or invalid by any Court of competent jurisdiction, such holding shall not in any manner affect the remaining parts or portions of this Act not so held unconstitutional or invalid. [Acts 1935, 44th Leg., p. 729, ch. 318.]

Art. 2613a—3. Lease of lands for oil, gas or other mineral development authorized.

Disposition of funds

Section 1. The Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized and empowered to lease for oil and/or gas and/or sulphur and/or other mineral development to the highest bidder at public auction all lands used for experimental stations and all other lands under its exclusive control or any part thereof now owned by the State of Texas and acquired for the use of the Agricultural and Mechanical College of Texas and its divisions or that may hereafter be acquired for the use of the Agricultural and Mechanical College of Texas and its divisions. Any amounts received under and by virtue of this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the "Agricultural and Mechanical College of Texas Special Mineral Fund," and any funds placed therein shall be appropriated by the Legislature of the State of Texas in its regular biennial appropriation bill exclusively for the Agricultural and Mechanical College of Texas and its branches or divisions; provided, the amounts received as bonuses and rentals between the effective date of this Act and August 31, 1937, are hereby appropriated to the Agricultural and Mechanical College of Texas to be expended as may be deemed proper by the Board of Directors of said College; provided, however, that the amounts received prior to August 31, 1937, as bonus money and rental money from leases of the land embraced in Experimental Station No. 4, located in Senatorial District No. 4, may be expended by the Board for the necessary improvements and maintenance of Experimental Station No. 4, and the Board is authorized to expend whatever amount they may deem necessary for improvements, livestock and maintenance of the Piney Woods Livestock Experimental Station in Senatorial District No. 4; provided, however, that any royalties received shall be placed in the special fund provided. All moneys realized from royalties accruing under the terms of this Act shall be used exclusively for the purpose of creating a permanent improvement fund, the income from which shall be expended under the direction of the Board of Directors of the Agricultural and Mechanical College of Texas in erecting permanent improvements for the College and its branches and divisions.

Division of lands into lots or blocks

Sec. 2. The Board is hereby authorized to cause said lands to be surveyed or subdivided into such tracts, lots or blocks as will, in their judgment, be most conducive and convenient to facilitate the advantageous sale of lease for oil, gas, sulphur, and/or other minerals thereof and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board is further authorized to obtain authentic abstracts of title to all of said lands as they may deem necessary from time to time and to take such steps as may be necessary to perfect a merchantable title to said lands in the State of Texas.

Advertising for lease

Sec. 3. Whenever, in the opinion of the Board, there shall be such a demand for the purchase of oil, gas, sulphur or other mineral leases on any tract or part of any tract of land as will reasonably insure an advantageous sale, the Board shall place such oil, gas, sulphur or other mineral leases on said land on the market in such tract or tracts, or any part thereof, as the Board may designate. It shall cause to be advertised a brief description of the land from which the oil, gas, sulphur or other minerals is proposed to be leased. Such advertisement shall be made by inserting in two or more papers of general circulation in this State and in addition the Board may, in its discretion, cause said advertisement to be placed in an Oil & Gas Journal published in and out of the State, and also mail copies of such proposals to the county judge of the county where said lands are located, and mail copies of such proposals to such other persons as the Board might think would be interested therein.

The Board may sell the lease or leases to the highest bidder at public auction at the Agricultural and Mechanical College of Texas, College Station, Texas, at any hour between 10:00 a. m. and 5:00 p. m. The Board shall have the right to reject all bids. However, the highest bidder shall pay to the Board on the day of the sale twenty-five per cent (25%) of the bonus bid and the balance of the bid shall be paid to the Board within twenty-four (24) hours after being notified that the bid has been accepted. Payment shall be paid in cash, certified check or cashier's check, as the Board may direct; provided, the failure to pay the balance of the amount bid will forfeit to the Board the twenty-five per cent (25%) paid.

Bids for leases

Sec. 4. A separate bid shall be made for each tract or subdivision thereof. No bids shall be accepted which offer a royalty of less than one-eighth (⅛th) of the gross production of oil, gas, sulphur and other minerals in the land bid upon and this minimum royalty may be increased at the discretion of the Board. Every bid shall carry the obligation to pay an amount not less than One Dollar ($1.00) per acre for delay

in drilling or development; such amount to be fixed by the Board in advance of the advertisement and shall be paid every year for five (5) years unless in the meantime production in paying quantities is had upon the land or said land is re-leased by the lessee.

Regulations on lease

Sec. 5. If in the opinion of the Board any one of the bidders shall have offered a reasonable and proper price for any tract and not less than the price fixed by the Board, the lands advertised may be leased for oil, gas, sulphur and/or other mineral purposes under the terms of this Act, and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. In the event no bid is accepted by the Board at public auction any subsequent procedure for the sale of oil and/or gas and/or sulphur and/or other mineral leases shall be in the manner above provided. Provided that no lease for oil, gas, sulphur, and/or other minerals shall be made by said Board which will permit the drilling or mining for oil and/or gas and/or sulphur and/or other minerals within less than three hundred (300) feet of any building on said land, without the consent of the Board, and further providing that in making any lease on any experimental station and/or farm the lease shall provide that the operations for oil, gas and other minerals shall not in any way interfere with the land as an experimental station and shall not cause the abandonment of said property or its use for experimental farm purposes, and the lessee operating said property shall drill and carry on his operations in such a way as not to cause the abandonment of said property for experimental farm purposes and any such leased property shall be subject to the use by the State of Texas for all experimental purposes and said Board shall continue to operate said experimental station.

Acceptance of lease; termination

Sec. 6. If the Board shall determine that a satisfactory bid has been received for said oil, gas, sulphur and/or other mineral lands it shall accept the same and reject all other bids and file said accepted bid in the General Land Office. Whenever the royalties shall amount to as much as the yearly payments as fixed by the Board, the yearly payments may be discontinued. If before the expiration of five years oil and/or gas and/or sulphur and/or other minerals shall not have been produced in paying quantities, the lease shall terminate, unless extended as hereinafter provided.

Award of lease to highest bidder; termination; extension

Sec. 7. (a) If the Board shall determine that a satisfactory bid has been received for said oil, gas, sulphur and/or other minerals, it will make an award to the bidder offering the highest price therefor, and a lease shall be filed in the General Land Office.

(b) The exploratory term of the lease as determined by the Board prior to the promulgation of the advertisement shall in no case exceed five (5) years, and each lease shall provide that the lease will terminate at the expiration of its exploratory term unless by unanimous vote of members of the Board such lease may be extended for a period of three (3) years, which lease may be extended where the Board finds that there is likelihood of oil, gas, sulphur and/or other minerals being discovered thereon by lessees, and that such lessees have proceeded with diligence to protect the interest of the State; provided, however, that if oil, gas, sulphur and/or other minerals are being produced in paying quantities from the premises, said lease shall continue in force and effect as long as such oil, gas, sulphur and/or other minerals are being so produced. Provided, that no extension hereunder may be made by the Board until the last thirty (30) days of the original term of the lease. The lease shall include such additional provisions and regulations as the Board may prescribe to preserve the interest of the State, but not inconsistent with the provisions of this Act.

(c) Whenever in the discretion of said Board, it is deemed for the best interest of the State to extend a lease issued by said Board, the Board is hereby granted and given full authority by unanimous vote to extend said lease for a period not to exceed three (3) years, upon the condition that the lessee shall continue to pay yearly rental as provided in the lease and such additional terms as the Board may see fit and proper to demand. The Board is hereby given full authority to extend such lease and execute an extension agreement therefor.

(d) Whenever in the discretion of the Board, it is for the best interest of the State to prorate, or reduce production of any land, said Board shall have and is hereby given authority to execute the necessary contract to carry out such purpose.

Rentals under lease

Sec. 8. If, during the term of any lease issued under the provisions of this Act, the lessee shall be engaged in actual drilling operations for the discovery of oil, gas, sulphur and/or other minerals on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil, gas, sulphur, and/or other minerals are discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as oil, gas, sulphur and/or other minerals are produced in paying quantities from such tract. In the event of the discovery of oil, gas, sulphur and/or other minerals on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease to properly develop the same, to the extent that a reasonably prudent operator would do under the same and similar circumstances.

Rights of purchaser; assignments

Sec. 9. Title to all rights purchased may be held by the owners so long as the area produces oil, gas, sulphur and/or other minerals in paying quantities. All rights purchased may be assigned. All assignments shall be filed in the General Land Office within one hundred days from the date of the first acknowledgment thereof, accompanied by ten cents (10¢) per acre for each acre assigned and if not so filed and payment made, the assignment shall not be effective. All rights to any whole tract or to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed with the Chairman of the Board accompanied with One Dollar ($1.00) for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe line, telephone line, and the opening of such roads as may be deemed reasonably necessary for and incident to the purpose of this Act.

Royalty payable to General Land Office

Sec. 10. If oil or other minerals are developed on any of the lands leased by the Board, the royalty as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, on or before the 20th day of each succeeding month for the preceding month during the life of the rights purchased, and be set aside in the State Treasury as specified in Section 1 hereof, and said funds may be used as therein provided. Said royalty paid to the General Land Office as above stipulated shall be accompanied

by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil, gas, sulphur and/or other minerals produced and saved since the last report and the amount of oil, gas, sulphur and/or other minerals produced and sold off the premises and the market value of the oil, gas, sulphur and/or other minerals together with a copy of all daily gauges, or vats, tanks, gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks, vats, or pool and gas lines or gas storage. The books and accounts, receipts and discharges of all wells, tanks, vats, pools, meters, pipe lines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil, gas, sulphur and/or other minerals shall at all times be subject to inspection and examination of any member of the Board of Directors of the Agricultural and Mechanical College of Texas or any duly authorized representative of said Board. The Commissioner of the General Land Office shall tender to the Board of Directors of the Agricultural and Mechanical College of Texas at the close of each month a report of all receipts from the lease or sale of oil, gas, sulphur and/or other minerals turned into the special fund in the State Treasury.

Protection of contiguous or adjoining lands

Sec. 11. In every case where the area in which oil, gas, sulphur and/or other minerals sold shall be contiguous or adjacent to lands which are not lands belonging to and held by the Agricultural and Mechanical College of Texas, the acceptance of the bid and the sale made thereby shall constitute an obligation on the owner thereof to adequately protect the land leased from drainage from said adjacent lands to the extent that a reasonably prudent operator would do under the same and similar circumstances. In cases where the area in which the oil, gas, sulphur and/or other minerals are sold is contiguous to other lands belonging to and held by the Agricultural and Mechanical College of Texas which have been leased or sold at a lesser royalty, the owner shall likewise protect said land from drainage from the lands so leased or sold for a lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided for forfeitures.

Forfeitures

Sec. 12. If the owner of the rights acquired under this Act shall fail or refuse to make the payments of any sum due thereon, either as rental or royalty on the production, within thirty (30) days after the same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling or mining or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeiture, the lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon oil, gas, sulphur and/or other minerals produced upon the leased area, and upon all rigs, tanks, vats, pipe lines, telephone lines, and machinery and appliances used in the production and handling of oil and/or gas and/or sulphur and/or other minerals produced thereon, to secure any amount due from the owner of the said lease.

Records filed in General Land Office

Sec. 13. All surveys, files, records, copies of sale and lease contracts and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all royalties, lease fees, rentals for delay in drilling or mining and all other payments, including all filing assignments and relinquishment fees hereunder, to be deposited in the special fund in the State Treasury to the credit of the Agricultural and Mechanical College of Texas as above provided.

Adoption of forms and regulations

Sec. 14. The Board shall adopt proper forms and regulations, rules and contracts as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have power to act in all cases. except where otherwise herein provided. The Board may reject any and all bids and shall have the further right to withdraw any lands advertised for lease.

Comptroller's warrants for expenses

Sec. 15. The expenses of executing the provisions of this Act shall be paid by warrants drawn by the Comptroller of the State on the State Treasurer, and for that purpose the sum of Two Thousand Dollars ($2000) or so much thereof as may be necessary is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated until September 1, 1937, after which time expenses of executing the provisions of this Act shall be paid by warrants drawn by the Comptroller of the State on the State Treasurer against the income from the special fund accumulated from leases, rentals, royalties, and other payments.

Partial invalidity

Sec. 16. If any section, subsection, paragraph, clause or sentence in this Act is declared to be unconstitutional, the same shall not affect the remaining portions of this Act. [Acts 1937, 45th Leg., p. 285, ch. 150.]

Art. 2613a—4. Dormitories, office building, additional power and steam plant equipment authorized.

Authority granted

Section 1. The Board of Directors of the Agricultural and Mechanical College of Texas is authorized to construct or acquire, and equip without cost to the State of Texas except as provided herein, four (4), or any number less than four (4), dormitories, an office building (for purposes and subject to limitations contained in Section 5 hereof), and construct or acquire additional equipment for its present central power and steam plant (subject to limitations contained in Section 4 hereof), when the total cost, type of construction, capacity, and plans and specifications therefor have been approved by such Board of Directors, provided, however, that the Legislature shall never make an appropriation out of the General Fund of the State, either in the regular Appropria-

tion Bill, or in a supplemental or emergency appropriation bill, for the purpose of equipping or for the purpose of purchasing or installing any utility connections in any of the buildings erected or improved under and by virtue of the provisions of this Act.

Fees, rentals and charges

Sec. 2. Said Board of Directors is authorized to fix fees, rentals and charges for the use of such buildings, and to make parietal rules to assure maintenance of a maximum percentage of use and occupancy of such buildings. The charges to be made and the fees to be fixed against students and others using any such buildings shall be in amounts deemed to be reasonable by the Board, taking into consideration the cost of providing said building, the use to be made of it, and the advantages to be derived therefrom.

Bonds authorized; terms; payment

Sec. 3. For the purpose of constructing or acquiring, extending or improving and equipping any one or more of said buildings, said Board of Directors is authorized to issue, sell, and deliver its negotiable revenue bonds, from time to time and in such amounts or amount as it may consider necessary. Bonds issued under this Act shall mature serially or otherwise not exceeding thirty (30) years from their date, bear interest at a rate or rates not exceeding four (4) per cent per annum, shall be payable at such place or places, may contain option of payment prior to maturity upon terms stated therein, and such provisions for registration as to ownership, as shall be prescribed by said Board in the resolution authorizing the issuance of said bonds. To assure the prompt payment of the principal and interest of said bonds the Board is authorized to pledge the net revenues from the operation of said building or buildings, constructed or acquired with the proceeds of said bonds, and may secure said bonds additionally by pledging the surplus or the unpledged net revenues from any one or more of the other buildings mentioned in Section 1, from kitchens and dining halls, dormitories, dormitory for help, or laundry, heretofore or hereafter constructed or acquired; provided that the Board shall have full authority to pledge the revenues from any number or all of such sources. It shall be the duty of the Board to fix fees, rentals and charges so that such revenues will be sufficient to pay the maintenance and operation expenses of the building whose revenues are thus pledged, the principal and interest of said bonds, and to provide reasonable reserves.

Water, steam, power, electricity, furnishing of; pledge of revenues

Sec. 4. Said Board is authorized to furnish water, steam, power, electricity, or any or all of such services from the central plant owned by the institution, to any or all dormitories, kitchens and dining halls, hospitals, student activity buildings, gymnasia, athletic buildings and stadia, the office building constructed pursuant to Section 5 hereof, the dormitory for help, laundry, and such other revenue-producing buildings or facilities as may have been or may be constructed for the good of the institution or the moral welfare and social conduct of the students of such institution, and shall determine the amount to be charged as a part of the maintenance and operation expense of such buildings or facilities for such service or services. The Board is authorized to pledge the net revenues from the amounts thus received for said services to pay the principal and interest of, and to create and maintain the reserve for the negotiable revenue bonds issued for the purpose of acquiring the additional equipment for said central power and steam plant, and may so use said bonds additionally by pledging the surplus of the unpledged net revenues from any one or more of the other buildings mentioned in Section 1, or of kitchens and dining halls, dormitories, dormitory for help, or laundry, heretofore or hereafter constructed or acquired, provided that the Board shall have full authority to pledge the revenues from any number or all of such sources.

Office building authorized; use; lease to government; pledge of revenues

Sec. 5. The Board is authorized to construct, equip and lease an office building to be used by the institution directly or, with consent of said Board, by any agency of the United States Government to house activities of the Department of Agriculture of the United States or activities of the United States Government in connection with the National Defense Program, provided that the total cost of constructing or acquiring and equipping said building shall not exceed Three Hundred Thousand Dollars ($300,000). The Board is authorized to pledge for the payment of negotiable revenue bonds issued for such purpose, the net revenues derived from the operation of such office building, including any rentals or lease consideration to be paid by such agency of the United States Government so long as such lease or rental agreements or renewals thereof shall be effective. In the event, and only in the event, that the lease of the United States Government, or an agency thereof, on the above-described office building should be surrendered by the Government or its agency, and such building be converted into a dormitory, the Board may additionally secure the bonds against such office building by pledging the surplus or the unpledged net revenues from any one or more of the other buildings mentioned in Section 1, or of kitchens and dining halls, dormitories, dormitories for help, or laundry, heretofore or hereafter constructed or acquired, or from any one or all of such sources, to become effective upon the happening of such event.

Refunding bonds; pledge of revenues

Sec. 6. The Board is authorized to issue negotiable refunding bonds for the purpose of taking up, at or prior to maturity, all or any part of an issue of revenue bonds issued either under this Act or under other laws, and to include in a refunding issue the revenue bonds of several issues. It is authorized to include in a single issue bonds for the purpose of refunding outstanding bonds and new bonds to obtain additional funds for purposes authorized in this Act. All of such refunding bonds, or refunding and construction bonds, shall be secured by a pledge of revenues pledged for the payment of said refunded or underlying bonds, and the net revenues from the buildings or facilities for which such construction bonds are issued, and may be additionally secured by pledging the surplus or the unpledged net revenues from any one or more of the other buildings or facilities mentioned in Section 1, or of kitchens and dining halls, dormitories, dormitory for help, or laundry, heretofore or hereafter constructed or acquired; provided that the Board shall have full authority to pledge the revenues from any number of such sources.

Priorities as between pledges of revenue

Sec. 7. After the revenues of any building or of any facilities, constructed or acquired pursuant to this Act, shall have been pledged to the payment of revenue bonds, any subsequent pledge of such revenues shall be inferior to such pledge previously made.

Revenue bonds not an indebtedness; use of local funds

Sec. 8. The revenue bonds authorized in this Act shall not constitute indebtedness of the State of Texas or said institution, and the holders thereof shall never have the right to demand payment of principal or interest out of funds other than those pledged to the payment of such bonds. In order to prevent or relieve a default in the payment of principal or interest or in creating or maintaining the reasonable pledged reserve for revenue bonds issued for purposes authorized in

this Act, said Board may in its discretion use local funds; provided that not more than twenty-five (25) per cent of the estimated local funds available during any one fiscal year can be used for such purposes; and provided that local funds shall not be used for such purpose in an amount which with reasonable certainty should necessitate supplementing such local funds by additional legislative appropriation.

Approval and registration of bonds

Sec. 9. Before any such revenue bonds are delivered to the purchaser, or before any refunding revenue bonds are delivered in exchange for original bonds, the record pertaining thereto shall have been examined by the Attorney General, and said record and bonds shall be approved by the Attorney General. After such approval the bonds shall be registered in the office of the Comptroller of Public Accounts, and no refunding bonds shall be registered until a like principal amount of said original bonds shall have been surrendered and cancelled by the Comptroller. Such bonds having been approved by the Attorney General and registered in the Comptroller's office shall be held in every action, suit or proceeding in which their validity is or may be brought into question, valid and binding obligations. In every action brought to enforce collection of such bonds or any rights incident thereto, the certificate of approval by the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of its validity. The only defense which can be offered against the validity of such bonds shall be forgery or fraud.

Brokerage and attorneys fees

Sec. 10. No brokerage fee, or commission, or attorney's fees in excess of Twenty-five Hundred Dollars ($2,500), shall be paid out of the funds of the A & M College of Texas, or out of the funds to be derived from the bonds or other evidences of obligation authorized herein.

Law as cumulative; conflicting laws

Sec. 11. This law shall be cumulative of all other laws applicable to said institution and is not intended to repeal other existing laws on the subject, but to the extent that the provisions of this Act are inconsistent with or are in conflict with the provisions of other laws, the provisions of this Act shall be effective. [Acts 1941, 47th Leg., p. 165, ch. 121.]

Art. 2613a—5. Eminent domain, power of.—Section 1. The Board of Directors of the Agricultural and Mechanical College of Texas is hereby vested with the power of eminent domain to acquire for the use of said College such lands as may be necessary and proper for carrying out its purposes, in the manner prescribed in Title 52, Revised Civil Statutes of Texas of 1925,[1] as amended.

Sec. 2. The taking of such property is hereby declared to be for the use of the State. Said Board of Directors of the Agricultural and Mechanical College shall not be required to deposit a bond or the amount equal to the award of damages by the Commissioners as provided in Section 2, of Article 3268, Revised Civil Statutes of Texas of 1925. [Acts 1941, 47th Leg., p. 471, ch. 297.]

[1] Articles 3264-3271.

Art. 2613a—6. Dormitories or additions to dormitories for John Tarleton Agricultural College.

Authority granted

Section 1. The Board of Directors of the Agricultural and Mechanical College of Texas, for the use and benefit of John Tarleton Agricultural College, at Stephenville, Texas, is authorized to construct or acquire, and equip, without cost to the State of Texas except as provided herein, not more than two dormitories, or to construct and equip additions to not more than two existing dormitories (such new dormitories or additions being referred to in this Act as "dormitories"), when the total cost, type of construction, capacity, and plans and specifications therefor have been approved by such Board of Directors, provided, however, that the Legislature shall never make an appropriation out of the General Fund of the State, either in the regular appropriation bill or in a supplemental or emergency appropriation bill, for the purpose of equipping or for the purpose of purchasing or installing any utility connections in any of the dormitories erected under and by virtue of the provisions of this Act.

Fees; rentals; charges; rules

Sec. 2. Said Board of Directors is authorized to fix fees, rentals, and charges for use of such dormitories, and to make parietal rules to assure maintenance of a maximum percentage of use and occupancy thereof. The charges to be made and the fees to be fixed against students and others using any such dormitory shall be in amounts deemed by the Board to be reasonable, taking into consideration the cost of providing said dormitory, the use to be made of it, and the advantages to be derived therefrom.

Revenue bonds authorized

Sec. 3. For the purpose of constructing or acquiring, and equipping any one or more of said dormitories, said Board of Directors is authorized to issue, sell, and deliver its negotiable revenue bonds, from time to time and in such amounts or amount as it may consider necessary. Bonds issued under this Act shall mature serially or otherwise not exceeding thirty (30) years from their date, bear interest at a rate or rates not exceeding four (4) per cent per annum, shall be payable at such place or places, may contain option of payment prior to maturity upon terms stated therein, and such provisions for registration as to ownership, as shall be prescribed by said Board in the resolution authorizing the issuance of said bonds. To assure the prompt payment of the principal and interest of said bonds the Board is authorized to pledge the net revenues from the operation of said dormitory or dormitories, constructed or acquired with the proceeds of said bonds, and may secure said bonds additionally by pledging the surplus or the unpledged net revenues from any one or more of its dormitories, kitchens, and dining halls, heretofore or hereafter constructed or acquired; provided that the Board shall have full authority to pledge the revenues from any number or all of such sources. It shall be the duty of the Board to fix fees, rentals, and charges so that such revenues will be sufficient to pay the maintenance and operation expenses of the dormitory or dormitories, and other buildings whose revenues are thus pledged, the principal and interest of said bonds, and to provide reasonable reserves.

Refunding bonds

Sec. 4. The Board is authorized to issue negotiable refunding bonds for the purpose of taking up, at or prior to maturity, all or any part of an issue of revenue bonds issued either under this Act or under other laws, and to include in a refunding issue the revenue bonds of several issues. It is authorized to include in a single issue, bonds for the purpose of refunding outstanding bonds and new bonds to obtain additional funds for purposes authorized in this Act. All such refunding bonds, or refunding and construction bonds, shall be secured by a pledge of revenues pledged for the payment of said refunded or underlying bonds, and the revenues from the buildings for which such construction bonds are issued, and may be additionally secured by pledging the surplus or the unpledged revenues from any one or more of its dormitories, kitchens, and dining halls, heretofore or hereafter constructed or acquired; provided that the Board shall have full

authority to pledge the revenues from any number of such sources.

Pledge of revenues

Sec. 5. After the revenues of any dormitory constructed or acquired pursuant to this Act shall have been pledged to the payment of revenue bonds, any subsequent pledge of such revenues shall be inferior to such pledge previously made.

Bonds not indebtedness of state

Sec. 6. The revenue bonds authorized in this Act shall not constitute indebtedness of the State of Texas, or of said Board of Directors, or of said Institution, and the holders thereof shall never have the right to demand payment of principal or interest out of funds other than those pledged to the payment of such bonds. In order to prevent or relieve a default in the payment of principal or interest or in creating or maintaining the reasonable pledged reserve for revenue bonds issued for purposes authorized in this Act, said Board may in its discretion use local funds; provided that not more than twenty-five (25) per cent of the estimated local funds available during any one fiscal year can be used for such purposes; and provided that local funds shall not be used for such purpose in an amount which with reasonable certainty should necessitate supplementing such local funds by additional legislative appropriation.

Approval of bonds

Sec. 7. Before any such revenue bonds are delivered to the purchaser, or before any refunding revenue bonds are delivered in exchange for original bonds, the record pertaining thereto shall have been examined by the Attorney General, and said record and bonds shall be approved by the Attorney General. After such approval the bonds shall be registered in the office of the Comptroller of Public Accounts, and no refunding bonds shall be registered until a like amount of said original bonds and matured unpaid coupons, if any, shall have been surrendered and cancelled by the Comptroller. Such bonds having been approved by the Attorney General and registered in the Comptroller's office shall be held in every action, suit or proceeding in which their validity is or may be brought into question, valid and binding obligations. In every action brought to enforce collection of such bonds or any rights incident thereto, the certificate of approval by the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of its validity. The only defense which can be offered against the validity of such bonds shall be forgery or fraud.

Brokerage fees

Sec. 8. No brokerage fee or commission shall be paid out of the funds of John Tarleton Agricultural College, or out of the funds to be derived from the bonds or other evidences of obligation authorized herein.

Effect of act

Sec. 9. This law shall be cumulative of all other laws applicable to said Institution and is not intended to repeal other existing laws on the subject, but to the extent that the provisions of this Act are inconsistent with or are in conflict with the provisions of other laws, the provisions of this Act shall be effective. [Acts 1941, 47th Leg., p. 639, ch. 386.]

Art. 2613b. State Forester; cooperation with Federal Agencies.—The State forester may, under the general supervision of the Board of Directors of the A. & M. College of Texas, cooperate on forestry projects with the Federal Forest Service and other Federal Agencies and he may, subject to the authorization of said Board, execute agreements relating to forest protection projects in cooperation with Federal agencies and timberland owners and also agreements with timberland owners involving supervision of forest protection and forest development projects when such projects are developed with the aid of loans from a Federal agency and when such supervision by the State is required by Federal Statute or is deemed necessary by the Federal Agency. [Acts 1933, 43rd Leg., p. 175, ch. 81.]

Art. 2613b—1. Texas Forest Service employees and others authorized to enter privately owned lands.—Authority is hereby granted to all employees of the Texas Forest Service and such outside labor or assistance as the employee deems necessary to enter upon any privately owned lands in the performance of their fire suppression duties which are by State law under the direction of the State Forester. Said entries on privately owned lands to be made whenever it is necessary to investigate forest and grass fires and ascertain whether they are burning uncontrolled or not, and whenever it is necessary to suppress forest and grass fires that are known to be burning uncontrolled. [Acts 1941, 47th Leg., p. 856, ch. 531, § 1.]

Art. 2614. [2677] [3872] Perpetual fund.—The money arising from the sale of the one hundred and eighty thousand acres of land donated to this State by the United States under the provisions of an Act of Congress passed on the second day of July, 1862, and an amended Act of Congress of July 23, 1866, shall constitute a perpetual fund, under the conditions and restrictions imposed by the above recited acts, for the benefit of said College; and the investment of the same, heretofore made in the bonds of the State, shall continue until the Legislature shall, by law, direct it to be invested otherwise in furtherance of the interests of said College and in accordance with the terms on which it was received. [12 U. S. Stat., p. 503; 14 U. S. Stat., p. 203; Acts 1875, p. 73; G. L. vol. 8, p. 445.]

Act April 7, 1915, c. 154, provides for a reissue of state bonds in order to comply with the provision of the federal donation act as to rate of interest of bonds held by the Agricultural and Mechanical College. See, also, House Concurrent Resolution No. 2, approved Jan. 29, 1915 (Acts 1915, Reg. Sess. p. 273).

Act Feb. 17, 1917, c. 27, makes an appropriation in furtherance of the carrying out of Act 34th Leg., ch. 154.

Art. 2615. [2678–81] Accrued interest.—The interest heretofore collected by the State Board of Education in accordance with the provisions of the act of August 21, 1876, due at the end of the fiscal year of 1876, on the bonds belonging to said Agricultural and Mechanical College and invested in six per cent State bonds, shall also constitute a part of the perpetual fund of said college until the legislature shall otherwise provide. The State Board shall collect the semi-annual interest on said bonds as the same becomes due, and place the same in the State Treasury to the credit of said College fund. The interest on all such bonds is set apart exclusively for the use of said College, and shall be drawn from the Treasury by the board of directors on vouchers audited by said board, or approved by the Governor and attested by the secretary of the board. On such vouchers being filed with the Comptroller, he shall draw his warrant on the State Treasurer for the same, from time to time, as the same may be needed to pay the directors, professors and officers of the College. [Const. art. 7, sec. 8; Acts 1876, p. 283; G. L. vol. 8, p. 1119; Acts 1875, p. 72; G. L. vol. 8, p. 444; Acts 1879, C. S. p. 16; G. L. vol. 9, p. 48.]

Art. 2615a. Firemen's Training School; creation of Advisory Board.—Sec. 1. That the Board of Directors or other managing officers of the A. & M. College of Texas be and they are hereby authorized and directed from and after the passage of this Act to create, conduct and maintain a Firemen's Training School in conjunction as a part of said College in such manner as to said Board may seem most expedient and advisable.

Sec. 2. There is hereby created what shall be known as the "Firemen's Training School Advisory Board" which shall be composed of three (3) members of the teaching staff of said school to be appointed by the Chairman of the Board of Directors of said College, and four (4) members or representatives of the Association known as the "State Firemen's Association of Texas" or its successor; said members to be appointed and designated by the President or other managing officer of said Association, and said Advisory Board shall confer and advise with the Board of Directors of said College with reference to the organization of said school, the purchasing of equipment, the curriculum and program and its conduct and management. The sum of Ten Thousand Dollars ($10,000) is hereby appropriated for the fiscal year 1932, and the sum of Ten Thousand Dollars ($10,000) for the fiscal year 1933 is hereby appropriated out of any sum not otherwise appropriated, out of the General Revenue Fund for the purpose of purchasing equipment and paying the expenses of such school for the next two (2) years, including the per diem expenses of the Advisory Board, as well as other necessary expenses of such school, all of such expenditures of any and all character shall be made only upon order of the Board of Directors and no warrants on this Fund shall ever be paid unless same shall be also approved in writing by the President of the A. & M. College, who shall be advised with in all the matters and conduct of such school. [Acts 1931, 42nd Leg., p. 382, ch. 228.]

Art. 2615b. Nautical School authorized; management by Board of Directors of Agricultural and Mechanical College.—Sec. 1. There shall be organized and established in one of the harbors of the State of Texas a Nautical School of the purpose of instructing boys in the practice of seamanship, ship construction, naval architecture, wireless telegraph, engineering and the science of navigation.

Sec. 2. The said School shall be under the management and direction of the Board of Directors of the Texas Agricultural and Mechanical College. The Board of Directors of said Agricultural and Mechanical College shall have power to receive such funds or properties as shall be subscribed or loaned or bequeathed for the organization or maintenance of said Nautical School, and shall execute all necessary agreements for the faithful application of same and prescribe the standard of admission and admit all boys who meet the requirements. All of such boys, when received into said Nautical School, shall be subject to such regulations of conduct and discipline as the Board may prescribe. It shall be the duty of the Board to make provision for the proper instruction, for courses of study, and for the care, supervision and management of the school, and all power necessary to the proper discharge of these duties are conferred upon said Board of Directors of the Agricultural and Mechanical College.

Sec. 3. It shall be the duty of said Board of Directors of the Agricultural and Mechanical College to employ a Superintendent of said School, who shall also be Commander, to employ instructors and the necessary employees, determine their number, duties and compensation, fix the terms and conditions under which pupils shall be received and instructed in the school, and shall be graduated, they shall establish rules and regulations necessary for the proper management of the school and from time to time shall arrange for cruises from and to the harbors of Houston, Galveston, Beaumont, Port Arthur and Corpus Christi.

Sec. 4. The fact that provision for the establishment of this school is for the primary purpose of giving students practical and technical instruction in the arts and sciences relating to the foregoing subjects, and the further fact that training in these fields will lead to immediate and remunerative employment for those who have finished the prescribed courses, make it necessary that larger fees be charged those students who enter the Nautical School than is now paid by students enrolled in State-supported institutions of higher learning. Therefore, the provisions of Senate Bill No. 202, Chapter 237 of the General and Special Laws of the 40th Legislature[1] shall not apply to those students enrolled in the Nautical School, the Board of Directors of the Texas Agricultural and Mechanical College are specifically charged with the duty of assessing such fees and charges against the students who enter this school as may be necessary to provide for the maintenance and support of the School.

Sec. 4A. It is hereby declared to be the intention of the Legislature only to allow interested citizens to support such school and that it is understood that the State shall never be called upon to appropriate any money for the support of this school at this or any future time. [Acts 1931, 42nd Leg., p. 423, ch. 255.]

[1] Article 2654a, post.

Borrowing from Federal Agencies, see Article 2603c, ante.

Art. 2615c. Airports; Board of Directors authorized to acquire and operate; eminent domain.—Section 1. The Board of Directors of the Agricultural and Mechanical College of Texas is authorized to construct or acquire otherwise, an airport for said institution and is authorized to acquire an airport for any one or more of the branches of said institution, and to maintain and operate same in connection with the teaching of its courses in aeronautical engineering, and for purposes in cooperation with the National Defense Program, and for other purposes which will not interfere with such uses.

Sec. 2. Said Board of Directors shall have the power and is hereby authorized to acquire by purchase, lease, gift, or in any other manner, and to maintain, use and operate any and all property of any kind, real, personal or mixed, or any interest therein necessary or convenient to the exercise of the powers conferred upon it by this Act. Said Board shall have the power of eminent domain for the purpose of acquiring by condemnation any and all property of all kinds, real, personal or mixed, or any interest therein necessary or convenient to the exercise of the powers and rights conferred upon it by this Act. Said Board shall exercise the right of eminent domain in the manner provided by General Law, including Article 3264 et seq. of the Revised Statutes and amendments thereto, except that it shall not be required to give bond for appeal or bond for costs. [Acts 1941, 47th Leg., p. 100, ch. 81.]

CHAPTER 3.—JOHN TARLETON AGRICULTURAL COLLEGE

Art.
2616. Government.
2617. Students loan fund.
2618. Courses of study.
2619. Eminent domain.

Article 2616. Government.—The government and direction of policies of the John Tarleton Agricultural College at Stephenville shall be vested in the Board of Directors of the Agricultural and Mechanical College of Texas. [Acts 1917, p. 58.]

Art. 2617. Student loan fund.—The sum of $75,000 donated by the citizenship of Stephenville and Erath County shall be used by said board of directors as a student loan fund to be lent to students who cannot otherwise attend said college, at a rate of interest not to exceed five per cent per annum, on such terms and conditions as said board may deem advisable. [Id.]

Art. 2618. Courses of study.—Said college shall rank as a Junior Agricultural College, which for the purposes of this law is designated as an institution offering four year courses beginning with the junior

year of a four year high school and extending to and including the sophomore year of a standard four year college, provided that nothing in this law shall preclude the offering of such preparatory courses or short courses as may be deemed advisable. It shall be co-educational and instruction shall be offered in agriculture, including the arts and sciences connected therewith. [Id.]

Art. 2619. Eminent domain.—Said board of directors is hereby vested with the power of eminent domain to acquire for the use of said college such lands as may be necessary or proper for carrying out its purposes. [Id.]

CHAPTER 4.—NORTH TEXAS JUNIOR AGRICULTURAL COLLEGE

Art.
2620. Government.
2621. Courses of study.
2622. Faculty.
2623. Entrance requirements.
2623a. Eminent domain.

Article 2620. Government.—The North Texas Junior Agricultural, Mechanical and Industrial College at Arlington shall be under the direction of the board of directors of the Agricultural and Mechanical College designated herein the supervisory board in connection with a local board of managers composed of five members to be appointed by the Governor, subject to the approval of said supervisory board, by and with the advice and consent of the Senate, who shall serve for two years from the date of their appointment. Said local board shall perform all the duties required in the management of said College in like manner as governing boards of the same character. Said local board shall meet at Arlington as soon after their appointment as convenient and organize by the election of a presiding officer, a secretary and a treasurer. The supervisory board shall determine the compensation to be paid said local board. [Acts 1917, p. 260.]

Art. 2621. Courses of study.—Said local board shall have all the powers, subject to the supervision of the supervisory board, necessary to establish and maintain said College as a co-educational institution in the arts and sciences of academic grade, and to furnish instruction in agriculture, horticulture, floriculture, stock raising and domestic arts and sciences, including the several branches and studies usually taught in the established institutions of like character, having in view the training of the youth for the more important industrial activities of life, while acquiring facilities for the acquirement of a good practical literary education not below the academic grade. [Id.]

Art. 2622. Faculty.—The local board, in connection with the supervisory board, shall appoint a president and professors of said College and such officers as they may think proper and necessary to put the same into successful operation, and make such rules and regulations for the government of said officers and the proper management of said institution as they may deem advisable. They shall regulate rates of tuition with the course of discipline necessary to enforce the faithful discharge of the duties of all officers, professors and students. They shall, in connection with the faculty, divide the courses of instruction into departments so as to secure a thorough education of the academic grade and the best possible industrial training, selecting careful and efficient professors in each department, giving preference to Texas teachers, if available, and shall adopt all such rules, by-laws and regulations as they may deem necessary to carry out all the purposes and objects of said institution. Said boards shall determine and fix the salary of each officer, professor and employé, provided that the salaries of the professors in any department shall not exceed that which is now fixed for the professors of the Agricultural and Mechanical College or the College of Industrial Arts. [Id.]

Art. 2623. Entrance requirements.—The terms upon which pupils may be admitted, including the entrance requirements, shall be determined by the local board and the supervisory board, and in that respect they are empowered to fix or remit tuition, fees and charges as they may deem best for said institution and the people for whose benefit it is established. [Id.]

Art. 2623a. Eminent domain.—That the Board of Managers of the North Texas Junior Agricultural, Mechanical and Industrial College is hereby vested with the power of eminent domain to acquire for the use of said college such lands as may be necessary or proper for carrying out its purpose. [Acts 1929, 41st Leg., 1st C. S., p. 105, ch. 46, § 1.]

CHAPTER 4A. DENTAL COLLEGE OF THE UNIVERSITY OF TEXAS

Art.
2623b—1. College created; location; branch of University; management.
2623b—2. Purpose of college.
2623b—3. Faculty.
2623b—4. Powers of Board of Regents; courses.
2623b—5. Tuition; expenditure of funds.
2623b—6. Grants or gifts.

Art. 2623b—1. College created; location; branch of University; management.—A Dental College of The University of Texas is hereby created for the State of Texas. It shall be located and is established hereby in the City of Houston, Harris County, Texas, provided the Texas Dental College, Houston, Texas, shall make, execute, and deliver to the Board of Regents of The University of Texas, for and on behalf of the State of Texas, a deed to the land, together with the buildings, improvements, and equipment thereon situated, located in the City of Houston, Harris County, Texas, now owned and used by said Texas Dental College, free of all debt or other encumbrances, to be used for the site and exclusive occupancy of such Dental College of The University of Texas. Before acceptance the Board of Regents shall secure the opinion of the Attorney General on the title to such real property. The Dental College of The University of Texas is hereby made and constitutes a branch of The University of Texas for instruction in dental education. The University of Texas, through its Board of Regents, shall take over the management and control of the Dental College and its properties. [Acts 1943, 48th Leg., p. 555, ch. 329, § 1.]

Section 7 of the Act of 1943 provides that a holding of partial invalidity shall not affect the remaining portions.

Art. 2623b—2. Purpose of college.—The principal purpose of said Dental College shall be to teach such branches in dental education as will give a thorough technical knowledge of dentistry, and all subjects pertaining thereto, and that shall meet the requirements of the Council on Dental Education, the American Association of Dental Schools and other such educational associations of like standard concerned with dental education. [Acts 1943, 48th Leg., p. 555, ch. 329, § 2.]

Art. 2623b—3. Faculty.—The faculty of the Dental College shall be appointed by the Board of Regents of The University of Texas. Those appointed shall thereupon become members of the faculty of The University of Texas. [Acts 1943, 48th Leg., p. 555, ch. 329, § 3.]

Art. 2623b—4. Powers of Board of Regents; courses.—The Board of Regents of The University of Texas shall have the authority to confer degrees

and issue diplomas, and fix a standard of grades for all students attending the College, and shall also have the power to make such other rules and regulations for the proper control and management of the school as may be deemed necessary. The Dental College shall have regular courses leading to degrees, and such other special courses as the Board of Regents of the University of Texas may deem necessary. [Acts 1943, 48th Leg., p. 555, ch. 329, § 4.]

Art. 2623b—5. Tuition; expenditure of funds.—The Board of Regents of The University of Texas shall fix the amount of tuition to be charged students in said Dental College, and all moneys and fees and all other receipts are hereby appropriated to said College to be expended under the direction and with the approval of the Board of Regents of The University of Texas. Should the Legislature, however, appropriate these funds in any general or special appropriation bill, and itemize or otherwise direct the expenditure of such funds for the use of the College, such shall control over the provisions of this Section. [Acts 1943, 48th Leg., p. 555, ch. 329, § 5.]

Art. 2623b—6. Grants or gifts.—The Board of Regents of The University of Texas is hereby authorized to accept, in connection with said Dental College, grants or gifts of property or money for the use of said institution from other than State sources. [Acts 1943, 48th Leg., p. 555, ch. 329, § 6.]

CHAPTER 5.—COLLEGES OF ARTS AND INDUSTRIES

TEXAS STATE COLLEGE FOR WOMEN

Art.
2624. Name of institute.
2624a. Name "College of Industrial Arts", when used in statutes, means Texas State College for Women.
2625. Board of regents.
2626. Courses
2627. General duties of regents.
2628. To apportion students.
2628a. Dormitories for College of Industrial Arts at Denton.

COLLEGE OF ARTS AND INDUSTRIES

2628a—1. Establishment of college at Kingsville.
2628a—2. Organization, control and management.
2628a—2a. Secretary-Treasurer of Board of Directors; remuneration.
2628a—3. The work of the College.
2628a—4. Courses and degrees.
2628a—5. Changing the management of the South Texas State Teachers College.
2628a—6. Additional courses.
2628a.—7. Board of directors, powers and duties.
2628a—8. Dormitories.
2628a—9. Lease of lands of Texas College of Arts and Industries and of Texas Technological College for oil, gas, sulphur or other mineral development; deposit and use of proceeds.
Sec.
1. Lease; deposit and use of proceeds.
2. Survey or subdivision of lands; maps and plats; abstracts of title and merchantable title.
3. Placing of leases on lands; advertisement; sale at public auction; payments.
4. Separate bid for each tract; minimum royalty; delay rental.
5. Subsequent procedure in event no bid at public auction accepted; restrictions and conditions.
6. Acceptance and filing of satisfactory bid; discontinuance of yearly payments; termination of lease.
7. Award to highest bidder; filing of lease; exploratory term; termination or extension; drilling and production under control of Railroad Commission.
8. Rentals in case of actual drilling in good faith; continuance of lease on discovery of minerals in paying quantities; duty to prevent damage.
9. Title to rights purchased; assignment; relinquishment.
10. Payment of royalties; inspection and examination of books, accounts, etc.; report of receipts.
11. Protection of land leased from drainage; forfeiture of rights.
12. Forfeiture of lease; grounds; suit for forfeiture, damages or specific performance; lien of state.
13. Filing of surveys, records, etc., in General Land Office; payment of royalties, rentals, etc.
14. Forms, regulations, rules and contracts; majority of board to act; rejection of bids; withdrawal of lands.
15. Partial invalidity.
2628b. See Art. 2628a.
2628c. See Art. 2653a.

TEXAS STATE COLLEGE FOR WOMEN

Art. 2624. [2682] Name of institute.—The industrial institute and college located at Denton, in Denton County, for the education of white girls in the arts and sciences, shall be known as the Texas State College for Women. [Acts 1901, p. 306; Acts 1945, 49th Leg., p. 203, ch. 156, § 1; Acts 1945, 49th Leg., p. 228, ch. 171, § 1.]

Art. 2624a. Name "College of Industrial Arts," when used in statutes, means Texas State College for Women.—Wherever the name "College of Industrial Arts", or any reference thereto, appears in the Revised Statutes of Texas, 1925, or in any amendment thereto, or in any of the Acts of any Legislature, passed since the adoption of said Revised Statutes, such name and such reference shall hereafter mean and apply to the Texas State College for Women, in order to conform to the name of said College as provided in Section 1 hereof.[1] [Acts 1945, 49th Leg., p. 203, ch. 156, § 2; Acts 1945, 49th Leg., p. 228, ch. 171, § 2.]

[1] Article 2624.

Art. 2625. [2683—4—7] Board of Regents.—The Board of Regents of the College of Industrial Arts at Denton shall be composed of nine persons, four of whom shall be women. The Board of Regents shall have the power incident to their position and to the same extent, so far as may be applicable and shall receive like compensation as is conferred by law on the regents of the State University; said Board of Regents shall elect a president, a secretary and a treasurer, whose terms of office shall be two years. The president shall convene the Board of Regents to consider any business connected with said College whenever he deems it expedient. The secretary shall record in a well-bound book all of the proceedings had by said Board. The treasurer shall receive and disburse all moneys under the direction of the Board, and shall be required to give bond in such sum as the Board may prescribe. [Acts 1901, p. 306; Acts 1913, p. 191; Acts 1927, 40th Leg., p. 216, ch. 145, § 1.]

Art. 2626. [2685] Courses.—The board of regents shall possess all the powers necessary to the

establishment and maintenance of a first-class industrial institute and college for the education of white girls in this State in the arts and sciences, at which such girls may acquire a literary education, together with a knowledge of kindergarten instruction, telegraphy, stenography and photography, drawing, painting, designing and engraving, in their industrial application, needle-work, including dressmaking, bookkeeping, scientific and practical cooking, including a chemical study of food, practical housekeeping, trained nursing, caring for the sick, the care and culture of children, with such other practical industries as, from time to time, may be suggested by experience, or tend to promote the general object of said institute and college, to-wit: Fitting and preparing such girls for the practical industries of the age. [Acts 1901, p. 306.]

Art. 2627. [2686–9] General duties of regents.—The board of regents shall appoint a president and professor of said college and such other officers and employés as they may think proper, and fix their salaries not to exceed the salaries paid professors in any one department at the Agricultural and Mechanical College; and make such rules and regulations for the government of said officers as they may deem advisable. They shall regulate rates of tuition, together with course of discipline necessary to enforce the faithful discharge of the duties of all officers, professors and students; divide the course of instruction into departments, so as to secure a thorough education and the best possible instruction in all of said industrial studies, selecting careful and efficient professors in each department, and shall adopt all such rules, by-laws and regulations as they may deem necessary to carry out all the purposes and objects of said institution. [Id.]

Art. 2628. [2688] To apportion students.—The board of regents shall apportion to each county its quota of pupils or students, on the basis of the number of educatable white girls in the State and several counties; and the several superintendents of education of the several counties shall, after having given notice in some newspaper of the county, and three weeks after such publication, under such regulations as the board of regents may adopt, appoint such number of white girls to such industrial institute and college as such county may be entitled to. [Id.]

Art. 2628a. Dormitories for College of Industrial Arts at Denton.—Sec. 2. The Board of Regents of the College of Industrial Arts at Denton, Texas, is hereby authorized and empowered to erect and equip, and/or to contract with any person, firm or corporation, for the erection, completion and equipping of such dormitories and/or other improvements as said Board of Regents may deem advisable, such improvements to be erected either on the campus or real estate then owned by said college, or on other real estate purchased or leased for the purpose, and the said Board of Regents is hereby expressly authorized to purchase, or lease, additional real estate for such purpose, or to exchange or sell real estate now or hereafter owned for such purpose.

Sec. 3. In payment for the erection, completion and equipping of such dormitories and/or other improvements, the Board of Regents of such college is further authorized and empowered to issue its obligations in such sum or sums and upon such terms and/or conditions as to said Board may seem advisable, and as security for the payment thereof to pledge the rents, revenues and income of and from the improvements to be erected hereunder, and/or the rents, revenues and income from such other dormitories erected and owned by said college at the time of the making of such contract, as well as all other revenues derived by said college from any and all other sources, save and except the revenues derived by means of appropriations made for any particular or specific purpose by the legislature of the State of Texas.

Sec. 4. Said Board of Regents is further authorized and empowered to sell and/or encumber any part of the campus or real estate owned by said college as may be deemed advisable by said Board of Regents, for the purpose of obtaining funds with which to erect and/or equip such improvements, or for the purpose of further securing the payment of its obligations issued to any person, firm or corporation, for the erection and/or equipping of such improvements; and said Board of Regents shall have and is hereby given full and complete power to adopt such rules and regulations as to said Board of Regents may be deemed reasonable, requiring any class or classes of students to reside in such dormitories, and/or other buildings, and absolute and sole management and control of such dormitories and other improvements is vested in said Board of Regents.

Sec. 5. On the completion, and acceptance by the Board of Regents, of any of such improvements, the Board of Regents is hereby authorized and empowered, if it so desires, to make requisition to the Board of Control of the State of Texas, for any and all furniture, furnishings, equipment and appointments that may be required for the proper use and enjoyment of such improvements; and the Board of Control of the State of Texas is hereby authorized upon requisition to purchase and pay for such furnishings, equipment and appointments.

Sec. 6. In the erection of such improvements, or in contracting therefor [1] the Board of Regents shall not in any manner nor to any extent incur any indebtedness against the College of Industrial Arts or the State of Texas, except as herein otherwise provided; that is to say, the obligation or obligations authorized by this act shall never be a personal obligation of the College of Industrial Arts or the State of Texas; but such obligation shall be discharged solely from the revenues and/or the property herein authorized to be pledged for that purpose.

[1] So in enrolled bill. Should probably read "therefore."

Sec. 7. The Board of Regents is hereby empowered to do any and all things necessary and/or convenient to carry out the purpose and intent of this Law. [Acts 1929, 41st Leg., 1st C.S., p. 55, ch. 21; Acts 1929, 41st Leg., 2nd C.S., p. 148, ch. 73; Acts 1930, 41st Leg., 5th C.S., p. 177, ch. 38.]

Section 8 of the Act of 1930 repeals all conflicting laws and parts of laws and section 9 provides that the invalidity of any section or provision shall not affect the remainder.

COLLEGE OF ARTS AND INDUSTRIES

Art. 2628a—1. Establishment of college at Kingsville.—There is hereby established in Texas, in the City of Kingsville, Kleberg County, a co-educational institution of learning for the white youth of this State, which shall be known as the Texas College of Arts and Industries, and the South Texas State Teachers College is hereby merged into said institution, the same to be conducted, operated and maintained under a new Board of Directors as herein provided. [Acts 1929, 41st Leg., p. 627, ch. 286, § 1.]

Section 8 of this Act makes available to the board any unexpended balance of any appropriation for the South Texas Teachers College. Section 9 repeals all conflicting laws and parts of laws.

Art. 2628a—2. Organization, control and management.—The organization, control and management of such College shall be vested in a Board of nine Directors who shall be appointed by the Governor of Texas and confirmed by the Senate. The term of office of each director shall be six years; provided that in making the first appointment the Governor shall appoint three members for two years, three members for four years and three members for six years. Any vacancy that occurs on the Board shall be filled

for the unexpired term by the Governor. The members of said Board shall be removable by the Governor for inefficiency or in-attention to the duties of his office. Each member of the Board shall take the constitutional oath of office. The said board of directors shall meet for the first time after the passing [1] of this act at the time and place designated by the Governor, as soon after their appointments as possible. They shall organize by electing a President of said board of directors, and such other officers as they may desire. They shall select a President for the College as soon as possible after the organization of the said Board of Directors. They shall fix his term of office, name his salary and define his duties. The President of the College shall be the executive officer for the board of directors and shall work under their directions. He shall recommend the plan organization, and the appointment of employees of said College and shall have the cooperation of said board of directors and shall be responsible to said board for the general management and success of said college. [Acts 1929, 41st Leg., p. 627, ch. 286, § 2.]

[1] So in enrolled bill. Should probably read "passage".

Art. 2628a—2a. Secretary-Treasurer of Board of Directors; remuneration.—The Board of Directors of the Texas College of Arts and Industries may, at their discretion, select from among their membership one individual to serve as Secretary-Treasurer of the Board of Directors, and may remunerate him a sum not to exceed Fifty ($50.00) Dollars per month, from the institutional funds that are normally expended under their authority. [Acts 1929, 41st Leg., p. 627, ch. 286, § 2a, added Acts 1941, 47th Leg., p. 151, ch. 111, § 1.]

Art. 2628a—3. The work of the College.—The general purpose of the Texas College of Arts and Industries shall be to prepare people for better living, through the application of science to the every day affairs of life. The work of the said college, its materials, or subject matter, and courses of study shall be divided into four divisions, to-wit:

(1) Liberal Arts
(2) Industrial Arts, and Commerce
(3) Education
(4) Military Science.

1. Liberal Arts. The liberal arts division shall embrace the fine arts, languages, literature, mathematics, the natural sciences, the social sciences including history, civics, and sociology. These shall be taught as such subjects are presented in the universities and the better class of senior colleges of the country, and as the board of directors may order.

2. Industrial Arts and Commerce. The College of Arts and Industries shall provide instruction of the best class in:

(a) Agriculture, and associated subjects, as agronomy, horticulture, fruit and grape culture, and farm management.

(b) Animal Husbandry and allied forms shall have intelligent and persistent attention, as stock breeding, feeding, "packing" and marketing. Dairying and its by-products shall be promoted by the work of the said college.

(c) Engineering in its appropriate and practical applications to the problems of industrial development shall be taught with efficiency in said Texas College of Arts and Industries, to-wit: Civil, electrical, textile, mechanical, agricultural and architectural.

(d) Instruction shall be given in geology in its relation to its mineral products, their mining, refining and uses to man. The mechanical arts in their lowest forms as they appear in blacksmith and carpenter shop, and in their higher forms of complicated machinery shall be taught well in the said Texas College of Arts and Industries, to the end that the college may lend itself to the development of the mechanical genius of the youth that may attend the college that they "better support themselves and those dependent upon them" through improved skills in these every day arts by which men may earn a living.

(e) The Texas College of Arts and Industries shall provide courses and give instruction in domestic science and art that shall equip the young women students to become efficient home makers. This department shall offer courses in the chemistry of cooking, canning, preserving, and other forms of culinary arts. Ample courses shall be offered in the care of health, home nursing, the care of children, and other domestic duties that may devolve upon the housewife. Ample and abundant courses shall be offered in making cloth, clothing, planning and decorating homes, and such other forms of domestic service as are usually found in colleges of the first rank in this field in Texas and other sections of the country. Home economics and its subdivisions and allied subjects shall be provided for the young women who desire to become teachers, in such a way as to enable them to meet the standard requirements of the laws of the State and of the Federal Government for teachers of this subject.

3. Education. When the board of directors of the Texas College of Arts and Industries shall by law assume the duties of the Regents of the Teachers Colleges, they shall continue the Teachers College permanently, and for the first year shall continue it just as they find it, in no case shall they weaken the organization of the Teachers College, nor diminish its efficiency. But they shall control, manage and equip said Teachers College so that it may continue to grow and expand in every way to meet the needs of South Texas for a strong college to care for the training of the teachers of the public schools of this section, from the kindergarten to the high school including both, provided only that the name shall be changed, and the South Texas State Teachers College as at present constituted shall become a permanent and an important part of the greater Texas College of Arts and Industries.

4. Military Training. The art and science of military training shall be offered the male students of the Texas College of Arts and Industries as shall be provided by the board of directors of said college of Arts and Industries, and under such rules and regulations as the said board may prescribe, provided that all rules and regulations made to govern such military training shall comply with the laws of Texas and of the United States. [Acts 1929, 41st Leg., p. 627, ch. 286, § 3.]

Art. 2628a—4. Courses and degrees.—Such courses of study shall be offered in the Texas College of Arts and Industries as are found in senior colleges of the first rank in similar fields in Texas, or elsewhere, as the board of directors may order, provided that any bachelor's degree shall be based on four years of college work, and any higher degree may be offered with appropriate courses, when in the judgment of the board of directors the educational welfare of the people served by the college demands such advanced courses and degrees, and provided that all work done and all credits, certificates and diplomas given to students shall conform to standard college requirements as proposed by the accrediting agencies of Texas, of the South, and of the other sections of the country. Short courses, long courses and special courses of intense practical value shall be given from time to time by the Texas College of Arts and Industries in the subjects of health, home economics, agriculture and industry, and such other subjects of practical value to the people as the board of directors shall order and direct. [Acts 1929, 41st Leg., p. 627, ch. 286, § 4.]

Art. 2628a—5. Changing the management of the South Texas State Teachers College.—At the beginning of the school year, September first after the passage of this bill, the control and management of the South Texas State Teachers College shall be di-

vested out of the Board of Regents of the Texas State Teachers College and invested in the Board of Directors of the Texas College of Arts and Industries as provided in this Act, who shall administer the affairs of the college according to the laws of Texas and the provisions of the Act. The corporeal property of the South Texas State Teachers College at the time of the passage of this Act, the control of which shall pass into the hands of the Board of Directors of the Texas College of Arts and Industries, consists of the following items:

A College campus of Fifty (50) acres, Estimated value	$12,500
A Farm and pasture, One Hundred Six (106) acres, barn, rent house equipment and live stock	10,000
Pasture land Two hundred twenty-five (225) acres	9,000
Main Building and Equipment	400,000
Boiler House and shop	1,000
Garage	950
President's Home	16,000
Total Properties	$449,450

Should the future development of the said Texas College of Arts and Industries ever require additional land for the accomplishment of its purposes as an industrial college, it shall have the right of eminent domain to acquire such land for its own use, and shall have the right to proceed under condemnation proceedings the same as is now enjoyed by Railroad Companies under the laws of Texas. [Acts 1929, 41st Leg., p. 627, ch. 286, § 5.]

Art. 2628a—6. Additional courses.—The specifications of courses of study written in this Act shall not prohibit the board of directors from adding other courses, subjects or groups of subjects necessary to enable the Texas College of Arts and Industries to perform its functions as college of arts and applied science in the most practical and efficient way. The Board of Directors are required and directed to build and control a State College of the first rank that shall compare favorably with the splendid colleges of Texas in the preparation of teachers for the schools, and artists and artisans for the varied interests and industries possible in the section in which the Texas College is located. This college shall be equipped adequately to do its work well, as the other State colleges perform their functions. To this end the President of the said college and the Directors of the same shall biennially place before the Legislature fully and frankly the growing needs of this college which is placed in the midst of a rapidly developing section of this State, to the end that it may stimulate and guide as well as possible the citizens and people generally into prosperity, moral righteousness, peace and happiness. [Acts 1929, 41st Leg., p. 627, ch. 286, § 6.]

Art. 2628a—7. Board of directors, powers and duties.—All power, duties and functions of the Board of Regents of the State Teachers Colleges under the law shall vest in the Board of Directors herein created in connection with the State Teachers College work of the institution herein provided for except where in conflict with this Act. [Acts 1929, 41st Leg., p. 627, ch. 286, § 7.]

Art. 2628a—8. Dormitories.—Sec. 1. The Board of Directors of The Texas College of Arts and Industries is hereby authorized to enter into contracts with persons, firms, or corporations for the erection of dormitories at The Texas College of Arts and Industries, and to purchase or lease lands and other appurtenances for the construction of such dormitories, provided that the State of Texas incurs no liability for the buildings or the sites.

Sec. 2. The said Board of Directors is hereby authorized to make contracts with reference to the collection and disposition of the revenue derived therefrom in the acquisition, management, and maintenance of said buildings.

Sec. 3. The Board of Directors is hereby authorized and empowered to adopt such rules and regulations requiring any class or classes of students to reside in such dormitories, or other buildings, as they may deem advisable. Absolute management and control of dormitories constructed under the provisions of this Act are vested in said Board of Directors. [Acts 1929, 41st Leg., 2nd C.S., p. 11, ch. 9.]

Art. 2628a—9. Lease of lands of Texas College of Arts and Industries and of Texas Technological College for oil, gas, sulphur or other mineral development; deposit and use of proceeds.

Lease; deposit and use of proceeds

Section 1. The Board of Directors of the Texas Technological College at Lubbock and the Texas College of Arts and Industries at Kingsville are hereby authorized and empowered to lease for oil and/or gas and/or sulphur and/or other mineral development to the highest bidder at public auction all lands under the exclusive control of each Board or any part thereof now owned by the State of Texas and acquired for the use of the Texas Technological College and its divisions and the Texas College of Arts and Industries and its divisions or that may hereafter be acquired for the use of the Texas Technological College and its divisions and the Texas College of Arts and Industries and its divisions. Any amounts received under and by virtue of this Act shall be deposited in the State Treasury to the credit of special funds to be known as the "Texas Technological College Special Mineral Fund" and the "Texas College of Arts and Industries Special Mineral Fund," and be used exclusively for the Texas Technological College and its branches or divisions and the Texas College of Arts and Industries and its branches or divisions; provided, however, no money shall ever be expended from these funds except in the Regular Appropriation Bill and then for the purposes and in the amounts stated in said Bill.

Survey or subdivision of lands; maps and plats; abstracts of title and merchantable title

Sec. 2. Each Board is hereby authorized to cause said lands to be surveyed or subdivided into such tracts, lots, or blocks as will, in their judgment, be most conducive and convenient to facilitate the advantageous sale of lease for oil, gas, sulphur, and/or other minerals thereof and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. Each Board is further authorized to obtain authentic abstracts of title to all of said lands as they may deem necessary from time to time and to take such steps as may be necessary to perfect a merchantable title to said lands in the State of Texas.

Placing of leases on lands; advertisement; sale at public auction; payments

Sec. 3. Whenever, in the opinion of such Board, there shall be such a demand for the purchase of oil, gas, sulphur, or other mineral leases on any tract or part of any tract of land as will reasonably insure an advantageous sale, such Board shall place such oil, gas, sulphur, or other mineral leases on said land on the market in such tract or tracts, or any part thereof, as such Board may designate. It shall cause to be advertised a brief description of the land from which the oil, gas, sulphur, or other minerals is proposed to be leased. Such advertisement shall be made by inserting in two (2) or more papers of general circulation in this State and in addition such Board may, in its discretion, cause said advertisement to be placed in an Oil and Gas Journal published in and out of the State, and also mail copies of such pro-

posals to the county judge of the county where said lands are located, and mail copies of such proposals to such other persons as such Board might think would be interested therein.

Such Board may sell the lease or leases to the highest bidder at public auction at the Texas Technological College at Lubbock, Texas, or at the Texas College of Arts and Industries at Kingsville, Texas, as the case may be, at any hour between 10:00 a.m. and 5:00 p.m. Such Board shall have the right to reject all bids. However, the highest bidder shall pay to such Board on the day of the sale twenty-five (25) per cent of the bonus bid and the balance of the bid shall be paid to such Board within twenty-four (24) hours after being notified that the bid has been accepted. Payments shall be paid in cash, certified check or cashier's check, as such Board may direct; provided, the failure to pay the balance of the amount bid will forfeit to such Board the twenty-five (25) per cent paid.

Separate bid for each tract; minimum royalty; delay rental

Sec. 4. A separate bid shall be made for each tract or subdivision thereof. No bids shall be accepted which offer a royalty of less than one-eighth of the gross production of oil, gas, sulphur, and other minerals in the land bid upon and this minimum royalty may be increased at the discretion of such Board. Every bid shall carry the obligation to pay an amount not less than One Dollar ($1) per acre for delay in drilling or development; such amount to be fixed by such Board in advance of the advertisement and shall be paid every year for five (5) years unless in the meantime production in paying quantities is had upon the land or said land is released by the lessee.

Subsequent procedure in event no bid at public auction accepted; restrictions and conditions

Sec. 5. If, in the opinion of such Board, any one of the bidders shall have offered a reasonable and proper price for any tract, and not less than the price fixed by such Board, the lands advertised may be leased for oil, gas, sulphur, and/or other mineral purposes under the terms of this Act, and such regulations as such Board may prescribe, not inconsistent with the provisions of this Act. In the event no bid is accepted by such Board at public auction any subsequent procedure for the sale of oil and/or gas and/or sulphur and/or other mineral leases shall be in the manner above provided. Provided that no lease for oil, gas, sulphur, and/or other minerals shall be made by said Board which will permit the drilling or mining for oil and/or gas and/or sulphur and/or other minerals within less than three hundred (300) feet of any building on said land, without the consent of such Board, and further providing that in making any lease or any experimental station and/or farm the lease shall provide that the operations for oil, gas, and other minerals shall not in any way interfere with the land as a Technological College or a College of Arts and Industries and shall not cause the abandonment of said property or its use for experimental farm purposes, and the lessee operating said property shall drill and carry on his operations in such a way as not to cause the abandonment of said property for Technological College purposes or for all purposes of a College of Arts and Industries and any such leased property shall be subject to the use by the State of Texas for all Technological College purposes or for all purposes of a College of Arts and Industries and said Board shall continue to operate said Technological college or said College of Arts and Industries, as the case may be.

Acceptance and filing of satisfactory bid; discontinuance of yearly payments; termination of lease

Sec. 6. If such Board shall determine that a satisfactory bid has been received for said oil, gas, sulphur, and/or other mineral lands it shall accept the same and reject all other bids and file said accepted bid in the General Land Office. Whenever the royalties shall amount to as much as the yearly payments as fixed by such Board, the yearly payments may be discontinued. If before the expiration of five (5) years oil and/or gas and/or sulphur and/or other minerals shall not have been produced in paying quantities, the lease shall terminate, unless extended as hereinafter provided.

Award to highest bidder; filing of lease; exploratory term; termination or extension; drilling and production under control of Railroad Commission

Sec. 7. (a) If such Board shall determine that a satisfactory bid has been received for said oil, gas, sulphur, and/or other minerals, it will make an award to the bidder offering the highest price therefor, and a lease shall be filed in the General Land Office.

(b) The exploratory term of the lease as determined by such Board prior to the promulgation of the advertisement shall in no case exceed five (5) years, and each lease shall provide that the lease will terminate at the expiration of its exploratory term unless by unanimous vote of members of such Board such lease may be extended for a period of three (3) years, which lease may be extended where such Board finds that there is likelihood of oil, gas, sulphur, and/or other minerals being discovered thereon by lessees, and that such lessees have proceeded with diligence to protect the interest of the State; provided, however, that if oil, gas, sulphur, and/or other minerals are being produced in paying quantities from the premises, said lease shall continue in force and effect as long as such oil, gas, sulphur, and/or other minerals are being so produced. Provided, that no extension hereunder may be made by such Board until the last thirty (30) days of the original term of the lease. The lease shall include such additional provisions and regulations as such Board may prescribe to preserve the interest of the State, but not inconsistent with the provisions of this Act.

(c) Whenever, in the discretion of said Board, it is deemed for the best interest of the State to extend a lease issued by said Board, such Board is hereby granted and given full authority by unanimous vote to extend said lease for a period not to exceed three (3) years, upon the condition that the lessee shall continue to pay yearly rental as provided in the lease and such additional terms as such Board may see fit and proper to demand. Such Board is hereby given full authority to extend such lease and execute an extension agreement therefor.

(d) The drilling for and the production of oil, gas and other minerals from such lands shall be governed by and under the control of the Railroad Commission of Texas or such other regulatory bodies as may govern same just as in other fields in this State.

Rentals in case of actual drilling in good faith; continuance of lease on discovery of minerals in paying quantities; duty to prevent drainage

Sec. 8. If, during the term of any lease issued under the provisions of this Act, the lessee shall be engaged in actual drilling operations for the discovery of oil, gas, sulphur, and/or other minerals on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil, gas, sulphur, and/or other minerals are discovered in paying quantities on any tract of land covered by any

such lease, then the lease as to such tract shall remain in force so long as oil, gas, sulphur, and/or other minerals are produced in paying quantities from such tract. In the event of the discovery of oil, gas, sulphur, and/or other minerals on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease to properly develop the same, to the extent that a reasonably prudent operator would do under the same and similar circumstances.

Title to rights purchased; assignment; relinquishment

Sec. 9. Title to all rights purchased may be held by the owners so long as the area produces oil, gas, sulphur, and/or other minerals in paying quantities. All rights purchased may be assigned. All assignments shall be filed in the General Land Office within one hundred (100) days from the date of the first acknowledgment thereof, accompanied by Ten (10) Cents per acre for each acre assigned and if not so filed and payment made, the assignment shall not be effective. All rights to any whole tract or to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed with the Chairman of such Board accompanied with One Dollar ($1) for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. Such Board shall authorize the laying of pipe line, telephone line, and the opening of such roads as may be deemed reasonably necessary for and incident to the purpose of this Act.

Payment of royalties; inspection and examination of books, accounts, etc.; report of receipts

Sec. 10. If oil or other minerals are developed on any of the lands leased by such Board, the royalty as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, on or before the 20th day of each succeeding month for the preceding month during the life of the rights purchased, and be set aside in the State Treasury as specified in Section 1 hereof, and said funds may be used as therein provided. Said royalty paid to the General Land Office as above stipulated shall be accompanied by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil, gas, sulphur, and/or other minerals produced and saved since the last report and the amount of oil, gas, sulphur, and/or other minerals produced and sold off the premises and the market value of the oil, gas, sulphur, and/or other minerals together with a copy of all daily gauges, or vats, tanks, gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks, vats, or pool and gas lines or gas storage. The books and accounts, receipts and discharges of all wells, tanks, vats, pools, meters, pipe lines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil, gas, sulphur, and/or other minerals shall at all times be subject to inspection and examination of any member of the Board of Directors of the Texas Technological College or any duly authorized representative of said Board or any member of the Board of Directors of the Texas College of Arts and Industries or any duly authorized representative of said Board, as the case may be. The Commissioner of the General Land Office shall tender to the Board of Directors of the Texas Technological College or to the Board of Directors of the Texas College of Arts and Industries, as the case may be, at the close of each month a report of all receipts from the lease or sale of oil, gas, sulphur, and/or other minerals turned into the special fund in the State Treasury.

Protection of land leased from drainage; forfeiture of rights

Sec. 11. In every case where the area in which oil, gas, sulphur, and/or other minerals sold shall be contiguous or adjacent to lands which are not lands belonging to and held by the Texas Technological College or the Texas College of Arts and Industries, as the case may be, the acceptance of the bid and the sale made thereby shall constitute an obligation on the owner thereof to adequately protect the land leased from drainage from said adjacent lands to the extent that a reasonably prudent operator would do under the same and similar circumstances. In cases where the area in which the oil, gas, sulphur, and/or other minerals are sold is contiguous to other lands belonging to and held by the Texas Technological College or the Texas College of Arts and Industries, as the case may be, which have been leased or sold at a lesser royalty, the owner shall likewise protect said land from drainage from the lands so leased or sold for a lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by such Board in the manner elsewhere provided for forfeitures.

Forfeiture of lease; grounds; suit for forfeiture, damages or specific performance; lien of state

Sec. 12. If the owner of the rights acquired under this Act shall fail or refuse to make the payments of any sum due thereon, either as rental or royalty on the production, within thirty (30) days after the same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling or mining or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority access to the records and other data pertaining to the operations under this Act, or if such owner or his authorized agent should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty (30) days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by such Board by an order entered upon the minutes of such Board reciting the facts constituting the default, and declaring the forfeiture. Such Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty (30) days after the declaration of forfeiture, the lease may, at the discretion of such Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon oil, gas, sulphur, and/or other minerals produced upon the leased area, and upon all rigs, tanks, vats, pipe lines, telephone lines, and machinery and appliances used in the production and handling of oil and/or gas and/or sulphur and/or other minerals produced thereon, to secure any amount due from the owner of the said lease.

Filing of surveys, records, etc. in General Land Office; payment of royalties, rentals, etc.

Sec. 13. All surveys, files, records, copies of sale and lease contracts and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at

Austin, Texas, who shall transmit to the State Treasurer all royalties, lease fees, rentals for delay in drilling or mining and all other payments, including all filing assignments and relinquishment fees hereunder, to be deposited in the special fund in the State Treasury to the credit of the Texas Technological College or the Texas College of Arts and Industries, as the case may be, as above provided.

Forms, regulations, rules and contracts; majority of board to act; rejection of bids; withdrawal of lands

Sec. 14. Such Board shall adopt proper forms and regulations, rules and contracts as will in its best judgment protect the income from lands leased hereunder. A majority of such Board shall have power to act in all cases, except where otherwise herein provided. Such Board may reject any and all bids and shall have the further right to withdraw any lands advertised for lease.

Partial invalidity

Sec. 15. If any section, subsection, paragraph, clause, or sentence in this Act is declared to be unconstitutional, the same shall not affect the remaining portions of this Act. [Acts 1939, 46th Leg., p. 265.]

Change of name of College of Industrial Arts to Texas State College for Women, see art. 2624a.

Arts. 2628b, 2628c.

Article 2628b, Acts 1929, 41st Leg., 1st C.S., p. 55, ch. 21, as amended Acts 1929, 41st Leg., 2nd C.S., p. 148, ch. 73; Acts 1930, 41st Leg., 5th C.S., p. 177, ch. 38, is set out as article 2628a.

Article 2628c, Acts 1930, 41st Leg., 5th C.S., p. 189, ch. 46, is set out as article 2653a.

CHAPTER 6.—TEXAS TECHNOLOGICAL COLLEGE

Art.
2629. Purpose.
2630. Board of Directors.
2631. Courses.
2632. Eminent domain.
2632a. Dormitories.
2632b. Lease of campus land for National Guard Armory, etc.
2632c. Lease of campus land to United States for armory.

Article 2629. Purpose.—The Texas Technological College at Lubbock shall be a co-educational college giving thorough instruction in technology and textile engineering from which a student may reach the highest degree of education along the lines of manufacturing cotton, wool, leather and textile engineering, the chemistry of materials, the technique of weaving, dyeing, tanning and the doing of any and all other things necessary for the manufacturing of raw materials into finished products; and said college shall also have complete courses in the arts and sciences, physical, social, political, pure and applied, such as are taught in colleges of the first class, leading to the degrees of bachelor of science, bachelor of arts, bachelor of literature, bachelor of technology and any and all other degrees given by colleges of the first class; said college being designed to elevate the ideals, enrich the lives and increase the capacity of the people for the democratic self-government, and particularly to give instruction in technology, manufacturing and agricultural pursuits, domestic husbandry and home economics so that the boys and girls of this State may attain their highest usefulness and greatest happiness and in so doing, may prepare themselves for producing from the State its greatest possible wealth. [Acts 1923, p. 32.]

Art. 2630. Board of Directors.—The government, control and direction of the policies of said technological college shall be vested in a board of nine directors who shall hold office for a period of six years. The Governor shall biennially appoint three directors, the classification to continue as constituted by law. The Governor may remove any director for inefficiency or inattention to his duties as members of such board. The board of directors shall provide a president therefor who shall devote his entire time to the executive management of said school and who shall be directly accountable to the board of directors for the conduct thereof. [Id.]

Art. 2631. Courses.—In addition to the courses provided in technology and textile engineering, said college shall offer the usual college courses given in standard senior colleges of the first class and shall be empowered to confer appropriate degrees to be determined by the board of directors, and shall offer four year courses, two year courses, or short term courses in farm and ranch husbandry and economics and the chemistry of soils and the adaption of farm crops to the peculiar soil, climate and condition of that portion of the State in which the college is located and such other courses and degrees as the board of directors may see fit to provide as a means of supplying the educational facilities necessary for this section of the State. The board shall furnish such assistance to the faculty and students of said college as will enable them to do original research work and to apply the latest and most approved method of manufacturing and, in general, to afford the facilities of the college for the purpose of originating, developing, supporting and maintaining all of those agencies for the development of the physical, mental and moral welfare of the students who attend the college and for the further purpose of developing the material resources of the State to their highest point of value and usefulness by teaching the arts of commerce and manufacturing. All male students attending this college shall be required to receive such instruction in military science and tactics as the board of directors may prescribe which shall at all times, comply in full with the requirements of the United States Government now given as a prerequisite to any aid now extended or hereafter to be extended by the Government of the United States to State institutions of this character and all such white male students shall, during their attendance at such college, be subject to such military discipline and control as the board of directors may prescribe. [Id.]

Art. 2632. Eminent domain.—The board of directors is hereby vested with the power of eminent domain to acquire for the use of said college such land as may be necessary for the purpose of carrying out its purpose. [Id.]

Art. 2632a. Dormitories.—Sec. 1. That the Board of Directors of the Texas Technological College are hereby authorized and empowered to acquire, without cost to the State of Texas, and accept title, subject to such conditions and limitations as may be prescribed and provided three boys dormitories and two girls dormitories and a kitchen and dining hall building and grounds in connection therewith, within a radius of not more than one quarter of a mile from the present campus of said College, when the total cost, type of construction, and the capacity of said buildings, as well as the other plans and specifications, have been approved by them; that said Board are further authorized to make any contracts with reference to the collection and disposition of the revenues derived therefrom in the acquisition, management, and maintenance of said buildings, and upon acquisition thereof absolute control and management shall vest in said Board, subject to any conditions that may be provided in the grant; provided that the said five dormitories and kitchen and dining hall shall be built of steel, concrete, brick, and/or rock, and fireproof, except the doors and windows, the buildings and land to cost not less than Two Hundred Thousand ($200,000.00) Dollars. And the buildings are to accommodate not less than 150 students. Provided that land owned by the State may be used for said

purposes, not exceeding a total of ten acres and not exceeding two acres for each dormitory, and not exceeding two acres for such kitchen and dining hall.

Sec. 2. On the acquisition of said building by said College the Board are hereby expressly authorized and empowered to make requisition for all furniture, furnishings, equipment, and appointments that may be necessary for the proper use and enjoyment of said buildings, which in no event, however, shall become permanent fixtures.

Sec. 3. The Board of Control of the State of Texas is hereby authorized to purchase and pay for the furnishings and equipment authorized to be purchased in Section 2 only after the buildings are accepted and acquired by the Board of Directors.

Sec. 4. The Board of Directors of said College are hereby authorized and empowered to adopt such rules and regulations as they may deem advisable, requiring any class or classes of students to reside in such dormitories, or other buildings as they may deem advisable. [Acts 1929, 41st Leg., 2nd C.S., p. 92, ch. 54.]

Section 5 of this Act provides that the invalidity of any part of the act shall not affect the remainder.

Borrowing from Federal Agencies, see Article 2603c, ante.

Art. 2632b. Lease of campus land for National Guard Armory, etc.—Section 1. The Board of Directors of Texas Technological College at Lubbock, Texas, is hereby authorized to select a tract of land upon the campus of the Texas Technological College at Lubbock, Texas, and to lease such tract of land so selected to the Texas National Guard Armory Board, for the purpose of erecting thereon, with money borrowed under the pledges authorized in the next Act mentioned, and with any assistance by the Federal Government or otherwise, an armory and other buildings suitable for use by the Texas National Guard under the provisions of Senate Bill No. 326, enacted by the Regular Session of the Forty-sixth Legislature of Texas, approved on May 1, 1939;[1] that the Board of Directors of Texas Technological College is hereby authorized to make and enter into a contract with the Texas National Guard Armory Board, providing for such lease on such terms as may be suitable and satisfactory to the Board of Directors of Texas Technological College, for a term not longer than ninety-nine (99) years.

Sec. 2. That the Board of Directors of Texas Technological College is hereby authorized to select and set aside a tract of land on the campus of Texas Technological College at Lubbock, Texas, not in excess of ten (10) acres, such tract of land so selected and set aside to be used by the Texas National Guard as a drill ground.

Sec. 3. The Board of Directors of Texas Technological College is hereby authorized to permit the Texas National Guard Armory Board and the Texas National Guard and any subdivision thereof, ingress upon the campus of the Texas Technological College, and egress therefrom, for the purpose of going to and from the Armory and other buildings and the drill ground, authorized by Sections 1 and 2 of this Act. [Acts 1939, 46th Leg., p. 272.]

[1] Article 5890b.

Section 4 of the Act of 1939 provided that a holding of partial invalidity should not affect the remaining portions of the Act.

Art. 2632c. Lease of campus land to United States for armory.—Section 1. The Board of Directors of Texas Technological College at Lubbock is hereby authorized to lease to the United States Government or any suitable agency thereof not to exceed three (3) acres of land being a part of the campus of said College to be used and occupied by the said United States Government, the Army, Navy or other department or agency thereof for a period of ninety-nine (99) years on which to erect and maintain an armory building or other suitable building or buildings for the instruction of students of said College in military and naval sciences and any other subjects that may be provided for the instruction of students of said College.

Sec. 2. Said Board of Directors is authorized to enter into such contracts, agreements and lease contracts as may be necessary and proper in carrying out the provisions in this Act. [Acts 1947, 50th Leg., p. 285, ch. 175.]

CHAPTER 7.—SCHOOL OF MINES AND METALLURGY

Art.
2633. Government.
2634. Purpose of school.
2635. Faculty.
2636. Tuition.
2637. Annual reports.

Article 2633. Government.—The School of Mines and Metallurgy at El Paso shall be under the management and control of the Board of Regents of the State University, and the faculty of said school shall be appointed by the Board of Regents of the University of Texas, and such appointees shall hold their positions for a term of two years, and the same is hereby made and constituted a branch of the State University of Texas for instruction in the arts of mining and metallurgy as now provided for by law. [Acts 1913, p. 427; Acts 1919, p. 92.]

Art. 2634. Purpose of school.—The principal purpose of said school shall be to teach such branches in mining and metallurgy as will give a thorough technical knowledge of mines and mining, and all subjects pertaining thereto, including physics and mining, engineering, mathematics, chemistry, geology, mineralogy, shop work and drawing, the technical knowledge and properties of mine gases, assaying, surveying, drafting of maps and plans, and such other subjects pertaining to mining engineering as may add to the safety and economical operation of mines within this State. [Id.]

Art. 2635. Faculty.—Said school shall have a separate and distinct faculty which shall have the power, under the direction of the board of regents, to confer degrees and issue diplomas and fix a standard of grades for all students attending said school, and to make such rules and regulations for the proper control and management of the school as they may deem necessary. Said school shall have regular courses leading to degrees, and such other special courses as the faculty may deem necessary. The regular course shall extend over a period of two years. [Acts 1913, p. 428.]

Art. 2636. Tuition.—The board of regents shall fix the terms and tuition to be charged students in this school, and all moneys received from said tuition or in any way from said school, over and above that necessary for the actual maintenance and carrying on of said school shall be paid into the State Treasury. [Id.]

Art. 2637. Annual reports.—At the close of each school year the board of regents shall require the faculty of said school to report to them the workings and progress of said school, and the board of regents in turn shall make a detailed report to the Governor exhibiting the progress, condition, and wants of the several departments of instruction in said school, the course of study in each and the number and names of the officers and students, the amount of receipts and disbursements, together with the nature, cost and results of all important experiments and investigations, and such other matters, including special industrial and economical statistics as may be thought useful. The board of regents shall cause the same to be printed for the use of the Legislature and the people of the State, and shall cause one copy of

same to be transmitted by mail to the Secretary of the Interior and one copy to the Commissioner of Labor at Washington, and one copy to the Commissioner of Labor and Chief Mine Inspector of this State. [Id.]

CHAPTER 8.—UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE FOR NEGROES

Art.
2638. Management.
2639. Appointment of students.
2640. Duties of board.
2641. Obligation of students.
2642. Courses.
2643. Appropriations.
2643a. [Repealed.]
2643b. The Texas State University for Negroes; The Prairie View Agricultural and Mechanical College of Texas.
Sec.
1. Purpose of act.
2. Establishment; courses; governing body of agricultural and mechanical college.
3. Government of University.
4. Expenditures.
5. Powers and duties of directors.
6. Site; buildings.
7. Powers of directors.
8. Grants or gifts.
9. Qualified applicant.
2643c. Transfer of property and activities of certain local colleges to State University for Negroes.
Sec.
1. Definitions.
2. Agreement for transfer.
3. Audit or financial report; approval of agreement.
4. Local colleges relieved of obligations and authority.
5. Repeal.
6. Partial invalidity.

Article 2638. [2718] [3885] Management.—The Prairie View State Normal and Industrial College for colored teachers at Prairie View shall be under the control and supervision of the board of directors of the Agricultural and Mechanical College, and said board shall in all respects have the same powers and perform the same duties in reference to this college as those conferred upon them by law for the government of the Agricultural and Mechanical College. [Acts 1879, p. 181; G. L. vol. 8, p. 1481.]

The name of the Prairie View Normal and Industrial College for colored teachers at Prairie View was changed to Prairie View University by Acts 1945, 49th Leg., p. 506, ch. 308. The Act of 1945 was repealed by Acts 1947, 50th Leg., p. 36, ch. 29, which changed the name of "Prairie View University" to "The Prairie View Agricultural and Mechanical College of Texas." See article 2643b.

Art. 2639. [2719] [3886] Appointment of students.—Said board shall admit one student from each senatorial district, who shall be appointed by the senator representing said district, and one student from each representative district, who shall be appointed by the member of the Legislature representing said district; provided, that, where there is more than one representative in a district, each representative of such district shall appoint one student, said students to be taken from the colored population of this State, and shall not be less than sixteen years of age at the time of their admission. Said board may provide for receiving such number of students of both sexes as the school can best accommodate. [Id.; Acts 1899, p. 325.]

Art. 2640. [2720] [3887] Duties of board.—Said board shall appoint a principal teacher and such assistant teachers and other officers of said school as may be necessary, and shall make such rules, by-laws and regulations for the government of said school as they may deem necessary and proper, and shall regulate the course of study and the manner of performing labor by the students, and shall provide for the board and lodging and instruction of the students, without pecuniary charge to them, other than that each student shall be required to pay one-third of the cost of said board, lodging and instruction, quarterly, in advance; and said board of directors shall regulate the course of discipline necessary to enforce the faithful discharge of the duties of all officers, teachers, students and employés of said school, and shall have the same printed and circulated for the benefit of the people of the State and the officers, teachers, students and employés of said school. [Id.]

Art. 2641. [2721] [3888] Obligation of students.—Said board shall require each student admitted to said school to sign a written obligation, in a proper book kept for that purpose, binding said student to teach in the public free schools for the colored population of their respective districts at least one year next after their discharge from the normal school, and as much longer than one year as the time of their connection with said normal school shall exceed one year; for which teaching said discharged students shall receive the same rate of compensation allowed other teachers of such schools with like qualifications. [Id.]

Art. 2642. [2722] Courses.—There shall be maintained a four-year college course of classical and scientific studies at said college, to which graduates of the normal course shall be admitted without examination, and to which others may be admitted after having passed a satisfactory examination in the branches comprised in the normal course; provided, that no State student shall be admitted to the privileges of the said course; and provided further, that the diploma conferred on the completion of said course shall entitle the holder without other or further examination to teach in any colored free school of the State. [Acts 1901, p. 35.]

Art. 2643. [2723] [3889] Appropriations.—The Comptroller shall annually set apart out of the interest accruing from the University fund, appropriated for the support of public free schools, the sum of six thousand dollars for the support of said normal school, and place said fund to the credit of said normal school and the same may be drawn by the board of directors on vouchers audited by the board or approved by the Governor and attested by the Secretary; and, on filing such vouchers, the Comptroller shall draw his warrant on the State Treasury for the same from time to time as the same may be needed. [Acts 1879, p. 181; Id.; G. L. vol. 8, p. 1481.]

Art. 2643a. [Repealed by Acts 1947, 50th Leg., p. 40, ch. 29, § 13.]

The article repealed was Acts 1945, 49th Leg., p. 506, ch. 308.

Art. 2643b. The Texas State University for Negroes; The Prairie View Agricultural and Mechanical College of Texas.

Purpose of act

Section 1. The Legislature of Texas deems it impracticable to establish and maintain a college or branch of the University of Texas for the instruction of the colored youths of this state without the levy of taxes and the use of the general revenue for the establishment, maintenance and erection of buildings as would be required by Section 14 of Article VII of the Constitution of Texas, if such institution were established as a college or branch of the University of Texas. Further, the Legislature of Texas deems that establishment of a negro university with such

limitations as to funds and operation would be unfair and wholly inadequate for the purpose of providing an equivalent university of the first class for negroes of this state. Therefore, it is the purpose of this Act to establish an entirely separate and equivalent university of the first class for negroes with full rights to the use of tax money and the general revenue fund for establishment, maintenance, erection of buildings and operation of such institution as provided in Section 48, Article III of the Constitution of the State of Texas.

Establishment; courses; governing body of agricultural and mechanical college

Sec. 2. To provide instruction, training, and higher education for colored people, there is hereby established a university of the first class in two divisions: the first, styled "The Texas State University for Negroes" to be located at Houston, Harris County, Texas, to be governed by a Board of Directors as provided in Section 3 hereof; the second, to be styled "The Prairie View Agricultural and Mechanical College of Texas" at Prairie View, Waller County, Texas, formerly known as Prairie View University, originally established in 1876, which shall remain under the control and supervision of the Board of Directors of The Agricultural and Mechanical College of Texas. At the Prairie View Agricultural and Mechanical College shall be offered courses in agriculture, the mechanic arts, engineering, and the natural sciences connected therewith, together with any other courses authorized at Prairie View at the time of the passage of this Act, all of which shall be equivalent to those offered at The Agricultural and Mechanical College of Texas. The Texas State University for Negroes shall offer all other courses of higher learning, including, but without limitation, (other than as to those professional courses designated for The Prairie View Agricultural and Mechanical College), arts and sciences, literature, law, medicine, pharmacy, dentistry, journalism, education, and other professional courses, all of which shall be equivalent to those offered at The University of Texas. Upon demand being made by any qualified applicant for any present or future course of instruction offered at The University of Texas, or its branches, such course shall be established or added to the curriculum of the appropriate division of the schools hereby established in order that the separate universities for Negroes shall at all times offer equal educational opportunities and training as that available to other persons of this state. The Board of Directors of The Agricultural and Mechanical College of Texas in administering The Prairie View Agricultural and Mechanical College of Texas shall in all respects have the same powers and perform the same duties in reference to this college as those conferred upon it by statute with reference to the government of The Agricultural and Mechanical College of Texas.

Government of University

Sec. 3. The government of the Texas State University for Negroes is hereby vested in a Board of Directors to be composed of nine (9) persons and to consist of both white and negro citizens of this state. They shall elect a chairman and a Vice-chairman from their number, who shall serve at the pleasure of the Board, and the Board shall appoint a secretary. The State Treasurer shall be the treasurer of said institution. The Board shall have the right to make and use a common seal and may alter the same at pleasure. Each member of the Board shall be a qualified voter of this state, and shall be selected from different portions of the state. One-third of the membership of such Board shall be biennially nominated by the Governor and appointed by and with the advice and consent of the Senate, and shall hold their offices for a term of six (6) years, respectively, except as to the first Board appointed hereunder. They shall take the official oath of office prescribed in the Constitution of Texas for public officials. Of the first Board to be appointed, the terms of three (3) members shall be for a period of two (2) years, to expire on February 1, 1949; the terms of the next three (3) members shall be for four (4) years, to expire on February 1, 1951; and the terms of the remaining three (3) members shall be for six (6) years, to expire on February 1, 1953; and the respective terms of the first members appointed hereunder shall be designated by the Governor so appointing them. After the first Board, the term of each member shall be for six (6) years from the date of the respective appointment, and the appointment shall be so made and their terms arranged in such manner that three (3) of said members shall retire on the first day of February biennially; and the Governor shall fill such vacancies by the appointment of three (3) members biennially on the first day of February.

Expenditures

Sec. 4. The reasonable expenses incurred by the members of the Board in the discharge of their duties shall be paid from any available funds of the institution. All expenditures shall be made by order of the Board, and the same shall be paid on warrants to be issued by the Comptroller of Public Accounts of the State of Texas based on vouchers to be approved by the chairman of the Board or some other officer of the University to be designated by him in writing to the Comptroller, and to be countersigned by the secretary of the Board or by some other officer of the University to be designated by said secretary in writing to the Comptroller.

Powers and duties of directors

Sec. 5. The Directors are hereby given the power and authority to select a site for the location of said University at the City of Houston, and are given the power, for and in behalf of the state, to acquire, take, appropriate, hold, and enjoy the title to such land and other property as they may deem necessary for this purpose, either by purchase or otherwise; and to that end they shall have the right to exercise the power of eminent domain and to condemn such land for such uses and purposes, in the manner prescribed in Title 52, Revised Civil Statutes of Texas of 1925, as amended; and the taking of such property is hereby declared to be for the use of the state, and said Directors shall not be required to deposit a bond or the amount equal to the award of damages by the Commissioner as provided in Section 2 of Article 3268, Revised Civil Statutes of Texas of 1925; provided that before exercising the power of eminent domain hereunder, said Board shall by order or resolution duly passed and entered on its minutes, define and describe the land needed for this purpose.

Site; buildings

Sec. 6. As soon as a site for the location of said University is determined upon and acquired, it shall be the duty of the Directors to proceed with the construction of all necessary buildings and other permanent improvements thereon. For this purpose it shall procure the services of a competent architect or architects, who shall make necessary plans and designs for such building and other permanent improvements and shall superintend the construction thereof. After such plans and specifications of such buildings and improvements have been adopted, the Directors shall proceed as soon as practicable to the erection and equipping of the same. It shall be the duty of the Directors to advertise for bids for the construction of said improvements and to let contracts therefor, but they may reject any and all bids. The contracts for such construction shall be awarded to the lowest responsible bidder, who shall enter into

a good and sufficient surety bond payable to and to be approved by the Directors in such sum as said Directors may determine, conditioned for the faithful compliance with and the performance of the contract. The Directors are hereby authorized and required to organize said University as soon as practicable and to take such action as may be deemed necessary in perfecting the organization of said institution as a University of the first class for the instruction and training of the colored people of this state. The Directors shall also have the authority to make proper arrangements by contract with other educational institutions, hospitals, and clinics at Houston for the use of such facilities and the services of qualified personnel as they may deem necessary and expedient for the proper training and education of students in professional courses.

Powers of directors

Sec. 7. The Directors shall establish the several departments in said University, determine the offices, professorships, and other positions at said institution, appoint a President, appoint the professors and other officers and employees and prescribe their duties, and fix their respective salaries; and they shall enact such by-laws, rules and regulations as may be deemed necessary for the successful management and government of the institution. They shall have the power, by and with the advice of the faculty, to prescribe and regulate the course or courses of instruction to be given at said institution, and to confer such degrees and to grant such diplomas as are now or may hereafter be granted by The University of Texas or any of its branches. The Directors shall have the power to remove any professor, instructor, tutor, or other officer or employee connected with the institution when, in their judgment, the best interests and proper operation of the institution shall require it.

Grants or gifts

Sec. 8. The Directors are hereby authorized to accept, for and in behalf of the state, in connection with said University for Negroes, grants or gifts of property or money for the use of said institution from other than state sources.

Qualified applicant

Sec. 12. The term "qualified applicant" as used in this Act shall mean any colored person who meets the educational requirements for entrance to the same course or courses in the University of Texas or any of its branches. The term "colored person" has the same meaning as contained in the provisions of the Texas Constitution requiring separate schools, being the same interpretation placed thereon by the Legislature and administrative officials of this state since 1876, to-wit: a negro or person of African descent. [Acts 1947, 50th Leg., p. 40, ch. 29, §§ 1–8, 12.]

Section 9 of the Act of 1947 made an appropriation for acquisition of a site for Texas State University for Negroes, for buildings and equipment and for maintenance and operation.

Section 10 of the Act provides for instruction in the interim and makes an emergency appropriation.

Section 11 of the Act provides for the establishment for an interim School of Law of the State Texas University for Negroes and makes an emergency appropriation for such purpose.

Art. 2643c. Transfer of property and activities of certain local colleges to State University for Negroes.

Definitions

Section 1. As used in this Act, (a) the term "local college" shall mean a junior college, university or combined junior college and university, organized and functioning with a separate Board of Regents under and pursuant to Chapter 26 of the Acts of the Forty-ninth Legislature, Regular Session, passed on March 12, 1945, known as Senate Bill No. 207 and incorporated into Vernon's Annotated Civil Statutes as Article 2815k; and such term, unless the context requires otherwise, shall also mean and include the Board of Regents or other governing body of the institution so defined; (b) the term "State University for Negroes" shall mean any educational institution now or hereafter established by the Constitution or by Act of the Legislature of this State for the exclusive benefit of citizens of the Negro race, the courses offered or to be offered by which include courses in higher learning or the professions; and said terms, unless the context requires otherwise, shall also mean and include the Board of Directors, Trustees or Regents, or other governing body of such institution.

Agreement for transfer

Sec. 2. Any local college (as herein defined) and any State University for Negroes (as herein defined), which is located in fact or by provision of law, within the geographical limits of the same independent school district, are authorized to make with each other and to carry out an agreement whereby:

(a) Said local college, without consideration other than that herein provided, transfers in perpetuity to said State University for Negroes all property of every kind of said local college, which, on or by the account books, board minutes, or other records of said local college, or in any instrument of transfer to or contract with the latter, is, at the time of said agreement, permanently dedicated to or earmarked for the exclusive purpose of educating students of the Negro race, said property to include (without being limited to) all lands, buildings, machinery and other fixtures, equipment, books, supplies, furniture, funds, contracts with Federal and other public bodies or agencies and all other contracts, all accounts and notes receivable and choses in action of every kind, officially recognized by said local college in its records aforesaid as constituting or solely appertaining to any school, college or other educational enterprise, actual or future, of said local college for the exclusive benefit of Negro students; and said local college permanently divests itself, in favor of said State University for Negroes, of all its actual or future educational enterprises and activities for the benefit of students of the Negro race, and of all its obligations and authority to conduct such enterprises or activities; and whereby

(b) Said State University for Negroes accepts the transfer described in subparagraph (a) of this Section, assumes and agrees to discharge, and to defend and indemnify said local college against, all money obligations and other contractual obligations, and all trusts of said local college in respect to any of the property, enterprises or activities transferred or divested by it as aforesaid including, but not limited to, its obligations under uncompleted building contracts and architectural contracts, its liabilities for sums borrowed against current annual revenue for the benefit of said enterprises or activities, and all sums properly carried on its books as accrued charges against said transferred enterprise or activity for funds or services advanced or rendered for account thereof; and whereby

(c) Said State University for Negroes undertakes to furnish, so long as there should be any demand therefor, all courses of study or instruction of whatever kind furnished by said local college at the time of said agreement as part of its said educational enterprises or activities thereby transferred and, in addition, whenever and so long as there shall be any demand therefor, all courses of study or instruction of whatever nature then furnished or thereafter to be furnished by said local college as part of its educational activities not transferred by said agreement; all said courses so furnished by said State University for Negroes to be, and to be maintained by it as, the equivalent in subject matter, quality of teaching and

other respects, of the corresponding courses afforded by said local college.

Audit or financial report; approval of agreement

Sec. 3. No agreement authorized by this Act shall be made or approved by any State University for Negroes except after it shall have procured a written audit or financial report by a reputable firm of Certified Public Accountants, which shall reflect in reasonable detail according to accepted accounting standards the number, character, value and other appropriate information concerning the properties, including funds, to be transferred to it and a descriptive list of the contractual obligations, with the amount and terms of any money obligations, or sums, to be assumed or paid under said agreement by said State University for Negroes, nor shall any such agreement to be made unless, according to said audit, the value of the properties to be transferred thereunder shall be at least five (5) times the amount of any obligations or payments to be assumed or made by it thereunder. Said agreement shall before its execution be approved by resolution, of the respective governing boards of the local college and the State University for Negroes concerned, and spread upon the minutes of each said board. Both said resolutions and the said agreement shall describe in sufficient detail the property transferred and all obligations to be assumed or sums paid by the transferee thereunder, and shall recite as a fact that such are the only properties, obligations and sums agreed to be transferred, assumed or paid. The form of said agreement shall be such as to constitute a valid deed of conveyance of the real estate and a bill of sale and assignment of the other property thereby transferred. Said instrument shall be executed in duplicate originals under the respective corporate seals of the parties, by their respective proper officers, duly acknowledged, and, by the transferee therein, duly recorded in the deed records of the county or counties in which said parties are located or provided by law to be located and in which are located the lands, if any, transferred. As between the parties thereto, their successors or assigns all factual recitals in said instrument shall be conclusively presumed to be correct, nor shall any such recital be contradicted in any proceeding thereafter.

Local colleges relieved of obligations and authority

Sec. 4. Any local college aforesaid, upon the execution of an agreement authorized by the preceding Sections of this Act, shall thereafter be relieved of any obligation or authority to conduct any educational enterprise or activity of which it has divested itself by said agreement, but any State University for Negroes shall, from and after its execution of any such agreement, have the duty to carry out its obligations thereunder, including its obligations to furnish courses of study or instruction agreed to be furnished by it.

Repeal

Sec. 5. All laws or provisions of law, both Special and General, are hereby repealed to the extent that they are in conflict with the provisions of this Act.

Partial invalidity

Sec. 6. If any article, section, subsection, sentence, clause or phrase of this Act shall for any reason be held to be unconstitutional or invalid, such decision shall not affect the validity of any remaining portions of this Act. The Legislature hereby declares that it would have passed this Act or any article, section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more of the articles, sections, subsections, sentences, clauses or phrases are declared unconstitutional. [Acts 1947, 50th Leg., p. 479, ch. 278.]

CHAPTER 9.—STATE TEACHERS' COLLEGES

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1. GENERAL PROVISIONS

Article 2644. Control of colleges.—Except as herein provided, all laws establishing State teachers colleges or normal institutes for the training of white teachers and providing for their government, control and maintenance are continued in force, and all such colleges which are or may be established by law shall be under the general control and management of the Board of Regents of the State Teachers' Colleges.

Art. 2645. [2695] Subjects required to be taught.—Manual training, domestic science and agriculture shall be taught in each of the State Teachers' Colleges. Elementary agriculture shall be taught in the summer sessions of said colleges.

Art. 2646. [2696] Diplomas and certificates.—Diplomas and teachers certificates of each of the State Teachers' Colleges shall authorize the holders to teach in the public schools.

Art. 2647. Board of regents.—Hereafter the Board of Regents of the State Teachers Colleges of this State shall be composed of nine persons to be appointed by the Governor of the State of Texas. Immediately upon the taking effect of this Act the Governor shall appoint three new members, so that the term of one of said three new members shall expire simultaneously with the expiration of two of the present members of the Board, one to expire simultaneously with two other members of the Board and a third to expire simultaneously with the remaining two members of the Board, and the term of office of each shall be six years. The Board thus constituted shall be charged with the powers, duties and functions of the present Board of Regents of the State Teachers Colleges and all laws applicable to said Board of Regents and the members thereof shall be likewise applicable to the new board as herein constituted and the members thereof. [Acts 1911, 2nd C.S., p. 74; Acts 1913, p. 191; Acts 1929, 41st Leg., p. 295, ch. 135, § 1.]

1. The Board of Regents of the State Teachers' Colleges is charged with the responsibility of the general control and management of all State Teachers' Col-

leges for white persons and may erect, equip and repair buildings; purchase libraries, furniture, apparatus, fuel and other necessary supplies; employ and discharge presidents or principals, teachers, treasurers and other employés; and fix the salaries of the persons so employed. The principal of each State Teachers' College shall nominate annually to the board of regents such professors, teachers, officials and assistants as in his opinion will promote the best interests of the institution. [Acts 1911, 2nd C. S. p. 74; Acts 1913, p. 191.]

2. The board shall visit each college under its control and management at least once during each scholastic year and inspect its work and gather such information as will enable said board to perform its duties intelligently and effectively. [Id.]

3. The board may determine what departments of instruction shall be maintained in the State Teachers' Colleges and what subjects of study shall be pursued in each department. Said board shall not change any department of instruction provided by law, and no department shall be established for the support of which provision has not been made by the Legislature. The board shall also have authority to fix the rate of incidental fees to be paid by students attending said schools and to make rules for the collection of such fees and for the disbursement of such funds. [Id.]

4. The board shall make an annual report to the Governor showing the general condition of the affairs of each college and shall make such recommendations as it may deem best for future management and welfare thereof. [Id.]

5. The board may determine the conditions on which students may be admitted to such colleges, and what grades of certificates may be issued to students attending, and on what conditions certificates and diplomas may be issued to students, and by what authority said certificates and diplomas shall be signed.

6. The board shall meet each year at Austin, on the first Monday in May, or as soon thereafter as practicable, for the transaction of business pertaining to the affairs of the State normal schools, and at such other times and places as a majority of the members of the board deem necessary for the welfare of said colleges. Each and every member of said board shall receive five dollars per day for the time spent attending the meetings provided for in this law, and in addition thereto the amount of their traveling expenses, said compensation to be paid to the several members of the board out of the appropriation for the support and maintenance of the said State Teachers' Colleges as the board may direct. [Id.]

7. All appropriations made by the Legislature for the support and maintenance of State Teachers' Colleges, for the purchase of land or buildings for the use of such schools, for the erection or repair of buildings, for the purchase of apparatus, libraries or equipment of any kind or for any other improvement of any kind, shall be disbursed under the direction and authority of the board of regents; and said board shall have power to formulate and establish such rules for the general control and management of the State normal schools for white teachers, for the auditing and approving of accounts, and for the issuance of vouchers and warrants as in their opinion may be necessary for the efficient administration of such schools. [Id.]

8. The board shall file in each house of the Legislature, at each of its regular biennial sessions, a statement of the receipts and expenditures of each of said normal schools, showing the amount of salaries paid to the various teachers, contingent expenses, expenditures for improvements, etc., together with such recommendations as the board may see proper to submit relative to the appropriation for said schools to be made by the Legislature. [Id.]

9. Power and authority is hereby conferred upon said board of regents to acquire by purchase or condemnation for the use and benefit of any of the State Teachers' Colleges, such lands within the counties where such schools may be located, as said board may deem expedient for the use of any of said schools for purposes necessary in the conduct thereof. [Acts 1913, p. 347.]

10. If in the exercise of such power, said board and the land owner cannot agree upon the sale and purchase of said land, the board of regents shall request the Attorney General to proceed to condemn the land required as provided by law. In lieu of such suit, the parties thereto may select by agreement three persons to ascertain the value of such land under their oaths and the direction of the court. The finding and decision of the jury, court or of such persons, shall in all cases be final; provided the parties to said proceedings shall have the right to appeal as in other civil cases.

11. When the value of the land has been so ascertained and the court is satisfied with such valuation, it shall enter a decree vesting the title of such lands in this State for the use and benefit of the State Teachers' College for whose benefit the land is sought to be acquired, to be held, owned, possessed and enjoyed by the State of Texas, for the purposes hereinbefore stated. No such decree shall be entered until the value of the land so ascertained, together with all reasonable cost and expense of the owner in attending such proceeding, shall be paid to him or into court for his benefit and subject to his order, such costs and expenses to be ascertained by the court in which such proceeding is had, including reasonable attorneys fees to be fixed by the court. [Id.]

Acts 1935, 44th Leg., p. 660, ch. 275, passed as a general law but in fact a special law, authorized the County Commissioners of Nacogdoches County and other counties in the section served by the Stephen F. Austin State Teachers College, to allow the College to act as depository of certain historical documents and to permit the librarian and archivist of the College to give certified copies thereof.

Art. 2647a. Dormitories and lands for teachers colleges.—Sec. 1. The Board of Regents of the Teachers Colleges of Texas is hereby authorized to enter into contracts with persons, firms, or corporations for the erection of dormitories at any Teachers College, and to purchase or lease lands and other appurtenances for the construction of such dormitories, provided that the State of Texas incurs no liability for the buildings or the sites.

Sec. 2. The said Board of Regents is hereby authorized to make contracts with reference to the collection and disposition of the revenue derived therefrom in the acquisition, management, and maintenance of said buildings.

Sec. 3. The Board of Regents is hereby authorized and empowered to adopt such rules and regulations requiring any class or classes of students to reside in such dormitories, or other buildings, as they may deem advisable. Absolute management and control of dormitories constructed under the provisions of this Act are vested in said Board of Regents. [Acts 1929, 41st Leg., p. 447, ch. 206.]

Art. 2647b. Eminent domain, power of.—Section 1. The Board of Regents of the Texas State Teachers Colleges is hereby vested with the power of eminent domain to acquire for the use of said Colleges such lands as may be necessary and proper for carrying out their purposes, in the manner prescribed in Title 52, Revised Civil Statutes of Texas of 1925, as amended.[1]

Sec. 2. The taking of such property is hereby declared to be for the use of the State. Said Board of Regents of the State Teachers Colleges shall not be required to deposit a bond or the amount equal to the award of damages by the Commissioners as provided in Section 2, of Article 3268, Revised Civil Statutes

of Texas of 1925. [Acts 1941, 47th Leg., p. 667, ch. 409.]

1 Article 3264 et seq.

Art. 2647c. Training teachers in schools of independent districts; contracts.—From and after the passage of this Act, the Boards of Regents of the Teacher Training Schools of Texas and the trustees of any independent school district shall be empowered to enter into contracts whereby the Teacher Training Schools may use the public schools of said independent school districts as laboratory schools for the training of teachers; provided no additional money shall be paid out of any fund of the State to the Independent School Districts or the Teacher Training Schools as a result of said contracts. [Acts 1945, 49th Leg., p. 234, ch. 177, § 1.]

2. SAM HOUSTON STATE TEACHERS' COLLEGE

Art. 2648. [2692–4] Admission of students.—Not more than two students from each senatorial district, and six from the State at large, shall be received in the Sam Houston State Teachers' College at Huntsville, as State students, who shall receive tuition, board and lodging free to the extent of the appropriation that may be made. In no case shall the current expenses of the institute exceed the sum or sums appropriated. The board of regents shall make all necessary rules and regulations for the admission of students, and the manner of their appointment or selection. No student shall be received who is not a resident of this State and at least of the age of sixteen years and of good moral character. Said board may authorize other students to be admitted to said College who shall pay tuition, in whole or in part, as the board may prescribe. [Acts 1879, p. 182; G. L. vol. 8, p. 1482.]

Art. 2649. [2693] [3881] Obligation of students.—All students attending said institute at State expense shall sign a written obligation in a book to be kept at the College for that purpose, binding said student to teach in the public schools of their respective districts at least one year next after their discharge from the normal school and as much longer than one year as the time of their attendance at said school shall exceed one year, for which teaching said student shall receive the same compensation allowed other teachers of said schools. Said board of education shall make rules by which students may receive certificates of qualification as teachers, authorizing them to teach without examination. [Id.]

Art. 2650. [2698] [3884] Annual appropriation.—The State Comptroller shall annually set apart out of the available free school fund the sum of fourteen thousand dollars for the support of said College and place the same to its credit. Said sum may be drawn upon by the board of regents for the current expenses of said school on vouchers audited by said board or approved by the Governor and attested by the Secretary; and, on filing said vouchers, the Comptroller shall draw his warrant on the State Treasurer for the same. The board is authorized to receive from the agent of the trustees of the Peabody Education Fund such sums as he may tender for the aid of said institute, and shall disburse the same in such manner as will best subserve the interests of said college. [Acts 1879, p. 182; G. L. vol. 8, p. 1482.]

Art. 2650a. Airport; Board of Regents authorized to acquire and operate.—Section 1. The Board of Regents of the Sam Houston State Teachers College of Texas is authorized to construct or acquire otherwise without any cost whatsoever to the state or the college, an airport for said institution for purposes in cooperation with the national defense program, and for instruction in aeronautics.

Sec. 2. Said Board of Regents shall have the power and is hereby authorized to acquire by purchase, lease, gift, or in any other manner, and to maintain, use and operate any and all property of any kind, real, personal or mixed, or any interest therein necessary or convenient to the exercise of the powers conferred upon it by this Act. Said Board shall have the power of eminent domain for the purpose of acquiring by condemnation any real property or any interest therein necessary or convenient to the exercise of the powers and rights conferred upon it by this Act. Said Board shall exercise the right of eminent domain in the manner provided by General Law, including Article 3264 et seq. of the Revised Statutes and amendments thereto, except that it shall not be required to give bond for appeal or bond for costs. [Acts 1943, 48th Leg., p. 103, ch. 74.]

Art. 2650b. Josey School of Vocational Education; division of Sam Houston State Teachers' College.—Section 1. There is hereby created the Josey School of Vocational Education to be under the direction of the President of Sam Houston State Teachers College. The purpose of said school shall be to provide the training of individuals over the age of eighteen (18) years who cannot qualify scholastically for college entrance or for other students who desire to avail themselves of short, intensive courses in vocational education in the following fields: agriculture, home management, distributive education, photography, plumbing, sheet metal work, machine shop, auto mechanics, furniture, electrical appliances, air conditioning and refrigeration, printing, radio, garment making, interior decorating, light construction contracting, photo engraving, watchmaking and other trades of like nature. The training of such subjects is to be so organized that the courses may be completed in from nine (9) to twenty-four (24) months, and said school shall be and is authorized to offer applied courses in such fields as English and Mathematics, or other subjects which will contribute to the vocational training of the student. The Josey School for Vocational Education is further authorized to offer vocational courses in Government to prepare workers in various county, city, and state offices.

Sec. 2. The said Josey School of Vocational Education is hereby constituted and made a division of the Sam Houston State Teachers College and is hereby placed under the direction and control of the Board of Regents of the Texas State Teachers Colleges, and said Board shall have power to administer the affairs of said school according to the laws of Texas pertaining to its powers, duties, and functions as a Teachers College Board and according to the provisions of this Act.

Sec. 3. The rate of tuition charged said students shall be the actual cost of teaching service not to exceed Five Hundred Dollars ($500) per scholastic year of nine (9) months. Scholarships may be awarded by the Board of Regents of the Texas State Teachers Colleges to worthy indigent students who might greatly benefit from the training offered by the Josey School of Vocational Education. The amount of said scholarships may vary according to the needs of the individuals, but in no case may it reduce the tuition payment by said student to a point less than the tuition fee regularly charged students at the Texas State Teachers Colleges. [Acts 1947, 50th Leg., p. 165, ch. 102.]

3. NORTH TEXAS STATE TEACHERS' COLLEGE

Art. 2651. [2699] Purpose.—The State Teachers' College located at Denton shall be known as the "North Texas State Teachers' College." It shall be conducted for a session of not less than thirty-six weeks each year upon improved methods and plans for first class schools designed for special training of teachers. [Acts 1899, p. 74.]

Art. 2652. [2701] Funds set apart for college.—The Comptroller shall set apart annually, out of the general revenue, the sum of twenty thousand dollars for the maintenance of said normal school, together with such other sums as may be appropriated by the Legislature for defraying a part of the expenses of the students appointed from year to year by senators and representatives, such sum or sums to be placed to the credit of such State normal school, and which shall be paid out upon warrants approved by the Governor and attested by the board of regents. Said board is hereby authorized to receive from the agent of the Peabody Education Fund such sums as he may tender for the aid of the said State normal school, to be disbursed in such manner as may be prescribed by the donor. [Id.; Amended Acts 1901, p. 10.]

Art. 2653. [2702] Free tuition.—Tuition in said college shall be free to all students who are at least sixteen years of age, of good moral character, and who wish to prepare themselves for the profession of teaching. All State students attending such college shall sign a written obligation, in a book to be kept for that purpose, binding said students to teach in the public schools of this State for as long a period of time as they attend said college, for which teaching they shall receive the same compensation as other teachers. [Id.]

Art. 2653a. Historical collection of North Texas State Teachers College.—Sec. 1. That the historical collection of the North Texas State Teachers College, located at Denton, Texas, consisting of books, documents, stamps, coins, fire arms, implements of warfare, relics, heirlooms and various and sundry other things and collections of historical importance, be and the same is hereby designated a State Historical Collection and shall hereafter be known as "The State Historical Collection of the North Texas State Teachers College."

Sec. 2. The Board of Regents of said College shall be authorized to accept and receive gifts, donations and collections of books, documents, stamps, coins, fire arms, implements of warfare, relics, heirlooms as well as collections of all kinds having a [1] historical importance and value, to be used in teaching the youth of our state.

[1] So in enrolled bill. Should probably read "an."

Sec. 3. The Board of Regents shall make such rules and regulations with respect to receiving and holding such gifts, donations and collections as in its judgment it may deem necessary and advisable. [Acts 1930, 41st Leg., 5th C.S., p. 189, ch. 46.]

Borrowing from Federal Agencies, see Article 2603c, ante.

4. SOUTHWEST TEXAS STATE TEACHERS' COLLEGE

Art. 2654. [2708–11] School established.—The institution established at San Marcos shall be known as the Southwest Texas State Teachers' College. The rules and regulations provided by law for the government of the Sam Houston State Teachers' College shall apply so far as applicable to the government and control of this college. [Acts 1909, p. 221.]

Borrowing from Federal Agencies, see Article 2603c, ante.

CHAPTER 9A.—TUITION AND CONTROL OF FUNDS OF STATE INSTITUTIONS

Art.

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Art. 2654a. Tuition in state educational institutions.—Sec. 1. No State educational institution shall collect from the student thereof any tuition, fee or charge of any kind whatever except as permitted by this Act, and no student shall be refused admission to or discharged from any such institution for the non-payment of any tuition, fee or charge except as permitted in this Act.

Sec. 2. Any such educational institution may collect from each student a matriculation fee of not to exceed thirty ($30) dollars for any term of nine months, and laboratory charges to cover actual laboratory materials and supplies used by such student not to exceed in any event four ($4.00) dollars for any one year from any one student in any one laboratory course. Matriculation fees for any six weeks may not exceed five dollars, or for any ten weeks term, not to exceed ten dollars. Provided, however said educational institutions may collect reasonable deposits from students each year to insure said institutions against losses, breakage, etc., in libraries and laboratories, said deposits to be returned at the end of each school year minus such damage, loss or breakage as may have been done by each individual student who has put up a deposit.

Sec. 3. The words "State educational institutions" as used in this Act shall include the following and any branch thereof: The University of Texas; the Agricultural and Mechanical College of Texas; the various State teachers' colleges of Texas; the College of Industrial Arts of Texas; the John Tarleton Agricultural College of Texas; the North Texas Agricultural College; the Prairie View State Normal and Industrial College; the Texas Technological College; and any other State educational institutions either heretofore provided for or hereafter to be provided for under the laws of this State.

Sec. 4. Each of the governing boards of the various institutions of higher education named in Section 3 of this Article is expressly authorized, when deemed necessary by said governing board, to require and collect a fee or charge from all students registering in said institution to cover the costs of student services which the said governing board deem necessary.

or helpful in carrying on the educational functions of the institutions, these services to include such services as textbook rentals, recreational activities, health and hospital service, artists and lecture courses, debating and oratorical activities, student publications, and other approved student activities; provided, however, that no student shall be required to pay for such services more than Fifteen ($15.00) Dollars per semester or entire summer session. All fees and charges which have heretofore been collected, charged or attempted to be collected by the various institutions of higher education for any of the purposes named in this section under the heading of student services, regardless of the name by which such fee was designated, all of which fees having been charged, collected or attempted to be collected under authority of Article 2654—a or Article 2654—c of the Revised Civil Statutes of Texas, are hereby in all respects validated, confirmed, approved and authorized as though they had been authorized and collected by specific order of the various governing boards. [Acts 1927, 40th Leg., p. 351, ch. 237; Acts 1947, 50th Leg., p. 96, ch. 66, § 1.]

Section 2, of the Act of 1947 provides that partial invalidity of the Act shall not affect the remaining portions.

Section 2a reads:

"Sec. 2a. The provisions of this Act shall be null and void on or after October 1, A. D. 1952.

Section 3 repeals conflicting laws.

Prairie View State Normal and Industrial College, the name of which was changed to Prairie View University by Acts 1945, 49th Leg., p. 506, ch. 308, repealed, is now known as The Prairie View Agricultural and Mechanical College of Texas. See art. 2643b.

Art. 2654b. Exemption of veterans from fees.—Every veteran soldier or other person who served in the Spanish-American War is hereby exempted from the payment of any fees or charges in State Institutions, Schools or Colleges of this State to the same extent as veterans or persons serving the World War are exempt from such fees or charges under State laws, and the provisions of the State laws exempting the latter shall apply to such veterans and other persons who served in said Spanish-American War. [Acts 1929, 41st Leg., 2nd C.S., p. 90, ch. 52, § 1.]

Art. 2654b—1. Exemption from fees; war veterans; members of armed forces and their children; holders of scholarships.—Sec. 1. The governing boards of the several institutions of collegiate rank, supported in whole or in part by public funds appropriated from the State Treasury, are hereby authorized and directed to except and exempt all citizens of Texas, who have resided in Texas for a period of not less than twelve (12) months prior to the date of registration, and who served during the Spanish-American and/or during the World War as nurses or in the armed forces of the United States during the World War, and who are honorably discharged therefrom, from the payment of all dues, fees and charges whatsoever, including fees for correspondence courses; provided, however, that the foregoing exemption shall not be construed to apply to deposits, such as library, or laboratory deposits, which may be required in the nature of a security for the return of or proper care of property loaned for the use of students, nor to any fees or charges for lodging, board or clothing. The governing boards of said institutions may and it shall be their duty to require every applicant claiming the benefit of the above exemption to submit satisfactory evidence that the applicant is a citizen of Texas and is otherwise entitled to said exemption. The provisions of this Section shall apply to those students who are herein exempted that have already registered and paid their fees or tuition for the 1933–34 school term, and the governing boards of such institutions are hereby authorized and directed to refund such fees to any student who has already paid such fees or tuition for the 1933–34 school term.

Sec. 2. The governing boards of said institutions of collegiate rank are hereby authorized to issue scholarships each year to the highest ranking graduate of accredited high schools of this State, exempting said graduates from the payment of all dues, fees and charges whatsoever; provided, however, that said exemptions shall not apply to library or laboratory or similar deposits, nor to fees or charges for lodging, board or clothing. Such exemptions shall be granted subject to such limitations and restrictions as may be prescribed by the governing board of each of said institutions. Promises heretofore made by State educational institutions with reference to scholarships shall not be invalidated by H. B. 322, Chapter 196, General Laws of the Regular Session of the Forty-third Legislature [1] and providing that those students who as holders of scholarships granted prior to the passage of H. B. No. 322, Chapter 196, General Laws of the Regular Session of the Forty-third Legislature who upon entering any of the State educational institutions are required to pay fees in accordance with the above mentioned Act shall be refunded those fees paid and that those scholarships affected shall continue to be valid so long as the students may desire to use them for the purposes for which they were granted or until such students shall have completed a four-year course in such institution. [Acts 1933, 43rd Leg., 1st C.S., p. 10, ch. 6.]

[1] Article 2654c, post.

Sec. 3. All of the above and foregoing provisions, conditions and benefits hereinabove in this Article provided for in Section 1 and in Section 2 shall apply and accrue to the benefit of all nurses, members of the Women's Army Auxiliary Corps, Women's Auxiliary Volunteer Emergency Service, and all members of the United States armed forces, regardless of whether members of the United States Army or of the United States Navy or the United States Coast Guard, who have, or are now serving, or who may after the passage of this Act, serve in the armed forces of the United States of America during the present World War Number II, being the war now being prosecuted, and which was entered into on or shortly after December 7, 1941, by the United States of America against what are commonly known as the Axis Powers; provided, further, that all the above and foregoing persons named have been honorably discharged from the services in which they were engaged. And, provided further, that the benefits and provisions of this Act shall also apply and inure to the benefit of the children of members of the United States Armed Forces, where such members were killed in action or died while in the service. The provisions of this Act shall not apply to or include any member of such United States Armed Forces, or other persons hereinabove named, who were discharged from the service in which they were engaged because of being over the age of thirty-eight (38) years or because of a personal request on the part of such person to be discharged from such service.

Other than as amended herein, present Article 2654b—1 is hereby reenacted and shall in all things continue in full force and effect subject only to the addition of the above section to be known as Section 3. [Added Acts 1943, 48th Leg., p. 568, ch. 337, § 1.]

Sec. 4. The exemption from the payment of dues, fees, and charges as provided hereinabove in Section 1 and Section 3 of this Article shall not apply to or include honorably discharged members of such United States Armed Forces, or other persons hereinabove named, who are eligible for education or training benefits provided by the United States Government under Public Law No. 16, 78th Congress,[1] or amendments thereto, or under Public Law No. 346, 78th Congress,[2] or amendments thereto, or under any other Federal legislation that may be in force at the time of registration in the college concerned of such ex-service man or woman. As to all ex-service men or women as defined in this section, the governing boards of each of the several institutions of collegiate rank,

supported in whole or in part by public funds appropriated from the State Treasury, are hereby authorized to enter into contracts with the United States Government, or any of its agencies, to furnish instruction to such ex-service men and women at a tuition rate which covers the estimated cost of such instruction or, in the alternative, at a tuition rate of One Hundred Dollars ($100.00) a semester, as may be determined by the governing board of the institution concerned; provided, however, that if such rates as herein specified are prohibited by Federal law for any particular class of ex-service men or women, then, and in that event, the tuition rate shall be such rate as may be agreed to by said governing boards, but in any event not less than the established rates for civilian students; provided further that should the Federal law provide as to any class of veterans that such tuition payments are to be deducted from any subsequent benefits which said veteran may be hereafter entitled to receive, the educational institution concerned is hereby authorized and directed to refund to any veteran who is a resident of Texas within the meaning of this Act the amount by which any adjusted compensation payment is hereafter actually reduced on account of tuition payments made by the Federal government to such educational institution for such veteran. [Added Acts 1945, 49th Leg., p. 552, ch. 338, § 1.]

1 38 U.S.C.A. § 701, 38 U.S.C.A. ch. 12 note.
2 38 U.S.C.A. § 693 et seq.

Art. 2654c. Tuition rates in State institutions of collegiate rank.—Sec. 1. The governing boards of the several institutions of collegiate rank supported in whole or in part by public funds appropriated from the State Treasury shall cause to be collected from students registering in the said schools after September 1, 1933, tuition at the following rates:

1. From each resident student, who registers for twelve (12) or more semester hours of work per semester of four and one-half (4½) months, Twenty-five Dollars ($25.00) per semester; or, who registers for twelve (12) or more term hours of work per term of three (3) months, Sixteen Dollars and Sixty-seven Cents ($16.67) per term.

2. From each nonresident student who registers for twelve (12) or more semester hours of work per semester of four and one-half (4½) months, a registration fee of not less than Seventy-five Dollars ($75) nor more than One Hundred and Fifty Dollars ($150) per semester as fixed and determined for each fiscal year by each governing board; from each nonresident student who registers for twelve (12) or more term hours of work per term of three (3) months, a registration fee of not less than Fifty Dollars ($50) per term, nor more than One Hundred Dollars ($100) per term, as fixed and determined for each fiscal year by each governing board; provided, that the nonresident registration fee may within the discretion of said governing boards be charged the United States Government for veterans enrolled under the provisions of any Federal law and regulations authorizing educational or training benefits for said veterans, and provided further, that the provisions of this paragraph relating to nonresident student registration fees shall not apply to junior colleges located immediately adjacent to State boundary lines, which institutions shall collect from each nonresident student who registers for twelve (12) or more semester or term hours of work an amount equivalent to the amount charged students from Texas by similar schools in the State of which the said nonresident student shall be a resident.

(a) A nonresident student is hereby defined to be a student of less than twenty-one (21) years of age, living away from his family and whose family resides in another State, or whose family has not resided in Texas for the twelve (12) months immediately preceding the date of registration; or a student of twenty-one (21) years of age or over who resides out of the State or who has not been a resident of the State twelve (12) months subsequent to his twenty-first birthday or for the twelve (12) months immediately preceding the date of registration.

(b) The term "residence" as used in this Act means "domicile"; the term "resided in" means "domiciled in," provided the governing board of each institution required under this Act to charge a nonresident registration fee is hereby authorized to promulgate such rules and regulations as may be necessary to administer this Act, and each such governing board is hereby authorized to define "residence" and is authorized for such purpose to employ the practices and standards prevailing in State-supported educational institutions in this Country.

(c) The various governing boards of the several State-supported institutions are hereby authorized to classify as "nonresident students" individuals who have come from without the State and who are within the State primarily for educational purposes as evidenced by registration in educational institutions, regardless of whether such individuals have become qualified voters or have otherwise attempted to establish legal residence within the State.

(d) The various governing boards of the several State-supported institutions are hereby authorized to classify as "nonresident students" individuals who have come from without the State and who are within the State primarily for educational purposes as evidenced by registration in educational institutions, regardless of whether such individuals have become the legal wards of residents of Texas or have been adopted by residents of Texas.

(e) The governing boards of the several State-supported institutions are hereby authorized to assess and collect from each nonresident student failing to comply with the rules and regulations of the governing boards concerning nonresident fees a penalty not to exceed Five Dollars ($5) per semester.

(f) All aliens shall be classified as nonresident students; provided, however, that an alien who has applied for naturalization in the United States and who has received his first citizenship papers shall have the same privilege of qualifying for resident status for the fee purposes under this Act as has a citizen of the United States. [As amended Acts 1947, 50th Leg., p. 389, ch. 218, § 1.]

3. From each resident or non-resident student who registers for less than twelve (12) semester or term hours of work, a sum proportionately less than that hereinabove prescribed therefor, provided each student registered shall pay no less than Seven Dollars and Fifty Cents ($7.50) per semester nor less than Five Dollars ($5.00) per term.

4. From each resident student registering for a summer session, such amount as shall be fixed by the governing board of such institution, but in no event less than Twenty Dollars ($20) for a twelve-week term nor more than Thirty-five Dollars ($35) for a twelve-week term. From each nonresident student registering for a summer session such proportionate amount as is provided in paragraph 2 of Section 1 as the length of the summer session bears to the length of the semester or term, provided, however, that in no event shall the summer session fee levied on a nonresident student be less than the fee charged to a resident student; provided, that the nonresident registration fee may within the discretion of said governing boards be charged the United States Government for veterans enrolled under the provisions of any Federal law and regulations authorizing educational or training benefits for said veterans, and provided further, that the provisions of this paragraph relating to nonresident student registration fees shall not apply to junior colleges located immediately adjacent to State boundary lines, which institutions shall collect from each nonresident student who registers for twelve (12) or more semester or term hours of work an amount

equivalent to the amount charged students from Texas by similar schools in the State of which the said nonresident student shall be a resident. [As amended Acts 1947, 50th Leg., p. 389, ch. 218, § 2.]

4a. From each student registering for courses in the Departments of Arts, Drama or Speech, and Music, an amount shall be collected as special tuition, in addition to that now provided for by law, for courses in such Departments designated by the Governing Board of said institutions; but in no event shall this special tuition be more than Seventy-five ($75.00) Dollars per course for each semester or summer session. [Acts 1933, 43rd Leg., p. 596, ch. 196, § 4a, as added Acts 1939, 46th Leg., p. 273, § 1.]

5. The foregoing provisions, requiring the governing boards to collect tuition, shall not be interpreted as depriving the said boards of the right to collect such library, laboratory, and other fees as they are now permitted by law to collect.

(6) Officers, enlisted men, selectees or draftees of the Army, Army Reserve, National Guard, Navy, Naval Reserve, or the Marine Corps of the United States, who are stationed in Texas by assignment to duty within the borders of this State, shall be permitted to enroll their children in State institutions of higher learning by paying the tuition fees and other fees or charges provided for regular residents of the State of Texas, without regard to the length of time such officers, enlisted men, selectees or draftees have been stationed on active duty within the State. [Added Acts 1941, 47th Leg., p. 873, ch. 544, § 1.]

Sec. 2. All tuition, local funds and fees collected by such institutions shall be retained and expended by such institutions and accounted for annually as provided in the General Appropriation Bill. Provided that laboratory fees or charges shall only cover actual materials and supplies used by a student. [Acts 1933, 43rd Leg., p. 596, ch. 196.]

Art. 2654c—1. Building use fees in certain state colleges; proceeds used for capital improvements.

Use fee

Section 1. The Board of Regents of the University of Texas and its branches, the Board of Directors of the Agricultural and Mechanical College and its branches, the Board of Directors of Texas Technological College, the Board of Regents of the State Teachers Colleges, the Board of Directors of the Texas State College for Women, and the Board of Directors of the College of Arts and Industries, are hereby severally authorized and empowered to charge each student enrolled in such institution a building use fee of not exceeding Five Dollars ($5) per semester, provided, however, this fee shall be a part of the fees now collected and no additional fees shall be collected for any purpose, all or a portion of which may be pledged for the retirement of bonds for the construction and equipment of buildings and power plants, the paving of streets, the purchase of land, and for such other capital improvements as may be needed from time to time for the efficient functioning of the aforesaid institutions, subject to the provisions of this Act, provided, however, that the building use fee herein authorized to be collected shall be included as a part of the fees authorized to be collected by Article 2654c of the Revised Civil Statutes of the State of Texas, Acts of the Forty-third Legislature, page 596, Chapter 196, and the governing boards of the several institutions of higher learning herein enumerated shall not increase tuition at said institutions in excess of the amounts authorized by said Article 2654c.

Improvements to be without cost to State

Sec. 2. The acquisition and the construction of the capital improvements contemplated in this Act shall be made without cost to the State of Texas, and no bonds issued for such improvements shall constitute a debt of the State of Texas in any manner whatsoever, but shall be a charge only against those revenues specifically pledged for their payment, provided, however, that the Legislature shall never make an appropriation out of the General Fund of the State, either in the Regular Appropriation Bill or in a Supplemental or Emergency Appropriation Bill, for the purpose of equipping or furnishing or for the purpose of purchasing or installing any utility connections in any of the buildings erected or improved by virtue of the provisions of this Act.

Deposit of building use fees

Sec. 3. The building use fee authorized by this Act, when collected, shall be deposited in the depository bank of the institution collecting the tax or in such other depository as may be designated by such Board. The funds accruing from the building use fee shall be deposited in a special account definitely describing the purpose for which the fee was collected and the object or objects for which it is to be applied, and all funds deposited in such special accounts shall be accorded the same protection by the pledging of assets of the depository as is now required or may hereafter be required by law for the protection of public funds.

Collection of fees

Sec. 4. Such fees shall be collected at the time the regular registration fees are collected and by the same officials collecting the registration fees.

Fractional part of fees for certain students

Sec. 5. Students taking less than twelve (12) credit hours of work shall pay such fractional part of the fee fixed for those taking twelve (12) or more credit hours as the ratio of the hours actually taken bears to twelve (12). The fee for students in the summer session shall be computed on the same basis as for students enrolling for twelve (12) hours or less in the long session.

Bonds; pledge of use fees

Sec. 6. For the purpose of constructing or otherwise acquiring, improving, or equipping any one or more of the buildings, power plants, or streets, or acquiring lands authorized by Section 1 of this Act, the governing body of each of said institutions is authorized to issue, sell, and deliver its negotiable revenue bonds from time to time in such amount or amounts as it may consider necessary. Bonds issued under this Act shall mature serially or otherwise in not exceeding thirty (30) years from their date, bear interest at not exceeding four (4) per cent per annum, shall be payable at such place or places, may contain option of payment prior to maturity and such provisions for registration as to ownership, as shall be determined by said Board. To assure the prompt payment of the principal and interest of said bonds, such Board is authorized to pledge all or any portion of the proceeds of the building use fee authorized in Section 1 of this Act, and said bonds may be additionally secured by a pledge of the net revenues from buildings and facilities to be constructed, acquired, or improved with the proceeds of such bonds and from other buildings or facilities heretofore or hereafter constructed or acquired. When such bonds are secured solely by the building use fees authorized in this Act, it shall be the duty of such governing body to fix the amount of such fees (within the maximum rate of Five Dollars ($5) per semester) so that the proceeds therefrom will be sufficient to pay the interest and principal on said bonds as they mature and accrue and to provide a reasonable reserve in the interest and sinking fund of the bonds. When such bonds are secured in whole or in part by a pledge of the net revenues from buildings or facilities, it shall be the duty of such

governing body to fix rentals and charges for the buildings and facilities whose net revenues are thus pledged, at rates sufficient to pay the maintenance and operation expense of such buildings and facilities and to produce net revenues which, together with the building use fee authorized in Section 1 of this Act, will be sufficient to pay the interest and principal of such bonds as they accrue and mature.

Limitation on indebtedness

Sec. 7. The governing Boards of the aforesaid institutions shall not be permitted to contract bonded indebtedness under the terms of this Act in excess of eighty (80) per cent of the amount which can be amortized with the revenues from said building use fee estimated at the time of the authorization of such revenue bonds. Revenues accruing from said fee in excess of the amount normally required for the orderly retirement of said bonds shall be held as surplus in the special bond account designated in Section 3 of this Act as a contingent fund for use when necessary in the event of a reduction of income from a decrease of enrollment.

Bonds as investments

Sec. 8. Bonds issued under the provisions of this Act shall be eligible investments for the Permanent School Fund of Texas.

Approval of bonds; defenses

Sec. 9. Before any such bonds are delivered to the purchaser the record pertaining thereto shall have been examined by the Attorney General and said record and bonds shall be approved by the Attorney General. After such approval the bonds shall be registered in the office of the Comptroller of Public Accounts. Such bonds, having been approved by the Attorney General, registered in the Comptroller's office, shall be held in every action, suit, or proceeding in which their validity is or may be brought into question, valid and binding obligations. In every action brought to enforce collection of such bonds or any rights incident thereto, the certificate of approval by the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of its validity. The only defense which can be offered against the validity of such bonds shall be forgery or fraud. [Acts 1941, 47th Leg., p. 908, ch. 560.]

Art. 2654d. Control of funds by governing boards.

Schools to which applicable; funds subject to control

Sec. 1. The governing boards of the Agricultural and Mechanical College of Texas, including the State Agricultural Experiment Station System and the Extension Service and Rodent Control Service, the Texas Forest Service, North Texas Agricultural College, John Tarleton Agricultural College, Prairie View State Normal and Industrial College, University of Texas, including all branches of the University and the College of Mines and Metallurgy at El Paso, College of Industrial Arts, Texas College of Arts and Industries, Texas Technological College, East Texas State Teachers College at Commerce, North Texas State Teachers College at Denton, Sam Houston State Teachers College at Huntsville, Stephen F. Austin State Teachers College at Nacogdoches, Southwest Texas State Teachers College at San Marcos, Sul Ross State Teachers College at Alpine, and the West Texas State Teachers College at Canyon, may retain control respectively of the following sums of money collected at each of said several institutions in carrying out the functions of an educational institution, such as funds collected from student fees of all kinds; charges for use of rooms and dormitories; receipts from meals, cafes and cafeterias; fees on deposit refundable to students under certain conditions; receipts from school athletic activities; income from student publications or other student activities; receipts from sale of publication products and miscellaneous supplies and equipment; students' voluntary deposits of money with said schools for safe keeping; all other fees and local institutional income of a strictly local nature arising out of and by virtue of the educational activities, or research or demonstration carried on by each and all of said several schools.

Deposits

Sec. 2. The governing boards of the respective institutions named in Section One above are authorized to select depository banks as places of deposit of all funds of the kind and character named in Section One, which are collected by said institutions, and said boards shall require adequate surety bonds or securities to be posted to secure said deposits, and may require additional security at any time any of said boards deem any said deposit inadequately secured. All funds of the character named in Section One hereof, which are so collected shall be deposited in said depository bank or banks within five days from the date of collection. Depository banks so selected are hereby authorized to pledge their securities to protect such funds. All depositories so designated shall pay interest on said deposits at a rate to be agreed upon by said depositories and said governing boards. Any surety bond furnished under the provisions of this Act shall be payable to the Governor of the State and his successors in office, and venue of suit to recover any amount claimed by the State to be due on any of said bonds is hereby fixed in Travis County, Texas.

Accounts; trust funds

Sec. 3. Separate accounts shall be kept on the books of the respective institutions showing the sources of all sums collected, and the purposes for which expended. All trust funds handled by the governing bodies of such institutions shall be deposited in separate accounts and shall not be commingled with the general income from student fees or other local institutional income, and all such trust funds shall be secured by separate bonds or securities.

Accounts; reports

Sec. 4. True and full accounts shall be kept by the governing boards and by the employees of the said several institutions hereinabove mentioned of all funds collected from all sources by said institutions, and all the sums paid out by said several institutions and the persons to whom and the purposes for which said sums are paid, and the governing board of each of said institutions named shall biennially, and more often, if the governing board of any of said institutions shall so order, print a complete report of all sums collected, all expenditures, and of the sums remaining on hand; said report to be printed in even numbered years after the first day of September and before the first day of the following January, and shall show the true condition of all of said funds as of the 31st day of August preceding, and shall show all collections and expenditures for the preceding two years. The governing board of each of said several institutions, shall, upon the printing of said report, furnish copies thereof to the Governor, State Treasurer, State Comptroller of Public Accounts, State Auditor, Attorney General, not less than three copies to the Board of Control, and shall, within a week after the selection of said committee, furnish a copy of each of said reports for the preceding biennium to each member of the House Appropriations Committee, the Senate Finance Committee, and the House and Senate Committees on Education of each Regular Biennial Session of the Legislature of Texas.

Inapplicable to income from Permanent Fund; deposit of certain income

Sec. 5. The provisions of this Act shall not apply to any income derived from the Permanent Fund of the

University of Texas, but all income derived from the Permanent Fund of the University of Texas and all income from the two million acres of land set apart to the University of Texas by the Constitution and by the Act of 1883, shall be deposited in the State Treasury and paid out on Comptroller's warrants as is now provided by law. All income to the Available University Fund shall be deposited with the State Treasurer within five days after receipt thereof by any State officer, agent or employee and shall be expended in accordance with Chapter 42, General Laws, Regular Session, Forty-second Legislature, 1931.

Application

Sec. 6. The provisions of this Act shall apply only to the funds hereinabove specifically enumerated and other local institutional income or donations or gifts to said schools.

Penal provisions

Section 7 of this Act, being a penal provision, is published as Penal Code, Art. 419b.

Partial invalidity; conflicting laws

Sec. 8. If any section, part or sentence of this Act shall be held unconstitutional, such holding shall not affect the remaining portions of this Act, and it is hereby declared that the Legislature would have enacted that part which is constitutional without having enacted the unconstitutional part, if any; and provided that all laws, or parts of laws, in conflict herewith, or contrary to this Act, be and they are hereby repealed.

Funds not to be used to increase salaries

Sec. 8a. No part of any of these funds shall ever be used to increase any salary beyond the sum fixed by the Legislature in the appropriations bill, and this law shall be subordinate and subservient to the biennial appropriation bills for the support of the several institutions herein mentioned. [Acts 1933, 43rd Leg., p. 746, ch. 221.]

Art. 2654e. Exemption from tuition fees of students from other nations of American continents; limitation on number.—The governing boards of the several institutions of collegiate rank, supported in whole or in part by public funds appropriated from the State Treasury, are hereby authorized and directed to except and exempt five (5) native born students annually from each of the other nations of the American continents from the payment of tuition fees; provided that every applicant claiming the benefit authorized herein shall furnish satisfactory evidence, certified by the proper authority of his native country, that he is a bona fide citizen and resident of the country which certifies his application, and that he is scholastically qualified for admission; provided further that the total number of students entitled to the benefits provided herein shall never exceed one hundred (100) annually; and provided further that the State Board of Education, in cooperation with representatives of the governing boards of the state institutions of higher learning, shall formulate and prescribe a plan for the admission and distribution of all applicants desiring to qualify under the provisions of this Act.

No student shall be allowed to take advantage of this Act who is not a native born citizen of the country certifying his qualifications for receiving the privileges authorized by this Act and who has not lived in one of the nations of the American continents for a period of at least five (5) years. [Added Acts 1941, 47th Leg., p. 38, ch. 25, § 1.]

CHAPTER 10.—STATE DEPARTMENT OF EDUCATION

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1. STATE SUPERINTENDENT

Article 2655. [4509] Election.—There shall be elected at each general election, a State Superintendent of Public Instruction, who shall hold his office for a term of two years. The Superintendent shall take the official oath and shall perform such duties as may be prescribed by law. [Acts 1905, p. 263.]

Art. 2656. [4510–13] General duties.—The State Superintendent shall be charged with the administration of the school laws and a general superintendency of the business relating to the public schools of the State, and he shall have printed for general distribution such number of copies of school laws as the State Board of Education may determine. He shall hear and determine all appeals from the rulings and decisions of subordinate school officers, and all such officers and teachers shall conform to his decisions. Appeal shall always be from his rulings to the State Board. He shall prescribe suitable forms for reports required of subordinate school officers and teachers, and blanks for their guidance in transacting their official business and conducting public schools and shall, from time to time, prepare and transmit to them such instructions as he may deem necessary for the faithful and efficient execution of the school laws, and by whatsoever is so communicated to them, they shall be bound to govern themselves in the discharge of their official duties. He shall examine and approve all accounts against the school funds that are to be paid by the State Treasurer, and, upon such approval, the Comptroller shall be authorized to draw his warrant. He may employ such clerks to perform the duties of his office as may be authorized by appropriations therefor.

Art. 2657. [4511] To advise school officers.—The State Superintendent shall advise and counsel with the school officers of the counties, cities and towns and school districts as to the best methods of conducting the public schools, and shall be empowered to issue instructions and regulations binding for observance on all officers and teachers in all cases wherein the provisions of the school law may require interpretation in order to carry out the designs expressed therein, also in cases that may arise in which the law has no provision, and where necessity requires some rule in order that there may be no hardships to individuals, and no delays or inconvenience in the management of school affairs. [Id.]

Art. 2658. [4512] Shall note educational progress.—He shall inform himself concerning the educational progress of the different parts of this State and of other States. In so far as he may be able, he shall visit different sections of this State and address teachers' institutes, associations, summer normals and other educational gatherings, instruct teachers and arouse educational sentiment; and the Legislature shall make adequate appropriation for necessary traveling expenses, or those of his representative, when in the service of the State. [Id.]

Art. 2659. [4514] Plans for school buildings.—The State Superintendent shall prepare as many as three sets of plans for public school buildings designed to meet the needs of rural schools of various sizes, and, upon request of the trustees of any school district, shall furnish copies of such plans and specifications. [Id.; Acts 1909, p. 21.]

Art. 2660. [4515–16] Shall make report.—The State Superintendent shall, one month before the meeting of each regular session of the Legislature and ten days prior to any special session thereof, at which, under the Governor's proclamation convening the same, any legislation may be had respecting the public schools, make a full report to the State Board of the condition of all the public schools. Such report shall give all the information called for by the State Board and such other matters as the State Superintendent shall deem important. The Governor shall lay such report before the Legislature and two thousand copies of said report shall be printed in pamphlet form for the use of the Legislature and for distribution among the various school officers and libraries within the State, and other States and territories of the United States and Canada, and the Bureau of Education at Washington. [Acts 1905, p. 263.]

Art. 2661. [4517] School officers to report.—The State Superintendent shall require of county judges, county, city and town superintendents, county and city treasurers and treasurers of school boards and other school officers and teachers, such school reports relating to the school fund and other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish the county, city and town superintendents, and other school officers and teachers, for the use of such officers and teachers, the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them. [Id.]

Art. 2662. [4618] Reports to be filed.—The State Superintendent shall file all reports, documents and papers transmitted to him and the State Board by county or city school officers, and from all other sources, pertaining to public schools, and keep a complete index of the same. [Id.]

Art. 2663. [4519–20] Shall prorate funds.—On the first of each month, the State Superintendent shall prorate to the several counties, cities and towns and school districts constituting separate school organizations, according to the scholastic population of each, the available school money collected during the preceding month and then on hand as shown by the certificate issued that day to him by the Comptroller, and shall thereupon certify to the Comptroller the total sum prorated to each; and such certificate shall be authority for the Comptroller to draw his warrant in favor of the Treasurer of each such county, city or town or school district for the amount stated in such certificate. He shall receive from the State Treasurer all warrants so drawn, and shall transmit such warrants to the respective treasurer in favor of whom they are drawn. [Acts 1909, 2nd C. S. 432.]

Art. 2663a. Instruction in physical education.—Sec. 1. That instruction in physical education shall be established and made part of the course of instruction and training in the public elementary and secondary schools of the State by September 1, 1930.

Sec. 2. The State Superintendent of Public Instruction shall prepare courses of instruction for the public schools of the State for the purpose of carrying out this Act. [Acts 1929, 41st Leg., p. 466, ch. 216.]

Art. 2663b. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 164, ch. 83, § 6.]

Article repealed was Acts 1929, 41st Leg., p. 494, ch. 234, §§ 1–6, as amended Acts 1929, 41st Leg., 1st C.S., p. 85, ch. 38, § 1.

Art. 2663b—1. Teaching Constitution in schools.—Sec. 1. In all high schools within this State supported by public funds there shall be given a course of instruction in the Constitutions of the United States and of Texas, which shall be a combined course in both Constitutions, and which shall be given for at least one-half hour each week of the school year or at least one hour each week for one-half of the school year, or the equivalent thereof. No student shall be graduated from any high school mentioned herein who has not passed a satisfactory examination in such high school course of instruction.

Sec. 2. There shall be given in all colleges and universities supported by public funds a course in American Government with special emphasis upon the Constitutions of the United States and of Texas, which course shall be given for at least three fifty-minute periods per week for not less than twelve consecutive weeks, or its equivalent if given in summer sessions. No student shall be graduated from any such college or university who has not passed a satisfactory examination in such college or university course in the college or university from which he is graduating or

in some other college or university which he may have attended previously. [As amended Acts 1930, 41st Leg., 4th C.S., p. 5, ch. 5, § 1.]

Sec. 3. The State Superintendent of Instruction shall prescribe the standard of the course to be taught in high schools, and if the Superintendent of Public Instruction shall have prescribed a standard of instruction that requires a textbook, then the Board or body that selects textbooks for high schools shall select and prescribe the proper textbooks for the course of instruction.

Sec. 4. No person hereafter shall be certified to teach in the public schools of the State of Texas until he has secured credit for the course in both Federal and State Constitutions of the grade of instruction upon which he is applying for the certificate, that is either of the subcollege or of the college work; or in lieu thereof shall have passed an examination set by the State Superintendent of Public Instruction on the Constitutions of the United States and Texas; provided, that any person who has to his credit in any standard college or university of Texas as much as six (6) hours of American Government shall be deemed to have met the requirements of this Section. Provided further, that after September 1, 1937, no student shall be certified for graduation from any tax supported State educational institution with the award of a college degree unless such student shall have completed theretofore in a standard college or university at least six (6) hours for credit in the governments of the State of Texas or of the United States of America, or the equivalent in both; or shall have completed at least three (3) hours of said credit in Government and at least three (3) hours of credit in a course in Military Science as provided in an approved senior R. O. T. C. unit. [As amended Acts 1937, 45th Leg., p. 482, ch. 244, § 1; Acts 1939, 46th Leg., p. 284, § 1.]

Sec. 5. The teaching courses of instruction in the Constitutions provided for in this Act shall begin with the terms of school beginning on or after September 1, 1930, and the provisions of this Act with reference to graduation from any school, college, or university, or with reference to certification to teach school, shall not apply to any student graduated before September 1, 1930, or receiving a certificate to teach school before that date. Provided, however, that the terms of this bill shall not be applied to, or affect, any student who commenced his studies leading to a degree, in any of the State Institutions with the required credits prior to the time this Bill was enacted into a law, to any student, who on or before September 1st, 1929, had credits for at least half the work required for a bachelor's degree. [Acts 1929, 41st Leg., 2nd C.S., p. 164, ch. 83; Acts 1930, 41st Leg., 4th C.S., p. 5, ch. 5, § 2.]

Acts 1930, 41st Leg., 4th C.S., p. 5, ch. 5, amended sections 2 and 5 of this Article.

Section 6 of Acts 1929, 41st Leg., 2nd C.S., p. 164, ch. 83, repealed Act 1929, 41st Leg., p. 494, ch. 234. Civ.St. Art. 2663b.

H. C. R. No. 124 of the 45th Legislature 1937, Laws 1937, p. 1629, provided, omitting the preamble, that the proviso as set out in this article as amended in 1937, "be so construed and applied to affect only those students who enroll in such institutions after September 1, 1937, and shall not apply to students who enrolled in the tax-supported colleges or universities before said date."

2. STATE BOARD

Art. 2664. [2727–8] Members.—The Governor, Secretary of State and Comptroller shall constitute a State Board of Education which shall hold its sessions at Austin. The Governor shall be ex officio president of the board. The State Superintendent shall be ex officio secretary of the Board and shall keep a complete record of all its proceedings, which shall be signed by the president and attested by the secretary. [Acts 1905, p. 263.]

See Article 2675b—1 et seq., post.

Art. 2665. [2729] Apportionment, duty to make; formula.—The State Board of Education shall, on or before the first day of August in each year, based on the estimate theretofore furnished said Board by the Comptroller, make an apportionment for the ensuing scholastic year of the available State School Funds among the several counties of the State and the several cities and towns and school districts constituting separate school organizations, according to the scholastic population of each, and thereupon the Secretary shall certify to the treasurer of each such separate school organization the total amount of available school fund so apportioned to each, which certificate shall be signed by the president and countersigned by the Comptroller and attested by the Secretary.

To determine the amount of the available school fund to be apportioned, the State Board of Education shall calculate the total cost of operating public schools in Texas for a period of six (6) months, and in so doing shall proceed as follows: (1) It shall consider the average salary of a teacher to be One Hundred and Fifty Dollars ($150) a month and shall multiply this average salary by the total number of teachers, principals, supervisors and superintendents in the public schools of the State during the preceding year, and shall then multiply this product by six to determine the state public school salary cost for a period of six (6) months; (2) It shall then take one-third (⅓) of said salary cost and shall consider the product so found as the total cost of other current expense of the state public schools for a period of six (6) months; (3) It shall then add said total salary cost for six (6) months and the total cost of other current expense for six (6) months and shall consider the sum so found as the total cost of operating the public schools in Texas for a period of not less than six (6) months for the succeeding year.

When the total cost of operating the public schools of the State for not less than six (6) months has thus been legally determined for the succeeding year, this amount shall be divided by the total number of scholastics as found in the approved state school census of the preceding scholastic year and the sum so found shall be considered the per capita apportionment needed to operate the public schools of the State for not less than six (6) months, and the State Board of Education shall make said per capita apportionment if it is within the total possible revenues which would accrue to the Available School Fund for the succeeding year. Should the total cost of operating the public schools of the State as determined above exceed the total probable estimate of the Available School Fund as herein provided, then the State Board of Education shall apportion to the public schools only such per capita for the succeeding year as the probable estimate of the Available School Fund for the said year will pay. [Acts 2nd C.S., 1909, p. 432; Acts 1939, 46th Leg., p. 274, § 1; Acts 1943, 48th Leg., p. 262, ch. 161, § 1; Acts 1945, 49th Leg., p. 74, ch. 52, § 1.]

Art. 2666. [2733] New districts created at Eleemosynary Institutions.—The State Board is authorized to create new school districts at such of the several Eleemosynary Institutions of this State, including the State Orphan Home, or at any and all orphan homes or like institutions that may be established by any Fraternal organization, or at any Institution for dependent or delinquent children maintained by any County in this State; provided, that the number of children within the scholastic age in each instance be sufficient to justify such action. The territorial limits in each case shall be co-extensive with the property lines of the institution. [Acts 1905, p. 263; Acts 1931, 42nd Leg., p. 291, ch. 172, § 1.]

Art. 2667. [2734] Trustees for such districts.—Upon the exercise of such power, the State Superintendent shall appoint a board of three trustees for each district so created; and such trustees need not

be residents of such district, and the fact shall be duly certified to local authorities for information and observance; and upon the creation of such districts the trustees shall take and certify the census of the children within the scholastic age, and the funds shall thereafter be apportioned directly to such district; and the law pertaining to independent districts shall govern so far as applicable, though the State Board may make special regulations and orders for the government of such districts as they may deem expedient, provided that the State Board of Control shall be ex-officio school trustees of all such districts created at State supported institutions and all such districts whose territory is limited to lands allotted to Indians. [Acts 1905, p. 263; Acts 1931, 42nd Leg., p. 291, ch. 172, § 2.]

Art. 2668. [2735] Transfer of funds.—Upon the creation of such district, the county school superintendent shall transfer to such district whatever amount of money may have been apportioned for the current school year to the old district, for and in behalf of the children included in the new district; provided only, such children may not have had the advantage of such fund in the old district.

Art. 2669. [2736] Investing school fund.—The State Board of Education is authorized and empowered to invest the permanent public free school funds of the State in bonds of the United States, the State of Texas, or any county thereof, and the independent or common school districts, road precincts, drainage, irrigation, navigation and levee districts in this State, and the bonds of incorporated cities and towns, and obligations and pledges of the University of Texas. [Acts 1905, p. 263; Acts 1909, p. 216; Acts 1929, 41st Leg., p. 573, ch. 278, § 1.]

Sale of United States Treasury Bonds. Acts 1941, 47th Leg., p. 853, ch. 527, approved and effective June 18, 1941 authorized the State Board of Education to sell the United States Treasury Bonds held by the State Treasurer for the account of the Permanent School Fund at September 1, 1940.

Art. 2670. [2737] Purchase of bonds.—When any county bonds, or the bonds of any incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts, or obligations and pledges of the University of Texas are offered for sale, the party offering, or proposing to sell, such bonds, obligations, and pledges shall first submit them to the Attorney General, who shall carefully inspect and examine the same in connection with the law under which they were issued, and shall diligently inquire into the facts and circumstances so far as may be necessary to determine the validity thereof; and, upon being satisfied that such bonds, obligations, and pledges were issued in conformity with law, and that they are valid and binding obligations, he shall thereupon certify to their validity, and his certificate to that effect, so procured by the party offering such bonds, obligations, and pledges as the case may be, shall be submitted to the Comptroller or State Board of Education with the bonds, obligations, and pledges so offered for sale, and shall be carefully preserved by the Comptroller. If the same be purchased from the county, city, precinct, or district issuing the same or from the University of Texas, or from any person authorized to act for it in the negotiation or sale of the same, they shall thereafter be held to be valid and binding obligations in every action or proceeding in which their validity is or may be called in question, unless fraudulently issued, or issued in violation of the constitutional limitation. In every such action, such certificate of the Attorney General shall be admitted and received as prima facie evidence of the validity of such bonds, obligations, or pledges, and coupons thereto, which may have been so purchased. [Acts 1905, p. 263; Acts 1909, p. 216; Acts 1929, 41st Leg., p. 573, ch. 278, § 1.]

Art. 2671. [2738] Conditions of purchase.—The Comptroller of State Board shall carefully examine the bonds, obligations, or pledges so offered and investigate the facts tending to show the validity thereof; and such Board may decline to purchase same unless satisfied that they are a safe and proper investment for such fund. No bonds, obligations, or pledges shall be so purchased that bear less than two and one-half (2½%) per cent interest. No bonds, obligations, or pledges except those of the United States, the State of Texas, and the University of Texas, shall be so purchased when the indebtedness of the county, city, precinct, or district issuing same, inclusive of those so offered, shall exceed seven (7%) per cent of the assessed value of the real estate therein. If default be made in the payment of interest due upon such bonds, obligations, or pledges, the State Board of Education may at any time prior to the payment of such overdue interest elect to treat the principal as also due, and the same shall thereupon, at the option of said Board become due and payable; and the payment of both such principal and interest shall in all such cases be enforced in the manner provided by law, and the right to enforce such collection shall never be barred by any law or limitation whatever. [Acts 1905, p. 263; Acts 1909, p. 216; Acts 1929, 41st Leg., p. 573, ch. 278, § 1; Acts 1939, 46th Leg., p. 276.]

Art. 2672. [2739] Estoppel.—In all cases where the proceeds of the sale of any of the obligations described in the three preceding articles have been received by the proper officers of any such county, city, precinct, or district, or by the Board of Regents of the University of Texas, or by the party acting for it in negotiating the sale thereof, such county, city, precinct, district or the University of Texas shall thereafter be estopped from denying the validity of such obligations so issued, and the same shall be held to be valid and binding obligations for the amount thereof sued on and interest thereon, at the rate mentioned therein, deducting such amounts, if any, as have been previously paid thereon. [Acts 1905, p. 263; Acts 1909, p. 216; Acts 1929, 41st Leg., p. 573, ch. 278, § 1.]

Art. 2673. [2740] Option to purchase.—Whenever any county, city, independent or common school district, road precinct, drainage, irrigation, navigation or levee district of this State or the University of Texas issues any bonds, obligations, or pledges, or issues any refunding bonds in lieu of outstanding bonds which are held for the account of the State Permanent School Fund which may be redeemed before maturity and which have been called for redemption, and whenever such bonds, obligations or pledges have been approved by the Attorney General, as required by the preceding Articles, the county judge, the mayor, the president of the board of trustees of the school district, the president of the board of regents, or the county judge or party authorized by law to sell such bonds, obligations, or pledges, shall notify the State Board of Education of all bids received for such bonds, obligations, or pledges, and shall give said Board an option of ten (10) days in which to purchase same; provided, that said Board will pay the price offered therefor by the best bona fide bidder; and if the said Board fails to purchase said bonds, obligations, or pledges within said time, then such county judge, mayor, or president shall sell the same to the best bona fide bidder. If the State Board shall pay a premium out of the Permanent School Fund on any bonds, obligations, or pledges purchased as an investment for the Permanent School Fund, then the principal of such bonds, obligations, or pledges and an amount of the interest first accruing thereon equal to the premium so paid, shall be treated as the principal in such investment, and; when such first interest is collected, such sum of the same shall be returned to the Permanent School Fund, and, if they purchase said bonds, obligations, or pledges for less than par,

the discount they receive in the purchase thereof shall be paid to the Available School Fund when the said bonds, obligations, or pledges are paid off and discharged. The price paid for bonds, obligations, and pledges shall be indorsed thereon at the time the same are purchased. If the said Board shall refuse to purchase bonds, obligations, and pledges from such county, city, precinct or district or the University of Texas, or the parties to whom the same were issued, then in no event shall said Board purchase them from any subsequent owner or holder of the same. [Acts 1905, p. 263; Acts 1909, p. 216; Acts 1929, 41st Leg., p. 573, ch. 278, § 1; Acts 1943, 48th Leg., p. 369, ch. 248, § 1.]

Section 2 of the act of 1943 declared an emergency.

Art. 2674. [2742] Jurisdiction.—The district court of Travis County shall have jurisdiction of any suit upon bonds or obligations belonging to the permanent public school funds, or purchased therewith, concurrent with that of any other court having jurisdiction in said case. [Acts 1905, p. 263; Acts 1909, p. 216.]

Art. 2675. [2743] Extent of these provisions.—The provisions of the six preceding articles shall extend to any bonds or securities other than the bonds of the State or of the United States, in which the public school funds are or may be invested, as is or may be authorized or prescribed by law, and also to any bonds or securities purchased with any of the permanent funds set apart for the support, maintenance and improvement of any asylum or other institution of this State. [Id.]

Art. 2675—1. Acceptance of funds from Congress for vocational rehabilitation.—Sec. 1. The Legislature of Texas does hereby accept the provisions and benefits of an Act of Congress passed June 2, 1920, amended June 5, 1924, entitled: "An Act to provide for the promotion of Vocational Rehabilitation of persons disabled in industry or otherwise, and their return to civil employment.[1]"

Sec. 2. The Treasurer of Texas be, and he is hereby authorized and empowered to receive the funds appropriated under said Act of Congress, and is authorized to make disbursements therefrom upon the order of the State Board for Vocational Education. The State Board of Vocational Education is empowered and instructed to co-operate with the terms and conditions expressed in the Act of Congress aforesaid.

Sec. 2-a. The Vocational Rehabilitation Division, through the Supervisor of Rehabilitation, is authorized to receive gifts and donations for rehabilitation work, said gifts and donations to be deposited by the Supervisor of Rehabilitation in the State Treasury, subject to the matching of same with Federal Funds up to such amount as the Federal Government may allocate per biennium to the State for said work, and which has not already been met with state appropriations for said biennium.

Sec. 2-b. Provided no person shall ever receive any commission in whole or in part for solicitation of any funds as provided in this Act. [Acts 1929, 41st Leg., 1st C.S., p. 57, ch. 23; Acts 1933, 43rd Leg., 1st C.S., p. 274, ch. 99, § 1.]

[1] 29 U.S.C.A. § 34.

Acts 1933, 43rd Leg., 1st C.S., p. 274, ch. 99, added sections 2—a and 2—b to this Article.

Acts 1941, 47th Leg., p. 786, ch. 489, made an appropriation for the biennium ending August 31, 1943, to promote public school interests and to assist local districts in the teaching of vocational agriculture, home economics, trades and industries, vocational rehabilitation, and rehabilitation for crippled children according to the federal laws governing vocational education.

Arts. 2675a—1 to 2675a—10. [Superseded by articles 2675b—1 to 2675b—10.]

See note to Article 2675b—1, post.

Art. 2675b—1. State Board of Education, membership.—There is hereby created the State Board of Education. Said Board shall consist of nine members to be appointed by the Governor, with the advice and consent of the Senate. Of the first Board to be appointed the terms of three members shall expire on January 1, 1931; the term of the next three members shall expire on January 1, 1933; and, the terms of the remaining three members shall expire on January 1, 1935. After the first Board, the term of each member shall be for six years from the date of the respective appointments, and the appointments shall be made and the terms arranged in such manner that three of said members shall retire on the first day of January biennially, and the Governor shall biennially, on the first of January, fill such vacancies by the appointment of three members. Each member of said Board shall be a citizen at least thirty years of age and otherwise qualified to vote and no member shall at the time of his appointment, or during the term of his service, be engaged as a professional educator. [Acts 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, § 1.]

Section 11 of Act 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, repeals all conflicting laws and parts of laws, and provides that if any section or provision of the act is held invalid, such holding shall not affect the remainder. This Act is in all respects similar to Act 1929, 41st Leg., 1st C. S., p. 86, ch. 39, except section 6 thereof which read as follows: "The Superintendent of Public Instruction shall act as Secretary of the State Board of Education, but shall have no voice in its deliberations." Being a later act, it is substituted for the former act.

Art. 2675b—2. Eligibility of members.—No person who has acted as an agent for any author or textbook publishing house or as the attorney of any author or textbook publishing house, or who has been an author or associate author of any textbook published by any publishing house, or who owns stock in any textbook depository or any publishing house, or who has been directly or indirectly concerned in the authorship of any textbook or connected with any textbook publishing house, shall be eligible to appointment on the State Board of Education; and each member of the said State Board of Education shall, in addition to taking the official oath prescribed herein, file with the secretary of the said Board an affidavit that he has not been so connected directly or indirectly with the authorship of any textbook or with any textbook publishing company as prescribed above, and that he will not become so connected or interested while he is a member of the said Board. [Acts 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, § 2.]

See note to Article 2675b—1, ante.

Art. 2675b—3. Organization.—The State Board of Education shall organize by the election of one of its members as president, and the State Superintendent of Public Instruction shall be ex-officio secretary of the Board. [Acts 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, § 3.]

See note to Article 2675b—1, ante.

Art. 2675b—4. Time and place of meeting and quorum.—The State Board of Education shall meet once in every three months at the Capitol in Austin, and at such other times as may be designated by the president, or it may meet upon call of any three members of the Board. Questions necessary for the decision of the Board shall be determined by a majority vote of the members of the Board present, and for the transaction of all business six shall constitute a quorum. Said Board of Education shall adopt rules necessary for the government of its proceedings. [Acts 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, § 4.]

See note to Article 2675b—1, ante.

Art. 2675b—5. Powers and duties.—It is made the duty of the State Board of Education, created by this Act,[1] to immediately take over and discharge all duties imposed by present laws upon the Board of Education in existence at the time this Act takes effect. In addition thereto, it shall perform such other duties as may from time to time be prescribed by the

Legislature. In addition to the duties now required by law of the Board of Education, existing prior to the taking effect of this Act, the State Board of Education hereby created shall perform the following duties:

(a) It shall fairly consider the financial needs of the public free school system of this State and biennially, in advance of each Session of the Legislature, prepare a report and present the same to the Governor to be transmitted to the Legislature upon convening.

(b) It shall fairly consider the financial needs of the State institutions of higher learning and make recommendations concerning same biennially. It shall submit these recommendations to the State Board of Control, which shall embody them in its budget, together with the original requests of the several institutions of higher learning, and its own recommendations, and transmit the same to the Governor and the Legislature.

(c) It shall make formal recommendations to the Governor, and through the Governor to the Legislature, concerning all proposals for the establishment of new Educational Institutions.

(d) It shall be the duty of the State Board of Education to make a careful study of the scope and purpose of the work of the State institutions of higher learning and to make such written and statistical reports as the Board of Education may desire. It shall be the further duty of the Board of Education to recommend such changes in the courses of study of the State institutions of higher learning as the needs of the State may warrant with especial reference to elimination of any needless waste or duplication of work; provided that, before such changes in the scope of the courses offered by any State supported institution of higher learning shall be recommended, the administrative officers of the institution involved shall have an opportunity to appear before the State Board of Education to defend or oppose such changes; provided that, if the recommendations of the State Board of Education shall not be adopted by the institution concerned, said Board shall report this fact together with these recommendations to the Governor of the State and to the Legislature; provided further that it shall be the duty of the executive authorities of the State institutions of higher learning to furnish or cause to be furnished, any and all information desired by the State Board of Education or by the State superintendent of Public Instruction.

(e) The State Textbook Commission shall no longer meet or function after the taking effect of this Act,[1] and the duties heretofore devolving by law upon the State Textbook Commission shall be performed by the State Board of Education, created in this Act, and the State Board of Education, hereby created shall for the purpose of disposing of textbook matters meet at times and places that the State Textbook Commission is required to meet and act under existing law.

(f) The State Board of Education shall appoint annually a Textbook Committee to be composed of nine members, each of whom shall be an experienced and active educator engaged in teaching in the public schools of Texas. At least a majority of the members of the Committee shall be classroom teachers and all members shall be appointed because of unusual backgrounds of training and recognized ability as teachers in the subject fields for which adoptions are to be made each year.

It shall be the duty of the Committee to examine all books submitted for adoption and make its recommendations in writing to the State Board of Education relative to the teachable value of the books in the grades and subjects for which they have been submitted.

The Textbook Committee shall hold its meetings where and when the State Board of Education shall determine, and shall receive the same compensation as members of the State Board of Education as provided for in Section 10 of this Act.[2]

The qualifications prescribed for members of the State Board of Education in Section 2 of this Act[3] shall apply to the Textbook Committee provided for herein. [As amended Acts 1945, 49th Leg., p. 189, ch. 144, § 1.]

(g) It shall fairly consider the athletic necessities and activities of the public schools of Texas, and biennially, in advance of each Session of the Legislature, specifically report to the Governor of Texas, the proper and legal division of the time and money to be devoted to athletics, the proper and legal division of the time and money to be devoted to holidays, legal and otherwise, and a proper division of the time and money to be devoted to Educational purposes, and said report shall be transmitted to the Legislature next thereafter convening. [Acts 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, § 5.]

[1] Articles 2675b—1 to 2675b—10.
[2] Article 2675b—10, post.
[3] Article 2675b—2, ante.
See note to Article 2675b—1, ante.

Art. 2675b—6. Superintendent of Public Instruction.—No person shall be eligible to have his name placed either on the official primary ballot or official ballot at the general election as a candidate for Superintendent of Public Instruction or to hold the office of Superintendent of Public Instruction, who shall accept or receive contributions to his campaign expenses from any textbook publishing house or from any agent or representative of any publishing house, who at the time of such contributions was known to such candidate to be such agent or representative of any publishing house. [Acts 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, § 6.]

See note to Article 2675b—1, ante.

Art. 2675b—7. Act not to affect government of state institutions.—Nothing in this Act[1] shall be construed to lessen the powers now held by the existing governing bodies of our State Teachers Colleges, the College of Industrial Arts, the University of Texas, the Technological College, and other State institutions of higher learning. [Acts 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, § 7.]

[1] Articles 2675b—1 to 2675b—10.
See note to Article 2675b—1, ante.

Art. 2675b—8. Examination of teachers and certificates.—The State Board of Education created by this Act[1] shall prescribe rules and regulations for the certification of teachers and for the system of examining applicants for teachers' certificates and otherwise granting certificates for teaching in the public schools of this State, in accordance with the Laws of this State. [Acts 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, § 8.]

[1] Articles 2675b—1 to 2675b—10.
See note to Article 2675b—1, ante.

Art. 2675b—9. Investment of school funds.—The State Superintendent of Public Instruction shall, subject to the approval of the Board of Education hereby created, invest the permanent school fund in the class of bonds which may be bought with said funds under existing law. And, when the State Superintendent of Public Instruction exercises the option given by law for the purchase of bonds, the same shall prevent the sale of said bonds to any other party until said Board of Education, at its next meeting, has had opportunity to either approve or disapprove such purchase. If the purchase is approved, said bonds shall be paid for out of the permanent school fund, as is now provided by law; and if disapproved, then said bonds shall be released as though the option given the permanent school fund to purchase said bonds had not been exercised. [Acts 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, § 9.]

See note to Article 2675b—1, ante.

Art. 2675b—10. Compensation of members.—The members of the State Board of Education, created by this Act,[1] shall be paid Ten Dollars per day when in actual attendance upon Board Meetings, and shall be entitled to actual traveling and other necessary expenses incurred in the discharge of their duties. Each member shall take the Constitutional oath of office. [Acts 1929, 41st Leg., 2nd C.S., p. 12, ch. 10, § 10.]

[1] Articles 2675b—1 to 2675b—10.
See note to Article 2675b—1, ante.

3. EDUCATIONAL SURVEY COMMISSION

Arts. 2675a–2675i. [Expired]

Articles 2675a–2675f, derived from Acts 1923, 38th Leg., ch. 124, p. 258, §§ 1–6, provided for an Educational Survey Commission to make a survey of the public educational system of the State, including all schools and educational institutions supported in whole or in part by public taxation, and all administrative departments connected therewith. It was provided that the Commission should report its findings and recommendations to the Governor and Legislature not later than Dec. 1, 1924.

Articles 2675g–2675i, derived from Acts 1925, 39th Leg., ch. 187, p. 459, §§ 1–3, extended the term of office of the Educational Survey Commission for a period of two years.

4. PHYSICAL RESTORATION OF CRIPPLED CHILDREN

Art. 2675j. Rehabilitation Division of State Department of Education.

Creation

Sec. 1. That there is hereby created in the Rehabilitation Division of the State Department of Education, a physical restoration service for crippled children under twenty-one years of age. This service shall make provision for locating, examining and physically restoring crippled children of the State as hereinafter provided.

Children eligible

Sec. 2. A crippled child is defined as any person of normal mentality, under twenty-one years of age, whose physical functions or movements are impaired by reason of a joint, bone, or muscle defect or deformity, to the extent that the child is or may be expected to be totally or partially incapacitated for education or remunerative occupation. To be eligible for service under this Act, the child's disability must be such that it is reasonable to expect that such child can be improved through hospitalization, medical or surgical care, artificial appliances, or through a combination of these services.

Powers of Rehabilitation Division; compensation for treatment; artificial appliances; rules and regulations

Sec. 3. The Rehabilitation Division of the State Department of Education is empowered to take census, make surveys, and establish permanent records of crippled children; to cooperate with the Department of Education in providing special equipment and instruction in the education of crippled children, to procure medical and surgical service for crippled children; provided that only physicians legally qualified to practice medicine and surgery in Texas be employed for purposes of diagnosis and treatment; provided further, however, that for crippled children having defects of the oral cavity, legally qualified dentists may be employed for purposes of diagnosis and treatment; that not more than the customary minimum fees be paid for such services, and that physicians, dentists, or surgeons so employed shall be approved by the State Board of Health as qualified to render such service; to select and designate hospitals for the care of crippled children contemplated by this Act providing that such hospital must be approved by the State Board of Control, and to take such other steps as may be necessary in order to accomplish the purposes of this Act.

At the discretion of the State Department of Education, transportation, appliances, braces, and material necessary in the proper handling of crippled children may be in part or entirely provided.

The Rehabilitation Division of the State Department of Education is directed to provide in Rules and Regulations, the necessary details for the conduct of this work, in accordance with the purposes of this Act, which shall permit as far as possible, the free choice of patients in their selection of physicians and hospitals, and shall arrange with hospitals, brace departments, and other services providing for crippled children's work, compensation for such services, provided that such fees or charges shall not exceed the average minimum charges for the same services rendered to average war patients in the hospitals approved for purpose of this Act, such Rules and Regulations shall be approved by the State Department of Education. [As amended Acts 1935, 44th Leg., p. 328, ch. 121, § 1; Acts 1937, 45th Leg., p. 411, ch. 207, § 1.]

Certification by county judge

Sec. 4. That no child shall be entitled to the care and treatment provided in this Act unless the county judge of the county in which said child resides shall certify to the Rehabilitation Division of the State Department of Education upon sworn petition of the parents of said child, or persons standing in loco parentis, proven to the satisfaction of said judge, that the parents of said child, or persons standing in loco parentis, are financially unable to provide for said care and treatment.

That children whose parents, or those in loco parentis are financially able to pay in part for such treatment and care may be provided for by the Rehabilitation Division under such rules and regulations as may be prescribed by the Department of Education.

Provided further that said county judge must also certify that one or more physicians, regularly practicing under the laws of the State of Texas, have examined said child and have recommended said child as coming under the provisions and intent of this Act. Provided further that no judge or official agent shall, by virtue of this Act, have any right to enter any home over the objection of the parents, or either of them, or the person standing in loco parentis of such child, and nothing in this Act shall be construed as limiting the power of a parent or guardian or person standing in loco parentis over such child.

Special supervisor; additional powers of Department of Education

Sec. 5. The State Department of Education is authorized to employ a special supervisor who shall carry out the provisions of this Act under the direction of the State Supervisor of Vocational Rehabilitation. The State Department of Education is further authorized to make such rules, regulations and policies as are necessary to carry out the provisions of this Act, and to secure such clerical assistance, equipment and supplies as are needed.

Appropriation

Sec. 6. There is hereby appropriated Twenty Thousand ($20,000.00) Dollars, from the General Revenue Fund for the biennium ending August 31st, 1935, for carrying out the provisions of this Act; provided that not more than five per cent of the total appropriation may be spent for office supplies and equipment.

Donations; payments of funds; reports

Sec. 7. The State Department of Education is authorized to receive gifts and donations for this work. All gifts and donations for crippled children's work shall be paid into the State Treasury and the same are hereby reappropriated for the purposes of this Act. The Treasurer of the State of Texas shall pay

out all money and funds provided for this Act upon proper warrant issued by the Comptroller of the State of Texas drawn upon vouchers approved by the State Department of Education and the Department of Education shall report annually to the Governor amounts received and expended and work accomplished.

Other powers of Vocational Rehabilitation Division

Sec. 8. The Vocational Rehabilitation Division of the State Department of Education is empowered and directed to take all action necessary to accomplish the purposes provided or implied by this Act, and to co-operate with public agencies, state, county and local, and with private agencies and individuals interested in the welfare of crippled children. The Vocational Rehabilitation Division, through the State Department of Education is further empowered and directed to work in co-operation with all acts relating to rehabilitation of crippled persons now in effect or enacted in the future. [Acts 1933, 43rd Leg., p. 400, ch. 158.]

Acts 1935, 44th Leg., p. 328, ch. 121, § 1, amended section 3 of this Article.

CHAPTER II.—COUNTY SCHOOLS

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1. TRUSTEES

Art. 2676. Election.—The general management and control of the public free schools and high schools in each county, unless otherwise provided by law shall be vested in five (5) county school trustees elected from the county, one of whom shall be elected from the county at large by the qualified voters of the common and consolidated independent school districts of the county, and one from each Commissioners' Precinct by the qualified voters of each Commissioners' Precinct, who shall hold office for a term of two years.

The time for such election shall be the first Saturday in April of each year; the order for the election of county school trustees to be made by the county judge at least thirty days prior to the date of said election, and such order shall designate one voting place for each common school district. The election officer appointed to hold the election for trustees in each common school district shall hold the election at the same place therein for the county school trustees. Each year there shall be elected alternately two (2) county school trustees and three (3) county school trustees in each county. The State Superintendent shall prepare a proper form of the ballot to be used in such election and such other explanation of the laws as he deems necessary, and transmit the same to the county judge of each county at least sixty days prior to the date of such election. All vacancies shall be filled by the remaining trustees. All elections heretofore held in accordance with the foregoing provisions of this section are hereby in all things validated and all trustees so elected shall continue to hold office until the expiration of the term for which they were originally elected.

All laws and parts of laws in conflict herewith shall be and the same are hereby repealed. [Acts 1915, p. 69; Acts 1932, 42nd Leg., 3rd C.S., p. 98, ch. 34; Acts 1934, 43rd Leg., 2nd C.S., p. 108, ch. 48, § 1.]

Art. 2677. Qualifications.—The county school trustees shall be qualified voters of the precinct or county from which they are elected, and four of them shall reside in different commissioners precincts. They shall be of good moral character, able to read and speak the English language, shall be persons of good education, and shall be in sympathy with public free schools. The returns of their election shall be made to the county clerk within five days after such election shall have been held, to be delivered by him to the commissioners court at its first meeting thereafter to be canvassed and the results declared as in cases of other elections. The county clerk shall issue to said trustees their commissions and impress thereon the seal of the said court after they have taken the official oath and filed same with said clerk. [Acts 1915, p. 69.]

Art. 2678. [Repealed by Acts 1927, 40th Leg., p. 259, ch. 181, § 2; Acts 1929, 41st Leg., 1st C.S., p. 2, ch. 2, § 2.]

Art. 2678a. Classification of schools.—The county board of school trustees, at the regular meeting in May of each year or as soon thereafter as practicable, shall classify the schools of the county, including those in independent school districts, in accordance with such regulations as the state superintendent may prescribe into elementary schools and high schools for the purpose of promoting the efficiency of the elementary schools and of establishing and promoting high schools at convenient and suitable places. In classifying the schools and in establishing high schools, said trustees shall give due regard to schools already located, to the distribution of population, and to the advancement of the students in their studies. In the event any school is so classified that a resident high school student within the free school age cannot receive instruction in his home district, his tuition for the number of months attended in any other high school recognized by either county or state shall be paid by warrants drawn by the local board of trustees on funds of said district and approved by the county superintendent. Provided, that if the said student, after having completed the course of study offered in in his home district is not prepared to enter a high school recognized by either the county or the state, the superintendent of the school district which maintains the high school he desires to attend shall place said student in the proper grade, and said district shall be entitled to receive tuition for said student in the same manner as if said student should attend the high school of said district. If the high school attended receives the transfer of state and county funds for said student, credit shall be given for the amount of same. The rate of tuition charged said pupil shall be the actual cost of teaching service, based upon the average monthly enrollment in the high school attended, exclusive of all other current or fixed charges, not to exceed $7.50 per month. Said tuition rate shall be agreed upon between the board of trustees of the district in which such high school is located and the county board of school trustees, or in the event of their disagreement shall be fixed by the State Superintendent of Public Instruction subject to appeal to the State Board of Education; and the principal of the high school or the superintendent of the schools of said district shall furnish a statement to the County Board of trustees supported by affidavit containing such information as may be necessary to carry out the provisions of this Act. On or before September first of each scholastic year, it shall be the duty of the board of trustees of each school district under the supervision of the county board of trustees and which does not offer high school training for all resident pupils within the free school age to prepare on forms and file with the county superintendent a budget prepared and furnished by the State Superintendent of Public Instruction of its proposed expenditures for the current year, which budget shall include the amount necessary for the payment of high school tuition charges as prescribed in this Act, and the amount of tuition payments so budgeted and approved by the county board of trustees shall not be expended for any other purpose in the maintenance of the current school term except with the approval of the county superintendent and county board of trustees.

For all school districts whose funds may not be sufficient to pay the tuition of resident students attending high school elsewhere, the county board of trustees shall, on or before the first of June of each scholastic year, apply to the State Board of Education for the funds with which to pay the tuition accounts of the said districts, or such part of them as the district is financially unable to pay; the said application to be approved by the county superintendent and supported by a sworn statement of the local district trustees as to such tuition charges. And on the approval of the said application by the State board of Education, the State Superintendent of Public Instruction shall transmit to the county school depository, by warrant drawn by the State Comptroller against any appropriation made by the Legislature for this purpose and payable to the County High School Tuition Fund, the funds with which to pay such tuition, and the county superintendent shall, with the approval of the county board of trustees, issue vouchers in payment of the outstanding tuition accounts of the said districts of his county and to reimburse such of them as have paid, in whole or in part, the tuition accounts of resident high school pupils as prescribed herein. Provided that the receiving district maintaining such a high school shall not be required to accept such a high school transfer as provided in this Act, unless and until such sending district shall have provided for the assessment and collection of a local tax not less than fifty cents on the one hundred dollars valuation of taxable property within such district. [Acts 1927, 40th Leg., p. 259, ch. 181, § 1; Acts 1929, 41st Leg., 1st C.S., p. 2, ch. 2, § 1.]

Section 2 of the Act of 1929 repeals Rev.St.1925, art. 2678, and all conflicting laws and parts of laws.

This article contravenes constitutional provisions as to equality of taxation and due process. City of Dallas v. Love, Civ.App., 23 S.W.2d 431, affirmed 120 T. 351, 40 S. W.2d 20.

Art. 2679. Classification of high schools.—The public high schools of the State shall, upon satisfactory evidence, be ranked by the State Department of Education as follows:

1. A high school of the first class shall be one which maintains at least four years or grades of work above the seventh grade or years, may include in its curriculum the first seven grades or years of work, shall employ at least two teachers to teach high school subjects, who shall each hold a State first grade certificate or certificate of higher grade, and shall be maintained for not less than eight scholastic months during each school year.

2. A high school of the second class shall be one which maintains at least three years or grades of work above the seventh grade or year, and shall otherwise conform to the requirements for the first class.

3. A high school of the third class shall be a high school which maintains at least two years or grades of work above the seventh grade or year, may include in its curriculum the first seven years or grades of work, shall employ at least one teacher to teach high school subjects, who shall hold a State first grade certificate or certificate of higher grade, and shall be maintained for not less than seven scholastic months during each school year.

Each such class of high schools shall be entitled to receive a certificate of approval or classification from the State Department of Education. Other high schools shall not be prohibited by this law, but shall not be entitled to receive such certificate. A grade or year of work as herein mentioned shall consist of not less than thirty-two weeks of five days each. [Acts 1911, p. 34; Acts 1915, p. 71.]

Art. 2680. Subjects in high schools.—Besides the subjects prescribed by law to be taught in the public schools of Texas, such additional subjects as agriculture, manual training, domestic economy or other vocational branches shall be included in the course of study in all high schools provided for herein which are located outside of incorporated towns and cities, and special attention shall be given to teaching said subjects. [Acts 1915, p. 71.]

Art. 2681. School districts.—The county school trustees are authorized to exercise the authority heretofore vested in the commissioners court with respect to subdividing the county into school districts, and making changes in school district lines. Said trustees shall call an annual joint meeting of the district and county school trustees of the county to be held at the county seat at some convenient season in August or September of each year, to be presided over by the chairman of the county school trustees. They shall consider questions dealing with the location of high schools and the teaching of high school subjects, the classification of schools and such other matters as may pertain to the location, conduct, maintenance and discipline of schools, the terms thereof, and other matters of interest in school affairs of the county, and the county school trustees shall be guided in their action by the result of the deliberation of such meeting, not inconsistent with law. The county school trustees may also call other meetings of the district school trustees, when deemed necessary by them, or on the petition of a majority of such district school trustees. The county superintendent, as secretary of the county school trustees, shall keep an accurate and complete record in a well bound book provided for that purpose, the field notes of all changes made in school district lines, and of all proceedings of the county school trustees. A certified copy of such change in a school district line shall be made and transmitted by the county superintendent to the county clerk, and the county clerk shall record the field notes and certified copy of such change in a well bound book to be designated as the "Record of School Districts." In providing better schooling for the children and in carrying out the provisions of article 2678, the county superintendent shall, on the recommendation of the county school trustees, transfer children of scholastic age from one school district to another, and the amount of funds to be transferred with each child of scholastic age shall be the amount to which the district from which the child is transferred is entitled to receive. [Id.]

Art. 2682. Supervisory powers of district court.—The district court shall have general supervisory control of the actions of the county board of school trustees in creating, changing and modifying school districts. [Id.]

Art. 2683. Powers of trustees.—The county school trustees of each county shall constitute a body corporate, by the name of the county school trustees of ———— County, State of Texas, and in that name may acquire and hold real and personal property, sue and be sued, and may receive bequests and donations or other moneys or funds coming legally into their hands, and may perform other acts for the promotion of education in the county. The title to any school property belonging to the county, the title of which has heretofore been vested in the County Judge and his successors in office, or any school property that may be acquired, shall vest in the county school trustees and their successors in office for public free school purposes. [As amended Acts 1947, 50th Leg., p. 332, ch. 190, § 1.]

Art. 2683a. Appropriation and use of donations.—Section 1. The Board of Trustees of the Public Free Schools of the State of Texas are authorized to make appropriations of funds and/or other property and the income therefrom, heretofore donated or which may hereafter be donated to them, when the specific purpose for such donation has not been designated by the donor, for the purpose of creating and establishing a retirement fund for the Superintendents, Principals, Supervisors, Teachers and other regular salaried employees in said schools, in their respective districts, and said Board of Trustees shall appropriate any such fund or other property and the income therefrom for such purpose when petitioned by the donor or his or her legal representatives when such funds and/or other property and the income therefrom heretofore donated have not been appropriated for other purposes. The Board of Trustees shall make provisions for the management and administration of said fund and/or other property and the income therefrom, and shall prescribe rules and regulations under which said fund or other property or the income therefrom shall be paid to said Superintendents, Principals, Supervisors, Teachers and other regular salaried employees, provided that no funds derived by way of taxation shall be used for said purpose.

Sec. 2. If any section, subsection, clause, sentence or phrase of this Act is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each portion thereof, irrespective of the fact that any one of the sections, subsections, sentences, clauses or phrases be declared unconstitutional. [Acts 1935, 44th Leg., p. 706, ch. 302.]

Art. 2683b. Special schools for Veterans of World War II.—Sec. 2. The county school trustees of every county in the State of Texas are hereby authorized to maintain, operate and administer special schools in their respective counties and establish classes therein for the education and vocational training of veterans of World War II and also for any other educational benefits which may be provided by law for such veterans, all such schools and classes to be conducted under the jurisdiction and supervision of the respective county school boards in their respective counties. Provided, however, that no provision of the herein Section 2 of this Act shall apply to those counties in which a tax supported college or junior college is already operating such non-credit classes and schools for Veterans of World War II.

Sec. 3. The State Board for Vocational Education is hereby authorized to allocate and pay to the respective county boards of trustees of the respective counties in this state, and such county trustees are hereby authorized to receive, such money as well as any private donations made for the same purpose and shall stand charged with the power and duty to maintain, operate and administer the same for the purposes above stated.

Sec. 4. The county school trustees are authorized to employ instructors, as they may deem necessary, and to do and perform all things which they deem proper for the successful operation of such schools, and pay for all such by warrants drawn on funds received by them for the purpose. [Acts 1947, 50th Leg., p. 232, ch. 190.]

Art. 2684. Organization.—At the regular meeting in May, the county trustees shall elect one of their number president; and three trustees shall be a quorum to transact business, and all questions shall be decided by majority vote. The secretary shall keep a true and correct record of all the proceedings of said county school trustees in a well bound book, which shall be open to public inspection. He shall keep an accurate record of the term of office of each common school district and county school trustee, and shall furnish the county judge at least sixty days prior to the date of their election the number of trustees to be elected in each district or precinct or in the county at large.

Art. 2685. Apportionment of fund.—Upon receiving notice from the State Superintendent of the amount of State available school funds apportioned to the county, exclusive of all independent districts having each more than one hundred and fifty scholastics, the county school trustees, acting with the county superintendent, shall apportion all available State and county funds to the school districts as prescribed by law. [Acts 1915, p. 71.]

Art. 2685a. Expenses of administering scholastic affairs in certain counties.—That in each county of this State with a population of not less than thirteen thousand, six hundred (13,600) and not more than thirteen thousand, six hundred fifty (13,650), and in all counties containing a population of not less than fifteen thousand, two hundred (15,200) and not more than fifteen thousand, seven hundred (15,700), as shown by the Federal Census last preceding such action, the county board of trustees is hereby authorized to set aside from the Available School Fund of the county, in accordance with the provisions of the General Law governing the assessment for the support of the county superintendent's office, an amount not to exceed Six Hundred Dollars ($600) to defray the expenses of the county superintendent and the county board of trustees in the administration of the scholastic affairs of the county. [Acts 1935, 44th Leg., p. 437, ch. 175, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 2685b. Counties of 5,100 to 5,200; expenses of administering scholastic affairs.—In each county of this State with a population of not less than five thousand one hundred (5,100) nor more than five thousand two hundred (5,200) as shown by the Federal Census of 1930, the county board of trustees is hereby authorized to set aside from the Available School Fund of the county, in accordance with the provisions of the General Law governing the assessment for the support of the county superintendent's office, an amount not to exceed Six Hundred ($600.00) Dollars per year to defray the expenses of the County Judge serving as ex-officio County Superintendent within the county. [Acts 1939, 46th Leg., Spec.L., p. 627, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2685b—1. Counties of 5,950 to 6,050; expenses of administering scholastic affairs.—In each county of this State with a population of not less than five thousand, nine hundred and fifty (5,950) nor more than six thousand and fifty (6,050), as shown by the Federal Census of 1940, the county board of trustees is hereby authorized to set aside from the Available School Fund of the county, in accordance with the provisions of the General Law governing the assessment for the support of the county superintendent's office, an amount not to exceed Nine Hundred Dollars ($900) per year to defray the expenses of the County Judge serving as ex officio county superintendent within the county. [Acts 1941, 47th Leg., p. 119, ch. 92, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 2686. Appeals.—All appeals from the decision of the County Superintendent of Public Instruction shall lie to the County Board of School Trustees, and should either party decide to further appeal such matters, they are here given the right to elect to appeal to any court having proper jurisdiction of the subject matter; or to the State Superintendent of Public Instruction as now provided by law, provided the election of which course of appeal the party or parties desire to pursue, shall be given within five days from the final decision of said County Board of School Trustees, provided this act shall not apply to any controversy now pending or to any orders of school authorities made more than five days before this act becomes effective. [Acts 1915, p. 71; Acts 1927, 40th Leg., p. 128, ch. 83, § 1.]

Section 1 of Acts 1927, 40th Leg., p. 128, ch. 83, repeals all conflicting laws and parts of laws.

Art. 2687. Meetings.—The County School Trustees shall hold meetings once each quarter, on the first Monday in August, February, May and November, or as soon thereafter as practicable, and at other times when called by the President of the County School Trustees or at the instance of any two (2) members of the County School Trustees and the County Superintendent, the meeting place to be at the county seat and in the office of the County Superintendent. Each Trustee shall be paid Six Dollars ($6) per day, but not to exceed Seventy-two Dollars ($72) in any one year, for the time spent in attending such meetings, out of the State and County Available School Fund by warrants drawn on order of the County Superintendent and signed by the President of the County School Trustees, after approval of the account, properly sworn to by the President of the County School Trustees. [Acts 1915, p. 71; Acts 1937, 45th Leg., p. 644, ch. 315, § 1; Acts 1945, 49th Leg., p. 371, ch. 238, § 1; Acts 1947, 50th Leg., p. 327, ch. 187, § 1.]

In all counties in Texas having a population of not less than forty-three thousand, one hundred and eighty (43,180) and not more than forty-four thousand, one hundred (44,100) population according to the last preceding Federal Census, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practical, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three members of said Board, and the County Superintendent, the meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the County Courthouse as may be designated by the President of said Board of County School Trustees. Each county school trustee shall be paid Five Dollars ($5) per day for the time spent in attending such meetings not to exceed twenty-four (24) days in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act. [Added Acts 1937, 45th Leg., p. 204, ch. 108, § 1.]

(a) In all counties in Texas having a population of not less than forty-eight thousand, five hundred and sixty (48,560) and not more than forty-eight thousand, six hundred and sixty-five (48,665), according to the last preceding Federal Census;

(b) in counties containing a population of not less than thirty thousand, and twenty (30,020) and not more than thirty thousand, one hundred and twenty-five (30,125), according to the last preceding Federal Census;

(c) in counties containing a population of not less than ten thousand, three hundred and seventy (10,370) and not more than ten thousand, four hundred and seventy-five (10,475), according to the last preceding Federal Census;

(d) in counties having a population of not less than fourteen thousand, five hundred and eighty (14,580) and not over fourteen thousand, five hundred and ninety (14,590), according to the last preceding United States Census, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practicable, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board and the County Superintendent; the meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the County Courthouse as may be designated by the President of said Board of County School Trustees. Each County School Trustee shall be paid Five Dollars ($5) per day for the time spent in attending such meetings not to exceed twenty-four (24) days in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act. [Added Acts 1937, 45th Leg., p. 795, ch. 389, § 1.]

(e) In all counties in Texas having a population of not less than thirty-seven thousand, five hundred (37,500), and not more than thirty-eight thousand, six hundred (38,600), according to the last preceding Federal Census and each succeeding Federal Census, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practical, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board, and the County Superintendent, the meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the County Courthouse as may be designated by the President of said Board of County School Trustees. Each county school trustee shall be paid Seven Dollars ($7) per day for the time spent in attending such meetings, but not to exceed One Hundred and Twelve Dollars ($112) in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act. [Added Acts 1939, 46th Leg., Spec.L., p. 691, § 1.]

In all counties in Texas having a population of not less than thirty thousand, two hundred and eighty-five (30,285) and not more than thirty thousand, two hundred and ninety-one (30,291), according to the last preceding Federal Census, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practicable, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board and the County Superintendent, the meeting place to be at the county seat and in the office of the County Superintendent, or at such other p'ace in the county courthouse as may be designated by the President of said Board of County School Trustees. Each County School Trustee shall be paid Four Dollars ($4) per day for the time spent in attending such meetings not to exceed twenty-five (25) days in any one year. Such compensation shall be paid out of the State and County Available School Fund as the law now provides. [Added Acts 1939, 46th Leg., Spec.L., p. 688, § 1.]

In all counties in Texas having a population of not less than fifty-three thousand, nine hundred and thirty (53,930) and not more than fifty-three thousand, nine hundred and forty (53,940), according to the last preceding Federal Census, the County School Trustees shall hold meetings twice each month on the first and third Mondays in each month, or as soon thereafter as practicable, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board and the County Superintendent; their general meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the Courthouse as may be designated by the President of the Board of County School Trustees. A minimum of twelve (12) meeting days of the Board of County School Trustees each year shall be devoted to visiting and inspecting the schools of the county, in both common and independent districts, and in company with the County Superintendent. Each County School Trustee shall be paid Five Dollars ($5) per day for the time spent in attending such meetings not to exceed twenty-four (24) days in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act. [Added Acts 1939, 46th Leg., Spec.L., p. 694, § 1.]

Section 2 of the Act of 1937, ch. 315 provided that the provisions thereof should be cumulative. Section 2 of the Act of 1937, ch. 108 and section 2 of Acts 1937, ch. 389, and section 2 of the Act of 1939, Spec.L., pp. 688, 691, and 694, provided that the provisions thereof were cumulative, but in case of conflict the provisions of the Act should control.

Art. 2687a. Transportation of pupils.—The trustees of any school district, common or independent, making provision for the transportation of pupils to and from school, shall for such purpose employ or contract with a responsible person or firm. No person shall be employed to transport pupils, who is not at least twenty-one years of age and a competent driver of motor vehicles and sound in body and mind. All motor vehicles operated by school districts, directly or by contract, in the transportation of pupils shall be covered and so glassed or curtained at the sides and rear as to protect the pupils from the inclemencies of the weather, and shall at all times be equipped with efficient lights and brakes. The drivers of all school transportation vehicles shall be required to give bond for such amount as the Board of Trustees of the district may prescribe, not less than $2,000.00, payable to the district, and conditioned upon the faithful and careful discharge of their duties for the protection of the pupils under their charge and faithful performance of the contract with [1] School Board; and they shall, before crossing any railroad or interurban railway tracks, bring their vehicles to a dead stop. Failure to stop before crossing such railway as provided herein shall forfeit the drivers contract and, in case of accident to pupils or vehicles the bond shall be forfeited and the amount and all right thereunder shall be determined by a court of competent jurisdiction. [Acts 1929, 41st Leg., 1st C.S., p. 96, ch. 42, § 1.]

[1] So in enrolled bill. Word "said" should probably be inserted.

Art. 2687—b. Meetings in counties of 130,000 to 133,000 population.—In all counties in Texas having a population of not less than one hundred and thirty thousand (130,000) and not more than one hundred and thirty-three thousand (133,000), according to the last preceding Federal Census, the County School Trustees shall hold meetings once each month on the first Monday of each month, or as soon thereafter as practicable, or at such other times when called by the President of the Board of County School Trustees

or at the instance of any three (3) members of said Board and the County Superintendent; the meeting place to be at the County Courthouse and in the office of the County Superintendent, or at such other place in the County Courthouse as may be designated by the President of said Board of County School Trustees. Each County School Trustee shall be paid Six Dollars ($6) per day for the time spent in attending said meetings, not exceeding twenty-four (24) days in any one year. Such compensation shall be paid out of the school administration fund of said county by warrants drawn against such fund as the law now provides, after the approval of this Act. [Acts 1937, 45th Leg., 1st C.S., p. 1820, ch. 40, § 1.]

Section 2 of the Act of 1937 provided that the provisions thereof should be cumulative, but that in case of conflict the provisions of such act should control.

Art. 2687c. Meetings in counties of 48,800 to 50,400; compensation.—Section 1. In all counties in Texas having a population of not less than forty-eight thousand, eight hundred (48,800) and not more than fifty thousand, four hundred (50,400) inhabitants, according to the last preceding Federal Census, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practicable, or at such other time when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board and the County Superintendent, the meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the county courthouse as may be designated by the President of said Board of County School Trustees. Each County School Trustee shall be paid Five Dollars ($5) per day for the time spent in attending such meeting not to exceed twenty-four (24) days in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act.

Sec. 2. The provisions of this Act shall be cumulative of all laws on the subject of this Act when not in conflict herewith, but in case of conflict the provisions of this Act shall control and be effective. All laws in conflict with this Act are hereby repealed to the extent of such conflict. [Acts 1941, 47th Leg., p. 1314, ch. 587.]

Art. 2687d. Meetings of trustees in certain counties; compensation.—Section 1. In all counties in this State having a population of not less than fifty thousand, nine hundred and fifty (50,950) nor more than fifty-one thousand, one hundred (51,100), all counties having a population of not less than thirty-four thousand (34,000) nor more than thirty-five thousand (35,000), and all counties having a population of not less than twenty-nine thousand, two hundred and twenty-five (29,225) nor more than twenty-nine thousand, two hundred and forty (29,240), according to the last preceding Federal Census, the County School Trustees shall hold meetings once each quarter on the first Monday in August, November, February, and May, or as soon thereafter as is practicable, or such meetings may be held on the first Monday in each month and at such other times when called by the President of the Board of County School Trustees or at the instance of any two (2) members of such Board and the County Superintendent.

The meeting place shall be at the county seat, and, if convenient, in the office of the County Superintendent. Each Trustee shall be paid Four Dollars ($4) per day for the time spent in attending such meetings, not to exceed twenty-five (25) days in any one year, to be paid out of the State and County Available School Fund by warrant drawn on the order of the County Superintendent and signed by the President of the Board of County School Trustees, after approval of the account, properly sworn to by the President of the Board of County School Trustees.

Sec. 1a. In all counties in this State having a population of not less than twenty-three thousand and five (23,005) nor more than twenty-three thousand, three hundred (23,300), according to the last available Federal Census as same now exists or may hereafter exist, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practicable, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board and the County Superintendent; the meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the County Courthouse as may be designated by the President of said Board of County School Trustees. Each County School Trustee shall be paid Five Dollars ($5) per day for the time spent in attending such meetings, not to exceed fifteen (15) days in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act.

Sec. 1b. In all counties in this State having a population of not less than thirty-one thousand, eight hundred and thirty (31,830), nor more than thirty-two thousand, nine hundred and forty-one (32,941), according to the last available Federal Census as same now exists and may hereafter exist, the County School Trustees shall hold meetings once each month on the first Monday in each month, or as soon thereafter as practicable, or at such other times when called by the President of the Board of County School Trustees, or at the instance of any three (3) members of said Board and the County Superintendent; the meeting place to be at the county seat and in the office of the County Superintendent, or at such other place in the County Courthouse as may be designated by the President of said Board of County School Trustees. Each County School Trustee shall be paid Four Dollars ($4) per day for the time spent in attending such meeting, not to exceed eighteen (18) days in any one year. Such compensation shall be paid out of the school administration fund of each county by warrants drawn against such fund as the law now provides, after the approval of this Act.

Sec. 2. The provisions of this Act shall be cumulative of all existing laws on this subject when not in conflict herewith. All laws or parts of laws in conflict herewith are repealed. [Acts 1941, 47th Leg., p. 1302, ch. 577.]

2. SUPERINTENDENT

Art. 2688. [2750] Office established.—The Commissioners Court of every county having three thousand (3,000) scholastic population or more as shown by the preceding scholastic census, shall at a General Election provide for the election of a County Superintendent to serve for a term of four (4) years, who shall be a person of educational attainments, good moral character, and executive ability, and who shall be provided by the Commissioners Court with an office in the courthouse, and with necessary office furniture and fixtures. He shall be the holder of a teacher's first grade certificate or teacher's permanent certificate. In every county that shall attain three thousand (3,000) scholastic population or more, the Commissioners Court shall appoint such superintendent who shall perform the duties of such office until the election and qualification of his successor. In all counties now or hereafter having the office of County Superintendent where the scholastic population according to the last scholastic census is less than three thousand (3,000) but more than two thousand (2,000) the office of County Superintendent shall continue unless and until a majority of the qualified property tax paying voters of said county, voting at an election held to determine whether said office shall be abolished, shall vote to abolish said office, which election shall be

ordered by the Commissioners Court upon petition therefor as hereinafter specified. Provided, however, that if a majority of said voters voting at said election hereinabove provided for, vote to abolish said office said election shall not become effective until the expiration of the term of office for which the County Superintendent has been elected or appointed. And in all other counties having less than three thousand (3,000) scholastic population whenever more than twenty-five (25) per cent of the qualified voters of said county as shown by the vote for Governor at the preceding General Election shall petition the Commissioners Court therefor, said Court shall order an election for said county to determine whether or not the office of County Superintendent shall be created in said county; and, if a majority of the qualified property taxpaying voters voting at said election shall vote for the creation of the office of County Superintendent in said county, the Commissioners Court, at its next regular term after the holding of said election, shall create the office of County Superintendent, and name a County Superintendent who shall qualify under this Chapter, and hold such office until the next General Election. Provided, that in all counties having a population in excess of three hundred and fifty thousand (350,000) inhabitants, according to the last available Federal Census, the County Superintendent shall be appointed by the County Board of Education, and shall hold office for four (4) years, provided further, that this provision shall not operate so as to deprive any elected superintendent of his office prior to the expiration of the term for which he has been elected; provided further that in counties having a scholastic population of between three thousand (3,000) and five thousand (5,000) scholastics, wherein the office of County Superintendent has not been created and a superintendent elected, then in such counties the question of whether or not such office is established shall be determined by the qualified voters of said county in a special election called therefor by the Commissioners Court of said county, upon petition therefor as hereinabove specified. [Acts 1905, p. 263; Acts 1907, p. 210; Acts 1931, 42nd Leg., p. 849, ch. 357; Acts 1932, 42nd Leg., 3rd C.S., p. 47, ch. 21, § 1; Acts 1945, 49th Leg., p. 287, ch. 208, § 1.]

Art. 2688a. Terms of county superintendents.—In all counties in which the county superintendent of schools is chosen by popular election the term of office shall be four years. [Acts 1930, 41st Leg., 5th C.S., p. 207, ch. 61, § 1.]

See note to article 2688b, post.

Art. 2688b. Appointment of county superintendent in counties of over 350,000.—In all counties having a population in excess of three hundred and fifty thousand (350,000) inhabitants, according to the last available Federal census, the County Superintendent shall be appointed by the Board of County School Trustees and shall hold office for four (4) years. [Acts 1934, 43rd Leg., 2nd C.S., p. 162, ch. 67, § 1.]

Section 2 of this Act designates this article as article 2688a, but, inasmuch as a previous article has been so designated, it is here published as article 2688b.

Art. 2689. [2751] Bond.—The county superintendent shall first take the official oath and shall enter into a bond in the sum of one thousand dollars with good and sufficient sureties, to be payable to and approved by the commissioners court, conditioned upon the faithful performance of his duties. Any sum collected on a forfeiture of said bond shall become a part of the available county school fund. [Acts 1905, p. 263.]

Art. 2690. [2752] Supervision of schools.—The county superintendent shall have, under the direction of the State Superintendent, the immediate supervision of all matters pertaining to public education in his county. He shall confer with the teachers and trustees and give them advice when needed, visit and examine schools, and deliver lectures that shall tend to create an interest in public education. He shall spend four days each week visiting the schools while they are in session, when it is possible for him to do so. He shall have authority over all of the public schools within his county, except such of the independent school districts as have a scholastic population of five hundred or more. In such independent school districts as have less than five hundred scholastic population, the reports of the principals and treasurers to the State Department of Education shall be approved by the county superintendent before they are forwarded to the State Superintendent. All appeals in such independent school districts shall lie to the county superintendent, and from the decisions of the county superintendent to the State Superintendent, and thence to the State Board of Education. [Id.; Acts 1907, p. 210.]

Art. 2691. [2753] Teachers' institutes.—The County Superintendent or ex-officio County Superintendent in each county may call the white teachers of the county together for one or more meetings, not exceeding three such meetings in any one school year, the number to be determined by the County Board and the County Superintendent, such meetings to be held on Saturday for one or more hours, not to exceed three on any one day, as the program arranged may demand. Similar meetings may be held by the County Superintendent for the colored teachers of the county, should there be any. The County Superintendent may require the attendance of the white teachers upon the meetings for white teachers and the attendance of colored teachers upon the meetings for colored teachers, and teachers shall not receive pay for such attendance. The Board of Trustees of any independent district having five hundred (500) or more scholastic population may authorize the Superintendent of Schools in such district to hold meetings of the teachers of the district in lieu of the county meetings. Provided further that the Superintendent must call any such meetings to be held at a time when the schools of the county are all in session. [Acts 1905, p. 263; Acts 1907, p. 210; Acts 1927, 40th Leg., p. 282, ch. 197; Acts 1933, 43rd Leg., p. 72, ch. 41.]

Arts. 2691a, 2691b.

Article 2691a, Acts 1927, 40th Leg., 1st C.S., p. 249, ch. 91, as amended, is set out as article 2701d—2a.

Article 2691b, Acts 1931, 42nd Leg., 1st C.S., p. 83, ch. 39, as amended, is set out as article 2701d—5.

Art. 2692. [2755] Shall apportion funds.—The county superintendent, upon the receipt of the certificate issued by the State Board of Education for the State fund belonging to his county, shall apportion the same to the several school districts, not including the independent school districts of the county, making a pro rata distribution as per the scholastic census, and shall at the same time apportion the income arising from the county school fund to all the school districts, including the independent school districts of the county, making a pro rata distribution as per scholastic census. Within thirty days after such apportionment, the trustees of each district shall, if possible, agree upon a division of the funds of the district among the schools thereof, and shall fix the term for which the schools of the district shall be maintained for the year. Should they agree upon a division of the funds of the district or upon the length of the term of which the schools of the district shall be maintained, they shall at once certify their agreement to the county superintendent who shall not approve any contracts with teachers of the district until such agreement is received. Should the trustees fail to agree, they shall at once certify their disagreement to the county superintendent who shall proceed to fix the school term of such school district and declare the division of the school fund of the district among the schools thereof, endeavoring as far as practicable to provide, for the schools of such district, school terms of the same length. [Acts 1905, p. 263; Acts 1907, p. 204.]

Art. 2693. [2756] General duties.—The county superintendent shall approve all vouchers legally drawn against the school fund of his county. He shall examine all the contracts between the trustees and teachers of his county, and if, in his judgment, such contracts are proper, he shall approve the same; provided, that in considering any contract between a teacher and trustees he shall be authorized to consider the amount of salary promised to the teacher. He shall distribute all school blanks and books to the officers and teachers of the public schools, and shall make such reports to the State Superintendent as may be required by that officer. He shall discharge such other duties as may be prescribed by the State Superintendent. [Acts 1905, p. 263.]

Art. 2694. [2757] May administer oaths.—The county superintendents are hereby empowered to administer oaths necessary in transacting any business relating to school affairs; but shall receive no compensation for administering same. [Id.]

Art. 2694a. Victory tax; deductions from salaries of teachers and other employees.—Section 1. The County Superintendent of the several counties of this State shall deduct the so-called Federal Victory Tax, and/or other taxes which may be levied by the Federal Government upon salaries of citizens or inhabitants of the United States of America, from the salary of each teacher or other employee of the common school districts of the county or any other schools coming within his jurisdiction. Such deductions shall be made from the per capita apportionment moneys or from any other funds available for the payment of such salaries, shall be deposited in the county depository in a common fund for which the deductions were made, and shall when the said tax or taxes are due be forwarded by said County Superintendent by check or voucher, with proper itemization, to the appropriate Federal authorities.

Sec. 2. The County Superintendent may and shall perform the various duties imposed by Section 1 without vouchers or other authorization from the various school districts or from anyone else, one of the purposes of this Act being that all duties imposed by Section 1 on the County Superintendent may be performed by the said officer alone and in his own office without direction or interference of others.

Sec. 3. Any general or special law or laws in conflict or inconsistent with the provisions of this Act are hereby expressly repealed but only in so far as they are in conflict or inconsistent. [Acts 1943, 48th Leg., p. 217, ch. 136.]

Art. 2695. [2759] Transfers.—Each year after the scholastic census of the county is completed, the county superintendent shall, if any district has fewer than twenty pupils of scholastic age, either white or colored, have authority to consolidate said district as to said white or colored schools with other adjoining districts, and to designate the board of trustees which shall control the white or colored school of such consolidated district. But this shall be done before the apportionment is made, and the apportionment shall be made with respect to such consolidation. [Acts 1905, p. 263.]

Art. 2696. [2760] Application to transfer.—Any child lawfully enrolled in any district or independent district, may by order of the county superintendent, be transferred to the enrollment of any other district or independent district in the same county upon a written application of the parent or guardian or person having lawful control of such child, filed with the county superintendent; provided that any district or independent district being dissatisfied with any transfer made by the county superintendent may appeal from such action to the county board of trustees of said county who shall have the right to annul and cancel the transfer allowed by the county superintendent.

The applicant shall state in said application that it is his bona fide intention to send said child to the school to which the transfer is asked.

Upon the certification of the transfer of any child, from one district to another district, by the county superintendent of the county in which the child resides at the time of the transfer, the State Department of Education shall authorize the State Treasurer to pay over directly the per capita apportionment, in independent districts of five hundred (500) or more scholastic population, to the district to which such child is transferred; and in all other districts, to county superintendents, to be paid by him to the respective districts to which such children are transferred; provided, no transfer shall be made after August 1st. [Acts 1905, p. 263; Acts 1935, 44th Leg., p. 488, ch. 201, § 1.]

Art. 2697. [2761] Transfer to adjoining county.—Any child specified in the preceding article, and its portion of the school fund, may be transferred to an adjoining district in another county, in the manner provided in said article. It must be shown to the county superintendent that the school in the district in which such child resides, on account of distance or some uncontrollable and dangerous obstacle, is inaccessible to such child. [Acts 1907, p. 242.]

Art. 2698. Emergency transfers.—In case of conditions resulting from public calamity in any section of the State such as serious floods, prolonged drouth, or extraordinary border disturbances, resulting after the scholastic census has been taken, in such sudden change of the scholastic population of any county as would work a hardship in the support of the public free schools of the said county, the State apportionment of any child of school age may, on approval of the State Board, be ordered by the State Superintendent to be transferred to any other county or Independent School District in any other county; provided, that the facts warranting such transfer shall be sent to the State Superintendent by the county or district board of trustees of schools to which transfer is to be made with a formal request for the said transfer before the first of August of the year in which such unusual conditions occur. No application for emergency transfers shall be granted unless the increase in scholastic population, as evidenced by a list of pupils within the scholastic age actually residing within the district not enumerated in said district, and filed in the State Department of Education is in excess of twenty per cent of the number of children assigned to said district; including regular transfers, as a result of the preceding census. The State Superintendent shall in such case notify the County Superintendent of both counties that final apportionment of school funds cannot be made under these circumstances before August 15. All arrangements for the said emergency transfers must be completed by the 15th of August following the unusual conditions causing the emergency. Children whose State funds are thus transferred to any county shall be included in the number of children for whom the county school apportionment of the said county is made. [Acts 1919, 2nd C.S., p. 87; Acts 1923, p. 253; Acts 1931, 42nd Leg., 1st C.S., p. 80, ch. 37, § 1.]

Art. 2699. [2762] By agreement of trustees.—Except as herein provided, no part of the school fund apportioned to any district or county shall be transferred to any other district or county; provided that districts lying in two or more counties, and situated on the county line, may be consolidated for the support of one or more schools in such consolidated district; and, in such case, the school funds shall be transferred to the county in which the principal school building for such consolidated district is located; and provided, further, that all the children residing in a school district may be transferred to another district, or to an independent district, upon such terms as may be agreed upon by the trustees of said districts interested. [Acts 1905, p. 263.]

Art. 2699a. Pupils attending public schools from adjoining states; provision as to payment by district of residence.—Any child who would be entitled to attend the public school of any district that lies on the border of Louisiana, Arkansas, Oklahoma and New Mexico, and who may find it more convenient to attend the public school in a district of a County of said State contiguous to said district in Texas, may have the State and County per capita apportionment of the Available School Fund paid to said district in said State and may have additional tuition, if necessary, paid by the district of his residence on such terms as may be agreed upon between the trustees of the receiving district and the trustees of the district of residence of such child, subject to the approval of the County Superintendent and the County Board of Trustees of the Texas district and county; provided, that the restrictions of the Texas Statutes shall apply to the amount paid for high school tuition. [Acts 1931, 42nd Leg., p. 192, ch. 113, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 2700. [2758] Salary of the County Superintendent.—Section 1. The elective and appointive County Superintendents of Public Instruction shall receive from the Available School Fund of their respective counties annual salaries based on the scholastic population of such counties as follows:

Population	Amount
3,000 or less	$2,880.00
3,001 to 4,000	3,120.00
4,001 to 5,000	3,360.00
5,001 to 6,000	3,600.00
6,001 to 7,000	3,840.00
7,001 to 8,000	4,080.00
8,001 to 9,000	4,320.00
9,001 to 12,000	4,370.00
12,001 to 15,000	4,600.00
15,001 to 20,000	4,830.00
20,001 to 30,000	5,060.00
30,001 to 50,000	5,290.00
50,001 and over	5,750.00

Provided, however, in counties having less than eight thousand and one (8,001) scholastics, where the total expense for office assistants does not exceed Two Thousand, Eight Hundred and Eighty Dollars ($2,880) per annum, the salary of the County Superintendent may be set at a sum not to exceed Four Thousand, Three Hundred and Twenty Dollars ($4,320) per annum by action of the County Board of Trustees.

In making the annual budget for County Administration expense, the County School Trustees shall make an allowance out of the State Available School Fund for the salary and expenses of the office of the County Superintendent and the same shall be determined by the resident scholastic population of the county. It shall be the duty of the County Board of Trustees to file the budget for County Administration expense with the State Department of Education on or before September first of each scholastic year, the budget to be approved and certified to by the President of the County Board of Education and attested to by the County Superintendent. The compensation herein provided for shall be paid monthly upon the order of the County School Trustees; provided that the salary for the month of September shall not be paid until the County Superintendent presents a receipt from the State Superintendent showing that he has made all reports required of him. The County Superintendent, with the approval and the confirmation of the County Board of Education, may employ a competent assistant to the County Superintendent at an annual salary not to exceed Two Thousand, Eight Hundred and Eighty Dollars ($2,880) and may also employ such other assistants as necessary provided the aggregate amount of the salaries of all assistants to the County Superintendent shall not exceed Four Thousand, Three Hundred and Twenty Dollars ($4,320) per annum; provided that counties having a population of more than one hundred thousand (100,000) according to the last Federal Census may employ a competent assistant to the County Superintendent at an annual salary not to exceed Three Thousand, Three Hundred and Sixty Dollars ($3,360) and may also employ such other assistants as necessary provided the aggregate amount of the salaries of all assistants shall not exceed Five Thousand, Two Hundred and Ninety Dollars ($5,290) annually; and said Board is hereby authorized to fix the salary of such assistants and pay same out of the same funds from which the salary and expenses of the County Superintendent are paid; and the County Board of Education may make further provisions as it deems necessary for office and traveling expenses of the County Superintendent; provided that expenditures for office and traveling expenses of the County Superintendent shall not be more than Nine Hundred and Sixty Dollars ($960) per annum.

Sec. 2. The County Superintendent of Public Instruction may, with the approval of the County Board of Education, employ one or more school supervisors to assist in planning, outlining, and supervising the work of the Public Free Schools in the county which is under the supervision of the County Superintendent of Public Instruction. Said supervisor or supervisors shall at all times work under the supervision and direction of the County Superintendent of Public Instruction, as other assistants are required to do, and must have evidence of proficiency in rural school supervision and must be the holder of at least a Bachelor of Science Degree or higher. Such supervisor or supervisors may receive a salary of not to exceed Three Thousand, One Hundred and Twenty Dollars ($3,120) per annum, to be paid out of the same funds and in the same manner as that of the County Superintendent of Public Instruction and other assistants.

Sec. 3. It shall be the duty of the State Superintendent to remit to the depository banks of each of the respective counties the amount of the State Available School Fund provided in the budget of each county, remittance to be made in October and February of each scholastic year, in equal amount.

Sec. 4. The State Superintendent of Public Instruction is hereby authorized to issue and transmit to county officials all instructions necessary for the proper observance and administration of this Act.

Sec. 5. All General and Special Laws in conflict herewith are hereby repealed except such laws as provide for a part of the office expense to be paid out of the General Revenue of the county, and the repealing clause shall not apply to any county that levies a special tax for the maintenance of the office of the County Superintendent in whole or in part. [Acts 3rd C.S.1920, p. 100; Acts 1923, p. 377; Acts 1941, 47th Leg., p. 407, ch. 237; Acts 1943, 48th Leg., p. 697, ch. 388, § 1; Acts 1945, 49th Leg., p. 675, ch. 374, § 1; Acts 1947, 50th Leg., p. 355, ch. 203, § 1.]

Acts 1933, 43rd Leg., p. 33, ch. 13, inserted here as a local law, reads as follows: "Sec. 1. That the salary of the Ex-officio Superintendent of Public Instruction in all counties in Texas having not less than seven thousand, one hundred (7,100) and not more than seven thousand, two hundred (7,200) population, according to the last preceding Federal Census, shall be, from and after the passage of this Act, paid from the Available School Fund of such county."

The title of Acts 1941, 47th Leg., p. 407, ch. 237, read as follows: "An Act amending Article 2700, Revised Civil Statutes of Texas, 1925, pertaining to the salaries of elective County Superintendents and to office and traveling expense; providing for salaries of County Superintendents in counties having not more than eight thousand (8,000) scholastic population under certain conditions; providing for assistants to the County Superintendent; providing for supervisors and their compensation; providing for the manner of payment of county administration expense; providing for budgets for the purpose; providing for administering the Act and repealing all General Laws in conflict herewith except such General Laws as provide for a part of the office expense to be paid out of the general revenue of the county; and declaring an emergency."

However, the act itself contained no enacting clause stating that the act amended article 2700. Therefore the act is published as article 2700.1.

Art. 2700.1. Salary and expenses of county superintendent; assistants; school supervisors; State Available School Fund, remittance of.—Section 1. The elective County Superintendents shall receive from the Available School Fund of their respective counties annual salaries based on the scholastic population of such counties as follows:

Population	Amount
3,000 or less	$1,800.00
3,001 to 4,000	2,000.00
4,001 to 5,000	2,200.00
5,001 to 6,000	2,400.00
6,001 to 7,000	2,600.00
7,001 to 8,000	2,800.00
8,001 to 9,000	3,000.00
9,001 to 12,000	3,200.00
12,001 to 15,000	3,400.00
15,001 to 30,000	3,600.00
30,001 to 40,000	3,800.00
40,001 to 50,000	4,200.00
50,001 and over	4,800.00

Provided, however, in counties having more than thirty-five hundred (3500) scholastics and less than eight thousand and one (8,001) scholastics, where no supervisor is employed and where the total expense for office assistants does not exceed Eighteen Hundred Dollars ($1800) per annum, the salary of the County Superintendent may be set at a sum not to exceed Three Thousand Dollars ($3,000) per annum by action of the County Board of Trustees.

In making the annual budget for County Administration expenses the County School Trustees shall make allowance out of the State Available School Fund for salary and expenses of the office of the County Superintendent and the same shall be determined by the resident scholastic population of the county. It shall be the duty of the County Board of Trustees to file the budget for county administration expense with the State Department of Education on or before September first of each scholastic year, the budget to be approved and certified to by the President of the County Board of Education and attested to by the County Superintendent. The compensation herein provided for shall be paid monthly upon the order of the County School Trustees; provided that the salary for the month of September shall not be paid until the County Superintendent presents a receipt from the State Superintendent showing that he has made all reports required of him. The County Superintendent, with the approval and the confirmation of the County Board of Education, may employ a competent assistant to the County Superintendent at an annual salary not to exceed Two Thousand Dollars ($2,000) and may also employ such other assistants as necessary provided the aggregate amount of the salaries of such other assistants shall not exceed Twelve Hundred Dollars ($1200) annually; and the County Board of Education may make further provisions as it deems necessary for office and traveling expenses of the County Superintendent; provided that expenditures for office and traveling expenses of the County Superintendent shall not be less than Three Hundred Dollars ($300) and not more than Eight Hundred Dollars ($800) per annum, such expense shall first be proven by affidavit therefor, and said Board is hereby authorized to fix the salary of such assistants and pay same out of the same funds from which the salary and expenses of the County Superintendent are paid.

Sec. 2. The County Superintendent of Public Instruction may, with the approval of the County Board of Education, employ one or more school supervisors to assist in planning, outlining, and supervising the work of the Public Free Schools in the county which is under the supervision of the County Superintendent of Public Instruction. Said supervisor or supervisors shall at all times work under the supervision and direction of the County Superintendent of Public Instruction, as other assistants are required to do, and must have evidence of proficiency in rural school supervision and must be the holder of at least a Bachelor of Science Degree or higher. Such supervisor or supervisors may receive a salary of not to exceed Two Thousand Dollars ($2,000) per annum, to be paid out of the same funds and in the same manner as that of the County Superintendent of Public Instruction and other assistants.

Sec. 3. It shall be the duty of the State Superintendent to remit to the depository banks of each of the respective counties the amount of the State Available School Fund provided in the budget of each county, remittance to be made in October and February of each scholastic year, in equal amount.

Sec. 4. The State Superintendent of Public Instruction is hereby authorized to issue and transmit to county officials all instructions necessary for the proper observance and administration of this Act.

Sec. 5. All General and Special Laws in conflict herewith are hereby repealed except such laws as provide for a part of the office expense to be paid out of the general revenue of the county, except that the repealing clause shall not apply to any county that levies a special tax for the maintenance of the office of the County Superintendent in whole or in part. [Acts 1941, 47th Leg., p. 407, ch. 237.]

Acts 1943, 48th Leg., p. 697, c. 388, amended article 2700 as amended by Acts 1941, 47th Leg., p. 407, ch. 237, incorporated in article 2700. See note under article 2700.

Art. 2700a. Salary and office expenses of superintendent.—Sec. 1. That the salary of the Superintendent of Public Instruction in all counties in Texas having 210,000 population or more according to the last preceding Federal census, shall be from and after the passage of this act the sum of $4,800.00 (forty-eight hundred dollars) per annum and the same is fixed by this act at the [1] sum.

Sec. 2. In making the annual per capita apportionment to the schools, the county school trustees of all counties having 210,000 population or more according to the last preceding Federal census shall also make an allowance out of the State and county available school funds for the payment of the salary of the Superintendent of Public Instruction of all counties having 210,000 population or more according to the last preceding Federal census $4,800.00 (forty-eight hundred dollars) and office expenses in any sum not exceeding $600.00 (six hundred dollars) per annum for stamps, stationery, expressage, and printing incidental to and necessary in the administration of his office; and shall be prorated to the schools in said county in proportion to the scholastic population of each district or community in the county that is under the jurisdiction and supervision of said county superintendent. And the Commissioners' Court of all counties having a population of 210,000 or more according to the last preceding Federal census may spend out of the general fund of said county any sum not exceeding the sum of $900.00 (nine hundred dollars) per annum to defray the travelling expenses of the County Superintendent.

Sec. 3. The salary and expenses for stamps, stationery, expressage and printing provided herein shall be paid monthly upon the order of the county school trustees; provided that the salary for the month of September shall not be paid until the said Superintendent of Public Instruction shall have presented a receipt or certificate from the State Superintendent of Public Instruction showing that he has made all reports required of him. That the travelling expenses provided for herein shall be paid monthly by the County Treasurer on order of the Commissioners'

Court as said expenses may be incurred. [Acts 1927, 40th Leg., p. 393, ch. 266.]

[1] So in enrolled bill. Should probably read "that".
Section 4 of the Act of 1927 repeals all conflicting laws.

Art. 2700b. Superintendent's salary and office expenses in certain counties.—Sec. 1. That the salary of the County Superintendent of Public Instruction of each county in Texas having a population of not less than 60,000 nor more than 73,000 according to the last Federal census, shall from and after the passage of this Act be not less than the sum of $2,800.00 per annum nor more than the sum of $3,800.00 per annum.

Sec. 2. In making the annual per capita apportionment to the schools of the counties having a population of not less than 60,000 nor more than 73,000, the County School Trustees shall also make an annual allowance out of the State and County Available Funds for the payment of the salary of the Superintendent of Public Instruction not less than $2,800.00 nor more than $3,800.00 and office expenses in any sum not exceeding $200.00 per annum for stamps and stationery; and the Commissioners' Courts of the Counties having a population of not less than 60,000 nor more than 73,000 may expend out of the general funds of said counties any sums not exceeding the sum of $600.00 per annum to defray the expenses incurred by said County Superintendent which said sum shall be paid by said Commissioners upon certificate of said Superintendent that the expenses have been incurred in the discharge of his duties as such Superintendent.

Sec. 3. The salary to be paid monthly upon the order of the School Trustees; provided, that the salary for the month of September shall not have been paid until the Superintendent of Public Instruction shall have presented a receipt or certificate from the State Superintendent of Public Instruction showing that he has made all reports required of him; that the expenses provided for herein shall be paid monthly by the County Treasurer on the order of the Commissioners' Court. [Acts 1927, 40th Leg., p. 394, ch. 267.]

Section 4 of the Act of 1927 repeals all conflicting laws.

Art. 2700c. Superintendent's salary and office expenses in counties of 12,100 to 12,190 population.—Sec. 1. That the salary of the County Superintendent of Public Instruction of each County in Texas having a population of not less than twelve thousand one hundred (12,100) and not more than twelve thousand one hundred and ninety (12,190), according to the last available Federal Census, shall from and after the passage of this Act be not less than the sum of twenty-one Hundred Dollars ($2100.00) and not more than the sum of Three Thousand Dollars ($3,000.00) per annum.

Sec. 2. In making the annual per capita apportionment to the schools of the counties having a population of not less than twelve thousand one hundred (12,100) and not more than twelve thousand one hundred and ninety (12,190), according to the last available Federal Census, the county school trustees shall also make an allowance out of the State and County Available Funds for the payment of the salary of the County Superintendent of Public Instruction, not less than Twenty-one Hundred Dollars ($2100.00) nor more than Three Thousand Dollars ($3,000.00), and an office expense not exceeding Three Hundred Dollars ($300.00) per annum for stamps and stationery, and the Commissioners' Courts of the counties herein affected may expend out of the General Fund of such counties any sums not exceeding Three Hundred Dollars ($300.00) per annum to defray the traveling expenses incurred by said County Superintendent, which said sum shall be paid by said Commissioners' Courts upon certificate of said Superintendent that the expenses have been incurred in the discharge of his duties as such Superintendent.

Sec. 3. The salary shall be paid monthly upon order of the county school trustees; providing that the month of September shall not be paid until the County Superintendent shall have presented a receipt or a certificate from the State Superintendent of Public Instruction, showing that he had made all reports required of him; the expenses herein authorized shall be paid monthly by the County Treasurer on the order of the Commissioners' Court. [Acts 1929, 41st Leg., p. 90, ch. 44; Acts 1931, 42nd Leg., Spec.L., p. 433, ch. 219.]

Section 4 of the Act of 1931 repeals all conflicting laws.

Art. 2700d. Superintendent's salary and expenses in counties of 100,000 population.—Sec. 1. That the salary of the County Superintendent of Public Instruction of each County in Texas, having a population of not less than 100,000 nor more than 150,000 according to the last Federal Census, shall from and after passage of this Act be not less than the sum of $2,800.00 per annum, or more than the sum of $3,800.00 per annum.

Sec. 2. In making the annual per capita apportionment to the schools of the Counties having a population of not less than 100,000 and not more than 150,000 the County School Trustees shall also make an annual allowance out of the State and County Available Funds for the payment of the salary of the Superintendent of Public Instruction not less than $2,800.00 nor more than $3,800.00 and the Commissioner's Courts of the Counties having a population of not less than 100,000 nor more than 150,000 may expend out of the general fund of said counties any sums not exceeding the sum of $1200 per annum, to defray the expenses incurred by said County Superintendent which said sum or any part thereof shall be paid by said Commissioners upon certificate of said Superintendent that the expenses have been incurred in the discharge of his duties as such superintendent.

Sec. 3. Said salary to be paid monthly upon the order of the county school trustees, provided that said salary to the Superintendent of public instruction for the month of September shall not be paid until the Superintendent shall have presented a receipt or certificate from the State Superintendent of Public Instruction showing that he has made all reports required of him; that the expenses provided for herein shall be paid monthly by the County Treasurer on the order of the Commissioner's Court. [Acts 1929, 41st Leg., p. 323, ch. 148.]

Act passed with emergency clause by two thirds vote of Senate and House, but was not signed by Governor.

Art. 2700d—1. Superintendent's salary and expenses to be paid out of school funds of districts.—Sec. 1. That from and after August 31, 1930, the salary and office expenses of the county superintendent of public instruction and such assistants as he may have shall be paid out of the school funds of the common and independent school districts of the county.

Sec. 2. That the County Board of Trustees shall annually on or before the first (1st) day of August hereafter order a scholastic per capita assessment against each school district within the County in sufficient amount to provide for the payment of the salary and office expenses of the County Superintendent and any office assistants he may have, as is now provided by law, or may hereafter be provided. And the said assessment when legally made and certified to the school districts of the County shall be paid by them for the purpose herein specified.

Sec. 3. The State Superintendent is hereby authorized and instructed to issue and transmit to County and District School Officials all instructions necessary for the proper observance and administration of this Act.

Sec. 4. All general laws in conflict herewith are hereby repealed, except such laws as provide for a part of the office expense to be paid from the general revenue of the county. [Acts 1930, 41st Leg., 4th C.S., p. 90, ch. 49.]

Art. 2700d—2. Superintendent's salary in counties having a population of 4,660 and not more than 4,700.—Sec. 1. That the salary of the County Superintendent of Public Instruction of each county in Texas having a population of not less than 4,660 nor more than 4,700 according to the Federal Census of 1920, shall, from and after the passage of this Act be not less than the sum of $2,400.00 per annum nor more than the sum of $3,000.00 per annum.

Sec. 2. In making the annual per capita apportionment to the schools of the counties having a population of not less than 4,660 nor more than 4,700 according to the Federal Census of 1920, the County School Trustees shall also make an allowance out of the State and County Available Funds for the payment of the salary of the County Superintendent of Public Instruction not less than $2,400.00 nor more than $3,000.00 and office expenses not exceeding $300.00 per annum for stamps and stationery; and the Commissioners' Courts of the counties having a population of not less than 4,660 nor more than 4,700 may expend out of the general funds of such counties any sums not exceeding the sum of $300.00 per annum to defray the traveling expenses incurred by said County Superintendent, which said sum shall be paid by said Commissioners upon certificate of said Superintendent that the expenses have been incurred in the discharge of his duties as such Superintendent.

Sec. 3. The salary shall be paid monthly upon the order of the County School Trustees; provided, that the month of September shall not be paid until the Superintendent of Public Instruction shall have presented a receipt or a certificate from the State Superintendent of Public Instruction showing that he has made all the reports required by him; that the expenses provided for herein shall be paid monthly by the County Treasurer on the order of the Commissioners' Court. [Acts 1930, 41st Leg., 5th C.S., p. 255, ch. 83.]

Section 4 of this Act repeals all conflicting laws and parts of laws.

Art. 2700d—3. Superintendent's salary in certain other counties.

Counties having population of 13,388 to 13,393, $2,500: Sp. Laws 1931, p. 345, ch. 166.

Counties having population of 18,425 to 18,435, $2,200: Sp.Laws 1931, p. 404, ch. 193.

Counties having population of 19,850 to 19,880, $2,400: Sp.Laws 1931, p. 406, ch. 194.

Acts 1935, 44th Leg., p. 386, ch. 146, passed as a general law, but in fact a special law relates to the salary of Ex-officio Superintendent of Public Instruction.

Acts 1935, 44th Leg., p. 202, ch. 82, passed as a general law but being in fact a special law relates to one county.

Acts 1935, 44th Leg., 1st C.S., p. 1580, ch. 393, relates to the salary of the County Superintendent of Public Instruction of Smith County, Texas.

Counties having population of 60,000 to 61,000, provides for traveling expenses of County Superintendent of Public Instruction and assistants; population of 6,800 to 6,900, provides for traveling expenses of ex officio County Superintendent of Public Instruction and assistants. [Acts 1935, 44th Leg., 2nd C.S., p. 1737, ch. 450.]

Art. 2700d—4. Superintendent's salary in counties of 2865 and not more than 2870, etc.—That the salary of County Superintendents of Public Instruction in all counties in Texas having not less than two thousand eight hundred and sixty-five (2,865) and not more than two thousand eight hundred and seventy (2,870) population and in all counties in Texas having not less than three thousand eight hundred and fifty (3,850) and not more than three thousand nine hundred (3,900) population, and in all counties in Texas having not less than four thousand nine hundred and fifteen (4,915) and not more than four thousand nine hundred and twenty (4,920) population, each, according to the last preceding Federal Census from and after the effective date of this Act shall be paid from the Available School Fund of such County. [Acts 1935, 44th Leg., p. 197, ch. 80, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 2700d—5. Superintendent's expenditures in certain counties.—In counties having a population of not less than seventy-seven thousand (77,000), and not more than seventy-seven thousand, six hundred (77,600), and in counties having a population of not less than fifteen thousand, five hundred and fifty (15,550), and not more than fifteen thousand, five hundred and sixty (15,560), and in counties having a population of not less than nineteen thousand, one hundred and thirty (19,130) and not more than nineteen thousand, three hundred (19,300); and in counties having a population of not less than thirty-four thousand, six hundred (34,600) and not more than thirty-four thousand, seven hundred (34,700), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. [Acts 1935, 44th Leg., p. 545, ch. 232, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws, general and special.

Art. 2700d—6. County superintendent's salary and traveling expenses.—In counties having a population of not less than thirty thousand (30,000) and not more than thirty thousand and twenty-nine (30,029), and counties having a population of not less than eighteen thousand four hundred twenty-five (18,425) and not more than eighteen thousand five hundred twenty-eight (18,528), and counties having a population of not less than forty-three thousand one hundred (43,100) and not more than forty-three thousand three hundred (43,300) and counties having a population of not less than twenty-three thousand eight hundred and eighty (23,880) and not more than twenty-three thousand nine hundred (23,900), and in counties having a population of not less than thirty-four thousand (34,000) and not more than thirty-five thousand five hundred (35,500), and in counties having a population of not less than eighteen thousand eight hundred fifty (18,850) and not more than eighteen thousand eight hundred seventy-five (18,875), and counties having a population of not less than ten thousand one hundred fifty-three (10,153) inhabitants and not more than ten thousand one hundred fifty-six (10,156) inhabitants, and counties having a population of not less than nineteen thousand one hundred (19,100) and not more than nineteen thousand one hundred fifty (19,150), and counties having a population of not less than thirty thousand four hundred (30,400) and not more than thirty thousand six hundred (30,600), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred ($600.00) Dollars per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. [Acts 1935, 44th Leg., 2nd C.S., p. 1852, ch. 471, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 2700d—7. County superintendent's office and travelling expenses in counties of enumerated population.

Counties of 24,060 to 24,075

Section 1. In counties having a population of not less than twenty-four thousand and sixty (24,060) and not more than twenty-four thousand and seventy-five (24,075), according to the last preceding Federal

Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 30,288 to 30,292

Sec. 1-a. In counties having a population of not less than thirty thousand, two hundred eighty-eight (30,288), nor more than thirty thousand, two hundred ninety-two (30,292), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 12,469 to 12,473

Sec. 1-b. In counties having a population of not less than twelve thousand, four hundred sixty-nine (12,469), nor more than twelve thousand, four hundred seventy-three (12,473), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 27,800 to 27,804

Sec. 1-c. In counties having a population of not less than twenty-seven thousand, eight hundred (27,800), nor more than twenty-seven thousand, eight hundred four (27,804), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 11,996 to 12,000

Sec. 1-d. In counties having a population of not less than eleven thousand, nine hundred ninety-six (11,996), nor more than twelve thousand (12,000), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 12,522 to 12,526

Sec. 1-e. In counties having a population of not less than twelve thousand, five hundred twenty-two (12,522), nor more than twelve thousand, five hundred twenty-six (12,526), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 17,062-17,066

Sec. 1-f. In counties having a population of not less than seventeen thousand, sixty-two (17,062), nor more than seventeen thousand, sixty-six (17,066), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 11,446 to 11,450

Sec. 1-g. In counties having a population of not less than eleven thousand, four hundred forty-six (11,446), nor more than eleven thousand, four hundred fifty (11,450), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 14,586 to 14,590

Sec. 1-h. In counties having a population of not less than fourteen thousand, five hundred eighty-six (14,586), nor more than fourteen thousand, five hundred ninety (14,590), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 22,640 to 22,644

Sec. 1-i. In counties having a population of not less than twenty-two thousand, six hundred forty (22,640), nor more than twenty-two thousand, six hundred forty-four (22,644), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of

such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 13,934 to 13,938

Sec. 1–j. In counties having a population of not less than thirteen thousand, nine hundred thirty-four (13,934), nor more than thirteen thousand, nine hundred thirty-eight (13,938) according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 28,625 to 28,630

Sec. 1–k. In counties having a population of not less than twenty-eight thousand, six hundred twenty-five (28,625), nor more than twenty-eight thousand, six hundred thirty (28,630), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties of 15,147 to 15,152

Sec. 1–*l*. In counties having a population of not less than fifteen thousand, one hundred forty-seven (15,147), nor more than fifteen thousand, one hundred fifty-two (15,152), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Provisions cumulative; conflicting laws

Sec. 2. The provisions of this Act shall be cumulative of all General Laws on the subject and where not otherwise provided herein, such General Laws shall apply; but, in case of conflict, the provisions of this Act shall control and be effective. [Acts 1937, 45th Leg., p. 35, ch. 27.]

Art. 2700d—8. Office and traveling expenses of Superintendent and assistants.

Counties with 14,540–14,580 population

Section 1. In counties having a population of not less than fourteen thousand, five hundred and forty (14,540) and not more than fourteen thousand, five hundred and eighty (14,580), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties with 48,563–48,663 population

Sec. 1a. In counties having a population of not less than forty-eight thousand, five hundred sixty-three (48,563) and not more than forty-eight thousand, six hundred sixty-three (48,663), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of County Superintendent.

Counties with 10,371–10,471 population

Sec. 1b. In counties having a population of not less than ten thousand, three hundred seventy-one (10,371) and not more than ten thousand, four hundred seventy-one (10,471), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of County Superintendent.

Counties with 30,030–30,130 population

Sec. 1c. In counties having a population of not less than thirty thousand, thirty (30,030) and not more than thirty thousand, one hundred thirty (30,130), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of County Superintendent.

Counties with 10,028–10,128 population

Sec. 1d. In counties having a population of not less than ten thousand, twenty-eight (10,028) and not more than ten thousand, one hundred twenty-eight (10,128), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Counties with 16,003–16,010 population

Sec. 1e. In counties having a population of not less than sixteen thousand, three (16,003) and not more than sixteen thousand, ten (16,010), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses

of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. [Acts 1937, 45th Leg., p. 111, ch. 64.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 2700d—9. County superintendent's office and traveling expenses in counties of 13,125 to 13,145.—In counties having a population of not less than thirteen thousand, one hundred and twenty-five (13,125) and not more than thirteen thousand, one hundred and forty-five (13,145), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. [Acts 1937, 45th Leg., p. 142, ch. 75, § 1.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 2700d—10. Office and traveling expenses in counties of 30,708 to 30,750.—In counties having a population of not less than thirty thousand, seven hundred and eight (30,708) and not more than thirty thousand, seven hundred and fifty (30,750), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Five Hundred Dollars ($500) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. [Acts 1937, 45th Leg., p. 156, ch. 82, § 1.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 2700d—11. Office and traveling expenses in counties of 49,000 to 49,025.—In all counties containing a population of not less than forty-nine thousand (49,000), nor more than forty-nine thousand and twenty-five (49,025), according to the last preceding Federal Census, the County Superintendents shall receive from the available school funds of their respective counties, for office and traveling expenses, a sum not to exceed Six Hundred Dollars ($600) per annum. [Acts 1937, 45th Leg., p. 243, ch. 127, § 1.]

Art. 2700d—12. Office and traveling expenses in counties of 29,400 to 29,450 and other counties.—Section 1. In counties having a population of not less than twenty-nine thousand, four hundred (29,400) and not more than twenty-nine thousand, four hundred and fifty (29,450), in counties having a population of not less than thirteen thousand, six hundred (13,600) and not more than thirteen thousand, seven hundred (13,700), and counties having a population of not less than thirty four thousand, six hundred and forty (34,640) and not more than thirty four thousand, six hundred and sixty (34,660), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1–a. In counties having a population of not less than thirteen thousand, six hundred and thirty-seven (13,637) and not more than thirteen thousand, six hundred and forty (13,640) according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent; and provided further that the provisions of this Act shall apply to counties having a population of not less than seventeen thousand, five hundred and fifty-five (17,555) and not more than seventeen thousand, five hundred and sixty (17,560) according to the last preceding Federal Census, and that the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. [Acts 1937, 45th Leg., p. 199, ch. 105.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 2700d—13. Office and traveling expenses in counties of 32,400 to 32,500.—In counties having a population of not less than thirty-two thousand, four hundred (32,400) and not more than thirty-two thousand, five hundred (32,500), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of One Thousand Dollars ($1,000) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. [Acts 1937, 45th Leg., p. 254, ch. 132, § 1.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 2700d—14. Office and traveling expenses in counties of 27,441 to 27,450 and other counties.—In counties having a population of not less than twenty-seven thousand, four hundred and forty-one (27,441) and not more than twenty-seven thousand, four hundred and fifty (27,450), and in counties having a population of not less than twenty thousand and forty-eight (20,048) and not more than twenty thousand and fifty-five (20,055), and in counties having a population of not less than twenty-five thousand, three hundred and ninety-four (25,394) and not more than twenty-five thousand, four hundred (25,400), and in counties having a population of not less than ten thousand, nine hundred seventy-five (10,975) and not more than ten thousand, nine hundred and eighty-five (10,985), according to the last preceding Federal Census, and the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; providing that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. [Acts 1937, 45th Leg., p. 258, ch. 135, § 1.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 2700d—15. Office and traveling expenses in counties of 10,050 to 10,075 and certain other counties.—Section 1. In counties having a population of not less than ten thousand and fifty (10,050) and not more than ten thousand and seventy-five (10,075), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 1–a. In counties having a population of not less than thirty-two thousand, three hundred and twelve (32,312) and not more than thirty-two thousand, three hundred and twenty (32,320), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions that they deem necessary for office and traveling expenses of County Superintendent of Public Instruction, provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of office of the County Superintendent.

Sec. 1–b. In counties having a population of not more than twenty-four thousand, one hundred and eighty (24,180) and not less than twenty-four thousand and forty (24,040), and in counties having a population of not more than forty-six thousand, two hundred and eighty (46,280) and not less than forty-six thousand, one hundred and eighty (46,180), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions that they deem necessary for office and traveling expenses of County Superintendent of Public Instruction, provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of office of the County Superintendent. [Acts 1937, 45th Leg., p. 395, ch. 197.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 2700d—16. Office and traveling expenses of county superintendents and assistants in counties of enumerated population.—In counties with a population of not less than sixteen thousand, six hundred (16,600) and not more than seventeen thousand, sixty (17,060); and in counties having a population of not less than thirty-eight thousand, seven hundred and sixty (38,760) inhabitants and not more than thirty-eight thousand, seven hundred and eighty (38,780) inhabitants; and in counties having a population of not less than twenty-six thousand, three hundred and eighty-two (26,382) and not more than twenty-six thousand, four hundred (26,400) inhabitants; and in counties having a population of not less than twenty-three thousand, six hundred and sixty-nine (23,669) nor more than twenty-three thousand, seven hundred and seventy-five (23,775) inhabitants; and in counties having a population of not less than nineteen thousand, one hundred and seventy-three (19,173) nor more than nineteen thousand, one hundred and eighty-three (19,183) inhabitants; and in counties having a population of not less than seventeen thousand, five hundred and sixty-five (17,565) nor more than seventeen thousand, five hundred and eighty-five (17,585) inhabitants; and in counties having a population of not less than forty-eight thousand, five hundred and eighteen (48,518) nor more than forty-eight thousand, five hundred and thirty-eight (48,538) inhabitants; and in counties having a population of not less than fifty-three thousand, nine hundred and twenty-five (53,925) nor more than fifty-three thousand, nine hundred and forty-seven (53,947) inhabitants; and in counties having a population of not less than thirty-three thousand, three hundred and seven (33,307) nor more than thirty-three thousand, three hundred and twenty-eight (33,328) inhabitants; and in counties having a population of not less than thirty-one thousand, three hundred and ninety-five (31,395) nor more than thirty-one thousand, four hundred (31,400) inhabitants; and in counties having a population of not less than fourteen thousand, nine hundred and ten (14,910) nor more than fourteen thousand, nine hundred and seventeen (14,917) inhabitants; and in counties having a population of not less than eight thousand, six hundred (8,600) nor more than eight thousand, six hundred and ten (8,610) inhabitants; and in counties having a population of not less than five thousand, six hundred and sixty-five (5,665) nor more than five thousand, six hundred and seventy (5,670) inhabitants; and in counties having a population of not less than twelve thousand, one hundred and eighty-five (12,185) nor more than twelve thousand, one hundred and ninety (12,190) inhabitants; and in counties having a population of not less than five thousand, five hundred and eighty-five (5,585) nor more than five thousand, five hundred and eighty-nine (5,589) inhabitants; and in counties having a population of not less than forty-one thousand, twenty (41,020) nor more than forty-one thousand, thirty (41,030) inhabitants; and in counties having a population of not less than forty-three thousand, thirty-five (43,035) nor more than forty-three thousand, forty (43,040) inhabitants; and in counties having a population of not less than twenty thousand, one hundred (20,100) nor more than twenty thousand, one hundred and fifty (20,150) inhabitants; and in counties having a population of not less than nine thousand, twenty-five (9,025) nor more than nine thousand, fifty (9,050) inhabitants; and in counties having a population of not less than thirty-nine thousand, one hundred (39,100) and not more than thirty-nine thousand, one hundred and ten (39,110) inhabitants; and in counties having a population of not less than twelve thousand, three hundred and seventy (12,370) nor more than twelve thousand, three hundred and eighty (12,380) inhabitants; and in counties having a population of not less than thirteen thousand, five hundred and seventy (13,570) and not more than thirteen thousand, five hundred and eighty (13,580) inhabitants; and in counties having a population of not less than thirty-four thousand, one hundred and fifty-five (34,155) nor more than thirty-four thousand, one hundred and sixty (34,160) inhabitants; and in counties having a population of not less than twelve thousand, seven hundred and eighty-five (12,785) nor more than twelve thousand, seven hundred and ninety (12,790) inhabitants; and in counties having a population of not less than nineteen thousand, three hundred and twenty (19,320) nor more than nineteen thousand, three hundred and twenty-five (19,325) inhabitants; and in counties having a population of not less than fourteen thousand, one hundred and eighty (14,180) nor more than fourteen thousand, one hundred and eighty-five (14,185) inhabitants; and in counties having a population of not less than twenty-four thousand, two hundred and thirty (24,230) nor more than twenty-four thousand, two hundred and thirty-five (24,235) inhabitants; and in counties having a population of not less than six thousand, six hundred and ninety-five (6,695) nor more than six thousand, seven hundred (6,700) inhabitants; and in counties having a population of not less than sixteen thousand, five hundred and sixty (16,560) nor more than sixteen thousand, five hundred and sixty-five (16,565) inhabitants; and in counties having a population of not less than five thousand, two hundred and fifty (5,250) nor more than five thousand, two hundred and fifty-five (5,255) inhabitants; and in counties having a population of not less than sixteen thousand, six

hundred and sixty-five (16,665) nor more than sixteen thousand, six hundred and seventy (16,670) inhabitants; and in counties having a population of not less than twelve thousand, three hundred and sixty (12,360) nor more than twelve thousand, four hundred and twenty (12,420) inhabitants; and in counties having a population of not less than thirteen thousand, five hundred and sixty (13,560) nor more than thirteen thousand, five hundred and eighty-five (13,585) inhabitants; and in counties having a population of not less than eight thousand, five hundred and ninety (8,590) nor more than eight thousand, eight hundred and ninety (8,890) inhabitants; and in counties having a population of not less than nine thousand, two hundred and ninety (9,290) and nor more than nine thousand, four hundred (9,400) inhabitants; and in counties having a population of not less than six thousand, eight hundred (6,800) and not more than six thousand, eight hundred and thirty (6,830) inhabitants; and in counties having a population of not less than seventeen thousand, four hundred and forty-five (17,445) and not more than seventeen thousand, four hundred and sixty-five (17,465) inhabitants; and in counties having a population of not less than eleven thousand, twenty-one (11,021) and not more than eleven thousand, fifty (11,050) inhabitants; and in counties having a population of not less than sixteen thousand, twenty (16,020) and not more than sixteen thousand, five hundred (16,500) inhabitants according to the last Federal Census in each instance, the County Boards of Trustees may make such provisions as they deem necessary for office and/or traveling expenses of the County Superintendent of Public Instruction, and any assistant he may have; provided that the amount of such expenditures for such necessary office and/or traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount of such expenses so allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent of Public Instruction. [Acts 1937, 45th Leg., p. 836, ch. 411, § 1.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 2700d—17. Salary and expenses of superintendents in counties of enumerated population.

Salaries in certain counties

Section 1. In all counties of the State of Texas having a population of not less than thirty-two thousand eight hundred (32,800) and not more than thirty-two thousand eight hundred thirty (32,830), and in all counties having a population of not less than twenty-four thousand (24,000) and not more than twenty-four thousand sixty-three (24,063), and in all counties having a population of not less than thirty-seven thousand nine hundred (37,900) and not more than thirty-seven thousand nine hundred fifty (37,950), and in counties having a population of not less than twenty-seven thousand four hundred twenty-five (27,425) and not more than twenty-seven thousand four hundred sixty (27,460), and in counties having a population of not less than thirty-one thousand three hundred twenty-five (31,325) and not more than thirty-one thousand four hundred twenty-five (31,425), and in counties having a population of not less than forty-eight thousand five hundred (48,500) and not more than forty-eight thousand five hundred seventy-five (48,575), and in counties having a population of not less than eleven thousand four hundred (11,400) and not more than eleven thousand five hundred (11,500), and in counties having a population of not less than seventeen thousand seven hundred sixty (17,760) and not more than seventeen thousand seven hundred eighty (17,780), the salary of the County Superintendent of Public Instruction shall be not less than Two Thousand Seven Hundred Fifty ($2,750.00) Dollars and not more than Three Thousand ($3,000.00) Dollars per annum, the amount of which salary shall be fixed by the order of the County Board of Education for the respective counties, and the County Board of Education for each of the counties coming within this bill shall, by order entered in its minutes, set the salary for each of their respective counties.

Allowance out of State and County Available School Fund; proration of allowance

Sec. 2. In making the annual per capita apportionment to the public free schools, the County Board of Education of each of the several counties mentioned in Section 1 of this Act shall also make an annual allowance out of the State and County Available School Fund not exceeding the sum of Three Thousand ($3,000.00) Dollars for the salary of the County Superintendent of Public Instruction and Six Hundred ($600.00) Dollars for traveling expenses incidental to and necessary in the administration of the County Superintendent's office annually, and the same shall be prorated to the schools in said county in proportion to the scholastic population of each school district in each of said respective counties, and the Commissioners' Court of each of said counties may expend out of the General Fund of said counties not to exceed Three Hundred ($300.00) Dollars per annum to defray the office expenses for stamps, stationery, telephone, and printing, incidental to and necessary in the efficient administration of the schools of said counties respectively.

Salaries in counties having enumerated population

Sec. 3. In all counties of the state of Texas having a population of not less than sixteen thousand five hundred fifty (16,550) nor more than sixteen thousand six hundred (16,600) according to the last United States Federal Census, the salary of the County Superintendent of Public Instruction shall be fixed by order of the County Board of Education in and for such counties at an amount not less than Eighteen Hundred ($1800.00) Dollars per year nor more than Two Thousand Two Hundred and Fifty ($2,250.00) Dollars per year, and said salary shall be exclusive of any and all traveling expenses allowed by law; and in all counties having a population of not less than seventeen thousand five hundred sixty-five (17,565) nor more than seventeen thousand six hundred (17,600) according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be fixed by order of the County Board of Education in and for such counties at an amount not less than Nineteen Hundred ($1900.00) Dollars per year nor more than Two Thousand Two Hundred and Fifty ($2,250.00) Dollars per year, and said salary shall be exclusive of any and all traveling expenses allowed by law.

Time for payment of salaries and expenses

Sec. 4. The salary and traveling expenses provided for herein shall be paid monthly, upon the order of the County Board of Education; provided that the salary for the month of September shall not be paid until the said County Superintendent submits a certificate from the State Superintendent of Public Instruction showing that all reports required have been made to the State Department of Education. That the office expenses provided herein shall be paid by the County Treasurer on the order of the Commissioners' Court as said expenses may be incurred. [Acts 1937, 45th Leg., p. 1276, ch. 477.]

Section 5 of the Act of 1937 repealed all conflicting laws.

Art. 2700d—18. Salary and expenses of Superintendents in counties of enumerated population.

Salaries in certain counties

Section 1. In counties having a population of not less than twenty-one thousand, eight hundred and sixteen (21,816) and not more than twenty-one thousand,

eight hundred and twenty-six (21,826); in all counties having a population of not less than forty-one thousand (41,000) and not more than forty-two thousand (42,000); in counties having a population of not less than thirteen thousand, three hundred and eighty-five (13,385) and not more than thirteen thousand, three hundred and ninety-five (13,395); in counties having a population of not less than nineteen thousand, eight hundred and forty-three (19,843) and not more than nineteen thousand, eight hundred and fifty-three (19,853); in counties having a population of not less than thirty-six thousand (36,000) and not more than thirty-six thousand and fifty (36,050); and in counties having a population of not less than twenty-nine thousand, seven hundred (29,700) and not more than twenty-nine thousand, seven hundred and fifty (29,750) according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; providing that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum.

Salaries in certain counties

Sec. 2. In all Counties of the State of Texas having a population of not less than seventeen thousand six hundred and sixty (17,660) inhabitants and not more than seventeen thousand eight hundred and fifty (17,850) inhabitants according to the preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be not less than Two Thousand Seven Hundred Fifty ($2,750.00) Dollars and not more than Three Thousand ($3,000.00) Dollars per annum; and in all Counties of the State of Texas having a population of not less than twenty nine thousand seven hundred (29,700) and not more than twenty nine thousand seven hundred fifty (29,750) inhabitants according to the last preceding Federal Census, the salary of the County Superintendent shall from and after the passage of this Act be not less than the sum of Twenty Four Hundred ($2,400.00) Dollars per annum nor more than the sum of Three Thousand ($3,000.00) Dollars per annum, the amount of which salary shall be fixed by the order of the County Board of Education for the said Counties, and the County Board of Education for each of the Counties coming within the terms of this bill shall by order entered in its minutes set the salary for each of their respective Counties.

The amount of salaries allowed hereunder shall be paid in the manner and in accordance with the now existing laws governing the maintenance of the office of the County Superintendent; provided, however, the salary herein provided for shall be paid monthly upon order of the County School Trustees; and provided further that the salary for the month of September shall not be paid until the County Superintendent of Public Instruction shall have presented a receipt or a certificate from the State Superintendent of Public Instruction showing that he has made all the reports required of him by the State Superintendent of Public Instruction. [As amended Acts 1939, 46th Leg., Spec. L., p. 632, § 1.]

Allowance out of State and County Available School Fund; proration of allowance

Sec. 2a. In making the annual per capita apportionment to the public free schools, the County Board of Education of each of the counties coming under Section 2 of this Act shall also make an annual allowance out of the State and County Available School Fund not exceeding the sum of Three Thousand Dollars ($3,000) for the salary of the County Superintendent of Public Instruction and Six Hundred Dollars ($600) for traveling expenses incidental to and necessary in the administration of the County Superintendent's office annually, and the same shall be prorated to the schools in said counties in proportion to the scholastic population of each school district in each of said respective counties, and the Commissioners Court of each of said counties may expend out of the General Fund of said counties not to exceed Three Hundred Dollars ($300) per annum to defray the office expenses for stamps, stationery, telephone, and printing, incidental to and necessary in the efficient administration of the schools of said counties respectively.

Monthly payments of salaries and expenses; prerequisites

Sec. 2b. The salary and traveling expenses provided for in Sections 2 and 2a shall be paid monthly, upon the order of the County Board of Education; provided that the salary for the month of September shall not be paid until the said County Superintendent submits a certificate from the State Superintendent of Public Instruction showing that all reports required have been made to the State Department of Education. That the office expenses provided herein shall be paid by the County Treasurer on the order of the Commissioners Court as said expenses may be incurred.

Salaries and expenses in counties of 30,000 to 30,100 population

Sec. 2c. In all counties in the State of Texas having a population of not less than thirty thousand (30,000) nor more than thirty thousand and one hundred (30,100), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be not less than Twenty-seven Hundred and Fifty Dollars ($2,750) nor more than Three Thousand Dollars ($3,000) per annum, the amount of which salary shall be fixed by the order of the County Board of Education for the respective county.

Subsection 1. In making the annual per capita apportionment to the public free schools, the County Board of Education of each such county mentioned in Section 1 of this Act shall also make an annual allowance out of the State and County Available School Fund not exceeding the sum of Three Thousand Dollars ($3,000) for the salary of the County Superintendent of Public Instruction and Six Hundred Dollars ($600) for traveling expenses incidental to and necessary in the administration of the County Superintendent's office annually, and the same shall be prorated to the schools in said county in proportion to the scholastic population of each school district in each of said respective counties, and the Commissioners Court of each of said counties may expend out of the General Fund of said county not to exceed Three Hundred Dollars ($300) per annum to defray the office expense for stamps, stationery, telephone and printing incidental to and necessary in the efficient administration of the schools in said counties respectively.

Subsection 2. The salary and traveling expenses provided for herein shall be paid monthly on the order of the County Board of Education; provided that the salary for the month of September shall not be paid until the County Superintendent submits a certificate from the State Superintendent of Public Instruction showing that all reports required have been made to the State Department of Education. That the office expense provided herein shall be paid by the County Treasurer on the order of the Commissioners Court as said expenses may be incurred. [Acts 1937, 45th Leg., 1st C.S., p. 1805, ch. 29.]

Section 3 of the Act of 1937 repealed conflicting laws.

Art. 2700d—19. County superintendent—expenses.

Counties to which applicable

Section 1. In counties having a population of not less than twenty-one thousand, eight hundred and thir-

ty-five (21,835) and not more than twenty-one thousand, eight hundred and fifty (21,850), and in counties having a population of not less than fifty thousand (50,000) and not more than fifty thousand, one hundred (50,100), and in counties having a population of not less than forty-eight thousand, nine hundred (48,900) and not more than forty-nine thousand (49,000), according to the last preceding Federal Census, the county boards of trustees may make such provisions as they deem necessary for office and traveling expenses of the county superintendent of public instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the county superintendent.

Act cumulative

Sec. 2. The provisions of this Act shall be cumulative of all General Laws on the subject and where not otherwise provided herein, such General Laws shall apply; but, in case of conflict, the provisions of this Act shall control and be effective. [Acts 1937, 45th Leg., 2nd C.S., p. 1944, ch. 43.]

Art. 2700d—20. Superintendent's salary in counties of 15,760 to 15,790.—From and after the effective date of this Act in all counties having a population of not less than fifteen thousand, seven hundred and sixty (15,760) and not more than fifteen thousand, seven hundred and ninety (15,790), and having an area of three hundred and twelve (312) square miles according to the last preceding Federal Census, the county board of trustees shall make provision for the salary of the county superintendent of public instruction in the sum of Four Thousand Dollars ($4,000) per year and no more. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the payment of maintenance and salaries of county superintendents. [Acts 1939, 46th Leg., Spec.L., p. 631, § 1.]

Section 2 of the Act of 1939 repealed conflicting laws.

Art. 2700d—21. Traveling expenses of Superintendents in counties of 15,725 to 15,775 population.—From and after the passage of this Act that all County Superintendents of Public Instruction in all counties having a population of not less than fifteen thousand seven hundred twenty-five (15,725) and not more than fifteen thousand seven hundred seventy-five (15,775) according to the last preceding Federal Census shall be and are allowed an additional Five Hundred ($500.00) Dollars per year for traveling expenses. [Acts 1939, 46th Leg., Spec.L., p. 652, § 1.]

Art. 2700d—22. Salary and expenses of Superintendents in counties of enumerated population.

Counties with 50,000 to 51,000; 38,765 to 38,775; 29,210 to 29,630

Section 1. From and after the passage of this Act in all counties of the State of Texas having a population of not less than fifty thousand (50,000) and not more than fifty-one thousand (51,000), according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be not less than Three Thousand, Three Hundred Dollars ($3,300) nor more than Three Thousand, Six Hundred Dollars ($3,600) per annum to be fixed by order of the board of education of such counties; and in counties having a population of not less than thirty-eight thousand, seven hundred and sixty-five (38,765) and not more than thirty-eight thousand, seven hundred and seventy-five (38,775), according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be Three Thousand, Three Hundred Dollars ($3,300) per annum; all counties in this State which have a population of not less than twenty-nine thousand, two hundred and ten (29,210) and not more than twenty-nine thousand, six hundred and thirty (29,630) according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be Three Thousand Dollars ($3,000) per year or Two Hundred and Fifty Dollars ($250) per month, to be paid in accordance with and in the manner as provided by general law governing the maintenance of the office of county superintendent, as provided in Article 2700, Revised Civil Statutes of Texas of 1925.

Counties of 77,750 to 77,800

Sec. 2. In counties having a population of not less than seventy-seven thousand, seven hundred and fifty (77,750) and not more than seventy-seven thousand, eight hundred (77,800), according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be Three Thousand, Six Hundred Dollars ($3,600) per annum. Such salary shall be paid in accordance with existing laws governing such office.

Counties of not over 70,000 with two cities over 13,800

Sec. 3. From and after the passage of this Act in all counties of the State of Texas having a population of not more than seventy thousand (70,000), according to the last preceding Federal Census, and having at least two (2) incorporated cities within their boundary with a population of more than thirteen thousand, eight hundred (13,800) each, according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be not less than the sum of Two Thousand, Eight Hundred Dollars ($2,800) per annum nor more than the sum of Three Thousand, Eight Hundred Dollars ($3,800) per annum, to be fixed by the county board of education of each of such counties, and in making the annual per capita apportionment to the schools of such counties, the county board of education of such counties shall make an annual allowance out of the State and county available school funds for the payment of the salary of the superintendents of public instruction for such counties; and in addition thereto, office expenses of an amount not in excess of Three Hundred Dollars ($300) per annum for stamps, stationery and telephone; and said county board of education is also authorized to allow for traveling expenses of such county superintendents a sum not in excess of Three Hundred Dollars ($300) per annum to defray the expenses incurred by such county superintendents, which said sum shall be paid by said county board of education upon certificate of such superintendents that the expenses have been incurred in the discharge of their duties as such superintendents, and the salary and expenses herein provided to be paid monthly upon the order of the school trustees; providing that the salaries for the month of September shall not be paid until the county superintendent of public instruction shall have presented a receipt or certificate from the State Superintendent of Public Instruction showing that he has made all reports required of him, that the expenses provided for herein shall be paid monthly by the county treasurer on the order of the county board of education.

Counties of 20,000 to 20,050

Sec. 4. In counties having a population of not less than twenty thousand (20,000) and not more than twenty thousand and fifty (20,050) according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be not less than the sum of Two Thousand, Five Hundred Dollars ($2,500) per annum nor more than the sum of Three Thousand, Two Hundred Dollars ($3,200) per annum, the amount of which salary shall be fixed by order of the county board of education for the respective counties, and the county board of education for each county coming within this section shall, by order en-

tered in its minutes, set the salary for each of the respective counties. The salary allowed shall be paid in the manner and in accordance with existing laws governing the office of the county superintendent of public instruction.

Counties of 23,000 to 23,400; 17,600 to 17,650; 15,700 to 15,730

Sec. 5. That the salary of the county superintendent of public instruction in all counties in Texas having not less than twenty-three thousand, three hundred (23,300) nor more than twenty-three thousand, four hundred (23,400) population, according to the last preceding Federal Census, and in all counties having not less than seventeen thousand, six hundred (17,600) nor more than seventeen thousand, six hundred and fifty (17,650) population, according to the last preceding Federal Census; in all counties having not less than fifteen thousand, seven hundred (15,700) nor more than fifteen thousand, seven hundred and thirty (15,730) population, according to the last preceding Federal Census, shall be, from and after the effective date of this Act, Two Thousand, Six Hundred Dollars ($2,600) per year to be paid in twelve equal payments out of the State and county available school fund of such counties.

Counties of 30,275 to 30,300

Sec. 6. From and after the passage of this Act in all counties of the State of Texas having a population of not more than thirty thousand, three hundred (30,300) nor less than thirty thousand, two hundred and seventy-five (30,275), according to the last preceding Federal Census, shall be not less than the sum of Two Thousand, Four Hundred Dollars ($2,400) per annum nor more than the sum of Three Thousand, Two Hundred Dollars ($3,200) per annum to be fixed by the county board of education of each of such counties, and in making the annual per capita apportionment to the schools of such counties, the county board of education of such counties shall make an annual allowance out of the State and county available school funds for the payment of the salary of the superintendent of public instruction for such counties payable in twelve equal payments out of the State and county available school fund of such counties.

Counties of 18,000 to 18,500

Sec. 7. In all counties having a population of not less than eighteen thousand (18,000) and not more than eighteen thousand, five hundred (18,500), according to the last preceding Federal Census, the county board of education shall, in addition to the salaries and expenses fixed by law, allow not to exceed the sum of Three Hundred Dollars ($300) per annum for the actual traveling expenses of such county superintendents made in the performance of their duties as county superintendents and to be paid out of the State and county available school fund of such counties on order of the county board of education of such counties on the verified account of such county superintendents.

Conflicting laws; Act as cumulative

Sec. 8. All laws and parts of laws, whether here referred to by article, title or number or not, general or special, in conflict herewith, are hereby modified and limited to the extent that they are not to be controlling, but the specific provisions of this Act shall be controlling in the counties to which it is made applicable. The provisions of this Act are cumulative of the general law on the subject, and where not otherwise modified hereby such general laws are made applicable. [Acts 1939, 46th Leg., Spec.L., p. 643.]

Section 9 of the Act of 1939 provided that a holding of partial invalidity should not affect the remaining portions.

Art. 2700d—23. Expenses of Superintendent and trustees in administration of scholastic affairs in certain counties.—In each county of this State with a population of not less than thirty thousand, nine hundred and twenty (30,920) and not more than thirty thousand, nine hundred and twenty-five (30,925), and in counties having a population of not less than fourteen thousand, four hundred and sixty (14,460) and not more than fourteen thousand, four hundred and sixty-five (14,465), and in counties having a population of not less than seven thousand, one hundred (7,100) and not more than seven thousand, one hundred and twenty-five (7,125), as shown by the Federal Census last preceding such action, the County School Board of Trustees is hereby authorized to set aside from the Available School Funds of the county, in accordance with the provisions of the General Law governing the assessment for the support of the County Superintendent's Office, an amount not to exceed Six Hundred Dollars ($600) to defray the expenses of the County Superintendent and County School Board of Trustees of such counties in the administration of the scholastic affairs of the county. [Acts 1939, 46th Leg., Spec.L., p. 656, § 1.]

Section 2 of the Act of 1939 repealed conflicting laws.

Art. 2700d—24. Travelling and other expenses of Superintendent in counties of 19,890 to 19,905 population.—Section 1. In counties having a population of not less than nineteen thousand, eight hundred and ninety (19,890) and not more than nineteen thousand, nine hundred and five (19,905), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent.

Sec. 2. The provisions of this Act shall be cumulative of all General Laws on the subject and, where not otherwise provided herein, such General Laws shall apply; but, in case of conflict, the provisions of this Act shall control and be effective. [Acts 1939, 46th Leg., Spec.L., p. 653.]

Art. 2700d—25. Superintendent's salary in counties of 18,760 to 18,960 population.—In counties having a population of not less than eighteen thousand, seven hundred and sixty (18,760) and not more than eighteen thousand, nine hundred and sixty (18,960), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be not less than the sum of One Thousand, Nine Hundred Dollars ($1,900) per annum nor more than the sum of Two Thousand, Four Hundred Dollars ($2,400) per annum, the amount of which salary shall be fixed by order of the County Board of Education for the respective counties, and the County Board of Education for each county coming within this Act shall, by order entered in its Minutes, set the salary for each of the respective counties. The salary allowed shall be paid in the manner and in accordance with existing laws governing the office of the County Superintendent of Public Instruction. [Acts 1939, 46th Leg., Spec.L., p. 634, § 1.]

Section 2 of the Act of 1939 repealed conflicting laws.

Art. 2700d—26. Superintendent's salary in counties of 29,750 to 30,025 population; reports.—Section 1. The salary of the County Superintendent of Public Instruction of each county in Texas, having a population of not less than twenty-nine thousand, seven hundred and fifty (29,750) nor more than thirty thousand and twenty-five (30,025) according to the last Federal Census, shall from and after passage of this Act be not less than the sum of Three Thousand, Six Hundred Dollars ($3,600) per annum.

Sec. 2. In making the annual per capita apportionment to the schools of the counties having a popula-

tion of not less than twenty-nine thousand, seven hundred and fifty (29,750) and not more than thirty thousand and twenty-five (30,025) the County School Trustees shall make an annual allowance out of the State and County Available Funds for the payment of the salary of the Superintendent of Public Instruction not less than Three Thousand, Six Hundred Dollars ($3,600).

Sec. 3. Said salary to be paid monthly upon the order of the County School Trustees, provided that said salary to the Superintendent of Public Instruction for the month of September shall not be paid until the Superintendent shall have presented a receipt or certificate from the State Superintendent of Public Instruction showing that he has made all reports required of him. [Acts 1939, 46th Leg., Spec.L., p. 640.]

Section 4 of the Act of 1939 repealed conflicting laws.

Art. 2700d—27. Superintendent's salaries in counties having population of 22,100 to 22,500; 41,050 to 42,100; 22,600 to 22,800; 14,550 to 14,800; 11,021 to 11,050; reports.—Section 1. From and after the passage of this Act, the salary of the County Superintendent of Public Instruction of each county in Texas having a population of not less than twenty-two thousand, one hundred (22,100) and not more than twenty-two thousand, five hundred (22,500), according to the last preceding Federal Census, shall be Thirty-six Hundred Dollars ($3600) per annum, to be paid in equal monthly payments out of the county's available per capita apportionment coming to such counties, upon the order of the County School Trustees.

Sec. 2. The salary of the County Superintendent of Public Instruction of each county in Texas having a population of not less than forty-one thousand and fifty (41,050) and not more than forty-two thousand, one hundred (42,100), according to the last preceding Federal Census, shall from and after the passage of this Act be not less than the sum of Two Thousand, Eight Hundred Dollars, ($2,800) per annum and not more than Three Thousand, Six Hundred Dollars ($3,600) per annum, to be fixed by the County Board of Education of each county; and in addition thereto, the county superintendents of such counties shall receive office expenses for stamps, telephone, and stationery not exceeding Three Hundred Dollars ($300) per annum, as well as an amount not in excess of Three Hundred Dollars ($300) per annum to defray traveling expenses incurred by such county superintendents, which said sum shall be paid by said County Board of Trustees on the certificate of such superintendent that the expenses had been incurred in the discharge of his duties as such superintendent.

Sec. 2-a. The salary and expenses provided for in Section 2 of this Act shall be paid monthly upon the order of the County School Trustees of such counties out of the county's available and State per capita apportionment coming to such counties; providing that the month of September shall not be paid until the County Superintendent of Public Instruction shall have presented a receipt or a certificate from the State Superintendent of Public Instruction showing that he has made all of the reports required by him.

Sec. 3. The salaries of the County Superintendent of Public Instruction of each county in Texas having a population of not less than twenty-two thousand, six hundred (22,600) and not more than twenty-two thousand, eight hundred (22,800), according to the last preceding Federal Census, shall from and after the passage of this Act be not less than Twenty-two Hundred Dollars ($2200) per annum and not more than Twenty-eight Hundred Dollars ($2800) per annum, and in counties having a population of not less than fourteen thousand, five hundred and fifty (14,550) and not more than fourteen thousand eight hundred (14,800), according to the last preceding Federal Census, shall from and after the passage of this Act be not less than the sum of Twenty-two Hundred Dollars ($2200) and not more than Twenty-eight Hundred Dollars ($2800) per annum, to be fixed by the County Board of Education in each county.

Sec. 4. The salary of the Superintendent of Public Instruction of each county in Texas having a population of not less than eleven thousand and twenty-one (11,021), nor more than eleven thousand and fifty (11,050), according to the latest Federal Census, shall from and after the passage of this Act be not less than Twenty-one Hundred Dollars ($2100) per annum, nor more than Twenty-four Hundred Dollars ($2400) per annum; said salary to be set by the County Board of School Trustees of each county affected.

Sec. 4-a. The salary shall be paid monthly upon the order of the County Board of School Trustees; provided that the month of September shall not be paid until the Superintendent of Public Instruction shal have presented a receipt or a certificate from the State Superintendent of Public Instruction showing that he has made all reports required by him. [Acts 1939, 46th Leg., Spec.L., p. 636.]

Section 5 of the Act of 1939 repealed all conflicting laws.

Art. 2700d—28. Salary and expenses of Superintendents in counties of 197,000 to 198,000 and 32,400 to 32,800 population; proration of allowance; reports.—Section 1. In all counties of the State of Texas having a population of not less than one hundred and ninety-seven thousand (197,000) and not more than one hundred and ninety-eight thousand (198,000) and all counties with a population of not less than thirty-two thousand, four hundred (32,400) and not more than thirty-two thousand eight hundred (32,800), according to the last preceding Federal Census, the salary of the county superintendent of public instruction shall be fixed by order of the County Board of Education in and for such counties at an amount not less than Three Thousand Dollars ($3,000) per year and not more than Four Thousand, Two Hundred Dollars ($4,200) per year and said salary shall be exclusive of any and all traveling expenses allowed by law.

Sec. 2. In making the annual per capita apportionment to the public free schools, the County Board of Education of each of the counties mentioned in Section 1 of this Act shall also make an annual allowance out of the State and County Available School Funds not exceeding the sum of Six Hundred Dollars ($600) salary for traveling expenses incidental to and necessary in the administration of the county superintendent's office annually, and the same shall be prorated to the schools in said county in proportion to the scholastic population of each school district in each of said respective counties, and the Commissioners Court of said county may expend out of the General Fund of said counties not to exceed Three Hundred Dollars ($300) per annum to defray the office expenses for stamps, stationery, telephone, etc., incidental to and necessary in the efficient administration of the schools of said counties respectively.

Sec. 3. The salary and traveling expenses provided for herein shall be paid monthly, upon the order of the County Board of Education; provided that the salary for the month of September shall not be paid until the said county superintendent submits a certificate from the State Superintendent of Public Instruction showing that all reports required have been made to the State Department of Education; that the office expenses provided herein shall be paid by the County Treasurer on the order of the Commissioners Court as said expenses may be incurred. [Acts 1939, 46th Leg., Spec.L., p. 649.]

Section 4 of the Act of 1939 repealed all conflicting laws.

Art. 2700d—29. Travelling expenses of Superintendents in counties of 22,500 to 22,600 population.—In all counties having a population of not less than twenty-two thousand, five hundred (22,500) and not more than twenty-two thousand, six hun-

dred (22,600), according to the last preceding Federal Census or any subsequent Federal Census, the county board of school trustees shall make provisions for the traveling expenses of the county superintendent of public instruction, and shall make an allowance for such traveling expenses in the sum of Six Hundred Dollars ($600) per annum, and no more. The amount allowed herein shall be paid in twelve (12) monthly installments and in the same manner as the salary and maintenance of the office of county superintendents are now paid. [Acts 1939, 46th Leg., Spec.L., p. 654, § 1.]

Section 2 of the Act of 1939 repealed conflicting laws.

Art. 2700d—30. Superintendent's salary in counties of 14,535 to 14,555 population.—In all counties of the State of Texas having a population of not less than fourteen thousand, five hundred and thirty-five (14,535) and not more than fourteen thousand, five hundred and fifty-five (14,555) inhabitants, according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be not less than Eighteen Hundred Dollars ($1800) and not more than Twenty-four Hundred Dollars ($2400) per annum, the amount of which salary shall be fixed by the order of the County Boards of Education for the respective counties; and the County Board of Education for each of the counties coming within this Act shall, by order entered in its Minutes, set the salary for its respective county. [Acts 1939, 46th Leg., Spec.L., p. 630, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2700d—31. Travelling and office expenses of Superintendents in counties of 13,400 to 13,500 and 5,180 to 5,190 population.—In all counties having a population of not less than thirteen thousand, four hundred (13,400) and not more than thirteen thousand, five hundred (13,500), and in all counties having a population of not less than five thousand, one hundred and eighty (5,180) and not more than five thousand, one hundred and ninety (5,190), according to the last preceding Federal Census, the County Board of School Trustees may make provisions for the traveling and office expenses of the County Superintendent of Public Instruction, and may make an allowance for such traveling and office expenses not exceeding the sum of Six Hundred Dollars ($600) per annum. The amount allowed herein shall be paid in twelve (12) monthly installments and in the same manner as the salary and maintenance of the office of County Superintendents are now paid. [Acts 1939, 46th Leg., Spec.L., p. 651, § 1.]

Section 2 of the Act of 1939 repealed conflicting laws.

Art. 2700d—32. Salary of Superintendent in counties of 23,880 to 23,890 and 6,000 to 6,010 population.—In all counties containing a population of not more than twenty-three thousand, eight hundred and ninety (23,890) and not less than twenty-three thousand, eight hundred and eighty (23,880) according to the Federal Census of 1930, and containing a scholastic population of not more than six thousand and ten (6,010) and not less than six thousand (6,000) according to the 1938–1939 Public School Directory of the State Department of Education, the County Superintendent of Schools shall receive from the Available School Fund of their respective counties an annual salary of not less than Two Thousand, Two Hundred Dollars ($2,200) nor more than Two Thousand, Four Hundred Dollars ($2,400), said salary to be fixed by the County Board of School Trustees of the respective counties. [Acts 1939, 46th Leg., Spec.L., p. 639, § 1.]

Art. 2700d—33. Salary of Superintendent in counties of 43,125 to 43,200 population.—Section 1. From and after the passage of this Act, in all counties of the State of Texas which had a population of not less than forty-three thousand, one hundred and twenty-five (43,125), and not more than forty-three thousand, two hundred (43,200), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Three Thousand, Two Hundred and Fifty Dollars ($3,250) per annum, to be paid in accordance with and in the manner as provided by a General Law governing the maintenance of the office of County Superintendent of Public Instruction.

Sec. 2. All laws and part of laws either here referred to by article, title, or number, General or Special, in conflict herewith are hereby modified and limited to the extent that they are not to be controlling, but the specific provisions of this Act shall be controlling in the counties to which it is made applicable. The provisions of this Act are cumulative of the General Law on this subject, but where not otherwise modified hereby, such General Laws are made applicable. [Acts 1939, 46th Leg., Spec.L., p. 647.]

Art. 2700d—34. Salary in counties of 20,790 to 20,825.—Section 1. From and after the passage of this Act, in all counties of the State of Texas which had a population of not less than twenty thousand, seven hundred and ninety (20,790) and not more than twenty thousand, eight hundred and twenty-five (20,825), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Twenty-four Hundred Dollars ($2400) per annum, to be paid in accordance with and in the manner as provided by General Law governing the maintenance of the office of County Superintendent of Public Instruction.

Sec. 2. All laws and parts of laws either here referred to by Article, Title, or Number, general or special, in conflict herewith are hereby modified and limited to the extent that they are not to be controlling, but the specific provisions of this Act shall be controlling in the counties to which it is made applicable. The provisions of this Act are cumulative of the General Law on this subject, but where not otherwise modified hereby, such General Laws are made applicable. [Acts 1939, 46th Leg., Spec.L., p. 635.]

Art. 2700d—35. Salary and office and traveling expenses in counties of 10,360 to 10,380 and counties of 10,399 to 10,499.—Section 1. The salary of the Superintendent of Public Instruction in each county in Texas having a population of not less than ten thousand, three hundred and sixty (10,360) and not more than ten thousand, three hundred and eighty (10,380), and in each county having a population of not less than ten thousand, three hundred and ninety-nine (10,399) and not more than ten thousand, four hundred and ninety-nine (10,499) inhabitants, according to the last preceding Federal Census, shall from and after the passage of this Act be Twenty-four Hundred Dollars ($2400) per annum.

Sec. 2. The Superintendent of Public Instruction in each county in Texas having a population of not less than ten thousand, three hundred and sixty (10,360) and not more than ten thousand, three hundred and eighty (10,380), and in each county having a population of not less than ten thousand, three hundred and ninety-nine (10,399) and not more than ten thousand, four hundred and ninety-nine (10,499) inhabitants, according to the last preceding Federal Census, shall be allowed office and traveling expenses not exceeding Six Hundred Dollars ($600) per annum, to be paid monthly out of the Available School Fund.

Sec. 3. The salary shall be paid monthly upon the order of the County School Trustees; provided that the month of September shall not be paid until the Superintendent of Public Instruction shall have presented a receipt or certificate from the State Superintendent of Public Instruction showing that he has made all the reports required by him. [Acts 1939, 46th Leg., Spec.L., p. 628.]

Section 4 of the Act of 1935 repealed all conflicting laws.

Art. 2700d—36. Office and traveling expenses in counties of 24,578 to 24,580 and counties of 64,400 to 64,500.—In counties having a population of not less than twenty-four thousand, five hundred and seventy-eight (24,578) and not more than twenty-four thousand, five hundred and eighty (24,580), and in counties having a population of not less than sixty-four thousand, four hundred (64,400) and not more than sixty-four thousand, five hundred (64,500), according to the last preceding Federal Census, the County Boards of Trustees may make such provisions as they deem necessary for office and traveling expenses of the County Superintendent of Public Instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the County Superintendent. [Acts 1939, 46th Leg., Spec.L., p. 655, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2700d—37. County superintendent—Salary and expenses—Compensation of school trustees—Counties of 13,450 to 13,600 and 19,950 to 20,100 population.—In counties with a population according to the last preceding Federal Census of not less than thirteen thousand, four hundred and fifty (13,450) and not more than thirteen thousand, six hundred (13,600) and of not less than nineteen thousand, nine hundred and fifty (19,950) nor more than twenty thousand, one hundred (20,100), the salary of the county superintendent of public instruction shall be fixed by the Commissioners Court at not less than Eighteen Hundred Dollars ($1800), nor more than Twenty-two Hundred Dollars ($2200) per annum, and office and travelling expenses not exceeding Four Hundred Dollars ($400) per annum may be allowed, when necessarily incurred by the superintendent in the discharge of the duties of the office, out of the State and county available school funds, provided further, that the Commissioners Court may expend from the general fund of the county not exceeding Two Hundred Dollars ($200) per annum for the purpose of supplementing the office expenses of the county superintendent of public instruction. The compensation of each county school trustee in such counties shall be Five Dollars ($5) per day, but not more than Sixty Dollars ($60) shall be paid any trustee in any one year, payment thereof to be made in the manner provided by existing law. [Acts 1939, 46th Leg., Spec.L., p. 629, § 1.]

Art. 2700d—38. Salaries in counties of 34,600 to 34,700 and counties of 13,800 to 13,900.—Section 1. From and after the passage of this Act, in all counties of the State of Texas which had a population of not less than thirty-four thousand, six hundred (34,600) and not more than thirty-four thousand, seven hundred (34,700), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be set by the County Board of Trustees at an amount not to exceed Thirty-six Hundred Dollars ($3600) per annum and not less than Twenty-eight Hundred Dollars ($2800) per annum to be paid in accordance with and in the manner as provided by a General Law governing the maintenance of the office of County Superintendent of Public Instruction.

Sec. 1a. From and after the passage of this Act, in all counties of the State of Texas which had a population of not less than thirteen thousand, eight hundred (13,800) and not more than thirteen thousand, nine hundred (13,900), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be set by the County Board of Trustees at an amount not to exceed Twenty-two Hundred and Fifty Dollars ($2250) and not less than Eighteen Hundred Dollars ($1800) and traveling and other expenses as now allowed by General Law to be paid in accordance with and in the manner as provided by the General Law governing the maintenance of the office of County Superintendent of Public Instruction. [Acts 1939, 46th Leg., Spec.L., p. 641.]

Section 2 of the Act of 1939 provided that all conflicting laws are modified to the extent that they are not to be controlling and that the provisions of such Act are cumulative.

Art. 2700d—39. Salaries in counties of 77,000—77,600; 51,770—51,800; 12,190—12,200; 13,400—13,500; 27,500—27,600.—From and after the passage of this Act in all counties of the State of Texas which have a population of not less than seventy-seven thousand (77,000) and not more than seventy-seven thousand, six hundred (77,600), and in all counties of the State of Texas which have a population of not less than fifty-one thousand, seven hundred and seventy (51,770) and not more than fifty-one thousand, eight hundred (51,800), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Thirty-six Hundred Dollars ($3600) per annum; and in all counties of the State of Texas which have a population of not less than twelve thousand, one hundred and ninety (12,190) and not more than twelve thousand, two hundred (12,200), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Three Thousand Dollars ($3,000) per annum; and in all counties of the State of Texas which have a population of not less than thirteen thousand, four hundred (13,400) and not more than thirteen thousand, five hundred (13,500), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Twenty-eight Hundred Dollars ($2800) per annum; and in all counties of the State of Texas which have a population of not less than twenty-seven thousand, five hundred (27,500) and not more than twenty-seven thousand, six hundred (27,600), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Twenty-four Hundred Dollars ($2400) per annum, to be paid in accordance with and in the manner as provided by the general law governing the maintenance of the office of County Superintendent, as provided in Article 2700, Revised Civil Statutes, 1925. [Acts 1939, 46th Leg., Spec.L., p. 648, § 1.]

Section 2 of the Act of 1939 provided that all conflicting laws are modified to the extent that they are not to be controlling and that the provisions of the Act are cumulative.

Art. 2700d—40. County superintendent—Salaries—Counties of 23,620 to 23,800 and 12,460 to 12,780 population.—Section 1. From and after the effective date of this Act, the salaries of county superintendents of public instruction in all counties in this State having a population of not less than twenty-three thousand, six hundred and twenty (23,620) nor more than twenty-three thousand, eight hundred (23,800), according to the last Federal Census, shall be in a sum not less than Twenty-two Hundred Dollars ($2200) and not more than Three Thousand Dollars ($3,000). The salaries of county superintendents of public instruction in all counties in this State having a population of not less than twelve thousand, four hundred and sixty (12,460) and not more than twelve thousand, seven hundred and eighty (12,780), according to the last preceding Federal Census, shall be in a sum not less than Eighteen Hundred Dollars ($1800) and not more than Twenty-four Hundred Dollars ($2400).

Sec. 2. In making the annual per capita apportionments in the schools of the counties coming within the provisions of this Act, the county school trustees shall provide for the payment of the salaries hereinabove named, to be paid monthly upon the order of the county school trustees, that is to say, the annual salaries

shall be divided by twelve (12) and the amount determined by such division shall be paid monthly to such superintendents. [Acts 1939, 46th Leg., Spec.L., p. 638.]

Section 3 of the Act of 1939 repealed all conflicting laws.

Art. 2700d—41. Office and traveling expenses of county superintendent or ex officio county superintendent in counties of 8,200 to 8,500.—In counties having a population of not less than eight thousand, two hundred (8,200) and not more than eight thousand, five hundred (8,500), according to the last preceding Federal Census, the county board of trustees may make such provisions as they deem necessary for office and traveling expenses of the county superintendent of public instruction or, if the county has no county superintendent, for the County Judge when acting as ex officio county superintendent of public instruction; provided that the amount of such expenditures for office and traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the county superintendent. [Acts 1941, 47th Leg., p. 396, ch. 229, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 2700d—42. Traveling expenses of ex officio county superintendent or assistant in counties of 9,070 to 9,200.—In counties with a population of not less than nine thousand and seventy (9,070) nor more than nine thousand, two hundred (9,200), as shown by the Federal Census of 1940, the county board of trustees may make such provisions as they deem necessary for traveling expenses of the ex officio county superintendent or any assistant he may have, provided that the amount of the traveling expenses shall not exceed the sum of Six Hundred Dollars ($600) per annum. The amount of such expenses so allowed shall be paid in the manner and in accordance with now existing laws governing the maintenance of the office of the ex officio county superintendent. [Acts 1941, 47th Leg., p. 442, ch. 278, § 1.]

Section 2 of the Act of 1941 repealed conflicting laws.

Art. 2700d—43. Salary and office and traveling expenses of county superintendent in certain counties.—Section 1. From and after the passage of this Act in all counties of the State of Texas which have a population of not less than eighty-three thousand (83,000) and not more than eighty-four thousand (84,000); and in all those counties of the State of Texas which have a population of not less than twenty thousand, five hundred and sixty (20,560) and not more than twenty thousand, five hundred and seventy (20,570); and in all those counties having not less than twenty thousand, two hundred and thirty (20,230) and not more than twenty thousand, two hundred and fifty (20,250); and in all counties of the State of Texas which have a population of not less than thirteen thousand, three hundred and twelve (13,312) and not more than thirteen thousand, three hundred and fifteen (13,315); and in all those counties of the State of Texas having a population of not less than thirteen thousand, two hundred and thirty (13,230) and not more than thirteen thousand, two hundred and thirty-five (13,235), according to the last preceding Federal Census, the salary of the County Superintendent of Public Instruction shall be Thirty-six Hundred Dollars ($3600) per annum; to be paid in accordance with and in the manner as provided by the General Law governing the maintenance of the office of County Superintendent, as provided in Article 2700, Revised Civil Statutes, 1925.

Sec. 2. From and after the passage of this Act, in all counties of the State of Texas which have a popuiation of not less than eighty-three thousand (83,000) and not more than eighty-four thousand (84,000); and in all those counties of the State of Texas which have a population of not less than twenty thousand, five hundred and sixty (20,560) and not more than twenty thousand, five hundred and seventy (20,570); and in all those counties of the State of Texas which have a population of not less than twenty thousand, two hundred and thirty (20,230) and not more than twenty thousand, two hundred and fifty (20,250); and in all those counties of the State of Texas which have a population of not less than thirteen thousand, three hundred and twelve (13,312) and not more than thirteen thousand, three hundred and fifteen (13,315); and in all those counties of the State of Texas which have a population of not less than thirteen thousand, two hundred and thirty (13,230) and not more than thirteen thousand, two hundred and thirty-five (13,235), according to the last preceding Federal Census, the amount which shall be allowed for office and travel expenditures for the County Superintendent of Public Instruction shall be Six Hundred Dollars ($600) per annum.

Sec. 3. All laws and parts of laws, whether here referred to by Article, Title, or number, or not, General or Special, in conflict herewith are hereby modified and limited to the extent that they are not to be controlling, but the specific provisions of this Act shall be controlling in the counties to which it is made applicable. The provisions of this Act are cumulative of the General Law on the subject, and where not otherwise modified hereby, such General Laws are made applicable. [Acts 1941, 47th Leg., p. 1410, ch. 643.]

Art. 2700d—44. Automobiles for use of county superintendents in counties of 500,000 or more.—Section 1. In all counties in this State having a population of five hundred thousand (500,000) or more according to the last preceding Federal Census, or any future Federal Census, the County School Trustees may provide for the purchase and maintenance of an automobile for the use of the County Superintendent. In lieu of providing for the purchase and maintenance of such automobile, the County School Trustees may, in their discretion, allow to the County Superintendent out of the County equalization fund such sum of money per month as will in their judgment cover the cost of an automobile and the expense of maintaining it, including depreciation thereon, provided that such sum so fixed shall not exceed the sum of One Hundred Dollars ($100) per month. Such allowance, when fixed by the County School Trustees, shall be paid monthly from the County equalization fund. Provided, however, that nothing herein contained shall be construed as authorizing any increase in any tax rate now in effect in any such counties.

Sec. 2. The County Superintendent shall make monthly reports showing the kind of automobile operated by him, the number of miles such car was operated during the month in the discharge of the duties of his office, the amounts expended by him in the maintenance thereof, and such other information as may be required of him by the County School Trustees. All such reports shall be audited, and shall be subject to the approval of the County Auditor of such counties, if there be a County Auditor.

Sec. 3. The allowance above provided for shall be continued in effect for such period of time as may be determined by the County School Trustees, and may be changed from time to time as in their judgment the facts and circumstances require. Such allowance shall be in addition to the expenses now authorized by law for County Superintendents.

Sec. 4. The provisions of Article 2700, Vernon's Annotated Civil Statutes, as amended by Acts 1941, Forty-seventh Legislature, Page 407, and Acts 1943,

Forty-eighth Legislature, Page 697, shall apply to all counties of the class above enumerated. The provisions of such laws shall be cumulative of all other laws governing such counties. [Acts 1945, 49th Leg., p. 169, ch. 126.]

Art. 2701. [2763–4] Ex-officio superintendent.—In each county having no School Superintendent, the County Judge shall be Ex-officio County Superintendent and shall perform all the duties required of the County Superintendent in this Chapter. He shall give bond in the sum of One Thousand ($1,000.00) Dollars, payable to and to be approved by the County Board of School Trustees of the respective counties and conditioned for the faithful performance of his duties. The County Board shall name or appoint an assistant to the Ex-officio County Superintendent and shall provide for office and traveling expense of the Ex-officio Superintendent. The salary of the Ex-officio Superintendent of Public Instruction, the salary of the Assistant Ex-officio Superintendent of Public Instruction and the office and traveling expenses for the office of the Ex-officio Superintendent in all counties in Texas shall be from and after September 1, 1947, paid from the State and County Available School Fund. [Acts 1905, p. 263; Acts 1935, 44th Leg., 2nd C.S., p. 1732, ch. 447, § 1; Acts 1947, 50th Leg., p. 519, ch. 305, § 1.]

Section 3 of Acts 1935, 44th Leg., 2nd C.S., p. 1732, ch. 447 repeals all conflicting laws and parts of laws and section 4 contains the general clause as to partial invalidity.

Section 2 of the Act of 1947, 50th Leg., p. 519, ch. 305 is set out as Art. 3888.

Section 4 provides that partial invalidity shall not affect the remaining portions.

Acts 1933, 43rd Leg., 1st C.S., p. 46, ch. 13 provides for the payment of the salary of the Ex-officio Superintendent of Public Instruction in counties of 3000 to 3100 from the Available School Fund of the County.

Acts 1933, 43rd Leg., 1st C.S., p. 141, ch. 46 provides that the salary of the Ex-officio Superintendent of Public Instruction in all counties of 7,645 to 7,690 from the available School Fund of the County.

3. RURAL SCHOOL SUPERVISOR

Art. 2701a. Rural supervisor, duties, salary, etc.—Sec. 1. That the County Board of School Trustees in counties having a population of not less than 31,000 nor more than 31,789, according to the Federal Census of 1920, and a scholastic population of not less than 9,300 as shown by the scholastic report for the school year of 1928–29, may employ a Rural School Supervisor to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the county.

Sec. 2. The Rural Supervisor provided for in this Act shall be the holder of a teacher's permanent certificate (not permanent primary) and shall have had four years successful experience as a teacher in the primary and intermediate grades and in addition shall have had practice teaching in said grades.

Sec. 3. It shall be the duty of such Supervisor to visit the schools of the county and help the teachers with their class work by teaching demonstration lessons for them; suggesting methods of presenting the work and aiding them in any other ways possible.

Sec. 4. The Supervisor may call meetings of the teachers when deemed necessary, either by the Supervisor or the County Board, for the purpose of discussing their work with them, and it shall be the duty of the teachers to attend all such meetings, whenever possible.

Sec. 5. The salary of the Rural School Supervisor shall be determined by the County Board of School Trustees; provided that the total salary paid such Supervisor for any one year shall not exceed $2,000. Said salary shall be paid out of the local or available funds of the districts in proportion to the weekly salary, or salaries, of the teachers of the districts.

Sec. 6. The employment of a Rural School Supervisor under the terms of this Act shall exempt the County Superintendent from holding a Teachers' Institute for rural teachers, including teachers of independent districts of fewer than five hundred scholastics, and exempt the rural teachers of the county from attendance upon a Teachers' Institute as provided for in Article 2691, Revised Statutes of 1925, and as amended by the 40th Legislature. [Acts 1929, 41st Leg., p. 469, ch. 219.]

Art. 2701b. Rural supervisor in certain counties.—Sec. 1. That the County Board of School Trustees in counties having a population of 30,000 to 30,500 and a population of 34,300 to 34,500 according to the Federal census of 1920, may employ a rural school supervisor or supervisors to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the county.

Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their class work by teaching demonstration lessons for them; suggesting methods of prescribing the work and aiding them in any other ways possible.

Sec. 3. The supervisor may call meetings of the teachers when deemed necessary, for the purpose of discussing their work with them, and it shall be the duty of the teachers to attend all such meetings called by the supervisor, whenever possible.

Sec. 4. The salary of the rural school supervisor shall be determined by the County Board of School Trustees; provided that the total salary paid such supervisor for any one year shall not exceed $1,800.00. Said salary shall be paid out of the local or available funds of the districts in proportion to the weekly salary, or salaries, of the teachers of the district or may be apportioned out of the State and County apportionment.

Sec. 5. The employment of a rural school supervisor under the terms of this Act shall exempt the County Superintendent from holding a teachers' institute for rural teachers, and teachers of Independent districts of less than 10,000 population and exempt such teachers from attendance upon a teachers' institute as provided for in Article 2691, Revised Civil Statutes of 1925, and as amended by the 40th Legislature. [Acts 1929, 41st Leg., p. 526, ch. 251.]

Art. 2701c. Rural school supervisor in lieu of teachers' institute.—Sec. 1. That the County Board of School Trustees in counties having a population of 37,000 to 37,800, according to the Federal census of 1920, and a scholastic population of at least 10,000 as shown by the scholastic report for the school year 1927–28, may employ a Rural School Supervisor to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the county.

Sec. 2. It shall be the duty of such Supervisor to visit the schools of the county and help the teachers with their class work by teaching demonstration lessons for them, suggesting methods of presenting the work and aiding them in any other ways possible.

Sec. 3. The Supervisor may call meetings of the teachers when deemed necessary, for the purpose of discussing their work with them, and it shall be the duty of the teachers to attend all such meetings called by the Supervisor, whenever possible.

Sec. 4. The salary of the Rural School Supervisor shall be determined by the County Board of School Trustees; provided that the total salary paid such Supervisor for any one year shall not exceed $1,800.00. Said salary shall be paid out of the available funds of the districts in proportion to the weekly salary, or salaries, of the teachers of the district.

Sec. 5. The employment of a Rural School Supervisor under the terms of this Act shall exempt the County Superintendent from holding a Teachers' In-

stitute for rural teachers and exempt the rural teachers of the county from attendance upon a Teachers' Institute as provided for in Article 2691, Revised Statutes of 1925, and as amended by the 40th Legislature. [Acts 1929, 41st Leg., 1st C.S., p. 188, ch. 74.]

Art. 2701d. Rural supervisor and salary in counties having population of 1,100 to 41,500.—Sec. 1. That the County Board of School Trustees in counties having a population of 1,100 to 41,500 according to the last Federal census, and a scholastic population of at least 9200 as shown by the scholastic report for the preceding school year may employ a rural school supervisor or supervisors to plan, outline and supervise the work of the primary and intermediate grades of the rural schools of the county. Such supervisor to have college degree or other appropriate evidence of proficiency in rural supervision.

Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their class work by teaching demonstration lessons for them; suggesting methods of presenting the work and aiding them in any other ways possible.

Sec. 3. The supervisor may call meetings of the teachers when deemed necessary, for the purpose of discussing their work with them, and it shall be the duty of the teachers to attend all such meetings called by the supervisor, whenever possible.

Sec. 4. The salary of the rural school supervisor shall be determined by the County Board of School Trustees; provided that the total salary paid such supervisor for any one year shall not exceed $2,000.00. Said salary shall be paid out of the local or available funds of the districts in proportion to the weekly salary, or salaries, of the teachers of the district or may be apportioned out of the State and County apportionment.

Sec. 5. The employment of a rural school supervisor under the terms of this Act shall exempt the County Superintendent from holding a teacher's institute for rural teachers, and teachers of Independent districts of less than 10,000 population and exempt such teachers from attendance upon a teachers' institute as provided for in Article 2691, Revised Civil Statutes of 1925, and as amended by the 40th Legislature. [Acts 1929, 41st Leg., 3rd C.S., p. 242, ch. 9.]

Counties having population of 3000-3100: Acts 1933, 43rd Leg., 1st C.S., p. 46.
Counties having population of 5,650 to 5,675: [Acts 1939, 46th Leg., Spec.L., p. 716.]
Counties having population of 7645-7690: Acts 1933, 43rd Leg., 1st C.S., c. 46, p. 141.
Counties having population of 29,400 to 29,500: [Acts 1939, 46th Leg., Spec.L., p. 719.]
Counties having population of 320,000 to 350,000: [Acts 1941, 47th Leg., p. 356, ch. 194.]

Art. 2701d—1. Rural supervisor and salary in counties having population of 30,000 to 30,500.—Sec. 1. That the County Board of School Trustees in counties having a population of 30,000 to 30,500 according to the Federal census of 1920 may employ a rural school supervisor or supervisors to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the county.

Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their class work by teaching demonstration lessons for them; suggesting methods of prescribing the work and aiding them in other ways possible.

Sec. 3. The supervisor may call meetings of the teachers when deemed necessary, for the purpose of discussing their work with them, and it shall be the duty of the teachers to attend all such meetings called by the supervisor, whenever possible.

Sec. 4. The salary of the rural school supervisor shall be determined by the County Board of School Trustees; provided that the total salary paid such supervisor for any one year shall not exceed $1,800. Said salary shall be paid out of the local or available funds of the districts in proportion to the weekly salary or salaries of the teachers of the districts, or may be apportioned out of the State and county apportionment. Provided, also, that any expense necessary in carrying on the work of said supervisors shall be paid by the County Board of School Trustees in the same manner and from the same funds as the salary of said supervisors.

Sec. 5. The employment of a rural school supervisor under the terms of this Act shall exempt the County Superintendent from holding a teachers' institute for rural teachers, and teachers of independent districts of less than 10,000 population and exempt such teachers from attendance upon a teachers' institute as provided for in Article 2691, Revised Civil Statutes of 1925 and as amended by the 40th Legislature. [Acts 1930, 41st Leg., 5th C.S., p. 166, ch. 32.]

Art. 2701d—2. Supervisor and salary in counties having population of 28,000 to 28,327.—Sec. 1. That the County Board of School Trustees in counties having a population of 28,000 to 28,327 according to the last Federal census, and a scholastic population of at least 8,349, as shown by the scholastic report for the preceding school year may employ a rural school supervisor to plan, outline and supervise the work of the primary and intermediate grades of the rural schools of the county. Such supervisor to have college degree.

Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their class work by teaching demonstration lessons for them; suggesting methods of presenting the work and aiding them in any other ways possible.

Sec. 3. The supervisor may call meetings of the teachers when deemed necessary, for the purpose of discussing their work with them, and it shall be the duty of the teachers to attend all such meetings called by the supervisor, whenever possible.

Sec. 4. The salary of the rural school supervisor shall be determined by the County Board of School Trustees; provided that the total salary paid such supervisor for any one year shall not exceed $2,000.00. Said salary shall be paid out of the local or available funds of the districts in proportion to the weekly salary or salaries, of the teachers of the district or may be apportioned out of the State and County apportionment.

Sec. 5. The employment of a rural school supervisor under the terms of this Act shall exempt the County Superintendent from holding a teachers' institute for rural teachers and teachers of Independent districts of less than 10,000 population and exempt such teachers from attendance upon a teachers' institute as provided for in Article 2691, Revised Civil Statutes of 1925, and as amended by the 40th Legislature. [Acts 1930, 41st Leg., 5th C.S., p. 195, ch. 53.]

Art. 2701d—2a. Rural school supervisors.—Section 1. The County Board of School Trustees in counties having a population of twenty-nine thousand, three hundred (29,300) to twenty-nine thousand, five hundred (29,500) and forty-six thousand, one hundred (46,100) to forty-six thousand, two hundred (46,200), according to the last available Federal Census, may employ a rural school supervisor to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the county, and shall meet with and advise with the County Board at all regular meetings.

Sec. 2. It shall be the duty of such Supervisor to visit the schools of the county and help the teachers with their class work by teaching demonstration lessons for them, suggesting methods of presenting the work, and aiding them in any other ways possible.

Sec. 3. The Supervisor may call the meetings of the teachers when deemed necessary, for the purpose of discussing their work with them, and it shall be the duty of the teachers to attend all such meetings called by the supervisor whenever possible.

Sec. 4. The salary of the rural school supervisor shall be determined by the County Board of School Trustees; provided that the total salary paid such supervisor for any one year shall not exceed One Thousand, Five Hundred Dollars ($1,500). Said salary shall be paid out of the available funds of the districts in proportion to the weekly salary or salaries of the teachers of the district.

Sec. 5. The employment of a rural school supervisor under the terms of this Act shall exempt the County Superintendent from holding a teachers' institute for rural teachers; and in all counties having a population of twenty-nine thousand, three hundred (29,300) to twenty-nine thousand, five hundred (29,500), according to the last available Federal Census, shall exempt the County Superintendent from holding a teachers' institute for teachers of independent districts with a scholastic population of less than five hundred (500); and shall exempt the teachers of such schools of the county from attendance upon a teachers' institute, as provided for in Article 2691, Revised Civil Statutes of Texas of 1925, and as amended by the Fortieth Legislature. [Acts 1927, 40th Leg., 1st C.S., p. 249, ch. 91; Acts 1929, 41st Leg., 1st C.S., p. 194, ch. 77; Acts 1930, 41st Leg., 4th C.S., p. 74, ch. 36; Acts 1931, 42nd Leg., Spec.L., p. 343, ch. 164; Acts 1933, 43rd Leg., p. 73, ch. 42; Acts 1939, 46th Leg., Spec.L., p. 710, § 1.]

Section 2 of the Act of 1939 provided that partial invalidity should not affect the remainder of the act. Section 3 repealed conflicting laws.

Art. 2701d—3. Supervisor, salary and duties in other counties.

Counties having population of from 8,955 to 8,957: Special Laws 1931, p. 21, ch. 9.

Counties having population of from 77,777 to 98,000: Special Laws 1931, p. 88, ch. 28.

Counties having population of 34,640 to 34,650: Special Laws, 42d Leg., p. 105, ch. 39. Repealed by Acts 1935, 44th Leg., p. 382, ch. 143, as to Nacogdoches County.

Counties having population of 24,000 to 24,150: Special Laws, 42d Leg., p. 120, ch. 45.

Counties having population of from 39,497 to 39,597: Special Laws 1931, p. 226, ch. 115.

Counties having a population of from 24,150 to 24,250 Special Laws 1931, p. 230, ch. 118.

Counties having population of from 36,000 to 36,100: Sp. Laws 1931, p. 298, ch. 153.

Counties having population of from 53,900 to 54,000: Sp. Laws 1931, p. 309, ch. 157.

Counties having population of 17,000 to 17,500: Sp. Laws 1931, p. 312, ch. 160.

Counties having population of 8,955 to 8,975: Sp. Laws 1931, p. 376, ch. 188.

Counties having population of 10,015 to 10,090: Sp. Laws 1931, p. 411, ch. 198.

Counties having population of 30,000 to 30,250: Sp. Laws 1931, p. 431, ch. 217.

Acts 1935, 44th Leg., p. 439, ch. 177, a special law passed as a general law, repeals Special Laws 1931, p. 420, c. 205. The repeal is of Senate Bill No. 265, chapter 14, Acts of the Regular Session of the Forty-Second Legislature, but Senate Bill No. 265, chapter 14, is the special law referred to.

Counties having population of 21,830 to 22,080: Acts 1935, 44th Leg., p. 512, ch. 218.

Acts 1935, 44th Leg., 1st C.S., p. 1578, ch. 392, relates to Rural School Supervisor for the Public Free Schools of Smith County.

Counties having population of 29,600 to 30,000: Acts 1937, 45th Leg., p. 75, ch. 45.

Counties having population of 64,351 to 64,451: Acts 1937, 45th Leg., p. 86, ch. 50.

Cities having population of 290,000 to 320,000: Acts 1937, 45th Leg., p. 215, ch. 116.

Counties having population of 2,850 to 2,875: Acts 1939, 46th Leg., Spec.L., p. 709.

Counties having population of 53,930 to 53,940: Acts 1939, 46th Leg., Spec.L., p. 712.

Counties having population of 37,250 to 38,350: Acts 1941, 47th Leg., p. 676, ch. 418.

Art. 2701d—4. Supervisor, salary and duties in counties having population of 49,100 to 51,500.—Sec. 1. That the County Board of County Trustees in co-operation with the County Superintendent in counties having a population of forty-nine thousand, one-hundred (49,100) to fifty one thousand, five hundred (51,500) according to the last Federal Census and scholastic population of twelve thousand, seven hundred and seventy-seven (12,777) as shown by the scholastic reports for the preceding school year, may employ one or two rural school supervisors to plan, outline and supervise the work of the primary and intermediate grades of the rural schools of the county. Such supervisors to have appropriate evidence of proficiency in rural supervision.

Sec. 2. It shall be the duty of such supervisor or supervisors to visit the schools of the county and help the teachers with their class work, by teaching demonstration lessons for them, suggesting methods of presenting the work and aiding them in any way possible.

Sec. 3. The supervisors in cooperation with the County Superintendent, may call meetings of the teachers when deemed necessary for the purpose of discussing their work with them, and it shall be the duty of such teachers to attend all such meetings, whenever possible.

Sec. 4. The salary of such rural school supervisor shall be determined by the County Board of County Trustees and the County Superintendent, provided that the total salary paid each such supervisor shall not exceed two thousand, four hundred dollars ($2.400.00) for any one year, including traveling expenses. The said salary shall be paid out of the State available funds apportioned to the said county each scholastic year.

Sec. 5. The employment of a rural supervisor under the terms of this Act shall exempt the County Superintendent from holding Teacher's Institutes for rural teachers and teachers of independent districts of the county and shall exempt the teachers from attendance upon a Teacher's Institute as provided in Article 2691, Revised Civil Statutes of Texas, of 1925, and as amended by the 40th Legislature. [Acts 1933, 43rd Leg., p. 557, ch. 181.]

Art. 2701d—5. Rural school supervisors in Van Zandt and other counties.

Counties to which applicable

Section 1. The County Boards of School Trustees may employ rural supervisors of Van Zandt, Panola, Nacogdoches, Jasper, Cass, Live Oak, Anderson, Scurry, Wood, Denton, Shelby, Morris, Parker, Nolan, Titus, Wise and Lamar Counties, to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the counties. [As amended, Acts 1939, 46th Leg., Spec.L., p. 713, § 1.]

Visiting schools

Sec. 2. It shall be the duty of such supervisors to visit the schools of the counties and help the teachers with their class work by teaching demonstration lessons for them: suggesting methods of presenting the work and aiding them in any other ways possible.

Teachers' meetings

Sec. 3. The supervisors may call meetings of the teachers when deemed necessary, either by the supervisors or the County Boards, for the purpose of discussing their work with them, and it shall be the duties of the teachers to attend all such meetings whenever possible.

Salary

Sec. 4. The salary of the rural school supervisor shall be determined by the County Board of School Trustees, providing that the total salaries paid such

school supervisor for any one year shall not exceed Two Thousand ($2,000.00) Dollars; said salary shall be included in the annual budget for County Administration Expense, and an assessment shall be levied upon the scholastic population of Van Zandt County for the purpose of paying the salary of the supervisor, provided the County Board of School Trustees of the various counties named in House Bill No. 72, Chapter 39, of the General and Special Laws of the Forty-second Legislature, First Called Session, 1931,[1] shall have the power to discontinue the office of rural school supervisors at any time when it is clearly shown that such rural school supervisors are not a public necessity, and their services are not commensurate with the salaries received. [As amended Acts 1939, 46th Leg., Spec.L., p. 714, § 1; Acts 1939, 46th Leg., Spec.L., p. 715, § 1.]

[1] This article.

Exemptions; partial invalidity

Sec. 5. The employment of rural school supervisors, under the terms of this Act shall exempt the County Superintendent from holding a Teachers' Institute for rural teachers, including teachers of independent districts of fewer than five hundred (500) scholastics, and exempt the rural teachers of the County from attendance upon a Teachers' Institute as provided for in Article 2691, Revised Statutes of 1925, and as amended by the 40th Legislature.

It is hereby declared that if any clause, phrase, provision or section of this bill should be invalid or unconstitutional, that the Legislature would have nevertheless passed the remaining portions of said bill without including the phrase, clause, provision or section so declared invalid or unconstitutional. [Acts 1931, 42nd Leg., 1st C.S., p. 83, ch. 39.]

Art. 2701e—1. Rural school music supervisor in counties of 16,670 to 17,060 and 9,300 to 9,405 population.—Section 1. The County Board of School Trustees in counties having a population of not less than sixteen thousand, six hundred and seventy (16,670) nor more than seventeen thousand and sixty (17,060) and all counties having a population of not more than nine thousand, four hundred and five (9,405) and not less than nine thousand, three hundred (9,300), according to the last preceding Federal Census, may employ, upon the recommendation of the County Superintendent, a rural school music supervisor to plan, outline, supervise, and teach music in the rural schools which are under the supervision and administration of the County Superintendent of Public Instruction, said supervisor at all times to work in cooperation with and under the supervision of the County Superintendent of Public Instruction. Such supervisor must have evidence of proficiency in public school music and be able to direct same. Other qualifications to be set up by County Superintendent.

Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their classwork, in music by teaching demonstration lessons for them, suggesting methods of presenting the work and aiding in every possible way to improve classroom instruction in music. The supervisor, in cooperation with the County Superintendent, may call meetings of the teachers of the county when deemed necessary for the purpose of discussing with them their problems, and it shall be the duty of said teachers to attend such meetings whenever called. Said supervisor, when not visiting schools, shall render assistance in the office of the County Superintendent of whatever nature may be necessary if demanded by the County Superintendent.

Sec. 3. The removal of such supervisor and the termination of his or her services shall at all times be under the control of the Board of County School Trustees acting on the recommendation of the County Superintendent of said county.

Sec. 4. The salary of such rural school music supervisor shall be determined by the Board of County School Trustees and the County Superintendent; provided the total salary of said supervisor shall not exceed One Thousand, Five Hundred Dollars ($1,500) per annum, the salary of said supervisor to be allowed each year out of the County Available Fund. [Acts 1939, 46th Leg., Spec.L., p. 718.]

CHAPTER 12.—COUNTY UNIT SYSTEM

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Art. 2702. Election.—Upon the petition, duly signed and verified by the tax rolls of the county, of five hundred (500) qualified voters of any county having a population of one hundred thousand (100,000) or over, or upon the petition duly signed and verified by the tax rolls of the county of one hundred (100) qualified voters of any county having a population of not less than three thousand nine hundred sixty (3,960) and not more than four thousand (4,000), and a county having a population of not less than eight thousand six hundred (8,600) and not more than nine thousand (9,000), according to the preceding Federal Census, the County Judge shall call an election in said county within ninety (90) days thereafter to determine whether or not such county shall adopt what is commonly known as the County Unit System of Education, provided for under this law; such election to be governed by the laws governing the holding of a primary election in and for a county, in which said election is called. Separate elections shall be held in each Commissioner's Precinct in the County, and it shall require a majority vote in each such Commissioner's Precinct before the consolidation may be ordered by the Commissioners' Court. And the Commissioners' Court is hereby constituted the canvassing board for each of such precincts and the elections therein. Said election shall be held on the same day and in the same manner as provided for the holding of primary elections in this State. The County Judge shall prepare a proper form of ballot to be used in such election, and furnish such explanations of the law as in his judgment may be necessary, and transmit the same to the presiding officer of each election precinct. The results of said election shall be certified by the County Judge to the Secretary of State, and shall take effect as soon as the County Board of Education hereinafter provided for has been duly elected and qualified; and this law shall take the place of any existing General or Special Law affecting said county which may be in conflict with the provisions hereof. [Acts 1923, p. 237; Acts 1931, 42nd Leg., p. 835, ch. 348, § 1; Acts 1941, 47th Leg., p. 176, ch. 128, § 1.]

Art. 2702—A. County-wide equalization districts in counties of 24,000 to 25,000 having valuation of $27,500,000.

Taxing power

All counties in this state having a population of not more than twenty-five thousand (25,000), nor less than twenty-four thousand (24,000) according to the last preceding Federal Census, and containing a valuation of Twenty-seven Million Five Hundred Thousand ($27,500,000.00) Dollars or more, are hereby created into county-wide equalization school districts, and each such county shall have the county unit system of education to the extent specified in this Act and may exercise the taxing power conferred on school districts by Article 7, Section 3 of the Constitution to the extent hereinafter provided; but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property tax-paying voters residing therein at an election to be held for that purpose as hereinafter provided.

Management; rate of equalization tax

Sec. 2. The general management, supervision, and control of the public schools and of the educational

interests of such counties shall be vested in the County Board of School Trustees, except as otherwise provided by law, and said Board shall perform such duties as are or may be required of it by existing law and by the provisions of this Act and shall constitute the Board of Trustees for such county-wide equalization district. Any such county-wide school equalization district may levy and collect annually on all taxable property in the county an equalization tax not to exceed Twenty-five (25) Cents on the One Hundred ($100.00) Dollars valuation of property situated in said county, and the money derived from said tax shall be known as an equalization fund for the support of the public schools of the county, which funds shall be distributed to the school districts of the county as provided herein.

Election

Sec. 3. On the petition of as many as one hundred (100) legally qualified taxpaying voters of any county, subject to the provisions of this Act, praying for the authority to levy and collect said tax, the County Judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days, nor less than twenty (20), from the date of such order. The County Judge shall give notice of such election by causing to be published a copy of the order of the election in some newspaper, published in the county once each week for three (3) consecutive weeks prior to the date of such election, the date of the first publication to be not less than twenty (20) days prior to the date fixed by the election. Only legally qualified property taxpaying voters who own property in the county and who have duly rendered the same for taxation shall be allowed to vote in said election. The form of ballot shall be substantially as follows:

"For the county-wide equalization tax."

"Against the county-wide equalization tax."

The manner of holding said election shall be governed by the General Laws of the State of Texas regulating elections and shall be held at the regular polling places within the county with duly appointed election officers holding said election. The officers holding the election shall make returns thereof to the County Judge within ten (10) days after the same was held.

The Commissioners Court shall at its next regular meeting canvass the returns of said election, and if a majority of the votes cast shall favor such tax, the Court shall declare the result and certify the same to the County Board of School Trustees and to the County Tax Assessor and Collector, and said Board of County School Trustees shall thereupon be authorized to levy said tax and the County Tax Assessor and Collector shall be authorized to assess and collect same. No election to revoke said tax shall be ordered until the expiration of five (5) years from the date of the election at which said tax was adopted.

Assessment and collection; reports

Sec. 4. In counties voting such equalization tax the County Tax Assessor shall assess all the taxable property in the county at the same rate of valuation as it is assessed for state and county purposes, and the County Tax Collector shall collect said tax at the same time and in the same manner as state and county taxes are collected. The Tax Collector shall have the same authority and the same laws shall apply in the collection of said tax as in the collection of county ad valorem taxes. He shall, on or before the 10th of each month, make a report to the County Board of School Trustees and to the County Superintendent of Schools showing all moneys collected by him during the last month by said tax. The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts.

Treasurer; deposits

Sec. 5. The County Superintendent shall be the Treasurer of the county-wide equalization district and shall keep an accurate record of all moneys received and paid out by such county-wide equalization district. The county depository shall be the depository for the county-wide equalization district and such depository shall enter into a bond of a like condition and amount as is prescribed by law for depositories of county funds. The Tax Collector shall on or before the 10th of each month deposit all moneys collected by him during the preceding month by said school equalization tax in the depository to the credit of the county-wide school equalization fund.

Distribution of money collected

Sec. 6. The County Board of School Trustees shall distribute the money collected from any taxes levied by said district to the common and independent school districts of the county on the same basis that the state per capita apportionment is distributed among said common and independent school districts. The County Board of School Trustees shall issue warrants to be signed by the President of said Board, attested by the Secretary thereof, against such equalization fund to the School District Trustees on a per capita basis as is provided herein; provided, however, that the County Board shall from time to time, as the money is collected, issue warrants to the various school districts in proportion to the amount that each is entitled to receive on such per capita basis as provided herein.

Powers and duties of trustees

Sec. 7. This Act shall not have the effect of changing any duties imposed on or powers conferred on the Trustees of any common or independent school district situated in the counties covered by this Act unless and except as expressly provided herein; it being the intention of this law that respective Boards of Trustees shall continue to administer their lawful duties and powers as now authorized by law, but the equalization tax authorized shall be levied by the County Board of School Trustees and assessed and collected by the County Tax Assessor and Collector, and distributed to the respective districts by the County Board of School Trustees.

Partial invalidity; repeal

Sec. 8. In the event any clause, sentence, paragraph, section, or part of this Act shall be held unconstitutional or void, then and in that event it is hereby declared to be the legislative intent that all other clauses, sentences, paragraphs, sections, and parts of this Act shall have full effect according to their purport and intent. All laws or parts of laws, both General and Special, in conflict with this Act, are hereby repealed insofar and only insofar as they conflict with the provisions of this Act in its local application. [Acts 1947, 50th Leg., p. 617, ch. 331.]

Art. 2703. County board of education.—The general management, supervision, and control of the public schools and of the educational interests of each county adopting the provisions of this Law, shall be vested in the County Board of Education except as otherwise provided by law, and said Board shall perform such duties as are or may be required of it by law. Said Board shall be composed of five (5) members only one of whom shall be elected from any Independent School District as now composed and four (4) from the county outside of said Independent School District or Districts, and which Board shall hold office for a term of four (4) years. They shall be nominated at the regular primary election held for coun-

ty officers and elected at the general election. At the first election five (5) members of said Board shall be elected, three (3) of whom shall be elected for a term of two (2) years and two (2) for a term of four (4) years and biennially thereafter. At the first meeting after such election, the members so elected shall determine by lot who shall hold under the four (4) year term and who under the two (2) year term. At subsequent elections, three (3) members and two (2) members shall be elected on alternate years. Such members shall be persons of good moral character, with at least a fair elementary education, and they need not hold teachers' certificates, and shall be of good standing in their respective communities, and known for their honesty and business ability, public spirit, and interest in the promotion of public education. Any vacancy in said office shall be filled by a majority of the remaining members and the appointee shall hold office until the next general election following the date of his appointment. If the vacancy is not so filled within thirty (30) days, the State Superintendent shall fill the vacancy. Each such member shall first qualify by taking the official oath, the certification of which shall be filed in the office of the Probate Judge of the county. The term "Board" when hereafter used in this Chapter shall mean the County Board of Education and the term "Superintendent" shall mean the County Superintendent of Education. Provided that in counties of a population of not less than three thousand, nine hundred sixty (3,960) and not more than four thousand (4,000) the County Board shall consist of five (5) members, one to be elected from each Commissioner's Precinct and one elected from the county at large. At the first election three (3) members shall be elected for a two (2) year term and two (2) members for a four (4) year term and biennially thereafter. At the first meeting after election the members shall determine by lot who shall hold under the two (2) year term and who under the four (4) year term. At subsequent elections three (3) members and two (2) members shall be elected on alternate years. [Acts 1923, p. 237; Acts 1931, 42nd Leg., p. 835, ch. 348, § 1.]

Art. 2704. Meetings.—Said board shall hold an annual meeting on the first Tuesday in January. At this meeting the board shall elect one of its members to serve as president, and one to serve as vice-president. Other regular meetings shall be held on the first Tuesday in April, July and October of each year and such other special meetings may be held and at such place as the duties and business of the board may require. No motion or resolution shall be declared adopted without the concurrence of the majority of the whole board. [Acts 1923, p. 237.]

Art. 2705. Payment for services.—The members of said board shall receive five dollars a day from the public schools of the county. Such members shall not be allowed pay for more than twenty days in any one year, to be paid in like manner as provided for the pay of teachers. [Id.]

Art. 2706. County superintendent secretary.—The board shall during the month of May appoint as its executive officer a county superintendent of education who shall also be secretary of the board. Such appointment may be for a term of two or five years from the first day of July succeeding his appointment. Such person must be a graduate of a standard normal school, or have completed courses in other institutions that in the opinion of said board are equivalent to such education, or must hold a first grade or life certificate, and in addition thereto have had at least three years of successful teaching experience. He shall devote his entire time to public school purposes and shall receive such compensation as said board shall direct, not less than fifteen hundred dollars per annum. As secretary, he shall conduct all correspondence of the board; keep and preserve all its records, receive all the reports required by the board, and see that such reports are in proper form, complete, and accurate. He shall have the right to advise on any question under consideration by the board, but shall have no vote. Said board may, by an affirmative vote of five or more of its members, remove such person for immorality, misconduct in office, incompetency or wilful neglect of duty, or when in the opinion of the board the best interests of the schools require it. If said office is temporarily vacant or said officer is absent by reason of the nature of the business in hand or otherwise, the board shall temporarily appoint some one to act as secretary. [Id.]

Art. 2707. Treasurer of board.—Said board shall select some suitable person, company or corporation to act as treasurer of the public school funds of the county. Said treasurer shall be selected and he shall qualify and give bond in like manner as provided by law for treasurers of independent school districts, except that the amount of his bond shall be determined according to the estimated amount of the receipts coming annually into his hands. [Id.]

Art. 2708. Scope of board's authority.—All the property, estate, effects, money, funds, claims and donations now or hereafter vested by law in the public school authorities of any county for the benefit of the public free schools of any county, are hereby transferred and vested in the county board of education and their successors in office. Said board is authorized, empowered, directed and required to maintain a uniform and effective system of public schools. Real and personal estate granted, conveyed, devised or bequeathed for the use of any particular county, school district, or public school, shall be held in trust by said board for the benefit of any such county, school district, or school. Said board shall determine with and on the advice of the county superintendent of education, the educational policy of the county, and shall prescribe rules and regulations for the conduct and management of the schools. The authority vested in said board shall apply to the county as a whole, including all cities and towns therein. [Id.]

Art. 2709. To supervise school system.—Said board shall exercise through the superintendent and his professional assistants, control and supervision of the public school system of the county, subject to the provisions of this law. The board shall consult and advise, through its executive officer and his professional assistants, with school trustees, principals, teachers, and interested citizens, and shall seek in every way to promote the interest of the schools under their jurisdiction. [Id.]

Art. 2710. Sanitation.—Said board shall provide sanitary, hygenic[1] suitable and convenient water closets or outhouses for the children of the public schools under its jurisdiction, not less than two for each school or building when both sexes are in attendance, with separate means of access to each and shall make provisions for keeping same in a clean, comfortable, sanitary and hygienic condition. [Id.]

[1] Probably should read "hygienic."

Art. 2711. Consolidation of districts.—Said board shall consolidate schools, wherever in its judgment, it is practicable, and arrange if possible, for the transportation of pupils to and from such consolidated schools. Before consolidating two or more separate schools located in separate school districts said board shall call a meeting of the board of trustees of such school districts to meet with the county board for the purpose of giving such boards of local trustees an opportunity of being heard as to the advisability of making such consolidations. [Id.]

Art. 2712. Common line districts.—The county boards of education of two or more counties shall have the power to provide jointly for the maintenance of schools in or near the dividing line of such counties,

on the basis of the probable enrollment in such school from the counties represented. [Id.]

Art. 2713. To appoint teachers.—Said board shall appoint, upon the written recommendation of the county superintendent, all principals, teachers, clerical and professional assistants for the county authorized by the board. The county board shall suspend or dismiss for immorality, misconduct in office, insubordination, or incompetency, or wilful neglect of duty, or whenever, in the opinion of the board, the best interests of the school require it, superintendents, principals, teachers, or other employés or appointees of the board. [Id.]

Art. 2714. Grades and courses.—Subject to the provisions of this law, said board shall on the written recommendation of its secretary, subject to the regulations of the State Board grade and standardize all schools under its jurisdiction and prescribe courses of study for same. A printed copy of these courses of study shall be supplied to every teacher and interested citizen of the county. The elementary schools of the county shall have grades from one to six inclusive, the junior high schools, grades seven to nine inclusive; and the senior high schools, grades ten and eleven inclusive. Upon the recommendation of the secretary, said board shall prescribe the conditions for admission of pupils from the elementary schools to the junior high schools, and from the junior to the senior high schools. [Id.]

Art. 2715. Date of opening.—Said board in order to expedite the payment of the teachers' salaries and to make possible efficient supervision, shall fix a uniform date for each fiscal year for the opening of all schools in the county under its jurisdiction, and all schools, so far as said board deems practicable, shall open on said date. If for any reason, the board shall permit any schools to open at a later date, the reports and the records of such schools shall be made so as to conform to the scholastic months, counting from said uniform date. [Id.]

Art. 2716. Census.—Said board subject to the rules and regulations of the State board, shall cause to be taken in the manner provided by law, under the direction of its secretary, a census of the children in the county within scholastic age. Upon the recommendation of its secretary, the board shall appoint a sufficient number of enumerators to take the census, and shall fix their compensation and order them paid out of the available funds of the county. The report of the enumerators shall be made under oath to said secretary not later than the fifteenth day of April next succeeding the time of the taking of the census, and on or before June first following, said secretary shall make his consolidated report to the State board. The said secretary upon the direction at any time of the State Superintendent, shall cause the whole or any part of any school census in his county to be retaken. [Id.]

Art. 2717. Reports.—Said board shall cause to be prepared and published annually, in the month of October, in sufficient quantities for distribution among the citizens of the county, a report covering the condition, current accomplishment, and needs for the improvement of the schools. and also a statement of the business and financial transactions of the board with an itemized account of all receipts and expenditures of said board. Such statement must show a total amount of school funds received by the county board and the sources from which derived; the amount expended for teacher's salaries in each of the several school districts of the county and the amount paid out of the school funds for any other purpose than teachers' salaries must be shown and shall include the name of the persons to whom paid, the amount of each of said items and the purpose for which said amounts were expended. Said board shall make all reports at the time and in the manner required by the State Board and the secretary of said county board shall prepare the same. [Id.]

Art. 2718. Forms for reports.—Said secretary shall submit to the board forms and blanks on which school trustees, supervisors, attendance officers, principals, teachers, janitors and other regular employés shall make such reports as said board shall require of them and said board shall prescribe the same. [Id.]

Art. 2719. To provide separate schools.—Said board shall provide schools of two kinds; those for white children and those for colored children. Such schools respectively, shall be free to all such children over six years of age. This article shall not be construed as in any wise reducing the scholastic age relative to State apportionment. [Id.]

Art. 2720. Compulsory attendance.—Said board shall, upon the recommendation of its secretary, arrange the county into one or more appropriate and convenient compulsory school attendance districts; shall keep full and complete records of the boundaries thereof, and shall see to it that the compulsory attendance law is enforced. [Id.]

Art. 2721. May borrow money.—Said board shall have authority, upon the recommendation of its secretary to borrow money on the credit of the school fund of the county to meet salaries of teachers and current expenses when the current funds on hand are not sufficient to meet the same, to be secured by a pledge of the current revenues of the year. All such current loans, under the provisions of this article and other regulations of the board, shall be paid within the county school year in which such current loans are made, and from the funds accruing for the support of the schools within such given school year. The amount so borrowed shall at no time exceed one-third of the sum estimated for current expenses, as shown by the school budget of that year. [Id.]

Art. 2722. Right to acquire property.—Said board shall have the right to purchase, acquire by the right of eminent domain, lease, receive, hold, transmit and convey the title to the real and personal property for school purposes, except where otherwise provided. It shall have the power to sue and contract, all contracts to be made after resolutions have been adopted by the board and spread upon its minutes. All processes shall be executed by service on the executive officers of the board. [Id.]

Art. 2723. To insure buildings.—Said board is charged with the duty of seeing that every school building whose title is vested in the State, county or school district, is insured for its insurable value, and to this end may use such a part of the proceeds of the maintenance funds of the schools herein provided as may be specifically set apart for such purpose by said board. [Id.]

Art. 2724. Local revenue and taxation.—Said Board shall form a budget of the county funds to be used for the benefit of the public schools within said county during the year in which said funds are to be used, and which shall be composed of the State and County available school funds and of any other funds that may be received for any schools in said county from the State and also such local funds as may be derived by local taxes as hereinafter provided for. Immediately upon the adoption of this law and at such other times as they may deem necessary and to the best interest of the schools, said Board shall call an election of all qualified taxpaying voters of the county to determine whether or not the county will vote in favor of levying a tax for the maintenance of schools and bonds for the purchase of sites and the erection of school houses and teacherages. The aggregate amount of bonds issued for said purpose and the amount of maintenance tax shall never exceed

One ($1.00) Dollar on the One Hundred ($100.00) Dollar valuation of taxable property and the specific rate of tax need not be determined in the election. Any district within the said county may continue to levy and collect any tax for maintenance and bonds heretofore provided, and any district within said county may hereafter provide by an election as provided in subdivision 4 of Chapter 13 [1] for the levy and collection of an additional tax for maintenance and bonds, the proceeds of which tax are to be used for the benefit of the schools within said district. All property assessed for school purposes by the county shall be assessed at such valuation as may be fixed by a County Board of Equalization, and assessed and collected by an assessor and collector of taxes, all of which shall be appointed by the County Board of Education. Provided that in counties having a population of not less than three thousand, nine hundred sixty (3,960) and not more than four thousand (4,000) the rate of taxation for all purposes including maintenance and bond purposes shall never exceed fifty (50) cents on the Hundred ($100.00) Dollar valuation of taxable property, and, provided further, that in such counties the assessment and collection of taxes shall be in the same manner as State and County and common school district taxes are assessed and collected and all taxable property shall be assessed on the same values as are used for State and County purposes. It is specifically provided that the bond endorsements now owned by existing Independent School Districts in the counties affected herein shall never be distributed by election or otherwise over the remainder of the County, but shall constitute a lien solely and alone against said Independent School District or [2] Districts as now constituted. [Acts 1923, p. 237; Acts 1931, 42nd Leg., p. 835, ch. 348, § 1.]

1 Article 2784 et seq.
2 So in enrolled bill. Session laws omit words "District or".

Art. 2725. Election for revenue.—Said board shall order the sheriff to post a notice of such election at some public place within each local school district in said county, for three weeks before the election, and the sheriff shall obey such order. Not more than one such election shall be held in the same scholastic year. The president of said board shall appoint a presiding officer for each voting place to hold said election who shall make due returns thereof as required by law for holding a general election; and shall prepare ballots therefor at the expense of the district for and within which such election is held, said expense to be paid out of the available maintenance funds of such school district, said ballots shall have written or printed thereon: "For Maintenance Tax", and "Against Maintenance Tax". If the election is for the purpose of issuing bonds, the form of the ballot shall be "For The Issuance of Bonds And The Levying Of The Tax In Payment Thereof", or "Against The Issuance Of The Bonds And The Levying Of The Tax In Payment Thereof". All polls for local tax elections shall be opened at eight o'clock A. M. and shall be closed at seven o'clock P. M., and none of the officers holding such election shall be entitled to compensation therefor. All persons who are legally qualified voters of this State and of the county of their residence and who are resident property taxpayers in said county, shall be entitled to vote in such county tax elections. Returns shall be made to the county board of education and the result declared at its next ensuing meeting, as in the case of general elections. Any person may challenge a voter, but if the challenged person takes an oath that he is qualified as a voter of the State and county, and that he is a resident property taxpayer in said district, then he shall be entitled to vote. [Acts 1923, p. 237; Acts 1935, 44th Leg., p. 135, ch. 55, § 1.]

Art. 2726. Tax levy.—Said board shall at the time of levying the taxes for county purposes, also levy upon such school district the rate of tax said district has voted upon itself; or, if the proposition was "For a school tax not exceeding seventy-five (75) cents on the one hundred dollar ($100) valuation of taxable property in the district", said board shall levy such rate within that limit as has been determined by the Board of Trustees of said district and the county superintendent and certified to said county board of education by the county superintendent. The tax assessor shall assess said tax as other taxes are assessed, and make an abstract showing the amount of special taxes assessed against each school district in his county and furnish it to the county superintendent on or before October 1st for the year for which such taxes are assessed; and the taxes levied upon the real property in such districts shall be a lien thereon, and the same shall be sold for unpaid taxes in the manner and at the time of sales for State and County Taxes. A special tax voted in any district after the levy of county taxes shall be levied at any meeting of the county board of education prior to the delivery of the assessment rolls by the assessor. The Assessor and Collector of Taxes shall assess and collect said taxes for educational purposes as other taxes are assessed and collected, and shall receive a commission of one half of one per cent for assessing and one half of one per cent for collecting such tax, and shall pay all such taxes to the county treasurer, and said treasurer shall credit the treasurer of the county school board the amount belonging to it and pay out the same in accordance with law. [Acts 1923, p. 237; Acts 1935, 44th Leg., p. 710, ch. 305, § 1.]

Art. 2727. Duties of county superintendent.—The county superintendent shall see that the laws relating to the schools and the rules and regulations of the State and county boards of education are carried into effect. He shall have authority to administer oaths and to examine witnesses under oath in any part of the county on any matter pertaining to the public schools of the county, and to cause the examination to be reduced to writing. He shall in addition to the other duties required of him hereunder, perform the following duties:

1. Recommend to the county board of education, the kind, grade, the location of schools and plans therefor to be established and maintained, and the compulsory school attendance and local districts to be established, educational policies to promote the educational interests of the county and rules and regulations for the conduct of the schools, and for the admission of pupils to the junior and senior high schools.
2. Recommend to said board for condemnation, school buildings which are unsanitary and unfit for use. He shall recommend in writing all repairs, purchase of play grounds, school sites and buildings to be erected with State, county and local aid, and shall see that the plans and specifications, and the rules and regulations of the State Department with reference to the erection, repair, and equipment of the school buildings are carefully followed. He shall approve in writing all contracts of whatever kind entered into by the county board of education.
3. Work out plans for the consolidation of schools, and for the grounds, buildings, and equipment of such consolidated schools and submit the same to said board.
4. Grade and standardize all public schools of the county, prepare rules and regulations therefor, and prescribe courses of study for the schools of the county and submit the same to said board. Printed copies of such courses shall be supplied to every teacher and interested citizen of the county.
5. Be the representative of the State Superintendent in all State examinations for teachers' certificates conducted within the county, and shall perform such duties in connection therewith as may be required by the State Board.

6. Organize and attend county and local institutes for teachers and citizens, advise teachers as to their further study in professional reading, assist parents and citizens to acquire knowledge of the aims and work of the schools, and call conferences with principals, teachers, attendance officers, school trustees and other interested citizens to develop interest in education and improve the condition of the schools.

7. Visit the schools, observe the management and instructions, and give suggestions for the improvement of the same.

8. Prepare an annual school budget for the schools of the county and shall submit the same to said board; and shall in every way seek to secure funds for the support and development of the schools of the county. He shall annually publish in a newspaper printed at the county seat a full itemized statement of the receipts and disbursements of the county at the time he forwarded the same to the State Superintendent.

9. On or before the first day of July of each year, forward to the State Superintendent, on blanks to be furnished by the latter, an annual report of the public schools of his county for the preceding year and submit a copy of same to said county board. If he fails, neglects, or refuses to make such statement, the county treasurer of the school funds is authorized and instructed to withhold the amount due him for the preceding month or months as salary, until said report has been duly received and approved by the State Superintendent.

Art. 2728. Assistants.—The county board of education may, in its discretion, provide, upon the nomination of its secretary, at least the following assistants: An elementary school supervisor and a statistical and stenographic clerk. No person shall be eligible for appointment as such supervisor who does not hold a certificate of graduation from a State normal school or the equivalent thereof. Said board may employ additional clerical and professional assistants, including health supervisors, and may reimburse them for all traveling expenses necessary in the performance of their official duties. The county commissioners shall provide said secretary and his professional and clerical assistants with ample, convenient and comfortable office quarters, and provide necessary forms and supplies, furniture and office equipment, stationery and postage required by them in the discharge of their official duties. [Acts 1923, p. 237.]

Art. 2729. Teachers to keep record.—No teacher shall be entitled to receive payment for services unless all the current records of the school have been kept with care and accuracy, and no teacher or other employé of the board shall be entitled to receive payment for services unless all records required by the county board of education have been properly made and submitted. [Id.]

Art. 2729a. County board of trustees and powers.—In any organized county of this State not having heretofore elected or appointed a county board of trustees, the Commissioners' Court of said county is hereby authorized to appoint a county board of trustees for said county, the residence of whose members shall conform to the provisions of the general law relating to the election of county trustees.

And the said board of county school trustees when appointed shall have and exercise all the rights and powers conferred upon county boards of trustees by the provisions of the general law; provided also that the county board may create one or more school districts in any unorganized county attached to said organized county for judicial purposes and provide for the organization of schools therein by the appointment of trustees for the said districts. The county school trustees of any organized county are authorized to exercise the authority heretofore vested in the Commissioners' Court with respect to subdividing the county into school districts and making changes in school district lines. [Acts 1927, 40th Leg., 1st C. S., p. 17, ch. 7, § 1.]

Art. 2730. District school trustees.—Each school district shall, in the manner provided by law, elect for every school in the county, discreet, competent and reliable persons of mature years, not exceeding three in number, residing near the school house, and having the respect and confidence of the community, to serve as trustees of the school. Such trustees shall care for the property, look after the general interests of the school, and from time to time make reports to the county board of education, through its secretary, showing the progress and needs of the schools and the will of the people in regard to the schools. [Acts 1923, p. 237.]

Art. 2731. Meetings.—Said trustees shall hold a meeting on the first Saturday in June of each year or as soon thereafter as practicable. At this meeting, the board shall appoint one of its members as chairman and shall give notice of such appointment to the county board of education. Other regular meetings shall be held at least twice during the scholastic year, and such special meetings shall be held as the duties of the board require. [Id.]

Art. 2732. Assignment of teachers.—Said trustees shall have the power by unanimous vote to refuse to accept the original assignment by the county board of education, of any teacher, not later than thirty days before the time set for the opening of the school upon written notification to the county superintendent of education setting out the reason for such refusal, and it is hereby made the duty of said superintendent to nominate another teacher for such school; provided, however, that not more than three such teachers shall be assigned to any one place under the provisions of this article. Said trustees may file written charges with said county board requesting the removal of the principal or any teacher of said schools. [Id.]

Art. 2733. Closing schools.—No teacher shall have the power to close the school during the school hours unless in case of an emergency without the consent of the school trustees or the county superintendent of education. [Id.]

Art. 2734. Janitor.—Said trustees, with the approval of the principal, may recommend the appointment of a janitor for the school under its jurisdiction. [Id.]

Art. 2735. To visit schools—Said trustees shall visit the schools under their jurisdiction at least once each month and consult with the teachers and principals of the schools as to the progress of the pupils, conditions and cleanliness of the school and the grounds belonging to same, and give such aid as in their power for the advancement of said school. [Id.]

Art. 2736. Care of property.—Said trustees shall have the care of the building and grounds, the school apparatus and other school property. They shall attend to all incidental repairs and pay for the same out of the incidental funds collected in accordance with this chapter, provided that when repairs are to be paid for out of other than incidental funds, the amount to be expended shall be approved by the county superintendent of education and authorized by the county board of education before the repairs are made. [Id.]

Art. 2737. Hygienic condition.—The school trustees shall see that the water closets or out houses connected with the school are kept clean, comfortable, and in a sanitary and hygienic condition. [Id.]

Art. 2738. Use of school building.—The school trustees shall have the power in their discretion to authorize the use of the school building for such civic, social, recreational and community gatherings as in their opinion do not interfere with the principal use of the said school building or property, and provided

that the building is placed in as clean a condition as it was when turned over to the person or persons requesting its use, ordinary wear and tear excepted. [Id.]

Art. 2739. Application of law.—All reference to schools in this law shall be understood to apply alone to public schools, and the authority granted by this law to the county board of education and the county superintendent of education, of general supervision, control and management of the schools and the educational interests of the county, and the establishment of an educational policy for such county shall apply alone to the public school system. [Id.]

Art. 2740. Abolishment of unit system.—Any county operating under this law, any time after two years from the adoption hereof, may by majority vote abolish said county unit system at an election held after the presentation of a petition to abolish the same, said petition and election to conform to the provisions of this law governing the adoption of the county unit system. [Id.]

Art. 2740a. Supervision of schools in counties of more than 1100 square miles.

County Board of Education

Section 1. The general management, supervision, and control of the public free schools of counties with an area of more than eleven hundred (1,100) square miles and a population of not less than forty-two thousand (42,000) nor more than fifty-two thousand (52,000) according to the last preceding Federal Census, shall be vested in a County Board of Education. The County Board of Education shall be composed of five members to be elected at the regular school trustee election on the first Saturday in April of each year, one of whom shall be elected from each of the Commissioners' precincts and one from the county at large, by the qualified voters of the common school districts and of the independent school districts having five hundred (500) scholastics or less. The member at large shall serve as president of the Board. At the meeting following the first election the lengths of the terms of office shall be determined by lot and one elected each year thereafter for a term of five years. Any vacancy occurring on said Board shall be filled by an election ordered by the County Judge. Said election shall be governed by the general laws of this State for elections. [As amended Acts 1939, 46th Leg., Spec.L., p. 693, § 1.]

Meetings

Sec. 2. Meetings: The County Board of Education of such counties shall hold such meetings as are now provided by law and the rules generally adopted by deliberative bodies for their government shall be observed.

Payment

Sec. 3. Payment: The members of the County Board of Education shall receive $5.00 per day for the time spent in attending meetings, to be paid in the same manner and from the same funds as is now provided by law; provided that they may not be allowed pay for more than 20 days in any one year.

Powers and duties

Sec. 4. Powers and Duties: The County Board of Education shall appoint, subject to the provisions of this Act, as its executive officer, a County Superintendent of Education, who shall also be the secretary of the County Board of Education, and whose duties shall be the same as are now specified by law and as otherwise defined in this Act. The County Board of Education shall designate the salary of the County Superintendent, subject to the provisions of this Act. The County Board of Education shall appoint such assistants, supervisors, and clerical help for the County Superintendent as may be deemed necessary by this body, subject to the provisions of this Act.

Professional supervision; meetings of teachers

Sec. 5. The County Board of Education may, upon the recommendation of the County Superintendent, provide for the employment of such professional supervision as may be deemed necessary, this to be in lieu of the teachers' institute as now provided by law. The County Superintendent shall be exempt after the passage of this Act from such requirements as are now provided by law for the holding of teachers' institute; and shall be empowered to provide for such meetings of the teachers of the county as may be deemed necessary and to require the attendance of all teachers upon such meetings.

Annual per capita apportionment; nomination of principals and teachers

Sec. 6. In making the annual per capita apportionment to the schools, the County Board of Education shall also make an annual allowance out of the State and county available funds for the salary and expenses of the County Superintendent and such assistants, supervisors, and clerical help as he may have, and such expenses shall be pro rated to the schools subject to the supervision of said Board; provided that in making this allowance for county administration, the per capita assessment against the scholastics of the districts subject to the supervision of the County Board of Education shall not exceed $1.50, provided further that the salary of the County Superintendent for the month of September shall not be paid until he presents a receipt from the State Superintendent of Public Instruction showing that he has made all reports required of him.

The County Superintendent shall nominate the principals and teachers for the various schools of the county, but this nomination shall be subject to confirmation by the District Trustees. The District Trustee shall have the power to refuse to confirm the nomination of the County Superintendent, and when such confirmation is refused, the County Superintendent shall nominate another teacher for such school, provided however, that not more than three such teachers shall be nominated for any one place under the provisions of this Section. In the event the District Trustees should refuse to confirm the nomination of the County Superintendent as provided herein, the selection of the principal or teachers shall be by joint action of the District Trustees and the County Superintendent, in which case a majority vote shall prevail.

Purchases and contracts

Sec. 7. The District Trustee shall make all purchases of equipment and supplies for the various school districts and shall contract for all buildings and improvements and repairs and all other expenditures, but where the consideration involved is more than $50 00 such contracts and purchases shall be approved by the County Superintendent.

Equalization fund

Sec. 8. The County Board of Education shall at its August meeting set aside such county available school funds as may have accrued from investments of the permanent school funds and land leases and shall supplement this with an amount not exceeding 5% of the State available school funds apportioned to the county, to be used as an equalization fund to be distributed by the County Board, under such rules and regulations as may be adopted by the County Board, provided that no district shall participate in this distribution that does not levy a local tax for school purposes of at least 75 cents on each one hundred dollars property valuation of such district. [Acts 1927, 40th Leg., 1st C. S., p. 246, ch. 89.]

Section 9 of Acts 1927, 40th Leg., 1st C. S., p. 246, ch. 89, repeals all conflicting laws and parts of laws.

Art. 2740b. County board of education and superintendent in certain counties, powers and duties.

County Board of Education in counties of 15,000 to 20,000

Sec. 1. The general management, supervision, and control of the public free schools of counties with an area of nine hundred and seventy-seven square miles and a population of not less than 15,000 nor more than 20,000 according to the last preceding Federal census, shall be vested in the County Board of Education composed of seven members elected by the qualified voters of the county and at least one member shall reside in each Commissioners' precinct, and shall be elected for a term of three years. At the first election on the first Saturday in April, 1930, two shall be elected for one year, two for two years, and three for three years and at the first meeting they shall determine by lot who shall serve for one year, two years and three years. All vacancies on said Board shall be filled by the remaining members. The County Board of Education shall be persons of progressive educational attainments, good moral character, and executive ability. They shall have the powers and duties as now provided by the General Laws of the State governing County Boards in addition to those provided by this Act. All candidates for County Boards of Education shall file an application with the County Judge requesting their names to be placed on said ballots for the election of County Boards of Education at least 15 days prior to said election. If no one makes application for name on the ballot, then ten (10) qualified voters of the county may petition the County Judge to place certain names on the ballots provided this is done at least ten (10) days prior to said election. The County Judge shall be required to furnish all election supplies as now provided under the General Law.

The first members of the County Board of Education after this Act shall become effective shall be as follows: B. G. Graham, J. F. Parnell, M. K. Withers, R. F. Smith, and J. W. Langley who compose the present Board. The County Board of Education as named in this Act, before organizing and entering upon their official duties as such, shall appoint two additional members who shall subscribe to the official oath provided by the General Statutes of the State of Texas. They shall continue in office until the first election provided for in this Act or until their successors are elected or appointed and qualified.

The members of the County Board of Education of the public schools of any county affected by this Act shall receive $5.00 per day for their services not to exceed twelve days per year in complying with the duties imposed upon them by this Act, to be allowed by the Commissioners' Court and paid out of the General Fund of the county, and the expense of making maps and plats provided for by this Act and all other expenses incident to carrying out its provisions shall be similarly allowed and paid.

Rearrangement and resubdivision of territory; alteration

Sec. 2. It shall be the duty of the County Board of Education of the public schools in every county in this State affected by this Act as soon as may be after this Act shall take effect, to rearrange and resubdivide all the territory of their respective counties into such number of convenient school districts as it shall deem advisable and designate them by number.

Such rearrangement and resubdivision shall be accomplished by constituting such existing Independent School Districts as the Board shall deem advisable, together with such territory adjacent to such Independent School Districts as it may deem advisable to add thereto, the new districts into which such county shall be subdivided; and such existing Independent School Districts, so enlarged shall continue to have and exercise all the powers and duties now provided by Law and shall continue to be governed by existing law and by this Act.

The words, "School District," as herein used, shall refer to Common School Districts or to Independent School Districts, however created.

The County Board of Education shall have the power, from time to time, to alter or amend the rearrangement and the resubdivision of school districts herein provided for, and in amending or altering same may increase or reduce the area of any school district; create additional school districts; consolidate two or more adjacent districts; revise or rearrange the boundaries of any school district; attach territory thereto or detach territory therefrom, if necessary for the best interest of the school children, provided that the territory of no Independent School District shall be changed without the consent of its Board of Trustees, and provided further that said Board shall not subtract from the territory of any school district in such way as to leave any portion thereof remaining in such district with insufficient taxable wealth to raise revenue sufficient to pay interest and create a sinking fund for outstanding bonds; and provided that no portion of the territory of the county shall be left in a school district, after such subdivision shall have been made, with insufficient taxable wealth within such district with proper and convenient school facilities, both in the elementary and high school grades.

Plan and map

Sec. 3. Before undertaking to create, revise or rearrange the boundaries or to change the territory in any school district, the County Board of Education shall cause a plan and a map to be made showing the boundaries of all districts affected and of the new districts, if any to be created, with the area, taxable wealth and scholastic population of such districts so affected or to be created, and before such action is taken, all interested persons shall be given an opportunity to be heard.

Adjustment of indebtedness and properties on division or consolidation

Sec. 4. When the boundaries of any school district having an outstanding bonded indebtedness have been changed or its territory divided or two or more such districts consolidated, it shall be the duty of the County Board of Education to make such an adjustment of such indebtedness and district properties between the districts affected and between the territory divided, detached or added, as may be just and equitable, taking into consideration the value of the school properties and the taxable wealth of the districts affected and the territory so divided, detached or added, as the case may be. And when said Board has arrived at a satisfactory basis of such an adjustment, it shall have the power to make such orders in relation thereto as shall be conclusive and binding upon the districts and the territory thereby affected.

Refunding bonds; election; tax to pay bonds

Sec. 5. To carry into effect orders adjusting bonded indebtedness when changes are made in school districts, the County Board of Education shall have the power to order the trustees of the districts affected, to order an election for the issuing of such refunding bonds as may be necessary to carry out the purpose of such order; and, in such case it shall be the duty of the district trustees to order such election, cause the same to be held, and if the proposition is carried, to issue the bonds voted. Such bonds shall be of the same denomination and carry the same interest rate and mature at the same time as the outstanding bonds owing by the district issuing them, and when so issued, shall, if possible be exchanged

for the outstanding bonds for which the district issuing them shall still be liable, according to the order adjusting such indebtedness; and in cases where such an exchange can not be made, the new bonds of the district, to the amount of the old bonds for which it is still liable, and for which no exchange can be made, shall be deposited in the County Treasury to the account of such district. Thereafter taxes shall be levied and assessed only for the payment of the interest, sinking fund and principal of the new bonds so issued; and the funds arising from such taxation shall be used to discharge the principal and interest of such new bonds as have been issued and exchanged, and such old bonds as have not been exchanged and the proceeds applied to payment on old bonds not exchanged, the corresponding new bonds in the County Treasury shall be credited with such payment and retired as the old unexchanged bonds are retired.

Procedure where refunding bonds are voted down

Sec. 6. In cases where changes are made in districts having outstanding bonded indebtedness and where the necessary refunding bonds are voted down or where the County Board of Education is otherwise unable to arrange an adjustment or settlement of such bonded indebtedness, it shall be the duty of the trustee to certify the fact and the territories affected by such changes, to the Commissioners' Court and thereupon it shall become the duty of the Commissioners' Court to thereafter annually levy and cause to be assessed and collected from the taxpayers of such districts as existed before the changes were made, and tax necessary to pay the interest, the sinking fund and discharge the principal of such indebtedness as it matures. And it shall be the duty of each Independent School District so affected, to cause all funds in its hands, whether sinking funds or otherwise, which have been collected on account of such bonded indebtedness, to be transferred to the County Treasurer of the county in which such district is situated and such district shall thereafter cease to levy and collect any tax on account of such bonds; and it shall be the duty of the County Treasurer to keep the funds so transferred and those arising from taxation, in separate accounts and apply the same only to the discharge of such bonded indebtedness and the interest thereon, as the same matures.

Other methods of settling outstanding bonded indebtedness

Sec. 7. Nothing in the provisions of this Act shall prevent the County Board of Education from arranging any other method for the adjustment and settlement of outstanding bonded indebtedness of school districts in which changes are made, but they shall have full power and authority to make any legal and equitable adjustment and settlement in such cases that can be effected.

Condemnation proceedings

Sec. 8. Said County Board of Education shall have the power to condemn land for free school purposes and may institute, maintain and prosecute suits for that purpose following the procedure applicable to condemnation of lands by railways or any other method authorized by law.

Transportation

Sec. 9. It shall be the duty of any school district into which the county shall be subdivided under this Act to provide adequate and convenient means of transportation to and from the schools of such school children in any district as it may be reasonably necessary to make such provision for, and to establish such routes for that purpose as the Board of Trustees of such district may deem advisable and to alter and change the same from time to time and the expense of such transportation shall be paid by the district in which such children may reside.

Appeal

Sec. 10. In all cases where changes have been made in the territory of existing school districts, any party aggrieved shall have the right to appeal to a District Court of the county in which such school district is located and the decision of such Court on such appeal shall be final; provided notice of such appeal is given to the County Board of Education within ten (10) days after the passage of any such order making such changes; and provided further that such appeal to the District Court shall be perfected within thirty (30) days from date of such order.

County Superintendent

Sec. 11. The County Board of Education shall appoint during the month of May at a regular or called meeting by a majority vote subject to the provisions of this Act, as its executive officer a County Superintendent of Education for a term of not less than three (3) years and not more than five (5) years and whose term shall begin July 1st after the enactment of this Law and shall serve until his successor is appointed and qualified. The County Board of Education shall not appoint any person except the present incumbent before the expiration of said incumbents' term of office as now elected under the General Laws of this State. They shall not appoint to the office of County Superintendent any person who has not at least completed two years' work of a College or University and who has not had at least four years teaching exeprience, or who does not hold a High School or permanent certificate and shall be a person of educational attainments and vision, good moral character, and executive ability.

The County Superintendent appointed under the provisions of this Act shall receive a salary of not less than $2,000.00 nor more than $2,400.00 per annum. The compensation herein provided for shall be paid in equal monthly payments upon the order of the County Board of Education; provided that the salary for the month of September shall not be paid until the County Superintendent presents a receipt showing that he has made all reports to the State Department of Education required of him; provided that whenever the General Laws of this State shall provide an annual salary for said County Superintendent in an amount greater than the salary as herein provided, then and only in that event, the General Law as to said salary will and shall control, otherwise the salary as herein fixed shall be in full force and effect.

The County Board of Education shall make provisions for the employment of a competent assistant for the County Superintendent, who shall, in addition to his other duties, act as attendance officer; and said Board is hereby authorized to fix the salary of such assistant and pay the same out of the same funds from which the salary of the County Superintendent is paid.

It shall be the duty of the County Board of Education during the month of June of each year to make an assessment of $160.00 per annum from each Independent School District of said county and shall make an assessment of not less than eighty (80) cents nor more than one dollar and fifty cents ($1.50) per scholastic from each Common School District for the salary of the County Superintendent, assistant County Superintendent and for making the consolidated census roll of the Common School Districts. It shall be the further duty of the County Board of Education to apportion the county available fund on a per capita basis as shown by the last scholastic census to all Common and Independent Districts of the county.

Expenses of County Superintendent

Sec. 12. It shall be the duty of the Commissioners' Court as soon as this Act shall become effective, on a written order of the County Board of Education, to pay from the general fund of the county to the County Superintendent not less than $600.00 nor more than $800.00 per annum in equal monthly payments for stamps, stationery, express, printing and all other expenses incidental and necessary in the administration of his office. The County Board of Education shall have the authority to fix the amount to be paid for the expenses of the County Superintendent as provided for in this Act and shall notify the Commissioners' Court of the amount to be paid not later than August 1st of each year.

Joint meetings

Sec. 13. The County Board of Education shall call an annual joint meeting of the County Board of Education and the Common and Independent District School Trustees at the County Seat or some other convenient place during the month of May of each year, said meeting to be presided over by the chairman of the County Board of Education for the purpose of classifying the schools, and to discuss and make provisions for the location, conduct, maintenance and discipline of schools, and other matters of interest for a constructive school program. The County Superintendent, as secretary of the County Board of Education, shall be required to keep a complete record of all transactions of this meeting on the Minutes of said County Board of Education.

Principals and teachers

Sec. 14. The County Board of Education shall appoint, upon the written recommendation of the County Superintendent all principals and teachers in the county except those of independent districts, but this nomination shall be subject to the confirmation by the district trustees. The district trustees shall have the power to refuse to confirm the nomination of the County Superintendent, and when such confirmation is refused the County Superintendent shall nominate another teacher for such school, provided, however, that not more than two such teachers shall be nominated for any one place under provisions of this Section. If the two nominations are not accepted, then the nominations shall be made by joint action of the district trustees and the County Board of Education, in which case a majority vote shall prevail. All applications for principals and teachers must be filed with the County Superintendent as provided for in this Section.

Equipment and supplies

Sec. 15. The County Superintendent shall make all purchases of equipment and supplies for the various Common School Districts where the consideration involves more than $25.00. [Acts 1929, 41st Leg., p. 641, ch. 289.]

Section 16 of this Act repeals all conflicting laws and parts of laws, general and special.

Art. 2740c. Exemption of independent districts from county supervision.—That from and after the passage of this Act all Independent School Districts in this State located in counties having a population of not less than 8,955 and not more than 8,960, according to the United States Census of 1910, shall be exempt from county supervision and from all assessments for county administration and be subject only to the supervising authority of the State Department of Education and the State Board of Education as prescribed by General Law in the administration of public schools in this State. [Acts 1929, 41st Leg., p. 663, ch. 295, § 1.]

Art. 2740d. County Board of Education in certain counties.

Membership; term

Sec. 1. The general management, supervision and control of the public free schools of counties with a population of not less than eighty thousand (80,000) and not more than one hundred thirty thousand (130,000) according to the latest Federal Census, shall be vested in a County Board of Education. The County Board of Education shall be composed of seven (7) members to be elected at the District School Trustee Election on the 1st Saturday in April, one of whom shall be elected by the qualified voters from each Commissioner's Precinct, and three (3) from the county at large, by the qualified voters of the county. All of said members shall serve for a term of three (3) years; provided that in those counties not now having seven (7) trustees, the present County Board shall appoint two (2) trustees at large to serve for a period of three (3) years. The two (2) members who were elected on the 1st Saturday in April, 1930, shall serve until April 30, 1933, or until their successors are elected and qualified. On the 1st Saturday in April, 1931, at the District School Trustee Election five (5) County School Trustees shall be elected, two (2) from the Commissioner's Precinct whose terms expire in 1931 to serve until April 30, 1932, or until their successors are elected and qualified, and three (3) from the county at large, to serve for a period of three (3) years. Annually hereafter on the 1st Saturday in April either two (2) trustees or three (3) trustees, shall be elected for a term of three (3) years. [As amended Acts 1931, 42nd Leg., p. 798, ch. 324, § 1.]

Organization

Sec. 2. The County Board of Education of such counties shall, at their first meeting in May of each year organize by electing one member of the Board as president, and one as vice-president to preside in the absence of the president; and they shall hold such other meetings as are not provided by law and the rules and methods of procedure generally adopted by deliberative bodies for their government shall be observed. Five members present at any meeting shall constitute a quorum to do business.

Qualification

Sec. 3. The County Board of Trustees shall be composed of persons of good moral character, high ideals of citizenship, and who are interested in public education. No person connected with the public schools of any district in such county either as an official or as an employee shall be eligible to serve on said County Board of Trustees.

Vacancies

Sec. 4. All vacancies arising from death, resignation, or removal from the county shall be filled by the other members of the Board of Education, and such an appointee shall fill out the unexpired term.

Payment

Sec. 5. The members of the County Board of Education shall receive $5.00 per day for the time spent in attending meetings, to be paid in the same manner and from the same funds as is now provided by law; provided that they may not be allowed pay for more than 20 days in any one year.

County Superintendent

Sec. 6. The County Superintendents of the counties now affected by this Bill shall serve the term for which they have been elected. Ninety days prior to the term of expiration of the County Superintendent, the County Board of Education shall, at a meeting, appoint his successor, who shall serve at the pleasure of said Board, provided no such appointment shall be

made unless at an election to be held on the first Saturday in April, 1930, the qualified voters shall so impower and authorize the County Board to choose the County Superintendent; if otherwise, then the County Superintendent shall continue to be an elective officer as now provided by the General Laws of Texas. It shall be the duty of the County Judge to give public notice of the submission of the proposition of the employment of the County Superintendent; and provision shall be made for the submission of the proposition on the official ballot for county school trustees. The question shall be submitted on the ballot in the following form:

"For the employment of the County Superintendent of schools by the County Board of Trustees"; and

"Against the employment of the County Superintendent of schools by the County Board of Trustees."

The returns of the election on this question shall be made to the County Judge, to be canvassed by the Commissioners' Court, and such returns shall be duly canvassed and the results certified to the County Board of Trustees within thirty days after the date of said election. The County Superintendent shall be secretary of the County Board. The County Board of Education shall designate the salary of the County Superintendent of Education, subject to the provisions of this Act, provided the salary shall not be less than $3,600.00 and not more than $4,800.00. The County Board of Education shall appoint such assistants and clerical help for the County Superintendent as may be deemed necessary, subject to the provisions of this Act.

Supervision in lieu of teachers' institute

Sec. 7. The County Board of Education may, upon the recommendation of the County Superintendent, provide for the employment of such professional supervision as may be deemed necessary, this to be in lieu of the teachers' institute as now provided by law. The County Superintendent shall be exempt after the passage of this Act from such requirements as are now provided by law for the holding of teachers' institute; and shall be empowered to provide for such meetings of the teachers of the county as may be deemed necessary and to require the attendance of all teachers upon such meetings.

School apportionment

Sec. 8. In making the annual per capita apportionment to the schools, the County Board of Education shall also make an annual allowance out of the State and County Available Funds for the salary and expense of the County Superintendent and such assistants, supervisors and clerical help as he may have, and such expenses shall be pro rated to all of the schools of the county; provided that in making this allowance for county administration, the per capita assessment against the scholastics of the districts shall not exceed $1.50, provided further that the salary of the County Superintendent for the month of September shall not be paid until he presents a receipt from the State Superintendent of Public Instruction showing that he has made all reports required of him. The County Superintendent shall nominate the principals and teachers for the various schools of the county under the supervision of the County Boards of Education, but this nomination shall be subject to confirmation by the district trustees. The district trustees shall have the power and right to refuse to confirm the nomination of the County Superintendent, and when such confirmation is refused, the County Superintendent shall nominate another teacher for such school, provided however, that not more than three nominations of teachers for any one teaching position be made under the provisions of this Section. In the event the district trustee should refuse to confirm the nomination of the County Superintendent as provided herein, the selection of the principal or teachers shall be by joint action of the district trustees and the County Superintendent in which case a majority vote shall prevail.

Contracts and purchases

Sec. 9. The district trustees shall make all purchases of equipment and supplies for the various school districts and shall contract for all buildings and improvements and repairs and all other expenditures, but where the consideration involved is more than $100.00 such contracts and purchases shall be approved by the County Superintendent. The County Board of Education may, if so authorized in writing by the district trustees, purchase supplies and equipment for all the school districts in wholesale lots, upon requisitions made by the district trustees of the various schools.

Equalization fund

Sec. 10. The County Board of Education shall at its August meeting set aside such County Available School Funds as may have accrued from investments of the County Permanent School Funds and land notes and leases, and shall supplement this with an amount not exceeding 5% of the State Available School Funds apportioned to all the schools of the county, to be used as an equalization fund to be distributed by the County Board, under such rules and regulations as may be adopted by the County Board, provided that no district shall participate in this distribution that does not levy and collect a local tax for school purposes of at least seventy-five cents on each One Hundred Dollars property valuation of such district. [Acts 1929, 41st Leg., 2nd C.S., p. 49, ch. 31.]

Acts 1931, 42nd Leg., p. 798, ch. 324, § 1, amended section 1 of this article.

Section 11 of this Act repeals all conflicting laws and parts of laws.

Art. 2740e. [Repealed by Acts 1931, 42nd Leg., Spec.L. p. 144, ch. 58, § 1.]

Section 2 of said repealing act validates election of County Superintendent in counties affected by repealed act.

The article repealed was Acts 1929, 41st Leg., 2nd C.S., p. 137, ch. 70.

Arts. 2740f, 2740f—1. [Repealed by Acts 1941, 47th Leg., p. 218, ch. 150, § 9.]

The articles repealed were Acts 1933, 43rd Leg., 1st C.S., p. 12, ch. 7; Acts 1937, 45th Leg., p. 90, ch. 54, § 1, and Acts 1937, 45th Leg., p. 90, ch. 54, § 2.

Section 9 of the Act of 1941 also contained a proviso "that such repeal shall not affect taxes heretofore levied under said laws."

Art. 2740f—2. County unit system in counties of 5,600 to 5,750.—Section 1. Any county in this State containing a population of not less than five thousand, six hundred (5,600) nor more than five thousand, seven hundred and fifty (5,750) according to the last preceding Federal Census shall have a county unit system of education to the extent specified in this Act, and for the purpose of levying, assessing, and collecting a school equalization tax, and for such other administrative functions as are herein set forth; the territory of each of such counties may be created into a county-wide school district in the manner hereinafter provided and may exercise the taxing power as hereinafter provided. There shall be exercised in and for the entire territory of each of such counties, to the extent in this Act prescribed, the taxing power conferred on school districts by Article 7, Section 3, of the Constitution, but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided.

Sec. 2. On the petition of as many as one hundred (100) legally qualified voters of any county coming under the provisions of this Act praying for the formation of such county-wide school district, the County Judge shall, within thirty (30) days, order an election to be held throughout the county. The County Judge shall give notice of the date of such election by publication of the order in some newspaper published in

the county for twenty (20) days prior to the date of such election, and all legally qualified voters shall be allowed to vote at said election. The form of ballot shall be substantially as follows:

"For Equalization District"

"Against Equalization District"

The Commissioners Court shall at its next regular meeting canvass the returns of said election, and if a majority of votes cast shall favor the formation of such district, the Court shall declare the result thereof and declare the county-wide school equalization district duly and legally created and the provisions of this Act duly adopted.

Sec. 3. The general management, supervision, and control of the public schools and of the educational interests of each county adopting the provisions of this law shall be vested in the County Board of School Trustees, except as otherwise provided by law, and said Board shall perform such duties as are or may be required of it by existing law and by the provisions of this Act and shall constitute the Board of Trustees for such county-wide district. Any such county-wide school equalization district formed in the manner hereinabove provided may levy and collect annually on all taxable property in the county an equalization tax not to exceed Twenty (20) Cents on the One Hundred Dollars ($100) valuation of property situated in said county, and the money derived from such tax shall be known as an equalization fund for the support of the public schools of the county, which fund shall be distributed to the school districts of the county as provided herein.

Sec. 4. On the petition of as many as one hundred (100) legally qualified property taxpaying voters of any county which shall have adopted the provisions of this Act, praying for the authority to levy and collect said tax, the County Judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days from the date of such order. The County Judge shall give notice of such election by publication of the order in some newspaper published in the county for twenty (20) days prior to the date of such election. Only legally qualified property taxpaying voters, who own property in the county and who have duly rendered the same for taxation, shall be allowed to vote in said election. The form of ballot is substantially as follows:

"For County Tax"

"Against County Tax"

The Commissioners Court shall, at its next regular or special meeting, canvass the returns of said election, and if a majority of the votes cast shall favor such tax, the Court shall declare the results and certify same to the County Board of School Trustees and to the County Tax Assessor and Collector, and said Board of County School Trustees shall thereupon be authorized to levy said tax and the County Tax Assessor and Collector shall be authorized to assess and collect same. No election to revoke said tax shall be ordered until the expiration of three (3) years from the date of the election at which said tax was adopted.

Sec. 5. In the counties adopting the provisions of this law, the County Tax Assessor shall assess all of the taxable property in the county at the same rate of valuation as it is assessed for State and county purposes, and the County Tax Collector shall collect said tax at the same time and in the same manner as other State and county taxes are collected. The Tax Collector shall deposit the money collected from said tax in a separate fund to be known as the County Equalization Fund for the support of the public schools of the county. He shall have the same authority, and the same laws shall apply in the collection of said tax as in the collection of county ad valorem taxes. He shall, on or about the 10th of each month, make a report to the County Board of School Trustees and to the County Superintendent of schools, showing all moneys collected by him during the last month by said tax, and shall each month place such funds in the Equalization Fund. The County Superintendent shall keep a record, both received and paid out, of all money from said Fund. The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts; however, no part of the moneys realized from said county-wide maintenance tax shall be used to pay any present or future bond issues or interest thereon, and the moneys received and held by independent school districts shall be protected in accordance with the existing depository laws. And the Tax Collector shall place to the credit of the common school districts in such county such moneys as are apportioned to them, which shall be protected as provided by the existing depository laws.

Sec. 6. The Tax Collector, before entering upon the duties of his office, shall enter into a bond, with two (2) or more good and sufficient sureties, or surety bond, for the protection of said Equalization Fund, said bond to be made payable to the County Board of School Trustees, and to be made in a sum not less than double the amount of money which he may have in his possession of said Fund at any time. The amount of said bond shall be fixed by the County Board of School Trustees. The County Board shall require a similar bond of any and all other persons or corporations in whose possession such Funds may be kept.

Sec. 7. The County Board of School Trustees shall distribute the money collected from any taxes levied by said district to the common and independent districts of the county on a per capita basis according to the number of scholastic pupils shown by the last preceding official scholastic census, and county-line districts shall be eligible to receive such per capita apportionment based upon the number of scholastic pupils residing in the county of such equalization district, as shown by the latest official scholastic census of such district. The County Board of School Trustees shall issue warrants against such Equalization Fund to the school district trustees on a per capita basis of scholastic pupils in each district; provided that the County Board may, from time to time, as the money is collected, issue warrants to the various school districts in proportion to the amount that each is entitled to receive on such per capita basis of scholastic pupils in the respective districts.

Sec. 8. The several independent school districts and common school districts in such county shall continue to have authority to levy, assess, and collect the maintenance taxes theretofore authorized by the property taxpayers in said respective districts. This law shall not affect the right and duty of said respective school districts to levy, assess, and collect taxes within their respective districts for the payment of principal and interest on bonded indebtedness of such districts. The respective districts shall continue to levy, assess, and collect taxes sufficient to pay principal of, and interest on their bonds. Provided, however, that nothing in this Act shall prevent the proper authorities from collecting and enforcing for the benefit of the respective districts, any maintenance taxes levied before this law becomes effective.

Sec. 9. This Act shall not have the effect of changing any duties imposed on or powers conferred on the trustees of any common or independent school districts situated in the counties covered by this Act, unless and except as expressly provided herein, it being the intention of this law that said respective Boards of Trustees shall continue to administer their lawful duties and powers as now authorized by law, but the equalization tax authorized shall be levied by the County Board of School Trustees and assessed and collected by the County Tax Assessor and Collector.

Sec. 10. In case any clause, sentence, paragraph, section, or part of this Act shall be held unconstitutional or void, then, and in that event, it shall not affect any other clause, sentence, paragraph, section, or part of this Act. All laws, or parts of laws, both general and special, in conflict with this Act are hereby repealed. [Acts 1937, 45th Leg., p. 315, ch. 163.]

Art. 2740f—3. County unit system in counties of 7,500 to 7,590.—Section 1. Any county in this State containing a population of not less than seven thousand, five hundred (7,500) nor more than seven thousand, five hundred and ninety (7,590) according to the last preceding Federal Census, or any future Federal Census, shall have a county unit system of education to the extent specified in this Act, and for the purpose of levying, assessing, and collecting a school equalization tax, and for such other administrative functions as are herein set forth; the territory of each of such counties may be created into a county-wide school district in the manner hereinafter provided and may exercise the taxing power as hereinafter provided. There shall be exercised in and for the entire territory of each of such counties, to the extent in this Act prescribed, the taxing power conferred on school districts, by Article 7, Section 3, of the Constitution, but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided.

Sec. 2. On the petition of as many as one hundred (100) legally qualified voters of any county coming under the provisions of this Act praying for the formation of such county-wide school district, the County Judge shall, within thirty (30) days, order an election to be held throughout the county. The County Judge shall give notice of the date of such election by publication of the order in some newspaper published in the county for twenty (20) days prior to the date of such election, and all legally qualified voters shall be allowed to vote at said election. The form of ballot shall be substantially as follows:

"For Equalization District."

"Against Equalization District."

The Commissioners Court shall at its next regular meeting canvass the returns of said election, and if a majority of votes cast shall favor the formation of such district, the Court shall declare the result thereof and declare the county-wide school equalization district duly and legally created and the provisions of this Act duly adopted.

Sec. 3. The general management, supervision, and control of the public schools and of the educational interests of each county adopting the provisions of this law shall be vested in the County Board of School Trustees for such county-wide district. Any such county-wide school equalization district formed in the manner hereinabove provided may levy and collect annually on all taxable property in the county an equalization tax not to exceed twenty (20) cents on the one hundred dollars valuation of property situated in said county and the money derived from such tax shall be known as an Equalization Fund for the support of the public schools of the county, which Fund shall be distributed to the school districts of the county as provided herein.

Sec. 4. On the petition of as many as one hundred (100) legally qualified property taxpaying voters of any county which shall have adopted the provisions of this Act, praying for the authority to levy and collect said tax, the County Judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days from the date of such order. The County Judge shall give notice of such election by publication of the order in some newspaper published in the county for twenty (20) days prior to the date of such election. Only legally qualified property taxpaying voters, who own property in the county and who have duly rendered the same for taxation, shall be allowed to vote in said election. The form of ballot is substantially as follows:

"For County Tax."

"Against County Tax."

The Commissioners Court shall, at its next regular or special meeting, canvass the returns of said election, and if a majority of the votes cast shall favor such tax, the Court shall declare the results and certify same to the County Board of School Trustees and the County Tax Assessor and Collector shall be authorized to assess and collect same. No election to revoke said tax shall be ordered until the expiration of three (3) years from the date of the election at which said tax was adopted.

Sec. 5. In the counties adopting the provisions of this law, the County Tax Assessor shall assess all of the taxable property in the county at the same rate of valuation as it is assessed for State and county purposes, and the County Tax Collector shall collect said tax at the same time and in the same manner as other State and county taxes are collected. The Tax Collector shall deposit the money collected from said tax in a separate fund to be known as the County Equalization Fund for the support of the public schools of the county. He shall have the same authority, and the same laws shall apply in the collection of said tax as in the collection of county ad valorem taxes. He shall, on or about the 10th of each month, make a report to the County Board of School Trustees and to the County Superintendent of Schools, showing all moneys collected by him during the last month by said tax, and shall each month place such funds in the Equalization Fund. The County Superintendent shall keep a record, both received and paid out, of all moneys from said Fund. The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts; however, no part of the moneys realized from said county-wide maintenance tax shall be used to pay any present or future bond issues or interest thereon, and the moneys received and held by independent school districts shall be protected in accordance with the existing depository laws. And the Tax Collector shall place to the credit of the common school districts in such county such moneys as are apportioned to them, which shall be protected as provided by the existing depository laws.

Sec. 6. The Tax Collector, before entering upon the duties of his office, shall enter into a bond, with two (2) or more good and sufficient sureties, or surety bond, for the protection of said Equalization Fund, said bond to be made payable to the County Board of School Trustees. The County Board shall require a similar bond of any and all other persons or corporations in whose possession such funds may be kept.

Sec. 7. The County Board of School Trustees shall distribute the money collected from any taxes levied by said district to the common and independent districts of the county on a per capita basis according to the number of scholastic pupils shown by the last preceding official scholastic census, and county line districts shall be eligible to receive such per capita apportionment based upon the number of scholastic pupils residing in the county of such equalization district, as shown by the latest official scholastic census of such district. The County Board of School Trustees shall issue warrants against such Equalization Fund to the school district trustees on a per capita basis of scholastic pupils in each district; provided that the County Board may, from time to time, as the money is collected, issue warrants to the various school districts in proportion to the amount that each is entitled to receive on such per capita basis of scholastic pupils in the respective districts.

Sec. 8. The several independent school districts and common school districts in such county shall continue to have authority to levy, assess, and collect the maintenance taxes theretofore authorized by the property taxpayers in said respective districts. This law shall not affect the right and duty of said respective school districts to levy, assess, and collect taxes within their respective districts for the payment of principal and interest on bonded indebtedness of such districts. The respective districts shall continue to levy, assess, and collect taxes sufficient to pay principal of and interest on their bonds. Provided, however, that nothing in this Act shall prevent the proper authorities from collecting and enforcing, for the benefit of the respective districts, any maintenance taxes levied before this law becomes effective.

Sec. 9. This Act shall not have the effect of changing any duties imposed on or powers conferred on the trustees of any common or independent school districts situated in the counties covered by this Act, unless and except as expressly provided herein, it being the intention of this law that said respective Boards of Trustees shall continue to administer their lawful duties and powers as now authorized by law, but the equalization tax authorized shall be levied by the County Board of School Trustees and assessed and collected by the County Tax Assessor and Collector.

Sec. 10. In case any clause, sentence, paragraph, section, or part of this Act shall be held unconstitutional or void, then, and in that event, it shall not affect any other clause, sentence, paragraph, or section of this Act. All laws or parts of laws, both general and special, in conflict with this Act are hereby repealed. [Acts 1941, 47th Leg., p. 121, ch. 95.]

Art. 2740f—4. County unit system in counties of 10,339 to 10,540; powers and duties of Commissioners' Court.—Section 1. This Act is applicable to counties with a population of not less than ten thousand, three hundred and thirty-nine (10,339) and not more than ten thousand, five hundred and forty (10,540), according to the latest Federal Census. Any county coming within the terms of this Act shall have a County Unit System of Education to the extent specified in this Act. For the purpose of levying, assessing, and collecting a school maintenance tax and for such further administrative functions as are set forth herein, the territory of each of such counties is hereby created into a school district, hereinafter described as the county-wide district, the taxing power to be exercised as hereinafter provided. There shall be exercised in and for the entire territory of each of such counties, to the extent in this Act prescribed, the taxing power conferred on school districts by Article VII, Section 3 of the Constitution, but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided. Whenever a petition is presented to the County Judge of any such county, signed by at least one hundred (100) qualified property taxpaying voters residing therein, asking that an election be ordered for the purpose of determining whether or not a maintenance tax shall be levied, assessed, and collected on all taxable property within said county for the maintenance of public schools therein, not exceeding Twenty-five (25) Cents on the one hundred dollars of assessed valuation of taxable property, it shall be the duty of the County Judge, immediately, to order an election to be held within said county to determine said question. Notice of said election shall be given by publishing a copy of the election order in a newspaper of general circulation in said county once each week for at least two (2) weeks, the date of the first publication to be not less than twenty (20) days prior to the date fixed for holding said election. Further notice shall be given by the posting of a copy of said election notice within the boundaries of each independent and each common school district, and one copy of said notice shall be posted at the courthouse door. Said notice shall be posted at least twenty (20) days prior to the date fixed for said election. Except as otherwise provided herein, the manner of holding said election shall be controlled by the General Election Laws of the State, and only resident, qualified property taxpaying voters shall be permitted to vote at said election. Said election shall be held at the usual voting places in the several election precincts of such county. Said election returns shall be made and delivered to the County Judge and shall be canvassed by the Commissioners Court of such county at its next regular or special meeting following said election. A majority vote of those voting at said election shall be sufficient to carry said election. The result of said election shall be recorded in the Minutes of the Commissioners Court and certified by the County Clerk and Ex Officio Clerk of the Commissioners Court to the County Superintendent or Ex Officio Superintendent of said county.

Sec. 2. In event said maintenance tax is adopted at such election, after the result of the election has been certified to the County Superintendent, he shall make a permanent record of such certificate and shall send a certified copy of same to the State Department of Education at Austin, Texas, for its information and guidance.

Sec. 3. As soon as the Commissioners Court of such county has determined the total of the assessed value of taxable property according to the values fixed by the Board of Equalization, which values shall be the same as those fixed for State and county taxation purposes, subject thereafter to ordinary corrections, it shall then perform the following duties:

(a) determine the estimated total receipts from the levying and collecting of said Twenty-five (25) Cents tax on the property in the county-wide district according to such valuation;

(b) to determine the estimated amount of money apportionable to each scholastic on the basis of equal per capita distribution according to the then current census of scholastics for the several districts;

(c) to determine the estimated amount of such money available for each common and independent school district according to such per capita distribution;

(d) to cause the ex officio Clerk of such Court to communicate a copy of the order fixing the estimated amount for each independent school district to the president thereof and for each common school district to the County Superintendent or ex officio County Superintendent of such county.

Sec. 4. It shall be the duty of the Commissioners Court at the time other taxes are levied in the county to levy a tax under this law of Twenty-five (25) Cents on the one hundred dollars valuation in said county for that year. Such taxes shall be assessed by the Tax Assessor and collected by the Tax Collector as other taxes are assessed and collected. The money collected from said Twenty-five (25) Cents tax shall be distributed to the various school districts in such county as follows:

All districts in the county shall receive the same amount of money for each scholastic, for the maintenance of schools in such district. No part of the moneys realized from said county-wide maintenance tax shall be used to pay any present or future bond issues or interest thereon. The Tax Collector shall, each month, apportion to each district the pro rata part of the taxes collected and dispose of same as hereinafter provided. The valuations fixed by the

County Board of Equalization for State and county taxation purposes shall be used in computing said taxes and in levying and collecting the same. The budget officer of each school district in said county as provided by Statute, and the trustees of each of said districts, after receiving the notice of the estimate of the Commissioners Court as herein provided for, and the notice of the State apportionment of public school funds to said district, shall proceed to make and approve the budget for their respective districts as provided by Acts, 1931, Forty-second Legislature, Regular Session, page 339, Chapter 206.[1]

Sec. 5. As and when said taxes are collected by the Tax Collector of the county, he shall make monthly settlements with the independent school districts situated in such county, said moneys to be received and held by said independent school districts and protected in accordance with the existing depository laws. And the Tax Collector shall place to the credit of the common school districts in such county such moneys as are apportioned to them, which shall be protected as provided by the existing depository laws.

Sec. 6. The several independent school districts and common school districts in such county shall continue to have authority to levy, assess, and collect the maintenance taxes theretofore authorized by the property taxpayers in said respective districts, subject to the restrictions that after said county-wide maintenance tax election has been carried and while said tax is in full force and operation, said respective independent school districts and common school districts shall not thereafter levy, assess, and collect any special tax for maintenance of schools, except in instances wherein the apportionment made by the Commissioners Court, together with the apportionment made by the State of Texas, produces an amount inadequate to meet the approved budget of such district, and in that event, such tax shall be levied in an amount to meet such deficit, due allowance to be made for delinquencies and for costs of collection. This law shall not affect the right and duty of said respective school districts to levy, assess, and collect taxes within their respective districts for the payment of principal and interest on bonded indebtedness of such districts. The respective districts shall continue to levy, assess, and collect taxes sufficient to pay principal of and interest on their bonds. Provided however, that nothing in this Act shall prevent the proper authorities from collecting and enforcing, for the benefit of the respective districts, any maintenance taxes levied before this law becomes effective.

Sec. 7. Until and unless said county-wide maintenance tax has been authorized at an election held in such county, the duties and powers of the Commissioners Court shall not be considered as having been changed, altered, or enlarged by this Act.

Sec. 8. This Act shall not have the effect of changing any duties imposed on or powers conferred on the trustees of school districts situated in the counties covered by this Act, unless and except as expressly provided herein, it being the intention of this law that said respective Boards of Trustees shall continue to administer their lawful duties and powers except as to the levying, assessing, and collecting of maintenance taxes, and the powers and duties as to levying, assessing, and collecting maintenance taxes shall remain unaffected except as modified as provided herein.

Sec. 9. This Act shall be considered as cumulative of other laws applicable to the counties affected, but in event any provision of this law is inconsistent with any other applicable law, the provisions of this Act shall prevail as to the counties affected. All laws and parts of laws in conflict with the provisions of this Act, in so far as they apply to the counties affected, are hereby repealed.

Sec. 10. The Commissioners Court shall have advisory supervision over the schools in the county to the extent that it shall be the duty of the Court to render its advice on all administrative matters submitted by the several Boards of Trustees.

Sec. 11. In event any section, paragraph, sentence, clause, or phrase of this Act shall be held to be unconstitutional, such holding shall not affect the other provisions of the Act not so invalidated. [Acts 1941, 47th Leg., p. 400, ch. 233.]

1 Article 688 et seq. and Pen., art. 414b.

Art. 2740f—5. County unit system in counties of 27,000 to 30,000.

Taxing power

Section 1. Any county in this state, having a population of not less than twenty-seven thousand (27,000) and not more than thirty thousand (30,000) according to the last preceding Federal Census and having an assessed valuation for ad valorem tax purposes of not less than Seventy Million ($70,000,000.00) Dollars according to the tax rolls of said county for the preceding year, shall have a county unit system of education to the extent specified in this Act, and for the purpose of levying, assessing and collecting a school equalization tax, and for such other administrative functions as are herein set forth; the territory of each of such counties may be created into a county-wide school district in the manner hereinafter provided and may exercise the taxing power as hereinafter provided. There shall be exercised in and for the entire territory of each of such counties, to the extent in this Act prescribed, the taxing power conferred on school districts by Article 7, Section 3, of the constitution, but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided.

Election on adoption

Sec. 2. On the petition of as many as one hundred (100) legally qualified voters of any county coming under the provisions of this Act praying for the formation of such county-wide school district, the County Judge shall, within thirty (30) days, order an election to be held throughout the county. The County Judge shall give notice of the date of such election by publication of the order in some newspaper published in the county for twenty (20) days prior to the date of such election, and all legally qualified voters shall be allowed to vote at said election. The form of ballot shall be substantially as follows:

"For Equalization District"; or

"Against Equalization District".

The Commissioners Court shall at its next regular meeting canvass the returns of said election, and if a majority of votes cast shall favor the formation of such district, the court shall declare the result thereof and declare the county-wide school equalization district duly and legally created and the provisions of this Act duly adopted.

Management; equalization tax

Sec. 3. The general management, supervision and control of the public schools and of the educational interests of each county adopting the provisions of this law shall be vested in the County Board of School Trustees, except as otherwise provided by law, and said Board shall perform such duties as are or may be required of it by existing law and by the provisions of this Act and shall constitute the Board of Trustees for such county-wide district. Any such county-wide school equalization district formed in the manner hereinabove provided may levy and collect annually on all taxable property in the county an equalization tax not to exceed Ten

(10¢) Cents on the One Hundred ($100.00) Dollars valuation of property situated in said county, and the money derived from such tax shall be known as an equalization fund for the support of the public schools of the county, which fund shall be distributed to the school districts of the county as provided herein.

Election on tax

Sec. 4. On the petition of as many as one hundred (100) legally qualified property taxpaying voters of any county which shall have adopted the provisions of this Act, praying for the authority to levy and collect said tax, the County Judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days from the date of such order. The County Judge shall give notice of such election by publication of the order in some newspaper published in the county for twenty (20) days prior to the date of such election. Only legally qualified property taxpaying voters, who own property in the county and who have duly rendered the same for taxation, shall be allowed to vote in said election. The form of ballot is substantially as follows:

"For County Tax"; or

"Against County Tax"

The Commissioners Court shall, at its next regular meeting, canvass the returns of said election, and if a majority of the votes cast shall favor such tax, the court shall declare the result and certify same to the County Board of School Trustees and to the County Tax Assessor and Collector, and said Board of County School Trustees shall thereupon be authorized to levy said tax and the County Tax Assessor and Collector shall be authorized to assess and collect same. No election to revoke said tax shall be ordered until the expiration of three (3) years from the date of the election at which said tax was adopted.

Assessment and collection of tax

Sec. 5. In the counties adopting the provisions of this law, the County Tax Assessor shall assess all of the taxable property in the county at the same rate of valuation as it is assessed for state and county purposes, and the County Tax Collector shall collect said tax at the same time and in the same manner as other state and county taxes are collected. The Tax Collector shall deposit the money collected from said tax in a separate fund to be known as the County Equalization Fund for the support of the public schools of the county. He shall have the same authority, and the same laws shall apply in the collection of said tax as in the collection of county ad valorem taxes. He shall, on or about the 10th of each month, make a report to the County Board of School Trustees and to the County Superintendent of Schools, showing all moneys collected by him during the last month by said tax, and shall each month place such funds in the equalization fund. The County Superintendent shall keep a record, both received and paid out, of all money from said fund. The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts.

Bond

Sec. 6. The Tax Collector, before entering upon the duties of his office, shall enter into a bond, with two (2) or more good and sufficient sureties, or surety bond, for the protection of said equalization fund, said bond to be made payable to the County Board of School Trustees, and to be made in a sum not less than double the amount of money which he may have in his possession of said fund at any time. The amount of said bond shall be fixed by the County Board of School Trustees. The County Board shall require a similar bond of any and all other persons or corporations in whose possession such funds may be kept.

Distribution of tax money

Sec. 7. The County Board of School Trustees shall distribute the money collected from any taxes levied by said District under the provisions of this Act to the common and independent districts of the county according to the financial needs of said school districts. The County Board of School Trustees shall determine the needs of said respective school districts and allocate said funds to said respective school districts so as to provide a salary of not less than Two Thousand ($2,000.00) Dollars per year to any teacher employed in any school within the county complying with the provisions of this Act. If the funds received by any such school district from the State Available School Fund, from the rural aid funds provided by the state and from the local taxes received by such school district, together with any funds received from any other source, are insufficient to provide the minimum salary, it shall be the duty of said County School Board to provide from the funds derived by the tax levied under the provisions of this Act sufficient funds to enable such school district to pay said minimum salary. After said school trustees shall have provided for the said minimum salary for all teachers employed in the public schools of such county, it shall be their duty to allocate and distribute the remaining funds provided by the tax to be levied under the provisions of this Act in such manner as to them shall appear best in assisting those schools that are in most need of said funds.

Trustees' duties and powers not affected; levy and collection of tax

Sec. 8. This Act shall not have the effect of changing any duties imposed on or powers conferred on the trustees of any common or independent school districts situated in the counties covered by this Act, unless and except as expressly provided herein; it being the intention of this law that said respective Boards of Trustees shall continue to administer their lawful duties and powers as now authorized by law, but the equalization tax authorized shall be levied by the County Board of School Trustees and assessed and collected by the County Tax Assessor and Collector.

Partial invalidity; repeal of conflicting laws

Sec. 9. In case any clause, sentence, paragraph, section or part of this Act shall be held unconstitutional or void, then, and in that event, it shall not affect any other clause, sentence, paragraph, section or part of this Act. All laws, or parts of laws, both general and special, in conflict with this Act, are hereby repealed. [Acts 1947, 50th Leg., p. 800, ch. 399.]

Art. 2740g. County unit school system in counties having large areas in reforestation.

Taxing power

Section 1. Any county in this State wherein the United States Government has acquired or shall hereafter acquire large tracts of land containing one thousand (1,000) acres or more or wherein such lands have been approved by the United States Government for purchase for the purpose of reforestation and whose assessed valuation of property is not less than Forty Million Dollars ($40,000,000), shall have a county unit system of education to the extent specified in this Act, and for the purpose of levying, assessing and collecting a school equalization tax, and for such other administrative functions as are herein set forth; the territory of each of such counties may be created into a county wide school district in the manner hereinafter provided and may exercise the taxing power as hereinafter provided. There shall be exercised in and

for the entire territory of each of such counties, to the extent in this Act prescribed, the taxing power conferred on school districts by Article 7, Section 3, of the Constitution, but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided.

Petition, notice of election and ballot

Sec. 2. On the petition of as many as one hundred (100) legally qualified voters of any county coming under the provisions of this Act praying for the formation of such county wide school district, the County Judge shall, within thirty (30) days, order an election to be held throughout the county. The County Judge shall give notice of the date of such election by publication of the order in some newspaper published in the county for twenty (20) days prior to the date of such election, and all legally qualified voters shall be allowed to vote at said election. The form of ballot shall be substantially as follows:

"For Equalization District"

"Against Equalization District"

The Commissioners Court shall at its next regular meeting canvass the returns of said election, and if a majority of votes cast shall favor the formation of such district, the Court shall declare the result thereof and declare the county wide school equalization district duly and legally created and the provisions of this Act duly adopted.

Supervision by county board of trustees

Sec. 3. The general management, supervision and control of the public schools and of the educational interests of each county adopting the provisions of this law shall be vested in the county board of school trustees, except as otherwise provided by law, and said board shall perform such duties as are or may be required of it by existing law and by the provisions of this Act and shall constitute the board of trustees for such county wide district. Any such county wide school equalization district formed in the manner hereinabove provided may levy and collect annually on all taxable property in the county an equalization tax not to exceed twenty-five (25) cents on the One Hundred Dollars ($100) valuation of property situated in said county, and the money derived from such tax shall be known as an equalization fund for the support of the public schools of the county, which fund shall be distributed to the school districts of the county as provided herein.

Petition and election for tax

Sec. 4. On the petition of as many as one hundred (100) legally qualified property taxpaying voters of any county which shall have adopted the provisions of this Act, praying for the authority to levy and collect said tax, the County Judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days from the date of such order. The County Judge shall give notice of such election by publication of the order in some newspaper published in the county for twenty (20) days prior to the date of such election. Only legally qualified property taxpaying voters, who own property in the county and who have duly rendered the same for taxation, shall be allowed to vote in said election. The form of ballot is substantially as follows:

"For County Tax"

"Against County Tax"

The Commissioners Court shall, at its next regular meeting, canvass the returns of said election, and if a majority of the votes cast shall favor such tax, the Court shall declare the result and certify same to the county board of school trustees and to the county tax assessor and collector, and said board of county school trustees shall thereupon be authorized to levy said tax and the county tax assessor and collector shall be authorized to assess and collect same. No election to revoke said tax shall be ordered until the expiration of three (3) years from the date of the election at which said tax was adopted.

Assessment and collection of tax, segregation as County equalization fund

Sec. 5. In the counties adopting the provisions of this law, the county tax assessor shall assess all of the taxable property in the county at the same rate of valuation as it is assessed for State and county purposes, and the county tax collector shall collect said tax at the same time and in the same manner as other State and county taxes are collected. The tax collector shall deposit the money collected from said tax in a separate fund to be known as the County Equalization Fund for the support of the public schools of the county. He shall have the same authority, and the same laws shall apply in the collection of said tax as in the collection of county ad valorem taxes. He shall, on or about the tenth of each month, make a report to the county board of school trustees and to the county superintendent of schools, showing all moneys collected by him during the last month by said tax, and shall each month place such funds in the equalization fund. The county superintendent shall keep a record, both received and paid out, of all money from said fund. The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts.

Bond of tax collector

Sec. 6. The tax collector, before entering upon the duties of his office, shall enter into a bond, with two (2) or more good and sufficient sureties, or surety bond, for the protection of said equalization fund, said bond to be made payable to the county board of school trustees, and to be made in a sum not less than double the amount of money which he may have in his possession of said fund at any time. The amount of said bond shall be fixed by the county board of school trustees. The county board shall require a similar bond of any and all other persons or corporations in whose possession such funds may be kept.

Distribution of taxes collected

Sec. 7. The county board of school trustees shall distribute the money collected from any taxes levied by said district to the common and independent districts of the county on a per capita basis according to the number of scholastic pupils shown by the last preceding official scholastic census, and county line districts shall be eligible to receive such per capita apportionment based upon the number of scholastic pupils residing in the county of such equalization district, as shown by the latest official scholastic census of such district. The county board of school trustees shall issue warrants against such equalization fund to the school district trustees on a per capita basis of scholastic pupils in each district; provided that the county board may, from time to time, as the money is collected, issue warrants to the various school districts in proportion to the amount that each is entitled to receive on such per capita basis of scholastic pupils in the respective districts.

Operation and effect of Act

Sec. 8. This Act shall not have the effect of changing any duties imposed on or powers conferred on the trustees of any common or independent school districts situated in the counties covered by this Act, unless and except as expressly provided herein, it being the intention of this law that said respective boards of trustees shall continue to administer their lawful duties and powers as now authorized by law, but the equalization tax authorized shall be levied by the county

board of school trustees and assessed and collected by the county tax assessor and collector.

Partial invalidity, repeals

Sec. 9. In case any clause, sentence, paragraph, section or part of this Act shall be held unconstitutional or void, then, and in that event, it shall not affect any other clause, sentence, paragraph, section or part of this Act. All laws, or parts of laws, both general and special, in conflict with this Act are hereby repealed. [Acts 1935, 44th Leg., p. 284, ch. 103.]

Art. 2740h. Compensation of members of board of county school trustees in counties of 8,470 to 8,480 population.—In all counties having a total population of not more than thirty thousand, nine hundred and twenty-five (30,925) and not less than thirty thousand, nine hundred and fifteen (30,915), according to the last preceding Federal Census, and at the same time in those counties having a scholastic population of not more than eight thousand, four hundred and eighty (8,480) and not less than eight thousand, four hundred and seventy (8,470), according to the latest scholastic census as contained in the Public School Directory of the State Department of Education, the salary of a member of a county board of school trustees shall be Five Dollars ($5) per day, provided that not more than twelve (12) meetings shall be held in any fiscal year for which reimbursement is paid. [Acts 1939, 46th Leg., Spec.L., p. 690, § 1.]

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1. COMMON SCHOOL DISTRICTS

Article 2741. [2815–6] Establishment of districts.—The commissioners courts of all organized counties not already subdivided shall subdivide their respective counties into convenient common school districts and designate them by number. Any county hereafter organized shall be so subdivided before the beginning of the next ensuing school year after its organization. The commissioners court of any organiz-

ed county, to which any unorganized county is attached for judicial purposes, may, and, upon written petition of not less than ten resident citizens of such unorganized county shall create such unorganized county into one or more school districts, and shall cause an order to that effect to be entered upon the minutes of said court. Said courts may reduce the area of any common school district, create additional school districts, consolidate two or more adjacent districts, or subdivide any school district, if necessary for the interest of the school children; provided, no school district shall be established so as to contain less than nine square miles of territory. The area of a school district having an outstanding bonded indebtedness, shall never be reduced until after such bonded indebtedness shall have been fully discharged.

In counties containing a population of less than ten thousand, no common school district shall be organized or surveyed in such a manner that the geographical center of the same will be more than four miles from the farthest line of said district. All districts shall be located as conveniently as possible to the scholastic population. [Acts 1905, p. 263; Acts 1913, p. 259.]

Art. 2742. [2817] To designate districts.—Said courts shall give the metes and bounds of each district, and shall designate the same carefully by giving the whole surveys and parts of surveys with acreage of whole surveys and approximate acreage of parts of surveys in each district, and the county clerk shall carefully record the same; and each district shall be given a number which shall be painted in large letters or figures over the doors of the school houses, said signs to be provided by the district trustees of each district. [Id.]

Art. 2742a. Reduction and revision of districts.—Sec. 1. The County Board of Trustees in each organized county with common school districts containing one hundred and twenty-five square miles or more which have no bonded indebtedness, may subdivide such districts, or revise or rearrange the boundaries of any districts, or may detach territory therefrom and add such territory so detached to other adjoining common school districts or independent school districts which have heretofore been incorporated under general or special law, if necessary for the interest of the school children, provided that no such common school district, when so reduced, shall contain less than nine square miles; and provided further that no such action shall be taken by said board of trustees without reasonable notice to the public and to the trustees of the districts affected nor without giving sufficient opportunity for all interested persons to be heard.

Sec. 2. The portion of territory detached from such common school district when added to an independent school district, shall become subject to and be governed by all laws governing such independent school district. [Acts 1927, 40th Leg., p. 239, ch. 165.]

Section 3 of this Act repeals all conflicting laws and parts of laws.

Art. 2742b. Method of increasing or diminishing area of districts and adjusting indebtedness. Secs. 1–4. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 106, ch. 47, § 3.]

Incorporation; petition; election

Sec. 5. Whenever a majority of the legally qualified property taxpaying voters residing in a Common School District, or one or more Common School Districts formerly constituting an Independent School District, desire to incorporate the said Common School District as an Independent School District for school purposes only, they may do so on a petition presented to the County Board of Trustees, and when the said County Board of Trustees find that the petition is duly signed by a majority of the legally qualified property taxpaying voters, and sufficient evidence being presented that said district when formed into an Independent School District will be financially capable of maintaining High School work at a reasonable cost per capita, they shall grant said petition by making an order upon the minutes of said County Board of Trustees; said order shall state the name by which said Independent School District shall be known and by which it may sue and be sued; at the same time said County Board of Trustees shall order an election in said Independent School District for seven school trustees, said election to be held according to the General Election Laws of the State; the returns of said election shall be made to the County Board of Trustees who shall declare the result; when the newly elected school trustees have qualified, said Independent School District shall enjoy all the privileges of an Independent School District as provided by Statutes.

Consolidation; petition; election

Sec. 5a. Whenever a majority of the legally qualified property taxpaying voters residing in two or more contiguous Common School Districts lying in two or more Counties desire to consolidate said contiguous Common School Districts for school purpose only, they may do so by a petition signed by twenty or more of the qualified taxpaying voters in each Common School District, presented to the County Board of School Trustees of the County in which the Common School District is situated.

Each County Board of County School Trustees upon the receipt of above mentioned application shall order an election in the Common School District of their respective Counties praying for the consolidation to determine if such Common School District shall consolidate with its contiguous Common School District lying in an adjoining County. Said election shall be held in each County upon the same date. The returns of said election shall be made to the respective Boards of County School Trustees who shall declare the result and if the consolidation is approved by a majority of the taxpaying voters of each Common School District applying for consolidation, the Board of County School Trustees of each County shall declare the result and at the same time notify the school trustees of each Common School District voting for consolidation who shall within ten days meet in joint meeting and select a name by which said new consolidated school district shall be known and designate the County having supervision of said consolidated district and at the same time they shall appoint school trustees for said new consolidated school district who shall serve until the next April election or until their successors shall qualify. Upon the election and qualifying of the above mentioned school trustees the new consolidated school district shall be in all manner and form governed by the general laws made and provided for the government of Common School Districts.

Consolidation of Common School and Common County-line Districts

Sec. 5b. In the manner prescribed by general law, Article 2806, Revised Statutes, 1925, providing for the consolidation of school districts by election, Common School and Common County-line Districts may be consolidated, and Common School and Common County-line School Districts may be consolidated with a contiguous Independent District in the same or in an adjoining County; provided that when the proposition is to consolidate districts having territory in two or more adjoining Counties, the petitions and election orders prescribed in Article 2806, Revised Statutes, 1925, shall be addressed to and issued by the County Judge of each County for and in behalf of each district wholly in his County or over which his County has jurisdiction for administrative purposes, and the County Commissioners' Court of each County shall canvass the returns of the election in each district lying whol-

ly within the County or under its jurisdiction for administrative purposes, and declare the results, as in the case of the consolidation of districts lying wholly within one County; and when the results are so declared the consolidation of the districts shall thereby become effective.

Districts formed under the provisions of this Act by the consolidation of Common School and Common County-line Districts shall be known as consolidated Common or consolidated Common County-line Districts, as the case may be, and shall function as Common School Districts, except as otherwise provided by general law governing consolidated Common School Districts.

Validation of districts

Sec. 6. All districts heretofore created by the Commissioners' Court or by the County Board of Trustees are hereby validated in all respects as though they had been legally created and all acts of the Board of Trustees of said district are hereby made valid and legal; except in cases in which the creative orders have been appealed from and no final disposition of such appeals has been made all of which districts are expressly excluded from this provision.

Rural high school act not affected

Sec. 7. Nothing in any provision of this Act shall repeal or affect the law enacted by the Regular Session of the 39th Legislature, providing for the creation of rural high schools.

County trustees

Sec. 8. One County Trustee shall be elected from the County at large and one from each Commissioners' Precinct by the voters of the districts under the supervision of the County Trustees and no school district not under the supervision of such trustees shall participate in their election.

Adjustment of indebtedness and properties

Sec. 9. When the boundaries of any school district having an outstanding bonded indebtedness have been changed or its territory divided or two or more of such districts consolidated, it shall be the duty of the County Board of Trustees to make such an adjustment of such indebtedness and district properties between the districts affected and between the territory divided, detached or added, as may be just and equitable, taking into consideration the value of school properties and the taxable wealth of the districts affected and the territory so divided, detached or added as the case may be. And when said Board has arrived at a satisfactory basis of such an adjustment, it shall have the power to make such orders in relation thereto as shall be conclusive and binding upon the districts and the territory thereby affected.

Refunding bonds; tax to pay bonds

Sec. 10. To carry into effect orders adjusting bonded indebtedness when changes are made in school districts, the County Board of Trustees shall have the power to order the Trustees of the districts affected, to order an election for the issuing of such refunding bonds as may be necessary to carry out the purpose of such order; and, in such case, it shall be the duty of the district trustee to order such election, cause the same to be held, and if the proposition is carried, to issue the bonds voted. Such bonds shall be of the same denomination and carry the same interest rate and mature at the same time as the outstanding bonds owing by the district issuing them; and when so issued, shall if possible be exchanged for the outstanding bonds for which the district issuing them shall still be liable, according to the order adjusting such indebtedness; and in cases where such an exchange cannot be made the new bonds of the district, to the amount of the old bonds for which it is still liable and to which no exchange can be made, shall be deposited in the County Treasury to the account of such district. Thereafter taxes shall be levied and assessed only for the payment of interest, sinking fund and principal of the new bonds so issued; and the funds arising from such taxation shall be used to discharge the principal and interest of such new bonds as have been issued and exchanged and such old bonds as have not been exchanged. When taxes are collected applicable to new bonds not exchanged and the proceeds applied to payment on old bonds not exchanged, the corresponding new bonds in the County Treasury shall be credited with such payment and retired as the old unexchanged bonds are retired.

Refunding bonds voted down; tax

Sec. 11. In cases where changes are made and districts having outstanding bonded indebtedness and where the necessary refunding bonds are voted down or where the County Board of Trustees are otherwise unable to arrange an adjustment or settlement of such bonded indebtedness, it shall be the duty of the trustees to certify the fact and the territories affected by such changes, to the Commissioners' Court and thereupon it shall become the duty of the Commissioners' Court to thereafter annually levy and cause to be assessed and collected from the taxpayers of such districts as they existed before the changes were made, the tax necessary to pay the interest, the sinking fund and discharge the principal of such indebtedness as it matures. And it shall be the duty of each Independent School District so affected, to cause all funds in its hands, whether sinking funds or otherwise, which have been collected on account of such bonded indebtedness, to be transferred to the County Treasurer of the County in which such district is situated and such district shall thereafter cease to levy and collect any tax on account of such bonds; and it shall be the duty of the County Treasurer to keep the funds so transferred and those arising from taxation, in separate accounts and apply the same only to the discharge of such bonded indebtedness and the interest thereon, as the same matures.

Other methods of adjustment and settlement

Sec. 12. Nothing in the provision of this Act shall prevent the County Board of Trustees from arranging any other method for the adjustment and settlement of outstanding bonded indebtedness of school districts in which changes are made but they shall have full power and authority to make any legal and equitable adjustment and settlement in such cases that can be effected. [Acts 1927, 40th Leg., 1st C. S., p. 228, ch. 84.]

Section 5 of this article (Acts 1927, 40th Leg., 1st C.S., p. 228, ch. 84, § 5) was held invalid in Pyote Independent School District v. Dyer (Com.App.) 24 S.W.(2d) 37, judgment modified, 34 S.W.(2d) 578, as being in violation of Const. art. 3, § 35, requiring subject of act to be embraced in title.

Article 2742d, post, validates all school districts theretofore created under Acts 1927, 40th Leg., 1st C.S., p. 228, ch. 84 (this article).

Section 13 of this Act repeals all conflicting laws and parts of laws, and section 13a provides that if any section is held invalid such holding shall not affect the remaining sections.

Art. 2742c. Rearranging and consolidating districts in certain counties.

Powers and duties of County Board of Trustees

Sec. 1. It shall be the duty of the County Board of Trustees of the public schools in every county in this State, having an area of not more than one thousand seventy five (1075) square miles and not less than nine hundred thirty (930) square miles and a population of not less than thirty-four thousand three hundred (34,300) and not more than thirty four thousand five hundred (34,500), according to the 1920 Federal Census, as soon as may be after this Act shall take effect, to re-arrange and resubdivide all

the territory of their respective counties into such number of convenient school districts as it shall deem advisable and designate them by number.

Such re-arrangement and re-subdivision shall be accomplished by constituting such existing Independent school districts as the Board shall deem advisable, together with such territory adjacent to such independent school district as it may deem advisable to add thereto, the new districts into which such county shall be subdivided; and such existing independent school districts, so enlarged shall continue to have and exercise all the powers and duties now provided by law and shall continue to be governed by existing law and by this Act. The districts thereby created shall be allowed to establish a central high school in each consolidated district under the general laws of the State of Texas, except that the location of the high school shall be determined by a majority vote of the qualified voters in the district which majority shall be ascertained by the County School Board under such regulations as they may prescribe.

The words, "School District," as herein used, shall refer to common districts or to independent school districts, however created.

The County Board of Trustees shall have the power, from time to time, to alter or amend the re-arrangement and the re-subdivision of school districts herein provided for, and making such original re-arrangement and re-subdivision, and in amending or altering same may increase or reduce the area of any school district; create additional school districts; consolidate two or more adjacent districts; revise or re-arrange the boundaries of any school district; attach territory thereto or detach territory therefrom, if necessary for the best interest of the school children, provided that the territory of no Independent school district having more than five hundred (500) scholastics shall be changed without the consent of its Board of Trustees and provided further that said Board shall not subtract from the territory of any school district in such a way as to leave any portion thereof remaining in such district with insufficient taxable wealth to raise revenue sufficient to pay interest and create a sinking fund for outstanding bonds; and provided that no portion of the territory of the county shall be left in a school district, after such subdivision shall have been made, with insufficient taxable wealth to raise revenue sufficient to provide all the scholastics residing within such district with proper and convenient school facilities, both in the elementary and high school grades.

It shall be the further duty of the county board of School Trustees at their first meeting after the State apportionment of available school funds has been made or as soon thereafter as practicable to apportion the available school funds of the county to the respective school districts within their jurisdiction on a per capita basis as shown by the last scholastic census, provided that the County Board of School Trustees shall be first required to set aside the entire available funds arising for the county permanent school funds, and to set aside not less than five per cent or not more than ten per cent of all other available school funds of the county derived from all other sources including the state per capita apportionment, except that the State per capita apportionment of Independent School Districts having more than two thousand scholastics, shall not be set aside for the equalization fund but shall remain in their respective districts, the said sums so set aside to constitute a county equalization fund that shall not be apportioned on a per capita basis, but shall be expended by the said county Board of School Trustees as a fund for equalizing as far as possible educational opportunities in the county and giving special aid to small and weak schools and to extend the school privileges of such children as have no other adequate provision for schooling in the districts in which they live, and to defray the costs of the county school administration. Provided that no part of such county equalization fund shall be expended in any school district in which there is not levied and collected taxes for school purposes amounting to one dollar ($1.00) on the one hundred ($100.00) dollars of taxable property.

County Board of Trustees to provide plans

Sec. 2. Before undertaking to create, revise or rearrange the boundaries or to change the territory in any school district, the County Board of Trustees shall cause a plan and a map to be made showing the boundaries of all districts affected and of the new district, if any to be created, with the area, taxable wealth and scholastic population of such district so affected or to be created; and notice shall be given for ten days by posting advertisements thereof in three public places within the territory embraced in such new district, before such action is taken. All interested persons shall be given full opportunity to be heard.

Adjustment of indebtedness

Sec. 3. When the boundaries of any school district having an outstanding bonded indebtedness have been changed or its territory divided or two or more such districts consolidated, it shall be the duty of the County Board of Trustees to make such an adjustment of such indebtedness and district properties between the districts affected and between the territory divided, detached or added, as may be just and equitable, taking into consideration the value of the school properties and the taxable wealth of the districts affected and the territory so divided, detached or added, as the case may be. And when said Board has arrived at a satisfactory basis of such an adjustment, it shall have the power to make such orders in relation thereto as shall be conclusive and binding upon the districts and the territory thereby affected.

Election for refunding bonds

Sec. 4. To carry into effect orders adjusting bonded indebtedness when changes are made in school districts, the County Board of Trustees shall have the power to order the trustees of the districts affected, to order an election for the issuing of such refunding bonds as may be necessary to carry out the purpose of such order; and, in such case, it shall be the duty of the district trustees to order such election, cause the same to be held, and if the proposition is carried, to issue the bonds voted. Such bonds shall be of the same.[1]

[1] So in enrolled bill. Section appears to be incomplete.

Commissioners' Court to annually levy tax

Sec. 5. In cases where changes are made in districts having outstanding bonded indebtedness and where the necessary refunding bonds are voted down or where the County Board of Trustees are otherwise unable to arrange an adjustment or settlement of such bonded indebtedness, it shall be the duty of the trustees to certify the fact and the territories affected by such changes, to the Commissioners' Court and thereupon it shall become the duty of the Commissioners' Court to thereafter annually levy and cause to be assessed and collected from the tax payers of such districts as they existed before the changes were made, the tax necessary to pay the interest, the sinking fund and discharge the principal of such indebtedness as it matures. And it shall be the duty of each independent school district so affected, to cause all funds in its hands, whether sinking funds or otherwise, which have been collected on account of such bonded indebtedness, to be transferred to the County treasurer of the county in which such district is situated and such district shall thereafter cease to levy and collect any tax on account of such bonds; and it shall be the duty of the County Treasurer to keep the funds so transferred and those arising from taxation, in separate accounts and apply the same only to the discharge of such bonded indebtedness and the interest thereon as the same matures.

County Board of Trustees empowered to adjust indebtedness

Sec. 6. Nothing in the provisions of this Act shall prevent the County Board of Trustees from arranging any other method for the adjustment and settlement of outstanding bonded indebtedness of school districts in which changes are made, but they shall have full power and authority to make any legal and equitable adjustment and settlement in such cases that can be effected.

Condemnation of lands

Sec. 7. Said trustees shall have the power to condemn land for free school purposes and may institute, maintain and prosecute suits for that purpose following the procedure applicable to condemnation of lands by railways or any other method authorized by law.

Transportation of pupils

Sec. 8. It shall be the duty of any school district into which the county shall be subdivided under this Act to provide adequate and convenient means of transportation to and from the schools of such school children in any district as it may be reasonably necessary to make such provision for, and to establish such routes for that purpose as the Board of Trustees of such district may deem advisable and to alter and change the same from time to time and the expense of such transportation shall be paid by the district in which such children may reside.

Appeal by party aggrieved

Sec. 9. In all cases where changes have been made in the territory of existing school districts, any party aggrieved shall have the right to appeal to a district court of the county in which such school district is located and the decision of such court on such appeal shall be final; provided notice of such appeal is given to the County Board of Trustees within ten (10) days after the passage of any such order making such changes; and provided further that such appeal to the district court shall be perfected within thirty (30) days from the date of such order.

Members of Board of County School Trustees

Sec. 10. For each county subject to the provisions of this Act the Board of County School Trustees shall consist of seven members, three of whom shall be elected from the county at large by the qualified voters of the county, and one from each commissioner's precinct by the qualified voters in such precinct, all of whom shall be elected on the first Saturday in April after this Act shall take effect and every two years thereafter for a term of two years. All vacancies on such Board shall be filled by the remaining Trustees. Such Board of County School Trustees shall have the powers and duties and possess the qualifications provided by law with respect to County School Trustees generally in this State, in addition to those provided by this Act.

The members of the County Board of Trustees of the Public Schools of any County affected by this Act shall receive five ($5.00) dollars per day for their services in complying with the duties imposed upon them by this Act, to be allowed by the Commissioners' Court and paid out of the General Fund of the County upon accounts to be approved by the Chairman of said County Board of Trustees; and the expense of making maps and plats provided for by this Act and all other expenses incident to carrying out its provisions shall be similarly allowed and paid. [Acts 1929, 41st Leg., p. 290, ch. 134.]

Section 11 of this Act declares that if any section of the Act is held invalid such decision shall not affect the remainder. Section 12 provides that the Act shall not be construed as depriving any district or part thereof from receiving state aid and bonuses as though consolidation had not been effected. Section 13 repeals all conflicting laws and parts of laws.

Acts 1933, 43rd Leg., 1st C.S., p. 293, ch. 108, passed as a general law, relates to one county.

Acts 1933, 43rd Leg., 1st C.S., p. 293, ch. 108 relates to re-arrangement and re-subdivision of territory in counties with an area of 3600-3800 square miles and a population of 9000-12000.

This article is a local act beyond the power of the legislature to enact. Wood v. Marfa Independent School District, Civ.App., 123 S.W.2d 429, reversed on other grounds in 135 T. 223, 141 S.W.2d 590 by Commission of Appeals which assumed but did not decide that this article was invalid.

Art. 2742c—1. Separation from municipal control of municipal school district surrounded by county line district to become common school district.

Definitions

Section 1. The term "municipal school district," as used in this Act, shall include any city or town constituting a separate and independent school district under authority of Section 3, Article VII, of the Constitution, as amended, and/or Section 10, of Article XI, of the Constitution, the boundaries of the school corporation being the same as the boundaries of the city or town in which said city has a population of sixteen hundred (1600) or less, according to the last preceding Federal Census.

The term "governing body," as used in this Act, shall include the governing body of each said city or town, whether designated as "city commission," "city council," "board of aldermen," or otherwise.

Procedure

Sec. 2. When any municipal school district, as defined in Section 1 hereof, entirely surrounded by a county line common school district, shall desire to have the public schools within its limits separated from municipal control so that the school corporation shall become and be a common school district, without the dual character theretofore possessed by the school corporation of the city or town, the same shall be done in the following manner:

Whenever as many as one hundred (100) of the resident qualified voters of such municipal school district in city or town petition the board of education or board of school trustees of such municipal district, praying for an election on the proposition as to whether or not the public schools shall be divorced from municipal control, the said board shall certify such petition to the governing body of such city or town. When such petition and the certificate of the board of education or trustees, has been submitted to the governing body of such city or town, it shall thereupon be the duty of such governing body to fix the date, which date shall be not more than ten (10) days from the date such petition and certificate was submitted, for the holding of a joint meeting of the governing body of the city or town and the board of education or trustees of such municipal school district. At such joint meeting, the governing body of the city or town and the board of education or trustees of such municipal school district, acting jointly as one body, the mayor or chairman of the governing body presiding, shall order an election as prayed for in such petition. The election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city or town. Every person who has attained the age of twenty-one (21) years and who has resided within the limits of the municipal school district and the city or town for six (6) months next preceding the date of the election, and is a qualified elector under the laws of this State, shall be entitled to vote in the election.

Ballots

Sec. 3. All persons voting at such election in favor of such proposition shall have written or printed upon their ballots the words, "For the separation of the public schools from municipal control, and converting same into a common school district," and all persons voting at such election not in favor of such proposition shall have written or printed upon their ballots the words, "Against the separation of the public schools

from municipal control, and converting same into a common school district."

Canvass; results of election

Sec. 4. If a majority of the qualified voters, voting at the election of such municipal school district, shall vote in favor of the separation of the public schools from municipal control and in favor of creating a common school district therefor, the governing body of such city or town shall immediately canvass the returns and certify the result of such election to the board of education or board of trustees of such municipal district, together with a certified copy of the record showing all the proceedings in respect of such election. If such board of education or board of trustees finds that such election has been in all respects lawfully held and the returns thereof duly and legally made to the governing body of such city or town, then it shall by resolution duly passed and entered of record, declare that the public schools of the municipal school district have been separated from municipal control, and that the name of the school district shall thereafter be "———— Common School District," inserting the name of such city or town. If the proposition shall be defeated at such election, then no election for that purpose shall be ordered until after the expiration of one year after the date of such election.

Bond tax

Sec. 5. Nothing contained in the provisions of this Act shall be construed as abrogating or repealing any district bond tax.

School trustees

Sec. 6. The members of the board of education or the board of trustees of such municipal school district shall continue as members of the board of education or board of trustees of such common school district after separation of municipal control until a special election can be held for choosing their successors, and such successors have been duly elected and qualified; provided that upon the certification of the carrying of such election, as hereinabove provided, the commissioners court of the county pursuant to its duties in connection with common school districts, shall order an election for said common school district for the purpose of naming a board of seven (7) school trustees in whom shall vest the authority for the conduct of the school district as provided by law for common school districts; provided that in all matters said common school district newly created, shall be under the direction of the county commissioners court and the board of trustees as provided by law for common school districts.

Title and rights to property

Sec. 7. The title and rights to all property owned, held, set apart, or in any way dedicated to the use of the public school of the city or town, and/or heretofore vested in such city or town and/or the mayor, chairman of the commission, city council, city commission or board of school trustees of said city or town, prior to separation from municipal control as hereinafter authorized and provided, shall be and are hereby vested in the board of education or board of trustees of such common school district, after separation from a municipal control, and shall be managed and controlled by the board of education or board of trustees thereof, as is now or hereafter provided by law for common school districts.

Obligations and debts

Sec. 8. All bonds issued by and outstanding against any such city or town, as a municipal school district, and all obligations, contracts, and indebtedness existing against said city or town, as a municipal school district, shall become the obligations and debts of the school district at the time of its separation from municipal control, and the said common school district, after separation from municipal control shall be held to have assumed the discharge of all such obligations, contracts and indebtedness, and the same shall be enforceable and collectible from, paid off and discharged by the said common school district, as if originally created by it as a separate common school district; and it shall not be necessary to call an election within and for such district for the purpose of assuming such bonds and other indebtedness.

Annexation or consolidation

Sec. 9. When any such municipal school district shall have been divorced from municipal control, and thereby shall have become a common school district under the provisions of this Act, said newly created common school district may annex and consolidate with a contiguous county line common school district when such annexation and consolidation shall have been approved in separate elections to be held in each of the districts. Such elections shall be held as nearly as practicable according to the provisions for consolidation of school districts as provided by law. If such proposition shall carry in each of the respective districts, then the annexation or consolidation shall be so declared.

Representation on board

Sec. 10. In the event of the annexation or consolidation of a common school district with a contiguous county line common school district, under the provisions of this Act, the common school district so annexed shall have representation on the board of school trustees for the consolidated district of not less than one member, unless and until the two (2) originally consolidated districts shall annex or consolidate three (3) more common school districts; provided that when three (3) more such annexations and consolidations shall have been effected, then the members of the board of school trustees of the entire district shall be elected at large.

Outstanding indebtedness on annexation

Sec. 11. Provided that upon the annexation of a common school district, divorced from municipal control, with a contiguous county line common school district, each of such original districts shall respectively remain exclusively liable for its outstanding bonds and other school indebtedness, unless and until the qualified resident property taxpaying voters of each original district, voting separately, shall vote to assume their proportionate part of the outstanding bonds of each such district. [Acts 1941, 47th Leg., p. 1342, ch. 608.]

Art. 2742d. School districts and bonds validated.—Sec. 1. That all school districts heretofore created pursuant to and in conformity with the provisions of Chapter 84 of the Acts of the First Called Session of the 40th Legislature of the State of Texas in 1927,[1] are hereby in all things validated.

Sec. 2. That all acts of the County Judge, Boards of Trustees of Common School Districts, Boards of Trustees of Independent School Districts, County Boards of Trustees, Boards of Trustees of Common County Line School Districts and Boards of Trustees of County Line Independent School Districts, and of petitioners and all other persons performed pursuant to the provisions of Chapter 84 of the Acts of the First Called Session of the 40th Legislature of the State of Texas, are hereby in all things ratified, confirmed and validated.

Sec. 3. That all petitions to County Boards of Trustees, to form Independent School Districts, all acts of County Boards of Trustees granting petitions and creating and incorporating Independent School Districts, ordering elections for school trustees in Independent School Districts; all elections for Boards of Trustees held pursuant to the order of the County

Board of Trustees, all orders canvassing and declaring results of election of Trustees of Independent School Districts, and all Independent School Districts created pursuant to the provisions of section 5 of Chapter 84 of the Acts of the First Called Session of the 40th Legislature [2] are hereby in all things ratified, confirmed and validated.

Sec. 4. All bonds issued or authorized to be issued that were authorized by a majority of the property tax paying voters at an election held for that purpose by any school district created pursuant to the provisions of Chapter 84 of the Acts of the First Called Session of the 40th Legislature are hereby validated.

Sec. 5. That all bonds heretofore issued or authorized to be issued that were authorized by a majority vote of the property tax paying voters at an election held for that purpose in which the petition for an election, order of election and notice of election did not include the maturity dates of the bonds and elections held pursuant to such petition, order and notice of election are hereby in all things ratified, confirmed and validated. [Acts 1929, 41st Leg., p. 105, ch. 50.]

[1] Article 2742b, ante.
[2] Article 2742b, § 5, ante.
Acts 1929, 41st Leg., 2nd C.S., p. 136, ch. 68, § 1, validates annexation proceedings in independent school districts having a scholastic population of not less than 300 and not more than 400.

Art. 2742e. Trustees authorized to change boundaries in school districts and acts validated.—Sec. 1. That all acts of the County Board of School Trustees in counties having a population of not less than 9,000 and not more than 9,010 according to the United States Federal census of 1920, in changing boundary lines of Common School Districts under the jurisdiction of said County Board, shall be and are hereby validated, and that all Common School Districts in said counties, whether created by General or Special Law in this State or by order of the County Board of Trustees, heretofore laid out and attempted to be established or changed by the County Board of Trustees or other proper officers of any such counties and recognized by either State or County authorities as school districts and the orders of said County Board in making certain changes in Common School District boundary lines are hereby validated in all respects as though they had been duly and legally established in the first instance.

Sec. 2. That on and after the passage of this Act the County Board of School Trustees in any county in this State shall have authority and full power to create Common School Districts, to subdivide districts, and to change boundary lines of any or all Common School Districts legally coming under the jurisdiction of the County Board of School Trustees, subject to the supervision of the District Court having jurisdiction over the county where the County Board is appointed or elected; provided that before any changes may be made in boundary lines of school districts the trustees of the Common School Districts affected shall be notified to appear before the County Board for a hearing, and after said hearing, or the date set for said hearing, the County Board of Trustees may pass such order or orders as will carry out the provisions of this Act; provided, further, that the trustees of the districts affected may appeal from the decision of the County Board to the District Court. [Acts 1929, 41st Leg., 1st C.S., p. 259, ch. 109.]

Section 3 of this Act provides that if any provision is held invalid, such decision shall not affect the validity of the remainder.

Art. 2742e—1. Trustees may abolish or subdivide districts.—From and after the passage of this Act, the County Board of School Trustees in any county in this State shall have authority and full power to abolish and/or subdivide any common school district, or other district coming under the jurisdiction of said County Board, having fewer than ten (10) resident scholastics within its boundaries, provided that no public school has been conducted in such district for a period of five (5) years immediately preceding such action by said County Board of School Trustees. The territory of any such school district so abolished or subdivided may be attached to any or all contiguous school districts or county line school districts in such manner as may be determined by said County Board. It is further provided that in the event such newly formed school district does not vote to assume the same, said County School Board shall make an adjustment of any outstanding bonded indebtedness, if there be such, and provide for an equitable distribution of all district properties and/or moneys between the districts affected and the territory so divided, detached or added, taking into consideration the value of school properties and the taxable wealth of the districts affected and the territories so divided, detached or added, as the case may be. When said County Board shall have arrived at a satisfactory basis of such an adjustment, it shall have power to make such orders with reference thereto as shall be conclusive and binding upon the districts so affected; provided, however, that the trustee or any residents of the districts or territory so affected by the Act of the County Board of Trustees as authorized by this Act may appeal from the decision of the County Board to the District Court. [Acts 1939, 46th Leg., p. 293, § 1.]

Acts 1935, 44th Leg., p. 790, ch. 339, purporting to amend this article, was held invalid. See School Trustees of Orange County v. District Trustees of Prairie View Common School Dist. No. 8, 133 T. 125, 153 S.W.2d 434, answers to certified questions conformed to 154 S.W.2d 1007.
Section 2 of the Act of 1939 validated actions of the County Boards of Trustees theretofore taken to accomplish objects authorized by the Act. Section 3 repealed all conflicting laws.

Art. 2742f. Detaching territory from one school district and attaching to another.—Section 1. In each county of this State the County Board of Trustees shall have the authority, when duly petitioned as herein provided, to detach from and annex to any school district territory contiguous to the common boundary line of the two districts; provided the Board of Trustees of the district to which the annexation is to be made approves, by majority vote, the proposed transfer of territory and provided, further, that where the territory to be detached exceeds ten per cent (10%) of the entire district the petition must be signed by a majority of the trustees of said district in addition to a majority of the qualified voters of the territory to be detached. The petition shall give the metes and bounds of the territory to be detached from the one and added to the other district and must be signed by a majority of the qualified voters residing in the said territory so detached. Upon receipt of the said petition, duly signed, and upon notice of the approval of the proposed annexation by the Board of Trustees of the district to which the territory is to be added, the County Board of Trustees shall pass an order transferring the said territory and redefining the boundaries of the districts affected by said transfer, the said order to be recorded in the Minutes of the County Board of Trustees. Provided that no school district shall be reduced to an area of less than nine square miles.

Sec. 1-a. The County Board of Trustees, upon receipt of the petition herein prescribed and when the educational needs of the county necessitate such action, may detach from any district, common or independent, or any such contiguous districts, whether created by General or Special Law, territory to be incorporated into a new common school or independent school district; provided that before the County Board may pass an order detaching the said territory and incorporating the said district, notice of such proposed action must be given in writing to the officers of the Board of Trustees of each district whose area would

be affected by the said transfer of territory, and an opportunity to be heard on the proposed change be afforded the officers of such district; and provided further that no district shall be reduced below an area of nine (9) square miles, or any district created with an area of less than nine (9) square miles and sufficient taxable valuations to support an efficient school system. In the event the territory to be detached from any district exceeds ten per cent (10%) of the total area of the said district, the County Board of Trustees must have, in addition to the petition prescribed herein, the written approval of the proposed detachment of territory by a majority of the Board of Trustees of said district. Any school district created under the provisions of this Act shall be governed by the General Laws relating to common and independent school districts as they now exist or may hereafter be enacted, and it shall be the duty of the County Board of Trustees, at the time the order for the establishment of the district is made, to appoint a Board of Trustees for the said common or independent school district, as the case may be, to serve until the next regular election of trustees as prescribed by the General Law, when a Board of Trustees shall be elected whose terms of office shall be in accordance with the provisions of the General Law governing common and independent school districts, respectively; and the said district, when so established, shall have all the rights and privileges of an independent or common school district as prescribed by General Law.

Any bonded indebtedness affected by the proposed transfer of territory and the establishment of a new district shall be adjusted by the County Board of Trustees as prescribed by the General Law; provided, however, that before any tax may be levied over the territory of the new district for the liquidation of its proportionate part of the outstanding bonded indebtedness of any district from which the territory of the new district is taken, the said new district shall vote to assume the said indebtedness and authorize the levy of the necessary tax. The said election shall be held in accordance with the provisions of the General Law governing bond tax elections in a common or independent school district as the case may be.

The petition shall give the metes and bounds of the proposed district and be signed by a majority of the qualified voters residing in each territory to be detached; provided that when the proposed new district will embrace territory lying in two or more counties, all orders affecting its establishment shall be concurred in by the County Board of Trustees of each county concerned, but the petition for the establishment of a County Line District as provided for herein shall be addressed to the County Board of Trustees of the county in which the principal school of the new district is to be located, and administrative jurisdiction of the said district shall be vested in the County Board of said county. [Added Acts 1931, 42nd Leg., p. 235, ch. 140, § 1.]

Sec. 2. Any outstanding indebtedness affected by changes in the boundaries of school districts shall be adjusted by the County Board of Trustees as provided in Sections 10, 11 and 12, of Chapter 84, Acts of the 40th Legislature, First Called Session. [Acts 1929, 41st Leg., 1st C.S., p. 106, ch. 47.]

Section 2 of Acts 1931, as amended by Acts 1931, 42nd Leg., 2nd C.S., p. 57, ch. 35, made the provisions of the Act cumulative of the present law governing Common and Independent School Districts, limited application of Act, and validated certain consolidations of school districts and certain acts of the County Board of School Trustees.

Acts 1935, 44th Leg., 2nd C.S., p. 1756, ch. 460, passed as a general law, validates acts of county board in certain counties.

Section 3 of the Act of 1929 repealed conflicting laws and expressly repealed sections 1, 2, 3 and 4 of art. 2765.

Art. 2742f—1. Elections as to transferring land from one school district to another validated.—All elections heretofore held under the provisions of Chapter 339, Acts of the Regular Session of the Forty-fourth Legislature of Texas,[1] in any common school district located in any county in Texas having a population of not less than eight thousand two hundred fifty (8,250), and not more than eight thousand five hundred (8,500), according to the last preceding Federal Census, transferring land from such common school districts to other school districts, and/or assuming any bonded indebtedness of such districts be, and all such elections are hereby in all things ratified, validated and confirmed, and all acts of the official bodies of said counties, and all acts of the election officials holding said elections, are hereby in all things validated, ratified and confirmed; provided that this Act shall not affect any election which is now being contested in the courts of this State. [Acts 1939, 46th Leg., Spec.L., p. 1020, § 1.]

1 Article 2742f.

Art. 2742g. Conferring authority upon and validating rural high school districts in counties having 23,200 and not more than 23,300 population.—Sec. 1. This act shall apply to any rural high school district composed of territory in two counties which counties have a combined population according to the latest United States Census of not less than 23,200 and not more than 23,300 according to the 1920 United States Census and which rural high school district was formed from three common school districts and one independent school district.

Sec. 2. Any rural high school district mentioned in Section 1 of this Act is hereby vested with all the rights, powers, privileges and duties of a town or village incorporated under the general laws of the State for school purposes only, and the Board of trustees of said district shall have and exercise and is hereby vested with all the rights, powers, privileges and duties conferred and imposed by the general laws of this State now in force or hereafter enacted upon the trustees of independent school districts of 250 or more scholastic population, including the right to levy and collect taxes and to issue bonds of said district to the extent, for the purposes and subject to all the provisions, limitations and conditions under which said powers may be exercised under the general laws of this State, and all the laws of this state applicable to towns and villages incorporated for free school purposes only are hereby declared to be applicable in any rural high school district mentioned in Section 1 of this Act.

Sec. 3. The acts of the county school trustees in creating any rural high school district mentioned in Section 1 of this act are in all things ratified, confirmed and validated. All of the acts and proceedings heretofore performed and done in organizing any such rural high school district, together with all tax levies, bond issues, contracts and obligations heretofore made, issued, authorized, done or incurred, and also all acts and proceedings relating to the extension and enlargement of the boundaries of any such district heretofore performed or had are in all things ratified, confirmed and validated. [Acts 1929, 41st Leg., 3rd C.S., p. 249, ch. 12.]

Art. 2742h. Validating school district boundaries in counties having population of 1010 and not more than 1025.—Sec. 1. That all acts of the County Board of School Trustees in counties having a population of not less than 1010 and not more than 1025 according to the United States Federal Census of 1920, in changing boundary lines of Common School Districts under the jurisdiction of said County Board, shall be and are hereby validated, and that all Common School Districts in said counties, whether created by General or Special Law in this State or by order of the County Board of Trustees, heretofore laid out and attempted to be established, combined, abolished, or changed by the County Board of Trustees or other proper officers of any such counties and recognized by either State or County authorities as

School Districts and the orders of said County Board in making certain changes in Common School Districts and Common School district boundary lines are hereby validated in all respects as though they had been duly and legally established in the first instance.

Sec. 2. That on and after the passage of this Act the County Board of School Trustees in said Counties shall have authority and full power to create Common School Districts, to subdivide, combine, or abolish districts, and change boundary lines of any or all Common School Districts legally coming under the jurisdiction of the County Board of School Trustees.

Sec. 3. The County Board of School Trustees of said counties shall have full power and authority to form and establish one or more Rural High School Districts having an area of more than one-hundred square miles and composed of two or more elementary school districts. [Acts 1930, 41st Leg., 4th C.S., p. 77, ch. 39.]

Section 4 of this Act provides that if any provision is held invalid, such decision shall not affect the remaining portion.

Art. 2742i. Validating school districts.—All School Districts, including Common School Districts, Independent School Districts, Consolidated Common School Districts, Consolidated Independent School Districts, County Line School Districts, Consolidated County Line School Districts, and Rural High School Districts, whether created by General or Special Law in this State and heretofore laid out and established or attempted to be established by the proper officers of any County or by the Legislature of the State of Texas and heretofore recognized by either State or County authorities as School Districts, are hereby validated in all respects as though they had been duly and legally established in the first instance; all acts of the Board or Boards of Trustees in such Districts ordering elections, declaring the result of such elections, and levying taxes therefor, and all bonds issued and now outstanding, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any District was omitted shall in nowise invalidate such District, and the fact that by inadvertence or oversight any act was omitted by any Board of Trustees of any such District in ordering an election or elections, or in declaring the result thereof, or in levying the taxes for such District, or in the issuance of the bonds of any such District shall in nowise invalidate any of such proceedings or any bonds so issued by such District. All acts of the County Boards of Trustees of any and all counties in rearranging, changing or subdividing such School Districts, or increasing or decreasing the area thereof, in any School District of any kind, or in creating new districts out of parts of existing districts or otherwise, are hereby in all things validated. This Law shall not apply to any district, the organization or creation of which is now involved in litigation. [Acts 1930, 41st Leg., 4th C.S., p. 79, ch. 40, § 1.]

Acts 1939, 46th Leg., Spec.L., p. 1032, effective June 13, 1939, validated the organization of certain school districts in counties from 28,620 to 28,650 and counties from 12,460 to 12,480.

Art. 2742j. Incorporation of school districts. Section 1. Upon a petition properly signed by twenty (20), or a majority, of the legally qualified property tax-paying voters residing in any common school district in which there is maintained a first-class high school of twelve (12) grades, offering sixteen (16) or more credits, the County Judge of said county shall issue an order calling for an election to be held not less than twenty (20) nor more than thirty (30) days from the date of the filing of said petition, for the purpose of converting the common school district into an independent school district for school purposes. After said election is held, the Commissioners Court shall canvass the returns thereof as in other similar elections, and if the majority of the votes cast favor the change from a common school district to an independent school district, the County School Board shall immediately pass such an order or orders as may be necessary, creating said independent school district. The County School Board shall appoint a Board of seven (7) members, all of whom shall be otherwise qualified by law, and said Board shall serve until the next regular trustee election under the laws of this state, at which time seven (7) members shall be elected as provided by law. [As amended Acts 1947, 50th Leg., p. 531, ch. 311, § 1.]

Sec. 2. All school districts, including common school districts, independent school districts, consolidated common school districts, consolidated independent school districts, county line school districts, consolidated county line school districts, and rural high school districts, whether created by general or special law in this State, heretofore laid out and established or attempted to be established by the proper officers of any county, or by the Legislature of the State of Texas, including such districts as have been created under the provisions of Section 5, Chapter 84, of the Acts of the First Called Session of the 40th Legislature of the State of Texas, 1927,[1] created or attempted to be created by any county board of trustees as therein provided, are hereby in all respects validated as though they had been duly and legally established in the first instance. All acts of the Board or Boards of Trustees in such districts ordering elections, declaring the result of such elections, and levying the tax therefor, and all bonds issued and now outstanding, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any district was omitted shall in no wise invalidate such district, and the fact that by inadvertence or oversight any act was omitted by any Board of Trustees of a county in creating such district, or in any Board of Trustees of such District in ordering an election or elections, or in declaring the result thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district was omitted shall in no wise invalidate such proceedings or the bonds so issued by any such district. [Acts 1930, 41st Leg., 5th C.S., p. 117, ch. 5.]

[1] Article 2742b.

Art. 2742k. Validation of districts.—All School Districts, including Common School Districts, Independent School Districts, Consolidated Common School Districts, Consolidated Independent School Districts, County Line School Districts, Consolidated County Line School Districts, and Rural High School Districts, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any County or by the Legislature of the State of Texas and heretofore recognized by either State or County Authorities as School Districts, are hereby validated in all respects as though they had been duly and legally established in the first instance; all acts of the Board or Boards of Trustees in such Districts ordering an election or elections, declaring the result of such elections, and levying taxes therefor, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any District was omitted shall in nowise invalidate such District and the fact that by inadvertence or oversight any act was omitted by any Board of Trustees of any such District in ordering an election or elections, or in declaring the result thereof, or in levying the taxes for such District, or in the issuance of the bonds of any such District shall in nowise invalidate any of such proceedings or any bonds so issued by such District. All acts of the County Boards of Trustees of any and all counties

in rearranging, changing or subdividing such School Districts or increasing or decreasing the area thereof, in any School District of any kind, or in creating new Districts out of parts of existing Districts or otherwise, are hereby in all things validated. This Law shall not apply to any District, the organization or creation of which is now involved in litigation. Provided further that this Act shall not apply to any District which may have been established or consolidated and which has later returned to its original status and has been so recognized by the proper authorities. [Acts 1931, 42nd Leg., p. 426, ch. 257, § 1.]

Acts 1937, 45th Leg., p. 260, ch. 136, validated school districts in counties of 39,497 to 39,500.

Art. 2742l. Validating annexation of school districts.—Sec. 1. That in each and every instance where one Independent School District in this State has been annexed to another Independent School District in this State pursuant to elections held in each of such Districts on the same day, and wherein the respective Boards of Trustees of such Independent School Districts have caused any such annexation to be effected and any such annexation has been approved by the County Board of Trustees of the county wherein any such District is located, such annexation is hereby in all things ratified, confirmed and validated.

Sec. 2. That all acts of the Board of Trustees of any Independent School District in levying and assessing the same rate of taxation in effect in such District against all taxable property situated in any such Independent School District annexed to it in the manner referred to in Section 1 of this Act are hereby in all things ratified, confirmed and validated, and all such Taxes so levied and assessed against the taxable property in any such Independent School District so annexed to such other Independent School District are likewise in all things ratified, confirmed and validated.

Sec. 3. All acts of the County Board of Trustees in any County approving the annexation of One Independent School District to another Independent School District after elections have been called and held on the same day in such respective Districts and at which a majority of the tax paying voters in one of such Districts voting at such election voted for the annexation of such Independent School District to such other School District and to subject the taxable property in such Independent School District to the same rate of taxation in effect in such other Independent School District and in which election so held in such other District to which such annexation was to be made a majority of the tax paying voters voting at such election voted for such annexation and for the assumption of the bonded indebtedness of such other District, are hereby in all things ratified, confirmed and validated, and the Independent School District, as created by any such annexation, is hereby in all things ratified, confirmed and validated. [Acts 1931, 42nd Leg., p. 805, ch. 329.]

Section 4 of this Act provides that if any section is held invalid, such decision shall not affect the remainder.

Art. 2742m. Abolition or subdivision of districts; adjustment of indebtedness.—That from and after the passage of this Act the County Board of School Trustees in any county in this State shall have authority and full power to abolish and/or subdivide any common school district, or other district coming under the jurisdiction of said County Board, having fewer than ten (10) resident scholastics within its boundaries, provided that no public school has been conducted in such district for a period of five (5) years immediately preceding such action by said County Board of School Trustees. The territory of any such school district so abolished or subdivided shall be attached to any or all contiguous school districts in such manner as may be determined by said County Board. It is further provided that said County School Board shall make an adjustment of any outstanding bonded indebtedness, if there be such, and provide for an equitable distribution of all district properties and/or moneys between the districts affected and the territory so divided, detached or added, taking into consideration the value of school properties and the taxable wealth of the districts affected and the territories so divided, detached or added, as the case may be. When said County Board shall have arrived at a satisfactory basis of such an adjustment, it shall have power to make such orders with reference thereto as shall be conclusive and binding upon the districts so affected; provided, however, that the trustees or any residents of the districts or territory so affected by the act of the County Board of Trustees as authorized by this Act may appeal from the decision of the County Board to the District Court. [Acts 1935, 44th Leg., p. 393, ch. 151, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 2742n. Validating establishment, combination, alteration, etc., of independent or common school districts.—All acts of County Boards of School Trustees in any County in this State in laying out and attempting to establish, combine, abolish or change any independent or common school districts in the county over which such County Board of School Trustees has jurisdiction under and by virtue of Chapter 339, Acts of the Regular Session of the Forty-fourth Legislature, 1935,[1] or under Chapter 151, Acts of the Regular Session of the Forty-fourth Legislature, 1935,[2] are hereby in all things ratified, confirmed and validated, and that all elections held in any County in this State for the purpose of laying out, establishing, combining, abolishing or changing any such independent or common school districts, are also in all things ratified, confirmed and validated; provided that this Act shall not validate any such acts of the County Boards of School Trustees in any County, nor any elections held in any such County, for the purpose of laying out, establishing, combining, abolishing or changing any such independent or common school districts in which there is now pending any contest or litigation. [Acts 1936, 44th Leg., 3rd C.S., p. 2093, ch. 502, § 1.]

[1] Article 2742f.
[2] Article 2742m.

Art. 2743. County line districts.—The boards of county school trustees shall have full power and authority to create common school districts, to contain territory within two or more counties. In creating said district each such board shall pass an order describing the territory to be included in such district by metes and bounds, giving the course and direction with the exact length of each line contained in such description and locating each corner called for upon the ground, and shall also give the acres of each survey and parts of survey of lands contained in such district, together with a map showing the conditions upon the ground as described in the field notes, giving the number of acres of land contained in each survey and parts of survey contained in each county; also showing the exact position and location of the county line in the territory created into such district. Said order shall also designate and name some one of the counties having territory included in the description of such district which shall manage and have control of the public schools therein for all school purposes.

Said district shall have no authority or power until said order has been passed by the board of county school trustees of each county having territory included therein. No common county line school district shall be created with or changed to a less area than nine square miles, and shall be laid out in as near the shape of a square as possible, and in no event shall the

length of such district be greater than the width plus one-half of the width of such district. [Acts 1909, Ch. 17; Acts 1911, p. 200; Acts 1917, p. 441.]

Acts 1939, 46th Leg., Spec.L., p. 1034, validated the subdivision of common county line school districts partly situated in two counties, the supervision of said schools being located in counties from 30,010 to 30,030.

Art. 2744. County line districts; powers.—Common county line school districts shall have all the rights, powers and privileges of common school districts, and for all school purposes, shall be managed and controlled by the county named in the order creating such district, and should such district desire to levy the special tax authorized by law to be levied for the purpose of the maintenance of its schools, or to issue bonds in accordance with the limitations for such purpose provided by law for common school districts, or both, after an election has been held in such common county line school district as provided by law and it has been determined by a majority vote that such district shall levy such special tax or issue such bonds, the commissioners court of the county having control of such district shall pass an order levying such tax or issuing such bonds, or both, against the territory included within such county where the commissioners court in control of the school is located, and such order levying said tax or issuing said bonds and levying a tax to pay the interest and sinking fund, shall be passed by the commissioners court of each county having territory in such district. Each such court shall continue to levy the said tax at such rate as is determined and certified by the county superintendent of the county having control of said schools until such tax be diminished or abrogated, as provided by law, or such bonds, if such a district has outstanding bonds, have been fully and finally paid and discharged. The tax assessor shall assess the taxes levied by the commissioners court of his county against the territory included in such county line school district for each year that such tax is levied, and shall make up a separate tax roll covering the special tax on territory in his county included in the county line school district, and deliver it with the general tax rolls of his county, which shall guide the tax collector in collecting the local taxes for such school district. The tax collector shall collect such special tax for such county line district in his county for every year that such tax has been levied in such districts and keep a separate account covering the territory of his county included in county line school districts, for the purpose of determining how much tax has been collected, and such taxes shall be paid by his county to the county line school district. Such district shall not be changed or abolished except by the consent of the commissioners court of each county having territory contained therein, and if such a district has outstanding bonds the same shall not be changed or abolished in any way until after such bonds are finally paid and discharged. [Acts 1911, p. 200.]

An amendment to art. 2806, passed after 1925, to provide for the consolidation of two independent school districts was required to be given effect, even if to do so required holding that it repealed provision of this article enacted in 1911, stating that no district shall be changed or abolished except by consent of commissioners' court of each county having territory contained therein, as applied to election held as part of proceedings to consolidate two contiguous independent school districts in Shackelford county, one of which contained land in Stephens county. *Stephens v. Coffee*, Civ.App., 133 S.W.2d 184.

Art. 2744a. Districts and bonds validated.—Sec. 1. All school districts, including all common county-line school districts, heretofore attempted to be created or consolidated by the proper authorities of the county, or by election in cases where an election for such purpose may have been authorized by law, and which have been recognized as valid by the proper school authorities of the respective counties, are hereby validated; provided that in case of such elections it appears that a majority of the votes cast in each district concerned was in favor of such creation or consolidation of such district or districts, or that in the case of common county-line school districts, the same territory has been designated by the proper authorities of each county concerned; such districts are hereby validated in all respects.

Sec. 2. All bond issues and all levies of special school taxes heretofore voted or which may hereafter be voted by any such district, are hereby validated, as though the original creation or consolidation of such district was in all respects regular; provided that the proceedings in the election for such bond issue or special taxes were or shall be in all other respects valid; and provided further that this Act shall not be construed as validating any bond issue attempted to have been voted upon any territory larger than, or in any way different from, that defined by the latest valid order of the county board of trustees, changing or defining the boundaries of the district for which such election was attempted to be held. [Acts 1927, 40th Leg., 1st C. S., p. 196, ch. 71.]

Art. 2744b. Creation of school district embracing entire county.—Sec. 1. Whenever a majority of the legally qualified taxpaying voters residing in any organized county of this State, having a scholastic population of more than four hundred and less than six hundred, as shown by the last scholastic census on file in the Department of Education of the State of Texas, and which does not embrace the whole or any part of an independent school district, and in which there is no outstanding indebtedness against any Common School District in such County, and which has an assessed valuation of more than four million and less than six million dollars, desire to have such county created into and to constitute a Common School District, the County Judge, when petitioned by fifty or a majority of the legally qualified property taxpaying voters of such county, shall order an election to be held throughout such county for the purpose of determining whether a majority of the legally qualified property taxpaying voters residing in said county shall favor the creation of a Common School District embracing the entire county.

The petition and order for the election shall state that the purpose is to create a Common School District embracing the entire county. The order for the election must be issued and public notice thereof given, as in other school elections, for not less than three weeks prior to the date of said election, and said election shall be held at the usual voting place in each election precinct in said county and shall be conducted under the General Election Laws of this State.

The Commissioners' Court shall either at a regular or special session canvass the returns of said election, and if it is found that a majority of the legally qualified property taxpaying voters, voting at said election, are in favor of the creation of a common School District embracing the entire county, they shall so declare same as a result of the election and shall immediately enter an order creating a Common School District embracing the entire county and abolishing all Common School Districts existing prior thereto, but it shall not be necessary to give the metes and bounds of the county, either in the petition, order for the election, or in the order creating the district.

Sec. 2. When any Common School District has been created embracing the entire county, as above provided, the County Judge shall immediately order an election for the election of three trustees for such school district, which shall be held at the usual voting place in each voting precinct in the county, and which shall be conducted, the returns made and canvassed and results declared, as in other common school districts. The County Judge shall appoint a presiding officer for each precinct in said election and shall cause public notice of said election to be given

by the posting of notices thereof at each voting place in the county not less than twenty (20) days before the date of said election; such presiding officer shall appoint two clerks to assist in the conduct of said election.

Any person desiring to have his name placed upon the ballot for trustee of such district at said election, shall make written application to the County Judge to have his name placed on the ballot not less than ten (10) days before the date of said election and the County Judge shall cause the necessary number of ballots to be prepared containing the name of each person applying to have his name placed upon the ballot as a candidate for trustee of such district.

The officers holding said election shall make returns thereof to the County Judge within five days after said election, which returns shall be canvassed by the Commissioners' Court at its next regular or special session, and the results thereof declared.

Sec. 3. Except as above provided, a Common School District created under this Act shall be governed as other Common School Districts in this State, and shall have all the rights and privileges of other Common School Districts heretofore created or which may be hereafter created under the General Laws of this State. [Acts 1929, 41st Leg., 1st C.S., p. 30, ch. 10.]

Art. 2744c. Ratifying formation of certain school districts.—All acts and proceedings of the County Board of School Trustees in any counties in this State in consolidating territory to any Independent School District having a scholastic population of not less than 140 and not more than 250 according to the last scholastic census, and all acts and proceedings of such board in any way relating to such consolidation, are hereby ratified, validated and approved. Any such acts or proceedings are hereby ratified, validated and approved even though one or more members of said Board were teachers at the time of performing such acts or proceedings. [Acts 1929, 41st Leg., 2nd C.S., p. 31, ch. 18, § 1.]

Art. 2744d. [Repealed by Acts 1937, 45th Leg., 1st C.S., p. 1810, ch. 31, § 1.]

The article repealed was Acts 1937, 45th Leg., p. 262, ch. 138.

Art. 2744e. County wide districts in counties of 20,000 to 32,500.

Creation; taxing power

Section 1. All counties in this State having a population of not more than thirty-two thousand, five hundred (32,500) nor less than twenty thousand (20,000), according to the last preceding Federal Census, and containing a valuation of Seventy-five Million Dollars ($75,000,000) or more, are hereby created into county-wide equalization school districts, and each such county shall have the county unit system of education to the extent specified in this Act and may exercise the taxing power conferred on school districts by Article 7, Section 3 of the Constitution to the extent hereinafter provided but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided.

Management and control; tax

Sec. 2. The general management, supervision, and control of the public schools and of the educational interests of such counties shall be vested in the County Board of School Trustees, except as otherwise provided by law and said Board shall perform such duties as are or may be required of it by existing law and by the provisions of this Act and shall constitute the Board of Trustees for such county-wide equalization district. Any such county-wide school equalization district may levy and collect annually on all taxable property in the county an equalization tax not to exceed Twenty-five (25) Cents on the One Hundred Dollars ($100) valuation of property situated in said county and the money derived from said tax shall be known as an equalization fund for the support of the public schools of the county, which funds shall be distributed to the school districts of the county as provided herein.

Petition; election

Sec. 3. On the petition of as many as one hundred (100) legally qualified taxpaying voters of any county, subject to the provisions of this Act praying for the authority to levy and collect said tax, the County Judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days, nor less than twenty (20), from the date of such order. The County Judge shall give notice of such election by causing to be published a copy of the order of the election in some newspaper, published in the county once each week for three (3) consecutive weeks prior to the date of such election, the date of the first publication to be not less than twenty (20) days prior to the date fixed by the election. Only legally qualified property taxpaying voters who own property in the county and who have duly rendered the same for taxation shall be allowed to vote in said election. The form of ballot shall be substantially as follows:

"For the county-wide equalization tax."

"Against the county-wide equalization tax."

The manner of holding said election shall be governed by the General Laws of the State of Texas regulating elections and shall be held at the regular polling places within the county with duly appointed election officers holding said election. The officers holding the election shall make returns thereof to the County Judge within ten (10) days after the same was held.

The Commissioners Court shall at its next regular meeting canvass the returns of said election, and if a majority of the votes cast shall favor such tax, the Court shall declare the result and certify the same to the County Board of School Trustees and to the County Tax Assessor and Collector, and said Board of County School Trustees shall thereupon be authorized to levy said tax and the County Tax Assessor and Collector shall be authorized to assess and collect same. No election to revoke said tax shall be ordered until the expiration of five (5) years from the date of the election at which said tax was adopted.

Assessment; collection of tax

Sec. 4. In counties voting such equalization tax the County Tax Assessor shall assess all the taxable property in the county at the same rate of valuation as it is assessed for the State and county purposes, and the County Tax Collector shall collect said tax at the same time and in the same manner as State and county taxes are collected. The Tax Collector shall have the same authority and the same laws shall apply in the collection of said tax as in the collection of county ad valorem taxes. He shall on or before the 10th of each month make a report to the County Board of School Trustees and to the County Superintendent of Schools showing all moneys collected by him during the last month by said tax. The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts.

Treasurer; depository

Sec. 5. The County Superintendent shall be the Treasurer of the county-wide equalization district

and shall keep an accurate record of all moneys received and paid out by such county-wide equalization district. The county depository shall be the depository for the county-wide equalization district and such depository shall enter into a bond of a like condition and amount as is prescribed by law for depositories of county funds. The Tax Collector shall on or before the 10th of each month deposit all moneys collected by him during the preceding month by said school equalization tax in the depository to the credit of the county-wide school equalization fund.

Distribution of taxes collected; warrants

Sec. 6. The County Board of School Trustees shall distribute the money collected from any taxes levied by said district to the common and independent school districts of the county on the same basis that the State per capita apportionment is distributed among said common and independent school districts. The County Board of School Trustees shall issue warrants to be signed by the president of said Board, attested by the secretary thereof, against such equalization fund to the School District Trustees on a per capita basis as is provided herein, provided, however, that the County Board shall from time to time as the money is collected issue warrants to the various school districts in proportion to the amount that each is entitled to receive on such per capita basis as provided herein.

Effect of act

Sec. 7. This Act shall not have the effect of changing any duties imposed on or powers conferred on the Trustees of any common or independent school district, situated in the counties covered by this Act unless and except as expressly provided herein. It being the intention of this law that respective Boards of Trustees shall continue to administer their lawful duties and powers as now authorized by law, but the equalization tax authorized shall be levied by the County Board of School Trustees and assessed and collected by the County Tax Assessor and Collector, and distributed to the respective districts by the County Board of School Trustees.

Partial invalidity; conflicting laws

Sec. 8. In the event any clause, sentence, paragraph, Section, or part of this Act shall be held unconstitutional or void, then and in that event it is hereby declared to be the legislative intent that all other clauses, sentences, paragraphs, Sections, and parts of this Act shall have full effect according to their purport and intent. All laws or parts of laws, both General and Special, in conflict with this Act are hereby repealed in so far and only in so far as they conflict with the provisions of this Act in its local application. [Acts 1937, 45th Leg., p. 454, ch. 231.]

Art. 2744e—1. County-wide equalization districts in counties of 35,000 to 67,500 population.

Creation; authorization of taxing power by voters required

Section 1. All counties in this State having a population of not more than thirty-five thousand (35,000) nor less than sixty-seven thousand five hundred (67,500), according to the last preceding Federal Census, and containing a valuation of Seventy-five Million ($75,000,000.00) Dollars, or more according to the last approved tax rolls for state and county purposes, are hereby created into county-wide equalization school districts, and each such county shall have the county unit system of education to the extent specified in this Act and may exercise the taxing power conferred on school district by Article 7, Section 3, of the Constitution to the extent hereinafter provided but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided.

Management and control; tax

Sec. 2. The general management, supervision, and control of the public schools and of the educational interests of such counties shall be vested in the County Board of School Trustees, except as otherwise provided by law and said Board shall perform such duties as are or may be required of it by existing law and by the provisions of this Act and shall constitute the Board of Trustees for such county-wide equalization district. Any such county-wide school equalization district may levy and collect annually on all taxable property in the county an equalization tax not to exceed Twenty-five (25¢) Cents on the One Hundred ($100.00) Dollars valuation of property situated in said county and the money derived from said tax shall be known as an equalization fund for the support of the public schools of the county, which funds shall be distributed to the school districts of the county as provided herein.

Petition; election

Sec. 3. On the petition of as many as one hundred (100) legally qualified taxpaying voters of any county, subject to the provisions of this Act praying for the authority to levy and collect said tax, the County Judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days, nor less than twenty (20), from the date of such order. The County Judge shall give notice of such election by causing to be published a copy of the order of the election in some newspaper, published in the county once each week for three (3) consecutive weeks prior to the date of such election, the date of the first publication to be not less than twenty (20) days prior to the date fixed by the election. Only legally qualified property taxpaying voters who own property in the county and who have duly rendered the same for taxation shall be allowed to vote in said election. The form of ballot shall be substantially as follows:

"For the county-wide equalization tax".

"Against the county-wide equalization tax".

The manner of holding said election shall be governed by the General Laws of the State of Texas regulating elections and shall be held at the regular polling places within the county with duly appointed election officers holding said election. The officers holding the election shall make returns thereof to the County Judge within ten (10) days after the same was held.

The Commissioners' Court shall at its next regular meeting canvass the returns of said election, and if a majority of the votes cast shall favor such tax, the Court shall declare the result and certify the same to the County Board of School Trustees and to the County Tax Assessor and Collector, and said Board of County School Trustees shall thereupon be authorized to levy said tax and the County Tax Assessor and Collector shall be authorized to assess and collect same.

Assessment and collection of equalization tax

Sec. 4. In counties voting such equalization tax the County Tax Assessor shall assess all the taxable property in the county at the same rate of valuation as it is assessed for the State and county purposes, and the County Tax Collector shall collect said tax at the same time and in the same manner as State and county taxes are collected. The Tax Collector shall have the same authority and the same laws shall apply in the collection of said tax as in the collection of county ad valorem taxes. He

shall on or before the 10th of each month make a report to the County Board of School Trustees and to the County Superintendent of Schools showing all moneys collected by him during the last month by said tax. The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts.

Treasurer; depository

Sec. 5. The County Superintendent shall be the Treasurer of the county-wide equalization district and shall keep an accurate record of all moneys received and paid out by such county-wide equalization district. The county depository shall be the depository for the county-wide equalization district and such depository shall enter into a bond of a like condition and amount as is prescribed by law for depositories of county funds. The Tax Collector shall on or before the 10th of each month deposit all moneys collected by him during the preceding month by said school equalization tax in the depository to the credit of the county-wide school equalization fund.

Distribution of taxes collected

Sec. 6. The County Board of School Trustees shall distribute the money collected from any taxes levied by said district to the common and independent school districts of the county on the same basis that the State per capita apportionment is distributed among said common and independent school districts. The County Board of School Trustees shall issue warrants to be signed by the president of said Board, attested by the Secretary thereof, against such equalization fund to the School District Trustees on a per capita basis as is provided herein, provided, however, that the County Board shall from time to time as the money is collected issue warrants to the various school districts in proportion to the amount that each is entitled to receive on such per capita basis as provided herein.

Effect of act

Sec. 7. This Act shall not have the effect of changing any duties imposed on or powers conferred on the Trustees of any common or independent school district, situated in the counties covered by this Act unless and except as expressly provided herein. It being the intention of this law that respective Boards of Trustees shall continue to administer their lawful duties and powers as now authorized by law, but the equalization tax authorized shall be levied by the County Board of School Trustees and assessed and collected by the County Tax Assessor and Collector, and distributed to the respective districts by the County Board of School Trustees.

Partial invalidity; conflicting laws

Sec. 8. In the event any clause, sentence, paragraph, section, or part of the Act shall be held unconstitutional or void, then and in that event it is hereby declared to be the legislative intent that all other clauses, sentences, paragraphs, sections, and parts of this Act shall have full effect according to their purport and intent. All laws or parts of laws both General and Special, in conflict with this Act are hereby repealed in so far and only in so far as they conflict with the provisions of this Act in its local application. [Acts 1939, 46th Leg., Spec.L., p. 677.]

Art. 2744e—2. County-wide equalization districts in counties of 2,775 to 2,850 population. —Section 1. All counties in this State having a population of not less than twenty-seven hundred seventy-five (2,775) and not more then twenty-eight hundred fifty (2,850), according to the last preceding Federal Census, and containing a valuation of Seven Million ($7,000,000.00) Dollars or more, are hereby created into County-wide Equalization School Districts for tax purposes, and each such county shall have the county unit system of education to the extent specified in this Act and may exercise the taxing power conferred on school districts by Article 7, Section 3, of the Constitution, to the extent hereinafter provided, but such taxing power shall not be exercised until and unless authorized by a majority of the qualified tax-paying voters residing therein at an election to be held for such purpose as hereinafter provided.

Sec. 2. The general management, supervision and control of the public schools and the educational interests of such counties shall be vested exclusively in the Boards of Trustees of the various school districts within such counties and the power to act in all school matters in behalf of such respective districts as is now provided by law shall be vested in said respective Boards of Trustees in the various districts with the exception of the powers herein granted to the County Board of School Trustees in said counties.

Sec. 3. The County Boards of School Trustees in all such counties are hereby vested with the authority, and only the authority, to distribute among the various school districts in such counties such funds as may be actually collected and paid into the said Equalization Fund, together with such other powers as are now by law vested in the County Board of School Trustees.

Sec. 4. Any such County-wide Equalization School District may levy and collect a tax not to exceed Forty Cents (40¢) on the One Hundred ($100.00) Dollar valuation of property situated in said counties. The money derived from said tax shall be known as an Equalization Fund for the support of the public schools of such counties, which funds shall be distributed to the school districts of the counties as provided herein.

Sec. 5. On the petition of as many as one hundred (100) legally qualified tax-paying voters of any county subject to the provisions of this Act, praying for the authority to levy and collect said tax, the county judge shall immediately order an election to be held throughout the county, said election to be held not more than thirty (30) days nor less than twenty (20) days from the date of such order. The county judge shall give notice of such election by causing to be published a copy of the order of election in some newspaper published in the county, once each week for three (3) consecutive weeks, prior to the date of such election, the date of the first publication to be not less than twenty (20) days prior to the date fixed for the election. Only legally qualified property tax-paying voters, who own property in the county, and have duly rendered the same for taxation shall be allowed to vote in said election. The form of the ballot shall be substantially as follows:

"For the county-wide equalization tax."

"Against the county-wide equalization tax."

The manner of holding said election shall be governed by the General Laws of the State of Texas regulating elections and shall be held at the regular polling places within the county. The regular election judges in such counties who have been duly appointed by the County Commissioners' Court are hereby designated as the election judges to hold any such elections as may be called under the provisions of this Act.

The officers holding the election shall make returns thereof to the county judge within ten (10) days after the same has been held.

The Commissioners' Court shall at its next regular meeting canvass the returns of said election, and if a majority of the votes cast at said election shall favor such tax, the Court shall declare the result and certify the same to the County Board of School Trustees

and to the County Tax Assessor and Collector. The County Commissioners' Court in all such counties shall thereupon be authorized to levy said tax as herein provided. The County Tax Assessor and Collector is hereby authorized and shall assess and collect such tax and after so collecting same shall certify the amount thereof to the County Board of School Trustees.

No election to revoke said tax shall be ordered until the expiration of one year from the date of the election at which said tax was adopted.

Sec. 6. In all such counties voting such equalization tax, the County Tax Assessor shall assess all the taxable property in the county at the same rate of valuation as it is assessed for State and County purposes and the County Tax Collector shall collect said taxes at the same time and in the same manner as State and County taxes are collected. The County Tax Collector shall have the same authority and the same law shall apply in the collection of said tax as in the collection of county ad valorem taxes. The County Tax Collector shall on or before the 10th of each month make a report to the County Board of School Trustees in said counties and to the County Superintendent of Schools in said counties, showing all monies collected by him during the last month by reason of said tax.

The officers assessing and collecting said equalization tax shall receive therefor the same compensation as is paid for assessing and collecting school taxes in common school districts.

Sec. 7. When the County Tax Collector shall have collected the tax provided for herein, he shall deposit the same in the County Depository Bank in a fund to be known as the "County-wide Equalization School Fund", said fund shall be disbursed by the County Board of School Trustees as herein provided out of said County-wide Equalization School Fund by the said County Board of School Trustees issuing warrants to be signed by the President of said Board, attested by the Secretary thereof, and approved by the County Superintendent of Schools in said counties.

The County Depository shall be the depository for the County-wide Equalization School Fund and such depository shall enter into a bond of like condition and amount as is prescribed by law for depositories of county funds. The County Tax Collector shall on or before the tenth (10th) day of each month deposit all monies collected by him during the preceding month for and on behalf of such County-wide Equalization School District.

Sec. 8. The County Board of School Trustees shall issue warrants as herein provided on the same basis that the State per capita apportionment is distributed among common and independent school districts, except that no per capita payment shall be issued to any school district within said counties by said County Board of School Trustees except for children actually enumerated in and residing within said county, as shown by the taker of the census in each of said districts and reported to, and approved by, the State Superintendent of Public Instruction, and upon which the State per capita apportionment is based.

Sec. 9. It is further provided that in any school district located within said counties with a scholastic population of One Hundred (100) or more, there shall have been levied for collection a total sum of One ($1.00) Dollar on each One Hundred ($100.00) Dollar valuation, including the Forty (40¢) Cents equalization tax herein provided, for each year, before such districts shall be eligible to receive any monies from the County-wide Equalization Tax Fund.

Sec. 10. It is hereby provided that in all school districts within such counties having a scholastic population of less than one hundred (100), the Board of School Trustees of such districts, shall have the exclusive determination of the amount of tax to be levied, if any, over and above the Forty (40¢) Cents tax levied herein by the Commissioners' Court for and on behalf of the County-wide Equalization School Fund.

Sec. 11. In the event any clause, sentence, paragraph, section, or part of this Act shall be held unconstitutional or void, then and in that event it is hereby declared to be the legislative intent that all other clauses, sentences, paragraphs, sections, and parts of this Act shall have full effect according to their purport and intent. All laws or parts of laws, both General and Special, in conflict with this Act are hereby repealed insofar and only insofar as they conflict with the provisions of this Act in its local application. [Acts 1939, 46th Leg., Spec. L., p. 673.]

Art. 2744e—3. County-wide districts in counties having $17,000,000 taxable property and not more than 21 persons per square mile.

Counties to which applicable; petition for election; notice; election

Section 1. This Act is applicable to all counties having an assessed valuation of taxable property according to the last approved tax rolls of not less than Seventeen Million ($17,000,000.00) Dollars and a population according to the latest Federal Census, of not more than twenty-one (21) persons per square mile. Any county coming within the terms of this Act shall have a County Unit System of education to the extent specified in this Act. For the purpose of levying, assessing, and collecting a school maintenance tax and for such further administrative functions as are set forth herein, the territory of each of such counties is hereby created into a School District, hereinafter described as the County-Wide District, the taxing power to be exercised as hereinafter provided. There shall be exercised in and for the entire territory of each of such counties to the extent in this Act prescribed, the taxing power conferred on School Districts by Article 7, Section 3 of the Constitution but such taxing power shall not be exercised until and unless authorized by a majority of the qualified property taxpaying voters residing therein at an election to be held for that purpose as hereinafter provided. Whenever a petition is presented to the County Judge of any such county, signed by at least one hundred (100) qualified property taxpaying voters residing therein, asking that an election be ordered for the purpose of determining whether or not a maintenance tax shall be levied, assessed and collected on all taxable property within said county for the maintenance of public schools therein, not exceeding Twenty (20¢) Cents on the One Hundred ($100.00) Dollars of assessed valuation of taxable property, it shall be the duty of the County Judge immediately to order an election to be held within said county to determine said question. The finding of the County Judge that such petition is sufficient and signed by the number of taxpaying voters required by law shall be conclusive. Notice of said election shall be given by publishing a copy of the election order in a newspaper of general circulation in said county once a week for at least two (2) weeks, the date of the first publication to be not less than twenty (20) days prior to the date fixed for holding said election. Further notice shall be given by the posting of a copy of said election within the boundaries of each Independent and each Common School District, and one copy of said notice shall be posted at the court house door. Said notice shall be posted at least twenty (20) days prior to the date fixed for said election. Except as otherwise provided, herein, the manner of holding said election shall be controlled by the general election laws of the state, and only qualified electors who own taxable property in such county and who have duly rendered the same for taxation shall be qualified to vote at said election, and all electors shall vote in the election precincts of their residence. Said notice

shall be held at the usual voting places in the several election precincts of such county. Such election returns shall be made and delivered to the County Judge and shall be canvassed by the Commissioners Court of such county at its next regular or special meeting following said election. A majority of those voting at said election shall be sufficient to carry said election. The result of said election shall be recorded in the minutes of the Commissioners Court and certified by the County Clerk and Ex-Officio Clerk of the Commissioners Court to the County Superintendent or Ex-Officio Superintendent of said county. [As amended Acts 1947, 50th Leg., p. 145, ch. 85, § 1.]

Record of certificate

Sec. 2. In event the said maintenance tax is authorized at such election, after the result of the election has been certified to the County Superintendent, he shall make a permanent record of such certificate and shall send a certified copy of same to the State Department of Education at Austin, Texas, for its information and guidance.

Duties of Commissioners' Court

Sec. 3. As soon as the Commissioners Court of such county has determined the total of the assessed value of taxable property according to the values fixed by the Board of Equalization, which values shall be the same as those fixed for state and county taxation purposes, subject thereafter to ordinary corrections, it shall then perform the following duties: (a) determine the estimated total receipts from the levying and collecting of said tax of not exceeding Twenty (20¢) Cents on the property in the County-Wide District according to such valuation; (b) determine the estimated amount of money apportionable to each scholastic on the basis of equal per capita distribution according to the then current census of scholastics for the several Districts; (c) determine the estimated amount of such money available for each Common and Independent School District according to such per capita distribution, with the special provision that no District shall receive less than Seven Hundred Fifty ($750.00) Dollars of such money and that the provision for equal per capita distribution shall yield to this special provision; (d) cause the Ex-Officio Clerk of such court to transmit a copy of the order fixing the estimated amount for each Independent School District to the president thereof and for each Common School District to the County Superintendent or Ex-Officio County Superintendent of such county. [As amended Acts 1947, 50th Leg., p. 145, ch. 85, § 1.]

Levy, assessment, collection and distribution of taxes

Sec. 4. It shall be the duty of the Commissioners Court, after such tax shall have been voted, at the time other taxes are levied in the county, to levy a tax under this law of not to exceed Twenty (20¢) Cents on the One Hundred ($100.00) Dollars valuation in said county for that year. Such taxes shall be assessed by the Tax Assessor and collected by the Tax Collector as other taxes are assessed and collected. The money collected from said tax, shall be distributed to the various School Districts in such county as follows:

All Districts in the county shall receive the same amount of money for each scholastic, with the exception that no District shall receive less than Seven Hundred Fifty ($750.00) Dollars, which shall be used for the maintenance of schools in such District. If any portion of said Seven Hundred Fifty ($750.00) Dollars is not used for any year, the balance shall be retained in the treasury and used for the said District for the next year, such balance to be deducted the following year from the Seven Hundred Fifty ($750.00) Dollars to be apportioned to such District. No part of the moneys realized from said County-Wide Maintenance Tax shall be used to pay any present or future bond issues or interest thereon. The Tax Collector shall each month apportion to each District the pro-rata part of the taxes collected and dispose of same as hereinafter provided. The valuations fixed by the County Board of Equalization for state and county taxation purposes shall be used in computing said taxes and in levying and collecting the same. The budget officer of each School District in said county as provided by statute, and the Trustees of each of said Districts, after receiving the notice of the state apportionment of public school funds to said District, shall proceed to make and approve the budget for their respective Districts as provided by Acts 1931, 42nd Legislature, Regular Session, page 339, Chapter 206.[1] [As amended Acts 1947, 50th Leg., p. 145, ch. 85, § 1.]

[1] Arts. 688 to 689a—20 and Pen.Code, art. 414b.

Monthly settlements

Sec. 5. As and when said taxes are collected by the Tax Collector of the County, he shall make monthly settlements with the Independent School Districts situated in such County, said moneys to be received and held by said Independent School Districts and protected in accordance with the existing depository laws. And the Tax Collector shall place to the credit of the Common School Districts in such County such moneys as are apportioned to them, which shall be protected as provided by the existing depository laws.

Authority of districts respecting taxes

Sec. 6. The several Independent School Districts and Common School Districts in such County shall continue to have authority to levy, assess and collect the maintenance taxes theretofore authorized by the property tax payers in said respective Districts, subject to the restrictions that after said County-wide maintenance tax election has been carried and while said tax is in full force and operation, said respective Independent School Districts and Common School Districts shall not thereafter levy, assess and collect any special tax for maintenance of schools, except in instances wherein the apportionment made by the Commissioners' Court, together with the apportionment made by the State of Texas, produces an amount inadequate to meet the approved budget of such District, and in that event, such tax shall be levied in an amount to meet such deficit, due allowance to be made for delinquencies and for costs of collection. This law shall not affect the right and duty of said respective School Districts to levy, assess and collect taxes within their respective School Districts for the payment of principal and interest on bonded indebtedness of such Districts. The respective District shall continue to levy, assess and collect taxes sufficient to pay principal of, and interest on their bonds. Provided, however, that nothing in this Act shall prevent the proper authorities from collecting and enforcing for the benefit of the respective districts, any maintenance taxes levied before this law becomes effective.

Powers of Commissioners' Court

Sec. 7. Until and unless said County-wide maintenance tax has been authorized at an election held in such County, the duties and powers of the Commissioners' Court shall not be considered as having been changed, altered or enlarged by this Act.

Board of trustees, duties and powers

Sec. 8. This Act shall not have the effect of changing any duties imposed on or powers conferred on the Trustees of School Districts situated in the Counties covered by this Act, unless and except as expressly provided herein, it being the intention of

this law that said respective Board of Trustees shall continue to administer their lawful duties and powers except as to the levying, assessing and collecting of maintenance taxes, and the powers and duties as to levying, assessing and collecting maintenance taxes shall remain unaffected except as modified as provided herein.

Law as cumulative; conflicting provisions; repeal

Sec. 9. This Act shall be considered as cumulative of other laws applicable to the Counties affected, but in event any provision of this law is inconsistent with any other applicable law, the provisions of this Act shall prevail as to the Counties affected. All laws and parts of laws in conflict with the provisions of this Act, insofar as they apply to the Counties affected, are hereby repealed. Specifically, Chapter 7, Acts of the 43rd Legislature, First Called Session,[1] Chapter 54, Acts of the 45th Legislature [2] are hereby repealed, provided, however, that such repeal shall not affect taxes heretofore levied under said laws.

1 Article 2740f.
2 Articles 2740f, §§ 1, 11; 2740f—1.

Commissioners' court, advisory supervision

Sec. 10. The Commissioners' Court shall have advisory supervision over the schools in the County to the extent that it shall be the duty of the court to render its advice on all administrative matters submitted by the several Boards of Trustees.

Commissioners' court, power to levy

Sec. 11. In instances wherein an election has heretofore been held in any such county under the provisions of Chapter 150, Acts of the Regular Session of the 47th Legislature,[1] resulting favorably to the levying of a tax at a rate not exceeding Fifteen (15¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property, the tax so voted shall remain effective and the Commissioners Court of such county shall have the power to levy such tax for each year until and including the taxes for the calendar year 1950, which will be due October 1, 1950, provided that whenever an election shall have been held in any such county in accordance with this amendment to Chapter 150, Acts of the Regular Session of the 47th Legislature, resulting favorably to levying of a tax at a rate greater than Fifteen (15¢) Cents and not more than Twenty (20¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property, the Commissioners Court of such county shall have the power and it shall be its duty to levy such tax at such increased rate for the calendar year in which the election shall have been held and for each year thereafter without limitation as to extent of time. Taxes thus levied by the Commissioners Court shall be assessed and collected in accordance with applicable laws. [As amended Acts 1947, 50th Leg., p. 145, ch. 85, § 1.]

1 Arts. 2744c—3, 2744c—3 note.

Validation of actions and elections

Sec. 12. All actions heretofore taken by the Commissioners' Court, the County officials, or the officials of School Districts located in any such County, or in behalf of any such County affected by this Act and all elections heretofore held in any such County for any purposes which are authorized by this Act, and all County-wide school taxes heretofore levied in any such County are hereby expressly validated and ratified. [Acts 1941, 47th Leg., p. 218, ch. 150.]

Validation of actions and elections. Section 2 of the Act of 1947 validated actions theretofore taken by the Commissioners Court, the county officials, and the officials of school districts located in any such county, elections theretofore held and County-Wide School Taxes theretofore levied.

Art. 2744e—4. County-wide independent districts in counties with scholastic population not over 2500 and not more than two districts.

Application

Section 1. This Act shall be applicable to any county which has a scholastic population of not more than twenty-five hundred (2500) and which has not more than two school districts which have conducted schools within the past two years. The words "two school districts", as used in this Section 1 shall mean two common school districts, or two independent school districts, or one common school district and one independent school district.

Petition for election

Sec. 2. Upon presentation of a petition to the County Judge signed by a majority of the Board of Trustees of the common and independent school districts within the county or upon a petition signed by twenty (20) qualified voters, or a majority of qualified voters of each of the districts of a county, common or independent, the County Judge shall order an election to be held throughout the county on a date not less than twenty-one (21) days and not more than thirty (30) days after the date of the filing of the petition to determine whether the entire county shall be converted into a single independent school district. Notice of such election shall be given by posting a substantial copy of such election order in a public place in each such common or independent school district not less than fifteen (15) days prior to the date fixed for such election.

Statement of purpose; election

Sec. 3. The petition and the order for the election shall state that the purpose is to create an independent school district embracing the entire county; provided that in the event a county line district, either common or independent shall exist in such county, such county line district shall be excepted from the provisions hereof. Said election shall be held at the usual voting place or places in each of the several districts in said county and shall be conducted under the general election laws of the state except as otherwise provided by this Act.

Canvass; declaring result of election

Sec. 4. The Commissioners Court shall at any regular or special session after said election canvass the returns of said election, and if it is found that a majority of the legally qualified voters voting therein favor the creation of a county-wide independent school district, it shall declare the result of the election as thus determined and shall pass an order creating the independent school district embracing the entire county and abolishing all common school districts and independent school districts participating in such election. In said order, the court shall declare the boundaries of such county-wide independent school district to be co-extensive with the boundaries of such county; provided that in the event a county line school district exists in such county, the Commissioners Court shall define the boundaries of the county-wide independent school district by metes and bounds.

Board of trustees

Sec. 5. When any independent school district thus has been created, the County Judge shall appoint five (5) trustees according representation to each Commissioners Precinct of the county by appointing from each such precinct one (1) trustee, and it shall appoint one (1) trustee from the county at large. Said Board of Trustees, after qualifying as now provided by law for the qualification of trustees of independent school districts, shall meet upon a date specified by the County Judge within ten (10) days

from the date of their appointment and qualification and shall organize in accordance with the law. Said appointed Board shall serve until the first Saturday in April of the year following their appointment and qualification, on which date the qualified electors of the county shall elect five (5) qualified persons as trustees. Each elector in the county shall be permitted to vote for one (1) Board member from the Commissioners Precinct in which said elector and the candidate, or candidates, reside, and shall be permitted to vote for one (1) candidate from the county at large. The County Judge shall call the first election for the election of trustees, and thereafter each trustee election shall be called by the Board of Trustees in the manner now provided by law for trustee elections in independent school districts. The Commissioners Court in said first election shall appoint election judges and assistants, cause to be printed and distributed ballots, receive, canvass and declare the results of such election, notify the persons thus elected of such results, and shall in addition call a meeting of the new Board of Trustees on a date not more than ten (10) days after the results of said election are determined and declared.

Powers and duties of Board in general

Sec. 6. The Board of Trustees of independent school districts embracing the entire county as provided by this Act shall have all the powers, rights, duties, privileges and qualifications granted to or required by the laws of Texas relating to independent districts.

Terms of trustees; powers

Sec. 7. The trustees elected as herein provided immediately after the organization of such Board shall draw for terms of office as follows: Those drawing numbers 1, 2, and 3 shall serve for one (1) year, and those drawing numbers 4 and 5 shall serve for two (2) years; and each year thereafter three (3) trustees or two (2) trustees, as the case may be, shall be elected for a term of two (2) years. Such elections of trustees shall be governed by the laws of the State of Texas relating to the election of trustees in independent school districts and shall be held on the first Saturday in April of each year at the places in each Commissioners Precinct designated by the Board of Trustees. All of the rights and powers of taxation, fixing of tax rates, assessing and valuation of property for tax purposes, business management, selection of teachers, issuance of bonds, and any other rights and powers now held and exercised by Boards of Trustees of independent school districts not enumerated herein, are granted to and shall be exercised by the Boards of Trustees of independent school districts created pursuant to the provisions of this law. Such Boards of Trustees shall have the general management and control of all schools situated or established in such districts.

Maintenance and bond taxes

Sec. 8. The maintenance and bond taxes and assessed valuations in each of the several component districts existing at the time of the creation of the independent school district embracing the entire county shall continue as authorized and approved until such time as an election shall have been held equalizing the maintenance tax and assuming the bonded indebtedness of the several component school districts making up such countywide independent school district.

Laws governing elections

Sec. 9. All Trustee elections, elections for the levying of taxes, assumption of debt and issuance of bonds shall be called, held and determined in accordance with the laws governing such elections in independent school districts; and the laws governing the assessing and collecting of taxes, issuance of bonds, new or refunding, in independent school districts shall be applicable to independent school districts created pursuant to the provisions of this law.

Certain laws inapplicable

Sec. 10. The laws requiring and providing for county Boards of School Trustees shall be inapplicable to counties where independent school districts are created as provided in this law.

Partial invalidity

Sec. 11. In case any one or more of the sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstance or agency, shall for any reason be held to be unconstitutional, such unconstitutionality shall not affect any other sections or provisions of this Act or the application of such sections or provisions to any other situation, circumstance or agency; and it is intended that this law shall be construed and applied as if such unconstitutionality, section or provision had not been included herein.

Conflicting laws

Sec. 12. This law shall take precedence over the provisions of any law in conflict herewith; and in the event of conflict, this law shall apply. [Acts 1947, 50th Leg., p. 297, ch. 181.]

Art. 2745. [2818] Election of trustees.—On the first Saturday in April of each year, the qualified voters of each Common School District, at a school district election for that purpose, shall elect three trustees for said district, who shall enter upon the discharge of their duties on the first day of May next following. No person shall be trustee who cannot read and write the English language intelligibly, and who has not been a resident of such district for six months prior to his election. Providing no person shall be qualified as trustee unless he is a property taxpayer in the district to which he is elected and otherwise a qualified voter in said district. They shall immediately organize by electing one of their number president and one secretary. The term of office of said trustees shall be divided into three classes, and they shall draw for the different classes; and one drawing number one shall serve for one year, and the one drawing number two shall serve for two years, and the one drawing number three shall serve for three years. On the first Saturday in April of each year thereafter, one trustee shall be elected who shall serve for a term of three years. Said trustees shall first take the official oath and shall, as soon as practicable, file same with the County Superintendent or County Judge. All vacancies shall be filled by the County Board of Trustees for the remainder of the term in which the vacancy occurs. The polls at said election shall open at 8 A. M. and close at 7 P. M. [Acts 1905, p. 263; Acts 1929, 41st Leg., 2nd C.S., p. 3, ch. 2.]

Sec. 2. The first election under the provisions of this Act shall be held on the first Saturday in April, 1930. In all Common School Districts in which the terms of two trustees expire in 1930 their successors shall draw for terms; the one drawing number one shall serve for three years and the one drawing number two shall serve for two years. In all Common School Districts in which the terms of two trustees expire in 1931 their successors shall draw for terms; the one drawing number one shall serve for one year and the one drawing number two shall serve for three years and annually thereafter one trustee shall be elected to serve for a term of three years. [Acts 1929, 41st Leg., 2nd C.S., p. 3, ch. 2.]

Section 3 of Acts 1929 repeals all conflicting laws and parts of laws, and specially repeals conflicting parts of Article 2747, post.

Art. 2745a. Residents of county line district qualified to vote for trustees though residing outside county managing district.—At an election for county school trustees, all persons who are otherwise qualified to vote for county school trustees and who reside in a county line school district shall be entitled to vote for county school trustees of the county having management and control of such county line district, even though such voters reside in that portion of the county line district lying outside of the county having management and control of the county line district. [Acts 1939, 46th Leg., Spec.L., p. 723, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2746. [2819–20] Conduct of election.—Said trustees shall appoint three (3) persons, qualified voters of the district, who shall hold such election and make returns thereof to said trustees within five (5) days after such election, and said persons shall receive as compensation for their services the sum of One Dollar ($1) each, to be paid out of the local funds of the school district where the election was held. The Board of Trustees, when ordering such election and appointing persons to hold election, shall give notice of the time and place where such election will be held, which notice shall be posted at three (3) public places within the district at least twenty (20) days prior to the date of holding said election. If, at the time and place for holding such election, any or all of the persons so appointed to hold such election are absent or refuse to act, then the electors present may select of their number a person or persons to act in the place of those absent or refusing to act. Said Board of Trustees shall meet and canvass the returns of said election within five (5) days after returns have been made and declare the result of said election and issue to the persons so elected their commissions as such trustees, and shall notify the County Judge or the County Superintendent if the county has a Superintendent. [Acts 1905, p. 263; Acts 1915, p. 204; Acts 1937, 45th Leg., p. 472, ch. 237, § 1; Acts 1941, 47th Leg., p. 1373, ch. 623, § 1.]

Art. 2746a. [2820] Official ballot.—All of the ballots for the election of a school trustee in common school districts and in independent school districts having fewer than five hundred (500) scholastics as shown by the last preceding scholastic census roll approved by the State Department of Education and exclusive of transfers shall be printed with black ink on clear white paper, of sufficient thickness to prevent the marks thereon being seen through the paper, and be of uniform style and dimension; at the top of the ballot there shall be printed "Official Ballot, ——— Independent School District," the number or name of the school district in which the election is to be held to be filled in by the judge of the county when he orders the ballots printed. Any person desiring to have his name placed on said official ballot, as a candidate for the office of trustee of a common school district or of an independent school district as herein provided shall, at least ten days before said election, file a written request with the county judge of the county in which said district is located, requesting that his name be placed on the official ballot, and no candidate shall have his name printed on said ballot unless he has complied with the provisions of this Act; provided that five or more resident qualified voters in the district may request that certain names be printed. The county judge, upon receipt of such written request, and at least five days before the election, shall have the ballots printed as provided in this Act, placing on the ballot the name of each candidate who has complied with the terms of this Act, and deliver a sufficient number of printed ballots and amount of supplies necessary for such election to the presiding officer of the election at least one day before said election is to be held, said election supplies, ballots, boxes, and tally sheets to be delivered by the county judge by mail or in any other manner by him deemed best, to the presiding officer of said election in sealed envelopes which shall not be opened by the election officer until the day of the election. The expenses of printing the ballots and delivering same to the presiding officer, together with the other expenses incidental to said election shall be paid out of the available maintenance funds belonging to the school district in which said election is held, or to be held. The officers of said election shall be required to use the ballots so furnished by the county judge as provided herein. The election officers shall make returns of said election to the county judge and certify the result in the same manner as is now required by law, and said ballot boxes which shall have been furnished by local school officials shall be sent to the county judge and said election returns shall be canvassed by the Commissioners' Court and together with ballot boxes shall be safely preserved for a period of three months next after the date of the election. [Acts 1925, 39th Leg., p. 329, ch. 128, § 1; Acts 1935, 44th Leg., p. 135, ch. 55, § 2.]

Art. 2746b. Expenses of elections.—All expenses incurred in connection with or incidental to any school district election in connection with the public school within such school district shall be paid out of the available maintenance fund belonging to such district for the fiscal year during which such election is held, or out of funds accruing to said district for the next ensuing fiscal year; provided, however, that the payment of any such expenses out of the funds accrued or to accrue to such school district for the fiscal year after the year in which such election is held shall be authorized by the county superintendent prior to the holding of such election. [Acts 1935, 44th Leg., p. 135, ch. 55, § 3.]

Art. 2747. Removal of trustee.—If a trustee so elected or appointed as herein provided, who in the opinion of the county superintendent, does not possess the qualifications prescribed by law, the county superintendent shall refuse to recognize such person who has been so elected and make written request within twenty days after such election, of the county attorney, or district attorney if there be no county attorney, to institute and prosecute with dispatch suit in the name of the State for the removal of such trustee, in the district court of the county where such trustee resides, at the option of said attorney. Upon good cause shown within the discretion of the court where such suit is pending, it shall be lawful to enjoin and restrain such person from acting as such trustee during the pendency of such suit. It shall be lawful to summon such trustee before the court in the trial of such cause, and there make examination of him as to his qualifications to serve as such. If after being so summoned, such trustee fails, neglects or refuses to obey said summons and fails to appear for the purpose of examination, and fails or refuses to submit to such examination, such failure, neglect or refusal shall be prima facie evidence of his disqualification, and because thereof the court trying such cause shall be authorized to render thereupon judgment by default against such trustee so defaulting, removing him from his said office and declaring the same vacant. The county board of education of the county where such trustee has been elected shall appoint some suitable person, who is qualified by law to act as such trustee, if during the pendency of such suit said trustee shall be enjoined from so acting. If such trustee so elected shall be so removed then such trustee so appointed shall continue to serve until the next regular election of school trustees for such district. The county board of education shall fill a vacancy in said office by ap-

pointing a suitable person qualified by law to act as trustee until the next regular election of school trustees for such district. [Acts 1905, p. 263; Acts 1907, p. 204; Acts 1917, p. 447.]

Art. 2748. [2822] Trustees a body corporate. —Said trustees shall be a body politic and corporate in law, and shall be known by and under the title and name of district trustees of district number....., and county of....., State of Texas; and as such may contract and be contracted with, sue and be sued, plead or be impleaded, in any court of this State of proper jurisdiction, and may receive any gift, grant, donation or devise made for the use of the public schools of the district. All reports and other official papers shall be headed with the number of district and name of county. [Acts 1905, p. 263.]

Art. 2749. [2823–4] Control of schools.— Said trustees shall have the management and control of the public schools and public school grounds; and they shall determine how many schools shall be maintained in their school district, and at what points they shall be located; provided, that not more than one school for white children and one school for colored children shall be established for each sixteen square miles of territory or major fraction thereof, within such district; and they shall determine when the schools shall be opened and when closed. They shall have the power to employ and dismiss teachers; but in case of dismissal, teachers shall have the right of appeal to the county and State Superintendents. They shall contract with teachers and manage and supervise the schools, subject to the rules and regulations of the county and State Superintendents; they shall approve all claims against school funds of their district; provided, that the trustees, in making contracts with teachers, shall not create a deficiency debt against the district. [Id.]

Art. 2750. [2825] Contracts with teachers. —Trustees of a district shall make contracts with teachers to teach the public schools of their district, but the compensation to a teacher, under a written contract so made, shall be approved by the county superintendent before the school is taught, stating that the teacher will teach such school for the time and money specified in the contract. The board of trustees shall have authority, whenever the average daily attendance exceeds thirty-five pupils, to employ one competent assistant to every thirty-five pupils of such excess and fractional part thereof exceeding fifteen pupils. All children within the scholastic age residing in such district, though they may have settled in such district since the scholastic census was taken, shall be entitled to receive all the benefits of the schools of such district. In a district that levies a special school tax the trustees shall have the right to increase the salaries of teachers and the scholastic age, and may also have the schools taught longer than six months, if it is deemed advisable. [Id.]

Art. 2750a. Contracts with principals, superintendents, and teachers; term; approval by County Superintendent.—Trustees of any common school district or consolidated common school district shall have authority to make contracts for a period of time not in excess of two (2) years with principals, superintendents, and teachers of said common school districts or consolidated common school districts, provided that such contracts shall be approved by the County Superintendent. No contract may be signed by the trustees until the newly elected trustee has qualified and taken the oath of office. [Acts 1937, 45th Leg., p. 541, ch. 267, § 1.]

Art. 2750a—1. Contracts with principals, superintendents, and teachers; term; approval by County Superintendent.—Trustees of any Common School District or Consolidated Common School District shall have authority to make contracts for a period of time not in excess of two (2) years with principals, superintendents, and teachers of said Common School Districts or Consolidated Common School Districts, provided that such contracts shall be approved by the County Superintendent. No contract may be signed by the Trustees of Common School Districts or Common Consolidated School Districts until the newly elected trustee or trustees have qualified and taken the oath of office. [Acts 1941, 47th Leg., p. 259, ch. 175, § 1.]

Art. 2751. [2826] Check for payment of teacher.—The amount contracted by trustees to be paid a teacher shall be paid on a check drawn on the county treasurer by a majority of the trustees and approved by the county superintendent. [Acts 1905, p. 263; Acts 1921, p. 237.]

Art. 2751a. Prompt payment of teachers.— That County Board of School Trustees of the various counties of Texas shall, on September 1st of each year, or as soon thereafter as practicable, ascertain the current financial resources of each school district under their supervision, and in the event any of said districts do not or will not have sufficient funds on deposit to pay the salaries of teachers when and as due, authorize the Depository Bank of the County to charge interest at a rate to be agreed upon by said depository and said trustees which rate shall not exceed eight per cent per annum on vouchers issued to teachers from the date of the receipt by said depository until sufficient funds accrue to the credit of the district issuing said vouchers to liquidate the respective vouchers, the said interest to be paid from the available funds of the district affected; provided that no voucher shall draw interest after sufficient funds have accrued in the depository for its payment, and provided further that the vouchers on which the interest is to be charged shall not exceed in amount fifty per cent of the current available funds of the district issuing said vouchers. And in order to enable the County Board of Trustees to make provision for paying teachers' salaries when due as provided for herein, the Depository Bank shall, on the request of the County Board of Trustees, furnish the County Board with a report of the funds to the credit of the various school districts, and of the financial needs of said districts; and the financial statement of the said Depository Bank made at the close of scholastic year to the State Superintendent of Public Instruction shall include full reports of all interest charged under the provisions of this Act. [Acts 1927, 40th Leg., p. 385, ch. 260, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 2752. [2844–5] Contracts for building. —The trustees of a school district shall contract for the erection of the buildings and superintend the construction of the same; and the county superintendent shall draw his warrant upon the school fund so appropriated only upon the accounts first approved by them. No mechanic, contractor, material man, or other person, can contract for, or in any other manner have or acquire, any lien upon the house so erected or the land upon which the same is situated; and all contracts with such parties shall expressly stipulate for a waiver of such lien. [Acts 1905, p. 263.]

Acts 1935, 44th Leg., p. 464, ch. 185, makes an appropriation for the relief of several separate school districts.

Art. 2753. [2846] Sale of school property.— The trustees of any school district, upon the order of the county trustees prescribing the terms thereof, when deemed advisable, may make sale of any property belonging to said school district, and apply the proceeds to the purchase of necessary grounds, or to the building or repairing of schoolhouses, or place the proceeds to the credit of the available school fund of the district. [Acts 1905, p. 263.]

Art. 2753a. Sale by district in certain counties.—In every county in this State having a popula-

tion according to the latest United States census of not less than 8,000 and not more than 8,100 each Independent School District shall be authorized to sell and dispose of any real property owned by such district when in the opinion of a majority of the Board of Trustees such property is not needed for school purposes. [Acts 1929, 41st Leg., 2nd C.S., p. 133, ch. 64, § 1.]

Art. 2754. [2847] Control of school property.—All school houses erected, grounds purchased or leased for a school district, and all other property belonging thereto, shall be under the control of the district trustees of such district. [Acts 1905, p. 263.]

Art. 2755. [2848] Separate schools.—A school house constructed in part by voluntary subscription by colored parents or guardians, and for a school for colored children, shall not be used for white children without the consent of the trustees of the district, and a like rule shall protect the use of school houses erected in part by voluntary subscription of white parents or guardians for the benefit of white children. [Id.]

Art. 2756. [2849] Title to property.—All conveyances, devises, and bequests of property for the benefit of the public schools made by any one for any county, city or town, or district, shall, when not otherwise directed by the grantor or devisor, vest said property in the county school trustees, or the board of school trustees of the city or town, or the trustees of the school district, or their successors in office, as the trustees for those to be benefited thereby, and the same, when not otherwise directed shall be administered by said officers under such rules as the State Superintendent may establish. [Id.]

Art. 2756a. [Repealed by Acts 1935, 44th Leg., p. 299, ch. 112, § 3.]

Article repealed was Acts 1933, 43rd Leg., 1st C.S. p. 136, ch. 41.

Art. 2756b. Independent school districts on military reservations.—Sec. 1. That the State Board of Education is hereby authorized and empowered to establish independent school districts upon any military reservations located within the State of Texas, upon such terms and conditions as may be agreed upon by the State Board of Education and the military authorities; and such districts may be entitled to enumerate its scholastics, to share in the State per capita apportionment, and such other privileges as are now granted to independent and common school districts.

Provided, that the children who are entitled to attend the schools thus established, shall be those of the officers, warrant officers, soldiers and civilian employees residing or employed upon such reservations.

And provided, that wherever in the opinion of the State Board of Education, the number of children resident upon any military reservation is not sufficient to warrant the establishment of a separate school district, that such military reservation shall for the purpose of this Act be included in any other school district under such regulations as the Board of Education may determine. Provided further, that the Board of Trustees of such district shall have the authority to transfer to any other independent or common school district maintaining adequate facilities and standards for elementary, junior or senior high schools, as set up by the State Department of Education and Southern Association, any school children who can not be provided for by the district of their residence.

Sec. 2. Upon establishment of a school district on any military reservation as heretofore provided, the State Superintendent of Public Instruction shall appoint a board of three trustees for each district so created to be selected from a list of civilians who are qualified under the general school laws of Texas, and who live or are employed upon the military reservation in which the school district is created, such list to be furnished by the commanding officer of said military reservation to the State Superintendent of Public Instruction. Said trustees shall hold office for two years, and until their successors are appointed and qualified.

Provided, that in so far as practicable the teachers of said schools shall be selected from the residents of said school district who are qualified to teach in the public schools of the State of Texas; and

Provided further, that each year the trustees of said districts shall take, and certify the census of eligible children within the scholastic ages; the scholastics so enumerated shall be entitled to participate in the annual apportionment of the State Available School Fund, and the amount of the available school fund to which the said district is entitled according to its scholastic population each year, shall be apportioned and paid directly to the said district. The laws pertaining to independent school districts shall govern said districts so far as the same may be applicable, but the State Board of Education may make such special regulations and orders for the government of such districts as they may deem expedient.

Sec. 3. The law created by House Bill No. 21[1] passed at the First Special Session of the 43rd Legislature, and all other laws in conflict herewith are hereby expressly repealed. [Acts 1935, 44th Leg., p. 299, ch. 112.]

[1] Article 2756a, ante.

2. INDEPENDENT DISTRICTS IN TOWNS

Art. 2757. [2851–54] Incorporation of town.—Any common school district containing seven hundred inhabitants or more may form an incorporation for free school purposes only, which may or may not include within its bounds any town or village incorporated for municipal purposes, the same not having assumed control of the public free schools within its limits. The territory so incorporated shall hereinafter be called an "independent school district" and said incorporation shall be laid out in a square as near as may be practicable with reference to the location of a school building.

Whenever any such common school district as herein provided is desired to be so incorporated there shall be presented to the county judge a petition signed by twenty or a majority of the resident qualified voters thereof praying for an election to be ordered for the purpose of determining the question of such incorporation. Said petition shall also contain a definite description by metes and bounds of such common school district proposed to be so incorporated, and said petition shall recite the name by which such independent school district shall be known, and said petition shall pray for an election to determine whether said common school district shall be incorporated as an independent school district and for the election of seven trustees.

Upon presentation of said petition to the county judge as herein provided, such county judge shall enter his order upon the minutes of the commissioners court granting said petition, provided that said county judge finds and determines the sufficiency of such petition and that the facts presented to him in support of such petition are true and substantially inclusive. Such order of election by said county judge shall, when made, specify the date of said election which shall be held within twenty days from the date of such order, and shall designate the place or places at which said election shall be held in said common school district proposed to be so incorporated, and said county judge shall, by such order, appoint a presiding officer for the place or each of the places of said election, and said county judge shall also, in entering such election order, describe the proposition to be so submitted together with a definite description by metes and bounds

of the common school district proposed to be so incorporated. The said county judge shall issue a notice of such election stating in substance the contents of such election order and the time and place or places of said election, and said county judge shall cause the sheriff to post a copy of such notice of election in three different public places within the boundaries of such common school district as described in said election order, which posting shall be done not less than ten days prior to the date fixed for said election.

The said election shall be held under the provisions of the laws of this State regulating general elections, except as herein otherwise provided, and only qualified voters who are residents of the common school district proposed to be so incorporated, shall be entitled to vote at said election. The officers holding the said election shall make returns of the result thereof to said county judge, and said county judge shall canvass such returns and declare the results of said election, and if a majority of the votes cast at said election shall have been cast in favor of such incorporation, then said county judge shall so find and enter his order to that effect and incorporating said independent school district upon the minutes of the commissioners court and cause the county clerk to record a certified copy of such order in the deed records of the county. Thereupon, such "independent school district" shall thereafter be regarded as duly incorporated for free school purposes only and shall have and is hereby vested with all the rights, powers and privileges conferred and imposed by the general laws of this State upon independent school districts. And said independent school district, shall, upon notice to the State Superintendent of Education, be entitled to receive its share of the available school fund to which it is entitled as provided by the laws of this State.

Whenever any unincorporated [1] town or village is included within the boundaries of any incorporated independent school district and such town or village be thereafter incorporated for municipal purposes, it shall not thereby acquire any right to take or assume control of the public free schools within its limits. [Acts 1905, p. 263; Acts 1927, 40th Leg., p. 353, ch. 238, § 1.]

[1] So in enrolled bill. Session laws read "incorporated". Section 3 of Acts 1927, 40th Leg., p. 353, ch. 238, provides that if any of its provisions shall be held invalid, such holding shall not affect the remaining provisions, and section 4 repeals all conflicting laws and parts of laws.

Art. 2758. [2852–3] Board of trustees.—When the said county judge shall enter his order for the incorporation election herein provided, he shall at the same time order an election to be held at the same time and place or places and by the same election officers for the election of a board of trustees to consist of seven members. Notice of the said election for the seven members of said board of trustees for the proposed independent school district shall be given within the same time and manner as herein provided for the giving of notice of election for the incorporation of an independent school district. The said election shall be held at the same time and place by the same election officers appointed to hold such incorporation election, and such election officers shall make returns of the result of such election for trustees to said county judge, and said county judge shall canvass the returns and declare the result thereof for said election and enter his order to that effect in the same manner as herein provided for such incorporation election. And said county judge shall issue his certificate of election to each of the seven candidates for the office of such trustee who received the greatest number of votes cast for the office of trustee, respectively. And upon the issuance of such certificate of election to and upon the taking of the oath of office provided in the Constitution of this State, by each of such trustees, they shall, respectively, be deemed to have fully qualified and shall immediately enter upon the discharge of their respective duties. When each of the seven trustees have so qualified as herein provided, they shall, respectively, file their oaths of office with the county judge, and proceed with the organization of the board of trustees by electing one of their number as president of the board of trustees, electing a secretary of such board of trustees who may or may not be a member of such board, and by election a treasurer and an assessor and collector of taxes, and such other officers and committees as shall be deemed by said board necessary.

Each of the seven trustees who were elected at such incorporation election shall hold office until the next regular trustee election to be held on the first Saturday in April next succeeding and until their respective successors have been duly elected and qualified, at which time seven trustees shall be elected for said independent school district, whose respective terms of office shall be determined in the following manner and by the following method: Such trustees shall draw by lot, and those trustees drawing the numbers 1, 2, 3 and 4 shall serve one year for the term of office ending with the next regular trustee election on the first Saturday in April of the following year and until their respective successors have been duly elected and qualified. And those trustees drawing the numbers 5, 6 and 7 shall serve for two years for the term of office ending with the next regular trustee election on the first Saturday in April of the second year following their election.

The said board of trustees of each of such independent school districts incorporated under the provisions of this Act shall have and exercise and are hereby vested with all the rights, powers, privileges and duties conferred and imposed upon the trustees and boards of trustees of independent school districts by the general laws of this State. [Acts 1905, p. 263; Acts 1927, 40th Leg., p. 353, ch. 238, § 2.]

See note to art. 2757.

Art. 2759. City control of district.—When a town or village incorporated for free school purposes only under the general law, and hereinafter designated as an "independent school district," and a city or town forming a part of such independent school district, which is incorporated for municipal purposes, under the general law, and hereinafter referred to as an incorporated city or town, shall desire to have the public schools within such independent district assumed by or under the control of such city or town, the same shall be done in the following manner:

Whenever as many as fifty or a majority of the resident qualified voters of such independent school district petition the district board of trustees thereof to order an election for the purpose of voting on such proposition of whether or not the public free schools in said district shall be assumed and controlled by such incorporated city or town, said board shall order an election to be held at the usual voting places within such district, and which election shall be ordered and held in conformity with the law governing bond and tax elections in independent school districts, except the qualified electors voting thereat need not be property tax payers, but must be qualified to vote under the laws of this State regulating general elections. [Acts 1919, 2nd C. S. p. 32.]

Art. 2760. City control: ballot.—All persons voting at such election in favor of such proposition shall have written or printed on their ballots the words "For assuming control of the public free schools of ——— Independent School District by the city of ———, Texas," and all persons voting at such election not in favor of such proposition shall have written or printed on their ballots the words "Against assuming control of the public free schools of ———

Independent School District by the city of ———, Texas." [Id.]

Art. 2761. Extent of city control.—If a majority of the qualified voters voting at the election in such independent school district, shall vote in favor of the incorporated city or town assuming control of the schools of such independent school district, the district board of trustees shall certify the results of such election to the governing authority of such incorporated city or town, together with a certified copy of the record showing all the proceedings had in the incorporation of such independent school district and all boundary extensions thereto, if any, together with a well defined map accurately showing the territory described in such record. If said governing authority finds that such election has been in all respects lawfully held and the returns thereof duly and legally made, then it shall, by ordinance duly passed and entered of record, assume control and management of the public free schools within its limits, in conformity with the provisions and requirements of subdivision 3 of this chapter except as otherwise provided herein; provided, that if the boundaries of such independent school district do not coincide with the boundaries of the incorporated city or town, then the city governing body shall on the same day pass an ordinance extending its corporate line for school purposes only so that the same shall coincide with and embrace the same territory within such independent school district. If such independent school district shall have an outstanding bonded indebtedness, then the incorporated city or town shall become liable and bound for the payment of such bonded indebtedness and the governing body thereof, shall levy and cause to be assessed and collected, upon all property subject to taxation within the limits of such incorporated city or town or within the limits of such corporation as extended for school purposes only if the boundaries of the former independent school district were not the same as the boundaries of the incorporated city or town, taxes to pay interest on such bonds and provide a sinking fund sufficient to redeem the same at maturity, and such tax thereafter shall be annually levied and collected so long as such bonds, or any of them, are outstanding and unpaid; and provided further that the assumption of the control of the schools of such independent school district shall not abrogate or affect any maintenance tax theretofore authorized in such independent school district and such tax shall thereafter be annually levied, assessed and collected by the proper authorities of such incorporated city or town, until increased or changed by the qualified voters in conformity with the provisions and requirements of subdivision 4 of this chapter. [Id.]

Art. 2761a. Abolishing corporate existence affecting school districts.—Sec. 1. That all cities and towns and towns and villages that have heretofore assumed control of the schools within its limits, whether or not said districts have been added to as provided by the laws of Texas, are hereby declared to be Independent School Districts.

Sec. 2. That where towns and villages or cities and towns have heretofore abolished their corporate existence as in municipal corporation the public free schools theretofore under the control of said towns and villages or cities and towns, are hereby declared to be independent school districts and shall remain under the control of the Trustees theretofore elected or appointed, and said Trustees shall be annually elected thereafter, unless said city or town shall sooner re-incorporate for municipal purposes and again assume control of said schools as provided by Article 2759, Revised Civil Statutes, 1925. [Acts 1927, 40th Leg., p. 81, ch. 57.]

Section 3 of this Act validates all towns and villages or cities and towns that have heretofore assumed control of their free public schools and have abolished their corporate existence and reincorporated and again assumed control of their free public schools, and also all acts by the board of trustees of the district or the municipal authorities in accepting said acts and assuming control of the district.

Art. 2761b. Exemption from county control of independent districts in counties of 11,000 to 11,021 population.—In all counties having a population of not fewer than eleven thousand (11,000) nor more than eleven thousand and twenty-one (11,021) according to the last preceding Federal Census, the independent school districts of said counties regardless of their scholastic population, shall be exempt from county supervision of their schools. Provided that said schools shall be subject to assessment and payment of county administration costs as provided in the General Law, and the provisions of the General Law relating to taking of scholastic census and supervision of rural aid shall also continue to apply to such districts. [Acts 1937, 45th Leg., 2nd C.S., p. 1877, ch. 10, § 1.]

Art. 2762. City control: officers.—Nothing in this law shall be construed as affecting the terms of office of any trustee previously elected in such independent school district and serving as such at the time of the assumption of the control of the district schools by the incorporated city or town, and such trustees shall be vested with the same authority as is conferred by law upon school trustees in cities and towns constituting separate and independent school districts, and shall thereafter be elected in the same manner as school trustees for such cities and towns, in accordance with the provisions of the succeeding subdivision of this chapter. [Acts 1919, 2nd C.S. p. 32.]

Art. 2763. [2856] Small districts: laws applicable.—All incorporated districts, having each fewer than one hundred and fifty scholastics according to the latest census, shall be governed in the general administration of their schools by the laws which apply to common school districts; and all funds of such districts shall be kept in the county depositories and paid out on order of the trustees approved by the county superintendent. [Acts 1905, p. 263; Acts 1909, p. 17.]

Provision of Rev.St.1911, art. 2856, relating to school districts created by special acts, not brought forward in this article of 1925 revision, was repealed.

Art. 2763a. Depositories, assessors and collectors in independent districts created by special laws; bond; control of schools.—Section 1. Any independent school district heretofore created by special law may, by proper order or orders passed by its board of trustees, select and designate its own school depository and also its own assessor and collector of taxes in accordance with the general laws applicable to other independent school districts. Such school depository, when so selected and designated, shall be required to give bond in accordance with the provisions of Article 2832, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 2. The Board of Trustees of any independent school district covered by this Act, after selecting and designating said district's own depository and its own assessor and collector of taxes, in accordance with the provisions hereof, shall thereafter maintain and control the public free schools within said district to the exclusion of every other authority, except in so far as the State Superintendent of Public Instruction and the State Board of Education may be vested with supervisory authority to instruct said Board and to exercise appellate jurisdiction in connection with its rulings or orders.

Sec. 3. Nothing in this Act shall be construed to affect, supersede, or change any of the provisions of Article 2763, Revised Civil Statutes of Texas, 1925, as amended. [Acts 1945, 49th Leg., p. 254, ch. 188.]

Art. 2764. Districts in several counties.—Independent school districts may be created containing territory within two or more counties in the same way

and manner that towns and villages are created by law for municipal purposes; provided, that the map required by the law governing said incorporation shall show the correct location and position of the county lines involved in such incorporation proceedings. Said incorporated free school district containing territory in two or more counties shall have all the rights, powers, and privileges granted under the general laws to incorporations for free school purposes only. The same modes, manners, and methods of government and procedure provided by the general law for independent school districts incorporated for free school purposes only shall govern the management and control of the incorporated school districts for free school purposes containing territory within two or more counties. [Acts 1911, p. 200.]

Art. 2764a. Elementary districts in grouped high school districts in certain counties authorized to create independent district.—In all counties having a total population of not more than fifteen thousand, seven hundred and twenty-five (15,725) and not less than fifteen thousand, seven hundred and fifteen (15,715) according to the last preceding Federal Census, and at the same time in all counties having a scholastic population of not more than five thousand and fifteen (5,015) and not less than five thousand and thirteen (5,013) according to the scholastic census of 1938–1939 as contained in the Public School Directory of the State Department of Education, any elementary school district in a grouped high school district may by majority vote of its people create an independent school district, which shall be separate and apart from the rural high school district, upon petition of twenty (20) resident qualified tax-paying voters to the County Judge for an election for such purposes and the County Judge shall order said election upon said petition and the Commissioners' Court of the county shall canvass the returns and declare the result. Upon receipt of a copy of said board order, all State school officials shall set up said independent school district and shall accept depository bond and make the State apportionment to said district direct and not to the rural high school district. [Acts 1939, 46th Leg., Spec.L., p. 724, § 1.]

Art. 2765. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 106, ch. 47, § 3.]

Art. 2766. [2866] Change of boundaries.—The commissioners court of any county shall have the authority to change the boundaries of any independent district incorporated for free school purposes only, situated in said county, when in the judgment of said court the public good demands such change; provided, that the president of the board of trustees of the independent district to be affected by the proposed change shall first be notified, and said board of trustees shall have the right to be heard in case there is opposition to the change. No such change shall be made that would reduce the total value of taxable property in any independent district against which there are outstanding bonds legally issued. [Acts 1905, p. 263, § 52.]

Counties having population of 2,750 to 2,850: Acts 1939, 46th Leg., Spec.L., p. 1018.

Art. 2767. Change of districts.—All independent school districts incorporated for free school purposes within the State of Texas, whether created under the general laws or by special act, now in existence, or hereafter to be created may be abolished in the manner herein provided:

The County Judge of any county in which any independent school district or part thereof is situated, shall, upon petition in writing signed by twenty-five of the resident property tax payers who are qualified voters of such independent school district, make an order for holding an election for such purposes, on a day therein stated, and at a place within said independent school district and within the county in which said county court is situated, therein designated. He shall appoint an officer to preside at the election, who shall select two judges and two clerks to assist in holding it. After previous notice of ten days by posting advertisements thereof at three public places within such independent school district, the election shall be held in the manner prescribed by law for holding general elections, except as is herein provided.

All persons who are legally qualified voters of the State and of the county in which such independent school district or part thereof is situated, and who have resided within said independent school district for at least six months next preceding, shall be entitled to vote at such election.

The officers holding such election shall make return thereof to the County Judge within ten days after the same is held. If a majority of such voters, voting at such election, shall vote to abolish such independent school district, the County Judge shall declare such independent school district abolished, and shall enter an order to that effect upon the minutes of the commissioners Court, and from the date of such order, said independent school district shall cease to exist. [Acts 1911, p. 200, § 6; Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

Section 2 of said Acts 1927, provides that if any provision thereof is held invalid such holding shall not affect the other provisions.

Art. 2767a. Payment of indebtedness of district abolished.—When any independent school district is abolished, whether as provided in this Chapter, or in any other lawful manner, having at the time of such abolishment, outstanding bonds or other indebtedness, enforcible either at law or in equity, then the County Board of School Trustees, or County Board of Education, as the case may be, for the purpose of paying such bonds, or other indebtedness, shall manage, control or dispose of all property of said independent school district; shall have power to levy and collect taxes; shall have power to bring and defend litigation in the name of said independent school district and shall have power to do any and all things necessary for the payment of such bonds or other indebtedness, which such independent school district, or the Trustees thereof, could have done if such independent school district had not been abolished. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

Art. 2767b. Suits against district abolished.—Any creditor of any independent school district which has been, or may be abolished, either under this Act,[1] or in any other lawful manner, shall file his claim against said district with the County Board of School Trustees, or the County Board of Education, as the case may be, within sixty days after said school district has been abolished. If such claim is not allowed, such creditor may maintain suit against such abolished independent school district as such, in the proper court of the State. Service in such suit may be had upon the Chairman, or President of the County Board of School Trustees, or Board of Education, as the case may be, and such County Board of School Trustees, or Board of Education, shall defend such suit on behalf of such abolished independent school district, and may, within its discretion, make such settlement of such litigation as may be deemed advisable. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

[1] Articles 2767–2767f, ante.

Art. 2767c. Taxation for indebtedness.—As used in this, and the succeeding articles the term "Independent School District" is defined to mean any independent school district whether created by special act, or under the general laws; and the term "school district" shall include every school district now existing or hereafter to be created in any manner whatsoever and likewise any other corporation having assumed control of its schools.

When all of the territory embraced within the boundaries of any abolished independent school district, having previously had legal existence, and having outstanding bonds or other indebtedness, enforcible either at law, or in equity, shall thereafter be contained or included within the limits of any other school district, all taxes against the property of such abolished independent school district at the time at which it is included or contained within such other school district, shall remain in full force and effect and shall be levied and collected by such other school district and the proper officers thereof until said entire indebtedness is fully paid.

If a part of the territory embraced within such abolished independent school district shall thereafter be included or contained within the limits of such other school district, then such taxes shall remain in full force and effect upon the property so included and shall be collected as hereinbefore provided until the proportion of such indebtedness as the assessed value of the portion so included or contained bears to the entire assessed value of said abolished independent school district, has been paid fully. The assessed values of such property shall be those shown upon the preceding county tax assessment roll after such territory is included in such other district.

Such other school district may assume such bonds or other indebtedness at an election held for that purpose, at which a majority of the qualified property tax paying voters of such other district, shall vote in favor thereof; in which event, all of the property within such other district, not exempt under the law, shall be subject to taxation for the payment of such bonds or other indebtedness. And the proper officers of such other district, shall levy upon such property in said district, a tax adequate for the payment of said bonds and other indebtedness, over such a period of time as may be necessary for that purpose. Such election shall be held in the manner provided for holding an election for voting bonds, or for voting a special tax, as the case may be, within such other school district. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

Art. 2767d. Territory of district abolished embraced in another district.—Where all the territory embraced within such abolished independent school district shall be contained or included within the limits of such other school district, title to all the property, both real and personal, belonging to such abolished independent school district shall be vested in such other school district, or its governing officers, and where a part of the territory embraced within such abolished independent school district shall be contained or included within the limits of such other school district, all real property, improvements and appurtenances, belonging to such abolished independent school district, and situated within the territory so included or contained, and such proportion of all personal property of whatsoever nature, as the assessed value of the territory so included or contained bears to the entire assessed value of said abolished independent school district, obtained as provided in Article 2767c hereof, belonging to such abolished independent school district, shall vest in such other school district or its governing officers, provided however, that nothing herein shall affect the rights of any creditor of such abolished independent school district. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

Art. 2767e. Uncollected taxes.—When all or part of the territory embraced within an abolished independent school district, having at the time of such abolishment, no outstanding indebtedness, shall be included or contained within the limits of such other school district, all uncollected taxes on the property so included or contained for the years up to and including the last day of January of the year immediately following that in which such territory is included or contained, within such other school district, shall be levied and collected by such other school district at the rate in force at the time of such abolishment and in the same manner as such abolished independent school district might or could have done had no abolishment been had. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

Art. 2767f. Effect of abolishing district created out of territory of two districts.—Upon the abolishment of an independent school district created by special or local law out of territory theretofore containing two or more common school districts, said common school district shall immediately come into existence by operation of law with the same boundaries they had prior to the creation of said independent school district; and all funds, property, rights and liabilities of the abolished independent school district may be divided as between the said common school districts by agreement between the trustees of said common school districts. In the event said trustees are unable to agree, decision shall be made by the county board of school trustees for said funds, property, rights and liabilities to be apportioned to the said common school districts in an equitable and just manner, taking into consideration the property owned and the assets and liabilities of said common school districts at the time such independent school district was created and also taking into consideration the assets and liabilities coming into existence after the formation of said independent school district. Any bonds issued by one of said common school districts prior to the creation of said independent school district shall be paid and retired by the common school district issuing same, and taxes for that purpose shall be levied and collected by said common school district. Any moneys paid by such abolished independent school district in connection with any such bond issue to take care of interest or sinking fund, shall be paid back by the common school district issuing such bonds in such an amount as will be necessary to reimburse the other common school district or districts in the territory of such abolished independent school district. High school children in any common school district within the territory of any such abolished independent school district which independent school district was created out of two common school districts shall have the right to attend school in the other common school district within the territory composing any such abolished independent school district without tuition, provided such other common school district has not more than 350 scholastic population. Any debt incurred by any such abolished independent school district the benefits of which accrue particularly to one of said common school districts shall be taken over by said common school districts. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

Art. 2767g. Certain independent districts excepted from law as to creation and abolition of districts.—Independent school districts created under the provisions of Chapter 5, Acts 1930, 41st Legislature, Fifth Called Session,[1] and which comprise an entire county, such county having a population of not more than seven hundred fifty (750) according to the last preceding Federal Census, and having a scholastic population of not more than one hundred (100) according to the last scholastic census as contained in the Public School Directory of the State Department of Education, shall not be subject to the provisions of Article 2763 of the Revised Civil Statutes of Texas, 1925, but are hereby declared exempt therefrom. [Acts 1939, 46th Leg., Spec.L., p. 723, § 1; Acts 1941, 47th Leg., p. 221, ch. 151, § 1.]

1 Art. 2742j.

3. INDEPENDENT DISTRICTS IN CITIES

Art. 2768. [2867–8] Assumption of control.—Any city or town in this State may acquire the ex-

clusive control of the public free schools within its limits. Any city or town which has heretofore, under the Act of March 15, 1875, or any subsequent law, assumed control of the public free schools within its limits, and has continued to exercise the same until the present time, or any city or town which may hereafter determine so to do by majority vote of the property tax payers of said city or town voting at an election held for that purpose, may have exclusive control of the public free schools within its limits. [Acts 1905, p. 263.]

Art. 2769. [2869] Election.—The mayor of said city or town shall, upon the written application of not less than fifty of the qualified electors thereof, and within twenty days thereafter, order an election by the qualified electors of such city or town, to be conducted as other municipal elections, to decide, by a majority of the votes cast by the qualified electors of such city or town at such election, whether such city or town shall acquire the exclusive control of the public free schools and institutions of learning within its limits. Not more than one election shall be held in any one calendar year to determine such question. [Id.]

Art. 2770. [2870] Shall receive pro rata of school funds.—Such city or town, after notice to the State Board that it has determined to assume control of the public free schools within its limits, shall receive such pro rata of the available school fund as its scholastic population may entitle it to. [Id.]

Art. 2771. [2871] General laws shall govern.—Schools thus organized and provided for by incorporated cities and towns shall be subject to the general laws, so far as the same are applicable; but each city or town having control of schools within its limits shall constitute a separate school district, and may provide for the organization of schools and the appropriation of its school funds in such manner as may be best suited to its population and condition. [Id.]

Art. 2772. [2872] Property vested in trustees.—In every city or town in this State which has or may assume the exclusive control and management of public free schools within its limits, and which has or may determine that such exclusive control and management shall be in a board of trustees, and organized under an Act of the Sixteenth Legislature, approved April 3, 1879, and Acts amendatory thereto, the title to all houses, lands and other property owned, held, set apart, or in any way dedicated to the use and benefit of the public free schools of such city or town, including property heretofore acquired as well as that which may hereafter be acquired, shall be vested in the board of trustees and their successors in office, in trust for the use and benefit of the public free schools in such city or town; and such board of trustees shall have and exercise the exclusive control and management of such school property, and shall have and exercise the exclusive possession thereof for the purpose aforesaid; provided, that where trustees are named other than the municipal corporation itself, in any instrument conveying, donating, bequeathing or devising any money or other property, real or personal, for the benefit of any city or town, this law shall not interfere in any manner with the title or authority of such trustees to or over such money or other property. Such board of trustees shall constitute a body corporate, and shall have full power to protect the title, possession and use of all such property within the limits of such city or town, and may bring and maintain such suit or suits in law or in equity in any court of competent jurisdiction when necessary to recover the title or possession of any such property that may be adversely held or seized, or to prevent any trespass upon or injury to such property; provided, that the provisions of this article shall not apply to lands belonging to the State upon which houses for school purposes have been built without authority from the State. [Id.]

Art. 2773. [2873] Sale of school property.—Any houses or lands held in trust by any city or town for public free school purposes may be sold for the purpose of investing in more convenient and desirable school property, with the consent of the State Board, by the board of trustees of such city or town; and, in such case, the president of the school board shall execute his deed to the purchaser for the same, reciting the resolution of the State Board giving consent thereto and the resolution of the board of trustees authorizing such sale. [Id.]

Art. 2773a. Independent school districts may sell, exchange or convey minerals; oil and gas leases; validation of sales or leases of minerals.—Section 1. Any independent school district, when in the opinion of a majority of its trustees it is necessary or advisable to sell, exchange, or convey the minerals, or any part thereof, belonging to said district, upon the order of said trustees, with the consent of the State Superintendent of Public Instruction, may execute an oil and/or gas lease, or sell, exchange, and convey the minerals, or any part thereof, to any person, upon such terms as such trustees may deem advantageous to said district, and which the State Superintendent of Public Instruction may approve, and apply any proceeds to the sinking fund account of such district, if there be outstanding bonds therein, otherwise to the purchase of necessary grounds or to the building or repairing of schoolhouses, or to the credit of the local maintenance school fund of the district, and in such case said district, acting by its president, shall execute its deed or lease to the purchaser of the same, reciting the approval of the State Superintendent of Public Instruction and the resolution of the Board of Trustees authorizing the sale.

Sec. 2. Any and all sales or leases of minerals heretofore made by any independent school districts in substantial compliance with the provisions of this Act and when such sales or leases have been made with the consent of the State Board of Education or the State Superintendent of Public Instruction after same have been authorized by the trustees of the independent school district, shall not be invalid by reason of any lack of authority to make and enter into such sales and leases. [Acts 1941, 47th Leg., p. 600, ch. 368.]

Art. 2774. [2885] Appointment of trustees.—Towns and cities which have heretofore chosen their trustees by appointment of the city council or board of aldermen, under the provisions of Article 4018, Revised Statutes of 1895, shall be authorized to continue to choose their trustees in this manner; that is, by the appointment of the board of aldermen of said city or town; provided, that seven trustees shall be appointed at first, four of whom shall serve for one year, and three for two years; and each year thereafter, four trustees and three trustees alternately, shall be appointed for a term of two years; and further provided, that on a petition of twenty-five per cent of the voters of any such city or town, to be ascertained by the ballots cast at the last regular city election in said city or town, the mayor of such city or town shall order an election to determine whether or not the school affairs of such city or town shall be directed by a school board elected in accordance with the provisions of this chapter; and, in case of an affirmative vote, an election shall at once be ordered by the said mayor, for the purpose of choosing a school board consisting of seven trustees, as provided in the succeeding article. [Acts 1905, p. 263.]

Art. 2774a. Appointment or election and terms of school trustees in certain districts.

Manner of choosing trustees

Sec. 1. Towns and cities which have heretofore chosen their trustees by appointment of the city coun-

cil or board of aldermen, shall be authorized to continue to choose their trustees in this manner; that is, by the appointment by the board of aldermen of said city or town; provided, that seven trustees shall be appointed, three of whom shall serve for one year, and two for two years and two for three years, and each year thereafter, three trustees or two trustees shall be appointed for a term of three years; and further provided, that on a petition of twenty-five per cent of the voters of any such city or town, to be ascertained by the ballots cast at the regular city election in said city or town, the mayor of such city or town shall order an election to determine whether or not the school affairs of such city or town shall be directed by a school board elected in accordance with the provisions of this chapter; and, in case of any affirmative vote, an election shall at once be ordered by the said mayor, for the purpose of choosing a school board consisting of seven trustees, as provided in the succeeding article.

Cities and towns under 75,000; election of trustees; term

Sec. 2. In all such towns and cities having fewer than seventy-five thousand population as shown by the Federal Census of 1920, the board of trustees shall be composed of seven members and the seven candidates receiving the largest number of votes at the first election, and the three or two candidates receiving the largest number of votes at all subsequent elections shall be entitled to serve as trustees hereunder. Those elected at the first election shall determine by lot the term for which they are to serve. The three members drawing numbers one, two and three shall serve for one year, the two members drawing four and five shall serve for two years and the two members drawing numbers six and seven shall serve for three years, or until their successors are elected and qualified; and regularly thereafter on the first Saturday in April of each year, three trustees or two trustees shall be elected for a term of three years to succeed the trustees whose term shall at that time expire. The members of the board remaining after a vacancy shall fill the same for the unexpired term.

Consolidation of school districts; trustees; term; qualification

Sec. 3. The board of county school trustees at its next meeting after the consolidation of school districts is declared shall appoint a board of seven trustees for the consolidated district. No person shall be trustee who cannot read and write the English language understandingly, and who has not been a resident of this State one year, and of the district six months, prior to his appointment or election. Those elected at the first election shall determine by lot the term for which they are to serve. The three members drawing numbers one, two and three shall serve for one year, the two members drawing numbers four and five shall serve for two years and the two members drawing numbers six and seven shall serve for three years, or and until their successors are elected and qualified; and regularly thereafter on the first Saturday in April of each year three trustees or two trustees shall be elected for a term of three years to succeed the trustees whose term shall at that time expire. The members of the board remaining after a vacancy shall fill the same for the unexpired term. District trustees shall qualify by taking the official oath which shall be filed with the county superintendent of the county wherein the district is situated. The board of trustees after being qualified shall immediately organize by electing one of their number president and another secretary, a report of which organization shall be filed with the county superintendent. The board of trustees of the district shall appoint three qualified voters of the district to hold said election and make returns thereof in like manner as provided by law for holding elections for trustees in common school districts, except that the persons holding said election shall each receive from the general fund of the county two dollars a day for such services.

Rural high schools; trustees; term

Sec. 4. The control and management of the schools of a rural high school district, established under the provisions of this Act, shall be vested in a board of seven trustees, elected by the qualified voters of the said district at large, who shall be elected and serve in accordance with the provisions of general law relative to common school districts except as may be otherwise provided herein; and provided that each of the original districts included in such rural high school district must be the residence of at least one member of said board. Provided, that for a rural high school district formed with more than one hundred square miles of territory, or embracing more than seven districts, the board of trustees, as herein provided for, shall be elected from the district at large. Should any rural high school district fail to elect a trustee or trustees as provided for in this Act, the county board of trustees shall appoint said trustee or trustees. Those elected at the first election shall determine by lot tne term for which they are to serve. The three members drawing numbers one, two and three shall serve for one year, the two members drawing numbers four and five shall serve for two years and the two members drawing numbers six and seven shall serve for three years, or until their successors are elected and qualified; and regularly thereafter on the first Saturday in April of each year three trustees or two trustees shall be elected for a term of three years to succeed the trustees whose term shall at that time expire. The members of the board remaining after a vacancy shall fill the same for the unexpired term.

Term of trustees; referendum in certain cities and towns of 22,000 to 25,000

Sec. 5. The first election under the provision of this Act shall be held on the first Saturday in April, 1931. In all independent districts not having included within their boundaries a city or town whose population exceeded seventy-five thousand (75,000) as shown by the Federal Census of 1920 and in all consolidated and rural high school districts in which the term of office of three elective trustees expire in 1931, their successors shall be elected for a term of three years. In all such districts in which the term of office of four elective trustees expire in 1932, after their successors are elected, they shall determine by lot which two members shall serve for one year and which two members shall serve for three years. Those members drawing numbers one and two shall serve for one year; those members drawing numbers three and four shall serve for three years, and annually thereafter either three trustees or two trustees, as the case may be, shall be elected to serve for a term of three years.

In all such independent, consolidated and rural high school districts in which the terms of office of four elective trustees expire in 1931, their successors shall determine by lot which two shall serve for two years and which two shall serve for three years. Those members drawing numbers one and two shall serve for two years and those members drawing the numbers three and four shall serve for three years; and annually thereafter either three trustees or two trustees shall be elected to serve for a term of three years. [Acts 1930, 41st Legislature, 5th Called Session, page 212, Chapter 66.]

Provided, that in towns and cities of this state having a population of not more than twenty-five thousand (25,000) and not less than twenty-two thousand (22,000) according to the last preceding Federal Census and constituting an independent school district and having control of the public schools therein by

virtue of the provisions of any special charter granted by the Legislature of this state, the people residing in such cities and towns shall have and retain the right of referendum, so as to determine whether or not said cities and towns shall come within or be affected by the provisions of this law; said referendum to be initiated by petition of at least twenty-five (25%) per cent of the qualified voters residing in the cities or towns affected. [Added Acts 1933, 43rd Legislature, page 100, Chapter 48; Acts 1945, 49th Leg., p. 440, ch. 277, § 1.]

Independent school districts; terms

Sec. 6. In all independent school districts in which the trustees are appointed under the provisions of Article 2774, R.S. 1925, the terms of office of those appointed to fill the terms expiring in 1931 and 1932 shall be adjusted by the appointing power into short and long terms as in the case of elective members as provided in Section 2 of this Act and annually thereafter three trustees or two trustees shall be appointed to serve for a term of three years. [Acts 1930, 41st Leg., 5th C.S., p. 212, ch. 66.]

See, also Article 2808, post.

Acts 1933, 43rd Leg., p. 100, ch. 48, added the last paragraph in section 5 of this article.

Section 7 of Acts 1930 repeals all conflicting laws and parts of laws.

Section 2 of Acts 1933, repeals all conflicting laws and parts of laws, and provides that cities may continue under present charter as to control of schools until the election under referendum provided has been carried.

Independent districts in cities of 1725–1730 population and having 602–607 scholastics: Acts 1941, 47th Leg., p. 130, ch. 102.

Section 2 of the Act of 1945 amending section 5 of this article provided that such amendment should take effect upon the date of the next succeeding general election of trustees of independent school districts as provided by general laws.

Art. 2775. [2886] Election.—In each independent district that shall hereafter be organized, the county judge of the county in which said independent district is situated shall order an election for seven trustees, who shall constitute the school board of such district, and all of whom shall serve without compensation. All of the qualified voters of each such district shall be entitled to vote at any election for trustees hereunder. [Acts 1905, p. 263.]

Art. 2776. [2887] Board shall order elections.—All elections shall be ordered by the board of trustees of each independent school district; and such order shall be made at least ten days before the date of election; and a notice of the order shall be posted at three different places in the district. The board of school trustees, at the time of ordering such election, shall appoint three persons to hold the election, and shall designate the places where the polls shall be open. Each person appointed to hold such election shall receive one dollar therefor, to be paid out of the general fund of the county as other claims are paid. All such elections shall be held, and returns thereof made to the board of school trustees, in accordance with the general election laws. The board of school trustees shall canvass such returns, declare the result of such election, and issue certificates of election to the persons shown by such returns to be elected. [Id.; Acts 1915, p. 205.]

Art. 2777. [2888–9–93] Terms of office.—The seven candidates receiving the largest number of votes at the first election, and the three or four candidates receiving the largest number of votes at all subsequent elections, shall be entitled to serve as trustees hereunder. Those elected at the first election shall determine by lot the term for which they are to serve. The four members drawing numbers one, two, three and four shall serve for one year, and the three members drawing the numbers five, six and seven shall serve two years, or until the second of April thereafter, and until their successors are elected and qualified; and regularly thereafter on the first Saturday in April of each year, four trustees and three trustees, alternately, shall be elected for a term of two years, to succeed the trustees whose term shall at that time expire. The members of the board remaining after a vacancy shall fill the same for the unexpired term. [Id.]

Art. 2777a. Election of trustees and terms of office.—Sec. 1. In all Independent Districts, including cities of a population of more than 200,000 according to the last preceding Federal Census, and in all Independent School Districts comprising such cities, the term of office of the Board of School Trustees shall be six years.

Sec. 2. In any such city or town constituting an Independent School District, which has heretofore been authorized by Statute to regularly elect the entire Board of Trustees at one election, there shall hereafter be elected a Board of Trustees for a term of six years. The first of such elections shall be held on the first Tuesday in April, 1932, and at such election there shall be elected seven trustees who shall draw for terms; those drawing numbers one, two and three shall serve for six years; those drawing numbers four and five shall serve for four years; and those drawing numbers six and seven shall serve for two years; and biennially thereafter there shall be elected three trustees, or two trustees respectively, to serve for a term of six years.

Sec. 3. In all such Districts in which the term of office of three elective trustees expire in 1931, their successors shall be elected for a term of two years. In all such Districts in which the term of office of four elective trustees expire in 1932, after their successors are elected they shall determine by lot which two members shall serve for three years and which two members shall serve for five years. Those members drawing numbers one and two shall serve for three years; those members drawing numbers three and four shall serve for five years; and thereafter on the first Saturday of April of each odd numbered Calendar year, either three or two trustees shall be elected to serve for a term of six years. In all such Independent School Districts in which the term of office of four elective trustees expire in 1931, their successors shall determine by lot which two shall serve for three years and which two shall serve for five years. Those members drawing numbers one and two shall serve for three years, and those members drawing the numbers three and four shall serve for five years. In all such Independent Districts in which the term of office of three elective trustees expire in 1932 their successors shall be elected for a term of six years, and thereafter on the first Saturday in April of each even numbered Calendar year either three trustees or two trustees shall be elected to serve for a term of six years. The members of the Board remaining after a vacancy shall fill the same for the unexpired term.

Sec. 4. Notice of all elections for trustees in Independent School Districts theretofore created by special Act of the Legislature and having included within their boundaries a city whose population was in excess of 200,000 as shown by the last preceding Federal Census shall be given in the manner and for the time required by such special Acts and such elections in any such Districts shall be held in the manner and in conformity with such special Acts so creating such School Districts. [Acts 1931, 42nd Leg., p. 789, ch. 317.]

Section 5 of this Act repeals all conflicting laws and parts of laws.

Art. 2777b. Trustees; terms in certain independent school districts; election; eligibility; vacancies.—Section 1. In all independent school districts heretofore created by Special Act of the Legislature and having a Board of seven (7) trustees and being included within the boundaries of a city having a population in excess of two hundred and twenty

thousand (220,000) and not more than two hundred and ninety thousand (290,000), as shown by the last preceding Federal Census, the terms of office of such school trustees shall be and the same are hereby fixed as follows: Where the term of office of two (2) such elective trustees expire on the first Saturday in April, 1945, and their successors shall be elected during the year 1945, the term of such successors is here fixed at one (1) year so that the term of office of such two (2) trustees shall expire on the first Saturday in April, 1946. On the first Saturday in April, 1946, an election shall be held in such independent school districts and at such election two (2) trustees shall be elected in such districts for a term of six (6) years each. The terms of those trustees elected on the first Saturday in April, 1942, and those trustees elected on the first Saturday in April, 1944, each for a term of six (6) years, shall not be changed. Thereafter elections shall be held on the first Saturday in April of each even numbered year as the terms of office expire for the election of trustees, each for a term of six (6) years. Except as modified by this Act all such elections in such independent school districts shall be held in the manner and in conformity with the provisions of the Special Acts of the Legislature creating such independent school districts.

Sec. 2. Any person shall be eligible to the office of trustee regardless of sex, provided that all other qualifications contained in any Special Law shall remain in effect.

Sec. 3. If any vacancy or vacancies shall occur in the membership of any such board of school trustees, such vacancy or vacancies shall be filled by the majority vote of the remaining trustees of such district, but any trustee so elected to fill a vacancy shall serve only for the unexpired term of his or her predecessor. [Acts 1933, 43rd Leg., p. 67, ch. 36; Acts 1945, 49th Leg., p. 304, ch. 221, § 1.]

Art. 2777c. Term of office of trustee.

Application

Sec. 1. In all independent school districts created by Special Act having included within their boundaries a city with a population of not less than 160,000 and not more than 220,000 according to the last preceding Federal Census, the terms of office of their school trustees (or members of their Boards of Trustees or Boards of Education, by whatever name called) shall hereafter be six years and until their successors are elected and qualified.

Successors to trustees whose terms expire on April 6, 1935

Sec. 2. If this Act becomes effective on or before the first Saturday in April, 1935, then:

(a) Successors to the school trustees, whose terms of office expire at that time, shall be elected on said first Saturday in April, 1935, and the terms of office of such successors so elected shall be six years from and after their election.

(b) School trustees, whose terms of office expire on the first Saturday in April, 1936, shall remain in office, without re-election, until the first Saturday in April, 1938, and their terms of office are hereby extended to the date last named, at which time their successors shall be elected for a term of six years.

Successors to trustees whose terms expire after April 6, 1935

Sec. 3. If this Act becomes effective after the first Saturday in April, 1935, and on or before the first Saturday in April, 1936, then:

(a) Successors to the school trustees, whose terms of office expire after the first Saturday in April, 1935, and on or before the first Saturday in April, 1936, shall be elected on the first Saturday in April, 1936, and the terms of office of such successors, so elected, shall be six years from and after their election.

(b) School trustees, whose terms of office expire on the first Saturday in April, 1937, shall remain in office without re-election, until the first Saturday in April, 1939, and their terms of office are hereby extended to the date last named, at which time their successors shall be elected for a term of six years.

Subsequent elections

Sec. 4. After the first election for a six-year term, as herein provided for, all subsequent elections shall be held every three years, and at each such election there shall be elected alternately three school trustees, or four school trustees, as the case may be, each for a term of six years.

Filling vacancy

Sec. 5. If any vacancy or vacancies occur in the membership of any such Board of School Trustees or Board of Education, such vacancy or vacancies shall be filled by the majority vote of the remaining school trustees of such school district, but any school trustee so elected to fill a vacancy shall serve only for the unexpired term of his or her predecessor.

Manner of conducting election

Sec. 6. All elections held pursuant to this Act shall be held in the way and manner provided for in the Special Acts creating said respective independent school districts. [Acts 1935, 44th Leg., p. 152, ch. 64.]

Section 7 of this Act repeals all conflicting laws and parts of laws, general or special.

Art. 2777d. Term of office of school trustees in cities of 101,000 to 105,000 constituting independent district.

Application

Section 1. In all cities constituting Independent School Districts, or which have assumed control of their Public Free Schools, and having, according to the last preceding Federal Census, a population of not less than one hundred and one thousand (101,000) inhabitants, and not more than one hundred and five thousand (105,000) inhabitants, the term of office of School Trustees shall be six (6) years.

Choosing terms by lot

Sec. 2. In all such Districts in which the terms of office of four (4) elective Trustees expire in 1937, after their successors are elected they shall determine, by lot, which two (2) members shall serve for three (3) years and which two (2) members shall serve for five (5) years. Those members drawing Nos. 1 and 2 shall serve three (3) years; those members drawing Nos. 3 and 4 shall serve five (5) years. In all such Districts in which the terms of office of three (3) elective Trustees expire in 1938, their successors shall be elected for a term of six (6) years, and thereafter on the first Saturday of April, of each even numbered calendar year, either three (3) Trustees or two (2) Trustees shall be elected to serve for a term of six (6) years.

Vacancy

Sec. 3. If any vacancy or vacancies shall occur in the membership of any such Board of School Trustees, such vacancy or vacancies shall be filled by the majority vote of the remaining Trustees of such district. Any Trustee so elected to fill a vacancy shall serve until the next general election of Trustees. At such general election of Trustees, in addition to the three (3) or two (2) regular Trustees, as the case may be, to be elected pursuant to the requirement of Section 2 of the Act of which this is an amendment, there shall be elected a Trustee or Trustees to fill any such vacancy or vacancies, as the case may be, and the person so elected to fill any such vacancy shall serve for the then remaining unexpired portion of the term of his or her predecessor. [As amended Acts 1945, 49th Leg., p. 252, ch. 186, § 1.]

Time of election

Sec. 4. Except as modified by this Act, all such elections in such Independent School Districts of cities

shall be held in the manner and in conformity with provisions of law now applicable; the date of such elections to be held on the first Saturday in April of the year in which the term of any such School Trustee expires.

Provisions cumulative

Sec. 5. The provisions of this Act shall be cumulative of all General Laws on the subject of this Act not in conflict herewith, and where not otherwise provided herein, such General Laws shall apply; but in case of conflict, the provisions of this Act shall control and be effective. [Acts 1937, 45th Leg., p. 296, ch. 153.]

Art. 2777e. Terms of trustees in districts having 70,000 or more scholastics and containing city of 375,000 or more; elections.—Section 1. In all Independent School Districts, whether created under the General Laws or by Special Act of the Legislature, having seventy thousand (70,000) or more scholastics according to the last official scholastic census and wherein there may be situated a City having a population of three hundred seventy-five thousand (375,000) or more according to the last preceding Federal Census and having a board of seven (7) Trustees, the term of office of the Board of School Trustees shall be six (6) years.

Sec. 2. All candidates for School Trustee in any such Independent School District, notwithstanding any contrary or inconsistent provisions in any other General or Special Law, shall be voted upon and elected separately for positions on said Board of Trustees and all candidates shall be designated on the official ballots according to the number of such position to which they seek election. Such official ballot shall have printed on it the following: "Official Ballot for the Purpose of Electing Trustees," giving the name of the School District together with the designating number of each position to be filled, with the list of candidates under the position to which they respectively seek election.

Sec. 3. Within ten (10) days from the date this Act shall become effective, the Trustees of any such Independent School District shall determine by lot which positions they shall hold on said Board of Trustees as follows: those whose terms of office expire during the year 1941, or who shall have been elected during the year 1941 if this Act shall not become effective until after March 1, 1941, shall draw for Positions Numbers 1 and 2; those whose terms of office expire during the year 1943 shall draw for Positions Numbers 3 and 4; those whose terms of office expire during the year 1945 shall draw for Positions Numbers 5, 6 and 7, and thereafter (a) if this Act shall become effective on or before March 1, 1941, Positions Numbers 1 and 2 shall be open for candidates to be elected at an election to be held on the first Saturday in April, 1941; (b) without regard to the effective date of this Act, Positions Numbers 3 and 4 shall be open for candidates to be elected at an election to be held on the first Saturday in April, 1943; (c) without regard to the effective date of this Act, Positions Numbers 5, 6 and 7 shall be open for candidates to be elected at an election to be held on the first Saturday in April, 1945, and thereafter, on the first Saturday of April of each odd numbered calendar year either two (2) or three (3) Trustees, as the case may be, shall be elected in like manner to positions on such Board of Trustees. (d) If this Act shall not become effective on or before March 1, 1941, Positions Numbers 1 and 2 shall be open for candidates to be elected at an election to be held on the first Saturday in April, 1947, and thereafter on the first Saturday of April of each odd numbered calendar year either two (2) or three (3) Trustees as the case may be shall be elected in like manner.

Sec. 4. Any person desiring election for a position on any such Board of Trustees shall, not less than ten (10) days prior to the date of said election, file with the Board of Trustees ordering such election written notice announcing his or her candidacy, designating in such written notice and request to have his or her name placed on the official ballot the number of the position on such Board of Trustees for which he or she as the case may be desires to become a candidate and all candidates so requesting shall have their names printed on the official ballot beneath the number of the position so designated. No person who does not so file said notice and request within the time aforesaid shall be entitled to have his or her name printed upon said official ballot to be used at any such election. No candidate shall be eligible to have his or her name placed on the official ballot under more than one position to be filled at any such election.

Sec. 5. In any such election each voter shall vote for only one candidate for each such position. The candidate receiving the highest number of votes for each respective position voted upon at any such election shall be entitled to serve as a Trustee on said board, holding the position thereon to which he or she as the case may be shall have been so elected.

Sec. 6. Notice of all elections for Trustees in any such Independent School District included within the terms of this Act heretofore created by Special Act of the Legislature shall be given in the manner and for the time required by such Special Acts and such elections in any such Districts shall be held in the manner and in conformity with such Special Acts so creating such School Districts, except where any such Special Act may be in conflict herewith, in which event this Act shall control; and, likewise, notice of all elections for Trustees in any Independent School District included within the terms of this Act heretofore created under the General Laws shall be given in the manner and in conformity with such General Laws except where any such General Laws may be in conflict herewith, in which event this Act shall control.

Sec. 7. All laws and parts of laws, both General and Special, insofar only as they may be in conflict herewith, are hereby repealed. [Acts 1941, 47th Leg., p. 29, ch. 17.]

Art. 2778. [2890] Oath of office.—Each trustee shall first swear that he will faithfully and impartially discharge the duties of such office; and his affidavit to that effect shall be filed after the first election with the county judge, and after all subsequent elections with the president or chairman of the school board. [Acts 1905, p. 263.]

Art. 2779. [2891] Organization of board.—Said trustees shall meet within twenty days after the election, or as soon thereafter as possible, for the purpose of organizing. A majority of said board shall constitute a quorum to do business. They shall choose from their number a president, and they shall choose a secretary, a treasurer, assessor and collector of taxes, and other necessary officers and committees. [Id.]

Art. 2779a. Election of tax assessors and collectors in independent school districts in counties of 19,220 to 19,240 and 51,325 to 54,200.—Upon receipt of a petition signed by twenty-five (25) per cent of the qualified voters in any Independent School District in counties having a population of no less than nineteen thousand, two hundred and twenty (19,220) and no more than nineteen thousand, two hundred and forty (19,240), and in counties having a population of no less than fifty-one thousand, three hundred and twenty-five (51,325) and no more than fifty-four thousand and two hundred (54,200), according to the last Federal Census, the Board of Trustees of such Independent School District shall provide for the election of a Tax Assessor and Collector to be held at the next regular election of Trustees of such Independent School Districts, and provided that such petition must be filed with the Board of Trustees at least sixty (60) days before the date of such election. The term of office of an elected Tax Assessor and Col-

lector shall be for two (2) years from the date of election. It is also provided that the Board of Trustees shall appoint a Tax Assessor and Collector upon receipt of a petition signed by twenty-five (25) per cent of the qualified voters in such Independent School District, but provided that if petitions requesting both election and appointment are filed at the same time, the petition which is signed by the largest number of qualified voters shall prevail, and the Board of Trustees shall follow the mode of selection of a Tax Assessor and Collector requested by such petition. [Added Acts 1941, 47th Leg., p. 439, ch. 272, § 1.]

Art. 2780. [2892] Power of trustees.—Said trustees shall adopt such rules, regulations and by-laws as they may deem proper; and the public free schools of such independent district shall be under their control; and they shall have the exclusive power to manage and govern said schools, and all rights and titles to property for school purposes heretofore vested in the mayor, city councils, or school trustees by articles 3995, 4013 and 4032, Revised Statutes of 1895, or other statutes, general and special, except such cities as are exempted by this title, shall be vested in said board of trustees and their successors in office; and their claims shall apply to any action or suit which may arise to which said board is a party. [Acts 1905, p. 263.]

Art. 2781. [2895] Teachers' contracts.—The Board of Trustees of any city or town or any independent school district may employ a superintendent, principal, teacher, or other executive officers in the schools therein for a term not to exceed three years, provided that the Board of Trustees of an independent school district which had a scholastic population of 5,000 or more in the last preceding scholastic year may employ a superintendent, principal, teacher, or other executive officers in the schools therein for a term not to exceed five years. All twelve-month contracts made by trustees of independent school districts with employees herein mentioned shall begin on July first and end on June 30th of the year terminating the contract. [Acts 1905, p. 263; Acts 1923, p. 260; Acts 1930, 41st Leg., 5th C.S., p. 123, ch. 8, § 1.]

Section 2 of Acts 1930, repeals all conflicting laws and parts of laws.

Art. 2782. [2884] Cities exempt.—The cities of Dallas and Fort Worth shall be exempt from the provisions of this title concerning trustees. [Acts 1905, p. 263.]

Art. 2783. [2894] Additional courses.—Any school district having voted a tax under the provisions of the succeeding subdivision may prescribe such other studies as the board of school trustees may deem proper. [Id.; Acts 1913, p. 175.]

Art. 2783a. Independent control of schools in certain cities, Board of Education, authority and duties.—Sec. 1. That the board of education or board of trustees in each and every incorporated city or town having a population of 100,000 or less according to the United States census of 1920 which has, when this Act becomes effective, control of the public free schools therein, regardless of whether such control was acquired by authority of Articles 2768 or 2769 of the Revised Civil Statutes of 1925, or any local, general or special law, or the provision of any charter, or by any other authority, shall hereafter have and exercise authority to control and manage the public schools of such city or town; and in the exercise of such authority the said board of education or board of trustees shall be independent of the municipal government of said city or town, and the Municipal authorities of such city or town shall have no further control, jurisdiction or authority over the public schools thereof under the provisions of any law, general, special, or local, or the provisions of any charter of such city or town.

Sec. 2. All authority existing in any such city or town having any relation to, connection with, the public free school therein, and all the duties imposed by law upon such city or town concerning the support, control or management of such schools, shall hereafter be exercised by such city or town through the board of education or board of trustees therein; and each city or town having heretofore had the control and management of the public schools thereof shall hereafter constitute an independent school district, governed and controlled by the board of education or board of trustees thereof, as provided by general law for the control and management of independent school districts.

Sec. 3. The board of education or board of trustees of such an independent district, as is provided for in Section 2 of this Act, shall consist of seven members elected at the time, in the manner, and for such term as is now, or may hereafter be provided by general law relating to the control, management and organization of independent school districts; provided, however, that nothing in this Act shall be construed as to prevent any member of the board of education or board of trustees of any city or town referred to in Section 1 from serving the remainder of the term for which he was elected or appointed prior to the passage of this act. And the said independent school district is hereby vested with all the rights, powers and duties of an independent school district incorporated for free school purposes, including the right to levy taxes and issue bonds for school purposes, as provided by General Law.

Sec. 4. The title to all property owned and used by any city or town referred to in Section 1 of this Act, which has heretofore been acquired and used for school purposes, shall hereafter vest in the independent district provided for in Section 2, and shall be managed and controlled by the board of trustees thereof, as is now, or may hereafter be, provided by general law. And in the event any city or town has outstanding bonds issued for school purposes, the independent school district may by a majority vote of the qualified tax-paying voters thereof assume said bonds and authorize the levy of a tax to pay the interest thereon and to pay the principal at maturity; the election for this purpose to be governed by the general law relating to independent school districts.

Sec. 5. Before this Act shall take effect in any city which has assumed control of the public schools within its limits, a petition signed by qualified voters of said city to the number of more than twenty-five per cent of those voting in the last regular election for city officials shall be filed with the mayor, requesting the submission of the proposition as to whether or not the public schools shall be divorced from municipal control. Within thirty days after filing said petition the mayor shall order an election to be held within not less than twenty days and not more than thirty days to determine the question submitted. The ballots for said election shall have written or printed thereon the words: "For the separation of the public schools from municipal control." "Against the separation of the public schools from municipal control." The election shall be held and the returns shall be made and canvassed and the results declared in the same manner as is required in other city elections. [Acts 1929, 41st Leg., p. 674, ch. 302.]

Section 6 of this Act repeals all conflicting laws and parts of laws.

Acts 1947, 50th Leg., p. 276, c. 171, § 11, incorporated in art. 2783d, provides that such act shall not repeal Acts 1929, 41st Leg., p. 674, c. 302.

Art. 2783b. Independent control of schools in certain municipal school districts.

Definitions

Sec. 1. The term "municipal school district," as used in this Act, shall include any city or town con-

stituting a separate and independent school district under authority of Section 3, of Article 7, of the Constitution, as amended, and/or Section 10, of Article 11, of the Constitution, the boundaries of the school corporation being the same as the boundaries of the city or town and which said city has a population of thirty thousand (30,000) or less, according to the last preceding United States Census.

The term "governing body," as used in this Act, shall include the governing body of each such city or town, whether designated as "city commission," "city council," "board of aldermen," or otherwise.

Petition and election for separation from municipal control

Sec. 2. When any municipal school district, as defined in Section 1 hereof, shall desire to have the public schools within its limits separated from municipal control so that the school corporation shall become and be an independent school district, without the dual character theretofore possessed by the school corporation and the city or town, the same shall be done in the following manner:

Whenever as many as one hundred (100) of the resident qualified voters of such municipal school district and city or town petition the Board of Education or board of school trustees of such municipal district, praying for an election on the proposition as to whether or not the public schools shall be divorced from municipal control, the said Board shall certify such petition to the governing body of the city or town. When such petition and the certificate of the Board of Education or trustees, has been submitted to the governing body of such city or town, it shall thereupon be the duty of such governing body to fix a date, which date shall not be more than ten (10) days from the date such petition and certificate are submitted, for the holding of a joint meeting of the governing body of the city or town and the Board of Education or trustees of the municipal school district. At such joint meeting, the governing body of the city or town and the Board of Education or trustees of the municipal school district, acting jointly as one body, the mayor or chairman of the governing body presiding, shall order an election as prayed for in such petition. The election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city or town. Every person who has attained the age of twenty-one (21) years and who has resided within the limits of the municipal school district and city or town for the six months next preceding the date of election, and is a qualified elector under the laws of this State, shall be entitled to vote at the election.

Ballots for or against separation

Sec. 3. All persons voting at such election in favor of such proposition shall have written or printed on their ballots the words, "For the separation of the public schools from municipal control," and all persons voting at such election not in favor of such proposition shall have written or printed on their ballots the words, "Against the separation of the public schools from municipal control."

Canvass of returns and certification of result; declaration of separation; corporate name.

Sec. 4. If a majority of the qualified voters, voting at the election in such municipal school district, shall vote in favor of the separation of the public schools from municipal control, the governing body of such city or town shall immediately canvass the returns and certify the result of such election to the Board of Education or board of trustees of such municipal school district, together with a certified copy of the record showing all the proceedings in respect of such election. If such Board of Education or board of trustees finds that such election has been in all respects lawfully held and the returns thereof duly and legally made to the governing body of such city or town, then it shall by resolution duly passed and entered of record, declare that the public schools of the municipal school district have been separated from municipal control, and that the corporate name of the school district shall thereafter be "_____ Independent School District," inserting the name of such city or town. If the proposition shall be defeated at such election, then no election for that purpose shall be ordered until after the expiration of one year from the date of such election.

Powers conferred on separated districts

Sec. 5. Except as herein denied or limited, all the powers conferred upon independent school districts and/or towns and villages incorporated for free school purposes only, by Title 49, of the Revised Civil Statutes of Texas, of 1925, and amendments thereto, including the right to annex contiguous territory for school purposes, and the right to levy taxes and issue bonds for school purposes, as provided by General Law, are hereby conferred upon any independent school district separated from municipal control under the provisions of this Act; provided however, that the trustees of any independent school district that may hereafter be separated from municipal control under the provisions of this Act, shall have the power to levy and collect an annual ad valorem tax not to exceed One Dollar ($1) on the One Hundred Dollars ($100) valuation of taxable property of the district, for the maintenance of the schools therein, and, in addition thereto, an annual ad valorem tax on each One Hundred Dollars ($100) valuation of taxable property of the district sufficient to pay the principal of and interest on all bonds issued for school building purposes outstanding against the municipal school district at the time of separation from municipal control, and the principal of and interest on all bonds to be issued hereafter by any such independent school district; provided, that nothing herein shall be construed as abrogating or in any manner repealing or affecting any maintenance tax and/or bond taxes heretofore voted, authorized and/or levied on taxable properties situated within the limits of the municipal school district; provided further, that no increase in the maximum rate of school maintenance tax and/or bond debt of any such district shall be authorized until after an election shall have been held wherein a majority of the tax-paying voters, voting at said election, shall have voted in favor of said tax, or the issuance of said bonds, or both, as the case may be; and provided further, that the bonds of any such district shall not exceed in amount seven (7) per centum of the assessed value of taxable property of such district, as shown by the last annual assessment of such property.

Existing board of education or board of trustees to continue until expiration of terms; vacancy

Sec. 6. That the members of the Board of Education or the board of trustees of such municipal school district shall continue as the members of the Board of Education or board of trustees of such independent school district after separation from municipal control until their terms for which they have been elected or appointed, as the case may be, shall have expired, or until their successors have been elected and qualified; provided, that a general election shall be held on the first Saturday in April of each year in which vacancies on the board occur, for the purpose of electing trustees for said vacancies, for a term of four (4) years; provided further, that in case of a vacancy or resignation of a member of the board of trustees, the vacancy shall be filled for the unexpired term by appointment made by the board of trustees.

Assessment and collection of taxes

Sec. 7. That the Board of Education or board of trustees of such independent school district, after separation from municipal control, shall have authority to provide for the taxes of said independent school

district to be assessed by the Assessor and Collector of Taxes of the city of which such school district was formerly a part, or to have the taxes of said district assessed and collected by an assessor and collector appointed by the board of trustees. Such assessor and collector shall be allowed and paid such compensation as is now or may be hereafter provided by law.

Title and rights to property

Sec. 8. The title and rights to all property owned, held, set apart or in any way dedicated to the use of the public schools of the city or town, and/or heretofore vested in such city or town and/or the mayor, chairman of the commission, city council, city commission or board of school trustees of such city or town, prior to separation from municipal control as herein authorized and provided, shall be and are hereby invested in the Board of Education or board of trustees of such independent school district, after separation from municipal control, and shall be managed and controlled by the Board of Education or board of trustees thereof, as is now or may hereafter be provided by law.

Bonds and outstanding obligations

Sec. 9. All bonds issued by and outstanding against any such city or town, as a municipal school district, and all obligations, contracts and indebtedness existing against the city or town, as a municipal school district, shall become the obligations and debts of the independent school district at the time of its separation from municipal control, and the said independent school district, after separation from municipal control, shall be held to have assumed the discharge of all such obligations, contracts and indebtedness, and the same shall be enforceable and collectible from, paid off and discharged by the said independent school district, as if originally created by it as a separate and independent school district; and it shall not be necessary to call an election within and for such district for the purpose of assuming such bonds and other indebtedness.

Partial invalidity

Sec. 10. If any section. sentence, clause or phrase of this Act is held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act.

Acts saved from repeal

Sec. 11. This Act shall not repeal any law already in existence, and especially this Act shall not repeal Chapter 302,[1] of the General Laws passed by the Forty-first Legislature, at its Regular Session in 1929, but said law, as embraced in said Chapter, shall and does remain in full force and effect, and shall continue to be applicable to the cities or towns therein mentioned, heretofore or hereafter adopting the same. [Acts 1935, 44th Leg., p. 219, ch. 88.]

[1] Article 2783a, ante.

Acts 1947, 50th Leg., p. 276, c. 171, § 11, incorporated in art. 2783d, provides that such Act shall not repeal Acts 1935, 44th Leg., p. 219, c. 88.

Art. 2783c. Extended municipal school district.

Definition

Sec. 1. The term "extended municipal school district," as used in this Act, shall include any independent school district existing under the authority of Section 3, of Article 7, of the Constitution of Texas, as amended, and/or Section 10, of Article 11, of the Constitution of Texas, including within its boundaries a city or town which has within its municipal limits a population of ten thousand (10,000) or less, according to the last preceding United States Census, and which city or town has extended its limits for school purposes only under authority of provisions of Title 49, Revised Civil Statutes of Texas, of 1925, and amendments.

Petition for separation from municipal control; election

Sec. 2. When any extended municipal school district, as defined in Section 1 hereof, shall desire to have the public schools within its limits separated from municipal control so that the school corporation shall become and be an independent school district, without the dual character theretofore possessed by the school corporation and the city or town as extended for school purposes only, the same shall be done in the following manner:

Whenever as many as one hundred (100) of the resident qualified voters of such municipal extended school district and/or city or town as extended for school purposes only petition the Board of Education or board of school trustees of such municipal extended district, praying for an election on the proposition as to whether or not the public schools shall be divorced from municipal control, the said Board shall certify such petition to the governing body of the city or town. When such petition and the certificate of the Board of Education or trustees, has been submitted to the governing body of such city or town, it shall thereupon be the duty of such governing body to fix a date, which date shall be not more than ten (10) days from the date such petition and certificate are submitted for the holding of a joint meeting of the governing body of the city or town and the Board of Education or trustees of the extended municipal school district. At such joint meeting, the governing body of the city or town and the Board of Education or trustees of the extended municipal school district, acting jointly as one body, the mayor or chairman of the governing body presiding, shall order an election as prayed for in such petition. The election shall be held within not more than thirty (30) days nor less than ten (10) days and ten (10) days notice of said election shall be given, otherwise as nearly as possible in compliance with the law with reference to regular city elections in said city or town. Every person who has attained the age of twenty-one (21) years and who has resided within the limits of the extended municipal school district and city or town as extended for school purposes only for the six (6) months next preceding the date of election, and is a qualified elector under the laws of this State, shall be entitled to vote at the election.

Ballots

Sec. 3. All persons voting at such election in favor of such proposition shall have written or printed on their ballots the words, "For the separation of the public schools from municipal control," and all persons voting at such election not in favor of such proposition shall have written or printed on their ballots the words, "Against the separation of the public schools from municipal control."

Declaration of result of election

Sec. 4. If a majority of the qualified voters, voting at the election in such extended municipal school district, shall vote in favor of the separation of the public schools from municipal control, the governing body of such city or town shall immediately canvass the returns and certify the result of such election to the Board of Education or Board of Trustees of such extended municipal school district, together with a certified copy of the record showing all the proceedings in respect of such election. If such Board of Education or Board of Trustees finds that such election has been in all respects lawfully held and the returns thereof duly and legally made to the governing body of such city or town, then it shall by resolution duly passed and entered of record, declare that the public schools of the extended municipal school district have been separated from municipal control, and that the corporate name of the school district shall thereafter be "——— Independent School District," inserting the name of such city or town. If the proposition shall be defeated at such

election, then no election for that purpose shall be ordered until after the expiration of one year from the date of such election.

Powers conferred on district

Sec. 5. Except as herein denied or limited, all the powers conferred upon independent school districts and/or towns and villages incorporated for free school purposes only, by Title 49, of the Revised Civil Statutes of Texas, of 1925, and amendments thereto, including the right to annex contiguous territory for school purposes, and the right to levy taxes and issue bonds for school purposes, as provided by General Law, hereby are conferred upon any independent school district separated from municipal control under the provisions of this Act; provided however, that the trustees of any independent school district that may hereafter be separated from municipal control under the provisions of this Act, shall have the power to levy and collect an annual ad valorem tax not to exceed One Dollar ($1) on the One Hundred Dollars ($100) valuation of taxable property of the District, for the maintenance of the schools therein, and not exceeding fifty (50) cents of which may be used to pay the principal and interest on all bonds issued for school building purposes outstanding against the extended municipal school district at the time of separation from municipal control, and the principal of and interest on all bonds to be issued hereafter by any such independent school district; provided, that nothing herein shall be construed as abrogating or in any manner repealing or affecting any maintenance tax and/or bond taxes heretofore voted, authorized and/or levied on taxable properties situated within the limits of the extended municipal school district; provided further, that no increase in the maximum rate of school maintenance tax and/or bond debt of any such district shall be authorized until after an election shall have been held wherein a majority of the taxpaying voters, voting at said election, shall have voted in favor of said tax, or the issuance of said bonds, or both, as the case may be; and provided further, that the bonds of any such district shall not exceed in amount seven (7) per centum of the assessed value of taxable property of such district, as shown by the last annual assessment of such property.

Trustees; number; terms

Sec. 6. The Board of Trustees of such independent school district after separation from municipal control, shall consist of seven (7) members. The members of the Board of Trustees of such extended municipal school district shall continue as members of the Board until the terms for which they have been elected or appointed, as the case may be, shall have expired, or until their successors have been elected and qualified; provided that in any district where the Board of Trustees was composed of fewer than seven (7) members in such extended municipal school district, after divorcement from municipal control the number necessary to cause the board to consist of seven (7) members shall be appointed by the members already serving as trustees, such appointees to serve in accordance with the general law governing the election and tenure of office of independent school district trustees. Provided further that an election shall be held on the first Saturday in April of each year, at which election either two (2) trustees or three (3) trustees, as the case may be, shall be elected to serve for a term of three (3) years. In the case of a vacancy on said board caused by any reason, said vacancy shall be filled for the unexpired term by appointment on the part of the remaining members of said Board of Trustees.

Taxation

Sec. 7. That the Board of Education or Board of Trustees of such independent school district, after separation from municipal control, shall have authority to provide for the taxes of said independent school district to be assessed by the Assessor and Collector of Taxes of the city of which such school district was formerly a part, or to have the taxes of said district assessed and collected by an Assessor and Collector appointed by the Board of Trustees. Such Assessor and Collector shall be allowed and paid such compensation as is now or may be hereafter provided by law.

Property rights of district

Sec. 8. The title and rights to all property owned, held, set apart or in any way dedicated to the use of the public schools of the city or town as extended for school purposes only, and/or heretofore vested in such city or town and/or the mayor, chairman of the commission, city council, city commission or board of school trustees of such city or town, prior to separation from municipal control as herein authorized and provided, shall be and are hereby vested in the Board of Education or Board of Trustees of such independent school district, after separation from municipal control, and shall be managed and controlled by the Board of Education or Board of Trustees thereof, as is now or may hereafter be provided by law.

District's assumption of indebtedness

Sec. 9. All bonds issued by and outstanding against any such city or town, as a school district, and all obligations, contracts and indebtedness existing against the city or town, as a school district, shall become the obligations and debts of the independent school district at the time of its separation from municipal control, and the said independent school district, after separation from municipal control, shall be held to have assumed the discharge of all such obligations, contracts and indebtedness, and the same shall be enforceable and collectible from, paid off and discharged by, the said independent school district, as if originally created by it as a separate and independent school district; and it shall not be necessary to call an election within and for such district for the purpose of assuming such bonds and other indebtedness.

Partial invalidity

Sec. 10. If any section, sentence, clause or phrase of this Act is held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act.

Acts saved from repeal

Sec. 11. This Act shall not repeal any law already in existence, and especially this Act shall not repeal Chapter 302, of the General Laws passed by the Forty-first Legislature,[1] at its Regular Session in 1929, nor shall it repeal Chapter 88, of the General Laws passed by the Forty-fourth Legislature, at its Regular Session in 1935,[2] but said law, as embraced in said Chapters, shall and does remain in full force and effect, and shall continue to be applicable to the cities or towns therein mentioned, heretofore or hereafter adopting the same. [Acts 1935, 44th Leg., 2nd C.S., p. 1689, ch. 432.]

[1] Article 2783a, ante.
[2] Article 2783b, ante.

Art. 2783d. Separation from municipal control of extended municipal school district having city of 290,000 or more.

Definition

Section 1. The term "extended municipal school district," as used in this Act, shall include any independent school district existing under the authority of Section 3, of Article 7, of the Constitution of Texas, as amended, and/or Section 10, of Article 11, of the Constitution of Texas, including within its boundaries a city or town which has within its municipal limits a population of two hundred ninety thousand (290,000) or more, according to the last preceding United States Census, and which city or town has extended its limits for school purposes only under authority of provisions

of Title 49, Revised Civil Statutes of Texas, of 1925, and amendments.

Petition for separation from municipal control; election

Sec. 2. When any extended municipal school district, as defined in Section 1 hereof, shall desire to have the public schools within its limits separated from municipal control so that the school corporation shall become and be an independent school district, without the dual character theretofore possessed by the school corporation and the city or town as extended for school purposes only, the same shall be done in the following manner:

Whenever as many as one hundred (100) of the resident qualified voters of such municipal extended school district and/or city or town as extended for school purposes only petition the Board of Education or Board of School Trustees of such municipal extended district, praying for an election on the proposition as to whether or not the public schools shall be divorced from municipal control, the said Board shall certify such petition to the governing body of the city or town. When such petition and the certificate of the Board of Education or trustees, has been submitted to the governing body of such city or town, it shall thereupon be the duty of such governing body to fix a date, which date shall be not more than ten (10) days from the date such petition and certificate are submitted for the holding of a joint meeting of the governing body of the city or town and the Board of Education or trustees of the extended municipal school district. At such joint meeting the governing body of the city or town and the Board of Education or trustees of the extended municipal school district, acting jointly as one body, the mayor or chairman of the governing body presiding, shall order an election as prayed for in such petition. The election shall be held within not more than thirty (30) days nor less than ten (10) days, and ten (10) days notice of said election shall be given; otherwise as nearly as possible in compliance with the law with reference to regular city elections in said city or town. Every person who has attained the age of twenty-one (21) years and who has resided within the limits of the extended municipal school district and city or town as extended for school purposes only for the six (6) months next preceding the date of election, and is a qualified elector under the laws of this state, shall be entitled to vote at the election.

Ballots

Sec. 3. All persons voting at such election in favor of such proposition shall have written or printed on their ballots the words, "For the separation of the public schools from municipal control", and all persons voting at such election not in favor of such proposition shall have written or printed on their ballots the words, "Against the separation of the public schools from municipal control".

Declaration of result of election

Sec. 4. If a majority of the qualified voters, voting at the election in such extended municipal school district, shall vote in favor of the separation of the public schools from municipal control, the governing body of such city or town shall immediately canvass the returns and certify the result of such election to the Board of Education or Board of Trustees of such extended municipal school district, together with a certified copy of the record showing all the proceedings in respect of such election. If such Board of Education or Board of Trustees finds that such election has been in all respects lawfully held and the returns thereof duly and legally made to the governing body of such city or town, then it shall by resolution duly passed and entered of record, declare that the public schools of the extended municipal school district have been separated from municipal control, and that the corporate name of the school district shall thereafter be "————— Independent School District," inserting the name of such city or town. If the proposition shall be defeated at such election, then no election for that purpose shall be ordered until after the expiration of one (1) year from the date of such election.

Powers conferred on district

Sec. 5. Except as herein denied or limited, all the powers conferred upon independent school districts and/or towns and villages incorporated for free school purposes only, by Title 49, of the Revised Civil Statutes of Texas, of 1925, and amendments thereto, including the right to annex contiguous territory for school purposes, and the right to levy taxes and issue bonds for school purposes, as provided by General Law, hereby are conferred upon any independent school district separated from municipal control under the provisions of this Act; provided however, that the trustees of any independent school district that may hereafter be separated from municipal control under the provisions of this Act, shall have the power to levy and collect an annual ad valorem tax not to exceed One and 25/100 ($1.25) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property of the district, for the maintenance of the schools therein, and which may be used to pay the principal and interest on all bonds issued for school building purposes outstanding against the extended municipal school district at the time of separation from municipal control, and the principal of and interest on all bonds to be issued hereafter by any such independent school district; provided that nothing herein shall be construed as abrogating or in any manner repealing or affecting any maintenance tax and/or bond taxes heretofore voted, authorized and/or levied on taxable properties situation within the limits of the extended municipal school district; provided further, that no increase in the maximum rate of school maintenance tax and/or bond debt of any such district shall be authorized until after an election shall have been held wherein a majority of the taxpaying voters, voting at said election, shall have voted in favor of said tax, or the issuance of said bonds, or both, as the case may be; and provided further, that the bonds of any such district shall not exceed in amount seven (7%) per centum of the assessed value of taxable property of such district, as shown by the last annual assessment of such property. In the event an election is held for the purpose of separating such school district from municipal control, and such election is in favor of the separation of the public schools from municipal control, then such independent school district may levy and collect taxes as of January 1st, of the year in which the election was held, and thereafter levy and collect such taxes on an annual basis.

Board of Education or Board of Trustees

Sec. 6. The Board of Education or Board of Trustees of such independent school district, after separation from municipal control, shall consist of seven (7) members. The members of the Board of Education or Board of Trustees of such extended municipal school district shall continue as members of the Board until the terms for which they have been elected or appointed, as the case may be, shall have expired, or until their successors have been elected and qualified; provided that in any district where the Board of Education or Board of Trustees was composed of fewer than seven (7) members in such extended municipal school district, after divorcement from municipal control the number necessary to cause the Board to consist of seven (7) members shall be appointed by the members already serving as trustees, such appointees to serve in accordance with the general law governing the election and tenure of office of independent school district trustees. Provided further, that an election shall be held on the first Saturday in April of each even-numbered year, at which election either two (2)

trustees or three (3) trustees, as the case may be, shall be elected to serve for a term of six (6) years. In the case of a vacancy on said Board caused by any reason, said vacancy shall be filled for the unexpired term by appointment on the part of the remaining members of said Board of Education or Board of Trustees.

Taxation

Sec. 7. The Board of Education or Board of Trustees of such independent school district, after separation from municipal control, shall provide for the taxes of said independent school district to be assessed by the Assessor and Collector of Taxes of the city of which such school district was formerly a part. Said Assessor and Collector shall be allowed and paid such compensation as is now or may be hereafter provided by law.

Property rights of district

Sec. 8. The title and rights to all property owned, held, set apart or in any way dedicated to the use of the public schools of the city or town as extended for school purposes only, and/or heretofore vested in such city or town and/or the mayor, chairman of the commission, city council, city commission or Board of Education or Board of School Trustees of such city or town, prior to separation from municipal control as herein authorized and provided, shall be and are hereby vested in the Board of Education or Board of Trustees of such independent school district, after separation from municipal control, and shall be managed and controlled by the Board of Education or Board of Trustees thereof, as is now or may hereafter be provided by law.

District's assumption of indebtedness

Sec. 9. All bonds issued by and outstanding against any such city or town, as a school district, and all obligations, contracts and indebtedness existing against the city or town, as a school district, shall become the obligations and debts of the independent school district at the time of its separation from municipal control, and the said independent school district, after separation from municipal control, shall be held to have assumed the discharge of all such obligations, contracts and indebtedness, and the same shall be enforceable and collectible from, paid off and discharged by, the said independent school district, as if originally created by it as a separate and independent school district; and it shall not be necessary to call an election within and for such district for the purpose of assuming such bonds and other indebtedness.

Partial invalidity

Sec. 10. If any section, sentence, clause or phrase of this Act is held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act.

Acts saved from repeal

Sec. 11. This Act shall not repeal any law already in existence, and especially this Act shall not repeal Chapter 302, of the General Laws passed by the 41st Legislature, at its Regular Session in 1929,[1] nor shall it repeal Chapter 88, of the General Laws passed by the 44th Legislature, at its Regular Session in 1935,[2] but said law, as embraced in said Chapters, shall and does remain in full force and effect, and shall continue to be applicable to the cities or towns therein mentioned, heretofore or hereafter adopting the same. [Acts 1947, 50th Leg., p. 276, ch. 171.]

[1] Article 2783a.
[2] Article 2783b.

4. TAXES AND BONDS

Art. 2784. [Repealed by Acts 1945, 49th Leg., p. 488, ch. 304, § 2.]

Road districts organized and bonds issued under laws held invalid by the United States Supreme Court in Browning v. Hooper, 46 S. Ct. 141, 269 U. S. 396, 70 L. Ed. 330, were validated by Acts 1926, 39th Leg., 1st C. S. p. 33, ch. 17.

Acts 1935, 44th Leg., p. 666, ch. 281 relating to both school districts and municipal corporations makes all provisions of Title 122 applicable, see article 1060a, ante.

Art. 2784a. Tax rate in school districts in counties having population of 720 and not more than 750.—In all counties in this State which according to the Federal Census of 1920, had a population of not fewer than Seven Hundred Twenty (720) and not more than Seven Hundred Fifty (750), the maximum rate of tax which may be levied in each common or independent school district of the said counties for the maintenance of the public schools and issuance of bonds may be One Hundred Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation of taxable property, said tax to be authorized, assessed, levied and collected under the provisions of the general laws. The amount of bond tax herein authorized shall never exceed fifty cents (.50c) on the One Hundred ($100.00) Dollars valuation of taxable property. [Acts 1930, 41st Leg., 4th C.S., p. 53, ch. 30, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 2784b. Tax on state lands in Cherokee county for school purposes.—Sec. 1. That from and after the passage of this Act, all land in Cherokee County, Texas, owned by the State of Texas and Prison Commission of Texas, except the land heretofore set aside for the Rusk State Hospital, but including the land heretofore set aside to the Agricultural & Mechanical College for re-forestration purposes, shall be subject to taxation for school purposes where any such land is embraced within the metes and bounds of any independent or common school district.

Sec. 2. Where any such land is embraced within the metes and bounds of any independent or common school district, the Trustees of the Independent School District, of the Commissioners' Court for a Common School District, are hereby authorized to levy and cause to be assessed and collected taxes for school purposes for the amount and in the manner prescribed by the General Laws for the levy of school taxes.

Sec. 3. The taxes herein provided for shall be assessed and collected in the manner now prescribed by General Laws for the assessment and collection of school taxes. [Acts 1930, 41st Leg., 5th C.S., p. 179, ch. 39.]

Art. 2784c. Tax rate in certain counties having population of 130,000 to 150,000.

Maximum rates

Section 1. In all common school districts in this State which have a taxable valuation of One Million, Five Hundred Thousand Dollars ($1,500,000) or less, as shown by the last approved tax rolls of the county in which such school districts are situated, in counties having a population of one hundred and thirty thousand (130,000) to one hundred and fifty thousand (150,000) and having therein two (2) cities of more than fifty thousand (50,000) population each, according to the last preceding Federal Census, the maximum rate of tax which may be levied in each said common school district for the maintenance of the public schools and the issuance of bonds may be One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property situated in said districts, said tax to be authorized, assessed, levied, and collected under the provisions of the General Laws. The amount of bond tax herein authorized shall never exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property.

Elections authorizing tax; qualifications of electors

Sec. 2. No tax shall be levied, collected, abrogated, diminished, or increased and no bonds shall be issued hereunder until such action has been first authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but prop-

erty taxpaying qualified voters of such district shall be entitled to vote.

Election procedure

Sec. 3. Before an election is held to determine the proposition of the levy of such tax, a petition therefor signed by twenty (20) or more, or a majority of those entitled to vote at such an election, shall be presented to the County Judge of the county in which such common school district is situated. On presentation of said petition, said official shall order an election for such purpose and order the sheriff to post notices thereof in three (3) places in the district for three (3) weeks prior thereto. The petition, election order, and notice of election shall in all cases either state the specific rate of tax to be voted on or that the rate shall not exceed the limit herein specified. All election orders, and notices of election shall state the date and place of holding the election. The ballots for maintenance tax elections shall have written or printed thereon the words, "For the school tax" and "Against the school tax." If said maintenance tax proposition is defeated at an election held for such purpose, no other election shall be held therefor, for one year from the date of said election. The Commissioners Court shall canvass the returns and declare the results of said election and said election shall be held and conducted as provided by law for General Elections except as herein provided.

Authority of Commissioners Court

Sec. 4. The Commissioners Court of the county in which such common school districts are situated under the provisions of this Act shall have the power to levy and cause to be collected the annual tax herein authorized subject to the foregoing provisions of this Act. [Acts 1937, 45th Leg., p. 779, ch. 379.]

Art. 2784d. Borrowing money, additional power of districts of 39,495 to 39,500 population and having large percentage of delinquent taxes.—Section 1. In addition to the powers conferred by other Acts, the board of education or other governing body of any school district having at any time outstanding delinquent taxes (other than bond taxes) levied within the preceding seven (7) years exceeding Eighteen Thousand Dollars ($18,000) and not less than sixty (60) per centum of its current tax levy for maintenance and operation, may borrow money for school purposes in an amount not exceeding fifty (50) per centum of the total amount of all delinquent taxes, excluding those mentioned in Section 7 hereof, and issue notes or certificates of indebtedness therefor in anticipation of the collection of such delinquent taxes. In the resolution authorizing the issuance of said notes or certificates, the governing body of any such district shall prescribe the rate of interest and the serial maturities thereof, the maximum maturity date not to exceed fifteen (15) years, and rights of redemption prior to maturity, if any, as to such notes scheduled to mature on and after five (5) years from their date. Except as herein otherwise provided, such taxes shall be deemed to be irrevocably pledged to the payment of such notes or certificates and shall as collected be paid into a separate fund or funds to be used solely for such payment until all such notes or certificates have been paid. The proceeds of said notes shall be applied first to the payment of any valid indebtedness or renewal thereof of such district previously incurred in anticipation of the collection of such delinquent taxes, and the balance of such proceeds shall be applied to other school purposes as the board of education or other governing body of the school district may authorize and provide.

Sec. 2. Whenever any notes or certificates of indebtedness have been issued under this Act, and so long as any of them may be outstanding the officer charged with the collection of such delinquent taxes shall pay the same to the legal depository of the district, to be deposited and held in a special fund for the payment of such notes or certificates, and except as herein otherwise provided, no part thereof shall be applied or used for any other purpose.

Sec. 3. The resolution authorizing such notes or certificates may provide for the transfer from such special fund or any accumulation of moneys not reasonably necessary to secure and assure their payment, but no such transfer shall be made except in consideration of the pledge of additional delinquent taxes as herein provided. At any time after the end of the fiscal year in which such notes or certificates are issued, or at or after the end of or during any later fiscal year, as and when current taxes become delinquent, the Board of education or any other governing body of the district may pledge to such special fund the delinquent taxes of such later year in such manner as may be prescribed in such authorizing resolution. Concurrently with the pledging of such revenues, if the notes or certificates remaining unmatured or unpaid less the moneys in the special fund for their payment are less than fifty (50) per cent (or such higher percentage as may be prescribed in the resolution authorizing such notes or certificates) of the delinquent taxes of the seven (7) next preceding fiscal years so pledged, such governing body may by resolution make the transfer of money from such funds to its general fund, provided, however, that no such transfer shall be made at any time unless all the taxes then delinquent of the later years not including the original pledge under Section 1, including all delinquent taxes of the next preceding fiscal year shall have been duly pledged to such fund and all other indebtedness chargeable against such delinquent taxes shall have been paid, and unless there shall be and remain in such special fund a sum sufficient to pay the principal and interest on such notes or certificates to fall due within one year thereafter, which sum shall also be not less at any time than an amount which, multiplied by the number of full years then remaining until the last of such notes or certificates become due, will equal the amount of notes or certificates then outstanding; provided, however, to make it clear, no such transfer of money from the special fund shall be permitted unless, after such transfer, the pledged delinquent taxes for the preceding seven (7) years shall be at least twice the amount of the outstanding certificates or notes less the amount of money left in the special fund. In addition to any requirements of such authorizing resolutions, on the occasion of each such transfer of money from the special to the general fund, the governing body of such district shall adopt a resolution making the findings of fact which are in this Section made a prerequisite to such transfer, directing the transfer of such money and authorizing its proper officers to issue proper checks or vouchers to accomplish the purpose. The resolution authorizing such notes or certificates may prescribe the form of resolution to effect such pledge of later delinquent taxes and the form of proof to be furnished the legal depository showing compliance with this Act and with such resolution. Such proof with certified copy of such resolution shall be filed with the legal depository of such district, as authority for and shall be filed with the legal depository of such district, prior to the transfer of such money. Upon receipt of and in accepting such instrument and by such transfer of funds, said legal depository shall incur no liability other than that imposed on such depository by other laws, or by the authorizing resolution, or for its own gross neglect. Such proof and such certified copy shall be available, for examination by the holder of any such certificate or note at all reasonable times, upon written request made of such legal depository. Thereafter all of such delinquent taxes additionally pledged shall be subject to the provisions of this Act in all respects as though they had been included in the original pledge under Section 1 of this Act. The officer charged with the collection of

delinquent taxes shall be charged with knowledge of such pledge or transfer and all moneys collected by him and any additional delinquent taxes so pledged shall be paid into such special fund, as above provided. So long as the original pledge of said taxes remains intact, and so long as such subsequent pledges of delinquent taxes for later years and concomitant transfers of money from said special fund to the general fund are made in strict compliance with the provisions of this Section, the holder or holders of such notes or certificates shall never have the right to demand payment thereof out of any fund other than such pledged delinquent taxes, but in all other respects such notes or certificates shall constitute obligations of the district and nothing herein shall prevent the use of general funds when necessary for their payment.

Sec. 4. Nothing herein shall prevent the district from borrowing funds in any year payable out of the revenues of such year and chargeable to such revenues, including any revenues that may be derived by transfer from such special fund under Section 3 but loans chargeable against the taxes of any year shall be paid or if so provided in the authorizing resolution described in Section 1 of the loan on current taxes securing same released before the taxes for such year when delinquent may be pledged under Section 3. For the purpose of this Act, the district may pay or renew any such current loans by new loans against the revenues of the succeeding year. But nothing in this Act shall prevent the district from pledging its current revenue or impair any loan so created.

Sec. 5. Interest and penalties on delinquent taxes shall be deemed a part of such taxes for the purpose of this Act. Should any delinquent taxes including interest and penalties be cancelled, waived, released, or reduced either by the district or in any other way, with or without its consent, the amount of the loss so sustained shall be paid by the district to the special fund provided in Section 2 out of funds not otherwise pledged to such special fund; provided, that in lieu of such payment the district may file with the legal depository a resolution and proof sufficient in form and effect to authorize the release of such moneys (if paid) from such fund under Section 3.

Sec. 6. Should there be an existing pledge at the time of the adoption of the original authorizing resolution of not exceeding ten (10) per cent of the delinquent taxes to secure indebtedness which in the judgment of the governing body is otherwise adequately secured, the resolution authorizing such notes or certificates may provide that such indebtedness, notwithstanding such pledge, shall not for purpose of this Act be deemed chargeable against such delinquent taxes and nothing in this Act or done under it shall be deemed to impair such prior charge.

Sec. 7. Taxes levied in any year to pay principal and interest of bonds which taxes subsequently become delinquent for the purpose of this Act shall not be included in the terms taxes or revenues or delinquent taxes as such herein.

Sec. 8. If and as provided in the resolution authorizing such notes or certificates, in the event of the violation of this Act or of any covenants made under it by which violation any moneys required to be paid into the special fund are not so paid or any moneys in such fund are applied, used, or transferred, except as provided by this Act, then in addition to the other rights and remedies hereunder the officer or officers required to collect any taxes or to pay any revenue to the district shall pay such taxes when collected or such revenue to the legal depository to be deposited and held in the special fund provided for the payment of such notes or certificates until the amount so paid (excluding delinquent taxes pledged) shall equal the moneys not so paid when required or the moneys so wrongfully applied, used, or transferred with interest at the rate of six (6) per cent per annum from the date of such violation. The legal depository may enforce compliance with this Act but shall not be required to do so. Any holder of such notes or certificates may enforce compliance with this Act on behalf of all the holders and may intervene in any action taken by the legal depository or by any other holder. Any reasonable expense properly incurred by the legal depository or by any such holder or holders shall, if the violation be established, constitute a charge on such special fund junior to the payment of the notes or certificates and no moneys shall thereafter be transferred from such special fund under Section 3 until such expenses are paid, or the amount claimed therefor is escrowed pending the determination of the reasonableness or propriety of such expense.

Sec. 9. Such notes or certificates shall be eligible to secure deposits of all funds of the State of Texas, and of counties, cities, districts, and political subdivisions of and in the State of Texas in the same manner and on the same basis that bonds of independent school districts are eligible for such purpose.

Sec. 11a. The provisions of this Act shall effect only those counties having a population of not less than thirty-nine thousand, four hundred and ninety-five (39,495), and not more than thirty-nine thousand, five hundred (39,500), according to the last Federal Census. [Acts 1939, 46th Leg., Spec.L., p. 704.]

Section 10 of the Act of 1939 provided that the provisions thereof were cumulative but that the provisions thereof should prevail in case of conflict. Section 11 provided that a holding of partial invalidity should not operate to defeat the whole act.

Art. 2784e. Maximum tax rate in school districts.—Taxing Power. The Commissioners Court for the common school districts in its county, and the district school trustees for the independent school districts incorporated for school purposes only, and trustees of rural high school districts and the trustees of all other school districts shall have power to levy and cause to be collected the annual taxes and to issue the bonds herein authorized, subject to the following provisions:

1. In common school districts, for the further maintenance of public free schools and the erection and equipment of school buildings therein, a special tax; and in independent districts, rural high school districts and all other school districts for the maintenance of schools therein, an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation of taxable property of the district.

2. In common school and independent districts, rural high school districts and all other school districts, for the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, a tax not to exceed Fifty (50¢) Cents on the One Hundred ($100.00) Dollars valuation, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which said districts are empowered to issue for such purposes;

3. The amount of maintenance tax, together with the amount of bond tax of any district, shall never exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation of taxable property; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50).

4. No tax shall be levied, collected, abrogated, diminished or increased, and no bonds shall be issued hereunder until such action has been authorized by a majority of the votes cast at an election held in the district for such purposes, at which none but property

taxpaying qualified voters of such district shall be entitled to vote.

5. All property assessed for school purposes in a common school district shall be assessed at the rate of value of property as said property is assessed for state and county purposes. [Acts 1945, 49th Leg., p. 488, ch. 304, § 1; Acts 1947, 50th Leg., p. 534, ch. 314, § 1.]

Art. 2785. Elections.—Before an election is held to determine the proposition of the levy of such tax or the issuance of such bonds, a petition therefor, signed by twenty (20) or more, or a majority of those entitled to vote at such election, shall be presented to the County Judge of the county if for a common school district, and to the district trustees if for an independent school district. On presentation of said petition, said officer or officers shall order an election for such purpose, and order the sheriff to post notices thereof in three (3) places in the district for ten (10) days prior thereto, or if for an independent district, the secretary of said board of trustees shall post such notices. The petition, election order and notice of election shall in all cases either state the specific rate of tax to be voted on or that the rate shall not exceed the limit herein specified. All election orders and notices of elections shall state the time and place of holding the election. The ballots for maintenance tax elections in common school districts shall have written or printed thereon the words "For school tax," and "Against school tax"; and for independent districts "For maintenance tax," and "Against maintenance tax." If said maintenance tax proposition is defeated at an election held for such purpose, no other election shall be held therefor within one year from the date of said election. The Commissioners Court for common school districts, and the board of trustees for independent districts, shall canvass the returns and declare the result of all elections hereunder; and said elections shall be held and conducted as provided by law for general elections, except as provided herein. [Acts 1921, p. 56; Acts 1935, 44th Leg., 2nd C.S., p. 1875, ch. 476, § 1.]

Art. 2785a. Consolidating, assessing and collecting of taxes.—That when the trustees of two (2) or more independent school districts deem it to the best interest of their districts, they may consolidate the assessing and collecting of their taxes by appointing one and the same person as assessor and collector for all the districts entering into such agreement, and they may prescribe additional duties and qualifications to those usually required of such officers. He shall receive such compensation as they may fix, not to exceed two (2) per cent for assessing and not to exceed two (2) per cent for collecting on the total amount of taxes collected. His term of office shall not be for more than two (2) years and when such person is a regularly licensed attorney, they may by agreement with such assessor and collector, include in his duties the collecting of their delinquent taxes and other legal matters and pay for such services, provided his fees or compensation for tax suits be the same as now provided by law for the collection of delinquent State and County taxes. Provided however, two-thirds vote of each school district board of trustees shall be required before such consolidation becomes effective. [Acts 1935, 44th Leg., p. 758, ch. 329, § 1.]

Art. 2786. Bonds.—Whenever the proposition to issue bonds is to be voted on in any common or independent school district hereunder, the petition, election order and notice of election must distinctly specify the amount of the bonds, the rate of interest, their maturity dates, and the purpose for which the bonds are to be used. The ballots for such election shall have written or printed thereon the words "for the issuance of bonds and the levying of the tax in payment thereof," and "Against the issuance of bonds and the levying of the tax in payment thereof." Such bonds shall bear not more than five per cent interest per annum and shall mature in serial annual installments over a period of not exceeding forty years from their date; provided, that when the houses are to be built of wood, said bonds shall mature in not more than twenty years from their date. Such bonds shall be examined by the Attorney General and if approved registered by the Comptroller. All bonds shall be sold to the highest bidder for not less than their par value and accrued interest, and the proceeds of such sale shall be deposited in the county depository for the common school districts, and in the district depository for the independent school districts, to the credit of such districts, and shall be disbursed only for the purpose for which the said bonds were issued, on warrants issued by the district trustees and approved by the county superintendent for common school districts, and by the president of the board of trustees and countersigned by the secretary of the said board for independent districts. [Acts 1921, p. 56; Acts 1929, 41st Leg., 1st C.S., p. 97, ch. 43, § 1.]

Section 2 of Acts 1929, repeals all conflicting general or special laws, or parts of laws.

Relief to political subdivisions and taxing district under Federal Bankruptcy Laws, see article 1024a, ante.

Validating bond issues, see article 716a, ante.

Art. 2786a. Election for cancellation or revocation of school bonds authorized to be issued.—Sec. 1. In the event any school bonds voted or issued, or any portion of such bonds voted or authorized by any common school district, independent school district, common consolidated school district, consolidated independent school district, county line school district, consolidated county line school district or rural high school district remain unsold, then the Commissioners Court in the case of any common school district, or the board of trustees in the case of a rural high school district or independent school district, may, upon its own motion, or upon petition of not less than twenty, or a majority of the qualifying property taxpaying voters thereof as shown by the records of the County Tax Collector, shall order an election to determine whether or not such school bonds shall be revoked and cancelled. Such election shall be ordered, held and conducted in the same form and manner as that at which such bonds were originally authorized.

Sec. 2. The result of such election, whether favorable to the cancellation of such bonds or not, shall in the case of common school districts be duly recorded by the Commissioners Court, and in the case of rural high school districts or independent school districts shall be duly recorded by the board of trustees thereof, and the returns thereof and the result, duly entered of record in the minutes of said Court or board of trustees, and in the event the result of such election for the cancellation and revocation of such unsold bonds shall show that a majority of the qualified resident property taxpaying voters of such school district, voting at such election, have voted for the cancellation and revocation of such unsold bonds, then in the case of common school districts the Commissioners Court, and in the case of rural high school districts and independent school districts, the board of trustees thereof shall cancel and burn all such bonds and forward to the State Comptroller a certified copy of the minutes of such destruction and cancellation. The State Comptroller shall thereupon cancel the registration of said bonds on the records of his office.

Sec. 3. When said bonds have been destroyed the Commissioners Court, or the board of trustees of such district, as the case may be, shall readjust the existing tax levies in such school district by an amount equal to that levied, or proposed to be levied, for the interest and sinking fund accounts of the bonds to be cancelled.

Sec. 4. After deducting the compensation of the Tax Assessor and Tax Collector of the County or School District as the case may be, and the County

Treasurer and any other claims properly chargeable against such taxes, the unexpended part of all taxes that have been collected with a view to the sale of such bonds so destroyed, shall be refunded to the taxpayers ratably upon the order of the Commissioners Court or the board of school trustees, and the County Treasurer, or treasurer of such school district, shall take and file proper receipts for all funds so refunded.

Sec. 5. The expense of holding any such election shall be paid as provided for the payment of expenses when the bonds were originally issued.

Sec. 6. Nothing in this Act shall be construed as invalidating any bond election or any bonds which have been sold by any school district within this State. [Acts 1933, 43rd Leg., p. 229, ch. 103.]

Art. 2786b. Assumption of bonded indebtedness by school districts when boundaries extended.

Application

Section 1. This Act shall be applicable to towns and villages incorporated for free school purposes only, common school districts, independent school districts, consolidated common school districts, consolidated independent school districts, county wide school districts, consolidated county wide school districts and rural high school districts and to every other class or type of school district, which have been heretofore or hereafter shall have been extended or enlarged under such circumstances that at the time of such extension or enlargement there were or are bonds outstanding payable from taxes levied against territory which does not comprise all of the territory of such extended or enlarged district.

Election; taxes

Sec. 2. The governing board of any such district, without the prerequisite filing of a petition requesting such action, is hereby authorized to order that an election be held in said district as enlarged or extended on the question of the assumption of such bonded indebtedness by said district as enlarged or extended and the levying and collecting of a tax therein to pay the principal and interest thereof. The law in reference to the calling of elections and the holding of elections for the issuance of school house bonds by any such district shall be applicable to such election to the extent that such law is applicable and not in conflict herewith, and in event of conflict the provisions of this Act shall control. Only qualified electors who own taxable property in said district and who shall have duly rendered the same for taxation shall be qualified to vote. If a majority of persons voting at said election shall vote in favor of the assumption of said indebtedness and the levying and collecting of said tax said indebtedness shall from and after the canvassing of the returns and declaration of the result of said election be the general obligation of such school districts as enlarged or extended, payable from taxes that shall be levied upon all taxable property therein, subject only to limitations prescribed by law.

It shall be the duty of the governing board of such district from and after the assumption of such indebtedness to levy and collect annually taxes against all of the taxable property in said district sufficient to pay the interest and to pay or to provide for the payment of the principal thereof.

Prior elections validated

Sec. 3. In every instance wherein an election has been held heretofore in any such district on the question of the assumption of indebtedness by such district as enlarged or extended, where a majority of those voting at said election voted in favor of the assumption of such indebtedness, and in which the governing board of such districts has heretofore canvassed the returns and declared the result thereof, the act of the governing board of such district in calling said election, the act of the voters in voting to assume such indebtedness, and the act of the governing board in canvassing the returns and declaring the results of such election are each and all hereby expressly validated. The indebtedness thus attempted to be assumed at each such election is hereby declared to be the indebtedness of such district as enlarged and extended and the duty is hereby imposed on the governing board of each such district to levy and collect annually taxes against all of the property in said district, sufficient to pay the interest and to pay or provide a proportionate part of the principal thereof.

Refunding indebtedness; bonds

Sec. 4. The law applicable to the issuance of refunding bonds by school districts shall be available in reference to the indebtedness thus assumed under or validated by the provisions of this Act, in event the governing board of such district elects to refund such indebtedness. In every instance wherein an election has heretofore been held on the question of assuming any such indebtedness and the governing board of such district has adopted resolutions or passed orders authorizing the issuance of refunding bonds eligible in exchange for said indebtedness which the district has attempted to assume, the actions taken by such governing board are hereby expressly validated and said refunding bonds when approved by the Attorney General of the State of Texas and registered in the office of the Comptroller of Public Accounts of the State of Texas in lieu of said original items of indebtedness are hereby expressly validated and when so issued registered and delivered shall constitute valid and binding obligations of such district so extended or enlarged.

Application of act

Sec. 5. It is expressly provided, however, that the provisions of this Act validating elections heretofore held on the question of the assumption of indebtedness and validating refunding proceedings heretofore had by such governing boards shall not apply in instances wherein the validity of such election or the validity of such action by such governing board is in litigation at the time this Act becomes effective.

Districts having coterminous boundaries

Sec. 6. In each instance wherein a common school district has been or shall hereafter be converted into an independent school district and in each instance wherein a district of any kind or class has been converted into a district of any other kind or class the boundaries of said original district and of said successor district being coterminous, the indebtedness of said original district shall be held and considered and is hereby declared to be the indebtedness of said successor district without the necessity of an election of any character for the assumption of such indebtedness, and the duty is hereby imposed on the governing board of such successor district to levy and collect annually taxes against all of the property in said district, sufficient to pay the interest and to pay or provide a proportionate part of the principal thereof. In each instance wherein the governing board of any such converted district shall have heretofore adopted resolutions or passed orders authorizing the issuance of refunding bonds for the purpose of taking up or including therein indebtedness created by any such original district such actions are hereby validated and said refunding bonds as and when approved by the Attorney General of the State of Texas and registered in the office of the Comptroller of Public Accounts of the State of Texas in lieu of such original bonds are hereby expressly validated and shall be held to be the binding obligations of said converted district. [Acts 1936, 44th Leg., 3rd C.S., p. 2105, ch. 508.]

Art. 2787. Common school bonds.—If the proposition to issue said bonds of a common school district carries at an election held therefor, the commissioners

court as soon thereafter as practicable shall issue said bonds on the faith and credit of said common school district. Said bonds shall express on their face: The State of Texas, the name of the county, and the number or corporate name of the district issuing said bonds. They shall be signed by the county judge, countersigned by the county clerk and registered by the county treasurer, in accordance with the general law relative to county bonds. At the time of the issuance of said bonds and each year thereafter so long as any of said bonds are outstanding, the said court shall levy a bond tax within the limits herein specified to pay the interest on said bonds and redeem the same at maturity. The rate of such tax shall be determined by the trustees of the district and county superintendent and certified by the county superintendent to the commissioners court, and said court shall levy the tax at said rate until a change is recommended by said school officers. Said tax shall be assessed and collected as provided by law for the assessment and collection of special local tax for the maintenance of public free schools. After said bonds shall have been issued and sold and said bond tax has been levied, it shall be unlawful to hold an election in said district to determine whether or not said tax shall be discontinued or lowered until said bonds, together with the interest thereon, shall have been fully paid, nor shall the limits and boundaries of said common school district ever be decreased by the county board of school trustees until all of said bonds and the accrued interest thereon shall have been fully paid. [Acts 1921, p. 56.]

Art. 2787a. May pay bond.—The State Board of Education may authorize the trustees of any common school district or of any independent school district of this State to pay off and discharge, at any interest paying date whether the bonds are matured or not, all or any part of any bonded indebtedness now owned or hereafter to be owned by the State Permanent School Fund, outstanding against any common school district, or any independent school district in this State.

It shall be the duty of the school trustees of any common school district, or any independent school district of this State desiring to pay off and discharge any bonded indebtedness now owned or hereafter to be owned by the Permanent School Fund of this State, outstanding against such district or districts, before maturity thereof, to make direct application in writing to the State Board of Education at least thirty days before any interest paying date on said bonds, making known to said State Board of Education the desire of said trustees to pay off and discharge said bonded indebtedness, or any part thereof, describing said bonds or the part thereof that the trustees desire to pay off and discharge; and it shall be the duty of the State Board of Education upon receipt of such application to act thereon in such manner as they deem best and notify the applicant or applicants whether the application is refused or granted in whole or in part; provided, that only such tax money as has been collected by virtue of tax levies made for the specific purpose of providing a sinking fund and paying interest on the particular bonds to be redeemed shall be expended in the redemption, taking up, or paying off of such bonds as provided in this Act; unless said bonds are being redeemed for the purpose of being refunded; and the application of the board of trustees of any common or independent school district desiring to retire bonds as herein provided shall include an affidavit to that effect in their application; and provided further, that it shall be unlawful for any person upon whom any duty rests in carrying out the provisions of this law to give or receive any commission, premium, or any compensation whatever for the performance of such duty or duties.

The provisions of this Act shall apply also to the governing boards of all cities, counties and political subdivisions in this State whose bonds are owned or may hereafter be owned by the Permanent School Fund of the State.

Art. 2787b. Serial coupon bonds.

Issuance of bonds; manner; purpose

Section 1. Any common school district or independent school district, located in any county having a population of not less than one hundred and twenty thousand (120,000) and not more than one hundred and thirty-three thousand (133,000) as shown by the last preceding United States Census whether created by special Act of the Legislature or by vote of the people, and any city or town which has assumed control of its public schools may issue serial coupon bonds in the manner now provided by law for the issuance of bonds by common and independent school districts, for the purpose of building and equipping schoolhouses, to purchase sites therefor, for the purpose of purchasing or building a teachers' home and for purchasing land in connection therewith; provided that no bonds shall be issued to provide a teachers' home in a district employing fewer than three (3) teachers in a single school.

Election on issuance of bonds; powers of trustees; proceeds

Sec. 2. In any city or town located in any county having a population of not less than one hundred and twenty thousand (120,000) and not more than one hundred and thirty-three thousand (133,000) as shown by the last preceding United States Census which has, when this Act becomes effective, assumed the control of the public free schools therein, or which shall hereafter assume control of its public free schools, regardless of whether such control was or shall be acquired by the authority of Articles 2768 or 2769 of the Revised Civil Statutes of Texas of 1925, or any local, general or special law, or the provision of any charter, or by any other authority whatsoever, where such control is exercised through a Board of Trustees, such Board of Trustees shall have and may exercise all and singular the powers and authority in respect of the issuance of bonds for school purposes possessed by Boards of Trustees of independent school districts organized for school purposes only. No such bonds shall be issued until such action shall have been authorized by a majority of the votes cast at an election held in the school district constituted of such city or town at which none but qualified voters who own taxable property in said school district and who have duly rendered the same for taxation shall be entitled to vote. The calling and holding of such election, the authorization by the electorate of the issuance of such bonds, and the issuance, sale and disposition thereof, shall be governed by Articles 2785, 2786, and 2788, Revised Civil Statutes of Texas of 1925, and any amendments thereto, and any other provisions of the laws of the State applicable to the authorization and issuance of bonds of independent school districts proper, except as such procedure shall be altered or modified by the provisions hereof. The proceeds of the sale of such bonds shall be deposited in the depository of such school district, to the credit thereof, and shall be disbursed only for the purpose for which the said bonds were issued on warrants issued by the president of the Board of Trustees of such district and countersigned by the secretary of such Board.

Tax to pay bonds and interest

Sec. 3. Where such bonds shall be issued by a city or town which has assumed the control of its schools, the Board of Trustees of such school district shall annually cause to be levied, assessed and collected, in form and manner provided by law for the levy, assessment and collection of other school taxes within said district, a tax sufficient in amount to provide for the payment of the annual accrual of interest on such bonds and for the retirement of the principal sum thereof at maturity, such tax not to exceed, however, fifty cents on the one hundred dollars valuation of

taxable property within said school district. Such tax shall be levied, assessed and collected at the same time that the regular maintenance tax of said school district shall be levied, assessed and collected. The amount of tax levied for the service of bonds issued pursuant to the authority herein granted, together with the amount of tax levied for the service of bonds issued by such city or town in its capacity as a school district under the authority of any other law and the amount of maintenance tax levied for the benefit of said school district shall not exceed the total of the school district tax authorized to be levied by vote of the qualified electorate of said school district under the authority of Section 3 of Article 7 of the Constitution of the State and the Acts of the Legislature passed pursuant thereto.

Bonds as obligations of city or town

Sec. 4. Bonds so issued shall be the obligations of the city or town constituting such school district in its capacity as a school district proper; provided, however, that any limitation in the amount of bonded indebtedness permitted such city or town contained in the charter of such city or town, or in other provision of law, general or special, shall not apply to the issuance of bonds by such city or town in its capacity as a school district proper pursuant to the authority herein granted, and the total of such bonds shall not be computed in determining the limit of the bonded indebtedness permitted such city or town by its charter, or other provision of law, general or special.

Exclusive power of Board of Trustees

Sec. 5. From and after the effective date of this Act the power to issue bonds for school purposes in any city or town located in any county having a population of not less than one hundred and twenty thousand (120,000) and not more than one hundred and thirty-three thousand (133,000) as shown by the last preceding United States Census which has assumed the control of its schools shall be vested exclusively in the Board of Trustees where such schools are managed and controlled by a Board of Trustees.

Validity of bonds issued

Sec. 6. Nothing herein appearing shall, in anywise, affect the validity of any bonds issued by any such city or town prior to the effective date of this Act by and through the governing body of such city or town, nor shall it affect, in anywise, the authority of the governing body of such city or town to issue any bonds for school purposes authorized by vote of the qualified electorate of such city or town prior to the effective date of this enactment. Bonds for school purposes heretofore lawfully issued by the governing body of such city or town, together with such bonds hereafter issued by the governing body of such city or town pursuant to authorization of the electorate voted prior to the effective date of this enactment, shall be and constitute the valid and subsisting obligations of such city or town in its capacity as a school district, and the payment of interest on and provision for the redemption of the principal of such bonds shall be provided for in the manner prescribed by existing applicable provisions of the laws of the State or the charter of such city or town. [Acts 1939, 46th Leg., Spec.L., p. 695.]

Section 7 of the Act of 1939 repealed conflicting laws.

Art. 2787c. Validating certain bonds.—Section 1. From and after the effective date of this Act, in all consolidated common school districts in this State, located in counties having a population, according to the last Federal Census, of not less than twenty-seven thousand, one hundred (27,100), and not more than twenty-seven thousand, four hundred and ten (27,410); and where said districts have a scholastic population, according to the 1938-1939 scholastic enumeration as shown by the Census Division of the State Department of Education, of not less than one hundred (100) nor more than one hundred and thirty (130) pupils within the scholastic age; all acts of the Boards of Trustees of such districts in regard to the ordering of elections for the purpose of voting bonds, and the election pursuant to such order, the order declaring the result of such election, the issuance of such bonds, the levying and assessment of taxes for the purpose of liquidating such bonds and each and every thing requisite to the validity of such issuance are hereby ratified, confirmed and in all things and respects validated.

Sec. 2. This Act shall be deemed cumulative of all laws now in force in this State, not in conflict herewith. [Acts 1939, 46th Leg., Spec.L., p. 1031.]

Art. 2787d. Bonds of common school districts for transportation facilities in counties of 11,021 to 11,050 population.—Section 1. Common school districts in each county in Texas having a population of not less than eleven thousand and twenty-one (11,021) nor more than eleven thousand and fifty (11,050) according to the latest Federal Census, shall from and after the passage of this Act have the legal privilege of voting bonds upon the faith and credit of said common school district for the purpose of purchasing a school bus, body, or chassis with the same laws applying to the voting of school house bonds being made applicable to all such issues.

Sec. 2. No common school district with any other outstanding bonded indebtedness shall be permitted to vote any bond or bonds for the purpose of purchasing a school bus, body, or chassis.

Sec. 3. No common school district levying less than One ($1.00) Dollar local maintenance tax shall be permitted to vote any bond or bonds for the purpose of purchasing a school bus, body, or chassis.

Sec. 4. No common school district shall vote bonds for the purpose of purchasing a school bus, body, or chassis whose maturity date or dates exceed five years from the date of the issue.

Sec. 5. No common school district shall ever vote bonds for the purpose of purchasing a school bus, chassis, or body in excess of two (2%) per cent of the valuation of the school district according to the latest tax roll of the district. [Acts 1939, 46th Leg., Spec.L., p. 698.]

Section 6 of the Act of 1939 repealed conflicting laws.

Art. 2788. Independent district bonds.—The bonds authorized to be issued by independent districts shall be coupon bonds, and the aggregate amount thereof shall never reach an amount such that a tax of fifty cents on the one hundred dollars valuation of taxable property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity. The election for said bonds shall be held within thirty days after order of election, as fixed in the election order. The board of trustees shall at the same time fix the polling places for holding such election and name a judge and two clerks at each polling place, or more judges and clerks, if deemed necessary, and furnish all necessary ballots and other election supplies requisite to such election. Immediately after the bond election the officers holding the same shall make returns of the result thereof to the board of trustees of the district, and return the ballot box to the secretary of such board, who shall safely keep the same and deliver them together with the returns of the election to the board of trustees at its next regular or special meeting; and said board shall then canvass the returns and declare the result of said election. If said election results in favor of the issuance of bonds and the levy of the tax in payment thereof, said board, after such result has been declared, shall make an order directing the issuance of the bonds of such district and provide for the levy and collection of a tax annually of sufficient amount with which to pay the in-

terest and provide a sinking fund with which to pay such bonds at maturity. Such bonds shall state upon their face the purpose for which they are issued, and shall be issued in the name of the independent school district, signed by the president of the board of trustees of such district, and countersigned by the secretary of such district, and have the seal of the district affixed to each bond. When said bonds have been duly approved and registered, they shall continue in the custody of and under the control of said board and shall be sold by said board for cash, either in whole or in parcels. [Id.]

Art. 2789. [2864] Refunding bonds.—Where bonds have been legally issued, or may be hereafter issued, by any town or village incorporated for free school purposes only, or any common school district, independent school district, consolidated common school district, consolidated independent school district, county line school district, consolidated county line school district, or rural high school district, new bonds, bearing the same or a less rate of interest, may when ordered by the governing board thereof be issued either as term bonds or as serial bonds, maturing in either case within forty (40) years from date of issue, and may be made optional on any interest payment date as the governing board shall direct; provided further, that matured interest coupons of such district may be refunded in like manner; and provided further, that no election shall be necessary to authorize the issuance of such new bonds; and provided further, that the State Treasurer shall, upon order of the State Board of Education, exchange bonds not matured held by him for the permanent school fund for the new refunding bonds issued by the same incorporation under the provisions of this Subdivision, in case the rate of interest on the new bonds is not less than the rate of interest on the bonds for which they are exchanged. [Acts 1905, p. 263; Acts 1933, 43rd Leg., p. 62, ch. 32; Acts 1935, 44th Leg., p. 760, ch. 331, § 1.]

Acts 1933, 43rd Leg., 1st C.S., p. 143, ch. 48, passed as a general law and Acts 1933, 43rd Leg., 1st C.S., p. 159, ch. 57, passed as a general law, relates to districts in one county.

Art. 2789a. Independent School Districts, voting refunding bonds to buy up outstanding bonds.—Section 1. School Trustees of Independent School Districts shall be authorized to order an election for the purpose of voting refunding bonds, the proceeds of which are to be used for the purpose of buying in previously issued bonds which bear no provision for the option of prior redemption, and subject to the provisions hereinbelow set forth; and provided further that said election shall be held in the manner now prescribed by law for the voting of bonds in Independent School Districts, except as herein otherwise provided.

Sec. 2. Before ordering an election for the voting of refunding bonds for the purposes hereinabove described, the Trustees of said Independent School Districts shall secure from the holders or owners of said outstanding bonds an option to purchase at a stipulated price; and in no case shall the agreed purchase price involve the payment of a premium in excess of thirteen (13%) per cent of par value.

Sec. 3. After having secured such option on the above described bonds, said Trustees may order an election, for the purpose of submitting to the qualified property taxpaying voters the proposition for the issuance of such refunding bonds, notice of which shall be given by posting in three (3) or more public places within the District, which notice shall be posted not less than fourteen (14) days prior to the date set for said election; and provided further that said notice shall fully inform the voters as to the bonds which it is proposed to buy in, the stipulated price as stated in the option, the estimated interest rate of the proposed refunding bonds, and the estimated savings to be effected thereby. Provided further, that like notice shall be given by publication in a newspaper published in such District, or if there is no newspaper in said District, then in a newspaper in the County where said election is to be held, for two (2) consecutive weeks prior to the date fixed for said election, and the date of the first publication of said notice shall be not less than fourteen (14) days prior to the date fixed for said election.

Sec. 4. Under no circumstances shall Trustees of any School District be authorized to order such an election or to issue such refunding bonds unless it is shown mathematically that a saving will result in total interest and principal to be paid. Such refunding bonds must be approved by the Attorney General. [Acts 1941, 47th Leg., p. 223, ch. 153.]

Art. 2789b. Refunding bonds when two or more school entities have become obligated to pay.—Whenever two or more school entities, including in that term common school districts, independent school districts, and cities which have assumed control of their schools or which constitute independent school districts, may have become obligated to pay a bond issue or issues, whether each is obligated to pay the whole or separate parts thereof, and which obligations arise on account of a change or changes in the boundaries of a school entity or division of such entity, or any other set of circumstances which have resulted in the bonds of a district having become wholly or in part the obligation or obligations of the original entity and some other entity or entities, or having become the obligation of two or more new entities, and the entities owing the same desire to issue refunding bonds, the said entities then owing such bonds shall have the right and authority through their governing boards without the necessity of any election to issue refunding bonds, which shall be done by joint action of their governing bodies. The refunding bonds so issued shall be the joint obligation of each such entity to the extent that each was liable prior to such refunding, in which event it shall be so provided in said refunding bonds. Such entities may enter into contracts between themselves, setting forth and determining their respective obligations as between themselves on such refunding bonds without impairing the rights of the holders of such refunding bonds; or each of said entities may separately issue refunding bonds for an amount sufficient to pay that part of the original bonds which it is its obligation to pay. Any such bonds may be issued to mature in serial and annual installments not exceeding thirty (30) years from the date of issue and may be made optional on any interest-paying date as the governing board may direct; and maturing interest coupons may also be so refunded. [Acts 1941, 47th Leg., p. 362, ch. 201, § 1.]

Art. 2789c. Refunding bonds to pay tax anticipation notes or certificates of indebtedness; validation of bonds previously issued.—Section 1. Any Independent School District is hereby authorized to issue negotiable refunding bonds for the purpose of providing funds to pay and cancel outstanding valid tax anticipation notes or certificates of indebtedness, and to levy a tax sufficient to pay such bonds and the interest thereon. Tax anticipation notes or certificates of indebtedness, as used in this Act, shall mean and include notes and certificates issued to borrow money for school purposes, and which were issued in anticipation of the collection of delinquent taxes and are secured by a pledge of delinquent taxes, even though, subsequent to the issuance of such notes or certificates, taxes which thereafter became delinquent were pledged in lieu of and to release taxes which were pledged originally to secure such notes or certificates. Provided, however, that no such bonds shall be issued, and no tax shall be levied therefor, unless and until authorized by a majority vote at an election

called and held for that purpose. Provided further, that no bonds shall be issued for the purpose of paying notes or certificates issued in excess of fifty (50) per cent of the total amount of taxes delinquent at the time of their issuance.

Sec. 2. Such election shall be called and held in the manner prescribed by General Law with reference to the calling and holding elections for the issuance of school house bonds by independent school districts, except that the election may be called by the Board of Trustees of the district without the prerequisite of a petition. Such refunding bonds may mature serially or otherwise in not to exceed fifteen (15) years, shall not bear a greater rate of interest than the notes or certificates to be funded thereby, and shall not be sold for less than par and accrued interest.

Sec. 3. Before any of said refunding bonds shall be sold, said bonds and the record pertaining to their issuance shall be submitted to the Attorney General of Texas for his examination; and if said bonds are issued in accordance with this Act, and are valid, he shall issue his certificate showing that he has examined the same, and that in his opinion said bonds are valid. Thereafter, said refunding bonds shall be registered by the Comptroller of Public Accounts, and by him delivered to the district or to its order. Such refunding bonds, after receiving the certificate of the Attorney General and having been registered in the Comptroller's office, shall be held in every action, suit or proceeding in which their validity is or may be brought into question, valid and binding obligations. In every action brought to enforce collection of such bonds, a certified copy of the opinion of the Attorney General shall be admitted in evidence to show validity of said bonds, together with the coupons pertaining thereto. The only defense which can be offered against the validity of such bonds shall be forgery or fraud.

Sec. 4. In each instance where an election has been held heretofore, resulting favorably to the issuance of refunding bonds for the purpose of refunding, cancelling, and in lieu of such notes or certificates, and the levy of a tax for the payment of said bonds and the interest thereon, such refunding bonds may be sold and the proceeds used to pay and cancel such notes and certificates. In each such instance, the refunding bonds, the election authorizing their issuance, the tax voted for their payment, and the notes or certificates to be so refunded or paid, are all hereby validated; provided, however, that the validating provision of this Section shall not apply to any notes, certificates or bonds, the validity of which shall have been attacked in any litigation pending at the time this Act becomes effective.

Sec. 5. No such bonds shall be delivered to the purchaser thereof until an equal amount of tax anticipation notes or certificates of indebtedness, being refunded thereby, shall have been surrendered to and cancelled by the district. Such bonds may be delivered at one time, or in installments. [Acts 1943, 48th Leg., p. 195, ch. 113.]

Art. 2790. Independent district tax.—If an independent school district votes a maintenance tax, the board of trustees shall thereafter annually levy and cause to be assessed and collected upon the taxable property in the limits of the district for the maintenance of the public free schools of the said district such ad valorem tax as the qualified voters of such district authorized at the election held for that purpose; or if no specific rate has been voted, said board shall levy such a rate each year within that limit as it may deem judicious. Where a maintenance tax has been voted, no election to revoke, modify or increase the same shall be held until two (2) years from the date of the election authorizing such maintenance tax; provided, however, that in counties containing a county-wide junior college which has been in operation for not more than two (2) years, additional elections may be held for the purposes described above at intervals of not less than six (6) months. An election to revoke, modify or increase such maintenance tax, when permissible, may be obtained and held substantially as herein provided for an election to authorize such tax; provided, however, that no change or modification in such maintenance tax shall ever affect any bond tax authorized by such district. [Acts 1921, p. 56; Acts 1947, 50th Leg., p. 469, ch. 270, § 1.]

Pledge of anticipated revenues in independent districts having not less than 500 scholastics in counties having population of 4,521 to 4,532: Acts 1941, 47th Leg., p. 260, ch. 176.

Section 2 of the Amendatory Act of 1947 repealed all conflicting laws.

Art. 2790a. Tax levies validated.—All levies for Ad Valorem taxes heretofore made by the governing body of any Independent School District in this State, and which are void and unenforceable because such levies were made and adopted by resolution, motion, or other informal action, instead of having been made by order, as required by the Statutes of this State, and which levies are otherwise legally enforceable, are hereby validated, and the same are hereby declared enforceable the same as though they had been made and adopted originally by an order duly passed by the respective governing bodies of such Independent School Districts. [Acts 1929, 41st Leg., p. 446, ch. 205, § 1.]

See, also, article 1028a, ante.

Art. 2790a—1. Levies and assessments of ad valorem taxes validated.—All levies and assessments of ad valorem taxes heretofore made by the governing body of any independent school district in this State, not in excess of the limit now provided by law, which are voidable or unenforceable because such levies were made and adopted by resolution, motion or other informal action, instead of having been made by order, as required by the Statutes of this State; and all assessments of taxes or assessments of property within the limits of any independent school district in this State, subject to taxation under the laws of this State, for taxation under such resolution, motion, or other informal action, which are insufficient because of the failure of such governing body to appoint the proper and statutory Board of Equalization, as required by law, and which are insufficient, and voidable, or unenforceable on account of technical irregularities in the manner of preparing the books and reports of the assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Board of Equalization acting for any such independent school districts, which are irregular or insufficient (because the reports of such equalization were adopted and accepted) orally, or by other informal action; and the acts of making such equalization were made orally or informally or in incomplete form, are each and all hereby validated, ratified, approved, confirmed, and declared enforceable, the same as though such levies and assessments of taxes had been made and adopted originally by the proper order, motion or resolution, duly passed, entered of record and signed by the proper officials of such governing body, and the same as though such assessments of property within such independent school districts for taxation purposes had been made in due and complete form, and the same as though said equalizations and the reports of each of the Boards of Equalization acting for said independent school districts had been made in due and regular form, and adopted and accepted in due and regular form. Provided further, however, the terms of this Act shall not apply to such districts situated wholly or partly within counties having a population of one hundred thousand (100,000) inhabitants or more according to the last preceding Federal Census. Provided further, however, that this Act shall not validate any valuation placed upon property by any Board of Equalization or any Tax Assessor where such prop-

erty has been valued in excess of its reasonable cash market value, or where such property has been discriminated against as to value or placed upon the rolls at a higher value than property of like kind and character, or at a greater percentage of its value than other property assessed for taxation. Provided, however, that this Act shall not affect any suit now pending in any Court of this State, or that may be filed in ninety (90) days after the effective date hereof and shall not validate any levy, assessment or valuation made or placed on any property where any suit as aforementioned shall be or shall have been filed within the time aforementioned. [Acts 1936, 44th Leg., 3rd C.S., p. 2088, ch. 499, § 1.]

Art. 2790a—2. [Repealed by Acts 1939, 46th Leg., Spec.L., p. 1025, § 2.]

The article repealed was Acts 1939, 46th Leg., Spec.L., p. 1023, § 1.

Art. 2790a—3. Ad valorem tax levies and assessments validated in county line independent districts of 17,000 to 17,500 population.—All levies and assessments of ad valorem taxes heretofore made by the governing body of any county line independent school district in this State, partly situated in three (3) counties, the supervision of said school district being located in counties having a population of not less than seventeen thousand (17,000) and not more than seventeen thousand, five hundred (17,500), according to the last preceding Federal Census, not in excess of the limit now provided by law, which are void or unenforceable because such levies were made and adopted by resolution, motion, or other informal action, instead of having been made by order, as required by the Statutes of this State; and all assessments of taxes or assessments of property within the limits of said county line independent school district in this State, subject to taxation under the laws of this State, for taxation under such resolution, motion, or other informal action, which are insufficient because of the failure of such governing body to appoint the proper and Statutory Board of Equalization, as required by law, and which are insufficient, and void, or unenforceable on account of technical irregularities in the manner of preparing the books and reports of the Assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Board of Equalization acting for any such county line independent school districts, which are irregular or insufficient because the reports of such equalization were adopted and accepted orally, or by other informal action; and the acts of making such equalization were made orally or informally or in incomplete form, are each and all hereby validated, ratified, approved, confirmed, and declared enforceable, the same as though such levies and assessments of taxes had been made and adopted originally by the proper order, motion, or resolution, duly passed, entered of record, and signed by the proper officials of such governing body, and the same as though such assessments of property within such county line independent school districts for taxation purposes had been made in due and complete form, and the same as though said equalizations and the reports of each of the Boards of Equalization acting for said county line independent school districts had been made in due and regular form, and adopted and accepted in due and regular form. Provided, however, that this Act shall not affect any suits pending at the time same becomes effective, which have been filed for the collection of taxes by any independent school district in this State; and provided further, that this Act shall not validate any valuation placed upon property by any Board of Equalization or any Tax Assessor where such property has been valued in excess of its reasonable cash market value, or where such property has been discriminated against as to value or placed upon the rolls at a higher value than property of like kind and character, or at a greater percentage of its value than other property assessed for taxation. [Acts 1939, 46th Leg., Spec. L., p. 1025, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws, and especially Acts 1939, 46th Leg., Spec.R. p. 1023, art. 2790a—2.

Art. 2790a—4. Tax levy by independent districts having limitation upon rate less than one dollar.—Any independent school district in this State, having a limitation upon the tax rate that may be levied and collected in any one year which is less than One ($1.00) Dollar on the One Hundred ($100.00) Dollars valuation of taxable property subject to taxation in said district, whether such independent school district was created under the general law or any special law or laws of this State, shall hereafter be authorized and have the power to levy and cause to be collected, when authorized by a majority of the qualified property taxpaying voters of such district voting at an election to be held for that purpose, a tax not to exceed in any one year One ($1.00) Dollar on the One Hundred ($100.00) Dollars valuation of taxable property. [Acts 1939, 46th Leg., p. 292, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2790a—5. Maintenance tax elections and proceedings validated.—Section 1. Whenever the Board of Trustees of any Independent School District in this State has heretofore called an election pursuant to Section 3 of Article VII of the Texas Constitution, and a majority of the voters voting at such election, who are qualified voters and property taxpayers of such independent school district, have heretofore authorized the trustees of any such independent school district to levy, assess, and collect taxes for school maintenance purposes at any rate specified in the election order and notice of election, not to exceed One Dollar and Fifty Cents ($1.50) on each one hundred dollars of assessed valuation, and the Board of Trustees of any such Independent School District has canvassed said vote and declared the results of said election in favor of the levy, assessment, and collection of such tax, all acts and proceedings had and done in connection therewith, including the order calling the election, notice of election, holding of election, canvassing the returns of the election, and declaring the results of same are hereby authorized, legalized, adopted, approved, ratified, and validated. It is the intention hereof to authorize, ratify, adopt, and confirm all acts and proceedings of the voters, Board of Trustees and election officials of any such Independent School District in respect to any such school tax election.

Sec. 2. All such School Districts, where the vote has heretofore been in favor of levying such maintenance tax shall have the power and authority to levy, assess and collect taxes at not to exceed the following rates per one hundred dollars of assessed valuation of taxable property, to wit:

For maintenance purposes One Dollar and Fifty Cents ($1.50) per one hundred dollars of assessed valuation, or so much thereof as may have been authorized by the voters voting at such election; for bond interest and sinking fund purposes Fifty (50) Cents per one hundred dollars of assessed valuation, but the combined tax for both purposes shall never exceed One Dollar and Fifty Cents ($1.50) per one hundred dollars of assessed valuation. Such taxes shall be assessed, levied and collected pursuant to the law applicable to such districts.

Sec. 3. Where the Board of Trustees and Tax Collector of any such Independent School District have heretofore levied and collected taxes at a rate in excess of One Dollar ($1) per one hundred dollars of assessed valuation, pursuant to the authority granted in any such election, the action of such Board of Trustees and Tax Collector in so doing is hereby authorized, legalized, adopted, approved, ratified and validated.

Sec. 3a. The provisions of this Act will not apply in any district where any such election or any action or

order in connection therewith is involved in litigation in any Court in this State, or may be before the effective date of this Act. [Acts 1943, 48th Leg., p. 20, ch. 17.]

Art. 2790b. Tax levies and assessments validated in counties having population of 16,363 to 16,963.—That all levies and assessments of ad valorem taxes heretofore made by the governing body of any independent school district in this State, in counties having a population of not less than sixteen thousand, five hundred and sixty-three (16,563) and not more than sixteen thousand, nine hundred and sixty-three (16,963), according to the last preceding Federal Census, not in excess of the limit now provided by law, which are void or unenforceable because such levies were made and adopted by resolution, motion or other informal action, instead of having been made by order, as required by the Statutes of this State; and all assessments of taxes or assessments of property within the limits of any independent school district in this State, subject to taxation under the laws of this State, for taxation under such resolution, motion, or other informal action, which are insufficient because of the failure of such governing body to appoint the proper and statutory Board of Equalization, as required by law, and which are insufficient, and void, or unenforceable on account of technical irregularities in the manner of preparing the books and reports of the assessors assessing such property; and all equalizations of said valuations of such property for taxation purposes made by the Board of Equalization acting for any such independent school districts, which are irregular or insufficient because the reports of such equalization were adopted and accepted orally, or by other informal action; and the acts of making such equalization were made orally or informally or in incomplete form, are each and all hereby validated, ratified, approved, confirmed, and declared enforceable, the same as though such levies and assessments of taxes had been made and adopted originally by the proper order, motion or resolution, duly passed, entered of record, and signed by the proper officials of such governing body, and the same as though such assessments of property within such independent school districts for taxation purposes had been made in due and complete form, and the same as though said equalizations and the reports of each of the Boards of Equalization acting for said independent school districts had been made in due and regular form, and adopted and accepted in due and regular form. Provided, however, that this Act shall not affect any suits pending at the time same becomes effective, which have been filed for the collection of taxes by any independent school district in this State; and provided further, that this Act shall not validate any valuation placed upon property by any Board of Equalization or any Tax Assessor where such property has been valued in excess of its reasonable cash market value, or where such property has been discriminated against as to value or placed upon the rolls at a higher value than property of like kind and character, or at a greater percentage of its value than other property assessed for taxation. [Acts 1933, 43rd Leg., p. 558, ch. 182.]

Art. 2790c. Refunding warrants authorized and validated in counties having 22,000 to 22,100 population; tax levy to pay warrants.—Sec. 1. This Act shall be applicable to Independent School Districts situated in counties having a population according to the latest Federal Census of more than twenty-two thousand (22,000) and less than twenty-two thousand, one hundred (22,100). The Board of Trustees of any such School District shall have the power to issue refunding warrants in lieu of and in extension of eligible vouchers as defined in this Act. Only such vouchers shall be eligible for refunding as meet the following conditions: They must have been originally authorized by the Board of Trustees for salaries or for current expenses, shall have been signed by the proper officials of the District and delivered for value to the original payee, shall not have been previously paid by the District and shall have been issued prior to January 1, 1932.

Sec. 2. The Board of Trustees of any such District shall have authority to pass all orders necessary or convenient to effect the surrender of said original vouchers for cancellation and to deliver refunding warrants in lieu thereof to the holders of said vouchers. Said refunding warrants shall bear interest at a rate not exceeding six per cent (6%) per annum, payable semi-annually, shall be payable serially at such times and in such amounts as may be determined by the Board, the maximum maturity date being not more than twenty (20) years after the date of said refunding warrants. The Board of Trustees shall have authority to reserve the right to retire said warrants before their maturity date upon the giving of proper notice to the holders, the method of which notice shall be prescribed in the order authorizing said warrants.

Sec. 3. The actions of the Board of Trustees in authorizing, issuing and delivering said original vouchers are hereby expressly authorized and validated and such vouchers and accrued interest thereon are in all things validated, and said refunding warrants issued in lieu thereof shall be binding and enforceable obligations of such District.

Sec. 4. It shall be the duty of the Board of Trustees of any such District issuing said refunding warrants to levy a continuing tax within the total rate theretofore voted by the District for maintenance and other purposes, sufficient to pay the principal and interest of said refunding warrants as said interest and principal matures, and to have said tax assessed and collected. It shall be the duty of the Board of Trustees to take into consideration the tax necessary for said purpose from year to year in fixing the annual tax levied for maintenance and other purposes and to include within said general tax levy an amount sufficient to pay the principal and interest of said refunding warrants. [Acts 1933, 43rd Leg., p. 519, ch. 168.]

Acts 1935, 44th Leg., p. 761, ch. 332, passed as a general law, authorized trustees of independent school districts in counties having a population of not less than 15,200 nor more than 15,650, to issue warrants for refunding and extending indebtedness incurred for legal maintenance of schools in said districts up to June 1, 1935.

Acts 1935, 44th Leg., 2nd C.S., p. 1761, ch. 464, passed as a general law, relates to funding warrants in districts in one county.

Art. 2790d. Refunding warrants authorized and validated in Independent School Districts, located partly in three (3) or more counties, tax levy to pay warrants.—Sec. 1. [This catch line is section 1 of the Act.]

Sec. 2. This Act shall be applicable to Independent School Districts situated partly in three (3) or more counties. The Board of Trustees of any such School District shall have the power to issue refunding warrants in lieu of and in extension of eligible vouchers as defined in this Act. Only such vouchers shall be eligible for refunding as meet the following conditions: They must have been originally authorized by the Board of Trustees for salaries or for current expenses, shall have been signed by the proper officials of the District and delivered for value to the original payee, shall not have been previously paid by the District and shall have been issued prior to January 1, 1934.

Sec. 3. The Board of Trustees of any such District shall have authority to pass all orders necessary or convenient to effect the surrender of said original vouchers for cancellation and to deliver refunding warrants in lieu thereof to the holders of said vouchers. Said refunding warrants shall bear interest at a rate not exceeding six per cent (6%) per annum, payable semiannually, shall be payable serially at such times and in such amounts as may be determined by the

Board, the maximum maturity date being not more than twenty (20) years after the date of said refunding warrants. The Board of Trustees shall have authority to reserve the right to retire said warrants before their maturity date upon the giving of proper notice to the holders, the method of which notice shall be prescribed in the order authorizing said warrants.

Sec. 4. The actions of the Board of Trustees in authorizing, issuing and delivering said original vouchers are hereby expressly authorized and validated and such vouchers and accrued interest thereon are in all things validated, and said refunding warrants issued in lieu thereof shall be binding and enforceable obligations of such District.

Sec. 5. It shall be the duty of the Board of Trustees of any such District issuing said refunding warrants to levy a continuing tax within the total rate theretofore voted by the District for maintenance and other purposes, sufficient to pay the principal and interest of said refunding warrants as said interest and principal matures, and to have said tax assessed and collected. It shall be the duty of the Board of Trustees to take into consideration the tax necessary for said purpose from year to year in fixing the annual tax levied for maintenance and other purposes and to include within said general tax levy an amount sufficient to pay the principal and interest of said refunding warrants. (Acts 1933, 43rd Leg., p. 519, ch. 168.[1]) [Added Acts 1934, 43rd Leg., 4th C.S., p. 55, ch. 22.]

[1] The reference to Acts 1933 in parentheses at the end of section 5 is contained in the enrolled bill.

Art. 2790d—1. Time warrants authorized in counties of 5,796 to 5,890 population to refund and extend indebtedness.—Section 1. In all Counties having a population of not less than five thousand seven hundred and ninety-six nor more than five thousand eight hundred and ninety inhabitants according to the last preceding Federal Census, it shall be lawful for School Districts located therein to create and issue upon the faith and credit of said Districts, time warrants for the purpose of taking up, refunding and extending indebtedness heretofore legally incurred for the local maintenance of schools in said Districts.

Sec. 2. Such time warrants shall be payable over a period of years as the Board of Trustees of any such issuing District may determine, not to exceed ten (10) years and may be redeemable as the Board shall prescribe, and shall draw interest not to exceed six (6) per cent per annum, said interest payable annually or semi-annually. The Board of Trustees of any such issuing District is authorized to create a special sinking fund to pay interest on said warrants and to liquidate said warrants as they mature, provided no warrants shall be issued in excess of an amount that may be redeemed with interest (together with all the bonded indebtedness of said District) by the levying of an annual tax not to exceed Fifty (50¢) Cents on each One Hundred ($100.00) Dollars valuation of said District, and provided no such warrants shall be issued by any common school district hereunder without the approval of the Commissioners' Court of said County. [Acts 1939, 46th Leg., Spec.L., p. 200.]

Art. 2790d—2. Refunding warrants of independent districts having population of 13,950 to 14,050 authorized.—Section 1. As to all counties having a population of not less than thirteen thousand, nine hundred and fifty (13,950) nor more than fourteen thousand and fifty (14,050) inhabitants according to the last preceding Federal Census, it shall be lawful for independent school districts located therein to create and issue, upon the faith and credit of said districts, time warrants for the purpose of taking up, refunding, and extending indebtedness heretofore legally incurred for the local maintenance of schools in said districts.

Sec. 2. Such time warrants shall be payable within five (5) years from August 31, 1939, and shall bear interest at not more than six (6) per cent per annum, and the boards of trustees of said independent school districts shall levy a sufficient tax within legal limitations to pay the interest on said obligations, and to create a sinking fund to discharge them at maturity. The powers herein granted shall be exercised by the boards of trustees of said districts without the necessity of a vote by the people. [Acts 1939, 46th Leg., Spec.L., p. 701.]

Art. 2790d—3. Refunding warrants authorized and validated in county line independent districts located in three or more counties; 17,000 to 17,500 population; tax levy to pay warrants.—Section 1. Refunding warrants authorized and validated in county line independent school districts, located partly in three (3) or more counties, the supervision of said schools being located in counties having a population of not less than seventeen thousand (17,000) nor more than seventeen thousand, five hundred (17,500) as shown by the last preceding Federal Census, tax levy to pay warrants.

Sec. 2. This Act shall be applicable to county line independent school districts situated partly in three (3) or more counties, the supervision of said schools being located in counties having a population of not less than seventeen thousand (17,000) nor more than seventeen thousand, five hundred (17,500) as shown by the last preceding Federal Census. It shall be lawful for county line independent school districts located therein to create and issue, upon the faith and credit of said districts, time warrants for the purpose of taking up, refunding, and extending indebtedness heretofore legally incurred for the local maintenance of county line independent schools in said district.

Sec. 3. Such time warrants shall be payable within ten (10) years from January 1, 1939, and they shall bear interest at six (6) per cent per annum, and the Board of Trustees of any such county line independent school district shall have authority to pass all orders necessary or convenient to effect the surrender of said original vouchers for cancellation and to deliver refunding warrants in lieu thereof to the holders of said vouchers. Said refunding warrants shall bear interest at a rate not exceeding six (6) per cent per annum, payable semiannually, and shall be payable serially at such times and in such amounts as may be determined by the Board, the maximum maturity date being not more than ten (10) years after the date of said refunding warrants. The Board of Trustees shall have authority to reserve the right to retire said warrants before their maturity date upon the giving of proper notice to the holders, the method and time of which notice shall be prescribed in the order authorizing said warrants.

Sec. 4. It shall be the duty of the Board of Trustees of any district issuing said refunding warrants to levy a continuing tax within the total rate theretofore voted by the district for maintenance and other purposes, sufficient to pay the principal and interest of said refunding warrants as said interest and principal mature, and to have said tax assessed and collected. It shall be the duty of the Board of Trustees to take into consideration the tax necessary for said purpose from year to year in fixing the annual tax levied for maintenance and other purposes and to include within said general tax levy an amount sufficient to pay the principal and interest of said refunding warrants. [Acts 1939, 46th Leg., Spec.L., p. 702.]

Art. 2790d—4. Refunding warrants of independent districts in counties of 9,200 to 9,250 population.—Section 1. As to all counties having a population of not less than nine thousand, two hundred (9,200) inhabitants nor more than nine thousand, two hundred and fifty (9,250) inhabitants, according to the last preceding Federal Census, it shall be lawful for independent school districts located therein to create and issue, upon the faith and credit of said districts, time warrants for the purpose of taking up, re-

funding, and extending indebtedness heretofore legally incurred for the local maintenance of schools in said districts.

Sec. 2. Such time warrants shall be payable within ten (10) years from August 31, 1940, and shall bear interest not to exceed six (6) per cent per annum, and the boards of trustees of said independent school districts shall levy a sufficient tax within legal limitations to pay the interest on said obligations and to create a sinking fund to discharge them at maturity. The powers herein granted shall be exercised by the boards of trustees of said districts without the necessity of a vote by the people. [Acts 1941, 47th Leg., p. 415, ch. 245.]

Art. 2790d—5. Funding warrants in independent districts in counties of 3,750 to 3,850 population.—Section 1. This Act shall apply to independent school districts in counties having a population of not less than three thousand, seven hundred and fifty (3,750) and not more than three thousand, eight hundred and fifty (3,850) according to the last preceding Federal Census. Independent school districts in said counties are hereby authorized to fund into time warrants any legal outstanding obligations of said districts whether evidenced by scrip, warrants, contracts, or any other instrument, which said obligations existed and were outstanding on the 1st day of July, 1940. Such time warrants shall be payable within five (5) years from the effective date of this Act and shall bear interest at not more than five (5) per cent per annum, and the Board of Trustees of said independent school districts shall levy a sufficient tax and within legal limitations to pay the interest on said obligations, and to create a sinking fund sufficient to discharge them at maturity.

Sec. 2. Such school districts are hereby authorized to borrow the sum of not more than Seven Thousand Dollars ($7,000) for the purpose of paying such outstanding obligations that were necessary expenses of said independent districts for the school years 1938–39 and 1939–40, and to issue time warrants within the limitations and upon the conditions prescribed in Section 1 hereof to evidence the indebtedness so incurred. The powers herein granted shall be exercised by the Boards of Trustees of said districts without the necessity of a vote by the people. [Acts 1941, 47th Leg., p. 403, ch. 234.]

Art. 2790d—6. Refunding warrants authorized and validated in independent districts in counties over 45,000 having assessed valuation of $550,000 to $775,000; tax levy to pay warrants.—Section 1. The Board of Trustees of any independent school district located in any county having a population of more than forty-five thousand (45,000) inhabitants according to the last preceding Federal Census, and which independent school district has an assessed valuation of not more than Seven Hundred and Seventy-five Thousand Dollars ($775,000) and not less than Five Hundred and Fifty Thousand Dollars ($550,000), shall have the power to issue refunding warrants in lieu of an extension of eligible vouchers, proceeds of such refunding warrants to be used exclusively for the payment of salaries of employees of said school district; providing that only such vouchers shall be eligible for refunding as meet the following conditions: They must have been originally authorized by the Board of Trustees for salaries, and shall have been signed by the proper officials of the district and delivered for value to the original payee; provided that such vouchers as may have been discounted by the original payee shall be redeemable by noninterest-bearing refunding warrants only.

Sec. 2. The Board of Trustees of any such independent school district as herein described shall have authority to pass all orders necessary and convenient to effect the surrender of such vouchers for cancellation and to deliver refunding warrants in lieu thereof to the holders of said vouchers. Said refunding warrants shall bear interest at a rate not exceeding three (3) per cent per annum, to be numbered serially, and shall be payable serially at such time and in such amount as may be determined by the Board, provided that the maximum date of maturity shall be not more than ten (10) years after the date of said refunding warrants. The Board of Trustees shall have authority to reserve the right to retire said warrants before their maturity date upon the giving of proper notice to the holders, the method of which notice shall be prescribed in the order authorizing said warrants; provided that the total amount of refunding warrants outstanding at any one time shall never exceed the sum of Five Thousand Dollars ($5,000).

Sec. 3. The actions of the Board of Trustees in authorizing, issuing, and delivering said original vouchers are hereby expressly authorized and validated and such vouchers and accrued interest thereon are in all things validated, and said refunding warrants issued in lieu thereof shall be binding and enforceable obligations of said district.

Sec. 4. It shall be the duty of the Board of Trustees of any such district as herein described issuing said refunding warrants to levy a continuing tax within the total rate theretofore voted by the district, for maintenance and other purposes, sufficient to pay the principal and interest on said refunding warrants as said interest and principal matures, and to have said tax assessed and collected. It shall be the duty of the Board of Trustees to take into consideration the tax necessary for said purposes from year to year in fixing the annual tax levied for maintenance and other purposes and to include within said general tax levy an amount sufficient to pay the principal and interest of said refunding warrants. [Acts 1941, 47th Leg., p. 522, ch. 319.]

Art. 2790d—7. Refunding warrants authorized in independent districts in counties of 1,843 to 1,943.—Section 1. This Act shall apply to independent school districts in counties having a population of not less than one thousand, eight hundred and forty-three (1,843) and not more than one thousand, nine hundred and forty-three (1,943) according to the last preceding Federal Census. Independent school districts in said counties are hereby authorized to fund into time warrants any legal outstanding obligations of said districts whether evidenced by scrip, warrants, contracts or any other instrument, which said obligations existed and were outstanding on the 10th day of May, 1941. Such time warrants shall be payable within ten (10) years from the effective date of this Act and shall bear interest at not more than five (5) per cent per annum, and the Board of Trustees of said independent school districts shall levy a sufficient tax and within legal limitations to pay the interest on said obligations, and to create a sinking fund sufficient to discharge them at maturity.

Sec. 2. Such school districts are hereby authorized to borrow the sum of not more than Fourteen Thousand Dollars ($14,000) for the purpose of paying such outstanding obligations that were necessary expenses of said independent districts for the school years 1939–40 and 1940–41, and to issue time warrants within the limitations and upon the conditions prescribed in Section 1 hereof to evidence the indebtedness so incurred. The powers herein granted shall be exercised by the Boards of Trustees of said districts without the necessity of a vote by the people. [Acts 1941, 47th Leg., p. 680, ch. 423.]

Art. 2790e. Election for school tax in counties of 350,000 or more; number of school trustees.

Petition for election

Sec. 1. In all counties having a population of 350,000 or more according to the last preceding Federal

Census, the County Judge of such counties shall, upon the presentation to him of a petition signed by one hundred and fifty or more of the qualified property taxpaying voters of such county praying for such an election, order an election for the purpose of submitting to the qualified property taxpaying voters of such county the question of whether or not a tax not to exceed One Cent on the One Hundred Dollars valuation of the taxable property in such county shall be levied, assessed and collected in such county for the purpose of creating an Equalization Fund for the public free schools in such counties, to be expended in the equalization of educational opportunities and in the advancement and administration of the public free schools therein.

Order for election

Sec. 2. Upon the presentation of such petition to the County Judge he shall order an election to be held in such county on the earliest day when a county wide election is being held; and such order shall designate at least one polling place in each school district, or part of school districts, in such county, with such additional polling places as he may deem necessary or advisable, and shall appoint one person, who shall be a qualified voter at such polling place, as presiding officer at such polling place; and such presiding officer may appoint one judge and two clerks to assist in holding such election. The ballots and other election supplies shall be furnished by the Election Board of such County, and such election shall be governed by the General Election Laws, except as may be otherwise provided in this Act.

Notice of election

Sec. 3. Notice of such election shall be given by publication of such order in a newspaper of general circulation in such county once each week for three consecutive weeks, or by posting notices thereof in three public places in such county for at least twenty days prior to the date of such election or by both such publication and posting.

Returns; declaring result of election

Sec. 4. The presiding officer at each polling place shall, within five days from the date of holding such election, make due return thereof to the Commissioners' Court of such county, which shall canvass the returns and declare the result thereof; and if a majority of the qualified property taxpaying voters voting at such an election shall vote in favor of such tax, the Commissioners' Court shall thereupon enter its order upon the minutes of such Court declaring the result thereof, and shall certify such fact to the County School Trustees of such County.

Meeting to determine amount required; tax

Sec. 5. If the vote be in favor of such tax, the County School Trustees of such county shall as soon thereafter as practicable hold a meeting for the purpose of determining the amount of money required for equalization purposes, and for the payment of administration expense in such counties, and they shall thereupon make their order setting forth the estimated amount of money required for such purposes, and the rate of tax to be levied to raise such sums, and shall certify the same to the Commissioners' Court; and the Commissioners' Court shall thereupon levy the rate so certified to them by the said County School Trustees, not to exceed the rate fixed by this Act, and cause such tax to be assessed and collected in the same manner, at the same time, and by the same officers as State and County taxes are now collected.

Disposition of taxes collected; County Equalization Fund

Sec. 6. The tax herein provided for shall constitute a part of the school funds of said counties, and shall never be levied, assessed or collected for any purpose other than those herein specified, and for the advancement of public free schools in such counties; and when collected, it shall be deposited by the Tax Collector in the County Depository in a fund which shall be known as "County Equalization Fund", and a statement of the amounts collected shall be furnished monthly by the Collector to the County School Trustees.

Lien, taxes

Sec. 7. Such tax, when levied by order of the Commissioners' Court as herein provided, shall be a lien upon all property in such county, and shall be governed by the same laws as govern the levy, assessment and collection of State and County taxes, except as otherwise specially provided herein.

Expenditure of funds

Sec. 8. Such funds shall be expended by the County School Trustees of such counties for the equalization of educational opportunities in such counties, and for the payment of administration expense, upon warrants signed by the President and the Secretary of the County School Trustees; and all such expenditures shall be approved monthly by the County School Trustees; provided, however, no part of such fund shall be expended in any school district which does not levy a tax for school purposes of Seventy-five Cents or more on the Hundred Dollars value of taxable property in such district.

Duties and powers as cumulative

Sec. 9. The duties, powers and authorities herein given to the County School Trustees shall be cumulative of all other duties, powers and authorities heretofore or hereafter given such Trustees. This law shall not affect the levy, assessment or collection of any other tax heretofore or hereafter levied, assessed or collected in any school district in such counties, and the tax herein provided for shall be in addition to such other tax, or taxes.

Payment of Superintendent's salary and expenses from funds realized

Sec. 10. In the event that the tax herein provided for shall be authorized by the voters of the county to which this Act applies, then the County Superintendent's salary and all expenses of maintaining his office shall be paid out of the funds realized from the collection of the tax herein provided for.

Assessment for County Equalization Fund

Sec. 11. Until the tax herein provided for shall be authorized and levied, the County Superintendent's salary and expenses of maintaining his office, together with the salary of any assistants he may have, shall be paid out of the County Equalization Fund. Such County Equalization Fund shall be created by an assessment of not to exceed Ten Cents (10¢) per scholastic out of the scholastic apportionment, such assessment to be made by the Board of County School Trustees. Such Ten Cents (10¢) assessment per scholastic shall also cover the cost of One Cent (1¢) per name now paid for checking the scholastic census. Any additional amount remaining in or accruing to such County Equalization Fund shall be used for the equalization of educational opportunities in such county by the Board of County School Trustees. This fund shall be created and so used beginning with the ensuing scholastic year after the effective date of this Act.

Board of County School Trustees in counties over 350,000

Sec. 12. In all counties having a population of more than 350,000, according to the last preceding Federal Census, the Board of County School Trustees shall consist of seven members, three of whom shall be elected from the county at large, and one from each Commissioners Precinct.

Election of trustees

Sec. 13. The election for County School Trustees shall be held on the first Saturday in April of each year, and the election officers holding elections for trustees in each district in the county shall hold the election for County School Trustees at the same time and place as the election for district trustees.

Term of office of trustees

Sec. 14. The term of office of such trustees shall be divided into three classes; and at the first election held under this Act, they shall determine by lot the terms for which they shall serve; the two trustees drawing numbers one and two shall serve for two years, and the two drawing numbers three and four shall serve for four years, and the three drawing numbers five, six and seven shall serve for six years. Thereafter, two trustees or three trustees shall be elected to serve for a term of six years, in accordance with the expiration of the terms herein fixed. [Acts 1935, 44th Leg., p. 455, ch. 182.]

Art. 2790f. Warrants for salaries in district in counties of 290,000 and not over 320,000 population.—Sec. 1. The trustees of Independent School Districts and of Common School Districts in all counties of this State having a population of not less than two hundred and ninety thousand (290,000) nor more than three hundred and twenty thousand (320,000) inhabitants, according to the last preceding Federal Census, are hereby authorized to issue interest bearing warrants in payment of salaries of all persons employed in the conduct of the public schools in such districts.

Sec. 2. All warrants issued under the provisions of Section 1 of this Act shall bear interest at not more than four per cent (4%) per annum from the date of issuance; provided, that no warrant that has been issued and sold by the holder thereof at a discount prior to the passage of this Act shall bear interest.

Sec. 3. The total amount of warrants which may be issued under the provisions of this Act, together with all other warrants theretofore issued for the current expenses of the schools in all counties containing a population of not less than two hundred and ninety thousand (290,000) nor more than three hundred and twenty thousand (320,000) inhabitants, during any particular year shall not exceed eighty per cent (80%) of the estimated proceeds of the local maintenance tax, as shown by the budget, and as determined by the County Board and the County Superintendent in the case of Common School Districts, and the City Superintendent and Trustees of the Individual Independent Districts, in the case of Independent Districts, together with not more than sixty per cent (60%) of the total per capita apportionment to be received from the State of Texas during the current scholastic year.

Sec. 4. It shall be the duty of the County Superintendent of Schools, or the Secretary of the School Board of such Independent School District, to number numerically and record each such interest bearing warrant, and to give official notice of its issuance to the proper depository, and it shall be the duty of such depository to notify the County Superintendent or the Secretary of the Independent School District when sufficient funds are in its hands to the credit of such district to liquidate these warrants, and such warrants issued for the payment of salaries shall be paid numerically. [Acts 1935, 44th Leg., 2nd C.S., p. 1706, ch. 439.]

Art. 2790g. Tax rate in certain independent districts of 15,140 to 15,160 population; elections.—Section 1. In any independent school district having and including within its limits two counties or portions thereof one of which counties according to the latest Federal Census had a population of not fewer than fifteen thousand, one hundred and forty (15,140) and not more than fifteen thousand, one hundred and sixty (15,160) inhabitants, the school district trustees of the independent school district, whether such independent school district was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property of the district as fixed by the county and collected by the County Assessor-Collector;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50);

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by two-thirds of the votes cast at an election held in the district for such purpose, at which none but property taxpaying qualified voters of such district shall be entitled to vote. [Acts 1937, 45th Leg., p. 781, ch. 381, § 1.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 2790h. Independent districts in counties of 32,350 to 32,800 population authorized to borrow money for construction of schools; interest bearing warrants authorized.—Section 1. This Act shall apply to independent school districts in counties having a population of not less than thirty-two thousand three hundred fifty (32,350) and not more than thirty-two thousand eight hundred (32,800) according to the last preceding Federal Census. Independent school districts in said counties are hereby authorized to borrow the sum of not more than One Hundred Fifty Thousand ($150,000.00) Dollars for the purpose of supplementing funds on hand to construct and equip public free school buildings of and in said independent school districts, and to issue time warrants within the limitations and upon the conditions prescribed in Section 2 hereof to evidence the indebtedness so incurred.

Sec. 2. Such time warrants as are authorized by Section 1 of this Act shall be payable within three (3) years from the effective date of this Act and shall bear interest at not more than the rate of five (5%) per cent per annum, and the Boards of Trustees of said independent school districts shall levy a sufficient tax, within legal limitations, to pay the interest on said obligations, and to create a sinking fund sufficient to discharge them at maturity. The powers granted by this Act shall be exercised by the Boards of Trustees of said districts without the necessity of a vote by the people. [Acts 1937, 45th Leg., 1st C.S., p. 1750, ch. 6.]

Art. 2790i. Time warrants of independent districts of 769 to 775 scholastics validated.—Section 1. All time warrants heretofore authorized by the governing bodies of all Independent School Districts in the State of Texas having a scholastic enumeration of not less than 769 and not more than 775, according to the last preceding scholastic enumeration and all proceedings heretofore had in connection with the issuance of such time warrants, including the levy of and provision for a tax for the payment of principal and interest on said time warrants as the same mature, are hereby validated, ratified and confirmed and legalized. The governing bodies of such Independent School Districts shall be and they are hereby authorized and empowered to do any and all things necessary and requisite in the issuance, sale and delivery of said time warrants, and when so issued and delivered, said time warrants shall constitute legal and binding obligations of such Independent School Districts.

Sec. 2. Provided, however, that the provisions of this Act shall not apply to any such proceedings or to any such time warrants heretofore authorized as aforesaid, the validity of which is being contested or attacked in any suit pending at the time this Act takes effect. [Acts 1937, 45th Leg., 1st C.S., p. 1781, ch. 20.]

Art. 2790j. Refunding bonds authorized in certain independent districts containing city or town of 7,100 to 7,200 population.—Any independent school district in which there is situated a city or town with a population of not less than seven thousand, one hundred (7,100) and not more than seven thousand, two hundred (7,200), according to the last preceding Federal Census, which independent school district has outstanding bonds and is delinquent in the payment of either principal or interest upon said bonds, and which said bonds were originally sold at a premium and such independent school district realized the benefit from said premium, and which independent school district can refinance and/or refund said bonds at a less rate of interest than said bonds now bear and thereby create a saving for such independent school district, is hereby authorized to expend not more than fifty (50) per cent of the taxes assessed and collected by such independent school district for a period of years not to exceed four (4) from the date said bonds are refinanced and/or refunded for the purpose of paying warrants issued by such independent school district in payment of the premium originally realized upon the sale of said bonds, in the repurchase of the same for the purpose of refinancing and/or refunding said bonds, and for the purpose of paying the actual and necessary cost of refinancing and/or refunding said bonds, providing said warrants shall not bear interest at a greater rate than six (6) per cent per annum and provided further that no taxes assessed and collected shall be used for such purposes which shall be necessary to pay the interest and create a sinking fund on any outstanding bonds of such independent school district. [Acts 1937, 45th Leg., 1st C.S., p. 1814, ch. 34, § 1.]

Art. 2790k. Tax rate in independent districts in certain cities.—In any Independent School District including within its limits a city of which had a population of more than seven thousand, eight hundred and fifty (7,850), and less than eight thousand (8,000), according to the last preceding Federal Census, the School District Trustees of the Independent District or the City Council or any Commission of any such city which has heretofore assumed control of its public school shall have the power to levy and cause to be collected the annual taxes and to issue the bonds herein authorized subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation of taxable property of the district or the city;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such Districts and the purchase of the necessary sites therefor, a tax not to exceed Sixty (60) Cents on the one hundred dollars valuation, such tax to be the payment of the current interest on and provide a Sinking Fund sufficient to pay the principal of bonds which said Districts are empowered to issue for such purposes;

(3) The amount of maintenance tax, together with the amount of bond tax of any district, shall never exceed One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation of taxable property; and if the rate of bond tax, together with the rate of maintenance tax voted in the district, shall at any time exceed One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Twenty-five Cents ($1.25); but if the bond tax shall at any time not equal Sixty (60) Cents on the one hundred dollars valuation, the District shall nevertheless have the power to levy and collect an ad valorem tax of not to exceed One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation;

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder until such action has been authorized by a majority of the votes cast at an election held in the District for such purposes, at which none but property tax-paying qualified voters of such District who have duly rendered their property for taxation shall be entitled to vote. [Acts 1939, 46th Leg., Spec.L., p. 668, § 1.]

Section 2 of the Act of 1939 repealed conflicting laws, but provided that nothing in such act should affect any Independent School District which at the time might have a larger authorized rate of taxation than specified therein.

Art. 2791. [2861] Independent district assessor and collector.—There is hereby created the office of assessor and collector of each independent school district, whether created by special or general law, who shall be appointed by the Board of Trustees thereof, and shall have the same power and shall perform the same duties with reference to the assessment and collection of taxes for free school purposes that are conferred by law upon the assessor and collector of taxes in and for any incorporated city, town or village, or upon the person or officer legally performing the duties of such assessor and collector, and he shall receive such compensation for his services as the Board of Trustees may allow, except in cities and towns provided for, not to exceed four (4) per cent of the whole amount of taxes received by him. He shall give bond in double the estimated amount of taxes coming annually into his hands, payable to and to be approved by the president of the Board, conditioned for the faithful discharge of his duties, and that he will pay over to the treasurer of the Board all funds coming into his hands by virtue of his office as such assessor and collector; provided that in the enforced collection of taxes the Board of Trustees shall perform the duties which devolve in such cases upon the city council of an incorporated city or town, the president of the Board of Trustees shall perform the duties which devolve in such cases upon the mayor of an incorporated city or town, and the county attorney of the county in which the independent school district is located, or the city attorney of the incorporated city in which said district or a

part thereof is located, shall perform the duties which in such cases devolve upon the city attorney of an incorporated city or town under the provisions of law applicable thereto. It shall be within the discretion of the Board of Trustees of any independent school district to name an assessor of taxes who shall assess the taxable property within the limits of the independent school district within the time and in the manner provided by existing laws, in so far as they are applicable, and when said assessment has been equalized by a Board of Equalization appointed by the Board of Trustees for that purpose, shall prepare the tax rolls of said district and shall duly sign and certify same to the county tax collector, or the city tax collector as provided for in the succeeding article. The said assessor of taxes shall receive a fee of two (2) per cent of the whole amount of taxes assessed by him as shown by the completed certified tax rolls. [Acts 1905, p. 263; Acts 1923, 2nd C.S., p. 78; Acts 1945, 49th Leg., p. 232, ch. 176, § 1.]

Art. 2792. [2862] County or city assessor and collector for independent district.—When a majority of the Board of Trustees of an independent district prefer to have the taxes of their district assessed and collected by the county assessor and collector, or by the city assessor and collector, of an incorporated city or town in the limits of which the school district, or a part thereof is located, or collected only by the county or city tax collector, same may be assessed and collected, or collected only, as the case may be, by said county or city officers, as may be determined by the Board of Trustees of said independent school district, and turned over to the treasurer of the independent school district for which such taxes have been collected. The property of such districts having their taxes assessed and collected by the county or city assessor and collector may be assessed at a greater value than that assessed for city, county and State purposes, and in such cases the city or county tax assessor and collector shall assess the taxes for said district on separate assessment blanks furnished by said district and shall prepare the rolls for said district in accordance with the assessment values which have been equalized by a Board of Equalization appointed by the Board of Trustees for that purpose. If said taxes are assessed by a special assessor of the independent district and are collected only by the city or county tax collector, the city or county tax collector in such cases shall accept the rolls prepared by the special assessor and approved by the Board of Trustees as provided in the preceding Article. When the county assessor and collector is required to assess and collect the taxes on independent school districts they shall respectively receive one (1) per cent for assessing, and one (1) per cent for collecting same; and when the assessor and collector of an incorporated city, or town, as hereinbefore provided, is required to assess and collect the taxes of independent school districts the Board of Trustees of such school district may contract with the governing body of said city for payment for such services as they may see fit to allow, not to exceed four (4) per cent of the whole amount of taxes collected and received. [Acts 1905, p. 263; Acts 1923, 2nd C.S., p. 78; Acts 1937, 45th Leg., p. 637, ch. 312, § 1; Acts 1945, 49th Leg., p. 232, ch. 176, § 2.]

Art. 2792a. Assessment at fair market value or intrinsic value.—No property shall be assessed for taxes at a valuation greater than its fair market value, and if there is no market value, then no greater than its intrinsic value. [Acts 1937, 45th Leg., p. 637, ch. 312, § 2.]

Art. 2792b. Board of Equalization; Assessor and Collector of Taxes; in certain Independent School Districts.—Section 1. Where any Independent School District, whether created by General or Special Law, now or hereafter existing, lies partly within and partly without the limits of any incorporated city or town, the Board of Trustees thereof, in addition to all the powers now provided by the General Laws of Texas governing the assessment and collection of taxes by such District and particularly those contained in Articles 2791 and 2792 of the Revised Civil Statutes of Texas, 1925, and all powers conferred by any Special Act creating or governing any district, shall also have power to appoint a Board of Equalization and an Assessor and Collector of Taxes for that portion of such district lying within the limits of such city or town and another Board and Assessor and Collector for that portion lying without the corporate limits of any city or town, provided, however, that all taxes for the district shall be equally and uniformly assessed. Said Boards of Equalization and Assessors and Collectors of Taxes may be one or more of the officials mentioned in Article 2792, or any other person or persons designated by the Board of Trustees of any Independent School District.

Sec. 1 (a) In addition to the requirements of Section 1 hereof, in order to come within the terms of this Act, any such school district must have included within its boundaries all or a portion of a city, the charter of which requires such city or the officials thereof to collect free the school taxes on property which is within both such city and such school district.

If for any reason this Section 1 (a) should invalidate this Act, the Legislature hereby declares that it is its intention to, and it does, pass and enact this Act without this Section 1 (a), and in such event this Act shall become a law the same as though this Section 1 (a) were not a part thereof.

Sec. 2. Wherever the Tax Assessor and Collector of any incorporated town or city is now required by Local or General Law to assess and collect taxes for an Independent School District lying within the corporate limits of such town or city, such law shall apply to any area in the limits of such town or city which may hereafter become a part of the district.

Sec. 3. This Act shall not repeal any Special or General Law but shall be cumulative of and in addition to all other laws relating to the subject matter hereof and particularly to Articles 2791 and 2792, as amended by the Acts of the Forty-ninth Legislature, Chapter 176, Sections 1 and 2. [Acts 1947, 50th Leg., p. 757, ch. 372.]

Art. 2793. [2829–32] Common school tax: election.—The county judge shall appoint a presiding officer for each voting place to hold any such election in common school districts; and shall prepare the ballots for such elections, and the county shall bear the expense of having them printed. All polls for school district elections shall be opened at eight o'clock a. m., and shall be closed at six o'clock p. m. and none of the officers holding such election shall be entitled to compensation therefor. Any person may challenge a voter; but if the challenged party takes an oath that he is a qualified voter of the State and county, and that he is a resident property taxpayer in said district, he shall be entitled to vote. [Acts 1905, p. 263; Acts 1909, p. 17.]

Art. 2794. [2833–35] Change in common school tax.—At any time after the expiration of two years after any common school district has levied a school tax on itself, twenty property taxpaying qualified voters, or a majority of such voters of the district, may have an election held, upon the proper petition to the county judge, to determine whether such tax shall be abrogated, increased or diminished. Said election shall be held and conducted as other elections in said district. If the election be to abrogate or diminish the school tax, the ballots shall have written

or printed thereon the words: "For abrogating school tax," or "For diminishing school tax to ..... cents;" and "Against abrogating school tax," or "Against diminishing school tax to ..... cents." If the election be to determine whether the tax shall be increased, the ballots shall have written or printed thereon the words: "For increase of school tax" and "Against increase of school tax." [Id.]

Art. 2795. Levy of common school tax.—The commissioners court, at the time of levying taxes for county purposes, shall also levy upon all taxable property within any common school district the rate of tax so voted if a specific rate has been voted; otherwise said court shall levy such a rate within the limit so voted as has been determined by the board of trustees of said district and the county superintendent and certified to said court by the county superintendent. If such tax has been voted after the levy of county taxes, it shall be levied at any meeting of said court prior to the delivery of the assessment rolls by the assessor. The tax assessor shall assess said tax as other taxes are assessed and make an abstract showing the amount of special taxes assessed against each school district in his county and furnish the same to the county superintendent on or before the first day of September of the year for which such taxes are assessed. The taxes levied upon the real property in said districts shall be a lien thereon and the same shall be sold for unpaid taxes in the manner and at the time of sales for State and county taxes. The tax collector shall collect said taxes as other taxes are collected. The tax assessor shall receive a commission of one-half of one per cent. for assessing such tax and the tax collector a commission of one-half of one per cent. for collecting the same. The tax collector shall pay all such taxes to the county treasurer, and said treasurer shall credit each school district with the amount belonging to it, and pay out the same in accordance with law. [Acts 1921, p. 56.]

Road districts organized and bonds issued under laws held invalid by the United States Supreme Court in Browning v. Hooper, 46 S. Ct. 141, 269 U. S. 396, 70 L. Ed. 330, were validated by Acts 1926, 39th Leg., 1st C. S., p. 33, ch. 17.

Maximum maintenance and bond tax rate in common school districts in counties having population of 23,909 to 23,915; Acts 1941, 47th Leg., p. 427, ch. 257.

Art. 2796. Districts affected.—The provisions of the twelve preceding articles relative to tax and bond elections in common school districts shall also apply to common county line school districts. The provisions hereof relative to tax and bond elections in independent school districts shall apply to any such district incorporated under general or special laws for school purposes only, and shall also apply to all such incorporated districts having each fewer than one hundred and fifty scholastics according to the latest census. [Id.]

Art. 2796a. General law to govern bonds and taxes in certain school districts.—That all school districts, whether common or independent, or created by general or special law, whose scholastic population is not less than 680 nor more than 690 as shown by the 1928–1929 scholastic census roll, shall hereafter be governed in the levy and collection of school taxes, and in the issuance of bonds, by the provisions of the general laws as they now exist or may hereafter be enacted; provided that the authority heretofore conferred upon any school district by special legislation to levy and collect a local tax in excess of the present statutory limitation shall not be affected by the provisions of this act. [Acts 1929, 41st Leg., 1st C.S., p. 44, ch. 13, § 1.]

Section 2 of this Act repeals all conflicting general or special laws.

Art. 2797. Teachers' homes.—Any Common School District or Independent School District, whether created by Special Act of the Legislature or by vote of the people, and any City or Town which has assumed control of its Public Schools, may issue serial coupon bonds in the same manner as provided by law for the issuance of other bonds to build and equip school houses and to purchase sites therefor, for the purpose of purchasing or building a teachers' home and for purchasing land in connection therewith, provided no bonds shall be issued to provide a home in a District employing fewer than two teachers in a single school; and no bonds shall be issued for such purpose except by a majority vote of the property taxpayers qualified to vote in such district. [Acts 1923, p. 256; Acts 1937, 45th Leg., p. 704, ch. 353, § 1.]

Art. 2798. [2875] Tax in cities.—After a city or town has assumed control of the public free schools within its limits, the governing body shall also submit the question to the property taxpayers as to whether or not the additional amount as provided for hereinafter shall be raised by taxation. The provisions of this subdivision relative to the holding of elections in common school and other independent districts shall apply to elections held under the provisions of this law, except as otherwise provided herein. [Acts 1905, p. 263.]

Art. 2799. [2877] Election for tax.—The governing body of any city or town which is a separate and independent school district, whether incorporated under any act of the Congress of the Republic or the Legislature of Texas, or under any act or incorporation whatever, shall have power by ordinance to annually levy and collect ad valorem taxes for the support and maintenance of public free schools and for the erection and equipment of public free school buildings in the city or town. The proposition submitted may be for such a rate of ad valorem tax not exceeding such per cent. as may be voted by a majority vote of all votes cast at any such election. If the proposition is carried, the school tax shall be continued to be annually levied and collected for at least two years, and thereafter, unless it be discontinued at an election held to determine whether the tax shall be continued or discontinued at the request of fifty property taxpayers of such independent district. When the tax is continued no election to discontinue it shall be held for two years; when the tax is discontinued no election to levy a tax shall be held during the same year. [Id.; Acts 1917, p. 380.]

Art. 2799a. Time of elections for maintenance tax.—Sec. 1. That in all independent school districts having 150 scholastics or more, whether created by general law or Special Acts of the Legislature, situated within any county having not less than 350,000 population according to the last preceding Federal Census, if an election shall have been called and held by the trustees or other governing board of any such school district, or any such election shall hereafter be called by the trustees or other governing board of any such school district, for the purpose or purposes of determining whether a maintenance tax shall be levied within said district or bonds of said district shall be issued and if, at any such election, the vote shall have resulted contrary to the proposed tax or bonds the board of trustees or other governing board of any such school district shall be and it is hereby authorized to call and cause to be held another election at any time thereafter at which there may again be submitted either the proposition to levy a maintenance tax or to issue bonds of such district, or both.

Sec. 2. All laws, both general and special, providing a definite time which shall elapse between any such elections within any such school districts covered by this Act are hereby expressly repealed, in so far as they conflict with the provisions of this Act. [Acts 1935, 44th Leg., 1st C.S., p. 1554, ch. 379.]

Art. 2800. [2878–9] Governing body to fix rate.—If the vote of the taxpayers is in favor of said tax, then the governing body of a city or town which

has assumed exclusive control of the public free schools in its limits shall annually thereafter levy and assess upon the taxable property in the limits of such district, by ordinance duly passed and approved, in accordance with the usual assessment of taxes for municipal purposes, such additional tax, not to exceed the rate voted, as may be necessary for the support and maintenance of the public schools and for the erection and equipment of public school buildings for nine months in the year. If a specific rate of tax has been voted, the governing body shall have no discretion in determining the rate to be levied, but shall levy and assess the same at the rate voted. [Acts 1905, p. 263; Acts 1917, p. 380.]

Art. 2801. [2880] Trustees to fix rate.—In a city or town constituting an independent school district, and where a special tax for school purposes has been voted by the people or provided by special charter, the board of trustees shall determine what amount of said tax, within the limit voted by the people or fixed by special charter, will be necessary for the maintenance and support of the school and for the erection and equipment of public school buildings for each current year; and the governing body of such city or town, upon the requisition of the said board of trustees, shall annually levy and collect said tax, as other taxes are levied and collected; and said tax, when collected, shall be placed at the disposal of the said school board, by paying over monthly to the treasurer of said board the amount so collected, to be used for the maintenance and support of the public free schools and for the erection and equipment of public school buildings in such district. [Id.]

Art. 2802. [2881] Assessment and collection.—In an independent school district constituted of a city or town having a city assessor and collector of taxes, such assessor and collector of taxes shall assess and collect the taxes for school purposes; provided, that in a city or town having an assessor and collector of taxes, the levy of taxes for school purposes shall be based upon the same assessment of property upon which the levy for other city purposes is based. In such a city or town, the assessor and collector of taxes shall receive no other compensation for collecting school taxes than the compensation paid him for assessing and collecting city taxes; and taxes for school purposes in such a city or town shall be assessed and collected as other city taxes are assessed and collected. [Acts 1905, p. 263.]

Art. 2802a. Independent districts and bonds validated.—Sec. 1. That in all cases where, with the intention of organizing an Independent School District, the Legislature of this State enacted a law prior to January 20, 1927, describing and designating a contiguous area of territory as an Independent School District and a Board of Trustees, chosen by the inhabitants of said territory has managed and governed the school affairs of such territory, conducted schools therein, levied taxes and called and held an election for voting upon the issuance of bonds for school purposes, and a majority of the qualified tax paying voters have voted in favor of such bonds and the bonds have been sold and the proceeds received by said District, then each such contiguous area of territory is hereby recognized and declared to be a validly organized Independent School District of this State for the purpose of establishing and maintaining public schools. The Board of Trustees acting for each such district is hereby declared to be the duly constituted governing body thereof and shall have the powers conferred by the laws of this State applicable to such Districts, and all proceedings and acts thereof heretofore taken and had as authorized by the school laws of this State are validated and all bonds so authorized and sold and now outstanding are hereby declared to be the valid obligations of each such school District.

Sec. 2. All common school districts, consolidated districts, rural high school districts and independent school districts, whether created by general or special law in this State, heretofore laid out and attempted to be established by the proper officers of any county or by the Legislature of the State of Texas, and heretofore recognized by either State or county authorities as school districts are hereby validated in all respects as though they had been duly and legally established in the first instance. [Acts 1929, 41st Leg., p. 666, ch. 298.]

See, also, article 835e, ante.

Art. 2802b. Maximum tax rate in independent district including large city.—In any independent school district including within its limits a city which had a population of more than one hundred thousand and fewer than one hundred sixty thousand, according to the Federal census of 1920, the school district trustees of the independent district or the city council or commission of any such city which has heretofore assumed control of its public schools shall have the power to levy and cause to be collected the annual taxes and to issue the bonds herein authorized subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed $1.25 on the one hundred dollars valuation of taxable property of the district or the city.

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, a tax not to exceed fifty cents on the one hundred dollars valuation, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which said districts are empowered to issue for such purposes.

(3) The amount of maintenance tax, together with the amount of bond tax of any district, shall never exceed one dollar and twenty-five cents on the one hundred dollars valuation of taxable property; and if the rate of bond tax, together with the rate of maintenance tax voted in the district, shall at any time exceed one dollar and twenty-five cents on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and one dollar and twenty-five cents.

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property tax paying qualified voters of such district shall be entitled to vote. [Acts 1929, 41st Leg., p. 489, ch. 232, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws general and special.

Art. 2802c. Maximum tax rate in certain school districts.—In all counties in this State which, according to the Federal census of 1920, had a population of not fewer than 36,500 and not more than 36,700, the maximum rate of tax which may be levied in each school district of the said counties for the issuance of bonds and maintenance of the public schools may be One Hundred and fifty cents ($1.50) on the $100.00, said tax to be authorized, assessed, levied, and collected under the provisions of the general law. The amount of bond tax herein authorized shall never exceed fifty cents on the $100.00 valuation of taxable property. [Acts 1929, 41st Leg., 1st C.S., p. 187, ch. 73, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 2802d. [Expired.]

The article expired was Acts 1933, 43rd Leg., p. 8, ch. 6.

Art. 2802e. Construction and mortgaging of gymnasia, stadia, etc. by districts authorized; self-liquidating.

Buildings; mortgages; franchise to foreclosure purchaser; obligation not a debt

Sec. 1. All independent, consolidated and common school districts, and all cities and towns which have assumed the control of the public schools situated therein shall have power to build or purchase buildings and grounds for the purpose of constructing gymnasia, stadia, or other recreational facilities, and to mortgage and encumber the same, and the income, tolls, fees, rents, and other charges thereof, and everything pertaining thereto, acquired or to be acquired, and to evidence the obligation therefor by the issuance of bonds, notes or warrants to secure the payment of funds to purchase same, including the purchase of equipment and appliances for use therein, and as additional security therefor by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereof a franchise to operate said properties so purchased for a term of not more than ten (10) years after such purchase. No such obligation shall ever be a debt of any such school district and/or city or town but solely a charge upon the property so encumbered, and shall never be reckoned in determining the power of any such school district, city or town to issue bonds for any other purpose authorized by law; provided that no election for the issuance of the evidence of indebtedness herein authorized shall be necessary, but the same may be authorized by a majority vote of the board of trustees of such independent school district or the governing body of such city or town. [As amended Acts 1934, 43rd Leg., 4th C.S., p. 76, ch. 31, § 1.]

Additions to buildings; mortgages; franchise to foreclosure purchaser; obligation not a debt

Sec. 1-a. All independent, consolidated and common school districts and all cities and towns which have assumed control of the public schools situated therein shall have the power to build additions to existing gymnasia, stadia, or other recreational facilities owned by the same, and to purchase additional buildings and grounds for the purpose of constructing additions to existing gymnasia, stadia and other recreational facilities, and to mortgage and encumber said original gymnasia, stadia and other recreational facilities, together with the additional buildings and grounds and additions to existing gymnasia, stadia and other recreational facilities, and the income, tolls, fees, rents and other charges thereof, and everything pertaining thereto acquired or to be acquired, and to evidence the obligation therefor by the issuance of bonds, notes or warrants to secure the payment of funds to purchase same, including the purchase of equipment and appliances for use therein, and as additional security therefor by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereof a franchise to operate said properties so purchased for a term of not more than ten (10) years after such purchase. No such obligation shall ever be a debt of any such school district and/or city or town but solely a charge upon the property so encumbered, and shall never be reckoned in determining the power of any such school district, city or town to issue bonds for any other purpose authorized by law; provided that no election for the issuance of the evidence of indebtedness herein authorized shall be necessary, but the same may be authorized by a majority vote of the board of trustees of such independent school district or the governing body of such city or town. [As added Acts 1935, 44th Leg., p. 127, ch. 50, § 1.]

Projects as self-liquidating

Sec. 2. Projects financed in accordance with this law are hereby declared to be self-liquidating in character and supported by charges other than taxation.

Bonds payable from revenue

Sec. 3. Such bonds shall be payable from the net revenues of the project together with all future extensions or additions thereto or replacements thereof, and the governing body of such city, town or school district shall provide in the ordinance or resolution authorizing the bonds, that the cost of maintaining and operating the project shall be a first charge against such revenue, the maintenance and operating expenses to include only such items as are set forth in said ordinance or resolution. After the payment of such maintenance and operating expenses a sufficient amount of the revenues remaining shall be set aside in a fund known as the Gymnasium or Stadium Bond Interest and Redemption Fund to provide for the payment of principal of and interest upon such bonds plus a reasonable amount as a margin of safety. Such fund shall be used for no other purpose than to pay the principal of and interest on said bonds. Any revenues remaining after making the payments hereinabove provided for may be used for any lawful purpose. [As amended Acts 1934, 43rd Leg., 4th C.S., p. 76, ch. 31, § 1.]

Bonds for additions payable from net revenue

Sec. 3-a. Such bonds provided for in Section 1-a shall be payable from the net revenues of the entire project, including the original existing gymnasia, stadia and other recreational facilities and the additional buildings and grounds and additions to the existing gymnasia, stadia and other recreational facilities, together with all future extensions or additions thereto or replacements thereof, and the governing body of such city, town or school district shall provide in the ordinance or resolution authorizing the bonds, that the cost of maintaining and operating the project shall be a first charge against such revenue, the maintenance and operating expenses to include only such items as are set forth in said ordinance or resolution. After the payment of such maintenance and operating expenses a sufficient amount of the revenues remaining shall be set aside in a fund known as the Gymnasium or Stadium Bond Interest and Redemption Fund to provide for the payment of principal of and interest upon such bonds plus a reasonable amount as a margin of safety. Such fund shall be used for no other purpose than to pay the principal of and interest on said bonds. Any revenues remaining after making the payments hereinabove provided for may be used for any lawful purpose. [Added Acts 1935, 44th Leg., p. 127, ch. 50, § 1.]

Clause required in bonds

Sec. 4. Every contract, bond or note, or other evidence of indebtedness issued or executed under this law shall contain the following clause:

"The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

When bonds are executed hereunder they may be presented to the Attorney General for his approval as is provided for the approval of other school bonds and in such case the bond shall be registered by the State Comptroller as in the case of other school bonds.

Time limit for issuance of bonds, etc.

Sec. 5. No contract, bond or note, or other evidence of indebtedness authorized to be issued or executed under this Act, shall be issued or executed after the expiration of the 31st day of the month of December, 1937. [As amended Acts 1934, 43rd Leg.,

2nd C.S., p. 88, ch. 36, § 1; Acts 1934, 43rd Leg., 4th C.S., p. 44, ch. 14, § 1; Acts 1937, 45th Leg., p. 1288, ch. 479, § 1.]

Land not subject to payment of indebtedness

Sec. 6. No land upon which is situated any of the school improvements other than as described herein shall ever be subject to the payment of any indebtedness created hereunder, nor shall any encumbrance ever be executed thereon. [Acts 1933, 43rd Leg., p. 330, ch. 130.]

Acts 1934, 43rd Leg., 2nd C.S., p. 88, ch. 36, amended section 5; Acts 1934, 4th C.S., p. 76, ch. 31, amended sections 1, 3, 5 and Acts 1935, 44th Leg., p. 127, ch. 50 added sections 1-a, 3-a to this article.

Art. 2802e—1. Construction and mortgaging of gymnasia, stadia, etc., by districts authorized; self-liquidating; proceedings validated.

Buildings; mortgages; bonds; franchise to foreclosure purchaser; obligation not debt

Section 1. All independent school districts or common school districts and all cities, which have assumed the control of the public schools situated therein, shall have the power to build or purchase buildings and grounds located within or without the district or city, for the purpose of constructing gymnasia, stadia, or other recreational facilities, and to mortgage and encumber the same, and the income, tolls, fees, rents, and other revenues therefrom, and everything pertaining thereto, acquired or to be acquired, and to evidence the obligation therefor by the issuance of bonds to secure the payment of funds to purchase or to construct, or to purchase and construct the same, including the purchase of equipment and appliances for use therein, and as additional security therefor by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereof a franchise to operate said properties so purchased for a term of not more than ten (10) years after such purchase. No such obligation shall ever be a debt of any such school district or city, but solely a charge upon the property so encumbered, and shall never be reckoned in determining the power of any such school district or city, to issue bonds for any other purpose authorized by law; provided that no election for the issuance of bonds herein authorized shall be necessary, but the same may be authorized by a majority vote of the board of trustees of such independent school district or common school district or the governing body of such city.

Additions to buildings; mortgages; bonds; franchise to foreclosure purchaser; obligation not debt

Sec. 2. All independent school districts or common school districts and all cities which have assumed the control of the public schools situated therein, shall have the power to build additions to existing gymnasia, stadia, or other recreational facilities owned by the same, and to purchase additional buildings and grounds for the purpose of constructing additions to existing gymnasia, stadia, and other recreational facilities, and to mortgage and encumber said original stadia, gymnasia, or other recreational facilities, together with the additional buildings and grounds and additions to existing gymnasia, stadia, and other recreational facilities, and the income, tolls, fees, rents, and other charges thereof, and everything pertaining thereto acquired or to be acquired, and to evidence the obligation therefor by the issuance of bonds to secure the payment of funds to purchase the same, including the purchase of equipment and appliances for use therein, and as additional security therefor by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereof a franchise to operate said properties so purchased for a term of not more than ten (10) years after such purchase. No such obligation shall ever be a debt of any such school district and/or city, but solely a charge upon the property so encumbered, and shall never be reckoned in determining the power of any such school district or city, to issue bonds for any other purpose authorized by law; provided that no election for the issuance of the bonds herein authorized shall be necessary, but the same may be authorized by a majority vote of the boards of trustees of such independent school district or common school district or the governing body of such city.

Projects self-liquidating

Sec. 3. Projects financed in accordance with this Law are hereby declared to be self-liquidating in character and supported by charges other than taxation.

Bonds provided for in Section 1 payable from revenue

Sec. 4. Such bonds provided for in Section 1 shall be payable from the net revenues of the project together with all future extensions or additions thereto or replacements thereof, and the governing body of such school district, or city, shall provide in the ordinance or resolution authorizing the bonds, that the cost of maintaining and operating the projects shall be a first charge against such revenue, the maintenance and operating expenses to include only such items as are set forth in said ordinance or resolution. After the payment of such maintenance and operating expenses a sufficient amount of the revenue remaining shall be set aside in a fund known as the Gymnasium or Stadium Bond Interest and Redemption Fund to provide for the payment of principal of and interest upon such bonds plus a reasonable amount as a margin for safety. Such fund shall be used for no other purpose than to pay the principal of and interest on said bonds. Any revenues remaining after making the payments hereinabove provided for may be used for any lawful purpose.

Bonds provided for in Section 2 payable from revenue

Sec. 5. Such bonds provided for in Section 2 shall be payable from the net revenues of the entire project, including the original existing gymnasia, stadia, and other recreational facilities, and the additional buildings and grounds and additions to the existing gymnasia, stadia, and other recreational facilities, together with all future extensions or additions thereto or replacements thereof and the governing body of such city or school district shall provide in the ordinance or resolution authorizing the bonds, that the cost of maintaining and operating the project shall be a first charge against such revenues, the maintenance and operating expenses to include only such items as are set forth in said ordinance or resolution. After the payment of such maintenance and operating expenses, a sufficient amount of the revenue remaining shall be set aside in a fund known as the Gymnasium or Stadium Bond Interest and Redemption Fund to provide for the payment of principal of and interest upon such bonds, plus a reasonable amount as a margin of safety. Such funds shall be used for no other purpose than to pay the principal of and interest on said bonds. Any revenues remaining after making the payments hereinabove provided for may be used for any lawful purpose.

Required clause

Sec. 6. Every bond issued or executed under this Law shall contain the following clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Such bonds shall be presented to the Attorney General for his approval as is provided for the approval of other school bonds and in such cases the bonds shall be registered by the State Comptroller as in the case of other school bonds.

Period for issuance of bonds

Sec. 7. No bonds authorized to be issued or executed under this Act shall be issued or executed after the expiration of two (2) years from the effective date of this Act.

Land not subject to payment of indebtedness

Sec. 8. No land upon which is situated any of the school improvements other than as described herein shall ever be subject to the payment of any indebtedness created hereunder, nor shall any encumbrance ever be executed thereon.

Validation of acts, proceedings and contracts

Sec. 9. That all acts performed, proceedings had and contracts executed by school districts to which this Act is applicable, and by the governing bodies thereof, which acts, proceedings and contracts were unauthorized by law at the time of their performance or execution, but which would have been authorized under the terms of this Act had the same been in force at such time, are hereby validated, ratified, approved and confirmed in all respects as fully as though they had been duly and legally performed, had and executed in the first instance. [Acts 1939, 46th Leg., p. 285; Acts 1941, 47th Leg., p. 911, ch. 561, § 1; Acts 1945, 49th Leg., p. 406, ch. 261, § 1; Acts 1947, 50th Leg., p. 692, ch. 350, § 1].

Art. 2802e—2. Validating proceedings for bond issues and tax levies for stadia by independent districts.—Section 1. All proceedings had prior to February 10, 1941, by the Boards of Trustees of all independent school districts in the State of Texas authorizing the issuance of bonds of such districts, in the amount of not exceeding Twenty-five Thousand Dollars ($25,000), bearing interest at a rate of not exceeding three and one-half (3½) per centum per annum, payable annually or semiannually, and maturing serially over a period of not exceeding twenty (20) years from their date, for the purpose of constructing and equipping public free school stadia within such districts, pursuant to a majority vote of the qualified resident property taxpaying voters of such districts, who owned taxable property in such districts and who had duly rendered the same for taxation voting at an election held for that purpose, and levying a tax for the purpose of paying such bonds and the interest thereon, are hereby, in all things, ratified, approved, confirmed, and validated.

Sec. 2. The acts of the Boards of Trustees of all independent school districts in the State of Texas prior to February 10, 1941, in ordering elections upon the question of issuing bonds of such districts for the purpose of constructing and equipping public free school stadia within such districts as prayed by petitions to such Boards of Trustees, signed by at least twenty (20) qualified resident property taxpaying voters of such districts who own taxable property in such districts and who had duly rendered the same for taxation; the acts of such Boards in giving notice of such school bond elections; the acts of such Boards in submitting such question to a vote of the qualified resident property taxpaying voters of such districts who owned taxable property in such districts and who had duly rendered the same for taxation at elections held for that purpose, and the elections so held; the act of the officers of such elections in making returns of such elections to the Boards of Trustees of such districts; the acts of such Boards in canvassing the returns and declaring the results of such elections; and the orders of such Boards in authorizing the issuance of such bonds for such purpose and the levying of a tax for the purpose of paying such bonds and the interest thereon as they mature, are hereby, in all things, ratified, approved, confirmed, and validated.

Sec. 3. All such bonds authorized prior to February 10, 1941, but not executed prior to the effective date of this Act, when executed, shall be submitted to the Attorney General of the State of Texas for his examination and approval in the same manner and with the same effect as is provided in Article 2786, of the 1925 Revised Civil Statutes, and such bonds shall be registered by the Comptroller of Public Accounts as provided in said Article; and that all such bonds authorized prior to February 10, 1941, and which have been approved by the Attorney General of the State of Texas, registered by the Comptroller of Public Accounts, and sold prior to the effective date of this Act, are hereby, in all things, ratified, approved, confirmed, and validated.

Sec. 4. If any part, section, paragraph, sentence, or clause contained in this Act shall be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portion of this Act, and the Legislature hereby declares that it would have passed such remaining portion despite such invalidity. [Acts 1941, 47th Leg., p. 84, ch. 70.]

Art. 2802e—3. Independent districts having indebtedness exceeding 6% of assessed valuation; replacing or repairing condemned buildings; tax.—Section 1. Any Independent School District in this State having an indebtedness in excess of six (6%) per cent of its assessed valuation, in which is located a school building which shall have been condemned by the Board of Trustees of such District, upon the recommendation of a certified licensed architect or by some other agency of the State or local government qualified to pass on the safety of school buildings, may levy a tax for the purchase, construction, repair or equipment of public free school buildings within the limits of such District and the purchase of necessary sites therefor, not to exceed Seventy-five (75¢) Cents on the One Hundred ($100.00) Dollars valuation, such tax to be for the payment of current interest on and to provide a sinking fund sufficient to pay the principal of bonds issued for such purposes, and such District is hereby authorized to issue additional bonds for such purposes provided that the aggregate amount thereof at the time of issuance shall never reach an amount such that a tax of Seventy-five (75¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property will not pay current interest; and provided further that the amount of school maintenance tax together with the amount of bond tax for any such District shall never exceed One and 25/100 ($1.25) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property, and that if the rate of bond tax, together with the rate of maintenance tax voted in the District, shall at any time exceed One and 25/100 ($1.25) Dollars on the One Hundred ($100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One and 25/100 ($1.25) Dollars.

Sec. 2. The additional tax herein authorized shall not be levied, and no bonds shall be issued hereunder until the issuance of said bonds and the levying of said tax have been authorized by a majority of the votes cast at an election held in the District for such purpose, at which election none but qualified electors of the District who own taxable property therein and who have duly rendered the same for taxation shall be entitled to vote. [Acts 1941, 47th Leg., p. 365, ch. 203.]

Art. 2802e—4. Construction and mortgaging of gymnasia, stadia, etc., by independent districts; counties of 21,590 to 21,620; self liquidating; proceedings validated.—Section 1. All independent school districts, and all cities which have assumed the control of the public schools situated therein, in any county having a population of not less than twenty-one thousand, five hundred and ninety (21,590) and not more than twenty-one thou-

sand, six hundred and twenty (21,620) according to the last preceding Federal Census, shall have power to build or purchase buildings and grounds located within or without the district or city, for the purpose of constructing gymnasia, stadia, or other recreational facilities, and to mortgage and encumber the same, and the income, tolls, fees, rents, and other revenues therefrom, and everything pertaining thereto, acquired or to be acquired, and to evidence the obligation therefor by the issuance of bonds to secure the payment of funds to purchase or to construct, or to purchase and construct the same, including the purchase of equipment and appliances for use therein, and as additional security therefor by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereof a franchise to operate said properties so purchased for a term of not more than ten (10) years after such purchase. No such obligation shall ever be a debt of any such school district or city, but solely a charge upon the property so encumbered, and shall never be reckoned in determining the power of any such school district or city, to issue bonds for any other purpose authorized by law; provided that no election for the issuance of the bonds herein authorized shall be necessary, but the same may be authorized by a majority vote of the board of trustees of such independent school district or the governing body of such city.

Sec. 2. Projects financed in accordance with this law are hereby declared to be self-liquidating in character and supported by charges other than taxation.

Sec. 3. Such bonds shall be payable from the net revenues of the project together with all future extensions or additions thereto or replacements thereof, and the governing body of such school district, or city, shall provide in the ordinance or resolution authorizing the bonds, that the cost of maintaining and operating the project shall be a first charge against such revenue, the maintenance and operating expenses to include only such items as are set forth in said ordinance or resolution. After the payment of such maintenance and operating expenses a sufficient amount of the revenues remaining shall be set aside in a fund known as the Gymnasium or Stadium Bond Interest and Redemption Fund to provide for the payment of principal of and interest upon such bonds plus a reasonable amount as a margin for safety. Such fund shall be used for no other purpose than to pay the principal of and interest on said bonds. Any revenues remaining after making the payments hereinabove provided may be used for any lawful purpose.

Sec. 4. All independent school districts, and all cities which have assumed the control of the public schools situated therein shall have the power to build additions to existing gymnasia, stadia, or other recreational facilities owned by the same, and to purchase additional buildings and grounds for the purpose of constructing additions to existing gymnasia, stadia, and other recreational facilities, and to mortgage and encumber said original gymnasia, stadia, and other recreational facilities, together with the additional buildings and grounds and additions to existing gymnasia, stadia, and other recreational facilities, and the income, tolls, fees, rents, and other charges thereof, and everything pertaining thereto acquired or to be acquired, and to evidence the obligation therefor by the issuance of bonds, notes, or warrants to secure the payment of funds to purchase same, including the purchase of equipment and appliances for use therein, and as additional security therefor by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereof a franchise to operate said properties so purchased for a term of not more than ten (10) years after such purchase. No such obligation shall ever be a debt of any such school district and/or city but solely a charge upon the property so encumbered, and shall never be reckoned in determining the power of any such school district or city to issue bonds for any other purpose authorized by law; provided that no election for the issuance of the evidence of indebtedness herein authorized shall be necessary, but the same may be authorized by a majority vote of the board of trustees of such independent school district or the governing body of such city.

Sec. 5. Such bonds provided for in Section 4 shall be payable from the net revenues of the entire project, including the original existing gymnasia, stadia, and other recreational facilities and the additional buildings and grounds and additions to the existing gymnasia, stadia, and other recreational facilities, together with all future extensions or additions thereto or replacements thereof, and the governing body of such city or school district shall provide in the ordinance or resolution authorizing the bonds, that the cost of maintaining and operating the project shall be a first charge against such revenue, the maintenance and operating expenses to include only such items as are set forth in said ordinance or resolution. After the payment of such maintenance and operating expenses a sufficient amount of the revenues remaining shall be set aside in a fund known as the Gymnasium or Stadium Bond Interest and Redemption Fund to provide for the payment of principal of and interest upon such bonds plus a reasonable amount as a margin of safety. Such fund shall be used for no other purpose than to pay the principal of and interest on said bonds. Any revenues remaining after making the payments hereinabove provided for may be used for any lawful purpose.

Sec. 6. Every bond issued or executed under this law shall contain the following clause:

"The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Such bonds shall be presented to the Attorney General for his approval as is provided for the approval of other school bonds and in such cases the bonds shall be registered by the State Comptroller as in the case of other school bonds.

Sec. 7. No bonds authorized to be issued or executed under this Act, shall be issued or executed after the expiration of two (2) years from the effective date of this Act.

Sec. 8. No land upon which is situated any of the school improvements other than as described herein shall ever be subject to the payment of any indebtedness created hereunder, nor shall any encumbrance ever be executed thereon.

Sec. 9. All acts performed, proceedings had and contracts executed by school districts to which this Act is applicable, and all cities which have assumed the control of the public schools situated therein, and by the governing bodies thereof, which acts, proceedings and contracts were unauthorized by law at the time of their performance or execution, but which would have been authorized under the terms of this Act had the same been in force at such time, are hereby validated, ratified, approved, and confirmed in all respects as fully as though they had been duly and legally performed, had and executed in the first instance. [Acts 1941, 47th Leg., p. 691, ch. 432.]

Art. 2802f. Delinquent tax penalties in independent districts having city of 275,000.—Sec. 1. That the Board of Education or the Board of Trustees, as the case may be, of any Independent School District within the State of Texas, whether created by General Law or Special Act of the Legislature, and wherein there may be situated a city having not less than two hundred seventy-five thousand (275,000) population according to the last preceding Federal Census,

shall have the power by passing a resolution by a majority vote of the members of said Board of Education or Board of Trustees, as the case may be, beginning with 1933 delinquent taxes due to any such school district, to require in addition to the payment of any such delinquent taxes, in lieu of the present penalties provided by law, the payment of a penalty of two per cent (2%) upon the amount of the tax due if paid during the first month of such delinquency, four per cent (4%) if paid during the second month of such delinquency, six per cent (6%) if paid during the third month of such delinquency, eight per cent (8%) if paid during the fourth month of such delinquency, nine per cent (9%) if paid during the fifth month of such delinquency, and ten per cent (10%) if paid thereafter. Such resolution shall provide that, in addition to the payment of the tax and penalty as provided, interest at the rate of six per cent (6%) per annum shall be charged and paid upon the gross amount of the tax and penalty due from the date the tax became delinquent until paid.

Sec. 2. Until and unless the Board of Education or Board of Trustees of any such Independent School District shall pass the resolution provided for in the next preceding section hereof, the penalties and interest now provided by law on delinquent taxes due to any such Independent School District shall be and remain in full force and effect.

Sec. 3. Notwithstanding the fact that such Board of Education or Board of Trustees of any such Independent School District may hereafter, during any particular year, pass a resolution as provided for in Section 1 hereof, such action may be rescinded as to future years thereafter by a resolution passed by such Board of Education or Board of Trustees in any such school district by a majority vote of the members of such Board of Education or Board of Trustees, in which event the same interest and penalties now provided by law on delinquent taxes due to Independent School Districts shall immediately accrue on all taxes thereafter becoming delinquent if such taxes be not paid before the same become delinquent.

Sec. 4. All laws and parts of laws, both general and special, in conflict herewith are hereby expressly repealed.

Sec. 5. If any section, clause, sentence, paragraph or part of this Act shall, for any reason, be adjudged by any Court of competent or final jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act but shall be confined in its operation to the section, clause, sentence, paragraph or part hereof directly involved in the controversy in which said judgment shall have been rendered. [Acts 1934, 43rd Leg., 2nd C.S., p. 22, ch. 9.]

Art. 2802f—1. Additional powers conferred on districts having large percentage of delinquent taxes.

Borrowing money; pledging taxes

Section 1. In addition to the powers conferred by other Acts, the Board of Education or other governing body of any school district having at any time outstanding delinquent taxes (other than bond taxes) levied within the preceding six years exceeding Nine Hundred Thousand Dollars ($900,000) and not less than sixty (60) per centum of its current tax levy for maintenance and operation, may borrow money for school purposes in an amount not exceeding fifty (50) per centum of the total amount of all delinquent taxes, excluding those mentioned in Section 7 hereof, and issue notes or certificates of indebtedness therefor in anticipation of the collection of such delinquent taxes. In the resolution authorizing the issuance of said notes or certificates, the governing body of any such district shall prescribe the rate of interest and the serial maturities thereof, the maximum maturity date not to exceed fifteen (15) years, and rights of redemption prior to maturity, if any, as to such notes scheduled to mature on and after five (5) years from their date. Except as herein otherwise provided, such taxes shall be deemed to be irrevocably pledged to the payment of such notes or certificates and shall as collected be paid into a separate fund or funds to be used solely for such payment until all such notes or certificates have been paid. The proceeds of said notes shall be applied first to the payment of any valid indebtedness or renewal thereof of such district previously incurred in anticipation of the collection of such delinquent taxes, and the balance of such proceeds shall be applied to other school purposes as the Board of Education or other governing body of the school district may authorize and provide.

Payment of delinquent taxes collected into special fund in depository

Sec. 2. Whenever any notes or certificates of indebtedness have been issued under this Act, and so long as any of them may be outstanding, the officer charged with the collection of such delinquent taxes shall pay the same to the legal depository of the district, to be deposited and held in a special fund for the payment of such notes or certificates, and except as herein otherwise provided, no part thereof shall be applied or used for any other purposes.

Pledge of delinquent taxes to special fund

Sec. 3. The resolution authorizing such notes or certificates may provide for the transfer from such special fund of any accumulation of moneys not reasonably necessary to secure and assure their payment, but no such transfer shall be made except in consideration of the pledge of additional delinquent taxes as herein provided. At any time after the end of the fiscal year in which such notes or certificates are issued, or at or after the end of or during any later fiscal year, as and when current taxes become delinquent, the Board of Education or any other governing body of the district may pledge to such special fund the delinquent taxes of such later year in such manner as may be prescribed in such authorizing resolution. Concurrently with the pledging of such revenues, if the notes or certificates remaining unmatured or unpaid less the moneys in the special fund for their payment are less than fifty (50) per cent (or such higher percentage as may be prescribed in the resolution authorizing such notes or certificates) of the delinquent taxes of the six (6) next preceding fiscal years so pledged, such governing body may by resolution make the transfer of money from such fund to its general fund; provided, however, that no such transfer shall be made at any time unless all the taxes then delinquent of the later years not included in the original pledge under Section 1, including all delinquent taxes of the next preceding fiscal year shall have been duly pledged to such fund and all other indebtedness chargeable against such delinquent taxes shall have been paid, and unless there shall be and remain in such special fund a sum sufficient to pay the principal and interest on such notes or certificates to fall due within one year thereafter, which sum shall also be not less at any time than an amount which, multiplied by the number of full years then remaining until the last of such notes or certificates become due, will equal the amount of notes or certificates then outstanding; provided, however, to make it clear, no such transfer of money from the special fund shall be permitted unless, after such transfer, the pledged delinquent taxes for the preceding six years shall be at least twice the amount of the outstanding certificates or notes less the amount of money left in the special fund. In addition to any requirements of such authorizing resolution, on the occasion of each such transfer

of money from the special to the general fund, the governing body of such district shall adopt a resolution making the findings of fact which are in this section made a prerequisite to such transfer, directing the transfer of such money and authorizing its proper officers to issue proper checks or vouchers to accomplish the purpose. The resolution authorizing such notes or certificates may prescribe the form of resolution to effect such pledge of later delinquent taxes and the form of proof to be furnished the legal depository showing compliance with this Act and with such resolution. Such proof with certified copy of such resolution shall be filed with the legal depository of such district, as authority for and shall be filed with the legal depository of such district, prior to the transfer of such money. Upon receipt of and in accepting such instrument and by such transfer of funds, said legal depository shall incur no liability other than that imposed on such depository by other laws, or by the authorizing resolution, or for its own gross neglect. Such proof and such certified copy shall be available, for examination by the holder of any such certificate or note at all reasonable times, upon written request made of such legal depository. Thereafter all of such delinquent taxes additionally pledged shall be subject to the provisions of this Act in all respects as though they had been included in the original pledge under Section 1 of this Act. The officer charged with the collection of delinquent taxes shall be charged with knowledge of such pledge or transfer and all moneys collected by him and any additional delinquent taxes so pledged shall be paid into such special fund, as above provided. So long as the original pledge of said taxes remains intact, and so long as such subsequent pledges of delinquent taxes for later years and concomitant transfers of money from said special fund to the general fund are made in strict compliance with the provisions of this section, the holder or holders of such notes or certificates shall never have the right to demand payment thereof out of any fund other than such pledged delinquent taxes, but in all other respects such notes or certificates shall constitute obligations of the district and nothing herein shall prevent the use of general funds when necessary for their payment.

Borrowing money payable out of current revenues; renewal of loans

Sec. 4. Nothing herein shall prevent the district from borrowing funds in any year payable out of the revenues of such year and chargeable to such revenues, including any revenues that may be derived by transfer from such special fund under Section 3 but loans chargeable against the taxes of any year shall be paid or if so provided in the authorizing resolution described in Section 1 the lien on current taxes securing same released before the taxes for such year when delinquent may be pledged under Section 3. For the purpose of this Act, the district may pay or renew any such current loans by new loans against the revenues of the succeeding year. But nothing in this Act shall prevent the district from pledging its current revenue or impair any lien so created.

Interest and penalties

Sec. 5. Interest and penalties on delinquent taxes shall be deemed a part of such taxes for the purpose of this Act. Should any delinquent taxes including interest and penalties be cancelled, waived, released, or reduced either by the district or in any other way, with or without its consent, the amount of the loss so sustained shall be paid by the district to the special fund provided in Section 2 out of funds not otherwise pledged to such special fund; provided, that in lieu of such payment the district may file with the legal depository a resolution and proof sufficient in form and effect to authorize the release of such moneys (if paid) from such fund under Section 3.

Existing pledge of delinquent taxes

Sec. 6. Should there be an existing pledge at the time of the adoption of the original authorizing resolution of not exceeding ten (10) per cent of the delinquent taxes to secure indebtedness which in the judgment of the governing body is otherwise adequately secured, the resolution authorizing such notes or certificates may provide that such indebtedness, notwithstanding such pledge, shall not for purpose of this Act be deemed chargeable against such delinquent taxes and nothing in this Act or done under it shall be deemed to impair such prior charge.

Definitions

Sec. 7. Taxes levied in any year to pay principal and interest of bonds which taxes subsequently become delinquent for the purpose of this Act shall not be included in the terms "taxes" or "revenues" or "delinquent taxes" as such herein.

Violation of requirement to pay moneys into special fund

Sec. 8. If and as provided in the resolution authorizing such notes or certificates, in the event of the violation of this Act or of any covenants made under it by which violation any moneys required to be paid into the special fund are not so paid or any moneys in such fund are applied, used or transferred except as provided by this Act, then in addition to the other rights and remedies hereunder the officer or officers required to collect any taxes or to pay any revenue to the district shall pay such taxes when collected or such revenues to the legal depository to be deposited and held in the special fund provided for the payment of such notes or certificates until the amount so paid (excluding delinquent taxes pledged) shall equal the moneys not so paid when required or the moneys so wrongfully applied, used or transferred with interest at the rate of six (6) per cent per annum from the date of such violation. The legal depository may enforce compliance with this Act but shall not be required to do so. Any holder of such notes or certificates may enforce compliance with this Act on behalf of all the holders and may intervene in any action taken by the legal depository or by any other holder. Any reasonable expense properly incurred by the legal depository or by any such holder or holders shall, if the violation be established, constitute a charge on such special fund junior to the payment of the notes or certificates and no moneys shall thereafter be transferred from such special fund under Section 3 until such expenses are paid, or the amount claimed therefor is escrowed pending the determination of the reasonableness or propriety of such expense.

Notes or certificates as security for deposits of public funds

Sec. 9. Such notes or certificates shall be eligible to secure deposits of all funds of the State of Texas, and of counties, cities, districts and political subdivisions of and in the State of Texas in the same manner and on the same basis that bonds of independent school districts are eligible for such purpose.

Provisions cumulative

Sec. 10. The provisions of this Act shall be cumulative of all other laws, general or special, and shall not be interpreted as repealing any existing powers in such school districts; but in the event that any of the provisions of this Act are in conflict with the provisions of any other law, general or special, the provisions hereof shall take precedence and shall prevail to the extent of such conflict. [Acts 1939, 46th Leg., p. 287.]

Section 11 of the Act of 1939 provided that a holding of partial invalidity should not operate to defeat the whole act.

Art. 2802f—2. Refunding bonds, issuance by Independent School Districts which have issued delinquent tax notes or certificates under Article 2802f—1; validation of outstanding notes and certificates.—Section 1. Any independent school district which heretofore has issued delinquent tax notes or certificates of indebtedness under the provisions of Chapter 16, passed at the 46th Legislature, as contained in Senate Bill No. 419, Acts of the 46th Legislature,[1] is hereby authorized to issue its negotiable bonds for the purpose of refunding any or all of such outstanding notes or certificates, and to levy a tax sufficient to pay such bonds and the interest thereon; provided however, that no such bonds shall be issued, and no tax shall be levied therefor, unless and until authorized by a majority vote at an election called and held for that purpose.

Sec. 2. Such election shall be called and held in the manner prescribed by General Law with reference to the calling and holding elections for the issuance of school house bonds by independent school districts, except that the election may be called by the Board of Trustees of the district without the prerequisite of a petition. Such bonds may mature serially or otherwise in not to exceed fifteen (15) years, and shall not bear a greater rate of interest than the notes or certificates to be funded thereby.

Sec. 3. Before any of said refunding bonds shall be exchanged for said notes or certificates, said bonds and the record pertaining to their issuance shall be submitted to the Attorney General of Texas for his examination; and if said bonds are issued in accordance with this Act, he shall issue his certificate showing that he has examined the same, and that in his opinion said bonds are valid. Thereafter, said refunding bonds shall be registered by the Comptroller of Public Accounts as such notes or certificates are surrendered to him and cancelled. Such refunding bonds, after receiving the certificate of the Attorney General and having been registered in the Comptroller's office, shall be held in every action, suit or proceeding in which their validity is or may be brought into question, valid and binding obligations. In every action brought to enforce collection of such bonds, a certified copy of the certificate of the Attorney General shall be admitted in evidence to show validity of said bonds, together with the coupons pertaining thereto. The only defense which can be offered against the validity of such bonds shall be forgery or fraud.

Sec. 4. All such notes and certificates heretofore issued and now outstanding and unpaid are hereby validated; provided however, that this section shall not apply to any notes or certificates the validity of which shall have been attacked in any litigation pending at the time this Act becomes effective. [Acts 1941, 47th Leg., p. 195, ch. 141.]

[1] Article 2802f—1.

Art. 2802g. Tax rate in independent district including city of 13,700 to 13,800.—Section 1. In any Independent School District having and including within its limits a City or Town which, according to the then latest Federal Census, had a population of not fewer than thirteen thousand seven hundred (13,700) and not more than thirteen thousand eight hundred (13,800) inhabitants, the School District Trustees of the Independent School District, whether such Independent School District was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property of the District;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such Districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property of the District, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of the bonds which such Districts are empowered to issue for such purpose.

(3) The amount of maintenance tax, together with the amount of bond tax of any such District shall never exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property within such District; and if the rate of bond tax, together with the rate of maintenance tax voted in the District shall at any time exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One and 50/100 ($1.50) Dollars.

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by the majority of the votes cast at an election held in the District for such purpose, at which none but property taxpaying qualified voters of such District shall be entitled to vote.

Sec. 2. All Laws and parts of Laws, both General and Special, in conflict herewith are hereby repealed. [Acts 1937, 45th Leg., p. 480, ch. 243.]

Art. 2802h. Maximum tax rate in independent districts including city or town having certain population.—In any Independent School District having and including within its limits a city or town, which according to the latest Federal Census, contained a population of not less than three thousand nine hundred forty-three (3,943) and not more than three thousand nine hundred forty-five (3,945), the school district trustees of such Independent School District, whether such Independent School District was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property of the District;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such Districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property of the School District, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such Districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such District shall never exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property within such Districts; and if the rate of bond tax, together with the rate of maintenance tax voted in the District shall at any time exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One and 50/100 ($1.50) Dollars;

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the District for such purpose, at which none but property tax-paying qualified voters of such District shall be

entitled to vote. [Acts 1937, 45th Leg., p. 691, ch. 348, § 1.]

Section 2 of the Act of 1937 repealed conflicting laws.

Art. 2802i. Tax rate in independent districts including city of 400 to 450 population in counties of 30,400 to 30,600 population.—Section 1. In any independent school district having and including within its limits a city or town which according to the last Federal Census had a population of not less than four hundred (400) and not more than four hundred and fifty (450) inhabitants, and in counties having not less than thirty thousand four hundred (30,400) and not more than thirty thousand six hundred (30,600) inhabitants according to the last Federal Census, the school district trustees of the independent school district, whether such independent school district was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Seventy-five (75¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and 50/100 ($1.50) Dollars;

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property tax-paying qualified voters of such district shall be entitled to vote.

Sec. 1a. In any common school district wherein a public free school building may have burned or may burn or be destroyed by fire, such common school district being located within a county having a population of not less than thirteen thousand six hundred thirty (13,630), nor more than thirteen thousand six hundred ninety-nine (13,699), according to the last preceding or any future Federal Census, whether such common school district was created under the General Laws or any Special Law or Laws, the Commissioners' Court of such common school district shall have the power to levy and cause to be collected the annual tax herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Seventy-five (75¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal on bonds which such districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One and 50/100 ($1.50) Dollars.

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property tax-paying qualified voters of such district shall be entitled to vote; [Acts 1937, 45th Leg., 1st C.S., p. 1758, ch. 12.]

Section 2 of the Act of 1937 repealed conflicting laws.

Art. 2802i—1. Maximum tax rate in independent or independent consolidated districts including city or town of 4,130 to 4,180 population.—1. In any independent school district, and/or independent consolidated school district, having and including within its limits a city or town which according to the last preceding Federal Census had a population of not fewer than four thousand, one hundred and thirty (4,130) and not more than four thousand, one hundred and eighty (4,180) inhabitants, the school district trustees of the independent school district, and/or consolidated independent school district, whether such district was created under the General Law or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such district and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such district is empowered to issue for such purposes.

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50).

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property-owning tax-paying qualified voters of such district shall be entitled to vote. [Acts 1939, 46th Leg., Spec. L., p. 662, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2802i—2. Maximum tax rate in independent or independent consolidated districts including city or town of 1,050 to 1,055 population.—Section 1. In any independent school district, and/or independent consolidated school district,

having and including within its limits, a city or town which according to the then latest preceding Federal Census, had a population of not fewer than one thousand and fifty (1,050) and not more than one thousand and fifty-five (1,055) inhabitants, the school district trustees of the independent school district, and/or consolidated independent school district whether such district was created under the General Law or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed One Hundred (100) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purposes.

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50).

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property-owning taxpaying qualified voters of such district shall be entitled to vote. [Acts 1939, 46th Leg., Spec. L., p. 657.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2802i—3. Maximum tax rate in independent districts including city or town of 4,450 to 4,485 population.—In any independent school district having and including within its limits a city or town which according to the then latest Federal Census had a population of not fewer than four thousand, four hundred fifty (4,450) and not more than four thousand, four hundred eighty-five (4,485) inhabitants, the school district trustees of the independent school district, whether such district was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose.

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50).

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property owning, taxpaying, qualified voters of such district shall be entitled to vote. [Acts 1939, 46th Leg., Spec. L., p. 663, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2802i—4. Maximum tax rate in independent districts including city or town of 6,750 to 6,850 population.—In any independent school district having and including within its limits a city or town which, according to the latest Federal Census, had a population of not fewer than six thousand, seven hundred and fifty (6,750) and not more than six thousand, eight hundred and fifty (6,850) inhabitants, the School District Trustees of the independent school district, whether such independent school district was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation of taxable property in the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of the bonds which such districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Twenty-five Cents ($1.25);

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by the majority of the votes cast at an election held in the district for such purposes, at which none but property-taxpaying qualified voters of such district shall be entitled to vote. [Acts 1939, 46th Leg., Spec.L., p. 666, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2802i—5. Tax rate in independent districts in counties of 24,060 to 24,070, having scholastic population of 760 to 770; election.—Section 1. In all independent school districts which have a scholastic population of not more than seven hundred and seventy (770), and not less than seven hundred and sixty (760) scholastics according to the 1938–1939 public school directory of the State Department of Education, and being in counties containing not more than twenty-four thousand and seventy (24,070), and not less than twenty-four thousand and sixty (24,060) population according to the last Federal

Census, and which school districts have One Dollar ($1) tax for school purposes, and being a tax for both bonds and maintenance.

The school district trustees of the independent school districts provided for in this Act, whether created under General or Special Laws, shall have the power to levy, and cause to be collected, the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of public schools, including bond retirement and interest thereon, there shall be levied and collected an ad valorem tax not exceeding in any one year One Dollar ($1) on the one hundred dollars valuation of taxable property of the districts as fixed by the board of trustees for such districts.

(2) For the purchase, construction, repair and/or equipment of the public free school buildings within the limits of such districts, and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, shall be levied for any one year; such tax to be for the payment of current interest on, and provide a sinking fund sufficient to pay the principal of, the bonds which such districts are empowered to issue for such purposes.

(3) The amount of maintenance tax together with the amount of bond tax of any such district shall never exceed One Dollar ($1) on the one hundred dollars valuation of taxable property within such district; providing, however, that if the rate of the bond tax shall be increased beyond Fifty (50) Cents on the one hundred dollars valuation of property within such district, then, and in that event, the maintenance tax rate in such district shall automatically be reduced to an amount where the bond tax and the maintenance tax together shall not aggregate a sum in excess of One Dollar ($1) on the one hundred dollars valuation of all property in such districts for any one year.

Sec. 2. The taxes hereinabove imposed shall never be levied, collected, abrogated, diminished, or increased, and no bond or bonds shall be issued thereunder, until such action has been authorized by a majority of the qualified property taxpaying voters of such districts, voting at an election to be held for that purpose; and providing that for the purpose of calling such election, the school board trustees of such districts shall, upon a petition of twenty (20) resident, qualified, taxpaying voters of such districts, order an election to determine whether said districts shall levy such taxes in the mode and manner as herein provided.

Sec. 3. Said district, when a majority of the resident, qualified, taxpaying voters shall have by majority determined in favor of the issuance of bonds and levying the tax therefor, and providing for the maintenance taxes hereinabove set out, said school board trustees of such district shall have the right to levy, assess, and collect therefor a bond rate as in this Act provided, and a maintenance rate as hereinabove set out; provided, however, that this Act shall be in force for a period of time not to exceed five (5) years from the effective date of issuance of said bonds and levying the tax therefor.

Sec. 4. This Act shall be cumulative of all laws on the Statute, and shall be deemed to be an addition to the authority now provided by law in such cases. [Acts 1939, 46th Leg., Spec.L., p. 669.]

Art. 2802i—6. Maximum maintenance and bond tax rate in independent districts in counties of 12,190 to 12,200 and including a town of not less than 2,000.—All Independent School Districts in counties having a population of not less than twelve thousand one hundred ninety (12,190) and not more than twelve thousand two hundred (12,200) inhabitants according to the last preceding Federal Census containing in such Independent School District a town of less than two thousand (2,000) inhabitants according to the last preceding Federal Census, are authorized to levy a tax for school maintenance and bond purposes the maximum of which for both of such purposes shall be One Hundred and Seventy-five (175¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property; said tax to be authorized, assessed, levied and collected under the provisions of the General Laws. Provided, however, of such One Hundred and Seventy-five (175¢) Cents on the One Hundred ($100.00) Dollars valuation maximum the bond tax shall never exceed Fifty (50¢) Cents on the One Hundred ($100.00) Dollars assessed valuation of taxable property. [Acts 1939, 46th Leg., Spec.L., p. 661, § 1.]

Section 2 of the Act of 1939 repealed conflicting laws.

Art. 2802i—7. Tax rate fixed in certain districts.—In any independent school district having and including within its limits a city or town which according to the latest Federal Census had a population of not fewer than six thousand, two hundred (6,200) and not more than six thousand, two hundred and twenty-five (6,225) the school district trustees of the independent school district, whether such independent school district was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such district and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50);

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property taxpaying qualified voters of such district shall be entitled to vote. [Acts 1939, 46th Leg., Spec.L., p. 665, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2802i—8. Maximum tax rate in certain independent school districts.—In any independent school district having and including within its limits a city or town which, according to the then latest Federal Census, had a population of not fewer than seventeen hundred twenty-one (1,721) and not more than seventeen hundred fifty-one (1,751) inhabitants, and in all independent school districts having territory located in as many as three (3) counties and containing a county seat town with a population of not less than four thousand two hundred (4,200) and not more than four thousand two hundred seventy-five (4,275) as shown by the last preceding

or any future Federal Census, the governing body thereof shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed Ninety One-Hundredths ($0.90) of a Dollar on the One Hundred ($100.00) Dollars valuation of taxable property in the district;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such district and the purchase of necessary sites therefor, an ad valorem tax not to exceed Sixty One-hundredths ($0.60) of a Dollar on the One Hundred ($100.00) Dollars valuation of taxable property in the district; such tax to be for the payment of the current interest on and to provide a sinking fund sufficient to pay the principal of the outstanding bonds of such district and any bonds hereafter lawfully issued;

(3) The amount of maintenance tax together with the amount of bond tax of any such district shall never exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property within such district; and if the rate of bond tax together with the rate of maintenance tax voted or levied in any year in the district shall at any time exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One and 50/100 ($1.50) Dollars.

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bonds shall be issued hereunder, until such action has been authorized by a majority vote of the qualified voters in said district cast at an election held therein for such purposes. [Acts 1939, 46th Leg., Spec.L., p. 659, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2802i—9. Maximum maintenance and bond tax rate; certain independent school districts of 51,750—52,000.—All independent school districts in counties having a population of not less than fifty-one thousand, seven hundred and fifty (51,750) and not more than fifty-two thousand (52,000) inhabitants, according to the last preceding Federal Census, which independent school district in such counties contains a city therein of not less than twenty-seven thousand, seven hundred and forty (27,740) and not more than twenty-seven thousand, eight hundred (27,800) inhabitants, according to the last preceding Federal Census, are authorized to levy a tax for school maintenance and bond purposes, the maximum of which for both of such purposes shall be One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation of taxable property; said tax to be authorized, assessed, levied, and collected under the provisions of law as now provided. [Acts 1939, 46th Leg., Spec.L., p. 671, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2802i—10. Maximum tax rate in independent school districts of 5,815 to 5,835.—In any independent school district having and including within its limits a city or town which according to the latest Federal Census had a population of not fewer than five thousand, eight hundred and fifteen (5,815) and not more than five thousand, eight hundred and thirty-five (5,835) inhabitants, the school district trustees of the independent school district, whether such independent school district was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein, an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose.

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district, shall at any time exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50).

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property taxpaying qualified voters of such district shall be entitled to vote. [Acts 1935, 44th Leg., p. 177, ch. 73, § 1; Acts 1941, 47th Leg., p. 34, ch. 20, § 1.]

Section 2 of the Act of 1941 repealed conflicting laws.

Art. 2802i—11. Maximum maintenance and bond tax rate; certain independent school districts within a county and containing ninety square miles or over; validation of proceedings.

Election on tax for maintenance and tax purposes

Section 1. Any independent school district situated wholly within one county, and containing not less than ninety (90) square miles in area, and also having an assessed property valuation of not less than Thirty-five Million Dollars ($35,000,000), may by vote of the qualified resident property taxpaying voters of the district, levy a tax for school maintenance and bond purposes, the maximum of which for both of such purposes shall be not exceeding for one year One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation of taxable property in such district; said tax to be authorized, levied, assessed, and collected under the provisions of the Statutes applicable to independent school district taxes.

Validation of elections, acts and proceedings

Sec. 2. Where, under authority of Section 3, of Article 7, of the Constitution of the State of Texas, a majority of the resident property taxpayers, being qualified electors of any independent school district of the class of school districts defined in Section 1 of this Act, voting on the proposition, having voted at an election held in such school district in favor of the levy of a tax for school maintenance and bond purposes of and at the rate of not exceeding One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation of taxable property in such school district, the canvass of said vote, revealing such majority, having been recorded in the minutes of the board of trustees of any such school district, and where thereafter the board of trustees of any such school district, by orders passed and recorded in its minutes, has levied such tax for the purposes stated, each such election, and all acts and proceedings had and done in connection therewith by the board of trustees of any such school district or districts, are hereby legalized, approved, and validated. It being the intent hereof to authorize, confirm,

and ratify all acts and proceedings of the board of trustees of any such district or districts in respect of any such school tax election, the levy of taxes pursuant to such election for school maintenance and bond purposes, with like effect, as though at the time or times said acts and proceedings were done or had there existed statutory authority for the doing thereof, and the power to levy such taxes each year hereafter is hereby expressly delegated to the board of trustees of any such school district.

Validation of proceedings increasing area

Sec. 3. All acts and proceedings of the county board of school trustees of any such county, increasing the area of any independent school district of the class defined in Section 1 of this Act, pursuant to request therefor in writing made to the county board of school trustees by the board of trustees of such school district, as shown by the minutes of said boards, respectively, are hereby, in all things, legalized, approved, and validated, and the territory so received shall be hereafter a component part of said independent school district. All acts and proceedings of the board of trustees of any such independent school district, in respect to increasing the area thereof, and which acts or proceedings are recorded in the minutes of said board, and were and are approved by the county board of school trustees of the county in which any such school district is situated, as shown by the minutes of said county board of school trustees, are hereby, in all things, legalized, approved, and validated.

Conversion of independent school district into junior college district, validation of

Sec. 4. Where any independent school district of the class defined in Section 1 of this Act has been converted into a junior college district and has been continuously recognized as a junior college district by the State Board of Education, all acts or proceedings of the county board of school trustees of the county in which such district is situated, increasing the area of such junior college district so that the boundaries thereof will be coterminous with the boundaries of such independent school district, pursuant to request therefor in writing made to the county board of school trustees by the board of education of such junior college district, as shown by the minutes of said boards, respectively, are hereby, in all things, legalized, approved, and validated, and the territory so received shall be hereafter a component part of said junior college district. All acts or proceedings of the board of education of any such junior college district, in respect to increasing the area thereof so that the boundaries of the junior college district will be coterminous with the boundaries of such independent school district, and which acts or proceedings are recorded in the minutes of said board, and were and are approved by the county board of school trustees of the county in which any such junior college district is situated, as shown by the minutes of said county board of school trustees, are hereby, in all things, legalized, approved, and validated.

Pending litigation

Sec. 5. The provisions of this Act shall not apply to any proceedings, the validity of which has been contested or attacked in any pending suit or litigation.

Partial invalidity

Sec. 6. If any section, clause, paragraph, or sentence of this Act shall be declared unconstitutional, it is hereby declared to be the intention of the Legislature that the remainder of such Act shall remain in full force and effect.

Certain act not affected

Sec. 6a. Nothing in this Act shall in any manner affect, repeal, suspend or modify any part of Senate Bill No. 402, Acts of the Regular Session of the Thirty-eighth Legislature.[1] [Acts 1941, 47th Leg., p. 202, ch. 145.]

[1] Acts 1923, 38th Leg., Spec.L., p. 317, ch. 91.

Art. 2802i—12. Maximum tax rate; certain independent districts having a scholastic population of 830 to 840.—Section 1. In all Independent School Districts which have a Scholastic population of not more than eight hundred forty (840), and not less than eight hundred thirty (830), according to the 1940–1941 Scholastic Census, the Trustees of the Independent School Districts provided for in this Act, shall have the power to levy, and cause to be collected, the annual ad valorem tax of not to exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property of the Districts as fixed by the Board of Trustees for such Districts.

Sec. 2. The taxes hereinabove imposed shall never be levied, collected, abrogated, diminished, or increased, and no bond or bonds shall be issued thereunder, until such action has been authorized by a majority of the qualified property taxpaying voters of such Districts, voting at an election to be held for that purpose. [Acts 1941, 47th Leg., p. 371, ch. 208.]

Art. 2802i—13. Maximum tax rate in Independent School Districts, having a scholastic population of 630 to 640, in certain counties.—Section 1. In all Independent School Districts having a scholastic population of not more than six hundred forty (640) and not less than six hundred thirty (630), according to the 1940–1941 Scholastic Census, located in any county having an area of 495 square miles, the School District Trustees of such School Districts shall have the power to levy and cause to be collected, the annual ad valorem tax of not to exceed One Dollar and Fifteen Cents ($1.15) on the One Hundred ($100.00) Dollars valuation of taxable property of the Districts as fixed by the Board of Trustees for such districts.

Sec. 2. In all such School Districts, it shall be lawful for the School District Trustees to issue time warrants in a sum of not to exceed Ten Thousand ($10,000.00) Dollars, which shall bear interest at a rate of not to exceed four (4%) per cent per annum.

Sec. 3. The sum of Fifteen (15¢) Cents out of the tax above provided for shall be set aside in a special fund to be used for the specific and sole purpose of paying the interest on said warrants and to liquidate said warrants as they mature, and no tax in excess of One ($1.00) Dollar shall ever be levied unless such excess is for the purpose of paying the time warrants and interest thereon herein authorized.

Sec. 4. The taxes hereinabove imposed shall never be levied, collected, abrogated, diminished, or increased, and no bond or bonds shall be issued thereunder until such action has been authorized by a majority of the qualified taxpaying voters of such Districts, voting at an election to be held for that purpose.

Sec. 5. If any section, sentence, clause or part of this Act shall, for any reason, be held to be invalid, such decision shall not affect the remaining portions of this Act, and it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause or part thereof, irrespective of the fact that any other sentence, section, clause or part thereof may be declared invalid. [Acts 1941, 47th Leg., p. 370, ch. 207.]

Art. 2802i—14. Maximum tax rate in independent school districts having scholastic population of 775 to 785.—In any independent school district which, according to the 1940–1941 scholastic census, had a scholastic population of not fewer than seven hundred and seventy-five (775) and not more than seven hundred and eighty-five (785) approved scholastics, the school trustees of such independent school district, whether such district was created by General or Special Law, shall have the power to levy

and cause to be collected the annual taxes herein authorized subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation of the taxable property of the district.

(2) No tax shall be levied, collected, abrogated, diminished, or increased, and no bonds shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property taxpaying qualified voters of such district shall be entitled to vote. [Acts 1941, 47th Leg., p. 537, ch. 331, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 2802i—15. Maximum tax rates in independent districts having city or town of 680 to 690 in counties of 4,050 to 4,060.—In any independent school district having and including within its limits a city or town which, according to the then latest preceding Federal Census, had a population of not fewer than six hundred and eighty (680) and not more than six hundred and ninety (690) inhabitants, and being in counties containing not less than four thousand and fifty (4050) and not more than four thousand and sixty (4060) inhabitants, according to the then latest preceding Federal Census, the school district trustees of the independent school district, whether such district was created under the General Law or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair, or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed One Hundred (100) Cents on the one hundred dollars of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purposes.

(3) The amount of maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50).

(4) No tax shall be levied, collected, abrogated, diminished, or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property-owning taxpaying qualified voters of such district shall be entitled to vote. [Acts 1941, 47th Leg., p. 678, ch. 421.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 2802i—16. Maximum tax rate in independent districts in counties of 10,400 to 10,660.—Section 1. In all counties in this State which, according to the Federal Census of 1940, had a population of not less than ten thousand, four hundred (10,400) and not more than ten thousand, six hundred and sixty (10,660), the School District Trustees of any Independent School District in any such county, whether such Independent School District was created under the General Laws or any Special Law or Laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools in any such District an ad valorem tax not to exceed Seventy-five (75) Cents on the one hundred dollars valuation of taxable property within the District;

(2) For the purchase, construction, or repair of equipment of public free school buildings within the limits of any such District and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Seventy-five (75) Cents on the one hundred dollars valuation of taxable property within the District, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which any such District is empowered to issue, or has heretofore lawfully issued for such purpose;

(3) The amount of maintenance tax, together with the amount of bond tax of any such District shall never exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property within such District; and if the rate of bond tax, together with the rate of maintenance tax voted in the District shall at any time exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50);

(4) No increase of the rate of tax authorized by any previous law shall be made until such action has been authorized by a majority of the votes cast at an election held in a District for such purpose, at which none but property taxpaying qualified voters of such District shall be entitled to vote.

Sec. 2. If any part or portion of this Act be in conflict with any part or portion of any law of the State, the terms and provisions of this Act shall be deemed to control. [Acts 1941, 47th Leg., p. 675, ch. 417.]

Art. 2802i—17. Maximum tax rate in independent districts including city or town of 6425 to 6457.—Section 1. In any independent school district having and including within its limits a city or town which, according to the then latest Federal Census, has a population of not fewer than sixty-four hundred and twenty-five (6425) and not more than sixty-four hundred and seventy-five (6475) inhabitants, shall have the power to levy a tax for school maintenance and bond purposes, the maximum of which for both of such purposes shall be One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property; said tax to be authorized, assessed, levied, and collected under the provisions of law as now provided.

Sec. 2. The taxes hereinabove imposed shall never be levied, collected, abrogated, diminished, or increased, and no bonds or bond shall be issued thereunder, until such action has been authorized by a majority of the qualified property taxpaying voters of such districts, voting at an election to be held for that purpose. [Acts 1941, 47th Leg., p. 831, ch. 513.]

Section 3 of the Act of 1941 repealed all conflicting laws.

Art. 2802i—18. Maximum maintenance and bond tax rate in common and independent districts.—Section 1. Any Common and Independent School District in this State, whether the same be created by Special Law or by General Law, which may now or which hereafter shall become unable to raise sufficient funds by the levying of a tax of Fifty (50¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable properties therein to provide for the payment of the current interest on and to provide a sinking fund sufficient to pay at maturity the principal of bonds which such District may have issued prior to passage of this Act, may levy the following taxes, if the same be authorized by the property taxpaying qualified voters of such District as hereinafter provided:

1. A tax not to exceed One ($1.00) Dollar on the One Hundred ($100.00) Dollars valuation for the payment of the current interest on and to provide a sinking fund sufficient to pay at maturity the principal of bonds which said District may have outstanding.

2. A tax not to exceed Fifty (50¢) Cents on the One Hundred ($100.00) Dollars valuation for the further maintenance of public free schools in such District.

3. No tax shall be levied, collected or increased under the provisions of this Act until such action has been authorized by a majority of the votes cast at an election held in the District for such purposes at which none but the property taxpaying qualified voters in such District shall be entitled to vote.

Sec. 2. Before an election is held to determine the proposition of the levying of such taxes, a petition therefor, signed by twenty (20) or more, or a majority of those entitled to vote at such election, shall be presented to the County Judge of the county if for a Common School District, and to the District Trustees if for an Independent School District. On presentation of said petition, said officer or officers shall order an election for such purposes, and order the Sheriff to post notices thereof in three (3) places in the District for ten (10) days prior thereto, or if for an Independent School District, the Secretary of said Board of Trustees shall post such notices. The petition, election order and notices of election shall in all cases state the specific rate of tax to be voted for bonds and if in addition the proposition of levying a maintenance tax is to be submitted, the petition, election order and notice of election shall also state specifically the proposition and the amount of such maintenance tax. All election orders and notices of election shall state the time and place of holding the election. Where the proposition of increasing the tax rate for bonds is submitted, the ballots shall have written or printed thereon the words "For bond tax of not exceeding ————" and "Against bond tax of not exceeding ————"; each such proposition shall be completed by specifying the maximum amount of tax to be voted. If the proposition of levying a maintenance tax of not exceeding Fifty (50¢) Cents in addition to the bond tax authorized is to be submitted at such election, the ballot shall also have written or printed thereon the words "For bond tax of ———— and maintenance tax of ————" and "Against bond tax of ———— and maintenance tax of ————"; and the blanks in such proposition shall be filled in with the amount of the tax for each purpose so as to complete the statement of the proposition. The Commissioners' Court for Common School Districts, and the Board of Trustees for Independent Districts, shall canvass the returns and declare the results of all elections hereunder; and said election shall be held and conducted as provided by law if for general elections except as provided herein. [Acts 1941, 47th Leg., p. 804, ch. 499.]

Art. 2802i—19. Additional maintenance taxes in independent districts in counties of 103,000 to 109,000; elections.—Section 1. Any independent school district which is located in any county in this State having a population not less than one hundred and three thousand (103,000) and not more than one hundred and nine thousand (109,000), according to the last preceding Federal Census, may levy, assess, and collect taxes at not to exceed the following rates per one hundred dollars of assessed valuation of taxable property, to wit:

For maintenance purposes One Dollar and Fifty Cents ($1.50) per one hundred dollars of assessed valuation; for bond interest and sinking fund purposes Fifty (50) Cents per one hundred dollars of assessed valuation, but the combined tax for both purposes shall never exceed One Dollar and Fifty Cents ($1.50) per one hundred dollars of assessed valuation. Such taxes shall be assessed, levied, and collected pursuant to the provisions hereof and of the general law applicable to such districts.

Sec. 2. Before levying any maintenance tax in excess of Fifty (50) Cents upon the one hundred dollars of assessed valuation as hereby authorized, the trustees of any such district shall order and hold an election within such district for the purpose of determining whether a majority of the voters voting thereat, desire to authorize the trustees of such district to levy such tax. At such election none but qualified voters who are property taxpayers of such district shall be entitled to vote. The election order and notice of election shall in all cases either state the specific rate of tax to be voted upon, or that the rate shall not exceed the limit herein specified.

Notice of such election shall be given for the length of time and in the manner provided by law for elections for trustees of independent school districts, and such election shall be conducted in accordance with the general law so far as applicable thereto. The ballots for such maintenance tax election shall have written or printed thereon the words "For the School Tax" and "Against the School Tax." If said maintenance tax proposition is defeated by a majority of the voters at an election held for such purpose, no other election shall be held upon such proposition for one year after the date of said election. [Acts 1941, 47th Leg., p. 740, ch. 461.]

Art. 2802i—20. Independent districts of 200,000 to 260,000; maximum amount of bonds and maximum tax rate.—In any independent school district having a population of more than two hundred thousand (200,000) and less than two hundred and sixty thousand (260,000), according to the Federal census of 1940 or any subsequent legally authorized census, the school district trustees of such independent district are hereby authorized and shall have the power to issue bonds and to levy and cause to be collected annual taxes, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation of taxable property of the district; but if the rate of bond tax, together with the rate of maintenance tax voted in the district, shall at any time exceed One Dollar and Twenty-five Cents ($1.25) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Twenty-five Cents ($1.25);

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, a tax necessary to pay the current interest on and provide a sinking fund sufficient to pay the principal of bonds which said districts are empowered to issue for such purposes, such bonds not to exceed in amount seven (7) per cent of the valuation of taxable property of the district at the time they are issued;

(3) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder until such action has been authorized by a majority of the votes cast at an election held in the district for such purposes, at which none but property taxpaying qualified voters of such district shall be entitled to vote. [Acts 1943, 48th Leg., p. 226, ch. 143, § 1.]

Section 2 of the Act of 1943 repealed all conflicting laws.

Art. 2802i—21. Independent districts of 1,500 to 3,000; maximum tax rate.—In all independent school districts, whether organized under general or special laws, and which have a scholastic population of more than one thousand, five hundred (1,500) and less than three thousand (3,000) approved scholastics, according to the Scholastic Census, for the preceding year, and the boundaries of which are coex-

tensive with the boundaries of the incorporated cities or towns in which such independent school districts are located, the trustees of such independent school districts shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein, an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the One Hundred Dollars ($100) valuation of taxable property of the District.

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty (50) Cents on the One Hundred Dollars ($100) valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose.

(3) The amount of the maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the One Hundred Dollars ($100) valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the One Hundred Dollars ($100) valuation, such bond tax shall operate to reduce the maintenance tax to be difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50).

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property taxpaying qualified voters of such district shall be entitled to vote. [Acts 1945, 49th Leg., p. 92, ch. 64, § 1.]

Section 2 of the Act of 1945 repealed all conflicting laws.

Acts 1945, 49th Leg., p. 488, ch. 304, § 1, incorporated in article 2784e, and Acts 1945, 49th Leg., p. 116, ch. 79, incorporated in article 2802i—22, provide maximum tax rates for school districts.

Art. 2802i—22. Independent districts with 1,250 to 3,000 scholastics in counties 10,000 to 21,000 and independent county unit districts in counties under 2,000; maximum tax rates.—Section 1. In all independent school districts, whether organized under general or special laws, and which, according to the last preceding approved original Scholastic Census, had a scholastic population of not less than twelve hundred and fifty (1250) and not more than three thousand (3,000) scholastics, and located in counties with a population of not less than ten thousand (10,000) and not more than twenty-one thousand (21,000) inhabitants according to the last preceding Federal Census, and in all independent county unit school districts in counties with a population of not more than two thousand (2,000) inhabitants according to the last preceding Federal Census, the trustees of such independent school districts and independent county unit school districts shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein, an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the One Hundred Dollars ($100.00) valuation of taxable property of the district.

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty Cents (50¢) on the One Hundred Dollars ($100.00) valuation of taxable property of the district, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose.

(3) The amount of the maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the One Hundred Dollars ($100.00) valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the One Hundred Dollars ($100.00) valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50).

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purposes, at which none but property taxpaying qualified voters of such district shall be entitled to vote. [Acts 1945, 49th Leg., p. 116, ch. 79.]

Section 2 of the Act of 1945 repealed conflicting laws.

Section 2a of the Act of 1945 read as follows: "Declaring that nothing in this Act shall alter, amend or repeal House Bill No. 516, Acts Regular Session, 49th Legislature [art. 2802i—21], anything in this Act to the contrary notwithstanding.

Art. 2802i—23. Maximum tax rate in county line independent districts of 700—1200 scholastics in certain counties.—In all county line independent school districts composing parts of two or more counties, whether organized under general or special laws, and which, according to the last preceding approved original Scholastic Census, had a scholastic population of not less than seven hundred (700) and not more than twelve hundred (1200) scholastics, and located in counties with a population of not less than five thousand (5,000) and not more than twelve thousand (12,000) inhabitants, according to the last preceding Federal Census, the trustees of such county line independent school districts shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein, an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property of the district.

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such district, and the purchase of the necessary sites therefor, an ad valorem tax not to exceed Fifty Cents (50¢) on the one hundred dollars valuation of taxable property of the district, such tax to be for the payment of the current interest on and providing a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purposes.

(3) The amount of the maintenance tax together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation of taxable property within such district, and if the rate of bond tax, together with the rate of maintenance tax voted in the district, shall at any time exceed One Dollar and Fifty Cents ($1.50) on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50).

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purposes, at which none but property taxpaying qualified voters of such district shall be entitled to vote. [Acts 1945, 49th Leg., p. 184, ch. 141, § 1.]

Section 2 of the Act of 1945 repealed all conflicting laws.

Art. 2802i—24. Additional maintenance taxes in independent districts in counties having certain levy.—Section 1. Any independent school district which now levies a total tax of One Dollar and Fifty Cents ($1.50) per one hundred dollars of assessed valuation of taxable property for maintenance purposes and bond interest and sinking fund purposes may levy, assess, and collect taxes at not to exceed the following rates per one hundred dollars of assessed valuation of taxable property, to wit:

For maintenance purposes One Dollar and Seventy-five Cents ($1.75) per one hundred dollars of assessed valuation; for bond interest and sinking fund purposes Seventy-five Cents (75¢) per one hundred dollars of assessed valuation, but the combined tax for both purposes shall never exceed One Dollar and Seventy-five Cents ($1.75) per one hundred dollars of assessed valuation. Such taxes shall be assessed, levied, and collected pursuant to the provisions hereof and of the general law applicable to such districts.

Sec. 2. Before levying any maintenance tax in excess of Seventy-five Cents (75¢) upon the one hundred dollars of assessed valuation as hereby authorized, the trustees of any such district shall order and hold an election within such district for the purpose of determining whether a majority of the voters voting thereat desire to authorize the trustees of such district to levy such tax. At such election none but qualified voters who are property taxpayers of such district shall be entitled to vote. The election order and notice of election shall in all cases either state the specific rate of tax to be voted upon, or that the rate shall not exceed the limit herein specified.

Notice of such election shall be given for the length of time and in the manner provided by law for elections for trustees of independent school districts, and such election shall be conducted in accordance with the general law so far as applicable thereto. The ballots for such maintenance tax election shall have written or printed thereon the words "For the School Tax" and "Against the School Tax." If said maintenance tax proposition is defeated by a majority of the voters at an election held for such purpose, no other election shall be held upon such proposition for one year after the date of said election. [Acts 1945, 49th Leg., p. 249, ch. 183.]

Art. 2802i—25. Counties of 10,000 to 10,500; maintenance tax; County-wide Equalization Fund.—Section 1. Upon a petition, duly signed and verified by the tax rolls of the County, of one hundred (100) qualified voters of any County having a population of not less than ten thousand (10,000) and not more than ten thousand, five hundred (10,500) inhabitants according to the preceding Federal Census, and having a total assessed valuation of not less than Twelve Million Dollars ($12,000,000) nor more than Fourteen Million Dollars ($14,000,000) for the year 1944, the County Judge shall call an election in said County within ninety (90) days thereafter to determine whether there shall be levied within said County a tax not to exceed Twenty-five Cents (25¢) on the One Hundred Dollars ($100) valuation of the taxable property within the County to be used for the purpose of upkeep, maintenance, and repair of the buildings and grounds of the various schools within the County, and shall prepare or cause to be prepared ballots therefor.

Sec. 2. If said tax is voted by the taxpaying voters of the County, there shall be created from the moneys derived from said taxes a fund to be known as "County-wide Equalization Fund." On January 1st or within thirty (30) days thereafter, after said "County-wide Equalization Fund" has been created, the moneys shall be divided between the various school districts within said County proportionate to their scholastics. The money so divided shall then be used by the various school districts for the upkeep, maintenance, and repair of the buildings and grounds of said school districts.

Sec. 3. The ballots to be used in an election provided for by Section 1 of this Act shall have written or printed thereon: "For the levying of a tax of ———— Cents on the One Hundred Dollars ($100) valuation of taxable property within the County to be used for the creation of a County-wide Equalization Fund for the upkeep, maintenance, and repair of the school buildings and grounds within ———— County" and "Against the levying of a tax of ———— Cents on the One Hundred Dollars ($100) valuation of taxable property within the County to be used for the creation of a County-wide Equalization Fund for the upkeep, maintenance, and repair of the school buildings and grounds within ———— County." The petition referred to in Section 1 of this Act shall specify the rate of tax to be levied and the name of the County in which such election is to be held, and the ballots provided for in this Section shall conform and have the blanks filled accordingly.

Sec. 4. All persons who are legally qualified voters within this State and of the County of their residence and who are resident property taxpayers in said County shall be entitled to vote in the election provided for by Section 1 of this Act. [Acts 1947, 50th Leg., p. 133, ch. 78.]

Art. 2802i—26. Taxes for maintenance, buildings, equipment and repairs; independent districts; election.—Any independent school district in this State, whether created by general or special law or laws, having a limitation upon the tax rate that may be levied and collected in any one year for maintenance purposes and for obtaining funds for the purchase of grounds for public schools and for constructing, remodeling, equipping, and repairing public school buildings which is less than One Dollar and Fifty Cents ($1.50) on the One Hundred Dollars ($100) valuation of taxable property subject to taxation in said school district, shall hereafter be authorized and have the power to levy and cause to be collected, when authorized by a majority of the taxpaying voters of such school district qualified to vote under the Constitution and the laws of this State at an election to be held for that purpose, a tax for such purposes not to exceed in any one year One Dollar and Fifty Cents ($1.50) on the One Hundred Dollars ($100) valuation of taxable property within said school district. [Acts 1947, 50th Leg., p. 152, ch. 89, § 1.]

Section 2 of the Act of 1947 repealed conflicting laws.

Art. 2802i—27. Independent districts with tax rate of $1.50, wherein school burns; maintenance and bond tax.—Any independent school district which now levies a total tax of One Dollar and Fifty Cents ($1.50) per One Hundred ($100.00) Dollars assessed valuation of taxable property for maintenance purposes and bond interest and sinking fund purposes, and wherein a public free school building may have burned, or may burn or be destroyed by fire, whether such independent school district was created under general laws, or any special law or laws, shall have the power to levy and cause to be collected the annual taxes herein authorized, subject to the following provisions:

(1) For the maintenance of the public schools therein an ad valorem tax not to exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation of taxable property of the district;

(2) For the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of necessary sites therefor, an ad valorem tax not to exceed Seventy-five (75¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property of the district, such tax to be for the payment of the current

interest on and provide a sinking fund sufficient to pay the principal of bonds which such districts are empowered to issue for such purpose;

(3) The amount of such maintenance tax, together with the amount of bond tax of any such district shall never exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation of taxable property within such district; and if the rate of bond tax, together with the rate of maintenance tax voted in the district shall at any time exceed One Dollar and Fifty Cents ($1.50) on the One Hundred ($100.00) Dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and One Dollar and Fifty Cents ($1.50);

(4) No tax shall be levied, collected, abrogated, diminished or increased, and no bond shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property tax-paying qualified voters of such district shall be entitled to vote. [Acts 1947, 50th Leg., p. 536, ch. 316, § 1.]

Section 2 of the Act of 1947 repealed conflicting laws.

5. ADDITIONS AND CONSOLIDATIONS

Art. 2803. [2883] Extension of city limits for school purposes.—Any city or town that has taken charge of the public free schools within its limits, or that shall hereafter take charge of the same, may, by ordinance, extend its corporation lines for school purposes only, on a petition signed by a majority of the resident qualified voters of the territory, which is to be taken into said city or town for school purposes only, and recommended by a majority vote of the trustees of the public free schools of said city or town; provided, that the proposed change shall not deprive the scholastic children of the remaining part of the common school district or districts which may be affected by the proposed change, of the opportunity of attendance upon school. The added territory shall bear its pro rata part according to taxable values of any school debt or debts that may be owed or contracted by said city or town to which it shall have been added, and shall not bear any part of any other debt that may be owed or contracted by such town or city. The property of the added territory shall bear its pro rata part of all school taxes, but of no other taxes. The added territory shall not affect the city's debts or business relations in any manner whatever, except for school purposes as provided above. The officers whose duty it is to assess and collect school taxes within the city limits shall also assess and collect school taxes within the territory added for school purposes as herein provided. [Acts 1905, p. 263.]

Art. 2803—1. Consolidation of city of over 290,000 with other city or town not to effect consolidation of school districts.—In the event of the consolidation of an incorporated city containing more than 290,000 inhabitants according to the last preceding or any future Federal census, with any other city or town, regardless of the number of inhabitants therein, such consolidation shall not be construed as permitting or requiring a consolidation of any independent school district or common school district or any part of the area thereof for school purposes with any city, town, independent school district or common school district on an affirmative vote in favor of consolidation for municipal purposes. When the ballot in any one of the several cities or towns voting on the question of consolidation contains a statement, phrase or sentence excepting or excluding consolidation of any particularly named independent school district or common school district, such designated school unit shall continue its separate and distinct, legal and corporate existence, with all of the powers and for all of the purposes for which originally organized, without interruption or impairment in any matter. All laws and parts of laws, and charter provisions in conflict herewith are hereby repealed, to the extent of such conflict only. [Acts 1945, 49th Leg., p. 54, c. 37, § 1.]

Section 2 of the Act of 1945 provided that a holding of partial invalidity should not affect the validity of the remaining portions of the Act.

Art. 2803a. Disannexing territory for school purposes.—Sec. 1. Any city in this State with a population of more than 100,000 located in a county having a population of 210,000 or more at the then preceding United States census, through its governing body, by ordinance, shall have the power to disannex for school purposes only any territory without the municipal limits of such city and which has been annexed by such city for school purposes only, wherever the territory to be disannexed is at some point contiguous to an adjoining school district and where a majority of the persons owning property in such territory petition the city to be disannexed, and where the Board of Trustees of the school district, of which the city is a part, or other governing body of such school district, if there be any other governing body, consents to such disannexation.

Sec. 2. In the event of any territory being disannexed under the terms hereof, the liabilities of the territory disannexed for outstanding obligations shall be governed by the present general laws which are applicable to territory which is changed from one school district to another.

Sec. 3. In the event of the disannexation of any territory under the terms of this Act, such territory shall thereupon ipso facto immediately become a part of the adjoining school district other than that from which it has been disannexed; provided, however, that if it adjoins more than one school district, other than the one from which it has been disannexed, it shall become a part of the school district to be designated by the Commissioners' Court of the County in which it is mainly situated. Upon any city passing a disannexation ordinance, a certified copy of the same shall be furnished by the governing body of such city to the Commissioners' Court of the County in which the principal part of the land disannexed is situated. [Acts 1927, 40th Leg., p. 137, ch. 89.]

Art. 2803b. Counties over 210,000; annexation of independent or common school district to contiguous independent school district.

Petition; election

Section 1. In every county in this State having a population of two hundred and ten thousand (210,000) or more, according to the last preceding Federal Census, any independent school district or common school district may be annexed to any contiguous independent school district as herein provided. A petition requesting annexation and stating the metes and bounds of the independent school district or common school district to be annexed and added to such other district, signed by a majority of the Board of Trustees of the district seeking annexation, or by not less than twenty (20) qualified voters of such district, shall be filed with the County Board of Trustees of the County. Upon receipt of such petition, duly signed, and upon the filing of a consent to the proposed annexation by a majority of the Board of Trustees of the District to which any independent school district or common school district is sought to be annexed, if it appears to the County Board that said annexation will be to the best interest of the districts affected and the public schools involved the Board shall enter its order for an election to be held within the petitioning district, and at its expense, at which election there shall be submitted to the qualified voters within said district the following propositions:

"For the annexation of ———— School District to ———— School District," and the contrary thereof, and "For the subjection of all taxable property in ———— School District to the same tax rate now and hereafter levied by ———— School District," and the contrary thereof.

Notice of said election shall be given and said election shall be held and the results thereof canvassed and certified in accordance with the provisions of Article 2815a of the General Laws of Texas.

Should the results of said election show that a majority of the qualified voters in such petitioning district voting at such election voted in favor of each question submitted, the County Board of Trustees shall certify such fact to the Board of Trustees of the receiving district and such Board and the County Board shall enter an order on their respective minutes declaring such petitioning district to be duly annexed to the receiving district and subject to all the laws governing the same and redefining the boundaries of the receiving district after annexation. A certified copy of the order of the County Board of Trustees shall be transmitted to the County Clerk of the County and recorded in the "Record of School Districts" of such County.

Effect of annexation

Sec. 2. In event a common or independent school district be annexed to an independent school district under this Act, title to all property, real and personal, shall vest in the receiving district, which shall also have complete authority over and management of the public schools in the territory annexed and the receiving district shall in consideration of the transfer of such property and the authority over the operation and maintenance of said schools, assume all outstanding indebtedness of the annexed district, bonded or otherwise. Any tax in effect in said independent school district receiving such territory shall continue and become effective in the territory annexed so that said tax and the rate thereof shall be effective and apply to the entire independent district as constituted after said annexation is completed and said tax shall remain in effect until changed as provided by law.

Elections in receiving district

Sec. 3. The County Board of Trustees may, at its option, order an election or elections to be held in the receiving district and at its expense upon the proposed annexation, the assumption of any bonded indebtedness, the issuance of refunding bonds, the levy of any tax and other like matters incident to such annexation, at such time and in such manner as are now or may hereafter be authorized by the laws of this State governing the consolidation, rearrangement, resubdivision, or annexation of school districts, and all elections herein authorized may be held simultaneously.

Independent district not affected

Sec. 4. The annexation of any district under this Act shall not affect the independent district to which said territory is added, whether created under General or Special Law, but such district shall continue as the same district and operate in all respects as it was prior to such annexation, save that the annexed territory shall become liable for all indebtedness, subject to all taxes, and be a part thereof for all purposes as though originally included therein.

Application; act as cumulative

Sec. 5. This Act shall apply to any independent school district, however created, and to any common school district, and the method of annexation herein provided shall not be exclusive, but shall be cumulative of all other laws relating to the subject.

Partial invalidity

Sec. 6. If any word, phrase, clause, sentence, paragraph, section, or part of this Act, shall be held by any Court of competent jurisdiction to be invalid or unconstitutional it shall not affect any other provision of this Act. [Acts 1947, 50th Leg., p. 457, ch. 259.]

Art. 2804. Extending city limits to include district.—Whenever the limits of any incorporated city or town constituting an independent school district are so extended or enlarged as to embrace the whole or any part of any independent or common school district adjacent to such incorporated city or town, that portion of such adjacent district so embraced within the corporate limits of such incorporated city or town shall thereafter become a part of the independent school district constituted by such incorporated city or town.

If within the portion of such district so embraced there should be situated any real property belonging to such district, such city or town may acquire the same upon such terms as may be mutually agreed upon between the governing body of such city or town and the authorities of such district.

This article shall not apply where it shall be determined at an election held within such city or town by majority vote of those voting thereon that the territory or any portion thereof to be so embraced shall not thereby become a part of the independent school district constituted by such city or town, but shall be taken into the city limits for municipal purposes only, and shall remain for school purposes a portion of the adjacent independent or common school district as though said city limits had not been extended. [Acts 1st C. S. 1917, p. 35; Acts 2nd C. S. 1919, p. 101.]

Art. 2805. Municipality assuming indebtedness.—In all cases where a district is embraced within an incorporated city or town, as provided in the preceding article; and in all cases where any town or village has been or may be incorporated for free school purposes only and which shall include within the limits thereof any portion of any common school district which has an outstanding bonded indebtedness, then such city, town or village shall become liable and bound for the payment of such proportion of the bonded indebtedness of such district as the assessed value of the portion thereof so included bears to the entire assessed value of the district from which the same was taken. The assessed values of the districts so included shall be those shown upon the last preceding county tax assessment roll after such districts are so included; such incorporated city, town or village shall pay either directly or through the officers of such district the proportion of the interest and principal of such bonded indebtedness for which it is liable. [Id.]

Art. 2806. Election to consolidate.—On the petition of twenty (20) or a majority of the legally qualified voters of each of several contiguous common school districts, or contiguous independent school districts, or one or more independent school districts and one or more common school districts constituting as a whole one continuous territory, praying for the consolidation of such districts for school purposes, the County Judge shall issue an order for an election to be held on the same day in each such district. The County Judge shall give notice of the date of such elections by publication of the order in some newspaper published in the county for at least twenty (20) days prior to the date on which such elections are ordered, or by posting a notice of such elections in each of the districts, or by both such publication and posted notice as may be elected by the County Judge. The Commissioners Court shall, at its next meeting, canvass the returns of such elections, and if the votes cast in each and all districts show a majority in each district voting separately in favor of such consolidation, the Court shall

declare the school districts consolidated. Provided that if any such district or districts are situated wholly in a county other than the county or counties embracing any other such district or districts the petitions and election orders prescribed in this Act shall be addressed to and issued by the respective County Judges of the respective counties in which such districts respectively lie, each County Judge ordering the election for the district or districts in his county, and the Commissioners Courts of such respective counties shall canvass the returns and declare the results of the elections in the district or districts of their respective counties. Where one or more independent school districts are consolidated together or with one or more common school districts the consolidated districts shall constitute an independent school district, and shall have all the rights, powers, and privileges granted to independent school districts by the laws of this State.

If only one independent school district is consolidated with one or more common school districts the consolidated district shall bear the name of such independent school district, and the board of trustees of said independent school district shall serve as the board of trustees of the consolidated district until the next regular election of trustees, as prescribed by general law, at which time the consolidated district shall elect a board of seven (7) trustees, whose powers, duties, and terms of office shall be in accordance with the provisions of the general laws governing independent school districts, as they now exist or may be thereafter enacted; provided, if two (2) or more independent school districts are included in such consolidation the consolidated district shall bear the name as prescribed in the petitions for consolidation but such name shall include the words "Consolidated Independent School District," but the board of trustees of the independent school district having the greatest number of scholastics at the time of such consolidation shall serve as the board of trustees of the consolidated district until the next regular election of trustees, as prescribed by general law, at which time the consolidated district shall elect a board of seven (7) trustees, at least two (2) of which trustees shall be elected from the area of each former independent district included in said consolidation, whose powers, duties, and terms of office shall be in accordance with the provisions of the general laws as they now exist or may hereafter be enacted; provided further, that when it is proposed to consolidate contiguous county-line districts, the petitions and election orders prescribed in this Act shall be addressed to and issued by the County Judge of the county having jurisdiction over the principal school of each district and the results of the election shall be canvassed and declared by the Commissioners Court of said county. [Acts 1919, 2nd C.S., p. 167; Acts 1923, 3rd C.S., p. 169; Acts 1931, 42nd Leg., p. 182, ch. 106, § 1; Acts 1945, 49th Leg., p. 416, ch. 264, § 1.]

Art. 2806a. Consolidation of districts validated.—Sec. 1. All consolidations or attempts at consolidation of a common school district or districts with a contiguous independent school district created by General or Special Laws after elections held under Article 2806, Title 49, Revised Civil Statutes of Texas, 1925, and amendments thereto, where a majority of the voters in each of said districts voted in favor of such consolidation, and all annexations of one or more common school district with an independent school district created by General or Special Law within the same county by the county school trustees upon the approval of the board of trustees of each school district affected, under the provisions of Chapter 78, Page 206, Acts of the 40th Legislature, 1927, First Called Session,[1] and amendments thereto, are hereby in all things validated and confirmed and such independent school districts so created or established either by consolidation or annexation are hereby declared to be duly and legally established as if they had been so created in the first instance. Such independent school districts so created or established shall be known by the name of the independent district included therein and the management of the said new district shall be under the existing board of trustees of such included independent school district and shall have all of the rights and privileges conferred upon independent school districts under General Law, as well as those conferred upon such included independent district by any Special Law if the said district is acting under a Special Act. All acts of the County Judge of the County in which said districts are situated in calling certain elections and giving notice thereof and all acts of the election officers in holding said elections and preparing and making the returns thereof and all acts of the Commissioners Court in canvassing the returns of said election and declaring the result and declaring and ordering the said district consolidated and all acts of the school trustees of the respective districts and the acts of the county school trustees of the County in which said districts are situated in providing for the annexation of said districts, are hereby in all things validated and the fact that by inadvertence or oversight any act required by law of any such officers in and about the consolidation or annexation of said district was admitted,[2] shall not invalidate any new district so created. It is expressly provided, however, that the provisions of this law shall not apply in any instance where the consolidation or annexation is in litigation in any of the Courts of this State at the time of the passage of this Act, or where the consolidation or annexation attempted to be effected [3] involves a "line district" or a common school district or independent school district a portion of which is situated in one county and another portion of which is situated in an adjoining county.

Sec. 2. All laws or parts of laws in conflict herewith are hereby expressly repealed. [Acts 1935, 44th Leg., 1st C.S., p. 1642, ch. 418.]

[1] Articles 2922a, 2922b, 2922f.
[2] So in enrolled bill. Should probably read "omitted".
[3] So in enrolled bill. Session Law reads "affected".

Art. 2806b. Validation of county line independent school districts formed by consolidation with contiguous common school districts.

Validation where certain acts done by Board of Trustees instead of Commissioners' Court

Section 1. All county line independent school districts in this State heretofore attempted to be organized and established, and now functioning as such, and recognized by either State or county authorities as such school districts, and which were attempted to be organized and established by a vote of the people at an election held in each district affected for the purpose of consolidating an existing county line independent school district with an existing contiguous common school district, and at which election there was an affirmative vote in each school district in favor of such consolidation, are hereby validated in all respects, as though such district or districts had been duly and legally established in the first instance, notwithstanding the fact that such election on the question of consolidation so held in such existing independent school district or districts may have been ordered, notices thereof given, and the results thereof declared by a Board of Trustees of such existing county line independent school district or districts instead of by the Commissioners Court as provided by Article 2806 of the Revised Civil Statutes of Texas, of 1925.

Elections, tax levies, contracts, and other acts of Board of Trustees validated

Sec. 2. All acts of the Board of Trustees of any such school districts in connection with the or-

dering of an election or elections and declaring the results thereof, and in attempting or purporting to levy taxes for and on behalf of such school district or districts, and all contracts and other acts of such Board of Trustees, otherwise legal, heretofore made on behalf of such district or districts are hereby in all things validated.

Taxation

Sec. 3. All schools districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of taxes as is now being levied, assessed, and collected therein, and heretofore authorized or attempted to be authorized by any act or acts of said districts in the same manner as if said district or districts had been duly and legally authorized and established in the first instance.

Act inapplicable to districts in litigation before termination thereof

Sec. 4. This Act shall not apply to any district, the organization or creation of which is now involved in litigation; provided, however, if and when such litigation shall be finally terminated in a manner favorable to such district, then this Act shall apply thereto.

Partial invalidity

Sec. 5. If any part or Section of this Act shall be declared unconstitutional or invalid for any reason, such partial invalidity shall not affect the other provisions of this Act. [Acts 1937, 45th Leg., p. 660, ch. 328.]

Art. 2806c. Validation of consolidations of common school districts with independent school districts and other consolidations.—All consolidations or attempts at consolidation of one or more common school districts with one or more independent school districts and all consolidations of consolidated independent school districts with a county line common school district lying in two (2) or more counties and all consolidations or attempts at consolidation wherein a county line independent school district is divided and consolidated with contiguous independent school districts lying in two (2) or more counties after an election was held and a majority of the legally qualified voters in each of such districts voted in favor of such consolidations, are hereby in all things validated and declared to be duly and legally consolidated or established as if they had been so consolidated or established in the first instance. Provided, however, the provisions of this Section shall not apply in any instance where the consolidation or consolidations are in litigation in any of the Courts of this State at the time of the passage of this Act. [Acts 1943, 48th Leg., p. 197, ch. 115, § 1.]

Section 2 of the act of 1943 repealed all conflicting laws and parts of laws.

Art. 2807. Consolidation: Outstanding bonds.—If at the time of such proposed consolidation there are outstanding bonds of any of such districts, then at an election held for that purpose on some future day, there shall be, or at the election held for the purposes of consolidation, there may be, submitted to the qualified tax paying voters of such proposed consolidated district the question as to whether or not the said consolidated district shall assume and pay off said outstanding bonds and whether or not a tax shall be levied therefor. If said election on the question of assuming said outstanding bonds is held on the day upon which the election on the question of consolidation is held, there shall be separate notices, ballots, and ballot boxes and tally sheets for the two separate elections. If a majority of said voters should vote at either of said elections to assume and pay off said bonded indebtedness, then said bonded indebtedness shall become valid and subsisting obligations of said consolidated district, and the proper officers thereof shall annually thereafter levy sufficient taxes to pay the interest thereon as it accrues and to create a sinking fund which in addition to the sinking funds already accumulated in the original bonded district will pay off and retire the said outstanding bonds when they shall become due. [Acts 1919, 2nd C. S., p. 167.]

Art. 2808. Consolidation: Trustees.—The board of county school trustees at its next meeting after such consolidation of school districts is declared, shall appoint a board of seven trustees for the consolidated district. No person shall be trustee who cannot read and write the English language understandingly, and who has not been a resident of this State one year, and of the district six months, prior to his appointment or election. The terms of office of three of the trustees so appointed shall expire on the first day of May next following their appointment, and the terms of office of the other four trustees shall expire on the first day of May of the succeeding year, as those so appointed shall determine by lot. Each year thereafter alternately three trustees and four trustees shall be elected by the qualified voters of the district on the first Saturday of April and trustees so elected shall enter upon the discharge of their duties on the first day of May next following and serve for a term of two years thereafter. District trustees shall qualify by taking the official oath which shall be filed with the county superintendent of the county wherein the district is situated. The board of trustees after being qualified shall immediately organize by electing one of their number president and another secretary, a report of which organization shall be filed with the county superintendent. The board of county school trustees shall fill any vacancy by appointment until the next regular election for district trustees. The board of trustees of the district shall appoint three qualified voters of the district to hold said election and make returns thereof in like manner as provided by law for holding elections for trustees in common school districts, except that the persons holding said election shall each receive two dollars a day for such services. [Id.]

Art. 2809. Consolidation: Teachers.—The board of trustees so elected shall employ a superintendent for the district, who shall be elected for one year or for two years as the trustees may determine, and who, in addition to his duties as superintendent, shall be a teacher in one of the elementary schools or the high school of the district. Acting in collaboration with the district superintendent, the board of trustees shall employ teachers for the several elementary schools of the district, or for the departments of the high school, which teachers shall be elected for one year or two years as the trustees decide, and they shall serve under the direction and supervision of the district superintendent. Contracts between the trustees and the district superintendent and teachers shall be in writing and subject to the approval of the county superintendent of the county wherein such district is situated. [Id.]

Art. 2810. Consolidation: Superintendent.—The district superintendent shall visit personally and inspect the several schools of the district and advise with the teachers therein, and he shall be responsible to the district trustees and to the county superintendent for the proper conduct of the school work and the management of the schools of the district. He shall spend at least one-fourth of his time in visiting and inspecting the schools of the district, and he shall make recommendations from time to time to the district trustees and to the county superintendent for any changes which in his judgment are necessary for the proper management of the schools of the district. He shall keep such records and make such reports as are required of him by the district trustees and the county superintendent, and the county superintendent shall refuse to approve vouchers drawn against the

school funds of the district until such reports are made by the district superintendent. [Id.]

Art. 2811. Consolidation: Elementary schools. The district trustees shall recognize or establish elementary schools within the bounds of the district as the need for such elementary schools shall appear. They shall, in so far as is practicable, provide uniform school buildings and equipment for the several elementary schools so recognized or established, and they shall arrange an annual wage schedule for the teachers employed in such elementary schools as nearly uniform as is possible. The instruction in the elementary schools of the district shall embrace not more than the first seven grades or years of work as outlined in the course of study issued by the State Superintendent and approved by the county superintendent. [Id.]

Art. 2812. Consolidation: High schools.—Said trustees may recognize or establish not more than one high school for white children and one high school for colored children within the limits of the district, which high schools shall be located with reference to the convenience of the majority of the high school pupils of either race. The instruction in such high schools may embrace any or all of the four years or grades of work above the seventh grade, as outlined by the State Superintendent and approved by the county board of trustees. Such high school may be located and conducted in connection with some of the elementary schools of the district as said trustees may decide. [Id.]

Art. 2813. Consolidation: Free transportation.—When in their judgment it is deemed necessary or expedient, said trustees may provide for the transportation of pupils to and from any elementary school or high school of the district whereupon such pupils may be in attendance, and trustees are hereby empowered to employ transportation vehicles and drivers for such service, paying the cost thereof out of the local maintenance fund of the district or out of such other funds as may be appropriated for this purpose. [Id.]

Art. 2814. Consolidation: Laws applicable.—Taxing and bonding powers as are provided for elsewhere in the laws of this State are hereby guaranteed to such consolidated districts, and rural school aid shall be extended to any or all of the schools of the districts so consolidating which comply with the laws and rulings governing the distribution of State aid to rural schools and independent districts. Appeals from such districts shall be made to the county superintendent and county board. [Id.]

Art. 2815. Dissolution; withdrawal.—(a) Such consolidated districts may, in the same manner provided for their consolidation, be dissolved and the districts included therein restored to their original status, except that it shall not be necessary to provide polling places in each district. Each such district when so restored shall assume and be liable for its prorata part of the outstanding financial obligations of the consolidated district, such prorata part to be based on the relation the total assessed valuation of all property in the district bears to the total assessed valuation of property in the consolidated district, as shown by the assessment rolls of the district for the current year. No election for the dissolution of said consolidated districts shall be held until three (3) years have elapsed after the date of the election at which such districts were consolidated. [Acts 1923, 38th Leg., 3rd C.S., p. 169, ch. 13, § 1; Acts 1943, 48th Leg., p. 475, ch. 317, § 1.]

(b) [Repealed by Acts 1947, 50th Leg., p. 797, ch. 397, § 3.]

The subdivision (b) repealed was added by Acts 1943, 48th Leg., p. 475, ch. 317, § 1.

Art. 2815—1. County line consolidated districts; dissolution.—Section 1. Any county line school district formed by the consolidation of two or more school districts situated in two or more counties after the effective date of this Act may be dissolved by the procedure hereinafter established, whenever the consolidated school district fails to operate a public free school.

Sec. 2. The procedure for any such dissolution of a consolidated county line school district shall be by a petition signed by twenty (20) or a majority of the qualified voters of said county line school district, and said petition shall be filed with the County Judge of the county in which that portion of the district desiring to be dissolved is situated. Upon the filing of any such petition, the County Judge shall call an election to be held at some designated place in said district, which said election shall be held in accordance with the laws of the State of Texas in such cases, and if a majority of the votes cast in said election shall favor the dissolution, the boundaries of the original districts, before consolidation, shall be reapportioned by order of the County Judge, and thereafter said consolidated county line school district shall cease to exist insofar as it shall relate to that portion of said district in which said election shall have been held; provided, however, that the indebtedness, bonded or otherwise, of the consolidated county line school district shall be borne proportionately by the original districts comprising said county line school district, and the dissolution of said district under the terms of this Act shall not operate to relieve any one of the original districts from assuming and bearing their pro rata part of the total indebtedness of said consolidated county line school district. [Acts 1947, 50th Leg., p. 797, ch. 397.]

Section 3 of the Act of 1947 repealed art. 2815, § b. Section 4 repealed conflicting laws and provided that partial invalidity should not affect the remaining portions of the Act.

6. DISTRICTS IN LARGE COUNTIES

Art. 2815a. Rearrangement of Districts.—It shall be the duty of the County Board of Trustees of the public schools in every county in this State, having two hundred and ten thousand (210,000) population or more, according to the last preceding Federal Census, as soon as may be after this Act shall take effect, to rearrange and resubdivide all territory of their respective counties into such number of convenient school districts as it shall deem advisable and designate them by number.

Such rearrangement and resubdivision shall be accomplished by constituting such existing independent school districts as the Board shall deem advisable, together with such territory adjacent to such independent school districts as it may deem advisable to add thereto, the new districts into which such county shall be subdivided; and such existing independent school districts, so enlarged, shall continue to have and exercise all the powers and duties now provided by law and shall continue to be governed by existing law and by this Act.

The words, "School District," as herein used, shall refer to common school districts or to independent school districts, however created.

The County Board of Trustees shall have the power, from time to time, to alter or amend the rearrangement and the resubdivision of school districts herein provided for, and in making such original rearrangement and resubdivision, and in amending or altering same may increase or reduce the area of any school district; create additional school districts; consolidate two or more adjacent districts; revise or rearrange the boundaries of any school district; attach territory thereto or detach territory therefrom, if necessary, for the best interests of the school children, provided that the territory of no independent school district having more than five hundred (500) scholastics shall be changed without the consent of its board of Trustees, and provided further, that said board shall

not subtract from the territory of any school district in such a way as to leave any portion thereof remaining in such district with insufficient taxable wealth to raise revenue sufficient to pay interest and create a sinking fund for outstanding bonds; and provided that no portion of territory of the county shall be left in a school district, after such subdivision shall have been made, with insufficient taxable wealth to raise revenue sufficient to provide all the scholastics residing within such district with proper and convenient school facilities, both in the elementary and high school grades.

Provided that in the event a petition of twenty (20) or a majority of the voters of any independent or common school district having less than five hundred (500) scholastics shall be presented to the County School Trustees of any county subject to this Act asking that such school district be annexed to an independent school district having more than five hundred (500) scholastics, and if the board of trustees of such district having five hundred (500) or more scholastics shall by a majority vote consent thereto, the County School Trustees may, at their option, cause an election to be held within such petitioning district, at which such election in such petitioning district there shall be submitted to the qualified voters within said district the following:

"Shall ——— School District (naming such petitioning district) be annexed to and become a part of ——— School District (naming such other school district), and the taxable property therein situated be subject to the same tax rate as is and may thereafter be levied in the ——— District (naming the district to which such annexation is sought)?"

And if said County School Trustees shall notify the board of trustees of such independent school district having more than five hundred (500) scholastics of its intention to call such election as hereinbefore provided for, then the board of trustees of such independent school district having five hundred (500) scholastics or more may, by a majority vote of its trustees, call an election to be held within its district, such election to be held on the same date as the election in such petitioning district, and at such election in such independent school district having more than five hundred (500) scholastics the board of trustees thereof shall submit to the qualified voters within said district the following:

"Shall ——— School District (naming such petitioning district) be annexed to and made a part of ——— School District (naming such district to which such annexation is sought to be made), all outstanding indebtedness of such petitioning district to be assumed by said ——— School District (naming such district having more than five hundred (500) scholastics to which such annexation is sought to be made)?"

Notice of the time and place of holding the election in such petitioning school district shall be given by the County School Trustees by publication of the order calling such election in a newspaper of general circulation in such county once each week for three (3) consecutive weeks prior to the date on which such election is ordered, or by posting three (3) notices thereof in such school district for at least twenty (20) days prior to such election, or by both such publication and posted notices, as such County School Trustees shall elect.

Notice of the time and place of holding such election in the independent school district to which such annexation is sought to be made shall be given by the board of trustees thereof by publication of the order calling such election in a newspaper of general circulation in such county once each week for three (3) consecutive weeks prior to the date on which such election is ordered.

The returns of the election to be held in such petitioning school district shall be canvassed by the County School Trustees and the results thereof by such County School Trustees shall be certified to the board of trustees of the school district to which such annexation is sought to be made within five (5) days after the holding of such election, and the returns of the election so held in such school district to which such annexation is sought to be made shall be canvassed within five (5) days after such election by its board of trustees, and if such County School Trustees shall certify to such board of trustees that a majority of the qualified voters voting at such election in such petitioning district voted in favor of the question submitted, and if a majority of the qualified voters voting at such election in the district to which such annexation is sought shall have voted in favor of the question submitted at such election therein, the board of trustees of such school district to which such annexation is sought shall enter an order on its minutes declaring such petitioning district to be duly annexed to it and subject to all the laws governing the same.

The method of annexation herein provided for shall not be exclusive but shall be cumulative of all other laws relating to the subject.

The elections herein authorized shall be held in accordance with the laws governing General Elections in this State, except as otherwise provided herein.

It shall be the further duty of the County Board of School Trustees at their first meeting after the State apportionment of available school funds has been made or as soon thereafter as practicable to apportion the available school funds of the county to the respective school districts within their jurisdiction on a per capita basis as shown by the last scholastic census, provided that the County Board of School Trustees shall be first required to set aside the entire available funds arising from the county permanent school funds, and to set aside not less than five per cent (5%) or not more than ten per cent (10%) of all other available school funds of the county derived from all other sources, including the State per capita apportionment, the said sums so set aside to constitute a county equalization fund that shall not be apportioned on a per capita basis, but shall be expended by the said County Board of School Trustees as a fund for equalizing as far as possible educational opportunities in the county and giving special aid to small and weak schools and to extend the school privileges of such children as have no other adequate provision for schooling in the districts in which they live, and to defray the costs of the county school administration. Provided that no part of such county equalization fund shall be expended in any school district in which there is not levied and collected taxes for school purposes amounting to One Dollar ($1) on the One Hundred Dollars ($100) of taxable property. [Acts 1927, 40th Leg., p. 124, ch. 82, § 1; Acts 1935, 44th Leg., p. 70, ch. 26, § 1.]

The title of Acts 1935, purports to amend Article 2815a as amended by Acts 1927, 40th Leg., ch. 82, p. 124 while in fact the Act of 1927, 40th Leg., ch. 82, p. 124 was the original act.

Section 11 of the Act of 1927 repealed all conflicting laws.

Art. 2815b. Maps of districts.—Before undertaking to create, revise or re-arrange the boundaries or to change the territory in any school district, the County Board of Trustees shall cause a plan and a map to be made showing the boundaries of all districts affected and of the new district, if any to be created, with the area, taxable wealth and scholastic population of such district so affected or to be created; and notice shall be given for ten days by posting advertisements thereof in three public places within the territory embraced in such new district before such action is taken. All interested persons shall be given full opportunity to be heard. [Acts 1927, 40th Leg., p. 124, ch. 82, § 2.]

Art. 2815c. Adjustment of bonded indebtedness.—Sec. 3. When the boundaries of any school district having an outstanding bonded indebtedness have been changed or its territory divided or two or more such districts consolidated, it shall be the duty of the County Board of Trustees to make such an adjustment of such indebtedness and district properties between the districts affected and between the territory divided, detached or added, as may be just and equitable, taking into consideration the value of the school properties and the taxable wealth of the districts affected and the territory so divided, detached or added, as the case may be. And when said Board has arrived at a satisfactory basis of such an adjustment, it shall have the power to make such orders in relation thereto as shall be conclusive and binding upon the districts and the territory thereby affected.

Sec. 4. To carry into effect orders adjusting bonded indebtedness when changes are made in school districts, the County Board of Trustees shall have the power to order the trustees of the districts affected, to order an election for the issuing of such refunding bonds as may be necessary to carry out the purpose of such order; and, in such case, it shall be the duty of the district trustees to order such election, cause the same to be held, and if the proposition is carried, to issue the bonds voted. Such bonds shall be of the same denomination and carry the same interest rate and mature at the same time as the outstanding bonds owing by the district issuing them; and when so issued, shall, if possible, be exchanged for the outstanding bonds for which the district issuing them shall still be liable, according to the order adjusting such indebtedness; and in cases where such an exchange can not be made, the new bonds of the district, to the amount of the old bonds for which it is still liable, and for which no exchange can be made, shall be deposited in the County Treasury to the account of such district. Thereafter taxes shall be levied and assessed only for the payment of the interest, sinking fund and principal of the new bonds so issued; and the funds arising from such taxation shall be used to discharge the principal and interest of such new bonds as have been issued and exchanged, and such old bonds as have not been exchanged. When taxes are collected applicable to new bonds not exchanged and the proceeds applied to payment on old bonds not exchanged, the corresponding new bonds in the County Treasury shall be credited with such payment and retired as the old unexchanged bonds are retired.

Sec. 5. In cases where changes are made in districts having outstanding bonded indebtedness and where the necessary refunding bonds are voted down or where the County Board of Trustees are otherwise unable to arrange an adjustment or settlement of such bonded indebtedness, it shall be the duty of the trustees to certify the fact and the territories affected by such changes, to the Commissioners' Court and thereupon it shall become the duty of the Commissioners' Court to thereafter annually levy and cause to be assessed and collected from the tax payers of such districts as they existed before the changes were made, the tax necessary to pay the interest, the sinking fund and discharge the principal of such indebtedness as it matures. And it shall be the duty of each independent school district so affected, to cause all funds in its hands, whether sinking funds or otherwise, which have been collected on account of such bonded indebtedness to be transferred to the County Treasurer of the county in which such district is situated and such district shall thereafter cease to levy and collect any tax on account of such bonds; and it shall be the duty of the County Treasurer to keep the funds so transferred and those arising from taxation, in separate accounts and apply the same only to the discharge of such bonded indebtedness and the interest thereon, as the same matures.

Sec. 6. Nothing in the provisions of this Act [1] shall prevent the County Board of Trustees from arranging any other method for the adjustment and settlement of outstanding bonded indebtedness of school districts in which changes are made, but they shall have full power and authority to make any legal and equitable adjustment and settlement in such cases that can be effected. [Acts 1927, 40th Leg., p. 124, ch. 82.]

[1] Articles 2815a–2815f.

Art. 2815d. Condemnation of lands.—Said trustees shall have the power to condemn land for free school purposes and may institute, maintain and prosecute suits for that purpose following the procedure applicable to condemnation of lands by railways or any other method authorized by law. [Acts 1927, 40th Leg., p. 124, ch. 82, § 7.]

Art. 2815e. Free transportation.—It shall be the duty of any school district into which the county shall be subdivided under this Act [1] to provide adequate and convenient means of transportation to and from the schools of such school children in any district as it may be reasonably necessary to make such provision for, and to establish such routes for that purpose as the Board of Trustees of such district may deem advisable and to alter and change the same from time to time and the expense of such transportation shall be paid by the district in which such children may reside. [Acts 1927, 40th Leg., p. 124, ch. 82, § 8.]

[1] Articles 2815a–2815g.

Art. 2315f. Appeals.—In all cases where changes have been made in the territory of existing school districts, any party aggrieved shall have the right to appeal to a District Court of the county in which such school district is located and the decision of such Court on such appeal shall be final; provided notice of such appeal is given to the County Board of Trustees within ten (10) days after the passage of any such order making such changes; and provided further that such appeal to the District Court shall be perfected within thirty (30) days from date of such order. [Acts 1927, 40th Leg., p. 124, ch. 82, § 9.]

Art. 2815g. Trustees.—For each county subject to the provisions of this Act [1] the Board of County School Trustees shall consist of seven members, three of whom shall be elected from the county at large by the qualified voters of the county, and one from each commissioner's precinct by the qualified voters of such precinct, all of whom shall be elected on the first Saturday in April after this Act shall take effect and every two years thereafter for a term of two years. All vacancies on such Board shall be filled by the remaining Trustees. Such Board of County School Trustees shall have the powers and duties and possess the qualifications provided by law with respect to County School Trustees generally in this State, in addition to those provided by this Act.

The members of the County Board of Trustees of the Public Schools of any County affected by this Act shall receive five ($5.00) dollars per day for their services in complying with the duties imposed upon them by this Act, to be allowed by the Commissioners' Court and paid out of the General Fund of the County upon accounts to be approved by the Chairman of said County Board of Trustees; and the expense of making maps and plats provided for by this Act and all other expenses incident to carrying out its provisions shall be similarly allowed and paid. [Acts 1927, 40th Leg., p. 124, ch. 82, § 10.]

[1] Articles 2815a–2815g.

Art. 2815g—1. Apportionment of available school funds including State per capita in certain counties.—Sec. 11a. Provided that in all counties having more than 275,000 and less than 300,000

population, according to the last preceding Federal census, and counties having more than 350,000 population, according to the last preceding Federal census, all Independent School Districts having 500 scholastics or more shall be entitled to receive their pro rata part of the entire available funds arising for the County Permanent School Funds to be paid to such Independent School Districts on a per capita basis, and such Independent School Districts shall likewise be entitled to receive their pro rata part on a per capita basis of all other available school funds including the State per capita apportionment, and the pro rata part of the State per capita apportionment to which any such Independent School District shall be entitled shall be paid by the Comptroller by a warrant or warrants in favor of the Treasurer of each such Independent School District. [Acts 1931, 42nd Leg., p. 812, ch. 334, § 1.]

Art. 2815g—1a. Provisions of act inapplicable to counties of over 290,000 and less than 320,000.—Provided further that in all counties having more than two hundred and ninety thousand (290,000) and less than three hundred and twenty thousand (320,000) population accor ıg to the last preceding Federal Census, the provisions of the foregoing Articles, 2815a, 2815b, 2815c, 2815d, 2815e, 2815f, 2815g, and 2815g-1, shall not apply, and the provisions of said Articles shall be without force and effect.

In all said counties having more than two hundred and ninety thousand (290,000) and less than three hundred and twenty thousand (320,000) population according to the last preceding Federal Census, the members of the County Board of School Trustees of the public schools of the county shall receive Five Dollars ($5) per day for their services in attending meetings, inspecting schools, and performing the duties imposed upon them by law, to be paid out of the General Fund of the county by warrants drawn on order of the Commissioners Court, after approval of the account by the County Superintendent. [Acts 1937, 45th Leg., p. 417, ch. 213, § 1; Acts 1941, 47th Leg., p. 842, ch. 517, § 1.]

Art. 2815g—2. School districts and acts of boards of trustees validated.—All School Districts, including Common School Districts, Independent School Districts, Consolidated Common School Districts, Consolidated Independent School Districts, County Line School Districts, Consolidated County Line School Districts, and Rural High School Districts, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any County or by the Legislature of the State of Texas and heretofore recognized by either State or County Authorities as School Districts, are hereby validated in all respects as though they had been duly and legally established in the first instance; all acts of the Board or Boards of Trustees in such Districts ordering an election or elections, declaring the result of such elections, and levying taxes therefor, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any District was omitted shall in nowise invalidate such District and the fact that by inadvertence or oversight any act was omitted by any Board of Trustees of any such District in ordering an election or elections, or in declaring the result thereof, or in levying the taxes for such District, or in the issuance of the bonds of any such District shall in nowise invalidate any of such proceedings or any bonds so issued by such District. All acts of the County Boards of Trustees of any and all counties in rearranging, changing or subdividing such School Districts or increasing or decreasing the area thereof, in any School District of any kind, or in creating new Districts out of parts of existing Districts or otherwise, are hereby in all things validated. Provided further that this Act shall not apply to any District which may have been established or consolidated and which has later returned to its original status and has been so recognized by the proper authorities. Provided further that this law shall not apply to any district the organization or creation or tax levy or assessment of which is now involved in litigation. [Acts 1931, 42nd Leg., 2nd C.S., p. 63, ch. 39, § 1.]

Art. 2815g—3. Validation of school districts.—All School Districts, including Common School Districts, Independent School Districts, Consolidated Common School Districts, Consolidated Independent School Districts, County Line School Districts, Consolidated County Line School Districts, and Rural High School Districts, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any County or by the Legislature of the State of Texas and heretofore recognized by either State or County Auditories as School Districts, are hereby validated in all respects as though they had been duly and legally established in the first instance; all acts of the Board or Boards of Trustees in such Districts ordering an election or elections, declaring the result of such elections, and levying taxes therefor, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any District was omitted shall in nowise invalidate such District, and the fact that by inadvertence or oversight any act was omitted by any Board of Trustees of any such District in ordering an election or elections, or in declaring the result thereof, or in levying the taxes for such District, or in the issuance of the bonds of any such District shall in nowise invalidate any of such proceedings or any bonds so issued by such District. All acts of the County Boards of Trustees of any and all counties in rearranging, changing or subdividing such School Districts or increasing or decreasing the area thereof, in any School District of any kind, or in creating new Districts out of parts of existing Districts or otherwise, are hereby in all things validated. Provided further that this Act shall not apply to any District which may have been established or consolidated and which has later returned to its original status and has been so recognized by the proper authorities in which case the original district and creation thereof is hereby validated. This Act shall not apply to any district, the organization, creation, rearranging or changing of which is now involved in litigation, nor shall this Act apply to, or affect, any litigation now pending which involves a change in the boundary line between two districts or which involves territory sought to be detached from one district and attached to another district. [Acts 1933, 43rd Leg., p. 60, ch. 31.]

Acts 1934, 43rd Leg., 2nd. C.S., p. 77, ch. 28, in fact a special law applicable to counties of not less than 8596 and not more than 8610 inhabitants, validated school districts in that county by provisions similar to this article.

Acts 1936, 44th Leg., 3rd C.S., p. 2036, ch. 494, validated transfer of territory to the McAdoo Independent Consolidated County Line District of Dickens County and designated the boundaries of the district.

Art. 2815g—4. Validating bond elections.—Where an election has heretofore been ordered, held and carried in an Independent School District (created by Special Act) for the purpose of authorizing the issuance of the bonds of such school district and the levying of a tax for the payment of said bonds, and there has been in the proceedings preliminary to such election either of the following two irregularities, to-wit, (1) the absence of a petition, or the filing of a defective petition, to the governing body of such Independent School District asking for the calling of such election,

and (2) a failure to state, or distinctly state, in the order calling such election and/or in the notice given of such election and/or in the proposition submitted at such election for the issuance of the bonds, the maturities of the bonds to be issued, such elections and such proceedings preliminary thereto and the bonds issued or to be issued in pursuance thereof and the tax levies made and to be made for the payment of such bonds are hereby ratified, confirmed and validated, and such bonds are hereby constituted the valid obligation of such Independent School District, notwithstanding the irregularities above referred to; provided, however, that nothing contained in this Act shall be held to waive or destroy any defenses against the validity of such bonds other than those based upon the two irregularities hereinabove specified; provided further, that the provisions of this Act shall not apply to or in anywise affect any bonds of any school district which bonds are now in litigation in any court in this State. [Acts 1934, 43rd Leg., 3rd C.S., p. 2, ch. 2, § 1.]

Art. 2815g—5. Validating school districts having city of 160,000 or more and elections therein.—Sec. 1. All Independent School Districts having within their limits a city with a population of one hundred sixty thousand (160,000) or more according to the last preceding Federal census, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any County or by the Legislature of the State of Texas and heretofore recognized by either State or County Authorities as School Districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All elections heretofore held in such school districts authorizing the issuance of bonds are hereby validated irrespective of the filing of a proper petition for such election, or in the absence of the filing of such petition, and of irregularities in the calling of, giving of notice of, the holding of, and the declaring of the result of such election; and all bonds heretofore voted in such districts and either heretofore delivered or not yet delivered, and all tax levies heretofore made to pay the principal and interest thereof, are, in all things, hereby validated, confirmed and approved.

Sec. 2. This law shall not apply to any District, the organization or creation of which is now involved in litigation; nor shall it apply to any bonds the validity of which is now involved in litigation.

Sec. 3. In the event any section, paragraph, sentence, clause or phrase of this Act is unconstitutional, the remaining parts of the law shall remain undisturbed, it being the legislative intent that the remaining parts of the law would have been enacted without including such unconstitutional provision or provisions. [Acts 1934, 43rd Leg., 3rd C.S., p. 18, ch. 11.]

Art. 2815g—6. Validating county line consolidated independent and other school districts.—All county line consolidated independent school districts, county line rural high school districts and/or consolidated common school districts which have heretofore been created by the vote of the people or by the acts of the County Boards of School Trustees or the Commissioners' Courts or by judgments of the District Courts where such districts are composed of territory lying in three adjoining counties and heretofore laid out and established or attempted to be established by the proper officers of any county or by the Legislature of the State of Texas are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Board or Boards of Trustees in such districts ordering an election or elections, declaring the result of such elections, and levying taxes therefor, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any district was omitted shall in nowise invalidate such district and the fact that by inadvertence or oversight any act was omitted by any Board of Trustees of any such district in ordering an election or elections, or in declaring the result thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so issued by such district. All acts by vote of the people of said districts or of the County Boards of Trustees, of the Commissioners' Courts, or by judgments of District Courts, of any and all counties in rearranging, changing or subdividing such school districts or increasing or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, are hereby in all things validated. [Acts 1934, 43rd Leg., 3rd C.S., p. 90, ch. 45, § 1.]

Art. 2815g—7. Validation of creation of all school districts.

Acts validated

Sec. 1. All school districts, including common school districts, independent school districts, consolidated common school districts, all county line school districts, including county line common school districts, county line independent school districts, county line consolidated common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any county or by the Legislature of the State of Texas, and heretofore recognized by either State or county authorities as school districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Board or Boards of Trustees in such districts ordering an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such school district, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any district was omitted shall in nowise invalidate such district, and the fact that by inadvertence or oversight any act was omitted by the Board of Trustees of any such district in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so issued by such districts.

All acts of the County Boards of Trustees of any and all counties in rearranging, changing or subdividing such school districts or increasing or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, are hereby in all things validated.

Provided, however, that no action or resolution purporting to transfer any territory from one district to another district, without an affirmative vote of the voters of the districts affected shall be validated by the passage of this Act.

Tax rate

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax as is now being levied, assessed and collected therein and heretofore authorized or attempted to be authorized by any act, or acts of said districts, or by any act, whether general or special, of the Legislature.

Districts excepted

Sec. 3. This law shall not apply to any district, the organization or creation of which is now involved in litigation. Provided further that this Act shall not

apply to any district which may have been established or consolidated and which has later returned to its original status and has been so recognized by the proper authorities, provided, however, if and when any such litigation shall be finally terminated, in a manner favorable to such district, then this Act shall apply thereto.

Partial invalidity

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any court of competent jurisdiction to be invalid, as unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section or part of this Act. [Acts 1935, 44th Leg., p. 530, ch. 221.]

Art. 2815g—8. Validating school districts created by general or special laws.—Sec. 1. All school districts created by general or special law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any county or by the Legislature of the State of Texas and heretofore recognized by either state or county authorities as school districts, are hereby validated in all respects as though they have been duly and legally established in the first instance. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any district was omitted shall in nowise invalidate such district and the fact that by inadvertence or oversight any act was omitted by any board of trustees of any school district in ordering an election or elections, or in declaring the result thereof, or in levying the taxes for such district, shall in nowise invalidate any of such proceedings by such district. All acts of the county boards of trustees of any and all counties in rearranging, changing or subdividing such school districts or increasing or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, are hereby in all things validated.

Sec. 2. All acts of the board or boards of trustees in such districts or the county commissioners' courts ordering an election or elections, declaring the result of such elections, and all bonds issued and now outstanding, and all tax levies made therefor, and all bonds heretofore authorized or heretofore voted but not yet issued for the purpose of financing or aiding in the financing of any work, undertaking or project by any school district in this State to which any loan or grant has heretofore been made by the United States of America through the Federal Emergency Administrator of Public Works for the purpose of financing or aiding in the financing of such work, undertaking or project, including all proceedings for the authorization and issuance of such bonds, and the sale, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any defects or irregularities (other than constitutional) in such proceedings, or in such sale, execution or delivery; and such bonds are and shall be binding, legal, valid and enforceable obligations of such public body.

Sec. 3. This Act shall not apply to any district which may have been established or consolidated and which has later returned to its original status and has been so recognized by the proper authorities. This law shall not apply to any district the organization or creation or tax levy or assessment of which is now involved in litigation, or contest before a County Board of School Trustees, the State Superintendent of Public Instruction, or the State Board of Education, or where the consolidation or annexation attempted to be effected involves a line district or a common school district or independent school district a portion of which is situated in one county and another portion of which is situated in an adjoining county. [Acts 1935, 44th Leg., 1st C.S., p. 1555, ch. 380.]

Art. 2815g—9. Validating independent school districts.—That in all independent school districts in the State of Texas heretofore created by any special act or acts, which act or acts provided for the election of three trustees in each such district and in which such district seven trustees have been elected under the general law, that the election of such seven trustees in said districts is hereby in all things validated, ratified and confirmed. All acts of the board of trustees in such independent school districts in regard to the ordering of elections for the purpose of voting bonds and the election pursuant to such order and the issuance and sale of such bonds and the levy and assessment of taxes for the purpose of liquidating said bonds are also in all things ratified, confirmed and validated. [Acts 1935, 44th Leg., 1st C.S., p. 1638, ch. 416, § 1.]

Art. 2815g—10. Validation of consolidation of contiguous independent school districts.—Section 1. All attempts to consolidate contiguous independent school districts lying in two or more counties, or either of which lies in two or more counties, be and the same are hereby validated in all respects, as though their consolidation had been duly and legally provided for and established in the first instance.

Sec. 2. All acts of the County Commissioners' Court of any county in this State ordering an election for the consolidation of an independent school district in such county or in two or more counties, with a contiguous independent school district in an adjoining county, or in two or more counties, including all orders of the Commissioners' Court of said county or counties declaring the results of any such election, and including all proceedings of every kind and character leading up to or taken in connection with said election or elections are hereby in all things validated, and said consolidated districts shall hereafter be known as a Consolidated County Line Independent School District, and such Consolidated County Line Independent School District shall have and possess all the rights and powers granted to an independent school district by the Constitution and Laws of the State of Texas, and shall be governed, controlled and operated by the law governing independent school districts lying wholly in one county; however, the management and control of said Consolidated County Line Independent School District shall be under the existing Board of Trustees of the oldest independent school district involved in the consolidations of said independent school districts, until the next regular election of trustees for the independent school districts, as provided by General Law, at which time the said Consolidated County Line Independent School District shall elect a Board of seven trustees, whose powers, duties and terms of office shall be in accordance with the provisions of the General Law governing independent school districts, and the election for said trustees of said Consolidated County Line Independent School District shall be governed by the provisions of the General Law governing the election of trustees for independent school districts.

Sec. 3. The Board of Trustees having the management and control of said Consolidated County Line Independent School District is hereby authorized and empowered to levy, assess and collect the same rate of taxes as is now being levied, assessed and collected in each of said independent school districts, constituting a part of said Consolidated County Line Independent School District as theretofore authorized or attempted to be authorized by any act or acts of either of said independent school districts, until such rate of taxation is changed by an election in said Consolidated County Line School District, which election shall be held in accordance with the provisions governing such elections in independent school

districts under the Constitution and Laws of the State of Texas.

Sec. 4. Provided that if any Section or part of the Section should be held unconstitutional it shall not affect the other provisions of this Act. [Acts 1937, 45th Leg., p. 177, ch. 94.]

Art. 2815g—11. Validating districts in counties of 98,000 to 100,000.—Section 1. The actions of any County Board of Trustees in this State for the purpose of creating independent school districts are hereby in all things validated as though they had been duly and legally established in the first instance.

Sec. 1a. This Act shall apply only to those counties having a population of ninety-eight thousand (98,000) to one hundred thousand (100,000), according to the last preceding Federal Census, and that no part of this Act shall affect any litigation of any district now pending.

Sec. 1b. The acts of the County Board of Trustees shall not be valid except those acts that are passed by four-fifths majority of the Board itself. [Acts 1937, 45th Leg., p. 575, ch. 285.]

Art. 2815g—12. Validation of all school districts, acts of trustees, bonds, etc.—Section 1. All school districts, including common school districts, independent school districts, consolidated common school districts, all county line school districts, including county line common school districts; county line independent school districts, county line consolidated common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, groups or annexations of whole districts or parts of districts by vote of the people residing in such districts or by action of County School Boards, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any county or by the Legislature of the State of Texas, and heretofore recognized by either State or county authorities as school districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Boards of Trustees in such districts ordering an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such school district, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any district was omitted shall in no wise invalidate such district, and the fact that by inadvertence or oversight any act was omitted by the Board of Trustees of any such district in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in no wise invalidate any of such proceedings or any bonds so issued by such districts.

All acts of the County Boards of Trustees of any and all counties in rearranging, changing, or subdividing such school districts or increasing or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, are hereby in all things validated.

Provided, however, that no action or resolution purporting to transfer any territory from one district to another district, without an affirmative vote of the voters of the districts affected shall be validated by the passage of this Act.

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax as is now being levied, assessed and collected therein and heretofore authorized or attempted to be authorized by any act, or acts of said districts, or by any Act, whether General or Special, of the Legislature.

Sec. 3. This law shall not apply to any district, the organization or creation of which, or consolidation or annexation of any territory in or to such district was not submitted to a vote of the people residing in such district or districts or territories affected thereby, or which is now involved in litigation, or the validity of the organization or creation of which or consolidation or annexation of territory in or to such district is attacked in any suit or litigation filed within forty-five (45) days after the effective date of this Act. Provided further that this Act shall not apply to any district which may have been established or consolidated, and which was later returned to its original status.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any court of competent jurisdiction to be invalid, as unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section or part of this Act. [Acts 1937, 45th Leg., p. 833, ch. 409.]

Art. 2815g—13. Validating elections for establishing, consolidating, abolishing, or changing independent or common districts.—Section 1. All acts of County Boards of School Trustees in any County in this State in ordering an election for the purpose of laying out, establishing, combining, abolishing, or changing any independent or common school districts, are hereby in all things ratified, confirmed, and validated, and that all elections held in any County in this State for the purpose of laying out, establishing, combining, abolishing, or changing any such independent or common school districts, where the majority of the qualified voters, who voted in said elections, voted in favor of laying out, establishing, combining, abolishing, or changing any such independent or common school districts, are also in all things ratified, confirmed, and validated.

Provided, however, that no action or resolution purporting to transfer any territory from one district to another district, without an affirmative vote of the voters of the districts affected, shall be validated by the passage of this Act.

Sec. 2. This law shall not apply to any district or districts the laying out, establishing, combining, abolishing, or changing of which was not submitted to a vote of the people residing in such district or districts or territories affected thereby, or which may now be involved in litigation; provided, however, that any contest may be filed within a period of forty-five (45) days after the effective date of this Act, as to the validity of any change attempted to be made by said district or districts, the same as though this Act had not been passed. [Acts 1937, 45th Leg., 1st C.S., p. 1825, ch. 44.]

Art. 2815g—14. Validation of school district bonds containing irregularity as to maturity date.—Section 1. All bonds heretofore voted and issued or heretofore voted and not yet issued, by any common school district, common consolidated school district, rural high school district, or independent school district, regardless of maturity date of the same and regardless of the fact that same do not become due in serial annual installments, are hereby in all things validated.

Sec. 2. It is the intention of the Legislature to only validate those bonds voted by school districts wherein there exists an irregularity with reference to the maturity date. It is not the intention to validate any other irregularity of bonds voted by such school districts.

Sec. 3. This law shall only apply in cases where in all other respects an election was properly held in conformity to the law, and it is expressly provided that all bonds herein validated must mature in not more than forty (40) years.

Sec. 3a. The provisions of this Act shall not apply to such bonds and such districts which are in litiga-

tion, at the effective date of this Act. [Acts 1937, 45th Leg., 2nd C.S., p. 1969, ch. 30.]

Art. 2815g—15. Validation of acts of trustees in creating, etc., school districts in counties not exceeding 11,400 population.—Section 1. All common school districts, common consolidated school districts, independent school districts, and rural school districts heretofore created, defined, or redefined since June 1, 1936, by the County Board of Trustees of the County wherein such school districts are located including those independent school districts to which territory detached from common school districts has been annexed by the County Board of Trustees of the County in which said school districts are located, are hereby in all things validated, regardless of the fact that they were not properly created, defined, or redefined, or enlarged by such annexation in the first instance, and regardless of the fact that there exists no record of their prior creation, and the acts of such County Boards in creating, defining, redefining, or attaching additional territory to such districts are hereby in all things validated, in counties having a population not exceeding eleven thousand, four hundred (11,400), according to the last preceding United States Census.

Sec. 2. The fact that by inadvertence or oversight there might be some irregularity in the creation or redefining of such district shall in nowise affect its status as a school district. Said school district shall be known and designated by the name given to it by the County Board of Trustees and shall be governed by the law governing the administration of school districts of the same name.

Sec. 2-a. This law shall not apply to any district, the organization or creation of which is now involved in litigation, or concerning which the validity of the organization or creation, or consolidation, or annexation of territory in or to such district is attacked in any suit or litigation, filed within forty-five (45) days after the effective date of this Act. Provided further, that this Act shall not apply to any district which may have been established, and which has later returned to its original status and has been so recognized by the proper authorities; provided, however, if and when any such litigation shall be finally terminated, in a manner favorable to such district, then this Act shall apply thereto. [Acts 1937, 45th Leg., 2nd C.S., p. 1910, ch. 31.]

Art. 2815g—16. Validation of districts created by joining county line and contiguous districts.—Section 1. All school districts heretofore attempted to be established by the annexation or joining of a part of a county line common school district to a contiguous school district after an election held in said common school district for the purpose of dividing it and/or annexing or joining a part or parts thereof to a contiguous district or districts, whether by order of a county board of school trustees or a County Commissioners Court, are hereby ratified, confirmed, and validated in all respects, provided, however, that said election shall have resulted in favor of division and/or annexation or joining, and provided further that the order of annexation or joining shall be in accordance with the terms of the order calling said election respecting a division and/or annexation or joining; and provided further that such order shall have been made by a county board of school trustees or Commissioners Court of a county containing a part of said county line common school district, and in addition thereto, a part or all of the district to which a part of said county line common school district is annexed or joined. Wherever a part of such county line common school district has been annexed or joined by such an order to a contiguous county line rural high school district, the newly established district shall exist and function under the laws governing county line rural high school districts and shall hereinafter be included within the term county line rural high school district.

Sec. 2. All elections called in the districts validated by Section 1 of this Act to authorize the issuance of bonds for a lawful purpose or to authorize the assumption by the entire district of any indebtedness lawfully chargeable against a part only of such districts, are hereby ratified, confirmed, and validated where a majority of those qualified to vote and voting in such elections voted in favor of the issuance of such bonds, or assuming such indebtedness. All bonds issued pursuant to said elections and now outstanding and all bonds voted at such elections but not yet issued are likewise validated.

Sec. 3. This law shall not apply to any district, the organization or creation of which is now involved in litigation, nor shall it apply to any act of any district mentioned herein, nor to any tax levy, nor any item of indebtedness, either of which is now involved in litigation, nor shall it apply to any district which may have been established and later returned to its original status and which has been so recognized by the proper authorities.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any Court of competent jurisdiction to be invalid as unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section, or part of this Act. [Acts 1937, 45th Leg., 2nd C.S., p. 1992, ch. 65.]

Art. 2815g—17. Validation of election of trustees in independent districts.—Section 1. Elections heretofore held in independent school districts created by Special Act or Acts of the Legislature of the State of Texas which provided for a Board of five (5) trustees in such district or districts, to elect seven (7) trustees for such districts, are hereby ratified, confirmed, and validated. The Board of Trustees elected at such elections is hereby constituted the Board of Trustees for such district or districts, and such district or districts shall hereafter elect seven (7) trustees instead of five (5), in accordance with the provisions of the General Law governing the election of seven (7) trustees in independent school districts, under which they are now acting.

Sec. 2. All bonds voted by such districts and not yet issued and all bonds issued by such districts and now outstanding are hereby validated. All tax levies made by such Board or Boards of Trustees for and on behalf of such districts and the assessment and collection thereof, are hereby validated.

Sec. 3. All other acts of such Boards of Trustees done under any law authorizing the legally constituted Boards of Trustees of such districts to so act are hereby ratified, confirmed, and validated, it being the intent of this provision to validate only those acts which were legal in all respects, excepting as they might have been made invalid by the fact that such Board consisted of more than five (5) members.

Sec. 4. This Act shall not be construed as obviating any Constitutional requirement of an election, nor shall it be construed as applying to any school district which the Legislature was not constitutionally authorized to create by Special Act, nor shall it apply to any school district mentioned herein which now purports to elect only five (5) trustees.

Sec. 5. This Act shall not apply to any bonds or to any tax levies or any acts of such Board or Boards of Trustees which are now the subject matter of litigation, nor shall it be construed as validating the creation or organization of any district which is now involved in litigation.

Sec. 6. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any Court of competent jurisdiction to be invalidated as unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, para-

graph, section, or part of this Act. [Acts 1937, 45th Leg., 2nd C.S., p. 2005, ch. 72.]

Art. 2815g—18. Validation of independent district elections assuming indebtedness apportioned against districts.—Section 1. In every instance wherein an election has been held heretofore in any Independent School District upon the question of assumption of indebtedness theretofore apportioned against such district or a part thereof, as a result of its segregation, or the segregation of the part thereof from another Independent School District, such apportionment having been approved by the County Board of Trustees of the County in which said District is located, whether the indebtedness so assumed be the identical proportionate part of the indebtedness owed by the original District as of the time of the segregation or an equal amount of indebtedness incurred by a portion of the original District after such segregation, where a majority of the legally qualified voters voting at such assumption election voted in favor of the assumption of such indebtedness and the governing board of such District has canvassed the returns of such election and declared the results thereof, the act of the governing board calling said election, the act of the voters in voting to assume such indebtedness, and the act of the governing body thereof in canvassing the returns of such election and declaring the results thereof, are each and all hereby expressly validated. The indebtedness thus attempted to be assumed at each such election is hereby declared to be the indebtedness of such District, and the duty is hereby imposed upon the governing body thereof to levy and collect annually against all taxable property therein a tax sufficient to pay interest as it accrues and to pay the principal as it matures.

Sec. 2. All proceedings heretofore had by the governing body of such District for the issuance of bonds to refund indebtedness thus assumed are hereby validated, and such refunding bonds when issued, approved by the Attorney General of the State of Texas, and registered by the Comptroller of Public Accounts, shall constitute legal and binding obligations of such District.

Sec. 3. Any Independent School District affected by the preceding sections of this Act, and any Independent School District from which all or a part of the territory comprising such Independent School District was detached, may issue interest bearing time warrants for the purpose of paying expenses incident to the refunding of its outstanding bonds, provided that such warrants and the interest thereon shall not exceed the saving in interest effected by the issuance of such refunding bonds.

Sec. 4. Provided, however, that no action or resolution purporting to transfer any territory from one district to another district, without an affirmative vote of the voters of the districts affected shall be validated by the passage of this Act.

Provided further, this law shall not apply to any district, the organization or creation of which, or consolidation or annexation of any territory in or to such district was not submitted to a vote of the people residing in such district or districts or territories affected thereby, or which is now involved in litigation, or the validity of the organization or creation of which or annexation or consolidation of territory in or to such district is attacked in any suit or litigation filed within forty-five (45) days after the effective date of this Act. Provided further, that this Act shall not apply to any district which may have been established or consolidated, and which was later returned to its original status. [Acts 1937, 45th Leg., 2nd C.S., p. 1871, ch. 7.]

Art. 2815g—19. Validation of consolidated independent districts of 13,500 to 15,500 population.—Section 1. Any Consolidated Independent School District heretofore established by the County Board of School Trustees of counties having not less than thirteen thousand, five hundred (13,500) nor more than fifteen thousand, five hundred (15,500) population according to the last preceding Federal Census, are hereby validated in all respects, and the acts of said County Boards of School Trustees as recorded in the minutes of said Boards are hereby ratified and confirmed.

Sec. 2. Provided further, this law shall not apply to any district, the organization or creation of which, or consolidation or annexation of any territory in or to such district was not submitted to a vote of the people, or petitioned by a majority of the qualified voters of such district or districts or territories affected thereby, or which is now involved in litigation, or the validity of the organization or creation of which or annexation or consolidation of territory in or to such district is attacked in any suit or litigation filed within forty-five (45) days after the effective date of this Act. [Acts 1939, 46th Leg., Spec.L., p. 1021.]

Art. 2815g—20. Validation of certain county line independent rural high school districts and acts of trustees.—Section 1. All attempts to consolidate or annex school districts situated in three (3) counties or either of which lies in three (3) counties, the supervision of said schools being located in counties having a population of not less than eleven thousand, four hundred and twelve (11,412) and not more than eleven thousand, nine hundred (11,900), as shown by the last preceding Federal Census, be and the same are hereby validated in all respects, as though their consolidation or annexation had been duly and legally provided for and established in the first instance.

Sec. 2. All acts of the County School Boards of Trustees of such counties, or persons acting under their directions, in creating county line independent rural high school districts are hereby in all things validated. The fact that by an inadvertence or oversight any act of the officers of said counties in the creation of any such district was omitted shall in nowise invalidate such district.

Sec. 3. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any Court of competent jurisdiction to be invalid, or unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section, or part of this Act. [Acts 1939, 46th Leg., Spec.L., p. 1022.]

Art. 2815g—21. Validating acts of trustees in ordering elections for establishing, combining, abolishing, or changing independent or common districts in counties of 22,570 to 22,600; bond elections validated.—Section 1. All acts of County Boards of School Trustees in any county of this State having a population of not less than twenty-two thousand, five hundred and seventy (22,570) nor more than twenty-two thousand, six hundred (22,600), according to the last preceding or any subsequent Federal Census, in ordering an election for the purpose of laying out, establishing, combining, abolishing, or changing any Independent or Common School Districts, are hereby in all things ratified, confirmed, and validated, and that all elections held in any county in this State for the purpose of laying out, establishing, combining, abolishing, or changing any such Independent or Common School Districts, where the majority of the qualified voters, who voted in said elections, voted in favor of laying out, establishing, combining, abolishing, or changing any such Independent or Common School Districts, are also in all things ratified, confirmed, and validated.

Sec. 2. This Act shall not apply to any district or districts the laying out, establishing, combining, abolishing, or changing of which was not submitted to a vote of the people residing in such district or districts or territories affected thereby, or which may now be involved in litigation.

Sec. 3. Where an election has heretofore been ordered held and carried in any Independent School District in any county having a population of not less than twenty-two thousand, five hundred and seventy (22,570) nor more than twenty-two thousand, six hundred (22,600), according to the last preceding or any subsequent Federal Census, for the purpose of authorizing the issuance of bonds of such School District and the levying of a tax for the payment of said bonds, and there has been in the proceedings of such election, in the petition for election, order of the School Board for such election, notice of election and order declaring the results of such election, either of the following errors or irregularities, to wit: (1) no definite maturity dates of bonds specified, (2) illegal tax rate set, (3) the phrase "resident taxpayer who has duly rendered his property for taxation" omitted, (4) a lower property valuation recommended, (5) a failure to have the proper certificate of the election judge of said election, (6) a conflict in the order of election and the petition for election, order of the School Board calling the election, notice of election, and the order of the School Board declaring the result thereof—are hereby ratified, confirmed, and validated; provided, however, that nothing contained in this Act shall be held to waive and destroy any defense against the validity of any bonds other than those based on such errors and irregularities hereinabove specified; providing further, that the provisions of this Act shall not apply to or in anywise affect any bonds of any School District which bonds are now in litigation in any Courts of this State. [Acts 1939, 46th Leg., Spec.L., p. 1029.]

Art. 2815g—22. Validating creation of certain county line districts.—Section 1. From and after the effective date of this Act all County Line Common School Districts and all County Line Consolidated Common School Districts created by General or Special Law in this State, and heretofore laid out and established, or attempted to be established, by the proper officials of any county or counties in this State having a population of not less than twenty-two thousand, one hundred (22,100) and not more than twenty-two thousand, five hundred (22,500), according to the last preceding Federal Census, and in all counties having a population of not less than twenty-four thousand, one hundred and eighty (24,180) and not more than twenty-four thousand, two hundred (24,200), according to the last preceding Federal Census, or by the Legislature of the State of Texas in such counties, and heretofore recognized by either State or county authorities and School Districts of such counties, and where, for such consolidation of County Line Consolidated Common School Districts and/or County Line Common School Districts. the election or elections were ordered by the County Judges of the counties in which such County Line Common School Districts and/or County Line Consolidated Common School Districts lie or are situated, and where such election was approved by the County Commissioners Courts of such counties are hereby validated in all respects as though they had been duly and legally established in the first instance. The fact that by inadvertence or oversight, any act of the officials of any such county or counties in the creation of any such districts, as hereinabove set out, was omitted shall in nowise invalidate such district; and the fact that by inadvertence or oversight, any act was omitted by any Board of Trustees of any of the School Districts embraced within this Act, in ordering an election or elections, or in declaring the result thereof, or in levying the taxes therefor; and the act of any official or person assuming to act as such official shall in nowise invalidate any of such proceedings by such districts.

All acts of the County Boards of School Trustees of any and all counties above set out in the creation of any County Line Common School District or any County Line Consolidated Common School District in rearranging, changing, consolidating, or subdividing such County Line Common School Districts and/or County Line Consolidated Common School Districts, or in increasing or decreasing the area of such school districts, or in creating new districts, and consolidating County Line Common School Districts or County Line Consolidated Common School Districts out of parts of existing districts or otherwise, are hereby in all things validated.

Sec. 2. All acts of the Board or Boards of Trustees in such districts, or the County Judges, or the County Commissioners Courts in such districts, in ordering an election or elections, declaring the result of such elections, and all bonds issued, if any, and now outstanding, and all tax levies made therefor, and all bonds heretofore authorized, if any, or heretofore voted, if any, for the purpose of financing and aiding in the financing of any work, undertaking or project by any school district as hereinabove defined in this State, are hereby validated, ratified, approved, and confirmed, notwithstanding any difficulties or irregularities (other than Constitutional) in such procedures for consolidation, creation, and establishment of such districts, shall hereafter be held to be binding, legal and in all things regular.

It being the purpose of this Act to validate all acts of officials in the creation, establishment, and consolidation of County Line Common School Districts and County Line Consolidated Common School Districts in the counties above set out in this State where irregularities in procedural matters might have inadvertently failed of performance by the proper official, and at the proper time.

Sec. 3. Nothing in this Act shall be construed to affect the Gladewater County Line Independent School District. [Acts 1939, 46th Leg., Spec.L., p. 1027.]

Art. 2815g—23. Continuing certain districts.—In all counties having a population of not more than twenty-three thousand, nine hundred (23,900) and not less than twenty-three thousand, eight hundred and eighty (23,880) according to the Federal Census of 1930 and which have at the same time an independent school district of not more than one hundred and sixty (160) and not less than one hundred and fifty (150) scholastics according to the Public School Directory of the State Department of Education for 1938–1939 that where the independent district has been operating as an independent school district and because of falling below one hundred and fifty (150) scholastics would otherwise have to revert to a common school district, it is provided that said district shall remain for all purposes an independent school district regardless of said decrease in scholastic population. [Acts 1939, 46th Leg., Spec.L., p. 722, § 1.]

Art. 2815g—24. Consolidating common school district to independent school district having scholastic population of 250–400 validated.—All acts and proceedings of the county school board of trustees in any county in this State in consolidating a common school district to any independent school district having a scholastic population of not less than two hundred and fifty (250) nor more than four hundred (400), according to the scholastic census of the said independent school district at the time of the consolidation, and all acts and proceedings of the county board of school trustees in any way relating to such consolidation are hereby ratified, validated, and approved. [Acts 1939, 46th Leg., Spec.L., p. 1017, § 1.]

Art. 2815g—25. Validation of school districts, bonds, tax levies, and acts; exceptions.—Section 1. All School Districts, including Common School Districts, Independent School Districts, Consolidated Common School Districts, Rural High School Districts, all County Line School Districts, including County Line Common School Districts,

County Line Independent School Districts, County Line Consolidated Common School Districts, County Line Consolidated Independent School Districts, County Line Rural High School Districts, and Districts formed by Consolidation of Rural High School Districts and contiguous Independent School Districts, and all other School Districts, groups or annexations of whole Districts or parts of Districts by vote of the people residing in such Districts or by action of County School Boards, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any County, or by the Legislature of the State of Texas, and heretofore recognized by either State or County authorities as School Districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Boards of Trustees in such Districts and all Commissioners' Courts in ordering an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such School Districts, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, and all bond assumption tax elections, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any County in the creation of any District was omitted shall in no wise invalidate such District; and the fact that by inadvertence or oversight any act was omitted by the Board of Trustees of any such District or the Commissioners' Court of any County in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such District, or in the issuance of the bonds of any such District, shall in no wise invalidate any of such proceedings or any bonds so issued by such Districts.

All acts of the County Boards of Trustees of any and all Counties in rearranging, changing, or subdividing such School Districts or increasing or decreasing the area thereof, in any School District of any kind, or in creating new Districts out of parts of existing Districts or otherwise, are hereby in all things validated.

Sec. 2. All School Districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax as is now being levied, assessed and collected therein, and heretofore authorized or attempted to be authorized by any act, or acts of said Districts, or by any Act, whether General or Special, of the Legislature.

Sec. 3. This Act shall not apply to any District, the organization or creation of which, or consolidation or annexation of any territory in or to such District which is now involved in litigation, or the validity of the organization or creation of which, or consolidation or annexation of territory in or to such Districts, is attacked in any suit or litigation pending in any court of competent jurisdiction which has been filed heretofore or within twenty (20) days after the effective date of this Act. Provided further that this Act shall not apply to any District which may have been established or consolidated, and which was later returned to its original status.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this Act shall be held by any court of competent jurisdiction to be invalid, as unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section or part of this Act. [Acts 1941, 47th Leg., p. 21, ch. 11.]

Art. 2815g—26. Validating certain county line independent districts.—Section 1. Every county line independent school district within this State, whose area has been increased by the acts of the Board of County School Trustees of all the counties within whose boundaries all of the area of such county line independent school districts lay by each of such Boards of each of such counties passing its order increasing the area of such county line independent school district by incorporating therein the same portion of the area of a contiguous county line common school district, having all of its territory lying within the boundaries of such counties or a part of such counties is hereby in all things validated, as though it had been duly and legally established in the first instance.

Sec. 2. The Board of Trustees of such county line independent school district, as same existed immediately prior to having its area increased, is hereby continued in office until the expiration of the respective terms of the members thereof, and their successors shall be elected as provided by the General Laws of the State of Texas for the election of trustees in county line independent school districts incorporated for school purposes only.

Sec. 3. All acts of the Board of Trustees of any such county line independent school district in connection with the ordering of an election or elections and declaring the results thereof, and in attempting or purporting to levy taxes for and on behalf of such county line independent school district with its increased area, and all contracts and other acts of such Board of Trustees, otherwise legal, heretofore made on behalf of such district with increased territory, are hereby in all things validated.

Sec. 4. Nothing in this Act shall in anywise affect any local maintenance tax or taxes for bond purposes heretofore voted upon any part of the territory included within the bounds of such county line independent school district within the increased area. [Acts 1941, 47th Leg., p. 59, ch. 42.]

Art. 2815g—27. Validating consolidation of certain common school districts, independent school districts, and county line districts.—All consolidations or attempts at consolidation of one or more common school districts with one or more independent school districts and all consolidations of consolidated independent school districts with a county line common school district lying in two or more counties after an election was held and a majority of the legally qualified voters in each of such districts voted in favor of such consolidations, are hereby in all things validated and declared to be duly and legally consolidated or established as if they had been so consolidated or established in the first instance. Provided however, the provisions of this section shall not apply in any instance where the consolidation or consolidations are in litigation in any of the Courts of this State at the time of the passage of this Act. [Acts 1941, 47th Leg., p. 866, ch. 540, § 1.]

Section 2 of the Acts of 1941 repealed all conflicting laws.

Art. 2815g—28. Validation of school districts, bonds, tax levies, and acts; exceptions.—Section 1. All school districts, including common school districts, independent school districts, consolidated common school districts, all county line school districts, including county line common school districts, county line independent school districts, county line consolidated common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, groups or annexations of whole districts or parts of districts by vote of the people residing in such districts or by action of County School Boards, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any county or by the Legislature of the State of Texas, and heretofore recognized by either State or county authorities as school districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Boards of Trustees in such districts ordering

an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such school district, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, and all bond assumption tax elections following consolidation elections are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any district was omitted shall in nowise invalidate such district, and the fact that by inadvertence or oversight any act was omitted by the Board of Trustees of any such district in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so issued by such districts.

All acts of the County Boards of Trustees of any and all counties in rearranging, changing, or subdividing such school districts or increasing or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, are hereby in all things validated.

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act or acts of said districts, or by any Act, whether General or Special, of the Legislature.

Sec. 3. This law shall not apply to any district which is now involved in litigation, or the validity of the organization or creation of which or consolidation or annexation of territory in or to such district is attacked in any suit or litigation filed within forty-five (45) days after the effective date of this Act. Provided further that this Act shall not apply to any district which may have been established or consolidated, and which was later returned to its original status.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this Act shall be held by any Court of competent jurisdiction to be invalid, as unconstitutional, or for other reasons, it shall not affect any other phrase, word, clause, sentence, paragraph, section, or part of this Act. [Acts 1941, 47th Leg., p. 875, ch. 546.]

Art. 2815g—29. Validation of school districts, bonds, tax levies and acts; exceptions.—Section 1. All school districts, including common school districts, independent school districts, consolidated common school districts, all county line school districts, including county line common school districts, county line independent school districts, county line consolidated common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, groups or annexations of whole districts or parts of districts by vote of the people residing in such districts or by action of County School Boards, whether created by General or Special Law in this state, and heretofore laid out and established or attempted to be established by the proper officers of any county or by the Legislature of the State of Texas, and heretofore recognized by either state or county authorities as school districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Boards of Trustees in such districts ordering an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such school district, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, and all bond assumption tax elections following consolidation elections are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any district was omitted, shall in nowise invalidate such district, and the fact that by inadvertence or oversight any act was omitted by the Board of Trustees of any such district in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so issued by such districts.

All acts of the County Boards of Trustees of any and all counties in rearranging, changing, or subdividing such school districts or increasing, or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, are hereby in all things validated.

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act or acts of said districts, or by any Act, whether General or Special, of the Legislature.

Sec. 3. This law shall not apply to any district which is now involved in litigation, or the validity of the organization or creation of which or consolidation or annexation of territory in or to such district is attacked in any suit or litigation filed within forty-five (45) days after the effective date of this Act. Provided further, that this Act shall not apply to any district which may have been established or consolidated, and which was later returned to its original status.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this Act shall be held by any Court of competent jurisdiction to be invalid, as unconstitutional, or for other reasons, it shall not affect any other phrase, word, clause, sentence, paragraph, section or part of this Act. [Acts 1943, 48th Leg., p. 548, ch. 327.]

Art. 2815g—30. Validation of consolidation with independent school districts; exception.

Consolidations of county-line common school districts with contiguous independent districts validated

Section 1. All consolidations of a county line common school district or districts with a contiguous independent school district (where such independent school district involved had been enlarged by the annexation thereto of one or more common school districts by the County Board of School Trustees of the county in which such independent school district is located, after an election held in such district at large in which a majority of the voters voting at such election voted in favor of such enlargement of such independent school district by the annexation thereto of one or more common school districts) after an election held under the provisions of Article 2742b, Section 5b, Acts of 1927, Fortieth Legislature, First Called Session, p. 228, Ch. 84, where such election carried in favor of such consolidation are hereby in all things validated and confirmed and such independent school districts so created or established by such consolidation are hereby declared to be one independent school district and shall be known by the name of the included independent school district and the management of such new district shall be under the existing board of trustees of such included independent school district and such independent school district so created or established by such consolidation shall have all of the rights, powers and privileges and the same status conferred upon independent school districts under General Law, as well as those conferred upon independent school districts by Special Law if the said original independent school district so included is acting under a Special Law.

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

Acts of County Judges and Commissioners Courts validated

Sec. 2. All acts of the County Judges of the counties in which said county line common school district or districts are located in determining the character and status of the districts involved in such consolidation, in calling the elections involved, in giving notice thereof and all acts of the election officers in holding said elections and preparing and making the returns thereof, and all acts of the Commissioners Courts in canvassing the returns of said elections and declaring the result and ordering the said districts consolidated are hereby in all things validated and confirmed and the fact that by inadvertence, or oversight or mistake in determining the character or status of any of the districts involved, or in omitting any act required by law of any such officer in and about the consolidation shall not invalidate any such district so established or created by such consolidation.

Independent school districts enlarged by order of County Board validated

Sec. 3. All independent school districts enlarged by order of the County Board of School Trustees of the county in which such district is located by the annexation thereto of one or more common school districts either after obtaining the consent of the board of trustees of the districts involved or after an election held in the area at large at which election a majority of the voters voting at such election voted in favor of such annexation and enlargement are hereby in all things validated and confirmed; and the independent school districts so enlarged by such order of the County Board of School Trustees are hereby declared to be duly established and created independent school districts and the one or more common school districts so annexed to such independent school districts are hereby declared to be abolished as separate elementary districts and are hereby declared to be an integral part of the enlarged independent school district to the same extent as if originally a part of such independent school district at the time of its original establishment or creation; such enlarged independent school district shall continue under the name of the independent school district and the management and control thereof shall be under the existing board of trustees of such independent school district and such district shall have all of the rights, powers, privileges and the same status conferred upon independent school districts under the General Law, as well as those conferred upon such independent school districts by any special law if the original independent school district is acting under a special law.

Acts of County Board of School Trustees validated

Sec. 4. All Acts of the County Board of School Trustees of the county in which such enlarged independent school district is located in determining the character and status of the districts involved, in such annexation proceeding, in calling the elections involved, in giving notice thereof and all acts of the election officers in holding said elections and preparing and making the returns thereof, and all acts of such County Board of School Trustees in canvassing the returns of said elections and declaring the results thereof and in enlarging the independent school district involved by the annexation thereto of one or more common school districts are hereby in all things validated and confirmed and the fact that by inadvertence, or oversight or mistake in determining the character or status of any of the districts involved, or in omitting any act required by law of any such officers in and about such enlargement of an independent school district by such annexation shall not invalidate any such district so established or created by such annexation proceeding.

Acts of boards of trustees validated

Sec. 5. All acts of the trustees of any enlarged independent school district and of the trustees of any rural high school district in discontinuing any elementary school in any part of such enlarged independent school district or rural high school district when such school in such district failed to have an average daily attendance the preceding year of at least twenty (20) pupils; and all acts of the County Board of School Trustees of the county in which such independent school district is located for administrative purposes in then consolidating or attempting to consolidate the former elementary school district within such enlarged independent school district to the original independent school district so enlarged, and all acts of the County Board of School Trustees in then consolidating the former elementary school district within such rural high school district to any other elementary school district within such rural high school district, are hereby in all things validated and confirmed and any such former elementary school district within such enlarged independent school district and any elementary school district within such rural high school district are hereby in all things abolished and made an integral part of the district to which they were so consolidated to the same extent as if originally a part of such district to which they were so consolidated. All acts of the board of trustees of the independent school district and all acts of the board of trustees of the rural high school district, in closing said schools and all acts of the county boards of trustees in abolishing said former elementary school districts and elementary school districts and in consolidating the same to the original independent school district or to another elementary school district within the rural high school district are hereby in all things validated and confirmed, and the fact that by inadvertence, or oversight or mistake any act required by law of any of such officers in and about the closing of said schools and the consolidation thereof was omitted shall not invalidate the abolition of such elementary school district or former elementary school district and the consolidation thereof.

Pending litigation

Sec. 6. It is expressly provided that the provisions of this law shall not apply in any instance where the consolidation, annexation or abolition is in litigation in any of the Courts of this State at the time of the passage of this Act. [Acts 1945, 49th Leg., p. 89, ch. 63.]

Section 7 of the Act of 1945 repealed all conflicting laws.

Art. 2815g—31. Validation of school tax elections in independent or municipal school districts.—Section 1. Whenever the board of trustees of any independent school district in this State, or the governing body of any city or town in this State which has heretofore assumed control of the public free schools within its limits, thereby creating a municipal school district, regardless of whether the boundaries of such city or town and municipal school district coincide or not, has heretofore called an election pursuant to Section 3 of Article VII of the Texas Constitution, and a majority of the voters voting at such election, who are qualified voters and property taxpayers of any such district or districts, have heretofore authorized the trustees of any such independent school district or any such governing body to levy, assess and collect taxes for school purposes at any rate specified in the election order and notice of election, not to exceed One Dollar and Fifty Cents ($1.50) on each One Hundred Dollars ($100) of assessed valuation, and the board of trustees of any such independent school district, or any such governing body, has canvassed said vote and declared the results of said election in favor of the levy, assessment and collection of such tax, all acts and proceedings had and done in connection therewith, including the order calling the election, notice of election, holding of election, canvassing the returns of the election, and declaring the results of same, are hereby authorized, legalized,

adopted, approved, ratified, and validated. It is the intention hereof to authorize, ratify, adopt, and confirm all acts and proceedings of the voters, board of trustees, governing bodies, and election officials, of any such school tax election.

Sec. 2. The board of trustees of all such independent school districts and the governing body of all such cities and towns, where the vote has heretofore been in favor of levying such tax for school purposes, shall have the power and authority to levy, assess, and collect such taxes at not to exceed the following rates per One Hundred Dollars ($100) of assessed valuation of taxable property, to-wit: For maintenance purposes, One Dollar and Fifty Cents ($1.50) per One Hundred Dollars ($100) of assessed valuation (or so much thereof as may have been authorized by the voters voting at such election); for bond interest and sinking fund purposes, Fifty Cents (50¢) per One Hundred Dollars ($100) of assessed valuation, but the combined tax for both purposes shall never exceed One Dollar and Fifty Cents ($1.50) per One Hundred Dollars ($100) of assessed valuation. Such taxes shall be assessed, levied, and collected pursuant to the law applicable to such districts.

Sec. 3. Where the board of trustees and tax collector of any such independent school district, or the governing body and tax collector of any such city or town, has heretofore levied and collected school taxes at a rate in excess of One Dollar ($1) per One Hundred Dollars ($100) of assessed valuation, pursuant to the authority granted in any such election, the action of such board of trustees and tax collector, or governing body and tax collector in so doing is hereby authorized, legalized, adopted, approved, ratified, and validated. [Acts 1945, 49th Leg., p. 177, ch. 137.]

Section 4 of the Act of 1945 provided that nothing in the act should validate any of the matters mentioned in Section 1, Section 2 or Section 3 where it was involved in litigation pending on the effective date of the Act.

Art. 2815g—32. Validation of school districts, bonds, tax levies and acts; exceptions.—Section 1. All school districts, including common school districts, independent school districts, consolidated common school districts, all county line school districts, including county line common school districts, county line independent school districts, county line consolidated common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, groupings or annexations of whole districts or parts of districts created by vote of the people residing in such districts or by action of County School Boards, whether created by General or Special Law in this State, and heretofore laid out and established or attempted to be established by the proper officers of any county or by the Legislature of the State of Texas, and heretofore recognized by either State or County authorities as school districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Boards of Trustees in such districts ordering an election or elections; declaring the results of such elections, for the purpose of authorizing the levy of taxes or the issuance of bonds, or levying, attempting or purporting to levy taxes for and on behalf of such school district, and all bonds issued and now outstanding, and all bonds heretofore voted but not yet issued, and the tax voted in payment thereof, and all bond assumption tax elections following consolidation elections are hereby in all things validated. The fact that by inadvertence, oversight or otherwise any act of the officers of any County in the creation of any district was omitted, shall in nowise invalidate such district, and the fact that by inadvertence, oversight or otherwise any act was omitted by the Board of Trustees of any such district in ordering any such election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so issued or authorized to be issued by such districts.

All acts of the County Boards of Trustees of any and all counties in rearranging, changing, or subdividing such school districts or increasing, or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, are hereby in all things validated.

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess and collect taxes at the rate authorized or attempted to be authorized by any election heretofore held in said district for the purpose of fixing, increasing or diminishing taxes for school purposes, or by any Act of the Legislature, whether General or Special.

Sec. 3. This law shall not apply to any district which on the effective date of this Act is involved in litigation which questions the creation, organization, validity of any consolidation or annexation thereof nor to any district which may have been established or consolidated and which was later returned to its original status.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section or part of this Act shall be held by any Court of competent jurisdiction to be invalid, as unconstitutional, or for other reasons, it shall not affect any other phrase, word, clause, sentence, paragraph, section or part of this Act. [Acts 1945, 49th Leg., p. 260, ch. 192.]

Art. 2815g—33. Independent school districts separated from municipal control validated; trustees; taxes.—Section 1. All independent school districts in the State of Texas heretofore separated and divorced from, and made independent of, municipal control, after an election held in said city in which a majority of the voters voting at such election voted in favor of such separation and divorcement, pursuant to and in conformity with Acts, 1929, Forty-first Legislature, page 674, Chapter 302, (Vernon's Annotated Civil Statutes, Article 2783a) are hereby in all things ratified, confirmed, and validated.

Sec. 2. The creation and formation of all independent school districts for rural high school purposes in the State of Texas by the annexation of one or more contiguous common school districts to such independent school district, so separated from municipal control as stated in Section 1 of this Act, and having a scholastic population of two hundred and fifty (250) or more, after an election held in such district at large in which a majority of the voters voting at such election voted in favor of such enlargement of such independent school district for rural high school purposes by the annexation thereto of one or more contiguous common school districts, pursuant to and in conformity with Acts, 1925, Thirty-ninth Legislature, page 204, Chapter 59; Acts, 1927, Fortieth Legislature, First Called Session, page 206, Chapter 78, Section 3; Acts, 1937, Forty-fifth Legislature, Second Called Session, page 1923, Chapter 40, Section 1, (Vernon's Annotated Civil Statutes, Article 2922c) are hereby in all things ratified, confirmed and validated.

Sec. 3. The trustees of all such rural high school districts, and other independent school districts mentioned in this Act, with more than one hundred (100) square miles of territory, duly elected from the district at large in accordance with Section 5 of Chapter 59, General Laws of the State of Texas, Thirty-ninth Legislature, 1925, Regular Session (Vernon's Annotated Civil Statutes, Article 2922e), and duly qualified as such trustees, are hereby in all things confirmed, in such election and qualification.

Sec. 4. All rural high school districts, and other independent school districts, in the State of Texas, mentioned in this Act, are hereby authorized and empowered to levy, assess, and collect annual taxes for the maintenance of public free schools of said district at the rate authorized, or attempted to be authorized, by any election heretofore held in said

district, in compliance, or attempted compliance, with Articles 2784, 2785 as amended, 2786 as amended, and 2788, Revised Civil Statutes of the State of Texas of 1925, and Section 1 of Chapter 147, Acts of 1933, Forty-third Legislature, page 376, (Vernon's Annotated Civil Statutes, Articles 2784, 2785, 2786, 2788, and 2955A), whether such election was held within more or less than one year from the date of any preceding election for the same purpose; and any such election so held in such districts mentioned in this Act within less than one year from the date of a preceding election for the same purpose, is hereby in all things confirmed, ratified, and validated.

Sec. 5. In all such districts mentioned in this Act, all petitions requesting submission at an election of the proposition as to whether or not the public schools shall be divorced from municipal control, all acts of city mayors in ordering such elections, in giving notice thereof, and all acts of the election officers in holding said elections, and in preparing and making the returns thereof, and all acts and orders of the city commission in canvassing and declaring the results of such elections, and in putting into force and effect the said separation of the public free schools from municipal control, all acts and orders of the County Board of School Trustees in ordering an election for the formation of rural high school districts containing more than one hundred (100) square miles of territory by the annexation of one or more contiguous common school districts, each having a scholastic population of less than four hundred (400), to an independent school district having a scholastic population of more than two hundred and fifty (250), in giving notice of such elections, and all acts of the election officers in holding said elections, and all acts of the election officers in preparing and making the returns thereof, and all acts and orders of the County Board of School Trustees in canvassing the returns of said elections and declaring the results thereof and ordering the formation and creation of said rural high school districts by the said annexations, all elections for trustees of such rural high school districts so formed, all acts and orders of the Board of Trustees of such Independent School Districts mentioned in this Act in calling such trustee elections, in giving notice thereof, and all acts of the election officers in holding said elections and in preparing and making the returns thereof, and all acts and orders of the Board of Trustees of such Independent School Districts in canvassing the returns of said elections and declaring the results thereof, and all acts and orders of the Board of Trustees of said Independent School Districts mentioned in this Act, in calling and ordering elections for maintenance tax, in giving notice thereof, and all acts of the election officers in holding said elections, and in preparing and making the returns thereof, and all acts of the said Board of Trustees of said Independent School District in canvassing the returns of said elections and declaring the results thereof, and in levying, assessing, and collecting the annual taxes for the maintenance of the public free schools of said district at the rate as authorized by said elections are hereby in all things confirmed, ratified, and validated. Provided further that this law shall not apply to any district, the organization, or creation or tax levy or assessment or election of which is now involved in litigation. [Acts 1945, 49th Leg., p. 290, ch. 210.]

Section 6 of the Act of 1945 repealed all conflicting laws, Section 7 provided that a holding of partial invalidity should not affect the remainder of the Act.

Art. 2815g—34. Validation of districts, bonds, acts and taxes; exceptions.—Section 1. All school districts, including any independent school district controlled by a municipality and including common school districts, independent school districts, consolidated common school districts, all county line school districts, including county line common school districts, county line independent school districts, county line consolidated common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, groups or annexations of whole districts or parts of districts by vote of the people residing in such districts, or by action of the governing body of any such municipality, or by action of county school boards, whether created by general or special law in this state, and heretofore laid out and established by the proper officers of any county or municipality or by the Legislature of the State of Texas, and heretofore recognized by either state or county authorities as school districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the boards of trustees in such districts or governing bodies of such municipalities ordering an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such school district, and all bonds issued and now outstanding, and all bonds heretofore voted but not issued, and all bond assumption tax elections following consolidation elections or annexation to said districts are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county or municipality in the creation of any district was omitted, shall in no wise invalidate such district; and the fact that by inadvertence or oversight any act was omitted by the board of trustees of any such district or governing body of any such municipality in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in no wise invalidate any of such proceedings or any bonds so issued by such district.

All acts of the county boards of trustees of any and all counties in re-arranging, changing, or subdividing such school districts, or increasing or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, and all acts of the governing bodies of any such municipalities in annexing territories to such municipally controlled school districts, are hereby in all things validated.

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax, or not to exceed the rate of tax as heretofore authorized or attempted to be authorized by any act of the district or by any election of the tax paying voters of said districts or by any Act whether general or special by the Legislature, or as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act or acts of said districts, or by any Act, whether general or special, of the Legislature.

Sec. 3. This law shall not apply to any district which is now involved in litigation, or the validity of the organization or creation of which or consolidation or annexation of territory in or to such district is attacked in any suit or litigation filed within forty-five (45) days after the effective date of this Act. Provided further, that this Act shall not apply to any district which may have been established or consolidated, and which was later returned to its original status.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this Act shall be held by any court of competent jurisdiction to be invalid, or unconstitutional, or for other reasons, it shall not affect any other phrase, word, clause, sentence, paragraph, section, or part of this Act. [Acts 1945, 49th Leg., p. 434, ch. 275.]

Art. 2815g—35. Consolidations of common school districts with independent districts validated.—Section 1. All consolidations, or attempts at

consolidation, of one or more common school districts with one or more independent school districts after an election was held and a majority of the legally qualified voters in each of such districts voting in such election voted in favor of such consolidations, are hereby in all things validated and declared to be duly and legally consolidated or established as though they had been so consolidated or established in the first instance; and shall include such attempted consolidations where the election proceedings call for the consolidation of one or more common school districts with an independent school district, but did not provide for the consolidation of each common school district with each other common school district.

Sec. 2. All proceedings had by any such consolidated districts authorizing the issuance of bonds after such attempted consolidation are hereby in all things validated, and the bonds authorized by such proceedings are in all respects validated.

Sec. 3. The provisions of this Act shall not apply in any instance where the consolidation or consolidations, or the proceedings authorizing the issuance of any bonds or such bonds, are in litigation in any of the courts of this state at the time of the passage of this Act. [Acts 1947, 50th Leg., p. 33, ch. 26, §§ 1–3.]

Section 4 of the Act of 1947 repealed all conflicting laws.

Art. 2815g—36. Validation of school districts, bonds, tax levies and acts: exceptions.—Section 1. All school districts, including any independent school district controlled by a municipality and including common school districts, independent school districts, consolidated common school districts, all county line school districts, including county line common school districts, county line independent school districts, county line consolidated common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, groups or annexations of whole districts or parts of districts by vote of the people residing in such districts, or by action of the governing body of any such municipality, or by action of county school boards, whether created by general or special law in this State, and heretofore laid out and established by the proper officers of any county or municipality or by the Legislature of the State of Texas, and heretofore recognized by either state or county authorities as school districts, as hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the boards of trustees in such districts or governing bodies of such municipalities ordering an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such school district, and all bonds issued and now outstanding, and all bonds heretofore voted but not issued, and all tax elections and bond assumption elections, following consolidation elections or annexation or grouping of said districts are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county or municipality in the creation of any district was omitted, shall in nowise invalidate such district; and the fact that by inadvertence or oversight any act was omitted by the board of trustees of any such district or governing body of any such municipality in ordering an election of elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so issued by such district.

All acts of the county boards of trustees of any and all counties in rearranging, grouping, annexing, changing, or subdividing such school districts, or increasing or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, and all acts of the governing bodies of any such municipalities in annexing territories to such municipally controlled school districts, are hereby in all things validated.

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax, or not to exceed the rate of tax as heretofore authorized or attempted to be authorized by any act of the district or by any election of the taxpaying voters of said districts or by any Act whether general or special by the Legislature, or as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act or acts of said districts, or by any Act, whether general or special, of the Legislature.

Sec. 3. This law shall not apply to any district which is now involved in litigation in any district Court of this State, the Court of Civil Appeals, or the Supreme Court of Texas, or the validity of the organization or creation of which or consolidation or annexation of territory in or to such district is attacked in any suit or litigation filed in a Court of competent jurisdiction in this State. Provided further, that this Act shall not apply to any district which has heretofore been declared invalid by a Court of competent jurisdiction of this State or which may have been established or consolidated, and which was later returned to its original status.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this Act shall be held by any Court of competent jurisdiction to be invalid, or unconstitutional, or for other reasons, it shall not affect any other phrase, word, clause, sentence, paragraph, section, or part of this Act. [Acts 1947, 50th Leg., p. 60, ch. 46, § 1.]

Art. 2815g—37. Bond election proceedings validated.—Section 1. In all common and independent school districts and cities and towns which have assumed control of their public schools, and in all public free school corporations where the issuance of bonds for school purposes has been authorized by a majority vote of the duly qualified resident electors of such district, city, town or corporation who own taxable property within such district, city, town or corporation, and who have duly rendered the same for taxation, voting at an election called for such purpose, and at which such election a majority of said qualified electors voted in favor of the levy of taxes not to exceed Seventy-five (75¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property for the purpose of paying the principal of, and interest on, such bonds, in which such election such district, city, town or corporation purported to be acting under the provisions of Chapter 499, Acts of the 47th Legislature of Texas, Regular Session, 1941,[1] or any other law, all proceedings in connection with such elections, including all petitions for such elections, the orders or resolutions calling such elections, the giving of notice thereof, the holding of such elections, the returns and all orders and resolutions canvassing such returns and declaring the results thereof, and all other proceedings in connection with such elections and the taxes authorized thereat, be and the same are hereby in all things ratified, confirmed and validated. The bonds so authorized may be issued, sold and delivered in the manner provided for other school bonds, respectively, of such districts, cities, towns and corporations and the Boards of Trustees or other governing bodies thereof shall be authorized to levy and cause to be assessed and collected a tax of not to exceed Seventy-five (75¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property for the payment of the interest on and to provide a sinking fund sufficient to pay the principal of such bonds as the same respectively come due, provided that the amount of maintenance tax, together with the amount of bond tax, of any such district, city, town or corporation shall never

exceed One and 50/100 ($1.50) Dollars on the One Hundred ($100.00) Dollars valuation of taxable property or such lesser amount as may have been authorized at an election called for such purpose; and if the rate of bond tax, together with the rate of maintenance tax, voted in such district, city, town or corporation, shall at any time exceed the total bond and maintenance tax theretofore authorized at such election, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and such maximum bond and maintenance tax so authorized.

Sec. 2. When the bonds authorized in Section 1 hereof have been approved by the Attorney General, registered by the Comptroller of Public Accounts and sold and delivered for not less than par and accrued interest, and the proceeds of such sale have been received by such district, city, town or corporation, the only defense which can be offered against the validity of such bonds shall be forgery or fraud.

Sec. 3. In the event the provisions of this Act are in conflict with the provisions of any other Act or statute, the provisions of this Act shall prevail, but nothing herein shall be construed as limiting any other powers or authority granted to such districts, cities, towns or corporations.

Sec. 4. The invalidity of any section, sentence, clause or phrase of this Act shall not affect the validity of the remaining portion of this Act. [Acts 1947, 50th Leg., p. 216, ch. 124.]

1 Articles 2802i—18, 2802i—18 note.

Art. 2815g—38. Validation of districts, bonds and acts; taxes.—Section 1. All school districts, including any independent school district controlled by a municipality and including common school districts, independent school districts, consolidated common school districts, all county line school districts, including county line common school districts, county line independent school districts, county line consolidated common school districts, county line consolidated independent school districts, rural high school districts, and all other school districts, groups or annexations of whole districts or parts of districts by vote of the people residing in such districts, or by action of the governing body of any such municipality, or by action of county school boards, whether created by General or Special Law in this State, and heretofore laid out and established by the proper officers of any county or municipality or by the Legislature of the State of Texas, and heretofore recognized by either State or county authorities as school districts are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the boards of trustees in such districts or governing bodies of such municipalities ordering an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such school district, and all bonds issued and now outstanding, and all bonds heretofore voted but not issued, and all bond assumption tax elections following consolidation elections or annexation to said districts are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county or municipality in the creation of any district was omitted, shall in nowise invalidate such district; and the fact that by inadvertence or oversight any act was omitted by the board of trustees of any such district or governing body of any such municipality in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so issued by such district.

All acts of the county boards of trustees of any and all counties in rearranging, changing, or subdividing such school districts, or increasing or decreasing the area thereof, in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, and all acts of the governing bodies of any such municipalities in annexing territories to such municipally controlled school districts, are hereby in all things validated.

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax, or not to exceed the rate of tax as heretofore authorized or attempted to be authorized by any act of the district or by any election of the taxpaying voters of said districts or by any Act whether General or Special by the Legislature, or as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act or acts of said districts, or by any Act, whether General or Special of the Legislature.

Sec. 3. This Law shall not apply to any district which is now involved in litigation, or the validity of the organization or creation of which or consolidation or annexation of territory in or to such district is attacked in any suit or litigation filed within forty-five (45) days after the effective date of this Act. Provided further, that this Act shall not apply to any district which may have been established or consolidated, and which was later returned to its original status.

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this Act shall be held by any court of competent jurisdiction to be invalid, or unconstitutional, or for other reasons, it shall not affect any other phrase, word, clause, sentence, paragraph, section, or part of this Act. [Acts 1947, 50th Leg., p. 483, ch. 280.]

7. JUNIOR COLLEGES

Art. 2815h. Junior college districts.

Application

Section 1. Any Independent School District, or city, which has assumed control of its schools, having in either case an assessed property valuation of not less than Twelve Million ($12,000,000.00) Dollars or having an income provided by endowment or otherwise that will meet the needs of the proposed Junior College District, said need to be determined by the State Board of Education, and having an average daily attendance of the next preceding school year of not fewer than 400 students in the last four years in the classified high school or high schools within the said district or city, may by vote of the qualified voters of the district or city establish and maintain a Junior College, such College District to be known as a Junior College District. [As amended Acts 1947, 50th Leg., p. 513, ch. 303, § 1.]

Junior college authorized where average daily attendance is 300 to 400, when

Sec. 1(a). Provided that if the assessed valuation of taxable property in such Independent School District or city which has assumed control of its schools (as the case may be) is Twenty Million ($20,000,000.00) Dollars or more, and the State Board of Education finds that such district or city is in a growing section and that there is a public convenience and necessity for such junior college, then such district or city may have an average daily attendance of the next preceding school year of fewer than 400 but not fewer than 300 students in the last four years of classified high school or high schools. [Added Acts 1947, 50th Leg., p. 513, ch. 303, § 1.]

Petition for election

Sec. 2. When it is proposed to establish a Junior College District as above provided, a petition praying for an election therefor, signed by not less than five per cent of the qualified tax-paying voters of the proposed territory shall be presented to the Board of Education of the district or city. It shall thereupon become the duty of the Board so petitioned to pass upon the

legality of the petition and the genuineness of the same. It shall then be the duty of the Board to forward the petition to the State Board of Education.

Desirability of establishing district

Sec. 3. It shall be the duty of the State Board of Education, with the advice of the State Superintendent of Public Instruction to determine whether or not the conditions set forth in Section No. 1 have been complied with, and also whether, in consideration of the geographic location with respect to colleges already established, it is feasible and desirable to establish such Junior College District. In passing upon this question, it shall be the duty of the State Board of Education to consider the needs of the State and the welfare of the State as a whole, as well as the welfare of the community involved. The action of the State Board of Education shall be final and shall be communicated, through the State Superintendent of Public Instruction, to the Board together with an order of the State Board of Education, authorizing further procedure in the establishment of the Junior College District, if said State Board indorses its establishment. If the State Board of Education approves of the establishment of the Junior College District, it shall then be the duty of the Board of Education to enter an order for an election to be held in the proposed territory within a time not less than twenty days and not more than thirty days after such order is issued, to determine whether or not such Junior College District shall be created and formed. Such order shall contain a description of the metes and bounds of such Junior College District to be formed, and shall fix the date for such election. If a majority of the votes cast by the qualified property tax-paying voters of such district at such election shall be in favor of the creation of a Junior College District the same shall be deemed to be formed and created, and said Board of Education, shall within ten days after holding such election, make a canvass of the returns and declare the results of the election. They shall then enter an order on the Minutes of the Board as to the results.

Control of college established

Sec. 4. A junior college established and maintained by an independent school district or city that has assumed control of its schools, or where the same has been organized as a junior college district under the provisions of this Act prior to October 15, 1935, as an independent entity, or may hereafter be so created, and/or wherein the boundaries of the junior college district are the same, or substantially the same, as the independent school district, shall be governed, administered, and controlled by and under the direction of the board of education of such district or city. The said board of education of such junior college district, under the provisions of this Act, shall in addition to all of the powers and duties vested in them by the terms of this Act, be furthermore vested with all the rights, powers, privileges, and duties conferred and imposed upon trustees of independent school districts by the General Laws of this State, so far as the same may be applicable thereto and not inconsistent with this Act. Provided, however, that all municipal junior colleges as provided in this Act that were organized and established prior to the year 1923, shall be governed and controlled by a separate board of trustees, and not less that twenty (20) days nor more than thirty (30) days from the effective date of this Act the board of trustees of the independent school district wherein such municipal junior college, established prior to the year 1923, is located, shall cause, and order to be held, an election of a board of trustees to consist of seven (7) resident citizens of said municipal junior college district. The order of such election shall follow that prescribed for the election of the board of trustees of the independent school district. The general laws governing the election of trustees for independent school districts shall determine the term of office and subsequent elections of the members of said board of such municipal junior college district. It is provided, also, that the cost of said election and subsequent elections shall be borne by the said municipal junior college district. Said board of trustees shall meet not later than seven (7) days from the date of their election and organize by electing one of their members president and one of their members vice president. Thereafter said municipal junior college board of trustees shall assume full administrative responsibility for managing, governing, and controlling said municipal junior college. In all respects in which it is not in conflict with this Act, such junior college districts shall be governed by the junior college law as amended by the Forty-fifth Legislature, Acts of 1937. It is further provided that no compensation shall be allowed said members for duties performed as members of said board of trustees. [As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 1; Acts 1941, 47th Leg., p. 535, ch. 330, § 1.]

General law to govern establishment

Sec. 5. The Board of Trustees of Junior College Districts shall be governed in the establishment, management and control of the Junior College by the General Law governing the establishment, management and control of Independent School Districts insofar as the General Law is applicable.

Location

Sec. 6. The location of the Junior College within the Junior College District shall be determined by the Junior College Board, as provided for in Sections herein. The Junior College Board shall make a selection of the location of the Junior College after its establishment has been authorized as provided in this Act.

District bond issues and taxes

Sec. 7. The Junior College District created under this Act shall have the power to issue bonds for the construction and equipment of school buildings and the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection. The Junior College District shall also levy and collect taxes for the support and maintenance of the Junior College, provided that no bonds shall be issued and no taxes shall be collected until by vote of the majority of the qualified voters of the Junior College District, at an election called for that purpose in accordance with the provisions of the General Law providing for similar elections in Independent School Districts, such bonds and taxes are authorized. The election for the issuance of such bonds for the levying of such tax or taxes, shall be ordered by the Board of Education of the Junior College upon petition signed by ten (10) per cent of the qualified property-taxpaying voters residing in such District, praying for the issuance of such bonds and the levying of tax or taxes. It shall be the duty of the Board to order such elections, and the same shall be conducted and the returns made to the Board of Education for the Junior College District. The issuance of the bonds for Junior College purposes, and the provision of the sinking fund for the retirement thereof, and the payment of interest and the levying of taxes for the support and maintenance of the Junior College, shall in so far as same is applicable, be in accordance with the general election laws and the laws governing the issuance of bonds and the levying of taxes in the Independent School District, provided the total amount of tax levied for Junior College purposes shall never exceed twenty (20) cents on the One Hundred Dollars of property valuation within said District, based on the valuation fixed by the Board of Equalization of the Junior College District; provided further that if no taxes have been assessed and equalized in said Junior College District at the time of the issuance of such bonds, then the

basis shall be the valuation in the Independent School District. If its boundaries are not the same, then such valuation shall be based on the valuation fixed by the Commissioners Court for State and County taxes in such County within the limits of the Junior College District. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 1990, ch. 480, § 1; Acts 1937, 45th Leg., p. 248, ch. 130, § 2.]

Maintenance of existing college

Sec. 7a. The Board of Trustees of any single Independent District in which a Junior College shall have already been created and which, under the provision of this Act, shall be under the control of such Board of Trustees may set aside for the maintenance of said college, not to exceed twenty per cent (20%) of the taxes collected in said district as theretofore authorized by a vote of the people residing in said district, in the manner provided by law, without the requirement of an election to be held in said district for the purpose of voting taxes for the maintenance of said college, provided, however, that the total amount of taxes levied in said district for the maintenance of the public schools therein situated, including said Junior College, shall not exceed the highest amount now allowed, or which may hereafter be allowed by law for the maintenance of schools in an Independent School District of this State; and, provided further, that this section shall apply only to those districts which had been using such funds for Junior College purposes prior to October 1, 1936. [Acts 1929, 41st Leg., p. 648, ch. 290, § 7a, added Acts 1936, 44th Leg., 3rd C.S., p. 1990, ch. 480, § 2.]

Acts 1936, 44th Leg., 3rd C.S., p. 1990, ch. 480, § 2, purported to add a new section 7a to Acts 1929, 41st Leg., p. 648, ch. 290, but contained provisions identical with section 8 of the same Act except the proviso "that this section shall apply only to those districts which had been using such funds for Junior College purposes prior to October 1, 1936" which was added by the Act of 1936.

Another section 7a was added to this article by Acts 1937, 45th Leg., p. 248, ch. 130, § 3. See section 7a, post, under this article.

Assessment, equalization and collection of taxes

Sec. 7a. The Assessor and Collector of such Junior College District shall assess the taxes and collect the same in the manner now provided by law for the collection of ad valorem taxes by County Assessors and Collectors and where there is not herein contained any specific provision or direction as to how anything connected with the assessment and collection of taxes shall be done, then the provisions of the General Law shall prevail. The Board of Education of said District shall have the power, and is hereby authorized to appoint three resident citizens of the said District to act as a Board of Equalization to equalize the values of all property subject to taxation in said District and said Board shall qualify in the same manner and shall perform the same duties as is authorized to be performed by the Board of Equalization appointed by the City Council of Cities and towns incorporated under the General Laws of this State.

All taxes provided for by this Act shall become due and payable on the same date as the taxes in the Independent School District provided the boundaries of the Junior College District are coterminus with the Independent School District. If the boundaries of the Junior College District are not coterminus with the Independent School District, then the taxes of said District shall become due and payable on the same date as is provided for taxes due to State and County. Said taxes shall be and remain a first and prior lien upon all the land and other property against which the same were assessed. In case such tax shall become delinquent there shall be added the same penalty and the same shall draw interest at the same rate and from the same date as is provided in case of taxes becoming delinquent to Independent School Districts under the General Laws. [Acts 1929, 41st Leg., p. 648, ch. 290, § 7a, as added Acts 1937, 45th Leg., p. 248, ch. 130, § 3.]

Another section 7a was added to this article by Acts 1936, 44th Leg., 3rd C.S., p. 1990, ch. 480, § 2. See section 7a, ante, under this article.

Assessment, equalization and collection of taxes, alternative method

Sec. 7b. In lieu of the manner of assessment and collection of taxes, as provided in Section 7a, the Board of Education of such Junior College District may provide for the assessment, equalization, and collection of taxes in the manner following, to wit:

(a) If the boundaries of said Junior College District shall be the same or substantially the same, as that of an Independent School District, having an Assessor and Collector of Taxes then such District may have the taxes of their District assessed and collected by the Assessor and Collector of Taxes of such Independent School District and have such taxes equalized by the Board of Equalization of such Independent School District.

(b) Where a city has assumed control of its schools and uses the Assessor and Collector of Taxes appointed and paid by the city is hereby authorized to have their taxes assessed, equalized, and collected by the same Board that assesses, equalizes, and collects city taxes.

(c) The Board of Education of such Junior College District, if they prefer to do so, may have the taxes of their District assessed and collected by the Assessor and Collector of County Taxes in the County in which said District shall be situated, or collected only by the Assessor and Collector of County Taxes, and in such event, such taxes shall be assessed and collected by said County officers, as the case may be, and turned over to the Treasurer of the Junior College District for which such taxes have been collected. The property of such Districts having their taxes assessed and collected by the Assessor and Collector of County Taxes shall not be assessed at a greater value than that assessed for County and State purposes. If said taxes are assessed by a Special Assessor of the Junior College District, or shall be assessed by the Special Assessor of the Independent School District in the manner above set out and are collected only by the County Tax Collector, the property of said District may be assessed at a greater or less value than that assessed for State and County purposes and the Assessor and Collector of County Taxes in such cases shall accept the rolls prepared by the Special Assessor or by the Assessor of the Independent School District, as the case may be, and approved by the Board of Education, as provided in this Section. When the Assessor and Collector of County Taxes is required to assess and collect the taxes of a Junior College District, he shall receive the same percentage as for State and County Taxes. [Acts 1929, 41st Leg., p. 648, ch. 290, § 7b, as added Acts 1937, 45th Leg., p. 248, ch. 130, § 3.]

Maintenance of existing college

Sec. 8. The Board of Trustees of any single Independent District in which a Junior College shall have already been created and which under the provision of this Act shall be under the control of such Board of Trustees may set aside for the maintenance of said college, not to exceed twenty per cent of the taxes collected in said district as theretofore authorized by a vote of the people residing in said district, in the manner provided by law, without the requirement of an election to be held in said district for the purpose of voting taxes for the maintenance of said college, provided, however, that the total amount of taxes levied in said district for the maintenance of the public schools therein situated, including said Junior College, shall not exceed the highest amount now allowed, or which may hereafter be allowed by law for the maintenance of schools in an Independent School District of this State.

Amount of tax levy

Sec. 9. The Board of Education of the Junior College District shall levy taxes for such District and in levying such taxes shall base the amount levied on the amount of money needed, with a reasonable margin for loss and expenses in collecting same, and shall furnish a copy of the order making such levy to the Assessor and Collector of Taxes for the Junior College District, or to such other agency to whom the assessment of such taxes shall be entrusted as above provided. [As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 4.]

Collection of taxes and report

Sec. 10. In case the tax levy necessary to meet the needs of the Junior College District is within the limit of twenty (20) cents prescribed by this Act and voted by the Junior College District, it shall be the duty of the assessing authority, as above indicated, to assess taxes for Junior College purposes, and it shall be the duty of the Collector of Taxes to collect the same. The Tax Assessor and Collector of the Junior College District, or other agency entrusted with the collection of such taxes, as hereinabove provided, shall, on or about the tenth of each month or at such other times as may be prescribed by the Board of Education of said District, make a report to the Junior College Board of Education showing all moneys collected by him during the past month for Junior College purposes and shall each month place such funds with the Treasurer of the Junior College District where such Junior College District is a separate and distinct entity, or to the Independent School District or city, where such Junior College District is operated by the Independent School District, or the city, as the case may be, to the credit of the Junior College fund, such funds to be drawn upon by action of the Junior College Board of Education, or other governing body, as the case may be. [As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 5.]

Bond of tax collector

Sec. 11. The Assessor and Collector of Taxes for the Junior College District shall enter into a bond with two or more good and sufficient sureties or surety bond for the protection of the Junior College fund, said bond to be made payable to the Board of Education of the Junior College District and to be made in a sum not less than double the amount of money which may be in his hands at any time while in office. The amount of said bond will be fixed by the Board of Education of the Junior College District and a copy filed with the State Board of Education. The Junior College Board shall require a similar bond of any and all other persons or corporations in whose possession such funds may be kept.

The Board of Education of the Junior College District shall have the right to select and designate a depository for such District and the General Laws pertaining to County depositories, so far as applicable, shall govern in the selection of the District depository, and with respect to the depository bond, and the like. [As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 6.]

Curriculum

Sec. 12. A Junior College as here considered must consist of the Freshman and Sophomore College work taught either separately or in conjunction with the Junior and Senior years of the High school, and the course of study must be submitted and approved by the State Department of Education before it may be offered.

Selection of officers and faculty

Sec. 13. The Board of Trustees of the Junior College shall have the power to select a president, dean or other administrative officer, and, upon his recommendation, to select the faculty and other employees of the college, and to fix the compensation and manner of payment of such administrative head, faculty and employees. The Board shall also have the power to fix and collect fees for matriculation, laboratories, library, gymnasium and tuition.

School funds not available for maintenance; penalty for use

Sec. 14. No funds received for school purposes from the State Available School Fund or raised by local taxation for school purposes under the General or Special Laws, except as in this Act specifically provided, or except as may be hereafter provided by the Legislature of the State of Texas, shall be used for the establishment, support, and maintenance of the Junior College. [As amended Acts 1937, 45th Leg., p. 248, ch. 130, § 7.]

Compensation of board limited to expenses

Sec. 15. The members of the Board of Education of the Junior College shall receive no compensation for their services, but shall be reimbursed from the local funds of the Junior College District for all legitimate expenses incurred by them in the transaction of their official duties, provided that the expense of each member shall not exceed $5.00 per day, or $60.00 per year.

Organization of existing colleges validated

Sec. 16. Any public Junior College now organized and conducted in the State of Texas which had been actually in operation prior to January 1, 1929, or which is recognized as a standard Junior College by the State Department of Education, is hereby validated and may, by action of its Board of Trustees, choose to be governed by the provisions of this Act, and receive the privileges of the same, at any time that it may desire to do so.

Also all limitations and restrictions of this Act relating to taxable values and to pupils enrolled shall not apply to Independent School Districts which have voted in excess of Forty-one Thousand Five Hundred ($41,500.00) dollars worth of bonds, prior to May 20, 1927, to purchase buildings and equipment and which buildings and equipment are worth in excess of two hundred and fifty thousand ($250,000.00) dollars and which said buildings have been used, operating under and doing business by virtue of being incorporated under the Laws of the State of Texas, and which said charter was granted said college and university training school prior to the 11th day of September, 1898; and all such Independent School Districts so voting in excess of Forty-one Thousand Five Hundred ($41,500.00) dollars worth of bonds prior to May 20, 1927, to purchase buildings and equipment, worth in excess of two hundred fifty thousand ($250,000.00) dollars which said buildings have been used, operated and occupied by a college and university training school, incorporated under the Laws of the State of Texas prior to the 11th day of September, 1898, are hereby created Junior College Districts and all such Independent School Districts Acts in voting of any such bonds are hereby in all things validated.

Maintenance of Union Junior College by contiguous districts

Sec. 17. Two or more contiguous independent school districts or two or more contiguous common school districts, or a combination composed of one or more independent school districts, with one or more common school districts of contiguous territory within the same county, having a combined taxable wealth of not less than Nine Million Five Hundred Thousand ($9,500,000.00) Dollars, and having a scholastic population of not less than seven thousand (7,000) the next preceding school year, and not less than four hundred (400) students in the last four years in the classified high school or high schools of said districts may, by vote of the qualified voters of the said territory, establish and maintain a Union Junior College. Any county or combination of contiguous counties in the State, having a taxable property valuation of not less than

Nine Million Five Hundred Thousand ($9,500,000.00) Dollars, and having a scholastic population of not less than seven thousand (7,000) the next preceding school year, and not fewer than four hundred (400) students in the last four years of the classified high school or high schools within the proposed territory during the next preceding school year, may, by vote of the qualified voters of the proposed territory, establish and maintain a county or joint county Junior College. [As amended Acts 1935, 44th Leg., p. 140, ch. 57, § 1; Acts 1987, 45th Leg., p. 134, ch. 69, § 1.]

Scholastic enrollment of proposed district

Sec. 17(a). Provided the proposed District may have less than seven thousand (7,000) scholastic enrollment, but not less than five thousand (5,000) in the next preceding school year, and where the State Board of Education finds that the proposed District is in a growing section, and that there is a public convenience and necessity for such Junior College. [Acts 1929, 41st Leg., p. 648, ch. 290, § 17(a), added Acts 1937, 45th Leg., p. 134, ch. 69, § 1.]

Petition for election for Union Junior College

Sec. 18. Whenever it is proposed to establish a Union Junior College District, or a County Junior College District, as above provided, a petition praying for an election therefor, signed by not fewer than 10 per cent of the qualified tax-paying voters of the proposed territory, shall be presented to the County Board of Education. In case of the Joint County Junior College District, the petition shall be signed by not fewer than 10 per cent of the qualified tax-paying voters of each of the proposed counties, and shall be presented to the Boards of Education of the counties included in the proposed district. In case there is no County Board of Education, the petition shall be presented to the Commissioners' Court or the Commissioners' Courts of the county or counties involved. Said petition may also incorporate therein a request for the proper authorities, in the event an election is ordered for the creation of such district, to submit at the same election the question of levying a tax for the construction and/or equipment and/or maintenance and/or purchase of school buildings and grounds for such district, in the event same is created, and/or for bonds to be issued for the construction and/or equipment of school buildings and/or the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection. It shall thereupon become the duty of the Board or Boards, or the Commissioners' Court or Courts, so petitioned, to pass upon the legality of the petition and the genuineness of the same. It shall then be the duty of the Board or Boards of Education, the Commissioners' Court or Courts, as the case may be, to forward the petition to the State Board of Education. [As amended Acts 1935, 44th Leg., p. 140, ch. 57, § 1.]

Determining desirability of Union Junior College

Sec. 19. It shall be the duty of the State Board of Education, with the advice of the State Superintendent of Public Instruction, to determine whether or not the conditions set forth in Section 17 have been complied with, and also whether, in consideration of the geographic location with respect to colleges already established, it is feasible and desirable to establish such Junior College District. In passing upon this question, it shall be the duty of the State Board of Education to consider the needs of the State, the welfare of the State as a whole, as well as the welfare of the community involved. The action of the State Board of Education shall be communicated, through the State Superintendent of Public Instruction, to the Commissioners Court or Courts, as the case may be, together with an order of the State Board of Education, authorizing further procedure in the establishment of the Junior College District. If the State Board of Education approves of the establishment of the Junior College District, it shall then be the duty of the Commissioners Court or Courts, as the case may be, to enter an order for an election to be held in the proposed territory within a time not less than twenty (20) days and not more than thirty (30) days after such order is issued, to determine whether or not such Junior College District shall be created and formed; and in the event the petition for the creation of such Junior College was accompanied by a request to submit the question of levying of a tax for the construction and/or equipment and/or maintenance and/or purchase of school buildings and grounds for such district, in the event same is created, and/or bonds to be issued for the construction and/or equipment of school buildings and/or the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection, then such order shall also submit such question of levying a tax and/or issuing bonds according to the terms of said petition. Such order shall contain a description of the metes and bounds of such Junior College District to be formed, and shall fix the date of such election. A majority vote of the qualified voters in said district, voting in said election, shall determine the question submitted in said order; provided, however, that in any election hereafter held under this Section, establishing or affecting a Joint County Junior College District, a majority vote of the qualified voters in each county shall be required. Said Commissioners Court or Courts, as the case may be, shall within ten (10) days after holding such election, make a canvass of the returns and declare the results of the election. They shall enter an order on the minutes of the Court or Courts as to the results. In the case of the Joint County Junior College District, the election shall, by mutual agreement, of the Court or Courts, be held on the same day. [As amended Acts 1935, 44th Leg., p. 140, ch. 57, § 1; Acts 1947, 50th Leg., p. 101, ch. 70, § 5.]

Government by trustee, election

Sec. 20. A Union Junior College, a County Junior College or a Joint County Junior College, shall be governed, administered and controlled by and under the direction of a Board of seven Junior College Trustees, elected at large from the Junior College District by the qualified voters of said district, with such terms of office as may be provided under the General Law for Trustees in Independent School Districts. Provided, however, that whenever an election is ordered for the creation of such district at the same election at which shall be determined the creation of such district, there shall also be submitted and voted upon, the question of who shall be the Junior College Trustees in the event such district is created. The 7 candidates for Junior College Trustees receiving the highest number of votes at such election, shall be declared the Trustees of such district, and they shall hold office until the next election provided for above. Any candidate desiring to be voted upon as such first Trustee, shall present a petition to the Commissioners' Court within 3 days before the order authorizing the election is issued by the Commissioners' Court, and shall be accompanied by a petition of not less than 2% of the qualified voters in such district, requesting that his name be placed on the ticket as a candidate for such Trustee. Said Board of Trustees shall adopt such rules, regulations and by-laws as they may deem proper, and they shall have exclusive power to manage and govern said Junior College, and as such they shall constitute a body corporate by the name of the Junior College District ———, State of Texas, and in that name may acquire and hold real and personal property, sue and be sued, and may receive bequests and do-

nations, or other moneys or funds coming legally into their hands, and may perform other acts for the promotion of education in said district. [As amended Acts 1935, 44th Leg., p. 140, ch. 57, § 1.]

Annexation of districts to Junior College District

Sec. 21. An Independent School District, or districts, a common school district or districts, may be annexed to a Junior College District for Junior College purposes only, by an election as provided in Section 2 hereof, upon petition of five per cent of the property tax-paying voters in such district or districts seeking to be annexed, provided further that such annexation shall have been previously approved by the Board of Trustees of the Junior College District and provided further that election for such annexation shall be called and the results canvassed and declared by the County Board of Education or the County Commissioners' Court of the county, in case there is no County Board of Education, provided further that the territory included in such annexed district shall thereby assume its share of any outstanding bonded indebtedness of the Junior College District, in proportion to the assessed valuation within the said district, and shall also become liable for taxes for maintaining the Junior College.

County tax collector to collect tax

Sec. 22. All taxes levied for a County or joint County Junior College District shall be assessed and collected in the manner provided in Sections 7b and 7c and such Collector each month shall place such funds with the Treasurer of such County or joint County College District. [Acts 1929, 41st Leg., p. 648, ch. 290; Acts 1937, 45th Leg., p. 248, ch. 130, § 14.]

Acts 1935, 44th Leg., p. 140, ch. 57, amended sections 17–20 of this article.

Section 23 of Acts 1929, provides that if any section is held unconstitutional such action shall not affect the remaining sections.

Art. 2815h—1. Validation of Junior College Districts.—All Junior College Districts heretofore organized and created in any manner under the provisions of the Acts of the Forty-first Legislature, 1929, Page 648, Chapter 290,[1] and/or under any amendment thereof, are hereby validated in all respects as though they had been duly and legally established in the first instance. All proceedings and acts of the board of trustees of all independent school districts heretofore taken by such boards of trustees in creating or undertaking to create Junior College Districts are likewise hereby validated in all respects as though they had been duly and legally established in the first instance. All proceedings and acts of boards of trustees, boards of education, or other governing bodies of Junior College Districts heretofore taken are here now validated. All bonds heretofore voted, authorized, and/or sold and/or now outstanding of said Districts and all bonds heretofore voted but not yet issued are hereby in all things validated.

The fact that by inadvertence or oversight any act of the officers of any District was omitted shall in no wise invalidate such District and the fact that by inadvertency or oversight any act was omitted by any board of trustees, board of education, or other governing body of any such District in ordering an election, or elections, or in declaring the result thereof or in levying the taxes for such District, or in the issuance of the bonds of any such District shall in no wise invalidate any of such proceedings, or any bonds so issued by such District.

This Act shall not apply to any District, the organization or creation of which is now involved in litigation, nor shall this Act apply to or affect any litigation now pending which involves the validity of such District, or the validity of any bonds issued or undertaken to be issued by it. [Acts 1937, 45th Leg., p. 143, ch. 76, § 1.]

[1] Article 2815h.

Art. 2815h—2. Validation of independent school districts constituting Junior College Districts.—The creation and existence of all Independent School Districts which also constitute a Junior College District, and which have been enlarged since the creation of such Junior College District, hereby are in all things validated as enlarged and as now existing and operating; and the creation and existence of such Junior College Districts as enlarged and as now existing and operating, hereby are in all things validated; and all tax assessments and tax levies by such Independent School Districts or Junior College Districts, hereby are in all things validated. [Acts 1937, 45th Leg., p. 143, ch. 76, § 1-a.]

Art. 2815h—3. Independent districts in counties of 34,150 to 34,200 population authorized to establish junior colleges.

Application

Section 1. From and after the effective date of this Act, the boards of school trustees of all independent school districts in this State now established, or hereafter to be established, which are located in counties of this State having a population of not less than thirty-four thousand, one hundred and fifty (34,150) and not more than thirty-four thousand, two hundred (34,200) according to the last Federal Census or any subsequent Federal Census, and where the school buildings and grounds of such independent school districts are located in whole or in part in a town or a city having a population of not less than six thousand and forty (6,040) and not more than six thousand and seventy (6,070) according to the last Federal Census or any subsequent Federal Census, are hereby authorized and empowered to create and establish by and through the boards of trustees of such independent school districts as hereinabove defined, a junior college.

Management and control

Sec. 2. Said junior college or colleges, as the case may be, shall be run in conjunction with and as an adjunct to the independent school districts now created and established in such districts, or that may hereafter be created in such districts. Said junior college or colleges shall continue to exist and be run in connection with such independent school districts, and the boards of trustees of such independent school districts shall continue to be the boards of trustees of both the independent school districts and the junior college or colleges herein created.

Financed without taxation or state appropriations

Sec. 3. The junior colleges herein created shall be operated exclusively by tuition, grants, gifts, or donations, and in no event shall such colleges ever be supported by appropriations from the State of Texas, or by taxes imposed by such districts.

It being the sole and only purpose of this Act to authorize the creation and operation of such junior colleges in conjunction with the independent school districts coming under the provisions of this Act.

Departments; degrees; minimum number of students

Sec. 4. The junior colleges herein created and authorized must provide for at least five (5) departments, and the heads of such departments shall be teachers holding M. A. Degrees, or their equivalent; however, the teachers in such departments who are not the heads of such departments shall be required to hold B. A. Degrees from some reputable, recognized college or university to be eligible to teach

in such junior colleges; and provided further that the colleges authorized hereunder shall have a minimum of sixty (60) students, who may be divided as follows: forty (40) freshmen and twenty (20) sophomores.

Taxable value of property in district

Sec. 5. Such school districts, before being authorized to create a junior college in connection with the independent school districts as hereinabove provided for, shall have a taxable value of all property taxable in such districts of not less than Four Million, Five Hundred Thousand Dollars ($4,500,000), and unless such values, according to the tax rolls of such districts, exist, no such college shall be created. [As amended Acts 1939, 46th Leg., Spec.L., p. 687, § 1.]

Enlargement of districts

Sec. 6. The independent school districts and the junior colleges provided for herein, shall continue to operate as independent school districts, and may be enlarged by consolidation or otherwise without affecting the rights of such districts to maintain such junior colleges as an added feature thereto.

Approval of State Board of Education

Sec. 7. It shall be the duty of the boards of trustees for the independent school districts coming within the provisions of this Act, before operating and conducting any junior college in connection therewith, to place said proposition before the State Board of Education, and receive the approval of such Board and the approval of the State Superintendent of Public Instruction, and no such junior college shall be established hereunder unless and until such approval is secured.

Determination of application by Board

Sec. 8. In considering such application, it shall be the duty of the State Board of Education to advise with the State Superintendent of Public Instruction as to the feasibility and desirability of establishing such junior colleges in such districts. In passing upon this question, it shall be the duty of the State Board of Education to consider the needs of the State, the welfare of the State as a whole, as well as the welfare of the community or communities involved.

The action of the State Board of Education shall be communicated through the State Superintendent of Public Instruction to the boards of trustees of the independent school districts authorized to create junior colleges in connection therewith, stating either the approval of the said Board of Education or the disapproval of said plan, and in case of disapproval of said plan no such junior college shall be created or authorized under this Act. However, if the State Board of Education approves the establishment of the junior colleges as authorized herein, it shall then be the duty of the boards of trustees for such districts to enter an order authorizing the boards of trustees of the independent school districts to make and provide for the junior colleges authorized hereunder; provided, however, that in the creation of such junior colleges, the boards of trustees of such independent school districts, having supervision and control of such colleges, shall never be authorized to issue any bonds or levy any tax for the support and maintenance of such junior college departments of such independent school districts.

Taxation

Sec. 9. All Taxes Inuring: The independent school districts authorized herein to create junior colleges in connection with such independent school districts shall function in the collection of taxes and in the management of such schools in the same mode and manner as now provided by law for the management, control, and supervision of independent school districts just as though no added authority had been given.

Self liquidating

Sec. 10. The junior college departments of the independent school districts coming under the provisions of this Act are declared to be self-liquidating, and for such purpose the Board of Education or boards of trustees of any such districts are hereby authorized to charge such fees and tuition for the attendance, as may be necessary to make the project self-liquidating; and may accept grants, gifts, donations, and endowments from any private source, provided such grants, donations, endowments, and gifts are voluntarily made.

It being reiterated and redeclared herein that such junior colleges, as by this Act authorized, shall never be authorized to issue any bonds or levy any tax, or in any manner create any compulsory charge for the support of such junior colleges.

Act cumulative

Sec. 11. This Act shall be considered cumulative of all laws and parts of laws now in force with reference to the creation of junior colleges in this State, and shall not be deemed to repeal any such laws. [Acts 1939, 46th Leg., Spec.L., p. 684.]

Art. 2815h—3a. Bonds of junior colleges for buildings and equipment; taxes.—Section 1. From and after the passage of this Act, the governing boards of all Junior Colleges organized and created in any manner under the provisions of House Bill No. 955, Chapter 37, Acts of 1939, Special Laws, Forty-sixth Legislature, Regular Session, and all amendments thereof,[1] shall have power to issue bonds for the construction and equipment of school buildings and the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection, subject to the limitations hereinafter imposed. Such governing boards shall also have power to levy and collect taxes for the support and maintenance of such Junior Colleges, provided that no bonds shall be issued and no taxes collected until authorized by vote of the majority of the qualified voters of the Independent School District in which such Junior College is located, at an election called for that purpose in accordance with the provisions of the General Law providing for similar elections in Independent School Districts. The election for the issuance of such bonds for the levying of such tax or taxes, shall be ordered by such governing board upon petition signed by ten per cent (10%) of the qualified property taxpaying voters residing in such district, praying for the issuance of such bonds and/or the levying of such tax or taxes. It shall be the duty of such board to order such election, and the same shall be conducted and the returns made to such board. The issuance of bonds for Junior College purposes, and the provision for the sinking fund for the retirement thereof, and the payment of interest and the levying of taxes for the support and maintenance of the Junior College, shall, in so far as same is applicable, be in accordance with the general election laws and the laws governing the issuance of bonds and the levying of taxes in the Independent School District in which such Junior College is located, provided the total amount of tax levied for the Junior College purposes shall never exceed Twenty Cents (20¢) on the one hundred dollars valuation of property in the Independent School District in which such Junior College is located.

Sec. 2. Such governing boards shall, when so authorized in pursuance of the provisions of Section 1 of this Act, levy taxes for such Junior Colleges, and in levying such taxes shall base the amount levied on the amount of money needed with a reasonable margin for loss and expense in collecting same, and shall furnish a copy of the order making such levy to the prop-

er assessing authority of the Independent School District in which such Junior College is located.

Sec. 3. In case the tax levy necessary to meet the needs of the Junior College is within the limit of Twenty Cents (20¢) prescribed by this Act, and voted by the Independent School District in which such Junior College is located, it shall be the duty of the assessing authority, as above indicated, to assess taxes for Junior College purposes, and it shall be the duty of the Collector of Taxes for such Independent School District to collect the same. Such tax collector shall on or about the tenth of each month make a report to said governing board, showing all moneys collected by him during the past month for Junior College purposes, and shall each month place such funds with the Treasurer of such Independent School District to the credit of such Junior College, such funds to be drawn upon by action of such governing board. The officers assessing and collecting Junior College taxes shall receive therefor the same compensation as is paid for assessing and collecting other school taxes. [Acts 1945, 49th Leg., p. 253, ch. 191.]

1 Article 2815h—3.
Section 4 of the Act of 1945 repealed all conflicting laws. Section 5 provided that partial invalidity should not affect any other provisions.

Art. 2815h—3b. Bonds of junior colleges for buildings and equipment; taxes; validation.—Section 1. From and after the passage of this Act, the governing boards of all public Junior Colleges organized, created and established under the laws of Texas, in any manner, shall have power to issue bonds for the construction and equipment of school buildings and the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection, subject to the limitations hereinafter imposed. Such governing boards shall also have power to levy and collect taxes for the support and maintenance of such Junior Colleges, provided that no bonds shall be issued and no taxes collected until authorized by vote of the majority of the qualified voters of the Junior College District in which such Junior College is located, at an election called for that purpose in accordance with the provisions of the General Law providing for similar elections in Independent School Districts. The election for the issuance of such bonds; for the levying of such tax or taxes, shall be ordered by such governing board upon petition signed by two hundred and fifty (250), or a majority, of the qualified property taxpaying voters residing in such district, praying for the issuance of such bonds and/or the levying of such tax or taxes. It shall be the duty of such board to order such election, and the same shall be conducted and the returns made to such board. The issuance of bonds for Junior College purposes, and the provision for the sinking fund for the retirement thereof, and the payment of interest and the levying of taxes for the support and maintenance of the Junior College, shall, in so far as same is applicable, be in accordance with the general election laws and the laws governing the issuance of bonds and the levying of taxes in Independent School Districts, provided the total amount of tax levied for the Junior College purposes shall never exceed One Dollar ($1) on the One Hundred Dollars ($100) valuation of property in the Junior College District in which such Junior College is located.

Sec. 2. Such governing boards shall, when so authorized in pursuance of the provisions of Section 1 of this Act, levy taxes for such Junior Colleges, and in levying such taxes shall base the amount levied on the amount of money needed with a reasonable margin for loss and expense in collecting same, and shall furnish a copy of the order making such levy to the proper assessing authority of the Junior College District in which such Junior College is located.

Sec. 2a. The Governing Board of Junior Colleges, in addition to the levying and collecting of the annual ad valorem tax not to exceed One Dollar ($1) on the One Hundred Dollars ($100) valuation of taxable property within the district for the maintenance of schools therein, shall have the power to levy a tax not to exceed Fifty cents (50¢) on the One Hundred Dollars ($100) valuation of taxable property within the district for the construction and equipment of school buildings and the acquisition of sites therefor within the limits of the district, when authorized by an election as aforesaid; provided, however, that the amount of maintenance tax together with the amount of bond tax of the district shall never exceed One Dollar ($1) on the One Hundred Dollars ($100) valuation of taxable property.

Sec. 3. In case the tax levy necessary to meet the needs of the Junior College is within the limit of One Dollar ($1) prescribed by this Act, and voted by the Junior College District in which such Junior College is located, it shall be the duty of the assessing authority, as above indicated, to assess taxes for Junior College purposes, and it shall be the duty of the Collector of Taxes for such Junior College District to collect the same. Such tax collector shall on or about the tenth of each month make a report to said governing board, showing all moneys collected by him during the past month for Junior College purposes, and shall each month place such funds with the Treasurer of such Junior College District to the credit of such Junior College, such funds to be drawn upon by action of such governing board.

Sec. 4. All Public Junior Colleges and Junior College Districts organized, created and established under the laws of Texas in any manner, and all bonds heretofore issued by such Junior College Districts, are hereby validated in all respects, and the creation of all such districts hereby ratified and validated, and all elections heretofore held for the creation of such districts or for other purposes in connection therewith are hereby in all things validated, and all bonds heretofore issued by such districts are hereby validated; provided this law shall not apply to any district involved in litigation as to organization, creation or validity of bonds on the effective date of this Act. [Acts 1947, 50th Leg., p. 101, ch. 70, § 1.]

Section 6 of the Act of 1947 repealed all conflicting laws. Section 7 provided that partial invalidity should not affect any other provisions.

Art. 2815h—4. Validation of Junior College Districts and Union Junior College Districts, proceedings, bonds, etc.—Section 1. All Junior College Districts and Union Junior College Districts heretofore organized and created in any manner under the provisions of the Acts of the 41st Legislature, 1929, Page 648, Chapter 290, and under any amendment thereof,[1] are hereby validated in all respects as though they had been duly and legally established in the first instance. All proceedings and acts of the County Board of Education, all proceedings and acts of the State Board of Education, and all proceedings and acts of the Commissioners' Courts heretofore taken by such Boards and Courts in creating, or undertaking to create such Junior College Districts are likewise hereby validated in all respects as though they had been duly and legally taken in the first instance; and all acts of the trustees of such Districts are hereby validated.

All elections for the creation of such Junior College Districts, and the election of trustees thereof, and the voting of bonds therefor, heretofore held are hereby in all things validated. All bonds heretofore voted, authorized, or sold, or now outstanding of said Districts, and all bonds heretofore voted, but not yet issued, are hereby in all things validated.

Sec. 2. The trustees elected for such Junior College Districts, after taking the oath of office, shall divide themselves into three classes: Class One, con-

sisting of two (2) members, shall serve for one (1) year; Class Two consisting of two (2) members who shall serve for two (2) years; and Class Three, consisting of the three (3) remaining members, who shall serve for three (3) years.

On the first Saturday of April of each year after such trustees first elected shall have served for a period of at least one (1) year, an election shall be held to fill the offices of the members of trustees whose terms expire that year. Such trustees so elected shall serve for a term of three (3) years.

The order for the election of trustees shall be made by the Board of Trustees at least twenty (20) days prior to the date of said election, which order shall be in conformity with the General Laws of the State relating to the election of trustees for Independent School Districts insofar as same are applicable.

The Board of Trustees of the District shall canvass the returns, and declare the result of all elections held for the election of trustees. All such elections shall be held in accordance with the laws governing the election of trustees of Independent School Districts. Vacancies shall be filled by the remaining members of the Board by appointment for the remainder of the term in which the vacancies occur.

Sec. 3. When the Assessor and Collector of county taxes is designated by the Board of Trustees of a Junior College District or a Union Junior College District to collect, or to assess and collect, the taxes for such Junior College District, he shall collect, or assess and collect, the same and receive as compensation for his services not more than one (1%) per cent of the taxes assessed for assessing same, and not more than one (1%) per cent of the taxes collected for collecting same.

Sec. 4. All laws or parts of laws, insofar as they conflict with the provisions of this Act, are hereby repealed.

Sec. 5. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any Court of competent jurisdiction to be invalid, or unconstitutional, it shall not affect any other provision of this Act.

Sec. 6. This Act shall not apply to any District, the organization or creation of which is now involved in litigation, nor shall this Act apply to or affect any litigation now pending which involves the validity of such District, or the validity of any bonds issued or undertaken to be issued by it. [Acts 1941, 47th Leg., p. 6, ch. 5.]

1 Article 2815h.

Art. 2815i. Donations for junior colleges.

Power to accept donations

Sec. 1. All independent school districts, whether created by General Law or by Special Acts, wherein there is situated a city having not less than two hundred twenty-five thousand (225,000) population according to the last preceding Federal Census, including independent school districts which are now or may hereafter be controlled by any city or town within this State having a population of not less than two hundred twenty-five thousand (225,000) inhabitants, according to the last preceding Federal Census, shall have the power and authority, in the name of any such school district, to receive donations of cash with which and donations of land upon which to build, erect and construct buildings in which its junior colleges may be maintained and operated and wherein in addition to the junior college work two (2) years additional college or university work may be taught so that such junior college work and additional college work shall constitute a university.

Districts to which applicable

Sec. 1a. The rights, powers and privileges created and authorized under the provisions of this law shall also apply to all independent school districts within this State which are entirely located within cities of a population of not less than seventeen thousand one hundred (17,100) nor greater than eighteen thousand two hundred (18,200), according to the 1930 Federal Census, and which said cities are located within counties in this State which had a population, according to the 1930 Federal Census, of not less than fifty-three thousand one hundred (53,100) nor greater than fifty-three thousand eight hundred (53,800).

Borrowing from Federal Agencies

Sec. 2. The board of education or board of trustees as the case may be of any such school district shall be and they are hereby authorized, in the name of any such school district, to borrow money from the Federal Emergency Administration of Public Works under the provisions of the National Industrial Recovery Act, or from any other source, for such periods of time as may be necessary or requisite for building, erecting and constructing on any such lands so received by way of donation or gift, the buildings authorized in the preceding section hereof, and for the purpose of purchasing any and all necessary equipment and appliances and the installation thereof in such building or buildings, and to mortgage and encumber such lands, buildings, equipment and appliances and the income, tolls, fees, rents and other charges to be derived from the operation thereof and everything pertaining thereto and to evidence the obligation therefor by the issuance of bonds, notes or warrants to secure the payment of such loans and indebtedness, providing no such obligations, maintenance, operation or expenses of any like character whatever shall ever be a debt of any such school district but solely a charge upon the property, income, tolls, fees, rents and charges so encumbered and pledged, and any such indebtedness shall never be reckoned in determining the power of any such school district to issue bonds for any other purpose and/or to levy taxes for any other purpose authorized by law and provided further that no election for the issuance of the evidence of the indebtedness herein authorized shall be necessary but the same may be authorized by a majority vote of the board of education or the board of trustees as the case may be of any such school district.

Self-liquidating projects

Sec. 3. Projects financed in accordance with this law are hereby declared to be self-liquidating in character and supported by charges other than taxation.

Fees and tuition authorized

Sec. 4. The boards of education or boards of trustees of any such districts are hereby authorized to charge such fees and tuition for attendance as may be necessary to make the project self-liquidating as said term "self-liquidating" may be defined by the law creating the Federal Emergency Administration of Public Works or any other Federal Law authorizing loans of the character in this Act provided for.

Limitation on use of income

Sec. 5. No part of the income which may be derived from the operation of any such schools herein provided for shall ever be used to pay any other debt, expense or obligation of such school district other than the necessary costs for the operation thereof until the indebtedness so secured shall be finally paid.

Income set aside as Self-Liquidating Fund

Sec. 6. Such part of the income, toll, fees, rents, tuition and charges which may be pledged or mortgaged or in otherwise encumbered to secure the payment of the indebtedness authorized by this Act, as, if and when received by any such school district, shall be placed in a special fund known as the "Self-Liquidating Fund" in the depository of such school district and may not be used for any purpose save the payment

of interest and principal of the indebtedness which may be created by virtue of this Act.

Bond issues may be approved by Attorney General

Sec. 7. If bonds are issued by virtue of the terms of this Act they may but shall not be required to be presented to the Attorney General for his approval as is provided in the case of other school bonds and in such case the bonds shall be registered by the State Comptroller as in the case of other school bonds.

Act cumulative

Sec. 8. This Act shall be deemed to be cumulative to Chapter 290 of the Acts of 1929, Forty-first Legislature, authorizing the establishment of junior colleges. [Acts 1933, 43rd Leg., 1st C.S., p. 110, ch. 34.]

Art. 2815j. Community centers in cities having junior colleges.

Power of cities

Sec. 1. All cities having a junior college within the corporate limits, shall have the power to establish community centers, consisting of (a) all land necessary therefor and (b) all buildings or structures necessary therefor, including gymnasiums, auditoriums, natatoriums and dormitories to furnish residence to teachers and students attending schools and colleges in any such city; and such cities shall have power to issue bonds or notes therefor, and to secure payment thereof, to mortgage and encumber all properties comprising any such community center and the income therefrom, and everything pertaining thereto.

One or more buildings or structures

Sec. 2. Whenever any such community center has been established, the gymnasium, auditorium, natatorium and dormitory may be included in one or more buildings or structures, within the discretion of the governing body of such city.

Borrowing on security of properties

Sec. 3. All cities establishing such community centers may borrow money on the security of the properties and facilities comprising such community centers so established, and the income therefrom, and everything pertaining thereto, acquired or to be acquired, for the purpose of paying the purchase price and/or construction cost, and may issue bonds or notes to evidence the moneys so borrowed, which bonds or notes shall have the characteristics of negotiable instruments under the law merchant. Such bonds or notes may be issued by the governing body of any such city, payable serially or otherwise throughout a period of time not exceeding thirty (30) years from the date thereof, and shall bear interest at a rate of not more than five per cent (5%) per annum, the rate of interest, denominations of such bonds or notes, and time of payment of principal and interest, shall be determined by the governing body. Provided that nothing herein shall be construed as in any way repealing H. B. 312, Chapter 163,[1] Page 269, General Laws of the Forty-second Legislature, and the provisions of said law shall apply herein.

Contents of bonds

Sec. 4. Every contract, bond or note executed or issued under this Act shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Where bonds are issued hereunder, they may be presented to the Attorney General for his approval, as is provided for the approval of municipal bonds issued by cities and towns. In such case, the bonds, after approval by the Attorney General, shall be registered by the State Comptroller, as in the case of other municipal bonds.

[1] Article 2368a.

Bonds as charge only on properties encumbered

Sec. 5. No contract, bond, note or any evidence of obligation, created under the provisions of this Act, shall ever be a debt of such city, but solely a charge upon the properties so encumbered, and shall never be reckoned in determining the power of such city to issue bonds for any purpose authorized by law.

Management by governing body of city

Sec. 6. The management and control of any such property and facilities so encumbered, during the time they are encumbered, shall be in the hands of the governing body of such city.

Rules and regulations by ordinance

Sec. 7. The governing body of such city shall have the power by ordinance to make rules and regulations in respect of the maintenance and operation of such community center, and the furnishing of the facilities thereof to patrons, and for the payment of the same, and providing for the discontinuance of any service or accommodation for those failing to pay therefor, when due, until payment is made.

Operating expenses as first lien on income

Sec. 8. The expense of operation and maintenance of all properties and facilities comprising such community center so encumbered shall always be a first lien and charge against the income and revenue therefrom, prior and superior to the lien of any such encumbrance.

Provision for interest and sinking fund

Sec. 9. Whenever the properties and facilities of any such community center, and the income and revenue therefrom, have been mortgaged and/or encumbered under this law, there shall be charged and collected, by the governing body of such city, for services furnished by such properties and facilities sufficient charges, rentals, rates, dues or fees in amounts sufficient to pay for all operation, maintenance, depreciation, replacement and interest charges, and for interest and sinking fund sufficient to pay any bonds or notes issued to purchase, construct, improve, maintain or repair such properties and facilities. No part of the income and revenue of any such community center shall ever be used to pay any debt, expense or obligation of the municipal government of such city; provided, however, that if after the properties and facilities comprising a community center, and/or the income and revenue therefrom, have been mortgaged and encumbered for purchase money or original construction cost, and such indebtedness is still outstanding, it should become necessary to make further improvements or alterations in the improvements already constructed, or to repair or maintain the improvements so created, and there shall be no sufficient funds in the maintenance and operation fund with which such improvements, alterations, repairs and maintenance may be made, the governing body of such city may proceed in all respects to provide additional funds for such purposes and may create additional indebtedness and evidence the same by the issuance of additional bonds or notes in accordance with the provisions of this Act in respect to the issuance of bonds or notes in the first instance, but the lien of such additional bonds or notes shall be junior and subordinate in all respects to the lien of the bonds or notes then outstanding as a charge against such properties, facilities and/or the income and revenue therefrom.

Records

Sec. 10. The city shall keep proper books of record and accounts (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to such communi-

ty center. It is hereby made the duty of the person acting as Treasurer of any such city to furnish to any holder of any of the bonds or notes outstanding against the properties and facilities comprising any such community center, at the written request of such holder, not more than thirty (30) days after the close of each six (6) months fiscal period, complete operating and income statements of the properties and facilities comprising such community center, in reasonable detail, covering such six (6) months period, and, not more than sixty (60) days after the close of each fiscal year, complete financial statements in reasonable detail covering such fiscal year.

Inspection of records by security holders

Sec. 11. Any holder or holders of twenty-five per centum (25%) of the amount of any indebtedness outstanding against the properties and facilities comprising any such community center shall have the right at all reasonable times to inspect such properties and facilities, and all records, accounts and data of the city relating thereto.

Conditions for foreclosure

Sec. 12. No encumbrance shall be foreclosed because of default of said city until said default has existed for a period of ninety (90) days and notice thereof has been served upon the governing body of said city.

Foreclosure and title of purchaser

Sec. 13. The encumbrance may provide for a trustee to enforce foreclosure, and in the event of foreclosure may provide for the grant of a franchise to the purchaser under foreclosure to operate the properties encumbered for a period of not to exceed twenty (20) years from the date of purchase, and the city shall have the option, at any five (5) year period for twenty (20) years after such purchase, to repurchase said properties upon reasonable terms and at reasonable prices to be set forth in said encumbrance. [Acts 1934, 43rd Leg., 3rd C.S., p. 79, ch. 39.]

Art. 2815j—1. Appropriations; regulation and allocation; eligibility.—Section 1. There shall be appropriated biennially from moneys in the State Treasury not otherwise appropriated an amount sufficient to supplement local funds in the proper support, maintenance, operation and improvement of the Public Junior Colleges of Texas, which meet the standards as herein provided; and said sum shall be allocated on a basis and in a manner hereinafter provided.

Sec. 2. To be eligible for and to receive a proportionate share of this appropriation, a Public Junior College must be accredited as a first class Junior College by the State Department of Education, and the State Department of Education is hereby authorized to set up rules and provisions by which Public Junior Colleges may be inspected and accredited. And provided further that to be eligible to participate in any biennial appropriation, each Public Junior College shall offer a minimum of twenty-four (24) semester hours of vocational and/or terminal courses. And provided further that in order to be eligible to participate in any biennial appropriation each Public Junior College shall have complied with all existing laws, rules and regulations governing the establishment and maintenance of Public Junior Colleges. It shall be mandatory that each institution participating in the funds herein provided shall collect from each pupil enrolled, matriculation and other session fees not less than the amounts provided for by law and by other state supported institutions of higher learning; as provided in Articles 2654A, 2654B and 2654C Revised Civil Statutes of Texas. [Acts 1941, 47th Leg., p. 778, ch. 483.]

Section 3 of the Act of 1941 made an appropriation of $325,000 to be apportioned among the junior colleges therein named.

Art. 2815j—2. Appropriations to supplement local funds; regulation and allocation; eligibility.—Section 1. There shall be appropriated biennially from moneys in the State Treasury not otherwise appropriated an amount sufficient to supplement local funds in the proper support, maintenance, operation, and improvement of the Public Junior Colleges of Texas, which meet the standards as herein provided; and said sum shall be allocated on a basis and in a manner hereinafter provided.

Sec. 2. To be eligible for and to receive a proportionate share of this appropriation, a Public Junior College must be accredited as a first class Junior College by the State Department of Education and the State Department of Education is hereby authorized to set up rules and provisions by which Public Junior Colleges may be inspected and accredited. And provided further that to be eligible to participate in any biennial appropriation, each Public Junior College shall offer a minimum of twenty-four (24) semester hours of vocational and/or terminal courses. And provided that in order to be eligible to participate in any biennial appropriation each Public Junior College shall have complied with all existing laws, rules, and regulations governing the establishment and maintenance of Public Junior Colleges. It shall be mandatory that each institution participating in the funds herein provided shall collect from each pupil enrolled, matriculation and other session fees not less than the amounts provided for by law and by other State-supported institutions of higher learning. Provided that all of the funds allocated under the provisions of this Act, with the exception of those necessary for paying the costs of audits as provided herein, shall be used exclusively for the purpose of paying salaries of the instructional forces of the several institutions.

Sec. 4a. No funds shall be paid to any institution under the provisions of this Act until the payment has been approved by the State Auditor after he has audited the books of the institution. The cost of such audit shall be paid out of the funds allocated herein. [Acts 1943, 48th Leg., p. 257, ch. 157; Acts 1945, 49th Leg., p. 319, ch. 342; Acts 1947, 50th Leg., p. 685, ch. 346.]

Section 3 of the Act of 1943 made an annual appropriation of $286,500 for each of the fiscal years beginning September 1, 1943 and September 1, 1944, respectively and for the allocation thereof among the junior colleges named.

Section 3 of the Act of 1947 made an appropriation for the two following fiscal years to be apportioned among the junior colleges named.

Acts 1943, 48th Leg., p. 257, ch. 157 and Acts 1945, 49th Leg., p. 319, ch. 234 contained similar provisions.

Art. 2815k. Management of junior colleges and universities in independent school districts containing city of 380,000 or more.

Board of Regents

Section 1. From and after the effective date of this Act, the Board of Education or the Board of Trustees, as the case may be, of any independent school district created either under the general laws of this state or by a special Act of the Legislature and in which there may be situated a city having a population of 380,000 or more according to the last preceding Federal Census, or any subsequent Federal Census, may divest themselves of the management, control and operation of any and all junior colleges and universities maintained and operated in connection therewith, and vest the control, operation and management of any such junior colleges and universities maintained in connection therewith in a separate Board to be known as the Board of Regents of any such junior colleges and universities. Such Board of Education or Board of Trustees, as the case may be, of any such independent school district shall be authorized to name, constitute and appoint a Board of Regents for any and all such junior colleges and universities, in any such

school district, to consist of fifteen (15) members who shall be residents of any such independent school district. Upon the appointment of any such Board of Regents the members thereof shall within ten (10) days from and after their appointment qualify in the same manner as is provided by law for the qualification of trustees of independent school districts. In the event any such Board of Regents shall be so appointed pursuant to the terms of this Act prior to April 1, 1946, the members thereof, after they shall have duly qualified as such, shall serve terms as follows: five (5) of such members shall serve for a term expiring April 1, 1946, and until their successors shall be appointed and have qualified; five (5) of such members shall serve for a term expiring April 1, 1948, and until their successors shall be appointed and have qualified; and five (5) of such members shall serve for a term expiring April 1, 1950, and until their successors shall be appointed and have qualified. The members of any such Board of Regents which may be appointed pursuant to the terms of this Act shall determine by lot the term for which they shall respectively serve. Those drawing numbers 1, 2, 3, 4, and 5 shall serve until April 1, 1946 and/or until their successors shall be appointed and have qualified; those drawing numbers 6, 7, 8, 9, and 10 shall serve until April 1, 1948, and/or until their successors shall be appointed and have qualified, and those drawing numbers 11, 12, 13, 14, and 15 shall serve until April 1, 1950, and/or until their successors shall be appointed and shall have qualified. In the event any such Board of Regents shall be first created and appointed after April 1, 1946, then, and in such event, the members thereof shall serve for terms as follows: five (5) members thereof for a term to expire on the next succeeding April 1st after such appointment and until their successors shall be appointed and shall have qualified; five (5) members thereof for a term to expire on April 1st of the second succeeding year after such appointment and until their successors shall be appointed and shall have qualified; and five (5) members thereof for a term to expire on April 1st of the fourth succeeding year after such appointment and until their successors shall be appointed and shall have qualified; and they shall determine by lot in the manner and time hereinbefore provided for the term for which they shall respectively serve.

All future members of the Board of Regents to succeed those whose terms have expired, or to fill vacancies created by the death or resignation of a member, shall be selected or appointed by one (but not more than one) of the following two methods:

1. Within thirty days after the expiration of the term of any member of any such Board of Regents, or within thirty days after any vacancy occurs on such Board of Regents by death or resignation of any member thereof, it shall be the duty of the remaining members thereof, by not less than a majority vote thereof, to appoint members of such Board of Regents to succeed those whose terms have expired or to fill any such vacancy, subject, however, to the approval and confirmation thereof by a two-thirds majority of the members of the Board of Education or Board of Trustees of any such independent school district included within the terms of this Act.

2. Within thirty days after the expiration of the term of any member of any such Board of Regents, or within thirty days after any vacancy occurs on such Board of Regents by death or resignation of any member thereof, it shall be the duty of such Board of Trustees or Board of Education of any such independent school district included within the terms of this Act, by not less than a majority vote thereof, to appoint members of such Board of Regents to succeed those whose terms have expired or to fill any such vacancies.

The Board of Education or Board of Trustees at the time of divesting itself of management or control of any such junior college or university and vesting the same in the Board of Regents, and as a part of the action of the Board of Education or Board of Trustees of any such independent school district adopting the benefits of this Act, shall select, adopt and specify by a resolution adopted by a majority of the Board of Trustees or Board of Education of such independent school district and incorporated in the minutes thereof, one of the two methods set forth above for selecting future Regents, and thereafter all such Regents (other than the first Board of Regents) shall be selected in accordance with the method so selected, adopted and specified.

Any and all members of any such Board of Regents appointed and who have qualified to succeed any members whose terms so expire, shall serve for a term of six years and/or until their successors shall have been appointed and shall have qualified as herein provided for. In the event there shall be a vacancy on any such Board of Regents caused by the death or resignation of any member thereof, such vacancy shall be filled for the unexpired term in like manner as for a full term. In all cases where it is provided in this section that members of any such Board of Regents shall serve until their successors shall have been appointed and shall have qualified, in no event shall any member of any such Board serve longer than sixty (60) days after the expiration of his term by reason of such provision; and such place on the Board shall thereafter be vacant until some eligible person is appointed and has qualified.

Transfer of moneys and properties to Board of Regents

Sec. 2. Within ten (10) days after the first Board of Regents shall have been appointed and shall have qualified pursuant to the terms of this Act, the Board of Education or Board of Trustees of any such independent school district so creating and appointing any such Board of Regents shall cause to be transferred to such Board of Regents all moneys then held by any such Board of Education or Board of Trustees and belonging to any such junior colleges and/or universities, and said Board of Education or Board of Trustees shall likewise deliver over to any such Board of Regents any and all personal property of whatsoever kind or character which may at that time be in use exclusively in the operation and maintenance of any such junior colleges and/or universities maintained and operated in connection therewith; and in addition thereto, said Board of Education or Board of Trustees of any such independent school district shall convey or cause to be conveyed by the proper officers thereof any and all lands and buildings which shall or may be at that time used exclusively in connection with the operation and maintenance of any such junior colleges and/or universities, and any such deed of conveyance which may be so executed and delivered pursuant to the terms hereof by the Board of Education or Board of Trustees of any such independent school district shall specify that the lands and buildings thereon situated constitute all of the lands and buildings then being used exclusively in the operation and maintenance of any such junior colleges and/or universities, and any such recitation shall be conclusive of the facts therein recited and be binding on any such Board of Regents to whom the same shall be so conveyed, and thereafter any such Board of Regents, and their successors in office, shall hold the same as Trustees for any such junior colleges and/or universities established in such independent school districts and have the exclusive management, control and disposition thereof; but nothing in this Act shall be construed to give to any such Board of Regents any control, management or disposition of any other properties, real, personal, or mixed, belonging to any such independent school district.

Administrative officers and employees; fees; rules and regulations; management; compensation of Regents

Sec. 3. The Board of Regents of any such junior colleges and/or universities shall select and employ a

President, and on recommendation of the President select and employ Deans, Directors, Heads, and any and all other administrative officers, faculty members, and other employees of any such junior colleges and/or universities and fix the compensation and manner of payment thereof. It shall likewise have the power to fix and collect all fees for matriculation, laboratories, libraries, gymnasium, and tuition, as well as any and all other fees and charges as to them may seem fit and proper in the maintenance and operation of any such junior colleges and/or universities. Any such Board shall make and establish rules and regulations for the management and operation of any such junior colleges and/or universities, and shall define and fix the powers, duties and responsibilities of the President, Deans, or other employees thereof. The Board of Regents of any such junior colleges and/or universities shall have the power to remove the President, and, subject to the rules and regulations above mentioned, remove Deans, Directors, Heads, and any and all other administrative officers, faculty employees and other employees of such junior colleges and/or universities when in their judgment the best interests of the school require it. In addition to all other powers and rights vested in any such Board of Regents by the terms of this Act, such Board shall have the general management and control of, and shall provide for maintaining and operating any such junior colleges and/or universities. The members of any such Board of Regents shall receive no compensation for their services.

Depository banks

Sec. 4. Such Board of Regents shall be and they are hereby authorized and required to select depository banks as places of deposits of all funds of all kind and character which are collected and received by any such junior colleges and/or universities, and such Board of Regents shall require adequate surety bonds or securities to be posted to secure said deposits and they may require additional security at any time they shall deem any such deposit inadequately secured. Any surety bond which may be furnished under the provisions of this Act shall be payable to the Board of Regents of any such junior colleges and/or universities and to their successors in office.

Eminent domain

Sec. 5. Any such Boards of Regents shall have the power to exercise the right of eminent domain and to appropriate property for the purpose of securing grounds for school buildings and appurtenances or additions thereto and/or other school activities under their jurisdiction; and in such event any such Board of Regents shall declare at a regular meeting thereof the necessity of such appropriation, describing the property sought to be appropriated, and stating the name and residence of the owner, if known, and if unknown, stating the fact; and such private property shall be condemned for the use of any such junior colleges and/or universities for the purposes expressed in said declaration, and the said Board of Regents through the same proceedings and under the same rules set forth, as far as applicable, as are now or may hereafter be provided by the general laws of the State of Texas for the condemnation of private property for the use of railroad corporations or in any other manner or by any other proceedings authorized by the general laws of this state for the condemnation of private property for public use and to provide payment therefor.

Contracts; actions; gifts; borrowing money; payment of judgments; exemptions; liability; liens

Sec. 6. Any Board of Regents may, in the name of the respective junior colleges and/or universities maintained in any such independent school district, contract, be contracted with, sue and be sued, plead or be impleaded, or intervene in any court of competent jurisdiction in any suit where the interests of any such Board of Regents of any such junior colleges and/or universities, or either, are involved; and any such Board of Regents may receive gifts, grants, conveyances, donations, legacies and devises made for the use of any such junior colleges and/or universities in any such independent school district and shall have the power to borrow money for the maintenance of any such junior colleges and/or universities and to secure advances of money and to pledge as security therefor the estimated income for any current year, provided any such sum so borrowed shall never exceed such estimated current income; and further provided that no such Board of Regents shall have any power to mortgage or otherwise encumber any lands and/or buildings belonging to any such junior colleges and/or universities, except that any such Board of Regents shall be and is hereby authorized to borrow money for the purpose of building and equipping self-liquidating projects, such as dormitories and/or other necessary buildings and additions, and to encumber the income, tolls, fees, rents, and other charges to be derived from the operation thereof and everything pertaining thereto and to evidence the obligation therefor by the issuance of bonds, notes or warrants to secure the payment of such loans and indebtedness, providing no such obligations, maintenance, operation or expenses of any like character whatever shall ever be a debt of any such school district but solely a charge upon the income, tolls, fees, rents and charges so encumbered and pledged.

No execution shall be issued or levied by virtue of any judgment that may be recovered against any such Board of Regents, but any such Board of Regents shall provide for the payment of judgments out of the current income received and to be received from the operation of any such junior colleges and/or universities, lands, houses, moneys, debts due to any such Board of Regents; but personal and real property and assets of every description belonging to any such junior colleges and/or universities shall be exempted from execution and sale and from involuntary liens; but any such Board of Regents shall make provisions for the payment of any and all such indebtedness due by it from its current operating revenues. No such Board of Regents shall ever be required to answer any writ of garnishment, neither shall they be required to give any bond for security for costs or for any other security in any suit or action brought by or against any such Board of Regents or in any proceedings to which any such Board of Regents may be a party in any court in this state, and any such Board of Regents shall have the remedies of appeal to all courts without bond or security of any kind; but any such Board of Regents shall be liable in the same manner and to the same extent as if the bond undertaken or security required in other cases had been really executed and given. No such Board of Regents or any member thereof or any such junior colleges and/or universities shall be liable for damages of any kind to property or to person or persons injured or killed on or near any property or premises controlled by such Board of Regents or under the jurisdiction thereof. Neither shall they be liable for damages to persons or property caused by said Board of Regents or any member thereof or by any agent, servant or employees of said Board of Regents. No builder's, materialman's or mechanic's lien of any kind or character shall ever attach to or become a lien upon any property, real or personal, belonging to any such junior colleges and/or universities and under the jurisdiction of any such Board of Regents.

Election of officers; meetings; seal; checks, warrants and drafts

Sec. 7. In the event any such Board of Regents shall be so appointed and created pursuant to the

terms of this Act prior to May 1st of any year, the members thereof shall hold a meeting for the purpose of electing officers of said Board of Regents to serve until May 1st of any such year, and thereafter, within ten (10) days after May 1st of each year, said Board shall hold a meeting for the purpose of electing officers of any such Board of Regents for the ensuing year. The officers of any such Board of Regents shall be chosen from and by the members thereof and shall be a Chairman, Vice-Chairman, and Secretary. At least one public meeting each month, and such other meetings as it may deem necessary for the transaction of its general business, shall be held by any such Board of Regents and regular records thereof shall be kept, with all books, vouchers, records and papers belonging to any such Board of Regents which shall be subject to the right of examination and the right to take copies thereof by every citizen during office hours. The Secretary of any such Board of Regents shall be the keeper of all records thereof and it shall be the duty of such custodian to produce and exhibit any such papers or records demanded to be inspected by any such citizen. Eight members of any such Board of Regents shall constitute a quorum sufficient to transact any business and to bind any such Board of Regents. Such Board of Regents shall make, adopt and publish such rules for the conduct of their business as they may deem proper including the conditions upon which pupils shall be admitted into such junior colleges and/or universities. Any such Board of Regents shall provide a suitable seal indicative of its official authority to be used as said Board of Regents shall deem advisable in the authentication of such bonds, contracts or other documents executed by the authority of any such Board of Regents. Any such seal shall have lettered upon its face the name of any such junior college and/or university and such other things as may be determined by such Board of Regents.

All such checks, warrants and drafts drawn against any funds of any such junior colleges and/or universities for expenditures of any character which shall have been authorized by any such Board of Regents shall be signed by the Chairman or other designated member of the Board of Regents, and attested by the Secretary thereof, or other designated member of the Board of Regents, except that the Board may delegate authority to duly employed officials to issue and sign checks for payrolls and other current bills of routine nature.

Laws controlling; repeals; powers of Board of Education or Board of Trustees not otherwise affected

Sec. 8. Except when in conflict with the terms of this Act, any such Board of Regents which may be appointed or created pursuant to the terms hereof shall in the management, control or operation of any such junior colleges and/or universities be governed by all pertinent laws pertaining to such junior colleges and/or universities, but such other laws, if in conflict with this Act, but only to such extent, are hereby expressly repealed, and all laws, whether general or special, in conflict with this Act, but only to such extent, are hereby expressly repealed; but this Act shall not be deemed to in anywise impair or affect the powers, duties and responsibilities of the Board of Education or Board of Trustees of any such independent school district with respect to any matters other than the operation and maintenance of junior colleges and/or universities maintained in connection therewith within any such independent school district; but any such Board of Education or Board of Trustees of any such independent school district shall continue to have every power, right, responsibility and duty with respect to the control and operation of all other schools within any such independent school district, and the affairs thereof, whether created under the general laws of this state or by special Act of the Legislature. [Acts 1945, 49th Leg., p. 37, c. 26.]

Section 9 of the Act of 1945 read as follows:

"If any article, section, subsection, sentence, clause or phrase of this Act shall for any reason be held to be unconstitutional or invalid such decision shall not affect the validity of any remaining portions of this Act. The Legislature hereby declares that it would have passed this Act or any article, section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more of the articles, sections, subsections, sentences, clauses or phrases are declared unconstitutional."

Art. 2815k—1. Board of Trustees for certain Junior College Districts extending into two or more counties.—Section 1. Any Junior College District extending into, or which may hereafter extend into, two or more counties, which was originally created out of territory then comprising an independent school district with boundaries coterminous with those of said independent school district, to which original Junior College District there has been annexed, or to which there may hereafter be annexed, for junior college purposes only, four or more common and/or independent school districts, of which annexed districts two or more contiguous districts, as they existed at the times of their annexation, lie wholly within one county and which two or more annexed contiguous districts have, or may hereafter have, in the aggregate, an assessed property valuation equal to, or in excess of, that of the original Junior College District, as said valuations are shown by the latest approved tax roll of said Junior College District, shall be governed, administered and controlled by a Board of Trustees constituted and elected as hereinafter set out.

Sec. 2. When only one of said counties contains, wholly within its boundaries, two or more annexed contiguous districts having in their territory the valuations provided in Section 1 hereof, there shall be elected from the remaining territory of said Junior College District, which is not completely segregated by said two contiguous annexed districts from the part thereof containing the original Junior College District, by the qualified voters thereof, five (5) trustees, who shall be residents of the territory from which they are elected.

Sec. 3. When each of two or more of said counties contains, wholly within its boundaries, two or more annexed contiguous districts, having the valuations provided in Section 1 hereof, there shall be elected from the territory of said Junior College District not comprised in said two or more contiguous annexed districts so lying in each of such two or more counties and which is not completely segregated by any of said two or more contiguous annexed districts from the portion thereof containing the original Junior College District, by the qualified voters thereof, three (3) trustees, who shall be residents of the territory from which they are elected.

Sec. 4. When two only of said annexed contiguous districts, having the valuation provided in Section 1 hereof, lie wholly within one county, there shall be elected from the territory comprised in said two districts, by the qualified voters thereof, two (2) trustees, who shall be residents of said two districts; provided that if said two annexed contiguous districts shall completely segregate from that part of said Junior College District containing the original Junior College District any territory of said Junior College District, said segregated territory shall be amalgamated with said two annexed contiguous districts so segregating it, its qualified voters shall be electors of said two trustees and its residents, otherwise qualified, shall be eligible to hold such offices.

Sec. 5. When three or more annexed contiguous districts, having the valuations provided in Section 1 hereof, lie wholly within one county, there shall be elected from the territory so making up said districts, by the qualified voters thereof, three (3)

trustees, who shall be residents of said territory; provided that if said three or more annexed contiguous districts shall completely segregate from that part of said Junior College District comprising the original Junior College District any territory of said Junior College District, such segregated territory shall be amalgamated with the territory of the three or more annexed contiguous districts so segregating it, its qualified voters shall be electors of said three trustees and its residents, otherwise qualified, shall be eligible to hold such offices.

Sec. 6. Whenever, under the provisions hereof, said Board of Trustees would otherwise be composed of an even number of trustees, there shall be elected at large, by the qualified voters of said Junior College District, one additional trustee, who shall be a resident of said Junior College District.

Sec. 7. The trustees composing the Board of Trustees of any Junior College District to which the provisions hereof are effective, or with respect to which same may become effective, shall continue to hold their respective offices until the first Saturday in April, next ensuing the date when the provisions hereof become applicable, at which time the trustees herein provided for shall be elected.

Sec. 8. The trustees elected for such Junior College District, after taking the oath of office, shall by lot divide themselves into three classes in as near equal numbers as is possible. One class shall serve for one (1) year, one class shall serve two (2) years and the third class shall serve for three (3) years. If said classes are not composed of equal numbers of members, then the class, or classes containing the lesser number of members shall serve the shorter term, or terms.

On the first Saturday of April of each year after such trustees first elected pursuant hereto shall have served for a period of at least one (1) year, an election shall be held to fill the offices of the members or trustees whose terms expire that year. Such trustees so elected shall serve for a term of three (3) years.

The order for the election of trustees shall be made by the Board of Trustees at least twenty (20) days prior to the date of said election, which order shall establish a voting box in each common and/or independent school district making up said Junior College District and which order shall be in conformity with the General Laws of the state relating to the election of trustees for independent school districts insofar as same are applicable.

The Board of Trustees of the Junior College District shall canvass the returns and declare the results of all elections held for the election of trustees. All such elections shall be held, insofar as same are applicable, in accordance with the laws governing the election of trustees of independent school districts. Vacancies shall be filled by the remaining members of the Board by appointment for the remainder of the term in which vacancies occur, provided that any office so vacated shall be filled by a person eligible for election thereto under the provisions hereof.

Sec. 9. All laws, or parts of laws, insofar as they conflict with the provisions of this Act, are hereby repealed.

Sec. 10. If any word, phrase, clause, sentence, paragraph, section or part of this bill shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other provision of this Act. [Acts 1947, 50th Leg., p. 395, ch. 224.]

Art. 2815*l*. Junior colleges organized under special law; validation; may choose to be governed by general law.—Any public Junior College now organized under the provisions of House Bill No. 955, Chapter 37, Acts of 1939, Special Laws, 46th Legislature, Regular Session, and all amendments thereof,[1] and conducted in the State of Texas, which has been actually in operation prior to January 1, 1943, or which is recognized as a standard Junior College by the State Department of Education, is hereby fully validated and may, by action of its governing board, choose to be governed by the provisions of House Bill No. 10, Chapter 290, Acts of 1929, Forty-first Legislature, Regular Session, and all amendments thereof,[2] and receive the privileges and benefits of same, at any time that it may desire to do so. [Acts 1945, 49th Leg., p. 454, ch. 285, § 1.]

1 Article 2815h—3.
2 Article 2815h.

Art. 2815m. Trustees of junior college districts; election; terms.—Trustees of County Junior College Districts, Joint County Junior College Districts and Union Junior College Districts organized under the provisions of the Acts of the Forty-first Legislature, 1929, page 648, Chapter 290,[1] and under any amendment thereof, shall be elected and shall serve in the following manner:

The Trustees first elected for such Junior College Districts, after taking the oath of office, shall divide themselves into three (3) classes: Class 1, consisting of two (2) members, shall serve for two (2) years; Class 2, consisting of two (2) members, shall serve for four (4) years; and Class 3, consisting of the three (3) remaining members, who shall serve for six (6) years.

On the first Saturday in April of each second year after such first election, an election shall be held to fill the offices of the members of Trustees whose terms expire that year. Such Trustees shall serve for a term of six (6) years.

Trustees of such districts heretofore organized shall, within thirty (30) days after the next election of Trustees, divide themselves into classes as herein provided with members who have one year to serve in Class 1, members who have two (2) years to serve in Class 2, and members who have three (3) years to serve in Class 3. Thereafter such members shall serve for terms in accordance with this Act. [Acts 1947, 50th Leg., p. 476, ch. 276, § 1.]

1 Article 2815h.
Section 2 of the Act of 1947 repealed conflicting laws.

CHAPTER 14.—SCHOLASTIC CENSUS

Art.
2816. Taking census.
2816a. Supplemental scholastic census; unusual increase in population from camps, reservations or building projects.
2817. Duty of census trustee.
2817a. Oath to rolls and summaries and delivery to county Superintendent.
2818. County line districts.
2819. Duty of county superintendent.
2820. Duty of State Superintendent.
2821. Compensation.
2822. In independent districts.
2822a. Supplemental census in districts having unusual population increase because of proximity of National Defense Agencies.

Article 2816. [2774] Taking census.—The county superintendent and the board of trustees of the independent school districts, on the first day of each January or as soon as practicable thereafter, shall appoint one of the trustees of each school district, or some other qualified person, to take the scholastic census, who shall be known as the census trustee of the district. The census trustee between the first day of March and the first day of April after his appointment, shall take a census of all the children that will be over seven and under eighteen years of age on the first day of the following September, and who are residents of the school district on said first day of April. In taking the said census he shall visit each home, residence, habitation and place of abode, and

shall by actual observation and interrogation, enumerate the children thereof in the following manner: He shall use for each parent, or guardian or person having control of any such children, a prescribed form showing the name, color and nationality of the person rendering such children, the name and number of the school district in which the children reside, and the name, sex and date of birth of each such child of which he is a parent or guardian, or of which he has control. The census trustee shall require such forms to be subscribed and sworn to by the person rendering the children, and he is authorized to administer oaths for this purpose. When the census trustee visits any home or house or place of abode of a family, and fails to find either the parent or any person having legal control, he shall leave the prescribed census blank for the use of parents at such home or place of abode, with a note to the parent or guardian having legal control of such child or children, requiring that the form be filled out, signed and sworn to, and that the blank, when so filled out, shall be delivered by the parent or person having legal control of the child or children to the census trustee. [Acts 1905, p. 263; Acts 1915, p. 183.]

Art. 2816a. Supplemental scholastic census; unusual increase in population from camps, reservations or building projects.—Section 1. It is hereby provided that in cases of unusual increase of scholastic population of any school district caused by the location therein or adjacent thereto of camps, reservations, building or dam projects sponsored by Federal Government or State Government ownership and whose creation results in an unusual increase in scholastic population in a school district upon the certified request of the county superintendent of the county in which such an unusual increase exists, the State Superintendent of Public Instruction, at district expense, shall require a supplemental scholastic census to be taken of the district involved. In the event that the census herein authorized shows a substantial increase in scholastic population, the State Superintendent of Public Instruction may approve a supplemental census roll, adding the names of additional eligible scholastics to the rolls of the districts. Said supplement of the scholastic census roll shall be considered a part of the original census as if it were taken in the last preceding month of March of the school year and the scholastic apportionment shall be paid in accordance with said scholastic population. Provided further that such supplemental census shall be taken not later than March 15 of any fiscal year, and shall include only such scholastics that are enrolled and are in actual attendance; provided that for the year 1940–1941 said supplemental census will be permitted until April 22, and no adjustment in scholastic apportionment in a district entitled thereto shall be in an amount more than that necessary for the additional expenditures needed to care for the needs of such districts and which shall be approved by the State Department of Education.

Sec. 2. Only one supplemental census annually in any one district shall be authorized by the State Superintendent. [Acts 1941, 47th Leg., p. 152, ch. 113.]

Art. 2817. [2775] Duty of census trustee.—Only children of the same family shall be listed on one form; and, if one person has under his control children of different family name, he shall use a separate form for each family name. The census trustee shall arrange the forms for white and colored children separately, in alphabetical order, according to the family name of the children reported thereon. He shall also make, on a prescribed form, separate census rolls for the white and colored children of his district, showing the name, age, sex and color of each child, and the name of the parent, guardian or person having control of said child, by whom it is reported. He shall also make a summary of his rolls showing the number of such children of each race of scholastic age. He shall make oath to all his rolls and summaries, and to the faithful and accurate discharge of his duties, and deliver said rolls, with the forms arranged in alphabetical order, to the county superintendent on or before June first next after his appointment. [Acts 1905, p. 263.]

Art. 2817a. Oath to rolls and summaries and delivery to county Superintendent.—Any person who is required to make a summary of the Scholastic Census rolls showing the number of children of each race that will be included in the Scholastic Census on the first day of the next September shall make oath to his rolls and summaries and to the faithful and actual discharge of his duties and deliver the rolls, together with the forms arranged in alphabetical order, to the County Superintendent on or before May 1 next after his appointment. [Acts 1931, 42nd Leg., p. 42, ch. 33, § 1.]

Section 2 of this Act being a penal provision is published as Penal Code, Article 294a. Section 3 repeals all conflicting laws and parts of laws.

Art. 2818. County line districts.—The scholastic census of all common county line school districts shall be taken under the supervision of the authorities of the county having control of such school district and reported by such county to the State Department of Education as provided by law governing the taking of the scholastic census of the State, except that the census trustee taking the census of a common county line school district shall make a separate roll of the scholastic population contained in the territory of each county in such district which shall be separate and distinct from the general census roll of such district and be returned together with the general census roll, as provided by law, to be made by the census trustees. The County Superintendent of the county having control of the schools of such district shall make a duplicate of the copy containing separately the scholastic population of each county having territory in such district and send such duplicate to the County Superintendent and County Treasurer of each such county to be by them used for the purpose of apportioning the County Available School Funds. If such district has voted a special tax for the purpose of school maintenance or the payment of interest and sinking fund on school bonds, the County Superintendent of each of said counties shall, from time to time, as such taxes have been collected by his county, draw his warrant against the County Treasurer or County Depository of such county for such amount of available county school funds or special tax, or either or both, as the case may be, as shall be in the hands of the Treasurer or Depository in favor of the County Treasurer of the county having control and management of the schools of such district, and upon the presentation of such warrant, the Treasurer or Depository against whom the warrant was drawn shall pay over to the Treasurer named as depository of the county having control of the schools of the district such amount of money as is called for in such warrant. The said warrant shall be drawn in favor of the school district embracing the territory in the counties involved and in favor of the County Treasurer or Depository of the county having control of the schools of the district and be credited to such school district, and the funds of such school district shall be used as provided by law for the use of the different kinds of school funds; provided that all funds heretofore derived or hereafter to be derived from the income of the county permanent fund of each county embracing any territory of said district shall be deposited to the credit of such district and shall be used for the same purposes and in the same manner as is now provided by law for the use of the State Available School Fund. [Acts 1911, p. 201; Acts 1931, 42nd Leg., 2nd C.S., p. 44, ch. 24, § 1.]

Art. 2819. [2776] Duty of county Superintendent.—The rolls and summaries of the census trustee shall be preserved by the county superintendent in his office for three years after they are filed. The county superintendent shall make, on prescribed forms, separate consolidated rolls for the white and colored children of his county, showing the name, age and sex of each, together with the number of the district in which it lives, and the name of the parent or guardian, arranging the names of the children according to the alphabetical order of their family names. In making these consolidated rolls, he shall scrutinize carefully the work of the census trustees, and shall have power to summon witnesses, take affidavits and correct any errors he may find in any census trustee's roll, and he shall carefully exclude all duplicates. If he deems it necessary he may reject any roll, and appoint another census trustee to take the census of the district, in which case he shall not approve the warrant to pay the census trustee whose work has been rejected. When the county superintendent has prepared his consolidated census rolls, one for each race, he shall make a duplicate of each, and he shall make affidavit to the correctness of both originals and duplicates. The originals he shall, on or before July first, forward to the State Superintendent, and the duplicates shall be filed with the county clerk and become permanent records of his office. The county superintendent shall forward with his consolidated rolls an abstract on the prescribed form, under oath, showing the number of children of each race, of the different years of school age, and the total number of children of each race, and the total of both races in his county. In making his consolidated rolls and in investigating the work of any census trustee, the county superintendent shall refer to the forms and rolls of previous years, when necessary, and they shall be carefully preserved for this purpose. [Acts 1911, p. 201.]

Art. 2820. [2777] Duty of State Superintendent.—The State Superintendent shall have authority to investigate the census of any county, to correct errors, and in extreme cases when he believes gross errors have occurred or that fraud has been practiced, he may, with the approval of the State Board, reject any county roll and require the census of the county to be retaken. [Acts 1905, p. 287.]

Art. 2821. [2778] Compensation.—For their services, the census trustees shall receive four cents per capita of the children of scholastic age taken by them in county districts and three cents per capita in towns of twenty-five hundred and not more than five thousand inhabitants, and two cents per capita in cities of more than five thousand inhabitants. The county superintendent shall receive one cent per capita of the scholastic population reported by him. These amounts shall not be paid until the census of the county is accepted by the State Superintendent, and shall be forfeited as follows: The trustee's compensation, if his work is rejected by the county superintendent and the census of his district ordered retaken; and both the county superintendent's and the trustee's compensation, if the census of the county is rejected and ordered by the State Superintendent and the State Board to be retaken. [Id.]

Art. 2822. [2779] In independent districts.—The provisions of this chapter shall apply to the taking of the scholastic census in cities and towns constituting independent districts, except as specially provided herein, to wit: The census trustee shall be appointed by the president of the board of trustees, and a census trustee may be appointed for each ward or school sub-district, at the discretion of the president of the school board making such appointment. The forms for the parent and the rolls shall show the street and house number or location of the house or place in which each child resides. [Id.]

Art. 2822a. Supplemental census in districts having unusual population increase because of proximity of National Defense Agencies.—Section 1. It is hereby provided that in cases of an unusual increase of the scholastic population of any School District, caused by the location therein, or adjacent thereto, or whose scholastic population is materially increased by, any of the National Defense Agencies, such as army camps, naval training stations, ship yards, flying fields, munitions works, or any other agency whose purpose is to further the National Defense, or by the production of oil, gas or other natural resources necessary in the program of National Defense, and whose creation results in an unusual increase in the scholastic population of any School District, upon the certified request of the County Superintendent of the County in which such an unusual increase exists, the State Superintendent of Public Instruction shall require a supplemental scholastic census to be taken, immediately, of the District involved. In the event that the census herein authorized shows a substantial increase in the scholastic population, the State Superintendent of Public Instruction shall approve a supplemental census roll, adding the names of the additional eligible scholastics to the rolls of the District. Said supplement of the scholastic census roll shall be considered a part of the original census as if it were taken in the last preceding month of March, and the scholastic apportionment shall be paid in accordance with said scholastic population. Provided further, that such supplemental census shall be taken not later than March 15th of any fiscal year, and no adjustment of scholastic apportionment to any District entitled thereto shall be in an amount more than that necessary for the additional expenditures needed to care for the needs of such Districts, and which shall be approved by the State Department of Education.

Sec. 2. The State Superintendent of Public Instruction is not authorized by this Act to provide for more than one supplemental scholastic census annually in any one District. [Acts 1941, 47th Leg., p. 26, ch. 15.]

CHAPTER 15.—SCHOOL FUNDS

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Article 2823. [2725] What shall constitute school fund.—Besides other available school funds provided by law, one-fourth of all occupation taxes and one dollar poll tax levied and collected for the use of public free schools, exclusive of the delinquencies and cost of collections; the interest arising from any bonds or funds belonging to the permanent school fund, and all the interest derivable from the proceeds of the sale of land heretofore set apart for the permanent school fund which may come into the State Treasury; all moneys arising from the lease of school lands, and such an amount of State tax not to exceed thirty-five cents on the one hundred dollars valuation of property, as may be from time to time levied by the Legislature, shall constitute the available school fund, which fund shall be apportioned annually to the several counties of this State, according to the scholastic population of each, for the support and maintenance of the public free schools. [Acts 1905, p. 263.]

Art. 2824. [5402] [4271] School lands.—Each county may sell or dispose of the lands granted to it for educational purposes in such manner as may be provided by the commissioners court of such county, and the proceeds of any such sale shall be invested in bonds of the United States, the State of Texas, the bonds of the counties of the State, and the independent or common school districts, road precinct, drainage, irrigation, navigation and levee districts in this State, and the bonds of incorporated cities and towns, and held by such county alone as a trust for the benefit of public free schools therein, only the interest thereon to be used and expended annually. [Acts 1889, p. 104; Acts 1915, p. 210.]

Transfer of care of county permanent school funds from Commissioners' Court to Board of Education in counties of 24,300 to 24,360 population: Acts 1941, 47th Leg., p. 173, ch. 126.

Art. 2824a. Releases validated.—All releases by each of the several counties of this State that have heretofore been executed by the proper officers of said counties and filed of record, releasing the lien or liens retained by said counties or any of them, to secure the payment of the purchase price of school lands purchased from such counties, which releases have been of record at least ten (10) years, are hereby validated and declared to have been executed in full compliance with the statutes. [Acts 1933, 43rd Leg., p. 619, ch. 205, § 1.]

Art. 2825. [2726] Income from lease.—Besides other available school funds provided by law, the proceeds of any leasing or renting of lands, heretofore granted by the State of Texas to the several counties thereof for educational purposes, shall be appropriated by the commissioners courts of said counties in the same manner as is provided by law for the appropriation of the interest on bonds purchased with the proceeds of the sale of such lands; and the proceeds arising from the sale of timber on said lands, or any part thereof, shall be invested in like manner as the Constitution and law requires of proceeds of sales of such lands; and it shall be unlawful for the commissioners court of any county to apply said proceeds, or any part thereof, to any other purpose, or to loan the same, except as above required. [Acts 1905, p. 263.]

Art. 2826. [2271] [1550] [1523] Duty of commissioners court.—It shall be the duty of the commissioners court to provide for the protection, preservation and disposition of all lands heretofore granted, or that may hereafter be granted to the county for education or schools. [Const., art. 7, sec. 6.]

Art. 2827. [2772] Authorized expenditures.—The public free school funds shall not be expended except for the following purposes:

1. The State and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents, when these salaries become due before the school funds for the current year become available; provided that no loans for the purpose of payment of teachers shall be paid out of funds other than those for the then current year.

2. Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for State and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employes, for buying school sites, buying, building and repairing and renting school houses, and for other purposes necessary in the conduct of the public schools to be determined by the Board of Trustees, the accounts and vouchers for county districts to be approved by the county superintendent; provided, that when the State available school fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein. [Acts 1905, p. 263; Acts 1919, p. 189.]

3. All independent school districts having within their limits a city with a population of 160,000 or more according to the last preceding Federal census shall, in addition to the powers now possessed by them for the use and expenditure of local school funds and for the issuance of school bonds, be expressly authorized and empowered, at the option of the governing body of any such school district, in the buying of school sites and/or additions to school sites and in the building of school houses, to issue and deliver notes of the school district, negotiable or non-negotiable in form, representing all or a part of the purchase price or cost to the school district of the land and/or building so purchased or built, and to secure such notes by a vendor's lien and/or deed of trust lien against such land and/or building, and, by resolution or order of the governing body of the school district made at or before the delivery of such notes, to set aside and appropriate as a trust fund, and the sole and only fund, for the payment of the principal of and interest on such notes such part and portion of the local school funds, levied and collected by the school district in that year and/or subsequent years, as the governing body of the school district may determine, provided that in no event shall the aggregate amount of local school funds set aside

in or for any subsequent year for the retirement of such notes exceed, in any one such subsequent year, ten (10%) per cent of the local school funds collected during such year. [As added by Acts 1934, 43rd Leg., 4th C.S., p. 34, ch. 9, § 1.]

Acts 1934, 43rd Leg., 4th C.S., p. 34, ch. 9, added subdivision 3 to article 2827.

Section 2 of Acts 1934, repeals all conflicting laws and parts of laws provided nothing therein shall be construed as repealing any existing statute relative to issuance of school bonds, and section 3 provides that if any part of the act is unconstitutional, the remaining parts of the law shall remain undisturbed.

Art. 2827a. State available school funds; notice to State Superintendent and State Board of Education; deposit in county depositories.—Sec. 1. That, from and after August 31, 1931, it shall be the duty of the County Board of Trustees in each county in this State having an elective County Superintendent of Public Instruction to notify the State Superintendent and the State Board of Education, not later than September 1, of each scholastic year, of the amount of the State Available School Fund that should be set aside from the per capita apportionment for said county for the ensuing scholastic year for the maintenance of the office of County Superintendent in accordance with Law; provided, that the amount to be set aside from the per capita apportionment for said county shall include the per capita apportionment for the districts of the county that are now lawfully required, or that may hereafter, by General Law, be required, to contribute to said County Administration Expense Fund.

Sec. 2. That the State Superintendent of Public Instruction shall, on the order of the State Board of Education, remit to the County Depository of each such county the amount of said Available School Fund, to be deposited to the credit of the Administration Fund of the County for the purpose set forth in Section 1 of this Act; provided, that the payments to the various counties may be made in two equal installments, the first, on or before October 1, and the second, on or before March 1, of each successive school year.

Sec. 3. All laws, or parts of laws, General and Special, in conflict herewith, are hereby repealed; provided, however, that this Act is not intended to repeal Article 2827, of the Revised Civil Statutes of 1925, but is intended merely to enlarge the purposes to the extent provided in this Act for which the State Available Funds may be used. [Acts 1931, 42nd Leg., p. 298, ch. 175.]

Art. 2828. [2767] County depository.—The terms "county treasurer" and "county treasury," as used in all provisions of law relating to school funds, shall be construed to mean the county depository. The commissioners court shall file with the State Department of Education a copy of the bond of said depository to cover school funds. No commission shall be paid for receiving and disbursing school funds. [Acts 1905, p. 263; Acts 1909, p. 17.]

Art. 2829. [2768] Bond.—Within twenty days after the receipt of a certificate of its selection, the County Depository shall execute a good and sufficient bond, payable to the County Judge, in amount equal to the probable amount of available School Fund, which may be on deposit at any one time, and of the permanent County Fund, to be estimated by the County Superintendent, or Commissioners' Court in a county having no Superintendent, and shall be conditioned that the depository will faithfully perform its duties under this title, and safely keep and faithfully disburse the School Fund according to Law, and pay such warrants as may be drawn on said fund by competent authority; provided, in lieu of said bond, such depository may secure said School Funds in the same manner as is now provided by Law for qualification as County Depository. [Acts 1905, p. 263; Acts 1909, p. 17; Acts 1931, 42nd Leg., p. 43, ch. 34, § 1.]

Sec. 1-A. In the event depositories have been selected at the time of adoption of the above provision, such depositories may, at option, secure said School Fund by approved securities other than by personal bond. [As added Acts 1931, 42nd Leg., p. 43, ch. 34.]

Art. 2830. [2769] To keep accounts.—The county treasurer, upon receiving notice from the State Superintendent of the amount apportioned to the county, shall report the same to the county superintendent, who shall immediately apportion the same to the several districts, according to the scholastic census; and the county superintendent shall immediately notify the county treasurer of the amount apportioned to each district. The county treasurer shall keep a separate account with each district, showing the amount apportioned, according to the certificate of apportionment, and the amount paid out to each school and district. In no case shall the county treasurer pay out any part of the school fund without the approval of the county superintendent. [Acts 1905, p. 263; Acts 1909, p. 17.]

Art. 2831. [2770] Balances.—All balances of the general school fund not appropriated for the current year shall be carried over by the treasurer as part of the general school fund for the county for the succeeding year, and unexpired [1] balances to the credit of any district shall be carried over for the benefit of such school district. If any such balance shall exceed five dollars per capita, according to the last scholastic census, then such excess shall be reapportioned to the school districts of the county. [Id.]

[1] So in enrolled bill. Should probably read "unexpended."

Art. 2831a. Balances in counties of 390,000 to 500,000.—In all counties having a population of not less than three hundred and ninety thousand (390,000) nor more than five hundred thousand (500,000) according to the last preceding Federal Census, all balances of all school funds of the common school districts of such counties not expended for the current year, and the entire available funds arising from county permanent school funds, shall be placed in the School Equalization Fund of such counties on the order of the County Board of School Trustees. [Added Acts 1941, 47th Leg., p. 62, ch. 47, § 1.]

Section 2 of the Act of 1941 repealed conflicting laws.

Art. 2832. [2771] Districts of more than 150 scholastics.—In any independent district of more than one hundred fifty (150) scholastics, whether it be in a city which has assumed control of the schools within its limits, or a corporation for school purposes only, and whether organized under general law or created by special act, the treasurer of the school fund shall be that person or corporation who offers satisfactory bond and the best bid of interest on the average daily balances for the privilege of acting as such treasurer. The treasurer when thus selected shall serve for a term of two years and until his successor shall have been duly selected and qualified and he shall be required to give bond in an amount equal to the estimated amount of the total receipts coming annually into his hands, when such bond is a personal bond; provided, that when a bond is executed by a surety company or is a bond other than a personal bond, such bond shall be in an amount equal to the highest estimated daily balance for the current biennium, to be determined by the governing body of such school district; provided, further that such governing body may, in lieu of the bond herein authorized, accept a deposit of approved securities, which securities may include bonds of the United States, or of this State, or of any county, city, town or independent school district in the State, or Anticipation Tax Warrants and/or Anticipation Tax Notes legally issued by the governing body of such school district, which shall be deposited as such governing body may direct, in an amount sufficient to adequately protect the funds of such school district in the hands of the selected Treasurer.

Provided, however, that no premium on any bonds shall be paid out of the funds of any said district or corporation. Said bond shall be payable to the president of the board and his successors in office, conditioned for the faithful discharge of the treasurer's duties and the payment of the funds received by him upon the draft of the president of the school board drawn upon order, duly entered, of the board of trustees. Said bond shall be further conditioned that the treasurer shall safely keep and faithfully disburse all funds coming into his hands as treasurer, and shall faithfully pay over to his successor all balances remaining in his hands. It shall be approved by the school board and the State Department of Education shall be notified of the treasurer by the president of the school board filing a copy of said bond in said department. If the custodian of the funds of any independent school district to which this Article applies has heretofore been designated as a depository, instead of a treasurer, the governing body of any such district may continue to use the name depository and this Article shall govern to the same extent as if the name treasurer were used. [Acts 1925, 39th Leg., p. 328, ch. 127, as amended Acts 1931, 42nd Leg., 1st C.S., p. 56, ch. 27; Acts 1933, 43rd Leg., p. 341, ch. 133.]

Section 2 of Acts 1933, cited to the text, repeals all conflicting laws and parts of laws.

Acts 1933, 43rd Leg., p. 10, ch. 7, passed as a general law, but in fact a special law, reads as follows: "In all counties having a population of not fewer than three thousand five hundred forty (3,540) nor more than three thousand five hundred sixty (3,560) according to the most recent United States Census, the Board of School Trustees of each independent district, regardless of its scholastic population, shall have the authority to select its depository of school funds for such district in the manner prescribed in Article 2832, Revised Statutes, 1925."

Art. 2832a. Depository of school funds in counties having population of 16800 and not more than 17000.—In all counties having a population of not fewer than 16,800 nor more than 17,000 according to the Federal census of 1920 the Board of School Trustees of each independent district, regardless of its scholastic population, shall have the authority to select its depository of school funds for such district in the manner prescribed in Article 2832, Revised Statutes, 1925. [Acts 1930, 41st Leg., 5th C.S., p. 161, ch. 29, § 1.]

Art. 2832b. School fund depositories in certain counties.—In all independent school districts created by act of the Legislature prior to January 1, 1920, in counties that have a population of less than three thousand three hundred forty (3340), the Boards of Trustees of such independent school districts are authorized and directed to select the school fund depositories for such districts as directed by Article 2832 of the Revised Civil Statutes of the State of Texas, and to buy, assess, and collect taxes as authorized by the Acts of the Legislature creating said Districts, regardless of whether said districts contain a population of 150 scholastics. [Acts 1933, 43rd Leg., 1st C.S., p. 194, ch. 72, § 1.]

Art. 2833. [2773] District treasurer's report.—Each treasurer receiving or having control of any school fund of an independent school district shall keep a full and separate itemized account with each of the different classes of school funds coming into his hands, and shall on or before the first day of October of each year, file with the board of trustees of such independent school district and with the State Superintendent an itemized report of the receipts and disbursements of the school funds for the preceding school year ending August 31st, which report shall be on a form prescribed and furnished by the Department of Education. The board of trustees shall notify the State Superintendent of their approval of said report within thirty days after receipt of same, should same be approved, and the State Superintendent shall notify the board of trustees of objections or of recommendations concerning same should he desire to make any. All vouchers showing items of the report shall be filed with the board of trustees and the State Superintendent may demand same when passing on said report or for the purpose of investigating same. [Acts 1905, p. 275; Acts 1919, p. 276.]

Art. 2833a. Financial reports to State Superintendent or Department of Education; forms.—Section 1. All financial reports made by or for school districts, either independent or common, or by their officers, agents or employees, to the State Superintendent of Public Instruction or to the Department of Education, shall be made on forms prescribed or approved by the State Auditor.

It shall be the duty of the State Auditor to combine as many forms as possible to the end that multiplicity of reports is avoided. Such forms shall call for all information required by law or the State Superintendent, as well as such information as is deemed necessary by the State Auditor.

Sec. 2. The provisions of this Act shall take precedence over any other law of this state in conflict herewith. [Acts 1947, 50th Leg., p. 435, ch. 240.]

Art. 2834. [2744] Comptroller shall report to State Board.—The Comptroller shall keep a separate account of the available State school fund arising from every source, and shall, on or before the meeting of the State Board on or before the first day of August of each year, make an estimate of the amount of available school fund to be received from every source, and to be available for the succeeding scholastic year, and report the same to said board. [Acts 1909, 2nd C. S. p. 432.]

Art. 2835. [2745] He shall draw warrants.—The Comptroller shall, on the first working day of each month, certify to the State Superintendent the total amount of money collected from every source during the preceding month and on hand to the credit of the available school fund, and shall draw his warrant on the State Treasurer, and in favor of the treasurer of the available school fund of each county, city or town, and each school district having control of its public schools, for the amount stated in, and upon receipt of, the certificate therefor issued to him on the first day of each month by the State Superintendent and shall register such warrants and transmit them to the State Treasurer. [Id.]

Art. 2835a. State Board may exact certain duties of districts, cities, and towns which have assumed control of schools, and whose bonds are owned by Permanent School Fund.

Levy of tax

Section 1. The State Board of Education may require any school district, or any city or town which has assumed the control of public schools located therein, school bonds of which are owned by the State Permanent School Fund, and which may be entitled to receive moneys from the Available State School Fund, or for Rural Aid, and which is in default for a period of two (2) years as to the payment of principal or of interest or both, of any outstanding school bond issue of such district, city or town, to levy a tax sufficient to pay the principal and interest of its bonds as such principal matures and as such interest accrues; provided, if any such district, city or town shall furnish to the State Board of Education satisfactory proof that its taxing ability is insufficient to provide money enough to pay principal and interest of its bonds according to their tenor and effect, then in the alternative, the Board may require such district, city or town to exhaust its legal remedies in the matter of collecting its taxes then delinquent, and to levy a tax at the maximum rate for bond purposes permitted under the law applicable to it, based on the assessed valuation of taxable property therein, duly and fairly ascertained in the manner required by

law; that when such taxes shall have been so levied and collected, each holder of its bonds including the State of Texas, shall be entitled to receive a proportionate part of the money thus collected based on the requirements for principal and interest of the bonds owned by each holder calculated on the basis of original bonds before refunding operations, if any, occasioned because of the embarrassed financial condition of such district, city or town; that the proportionate part to be available to each holder shall not be reduced by reason of acceptance by said holders of refunding bonds.

Default in payments of principal or interest of bonds

Sec. 2. If any such district, city or town defaults in the payment of principal or interest on its bonds for a period of two years held by the State Permanent School Fund, the Comptroller of Public Accounts shall not issue any warrants to or for the benefit of such district, city or town for the payment of the Available School Fund or for Rural Aid; provided that at such time as the Comptroller shall have received a certificate executed by the President and Secretary of the State Board of Education to the effect that such district, city or town has complied with the requirements of the State Board of Education as to the levying and collecting and distributing of taxes as more fully described in Section 1 of this Act, then in that event the Comptroller of Public Accounts shall resume making such payments to or for the benefit of such district, including the making of pretermitted payments.

Authority of State Board during period of delinquency

Sec. 3. So long as any such district, city or town is delinquent in its payments of principal or interest or both, the State Board of Education shall have authority to specify the method of crediting payments to the State made by such District, city or town as to principal or interest.

Duties and rights cumulative

Sec. 4. The duties imposed and the rights conferred by this Act shall be cumulative of all other duties heretofore imposed and rights heretofore conferred and shall not be considered to be in substitution thereof.

Partial invalidity

Sec. 5. In event any provisions of this Act shall be in conflict with the provisions of any other Act, the provisions contained in this Act shall prevail. In event any sentence, clause or provision contained in this Act shall be invalid, such partial invalidity shall not affect the other provisions of this Act. [Acts 1933, 43rd Leg., p. 625, ch. 209; Acts 1937, 45th Leg., p. 619, ch. 309, § 1.]

Art. 2835b. School district bonds in default owned by Permanent School Fund or Available School Fund; modification or refinancing; refunding bonds.

Declaration of policy

Section 1. It is hereby declared to be the policy of the State to preserve and protect the State Permanent School Fund and to enforce according to their terms the executed and matured portions of all obligations held by such Fund or by the Available School Fund. In those instances wherein the executory and unmatured portions of any obligations of school districts held by either of said Funds cannot be enforced effectively because of the insolvency (as hereinafter in Section 4 of this Act defined) of such districts, it is hereby declared to be the policy of the State that such obligations be restored to current status for the benefit of the State, and to effect such restoration, the State Board of Education (hereinafter sometimes called the "Board") is authorized and empowered to revise, readjust, modify, refinance or refund the indebtedness held by the Permanent School Fund and the Available School Fund in accordance with the provisions of this Act.

Application

Sec. 2. This law shall apply only to bonds of school districts of the State and interest accrued thereon now owned by the Permanent School Fund or the Available School Fund.

Refunding of debt, when

Sec. 3. Any such school district whose bonds are owned by the Permanent School Fund and which bonds are in default in the interest due thereon to the extent that such unpaid interest and interest on delinquent interest amounts to a sum equal to not less than fifty per cent (50%) of the principal amount of its bonds owned by the Permanent School Fund and whose taxable valuation has decreased to such extent that a full application of the proceeds of the voted maximum tax authorized to be levied on each One Hundred Dollars ($100) of such taxable valuation to the payment thereof will not pay the principal and interest annually maturing on said bonds, may apply to the Board of Education for a revision, readjustment, modification, refinancing or refunding of such debt and said Board shall have the power to effect a refunding of the debt due and to become due, only when said Board shall have found the following conditions to exist:

(a) That such a district is unable to pay the sums already matured and the sums contracted to be paid as same mature by paying annually to said Board the full proceeds of a fifty cents (50¢) tax levy on the One Hundred Dollars ($100) on all taxable valuation of property situated in such district; and

(b) The taxable valuation of property in such district at the time any of said bonds were purchased originally by the Board to have been at least seventy-five per cent (75%) more than the taxable valuation existing at the time application for refunding is filed by such district and that such decrease is due to a loss of natural resources by depletion or through other causes not attributable to such district or any of its officials; and

(c) That such district for a period of not less than five (5) years next preceding the date of the application to refund its debt has levied a tax of fifty cents (50¢) on the One Hundred Dollars ($100) of taxable valuation of property in such district, and that despite such levies, the aggregate amount due the Board exceeds the aggregate amount due the Board at the beginning of the five (5) year period next preceding the date of the filing of the application to refund and further that during said five (5) year period no additional bonds of such district have been authorized and sold; and

(d) That such district has in good faith endeavored to pay its debt in accordance with the contract evidenced by the bonds held for the account of the Permanent School Fund or the Available School Fund, or both.

Refunding bonds

Sec. 4. When the Board shall have found the facts to exist in a school district as required in Section 3 hereof, such district shall for the purposes of this Act be deemed to be insolvent and said Board shall be authorized to exchange the bonds, interest coupons, and other evidences of indebtedness held in the Permanent School Fund and the Available School Fund for new refunding bonds of such district provided that the total principal amount of all such refunding bonds shall be not less than the total amount of bonds, matured interest coupons, accrued interest and interest on delinquent interest then actually due said Funds and provided further that the rate of interest to be borne by such refunding bonds may be

lower than that borne by the bonds to be refunded if in consideration of such interest reduction such district shall agree to levy a tax each year for a period of forty (40) years at a rate sufficient to produce annually a sum equal to ninety per cent (90%) of the amount that can be calculated by the levy of a tax at the rate of fifty cents (50¢) on the One Hundred Dollars ($100) of taxable valuation of property as determined by the last approved tax roll of such district. In determining the rate of interest to be borne by such bonds the Board is authorized to require the rate to be such per cent per annum as in its judgment will represent the maximum rate that can be paid by such district and still permit an orderly and certain retirement of such refunding bonds within forty (40) years from their date, provided that the interest rate of the refunding bonds received in exchange for the bonds owned by the Permanent School Fund shall be not less than the minimum rate at which bonds then may be purchased as investments for the Permanent School Fund and provided further the interest to be borne by any refunding bonds received in exchange for the bonds or other obligations owned by the Available School Fund may be at such rate or rates, as the Board may deem feasible and such interest refunding bonds may be made non-interest bearing to such date as may be fixed by the Board.

Manner of issuance

Sec. 5. Such refunding bonds shall be authorized and issued in the manner provided by law for the issuance of refunding bonds by school districts, except as otherwise provided or permitted by this Act.

Exchange of obligations for refunding bonds

Sec. 6. When the Board shall have entered into a refunding agreement as contemplated herein, it shall be the duty of the State Treasurer, as custodian of the bonds held for the Permanent School Fund or bonds and other obligations held for the Available School Fund, upon order of the Board of Education to exchange such bonds or obligations thus held by him for the refunding bonds authorized by any such district pursuant to and in conformity with such refunding agreement.

Obligations due not to be released

Sec. 7. No revision, readjustment, modification, refinancing or refunding shall be made by the Board of Education that will release or extinguish any debt or obligation now due and payable to the State Permanent School Fund or Available School Fund or such as may be due and payable as of the date the Board agrees to any change in the contracts represented by such bonds or other obligations accrued therefrom.

Precedence over conflicting laws; partial invalidity

Sec. 8. This law shall take precedence over the provisions of any law in conflict herewith and in the event of conflict this law shall apply, and if any provision, Section, clause or sentence hereof shall be held invalid such holding shall not affect the validity of any other provision, Section, clause or sentence hereof. [Acts 1947, 50th Leg., p. 254, ch. 150.]

Art. 2836. [2746] He shall report to Legislature.—The Comptroller shall, on or before the meeting of each regular session of the Legislature, report to the Legislature an estimate of the amount of the available school fund to be received for the succeeding two years, and the several sources from which the same accrues, and which may be subject to appropriation for the establishment and support of public schools. [Acts 1905, p. 263.]

Art. 2837. [2747–9] Duty of Treasurer.—The State Treasurer shall receive and hold as a special deposit all money belonging to the available school fund, and keep an account of the same. He shall register every warrant drawn by the Comptroller on such fund in favor of the treasurer of the available school fund of any county, city, town or school district having control of its public schools, and transmit such warrants to the State Superintendent. On presentation to him for payment properly endorsed, he shall pay such warrants each in the order in which presented. He shall not, under any circumstances, use any portion of the permanent or available school funds in payment of any warrant drawn against any other fund whatever. [Acts 1909, 2nd C. S. p. 432; Acts 1905, p. 263.]

Art. 2838. [2748] Shall report condition of funds.—The State Treasurer shall, thirty days before each regular session of the Legislature, and ten days before any special session, at which any legislation can be had respecting the public schools, report to the Governor the condition of the permanent and available school funds, the amount of each, and the manner of its disbursement; and he shall also make any additional report required by the Board of Education. [Acts 1905, p. 263.]

CHAPTER 16.—FREE TEXTBOOKS

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1. TEXTBOOK COMMISSION

Article 2839. The commission.—A permanent Textbook Commission of the State of Texas is hereby authorized and created, to be styled the "Texas State Textbook Commission" [1] which shall be composed of seven members appointed by the Governor with the advice and consent of the Senate, together with the State Superintendent of Public Instruction and the Governor of the State, who shall be ex-officio members of the same. In appointing members of the Textbook Commission, the Governor shall select as such members citizens of recognized ability from the various business and professional activities and teachers of recognized scholarship and professional standing, and the teacher members of said board shall have been actively and continuously engaged in teaching or supervising in the public schools of this State for the past five years, and shall have State Permanent Primary, or State Permanent, State Permanent High School or State Permanent Elementary certificates. One member of the said Board shall have had at least three years' experience in teaching in the schools of Texas below the High school within five years immediately preceding the appointment, and the Commission shall represent as nearly as possible every phase of public school work. No two appointed members of the said Commission shall live in the same county. In the event any member, after appointment, shall move his place of abode into the same county as another member he shall thereby automatically vacate his position as a member of the said Commission.

The term of office of the appointive members shall extend to the end of the term of the officer making the appointment, unless sooner terminated by operation of the provisions of this law.

No person who has acted as a textbook agent for any author or textbook publishing houses, or has been an author or an associate author or directly or indirectly interested in the publication of any book, or who owns stock in any publishing house, or in any school book depository, shall be eligible to appointment on the Textbook Commission. Any vacancy occurring on said Commission from any cause shall be filled by appointment of the Governor as in the original appointments.

Appointments shall be made by the Governor during the regular session of the Legislature, and immediately thereafter the members shall be called together in special session to adopt such rules, regulations and by-laws to govern the action of the Commission as it may deem proper, not inconsistent with the provisions of this law. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 1.]

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b-5, ante.

Art. 2840. Affidavit.—Each member af the Commission [1] before entering upon his duties as a member of the Commission, shall make out and file with the Secretary of State an affidavit that he is not and has not been directly or indirectly interested in or connected with or employed by any publishing house, person, firm or corporation submitting any books for adoption, or in any books offered for adoption, or in any books adopted, nor is he connected in business with any person or agent representing such house, person, firm or corporation to whom any contract may be awarded by said Commission during the term and duration of said contract, nor does he own stock in any school book depository, and that he is not connected in any business with any person or agent representing such house, firm or corporation, and that he will not become so interested and will not accept any position as agent or representative of any person, firm or corporation who may submit any books for adoption or to whom any contract may be awarded by said Commission during the term and duration of said contract, and that he is possessed of the qualifications required in Article 2839 as amended, and is under no disqualification mentioned therein. In the event any member of said Commission becomes interested in any publishing company, as an agent, representative, or author, such publishing company shall be barred from submitting bids until after the contracts made by the Commission, of which said agent, representative, or author was a member, have expired. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 2.]

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b-5.

Art. 2841. Chairman—secretary—annual meeting.—The Governor shall be chairman of the commission [1] and the State Superintendent of Public Instruction shall be its secretary, who shall keep a complete record of all proceedings of the Commission. The commission shall meet annually on the second Monday in October and at such other times and places as may be designated by the chairman for the purpose of considering and extending contracts, the making of new adoptions, and the keeping and operation of a complete system of uniform textbooks for the public free schools of this State in accordance with the provisions of this Act. The commission shall keep a minute book for its proceedings and on every action of the commission an "aye" and "no" vote of the members thereof shall be required, and such minute book shall be kept in the office of the Superintendent of Public Instruction, and shall be open to public inspection, and no adopted text shall be superseded or substituted or new text adopted except by the affirmative vote of two-thirds of the members of the commission.

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b-5.

Art. 2842. Continuing or discontinuing textbooks.—It shall be the duty of the State Board of Education, which now performs the duties formerly devolving by law upon the State Textbook Commission, to meet annually on the second Monday in November, and at such other times as it may be called together by the Chairman, for the purpose of considering the advisability of continuing or discontinuing, at the expiration of each current contract, any or all of the State adopted textbooks in use in the public schools of Texas, and of making such adoptions as are provided for in Articles 2843, 2844, and 2844a, Revised Civil Statutes, 1925, as amended. Before making any change in the adopted series, however, the State Board of Education shall, upon thorough investigation, satisfy itself that a change is necessary for the best interest of the school children and that such change is consistent with financial economy. Provided, that unless new texts better suited to the requirements of the schools and at a price and quality satisfactory to the Board are offered to supplant existing texts, then the Board shall renew the existing contracts for such a period as may be deemed advisable not to exceed a period of six (6) years. Provided, that whenever the contractor supplying any book agrees to renew the contract on the same terms for a period of not less than two (2) years or more than six (6), the members of the State Board of Education shall give preference to the offer of the company holding the contract if they shall thereby secure as good or better books at a lower price than by making a different contract; and it shall always be lawful for the Board to renew a contract on such terms as

in its judgment may be for the best interests of the State. Provided further that before the Board shall determine to displace any book upon which the contract is expiring, it shall, before making a new contract for a new text, ascertain through the office of the State Superintendent of Public Instruction the number of usable books of the kind on which the contract has, or is about to expire, there are on hand, and also the estimated number of such books that would be required to supply the needs of the Schools of the State using said books for the first, second, and third years immediately succeeding the expiration of the contract on such books. The Board shall then secure from the publisher of such book a bid or offer for the furnishing of such text books to meet the actual necessities of the schools of the State during the said first, second and/or third year period, allowing the State, however, a margin of twenty-five (25) per cent over, or twenty-five (25) per cent under, the estimated number to be required. If, upon consideration of the cost of the books required to supply such needs for such a period, it appears to the Board that it will be economical to do so, it may make a contract with such publishers to furnish such books during said first, second and/or third year period with a view to using up the entire supply of such books on hand instead of wasting the same at the expiration of the original contract. At the expiration of said period, the Board shall then make a contract for a textbook on the subject. No contract shall ever be made, binding the State to buy a specific number or a specific quantity of textbooks, but all contracts shall be for such books as the State may need and the purpose of furnishing an estimated number of the books needed, as above provided, shall have as its purpose to give the textbook publishers only an approximation as to the possible quantity of books which the State may need. The contracts for the total number of different texts adopted shall be so arranged, in adoptions taking place after the passage of this Act, that contracts on not more than one-sixth of the total number of different basal subjects shall expire in any one year, or shall be changed in any one year. The series of copy books and series of drawing books shall each be considered as one book. If no text or texts on any prescribed subject or subjects are submitted by any particular publisher or publishers that meet the requirements of the schools, as may be determined by the Board, then it shall be the duty of the Chairman of the Board to instruct the secretary of the Board to investigate the book markets for the purpose of securing bids with a view of providing at most reasonable price or prices possible, the best available texts on any and all subjects that are to be adopted by the Board for the schools of Texas. At the time the Superintendent of Public Instruction undertakes to secure a statement of the number of usable books on hand, as provided above, he shall also secure from the superintendents of independent school districts and county superintendents an expression as to whether or not they believe the existing text should be re-adopted or a new text adopted, and such information shall be for the use of the State Board of Education, but the Board shall not be bound to re-adopt the old text or to adopt a new text by reason of such expression of preference by such superintendents. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 3; Acts 1945, 49th Leg., p. 306, ch. 222, § 1.]

Art. 2843. Uniform system.—The Textbook Commission [1] authorized by this Act shall have authority to select and adopt a uniform system of textbooks to be used in the public free schools of Texas, and the books so selected and adopted shall be printed in the English language, and shall include and be limited to textbooks on the following subjects: spelling, reading, English language and grammar, geography, arithmetic, physiology-hygiene, civil government, vocal music, history of the United States (in which the construction placed on the Federal Constitution by the Fathers of the Confederacy shall be fairly represented), history of Texas, agriculture, a system of writing books, a system of drawing books, and may also, if deemed necessary, adopt a geography of Texas and a civil Government of Texas; provided that none of said books shall contain anything of a partisan or sectarian character, and that nothing in this Act shall be construed to prevent the teaching of German, Bohemian, Spanish, French, Latin, or Greek in any of the public schools.

Said Textbook Commission shall also adopt a multiple list of books for use in the high schools of the State, said multiple list including not fewer than three (3) nor more than five (5) textbooks on the following subjects: algebra, plane geometry, solid geometry, general science, biology, physics, chemistry, a one-year general history, ancient history, modern history, American history, Latin, Spanish, physical geography, economics, vocal music, driver education, commercial law, trigonometry, public speaking, English composition, history of American Literature, history of English literature, physiology, agriculture, and civil government and for each high school branch of study and one or several of the textbooks of said multiple list adopted for that subject may be selected; provided, however, that the several textbooks do not exceed the allowable number equivalent to one textbook for and used in any high school as the textbook or in such a branch in that high school, but when such book or books is or are so chosen by local authorities from the multiple list adopted such book or books shall be continued in that high school for the entire five (5) years of the adoption period. Provided, however, that the multiple list herein provided for shall apply to all high schools classed by the Department of Education as high schools of the first class. For use in all other high schools a uniform system of textbooks on each subject mentioned above shall be selected by the commission; provided, that in any city or independent school district having more than one high school of the first class said city or independent school district shall adopt from said multiple list for use in each of said high schools of the same books and shall use said books so adopted for a period of not less than five (5) years.

Specific rules as to the manner of the selection of books by the high school shall be made by the State Textbook Commission.

The Commission, as herein provided for, shall adopt textbooks in accordance with the provisions of this Act for every public free school in this State and no public free school in this State shall use any textbook unless same has been previously adopted and approved by this Commission; and the Commission shall prescribe rules under which all textbooks adopted and approved shall be introduced or used by or in the public schools of the State.

In the event as many as three (3) suitable texts are not offered for adoption on any one subject, the Commission may select fewer than three (3) texts.

Existing contracts shall not be affected by any adoptions made under this Act. [As amended Acts 1941, 47th Leg., p. 1388, ch. 627, § 1; Acts 1947, 50th Leg., p. 1036, ch. 448, § 1.]

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b—5.

Amendment by Acts 1947, 50th Leg., p. 1038, ch. 449, § 1, see art. 2843, post.

Section 2 of the Act of 1947 repealed conflicting laws. Section 3 provided that in case of a holding of partial invalidity, the other parts of the Act should have full force and effect.

Art. 2843. Uniform system.—The Textbook Commission (State Board of Education) authorized by

this Act shall have authority to select and adopt a uniform system of textbooks to be used in the public free schools of Texas, and the books so selected and adopted shall be printed in the English language, and shall include and be limited to textbooks on the following subjects: spelling, reading, English language and grammar, geography, arithmetic, physiology-hygiene, civil government, driver education and safety, vocal music, history of the United States (in which the construction placed on the Federal Constitution by the fathers of the Confederacy shall be fairly represented), history of Texas, agriculture, a system of writing books, a system of drawing books, and may also, if deemed necessary, adopt a geography of Texas and a civil government of Texas; provided that none of said books shall contain anything of a partisan or sectarian character, and that nothing in this Act shall be construed to prevent the teaching of German, Bohemian, Spanish, French, Latin, or Greek in any of the public schools.

Said Textbook Commission (State Board of Education) shall also adopt a multiple list of books for use in the high schools of the state, said multiple list including not fewer than three (3) nor more than five (5) textbooks on the following subjects: algebra, plane geometry, solid geometry, general science, biology, physics, chemistry, a one-year general history, ancient history, modern history, American history, Latin, Spanish, physical geography, driver education and safety, vocal music, English composition, history of American literature, history of English literature, physiology, agriculture, and civil government, and for each high school branch of study any one or several of the textbooks of said multiple list adopted for that subject may be selected; providing that the State Board of Education is authorized and shall have the authority by an affirmative vote of at least six (6) of its members, called for the purpose of considering adoptions, to adopt for use of the public high schools one (1) or more not to exceed five (5) texts for each high school grade wherein the subject is taught, texts for any subject accredited by the State Accrediting Committee, which subject is being taught to as many as ten thousand (10,000) Texas public high school children; provided, however, that the several textbooks selected may not be supplied to local systems in an amount greater than the equivalent of one textbook for each pupil enrolled in such a branch of study in each school system, but when such book or books is or are so chosen by local authorities from the multiple list adopted, such book or books shall be continued in that high school for the entire adoption period, or a minimum of five (5) years. Provided, however, that the multiple list herein provided for shall apply to all high schools classed by the Department of Education as high schools of the first class. For use in all other high schools a uniform system of textbooks on each subject mentioned above shall be selected by the Commission; provided, that in any city or independent school district having more than one high school of the first class, said city or independent school district shall adopt from said multiple list for use in each of said high schools the same books, and shall use said books so adopted for a period of not less than five (5) years.

Textbooks for subjects for which there is not sufficient demand from schools, based upon enrollments and requisitions, may be dropped from the list of adoptions upon an affirmative vote of six (6) members of the State Board of Education.

Specific rules as to the manner of the selection of books by the high school shall be made by the State Textbook Commission (State Board of Education).

The Commission (State Board of Education), as herein provided for, shall adopt textbooks in accordance with the provisions of this Act for every public free school in this state. The Commission shall prescribe rules under which all textbooks adopted and approved shall be introduced or used by or in the public schools of the state.

In the event as many as three (3) suitable texts are not offered for adoption on any one subject, the Commission may select fewer than three (3) texts.

Existing contracts shall not be affected by any adoptions made under this Act. [As amended Acts 1941, 47th Leg., p. 1388, ch. 627, § 1; Acts 1947, 50th Leg., p. 1038, ch. 449, § 1.]

Amendment by Acts 1947, 50th Leg., p. 1036, ch. 448, § 1, see art. 2843, ante.

Section 2 of the Act of 1947 repealed conflicting laws. Section 3 provided that in case of a holding of partial invalidity, all other parts of the Act should have full force and effect.

Art. 2843a. Text books on reading of music.—Resolved by the Senate of the State of Texas, the House of Representatives concurring, that it was and is now the intention of the Legislature to include among the text books authorized to be selected and adopted by the State Board of Education, text books on the reading of music and that the reading of music is included in the subjects authorized to be taught in the public free schools of Texas; and, be it further

Resolved that such is the legislative construction to be placed on the statutes governing the selection of text books in the public free schools of Texas. [Acts 1936, 44th Leg., 3rd C.S., p. 2114, S.C.R. # 2.]

Art. 2844. Supplementary readers.—The Textbook Commission [1] shall have authority to adopt supplementary readers for the first seven grades and such other supplementary books for use in said elementary grades as it may deem advisable. Said other supplementary books may be arranged in a series by said Commission, one book in each series for each elementary grade, and contracts for not more than four series of supplementary books and readers, inclusive, as provided for in this Section, may be in force at the same time; provided, that such series of these supplementary books shall only be used to supplement the basal book on reading and in no case shall supplemental books be adopted for other subjects. Each bidder presenting such book or books shall state at what price it or they are offered; provided, however, that no supplementary books shall be purchased and used to the exclusion of the books prescribed under the provisions of Article 2843, but full use must be made in good faith of the books selected by said Commission under Article 2843 before any of the supplementary books provided for in this Article shall be purchased and used; and provided further that the Textbook Commission shall adopt supplementary readers for the first seven grades for a period of not less than three (3) years nor more than five (5) years and all such adopted supplementary readers shall be subject to readoption after such period; and provided further, that the Textbook Commission shall not authorize the adoption of a new and different series of supplementary readers until in its opinion an imperative necessity exists making such change necessary. [As amended Acts 1939, 46th Leg., p. 279.]

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b—5.

Art. 2844a. German, Czech and French language books—Commercial arithmetic, bookkeeping and typewriting books—Band and orchestra music books—Books containing charters and documents of American Democracy.—Section 1. The State Board of Education shall, by a vote of at least six (6) of its members, adopt a multiple list of not fewer than three (3) nor more than five (5) textbooks for use in the public high schools in teaching the German, Czech, and French languages; and shall also by a vote of at least six (6) of its members, adopt, for use in the public high schools, a multiple list of textbooks printed in the English language, of not few-

er than three (3) nor more than five (5) in each of the subjects of commercial arithmetic, bookkeeping, and typewriting. And said Board shall also, by a vote of at least six (6) of its members, adopt for use in the public schools a multiple list of textbooks printed in the English language of not more than five (5) in the subject of Band and Orchestra Music. And said Board shall, by a vote of at least six (6) of its members, adopt for use in the public high schools one (1) or more, not to exceed five (5). books containing the basic charters and documents of American Democracy, both State and Federal, and a discussion of them; said book or books to be used by such schools and in such grades as collateral or supplementary reading in the courses in History and Government and/or in the courses in Political and Social Sciences. [As amended Acts 1939, 46th Leg., p. 277, § 1.]

Sec. 2. The State Textbook Commission [1] is hereby empowered to adopt single basal textbooks of a type suitable for junior high schools, provided seven-ninths of the Commission approve the policy; the adoption of the text to be made by six (6) votes as in other adoptions and provided further, that such junior high school textbooks shall be furnished free only to such school systems as maintain junior high school organizations, as certified by the proper school authorities to the State Board of Education. [Acts 1929, 41st Leg., p. 451, ch. 210; Acts 1935, 44th Leg., p. 381, ch. 142, § 1; Acts 1937, 45th Leg., p. 329, ch. 167, § 1.]

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Section 2 of the amendatory acts of 1937 and 1939 repealed all conflicting laws.

Art. 2845. May change textbooks.—The Textbook Commission [1] may at any time require such changes, amendments or additions to the book or books adopted as in their judgment will be for the best interest of the public schools of this State; and contracts for books under the provisions of this Act shall be made upon the distinct condition that the commission provided for in this Act may, during the time for which the books are adopted under this Act, upon giving one year's previous notice to the publishers thereof, order such changes, amendments and additions to the book or books so adopted as such Textbook Commission may determine; provided, also that if in the judgment of the commission such changes or revisions make it impractical for the revised books to be used in the same class with the old books, the publishers will be required to give the same exchange terms as were given when the books were first adopted, and such exchange period shall extend two years from the time the revised books are first put into use in the schools; provided, that nothing in this section shall be construed so as to give said commission power or authority to abandon any book or books originally contracted for.

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2846. Notice of meeting to be given.—When texts are to be selected and adopted under the provisions of this law, or where a contract for a text then in use is about to expire, the Chairman of the Commission [1] shall, two months in advance of the meeting of the Commission, at which time, the adoption may be made, give public notice by having printed in the public press a notice to the effect that such meeting will be held and that adoptions will be made, and by sending written notices to all persons, firms or corporations in whose behalf such notices shall have been requested. Such notices shall state the time and place of the meeting of the Commission, the subjects on which textbooks may be adopted, and the last date on which sample copies of books offered, prepared as provided in the succeeding paragraph of this Article shall be deposited, the amount of the cash deposit required, the time allowed for signing contract and filing bond after award is made; and that formal proposals will be received on the date of the meeting.

Deposits of Samples.—At least thirty days prior to the date of the meeting of the said Commission, every person, firm or corporation desiring to submit bids shall file with the State Superintendent of Public Instruction nine copies of each book on which a bid will be submitted, in each of which copies there shall be printed or stamped a statement of the price at which such book and special editions thereof are sold in other places under State or county adoptions, and the minimum quantities in which it will be sold at such prices, and there shall also be printed or stamped in such books a statement of the publisher's catalogue price of the same and special editions thereof, together with trade discounts and the conditions under which, and the purchasers to whom, such discounts are allowed, and the place of delivery. There shall also be printed or stamped in each book the price at which it is offered to Texas, f. o. b. the Publisher's Texas depository, with and without exchange. There shall also be printed or stamped in each book, the minimum wholesale price at which such book, and special editions thereof, are sold f. o. b. the shipping point of the publisher and the name of the shipping point shall also be stated.

Bids and Cash Deposits.—Bids, when filed by the publishers, shall state specifically at what price each book will be furnished, and such bid shall be accompanied by specimen copies of each book offered, and it shall be required that each bidder deposit with the Treasurer of the State of Texas such sum of money as the Commission may require, to be not less than five hundred ($500.00) dollars, nor more than twenty-five hundred ($2,500.00) dollars, according to the value of the books each bidder may propose to supply; and each bidder shall file with the Secretary of the Commission on the day that the Commission meets or within the last five (5) days just preceding the date on which such Commission meets, an affidavit executed by the individual bidder or a member of the firm or the president and secretary of the corporation bidding, which shall set forth all of the facts with reference to the eligibility of the bidder to make a proposal. Such deposit shall be forfeited to the State absolutely if such bidder so depositing shall fail or refuse to make and execute the contract and the bond required within such time as the Commission may require, which time shall be specified in the notice advertised. Such deposits shall be returned to the unsuccessful bidders on certificate of the State Superintendent that no contract has been awarded on the bid for which the sum was deposited. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 4.]

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2847. Filing of bids.—All bids submitted to the Textbook Commission [1] for the furnishing of textbooks shall be deposited with the Chairman of the Commission, to be delivered by him to the Commission in session for the purpose of considering the same. Such bid shall state the price at which the books will be furnished to the State of Texas, f. o. b. the bidder's Texas depository, which price must be in accord with that printed or stamped in the sample copies of the books previously deposited, and shall also state the terms and conditions upon which said books shall be furnished, which terms and conditions shall not be in conflict with the other provisions of this Chapter.

Each bidder shall file with the Secretary of the Commission on the day that the Commission meets an affidavit executed by the individual bidder, or a member of the firm or the president and secretary of the corporation bidding, which shall state that all the taxes levied against the bidder under and by virtue of Chapter 148, Acts of the Twenty-ninth Legislature, and all

other Acts amendatory thereof, have been paid and shall be accompanied by official certificates in support of such statement, where such certificate can be secured; such affidavit shall also state the name or names of all the people employed to act for such bidder, directly or indirectly, in any way whatsoever in securing the contract or in the preparation of its bids, and supporting documents, with the addresses of such individuals and the capacity in which they serve; and said affidavit shall further state the names of any and all other persons who may have at any time during the preceding year received, either directly or indirectly any money or other thing of value from said company, by way of emolument for services rendered in this State, either directly or indirectly, in securing or attempting to secure, contracts for the sale of books of said publisher, or in promoting the sale of such books to the State of Texas; and that no member of the Commission is in any way interested, directly or indirectly, in such individual, firm or corporation bidding; and in the event any publisher, after filing said affidavit, shall employ an attorney or other representative to assist in securing the award of a contract by the Commission, he shall disclose such employment to the Commission by filing a supplementary affidavit before any contract in which he is interested shall be awarded.

No publisher who cannot and does not comply with these provisions shall be eligible to bid.

No bid shall be considered from, and no contracts shall be made with any publisher not eligible to bid under the provisions of this law, and any contracts made with an ineligible bidder shall be void. The statements made in all affidavits filed by the publisher with the bid shall be considered warranties, and if found to be untrue, shall subject the contract to forfeiture and authorize a recovery on the bond to the full amount thereof, as liquidated damages, unless it be shown that such mis-statement or non-disclosure of fact was unintentional or an oversight on the part of said publisher. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 5.]

1 State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2848. Bids opened.—It shall be the duty of the commission [1] to meet at the time and place mentioned in the notice and advertisement, and it shall then and there open and examine the sealed proposals received; and it shall be the duty of the commission to make a full and complete investigation of all the books and bids accompanying the same. The textbooks shall be selected and adopted after a careful examination and consideration of all books presented, and the books selected and adopted shall be those which in the opinion of the commission are most acceptable for use in the schools,—quality, mechanical construction, paper, print price, authorship, literary merit and other relevant matters being given such weight in making its decision as the commission may deem advisable. The commission shall proceed without delay to adopt for use in the public schools of this State textbooks on all branches hereinbefore mentioned; provided, that if the bids submitted to said commission should not be satisfactory to said commission, they may postpone the selection of such books or a part thereof to such time as they may select, and after the same is readvertised, new bids may be received and acted on by such commission as provided for in this Act; provided, that no textbook shall be adopted until it has been read carefully and examined by at least a majority of the commission.

1 State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2849. Bids in two forms.—All publishers submitting bids under the provisions of this law shall submit their bids in two forms, one in which is stated the allowance made for the books then in use, and the property of the State when offered in exchange for the new books adopted under this law; the other without stating the allowance for said books, which books would remain the property of the State; provided that said allowance and condition for exchange if agreed to and accepted by the State shall be enforced only during the two scholastic years following a change in books; both prices under these two forms of bids shall be printed or stamped upon the sample copies deposited under the provisions hereof. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 6.]

Art. 2850. Changes may be ordered.—Every contract entered into with a publisher for the adoption of any book or books shall contain a provision that the commission [1] herein provided for may, during the life of the contract, upon giving one year's previous notice to the publishers of such book or books, order such changes, amendments and additions to the book or books so selected and adopted as in the discretion of said commission shall keep them up to date and abreast of the times; provided that such revisions shall not be made oftener than once in two years.

1 State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2851. Contractors bond.—The bidder to whom any contract may have been awarded shall execute a good and sufficient bond payable to the State of Texas in the sum of not less than ten thousand ($10,000.00) dollars for each basal book adopted under the provisions of this Act; and a good and sufficient bond payable to the State of Texas in the sum of not less than three thousand ($3,000.00) dollars for each supplementary textbook adopted under the provisions of this Act; provided further, that the commission [1] is hereby given authority to require bond in such further and additional sums as it may deem advisable, said bond to be approved by the commission; such bond to be conditioned that the contractor shall faithfully perform all the conditions of the contract; the contract and bond shall be prepared by the Attorney General, and be payable in Travis County, Texas, and shall be deposited in the office of the Secretary of State. For the purpose of securing satisfactory bond a series of pamphlet writing books shall be considered as one basal book, and a series of pamphlet drawing books shall be considered as one basal book. The bond shall not be exhausted by a single recovery thereon, but may be sued upon from time to time until the full amount thereof is recovered; and the Texas State Textbook Commission may, at any time, on twenty days' notice, require a new bond to be given, and in the event the contractor shall fail to furnish such new bond the contract of such contractor may, at the option of the Texas State Textbook Commission, be forfeited.

1 State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2852. Books to be bought at minimum prices—The maximum price which the Texas State Textbook Commission [1] shall contract to pay, f. o. b. the Texas depository of the publisher, for any books to be used in the public schools of this State shall not exceed the minimum price at which the publisher sells such book in wholesale quantities, f. o. b. the publisher's publishing house, after all discounts have been deducted. Any contract made for the purchase of books for use in the public schools of this State at a higher price than the maximum price fixed by the preceding sentence of this article shall be void. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 7.]

1 State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2853. Anti-trust provision.—No book or books shall be purchased from any person, firm or corporation who is a member of or connected with any trust; and in the event it be established that this provision has been violated, such violation shall be held to be fraud and collusion as contemplated under Article 2852 of this Act, and the Attorney General shall bring suit upon the bond of such person, firm or corporation, and upon proof of such violation shall recover the liquidated damages as provided for in said Article 2852 hereof, as defined by the laws of this State, and a sworn affidavit that said person or corporation is not connected either directly or indirectly with a trust shall be required, and said affidavit shall be filed with said commission.[1] Before proceeding to adopt books as provided under the provision of this Act, the commission shall require all persons, firms and corporations bidding for a contract to file with the commission a sworn statement on or before the date selected by the commission for receiving sealed bids, stating whether said person, firm or corporation is interested, or whether said person, firm or any member thereof, or any individual stockholder of such corporation is interested, or whether said person, firm, or any member thereof, or any individual stockholder of such corporation is interested or acting as a director, trustee or stockholder, either directly or indirectly or through a third party, or in any manner whatsoever in any other textbook publishing house, and this statement shall be sworn to by such person, a member of such firm or the president, secretary, and each of the directors of said corporation. All firms or persons bidding for a contract or supplying books shall present a sworn statement signed by all its members showing the names of all members of said firm, and whether any other person, firm or corporation has any financial interest in said firm, and also whether any individual member or members of said firm have any financial interest in any other textbook publishing firm or corporation or textbook publishers. The commission shall require all corporations, or persons, or firms to file with the Governor attested copies of all written agreements entered into and existing between them and others engaged in the textbook publishing business, and if in the opinion of the commission such written agreements or other facts adduced are violations of the anti-trust law of the State of Texas, or opposed to public policy, the bids of such houses shall not be considered by the commission.

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2854. Contract approved.—Each contract shall be duly signed by the publishing house or its authorized officers and agents; and if it is found to be in accordance with all the provisions of this Act, and if the bond herein required is presented and duly approved, the commission [1] shall approve said contract and order it to be signed on behalf of the State by the Governor in his capacity as chairman. All contracts shall be made in duplicate, one copy to remain in custody of the Secretary of State and be copied in full in the minutes of the meeting of the commission in a well bound book, and the other copy to be delivered to the company or its agent.

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2855. Deposit to be returned.—When any person has been awarded a contract and he has filed his bond and contract with the commission and the same has been approved, the commission shall make an order on the Treasurer of the State reciting such fact, and thereupon the Treasurer shall return the deposit of such bidder to him; but if any successful bidder shall fail to make and execute the contract and bond as hereinbefore provided, the Treasurer shall place the deposit of such bidder in the State Treasury to the credit of the available school fund, and the commission shall readvertise for other bids to supply such books which said bidder may have failed to supply. All unsuccessful bidders shall have their deposit returned to them by the State Treasurer as soon as the commission has decided not to accept their bids.

Art. 2856. Commission to issue proclamation.—As soon as the State shall have entered into the contract for the furnishing of books for the public schools of this State under the provision of this Act, it shall be the duty of the commission [1] to issue its proclamation of such facts to the people of the State; and the State Superintendent of Public Instruction shall carefully label and file away the copies of the books adopted as furnished for examination to the board; and such copies of such books shall be securely kept and the standard of quality and mechanical excellence of the book or books so furnished under this Act shall be maintained in said books so furnished under contract authorized by this Act during the continuance of the contract.

[1] State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2857. List to be furnished.—As soon as practical after the adoption of the textbooks provided for in this Act, the Superintendent of Public Instruction shall address a circular letter to the county superintendent and to the president of the school boards in independent school districts, which circular letter shall contain a list of all the books with their respective prices, together with such other information as he may deem advisable.

Art. 2858. Depository.—All parties with whom the contracts have been made shall establish and maintain in some city in the State a depository where a stock of their goods to supply all immediate demands shall be kept; and contractors not maintaining their own individual or separate State agencies or depositories shall maintain a joint agency or depository to be located at some suitable and convenient distributing point. Any person, dealer or school board in any county in the State may order from the central depository; provided that the price of books so ordered shall be paid in advance. Upon the failure of any contractor to furnish the books as provided in the contract and in this Act, the county judge in the county wherein such books have not been furnished shall report the fact to the Attorney General, and he shall bring suit on account of such failure in the name of the State of Texas in the district court of Travis County, and shall recover on the bond given by such contractor for the full value of the books not furnished as required, and in addition thereto the sum of one hundred dollars, and each day of failure to furnish the books shall constitute a separate offense, and the amounts so recovered shall be placed to the credit of the available school fund of the State. Any unorganized county shall be furnished from the same agency as the county to which said unorganized county is attached for judicial purposes in the same manner as such organized county.

Art. 2859. Price to be printed.—The contract price of each book shall be plainly printed on the inside of the back of each book, together with the following notice, "The price marked hereon is fixed by the State, and any deviation therefrom should be reported to the State Superintendent of Public Instruction;" provided this notice may be waived by the State Board of Education the last year of the contract.

Art. 2860. Textbooks exclusive.—The books adopted by the commission [1] under the provisions of this law shall be introduced and used as textbooks to the exclusion of all others in public free schools of this State for such period of years as may be deter-

mined by the commission, not to exceed six years in any case; provided the right to the exclusive use of new books during the first three years of the term of any contract shall be waived by the contracting publishers to provide for the gradual introduction of new books; and provided further that nothing in this Act shall be construed to prevent or prohibit the trustees of school districts from purchasing textbooks with the local maintenance funds and furnishing free textbooks to the students in the event that no contracts are made by the State. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 8.]

1 State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2861. Appearing before commission.—No person, not the author or publisher or the bona fide permanent and regular employé of such publisher, shall appear before such Textbook Commission [1] in behalf of any book submitted to the Commission for adoption, or seek to influence the members thereof.

1 State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

2. DISTRIBUTION OF BOOKS

Art. 2862. Additional supplementary books.—When the supplementary books other than those selected by the Textbook Commission [1] are used, they shall be furnished at a price fixed by the trustees of the school in which they are used and approved by the State Superintendent of Public Instruction, which price in no case shall be greater than the publishers list price; and if any teacher or trustee shall knowingly and directly or indirectly receive from any pupil a greater price therefor than the price fixed, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty dollars nor more than one hundred dollars.

1 State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

Art. 2863. Cancellation for fraud.—The State may, in a suit to be instituted by the Attorney General, cancel any contract entered into by virtue of the provisions of this Act for fraud, or collusion, or material breach of contract upon the part of either party of the contract, or any member of the commission or any person, firm or corporation or their agents making said bond or contract; and for the cancellation of any such contract the Attorney General is hereby authorized to bring suit in the proper court of Travis County, and in case of the cancellation of any contract as provided for, the damages are fixed at not less than the amount of said bond, to be recovered as liquidated damages in the same suit cancelling said contract; and on account of the difficulty of determining the damages that might accrue by reason of such fraud, collusion or material breach, and cancellation of such contract, the full amount of the bond given by the contractor shall be considered as liquidated damages to be recovered out of said bond by the State at the suit of the Attorney General, and every contract that shall contain a clause to this effect.

Art. 2864. Agent designated.—Any person, firm or corporation with whom a contract has been entered into under the provisions of this Act shall designate the Secretary of the State of Texas as its or their agent, upon whom citation and all other writs and processes may be served in the event any suit shall be brought against such person, firm or corporation.

Art. 2865. Compensation of teachers.—The teachers selected upon said Commission [1] under the provisions of this Act shall receive as compensation for their services the sum of five dollars per day each while on active duty and actual traveling expenses in going to and from the place of meeting, and in attending to the business of the Commission, to be [2] paid upon warrants drawn by the Comptroller under the direction and approval of the chairman of the Commission. The Superintendent of Public Instruction is hereby fully authorized to employ one stenographer to assist in the clerical work of the State Textbook Commission, the pay of said stenographer to be paid out of the appropriation made for expenses of the Textbook Commission on account approved by the State Superintendent of Public Instruction.

1 State Text Book Commission abolished and duties transferred to State Board of Education, see article 2675b —5.

2 So in enrolled bill. R.S.1925 omits word "be".

Art. 2866. Without cost to pupils.—The State Board of Education is hereby authorized and empowered and it is made its duty to purchase books from the contractors of textbooks used in public free schools of this State and to distribute the same without other cost to the pupils attending such schools within this State in the manner and upon the conditions hereinafter set out.

Art. 2867. Available fund.—In order to carry out the provisions of this Act the State Board of Education shall annually at a meeting designated by them each year, set apart out of the available free school fund of the State an amount sufficient to purchase and distribute the necessary school books for the use of the pupils of this State for the scholastic year ensuing.

Art. 2868. Textbook fund.—The State textbook fund of this State shall consist of the fund set aside by the State Board of Education from the available school fund as is provided for in this Act, together with all funds accruing from the sale of disused books and all moneys derived from the purchase of books from boards of school trustees by private individuals, by schools, or from any other source.

Art. 2869. Superintendent's report.—The State Board of Education shall require from the State Superintendent on July first of each year a report as to the funds necessary for the purchase and distribution of [1] other necessary expenses of school books for the regular school session of the following year, and said Board of Education shall have the power to set apart from the available school fund the estimated amount with 25 per cent additional, this additional sum to be used to meet emergencies or necessities caused by unusual increase in scholastic attendance or by unusual and unforeseen expenses and school conditions. Funds transferred in the textbook fund shall remain permanently in this fund until expended, and shall not lapse to the State at the close of the fiscal year. The State Superintendent of Public Instruction shall be required to include in the aforementioned report to the State Board of Education a statement as to the amount of this fund which is unexpended, and said amount shall be considered by the board in determining the necessary expenditures for textbooks for the following year.

1 Probably should read "or."

Art. 2870. Superintendent — manager. — The purchase and distribution of free textbooks for the State shall be under the management of the State Superintendent of Public Instruction, subject to the approval of the State Board of Education.

Art. 2871. Depositories.—All parties with whom book contracts have been made shall establish and maintain in some city in the State a depository where a stock of their goods to supply all immediate demands shall be kept; all contractors not maintaining their own individual or separate state agencies or depositories shall maintain a joint agency or depository to be located at some suitable and convenient distributing point, at which general depository each contractor

joining in said agency shall keep on hand a sufficient stock of books to supply the schools of the State.

Books purchased in accordance with the terms of this Act shall be delivered to the school districts f. o. b. the Texas depository of the publisher and shall be shipped by freight, parcel post or express, as may be set out in the requisition therefor. In case it is necessary for the publisher or the depository to prepay any shipping charges, same shall be repaid by the State, in addition to the bill for books, and in the same manner that the books are paid for; provided that the State Department of Education shall be given authority to direct the route by which said books shall be shipped.

Any person, school not controlled by the State, or dealer in any county in the State may order books from the said State agency, or depository and the books so ordered shall be furnished at the same rate and discount as are granted to the State; provided, that in such case the State depository or agency may require that the price of books so ordered shall be paid in advance. Upon failure of any contractor to furnish the books as provided in the contract and in this Act, the county judge in the county wherein such books have not been furnished, shall report the fact to the Attorney General, and he shall bring suit on account of such failure in the name of the State of Texas in the district court of Travis County, and shall recover on the bond given by such contractor for the full value of the books not furnished as required, and in addition thereto the sum of one hundred dollars, and each day of failure to furnish the books shall constitute a separate offense, and the amount so recovered shall be placed to the credit of the State Textbook Fund. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 9.]

Art. 2872. Custodians.—The school trustees of each district shall be designated as the legal custodians of the books, and shall have the power to make such arrangements for the distribution of books to the pupils as they may deem most effective and economical; provided, that no district shall have the power to make any regulation in regard to textbooks which is at variance with the provisions of this Act, or with the regulation of the State made by the State Superintendent of Public Instruction and approved by the State Board of Education.

Art. 2873. Property of the State.—Books shall remain the property of the State, and after purchase through requisition according to the provisions of this Act, shall remain in the charge of the district school trustees as the legal custodians of the books. The district school trustees shall have the power to delegate to their employees such power as to requisitions and distributions of books and the management of books as in their judgment may be best, provided that such plans shall not be at variance with the provisions of this law, or with the State rules for free textbooks formulated by the State Superintendent of Public Instruction and approved by the State Board of Education.

Art. 2874. Trustees bond.—One or more members or employees of each district board of trustees shall enter into a bond in the sum of fifty per cent (50%) of the value of the books consigned to them by the State, payable in Austin, Texas, to the Governor of the State of Texas, or his successors in office, said bond to be approved by the county judge of the county in which the school is situated, and by the State Superintendent of Public Instruction and deposited with the State Superintendent, conditioned on the faithful discharge of his duties under his employment and under this Act, and that he or they will faithfully account for all books coming into his or their possession, and for all moneys received from the sale thereof. All moneys accruing from the forfeiture of the bonds shall be deposited by the Governor to the credit of the State Text Book Fund. [As amended Acts 1945, 49th Leg., p. 549, ch. 334, § 1.]

Section 2 of the Act of 1945 repealed all conflicting laws.

Art. 2875. Requisitions.—Requisitions for books shall be made in the following manner: On the first day of April each teacher shall make report to the principal of the maximum attendance of his or her grade, or school, if not a graded school. If the school has only one teacher, said report as to the maximum attendance of pupils of each grade of work shall be made by the teacher to the board of school trustees and to the county superintendent. Reports as to the maximum attendance for the school shall be made not more than one week subsequent to the first school day of April by the principal to the city or town superintendent or by the principal to the county superintendent if the school is not situated in a city or town. The city or town superintendent of schools shall compile reports of principals and make report to the State Superintendent of Public Instruction. The county superintendent shall compile reports of the rural schools in his county and make report to the State Superintendent of Public Instruction. Books needed by the rural schools shall be requisitioned and distributed entirely through the office of the county superintendent. The duties of the county superintendent with reference to the care and distribution of textbooks shall be subject to the approval of the county board of trustees and the State Superintendent. Reports as to the maximum attendance of each school under their direction shall be made to the State Superintendent of Public Instruction by the aforesaid superintendent of cities, towns, and counties not later than April 25th, provided that should the school close before this date, it shall be the duty of the teacher to file with the county superintendent and with the board of school trustees reports complying with the provisions of this Act. Blank forms for reports and for requisitions of textbooks shall be furnished to all boards of school trustees by the State Department of Education. Requisitions for books for a subsequent session shall be based on said reports as to the maximum number of scholastics in attendance the preceding school session, plus an additional ten per cent, and such requisition shall be made through the State Superintendent of Public Instruction and by him furnished to the State depository designated by contractors of books not later than June 1st of each year, provided that in cases of unforeseen emergency the State depository shall fill small orders for books on requisition approved by the State Department of Education. One copy of each textbook used in the work taught by the teacher shall be issued by the school trustees, or their representatives, to each teacher as a desk copy, such books to be returned to the trustees or their representatives at the close of the session.

Art. 2876. Warrants.—Bills for textbooks purchased by the State on requisitions as provided for in Article 2876a shall be paid by warrants on the State Treasury made by the Comptroller on receipt of bills approved by the State Superintendent of Public Instruction. Such payment shall be made within ninety days from date of delivery, and if payment be delayed thereafter, six per cent. per annum shall be added until date of payment.

Art. 2876a. Teachers to report.—Teachers and school officers must make such reports as to the use, care and condition of free textbooks as may be required by the local trustees or by the State Department of Education. The salary for any month of any teacher or employee who neglects to make such report at the proper time may be withheld until each report be received in a condition satisfactory in form and content. Textbooks shall be subject to inspection by any inspector or agent authorized by those having charge of the local textbook service, or authorized by

the State Superintendent of Public Instruction, subject to the approval of the State Board of Education, provided that inspectors authorized by the State Department of Education shall be those in regular employment as high school inspectors, rural school inspectors, or inspectors of vocational education.

Art. 2876b. Rules by superintendent.—Specific rules as to the requisition, distribution, care, use, and disposal of books may be made by the State Superintendent of Public Instruction, subject to the approval of the State Board of Education; provided, that such rules shall not conflict with the provisions of this Act, or with the uniform textbook law under the terms of which contracts for supplies and books are made with the publishers or with the terms of said contract. No teacher or employee of the school engaged in the distribution of textbooks under this law as the agent or employee of the State, or of any county or district in the State shall, in connection with this distribution, sell or distribute, or in any way handle, any kind of school furniture or supplies, such as desks, stoves, blackboards, crayon, erasers, pens, ink, pencils, tablets, etc.

Art. 2876c. Printed labels.—All books shall have printed labels on both inside covers. Each school shall number all books, placing the number on these labels. All teachers shall keep a record of the number of all books issued to each pupil. All books must be covered by the pupil under the direction of the teacher. Books must be returned to the teacher at the close of the session, or when the pupil withdraws from school. Each pupil, or its parent or guardian shall be responsible to the teacher for all books not returned by the pupil, and said pupil not returning all books delivered to him or her shall not be entitled to the benefits of this Act until said books are paid for by said parent or guardian.

Local boards of trustees shall make provision for the fumigation of books before the reissue of the books. Covers of all books shall be removed before reissue, and the pupil to whom the books are issued shall replace cover under the direction of the teacher.

Art. 2876d. Books may be purchased.—Books may be bought from the local boards of trustees by pupils or parents of pupils attending the public schools of the State, said board to furnish the books at the retail contract price. Any book may be purchased from the State depository designated by the contractor holding the contract for said book, by State institutions or by private schools, or church schools, such purchase to be made on the same terms as those given to the State for the same book. All money accruing from sales of books by district boards of school trustees shall be forwarded to the State Textbook Fund not later than one month after the sale.

Art. 2876e. Disposition of textbooks.—The State Superintendent of Public Instruction, with the approval of the State Board of Education, may provide for the disposition of such textbooks as are no longer in a fit condition to be used for purposes of instruction, or for discarded books remaining the property of the State. In case of the disuse of books in fair condition, inspectors of the State Department of Education may require the continuance of the use of said books.

Art. 2876f. Complaints.—Complaints in regard to textbook service shall be made both to the State Superintendent and to the State depository designated by the contractor of the books. In case such complaint does not receive reasonable prompt attention complaint shall be taken to the county judge, who shall proceed in accordance with the provisions of this Act. Trustees of unorganized counties shall make complaint to the county judge of the county to which said unorganized county is attached for judicial purposes.

Art. 2876g. Requisitions for readers.—Requisitions for supplementary readers and books may be made at convenient times during the session, but must be made within one month in advance of the time the books will be needed, and shall be issued according to the rules prescribed by the State Board of Education.

Art. 2876h. Expenses.—All necessary expenses incurred by the operation of this Act incident to the enforcement of this law shall be paid from the State Textbook Fund herein provided for upon bills approved by the State Superintendent of Public Instruction, and shall be paid upon warrants drawn by the Comptroller upon the Treasury of the State.

Art. 2876i. Constitutionality.—Should the courts declare any section or provision of this Act unconstitutional, such decision shall affect [1] only the section or provision so declared to be unconstitutional, and shall not affect [1] any other section or part of this Act.

[1] So in enrolled bill. R.S.1925 reads "effect".

Art. 2876j. Complete plan.—The provisions of this Act are intended to furnish a complete plan for the adoption, purchase, distribution and use of free textbooks to be supplied to the public free schools of the State. All laws and part of laws in conflict herewith are hereby repealed.

CHAPTER 17.—TEACHERS' CERTIFICATES AND SALARIES

1. ISSUANCE OF CERTIFICATES

Art.
2877. State Board of Examiners.
2878. County board of examiners.
2879. Application.
2880. Applicant's requisites.
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2881. Examination of papers.
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2. CLASSES OF CERTIFICATES

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3. SALARIES

2891—1. Minimum salaries of teachers; increments; salary schedules.

1. ISSUANCE OF CERTIFICATES

Article 2877. [2794] State Board of Examiners.—The State Superintendent shall be authorized to appoint a State Board of Examiners, consisting of not less than three competent teachers, living in the State, to serve during his pleasure, and he may increase or decrease the number, as varying conditions may make necessary. [Acts 1905, p. 262.]

Art. 2878. [2786] County board of examiners.—Each county superintendent shall appoint two persons who shall be a county board of examiners. A person to be eligible to such appointment must hold a teacher's State certificate of first or higher grade. They shall serve during the pleasure of the county superintendent, and shall meet at his call. The State Superintendent may, for cause approved by the State Board, require the county superintendent to dismiss any such appointee. In such case the vacancy must be filled by an appointee approved by the State Board. The county board of examiners of each county shall hold an examination if there be applicants, on the first Friday and Saturday following in the months of April, June, July, September and December of each year, and the State Superintendent may authorize such other examinations as may be necessary to secure an adequate force of certified teachers. Said board of examiners shall use the questions prescribed by the State Department of Education and shall conduct the examinations in accordance with the rules and regulations prescribed by said State Department and the county superintendent. [Acts 1911, p. 195; Acts 1920, 3rd C. S., p. 112.]

Art. 2879. [2787] Application.—Any person desiring to be examined for a teacher's certificate shall make application to the county superintendent, stating the class of certificate desired, and shall present to the county superintendent a statement of three good and well known citizens, or such proof as he may require of his qualifications, except the examination grades required for the class of certificate desired. After investigation, the county superintendent shall give the applicant a written recommendation to the county board of examiners requiring them to examine the applicant for a certificate of the class mentioned; but no person shall receive such recommendation without first depositing with the county superintendent the sum of four dollars as an examination fee, and the recommendation given by the county superintendent shall show the receipt of said fee. The county board of examiners shall not permit any person to enter the examination who does not first present the written recommendation of the county superintendent. All examinations provided for herein and elsewhere in the Texas school laws shall be conducted in writing and in the English language. The county superintendent shall forward promptly to the State Superintendent, all papers of applicants applying for State certificates, these to be submitted to the State Board of Examiners, together with the reports of the county board of examiners, on a prescribed form furnished by the State Department of Education, with a fee of two dollars from the fee paid to him by each of the applicants applying for State certificates. Until shipment of papers to the State Superintendent, papers of applicants for a State certificate shall be deposited in some safe or vault at the county court house. [Acts 1905, p. 262; Acts 1911, p. 189; Acts 1921, p. 250.]

Art. 2880. [2788] Applicant's Requisites.—No person shall receive a certificate authorizing his employment in the public free schools of Texas without showing to the satisfaction of the county superintendent that he is a person of good moral character, that he will support and defend the Constitution of the United States, and the State of Texas, and has ability to speak and understand the English language sufficiently to use it easily and readily in conversation and in giving instruction in all subjects prescribed for the class of certificate for which he applies. The county superintendent, unless he knows the facts personally, shall require satisfactory proof of the applicant as herein required before issuing his recommendation to the county board of examiners. No certificate shall be granted to a person under eighteen (18) years of age. [Acts 1905, p. 262; Acts 1911, p. 189; Acts 1920, 3rd C.S., p. 114, as amended Acts 1935, 44th Leg., p. 759, ch. 330, § 1.]

Art. 2880a. Certificates to aliens prohibited; exchange teachers.—No teacher's certificate shall be issued to an alien, authorizing such person to teach in the elementary and/or secondary public free schools, unless evidence is produced showing an intention to become a naturalized citizen of the United States of America; and the State Department of Education shall not issue a teacher's permanent certificate to any person who is not a citizen of the United States. It shall be unlawful for any board of trustees to contract with any person who is an alien, to teach in any elementary and/or secondary free public school of this state, unless such person has been naturalized or has declared his intention to become a citizen of the United States; and all contracts in violation of this provision shall be void and of no effect; provided, however, this section shall not apply to any alien teacher, a subject of Great Britain or a citizen of Canada or Mexico, regularly designated by proper authority to serve as an exchange teacher in the United States and to teach in the public schools of Texas for not more than one year, if a like privilege is currently granted by the nations named to any teacher designated by the governing body of a school district in this state to serve as an exchange teacher for a period of not more than one year. [Acts 1929, 41st Leg., p. 72, ch. 38, § 1; Acts 1947, 50th Leg., p. 484, ch. 281, § 1; Acts 1947, 50th Leg., p. 485, ch. 282, § 1.]

Section 2 of the amendatory Act of 1947 repealed all conflicting laws.

Art. 2881. [2786] Examination of papers.—The State Board of Examiners shall, at their next meeting after the receipt of said papers and reports, together with the fees, examine the papers and shall make a report to the State Superintendent recommending that certificates be issued or be not issued, according to the grades made. To each applicant who has made the required grades the State Superintendent shall forward the report, together with the certificate recommended by the State Board of Examiners; and to each applicant who has failed to make the required grades, the State Superintendent shall forward the report of the State Board of Examiners without a certificate. [Acts 1911, p. 195; Acts 3rd C. S. 1920, p. 112.]

Art. 2882. [2798] Record of certificates.—The county superintendent shall keep a record of all certificates held by persons teaching in the public schools of the common school districts and of the independent school districts of his county. Any person who desires to teach in a public free school of a common school district shall present his certificate for record, before the approval of his contract. Any person who desires to teach in the public schools of an independent school district shall present his certificate to the county superintendent for record before his contract with the board of trustees of the independent school district shall become valid. A teacher or superintendent who does not hold a valid certificate shall not be paid for teaching or work done before the granting of a valid certificate, except for teaching in such branches as are exempted under the terms of this law. [Id.]

Art. 2883. [2781] Salaries.—Trustees in making a contract with a teacher shall determine the salary to be allowed or the wages to be paid. Provided a teacher holding a permanent State certificate shall not receive wages in excess of one hundred and fifty dollars per month out of the public free school fund; a teacher holding a first grade certificate shall not receive as wages from the public free school fund more than one hundred and twenty-five dollars per month, and a teacher holding a second grade certificate shall not receive as wages from the public free

school fund more than one hundred dollars per month; provided that the salary limits herein specified shall not apply to any school district which levies and collects a local tax for school purposes. All women teaching in the State schools of the State shall be paid the same compensation as is paid to men for performing the same kind, grade and quantity of service. [Acts 1905, p. 262; Acts 1919, p. 145; Acts 3rd C. S. 1920, p. 45; Acts 1921, p. 211.]

Art. 2883a. Assignment, transfer or pledge of compensation of teachers or school employees; consent of school officials required; venue of suits.—Section 1. Definition—Teacher and School Employee. The terms "teacher" and "school employee," within the provisions of this Act, shall be held and deemed to embrace and include any person employed by any Public School System, Independent School District or Common School District, in this State, in an executive, administrative, or clerical capacity, or as a superintendent, principal, teacher or instructor, and any person employed by a university or college, or other educational institution in an executive, administrative, or clerical capacity, or as a professor, or instructor, or in any similar capacity.

Sec. 2. An assignment, transfer, pledge or similar instrument executed by any teacher or school employee wherein any salary or wages or any interest therein or part thereof then due or which may become due to such teacher or school employee under an existing contract of employment is assigned, transferred or pledged as security for indebtedness, shall be valid and enforceable only in the event that prior to or at the time of the execution, delivery or acceptance of such assignment, written consent to or approval of such assignment shall have been obtained from the employing authority or officer herein designated as follows: (a) If the teacher or school employee executing such salary assignment shall be employed by a common school district, the consent to or approval of such assignment shall be obtained either from the Secretary or Chairman of the Board of Trustees for such common school district, and also from the County Superintendent of the county in which such school district is located. (b) If the teacher or school employee executing such assignment shall be employed by an independent school district, the consent to or approval of such assignment shall be obtained either from the President or Secretary of the Board of Trustees, or from the superintendent or the business manager of said independent school district. (c) If the teacher or school employee executing such assignment shall be employed by a college, university or other educational institution, the consent to or approval of such assignment shall be obtained from the person or officer thereof having the duty or responsibility for the payment of salaries of its teachers and employees. Any such assignment, transfer or pledge shall be in writing and acknowledged in the same manner as required for the acknowledgement of a deed or other instrument for registration, and if such instrument be executed by a married person, it shall also be executed and acknowledged by his or her spouse in such manner; but it shall not be necessary for the school official or officer giving written consent to or approval of such assignment as hereinbefore provided to acknowledge the same. Such assignment, transfer or pledge shall be valid only to the extent that the indebtedness secured thereby is a valid and enforceable obligation. Any school district, college, university or other educational institution, county superintendent or any disbursing agent therefor shall be authorized to, and shall honor such assignment without being subject to any liability therefor to the teacher or school employee so executing such assignment; and any sum paid to any assignee in accordance with the terms of any such assignment shall be deemed to be payment to or for the account of such teacher or school employee; but such assignment shall be valid and enforceable only to the extent of any salary which may be due or may become due and earned by such teacher or school employee during the continuation of his or her employment by such school district, college, university or educational institution.

Sec. 3. The venue of any suit against a county superintendent, common school district, independent school district, or the officials thereof or against any university, college or other educational institution brought for the purpose of enforcing or foreclosing any assignment of salary given under the provisions hereof, shall be in the county where the school or educational institution employing such teacher or school employee is located.

Sec. 4. Nothing in this Act shall in any manner affect or repeal any part of Senate Bill No. 402, Acts of the Regular Session of the Thirty-eighth Legislature.[1] [Acts 1939, 46th Leg., p. 282; Acts 1941, 47th Leg., p. 6, ch. 4, § 1; Acts 1941, 47th Leg., p. 598, ch. 367, § 1.]

[1] Acts 1923, 38th Leg., Spec.L., p. 317, ch. 91.

Art. 2884. [2814] Cancellation of certificates.—Any certificate may be canceled for cause by the authority issuing it; and the State Superintendent shall have power to cancel any certificate upon satisfactory evidence that the holder thereof is conducting his school in violation of the laws of the State or is a person unworthy to instruct the youth of this State. If any teacher holding a certificate to teach in the public schools of this State shall enter into a written contract with any board of trustees to teach in any public school of this State, and shall, after making such contract and without the consent of the trustees, abandon said contract, except for good cause, such abandonment shall be considered sufficient grounds for the cancellation of said teacher's certificate, and the same may be canceled upon the complaint of said trustees, or either of them. Before any certificate shall be canceled the holder thereof shall be notified, and shall have an opportunity to be heard, and shall have the right of appeal from such decision to the State Superintendent, and the State Board; provided, that when the State Superintendent shall have canceled the certificate, the appeal shall be to the State Board. The State Superintendent shall have the authority, upon satisfactory evidence being presented, to reinstate any teacher's certificate canceled under the provisions of this article, and upon a refusal of the Superintendent to so reinstate such certificate, the applicant shall have the right of appeal to the State Board. [Acts 1905, p. 263; Acts 1917, p. 366.]

2. CLASSES OF CERTIFICATES

Art. 2885. [2797] Kinds of certificates.—Teachers' certificates authorizing the holders thereof to contract to teach in the public free schools of this State shall be of three kinds, as follows:

1. Elementary certificates.
2. High school certificates.
3. Special certificates.

Elementary certificates shall be of the following classes:

1. Elementary certificates of the second class.
2. Elementary certificates of the first class.
3. Elementary permanent certificates.

High school certificates shall be of the following classes:

1. High school certificates of the second class.
2. High school certificates of the first class.
3. High school permanent certificates.

Special certificates granted to teachers of kindergarten and special branches of study shall be of two classes:

1. Temporary.
2. Permanent. [Acts 1921, p. 242.]

Art. 2885a. Ten years.—When a teacher of a special subject has been for ten years engaged in teaching that subject in a city or town of two thousand inhabitants or more the board of trustees of such city or town shall have the right to employ such teacher though such teacher has no certificate. [Acts 1925, p. 326.] [39th Leg., ch. 124, § 1.]

Art. 2886. Certificate by examination.—An elementary certificate of the second class may be obtained by examination only. An applicant for an elementary certificate of the second class shall be examined in spelling, reading, writing, arithmetic, English grammar, elementary physiology and hygiene with special reference to narcotics, school management and methods of teaching, descriptive geography, Texas history, United States history, Texas school law relating to teachers and pupils, and, in addition, on any two of the following subjects:

Elementary agriculture, elementary composition, drawing and music.

In taking examination for elementary certificate of the second class, no applicant shall be permitted at any one series of examinations to take examinations on more than thirteen subjects, eleven prescribed and two optional. An elementary certificate of the second class shall be valid, unless canceled by lawful authority, until the second anniversary of the thirty-first day of August of the scholastic year in which the examination was held, and to receive such a certificate an applicant shall make on examination on all subjects an average grade of not less than seventy-five per cent and on each subject a grade of not less than fifty per cent; provided that if the applicant makes a general average on all subjects of not less than eighty-five per cent and on each subject a grade of not less than sixty per cent, he may receive an elementary certificate of the second class valid, unless canceled by lawful authority, until the third anniversary of the thirty-first day of August of the calendar year in which the examination was held.

A high school certificate of the second class may be secured by examination only.

An applicant for a high school certificate of the second class shall be examined in the subjects prescribed for an elementary certificate of the second class, on any two of the optional subjects prescribed for an elementary certificate of the second class, and in addition thereto, on civil government, higher English composition, elementary psychology applied to teaching, and on any four of the following subjects:

Algebra, physical geography, ancient history, modern history, elements of plane geometry, botany and American literature.

A high school certificate of the second class shall be valid, unless canceled by lawful authority, until the second anniversary of the thirty-first day of August of the calendar year in which the examination was held. The applicant shall make on examination on all subjects an average grade of not less than seventy-five per cent and on each subject a grade of not less than fifty per cent; provided that if the applicant makes a general average on all subjects of not less than eighty-five per cent, and on each subject a grade of not less than sixty per cent, he shall be entitled to receive a high school certificate of the second class valid, unless canceled by lawful authority, until the third anniversary of the thirty-first day of August of the calendar year in which the examination was held. [Acts 1921, p. 242.]

Art. 2887. Building to higher certificate.—The holder of an elementary certificate of the second class may during the validity of said certificate, build to a high school certificate of the second class by taking examination in the additional subjects required for a high school certificate of the second class and in any four of the optional subjects prescribed for a high school certificate of the second class.

An applicant who, at one series of examinations, takes examinations on all of the subjects required for a high school certificate of the second class, shall not be permitted to take examination, at any one series of examinations, on more than twenty subjects, fourteen required and six optional, as specified in the requirements, respectively, for the issuance of elementary and a high school certificate of the second class. An applicant who takes at one series of examinations all of the examinations necessary to raise an elementary certificate of the second class to a high school certificate of the second class, shall not be permitted to take examinations during any one series of examinations on more than seven subjects, three prescribed, and four optional. [Id.]

Art. 2887a. Certificate for teachers in grade and high schools.—That any teacher holding a valid certificate classified as an "Elementary Permanent Certificate builded upon a Temporary High School Certificate or First Grade Certificate," or "High School Permanent Certificate" under Art. 2885 Revised Civil Statutes of 1925 shall be authorized to teach any subject in any grade in any common school or high school in this State, which subject such teacher was required to pass in order to acquire such certificate. And such teacher shall be authorized to contract as teacher, principal, superintendent or other position to which he or she may be assigned by the trustees or other governing body of any common school or high school for all grades and subjects covered by his or her certificate as aforesaid, and for the pay authorized by law for the grades or subjects so contracted to be taught. In determining the subjects required for any such certificate all subjects shall be considered, whether such certificate was issued as a permanent originally, or by building upon temporary certificates so as to include all subjects passed upon as a whole to acquire such certificates, and no discrimination shall be made between certificates acquired by examination, and those acquired through actual attendance at teachers' or other colleges. [Acts 1927, 40th Leg., p. 386, ch. 261, § 1.]

Section 2 of this Act repeals all conflicting laws or parts of laws.

Art. 2888. College certificates.—An applicant who completes the first year course of a Texas State normal school shall be entitled to receive an elementary certificate of the first class, which shall be valid unless cancelled by lawful authority until the second anniversary of the thirty-first day of August of the calendar year in which the certificate was issued.

An applicant who completes the second-year course of a Texas State normal school shall be entitled to receive an elementary certificate of the first class, which shall be valid, unless cancelled by lawful authority, until the third anniversary of the thirty-first day of August of the calendar year in which the certificate was issued.

A person who has satisfactorily completed five full courses in any Texas State normal college, or in any university, senior college, junior college, or normal college which is ranked as first class by the State Superintendent shall be entitled to receive from the State Department of Education an elementary certificate of the first class, which shall be valid unless canceled by lawful authority, until the fourth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued; provided that the five courses shall include at least one course in education dealing especially with elementary education, at least one course in English, and that not more than two courses may be taken in one subject; and provided further that all of these five courses must be those only which the college recognizes as credit towards its diploma or degree.

An applicant who has satisfactorily completed the second year of college work in a Texas State normal col-

lege, and who has specialized in the materials of elementary education, including a minimum of thirty-six recitation hours of practice teaching in the elementary grades, under the supervision of a critic teacher, shall be entitled to receive a permanent elementary certificate.

An applicant who has satisfactorily completed the second year's work of a university, or senior or junior college, other than a Texas State normal college, which is classified as first class by the State Superintendent, in which work shall be included two courses of professional training, shall be entitled to receive an elementary certificate of the first class, valid until the sixth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued; provided that the holder of this certificate shall, upon completion of five years of successful elementary teaching, be granted a permanent elementary certificate; provided further that the satisfactory completion of any year's work at any Texas State normal college, or any university, senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, may be substituted for a year's successful teaching, if this attendance at college take place after the issuance of the certificate.

A high school certificate of the first class, valid until the second anniversary of the thirty-first day of August of the scholastic year in which the certificate is issued, shall be granted to a student who has satisfactorily completed five full courses in any Texas State normal college or in any university, senior college, junior college or normal college, which is ranked as first class by the State Superintendent; provided that the five courses shall include at least one course in education, and at least one course in English, and that not more than two courses may be taken in any one subject; and provided further that all these five courses must be those only which the college recognizes as credit towards its diploma or a degree.

A high school certificate of the first class, valid until the fourth anniversary of the thirty-first day of August of the scholastic year in which the certificate is issued, shall be issued to a student who completes two years of college work in any Texas State normal college, or in any university, senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, provided that this work shall include two courses in education, one of which shall bear upon training for high school teaching.

A high school certificate of the first class, valid until the sixth anniversary of the thirty-first day of August of the scholastic year in which the certificate is issued shall be granted to a student who completes three years of college work in a Texas State normal college or in any university, senior college, or normal college which is ranked as first class by the State Superintendent, provided that this work shall include three courses in education, one course of which must include a minimum of thirty-six recitation hours of practice teaching and one course of which shall bear upon training for high school teaching.

A permanent high school certificate shall be granted to a student who has satisfactorily completed a four year course, leading to a degree, in a Texas State normal college or in any university, senior college, or normal college, classified as first class by the State Superintendent, provided that this work shall include four courses in education, one of which shall bear upon high school teaching and one of which shall consist of study of methods, observation of methods, and practice in teaching.

Any person who holds a diploma conferring upon him the degree of Bachelor of Arts, or any equivalent Bachelor's degree, or any higher academic degree, from any Texas State normal college, or any university, senior college, or normal college, which is ranked as first class by the State Superintendent, who has not had four full courses in education, but who furnishes satisfactory evidence of having completed two full courses in education, one of which shall bear upon high school teaching, and of having had not less than three years' successful experience in teaching, aggregating not less than twenty-seven months, subsequent to the taking of the degree, shall be entitled to receive from the State Department of Education a permanent high school certificate, which shall be valid anywhere in the State, unless canceled by lawful authority; provided that a person on receiving such a diploma and degree from any Texas State normal college, or any university, senior college, or normal college, which is ranked as first class by the State Superintendent, who has taken two full courses in education, one of which shall bear upon high school teaching, and who has not had three years' successful experience in teaching, may be granted a temporary high school certificate, valid until the fourth anniversary of the thirty-first day of August of the scholastic year in which the diploma is issued.

An elementary certificate of the second class shall be valid only in elementary schools, grades one to seven, inclusive.

A high school certificate of the second class shall be valid in elementary schools, grades one to seven, inclusive, and in third class high schools, and unclassified high schools, but not in first and second class accredited high schools.

An elementary certificate of the first class shall be valid only in elementary schools, grades one to seven, inclusive; provided that the holder of an elementary certificate based upon the completion of two years of college work in a Texas State normal college, or in any university, senior college, junior college, or normal college, ranked as first class by the State Superintendent, may contract to teach in unclassified high schools, and in high schools of the third class.

A two-year high school certificate of the first class shall be valid in the elementary grades, one to seven, inclusive, in third class high schools, and unclassified high schools, but not in accredited high schools of the first and second class.

A high school certificate of the first class, valid for four years or six years, shall entitle the holder to contract to teach in any elementary grade or in any high school.

The term "course" as relating to college work, wherever it occurs in this law is to be taken as designating not less than the equivalent of 108 recitation hours of work.

In all cases of elementary, high school or special certificates, granted on college work, the validity of the certificate shall begin with the date of the completion of the work on which the certificate is granted, and shall expire on the thirty-first day of August of the scholastic year, for the specified length of time for which the certificate was issued. The State Board of Examiners in the State Department of Education shall on application of institutions in Texas to be recognized as junior colleges, teachers' colleges, colleges or universities of the first class, make investigations as to the standards of such institutions, and shall make recommendations to the State Superintendent of Public Instruction[s], who shall give them such rating as the standards of their work may justify. Any school applying for approval under the provisions of this Act shall pay a fee of twenty-five dollars. Each applicant for teachers' certificates based on college credentials from junior colleges, teachers' colleges, colleges or universities, shall pay a fee of one dollar to cover the expenses of inspection and standardization of approved colleges and of recording and issuing the certificate.

The State Superintendent shall appoint a suitable person or persons of recognized college standing, who shall make a thorough inspection of the equipment and standards of instruction maintained in each school applying for approval under this law, and who shall make a detailed report to the State Board of Exam-

iners for their consideration. The State Board of Examiners shall make recommendation to the State Superintendent in regard to the classification of schools applying for approval under the provisions of this law, and shall give to them such rating as the standards of their work may justify.

The State Superintendent shall have each school receiving the benefits of this law thoroughly inspected from year to year as to its standards and facilities of instruction, and he shall have authority to suspend any school from the benefits of this law which fails for any reason to maintain the approved standards of classification. [Acts 1921, p. 242; Acts 1925, p. 370.]

Art. 2889. Special certificates.—Special certificates may be issued authorizing the holders to teach in a kindergarten or to teach the special subjects specified in this article.

Any person who has satisfactorily met the college entrance requirements of any Texas State normal college or any university or senior college, junior college or normal college, ranked as first class by the State Superintendent, and who has satisfactorily completed one year's training in a kindergarten training school for teachers which has been classified by the State Superintendent as a kindergarten training school of the first class, shall be entitled to receive a kindergarten certificate valid for two years, and the holder thereof on completing the equivalent of three courses of additional work at a kindergarten training school classified as first class by the State Superintendent, shall be entitled to have this certificate extended for one year.

A person who has satisfactorily met the college entrance requirements of any Texas State normal college or any university, or senior college, junior college, or normal college ranked as first class by the State Superintendent and who has satisfactorily completed a two-year college course in a kindergarten training school for teachers, classified by the State Superintendent as a kindergarten training school of the first class, shall be entitled to receive a kindergarten certificate valid for four years. The holder of such certificate after three years of satisfactory experience in teaching in a kindergarten, shall be entitled to receive a permanent kindergarten certificate; provided that it shall be illegal for a person to teach in a public school kindergarten unless he or she is the holder of a kindergarten certificate.

Certificates authorizing the holders to teach the special subjects of agriculture, domestic art, domestic science, commercial subjects, public school drawing, expression, manual training, physical training, public school music, vocal music, instrumental music, industrial training, or foreign languages may be granted to applicants as follows:

An applicant who has met the college entrance requirements of any Texas State normal college, or any university or senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, and, in addition thereto, has satisfactorily completed ten college courses, at least one of which shall be in English, at least one in education, and at least one in the special subject on which the certificate is issued, these courses to be taken in any Texas State normal college, or any university, or senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, shall be entitled to receive a special certificate authorizing him to make contract to teach his special subject, which special certificate shall be valid until the third anniversary of the thirty-first day of August of the scholastic year in which the certificate was issued; provided that one of these courses must include special methods of teaching the subject on which the certificate is granted.

An applicant who has met the college entrance requirements of any Texas State normal college, or any university, senior college or normal college, which is ranked as first class by the State Superintendent, and in addition thereto has satisfactorily completed fifteen college courses, at least one of which shall be in English, at least one in education, and at least three of which shall be in the subject on which the certificate is granted, these courses to be taken in any Texas State normal college, or any university, or senior college, or normal college, ranked as first-class by the State Superintendent, shall be entitled to receive a certificate entitling him to contract to teach his special subject, which certificate shall be valid until the fourth anniversary of the thirty-first day of August of the scholastic year in which the certificate is granted.

It is especially herein provided that the holder of a special kindergarten certificate, or a special certificate in commercial subjects, public school music, public school drawing, or physical training, on the completion of three years of teaching the special subject during the validity of his certificate or certificates, shall be entitled to receive a permanent special certificate in his subject, valid for use in the public schools, unless cancelled by lawful authority.

An applicant who has met the college entrance requirements of any Texas State normal college or any university or senior college, or normal college, ranked as first class by the State Department of Education, and in addition thereto, has completed twenty college courses, at least one of which shall be in English, at least one in education, and at least four of which shall be in his special subject, these courses to be taken in any Texas State normal college, senior college, or normal college, ranked by the State Superintendent as a college of the first class, shall be entitled to receive a permanent certificate in his special subject, valid for life unless cancelled by lawful authority; provided that the college courses shall include special methods of teaching the subject on which the certificate is issued.

Teachers who devote the major portion of their time to teaching or supervising special subjects shall be required to hold a high school certificate or a special certificate, as provided for in this law, on the special subject in which they give instruction or supervise work. [Acts 1921, p. 242.]

Art. 2889a. Special certificate.—(1) Any person who for four years or more has been the holder of a State First Grade Certificate or its equivalent, and who can furnish evidence of successful experience in teaching in the public schools of Texas for six or more sessions subsequent to September 1, 1910, shall be entitled to receive a State First Grade Certificate or its equivalent valid for three years. The provisions of sub-paragraph (1), Section 1, of this Act, and sub-paragraph (1) of Section 1 only, shall expire and be of no further force and effect after September 1, 1945.

(2) Any person who has been engaged in teaching a special subject in the public school for a period of four years, and who has been employed to teach the said subject during the last three years prior to September 1, 1925, shall be exempt from the requirement to hold a Teacher's Special Certificate so long as she or he continues to be employed to teach the same subjects; provided that any person who has been engaged in the teaching of music or writing and drawing in the public schools of Texas for ten years shall be exempt from the present law and be given a life certificate in that subject.

(3) Any teacher who applies for a Texas Teacher's Certificate on credentials from another state may be granted by the State Superintendent an emergency certificate valid for four months, while the record is being completed, prior to determining the kind and class of certificate, if any, to be issued to the applicant. The applicant shall be required to pay the same fee for the issuance of an emergency certificate as is required by law to be paid on application for other teacher's certificates.

(4) Any person who is employed to teach any trade or industry in the public schools may, upon application to the State Superintendent, signed by the majority of the board of trustees of the school desiring his services, be issued a temporary permit to teach said trade without being required to hold the special certificate prescribed by law; provided that no permit may be granted for a longer term than two years and provided further that the fee for issuing said permit shall be the same as is required by law for the issuance of teacher's certificates. [Acts 1925, p. 449; Acts 1943, 48th Leg., p. 686, ch. 379, § 1.]

Section 2 of the Act of 1943 provided that the provisions of the Act were cumulative and that all conflicting laws were repealed.

Art. 2889b. Deaf and blind, certificate to teach; persons qualified to teach in Texas School for Deaf or Texas School for Blind.—Section 1. Any person who has attained eighteen (18) years of age and who has satisfactorily completed a four-year course of study in an "A" or an accredited college, professional or technical school, or an approved teacher-training center, graduating with a degree including ten (10) semester hours of education with not less than five (5) semester hours of principles and methods of teaching that type of handicapped children they are being certified to teach, shall be granted a Permanent First Class Teachers Certificate to teach the deaf and blind.

Sec. 2. In cases of teachers of industrial and special subjects, four years of trade or professional experience or successful teaching experience may be substituted for college work. Certificates issued in these industrial and special subjects shall be limited to those subjects and authorize the holder to teach that subject in the School for the Deaf or Blind.

Sec. 3. Any teacher who has had five years of successful teaching experience of the particular type of handicapped child, subsequent to 1935, shall be granted a Permanent First Class Teachers Certificate entitling him to teach that type of handicapped child, or that industrial and special subject in the School for the Deaf or the School for the Blind.

Sec. 4. This Act does not in any way invalidate any certificate issued under the laws of the State of Texas. Any person now holding a valid Teachers Certificate or who may hereafter be granted a certificate may be deemed qualified to teach in the Texas School for the Deaf or the Texas School for the Blind. [Acts 1943, 48th Leg., p. 54, ch. 49.]

Art. 2890. Certificates from other States.—The holders of diplomas or certificates from other States, who desire certificates valid in Texas, shall present such diplomas or certificates to the State Superintendent, who shall require the State Board of Examiners to make investigations as to the value of such diplomas or certificates as measured by the standards for certificates in this State; and the State Superintendent shall have the power to issue to the holder of a diploma or certificate from another State such Texas certificate as, in his judgment, the holder is entitled to receive, when the value of his diploma or certificate is estimated by the standards required for Texas certificates; provided that no certificates may be issued if the said diploma or certificate is not estimated to equal the lowest State certificate issued in Texas. [Acts 1911, p. 189; Acts 1920, 3rd C. S., p. 112.]

Art. 2891. City certificates.—A city or town which has a scholastic population of one thousand or more and has become an independent school district and which levies a local tax for educational purposes or which maintains a system of free schools for nine months in each year, and which has employed a superintendent of city schools, may have a city Board of Examiners. Said Board of Examiners shall in all cases consist of the city superintendent of the city schools; together with two other persons who shall be appointed by him, and who shall be teachers. The city Board of Examiners is hereby authorized to issue certificates valid only in the city in which they are issued; such certificates shall be temporary.

Temporary city certificates shall be of three classes, as follows: Second Grade, First Grade, and High School. A temporary city certificate shall be good for two years, unless cancelled by lawful authority, and a second city certificate shall not be issued to any person. The further regulation of the issuance of such certificates shall be provided for by the board of trustees of such cities or towns; provided, that no city or town shall make the requirements for a temporary certificate inferior to the requirements provided by law for any State certificates of the corresponding grades. Any city or town may at the discretion of the superintendent of city schools, employ a teacher of any special branch not included in the requirements of a State certificate, without requiring an examination or a teacher's certificate. Nothing in this article shall prevent the board of trustees of any city or town from recognizing the certificate issued in any other such city or town in this State and validating the same in the city or town so recognizing.

A superintendent of schools in any city or town of this State shall be required to be the holder of a State first grade or State permanent certificate, and no school board may legally contract with any superintendent who is not the holder of a State first grade or State permanent certificate; provided, however, this certificate requirement shall not apply to a superintendent who has held a position as city or town superintendent for a period of ten consecutive years in the school in which he or she is employed. [Acts 1921, p. 243.]

Art. 2891a. Teachers' certificates revived and continued.—Any person holding a teacher's certificate of any kind or grade which has not expired at the beginning of any summer school of any State teachers college or any other institution rated as first class by the State Department of Education in this State, shall have the right to have such certificate revived and continued in force for a period of one year by taking three courses or subjects and passing in same at such summer session of a State teachers' college or any other institution rated as first class by the State Department of Education in this State. Upon successfully passing such three courses or subjects, the president of the college shall certify to same and attach his certificate to the teacher's certificate so held by such persons, and thereupon such teacher's certificate shall be presented to the State Department of Education and upon the payment of one dollar fee by the holder, shall be renewed and continued for one year from the beginning of the ensuing year after taking said three courses; provided the work course or subject as herein specified shall mean one-third of a regular nine months' course, and this privilege shall be extended to the holder of said certificate so long as it may remain in force. [Acts 1927, 40th Leg., 1st C.S., p. 115, ch. 40, § 1; Acts 1929, 41st Leg., p. 53, ch. 20, § 1.]

3. SALARIES

Art. 2891—1. Minimum salaries of teachers; increments; salary schedules.—Section 1. Beginning with the school session of 1947–1948, the Board of Trustees of each and every school district in the State of Texas maintaining an accredited or affiliated school either in elementary or in high school grades, or seeking accreditation or affiliation, shall pay their teachers upon a salary schedule providing a minimum beginning salary for a full-time teacher of not less than Two Thousand Dollars ($2,000) per annum with increments above the minimum for additional college training and for experience and ef-

ficiency in teaching. Such increments for additional college training and for experience and efficiency in teaching shall be paid upon the schedule not less than provided by the State Equalization Aid Law.[1] The minimum beginning salary of not less than Two Thousand Dollars ($2,000) shall be paid to teachers who hold a recognized bachelor's degree and who do not have previous experience in teaching. Teachers without a recognized bachelor's or higher degree shall be paid upon the schedule provided by the State Equalization Aid Law.

Sec. 2. If the total revenue of any school district will not permit the payment of the schedule to be provided by said district in conformity with the provisions of this Act, when the total amount received from the State per capita plus all additional State aid or federal grants of any and all kinds, except State or federal grants for school lunch programs, plus at least forty per cent (40%) of the total local maintenance tax currently collected are allocated and appropriated and devoted to the payment of salaries of teachers, principals, and supervisors, then the highest salaries possible with the revenue available shall be paid by such district to its teachers. Provided further that any such school district shall submit its salary schedule for the payment of its teachers to the State Superintendent and through him to the State Board of Education for approval.

Sec. 3. It shall be the duty of the Committee on Affiliation and Accreditation to require through the State Superintendent and the Deputy State Superintendent in each district the presentation of evidence that the provisions of this Act as to minimum salaries with the increments required for additional college training and teaching experience are being faithfully complied with, or that the salary schedule actually being paid is approved by the State Superintendent and the State Board of Education before any school of any district is affiliated or accredited or continued on the list of affiliated or accredited schools.

Sec. 4. Any law or parts of laws in conflict with the provisions of this Act are repealed in so far as such conflict is concerned. If any clause, sentence, paragraph or section of this Act is declared invalid or unconstitutional by any Court of competent jurisdiction, the remainder of this Act shall nevertheless remain in full force and effect. [Acts 1947, 50th Leg., p. 172, ch. 109.]

[1] See Laws 1947, page 400, ch. 228.

CHAPTER 18.—COMPULSORY EDUCATION

Art.
2892. Attendance requirements.
2892a. School attendance by child between seven and fifteen.
2892b. Districts having city over 375,000; children subject to certain exemption provisions of Article 2893.
2893. Exemptions.
2894. Excuses for absences.
2895. Attendance officer.
2896. Powers and duties.
2897. Superintendent shall furnish list, etc.
2898. Parole of pupil.

Article 2892. Attendance requirements.—Every child in the State who is seven years and not more than sixteen years of age shall be required to attend the public schools in the district of its residence, or in some other district to which it may be transferred as provided by law, for a period of not less than one hundred and twenty days. The period of compulsory school attendance at each school shall begin at the opening of the school term unless otherwise authorized by the district school trustees and notice given by the trustees prior to the beginning of such school term; provided that no child shall be required to attend school for a longer period than the maximum term of the public school in the district where such child resides. [Acts 1915, p. 93; Acts 1923, p. 255; Acts 1935, 44th Leg., p. 409, ch. 160, § 2.]

Art. 2892a. School attendance by child between seven and fifteen.—Provided, however, that every child in counties of not less than three hundred twenty-five thousand (325,000) and not more than three hundred twenty-six thousand (326,000) population according to the preceding Federal Census, who is seven years and not more than fifteen years old shall be required to attend the public school in the district of its residence or in some other district to which it may be transferred, as provided by law, for the entire school term of the district in which said child attends school. [Acts 1931, 42nd Leg., Spec.L., p. 439, ch. 221, § 1.]

Art. 2892b. Districts having city over 375,000; children subject to certain exemption provisions of Article 2893.—Every child in a school district in which there is an incorporated city with not less than three hundred seventy-five thousand (375,000) inhabitants, according to the last preceding Federal Census, who is seven years and not more than sixteen years old, subject to subdivisions 2 and 3 of Article 2893, Revised Civil Statutes of Texas of 1925, shall be required to attend a public, private or parochial school in the district of its residence or in some other district to which it may be transferred, as provided by law, for the entire regular school term of the district in which said child attends school. [Acts 1945, 49th Leg., p. 129, ch. 88, § 1.]

Art. 2893. Exemptions.—The following classes of children are exempt from the requirements of this law:

1. Any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship, and shall make the English language the basis of instruction in all subjects.

2. Any child whose bodily or mental condition is such as to render attendance inadvisable, and who holds definite certificate of a reputable physician specifying this condition and covering the period of absence.

3. Any child who is blind, deaf, dumb or feebleminded, for the instruction of whom no adequate provision has been made by the school district.

4. Any child living more than two and one-half miles by direct and traveled road from the nearest public school supported for the children of the same race and color of such child and with no free transportation provided.

5. Any child more than sixteen (16) years of age who has satisfactorily completed the work of the ninth grade, and whose services are needed in support of a parent or other person standing in parental relation to the child, may, on presentation of proper evidence to the county superintendent, be exempted from further attendance at school. [Acts 1915, p. 93; Acts 1923, p. 255; Acts 1945, 49th Leg., p. 185, ch. 142, § 2.]

Section 2e of the Act of 1945 provided that nothing in the act should change or amend any part of art. 2892b.

Art. 2894. Excuses for absences.—Any child not so exempt may be excused for temporary absence due to personal sickness, sickness or death in the family, quarantine, severe storm which has destroyed bridges and made the regular means of travel dangerous, or for unusual causes acceptable to the teacher, principal or superintendent of the school in which said child is enrolled; provided that the excuses are in writing and signed by the parent or guardian of said child. Any case so excused may be investigated by the authorities discharging the duties of attendance officer for the school from which said child is so excused. [Id.]

Art. 2895. Attendance officer.—The county school trustee of any county having a scholastic popu-

lation of more than three thousand may elect a school attendance officer for said county upon petition of at least fifty resident freeholders of said county setting forth good reasons why said county should have an attendance officer. A public hearing shall be had on said petition after due notice thereof given by publication in a newspaper published at the county seat for three consecutive weeks, or if there be no such newspaper, then by posting printed notices in two public places within the county and one at the courthouse door of said county. If, after such hearing, said trustees believe that a school attendance officer is necessary to the proper enforcement of the provisions of this law, and that the schools of said county will be benefited by having said attendance officer, the said board may elect such officer as herein provided.

The board of trustees of any independent district having a scholastic population of more than two thousand may in like manner elect an attendance officer for said district.

Such attendance officer may have his salary paid from the available school funds belonging to said county or district, not exceeding two dollars per day for the time actually employed in discharging his duty. In any county or independent district where such attendance officer is not so elected, the duties of said attendance officer shall devolve upon the school superintendents and peace officers of such county or district who shall perform the same without additional pay. Counties or independent school districts which may avail themselves of the option to elect school attendance officers may elect the probation officer or some officer or officers of the juvenile court of said county to serve as such attendance officer. [Id.]

Art. 2896. Powers and duties.—The attendance officer shall have power to investigate all cases of unexcused absences from school, to administer oaths and to serve legal process, to enforce the provisions of this law, to keep records of all cases of any kind investigated by him in the discharge of his duties, and to make reports of his work as the State Superintendent may require. Nothing in this law shall be construed to authorize any attendance officer to invade or enter without permission of the owner or tenant thereof, or the head of any family residing therein, any private home, or private residence, or any room or apartment thereof, except to serve lawful process upon any parent, guardian or other person standing in parental relation to any child affected by this law, or to forcibly take corporal custody of any child anywhere without permission of the parent or guardian thereof, or other person standing in parental relation to such child, except in obedience to valid process issued by a court of competent jurisdiction. [Id.]

Art. 2897. Superintendent shall furnish list, etc.—The county superintendent shall furnish to the superintendent of schools of each school district in the county, and to the principal of the school in case there be no superintendent, a complete list of all children of scholastic age belonging in said district, as shown by the last scholastic census and the record of transfers to and from said district. The superintendents and principals of the various schools of said county shall report to said county superintendent the names of all children subject to the provisions of this law who have not enrolled in said school, and the superintendent, principal or other official of private, denominational or parochial schools shall furnish to said county superintendent a list of all children of scholastic age enrolled in the school presided over by said official and the district in which said child was enumerated in the public school census. From such reports the county superintendent shall make up a complete list of all children within scholastic age enrolled in the various districts of said county who have not enrolled in some school and are not complying with the compulsory attendance law, and said list shall be furnished to the attendance officer. All notices, forms and blanks to be used by any of the superintendents, principals or officials of any school shall be prescribed by the State Superintendent. Any teacher giving instruction to any child within compulsory attendance age shall promptly report any unexcused absences to the attendance officer. [Id.]

Art. 2898. Parole of pupil.—Any child within the compulsory school attendance ages who shall be insubordinate, disorderly, vicious or immoral in conduct, or who persistently violates the reasonable rules and regulations of the school which he attends, or who otherwise persistently misbehaves therein so as to render himself an incorrigible, shall be reported to the attendance officer who shall proceed against such child in the juvenile court. If such child is found guilty in said court the judge shall have the power to parole said child, after requiring the parent or other person standing in parental relation, to execute a bond in the sum of not less than ten dollars, conditioned that said child shall attend school regularly and comply with all the rules and regulations of said school. If the superintendent or principal of any school shall report to the attendance officer for said school that said child has violated the conditions of his parole, said attendance officer shall proceed against such child before the judge of the juvenile court, and if such child shall be found guilty of violating the conditions of said parole, the bond shall forthwith be declared forfeited and shall be collected in the same manner as other forfeited bonds under the general laws of this State, and the proceeds of same shall be paid into the available school fund of the common or independent school district. The judge of said court may, after a fair and impartial hearing given to said child, again parole said child, requiring such bond as he may deem prudent, and require said child to again enter school. If said child shall violate the conditions of the second parole and shall be convicted of same he shall be committed to a suitable training school as may be agreed upon by the parent of the child and the judge of the juvenile court in which the child is convicted. [Id.]

CHAPTER 18A.—STATE BOARD OF SCHOOL SAFETY SUPERVISION

2898—1. Board of School Safety Supervision; minimum safety standards for buildings; approval of plans before paying contractors; exceptions.

Sec.

1. Declaration of policy; powers of board.
2. Membership of board—Authority.
3. Meetings; hearings; adoption of rules, regulations and orders.
4. Patented and monopolized equipment; architectural designs and requirements.
5. Minimum standards.
6. Filing of rules, regulation and orders; inspection; modification.
7. Approval of plans.
8. Department heads and employees to carry out duties.
9. Inspection of buildings, premises and facilities.
10. Inspector to obtain certificate.
11. Summary of reports; notice and recommendation.
12. Exemption of schools in incorporated cities.
13. Notice that approval required.
14. Executive director of board.
15. Deputizing employees.

16-a. Textbooks.

16-b. Independent districts having city of 375,000.

Art. 2898—1. State Board of School Safety Supervision; minimum safety standards for buildings; approval of plans before paying contractors; exceptions.

Declaration of policy; powers of board

Section 1. It is declared to be the public policy of this state to prevent the unnecessary loss of life and destruction of property due to failure to observe safety practices, rules and procedures in the architectural design of public buildings and schools, and it is the intention of the Legislature to delegate to the Board here created the authority to determine as a fact the minimum safety standards that will promote and effectuate such policy and so declare them by issuing rules, regulations and orders in that regard after a public hearing in respect thereto, as well as to set up the other regulations, supervision and controls thereof as is incorporated in this Act.

Membership of board—Authority

Sec. 2. The State Superintendent of Public Instruction, the State Fire Insurance Commissioner and the State Director of Public Safety shall by virtue of their office and in addition to the duties now performed in such capacities, compose the State Board of School Safety Supervision and perform the duties hereinafter prescribed for such Board. The Board and its members are hereby authorized and empowered to perform the duties and functions hereinafter prescribed for it and its members.

Meetings; hearings; adoption of rules, regulations and orders

Sec. 3. The State Board of School Safety Supervision shall meet on the first day of June of each year, and at such other times as a majority of the Board may agree, in a public hall or auditorium in the City of Austin and there hear, under such reasonable rules as the Board may make for the conduct of the hearing, such matters as may be brought to their attention or that the Board or any member may initiate concerning safety of school children and protection of school property, and after such hearing make rules, regulations and orders setting up safety standards to be followed in the construction, operation and use of public school buildings, plants and facilities that will promote safety of school children and school occupants and the safe use of such buildings, plants and facilities.

Patented or monopolized equipment; architectural designs and requirements

Sec. 4. Such rules, regulations and orders shall not be so framed as to require the use of any patented or monopolized safety equipment, device or plan or the use of any material that would limit or tend to limit the free choice and exercise of free agency on the part of school trustees or others having authority to contract for the erection of school buildings, nor require any building contractor to use any specified material or device therein. Such rules, regulations and orders may only require the incorporation into school buildings, plants and facilities, architectural designs and requirements that will tend to reduce hazards to the property itself and make the use of such buildings, plants and facilities safe for school children and school employees or other persons using and occupying school facilities.

Minimum standards

Sec. 5. The rules, regulations and orders made by the Board shall require that school buildings in Texas conform with the following minimum standards:

1. No window admitting light shall be so placed in a class room or study hall that it must be faced by pupils when seated at their desks. All such window openings shall not come lower than a point three and a half feet from the floor, and shall extend to a point within six inches of the ceiling; and the area of clear window surface thereof shall not be less than one-sixth of the area of the floor space in said class room or study hall. No part of said class room or study hall shall be at a greater distance from the window than twice the height of the top of the window above the floor, except when adequate skylights are provided. The main light in all one-room schools shall come from the left of the pupils as they sit at their desks, and in all larger buildings this condition shall be approximated as nearly as architectural demands and the demands of ventilation will permit.

2. All school houses shall be provided with sufficient heating apparatus. All stoves, radiators or other sources of direct heat located within the class rooms or study halls shall be so jacketed, ventilated or otherwise protected that the desks upon the side adjoining same shall not be more than five degrees Fahrenheit hotter than the desks upon the opposite side of the room; and shall be equipped with an automatic temperature regulator that will regulate the temperature of said class room or study hall to within two degrees of any set standard.

3. Every class room or study hall shall be provided with an efficient apparatus whereby in cold weather a supply of thirty cubic feet per minute of fresh, warm air shall be supplied to each pupil in such manner as not to place any pupil in a disagreeable draft, and shall be provided with exhaust flue or flues, with inlets at or near the floor line, so arranged as to effectively carry out of the room the cold and impure air without placing any pupil in a disagreeable draft.

4. All interior wood work in school buildings shall be without such unnecessary fluting, turning or carvings as catch dust and microbes, and all floors shall have their surfaces made impervious to water and germs by a coat of boiling paraffin oil or other floor dressing having similar effect, applied immediately after the floor is laid.

5. All school buildings of two or more stories shall be provided with not less than two widely separated flights of stairs, and no stair shall have winding treads, but every tread shall be full width and turns be made flat landings not less than four feet wide; and there shall be one such landing between floors. All stairs shall have a hand rail on each side and of such size and so placed that it can be held easily by the pupils using said stairs.

6. All outside doors and all doors leading from class rooms or study halls shall be hung so as to open outward.

7. The Board shall have the authority and is empowered and authorized, upon the application of any school district acting through its Board of Trustees, Superintendent or Principal, to suspend any of the minimum standards or requirements set out in this section if the Board finds as a fact that such standard or requirement does not contribute to the safety and health of school children and protection of school property of the particular school involved, by entering an order on its minutes designating that part of Section 5 suspended and the reasons therefor; a copy of which order shall be filed as provided in Section 6 hereof.

Filing of rules, regulations and orders; inspection; modification

Sec. 6. The rules, regulations and orders after adoption by two-thirds of the members of the Board shall be filed in the office of the State Fire Insurance Commissioner, and be open to the inspection of the public during reasonable business hours each business day, and the Board shall through every means available to it without cost to the state, give publicity to the rules, regulations and orders adopted. Modification of any rules, regulations or orders may be made from time to time after open hearing as heretofore provided, and such modification filed with the State Fire Insurance Commissioner.

Approval of plans

Sec. 7. Plans of any new construction or alteration, repair or change in any public school building shall be submitted to the State Fire Insurance Commissioner, who shall act for the Board, and be examined by him to determine if such plans meet the standards set up by the Board before construction is undertaken. The Insurance Commissioner, acting for the Board, shall have exclusive authority to approve or disapprove plans and shall do so without delay, and in cases where approval is withheld, he shall indicate wherein the plans under consideration fail to meet the standards set up by the Board and when such plans are amended to conform with the Board's requirements, he shall approve them and issue his certificate of approval. No public money of this state or any county, city or town, school district or subdivision of this state shall be paid to any contractor or other person in consideration of the construction, alteration or change in any public school building until such plans are so submitted and a certificate of approval is issued by the State Fire Insurance Commissioner. Approval may be made after completion, if construction conforms with the standards prescribed by the Board, if good cause be shown for not obtaining approval prior to the beginning of construction. Any person disbursing public funds shall be liable on his official bond for his violation of this provision. The foregoing provision shall not authorize the construction of any building, or alteration, change or repair thereof without first obtaining such permit or permits as may be required by valid local ordinance or regulation.

Department heads and employees to carry out duties

Sec. 8. Within the existing organization of the named Departments, whose heads comprise this Board, insofar as appropriations will permit, it will be the duty of the heads of the Departments named and their employees to carry out the duties prescribed for the Board.

Inspection of buildings, premises and facilities

Sec. 9. The State Superintendent of Public Instruction will require that all other department personnel performing the function of inspectors of schools be charged with the duty of inspecting school buildings, premises and facilities, and reporting in writing to the State Superintendent of Public Instruction the result of their inspection with a statement as to the nature of any hazardous condition (hazardous to life or property) found, and their recommendation as to how such condition may be removed or remedied. Nothing herein shall be construed as requiring the retention of any present personnel or the addition of new personnel.

Inspector to obtain certificate

Sec. 10. Each person hereafter employed in the State Department of Public Instruction to perform the function of Inspector of Schools, regardless of the title by which the position is designated, shall, within one year after such employment, obtain a certificate from an institution approved by this Board certifying that he has successfully completed such course of instruction in safety work as the institution offers.

Summary of reports; notice and recommendation

Sec. 11. The Superintendent of Public Instruction shall summarize such reports and furnish them to the Executive Secretary of the Board who shall issue a notice in writing describing the condition found by the inspector, along with recommendations as to its removal or remedy, which notice shall be directed to the Superintendent, Principal, or other person in charge of the school concerned, and a copy of such notices shall also be directed to the President and members of the Board of Trustees of such school district.

Exemption of schools in incorporated cities

Sec. 12. Inspection of schools located within incorporated cities shall not be made if the Superintendent, Principal or President of the Board of Trustees of such schools files with the State Board a certificate under oath that the school building, plant and facilities are within the protection of an organized fire department and that regular inspections of the premises are made by municipal fire inspectors at least every six months.

Notice that approval required

Sec. 13. The State Superintendent of Public Instruction shall notify the President of the Board of Trustees of each school district in this state of the requirement that prior approval of plans of new construction, alterations, repair or change in public school buildings must be obtained from the Board.

Executive director of board

Sec. 14. The Director of the Department of Public Safety shall be Secretary of this Board and its Executive Director. He shall cause to be kept, minutes of the Board meetings, and shall perform the duties herein prescribed for the Executive Director, and shall file on behalf of the Board a biannual report with the Governor reviewing the activities of the Board.

Deputizing employees

Sec. 15. The members of this Board may deputize employees of their departments to act for them in the performance and discharge of the duties prescribed, but all acts shall be in the name of the Board.

Textbooks

Sec. 16-a. The State Board of Education is hereby prohibited from purchasing any textbooks out of public funds for any purpose arising under the provisions of this Act.

Independent districts having city of 375,000

Sec. 16-b. Nothing in this Act, except Sections 8 to 12, inclusive, shall apply to any independent school district having within its limits a city containing a population of 375,000 inhabitants or more according to the last preceding or any future Federal Census. [Acts 1945, 49th Leg., p. 97, ch. 68.]

Section 16 of the Act of 1944 repealed articles 2920, 2921, 2922 and all conflicting laws.

CHAPTER 19.—MISCELLANEOUS PROVISIONS

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2919b. School canning factories in districts of not less than 1800 scholastics.
2920–2922. [Repealed.]

Article 2899. [2896] Non-sectarian schools.—No part of the public school fund shall be appropriated to or used for the support of any sectarian school. [Acts 1905, p. 263.]

Art. 2899a. Inquiry respecting religion of persons seeking employment or official positions prohibited; penalty.—Sec. 1. That no person, agency, bureau, corporation or association employed or maintained to obtain or aid in obtaining positions for teachers, principals, superintendents, clerks or other employees in the public schools of Texas, and no individual or individuals conducting or employed by or interested directly or indirectly in such an agency, bureau, corporation or association, and no board of education, trustee of a school district, superintendent, principal, or teacher of a public school or other official or employee of a board of education, shall directly or indirectly ask, indicate, or transmit orally or in writing the religion or religious affiliation of any person seeking employment or official position in the public schools of the State of Texas, except to inquire of the applicant whether or not he or she believes in the existence of a Supreme Being.

Sec. 1-a. No department, agency or commission or any agent or employee of the State shall have the right to inquire, request, or in any manner directly or indirectly indicate, require or request the religious affiliation of any applicants for any position. The same penalty as provided for violation in Section 1 shall apply to this section.

Sec. 2. Any person who, or any agency, bureau, corporation or association which shall violate any of the provisions of Sections 1 or 1-a of this Act, or who or which shall aid or incite the violation of any of said provisions shall for each and every violation thereof be liable to a penalty of not less than One Hundred Dollars nor more than Five Hundred Dollars, to be recovered by the person aggrieved thereby or by any resident of this State, to whom such person shall [1] assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person and the manager or owner of, or each officer of, such agency, bureau, corporation or association, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars nor more than Five Hundred Dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. [Acts 1933, 43rd Leg., 1st C.S., p. 48, ch. 15.]

[1] So in enrolled bill. Session Laws omit word "shall".

Art. 2899b. Historical documents; deposit in libraries of institutions of higher learning.—Section 1. The County Commissioners of any county, and other custodians of public records, are hereby authorized, in their discretion, to lend to the library of any State-supported institution of higher learning, for such length of time and on such conditions as they may determine, such parts of their archives and records as have become mainly of historical value, taking a receipt therefor from the librarian thereof; and the said librarian is hereby authorized to receipt for such records as may be transferred to the said library, and to make copies for historical study; provided however, that nothing in this Act shall affect the authority of the Texas State Librarian concerning public records which is now, or may hereafter, be granted by law.

Sec. 2. The librarian and the archivist of State-supported institutions of higher learning are hereby authorized to make certified copies of all public records in the custody of the institution, and said certified copies of all public records in the custody of the institution, shall be valid in law and shall have the same force and effect for all purposes as if certified to by the County Clerk or other custodian as now provided for by law. In making the certificate to the said certified copies, either by the librarian or by the archivist, the said officer shall certify that the foregoing is a true and correct copy of said document, and after signing the said certificate shall swear to the same before any officer authorized to take oaths under the laws of this State. [Acts 1947, 50th Leg., p. 763, ch. 376.]

Art. 2900. [2897–8] Separate schools.—All available public school funds of this State shall be appropriated in each county for the education alike of white and colored children, and impartial provisions shall be made for both races. No white children shall attend schools supported for colored children, nor shall colored children attend schools supported for white children. The terms "colored race" and "colored children," as used in this title, include all persons of mixed blood descended from negro ancestry. [Acts 1905, p. 263.]

Art. 2901. [2899] Where children may attend school.—Every child in this State of scholastic age shall be permitted to attend the public free schools of the district or independent district in which it resides at the time it applies for admission, notwithstanding that it may have been enumerated elsewhere, or may have attended school elsewhere part of the year. [Id.]

Art. 2902. [2894–2900] Scholastic age.—All children, without regard to color, over six years of age and under eighteen years of age at the beginning of any scholastic year, shall be included in the scholastic census and shall be entitled to the benefit of the public school fund for that year. The board of school trustees of any city or town or independent or common school district shall admit to the benefits of the public schools any person over six and not over twenty-one years old at the beginning of the scholastic year, if such person or his parents or legal guardian reside within said city, town or district. [Acts 1905, p. 263; Acts 1913, p. 175; Acts 1915, p. 183; Acts 1929, 41st Leg., p. 232, ch. 97.]

Section 3 of Act 1929, repeals all conflicting laws and parts of laws.

Art. 2903. [2901] Scholastic year.—The scholastic year shall commence on the first day of September of each year and end on the thirty-first day of August thereafter. [Acts 1905, p. 263; Acts 1915, p. 183.]

Art. 2904. [2902] Powers of trustees over pupils.—The trustees of schools shall have the power to admit pupils over and under scholastic age, either in or out of the district, on such terms as they may deem proper and just; provided, that in admitting pupils over and under the scholastic age, the school shall not be overcrowded to the neglect and injury of pupils within the scholastic age. They may suspend from the privileges of schools any pupil found guilty of incorrigible conduct, but such suspension shall not extend beyond the current term of the school. [Id.]

Art. 2904a. Free tuition for persons over six and not over twenty one years of age in certain school districts.—Sec. 1. The board of trustees of any common or independent school district, whether organized by general or special law, which levies and collects a maintenance tax for the purpose of supplementing the available school fund received from the state and county shall admit into the public schools of the district free of tuition, all persons who are over six and not over twenty-one years old at the beginning of the scholastic year, if such person or his parents or legal guardian reside within said common or independent school district.

Sec. 2. In the event such district as is mentioned in section one of this act fails to provide high school instruction in the proper grade for any such resident pupil, the board of trustees shall pay a reasonable rate of tuition for such pupils in any other public high school of this state or of any other state if the public high school in the other state is located in a district contiguous to the state line and is more convenient to the student than a Texas public high school; provided that if the school district is unable to pay said tuition and also maintain an efficient elementary school as determined by the county board of trustees approved by the State Board of Education, the tuition or such part thereof as may be necessary, shall be paid by the State of Texas.

Sec. 3. All such high school pupils as are subject to transfer under the transfer laws of this State shall be transferred and the receiving district shall grant free tuition to such transferred pupils for the length of term the state and county funds support the public schools of the race to which such transferred pupil belongs, such free school term for such pupil to begin with the date such transferred pupil enters the school of the receiving district.

Sec. 4. High school grades within the meaning of this Act shall include the upper four grades in a public school system of eleven or twelve grades and shall not include school work of college rank. [Acts 1931, 42nd Leg., 1st C.S., p. 33, ch. 20.]

Art. 2904b. College entrance examinations.—Section 1. The State Superintendent of Public Instruction is hereby authorized and directed to provide for the holding of college entrance examinations throughout the State in the manner hereinafter stipulated.

Sec. 2. The State Superintendent of Public Instruction is hereby authorized and directed to set up such rules, regulations and administrative units necessary to the carrying out and holding of college entrance examinations. He shall keep such records, issue such receipts and make disbursements on forms and in such manner as may be prescribed by the State Auditor and Efficiency Expert.

Sec. 3. The State Superintendent of Public Instruction is hereby authorized and directed to set up a system of fees not exceeding One Dollar ($1) for any four (4) subjects taken in said examinations, to employ such labor, purchase such materials and provide all necessary expenses to the complete handling of the administrative duties. All fees collected under this Act shall be placed by the State Superintendent of Public Instruction in the General Fund of the State. The examinations herein provided for shall be held in the counties of the residences of the persons desiring to take such examinations.

Sec. 4. The fees collected by the State Superintendent of Public Instruction shall be based by the State Superintendent of Public Instruction upon the actual cost for the preceding year of the administration of this Act not to exceed One Dollar ($1) for any four (4) subjects taken in said examination. [Acts 1939, 46th Leg., p. 280.]

Section 5 of the Act of 1939 made an appropriation for administration purposes.

Art. 2905. Trustees' powers; eminent domain.—The County School Trustees shall have power to purchase and lease, and by the exercise of the right of eminent domain to acquire the fee simple title to real property for all the Common School Districts and the Independent School Districts of their county having less than one hundred fifty (150) scholastics, for the purpose of supplying play grounds, agricultural tracts, and sites upon which to build schoolhouses and such other buildings as are necessary for the schools of said District, and for such other purpose as may be necessary for the schools within any such Districts, and when acquired by the exercise by the right of eminent domain herein given, the trial and all other proceedings, including the assessing of damages, shall be in conformity to the Statutes of the State of Texas, for condemning and acquiring property by railroads, and whenever final judgment is rendered in any such condemnation proceedings the plaintiff therein shall be awarded the fee simple title to the property condemned, and such plaintiff thereupon shall acquire and shall thereafter have, hold and possess such property in fee simple title with full power over the same, including the right of alienation. [Acts 1917, p. 323; Acts 1931, 42nd Leg., p. 243, ch. 145, § 1.]

Section 2 of Acts 1931, repeals all conflicting laws and parts of laws.

Art. 2905a. [Expired.]

This article (Acts 1933, 43rd Leg., p. 579, ch. 191), authorizing the trustees of independent school districts and of common school districts to issue interest bearing warrants in payment of salaries of all public school employees, expired by its own terms on August 31, 1935.

Art. 2906. [2903] School terms.—Public schools shall be taught for five days in each week. Schools shall not be closed on legal holidays unless so ordered by the trustees. A school month shall consist of not less than twenty school days, inclusive of holidays, and shall be taught for not less than seven hours each day, including intermissions and recesses. [Acts 1905, p. 263; Acts 1915, p. 183.]

Art. 2907. Governing boards: appointment.—Each member of the governing board of the University of Texas, the Agricultural and Mechanical College, of the normal colleges, and of the College of Industrial Arts, shall be a qualified voter, and shall be selected from different portions of the State. One-third of the membership of each such board shall be biennially nominated by the Governor and appointed by and with the advice and consent of the Senate, and shall hold their offices for six years, respectively. [Acts 1913, p. 191.]

Art. 2908. [2766] Oath.—County superintendents, county judges and all school officers shall take the official oath. [Acts 1905, p. 263.]

Art. 2908a. Oath of allegiance by teachers, instructors, and other employees; exemptions.—Section 1. That on and after the date this Act becomes effective, no public funds may be paid to any person as a teacher, instructor, visiting instructor, or other employee in, for or connected with any tax-supported school, college, university or other tax-

supported institution of learning in this State, unless and until such person shall have taken the oath of office required to be taken by members of the Legislature and all other officers, as provided in Article XVI, Section 1, as amended by amendment adopted November 8, 1939.

Sec. 2. Exempting foreign visiting instructors, refugees and political refugees from conquered countries from the provisions set out in Section 1 of this Act, and providing that such foreign visiting instructors, refugees and political refugees from conquered countries shall file an affidavit, on form to be prescribed by the Attorney General of the State of Texas, stating, among other things, that they are not members of the Communist, Fascist or Nazi Parties, nor members of any Bund, or any affiliated organization, and further stating that they will not engage in any un-American activities, nor teach any doctrines contrary to the Constitution and Laws of the United States of America or of the State of Texas.

Sec. 3. That any teacher or instructor of any tax-supported school, college, university or other institution of learning in this State who shall have been found guilty of openly advocating doctrines which seek to undermine or overthrow by force or violence the republican and democratic forms of government in the United States, or which in any way seek to establish a government that does not rest upon the fundamental principle of the consent of the governed, upon and after a full hearing by the employing or appointing authority of such teacher or instructor, shall be dismissed from such service. [Acts 1941, 47th Leg., p. 1355, ch. 617.]

Art. 2909. Definitions.—As used in this title:

1. State Superintendent means the State Superintendent of Public Instruction.

2. State Board means the State Board of Education.

3. County superintendent means county superintendent of public instruction.

Art. 2909a. Dormitories, cottages, and stadiums; self liquidating.

Construction and equipment authorized; obligations payable from revenue

Section 1. The Board of Directors of Texas Technological College, the Board of Directors of the Texas Agricultural and Mechanical College, the Board of Regents of the University of Texas, the board of Directors of the State Teachers' Colleges of Texas, the Board of Directors of the Texas State College for Women, and the Board of Directors of the College of Arts and Industries, are hereby authorized and empowered to erect and equip, and to contract with any person, firm or corporation, for the erection, completion and equipping of domitories, cottages or stadiums, to be erected either on the campus or real estate then owned by said colleges, or on other real estate purchased or leased for the purpose, and the said Boards of Directors are hereby expressly authorized to purchase, or lease, additional real estate for such purposes, provided said Institutions have sufficient surplus from local funds, but not exceeding twenty-five (25%) per cent of the total for any fiscal year, to pay cash for any purchase of land; or the purchase of land is made from funds derived from the sale of revenue bonds or notes. The bonds or notes authorized herein are to be paid solely from the revenues of the dormitories, cottages and stadium, and shall never be charged against the State nor any appropriation made by the State nor shall any portion of said appropriation ever be used for the payment of said notes or bonds; nor shall any local or institutional funds in excess of twenty-five (25%) per cent of the total for any calendar year ever be used for the payment of said notes or bonds. It being the intention of the Legislature to authorize the payment of said notes and bonds solely from revenues derived from the improvements authorized herein and an emergency to be supplemented from local funds not exceeding twenty-five (25%) per cent for any fiscal year.

Contracts for joint construction

Sec. 2. The Boards aforesaid are hereby authorized and empowered to enter into contracts with municipalities or school districts for the joint construction of museums, library buildings, or such other buildings as may be deemed necessary.

Issuance of obligations; interest rate

Sec. 3. In payment for the erection, completion and equipping of such dormitories, cottages and stadiums, and the purchase of the necessary sites thereto, the Boards aforesaid are further authorized and empowered to issue their obligations in such sum or sums and upon such terms and conditions as to said directors may seem advisable, and as security for the payment thereof to pledge the net rents, fees, revenues and incomes from the improvements to be erected hereunder. Any bonds or notes issued hereunder shall bear interest at the rate not to exceed six (6%) per cent per annum and shall finally mature not more than twenty years from date.

Pledge of revenues

Sec. 4. The aforesaid Boards are hereby authorized and empowered to pledge the unused part of any revenues from self-liquidating buildings for the construction of additions to said buildings or the construction of any other buildings and the purchase of the necessary sites thereto such Boards may deem necessary, provided that any subsequent issue of revenue bonds or notes shall be a second lien on said net revenues, rents, fees and incomes and shall be inferior to any outstanding revenues, bonds or notes which are secured by a pledge of said net revenues, rents, fees and incomes.

Schedules of fees and charges

Sec. 5. The Boards aforesaid are hereby authorized and directed to establish and maintain such schedule of rates, fees and charges for the use of the facilities afforded by its dormitories, cottages and stadiums, and the revenue from the athletic fields and stadiums, which rates, fees and charges shall be in an amount at least sufficient to pay the operating and maintenance charges thereof and to pay the principal and interest representing the indebtedness against said revenues, rents, fees and incomes.

Provided that the fees to be charged for the use of any buildings shall not exceed the maximum fee per semester specified in Chapter 459, Acts of the Second Called Session of the Forty-third Legislature, 1935, or Acts amendatory thereto.[1]

[1] Article 2700d—3 note.

Obligations payable from revenue

Sec. 6. In payment for the erection, completion and equipping of such dormitories, cottages and stadium, and the purchase of the necessary sites thereto, the Boards aforesaid shall not in any manner nor to any extent incur indebtedness against themselves or the State of Texas, and the obligation or obligations authorized by this Act shall never be a personal obligation of the colleges above named, or the State of Texas; but such obligations shall be discharged solely from the revenues herein authorized to be pledged for the purpose.

Examination and approval of revenue bonds

Sec. 7. All revenue bonds shall be examined and approved by the Attorney General of the State of Texas; and the State Auditor shall approve such revenue bonds or revenue notes after an examination of revenues which shows a reasonable prospect of adequate rents, income, fees or charges to pay principal

and interest, and all approved bonds shall be registered in the office of the Comptroller of Public Accounts of the State of Texas.

Powers of Boards

Sec. 8. The aforesaid Boards are hereby empowered to do any and all things necessary and convenient to carry out the purpose and intent of this law.

Legislative intent

Sec. 9. It is the intention of the Legislature that the State of Texas shall never be called upon to supplement, by emergency or general appropriation, any of the local funds of any institution which takes advantage of the provisions of this Act. The governing boards of such institutions are directed not to make any appropriation from the local funds of such institutions when in so doing it will necessitate the Legislature supplementing such local funds. It is further provided that the Legislature shall never make an appropriation for the purpose of equipping (including utility connections) or maintaining any building erected under the provisions of this Act. [Acts 1939, 46th Leg., p. 259.]

Section 10 of the Act of 1939 repealed all conflicting laws. Section 11 provided that a holding of partial invalidity should not affect the remaining provisions.

Art. 2910. [2904] Agent for book publishers.—No member of the Board of Trustees of any public school, nor teacher in any of the public schools in this State, nor County or City Superintendent, University President, College President and any teacher in any institution of higher learning, of public schools shall, during the term of his office as Trustee or Superintendent, or during the time of his employment as teacher, act as agent or attorney for any textbook publishing company selling textbooks in this State. If, after election as trustee, County or City Superintendent, University President, College President and any teacher in any institution of higher learning, or employment as teacher, any person filling such position accepts the agency or attorneyship of any textbook publishing company, the acceptance of such agency or attorneyship shall work a forfeiture of the office or place in the public schools held at the time of the acceptance of such agency or attorneyship. [Acts 1905, p. 263; Acts 1935, 44th Leg., p. 295, ch. 109, § 1.]

Art. 2911. [2783] Prescribed studies.—All public schools in this State shall be required to have taught in them orthography, reading in English, penmanship, arithmetic, English grammar, modern geography, composition, mental arithmetic, Texas history, United States history, civil government, elementary agriculture, cotton grading, and other branches as may be agreed upon by the trustees or directed by the State Superintendent; provided, that the subject of elementary agriculture shall not be required to be taught in independent school districts having a scholastic population of three hundred (300) or more unless so ordered by the school boards. Suitable instruction shall be given in the primary grades as acts regarding kindness to animals and the protection of birds and their nests and eggs. Elementary agriculture shall include certain practical field studies and laboratory experiments as prescribed by the county school trustees in conformity to law and the requirements of the State Superintendent. Each summer normal institute and each county teachers institute shall employ at least one instructor who shall be selected because of his special preparation to give instruction in agriculture. All of the above-mentioned schools shall be required to have taught in them physiology and hygiene. The effects of alcohol and narcotics shall be taught in all grades of the public schools and in all of the colleges and universities that are wholly or in part supported by State funds.

Provided that this shall not require the immediate adoption of textbooks to carry into effect the requirement that the effects of alcohol and other narcotics be taught in all of the Public Schools and in all colleges and universities that are wholly or in part supported by State funds and provided further that at the next adoption of textbooks on physiology and hygiene it be required to be taught in all of the above-mentioned schools. All textbooks on physiology and hygiene purchased in the future for use in the public schools of this State shall include at least one chapter on the effects of alcohol and narcotics, but this shall not be construed as a requirement that duly adopted textbooks in use at the present time be discarded until full use of said books is had as in ordinary cases. [Acts 1905, p. 262; Acts 1907, p. 316; Acts 1915, p. 134; Acts 1943, 48th Leg., p. 599, ch. 344, § 1.]

Art. 2911a. Spanish in elementary grades, teaching of; text books; records.—Section 1. The Board of Trustees of Independent and Common School Districts in this State shall have the power to designate certain grades of the elementary schools in their respective districts and to designate certain grades or sections of grades above the second grade in such schools in which the teaching of the Spanish language may be a part of the curriculum.

Sec. 2. The State Board of Education is hereby authorized and empowered and directed to purchase text books and recorded Spanish exercises for the teaching of the Spanish language in such grades or sections of grades so designated by said Board of Trustees, and to distribute such books without cost to the pupils. [As amended, Acts 1945, 49th Leg., p. 465, ch. 294, § 1.]

Sec. 3. Nothing in this Act shall be construed to restrict in any wise the teaching of the Spanish or other modern language in the public high schools of this State or the supplying of free text books therefor, as now authorized by law. The manner and condition of selecting, purchasing and distributing the text books authorized by this Act shall be the same as now provided with respect to free text books generally by Title 49, Chapter 16 of the 1925 Revised Civil Statutes of the State of Texas,[1] as amended to the effective date of this Act. [Acts 1941, 47th Leg., p. 125, ch. 98.]

[1] Articles 2839-2861.

Art. 2912. [2784] Registers and reports.—Teachers shall keep daily registers, in which the attendance, names, ages and studies of the pupils shall be recorded, and such other matters as may be prescribed by the State Superintendent. Said registers shall be open to the inspection of all parents, school officers, and all other persons who may be interested. All teachers shall make monthly reports on such subjects as may be designated by the State Superintendent or county superintendent, to be approved by a majority of the trustees of the district, and shall file the same with the county superintendent when they present their vouchers for their month's salaries. They shall make such reports at the end of the school term as may be prescribed by the State Superintendent, and, until such term reports are made, the trustees shall not approve vouchers for last month's salaries, nor shall the county treasurers pay the same. [Acts 1905, p. 263.]

Art. 2913. [2785] Shall attend summer schools.—As far as possible all teachers in the public schools of this State shall attend the summer normal and county institutes. [Id.]

Art. 2913a. Combination of schools with State of New Mexico; compact Commissioner.—Sec. 1. That the Governor of the State of Texas is hereby authorized to negotiate a contract with the State of New Mexico to permit school districts, or incorporated towns, or union high school districts, located in Texas adjoining the Texas-New Mexico State line to combine with school districts, incorporated towns, and other educational subdivisions of the State of New Mexico adjoining the Texas-New Mexico State

line to promote educational facilities for such communities, to permit cooperative measures to be adopted by them for the financing of school buildings and teaching staffs for the same, and for other purposes incident thereto or in aid thereof.

Sec. 2. That the Governor of Texas is authorized to appoint a Compact Commissioner, who shall have authority to negotiate such a compact with the State of New Mexico, subject to final approval by the Legislature of Texas. [Acts 1931, 42nd Leg., p. 418, ch. 251.]

For text of Acts 1935, 44th Leg., p. 516, ch. 220, ratifying compact between the states of New Mexico and Texas, see Vernon's Annotated Texas Civil Statutes, Art. 2913a, note.

Acts 1935, c. 220, referred to in note under this article, violated constitutional provision limiting authority of legislature in creation of school districts to within the state. Texas-New Mexico School Dist. No. 1 v. Farwell Independent School Dist., Civ.App., 184 S.W.2d 642.

Art. 2914. [2731] Elementary agriculture.—The State Normal School Board of Regents, the boards of directors of the Agricultural and Mechanical College, of the College of Industrial Arts, and of the State University shall require the teaching of elementary agriculture for teachers in the summer sessions of said institutions and the State normal schools. [Acts 1909, p. 221.]

Art. 2915. Cotton classing.—The State Board is authorized and instructed to require the teaching of cotton classification in all the State normal schools, industrial schools, summer normal schools, teachers' institutes, and in all public schools; such subject shall not be required to be taught in independent school districts having a scholastic population of three hundred or more, or in districts where the cotton acreage is less than ten per cent of the total acreage planted to farm products, unless so ordered by the school board or trustees. The grades of cotton taught in all schools shall be those established and provided for by the United States Department of Agriculture and known as official types or "standards." The State Superintendent shall furnish full information to all schools required to teach the classification of cotton, as to how to obtain such types or "standards." [Acts 1913, p. 129.]

Art. 2916. Cotton classing: standards.—The commissioners court of all counties coming under the provisions of this law shall provide for at least one set of the official types or "standards" to be placed in charge of the county superintendent, who shall use them for the purposes of instruction in classification of cotton, lend them to summer normal schools and teachers' institutes held in his county, and have types of same made for the various schools in his county applying for same, provided, that such schools shall pay the cost of making said types. The school board or trustees of every school district required by the provisions of this law to teach cotton grading, shall furnish the county superintendent with samples of the different grades of cotton from which a set of types or "standards" shall be made by comparing them with the official types or "standards," and the county superintendents shall certify that the same have been carefully compared with the official types or standards in his office, and shall correctly label same, showing the grade thereof; provided, that nothing in this article shall prevent school boards or trustees from purchasing the official types or standards direct from the United States Department of Agriculture. The State normal schools and the State industrial schools shall procure the official types or standards from the United States Department of Agriculture and pay for same out of the appropriation made by the Legislature for their support and maintenance. [Id.]

Art. 2917. Cotton classing: instructors.—The State normal and industrial schools shall employ a competent instructor to teach the practical art of grading and classing cotton, and the handling of cotton in all of its branches from the field to the factory. Summer normals and county institutes shall make provision for the employment of instructors in cotton classification in the same way that they employ instructors in other required branches. [Id.]

Art. 2918. Cotton classing cetificates.—Students of any school in this State where cotton grading or classing is required to be taught shall be entitled to a certificate of proficiency after passing such examination as the faculty of the school or the county superintendent of the county in which they propose to teach may prescribe; provided, that the applicant must be able to class sixty per cent or more of the samples presented compared with the types or standards of the Department of Agriculture. [Id.]

Art. 2919. Free kindergartens.—The trustees of any school district in Texas, upon the petition of the parents or guardians of twenty-five or more children under the scholastic age down to and including five years, residing in said district, shall establish and maintain a kindergarten as a part of the public free schools of said district, for the training of children within said ages residing in said district, and shall establish such courses of training, study and discipline, and such rules and regulations governing such kindergartens as said trustees shall deem best. Any such petition for the establishment and maintenance of a free kindergarten shall be presented to the trustees of said district between the first day of June and the first day of August in any one year. The cost of establishing and maintaining such kindergartens shall be paid from the special school tax of said districts. Said kindergartens shall be a part of the public school system and shall be governed, as far as practicable in the same manner and by the same officers as is or may be provided by law for the government of the other public schools of the State. The trustees shall be empowered to employ to teach such kindergartens only those who hold State Kindergarten Certificates. [Acts 1917, p. 319.]

Art. 2919a. School canning factories in districts of not less than 225 scholastics.—Sec. 1. That the Board of School Trustees of Independent School Districts having a scholastic population of not less than 225 nor more than 325 according to the latest approved census roll on file in the State Department of Education, be and are hereby authorized to borrow money from the Reconstruction Finance Corporation, or any other source, for such periods of time as may be necessary, for the purpose of installing school canning factories to be used in giving instruction in food conservation work to high school children and adults of said districts, and for the purpose of purchasing the necessary equipment for the installation of manual training departments; and for the equipment of physical education departments and for the erection of the necessary buildings therefor.

Sec. 2. That the Board of School Trustees of the districts designated in the preceding section be and are hereby authorized to charge such fees for the use of such equipment or departments as are provided for herein as may be necessary to make the project self-liquidating as said term self-liquidating is defined by the Emergency Relief and Construction Act of 1932.[1]

Sec. 2-a. That all such fees be placed in a special fund known as the "Self-Liquidating Fund" in the Depository of School Funds for said districts, that said fund cannot be used for any purpose save the payment of interest and principal or obligations incurred for the erection of necessary buildings and the installation of such equipment or departments as are provided for herein. Should the amount collected from fees for the use of such equipment or departments, be insufficient at any time to meet the interest, or interest and principal due on such obligations as provided for herein, the Boards of Trustees of such districts are vested with authority and are hereby directed to transfer from the local maintenance tax of said district any amount nec-

essary to meet such interest, principal, or interest and principal.

Sec. 3. That the Board of School Trustees in such districts as are provided for in Section One, be and are hereby vested with authority to issue securities based on fees as provided for in preceding Section, which may be supplemented by additional warrants based on the maintenance tax to be collected in succeeding years.

Sec. 4. That Boards of Trustees of such School Districts as are provided for in Section One, be and are hereby authorized to perform any and every act in anywise suggested or demanded by the Reconstruction Finance Corporation, which may be necessary to obtaining loans for the above named purpose or any other purpose. [Acts 1933, 43rd Leg., p. 195, ch. 90.]

1 Act of July 21, 1932, c. 520, 47 U.S.Stat. 709.

Art. 2919b. School canning factories in districts of not less than 1800 scholastics.—Sec. 1. That the Board of School Trustees of Independent School Districts having a scholastic population of not less than 1800 nor more than 1900, according to the latest approved census roll on file in the State Department of Education, be and are hereby authorized to borrow money from the Reconstruction Finance Corporation, or any other source, for such periods of time as may be necessary, for the purpose of installing school canning factories to be used in giving instruction in food conservation work to high school children and adults of said districts, and for the purpose of purchasing the necessary equipment for the installation of manual training departments.

Sec. 2. That the Boards of School Trustees of the districts designated in the preceding section be and are hereby authorized to charge such fees for the use of such equipment or departments as are provided for herein as may be necessary to make the project self-liquidating as said term self-liquidating is defined by the Emergency Relief and Construction Act of 1932.1

Sec. 2-A. That all such fees be placed in a special fund known as the "Self-Liquidating Fund" in the Depository of School Funds for said districts, that said fund cannot be used for any purpose save the payment of interest and principal or obligations incurred for the installation of such equipment or departments as are provided for herein. Should the amount collected from fees for the use of such equipment or departments, be insufficient at any time to meet the interest, or interest and principal due on such obligations as provided for herein, the Boards of Trustees of such districts are vested with authority and are hereby directed to transfer from the local maintenance tax of said district any amount necessary to meet such interest, principal, or interest and principal.

Sec. 3. That the Board of School Trustees in such districts as are provided for in Section One, be and are hereby vested with authority to issue securities based on fees as provided for in preceding Section, which may be supplemented by additional warrants based on the maintenance tax to be collected in succeeding years.

Sec. 4. That Boards of Trustees of such School Districts as are provided for in Section One be and are hereby authorized to perform any and every act in anywise suggested or demanded by the Reconstruction Finance Corporation, which may be necessary in obtaining loans for the above named purposes or any other purpose. [Acts 1933, 43rd Leg., p. 132, ch. 63.]

1 Act of July 21, 1932, c. 520, 47 U.S.Stat. 709.

Arts. 2920–2922. [Repealed by Acts 1945, 49th Leg., p. 97, ch. 68, § 15.

CHAPTER 19A.—RURAL HIGH SCHOOLS

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4. Partial invalidity.
2922*l*(3). Trustees in certain rural high school and consolidated independent school districts.

Art. 2922a. Authority to establish.—In each organized county in this state, and in any county which shall hereafter be organized, the county school trustees shall have the authority to form one or more rural high school districts, by grouping contiguous common school districts having less than four hundred (400) scholastic population and independent school districts having less than two hundred fifty (250) scholastic population, for the purpose of establishing and operating rural high schools; provided, also, that the county school trustees may annex one or more common school districts or one or more independent school districts having less than two hundred fifty (250) scholastic population to a common school district having four hundred (400) or more scholastic population, or to an independent district having two hundred fifty (250) or more scholastic population. Provided, that the county school trustees shall have the authority to abolish a rural high school district on a petition signed by a majority of the voters of each elementary school district composing the rural high school district, and when such district has been abolished the elementary districts shall automatically revert back to their original status, with the exception that in the event there are any outstanding indebtednesses against the said rural school district each elementary district shall assume its proportional part of the debts, bonded or otherwise. [Acts 1925, 39th Leg., p. 204, ch. 59; Acts

1927, 40th Leg., 1st C.S., p. 206, ch. 78, § 1; Acts 1947, 50th Leg., p. 798, ch. 398, § 1.]

Section 3 of the amendatory Act of 1947 repealed all conflicting laws.

Art. 2922a—1. Validating consolidated rural high school districts.—All Consolidated Rural High School Districts heretofore created or attempted to be created by an act of the County Board of Trustees in creating or attempting to create Consolidated Rural High School Districts out of a district or districts that had been theretofore a Consolidated Common School District or districts are hereby validated in all respects as though they had been duly and legally established in the first instance; all acts of the Board of Trustees of such districts in ordering and holding elections and declaring the results thereof, and levying taxes therefor, all bonds issued and outstanding and all tax levies made therefor, and all tax assessments, assessment rolls, and tax rolls of such districts, and all bonds heretofore authorized and voted but not yet issued by such districts are hereby validated, ratified, approved and confirmed; provided, that this act shall not apply to any such districts, bonds, tax levies, tax assessments or tax rolls which are now involved in litigation. [Acts 1936, 44th Leg., 3rd C.S., p. 1992, ch. 481, § 1.]

Art. 2922a—2. Validation of consolidated rural high school districts in counties of 48,550 to 48,570 population and 280 to 295 scholastics.—From and after the effective date of this Act, in all consolidated rural high school districts in this State, located in counties having a population of not less than forty-eight thousand, five hundred and fifty (48,550) and not more than forty-eight thousand, five hundred and seventy (48,570), according to the last preceding Federal Census, and where such consolidated rural high school districts, located in such counties, having a scholastic population of not less than two hundred and eighty (280) and not more than two hundred and ninety-five (295), according to the last preceding scholastic enumeration in such districts heretofore created or attempted to be created by an act of the county board of trustees in creating or attempting to create consolidated rural high school districts out of a district or districts that had been theretofore a consolidated common school district or districts are hereby validated in all respects as though they had been duly and legally established in the first instance; all acts of the board of trustees of such district in ordering and holding elections and declaring the results thereof, and levying taxes thereof, all bonds issued and outstanding and all tax levies made therefor, and all tax assessments, assessment rolls, and tax rolls of such districts, and all bonds heretofore authorized and voted but not yet issued by such districts are hereby validated, ratified, approved and confirmed; provided, that this Act shall not apply to any such districts, bonds, tax levies, tax assessments or tax rolls which are now involved in litigation. [Acts 1939, 46th Leg., Spec.L., p. 1036, § 1.]

Art. 2922a—3. Validation of consolidated rural high school districts in counties of 31,130 to 31,145 population and 250 to 700 scholastics.—From and after the effective date of this Act, in all consolidated rural high school districts in this State located in counties having a population of not less than thirty-one thousand, one hundred and thirty (31,130) and not more than thirty-one thousand, one hundred and forty-five (31,145) inhabitants, according to the last preceding Federal Census and where such consolidated rural high school districts, located in such counties, have a scholastic population of not less than two hundred and fifty (250) and not more than seven hundred (700) scholastics, according to the last preceding scholastic enumeration, in such district, heretofore created or attempted to be created by an act of the County Board of Trustees in creating or attempting to create consolidated rural high school districts out of a district or districts that had been theretofore a consolidated common school district or districts, are hereby validated in all respects as though they had been duly established in the first instance; all acts of the Board of Trustees of such district in ordering or holding the elections and declaring the results thereof, and levying taxes therefor, all bonds issued and outstanding and taxes levied therefor, and all tax assessments, assessment rolls, and tax rolls of such district, and all bonds heretofore authorized and voted but not issued by such district are hereby validated, ratified, approved, and confirmed; providing that this Act shall have no application to any such districts, bonds, tax levies, and tax rolls which are now involved in tax litigation. [Acts 1941, 47th Leg., p. 1321, ch. 594, § 1.]

Art. 2922aa. Consolidation of rural high school districts and common school districts authorized.—Provided any Rural High School District already formed under the provisions of this law may consolidate with any contiguous Common School District upon an election being held in the respective districts; said election to be held in conformity with Article 2806, Revised Civil Statutes of Texas, 1925. Upon such consolidation said newly formed district shall take the form of said Rural High School District and be governed by the Board of Trustees of said Rural High School District, and shall become a part of said Rural High School District for all intents and purposes as though it were originally a part of said district. Provided that in case of any outstanding bonded indebtedness in either of said districts an election shall be held in conformity with the General Law governing school districts to determine whether or not said Common School District or Rural High School District shall assume their prorata part of such indebtedness. Provided, however, that said consolidation above referred to shall not become effective until after the election adjusting the bonded indebtedness and in case such election fails to be carried the consolidation shall be held for naught and such districts shall remain in their original status. [Added Acts 1937, 45th Leg., p. 845, ch. 416, § 1.]

Art. 2922b. How classed.—Rural high school districts as provided for in the preceding article shall be classed as common school districts, and all other districts, whether common or independent, composing such rural high school district shall be referred to in this Act as elementary school districts; provided that all independent school districts enlarged by the annexation thereto of one or more common school districts as provided for in Article 2922a shall retain its status and name as an independent school district, and shall continue to operate as an independent school district under the provisions of the existing laws and the laws hereafter enacted governing other independent school districts, except as otherwise provided for herein.

Art. 2922c. Area.—No rural high school district, as provided for herein, shall contain a greater area than one hundred square miles, or more than ten elementary school districts, except that the county school board of school trustees may form rural high school districts, as provided in Article 2922a, containing more than one hundred square miles, upon a vote of a majority of the qualified electors in the said proposed rural high school district voting at an election called for such purpose; and provided further, that the said board of county school trustees may form a rural high school district containing more than ten elementary districts upon a vote of a majority of the qualified voters in each of the elementary districts within such proposed rural

high school district. [As amended Acts 1947, 50th Leg., p. 798, ch. 398, § 2.]

Art. 2922d. County line districts.—The county board of trustees of two or more adjoining counties shall have the authority, upon the written order of a majority of the members of each county board concerned, to establish a county line rural high school district, and to designate the county which shall have supervision of said county line rural high school district. Said county line rural high school district shall be governed as other rural high school districts herein provided for.

Art. 2922e. Control of.—The control and management of the schools of a rural high school district, established under the provisions of this Act, shall be vested in a board of seven trustees, elected by the qualified voters of the said district at large, who shall be elected and serve in accordance with the provisions of General Law relative to common school districts, except as may be otherwise provided herein; and provided that such elementary district included in such rural high school district must be the residence of at least one member of said board. Any vacancy shall be filled for the unexpired term by appointment by the county board of trustees. Provided that for a rural high school district formed with more than one hundred square miles of territory, or containing more than seven elementary districts, as provided in this Act, the board of trustees, as herein provided for, shall be elected from the district at large. Should any rural high school district fail to elect a trustee or trustees as provided for in this Act, the county board of trustees shall appoint said trustee or trustees. Four of said trustees shall be elected each odd number of years and three on each even number of years on the first Saturday in April. The trustees of the first board shall draw for terms. In the event a rural high school district is created subsequent to the date for the election of trustees of common school districts, as provided by General Law, it shall be the duty of the county board to appoint a board of trustees for the district, as prescribed herein, to serve until the next date for the election of common school district trustees. In the election of rural high school district trustees, at least one voting box shall be provided in each elementary district composing the high school district.

The present board of trustees of all elementary school districts which may be included within a rural high school district, as herein provided, shall continue in control of their respective districts until the close of the current scholastic year, but they shall make no contract effecting the expenditure of any school funds subsequent to September 1, 1925, nor shall they have any other authority in the management and control of the schools of the said districts after September 1, 1925. The boards of trustees of rural high school districts shall immediately upon their election and organization proceed to make contracts for the operation of all schools under their control. The first board of trustees herein provided for shall be elected on the first Saturday in April, 1925, and annually thereafter an election shall be held as provided for by law for holding trustee elections in common school districts.

Art. 2922f. Elementary schools—how abolished.—The county board of school trustees shall not have the authority to abolish or consolidate any elementary school district already established except upon the vote of a majority of the qualified electors residing in such elementary district; provided that when any school within an elementary district fails to have an average daily attendance the preceding year of at least twenty pupils it may be discontinued by the board of trustees of said rural high school district, and said district may be consolidated by the county board of school trustees with some other district or districts for elementary school purposes; provided that if there is more than one white or one colored school in such elementary school district the board of trustees of the said rural high school districts or an independent district, as the case may be, may consolidate such white or colored schools of the elementary district; and provided that the board of trustees of a rural high school district may transfer the pupils of one elementary district to another within the rural high school district, when the transfer is made from an elementary district of lower classification to one of higher classification; and provided further that the board of trustees of a rural high school district may transfer pupils from an elementary district to any other elementary district within the rural high school district upon application of the parents or guardian of the said pupils.

Whenever one or more common school districts are annexed to a common school district or to an independent district under the provisions of Section 1, such common or independent district shall maintain elementary schools of such classification as the county board may designate in each district so annexed, for the same length of term provided for the schools of the said common school district or independent district. Provided such schools may be discontinued by the local board of trustees when the average daily attendance of any such schools for the preceding year is less than twenty.

Art. 2922g. Districts classified.—The county board of school trustees shall classify the elementary schools in each rural high school [1] district and designate the number of grades that shall be taught in such schools, and when such classification is made the board of trustees of the rural high school districts shall maintain a school of such classification for the same length of term as all other schools within said rural high school district. The board of trustees of a rural high school district shall have a right to be heard by the county board of trustees relative to the classification of schools within their districts and shall have the right of appeal from such classification from the county board of school trustees to the State Superintendent of Public Instruction.

[1] So in enrolled bill. R.S.1925 omits word "school".

Art. 2922h. Outstanding bonds.—In the event any of the elementary districts included within a rural high school district or the common school districts annexed to a common or independent district, or the common school or independent district to which one or more common school districts are annexed, as herein provided for, have outstanding bonded or other valid indebtedness, then at an election for that purpose, at a date, to be designated by the proper authorities, as provided by General Law, the question as to whether or not the said rural high school district, common school district, or independent school district as the case may be, shall assume and pay off such outstanding bonds or other indebtedness and whether a tax shall be levied therefor may be submitted to the qualified taxpaying voters of such high school, common or independent district. If a majority of the votes cast at such an election favor the assumption of such indebtedness then such indebtedness shall become valid and subsisting obligations of the said rural high school district, common school district, or independent district; and the board of trustees of such district shall annually thereafter levy and collect sufficient taxes to pay the interest on the bonds so assumed as it accrues, and create a sinking fund which, in addition to the sinking funds already accumulated in the original bonded district or districts, will pay off and retire the said outstanding bonds when they shall become due. The said election providing for the assumption of such bonded or other indebtedness shall be called and held in accordance with existing provisions of law relating to elections for the issuance of bonds by independent

school districts. [Acts 1925, 39th Leg., p. 204, ch. 59; Acts 1927, 40th Leg., 1st C.S., p. 206, ch. 78, § 2.]

Art. 2922i. Warrants.—All funds of every nature to which a rural high school district may be entitled shall be paid out on warrants issued by the secretary and signed by the secretary and president of the board of trustees and approved by the county superintendent of public instruction. The board of school trustees shall select its own president and secretary, each of whom shall be a member of the board. The secretary shall keep a complete itemized account of all receipts and disbursements in a well-bound book owned and paid for by the district, and his accounts shall be approved by the county superintendent and by the county board of school trustees at the end of each scholastic year.. No school funds shall be allotted or apportioned and paid to any rural high school district for the following year thereafter until this report is submitted to and approved by the county superintendent and the county board of school trustees.

Art. 2922j. Deposit and disbursement of funds.—All funds belonging to a rural high school district shall be deposited in the county depository and disbursed in the same manner as other funds are disbursed from such depository under the depository law in so far as same are applicable.

Art. 2922k. Control by and of trustees.—All rural high schools within a rural high school district herein provided for shall be under the immediate control of the board of school trustees for such rural high schools, and such board of school trustees shall be under the control and supervision of the county superintendent and county board of school trustees, and shall be subject to the same provisions of law and restrictions that common school districts are now subject to, except where otherwise provided herein.

Art. 2922*l*. Tax.—The board of a rural high school district provided for in this Act shall have the power to levy and collect an annual ad valorem tax not to exceed One Dollar ($1) on the one hundred dollars valuation of taxable property of the district for the maintenance of schools therein, and a tax not to exceed Fifty (50) Cents on the one hundred dollars valuation of taxable property of the district for the purpose of purchasing, constructing, repairing, or equipping public free school buildings within the limits of such district, and the purchase of necessary sites therefor; providing that the amount of maintenance tax, together with the amount of bond tax of the district shall never exceed One Dollar ($1) on the one hundred dollars valuation of taxable property; and provided further that no such tax shall be levied and no such bonds shall be issued until after an election shall have been held wherein a majority of the qualified taxpaying voters, voting at said election, shall have voted in favor of the levying of said tax, or of the issuance of said bonds, or both, as the case may be, and which election shall be held in accordance with the law now governing such elections in common school districts,[1] or districts included in a rural high school district or annexed to a common or independent school district, as provided for herein, shall be continued in force until such time as a uniform[2] district or said common or independent district as enlarged by the annexation of the said common school districts thereto. The board of trustees of any rural high school district may appoint an assessor of taxes who shall assess the taxable property within the limits of said district within the time provided by existing laws, and said assessment shall be equalized by the board of equalization composed of three (3) members appointed by the board of trustees of said district. The said board of equalization shall be composed of legally qualified voters residing in said district, and shall have the same power and authority, and be subject to the same restrictions that now govern such boards in independent school districts. The tax assessor herein provided for shall receive such compensation for his services as the trustees of said district may allow, not to exceed two (2) per cent of taxes assessed by him. The county tax collector shall collect such tax and shall receive one-half of one per cent for his services for collecting such tax. Such tax when collected shall be deposited in the county depository to the credit of such rural high school district. The tax assessor herein provided for shall make a complete list of all assessments made by him, and when approved by the board of trustees shall be submitted to the county tax collector not later than September 1st of each year.

Provided that in counties having a population of less than eight thousand, seven hundred (8,700) and more than eight thousand, five hundred (8,500) according to the last Federal Census, rural high school districts composed wholly of common school districts, such rural high school districts shall not have the authority to appoint its tax assessor, board of equalization, nor tax collector, and the taxes thereof shall be assessed by the county tax assessor and collected by the county tax collector as in common school districts. [Acts 1925, 39th Leg., p. 204, ch. 59; Acts 1927, 40th Leg., 1st C.S., p. 206, ch. 78, § 3; Acts 1937, 45th Leg., 2nd C.S., p. 1923, ch. 40, § 1.]

1 "provided that the local taxes previously authorized by a district" was probably omitted inadvertently.

2 "tax may be provided for the benefit of the rural high school" was probably omitted inadvertently.

The 1937 amendment was invalid because of defective caption. Landrum v. Centennial Rural High School Dist. No. 2, Civ.App., 134 S.W.2d 353.

Art. 2922*l*(1). Free tuition in certain districts, attendance in high schools in or out of home district.

Persons entitled to benefits

Sec. 1. The board of trustees of any common or independent school district, whether organized by General or Special Law, which levies and collects a maintenance tax for the purpose of supplementing the available school fund received from the State and county shall admit into the public schools of the district free of tuition, all persons who are over six (6) and not over twenty-one (21) years old at the beginning of the scholastic year, if such person or his parents or legal guardian reside within said common or independent school district.

Any pupil between the age of six (6) and twenty-one (21) residing in a rural district or other district, which levies a local maintenance tax, who has been promoted to a high school grade not taught in his home district, shall have the right to attend a standardized, classified, or affiliated high school in his home county or in any other county at the expense of his home school district, if such district as determined by its budgeted expenditures according to the General Budget Law is financially able to provide tuition, or otherwise at the expense of the State of Texas.

If the name of such pupil appears on the census roll of his home district and if the pupil attends a high school in the county of his residence, his State and county per capita funds shall be transferred to the receiving district under the General Laws governing the transfer of pupils. If the pupil's name appears on the census roll of his home district and if he attends a high school in a county other than that of his residence, his local district shall pay to the school which he attends an amount equivalent to the State and county per capita apportionment. The receiving district shall allow such pupils to attend school for as long a time as the State and county available funds will operate the public schools of the race to which such transferred pupil belongs, such free school term for such pupil to begin with the date such transferred pupil enters the school of the receiving districts. Aft-

er the expiration of the time that the State and county available funds will operate the free schools of the district, the receiving district may charge such pupil tuition at a rate fixed by the Board of Trustees of the receiving district, and approved by the State Department of Education, such rate to be based upon the budgeted expenditures for maintenance of the high school grades of the receiving district for the current school year, exclusive of bonds and interest thereon.

If the name of such pupil is not on the census roll of his home district, he may attend a high school under the same terms as the above pupils, except that his home district and the State will be obligated for the payment of tuition for the entire time of his attendance in the receiving district. Provided, any obligations of the State of Texas as herein referred to in this Act shall be paid from the Rural Aid Fund from the sum or sums set aside for rural high school tuition in said law. It is further provided that in no instance shall the State be obligated to pay out of the funds appropriated for this purpose a tuition rate in excess of Seven Dollars and Fifty Cents ($7.50) per month per pupil. Provided further, that this provision shall not alter or limit the operation in any county which has by special Act created a County Equalization Fund and where said Fund is now being used to defray in whole or part, rural high school tuition fees.

Information as to transferred pupils to State Department of Education, adjustment between districts as to tuition

Sec. 2. The superintendent of the receiving district, the county superintendent, and the superintendent or principal of the sending district shall certify, not later than thirty (30) days after notification of the entrance of each pupil in the receiving high school, the eligibility of pupils from the sending districts for tuition privileges in the high schools of the receiving district which said pupils desire to attend by supplying such information and signing such forms as may be required by the State Department of Education. Upon the approval of this certificate by the county superintendent, the State and the district shall be obligated for the payment of the tuition. The county superintendent is hereby required to file with the State Department of Education a copy of the budget, made under the General Budget Law of the State, not later than October 1st, of each year of each of the several districts in his county and to furnish such other information as will enable the State Department of Education to estimate the amount of high school tuition that each district will be able to pay; provided, however, that no portion of the State and county available funds of such district of those children not transferred for high school purposes shall ever be used for the payment of the high school tuition due other districts except as provided by the General Law; provided further, that the superintendents of sending independent school districts shall sign a certificate of eligibility, which certificate shall obligate the district and the State for the payment of such tuition at the rate as hereinbefore provided; provided further, that the superintendent of each sending independent district is hereby required to file with the State Department of Education a copy of the budget of his district not later than October 1st, of each school year and to furnish such other information as will enable the State Department of Education to estimate the amount of high school tuition that the district will be able to pay; provided further, that no child entitled to free high school privileges under the provisions of this Act shall ever have such privileges curtailed, or his tuition account invalidated. This shall not be construed, however, to limit except as to high school tuition, the regulations of the State Department of Education relative to other provisions of the present Rural Aid Law, or such other laws for the equalization of educational opportunities as may be enacted.

Report by receiving high school district to State Department of Education

Sec. 3. Receiving high school districts shall make a report to the State Department of Education and the county superintendent at the close of each semester, giving the name of the county, of the home district, and of the child, with his age, grade, and attendance, and the rate and the amount of tuition. In addition to this report an itemized statement indicating tuition due to date shall be sent at the close of each semester to the secretary of the board of trustees of the sending district. Upon the basis of the attendance report, referred to in this Section, when approved by the State Department of Education, warrants shall be issued semi-annually by the State directly to the receiving high school district for payment of the tuition due; provided, however, each home district indebted to a high school district for tuition shall issue a warrant to the high school district not later than June 15th, of each fiscal year for all of its surplus maintenance funds, or as much thereof as may be necessary to pay the entire tuition account of such home district to the receiving high school, and the superintendent of the receiving high school shall not later than July 1st, of each year certify to the State Department of Education the amount received by the school on high school tuition from each sending district. The amount paid by the sending district shall be deducted from the second semi-annual payment made by the State to the receiving school, provided that any high school district receiving from the State Department an amount in excess of the total tuition charged by the receiving district shall be required under this Act to return all excess payment to the State Department of Education to be deposited with the State Treasurer to the credit of the fund from which it came.

State Superintendent authorized to withhold funds due districts failing to execute required forms

Sec. 4. The State Superintendent shall withhold any and all funds due any district that refuses or fails to execute forms required by the State Department of Education for pupils eligible to have their high school tuition paid by the home district and the State. It is further provided that the State per capita available fund for each pupil transferred for high school purposes under this Act, who has enrolled in the school to which he has been transferred, shall be distributed to the districts to which such pupils have been transferred as the apportionment is paid by the State. If any district fails to pay this portion of the State per capita according to the provisions of this Act, then the State Superintendent, when notified by the superintendent of the receiving districts, accompanied by an affidavit of such failure, shall withhold from such district, when the next per capita payment is ready for distribution, such an amount as such district may owe any other district until such obligation has been paid; provided further, that the State Superintendent shall investigate such accounts and determine that they are just accounts and obligations of the district before their portion of the per capita allotment is withheld.

Partial invalidity, repeals

Sec. 5. In case any clause, sentence, paragraph, section or part of this Act shall be held unconstitutional or void, then and in that event it shall not affect the validity of any other clause, sentence, paragraph, section or part of this Act. All laws or parts of laws, both General and Special, in conflict with this Act are hereby repealed. [Acts 1935, 44th Leg., p. 351, ch. 127.]

Art. 2922l(2). Validation of county line rural high school districts.

Acts validated

Section 1. All county line rural high school districts, created by General Law in this State, and heretofore laid out and established or attempted to

be established by the proper officers of the counties in which such districts are located, and heretofore recognized by either State or county authorities as school districts, are hereby validated in all respects as though they had been duly and legally established in the first instance. All acts of the Boards of Trustees of such districts ordering an election or elections, declaring the results thereof, levying, attempting or purporting to levy taxes for and on behalf of such school districts and all bonds heretofore voted but not yet issued, are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county in the creation of any such district was omitted shall in nowise invalidate such district, and the fact that by inadvertence or oversight any act was omitted by the Board of Trustees of any such district in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such district, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so issued by such district.

Provided, however, that no action or resolution purporting to transfer any territory from one district to another district, without an affirmative vote of the voters of the districts affected shall be validated by the passage of this Act.

Taxation

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act, or acts of said districts, or by any Act, whether General or Special, of the Legislature.

Pending litigation, effect on application of act

Sec. 3. This law shall not apply to any district, the organization or creation of which is now involved in litigation. Provided further that this Act shall not apply to any district which may have been established and which has later returned to its original status and has been so recognized by the proper authorities, provided, however, if and when any such litigation shall be finally terminated, in a manner favorable to such district, then this Act shall apply thereto.

Partial invalidity

Sec. 4. If any word, phrase, clause, sentence, paragraph, section, or part of this bill shall be held by any Court of competent jurisdiction to be invalid, as unconstitutional, or for other reasons, it shall not affect any other word, phrase, clause, sentence, paragraph, section, or part of this Act. [Acts 1937, 45th Leg., p. 577, ch. 287.]

Art. 2922l(3). Trustees in certain rural high school and consolidated independent school districts.—Section 1. This Act shall apply only to rural high school districts and consolidated independent school districts composed of the territory formerly comprising twelve (12) original school districts, two (2) of which shall have been independent school districts, each containing more than two hundred and fifty (250) scholastic population, and it is immaterial whether such rural high school district or consolidated independent school district shall have been established, or shall be established, by consolidation or by annexations or by grouping the original school districts. If a rural high school district or consolidated independent school district contains the territory formerly comprising three (3) independent school districts each having more than two hundred and fifty (250) scholastic population this Act shall not apply to such district.

Sec. 2. In all such rural high school districts and consolidated independent school districts to which this Act is applicable a Board of seven (7) trustees shall be elected by the voters of the district at large, and two (2) of such trustees shall be elected from the territory formerly comprising each one of the independent school districts containing more than two hundred and fifty (250) scholastic population, and the other three (3) trustees shall be elected from the territory formerly comprising the common school districts and independent school districts having fewer than two hundred and fifty (250) scholastic population.

Sec. 3. In all districts to which this Act is applicable it shall be the duties of the Board of County School Trustees of the county in which each school district is situated to divide the territory of such rural high school district or consolidated independent school district, exclusive of the territory formerly comprising the two (2) independent school districts having more than two hundred and fifty (250) scholastic population, into three (3) areas, and to define such areas; and one trustee shall be elected from each of such areas so established and defined by the County Board; but it is expressly provided that each of such trustees is to be elected by the voters at large of the rural high school district or the consolidated independent school district, as the case may be.

Sec. 4. The Board of seven (7) trustees selected at the time of the establishment of such rural high school district or consolidated independent school district, or the Board of seven (7) trustees serving such district at the time this Act becomes a law shall serve until the next regular election of trustees, as prescribed by general law, at which time a full Board of seven (7) trustees shall be elected under the provisions of this Act; and they shall divide themselves into classes, and class two (2) comprising two (2) trustees shall serve for two (2) years and class three (3) comprised of three (3) trustees shall serve for three (3) years; and thereafter the trustees to be elected shall be in conformity with this classification. [Acts 1947, 50th Leg., p. 136, ch. 80.]

CHAPTER 19B.—STATE AID FOR RURAL AND SMALL TOWN SCHOOLS

Art.
2922m–2922z. [Executed.]
2922zz—1. State or governmental agencies aiding school districts.

Sec.
1. Declaration concerning corporate bodies affected.
2. Conditions existing as basis for aid.
3. Defining powers for relief to be conferred by the act.
4. Taxation of lands of State agencies by school districts.
5. Leases by governmental agencies.

Arts. 2922m–2922zz. [Executed.]

The articles were Acts 1925, 39th Leg., p. 292, ch. 113, §§ 1–15.

Art. 2922zz—1. State or governmental agencies aiding school districts.

Declaration concerning corporate bodies affected

Section 1. Declaration concerning the corporate bodies politic or other governmental agencies to be affected by the Act. Whenever it appears that the consummation of any project by the State of Texas, or by any subsidiary corporate body politic of the State, or by any other governmental agency of the State (all of which, for convenience, hereinafter usually will be referred to as "State agency") has resulted, or will result, in producing in the affairs of any common school district, or independent school district, or other similar tax-supported educational district-creatures of the State (by whatever name they be designated, for convenience to be hereinafter usually referred to as "school district," or "district"),

the conditions hereinafter designated; then, there may be exercised by the governing authority of the State's agency having control of any such project, the powers hereinafter established, under the conditions hereinafter defined.

Conditions existing as basis for aid

Sec. 2. The conditions which must exist as a basis for invocation of the powers of this Act:

(a) The school district has outstanding bonds or other indebtedness, which indebtedness must be paid, in whole or in part, by using the proceeds of ad valorem taxes levied by the district;

(b) It appears that the uncompensated loss of taxable values by the district will unduly burden the property, or the owners of the property, remaining subject to the taxing power of the district; or, if it appears that the district thereafter will not be able to discharge its function as an educational agency of the State, in a manner substantially comparable to that standard theretofore prevailing in the district; and

(c) To be a necessary condition for any relief under the provisions of this Act; the State agency has assurance of revenues to be derived from taxation of property not subject to taxation by one or more school districts conditioned as set forth in this Act, and deemed to be adequate in amount to afford the relief sought to be provided by this Act, without assuredly impairing the ability of a given affected State agency to discharge its lawfully imposed duties to the State; then:

Defining powers for relief to be conferred by the act

Sec. 3. Defining the powers for relief to be conferred by this Act. Whenever there be present in the relations of the State, or a State agency, to a school district concurrence of the conditions specified in Section 2 of this Act, then the governing body (or duly constituted and empowered officer or officers) of the State agency producing distress in the affairs of an affected school district, may exercise discretion to compensate the district and cooperate with it in the manners and within the limits now to be specified, i. e.:

(1) The State or any State agency in this Act specified may pay for the use and benefit of the district a sum of money not to exceed that which would be produced by taxing for a period of not to exceed six (6) years the property of the State agency, at the assessed valuation and at the rate of the district's tax levy for the particular year in which the appropriation of the given property was consummated; however:

(2) In no event shall the compensation to be made hereunder to any given district exceed the amount of its outstanding bonded debt on December 31st of the year during which the State agency may have acquired the property theretofore subject to the district's taxing power, plus a sum of money equal to the amount which will be produced by: Take the assessed value of the property acquired for the year in which it was acquired and apply thereto the rate of tax levied by the district for that year for operating costs (excluding levies for the betterment of the school plant and money to care for funded debt) and extend the amount to be produced in one (1) year for a period of not to exceed six (6) years; provided that compensation to be made hereunder shall be either under the terms of this subdivision (2) or under subdivision (1) foregoing, whichever will result in the smaller amount of compensation; and:

Taxation of lands of State agencies by school districts

Sec. 4. Authorizing the rendition of certain lands of State agencies for taxation by school districts. Whenever any State agency in acquiring land for its project acquires land so conditioned that:

(1) It is not needed to accomplish the objects of the project;

(2) Its segregation and separate use will not impair the usefulness of the remaining land so acquired; the land when segregated may be made to produce a rental or revenue; or, whenever any land so conditioned is held in anticipation of potential or future (undeveloped) needs, then it shall be lawful for any State agency, through its appropriate governing authority, to subject such land to taxation by a school district eligible for compensation hereunder, until such time as need for the actual use of such land has come into existence.

Leases by governmental agencies

Sec. 5. Where the law peculiar to any given State agency does not provide for it a duty differing from that next provided, and the particular governmental agency (not differently directed) owns or controls land subject to lease by others, then:

(a) Unless advertized as hereinafter provided; no lease upon any such land intended to confer on another the right of use for a period extending to a time later than December 31 of the calendar year in which the term of the particular use begins to run, shall be valid; and:

(b) Expressly excepted from need for advertisement as hereinafter provided for, are lands conditioned as follows:

1. Tracts of land not exceeding ten (10) acres in area;

2. Tracts of land as to which the reasonable lease value will not exceed One Hundred Dollars ($100) per annum;

3. All lands not intended to be subjected to use in agriculture or grazing, and meaning hereby to provide for the hereinafter stipulated notice only in case of lands intended for use in agriculture and grazing, or leases for terms designated in subdivision (a) of this Section (unless the same may be excepted herefrom by the provisions of subdivision (b) of this Section) must be subjected to preliminary advertisement of the intent to lease the same, under the provisions that: The notice of the intent to lease for the calendar year next to ensue shall be published one time in the month of October of any given year, prior to the fifteenth day of that month, in a newspaper (if such there be) published in and having general circulation in each county in which the State agency may hold such leaseable land (in default of a newspaper published in a given county to be published in any newspaper having general circulation therein); and such published notice shall be sufficient if it, in substance, gives fair advice that: The advertising State agency will on a definite date (not earlier than October 25th of the particular year) begin to consider and thereafter continue to consider and determine the proposals for leases which may come to it; and, the notice further shall give advice as to the place or places, person or persons at which or to whom proposals for lease shall be made; further, the notice must state the postal address of the principal office of the given lessor agency and state that any interested person may have full knowledge concerning the lands proposed to be placed under lease, and the proposed terms of the leases, by applying at the address given. [Acts 1937, 45th Leg., p. 263, ch. 139.]

CHAPTER 20.—TEACHERS' RETIREMENT

Art.
2922—1. Teachers' Retirement System.

Sec.
1. Definitions.
2. Name and date of establishment.
3. Membership.
4. Creditable service.
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Sec.
6. Administration.
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Art. 2922—1. Teachers' Retirement System.

Definitions

Section 1. The following words and phrases as used in this Act, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Retirement System" shall mean the Teachers Retirement System of Texas as defined in Section 2 of this Act.

(2) "Public school" shall mean any educational organization supported wholly or partly by the State under the authority and supervision of a legally constituted board or agency having authority and responsibility for any function of public education.

(3) "Teacher" shall mean a person employed on a full time, regular salary basis by boards of common school districts, boards of independent school districts, county school boards, Retirement Board of Trustees, State Board of Education and State Department of Education, boards of regents of colleges and universities, and any other legally constituted board or agency of an educational institution or organization supported wholly or partly by the State. In all cases of doubt, the Retirement Board of Trustees, hereinafter defined, shall determine whether a person is a teacher as defined in this Act. A teacher shall mean a person rendering service to organized public education in professional and business administration and supervision and in instruction, in public schools as defined in Subsection (2) of this Section.

(4) "Taught" shall mean all regular services contributing directly and indirectly to the instruction offered by and through the teachers as defined in Subsection (3) of this Section.

(5) "Employer" shall mean the State of Texas and any of its designated agents or agencies with responsibility and authority for public education, such as the common and independent school boards, the boards of regents of State colleges and universities, the county school boards, or any other agency of and within the State by which a person may be employed for service in public education.

(6) "Member" shall mean any teacher included in the membership of the system as provided in Section 3 of this Act.

(7) "State Board of Trustees" shall mean the Board provided for in Section 6 of this Act to administer the Retirement System.

(8) "Service" shall mean service as a teacher as described in Subsection (3) of this Section.

(9) "Prior service" shall mean service rendered prior to the date of establishment of the Retirement System.

(10) "Membership service" shall mean service as a teacher rendered while a member of the Retirement System.

(11) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in Section 4 of this Act.

(12) "Beneficiary" shall mean any person in receipt of an annuity, a retirement allowance, or other benefit as provided by this Act.

(13) "Regular interest" shall mean interest at the rate of three and one-half (3 1/2) per centum per annum, compounded annually.

(14) "Current interest" shall mean interest at a rate per centum per annum ascertained each year by dividing (1) the amount in the Interest Fund on August 31st of such year before the transfer of interest to other funds, less an amount equal to three and one-half (3-½) per centum of the sum of the mean amount in the Membership Annuity Reserve Fund during such year, and the mean amount in the Prior-Service Annuity Reserve Fund during such year, and less an amount not to exceed Fifty (50) Cents per member of record as of August 31st of that year as may be set annually by the Board of Trustees, by (2) an amount equal to the amount in the State Membership Accumulation Fund at the beginning of such year plus the amount in the Permanent Retirement Fund at the beginning of such year and plus the sum of the accumulated contributions in the Teacher Saving Fund at the beginning of such year to the credit of all members included in the membership of the System on August 31st of such year, before any transfers for Service Retirement effective August 31st of such year are made, it being provided that the above division shall be carried to only three (3) decimal places and shall never be taken as greater than three and one-half (3–½) per cent. [As amended Acts 1943, 48th Leg., p. 676, ch. 377, § 1.]

(15) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member, and credited to his individual account in the Teacher Saving Fund, together with all current interest credits thereto, as provided in Section 8 of this Act.

(16) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher if he worked the full normal working time. In cases where compensation includes maintenance, the State Board of Trustees shall fix the value of that part of the compensation not paid in money.

(17) "Average prior-service compensation" shall mean the average annual compensation of a member during the ten (10) years immediately preceding the enactment of this law, or if he had less than ten (10) years of such service, then his average compensation shall be computed for his total years of such prior service, but in computing the average, no salary for any one year shall be more than Three Thousand Dollars ($3,000).

(18) "Membership annuity" shall mean payments for life actuarially determined and derived from reserve funds contributed by a member and an equal amount of reserve funds contributed by the State. All membership annuities shall be payable in equal monthly installments.

(19) "Prior Service Annuity" shall mean payment each year for life of one and one-half per centum of a member's average prior-service compensation, as defined in this Act, multiplied by the number of years of Texas service certified in his prior-service certificate; provided that the maximum number of years of prior-service to be allowed shall be thirty-six (36) years, and in computing his average prior-service compensation, the maximum prior-service salary shall be Three Thousand ($3,000.00) Dollars. All prior-service annuities shall be payable in equal monthly installments. [As amended Acts 1947, 50th Leg., p. 441, c. 248, § 1.]

(20) "Service retirement allowance" shall mean a membership annuity and a prior-service annuity, or any optional benefits payable in lieu thereof.

(21) "Disability Retirement Allowance" shall mean a membership annuity and a prior-service annuity. [As amended Acts 1947, 50th Leg., p. 441, ch. 248, § 2.]

(22) "Retirement" shall mean withdrawal from service with a retirement allowance granted under the provisions of this Act.

(23) "Service Retirement" means the retirement of a member from service with a service retirement allowance under any of the following conditions:

(a) At any time after twenty (20) years of creditable service in Texas and upon attaining the age of sixty (60) years;

(b) Retirement at any time after twenty-five (25) years of creditable service in Texas, although not in service at the time the age of sixty (60) years is attained, but only when the member shall have attained the age of sixty (60) years and only in instances where the member has not withdrawn his contributions.

(c) At any time after thirty (30) years of creditable service regardless of the age attained. [As amended Acts 1947, 50th Leg., p. 441, ch. 248, § 3.]

(24) "Disability Retirement" shall mean withdrawal from service on a disability allowance any time after twenty (20) years of creditable service in Texas and before attaining sixty (60) years of age.

(25) "Membership annuity reserve" shall mean the present value computed upon the basis of such annuity or mortality tables as shall be adopted by the State Board of Trustees with regular interest, of all payments to be made on account of any membership annuity or benefit in lieu thereof, granted to a member under the provisions of this Act.

(26) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the State Board of Trustees, and regular interest.

(27) "School year" shall mean the year beginning on or about September 1st and ending on or about August 31st. [As amended Acts 1941, 47th Leg., p. 610, ch. 376, § 1.]

Name and date of establishment

Sec. 2. A Retirement System is hereby established and placed under the management of the State Board of Trustees as hereinafter created for the purpose of providing retirement allowances and other benefits under the provisions of this Act for teachers as defined in this Act. The Retirement System so created shall be established as of July 1, 1937.

It shall have the power and privileges of a corporation and shall be known as the "Teacher Retirement System of Texas", and by such name all of its business shall be transacted, all of its funds invested and all of its cash and securities and other property held.

Membership

Sec. 3. The membership of said Retirement System shall be composed as follows:

(1) All persons who are teachers on the date as of which the Retirement System is established shall become members as of that date as a condition of their employment unless within a period of ninety (90) days after September 1, 1937, any such teacher shall file with the State Board of Trustees on a form prescribed by such Board, a notice of his election not to be covered in the membership of the System and a duly executed waiver of all present and prospective benefits which would otherwise inure to him on account of his participation in the Retirement System.

(2) Beginning September 1, 1938, and thereafter any teacher teaching for the first time in Texas shall become a member of the Retirement System as a condition of his employment.

(3) Should any member in any period of six (6) consecutive years after becoming a member be absent from service more than five (5) years, or should he withdraw his accumulated contributions, or should he become a beneficiary, or upon death, he shall thereupon cease to be a member; provided, however, that any member who has twenty-five (25) years of creditable service in Texas may leave the service prior to attaining the age of sixty (60) years and continue as a member of the Teacher Retirement System by not withdrawing his accumulated contributions; and said member shall be entitled to retirement upon attaining said age of sixty (60) years with all the rights, duties and privileges as though he had continued in the service until attaining the age of sixty (60) years; provided further, that during the time the United States is in a state of war and for a period of twelve (12) months thereafter, time spent by a member of the Teacher Retirement System (1) in the Armed Forces of the United States of America and their auxiliaries and/or in the Armed Forces Reserve of the United States of America and their auxiliaries and/or in the service of the American Red Cross as a result of having volunteered or having been drafted and/or conscripted thereinto; or (2) in war work as a direct result of having been drafted and/or conscripted into said war work, shall not be construed as absent from service insofar as the provisions of this Act are concerned but shall count towards membership service. [As amended Acts 1943, 48th Leg., p. 676, ch. 377, § 2; Acts 1947, 50th Leg., p. 441, ch. 248, § 4.]

(4) Any teacher who elects not to become a member of the Retirement System as herein provided as of September 1, 1937, and the ninety (90) days next following, may make application to become a member at the beginning of any new school year, but without claim for prior-service credit.

(5) Anyone who has taught in the State of Texas in accordance with the terms of this Act, but who is not in service in the 1937–38 school year, if he subsequently becomes a teacher and if he continues as such for a period of five consecutive years, shall be entitled to receive credit and resulting benefits for prior service as provided for in this Act. [As amended Acts 1947, 50th Leg., p. 441, ch. 248, § 5.]

Creditable service

Sec. 4.

(1) Under such rules and regulations as the State Board of Trustees shall adopt each person who was a teacher, as defined in this Act, at any time during the year immediately preceding the establishment of the System, and who becomes a member during the first year of operation of the Retirement System, or who is a member at the beginning of the school year 1937–1938, shall file a detailed statement of all Texas service, as a teacher, rendered by him prior to the date of establishment of the Retirement System for which he claims credit.

(2) The State Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one school year.

(3) Subject to the above restrictions and to such other rules and regulations as the State Board of Trustees may adopt, the State Board of Trustees shall verify and adjust, as soon as practicable after the filing of such statements of service, the service therein claimed.

(4) Upon adjustment and verification of the statements of service, the State Board of Trustees shall issue prior-service certificates certifying to each member the length of Texas service rendered prior to the date of the establishment of the Retirement System, with which he is credited on the basis of his statement of service. So long as membership continues, a prior-service certificate shall be final and conclusive for retirement purposes as to such service, provided, however, that any member may, within one (1) year from the date of issuance or modification of such

certificate, request the State Board of Trustees to modify or correct his prior-service certificate.

When membership ceases, such prior-service certificate shall become void. Should the employee again become a member, such a person shall enter the System as a member not entitled to prior-service credit except as provided in Section 5, subsection (5), paragraph (b) of this Act.

(5) Creditable service at retirement on which the retirement allowance of a member shall be based, shall consist of the membership-service rendered by him since he last became a member, and also, if he has a prior-service certificate which is in full force and effect, the amount of the service credited on his prior-service certificate. No member shall be entitled to a retirement allowance until he has accumulated twenty (20) or more years of creditable service in Texas.

Benefits

Sec. 5.

(1) Service Retirement Benefits.

Any member may retire upon written application to the State Board of Trustees. The effective date of retirement for any member making application under this Act shall be, at the option of said member, forthwith or as of the end of the school year then current, provided that the said member at the time so specified for his retiring shall have attained the age of sixty (60) years and shall have completed twenty (20) years of creditable service in Texas; provided that a member who leaves the service after completing twenty-five (25) years of creditable service shall be eligible for retirement upon attaining the age of sixty (60) years if said member is then living and if he shall not have withdrawn his contributions; and provided further, that any member with thirty (30) years of creditable service may retire at any time regardless of the age attained. No retirement shall be effective prior to August 31, 1941. Any member in service who has attained the age of seventy (70) years shall be retired forthwith; provided that with the approval of his employer he may remain in service. Any member who has accepted service retirement shall be ineligible and disqualified to resume and/or continue teaching in the public schools of Texas, and also shall be ineligible and disqualified to be otherwise employed as a teacher under this Act; provided, however, that during the present world conflict, commonly called "World War II", and for a period of twelve (12) months thereafter, a retired member who retired August 31, 1942, and prior thereto, and only such retired member shall not be ineligible and disqualified as above stated but may be employed as a teacher under the terms of this Act; provided, however, that during said time a retired member is so employed, retirement benefit payments that would otherwise have been paid to said member shall be suspended and shall be resumed again when said member leaves said employment permanently; provided further, that during the time that said retired teacher member is employed as a teacher, as above specified and limited, no retirement deductions shall be made from his salary, and the retirement benefits that are paid to said retired member after the benefits are again resumed shall be in the same amount as were paid on the original retirement; provided that if a retired member returns to teaching as above outlined, during the time he is so teaching, both the membership annuity payment and the prior service annuity payment, to which said retired member would have been entitled if he had not so returned to teaching, shall be transferred to the State Membership Accumulation Fund; provided further, that if a retired member who elected to receive an annuity in a guaranteed payment for a certain number of years after retirement returns to teaching as above specified, the time so spent teaching by such retired member after the initial or original retirement shall count as time within said certain number of years the same as if said retired member had not returned to teaching; provided further, that any retired member who accepts employment as a teacher, except in the present world conflict and for twelve (12) months thereafter, as above specified, shall forfeit all rights as a retired teacher and any and all claims to any retirement benefits under this Act; provided further, that every retired member is charged with the knowledge of all these provisions and by returning to teaching shall be deemed to have accepted the same. [As amended Acts 1943, 48th Leg., p. 676, ch. 377, § 3; Acts 1947, 50th Leg., p. 441, ch. 248, § 6.]

2. Allowance for Service Retirement.

Upon retirement for service, a member shall receive a retirement allowance in the form of an annuity which shall be the actuarial equivalent of the sum of his savings and the State reserves due him as a condition of his creditable service and membership in the Retirement System. His retirement allowance reserve shall be derived from:

(a) His accumulated contributions credited to his account in the Teacher Saving Fund at the time of retirement; and

(b) If he has a prior-service certificate in full force and effect, the prior-service annuity shall be one and one-half per centum of his average prior-service compensation, as defined in this Act, multiplied by the number of years of Texas service certified in his prior-service certificate; except that for the first sixty (60) days from and after the passage of this Act, the prior-service annuity shall be computed on the basis of one per centum of his average prior-service compensation, as defined in this Act, multiplied by the number of years of Texas service certified in his prior-service certificate; provided that the maximum number of years of prior-service to be allowed shall be thirty-six (36) years and that in computing his average prior-service compensation, the maximum prior-service salary shall be Three Thousand ($3000.00) Dollars; provided that the State Board of Trustees shall have an actuarial and statistical study made at least once every five (5) years showing annual trends. It is expressly provided that monthly payments, payable sixty (60) days or more after the passage of this Act, under prior-service annuities which became effective prior to the passage of this Act, or which become effective within sixty (60) days from and after the passage of this Act, shall be computed on the same basis and in the same manner as monthly payments under prior-service annuities for members whose retirement is effective later than sixty (60) days after the effective date of this amending Act. Upon the recommendation of the actuary, the State Board of Trustees shall have the power to reduce proportionately all payments for prior-service annuities at any time and for such period of time as is necessary so that the payments to beneficiaries for prior-service annuities in any biennium shall not exceed the available assets for payment of prior-service annuities in such biennium. Available assets shall mean the amount of assets in the Prior-Service Annuity Reserve Fund at the beginning of any biennium plus all payments calculated to be made to the Prior-Service Annuity Reserve Fund during such biennium. [As amended Acts 1947, 50th Leg., p. 441, ch. 248, § 7.]

(c) It is expressly provided that the prior-service compensation herein provided for shall be a mutual agreement on the part of the State of Texas and the teacher-member of the Retirement System, and in no event shall the failure of the State Board of Trustees to make adjustments for which total funds are not available for payment of prior-service benefits be held as a liability against the State of Texas. It is further expressly provided that there shall be no

claim for payments under prior-service annuities for any period of time prior to September 1, 1941.

(d) [Deleted by Acts 1947, 50th Leg., p. 441, ch. 248, § 8.]

3. Disability Retirement Benefits.

Upon the application of a member or of his employer or his legal representative acting in his behalf, any member who has had twenty (20) or more years of creditable service may be retired by the State Board of Trustees, not less than thirty (30) and not more than ninety (90) days next following the date of filing such application, on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(4) Allowance on Disability Retirement.

Upon retirement for disability a member shall receive a service retirement allowance if he has attained the age of sixty (60) years; otherwise, he shall receive a disability retirement allowance consisting of a membership annuity, which shall be the actuarial equivalent of his membership annuity reserve, and a prior-service annuity to which his creditable service and membership in the Teacher Retirement System entitles him under the provisions of this Act:

(a) His membership annuity reserve shall be derived from:

(1) His accumulated contributions credited to his account in the Teacher Saving Fund at the time of retirement; and

(2) An additional sum from the State Membership Accumulation Fund equal to the accumulated contributions provided by the member in subsection (1) of paragraph (a) of this subsection.

(3) If he has a prior-service certificate in full force and effect, he shall receive a prior-service annuity equal to the prior-service annuity provided in paragraph (b), subsection (2) of Section 5 of this Act. It is expressly provided that monthly payments, payable after the passage of this Act, under prior-service annuities which became effective prior to the passage of this Act, or which become effective within sixty (60) days from and after the passage of this Act, shall be computed on the same basis and in the same manner as monthly payments under prior-service annuities for members whose retirement is effective later than sixty (60) days after the effective date of this Act. [As amended Acts 1947, 50th Leg., p. 441, ch. 248, § 9.]

5. Beneficiaries Retired on Account of Disability.

Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the State Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty (60) years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or any other place mutually agreed upon, by a physician or physicians designated by the State Board of Trustees. Should any disability beneficiary who has not yet attained the age of sixty (60) years refuse to submit to at least one medical examination in any such periods by a physician or physicians designated by the State Board of Trustees, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his allowance shall be revoked by the State Board of Trustees.

(a) Should the Medical Board report and certify to the State Board of Trustees that such disability beneficiary is no longer physically or mentally incapacitated for the performance of duty, or that such disability beneficiary is engaged in or is able to engage in a gainful occupation, and should the State Board of Trustees by a majority vote concur in such report, then the amount of his allowance shall be discontinued or reduced to an amount by which the amount of the last year's salary of the beneficiary, as a teacher, exceeds his present earning capacity. Should his earning capacity be later changed, the amount of his allowance may be further modified; provided, that the revised allowance shall not exceed the amount of the allowance originally granted, nor shall it exceed an amount which, when added to the amount earnable by the beneficiary, equals the amount of his compensation for the last year prior to retirement.

(b) Should a disability beneficiary under the age of sixty (60) years be restored to active service, his retirement allowance shall cease, he shall again become a member of the Retirement System, and any reserves on his membership annuity at that time in the Membership Annuity Reserve Fund shall be transferred to the Teacher Saving Fund and to the State Membership Accumulation Fund, respectively, in proportion to the original sum transferred to the Membership Annuity Reserve Fund at retirement. Upon restoration to membership, any prior-service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his membership service. No teacher eligible to retire for service at sixty (60) years of age shall be allowed to retire on a disability allowance. Should a disability beneficiary die or be removed from the disability list for any cause other than restoration to active service, an amount equal to the amount by which such beneficiary's accumulated contributions at the time of disability retirement exceeds the membership service annuity payments received by such beneficiary under his disability allowance, if any such excess exists, shall be paid from the Membership Annuity Reserve Fund to such beneficiary if living; otherwise such amount shall be paid as provided by the laws of descent and distribution of Texas unless the beneficiary has directed such amount to be paid otherwise.

6. Return of Accumulated Contributions.

Should a member cease to be a teacher except by death or retirement under the provisions of this Act, he shall be paid in full the amount of the accumulated contributions standing to the credit of his individual account in the Teacher Saving Fund. Should a member die before retirement, the amount of his accumulated contributions standing to the credit of his individual account shall be paid as provided by the laws of descent and distribution of Texas unless he has directed the account to be paid otherwise. Seven (7) years after such cessation of service, if no previous demand has been made, any accumulated contributions of a contributor shall be returned to him or to his heirs. If the contributor or his heirs cannot then be found, his accumulated contributions shall be forfeited to the Retirement System and credited to the Permanent Retirement Fund.

7. Optional Allowances for Service Retirement.

With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of death, until the first payment on account of any service benefit becomes normally due, any member may elect to receive his membership annuity in an annuity payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his membership annuity in a reduced membership annuity payable throughout life with the provision that:

Option (1). Upon his death, his reduced membership annuity shall be continued throughout the life of, and paid to, such person as he shall nominate by written designation duly acknowledged and filed with the State Board of Trustees at the time of his retirement; or

Option (2). Upon his death, one-half of his reduced membership annuity shall be continued through the life of, and paid to, such person as he shall nominate by written designation duly acknowledged and filed with the State Board of Trustees at the time of his retirement; or

Option (3). Some other benefit or benefits shall be paid either to the member, or to such person or persons as he shall nominate, provided such other benefit or benefits, together with the reduced membership annuity, shall be certified by the actuary to be of equivalent actuarial value to his membership annuity, and approved by the State Board of Trustees.

With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement and that such a beneficiary shall be considered as an active member at the time of death, until the first payment on account of any service benefit becomes normally due, any member may elect to receive his prior-service annuity in an annuity payable throughout life or he may elect to receive the actuarial equivalent at that time, of his prior-service annuity in a reduced prior-service annuity payable as provided in Option (1), (2), or (3) above, provided that all payments under all prior-service annuities are subject to adjustment by the State Board of Trustees as provided in Section 5, Subsection 2, Paragraph (b) of this Act; provided further, that the same option must be selected by a member for the payment of his prior-service annuity as is selected by the member for the payment of his membership service annuity. [As amended Acts 1941, 47th Leg., p. 610, ch. 376, § 2.]

Administration

Sec. 6. State Board of Trustees.

(1) The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of the Act are hereby vested in a State Board of Trustees which shall be organized immediately after a majority of the Trustees provided for in this Section shall have qualified and taken the oath of office.

(2) The Board shall consist of six (6) trustees, as follows:

(a) The State Life Insurance Commissioner, ex officio.

(b) The Chairman of the State Board of Control of Texas, ex officio.

(c) A person nominated by the State Board of Education for a term of six (6) years who shall be confirmed by a two-thirds (⅔) vote of the Senate of the State of Texas present after submission to the Senate by the State Board of Education of the person nominated. [As amended Acts 1947, 50th Leg., p. 441, ch. 248, § 10.]

(d) Three (3) of the trustees shall be members of the Retirement System and shall be nominated by the members of the Retirement System for a term of six (6) years each, according to such rules and regulations as the State Board of Trustees shall adopt to govern such nominations, provided that the first three (3) teachers to serve as members of the State Board of Trustees shall be appointed by the Governor from a list of seven (7) teachers nominated by the Executive Committee of the Texas State Teachers Association. The terms of office of the first three (3) teacher-trustees shall begin immediately after they have qualified and taken the oath of office. They shall draw for terms of two (2), four (4), and six (6) years, which shall expire August 31, 1939, and August 31, 1941, and August 31, 1943, respectively. Thereafter, the State Board of Trustees shall provide for the nomination of three (3) teacher-members biennially by popular election of the members of the Retirement System, from which the Governor shall appoint one member to the State Board of Trustees; said member shall be subject to confirmation by two-thirds vote of the State Senate. The members so appointed shall serve for terms of six (6) years, or until their successors are qualified. It is provided, however, the re-enactment of this Section shall not affect the status or terms of office of the present members of said Board.

(3) If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(4) The trustees shall serve without compensation, but they shall be reimbursed from the Expense Fund for all necessary expenses that they may incur through service on the Board.

(5) Each trustee shall, within ten (10) days after his appointment, in addition to the constitutional oath, subscribe to the following oath of office: "I do solemnly swear that I will, to the best of my ability, discharge the duties of a trustee of the Teacher Retirement System and will diligently and honestly administer the affairs of the Board of Trustees of said Retirement System and that I will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to said Retirement System." This oath shall be subscribed to by members making it before any officer qualified to administer oaths in Texas, and duly filed in the office of the Secretary of State.

(6) Each trustee shall be entitled to one vote in the Board. A majority of the State Board of Trustees shall constitute a quorum and a majority vote of those present shall be necessary for a decision by the trustees at any meeting of said Board.

(7) Subject to the limitations of this Act, the State Board of Trustees shall, from time to time, establish rules and regulations for eligibility of membership and for the administration of the funds created by this Act and for the transaction of its business.

(8) The State Board of Trustees shall elect from its membership a Chairman and shall by a majority vote of all its members appoint an Executive Secretary who shall not be one of its members. Provided that the Executive Secretary appointed under the provisions of this Act shall be confirmed by a two-thirds vote of the Senate present, and provided further that said Executive Secretary shall have been a citizen of Texas three (3) years immediately preceding his appointment. He shall recommend and nominate to the State Board of Trustees such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the State Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the State Board of Trustees shall approve, provided that in no case shall they be greater than that paid for like or similar service of the State of Texas.

(9) The State Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System and for checking the expenses of the System.

(10) The State Board of Trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding school year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System.

Legal Adviser.

(11) The Attorney General of the State of Texas shall be the legal adviser of the State Board of Trustees, and shall represent it in all litigations.

Medical Board.

(12) The State Board of Trustees shall designate a Medical Board to be composed of three (3) physicians not eligible to participate in the Retirement System. The physicians so appointed by the State Board of

Trustees shall be legally qualified to practice medicine in Texas and shall be physicians of good standing in the medical profession. If required, other physicians may be employed to report on special cases. The Medical Board shall pass upon all medical examinations required under the provisions of this Act, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the State Board of Trustees its conclusion and recommendation upon all the matters referred to it.

Duties of Actuary.

(13) The State Board of Trustees shall designate an Actuary who shall be the technical adviser of the State Board of Trustees on matters regarding the operation of the funds created by the provisions of this Act, and shall perform such other duties as are required in connection therewith.

(14) Immediately after the establishment of the Retirement System, the Actuary shall make such investigation of the mortality, service, and compensation experience of the members of the System as he shall recommend and the State Board of Trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the State Board of Trustees such tables and such rates as are required. The State Board of Trustees shall adopt tables and certify rates, and as soon as practicable thereafter, the Actuary shall make a valuation based on such tables and rates, of the assets and liabilities of the funds created by this Act.

(15) In the year 1938, and at least once in each five-year period thereafter, the Actuary shall make, under the direction of the Board, an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the State Board of Trustees shall adopt for the Retirement System such mortality, service, and other tables as shall be deemed necessary.

(16) On the basis of such tables as the State Board of Trustees shall adopt, the Actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this Act. [As amended Acts 1941, 47th Leg., p. 610, ch. 376, § 3.]

Management of funds

Sec. 7. (1) The State Board of Trustees shall be the trustees of the several funds as herein created by this Act, and shall have full power to invest and reinvest such funds subject to the following limitations and restrictions: All retirement funds, as are received by the Treasury of the State of Texas from contributions of teachers and employers as herein provided, may be invested only in bonds of the United States, the State of Texas, or counties, or cities, or school districts of this State, wherein said counties, or cities, or school districts have not defaulted in principal or interest on bonds within a period of ten (10) years, or in bonds issued by any agency of the United States Government, the payment of the principal and interest on which is guaranteed by the United States; and in interest-bearing notes or bonds of the University of Texas issued under and by virtue of Chapter 40, Acts of the Forty-third Legislature, Second Called Session;[1] provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amounts that may become due each year as provided in this Act. The State Board of Trustees shall have full power by proper resolution to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds, provided that any money on hand shall be subject to the State Depository Laws of Texas.

(2) The State Board of Trustees annually, on August 31st, shall in accordance with Subsection 7(d) of Section 8 of this Act transfer from the Interest Fund to the Expense Fund an amount not to exceed Fifty (50) Cents per member of record as of August 31st of that year, as shall be determined by the Board to be necessary for the payment of expenses of the Retirement System in excess of the amount available to be paid from the Expense Fund to cover the expenses as estimated for the succeeding year. The State Board of Trustees annually, on August 31st, shall allow regular interest on the mean amount in the Membership Annuity Reserve Fund for the year then ending and shall allow regular interest on the mean amount in the Prior-Service Annuity Reserve Fund for the year then ending and shall allow current interest as defined in Section 1, Subsection (14) of this Act on the amount in the State Membership Accumulation Fund at the beginning of such year and on the amount in the Permanent Retirement Fund at the beginning of such year and on an amount in the Teacher Saving Fund equal to the sum of the accumulated contributions standing to the credit at the beginning of such year of all members included in the membership of the System on August 31st of such year, before any transfers for Service Retirement effective August 31st of such year are made. The amounts so allowed shall be due and payable to said funds and shall be credited thereto by the State Board of Trustees on August 31st of each year from the moneys of the Retirement System held in the Interest Fund, provided that current interest shall not be at a rate greater than three and one-half (3–½) per cent per annum and that any excess earnings over such amount required shall be paid to the Interest Reserve Account of the Permanent Retirement Fund. [As amended Acts 1943, 48th Leg., p. 676, ch. 377, § 4.]

(3) The Treasurer of the State of Texas shall be the custodian of all bonds, securities, and funds. All payments from said funds shall be made by him on warrants drawn by the State Comptroller of Public Accounts supported only upon vouchers signed by the Secretary of the Retirement System and the Chairman of the State Board of Trustees. A duly attested copy of a resolution of the State Board of Trustees designating such persons shall be filed with said Comptroller as his authority for issuing such warrants.

(4) For the purpose of meeting disbursements for annuities and other payments there may be kept available cash, not exceeding ten (10) per centum of the total amount in the several funds of the Retirement System, on deposit with the State Treasurer.

(5) No trustee and no employee of the State Board of Trustees shall have any direct or indirect interest in the gains or profits of any investment made by the State Board of Trustees, nor as such receive any pay or emolument for his service other than his designated salary and authorized expenses, except such interest as such person or persons may have in the retirement funds as a member in the Retirement System. [As amended Acts 1941, 47th Leg., p. 610, ch. 376, § 4.]

[1] Article 2603d.

Method of financing

Sec. 8. The amount contributed by each teacher to the Retirement System shall be five (5) per centum of the regular annual compensation paid each member, the amount not to exceed One Hundred and Eighty Dollars ($180) per annum. After such time as the State shall have contributed to the Retirement System a sum equivalent to the sum of all amounts which have then been contributed by the members of the Retirement System, the amount contributed by the State of Texas to the Retirement System thereafter shall not exceed during any one year five (5) per centum of salaries of all members, disregarding salaries in amounts in excess of Three Thousand, Six Hundred Dollars ($3,600), provided the total amount contributed by the State during any one (1) year shall at least equal

the total amount contributed during the same year by all members of the Retirement System.

All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one (1) of seven (7) funds, namely, the Teacher Saving Fund, the State Membership Accumulation Fund, the Membership Annuity Reserve Fund, the Prior-Service Annuity Reserve Fund, the Interest Fund, the Permanent Retirement Fund, and the Expense Fund.

1. The Teacher Saving Fund.

(a) The Teacher Saving Fund shall be a fund in which shall be accumulated regular five (5) per centum contributions from the compensation of members, including current interest earnings. Contributions to and payments from the Teacher Saving Fund shall be made as follows:

(b) Each employer shall cause to be deducted from the salary of each member on each and every pay roll of such employer for each and every pay roll period, five (5) per centum of his earnable compensation, provided that the sum of the deductions made for a member shall not exceed One Hundred and Eighty Dollars ($180) during any one (1) year. Deductions shall begin with the first pay roll period of the school year 1937–38. In determining the amount earnable by a member in a pay roll period, the State Board of Trustees may consider the rate of annual compensation payable to such member on the first day of the pay roll period as continuing throughout such pay roll period, and it may omit deduction from compensation for any period less than a full pay roll period if a teacher was not a member on the first day of the pay roll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth (1/10) of one (1) per centum of the annual compensation upon the basis of which such deduction is to be made.

(c) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation, less said deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Act. The employer shall certify to the State Board of Trustees on each and every pay roll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Teacher Saving Fund, and shall be credited, to the individual account of the member from whose compensation said deduction was made.

(d) During the time that the United States is in a state of war and for twelve (12) months thereafter, a member of the Teacher Retirement System (1) in the Armed Forces of the United States or their auxiliaries and/or in Armed Forces Reserve of the United States and their auxiliaries and/or in the service of the American Red Cross as a result of having volunteered or having been drafted and/or conscripted thereinto, or (2) in war work as a direct result of having been drafted and/or conscripted into said war work, shall be permitted to contribute each year to the Retirement System a sum not to exceed the amount contributed by him to said Retirement System during the last year that he was employed as a teacher under the provisions of this Act. The sum so contributed by such member and received by the Retirement System shall be deposited by said Retirement System in the Teacher Saving Fund to the credit of the member's individual account and shall be treated in the same manner as funds contributed by the member while he was employed as a teacher under the provisions of this Act. [As amended Acts 1943, 48th Leg., p. 676, ch. 377, § 5.]

(e) Current interest on members' contributions shall be credited annually as of August 31st and shall be allowed on the amount of the accumulated contributions standing to the credit of the member at the beginning of the year and shall not be allowed for parts of a year. Following the termination of membership in the Retirement System for those members who have been absent from service for five (5) years in any period of six (6) consecutive years, the Teacher Saving Fund account of such members shall be closed and warrants covering the total accumulated contributions sent to them upon the filing of formal application; provided that the account of a member with twenty-five (25) years of creditable service shall not be closed although said member should leave the service prior to attaining the age of sixty (60) years. Until the time of payment of such accumulated contribution, said teacher shall receive no interest on the amount due him under this subsection, and the amount shall be held in a non-interest bearing account to be set up for such purpose. [As amended Acts 1943, 48th Leg., p. 676, ch. 377, § 5; Acts 1947, 50th Leg., p. 441, ch. 248, § 11.]

(f) Upon the retirement of a member, his accumulated contributions shall be transferred from the Teacher Saving Fund to the Membership Annuity Reserve Fund. [As amended Acts 1943, 48th Leg., p. 676, ch. 377, § 5.]

2. State Membership Accumulation Fund.

The State Membership Accumulation Fund shall be the fund in which shall be accumulated all contributions made to the Teacher Retirement System by the State of Texas for the purpose of providing upon the retirement of each member an amount equal to such member's accumulated contributions; and from which shall be transferred to the Membership Annuity Reserve Fund at the retirement of a member an amount equal to the accumulated contributions of the member. Contributions to and payments from this fund shall be made as follows:

(a) On the basis of such mortality and other tables as the State Board of Trustees shall adopt, the Actuary shall determine the annual amount required to be paid into the State Membership Accumulation Fund in order to accumulate by or before August 31, 1966, a sufficient sum to meet all present and prospective liabilities of this Fund at the termination of said period, and to provide the amount required according to this Act to be transferred from this Fund into the Membership Annuity Reserve Fund during such period. "Present and prospective liabilities" as used herein shall mean at any time an amount equal to that amount in the Teacher Saving Fund at that time which will eventually be transferred to the Membership Annuity Reserve Fund, according to calculations made by the Actuary and approved by the State Board of Trustees on the basis of the mortality and other tables adopted by the State Board of Trustees. The State Board of Trustees shall certify annually to the Comptroller of Public Accounts and to the State Treasurer the amount so ascertained by the Actuary, and such amount shall be paid each year in equal monthly installments in the manner hereinafter provided into the State Membership Accumulation Fund by the Comptroller from the funds appropriated as contributions to the Teacher Retirement System by the State of Texas. If the investigation and valuation as herein provided to be made each five (5) years shall cause a revision in the amount to be paid into this Fund annually in order to provide the required reserves by or before August 31, 1966, as determined by the State Board of Trustees, the revised amount shall be certified to the Comptroller annually, and the revised amount shall thereafter be paid into the State Membership Accumulation Fund each year.

(b) When the amount in the State Membership Accumulation Fund shall become sufficient to meet the present and prospective liabilities of this Fund, the State of Texas shall thereafter pay each year in equal monthly installments into the State Membership Accumulation Fund an amount equal to a per centum of the contributions of the members during such year which shall be calculated by the Actuary and certified to the Comptroller by the State Board of Trustees as being the necessary and required per centum to maintain a reserve in this Fund equal to present and prospective liabilities of the Fund. The rate per centum so certified shall continue in force until modified by the Board of Trustees on the basis of a new investigation and valuation as provided for herein to be made at the end of each five-year period.

(c) Upon the retirement of a member, an amount equal to his accumulated contributions in the Teacher Saving Fund shall be transferred from the State Membership Accumulation Fund into the Membership Annuity Reserve Fund as a reserve for his Membership Annuity.

3. Membership Annuity Reserve Fund.

The Membership Annuity Reserve Fund shall be the fund in which shall be held all reserves for membership annuities granted and in force and from which shall be paid all membership annuities and all benefits in lieu of membership annuities, payable as provided in this Act. This Fund shall be made up of transfers as follows:

(a) At the time of service or disability retirement the accumulated contributions of a retiring teacher shall be transferred from the Teacher Saving Fund to the Membership Annuity Reserve Fund as reserves for the membership annuity purchased by his contributions.

(b) An amount equal to the accumulated contributions of each retiring teacher shall be transferred, upon service or disability retirement, from the State Membership Accumulation Fund as reserves for an additional membership annuity equal to the membership annuity purchased by the teacher.

Transfers and payments from the Membership Annuity Reserve Fund shall be made as provided in Section 5, Subsection (5), Paragraph (b) of this Act, upon the death, restoration to active service or removal from the disability list of a beneficiary retired on account of disability.

4. Prior-Service Annuity Reserve Fund.

The Prior-Service Annuity Reserve Fund shall be the fund in which shall be accumulated all contributions made to the Retirement System by the State of Texas for the purpose of providing the amounts required for payment of prior-service annuities; and from which prior-service annuities shall be paid to beneficiaries as herein provided. Contributions to and payments from this fund shall be made as follows:

(a) All moneys appropriated by the State of Texas as contributions to the Teacher Retirement System each year and which will not be paid into the State Membership Accumulation Fund as elsewhere herein provided shall be paid into the Prior-Service Annuity Reserve Fund in the manner hereinafter provided.

(b) All prior-service annuity payments to beneficiaries, as provided in this Act to be paid after September 1, 1941, shall be paid from this fund. The State Board of Trustees shall have the power to reduce proportionately all payments for prior-service annuities at any time and for such period of time as is necessary so that the payments to beneficiaries for prior-service annuities in any biennium shall not exceed the available assets for payment of prior-service annuities in such biennium. It is further provided that any funds on hand in the Prior-Service Annuity Reserve Fund at the end of any five-year period in excess of the reserve necessary to meet all future payments in full to beneficiaries for prior-service annuities, on the basis of the actuarial and statistical study herein provided for, shall revert to the General Treasury of the State of Texas as of August 31st of the year ending said period.

5. Interest Fund.

The Interest Fund is hereby created to facilitate the crediting of interest to the various other funds. All income, interest and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund. Once each year on August 31st, interest shall be allowed and transferred to the other funds, respectively. The State Board of Trustees shall annually transfer to the credit of the interest reserve account of the Permanent Retirement Fund all excess earnings after interest-bearing funds and the Expense Fund have been duly credited with interest for the year in the manner provided in this Act. [As amended Acts 1943, 48th Leg., p. 676, ch. 377, § 6.]

6. Permanent Retirement Fund.

The Permanent Retirement Fund shall be a fund in which shall be accumulated all gifts, awards, funds, and assets accruing to the Retirement System not specifically required by other funds created by this Act, and to provide a contingent fund out of which special requirements of other funds may be covered. The principal of this Fund is hereby held and dedicated as a perpetual endowment of the Retirement System and shall not be diverted or appropriated to any other cause or purpose. All current interest credited to this Fund and excess interest earnings transferred to this Fund shall be held as an interest reserve account from which the State Board of Trustees shall transfer annually to the Expense Fund such amount as is required to provide for the administration and maintenance of the Retirement System, provided the funds are available.

7. Expense Fund.

The Expense Fund shall be the fund from which the expenses of administration and maintenance of the Retirement System shall be paid. Transfers to and payments from this Fund shall be made as follows:

(a) The Executive Secretary shall prepare annually an itemized budget showing the amount required to defray the expenses for the ensuing fiscal year and shall submit the report to the State Board of Trustees for its review and adoption.

(b) Each member shall pay with the first payment to the Teacher Saving Fund each year, and in addition thereto a sum of One Dollar ($1), which amount shall be credited to the Expense Fund, said payments for the Expense Fund shall be made to the State Board of Trustees in the same way as payments to the Teacher Saving Fund shall be made, as provided for in this Act; provided, however, that if said payment for the Expense Fund of any member is not made with said first payment of said member, the State Board of Trustees may deduct the amount of the payment for the Expense Fund from said first payment of said member.

(c) If the amount estimated to be required to meet the expenses of the State Board of Trustees is in excess of One Dollar ($1) per contributor for the year, the amount of such excess shall be paid from the interest reserve account of the Permanent Retirement Fund. If in the judgment of the State Board of Trustees, as evidenced by a resolution of that Board recorded in its minutes, the amount in the interest reserve account of the Permanent Retirement Fund exceeds the amount necessary to cover the ordinary requirement of that Fund for a period of five (5) years in the future, the Board may transfer to the Expense Fund such excess amount not exceeding the entire amount required to cover the expenses as estimated for the year.

(d) If the amount estimated to be required to meet the expenses of the State Board of Trustees is in excess of One Dollar ($1) per contributor for the year and if there is an insufficient amount in the interest

reserve account of the Permanent Retirement Fund to pay such excess, the State Board of Trustees, as evidenced by a Resolution of that Board recorded in its minutes, shall transfer to the Expense Fund, from the Interest Fund, an amount necessary to cover the expenses as estimated for the year, but in no event shall the amount so transferred exceed, in any one year, Fifty (50) Cents per member of record as of August 31st of that year. [As amended Acts 1943, 48th Leg., p. 676, ch. 377, § 7.]

8. Collection of Contributions.

(1) The collection of members' contributions shall be as follows:

(a) Each employer shall cause to be deducted on each and every payroll of a member for each and every pay roll period subsequent to the date of establishment of the Retirement System the contributions payable by such member, as provided in this Act. Each employer shall certify to the treasurer of said employer on each and every pay roll a statement as vouchers for the amount so deducted.

(b) The treasurer or proper disbursing officer of each employer on authority from the employer shall make deductions from salaries of teachers as provided in this Act, and shall transmit monthly, or at such time as the State Board of Trustees shall designate, a certified copy of the pay roll, and the amount specified to be deducted shall be paid to the Executive Secretary of the State Board of Trustees, and after making a record of all receipts, the said Board shall pay them to the Treasurer of the State of Texas, and by him be credited to Teacher Saving Fund, and such funds shall be deemed as appropriated for use according to the provisions of this Act. For the purpose of collecting contributions of teachers who are teaching in common school districts, the county superintendent or ex officio county superintendent of each county of this State is hereby designated to perform the duties of employer of all common school districts over which he has jurisdiction, and he is hereby authorized and empowered to retain the amounts so deducted from pay rolls of members and have a corresponding amount deducted from any funds available for paying teachers' salaries, and transmit same to the Executive Secretary of the State Board of Trustees as provided for in this Act. Any college or university or other educational institution or agency supported in whole or in part by the State shall have the amount retained or deducted from the funds regularly appropriated by the State for the current maintenance for such educational departments and institutions.

(c) Any member of the Teacher Retirement System from whose salary prior to August 31, 1943, a deduction or deductions have not been made, but which should have been made, in accordance with the provisions of this Act, may elect to pay such sums that should have been deducted, on such terms as are determined by the State Board of Trustees, and thus receive the credit for prior service and membership service to which the member may be entitled for teaching under the provisions of this Act prior to August 31, 1943, or not to pay such sums and thus acquire the status of a beginning teacher as of September 1, 1943, or if said member is not teaching at that time, as of the date when the member resumes teaching under the Act. Provided, the provisions of this Act shall apply only to deductions which should have been made from salaries of teachers prior to August 31, 1943, and to no other time.

(d) For the purpose of enabling the collection of five (5) per centum of the salaries of the members of the Retirement System to be made as simple as possible, the State Board of Trustees shall require the secretary or other officer of each employer-board or agency, within thirty (30) days after the beginning of each school year, to make up a list of all teachers in its employ, who are members of the Retirement System, set out their salaries by the month and by the year, make an affidavit to the correctness of this statement, and file the same with the Executive Secretary of the State Board of Trustees of the Teacher Retirement System. If additions to or deductions from this list should be made during the year, such additions or deductions shall likewise be certified under oath to the State Board of Trustees of the Teacher Retirement System.

(e) The State Treasurer shall furnish annually to the State Board of Trustees a sworn statement of the amount of the funds in his custody belonging to the Retirement System. The records of the State Board of Trustees shall be open to public inspection and any member of the Retirement System shall be furnished with a statement of the amount to the credit of his individual account upon written request by such member, provided that the State Board of Trustees shall not be required to answer more than one such request of a member in any one year.

(2) The collection of the State's contributions shall be made as follows:

(a) On or before the first day of November, next preceding each regular session of the Legislature, the State Board of Trustees shall certify to the State Board of Control for its review and adoption the amount necessary to pay the contributions of the State of Texas to the Teacher Retirement System for the ensuing biennium. This amount shall be included in the budget of the State which the Governor submits to the Legislature. The State Board of Trustees shall certify on or before August 31st of each year to the State Comptroller of Public Accounts and to the State Treasurer the estimated amount of contributions to be received from members during the ensuing year.

(b) All moneys allocated and appropriated by the State to the Retirement System shall be paid to the Teacher Retirement System in monthly installments as provided in House Bill No. 8, Acts of the Regular Session, Forty-seventh Legislature.[1] Each of said monthly installments shall be paid into the State Membership Accumulation Fund and the Prior-Service Annuity Reserve Fund in the proportional amounts certified by the State Board of Trustees. [As amended Acts 1941, 47th Leg., p. 610, ch. 376, § 5; Acts 1943, 48th Leg., p. 676, ch. 377, § 8.]

1 Acts 1941, 48th Leg., p. 269, ch. 184.

Exemptions from execution

Sec. 9. The right of a person to an annuity or a retirement allowance, to the return of contributions, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Act, and the moneys in the various funds created by this Act, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this Act specifically provided.

Protection against conversion of funds and fraud

Sec. 10. Any person who shall confiscate, misappropriate, or convert moneys representing deductions from teachers' salaries before such moneys are received by the Retirement System or after such moneys are received by the Retirement System shall be guilty of a felony and upon conviction be punished by confinement in the State Penitentiary for any term of years not less than one (1) nor more than five (5). Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a felony and upon conviction be punished by confinement in the State Penitentiary for any term of years not less than one (1) nor more than five (5). Should any change or

error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the State Board of Trustees shall correct such error, and so far as practicable shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

Violation of Provisions. Any person, including any county superintendent or ex officio county superintendent, and any member of the employer and/or its treasurer or proper disbursing officer, who violates any of the provisions of this Act other than those to which the first paragraph of this Section applies shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000). Any member of the System who knowingly receives money as salary, which money should have been deducted from his salary under the provisions of this Act, shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500). The teacher's certificate of any person who violates the provisions of this Act may be cancelled by the State Superintendent of Public Instruction after the State Superintendent has been notified of such violation by the State Board of Trustees of the Teacher Retirement System and after the holder of the certificate has been notified by the State Superintendent and given an opportunity to be heard. Appeal from the decision of the State Superintendent shall, if made, be to the State Board of Education, the decision of which shall be final. Provided that it shall not be a prerequisite for action by the State Superintendent and/or the State Board of Education, as outlined, that any such holder shall first have been prosecuted and/or fined. [As amended Acts 1943, 48th Leg., p. 676, ch. 377, § 9.]

Surety bonds

Sec. 11. The Treasurer of the State of Texas shall, upon becoming custodian of the Teacher Retirement Fund, give a bond in the sum of Fifty Thousand ($50,000.00) Dollars; the Executive Secretary shall give bond in the sum of Twenty-five Thousand ($25,000.00) Dollars, and the State Board of Trustees shall require any other employees and members of the State Board of Trustees to give bond in such amounts as the Board may deem necessary, conditioned that said bonded persons will faithfully execute the duties of the respective offices. All bonds shall be made with a good and solvent surety company, authorized to do business in the State of Texas, said bonds shall be made payable to the State Board of Trustees and shall be approved by it and the Attorney General of Texas. All expense necessary and incident to the execution of such bonds, including premiums thereon, shall be paid by the State Board of Trustees from the Expense Fund.

Limitation on membership

Sec. 12. No other provision of law in any other statute which provides wholly or partly at the expense of the State of Texas for pensions or retirement benefits for teachers of the said State, their widows, or other dependents, shall apply to members or beneficiaries of the Retirement Ssytem established by this Act.

Reservation of right to amend

Sec. 13. The Legislature hereby reserves the right to amend any section, paragraph or any and all provisions of this Act as it may from time to time deem necessary.

Partial invalidity and repeal of inconsistent laws

Sec. 14. If any section or part of any section of this Act is declared to be unconstitutional, the remainder of the Act shall not thereby be invalidated. All provisions of the law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency. [Acts 1937, 45th Leg., p. 1178, ch. 470.]

Section 12 of the Act of 1947 amending section 8 of this article repealed conflicting laws only to extent of the conflict and provided that partial invalidity should not affect any other sections. Section 10 of the Act of 1943 amending section 10 of this article provided a holding of partial invalidity should not affect the validity of the remaining portions.

CHAPTER 21.—EDUCATIONAL SERVICES FOR EXCEPTIONAL CHILDREN

Art.
2922—2. Purpose and definition.
2922—3. Eligibility.
2922—4. Supervision and Administration.
2922—5. Teacher Qualifications and Course of Study.
2922—6. Allocation and Appropriation.
2922—7. Institutional Schools.
2922—8. Repealing and Constitutional Clauses.

Art. 2922—2. Purpose and Definition.—Section 1. Purpose. It is the purpose of this Act [1] to provide competent educational services for the exceptional children in Texas between and including the ages of six (6) and seventeen (17) for whom the regular school facilities are inadequate or not available.

Sec. 2. Definition. In interpreting and carrying out the provisions of this Act, the words "exceptional children", wherever used, will be construed to include any child of educable mind whose bodily function or members are so impaired that he cannot be safely or adequately educated in the regular classes of the public schools without the provision of special assistance or services. For the purposes of this Act, the term "exceptional children" shall not include those children who are eligible for the state schools for the deaf, the blind, or the feeble-minded. The term "special services" may be interpreted to mean transportation; special teaching in the public school curriculum; corrective teaching, such as lip reading, speech correction, sight conservation, and corrective health habits; the provision of special seats, books and teaching supplies, and equipment required for the instruction of exceptional children. [Acts 1945, 49th Leg., p. 668, ch. 369, Art. I; Acts 1947, 50th Leg., p. 233, ch. 136.]

[1] Articles 2922—2 to 2922—8.

Art. 2922—3. Eligibility.—Section 1. The School Board of any school district may establish and maintain special classes for five (5) or more exceptional children who are residents of such district and/or such exceptional children who are the residents of other school districts, which cannot meet the requirements for establishing and maintaining special classes. In any school district where the parents of five (5) or more of any type of exceptional children, or types which may be taught together, petition the Board of Education of that district for a special class, it shall be the duty of the school authorities to request the Division of Special Education of the State Department of Education to cooperate in the establishment of such class or classes under rules and regulations established for this purpose by the State Department of Education; provided also, that two (2) or more adjacent school districts may join together and contract to establish a special class or classes. In such a case the various districts are to be paid the cost of educating the children in the special class or classes over and above the average per capita cost of educating normal children in the respective school districts. In other districts where

there is not sufficient number for the organization of a special class or classes, exceptional children may be entered in special classes in any other district; and all per capita apportionment paid to such district for each such child shall be transferred to the district that provides the facilities for their education by the proper authorities, as provided in Section 1 of Article 6 of this Act.[1]

Sec. 2. It is further provided that to be eligible for aid under the provisions of this Act,[2] the school district establishing and maintaining special classes for exceptional children must file with the Division of Special Education in the State Department of Education on or before September 1st of each school year, on forms furnished by the State Department of Education, a tentative budget containing the anticipated expenditures of such special classes. On or before July 15th of each school year, each school district maintaining special classes for exceptional children shall make a detailed, accurate financial record of all moneys paid out by it for maintenance of these classes, and such financial record shall be subject to the approval of the State Superintendent of Public Instruction. The tentative budget and all forms filed with the State Department of Education must be sworn to by the County Superintendent and/or the superintendent or principal of the school making and filing said forms.

Sec. 3. It is further provided that in order to qualify for reimbursement, the district must include in the receipts of its budget a sum not less than the total per capita cost of educating said exceptional children who are to be taught in special classes. The State Treasurer and the State Department of Education are hereby authorized to pay within the limits set forth in Section 1, Article 5,[3] to the Local Board of Education of the school districts establishing and maintaining special classes for exceptional children, not more than the difference between the per capita cost of instruction and equipment for the normal children of that district in any corresponding grade of said school district, and the average per capita cost required to pay teachers' wages and the cost of special services; provided that no excess cost shall be paid for school buildings, premises, or plant.

Sec. 4. Failure on the part of the school district to prepare and certify its report of claims for the excess cost of educating exceptional children to the State Department of Education on or before July 15th of any year, and its failure thereafter to prepare and certify such report to the State Department of Education within ten (10) days after receipt of notice of such delinquency sent to it by the State Department of Education, by registered mail, shall constitute a forfeiture by the school district of its right to be reimbursed by the state for the excess cost of educating exceptional children for such year. [Acts 1945, 49th Leg., p. 668, ch. 369, Art. II; Acts 1947, 50th Leg., p. 233, ch. 136; Acts 1947, 50th Leg., p. 450, ch. 252, § 1.]

1 Article 2922—7.
2 Articles 2922—2 to 2922—8.
3 Article 2922—6.
Section 2 of the Act of 1947 repealed all conflicting laws and provided that a holding of partial invalidity should not affect the remainder of the Act.

Art. 2922—4. Supervision and Administration.—Section 1. There is hereby created, in the State Department of Education, a Division of Special Education to foster, inspect, approve and supervise a program of education for exceptional children as defined in this Act; and it is hereby designated as the agency for cooperation with the approved treatment centers and local schools in carrying out the provisions of this Act;[1] and it is further provided that said Division of Special Education in its rules and regulations shall provide for cooperation with (1) the State Crippled Children's Service; (2) the State Division of Vocational Rehabilitation; (3) the State Departments dealing with employment; (4) the local school boards and other interested agencies in providing individual counseling and guidance in social and vocational matters; and for this and other purposes the Division of Special Education may employ from the regular appropriation one teacher-coordinator to assist in the establishment of such services.

Sec. 2. There shall be appointed by the State Superintendent of Public Instruction a Director for the Division of Special Education. It shall be the duty of the Director of the Division of Special Education to furnish forms to all school districts making application for aid under the provisions of this Act; to take such action and to make such rules and regulations not inconsistent with the terms of this Act as may be necessary to carry out the provisions and intentions of this Act, and for the best interest of the exceptional children for whose benefit the funds are appropriated; and to determine whether the exceptional child for whom claim is made is within the class defined by this Act and whether or not competent educational services were rendered to the child. The Director of the Division of Special Education shall hold a Master's Degree from a standard institution of higher learning; shall have completed creditably at least six semester hours in study of the education of exceptional children; and shall show evidence of at least three years of successful experience in the education of exceptional children. [Acts 1945, 49th Leg., p. 668, ch. 369, Art. III; Acts 1947, 50th Leg., p. 234, ch. 136.]

1 Articles 2922—2 to 2922—8.

Art. 2922—5. Teacher Qualifications and Course of Study.—Section 1. No person shall be employed to teach any class for exceptional children as defined in this Act,[1] unless he possesses a valid teacher's certificate and in addition such training as the Division of Special Education may require in its rules and regulations.

Sec. 2. School boards of the district wherein a special class or classes are established and maintained are to employ all teachers used in this service prior to the end of the school year 1947-1948; provided such teachers are approved by the Director of the Division of Special Education. After the end of the school year 1947–1948, no teacher shall be employed unless he has the qualifications as set out in Section 1 of this Article.

Sec. 3. Courses of study, relative to adequacy of methods of instruction, necessary equipment for education, and prescribed rest and diets, must be prepared and issued by the Director of the Division of Special Education with the approval of the State Superintendent of Public Instruction, to schools establishing and maintaining classes for exceptional children. It is further provided that the Division of Special Education shall cooperate with the State University and the State Teachers Colleges or any other standardized institutions of higher learning in establishing training facilities for teachers of exceptional children. [Acts 1945, 49th Leg., p. 668, ch. 369, Art. IV; Acts 1947, 50th Leg., p. 235, ch. 136.]

1 Articles 2922—2 to 2922—8.

Art. 2922—6. Allocation and Appropriation.—Section 1. The appropriations made under the provisions of this Act,[1] and subsequent appropriations, are to be used to pay school districts establishing and maintaining special classes, the excess cost of instructing exceptional children, which cost is over and above the average per capita cost of educating normal children in the respective school districts. This aggregate excess cost shall be allocated for payment of teachers' salaries, including corrective teaching, such as lip reading, speech correction, sight conservation, and corrective health habits; necessary

schoolroom equipment, and transportation. Such excess cost shall not exceed Two Hundred ($200.00) Dollars per school year per scholastic.

Sec. 2. If a child attends a class for exceptional children in a school district other than that of his residence, the School Board of the district of his residence shall pay to the school district maintaining the class which he attends the state and county per capita apportionment received by the district, or a sum equal to the cost of educating a normal child of like grade in the district of his residence. If the per capita cost of educating a normal child of like grade in the district of his residence is smaller than the per capita cost of educating a normal child of like grade in the district where he attends, the amount of the difference may be included as part of the excess cost claimed by the school district where the child attends such class. [Acts 1945, 49th Leg., p. 668, ch. 369, Art. V; Acts 1947, 50th Leg., p. 235, ch. 136.]

1 Articles 2922—2 to 2922—8.
Section 3 of Article V of the act of 1945 made appropriations for the fiscal years ending Aug. 31, 1946 and Aug. 31, 1947.

Art. 2922—7. Institutional Schools.—The Division of Special Education may establish or approve convalescent classes in approved treatment institutions and pay the cost thereof; however, such aggregate cost, which shall be over and above the average per capita cost of educating normal children in the respective school districts, shall not exceed Two Hundred ($200.00) Dollars per child, per school year. The state and county available per capita apportionment for educating a normal child in the respective school district shall be transferred by the school district of the exceptional child to the approved treatment institution in which he is attending convalescent classes; and such application for transfer shall be filed in the office of the County School Superintendent on or before August 1st of each year on forms furnished by the State Department of Education. The State Crippled Children's Services and the managers of such institutions shall cooperate with the Division of Special Education in such educational programs under rules and regulations jointly established by them. [Acts 1945, 49th Leg., p. 668, ch. 369, Art. VI, § 1; Acts 1947, 50th Leg., p. 236, ch. 136.]

Art. 2922—8. Repealing and Constitutional Clauses.—All laws or parts of laws in conflict herewith are hereby repealed, and in the event any provision of this Act [1] is declared unconstitutional or invalid by any court of competent jurisdiction, the remainder of this Act shall nevertheless remain in full force and effect. [Acts 1945, 49th Leg., p. 668, ch. 369, Art. VII; Acts 1947, 50th Leg., p. 236, ch. 136.]

1 Articles 2922—2 to 2922—8.

TITLE 50—ELECTIONS

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CHAPTER 1.—MISCELLANEOUS PROVISIONS

Art.
2923. Applicable to all elections.
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Article 2923. [3081] [1810] [1759] Applicable to all elections.—The provisions of this title shall apply to all elections held in this State, except as otherwise provided herein. [Acts 1st C. S. 1905, p. 520.]

Art. 2924. [3079] [1806] [1755] County judge failing to act.—Whenever, by this title, any duty is devolved upon a county judge and that office is vacant, or such officer from any cause fails to perform such duty, any two or more of the county commissioners of the county may and shall perform such duty.

Art. 2925. [2937] Blanks furnished.—At least thirty days before each general election the Secretary of State shall prescribe forms of all blanks necessary under this title and furnish same to each county judge. [Acts 1st C. S. 1905, p. 528, sec. 32.]

Art. 2926. [3080] [1018] [1757] To certify death of officer.—When any State or district officer, member of Congress, member of the Legislature or notary public shall die, the county judge of the county where such death occurs or of the county where such officer resided, shall immediately certify the fact of the death of such officer to the Secretary of State. [Acts 1863, p. 16; G. L. vol. 5, p. 604.]

Art. 2927. [3082] Ineligibility.—No person shall be eligible to any State, county, precinct or municipal office in this State unless he shall be eligible to hold office under the Constitution of this State, and unless he shall have resided in this State for the period of twelve (12) months and six (6) months in the county, precinct, or municipality, in which he offers himself as a candidate, next preceding any general or special election, and shall have been an actual bona fide citizen of said county, precinct, or municipality for more than six (6) months. No person ineligible to hold office shall ever have his name placed upon the ballot at any general or special election, or at any primary election where candidates are selected under primary election laws of this State; and no such ineligible candidate shall ever be voted upon, nor have votes counted for him, at any such general, special or primary election. No person, who advocates the overthrow by force or violence or the change by unconstitutional means of the present constitutional form of government of the United States or of this State, shall be eligible to have his or her name printed on any official ballot in any general, special, or primary election in this State. [Acts 1895, p. 81; G.L. vol. 10, p. 811; Acts 1919, p. 17; Acts 1947, 50th Leg., p. 778, ch. 386, § 1.]

Art. 2928. [3083] Ineligibility bars.—Neither the Secretary of State, nor any county judge of this State, nor any other authority authorized to issue certificates, shall issue any certificates of election or appointment to any person elected or appointed to any office in this State, who is not eligible to hold such office under the Constitution of this State and under the above article; and the name of no ineligible person, under the Constitution and laws of this State, shall be certified by any party, committee, or any authority authorized to have the names of candidates placed upon the primary ballots at any primary election in this State; and the name of no ineligible candi-

date under the Constitution and laws of this State shall be placed upon the ballot of any general or special election by any authority whose duty it is to place names of candidates upon official ballots. [Acts 1895, p. 81; G.L. vol. 10, p. 811; Acts 1919, p. 17; Acts 2nd C. S. 1919, p. 97.]

Art. 2929. Injunction may issue.—The district court shall have authority to issue writs of injunction and all other necessary process at the suit of any interested party, or of any voter, to enforce the provisions of the above two articles and to protect thereunder the rights of all parties and the public; for such purpose, jurisdiction and authority is conferred upon all district courts of this State and all cases filed hereunder shall have first right of precedence upon trial and appeal. [Acts 1919, p. 18.]

Art. 2929a. [Unconstitutional.]

This article, as added by Acts 1943, p. 375, ch. 251, § 1, requiring executive or administrative officers elected or appointed for term of over two years to resign before running for another office, but exempting members of legislature and judiciary, was void because seeking to impose an additional test of eligibility other than that prescribed by Const. art. 3, § 6 and because the classification was unreasonable in violation of Const. art. 1, § 3. See Burroughs v. Lyles, 142 T. 704, 181 S.W.2d 570.

The article was from Acts 1937, 45th Leg., p. 1320, ch. 486, § 1, is now set out as 2929a—1.

Art. 2929a—1. Commencement of term of office.—From and after the effective date hereof the terms of office of all elective State and District officers of the State of Texas, excepting Governor, Lieutenant Governor, Members of the Senate, and Members of the House of Representatives, shall begin on the first day of January next following the General Election at which said respective State and District officers were elected. [Acts 1937, 45th Leg., p. 1320, ch. 486, § 1.]

CHAPTER 2.—TIME AND PLACE

Art.
2930. Time and place.
2931. In cities and towns.
2932. Held in public buildings.
2933. Election precincts formed.
2934. Precincts in cities and towns.
2935. Unorganized counties.
2936. Where to vote.

Art. 2930. [2810 to 2912—3088] Time and place.—A general election shall be held on the first Tuesday after the first Monday in November, A. D. 1926, and every two years thereafter, at such places as may be prescribed by Law, after notice as prescribed by Law. Special elections shall be held at such times and places as may be fixed by Law providing therefor. In all elections, general, special, or primary, the polls shall be open from seven o'clock a. m. to seven o'clock p. m. in all counties having a population of 150,000 or more according to the last Federal census and in all other counties the polls shall be opened at 8 a. m. and shall remain open until 7 p. m. The election shall be held for one day only. [Acts 1st C.S. 1905, p. 520, Acts 1931, 42nd Leg., p. 387, ch. 232, § 1.]

Art. 2931. [2918—19—2964] In cities and towns.—All provisions of this title which prescribe qualifications for voting and which regulate the holding of elections shall apply to elections in cities and towns. In towns or cities incorporated under the general laws, the governing body may provide for city or town elections that there shall be one or more polling places; and, in such case, the certified list of poll taxpaying voters for all election precincts in which voters reside who are to vote at any such polling place shall be used therefor. In all cities and towns in which the number of electors at the last municipal election does not exceed four hundred in number, but one election poll shall be opened at any municipal election; and all officers of such towns and cities to be elected shall be voted for at such poll. [Acts 1897, p. 10; Acts 1905, 1st C.S., p. 520, § 9.]

Art. 2932. Held in public buildings.—In all cases where it is practicable so to do, all elections shall be held in some school house, fire station or other public building within the limits of the election precinct in which such election is being held. No charge shall be made for the use of such building except that any additional expense actually incurred by the authorities in charge of such building on account of the holding of the election therein shall be repaid to them by the party who would be liable for the expenses of holding the election under the existing law. If there be no public building so available, such election may be held in some other building. [Acts 1917, p. 357.]

Art. 2933. [2913—17] Election precincts formed.—Each commissioners court may, if they deem it proper, at each August term of the court, divide their respective counties, and counties attached thereto for judicial purposes, into convenient election precincts, each of which shall be differently numbered and described by natural or artificial boundaries or survey lines by an order to be entered upon the minutes of the court. They shall immediately thereafter publish such order in some newspaper in the county for three consecutive weeks. If there be no newspaper in the county, then such copy of such order shall be posted in some public place in each precinct in the county. No election precinct shall be formed out of two or more justice precincts, nor out of the parts of two or more justice precincts. The commissioners court shall cause to be made out and delivered to the county tax collector, before the first day of each September a certified copy of such last order for the year following. [Acts 1st C. S. 1905, p. 520.]

Art. 2934. [2914] Precincts in cities and towns.—The commissioners court, in establishing new election precincts, shall divide any city or town into as may [1] election precincts as they may see proper, none of which shall have resident therein more than three hundred and fifty voters as ascertained by the vote of the preceding general city or town election. Every ward in every incorporated city, town or village shall constitute an election precinct, unless there shall have been cast in said ward, at the last general city or town election held therein, more than three hundred and fifty votes. Cities and towns and towns and villages incorporated under the general laws shall not necessarily constitute election precincts. No precinct shall be made out of parts of two wards. This article shall not apply to cities, towns and villages of less than ten thousand inhabitants; and, in such cities, towns and villages, the justice precincts in which said cities, towns and villages are situated may be divided into election precincts without regard to the wards of such cities, towns and villages, and without reference to the number of votes to be cast. [Id.; sec. 8.]

[1] So in enrolled bill. Should probably read "many".

Art. 2935. [2915] [1709] Unorganized counties.—Each unorganized county which is attached for judicial purposes to an organized county shall be attached for election purposes, to some one of the commissioners precincts of such organized county, and voters in such unorganized county shall be authorized to vote in any election for commissioner of such commissioners precinct; provided, when more than one election precinct has been established by law in such unorganized county, each election precinct therein shall be attached, for election purposes, severally to one of the commissioners precincts of such organized county; and voters in such election precincts shall be authorized to vote in any election for commissioner of the commissioners precinct to which such election precinct has been attached. [Acts 1885, p. 88; G. L. vol. 9, p. 708.]

Art. 2936. [2916] [1732] Where to vote.—All voters shall vote in the election precinct in which they reside. [Acts 1881, p. 97; G. L. vol. 9, p. 189.]

CHAPTER 3.—OFFICERS OF ELECTION

Art.
2937. In small precincts.
2938. In large precincts.
2939. Qualifications.
2940. Disqualifications.
2941. Appointed supervisors.
2942. Agreed supervisors.
2942a. Selection of supervisor for election precinct; qualification and duties.
2943. Pay of judges and clerks.
2944. Precinct judges served.
2945. In unorganized counties.

Article 2937. [2920] In small precincts.—The commissioners court at the February term shall appoint from among the citizens of each voting precinct in which there are less than one hundred voters who have paid their poll tax and received their certificates of exemption, two reputable qualified voters as judges of the election, selected from different political parties if practicable, who shall continue to act until their successors are appointed. When the bounds of the precinct are changed so that one or more judges reside outside of the precinct for which they were appointed, the court shall appoint others to fill such vacancy or vacancies. One of the judges who shall, in all cases belong to the party that at the last general election cast the largest vote for Governor throughout the State shall be designated as the presiding judge at elections; he shall appoint two competent and reputable qualified voters of different political parties if practicable, to act as clerks of the election. The order appointing all judges shall be entered of record. The presiding judge shall act in receiving and depositing the votes in the ballot boxes, and the other judge shall act in counting the votes cast; one clerk shall keep the poll list of qualified voters, and upon the poll list he shall write at the time of voting the name and number of each voter; the other clerk shall act as canvassing clerk, and shall keep the tally list of votes counted. Said officers shall perform such other duties as the presiding judge may direct. [Acts 1st C. S. 1905, p. 533, sec. 57.]

Art. 2938. [2921] In large precincts.—For every precinct in which there are one hundred citizens or more who have paid their poll tax or received their certificates of exemption, the commissioners court shall appoint four judges of election, who shall be chosen when practicable from opposing political parties, one of whom shall be designated as presiding judge. The presiding and one associate judge shall act in receiving and depositing the votes in the ballot box, and the other two judges shall act in counting the votes cast. The presiding judge shall appoint four competent and reputable clerks who have paid their poll tax, and of different political parties, when practicable; two of said clerks shall assist in keeping poll lists and the list of qualified voters; upon the poll lists they shall write the name and number of each voter, and at the time voted. Two clerks shall be canvassing clerks, who shall keep tally lists of votes counted and perform such other duties as the presiding judge may direct. At the close of the canvassing and during its progress, the tally clerks shall compare their tally lists and certify officially to their correctness. Provided, that in all elections held under the provisions of this title, other than general elections, local option elections and primary elections, the officers to be appointed by the commissioners court to hold said elections shall be a presiding judge, and assistant judge and two clerks, whose compensation shall be two dollars per day, and two dollars extra to the presiding judge for making return of the election. [Id.; sec. 58.]

Art. 2939. Qualifications.—All supervisors, judges and clerks of any general or primary election shall be qualified voters of the election precinct in which they are named to serve. [Acts 2nd C. S. 1923, p. 75.]

Art. 2940. [2922] Disqualifications.—No one who holds an office of profit or trust under the United States or this State, or in any city or town in this State, or within thirty (30) days after resigning or being dismissed from any such office, except a notary public, or who is a candidate for office, or who has not paid his Poll Tax, shall act as judge, clerk or supervisor of any election; nor shall any one act as chairman or as member of any District, County or City Executive Committee of a political party who has not paid his Poll Tax, or who is a candidate for office, or who holds any office of profit or trust under either the United States or this State, or in any city or town in this State; or who may be enjoying gratuitous passage on street cars or on other public service corporations, by reason of his appointment as a special policeman; or any one who has any connection, whatever, with the city, whereby the city is justified in issuing to any such person free transportation on the street cars, or franks entitling him to the free use of public service corporations, or any person who is regularly employed in any capacity by the city for whose services a salary or wages is paid, except a notary public. [Acts 1905, 1st C.S., p. 533, § 60; Acts 1911, p. 18; Acts 1939, 46th Leg., p. 295.]

Section 2 of the act of 1939 repeals conflicting laws.

Art. 2941. [2923] Appointed supervisors.—The chairman of the county executive committee, for each political party that has candidates on the official ballot, or if he fail to act, any three members of such committee, may, not less than five days before the general election, nominate one supervisor of election for each voting precinct, who has paid his poll tax, by presenting his name to the county judge, who shall indorse his approval on the certificate of his nomination if he is a reputable citizen, but not otherwise. Thereupon, on his presenting such nomination and its approval to the presiding judge of the precinct, he shall be permitted to sit conveniently near the judges, so that he can observe the conduct of the election, including the counting of the votes, the locking and sealing of the ballot boxes, their custody and safe return. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. Before he shall be permitted to act as supervisor, he shall take an oath, to be administered by the presiding judge, that he will mention and note any errors he may see in testing or counting the votes, and that he will well and truly discharge his duties as supervisor impartially, and will report in writing all violations of the law and irregularities that he may observe to the next grand jury. [Acts 1st C. S. 1905, p. 534, sec. 59.]

Art. 2942. [2924] Agreed supervisors.—Any one-fifth of the candidates whose names appear on the official ballot on the day preceding the election or prior thereto may agree in writing signed by them upon two supervisors who, when selected, shall be sworn as election officers. Said supervisors shall be qualified voters of the county in which they may serve as such supervisors, and while the election is being held shall remain in view of the ballot boxes until the count is concluded. It shall be their duty to be present at the marking of the ballot of any voter, by the judge of said election, not able to make his own ballot, to see that said ballot is marked in accordance with the wishes of the voter, and to see that each ballot is correctly called. Said supervisors shall note any fraud

or irregularity occurring and report same to the next grand jury. [Acts 2nd C. S. 1909, p. 451.]

Art. 2942a. Selection of supervisor for election precinct; qualification and duties.—Upon petition of forty (40) of the qualified voters but not to exceed five (5) per cent of any election precinct or ward, the Chairman of the County Executive Committee or any three (3) members of such Committee may not less than five (5) days before such election select a supervisor for such election precinct who, when selected, shall be sworn as an election officer. Said supervisors shall be qualified voters in that particular election precinct and shall be selected from the list of voters signing such petition. While the election is being held such supervisors shall remain in view of the ballot boxes until the count is concluded. It shall be their duty to be present at the marking by the Judge of said election of the ballot of any voter not able to mark his own ballot, to see that said ballot is marked in accordance with the wishes of the voter, and to see that such ballot is correctly counted. Said supervisors shall note any fraud or irregularity occurring and report same to the next Grand Jury. The supervisor appointed by virtue of the provisions of this Act shall be compensated by the citizens upon whose petition they were appointed. [Added Acts 1937, 45th Leg., p. 381, ch. 188, § 1.]

Art. 2943. [2925–26] Pay of judges and clerks.—Judges and clerks of general and special elections shall be paid Five Dollars ($5.00) a day each, and Fifty Cents (50¢) per hour each for any time in excess of a day's work as herein defined. The judge who delivers the returns of election immediately after the votes have been counted shall be paid Two Dollars ($2.00) for that service; provided, also, he shall make returns of all election supplies not used when he makes return of the election. Ten (10) working hours shall be considered a day within the meaning of this Article. The compensation of judges and clerks of general and special elections shall be paid by the County Treasurer of the county where such services are rendered upon order of the Commissioners. [Acts 1921, p. 216; Acts 1937, 45th Leg., p. 591, ch. 295, § 1; Acts 1945, 49th Leg., p. 128, ch. 87, § 1.]

Art. 2944. [2927] Precinct judges served.—Precinct judges for all general elections shall be served with copies of the order of the commissioners court properly certified to by the clerk of the said court, designating the number, name and bounds of the election precinct and of their appointment as judges. Such service shall be made by the sheriff or a constable within ten days after the entry of such order, and return shall be made thereof on a copy showing when, where and how he executed the same. [Acts 1st C. S. 1905, p. 522, sec. 11.]

Art. 2945. [2928] [1708] In unorganized counties.—The commissioners court to which any unorganized county is attached for judicial purposes shall appoint some suitable person in each of such unorganized counties to serve as presiding officer of elections in said unorganized county in the same manner as in the appointment of presiding officers in election precincts in organized counties. [Acts 1881, p. 97; G. L. vol. 9, p. 189.]

CHAPTER 4.—ORDERING ELECTIONS, ETC.

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Article 2946. [2929] Proclamation by Governor.—Notice shall be given to the people of all elections for State and district officers, electors for president and vice-president of the United States, members of Congress, members of the Legislature, and all officers who are elective every two years. Such notices shall be by proclamation by the Governor ordering the election, not less than thirty days before the election, issued and mailed to the several county judges. [Acts 1st C. S. 1905, p. 528, sec. 30.]

Art. 2947. [2930] Order by county judge.—The county judge, or if his office is vacant or if he fails to act, then two of the county commissioners, shall order an election for county and precinct officers, and all other elections which under the law the county judge may be authorized to order. The county judge or county commissioners, as the case may be, shall issue writs of election ordered by him or them, in which shall be stated the day of election, the office or offices to be filled by the election or the question to be voted on, or both, as the case may be. [Id.; sec. 31.]

Art. 2948. [2931] [1725] [1682] Writs of election.—The writs of election and copies of the form of returns shall be delivered to the sheriff of the county, who shall, previous to the day of election, deliver the same to the presiding officer of each election precinct in which the election is ordered to be held, and in case there is no presiding officer in any such election precinct, the same shall be delivered to the qualified voter of such election precinct who resides at or nearest to the voting place in such precinct.

Art. 2949. [2932] Failure to order.—A failure from any cause, on the part of the Governor, or the county judge or commissioners court, or of both, to order or give notice of any general election shall not invalidate the same if otherwise legal and regular. [Acts 1st C. S. 1905, p. 528, sec. 31.]

Art. 2950. [2933] Notice of election.—The county judge shall cause notice of a general election or any special election to be published by posting notice of election at each precinct thirty days before the election; which notice shall state the time of holding the election, the office to be filled, or the question to be voted on; provided, that in local option, stock law and road tax elections, or any other special election specially provided for by the laws of this State, the notices of election shall be given in compliance with the laws governing said elections respectively. If a

vacancy occurs in the State Senate or House of Representatives during the session of the Legislature, or within ten days before it convenes, then twenty days notice of a special election to fill such vacancy shall be sufficient. Posting notice of an election shall be made by the sheriff or a constable, who shall make return on a copy of the writ, how and when he executed the same. [Id.; sec. 33.]

Art. 2951. [2934] Municipal elections.—In all city, town and village elections, the mayor, or if he fails to do so, then the governing body shall order elections pertaining alone to municipal affairs, give notice and appoint election officers to hold the election, unless a different method be prescribed by the charter of such city, town or village; but, in all cases, supervisors may be selected as in general elections, and judges and clerks shall each be selected from different political parties when practicable. [Id.; sec. 34.]

Art. 2951a. Election of judges and clerks and appointment of supervisors of elections in cities of 200,000 to 260,000 population—number and compensation.

Manner of election of city officers

Section 1. All elections for the election of city officers in all cities in this State having a population in excess of two hundred thousand (200,000) and less than two hundred and sixty thousand (260,000) for the last preceding Federal census or any future Federal census shall be held by election officers elected in the following manner:

(1) The election officers in all such elections shall be elected by the Mayor and Commissioners by ordinance duly adopted in open meeting not less than ten (10) days before an election and shall be qualified voters of said city and of the precinct in which they are to serve.

(2) There shall be elected not more than two (2) judges and two (2) clerks in precincts having less than two hundred (200) qualified voters, and not more than two (2) judges and four (4) clerks in precincts having more than two hundred (200) qualified voters. The number of qualified voters in each precinct and the qualifications of voters for the purposes of this Act shall be determined from the poll tax list prepared by the County Tax Collector of the county in which such city is situated for the year ending January 31st next preceding such election.

(3) Any local political party desiring the appointment of persons as judges and clerks in any such city election shall file with the City Clerk of said city, fifteen (15) days before said election is to be held, one list of prospective judges and clerks, giving the name, street address, and precinct number of each person. Each list shall name not more than five (5) qualified voters of each precinct and shall be signed by the candidate for Mayor or two (2) candidates for Commissioner of the local party proposing same. Each such list shall be filed with the City Clerk and preserved by the City Clerk for a period of ten (10) years as one of the records of his office, and shall be open at all times for public inspection. The Mayor and Commissioners shall elect an equal number of judges and clerks for each precinct from each of said lists so filed by the different political parties so as to give equal representation to each local political party, whenever the number of names submitted by each of the local political parties is sufficient for this purpose. Whenever the number of local political parties is such that an exact division cannot be made of the judges and clerks in each precinct, then equal representation shall be given in all precincts where it is possible and some representation is to be given each party in all other precincts where it is possible, with preference to the parties in the order in which the lists are filed with the City Clerk. For the purpose of this Act a "local political party" shall be held to include any candidate for Mayor when he is running independently or any two (2) candidates for Commissioner when they are running independently, or the candidates for Mayor and Commissioner who are running on the same ticket, provided that the candidate or candidates file with the City Clerk thirty (30) days before the election a petition or petitions signed by five hundred (500) qualified voters endorsing their candidacy. The signatures to such petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving street and number. One of the signers of each paper shall make oath before some officer authorized to administer oaths, that each signature to the paper appended is the genuine signature of the person whose name it purports to be, and a copy of such petition when certified to by the City Clerk shall be admissible in evidence in any Court and be prima facie proof that the signatures appearing thereon are the genuine signatures of the persons whose names they purport to be. Within five (5) days from the date of filing of such petition, the City Clerk shall examine the same and from the list of qualified voters of the City, heretofore mentioned, ascertain whether or not said petition is signed by the requisite number of qualified voters, and he shall attach to said petition his certificate showing the result of such examination, stating the number of qualified voters found upon said petition, and the number of persons not qualified to vote. In checking said petition the City Clerk shall designate the names of persons found thereon not qualified to vote, with the letters: "D. V." in red ink, opposite such name or names. If, by the Clerk's certificate, the petition is shown to be insufficient, it may be amended within ten (10) days from the date of said certificate. The Clerk shall within five (5) days after such amendment is filed with him, make a like examination and check off the names thereon and if his certificate shall show the same to be insufficient, it shall be returned to the candidate filing the same without prejudice, however, to the filing of a new petition to the same effect, provided the new petition be filed not later than thirty (30) days before the date of the election.

(4) When at any time there has been only one list of prospective judges and clerks filed with the City Clerk by a local political party, or if at any time only one of the lists so filed contains the names of qualified voters residing in a particular precinct, then any forty (40) qualified voters of any such precinct may sign a petition, giving their names, and street addresses, and file same with the City Clerk five (5) days before said election, submitting the names of five (5) qualified voters of said precinct as election officers and the Mayor and Commissioners shall, two (2) days before such election elect one judge and one clerk from the five (5) names so submitted in said petition. The petition shall be sworn to by one of the signers to the effect that all signatures appearing thereon are the signatures of the persons whose names they purport to be and a copy of any such list when certified to by the City Clerk shall be admissible in evidence in any Court and be prima facie proof that the signatures appearing thereon are the genuine signatures of the persons whose names they purport to be.

(5) If at any time the list or lists of persons filed with the City Clerk fails to name a sufficient number of qualified voters to fill the election offices in any precinct or if those officials elected fail or refuse to serve and there is a vacancy or vacancies after all the qualified voters for the precinct appearing on any of said lists have been elected, then the Mayor and Commissioners shall have the power to appoint as a substitute any qualified voter of the particular precinct who shall thereupon serve as an election official in the place of the person who is disqualified or has failed or refused to serve.

Supervisors for voting precincts

Section 2. In all such cities as defined in Section 1, any candidate for Mayor running independently or any two (2) candidates for Commissioner running independently or a candidate for Mayor and Commissioners who are running on the same ticket may by written petition addressed to the Mayor and Commissioners of any such city and filed with the City Clerk fifteen (15) days before any such election, request the issuance in blank of credentials for two (2) supervisors for each of the voting precincts in such city and the Mayor and Commissioners of said city shall ten (10) days before such election issue to the candidate or candidates the number of credentials for supervisors requested in each petition numbered as to precincts and with the name of the supervisor left blank. The candidate or candidates to whom such credentials are issued in blank shall have the right as agent for the Mayor and Commissioners to insert the name of any duly qualified voter of the precinct for which such credential is issued and deliver such credential to the person named therein and such person shall thereupon be a duly appointed supervisor for such election. The person so appointed shall present such credential to the presiding judge of his precinct on election day and shall take an oath, to be administered by the presiding judge, that he will mention and note any errors he may see in listing or counting the votes and that he will well and truly discharge his duties as supervisor impartially, and will report in writing all violations of the law and irregularities that he may observe to the next grand jury. While the election is being held such supervisors shall be permitted to sit conveniently near the judges and they shall remain in view of the ballot boxes until the vote is counted, and ballot boxes are locked and sealed and safely returned to the City Clerk. It shall be their duty to be present at the marking by the judge of said election of the ballot of any voter not able to mark his own ballot, to see that said ballot is marked in accordance with the wishes of the voter and to see that such ballot is correctly counted. Said supervisors shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularities or violation of the law that he may observe, provided however, that the supervisors shall assist the election officers whenever additional help is necessary for the proper conduct of the election and when they have been requested to do so by the presiding judge. The supervisor appointed under the provisions of this Act shall be compensated by the candidate who delivers him his credentials.

Judges and clerks, compensation of

Sec. 3. Judges and clerks in all such cities as defined in Section 1 shall be paid Five Dollars ($5) a day each and Fifty (50) Cents per hour each for any time in excess of a day's work as herein defined. The judge who delivers the returns of election immediately after the votes have been counted shall be paid Two Dollars ($2) for that service provided he shall make returns of all election supplies used when he makes returns of the election. Twelve (12) working hours shall be considered a day within the meaning of this Act. The compensation of judges and clerks shall be paid out of the city treasury. No supervisors shall be paid by the city.

Conflicting provisions repealed

Sec. 4. The portions of all laws, charter provisions, and ordinances that are in conflict with the provisions of this Act are hereby repealed.

Partial invalidity

Sec. 5. If any provision of this Act shall be held invalid, it shall not be construed to invalidate other provisions of the Act. [Acts 1939, 46th Leg., Spec.L., p. 726.]

Art. 2952. [Repealed by Acts 1933, 43rd Leg., p. 3, ch. 3, § 9.]

Art. 2953. [2936] [1805] [1754] In case of a tie.—At any election, if there be an equal number of votes given to two or more persons for the same office, except executive offices as provided in the Constitution, and no one elected thereto, the officer to whom the returns are made shall declare such election void as to such office only, and shall immediately order another election to fill such office; and notice shall be given, and such other election shall be held in the same manner as the general election. [Acts 1876, p. 310; G. L. vol. 8, p. 1146; P. D. 3606.]

Art. 2953a. Special elections to fill vacancies in public offices.

Time of election

Sec. 1. Where special elections are authorized by this Act, the officer authorized by law to order elections shall make such order, fixing the time of the election not less than twenty nor more than ninety days after the first public notice of such order.

Election to fill unexpired term

Sec. 2. Where vacancies which are to be filled by election occur in a civil office, an election shall immediately be ordered to fill the unexpired term.

Election to unexpired term and to fill term succeeding unexpired term

Sec. 3. Where an officer, holding an office the vacancy of which is to be filled by election, is re-elected to a term of office succeeding that of which he is the incumbent, and where, after the re-election of said officer, by reason of the death or resignation of the officer or otherwise, there is no person legally entitled to fill the office for the unexpired term or to fill the office for the succeeding term to which the former officer was elected to succeed himself, an election shall be immediately ordered to elect a person to fill the unexpired term in said office and to elect a person to fill the term of office succeeding the unexpired term.

Election on resignation of incumbent of unexpired term

Sec. 4. When the incumbent of an office, the vacancy of which is to be filled by election, tenders to the officer authorized by law to receive same a written resignation effective at a future date, an election shall be ordered immediately after acceptance of the resignation to elect a successor to the incumbent to fill the term of office unexpired from and after the effective date of the resignation.

Election on resignation of officer-elect

Sec. 5. When an officer-elect to an office a vacancy in which must be filled by election, tenders to the officer authorized by law to receive the resignation of an incumbent of the office to which said officer-elect was elected, a declaration in writing of his intention not to qualify for the office to which he was elected, an election shall be ordered immediately upon receipt of said written declaration to elect a successor to the incumbent of the office.

Election on death of officer-elect

Sec. 6. When the officer-elect to an office which must be filled by election dies or becomes ineligible to qualify for the office to which he was elected, the proper officer shall immediately order an election to elect a successor to the incumbent of the office.

Governor may accept resignations

Sec. 7. Where no officer is otherwise authorized by law to receive and accept the resignation of an officer, the Governor is hereby designated as the officer to do so, and he is hereby empowered and authorized

to receive and accept the resignation of all such officers.

Poll tax lists delivered by tax collector to board

Sec. 8. Whenever a special election or special primary as herein provided or otherwise provided by law shall be called between February 1st and April 1st, the tax collectors of the counties in which such election or primary is to be held shall make up and deliver to the board charged with the duty of furnishing election supplies separate certified lists of the citizens in each precinct who have paid their poll tax or have received their certificates of exemption in the form now provided by law, on or before February 20th.

Elections validated

Sec. 10. All elections heretofore held or orders of elections heretofore made are hereby validated where same would have been authorized under the provisions of this Act.

Partial invalidity

Sec. 11. If any section, paragraph, or provision of this Act be held or declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this Act, but the same shall remain in full force and effect. [Acts 1933, 43rd Leg., p. 3, ch. 3.]

Section 9 of this Act expressly repeals Article 2952, ante.

CHAPTER 5.—SUFFRAGE

Art.
2954. Not qualified to vote.
2955. Qualifications for voting.
2955a. Qualifications for voting for bond issues, lending credit, expending money, or assuming debt.
2955b. Certified list of taxpayers.
2956. Absentee voting.
2957. To vote in city elections.
2958. "Residence."
2959. Liable to poll tax.
2960. Exempt from poll tax.
2960a. Persons in armed forces and auxiliaries and nurses; exemption after discharge.
2961. Mode of paying poll tax.
2962. Paying poll tax in large city.
2963. Receipt mailed.
2964. Not to pay tax.
2965. Form of receipt.
2966. Removal to another ward.
2967. Removal to another county or precinct.
2968. Exemption certificate in cities.
2968a. Certificate of exemptions without cost to certain qualified voters not subject to payment of poll tax.
2969. Becoming of age.
2970. Poll tax books.
2971. Poll tax deputy.
2972. Collector may administer oaths.
2973. Proof of residence.
2974. False swearing reported.
2975. Lists of voters.
2976. Duplicates kept.
2977. Statement of receipts.

Article 2954. [2938] Not qualified to vote.—The following classes of persons shall not be allowed to vote in this State:

1. Persons under twenty-one years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.
4. All persons convicted of any felony, except those restored to full citizenship and right of suffrage, or pardoned.
5. All soldiers, marines and seamen employed in the service of the army or navy of the United States. [Acts 1st C. S. 1905, p. 520.]

Art. 2955. [2939] Qualifications for voting.—Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one (21) years and who shall be a citizen of the United States, and who shall have resided in this State one year next preceding an election, and the last six (6) months within the district or county in which he or she offers to vote, shall be deemed a qualified elector. The electors living in an unorganized county may vote at an election precinct in the county to which such county is attached for judicial purposes; provided that any voter who is subject to pay a poll tax under the laws of this State, shall have paid said tax before offering to vote at any election in this State and holds a receipt showing that said poll tax was paid before the first day of February next preceding such election; and, if said voter is exempt from paying a poll tax and resides in a city of ten thousand (10,000) inhabitants or more, he or she must procure a certificate showing his or her exemptions, as required by this title. If such voter shall have lost or misplaced said tax receipt, he or she shall be entitled to vote upon making and leaving with the judge of the election an affidavit that such tax was paid by him or her, or by his wife or by her husband before said first day of February next preceding such election at which he or she offers to vote, and that said receipt has been lost or misplaced. In any election held only in a subdivision of a county for the purpose of determining any local question or proposition affecting only such subdivision of the county, then in addition to the foregoing qualifications, the voters must have resided in said county for six (6) months next preceding such election. The provisions of this Article as to casting ballots shall apply to all elections including general, special, and primary elections; provided that a city poll tax shall not be required to vote in any election in this State except in city elections. [Acts 1st C.S.1905, p. 520; Acts 1st C.S.1917, p. 62; Acts 4th C.S.1920, p. 10; Acts 1921, p. 217; Acts 1923, p. 318; Acts 1941, 47th Leg., p. 64, ch. 50, § 1.]

Art. 2955a. Qualifications for voting for bond issues, lending credit, expending money, or assuming debt.—When an election is held by any county, or any number of counties, or any political subdivision of the State, or any political subdivision of a county, or any defined district now or hereafter to be described and defined within the State, and which may or may not include towns, villages or municipal corporations, or any city, town or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political subdivision, district, city, town or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence. [Acts 1933, 43rd Leg., p. 376, ch. 147, § 1.]

Art. 2955b. Certified list of taxpayers.—Whenever an election is called in the State of Texas or any political subdivision thereof or in any defined district for the purpose of authorizing the issuance of bonds which place a lien upon real estate, it shall be the duty of the Tax Collector of the county or political subdivision or defined district to furnish to the Election Judges a certified list of the owners of real estate in said county or political subdivision of the State in which said election is to be held who have rendered the same for taxes as shown on the tax rolls; said list of real estate owners shall determine the qualification of the electors to participate in said election. [Acts 1933, 43rd Leg., p. 376, ch. 147, § 2.]

Art. 2956. [2939] Absentee voting.—Subdivision 1. Any qualified elector of this State who is absent from the county of his residence, or because of sickness or physical disability can not appear at the

poll place in the election precinct of his residence, on the day of holding any general, special, or primary election, may, nevertheless, cause his vote to be cast at such an election in the precinct of his residence by compliance with one or other of the methods hereinafter provided for absentee voting.

Subdivision 2. Such elector shall make application for an official ballot to the county clerk in writing signed by the elector, or by a witness at the direction of said elector in case of latter's inability to make such written application because of physical disability. Such application shall be accompanied by the poll tax receipt or exemption certificate of the elector, or, in lieu thereof, his affidavit in writing that same has been lost or mislaid. If the ground of application be sickness or physical disability by reason of which the elector can not appear at the polling place on election day, a certificate of a duly licensed physician certifying as to such sickness or physical disability shall accompany the application.

Subdivision 3. At any time not more than twenty (20) days, nor less than three (3) days, prior to the date of such an election, such elector making his personal appearance before the county clerk of the county of his residence at his office and delivering to such clerk his application aforesaid, shall be entitled to receive from said clerk one official ballot which has been prepared in accordance with law for use in such election, which ballot is then and there, in the office of said clerk of said county, and in the presence of said clerk and of no other person, except the witness who is authorized to assist elector in certain cases as hereafter provided, to be marked by the elector, or by said witness in case of physical disability of elector, so as to conceal the marking, and same shall, in the presence of the clerk, be deposited in a ballot envelope furnished by said clerk, which envelope shall bear upon the face thereof the name, official title and post office address of such county clerk, and upon the other side a printed affidavit in substantially the following form, to be filled out and signed by the elector; provided, however, that in case of the physical disability of elector preventing him from filling out and signing such affidavit, then the witness who assisted the elector in marking his ballot shall fill out and sign affidavit for and in behalf of elector and shall also sign his, witness' name as prescribed in the following form:

State of ——— County of ———

I, ———, do solemnly swear that I am a Resident of Precinct No. ———, in ——— County, and am lawfully entitled to vote at the election to be held in said precinct on the ——— day of ———, 19——; that I am prevented from appearing at the polling place in said Precinct on the date of such election because of (illness), (physical disability), (or because of absence from County), ———, (elector to signify one of foregoing reasons) that the enclosed ballot expresses my wishes, independent of any dictation or undue persuasion of any person; that I did not use any memorandum or device to aid me in the marking of said ballot.

———————
Signature of elector

By: ———————
Name of witness who assisted elector in event of physical disability.

Subdivision 4. At any time not more than twenty (20) days, nor less than three (3) days prior to the date of such an election, such elector who makes written application for a ballot as provided for in Subdivision 2 hereof, shall be entitled to have his ballot cast at such an election on compliance with the following provisions:

The application, including fifteen cents (15¢) to cover postage, shall be mailed to the County Clerk of the elector's residence whose duty it shall be forthwith to mail to such elector a blank official ballot and ballot envelope as provided in Subdivision 3, which ballot shall be marked by elector, or by witness at the direction of said elector in case of the latter's inability to mark such ballot because of physical disability, in the presence of a Notary Public or other persons qualified under the law to take acknowledgments, and in the presence of no other person except said witness and/or such officer, and in such manner that such officer cannot know how the ballot is marked, and such ballot shall then in the presence of such officer be folded by the elector or by said witness in case of physical disability of said elector, deposited in said envelope, the envelope securely sealed, the endorsement filled out, signed and sworn to by the elector, or in case of physical disability, then by the said witness for and in behalf of said elector, and certified by such officer and then mailed by said officer, postage prepaid, to the County Clerk.

Subdivision 5. Upon receipt of any such ballot sealed in its ballot envelope duly endorsed, the clerk shall keep the same unopened until the second day prior to such election, and shall then enclose same together with the elector's application and accompanying papers, in a larger or carrier envelope which shall be securely sealed and endorsed with the name and official title of such clerk, and the words "this envelope contains an absentee ballot, and must be opened only at the polls on election day," and the clerk shall forthwith mail same, or deliver it in person, to the presiding judge of election, or to any assistant judge of election, in said precinct.

And ballots mailed out by the county clerk within the legal time, but not received back by him on or before the third day prior to the election on the day of election, shall not be voted, but shall remain in the custody of the county clerk during the thirty (30) day period provided in Subdivision 6.

Subdivision 6. On the day of such election, and in the presence of the election officers, and the supervisors, if any, one of the judges of election shall, between the hours of 2:00 and 3:00 o'clock open the carrier envelope only, announce the elector's name and compare the signature upon the application with the signature upon the affidavit on the ballot envelope. In case the election board finds the affidavits duly executed, that the signatures correspond, that the applicant is a duly qualified elector of the precinct, and that he has not voted in person at said election, they shall open the envelope containing the elector's ballot in such manner as not to deface or destroy the affidavit thereon, take out the ballot therein contained without permitting same to be unfolded or examined and having endorsed the ballot in like manner as other ballots are required to be endorsed, deposit the same in the proper ballot box and enter the elector's name in the poll list the same as if he had been present and voted in person. If the ballot be challenged by any election officer, supervisor, party challenger, or other person, the grounds of challenge shall be heard and decided according to law, including the consideration of any affidavits submitted in support of or against such challenge. If the ballot be admitted, the words "absentee voter" shall be set down opposite the elector's name on the poll list. If the ballot be not admitted, there shall be endorsed on the back thereof the word "rejected," and all rejected ballots shall be enclosed, securely sealed, in an envelope on which words "rejected absentee ballots" have been written, together with a statement of the precinct and the date of election, signed by the judges and clerks of election and returned in the same manner as provided for the return and preservation of official ballots voted at such election. In all cases the application poll tax receipt or exemption certificate, ballot envelope and the affidavits and certificates accompanying same shall be returned by the officers of election to the county

clerk who shall keep all such papers except poll tax receipts and exemption certificates for one (1) year and shall return poll tax receipts and exemption certificates to the voter at any time after the same have been returned to him except in case of challenge when such poll tax receipts and exemption certificates shall be held thirty (30) days and as much longer thereafter as any Court or reviewing authority may direct.

Subdivision 7. Whenever it shall be made to appear to the officers of election that any elector whose ballot has been marked and forwarded as hereinbefore provided, has since died, then the ballot of such deceased voter shall not be deposited in the ballot box, but shall be returned as in the case of other rejected ballots; provided however, the casting of the ballot of a deceased voter shall not invalidate the election.

Subdivision 8. The county clerk shall post at a conspicuous place in his office, for public inspection, a complete list of those to whom ballots have been delivered or sent out under this Article, stating thereon the elector's name, age, occupation, precinct of residence and poll tax number or exemption certificate number, and the date on which ballot was delivered or mailed which list shall be kept up from day to day. The applications, poll tax receipts, exemption certificates, or affidavits of loss thereof, shall also be open to public inspection at regular office hours, but under such reasonable rules and regulations as the county clerk may adopt to safeguard the same and to reasonably economize his own time while they are in his keeping.

Subdivision 9. Any of the duties by this Article committed to the county clerk may be performed at [1] the county clerk's office by one or more deputies specially designated in writing by the county clerk to act in connection with the election stated in the appointment.

Subdivision 10. The county clerks, their deputies and officers acting under this Article shall be considered as judges or officers of election within the scope of Articles 215 to 231, inclusive, of the Penal Code of Texas, and all amendments thereto, and be punishable as in said Articles respectively, provided in the case of judges or officers of election. [Acts 1905, 1st C.S., p. 520; Acts 1917, 1st C.S., p. 62; Acts 1920, 4th C.S., p. 10; Acts 1921, p. 217; Acts 1923, p. 318; Acts 1931, 42nd Leg., p. 180, ch. 105; Acts 1933, 43rd Leg., p. 5, ch. 4; Acts 1935, 44th Leg., p. 700, ch. 300, § 1; Acts 1935, 44th Leg., 2nd C.S., p. 1700, ch. 437, § 1.]

Subdivision 11. In counties where the towns other than the county seat have a population of four thousand (4000) inhabitants or more according to the last Federal Census, the County Clerk may appoint a Deputy Clerk in such towns for the purpose of receiving applications and accepting absentee ballots. [Added Acts 1945, 49th Leg., p. 48, c. 30, § 1.]

[1] So in enrolled bill. Session Law omits words "the county clerk may be performed at".

Section 2 of Acts 1935, 2nd C.S., repeals all laws and parts of laws in conflict with this Act.

Art. 2957. [2940] To vote in city elections.—All qualified electors of this State, as described in the two preceding articles who shall have resided for six months immediately preceding an election within the limits of any city or incorporated town shall have a right to vote for mayor and all other elective officers; but, in all elections to determine the expenditure of money or assumption of debt, or issuance of bonds, only those shall be qualified to vote who pay taxes on property in such city or incorporated town. [Acts 1st C. S. 1905, p. 521, sec. 3.]

Art. 2958. [2941] "Residence."—The "residence" of a single man is where he usually sleeps at night; that of a married man is where his wife resides, or if he be permanently separated from his wife, his residence is where he sleeps at night; provided that the residence of one who is an inmate or officer of a public asylum or eleemosynary institute, or who is employed as a clerk in one of the departments of the government at the capitol of this State, or who is a student of a college or university, unless such officer, clerk, inmate or student has become a bona fide resident citizen in the county where he is employed, or is such student, shall be construed to be where his home was before he became such inmate or officer in such eleemosynary institution or asylum or was employed as such clerk or became such student; and if on payment of his poll tax he would be a qualified voter, he shall be permitted to return during the month of January in each year to his home to pay his poll tax or obtain his certificate of exemption, and shall be permitted to return again to his home to vote at any general or primary election. The inmates of the Confederate Home situated within the limits of the city of Austin shall, after obtaining their certificates of exemption, be entitled to vote for State, district, municipal and county officers. [Id.; sec. 4.]

Art. 2959. [2942] Liable to poll tax.—A poll tax shall be collected from every person between the ages of twenty-one (21) and sixty (60) years who resided in this State on the first day of January preceding its levy, Indians not taxed, persons insane, blind, deaf or dumb, those who have lost a hand or foot, those permanently disabled, and all disabled veterans of foreign wars, where such disability is forty (40%) per cent or more, excepted. It shall be paid at any time between the first day of October and the first day of February following; and the person when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. [Acts 1st C.S.1905, p. 521, § 3; Acts 4th C.S.1920, p. 11; Acts 1941, 47th Leg., p. 1406, ch. 639, § 1.]

Art. 2960. [2943] Exempt from poll tax.—Every person who is more than sixty (60) years old, or who is blind or deaf or dumb, or is permanently disabled, or has lost a hand or foot, or who is a disabled veteran of a foreign war, where such disability is forty (40%) per cent or more, shall be entitled to vote without being required to pay a poll tax if he has obtained his certificate of exemption from the County Tax Collector when same is required by the provisions of this title. [Acts 1st C.S.1905, p. 521; Acts 1941, 47th Leg., p. 1336, ch. 604, § 1.]

Art. 2960a. Persons in armed forces and auxiliaries and nurses; exemption after discharge.—After the United States of America has ceased the prosecution of the war and has concluded a peace with all of her enemies commonly known as the Axis Powers, all members who have served, or, are now serving, or, who may hereafter serve in the armed forces of the United States of America, and all nurses, and all members of the Women's Army Auxiliary Corps and all members of the Women's Auxiliary Volunteer Emergency Service, who shall have been honorably discharged from such services shall be entitled to vote during the first calendar year after such discharge without having paid a poll tax under the laws of the State of Texas, provided, such discharged members of the armed forces, such nurses, such members of the Women's Army Auxiliary Corps and members of the Women's Auxiliary Volunteer Emergency Service were still in the armed forces on January 31st immediately preceding such discharge and because thereof were not permitted to be personally present and purchase such poll tax. Any and all persons claiming the benefits of this Article shall possess all of the other qualifications as to age, residence, etc., as required and provided for under this title. All such persons shall be issued exemption certificates which may be obtained in the same manner as elsewhere provided for under this title from all officers authorized by law to issue poll tax receipts and/or exemption.

certificates, and all such officers shall grant the same to the persons entitled thereto under the provisions of this Act which shall entitle the recipient thereof to the privilege of voting as provided hereunder, but no certificate of exemption shall be issued at a date later than fifteen (15) days immediately preceding the date of the election in which the holder of the exemption certificate expects to vote during such year. The exemption certificate shall be in substantially the following form:

CERTIFICATE OF EXEMPTION FROM THE PAYMENT OF POLL TAX

The State of Texas, County of ————, Precinct No. ————. I, ————, Tax Collector for said County, of the State of Texas, do hereby certify that ———— personally appeared before me on the —— day of ————, A.D. 19—, and being duly sworn declared his name to be ————, that his race is ————, that —he is ———— years old, that he has resided in the State of Texas for ———— years, in ———— County for —— years, and in ————, Texas, for —— years; and that he now and has for the past ———— years resided in Precinct No. ——— and/or Ward No. ——— in said County, and/or city, and that his street address is ———— Street, or that his rural address is ————, and that —he is exempt from the payment of a poll tax for the year 19—— for the reason that —he was a member of the armed forces, a nurse, a member of the Women's Army Auxiliary Corps, or a member of the Women's Auxiliary Volunteer Emergency Service of the United States on January 31, 19—— and that —he is a qualified voter under the Constitution and laws of the State of Texas.

Given under my hand and seal of office this the —— day of ————, A.D., 19—.

(Signed) ————

Tax Collector ———— County, Texas.

In the event the exempt voter, holding certificate under this Article, shall remove from one voting precinct to another within the county, he shall only be required to present his certificate of exemption to the Tax Assessor and Collector for endorsement, which endorsement shall show the date of removal, and the date of endorsement, the new address and precinct to which such voter has removed, which endorsement shall be under seal and signed by the County Tax Assessor and Collector.

In the event the exempted voter holding certificate under this Article shall remove from the county in which he resided when same was issued, to another county in this state, he shall be required to present his certificate of exemption to the Assessor and Collector of taxes of the county of his new residence for reissue of registration and endorsement at least ten days before any election at which he expects to vote.

In the event of the loss of certificate of exemption, the voter may secure a reissue under his old number by making affidavit of such loss before the County Tax Assessor and Collector. [Added Acts 1943, 48th Leg., p. 570, ch. 338, § 1.]

Section 2 of the Act of 1943 related to the purpose of the Act.

Art. 2961. [2944] Mode of paying poll tax.—If the taxpayer does not reside in a city of ten thousand (10,000) inhabitants or more, his poll tax must either be paid by him in person or by some one duly authorized by him in writing to pay the same, and to furnish the Collector the information necessary to fill out the blanks in the poll tax receipt. Such authority and information must be signed by the party who owes the poll tax, and must be deposited with the Tax Collector and filed and preserved by him. A taxpayer may pay his poll tax by a remittance of the amount of the tax through the United States mail to the County Tax Collector, accompanying said remittance with a statement in writing showing all the information necessary to enable the Tax Collector to fill out the blank form of the poll tax receipt, which statement must be signed by the party who owes the poll tax under oath, but the husband may sign for the wife and in like manner the wife may sign for the husband, and the Tax Collector shall issue and mail to the taxpayer at his last known address a poll tax receipt, or, if requested to do so by the taxpayer in writing, the Collector may hold said receipt to be delivered to the taxpayer in person. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner the wife may pay the poll tax of her husband and receive the receipt therefor. The Assessor and Collector of Taxes may at such places as shall in his discretion be necessary or advisable, have a duly authorized and sworn deputy for the purpose of accepting poll taxes and giving receipts therefor. [Acts 1st C.S., 1905, p. 521; Acts 1941, 47th Leg., p. 183, ch. 132, § 1.]

Section 3 of the amendatory Act of 1941 repealed all conflicting laws.

Art. 2962. [2945] Paying poll tax in large city.—In all cases where the taxpayer resides in a city of ten thousand (10,000) inhabitants or more, the tax must be paid in person by the taxpayer entitled to the receipt, except as provided by this Article. A taxpayer may pay his poll tax by a remittance of the amount of the tax through the United States mail to the County Tax Collector, accompanying said remittance with a statement in writing showing all the information necessary to enable the Tax Collector to fill out the blank form of the poll tax receipt, which statement must be signed by the party who owes the poll tax under oath, but the husband may sign for the wife and in like manner the wife may sign for the husband, and the Tax Collector shall issue and mail to the taxpayer at his last known address a poll tax receipt, or, if requested to do so by the taxpayer in writing, the Collector may hold said receipt to be delivered to the taxpayer in person. A person who is entitled to a certificate of exemption may obtain the same by sending through the United States mail a written request addressed to the Tax Collector furnishing the information necessary to enable the Tax Collector to fill out the blank form of certificate of exemption, which written request shall be under oath signed by the person entitled to the certificate, and the Tax Collector upon receipt of such request and information shall issue and mail to said person at his last known address a certificate of exemption, or, if requested to do so by said person in writing, the Collector may hold said certificates to be delivered to the person entitled thereto. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner the wife may pay the poll tax of her husband and receive the receipt therefor. If a person residing in a city of ten thousand (10,000) inhabitants who is subject to pay a poll tax, leaves the county of his residence with the intention not to return until after the first day of the following February, and does not return before that time, he shall be entitled to vote, if possessing all other legal qualifications, by paying his poll tax or obtaining his certificate of exemption through an agent authorized by him in writing, which shall state truly his intention to depart from the county, the expected period of his absence, and every fact necessary to enable the Tax Collector to fill the blanks in his receipt. Such authority in fact, must be sworn to by the citizen, and certified to by some officer authorized to administer oaths. It shall be deposited with the Tax Collector and kept in his office. [Acts 1st C.S., 1905, p. 521; Acts 1941, 47th Leg., p. 183, ch. 132, § 2.]

Art. 2963. Receipt mailed.—When in cases permitted by this Title, the tax is paid by an agent, the tax receipt shall not be delivered to such agent, but shall be sent by mail to the taxpayer or kept and delivered to him in person by the Tax Collector.

Where a property taxpayer residing either within or without a city of ten thousand inhabitants or more, has a poll tax assessed against him or his wife or both, he may, at the same time that he pays his property tax by bank check or money order, also pay the poll tax of himself and wife, or either, and in the same way, and it shall be the duty of the Tax Collector in such cases, to mail such poll tax receipts, together with the property tax receipt to such property taxpayer. Exemption certificates shall be mailed in like manner, with the property tax receipt upon the payment of property taxes.

All tax receipts issued for any year after January 31st shall be stamped on the face thereof: "Holder not entitled to vote," and the names of the holders of such poll tax receipts shall not be included in the list of qualified voters. [Acts 1st C.S., 1905, p. 524, § 16; Acts 1929, 41st Leg., p. 248, ch. 109, § 1; Acts 1929, 41st Leg., 1st C.S., p. 111, ch. 51, § 1.]

Section 4 of Acts 1929, 41st Leg., 1st C.S., p. 111, c. 51, being a penal provision is published as Pen.Code, Article 205a.

Art. 2964. [2946] Not to pay tax.—No candidate for office shall pay the poll tax for another. No person shall for or on behalf of any candidate for office or person interested in any question to be voted on, pay the poll tax for another; provided, that any person who has bought the property of another, which property is legally bound for the payment of any poll tax, may pay the poll tax of such former owner; but the collector in such case shall not issue a poll tax receipt authorizing any person to vote, but shall give the party paying the same an ordinary memorandum receipt therefor; but such memorandum receipt shall not state either the race, occupation or residence of the taxpayer. [Acts 1st C.S. 1905, p. 524, § 16.]

Art. 2965. [2949–50] Form of receipt.—Each poll tax receipt and its duplicate shall show the name of the party for whom it was issued, the payment of the tax, the age and race of the taxpayer, and length of time the taxpayer has resided in the State and whether the taxpayer is a citizen of the United States, and if so, whether a native born or a naturalized citizen of the United States, and the State of the United States or the foreign country where the taxpayer was born, the length of time the taxpayer has resided in the county, the voting precinct in which the taxpayer lives, except when in an unorganized county, the taxpayer's occupation and post-office address, or if living in an incorporated city, the ward, street, and number of residence in such city or town. The poll tax receipt shall be in the following form and numbered consecutively in each book provided for in this title:

Poll Tax Receipt No. ——
State of Texas
County of ————

Received of ———— on the ——— day of ————, A. D. ———, the sum of $———— in payment of poll tax for year A. D. 19—, the said taxpayer being duly sworn by me, says that he (she) is ——— years old, that he (she) resides in voting precinct No. ——, in ——— County, that his (her) race is ———, that he (she) is a native born (naturalized) citizen of the United States, and was born in ———— County, ———— State, that he (she) has resided in Texas ——— years and in ———— County ——— years, that he (she) is by occupation ————, and that his (her) post-office address is ———— (if in an incorporated city or town, a blank word must be printed for the ward, street, and number of residence in lieu of his (her) post-office address, and length of time he (she) has resided in such city or town)

All of which I certify: (Signed) ————. (Seal)

If from the information on the poll tax receipt above required, it appears that the party receiving the same is an alien, he shall be given a receipt from a book specially prepared for alien taxpayers, which book is hereinafter provided in this Title, and the Tax Collector and the Commissioners Court or other authorities providing said poll tax receipt shall have printed on the face of said receipt the word "alien," which said printing shall not be less than two (2) inches in height, superimposed in outline type, and printed in red ink. [Acts 1st C.S., 1905, p. 524, § 16; Acts 1929, 41st Leg., p. 248, ch. 109, § 2; Acts 1929, 41st Leg., 1st C.S., p. 111, ch. 51, § 2; Acts 1939, 46th Leg., p. 296, § 1.]

Section 2 of the amendatory act of 1939 amended art. 2970 and section 3 amended art. 2975.

Sections 4, 5, and 6 prescribing penalties for violating the provisions of the act as to poll tax receipts and as to alien poll taxpayers, appear as Pen.Code arts. 200a—1, 200a—2, and 200a—3, respectively.

Section 4 of Acts 1929, 41st Leg., 1st C.S., p. 111, ch. 51, being a penal provision is published as Pen.Code, Article 205a.

Art. 2966. [2951] Removal to another ward.—If a citizen in a city of ten thousand inhabitants, after receiving his poll tax receipt or certificate of exemption, removes to another ward in the same city before the next election, he may vote at any general election in the ward of his new residence by presenting his poll tax receipt or certificate of exemption to the precinct election judges, or by making affidavit that it has been lost or misplaced; which affidavit shall be left with the judges and forwarded with the election returns. But in all such cases if the removal was to the ward of his new residence in the same city before the certified list of voters was delivered to the precinct judges, he shall appear before the tax collector not less than five days before such election or primary election and obtain a corrected receipt or certificate; and his name shall be added to the list of voters for the precinct of his new residence; and he shall not vote in that event unless his name appears on the certified list of voters. [Acts 1st C.S. 1905, p. 526, § 21.]

Art. 2967. [2952] Removal to another county or precinct.—If a citizen after receiving his poll tax receipt or certificate of exemption, removes to another county or to another precinct in the same county, he may vote at an election in the precinct of his new residence in such other county or precinct by presenting his poll tax receipt or certificate of exemption or his affidavit of its loss to the precinct judges of election, and state in such affidavit where he paid such poll tax or received such certificate of exemption, and by making oath that he is the identical person described in such poll tax receipt or certificate of exemption, and that he then resides in the precinct where he offers to vote and has resided for the last six months in the district or county in which he offers to vote and twelve months in the State. But no such person shall be permitted to vote in a city of ten thousand inhabitants or more, unless he has first presented to the tax collector of his residence a tax receipt or certificate, not less than four days prior to such election or primary election or made affidavit of its loss and stating in such affidavit where he paid such poll tax or received such certificate of exemption; and the collector shall thereupon add his name to the list of qualified voters of the precinct of his new residence; and, unless such voter has done this and his name appears in the certified list of voters of the precinct of his new residence, he shall not vote. [Id.; sec. 22.]

Art. 2968. [2953] Exemption certificate in cities.—Every person who is exempted by law from the payment of a poll tax, and who is in other respects a qualified voter, who resides in a city of ten thousand (10,000) inhabitants or more, shall, before the first day of February of the year when such voter shall have become entitled to such exemption, obtain from the Tax Collector of the county of his or her residence, a certificate showing his or her exemption from the payment of a poll tax.

Such exempt person shall on oath state his name, age, race, county of residence, occupation, the length of time he has resided in said county, and the length

of time in the city, and the number of the ward or voting precinct in which he resides, and shall also state his street address by name and number, if numbered, and the grounds upon which he claims exemption from the payment of a poll tax.

A certificate of exemption from the payment of poll tax shall be issued from a well-bound book, containing therein original and duplicate, and upon issue the certificate issued to the exempt voter shall be detached from said book, leaving therein a duplicate carbon or other copy thereof, which shall contain the same description and the original certificate bearing its proper number shall be delivered to the citizen in person to identify him in voting. Certificates of exemption for each precinct shall be numbered consecutively, beginning at Number One.

Certificates shall be in substantially the following form:

CERTIFICATE OF EXEMPTION FROM THE PAYMENT OF POLL TAX

The State of Texas, County of ———, Precinct No. ———.

I, ———, Tax Collector for said County, of the State of Texas, do hereby certify that ———, personally appeared before me on the — day of ——— A. D. 19—, and being duly sworn declared his name to be ———, that his race is ———, that he is ——— years old, that he has resided in the State of Texas for —— years, in ——— County for —— years, and in ———, Texas, for —— years; and that he now and has for the past —— years resided in Precinct No. —— in Ward No. —— in said City, and that his street number is No. ——— Street; that he is exempt from the payment of a poll tax by reason of ———; and that he is a qualified voter under the Constitution and laws of the State of Texas.

Given under my hand and seal of office, this the —— day of ———, A. D. 19—.

(Signed) ———

Tax Collector, ———, County, Texas."

All certificates of exemption shall be renewed or reissued annually.

In the event of loss of certificate of exemption, the voter may secure a reissue under his old number by making affidavit of such loss before the County Tax Collector. [As amended Acts 1929, 41st Leg., p. 248, ch. 109, § 3; Acts 1929, 41st Leg., 1st C.S., p. 111, ch. 51, § 3; Acts 1930, 41st Leg., 5th C.S., p. 157, ch. 26, § 1; Acts 1935, 44th Leg., 2nd C.S., p. 1734, ch. 448, § 1; Acts 1945, 49th Leg., p. 547, ch. 333, § 1.]

Section 4 of Acts 1929, 41st Leg., 1st C.S., p. 111, ch. 51, being a penal provision is published as Pen.Code Article 205a.

Art. 2968a. Certificate of exemptions without cost to certain qualified voters not subject to payment of poll tax.—Every person not subject to the disqualifications set out in Article 2954 of the Revised Civil Statutes of 1925 who does not reside in a city of ten thousand inhabitants or more, and who is exempt from the payment of a poll tax by reason of the fact that he or she has not yet reached the age of twenty-one years on the first day of January preceding its levy, or who is exempt from the payment of a poll tax because he or she was not a resident of the State on the first day of January preceding its levy, but who shall have since become eligible to vote by reason of length of residence or age, shall, on or before the thirty-first day of January of the year in which he or she offers to vote, obtain from the Assessor and Collector of Taxes for the county of his or her residence a certificate of exemption from the payment of a poll tax, and no such person who has failed or refused to obtain such certificate of exemption from the payment of a poll tax shall be allowed to vote.

Such exempt person shall on oath state his name, age, race, county of residence, occupation, the length of time he has resided in the State of Texas, the length of time he has resided in said county, and the length of time in the city, and the number of the ward or voting precinct in which he resides, and shall also state his street address by name and number, if numbered, and his or her rural address if not a resident of a city or a village. He shall also state the grounds upon which he claims exemption from the payment of a poll tax, and such information pertaining to foreign-born citizens as is set out in the certificate hereinafter prescribed.

A certificate of exemption from the payment of poll tax shall be issued from a well bound book, containing therein original and duplicate, and upon issue the certificate issued to the exempt voter shall be detached from said book, leaving therein a duplicate carbon or other copy thereof, which shall contain the same description, and the original certificate, bearing its proper number, shall be delivered to the citizen in person to identify him in voting. Certificates of exemption for each precinct shall be numbered consecutively, beginning at Number One.

The Tax Assessor and Collector shall place the names of such persons who are exempt from the payment of poll tax and who receive an exemption certificate under the terms of this Act, on the regular list of qualified voters for each precinct.

No charge shall be made by the Tax Assessor and Collector for the issuance of certificates of exemption as prescribed by this Act.

Certificates shall be in substantially the following form:

Certificate of Exemption from the Payment of Poll Tax. The State of Texas, County of ———, Precinct No. ———, No. ———.

I, ———, Tax Assessor and Collector for said County, of the State of Texas, do hereby certify that ——— personally appeared before me on the ——— day of ———, A.D. 19—, and being duly sworn declared his name to be ———, that his race is ———, that he was born in ———, and (if of foreign birth and not a native citizen of the United States, received his final citizenship papers in the city of ———, on the ——— day of ———, of the year ———); that he is ——— years old, that he has resided in the State of Texas for ——— years, in ——— County for ——— years, and in ———, Texas, for ——— years; and that he now and has for the past ——— years resided in Precinct No. —— in Ward No. —— in said City, and that his street address is No. —— ——— Street, or that his rural address is ———; that he is exempt from the payment of a poll tax for the year 19— and that he is a qualified voter under the Constitution and laws of the State of Texas.

Given under my hand and seal of office, this the ——— day of ———, A.D. 19——.

(Signed) ———

Tax Assessor and Collector, ———

County, Texas.

In the event the exempt voter, holding certificate under this Article, shall remove from one voting precinct to another within the county, he shall only be required to present his certificate of exemption to the Tax Assessor and Collector for endorsement, which endorsement shall show the date of removal, and the date of endorsement, the new address and precinct to which such voter has removed, which endorsement shall be under seal and signed by the County Tax Assessor and Collector.

In the event the exempted voter holding certificate under this Article shall remove from the county in which he resided when same was issued, to another county in this State, he shall be required to present his certificate of exemption to the Assessor and Collector of taxes of the county of his new residence for reissue of registration and endorsement at least twenty days before any election at which he expects to vote.

In the event of the loss of certificate of exemption, the voter may secure a reissue under his old number by making affidavit of such loss before the County Tax Assessor and Collector. [Acts 1935, 44th Leg., p. 686, ch. 292, § 1.]

Art. 2969. [2954] Becoming of age.—Every person who will reach the age of twenty-one years after the first day of January and before the day of a following election at which he or she wishes to vote, and who possesses all the other qualifications of a voter under the Constitution and laws of Texas shall be entitled to vote at such election, and it shall not be to have obtained a certificate of exemption in order to necessary for such person to have paid a poll tax or entitle such person to vote at such election. If the right of such person to vote is challenged on the ground of non-age, if such person shall make affidavit that he or she, has attained the age of twenty-one years on the day of such election, such person shall be entitled to vote at such election upon filing such affidavit with the judge of election. This law shall not apply to cities having a population of five thousand or more according to the preceding Federal census. [Acts 1st C.S. 1905, p. 527, § 23; Acts 2nd C.S. 1923, p. 45.] p. 45.]

Art. 2970. [2956] Poll tax books.—The Commissioners Court of each county in this State, before the first day of October every year, shall furnish to the County Tax Collector a sufficient number of blank poll tax receipt books and blank certificates of exemption books for the county. Each receipt and certificate shall, in such books, be bound immediately over a duplicate copy which when filled out shall correspond with the receipt or certificate in its number and name, length of residence in the State and county, and the voting precinct, race, occupation, and post-office address of the citizen to whom the tax receipt or certificate of exemption is given. If the citizen resides in a city, the receipt or certificate and duplicate must show the ward, street, and number, if numbered, of the citizen's residence (in lieu of post-office address) and the length of time he has resided in such city; the receipt and certificates shall be numbered in consecutive order for the entire county. Similar blank books of poll tax receipts and certificates of exemption shall be furnished to such unorganized county attached to such county for judicial purposes. When the tax receipt or certificate is delivered to the citizen, it shall be detached from the book and retained by him for his future use and identification in voting, and at the time said books are made, the Commissioners Court shall prepare a separate book or books which shall be marked "Alien Poll Tax Receipt Book" and if the tax certificate provided for in Article 2965 of this Chapter discloses that said applicant is an alien then the Tax Collector shall issue from the book marked "Alien Poll Tax Receipt Book" a receipt to said applicant which shall have printed on the face of said receipt the word "alien" not less than two (2) inches in height, superimposed in outline type, printed in red ink, and in order that the Tax Collector may carry out this provision, it shall be the duty of the Commissioners Court to provide the separate book or books as herein set out and have the receipt prepared in said book or books in conformity with the above provision. [Acts 1905, 1st C.S., p. 520, § 14; Acts 1939. 46th Leg., p. 296, § 2; Acts 1941, 47th Leg., p. 198, ch. 143, § 1.]

Section 1 of the amendatory acts of 1939 amended art. 2965; section 3 amended art. 2975; sections 4-6 being penal provisions are published as Penal Code, arts. 200a—1 to 200a—3 and section 7 declared an emergency.

Section 2 of the amendatory Act of 1941 repealed all conflicting laws.

Art. 2971. [2957] Poll tax deputy.—In all counties containing a city of ten thousand inhabitants or more, other than the county seat, such collector shall have a duly authorized and sworn deputy to represent him for the purpose of accepting poll taxes and giving receipts therefor, who shall keep his office for such purpose at some convenient place in such city during the entire month of January of each year, and he shall publish four weeks notice of the authority of such deputy and the location of the office. [Acts 1st C. S. 1905, p. 520, sec. 17.]

Art. 2972. [2958] Collector may administer oaths.—The county collector is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this title connected with his official duties. Id.; sec. 24.]

Art. 2973. [2959] Proof of residence.—If the county collector does not personally know one who applies to pay his poll tax or secure his certificate of exemption from its payment, as being a resident in the precinct which such person claims as that of his residence, it shall be the duty of such collector to require proof of such residence; and if he has reason to believe such person has falsely stated his age, occupation, precinct of his residence, or the length of his residence in the State, county and city, he shall require proof of such statement; and, if on inquiry, he is satisfied that said person has sworn falsely, he shall make a memorandum of the words used in such statement, and present the same to the foreman of the next grand jury. [Id.; sec. 26.]

Art. 2974. [2960] False swearing reported.—Whenever the county collector shall have reason to believe that a citizen who has paid his poll tax or received a certificate of exemption has sworn falsely to obtain the same, he shall report the facts upon which such belief is founded to the next grand jury organized in the county. [Id.; sec. 20.]

Art. 2975. [2961] Lists of voters.—Before the first day of April every year, the County Tax Collector shall deliver to the Board that is charged with the duty of furnishing election supplies separate certified lists of citizens in each precinct who have paid their poll tax or received their certificates of exemption, the names being arranged in alphabetical order and to each name its appropriate number as shown by the duplicate retained in his office with a description of the voter as to his residence, his voting precinct, length of his residence in the State and County, his race, occupation, and post-office address, if not in a city of more than ten thousand (10,000) inhabitants. If the county has any unorganized county or counties attached to it for judicial purposes, the Tax Collector shall also deliver to said Board before the first day of April of each year as many certified lists of the electors resident in such unorganized county or counties who have paid their poll tax or received their certificates of exemption as there are election precincts in his county, which lists shall be identical with those of poll taxpayers in his own county, except that the voting precinct shall not be stated. The Tax Collector of any county containing a town or city of more than ten thousand (10,000) inhabitants shall also furnish to said Board, not less than four (4) days prior to any Primary or General Election, supplemental lists in the form herein prescribed of all poll taxpaying voters who have, since paying their poll tax, removed to each voting precinct in each such city or town in the county from another county or in other precincts in the same county. Said Board shall furnish each presiding Judge of a precinct the certified lists and supplemental lists of the voters of his precinct at the time when it furnishes other election supplies.

At the time the Tax Collector makes up his lists of voters as herein provided, he shall at the same time on a separate list make up a list of alien poll taxpayers and shall mark at the top of said list the words "Alien Poll Taxpayers," and such list shall be delivered at the same time and the same manner and to the same officials as hereinabove provided for other poll tax lists, and the lists of qualified voters in said county and in the various precincts of said county.

Such certified lists of qualified voters and lists of alien taxpayers shall be in the following form:

No. _____
Name _____
Precinct _____
Age _____
Length of Residence _____
Occupation _____
Race _____
Length of Residence in City and Ward _____
Street and Number of Residence _____
Post-office Address _____

And the same form shall be used with reference to the list of alien taxpayers furnished the officials as provided in this Article. [Acts 1905, 1st C.S., p. 520, § 29; Acts 1939, 46th Leg., p. 296, § 3.]

Section 1 of the amendatory act of 1939 amended art. 2965 and section 2 amended art. 2970; sections 4-6 being penal provisions are published as Penal Code, arts. 200a—1 to 200a—3 and section 7 declared an emergency.

Art. 2976. [2962] Duplicates kept.—The county collector shall keep securely in a safe place the duplicates for each precinct from which such poll tax receipts and certificates of exemption have been detached, and they must remain there except when taken out for examination, which must always be done in his presence, but they shall be burned by the county judge at the expiration of three years. [Acts 1905, 1st C. S., p. 520, sec. 29.]

Art. 2977. [2963] Statement of receipts.—On or before the tenth day of March of each year, the tax collector shall make a statement to the county clerk showing how many poll tax receipts have been issued and to whom issued in each voting precinct in the county. Such statement shall become a record of the commissioners court. [Id.; sec. 28.]

CHAPTER 6.—OFFICIAL BALLOT

Art.
2978. Official ballot.
2978a. Affidavit required for name to appear on official ballot; certain parties' candidates excluded.
2979. Death or declination.
2980. Form of ballot; presidential electors, counting votes for.
2981. How to mark ballot.
2982. Constitutional amendment and other questions.
2983. Form by local authorities.
2984. Ballots furnished.
2985. Voters provide form.

Art. 2978. [2964-5-6-7-70] Official ballot.—In all elections by the people, the vote shall be by official ballot, which shall be numbered, and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot". It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this title. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this title. The name of no candidate shall appear more than once upon the official ballot, except as a candidate for two or more offices permitted by the Constitution to be held by the same person. The name of no candidate of any political party that cast two hundred thousand (200,000) votes or more at the last preceding general election shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as herein otherwise provided. [Acts 1st C.S. 1905, p. 520; Acts 1945, 49th Leg., p. 248, ch. 182, § 1.]

Section 4 of the act of 1945 provided that a holding of partial invalidity should not affect the validity of the remaining portions of the act.

Art. 2978a. Affidavit required for name to appear on official ballot; certain parties' candidates excluded.—Section 1. No person shall be permitted to have his name appear upon said official ballot as a candidate for any office in this State unless and until he shall file with the Secretary of State his affidavit, in a form to be prescribed by the Attorney General, that if elected to the office which he seeks, he will support and defend the Constitution and Laws of the United States and of Texas. Said affidavit shall further recite that such candidate believes in, approves of and if elected will support and defend our present representative form of government, and will resist any effort or movement from any source which seeks to subvert or destroy the same or any part thereof. Use of the masculine term herein shall be construed to include the feminine.

Sec. 2. The name of no candidate or nominee of any political party whose principles include any thought or purpose of setting aside representative form of government and substituting therefor any other form of government shall be permitted on said official ballot.

Sec. 3. It is specifically provided that no candidate or nominee of the Communist Party, or the Fascist Party, or the Nazi Party, shall ever be allowed a place on said official ballot. [Added Acts 1941, 47th Leg., p. 877, ch. 547, § 1.]

Art. 2979. [2968] Death or declination.—If a nominee dies or declines his nomination, and the vacancy so created shall have been filled, and such facts shall have been duly certified in accordance with the provisions of this title, the Secretary of State or county judge, as the case may be, shall promptly notify the official board created by this law to furnish election supplies that such vacancy has occurred and the name of the new nominee shall then be printed upon the official ballot, if the ballots are not already printed. If such declination or death occurs after the ballots are printed, or due notice of the name of the new nominee is received after such printing, the official board charged with the duty of furnishing election supplies shall prepare as many pasters bearing the name of the new nominee as there are official ballots, which shall be pasted over the name of the former nominee on the official ballot before the presiding judge of the precinct indorses his name on the ballot for identification. No paster shall be used except as herein authorized, and if otherwise used the names pasted shall not be counted. [Acts 1st C. S. 1905, p. 520, § 50.]

Art. 2980. [2969] Form of ballot; presidential electors, counting votes for.—All ballots shall be printed with black ink on clear white paper of uniform style and of sufficient thickness to prevent the marks thereon to be seen through the paper. The tickets of each political party shall be placed or printed on one ballot, arranged side by side in columns separated by a parallel rule. The space which shall contain the title of the office and the name of the candidate shall be of uniform style and type on said tickets. At the head of each ticket shall be printed the name of the party. When a party has not nominated a full ticket, the titles of those nominated shall be in position opposite the same office in a full ticket, and the titles of the offices shall be printed in the corresponding positions in spaces where no nominations have been made. In the blank columns and in-

dependent columns, the titles of the offices shall be printed in all blank spaces to correspond with a full ticket. When presidential electors are to be voted on, their names shall not appear on the official ballot, but the names of the candidates for President and Vice-President, respectively, of the Political Parties, as defined in the law, shall appear at the head of their respective tickets, and the votes for presidential electors of the various parties shall be canvassed, counted, and the returns made in accordance with Article 3079A and 3079B of the Revised Civil Statutes of Texas of 1925. When Constitutional Amendments or other propositions are to be voted on, the same shall appear once on each ballot in uniform style and type. [Acts 1st C.S. 1905, p. 520; Acts 1945, 49th Leg., p. 247, ch. 181, § 1.]

Art. 2981. How to mark ballot.—When a voter desires to vote a ticket straight, he shall run a pencil or pen through all other tickets on the official ballot, making a distinct marked line through such ticket not intended to be voted; and when he shall desire to vote a mixed ticket he shall do so by running a line through the names of such candidates as he shall desire to vote against in the ticket he is voting, and by writing the name of the candidate for whom he desires to vote in the blank column and in the space provided for such office; same to be written with black ink or pencil, unless the names of the candidates for which he desires to vote appear on the ballot, in which event he shall leave the same not scratched. [Acts 1st C.S. 1905, p. 520, § 53.]

Art. 2982. [2971] Constitutional amendment and other questions.—When a proposed constitutional amendment or other question submitted by the Legislature is to be voted on, the form in which it is submitted, if the Legislature has failed to prescribe the same, shall be prescribed by the Governor in his proclamation, describing the same in such terms as to give a clear idea of the scope and character of the amendment in question. When more than one proposed constitutional amendment or other question is submitted by the Legislature at one election, the Secretary of State shall give to each such proposition and question a separate number, and shall certify the same together with its separate number to the county clerk of each county in the State. The number given to each such proposition, question or proposed amendment shall be determined by lot. The Secretary of State shall hold such drawing at a time and place designated by him and such drawing shall be open to the public. The propositions and questions so submitted shall be printed and numbered on the official ballot in the serial order in which they are numbered by the Secretary of State.

The form in which any proposition or question to be voted on by the people of any city, county or other subdivision of the State shall be submitted, shall be prescribed by the local or municipal authorities submitting it. [Acts 1905, 1st C.S., p. 532, § 54; Acts 1935, 44th Leg., p. 497, ch. 208, § 1.]

Art. 2983. [2972] Form by local authorities.—At the election of school district officers or school officers for a city, town or village, at which no officer is to be elected, or election of officers of fire departments. any ballot may be used prescribed by local authorities. [Acts 1905, 1st C.S., p. 532, § 51.]

Art. 2984. [2973–4] Ballots furnished.—For each voting precinct, there shall be furnished one and a half times as many official ballots as there are qualified voters in the precinct, as shown by the list required to be furnished by the tax collector to precinct judges. The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each indorsed on the package, and entered of record by the county clerk in the minutes of the commissioners court. In like manner, shall be sent the list of qualified voters for the precinct certified to by the collector. [Id. secs. 44 and 48.]

Art. 2985. [2975] Voters provide form.—If, from any cause, the official ballots furnished for an election precinct have been exhausted or not delivered to the precinct judges, the voters may provide their own ballot after the style of the official ballot described in this title. [Id. sec. 47.]

CHAPTER 7.—ARRANGEMENTS AND EXPENSES OF ELECTION

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2997c. Runoff elections in cities and towns of over 200,000; voting machines; ballot.

Article 2986. [2976] Voting booths.—Voting booths shall be furnished and used at elections at each voting precinct in towns or cities of ten thousand inhabitants or more. [Acts 1st C. S. 1905, p. 529, sec. 37.]

Art. 2987. [2977] Booths and guard rails.—There shall be one voting booth or place for every seventy citizens who reside in the voting precinct and

who at the last general election paid their poll tax or obtained certificates of exemption from its payment, provided, the judges of the election may provide as many more booths and places as they deem necessary. Each polling place, whether provided with voting booths or not, shall be provided with a guard rail, so constructed and placed that only such persons as are inside of such guard rail can approach the ballot boxes or compartments, places or booths at which the voters are to prepare their votes, and that no person outside of the guard rail can approach nearer than six feet of the place where the voter prepares his ballot. The arrangement shall be such that neither the ballot boxes nor the voting booths nor the voters while preparing their ballots shall be hidden from view of those outside the guard rail, or from the judges, and yet the same shall be far enough removed and so arranged that the voter may conveniently prepare his ballot for voting in secrecy. Where voting booths are required they shall have three sides closed and the front side open, shall be twenty-two inches wide on the inside, thirty-two inches deep and six feet four inches high, contain a shelf for the convenience of the voter in preparing his ballot; and shall be so constructed with hinges that they can be folded up for storage when not in use. The voting booths shall be so arranged that there shall be no access to them through any doors, window or opening except through the front of the booth; and the same care shall be observed in precincts where there are no booths in protecting the voter from intrusion while he is preparing his ballot. [Id. secs. 38 and 41.]

Art. 2988. [2978] Open to view.—All booths and voting places shall be properly lighted. Every guard rail shall be provided with a place for entrance and exit. The arrangement of the polling place shall be such that the booths or places prepared for voting can only be reached by passing within the guard rail; and the booths, ballot boxes, election officers and every part of the polling place, except the inside of the booths, shall be in plain view of the election officers and persons outside the guard rail, among whom may be one challenger for each political party and no more. [Id. sec. 40.]

Art. 2989. [2980] When booth not required.—When voting booths are not required, a guard rail shall be so placed that no one not authorized can approach nearer than six feet of the voter while he is preparing his ballot; and a shelf for writing shall be prepared for him, with black lead pencil, and so screened that no other person can see how he prepares his ballot. [Id. sec. 42.]

Art. 2990. [2981] Ballot boxes marked.—For each election precinct, there shall be provided four ballot boxes to be marked as follows: "Ballot box No. 1 for election precinct No. ———" (giving name and number of precinct); "Ballot box No. 2 for election precinct No. ———;" "Ballot box No. 3 for election precinct No. ———;" "Ballot box No. 4 for election precinct No. ———." [Id. sec. 43.]

Art. 2991. [2982] Ballot boxes.—All ballot boxes shall be securely made of metal or wood, provided with a top, hinges, lock and key, and an opening shall be made at the top of each just large enough to receive a ballot when polled.

Art. 2992. [2983] Board to provide supplies.—The county judge, county clerk and sheriff shall constitute a board, a majority of whom may act, to provide the supplies necessary to hold and conduct the election, all of which shall be delivered to the presiding judges of the election by the sheriff or any constable of the county, when not called for and obtained in person by the precinct judges. Said board shall file with the commissioners court a written report of their action as to supplies furnished by the county, giving a detailed statement of the expenses incurred in procuring such supplies. [Id. secs. 38 and 39.]

Art. 2993. [2984] Judge to procure.—If, from any cause, ballot boxes, voting booths, guard rails or other election supplies have not been received by the presiding judge, he shall procure them, and they shall be paid for as other election supplies. If the certified list of qualified voters is not in his possession at least three days before the election, he shall send for and procure them. [Id. sec. 45.]

Art. 2994. [2986] Collector's fees for poll taxes.—The tax collector shall be paid Fifteen (15) Cents for each poll tax receipt and certificate of exemption issued by him to be paid pro rata by the State and county in proportion to the amount of poll tax received by each, which amount shall include his compensation for administering oaths, furnishing lists of qualified voters in election precincts for use in all general and primary elections and primary convention when desired, and for all duties required of him under this title. [Acts 1905, 1st C.S., p. 557, § 144; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 1; Acts 1945, 49th Leg., p. 662, ch. 368, § 1.]

Section 7 of the Act of 1945 repealed all conflicting laws.

Art. 2995. [2987] Sheriff's and constable's fees.—The sheriff or any constable for serving copies of the order designating the bounds of election precincts, or the election judges, posting notices, and for serving all other writs or notices prescribed by this title, shall be paid the amounts allowed by law for serving civil process. For delivering election supplies to precinct judges, when they are not obtained by such judges in person, the sheriff or constable shall be paid such amount as the commissioners court may allow, not to exceed two dollars for each election precinct. [Acts 1905, 1st C.S., p. 557, § 145.]

Art. 2996. [2988] Expenses for election supplies.—All expenses incurred in providing voting booths, stationery, official ballots, wooden or rubber stamps, tally sheets, polling lists, instruction cards, ballot boxes, envelopes, sealing wax and all other supplies required for conducting a general or special election shall be paid for by the county, except the cost of supplying booths for cities. All accounts for supplies furnished or services rendered shall first be approved by the commissioners court, except the accounts for voting booths for cities. [Id. sec. 147.]

Art. 2997. [2989–90] Municipal elections.—The expense of all city elections shall be paid by the city in which same are held. In all elections in incorporated cities, towns and villages, the mayor, the city clerk, or the governing body shall do and perform each act in other elections required to be done and performed respectively by the county judge, the county clerk, or the commissioners' court. [Id. sec. 45.]

Art. 2997a. Providing for voting machines.

Providing for examination and approval of voting machines by the Secretary of State

Sec. 1. Any person, firm or corporation owning or controlling any voting machine and desiring to have the same adopted for use in the State of Texas, may apply to the Secretary of State to have such machine examined. Before the examination the applicant shall pay to the Secretary of State the sum of four hundred fifty ($450.00) dollars. The Secretary of State shall cause said machine to be examined as hereinafter provided and shall make and file and keep on file in the office of the Secretary of State a report of such examination, which shall show whether the kind of machine so examined can safely be used by the voters at an election or primary election, under the conditions hereinafter provided. If the report states that the machine can be so used, it shall be deemed approved, and machines of its kind may be adopted for use at elections and primary elections as herein provided. Before making and filing such report, the Secretary of State shall require such voting machine to be examined

by three examiners to be appointed by the Secretary of State for such purpose, one of whom shall be an expert in patent law, and the other two mechanical experts, and shall require of them a written report on such machine, and which reports shall be attached to the Secretary of State's report and be kept on file. Each examiner shall receive the sum of one hundred and fifty ($150.00) dollars as his compensation and expenses in making an examination and report as to each voting machine examined by him. Neither the Secretary of State nor any examiner shall have any pecuniary interest in any voting machine. When the machine has been approved, any improvement or change that does not impair its accuracy, efficiency or capacity, shall not make necessary a re-examination or reapproval thereof. Any form of voting machine not approved as herein set out, or which has not been examined by voting machine examiners and reported on pursuant to law and its use specifically authorized by law, cannot be used at any election or primary election in the State of Texas.

Setting out requirements of voting machines

Sec. 2. A Voting machine approved by the Secretary of State must be so constructed as to provide facilities for voting for such candidates as may be legally placed on a ballot in the State of Texas. It must also permit a voter in a general election to vote for any person for any office, whether or not nominated as a candidate by any party but whose name is legally on the ballots as an independent candidate, and must permit voting in absolute secrecy. It also must be so constructed that a voter cannot vote for a candidate or on a proposition for whom or on which he is not lawfully entitled to vote. It also must be so constructed as to prevent voting for more than one person for the same office and at the same time preventing his voting for the same person twice. It must be provided with a lock or locks, by the use of which immediately after the polls are closed or the operation of such machine for such election or primary is completed, any movement of the voting or registering mechanism is absolutely prevented. Such machine shall be equipped with one or more protective counters.

Adoption by Commissioners' Court

Sec. 3. The Commissioners Court of any county in the State of Texas may adopt for use in elections and primary elections in at least three (3) of the larger voting precincts in voting strength in said county, any kind of voting machine approved by the Secretary of State and may adopt such voting machine at any time for use in such additional voting precincts in the county as it may deem advisable, and thereupon such voting machine shall be used at any and all elections and primary elections, municipal, county, district, or State held in that county or any part thereof, designated for voting, registering and counting votes cast at such elections and primary elections, all school and bond elections also shall be conducted by the use of voting machines in those counties or parts thereof where such machines have been adopted, where the law specifically makes their use obligatory. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 1.]

Experimental use of voting machines

Sec. 4. The Commissioners' Court of any county in the State of Texas, where not otherwise herein provided, may secure, for experimental use, at an election or primary election, in one or more precincts, without a formal adoption thereof; and its use at such election or primary shall be as valid for all purposes as if it had been formally adopted.

Providing voting machines; generally; division of counties, towns, etc., into election precincts

Sec. 5. The County Commissioners of a county which has adopted voting machines for that county or any portion thereof, shall as soon as practicable, and in no case later than six (6) months after adoption thereof, provide for each voting precinct designated one or more approved voting machines in completed working order, and shall thereafter preserve and keep them in repair. The Commissioners' Court of any county in the State of Texas, which has adopted voting machines for that county or any portion thereof may, if they deem it proper, at each August term of court, divide their respective counties, and counties attached thereto for judicial purposes, into convenient election precincts, containing any number of qualified electors, each of which precincts shall be differently numbered and described by natural, or artificial boundaries or survey lines by an order to be entered upon the minutes of the court. They shall immediately thereafter publish such order in some newspaper in the county for three (3) consecutive weeks. If there be no newspaper in the county, then such copy of such order shall be posted in some public place in each precinct in the county. No election precinct shall be formed out of two or more Justice Precincts nor out of the parts of two or more Justice Precincts. The Commissioners' Court shall cause to be made out and delivered to the County Tax Assessor and Collector, before the first day of each September, a certified copy of such last orders for the year following. The Commissioners' Courts, in establishing new election precincts, shall divide any city or town into as many election precincts as they may see proper. Cities and towns and towns and villages incorporated under the general laws shall not necessarily constitute election precincts. No precinct shall be made out of parts of two (2) wards. [As amended Acts 1939, 46th Leg., p. 301, § 1.]

Payment for voting machines

Sec. 6. The County Commissioners Court shall provide for the payment of voting machines to be used in such county in such manner as the Court may deem for the best interest of the county, and for the purpose of paying for voting machines, such Commissioners Court is hereby authorized to issue bonds, and certificates of indebtedness, warrants, or other obligations to be used for this purpose and no other, which shall be a charge against the county, such bonds, certificates of indebtedness, or other obligations, may be issued with or without interest payable at such time or times as the Commissioners Court may determine, but shall never be issued nor sold for less than par; provided, however, that such Commissioners Court shall issue such bonds, certificates of indebtedness, warrants, or other obligations, to be used for the purpose of payment of voting machines in the same manner and with the same authority as provided for the issuance of warrants, bonds, certificates of indebtedness, or other obligations, by the General Laws of this State. The necessary tax shall be set aside at the time of creating such obligation so as to meet the debt provisions of the Constitution; provided, however, that should the Commissioners Court of any county deem it for the best interest of such county, said Commissioners Court is hereby authorized to contract for the renting of voting machines by such county for use in elections for a term of not more than two (2) years in any one contract of rental. Upon the expiration of such term of contract of rental such Commissioners Court may renew and/or extend same from time to time. Such contracts shall be made only after advertising for bids in the manner provided by the General Laws controlling the purchases made by such county for county purposes, provided and except, however, the Commissioners Court of any county is hereby authorized to accept proposals of rental and/or sale of voting machines after advertising as provided by law wherein the rentals paid by such county for the use of such voting machines or a part thereof may be applied on the purchase price of such machines upon such Commissioners Court determining that it is to the best interest of such

counties so to do. Such voting machines shall be the property of the county paying for same and/or renting same, subject to the terms of the rental contract, and when used in any election or primary election, the county is not charged by law with the holding of, such machines shall be leased to the authorities charged with holding such election or primary election, and payment shall be received by the county at such lease price per machine for each election day such machines are used in an election as the Commissioners Court shall fix, but not to exceed ten (10) per cent of the original cost of such voting machine, as may be required to hold each election or primary election. The term each election or primary election, as herein used, shall mean each election day such machines are used for voting purposes in such elections, and the Commissioners Court in fixing such lease price shall fix a lease price, and payment for same shall be received by the county, for each day such machines are actually used for voting in such election or primary election, and in the event a runoff election or primary runoff election is held, such lease price shall be paid to the county for each whether the same be the first election or primary election or the second and/or runoff election or second and/or runoff primary; and those charged with the holding of such election or primary election shall pay the lease price whether it be a school board, a municipality, a political party, or any other organization or authority. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 2.]

Absentee voting

Sec. 7. In counties in which voting machines are adopted for use, the authority charged with holding an election shall within its discretion determine by proper resolution and/or order whether or not voting machines shall be used for the casting of absentee votes at such election and if it be determined by such authority that voting machines shall be used for the casting of absentee votes at such election, a voting machine or machines shall be placed in the County Clerk's office, if an election held at the expense of the county, or if a primary election, and if a city or town election in the office of the city or town secretary and if a school district or other election, in a public place designated within the boundaries of such district or election, with the ballot of the election thereon as required by law and those entitled under the law, shall cast their vote on such machine or machines as the case may be, under the laws now applicable to absentee voting; except that the machine or machines shall be sealed at the close of the day's voting in the presence of authorized watchers, of all persons interested, if any, and such seal shall be broken in the presence of such authorized watchers, if any, the following morning when voting shall begin, by the person authorized by law and charged as the authority holding such election. When absentee voting is legally concluded at an election or primary election, such voting machines shall be locked and sealed in the manner prescribed for precincts, to be kept intact until 7 A. M. of the day of the election or primary election, at which time the machine or machines shall be opened and the vote canvassed by the Election Board holding such election as provided by law, and if a primary election, by the Chairman and the Executive Secretary of the Executive Committee of the political party holding same, and the results of such canvass shall be returned by sealing and delivering same to the proper authority as provided by law and such results and/or returns shall be tabulated and canvassed in the same manner and together with the tabulation and canvassing of the returns from other voting precincts; however, provided that the results of such absentee votes shall not be announced or made public until after 7 P. M. of the day of the election, or primary election, when such results shall be announced and made public together with the general results of the election by proclamation of same as provided by law. Upon such machine and/or machines in use for absentee voting being opened and the vote canvassed, the same shall be immediately prepared and set for voting as provided by law and shall be used, if necessary, in any voting precinct of said election or primary election, then being held. Should the authority charged with holding an election determine by such resolution as above provided, that absentee votes cast at such election be cast by a paper ballot, then, and in such event, the authority charged with holding such election shall provide a ballot for the casting of absentee votes as prescribed and provided by the general laws applicable to elections and to absentee voting and those entitled under the law shall cast their vote by such ballot under the laws applicable to absentee voting, providing, however, that on the day of such election and in the presence of the election officers one of the judges of election shall, between the hours of 2 P. M. and 3 P. M. open the carrier envelope only as provided by the laws applicable to absentee voting, announce each and every one of the electors' names and compare the signature upon the application with the signature upon the affidavit on the ballot envelope. In case the election judges find the affidavits duly executed, that the applicant is a duly qualified elector of the precinct and that he has not voted in person at said election, they shall open the envelope containing the elector's ballot in such manner as not to deface or destroy the affidavit thereon, take out the ballot therein contained in the presence of the watchers, if any, without permitting same to be unfolded or examined. Such absentee ballot shall thereupon be endorsed by the presiding officer of such voting precinct in such election and deposited in an "Absentee Ballot Box", providing for such purpose and the name of each elector voting such absentee ballot shall be entered in the poll list and numbered the same as if he had been present and voted in person as such absentee ballots are deposited in said absentee ballot box. After all such absentee ballots have been deposited in such absentee ballot box, the officers of such election shall designate such of their number as will not interfere with the uninterrupted use of voting machines by the voters during said election, to thereupon immediately proceed to open such absentee ballot box, count and/or tally such absentee ballots, and return the canvass thereof together with the canvass and returns of the votes cast on voting machines and on the forms as provided by law. Such tally and/or count of such absentee ballots shall be completed and be available for the making of returns at the time of the closing of the polls at such election. If the ballot be challenged by any election officer, supervisor, watcher, party challenger or other person, the grounds of challenge shall be heard and decided according to law including the consideration of any affidavits submitted in support of or against such challenge, provided, however, that all challenges to absentee votes shall be made prior to the casting thereof and if the ballot be not admitted, there shall be endorsed on the back thereof the word "rejected", and if the ballot be admitted, the words, "absentee voter" shall be set down opposite the elector's name on the poll list. All rejected ballots shall be enclosed, securely sealed in an envelope on which words, "rejected absentee ballots" have been written together with the statement of the precinct and the date of the election, signed by the judges and clerks of election and returned in the same manner as provided for the return and preservation of official ballots voted at such election and shall be held by the County Clerk, City Secretary or other person provided by law, thirty (30) days and as much longer thereafter as any court or reviewing authority may direct. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 3; Acts 1939, 46th Leg., p. 301, § 2.]

Form of ballots on voting machines

Sec. 8. All ballots shall be printed in black ink on white clear material, of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. In general elections, the party name and a designating letter and number shall be affixed to the name of each candidate, and the name of all candidates of one political party shall be so arranged that a voter may be able to cast his ballot for such candidates as he may desire or to cast one ballot for all the candidates of that political party. In primary elections, however, the ballot shall be so arranged and the lever so locked as to prevent the voting of straight tickets. Should there be so many candidates and/or propositions to be voted upon in any election as to exceed the capacity of one machine, more than one machine shall be provided for each voting precinct but in all cases where more than one machine is used in a voting precinct, the names of all candidates for any particular office shall be placed on one machine; provided, however, that the authorities charged with holding the election where in their discretion more than one voting machine is necessary to accommodate the number of voters voting in a voting precinct, then, and in that event, as many voting machines shall be provided for each voting precinct as such authorities deem necessary and the same form of ballot containing the names of all candidates and/or propositions arranged in the same manner shall be provided for each machine, and each of the machines so used in each voting precinct shall be identified by alphabetical designation, and in such event, the number placed opposite or along side of the name of each voter after the voter cast his ballot, corresponding to the number on the public numbering counter as herein provided, shall include such alphabetical designation of the machine on which such voter cast his vote. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 4; Acts 1939, 46th Leg., p. 301, § 3.]

Sample ballots

Sec. 9. The authorities charged with holding the election or primary election may provide for each precinct two sample ballots and one model arranged in the form of a diagram showing such part of the face of the voting machine as shall be in use in that election or primary election. Such sample ballots and model shall be on display in each precinct voting place throughout the time the polls are open and attention shall be especially called to them before each voter uses machine. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 5.]

Preparation of voting machines

Sec. 10. It shall be the duty of the County Clerk of each county where voting machines are used, to cause the proper ballot labels to be placed on voting machines, to cause the machines to be placed in proper order for voting, to examine all voting machines in the presence of authorized watchers for any interested persons, before they are sent out to the polling places, to see that all the registering counters are set at zero (000), to lock, in the presence of authorized watchers, all voting machines so that the counting machinery cannot be operated and to seal each one with a numbered seal, a list of which numbered seals and the number on the protective counters, together with the number of the precinct to which it was sent, shall be kept as a permanent record open to any citizen, in the records of the County Clerk. Such inspection and sealing of voting machines shall begin within five (5) days of the day before any election or primary election at which such machines are to be used, and continue until all such machines are sealed. When all machines are locked and sealed, the key to each machine shall be placed in an envelope and sealed, the signature of the County Clerk and the signatures of two (2) watchers of opposed interest, if there be such, placed across the seal, and on the envelope shall be written the number then on the protective counter and the number of the seal of the voting machine, such envelope to be delivered to the presiding officer of each precinct.

It shall be the duty of the Sheriff in an election which the county is charged with the expense of, the duty of the County Chairman in the primary election, the duty of the Mayor in a city election, the duty of the president of a school board in a school election, and the duty of the authority holding such election or primary election of any character, to have delivered a voting machine or machines, to each and every polling place where same is required by law to be used, at least one hour before the time set for the opening of the polls in such voting precinct. After the machine has been delivered, the same authority shall cause such machine to be set up in the proper manner and cause protection to be given so such machine shall be free from molestation and injury. The same authority shall cause to be delivered with each such machine an auxiliary light where necessary properly prepared to be lighted in emergency, so arranged that the light from such will illuminate the face of the machine sufficiently that a voter may be able to read all the names on such machine, and suitable for officers in examining counters. The protective hood and screen of the machine shall be examined to see that they conceal the actions of the voter properly, while such voter is operating the machine. All poll lists and necessary supplies shall be delivered to the presiding officer at the same time the key or keys to the machine are delivered. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 6.]

Instruction of election officers

Sec. 11. Not less than three days before an election or primary election, the authority charged with holding the same, shall cause to be held a public school of instruction for those who will actually conduct the election or primary election at the polling places, such school to be open to any interested person and notice of such meeting being given to the public press at least 48 hours before same is to be held.

Preliminaries of opening the polls

Sec. 12. The key or keys to the voting machine or machines shall be delivered to the presiding officer of each precinct at least thirty minutes before time for the opening of the polls, the seal of the envelope containing the same to be unbroken, and the seal shall be broken by the presiding officer only in the presence of at least two authorized watchers for opposing interests (if there be such), and shall only be broken after comparison shows that the number written on the envelope and the number shown in the protective counter are identical. If these numbers are found not to be the same the seal shall not be broken until the County Clerk or his representative shall arrive and deliver the correct keys or until another and properly sealed machine is delivered. If the numbers written on the envelope and the numbers on the sale of the machine are not identical then the envelope shall not be opened and the same procedure as above set out shall govern. But if the numbers written on the envelope and the respective numbers on the seal and on the protective counter are found to be the same, the presiding officer shall open the doors concealing the counters, and before the polls are declared open, the election officials and each authorized watcher for any person interested shall carefully examine each and every counter and see that it registers zero (000). All of those last enumerated then shall examine the ballots and satisfy themselves they are in their proper places

on the machine. The election officials shall cause to be conspicuously placed the sample ballots and model for the guidance of the voters. All the persons authorized to be in the polls shall satisfy themselves that the voting machine is properly placed, being at least three feet from any wall or partition or any other obstruction and that the face of the machine is turned toward where the election officials and the public may obtain a clear and unobstructed view of the same at all times, except when the curtain on the machine is closed for the casting of the ballot. The election officials and at least two watchers of opposing interests (if there be such) shall then sign a certificate setting out that the keys were delivered intact, that the numbers on the protective counter and the seal correspond with that on the envelope, that all the counters were set at zero (000) and that the ballot labels were in their proper places. If any counter, however, shall be found not to register zero (000), the presiding officer shall write out a statement to that effect and keep the same prominently posted throughout the day showing the number that counter was found to register, and in filling out the statement of canvass, he shall subtract such number from the number found to register on that counter when the polls close. The machine shall then be opened for voting and the polls formally declared on.

General provisions

Sec. 13. The presiding officer shall be in general charge of the poll and shall see that one or more of the clerks of the election properly checks off the name of each voter from the poll list before such voter casts his ballot and shall provide for the numbering of tickets by placing a number on a list containing the names of each voter kept for such purposes, corresponding to the number on the public numbering counter opposite or along side of the name of each voter including the alphabetical identification of each machine used in such voting precinct after such voter casts his ballot; that the poll tax certificate or exemption certificate of the voter is stamped "Voted" with the date of the particular election or primary election with the rubber stamp provided under the law, or writes "Voted" with the date, with pen and ink if no rubber stamp be provided, and it shall further be the duty of one of such clerks to see that the voting machine is not tampered with and shall attend the machine at all times. He shall inspect the ballot labels after each voter leaves the machine to see that none have been tampered with and to see that the machine has not been injured. He shall see that the coverings of the counter compartments of the machine are never unlocked nor opened so the counters are exposed during voting except for good and sufficient reasons, a statement of which shall be made and signed by all authorized persons in the polls and attached to the returns. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 7; Acts 1939, 46th Leg., p. 301, § 4.]

Instructions and assistance for voters in the polls

Sec. 14. In addition to the sample ballots and model hereinbefore mentioned, which shall be prominently displayed and the particular attention of each voter thereto called by the presiding officer, if any voter after entering the machine, but before the curtains thereof are closed, shall desire further instructions, two watchers of opposing interests (if there be such) under the direction of the presiding officer shall give such instruction without asking, persuading or otherwise trying to induce such voter to vote for or against any ticket, candidate, amendment, question or proposition. Finishing instructions, the three shall retire, whereupon such voter shall close the curtain and vote as in the case of an unassisted voter.

Manner of voting

Sec. 15. But one voter shall be admitted at a time and after ascertaining if such vote be on the poll list and the certificate marked voted such voter shall proceed to the machine, and no voter shall be permitted to keep the curtain of the machine closed longer than two (2) minutes.

Voting for person whose name does not appear on the ballot

Sec. 16. Ballots voted for any person whose name does not appear on the ballot shall be designated "irregular" ballots, but such ballots shall be valid and shall be counted as though they had been voted on the voting machine. Should a voter desire to vote for some person for an office whose name does not appear on the ballot, such person shall write the name of the person for whom he desires to vote on the roll of paper provided and designated for such purpose and such ballot shall be counted and included in the canvass officially made from that precinct, but no irregular ballot shall be cast or counted for any person whose name shall appear on the voting machine.

Unofficial ballots, repair and substitution of machines

Sec. 17. Should the official ballots for any precinct where voting machines are to be used be not delivered at the time required, or if after delivery shall be lost, destroyed or stolen, the County Clerk or the presiding officer of that precinct shall cause other ballots to be prepared, printed or written, as nearly in the form of the official ballots as practicable, and shall cause the ballots so substituted to be used in the same manner, as near as may be, as the official ballots. Such ballots shall be known as unofficial ballots, and a certificate setting out the circumstances of the use shall be made out by the presiding officer and signed by such officer together with every person legally serving in such poll, such certificate to be attached to the canvass from that precinct. Should any voting machine become out of order while being used, it shall, if possible, be repaired or another machine substituted in its place as promptly as possible, and the Commissioners Court of any county in the State of Texas in which voting machines have been adopted, either in whole or in part, for use in elections and in primary elections, shall be, and it is hereby, authorized and empowered to appropriate funds for servicing, repairing or substituting any such voting machines, on a per diem or on such other basis as to said Court may appear just and proper; provided, however, that in no event shall payment to any one individual hereunder exceed the sum of Ten Dollars ($10) per day exclusive of mileage. [As amended Acts 1945, 49th Leg., p. 446, ch. 280, § 1.]

Canvass of the vote and the proclamation of the result

Sec. 18. As soon as the polls are closed, officials thereat shall immediately lock the machine against voting. They then shall sign a certificate stating that the machine was locked and sealed, giving the exact time; such certificate giving the number of voters shown on the public counters, which shall be the total number of votes cast on such machine in that precinct; the number on the seal; the number registered on the protective counter. (This also shall be the procedure at the close of absentees voting when the machines are used for absentee voting prior to election day.) They then shall open the counting compartment in the presence of the watchers, and at least one representative of any newspaper or press association which cares to be represented, giving full view of all the counter numbers. The presiding officer shall under the scrutiny of the watchers, in the order of the offices as their titles

are arranged on the machines, read and announce in distinct tones the designating number and letter on each counter for each candidate's name, and the result as shown by the counter numbers, and shall then read the votes recorded for each office on the irregular ballots. He shall also in the same manner announce the result on each Constitutional amendment, bond proposition, or any other question voted on. The vote as registered shall be entered on the statements of canvass in ink by two (2) watchers of opposing interest (if there be such) and verified by the three (3) election officials, such entries to be made in the same order on the space which has the same designating number and letter, after which the figures shall again be verified by being called off in the same manner from the counters of the machines by watchers of opposed interest (if there be such). The returns of the canvass as required by law shall then be filled out, verified, and shall show the number of votes cast for each candidate, the number of votes cast for and against any proposition submitted, and shall be signed by the three (3) election officials and at least two (2) watchers of opposed interest (if such there be). The counter compartments of the voting machine shall remain open throughout the time of the making of all statements and certificates and the official returns and until such have been fully verified, during such time any candidate or his representative or any representative of any newspaper or press association shall be admitted. The proclamation of the result of the votes cast shall be deliberately announced in a distinct voice by the presiding officer, who shall read the names of each candidate, with the designating number and letter of his counter, and the vote registered on such counter; also the vote cast for and against each proposition submitted. During such proclamation ample opportunity shall be given to any person lawfully entitled to be in the polls, to compare the results announced with the counter dials of the machine and any necessary corrections shall then and there be made, after which the doors of the voting machine shall be locked and sealed with the seal provided, so sealing the operating lever of the machine that the voting and counting mechanism will be prevented from operation. Irregular ballots, properly sealed, and signed shall be filed with the original statement of canvass, which canvass shall be delivered in the same manner and to the same authorities as now provided by law. The presiding officer shall deliver to the County Clerk the keys of the machine enclosed in a sealed envelope across the seal of which shall be written his own name together with that of at least two (2) watchers of opposed interest (if such there be) or the two (2) other election officials, and on this envelope shall be recorded the date of the election or primary election, the number of the precinct, the number of the seal with which the machine was sealed, the number of the public counter and the number of the protective counter. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 8.]

Statements of canvass

Sec. 19. The Authority charged with the holding of an election or primary election where voting machines shall be used, shall cause to be prepared a statement of canvass of a form to be approved by the Secretary of State, in the necessary number as now required by law, such statement of canvass to conform with the type of voting machine to be used and the designating number and letter of each candidate (or proposition) shall be printed next to the candidate's name on the statement of canvass. Provided however, that at the time of the making of the official canvass of said election returns, where voting machines are used in an election, the canvassing board charged with the duty of canvassing said election returns shall, at the request, in writing, of any candidate whose name appears on said election or primary election ballot, or on the petition, in writing, of twenty-five resident citizens of said county, city, or of a subdivision thereof, make, in the presence of a District Judge and County Judge of the county in which said election is held, a recheck and comparison of the results shown on the official returns, then in process of being canvassed by the canvassing board, with the results appearing and registered on the counter-dials of each voting machine or voting machines used in said election or primary election; and to enable the canvassing board to make such recheck and comparison it shall be, and hereby is, authorized and empowered to break the seals on each such voting machine or voting machines so used, and at the conclusion of said recheck and comparison, said voting machine or voting machines shall again be sealed up, the necessary corrections, if any, shall be made on the returns, and the result of said election be declared, as shown by said recheck and comparison of the returns of election, with counter-dials of the voting machines, as provided by law. [As amended Acts 1945, 49th Leg., p. 446, ch. 280, § 2.]

Preservation of ballots and records of voting machines

Sec. 20. The voting machine shall remain locked against voting for a period of ten (10) days and then shall have the seal broken only on the order of a District Judge having jurisdiction in that county, such order to be entered on the minutes of the District Court of that county, and if in the opinion of such District Judge, contest is likely to develop, shall remain locked for such time as the District Judge may direct; provided, however, such time shall not be for a period of time that will interfere with or prohibit the use of such machines in a subsequent election. Except, that on the order of any Court of competent jurisdiction or on the order of any legislative body the seal may be broken for the purposes of proper investigation and when such investigation is completed, the machine shall again be sealed and across the envelope containing the keys shall be written the signature of the persons or person having broken same. Irregular ballots shall be preserved in the same manner and for the same length of time as now provided by law for other ballots. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 9.]

Custody of voting machines and the keys thereof

Sec. 21. The County Commissioners of a county in which voting machines are used shall have general custody and care and repair of such machines, but the County Clerk is charged with the care and custody of the keys and seals for the same. The same authority that caused the delivery of the voting machines shall be charged with the transporting such machines back into the custody of the County Commissioners and shall furnish all necessary protection to see that such machines are not molested nor injured from the time such machines leave the place where they are regularly stored until they are turned into the custody of the officials of a precinct and from the time that custody ceases on the part of the precinct officials and the machines are returned to the place of regular storage.

Provisions for recanvass of vote

Sec. 22. The same authority as now charged by law may apply to a district judge for an order to break the seals of a voting machine for the purpose of recanvassing the vote should same become necessary, whereupon all the other articles in the Revised Civil Statutes of Texas, 1925, shall be followed in making such recanvass and the machines shall be re-sealed as herein provided. However, nothing herein or elsewhere contained shall authorize any change in the officials [1] returns of any canvass where

at least two watchers of opposed interests have signed the same.

[1] So in enrolled bill. Should probably read "official".

Application of other laws; fraud and perjury

Sec. 23. The provisions of all other laws relating to the conduct of elections or primary elections, shall so far as practicable, apply to the conduct of elections and primary elections where voting machines are used, unless herein otherwise provided; provided, however, it is declared to be the public policy of this State that the provisions herein, providing for the use of voting machines at elections, are regulations to detect and punish fraud, and to preserve the purity of the ballot box; and any voter who fraudulently or illegally casts a ballot, or who casts a fraudulent or illegal ballot upon a voting machine, at any election (after the casting of such fraudulent or illegal ballot, or such fraudulent or illegal casting of a ballot has been established by final adjudication before a court of competent jurisdiction and by competent evidence), shall be compelled and required to disclose the names of the candidate or candidates for whom he cast such ballot at such election, and the ballot cast by him upon any question or questions at such election in any proceedings instituted under the laws of this State in any court of competent jurisdiction, and whoever in such proceedings shall swear and/or testify falsely, shall be deemed guilty of the offense of perjury, and shall be subject to the penalties provided for such offense by the laws of this State. [As amended Acts 1939, 46th Leg., p. 301, § 5.]

Representation

Sec. 24. The authorities charged with holding an election or primary election are directed wherever possible, in the naming of election officers, to name for each precinct, in which only one voting machine is used, a presiding officer and three (3) clerks for such precinct of opposed interest in that election or primary election and another clerk who should be, whenever possible, non-partisan; and in each precinct, in which two (2) or more voting machines are used, a presiding officer and five (5) clerks for such precinct of opposed interest in that election or primary election and another clerk who should be, wherever possible, non-partisan. The number of judges and clerks herein authorized to be appointed, in all counties in which elections are conducted by the use of voting machines, shall be controlling and shall apply regardless of the provisions of Articles 2937 and 2938 of the Revised Civil Statutes of Texas, 1925, as amended. But each political party concerned in an election is entitled to name one watcher for each voting precinct where voting machines are used, said watcher to be recognized by the presiding officer, of that precinct upon the presentation of a certificate signed by the County Chairman of that political party, and any candidate for a State office, the State Senate, any candidate for Representative in the House of the Legislature of Texas, or any candidate for District Judge, or any one-fifth (1/5) of the candidates for any county offices, or any one-fifth (1/5) of the candidates for precinct offices; or any candidate for mayor, or any candidate for city commissioner in municipalities, or any three (3) candidates in a school election, or the proponents or the opponents of a bond issue, may name one watcher for each precinct in an election or primary election for each precinct where voting machines are used. Any candidate for the United States Senate or Representative in the House of the United States Congress may name one watcher for each election precinct where a voting machine is used. The candidate desiring representation by a watcher shall sign a certificate setting out the name of the person, the number of the precinct where such watcher is to serve, such certificate to bear the signature of the candidate or candidates entitled to representation, together with the signature of the bearer. The presiding officer of the election must require a counter-signature and preserve the certificate of the bearer to make certain he is the identical person referred to in the certificate but cannot for any other reason refuse to permit such watcher to serve. For their services election officials and employees shall be paid a sum to be set by the authority charged with holding the election or primary eelction, but not less than the amount set now by law and not more than Ten Dollars ($10) per day, provided, however that no election official shall be paid more than the pro rata part of two (2) hours overtime after the polls are closed. Watchers, a necessary adjunct to an election with voting machines, may be paid by the interest they represent, but not to exceed Ten Dollars ($10) per day, provided, however, that the authority holding such election shall not pay for the services of such watchers. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1953, ch. 52, § 10; Acts 1945, 49th Leg., p. 446, ch. 280, § 3.]

Definitions

Sec. 25. The list of candidates and offices and/or propositions to be voted for or against, used or to be used on the front of the voting machine shall be deemed official ballots for the purpose of precincts using machines.

The provisions of this Act shall apply only in counties in which such voting machine is adopted for use at elections.

The word "ballot" as used herein means that portion of the cardboard or other material within the ballot frames containing the name of the candidate and the office, or statement of a Constitutional Amendment, bond issue or other propositions with words "yes" or "no" for voting for or against, except when referring to irregular or unofficial ballots and except where such word is used in connection with the casting of a vote by a voter and in such event the word "ballot" is defined as the casting of a secret vote.

The term "the numbering of tickets" is defined to mean the numbering of the votes and/or ballots as they are cast by the voters at an election.

The terms "protective numbering counter" and/or "protective counter" mean a separate counter built into the machine which can not be reset and which records the total number of movements of the operating lever.

The terms "public numbering counter" and/or "public counter" mean a device in full view of the election officials except while the voter is voting which records the number of the voter's vote and is cumulative of the number of votes cast on the machine at the election being held.

The term "watcher" is similar to supervisor in meaning but he is an official of the election in this Act. [Acts 1930, 41st Leg., 4th C.S., p. 60, ch. 33; Acts 1939, 46th Leg., p. 301, § 6.]

The amendatory act of 1939 also purported, in the title, to amend section 15 of this article, but the body of the act did not effect an amendment to such section 15.

Section 11 of the Act of 1937, section 8 of the Act of 1939 and section 4 of the Act of 1945 repealed all conflicting laws.

Section 7 of the Act of 1939 and section 5 of the act of 1945 provided that a holding of partial invalidity should not affect the validity of the remaining portions of the act.

Art. 2997b. Transportation of voting machines; counties of 300,000–355,000.—In all counties in the State of Texas having a population of three hundred thousand (300,000) inhabitants or more, and less than three hundred and fifty-five thousand (355,000) inhabitants according to the last preceding Federal Census, and where such counties have purchased and adopted voting machines for

the purpose of holding any and all elections in such counties, it shall be the duty of the County Auditor upon the order of Commissioners Court to advertise for bids for the hauling and/or transporting such voting machines to the various precincts of such counties, such advertisement to be inserted in a newspaper, published and having a general circulation in such counties at least one week prior to the date of the election. All bids shall be opened at a regular or called meeting of the Commissioners Court and contract for hauling and/or transporting said voting machines to the place of voting including those precincts located both within and without the city limits of the county seat shall be let to the lowest and best bidder; provided the Commissioners Court shall reserve the right to reject any and all bids if in their judgment such bids are unsatisfactory. [Acts 1939, 46th Leg., Spec.L., p. 730, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 2997c. Runoff elections in cities and towns of over 200,000; voting machines; ballot.—Section 1. In all cities and towns in this State, whether incorporated under General or Special Law, (including home rule cities) having a population in excess of two hundred thousand (200,000) inhabitants, according to the last preceding or future Federal Census the election of candidates for all municipal offices shall be determined in the following manner:

(a) Election by majority vote. Any candidate for office in any duly held municipal election receiving a majority of all the votes cast for the office for which he is a candidate shall be elected to such office.

(b) In the event any candidate for either of said offices fails to receive a majority of all votes cast for all the candidates for such office at such election the Mayor of said city shall, on the first day following the completion of the official count of the ballots cast at said first election, issue a call for a second election to be held in said city on the second Tuesday following the issuance of such call, at which said second election the two candidates receiving the highest number of votes for any such office in the first election, at which no one was elected at said first election by receiving a majority of all votes cast for all candidates for such office, shall again be voted for. The official ballot to be used at said second election shall be prepared by the City Clerk or City Secretary and the name of no person shall appear thereon unless he was a candidate for the office designated at said first election, and the two persons receiving at said first election the first and second highest number of votes cast for candidates for such office at such first election shall be entitled to have their names printed on said official ballot in the order of their standing in the computation of the votes cast for such candidates at said first election as candidates at said second election for such office; provided, however, that in the event any person who was a candidate at said first election and who shall be entitled to become a candidate at said second election shall fail to request that his name shall appear on the official ballot therefor at such second election as herein provided, the candidate for such office standing next highest in the computation of votes shall succeed to the rights of such candidate who failed to request that his name appear upon the ballot at said second election; provided further, that two candidates for such office at said first election shall be entitled or become candidates therefor at said second election, which two candidates shall be those two among such candidates as shall stand highest respectively in the computation of all votes cast for all the candidates for such office at said first election as shall file written requests to be placed on the official ballot as candidates for such office at said second election. In the event of a tie in the vote for the two leading candidates for any office at said first election, said office shall be filled at a second election as herein provided for, at which such candidates so tied in said first election may again become candidates. In the event such candidates who tied in said first election, or either of them, shall fail so to do, the two candidates for such office who are next highest in the computation of votes therefor and who desire to become candidates therefor at said second election shall be entitled so to do in order of the number of votes they respectively received at said first election. In the event of a tie between the two candidates for any office at said second election, they shall cast lots to determine who shall be elected to such office.

Sec. 2. This law shall not apply to any city whose charter now, or hereafter, provides for the selection of its officers by means of a preferential type of ballot; provided that such city does not use voting machines as the legal method of voting.

Sec. 3. The provisions of all laws, charters, and ordinances in conflict with the provisions of this Act are hereby expressly repealed. [Acts 1941, 47th Leg., p. 98, ch. 80.]

CHAPTER 8.—CONDUCTING ELECTIONS AND RETURNS THEREOF

Art.
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Article 2998. [2991] Officers of election sworn.—Before opening the polls, the presiding judge of election and each of the other judges and clerks shall

repeat in an audible voice: "I solemnly swear that I will not in any manner request or seek to persuade or induce any voter to vote for or against any candidate or candidates, or for or against any proposition to be voted on; and that I will faithfully perform this day my duty as officer of the election, and guard as far as I am able, the purity of the ballot box. So help me God." [Acts 1st C. S. 1903, p. 533, sec. 56.]

Art. 2999. [2992] Preliminary arrangements.—The judges and clerks of election for each precinct, and supervisors if any, shall meet at the polling place at least half an hour before the time for opening the polls, and shall proceed to arrange the guard rail, the space within the guard rail, the voting booths, if any, and the furniture for the orderly and legal conduct of the election. The judges of election shall then examine the ballot boxes and the blank official ballots, and shall deposit such ballots as are found to be defective in printing in ballot box No. 4 for mutilated or return ballots. They shall examine the sample ballots, instruction cards, distance markers, tally sheets, return sheets, certified list of voters, rubber stamps and all things required for the election. The package of official ballots shall remain in the custody of the judges and the polling clerks, and shall not be opened until the morning of the election and at the polling place. The judges shall cause to be placed at the distance of one hundred feet from the entrance of the room at which the election is held visible distance markers in each direction of approaches to the polls, on each of which shall be printed in large letters the words: "Distance markers. No electioneering or loitering between this point and the entrance to the polls." The judges shall examine the ballot boxes and then relock them, after all present can see they are empty. The ballot clerks with official ballots, the presiding officer of the election, the poll clerk, the election supplies and the certified lists of qualified voters for the precinct, and the supervisors, if any, shall be as conveniently near each other as practicable within the polling place. [Id. sec. 55.]

Art. 3000. [2993] Instruction card posted.—Before the election begins, one instruction card shall be posted conspicuously near each distance marker and one posted up in each voting booth where it can be read. When there are no voting booths, one shall be posted up in plain view at the place prepared for the voter to make out his ballot. [Id. sec. 56.]

Art. 3001. [2994] Presiding judge absent.—If no presiding judge was appointed or fails to act or fails to attend on election day, the voters present may appoint their own presiding officer, who has paid his poll tax, and they may also appoint the necessary assistant judges of election. When a presiding officer who has been appointed by a commissioners court fails to act in conducting an election, and one is selected by the voters present, the judges and clerks at such election shall, in making their returns of election, certify to that fact, and state that the acting judges were appointed by the voters present. When an assistant judge or clerk having been appointed fails to act at the opening of the polls or during the election, the presiding judge shall appoint in his place another with the same qualifications, and return a certificate of such appointment with each election return. [Id. sec. 83.]

Art. 3002. [2995] Power of presiding judge.—Judges of election are authorized to administer oaths to ascertain all facts necessary to a fair and impartial election. The presiding judge of election, while in the discharge of his duties as such, shall have the power of the district judge to enforce order and keep the peace. He may appoint special peace officers to act as such during the election and may issue warrants of arrest for felony, misdemeanor or breach of peace committed at such election, directed to the sheriff or any constable of the county, or such special peace officer, who shall forthwith execute any such warrants, and, if so ordered by the presiding judge, confine the party arrested in jail during the election or until the day after the election, when his case may be examined into before some magistrate, to whom the presiding judge shall report it; but the party arrested shall first be permitted to vote, if entitled to do so unless he is drunk from the use of intoxicating liquor, then he shall not be permitted to vote until he is sober. [Id. sec. 67.]

Art. 3003. [2996] To inspect ballot boxes.—Before the balloting begins, the presiding judge shall unlock ballot box No. 1, and after all the officers of the election and supervisors have inspected the same to see that it is empty, relock it and place it within view, where it shall remain until removed to make room for ballot box No. 2. A like examination shall be made of ballot box No. 2. [Id. sec. 68.]

Art. 3004. [2997] Present poll tax receipt.—No citizen shall be permitted to vote, unless he first presents to the judge of election his poll tax receipt or certificate of exemption issued to him before the first day of February of the year in which he offers to vote, except as otherwise permitted in this title, unless the same has been lost or mislaid, or left at home, in which event he shall make an affidavit of that fact, which shall be left with the judges and sent by them with the returns of the election; provided, that, if since he obtained his receipt or certificate he removes from the precinct or county of his residence, he may vote on complying with other provisions of this title. [Id. sec. 66.]

Art. 3005. [2998] Announcer.—One election judge shall receive from the voter his poll tax receipt or certificate of exemption, when he presents himself to vote; the voter shall announce his name, and the judge after comparing the appearance of the party with the description given in the certified list of qualified voters of the precinct made out by the county collector, and being satisfied that it accords therewith, shall pronounce in an audible voice the name of the voter, and his number as given in the list of qualified voters. If the voter has lost, mislaid or left at home his receipt or certificate, and shall present his affidavit of that fact, and if his appearance tallies with that given for the same number and name on the list of qualified voters, or if the voter presents his affidavit of removal from some other precinct or county, in cases where the same is permitted by this title, together with his receipt or certificate or affidavit of the loss thereof, and the judges of election shall be satisfied that he paid his poll tax or received his certificate of exemption before the first day of the preceding February, the judge shall in like manner pronounce in an audible voice the name and number of the elector on the certified list of qualified voters with the word, "correct." [Id. sec. 71.]

Art. 3006. [2999] Examination of challenged voter.—When a person offering to vote shall be objected to by an election judge or a supervisor or challenger, the presiding judge shall examine him upon an oath touching the points of such objection, and, if such person fails to establish his right to vote to the satisfaction of the majority of the judges, he shall not vote. If his vote be received, the word, "sworn," shall be written upon the poll list opposite the name of the voter. [Id. sec. 73.]

Art. 3007. [790–3000] Vote challenged.—In any election, State, county or municipal, being held in any city or town of ten thousand inhabitants or more according to the preceding Federal census, when the right of any elector to vote is challenged, the following proceedings shall be had:

1. The judges of election shall refuse to accept such vote of such elector unless in addition to his own oath he proves by the oath of one well known resident of the ward that he is a qualified voter at such election and in such ward.

2. When such vote is accepted, the word "challenged" shall be written on the ballot, and the judges shall cause the clerk of election to make a minute of the name of the elector and the party testifying under oath as to his qualifications, and such memoranda shall be kept by the county clerk of the county for six months after such election is held, subject to order of the district judge. [Acts 1891, p. 47; G. L. vol. 10, p. 49.]

Art. 3008. [3001] Delivery of ballot.—When the judges are satisfied as to the right of the citizen to vote, the judge shall stamp in legible characters with a stamp of wood or rubber the poll tax receipt or certificate of exemption with the words: "Voted ..... day of ....., A. D. 19....." Or write the same words in ink and then return said receipt or certificate to the voter, and shall at the same time deliver to him one official ballot on the blank side of which the presiding judge shall have previously written his signature. The voter shall then immediately repair to a voting booth or a place prepared for voting by the election officers, and there prepare his ballot in the manner provided by law. [Id. sec. 72.]

Art. 3009. [3002–3119] Marked ballot.—At either a general, special or primary election, any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed or promised to vote or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked ballot on paper, if he has one. [Id. secs. 70 and 127.]

Art. 3010. [3003] Aid to voter.—Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, nor shall any assistance be given a voter in preparing his ballot, except when a voter is unable to prepare the same himself because of some bodily infirmity, such as renders him physically unable to write or is over sixty years of age and is unable to read and write, in which case two judges of such election shall assist him, they having been first sworn that they will not suggest, by word or sign or gesture, how such voter shall vote; and they will confine their assistance to answering his questions, to naming candidates, and the political parties to which they belong, and that they will prepare his ballot as such voter himself shall direct; provided that the voter must in every case explain in the English language how he wishes to vote, and no judge of the election shall use any other than the English language in aiding the voter, or in performing any duty as such judge of the election. Where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes. If the election be a general election, the judges who assist such voters shall be of different political parties, if there be such judges present, and if the election be a primary election one or more supervisors may be present when the assistance herein permitted is being given, but each supervisor must remain silent except in cases of irregularity or violation of the law. [Id. sec. 82; Acts 4th C. S. 1918, p. 54; Acts 1919, p. 94.]

Art. 3011. [3004] Officers not to electioneer.—No election judge, clerk or other person connected with the holding of an election, shall on election day, indicate by words, sign, symbol or writing to any citizen, how he shall or should not vote; provided, nothing herein shall interfere with the operation of the preceding article. [Acts 1st C. S. 1905, p. 533, sec. 65.]

Art. 3012. [3005] Depositing ballot.—When a citizen shall have prepared his ballot, he shall fold the same so as to conceal the printing thereon, and so as to expose the signature of the presiding judge on the blank side, and shall, after leaving the booth, hand to the numbering judge his ballot. If the judges are satisfied that the ballot returned is the one delivered to the voter, the numbering judge shall number the ballot, writing on the blank side the number opposite the voter's name on the voting list, and shall stamp or write the same with the word "voted," and deposit the ballot in the ballot box. The letter, "V" shall, at the same time, be marked by any clerk on the certified list or supplemental list of qualified voters opposite the voter's name thereon, and the voter shall at once leave the polling place. [Id. sec. 74.]

Art. 3013. [3006–3119] Mutilated ballots.—At any general or primary election no voter shall be entitled to receive a new ballot in lieu of one mutilated and defaced, until he first returns such ballot. No one shall be supplied with more than three ballots in succession, when they are mutilated or defaced. A register shall be kept by the clerks as the voting progresses of the mutilated or defaced ballots, which shall be deposited in box No. 4. [Id. secs. 75 and 138.]

Art. 3014. [3007] Bystanders excluded.—From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges and supervisors, if any. No person, except those admitted to vote, shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, and supervisors of election. [Id. sec. 76; Acts 4th C. S. 1918, p. 54.]

Art. 3015. [3008] Defective ballots in Box No. 4.—In ballot box No. 4 shall be deposited, in addition to ballots defectively printed, all defaced and mutilated ballots, and, when the polls are closed, all the ballots that have not been voted. The box shall be locked and so returned sealed to the county clerk, with a statement which shall be placed therein signed by the presiding judge of the number of ballots received by him, the number of mutilated or defaced ballots that the box contained, and also the number of ballots not given to voters, as well as those defectively printed, so that, after adding such numbers, all ballots delivered to the election officers may be accounted for. Such ballot box shall, when the returns of votes cast are canvassed by the commissioners court, be opened, the ballots counted and a record made of what they have found to be its contents. [Acts 1st C.S., 1905, p. 533, sec. 69.]

Art. 3016. [3009] Deposit and count.—At the expiration of one hour after voting has begun, the receiving judges shall deliver ballot box No. 1 to the counting judges, who shall at once deliver in its place ballot box No. 2, which shall again be opened and examined in the presence of all the judges and securely closed and locked; and, until the ballots in box No. 1 have been counted, the receiving judge shall receive and deposit ballots in ballot box No. 2. Ballot box No. 1 shall, on its receipt by the counting judges, be immediately opened and the tickets taken out by one of them, one by one, when he shall read and distinctly announce while the ticket remains in his hand, the name of each candidate voted for thereon, which shall be noted on the tally sheets, and shall then deliver the ballot to the other counting judge, who shall place the same in box No. 3, which shall remain locked and in view until the counting is finished, when said box shall be returned with the other boxes, locked and sealed, to the county clerk. Ballot boxes Nos. 1 and 2 shall be used by the receiving judge and the counting judge alternately, as above provided, as often as the counting judge has counted and exhausted the ballots in either box. [Id. sec. 80.]

Art. 3017. [3010] Examining ballots.—No officer of election shall unfold or examine the face of

a ballot when received from an elector, nor the indorsement on the ballot, except the signature of the judge, or the words stamped thereon, nor compare it with the clerk's list of voters when the ballots are counted, nor shall he permit the same to be done; nor shall he examine or permit to be examined the ballots after they are deposited in a ballot box, except as herein provided for in canvassing the votes, or in cases especially provided by law. [Id. sec. 77.]

Art. 3018. [3011–12] Ballots not counted.—The counting judges and clerks shall familiarize themselves with the signature of the judge who writes his name on each ballot that is voted, and shall count no ballot where two or more are folded together, or that does not bear the judge's signature or is unnumbered, or if, on examination by the judges, such signature is found to be a forgery. If the names of two or more persons are upon a ballot for the same office, when but one person is to be elected to that office, such ballot shall not be counted for either of such persons. [Id. secs. 78; Acts 1876, p. 308; G. L. vol. 8, p. 1144.]

Art. 3019. [3013] If nominee dies before election.—If a nominee dies or declines the nomination before the election, and no one is nominated to take his place, the votes cast for him shall be counted and return made thereof; and, if he shall have received a plurality of the votes cast for the office, the vacancy shall be filled as in case of a vacancy occurring after the election. [Acts 1st C. S. 1905, p. 533, sec. 78.]

Art. 3020. [3014] Supervisors present.—The election supervisors may be present when the ballots are being examined and the vote called off and noted on the talley sheets. [Id. sec. 80.]

Art. 3021. [3015] Announcement of vote.—At each change of the boxes, one judge shall announce at the outer door of the voting place the number of votes already cast. [Id. sec. 81.]

Art. 3022. [3016–17] Status of count announced.—Immediately upon the closing of the polls, and at intervals of two hours thereafter, one of the judges of election shall make a correct but unofficial memorandum of the total number of votes counted for each candidate at that time, such memorandum being in the order in which the names of the candidates appear upon the official ballot; and thereupon he shall publicly announce from such memorandum the status of the count at the door of the building where the counting is in progress. This memorandum shall thereafter be accessible to the public, and especially to newspaper reporters who may call for information; and the presiding judge and associate judge may furnish reporters information concerning the status of the count at other times after the polls have been closed. The announcement of the status of the count shall continue, as aforesaid, until the count has been completed, when a correct but unofficial announcement of the total number of votes received by each candidate shall be made as above provided. In all general, special or primary elections, the presiding judge of election shall, upon the completion of the count, immediately transmit by telephone or by more expeditious means, if available, to the officer of the county clerk, if the election be a general or special election, or to the county chairman, if a primary election, an unofficial but complete report of the number of votes cast for each candidate, and/or cast for or against each proposition submitted to the voters for determination. No judge, clerk, supervisor or other officer of election shall make any statement, or give any information in any manner, of the number of votes cast for or against any candidate or for or against any proposition submitted to the people, or convey to any person his opinion regarding the state of the polls until after the closing thereof, and then only as herein expressly permitted. The provisions of this Article shall apply to all elections, general, special or primary. [Acts 1905, 1st C.S., p. 538, §§ 76, 78, as amended Acts 1933, 43rd Leg., p. 762, ch. 225, § 1.]

Section 13 of Laws 1933, being a penal provision, is published as Pen.Code, Article 231a.

Acts 1933, § 14, provides that if any part of the Act is declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remainder.

Art. 3022a. Tabulation of unofficial returns.—Sec. 2. The county clerk in case of general election, or the county chairman if a primary election, shall tabulate such unofficial returns when received, and at convenient intervals until midnight of election day shall announce or have announced at the courthouse door, or some other designated place, the total number of votes, as far as tabulated at the time, counted for each candidate, and/or for or against each proposition submitted to the voters for determination. When returns from each precinct of the county shall have been tabulated the county clerk or county chairman shall immediately prepare an unofficial memorandum of the total number of votes received by each candidate, and/or cast for or against each proposition submitted to the people, and shall post a copy of the same at the courthouse door or at some other designated public place in the county. And such officer shall, after making the unofficial memorandum, immediately transmit by telegraph or by more expeditious means to the Secretary of State, an unofficial but complete report of the number of votes cast in his county for each candidate for state and district offices, and/or cast for or against each proposition submitted to the voters of the entire State. The Secretary of State shall tabulate the unofficial returns received at his or her office and shall prepare an unofficial memorandum concerning the status of the returns received, at least once each day until he shall have received complete, unofficial returns from each county, at which time he shall prepare a memorandum giving the total number of votes received by each candidate, and/or cast for or against each proposition submitted to the people, as shown by the unofficial returns received at his office.

Sec. 3. For receiving unofficial returns by telephone and tabulating them as herein provided, the county clerk or county chairman and assistants employed in the work shall receive the same compensation per hour as allowed precinct judges of election.

Sec. 4. Charges for telephone or other service in transmitting unofficial returns to the county clerk shall be payable out of the general fund of the county. Charges for such service in primary elections shall be payable out of the funds of the political parties holding such elections.

Sec. 5. The tabulation of unofficial returns shall be preserved for public inspection until such time as official returns shall have been tabulated; thereafter, the unofficial tabulation may be destroyed.

Sec. 6. In precincts using voting machines, where absentee ballots have been voted by mail, none of said ballots shall be opened until immediately after the closing of the polls to voters who vote in person. If there be more than one absent voter's ballot entitled to be cast, they shall, without being unfolded, be thoroughly intermingled in some proper manner, after which they shall be unfolded and, under the personal supervision of all the judges, be registered on the voting machine the same as if the absent voter had been present and voted in person. [Acts 1933, 43rd Leg., p. 762, ch. 225.]

Art. 3023. [3018] [1807] Privilege from arrest.—In all cases except treason, felony or breach of peace, voters shall be privileged from arrest during their attendance at elections, and in going to and returning therefrom. [Acts 1905, 1st C.S., p. 535, § 63; P.D. 3625.]

Art. 3024. [3019] Loitering near polls.—The election judges shall prevent loitering and electioneering while the polls are open, within one hundred

feet of the door through which voters enter to vote, and within one hundred feet of the place where the voter is required to prepare his ballot; and, for this purpose, they may appoint a special constable to enforce this authority. [Id. sec. 84.]

Art. 3025. [3020] Conveying to polls.—No vehicle shall be used by any person to convey voters to the voting places unless the voter is physically unable to go to or to enter the polling place without assistance, in which event two of the judges of different political parties, if there are such, may deliver an official ballot to him at the entrance to the polling place and permit him to make out his ballot and deliver it there. [Id. sec. 85.]

Art. 3026. [3024–5] Return of elections.—When the ballots have all been counted, the managers of the election in person shall make out triplicate returns of the same, certified to be correct, and signed by them officially, showing: First, the total number of votes polled at such box; second, the number polled for each candidate; one of which returns, together with the poll lists and tally lists, shall be sealed up in an envelope and delivered by one of the precinct judges to the county judge of the county; another of said returns, together with poll lists and tally lists, shall be delivered by one of the managers of election to the county clerk of the county to be kept by him in his office open to inspection by the public for twelve months from the day of the election; and the other of said returns, poll and tally lists shall be kept by the presiding officer of the election for twelve months from the day of the election. In case of vacancy in the office of county judge, or the absence, failure or inability of that officer to act, the election returns shall be delivered to the county clerk of the county who shall safely keep the same in his office, and he, or the county judge, shall deliver the same to the commissioners court on the day appointed by law to open and compare the polls. [Acts 1883, p. 50; Acts 1st C. L. 1905, p. 541, sec. 91; G. L. vol. 9, p. 357.]

Art. 3026a. Time for report by election judges.—The presiding judges in the several election precincts of this State in general and special elections shall, within seventy-two hours after the closing of the polls in said general and special elections, make a report of the returns of said election to the County Judge of their respective counties in the State, and said County Judges shall forthwith and within forty-eight hours after the returns have been canvassed by the Commissioners' Court as provided in Article 3030, Revised Civil Statutes 1925, forward by mail to the Secretary of State complete returns of the general and special elections in their respective counties. Provided this Section shall in no wise be construed as repealing Article 3036, Revised Civil Statutes, 1925. [Acts 1933, 43rd Leg., p. 769, ch. 228, § 1.]

Section 3 of this Act being a penal provision is published as Pen.Code, Article 231b.

Art. 3027. [3026] To be stored.—One of the precinct judges shall deliver the returns of election with certified lists of qualified voters, with all stationery, rubber stamps and blank forms and other election supplies not used, to the county judge, immediately after the votes have been counted. He shall provide for the safe storage of the voting booths in some place in the precinct, and notify the county judge. [Acts 1st C. S. 1905, p. 541, sec. 91.]

Art. 3028. [3027–28] Ballots delivered to county clerk.—Immediately after counting the votes by the managers of election, the presiding officer shall place all the ballots voted, together with one poll tax list and one tally list, into a wooden or metallic box, and shall securely fasten the box with nails, screws or locks, and he shall, within ten days after the election, Sundays and the days of election excluded, deliver said box to the county clerk of his county, or to the county to which the unorganized county is attached for judicial purposes, whose duty it shall be to keep the same securely; and, in the event of any contest growing out of elections within one year thereafter, he shall deliver said ballot box to any competent officer having a process therefor, from any tribunal or authority authorized by law to demand such ballot box; provided, that all questions arising at any election board shall be settled and determined by the presiding officer, and the judges, anything in any law to the contrary notwithstanding. If no contest grows out of the election within one year after the day of such election, the said clerk shall destroy the contents of said ballot box by burning the same. [Acts 1876, p. 308; G. L. vol. 8, p. 1144; Acts 1881, p. 97; G. L. vol. 9, p. 189.]

Art. 3029. [3029] [1749] [1704] To retain poll and tally list.—The presiding officer shall retain in his custody one poll list and one tally list of the election, and shall keep the same for one year after election, subject to the inspection of any one interested in such election.

Art. 3030. [3030] [1753] [1705] Commissioners to open returns.—On the Monday next following the day of election, and not before, the commissioners court shall open the election returns and estimate the result, recording the state of the polls in each precinct in a book to be kept for that purpose; provided, that, in the event of a failure from any cause of the commissioners court to convene on the Monday following the election to compute the votes, then said court shall be convened for that purpose upon the earliest day practicable thereafter. [Acts 1883, p. 50; G. L. vol. 9, p. 357.]

Art. 3031. [3031] [1754] [1706] Returns not estimated.—No election returns shall be opened or estimated, unless the same have been returned in accordance with the provisions of this title.

Art. 3032. [3032–34] Certificates of election.—After an estimate of the result of an election has been made as provided for in this title, the county judge shall deliver to the candidate or candidates for whom the greatest number of votes have been polled for county and precinct officers a certificate of election, naming therein the office to which such candidate has been elected, the number of votes polled for him and the day on which such election was held and shall sign the same and cause the seal of the county court to be thereon impressed. If the county constitutes a senatorial or representative district of itself, the commissioners court shall at the same time make an estimate of the votes polled for members of the Legislature; and the county judge shall give a like certificate of election, as provided herein to the person receiving the highest number of votes for senator or representative, and shall also transmit a duplicate of such certificate to the Secretary of State. [Acts 1883, p. 50; G. L. vol. 9, p. 357.]

Art. 3033. [3035] [1757] Returns for certain State and district officers.—In all elections for state or district officers, except members of the legislature, the county judge shall, within twenty-four hours after the Commissioners' Court shall have opened the returns and estimated the result, as provided in Article 3030, make out duplicate returns of the election; one of which he shall immediately transmit to the seat of government of the State, sealed in an envelope, directed to the Secretary of State, and endorsed, "Election Returns for ——— county, for ———" (filling the first blank with the name of the county and the other blank with the name of the office for which the election was held, or a designation of the proposed amendments to the Constitution voted upon, as the case may be); and the other of such returns shall be deposited in the office of the clerk of the county court of the county where such election was held. [Acts

1897, p. 31; G.L. vol. 10, p. 1085; Acts 1933, 43rd Leg., p. 762, ch. 225, § 7.]

Art. 3034. [3036] [1758] [1710] Such returns counted.—On the fifteenth day after the election, the day of election excluded, and not before, the Secretary of State in the presence of the Governor and Attorney General, or in case of vacancy in either of said offices, or of inability or failure of either of said officers to act, then in the presence of either one of them, shall open and count the returns of the election. [Acts 1883, p. 50; G.L. vol. 9, p. 357; Acts 1933, 43rd Leg., p. 762, ch. 225, § 8.]

Art. 3035. [3037] [1759] [1711] Governor to give certificate.—When the returns have been counted, the Governor shall immediately make out, sign and deliver a certificate of election, with the seal of the State thereto affixed, to the person or persons who shall have received the highest number of votes for each or any of said officers. [Acts 1883, p. 50; G. L. vol. 9, p. 357.]

Art. 3036. [3038–9] Returns for Governor and Lieutenant Governor.—Each county judge shall promptly make duplicate returns of the election for Governor and Lieutenant Governor, carefully sealed in an envelope, one of which shall be transmitted to the seat of Government in this State, directed to the Speaker of the House of Representatives and indorsed as provided in Article 3033 and the other of said returns shall be deposited in the office of the county clerk of said county. Said transmitted returns directed to the Secretary of State shall be kept by him with the package and seal thereon to remain unbroken until the organization of the next Legislature, when he shall, on the first day thereof, deliver them to the Speaker of the House of Representatives. [Id.]

Art. 3037. [3040–1] Returns for legislators.—When an election shall have been held for members of the Legislature in any district composed of more counties than one, the county judge to whom the returns in each county are made, and who is not authorized to give certificates of election to such members of the Legislature, shall make out and send complete returns of such election for members of the Legislature in his county immediately after examining and recording the same, to the county judge of the county who may by law be authorized to give certificates of election to such members for such district. Said returns shall be sealed in an envelope, and the name of the officer forwarding them shall be written across the seal, and the envelope shall be indorsed, "Election Returns," and directed to the county judge of the proper county and transmitted by mail or other safe and expeditious conveyance. [Id.]

Art. 3038. [3042–3] Certificate of legislator.—The county judge to whom the returns named in the preceding article are forwarded, or in case of a vacancy in that office, or of inability or failure to act on the part of such officer, then the county clerk of such county shall, upon the thirtieth day after the election, Sunday excluded if Sunday be the thirtieth day, open and count said returns in the presence of at least two qualified voters of said district, and, after recording the same, shall give a certificate or certificates of election under seal of said court to the persor or persons receiving the highest number of votes for senator or representative in that district. Said certificate shall state the number of votes received by the person to whom the same is given; and the officer giving such certificate shall immediately forward a duplicate of the same to the Secretary of State. If all the election returns of the district shall have been received by the returning officer of the district before the said thirtieth day, then he may count said returns and issue the certificate of election as provided for in the preceding article at any time before said thirtieth day. [Id.]

Art. 3039. [3044] [1766] [1718] County judge to certify to Secretary of State.—At the expiration of thirty days from an election, and from time to time thereafter as the officers may qualify, each county judge shall make out and certify to the Secretary of State a tabular statement showing who were elected, and to what office, and the date of qualification, giving the number of the precinct, of precinct officers, and he shall also certify the result of the vote for members of the Legislature; and he shall in like manner report to the Secretary of State all special elections to fill a vacancy in any county or precinct office, certifying when and how the vacancy occurred. [Acts 1863; G. L. vol. 5, p. 604; P. D. 3604.]

Art. 3039a. Special election to Legislature.—That whenever there shall be held a special election in any representative or senatorial district in this State for the election of any member of the Legislature, during the session of any Legislature, or within a period of 30 days prior to the convening of any session of the Legislature, it shall be the duty of the County Commissioners of each county in such district to meet within two days after such election is held, and canvass the returns thereof, and to immediately certify such returns to the proper returning County Judge, and such County Judge shall immediately thereafter open and count such returns in the same manner as is now provided in such Chapter 8; such judge shall immediately issue a certificate, as is now provided by law and immediately forward same to the Secretary of State. [Acts 1929, 41st Leg., p. 7, ch. 3, § 1.]

Art. 3040. [3045] [1809] [1758] Commission to officers.—The Governor shall commission all officers except Governor, members of Congress, electors for President and Vice-President of the United States, members of the Legislature and municipal officers. [Acts 1876, p. 310; G. L. vol. 8, p. 1146.]

CHAPTER 9.—CONTESTING ELECTIONS

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Article 3041. [3046–3050] By whom tried. Contested elections for other purposes than the election of officers shall be tried by any district court of the county where the election was held. Contested elections for the following offices shall be tried:

1. For district attorney, by any district judge of the district in the county where the candidate receiving the certificate of election shall reside.
2. For district judge, by the district judge of and in the county of the adjoining district, the county seat of which is nearest to the residence of the candidate receiving the certificate of election, and in counties having two or more district courts, then by the district court of the adjoining district in said county.
3. For any justice of the Supreme Court or Court of Criminal Appeals, in any district court of Travis County, and for any justice of any court of Civil Appeals by any district court in the county where said court of Civil Appeals has its sittings.
4. For any county office, by any district court of the county where the election was held. [Acts 1895, p. 58; G. L. vol. 10, p. 788.]

Art. 3042. [3051] [1798] Notice of contest.—Any person intending to contest the election of any one holding a certificate of election for any office mentioned in this law, shall, within thirty days after the return day of election, give him a notice thereof in writing and deliver to him, his agent or attorney, a written statement of the ground on which such contestant relies to sustain such contest. By the "return day" is meant the day on which the votes cast in said election are counted and the official result thereof declared. [Id.]

Art. 3043. [3052] [1799] Reply to notice of contest.—The person holding such certificate shall, within ten days after receiving such notice and statement, deliver, or cause to be delivered, to said contestant, his agent or attorney, a reply thereto in writing. [Id.]

Art. 3044. [3053] [1800] Service of notice.—The notice, statement and reply required by the two preceding articles may and shall be served by any person competent to testify, and shall be served by delivering the same to the party for whom they are intended in person, if he can be found in the county, if not found, then upon the agent or attorney of such person, or by leaving the same with some person over the age of sixteen years at the usual place of abode or business of such person.

Art. 3045. [3054] [1801] Where to file papers.—If the contest be for the validity of an election for any State office, except the office of Governor and Lieutenant-Governor, or for any district office, except members of the Legislature, or for any county office, a copy of the notice and statement of the contestant and of the reply thereto of the contestee served on the parties shall be filed with the clerk of the court having jurisdiction of the case. [Id.]

Art. 3046. [3055] [1802] Cause to have precedence.—When the notice, statement and reply have been filed with the clerk of the court, he shall docket the same as in other causes, and the said contest shall have precedence over all other causes. If the office contested for be that of district clerk, then a clerk pro tem shall be appointed as is provided by law in suits where the clerk is a party to the suit. [Id.]

Art. 3047. [3056] [1803] Evidence and procedure.—In trials of all contests of election, the evidence shall be confined to the issues made by the statement and reply thereto, which statement and reply may be amended as in civil cases. As to the admission and exclusion of evidence, the trial shall be conducted under the rules governing proceedings in civil causes. [Id.]

Art. 3048. [3057] [1804] To execute bond.—Whenever the validity of an election for an officer other than for members of the Legislature is contested, the contestee shall, within twenty days after the service of said notice and statement of such contest upon him, file with the clerk of the court in which such contest is pending a bond with two or more good and sufficient sureties, payable to the contestant, to be approved by said clerk, in an amount to be fixed by said clerk, and not less than double the probable amount of salary or fees or both, as the case may be, to be realized from the office being contested for a period of two years; conditioned that, in the event the decision of the contest shall be against such contestee and in favor of the contestant, such contestee will pay over to such contestant whatever sum may be adjudged against him by a court having jurisdiction of the subject matter of such bond. [Id.]

Art. 3049. [3058] Failure to file bond.—If the contestee fails to file the bond as required in the preceding article, and within the time therein prescribed, said clerk shall notify the contestant immediately of such failure; and such contestant shall have the right, within ten days after such notice, to file a like bond payable to the contestee, conditioned that, in the event the decision of the contest is against him and in favor of the contestee, he will pay over to such contestee whatever sum may be adjudged against him, the said contestant, by a court having jurisdiction of the subject matter of such bond. [Id.]

Art. 3050. [3059] Execution of bond by contestant certified.—Immediately upon the filing of said bond by the contestant, the clerk shall certify in writing, and under his official seal, to the Governor, that the contestee failed to give the required bond, and that the contestant has given such bond in accordance with law. [Id.]

Art. 3051. [3060] To commission contestant.—Upon receiving such certificate from the clerk, the Governor shall issue a commission to the said contestant for the office in controversy pending such contest; and thereupon the contestant, upon qualifying in said office as required by law, shall exercise all the rights and powers and perform all the duties of said office for the full term thereof, unless it shall otherwise be determined and ordered by the court upon the trial of such contest. [Id.]

Art. 3052. [3061] Failure of contestant to execute bond.—The Governor shall issue the commission to the contestee at the time provided by law as in other cases, unless he has been notified of the failure of such contestee to file the bond required by article 3048, in which event the Governor shall withhold the issuance of such commission until after the time allowed the contestant to file such bond has elapsed; but, if the said contestant shall also fail to file bond as provided in article 3049, and within the time therein required, the clerk shall certify all the facts in the case under his official seal to the Governor, who shall thereupon issue the commission to the contestee. [Id.]

Art. 3053. [3062] Fraudulent votes not counted.—If any vote or votes are found upon the trial of any contested election to be illegal or fraudulent, the trial court shall subtract such vote or votes from the poll of the candidate who received the same, and after a full and fair investigation of the evidence shall decide to which of the contesting parties the office belongs. [Id.]

Art. 3054. [3063] Election declared void.—If it appears on the trial of any contest provided for in article 3045 that it is impossible to ascertain the true result of the election as to the office about which the contest is made, either from the returns of the election or from any evidence within reach, or from the returns considered in connection with other evidence, or should it appear from the evidence that such a number of legal voters were, by the officers or man-

agers of the election, denied the privilege of voting as, had they been allowed to vote, would have materially changed the result, the court shall adjudge such election void, and direct the proper officers to order another election to fill said office; which election shall be ordered and held and returns thereof made in all respects as required by the general election laws of the State. [Id.]

Art. 3055. [3064] Bonds subject to suit.—The bonds required to be filed by the contestant and contestee under the provisions of this chapter shall remain on file in the office of the clerk where filed, and may be sued upon as other bonds. [Id.]

Art. 3056. [3065–6] Appeal available.—Either the contestant or contestee may appeal from the judgment of the district court to the Court of Civil Appeals, under the same rules and regulations as are provided for appeals in civil cases; and such cases shall have precedence in the Court of Civil Appeals over all other cases. In case of appeal as provided for in this article, the clerk shall, without delay, make up the transcript and forward the same to the clerk of the Court of Civil Appeals for that district. [Id.]

Art. 3057. [3067] [1804] Taxing costs.—The costs in all contested election cases shall be taxed according to the laws governing costs in civil cases, except when otherwise specially provided, and bond for cost may be required as in civil suits. [Id.]

Art. 3058. [3068] Measure of damages.—Where the contest shall have been decided against one of the parties and the other party shall have filed a bond and performed the duties of the office under the provisions of this chapter, the bond so filed shall inure to the benefit of the successful party in any suit thereon in a court having jurisdiction of the amount in controversy; and the measure of damages recoverable, besides cost of suit, shall be the salary, fees, and emoluments of office of which he has been deprived, less such reasonable expenses as the party holding the office shall have incurred in executing the duties of the office; provided, that he shall have acted in good faith in receiving the certificate of election or commission for the office. [Id.]

Art. 3059. [3069] [1804] For Legislature.—If the contest be for the validity of an election for members of the Legislature, a copy of the notice, the statement, and the reply served upon the parties as required by this chapter, shall, within twenty days after the service thereof, be filed with the district returning officer to whom the returns of such election were made, who shall envelope the same, together with a certified copy of the poll book or register of the votes of each precinct and county returned to him in said election, and shall seal the said envelope and write his name across the seals, and address the package to the President of the Senate or Speaker of the House of Representatives, as the case may be, to the care of the Secretary of State, and shall forward the same by mail or other safe conveyance to the seat of government, so as to reach there, if possible, before the convening of the Legislature. [Id.]

Art. 3060. [3070] Depositions taken.—At any time after filing said papers with said returning officer, either party to said contest may proceed, at his own expense, to take such written testimony as he may deem proper, having first served the opposite party, his agent or attorney, with a copy of the interrogatories he intends to propound to each witness, and the name of the officer before whom the same will be answered as well as the time and place of taking such testimony. [Id.]

Art. 3061. [3071] Who may take such depositions.—Any officer authorized by the law of this State to administer oaths, upon being satisfied as to any costs, including his own fees, that may accrue in the taking of such testimony, shall proceed upon the application of the party desiring it, to summon the witness or witnesses named in the interrogatories and take his or their answers in writing and under oath to such interrogatories and cross interrogatories as may be propounded in writing. [Id.]

Art. 3062. [3072] How depositions may be returned.—The answers of each witness shall be reduced to writing and signed by such witness, and sworn to by such witness before the officer taking the same, and shall be certified to by such officer and sealed in an envelope; and the name of said officer shall be written by him across the seals; and he shall forward the same without delay by mail or other safe conveyance to the President of the Senate or Speaker of the House of Representatives, as the case may be, to the care of the Secretary of State, at the seat of government. [Id.]

Art. 3063. [3075] Referred to committee.—The notice and statement of contest and the other papers pertaining thereto shall immediately after the organization of the Legislature be opened by the President of the Senate or by the Speaker of the House of Representatives, as the case may be; and the same shall be referred to the committee on privileges and elections of the House in which the contest is pending, which committee shall proceed without delay to fix a time for the hearing of said case, and, after due notice to the parties thereto shall investigate the issues between said parties, hearing all the legal evidence that may be presented to said committee, and shall as soon thereafter as practicable report their conclusions of law and fact in respect to said case to the house by which said committee was appointed, accompanied by all the papers in the cause, and the evidence taken therein, with such recommendations as may to them seem proper. Any one or more of the committee dissenting from the views of the majority may present a minority report. [Id.]

Art. 3064. [3074] Hearing by committee.—The rules of evidence and the laws in force respecting the admissibility of evidence, the taking of depositions and the issuance and service of process in the district courts of this State shall be observed by said committee, so far as the same may be applicable. Said committee shall have the power to send for persons and papers, and the chairman of said committees shall have the power to issue all process necessary to secure the attendance of witnesses and the production of papers, ballot boxes and other documents before said committee, and such process shall be executed by the sergeant-at-arms of the house in which the contest is pending, or by such other person as the presiding officer of said house may designate. [Id.]

Art. 3065. [3075] Procedure by house.—The house in which the contest is pending shall, as soon as practicable after the report of the committee has been received, fix a day for the trial of the contest, and shall proceed to determine whether the contestant or contestee, or either of them, is entitled to the contestant's seat; provided, the said house may hold the election void after full consideration of all the evidence and for the reasons prescribed in article 3054, and in such case the Governor shall at once be notified of the vacancy. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the house in which said contest is pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided. [Id.]

Art. 3066. [3076] Contest for State office.—If the contest be for the validity of an election for Governor, Lieutenant-Governor, Comptroller, State Treasurer, Land Commissioner or Attorney General, the same shall be tried and determined by both houses of the Legislature in joint session, and the provisions

of this chapter governing in case of a contest for the validity of an election for members of the Legislature shall apply to and govern in a contest for the offices above named, as far as applicable. [Id. Const. art. 4, sec. 3.]

Art. 3067. United States Senator.—If the nomination of any candidate for United States Senator be contested, the same shall be conducted under the provisions of the law regulating contests before party election committees or the courts for State officers. [Acts 1st C. S. 1913, p. 101.]

Art. 3068. [3181] For presidential electors.—Any person intending to contest the election of any or all of the persons duly declared elected as electors of president and vice-president, shall within fifteen days from the said fourth Monday in November, file with the Secretary of State a written statement of the ground on which such contestant relies to sustain such contest, and shall within such time, notify the contestee thereof in writing, and deliver to him, his agent or attorney, a copy of said statement. The contestee shall, within ten days after receiving such notice, file with the Secretary of State his reply thereto in writing. The contest shall, as soon thereafter as possible, be tried and determined by the State Board of canvassers, consisting of the Governor, Attorney General and Secretary of State, or any two of them; and their decision shall be rendered at least six days before the time fixed by law for the meeting of the electors. Such decision, in which two at least of such board shall join, shall be final, and certificates of election, in accordance therewith shall at once be issued by the Secretary of State to the proper parties. Where not otherwise herein provided, the provisions of law relating to contests for the validity of an election for members of the Legislature shall apply to such contests for presidential electors. [Acts 1897, p. 24; G. L. vol. 10, p. 1079.]

Art. 3069. [3077] Other contested elections.—If the contest be for the validity of an election held for any other purpose than the election of an officer or officers in any county or part of a county or precinct of a county, or in any incorporated city, town or village, any resident of such county, precinct, city, town or village, or any number of such residents, may contest such election in the district court of such county in the same manner and under the same rules, as far as applicable, as are prescribed in this chapter for contesting the validity of an election for a county office.

Art. 3070. [3078] Parties defendant.—In any case provided for in the preceding article, the county attorney of the county, or if there is no county attorney, the district attorney of the district, or the mayor of the city, town or village, or the officer who declared the official result of said election, or one of them, as the case may be, shall be made the contestee, and shall be served with notice and statement, and shall file his reply thereto as in the case of a contest for office; but in no case shall the costs of such contest be adjudged against such contestee, or against the county, city, town or village which they may represent, nor shall such contestee, be required to give any bond upon an appeal. [Id.]

Art. 3071. Constitutional amendment.—Within sixty days from the date of any election upon any proposed amendment to the Constitution, and not thereafter, any citizen of this State who is a qualified voter, shall have the right to contest said election by filing his petition in a district court of Travis County, fully stating his grounds for contest, naming the Secretary of State as contestee; and thereupon the district judge, in whose court the contest is filed, shall make an order for the issuance, and the clerk of said court or the judge thereof, shall issue a writ of injunction enjoining the Secretary of State from tabulating, estimating or canvassing the returns of said election and from ascertaining or declaring the result of said election until said contest is finally determined. Citation shall be issued and served upon the Secretary of State as in other civil cases. At the time of filing such petition, contestant shall cause to be published in a daily newspaper printed in Texas, for at least ten days before appearance day, a brief notice to all parties interested that such suit has been filed. The Secretary of State shall within twenty days from service of citation file a formal answer, but shall not be liable for any costs. Any qualified citizen or citizens adversely interested in such contest may appear by counsel of their own choosing upon either side of the contest, but opponents of the contest shall have the right to direct and control the pleadings of the Secretary of State and the conduct of the contest upon the part of the contestees; and contestants shall jointly and not severally plead in the cases. The said court shall cause the party contesting the result of said election and the parties adversely interested to form issues and shall as near as may be conform the hearing and determination of such contest to the proceedings usual in courts in contested election cases. The court shall permit contestants to amend their petition, include therein allegations charging fraud, irregularities or mistakes, upon such terms as to the court may seem just, and likewise the contestees shall have the right both to contest the charges made by the contestant and to make counter charges, but the court shall bring the parties to issue with all possible dispatch. Said contestant shall be required to give a good and sufficient bond to be approved by the clerk of the court wherein said contest is filed, conditioned that the said contestant will pay, in the event he is defeated in said contest, all the costs that may be incurred in the trial of said contest. He shall not be permitted to file any such contest and give in lieu of the bond herein provided for any affidavit of inability to pay the costs as provided for by law. [Acts 1911, p. 144.]

Art. 3072. Power of court.—The said court shall have the power to appoint commissioners to sit at such places as the court may designate for the purpose of hearing testimony, reduuing same to writing and reporting same to said court, said court shall also have the power to issue all orders that may be necessary or proper to compel the production before said court or any commissioner appointed by said court of all ballot boxes and instrumentalities used in connection with said election that may be necessary or proper to determine the issues raised by such contest, and to send by proper process to any county in the State, for the officers of the election or the custodians of ballot boxes for the purpose of aiding in, ascertaining and determining any matter or thing necessary or proper in connection with the trial of said contest. The said court may proceed to the trial of said issue raised by said contest after having given the contestants and the contestees full and fair opportunity to produce before said court the evidence upon such issues. The court may adjourn the said hearing from time to time and may, before the final determination of said cause, make such orders and decrees as to the court may seem just and proper, requiring any election officers to make such certificate of the result of such election as in the judgment of the court such officers should have made in making the returns of such election. Upon the trial of said cause, the court shall have full power and authority to hear and determine all matters and things necessary or proper to the determination of the question whether a majority

of the legal votes cast in said election, either in favor of or against said proposed amendment, including the manner of holding the election, any frauds or irregularities in the conduct thereof, or in the making of the returns thereof illegal votes cast at said election or legal votes prevented from being cast, false calculations, certificates or returns, and to exercise all powers of the court, in order to fully inquire into and ascertain the true and correct result of such election, free from any fraud, irregularity or mistake. [Id.]

Art. 3073. To compel returns.—The said court shall have full authority when the result of such election in any voting precinct box shall have been ascertained and determined, to order and compel the proper officers thereof to make true and correct returns of such election in such voting box as finally determined by said court, to the proper officers of such county and when the result in any county shall have been ascertained and determined by said court, to order and compel the proper returning officers of such county to make true and correct returns of the result of said election in said county as to said amendment as ascertained by said court to the Secretary of State, and to order the Secretary of State to make his returns, tabulations, canvassings, countings and certificates in accordance with the result of such election as finally ascertained and determined by the court. [Id.]

Art. 3074. Decree.—The said contest shall have precedence in said court over all causes pending therein. Either party may appeal as in other civil cases and the same shall have precedence over all other causes pending in the appellate courts to which the appeal or writ of error is taken, except such cases as may be entitled to precedence over said cause by virtue of some provision of the Constitution of this State, Upon final judgment in said appellate court, it shall enter a decree ordering and directing the Secretary of State to declare the true result of said election as judicially determined and ascertained by said court, and the Secretary of State shall make his tabulations, canvassings and certificates of the results of such election in accordance with the final judgment of said court, and said amendment shall be adopted or rejected in accordance with the final result of said election as finally determined by the judgment of said court. [Id.]

Art. 3075. Result final.—The result of said contest shall finally settle all questions relating to the validity of said election, and it shall not be permissible to again call the legality of said election in question in any other suit or proceeding. If no contest of said election is filed and prosecuted in the manner and within the time herein provided for, it shall be conclusively presumed that said election as held and the result thereof as declared are in all respects valid and binding upon all courts, provided, that pending such contest the enforcement of all laws in relation to the subject matter of such contest shall not be suspended, but shall remain in full force and effect. [Id. sec. 15.]

CHAPTER 10.—CONSTITUTIONAL AMENDMENTS

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Sec.
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Article 3076. Officers named.—Whenever any proposed amendment to the Constitution of this State is to be voted upon by the qualified voters of this State, either at an election held for that purpose, or at any election for the State officers, the county chairman of any organization advocating, and the county chairman of any organization opposing the adoption of such amendment, or if such county chairman fails to act, then three members of the county executive committee of any organization advocating, or three members of the county executive committee opposing the adoption of such Constitutional amendment may at any time not less than five days before the election at which such proposed amendment is to be voted upon, nominate one judge, one clerk and one supervisor to serve as judge, clerk and supervisor, respectively, for the voting box for which they are so selected, who shall be qualified voters of the voting precinct or box for which they are chosen, by presenting in writing to the county judge of the county the names of such judges, clerks and supervisors so selected. Such county judge shall appoint the parties nominated to act in such capacities at the respective voting precincts and boxes for which they are respectively selected. If the county judge fails or refuses to appoint such officers, they shall apply to the officers and judges of the voting precinct or box for which they were respectively nominated, and the manager and judges of such precinct or box shall permit such persons so selected to act in the capacities named. [Acts 1911, p. 144.]

Art. 3077. Duties of election officers.—Such judges, clerks and supervisors shall serve in addition to the election officers provided for by the general election laws, and they shall receive the same compensation. Said judges and clerks shall assist in holding and conducting said election, and in receiving and counting the votes cast. Said supervisor shall have the right to watch the conduct of the election, including the counting of the votes, locking and sealing the ballot boxes, their custody and safe return. [Id. sec. 3.]

Art. 3078. Discovering fraud.—Any supervisor who shall discover any fraud or irregularity in the conduct of an election or in counting the votes or in making returns thereof, within five days after said election, shall file a written sworn report with the county clerk of the county in which he resides, setting out fully any irregularity or fraud or semblance thereof occurring in said voting precinct or box that would in any manner affect the true result of said election in said voting precinct. Said county clerk shall keep said report on file in his office and shall permit the same to be inspected upon application by any citizen of this State. Such supervisor shall call the attention of the officers holding such election to any fraud, irregularity or mistake, illegal voting attempted, or legal voting prevented, or other failure to comply with the law

governing such election at the time it occurs, if practicable, and if he has knowledge thereof at the time; and he shall not report any matter to which he should have called but did not call attention at the time, unless he shows some good and sufficient reason therefor. [Id. sec. 4.]

Art. 3078a. Convention to ratify proposed Amendments to Federal Constitution.

Election of delegates

Sec. 1. Whenever the Congress of the United States shall submit to the respective States a proposed Amendment to the Constitution of the United States and shall propose that it be ratified by conventions in the several States, an election shall be held on the fourth (4th) Saturday in August of the year in which any such amendment is submitted by the Congress of the United States, at which election thirty-one (31) delegates and thirty-one (31) alternates each, such total number of delegates and such total number of alternates to be composed of one (1) delegate and one (1) alternate from each of the several thirty-one (31) Senatorial Districts of the State, shall be elected, provided that the same is submitted to this State within the time necessary to comply with the provisions hereof, otherwise at the succeeding General Election.

Nominating Conventions

Sec. 2. On the sixtieth (60th) day preceding the day of the election those persons, groups and organizations in favor of the ratification of the Amendment, and those persons, groups and organizations against the ratification of the Amendment shall hold separate Conventions in the City of Austin. Any qualified voter of this State shall be entitled to participate and vote in either of said Conventions, but not in both. Ten (10) days prior to the meeting of such Conventions it shall be the duty of the Governor of this State to designate a qualified voter of this State known by him personally to be in favor of the ratification of such Amendment, and it shall be the duty of the person so appointed to select and designate the place in the City of Austin at which the Convention of those persons, groups and organizations favoring the ratification of the Amendment shall convene and hold its meeting and the person so appointed shall preside as president pro tem until the permanent officers of the Convention are elected. The Governor shall likewise appoint a qualified voter of this State, known to him to oppose the ratification of the proposed Amendment, and the person so appointed shall select and designate the place in the City of Austin where the Convention of those persons, groups and organizations opposing the ratification of the proposed Amendment shall convene and hold their meeting, and the person so appointed shall preside and act as president pro tem until the permanent officers of the Convention of those persons opposing the ratification of the Amendment are elected.

Nomination and qualifications of delegates and alternates

Sec. 3. After each such Convention has been organized and its permanent officers elected the same shall proceed to nominate thirty-one (31) delegates and thirty-one (31) alternates each, such total number of delegates and such total number of alternates to be composed of one (1) delegate and one (1) alternate from each of the several thirty-one (31) Senatorial Districts of the State. Candidates for the offices of delegates and alternates to the Convention to pass on the proposed amendment shall be citizens and residents of this State and duly qualified voters in the Senatorial District from which they offer their candidacy for election, and their names shall be certified by the Chairman and Secretary of the respective Conventions to the Secretary of State within five (5) days after the day of holding the respective Convention. No person shall be eligible as a delegate or alternate of the Convention of those persons opposing the ratification of the Amendment unless he shall make affidavit before some officer authorized to administer oaths that he is opposed to the ratification of the Amendment, and will so cast his vote in Convention, and no person shall be eligible as a delegate or alternate of the Convention favoring the ratification of the proposed Amendment unless he shall make affidavit in writing before some officer authorized to administer oaths that he favors the ratification of the Amendment, and will so cast his vote in Convention, and each such delegate and alternate shall file his affidavit with the Chairman of the Convention of which he is the nominee, or with the Secretary of State, which affidavit shall be filed within fifteen (15) days after the date of the filing of the list of delegates and alternates with the Secretary of State by the respective Chairmen of the Conventions. No nominee of either Convention shall be either a State, District or County office holder. The Chairman of each Convention shall file the affidavit of the respective nominees of each Convention with the Secretary of State, together with the certified list of nominees for said Convention.

Journal of Nominating Conventions

Sec. 4. Each such Convention shall be required to keep a journal of its proceedings and set forth among the minutes thereof the respective names of each delegate and alternate nominated at such Convention, together with the number of votes received by each such nominee, together with all other proceedings that may be had in said Convention. It shall be the duty of the Chairman of each such Convention, upon the adjournment thereof, to deposit each such journal with the Secretary of State where the same shall remain as a permanent public record.

Certification of nominees by Secretary of State

Sec. 5. It shall be the duty of the Secretary of State to certify to the County Clerk of each county in this State the names of the persons selected as the nominees of each Convention and to show in his certificate those delegates and alternates in favor of the ratification of the Amendment and those delegates and alternates against the ratification of such Amendment.

General Election Laws applicable

Sec. 6. All laws pertaining to conducting and holding General Elections and the qualifications of voters shall apply to the holding of the election ordered by the Governor except in so far as they are inconsistent with the provisions of this Act.

Form of ballot

Sec. 7. The election shall be by ballot, separate from any ballot to be used at the same election, and shall be prepared as follows: It shall first state the substance of the proposed Amendment. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width headed respectively, in plain type "For Ratification of the above Amendment," and "Against Ratification of the above Amendment." In the column headed "For Ratification of the above Amendment" shall be placed the names of the nominees or delegates and alternates nominated as in favor of the ratification; in the column headed "Against Ratification of the above Amendment" shall be placed the names of the nominees or delegates and alternates nominated as opposed to the ratification. The voter shall be entitled to vote for any number of candidates whose names appear on such ballot, not to exceed thirty-one (31) delegates and thirty-one (31) alternates. Such voter shall indicate his choice by drawing a line through or striking out all the names of such candidates other than the ones for whom he desires to cast his vote.

The ballot shall be substantially in the following form:

PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES
The Congress has proposed an amendment to the Constitution of the United States which reads as follows: (Here insert the proposed amendment)

INSTRUCTIONS TO THE VOTER	
FOR the ratification of the above amendment. (Insert names of delegates and then alternates in alphabetical order favoring the ratification of the amendment)	AGAINST the ratification of the above amendment. (Insert names of delegates and then alternates in alphabetical order against the ratification of the amendment)

Form of ballot in case of proposed repealing amendment

Sec. 7a. Provided, however, that if such proposed amendment, is one which repeals another amendment to the Constitution of the United States then it shall not be necessary to state the substance of the proposed amendment; and in lieu of the words "for ratification of the above amendment," and "against ratification of the above amendment" at the top of the two perpendicular columns, there shall be inserted the words "For repeal of the ——— amendment," and the words "Against repeal of the ——— amendment," respectively; the number of such amendment which it is proposed to repeal to be inserted in the blank space above, as e. g. "For repeal of the Eighteenth (18th) Amendment," and "Against repeal of the Eighteenth (18th) Amendment." In such instances the ballot shall be substantially in the following form:

INSTRUCTIONS TO THE VOTER	
FOR the repeal of the ——— amendment. (Inserting in the blank the number of the amendment proposed to be repealed) (Insert names of delegates and then alternates in alphabetical order favoring the repeal of the amendment)	AGAINST the repeal of the ——— amendment. (Inserting in blank the number of the amendment proposed to be repealed) (Insert names of delegates and then alternates in alphabetical order against the repeal of the amendment)

Voting and marking ballots

Sec. 7b. The voter shall be entitled to vote for not more than thirty-one (31) delegates (candidates) and thirty-one (31) alternates (candidates) and shall indicate his choice by drawing a line through or marking out all the names of such delegates (candidates) and alternates (candidates) other than the ones for whom he desires to cast his vote.

Making and canvassing returns

Sec. 8. Returns shall be made of the election in the same manner and by the same officers as is provided by law for the making of returns of elections for Railroad Commissioners. On the thirtieth (30th) day following the day of the election and not before, the Secretary of State, in the presence of the Governor and the Attorney General, or either of them, shall open and canvass the returns of the election.

Certificates of election

Sec. 9. The thirty-one (31) delegates and the thirty-one (31) alternates receiving the highest number of votes shall be declared elected and the Governor shall issue to each of those persons a certificate of election which shall be signed by the Governor and attested by the Secretary of State.

Time of convening of ratification convention

Sec. 10. On the ninetieth (90th) day following the day of the election the thirty-one (31) delegates and thirty-one (31) alternates elected at the said election and commissioned by the Governor shall convene in the City of Austin at 10 o'clock A. M., and shall thereupon constitute a convention to pass upon the question of whether or not the proposed amendment to the Constitution shall be ratified.

Quorum; Alternates

Sec. 11. A majority of the delegates so elected shall constitute a quorum at such convention for the purpose of transacting business. A majority of the quorum present and voting may act for the convention. In the event any delegate to such conventions, after he has been duly elected, shall die, resign, become incapacitated or fail to attend such convention, then and in any such event the alternate of such delegate shall act in the stead of said delegate with the full and complete powers of said delegate.

Journal of ratification convention

Sec. 12. The convention shall keep a journal of its proceedings in which shall be recorded the vote of each delegate on the question of the ratification of the proposed Amendment, and upon final adjournment the journal reflecting the vote of the delegates, together with the minutes of the convention, shall be filed with the Secretary of State of the State of Texas where it shall remain on file as a public record.

Certificate of ratification

Sec. 13. If the convention shall agree to the ratification of the proposed Amendment, a certificate to that effect shall be executed by the President and Secretary of the Convention and transmitted to the Secretary of State of this State and to the Secretary of State of the United States. The Secretary of State shall in turn transmit such certificate under the great Seal of the Sovereign State of Texas to the Secretary of State of the United States.

Election expenses; duties of public officials

Sec. 14. The expenses necessary to conduct such election shall be paid for by the respective counties of this State in the same manner as is now provided by law with reference to any other general or special State-wide election and the duties of all public officials with reference to providing for such election shall be the same as is now prescribed by law with reference to other elections except as herein provided.

Appointment of county chairman and vice-chairman

Sec. 15. The permanent chairman of each Convention provided for in Section 2 hereof is hereby empowered to appoint a chairman and vice-chairman for each county. The chairman in each county (or the vice-chairman in event of failure or inability of the chairman) is hereby empowered to appoint one assistant election judge and one clerk for each voting precinct for the purpose of assisting in holding the election provided for by this Act. Should a chairman or vice-chairman fail to make such appointments, then the presiding judge of each precinct is hereby empowered to appoint such assistants, in the manner now provided by statute, the appointees, however, shall be selected to equally represent both sides of the question; otherwise the said election, manner of conducting the same and the returns thereof, shall be in all things held as is now provided by statute for the holding of general elections. None of the expenses arising or accruing because of the appointment of or the services rendered by the officials provided for in this Section shall be borne by the State or any county thereof; provided, however, any other usual, customary election expenses for officials to hold said election and for other election expenses shall be paid as is now provided by law for general elections.

Expenses of delegates

Sec. 16. The delegates elected to such Convention shall defray their own expenses incurred in connection therewith.

Conflicting Statute or Resolution of Congress

Sec. 17. If Congress should, at any time, either by Resolution or by Statute, prescribe the method and manner in which the Convention shall be constituted, and shall not except from the provisions of such Statute or Resolution such States as may have theretofore provided for constituting such conventions, the provisions of this Act shall be inoperative in so far as the same shall operate as to conflict with such Resolution or Act of Congress. [Acts 1933, 43rd Leg., p. 358, ch. 139.]

CHAPTER 11.—PRESIDENTIAL ELECTORS

Art.
3079. Time of election.
3079A. Count of vote for candidates of Political Party for both President and Vice President.
3079B. Canvass and returns of votes for candidates for President and Vice President.
3079C. Certification of names of candidates for President and Vice President.
3080. Governor's proclamation.
3081. Returns.
3082. Returns by counties.
3083. To count returns.
3084. Electors to convene.
3085. Pay of electors.

Art. 3079. [3176–7] Time of election.—On the Tuesday after the first Monday in November, A. D. 1932, and on the Tuesday next after the first Monday in November, every four years thereafter, or at such other times as the Congress of the United States may direct, there shall be elected by the voters of the State, as many electors for President and Vice-President of the United States as the State of Texas may at that time be entitled to elect, no one of whom shall be a person holding the office of Senator or Representative in Congress, or any office of trust or profit under the United States. [Acts 1848, p. 104; G.L. vol. 3, p. 104; Acts 1931, 42nd Leg., p. 314, ch. 186, § 1.]

Art. 3079A. Count of vote for candidates of Political Party for both President and Vice President.—A vote for the candidates of any Political Party for both President and Vice-President of the United States shall be conclusively deemed to be a vote for candidates of the same party for Presidential electors, and shall be so counted and recorded for such electors as the State shall be empowered to elect. [Acts 1931, 42nd Leg., p. 314, ch. 186, § 1.]

Art. 3079B. Canvass and returns of votes for candidates for President and Vice President.—The convass of the votes for candidates for President and Vice-President of the United States and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party, respectively, and the certificate of such election made by the Governor shall be in accord with such return. [Acts 1931, 42nd Leg., p. 314, ch. 186, § 1.]

Art. 3079C. Certification of names of candidates for President and Vice President.—The names of the candidates for President and Vice-President, respectively, of a Political Party as defined in the Law, shall, at least twenty days prior to the election, be certified to the Secretary of State by the chairman and secretary of the State Committee of said Party. [Acts 1931, 42nd Leg., p. 314, ch. 186, § 1.]

Art. 3080. [3184] [1819] [1768] Governor's proclamation.—The Governor shall issue a proclamation under the seal of the State, and have the same published for at least forty days before an election for electors, in some newspaper printed at Austin, requiring the county judge, or other proper officer or officers, of each county in the State to cause said election to be held at each precinct in the county at the time and for the purpose prescribed in this chapter. [Acts 1848, p. 104; G.L. vol. 3, p. 104; P.D. 3662.]

Art. 3081. [3178] [1813] [1762] Returns.—The officers conducting said elections within three days after holding said election shall compute the number of votes given for each person there voted for as an elector, and shall make out in writing, seal up, certify and transmit the result of said election to the county judge or other proper officer of their county, in the same manner prescribed by the laws regulating elections for members of the State Legislature. [Id. P. D. 3646.]

Art. 3082. [3179] [1814] Returns by counties.—On the Monday next following the day of election, or as soon thereafter as the commissioners court shall have opened the election returns, and estimated the result, in accordance with law, the county judge shall make duplicate returns of the election, one of which he shall at once send sealed in an envelope, directed to the Secretary of State at Austin, and endorsed "Election Returns for ..... County for Presidential Electors," (filling the blank with the name of the county) and the other of such returns shall be deposited in the office of the county clerk of the county where such election was held. [Id. P. D. 3647; Acts 1897, p. 24; G. L. vol. 10, p. 1079.]

Art. 3083. [3180] [1815] To count returns.—The Secretary of State, in the presence of the Governor and Attorney General, or either of them, on the fourth Monday in November next after said election, shall open all the election returns received by him, and correctly add up all the votes cast in the several counties for each of the said electors, and cause the result thereof, with the names of those elected, to be published forthwith in some newspaper printed at Austin, and shall issue certificates of election to the persons so elected. [Id. P. D. 3648.]

Art. 3084. [3181–2–3] Electors to convene.—On or before the meeting of the electors the Governor shall cause three lists of the names of such electors to be made out and delivered to them, as required by Act of Congress. The electors so chosen shall convene in the Capitol at Austin on the Second Monday in January next after their election, and vote for president and vice-president of the United States, and make returns thereof as is or may be required by the laws of the United States. If any person so chosen elector shall, by death or other disabling cause, fail to attend by the hour of two o'clock in the afternoon of the day fixed by law, and vote as required by law, or if any such person shall be legally disqualified to serve as elector, a majority of the qualified electors present, after having convened, may appoint some other person to act as elector in the place of any such absent or disqualified person, and shall immediately report their action to the Secretary of State. [Acts 1848, p. 104; G. L. vol. 3, p. 104; Acts 1879, p. 24; G. L. vol. 10, p. 1079.]

Art. 3085. [3185] [1820] [1769] Pay of electors.—Such electors shall receive the same pay for mileage in traveling to and from Austin and the same pay daily while engaged there in the duties required of them by law, as that allowed by law to the members of the Legislature.

CHAPTER 12.—UNITED STATES SENATORS

Art.
3086. Election day.
3087. Vacancy.
3088. State laws apply.
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Art.
3090. Nomination at primary.
3091. All laws apply.
3092. Application to get on ballot.
3093. Requisites of application.
3094. Second primary.
3095. Conduct of election.
3096. Candidate not nominated.
3097. Vacancy; application to get on ballot.
3098. Request to enter special primary.
3099. If two Senators.

Article 3086. Election day.—An election for the election of a Senator from Texas to the Congress of the United States shall be held on the first Tuesday after the first Monday in November of every year immediately preceding the fourth day of March when the term of any United States Senator from the State of Texas to the Congress of the United States is to expire. At such election no person shall be qualified to vote for any candidate for United States Senator unless he is a qualified elector in any election held to elect members of the most numerous branch of the Legislature of this State. [Acts 1st C. S. 1913, p. 101.]

Art. 3087. Vacancy.—When any vacancy occurs in the representation of this State in the United States Senate, the Governor of this State shall within ten days issue writs of election to fill such vacancy, which election shall be held not less than sixty days nor more than ninety days after such vacancy occurs, provided, if the Congress or Senate is in session at the time of such vacancy or should convene before such election or before the result of the same can be officially ascertained under law, the Governor shall make temporary appointment of a suitable and qualified person to represent the State in the United States Senate, until the election and qualification of a Senator can be made. [Id.]

Art. 3088. State laws apply.—Every law regulating or in any manner governing elections or the holding of primaries in this State shall be held to apply to each election or nomination of a candidate for a United States Senator so long as they are not in conflict with the Constitution of the United States or of any law or statute enacted by the Congress of the United States regulating the election of United States Senators or the provisions of this law. The returns from any election held for United States Senator shall be made, the result ascertained and declared, a certificate of election issued, as provided for the election of representatives in Congress, by this title. [Id.]

Art. 3089. Name on ballot.—The name of no candidate for United States Senator shall be placed upon the official ballot of any party or of any organization as the nominee of said party or organization for said office unless the said candidate has been duly nominated and selected as herein provided. [Id.]

Art. 3090. Nomination at primary.—Each party desiring to nominate a candidate for United States Senator shall, if such election is to be held on the first Tuesday after the first Monday in November of any year, nominate or select such candidate at a general primary election to be held throughout the State on the fourth Saturday in July next preceding such election for United States Senator. [Id.]

Art. 3091. All laws apply.—At each primary election held in this State for the nomination of a candidate for United States Senator, each provision of the laws of this State which has for its object the protection of the ballot and the safe-guarding of the public against fraudulent voting, illegal methods, undue influence, corrupt practices, and in fact each restriction of whatever kind or character as applied to any election held in this State whether general, special or primary shall be held to apply to a primary election held for or when a candidate for United States Senator is to be nominated when not in conflict with the provisions of this law. When the law with reference to holding senatorial primaries is silent, the election officers in securing supplies, in conducting the election and in making returns and in canvassing the votes shall in every particular follow the methods provided by law covering primary elections or general elections held for the purpose of nominating or electing State, district, county, and precinct officers. [Id.]

Art. 3092. Application to get on ballot.—Any person affiliating with any political party who desires his name to appear on the general official primary ballot of said party as a candidate for the nomination of such party for United States Senator shall file with the State chairman of said party not later than the first Monday in June preceding such general primary his written request that his name shall be placed on the official ballot of said party as a candidate at the aforesaid general primary for the nomination as a candidate for United States Senator before the party with which he affiliates. [Id.]

Art. 3093. Requisites of application.—Any person who is thirty years of age or over, and who has been for nine years a citizen of the United States and is a bona fide inhabitant of the State who desires his name to appear on the official ballot at any primary election as a candidate for the nomination of said party as a candidate for United States Senator shall address his application to the State chairman of the party with which he affiliates setting forth:

1. That he is a candidate for the nomination of his party as a candidate for United States Senator.

2. His age, occupation, county of his address, and post-office address.

3. That he is a member in good faith of the political party upon whose ballot he wishes his name to appear and that if he voted at the preceding election he voted for the nominees of said party.

4. That he will, during his term of office, if elected, endeavor to truly respect the wishes of his constituency and to abide by and support such measures as may be endorsed by the primary voters of his party in this State as declared by their vote at a primary election.

Said application shall be signed by the candidate and duly acknowledged before some person authorized to take acknowledgments. Twenty-five qualified voters may likewise join in a request that the name of any person affiliating with such party be placed upon the official ballot as a candidate for United States Senator, giving the occupation, county of residence and post-office address of such person, signing and acknowledging same as above provided, and may file the same with the State chairman on or prior to the date above mentioned with the same effect as if such request had been filed by the party named therein as a candidate for such nomination. All such petitions or requests filed by twenty-five voters shall be endorsed by the person in whose favor the request is made showing his willingness to qualify for the position, if elected. All requests, whether made by the candidate or by petition shall be considered filed with the State chairman when they are sent from any point within the United States by registered mail, on or before the date mentioned, addressed to the State chairman at his post-office address. [Id.]

Art. 3094. Second primary.—No person shall be declared the nominee of any political party for United States Senator unless he has complied with every requirement of this law and all laws applicable thereto and has received a majority of all the votes cast at said primary election for all the candidates for that party for United States Senator. If at the first primary election no candidate receives a majority of the vote polled by his party for all the candidates for United States Senator before said party, the State Executive Committee or State chairman thereof shall call a second primary election for the purpose of determining the choice of the party as between the two candidates receiving the largest number of votes at

the first primary election. Said second primary shall be held on the fourth Saturday in August, immediately after the first primary is held. At such second primary, only the two candidates in each party receiving the highest votes shall be voted upon. [Id.]

Art. 3095. Conduct of election.—At each primary held for the nomination of a candidate for United States Senator, the election shall be conducted by the duly appointed and constituted election officers of the several polling places and voting precincts throughout the State who shall be paid as provided by law for holding elections in other cases. No person shall vote for any candidate for the nomination for United States Senator who does not belong to the same political party with which the voter affiliates and when any voter attempts to vote for any person as a candidate for the nomination for United States Senator, and is challenged he shall, before being permitted to vote, make an affidavit that he is a bona fide member of said party and if he voted in the preceding general election held for the election of State officials, he voted for the nominees of the party whose ticket he desires to vote. Upon making such affidavit he shall be permitted to vote. [Id.]

Art. 3096. Candidate not nominated.—Any person who has not been defeated at the primary election preceding the general or special election for United States Senators, desiring to have his name appear upon the official ballot at any general election as a candidate for United States Senator who is not the nominee of any political party or political organization may do so only upon presenting a petition to the Secretary of State signed by at least ten per cent of the qualified voters in the State of Texas as measured by the total vote for Governor at the preceding general election. Said petition shall conform in every particular to the requirements of the laws of this State with reference to placing the name of any candidate, other than the nominee of any party upon the official ballot, but in no case shall the name of any person be placed upon the official ballot at any general election as a candidate for United States Senator as the nominee of any party unless he has been nominated under the provisions of this law and has complied with every provision of the laws of this State with reference to the nomination of candidates for United States Senators. [Id.]

Art. 3097. Vacancy: application to get on ballot.—Any person desiring to have his name appear upon the official ballot as a candidate for United States Senator at any special election held for the purpose of filling a vacancy in the United States Senate, when no party primary is held, may do so by presenting his application to the Secretary of State which shall set forth:

1. That he is a candidate for United States Senator.
2. His age, occupation, the county of his residence and his post-office address.
3. That he is a member in good faith of the political party upon whose ballot he wishes his name to appear, that if a voter at the preceding election he voted for the nominees of said party.
4. That he will during the term of his office, if elected, endeavor to truly respect the wishes of his constituency and to abide by and support such measures as may be endorsed by the primary voters of his party in this State, and that he will use all honorable means at his command to secure the appointment for such applicants for positions in the Federal service as received a majority of the votes at any primary held by the members of his party to determine their wishes with reference thereto. Said application to be signed by the candidate and properly acknowledged before some person authorized to take acknowledgments. The Secretary of State shall upon receipt of the application which conforms to the above requirements, issue his instructions to the county clerks of this State directing that the name of the applicant shall be printed on the official ballot in the column under the title of the office for which he is a candidate. [Id.]

Art. 3098. Request to enter special primary.—Any candidate who desires his name to appear on the official ballot for a special primary as a candidate for the nomination of such party for the office of United States Senator shall file with the State chairman of his party, not later than fifteen days prior to the date of such primary, his written request that his name be placed upon such official ballot as a candidate for the nomination of United States Senator, giving his age and occupation, the county of his residence and post-office address, which shall be signed by him and acknowledged by him before some officer, and also twenty-five qualified voters may likewise join in a request that the name of any person affiliating with such party be placed upon the official ballot as a candidate for United States Senator, giving the occupation, county of residence and post-office address of such person, signing and acknowledging same as above provided, and may file the same with the State chairman within the time above mentioned with the same effect as if such request had been filed by the party named therein as a candidate for such nomination. The chairman and secretary of the State committee shall forthwith cause to be mailed to the chairman and secretary of every county committee of the party in the State the name of such candidate for United States Senator, with instructions that it be placed on the official ballot of such county. All requests shall be considered filed with the State chairman when they are sent from any point within the United States by registered mail, or by telegraph, addressed to the State chairman at his post-office address. On the first Saturday following such special primary election, the county executive committee of each county in the State, shall meet and canvass the returns of such election, and shall immediately thereafter certify by its chairman and secretary the result of said election and forward same to the State chairman. The State executive committee shall meet at a time not later than fifteen days after the date of said special primary and canvass and tabulate the returns of said election as certified by the county chairman, and the candidate receiving the majority of the number of votes cast at such primary shall be the nominee of the party for such office; and the State chairman shall order the name of such candidate placed upon the official ballot of said party. Provided, however, if at the first primary election no candidate receives a majority of the votes polled by his party for all the candidates for United States Senator before said party, the State executive committee or State chairman thereof shall call a second primary election for the purpose of determining the choice of the party as between the two candidates receiving the largest number of votes at the first primary election. Said second primary shall be held on the third Saturday following the first primary, and at such primary, only the two candidates in each party receiving the two highest votes shall be voted upon. [Id.]

Art. 3099. If two Senators.—When there are two Senators to be elected from Texas to Congress, each candidate offering his name for election shall designate in his application for a position on the ticket whether in a general or special election or primary, whether he is a candidate for the short term or long term. [Id.]

CHAPTER 13.—NOMINATIONS

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1. BY PARTIES OF ONE HUNDRED THOUSAND VOTES AND OVER

Article 3100. [3085] "Primary election."—The term "primary election," as used in this chapter, means an election held by the members of an organized political party for the purpose of nominating the candidates of such party to be voted for at a general or special election, or to nominate the county executive officers of a party. [Id.]

Art. 3101. [3084] Nominated at primary.—On primary election day in 1946, and every two years thereafter, candidates for Governor and for all other State offices to be chosen by vote of the entire State, and candidates for Congress and all district offices to be chosen by the vote of any district comprising more than one county, to be nominated by each organized political party that cast two hundred thousand (200,000) votes or more at the last general election, shall, together with all candidates for offices to be filled by the voters of a county, or of a portion of a county, be nominated in primary elections by the qualified voters of such party. [Acts 1st C.S., 1905, p. 549; Acts 1945, 49th Leg., p. 248, ch. 182, § 2.]

Art. 3102. [3086] Date of primary.—The fourth Saturday in July 1926, and every two years thereafter shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except when specially authorized. No person shall be declared the nominee of any political party at any primary election for any State or district office unless he has complied with every requirement of all laws applicable to primary and other elections, and has received a majority of all the votes cast at such primary elections for all candidates for such office. If at the general primary election for any political party, no candidate becomes the nominee for any State or district office under this article, a second primary election shall be held by such political party, in the State or such district, or districts, as the case may be, on the fourth Saturday in August succeeding such general primary election, and only the name of the two

candidates who received the highest number of votes for any office for which nomination was made at the general election shall be placed on the official ballot as candidates for such office at such second primary. The second primary election shall be conducted according to the law prescribed for conducting the general primary election and the candidates receiving a majority of all votes cast for the office to which they aspire shall be declared the nominee for their respective offices. Any political party may hold a second primary election on the fourth Saturday in August to nominate candidates for any county or precinct office, where a majority vote is required to make nomination; but at such second primary, only the two candidates who received the highest number of votes at the general primary for the same office shall have their names placed upon the official ballot. Nominations of candidates to be voted for at any special election shall be made at a primary election at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations. All precincts in the same county and all counties in the same district shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than ten days prior to the city or town election at which they are to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method for conducting county primary elections shall apply to them. [Id. Acts 4th C. S. 1918, p. 191.]

Art. 3103. [3087] Where to vote.—The places of holding primary elections of political parties in the various precincts of the State shall not be within one hundred yards of the place at which such elections or conventions are held by a different political party. When the chairmen of the executive committees of the different parties cannot agree on the places where precinct primary elections to be held on the same day shall be held, such places in each precinct shall be designated by the county judge, who shall cause public notice thereof to be given at once in some newspaper in the county, or if there be none, by posting notices in some public place in the precinct. [Acts S. S. 1905, p. 549.]

Art. 3104. [3089] Officers of primary.—All the precinct primary elections of a party shall be conducted by a presiding judge, to be appointed by a chairman of the county executive committee of the party, with the assistance and approval of at least a majority of the members of the county executive committee. Such presiding judge shall select an associate judge and two clerks to assist in conducting the election; two supervisors may be chosen by any one-fourth of the party candidates, who, with the judges and clerks, shall take the oath required of such officers in general elections. Two additional clerks may be appointed, but only when, in the opinion of the presiding judge, there will be more than one hundred votes polled at the primary election in the precinct. [Id.]

Art. 3105. [3090] Judges of primary.—Judges of primary elections have the authority, and it shall be their duty, to administer oaths, to preserve order at the election, to appoint special officers to enforce the observance of order and to make arrests, as judges of general elections are authorized and required to do. Such judges and officers shall compel the observance of the law that prohibits loitering or electioneering within one hundred feet of the entrance of the polling place, and shall arrest, or cause to be arrested, any one engaged in the work of conveying voters to the polls in carriages or other mode of conveyance, except as permitted by this title. [Id.]

Art. 3106. [3091–2] Nomination by majority vote; second primary.—In all nominations by political parties holding primary elections as provided in Title 50, Chapter 13, Revised Civil Statutes of Texas, and amendments thereto, the candidates for county offices shall be nominated by majority vote of the electors voting in such primary, provided that if no candidate received a majority of votes cast for the candidates for the office for which he is a candidate, the county executive committee, after canvassing the results of such first primary as provided by law, shall cause the names of the two (2) candidates receiving the highest numbers of votes to be placed on the ballot to be voted upon at the second primary at the time and in the manner provided by law for such second primary. [Acts 1st C.S., 1905, p. 549; Acts 1947, 50th Leg., p. 258, ch. 153, § 1.]

Section 2 of the Act of 1947 repealed all conflicting laws.

Art. 3107. Political party may prescribe qualifications of members.—Every political party in this State through its State Executive Committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party; provided that no person shall ever be denied the right to participate in a primary in this State because of former political views or affiliations or because of membership or nonmembership in organizations other than the political party. [As reenacted Acts 1927, 40th Leg., 1st C. S., p. 193, ch. 67, § 1.]

Section 1 of Acts 1927, 40th Leg., 1st C. S., p. 193, ch. 67, repeals Rev. St. 1925, art. 3107, but gives the new article the same number.

Art. 3108. [3094] Expenses of primary.—At the meeting of the county executive committee provided in Article 3117, the county committee shall also carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks and messengers, to report the result in each precinct to the county chairman, as provided for herein, and all other necessary expenses of holding such primaries in such counties and shall apportion such cost among the various candidates for nomination for county and precinct offices only as herein defined, and offices to be filled by the voters of such county or precinct only (candidates for State offices excepted), in such manner as in their judgment is just and equitable, giving due consideration to the importance and emoluments of each such office for which a nomination is to be made and shall, by resolution, direct the chairman to immediately mail to each person whose name has been requested to be placed on the official ballot a statement of the amount of such expenses so apportioned to him, with the request that he pay the same to the county chairman on or before the Saturday before the fourth Monday in June thereafter. [Acts 1905, S. S., p. 549; Acts 1931, 42nd Leg., p. 180, ch. 105, § 2.]

Art. 3109. [3095] Ballot at primaries.—The vote at all general primaries shall be by official ballot, which shall have printed at the head the name of the party, and under such head the names of all candidates, those for each nomination being arranged in the order determined by the various committees as herein provided for, beneath the title of the office for which the nomination is sought. The voter shall erase or mark out all names he does not wish to vote for. The official ballot shall be printed in black ink upon white paper, and beneath the name of each candidate thereof for State and district offices, there shall be printed the county of his residence. The official ballot shall be printed by the county committee in each county, which shall furnish to the presiding officer of the general primary for each voting precinct at least one and one-half times as many of such official ballots as there are poll taxes paid for such precinct, as

shown by the tax collector's list. Where two or more candidates are to be nominated for the same office, to be voted for by the qualified voters of the same district, county or justice precinct, such candidates shall be voted for and nominations made separately, and all nominations shall be separately designated on the official ballots by numbering the same, "1," "2," "3," etc., printing the word "No.," and the designating number after the title of the office for which such nominations are to be made. Each candidate for such nomination shall designate in the announcement of his candidacy, and in his request to have his name placed on the official ballot, the number of the nomination for which he desires to become a candidate, and the names of all candidates so requesting shall have their names printed beneath the title of the office and the number so designated. Each voter shall vote for only one candidate for each such nomination. [Acts 1905, S.S., p. 549.]

Art. 3109a. Minimum number of official ballots for each county in primary elections; names of candidates for county commissioner.—Section 1. In primary elections involving the election of County Commissioners, in addition to the other officers, the county committee in each county in this State shall be required to print a minimum of four (4) different official ballots for primary elections, as otherwise required by Article 3109, Revised Civil Statutes of Texas, 1925, to differ with respect to the office of County Commissioner for each commissioner's precinct in the county. Each official ballot, in addition to the names of candidates for other offices as prescribed in Article 3109, shall contain the names of candidates for the office of County Commissioner in not more than one commissioner's precinct in the county. The election officials for each voting precinct shall be furnished such official ballots which contain the names of candidates for the office of County Commissioner which are to be voted on by the voters in the particular election precinct. If the election precinct includes more than one, or parts of more than one commissioner's precinct, the election officials shall be furnished with appropriate official ballots for each commissioner's precinct. Election officials in each voting precinct shall be required to determine in which commissioner's precinct a voter resides before furnishing him with an official ballot, and shall furnish him with the official ballot containing the names of candidates for the office of county commissioner which the voter is entitled to vote upon. In all other respects, the official ballot for primary elections provided for in Article 3109 shall be subject to regulations contained in Article 3109 and other applicable Statutes.

Sec. 2. This law is cumulative and shall not prohibit the printing of ballots corresponding to various precinct offices. [Acts 1943, 48th Leg., p. 215, ch. 134.]

Art. 3110. [3096–7] Test on ballot.—No official ballot for primary election shall have on it any symbol or device or any printed matter, except a uniform primary test, reading as follows: "I am a .....(inserting name of political party or organization of which the voter is a member) and pledge myself to support the nominee of this primary;" and any ballot which shall not contain such printed test above the names of the candidates thereon, shall be void and shall not be counted.

Art. 3111. [3098–9] Request to go on ballot.—The request to have the name of any person affiliating with any party placed on the official ballot for a general primary as a candidate for the nomination of such party for any State office shall be governed by the following:

1. Such request shall be in writing signed and duly acknowledged by the person desiring such nomination, or by twenty-five qualified voters. It shall state the occupation, county of residence and post-office address of such person, and if made by him shall also state his age.

2. Any such request shall be filed with the State chairman not later than the first Monday in June preceding such primary, and shall be considered filed if sent to such chairman at his post-office address by registered mail from any point in this State.

3. On the second Monday in June preceding each general primary, the State committee shall meet at some place to be designated by its chairman who shall not less than three days prior to such meeting notify by mail all members of said committee and all persons whose names have been requested to be placed upon the official ballot of such designation. Such committee at this meeting by resolution shall direct their chairman to certify to each county chairman the names and county of residence of such candidates as shown by such requests. Copies of such certificates shall be immediately furnished to each newspaper in the State desiring to publish the same, and one copy shall at once be mailed to the chairman of the executive committee of each county. [Id.; secs. 108–9.]

Art. 3112. [3100] Request for district office.—Any person desiring his name to appear on the official ballot as a candidate for the nomination for Chief Justice or Associate Justice of the Court of Civil Appeals, or for Representative in Congress, or for State Senator when such Senatorial District is composed of one or more than one County, or for Representative, or district judge or district attorney in representative or judicial districts composed of one or more than one county, shall file with the chairman of the executive committee of the party for the district, said request with reference to a candidate for a State nomination, or if there be no chairman of such district executive committee, then with the chairman of each county composing such district, not later than the third Monday in May preceding the general primary. Such requests may likewise be filed not later than said date by any twenty-five (25) qualified voters resident within such district, signed and duly acknowledged. Immediately after said date each such district chairman shall certify the names of all persons for whom such requests have been filed to the county chairman of each county composing such district. If said name is not submitted or filed within said time, same shall not be placed upon said ballot. [Acts 1905, 1st C.S., p. 546, § 110; Acts 1943, 48th Leg., p. 337, ch. 218, § 1.]

Art. 3113. [3101] Candidate for county office.—Any person desiring his name to appear on the official ballot for the general primary, as a candidate for the nomination for any office to be filled by the qualified voters of a county or a portion thereof, or for county chairman, shall file with the county chairman of the county of his residence, not later than Saturday before the third Monday in June preceding such primary, a written request for his name to be printed on such official ballot as a candidate for the nomination or position named therein, giving his occupation and post-office address, giving street and number of his residence, if within a city or town, such request to be signed and acknowledged by him before some officer authorized to take acknowledgment to deeds. Such request similarly signed and acknowledged by any twenty-five qualified voters resident in the county may be filed on or before said date, requesting that the name of any person named therein may be placed on the official ballot as a candidate for any county or precinct office or chairmanship, with like effect as if such request was filed by the person named as a candidate therein; which request shall be endorsed by the candidate named therein, showing his consent to such candidacy, if nominated. [Id. sec. 111.]

Art. 3114. [3102] Certificates to county committee.—At the meeting of the county executive committee provided for in Article 3117, the county chairman shall present to the committee the certificates of the chairman of the State and the various district executive committees, showing the names of all persons whose names are to appear on the official ballot as candidates for State and district offices. [Id.]

Art. 3115. [3103] Primary committee.—Subject to the approval of the committee, the County Chairman shall appoint a subcommittee of five (5) members to be known as the primary committee, of which he shall be ex-officio chairman. This subcommittee shall meet on the fourth Monday in June and make up the official ballot for such general primary in such county, in accordance with the certificates of the State and District Chairman and the request filed with the County Chairman, and place the names of the candidates for nomination for State, district, county and precinct offices thereon in the order determined by the county executive committee as herein provided. [Acts 1905, S.S., p. 546, § 111; Acts 1931, 42nd Leg., p. 180, ch. 105, § 2.]

Art. 3116. [3104] Must pay.—No person's name shall be placed on the ballot of a district, county or precinct office who has not paid to the county executive committee the amount of the estimated expense of holding such primary, apportioned to him by the county executive committee, as hereinbefore provided. Provided, however, that no candidates for nomination for chief justice or associate justice of a Court of Civil Appeals or for representative in Congress or for district judge or district attorney or any other district office in representative or judicial districts composed of four or more counties shall be required to pay more than one ($1.00) dollar to any county executive committee or other person for any particular county as his portion of such expense for holding such primary and shall not be required to pay any other sum or sums to any other person or committee to have their name placed on the ticket as such candidate. No candidates for nomination for State Senator or Representative in the Legislature shall be required to pay more than one ($1.00) dollar to any county executive committee or any other person or any particular committee, as his portion of such expense for holding such primary. Candidates for United States Senator or for Congressman-at-Large and all those who are candidates for State offices to be voted upon by the qualified voters of the whole State shall pay to the chairman of the State executive committee one hundred ($100.00) dollars, and shall not be required to pay any other sum or sums to any other person or committee to have their names placed on the ticket as such candidate. [Acts 1905, S.S., p. 546, § 111; Acts 1923, 3rd C.S., p. 170; Acts 1927, 40th Leg., p. 77, ch. 54, § 1.]

Art. 3116a. Payments by candidates for State Senator or Representative.—In all counties of this State having a population of more than one hundred thousand (100,000), and not in excess of two hundred and fifty thousand (250,000) inhabitants, according to the last preceding Federal Census, no person who is a candidate in a primary election of such county for nomination for State Senator or Representative in the Legislature shall have his or her name placed on such primary ballot unless and until he or she has paid to the County Executive Committee of such county a sum to be fixed by such Executive Committee not to exceed Fifty Dollars ($50) as his or her portion of the expenses for holding such primary election; and in all counties of this State having a population of more than two hundred and fifty thousand (250,000) inhabitants, according to the last preceding Federal Census, no person who is a candidate in a primary election of such county for nomination for State Senator or Representative in the Legislature shall have his or her name placed on such primary ballot unless and until he or she has paid to the County Executive Committee of such county a sum to be fixed by such Executive Committee, not to exceed One Hundred Dollars ($100), as his or her portion of the expenses for holding such primary election; and such candidate shall not be required to pay any other sum, or sums, to any other person or committee to have his or her name placed on the ballot as such candidate; except that any such candidate whose district includes another county or counties of less than one hundred thousand (100,000) population, according to the last Federal Census, shall pay to the Executive Committee of such other county, or counties, as may be in such candidate's district, an additional sum of One Dollar (1) and no more in each of said counties to have his or her name placed on the ballot in each of such other counties.

Sec. 2. All laws, or parts of laws, in conflict herewith are hereby repealed as to those portions of such law, or laws, as are in conflict herewith. [Acts 1935, 44th Leg., p. 356, ch. 129; Acts 1937, 45th Leg., p. 809, ch. 399.]

Art. 3116b. [Repealed by Acts 1943, 48th Leg., p. 252, ch. 153, § 1.]

The repealed article was Acts 1937, 45th Leg., p. 805, ch. 396, § 1.

Art. 3116c. Counties of 43,000 to 43,100, 60,000 to 60,600 and 98,000 to 99,000 population—Candidates for State Representative to make payments to County Executive Committee.—From and after the effective date of this Act, in all counties in this State having a population of not less than forty-three thousand (43,000) and not more than forty-three thousand, one hundred (43,100), and in all counties in this State having a population of not less than sixty thousand (60,000) and not more than sixty thousand, six hundred (60,600), and in all counties of this State having not less than ninety-eight thousand (98,000) nor more than ninety-nine thousand (99,000), according to the last preceding Federal Census, and where such counties substitute a Representative District, no person who is a candidate in a primary election of such counties, for nomination for State Representative, including Flotorial Representative, in the Legislature, shall have his or her name placed on such primary ballot in such counties, unless and until he or she has paid to the County Executive Committee of the political party whose nomination he or she seeks, the sum of Fifty Dollars ($50).

It being the purpose of this Act to require the payment of Fifty Dollars ($50) as a prerequisite to having the name of the candidate placed on the official ballot in any primary election in each and all counties hereinabove set out. [Acts 1939, 46th Leg., p. 309, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 3116d. Counties of 133,391 to 150,000 and of 15,149 to 15,525 population—Payments to County Executive Committee by candidates for Representative.—From and after the effective date of this Act, in all counties in this State having a population of not less than one hundred and thirty-three thousand, three hundred and ninety-one (133,391) and not more than one hundred and fifty thousand (150,000), and in all counties in this State having a population of not less than fifteen thousand, one hundred and forty-nine (15,149) and not more than fifteen thousand, five hundred and twenty-five (15,525), according to the last preceding Federal Census, no person who is a candidate in a primary election of such counties, for nomination for State Representative, shall have his or her name placed on the primary ballot to be voted on at any election unless and until

he or she has paid to the County Executive Committee of the political party, whose nomination he or she seeks, the sum of One Hundred Dollars ($100); provided, however, that where said counties are a part of a Flotorial Representative District, the Flotorial Representative in such counties shall not have his or her name placed on the official ballot for Flotorial Representative unless and until he or she shall have paid to the Chairman of the County Executive Committee of the political party, whose nomination he or she seeks, the sum of Fifty Dollars ($50), in each of said counties. [Acts 1939, 46th Leg., p. 311, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 3116e. Payments to County Executive Committee by candidates for Representative in certain counties.—In all counties of this State having a population of not less than thirty-eight thousand (38,000) nor more than thirty-eight thousand, three hundred and twenty-five (38,325) population, and in counties having not less than twelve thousand, four hundred and twenty-five (12,425) nor more than twelve thousand, four hundred and seventy-five (12,475) population, and in counties having not less than ten thousand, eight hundred (10,800) nor more than ten thousand, nine hundred (10,900) population, and in counties having not less than forty-seven thousand, seven hundred and fifty (47,750) nor more than fifty thousand, two hundred (50,200) population, and in counties having not less than twenty-two thousand (22,000) nor more than twenty-three thousand (23,000) population, and in counties having not less than twelve thousand, three hundred and twenty-five (12,325) nor more than twelve thousand, four hundred (12,400) population, and in counties having not less than eighteen thousand, three hundred and fifty (18,350) nor more than eighteen thousand, eight hundred (18,800) population, and in counties having not less than twenty-eight thousand, nine hundred (28,900) nor more than twenty-nine thousand, two hundred and forty-five (29,245) population, and in counties having not less than twenty-five thousand, six hundred and eight (25,608) nor more than twenty-five thousand, eight hundred and ninety-five (25,895) population, and in counties having not less than twenty-four thousand, nine hundred and ten (24,910) nor more than twenty-five thousand, three hundred and fifty (25,350) population, according to the last Federal Census, no person who is a candidate in a primary election of such counties for nomination for State Representative in the Legislature shall have his name placed on such primary ballot unless and until he has paid to the County Executive Committee of his county a sum to be fixed by such Executive Committee not to exceed Fifty Dollars ($50) as his portion of the expenses for holding such primary election, and such candidate shall not be required to pay any other sum or sums to any other person or committee to have his name placed on the ballot as such candidate in such county. [Acts 1941, 47th Leg., p. 411, ch. 240, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 3116f. Counties of 31,950 to 32,840 and of 11,940 to 12,013; payments to County Executive Committee by candidates for State Representative.—In all counties of this State having a population of more than thirty-one thousand, nine hundred and fifty (31,950), and not in excess of thirty-two thousand, eight hundred and forty (32,840), according to the last preceding Federal Census, and in all counties of this State having a population of more than eleven thousand, nine hundred and forty (11,940), and not in excess of twelve thousand, and thirteen (12,013), according to the last preceding Federal Census, no person who is a candidate in a primary election in such county for nomination for State Representative in the Legislature shall have his name placed on such primary ballot unless and until he has paid to the County Executive Committee of each county a sum to be fixed by such County Executive Committee, not to exceed Thirty Dollars ($30), as such candidate's portion of the expenses for holding such primary election, and such candidate shall not be required to pay any other sum or sums to any other person or committee in such counties to have his name placed on the primary election ballot as a candidate for such office. The term primary election, as used in this Act, shall mean and include a first primary and a second or run-off primary, if such be necessary, and a candidate shall not be required to pay any additional sum or sums in the event of a second or run-off primary. [Acts 1941, 47th Leg., p. 1412, ch. 644, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 3117. [3105–6] Order of names on ballot.—The various county committees of any political party, on the third Monday in June preceding each general primary, shall meet at the county seat and determine by lot the order in which the names of all candidates for all offices requested to be printed on the official ballot shall be printed thereon. [Acts 1st C. S. 1905, p. 549.]

Art. 3118. [3107–9] County executive committees.—There shall be for each political party required by this law to hold primary elections for nomination of its candidates, a county executive committee, to be composed of a county chairman, and one member from each election precinct in such county; the committeeman from such election precinct shall be chairman of his election precinct, and the said county chairman shall be elected on the general primary election day; the county chairman by the qualified voters of the whole county, and the precinct chairman by the qualified voters of their respective election precincts. Said county and precinct chairman shall assume the duties of their respective offices on Saturday following the run-off primary immediately after the committee has declared the results of the run-off primary election. Said county chairman shall be ex-officio a member of the executive committee of all districts of which his county is a part, and the district committee thus formed shall elect its own chairman. Any vacancy in the office of chairman, county or precinct, or any member of such committee shall be filled by a majority vote of said executive committee. The list of election precinct chairmen and the county chairmen so elected, shall be certified by the county convention to the county clerk, along with the other nominees of said party. If there are no requests filed for candidates for county and precinct chairman, a blank space shall be left on the ticket beneath the designation of such position. [Acts 1st C. S. 1905, p. 549.]

Art. 3119. [3112–13] Supplies.—The executive committee shall have a general supervision of the primary in such county, and shall be charged with the full responsibility for the distribution to the presiding judge of all supplies necessary for holding same in each precinct. If the duly appointed presiding officer shall fail to obtain from the executive committee the supplies for holding such election, such committee shall deliver the same to the precinct chairman for such precinct, and, if unable to deliver the same to such presiding officer or precinct chairman not less than twenty-four hours prior to the time of opening the polls for such primary, such committee shall deliver the same to any qualified voter of the party residing in such precinct, taking his receipt therefor, and appointing him to hold such election in case such presiding officer or precinct chairman shall fail to appear at the time prescribed for opening the polls. [Id.]

Art. 3120. [3114] Booths used for primary.—The voting booths, ballot boxes and guard rails, prepared for a general election, may be used for the organized political party nominating by primary election that cast over one hundred thousand votes at the preceding general election. [Id.]

Art. 3121. [3115–6–7] Lists of voters.—The county tax collector shall deliver to the chairman of the county executive committee of each political party, for its use in primary elections, at least five days before election day, certified and supplemental lists of the qualified voters of each precinct in the county, arranged alphabetically and by precincts, and such chairman shall place the same for reference in the hands of the election officers of each election precinct before the polls are open. No primary election shall be legal, unless such list is obtained and used for reference during the election. Opposite the name of every voter on said list shall be stamped, when his vote is cast, with a rubber or wooden stamp, or written with pen and ink the words, "primary—voted," with the date of such primary under the same. For each list of all the qualified voters of the county who have paid their poll taxes or received their certificates of exemption, the collector shall be permitted to charge not more than five dollars, the same to be paid by the party or its chairman so ordering said lists; provided, that the charge of five dollars shall be in full for the certified lists of all the voters of the county arranged by precincts, as herein provided. [Id.]

Art. 3122. [3118] Precaution against fraud.—The same precautions required by law to secure the purity of the ballot box in general elections, in regard to the ballot boxes, locking the ballot boxes, sealing the same, watchful care of them, the secrecy in preparing the ballot in the booth or places prepared for voting shall be observed in all primary elections. [Id. sec. 135.]

Art. 3123. [3121] Time for returns by judge in party primary elections.—The presiding judges of party primary elections in all of the election precincts of this State shall, within seventy-two hours after the closing of the polls in said party primary election, make returns to the Chairman of the County Executive Committee of their respective Counties of the ballot boxes containing the ballots voted, locked and sealed, tally sheets, poll lists, return sheets, ballots mutilated and defaced, and ballots not voted, for which said County Chairman shall account to the Executive Committee of the county. The County Chairman shall, within forty-eight hours after the votes have been canvassed by the County Executive Committee as provided in Article 3124, Revised Civil Statutes of 1925 as amended by Chapter 275, Acts of the Regular Session of the Forty-first Legislature, mail to the State Chairman of their respective parties, complete returns as to the results of said party primary elections as to the several State offices. [Acts 1905, 1st C.S., p. 554, § 136; Acts 1933, 43rd Leg., p. 769, ch. 228, § 2.]

Art. 3124. [3122] Returns of election.—Immediately upon the completion of the counting of the ballots, the precinct election judges shall prepare and make out triplicate returns of the same showing: (1) The total number of votes polled at such box; (2) The total number of votes cast at such box for each candidate, and the total number of votes polled at such box for or against any proposition voted upon. Such returns shall be signed and certified as correct by the judges and clerks of the election precinct. One copy of said returns shall be sealed up in an envelope and delivered by one of the precinct judges of election to the chairman of the county [1] executive committee within twenty-four hours after the ballots shall have been counted; one copy of said returns shall be placed in one of the ballot boxes together with the ballots voted and shall be locked and sealed therein; the remaining copy of said returns shall be retained by the presiding judge of election for a period of twelve months succeeding the date of election. The chairman of the county executive committee shall, upon receiving returns from each election precinct in the county, order the members of the county executive committee to convene at the county seat of the county on the next succeeding day; provided, however, that if the returns of all precincts are not received by the county chairman before the first Friday succeeding the day of the primary election, the county executive committee shall meet on the first Saturday succeeding the day of the primary election, and the returns in the hands of the county chairman shall be opened by the executive committee in executive session and shall be canvassed by them. The county attorney shall upon the relation of the county chairman immediately institute mandamus proceedings in the proper court to compel the delinquent returning officers to make proper returns as required by law, and it shall be the duty of the county chairman to notify the county attorney of the delinquency of the election officers immediately after the meeting of the county executive committee on the first Saturday next succeeding the day of the primary election. [Acts 1905, 1st C.S., p. 553, § 131; Acts 1929, 41st Leg., p. 570, ch. 275; Acts 1933, 43rd Leg., p. 762, ch. 225, § 9.]

[1] So in enrolled bill. Session Law omits word "county". Section 2 of said Acts 1929, being a penal provision is published as Pen.Code, Article 246a.

Art. 3125. [3123–25] Canvass of result.—At the meeting of the county executive committee, provided for in Article 3124, returns from the election precincts of the county shall be canvassed by the committee. Within the meaning of this Act, such canvass shall include an actual checking and comparison of the voting lists with the tally lists and return sheets, and a mere tabulation of votes shown by the return sheets shall not be deemed a compliance with this provision. All discovered errors in the returns shall be corrected before the results of the election are certified, and upon the sworn statement of any candidate filed with the committee before the actual printing of the official ballot, setting out alleged errors in the primary election returns as certified by the county executive committee, the said committee shall be reconvened for the investigation and consideration of such alleged error, which provision is hereby declared to be mandatory and may be enforced by writ of mandamus. The said committee shall have the power to exclude any vote that is prima facie illegal, but any vote involving a question of law, or mixed question of law and fact shall not be determined by the committee. When the votes have been canvassed in accordance with the foregoing provisions and the result thereof declared by the committee, the chairman of the executive committee shall make a list of the candidates for county and precinct offices who received the necessary vote to nominate and shall certify the same and deliver it to the county clerk of the county. At the meeting of the executive committee after the first primary, if a majority of the votes be required to nominate for county and precinct offices, and in any case no candidate received a majority of the votes, the county executive committee shall determine the two candidates who received the highest number of votes cast for all candidates for the particular office and order their names printed on the ballot for the second primary. [As amended Acts 1933, 43rd Leg., p. 762, ch. 225, § 10; Acts 1941, 47th Leg., p. 1400, ch. 635, § 1.]

Section 12 of the Act of 1941 repealed articles 3149 and 3151 and article 3152 as amended by Acts 40th Leg., ch. 19, as amended by Acts 42nd Leg., ch. 241 and all other conflicting laws.

Art. 3126. [3124] Tie in primary.—If, upon a canvass of the returns of the first primary election, it appears that for a county or precinct office, the two highest candidates have received an equal number of votes, then the names of such two highest candidates shall be certified for places on the ballot of the second primary, unless the said candidates shall agree in writing to cast lots for such nomination. Should a tie vote result from any contest in the second primary

election, then the executive committee shall provide for the casting of lots in the presence of said candidates, and that candidate who shall be successful by lot shall be certified as the nominee for such office. [Acts 1905, 1st C.S., p. 554, § 133; Acts 1941, 47th Leg., p. 1400, ch. 635, § 2.]

Art. 3127. [3126–7] Tabulated statement.—The chairman of the executive committee in each county shall, as soon as the vote in the primary election has been counted and canvassed, as provided in this chapter, prepare a tabulated statement of the votes cast in his county for each candidate for each nomination for a State, district, county or precinct office, and of that cast for county chairman, as shown by the canvass made by the county executive committee, and shall immediately mail such statement as to a state or district office, in a sealed envelope by registered letter, to the chairman of the state executive committee, who shall present the same to the state executive committee, as herein provided. The state executive committee shall meet at the seat of government not later than the second Saturday following the day of the first primary election and shall canvass the returns for all state and district offices. In the event any candidate for a district office received in the first primary the necessary vote to nominate, the state executive committee shall certify the name of such candidate to the county clerks of the proper district to be printed upon the official ballot for the general election as a candidate of the party for said office. In the event no candidate for a particular state or district office received the necessary vote to nominate at the first primary, the state executive committee shall upon canvassing the returns, determine the two candidates who received the largest number of votes cast for all candidates for the particular state or district office and shall order that the names of those candidates be printed upon the official ballot for the second primary election. [Acts 1905, 1st C.S. pp. 549–553, §§ 117–131; Acts 1933, 43rd Leg., p. 762, ch. 225, § 11.]

Art. 3128. [3129] Boxes and ballots returned.—Ballot boxes after being used in primary elections, shall be returned with the ballots cast as they were deposited therein by the election judges, locked and sealed, to the county clerk, and unless there be a contest for a nomination in which fraud or illegality is charged, they shall be unlocked and unsealed by the county clerk and their contents destroyed by the county clerk and the county judge without examination of any ballot, at the expiration of sixty (60) days after such primary election. Provided, that the district judge, upon his own motion or upon the request of the county or district attorney, may, by an order entered on the minutes of the district Court, defer the destruction of the contents of such ballot boxes for a period not exceeding twelve (12) months after such primary election. [Acts 1905, 1st C.S., p. 557, § 143; Acts 1941, 47th Leg., p. 1400, ch. 635, § 3.]

Art. 3129. [3130] To publish nominees.—The county clerk, under his official hand and seal, shall cause the names of the candidates who have received the necessary vote to nominate, as directed by the county executive committee and as certified by the chairman of said committee, for each office, to be published in some newspaper published in the county, if any there be, but if there be no newspaper published in the county, then he shall post a list of such names in at least five public places in the county, one of which notices shall be posted at the courthouse door. Provided, that if a contest for the nomination for any county or precinct office in the county be pending, publication or posting as to that office shall be deferred until the contest is finally determined, after which, he shall post or publish as to that particular office as hereinabove set out. [Acts 1905, 1st C.S., p. 557, § 131; Acts 1941, 47th Leg., p. 1400, ch. 635, § 4.]

Art. 3130. [3131] Objections to nomination; jurisdiction of district court; procedure.—The District Court shall have original and exclusive jurisdiction of all contests for nominations growing out of primary elections. Any candidate desiring to contest the declared result of any primary election in which he was a candidate, shall file his suit in the District Court within ten (10) days from the date of declaring the result by the executive committee, and process shall be served upon the opposite party as in other civil suits, except that the return day thereof shall be fixed by the District Judge. However, upon the filing of any such suit, the contestant shall forthwith deliver, or cause to be delivered, a true copy of his petition or complaint to the opposite party. The filing of the suit shall be immediately called to the attention of the District Judge by the Clerk of said Court. If the District Court be then in session, the Judge thereof shall set the said contest for trial at a date not more than ten (10) days from the date of the filing of said contest. If the District Court be not in session at said time, the Judge thereof shall order a special term of said Court to be convened not later than ten (10) days from the filing of such contest for the hearing of same, and in either case, the said contest shall have precedence over all other matters. The contestee shall file his answer within five (5) days from the filing of such suit, but either party, or both, shall have the right to amend before announcing ready for trial and set up additional causes of action or matters of defense, as the case may be. Any further changes in the pleadings shall be within the sound discretion of the Court. In the trial of such cause, the trial judge shall have wide discretion as to matters of pleading, procedure and admissibility of evidence, the purpose of this article being to subserve the ends of justice, rather than strict compliance with technical rules of pleading, procedure, and evidence. The District Court shall have the exclusive power to determine the regularity of the election in the county or any precinct, and the legality or illegality of any ballot involving a question of law, or mixed question of law and fact. When the issues involved in such contest have been adjudicated, the District Court shall cause its decision to be certified to the county clerk of the county. [As amended, Acts 1941, 47th Leg., p. 1400, ch. 635, § 5.]

Art. 3131. [3132] Name printed on ballot.—After the names of the successful candidates have been published or posted in compliance with Article 3129, and all contests, if any, have been determined, the county clerk shall cause the names of all the nominees to be printed on the official ballot in the column for the ticket of that party. [Acts 1905, 1st C.S., p. 557, § 131; Acts 1941, 47th Leg., p. 1400, ch. 635, § 6.]

Art. 3132. [3133] To post names of candidates.—Each county clerk shall post in a conspicuous place in his office, for the inspection of the public, the names of all candidates that have been lawfully certified to him to be printed on the official ballot, for at least ten days before he orders the same to be printed on said ballot; and he shall order all the names of the candidates so certified printed on the official ballot as otherwise provided in this title. [Id. sec. 132.]

Art. 3133. [3110] Referendum on platform demands.—No political party in this State, in convention assembled, shall place in the platform or resolutions of the party they represent any demand for specific legislation on any subject, unless the demand for such specific legislation shall have been submitted to a direct vote of the people, and shall have been endorsed by a majority of all the votes cast in the primary election of such party; provided, that the State executive committee shall, on petition of ten per cent of the voters of any party, as shown by the last primary election vote, submit any such question or questions to the

voters at the general primary next preceding the State convention. [Acts 1907, p. 328.]

Art. 3134. [3134] County and precinct conventions.—On the first Saturday after primary election day for 1926, and each two years thereafter, there shall be held in each county a county convention of each party, to be composed of one delegate from each precinct in such county for each twenty-five votes, or a major fraction thereof, cast for the party's candidate for Governor at the last preceding election, which delegates shall be elected by the voters of each precinct on primary election day, in such manner as may be prescribed by the county executive committee at their meeting on the second Monday in June, which convention shall elect one delegate to the State and several district conventions for each three hundred votes, or a major fraction thereof, cast for the party's candidate for Governor in such county at the last preceding general election; and the delegates to said convention so elected, or such of them as may attend the said convention, shall cast the vote of the county in such conventions. Immediately upon the adjournment of each such county convention, the president thereof shall make out a certified list of the delegates to each of said conventions chosen by such county convention and shall sign the same, the secretary of such convention attesting his signature, and shall forward such certified list by sealed registered letter to the chairman of the State and district executive committees, who shall present the same to the respective committees at its meeting prior to the convention; and from such certified list, the respective committees shall prepare a temporary roll of those selected as delegates to such convention: provided, that no proxies shall be allowed to, or recognized in, any convention held by authority of this title, where a delegate from the county is present in the convention. [Id. sec. 115.]

Art. 3135. [Repealed by Acts 1933, 43rd Leg., p. 762, ch. 225, § 12.]

This article was amended by Acts 1927, 40th Leg., p. 280, ch. 196, § 1.

Art. 3136. [3137] Place for State convention.—At the meeting of the State executive committee held on the second Monday in June preceding each general primary election, the said committee shall decide upon and publish the place where the State convention of the party shall be held on the first Tuesday after the third Monday after the fourth Saturday in August, A. D. 1928. [Acts 1st C. S. 1905, p. 545, sec. 109; Acts 1927, 40th Leg., 1st C. S., p. 27, ch. 15, § 1.]

Art. 3137. [3138] State committee to canvass.—On the third Monday after the fourth Saturday in July 1928, and every two years thereafter the State executive committee shall meet at a place selected at the meeting held on the second Monday in June preceding, and shall open and canvass the returns of the primary elections held on the fourth Saturday in July as to candidates for State offices, as certified by various county chairmen, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the State committee and certified by its chairman. If such returns show that for any State office no candidate received a majority of all the votes cast for all candidates for such office, such committee shall prepare a list of the two candidates receiving the highest vote for each office for which no candidate received a majority of votes cast at such primary for such office and shall certify same to the county chairmen of the several counties to be placed upon the official ballot as candidates for office at the second primary election to be held on the fourth Saturday in August thereafter. On the third Monday after the fourth Saturday in August 1928, and every two years thereafter, the State executive committee shall meet at the place selected for the meeting of the State convention and shall open and canvass the returns of the second primary election held to nominate candidates for State offices as certified by the various county chairman [chairmen] to the State chairman, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the State committee and certified by its chairman. At this meeting the State committee shall also prepare a complete list of the delegates elected to the State conventions from each county, as certified to the State chairman by each county chairman. The State chairman shall present said tabulated statement and said list of delegates to the chairman of the State convention immediately after its temporary organization on the following day, for its approval or disapproval. [Acts 1905, 1st C.S., p. 545, § 119; Acts 1918, 4th C.S., p. 192; Acts 1927, 40th Leg., 1st C.S., p. 27, ch. 15, § 2.]

Art. 3138. [3139] State convention to canvass.—The State convention shall canvass the vote cast in the entire State for each candidate for each State office as shown by the statement thereof presented to it by the State committee, and shall declare the candidates for each State office who has received a majority of votes cast for all candidates for such office in the first primary election, if any candidate receives a majority of all the votes cast for all the candidates for such office at said primary election, and if no candidate received such majority, then it shall declare the candidate who received a majority of all votes cast for such office at the second primary election, the nominee of the party for such office; and the chairman and the secretary of the State convention shall forthwith certify all such nominations to the Secretary of State. [Acts 1st C. S. 1905, p. 550; Acts 2nd C. S. 1905, p. 4; Acts 1907, p. 329; Acts 4th C. S. 1918, p. 193.]

Art. 3139. [3140] State convention.—All party State conventions to announce a platform of principles and announce nominations for Governor and State offices shall, except as otherwise provided, meet at such places as may be determined by the parties respectively on the Tuesday after the second Monday after the fourth Saturday in August, 1936, and every two years thereafter, and they shall remain in session from day to day until all nominations are announced and the work of the convention is finished. Said convention shall elect a chairman and a vice-chairman of the executive committee, one of whom shall be a man and the other a woman, and sixty-two members thereof, two from each senatorial district of the State, one of whom shall be a woman and the other a man, the members of said committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold said office until his successor is elected; and, in case of a vacancy, majority of the members of said committee shall fill the same by electing some eligible person thereto, but such person shall be of the same sex as vacating member. [Acts 1905, 1st C.S., p. 549; Acts 1918, 4th C.S., p. 193; Acts 1927, 40th Leg., 1st C.S., p. 27, ch. 15, § 3; Acts 1937, 45th Leg., p. 538, ch. 264, § 1; Acts 1939, 46th Leg., p. 308, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 3140. [3141] Certificate of nomination.—Every certificate of nomination made by the president of the State convention, or by the chairman of any executive committee, must state when, where, by whom, and how the nomination was made. [Acts S. S. 1905, p. 549.]

Art. 3141. [3142] Convention vote.—Each county in the State or district convention shall be entitled to one vote for each five hundred votes, or major fraction thereof, cast for the candidate for Governor of the political party holding the convention, at the last preceding primary election. In case, at such primary election, there were cast for such candidate for Governor less than five hundred votes in any county, then

all such counties shall have one vote. [Acts 1907, p. 329.]

Art. 3142. [3143] Mandamus.—Any executive committee or committeeman or primary officer, or other person herein charged with any duty relative to the holding of the primary election, or the canvassing, determination or declaration of the result thereof, may be compelled by mandamus to perform the same in accordance with the provisions of this title. [Acts S. S. 1905, p. 557.]

Art. 3143. [3144] Spirit of law.—No immaterial error made by any officer of a primary election, or any immaterial violation of the primary election laws by an elector, shall vitiate any election held under this title, nor be the cause of throwing out the vote of any election precinct. [Id. sec. 137.]

Art. 3144. [3145] Statement of expenses.—Within ten days after a final election, all candidates for office at such election shall file a written itemized statement, under oath, with the county judge of the county of their residence, of all the expenses incurred during the canvass for the office, and for the nomination, including amounts paid to newspapers, hotel and traveling expenses, and such statement shall be sworn to and filed, whether the candidate was elected or defeated, which shall at all times be subject to the inspection of the public. [Id. sec. 90.]

Art. 3145. [3146] Expenses of manager.—Every person who manages any political headquarters for any political party, or for any candidate before any election, and every clerk or agent of such manager for such headquarters or candidate, and every other person whomsoever who expends money, gives any property or thing of value, or promises to use influence, or give a future reward to promote or defeat the election of any candidate, or to promote or defeat the success of any political party at any election, shall, within ten days after such election, file with the county judge of the county in which the political headquarters was located, and with the county judge of the county where such manager, clerk, or other person, as the case may be, resides, an itemized statement of all moneys or things of value thus given or promised, for what purpose, by whom supplied, in what amount and how expended, and what reward was given or promised, by whom and to whom, and what influence was promised, by whom promised, and to whom said promise was given. He shall state whether he has been informed, or has reason to believe, that the person thus aiding or attempting to defeat a party or candidate was an officer, stockholder, agent or employé of, or was acting for or in the interest of any corporation, giving his name, and, if so, what corporation; and he shall if he has no positive knowledge, state the source of his information or the reasons for his belief, as the case may be; all of which shall be sworn to and subscribed before the county judge, who shall file and preserve the same, which shall at all times be subject to the inspection of the public. [Id. sec. 89.]

Art. 3146. [3147] Contest of primary.—Except for a place on party tickets for public elective offices, all contests within a political party shall be decided by the State, District, or County Executive Committee, as the nature of the office may require, each such Committee to retain all such powers and authority now conferred by law. [Acts 1909, 2nd C.S., p. 452, § 141; Acts 1941, 47th Leg., p. 1400, ch. 635, § 7.]

Art. 3147. [3148] Venue of suits or contests.—The venue of suits or contests between candidates for nomination for State office is hereby fixed in the District Court of Travis County, Texas, unless the parties shall agree upon some other county. The venue of suits between candidates involving party nomination for district offices shall be in the county in which the fraud or illegality is alleged to have occurred, or in the county that may be agreed upon by the parties. The venue of suits involving party nominations for precinct or county offices shall be fixed as in the county where such cause of action originated. Provided, that nothing herein shall be construed to prohibit the District Court in the county where any such contest may be filed from changing the venue to some other adjacent county, upon showing of adequate cause, and in the event of any such change of venue, the District Court of the county to which such contest is transferred shall be governed by all the provisions of this Act. [Acts 1909, 2nd C.S., p. 452, § 141; Acts 1941, 47th Leg., p. 1400, ch. 635, § 8.]

Art. 3148. [3149] Contest before executive committee.—The complaining candidate, if he desires to file a contest with the executive committee, shall, within five (5) days after the result has been declared by the committee or convention, cause a notice to be served on the chairman or some member of the executive committee, in which he shall state specifically the ground of his contest; and said hearing shall be set at a date not exceeding ten (10) days from the filing of said contest; and he shall also serve or cause to be served on the opposing candidate a copy of such notice, at least five (5) days prior to the date set for hearing by the committee; provided, however, that such notice may be served upon the agent or attorney of such opposing candidate, or may be served by leaving the same with some person over the age of sixteen (16) years at the usual place of residence or business of such opposing candidate, or his last address. If special charges of fraud or illegality in the conduct of the election, or in the manner of holding the convention, or in the manner of making nominations, are made, and not otherwise, the chairman, or, in case he fails or refuses, any member of the committee, shall within twenty (20) days after the primary election, or the convention, convene the executive committee, who shall then examine the charges, hear evidence and decide in favor of the party who in their opinion was nominated in the primary election, or in the convention; provided, that, before any advantage can be taken of the disregard or violation of any directory provision of the law, it must appear that, but for such disregard or violation, the result would have been different. [Acts 1909, 2nd C.S., p. 452, § 141; Acts 1941, 47th Leg., p. 466, ch. 292, § 1.]

Amendment by Laws 1941, 47th Leg., p. 1400, ch. 635, see article 3148, post.

Art. 3148. [3149] Powers of district court where fraud or illegality charged.—In addition to the powers and authority granted to the District Courts by Article 3130, as amended by this Act, where fraud or illegality is charged, if such charges of fraud or illegality be supported by some evidence, or by affidavit of reputable persons, and the ends of justice seem to require it, the Court shall have authority to unseal and reopen the ballot boxes to determine controverted issues, and the Court may recount, or under its direction cause to be recounted, the ballots cast in any or all precincts of the county to determine the true result of such election. In all such cases in which a reopening of ballot boxes is ordered, the Court shall exercise all due diligence to preserve the secrecy of the ballots, and upon completion of such recount, the said ballot boxes with their original contents shall be resealed and redelivered to the county clerk. [Acts 1909, 2nd C.S., p. 452, § 141; Acts 1941, 47th Leg., p. 1400, ch. 635, § 9.]

Amendment by Laws 1941, 47th Leg., p. 466, ch. 292, § 1, see article 3148, ante.

Art. 3149. [Repealed by Acts 1941, 47th Leg., p. 1400, ch. 635, § 12.]

Art. 3150. [3151–2] District court to certify findings; filing record in appellate court.—When the District Court shall have decided the contest, unless notice of appeal to the Court of Civil Appeals be given and an appeal bond filed within five (5) days, the said Court shall certify its findings to the officers charged with the duty of providing the official ballot for the ensuing election for observance in the preparation of the ballot for that particular party. The trial Court shall further fix a time within which the record in the trial Court shall be filed in the appellate Court, and make all such other orders in the cause as in his discretion may be necessary and expedient in order to expedite such appeal. [Acts 1909, 2nd C.S., p. 452, § 141; Acts 1941, 47th Leg., p. 1400, ch. 635, § 10.]

Art. 3151. [Repealed by Acts 1941, 47th Leg., p. 1400, ch. 635, § 12.]

Art. 3152. [3154 to 3157] By district court.—In State, district, county, precinct, or municipal offices, the certificate of nomination issued by the president or chairman of the nominating convention or chairman of the county executive committee shall be subject to review, upon allegations of fraud or illegality, by the District Court of the county in which the contestee resides, or the Judge of said Court in vacation, or in any county in which contestee was candidate for office; provided, that such allegations are filed in said Court within ten (10) days after the issuance of said certificate; and when said allegations are so filed, or the appeal from the decision of the executive committee is perfected, the Judge of the District Court shall set same down for hearing, either in termtime or vacation, at the earliest practicable time, not to exceed ten (10) days; and a copy of said grounds of contest, together with the notice of the date set for hearing shall be prepared and issued by the District Clerk and be served upon the contestee five (5) days before the hearing by said Court or Judge, and the parties to said contest shall have the right to summon witnesses; provided, however, that service upon the contestee of a copy of said grounds of said contest, together with the notice of the date set for hearing, may be had by service upon the agent or attorney of such person, or by leaving the same with some person over the age of sixteen (16) years at the usual place of residence or business of the contestee, or his last address. The said Court or Judge shall determine said contest at the earliest time practicable. A certified copy of the judgment of said Court or Judge shall be transmitted by the clerk thereof to the officers charged with the duty of providing the official ballot, and the name of the candidate in whose favor said judgment shall be rendered shall be printed in the official ballot for the general election.

For good cause shown, supported by affidavit of either party, the trial of said contest may be postponed one time for not exceeding five (5) days. [As amended Acts 1941, 47th Leg., p. 467, ch. 293, § 1.]

This article, in so far as undertaking to empower or authorize the judge of a district court to try a contested election case in vacation, was held invalid in Moore v. McCallum, 116 T. 142, 287 S.W. 493, as being in violation of Const. art. 5, § 8.

This article as amended by Acts 1927, 40th Leg., p. 24, ch. 19, § 1, and Acts 1931, 42nd Leg., p. 395, ch. 241, § 1, was repealed by Acts 1941, 47th Leg., p. 1400, ch. 635, § 12, effective 90 days after July 3, 1941, date of adjournment. The repealing section made no reference to the amendment by Acts 1941, 47th Leg., p. 467, ch. 293, § 1, which specifically amended article 3152 as previously amended in 1927 and 1931.

Art. 3153. [3158] Appeal from district court.—In all contests for party nominations filed in the District Courts under authority of this Act, either party thereto may appeal to the Court of Civil Appeals for that particular Supreme Judicial district, which appeal shall be advanced upon the docket of said Court and shall have precedence over all other cases. Provided, that no appeal in such cases shall be dismissed as moot merely because of possible interference with the printing of the official ballot, unless the appellant has been guilty of negligence in perfecting and prosecuting such appeal, (but such appellate Court shall retain jurisdiction of such appeal) and expeditiously dispose of same. [Acts 1905, 1st C.S., p. 556, § 141; Acts 1931, 42nd Leg., p. 395, ch. 24, § 2; Acts 1941, 47th Leg., p. 1400, ch. 635, § 11.]

2. BY PARTIES OF 10,000 AND LESS THAN 100,000 VOTES

Art. 3154. [3159] May nominate.—Each political party, whose nominee for Governor in the last preceding general election received as many as ten thousand (10,000) votes and less than two hundred thousand (200,000) votes, may nominate candidates for State, district and county offices under the provisions of this law by primary election, and they may nominate candidates for State offices and for United States Senator at a State convention, which shall be held the second Tuesday in August, and which shall be composed of delegates selected in the various counties and county conventions held on the first Saturday after primary election day, which shall be composed of delegates from the general election precincts in such counties elected therein at primary conventions, held in such precincts on the fourth Saturday in July. [Acts 1905, S.S., p. 542, § 99; Acts 1945, 49th Leg., p. 248, ch. 182, § 3.]

Art. 3155. [3160] State committee to determine mode.—The State committee of all such parties shall meet at some place in the State to be designated by the chairman thereof on the second Tuesday in May, and shall decide, and by resolution declare, whether they will nominate State, district and county officers by convention or primary elections, and shall certify their decision to the Secretary of State. [Acts 1905, S.S., p. 542.]

Art. 3156. [3161] For district offices.—Nominations for district offices made by such parties shall be made by conventions held on the same days as herein prescribed for district conventions of other parties, composed of delegates elected thereto at county conventions held on the same day herein prescribed for such county conventions of other parties all of which county conventions shall nominate candidates for county offices of such party. [Id.]

Art. 3157. [3162] Nominations certified.—All nominations so made by a State or district convention shall be certified by the chairman of the State or district committee of such party to the Secretary of State, and a nomination made by a county convention, by the chairman of the county committee. [Id.]

Art. 3158. [3163] Illegal participation.—No person shall be allowed to participate in any such convention who has participated in the convention or primary of any other party held on the same day. [Id.]

3. NON-PARTISAN AND INDEPENDENT CANDIDATES

Art. 3159. [3164] Non-partisan and independent candidates.—The name of a non-partisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the Secretary of State and delivered to him within thirty days after primary election day as follows: If for a State office to be voted for throughout the State, one per cent of the entire vote of the State cast at the last preceding general election; if for a congressional, supreme judicial, senatorial, representative, flotorial or judicial district office, three per cent of the entire vote cast in any such district at the last preceding general election; provided, that the number

of signatures need not exceed five hundred for any congressional, senatorial or judicial office, nor for any other office that is not filled by all the voters of the State. No application to the Secretary of State shall contain the name of more than one candidate, and no citizen shall sign such application, unless he has paid his poll tax or received his certificate of exemption; provided, that, if the office is one to which two or more persons are to be elected, his application may be for as many candidates as there are persons to be elected to that office; and provided, also that no person who has voted at a primary election shall sign an application in favor of any one for an office for which a nomination was made at such primary election. [Id. secs. 94–95.]

Art. 3160. [3166] Oath to application.—To every citizen who signs such application, shall be administered the following oath, which shall be reduced to writing and attached to such application, viz: "I know the contents of the foregoing application; I have participated in no primary election which has nominated a candidate for the office for which I (here insert the name) desire to be a candidate; I am a qualified voter at the next general election under the constitution and laws in force, and have signed the above application of my own free will." One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered. [Id. sec. 96.]

Art. 3161. [3167] Must consent to run.—The Secretary of State shall, on receipt of the application which conforms to the above requirements, issue his instruction to the county clerks of this State, or of the district, as the case may require, directing that the name of the citizen, in whose favor the application is made, shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that the citizen, in whose favor the application is made, shall first file his written consent with the Secretary of State to become a candidate, within thirty days after primary election day. [Id. sec. 97.]

Art. 3162. [3168] Independent candidates.—Independent candidates for office at a county, city, or town election may have their names printed upon the official ballot on application to the County Judge, if for a county office, or to the mayor, if for a city or town office, such application being in the same form and subject to the same requirements herein prescribed for applications to be made to the Secretary of State in case of state or district independent nomination; provided, that in county elections it shall be necessary for nomination of independent candidates for the independent candidate to file a petition with the County Judge, signed by five (5%) per cent of the entire vote cast in such county at the last general election, endorsing such candidate for a particular county office. And provided further, in elections for a city or town office, it shall not be necessary that independent candidates be nominated, but anyone otherwise qualified may have his name printed upon the official ballot for a particular office by filing his sworn application with the Mayor at least thirty (30) days prior to the election day and by paying such filing fees as may be required by statute or by charter provision. [Acts 1905, S.S. p. 542, § 98; Acts 1947, 50th Leg., p. 148, ch. 86, § 1.]

Section 2 of the Act of 1947 repealed all conflicting laws.

4. BY PARTIES WITHOUT STATE ORGANIZATIONS

Art. 3163. [3169] Parties without State organization.—Any political party without a State organization desiring to nominate candidates for county and precinct offices only may nominate such candidates therefor under the provisions of this title by primary elections or by a county convention held on the legal primary election day, which convention shall be composed of delegates from various election precincts in said county, elected therein at primary conventions held in such precincts between the hours of eight a. m. and ten p. m. of the preceding Saturday. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties so certified, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge, signed and sworn to by three per cent of the entire vote cast in such county at the last general election. [Id. sec. 100.]

5. FOR CITY AND TOWN ELECTIONS

Art. 3164. [3170] Executive committee.—Each incorporated city or town in this State, whether incorporated under the general or special laws, may make nominations for office in the following manner: In each of said cities and towns there shall be an executive committee for each political party, consisting of a city chairman and one member for each ward in such city or town, and in case such city or town is not divided into wards, for either political or election purposes, then there shall be selected four members of said committee, in addition to the city chairman. If any city or town shall be divided into wards, for either political or election purposes, or both, then such party executive committee shall consist of one member from each ward and a city chairman of such executive committee. Provided, however, that no city or town in this State shall have a smaller number than four executive committeemen and a chairman of such executive committee. In all cities and towns which now have no executive committee, the county chairman of the party desiring to make nominations in such cities and towns shall appoint an executive committee to serve until the next city election shall be held, and in each city and town in this State in which a political party may desire to make nominations, there shall be held, at least thirty days prior to the regular city election, an election at which there may be nominated by such political party, officers to be elected at the next city election, and at which election there shall be selected the executive committee for such party in said city or town herein provided for, and in all such city primary elections, the provisions of the law relating to primary elections and general elections shall be observed. The executive committee herein provided for may decide whether or not nominations shall be made by such political party in such city or town; provided, that upon petition being made to said city or county chairman, signed by twenty-five per cent of the voters of the party in such city, as shown by the last general State election, requesting that party nominations be made for city officers, then said city executive committee, through an order of its chairman, shall order a primary election or mass convention of the qualified voters of the party, as may be petitioned for by the voters presenting said petition, and it shall thereupon be the duty of said city executive committee to grant such request as shall be contained in such petition, and such primary election or mass convention shall be ordered, and it shall be mandatory upon such city or county chairman to order such election or mass convention to be held within ten days from the time such petition is presented. At such primary election or mass convention a new executive committee shall be selected to serve during the ensuing term; provided that this law shall not be construed so as to prevent independent candidates for city offices from having their names upon the official ballot, as provided for by law. This article shall not

repeal the provisions of any charter heretofore or hereafter specially granted to any city in this State. [Id.; Acts 1911, p. 18.]

6. MISCELLANEOUS

Art. 3165. [3172–3] Nomination declined.—A nominee may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed, ten days before the election, if it be for a city office, and twenty days in other cases, a declaration in writing, signed by him before some officer authorized to take acknowledgments. Upon such declination (or in case of death of a nominee), the executive committee of a party, or a majority of them for the State, district or county, as the office to be nominated may require, may nominate a candidate to supply the vacancy by filing with the Secretary of State in the case of State or district officers, or with the county judge in the case of county or precinct officers, a certificate duly signed and acknowledged by them, setting forth the cause of the vacancy, the name of the new nominee, the office for which he was nominated and when and how he was nominated. No executive committee shall ever have power of nomination, except where a nominee has died or declined the nomination as provided in this article. [Id. sec. 118.]

Art. 3166. [3174] Party name.—No new political party shall assume the name of any pre-existing party; and the party name printed on the official ballot shall not consist of more than three words. [Id.]

Art. 3167. [3175] National convention.—Any political party desiring to elect delegates to a national convention, shall hold a State convention at such place as may be designated by the State executive committee of said party, on the fourth Tuesday in May, 1928, and every four years thereafter. Said convention shall be composed of delegates duly elected by the voters of said political party in the several counties of the State at primary conventions to be held on the first Saturday in May 1928, and every four years thereafter. Said primary conventions shall be held between the hours of ten o'clock a. m. and eight o'clock p. m. These primary conventions shall elect delegates to the county conventions of the several counties, which shall be held on the first Tuesday after the first Saturday in May 1928, and every four years thereafter. The qualified voters of each voting precinct of the county shall assemble on the date named, and shall be presided over by a chairman who shall have been previously appointed by the county executive committee of the party, and shall be a qualified voter in said election precinct. Said convention may elect from among their number a secretary and such other officers as may be necessary to conduct its business. The chairman of said convention shall possess all the power and authority that is given to election judges under the provisions of this title. Before transacting any business, the chairman shall cause to be made a list of all qualified voters present. The name of no person shall be entered upon said list, nor shall he be permitted to vote or to participate in the business of such convention, until it is made to appear that he is a qualified voter in said precinct, from a certified list of the qualified voters, the same as is required in conducting a general election. After the convention is so organized it shall elect its delegates to the county convention and transact such other business as may properly come before it. The officers of said convention shall keep a written record of its proceedings, including a list of the delegates elected to the county conventions, which shall constitute the returns from said convention. The same shall be signed officially, sealed up and safely transmitted by the officers thereof to the chairman of the county executive committee of the party to be used by them in making up the roll of the delegates to the county convention. [Acts 1905, 1st C.S., p. 555, sec. 139.]

Art. 3167a. Nominations for two or more state offices of same classification.—Whenever nominations for two or more state offices of the same classification are to be made at the same primary or general election, each such office shall be separately designated on the official ballot used at such primary or general election by numbering the places as "No. 1", "No. 2", "No. 3.", etc., and candidates for each place shall be separately nominated. Such designations shall be made by the State Committee of the political party holding the election. Each candidate for nomination for such offices shall designate in the announcement of his candidacy, and in his request to have his name placed on the official primary ballot, the number of the nomination or place for which he desires to become a candidate, and the names of all candidates so requesting shall have their names printed beneath the title of the office and the number so designated. No person shall be a candidate for more than one of such places. [Acts 1945, 49th Leg., p. 386, ch. 222, § 1.]

CHAPTER 14.—LIMITING EXPENDITURES IN PRIMARY

Art.
3168. Definitions.
3169. Appointing manager.
3170. Limiting expenditures.
3170a. Money paid by candidates.
3170b. Candidates for Representative in State Legislature, limiting expenses of in certain counties.
Sec.
1. Counties over 100,000.
2. Provisions cumulative; repeal.
3171. Campaign contributions.
3172. Sworn statement.
3173. Leave name off ticket.

Article 3168. Definitions.—The word "candidate" shall mean any person who has announced to any other person or to the public that he is a candidate for the nomination for any office which the laws of this State require to be determined by a primary election. The words "county nomination" shall mean the nomination for any office to be filled by the choice of the voters residing in only one county or less than one county. The words "district nomination" shall mean the nomination for any office to be filled by the choice of the voters residing in more than one county. The words "State nomination" shall mean the nomination for any office to be filled by the choice of the voters of the entire State. In all cases where second primary elections may be held in compliance with any law of this State, the first and second primary elections shall for the purposes of this law be considered together as one primary election. [Acts 1919, p. 139.]

Art. 3169. Appointing manager.—Every candidate for a State or district nomination may designate a campaign manager by written appointment filed with the Secretary of State. Every candidate for a county nomination may designate a campaign manager by written appointment to be filed with the county clerk of his county, and each candidate for State or district nomination, or the lawfully designated campaign manager of such candidate, may also designate an assistant campaign manager for each county affected by such candidacy by written appointment to be filed with the county clerk of the county. Any campaign manager or assistant campaign manager designated as provided in this article may be removed by the designation of a successor, and all vacancies occurring by such removal or by death, resignation or otherwise, may be filled in the manner provided for original designations. [Id.]

Art. 3170. Limiting expenditures.—No candidate for any nomination to be determined by primary election and no campaign manager for such candidate shall himself or by or through any other person or persons, or on behalf of any other person or persons, directly or indirectly, give, pay or expend any money or pay or give anything of value or promise to give, pay or expend any money or to pay or to give anything of value, or authorize any expenditure or assume any pecuniary liability in furthering or opposing the candidacy of any persons for any nomination to be determined by a primary election in this State, except for the following purposes only, to-wit:

1. For the traveling expenses of the candidate, or of his campaign manager or assistant campaign manager as defined by this chapter, or of a secretary for such candidate.
2. The payment of fees or charges for placing the name of the candidate upon the primary ballot, and for holding and making returns of the election.
3. The hire of clerks and stenographers and the cost of clerical and stenographic work and of addressing, preparing and mailing campaign literature.
4. Telegraph and telephone tolls, postage, freight and express charges.
5. Printing and stationery.
6. Procuring and formulating lists of voters.
7. Headquarters or office rent.
8. Newspaper and other advertising and publicity.
9. Renting of halls or providing places for public meetings and all expenses of advertising and other expenses usually incident to holding such meetings.

No expenditures authorized by this article may lawfully be made or authorized or liability therefor incurred by any person other than a candidate himself, or his lawfully designated campaign manager or assistant campaign manager, or by some clerk or other agent lawfully authorized, in writing, by a campaign manager or assistant campaign manager, provided that no campaign manager or assistant campaign manager shall have more than one person so authorized to act for him at the same time.

The expenditure of any money or the giving, paying or promising to give or pay any money or anything of value, directly or indirectly by any candidate for nomination or by any campaign manager or assistant campaign manager or any authorized clerk or other employé of such campaign manager or assistant campaign manager, in furthering or opposing the candidacy of any person for nomination in a primary election, except in the manner and for the purposes authorized by the provisions of this article is expressly prohibited, and the total amount expended and authorized for these purposes and for any and all purposes connected with furthering or opposing the candidacy of any person for a nomination to be determined by a primary election by any candidate or campaign manager, shall not exceed the following amounts for each candidate for each of the following offices, to-wit:

For United States Senator	$10,000.00
For Governor	10,000.00
For all other officers to be chosen by voters of the entire State, including Judges of Courts of Last Resort, district members of Congress, and members of Congress at large	2,500.00
For members of the Court of Civil Appeals	1,500.00
For district attorney or district judge	600.00
For member of the State Senate	1,000.00
For member of the House of Representatives	300.00
For county officers in counties having a population of 50,000 or more	750.00
For county officers in counties having a population of 30,000 or more, and less than 50,000	500.00
For county officers in counties having a population of less than 30,000	300.00
(The preceding Federal census to determine the population of a county.)	
For any other position which the law may provide shall be chosen in primary election	100.00

Four-fifths of the sums stipulated in this article as the limits of expenses to be incurred by candidates and their campaign managers may be expended in the campaign preceding the first primary, and the remainder in the campaign preceding the second primary.

The limits fixed by this article for all State and district nominations shall include and cover all amounts expended or authorized to be expended by such candidate or his campaign manager and also all amounts paid or distributed to assistant campaign managers for use of expenditure in their respective counties. Any such assistant campaign manager may himself and through his lawfully authorized agent, expend in his county out of contributions made to the campaign fund by citizens of his county and collected by him or out of monies furnished him by the candidate or his campaign manager or from all such sources together, for lawful purposes permitted by this chapter, a sum which shall not exceed ten dollars for each one hundred qualified voters on the current poll tax list of such county, provided that such sum shall in no event exceed in the aggregate the sum of five hundred dollars for any county. The aggregate sums stipulated in this article as the maximum amounts that may be expended by candidates and their campaign managers shall be construed to embrace all expenditures herein authorized to be made in counties by assistant campaign managers. The expenditure of any money or the giving or promising to give or pay any money or any thing of value by any candidate or by any campaign manager or his clerk or agent, or assistant campaign manager or his clerk or agent in furthering of or opposition to the candidacy of any person for any nomination in a primary election in excess of the amount fixed and prescribed by this article, is hereby prohibited and declared to be unlawful. [Id.]

Art. 3170a. Money paid by candidates.—The amount of money paid to the State, district or county committee of any political party by any candidate for political nomination to office for the purpose of placing his or her name upon the primary ballot of such political party, shall not be included in the amount of money limited by law for campaign expenses. [Acts 1925, p. 334.] [39th Leg., ch. 131, § 1.]

Art. 3170b. Candidates for Representative in state legislature, limiting expenses of in certain counties.

Counties over 100,000

Section 1. In all counties of this State having a population of more than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, each candidate for Representative in the Legislature, may expend, or cause to be expended by his campaign manager or otherwise under the provisions of Chapter 14[1] of Title 50, Revised Civil Statutes of Texas, 1925, not to exceed Seven Hundred and Fifty Dollars ($750), or the equivalent thereof in value, for campaign expenses in the primary campaigns for nomination to such office; of which sum, not more than Six Hundred Dollars ($600) may be expended in the first primary. Other than the increase in the amount of expenditures of such campaign expenses provided for, and permitted under the provisions of this Act, all other provisions of Chapter 14, Title 50, of the Revised Civil Statutes of Texas of 1925, shall remain unaffected by this Act, and all other provisions of said Chapter 14, other than as to the amount of expenditures permitted, shall remain in full force and effect.

Provisions cumulative; repeal

Sec. 2. The provisions of this law shall be cumulative of all General Laws on the subject not in actual conflict herewith, and all laws and parts of laws in conflict herewith are repealed only in so far as such laws are in actual conflict with the provisions of this Act in their application, and in case of such conflict the provisions of this Act shall control and be effective. [Acts 1937, 45th Leg., p. 810, ch. 400.]

1 Articles 3168–3173.

Art. 3171. Campaign contributions.—It shall be lawful for any person other than a corporation to make campaign contributions to be paid directly to the candidate or his lawfully designated and appointed campaign manager or by citizens of any county to the lawfully designated and appointed assistant campaign manager for such county, such contributions to be used for lawful purposes. It shall be lawful for any one or more citizens residing in any locality to raise by voluntary contributions a fund not exceeding fifty dollars for the purpose of defraying the expenses of any political meeting to be held in such locality, such expense to include the cost of advertising such meeting, or hiring halls or providing other places for holding the same, or providing music therefor, or the bona fide traveling expenses and hotel bills of speakers, provided that a statement of all receipts and disbursements for such purposes signed and sworn to by the person or persons receiving and disbursing the same shall be filed with the county clerk of the county in which such meeting is held, within twenty-four hours after it is held. It shall be lawful for any person to expend a sum which shall not in the aggregate exceed ten dollars for postage, or telegraph or telephone tolls, or for cost of any correspondence or any other lawful purpose out of his own funds where the sum is not to be repaid to him in behalf of any one candidate. It shall be lawful for any person to contribute bona fide his own personal services and personal traveling expenses, including hotel bills while traveling, to the support of any candidacy. Except as expressly permitted by the foregoing provisions of this article, it shall be unlawful for any person other than candidates for nomination to be determined by primary elections or the campaign managers or assistant campaign managers of such candidates lawfully designated as provided in this chapter, or the agents of such campaign managers or assistant campaign managers lawfully authorized as provided in this chapter, either himself or by or through any other person or on behalf of any other person directly or indirectly to give, pay or expend any money or give or pay anything of value, or promise to give, pay or expend, any money, or authorize any expenditure or assume any pecuniary liability for the purpose of aiding or defeating or helping to defeat the nomination at any such primary election of any candidate for any nomination to be determined thereby. [Acts 1919, p. 139.]

Art. 3172. Sworn statement.—Each candidate for nomination in a primary election and every campaign manager or assistant campaign manager for any such candidate, is hereby required to keep an accurate record of all funds received and disbursed for campaign purposes, which record shall be preserved for a period of twelve months, and shall be open to inspection of all opposing candidates and qualified voters. Every candidate and campaign manager is hereby required to file a sworn statement of all moneys previously received or disbursed by him, including money borrowed and liabilities incurred but not paid, not more than thirty nor less than twenty-five days prior to the date of the primary election, and not more than twelve nor less than eight days prior to the date of the primary election, and not more than ten days after the date of the primary election. Each such statement shall include all items contained in all statements previously made in accordance with the requirements of this article, if any, and shall include the names of all contributors to any campaign fund handled by the party making the same, and the names of all persons from whom any money has been received or from whom any money has been borrowed for such fund, and the names of all persons to whom disbursements exceeding ten dollars in amount have been made and the purpose of such disbursements. Such statement shall also set forth that it is as full and explicit as the party making it is able to make, and the party making it shall make the following affidavit, which shall be filed with said statement:

"I do solemnly swear that the foregoing statement, filed herewith, correctly shows all moneys received by me and disbursed by me or in my behalf or with my knowledge or consent through or by any other person in connection with the candidacy of ——— for the nomination for ——— before the ——— primary election, and that I have neither directly nor indirectly arranged or assented to, encouraged or connived at the spending of any money other than as shown in said statement, and that I have not violated any provision of the laws of Texas governing primary elections or the expenditure of funds in connection with a candidacy for a nomination in such primary election in letter or in spirit."

Such statements and oaths shall be filed within the times required by this article by candidates for State and district nominations and their campaign managers with the Secretary of State, and by candidates for county nominations and their campaign managers and by the assistant campaign managers of candidates for State and district nominations with the county clerk of the county in which they reside. [Acts 1913, p. 144; Acts 1919, p. 143.]

Art. 3173. Leave name off ticket.—Any candidate who shall knowingly violate, or who shall knowingly permit or assent to the violation of any provision of this chapter by any campaign manager or assistant campaign manager, or other person, shall thereby forfeit his right to have his name placed upon the primary ballot, or if nominated in the primary election, to have his name placed on the official ballot at the general election. Proceedings by quo warranto to enforce the provisions of this article, or to determine the right of any candidate alleged to have violated any provision of this chapter, to have his name placed on the primary ballot, or the right of any nominee alleged to have violated any provision of this chapter to have his name placed upon the official ballot for the general election, may be instituted at the suit of any citizen in the district court of any county, the citizens of which are entitled to vote for or against any candidate who may be charged in such proceedings with any such violation. All such proceedings so instituted shall be advanced, and summarily heard and disposed of by both the trial and appellate courts. [Id.]

This article is unconstitutional in so far as conferring jurisdiction on courts to determine alleged disqualification of gubernatorial nominee. Kilday v. State ex rel. Candler, Civ.App., 75 S.W.2d 148, mandamus denied 123 T. 549, 75 S.W.2d 253.

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CHAPTER 1.—GENERAL PROVISIONS

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3183b. Eminent domain exercised by charitable and eleemosynary corporations.

Article 3174. Management.—Each eleemosynary institution established by law shall be managed and controlled in accordance with the provisions of this title. The general control, management and direction of the affairs, property and business of such institutions is vested in the State Board of Control.

Art. 3175. Duties of superintendent.—Each superintendent shall: 1. Receive and discharge patients and pupils, superintend repairs and improvements, and see that all moneys intrusted to him are judiciously and economically expended. He shall keep an accurate and detailed account of all moneys received and expended by him, specifying the sources from which they were received, and to whom and on what account paid out.

2. Keep a register of all patients and pupils received and discharged and a full record of all operations of the institution.

3. On November 1st, of each year, submit to the Board an inventory of all the personal property belonging to the asylum, in which the estimated value shall be set opposite each article.

Art. 3176. Powers of superintendent.—The Superintendent shall be the administrative head of the institution to which he is appointed. He shall have the following powers:

1. To establish such rules and regulations for the government of the institution in his charge, as he deems will best promote the interest and welfare of its inmates.

2. Where not otherwise provided by law, to appoint the subordinate officers, teachers, attendants, and other employés, and to fix their salaries.

3. To remove for good cause, with the consent of the Board, any officer, teacher or employé.

4. The care and custody of the buildings, grounds, furniture, and other property pertaining to the institution.

Art. 3177. Accounts.—The superintendent of each asylum shall be the chief disbursing officer of the institution and subject to the rules of the Board of Control, shall have general charge over everything connected with the institution over which he presides. He shall attend to the enforcement of the laws relating to such institution and to the by-laws provided by such Board, and shall see that the employés faithfully perform their duties. He shall admit members of the Board into every part of the asylum, and exhibit to them at their request, all books, papers and accounts of the institution pertaining to its business, management, discipline and government, and shall furnish the Board copies, abstracts and reports as it may require.

Art. 3178. Reports.—On January 1st, and July 1st, of each year, the superintendent of each institution shall report to the Governor and to the Board of Control, a full sworn statement of all moneys and choses of action received by such superintendent and how disbursed or otherwise disposed of. Such report shall show in detail the operations of the institution for the term, accompanied with such suggestions and recommendations as the superintendent may deem important to the well-being of the institution, the number of employés and the salaries of each, the number of inmates received and discharged and the number still in said institution. The report shall state the general condition of the inmates, and contain an estimate of the appropriations needed for maintenance.

Art. 3179. Funds.—All funds of every character received by or belonging to the institutions, other than money appropriated for their support from time to time by the Legislature, shall as soon as received, be paid over to the State Treasurer by the Board, superintendent or other person receiving them. The Treasurer shall place such sums to the credit of the general revenue fund.

Art. 3180. Duty of Treasurer.—The State Treasurer shall keep an exact account of the moneys received by him belonging to the institutions, from what source received, and to whom paid out and on what account. To each annual report that he may be required by law to make to the Governor or to the Legislature, he shall append a full report of such account showing the receipts and expenditures thereof for the year for which such report is made.

Art. 3181. [128] Interest in contracts.—No member of the Board of Control, superintendent or other person connected with the asylums shall sell or be in any way concerned in the sale of any merchandise, supplies or other articles to the asylums, or have any interest in any contract therewith.

Art. 3182. [129] Disbursements.—The appropriations made from time to time by the Legislature for the maintenance of the asylums shall remain on deposit in the State Treasury and be paid out as are other public funds upon the warrant of the Comptroller. The Comptroller shall not draw his warrant upon the Treasurer unless the account upon which such warrant is drawn is certified as just and correct by the superintendent and is approved by the Board. [Act 1875, p. 67.]

Art. 3183. Support and maintenance.—The Legislature from time to time shall make suitable provision in the general appropriation bill or otherwise

for the proper support and maintenance of each asylum and eleemosynary institution of this State.

Art. 3183a. Oil and gas lands of State Eleemosynary Institutions and Parks.

Board for Lease of Eleemosynary and State Memorial Lands

Sec. 1. A Board is hereby created to consist of the Commissioner of the General Land Office, the Attorney General, and the chairman of the Board of Control, who shall perform the duties hereinafter indicated; the Board shall be known as the "Board for Lease of Eleemosynary and State Memorial Lands." The term "Board" wherever it appears hereafter in this Act shall mean the Board for Lease of Eleesmosynary and State Memorial Park Lands. This Board shall keep a complete record in writing of all its proceedings.

Leases authorized

Sec. 2. All lands or any parcel of same now owned, or that may be owned and held by the State as State Eleemosynary and State Memorial Park Lands may be leased by the Board to any person, or persons, firm, or corporation, subject to, and as provided for in this Act, for the purpose of leasing for agricultural purposes or for prospecting, or exploring for and mining, producing, storing, caring for, transporting, preserving, and disposing of the oil and/or gas therein belonging to the State.

Surveys and subdivisions; abstracts of title examined by Attorney General

Sec. 3. The Board is hereby authorized to cause the State Eleemosynary and State Memorial Park lands to be surveyed and subdivided into such lots or blocks as will be conducive or convenient to facilitate the advantageous sale of oil and/or gas leases thereon, and identify such lots and blocks by permanent markings on the ground, and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board shall forthwith obtain authentic abstracts of title to all Eleemosynary and State Park lands, and cause same to be examined by the Attorney General, who shall file written opinions thereon, and said Board shall take such steps as may be necessary to perfect a merchantable title to such lands in the State of Texas. Such Abstracts of Title and the Attorney General's opinion thereon shall be held on file in the General Land Office as public documents for the inspection of any prospective purchaser of oil and gas leases on said lands.

Advertisement for bids

Sec. 4. Wherever, in the opinion of the Board, there shall be such a demand for the purchase of oil and/or gas leases on any lot or tract of said land as will reasonably insure an advantageous sale, the Board shall place such oil and gas in said land on the market in such blocks or lots as the Board may designate. It shall cause to be advertised a brief description of the land from which the oil and gas is proposed to be sold, and that sealed bids for the purchase of said oil and/or gas by lease will be opened at a designated day, at ten o'clock A. M. that day, and that sealed bids received up to that time will be considered. Said advertisements shall be made:

(a) In addition the Board may in its discretion, cause said advertisement to be placed in oil and gas journals in and out of the State to be mailed generally to such persons as they think might be interested.

Opening bids; minimum royalty

Sec. 5. All bids shall be directed to the said Board in care of the General Land Office of the State of Texas, and shall be retained by the Commissioner of the General Land Office until the day designated for the opening of bids, and upon that day the said Board, or a majority of its members, shall open said bids and shall list and file and register all bids and money received. A separate bid shall be made for each whole survey or subdivision thereof. No bid shall be accepted which offers a royalty of less than one-eighth of the gross production of oil and/or gas in the land bid upon, and this minimum royalty may be increased at the discretion of the Board, all members concurring, before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than $1.00 per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five years, unless in the meantime production in paying quantities is had upon the land.

Payment accompanying bid; bid to indicate royalty and payments in addition to royalty

Sec. 6. Every bid shall be accompanied by a payment equal to the minimum price fixed on the land per acre for the delay in drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and in the annual payment herein provided for, and shall be accompanied by cash or checks collectable in Austin to cover said amounts.

Lease for reasonable and proper price; rejection of bids

Sec. 7. If any one of the bidders shall have offered a reasonable and proper price therefor, and less than the price fixed by the Board, the lands advertised, or any whole survey or subdivision thereof, may be leased for oil and/or gas purposes under the terms of this Act, and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. If after any bidding by sealed bids the Board should reject all bids, as it is hereby authorized to do, it may thereafter offer for sale and sell the oil and/or gas in said lands, in separate whole surveys only or subdivisions thereof, by open public auction at a price less than the price offered by the sealed bids. All bids may be rejected. In the event of no sale at public auction, any subsequent procedure for the sale of said oil and gas leases shall be in the manner above provided. Provided, that no lease for oil or gas shall be made by said Board which will permit the drilling for oil or gas within 1,000 feet of any building where patients are confined.

Acceptable bid filed in General Land Office

Sec. 8. If the Board shall determine that a satisfactory bid has been received for said oil and gas, it shall be filed in the General Land Office. Whenever the royalties shall amount to as much as the yearly payment as fixed by the Board, the yearly payment may be discontinued. If before the expiration of three years oil and/or gas shall not have been produced in paying quantities, the lease shall terminate.

No rentals payable pending discovery operations; lease to continue during production

Sec. 9. If during the term of any lease issued under the provisions of this Act the lessee shall be engaged in actual drilling operations for the discovery of oil and/or gas on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil or gas is discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as oil or gas is produced in paying quantities from such tract. In the event of the discovery of oil and/or gas on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from

the tract covered by such lease to properly develop the same. Failure to comply with the obligations provided by this section shall subject the holder of the lease to penalties provided in Sections 12 and 13 of this Act.

Assignments; pipe lines and roads over lands authorized

Sec. 10. Title to all rights purchased may be held by the owners so long as the area produces oil and gas in paying quantities. All rights purchased may be assigned in quantities of not less than forty acres, unless there be less than forty acres remaining in any survey, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred days after the date of the first acknowledgment thereof, accompanied by ten cents per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed in the Land Office accompanied with one dollar for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe line, telephone line, and the opening of such roads over the Eleemosynary and State Park Lands as may be deemed reasonably necessary for and incident to the purposes of this Act.

Royalties payable to General Land Office; sworn statement of production

Sec. 11. Royalty as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, for the benefit of the Special Building Fund of the Eleemosynary Institutions on or before the 20th day of each succeeding month for the preceding month during the life of the rights purchased, and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, receipts and discharges of all wells, tanks, pools, meters, pipe lines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and/or gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, or any member of the State Board of Control.

Protection of lands from drainage

Sec. 12. In every case where the area in which oil and/or gas sold shall be contiguous or adjacent to land not eleemosynary and State Park Land, the acceptance of the bid and the sale made thereof to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and/or gas is sold, as a lesser royalty, the owner shall likewise protect the State from drainage from the land so leased or sold for lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided herein for forfeitures.

Forfeiture; grounds

Sec. 13. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production, within thirty days after same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority to access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeiture, the lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon all oil and/or gas produced upon the leased area, and upon all rigs, tanks, pipe lines, telephone lines, and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of the said lease.

Records filed in General Land Office

Sec. 14. All surveys, files, records, copies of sale and lease contracts and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all royalty for deposit to the credit of the General Revenue Fund, and all rentals for delay in drilling and all other payments, including all filing assignments and relinquishment fees hereunder to the credit of the General Revenue Fund.

Expenses paid by Comptroller's warrants

Sec. 15. The expenses of executing the provisions of this Act shall be paid monthly by warrants drawn by the Comptroller on the State Treasurer, and for that purpose the sum of Two Thousand ($2,000.00) Dollars, or as much thereof as may be necessary is hereby appropriated out of any money in the Treasury not otherwise appropriated until September 1, 1930.

Partial invalidity

Sec. 16. If any provision hereof should be held unconstitutional, the balance of the Act shall not be affected thereby.

Adoption by Board of proper forms and regulations; withdrawal of lands

Sec. 17. The Board shall adopt proper forms and regulations, rules and contracts as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have power to act in all cases, except where otherwise herein provided. The Board may reject any and all bids and shall have the further right to withdraw any lands advertised for lease prior to receiving and opening bids. Any and all or parts of laws in conflict with this Act are hereby repealed.

Reservation as to lease of battlefields

Sec. 17a. The said board herein created shall have no right, power or authority to lease for any purpose any of the land composing the San Jacinto Battlefield lands or any other lands where battles were fought for Texas Independence and Washington Park on the

Brazos, and it is hereby expressly forbidden from leasing same. [Acts 1930, 41st Leg., 4th C.S., p. 55, ch. 32.]

Art. 3183b. Eminent domain exercised by charitable and eleemosynary corporations.—That any Charitable or Eleemosynary Institution incorporated under the laws of the State of Texas, shall have the right of eminent domain and condemnation within the confines of any corporated city in this State having more than 43,000 inhabitants according to the United States Census of 1920, which city is in a county having a population of less than 100,000 inhabitants according to said Census; such Charitable or Eleemosynary Corporation shall have the right to eminent domain with all rights and powers as fully as are conferred by Law upon steam railway corporations, which power of eminent domain shall be exercised in accordance with the provisions of Title 52, Revised Statutes of Texas of 1925. [Acts 1931, 42nd Leg., Spec. L., p. 132, ch. 52, § 1.]

CHAPTER 2.—STATE HOSPITALS

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Art. 3184. Superintendent; qualifications; removal; State Board of Control, powers as to witnesses; witness fees.—Section 1. The Superintendent of each State Hospital shall be a married man, a skilled physician authorized to practice medicine in Texas, and shall have not less than five (5) years experience in the treatment of mental diseases. He shall reside at the hospital with his family and shall devote his time exclusively to the duties of his office, and may be removed by the State Board of Control for good cause after a trial in a court of competent jurisdiction in Travis County, Texas, and a judicial determination of whether good cause exists for such removal.

Sec. 2. Good cause, as referred to in the preceding Article means commission of any felony or any other offense involving moral turpitude or of the failure and refusal of any Superintendent of any eleemosynary institution in the State of Texas to knowingly and willfully refuse to carry out the duties prescribed by the Legislature or by the State Board of Control.

Sec. 3. On and after September 1, 1943, the State Board of Control is authorized to enter into contract with any person having the qualifications hereinabove provided, as an employee of the State Board of Control, to act as Superintendent of any eleemosynary institution of the State of Texas, to which such Superintendent may be assigned, until such person is removed for good cause, as that term is defined in the preceding Article.

Sec. 4. Any member of the State Board of Control shall hereafter have the authority to administer an oath, issue a subpoena to any witness, enforce the attendance of such witness, punish for contempt, hear evidence, and a majority of such Board of Control shall have the right to render a judgment.

Sec. 5. One or more members of the State Board of Control may enforce the attendance of any witness to be and appear at the office of any eleemosynary institution in the State of Texas, by the issuance of a subpoena for such witness, and thereafter, if necessary, under the rules governing the District Courts of this State, to issue an attachment for any such witness, who fails or refuses to answer such subpoena, and any sheriff, constable, or other duly qualified executive officer in the State of Texas is hereby authorized and directed to serve such subpoena, or attachment for the attendance of any such witness.

Sec. 6. Any witness residing outside the county from which such subpoena is issued by any member of the State Board of Control, shall be entitled to mileage and per diem, now provided by law, for the attendance of any witness in the trial of a criminal case in any District Court of this state, and any officer of the law serving an attachment, or subpoena, shall be entitled to receive and collect such fees as are now provided by law for similar services in any District Court of this state.

Sec. 7. No inquiry shall ever be instituted by the State Board of Control until a majority thereof, by a written order, duly passed and entered in the minutes of such Board, shall have been made. [As amended Acts 1943, 48th Leg., p. 82, ch. 65, § 1.]

Section 2 of the Act of 1943 repealed all conflicting laws.

Art. 3185. Name.—The names of the various insane hospitals and asylums, and the State Epileptic Colony and the State Colony for Feeble Minded, shall be changed, and those institutions which have been heretofore created for the care and treatment of the insane, epileptic and feeble minded, shall hereafter be designated as follows:

(a) The East Texas Hospital for Insane, which is located at Rusk in Cherokee County, Texas, shall hereafter be known as the Rusk State Hospital; and it is hereby so named.

(b) The Northwest Texas Insane Asylum which is located at Wichita Falls in Wichita County, Texas, shall hereafter be known as the Wichita Falls State Hospital; and it is hereby so named.

(c) The North Texas Hospital for the Insane which is located at Terrell in Kaufman County, Texas, shall hereafter be known as the Terrell State Hospital; and it is hereby so named.

(d) The Southwestern Insane Asylum which is located at San Antonio in Bexar County, Texas, shall hereafter be known as the San Antonio State Hospital; and it is hereby so named.

(e) The State Lunatic Asylum which is located at Austin, in Travis County, Texas, shall hereafter be known as the Austin State Hospital; and it is hereby so named.

(f) The State Colony for Feeble Minded which is located at Austin, in Travis County, Texas, shall hereafter be known as the Austin State School; and it is hereby so named.

(g) The State Epileptic Colony which is located at Abilene in Taylor County, Texas, shall hereafter be known as the Abilene State Hospital; and it is hereby so named.

Art. 3185a. State Hospital established west of one hundredth meridian.—There shall be constructed, established, and maintained a hospital for the care, treatment, and support of mentally ill persons of this State. It shall be known as the State Hospital; that after the said hospital has been located then the name of the town near which it is located shall be added to the name so as to thereafter read ———— State Hospital. The hospital shall be located at some point west of the one hundredth meridian, or within any county through which the one hundredth meridian passes, and any place where not less than three hundred (300) acres of good fertile agricultural land can be secured by donation to the State of Texas.

The Board of Control of the State of Texas shall select a site for said hospital, and the Board, in selecting such site, shall make such selection with a view to its accessibility and convenience to the greatest number of inhabitants, the supply of water, building material, fuel, fertility of soil, and healthfulness, and the same shall contain not less than three hundred (300) acres of land as above described. Said Board shall take title to the land so selected by them in the name of the State of Texas for the use and benefit of said hospital; provided, however, that the Attorney General's Department shall first approve the title to the said land so selected by the said Board.

At the completion of the buildings, and when the said hospital is ready to open, the Board of Control shall appoint a Superintendent and other employees to superintend and carry on the work of such hospital as is now provided by the General Laws of the State of Texas governing such institutions.

The support and general maintenance of said hospital shall be the same in every respect as is provided for insane hospitals as now provided by law.

There shall be constructed upon said grounds so selected permanent, suitable, substantial, and fireproof buildings sufficient to accommodate at least five hundred and forty (540) inmates; said buildings to be provided with modern improvements for furnishing water, heat, ventilation, and sewerage; and the Board of Control immediately after this Act goes into effect and after the selection of the site for said hospital, and after the title of said land shall have been approved by the Attorney General, shall advertise for plans and specifications for said buildings and contract for the erection of the same; and shall have the power and authority to do and perform all things necessary for carrying out the purpose of this Act. Provided that all buildings authorized by this Act, and for which an appropriation is hereby made, shall be of fireproof construction, and that the part of all plans and specifications for the erection of said buildings relating to fire protection shall be subject to the approval of the State Fire Insurance Commission.

That there shall be and there is hereby appropriated out of the General Revenues of this State not otherwise appropriated the sum of Eight Hundred and Seventeen Thousand Dollars ($817,000) for the buildings and improvements and the expenses incurred in securing the lands for the site, providing that no money herein appropriated shall be expended for the payment of the lands selected for the site.

The total appropriation as heretofore set out shall be allocated as follows:

Item 1 Ward building and equipment...	$115,000.00
Item 2 Ward building and equipment...	115,000.00
Item 3 Psychopathic building and equipment	127,000.00
Item 4 General hospital-clinic building and equipment.....	75,000.00
Item 5 Administration building and equipment	100,000.00
Item 6 Employees' quarters and equipment	60,000.00
Item 7 Storeroom-warehouse and equipment	40,000.00
Item 8 Utility and other buildings, utility and other equipment, roads, sidewalks, furniture, livestock, implements, and contingencies	185,000.00
Grand total, proposed new hospital.....	$817,000.00

In the expenditure of the above itemized amounts, the Board of Control shall have the authority to make proper adjustments in the above set forth items. [Acts 1937, 45th Leg., p. 793, ch. 388, § 1.]

Sections 2 and 3 of Acts 1937, 45th Leg., p. 793, ch. 388, which were similar to section 1 of the act except that they appropriated the sum of $817,000.00 for establishment of a state hospital east of the 96th meridian, were vetoed by the governor.

Art. 3186. [144] Discharged convict.—When a convict shall be discharged from any State penitentiary and is insane at the time of his discharge and shall be adjudged by a court of competent jurisdiction within thirty days after his discharge to be insane and that he should be placed under restraint, he shall be delivered to the superintendent of the State penitentiary to be conveyed to one of the State hospitals. The expenses incurred in such adjudication and in keeping

and conveying such patient to the hospital including such clothing as shall be necessary for his comfort, shall be paid by the State upon the certificate of the superintendent. [Acts 1895, p. 164.]

Art. 3186a. Insane convicts; trial as to insanity by County Judge of Walker County.—Sec. 1. When any prisoner confined in the State Penitentiary becomes insane, he shall be treated by the prison physician at Huntsville and shall be observed by said physician and the Warden of the Penitentiary; and when, in the judgment of said physician or Warden, such convict is insane and should be transferred to one of the State Hospitals for treatment of the insane, then either said prison physician or said warden shall go before the County Judge of Walker County, Texas, and make affidavit to said fact, and the County Judge shall forthwith proceed to try said convict in the same manner as other persons and under the same rules of procedure as apply to the trial of citizens who become insane. Upon trial, if said convict is found to be insane, the County Judge before whom he is tried shall issue his warrant for transfer of said convict to one of the State Hospitals for the treatment of the insane or other place provided hereafter by law, provided the provision of this law shall not apply to prisoners under sentence of death and confined within the State Penitentiary.

Sec. 2. When a State Convict, located on any of the prison farms, becomes insane, he shall immediately be transferred to the main prison at Huntsville for observation and treatment.

Sec. 3. The County Judge and Officers trying said convict shall receive the same fees as allowed by law for the trial of such cases in the County Court; but all costs and expenses incident thereto including Court costs and fees, and the costs of providing the necessary clothing for the admission of said convict to a State Hospital for the treatment of the insane, together with the expense of transferring said prisoner to such an institution shall be paid by the manager of the Prison System out of funds allowed for management and operation of the Prison System.

Sec. 4. The headquarters and main offices of the Texas Prison System, being located at Huntsville, in Walker County, that County is given exclusive venue in the trial of insane convicts who are inmates of the Texas Prison System. [Acts 1931, 42nd Leg., p. 25, ch. 21.]

Art. 3187. Applicable to other institutions.—All laws now in force in any way affecting the East Texas Hospital for the Insane, the Northwest Texas Insane Asylum, the North Texas Hospital for Insane, the Southwestern Insane Asylum, the State Lunatic Asylum, the State Colony for Feeble Minded and the State Epileptic Colony, shall apply to the Rusk State Hospital, the Wichita Falls State Hospital, the Terrell State Hospital, the San Antonio State Hospital, the Austin State Hospital, the Austin State School and the Abilene State Hospital, subject to such changes in said laws as shall be hereinafter made.

Art. 3188. Divide into districts.—The Board of Control shall divide the State into hospital districts, may change the districts from time to time, and shall designate the State hospitals to which insane, epileptic and feeble-minded persons from each district shall be admitted and may transfer patients from one institution to another. All such persons within any such districts committed, shall be committed to the State hospital designated for that district, or to the United States Veterans' Administration or such other agency or department of the United States as will accept such insane person for care or treatment. The said State Board of Control shall also have authority to transfer any legally committed patient from a State hospital to the United States Veterans' Administration or any other agency or department of the United States as will accept such person of unsound mind for care or treatment, and in case such transfer is or shall be made, the commitment and transfer order shall constitute legal authority for the restraint of such patient by the United States Veterans' Administration or such other agency or department of the United States until the Court by which such patient was adjudged insane and committed shall order such patient released. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2025, ch. 485, § 1.]

Art. 3189. [Repealed by Acts 1937, 45th Leg., p. 293, ch. 152, § 6.]

Art. 3190. Board of Control shall appoint.—The superintendent of the psychopathic hospitals hereinafter mentioned shall be appointed by the Board of Control. Each superintendent shall be a well qualified physician thoroughly trained in psychiatry, and experienced in hospital management. He shall reside at the hospital and shall devote his whole time exclusively to the duties of his office. Each superintendent shall be appointed for an indefinite time, his continuance in service being determined by the character of administration rendered by the hospital, and shall receive a salary of ($4,000.00) dollars per annum, payable monthly; provided that any superintendent may be dismissed by the Board of Control for good cause, the reasons for such dismissal to be specified in writing, and filed with the Secretary of State.

Art. 3191. Clinic.—The Board of Control may through its agents and institutions, develop a mental hygiene clinic service for co-operation with the State Department of Public Instruction and local boards of education in the study of the mental and physical health of children who are seriously retarded in school progress or in mental development, and of all children who present problems in personality development.

Art. 3192. State psychopathic hospital.—There shall be established and maintained a Psychopathic Hospital at Galveston to be known as the Galveston State Psychopathic Hospital, and one at Dallas to be known as the Dallas State Psychopathic Hospital. The Galveston State Psychopathic Hospital shall be a hospital for the treatment of nervous and mental diseases both in the hospital and out patient clinic, and shall be available as a part of the teaching facilities in mental medicine for the State Medical College. The Dallas State Psychopathic Hospital shall be a hospital for the treatment of nervous and mental diseases both in the hospital and in out patient clinic.

Art. 3192a. Dallas State Hospital created; consolidation of hospitals.—That the Dallas State Hospital is hereby created, to be composed of the Dallas Psychopathic Hospital as defined in Chapter 2, Article 3192, Revised Civil Statutes, 1925, and the State Cancer and Pellagra Hospital as defined in Chapter 185 of the General and Special Laws of the 41st Legislature, Regular Session, 1929, provided there shall be only one Superintendent for said consolidated hospitals. [Acts 1931, 42nd Leg., p. 70, ch. 47, § 1.]

Art. 3192b. Galveston State Psychopathic Hospital transferred to Board of Regents of University of Texas.—Section 1. From and after the effective date of this Act, the control and management of, and all rights, privileges, powers, and duties incident thereto, the Galveston State Psychopathic Hospital, located at Galveston, Texas, which were formerly vested in and exercised by the State Board of Control, shall be transferred to, vested in, and exercised by the Board of Regents of The University of Texas, and, hereafter, the aforesaid Hospital shall no longer be a part of the eleemosynary service of the State of Texas.

Sec. 2. The Galveston State Psychopathic Hospital shall continue to be used as a Hospital for the treatment of nervous and mental diseases, both in the Hospital and out-patient clinic, and shall be avail-

able as a part of the teaching facilities in mental medicine for the School of Medicine of The University of Texas, located at Galveston, Texas. [Acts 1945, 49th Leg., p. 384, ch. 246.]

Section 3 of the Act of 1945 repealed all conflicting laws.

Art. 3193. Who may be admitted.—A person alleged to be insane, and who is not held on a criminal charge, may be committed to and confined in an institution for the custody and treatment of the insane and of other persons suffering from mental illnesses upon an order made by a county judge of the county in which the alleged insane person resides or may be, adjudging such person to be insane, upon a certificate of insanity made by two properly qualified and licensed physicians, accompanied by a verified petition therefor, or upon such certificate and petition and after a hearing to determine such question, as hereinafter provided. The Board of Control shall prescribe and furnish forms for such certificates and petitions, which shall be made only upon such forms. An insane person shall be committed only to an institution for the treatment of insane and of other persons suffering from mental illnesses, or to the care and custody of a relative; provided, that any person or someone for him may demand a jury trial as to his mental state.

Art. 3193a. Necessary certificate.—No person shall be committed to any institution for the treatment of the insane and other mentally ill persons, unless there has been filed with the county judge a certificate of the insanity of such person by two properly qualified and licensed physicians, nor without an order therefor, signed by the county judge, stating that he finds that the person committed is insane, and is a proper subject for treatment in a hospital for the insane, and either that he has been an inhabitant of the State for the six months immediately preceding such time or that provision satisfactory to the Board of Control has been made for his maintenance, or that by reason of insanity he would be dangerous if at large. The order of commitment shall also authorize the custody of the insane person either at the institution to which he shall first be committed or at some other institution to which he may be transferred by order of the Board of Control. Neither of the physicians mentioned in this section shall be a relative of the person applying for the order, or of the person alleged to be insane, nor shall he be a manager, superintendent, proprietor, officer, stockholder, or have any pecuniary interest, directly or indirectly, or be an attending physician in the institution to which it is proposed to commit such alleged insane person.

Art. 3193b. Jury not necessary.—The judge to whom such application for commitment is made, may, if no demand is made for a jury trial in behalf of the alleged insane person, proceed forthwith to determine the question of insanity, and if satisfied that the alleged insane person is insane, may immediately issue and [an] order for the commitment of such person to an institution for the custody and treatment of the insane.

Upon the demand of any relative or near friend in behalf of such alleged insane person, the judge shall, or he may upon his own motion, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion may name. Upon such day, or upon such other day to which the proceedings shall be legally adjourned, he shall hear the testimony introduced by the parties and examine the alleged insane person if deemed advisable, at some place which may be either in the court house of the county or at the residence or place of detention of the person named, and render a decision in writing as to such person's insanity. If it be determined that such person is insane the judge shall forthwith issue his order committing him to an institution for the custody and treatment of the insane and other mentally ill persons, or make such other order as is herein provided for; provided in any proceedings under this Act the person alleged to be insane and appearing before the county judge, or any person interested in such person, shall have the right to demand for such alleged insane person a trial by jury, which shall be granted as in other cases, or the county judge may, in his discretion, issue a warrant to the sheriff or his deputy, directing him to summon a jury of six men to hear and determine whether the alleged insane person is insane.

Art. 3193c. Confinement in jails.—In no case shall any insane person be confined in any other place than an institution for the treatment of the insane and other mentally ill persons, for a period longer than thirty days, nor shall such person be committed as a disorderly person to any prison, jail or lockup for criminals, except when in the judgment of the county health officer no other quarters suitable for the detention of such insane person can be provided. The county health officer in the county wherein an insane or alleged insane person may be shall see that such person is cared for in a place suitable for the comfortable, safe and humane confinement of such person, pending the determination of the question of his insanity and until his transfer to an institution for the treatment of the insane and other mentally ill person. If, in case of emergency, any such person is so placed or detained in a jail or other lockup, he shall forthwith be examined by a physician and shall be furnished suitable medical care and nursing. The reasonable expense for board, lodging, medical care, nursing, clothing and all other necessary expenses incurred by the county health officer under this section, shall be allowed by the commissioners' court and paid out of the general fund of the county. In all cases of commitment of an insane person to jail or other place of temporary restraint, a notice of such commitment, giving the name and condition of patient and character of place to which he is committed, shall be sent immediately to the State Board of Control by the judge ordering the commitment.

Art. 3193d. [161] Warrant to sheriff.—Immediately after any person is adjudged insane the county judge shall communicate with the superintendent of the State Hospital or Psychopathic Hospital of the district in which said person resides or may be at the time, and if notified by the latter that there is a vacancy in the institution, he shall issue a warrant to the sheriff or some other suitable person, directing him to convey the insane person to the hospital without delay. The county judge may permit, by special order, the assistance of one additional person to such office in cases where he deems such assistance necessary. Each female committed to any institution for the treatment of the insane and of other mentally ill persons shall be accompanied by a female attendant, unless accompanied by her father, brother, husband or son, during conveyance to such institution.

Art. 3193e. Certificate of physicians.—If a person is found by two properly qualified and licensed physicians to be in such mental condition that his commitment to an institution for the treatment of the insane and other mentally ill persons is necessary for his proper care or observation, he may be committed by the county judge to a State Hospital for thirty-five days pending the determination of his insanity; within thirty days after such commitment, the superintendent of the institution to which the person has been committed shall discharge him if he is not insane, and shall notify the judge who committed him, or if he is insane he shall report the patient's mental condition to the judge with the recommendation that he shall be committed as an insane person or discharged to the care of his guardian, relatives, or friends, if he is harmless and can properly be cared for by them, within the said thirty-five days, the committing judge may

authorize a discharge as aforesaid, or he may commit the patient to the institution as an insane person, if, in his opinion, such commitment is necessary. If in the opinion of the judge, additional medical testimony as to the mental condition of the alleged insane person is desirable, he may appoint a physician to examine and report thereon.

Art. 3193f. Certificate of physician.—The superintendent of any institution for the treatment of the insane and other mentally ill person, may, without the order of the county judge, receive into his custody and detain in such institution for not more than five days any person whose case is certified to be one of violent and dangerous insanity, or of other emergency, by two properly qualified and licensed physicians, which certificate shall be filed with a county judge as the certificate required in Article 3193a. Any peace officer shall, upon the request of the applicant or of one of the said physicians, cause the arrest and delivery of such person to such superintendent. The person applying for such admission shall within five days cause the alleged insane person to be committed to or removed from the institution, and upon his failure so to do, he shall be liable to the State for the expenses incurred and to a penalty of fifty dollars ($50.00), which may be recovered by the State.

Art. 3193g. Received temporarily.—The superintendent of any institution for the care of the insane and of other mentally ill persons, may, when requested by a physician or by a health officer, or peace officer, receive and care for as a patient in such institution, for a period not exceeding ten days, any person needing immediate care and treatment because of mental derangement other than delirium tremens or drunkenness. Such request for admission of a patient shall be put in writing and shall be filed at the institution at the time of the patient's reception or within twenty-four hours thereafter, together with the applicant's statement in the form procured or approved by the Board of Control giving such information as it deems advisable. Any such patient deemed by the superintendent as unsuitable for such care shall, upon the request of the superintendent, be removed forthwith from the institution by the party requesting his reception, and if he is not so removed, such person shall be liable to the State for all reasonable expenses incurred under this article on account of the patient, which may be recovered by the State. The superintendent shall cause every such patient either to be examined by two physicians, properly qualified and licensed, who shall cause application to be made for this admission or commitment to such institution, or to be removed therefrom before the expiration of said period of ten days unless he signs a request to remain therein as a voluntary patient as hereinafter provided. Reasonable expenses incurred for the examination of the patient and his transportation to the institution shall be allowed by the commissioners' court and paid out of the general fund of the county in which the patient resides or may be at the time of application.

Art. 3193h. Voluntary private patients; discharge; determination of incompetency.—Section 1. The superintendent of any institution to which an insane or other mentally ill person may be committed, may receive and detain therein as a boarder and patient by and with the consent of the State Board of Control any person who is desirous of submitting himself to treatment, and who, being mentally competent to make such application, makes written application therefor; and any such person who desires to so submit himself for treatment may make such written application. No such person shall be detained more than three (3) days after having given written notice of his intention or desire to leave the institution. Whenever any such person is received into any institution, the superintendent thereof shall give immediate notice of such reception to the Board of Control.

Sec. 2. The superintendent of any such institution who receives a voluntary patient must, within ninety (90) days thereafter, discharge such patient, provided such patient has not become mentally incompetent during his stay in such institution.

Sec. 3. After the admission of a patient, mentally competent to make application therefor, and during the period of his stay, should it be determined by the superintendent of such hospital in which he is confined that he is incompetent, such fact shall be certified to the County Judge of the county in Texas where such patient has a legal residence and such County Judge shall cause such patient to be tried in absentia upon a complaint charging lunacy, verified and filed by the superintendent or other physician of the institution where such patient is confined, or any other duly licensed physician. Such County Judge shall appoint a licensed attorney of the State of Texas to represent such patient and no such patient shall be adjudged insane, except upon the evidence of two duly licensed physicians, one of whom shall be on active duty at the institution where such patient is confined. All such evidence may be by deposition, or given in person, and the case shall be tried for the county by the county or district attorney. After trial, a transcript of the record thereof shall be transmitted by the clerk of the County Court to the hospital having such patient in custody. [As amended Acts 1943, 48th Leg., p. 251, ch. 152, § 1.]

Art. 3193i. Temporary absence.—The superintendent of any institution, after the examination as hereinafter provided, may permit any inmate thereof temporarily to leave such institution in charge of his guardian, relatives, friends, or by himself, for a period not exceeding twelve months, and may receive him when returned by any such guardian, relative, friend, or upon his own application, within such period, without any further order of commitment; but no patient, who has been charged with or convicted of some offense and been adjudged insane in accordance with the provisions of the code of criminal procedure, shall be permitted to temporarily leave such institution under any circumstances. The superintendent may require as a condition of such leave of absence, that the person in whose charge the patient is permitted to leave the institution shall make reports to him of the patient's condition. Any such superintendent, guardian, relative or friend may terminate such leave of absence at any time and authorize the arrest and return of the patient. Any peace officer of this state shall cause such patient to be arrested and returned upon the request of any such superintendent, guardian, relative or friend. Any patient, except such as are charged with or convicted of some offense, who has been adjudged insane in accordance with the provisions of the code of criminal procedure, who has returned to the institution at the expiration of twelve months may be granted an additional leave of not to exceed two years, by the superintendent, or upon his recommendation. [As amended Acts 1943, 48th Leg., p. 394, ch. 266, § 1.]

Section 2 of the Act of 1943 declared an emergency.

Art. 3193j. Money and clothing.—No patient in a State hospital shall be discharged therefrom or permitted to leave on a temporary visit without suitable clothing; and the Board of Control may furnish the same, and such an amount of money, not exceeding twenty dollars ($20.00) as they may consider necessary. Inquiry shall be made into the future situation of every patient about to be discharged or permitted to be temporarily absent, and precautionary medical advice shall be given him. No patient shall be discharged or permitted to be temporarily absent from any insti-

tution without a personal examination of his mental condition made by one of the hospital physicians within forty-eight hours of his departure, the result of which shall be entered in his case record.

Art. 3193k. Restraining patients.—No restraint in the form of muffs, waist straps, wristlets, anklets, camisoles, lock chairs, lock cribs, protection sheets or other devices interfering with free movement shall be imposed upon any patient in any institution unless applied in the presence of the superintendent or of the physician or of an assistant physician of the institution, or on his written order, which order shall be preserved in the files or records of the institution. Such device shall be applied only in cases of extreme violence, active, homicidal and suicidal condition, physical exhaustion, infectious disease or following an operation or acts which have caused serious bodily injury; except that in case of emergency, restraint may be imposed without the presence of the superintendent, physician or assistant physician and without a written order; but each emergency case after the imposition of such restraint shall be immediately reported to the superintendent or to the physician or assistant physician of the institution who shall immediately investigate the case and approve or disapprove of the restraint imposed.

Art. 3193l. Instruments of restraint.—The superintendent or head physician of every institution, or in his absence, one of the assistant physicians shall personally keep under lock and key all implements or devices of restraint not in actual use.

Art. 3193m. Record of restraints.—The superintendent or head physician of each institution shall cause to be kept in a book provided for the purpose, records of all cases wherein restraint is used. Such record shall be open for inspection at all times by the director of the division of mental hygiene, by the Board of Control and by all other persons having control of the institution and other State officers, and shall contain a complete record relative to the restraint, including the cause for the same, the form used, the name of the patient, the time when the patient was placed under restraint and the time when he was released. Restraint as here used shall include therapeutic and chemical restraint and confinement in a strong room as well as seclusion in solitary confinement, except when patients are placed in single rooms at night, but shall not include the prolonged bath, the hot or cold pack, or a medication when it is used as a remedial measure and not as a form of restraint.

Art. 3193n. Guardians of insane.—Nothing herein shall be held to affect or repeal the provisions of any law now existing or hereafter enacted relating to the appointment of guardians of insane persons, or persons of unsound mind.

Art. 3193o. Constitutionality.—In the event that any article or provision of this Act should for any reason be held unconstitutional by the courts of this State, the same shall not affect any other article or provision of this Act, and the Legislature does hereby declare that it would have enacted each and all of the provisions of this Act without reference to any other article or provision. [Acts 1925, p. 407.] 39th Leg., ch. 174, § 25.]

Art. 3193o—1. Temporary commitment by county court without jury trial; apprehension and commitment.

Information; hearing; order

Section 1. (a) If information in writing and under oath be given to any County Judge that any person in his county who is not charged with a criminal offense, is believed to be mentally ill, and that the welfare of himself and/or others requires that he be placed in a State hospital for the mentally ill for not exceeding ninety (90) days for observation and/or treatment, and such County Judge shall believe such information to be true, he shall forthwith, in termtime or vacation, fix a day and place for the hearing and determining of the matter, which place shall be either in the Courthouse of the county, or at the residence of the person named, or at any other place in the county, as the County Judge may deem best for such person and shall give notice to such person of the time and place of such hearing. If, upon the hearing of such matter, two (2) reputable physicians authorized by law to practice medicine in the State of Texas, neither of whom is on the staff of any Texas State Hospital, and each of whom has examined the person alleged to be mentally ill within the preceding five (5) days of said hearing, shall swear that in each of their professional opinions such person is mentally ill, is neither feebleminded, an idiot, an imbecile, nor an epileptic, and that in his opinion such person should be temporarily committed for observation and/or treatment to some State hospital authorized by law to care for and treat mentally ill persons, and if thereupon the County Court finds that such person should be temporarily committed to a State hospital for observation and/or treatment, he shall so state in his order of commitment which shall be entered upon the minutes of said Court and a writ of commitment issued thereupon committing said person temporarily for observation and/or treatment to some State hospital authorized by law to care for and treat mentally ill persons. Said order of the County Court shall in no event be of any further force or effect from and after ninety (90) days from the date thereof. The Court's order shall fix the temporary commitment period at a term which shall not exceed ninety (90) days. A sworn statement of the evidence of said two (2) physicians shall be filed in said matter, and a duly certified copy thereof and the Court's order committing such person and the financial-property statement hereinafter provided for shall be forwarded immediately to the State Board of Control, and said certified copies shall be any hospital superintendent's sufficient authority to admit and hold said person in said hospital for observation and/or treatment for not exceeding ninety (90) days. Said person, while a patient of any State hospital, shall be subject to the General Laws and the rules and regulations governing said hospital. The Board of Control, upon advice of the Attorney General, shall prepare the legal forms needed hereunder and shall furnish the counties copies thereof to be used in the preparation and printing of such legal forms. No superintendent of a State hospital shall admit such person, unless and until the commitment order and papers are prepared and so filed on the approved forms.

(b) Such person may also be committed temporarily for not exceeding ninety (90) days, as hereinbefore provided, to United States Veterans' Administration Facilities and other United States Government-operated hospitals, or any other agency or department of the United States Government required or authorized by Federal Law to furnish care and treatment to such person in those cases where such agency or department of the United States Government will accept such person.

Release of temporarily committed patient

Sec. 2. A person who has been temporarily committed by the County Court to a State hospital for observation and/or treatment, may be released, discharged, or furloughed by the hospital superintendent at any time during the commitment period. Said patient shall be automatically discharged on the expiration date fixed in the Court's order and the hospital superintendent shall thereupon immediately re-

lease such patient, and any discharge from said superintendent of said patient shall operate to fully set aside in all respects said order of commitment by the County Court.

Expenses of temporarily committed patients

Sec. 3. The county shall provide transportation to and from the State hospital for such person temporarily committed to such hospital by the County Court, but the county shall be reimbursed for such expenses if the patient or relatives are financially able to pay such expenses. The county committing such person to a State hospital, acting through its County Court, shall provide all transportation expenses of returning the patient from the State hospital to the committing county within five (5) days after the hospital superintendent shall have mailed a notice by registered mail to the committing County Judge that the patient is to be released, discharged, or furloughed. Said hospital charges for the maintenance and treatment of such patient shall be paid by such patient or such patient's relatives, if they are financially able to pay, in such amounts and at such times as may be required by the State Board of Control in accordance with the laws now in force or hereinafter enacted relating to such charges of persons committed to State hospitals by jury trial. The committing county shall be liable to the State for the board and treatment of the person for all the time he remains in the State hospital after the expiration of the five-day period after notice shall have been mailed to the County Judge of said county as hereinbefore provided. The County Judge shall furnish to the State Board of Control a financial and property statement or certificate concerning the property of said person, or the property of such person's relatives who may be liable for such person's support.

Who are liable

Sec. 4. Where the patient has no sufficient estate of his own, he shall be maintained at the expense:

Of the husband or wife of such person, if able to do so;

Of the father or mother of such person, if able to do so.

Property rights of temporarily committed persons

Sec. 5. The commitment of a person under this Act shall not affect his property rights nor his legal capacity.

Transfer of patients from other states to Texas

Sec. 6. The State Board of Control, upon the written application of the County Judge of a person's resident county, is authorized to accept for observation and/or treatment in any State hospital for the mentally ill, any resident citizen of Texas who may be committed to a hospital for the treatment of the mentally ill in any other State, and the county of his residence shall be, for all purposes, considered the committing county.

Partial invalidity

Sec. 7. In the event any section, subdivision, paragraph, or sentence of this Act shall be declared unconstitutional or void, the validity of the remainder of this Act shall not be affected thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding the invalid portions. [Acts 1937, 45th Leg., p. 542, ch. 268.]

Art. 3193o—2. Jury trial, commitment for more than 90 days without forbidden; inventory and appraisement; copies to institution and Board of Control.—Section 1. No person shall be committed to any state hospital or state institution for the treatment of the insane or other mentally ill persons for a period of more than ninety (90) days unless such person has been adjudged insane by a duly qualified jury in a lunacy proceeding, as provided for under the present Statutes of the State of Texas. The County Judge trying such lunacy case shall cause the clerk of said court to prepare forthwith a transcript of such proceedings in duplicate and send one (1) copy of the same to the state hospital, or institution, to which such person is committed, and one (1) copy to the State Board of Control.

Sec. 2. Hereafter the County Judge, upon conviction of any person in a lunacy trial, and the County Judge, or District Judge, in any other legal proceeding, requiring a commitment, or order to transfer any person to any eleemosynary institution of this state, shall cause within ten (10) days after the entry of judgment, to be prepared and entered in the minutes of his court, by three (3) disinterested appraisers, under oath, an itemized inventory and appraisement of the estate of any such person, if any, and shall cause the same to be issued in duplicate, duly certified by the clerk of the County Court, and a copy thereof mailed to the eleemosynary institution where such patient was committed, and one (1) copy thereof to the State Board of Control at Austin, Texas. These reports shall be made by such appraisers, certified and mailed whether such property exists, or not, and the appraisers and officers of the court shall be paid fees chargeable to the estate, if any, of such person, as are now allowed by law in guardianship proceedings.

Sec. 3. In the event there has been a guardianship, or other legal proceeding had on the estate of any person, or persons legally committed to any eleemosynary institution, as provided in the preceding section of this law, then and in such event the Judge presiding at such trial will cause to be made at the time of trial certified copies of the inventory and appraisement of such estate by the clerk thereof, and a copy mailed to the eleemosynary institution to which such person was committed, and a copy to the State Board of Control at Austin, Texas, for which said clerk is authorized to charge against such estate the fees now allowed by law for certified written instruments. These certified copies are to be made and mailed as herein provided in lieu of the requirements of the preceding section of this Act.

Sec. 4. It is hereby made the duty of the clerk of the County Court of each county in Texas, to make two (2) certified copies of the inventory and appraisement, if any, of the estate of any person heretofore committed to any eleemosynary institution of this State, and to mail a copy thereof to the institution where such person is confined, and one (1) copy to the State Board of Control at Austin, Texas, for which such County Clerk may charge the fees now provided by law for making certified copies of instruments.

Sec. 5. It shall be the duty of the County Clerk to make two (2) certified copies of the inventory and appraisement of the estate of any person confined in any eleemosynary institution in the State of Texas that may hereafter come to his knowledge and to mail a copy thereof to the institution where such person is committed, and a copy thereof to the State Board of Control at Austin, Texas, for which said clerk is hereby authorized to collect the fees provided by law from the estate of any such person for making certified copies of instruments. [Acts 1943, 48th Leg., p. 347, ch. 226.]

Art. 3194. [145] [146] Transportation.—The expenses of conveying all public patients to the asylum shall be borne by the counties respectively from which they are sent; and said counties shall pay the same upon the sworn account of the officer or person performing such service, showing in detail the actual expenses incurred in the transportation. In case any

public patient is possessed of property sufficient for the purpose, or any person legally liable for his support is so possessed of property, the county paying the expenses of such transportation shall be entitled to reimbursement out of the estate of the lunatic or the property of the person legally liable for his support, which may be recovered by the county on suit brought therefor. [Acts 1876, p. 140.]

Art. 3195. [147] [149] Transportation home.—The expense of conveying to their homes public patients discharged from the asylums, and the necessary clothing furnished to them at the time of their discharge, shall be paid by the State. Any officer who may convey a patient to the asylum in accordance with the provisions of the preceding article shall be paid for such service out of the funds of the asylum at the rate of ten cents per mile for himself and each necessary guard he may employ, going and returning and the same for the patient going, the distance to be determined by the superintendent, according to the most direct traveled route. [Id. p. 119.]

Art. 3196. [148] Escape.—If any person confined in the asylum shall escape therefrom, it shall be the duty of any peace officer to apprehend and detain him and report the same to the county judge of the county, and also to the superintendent of the asylum, and upon the order of either to convey such patient back to the asylum. [Id. p. 119.]

Art. 3196a. Classes of patients admitted.

Indigent patients; non-indigent patients

Section 1. Patients admitted to State hospitals and State psychopathic hospitals shall be of two classes, to wit:

Indigent patients;

Non-indigent patients;

Indigent patients are those who possess no property of any kind nor have anyone legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

Non-indigent patients are those who possess some property out of which the State may be reimbursed, or who have someone legally liable for their support. This class shall be kept and maintained at the expense of the State, as in the first instance, but in such cases the State shall have the right to be reimbursed for the support, maintenance, and treatment of such patients.

Persons chargeable with expenses of patients

Sec. 2. Where the patient has no sufficient estate of his own, he shall be maintained at the expense:

Of the husband or wife of such person, if able to do so;

Of the father or mother of such person, if able to do so.

Investigations to determine means of support

Sec. 3. The State Board of Control is authorized to demand and conduct investigations in the County Court to determine whether or not a patient is possessed of or entitled to property and/or whether or not some other person is legally liable for his support, maintenance, and treatment and to pay therefor, and to have citation issued and witnesses summoned to be heard on said investigation.

Contracts fixing support

Sec. 4. The State Board of Control, directly or through an authorized agent or agents, may make contracts fixing the price for the support, maintenance, and treatment of patients in any State hospital or psychopathic hospital at a sum not to exceed the cost of same or for such part thereof as such respective patient, his relatives or guardian of his estate may be able to and agree to pay, and binding the persons making such contracts to payment thereunder.

State representative in filing claims in probate court

Sec. 5. Upon the written request of the State Board of Control the County or District Attorney, or in case of the refusal or inability of both to act, the Attorney General, shall represent the State in filing a claim in Probate Court or a petition in a Court of competent jurisdiction, wherein the guardian of such patient and/or other person legally liable for his support, may be cited to appear then and there to show cause why the State should not have judgment against him or them for the amount due it for the support, maintenance, and treatment of such patient; and, upon sufficient showing, judgment may be entered against such guardian or other persons for the amount found to be due the State, which judgment may be enforced as in other cases. A verified account, sworn to by the superintendent of the respective hospitals or psychopathic hospitals wherein such patient is being treated, or has been treated, as to the amount due shall be sufficient evidence to authorize the Court to render judgment therein. The County or District Attorney representing the State shall be entitled to a commission of ten (10) per cent, of the amount collected. All moneys so collected, less such commission, shall be, by the said attorney, paid to the State Board of Control, which shall receive and receipt for the same and shall use the same for the maintenance and improvement of said institution or institutions in which said patient shall have been confined.

Repeals

Sec. 6. Section 4, Chapter 174, Acts, Regular Session of the Thirty-ninth Legislature, being Article 3189, Revised Civil Statutes of Texas of 1925, and all laws and parts of laws in conflict with this Act, be and they are hereby expressly repealed. There is however, specifically reserved and preserved to the State any and all rights and causes of action that accrued or arose under and by virtue of said Section 4, Chapter 174, Acts, Regular Session, Thirty-ninth Legislature, being Article 3189, Revised Civil Statutes of Texas of 1925, or any other laws repealed by this Act.

Partial invalidity

Sec. 7. If any section, sentence, clause, or part of this Act shall, for any reason, be held to be invalid, such decision or holding shall not affect the remaining portions of this Act, and it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause, or part thereof irrespective of the fact that any other sentence, section, clause, or part thereof may be declared invalid. [Acts 1937, 45th Leg., p. 293, ch. 152.]

PASTEUR HOSPITAL

Art. 3197. [166] Admission to.—Any person affected with hydrophobia within this State shall be admitted to the Pasteur Hospital or department for the treatment of hydrophobia, under the management of the Austin State Hospital, such admission to be upon the certificate of a practicing physician and the recommendation of any county judge in this State. [Acts 1903, p. 195.]

Art. 3198. [167] Expense of patients.—All indigent persons afflicted with hydrophobia in the State shall be treated at the expense of the State at said Pasteur Hospital, but the county in which such indigent persons reside shall pay the traveling expenses of such persons to and from Austin and the necessary living expenses of such persons while in Austin undergoing said treatment, such expenses to be paid upon the order of the commissioners court of the county in which such persons reside when satisfactory showing is made to said court as to indigency and the reasonableness and the necessity of the expense. All non-indigent persons shall be kept, treated and maintained

at said hospital at their own expense or that of the relatives, friends or guardians. [Id. Acts 1907, p. 321; 1917, p. 359.]

Art. 3199. [168] Laws applicable.—Laws pertaining to the introduction and control of said patients shall be the same as those applying to the Austin State Hospital. [Acts 1907, p. 320.]

Art. 3200. [169] Disposition of fees.—All fees collected from non-indigent patients shall be used as the Board and superintendent may direct for the support and maintenance of said hospital. [Id.]

Art. 3201. [170] Compensation of assistant physician.—The board may allow such additional compensation, not to exceed two hundred and fifty dollars per annum, to the assistant physician who does the work of this department, out of such fees collected as may be justified by the extra labor done by said assistant. [Id.]

CHAPTER 3.—OTHER INSTITUTIONS

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Article 3202. [195] Application for admission.—Application for the maintenance, care and education of all deaf, dumb and blind children shall be made by the parent or guardian of such child or chil-

dren to the superintendent of the asylum under such rules as may be prescribed. [Acts 1st C. S. 1901, p. 20.]

Art. 3202—a. Price for care.—The Board of Control, directly or through an authorized agent or agents, may make contracts fixing the price for the support, maintenance and treatment of children maintained, supported and treated, in the State Orphans Home, the State Home for Dependent and Neglected Children, the Texas School for the Deaf, the Texas School for the Blind, Austin State School, and the Deaf, Dumb and Blind Institute for Colored Youths, at a sum fixed by the State Board of Control, not to exceed the actual cost of supporting such child, or for such part thereof as the estate of said child or any person legally liable for such child's support may be able to pay or agree to pay, and binding the person making such contracts to payments thereunder. The costs of educating such children, however, shall not be included in arriving at such costs. Such payments by guardians shall be in accordance with the legal method controlling expenditures by guardians. The Board of Control is authorized to demand investigation to determine whether or not a child is possessed of or entitled to property and whether or not some other person is legally liable for his support and to pay therefor. The county judge of the county from which the child is received into such institution or the county having jurisdiction over the estate of such child, may from time to time, upon the request of the State Board of Control, cite the guardian of such child, or other persons legally liable for his support, to appear at some regular term of the county court having jurisdiction of such matter, then and there to show cause why the State should not be paid or have judgment for the amount due it for the support and maintenance of such child; or such guardian or other persons legally liable for the support of such child may be cited to appear at some regular term of the district court having jurisdiction of such matter, then and there to show cause why the State should not have judgment for the amount due it for the support and maintenance of such child; and, if sufficient cause be not shown, judgment may be entered against such guardian or other persons for the amount found to be due the State, which judgment may be enforced as in other cases. The certificate of the superintendent of the State institution or school wherein such child is being, or shall have been supported and maintained, as to the amount due, shall be sufficient evidence to authorize the Court to render judgment. The county or district attorney, upon request of the State Board of Control, shall appear and represent the State in all cases provided for in this Section; provided, however, that the provisions of this Act shall not apply to any child maintained, supported or treated in the Texas School for the Deaf; Texas School for the Blind; Deaf, Dumb and Blind Institute for Colored Youths, unless the person legally liable for the support of such child agrees to pay such cost as is herein provided. [Acts 1931, 42nd Leg., p. 191, ch. 112, § 2; Acts 1945, 49th Leg., p. 50, ch. 33, § 1.]

Art. 3202—b. Failure to make required payments.—In the event any payments are not made as required by the Board of Control it may provide for the discharge of any such children of said institutions or schools. [Acts 1931, 42nd Leg., p. 191, ch. 112, § 3.]

DEAF AND DUMB ASYLUM

Art. 3203. [190] To teach printing.—A certain number of the pupils at the Deaf and Dumb Asylum, to be designated by the superintendent, shall each year receive instruction in the art of printing in all its branches; and the studies of such pupils shall be so arranged as not to interfere with such instruction and the execution of any public printing by them for the State. [Acts 1875, p. 91.]

Art. 3204. [193] Public printing.—Any public printing for the State may be executed at the Deaf and Dumb Asylum without regard to any contract with an individual to do the public printing thereof. [Id. Acts 1875, S. S. p. 35.]

Art. 3205. [191] [192] Instructor.—The board shall employ a competent practical printer as instructor at said asylum in the art of printing; and the person so employed shall also discharge such other duties as the Board may require. His compensation shall not exceed one thousand dollars annually, and he may be discharged at any time by the Board. [Acts 1875, p. 91.]

TEXAS SCHOOL FOR THE BLIND

Art. 3206. Board of Trustees.—The Board of Trustees of the Texas School for the blind shall be composed of the Governor, the Lieutenant Governor and the Attorney General of Texas, of which Board the Governor shall be chairman, and the superintendent of the Texas School for the Blind shall be secretary; and said Board shall take the title to any real estate acquired under this law to "The Board of Trustees of the Texas School for the Blind," and their successors as trustees, for the use and benefit of the State of Texas. [Acts 1st C. S. 1915, p. 36.]

Art. 3207. [188] [189] Oculist.—The Board of Control shall appoint a skilled oculist for the blind asylum. Such oculist must be married and shall attend regularly at the asylum and administer treatment to all cases of curable blindness among its pupils. He shall hold his office for two years, and the Board of Control may remove him for good cause. [Acts 1883, p. 109.]

Art. 3207a. State Commission for the Blind; quorum; vacancies; powers and duties.—Section 1. There is hereby created and established the State Commission for the Blind, consisting of six (6) members to be appointed by the Governor and confirmed by the Senate of Texas. Two (2) to be graduates of the Texas School for the Blind and the other four (4) to be outstanding citizens of Texas, and whose terms of office shall be for six (6) years each, or until their successors shall have been appointed and qualified; provided, however, that the Governor shall name the Chairman thereof and that four (4) members thereof shall constitute a quorum for the transaction of business; providing the term of two (2) members to expire January 1, 1945, the term of two (2) members to expire January 1, 1947, and the term of two (2) members to expire January 1, 1949; provided, however, that the present members of the State Commission for the Blind who have previously been appointed by the Governor and confirmed by the Senate shall continue to hold office for the terms to which they have been appointed. The Governor shall designate which appointee he desires to fill each term and shall make such appointments immediately after the effective date of this Act. Vacancies shall be filled for any unexpired term by appointment by the Governor with the advice and consent of the Senate. On January 1, 1945, and biennially thereafter, vacancies existing on said Commission shall be filled and members selected shall be appointed for a full term of six (6) years, and each member of said Commission shall hold office until his successor has been appointed and has qualified by taking the oath of office. [As amended Acts 1939, 46th Leg., p. 313, § 1; Acts 1943, 48th Leg., p. 324, ch. 208, § 1.]

Sec. 2. The State Commission for the Blind shall maintain a Bureau of Information, the object of which shall be to aid the blind whose training is not otherwise provided for, in finding employment, in developing home industries among the blind, and in marketing their products. The Commission shall in its discretion furnish materials, tools and books for

the use as a means in rehabilitating such persons, and it may establish workshops and salesrooms, and shall have authority to use any receipts or earnings that accrue from the operation of industrial schools, salesrooms or workshops as provided in this Chapter, but detailed statement of receipts or earnings and expenditures shall be made monthly to the Auditor of the State. Through the employment of teachers the Commission may give instruction to adult blind persons in their homes; provided that it shall not undertake the permanent support or maintenance of any blind person. The Commission may also register cases of persons whose eyesight is seriously defective or who are likely to become visually handicapped or blind, and take such measures, in cooperation with other authorities, as it may deem advisable for the prevention of blindness or conservation of eyesight, and in appropriate cases, for the education of children and for the vocational guidance of adults having seriously defective sight. The Commission may receive gifts, bequests, or devises from individuals, associations or corporations, and may expend them in accordance with the provisions of this Act.

Sec. 3. The State Commission for the Blind may appoint and fix the compensation of an executive secretary and such other workers as may be necessary to make effective the purposes of this Act within the appropriations provided.

Sec. 4. The Commission shall make a detailed report to the Legislature by January 1st of each biennium in which it convenes, showing all appropriations received and how the same have been expended, and covering its activities and accomplishments and making recommendations therein for the further improvement of the conditions of the blind in the State. [Acts 1931, 42nd Leg., p. 122, ch. 80.]

Section 2 of the Act of 1943 repealed conflicting laws.

Art. 3207b. Commission; eligibility for appointment; compensation; secretary.—No paid employee of any agency carrying on work for the blind shall be eligible for appointment. Members of the Commission for the Blind shall serve without compensation but shall receive their necessary traveling and other expenses actually incurred in the performance of their duties. The Commission for the Blind shall annually elect a Secretary and such other employees as may be authorized by the general or special appropriation for said Commission. [Acts 1943, 48th Leg., p. 324, ch. 208, § 3.]

Art. 3207c. Vocational rehabilitation of blind.

Definitions

Section 1. As used in this Act:

(a) "Commission" means the State Commission for the Blind;

(b) "Division" means the Division of Vocational Rehabilitation established by this Act;

(c) "Director" means the Executive Secretary-Director of the State Commission for the Blind;

(d) "Employment handicap" means a physical or mental condition which constitutes, contributes to or if not corrected will probably result in an obstruction to occupational performance;

(e) "Disabled individual" means any person who has a substantial employment handicap;

(f) "Blind" means a person having not more than 20/200 of visual acuity in the better eye with correcting lenses; or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees;

(g) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the Director to be necessary to compensate a blind disabled individual for his employment handicap, and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counselling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, and training books and materials;

(h) "Rehabilitation training" means all necessary training provided to a blind disabled individual to compensate for his employment handicap including, but not limited to, manual, pre-conditioning, pre-vocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities;

(i) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled blind individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions;

(j) "Prosthetic appliance" means any artificial device necessary to support or take the place of any part of the body or to increase the acuity of a sense organ;

(k) "Occupational licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation;

(l) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation;

(m) "Regulations" means regulations made by the Director with the approval of the State Commission for the Blind.

Establishment of Division of Vocational Rehabilitation

Sec. 2. There is hereby established in the State Commission for the Blind a Division of Vocational Rehabilitation.

Director of State Commission for the Blind

Sec. 3. The Division shall be administered, under the general supervision and direction of the Commission, by a Director appointed by such Commission in accordance with established personnel standards and on the basis of his education, training, experience, and demonstrated ability. In carrying out his duties under this Act the Director:

(a) shall make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for vocational rehabilitation services, procedures for fair hearings and such other regulations as he finds necessary to carry out the purposes of this Act;

(b) shall, with the approval of the Commission establish appropriate subordinate administrative units within the Division;

(c) shall, with the approval of the Commission, appoint such personnel as he deems necessary for the efficient performance of the functions of the Division;

(d) shall prepare and submit to the Commission annual reports of activities and expenditures and, prior to each Regular Session of the Legislature, estimates of sums required for carrying out this Act and estimates of the amounts to be made available for this purpose from all sources;

(e) shall make certification for disbursement, in accordance with regulations, of funds available for vocational rehabilitation purposes;

(f) shall, with the approval of the Commission, take such other action as he deems necessary or appropriate to carry out the purposes of this Act;

(g) may, with the approval of the Commission, delegate to any officer or employee of the Division such

of his powers and duties, except the making of regulations and the appointment of personnel, as he finds necessary to carry out the purposes of this Act.

Administration

Sec. 4. The Commission, through the Division, shall provide vocational rehabilitation services to blind disabled individuals determined by the Director to be eligible therefor and, in carrying out the purposes of this Act, the Division is authorized, among other things:

(a) To cooperate with other departments, agencies and institutions, both public and private, in providing for the vocational rehabilitation of blind disabled individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of this Act, such programs, facilities, and services as may be necessary or desirable;

(b) to enter into reciprocal agreement with other States to provide for the vocational rehabilitation of residents of the States concerned;

(c) to conduct research and compile statistics relating to the vocational rehabilitation of disabled blind individuals.

Cooperation with Federal Government

Sec. 5. The Commission, through the Division, shall cooperate, pursuant to agreements, with the Federal Government in carrying out the purposes of any Federal statutes pertaining to vocational rehabilitation and is authorized to adopt such methods of administration as are found by the Federal Government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation; provided, however, that the Commission shall not adopt any rule or regulation which is inconsistent with existing State laws, and to comply with such conditions as may be necessary to secure the full benefits of such Federal statutes.

Receipt and disbursement of Vocational Rehabilitation Funds

Sec. 6. The State Treasurer is hereby designated as the custodian of all funds received from the Federal Government for the purpose of carrying out any Federal statutes pertaining to vocational rehabilitation. The State Treasurer shall make disbursements from such funds and from all State funds available for vocational rehabilitation purposes upon certification in the manner provided in Section 3(e).

Gifts

Sec. 7. The Director is hereby authorized and empowered, with the approval of the Commission, to accept and use gifts made unconditionally by will or otherwise for carrying out the purposes of this Act. Gifts made under such conditions as in the judgment of the Commission are proper and consistent with the provisions of this Act may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

Eligibility for vocational rehabilitation

Sec. 8. Vocational rehabilitation services shall be provided to any blind disabled individual (1) who is a resident of the State at the time of filing his application therefor and whose vocational rehabilitation, the Director determines after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another State or with the Federal Government: Provided, that, except as otherwise provided by law or as specified in any agreement with the Federal Government with respect to classes of individuals certified to the Commission thereunder, the following rehabilitation services shall be provided at public cost only to disabled blind individuals found to require financial assistance with respect thereto:

(a) Physical restoration;

(b) transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;

(c) occupational licenses;

(d) customary occupational tools and equipment;

(e) maintenance;

(f) training books and materials.

Maintenance not assignable

Sec. 9. The right of a disabled blind individual to maintenance under this Act shall not be transferable or assignable at law or in equity.

Hearings

Sec. 10. Any individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the Division shall be entitled, in accordance with regulations, to a fair hearing by the Commission.

Misuse of vocational rehabilitation lists and records

Sec. 11. It shall be unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program, and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for or receiving vocational rehabilitation, directly or indirectly derived from the records, papers, files, or communications of the State or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

Limitation of political activity

Sec. 12. No officer or employee engaged in the administration of the vocational rehabilitation program shall use his official authority or influence or permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the results thereof or for any partisan political purpose. No such officer or employee shall take any active part in the management of political campaigns or participate in any political activity, except that he shall retain the right to vote as he may please and to express his opinions as a citizen on all subjects. No such officer or employee shall solicit or receive, nor shall any such officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose. Any officer or employee violating this provision shall be subject to discharge or suspension.

Separability

Sec. 14. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby. [Acts 1945, 49th Leg., p. 374, ch. 24.]

Section 13 of the Act of 1945 repealed all conflicting laws.

STATE ORPHAN HOME

Art. 3208. [197] [200] Duties of Superintendent.—The superintendent shall keep a carefully prepared list containing the name and age of each child, as well as such other data concerning the history of said child as the Board may prescribe, and said lists shall be recorded in a well-bound book for said purpose, and subject to the inspection of all persons who may desire to examine its contents. He shall annually deliver to the proper authorities a list of all children within the scholastic age, and see that their pro rata of the public free school fund is set aside to their credit, and that they are provided with proper educational facilities. He shall promptly answer all

inquiries, by mail or otherwise concerning the orphans under his charge, and promptly inform the Board when an opportunity is presented to secure a good and permanent home for any child under his charge. [Acts 1887, p. 129; 1899, p. 303.]

Art. 3209. [198] Industrial manager.—The Board shall elect an industrial manager for said home whose duties and salary shall be prescribed by the Board, subject to legislative appropriation, not to exceed fifteen hundred dollars per annum. [Id.]

Art. 3210. [203] Matron.—A matron of said Home shall be chosen by the superintendent, with the consent of the Board, whose salary shall not exceed forty-five dollars per month. [Acts 1887, p. 129.]

Art. 3211. [199] Children admitted.—All children under the age of fourteen years, shall be admitted subject only to such restrictions as the Board may deem requisite to the welfare of said Home. [Id.]

Art. 3212. [201] Removal of children.—No person shall be permitted to remove a child from said home except under such lawful rules and regulations as the Board may adopt. In no case shall a child be removed therefrom by any person other than the natural guardian of said child, or the duly qualified guardian of the person of such child, or the parent of said child by adoption. [Id.]

CONFEDERATE HOME

Art. 3213. [205] Duties of Board.—The State Board of Control shall be governed in its regulations of the affairs of the Confederate Home by the laws relative to the Deaf, Dumb and Blind institutions of this State so far as the same may be applicable, and shall make such rules and regulations as may be necessary for the internal government, discipline and management of the home, and shall have power to enforce compliance with said rules and regulations by discharging from the home, if in its judgment it be necessary, any inmate who may violate said rules and regulations. Said Board shall make such examination from time to time as it may deem necessary, as to the qualifications and record as a soldier in the Confederate army or navy of any inmate, and discharge at once any inmate who procured admission to the home by fraud or misrepresentation. Said board shall, every three months, cause to be examined by a board of physicians consisting of the home physician and two others not connected with the home, any inmate who may be designated by the superintendent and the home physician or by any member or the Board as to the physical condition of such inmate and if it be shown from said examination and report of said examining board of physicians that any inmate so examined has sufficiently recovered from his disabilities to be able to earn a living, such inmate shall be given an honorable discharge from the home, with transportation to the place from which he entered the home; provided, however, that such inmate be given twenty days notice of his dismissal, and that he be subject to all rules and regulations governing the home during said twenty days, or such part of that time as he may remain in the home after said notice of dismissal be given. The two physicians assisting the home physician in such examination shall be selected by the board, and shall be paid for such service two dollars and fifty cents each for each examination so made. Said Board shall also have charge of all the property received from the John B. Hood Camp Confederate Veterans, or from any other source for the maintenance of said home. [Acts 1891, p. 14; 1895, p. 42.]

Art. 3214. [206] Superintendent.—The Board shall appoint a superintendent who shall be an ex-Confederate soldier or the son of an ex-Confederate soldier, whose duties of office shall be the supervision of the affairs of said home, keeping the accounts of same, and its general management, under the direction of the Board. He shall be under the control of said Board. He shall keep in a book prepared for that purpose, the name and age of each inmate, date of admission to the home, the company and regiment or other command or capacity in which the military service was performed, and the State from which he entered the service, and such other data concerning the history of the inmates as the Board may prescribe. [Acts 1895, p. 42; 1921, p. 154.]

Art. 3215. [207] Secretary to the superintendent.—The superintendent of said home shall be authorized to employ one secretary who shall keep the books of the institution and discharge such other duties as may be required of him by the superintendent. He shall be furnished board and lodging similar to other employés of the home. [Acts 1903, p. 54.]

Art. 3216. [208] Application for admission.—All applications for admission to said home must show on the oath of the applicant:

1. Name of applicant.
2. His age.
3. His residence (county and post-office address.)
4. The company, regiment, brigade and army in which he served.
5. That he is disabled and indigent and is not receiving a pension from any source, and is now a bona fide citizen of Texas. And further (if he did not serve in a Texas command) that he was a bona fide resident of Texas on January 1, 1895. Proof of the honorable service of applicant, as stated by himself, must be made by affidavit of two reputable persons, or by his written discharge duly authenticated with sufficient proof of identity, or such other proof in manner and form as may be entirely satisfactory to the Board. The application must also be accompanied by a certificate of a regular practicing physician that the applicant is unable to support himself, giving the character of the disability, and that the applicant is not a lunatic, and is not afflicted with any contagious or infectious disease. All applications for admission to said home shall be passed upon by the Board. [Id.; 1895, p. 42.]

Art. 3216a. Admission to Confederate Home; Confederate Veterans given priority; senile persons, admission of; transfer from state hospitals.—Section 1. All eligible Confederate Veterans hereafter making application for admission to the Texas Confederate Home for Men at Austin, Texas, be given priority of admission, and the State Board of Control shall reserve sufficient space, at all times, for their admission and maintenance and they, together with all Confederate Veterans now maintained in said Home, and all senile persons to be transferred to said Home shall be segregated and be maintained in said Home.

Sec. 2. The Superintendent of any State Hospital is hereby authorized, upon receipt of a written order from the State Board of Control, to transfer from said Texas Hospital to the Texas Confederate Home for Men at Austin, Texas, any senile patient now being maintained in said hospital, or hereafter admitted thereto, and to relinquish custody of said senile patient, and custody of said patient is hereby placed in the Confederate Home for Men at Austin, Texas.

Sec. 3. The State Board of Control shall have the right to cause to be admitted to the Texas Confederate Home for Men at Austin, Texas, any senile aged person after such person has been duly adjudged insane, upon receipt of the certified transcript of such proceeding in the manner required by law.

Sec. 4. The Superintendent of the Texas Confederate Home for Men at Austin, Texas may, upon the recommendation of the chief physician employed at

such institution, grant any senile patient confined therein a furlough or discharge in the same manner in which such senile patients are now released from State Hospitals.

Sec. 5. The Texas Confederate Home for Men at Austin, Texas, shall never be considered a custodial institution in so far as the laws, rules and regulations governing such institution affect Confederate Veterans, but shall be and is hereby made a custodial institution for senile patients.

Sec. 6. The preceding provisions of this Act are cumulative of existing law governing the Texas Confederate Home for Men, and it is the legislative intent that such home revert to the purposes for which it has been heretofore dedicated, when other facilities for the care of the senile aged patients, contemplated by this Act, are provided. [Acts 1943, 48th Leg., p. 18, ch. 16.]

Acts 1943, 48th Leg., p. 18, ch. 16, contained two sections numbered "Sec. 7." The first "Sec. 7" made appropriations for the current biennium. The second "Sec. 7" declared an emergency and provided that the Act should take effect from and after its passage.

Art. 3217. Wife of inmate.—Any woman who is the wife of a Confederate soldier and who is an inmate of the Confederate Woman's Home, and whose husband is an inmate of the Confederate Home, and who became the wife of such soldier prior to his admission into the Confederate Home, may on her request be transferred from the Confederate Woman's Home to the Confederate Home and may remain as an inmate of the Confederate Home with her husband as long as her husband remains an inmate of that institution, and while such inmate she shall be entitled to the same care, support, maintenance and privileges, and be subject to the same discipline, rules and regulations as other inmates of that institution; but the wife of any Confederate soldier so transferred to the Confederate Home shall be immediately transferred back to the Confederate Woman's Home on the death of her husband, or whenever for any reason her husband ceases to be an inmate of the Confederate Home, or whenever in the judgment of the Board of Control it will be to the interest of the individual or of the institution to make such transfer; provided, however, that when there is room in the Confederate Home and there is an overcrowded condition existing in the Confederate Woman's Home, the Board of Control may retain at or remove to said Confederate Home any widow who is entitled to the privileges conferred by this Chapter. [Acts 1921, p. 95; Acts 1931, 42nd Leg., p. 5, ch. 4.]

CONFEDERATE WOMAN'S HOME

Art. 3218. Home established.—There shall be established in or near the city of Austin, a home for the indigent wives and widows who are over sixty years of age, of disabled ex-Confederate soldiers and sailors who entered the Confederate service from Texas, or who came to the State prior to January 1, 1880, and whose disability is the proximate result of actual service in the Confederate army for at least three months, and also for women who aided the Confederacy. This institution shall be known as the Confederate Woman's Home. [Acts 1911, p. 50.]

Art. 3219. Duties and powers of Board.—The Board shall make suitable rules and regulations for the admission of women to the benefits of said home and for the internal government and management of said home. The Board shall also provide such attendants and nurses as may be deemed necessary in the management of the Home, and fix their compensation. The Board shall appoint a superintendent for the Confederate Woman's Home, with the approval of the Governor. [Id.]

Art. 3220. Superintendent.—Said superintendent must be the widow or daughter of a Confederate soldier, and shall reside in the Home and receive free board and lodging. She may hold office for a term of two years. [Id.]

SOLDIERS' AND SAILORS' HOME

Art. 3220—1. Creation of Soldiers' and Sailors' Home; persons eligible; regulations.

Establishment; government; examinations as to qualifications

Section 1. There be and is hereby created and established a Soldiers' and Sailors' Home in the State of Texas; said Home shall be operated in conjunction with and as a part of the Confederate Home at Austin, Texas; said Home to be under the control and regulation of the State Board of Control and said Board shall be governed in the regulation of the affairs of said Home by laws relative to the affairs of the Confederate Home, Deaf, and Blind Institutes of the State of Texas so far as same may be applicable and shall be authorized to make such other regulations as may be necessary for the internal government, discipline and management of the home, and shall have power to enforce compliance with said rules and regulations by discharging from the Home as in its judgment shall be necessary, any inmate who may violate said rules and regulations. Said Board shall make such examination from time to time as it may deem necessary, as to the qualification and record as a soldier and sailor in the United States Army of any inmate, and discharge at once any inmate who procured admission to the home by fraud or misrepresentations.

Eligibility for admission; deposit of pension or compensation

Sec. 2. All honorably discharged ex-service men who served in the armed forces of the United States in the Spanish American War or the World War and have been residents of this State for five years immediately preceding the date of application for admission to the Home, unless the service of applicant is accredited to the State of Texas, and who are disabled by disease, wound or otherwise and by reason of such inability are unable to earn their living, shall be entitled to be admitted to said Home subject to the rules and regulations adopted by the Board of Control shall govern the admission of applicants. The fact that an ex-service man receives a pension or other compensation from the United States Government, shall not be considered in establishing such person's eligibility for admission to said home. Whenever it shall be deemed necessary by the Board of Control, any ex-service man receiving a pension or compensation from the United States Government residing in said home and accepting the benefits shall deposit with the Superintendent of the Home his pension money or compensation or so much thereof as said Board of Control shall determine upon receipt of his pension or compensation check. In cases where any such occupant has a wife, child or parent dependent upon him, such pension or compensation money in excess of his prorate part required for his maintenance shall be sent to such dependent person, and in other cases, the same shall be kept on deposit for such occupant, subject to the direction of the Board of Control, and all unexpended money shall be paid to the depositor in his final discharge from the home or to his heirs or legal representatives upon his decease. The provision herein concerning admission to the Home shall apply at all times to residents to be entitled to remain in said home.

Wives of ex-service men

Sec. 3. When any ex-service man is a resident or becomes a resident in the Soldiers' and Sailors' Home, the wife of such ex-service man shall be admitted as a resident of said Home provided she is

more than forty-five years of age, subject to the rules and regulations of said Home governing the admission of applicants, provided said wife, if she be the wife of an ex-service man of the Spanish American War or the World War, was married to such ex-service man at least ten years preceding the date of making application for admission and provided further said wife has no adequate means of support and by reason of physical disability is unable to earn the same.

Deposit of pension or compensation where wife is resident

Sec. 4. Every inmate residing in said Home and accepting the benefits and whose wife also resides therein and receives its benefits, shall deposit with the Superintendent of said Home any pension or compensation or other benefits in money which he may receive from the United States Government and said sum or so much thereof as may be necessary, shall be used, under the direction and supervision of said Superintendent, for the purpose of clothing said wife.

Confederate soldiers and widows

Sec. 5. Provided the Confederate Soldiers or their widows now in the Home or who shall occupy said Home hereafter shall never be discriminated against nor disturbed in any way.

Death of ex-service man when wife is resident

Sec. 6. Upon the death of any ex-service man, who is or may be a resident of said Home, the widow of said ex-service man shall be transferred to and received in the Confederate Woman's Home at Austin, Texas, if she so desires; or if she desires, she may thereafter during her natural life remain in said Soldiers' and Sailors' Home, subject to the rules and regulations of said Home.

Donations

Sec. 7. The said Board of Control is empowered and authorized to receive for and on behalf of the State any donations of money, personal property or real estate, offered for the purpose of aiding in the establishment of such Home and the future maintenance and comfort of disabled and indigent soldiers and sailors.

Supervision

Sec. 8. Said Soldiers' and Sailors' Home shall be under the supervision of the Superintendent of the Confederate Home, subject to such rules and regulations as may be determined by the State Board of Control and not inconsistent with the General Laws.

Assistance from United States

Sec. 9. The Board of Control is hereby authorized to enter into negotiations and make any agreements with the United States Government for assistance in the support and maintenance of said Soldiers' and Sailors' Home.

Repeal; partial invalidity

Sec. 10. All laws and parts of Laws, General and Special, in conflict with this Act are hereby repealed, and in the event any provision of this Act is unconstitutional or invalid, the remainder of this Act shall, nevertheless, remain in effect.

Employees

Sec. 11. Wherever practical, the Board of Control shall employ ex-service men, their widows or dependents, in the operation of said Soldiers' and Sailors' Home.

Maintenance of Home

Sec. 11a. Nothing in this Act is intended or shall ever be intended to bind or obligate the State of Texas for any financial assistance in carrying out the provisions of this Act nor shall any appropriation ever be made out of the general fund or any special fund of this State for the support or maintenance of the Soldiers' and Sailors' Home as authorized herein. It being the intention of the Legislature to permit the use of said Home as provided for herein but not assuming any expense directly or indirectly of any kind or character in connection therewith. [Acts 1939, 46th Leg., p. 314.]

TEXAS BLIND, DEAF AND ORPHAN SCHOOL

Art. 3221. [210] Powers and duties of Board of Control.

Rules and regulations

Section 1. The Board shall make all necessary rules and regulations for the government of the Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans [1] to comport as nearly as may be practicable with the rules and regulations of the asylums for like purposes in this State. Said Board shall prescribe the duties of all subordinate officers or assistants in said asylum; shall appoint and may remove all such officers or assistants, determine their duties and their compensation. The admission of all deaf, dumb and blind applicants to said asylum, their treatment, instruction and continuance therein, all questions relating to their dismissal or removal, or voluntary departure from said asylum, or employment therein, or thereabout, shall be governed by the rules and regulations of the State Asylums for white youths for the deaf, dumb and blind, and the Board of Control shall have authority to make necessary rules and regulations for the admittance, treatment, instruction and discharge of other applicants for admission to said asylum. [Acts 1887, p. 150; Acts 1929, 41st Leg., 3rd C.S., p. 523, ch. 21, § 1.]

1 Name changed, see article 3221b.

Removal of colored youth to Austin asylum

Sec. 2. The State Board of Control is hereby authorized to accept and care for, support and maintain, orphan negro children in said asylum, located at Austin, Texas. Said Board shall have authority to move any and all orphan negro children from the Dickson Colored Orphanage located near Gilmer, Texas, to Austin, and place them in said asylum, and care for, support and maintain them, in said institution whenever they deem it advisable to do so; and until such time said Board shall be authorized to use the land and other property at Gilmer, Texas, now occupied and used by said Dickson Colored Orphanage for such purpose, and shall have all powers and authority herein conferred to control the property of said orphanage at such place, and use it for such purposes until such time as suitable provisions shall be made for caring for said orphans at the said Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans at Austin, Texas. [As added Acts 1929, 41st Leg., 3rd C.S., p. 523, ch. 21.]

Section 2 was repealed by Acts 1937, 45th Leg., p. 313, ch. 162, § 3. However, the 45th Leg., by ch. 434, p. 879, § 1, repealed p. 313, ch. 162.

Appropriation for removal

Sec. 3. The sum of Seventy-five Hundred ($7,500.00) Dollars is hereby appropriated out of the State Treasury to pay the expenses of caring for and transporting said negro children as provided for in this Act, and to care for, maintain and support orphan negro children as herein provided for the fiscal year ending August 31, 1929, the same to be available to the Board of Control for such purposes. [As added Acts 1929, 41st Leg., 3rd C.S., p. 523, ch. 21.]

Additional appropriation

Sec. 4. The further sum of Thirty Thousand ($30,000.00) Dollars is hereby appropriated out of the State

Treasury for the care, maintenance, support and transportation of said orphan negro children for the year ending August 31, 1930, and also the sum of Thirty Thousand ($30,000.00) Dollars for the year ending August 31, 1931, the same to be available to the Board of Control for such purposes. [As added Acts 1929, 41st Leg., 3rd C.S., p. 523, ch. 21.]

Acceptance of donation by Dickson Colored Orphanage Incorporated

Sec. 5. The donation by the Dickson Colored Orphanage Incorporated to the State of Texas of the lands and premises, and improvements therein described in the deed conveying said property to W. H. Francis, Trustee, in trust for the State of Texas, for the establishment of an orphanage asylum for colored children; said land consisting of approximately seven hundred acres, all in solid body, situated near the Town of Gilmer in Upshur County, Texas, together with all improvements thereon, said improvements consisting of approximately twenty-nine buildings, is hereby accepted; and said trustee is hereby directed to execute and deliver the proper deed conveying said land and premises unto the State of Texas for the purpose herein specified, free from all debts, liens, or encumbrances of any character whatsoever; the instrument conveying said property shall be drawn by the Attorney General and after its execution, shall be delivered to the State Board of Control of the State of Texas to be by it filed and recorded in the office of the County Clerk of Upshur County, Texas; the said trustee shall also furnish to the Attorney General of the State of Texas an abstract of title to said property showing said property to be free from all debts, liens or encumbrances of any character whatsoever, and it is hereby made the duty of the Attorney General to examine and approve the title to said property.

The donation by the said Dickson Colored Orphanage Incorporated to the State of Texas of all personal property owned by it and used in connection with or located at said orphanage, and consisting of several carloads of brick; approximately one thousand sacks of cement; approximately nineteen mules, four horses, twenty-five head of fairly good grade jersey cattle, a breeding sow, four pigs, a few chickens, numerous farming implements, household and kitchen furniture, cooking utensils, and food supplies, is hereby accepted and the Board of Control of this State is hereby authorized and directed to accept and receive said personal property, and to use and dispose of the same as in this Act provided. [As added Acts 1929, 41st Leg., 3rd C.S., p. 523, ch. 21.]

Construction of act

Sec. 6. Nothing in this Act shall be construed so as to require the real estate herein to be deeded to the State of Texas before the Board of Control shall have the authority to use the money herein appropriated for the care of said Negro orphans, but to the contrary, this Act shall be construed so as to give the Board of Control authority to accept the property herein mentioned at any time and in any manner so long as they do not bind the State of Texas to pay any indebtedness on said property; and this Act shall also give the Board of Control authority to care for, maintain and support said Negro orphans and to provide quarters and other things incidental to the welfare of said orphans such as the Board of Control may deem advisable. [As added Acts 1929, 41st Leg., 3rd C.S., p. 523, ch. 21; amended Acts 1930, 41st Leg., 5th C.S., p. 180, ch. 40, § 1.]

Sale of Dickson Colored Orphanage property authorized

Sec. 7. As soon as all the negro children are removed from said Dickson Colored Orphanage by the Board of Control as provided for in this Act, the said Board shall be authorized, and it is hereby made its duty, to sell the said Dickson Colored Orphanage property for the best price that can be obtained therefor; said sale to be either for cash or on a credit as said Board may determine to be for the best interest of the State. The title to said real property shall be conveyed to the purchaser by deed duly executed by the members of the Board of Control, and the title to the personal property shall be passed to the purchaser by bill of sale, duly executed by said members. The proceeds from the sale of said property when collected shall be used by the said Board of Control for the purchase of additional land, the erection of additional buildings, or the support and maintenance for the said Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans at Austin, Texas, as said Board may determine to be for the best interest of said institution. [As added Acts 1929, 41st Leg., 3rd C.S., p. 523, ch. 21.]

Art. 3221a. Orphan negro children to be accepted in Home at Austin; removal of orphan negro children from Dickson Colored Orphanage.

Authority of Board of Control

Sec. 2. The State Board of Control is hereby authorized to accept and care for, support and maintain, orphan Negro children in the Deaf, Dumb, and Blind Asylum for Colored Youths and Colored Orphans, located at Austin, Texas. Said Board shall have authority to move any and all orphan Negro children from the Dickson Colored Orphanage located near Gilmer, Texas, to Austin, and place them in said asylum, and care for, support, and maintain them, in said institution whenever they deem it advisable to do so; and until such time said Board shall be authorized to use the land and other property at Gilmer, Texas, now occupied and used by said Dickson Colored Orphanage for such purpose, and shall have all powers and authority herein conferred to control the property of said orphanage at such place, and use it for such purposes until such time as suitable provisions shall be made for caring for said orphans at the said Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans at Austin, Texas.

Dickson Colored Orphanage to be sold

Sec. 3. As soon as all the Negro children are removed from said Dickson Colored Orphanage by the Board of Control as provided for in this Act, the said Board shall be authorized, and it is hereby made its duty, to sell the said Dickson Colored Orphanage property for the best price that can be obtained therefor; said sale to be either for cash or on a credit as said Board may determine to be for the best interest of the State. The title to said real property shall be conveyed to the purchaser by deed duly executed by the members of the Board of Control, and the title to the personal property shall be passed to the purchaser by bill of sale, duly executed by said members. The proceeds from the sale of said property when collected shall be used by the said Board of Control for the purchase of additional land, the erection of additional buildings, or the support and maintenance for the said Deaf, Dumb and Blind Asylum for Colored Youths and Colored Orphans at Austin, Texas, as said Board may determine to be for the best interest of said institution. [Acts 1937, 45th Leg., p. 879, ch. 434.]

Acts 1937, 45th Leg., p. 313, ch. 162, creating the Texas Home for Colored Orphans and providing for the maintenance of such Home at or near Gilmer, Texas, was repealed by Acts 1937, 45th Leg., p. 879, ch. 434, § 1.

Art. 3221b. Texas Blind, Deaf and Orphan School, name changed to.—The name of the Deaf, Dumb, and Blind Asylum for Colored Youths and Colored Orphans, which is located in Austin, Texas, be and the same is hereby changed and shall hereafter be known and designated as the Texas Blind, Deaf and Orphan School. [Acts 1947, 50th Leg., p. 497, ch. 292, § 1.]

Art. 3222. [209] Superintendent.—The Board shall appoint a superintendent of said asylum. Said superintendent shall be a man of mature years and experienced and familiar with the duties required. [Acts 1887, p. 150.]

ABILENE STATE HOSPITAL

Art. 3223. [232] Support and management.—The support and general management of the Abilene State Hospital shall be the same as is now provided for other branch asylums of this State. The Board and superintendent shall prepare and adopt by-laws, rules and regulations for the government of the hospital. [Acts 1899, p. 4; 1900, p. 16; 1901, p. 11; 1925, p. 408.] [39th Leg., ch. 174, p. 407, § 1.]

Art. 3224. [213–218–219–220] Who admitted.—All persons afflicted with epilepsy who have been bona fide residents of this State for one year next preceding the filing of his application with the county judge as herein provided, shall be admitted into the Abilene State Hospital, with the following exceptions:

Those who are infirm and bedridden or suffering from contagious or infectious disease.

The classification of all patients admitted to the hospital shall be as follows:

1. Indigent public patients.
2. Non-indigent public patients.
3. Private patients.

Indigent public patients are those who possess no property of any kind, and have no one legally liable for their support and able to reimburse the State.

Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have some one legally liable for their support and able to reimburse the State. [Acts 1903; Acts 1925, 39th Leg., p. 408, ch. 174, § 1; Acts 1943, 48th Leg., p. 105, ch. 76, § 1.]

Art. 3225. [228] Preference in admission.—When there is room in the hospital, the superintendent shall receive such patient, and when application is made for more patients than can be admitted, he shall give preference to indigent public patients over non-indigent public patients, and shall at all times give preference to both of the classes mentioned over private patients. [Acts 1903; Acts 1925, 39th Leg., p. 408, ch. 174, § 1.]

Art. 3226. [214–15–16] Transfer of insane patients.—When any person is admitted to any insane asylum, and it shall be found that such person is an epileptic, such person shall at once be transferred to said hospital, and when so transferred shall have the same classification as that given him upon his admission to the insane asylum. The superintendents of the insane asylums shall transmit to the superintendent of the said hospital all transcripts of legal proceedings and histories of all epileptics transferred which they may have. The expenses of the transportation of all patients and necessary attendants so transferred shall be paid out of the apportionment for the maintenance of the hospital. [Id.]

Art. 3227. [221] Admission of private patients.—Private patients may be admitted into said hospital upon application of parent, guardian or friend under such regulations as the Board and superintendent may prescribe, not in conflict with the provisions of this subdivision. Such patients shall be kept and maintained at the hospital at their own expense, or at the expense of their guardian, relatives or friends, and for the board and care of such patients, the superintendent may make a special contract at a rate of not less than five dollars per week; and at the time of the admission of any such patient into the hospital, his board must be paid in advance for six months and bond and security given for the prompt payment of all future expenses of such patient. All moneys so collected, shall be paid directly into the State Treasury and placed in the general fund. [Id.]

Art. 3228. [222] Application for public patients.—The parent, guardian, or friend of any epileptic not seeking admission as a private patient may make application in writing and under oath to the county judge of the county wherein such epileptic resides, for the admission of the epileptic into said hospital, which application shall show:

1. The name of the epileptic.
2. Sex.
3. Age and nativity.
4. Whether possessed of any property, and if so, what, and the estimated value thereof.
5. Whether the epileptic has any one legally liable for his support, if so, whom, what property possessed by such person, and the estimated value thereof.
6. Residence of the epileptic for the year next preceding the date of application.
7. Occupation, trade or employment.
8. Parent or parents, if living, or guardian, if any.
9. Name of husband or wife, if any.
10. Children, if any, number, age and sex.
11. Relatives similarly affected, insane, inebriate, consumptive or criminal. [Id.]

Art. 3229. [223] Certificate of examination.—Said application shall be accompanied with a certificate of a reputable practicing physician, stating that he has carefully examined the person for whose admission application is made and that such person is afflicted with epilepsy, and which certificate shall also show:

1. The age of the epileptic at first attack.
2. The date of last attack.
3. Physical condition.
4. Accompanying bodily disorders. [Id.]

Art. 3230. [223–224–225–226–227–229] Duties of county judge.—The county judge shall certify that the physician making such certificate is a reputable physician actively engaged in the practice of his profession, and has complied with the laws of this State granting license to physicians to practice medicine. If such judge is not satisfied as to the showing made in said application and certificate, or either, he may subpœna witnesses and examine them under oath touching such matters. If it be made to appear to the county judge that such epileptic is entitled to admission into the hospital under the provisions of this subdivision, he shall forward an application to the superintendent of the hospital for admission of such epileptic as an indigent or non-indigent patient, as the judge shall determine upon careful investigation, which application shall be accompanied with full copy of the proceedings had in such case, and the original shall be filed in the office of the county clerk. The county judge shall see that each patient admitted to the hospital is supplied with three full suits of substantial clothing. For all services needed in connection with such matters in each case, the county judge shall be paid three dollars by the county. [Id.]

Art. 3231. [230–231] Transportation, etc.—The expense of such clothing and the transportation of indigent public patients and necessary escort, and compensation to such escort, shall be paid by the county from which the patient shall be sent. Non-indigent public patients shall pay for such clothing, transportation and escort. In no case shall such escort be entitled to charge or receive more than two dollars per day and expenses actually necessary in going to and returning from the colony. [Id.]

Art. 3232. [219–220] Expense of public patients.—Indigent public patients shall be supported

entirely at the expense of the State. Non-indigent public patients shall be kept and maintained at the expense of the State in the first instance; but in such cases the State shall have the right to be reimbursed for the support of such non-indigent patients, and the claim of the State for such support shall constitute a valid indebtedness against any such patient, or in case he has a guardian, against his estate, or against the person or persons who may be legally liable for his support and financially able to contribute thereto, and such claim may be collected by suit or other proceedings in the name of this State by the county or district attorney of the county from which said patient is sent, against such patient, his guardian, or the person or persons liable for his support as the case may be; such suit or proceeding to be instituted upon the written request of the superintendent of the hospital, accompanied by his certificate as to the amount due the State, which shall in no case exceed five dollars per week for board. In all such suits or proceedings the certificate of the superintendent shall be sufficient evidence of the amount due the State for the support of such patient. Said attorney, upon such request being made, shall institute and conduct such suit or proceedings, and for which he shall be entitled to a commission of ten per cent of the amount collected. All moneys so collected, less such commission, shall be by the county attorney paid into the State Treasury and placed in the general funds. [Id.]

AUSTIN STATE SCHOOL

Art. 3233. Feeble minded persons defined.—A feeble minded child, as defined herein, is one of such feeble mental or moral powers as to be unable to profit by the ordinary methods of education as employed in the common schools. A feeble minded adult is one who is unable under ordinary circumstances to protect and support himself as a law abiding citizen because of lack of mental power. [Acts 1915, p. 143.]

Art. 3234. Duties and powers of board.—The Board shall employ a superintendent and fix his salary and his duties, and for cause deemed sufficient by the Board, may remove him. The superintendent shall be a man of education, with training and experience in the work of institutions of this kind; he shall have power to appoint and remove the subordinate officers and employés; he shall be responsible to the Board for the details of management of the colony, and shall only exercise the power conferred upon him by law with the approval and consent of the Board. The Board shall also determine the number and fix the salaries of other officers and employés connected with the colony. [Id.]

Art. 3235. Accommodation for inmates.—The Board shall provide accommodations for only such number of inmates from year to year as can be advantageously cared for with the appropriation granted for that year, giving preference first to girls and women of child bearing age, and to those of both sexes who are most likely to profit by the special education and training. [Id.]

Art. 3236. Release and parole of inmates.—All persons committed or admitted to said institution shall remain in its custody as permanent wards of this State until released by the management thereof. The superintendent and Board may in their discretion and subject to revocation at any time, parole any such person in the custody of parent or guardian for an indefinite period. Notice of all paroles of longer duration than thirty days shall be sent by the superintendent on the date of the parole to the committing court. [Acts 1923, p. 172.]

Art. 3237. Escape and apprehension.—Any person who may escape or be enticed or taken from the colony without being released, or who may be detained under parole after the expiration or termination of such parole, shall be apprehended and detained by any peace officer, who shall report the same to the county judge of the county where such person is found, and also to the superintendent of the school, and upon the order of either, convey such person back to the colony, and no writ shall be necessary therefor. Notice of such escape or detention shall be immediately sent to the committing court by the superintendent. Any officer who may convey a patient back to such institution under the provisions of this article shall be paid for such service out of the funds of the institution in the same manner as provided for conveying lunatics to asylums. [Id.]

Art. 3238. Expenses of inmates.—In all cases in which the parent or guardian of a feeble minded person is financially able to pay the expenses of supporting and training such feeble minded person in the school, in whole or in part, he shall be required to do so. In all other cases there shall be no fees or charges. [Acts 1915, p. 143; Acts 1925, p. 407.]

ADDITIONAL FEEBLE-MINDED INSTITUTION

Art. 3238a. Institution for feeble-minded; transfer of persons to; admitting persons; custody.—Sec. 4. No real property, improvements, and equipment will be acquired for the sum of money herein appropriated unless there can be comfortably and properly housed therein at least 350 feeble-minded patients, and such institution is hereby dedicated for the care, hospitalization, maintenance and education of feeble-minded persons having resided in the State of Texas for a period of not less than three (3) years preceding the date of their application for admission, and of not less than seven (7) nor more than twenty-one (21) years of age.

Sec. 5. The State Board of Control is hereby authorized to transfer from any existing eleemosynary institution in Texas unto the institution contemplated by this Act all such feeble-minded person or persons coming within the ages hereinabove set out, and the Superintendents of any such institutions are hereby authorized to make transfer of such feeble-minded patients to such new institution.

Sec. 6. The Superintendent of the institution contemplated by this Act shall admit any feeble-minded person upon commitment or legal transfer in the same manner as such feeble-minded person or persons are now admitted to the Austin State School, and such Superintendent is further authorized to furlough or discharge such feeble-minded person or persons within the custody of such institution in the same manner as is now prescribed by law for the discharge or parole of any patient confined in the Austin State School.

Sec. 7. The new feeble-minded institution contemplated by this Act is made a custodial institution, and the Superintendent and other officers and employees thereof are directed to hold in custody, subject to the terms of the law, all such feeble-minded person or persons committed to them by the courts of this state. [Acts 1943, 48th Leg., p. 718, ch. 396.]

Sections 1-3 of Laws 1943, p. 718, c. 396 provided for the appraisal, examination of title and purchase of real property, improvements and equipment, for the purpose of hospitalizing, maintaining, caring for and educating feeble-minded persons, at a cost of not exceeding $150,000.

Section 8 repealed certain provisions in an appropriation act of 1941. Section 9 required the purchase of real property and improvements and equipment by August 31, 1943; otherwise the funds provided for are to revert to the General Revenue Account. Section 10 thereof made appropriations for the purposes mentioned therein.

STATE TUBERCULOSIS SANATORIUM

Art. 3239. Duties of Board.—The State Board of Control shall prepare and adopt by-laws, rules and regulations for the government of the entire colonies, prescribing the duties of all officers and employés, and for enforcing the necessary discipline and restraint of

all patients. The Board shall appoint for each of said colonies a regularly licensed physician. The Board shall supply each colony with the necessary cooks, waiters, yard men, nurses, etc., for the operation and maintenance of such colonies. Each physician so appointed shall be superintendent of the institution under his control and shall have power to remove at will, and without assigning any cause whatever, any person employed in any colony over which he has such authority. All such physicians shall hold their office for two years and shall be removed only for just cause to be determined by the Board. [Acts 1911, 32nd Leg., p. 140, ch. 77, § 20.]

Art. 3240. Who admitted.—Persons afflicted with tuberculosis who shall have been citizens of this State and of the county from which he or she comes at the time of filing of their application with the county judge as hereinafter provided, shall be admitted to said institutions. A citizen of this State is defined to be any person who has actually resided therein with the bona fide intention of being a citizen thereof for a period of twelve months next preceding the date of such application. [Id.]

Art. 3241. Classification of patients.—Patients admitted to said institutions shall be of three classes, to-wit:

1. Indigent public patients.
2. Non-indigent public patients.
3. Private patients.

Indigent public patients are those who possess no property of any kind nor have any one legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have some one legally liable for their support. This class shall be kept and maintained at the expense of the State, as in the first instance, but in such case the State shall have the right to be reimbursed for the support of such patients, and the claim of the State shall constitute a valid lien against any property of any such patient or in case he has a guardian, against any property of his which is in the possession of said guardian, or against the person or persons who may be legally liable for his support and financially able to contribute as herein provided; and such claim may be collected by suit or other proceedings in the name of the State of Texas by the county or district attorney of the county from which said patient is sent, against such patient or his guardian or the person or persons liable for his support; and the suit may be brought in the county from which such patient was sent. Such suit shall be instituted upon the written request of the superintendent of said colony accompanied by a certificate as to the amount due the State, which in no case shall exceed five dollars per week for the board of such patient, together with the necessary cost incident to his transportation to said colony. In all suits or proceedings, the certificate of the superintendent shall be sufficient evidence of the amount due the State for the support of such patient. It shall be the duty of said attorney upon such request being made to institute and conduct such proceedings and for which he shall be entitled to a commission of ten per cent of the amount collected. All moneys so collected less such commission shall be by the county attorney paid to the superintendent of said colony, who shall receive and receipt for the same and shall use the same for the maintenance and improvement of said property.

Private patients may be admitted into said colonies upon application of parent or guardian or friend, under such regulations as the Board may prescribe, not in conflict with this law. Such patients shall be kept and maintained at the colony at their own expense for the board and care of such patients. The Board may make special contracts for private patients at a rate not to exceed ten dollars per week, payable in advance. All moneys collected shall be paid to the superintendent of such institution, who shall account for the same and for its use in the maintenance and improvement of said colony at which the same is received. [Id.]

Art. 3242. Application for admission.—The parent, guardian or friend of any patient seeking admission may make application in writing and under oath to the county judge of the county wherein such patient resides, for admission of said patient into said State Colony, which application shall show:

1. The name of the patient.
2. The sex.
3. Age and nativity.
4. Whether possessing any property; if so, what, and the estimated value thereof, and where located.
5. Whether the patient has any one legally liable for his support; if so, whom; what property possessed by such person; the estimated value thereof, and where located.
6. Residence of patient for two years next preceding the date of application.
7. Occupation, trade or employment.
8. Parent or parents, if living, or guardian, if any.
9. Name of husband or wife, if any.
10. Children, if any; number, age and sex.
11. Relatives similarly affected, insane, invalid, consumptive and such other information as may be required by the Board.

Art. 3243. Certificate of examination.—Said application shall be accompanied by the certificate of a reputable practicing physician, or in the case of indigent patients, by a certificate from the county physician, stating that he has thoroughly examined the person for whose admission application has been made, and that such person is suffering from tuberculosis, and the duration of said disease if known, and the accompanying bodily disorders. No person afflicted with any contagious, infectious or transmissible disease, other than tuberculosis, shall be admitted. It shall be the duty of the county judge to certify that the physician making the certificate is a reputable physician actively engaged in the practice of his profession, and has complied with the law of this State governing licenses to practice medicine. [Id.]

Art. 3244. Duties of county judge.—If the County Judge is not satisfied as to the showing made in said application and certificate or either, he may subpoena witnesses and examine them under oath touching such matter, and if it be made to appear to the Judge that such person is entitled to admission into the colonies under the provisions of this law, he shall forward an application for admission, together with the application hereinbefore described, to the Superintendent of the State Tuberculosis Sanatorium. If said County Judge shall find that the person for whom application is made is in fact not indigent, then he shall make application for such person as a non-indigent patient. [Acts 1911, 32nd Leg., p. 139, ch. 77, § 16; Acts 1943, 48th Leg., p. 75, ch. 60, § 1.]

Art. 3245. Duties of Superintendent of the Tuberculosis Sanatorium.—The Superintendent of the Tuberculosis Sanatorium shall receive such applications, file and alphabetically index the same in his office where they shall become a permanent record. If the County Judge shall determine not to make such an application for such person, then such person may make an application direct to the Superintendent of the Tuberculosis Sanatorium, and if in the judgment and opinion of the said Superintendent such patient is entitled to admission into such colony, then he shall order him to be admitted by and with the consent of the State Board of Control. The order of admission must be by the Superintendent, written, signed and

filed with the State Board of Control. [Acts 1911, 32nd Leg., p. 139, ch. 77, § 16; Acts 1943, 48th Leg., p. 75, ch. 60, § 2.]

Art. 3246. No preference in admission.—No patient in any State colony shall be discriminated against by virtue of the fact that he is an indigent, non-indigent or private patient, but they shall be treated alike, given equal facilities, equal attention and equal treatment. No patient in any such institution shall be permitted to give any officer, servant, agent or employé in any such institution any tip, pay or reward of any kind, and if such patient does so, it shall be a cause for his expulsion from said colony, and the discharge of any servant accepting the same; and the Board shall see that this provision is rigidly enforced. [Acts 1911, 32nd Leg., p. 140, ch. 77, § 17.]

Art. 3247. [Repealed by Acts 1943, 48th Leg., p. 75, ch. 60, § 4.]

Art. 3248. Clothing, etc., expenses.—The County Judge shall see that each patient admitted to the colony is supplied with three full suits of clothes and one neat top coat, all being such as may be prescribed by the Superintendent of the State Tuberculosis Sanatorium, and the expenses of the clothing and transportation of public indigent patients shall be paid by the county from which the patient is sent. If any patient is admitted directly upon the certificate of the Superintendent of the State Tuberculosis Sanatorium as an indigent patient, then the said Superintendent shall supply such patient with such clothing and his certificate thereof shall be full evidence that the same was so supplied and of the value thereof, and the county from which said patient comes shall pay the cost thereof upon presentation of said certificate. Non-indigent public patients shall pay for their clothing and transportation. [Acts 1911, 32nd Leg., p. 140, ch. 77, § 19; Acts 1943, 48th Leg., p. 75, ch. 60, § 3.]

The title of Acts 1943, 48th Leg., p. 75, ch. 60, purports to amend Art. 3284 but the act itself amends Art. 3248 instead.

Art. 3249. Private additions to sanatorium.—The Board is hereby authorized, on request of any charitable fraternity or society in this State, to permit the erection, furnishing and maintenance by such fraternities or societies upon the grounds of said sanatorium, of dormitories and such other accommodations as may be desired by any such fraternity or society for the proper treatment and care or [1] any member or members of such fraternity or society or for any members of their families, or for the widows and children of deceased members of such fraternity or society, who may be afflicted with tuberculosis, and which accommodations so erected shall be reserved for the preferential use of such members and members of their families and of the widows and children of deceased members of the fraternity or society so erecting, furnishing and maintaining such accommodations hereunder. The State shall be at no expense whatever in the erection, furnishing or maintenance of such accommodations, and the fraternity or society entering a patient or patients shall provide such pro rata part for the maintenance of such patient or patients as may be found just and equitable pending the next succeeding appropriation to be made by the Legislature for the maintenance of said Tuberculosis Sanatorium. "Children" under this article shall mean any minor child of a deceased member of such fraternity or society. Such accommodations or any part of them not being used or required by those entitled to such preference, may be used and occupied by other patients in said sanatorium at the discretion of the superintendent thereof and without any charge therefor against the State. [Acts 1917, p. 408.]

[1] So in enrolled bill. Should probably read "of".

Art. 3250. Plan of buildings.—All matters pertaining to the location, construction, style or character of buildings, term of their existence and all other questions arising in connection with the granting of the permission to erect and maintain the accommodations contemplated in the preceding article, shall be arranged and agreed upon in writing by and between the Board on the part of the State, and the properly authorized officers, board or committee of each respective charitable fraternity or society, and such written agreement in each case shall be recorded at length upon the minutes of the Board and be duly reported to the State Health Officer in the next succeeding report of the superintendents of the sanatorium, accompanied with all documents pertaining to the matter, or full copies thereof. [Id.]

Art. 3251. Rules of admission.—The members of such charitable fraternities or societies, members of their families and the widows and children of deceased members thereof, shall be classified as indigent public patients, non-indigent public patients or private patients, according to the facts, the same as other patients of said Sanatorium are classified, and shall be admitted, maintained, cared for and treated in said sanatorium upon the same terms and conditions and under the same regulations as all other patients therein, save and except that they shall at all times have the preference and right to occupy the accommodations erected and maintained hereunder by their several and respective fraternities or societies, when not already filled with others having the same preferential right. [Id.]

Art. 3251a. Lands, buildings and facilities for tuberculosis sanatoriums; acquisition.—The State Board of Control is hereby authorized to negotiate for and to acquire from the United States Government, or any agency thereof, or from any source whatsoever, by gift, purchase, or leasehold, for and on behalf of the State of Texas, for use in the state eleemosynary service, and in the establishment of state tuberculosis sanatoriums, any lands, buildings, and facilities within the State of Texas, and any personal properties wherever located, and to take title thereto for and in the name of the State of Texas. [Acts 1947, 50th Leg., p. 58, ch. 44, § 1.]

AMERICAN LEGION MEMORIAL SANATORIUM

Art. 3252. Management and control.—The State tuberculosis sanatorium known as the American Legion Memorial Sanatorium of Texas, shall be operated, controlled and managed by the State Board of Control, and said Board shall appoint a superintendent for said sanatorium who shall reside at the sanatorium and who shall have authority to appoint and employ necessary employés, assistants and servants. The salary of each superintendent shall be five thousand dollars per annum and in addition thereto he shall be entitled to living quarters, heat, light, fuel and water. Said superintendent shall be required to give bond in the sum of five thousand dollars, conditioned upon the faithful performance of his duties and shall take the official oath.

The Board is hereby authorized to enter into negotiations and make any agreement with the accredited representatives of the United States Government, the United States Public Health Service or other Federal agent or agency for the purpose of leasing, and said Board is empowered to lease to the United States Government any or all of said Sanatorium for disabled tubercular ex-service men and women, for such time and on such terms as in the judgment of the Board may seem proper. In the event that no such lease is entered into, then said Sanatorium shall be operated, controlled and managed as herein provided. [Acts 1921, p. 37; 1921, 2nd C. S. p. 222.]

Art. 3253. Advisory Board.—The Governor shall appoint three competent licensed physicians, citizens of this State, experienced in the treatment of tuberculosis, who with the State Health Officer as chairman

shall constitute the advisory board to advise with the superintendent in the management of the sanatorium and in the treatment and care of the patients. The members of said advisory board shall serve without compensation, but shall be entitled to be reimbursed for necessary traveling expenses, including hotel bills incurred in the actual performance of their duties. [Acts 1921, p. 37.]

Art. 3254. Admission of patients.—The superintendent and advisory board are hereby authorized to promulgate rules and regulations for the operation and maintenance of the Sanatorium, and shall prescribe rules for the admission of patients; provided in all cases priority and preferential rights of admission shall always be given to honorably discharged veterans of the World War. After such preference and priority shall be given, if there should be further available beds, then any bona fide citizen of this State who has been such for at least six months next preceding the date of his application, having tuberculosis, shall be entitled to be admitted upon application to the superintendent; provided that if such person shall make affidavit, which affidavit shall never be required of any honorably discharged veteran of the World War, that he or she is unable to pay for admission and treatment, such person shall be admitted and treated free of charge. Such affidavit shall be prima facie evidence of the fact that such person is unable to pay. In the event the applicant shall not make an affidavit and is able to pay not exceeding five dollars per week, a charge of not exceeding five dollars per week shall be made for treatment of each such person. If the applicant is able to pay more than five dollars per week, he shall be required to pay not exceeding ten dollars per week.

The superintendent shall enter into contract or agreement with the United States Government or any authorized agent, agencies or representatives thereof to accept into said Sanatorium and treat any person otherwise eligible having tuberculosis, whereby the Sanatorium shall be compensated for treatment or service rendered such person, in such sum as may be agreed upon by both parties and as authorized and provided for by the laws of the United States; and the rules and regulations as are now or may be hereafter promulgated by the United States Public Health Service or other Federal agent or agency.

STATE TUBERCULOSIS SANATORIUM FOR NEGROES

Art. 3254a. Sanatorium created and established.

Maintenance

Sec. 1. There is hereby created and established, and there shall be maintained by the State of Texas a tuberculosis Sanatorium for negroes to be known as the State Tuberculosis Sanatorium for Negroes.

Location

Sec. 2. Said Sanatorium shall be located at a place in the State of Texas selected by locating and building board composed of the State Health Officer, the Chairman of the State Board of Control and the Superintendent of the State Tuberculosis Sanatorium, which place shall be selected as soon as practical after this Act goes into effect.

Purchase or donation of land

Sec. 3. For the purpose of providing a suitable location for said Sanatorium, said locating and building board shall purchase, if a suitable site is not donated, a tract of land not to exceed one thousand acres, and shall accept title thereto in the name of and for the use and benefit of the State of Texas. The title to said tract of land shall, before the same is accepted and paid for, be approved by the Attorney General of the State of Texas. Said locating and building board shall also be authorized to accept in behalf of the State for said purpose a suitable tract of land donated or given to the State as a site for said Sanatorium, and, in case a suitable site is donated, none shall be purchased. Provided, however, that if only a part of a suitable site shall be donated, the board shall be authorized to purchase the remainder not to exceed the maximum above set out.

Buildings and equipment

Sec. 4. Said locating and building board shall have constructed upon said site suitable, substantial, permanent and fireproof buildings and equipment sufficient to accommodate the maximum number of patients. Said buildings and equipment shall be provided with modern improvements for furnishing good water, heat, ventilation, sewerage and other necessities.

Plans and specifications for buildings, architect

Sec. 5. Immediately after this Act goes into effect, and as soon as a suitable site is acquired, said locating and building board shall have plans and specifications for said buildings and equipment prepared by the Chief of Division of Designs, Construction and Maintenance of the State Board of Control, and said locating and building board is authorized to do all things necessary to construct and establish said Sanatorium. The architect whose plans and specifications are accepted shall be the supervising architect and shall act at all times under the supervision and control of said locating and building board. Said architect shall execute a bond, payable to the State of Texas, at Austin, Texas, in a sum to be fixed by the board, and approved by the board, with good and sufficient sureties, conditioned that said architect shall be liable and bound to pay to the State of Texas all damages it may sustain by reason of defective plans and specifications or any wilful failure of negligent performance of duty on the part of said architect. The compensation of said architect shall not exceed three (3%) per cent. Provided, that the State shall not be limited to one recovery upon said architect's bond, if not exhausted, but shall be authorized to bring as many actions as necessary until such bond be exhausted.

Officers appointed by State Board of Control

Sec. 6. The State Board of Control shall have authority and it shall be its duty to appoint officers for said Sanatorium, including its Superintendent and Medical Director, and such other servants, employees, and assistants as shall be necessary, and as shall be provided for by appropriations by the Legislature.

Appropriation

Sec. 7. There is hereby appropriated out of any funds in the Treasury of the State of Texas not otherwise appropriated Two Hundred Thousand Dollars ($200,000.00) to purchase the site and construct and equip the Sanatorium provided for in this Act, out of which may also be paid the necessary traveling and other expenses of the board in locating and constructing said Sanatorium.

Operations as other eleemosynary institutions

Sec. 8. Upon the completion and acceptance of said site by the board created for such purpose, the same shall be operated, managed and controlled in the same manner as other eleemosynary institutions.

Admission of persons

Sec. 9. The Superintendent of said Sanatorium shall determine upon application the persons entitled to admission therein, as now provided by law for the admission of persons to the State Tuberculosis Sanatorium.

Maintenance

Sec. 10. Provision shall be made by the Legislature for the operation and maintenance of said Sanatorium by appropriation.

Afflicted negroes only admitted

Sec. 11. Negroes afflicted with tuberculosis who shall have been citizens of this State and of [1] the county from which he or she comes, at the time of filing application with the County Judge, as hereinafter provided, shall be admitted to said Sanatorium under this Act, and no other persons shall be admitted.

[1] So in enrolled bill. Session Law omits word "of".

Citizen defined

Sec. 12. A citizen of this State, under the provisions of this Act, is defined to be any person who has actually resided therein with the bona fide intention of being a citizen thereof for a period of twelve months next preceding the date of the application for admission to said Sanatorium.

Classes of patients

Sec. 13. Patients admitted to said Sanatorium shall be of three classes, to-wit:

1. Indigent public patients.
2. Non-indigent public patients.
3. Private patients.

Indigent public patients are those who possess no property of any kind nor have any one legally responsible for their support, and who are unable to reimburse the State. This class shall be supported entirely at the expense of the State.

Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have someone legally liable for their support. This class shall be kept and maintained at the expense of the State, as in the first instance, but in such case the State shall have the right to be reimbursed for the support of such patients, and the claim of the State shall constitute a valid lien against any property of any such patient, or, in case he has a guardian, against any property of his which is in the possession of said guardian, or against the person or persons who may be legally liable for his support, and financially able to contribute as herein provided; and such claim may be collected by suit or other proceedings in the name of the State of Texas by the County Attorney of the county from which said patient is sent, against such patient, his guardian, or the person or persons liable for his support; and the venue of any such suit is hereby fixed to be in the county from which such patient was sent. Such suit or proceedings shall be instituted upon the request, in writing, of the Superintendent of said Sanatorium, accompanied by a certificate as to the amount due the State, which in no case shall exceed Five ($5.00) Dollars per week for the board of such patient, and together with the necessary cost incident to his transportation to said Sanatorium. In all suits or proceedings, the certificate of the Superintendent, shall be sufficient evidence of the amount due the State for the support of such patient. It shall be the duty of the County Attorney, upon such request being made, to institute and conduct such proceedings, and for which he shall be entitled to a commission of ten (10%) per cent of the amount collected. All moneys so collected, less the commission above provided for, shall be by the County Attorney paid to the Superintendent of said Sanatorium, who shall receive and receipt for the same, and shall use the same for the maintenance and improvement of said property.

Private patients may be admitted into said Sanatorium upon application of parent or guardian or friend, under such regulations as the Superintendent under the direction of the State Health Officer may prescribe, not in conflict with this Act. Such patients shall be kept and maintained at the Sanatorium at their own expense for the board and care of such patients. The Superintendent under the direction of the State Health Officer may take special contracts for private patients at a rate not to exceed Ten ($10.00) Dollars per week, payable in advance. All moneys collected shall be paid to the Superintendent of such institution, who shall account for the same and for its use in the maintenance and improvement of said Sanatorium at which the same is received.

Rules and regulations

Sec. 14. Except as herein otherwise specified, the rules and regulations governing the admission of patients to said Sanatorium shall be the same as those governing the admission of patients to the State Tuberculosis Sanatorium; provided, however, that no white person shall ever be admitted to the Sanatorium created hereby, and no negro person shall ever be admitted to the State Tuberculosis Sanatorium.

No discrimination among patients

Sec. 15. No patient in this Sanatorium shall be discriminated against by virtue of the fact that he is an indigent, non-indigent or private patient, but all patients shall be treated alike, given equal facilities, equal attention and equal treatment, and no patient shall be permitted to give to any officer, servant, agent or employee of the Sanatorium any tip, pay or reward of any character or kind whatever, and if such patient does so, and it is discovered, it shall be a cause for his expulsion from said Sanatorium and the discharge of any officer, servant, agent or employee accepting the same; and the Board of Control shall see that this provision is rigidly and drastically enforced.

Admission by file number of application; reservations for classes

Sec. 16. The Superintendent of the Sanatorium hereby created shall keep on file an alphabetical index of all applications of all patients, and patients shall be admitted according to their file number, reserving at all times not less than one-half the accommodations afforded at the Sanatorium for indigent patients, one-fourth of the accommodations for non-indigent patients, and one-fourth for private or pay patients, subject, however, to the control and discretion of the Superintendent. And the Superintendent shall file with the State Health Officer such copies of such applications as shall be necessary to meet all provisions of this Act.

Clothing for patients

Sec. 17. It shall be the duty of the County Judge to see that each patient admitted to the Sanatorium is supplied with three full suits of underwear, two shirts, and one neat top suit, all being such as may be prescribed by the State Health Officer; and the expenses of the clothing and transportation of indigent public patients shall be paid by the county from which the patient is sent. And if any patient is admitted directly upon the certificate of the State Health Officer as an indigent patient as provided hereinbefore, then the State Health Officer shall supply such patient with such clothing, and his certificate therefor shall be full evidence that the same was so supplied and of the value thereof, and the county from which the said patient came shall be chargeable with said clothes, and shall pay the same upon presentation of said certificate. Non-indigent public patients shall pay for their clothing and transportation themselves.

Board of Control to promulgate rules and regulations

Sec. 18. Rules and regulations for the operation, government, control and management of said Sanatorium, its officers, employees, and patients shall be approved and promulgated by the State Board of Control, and as set forth in this Act.

Officers and employees appointed for term of good behavior

Sec. 19. The purpose of this bill being to bring about the best results for those unfortunate people who are afflicted with this disease, and for the general welfare of the State, it is hereby expressed that it is the desire of this Legislature that the Physicians, Superintendent, and others connected with this Sanatorium whose appointments are herein provided for, they, and each of them, shall be permitted to hold their respective offices and employment during the term of their good behavior, and that they be removed only for cause, which cause shall be determined by the Board of Control; and that such persons shall be under, as nearly as possible, the rule of civil service, to the end that they may be taken entirely out of politics.

Negro defined

Sec. 20. The term "Negro" is used in this Act as defined in Article 484, Penal Code of the State of Texas of 1911.[1] [Acts 1935, 44th Leg., p. 359, ch. 131.]

[1] Penal Code, Article 493.

Art. 3254a—1. Re-location and re-establishment of State Tuberculosis Sanatorium for negroes.—Sec. 13. To carry out the purposes of this Act[1] and in furtherance of the objectives and purposes of Senate Bill No. 147, Acts of 1947, 50th Legislature,[2] the State Board of Control is hereby authorized and directed to re-locate and re-establish the State Tuberculosis Sanatorium for Negroes; and to that end, said Board, as provided in said Senate Bill No. 147, is authorized and directed to negotiate for and acquire from the United States Government or any Agency thereof, or from any source whatsoever, by gift, purchase or lease-hold, for and on behalf of the State of Texas and for the use of the State Eleemosynary Service, any available land, buildings and equipment suitable for such Sanatorium, and to take title thereto for and in the name of the state. Upon the acquiring of such land, buildings and facilities, the Board of Control is authorized and directed to condition and re-condition, construct and re-construct, such buildings and equipment in such manner as to make the same suitable for use and occupancy as a State Tuberculosis Sanatorium for Negroes.

Sec. 14. As soon as the Board of Control can secure such location and buildings for the use of such State Tuberculosis Sanatorium for Negroes and properly condition the same for the use of such Sanatorium, the Texas State Tuberculosis Sanatorium for Negroes now located at Kerrville, Texas, shall be and the same is hereby removed and relocated at such new location as may be provided by the Board of Control under the provisions of this Act. All the personal property, hospital and other supplies and equipment belonging to said Tuberculosis Sanatorium for Negroes at Kerrville, as may be necessary and useful to such Sanatorium, shall be removed and made available for the use of such Sanatorium in its new location. When the said State Tuberculosis Sanatorium for Negroes has been removed and relocated, as herein provided, the said Sanatorium for Negroes at Kerrville shall be discontinued, and all the lands, property and buildings, supplies and equipment not removed with said Sanatorium, as herein provided, shall be and the same are hereby transferred to said Texas State School for Cerebral Palsied for use by such school. Thereafter, such school shall receive and admit persons qualified to enter such school, as provided herein.

Sec. 15. Upon the removal and re-establishment of said Sanatorium, as herein provided, the said Sanatorium shall continue to be operated in the manner not inconsistent with this Act provided by law before such removal; and all appropriations made for the support of such Sanatorium shall be available for such Sanatorium in its new location; and Acts of 1935, 44th Legislature, page 359, Chapter 131, and all amendments thereto,[3] are continued in force and effect, except the provisions thereof by which such Sanatorium was located at Kerrville, Texas, which part of such Act providing for the location of said Sanatorium at Kerrville, is hereby repealed. [Acts 1947, 50th Leg., p. 679, ch. 344.]

[1] This article and arts. 3254c, 3254d.
[2] Article 3251a.
[3] Article 3254a.
Sections 1–12 are published as art. 3254c. Sections 16 and 17 are art. 3254d.

SOUTH TEXAS TUBERCULOSIS SANATORIUM

Art. 3254b. Acceptance of title; control and supervision.—Section 1. The State Board of Control is hereby authorized to accept for the State of Texas title to all the said land, which must be described by metes and bounds, buildings, and equipment referred to in the preamble hereof, by proper conveyance or conveyances from the City of Laredo, Texas, and the Webb County Tuberculosis Association, a corporation as aforesaid, for the purpose of operating and maintaining a state tuberculosis sanatorium at Laredo, Texas, to be known and which is hereby designated, subject to the following provisions hereof, as the South Texas Tuberculosis Sanatorium. Before title to said property can be accepted by said Board of Control, however, the owner of said land must furnish said Board of Control with an abstract or satisfactory certificate of title thereto, showing good and merchantable title in the City of Laredo, Texas, and said title and conveyance thereof must first receive the written approval of the Attorney General of this state. The Attorney General must also be satisfied, to be evidenced by his written approval, that the title to all of the buildings, and equipment owned by the Webb County Tuberculosis Association is free and clear of all liens before any conveyance thereof can be accepted by said Board of Control. Unless and until title to all of said land, buildings and equipment receive the written approval of the Attorney General of Texas, no conveyance of any of such property shall be accepted by the said Board of Control.

Sec. 2. Upon acceptance of title by proper conveyance or conveyances of said lands, buildings, and equipment, as hereinabove authorized, the State Board of Control shall thereafter have the control and supervision of said South Texas Tuberculosis Sanatorium, with like powers in connection therewith as are now possessed by said Board of Control in connection with the State Tuberculosis Sanatorium at Carlsbad, Tom Green County, Texas, except that the Board of Control shall also have the authority to accept for the said South Texas Tuberculosis Hospital contributions or gifts of money, equipment, materials, supplies or personal services to be received and used by said hospital under the direction of the Board of Control.

Sec. 4. If any section or provision of this Act shall be declared unconstitutional, the remaining sections or provisions hereof shall not be affected by such invalidity; and the Legislature hereby declares it would have enacted such remaining sections and provisions regardless of such unconstitutional provisions of this Act. [Acts 1945, 49th Leg., p. 659, ch. 366.]

Section 3 of the Act of 1945 read as follows:
"There is hereby appropriated to the South Texas Tuberculosis Sanatorium, for each of the fiscal years ending August 31, 1946 and August 31, 1947; and, in addition, the State Board of Control is hereby authorized to accept and permit the participation of funds, gifts or services from other than state appropriations for the operation and maintenance of said South Texas Tuberculosis Sanatorium."

Acts 1947, 50th Leg., p. 1035, ch. 447, effective 90 days after June 6, 1947, date of adjournment, made an appropriation to the South Texas Tuberculosis Sanatorium for the fiscal year beginning September 1, 1947, and ending August 31, 1948.

Section 2 thereof provided that at the expiration of the fiscal year for which the appropriation was made, to wit, August 31, 1948, the State of Texas relinquished to the City of Laredo, Texas, the said South Texas Tuberculosis Sanatorium, together with the title to all of the buildings

and equipment, lands, and other properties belonging to the said Sanatorium, together with the possession and control thereof.

Section 3 thereof read: "When the provisions of this Act have been complied with, and said property relinquished, returned and reconveyed to the City of Laredo, Texas, the said Acts, 1945, Forty-ninth Legislature, Chapter 366, Page 659, shall be, and the same are hereby repealed."

TEXAS STATE SCHOOL FOR CEREBRAL PALSIED

Art. 3254c. Texas State School for Cerebral Palsied.

Creation; location; repair of buildings and equipment

Section 1. There is hereby created an institution which shall be known as "Texas State School for Cerebral Palsied", to be located and established on the property now occupied by the State Tuberculosis Sanatorium for Negroes at Kerrville, Texas. Upon the re-location and re-establishment of a Tuberculosis Sanatorium for Negroes, as herein provided, the use and occupancy of the buildings, grounds, personal property and equipment, or so much thereof as may be necessary and useful for the purpose of said Texas State School for Cerebral Palsied, and not retained for said Sanatorium as herein provided, shall be and the same are hereby transferred from State Tuberculosis Sanatorium for Negroes to said Texas State School for Cerebral Palsied. For the purposes of this Act [1] and for the use of said State School for Cerebral Palsied, the Board of Control is authorized to reconstruct, remodel and repair the buildings and equipment now being used by said State Tuberculosis Sanatorium for Negroes at Kerrville, in such manner as may be necessary and proper to make same suitable for the use and purposes of the said State School for Cerebral Palsied.

[1] This article and arts. 3254a—1, 3254d.

Purpose

Sec. 2. It shall be the purpose of this school to provide for the diagnosis, care and education of persons afflicted with cerebral palsy.

Superintendent; officers; employees

Sec. 3. The Board of Control shall appoint a Superintendent and fix the salary and duties, and for cause deemed sufficient by the Board, may remove such Superintendent. The Superintendent shall be a person of education; such Superintendent shall have power to appoint and remove the subordinate officers and employees; such Superintendent shall be responsible to the Board for the details of management of the institution, and shall only exercise the power conferred upon him by law with the approval and consent of the Board. The Board shall also determine the number and fix the salaries of other officers and employees connected with the institution.

Persons who may be admitted

Sec. 4. Persons afflicted with cerebral palsy who shall have been citizens of this state and of the county from which he or she comes at the time of filing of their application with the County Judge as hereinafter provided, shall be admitted to said institution. A citizen of this state is defined to be any person who has actually resided therein with the bona fide intention of being a citizen thereof for a period of twelve months next preceding the date of such application.

The classification of all students admitted to the school shall be as follows:

1. Indigent public students;
2. Non-indigent public students;
3. Private students.

Indigent public students are those who possess no property of any kind, and have no one legally liable for their support and able to reimburse the state.

Non-indigent public students are those who possess some property out of which the state may be reimbursed or who have someone legally liable for their support and able to reimburse the state.

Preference as between applicants

Sec. 5. When application is made for more students than can be admitted, the Superintendent shall give preference to indigent public students over non-indigent public students and shall at all times give preference to both of the classes mentioned over private students.

Private students

Sec. 6. Private students may be admitted into said school upon application of parent, guardian or friend, under such regulations as the Board and Superintendent may prescribe, not in conflict with the provisions of this Act. Such students shall be kept and maintained at the school at their own expense or at the expense of their guardians, relatives or friends, and for the board and care and education of such students, the Superintendent shall make a special contract at the rate set by the Board of Control; and at the time of admission of any such student into the school, the agreed fee must be paid in advance for six months and bond and security given for the prompt payment of all future expenses of such students. All money so collected shall be paid to the institution which shall receive and receipt for the same and shall use the same for the maintenance and improvement of said institution.

Application by parent, guardian or friend of spastic

Sec. 7. The parent, guardian or friend of any spastic in seeking admission for such student may make application in writing and under oath to the County Judge of the county wherein such spastic resides, for his admission into said school, which application shall show:

1. Name of spastic;
2. Sex;
3. Age and nativity;
4. Whether possessed of any property, and if so, what, and the estimated value thereof;
5. Whether the spastic has anyone liable for his support, if so whom, what property possessed by such person, and the estimated value thereof;
6. Residence of the spastic for three years next preceding the date of application;
7. Occupation, trade or employment;
8. Parent or parents, if living; or guardian, if any;
9. Name of husband or wife, if any;
10. Children, if any, number, age and sex;
11. Relatives similarly affected, insane, inebriate, consumptive or criminal.

Certificate of physician

Sec. 8. Said application shall be accompanied with a certificate of a reputable practicing physician stating that he has carefully examined the person for whose admission application is made and that such person is afflicted with cerebral palsy, and said certificate shall also show the present physical condition of the applicant and any special and other information that would be helpful to the Superintendent in the care and education of the person.

County judge's duties

Sec. 9. The County Judge shall certify that the physician making such certificate is a reputable physician actively engaged in the practice of his profession, and has complied with the laws of this state granting license to physicians to practice medicine. If such Judge is not satisfied as to the showing made in said application and certificate, or either, he may subpoena witnesses and examine them under oath touching such matters. If it be made to appear to the County Judge that such spastic is entitled to admission into the school, he shall forward an applica-

tion to the Superintendent of the school for admission of such person as an indigent or non-indigent student, as the Judge shall determine upon careful investigation, which application shall be accompanied with full copy of the proceedings had in such case, and the original shall be filed in the office of the County Clerk. The County Judge shall see that each student admitted to the school is supplied with three full suits of substantial clothing.

Expenses

Sec. 10. The expense of such clothing and the transportation of indigent public students and necessary escort, and compensation to such escort, shall be paid by the county from which the student shall be sent. Non-indigent public students shall pay for such clothing, transportation and escort. In no case shall such escort be entitled to charge or receive more than Two ($2.00) Dollars per day and expenses actually necessary in going to and returning from the school.

Support of students by state; reimbursement; suits

Sec. 11. Indigent public students shall be supported entirely at the expense of the state. Non-indigent public students shall be kept and maintained at the expense of the state in the first instance; but in such cases the state shall have the right to be reimbursed for the support of such non-indigent students, and the claim of the state for such support shall constitute a valid lien against any property of such student, or in case he has a guardian, against his estate, or against the person or persons who may be legally liable for his support and financially able to contribute thereto; and such claim may be collected by suit or other proceedings in the name of this state by the county or district Attorney of the county from which said patient is sent, against such patient, his guardian, or the person or persons liable for his support as the case may be; such suit or proceeding to be instituted upon the written request of the Superintendent of the hospital, accompanied by his certificate as to the amount due the state, which shall in no case exceed the sum set by the Board of Control. In all such suits or proceedings the certificate of the Superintendent shall be sufficient evidence of the amount due the state for the support of such student. Said Attorney, upon such request being made, shall institute and conduct such suit or proceedings, and for which he shall be entitled to a commission of ten (10%) per cent of the amount collected. All moneys so collected, less such commission, shall be, by said attorney, paid to the State Board of Control, which shall receive and receipt for the same and shall use the same for maintenance and improvement of said institution in which said patient shall have been maintained.

Rules and regulations

Sec. 12. The Superintendent, with the approval of the Board of Control, shall make all necessary rules and regulations for the government and management of the school. [Acts 1947, 50th Leg., p. 679, ch. 344.]

Sections 13–15 are published as art. 3254a—1. Sections 16 and 17 are art. 3254d.

Art. 3254d. East Texas State Tuberculosis Sanatorium.—Sec. 16. There is hereby created the "East Texas State Tuberculosis Sanatorium" for tubercular white persons. As the Board of Control is able to secure sufficient buildings and equipment to establish such tuberculosis sanatorium, the said Board is hereby authorized and directed to re-condition and re-model same as may be necessary to establish a Sanatorium for white persons only, to be known and designated as the "East Texas State Tuberculosis Sanatorium". The Board of Control shall provide for and admit white patients to such Sanatorium under the same laws, rules and regulations as now provided for admission of tubercular patients to the State Tuberculosis Sanatorium at Carlsbad.

Sec. 17. The Board of Control shall appoint a Superintendent for such East Texas State Tuberculosis Sanatorium and such medical staff and employees as the Board may think necessary and proper, whose salaries shall not exceed the salaries paid for similar positions at the State Tuberculosis Sanatorium at Carlsbad; provided, that if the East Texas State Tuberculosis Sanatorium and the State Tuberculosis Sanatorium for Negroes are in sufficiently close proximity and the Board of Control finds the same to be practical for the purpose of operating economies, the Board may appoint one Superintendent and supervisory positions and such other utility and service employees as can serve both institutions alike, but keeping the medical services and kitchen staffs separate under separate Assistant Superintendents. [Acts 1947, 50th Leg., p. 679, ch. 344.]

WACO STATE HOME

Art. 3255. Superintendent and officers.—The State Board of Control shall employ as superintendent of the State Home for Dependent and Neglected Children [1] a person of previous experience in a similar institution. Said board shall fix the salary of the superintendent and all employés, and shall have authority to remove the superintendent for cause, and its decision in such matters shall be final. Said Board shall also appoint a physician for said Home. [Acts 1919, p. 301.]

[1] Name changed to Waco State Home, see article 3255a.

Art. 3255a. Name of home changed.—The name of the State Home for Dependent and Neglected Children which is located at Waco, Texas, be and the same is hereby changed and shall hereafter be known and designated as Waco State Home. [Acts 1937, 45th Leg., p. 775, ch. 375, § 1.]

Art. 3256. Rules and regulations.—The board shall make necessary rules and regulations for the proper government of said Home, and shall see that the time of the children is properly distributed between the school of letters and the industrial and domestic pursuits according to what is deemed for their best interests and the facilities at hand. The superintendent shall from time to time make such recommendation to said board as may seem to the best interests of all the children committed to said home. It shall be the duty of said controlling board to give diplomas or certificates of proficiency for grades made in any school that may be established by the board. [Acts 1919, p. 301.]

Art. 3257. Commitment of child.—Whenever any child under sixteen years of age is brought before any juvenile court upon petition of any person within this State, charged with being a dependent or neglected child, the court may, if in the opinion of the judge the Home for Dependent and Neglected Children [1] is the proper place for said child, commit such child to said Home during its minority. No child who is feebleminded, epileptic, insane or afflicted with a venereal, tubercular or other communicable disease shall be assigned to this institution until cured of such disease. No child shall be admitted to the Home until he has been examined by the physician of the Home and such physician has issued a certificate showing the exact condition in reference to said qualifications. The court committing any child to said Home shall prepare a transcript of all proceedings and attach thereto a certificate of the county health officer of such county to said transcript. If it be a girl or baby or infant committed to said Home, the judge of the court shall designate some reputable woman to convey said girl, baby or infant to said institution. The cost of conveying any child to said institution shall be paid out of the general fund of the county from which it may be committed but no compensation

shall be allowed beyond actual and necessary expenses of the party conveying and the child conveyed. [Id.]

1 Name changed to Waco State Home, see article 3255a.

Art. 3258. [Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6.]

Art. 3259. Placing child in children's boarding home—Dismissal of child.—Section 1. Children committed to the Waco State Home may be placed by the superintendent, upon the approval of the State Board of Control and under the authority of an order to that effect issued by the Court which committed such child to such institution, in children's boarding homes at a reasonable rate not to exceed One Dollar ($1) per day for each child so boarded when in the judgment of such superintendent effective administration of said Waco State Home so requires; provided that such children's boarding homes shall obtain an annual license as required by law, which license shall be issued without fee, and under such reasonable and uniform rules and regulations as the State Board of Public Welfare may prescribe for all children's boarding homes in accordance with the laws of this State as same now exist or may hereafter be enacted. No child shall be placed in such children's boarding home unless it is deemed advantageous to the welfare of such child; and children so placed shall be deemed to have the same status as other inmates of said Waco State Home and shall continue to be wards and subject to the guardianship of said superintendent. Children shall be given preference who, in the judgment of the superintendent, are eligible upon the basis of their respective individual problems and individual needs, and who will profit most by such placement, and whose placement will make for more effective administration of the Waco State Home's program; provided, however, that no more than twenty (20) such children from all inmates of said Waco State Home shall, at any given time, be so boarded. The superintendent of said Waco State Home shall, upon the approval of said Board, replace or remove such child from such licensed boarding homes when in his discretion he deems it advisable; or upon complaint of such child, the superintendent shall remove the child from such children's boarding home; provided that nothing herein shall abridge the visitorial and regulatory powers of the superintendent over the person of any such child so placed in such children's boarding homes, until such child has been dismissed from said Waco State Home, and then under such provisions and limitations as hereinafter stated.

Sec. 2. No child shall be dismissed from the Waco State Home until some suitable home has been found for it, or it has become self-supporting and only then upon the written recommendations of the superintendent to the State Board of Control, or when any ward committed to said Home has become married with the consent of the Board and superintendent. Children may be placed for adoption only in homes approved by the Division of Child Welfare, State Department of Public Welfare. Upon the adoption or marriage of any such child, the visitorial and regulatory powers of said Board of Control and superintendent shall terminate. Any child not adopted who goes out from this Home either under the custody of some adult or as self-supporting shall continue under the supervision and guidance of said Board. The Board or its representative shall visit the place where said child is living or employed, and it shall be the duty of the person having the custody of said child to answer all questions asked by such Board or representative concerning the conduct, employment, treatment, or condition of said child. If in the judgment of the Board it should be for the best interest of said child that it be returned to said Waco State Home, the Board is hereby empowered to have it returned. [Acts 1919, p. 301; Acts 1939, 46th Leg., p. 429, § 1; Acts 1941, 47th Leg., p. 601, ch. 369, § 1.]

COLORED GIRLS TRAINING SCHOOL

Art. 3259a. Colored girls training school established and maintenance provided.

Establishment authorized

Sec. 1. The State Board of Control is hereby authorized and directed to locate and establish in this State at some suitable place a school upon the cottage plan for the care, education and training of dependent and delinquent colored girls, provided such location is approved by the Governor.

Purpose; training

Sec. 2. It shall be the purpose of this home and school to provide an institution of training and care of colored girls who by their own misconduct or by their unfavorable surroundings have become dependent or delinquent and need care and attention not otherwise provided; and in the accomplishment of the purpose of this Act the Board of Control shall provide adequate and proper quarters and exercise and diversion, and shall make provision for training of such girls in such of the useful arts and sciences to which women are adapted in order to prepare them for future usefulness and economic independence. Among other things, in connection with said institution a provision shall be made for instruction in nursing, sanitation and hygiene. Proper provision shall be made for the moral and religious training of such girls.

Control and management

Sec. 3. The colored girls' training school provided for in this Act shall be under the control and management of the State Board of Control, who shall appoint a superintendent, and manage and control the same through such superintendent in similar manner as the Girls' Training School at Gainesville is operated and controlled under the laws of this State.

Superintendent; advisers; conference; salaries

Sec. 4. The Board of Control shall employ as superintendent of said school a colored woman of previous experience and training. The superintendent and the Board of Control shall have as their advisers in connection with said school a board of five members, all of whom shall be women, who shall be nominated by the Board of Control and confirmed by the Governor and who shall act in an advisory capacity, but shall not have power to manage or control said institution.

There shall be held semi-annually a joint conference of the Board of Control and said Advisory Board of this institution, for the purpose of considering all matters pertaining to the policies and general welfare of the institution.

The Board of Control shall fix the salary of the superintendent and all employees of said school. The superintendent or any other employee of the institution may be removed by the Board of Control on account of inefficiency, incompetency, inattention to his or her duties, misconduct or malfeasance in office, and the decision of the Board of Control as to such matters necessitating removal shall be final.

Commitment

Sec. 5. Any colored girl between the ages of seven and eighteen years may be adjudicated to be a dependent or delinquent child in the same manner as provided in Title 43 of the Revised Civil Statutes of 1925 relating to dependent and neglected children. In such a proceeding the charge may be that such a child is a dependent or delinquent child as evidenced by the conduct of such child, and enough of the facts shall be alleged and proved to substantiate said charge. The court may, if it is the opinion of the Judge that the Colored Girls' Training School is a suitable place for the girl complained against, commit the defendant to said colored girls' training school for any period not

to exceed the balance of her minority. No girl shall be committed to said school who is feeble-minded, epileptic or insane. Any girl committed to said school who is suffering with any communicable disease shall be assigned to a distinct and separate building of the institution and shall not be allowed to associate with other children or persons not so afflicted. No girl shall be admitted to said institution until she has been examined by the physician at said school, and such physician shall issue a certificate showing her exact physical and mental condition before she is admitted to the institution.

Transcript; conveyance of girl

Sec. 6. It shall be the duty of the court committing any girl to said school in addition to the commitment to annex thereto a carefully prepared transcript of the trial to aid the officials of the institution in better understanding in classifying the girl.

The Court shall also designate some reputable woman to convey the girl to the institution. The cost of conveying any girl committed to said institution shall be paid by the county from which she is committed; provided that no compensation shall be allowed beyond the actual and necessary expenses of the person conveying and the girl so conveyed.

Dismissal or parole

Sec. 7. No girl shall be dismissed or paroled from said school until some suitable home has been found for her, and then only upon the written recommendation of the superintendent of the school to the Board of Control, or unless she has become married with the consent of the superintendent of said institution and the Board of Control; provided that no provision of this act shall be construed to interfere with the power of the Governor in the exercise of executive clemency to any such girl when in his judgment it may be best. The State Board of Control shall have authority to parole, subject to the limitations of this Act. Any girl who is thus paroled from the institution shall be under the supervision and guidance of the superintendent for the remainder of the time for which she was committed and the superintendent shall require that said girl write letters twice per week to the superintendent of the school for the first six months after leaving the institution, and monthly letters thereafter. The Board of Control shall also see to it that the person under whose care or employ the girl is placed shall write monthly letters to the superintendent of the school for the first six months, and semi-annually thereafter.

Visiting person paroled

Sec. 8. The Board of Advisors herein provided for, the superintendent of said school, any member of the Board of Control, or other person designated by the Board of Control, may visit the place where the girl is living or is employed, and it shall be the duty of the person having the girl in charge to answer all questions asked by said visitors concerning the conduct, employment or training of said girl. If, in the judgment of the Board of Control, it shall be for the best interest of the girl that she be returned to said school, the Board is hereby empowered to have her returned.

Rules and regulations; diplomas and certificates

Sec. 9. The superintendent; with the assistance of the Advisory Board, in an advisory capacity only, with the approval of the Board of Control, shall make all necessary rules and regulations for the government and management of the Training School, and shall provide that the time of the pupils is properly distributed between academic subjects and industrial and domestic subjects and employment according to the needs of the various pupils and the facilities at hand.

Provision shall be made for giving diplomas or certificates of proficiency for graduates from the Nurses' Training School, or any other school or departments of learning that may be established and operated in connection with said institution.

Advisory board; no compensation; expenses

Sec. 10. The Advisory Board provided for in this Act shall not be entitled to any compensation, but shall be paid out of the support and maintenance fund of said institution actual expenses incurred in traveling to and from said institution, or to and from any place where such a delinquent or neglected child is located upon authority of the Board of Control.

Donations

Sec. 12. Any city or county in this State is hereby authorized to donate money to said institution to the extent that such county or city may be interested in the same.

Disposition of donations

Sec. 13. Any and all funds which may be donated for the benefit of said institution shall be placed in the State Treasury and expended in the same manner as other State moneys are expended, upon warrants drawn by the Comptroller upon the order of the Board of Control. Any of said moneys are hereby appropriated for the purpose of carrying out this Act. [Acts 1927, 40th Leg., p. 441, ch. 293.]

Section 11 of Acts 1927, 40th Leg., p. 441, ch. 293, being a penal provision is published as Penal Code, art. 333a.

Art. 3259b. Acquisition or construction and equipment of colored girls' training school; salaries.—Section 1. The State Board of Control is hereby authorized to acquire, purchase, construct or recondition, and equip a school for the care, education and training of dependent and delinquent colored girls pursuant to the provisions of Senate Bill No. 239, Chapter 293 of the Acts of the 40th Legislature, Regular Session,[1] at a cost of not to exceed One Hundred Fifty Thousand Dollars ($150,000.00).

Sec. 3. The Board of Control shall fix the salaries of the Superintendent and all employees of said institution, which salaries shall not exceed those paid for similar services at other comparable state institutions. [Acts 1945, 49th Leg., p. 136, ch. 92.]

1 Article 3259a and Pen.Code, art. 333a.

Section 2 of the Act of 1945 made an appropriation for the acquisition or construction or reconditioning and equipment of the school and for maintenance until August 31, 1947.

STATE HOSPITAL FOR CRIPPLED AND DEFORMED CHILDREN

Art. 3260. Hospital established.—There is hereby established a State Hospital for Crippled and Deformed Children. The gift to the State of Texas by the Texas Public Health Association of the Walter Colquitt Memorial Children's Hospital, also known as the children's ward of the John Sealy Hospital on the premises of the University of Texas at Galveston, Texas, is hereby accepted by the State, and this hospital shall be the State Hospital for Crippled and Deformed Children. The term "crippled and deformed children" as used herein shall include children suffering from disease from which they may become crippled or deformed. [Acts 1915, p. 32.]

Art. 3261. Management and Control.—Said hospital shall be under the control and management of the Board of Regents of the University of Texas, which is hereby authorized and empowered to lease said hospital building to the city of Galveston in the same manner as the John Sealy Hospital buildings, and to require that provision be made in such hospital for the care and treatment of crippled and deformed children, who may be benefited or cured by treatment in said hospital, and for such other cases or patients as may be required in the interest of scientific study by the faculty and students of the Medical Department of the University of Texas.

Said Board of Regents may in its discretion receive in said hospital any sick or afflicted child who is not crippled or deformed, and who is not suffering from any communicable disease. [Id.]

Art. 3262. Rules and regulations.—The Board of Regents shall adopt such rules and regulations as it may deem necessary and proper for the admission, discharge, care and treatment of such children. It may require their parents or guardians to pay all or a part of the expenses of the care and treatment of patients when able to do so, otherwise it may require such payment of their home counties or cities. [Id.]

Art. 3263. Donations.—Said Board of Regents is authorized to accept donations for the support of crippled or deformed patients, and for the improvement of the hospital and building. [Id.]

STATE CANCER AND PELLAGRA HOSPITAL

Art. 3263a. Cancer and Pellagra hospital.

Creation; name

Sec. 1. That there shall be built, established and maintained at a practicable point hereinafter provided for, in the State of Texas, an institution for the treatment of persons afflicted with Cancer or Pellagra; said institution to be known as the State Cancer and Pellagra Hospital.

Membership of commission

Sec. 2. The Governor of the State with the State Health Officer, the Chairman of the Board of Control and the Attorney General shall constitute the Anti-Cancer and Pellagra Commission of Texas. The Governor and Commission shall meet once every six (6) months unless called more often by the chairman. They shall accept title to the land selected by them in the name of the State, for use and benefit of the State, but not until the Attorney General shall first have approved the title to the land so selected.

Location of hospital

Sec. 3. Support and maintenance of said institution shall be made by appropriation for that purpose. Said hospital shall be located at such place as to make it easy [1] accessible to the citizenship of this State and such that the climate and surroundings would advise, and it shall contain not more than five hundred (500) acres nor less than one hundred (100) acres and shall have an abundant supply of water. In the selection of a place for the establishment of this hospital all other things being equal it shall be located at, or near, a city that has a State Institution of a kindred nature, or a city in which there is a Medical School of recognized standing.

[1] So in enrolled bill. Should probably read "easily".

Construction and equipment of hospital

Sec. 4. The Governor with the State Health Officer, the Chairman of the Board of Control and the Attorney General shall constitute the Commission for the Cancer and Pellagra hospital of Texas, and shall have full power to act in their capacity as hereinbefore provided; and they shall advertise for plans and specifications for said hospital. When plans have been accepted, the Board of Control shall contract for the construction and equipment of said hospital, according to plans and specifications as adopted, to the lowest responsible bidder, who shall give good and sufficient bond for the completion and equipment of said plant according to the contract; providing, that the total cost of land and buildings, with all necessary equipment and buildings shall not exceed two hundred thousand ($200,000.00) dollars and that said plants when so completed and equipped shall have a capacity of two hundred (200) patients.

Citizens admitted

Sec. 5. Persons afflicted with Cancer or Pellagra who shall have been citizens of this State and of the County from which he or she comes at the time of filing their application shall be admitted in said institution under this Act.

Citizen defined

Sec. 5½. A citizen of this State under the provisions of this Act is defined to be any person who has actually resided therein with the bona-fide intention of being a citizen thereof for a period of twelve months next preceding the date of the application for admission to said hospital.

Classes of patients

Sec. 6. Patients admitted to said institution shall be of three classes, to-wit:

1. Indigent public Patients.
2. Non-indigent public patients.
3. Private patients.

Indigent public patients are those who possess no property of any kind nor have any one legally responsible for their support, and who are unable to reimburse the State. This class shall be supported entirely at the expense of the State.

Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have some one legally liable for their support. This class shall be kept and maintained at the expense of the State, as in the First instance, but in such case the State shall have the right to be reimbursed for the support of such patients, and the claim of the State shall constitute a valid lien against any property of any such patients, or, in case he has a guardian, against any property of his which is in the possession of said guardian, or against the person or persons who may be legally liable for his support, and financially able to contribute as herein provided; and such claim may be collected by suit or other proceedings in the name of the State of Texas by the county attorney of the county from which said patient is sent, against such patient, his guardian or the person or persons liable for his support; and the venue of any such suit is hereby fixed to be in the county from which such patient was sent. Such suit or proceedings shall be instituted upon the request in writing, of the superintendent of said hospital, accompanied by a certificate as to the amount due the State, which in no case shall exceed five dollars per week for the board of such patient, and together with the necessary cost incident to his transportation to said hospital. In all suits or proceedings, the certificate of the superintendent shall be sufficient evidence of the amount due the State for the support of such patient. It shall be the duty of the county attorney, upon such request being made, to institute and conduct such proceedings, and for which he shall be entitled to a commission of ten (10) per cent of the amount collected. All moneys so collected less the commission above provided for, shall be by the county attorney paid to the superintendent of said hospital, who shall receive and receipt for the same, and shall use the same for the maintenance and improvement of said property.

Private patients may be admitted into said hospital upon application of parent or guardian or friend, under such regulations as the Commission may prescribe, not in conflict with this Act. Such patients shall be kept and maintained at the hospital, at their own expense for the board and care of such patients. The Commission may make special contracts for private patients at a rate of not to exceed ten dollars per week, payable in advance.

Petition for admission

Sec. 7. The parent, guardian or friend of any patient seeking admission may make application in writing and under oath to the county judge of the county wherein such patient resides, for admission of said patient into said hospital, which application shall show:

1. The name of the patient.
2. The sex.
3. Age and nativity.
4. Whether possessing any property; if so, what, and the estimated value thereof, and where located.
5. Whether the patient has any one legally liable for his support if so, whom, what property possessed by such person; the estimated value thereof and where located.
6. Residence of patient for two years next preceding the date of application.
7. Occupation, trade or employment.
8. Parent or parents, if living, or guardian, if any.
9. Name of husband or wife, if any.
10. Children, if any; number, age and sex.
11. Relatives similarly affected, insane, invalid, consumptive, and such other information as may be required by the Commission of said institution.

Certificate accompanying application

Sec. 8. Said application shall be accompanied by the certificate of a reputable practising physician, or, in the case of indigent patient by a certificate from the county physician, stating that he has thoroughly examined the person for whose admission application has been made, and that such person is suffering from Cancer or Pellagra, and the duration of said disease, if known, and the accompanying bodily disorders; provided, that no person afflicted with any contagious, infectious or transmissible disease, other than cancer or pellagra, shall be admitted. It shall be the duty of the county judge to certify that the Physician making the certificate is a reputable physician, actively engaged in the practice of his profession, and has complied with the laws of this State governing licenses to physicians, to practice medicine.

Hearing on application

Sec. 9. If the county judge is not satisfied as to the showing made in said application and certificate, or either, he may subpœna witnesses and examine them under oath touching such matters, and if it be made to appear to the county judge that such person is entitled to admission into the hospital under the provisions of this Act he shall forward an application for admission, together with the application hereinbefore described, to the State Health officer, and the State Health Officer shall receive the same, alphabetically index it and file in his office, where it shall become a permanent record. If the county judge shall find that the person for whom application is made is in fact not indigent, then he shall make application as before provided, for him as a non-indigent patient, and in either or both cases, if the county judge shall determine not to make such application for any person, then such person may make an application direct to the State Health Officer, and if in the judgment and opinion of the State Health Officer such patient is entitled to admission into the State Hospital for Cancer or Pellagra, then he shall order him to be admitted upon his own motion, which order must be by him written, signed and filed with the superintendent of the institution into which such patient is admitted.

Discrimination prohibited

Sec. 10. No patient in any State hospital shall be discriminated against by virtue of the fact that he is an indigent, non-indigent or private patient, but they shall all be treated alike, given equal facilities, equal attention and equal treatment, and no patient in any such institution shall be permitted to give to any officer, servant, agent or employee in any such institution any tip, gift, pay or reward of any character of any kind whatever, and if such patient does so, and it is discovered, it shall be a cause for his expulsion from said hospital, and the discharge of any servant or attendant accepting the same; and the Commission shall see that this provision is rigidly and drastically enforced.

Any inmate of any of the eleemosynary or penal institutions of this State requiring treatment for Cancer or Pellagra shall be admitted to this institution under rules and regulations prescribed by the Commission.

Admission according to file number

Sec. 11. The State Health Officer shall keep on file an alphabetical index of all applications of all patients, and patients shall be admitted according to their file number; reserving at all time not less than one-half the accommodations afforded at the hospital for indigent cases of Cancer or Pellagra, one-fourth of the accommodations for the non-indigent patients, and one-fourth for private or pay patients; subject, however, to the control and discretion of the Commission.

Clothing for patients

Sec. 12. It shall be the duty of the County Judge to see that each patient admitted to the hospital is supplied with three full suits of underwear and one neat top suit, all being such as may be prescribed by the State Health Officer; and the expense of the clothing and transportation of indigent public patients shall be paid by the county from which the patient is sent. And if any patient is admitted directly upon the certificate of the State Health Officer as an indigent patient as provided hereinabove, then the State Health Officer shall supply such patient with such clothing, and his certificate thereof shall be full evidence that the same was so supplied and of the value thereof, and the county from which the said patient came shall be chargeable with said clothes, and shall pay the same upon presentation of said certificate. Non-indigent public patients shall pay for their clothing and transportation themselves.

Regulations for government of hospital; physician as superintendent; employes; salaries

Sec. 13. It shall be the duty of the Commission of said Hospital to prepare and adopt by-laws, rules and regulations for the government of the entire hospital, prescribing the duties of all officers and employees and for enforcing the necessary discipline and restraint of all patients. The Commission shall appoint for said hospital a regularly licensed physician as superintendent who shall receive a salary to be fixed by the Legislature not to exceed the sum of four thousand ($4,000.00) dollars per year, with provisions for himself and family, not to exceed in value $500.00 per annum with water, lights, fuel, laundry and housing; The superintendent shall appoint such assistant physicians well qualified in Surgery, Dermatology, Pathology and Radiology, subject to approval of the commissioners, who shall receive a salary to be fixed by the Legislature not to exceed the sum of thirty-six hundred ($3,600.00) per year, with provisions for board and laundry for himself and family, and in addition to such physician the board shall supply said hospital with the necessary cooks, waiters, yardmen, nurses, etc., for the operation and maintenance of such hospital. The Physician so appointed shall be superintendent of the institution, and shall have the power to remove at will, and without assigning any cause whatever, any person employed in the hospital. [Acts 1929, 41st Leg., p. 400, ch. 185.]

Section 14 of this Act declares that if any section is held invalid, such decision shall not affect the remainder.

NAVARRO COMMUNITY FOUNDATION

Art. 3263b. [Unconstitutional.]

This article [Acts 1939, 46th Leg., Spec.L., p. 551, §§ 1-16] is void because it violates Const. art. XII, § 1, providing that no private corporation shall be created except by general laws. Therefore, no corporation was created by this article. See Miller v. Davis, 136 T. 299, 150 S.W.2d 973, 136 A.L.R. 177.

TITLE 52—EMINENT DOMAIN

Art.
3264. Procedure.
3264a. Eminent domain by counties.
3264b. Eminent domain by Board of Regents acting as trustee.
3264c. Condemnation of historical sites.
3264d. Texas State College for Women; eminent domain.
3265. Rule of damages.
3266. General provisions.
3267. How costs awarded.
3268. Damages paid first.
3269. Practice in case specified.
3270. Property, how construed.
3271. Property vested by judgment.

Article 3264. [6506] [6528] Procedure.—The exercise of the right of eminent domain shall in all cases be governed by the following rules:

1. When real estate is desired for public use by the State or by a county, or a political subdivision of a county, or by a city or town, or by the United States Government, or by a corporation having the right of eminent domain, or by an irrigation district, water improvement district, or a water power control district created by authority of law, the party desiring to condemn the property after having failed to agree with the owner of the land on the amount of damages shall file a statement in writing with the county judge of the county in which the land or a part thereof is situated. It shall describe the land sought to be condemned, state the purpose for which it is intended to be used, the name of the owner, if known, and that the plaintiff and the owner have been unable to agree upon the value of the land or the damages. Where the land lies in two or more counties, in one of which the owner resides, the statement shall be filed in the county of the owner's residence. [As amended Acts 1934, 43rd Leg., 2nd C.S., p. 89, ch. 37, § 1.]

2. When such statement is filed with the county judge, he shall, either in term time or vacation, appoint three disinterested freeholders of said county as special commissioners to assess said damages, giving preference to those that may be agreed upon between the parties.

3. The commissioners shall be sworn to assess said damages fairly and impartially and in accordance with law.

4. The commissioners shall promptly set a time and place for hearing the parties, and the day appointed shall be the earliest practicable day, and the place selected shall be as near as practicable to the property in controversy or at the county seat of the county in which the property is situated.

5. Notice in writing shall be issued by the commissioners to each of the parties interested, notifying them of the time and place selected for the hearing.

6. The notices shall be served upon the parties at least five days before the day set for the hearing, exclusive of the day of the service, and may be served by any person competent to testify, by delivering a copy of such notice to the party, his agent or attorney.

7. When the property sought belongs to the estate of a deceased person or a minor, or other person laboring under disability, and the estate has a legal representative, the notice shall be served upon such representative.

8. When the property belongs to a non-resident of the State, or if the owner is unknown, or if the residence of the owner is unknown, or the owner secretes himself so that the process of law cannot be served upon him, such notice may be served by publication in the manner provided for such service of citation by publication in other civil cases in the district or county court. When the owner is a non-resident of the State the notice may be served as provided in paragraph six hereof.

9. The person serving notice shall return the original to the commissioners on or before the day set for the hearing, with his return in writing thereon, stating how and when it was served.

10. When service of notice has been perfected, the commissioners shall at the time and place appointed or at any other time and place to which the hearing may be adjourned, proceed to hear the parties.

11. Commissioners shall have the power to compel the attendance of witnesses and production of testimony, administer oaths, and punish for contempt as fully and in the same manner as is provided by law for judges of the county courts.

Acts 1934, 43rd Leg., 2nd C.S., p. 89, ch. 37, § 1 amended subdivision 1 of this article.

Section 3 of amendatory Acts 1934, p. 89, ch. 37, cited to subd. 1, provides that if any provision thereof is held invalid such holding shall not affect the remainder.

Art. 3264a. Eminent domain by counties.—The right of Eminent Domain is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land, right of way or easement in land, private or public, except property used for cemetery purposes, where said land, right of way or easement is necessary in the construction of jails, courthouses, hospitals, delinquent and dependent schools, poor farms, libraries or for other public purposes, where such purpose is now or may hereafter be authorized by the Constitution or Statutes of this State.

All such condemnation proceedings shall be instituted under the direction of the commissioners' court, and in the name of the county, and the assessing of damages shall be in conformity to the Statutes of the State of Texas for condemning and acquiring right of way by railroads. That no appeal from the finding and assessment of damages by the commissioners appointed for that purpose shall have the effect of causing the suspension of work by the county in connection with which the land, right of way, easement, etc., is sought to be acquired. In case of appeal, counties shall not be required to give bond, nor shall they be required to give bond for costs. [Acts 1925, p. 300.] [Acts 39th Leg., ch. 116, § 1.]

Art. 3264b. Eminent domain by Board of Regents acting as trustee.—Whenever the Board of Regents of the University of Texas shall have been made trustees by a will, instrument in writing or otherwise of a trust for a scientific, educational, philanthropic or charitable purpose, or other trust for a public purpose, that they may act by a quorum of the Board or a majority of all members; unless otherwise directed by the terms of the will or instrument, as such trustees they may exercise for the purposes of the trust the power of eminent domain, and may condemn land and other property as provided in this chapter; the power already existing of condemnation for University purposes is not affected hereby. [Acts 1933, 43rd Leg., 1st C.S., p. 77, ch. 23, § 1.]

Art. 3264c. Condemnation of historical sites.—Sec. 1. Whenever any land is required by the State of Texas for the purpose of preserving, restoring or marking any place of historical significance, the Commission of Control for Texas Centennial Celebrations is authorized to purchase such land for such purpose, or failing to agree with the owner on the price therefor, such land may be condemned in the name of this State upon directions of the Commission of Control for Texas Centennial Celebrations, and proceedings shall be instituted against the owner of the land by the Attorney General.

Should the award of damages, in the opinion of the Commission of Control for Texas Centennial Celebrations, be excessive, such award shall not be paid, but the state shall pay the costs of the proceedings and no further action shall be taken.

Sec. 2. The procedure for such condemnation shall be that provided for in Article 3264, Revised Civil Statutes of Texas, 1925, as it is now, or may hereafter exist. [Acts 1935, 44th Leg., 2nd C.S., p. 1694, ch. 433, § 1.]

Art. 3264d. Texas State College for Women; eminent domain.—Section 1. The Board of Regents of the Texas State College for Women of Texas is hereby vested with the power of eminent domain to acquire for the use of said College such lands as may be necessary and proper for carrying out its purposes, in the manner prescribed in Title 52, Revised Civil Statutes of Texas of 1925, as amended.

Sec. 2. The taking of such property is hereby declared to be for the use of the state. Said Board of Regents of the Texas State College for Women shall not be required to deposit a bond or the amount equal to the award of damages by the Commissioners as provided in Section 2, of Article 3268. Revised Civil Statutes of Texas of 1925. [Acts 1943, 48th Leg., p. 208, ch. 127.]

Art. 3265. [6518–28] Rule of damages.—1. The commissioners shall hear evidence as to the value of the property sought to be condemned and as to the damages which will be sustained by the owner, if any, by reason of such condemnation and as to the benefits that will result to the remainder of such property belonging to such owner, if any, by reason of the condemnation of the property, and its employment for the purpose for which it is to be condemned, and according to this rule shall assess the actual damages that will accrue to the owner by such condemnation.

2. When the whole of a tract or parcel of a person's real estate is condemned, the damages to which he shall be entitled shall be the market value of the property in the market where it is located at the time of the hearing.

3. When only a portion of a tract or parcel of a person's real estate is condemned, the commissioners shall estimate the injuries sustained and the benefits received thereby by the owner; whether the remaining portion is increased or diminished in value by reason of such condemnation, and the extent of such increase or diminution and shall assess the damages accordingly.

4. In estimating either the injuries or benefits, as provided in the preceding article, such injuries or benefits which the owner sustains or receives in common with the community generally and which are not peculiar to him and connected with his ownership, use and enjoyment, of the particular parcel of land, shall not be considered by the commissioners in making their estimate.

5. When the commissioners have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due the owner, if any be found to be due, and shall date and sign such decision and file it together with all other papers connected with the case promptly with the county judge.

Art. 3266. [6507–28] General provisions.—1. When the county judge is disqualified to act in the case, and the parties fail to agree upon a special judge, he shall certify such disqualification upon the petition or statement filed with him, and file it with the county clerk, who shall make a certified copy thereof and of the endorsement thereon and forward the same to the Governor, who shall appoint some person learned in the law to act as special judge, and such special judge when appointed and qualified, shall proceed with the case to its final conclusion, or the parties may agree upon a special judge.

2. The county judge may appoint other commissioners when one or more of those appointed shall fail to serve.

3. Commissioners shall receive for their services three dollars for each day they may be engaged in the performance of their duties, and may withhold their decision until their fees are paid.

4. The party seeking to condemn the property shall pay the expense of serving notice upon the owner, but may recover from the owner such expenses when it is decided that the owner shall pay the costs.

5. The commissioners may adjudge the costs against either party, and shall make a statement in writing of all the costs which have accrued and state therein the party against whom such costs have been adjudged, and shall sign such statement and deliver it with the other papers.

6. If either party be dissatisfied with the decision, such party may within ten days after the same has been filed with the county judge file his objection thereto in writing, setting forth the grounds of his objection, and thereupon the adverse party shall be cited and the cause shall be tried and determined as in other civil causes in the county court.

7. If no objections to the decision are filed within ten (10) days, the County Judge shall cause said decision to be recorded in the minutes of the County Court, and shall make the same the judgment of the court and issue the necessary process to enforce the same. [As amended, Acts 1941, 47th Leg., p. 872, ch. 543, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 3267. [6529] [4470] [4204] How costs awarded.—The costs of the proceedings before the commissioners and in the court shall be determined as follows, to-wit: If the commissioners shall award greater damages than the plaintiff offered to pay before the proceedings commenced, or if objections are filed to the decision in the county court under the provisions of this title, and the judgment of the court is for a greater sum than the amount awarded by the commissioners, then the plaintiff shall pay all costs; but if the amount awarded by the commissioners as damages or the judgment of the county court shall be for the same or less amount of damages than the amount offered before proceedings were commenced, then the costs shall be paid by the owner of the property.

Art. 3268. [6530] [4471] [4205] Damages paid first.—If the plaintiff in the condemnation proceedings should desire to enter upon and take possession of the property sought to be condemned, pending litigation, it may do so at any time after the award of the commissioners, upon the following conditions, to-wit:

1. It shall pay to the defendant the amount of damages awarded or adjudged against it by the commissioners, or deposit the same in money in court, subject to the order of the defendant, and also pay the costs awarded against it.

2. In addition thereto, it shall deposit in said Court a further sum of money equal to the amount of the damages awarded by the Commissioners, and which shall be held, together with the award itself, should it be deposited in Court instead of being paid, exclusively to secure all damages that may be awarded or adjudged against the plaintiff; and it shall also execute a bond with two or more good and solvent sureties, to be approved by the Judge of the Court in which such condemnation proceedings are pending, conditioned for the payment of any further costs that may be adjudged against it, either in the Court below or upon appeal. The State, a county, municipal corporation, irrigation district, water improvement district or water power control district created under authority of law, shall not be required to deposit a bond or the amount equal to the award of damages by the Commissioners as provided in Section 2 hereof. [As amended Acts 1930, 41st Leg., 4th C.S., p. 75, ch. 37, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 89, ch. 37, § 2.]

3. Should it be determined on final decision of the case that the right to condemn the property in question

does not exist, the plaintiff shall surrender possession thereof, if it has taken possession pending litigation, and the court shall so adjudge and order a writ of possession for the property in favor of the defendant, and the court may also inquire what damages, if any, have been suffered by the defendant by reason of the temporary possession of the plaintiff, and order the same paid out of the award or other money deposited; provided, that in any case where the award paid the defendant or appropriated by him exceeds the value of the property as determined by the final judgment, the court shall adjudge the excess to be returned to the plaintiff.

If the cause should be appealed from the decision of the county court, the appeal shall be governed by the law governing appeals in other cases; except the judgment of the county court shall not be suspended thereby. [Const. art. 1, sec. 17; Acts 1899, p. 105.]

Acts 1930, 41st Leg., 4th C.S., p. 75, ch. 37, section 1 and Acts 1934, 43rd Leg., 2nd C.S., p. 89, ch. 37, section 2 amended subdivision 2 of this Article.

Art. 3269. [6531] [4472] Practice in case specified.—When the State of Texas, or any county, incorporated city, or other political subdivision, having the right of eminent domain, or any person, corporation or association of persons, having such right, is a party, as plaintiff, defendant or intervenor, to any suit in a District Court, in this State, for property or for damages to property occupied by them or it for the purposes of which they or it have the right to exercise such power of eminent domain, or when a suit is brought for an injunction to prevent them or it from going upon such property or making use thereof for such purposes, the Court in which such suit is pending may determine the matters in dispute between the parties, including the condemnation of the property and assessment of damages therefor, upon petition of the plaintiff, cross-bill of the defendant or plea of intervention by the intervenor asking such remedy or relief; and such petition, cross-bill of plea of intervention asking such relief shall not be an admission of any adverse party's title to such property; and in such event the condemnor may assert his or its claim to such property and ask in the alternative to condemn the same if he or it fails to establish such claim; and provided that, if injunctive relief be sought, the Court may grant such relief under the Statutes and Rules of Equity, or may, as a prerequisite for denying such relief, require the party seeking condemnation to give such security as the Court may deem proper for the payment of any damages that may be assessed on such party's pleading for condemnation. [Acts 1899, p. 18; Acts 1931, 42nd Leg., p. 413, ch. 245, § 1; Acts 1945, 49th Leg., p. 404, ch. 259, § 1.]

Section 2 of the Act of 1945 provided that a holding of partial invalidity should not affect the remaining portions of the act.

Art. 3270. [6532] [4473] [4206] Property, how construed.—Except where otherwise expressly provided by law, the right secured or to be secured to any corporation or other plaintiff in this State, in the manner provided by this law, shall not be so construed as to include the fee simple estate in lands, either public or private, nor shall the same be lost by the forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter without a new condemnation. [Acts 1861, p. 12.]

Art. 3271. [6534] [4475] [4208] Property vested by judgment.—Whenever acquired as hereinbefore provided, the judgment of the court shall vest such right in the company acquiring the same.

TITLE 52A—ENGINEERS

Art.
3271a. Registration of professional engineers.

Sec.
1. Evidence of qualifications; registration required.
2. Definitions.
3. State Board of Registration for Professional Engineers—Appointment of members—Terms.
4. Qualifications of members of board.
5. Compensation and expenses of board members.
6. Removal of members of board—Vacancies.
7. Organization and meetings of the board.
8. Powers of the board.
9. Receipts and disbursements.
10. Records and reports.
11. Roster of registered engineers.
12. General requirements for registration.
13. Applications and registration fees.
14. Examinations.
15. Certificates, seals.
16. Expirations and renewals.
17. Firms, partnerships, corporations and joint stock associations.
18. Practitioners at time act becomes effective.
19. Public work.
20. Exemptions.
21. Reciprocity.
22. Revocations and re-issuances of certificates.
23. Violations and penalties.
24. Invalid portions.
25. Repeal of conflicting legislation with proviso.

Art. 3271a. Registration of professional engineers.

Evidence of qualifications; registration required

Section 1. In order to safeguard life, health, and property, any person practicing or offering to practice the profession of engineering as hereinafter defined shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or offer to practice the profession of engineering in this State, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer unless such person has been duly registered or exempted under the provisions of this Act.

Definitions

Sec. 2. The term professional engineer as used in this Act shall mean a person who, by reason of his knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice as hereinafter defined.

The practice of professional engineering within the meaning and intent of this Act includes any professional service, such as consultation, investigation, evaluation, planning, designing, or responsible supervision of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, wherein the public welfare, or the safeguarding of life, health or property is concerned or involved, when such professional service requires the applica-

tion of engineering principles and interpretation of engineering data.

The term "Board" as used in this Act shall mean the State Board of Registration for Professional Engineers, provided for by this Act.

State Board of Registration for Professional Engineers—Appointment of members—Terms

Sec. 3. A State Board of Registration for Professional Engineers is hereby created whose duty it shall be to administer the provisions of this Act. The Board shall consist of six (6) professional engineers, who shall be appointed by the Governor of the State, with the advice and consent of the Senate. The members of the first Board shall be appointed within ninety (90) days after this Act becomes effective, to serve the following terms: Two (2) members for two (2) years; two (2) members for four (4) years; and two (2) members for six (6) years, from the date of their appointment or until their successors are duly appointed and qualified. Thereafter, at the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of the State and he shall serve for a term of six (6) years or until his successor shall be appointed and qualified. Before entering upon the duties of his office each member of the Board shall take the Constitutional Oath of office and the same shall be filed with the Secretary of State. Each member of the Board first appointed hereunder shall receive a certificate of registration under this Act from said Board.

Qualifications of members of board

Sec. 4. Each member of the Board shall be a citizen of the United States and a resident of this State for a period of ten (10) years prior to his appointment, and shall have been engaged in the practice of the profession of engineering for at least ten (10) years, two (2) years of which may be credited for graduation from an approved engineering school. Responsible charge of engineering teaching may be construed as the practice of professional engineering.

Compensation and expenses of board members

Sec. 5. Each member of the Board shall receive the sum of Ten ($10.00) Dollars per day for each day he is actually engaged in the duties of his office, including time spent in necessary travel, together with all legitimate expenses incurred in the performance of such duties. All per diem and expenses incurred hereunder shall be paid from the "Professional Engineers' Fund" as provided in this law. No money shall ever be paid for the administration of this Act from the General Funds of the State.

Removal of members of board—Vacancies

Sec. 6. The Governor may remove any member of the Board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the Board shall be filled for the unexpired term by appointment by the Governor as provided in this Act.

Organization and meetings of the board

Sec. 7. The Board shall hold a meeting within thirty (30) days after its members are first appointed, and thereafter shall hold at least two (2) regular meetings each year. Special meetings shall be held at such time as the by-laws of the Board may provide. Notice of all meetings shall be given in such manner as the by-laws may provide. The Board shall elect or appoint annually from its own membership the following officers: a Chairman, a Vice-Chairman, and a Secretary. A quorum of the Board shall consist of not less than four (4) members.

Powers of the board

Sec. 8. The Board shall have the power to make all by-laws and rules, not inconsistent with the Constitution and laws of this State, which may be reasonably necessary for the proper performance of its duties and the regulations of the proceedings before it. The Board shall adopt and have an official seal. The Board shall have such additional power as may be conferred by other provisions of this Act.

Receipts and disbursements

Sec. 9. The Secretary of the Board shall receive and account for all moneys derived under the provisions of this Act, and shall pay the same weekly to the State Treasurer who shall keep such moneys in a separate fund to be known as the "Professional Engineers' Fund". Such fund shall be paid out only by warrant of the State Comptroller upon the State Treasurer, upon itemized vouchers, approved by the Chairman and attested by the Secretary of the Board. All moneys in the "Professional Engineers' Fund" are hereby specifically appropriated for the use of the Board in the administration of this Act. The Secretary of the Board shall give a surety bond to the Governor of the State of Texas in the sum of Two Thousand Five Hundred ($2,500.00) Dollars. The premium on said bond shall be paid out of the "Professional Engineers' Fund". The Secretary of the Board shall receive such salary as the Board shall determine in addition to the compensation and expenses provided for in this Act. The Board shall employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this fund for any purpose which in the opinion of the Board is reasonably necessary for the proper performance of its duties under this Act. Under no circumstances shall the total amount of warrants issued by the State Comptroller in payment of the expenses and compensation provided for in this Act exceed the amount of the "Professional Engineers' Fund". Provided further, that the salaries paid herein shall not be in excess of salaries paid for similar work in other departments.

Records and reports

Sec. 10. The Board shall keep a record of its proceedings and register of all applications for registration, which register shall show (a) the name, age and residence of each applicant; (b) the date of the application; (c) the place of business of such applicant; (d) his educational and other qualifications; (e) whether or not an examination was required; (f) whether the applicant was rejected; (g) whether a certificate of registration was granted; (h) the date of the action of the Board; and (i) such other information as may be deemed necessary by the Board.

The records of the Board shall be available to the public at all times and shall be prima facie evidence of the proceedings of the Board set forth therein, and a transcript thereof, duly certified by the Secretary of the Board under seal, shall be admissible in evidence with the same force and effect as if the original was produced.

Annually, as of August 31st, the Board shall submit to the Governor a report of its transaction of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the Board, attested by affidavits of its Chairman and its Secretary.

Roster of registered engineers

Sec. 11. A roster showing the names and places of business of all registered professional engineers shall be prepared by the Secretary of the Board during the month of July of each year, commencing with the month of July, 1938. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of State, and furnished to the public upon request.

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

General requirements for registration

Sec. 12. The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration as a professional engineer, to-wit:

(a) Graduation from an approved course in engineering of four (4) years or more in a recognized school or college approved by the Board as of satisfactory standing, and a specific record of an additional four (4) years or more of active practice in engineering work, of a character satisfactory to the Board, indicating that the applicant is competent to be placed in responsible charge of such work; or

(b) Successfully passing a written, or written and oral, examination designed to show knowledge and skill approximating that attained through graduation from an approved four (4) years engineering course; and a specific record of at least eight (8) years of active practice in engineering work of a character satisfactory to the Board and indicating that the applicant is competent to be placed in responsible charge of such work.

(c) At any time within five (5) years after this Act becomes effective the Board may accept as evidence that the applicant is qualified for registration as a professional engineer a specific record of twelve (12) years or more of active practice in engineering work of a character satisfactory to the Board and indicating that the applicant is qualified to design, to operate, or to supervise construction of engineering work and has had responsible charge of important engineering work for at least five (5) years and provided applicant is not less than thirty-five (35) years of age, and was not practicing professional engineering at the time this Act becomes effective.

(d) After this Act shall have been in effect five (5) years, the Board shall issue certificates of registration only to those applicants who meet the requirements of Section 12, (a), or (b), or Section 21.

(e) Provided, that no person shall be eligible for registration as a professional engineer who is not of good character and reputation; and provided further, that any engineer licensed under this Act shall be eligible to hold any appointive engineering position with the State of Texas.

(f) In considering the qualifications of applicants, responsible charge of engineering teaching may be construed as responsible charge of engineering work. The satisfactory completion of each year of an approved course in engineering in a school or college approved by the Board as of satisfactory standing, without graduation, shall be considered as equivalent to a year of active practice. Graduation in a course other than engineering from a college or university of recognized standing shall be considered as equivalent to two (2) years of active practice; provided, however, that no applicant shall receive credit for more than four (4) years of active practice because of educational qualifications. The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as foreman or superintendent shall not be deemed to be active practice in engineering work.

(g) Any person having the necessary qualifications prescribed in this Act to entitle him to registration shall be eligible for such registration though he may not be practicing at the time of making his application.

Applications and registration fees

Sec. 13. Applications for registration shall be on forms prescribed and furnished by the Board, shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five (5) references, of whom three (3) or more shall be engineers having personal knowledge of his engineering experience.

The registration fee for professional engineers shall be Twenty-five ($25.00) Dollars, Fifteen ($15.00) Dollars of which shall accompany the application, the remaining Ten ($10.00) Dollars to be paid upon issuance of certificate. When a certificate of qualification issued by the National Bureau of Engineering Registration is accepted as evidence of qualification, the total fee for registration as professional engineer shall be Ten ($10.00) Dollars.

Examinations

Sec. 14. When oral or written examinations are required, they shall be held at such time and place as the Board shall determine. The scope of the examinations and the methods of procedure shall be prescribed by the Board with special reference to the applicant's ability to design and supervise engineering works, which shall insure the safety of life, health, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration in professional engineering. A candidate failing on examination may apply for re-examination at the expiration of six (6) months and will be re-examined without payment of additional fees. Re-examination may be granted at any time upon payment of a fee to be determined by the Board.

Certificates, seals

Sec. 15. The Board shall issue a certificate of registration upon payment of registration fee as provided for in this Act, to any applicant, who, in the opinion of the Board, has satisfactorily met all the requirements of this Act. In case of a registered engineer, the certificate shall authorize the practice of professional engineering. Certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the Chairman and the Secretary of the Board under seal of the Board. The issuance of a certificate of registration by this Board shall be evidence that the person named therein is entitled to all rights and privileges of a registered professional engineer, while the said certificate remains unrevoked or unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the Board, bearing the registrant's name and the legend "Registered Professional Engineer". Plans, specifications, plats, and reports issued by a registrant shall be stamped with the said seal when filed with public authorities, during the life of the registrant's certificate, but it shall be unlawful for any one to stamp or seal any documents with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or reissued.

Expirations and renewals

Sec. 16. Certificates of registration shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the Secretary of the Board to notify every person registered under this Act of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one (1) year; such notice shall be mailed at least one (1) month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee of Five ($5.00) Dollars. The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of December shall be increased ten

(10%) percent for each month or fraction of a month that renewal payment is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

Firms, partnerships, corporations and joint stock associations

Sec. 17. A firm, or a co-partnership, or a corporation, or a joint stock association may engage in the practice of professional engineering in this State, provided such practice is carried on by only professional engineers registered in this State.

Practitioners at time act becomes effective

Sec. 18. At any time within one (1) year after this Act becomes effective, upon due application therefor and the payment of the registration fee of Twenty-five ($25.00) Dollars for professional engineers, the Board shall issue a certificate of registration, without oral or written examination, to any professional engineer who shall submit evidence under oath satisfactory to the Board that he is of good character, has been a resident of the State of Texas for at least one (1) year immediately preceding the date of his application, and was practicing professional engineering at the time this Act became effective, and has had responsible charge of work of a character satisfactory to the Board.

After this Act shall have been in effect one (1) year, the Board shall issue certificates of registration only as provided for in Section 12 or Section 21 thereof.

Public work

Sec. 19. After the first day of January, 1938, it shall be unlawful for this State, or for any of its political subdivisions, for any county, city, or town, to engage in the construction of any public work involving professional engineering, where public health, public welfare or public safety is involved, unless the engineering plans and specifications and estimates have been prepared by, and the engineering construction is to be executed under the direct supervision of a registered professional engineer; provided, that nothing in this Act shall be held to apply to any public work wherein the contemplated expenditure for the completed project does not exceed Three Thousand ($3,000.00) Dollars. Provided, that this Act shall not apply to any road maintenance or betterment work undertaken by the County Commissioners' Court.

Exemptions

Sec. 20. The following persons shall be exempt from the provisions of this Act, to-wit:

(a) A person not a resident of and having no established place of business in this State, practicing or offering to practice here the profession of engineering, when such practice does not exceed in the aggregate more than sixty (60) days in any calendar year; provided, such person is legally qualified by registration to practice the said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this Act.

(b) A person not a resident of and having no established place of business in this State, or who has recently become a resident thereof, practicing or offering to practice herein for more than sixty (60) days in any calendar year the profession of engineering, if he shall have filed with the Board an application for a certificate of registration and shall have paid the fee required by this Act. Such exemption shall continue only for such time as the Board requires for the consideration of the application for registration; provided, that such a person is legally qualified to practice said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this Act.

(c) An employee or a subordinate of a person holding a certificate of registration under this Act, or any employee of a person exempted from registration by classes (a) and (b) of this section; provided, his practice does not include responsible charge of design or supervision.

(d) Officers and employees of the Government of the United States while engaged within this State in the practice of the profession of engineering for said Government.

(e) Nothing in this Act shall be construed to apply to persons doing the actual work of installing, operating, repairing, or servicing locomotive or stationary engines, steam boilers, Diesel engines, internal combustion engines, refrigeration compressors and systems, hoisting engines, electrical engines, air conditioning equipment and systems, or mechanical and electrical equipment and apparatus; nor shall this Act be construed to prevent any citizen from identifying himself in the name and trade of any engineers' labor organization with which he may be affiliated. Provided, however, that nothing in this Act shall be construed as permitting any person other than a licensed professional engineer affixing his signature as such to engineering plans, specifications or estimates.

(f) Nothing in this Act shall be construed to apply to persons erecting or building any private dwelling.

Reciprocity

Sec. 21. The Board may, upon application therefor, and the payment of a fee of Ten ($10.00) Dollars, issue a certificate of registration as a professional engineer to any person who holds a certificate of qualification or registration issued to him by proper authority of the National Council of State Boards of Engineering Examiners, or of the National Bureau of Engineering Registration, or of any state or territory or possession of the United States, or any country provided that the requirements for the registration of professional engineers under which said certificate of qualification or registration was issued do not conflict with the provisions of this Act and are of a standard not lower than that specified in Section 12 of this Act.

Revocations and re-issuances of certificates

Sec. 22. The Board shall have the power to revoke the certificate of registration of any registrant who is found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration;

(b) Any gross negligence, incompetency, or misconduct in the practice of professional engineering as a registered professional engineer.

In determining any such charges the Board shall proceed upon sworn information furnished it by any reliable resident of this State; such information shall be in writing and shall be duly verified by the person familiar with the facts therein charged, and three (3) copies of the same shall be filed with the Secretary of the Board. Upon receipt of such information the Board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearing at a specified time and place, and the Secretary of the Board shall cause a copy of the Board's order and of the information to be served upon the accused at least thirty (30) days before the date appointed in the order for the hearing. The accused may appear in person or by counsel, or both, at the time and place named in the order and make his defense to the same. If the accused fails or refuses to appear, the Board may proceed to hear and determine the charges in his absence. If the accused pleads guilty, or upon a hearing of the charges the Board and a majority of its members

shall find them to be true, it may enter an order revoking the certificate of registration of such registered professional engineer. The Board shall have the power, through its Chairman or Secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the district court by subpoena issued over the signature of the Secretary and seal of the Board. If the accused desires the evidence to be preserved and shall so inform the Board before the hearing is begun and shall deposit with the Board such a sum of money as the Board may deem reasonably necessary for the employment of a stenographer, then the Board shall employ such stenographer and when so employed he shall be the official stenographer of the Board for the purpose of reporting the evidence and proceedings of such Board. In proceedings under this section, as under others, a majority of the Board shall constitute a quorum.

When the Board has completed such hearing it shall make a record of its findings and order and shall cause a certified copy thereof to be forwarded to the accused.

Any person who may feel himself aggrieved by reason of the revocation of his certificate of registration by the Board, as hereinabove authorized, shall have the right to file suit within thirty (30) days after receiving notice of the Board's order revoking his certificate of registration, in the district court of the county of his residence, or of the county in which the alleged offense relied upon as grounds for revocation took place, to annul or vacate the order of the Board revoking the certificate of registration. Said suit shall be filed against the Board as defendant, and service of process may be had upon its Chairman or Secretary. The suit shall be tried as other civil causes, the burden of proof devolving upon the plaintiff assailing the order of revocation.

The Board, for reasons it may deem sufficient, may re-issue a certificate of registration to any person whose certificate has been revoked, provided four (4) or more members of the Board vote in favor of such re-issuance. A new certificate of registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the Board, and a charge of Three ($3.00) Dollars shall be made for such issuance.

Violations and penalties

Sec. 23. On or after the first day of January, 1938, any person who shall practice, or offer to practice, the profession of engineering in this State without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining a certificate of registration, or any person who shall violate any of the provisions of this Act, be fined not less than One Hundred ($100.00) Dollars nor more than Five Hundred ($500.00) Dollars, or be confined in jail for a period of not exceeding three (3) months, or both. Each day of such violation shall be a separate offense.

The Board is charged with the duty of aiding in the enforcement of the provisions of this Act, and any member of the Board may present to a prosecuting officer complaints relating to violations of any of the provisions of this Act; and the Board through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violation of said statutes, subject to the control of the prosecuting officers.

The Attorney General or his assistants shall act as legal adviser of the Board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

Invalid portions

Sec. 24. If any article, section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and such section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Repeal of conflicting legislation with proviso

Sec. 25. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. Provided, however, that this Act shall not be construed as repealing or amending any law affecting or regulating licensed state land surveyors; and such licensed state land surveyors in performing their duties as such shall not be subject to the provisions of this Act; nor shall this Act be construed to affect or prevent the practice of any other legally recognized profession by the members of such profession licensed by the State or under its authority. [Acts 1937, 45th Leg., p. 816, ch. 404.]

TITLE 53—ESCHEAT

Art.
3272. When estates shall escheat.
3273. Petition for escheat.
3274. Citation.
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3276. Claimants may appear and plead.
3277. If no person appears.
3278. Issue and trial.
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3282. Writ of seizure.
3283. Claimant not served may sue.
3284. Appeal or writ of error.
3285. Comptroller to keep accounts.
3286. Heir may sue.
3287. Order in favor of claimant.
3288. Review of probate decree.
3289. Suit for assets.

Art. 3272. [3186] [1821] [1770] When estates shall escheat.—If any person die seized of any real estate or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devisee of his estate, such estate shall escheat to and vest in the State. Where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be prima facie evidence of the death of the owner without heirs. Any one paying taxes to the State on such property, either personally or through an agent, shall be held to be exercising lawful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party by personal service of citation, to such escheat proceedings, if a resident of this State, and his address can be secured by reasonable diligence, but, if he be a nonresident of the State or can not be found, the personal service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable

diligence, can be found; such diligence to include an investigation of the records of the office and inquiry of the tax collector and tax assessor of the county in which the property sought to be escheated is situated. [Acts 1885, p. 35, G. L. vol. 9, p. 655; Acts 1907, p. 111.]

Art. 3273. [3187] [1822] [1771] Petition for escheat.—When the district or county attorney shall be informed, or have reason to believe, that any estate, real or personal, is in the condition specified in the preceding article, he shall file a sworn petition which shall set forth a description of the estate, the name of the person last lawfully seized or possessed of same, the name of the tenants or persons in actual possession, if any, and the names of the persons claiming the estate, if any such are known to claim or whose claim may be discovered by the exercise of reasonable diligence, and the facts or circumstances in consequence of which such estate is claimed to have escheated and the diligence exercised to discover the claimants of same, praying that such property be escheated and for a writ of possession therefor in behalf of the State. [Id.]

Art. 3274. [3188] [1823] [1772] Citation.—The district clerk shall issue citation as in other civil causes for each defendant alleged in the petition to hold possession of or claim such estate and for each other person required by this title to be cited. [Id.]

Art. 3275. [3189] [1824] [1773] Citation by publication.—The clerk shall also issue a citation, setting forth briefly the contents of the petition, for all persons interested in the estate to appear and answer at the next term of court, which citation shall be published as required in other civil suits. [Acts 1885, p. 35; G. L. vol. 9, p. 655.]

Art. 3276. [3190] [1825] [1774] Claimants may appear and plead.—All persons named in such petitions as tenants or persons in actual possession or claimants of the estate, and any other person claiming an interest in such estate, may appear and plead to such proceedings, and may traverse the facts stated in the petition. [Acts 1848, p. 211; G. L. vol. 3, p. 211.]

Art. 3277. [3191] [1826] [1775] If no person appears.—Judgment shall be rendered by default in behalf of the State if no person after due notice shall plead within the time fixed by law. [Id.]

Art. 3278. [3192] [1827] [1776] Issue and trial.—If any person appears and denies the title set up by the State, or traverses any material fact in the petition, issue shall be made up and tried as other issues of fact. A survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question. [Id.]

Art. 3279. [3193–95] Judgment for State.—If it appears upon the facts found that the property is subject to escheat, judgment shall be rendered that the State recover the same and at the discretion of the court, recover the costs against the defendant. If such judgment is for real estate, the court shall fix the minimum price at which the same shall be sold, and a writ of possession shall be awarded as in other civil suits, but shall not issue until after the expiration of two years from the date of the final judgment. If such judgment be for personal property, a writ of possession shall issue as in other cases of judgment for the recovery of personal property. Such writ of possession shall contain such description of the property as shall identify the same. [Id.; Acts 1907, p. 112.]

Art. 3280. [3194] [1829] [1778] Costs against State.—If it appears that the State is not entitled to such estate, the costs of such proceedings shall be taxed against the State, and certified by the clerk. The Comptroller shall, on such certificate being filed in his office, issue a warrant therefor on the treasury. [Acts 1848, p. 211; G. L. vol. 3, p. 211.]

Art. 3281. Escheated lands dedicated to Permanent Free School Fund, lease or sale.—All lands heretofore or hereafter escheated to the State of Texas by provisions of this Title are hereby dedicated, appropriated and set apart to the Permanent Free School Fund of the State of Texas. The Clerk of the District Court in which any judgment shall be rendered for the State escheating real estate to the State shall, within ninety (90) days of the date of said judgment, forward the Commissioner of the General Land Office at Austin, Texas, a certified copy of said judgment of escheat. The Clerk of said Court shall likewise notify the Commissioner of the General Land Office of any appeal that may be taken in said case. Upon receipt of a certified copy of the judgment escheating real estate to the State from which no appeal is taken, or upon receipt of a certified copy of notice of affirmance of any judgment escheating lands to the State, from which an appeal was taken, the Commissioner of the General Land Office shall list said lands as escheated permanent free school lands. The Commissioner of the General Land Office may lease said lands for grazing purposes under existing laws relating to the leasing for grazing purposes of unsold school lands. The Commissioner of the General Land Office may lease said lands for agricultural, residential, business or other purposes for a term of not to exceed two (2) years, said rental to be payable in money, the amount of said rental and all other terms of the lease to be fixed by the Commissioner of the General Land Office. Any escheated permanent free school lands shall be subject to lease for oil and gas development or subject to other mineral development under Statutes governing the leasing for mineral purposes all other unsold permanent free school lands. Any escheated permanent free school lands may be sold by the Commissioner of the General Land Office for not less than one-tenth of the purchase price in cash and the balance of said purchase price payable in nine equal annual installments, said deferred installments to bear interest at the rate of six (6) per cent per annum. Any lands so sold shall be sold to the highest bidder as are other public free school lands but no escheated lands shall be sold at a price of less than Two Dollars and Fifty Cents ($2.50) per acre. All sales of escheated permanent free school lands shall be with a reservation to the State of all the minerals in the land in favor of the Permanent Free School Fund. All sums received from the leasing, mineral developments, or sale of escheated lands shall be deposited in the Permanent School Fund of Texas. The Commissioner of the General Land Office is authorized to adopt such regulations as he deems necessary to carry out this Article. Said regulations or forms adopted shall be approved by the Attorney General. [As amended Acts 1934, 43rd Leg., 3rd C.S., p. 112, ch. 60, § 1.]

Art. 3282. [3197] [1831] [1780] Writ of seizure.—If the property recovered be personal property, a writ shall issue to the sheriff commanding him to seize such property and he shall dispose of the same by public auction in the manner provided by law for the sale of personal property under execution, and pay the proceeds of such sale less the costs of the court, into the State Treasury. [Acts 1885, p. 35. G. L. vol. 9, p. 655.]

Art. 3283. [3196] [1830] [1779] Claimant not served may sue.—When title to real property, or any part thereof, is adjudged to the State, it shall be subject to divestiture at the suit of any claimant not personally served with citation in such escheat proceedings, who shall institute suit therefor against the State within two years after such judgment has become final, who shall, upon trial of such issue, be adjudged the owner of the property or any part thereof, for the recovery of which the suit is brought. [Acts 1907, p. 112.]

Art. 3284. [3198] [1832] [1781] Appeal or writ of error.—Any party who has appeared in any such proceedings, and also the district or county attorney on behalf of the State, shall have the right to prosecute an appeal or writ of error upon such judgment. [Acts 1848, p. 212. G. L. vol. 3, p. 212.]

Art. 3285. [3199] [1833] [1782] Comptroller to keep accounts.—The Comptroller shall keep an account of money paid into the treasury, and of lands vested in the State under any provision of this title. [Id.]

Art. 3286. [3200] [1834] [1783] Heir may sue.—If any person appears after the death of the testator or intestate and claims any money or property paid into the treasury under this Title, as heir, or devisee, or legatee thereof, he may file a petition against the State in the District Court of Travis County, Texas, stating the nature of his claim and praying that such money be paid to him. A copy of such petition shall be served on the Attorney General of this State at least twenty (20) days previous to the return day of the process. Any such suit shall be instituted within four (4) years of the date of the final judgment escheating such property to the State, and not thereafter. [Acts 1848, p. 212; G.L. vol. 3, p. 212; Acts 1934, 43rd Leg., 3rd C.S., p. 112, ch. 60, § 2.]

Art. 3287. [3201] [1835] [1784] Order in favor of claimant.—If the court shall find that such person is entitled to recover such money as heir, devisee, legatee, or legal representative, it shall make an order directing the Comptroller to issue his warrant on the Treasury for the payment of the same, but without interest or costs; a copy of which order under the seal of the court shall be sufficient voucher for issuing such warrant. [Acts 1895, p. 189; G. L. vol. 10, p. 919.]

Art. 3288. [3203—4] Review of probate decree.—When an estate owning property claimed by the State to be subject to escheat, shall have been administered in a probate court in this State, the State may have the judgment of such probate court reviewed in the district court, upon petition alleging that such administration was obtained by fraud or mistake of fact, and the case shall be tried in the manner prescribed by law for the revision and correction of any decree of the probate court. [Act Nov. 13, 1866, p. 236; G. L. vol. 5, p. 1154.]

Art. 3289. [3205] [1839] [1788] Suit for assets.—All suits brought for the collection of the assets turned over to the Treasurer, under this title, shall be brought in the name of the State of Texas. [Id.]

TITLE 54—ESTATES OF DECEDENTS

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CHAPTER 1.—JURISDICTION

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3292. Proceedings before death.
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3293—A. Administration to receive funds from Federal Government; venue.
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Article 3290. [3206] 1840] [1789] Of the county court.—The county court shall have general jurisdiction of a probate court. It shall probate wills, grant letters testamentary or of administration, settle the accounts of executors and administrators, and transact all business appertaining to the estates of deceased persons, including the settlement, partition and distribution of such estates. [Const. art. 5, sec. 16.]

Art. 3291. [3207] [1841] [1790] Of district court.—The district court shall have appellate jurisdiction and general control in probate matters over the county court for the probating of wills, granting letters testamentary or of administration, settling the accounts of executors and administrators and for the transaction of business appertaining to estates, and original jurisdiction and general control over executors and administrators under such regulations as may be prescribed by law. [Const. art. 5, sec. 8.]

Art. 3292. [3208] [1842] [1791] Proceedings before death.—The probate of a will, or administration of an estate of a living person shall be void; but the bonds of the executor or administrator shall not be void but may be recovered upon.

Art. 3293. [3209] [1843] 1792] Venue for probate.—Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

1. In the county where the deceased resided, if he had a domicile or fixed place of residence in the State.

2. If the deceased had no domicile or fixed place of residence in the State, but died in the State, then either in the county where his principal property was at the time of his death, or in the county where he died.

3. If he had no domicile or fixed placed of residence in the State, and died without the limits of the State, then in any county in this State where his nearest of kin may reside.

4. But if he has no kindred in this State, then in the county where his principal estate was situated at the time of his death. [Acts 1876, p. 93; G. L. vol. 8, p. 929.]

Art. 3293—A. Administration to receive funds from Federal Government; venue.—An administration may be had upon the estate of a person deceased, in the county where the applicant resides, where the purpose of such administration is to appoint an administrator or administratrix to receive only funds or money due such deceased or the estate of such deceased, from the Federal Government; provided that notice shall be given to the mother or father and/or husband or wife of such deceased person.

Provided, further, that this article shall in no way conflict with the provisions of Article 3293 and Article 3357. [Acts 1931, 42nd Leg., p. 93, ch. 59, § 1.]

Art. 3294. [3210] [1844] [1793] Concurrent jurisdiction.—When two or more courts have concurrent jurisdiction of an estate, the court in which application for letters testamentary or of administration thereon is first filed shall have and retain jurisdiction of such estate to the exclusion of such other court or courts.

CHAPTER 2.—RECORD BOOKS

Art.
3295. Judges probate docket.
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3299. Index.
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Article 3295. [3211] 1845] [1794] Judges probate docket.—The clerk of the county court shall keep a record book to be styled, "Judge's Probate Docket," and enter therein:

1. The name of each deceased person upon whose estate proceedings are had or sought to be had.
2. The name of the executor or administrator of such estate, or of the applicant for letters.
3. The date of the filing of the original application for the probate of a will, or for letters testamentary or of administration.
4. A minute of all orders, judgments, decrees and proceedings had in the estate, with the date thereof.
5. Each estate shall be numbered upon the docket in the order in which the proceedings therein have been commenced, and each paper filed in an estate shall be numbered with the docket number of such estate.

Art. 3296. [3212] [1846] [1795] Probate minutes.—The clerk shall keep a record book, styled "Probate minutes," and enter therein in full all the orders, judgments, decrees and proceedings of the court, and record therein all papers of estates required by law to be recorded.

Art. 3297. [3213] [1847] [1796] Claim docket.—He shall also keep a record book to be styled, "Claim docket," and enter therein all claims presented against an estate for approval by the court. This docket shall be ruled in sixteen columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each estate. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; when due; the date from which it bears interest; the rate of interest; when allowed by the executor or administrator; the amount allowed; the date of rejection; the date of filing; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of such judgment. [Acts 1870, p. 169; P. D. 5673; G. L. vol. 6, p. 343.]

Art. 3298. [3214] [1848] [1797] Probate fee book.—He shall keep a record book, styled, "Probate Fee Book," and enter therein each item of costs which accrues to the officers of the court, together with witness fees, if any, showing the party to whom such costs or fees are due, the date of the accrual of the same, and the estate or party liable therefor.

Art. 3299. [3215] [1849] [1798] Index.—He shall properly index each record book, and shall keep it open for public inspection, but shall not let it out of his office.

Art. 3300. [3216] [1850] [1799] Shall be evidence.—Said record books or certified copies therefrom shall be evidence in any court of this State.

Art. 3301. [3217] [1851] [1800] Papers to be recorded.—The following papers shall be recorded in the probate minutes:

1. All applications for the probate of wills when the probate has been granted.
2. The citation and return thereon.
3. The will and the testimony upon which the same was admitted to probate.
4. All bonds and oaths of executors and administrators.
5. The notice to persons holding claims against an estate.
6. All inventories and appraisements and lists of claims.
7. All exhibits and accounts.
8. All reports of hiring, renting or sale.
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Article 3302. [3218–19] County court decrees.—All decisions, orders, decrees and judgments of the county court in probate matters shall be rendered in open court at a regular term for civil and probate business, unless otherwise specially provided; and the same shall be entered on the records of the court during the term at which same are rendered.

Art. 3303. [Repealed by Acts 1935, 44th Leg., p. 660, ch. 274, § 1.]

Art. 3304. [3221] [1855] [1803] Trial by jury.—There shall be no trial by jury in probate matters in the county court.

Art. 3305. [3222] [1856] [1804] Clerk to file papers.—The county clerk shall file all applications, complaints, partitions and all other papers permitted or required by law to be filed in said court in estates of decedents, and shall indorse on each paper the date filed, with the proper docket number and sign the same officially.

Art. 3306. [3223] [1857] [1805] Clerk shall issue notices.—The clerk shall issue necessary notices, citations, writs and process from said court in probate matters, without any order from the county judge, unless such order is required by some provision of this title. [Acts 1876, p. 129; G. L. vol. 8, p. 965.]

Art. 3307. [3224] [1858] [1806] Judge may enforce obedience.—The county judge may enforce obedience to all his lawful orders against executors and administrators, by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, except as hereinafter provided. [Id.]

Art. 3308. [3225] [1859] [1807] Withholding will from probate.—On written complaint that any person has the last will of any testator or testatrix, or any papers belonging to the estate of a testator or intestate, the county judge shall cause said person to be cited to appear before him, either in term time or vacation, and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator. Upon the return of such citation served, unless such delivery is made or good cause shown, if satified [satisfied] that such person had such will or papers at the time of filing the complaint, such judge may cause him to be arrested and imprisoned until he shall so deliver them. [Id.]

Art. 3309. [3226] [1860] [1808] Executions.—Executions in probate matters shall be directed to the sheriff or any constable of a county, made returnable in sixty days, and shall be tested and signed by the clerk officially under the seal of the court. All proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the district court so far as applicable. [Id.]

Art. 3310. [3228] [1862] [1810] Citation in probate.—Citations in probate matters shall be in writing, dated and signed by the clerk officially under the seal of the court, and shall state substantially the nature of the proceeding which the party to be cited is called upon to answer, and the time and place he is required to appear.

Art. 3310a. Return of citation and notices.—All citations and notices issued out of the County Court in probate matters shall be returnable to the Court from which issued on the first Monday after the service is perfected. All such notices and citations now required to be posted shall be posted at the Court House door for not less than ten (10) days before the return day thereof. All such notices and citations now required to be published shall be published once and said publication shall be not less than ten (10) days before the return day thereof. All such notices and citations now required to be served personally shall be served at least ten (10) days before the return day thereof. The time of return of the notice for citation shall be fixed by the Clerk in accordance with the provisions of this Act.

Sec. 2. All laws requiring service of citations, notices, orders or other proceedings in probate matters for a period of time and in a manner different from that herein provided, and in conflict with this Act, are hereby expressly repealed insofar as they conflict with this Act, it being the purpose of this Act to require only ten (10) days service, exclusive of the day of service, whether such service is personal, by posting or by publication. Any Probate Statute now in force and not hereby repealed by other provisions of this Act, using the expression "at the next term of Court," or "next regular term," or "during term time," or other similar expressions shall be so construed as to conform to this Act, and are hereby amended and modified as to accomplish the purposes set out in this Act. [Acts 1929, 41st Leg., 1st C.S., p. 107, ch. 48, § 1; Acts 1931, 42nd Leg., p. 210, ch. 123.]

Section 3 of Acts 1931, provides that it shall not affect process previously issued.

Art. 3310b. Posting; manner and sufficiency; return.—In any probate matter where citation or notice is required to be served by posting and such citation or notice is issued in conformity with the applicable statute or statutes, the citation or notice and the service and return thereof shall be sufficient and valid if the sheriff or any constable of the county wherein the probate matter is pending, posts a copy or copies of such citation or notice at the place or places prescribed by the applicable statute or statutes on a day which is sufficiently prior to the return day named in such citation, or notice for the period of time for which such citation or notice is required to be posted to elapse before the return day named in such citation or notice, and the fact that such sheriff or constable makes his return on such citation or notice and returns same into court before the period of time for which such citation or notice is required to be posted elapses, shall not affect the sufficiency or validity of such citation or notice or the service or return thereof even though such return is made, and such citation or notice is returned into court on the same day it is issued. [Acts 1945, 49th Leg., p. 296, ch. 214, § 1.]

Art. 3311. [3229–32] Service of citation.—A citation or notice issued out of the County Court is served either by delivering in person, by posting or by publication, and these rules shall govern the mode of service.

1. When the mode is not expressly provided by law, it must be served upon the party to be cited in person by delivering to him a true copy of such citation or notice at least ten (10) days before the return day thereof.

2. When such citation or notice is required to be posted, it shall be posted at the courthouse door for not less than ten (10) days before the return day thereof. The clerk shall deliver the original and a copy of such citation or notice to the sheriff or constable of the proper county who shall post said copy as herein prescribed and return the original to the clerk stating in a written return thereon the time when and the place where he posted such copy.

3. Where a person is to be cited by publication, the citation or notice shall be published once, and said publication shall be not less than ten days before the return day thereof. [Acts 1876, p. 129; G.L. vol. 8, p. 965; Acts 1935, 44th Leg., p. 634, ch. 247, § 1.]

Art. 3312. [3233] [1867] [1815] Common law applicable.—The rights, powers and duties of executors and administrators shall be governed by the principles of the common law, when the same do not conflict with the provisions of the statutes of this State. [Acts 1876, p. 129; G.L. vol. 8, p. 965.]

Art. 3313. [3234–44] Evidence.—In proceedings arising under the provisions of this title, the rules relating to witnesses and evidence that govern in the district court shall apply so far as applicable except that where a will is to be probated and in other proceedings in estates where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be had, service may be had by posting notice of intention to take depositions for a period of twenty days as provided by laws governing posting of notices. When such notice is filed with the clerk, a copy of the interrogatories shall also be filed, and at the expiration of twenty days commission may issue for taking the depositions and the judge may file cross interrogatories where no one appears, if he so desires.

Art. 3314. [3235] [1869] [1817] Transfer of estate at death.—When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will shall vest immediately in the devisees or legatees; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject however, to the payment of the debts of the testator or intestate, except such as may be exempted by law; and, whenever a person dies in-

testate, all of his estate shall vest immediately in his heirs at law, but with the exceptions aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to the possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and he shall recover possession of and hold such estate in trust to be disposed of in accordance with law. [Id.]

Art. 3315. [3236] [1870] [1818] Contestant.—Any person interested in an estate may, at any time before any character of proceeding is decided upon by the court, file opposition thereto in writing, and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition as in other suits.

Art. 3316. [3237] [1871] [1819] Call of dockets.—The county judge, at each regular term of his court for probate business, shall call the estates in their regular order upon both the probate and claim dockets and make such orders as may be necessary. He shall also see that the executors, administrators and officers perform the duties enjoined upon them by law in all matters pertaining to such estates.

Art. 3317. [3238] [1872] [1820] Definitions.—As used in this Title, "docket" means the probate docket, and "minutes" means the probate minutes. [As amended Acts 1935, 44th Leg., p. 665, ch. 280, § 1.]

Art. 3318. [3239] [1873] [1821] Judge to sign minutes.—The county judge, whenever he enters an order upon the minutes in vacation, shall date and sign the same officially; and, at the close of each term of his court, he shall in open court sign the minutes of such term officially, after all orders, judgments, decrees and proceedings of the term have been properly entered, and all papers required to be recorded therein have been so recorded.

Art. 3319. [3240] [1874] [1822] Attachment for property.—Whenever complaint in writing, under oath, shall be made to the county judge, by any person interested in the estate of a decedent, that the executor or administrator is about to remove said estate, or any part thereof beyond the limits of the State, such judge may order a writ to issue, directed to the sheriff or any constable of any county in the State, commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge may make on such complaint. No such writ shall issue unless the complainant shall give bond, in such sum as the said judge may require, payable to the executor or administrator of such estate conditioned for the payment of all damages and costs that may be recovered for the wrongful suing out of such writ. [Acts 1876, p. 129; G. L. vol. 8, p. 965.]

Art. 3320. [3241] [1875] Accounts of executors.—Executors and administrators shall make annual exhibits under oath, fully showing the condition of the estate; they shall make final settlement of the estates they represent within three years from the grant of letters, unless the time be extended by the court after satisfactory showing made under oath; and, upon failure in either case, shall be removed as provided by law. [Acts 1881, p. 31; G. L. vol. 9, p. 123.]

Art. 3321. [3242] [1876] [1823] Filing accounts.—Any exhibit made by an executor or administrator showing a list of claims allowed and approved or established against the estate he represents, or showing the condition of said estate and an account of all money received and paid out on account of said estate, returned to the court before the filing of the account for final settlement, shall be filed with the clerk, and notice of such filing shall be posted at the courthouse door for ten days from the posting, after which the court shall examine said exhibit, and if correct, render judgment of approval thereon and order it to be recorded. [Acts 1876, p. 109; G.L. vol. 8, p. 945, Acts 1935, 44th Leg., p. 638, ch. 251, § 1.]

Art. 3322. [3243] [1877] [1824] Executor; how qualified.—An executor or administrator shall be deemed to have duly qualified when he shall have taken the oath and given the bond required by law, and when said bond has been approved and filed. In case of an executor where no bond is required, he shall be deemed to have been duly qualified when he shall have taken the oath required by law.

Art. 3323. [3245] [1879] [1826] Valid title through executor.—When an executor or administrator, legally qualified as such has performed any acts as such executor or administrator in conformity with his authority and law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterward be set aside, annulled and declared invalid.

Art. 3324. [3518–19–20] Enforcement of specific performance.—When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement or his legal representatives, may file a complaint in writing in the county court of the county where the letters testamentary or of administration were granted and cause the executor or administrator to be cited to appear at a regular term of the court, and show cause why a specific performance of such bond or other written agreement should not be decreed. Such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same can not be so filed; and if it can not be so filed, the same or the substance thereof shall be set forth in the complaint. After service of the citation, the court shall hear such complaint and the evidence thereon, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand a specific performance thereof, a decree shall be made ordering the executor or administrator to make title to the property, according to the tenor of the obligation, fully describing the property in such decree. When a conveyance is made under the provisions of this article, it shall recite the decree of the court authorizing it, and, when delivered, shall vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all requirements of the law have been complied with in obtaining the same. [Acts 1876, p. 108; G. L. vol. 8, p. 944.]

CHAPTER 4.—APPLICATIONS FOR THE PROBATE OF WILLS AND FOR LETTERS

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THE CITATION

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3343. Lien upon estate.

Article 3325. [3247] [1880] [1827] Time to file.—All applications for the grant of letters testamentary or of administration upon an estate must be filed within four years after the death of the testator or intestate; provided that this Article shall not apply in any case where administration is necessary in order to receive or recover funds or other property due the estate of the decedent. [Acts 1876, p. 94; Acts 1899, p. 244; P. D. 5505; G.L. vol. 8, p. 930; Acts 1929, 41st Leg., p. 288, ch. 132, § 1.]

Art. 3326. [3248] [1881] [1828] Limitation.—No will shall be admitted to probate after the lapse of four years from the death of the testator unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

Art. 3327. [3249] [1882] [1829] Settlement not barred.—Where letters testamentary or of administration shall have once been granted, any person interested in the administration may proceed, after any lapse of time, to compel settlement of the estate when it does not appear from the record that the administration thereof has been closed. [P. D. 5507.]

Art. 3328. [3250] [1883] [1830] Requirements.—All applications for probate of wills, or for letters testamentary or of administration, shall be in writing and filed with the county clerk of the proper county. [Acts 1876, p. 94; G. L. vol. 8, p. 930.]

Art. 3329. [3251–52] Written wills.—A written will shall be filed with the application for the probate thereof, and shall remain in the office of the clerk unless removed therefrom by order of the county or district court. An application for the probate of a written will produced in court shall state:

1. The name of the testator and that he is dead, and the time and place of his death.
2. The facts necessary to show that the court has jurisdiction of the estate.
3. The nature and probable value of the estate.
4. The name and residence of the executor named in the will, if any, and if none be named in the will, then the name and residence of the applicant.
5. That such executor or applicant is not disqualified by law from accepting letters, if letters be desired.

Art. 3330. [3253] [1886] [1833] When written will cannot be produced.—When a written will cannot be produced in court, in addition to the requirements of the preceding article, the application shall state:

1. The reason why such will cannot be produced.
2. The contents of such will, as far as known.
3. The date of such will and the executor appointed therein, if any, and the names of the subscribing witnesses thereto, if any.
4. The names and residences, if known, of all the heirs at law of the testator, and if not known, that fact shall be stated. Such application shall be sworn to by the applicant or some other credible person.

Art. 3331. [3254] [1887] [1834] Nuncupative will.—An application for the probate of a nuncupative will, in addition to the requirements of the second preceding article, shall state:

1. The substance of the testamentary words spoken.
2. The name and residence of the witness thereto.
3. The names and residence, if known, of the heirs at law of the testator, and, if not known, that fact shall be stated.
4. Such application shall be sworn to by the applicant or some other credible person.

Art. 3332. [3255] [1888] [1835] Letters of administration.—An application for letters of administration shall state:

1. The name of the deceased; that he is dead, and the time and place of his death, and that he died intestate.
2. The facts necessary to show that the court has jurisdiction of the estate.
3. The nature and probable value of the estate.
4. That a necessity exists for an administration upon such estate, setting forth the facts which show such necessity.
5. That the applicant is not disqualified by law to act as administrator.

THE CITATION

Art. 3333. [3256] [1889] [1836] Contents.—When an application for the probate of a written will, or for letters of administration, is filed with the clerk he shall issue a citation to all parties interested in such estate, which citation shall state:

1. That such application has been filed, and the nature of it.
2. The name of the deceased and of the applicant.
3. The time when, and the court by which, the application will be acted upon.
4. It shall cite all persons interested in the estate to appear at the time therein named and contest said application, should they desire to do so.

Art. 3333a. Validation of citation and return thereof.—Section 1. In all cases where written wills have been probated, or letters of administration granted upon citation or notice duly issued by the clerk, and conforming to the requirements of Article 3333 of Title 54 of the Revised Civil Statutes of Texas, Revision of 1925, as amended, but not directed to the Sheriff, or any Constable of the county wherein the proceeding was pending, and such citation or notice had been duly posted by, and return thereof in the time, manner and form required by law had been made by the sheriff or any constable of said county, such citation or notice and return thereof and action of the court in admitting said will to probate and/or granting letters of administration upon estates are hereby validated, in so far as said citation or notice, and the issuance, service and return thereof, are concerned.

Sec. 2. The provisions of this Act shall not be applicable to the issues in any law suit or in any contested probate proceeding pending in any court of this State on the effective date of this Act. [Acts 1941, 47th Leg., p. 845, ch. 521.]

Art. 3334. [3257] [1890] [1837] Service.—The citation shall be served by posting one copy thereof at the courthouse door for not less then ten (10) days before the return day thereof. [As amended Acts 1927, 40th Leg., p. 123, ch. 81, § 1; Acts 1929, 41st Leg., p. 235, ch. 100, § 2; Acts 1935, 44th Leg., p. 635, ch. 248, § 1.]

Art. 3334a. Validation.—In all cases where written wills produced in court have been probated after publication of citation as provided by Article 28 of the Revised Civil Statutes of Texas without service of notice by posting, such service of citation and the action of the court in admitting said wills to probate, is hereby validated in so far as service of citation is concerned. [Acts 1927, 40th Leg., p. 123, ch. 81, § 2.]

Art. 3334b. Validation.—In all cases where written wills produced in Court have been probated or letters of administration have been granted after citation, as provided by Article 3334, Title 54 of the Revised Civil Statutes of Texas, without service of citation as provided for in Article 3336, Title 54 of the Revised Civil Statutes of Texas as amended by Acts 1935, Forty-fourth Legislature, Page 659, Chapter 273, Section 1, such service of citation and the action of the Court in admitting said wills to probate and/or granting administration upon estates, is hereby validated in so far as service of citation is concerned. [Added Acts 1939, 46th Leg., p. 318, § 1.]

Sec. 1a provided that the provisions of the Act should not be applicable to the issues in any lawsuit or in any contested probate proceeding pending in any court of the State on the effective date of the Act.

Art. 3335. [3258] [1891] [1838] When will cannot be produced.—When the application is for the probate of a noncupative will, or a written will which cannot be produced in court, the citation shall contain substantially the statements made in the application for probate, and the time when, place where, and the court before which such application will be acted upon.

Art. 3336. [3259] [1892] [1839] Service of citation.—If the heirs of the testator be residents of this State, and their residence be known, the citation provided for in Article 3335 shall be served upon them by delivering to each of them in person a true copy of such citation, at least ten (10) days before the return day thereof. [As amended Acts 1927, 40th Leg., p. 123, ch. 81, § 3; Acts 1935, 44th Leg., p. 659, ch. 273, § 1; Acts 1939, 46th Leg., p. 319, § 1.]

Art. 3337. [3260] [1893] [1840] Service by publication.—Service of such citation may be made by publication for one time not less than ten (10) days before the return day thereof in a newspaper published in the county in which such citation is issued, if there be one, and if there be none, then in the newspaper which is published nearest to the courthouse of such county, in the following cases:

1. When the heirs are non-residents of this State.
2. When their names or their residences are unknown.
3. When they are transient persons. [As amended Acts 1935, 44th Leg., p. 658, ch. 272, § 1.]

Art. 3338. [3261] [1894] [1841] No action until service.—No application shall be acted upon until the service of citation has been made in the manner and for the length of time in such case provided.

Art. 3339. [3262] [1895] [1842] Application made by whom.—Applications for the probate of a will may be made by the testamentary executor, or by any person interested in the estate of the testator, and application for letters of administration upon an estate may be made by any person. [Acts 1876, p. 95; G. L. vol. 8, p. 931.]

Art. 3340. [3263] [1896] [1843] Administration prevented.—When application is made for letters of administration upon an estate by a creditor, and those interested in the estate do not desire an administration thereupon, they can defeat such application:

1. By the payment of the claim of such creditor.
2. By proof to the satisfaction of the court that such claim is fictitious, fraudulent, illegal or barred by limitation.
3. By executing a bond payable to, and to be approved by, the county judge in double the amount of such creditor's debt, conditioned that the obligors will pay the debt of such applicant upon the establishment thereof by suit in any court having jurisdiction of the amount in the county having jurisdiction of such estate. [P. D. 5558.]

Art. 3341. [3265] [1898] [1845] Bond to be filed.—The bond provided for, when given and approved, shall be filed with the clerk of the county court and recorded in the minutes, and any creditor, for whose protection it was executed, may sue thereon in his own name for the recovery of his debt.

Art. 3342. [3264] [1897] [1844] One creditor may apply for several.—Several creditors may authorize one of their number to apply for letters in behalf of them all; and, in such case, the grant of letters cannot be defeated without complying with the requirements of the two preceding articles as to all claims so represented. [P. D. 5559.]

Art. 3343. [3266] [1899] [1846] Lien upon estate.—A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided herein.

CHAPTER 5.—PROBATE OF WILLS

Art.
3344. Proof of written will produced in court.
3345. Proof of written will not produced.
3346. Proof of nuncupative will, when.
3347. Nuncupative will proved.
3348. Facts which must be proved.
3349. Will which cannot be produced in court.
3350. Testimony committed to writing.
3351. Order entered; will, etc., recorded, when.
3352. Will probated in another State.

Art. 3344. [3267] [1900] [1847] Proof of written will produced in court.—A written will produced in court may be proved:

1. By the affidavit of one of the subscribing witnesses thereto, taken in open court and subscribed by such witness.
2. If all the witnesses are non-residents of the county, or those residents of the county are unable to attend court, by the testimony of any one or more of them taken by deposition.
3. If none of the witnesses are living, or if all such witnesses are members of the Armed Forces of the United States of America or any Auxiliary thereto, or of the Armed Force Reserve of the United States of America or any Auxiliary thereto and beyond the jurisdiction of the Court, by two witnesses to the hand-writing of the subscribing witnesses thereto, and of the testator, if signed by him, proof may be either by affidavit taken in open court and subscribed by the witnesses, or by deposition.
4. If the will was wholly written by the testator, by two witnesses to his handwriting, which may be made by affidavit taken in open court and subscribed to by the witnesses, or by deposition. [Acts 1876, p. 94; G.L. vol. 8, p. 930; Acts 1945, 49th Leg., p. 468, ch. 296, § 1.]

Art. 3345. [3268] [1901] [1848] Proof of written will not produced.—A written will which cannot be produced in court, may be proved in the same manner as provided in the preceding article, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court.

Art. 3346. [3269] [1902] [1849] Proof of nuncupative will, when.—No nuncupative will shall be proved within fourteen days after the death of the testator; nor shall any such will be probated after six months have elapsed from the time of speaking the purported testamentary words, unless the same

or the substance thereof, shall have been committed to writing within six days after making such will; nor shall any such will be probated, unless it be made in the time of the last sickness of the deceased, at his habitation, or where he has resided for ten days next preceding, except when the deceased is taken sick away from home and dies before he returns to such habitation. [Id.]

Art. 3347. [3270] [1903] [1850] Nuncupative will proved.—No nuncupative will shall be probated, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import, and if the testimony of such witnesses differs materially as to the testamentary words spoken, or as to the testator's calling upon some one to witness the same, the will shall not be admitted to probate.

Art. 3348. [3271] [1904] [1851] Facts which must be proved.—Before admitting a will to probate, it must be proved to the satisfaction of the court:

1. That the testator, at the time of executing the will, was at least twenty-one (21) years of age, or was married, or was a member of the Armed Forces of the United States or the Auxiliaries thereof or Maritime Service at the time of the making of the will, that he was of sound mind, and that he is dead.
2. That the court has jurisdiction of his estate.
3. That citation has been served and returned in the manner and for the length of time required by law.
4. That the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will.
5. That such will has not been revoked by the testator. [As amended Acts 1945, 49th Leg., p. 469, ch. 297, § 2.]

Section 3 of the Act of 1945 provided that a holding of partial invalidity should not affect the remaining portions of the act.

Art. 3349. [3272] [1905] [1852] Will which cannot be produced in court.—If the will be a written will which cannot be produced in court, the cause of its non-production must be proved, and such cause must be sufficient to satisfy the court that it cannot by any reasonable diligence be produced, and the contents of such will must be substantially proved by the testimony of a credible witness who has read it or heard it read.

Art. 3350. [3273] [1906] [1853] Testimony committed to writing.—All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at the time it is taken, and subscribed in open court by the witness or witnesses, and filed by the clerk. [Acts 1876, p. 95; G. L. vol. 8, p. 931.]

Art. 3351. [3274] [1907] [1854] Order entered; will, etc., recorded, when.—Upon the hearing of an application for the probate of a will, if the court be satisfied from the evidence that such will should be admitted to probate, an order to that effect shall be entered upon the minutes; and such will, together with the application for probate thereof, and all the testimony in the case, shall be recorded in the minutes; provided, that the substance only of depositions shall be so recorded. A certified copy of such record of testimony may be read in evidence on the trial of the same matter in any other court when taken there by appeal or otherwise. [As amended Acts 1927, 40th Leg., p. 142, ch. 92, § 1.]

Art. 3352. [3276] [1909] [1856] Will probated in another State.—When application is made for the probate of a will which has been probated according to the laws of any of the United States or territories or of any country out of the limits of the United States, a copy of such will and the probate thereof attested by the clerk of the court in which such will was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court, that the said attestation is in due form, may be filed and recorded in the court, and shall have the same force and effect as the original will, if probated in said court; provided, that the validity of such will may be contested in the same manner as the original might have been. [Acts 1876, p. 95; G.L. vol. 8, p. 931.]

CHAPTER 6.—GRANTING LETTERS

Art.
3353. Persons disqualified.
3354. Letters testamentary granted.
3355. When administration granted.
3356. Administration not granted.
3357. Letters granted in order.
3358. Applicants equally entitled.
3359. May waive right.
3360. Letters revoked and granted to another.
3361. Letters revoked and granted to executor upon attaining lawful age.
3362. Executor absent from State.
3363. Letters shall not be revoked except.
3364. When will is discovered after administration.
3365. Executor of will proved in another State.
3366. Bond required.
3367. Further administration.
3368. Executor, etc., removed; not reappointed.
3369. Letters testamentary.
3370. Letters of administration.
3371. Order of court.
3372. Grant of letters may be opposed, etc.

Article 3353. [3277] [1910] [1857] Persons disqualified.—Letters testamentary or of administration shall not be granted to any person of unsound mind or who is under twenty-one years of age, except a surviving husband or wife who may be under twenty-one years of age. [Acts 1876, p. 96; G. L. vol. 8, p. 932.]

Art. 3354. [3278] [1911] [1858] Letters testamentary granted.—When a will has been probated, the court shall within twenty days thereafter, grant letters testamentary, if permitted by law, to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law. [Id.]

Art. 3355. [3279] [1912] [1859] When administration granted.—When any person shall die intestate, or where no executor is named in a will, or where the executor named shall fail or neglect to accept and qualify within twenty days after the probate of the will, or shall neglect for a period of thirty days after the death of the testator to present the will for probate, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator shall be granted, should administration appear to be necessary.

Art. 3356. [3280] [1913] [1860] Administration not granted.—No administration upon any estate shall be granted unless there exists a necessity therefor, such necessity to be determined by the court hearing the application.

Art. 3357. [3281] [1914] [1861] Letters granted in order.—Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

1. To the person named as executor in the will of the deceased.
2. To the surviving husband or wife.
3. To the principal devisee or legatee of the testator.
4. To any devisee or legatee of the testator.

5. To the next of kin of the deceased, the nearest in the order of descent first, and so on.
6. To a creditor of the deceased.
7. To any person of good character residing in the county.

Art. 3358. [3282] [1915] [1862] Applicants equally entitled.—When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or three of such applicants. [P. D. 5512.]

Art. 3359. [3283] [1916] [1863] May waive right.—The surviving husband or wife, or, if there be no such survivor the heirs or any one of the heirs of the deceased, to the exclusion of any person not equally entitled, may, in open court, or by power of attorney, duly authenticated and filed with the clerk of the county court of the county having jurisdiction of the estate, renounce his right to the administration in favor of some other qualified person, and thereupon the court may grant letters to such other person.

Art. 3360. [3284] [1917] [1864] Letters revoked and granted to another.—Where letters have been granted to one, and another whose right thereto is prior and who has not waived such right and who is not disqualified, makes application for letters, the letters previously granted shall be revoked and other letters shall be granted to the person thus entitled.

Art. 3361. [3285] [1918] [1865] Letters revoked and granted to executor upon attaining lawful age.—Whenever any person named as executor in a will is under age, and letters of administration with the will annexed have been granted to any other person, such executor shall, upon proof that he has attained the age of twenty-one years and is not disqualified otherwise, be entitled to have such letters of administration revoked and letters testamentary granted to him. And when two or more persons are named executors in a will, any one or more of whom are minors when such will is admitted to probate, and letters testamentary have been issued to such only as are of full age, such minor or minors, upon attaining the age of twenty-one years, if not disqualified, shall be permitted to qualify and receive letters. [Id.]

Art. 3362. [3286] [1919] [1866] Executor absent from State.—Whenever a person named as executor in a will was absent from the State when the testator died, or when the will was proved, and was prevented from presenting the will for probate within thirty days after the death of the testator, or from accepting and qualifying as executor within twenty days after the probate of the will or when he shall have been prevented by sickness from so presenting the will or from so accepting and qualifying, he may accept and qualify as executor within sixty days after his return or recovery from sickness, upon proving to the court that he was so absent or prevented by sickness; and, if in the meantime letters of administration have been granted, such letters shall be revoked. [Id.]

Art. 3363. [3287] [1920] [1867] Letters shall not be revoked except.—Letters shall not be revoked and other letters granted under the provisions of either of the four preceding articles, unless application therefor has been filed and the executor or administrator has been cited to appear at a regular term of the court and show cause why such application should not be granted; but in such cases, when the letters are revoked, other letters may be granted without the posting of citation as in other cases.

Art. 3364. [3288] [1921] [1868] When will is discovered after administration.—Whenever letters of administration shall have been granted upon an estate, and it shall afterwards be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and, if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but if no such executor be named in the will, or if the executor named be disqualified, or shall renounce the executorship, or shall neglect to accept and qualify within twenty days after the date of the probate of the will, or shall neglect for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first administrator, previous to the qualification of the executor or administrator with the will annexed shall be as valid as if no such will had been discovered. [Id.]

Art. 3365. [3289] [1922] [1869] Executor of will proved in another State.—When a will has been admitted to probate in any State of the United States or territories thereof or in the District of Columbia or in any country without the limits of the United States, and the executor named in such will has qualified, and a duly certified copy of such will and the probate thereof has been filed and recorded in any county court in this State having jurisdiction of the estate, together with the application of such foreign executor for the probate of such will, the same shall be admitted to probate; and letters testamentary shall be granted to such applicant and an order to that effect shall be entered upon the minutes of the court as in other cases; and if letters of administration have been previously granted by such court in this State to any person other than such foreign executor, such letters shall be revoked upon the application of such executor after service of citation upon the person to whom such letters were granted as required in other cases.

Art. 3366. [3290] [1923] [1870] Bond required.—In the case provided for in the preceding article, the executor shall be required to give bond as in other cases, notwithstanding any provision to the contrary in the will, and the order revoking the former letters shall not take effect until such executor has qualified in accordance with law. [P. D. 5517.]

Art. 3367. [3291] [1924] [1871] Further administration.—Whenever any estate is unrepresented by reason of the death, removal or resignation of the executor or administrator, the court shall grant further administration upon such estate when necessary, and with the will annexed, where there is a will, in the same manner and under the same regulations provided for the appointment of the original executors or administrators.

Art. 3368. [3292] [1925] [1872] Executor, etc., removed; not reappointed.—Whenever any person has been removed from the executorship or administration of an estate, he shall not afterward be appointed administrator thereof. [Id.]

Art. 3369. [3293] [1926] [1873] Letters testamentary.—Before granting letters testamentary, it must appear to the court:
1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That the will has been proved as prescribed by law.
5. That the person to whom the letters are to be granted is named as executor in the will.
6. That the person named as executor is not disqualified by law.

The first three subdivisions of this Article have no application where letters testamentary or of administration upon such estate have been previously granted in said court. [Acts 1876, p. 96; P.D. 5517; Acts 1934, 43rd Leg., 3rd C.S., p. 48, ch. 25, § 1.]

Art. 3370. [3294] [1927] [1874] Letters of administration.—Before granting letters of administration, it must appear to the Court:

1. That the person is dead.
2. That four (4) years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That there is a necessity for an administration upon such estate; such necessity shall be deemed to exist if two or more debts exist against the estate, or if or when it is desired to have the county court partition the estate among the owners in accordance with the provisions of Chapter 24, Title 54, Revised Civil Statutes of Texas, 1925.
5. That the person to whom the letters are about to be granted is entitled thereto by law and is not disqualified.

The first three (3) subdivisions of this Article have no application when letters testamentary or of administration have been previously granted upon such estate by said Court. [P.D. 5517; Acts 1939, 46th Leg., p. 320, § 1.]

Art. 3371. [3295] [1928] [1875] Order of court.—When letters testamentary or of administration are granted by the court, an order to that effect shall be entered upon the minutes, which order shall state:

1. The name of the testator or intestate.
2. The name of the person to whom the grant of letters is made.
3. If bond is required, the amount thereof.
4. The order shall require the clerk of the court to issue letters in accordance with such order, when the person to whom such letters are granted shall have qualified according to law.

Art. 3372. [3296] [1929] [1876] Grant of letters may be opposed, etc.—When application is made for letters of administration, any person may at any time before the said application is granted, file his opposition thereto in writing, and may apply for the grant of letters to himself or to any other person; and, upon the trial, the court shall grant letters to the person that may seem best entitled to them, having regard to the provisions of this title, without further notice than that of the original application.

CHAPTER 7.—TEMPORARY ADMINISTRATION

Art.
3373. Temporary administrator; appointed, when.
3374. Appointment without application.
3375. Appointment perpetuated.
3376. Citation.
3377. If contested.
3378. Judge may appoint temporary administrator.
3379. Powers of temporary administrator.
3380. List, return of sales, etc.
3381. List, acted upon by the court.

Article 3373. [3297] [1930] [1877] Temporary administrator; appointed, when.—Whenever it appears to the county judge that the interest of an estate requires the immediate appointment of an administrator, he shall, either in open court or in vacation, by writing under his hand and the seal of the court, attested by the clerk, appoint a suitable person temporary administrator with such limited powers as the circumstances of the case may require; and such appointment may be made permanent, as herein provided. [Acts 1876, p. 98; G. L. vol. 8, p. 934; Acts 1921, p. 139.]

Art. 3374. [3298–99] Appointment without application.—Such appointment may be made either upon written application or none, and without citation. It shall define the powers conferred, and such appointment shall not become effective until the order of the court has been recorded in the minutes, and when the clerk has indorsed thereon a certificate that it has been so recorded, he may deliver it to the person appointed upon his taking the oath and making the bond required by law. [Acts 1876, p. 98; G. L. vol. 8, p. 934.]

Art. 3375. [3300] [1933] [1880] Appointment perpetuated.—The order of the court in making such appointment shall state that unless the same is contested at the next regular term of the court, after service of citation, the same shall be made permanent, provided the court is of the opinion that a permanent administrator is necessary. [Id.; Acts 1921, p. 140.]

Art. 3376. Citation.—Immediately after such appointment, the clerk shall issue citation; which shall state the name of the person appointed, when appointed, and the name of the deceased estate, and shall cite all persons interested in the welfare of the estate to appear at the term of the court named in such citation, and contest such appointment if they so desire; and, that, if such appointment is not contested at the term of court so named in the citation, then the same shall become permanent. [Acts 1921, p. 140.]

Art. 3377. If contested.—If such appointment is contested, the court shall hear and determine the same, and during the pendency of such contest, the person so appointed as temporary administrator shall continue to act; and, if such appointment is set aside, the court shall require the person so appointed to file in court, under oath, a complete exhibit of the condition of such estate, and what disposition, if any, he has made of the same, or any portion thereof. [Id.]

Art. 3378. [3301] [1934] [1881] Judge may appoint temporary administrator.—Pending a contest relative to the probate of a will, or the granting of letters of administration, the county judge may appoint a temporary administrator, with such limited powers as the circumstances of the case may require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers. [Acts 1876, p. 98; G. L. vol. 8, p. 934.]

Art. 3379. [3302] [1935] [1882] Powers of temporary administrator.—Temporary administrators shall have and exercise only such rights and powers, as are specifically expressed in the order of the court appointing them, and any acts performed by them as such administrators that are not so expressly authorized shall be void.

Art. 3380. [3303] [1936] [1883] List, return of sales, etc.—At the expiration of the time for which a temporary administrator has been appointed, he shall file with the clerk of the court, duly verified, a list of all property of the estate which has come to his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such administrator.

Art. 3381. [3304] [1937] [1884] List, acted upon by the court.—The list, return, exhibit and account filed by the temporary administrator, shall be acted upon by the court, and whenever temporary letters shall expire, or cease to be of effect from any cause, the court shall immediately, either in term time or vacation, enter an order upon the probate minutes requiring such temporary administrator to forthwith deliver the estate remaining in his possession to the person legally entitled to the possession of the same.

CHAPTER 8.—OATH AND BOND OF EXECUTORS AND ADMINISTRATORS

Art.
3382. Oath of executor or administrator.
3383. Oath of administrator.
3384. Oath of temporary administrator.

Art.
3385. Oaths filed with clerk.
3386. Bond of executors and administrators.
3387. Form of bond.
3388. Oath and bond.
3389. When no bond required.
3390. Bond of married woman.
3391. Husband or wife who is a minor.
3392. When new bond may be required.
3393. Judge to require new bond.
3393a. Decrease of amount of bond.
3394. Person interested may demand new bond.
3395. Sureties may ask to be discharged.
3396. Citation.
3397. Order requiring new bond.
3398. Functions of executor suspended.
3399. Sureties discharged.
3400. Bond shall not be void.

Article 3382. [3305] [1938] [1885] Oath of executor or administrator.—Before the issuance of letters testamentary or of administration with the will annexed, the person named as executor or appointed administrator with the will annexed shall take and subscribe an oath in form as follows: "I do solemnly swear that the writing which has been offered for probate is the last will of ———, so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or of administrator with the will annexed, as the case may be) of the estate of said ———." [Acts 1876, p. 100; G. L. vol. 8, p. 936.]

Art. 3383. [3306] [1939] [1886] Oath of administrator.—Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form as follows: "I do solemnly swear that ——— deceased, died without leaving any lawful will, so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of said deceased." [Id.]

Art. 3384. [3307] [1940] [1887] Oath of temporary administrator.—Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form as follows: "I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of ———, deceased, in accordance with law, and with the order of the court appointing me such administrator." [Id.]

Art. 3385. [3308] [1941] [1888] Oaths filed with clerk.—The oaths prescribed by the three preceding articles may be taken before any officer authorized to administrator [1] oaths, and shall be filed with the clerk of the court granting the letters, and recorded in the minutes of such court.

[1] So in enrolled bill. Should probably read "administer".

Art. 3386. [3309] [1942] [1889] Bond of executors and administrators.—Before the issuance of letters testamentary or of administration, the person to whom letters are granted, shall enter into bond, to be approved by, and payable to, the county judge of the county, in such penalty as he may direct, in an amount, if the sureties be natural persons, equal to double the estimated value of the personal property belonging to such estate, plus a reasonable amount to be fixed at the discretion of the county judge, to cover rents, revenues, and income derived from renting or use of real estate belonging to such estate, but if the surety or sureties on said bond be either a domestic or foreign corporation, or corporations, permitted to do business in the State of Texas for the purpose of issuing surety, guaranty or indemnity bonds, guaranteeing the fidelity of executors, administrators and guardians, then such bond shall be in an amount equal to the estimated value of the personal property belonging to such estate, plus a reasonable amount to be fixed at the discretion of the county judge to cover rents, revenues and income derived from the renting or use of real estate belonging to such estate; provided, in case of a temporary administrator, the bond shall be in such sum as the county judge may direct. The cost of any such bond of an executor or administrator, executed by a domestic or foreign corporation authorized to do business in Texas as hereinabove provided, may be paid out of the estate being administered. [Acts 1876, p. 100; Acts 1897, p. 58; G.L. vol. 8, p. 936; G.L. vol. 10, p. 1112; Acts 1927, 40th Leg., p. 223, ch. 152, § 1; Acts 1929, 41st Leg., p. 63, ch. 29, § 1; Acts 1945, 49th Leg., p. 525, ch. 316, § 1.]

Section 6 of the Act of 1945 repealed conflicting laws.

Art. 3387. [3310] [1943] [1890] Form of bond.—The following form, or the same in substance, may be used for the bonds of executors and administrators:

"The State of Texas,
"County of.....

"Know all men by these presents, that we, A. B. as principal, and C. D. and E. F. as sureties, are held and firmly bound unto the county judge of the county of ....., and his successors in office, in the sum of..... dollars; conditioned that the above bound A. B. who has been appointed executor of the last will and testament of J. C. deceased, (or has been appointed by the county judge of ..... County, administrator with the will annexed of the estate of J. C. deceased, or has been appointed by the county judge of ..... County, administrator of the estate of J. C. deceased, or has been appointed by the county judge of ..... County, temporary administrator of the estate of J. C. deceased, as the case may be), shall well and truly perform all the duties required of him under said appointment." [Acts 1876, p. 101; G. L. vol. 8, p. 937.]

Art. 3388. [3311–12] Oath and bond.—The oath of an executor or administrator may be taken and subscribed, or his bond may be given and approved, either in term time or vacation, at any time before the expiration of twenty days from the probate of the will or the order granting the letters, or before his letters shall have been revoked for a failure to qualify within the time allowed, and such bonds shall be filed and recorded in the minutes of the court. [Id.]

Art. 3389. [3313] [1946] [1893] When no bond required.—When any testator directs in his will that no security shall be required of the person named therein as the executor, letters testamentary shall be issued to such person without any bond being required, when a will is probated in a Texas court. [Id.]

Art. 3390. [3314] [1947] [1894] Bond of married woman.—When a married woman is appointed executrix or administratrix, she may, jointly with her husband, or without her husband, if he be absent from the State, or insane, or refuses to join with her, execute such bond as the law requires and acknowledge the same before the county judge, county clerk or any notary public of the county where the will was proved or letters were granted; and such bond shall bind her separate estate, but shall not bind her husband as surety unless signed by him and it is approved as such. [Id.]

Art. 3391. [3315] [1948] [1895] Husband or wife who is a minor.—When a surviving husband or wife under twenty-one years of age shall wish to accept and qualify as executor or executrix, or administrator or administratrix, he or she may execute such bond as the law requires and acknowledge the same before the county judge, county clerk or a notary public of the county in which the will was proved or letters of administration were granted, and such bonds shall be as valid as if he or she were of lawful age. [Id.]

Art. 3392. [3316] [1949] [1896] When new bond may be required.—An executor or administrator may be required to give a new bond in the following cases:

1. When the sureties upon the bond or any one of them shall die, remove beyond the limits of the State, or become insolvent.

2. When, in the opinion of the county judge, the sureties upon any such bond are insufficient.

3. When, in the opinion of the county judge, any such bond is defective.

4. When the amount of any such bond is insufficient.

5. When the sureties or any one of them petition the court to be discharged from future liability upon such bond.

6. When the bond and the record thereof have been lost or destroyed. [Id.]

Art. 3393. [3317] [1950] [1897] Judge to require new bond.—When it shall be known to him that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, he shall without delay cause the executor or administrator to be cited to show cause why he should not give a new bond.

Art. 3393a. Decrease of amount of bond.—At any time, an executor or administrator, required by law to give bond, may apply to the County Judge upon citation issued out of the County Court to the legatees, next of kin, and surety or sureties on the bond, to have such bond reduced; and the County Judge, in his discretion, upon the submission of poof that a smaller bond than the one in effect will be adequate to meet the requirements of the law and protect the estate and upon the approval of an accounting filed at the time of the application, may permit the filing of a new bond in a reduced amount, and provide for the discharge of the former bond and surety or sureties as to liability for matters subsequent to the filing of the new bond. [Acts 1929, 41st Leg., p. 130, ch. 63, § 1; Acts 1939, 46th Leg., p. 321, § 1.]

Section 2 of the Act of 1939 amended article 3396; section 3 repeals conflicting laws. Section 4 declared an emergency.

Art. 3394. [3318] [1951] [1898] Person interested may demand new bond.—Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the administration is pending, alleging that the bond of the executor or administrator is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such executor or administrator to be cited to appear and show cause why he should not give a new bond. [Acts 1876, p. 101; G.L. vol. 8, p. 937.]

Art. 3395. [3319] [1952] [1899] Sureties may ask to be discharged.—The sureties upon the bond of an executor or administrator, or any one of these, may, at any time, present a petition to the county judge praying that such executor or administrator may be required to give a new bond and that he or they may be discharged from all liability for the future acts of such executor or administrator, whereupon such executor or administrator shall be cited to appear and give a new bond. [Id.]

Art. 3396. [3320] [1953] [1900] Citation.—The citations required in the three preceding Articles shall require the party cited to appear before the County Judge on the day named therein, and shall be served personally at least ten (10) days before the return day thereof, provided, however, that if the party to be cited is not a resident within the county, service may be effected by mailing by registered mail, return receipt requested, to his last known address, a true copy of such citation at least thirty (30) days before the return day thereof. [As amended Acts 1935, 44th Leg., p. 654, ch. 266, § 1; Acts 1939, 46th Leg., p. 321, § 2.]

Section 1 of the Act of 1939 amended article 3393a; section 3 repealed conflicting laws.

Art. 3397. [3321] [1954] [1901] Order requiring new bond.—Upon the return of any such citation served, the county judge shall, on the day named therein for the hearing of the matter, whether in term time or vacation, proceed to inquire into the sufficiency of the reasons for requiring a new bond, and if satisfied that a new bond should be required he shall enter an order to that effect, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order. [Acts 1876, p. 101; G. L. vol. 8, p. 937.]

Art. 3398. [3322] [1955] [1902] Functions of executor suspended.—When an executor or administrator is required to give a new bond, the order requiring such bond shall have the effect to suspend the powers of such executor or administrator, and he shall not thereafter pay out any money of said estate or do any other official act, except to preserve the property of the estate, until such new bond has been given and approved. [Id.]

Art. 3399. [3323] [1956] [1903] Sureties discharged.—When a new bond has been given and approved, the sureties upon the former bond of such executor or administrator are thereby discharged from all liability for the future acts of such executor or administrator, and an order to that effect shall be entered upon the minutes of the court. [Id.]

Art. 3400. [3324] [1957] [1904] Bond shall not be void.—The bonds of executors and administrators shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.

CHAPTER 9.—ISSUANCE OF LETTERS

Art.
3401. Clerk shall issue letters.
3402. What constitutes letters.
3403. Letters or certificate made evidence.
3404. Letters shall issue to each.
3405. Other letters.

Article 3401. [3325] [1958] [1905] Clerk shall issue letters.—Whenever an executor or administrator has been qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall forthwith issue and deliver the letters to such executor or administrator. [Acts 1876, p. 97; G. L. vol. 8, p. 933.]

Art. 3402. [3326] [1959] [1906] What constitutes letters.—Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that such executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification and the name of the deceased. [Id.]

Art. 3403. [3327] [1960] [1907] Letters or certificate made evidence.—Such letters or a certificate of the clerk of the court which granted the same, under the seal of such court, that such letters have been issued, shall be sufficient evidence of the appointment and qualification of an executor or administrator and of the date of such qualification. [Id.]

Art. 3404. [3328] [1961] [1908] Letters shall issue to each.—When two or more persons qualify as executors or administrators, letters shall be issued to each of them so qualifying. [Id.]

Art. 3405. [3329] [1962] [1909] Other letters.—When letters have been destroyed or lost, the clerk may issue other letters in their stead, which shall have the same force and effect as the original letters.

CHAPTER 10.—INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Art.
3406. Appointment of appraisers.
3407. Failure to serve.
3408. Inventory and appraisement.
3409. Appraisement sworn to.
3410. List of claims.
3410—a. List of claims attached to inventory.
3410—b. Filing list of debts and claims with reference to inheritance taxes.
3411. Inventory and list sworn to.
3412. Returned within sixty days.
3413. Courts shall approve or disapprove same.
3414. Order of approval.
3415. Order of disapproval.
3416. Duty of executor.
3417. May be cited to make, etc.
3418. Order of the court.
3419. Erroneous inventory or list.
3420. New appraisement.
3421. Order for same.
3422. Replaces original appraisement.
3423. Not more than one re-appraisement.
3424. Evidence.
3425. More than one executor or administrator.

Art. 3406. [3330] [1963] [1910] Appointment of appraisers.—When letters testamentary or of administration shall be granted, the county judge shall, by an order entered on the minutes of the court, appoint three or more disinterested persons, citizens of the county, any two of whom may act, to appraise the estate of the deceased. [Acts 1876, p. 103; G. L. vol. 8, p. 939.]

Art. 3407. [3331] [1964] [1911] Failure to serve.—If from any cause such appointment be not made, or if the appraisers, or any of them so appointed fail to act, or if from any other cause a new appointment is required, the county judge shall by a like order, either in term time or vacation, appoint another appraiser or appraisers, as the case may require.

Art. 3408. [3332] [1965] [1912] Inventory and appraisement.—Every executor or administrator shall, immediately after he has qualified, with the assistance of any two or more of the appraisers appointed by the judge, make, or cause to be made, a full inventory and appraisement of all the estate of the testator or intestate, both real and personal, specifying in such inventory what portion of the estate is the separate property of the deceased, and what portion, if any, is represented as common property. [Id.]

Art. 3409. [3333] [1966] [1913] Appraisement sworn to.—The appraised value of each article of property shall be stated opposite such article in the inventory; and such appraisement shall be duly sworn to and subscribed by the appraisers making the same. [Id.]

Art. 3410. [3334] [1967] [1914] List of claims.—Such executor or administrator shall also make and attach to said inventory a full and complete list of all claims due or owing to the testator or intestate, stating the nature of such claims, the name of the parties owning [1] the same, the date thereof and the date when due, and the rate of interest each one bears, and shall also specify what portion of such claims is the separate property of the deceased, and what portion, if any, is represented as common property. [Id.]

[1] So in enrolled bill. Should probably read "owing".

Art. 3410—a. List of claims attached to inventory.—Such executor or administrator shall also make and attach to said inventory a full and complete list of all claims due or owing to the testator or intestate, stating the nature of such claims, the names of the parties owing the same, the dates thereof, and the dates when due, and the rate of interest each one bears, and shall also specify what portion of such claims is the separate property of the deceased and what portion, if any, is represented as common property. [Acts 1937, 45th Leg., p. 391, ch. 193, § 1.]

Art. 3410—b. Filing list of debts and claims with reference to inheritance taxes.—Every executor, administrator, or legal representative of any estate shall make and file with the County Clerk of the County in which such estate is pending and with the Comptroller of the State of Texas, in addition to the information now required by law pertaining to inheritance taxes, a statement showing a full and complete list of all debts and claims due or owing by the testator or intestate known by such executor, administrator, or legal representative at the time of the approval of the inventory and appraisement by the Probate Judge, with reference to inheritance taxes as now required by law, showing the nature of such claims, the names of the parties to whom such debts or claims are owing, the dates thereof, the dates when due, the rate of interest each one bears, and what portion of such claims is chargeable to the separate property of the deceased, and what portion, if any, of such claims is chargeable to the common property of the deceased. Provided that the provisions of this Act shall in nowise repeal any of the provisions of the law now pertaining to inheritance taxes, but shall be cumulative thereto. [Acts 1937, 45th Leg., p. 391, ch. 193, § 1.]

Art. 3411. [3335] [1968] [1915] Inventory and list sworn to.—Such executor or administrator shall also attach to such inventory and list his affidavit sworn to before some officer of the county authorized by law to administer oaths, that the said inventory and list is a full and complete inventory and list of the property and claims of his testator or intestate that have come to his knowledge. [Acts 1876, p. 103; G. L. vol. 8, p. 939.]

Art. 3412. [3336] [1969] [1916] Returned within sixty days.—The inventory, appraisement and list shall be returned to the court granting the letters, either in term time or vacation, within sixty days from the date of granting such letters.

Art. 3413. [3337] [1970] [1917] Courts shall approve or disapprove same.—Upon return of such inventory, appraisement and list, the judge, either in term time or in vacation, shall examine the same and either approve or disapprove the same. [Id.]

Art. 3414. [3338] [1971] [1918] Order of approval.—Should the inventory, appraisement and list be approved by the judge, he shall cause an order to that effect to be entered upon the minutes, either in term time or vacation, and shall cause such inventory and list to be recorded upon said minutes.

Art. 3415. [3339] [1972] [1919] Order of disapproval.—Should the inventory, appraisement and list, or either of them, be disapproved, an order to that effect shall be entered upon the minutes, either in term time or in vacation, and such order shall further require the executor or administrator to return another inventory, appraisement and list, or either of them, within a time which shall be specified in such order, not to exceed ten days from the date of such order; and the judge may also, if he deems it necessary, appoint new appraisers.

Art. 3416. [3340] [1973] [1920] Duty of executor.—Whenever property or claims of the testator or intestate other than such as may be included in the inventory and list, which have been returned, shall come to the knowledge of the executor or administrator, he shall make and return an additional inventory or list, or both, of such newly discovered property or claims, or both, without delay; and, upon the return of any such additional inventory, the county judge shall, either in term time or vacation appoint appraisers and cause the property named in such additional

inventory to be appraised as in the case of original appraisement. [Id.]

Art. 3417. [3341] [1974] [1921] May be cited to make, etc.—Any executor or administrator, on the written complaint of any person interested in the estate, shall be cited to appear before the court in which the administration was granted, and show cause why he should not be required to make and return an additional inventory or list of claims, or both. [Acts 1876, p. 103; G.L. vol. 8, p. 939; Acts 1935, 44th Leg., p. 664, ch. 278, § 1.]

Art. 3418. [3342] [1975] [1922] Order of the court.—After hearing such complaint, the court shall, on sufficient proof that any property or claims of the estate have not been included in the inventory and list returned, require an additional inventory or list or both, to be made and returned, including such property or claims, in like manner as original inventories and lists, and within such time as may be fixed by the court by an order to that effect entered upon the minutes. [Acts 1876, p. 103; G.L. vol. 8, p. 939.]

Art. 3419. [3343] [1976] [1923] Erroneous inventory or list.—Any executor or administrator, on complaint in writing of any person interested in the estate, setting forth that an error has been made in the inventory or list of claims returned, and pointing out such error, shall be cited to appear at a regular term of the court and show cause why such alleged error should not be corrected; and, if upon hearing of such complaint it appear to the satisfaction of the court that such inventory or list is in any particular erroneous, such error shall be corrected and an order to that effect shall be entered upon the minutes, specifying such error and the correction thereof.

Art. 3420. [3344] [1977] [1924] New Appraisement.—Any person interested in the estate who may deem any appraisement returned therein unjust or erroneous, may, upon complaint in writing, cause the executor or administrator to be cited to appear before the county court and show cause why a new appraisement should not be made. [Acts 1876, p. 103; G.L. vol. 8, p. 939; Acts 1935, 44th Leg., p. 638, ch. 252, § 1.]

Art. 3421. [3345] [1978] [1925] Order for same.—Upon the hearing of such complaint, if the court be satisfied that such appraisement was erroneous, an order shall be entered upon the minutes appointing appraisers and requiring a new appraisement to be made and returned in like manner as original appraisements. [Acts 1876, p. 103; G.L. vol. 8, p. 939.]

Art. 3422. [3346] [1979] [1926] Replaces original appraisement.—When any such new appraisement is made, returned and approved by the court, it shall stand in place of the original appraisement. [Id.]

Art. 3423. [3347] [1980] [1927] Not more than one reappraisement.—Not more than one reappraisement shall be made, but any person interested in the estate may contest the approval of any appraisement by filing his objections thereto in writing at any time before such appraisement has been approved by the court. [Id.]

Art. 3424. [3348] [1981] [1928] Evidence.—All inventories and appraisements and lists of claims which have been taken, returned and approved in accordance with the provisions of this chapter, or the record thereof, or certified copies of either the originals or the record thereof, may be given in evidence in any of the courts of this State in any suit, by or against the executor or administrator, but shall not be conclusive for or against him, if it be shown:

1. That there is other property belonging to the estate not inventoried: or,

2. That there are other claims belonging to the estate other than those named in the list; or,

3. That certain property or claims named in the list did not belong to the estate; or

4. That the property was not separate or common property as specified in such inventory or list; or,

5. That the property or any part thereof was sold legally and in good faith for less than the appraised value thereof. [Id.]

Art. 3425. [3349] [1982] [1929] More than one executor or administrator.—If there be more than one executor or administrator qualified as such, any one or more of them, on the neglect of the others, may return an inventory and appraisement and list of claims; and the executor or administrator so neglecting shall not thereafter interfere with the estate or have any power over the same; but the executor or administrator so returning shall have the whole administration, unless within sixty days after the return the delinquent or delinquents shall assign to the court in writing and under oath some reasonable excuse which the court may deem satisfactory; and, if no such sufficient excuse shall be assigned within said time, an order shall be entered upon the minutes removing such delinquent or delinquents and revoking his or their letters. [Id.]

CHAPTER 11.—RIGHTS, DUTIES AND POWERS OF EXECUTORS AND ADMINISTRATORS

Art.
3426. Care of property of estate.
3427. Duty as to plantation, etc.
3428. Action of executor.
3429. Diligence to collect claims and recover property.
3430. May purchase and compromise.
3431. Acts valid.
3432. Conveyance of real estate.
3432a. Extending obligations.
3432b. Payment or credit of annual net income of estate to owners of estate.

Article 3426. [3350] [1983] [1930] Care of property of estate.—The executor or administrator shall take such care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate, he shall keep the same in tenable repair, extraordinary casualties excepted, unless directed not to do so by an order of the court. [Acts 1876, p. 104; G. L. vol. 8, p. 940.]

Art. 3427. [3351] [1984] [1931] Duty as to plantation, etc.—If there be a plantation, manufactory or business belonging to the estate and the disposition thereof is not specially directed by will, and, if the same be not required to be at once sold for the payment of debts, the executor or administrator shall carry on the plantation, manufactory or business, or cause the same to be done, or rent the same, as shall appear to be for the best interests of the estate. He shall consider the condition of the estate and the necessity that may exist for future sale of such property for the payment of claims or legacies and shall not extend the time of renting any of the property beyond what may be consistent with the speedy settlement of the estate. [Id.]

Art. 3428. [3352] [1985] [1932] Action of executor.—Any person interested in the estate may, upon written complaint, after citation to the executor or administrator, at a regular term of the court upon good cause shown, obtain an order of the court, which shall be entered upon the minutes, controlling the action of such executor or administrator in regard to such plantation, manufactory or business. [Id.]

Art. 3429. [3353] [1986] [1933] Diligence to collect claims and recover property.—Every executor or administrator shall use ordinary diligence to collect claims due the estate and to recover possession of property of the estate and, if any executor or administrator shall wilfully neglect to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as may have been lost by his neglect to use such diligence. [Id.]

Art. 3430. [3354–55] May purchase and compromise.—When an executor or administrator deems it for the interest of the estate to purchase or exchange property, or to take any claims or property for the use and benefit of the estate in payment of any debt due or owing to the estate, or to compound bad or doubtful debts due or owing the estate, or to make compromises or settlements in relation to property or claims in dispute or litigation, or to compromise or pay in full any secured claim which has been allowed and approved as required by law against the estate by conveying the real estate securing the payment of the claim to the holder thereof in full payment, liquidation and satisfaction of such claim and the cancellation of any and all notes, deeds of trust, mortgages or other liens evidencing or securing the payment of such claim, he shall present an application in writing to the County Court representing the facts; and if the Court is satisfied that it will be to the interest of the estate to grant the same, an order shall be entered showing the authority granted. The executor or administrator may also release mortgages upon payment of the debt secured thereby. [Acts 1876, p. 104; G.L. vol. 8, p. 940; Acts 1935, 44th Leg., p. 662, ch. 277, § 1.]

Art. 3431. [3356] [1989] [1936] Acts valid.—Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly; and, in case of the death, resignation or removal of an executor or administrator, if there be a co-executor or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal had occurred.

Art. 3432. [3357] [1990] [1937] Conveyance of real estate.—The preceding article shall not be construed to authorize one of several executors to convey real estate, but in such case all the executors who have qualified as such and who are acting as such shall join in such conveyance.

Art. 3432a. Extending obligations.—The executor or administrator of the estate of any person may, upon application and order authorizing same, renew or extend any obligation owing by or owing to such estate. [Acts 1931, 42nd Leg., p. 842, ch. 352, § 1.]

Art. 3432b. Payment or credit of annual net income of estate to owners of estate.—In all cases where the estate of a deceased person is being administered under the direction, control, and orders of a County Court in the exercise of its probate jurisdiction, upon the application of the executor or administrator of said estate, or any interested party, after notice thereof has been given in the same manner and for the same time as provided for in Sections 6 and 7 [1] of House Bill No. 112, Chapter 446 of the Acts of the Forty-fourth Legislature, Second Called Session, 1935, relating to notices of applications filed under the provisions of said House Bill No. 112,[2] and when it appears from evidence introduced at the hearing upon said application, and the Court finds that the reasonable market value of the assets of the estate then on hand, exclusive of the annual income therefrom, is at least twice the aggregate amount of all unpaid debts, administration expenses, and legacies, and no creditor or legatee of the estate then appearing and objecting, the County Court may order and direct the executor or administrator to pay to, or credit to the account of, those persons who the Court finds will own the assets of the estate, when the administration thereon is completed, and in the same proportions, such part of the annual net income received by or accruing to said estate, as the Court may believe and find can be conveniently paid to such owners without prejudice to the rights of creditors, legatees, or other interested parties. Nothing herein contained shall authorize the County Court to order paid over to such owners of the estate any part of the corpus or principal of the estate; provided however, in this connection, bonuses, rentals, and royalties received for, or from, an oil, gas, and mineral lease shall be treated and regarded as income, and not corpus or principal. [Acts 1941, 47th Leg., p. 633, ch. 382, § 1.]

1 Articles 3456F, 3456G.
2 Article 3456A et seq.

CHAPTER 12.—ADMINISTRATION UNDER A WILL

Art.
3433. Directions in will to be executed.
3434. Citation to executor.
3435. Order of the court.
3436. Testator may provide that no action be had in court, etc.
3437. Creditor may sue executor.
3438. Executor without bond may be required to give bond.
3439. Order requiring bond.
3440. Bond in such case.
3441. Failure to give bond.
3442. Estate may be partitioned.
3443. Heirs required to give bond, when.
3444. Failing to give bond, estate administered how.
3445. Bond filed and recorded.
3446. Creditor may sue on bond.
3447. Costs of such proceeding.
3448. Executor may sell property.
3449. Administration under will.
3450. Rights of legatee or devisee.
3451. Effect of naming an executor in a will.

Article 3433. [3358–59] Directions in will to be executed.—When a will has been probated, its provisions and directions shall be specifically executed, unless annulled or suspended by order of the court probating the same in a proceeding instituted for that purpose by some person interested in the estate. Such proceeding shall be by application in writing, filed with the clerk of the court, setting forth the objectionable provisions and directions in the will, and the grounds of objections. [P. D. 5623.]

Art. 3434. [3360] [1993] [1940] Citation to executor.—Upon the filing of such application, the clerk shall issue a citation for the executor or administrator to appear at a regular term of such court and answer such application; the substance of the application shall be stated in the citation; and such citation shall further direct such executor or administrator to refrain from executing the provisions and directions in the will that are objected to, until such application has been heard and decided by the court.

Art. 3435. [3361] [1994] [1941] Order of the court.—If it appears upon the hearing of such application that no material injury to the interests of the applicant will be occasioned by executing the provisions and directions of the will, and that such provisions and directions are legal, the objections shall be overruled, and the provisions and directions objected to shall be confirmed and executed, and an order to that effect shall be entered upon the minutes; otherwise, an order shall be entered upon the minutes of the court annulling the provisions and directions in the will to which objections are sustained, or sus-

pending the execution of the same until the further order of the court.

Art. 3436. [3362] [1995] [1942] Testator may provide that no action be had in court, etc.—Any person capable of making a will may so provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisement and lists of claims of his estate. [Acts 1876, p. 124; G. L. vol. 8, p. 960.]

Art. 3437. [3363] [1996] [1943] Creditor may sue executor.—Any person having a debt or claim against the estate may enforce the payment of the same by suit against the executor; and, when judgment is recovered against the executor, the execution shall run against the estate of the testator in the hands of the executor that may be subject to such debt. The executor shall not be required to plead to any suit brought against him for money until after one year from the date of the probate of such will. [Id.]

Art. 3438. [3364] [1997] [1944] Executor without bond may be required to give bond.—Where no bond is required of an executor, any person having a debt, claim or demand against the estate, to the justice of which oath has been made by himself, his agent or attorney, or any person interested in such estate, whether in person or as the representative of another, may by complaint in writing filed in the court where such will is probated, cause such executor to appear at a regular term of the court and show cause why he should not be required to give bond. [Id.]

Art. 3439. [3365] [1998] [1945] Order requiring bond.—Upon hearing such complaint, if it appears to the court that such executor is wasting, mismanaging or misapplying such estate, and that thereby a creditor may probably lose his debt, or some person his interest in the estate, the court shall enter an order upon the minutes requiring such executor to give bond within ten days from the date of such order. [Id.]

Art. 3440. [3366] [1999] [1946] Bond in such case.—Such bond shall be for an amount equal to double the full value of the estate, to be approved by, and payable to, the county judge, conditioned that said executor will well and truly administer such estate, and that he will not waste, mismanage or misapply the same; which bond shall be filed, and approved by the county judge, and recorded in the minutes. [Id.]

Art. 3441. [3367] [2000] [1947] Failure to give bond.—Should the executor fail to give such bond within ten days after the order requiring him to do so, then the county judge, without citation, either in term time or in vacation, shall remove such executor and appoint some competent person in his stead, who shall administer the estate according to the provisions of such will, and who, before he enters upon the administration of said estate, shall take the oath required of executors and shall give the bond required in the preceding article. [Id.]

Art. 3442. [3368] [2001] [1948] Estate may be partitioned.—If such will does not distribute the entire estate of the testator, or provide a means for partition of said estate, the executor may file his final account in the court in which the will was probated, and ask partition and distribution of the estate; and the same shall be partitioned and distributed in the manner provided for the partition and distribution of estates administered under the direction of the court. [Id.]

Art. 3443. [3369] [2002] [1949] Heirs required to give bond, when.—When it is provided in a will that no action shall be had in the county court, except to probate and record the will and return an inventory of the estate, any person having a debt against such estate may, by written complaint filed in the court where such will was probated, cause all the persons entitled to any portion of such estate under the will or as heirs at law to be cited to appear before such court at some regular term and execute an obligation, for an amount equal to the full value of such estate as shown by the inventory and list of claims, such obligation to be payable to the county judge, and to be approved by him, and conditioned that all obligors shall pay all debts that may be established against such estate in the manner provided by law. [Id.]

Art. 3444. [3370] [2003] [1950] Failing to give bond, estate administered how.—Upon the return of the citation served, unless such persons so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such obligation to the satisfaction of the county judge, such estate shall thereafter be administered and settled under the direction of the court as other estates are required to be settled. [Id.]

Art. 3445. [3371] [2004] [1951] Bond filed and recorded.—If the obligation is executed and approved, it shall be filed and recorded in the minutes of the court, and the administration shall proceed as hereinbefore provided. [Id.]

Art. 3446. [3372] [2005] [1952] Creditor may sue on bond.—Creditors of the estate may sue on such obligation, and shall be entitled to judgment thereon for the amount of their debt, or they may have their action against those in possession of the estate. [Id.]

Art. 3447. [3373] [2006] [1953] Costs of such proceeding.—All costs of such proceeding shall be paid by the persons entitled to the estate, according to their respective interests therein. [Id.]

Art. 3448. [3374] [2007] [1954] Executor may sell property.—Whenever by the term of a will an executor is authorized to sell any property of the testator, no order of the county judge shall be necessary to authorize the executor to make such sale, and, when any particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court.

Art. 3449. [3376] [2009] [1956] Administration under will.—The administration of an estate under a will shall in all respects be governed by the provisions of the law respecting the administration of intestates' estates, except where it is otherwise provided by law or by the provisions and directions of the will.

Art. 3450. [3377] [2010] [1957] Rights of legatee or devisee.—Any devisee or legatee may obtain from the county judge of the county where the will was proved an order for the executor or administrator to deliver to him the property devised or bequeathed, provided that there will remain in the hands of such executor or administrator, after such delivery, a sufficient amount of the estate for the payment of all debts against said estate. Such devisee shall first cause the executor or administrator, and the other devisees or legatees, if any, and the heirs, if any, to be cited to appear and show cause why such order should not be made. [Id.]

Art. 3451. [3378] [2011] [1958] Effect of naming an executor in a will.—The naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against him; and, in all cases where an executor or administrator may be indebted to his testator or intestate, he shall account for the debt in the same manner as if it were

cash in his hands: provided, however, that if said debt was not due at the time of receiving letters, he shall only be required to account for it from the date when it shall become due. [Id.]

CHAPTER 13.—SUBSEQUENT EXECUTORS AND ADMINISTRATORS

Art.
3452. Subsequent administrator under will.
3453. Powers.
3454. Shall proceed, how.
3455. Executor after administration
3456. Inventories to be returned.
3456A. Powers of administrator de bonis non succeeding independent executor.
3456B. Mortgage or pledge of property of estate.
3456C. Powers limited to extent granted independent executor.
3456D. Acting under order of court.
3456E. Application for grant of powers.
3456F. Citation on filing application.
3456G. Posting citation.
3456H. Hearing.
3456I. Partial invalidity.

Article 3452. [3379] [2012] [1959] Subsequent administrator under will.—When an administrator of the estate not administered has been, or shall be hereafter, appointed, he shall succeed to all the rights, powers and duties of the former executor or administrator, except such rights and powers conferred on the former executor by the will of the testator as are different from those conferred by this title in executors generally. [Acts 1876, p. 98; G. L. vol. 8, p. 934.]

Art. 3453. [3380] [2013] [1960] Powers.—Such administrator may make himself, and may be made, a party to suits prosecuted by or against the former executor or administrator of the estate. He may settle with the former executor or administrator, and receive and receipt for all such portion of the estate as remains in his hands. He may bring suit on the bond or bonds of the former executor or administrator, in his own name as administrator, for all the estate that has not been accounted for by such former executor or administrator. [Id.]

Art. 3454. [3381] [2014] [1961] Shall proceed, how.—Such administrator shall proceed to administer such estate in like manner as if his administration was a continuation of the administration of the former executor or administrator, with the exceptions hereinbefore named. [Id.]

Art. 3455. [3382] [2015] Executor after administration.—Whenever an executor shall accept and qualify as such after letters of administration shall have been granted upon the estate, such executor shall, in like manner, succeed to the previous administrator, and he shall administer the estate in like manner as if his administration was a continuation of the former one, subject, however, to any legal directions of the testator contained in his will, in relation to the estate. [Id.]

Art. 3456. [3383] [2016] [1963] Inventories to be returned.—An executor or administrator who has been qualified as such to succeed a prior executor or administrator shall make and return to the court an inventory and appraisement and list of claims of the estate, within one month after being qualified, in like manner as is required of original executors and administrators; and they shall also in like manner return additional inventories and lists of claims. [Id.]

Art. 3456A. Powers of administrator de bonis non succeeding independent executor.—Wherever a person has died, or may die, testate, owning property in Texas, and such person's will has been or may be admitted to probate by the County Court and such probated will names an independent executor or executors, and/or trustees, acting in the capacity of independent executors, to execute the terms and provisions of said will, or provides that no other action shall be had in the Court of Texas in reference to the settlement of the estate than the probating and recording of the will and the return of an inventory, appraisement and list of claims of the estate dealt with in the will, or contains language of similar import, and such will grants to such independent executor, or executors, and/or trustees, acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and such independent executor, or executors, and/or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator de bonis non, with the will annexed, is appointed by the County Court having jurisdiction of such estate, and an administrator's bond is filed and approved by the Court, then in all such cases, the County Court may, in addition to the powers conferred upon such administrator under other provisions of the laws of Texas, authorize, direct and empower such administrator to do and perform the acts and deeds, clothed with the rights, powers, authorities and privileges, and subject to the limitations, set forth in the succeeding Sections of this Act. [Acts 1935, 44th Leg., 2nd C.S., p. 1729, ch. 446, § 1.]

Art. 3456B. Mortgage or pledge of property of estate.—The County Court, upon application, notice and hearing, may, by its order, authorize, direct, and empower such administrator to raise or borrow such sums of money and incur such obligations and debts as the Court may, in its said order, direct, and to renew and extend same from time to time, as the Court, upon application and order, may provide; and, if authorized by the Court's order, to secure such loans, obligations and debts, by pledge or mortgage upon property or assets of the estate, real, personal, or mixed, upon such terms and conditions, and for such duration of time as the Court may deem to the best interest of the estate, and by its order may prescribe; and all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against such administrator in his official capacity. [Acts 1935, 44th Leg., 2nd C.S., p. 1729, ch. 446, § 2.]

Art. 3456C. Powers limited to extent granted independent executor.—The County Court may order and authorize such administrator to have and exercise the powers and privileges set forth in the preceding Section of this Act to the extent only that same are granted to the independent executor, or executors, and/or trustees, acting in the capacity of independent executors, under the terms of the probated will of such deceased person, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of such administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent executor, or executors, and/or trustees, or unpaid expenses of administration, or when the Court appointing such administrator orders the business of such estate to be carried on and it becomes necessary, from time to time, under orders of the Court, for such administrator to borrow money, and incur obligations and indebtedness in order to protect and preserve the estate. [Acts 1935, 44th Leg., 2nd C.S., p. 1729, ch. 446, § 3.]

Art. 3456D. Acting under order of court.—The County Court, in addition, may, upon application, notice and hearing, order, authorize and empower such administrator to assume, exercise and discharge, under the orders and directions of said Court, made from time to time, all or such part of the rights, powers and authorities vested in and delegated to the in-

dependent executor, or executors, and/or trustees, acting in the capacity of independent executors, under the terms of the will of such deceased person, as the Court may find to the best interest of the estate and may, from time to time order and direct. [Acts 1935, 44th Leg., 2nd C.S., p. 1729, ch. 446, § 4.]

Art. 3456E. Application for grant of powers.—The granting to such administrator by the County Court of some, or all of the powers and authorities set forth in this Act, shall be upon application filed by such administrator with the County Court Clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested. [Acts 1935, 44th Leg., 2nd C.S., p. 1729, ch. 446, § 5.]

Art. 3456F. Citation on filing application.—Upon the filing of such application, the Clerk shall issue citation to all persons interested in the estate, stating the nature of the application, and requiring such persons to appear on the return day named in such citation, and show cause why such application should not be granted, should they choose to do so. [Acts 1935, 44th Leg., 2nd C.S., p. 1729, ch. 446, § 6.]

Art. 3456G. Posting citation.—Such citation shall be served by posting one copy thereof at the Courthouse door for not less than ten (10) days before the return day thereof, and the citation and return shall be recorded as other citations and returns. [Acts 1935, 44th Leg., 2nd C.S., p. 1729, ch. 446, § 7.]

Art. 3456H. Hearing.—The Court shall hear such application and evidence thereon, upon the return day named in the citation, or thereafter, and if satisfied a necessity exists and that it would be to the best interest of the estate to grant said application in whole or in part, shall so order; otherwise, the Court may refuse said application. The Court's order shall be entered in the minutes of the County Court. [Acts 1935, 44th Leg., 2nd C.S., p. 1729, ch. 446, § 8.]

Art. 3456I. Partial invalidity.—The validity of any provision or part of this Act shall not be dependent upon any other provision or part thereof. If any provision or part thereof shall, for any reason, be held unconstitutional or invalid, such decision shall not affect the validity of any of the remaining provisions or parts of this Act. [Acts 1935, 44th Leg., 2nd C.S., p. 1729, ch. 446, § 9.]

CHAPTER 14.—WITHDRAWING ESTATES FROM ADMINISTRATION

Art.
3457. Executor or administrator may be cited.
3458. May give bond.
3459. Bond filed and recorded.
3460. Partition.
3461. Lien on property.
3462. Creditor may sue on bond.
3463. Other creditors may sue.
3464. Creditor may sue distributee.
3465. Order of discharge.

Article 3457. [3384] [2017] [1964] Executor or administrator may be cited.—At any time after the return of inventory, appraisement and list of claims of a deceased person, any one entitled to a portion of the estate, may, by a written complaint, filed in the court where such case is pending, cause the executor or administrator of the estate to be cited to appear at a regular term of the court and render an exhibit under oath of the condition of the estate. [Acts 1876, p. 126; G. L. vol. 8, p. 962.]

Art. 3458. [3385] [2018] [1965] May give bond.—Upon the return of such citation served, the persons so entitled to such estate, or any of them, or any persons for them, may execute and deliver to the county judge an obligation payable to him, to be approved by such county judge for an amount equal to at least double the appraised value of the estate as ascertained by the appraisement and list of claims returned, conditioned that the persons who execute such obligation shall pay all the debts against the estate not paid that have been allowed by the executor or administrator and approved by the county judge, or that may have been established by suit, or that may be established by suit against said estate, and will pay to the executor or administrator any balance that may be found to be due him by the judgment of the court on his exhibit. [Id.]

Art. 3459. [3386] [2019] [1966] Bond filed and recorded.—When such bond has been given and approved, it shall be filed and recorded in the minutes; and the court shall thereupon enter an order upon the minutes directing and requiring the executor or administrator to deliver forthwith to such person or persons the portion or portions of such estate to which he or they are entitled. [Id.]

Art. 3460. [3387] [2020] [1967] Partition.—Any person so entitled to any portion of the estate may on written application to the court cause a partition and distribution of such estate to be made among the persons entitled thereto, in accordance with the provisions of this title respecting the partition and distribution of estates. [Id.]

Art. 3461. [3388] [2021] [1968] Lien on property.—A lien shall exist on all of said estate in the hands of the distributees, and those claiming under them, with notice of such lien, to secure the ultimate payment of the aforesaid obligation. [Id.]

Art. 3462. [3389] [2022] [1969] Creditor may sue on bond.—Any creditor of such estate whose claim is unpaid, but has been allowed by the executor or administrator, and approved by the county judge or established by suit against the executor or administrator previous to the filing of such obligation, shall have the right to sue on such obligation in his own name, and shall be entitled to judgment thereon for the amount of his claim. [Id.]

Art. 3463. [3390] [2023] [1970] Other creditors may sue.—Any other creditor of such estate whose claim is not barred by limitation shall have the right to sue on such obligation, and shall be entitled to judgment thereon for such debt as he may establish against the estate. [Id.]

Art. 3464. [3391] [2024] [1971] Creditor may sue distributee.—Any creditor may sue any distributee, or he may sue all the distributees together, who have received any of the estate; but no one of such distributees shall be liable beyond his just proportion according to the estate he may have received in the distribution. [Id.]

Art. 3465. [3392] [2025] [1972] Order of discharge.—When an estate has been withdrawn from further administration under the provisions of this chapter, an order shall be entered upon the minutes discharging the executor or administrator and declaring the administration closed.

CHAPTER 15.—REMOVAL AND RESIGNATION

1. REMOVAL

Art.
3466. Without notice.
3467. With notice.
3468. Citation not served.
3469. Order to state cause.

2. RESIGNATION

3470. Application to resign.
3471. Citation.
3472. Exhibit and account.
3473. Approval of same.
3474. Order of discharge.
3475. Requisites of discharge.

1. REMOVAL

Article 3466. [3393] [2026] [1973] Without notice.—An executor or administrator may be removed by the county judge without notice, at a regular term of the court, in the following cases:

1. When he neglects to qualify in the manner and within the time required in this title.

2. When he neglects to return to the court an inventory and appraisement and list of claims of the estate, in the manner and within the time required in this title.

3. When he has been required to give a new bond and neglects to do so within the time prescribed by the court.

4. When he absents himself from the State for a period of three months at one time, without permission of the court.

5. In such other cases as are specially provided for in this title. [Acts 1876, p. 99; G. L. vol. 8, p. 935.]

Art. 3467. [3394] [2027] [1974] With notice.—An executor or administrator may be removed by the county judge on his own motion, or on the complaint of any person interested in the estate, after being cited to answer such motion or complaint at a regular term of the court in the following cases:

1. When there shall appear sufficient grounds to believe that he has misapplied, embezzled or removed from the State, the property or any part thereof, committed to his charge, or that he is about to misapply, embezzle or remove from the State any of such property.

2. When it is proved that he has been guilty of gross neglect, or mismanagement in the performance of his duties as such executor or administrator.

3. When he fails to obey any order of the court consistent with this title, made in relation to the estate committed to his charge.

4. When he becomes of unsound mind, or from any other cause he is incapable of performing the duties of his trust.

5. When he fails to make an annual exhibit fully showing the condition of the estate he represents, or fails to make to the court any exhibit he is required to make by law.

6. When he fails to make a final settlement for three years after the grant of letters, unless the time be extended by the court, after satisfactory showing being made under oath. [Acts 1881, p. 31; G. L. vol. 9, p. 123.]

Art. 3468. [3395] [2028] [1975] Citation not served.—In the cases enumerated in the preceding article, when proof is made that the executor or administrator has removed from the State, or is eluding the process of the court, the motion or complaint may be heard, though the citation be not served. [Acts 1876, p. 99; G. L. vol. 8, p. 935.]

Art. 3469. [3396] [2029] [1976] Order to state cause.—When an executor or administrator is removed, the order to that effect shall set forth the cause of such removal. [Id.]

2. RESIGNATION

Art. 3470. [3397] [2030] [1977] Application to resign.—An executor or administrator may resign the administration of an estate, and in such case, he shall present to the court in which the administration is pending, a written application stating such wish, and accompany said application with a full and complete exhibit of the condition of the estate, together with his administration account; which exhibit and account shall both be verified by affidavit. [Acts 1876, p. 100; G. L. vol. 8, p. 936.]

Art. 3471. [3398–99] Citation.—Upon the filing of such application, exhibit and account, the clerk shall make out a citation returnable to some regular term of the court; which citation shall state the presentation of such application, exhibit and account, the term of the court at which the same will be acted upon, and shall require all those interested in the estate to appear and contest the exhibit and account if they see proper. Such citation shall be published for at least twenty days in a newspaper printed in the county, if there be one; if not, then by posting copies thereof for a like period in the manner required for posting other citations. [Id.]

Art. 3472. [3400] [2033] [1980] Exhibit and account.—At the return term of such citation, or at some other term to which it may have been continued, upon the county judge being satisfied that such citation has been published or posted, as the case may be, he shall proceed to examine such exhibit and account, and to hear all proof that may be offered in support of the same, and all objections, exceptions and proof offered against the same, and shall, if necessary, restate such exhibit and account, and shall audit and settle the same. [Id.]

Art. 3473. [3401] [2034] [1981] Approval of same.—If the court is satisfied that such executor or administrator has accounted for all said estate according to law, the county judge shall enter an order approving such exhibit and account, and requiring such executor or administrator to deliver the estate, remaining in his possession, to some person qualified by law to receive it. [Id.]

Art. 3474. [3402] [2035] [1982] Order of discharge.—When the estate has been delivered in accordance with the order of the court, the court shall enter an order either in term time or in vacation accepting the resignation of such executor or administrator and discharging him from such trust. [Id.]

Art. 3475. [3403] [2036] [1983] Requisites of discharge.—No executor or administrator shall be discharged until the exhibit and account required have been made, returned, settled and approved as provided in this chapter, nor until he has delivered the estate, if there be any remaining in his possession, as hereinbefore required.

CHAPTER 16.—ALLOWANCE TO WIDOW AND MINOR CHILDREN

Art.
3476. Allowance to widow and minors.
3477. Amount of allowance.
3478. Not made, when.
3479. Order fixing allowance.
3480. To whom paid.
3481. May take property for.
3482. Sale ordered.
3483. Allowance preferred.
3484. Allowance apportioned.

Art. 3476. [3404] [2037] [1984] Allowance to widow and minors.—Within twelve (12) months after the original grant of letters testamentary or of administration, the court shall fix an allowance for the support of the widow and minor children of the deceased. [Acts 1876, p. 105; G. L. vol. 8, p. 941; Acts 1935, 44th Leg., p. 639, ch. 253, § 1.]

Art. 3477. [3405] [2038] [1985] Amount of allowance.—Such allowance shall be of an amount sufficient for the maintenance of such widow and minor children for one year from the time of the death of the testator or intestate. Such allowance shall be fixed with regard to the facts existing during the first year after such death. [Acts 1887, p. 73; G. L. vol. 9, p. 871.]

Art. 3478. [3406] [2039] [1986] Not made, when.—No such allowance shall be made for the widow when she has separate property adequate to her maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance. [Id.; Acts 1876, p. 105; G. L. vol. 8, p. 941.]

Art. 3479. [3407] [2440] [1987] Order fixing allowance.—When an allowance has been fixed, an order shall be entered stating the amount thereof, and directing the executor or administrator to pay the same in accordance with law.

Art. 3480. [3408] [2041] [1988] To whom paid.—The executor or administrator shall pay such allowance:

1. To the widow, if there be one, for the use of herself, and the minor children, if such children be hers.

2. If the widow is not the mother of such minor children, or some of them, the portion of such allowance necessary for the support of such minor child or children, of which she is not the mother, shall be paid to the guardian or guardians of such minor child or children.

3. If there be no widow, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

Art. 3481. [3409] [2042] [1989] May take property for.—The widow, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement returns. [Id.]

Art. 3482. [3410] [2043] [1990] Sale ordered.—If there be no personal effects of the deceased that the widow or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the county judge, so soon as the inventory and appraisement and list of claims are returned and approved, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require. [Id.]

Art. 3483. [3411] [2044] [1991] Allowance preferred.—The allowance made for the support of the widow and minor children of deceased shall be paid in preference to all other debts or charges against the estate, except expenses of the funeral and last sickness of deceased.

Art. 3484. [3412] [2045] [1992] Allowance apportioned.—The said allowance shall be paid as follows:

1. If there be both widow and minor child or children, the widow shall be entitled to one-half and the minor child or children to the other half.

2. If there be a widow and no minor child or children, the widow shall receive the whole.

3. If there be a minor child or children and no widow, such minor child or children shall receive the whole.

CHAPTER 17.—SETTING APART THE HOMESTEAD AND OTHER EXEMPT PROPERTY TO WIDOW AND CHILDREN

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Article 3485. [3413] [2046] [1993] Court to set apart exempt property.—At the first term of the court after an inventory, appraisement and list of claims have been returned, the court shall by an order entered upon the minutes, set apart for the use and benefit of the widow and minor children and unmarried daughters remaining with the family of the deceased, all such property of the estate as may be exempt from execution or forced sale by the constitution and laws of the State with the exception of any exemption of one year's supply of provisions. [Acts 1876, p. 106; G. L. vol. 8, p. 942.]

Art. 3486. [3414] [2047] [1994] Allowance in lieu of exempt articles.—In case there should not be among the effects of the deceased all or any of the specific articles so exempted, the court shall make a reasonable allowance in lieu thereof, to be paid to such widow and children, or such of them as there may be, as hereinafter directed. [Id.]

Art. 3487. [3415] [2048] [1995] Allowance limited.—The allowance in lieu of a homestead shall in no case exceed five thousand dollars and the allowance for other exempted property shall in no case exceed five hundred dollars, exclusive of the allowance provided in the preceding chapter. [Id.]

Art. 3488. [3416] [2049] [1996] To whom delivered.—The exempted property set apart to the widow and children shall be delivered by the executor or administrator without delay as follows:

1. If there be a widow and no children, or if the children be the children of the widow, the whole of such property shall be delivered to the widow.

2. If there be children and no widow, such property shall be delivered to such children if they be of lawful age, or to their guardian if they be minors, or the same may be equally divided among them, except the homestead.

3. If there be children of the deceased of whom the widow is not the mother, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors, or may be equally divided between them.

4. In all cases, the homestead shall be delivered to the widow, if there be one, and if there be no widow, to the guardian of the minor children and unmarried daughters, if any, living with the family.

Art. 3489. [3417] [2050] [1997] Allowance paid, how.—The allowances made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that may come to the hands of the executor or administrator, or in any property of the deceased that such widow or children if they be of lawful age, or their guardian if they be minors, may choose to take at the appraisement, or a part thereof, or both, as they may select. [Id.]

Art. 3490. [3418] [2051] [1998] To whom paid.—Such allowance shall be paid by the executor or administrator in the following manner:

1. If there be a widow and no children, the whole to be paid to such widow.

2. If there be children and no widow, the whole to be paid to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them.

3. If there be both widow and children, the whole to be paid to such widow if she be the mother of such children, but if she be not the mother of such children, one-half to be paid to such widow and the other half to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them. [Id.]

Art. 3491. [3419] [2052] [1999] Sale to raise allowance.—If there be no property of the deceased that such widow or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the county judge, on the application in writing of such widow and children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require. [Id.]

Art. 3492. [3420] [2053] [2000] Liens have preference.—If property upon which there is a valid subsisting lien or encumbrance, shall be set apart to the widow or children as exempt property, or appropriated to make up allowances made in lieu of exempt property or for the support of the widow or children, the debts secured by such lien, shall, if necessity requires, be either discharged or continued as against such property. This Article applies to all estates, whether solvent or insolvent. [Acts 1876, p. 106; G. L. vol. 8, p. 942; Acts 1917, p. 60; Acts 1931, 42nd Leg., p. 391, ch. 236, § 1.]

Section 2 of Acts 1931, repeals all conflicting laws and parts of laws.

Art. 3493. [3421] [2054] [2001] When estate is solvent.—If, upon a final settlement of such estate, it shall appear that the same is solvent, the exempted property, except the homestead, which has been set apart to the widow or children or both, together with any allowance that has been received by them in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate. [Acts 1876, p. 106; G. L. vol. 8, p. 942.]

Art. 3494. [3422] [2055] [2002] When estate is insolvent.—Should the estate, upon final settlement, prove to be insolvent, the title of the widow and children to all the property and allowances set apart or paid to them, under the provisions of this and of the preceding chapter, shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided. [Id.]

This article, in so far as it provides that where a decedent is insolvent his widow and minor children take absolute title to the homestead, is unconstitutional. Dorman v. Grace, 57 C.A. 386, 122 S.W. 401; Hays v. Moore, Civ.App., 144 S.W. 1054.

Art. 3495. [3423] [2056] [2003] Exempt property, not considered.—In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the widow or children, or the allowance in lieu thereof, and the allowance provided for in the preceding chapter, shall not be estimated or considered as assets of the estate.

Art. 3496. [3424] [2057] [2004] When homestead not partitioned.—The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the widow, or so long as she may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted under the order of the proper court having jurisdiction, to use and occupy the same. [Const. art. 16, sec. 52.]

Art. 3497. [3425] [2058] [2005] When homestead partitioned.—When the widow dies or sells her interest in the homestead, or elects to no longer use or occupy the same as a homestead, and when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

Art. 3498. [3426] [2059] [2006] Separate and community homestead.—The homestead rights of the widow and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the widow and the deceased, and the respective interests of such widow and children shall be the same in one case as in the other.

Art. 3499. [3427] [2060] [2007] Homestead not liable for debts, except.—The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon or for work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of the wife, given in the same manner as required in making a sale and conveyance of the homestead. [Const. art. 16, sec. 50.]

Art. 3500. [3428] [2061] [2008] Exempt property liable for debts.—The exempted property, other than the homestead, or any allowance made in lieu thereof, shall be liable for the payment of the funeral expenses and the expenses of last sickness of deceased, when presented within the time prescribed therefor, but such property shall not be liable for any other debts of the estate.

Art. 3501. [3429] [2062] [2009] Homestead rights of surviving husband.—On the death of the wife, leaving a husband surviving, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of such surviving husband, or so long as he may elect to use or occupy the same as a homestead. [Const. art. 16, sec. 51.]

CHAPTER 18.—PRESENTMENT OF CLAIMS

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Article 3502. [3430] [2063] [2010] Notice.—Executors or administrators within one month after receiving letters, shall publish in some newspaper printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate of the testator or intestate to present the same within the time prescribed by law; which notice shall state the time of the original grant of letters testamentary or of administration, and the residence and post-office address of such executor or administrator, and shall be published once a week for four successive weeks. [Acts 1876, p. 106; G. L. vol. 8, p. 942.]

Art. 3503. [3431] [2064] [2011] Copy of notice, filed and recorded.—A copy of such printed notice, together with the affidavit of the publisher, duly sworn to and subscribed before a proper officer, to the effect that it was published once a week for four consecutive weeks, shall be filed and recorded in the court where the cause is pending. [Id.]

Art. 3504. [3432] [2065] [2012] Posting of notice.—When no newspaper is printed in the county, the notice required shall be posted at the courthouse door of the county where the letters were issued, for four consecutive weeks, and a copy of such notice, with the return that such notice has been posted according to law, shall be filed and recorded. [Id.]

Art. 3505. Notice to holders of recorded claims.—An executor or administrator within four months after receiving letters shall give notice of the issuance of such letters, to each and all persons having a claim for money against the testator or intestate at the time of death, provided:

1. That such claim is secured by a deed of trust, mortgage, or vendors, mechanics or other contractors lien upon real estate belonging to such testator or intestate.

2. That the instrument creating, extending, or transferring such lien is duly recorded prior to the death of such testator or intestate in the county in which the real estate covered by such lien is situated, and,

3. That the instrument creating, extending, or transferring such lien shall contain a statement of the residence and post-office address of the holder of such claim (whether original payee or transferee). Said notice stating the original grant of letters testamentary or of administration shall be given by mailing same by registered letter addressed to the record holder of such indebtedness or claim at the post-office address given in said instrument creating such lien, or in the last recorded extension or transfer of said lien in case same has been transferred of record. [Acts 1913, p. 253.]

Art. 3506. Notice and affidavit to be filed.—A copy of such notice together with return receipt and accompanied by the affidavit of the executor or administrator, stating that said notice had been mailed as required by law, and giving the name of the person to whom sent, shall be filed and recorded in the court from which the letters issued. [Id.]

Art. 3507. [3433] [2066] [2013] One notice sufficient.—If such notices have been given by a former executor or administrator, or by one where several are acting, it shall be sufficient. [Id.; Acts 1876, p. 106; G. L. vol. 8, p. 942.]

Art. 3508. [3434] [2067] [2014] Penalty for neglect to give notice.—If the executor or administrator fails to give or cause such notices to be given, he and his sureties upon his bond shall be liable for any damage which any person may sustain by reason of such neglect, unless it appears that such person had such notice otherwise; and such executor or administrator shall be removed by the county judge at any regular term of the court on the complaint of any person interested in the estate after being cited to answer such complaint. [Id.]

Art. 3509. [3435] [2068] [2015] Claims postponed if not presented in one year.—All claims for money against a testator or intestate shall be presented to the executor or administrator within one year after the original grant of letters testamentary or of administration, otherwise the payment thereof shall be postponed until the claims which have been presented within one year and allowed by the executor or administrator and approved by the county judge have been first entirely paid. [Id.]

Art. 3510. [3435] [2068] [2015] Exception.—If the notice to holders of recorded claims has not been given by the executor or administrator as provided in this title, then failure of such holder to present his claim within one year shall not postpone the payment thereof, as provided in the preceding article, nor shall any of the provisions of said article apply to such claim. [Id.]

Art. 3511. [3436] [2069] [2016] Claims for funeral expenses.—Claims for funeral expenses and expenses of last sickness of the deceased shall be presented within sixty days after the original grant of letters testamentary or of administration or the exempted property set apart to the widow and children, or allowances made them under the provisions of this title shall no longer be liable to the payment of such claims or any part thereof.

Art. 3512. [3437] [2070] [2017] Absence of executor.—If the executor or administrator absent himself from the State, the period of such absence shall not be computed in estimating the time mentioned in the three preceding articles. [Id.]

Art. 3513. [3438] [2071] Joint obligation.—When two or more persons are jointly bound for the payment of a debt, or for any other purpose, upon the death of either of said persons so bound, his estate may be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly. [Acts 1887, p. 17; G. L. vol. 9, p. 815.]

Art. 3514. [3439] [2072] [2018] Affidavit to claim.—No executor or administrator shall allow claim for money against his testator or intestate, nor shall the county judge approve the same, unless such claim is accompanied by an affidavit that the claim is just and that all legal offsets, payments and credits known to affiant have been allowed. Such affidavit, if made by any other person than the owner of the claim, shall state further that the affiant is cognizant of the facts contained in his affidavit. [Acts 1876, p. 106; G. L. vol. 8, p. 942.]

Art. 3515. [3440–1–2] Claim lost or destroyed.—If a claim is lost or destroyed, the claimant, or some one for him, may make affidavit to the fact of such loss or destruction, stating the amount, date and nature of such claim and when due, and that the same is just, and that all legal offsets, payments and credits known to affiant have been allowed, and that the claimant is still the owner of the same; and it must be proved by disinterested testimony taken in open court, or by deposition, before such claim is allowed. If such a claim is allowed or approved without such affidavit and proof, such allowance or approval shall be void.

Art. 3515a. Regulating claims against estates of deceased persons.

Specifications of claim

Sec. 1. That in addition to the matter contained in the affidavit provided for in Articles 3514 and 3515 of the Revised Civil Statutes of 1925, when a secured claim against an estate is presented, the claimant shall specify therein:

(a) Whether it is desired to have the claim allowed and approved as a matured secured claim to be paid in due course of administration, in which event it shall be so paid if allowed and approved, or

(b) Whether it is desired to have the claim allowed, approved and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract which secures the lien, in which event it shall be so allowed and approved if it is a valid lien, provided, however, that the executor or administrator may pay said claim prior to maturity if it is for the best interest of the estate to do so.

Secured claim not presented in time; claims providing for attorney fees

Sec. 2. If a secured claim is not presented within the time provided by law it shall be treated as a claim to be paid as provided in Subsection (b) of Section 1. If the instrument evidencing or supporting a claim provides for attorney's fees then the claimant may include as a part of the claim the portion of such fee that he has contracted to pay to an attorney to prepare, present and collect such claim. If the claim is presented under Subsection (b) of Section 1 and is not contested the fee shall not exceed fifty (50%) per cent. of the amount provided in the instrument evidencing or supporting the claim, which fee shall be treated as a matured part of such claim, but if the claim is contested the full amount of attorney's fees may be recovered.

Approved claim as preferred lien against property securing same

Sec. 3. When an indebtedness has been allowed and approved under Subsection (b) of Section 1 hereof, no further claim shall be made against other assets of the estate by reason thereof, but the same thereafter shall remain a preferred lien against the property securing same and the property shall remain security for the debt in any distribution or sale that may be made of it prior to final maturity and payment of the debt.

Payment of claims secured by particular property

Sec. 4. If property securing a claim allowed, approved and fixed under Subsection (b) of Section 1 hereof, is not sold or distributed within twelve months from the date letters testamentary or of administration are granted the executor or administrator shall promptly pay all maturities which have accrued on the debt according to the terms thereof and shall perform all the terms of any contract securing same. If the executor or administrator defaults in such payment or performance on motion of the claimholder, the court shall require the executor or administrator to sell said property subject to the unmatured part of such debt and apply the proceeds of the sale to the liquidation of the maturities or, at the option of the claimholder, a motion may be made in a like manner to require the executor or administrator to sell said property free of such lien and apply the proceeds to the payment of the whole debt. [Acts 1931, 42nd Leg., p. 79, ch. 52.]

Section 5 of this Act repeals all conflicting laws and parts of laws and makes its provisions cumulative of Articles 3502–3515, ante, and 3516–3544, post.

Art. 3516. [3443] [2076] [2022] Memorandum of allowance or rejection.—When any claim for money against an estate is presented to the executor or administrator, properly authenticated, he shall indorse thereon or annex thereto a memorandum in writing signed by him, stating the time of its presentation, and that he allows or rejects the claim, or what portion thereof he allows or rejects, as the case may be. [Acts 1876, p. 106; G.L. vol. 8, p. 942.]

Art. 3517. [3444] [2077] [2023] Failure to indorse or annex memorandum.—When a claim for money against an estate is presented to the executor or administrator for his action, and he shall fail to indorse thereon, or annex thereto, such memorandum as required by the preceding article, such failure shall operate as a rejection of the claim, and shall authorize the claimant to bring suit to establish it, as if such claim had been rejected; and such executor or administrator shall be removed on the complaint of any person interested in such claim, after being cited to appear and answer such complaint, and upon proof of such failure. [Id.]

Art. 3518. [3445] [2078] [2024] When claim is allowed.—If a claim or a part thereof, be allowed by an executor or administrator, it shall be presented within twelve months after the issuance of original letters testamentary or of administration to the county clerk of the proper county who shall enter the same in its proper place upon the claim docket, and unless such claim is so presented within said time, the payment thereof, should it be approved either in whole or in part, shall be postponed until all other claims which have been allowed and approved within the time prescribed have been first entirely paid.

Art. 3519. [3446] [2079] [2025] Claim shall be acted upon.—All claims that have been allowed by the executor or administrator and entered upon the claim docket for the period of ten days shall be acted upon by the court at a regular term, and either approved in whole or in part or rejected, and they shall also at the same time be classified by the court.

Art. 3520. [3447] [2080] [2026] Action of the court.—When the court has acted upon a claim, such action shall be entered upon the claim docket and the date thereof, and the judge shall also indorse upon such claim or annex thereto, a memorandum in writing, dated and signed by him officially, stating the action of the court upon such claim, whether approved or disapproved, or if approved in part and rejected in part, stating the amount approved, and also stating the classification of such claim.

Art. 3521. [3448] [2081] [2027] May oppose approval of claim.—Any person interested in an estate may, at any time before the court has acted upon a claim, appear and object to the approval of the same, or any part thereof, in writing, and in such case the court shall hear proof and render judgment thereon.

Art. 3522. [3449] [2082] [2028] May sue on rejected claim.—When a claim for money against an estate has been rejected by the executor or administrator, either in whole or in part, the owner of such claim may, within ninety days after such rejection, and not thereafter, bring suit against the executor or administrator for the establishment thereof in any court having jurisdiction of the same. [Id.]

Art. 3523. [3450] [2083] [2029] Judgment filed, etc.—No execution shall be issued on a judgment obtained in such suit, but a certified copy of such judgment shall be filed with the county clerk of the county where the estate is pending within thirty days after the rendition of such judgment, and entered upon the claim docket, and shall be classified by the county judge, and have the same force and effect as if the amount thereof had been allowed by the executor or administrator, and approved by the county judge. [Id.]

Art. 3524. [3451] [2084] [2030] Costs of suit against claimant, when.—In suits to establish a claim after rejection, if the holder fails to recover judgment thereon for a greater amount than was allowed by the executor or administrator, he shall be adjudged to pay all costs of such suit. [Id.]

Art. 3525. [3452] [2085] [2031] Action of court on claim a judgment.—The action of the court in approving or disapproving a claim shall have the force and effect of a final judgment, and when the claimant, or any person interested in the estate, shall be dissatisfied with such action, he may appeal therefrom to the district court, as from other judgments of the county court rendered in probate matters.

Art. 3526. [3453] [2086] [2032] Claim of executor or administrator.—The provisions of this chapter respecting the presentations of claims against an estate shall not be construed to apply to any claim of the executor or administrator against his testator or intestate; but an executor or administrator holding such claim shall file the same in the court granting his letters, verified by affidavit as required in other cases, within six months after he has qualified, or such claim shall be barred. [Id.]

Art. 3527. [3454] [2087] [2033] Action of court thereon, etc.—When such claim has been entered upon the claim docket, and acted upon by the court as in other cases of claims, an appeal from the judgment of the court may be taken as in other cases.

Art. 3528. [3455] [2088] [2034] Application of law.—The provisions of this chapter respecting the presentation of claims shall not be so construed as to apply to the claim of any heir, devisee or legatee when claiming as such, nor to any claim that accrues against the estate after the granting of letters testamentary or of administration for which the executor or administrator has contracted. [Id.]

Art. 3529. [3456] [2089] [2035] Claims not allowed.—No claim for money against his testator or intestate shall be allowed by an executor or administrator, nor shall any suit be instituted against him on any such claim after an order for partition and distribution has been made; but the owner of a claim not barred by the laws of limitation shall have his action thereon against the heirs, devisees or legatees of the estate, limited to the value of the property they may receive in such partition and distribution. [Id.]

Art. 3530. [3457] [2090] [2036] No judgment in favor of claim.—No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the executor or administrator, and rejected by him, either in whole or in part. [P. D. 5683.]

CHAPTER 19.—CLASSIFICATION AND PAYMENT OF CLAIMS

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Art. 3531. [3458] [2091] [2037] Classification of claims.—The claims against an estate shall be classed and have priority of payments as follows:

1. Funeral expenses and expenses of last sickness for a reasonable amount, to be approved by the County Judge, not to exceed the sum of Five Hundred ($500.00) Dollars; any excess to be classified and paid as other unsecured claims.

2. Expenses of administration and expenses incurred in preservation, safekeeping and management of the estate.

3. Claims secured by mortgage or other liens so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property the oldest shall be first paid; but no preference shall be given to such claims secured by mortgage or other lien further than regards the property subject to such mortgage or other lien.

4. All claims legally exhibited within one (1) year after the original grant of letters testamentary or of administration.

5. All claims legally exhibited after the lapse of one (1) year from the original grant of letters testamentary or of administration. [Acts 1876, p. 115; P. D. 5674; G.L. vol. 8, p. 951; Acts 1931, 42nd Leg., p. 389, ch. 234, § 1.]

Section 2 of Acts 1931, repeals all conflicting laws and parts of laws.

Art. 3532. [3459] [2092] [2038] Claims paid pro rata.—Where there is a deficiency of assets to pay all claims of the same class, they shall be paid pro rata; and no executor or administrator shall be allowed to pay any claims, whether the estate is solvent or insolvent, except with their pro rata amount of the funds of the estate that have come to hand. [Acts 1876, p. 115; P.D. 5674; G.L. vol. 8, p. 951.]

Art. 3533. [3460] [2093] [2039] Order of payment of claims.—Executors and administrators, when they have funds in their hands belonging to the estate, shall pay:

1. Funeral expenses and expenses of last sickness, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or of administration, but if not presented within such time their payment shall be postponed until the allowances made to the widow and children, or either, are paid.

2. Allowances made to the widow and children, or either.

3. Expenses of administration and the expenses incurred in the preservation, safe-keeping and management of the estate.

4. Other claims against the estate in the order of their classification.

Art. 3534. [3461] [2094] [2040] Claim not paid, unless, etc.—No claim for money, or any part thereof, shall be paid until it has been approved by the county judge or established by the judgment of a court of competent jurisdiction.

Art. 3535. [3462] [2095] [2041] Owner may obtain order for payment.—When an executor or administrator has funds of the estate in his hands sufficient to pay a claim, or a part thereof, and fails to make such payment when required to do so by the owner, such owner may obtain an order of the court, at a regular term, directing such payment to be made, by making proof that such executor or administrator has funds of the estate in his hands which should be paid upon such claim, and that he has failed to make such payment; provided, such executor or administrator shall have first been cited on the written complaint of such claimant, filed with the clerk, to appear and show cause why such order should not be made. [Id.]

Art. 3536. [3463] [2096] [2042] Proceeds of sale of mortgaged property.—Whenever an executor or administrator has in his hands the proceeds of a sale that has been made for the satisfaction of a mortgage or other lien, and such proceeds, or any part thereof, are not required for the payment of any debts against the estate that have a preference over such mortgage or other lien, he shall within twelve months after the grant of letters testamentary or of administration, pay such proceeds to the creditor or creditors

having a right thereto; and, if he shall fail to do so, such creditor or creditors, upon proof thereof, may obtain an order from the county court, directing such payment to be made. [Id.]

Art. 3537. [3464] [2097] [2043] Exhibit of condition after twelve months.—At the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, the executor or administrator shall return to the court an exhibit in writing, sworn to and subscribed by him, setting forth a list of all claims against the estate that were presented to him within twelve months after said original grant of letters testamentary or of administration, specifying which have been allowed by him, which have been rejected and the date when rejected, which have been sued upon and the condition of the suit, also setting forth fully the condition of the estate. [Id.]

Art. 3538. [3465] [2098] [2044] Penalty.—Should such executor or administrator fail to return such exhibit, any person interested in the estate may, upon written complaint, filed with the clerk, cause him to be cited to appear at a regular term of the court and show cause why his letters should not be revoked and why he should not be fined for such failure; and, upon the hearing of such complaint, unless good cause be shown for such failure, the court shall revoke the letters of such executor or administrator and shall fine him in a sum not to exceed one hundred dollars. [Id.]

Art. 3539. [3466] [2099] [2045] Payment of claims in full.—If it shall appear from the exhibit, or from other evidence, that the estate is wholly solvent, and that the executor or administrator has in his hands sufficient funds for the payment of all character of claims against the estate, the county judge shall order immediate payment to be made of all claims allowed and approved or established by judgment. [Id.]

Art. 3540. [3467] [2100] [2046] Payment of claims pro rata.—If it appear that the funds on hand are not sufficient for the payment of all the said claims, or if the estate is insolvent and the executor or administrator has any funds in his hands, the county judge shall order such funds to be applied to the payment of all claims having a preference in the order of their priority, if they, or any of them, be still unpaid, and then to the payment pro rata of the other claims allowed and approved or established, taking into consideration also the claims that were presented within twelve months, and in suit or on which suit may yet be instituted. [Id.]

Art. 3541. [3468] [2101] [2047] Claims presented after twelve months.—Claims for money against the estate presented to the executor or administrator after the expiration of twelve months from the original grant of letters, and allowed and approved or established by judgment, shall be paid by the executor or administrator at any time before the estate is finally closed, when he has funds of the estate in his hands over and above what may be sufficient to pay all debts of every kind against the estate that were presented within the twelve months and allowed and approved or established by judgment, or that may be so established; and an order for the payment of any such claim, upon proof that the executor or administrator has such funds, may be obtained from the county judge in like manner as is provided in this chapter for creditors to obtain payment. [Id.]

Art. 3542. [3469] [2102] [2048] Exhibit required.—At the third regular term after the expiration of twelve months from the original grant of letters testamentary or of administration, or at any term of the court thereafter, any person interested in the estate may, by a complaint in writing, filed in the county court, cause the executor or administrator to be cited to appear at a regular term of the court and make an exhibit in writing, under oath to the court, setting forth fully, in connection with the previous exhibits, the condition of the estate he represents; and if it shall appear to the court by said exhibit, or by other evidence, that said executor or administrator has any funds of the estate in his hands subject to distribution among the creditors of the estate, the county judge shall order the same to be paid out to them according to the provisions of this chapter; or any executor or administrator may voluntarily present such exhibit to the court, and, if he has any of the funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made. [Id.]

Art. 3543. [3470] [2103] [2049] Liability of executor.—Where an order is made by the county judge, for an executor or administrator to pay over money to any person other than the State Treasurer, and such executor or administrator shall neglect to make such payment when it is demanded by the person entitled thereto, his agent or attorney, such executor or administrator shall be liable on his official bond to the person in whose favor such order of payment was made, for damages upon the amount he shall so neglect to pay, at the rate of five per cent per month for each month he shall so neglect to make such payment after the same was so demanded, such damages to be recovered by suit against such executor or administrator and the sureties upon his bond before any court having jurisdiction of the amount claimed, exclusive of interest and such damages. [Id.]

Art. 3544. [3471] [2104] [2050] Executor not to purchase claim.—No executor or administrator shall purchase for his own use, either directly or indirectly, any claim against the estate he represents; and, should he do so, any person interested in the estate may upon written complaint, cause him to be cited to appear before the court; and upon proof of such complaint, the court shall enter an order upon the minutes canceling the claim so purchased; and such executor or administrator shall not be allowed to receive from the estate any portion of such claim. [Id.]

CHAPTER 20.—HIRING AND RENTING

Art.
3545. Executor may hire or rent property.
3546. May obtain order to hire or rent.
3547. Without order of court.
3548. Security shall be taken.
3549. Report of hiring or renting.
3550. Action of court on report.
3551. Who may file complaint.

Article 3545. [3472] [2105] [2051] Executor may hire or rent property.—When an executor or administrator thinks it would be to the interest of the estate to hire out any of the personal property of the estate, or to rent any of the real estate, he shall do so either at public auction or privately, for cash or credit, as he may deem most advantageous to the estate. [Acts 1876, p. 104; G. L. vol. 8, p. 940.]

Art. 3546. [3473] [2106] [2052] May obtain order to hire or rent.—An executor or administrator if he prefers, may file a written application with the county clerk setting forth the property which he thinks should be hired or rented; and if the county judge be of the opinion that it would be to the interest of the estate to grant the application, he shall do so by an order entered upon the minutes, either in term time or in vacation, which order shall name the property to be hired or rented, and state whether such hiring or renting shall be at public auction or privately, and whether for cash or credit, and if on credit, the length of such credit, and shall also state the period of time for which such property shall be hired or rented.

Art. 3547. [3474] [2107] [2053] Without order of court.—When an executor or administrator hires or rents property belonging to an estate without an order of the court authorizing him to do so, he shall be held responsible to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court by satisfactory evidence.

Art. 3548. [3475] [2108] [2054] Security shall be taken.—When property is hired or rented on credit, possession thereof shall not be delivered to the person hiring or renting the same until such person has executed and delivered to the executor or administrator a note with good personal security for the amount of such hire or rent; and any executor or administrator who shall deliver possession of any property so hired or rented on credit without first receiving such note with good personal security shall be responsible upon his bond as such executor or administrator for the full amount of such hire or rent.

Art. 3549. [3476] [2109] [2055] Report of hiring or renting.—When any property of the estate has been hired or rented, the executor or administrator shall, within thirty days thereafter, return to the court a written report, signed by him and duly sworn to, stating:

1. The property hired or rented.
2. When the same was so hired or rented, and whether at public auction or privately.
3. Whether for cash or on credit, and, if on credit, the length of such credit.
4. The name of the person hiring or renting the same.
5. The amount for which the same was hired or rented.

Art. 3550. [3477] [2110] [2056] Action of court on report.—When such report is returned to the court, it shall be filed, and, at a regular term thereafter, it shall be examined, and if found to be just and reasonable, it shall be approved and confirmed by order of the court entered upon the minutes, and shall be recorded in the minutes; but if disapproved by the court, an order to that effect shall be entered, and also adjudging against the executor or administrator the reasonable value of the hire or rent of such property where it appears that, by reason of any fault of such executor or administrator, such property has not been hired or rented for its reasonable value.

Art. 3551. [3478] [2111] [2057] Who may file complaint.—Any person interested in an estate may, upon written complaint filed in the county court, cause an executor to be cited to appear at a regular term of such court and show cause why he should not hire or rent any of the property belonging to the estate, and upon the hearing of such complaint the court shall make such order as may seem for the best interest of the estate.

CHAPTER 21.—SALES

Art.
3552. Advantage considered.
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Article 3552. [3479] [2112] [2058] Advantage considered.—All sales for the payment of the debts owing by the estate shall be ordered to be made of such property as may be deemed most advantageous to such estate to be sold. [Acts 1876, p. 112; G. L. vol. 8, p. 948.]

Art. 3553. [3480] [2113] [2059] Court must order sales.—No sale of any property of an estate shall be made by an executor or administrator without an order of the court authorizing the same.

Art. 3554. Mineral lease.—Upon written application by the executor or administrator, or any heir, devisee or legatee of a deceased person, or by any creditor of the estate whose claim has been allowed and approved or established by suit, the county court may, by an order entered on the minutes of the court either in term time or in vacation, direct the lease of real property belonging to the estate of a deceased person, or any part thereof, for the purpose of drilling, mining, and operating for gas, oil or other minerals or metals. Such order shall state the minimum bonus, if any, to be received by the executor or administrator under such lease, the minimum royalty to be reserved to the estate under such lease in no event less than one-eighth royalty on oil, and such other terms of such lease as the court may embody in such order. [Acts 1919, p. 251.]

Art. 3554a. Easements and right-of-ways, sale by guardians, executors and administrators.—Guardians, executors and administrators are authorized to sell and convey easements and right-of-ways on, under and over the land owned by the ward of the guardians or by the estate being administered by such executors or administrators. The procedure to be followed for the sale and conveyance of any such easements and right-of-ways shall be the same procedure now or hereafter provided by law for the sale of real estate by guardians, executors or administrators. [Acts 1943, 48th Leg., p. 356, ch. 234, § 1.]

Art. 3555. Notice of application.—Before such application shall be heard by the court, notice of the application shall be given by the executor or administrator by publication of such notice in one issue of a newspaper published in the county where the property is situated, which notice shall appear subsequent to filing of such application and not less than ten days prior to hearing thereon, and shall describe the property with sufficient accuracy to identify it and shall state the time and place of hearing on such application. [Acts 1919, p. 251.]

Art. 3556. Report on application.—The executor or administrator shall in term time or vacation report to the court the lease made by him in accordance with such order within ten days after entry of order authorizing such lease, and shall embody in such report, or attach thereto, a full copy of the proposed contract of lease, and such lease shall be approved by the court, with such amendments, if any, as the court may

direct, or shall be disapproved by the court at any time within ten days after the filing of such report either in term time or vacation by an order of approval or disapproval entered on the minutes of said court. If such lease is approved, the order of approval shall direct the executor or administrator to execute and deliver the lease contract approved on compliance by the other party or parties thereto with the terms thereof; provided that no lease executed under the provisions of this chapter shall be binding upon heirs, legatees, or distributees of any estate, or on purchasers from such estate unless actual development has been commenced by the time said estate is partitioned and distributed and is being and continues to be prosecuted with reasonable diligence thereafter. [Id.]

Art. 3557. [3481] [2114] [2060] Terms of sale.—The court may order a sale of property, to be made for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when herein otherwise specially provided. [Acts 1876, p. 112; G. L. vol. 8, p. 948.]

Art. 3558. [3482] [2115] [2061] Sale at public auction.—All sales of personal property at public auction shall be governed by the rules governing sales of personal property under execution, unless herein otherwise provided. [Id.]

Art. 3559. [3483] [2116] [2062] When sold on credit.—When personal property is sold on credit, it shall not be for a longer time than six months from the date of such sale, and the purchaser shall be required to give his note for the amount of such purchase, with good and solvent personal security, before such property shall be delivered to him.

Art. 3560. [3484] [2117] [2063] Sale of perishable property.—Whenever there is property belonging to the estate of a deceased person that is perishable or liable to waste, upon written application of the executor or administrator, or an heir, devisee, legatee or creditor of the deceased, whose claim has been allowed and approved or established by suit, the county judge, by an order entered on the minutes, either in term time or vacation, may direct the sale of such property, or any part thereof. [Id.]

Art. 3561. [3485] [2118] [2064] Sale of crops.—The county judge may, either in term time or in vacation, by an order entered on the minutes, direct the crops belonging to the estate of a deceased person, or any part thereof, to be sold for their market value at private sale, upon written application of the executor or administrator, or any heir, devisee, legatee or creditor of the deceased, whose claim has been allowed and approved or established by suit. [Id.]

Art. 3562. [3486] [2119] [2065] Executor to sell personal property.—The executor or administrator, as soon as practicable after his qualification as such, shall sell, at public or private sale, as the court may order, all personal property belonging to the estate, except bonds, securities or other personal property, which in the opinion of the county judge may not be liable to waste or loss, and except property exempt from forced sale, specific legacies and personal property necessary to carry on a plantation, manufactory or business, which it may be thought best to carry on, giving such credit as such executor or administrator or county judge may deem most advantageous to the estate, not exceeding six months, and taking notes with one or more sufficient sureties for the purchase money. [Id.]

Art. 3563. [3487] [2120] [2066] Sale of stock.—If the executor or administrator shall represent to the court on oath in writing that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes with good and sufficient sureties for the purchase money: and such sale shall be advertised, made, returned and confirmed in the same manner as the sale of real property. [Id.]

Art. 3564. [3488] [2121] [2067] Sale of mortgaged property.—Any creditor of a deceased person holding a claim secured by a mortgage or other lien, which has been allowed and approved or established by suit, may, at a regular term thereof, obtain from the county court where the estate is pending, an order for the sale of such property or so much thereof as may be required to satisfy his claim. The application shall be in writing and the executor or administrator shall be cited to appear and answer the same. If the lien is on real property, the same notice shall be given of the application as is required to obtain an order for the sale of real property. [Id.]

Art. 3565. [3489] [2122] [2068] Sale of real estate, how made.—The executor or administrator, when necessary, shall apply to the county judge, at a regular term of the court, for an order to sell so much of the real estate belonging to the estate as is sufficient to pay the local charges and claims against the estate. [Id.]

Art. 3566. [3490] [2123] [2069] Requisites of application to sell.—Such application shall be made in writing and shall describe the real estate sought to be sold, and shall be accompanied by an exhibit in writing, verified by the affidavit of the executor or administrator, showing fully and particularly the charges and claims against said estate that have been approved or established by suit or that have been rejected and may yet be established, and the amount of each, and the estimated expenses of administration, and the property of said estate remaining on hand liable for the payment of such charges and claims. [Id.]

Art. 3567. [3491] [2124] [2070] Citation in such case.—Upon the filing of such application and exhibit, the clerk shall issue a citation to all persons interested in the estate, describing the land sought to be sold, and requiring such persons to appear at the term named in such citation, and show cause why such sale should not be made should they choose to do so. [Id.]

Art. 3568. [3492] [2125] [2071] Posting and return of citation.—Such citation shall be posted in the manner required for other citations for at least twenty days before the first day of the term of the court at which the application is to be heard, and the citation and return shall be recorded, as other citations and returns. [Id. Acts S. S. 1909, p. 336.]

Art. 3569. [3493] [2126] [2072] Action of court on application.—The court shall hear such application and evidence thereon at a regular term and if satisfied that a necessity exists therefor, shall order the sale to be made; otherwise he may refuse to order the sale and may, if he deems best, order the sale of other property of the estate that it would be more to the interest of the estate to have sold. The order to that effect shall be entered into the minutes. [Acts 1876, p. 112; G. L. vol. 8, p. 948.]

Art. 3570. [3494] [2127] [2073] Real estate sold on credit.—All sales of real estate for the payment of debts shall be made at public auction to the highest bidder on a credit of twelve months, except when otherwise specially provided by law. [Id.]

Art. 3571. [3495] [2128] [2074] Sold for cash.—Sales of real estate may be made at public auction for cash or on such credit as the county judge may direct not exceeding twelve months, in the following cases:

1. When the sale is made for the purpose of raising the amount, or any part thereof, of any allowance made to the widow and children, or either, under the provisions of this title.

2. When the sale is made for the satisfaction of a mortgage or other lien upon such real estate.

3. When such sale is made in accordance with directions contained in a will. [Id.]

Art. 3572. [3496] [2129] [2075] Private sale.—The county judge may order a sale of real estate to be made at a public or private sale for cash, or for part cash and part credit, and if sold for part cash and part credit, then upon the terms to be determined by him. One-fifth of the purchase price must be paid in cash, and the executor or administrator shall retain a lien upon the premises to secure the deferred payment. It must be shown, in addition to the other requirements, that said sale was made for a fair price, and the judge may require personal security should he deem it necessary. [Id. Acts 1915, p. 87.]

Art. 3573. [3497–8] Notice of sale.—All public sales of real estate shall be advertised at least twenty days before the day of sale, by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale in a newspaper published in the county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Such notice shall state the time and place of sale, the terms of sale, shall describe the property to be sold, and shall be signed by the executor or administrator. [Acts 1876, p. 113; G. L. vol. 8, p. 949.]

Art. 3574. [3499] [2132] [2078] Time and place of sale.—All public sales of real estate shall be made in the county where the letters testamentary or of administration were granted, at the courthouse door of such county, or at the place in such county where sales of real estate are specially authorized by law to be made; and all such sales shall be made on the first Tuesday of the month, between the hours of ten a. m. and four p. m.

Art. 3575. [3500] [2133] [2079] Where sale may be ordered.—If deemed advisable, the county judge may order a public sale of real estate to be made in the county where it is situated. If made in any other county than that in which the letters testamentary or of administration were granted, such sale shall be advertised in both counties. [Id.]

Art. 3576. [3501] [2134] [2080] Order of court; amount of bond executed by corporation.—Whenever any property of an estate is ordered to be sold by the county judge, such order shall be entered upon the minutes of the court, shall describe the property to be sold, the time and place of sale, and the terms of said sale, and shall require the executor or administrator to file a good and sufficent bond, subject to the approval of the court, and if the sureties on said bond are natural persons, same shall be in an amount equal to twice the amount for which such real estate is sold, but if the surety on said bond is either a domestic or foreign corporation permitted to do business in this State for the purpose of issuing surety, guaranty, or indemnity bonds guaranteeing the fidelity of executors, administrators and guardians, same shall be equal to the amount for which such real estate is sold, plus any additional sum the court shall find necessary and fix for the protection of said estate; provided that where the sale of such real estate is made to the owner or holder of a secured claim against the estate the sale of the real estate securing such claim, and is in full payment, liquidation and satisfaction thereof, no bond shall be required except for the amount of cash, if any, actually received by such executor or administrator in excess of the amount necessary to pay, liquidate and satisfy such claim in full. [Acts 1876, p. 113; G.L. vol. 8, p. 949; Acts 1929, 41st Leg., p. 63, ch. 29, § 2; Acts 1935, 44th Leg., p. 637, ch. 250, § 1; Acts 1945, 49th Leg., p. 525, ch. 316, § 2.]

Article 3576 was also amended by Acts 1935, 44th Leg., p. 662, ch. 277, § 2, effective May 13, 1935, but such amendment is identical with the amendment as set out above.

Art. 3577. [3502] [2135] [2081] Who may apply for order of sale.—When an executor or administrator shall neglect to apply for an order to sell sufficient property of the estate to pay the charges and claims against the estate that have been allowed and approved or established by suit, any person interested in the estate may, upon written application, cause such executor or administrator to be cited to appear at a regular term of the court and make a full exhibit of the condition of such estate, and show cause why a sale of the property should not be ordered; and, upon hearing such application, if the court is satisfied from the proof that a necessity exists for the sale, the same shall be ordered. [Acts 1876, p. 113; G.L. vol. 8, p. 949.]

Art. 3578. [3503] [2136] [2082] Who may oppose application.—When an application for an order of sale is made, any person interested in the estate may, before an order is made thereon, file his opposition to the sale, in writing, or may make application for the sale of other property of the estate; and, after hearing the controversy, the county judge shall make such order thereon as the circumstances of the case may require. [Id.]

Art. 3579. [3504] [2137] [2083] Executor or administrator not to purchase.—No executor or administrator shall buy the estate of his testator or intestate, or any part thereof, at its appraised value, or become the purchaser, either directly or indirectly of any property of the estate sold by him. If an executor or administrator should either directly or indirectly become the purchaser of any of the property of his testator or intestate, at a sale made by him or his co-executor or co-administrator, upon the written complaint of any person interested in the estate, and service of citation upon any such executor or administrator, and, upon proof of such complaint, such sale shall be declared void by the county judge, and such executor or administrator decreed to hold the property so purchased in trust as assets of the estate, and an order to that effect shall be entered upon the minutes. [Id.]

Art. 3580. [3505] [2138] [2084] Failure of bidder to comply, etc.—When any person shall bid off property offered for sale, rent or hire, at public auction, by an executor or administrator, and shall fail to comply with the terms of sale, renting or hiring, such property shall be readvertised and sold, rented or hired without any further order; and the person so failing to comply shall be liable to pay such executor or administrator for the use of the estate ten per cent on the amount of his bid, and also the deficiency in price on the second sale, renting or hiring, if any, to be recovered by such executor or administrator. [Id.]

Art. 3581. [3506] [2139] [2085] Public sale may be continued.—Public sales may be continued from day to day, in case the day set apart for such sale shall be insufficient to complete the same, by giving public notice of such continuance at the conclusion of the sale of each day, and the continued sale shall commence and close within the same hours. [Id.]

Art. 3582. [3507] [2140] [2086] Notice of private sale.—When property is ordered by the court to be sold at private sale, no notice of such sale shall be required, unless the court ordering such sale shall direct otherwise.

CHAPTER 22.—REPORT OF SALES, ETC.

Art.
3583. Report of sale.
3584. Action on report.
3585. Decree vests title.
3586. Conveyance.

Art.
3587. Conveyance delivered.
3588. Penalty for neglect.
3589. Vendor's lien.

Art. 3583. [3508–9–10] Report of sale.—All sales of property of an estate shall be reported to the court ordering the same within thirty days after the sales are made. The report of sale shall be in writing and shall be subscribed and sworn to by the executor or administrator. Said report may be made in term time or in vacation, and when returned shall be filed by the clerk and the filing thereof noted upon the judge's docket, and shall show:

1. The time and place of the sale.
2. The property sold, describing the same.
3. The name of the purchaser of such property.
4. The amount for which each article of property sold.
5. The date of the order of the court authorizing the sale.
6. The terms of the sale, and whether at public auction or made privately. [Acts 1876, p. 113; G. L. vol. 8, p. 949.]

Art. 3584. [3511–12] Action on report.—After the expiration of five days from the filing of a report of sale, the county judge at a regular term of his court, shall inquire into the manner in which the sale was made, and hear evidence in support of or against such report; and, if satisfied that the sale was fairly made, and in conformity with law, he shall enter upon the minutes a decree confirming such sale, and order the report of sale to be recorded by the clerk, and a conveyance of the property to be made by the executor or administrator to the purchaser upon compliance with the terms of sale. If the court is not satisfied that the sale was fairly made and in conformity with law, an order shall be entered upon the minutes setting the same aside and ordering a new sale to be made if necessary. [Id.]

Art. 3585. [3513] [2146] Decree vests title.—No conveyance of personal property shall be necessary, but the decree of the court confirming the sale shall vest the right and title of the testator or intestate in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making the sale. [Id.]

Art. 3586. [3514] [2147] [2092] Conveyance.—After a sale has been confirmed by the court, upon the purchaser complying with the terms of the sale, the executor or administrator shall execute and deliver to him a proper conveyance of the property. Real estate shall be conveyed by deed, and shall recite the decree of the court confirming the sale and ordering the conveyance to be made, and such conveyance shall vest the right and title that the testator or intestate had in such real estate in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making such sale. [Id.]

Art. 3587. [3515] [2148] [2093] Conveyance delivered.—No conveyance of real estate shall be executed and delivered by the executor or administrator until the terms of sale have been complied with by the purchaser; and if the sale is made on credit, the executor or administrator before delivering the conveyance shall take from such purchaser a note with good personal security, together with a mortgage containing power of sale upon the property sold to secure the payment of the purchase money, and shall file such mortgage for record in the county where such real estate is situated.

Art. 3588. [3516] [2149] [2094] Penalty for neglect.—Should the executor or administrator neglect to take such note, security and mortgage, and file such mortgage for record in the proper county before delivery of the deed, he and the sureties on his bond shall be liable at the suit of any person interested in the estate, for the use of the estate, for the full amount of such sale. [Id.]

Art. 3589. [3517] [2150] [2095] Vendor's lien.—All notes executed for the purchase money of real estate purchased under the provisions of this title shall hold the vendor's lien on the real estate for which they were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not, and such lien shall in no case be waived. [Id.]

CHAPTER 23.—HEIRSHIP, ETC.—ADJUDICATION OF

Art.
3590. Actions to declare heirship.
3591. Who may maintain action, etc.
3592. Notice, citation, etc.
3593. Hearing and procedure.
3594. Judgment.
3595. Effect.
3596. Certified copy of judgment filed.
3597. Chapter cumulative.

Article 3590. [3521] Actions to declare heirship.—When a person dies, intestate, owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon his estate, and when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the county court of the county in which such proceedings were last pending, or in the event, no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the county court of the county in which any of the real property belonging to such estate is situated, or, if there be no such real property, then of the county in which any personal property belonging to such estate may be found, may determine and declare in the manner hereinafter provided in this chapter, who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such decedent, and actions therefor shall be known as actions to declare heirship. [Acts 1907, p. 230.]

Art. 3591. [3522] Who may maintain action, etc.—Such action may be instituted and maintained in any of the instances enumerated in the preceding article by any person or persons claiming to be the owner of the whole or a part of the estates of such decedent. In such case a petition shall be filed in a proper court stating the name, time and place of the death and the names and residences of the heirs of the decedent, if known to the petitioners, and, if the time and place of the death or the names and residence of all the heirs of such decedent be not definitely known to such petitioners or any of them, then the petition shall set forth all of the material facts and circumstances within the knowledge or information of such petitioners, or any of them, as may reasonably tend to show the time and place of the death of the decedent and the names and places of residence of the heirs, and the true share and interest of each petitioner, and of each heir, in the estate of such decedent. Such petition shall, so far as is known to any of the petitioners, contain a general description of all the real property of the decedent and a general description of all the personal property belonging to the estate of the decedent. Such petition shall be supported by the affidavit of each petitioner to the effect that, in so far as is known to such petitioner, all the allegations of such petition are true in substance and

in fact and that no such material fact or circumstance has, within affiant's knowledge, been omitted from such petition. The unknown heirs of such decedent, all persons who may be named in the petition as heirs of such decedent, and all persons who may, at the date of the filing of the petition, be shown by the deed records of the county in which any of the real property described in such petition may be situated, to own any share or interest in any such real property shall be made parties defendant in such action. [Id.]

Art. 3592. [3523] Notice, citation, etc.—Due notice of the filing of such petition shall be given in the manner and for the length of time and in accordance with the provisions of law now in force concerning the issuance and service of citations upon resident defendants, and notice to non-resident defendants, and citation by publication for unknown heirs respectively; and, in so far as they are applicable thereto, all provisions of laws now in force in this State, relative to or concerning suits wherein citation by publication is provided for, shall apply to and govern in suits provided for in this chapter. If an administration upon the estate of any such decedent shall be granted in this State, or if the will of such decedent shall be admitted to probate in this State, after the institution of such action, the court in which such action may be pending, shall, by an order entered of record therein, transfer the cause to the county court of the county in which such administration shall have been granted, or such will shall have been probated, and, thereupon, the clerk of the court in which such action was originally filed shall send to the clerk of the court named in such order, a certified transcript of all docket entries and orders of the court in such cause. The clerk to which such cause shall be transferred shall file the transcript and record the same in the minutes of the court, and shall docket such cause, and same shall thereafter proceed as though originally filed in that court. [Id.]

Art. 3593. [3524] Hearing and procedure.—Upon the hearing of such cause, the trial court may require the issues involved to be duly framed and submitted, and shall confine the proof to such issues; and all the evidence shall be reduced to writing, and shall be subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the minutes of the court. [Id.]

Art. 3594. [3524] Judgment.—The judgment of the court in such cause shall declare the names and places of residence of the heirs of the decedent, and their respective shares and interests in the real and personal property of such decedent, and shall state in what respects, if any, the evidence presented upon such hearing failed to develop such issues, or any of them; and all issues in the cause which may be framed by the court, or under its direction shall be embodied in the judgment. [Id.]

Art. 3595. [3524] Effect.—As between the parties to such cause who may have been personally served with citation or notice, and as to non-resident defendants and all bona fide purchasers of the property described in the judgment for value from them, or any of them, such judgment shall be conclusive, and as to any and all other persons such judgment shall be prima facie evidence that the heirs of such decedent and that their respective interest in the property described in such judgment are as therein stated; but such judgment shall not preclude any suit against the persons therein named as heirs of such decedent, or any one or more of them, based upon the allegation that such heir or heirs have received more than his or their proper and just share of the property of such decedent. Such judgment shall have the force and effect of a final judgment of such court; and any party or parties to such cause may appeal from such judgment in like manner and under the same conditions as is or may be provided by law in other cases arising under the probate laws of this State. [Id.]

Art. 3596. [3525] Certified copy of judgment filed.—A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment may be situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth in such judgment. [Id.]

Art. 3597. [3526] Chapter cumulative.—The provisions of this chapter are cumulative of and do not repeal existing laws. [Id.]

CHAPTER 24.—PARTITION AND DISTRIBUTION

Art.
3598. Application.
3599. Citation.
3600. Service of citation.
3601. Executor.
3602. Application made.
3603. Court shall proceed, etc.
3604. Shall ascertain facts.
3605. Guardians for minors, etc.
3606. Decree of partition.
3607. If estate consists of money or debts only.
3608. To appoint commissioners.
3609. Writ of partition.
3610. Service of writ.
3611. Partition by commissioners.
3612. Report of commissioners.
3613. Action of court.
3614. Special finding.
3615. Property incapable of division.
3616. May take it on credit.
3617. Decree of court.
3618. New appraisement.
3619. Property sold.
3620. Distributee purchasing.
3621. Court may order sale.
3622. Commissioners in each county.
3623. Majority may act.
3624. Delivery of property.
3625. To whom delivered.
3626. Damages for neglect to deliver.
3627. Of common property.
3628. Action and bond in such case.
3629. Lien upon property delivered.
3630. Property held by executor.
3631. Joint owners may have partition.
3632. Expense of partition.
3633. May appoint another guardian.

Article 3598. [3527] [2154] [2099] Application.—Anyone interested in an estate may make application for the partition and distribution of the estate; it shall be in writing and filed with the clerk of the court in which the administration of the estate is pending, and shall state:

1. The name of the person whose estate is sought to be partitioned and distributed.

2. The names and residences of all persons entitled to a share of such estate, and whether adults or minors, and if these facts be unknown to the applicant, it shall be so stated in the application. [Acts 1876, p. 120; G. L. vol. 8, p. 956.]

Art. 3599. [3528] [2155] [2100] Citation.—Upon the filing of such application, the clerk shall issue a citation returnable to a regular term of the court; the citation shall state the name of the person whose estate is sought to be partitioned and distributed, the term of the court to which such citation is returnable, and shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made. [Id.]

Art. 3600. [3529] [2156] [2101] Service of citation.—Such citation shall be personally served by leaving a copy thereof with each person residing in the State entitled to a share of the estate, who is known; and, if there be any who are not known, or who are not residents of this State, such citation shall be published for at least four successive weeks in some newspaper printed in the county, if there be one, if not, then in like manner in one of the nearest newspapers published in the State. A copy of such publication, and the affidavit of the publisher or printer attached thereto, shall accompany the report of the officer serving such citation. [Id.]

Art. 3601. [3530] [2157] [2102] Executor.—When the application is made by any other person than the executor or administrator of the estate, such executor or administrator shall be cited to appear and answer such application, and to file in court a verified exhibit and account of the condition of the estate, as in case of final settlement of an estate.

Art. 3602. [3531] [2158] [2103] Application made.—After the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, the heirs, devisees or legatees of the estate, or any of them, may, by written application filed in the county court, cause the executor or administrator, and the heirs, devisees and legatees of the estate, to be cited to appear at a regular term of the court and show cause why a partition and distribution of the residue of such estate should not be made. [Id.]

Art. 3603. [3532] [2159] [2104] Court shall proceed, etc.—After service of citation, the court shall ascertain whether the whole, or any part, of such property is susceptible of partition, also the value of the property, and that there is a residue of the estate on hand subject to partition and distribution, and shall proceed to have such residue partitioned and distributed among the persons entitled thereto in the manner hereinafter provided. [Id.]

Art. 3604. [3533] [2160] [2105] Shall ascertain facts.—In proceeding to partition an estate, the court shall ascertain:

1. The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment or which may yet be established by judgment, and also the probable future expenses of administration.

2. The persons who are by law entitled to partition and distribution, and their respective shares.

3. Whether advancements have been made to any of the persons so entitled, their nature and value, and shall require the same to be placed in hotchpotch as required by the law governing descents and distributions. [Id.]

Art. 3605. [3534] [2161] [2106] Guardians for minors, etc.—Where there are minors, or non compos mentis, having no guardian in this State who are entitled to a portion of an estate, or whose guardians also have an interest in the estate, the Court shall appoint a guardian ad litem to represent such minors, or non compos mentis and shall appoint an attorney to represent nonresident and unknown parties, having an interest if there be any. [As amended Acts 1937, 45th Leg., p. 499, ch. 250, § 1.]

Art. 3606. [3535] [2162] [2107] Decree of partition.—The court shall then proceed to enter a decree, which shall state:

1. The name and residence, if known, of each person entitled to a share of the estate, specifying those who are known to be minors, and the name of their guardian, or guardian ad litem, and the name of the attorney appointed to represent those who are unknown or are not residents of the State.

2. The proportional part of the estate to which each is entitled.

3. It shall contain full description of all the estate to be distributed.

4. It shall direct the executor or administrator to retain in his hands for the payment of all debts and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained. [Acts 1876, p. 120; G. L. vol. 8, p. 956.]

Art. 3607. [3536] [2163] [2108] If estate consists of money or debts only.—If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and order the payment and delivery thereof by the executor or administrator. [Id.]

Art. 3608. [3537] [2164] [2109] To appoint commissioners.—If the estate does not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition. [Id. Acts 1905, p. 108.]

Art. 3609. [3538] [2165] [2110] Writ of partition.—When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make such partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also commanding them to make due return of said writ, with their proceedings under it at some term of the court to be named in the writ. [Acts 1876, p. 120; G. L. vol. 8, p. 956.]

Art. 3610. [3539] [2166] [2111] Service of writ.—Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person.

Art. 3611. [3540] [2167] [2112] Partition by commissioners.—The commissioners shall make a fair, just and impartial partition and distribution of the estate in the following order:

1. Of the land or other property by allotment to each distributee of a part in each parcel or of parts in one or more parcels, or of one or more parcels either with or without the addition of a part or parts of other parcels as shall be most for the interest of the distributees; provided, the real estate is capable of being divided without manifest injury to all or any of the distributees.

2. If the real estate is not capable of a fair, just and equal division in kind, but may be made so by allotting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as near as may be, an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

3. The commissioners shall proceed to make a like division in kind, as near as may be, of the money and other personal property, and shall determine by lot, among equal shares to whom each particular share shall belong. [Id.]

Art. 3612. [3541] [2168] [2113] Report of commissioners.—Said commissioners having divided the whole, or any part of the estate, shall make to the court a written sworn report containing a statement of the property divided by them, and also a particular description of the property allotted to each

distributee and its value. And, if it be real estate that has been divided, the report shall contain a general plat of said land with the division lines plainly set down and a number of acres in each share. [Id.]

Art. 3613. [3542] [2169] [2114] Action of court.—Upon the return of such report, the court, at some regular term, shall examine the same carefully and hear all exceptions and objections thereto, and evidence in favor of or against the same, and, if it be informal, shall cause said informality to be corrected. If such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it and order it to be recorded, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners, otherwise the court may set aside said report and division and order a new partition to be made. [Id.]

Art. 3614. [3543] [2170] [2115] Special finding.—When the whole or any portion of the estate is in the opinion of the court not capable of fair and equal division among the distributees, the court shall make a special finding in writing, specifying therein the property that is incapable of division, and the value of the same as found. [Id. Acts 1905, p. 109.]

Art. 3615. [3544] [2171] [2116] Property incapable of division.—Upon such special finding of the court, and not less than twenty days after such finding, and before any exception thereto is filed, or after such exception is acted upon by the court, any one or more of the distributees at a regular term of the court by the payment to the executor or administrator of the value of the property found by the court, that is incapable of division, shall have the right to take such property. [Id.]

Art. 3616. [3545] [2172] [2117] May take it on credit.—With the approval of the court, any one or more of such distributees shall have the right to take said property by executing his or their obligation in favor of each of the other distributees for their share of the appraised value of such property, payable at such time, not exceeding twelve months from the date thereof, as the court may designate; and, when such obligations are executed, a lien shall exist upon such property by operation of law to secure the payment of the same. [Acts 1876, p. 120; G. L. vol. 8, p. 956.]

Art. 3617. [3546] [2173] [2118] Decree of court.—Should any one or more of the distributees take the property, the court shall enter upon the minutes a decree stating the facts; and, upon the entry of such decree all the right and title of the deceased in the property shall vest fully and absolutely in the person or persons taking the same, subject to the purchase money lien. [Id.]

Art. 3618. [3547] [2174] [2119] New appraisement.—Any distributee shall have the right to file his exception to said finding within twenty days thereafter, and the court shall hear proof of same; and, if satisfied that its finding is erroneous, it may make such additional or amendatory finding so as to conform to the proof. [Id. Acts 1905, p. 109.]

Art. 3619. [3548] [2175] [2120] Property sold.—If no distributee take the property, the court shall order the sale of same, either for cash or on a credit, and the proceeds of sale when collected shall be distributed by the court among those entitled thereto. [Acts 1876, p. 120; G. L. vol. 8, p. 956.]

Art. 3620. [3549] [2176] [2121] Distributee purchasing.—At such sale, if any distributee shall buy any of the property, he shall be required to pay or secure only such amount of his bid as may exceed the amount of his share of such property. [Id.]

Art. 3621. [3550] [2177] [2122] Court may order sale.—When any portion of the estate to be partitioned lies in another county and cannot be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the county judge in writing; whereupon at some regular term of the court, if satisfied that the said property cannot be fairly divided, or that its sale would be more advantageous to the distributees, he may order a sale thereof for cash, or on a credit of not more than twelve months. [Id.]

Art. 3622. [3551] [2178] [2123] Commissioners in each county.—If the court is not satisfied that such property can be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as is provided in this chapter for commissioners to make partition. [Id.]

Art. 3623. [3552] [2179] [2124] Majority may act.—Where commissioners to make partition are appointed under this chapter, the report of a majority of them shall be sufficient. [Id.]

Art. 3624. [3553] [2180] [2125] Delivery of property.—When the report of commissioners to make partition has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same. [Id.]

Art. 3625. [3554] [2181] [2126] To whom delivered.—If any distributee be a minor, his share shall be delivered to his guardian; if he has no guardian and is a resident of this State, the executor or administrator shall retain it until a guardian is appointed; if a distributee be a minor and resides out of this State, and has a guardian in the State where he resides, the executor or administrator in this State shall settle with and pay or deliver the estate of the minor to such guardian. Said guardian, before he receives such estate, shall make a bond as guardian in the matter of the guardianship so pending, conditioned and for the amount prescribed by the court having jurisdiction of such guardianship; and he shall produce to the court wherein administration has been, or may be granted in this State a certified copy of the bond and of the record of his appointment as guardian, with certificates from the clerk and judge of the court in which said guardianship is pending that said appointment and bond are in due and legal form under the laws of said State; also a copy of his bond as guardian; and if the court shall be satisfied that said guardian has been legally appointed and otherwise complied with the requirements herein, such court shall order same to be recorded in the office of the county clerk, whereupon the guardian shall settle for the amount due his ward. [Id. Acts 1895, p. 150.]

Art. 3626. [3555] [2182] [2127] Damages for neglect to deliver.—If any executor or administrator shall neglect to deliver to the person entitled thereto, when demanded, any portion of an estate ordered to be delivered, such executor or administrator shall be liable to pay out of his own estate to the person so entitled damages on the amount or value of the share so withheld, at the rate of ten per cent per month for each and every month he shall so neglect to deliver such share after such demand. [Id.]

Art. 3627. [3556] [2183] [2128] Of common property.—When a husband or wife shall die leaving any common property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisement and list of the claims of the estate have been returned, make application in writing to the court

which granted such letters for a partition of such common property, which application shall be acted upon at some regular term of the court. [Id.]

Art. 3628. [3557] [2184] [2129] Action and bond in such case.—The surviving husband or wife shall execute and deliver to the county judge an obligation with two or more good and sufficient sureties, payable to and approved by said county judge, for an amount equal to the value of his or her interest in such common property, conditioned for the payment of one-half of all debts existing against such common property, and the county judge shall proceed to make a partition of said common property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased. The provisions of this chapter respecting the partition and distribution of estates shall apply to such partition so far as the same may be applicable. [Id.]

Art. 3629. [3558] [2185] [2130] Lien upon property delivered.—Whenever such partition is made, a lien shall exist upon the property delivered to the survivor to secure the payment of the aforesaid obligation; and such obligation shall be filed with the clerk and recorded in the minutes of the court; and any creditor of said common property may sue in his own name on such obligation, and shall have judgment thereon for one-half of such debt as he may establish, and for the other half he shall be entitled to be paid by the executor or administrator of the deceased. [Id.]

Art. 3630. [3559] [2186] [2131] Property held by executor.—Until such partition is applied for and made, the executor or administrator of the deceased shall recover possession of all such common property and hold the same in trust for the benefit of the creditors and others entitled thereto. [Id.]

Art. 3631. [3560] [2187] [2132] Joint owners may have partition.—Any person having a joint interest with the estate of a decedent, in any property, real or personal, may make application to have the county court from which letters testamentary or of administration have been granted thereon to have a partition thereof; whereupon the court shall make a partition of said property between the applicant and the estate of the deceased; and all the rules and regulations contained herein in relation to the partition and distribution of estates shall govern partitions under this article so far as the same are applicable. [Id.]

Art. 3632. [3561] [2188] [2133] Expense of partition.—Expense of partition of estates shall be paid by the parties interested pro rata. The portion of the estate allotted to each distributee shall be liable for his portion of such expenses, and if not paid the court may order execution therefor in the names of the persons entitled thereto. [Id.]

Art. 3633. [3562] [2189] [2134] May appoint another guardian.—Where the county judge shall appoint a guardian ad litem for minors, or an attorney to represent a distributee who is absent from the State or unknown, under the provisions of this title, if such guardian ad litem, or attorney, shall neglect to attend to the duties of such appointment, the county judge shall appoint others in their places by an order entered on the minutes of the court; and such guardian ad litem and attorney shall be allowed by the county judge a reasonable compensation for their services, to be paid out of the estate of the person they represent, and an order to that effect shall be entered upon the minutes, and if such an allowance is not paid an execution may issue therefor in the name of the person entitled thereto. [Id.]

CHAPTER 25.—FINAL SETTLEMENT, ETC.

Art.
3634. Final account.
3635. Description.
3636. Executor cited.
3637. Citation shall issue.
3638. Service of citation.
3639. May order other notice.
3640. Action upon account.
3641. Partition.
3642. Executor discharged.
3643. Order for discharge.

Article 3634. [3563–3564] Final account.—When all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets of the estate in the hands of the executor or administrator of such estate will permit, he shall present to the court his account for final settlement of the estate verified by affidavit. Such accounts shall show:

1. The property which has come into the hands of such executor or administrator belonging to the estate.
2. The disposition that has been made of any such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.
6. The persons entitled to receive any portion of such estate, and their residence, if known, and whether adults or minors, and if minors, the names of their guardians.
7. Any advancements or payments that may have been made by the executor or administrator from such estate to any such person.
8. Said account shall be accompanied by proper vouchers in support of each item thereof, and such account and vouchers shall be filed with the clerk either in term time or vacation. [Acts 1876, p. 117, G. L. vol. 8, p. 953.]

Art. 3635. [3565] [2192] [2137] Description.—It shall be sufficient under the preceding article to refer to the inventory without giving each item in detail; also to refer to an.. adopt report of sales, exhibits and accounts of the executor or administrator, including vouchers which have been approved and filed, without re-stating the items thereof.

Art. 3636. [3566] [2193] [2138] Executor cited.—Should the executor or administrator neglect to present such account, the county judge, either of his own motion or upon the complaint of any person interested in the estate, shall cause such executor or administrator to be cited to present such account within the time specified in such citation. [Id.]

Art. 3637. [3567] [2194] [2139] Citation shall issue.—Upon the presentation of an account for final settlement, the clerk shall issue a citation, which shall state the presentation of said account, the term of the court when it will be acted on, and shall require all persons interested to appear and contest the same if they see proper. [Id.]

Art. 3638. [3568] [2195] [2140] Service of citation.—Such citation shall be published for at least twenty days in a newspaper printed in the county, if there be one, if not, then by posting such notice at the courthouse and at two public places in the county, not in the same town or city, for at least twenty days. When the citation has been published, the affidavit of the publisher or printer attached to a copy thereof that the same has been published for at least twenty days, shall accompany the return of the officer who executes such citation. When the citation has been posted, the original citation, with the return of the officer posting the same indorsed thereon or attached thereto, shall be filed.

See Article 3310a, ante.

Art. 3639. [3569] [2196] [2141] May order other notice.—In addition to the citation required in the two preceding articles, the county judge

may order such notice to be given as he shall deem expedient, by an order entered upon the minutes. [Id.]

Art. 3640. [3570] [2197] [2142] Action upon account.—Upon return being made that the citation has been served in the manner required, the court shall examine said account and the vouchers accompanying the same, and after hearing all exceptions thereto and the evidence, shall re-state said account if necessary, and audit and settle the same. [Id.]

Art. 3641. [3571] [2198] [2143] Partition.—Upon a settlement of an estate, if there be any of the estate remaining in the hands of the executor and administrator, and the heirs, devisees or legatees of the estate, or their assignee, or either of them, are present or represented in court, the county judge shall order a partition and distribution of the estate to be made among them. [Id.]

Art. 3642. [3572] [2199] [2144] Executor discharged.—If upon such settlement, there be none of the estate remaining in the hands of the executor or administrator, he shall be discharged from his trust by an order of the court, and such order shall declare said estate closed. [Id.]

Art. 3643. [3573] [2200] [2145] Order for discharge.—Whenever the executor or administrator has fully administered the estate in accordance with the provisions of this title, and in accordance with the order of the court, and has filed proper vouchers, it shall be the duty of the court to enter upon the minutes an order discharging said executor or administrator from his trust and declaring said estate to be closed.

CHAPTER 26.—PAYMENT OF ESTATES INTO THE TREASURY

Art.
3644. Paid to State Treasurer.
3645. Property uncalled for sold.
3646. Executor shall make report.
3647. While property under control of executor.
3648. Order for payment to treasurer.
3649. Certificate of postmaster.
3650. Penalty for neglect.
3651. Receipt of Treasurer.
3652. Distributees may recover.
3653. Mode of recovery.
3654. Citation to attorney.
3655. Proceedings.
3656. Costs.
3657. Penalty in certain cases.
3658. Treasurer may apply.
3659. Treasurer may sue.
3660. To represent State.

Article 3644. [3574—5] Paid to State Treasurer.—If any person entitled to a portion of an estate, except a resident minor without a guardian, shall not demand his portion from the executor or administrator within six months after an order approving the report of commissioners of partition, the county judge by an order entered upon the minutes shall require the executor or administrator to pay so much of said portion as may be in money to the State Treasurer; and such portion as may be in other property he shall order the executor or administrator to sell on such terms as the court may think best, and, when the proceeds of such sale are collected, he shall order the same to be paid to the State Treasurer, in all such cases allowing the executor or administrator reasonable compensation for his services. Upon the settlement of the final account of any executor or administrator, if the heirs, devisees or legatees of the estate, or assignees, or any of them, do not appear or are not represented in the court, and there are any funds of such estate remaining in the hands of the executor or administrator, the county judge shall enter an order upon the minutes requiring such executor or administrator to pay such funds to the State Treasurer. [Acts 1876, p. 124; G. L. vol. 8, p. 960.]

Art. 3645. [3576] [2203] [2148] Property uncalled for sold.—If in such case there shall be any property of the estate that has not been sold, or any debts due the estate that may be collected, the county judge shall by an order entered upon the minutes, require the executor or administrator to sell such property under the direction of the county judge, and to collect such debts and to pay the proceeds of such sale and amount collected of such debts to the State Treasurer in all such cases allowing to the executor or administrator reasonable compensation for his services. [Id.]

Art. 3646. [3577] [2204] [2149] Executor shall make report.—The executor or administrator, while he has any of such estate under his control, shall from time to time, as he receives money, report the same to the court in writing under oath, and, should he neglect to report to the court the condition of the estate at reasonable periods of time, the court shall cause him to be cited to appear and make such report either in term time or in vacation, and the court shall thereupon make proper orders.

Art. 3647. [3578] [2205] [2150] While property under control of executor.—While such estate, or any portion thereof, remains under the control of the executor or administrator, the heirs, devisees, legatees or their assigns, or any of them, may obtain from the county judge, at a regular term of the court an order to have the same partitioned and distributed among them, according to their respective interests, upon causing the executor or administrator to be cited. [Id.]

Art. 3648. [3579] [2206] [2151] Order for payment to treasurer.—Whenever an order shall be made by the county judge for an executor or administrator to pay any funds to the State Treasurer, under the provisions of this chapter, the clerk of the court, in which such order may be made, shall mail to said Treasurer a certified copy of such order within thirty days after said order has been made. [Id.]

Art. 3649. [3580] [2207] [2152] Certificate of postmaster.—Whenever the clerk mails such copy, he shall take from the postmaster with whom it is mailed a certificate stating that such certified copy was mailed in his office, directed to the State Treasurer, at the seat of government, and the date when it was mailed, which certificate shall be recorded in the minutes of the court. [Id.]

Art. 3650. [3581] [2208] [2153] Penalty for neglect.—Any clerk who shall neglect to transmit a certified copy of such order within the time prescribed, and to take such certificate and have it so recorded, as required in the preceding article, shall be liable in a penalty of one hundred dollars, to be recovered in an action in the name of the State, on the information of any citizen of the county, one-half of which penalty shall be paid to the informer and the other half to the State. [Id.]

Art. 3651. [3582] [2209] [2154] Receipt of Treasurer.—Whenever an executor or administrator pays the State Treasurer any funds of the estate he represents, under the provisions of this chapter, he shall take from such Treasurer a receipt for such payment, with his official seal attached, and file the same with the clerk of the court ordering such payment; and such receipt shall be recorded in the minutes of the court. [Id.]

Art. 3652. [3583] [2210] [2155] Distributees may recover.—When funds of an estate have been paid to the State Treasurer, any heir, devisee or legatee of such estate, or their assignees, or any of them, may recover the portion of such funds to which he or they would have been entitled. [Id.]

Art. 3653. [3584] [2211] [2156] Mode of recovery.—The person claiming such funds shall institute his suit therefor, by petition filed in the county court of the county in which the estate was administered, against the State Treasurer, setting forth the petitioner's right to such funds, and the amount claimed by him. [Id.]

Art. 3654. [3585] [2212] [2157] Citation to attorney.—Upon the filing of such petition, the Clerk shall issue a citation for the County Attorney of the county or the District Attorney of the district to appear and represent the interest of the State in such suit, and it shall be the duty of such County or District Attorney to do so. [As amended Acts 1927, 40th Leg., p. 74, ch. 50, § 1.]

Art. 3655. [3586] [2213] [2158] Proceedings.—The proceedings in such suit shall be governed by the rules for other civil suits; and should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the Treasurer to pay the same.

Art. 3656. [3587] [2214] [2159] Costs.—The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required to secure the costs. [Acts 1876, p. 124; G.L. vol. 8, p. 960.]

Art. 3657. [3588] [2215] [2160] Penalty in certain cases.—When an executor or administrator fails to pay to the Treasurer any funds of an estate which he has been ordered by the county judge so to pay, within three months after such order has been made, such executor or administrator shall be liable to pay out of his own estate to the State Treasurer damages thereon at the rate of five per cent per month for each month he may neglect to make such payment after the three months from such order. [Id.]

Art. 3658. [3589] [2216] [2161] Treasurer may apply.—The State Treasurer shall have the right in the name of the State to apply to the court in which the order for payment was made, by application in writing, to enforce the payment of such funds, together with the payment of any damages that may have accrued under the provisions of the preceding article; and the court shall enforce such payment in like manner as other orders of payment are required to be enforced. [Id.]

Art. 3659. [3590] [2217] [2162] Treasurer may sue.—The Treasurer shall also have the right to institute suit in the name of the State against such executor or administrator and the sureties on his bond for the recovery of the funds so ordered to be paid and damages, if any have accrued. [Id.]

Art. 3660. [3591] [2218] [2163] To represent State.—The county or district attorney, as the case may be, shall attend to and represent the interests of the State in all matters arising under any provision of this chapter.

CHAPTER 27.—ADMINISTRATION OF COMMUNITY PROPERTY

Art.
3661. Community property.
3662. Where there is no child.
3663. When husband shall have management.
3664. Application for community administration.
3665. Court appoints appraisers.
3666. Inventory, appraisement, etc.
3667. Bond of survivor.
3668. Action of the court.
3669. Survivor has control.
3670. Survivor shall keep account.
3671. New appraisement and bond.
3672. Survivor to pay debts.
3673. Creditor may require exhibit.
3674. Action of court upon exhibit.
3675. Sureties on bond cited, when.
3676. Creditor may sue.
3677. Action of court.
3678. Surviving wife.
3679. "Survivor."
3680. Rights of wife cease when.
3681. May have partition.
3682. Recovery of insane spouse.
3683. Duty of guardians.
3683a. Federal Estate Tax, community property; apportionment of tax.

Article 3661. [3592] [2219] [2164] Community property.—The community property of the husband and wife except such as is exempt from forced sale, shall be liable for all the debts contracted during marriage. And, in the settlement of such community estates, the survivor, executor or administrator shall keep a separate and distinct account of all the community debts allowed or paid in the settlement of such estates. [Acts 1876, p. 124; G. L. vol. 8, p. 960.]

Art. 3662. [3593] [2220] [2165] Where there is no child.—Where the husband or wife dies intestate, or becomes insane, having no child or children, and no separate property, the common property passes to the survivor, charged with the debts of the community; and no administration thereon or guardianship of the estate shall be necessary. [Id. Acts 1893, p. 89; P. D. 5498, G. L. vol. 10, p. 519.]

Art. 3663. [3594] [2221] [2166] When husband shall have management.—Where the wife dies or becomes insane, leaving a surviving husband and child, or children, the husband shall have exclusive management, control and disposition of the community property in the same manner as during her lifetime, or sanity; and it shall not be necessary that the insane wife shall join in conveyances of such property, or her privy examination and acknowledgment to be taken to such conveyances, subject, however, to the provisions of this chapter. [Id.]

Art. 3664. [3595] [2222] [2167] Application for community administration.—The husband shall, within four years after the death of the wife, or her being declared insane, when there is a child or children, file a written application in the county court of the proper county stating:

1. The death of his wife, or that she has been declared insane by a court of competent jurisdiction, and the time and place of her death or of such declaration.
2. That she left a child or children, giving the name, sex, residence and age of each child.
3. That there is a community estate between the deceased or insane wife and himself.
4. Such facts as show the jurisdiction of the court over the estate.
5. Asking for the appointment of appraisers, to appraise such estate. [Id.]

Art. 3665. [3596] [2223] [2168] Court appoints appraisers.—Upon the filing of such application, the county judge shall, without citation, and either in term time or in vacation, by an order entered upon the minutes of the court appoint appraisers to appraise such estate as in other administrations. [Acts 1876, p. 124; G. L. vol. 8, p. 960.]

Art. 3666. [3597] [2224] [2169] Inventory, appraisement, etc.—The surviving husband or wife (of community estates) with the assistance of any two of the appraisers, shall make out a full, fair and complete inventory and appraisement of the community estate; and the survivor shall attach thereto a list of all community debts due the estate, and shall also attach thereto a list of all indebtedness due by said

community estate to other parties, giving the amount of each debt and the name of the party or parties to whom it is due, and his or their post-office address; and such inventory, list of claims, and list of indebtedness of such community estate shall be sworn to by said survivor; and the inventory, appraisement and list of claims due said community estate shall be sworn to by said appraisers; and said inventory, appraisement, list of claims due said estate and list of indebtedness due by said estate shall be returned to the court within twenty days from the date of the order appointing appraisers in like manner as other administrations. [Id. Acts 1905, p. 336.]

Art. 3667. [3598] [2225] [2170] Bond of survivor.—The surviving husband shall, at the time he returns the inventory, appraisement, and list of claims, present to the court his bond with two or more good and sufficient sureties, payable to and to be approved by the county judge, in a sum equal to the whole of the value of such community estate as shown by the appraisement, conditioned that he will faithfully administer such community estate, and pay over one-half the surplus thereof after the payment of the debts with which the whole of such property is properly chargeable to such person or persons as shall be entitled to receive the same. [Acts 1876, p. 124, G. L. vol. 8, p. 960.]

Art. 3668. [3599] [2226] [2171] Action of the court.—When such inventory, appraisement, list of claims and bond are returned to the county judge, he shall, either in term time or vacation, examine the same and approve or disapprove them by an order to that effect entered upon the minutes of the court, and, when approved, they shall be recorded upon the minutes of the court, and the order approving them shall also authorize such survivor to control, manage and dispose of such community property in accordance with the provisions of this chapter.

Art. 3669. [3600] [2227] [2172] Survivor has control.—When the order mentioned in the preceding article has been entered, such survivor, without any further action in the county court, shall have the right to control, manage and dispose of such community property as may seem for the best interest of the estate and of suing and being sued with regard to the same, in the same manner as during the lifetime of the deceased; and a certified copy of the order of the court mentioned in the preceding article shall be evidence of the qualification and right of such survivor. [P. D. 4648.]

Art. 3670. [3601] [2228] [2173] Survivor shall keep account.—The survivor shall keep a fair and full account and statement of all community debts and expenses paid by him, and of the disposition made of such community property; and, upon final partition of said estate, shall account to the legal heirs of the deceased for their interest in such estate, and the increase and profits of the same, after deducting therefrom all community debts, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same. [P. D. 4648.]

Art. 3671. [3602] [2229] [2174] New appraisement and bond.—Any person interested in such community estate may cause a new appraisement to be made of the same, or a new bond may be required of the survivor for the same causes and in like manner as provided in other administrations.

Art. 3672. [3603] [2230] [2175] Survivor to pay debts.—The survivor shall pay all just and legal community debts as soon as practicable, and according to the classification and in the order prescribed for the payment of debts in other administrations.

Art. 3673. [3604] [2231] [2176] Creditor may require exhibit.—Any creditor of the estate whose claim has not been paid in full, after the lapse of one year from the filing of the inventory, appraisement, list of claims and bond by the survivor, may cause such survivor to be cited to appear at a regular term of the court in which such bond has been filed, and make an exhibit to the court in writing and under oath, showing fully and specifically:

1. The debts that have been presented to him against such community estate and their class.
2. The debts that have been paid by him and those that remain unpaid and the class of each.
3. The property that has been disposed of by him and the amount received therefor.
4. The property remaining on hand.
5. An account of losses, expenses and commissions.

Art. 3674. [3605] [2232] [2177] Action of court upon exhibit.—When such exhibit has been returned to the court and filed, the court shall, at a regular term, examine the same and hear exceptions and objections thereto, and evidence in support of or against the same; and, if satisfied that the estate has been fairly administered and in conformity to law, and that there remains no further property of such estate for the payment of debts, the court shall enter an order upon the minutes, approving such exhibit and directing the same to be recorded in the minutes, and shall also in such order declare such administration closed.

Art. 3675. [3606] [2233] [2178] Sureties on bond cited, when.—Should it appear to the court from such exhibit or from other evidence that such estate has been improperly administered, or that there are still assets of said estate that are liable for the payment of the applicant's debt, or any part thereof, and if said debt be for the amount of one thousand dollars or less, exclusive of interest, the court shall order citation to issue for the sureties upon the bond of such survivor, citing them to appear before such court at a regular term thereof, and show cause why judgment should not be rendered against them for such debt and costs, which citation shall be returnable as in other civil suits; and the proceedings in such case shall be the same as in other civil suits in said court.

Art. 3676. [3607] [2234] [2179] Creditor may sue.—Should the amount due and payable to such creditor exceed one thousand dollars, exclusive of interest, the court shall enter an order upon the minutes requiring the survivor to pay such debt, or a part thereof, as the evidence may show to be proper; and, should he neglect to pay the same for thirty days after the date of such order, the creditor may have his action in the district court of the county where the survivor's bond is filed against such survivor, and the sureties upon his bond.

Art. 3677. [3608] [2235] [2180] Action of court.—Should the survivor, after being duly cited, fail to file an exhibit as required, the court shall proceed, in accordance with the provisions of the two preceding articles, as if the creditor's right to the payment of his claim had been fully established.

Art. 3678. [3609] [2236] [2181] Surviving wife.—The wife may retain the exclusive management, control and disposition of the community property of herself and deceased, or insane husband in the same manner, and subject to the same rights, rules and regulations as provided in the case of the husband and until she shall, in the event of the death of the husband, marry again, and in such event her right to manage, control and dispose of the community property shall cease; provided, however, that when no administration is had upon the estate of the deceased husband, as is provided under Article 3680, she may renew, and extend the maturity date, of valid existing debts of the community estate, and any lien securing same. [Acts 1925, p. 253.] [39th Leg., ch. 82, § 1.]

Art. 3679. [3610] [2236a] "Survivor."—The use of the words, "survivor" or "surviving" in the

foregoing articles of this chapter, where no other designation is given, shall be held to apply as well to a sane person representing an insane person. [Acts 1893, p. 89; G. L. vol. 10, p. 519.]

Art. 3680. [3611] [2237] [2182] Rights of wife cease when.—Upon the marriage of the surviving wife, she shall cease to have control and management of said estate or the right to dispose of the same; and said estate shall be subject to administration as in other cases of deceased persons' estates.

Art. 3681. [3612] [2238] [2183] May have partition.—After the lapse of twelve months from the filing of the bond by the survivor, the persons entitled to the deceased's share of such community estate, or any portion thereof, shall be entitled to have a partition and distribution thereof in the same manner as in other administrations.

Art. 3682. [3613] [2238] Recovery of insane spouse.—Whenever such insane husband or wife shall have recovered sanity, then all action hereunder shall cease, and a report shall be made under oath of all transactions had and done under said proceedings; and said report shall be filed and recorded in the court where such proceedings were had, and with the other papers of the case. [Id.]

Art. 3683. [3614] [2238] Duty of guardians.—Persons now acting as guardians of the estate of persons of unsound mind shall turn over the estates of their wards, where the wards shall be married persons, upon the qualification of the same [1] spouse, as provided in this chapter. [Id.]

[1] So in enrolled bill. Should probably read "sane".

Art. 3683a. Federal Estate Tax; community property; apportionment of tax.—Whenever a Federal Estate Tax is collected under Section 811(e) (2) of the United States Internal Revenue Code,[1] or any corresponding section hereafter enacted by the Congress of the United States, and such tax is measured in part by the value of the surviving spouse's interest in community property owned by the decedent, and such surviving spouse at the decedent's death, the executors, administrators or personal representatives of the decedent, unless the decedent directs otherwise in his or her will, shall be entitled to recover from the surviving spouse such portion of the total federal estate tax paid under said Section 811(e) (2) as the net value of the survivor's interest in the community estate included in the decedent's estate in the computation of the federal estate tax bears to the net taxable estate. [Acts 1947, 50th Leg., p. 942, ch. 401, § 1.]

[1] 26 U.S.C.A. § 811(e) (2).

CHAPTER 28.—TRANSFER OF ADMINISTRATION

Art.
3684. Administration transferred.
3685. Fees.
3686. Order for transfer.
3687. Clerk to record papers.
3688. Administration when transferred.

Article 3684. [3615] [2239] [2184] Administration transferred.—The county judge of any county from which any county, or part thereof, has been taken, upon the written application of the executor, administrator, or the majority of the heirs of an estate, shall transmit all original papers relating to the settlement of a deceased person's estate who was at the time of his decease a resident of that part of the territory of the county which has been, or may hereafter be, taken to form any new county, or that may be added to any other county, to the county court of such new county, or county to which such territory has been added; and he shall also transmit with such original papers a transcript, certified by the clerk under the seal of the court, of the records of all orders, judgments and decrees of the court had in relation to such estate. [Acts 1876, p. 125; G. L. vol. 8, p. 961.]

Art. 3685. [3616] [2240] [2185] Fees.—At the time of filing such application, the applicant shall pay all fees due on account of such estate; and the order for the transfer of such estate shall not be made until such fees have been paid. [Id.]

Art. 3686. [3617] [2241] [2186] Order for transfer.—When the fees due have been paid, the county judge shall, either in term time or in vacation, hear such application; and, if satisfied that the facts exist which authorize the transfer of such estate, he shall enter an order upon the minutes directing such transfer, and ordering all original papers of the estate that have not been recorded to be recorded previous to such transfer.

Art. 3687. [3618] [2242] [2187] Clerk to record papers.—Upon the entry of such order, the clerk shall record all original papers belonging to the estate that have not been previously recorded, for which the same fee shall be allowed him as is allowed for other recording; which fees shall be paid by the applicant before any such transfer shall be made. [Id.]

Art. 3688. [3619] [2243] [2188] Administration when transferred.—Where papers and proceedings relating to the settlement of an estate shall be transmitted to any court in the manner provided for in this chapter such papers and proceedings shall be filed in such court; and the estate shall be proceeded with and settled in such court in like manner as if the settlement of such estate had been originally commenced in such county. [Id.]

CHAPTER 29.—COSTS

Art.
3689. Commission.
3690. No commissions.
3691. Expenses allowed.
3692. Expense account.
3693. Costs of appraisers.
3694. Costs of commissioners.
3695. Costs adjudged against executor.
3696. Costs on contests.
3697. Security for costs.

Article 3689. [3621] [2245] [2190] Commission.—Executors and administrators shall be entitled to receive and may retain in their hands five per cent on all sums they may actually receive in cash, and the same per cent on all sums they may pay out in cash in the course of their administration. [Acts 1876, p. 126; G. L. vol. 8, p. 961.]

Art. 3690. [3622] [2246] [2191] No commissions.—A commission shall not be allowed or received for receiving any cash which was on hand at the time of the death of the testator or intestate, nor a commission for receiving money realized from the sale of property to satisfy debts against the property and the paying out of the proceeds in satisfaction of the debt except as to the amount realized from the sale in excess of the debt, nor for paying out money to the heirs or legatees as such. Provided, however, that if the administrator or executor shows to the court that the value of the services rendered the estate in making a sale of property securing a debt exceeds the amount of the commission calculated as above provided, then the court shall allow a commission for a just amount. The amount not to exceed that now allowed by law. [Acts 1876, p. 126; G.L. vol. 8, p. 961; Acts 1931, 42nd Leg., p. 390, ch. 235, § 1.]

Section 2 of Acts 1931, repeals all conflicting laws and parts of laws.

Art. 3691. [2623] [1] [2247] [2192] Expenses allowed.—Executors and administrators shall also be allowed all reasonable expenses necessarily incurred by them in the preservation, safe-keeping and man-

agement of the estate, and all reasonable attorney's fees, that may be necessarily incurred by them in the course of the administration. [Acts 1876, p. 126; G. L. vol. 8, p. 961.]

[1] So in enrolled bill. "2623" should read "3623".

Art. 3692. [3624] [2248] [2193] Expense account.—All expense charges shall be made in writing, showing specifically each item of expense and the date thereof and shall be verified by the affidavit of the executor or administrator, and filed with the clerk and entered upon the claim docket, and shall be acted upon by the court in like manner as other claims against the estate.

Art. 3693. [3625] [2249] [2194] Costs of appraisers.—Appraisers appointed under the provisions of this title shall be entitled to receive two dollars per day each for every day that they may be necessarily engaged in the performance of their duties as such appraisers.

Art. 3694. [3626] [2250] [2195] Costs of commissioners.—Commissioners appointed to partition and distribute an estate, shall be entitled to receive two dollars each for every day that they are necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

Art. 3695. [3627–8] [2251–2] [2196–7] Costs adjudged against executor.—When an executor or administrator neglects the performance of any duty required by this title, and any costs are incurred thereby, he and the sureties on his bond shall be liable for such costs. When an executor or administrator is removed for cause, the costs of such proceedings shall be adjudged against him and the sureties upon his bond. [Id.]

Art. 3696. [3629] [2253] [2198] Costs on contests.—When a party files an application, complaint or opposition in court, and shall fail to sustain the object thereof, all costs occasioned by the filing of the same shall be adjudged against him. [Id.]

Art. 3697. [3630] [2254] [2199] Security for costs.—When any person other than the executor or administrator files an application, complaint or opposition in relation to the estate, the clerk may require him to give security for the probable costs of such proceedings before filing the same; or any one interested in the estate, or any officer of the court may, at any time before the trial of such application, complaint or opposition, obtain from the court, upon written motion, an order requiring such party to give security for the costs of such proceedings, and the rules governing the proceedings in civil suits in the county court respecting this subject shall govern in such case.

CHAPTER 30.—APPEALS TO THE DISTRICT COURT

Art.
3698. Right of appeal.
3699. [Repealed.]
3700. Bond not required of executor, etc.
3701–3703. [Repealed.]

Article 3698. [3631] [2255] [2200] Right of appeal.—Any person who may consider himself aggrieved by any decision, order, decree or judgment of the county court, shall have the right to appeal therefrom to the district court of the county upon complying with the provisions of this chapter; provided that in appeals from orders or judgments, appointing administrators or temporary administrators, the administrators shall continue the prosecution of suits then pending in favor of the estate, and if on appeal from probate court a different administrator shall be appointed, he shall be substituted in such case. [Acts 1876, p. 128; G. L. vol. 8, p. 964; Acts 1921, p. 222.]

Art. 3699. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 352.

Art. 3700. [3633] [2257] [2202] Bond not required of executor, etc.—When an appeal is taken by an executor or administrator, no bond shall be required, unless such appeal personally concerns him, in which case he must give the bond.

Arts. 3701–3703. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 333–335.

TITLE 55—EVIDENCE

1. WITNESSES AND EVIDENCE

Art.
3704–3707. [Repealed.]
3708. Fees of witnesses.
3709. [Repealed.]
3710. Privileged from arrest.
3711–3713. [Repealed.]
3714. Color or interest does not disqualify.
3715. Husband or wife not disqualified.
3716. In actions by or against executors, etc.
3717. Witness not disqualified.
3718. Printed statutes.
3719. Certified copies of acts, etc.
3720. Copies of records of officers and courts.
3721. Record of surveys.
3722. Copies and certificates from certain officers.
3723. Notarial acts and copies thereof.
3724. Transcript from Comptroller's office.
3725. Copies of certain ancient instruments.
3726. Recorded instruments admitted without proof.
3726a. [Transferred.]
3726b. Defects not affecting admissibility in evidence of certain instruments.
3727. Old record books declared valid.
3728. Copies of transcribed records.
3729. Certain abstracts.
3730. Certified copy of instrument sued on.
3731. Certified copies from heads of departments.
3732. Assessment or payment of taxes.
3733. Rate of interest presumed.
3734. [Repealed.]
3734a. Proof of execution of written instrument offered in evidence.
3735. Appointment and qualification of executor, etc.
3736. [Repealed.]
3737. Records of corporation.
3737a. Records of closed bank as evidence.
3737b. Evidence of handwriting by comparison.
3737c. Certified copies of records or instruments pertaining to oil industry.

2. DEPOSITIONS

3738, 3739. [Repealed.]
3740. Notice by publication.
3741–3745. [Repealed.]
3746. Officers authorized to execute.
3747. [Repealed.]
3748. May be attached.
3749–3756. [Repealed.]
3757. Power of officer taking depositions.
3758–3769. [Repealed.]
3769a. Execution of commission issued by court of foreign state.
3769b. Contempt in disobeying writ.
3769c. [Repealed.]

1. WITNESSES AND EVIDENCE

Arts. 3704–3707. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 176–179.

Art. 3708. [3644] [2268] [2213] Fees of witnesses.—Witnesses shall be allowed a fee of one dollar for each day they may be in attendance on the

court, and six cents for every mile they may have to travel in going to and returning therefrom, which shall be paid on the certificate of the clerk, by the party summoning them; which certificate shall be given on the affidavit of the witness before the clerk. Such compensation and mileage of witnesses shall be taxed in the bill of costs as other costs. [Acts 1846, p. 353.]

Art. 3709. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 180.

Art. 3710. [3646] [2270] [2215] Privileged from arrest.—Witnesses shall be privileged from arrest, except in cases of treason. felony and breach of the peace, during their attendance at court, and in going to and returning therefrom, allowing one day for each twenty-five miles from their place of abode. [Acts 1846, p. 353.]

Arts. 3711–3713. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 181, 183, 184.

Art. 3714. [3688] [2300] [2246] Color or interest does not disqualify.—No person shall be incompetent to testify on account of color, nor because he is a party to a suit or proceeding or interested in the issue tried. [Acts 1871, p. 108; P. D. 6826.]

Art. 3715. [3689] [2301] [2247] Husband or wife not disqualified.—The husband or wife of a party to a suit or proceeding, or who is interested in the issue to be tried, shall not be incompetent to testify therein, except as to confidential communications between such husband and wife.

Art. 3716. [3690] [2302] [2248] In actions by or against executors, etc.—In actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any transaction with, or statement by, the testator, intestate or ward, unless called to testify thereto by the opposite party; and the provisions of this article shall extend to and include all actions by or against the heirs or legal representatives of a decedent arising out of any transaction with such decedent. [Id. P. D. 6827.]

Art. 3717. Witness not disqualified.—No person shall be incompetent to testify in civil cases on account of his religious opinion, or for the want of any religious belief, or by reason of having been convicted of a felony. [Acts 1925, p. 146.] [39th Leg., ch. 28, § 1.]

Art. 3718. [3692] [2304] [2250] Printed statutes.—The printed statute books of this State, of the United States, of the District of Columbia. or of any State or territory of the United States or of any foreign government, purporting to have been printed under the authority thereof, shall be received as evidence of the acts and resolutions therein contained. [Acts 1846, p. 388; P. D. 3712; G. L. vol. 2, p. 1694.]

Art. 3719. [3693] [2305] [2251] Certified copies of acts, etc.—A certified copy under the hand and seal of the Secretary of State of this State, of any act or resolution contained in any of such printed statute books deposited in his office, or of any law or bill, public or private, deposited in his office in accordance with law, shall be received as evidence thereof. [Id.]

Art. 3720. [3694] [2306] [2252] Copies of records of officers and courts.—Copies of the records and filed papers of all public officers and custodians of records of minutes of boards, etc., and courts of this State. certified to under the hand, and the seal if there be one, of the lawful possessor of such records, shall be admitted as evidence in all cases where the records themselves would be admissible. Translated copies of all records in the land office certified to under the hand of the translator, and the Commissioner of the General Land Office, attested with the seal of said office, shall be prima facie evidence in all cases where the original records would be evidence. [Id. P. D. 3715.]

Art. 3721. [3695] [2307] [2252a] Record of surveys.—Each county surveyor shall record in a well-bound book each survey in the county for which he was elected, with the plat thereof that he may make, whether private or official, and certified copies of such record, under the official signature of the surveyor, may be used in evidence in any court of this State. [Acts 1881, p. 71; G. L. vol. 9, p. 163.]

Art. 3722. [3696] [2308] [2253] Copies and certificates from certain officers.—The Secretary of State, Attorney General, Land Commissioner, Comptroller, Treasurer, Adjutant General, Commissioner of Agriculture, Commissioner of Insurance, Banking Commissioner, and State Librarian shall furnish any person applying for the same with a copy of any paper, document or record in their offices, and with certificates under seal certifying to any fact contained in the papers, documents or records of their offices; and the same shall be received in evidence in all cases in which the originals would be evidence. [Acts March 20, 1848; P. D. 3806; G. L. vol. 3, p. 184.]

Art. 3723. [3697] [2309] [2254] Notarial acts and copies thereof.—All declarations and protests made and acknowledgments taken by notaries public, and certified copies of their records and official papers, shall be received as evidence of the facts therein stated in any court of this State. [Acts 1876, p. 30; P. D. 4697; G. L. vol. 8, p. 865.]

Art. 3724. [3698] [2310] [2255] Transcript from Comptroller's Office.—In suits by the State against any officer or agent thereof, on account of any delinquency or failure to pay to the State any money, a transcript from the papers, books, records and proceedings of the office of the Comptroller purporting to contain a true statement of accounts between the State and such party, authenticated under the seal of said office, shall be admitted as prima facie evidence; and the court trying the cause may thereupon render judgment accordingly. All copies of bonds, contracts or other papers relating to, or connected with, any account between the State and an individual, sued as aforesaid, when certified by the Comptroller to be true copies of the originals on file in said office, and authenticated under the seal of said office, may be annexed to such transcript and shall be entitled to the same degree of credit that would be due to the original papers if produced and proved in court; but, when such suit is brought upon a bond or other written instrument, and the defendant shall by plea under oath deny the execution of such instrument, the court shall require the production and proof thereof. [Acts 1861, p. 14; P. D. 3704; G. L. vol. 5, p. 351.]

Art. 3725. [3699] [2311] [2256] Copies of certain ancient instruments.—Copies of all conveyances and other instruments of writing between private individuals, which were filed in the office of any alcalde or judge in Texas previous to the first Monday in February, 1837, shall be admissible in evidence, and shall have the same force and effect as the originals thereof; provided, such copies are certified under the hand and official seal of the officer with whom the originals are now deposited [Acts May 13, 1846, p. 365; P. D. 3717; G. L. vol. 2, p. 1671.]

Art. 3726. [3700] [2312] [2257] Recorded instruments entered without proof.—Every instrument of writing which is permitted or required by law to be recorded in the office of the Clerk of the County Court, and which has been, or hereafter may be, so recorded, after being proved or acknowl-

edged in the manner provided by the laws of this State in force at the time of its registration, or at the time it was proved or acknowledged; or every instrument which has been, or hereafter may be actually recorded for a period of ten (10) years in the book used by said Clerk for the recording of such instruments, whether proved or acknowledged in such manner or not, shall be admitted as evidence in any suit in this State, without the necessity of proving its execution; provided, no claim adverse or inconsistent to the one evidenced by such instrument shall have been asserted during that ten (10) years; provided, that the party to give such instrument in evidence shall file the same among the papers of the suit in which he proposes to use it, at least three (3) days before the commencement of the trial of such suit, and give notice of such filing to the opposite party or his attorney of record; and unless such opposite party, or some other person for him, shall, within three (3) days before the trial of the cause, file an affidavit stating that he believes such instrument of writing to be forged. And whenever any party to a suit shall file among the papers of the cause an affidavit stating that any instrument of writing, recorded as aforesaid, has been lost, or that he cannot procure the original, a certified copy of the record of any such instrument shall be admitted in evidence in like manner as the original could be. And after such instrument shall have been actually recorded as herein provided for a period of ten (10) years, it shall be no objection to the admission of same, or a certified copy thereof, as evidence, that the certificate of the officer who took such proof or acknowledgment, is not in form or substance such as required by the laws of this State; and said instrument shall be given the same effect as if it were not so defective. If the land to which the instrument pertains is situated within the county in which the suit is pending, the party desiring to offer in evidence recorded instruments, may do so, without producing the originals thereof and without accounting for his failure to produce such originals, by filing a list of such instruments at least ten (10) days before the trial, giving the volume and the page wherein such instruments are recorded; and unless an affidavit is filed by the opposite party at least three (3) days before trial, stating that he believes such instruments of writing to be forged, then the party filing such lists of instruments shall be entitled to read the same from the record. A copy of a list of such instruments shall be filed with the Clerk of the County Court at least three (3) days before the trial of a case and said County Clerk shall on the day of the trial deliver, or cause to be delivered, to the Court in which the case is pending, all of the records requested, and said Clerk shall not charge for the use of said records. [Acts 1846, p. 387; Acts 1907, p. 308; P.D.3716; G.L. vol. 2, p. 1693; Acts 1927, 40th Leg., 1st C.S., p. 198, ch. 73, § 1; Acts 1939, 46th Leg., p. 325, § 1; Acts 1941, 47th Leg., p. 476, ch. 299, § 1.]

Art. 3726a. [Transferred.]

Acts 1927, 40th Leg., p. 362, ch. 244, § 1, relating to statements of facts concerning family history as prima facie evidence when contained in certain recorded instruments, formerly set out under this article, is now set out under Article 3597a.

Art. 3726b. Defects not affecting admissibility in evidence of certain instruments.—Every instrument of writing which is permitted or required by law to be recorded in the office of the clerk of the County Court, and which has been, or hereafter may be, so recorded, after being proved or acknowledged in the manner provided by the laws of this state in force at the time of its registration, or at the time it was proved or acknowledged, or every instrument which has been, or hereafter may be, actually recorded for a period of 10 years in the book used by said clerk for the recording of such instruments, whether executed, proved or acknowledged in such manner or not, shall be admitted as evidence in any suit in this State without the necessity of proving its execution, provided, no claim adverse or inconsistent to the one evidenced by such instrument shall have been asserted during that 10 years; provided, that the party to give such instrument in evidence shall file the same among the papers of the suit in which he proposes to use it at least three days before the commencement of the trial of such suit, and give notice of such filing to the opposite party, or his attorney of record; and unless such opposite party, or some other person for him, shall, within three days before the trial of the cause, file an affidavit stating that he believes such instrument of writing to be forged. Whenever any party to a suit shall file among the papers of the cause an affidavit stating that any instrument of writing, recorded as aforesaid, has been lost, or that he cannot procure the original, a certified copy of the record of any such instrument shall be admitted in evidence in like manner as the original could be. And after such instrument shall have been actually recorded as herein provided for a period of 10 years, it shall be no objection to the admission of same, or a certified copy thereof, as evidence that it has not been signed by the proper officer of any corporation; or that the corporate seal of the corporation has not been impressed on such instrument; or that the record does not show such corporate seal; or that the record does not show authority therefor by the Board of Directors and stockholders (or either of them) of a corporation; or that such instrument was executed and delivered by a corporation which had been dissolved or whose charter had expired, or whose corporate franchise had been canceled, withdrawn or forfeited; or that the executor, administrator, guardian, assignee, receiver, Master in Chancery, agent, or trustee or other agency mentioned in such instrument, signed or acknowledged the same individually instead of in his representative or official capacity; or that such instrument is executed by a trustee without record of Judicial or other ascertainment of the authority of such trustee or of the verity of the facts therein recited; or that the officer taking the acknowledgment of such instrument having an official seal did not affix the same to the certificate of acknowledgment; or that the notarial seal is not shown of record; or that the wording of the consideration may or might create an implied lien in favor of grantor, (By this is not meant an express vendor's lien retained); and said instrument shall be given the same effect as if it were not so defective; provided that this Act shall be cumulative of all other laws on this subject; and provided that if any portion of this Act be declared unconstitutional the remaining portion shall not be affected thereby and shall remain in full force and effect. [Acts 1929, 41st Leg., p. 390, ch. 179, § 1.]

Art. 3727. [3701] Old record books declared valid.—All volumes constituting a portion of the records of any county organized prior to January 1, 1882, wherein are recorded deeds, mortgages or trust deeds, or other muniments of title to real estate situated in such county, which volumes and records are now and have been constantly among the archives of such county, as records thereof, shall be in all respects lawful and valid records of such counties respectively, for all purposes whatsoever relating to titles to real estate, as effectively as if such books and records were originally records of such counties, respectively, and as fully and completely as if such counties had been duly organized at the dates of the filing for record of the instruments recorded therein, as shown therein. Certified copies of the instruments recorded in said volumes, made in accordance with law, shall have the force and effect that certified copies of original records

have in organized counties, and same may be used for all purposes lawful for certified copies of original records in ordinary cases in organized counties. [Acts 1905, p. 36.]

Art. 3728. [3703] [2319] [2263] Copies of transcribed records.—Where a county has been or may be created out of the territory of any organized county, and the records of deeds and other instruments required or permitted by law to be recorded, relating to lands or other property in such new county, have been transcribed and placed on record in such new county, in accordance with law, certified copies of such transcribed records in the new county may be admitted in evidence with like effect as certified copies of the original records. [Acts 1879, p. 106; G. L. vol. 8, p. 1406.]

Art. 3729. [3705] [2313] Certain abstracts.—All abstracts of land titles, or land abstract books to lands in this State, compiled from the records of any county in this State, prior to the year 1890, which said records were partially or wholly destroyed or lost from any cause during the months of May, 1874, March, 1876, and January, 1889, shall be competent prima facie evidence of the truth of the data or memoranda therein contained and compiled prior to the year 1890, and shall be admissible in evidence in the courts of this State; provided, that the compiler or compilers of such abstracts of land titles or land title abstract books, shall have made heretofore, or before offered in evidence, affidavit to the effect that said abstracts of land titles, or land title abstract books, were compiled by him from the records of the county prior to their destruction or loss, and that they contain a true and correct statement of the matters and things to which they relate. Any testimony is admissible which tends to discredit or substantiate the reliability of such abstract of land titles or land title abstract books, or tends to show the compiler thereof to have been incompetent or unreliable, or competent and reliable. A copy of such abstract shall be filed in the papers of the cause in which it is sought to be used, and notice given to the opposite party at least five days before the trial, and the same defense may be made as if copies of the original record had been filed; provided, that the party offering such abstracts of land titles, or land title abstract books, in evidence, shall himself, or by his agent or attorney, have made affidavit that the original instrument to which the said data or memorandum relates is not then on record; and that he has made diligent search and inquiry for the same in places and from persons where and in whose possession it would most probably be found, and has been unable to find the same; that, to his best knowledge and belief, the same is lost or destroyed; and provided, further, that the owner of said abstracts of land titles, or of land title abstract books, shall have filed with the county commissioners court his application in writing (which may be granted or refused, in the discretion of said court, and if refused, this article shall not become of force as to said application so refused) for an order of said court admitting to record in said court the contract of the said owner in writing, wherein the said owner shall bind himself, his heirs and assigns, as follows: That said owner, his heirs or assigns, will, whenever requested in writing, setting forth the data required by any party to any suit interested in introducing said abstracts of land titles, or land title abstract books, produce the same without charge on the day demanded for introducing in evidence, and upon the trial of any cause in this State; provided, that if said owner, his heirs or assigns, are required to produce said abstracts of land titles, or land title abstract books, in courts of any other county than that to the lands of which said abstract of land titles, or land title abstract books pertain, they shall be, by the party at whose instance such production is required, reasonably compensated in advance for the time and expense of the said owner, his heirs or assigns. And the said owner in said contract shall bind himself, his heirs and assigns. to answer in full damages to any party damaged by the failure or default of the said owner, his heirs or assigns, without good cause, to produce said abstracts of land titles or land title abstract books, as herein provided. Said contract shall further stipulate that no charge shall ever be made by said owner, his heirs or assigns, in excess of one dollar for each instrument or remove in any title, in the compilation of a complete abstract or title to the lands in the county to which said abstracts of land titles, or land title abstract books, pertain, and that said owner, his heirs and assigns, will, upon request and payment of the fees therefor by any person, either make, compile and certify, or cause to be made, compiled or certified, within a reasonable time, a complete abstract of title to any land to which said abstracts of land titles, or land title abstract books, pertain. The provisions of this article shall not apply if it can be shown by competent evidence that any such deeds were improperly recorded. Whenever any person, company or corporation has heretofore complied with the law which is amended hereby, in order to make an abstract evidence, the said person, company or corporation shall not be required to do anything more or further under this article in order to have the benefits thereof. [Acts 1891, p. 136; Acts 1897, p. 146; Acts 1901, p. 44.]

Art. 3730. [3706] [2314] [2258] Certified copy of instrument sued on.—If suit be brought on any instrument or note in writing filed in any suit brought thereupon in any other court of this State, a certified copy of such instrument or note in writing, under the hand and seal of the clerk of the court in which the original may be filed, shall be admitted as evidence in like manner as such original might be; but if the defendant shall plead, and file an affidavit that such original instrument or note in writing has not been executed by him, or by his authority, the clerk of the court having the custody of such original shall, on being summoned as a witness, attend with the same on trial of the cause. [Acts 1891, p. 136; Acts 1846, p. 365; P. D. 3718; G. L. vol. 2, p. 1692.]

Art. 3731. [3707] [2315] [2259] Certified copies from heads of departments.—Certified copies, under the hands and official seals of the heads of departments, of all notes, bonds, mortgages, bills, accounts, or other documents, properly on file in any department of this State, shall be received in evidence on an equal footing with the originals, in all suits now pending, or which may be hereafter instituted, in this State, where the originals of such notes, bonds, mortgages, bills, accounts or other documents would be evidence. [Acts 1870, p. 62; P. D. 6825; G. L. vol. 6, p. 236.]

Art. 3732. [3708] [2316] [2260] Assessment or payment of taxes.—Whenever in any cause it may be material to prove the assessment of any property for taxes, or the payment of any taxes, the certificate of the Comptroller of such assessment from the rolls deposited in his office, or that the payment of such taxes is shown by the records of his office, shall be admissible in evidence to prove the same. [P. D. 3708.]

Art. 3733. [3709] [2317] [2261] Rate of interest presumed.—The rate of interest in any other State, territory or country is presumed to be the same as that established by law in this State, and may be recovered accordingly without allegation or proof thereof, unless the rate of interest in such other country be alleged and proved. [Acts 1858, p. 112; G. L. vol. 4, p. 984.]

Art. 3734. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 93.

Art. 3734a. Proof of execution of written instrument offered in evidence.—In the trial of any civil or criminal case, where an attested or witnessed instrument or writing is offered in evidence and said instrument is not required by law to be attested or witnessed, the execution of same may be proved in the same manner as if it were not attested or witnessed. [Acts 1933, 43rd Leg., p. 279, ch. 109.]

Art. 3735. [3711] [2321] [2264] Appointment and qualification of executor, etc.—Whenever it may be necessary to make proof of the appointment and qualification of an executor, administrator or guardian, the letters issued to them in the manner provided by law, or a certificate of the proper clerk under his official seal that such letters have been issued, shall be sufficient evidence of the appointment and qualification of such executor, administrator or guardian. [Acts 1863, p. 5; G. L. vol. 5, p. 593.]

Art. 3736. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 185.

Art. 3737. [3713] [677] [601] Records of corporation.—The records of any company incorporated under the provisions of any statute of this State, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceedings to which such corporation may be a party. [Acts 1883, p. 110; G.L. vol. 9, p. 416; P.D. 5967.]

Art. 3737a. Records of closed bank as evidence.—Sec. 1. Whenever an insolvent state bank shall come into the hands of the Banking Commissioner of Texas for liquidation, all books, records, documents and papers of such failed bank received by the Commissioner and held by him in the course of the liquidation, or certified copies thereof, under the hand and official seal of the Commissioner, shall be received in evidence in all cases without proof of the correctness of the same and without other proof, except the certificate of the Commissioner that same were received from the custody of the failed bank, or found among its effects.

Sec. 2. That such original books, records, documents and papers, or certified copies thereof, or any part thereof, when received in evidence shall be prima facie evidence of the facts disclosed thereby. [Acts 1927, 40th Leg., p. 290, ch. 203.]

Art. 3737b. Evidence of handwriting by comparison.—In the trial of any civil case, it shall be competent to give evidence of handwriting by comparison, made by experts or by the jury. The standard of comparison offered in evidence must be proved to the satisfaction of the judge to be genuine before allowing same to be compared with the handwriting in dispute. [Acts 1933, 43rd Leg., p. 234, ch. 106.]

Art. 3737c. Certified copies of records or instruments pertaining to oil industry.—Certified copies of well logs, and records, plugging records, oil and gas production records or reports and all other instruments pertaining to the drilling, completion, operation, abandonment, or plugging of oil and/or gas wells, in this State, required by Statute or by rules heretofore or hereafter adopted by the Railroad Commission of Texas, to be filed with the Railroad Commission of Texas, and which have been heretofore or may be hereafter filed with said Railroad Commission of Texas, shall be admissible in evidence. Such certificate to any such certified copies may be made by any member of the Railroad Commission of Texas, or by the Secretary of said Commission. [Acts 1937, 45th Leg., p. 1118, ch. 449, § 1.]

2. DEPOSITIONS

Arts. 3738, 3739. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 186, 189.

Art. 3740. [3651] [2275] [2220] Notice of publication.—In all civil suits where it shall be shown to the court, by affidavit filed therein, that either party is beyond the jurisdiction of the court, or that he cannot be found, or has died since the commencement of the suit and such death has been suggested at a prior term of the court, so that the notice and copy of interrogatories cannot be served upon him for the purpose of taking depositions, and such party has no attorney of record upon whom they can be served, or if he be deceased and all the persons entitled to claim by or through such deceased defendant have not made themselves parties to the suit, and are unknown, the party wishing to take depositions may file his interrogatories in the court where said suit is pending, and the clerk of such court or justice of the peace shall thereupon cause a notice to be published in some newspaper in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in the nearest county where a newspaper is published, once each week for two (2) consecutive weeks, stating the number of the suit, the names of the original parties, in what court the suit is pending, name and residence of the witness to whom the interrogatories are propounded, and that a commission will issue on or after the fourteenth day after such publication to take the deposition of such witness; at the expiration of which time such clerk or justice shall, on the application of the party filing such interrogatories, his agent or attorney, issue a commission as in other cases. [Acts 1879, p. 126; P.D. 3737; Acts 1939, 46th Leg., p. 327, § 1.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941. See Rule 190.

Arts. 3741–3745. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 187, 191–194.

Art. 3746. [3657] [2281] [2226] Officers authorized to execute.—The commission shall be addressed to the following officers, either of whom may execute and return the same:

1. If the witness be alleged to reside or be within the State, to any clerk of the District Court, any judge or clerk of the County Court, or any notary public of the proper county.

2. If the witness be alleged to reside or be without the State, and within the United States, to any clerk of a Court of Record having a seal, any notary public, or any commissioner of deeds duly appointed under the laws of this State within some other State or territory.

3. If the witness is alleged to reside or be without the United States, to any notary public or any minister, commissioner or charge d'affairs of the United States resident in, and accredited to, the country where the deposition may be taken, or any consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident in such country.

4. If the witness is alleged to be a member of the Armed Forces of the United States or of the Auxiliaries thereof or a civilian employed by or accompanying any such Forces or Auxiliaries, without the territorial confines of the forty-eight states and the District of Columbia of the United States of America, such commission may be addressed to any commis-

sioned officer in the Armed Forces of the United States of America, in the Auxiliaries thereto, or to any commissioned officer in the Armed Force Reserve of the United States of America or any Auxiliary thereto. When any deposition appears on its face to have been taken in compliance with the provisions of this Section and when such deposition, or any part thereof, is offered in evidence, it shall be presumed, in the absence of pleading and proof to the contrary, that the person taking such deposition as a commissioned officer was such on the date on which the deposition was taken and that the witness whose deposition was taken was one of those with respect to whom such action is hereby authorized. [P.D. 3726, 3736; Acts 1945, 49th Leg., p. 221, ch. 164, § 1.]

Art. 3747. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 195.

Art. 3748. [3659] [2283] [2228] May be attached.—If the witness, after being duly summoned, shall fail to appear, or, having appeared, shall refuse to answer the interrogatories, such officer shall have power to issue an attachment against such witness and to fine and imprison him in like manner as the district and county courts are empowered to do in like cases. [Acts 1874, p. 103.]

Arts. 3749–3756. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 196–203.

Art. 3757. [3668] Power of officer taking depositions.—Said officer shall have the same power and authority to enforce the attendance of the witness, and to compel him to testify, as in cases of written interrogatories. [Acts 1907, p. 187.]

Arts. 3758–3769. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 188, 204–208, 210–215.

Art. 3769a. Execution of commission issued by court of foreign state.—Whenever any mandate, writ or commission is issued out of any court of record in any other state, territory district or foreign jurisdiction, and it is required to take the testimony of a witness or witnesses in this state, either on written interrogatories or by oral deposition, the witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this State. [Acts 1929, 41st Leg., p. 553, ch. 268, § 1.]

Art. 3769b. Contempt in disobeying writ.—Whenever any commission for the taking of the deposition of any witness or party to any civil suit pending in any of the courts of Texas shall have been regularly and legally issued and placed in the hands of a person legally designated and qualified to take depositions under the laws of this state such officer shall have authority to issue any writ authorized by law to compel the attendance of a witness in court, and upon disobedience of such writ by any such witness he may be punished as for contempt either by the court out of which such commission issued, or by the Judge of any District Court of the County in which such witness resides. [Acts 1929, 41st Leg., p. 553, ch. 268, § 1-a.]

Art. 3769c. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 182.

TITLE 56—EXECUTION

Art.
3770–3772. [Repealed.]
3773. Dormant judgment.
3774. [Repealed.]
3775. On death of plaintiff.
3776–3784. [Repealed.]
3785. Indorsements by officer.
3786. Execution on property of surety.
3787. On death, etc., of officers.
3788–3791. [Repealed.]
3792. Property exempt.
3793–3797. [Repealed.]
3798. Shares of stock sold.
3799. Duty of officer.
3800. Expense of keeping property.
3801–3803. [Repealed.]
3804. Sale of real property.
3805. Sale made elsewhere.
3806. Sale of city lots.
3807. Sale of rural property.
3808, 3809. [Repealed.]
3810. Sales under deed of trust.
3811–3815. [Repealed.]
3816. Conveyance to purchaser.
3817. Conveyance after death of purchaser.
3818. Purchaser deemed innocent.
3819. Penalty for unlawful sale.
3820. Officer shall not purchase.
3821–3823. [Repealed.]
3824. Money to be paid over.
3825. Failure to levy or sell.
3826. Failure to return execution.
3827. Surplus to be paid to defendant.
3828. [Repealed.]
3829. Death of defendant.
3830. Death of the plaintiff.
3831. [Repealed.]

Arts. 3770–3772. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 622–634.

Art. 3773. [3717] [2326a] Dormant judgment.—If no execution is issued within ten years after the rendition of a judgment in any court of record, the judgment shall become dormant and no execution shall issue thereon unless such judgment be revived. If the first execution has issued within the ten years, the judgment shall not become dormant, unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years after the issuance of the preceding execution. [Acts 1895, p. 2; G.L. vol. 10, p. 732; Acts 1933, 43rd Leg., p. 369, ch. 144.]

Art. 3774. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 628.

Art. 3775. [3720] On death of plaintiff.—Where a sole plaintiff, or one of several plaintiffs, shall die after judgment, execution shall issue on such judgment in the name of the legal representative of such deceased sole plaintiff, or in the name of the surviving plaintiffs, and the legal representative of the deceased plaintiff, as the case may require, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of such representative under the hand and seal of the clerk of the court wherein such appointment was made; provided that if there be no administration upon the estate of such deceased sole plaintiff or plaintiffs, and none necessary as shown by an affidavit filed with the clerk of the court in which judgment was obtained, execution shall issue in the name of all the plaintiffs, both living and deceased, as shown in the judgment, and all money or moneys collected thereunder by the officer levying such execution, and paid unto the registry of the court, out of which such execution issued shall be partitioned among and paid to parties entitled to the same, and in the proportions to which they are entitled to the same under proper order of the presiding judge of said court. [Acts 1925, p. 450.] [39th Leg., ch. 181, § 1.]

Arts. 3776–3784. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 623–626, 622, 629–633, 621, 629.

Art. 3785. [3731] [2340] [2283] Indorsements by officer.*—The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person, he shall number them as received; and, on failure to do so, or in case of false indorsement, he and his sureties shall be liable on motion in the court from whence the execution is issued, three days' notice being given, to a judgment in favor of the plaintiff in execution for twenty per cent on the amount of the execution, together with such damages as the plaintiff in execution may have sustained by such failure or such false indorsement. [Act Jan. 27, 1842, p. 66; P. D. 3780; G. L. vol. 2, p. 738.]

* *Repealed in part, Rules of Civil Procedure, Rule 636.*

Art. 3786. [3732] [2341] [2284] Execution on property of surety.—If it appear upon the face of an execution, or by the indorsement of the clerk, that of those against whom it is issued any one is surety for another, the levy of the execution shall first be made upon the property of the principal subject to execution and situate in the county in which the judgment is rendered. If property of the principal cannot be found which will, in the opinion of the officer, be sufficient to make the amount of the execution, the levy shall be made on so much property of the principal as may be found, and upon so much of the property of the surety as may be necessary to make the amount of the execution. [Act Feb. 5, 1858, p. 110; P. D. 4786; G. L. vol. 4, p. 982.]

Art. 3787. [3733] [2342] [2285] On death, etc., of officers.—If the officer receiving an execution die or go out of office before the return of any execution, his successor, or other officer authorized to discharge the duties of the office in such case, shall proceed therein in the same manner that such officer should have done.

Arts. 3788–3791. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, rules 637, 638.

Art. 3792. [3738] [2347] [2290] Property exempt.—Property which the judgment debtor has sold, mortgaged or conveyed in trust shall not be seized in execution, if the purchaser, mortgagee or trustee shall point out other property of the debtor in the county sufficient to satisfy the execution.

Arts. 3793–3797. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, rules 639–643.

Art. 3798. [3745] [2354] [2297] Shares of stock sold.—Shares of stock in any joint stock or incorporated company may be sold on execution against the person owning such stock. [Act March 13, 1875, p. 102, G. L. vol. 8, p. 474.]

Art. 3799. [3746] [2355] [2298] Duty of officer.—The officer shall keep securely all personal property levied on by him for which no delivery bond has been given. If any injury or loss should result by his negligence to any party interested, he and his sureties shall be liable to pay the value of the property so lost or the amount of the injury sustained, and ten per cent thereon, to be recovered by the party injured on motion, three days notice being given in the court from which the execution issued. [Act Jan. 27, 1842; P. D. 3782; G. L. vol. 2, p. 738.]

Art. 3800. [3747] [2356] [2299] Expense of keeping property.—The officer shall be authorized to retain out of the proceeds of personal property sold upon execution all reasonable expenses incurred by him in making the levy and keeping the property. [Id.]

Arts. 3801–3803. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, rules 644–646.

Art. 3804. [3751] [2360] [2303] Sale of real property.—Real property taken by virtue of any execution shall be sold at public auction, at the courthouse door of the county, on the first Tuesday of the month, between the hours of ten o'clock, a. m. and four o'clock, p. m. [Acts Jan. 27, 1842; P. D. 3776.]

Art. 3805. [3752] [2361] [2304] Sales made elsewhere.—Where by law the public sales of lands in any county are directed to be made at any other place than the courthouse door, the sales herein provided to be made at the courthouse door shall be made at the place designated by such law.

Art. 3806. [3753] [2362] [2305] Sale of city lots.—If real property situated in any town or city, taken in execution, consist of several lots, tracts or parcels, each shall be offered separately, unless the same be not susceptible of a separate sale by reason of the character of the improvements thereon.

Art. 3807. [3754 to 3756] Sale of rural property.—When lands not situated in any town or city or taken in execution, the defendant in such writ in whom the legal or equitable title to such land may be vested, shall have the right to present to the officer holding such execution, at any time before the sale so as not to delay the same being made as advertised, a plat of said land as actually surveyed, in lots of not less than fifty acres, by the county surveyor of the county wherein said premises are situated. The plat shall be accompanied by the field notes of each lot as numbered, with the certificate of the county surveyor that the same are correct, and the defendant shall have the right to designate the order in which the lots shall be sold. When a sufficient number of such lots are sold to satisfy the amount due on the execution, the sale shall cease. All of the expenses attending the survey and sale of said land in lots shall be paid by the defendant, and shall in no case constitute any additional cost in the case. [Acts 1875, p. 50, G. L. vol. 8, p. 422.]

Arts. 3808, 3809. [Repealed.]
Corresponding provisions, see Rules 647, 648, Vernon's Texas Rules of Civil Procedure.
Article 3808, as last amended in 1941, read:
"The time and place of sale of real estate under execution, order of sale, or venditioni exponas shall be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county. The first of said publications shall appear not less than twenty (20) days immediately preceding the day of sale. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes. Publishers of newspapers shall charge the legal rate of Two (2) Cents per word for the first insertion of such publication and One Cent per word for such subsequent insertions, or such newspaper shall be entitled to charge for such publication at a rate equal to but not in excess of the published word or line rate of that newspaper for such class of advertising. If there be no newspaper published in the county, or none which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of such county, for at least twenty (20) days successively next before the day of sale. The officer making the levy shall give the defendant or his attorney written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements. As amended Acts 1941, 47th Leg., p. 480, ch. 303, § 2."

Art. 3810. [3759] [2369] [2310a] Sales under deed of trust.—All sales of real estate made under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated. Where such real estate is situated in more than one county then notices as herein provided shall be given in both or all of such counties, and the real estate may be sold in either county, and such notice shall designate the county where the real estate will be sold. Notice of such proposed sale

shall be given by posting written notice thereof for three consecutive weeks prior to the day of sale in three public places in said county or counties, one of which shall be made at the courthouse door of the county in which such sale is to be made, and if such real estate be in more than one county, one at the courthouse door of each county in which said real estate may be situated, or the owner of such real estate may, upon written application, cause the same to be sold as provided in said deed of trust or contract lien. Such sale shall be made at public vendue between the hours of 10 o'clock a. m. and 4 o'clock p. m. of the first Tuesday in any month. When any such real estate is situated in an unorganized county, such sale shall be made in the county to which such unorganized county is attached for judicial purposes. [Acts 1889, p. 143; G. L. vol. 9, p. 1171; Acts 1st C. S. 1915, p. 32; Acts 1915, p. 84.]

Arts. 3811–3815. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 649–651.

Art. 3816. [3765] [2375] [2316] Conveyance to purchaser.—When a sale has been made and the terms thereof complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest and claim which the defendant in execution had in and to the property sold. [Acts Jan. 27, 1842; P. D. 3795.]

Art. 3817. [3767] [2377] [2317] Conveyance after death of purchaser.—If the purchaser, having complied with the terms of the sale, shall die before a conveyance was executed to him, the officer shall nevertheless convey the property to the purchaser, and the conveyance shall have the same effect as if it had been executed in the lifetime of the purchaser.

Art. 3818. [3768] [2378] [2318] Purchaser deemed innocent.—A purchaser at a sale under execution shall be deemed to be an innocent purchaser without notice in all cases where he would be deemed to be such had the sale been made voluntarily by the defendant in person.

Art. 3819. [3769] [2379] [2319] Penalty for unlawful sale.—Any officer who shall sell any property without giving the previous notice herein directed, or who shall sell the same otherwise than in the manner prescribed herein, shall forfeit and pay to the party injured not less than ten nor more than two hundred dollars in addition to such other damages as the party may have sustained, to be recovered on motion, five days notice thereof being given such officer and his sureties.

Art. 3820. [3770] [2380] [2320] Officer shall not purchase.—If any officer or his deputy making sale of property on execution, shall, directly or indirectly, purchase the same, the sale shall be void.

Arts. 3821–3823. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 652, 653, 655.

Art. 3824. [3774–75] Money to be paid over.—When an officer has collected money on execution, he shall pay the same to the party entitled thereto at the earliest opportunity. If an officer fails or refuses to pay money collected under an execution when demanded by the person entitled to receive the same, he shall be liable to pay to such person the amount so collected, with damages at the rate of five per cent per month thereon, besides interest and costs, which may be recovered of him and his sureties by the party entitled to receive the same on motion before the court from which said execution issued, five days previous notice thereof being given to said officer and his sureties.

Art. 3825. [3776] [2386] [2326] Failure to levy or sell.—Should an officer fail or refuse to levy upon or sell any property subject to execution, when the same might have been done, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs, to be recovered on motion before the court from which said execution issued, five days previous notice thereof being given to said officer and his sureties.

Art. 3826. [3777] [2387] [2327] Failure to return execution.—Should an officer neglect or refuse to return any execution as required by law, or should he make a false return thereon, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs to be recovered as provided in the preceding article. [Acts Jan. 27, 1842; P. D. 3769.]

Art. 3827. [3778] [2388] [2328] Surplus to be paid to defendant.—If, on the sale of property, more money is received than is sufficient to pay the amount of the execution or executions in the hands of the officer, the surplus shall be immediately paid over to the defendant, his agent or attorney.

Art. 3828. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 654.

Art. 3829. [3780] [2390] [2330] Death of defendant.—The death of the defendant after the execution is issued shall operate as a supersedeas thereof; but the lien, when one has been acquired by a levy, shall be recognized and enforced by the county court in the payment of the debts of the deceased.

Art. 3830. [3781] [2391] [2331] Death of the plaintiff.—An execution shall not be abated by the death of the plaintiff therein after the execution has been issued, but shall be executed and returned in the same manner as if the plaintiff was still living.

Art. 3831. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 656.

TITLE 57—EXEMPTIONS

1. PROPERTY EXEMPT FROM FORCED SALE

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1. PROPERTY EXEMPT FROM FORCED SALE

Article 3832. [3785] [2395] [2335] Property exempt to family.—The following property shall be reserved to every family, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as hereinafter provided:

1. The homestead of the family.
2. All household and kitchen furniture.
3. Any lot or lots in a cemetery held for the purpose of sepulture.
4. All implements of husbandry.
5. All tools, apparatus and books belonging to any trade or profession.
6. The family library and all family portraits and pictures.
7. Five milk cows and their calves.
8. Two mules.
9. Two horses and one wagon.
10. One carriage or buggy.
11. One gun.
12. Twenty hogs.
13. Twenty head of sheep.
14. All saddles, bridles, and necessary harness for the use of the family.
15. All provisions and forage on hand for home consumption.
16. All current wages for personal services.
17. All wearing apparel.
18. Twenty head of goats.
19. Fifty head of chickens.
20. Thirty head of turkeys.
21. Thirty head of ducks.
22. Thirty head of geese.
23. Thirty head of guineas.
24. One dog. [Const. art. 16, §§ 28, 50; Acts 1870, p. 127; Acts 1874, p. 137; P. D. 6003, 6834; G.L. vol. 6, p. 301; G.L. vol. 8, p. 138; Acts 1935, 44th Leg., p. 384, ch. 145, § 1.]

Art. 3832a. Insurance policies.—The cash surrender value of any life insurance policy which has been in force more than two years, shall be exempt from liability for any debt, and shall not be subject to forced sale, or other process to satisfy any debt, provided a member or members of the family of the insured are the beneficiaries under such policy, and in event they are only partially the beneficiaries then such policies shall be so exempt to the extent of their beneficiary interest. This act shall not apply to debts arising under the policy nor to debts secured by lawful assignment of the policy. [Acts 1929, 41st Leg., 2nd C.S., p. 78, ch. 43, § 1.]

Art. 3833. [3786] [2396] [2336] "Homestead."—The homestead of a family, not in a town or city, shall consist of not more than two hundred acres, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village shall consist of a lot or lots, not to exceed in value five thousand dollars at the time of their designation as a homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family. Any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired. [Acts 1897, p. 131; G. L. vol. 10, p. 1185.]

Art. 3834. [3787] [2396] [2336] Proceeds exempt.—The proceeds of the voluntary sale of the homestead shall not be subject to garnishment or forced sale within six months after such sale. [Id.]

Art. 3835. [3788] [2397] [2337] Exempt to others than family.—The following property shall be reserved to persons who are not constitutents [constituents] of a family, exempt from attachment, execution and every other species of forced sale:

1. A lot or lots in a cemetery, held for the purpose of sepulture.
2. All wearing apparel.
3. All tools, apparatus and books belonging to any trade or profession.
4. One horse, saddle and bridle.
5. Current wages for personal services. [Acts 1870, p. 127; Const., art. 16, sec. 28; P. D. 6834; G. L. vol. 6, p. 301.]

Art. 3836. [3789] [2398] [2338] Ferryman.—There shall be reserved to every ferryman exempt from attachment, execution and every other species of forced sale, except as hereinafter provided, one ferryboat, keel, or flat-boat used as a ferryboat, with the necessary tackle for operating the same, not exceeding in value five hundred dollars. Such exemption shall not apply to any recovery for damages sustained by the negligence or other improper conduct on the part of such ferryman. [Acts 1858, p. 210; P. D. 3802; G. L. vol. 4, p. 1082.]

Art. 3837. [3790] [2399] [2339] Public property.—The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used and intended for extinguishing fires, public grounds and other property devoted exclusively to the use and benefit of the public, shall be exempt from forced sale. [Const. art. 11, sec. 9.]

Art. 3838. [3791] [2400] [2340] Public libraries.—All public libraries shall be exempt from attachment, execution and every other specie of forced sale.

Art. 3839. [3792] [2401] [2341] Exemption does not apply.—The exemption of the homestead provided for in this title shall not apply where the debt is due:

1. For the purchase money of such homestead or a part of such purchase money.
2. For taxes due thereon.
3. For work and material used in constructing improvements thereon; but in this last case such work and material must have been contracted for in writing, and the consent of the wife, if there be one, must have been given in the same manner as is by law required in making a sale and conveyance of the homestead. [Const. art. 16, sec. 50.]

Art. 3840. [3793] [2402] [2342] Claim for rent, etc.—The exemption of personal property above provided for shall not apply when the debt is due for rents or advances made by a landlord to his tenant, or to other debts which are secured by a lien on such property. [Acts 1874, p. 55; G. L. vol. 8, p. 57.]

2. EXCESS OVER HOMESTEAD SET APART

Art. 3841. [3794] [2403] [2343] Voluntary designation.—When the homestead of a family, not being in a town or city, is a part of a larger tract or tracts of land than is exempt from forced sale as such homestead, it shall be lawful for the head of the family to designate and set apart the homestead, not exceeding two hundred acres, to which the family is entitled under the constitution and laws of this State. [Acts 1873, p. 64; P. D. 6994a; G. L. vol. 7, p. 516.]

Art. 3842. [3795] [2404] [2344] Mode of setting it apart.—The party desiring so to designate and set apart the homestead shall file for record with the county clerk of the county in which the land, or a part thereof, may be, an instrument of writing containing a description by metes and bounds, or other sufficient description to identify it, of the homestead so claimed by him, stating the name of the original grantee and the number of acres, and if more than one survey, the number of acres in each.

Art. 3843. [3796] [2405] [2345] Recorded, etc.—Such instrument shall be signed by the party and acknowledged or proved as other instruments for record, and shall state that the party has designated and set apart as his homestead the tract or tracts of land so claimed by him; and such instrument shall be recorded in the record of deeds of said county.

Art. 3844. [3797] [2406] [2346] Subject to execution.—Where the owner of a homestead, a part of a larger tract, has failed to so designate and set apart his homestead, the excess of such tract or tracts of land over and above the homestead exemption may be partitioned and separated from such homestead and subjected to levy and sale under execution, if otherwise subject, as hereinafter directed. [Id.]

Art. 3845. [3798–3799] Notice to set apart.—The sheriff or constable holding an execution against the owner of such excess of land, over and above his exempted homestead, and not separated and partitioned therefrom, may on his own motion, and shall, if required by the plaintiff in execution, his agent or attorney, notify the defendant in execution to designate and set apart his homestead from the remainder of the land so owned and occupied by him, and that on failure to do so within ten days the sheriff or constable will proceed to have such partition made as provided by law. Such notice shall be written or printed, and shall be signed by the sheriff or constable. [Id.]

Art. 3846. [3800–1–2] Service and return.—Such notice may be served on the defendant by such officer by reading it to him, or by leaving a copy of it at his place of residence with some person over fourteen years of age. The officer shall return said notice to the court from which the execution issued, with his return indorsed thereon, showing how he executed the same. Such notice and return shall be filed by the proper officer of the court, and shall be prima facie evidence of the facts stated. [Id.]

Art. 3847. [3803] [2412] [2352] Defendant may designate.—On the service of such notice, the defendant in execution shall have the right within ten days thereafter, to designate and set apart his homestead, and deliver such designation to the sheriff or constable. [Id.]

Art. 3848. [3805] [2414] [2354] Designation recorded.—The sheriff or constable shall deliver the designation or setting apart of the homestead so made to the county clerk of the county in which such homestead, or a part thereof, is, and such clerk shall forthwith record the same in the record of deeds of his said county. [Id.]

Art. 3849. [3806] [2415] [2355] Effect of.—Such designation and setting apart of the homestead made by the defendant under any preceding article shall operate as a relinquishment of all right of homestead in the excess of land so partitioned from the homestead, and shall be binding on the defendant, and all others in privity with him, and the same, or a certified copy of the record thereof, shall be admitted in evidence of the facts stated therein. [Id.]

Art. 3850. [3807] [2416] [2356] May appoint commissioners.—If the defendant in execution shall fail or refuse, within ten days after such notice, to so designate and set apart his homestead, the officer holding such execution shall forthwith summon either verbally or in writing three disinterested freeholders of the county as commissioners to designate a homestead for the defendant. [Id.]

Art. 3851. [3808] [2417] [2357] Commissioners to designate.—The commissioners shall forthwith proceed to partition the homestead of the defendant from the remainder of the tract or tracts, and may, if they deem it necessary, call in a surveyor to assist them. The action of such commissioners shall be reduced to writing and signed by them, or a majority of them and shall be duly sworn to, which shall be sufficient to admit the same of record. [Id.]

Art. 3852. [3809] [2418] [2358] Requisites of designation.—The designation of the homestead by such commissioners shall contain each requisite prescribed for a designation and setting apart by the defendant, and, shall also state that the commissioners making the same were summoned by the sheriff or constable holding said execution to perform such duty and that the designation of the homestead made by them is fair and just to the best of their judgment and belief. [Id.]

Art. 3853. [3810] [2419] [2359] Returned and recorded.—The commissioners shall return such designation to the sheriff or constable, who shall deliver the same to the county clerk to be recorded; and such designation, or a certified copy thereof, shall have the same effect as if the defendant had made the same under the provisions of this title. [Id.]

Art. 3854. [3811] [2420] [2360] Sheriff's return.—Whenever a homestead is designated under the provisions of this title, the sheriff or constable holding said execution shall make due return thereon, showing:

1. That notice to designate his homestead was given to the defendant in execution, referring to said notice and return thereon, which shall be returned with said execution.
2. That the designation of his homestead was delivered to him by the defendant, and has been filed with the county clerk, stating the dates of such delivery and filing.
3. If the defendant has failed or refused to deliver to him the designation of his homestead within the time prescribed by law, the return shall show that fact, and also that the commissioners were duly appointed by him, and that the designation made by such commissioners was filed by him with the county clerk, stating the times when said acts were done. Such return shall be prima facie evidence of the facts therein stated. [Id.]

Art. 3855. [3812–13–14] Fees and expenses.—The commissioners shall be entitled to receive two dollars a day for their services, and the surveyor five dollars per day, to include pay for chain carriers. The sheriff or constable and clerk should be entitled to such fees as are allowed by law. Such fees and expenses shall be taxed as part of the costs of the execution against the defendant and collected as other costs. [Id.]

Art. 3856. [3815] [2424] [2364] Excess to be sold.—Whenever the homestead of the defendant in execution has been designated in either of the modes prescribed in this title, the officer holding said execution may proceed to sell the excess over and above the homestead, in accordance with the law governing sales under execution. [Id.]

Art. 3857. [3816] [2425] [2365] Defendant may change, etc.—The defendant may, at any time after his homestead has been designated and set apart in either of the modes pointed out in this title, change the boundaries of his said homestead by an instrument executed and recorded as in cases of setting apart the homestead, but such change shall not impair the rights of parties acquired prior to such change.

Art. 3858. [3817] [2426] [2366] Law cumulative.—The provisions of this title in regard to the designation of the homestead are cumulative, and shall not be construed so as to interfere with, or abrogate any other mode or remedy now known to the law for subjecting the excess of the homestead tract of land over and above the exemption to forced sale, or any mode known to the law for producing partition

by the purchaser at such execution sale, between himself and the owner of the homestead. [Id.]

Art. 3859. [3818] [2427] [2367] Personal property designated.—Where there is more personal property of the same kind than is exempt from execution, the head of the family, or other person entitled to such exemption, may point out the portions to be levied on. If he fails to do so within a reasonable time after being requested by the officer holding the execution, such officer may make the selection for himself; but such notice shall only be necessary when the defendant is at the time to be found within the county.

TITLE 58—EXPRESS COMPANIES

Art.
3860. Declared common carriers.
3861. Regulation.
3862. Penalty for overcharge.
3863. Powers of commission.
3864. General office.
3865. To give notice, etc.
3866. Penalty.

Article 3860. [3819] [2428] Declared common carriers.—Each person, firm or corporation which shall do the business of an express company, upon railroads or otherwise, in this State, by the carrying of any kind of property, money, papers, packages or other things, are hereby declared to be common carriers, and shall receive, safely carry and promptly deliver at the express office nearest destination every such article as may be tendered to them, and in the carriage of which they are engaged. No such company shall be compelled to carry any gunpowder, dynamite, kerosene, naptha, gasoline, matches or other dangerous or inflammable oils, acids or materials, except under such regulations as may be prescribed by the Railroad Commission. No person, firm or corporation so engaged shall demand or receive for such services other than reasonable compensation. [Acts 1891, p. 48; G. L. vol. 10, p. 50.]

Art. 3861. [3820] [2429] Regulation.—The Railroad Commission of Texas shall have power, and it shall be its duty, to fix and establish reasonable and just rates of charges for each class or kind of property, money, papers, packages and other things, to be received and charged for by each express company, and, which, by the contract of carriage, are to be transported by such express company between points wholly within this State. Such rates shall be made to apply to all such companies, and may be changed or modified by said Commission from time to time in such manner as may become necessary. Said Commission shall have the same power to make and prescribe such rules and regulations for the government and control of such express companies as is, or may be, conferred upon said Commission for the regulation of railroads.

Art. 3862. [3821] [2430] Penalty for overcharge.—Every express company doing business in this State which shall demand or receive a greater compensation than that which may be prescribed and fixed by said Commission for the transportation within this State of any class or kind of property, money, papers, packages or things, shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not to exceed five hundred dollars for each offense. If it shall appear that such violation was not wilful, said company shall have ten days to refund such overcharges or damages, in which case the penalty shall not be incurred. The said Commission shall have authority and it shall be its duty tc sue for the same in such manner as may be prescribed by law for like suits against railroad companies.

Art. 3863. [3822] [2431] Powers of Commission.—The said Commission shall have authority, and it shall be its duty to call upon such express companies for reports, and investigate their books in the same manner as may be prescribed by law for the regulation of railroad companies, and the said Commission shall have power and authority to institute suits, sue out such writs and process as may be applicable and authorized for the regulation of railroad companies. All laws, rules and regulations made and prescribed for the government and control of railroads, when applicable, shall be of equal force and effect as to express companies.

Art. 3864. [3823–3824] General office.—Every incorporated express company doing business in this State shall keep a general office in this State at some place on the line of its transportation, in which it shall keep its charter, books, papers, accounts and contracts, or copies thereof, showing the value of its property of all kinds, its receipts and disbursements on account of business done in this State, and its indebtedness. It shall make a full annual statement of all such matters as shown by its books to the Railroad Commission of Texas, and such additional statements as may be required by such Commission, which statements shall be certified to be correct and sworn to by the president and secretary, or general manager in Texas of such company. Such company shall permit any member of the Railroad Commission of Texas or its authorized agent to examine at any time, any and all books, papers and contracts in its said office. [Acts 1897, p. 14; G. L. vol. 10, p. 1068.]

Art. 3865. [3825] To give notice, etc.—Every express company doing business in this State shall give notice in writing to the Railroad Commission of the name, and official designation, of the person or persons, officer or officers charged with the management of its general office in this State, the location of its general office in this State, and shall from time to time give like notice in writing of any change in location of such general office, and of the person or persons, officer or officers in charge thereof. [Id.]

Art. 3866. [3823–3824–3825] Penalty.—Failure to comply with any provision of this title shall subject the offending company and any officer, agent, or employé thereof, so offending, to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by suit therefor. The Railroad Commission shall notify the Attorney General of any violation of any provision of this title which shall come to its knowledge. In addition to said penalty, a failure to comply with any provision of this title shall be sufficient cause to cancel the permit of any express company so offending. [Id.]

TITLE 59—FEEBLE MINDED PERSONS —PROCEEDINGS IN CASE OF

Art.
3867. Jurisdiction.
3868. Petition and affidavit.
3869. Citation.
3870. Hearing.
3871. Commitment.

Article 3867. Jurisdiction.—The county courts shall have original jurisdiction in all cases coming within the terms of this title, and shall at all times be deemed in session for the disposition of the same. In all trials under this title any person interested therein may demand a jury, or the judge of the court, of his own motion, may order a jury. Any person interested in any such case shall have the right to appear therein and be represented by counsel. [Acts 1923, p. 172.]

Art. 3868. Petition and affidavit.—Any resident citizen having knowledge of a person in his county who appears to be feeble minded may file with the county clerk a sworn complaint, which may be

made upon information and belief, setting forth that such person is feeble minded. If such alleged feeble minded person be a minor, such complaint shall set forth the names of the parents, if known, and their residence, or if such person has no parent living, then the name and residence of his guardian, if any. Upon the filing of such complaint, the county judge shall fix the day and time for the hearing. [Id.]

Art. 3869. Citation.—If the alleged feeble minded person be a minor and it shall appear that one or both of such parents, or guardian if there be no parents, reside in said county, the clerk of said court shall immediately issue citation. Such citation shall include a brief statement of the complaint which shall be served on such parent, parents or guardian, if either can be found in said county, not less than two days before the time fixed for such hearing, requiring them to appear before the court on said day and time to show cause, if any, why such person should not be declared to be feeble minded. Such citation shall be served by the sheriff or any constable of the county. If it appears that neither of said parents is living or that they do not reside in said county, and that said person has no guardian residing in said county, or in case one or both of such parents or the guardian, in case there be no parent, shall endorse on said complaint a request that such person be declared feeble minded, then such citation need not be issued, and the court may thereupon proceed to hear the case. If such alleged feeble minded person is above the age of twenty-one years, citation shall be served upon him in the manner provided above. [Id.]

Art. 3870. Hearing.—Upon the hearing of such case, the alleged feeble minded person shall be brought before the court. The court shall appoint an attorney to represent such person, unless he be otherwise suitably represented by parent, guardian or attorney. The procedure, duties and powers of the court and officers in such case shall be the same as provided by law in other civil cases. It shall be the duty of the county attorney when requested by the court or petitioner to appear in any such hearing in behalf of the petitioner. [Id.]

Art. 3871. Commitment.—If such person be found to be feeble minded, the court shall enter its order so adjudging him, and that he be committed to the custody of the Austin State School. Upon the entry of such order, the judge shall cause to be prepared a transcript of the proceedings and evidence, which shall show the age, sex, race, status and mental condition of the patient, all of which he shall certify to be correct, and transmit the same to the superintendent of such school. If the patient is entitled to be received into the school, and there is sufficient room therein, the superintendent shall notify said judge thereof, whereupon the judge shall arrange to send such person to said school in like manner in all respects as is provided for the sending of insane patients to an asylum. [Id. Acts 1925, p. 407.] [39th Leg., ch. 174, § 2.]

TITLE 60—FEEDING STUFF

Art.
3872. Tag and certificate.
3873. "Feeding stuff."
3874. To file statement and deposit samples.
3875. Inspection tax tag.
3876. To furnish list of names or trade marks.
3877. Analysis.
3878. "Importer."
3879. Adulterated feeding stuff.
3880. Director of experiment station.
3880—A. Sale and distribution of feeding stuff; detention; confiscation.
3881. Weights.

Article 3872. [5894] Tag and certificate.—Every lot or parcel of feeding stuff, used for feeding farm live stock, sold, offered or exposed for sale in this State, for use within the State, shall have attached a tag, described in Article 3875, carrying a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of materials of which such weight is composed where the contents are of mixed nature, the name, brand or trade mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by Article 3879, if any, and a chemical analysis stating the minimum percentage it contains of crude protein, allowing one per cent of nitrogen to equal six and one-quarter per cent of protein, of crude fat, of nitrogen-free extract, and the maximum percentage it contains of crude fiber; these constituents to be determined by the methods adopted at the time by the Association of Official Agricultural Chemists of North America. [Acts 1905, p. 207; Acts 1927, 40th Leg., p. 20, ch. 14, § 1.]

Art. 3873. [5895] [5896] "Feeding stuff."—The term "feeding stuff," as used in this title, is defined to mean and include wheat bran, wheat shorts, linseed meal, cotton seed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, oat feeds, corn and oat chops, corn chops, ground beef or mixed fish feeds, and all other materials of similar nature, but shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat or broomcorn, or any other whole or unground grains or seed. [Acts 1905, p. 208.]

Art. 3874. [5897] To file statement and deposit samples.—Before any feeding stuff is so offered or exposed for sale, the importer, manufacturer or party who causes it to be sold, or offered for sale within this State for use within the State, shall, for each feeding stuff bearing a distinguishing name or trade mark, file with the director of the Texas Agricultural Experiment Station a certified copy of the statement named in Article 3872, and shall also deposit with said director a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This does not apply to farmers who grind their own feeding stuff and who do not adulterate same. [Acts 1907, p. 243, sec. 4.]

Art. 3875. [5898] Inspection tax tag.—The manufacturer, importer, agent or seller of each feeding stuff shall, before the article is offered for sale, pay to the director of the Texas Agricultural Experiment Station an inspection tax of ten cents for each ton of such feeding stuff sold, or offered for sale, in this State for use within the State, and shall affix to each lot shipped in bulk, and to each bag, barrel or other package of such feeding stuff, a tag to be furnished by said director, stating that all charges specified in this article have been paid. The director of said experiment station is hereby empowered to prescribe the form of such tags, and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a feeding stuff shall have filed a statement made as provided for in Article 3872, and paid the inspection tax, no agent or seller of said manufacturer, importer or shipper shall be required to file such statement or pay such tax. The amount of the inspection tax and penalties received by said director shall be paid into the State Treasury. So much of the inspec-

tion tax and penalties collected under this title shall be paid by the State Treasurer to the treasurer of the Texas Agricultural and Mechanical College as the director of the Texas Agricultural Experiment Station may show by his bills has been expended in performing the duties required by this title, but in no case to exceed the amount of the inspection tax and penalties received by the State Treasurer under this title. [Id. sec. 5.]

Art. 3876. [5899] To furnish list of names or trade-marks.—All manufacturers and importers of feeding stuff, or dealers in same, shall, on request, furnish the director of the Texas Experiment Station with a complete list of names or trade-marks of such feeding stuff. [Acts 1905, p. 207, sec. 8.]

Art. 3877. [5900] Analysis.—The director of the Texas Agricultural Experiment Station shall cause one analysis or more to be made annually of each feeding stuff sold or offered for sale under any provision of this title. Said director is hereby authorized in person or by deputy to take a sample not exceeding two pounds in weight for analysis from any lot or package of feeding stuff which may be in the possession of any manufacturer, importer, agent, dealer or buyer in this State; but said sample shall be drawn or taken in the presence of said party or parties in interest, or their representatives, and shall be taken from a parcel, lot or number of parcels which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and, if requested, divided into two samples, and placed in glass or metal vessels carefully sealed, and a label placed on each, stating the name or brand of the feeding stuff, or material sampled, the name of the party from whose stock the sample was drawn, and the date and place of taking such sample. Said label shall be signed by the director or his deputy and the party or parties at interest, or their representative present at the taking and sealing of said sample. Where the party or parties at interest refuse to be present and take part in the sampling of the said feeding stuff, the director or his deputy may take said samples in the presence of two disinterested witnesses, one of said duplicate samples shall be retained by the director, and the other shall be left with the party whose stock was sampled. The sample or samples retained by the director shall be for comparison with the certified statements made as provided for in this title. The result of the analysis of the sample or samples so prescribed, together with such additional information as circumstances advise shall be published in reports or bulletins by the Texas Agricultural and Mechanical College from time to time. [Acts 1905, p. 207, sec. 9.]

Art. 3878. [5901] "Importer."—The term "importer" means all persons who shall bring into or offer for sale within this State feeding stuff manufactured without this State. [Acts 1905, p. 207.]

Art. 3879. [5902] Adulterated feeding stuff.—A feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented to be, or if any rice hulls or chaff, peanut shells, corncobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith. No wholesome mixture of feeding stuff shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package and made known to the buyer at the time of the sale. It shall be the duty of the director of the experiment station to examine, or have examined for adulteration all suspicious samples of feeding stuff, and such other samples as may be desirable. [Acts 1905, p. 207; Acts 1907, p. 243, sec. 11.]

Art. 3880. [5903] Director of experiment station.—The director of said experiment station is empowered to adopt standards or definitions for feeding stuff, and such other regulations as may be necessary for the enforcement of any provision of this title. Said director shall have the power to refuse the registration of any feeding stuff, under a name which would be misleading as to materials of which it is made up, or which does not conform to the standards or definitions aforesaid. Should any said feeding stuffs be registered and it is afterwards discovered that they are in violation of the above provisions, said director shall have the power to cancel the registration ten days after notice. [Acts 1907, p. 243.]

Art. 3880—A. Sale and distribution of feeding stuff; detention; confiscation.—(a) Detained Feeding Stuff. Whenever the Director of the Texas Agricultural Experiment Station, hereinafter referred to as the Director, or his duly authorized representative, shall find a feeding stuff which he has reasonable cause to believe is adulterated or misbranded within the meaning of the Texas Feeding Stuff Law, he shall affix to the container of such feeding stuff a written notice that such article is, or is suspected of being, adulterated or misbranded and has been detained, and warning all persons not to dispose of such article in any manner until permission is given by the Director or the Court. If the Director finds that such detained article is not adulterated or misbranded, he shall remove the aforesaid notice.

(b) Condemnation and Confiscation. If such detained article of feeding stuff is found, after examination and analysis, to be adulterated or misbranded, the Director shall petition the Judge of the District or County Court in whose jurisdiction the article is found for a libel for condemnation and confiscation of such article. If it be determined by the Court that an article of feeding stuff is adulterated or misbranded, such article shall, after entry of the decree, be disposed of by destruction or sale in accordance with the judgment of the Court, and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the State Treasury. Provided that when the adulteration or misbranding can be corrected by proper processing or labeling of the article, the Court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so processed or labeled, has been executed, may make an order directing that such article be delivered to the owner thereof for such processing or labeling under the supervision of a representative of the Director. The expense of such supervision shall be paid by the owner. The bond shall be returned to the owner on representation to the Court by the Director that the article is no longer in violation of this Act, and that expenses incident thereto have been paid. [Acts 1947, 50th Leg., p. 759, ch. 374, § 1.]

Section 2 of the Act of 1947 related to partial invalidity.

Art. 3881. Weights.—Feeding stuff shall have the following standard net weights per sack or container: one hundred and forty-three pounds, one hundred and thirty-three and one-third pounds, one hundred and twenty-five pounds, one hundred pounds, or the following fractions of one hundred: three-fourths, one-half, one-fourth, one-sixth, one-eighth, one-tenth, one-twelfth, one-sixteenth, and one-twentieth. No tax tags shall be issued for any feeding stuff which does not conform to the weights herein prescribed. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1986, ch. 61, § 1.]

TITLE 61—FEES OF OFFICE

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CHAPTER 1.—GENERAL PROVISIONS

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3912f—3. Salaries of sheriffs and deputies in counties of 25,600 to 25,889 in which there are no district attorneys.

Article 3882. [3880] To take out commission.—No official who fails or refuses to take out a commission shall be entitled to collect or receive either from the State or from individuals any money as fees of office or compensation for official services. Neither the Comptroller, commissioners court, county auditor nor any other person shall approve or pay any claim or account in favor of any such officer who has so failed or refused. The Secretary of State shall from time to time, as such commissions are issued by him, furnish a list thereof to each commissioners court, each county auditor and to the Comptroller, with the name of the county in which such officers reside. Each State, district, county and precinct officer is required to apply for and receive his commission. [Acts 1907, p. 501; Acts 1919, p. 80.]

Art. 3883. [3881 to 3883] Maximum fees.—Except as otherwise provided in this Act, the annual fees that may be retained by precinct, county and district officers mentioned in this Article shall be as follows:

1. In counties containing twenty five (25,000) thousand or less inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Twenty-four Hundred ($2400.00) Dollars each; Justice of the Peace and Constable, Twelve Hundred ($1200.00) Dollars each.

2. In counties containing as many as twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, and in which there is no city containing twenty-five

thousand (25,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Twenty-seven Hundred and Fifty Dollars ($2750) each; Justice of the Peace and Constable, Fifteen Hundred Dollars ($1500) each; provided, however, that in all counties with a taxable valuation for county purposes of not less than Fifty-one Million, One Hundred Thousand Dollars ($51,100,000) nor more than Fifty-one Million, Four Hundred Thousand Dollars ($51,400,000), and in all counties with a taxable valuation for county purposes of not less than Twenty-seven Million, Nine Hundred and Fifty Thousand Dollars ($27,950,000) nor more than Twenty-seven Million, Nine Hundred and Sixty Thousand Dollars ($27,960,000), according to the tax rolls as prepared by the Tax Assessor-Collector of the respective counties for the current year 1938, the county Commissioners Courts in such counties shall have the power to set and establish annually the maximum amount of the fees collected by the Justices of the Peace and Constables which shall be retained by such officers as compensation for their services; provided, however, that the maximum amount so set and established by the county Commissioners Courts as the amount to be retained by such officers shall in no event exceed Three Thousand, Six Hundred Dollars ($3,600) per annum, and provided further, that the compensation for such officers as provided for herein shall be due and payable the first of each month, and the pro rata compensation or fees to be retained for any quarter of the fiscal year shall in no event exceed Nine Hundred Dollars ($900) and such Nine Hundred Dollars ($900) shall be paid only out of fees collected by such officers during the quarter to which such Nine Hundred Dollars ($900) limit applies, and in the event the county Commissioners Courts of such counties shall set and establish the maximum amount of fees to be retained by such officers at an amount less than Three Thousand, Six Hundred Dollars ($3,600) then the same provisions, conditions, and limitations as set out above shall be applicable and shall be applied to any and all such lesser payments as may be provided by the county Commissioners Courts of such counties. [As amended Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 11; Acts 1931, 42nd Leg., p. 822, ch. 340, § 1; Acts 1933, 43rd Leg., p. 734, ch. 220, § 1; Acts 1937, 45th Leg., p. 574, ch. 284, § 1; Acts 1937, 45th Leg., p. 798, ch. 391, § 1; Acts 1939, 46th Leg., Spec.L., p. 737, § 1.]

2-a. In counties containing less than thirty-five thousand (35,000) inhabitants and with a tax valuation, according to the last approved tax roll, in excess of Seventy-eight Million Dollars ($78,000,000) the District or Criminal District Attorney shall receive an annual fee not to exceed Four Thousand, Two Hundred and Fifty Dollars ($4,250) out of the fees of office except as provided in Article 3891 for the retention of excess fees of office for counties of like population and in no event shall the maximum salary received exceed Four Thousand, Five Hundred Dollars ($4,500). [As added Acts 1935, 44th Leg., p. 724, ch. 315, § 1.]

3. In counties containing as many as thirty-seven thousand, five hundred and one (37,501) and not more than sixty thousand (60,000) inhabitants, or containing a city of over twenty-five thousand (25,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Thirty-five Hundred Dollars ($3500) each; Justice of the Peace and Constable, Twenty-four Hundred Dollars ($2400) each. [As amended Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20; Acts 1931, 42nd Leg., p. 822, ch. 340; Acts 1933, 43rd Leg., p. 734, ch. 220, § 1; Acts 1945, 49th Leg., p. 541, ch. 327, § 1.]

4. In counties containing sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Four Thousand ($4000.00) Dollars each; Justice of the Peace and Constable, Twenty-one Hundred ($2100.00) Dollars each. [As added Acts 1933, 43rd Leg., p. 734, ch. 220, § 1.]

5. In counties containing as many as one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Forty-five Hundred ($4500.00) Dollars each; Justice of the Peace and Constable, Twenty-five Hundred ($2500.00) Dollars each. [As added Acts 1933, 43rd Leg., p. 734, ch. 220, § 1.]

6. In counties containing as many as one hundred and fifty thousand and one (150,001) or more inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Fifty-five Hundred ($5500.00) Dollars each; Justice of the Peace and Constable, Three Thousand ($3000.00) Dollars each. [As added Acts 1933, 43rd Leg., p. 734, ch. 220, § 1.]

6a. Provided that in counties in this State having assessed tax valuation of more than Ninety Million Dollars ($90,000,000), according to the tax rolls for the last preceding calendar year and having a population of less than thirty thousand (30,000) inhabitants according to the last preceding Federal Census, the Justices of Peace and Constables in such counties may receive and retain maximum fees of Three Thousand Dollars ($3,000) per year. Such Justices of the Peace and Constables shall also receive and retain one-third of excess fees as said term is defined in Article 3891, Revised Civil Statutes, 1925, as amended by Chapter 220, Acts of the Regular Session of the Forty-third Legislature, until such one-third amounts to Six Hundred Dollars ($600). [As added Acts 1934, 43rd Leg., 2nd C.S., p. 123, ch. 59, § 1; Acts 1935, 44th Leg., p. 483, ch. 197, § 1.]

7. Provided that in any county in this State having a population of not less than fifty-one thousand, seven hundred and seventy-nine (51,779) nor more than fifty-two thousand, seven hundred and seventy-nine (52,779), according to the last preceding Federal Census of the United States, Justices of the Peace and Constables shall have and receive as fees of office Twenty-seven Hundred and Fifty Dollars ($2750) each per annum. Provided that such Justices of the Peace and Constables shall also receive excess fees in addition thereto by retaining one-third of such excess fees until such one-third of such excess fees, together with the said amount of Twenty-seven Hundred and Fifty Dollars ($2750), equals the sum of Three Thousand Dollars ($3,000). [As added Acts 1935, 44th Leg., p. 707, ch. 303, § 1.]

Section 2 of Acts 1935, 44th Leg., p. 707, ch. 303, repeals all conflicting laws and parts of laws.

8. Provided that in any county in this State having a population of not less than seventy-seven thousand, seven hundred and fifty (77,750) nor more than eighty-eight thousand, seven hundred and fifty (88,750), according to the last preceding Federal Census of the United States, Justices of the Peace and Constables shall have and receive as fees of office Twenty-seven Hundred and Fifty Dollars ($2750) each per annum. Provided that such Justices of the Peace and Constables shall also receive excess fees in addition thereto by retaining one-third of such excess fees until such one-third of such excess fees, together with the said amount of Twenty-seven Hundred and Fifty Dollars ($2750), equals the sum of

Three Thousand Dollars ($3,000). [As added Acts 1937, 45th Leg., p. 798, ch. 391, § 2.]

Provided, however, in any county in this State having a population less than thirty-five thousand (35,000) inhabitants, and which has a tax valuation exceeding forty million ($40,000,000.00) Dollars, according to the last tax roll, approved as required by law, the officers herein enumerated shall receive the maximum set forth in Section 3 of Article 3883 as herein amended, and shall also receive excess fees as provided in counties containing a population of between thirty-seven thousand five hundred and one (37,501) and less than sixty thousand (60,000) inhabitants, as provided in Article 3891 as herein amended. [As added Acts 1933, 43rd Leg., p. 734, ch. 220, § 1.]

Provided, however, in any county in this State having a population less than twenty thousand (20,000) inhabitants, and which has a tax valuation of not less than Seventeen Million ($17,000,000.00) Dollars and not exceeding Twenty-five Million ($25,000,000.00) Dollars according to the last approved tax roll, and with a total area of not less than nine hundred fifty (950) square miles and not exceeding nine hundred eighty (980) square miles, the officers herein enumerated shall receive the maximum set forth in Section 3 Article 3883 as herein amended, and shall also receive excess fees as provided in counties containing a population of between thirty-seven thousand five hundred and one (37,501) and less than sixty thousand (60,000) inhabitants, as provided in Article 3891 as herein amended. [As added Acts 1939, 46th Leg., Spec.L., p. 735, §§ 1, 2.]

Compensation herein fixed for Sheriff of any county shall be exclusive of any reward or rewards received for the apprehension of criminals or fugitives from justice, and rewards received for the recovery of stolen property. The maximum fixed for the compensation of each District or Criminal District Attorney shall be inclusive of the salary allowed by the Constitution. However, the maximum herein fixed for District or Criminal District Attorneys applies only to those District or Criminal District Attorneys receiving their compensation under the provisions of Articles 1024 and 1025 of the Code of Criminal Procedure, 1925, and shall not apply to District Attorneys in judicial districts composed of two or more counties whose compensation is otherwise provided. [Acts 1st C.S., 1897, pp. 9–43; Acts 1913, p. 246; Acts 1917, p. 333; Acts 3rd C.S., 1920, p. 68; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20; Acts 1931 42nd Leg., p. 822, ch. 340; Acts 1933, 43rd Leg., p. 734, ch. 220, § 1.]

Sp.Laws 1931, c. 174, p. 355, authorizing county clerks of counties with population of from 15,550 to 15,800 to retain fees to the amount of $6,000, was repealed by Acts 1933, ch. 220, p. 734, incorporated in this article and art. 3891, providing that maximum compensation, including fees, of county clerks in counties with population of less than 25,000, should be $3,000, where subsequent statute was intended to embrace all the law relating to the compensation and retention of fees of county clerks. Meek v. Wheeler County, 135 T. 454, 144 S.W.2d 885.

Art. 3883a. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

Article repealed was Acts 1925, 39th Leg., p. 152, ch. 32, § 1.

Art. 3883b. [Repealed by Acts 1937, 45th Leg., p. 602, ch. 302, § 1.]

The repealed article was Acts 1931, 42nd Leg., Spec.L., p. 355, ch. 174, § 1.

Art. 3883c. County judge, sheriff, district attorney, assessor, and other officers in counties of 250,000 to 325,000 population.

Salaries; apportionment of per capita payments

Section 1. The County Judge, Sheriff, District Attorney, or Criminal District Attorney, as the case may be, County Clerk, District Clerk, and the Assessor and Collector of Taxes; in any county having a population of more than two hundred fifty thousand (250,000) inhabitants, and less than three hundred twenty-five thousand (325,000) inhabitants, according to the last preceding, or future Federal Census, shall receive a salary of Seven Thousand Four Hundred ($7,400.00) Dollars per annum from the Officer's Salary Fund, or General Fund, as the case may be; and the Seven Thousand Four Hundred ($7,400.00) Dollars salary shall include the compensation to the County Judge allowed in Senate Bill 186, 45th Legislature, Regular Session, Acts 1937;[1] the compensation herein fixed for the Sheriff shall be exclusive of any reward received for the apprehension of criminal fugitives from justice, and reward received from the recovery of stolen property; and the per capita payments made by the State to the Counties in lieu of felony fees formerly paid to the officers shall be apportioned by the Commissioners' Courts as follows: after paying the fees to precinct officers rendering service in felony cases, pay to the District Clerk and the Sheriff the same amount each officer earned in felony fees during the year 1935, and the remaining balance shall be paid to the District Attorney or Criminal District Attorney, as the case may be; and in all such Counties the County Auditor shall receive a salary of Six Thousand ($6,000.00) Dollars per annum, to paid from the General Fund of the County, and the County Commissioners in such Counties shall receive a salary of Forty-eight Hundred ($4,800.00) Dollars annually, payable monthly from the Road and Bridge Fund of such County.

[1] Article 5142b.

Sworn statement; failure to file; proceedings to collect unreported fees

Sec. 2. In all counties having a population in excess of two hundred fifty thousand (250,000) inhabitants, and less than three hundred twenty-five thousand (325,000) inhabitants, each District, County, and Precinct Officer, except the County Treasurer and County Commissioners, at the close of each fiscal year (December 31) shall make to the District Court of such County a sworn statement in triplicate, on forms designed and approved by the County Auditor, a copy of which statement shall be forwarded to the State Auditor by the Clerk of the District Court of said County within fifteen (15) days after the same has been filed in his office, and one copy shall be filed with the County Auditor. Said report shall show the amount of fees, commissions, and compensations collected by him during the fiscal year and their disposal. Said report shall show the names of Deputies and Assistants employed by him during the year, the time served, and the amount paid or to be paid each. Said report shall be filed not later than January 15th following the close of the fiscal year. For failure to file said report said officer shall be subject to removal from office. The County Auditor shall audit such report, also any and all books authorized by Section "N" or any other Section of this Act daily, monthly, or annually that he shall deem necessary and shall file his report with the Commissioners' Court and file with the District or Criminal District Attorney a detailed report of all fees, commissions, and compensation collected by said Officers and not reported by them; also list of cases filed since January 1, 1936, in which any County or District Clerk or Justice of the Peace has not taken adequate security for costs or required a pauper's oath.

It shall be the duty of the District or Criminal District Attorney to institute proceedings for the collection of such fees, commissions, and compensations collected by such Officer and not reported, all of which are declared to be the property of the county and shall be deposited in the General Fund.

Repeal of conflicting laws

Sec. 3. It is hereby declared to be the intention of the Legislature that the provisions of this Section control in all things as to the Counties affected hereby, and any and all laws in conflict herewith, are hereby expressly repealed to the extent of each conflict. [Acts 1937, 45th Leg., p. 1274, ch. 476.]

Art. 3883c—1. County judge, county attorney, county clerk, sheriff, assessor, and collector in counties of 18,528 to 18,535.—In all counties in this State having a population of not less than eighteen thousand five hundred twenty-eight (18,528) and not more than eighteen thousand five hundred thirty-five (18,535) according to the last preceding Federal Census, the County Judge, the County Attorney, County Clerk, County Sheriff, Tax Assessor and Tax Collector shall receive maximum fees of Two Thousand Seven Hundred Fifty ($2,750.00) Dollars each per year; the Justice of Peace and Constable One Thousand Five Hundred ($1,500.00) Dollars each per year. [Acts 1939, 46th Leg., Spec.L., p. 734, § 1.]

Art. 3883d. Sheriff, tax collector-assessor, county clerk, county judge and other officers in counties of 48 530 to 48,930.—Section 1. From and after January 1, 1940, being the effective date of this Act in all counties in this State having a population of not less than forty-eight thousand, five hundred and thirty (48,530) and not more than forty-eight thousand, nine hundred and thirty (48,930), according to the last preceding Federal Census, the Commissioners Court shall have the power and authority to fix the salaries of the sheriff, the tax assessor-collector, the county clerk, the county judge, the district clerk, and the county attorney; provided, however, that the salary of the sheriff shall not be fixed in excess of the sum of Four Thousand, Two Hundred and Fifty Dollars ($4,250) per annum, nor less than the sum of Three Thousand, Six Hundred Dollars ($3,600) per annum; the salary of the tax assessor-collector shall not be fixed in excess of the sum of Four Thousand Dollars ($4,000) per annum, nor less than the sum of Three Thousand, Six Hundred Dollars ($3,600) per annum; the salary of the county clerk shall not be fixed in excess of the sum of Four Thousand Dollars ($4,000) per annum, nor less than the sum of Three Thousand, Three Hundred Dollars ($3,300) per annum; the salary of the county judge shall not be fixed in excess of the sum of Three Thousand, Two Hundred Dollars ($3,200) per annum, nor less than the sum of Two Thousand, Seven Hundred Dollars ($2,700) per annum; the salary of the district clerk shall not be fixed in excess of the sum of Three Thousand, Three Hundred Dollars ($3,300) per annum, nor less than the sum of Two Thousand, Seven Hundred Dollars ($2,700) per annum; the salary of the county attorney shall not be fixed in excess of the sum of Three Thousand Dollars ($3,000) per annum, nor less than the sum of Two Thousand, Seven Hundred Dollars ($2,700) per annum.

Sec. 2. All such salaries shall be paid in twelve (12) equal installments per year, and paid from funds now provided by law for payment of such officials. [Acts 1939, 46th Leg., Spec.L., p. 739.]

Section 3 of this Act repeals all conflicting laws and parts of laws to the extent of the conflict only.

Art. 3883e. Tax Assessor-Collector in counties of 70,000 to 80,000 and with $40,000,000 assessed valuation.—Section 1. In all counties in the State with a population of more than seventy thousand (70,000) and not more than eighty thousand (80,000) according to the last preceding Federal Census, or any future Federal Census, and with an assessed valuation of not less than Forty Million Dollars ($40,000,000), the Tax Assessor-Collector shall receive a salary of Fifty-five Hundred Dollars ($5500), payable in equal monthly payments.

Sec. 2. It is hereby declared to be the intention of the Legislature that the provisions of this Act shall control in all things as to the counties affected hereby, and any and all laws in conflict herewith are hereby repealed to the extent and only to the extent of such conflict. [Acts 1941, 47th Leg., p. 361, ch. 200.]

Art. 3883f. Tax assessor-collector in counties of 18 500 to 18,900 and with $14,000,000–$15,500 000 assessed valuation.—In all counties of this State having a population of more than eighteen thousand, five hundred (18,500) and not more than eighteen thousand, nine hundred (18,900) inhabitants, according to the last preceding Federal Census, and having an assessed valuation on property for ad valorem tax purposes of more than Fourteen Million Dollars ($14,000,000) and not over Fifteen Million, Five Hundred Thousand Dollars ($15,500,000), the Commissioners Court of such counties may fix the salary of the County Tax Assessor-Collector at any amount not to exceed the sum of Four Thousand, Eight Hundred Dollars ($4,800) per annum to be paid in twelve (12) equal monthly installments. [Acts 1947, 50th Leg., p. 467, ch. 268, § 1.]

Art. 3883g. County Judge, Sheriff, and certain other officers in counties of 145,000 to 250,000.—Section 1. The provisions of this Act shall apply to and control in each county in this State having a population of not less than one hundred and forty-five thousand (145,000) and not more than two hundred and fifty thousand (250,000) inhabitants, according to the last preceding Federal census.

Sec. 2. The County Judge, Sheriff, District Attorney, or Criminal District Attorney, as the case may be, District Clerk, County Clerk, and Assessor and Collector of Taxes shall receive a salary of not less than Seven Thousand, Four Hundred Dollars ($7,400) per annum from the Officers Salary Fund, in such counties.

Sec. 3. The Commissioners Court is hereby authorized, when in its judgment the financial condition of the county and the needs of the Deputies, Assistants and Clerks of any District, County or Precinct Officer justify the increase, to enter an order increasing the compensation of such Deputy, Assistant or Clerk in an additional amount not to exceed twenty per cent (20%) of the sum allowed under the law for the fiscal year of 1946.

Sec. 4. The Commissioners Courts of each county affected by this Act shall amend the budget to provide sufficient funds to pay additional compensation.

Sec. 5. This Act is not intended and shall not be considered or construed as repealing any law or laws now on the Statute books except those in conflict herewith, and to the extent of the conflict only, but in other respects shall be construed as being cumulative law. [Acts 1947, 50th Leg., p. 1064, ch. 455.]

Art. 3884. [Repealed by Acts 1931, 42nd Leg., p. 364, ch. 214, § 1.]

This article was also repealed by Acts 1929, 41st Leg. 1st C.S., p. 225, ch. 92, § 1.

Art. 3885. District attorneys of districts of two or more counties.—(See Code of Criminal Procedure.) Art. 2010.[1]

[1] Enrolled bill quotes the entire statute without cross-reference to Code of Criminal Procedure. Art. 2010 apparently refers to Code of Criminal Procedure, article 1021.

Art. 3886. District and county attorneys of large counties.—In any county having a population in excess of one hundred fifty thousand (150,000) and less than three hundred fifty-five thousand (355,000) inhabitants, the District Attorney, or Criminal District Attorney may appoint not exceeding eight Assistant

District Attorneys, two of whom shall receive a salary not to exceed Four Thousand Two Hundred Fifty ($4,250.00) Dollars per annum each; two of whom shall receive a salary not to exceed Thirty-six Hundred ($3,600.00) Dollars per annum each; four of whom shall receive a salary not to exceed Three Thousand ($3,000.00) Dollars per annum each. He may appoint two stenographers, one of whom shall receive a salary not to exceed Eighteen Hundred ($1,800.00) Dollars per annum, and one of whom shall receive a salary not to exceed Fifteen Hundred ($1,500.00) Dollars per annum. He may appoint two investigators, who shall receive a salary not to exceed Twenty-four Hundred ($2,400.00) Dollars per annum. He may appoint one court reporter who shall receive a salary not to exceed Twenty-four Hundred ($2,400.00) Dollars per annum. In addition to the above, each County Attorney in said counties shall be authorized to appoint not exceeding seven Assistant County Attorneys, two of whom shall receive a salary not to exceed Thirty-six Hundred ($3,600.00) Dollars per annum each; two of whom shall receive a salary not to exceed Three Thousand ($3000.00) Dollars per annum each; three of whom shall receive a salary not to exceed Twenty-four Hundred ($2400.00) Dollars per annum each. He may appoint one investigator, who shall receive a salary, not to exceed Eighteen Hundred ($1800.00) Dollars per annum. He may appoint one stenographer, who shall receive a salary, not to exceed Sixteen Hundred and Twenty ($1620.00) Dollars per annum. He may appoint one abstractor, who shall receive a salary, not to exceed Twenty-four Hundred ($2400.00) Dollars per annum. The salaries of all such assistants, stenographers and investigators hereinbefore provided for in this Article shall be paid monthly by said counties by warrant drawn upon the general funds thereof. Should such District Attorney or Criminal District Attorney or County Attorney be of the opinion that the number of assistants, stenographers, investigators or other employees above provided for are inadequate for the proper investigation of crime in the efficient performance of the duties of said office, he may, with the advice and consent of the County Commissioners' Court, appoint not to exceed seven such additional assistants and employees and fix their salaries, provided such salaries shall not, in any event, exceed Three Thousand ($3000.00) Dollars per annum each, but such additional assistants or employees so appointed before qualifying and entering upon the duties of such office and employment shall be approved as to number and salary by the Commissioners' Court of the county in which such appointments were made. The salaries of such additional assistants and employees shall be paid monthly out of the excess fees collected by such District Attorney, or Criminal District Attorney, or County Attorney which would otherwise go to said county. In no event shall said county be liable for the salaries of such additional assistants or employees; provided, however, in any county having a population in excess of three hundred fifty-five thousand (355,000) inhabitants the Criminal District Attorney shall be authorized to appoint eleven Assistant District Attorneys; two of whom shall receive a salary not to exceed Four Thousand Two Hundred Fifty ($4250.00) Dollars per annum each; two of whom shall receive a salary not to exceed Thirty-six Hundred ($3600.00) Dollars per annum each; the balance of whom shall receive a salary not to exceed Three Thousand ($3000.00) Dollars per annum each. He may employ two court reporters at a salary not to exceed Twenty-four Hundred ($2400.00) Dollars per annum each. He may employ three stenographers, each of whom shall receive a salary not to exceed Sixteen Hundred and Twenty ($1620.00) Dollars per annum. He may employ three investigators who shall receive a salary not to exceed Eighteen Hundred ($1800.00) Dollars per annum each. He may employ one information clerk who shall receive a salary not to exceed Nine Hundred ($900.00) Dollars per annum. The salaries of such assistants, stenographers, investigators and clerk above provided for shall be paid monthly by said counties by warrant drawn upon the general funds thereof. Should such District Attorney or Criminal District Attorney be of the opinion that the number of assistants, stenographers, investigators or other employees above provided for are inadequate for the proper investigation of crime and the efficient performance of the duties of said office, he may, with the advice and consent of the County Commissioners' Court, appoint not to exceed nine additional assistants and employees and fix their salaries, provided such salaries shall in no event exceed Three Thousand ($3000.00) Dollars per annum each, but such additional assistants or employees so appointed before qualifying and entering upon the duties of such office and employment shall be approved as to number and salary by the Commissioners' Court of the county in which such appointments are made. The salaries for such additional assistants and employees shall be paid monthly out of the excess fees collected by such District Attorney and his office which would otherwise go to said county. Each of the officers named herein shall be subject to the provisions of Articles 3883 and 3891 in so far as the retention of the maximum and excess fees is concerned, and each shall file the sworn report required by Article 3897 giving a detailed and itemized statement of all fees collected and the purposes for which the same were used, provided that nothing in this Act shall be construed as repealing or affecting House Bill No. 875, passed by the Regular Session of the Forty-third Legislature. [Acts 1911, p. 116; Acts 1917, pp. 69, 94, 123; Acts 1919, p. 83; Acts 1923, p. 373; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20; Acts 1933, 43rd Leg., p. 734, ch. 220, § 5.]

Section 1 of Acts 1935, 44th Leg., p. 802, ch. 343, is incorporated in art. 3886e. Section 2 repeals the portion of art. 3886 as amended in 1933, relating to the appointment of the court reporter and all conflicting laws.

Art. 3886a. Assistants and other appointments by district and county attorneys in counties of 125,001.—Sec. 5-A: In all counties in this State having a population of one hundred and twenty-five thousand and one (125,001) inhabitants and not more than one hundred and fifty thousand (150,000) inhabitants, according to the last preceding Federal Census, and being in a Judicial District composed of two or more counties, the District Attorney of any such Judicial District in this State, if and when in his judgment the efficient conduct of his office so requires may, with the consent and approval of the Commissioners' Court, and in addition to such of his Assistants as are or may be paid by the State, appoint not to exceed two (2) Assistant District Attorneys, each of whom shall receive a salary of not more than Three Thousand Two Hundred Dollars ($3,200.00) per annum. Such District Attorney may also, with the consent and approval of the Commissioners' Court, appoint one stenographer who shall receive a salary of not more than Two Thousand Four Hundred Dollars ($2,400.00) per annum. Such District Attorney may also, with the consent and approval of the Commissioners' Court, appoint two (2) investigators, each of whom shall receive a salary of not more than Two Thousand Four Hundred Dollars ($2,400.00) per annum. The salaries of such Assistant District Attorneys, stenographers, and investigators shall be fixed by the said Commissioners' Court and shall be payable out of the General Fund of such county, upon the certificate of the District Attorney aforesaid. The Commissioners' Court of such county is hereby authorized to set aside each year a sum not to exceed One Thousand Five Hundred Dollars ($1,500.00), to be expended by such District Attorney in preparation and con-

duct of the criminal affairs of his office. This sum is to be expended upon sworn claim of such District Attorney, to be approved by the County Judge of such County and shall be payable out of the General Fund of such County.

In addition to the above the County Attorney in each of such Counties, when and if in his judgment the efficient conduct of his office so requires may with the consent and approval of the Commissioners' Court appoint two Assistant County Attorneys, each of whom shall have the qualifications of County Attorneys, and each of whom shall receive a salary of not more than Three Thousand Dollars ($3,000.00) per annum; such salary to be fixed and determined by the Commissioners' Court of such Counties. The County Attorney in such Counties may also appoint, with the consent and approval of the Commissioners' Court, one Assistant County Attorney, who need not possess the qualifications of County Attorneys, who shall act as stenographer and/or investigator and perform such other duties as may be assigned to him by such County Attorney; such Assistant County Attorney shall receive a salary of not to exceed Eighteen Hundred Dollars ($1,800.00) per annum. Such salaries hereinabove set out shall be paid monthly by the Commissioners' Court, out of the General Fund of such Counties, upon the certificate of the County Attorney.

The County Attorney in such Counties may also appoint, with the consent and approval of the Commissioners' Court, an Assistant County Attorney to assist in the filing and prosecuting of tax suits. Such Assistant County Attorney shall receive such salary as the Commissioners' Court may determine, not to exceed Twenty-four Hundred Dollars ($2,400.00) per annum, said salary to be paid monthly out of a percentage of all delinquent taxes collected.

Should such District and/or County Attorney aforesaid be of the opinion that the number of Assistants, stenographers, investigators or other employees above provided for are inadequate for the proper investigation of crime, and the efficient performance of the duties of said office, he may, with the advice and consent of the County Commissioners' Court, appoint additional Assistants, deputies or clerks, under the provisions and limitations of Article 3902, Revised Civil Statutes of Texas of 1925, as amended by the Forty-third Legislature, Regular Session, 1933, Chapter 220. [Acts 1933, 43rd Leg., 1st C.S., p. 300, ch. 110, § 1.]

Art. 3886b. Appointment and salaries of assistant county attorneys in counties of over 125,000 having no district or criminal district attorney.—Sec. 5–B. In all Counties in this State having a population of over 125,000 inhabitants according to the latest preceding Federal Census and in which there is no District Attorney or Criminal District Attorney and the County Attorney performs the duties of County and District Attorney, the County Attorney in such Counties, upon sworn application showing the necessity therefor and upon approval by the Commissioners' Court of such application, shall be authorized to appoint one first assistant County Attorney who shall receive a salary of not to exceed Three Thousand Six Hundred ($3,600.00) Dollars per annum, and such other assistants and employees as are necessary who shall receive salaries of not to exceed Three Thousand ($3,000.00) Dollars per annum. The Commissioners' Court in each order approving the appointment of such assistants and employees shall state the number authorized and the amount of compensation to be allowed each assistant or employee; and should the fees of the County Attorney's office be insufficient to pay the compensation allowed to such officer, and also pay the allowable expense and the salaries of such assistants and employees of such office as the Commissioners' Court may determine are necessary to properly perform the duties and carry on the affairs of the office, the Commissioners' Court shall allow the payment of such portion of such expenses and salaries out of the general fund of the County as in their judgment may be necessary. The County Attorney may also appoint with the consent and approval of the Commissioners' Court an Assistant County Attorney who need not possess the qualifications of County Attorney, but who shall have the qualifications of a competent tax man, and a Clerk or Assistant to assist in the collection of delinquent taxes, and in the filing and prosecuting of tax suits. Such Assistant County Attorney shall receive such salary as the Commissioners' Court may determine, not to exceed Three Thousand ($3,000.00) Dollars per annum, and such Clerk or Assistant a salary not to exceed One Thousand Eight Hundred ($1,800.00) Dollars per annum, such salary to be paid monthly out of a percentage of all delinquent taxes collected. [Acts 1933, 43rd Leg., 1st C.S., p. 145, ch. 49, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 54, ch. 18, § 1; Acts 1935, 44th Leg., p. 228, ch. 92, § 1.]

Section 2 of Acts 1935, repeals all conflicting laws and parts of laws.

Art. 3886c. Assistant criminal district attorneys and other appointees in counties of over 355,000.—In any county having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants the Criminal District Attorney shall be authorized to appoint nine (9) assistant criminal district attorneys, and fix their salaries at not to exceed the following amounts: Four (4) of said Assistant Criminal District Attorneys shall receive a salary not to exceed Forty-two Hundred Dollars ($4200.00) per annum each; one of said Assistant Criminal District Attorneys shall receive a salary of not to exceed Thirty-Six Hundred Dollars ($3600.00) per annum; one of said Assistant District Attorneys shall receive a salary of not to exceed Three Thousand Dollars ($3000.00) per annum; three of said Assistant Criminal District Attorneys shall receive a salary not to exceed Twenty-Four Hundred Dollars ($2400.00) per annum each. He may employ three (3) investigators and fix their salaries at not to exceed the following amounts: One (1) of said investigators shall receive a salary of not to exceed Twenty-one Hundred and Sixty Dollars ($2160.00) per annum, and the other two investigators shall each receive a salary of not to exceed Twenty-one Hundred Dollars ($2100.00) per annum. He may employ two (2) court reporters and fix their salaries at not to exceed Twenty-One Hundred and Sixty Dollars ($2160.00) per annum each. He may employ one (1) combination stenographer and accountant and fix his salary at not to exceed Twenty-one Hundred Dollars ($2100.00) per annum. He may employ one (1) stenographer and fix his salary at not to exceed Eighteen Hundred Dollars ($1800.00) per annum. He may employ one (1) Chief Civil Clerk and fix his salary at not to exceed Twenty-one Hundred Dollars ($2100.00) per annum. He may employ two (2) abstracters and fix their salaries as follows: One (1) of said abstracters at not to exceed Twenty-one Hundred Dollars ($2100.00) per annum, and the salary of the other abstracter at not to exceed Eighteen Hundred Dollars ($1800.00) per annum. The salaries of all of such above provided for Assistants, Investigators, Court Reporters and other employes shall be paid monthly by said counties by warrants drawn upon the general funds thereof. Should such Criminal District Attorneys be of the opinion that the number of assistants, stenographers, investigators or other employes above provided for is not adequate for the proper investigation and prosecution of crime, and the efficient performance of the duties of said office, he may, with the advice and consent of the Commissioners' Court appoint not to exceed five (5) additional Assistant Criminal District Attorneys and fix their salaries as follows: One (1) of such additional Assistant Criminal District Attorneys to receive a salary of not to exceed Forty-two Hundred and Fifty Dollars ($4250.00) per annum, one

of such additional Assistant Criminal District Attorneys to receive a salary of not to exceed Thirty-six Hundred Dollars ($3600.00) per annum, one of such additional Assistant Criminal District Attorneys to receive a salary of not to exceed Three Thousand Dollars ($3,000.00) per annum, one of such additional Assistant Criminal District Attorneys to receive a salary of not to exceed Twenty-four Hundred Dollars ($2400.00) per annum, and one (1) of such additional Assistant Criminal District Attorneys to receive a salary of not to exceed Twenty-one Hundred Dollars ($2100.00) per annum. He may employ one (1) court reporter and fix his salary at not to exceed Twenty-one Hundred and Sixty Dollars ($2160.00) per annum. He may employ one (1) stenographer and fix his salary at not to exceed Fifteen Hundred Dollars ($1500.00) per annum. He may employ one (1) Civil Clerk and fix his salary at not to exceed Fifteen Hundred Dollars ($1500.00) per annum. He may employ one (1) information clerk and fix his salary at not to exceed Nine Hundred Dollars ($900.00) per annum, but such additional assistants or employes so appointed, before qualifying and entering upon the duties of such office and employment, shall be approved as to number and salaries by the Commissioners' Court of the county in which such appointments are made. The salaries of such additional Assistants and employes shall be paid monthly by such Criminal District Attorney out of the excess fees of his office, which would otherwise go to said county. [Acts 1933, 43rd Leg., 1st C.S., p. 134, ch. 40, § 1.]

The Legislature numbered two articles 3886b so this is numbered 3886c.

Art. 3886d. Investigators and stenographers for District Attorneys in counties of less than 30,000.—Provided that in any county in this State having a population less than thirty thousand (30,000) inhabitants, according to last preceding Federal Census, and which has a tax valuation exceeding Sixty Million Dollars ($60,000,000.00), according to the last tax roll approved as required by law, the District Attorney or Criminal District Attorney may if and when in his judgment the efficient conduct of his office so requires, appoint a criminal investigator who shall receive a salary not to exceed Three Thousand Dollars ($3,000.00) per year. Such District Attorney or Criminal District Attorney may also, if in his judgment the efficient conduct of his office so requires, appoint a stenographer for said office, who shall receive a salary of not more than Eighteen Hundred Dollars ($1800.00) per year. The salary of such investigator and stenographer shall be payable out of the General Fund of the county in which they are appointed, in twelve (12) equal installments, upon the certificate of the District Attorney or Criminal District Attorney of such county.

Provided, that in Montgomery County, the District Attorney of the Ninth Judicial District may, if and when in his judgment the efficient conduct of his office so requires, appoint a criminal investigator in and for Montgomery County, who shall receive a salary of not to exceed Eighteen Hundred Dollars ($1800) per year. The salary of such investigator shall be payable out of the General Fund of Montgomery County, Texas, in twelve (12) equal installments upon the certificate of the District Attorney of said District. [Acts 1934, 43rd Leg., 3rd C.S., p. 118, ch. 63, § 2; Acts 1939, 46th Leg., Spec.L., p. 751, § 1.]

Section 2 of the amendatory Act of 1939 provided that "Nothing in this Act shall be construed to repeal or in any manner affect any law now in existence with reference to investigators or stenographers in Judicial Districts not included in this Act."

Art. 3886e. Court reporter; salary.—In any county of this State having a population in excess of one hundred and fifty thousand (150,000) and less than three hundred and fifty-five thousand (355,000) inhabitants, according to the last preceding Federal Census, and which alone constitutes two or more Judicial Districts, the District Attorney or Criminal District Attorney may appoint one Court Reporter who shall receive a salary not to exceed Three Thousand Dollars ($3,000) per annum to be paid monthly by such county by warrant drawn upon the General Funds thereof. [Acts 1935, 44th Leg., p. 802, ch. 343, § 1.]

Section 2 of this Act repeals the portion of article 3886 as amended by Acts 1933, 43rd Leg., p. 734, ch. 220, § 5, relating to the appointment of the court reporter and all conflicting laws and parts of laws.

Art. 3886f. Compensation of district attorneys.—Sec. 1. From and after January 1, 1936, in all Judicial Districts in this State the District Attorney in each such District shall receive from the State as pay for his services the sum of Four Thousand Dollars ($4,000) per year, which said Four Thousand Dollars ($4,000) shall include the Five Hundred Dollars ($500) salary per year now allowed such District Attorneys by the Constitution of this State; providing that in all Judicial Districts in this State composed of two (2) or more counties in one (1) of which such counties there is a city containing the population of not less than ninety thousand (90,000) inhabitants according to the last preceding Federal Census, the District Attorney of such District shall receive from the State as pay for his services the sum of Five Thousand Five Hundred Dollars ($5,500) per year, which said Five Thousand Five Hundred Dollars ($5,500) shall include the Five Hundred Dollars ($500) salary per year now allowed such District Attorneys by the Constitution of this State. Such salary shall be paid in twelve (12) equal monthly installments upon warrants drawn by the Comptroller of Public Accounts upon the State Treasury. Provided that nothing in this Act shall be construed so as to deprive District Attorneys of the expense allowance allowed or which may hereafter be allowed by law.

Sec. 2. All monies heretofore appropriated by the Legislature to pay fees, salaries and per diem accounts of the officers named in this Act are hereby reappropriated for the purpose of paying the salaries fixed by this Act.

Sec. 3. All fees, commissions and perquisites which may be earned and collected by District Attorneys affected by this Act shall be paid into the County Treasury of the counties in which such fees are earned for the account of the proper fund.

Sec. 4. Nothing in this Act shall be construed to repeal or in any manner affect any law now in existence with reference to Assistant District Attorneys, Investigators or Stenographers in Judicial Districts included in this Act.

Sec. 5. Nothing in this Act shall affect Criminal District Attorneys whose district is composed of only one (1) county. [Acts 1935, 44th Leg., 2nd C.S., p. 1710, ch. 442.]

Art. 3887. County attorney.—In any county having a population of one hundred thousand (100,000) or less, and containing a city having a population in excess of fifty thousand (50,000) in which county there is no District Attorney, the County Attorney may appoint not to exceed three Assistant County Attorneys, two of whom shall receive a salary not to exceed Two Thousand Seven Hundred ($2700.00) Dollars per annum each, and one of whom shall receive a salary of not to exceed Two Thousand One Hundred ($2100.00) Dollars per annum. He may appoint an investigator who shall receive a salary not to exceed One Thousand Eight Hundred ($1800.00) Dollars per annum. He may appoint a stenographer who shall receive a salary not to exceed One Thousand Five Hundred ($1500.00) Dollars per annum. The salaries of such assistants, investigator and stenographer shall be paid monthly by said county by warrants drawn on the general fund thereof. Any such assistant, investigator or stenographer shall be subject to removal at the will of such County Attorney. All fees collected by such County Attorney, including fees for represent-

ing the State in criminal actions in corporation courts, shall be accountable for and disposed of in the manner provided in this chapter.

In any county having a population of more than one hundred thirty thousand (130,000) and less than one hundred fifty thousand (150,000), and containing two cities of fifty thousand (50,000) population or more each, in which county there is no District Attorney, the Commissioners' Court may, should the fees of the County Attorney's office be insufficient to pay the compensation allowed herein to such officer, and also pay the allowable expenses as otherwise provided in this Act and the salaries of such deputies, assistants and employees of such office as the Commissioners' Court may determine are necessary to properly perform the duties and carry on the affairs of the office, allow the payment of such portion of such expenses and salaries out of the general fund of the county as in their judgment may be necessary. [Acts 1st C.S. 1917, p. 55; Acts 1929, 41st Leg., p. 256, ch. 112; Acts 1931, 42nd Leg., p. 800, ch. 326; Acts 1933, 43rd Leg., p. 734, ch. 220, § 6.]

Sec. 2a. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

The repealed section was Acts 1931, 42nd Leg., 2nd C.S., p. 56, ch. 34.

Art. 3887a. Compensation of county attorneys in counties of 48,540 to 48,800 population.—In all counties in the State of Texas having a population of more than forty-eight thousand five hundred and forty (48,540) and less than forty-eight thousand eight hundred (48,800), according to the last preceding or any future Federal Census, where the Commissioners' Court shall have determined, or shall determine, to compensate the county attorney of such counties upon an annual salary basis according to law, such Court shall fix the salary of such county attorneys at not to exceed Two Thousand Four Hundred ($2,400.00) Dollars per annum. [Acts 1937, 45th Leg., 2nd C.S., p. 1878, ch. 11, § 1.]

Section 2 of the Act of 1937 repealed all conflicting laws.

Art. 3888. [2765–3886] County judge acting as Ex-officio County Superintendent; Assistant Superintendent.—In a county where the County Judge acts as Superintendent of Public Instruction, he shall receive for such services such salary not to exceed Sixteen Hundred ($1600.00) Dollars a year as the County Board of School Trustees of the respective counties may provide. The Ex-officio Assistant Superintendent of Public Instruction shall receive for his services such salary not to exceed Fifteen Hundred ($1500.00) Dollars a year as the County Board of School Trustees of the respective counties may provide.

The County Judge while acting as Ex-officio County Superintendent of Public Instruction, for office and traveling expenses, may receive an amount not to exceed Four Hundred Fifty ($450.00) Dollars a year as the County Board of School Trustees of the respective counties may provide. The above amounts shall be paid in the manner specified in Chapter 49, Acts of the 41st Legislature, Fourth Called Session,[1] and in Chapter 175, Acts of the 42nd Legislature, Regular Session.[2] [Acts 1st C.S.1897, p. 44; Acts 3rd C.S.1920, p. 101; Acts 1935, 44th Leg., 2nd C.S., p. 1732, ch. 447, § 2; Acts 1947, 50th Leg., p. 519, ch. 305, § 2.]

[1] Article 2700d—1, ante.

[2] Article 2827a, ante.

Section 1 of the act of 1947 is set out as Article 2701.

Section 3 of the amendment of 1935 repealed all conflicting laws and parts of laws.

Art. 3888a. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

Article repealed was Acts 1929, 41st Leg., 1st C.S., p. 239, ch. 97.

Art. 3889. Census to govern.—The preceding Federal census shall govern as to population in all cases under any provision of this chapter.

Art. 3890. [3888] State or county not liable.—The amounts allowed to each officer mentioned in Article 3883 may be retained out of the fees collected by him under existing laws; but in no case shall the State or county be responsible for the payment of any sum when the fees collected by any officer are less than the maximum compensation allowed by this chapter, nor be responsible for the pay of any deputy or assistant. [Acts 1907, p. 50.]

Art. 3891. [3889] Disposition of fees.—Each officer named in this Chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, same shall be deemed excess fees, and shall be disposed of in the manner hereinafter provided.

In counties containing twenty-five thousand (25,000) or less inhabitants, District and County officers named herein shall retain one-third of such excess fees until such one-third, together with the amounts specified in Article 3883, amounts to Three Thousand Dollars ($3,000). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Fourteen Hundred Dollars ($1400).

In counties containing as many as twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Thirty-five Hundred Dollars ($3500). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Eighteen Hundred Dollars ($1800).

In counties containing as many as thirty-seven thousand, five hundred and one (37,501) and not more than sixty thousand (60,000), or containing a city of over twenty-five thousand (25,000) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Forty-two Hundred and Fifty Dollars ($4250). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Twenty-two Hundred Dollars ($2200).

In counties containing sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Forty-seven Hundred and Fifty Dollars ($4750). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Twenty-six Hundred Dollars ($2600).

In counties containing as many as one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Fifty-five Hundred Dollars ($5500). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Three Thousand Dollars ($3000).

In counties containing as many as one hundred and fifty thousand and one (150,001) or more inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Sixty-five Hundred Dollars ($6500). Precinct officers shall retain one-third until such one-

third, together with the amount specified in Article 3883, amounts to Four Thousand Dollars ($4000).

All current fees earned and collected by officers named in Article 3883 during any fiscal year in excess of the maximum and excess allowed by this Act, and for their services and for the services of their deputies and assistants and authorized expenses, together with all delinquent fees collected and not used as provided in Article 3892, or used to pay salaries of deputies and assistants when current fees are insufficient, shall be paid into the County Treasury in the county where the excess accrued.

All fees due and not collected, as shown in the report required by Article 3897, shall be collected by the officer to whose office the fees accrued and shall be disposed of by said officer in accordance with the provisions of this Act.

The compensations, limitations and maximums herein fixed in this Act for officers shall include and apply to all officers mentioned herein in each and every county of this State, and it is hereby declared to be the intention of the Legislature that the provisions of this Act shall apply to each of said officers, and any special or general law inconsistent with the provisions hereof is hereby expressly repealed in so far as the same may be inconsistent with this Act.

The compensation, limitations and maximums herein fixed shall also apply to all fees and compensation whatsoever collected by said officers in their official capacity, whether accountable as fees of office under the present law, and any law, general or special, to the contrary is hereby expressly repealed. The only kind and character of compensation exempt from the provisions of this Act shall be rewards received by Sheriffs for apprehension of criminals or fugitives from justice and for the recovery of stolen property, and moneys received by County Judges and Justices of the Peace for performing marriage ceremonies, which sum shall not be accountable for and not required to be reported as fees of office.

(a) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing the compensation of the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred ($3600.00) Dollars. [Acts 1923, p. 398; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20; Acts 1931, 42nd Leg., p. 870, ch. 368; Acts 1933, 43rd Leg., p. 734, ch. 220, § 2; Acts 1935, 44th Leg., p. 752, ch. 327, § 1; Acts 1945, 49th Leg., p. 244, ch. 179, § 1.]

Section 5 of the Act of 1945 read as follows: "That Section 2 of Article 3934, Revised Civil Statutes of Texas, 1925, be and the same is hereby in all things repealed; and all laws or parts of laws in conflict with the provisions of this Act are hereby repealed insofar as they conflict."

Art. 3892. [3890] Failure to collect maximum.—Any officer mentioned in this Chapter who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation authorized by Articles 3883, 3883-A, and 3886 for the year in which delinquent fees were charged, and also retain the amount of excess fees authorized by law, and the remainder of the delinquent fees for that fiscal year shall be paid as herein provided for when collected; provided, the provisions of this Article shall not apply to any officer after one year from the date he ceases to hold the office to which any delinquent fee is due, and in the event the officer earning the fees that are delinquent has not collected the same within twelve months after he ceases to hold the office, the amount of fees collected shall be paid into the county treasury. Provided, however, that nothing in this Act precludes the payment of ex-officio fees in accordance with Title 61 of the Revised Civil Statutes of Texas, 1925, as part of the maximum compensation. Provided, that any change made in this Article by this Act shall not apply to fees heretofore earned. [Acts 1907, p. 50; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 4.]

Art. 3893. [3891] District clerks.—In counties having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court. [Acts 1907, p. 50.]

Art. 3894. [Repealed by Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 10.]

Art. 3895. [3893] Ex-officio services.—The Commissioners' Court is hereby debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the Commissioners' Court shall allow compensation for ex officio services when, in their judgment, such compensation is necessary, provided, such compensation for ex officio services allowed shall not increase the compensation of the official beyond the maximum of compensation and excess fees allowed to be retained by him under this chapter. Provided, however, the ex officio herein authorized shall be allowed only after an opportunity for a public hearing and only upon the affirmative vote of at least three members of the Commissioners' Court. [Acts 1st C.S. 1897, p. 10; Acts 1913, p. 248; Acts 1933, 43rd Leg., p. 734, ch. 220, § 7.]

Art. 3896. [3894] To keep accounts.—Each district, county and precinct officer shall keep a correct statement of all fees earned by him and all sums coming into his hands as deposits for costs, together with all trust funds placed in the registry of the court, fees of office and commissions in a book or in books to be provided him for that purpose, in which the officer, at the time when such deposits are made or such fees and commissions are earned and when any or all of such funds shall come into his hands, shall enter the same; and it shall be the duty of the county auditor in counties having a county auditor to annually examine the books and accounts of such officers and to report his findings to the next succeeding grand jury or district court. In counties having no county auditor, it shall be the duty of the Commissioners' Court to make the examination of said books and accounts or have the same made and to make report to the grand jury as hereinabove provided. [Acts 1st C.S., 1897, p. 10; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 8.]

Art. 3897. [3895] Sworn statement.—Each district, county and precinct officer, at the close of each fiscal year (December 31st) shall make to the district court of the county in which he resides a sworn statement in triplicate (on forms designed and approved by the State Auditor) a copy of which statement shall be forwarded to the State Auditor by the clerk of the district court of said county within thirty (30) days after the same has been filed in his office, and one copy to be filed with the county auditor, if any; otherwise said copy shall be filed with the Commissioners' Court. Said report shall show the amount of all fees, commissions and compensations whatever earned by said officer during the fiscal year; and secondly, shall show the amount of fees, commissions and compensations collected by him during the fiscal year; thirdly, said report shall contain an itemized statement of all fees, commissions and compensations earned during the fiscal year which were not collected,

together with the name of the party owing said fees, commissions and compensations. Said report shall be filed not later than February 1st following the close of the fiscal year and for each day after said date that said report remains not filed, said officer shall be liable to a penalty of Twenty-Five ($25.00) Dollars, which may be recovered by the county in a suit brought for such purposes, and in addition said officer shall be subject to removal from office. [Acts 1st C.S. 1897, p. 10; Acts 1907, p. 50; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 5; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 9.]

Art. 3898. [3896] Fiscal year.—The fiscal year, within the meaning of this Act, shall begin on January 1st of each year; and each district, county and precinct officer shall file his report and make the final settlement required in this Act not later than February 1st of each year; provided, however, that officers receiving an annual salary as compensation for their services shall, by the close of each month, pay into the Officers' Salary Fund or funds, all fees, commissions and compensation collected by him during said month. Whenever such officer serves for a fractional part of the fiscal year, he shall nevertheless file his report and make final settlement for such part of the year as he serves and shall be entitled to such proportionate part of his compensation as the time for his service bears to the entire year. [Acts 1923, p. 223; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 10.]

Art. 3899. [3897] Expense account.—(a) At the close of each month of his tenure of office, each officer named herein who is compensated on a fee basis shall make, as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office such as stationery, stamps, telephone, premiums on officials' bonds including the cost of surety bonds for his deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses, and other necessary expenses; provided, that in addition to the officers named herein, the county treasurer, county auditor, county road commissioners, county school superintendent, and the hide and animal inspector shall likewise make a report on the premiums on officials' bonds, including the cost of surety bonds for any deputies, and said premiums shall be subject to payment out of the fees of said office, as herein otherwise provided for the officers named; and provided further that if any of the officers so designated are on a salary rather than a fee basis, then all such bond premiums for officers and their deputies shall be paid from the General Fund of the county. The Commissioners Court of the county of the sheriff's residence may, upon the written and sworn application of the sheriff stating the necessity therefor, purchase equipment for a Bureau of Criminal Identification such as cameras, fingerprint cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas, and other equipment in keeping with the system in use by the Department of Public Safety of this State or the United States Department of Justice and/or Bureau of Criminal Identification. If such expenses be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the county auditor, if any, otherwise by the Commissioners Court; and if it appears that any item of such expense was not incurred by such officer or such item was not a necessary expense of office, such item shall be by such auditor or court rejected, in which case the collections of such item may be adjudicated in any court of competent jurisdiction. The amount of salaries paid to assistants and deputies shall also be clearly shown by such officer, giving the name, position, and amount paid each; and in no event shall any officer show any greater amount than actually paid any such assistant or deputy. The amount of such expenses, together with the amount of salaries paid to assistants, deputies, and clerks, shall be paid out of the fees earned by such officer. The Commissioners Court of the county of the sheriff's residence may, upon the written and sworn application of the sheriff stating the necessity therefor, allow one or more automobiles to be used by the sheriff in the discharge of his official duties, which, if purchased by the county, shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county, and they shall be and remain the property of the county. The expense of maintenance, depreciation, and operation of such automobiles as may be allowed, whether purchased by the county or owned by the sheriff or his deputies personally, shall be paid for by the sheriff and the amount thereof shall be reported by the sheriff, on the report above mentioned, in the same manner as herein provided for other expenses. [As amended, Acts 1941, 47th Leg., p. 1390, ch. 629, § 1.]

(b) Each officer named in this Act, where he receives a salary as compensation for his services, shall be entitled and permitted to purchase or charge to his county all reasonable expenses necessary in the proper and legal conduct of his office, premiums on officials' bonds, premiums on fire, burglary, theft, robbery insurance protecting public funds, and including the cost of surety bonds for his deputies, provided that expenses incurred for premiums on officials' bonds for the county treasurer, county auditor, county road commissioners, county school superintendent, and the hide and animal inspector, including the cost of surety bonds for any deputies of any such officers, may be also included, and such expenses to be passed on, predetermined and allowed in the time and amount, as nearly as possible, by the Commissioners Court once each month for the ensuing month, upon the application by each officer, stating the kind, probable amount of expenditure and the necessity for the expenses of his office for such ensuing month, which application shall, before presentation to said court, first be endorsed by the county auditor, if any, otherwise the county treasurer, only as to whether funds are available for payment of such expenses. The Commissioners Court of the county of the sheriff's residence may, upon the written and sworn application of the sheriff stating the necessity therefor, purchase equipment for a Bureau of Criminal Identification, such as cameras, fingerprint cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas and other equipment, in keeping with the system in use with the Department of Public Safety of this State, or the United States Department of Justice and/or Bureau of Criminal Identification.

Such purchases shall be made by each officer, when allowed, only by requisition in manner provided by the county auditor, if any, otherwise by the Commissioners Court. Each officer, shall, at the close of each month of his tenure of office, make an itemized and sworn report of all approved expenses incurred by him and charged to his county, accompanying such report with invoices covering such purchases and requisitions issued by him in support of such report. If such expenses be incurred in connection with any particular case, such report shall name such case. Such report, invoices, and requisitions shall be subject to the audit of the county auditor, if any, otherwise by the Commissioners Court, and if it appears that any item was not incurred by such officer, or that such item was not a necessary or legal expense of such office, or purchased upon proper requisition, such item shall be by said county auditor or court rejected, in which case the payment of such item may be adjudicated in any court of competent jurisdiction. All such approved claims and accounts shall be paid from the Officers Salary Fund unless otherwise provided herein.

The Commissioners Court of the county of the sheriff's residence may, upon the written and sworn application of such officer, stating the necessity therefor, allow one or more automobiles to be used by the sheriff in the discharge of official business, which, if purchased by the county shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county and they shall be reported and paid in the same manner as herein provided for other expenses.

Where the automobile or automobiles are owned by the Sheriff or his deputies, they shall be allowed four (4) cents for each mile traveled in the discharge of official business, which sum shall cover all expenses of the maintenance, depreciation, and operation of such automobile. Such mileage shall be reported and paid in the same manner prescribed for other allowable expenses under the provisions of this section. No automobile shall be allowed for any Deputy Sheriff except those regularly employed in outside work. It shall be the duty of the County Auditor, if any, otherwise the Commissioners Court, to check the speedometer reading of each of said automobiles, owned by the county once each month and to keep a public record thereof; no automobile owned by the county shall be used for any private purpose.

(c) Provided that in all counties of this State having a population of not less than thirty thousand, nine hundred (30,900) and not more than thirty thousand, nine hundred and fifty (30,950) according to the last preceding Federal Census wherein there is no District Attorney and the Criminal District Attorney performing the duties of a District Attorney, such Criminal District Attorney performing the duties of a District Attorney shall be empowered and permitted to incur reasonable and necessary expenses in investigating crime and accumulating evidence in criminal cases; and shall be allowed Three (3) Cents a mile for each mile traveled by him in an automobile furnished by him in the discharge of official business, which sum shall cover all expenses of the maintenance, depreciation, and operation of such automobile; such expenses shall be reported to the Commissioners Court of each county affected by this Act as other expenses are reported and shall be paid by said Commissioners Court as such other expenses are paid. [Acts 1923, p. 405; Acts 1933, 43rd Leg., p. 734, ch. 220, § 4; Acts 1935 44th Leg., p. 718, ch. 311, § 1; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 11; Acts 1937, 45th Leg., p. 1340, ch. 498, § 1; Acts 1937, 45th Leg., 1st C.S., p. 1817, ch. 37, § 1; Acts 1941, 47th Leg., p. 1390, ch. 629, §§ 1, 2.]

Section 2 of the amendment of 1937 provided that the provisions of such act should be cumulative of all laws not in conflict therewith.

Senate concurrent resolution No. 40 filed in the Department of State May 17, 1935 without the Governor's signature, omitting the whereas provisions, reads as follows: "Resolved, by the Senate of the Forty-fourth Legislature of the State of Texas, the House of Representatives concurring, that it was the intention of the Legislature that the Sheriffs of this State be permitted to charge as reasonable expenses for the operation of their automobiles a maximum sum of Fifty ($50.00) Dollars per month per car; and be it further

"Resolved, That the Commissioners' Court and County Auditors and other County and State officials are hereby requested and instructed to so construe said Statute and to allow the Sheriffs of this State a maximum sum of Fifty ($50.00) Dollars, per car per month, for the operating expenses of all such cars, as are reasonably necessary to a proper discharge of the duties of the Sheriffs of this State."

Art. 3899a. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

Article repealed was Acts 1929, 41st Leg., p. 37, ch. 12.

Art. 3899b. Offices, office supplies, furniture and automobiles; aid for district attorneys.— Section 1. There shall be allowed to County Judges, Clerks of the District and County Courts, Sheriffs, County Treasurers, Tax Assessors and Collectors, such books, stationery, including blank bail bonds and blank complaints, and office furniture as may be necessary for their offices, to be paid for on the order of the Commissioners Court out of the County Treasury; and suitable offices shall also be provided by the Commissioners Court for said officers at the expense of the county. And such books and stationery as are necessary in the performance of their duties shall also be furnished Justices of the Peace by said Commissioners Court. Provided all purchases herein must be approved by Commissioners Court, and must be made under the provisions of Article 1659, Revised Civil Statutes of Texas, 1925.

Sec. 2. Suitable offices and stationery and blanks necessary in the performance of their duties may in the discretion of the Commissioners Court also be furnished to resident District Judges, resident District and County Attorneys, County Superintendents and County Surveyors, and may be paid for on order of the Commissioners Court out of the County Treasury.

Sec. 3. In addition to the expenditures authorized in the preceding paragraphs, Nos. 1 and 2 of said Article 3899b, in all Counties having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants according to the preceding or any future Federal Census, the Commissioners Court of the County of the Tax Assessor and Tax Collector's residence may, upon the written and sworn application of such officer, stating the necessity therefor, allow one or more automobiles to be used by the Tax Assessor and Collector or his deputies in the discharge of official business, which, if purchased by the County shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the County. All expenses incurred in the operation, repair, and maintenance of such automobile or automobiles purchased by the County shall be incurred and paid in the manner provided by subdivision 1 of Section 19 of Acts, 1935, Forty-fourth Legislature, Second Called Session, Chapter 465.[1] The Commissioners Court may, in lieu of the purchase of automobiles for the use of the Assessor and Collector of Taxes, authorize the use of personally owned automobiles of the Assessor and Collector of Taxes or his deputies in which event such Assessor and Collector of Taxes or his deputies shall file monthly sworn reports with the County Auditor showing mileage covered by such automobiles on official business and the nature thereof and may be allowed Four (4) Cents per mile for each mile traveled which sum shall cover all expenses of maintenance, operation, and depreciation, and claims therefor shall be audited and allowed in the manner provided by Section 19 of Acts, 1935, Second Called Session, Chapter 465, for other expenses of County and District Officers. The District Attorney or Criminal District Attorney may be allowed by order of the Commissioners Court of his County, such amount as said Court may deem necessary to pay for, or aid in, the proper administration of the duties of such office not to exceed Twenty-five Hundred Dollars ($2500) in any one calendar year; provided that such amounts as may be allowed shall be allowed upon written application of such District Attorney or Criminal District Attorney showing the necessity therefor, and provided further that said Commissioners Court may require any other evidence that it may deem necessary to show the necessity for such expenditures, and that its judgment in allowing or refusing to allow the same shall be final.

No expenditures made in accordance with the preceding paragraph shall lessen or diminish the amount of fees that said District Attorney or Criminal District Attorney may retain or receive as compensation under the terms of Articles 3883 and 3891 of the Revised Civil Statutes as amended by the Acts of the Forty-third Legislature or under the terms of Article 3892 of said Statutes as amended by the Acts of the Forty-first Legislature and this Act shall be cumulative of any other Act now in effect permitting such Commissioners Court to defray, or aid in defraying the

expenses incurred by such County Tax Assessor and Collector, or District Attorneys or Criminal District Attorneys, and all such Acts shall be and remain valid and effective and wholly unaffected hereby. [Acts 1929, 41st Leg., p. 448, ch. 207; Acts 1935, 44th Leg., p. 726, ch. 316, § 1; Acts 1945, 49th Leg., p. 182, ch. 140, § 1.]

1 Article 3912e.

Art. 3899c. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

Acts 1933, 43rd Leg., p. 734, ch. 220, § 9 repeals the amendatory Act 1931, 42nd Leg., Spec.L. p. 284, ch. 146, § 1, but makes no reference to the original Act 1929, 41st Leg. 1st C.S. p. 221, ch. 90, which read as follows:

"Section 1. In all counties having a population not less than ten thousand and fifteen and not more than ten thousand and forty as shown by United States Census of 1920, the Commissioners' Court may pay the sheriff for summoning jurors in District or County Courts, serving all legal notices to overseers of roads, and doing all other public business for which compensation is not otherwise provided for, not exceeding Twenty-five Hundred Dollars per annum, to be fixed by the Commissioners' Court at the same time other ex officio salaries are fixed, and to be paid out of the General Fund of the county. .

"Sec. 2. The Commissioners' Court in the counties mentioned in Section 1 of this Act are further authorized upon the written sworn application of the sheriff stating the necessity therefor to purchase an automobile to be used by the sheriff in the discharge of his official duties and to pay for same, together with expense of maintenance and operation of same, out of the General Fund of the county."

Counties having population of 13,950 to 14,050, not exceeding $2,500.00: Special Laws 1931, p. 442, ch. 224.

Art. 3900. [Repealed by Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 10.]

Art. 3901. [3899] Collector and assessor.—Each assessor and collector of taxes, at the time of his settlement with the Comptroller of Public Accounts of the State of Texas, shall file with the Comptroller a copy of the sworn statement required under Article 3897 as herein amended. [Acts 1st C.S. 1897, p. 11; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 12.]

Art. 3901—1. Maximum fees of collectors—assessors in counties of 13,350 to 13,440 population.—Section 1. In all counties having a population of not less than thirteen thousand, three hundred and fifty (13,350) and not more than thirteen thousand, four hundred and forty (13,440), according to the most recent available Federal Census and each available Federal Census thereafter, the Assessors-Collectors of Taxes of such counties shall be entitled to receive the fees of office earned by their offices in accordance with the provisions of the Maximum Fee Bill; provided, however, that in such counties the maximum amount of fees which may be retained by such officer, including all excess fees, shall be Four Thousand Dollars ($4,000), provided such office earns sufficient fees to pay this amount.

Sec. 2. Each Assessor-Collector of Taxes earning fees in excess of Four Thousand Dollars ($4,000) shall make disposition of such excess in accordance with the provisions of the Maximum Fee Bill. All Assessors-Collectors in counties hereby affected shall be entitled to deputies and assistants in the manner authorized in the Maximum Fee Bill. [Acts 1937, 45th Leg., 1st C.S., p. 1826, ch. 45.]

Section 3 of the Act of 1937 amended art. 1645. Section 4 related to partial invalidity. Section 5 repealed all conflicting laws and parts of laws.

Art. 3902. [3903] Deputies, assistants or clerks; appointment; compensation and salaries; increase.—Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners' Court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office. Upon the entry of such order the officers applying for such assistants, deputies or clerks shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The compensation which may be allowed to the deputies, assistants or clerks above named for their services shall be a reasonable one, not to exceed the following amounts:

1. In counties having a population of twenty-five thousand (25,000) or less inhabitants, first assistant or chief deputy not to exceed Eighteen Hundred ($1800.00) Dollars per annum; other assistants, deputies or clerks not to exceed Fifteen Hundred ($1500.00) Dollars per annum each.

1-a. In counties having a population of twenty-five thousand (25,000) inhabitants or less, according to the last preceding Federal Census, and whose tax values exceed One Hundred Million Dollars ($100,000,000), according to the last approved tax rolls, the first assistant to the Tax Assessor and Collector and the first assistant to the County Clerk may each receive an annual salary of not to exceed Three Thousand Dollars ($3,000) per annum, and the cashier to the Tax Assessor and Collector and the County Clerk may each receive an annual salary of not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum. The Tax Assessor and Collector shall designate in addition to the first assistant and cashier, two heads of departments, one to be in charge of assessing and one to be in charge of collecting in such counties, who may receive an annual salary of not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum, and any additional assistants, deputies or clerks to the Tax Assessor and Collector or the County Clerk may receive an annual salary of not to exceed One Thousand, Eight Hundred Dollars ($1,800) per annum. [Added Acts 1939, 46th Leg., Spec.L., p. 736, § 1.]

Another subsection 1-a was added to this article by Acts 1939, 56th Leg., Spec.L., p. 740, § 1, see post.

1a. In counties having a population of not less than nineteen thousand, eight hundred and fifty (19,850) and not more than nineteen thousand, eight hundred and ninety-five (19,895) inhabitants, according to the last preceding Federal Census, the Commissioners Court may approve the appointment of heads of departments, when necessary, and when additional allowance for salary is deemed necessary or justified by the Commissioners Court of such counties for heads of departments or chief deputies, a sum not to exceed Two Hundred Dollars ($200) per annum may be allowed, in addition to the regular salary for such heads of departments or chief deputies, when such officers shall have previously served the county for not less than two (2) continuous years. [As added Acts 1939, 46th Leg., Spec.L., p. 740, § 1.]

Another subsection 1-a was added by Acts 1939, 46th Leg., Spec.L., p. 736, § 1, see ante.

1b. In counties having a population of not less than twenty-four thousand, five hundred (24,500) and not more than twenty-four thousand, seven hundred (24,700) inhabitants, according to the last preceding Federal census, the Commissioners Court may approve the appointment of heads of departments, when necessary, and when additional allowance for salary is deemed necessary, or justified by the Commissioners Court of such counties for heads of departments or Chief Depu-

ties, a sum not to exceed Two Hundred Dollars ($200) per annum may be allowed, in addition to the regular salary for such heads of departments or Chief Deputies, when such officers shall have previously served the County for not less than three (3) continuous years. [Added Acts 1941, 47th Leg., p. 540, ch. 334, § 1.]

2. In counties having a population of twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, first assistant or chief deputy not to exceed Two Thousand Dollars ($2,000) per annum; other assistants, deputies, or clerks not to exceed Seventeen Hundred Dollars ($1700) per annum each. Provided, however, that in all counties containing a population of not less than thirty thousand (30,000) nor more than thirty-seven thousand, five hundred (37,500), according to the last preceding Federal Census, and having a valuation in excess of Eighty-five Million Dollars ($85,000,000), and in all counties having an assessed valuation of not less than Twenty-seven Million, Five Hundred Thousand Dollars ($27,500,000) nor more than Twenty-seven Million, Seven Hundred Thousand Dollars ($27,700,000), according to the last approved tax roll, and containing a population of not less than fifty-three thousand, nine hundred (53,900) nor more than fifty-four thousand (54,000), according to the last preceding Federal Census, four (4) deputies in the Tax Collector and Assessor's office may receive not to exceed Twenty-four Hundred Dollars ($2400) per annum each, the remainder of the deputies in said office shall receive not exceeding Seventeen Hundred Dollars ($1700) per annum each. [As amended Acts 1937, 45th Leg., p. 1330, ch. 493, § 1.]

3. In counties having a population of thirty-seven thousand five hundred and one (37,501) and not more than sixty thousand (60,000) inhabitants, first assistant or chief deputy not to exceed Twenty-one Hundred ($2100.00) Dollars per annum; other assistants, deputies or clerks not to exceed Eighteen Hundred ($1800.00) Dollars per annum each. Provided that nothing in this Act shall be construed as repealing or affecting Section 2 of H. B. No. 694, Chapter 315, Acts 1935, Forty-fourth Legislature, page 724.

3a. In counties having a population of not less than forty-eight thousand nine hundred (48,900) and not more than forty-nine thousand (49,000) inhabitants, according to the preceding Federal Census, the County Judge may employ one person as office assistant, bookkeeper and stenographer at a salary to be fixed by the County Judge not to exceed Eighteen Hundred ($1,800.00) Dollars per annum, in twelve equal monthly installments out of the general fund of the county. [Added Acts 1937, 45th Leg., 2nd C.S., p. 1870, ch. 6, § 1.]

4. In counties having a population of sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants, first assistant or chief deputy not to exceed Twenty-four Hundred ($2400.00) Dollars per annum; other assistants, deputies or clerks not to exceed Twenty-one Hundred ($2100.00) Dollars per annum each.

4a. In counties having a population of sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants, according to the preceding Federal Census and containing a city of not less than fifty-two thousand (52,000) inhabitants according to the preceding Federal Census, heads of departments may be allowed by the Commissioners Court, when in their judgment such allowable is justified, the sum of Two Hundred Dollars ($200) per annum in addition to the amount hereinbefore authorized to either First Assistant or Chief Deputy, or other Assistants, Deputies or Clerks, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two (2) continuous years; provided no heads of departments shall be created except where the persons ought to be appointed shall be in actual charge of some department, with Deputies or Assistants, under his supervision, or a department approved by the Court, and only in offices capable of a bona fide subdivision into departments. [Added Acts 1937, 45th Leg., p. 581, ch. 290, § 1.]

5. In counties having a population of one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants, first assistant or chief deputy not to exceed Twenty-six Hundred ($2600.00) Dollars per annum: heads of departments may be allowed by the Commissioners' Court, when in their judgment such allowance is justified, the sum of Two Hundred ($200.00) Dollars per annum in addition to the amount herein allowed, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two continuous years; other assistants, deputies or clerks not to exceed Twenty-three Hundred ($2300.00) Dollars per annum each.

6. In counties having a population of one hundred fifty thousand and one (150,001) and not more than one hundred ninety thousand (190,000) inhabitants, first assistant or chief deputy not to exceed Three Thousand ($3,000.00) Dollars per annum; other assistants, deputies or clerks not to exceed Twenty-four Hundred ($2,400.00) Dollars per annum each. [Acts 1925, 39th Leg., p. 189, ch. 52, § 1; Acts 1929, 41st Leg., 1st C.S., p. 225, ch. 92; Acts 1931, 42nd Leg., p. 364, ch. 214; Acts 1933, 43rd Leg., p. 734, ch. 220, § 3; Acts 1934, 43rd Leg., 2nd C.S., p. 123, ch. 59, § 2; Acts 1934, 43rd Leg., 3rd C.S., p. 118, ch. 63, § 1; Acts 1935, 44th Leg., p. 667, ch. 282, § 1; p. 724, ch. 315, § 2; p. 752, ch. 327, § 2; Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465, § 14.]

7. That in all counties in this State having a population of not less than thirty-nine thousand, four hundred and ninety-six (39,496) and not more than forty thousand (40,000), according to the last preceding Federal Census, first assistant county attorneys shall be entitled to a salary of not less than Sixteen Hundred and Twenty Dollars ($1620) per annum nor more than Nineteen Hundred and Twenty Dollars ($1920) per annum, to be set by the Commissioners Court of the County. The amount of the salary shall be paid on the first of each month and in twelve (12) equal monthly payments. [Added Acts 1937, 45th Leg., p. 301, ch. 157, § 1.]

8. That in all counties of the State having a population of not less than twenty-four thousand, nine hundred (24,900) inhabitants and not more than twenty-five thousand (25,000) inhabitants, according to the last preceding Federal Census, first assistants or chief deputies shall receive a salary not to exceed Two Thousand Dollars ($2,000) per annum, and other assistant deputies or clerks shall receive salaries not to exceed Seventeen Hundred Dollars ($1700) each. [Added Acts 1941, 47th Leg., p. 153, ch. 114, § 1.]

9. The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the deputies, assistants and clerks of any district, county or precinct officer justify the increase, to enter an order increasing the compensation of such deputy, assistant or clerk in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed Thirty-six Hundred ($3600.00) Dollars. [Added Acts 1945, 49th Leg., p. 244, ch. 179, § 2.]

10. In all counties having a population of not less than fifty-one thousand seven hundred eighty-two (51,782) inhabitants, and not more than fifty-two thousand five hundred (52,500) inhabitants, according to the last preceding Federal Census, the Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the dep-

uties, assistants and clerks of any district, county, or precinct officer justify the increase, to enter an order increasing the compensation of such deputy, assistant or clerk in an additional amount not to exceed twenty (20%) per cent of the maximum sum now allowed under the present law. Provided that nothing in this Act shall be construed as repealing or affecting Sections 3 and 9 of Article 3902, Revised Civil Statutes of Texas, 1925, as amended. [Added Acts 1947, 50th Leg., p. 266, ch. 162, § 1.]

Acts 1937, 45th Leg., p. 647, ch. 317 which purports to amend article 3902, Rev.St.1925, as amended by Acts 1935, 44th Leg. 2nd C.S., p. 1762, ch. 465 is set out in article 3912e, section 16.

Acts 1937, 45th Leg., p. 647, ch. 317 which purports to amend article 3902, Rev.St.1925, as amended by Acts 1935, 44th Leg. 2nd C.S., p. 1762, ch. 465 is set out in article 3912e, section 16.

Counties of 135,000 to 190,000

Acts 1941, 47th Leg., p. 434, ch. 267, read as follows:

"Section 1. In all counties having a population of not less than one hundred and thirty-five thousand (135,000) and not more than one hundred and ninety thousand (190,000) inhabitants, according to the last preceding Federal Census, whenever any district, county, or precinct officer shall require the services of deputies, assistants, or clerks in the performance of his duties he shall apply to the County Commissioners Court of his county for authority to appoint such deputies, assistants, or clerks, stating by sworn application the number needed, the position to be filled, and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions, and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said Court shall make its order authorizing the appointment of such deputies, assistants, and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said Court may be proper; provided that in no case shall the Commissioners Court or any member thereof attempt to influence the appointment of any person as deputy, assistant, or clerk in any office. Upon the entry of such order the officers applying for such assistants, deputies, or clerks shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The compensation which may be allowed to the deputies, assistants, or clerks above named for their services shall be a reasonable one, not to exceed the following amounts: First assistant or chief deputy Twenty-six Hundred Dollars ($2600) per annum, heads of departments, other assistants, deputies, or clerks Twenty-three Hundred Dollars ($2300); first assistants or chief deputies or heads of departments may be allowed, by the Commissioners Court, when in their judgment such allowance is justified, the sum of Two Hundred Dollars ($200) per annum in addition to the amount herein allowed, when such first assistant or chief deputy or head of department so appointed shall have previously served the county or political subdivision thereof for not less than any two (2) continuous years, provided no heads of departments shall be created except where the persons sought to be appointed shall be in actual charge of some department, with deputies or assistants under his supervision or a department approved by the Court, and only in offices capable of a bona fide subdivision into departments.

"Sec. 2. All laws and parts of laws conflicting with the provisions of Section 1 of this Act are hereby repealed to the extent of such conflict."

Art. 3902a. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

Article repealed was Acts 1929, 41st Leg., 1st C.S., p. 58, ch. 24, as amended Acts 1929, 41st Leg., 2nd C.S., p. 94, ch. 55.

Art. 3902b. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

Article repealed was Acts 1927, 40th Leg., p. 410, ch. 272.

Art. 3902c. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

Article repealed was Acts 1929, 41st Leg., 2nd C.S., p. 97, ch. 58.

Art. 3902d. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

Article repealed was Acts 1927, 40th Leg., p. 409, ch. 271.

Art. 3902e. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

Article repealed was Acts 1931, 42nd Leg., p. 815, ch. 336.

Art. 3902f. [Repealed by Acts 1933, 43rd Leg., p. 734, ch. 220, § 9.]

Article repealed was Acts 1931, 42nd Leg., p. 806, ch. 330.

Art. 3902g. Deputy sheriffs in counties over 48,000.—It is hereby provided that in counties having a population of more than 48,000 as shown by the last preceding Federal Census, and containing a city of more than 15,000 population as shown by the last preceding Federal Census, located in a justice precinct other than that in which is located the county site in such county, the sheriff of such county may appoint as many deputies as the Commissioners' Court of such county may deem necessary. [Acts 1935, 44th Leg., p. 53, ch. 17, § 1.]

Art. 3902h. Deputy assessor—collector of taxes in counties 140,000 to 220,000.—In all counties in this state having a population of not less than one hundred forty thousand (140,000) nor more than two hundred twenty thousand (220,000), according to the last preceding Federal Census or any future Federal Census, the Commissioners Court may employ one deputy Assessor-Collector of Taxes in each of such counties who shall receive a salary not to exceed Thirty-six Hundred ($3,600.00) Dollars per annum, payable in equal monthly installments; provided however, that said deputy Assessor-Collector of Taxes shall possess special technical training, skill and experience as to valuations of oil and mineral bearing lands, properties and interests therein, industrial and refining plants, synthetic rubber plants, wharfs, docks and other transportation facilities, shipyards and other properties where special technical skill and training are required. The Commissioners Court in such counties may contract with such deputy who shall work under the Assessor-Collector of Taxes, but such contract shall be terminable at the will of either party. To be valid any such contract of employment shall be in writing, shall be signed by the parties thereto, and shall be approved as to substance and form by the County Auditor and by the County Attorney. It is further provided that the Commissioners Court in any such counties, by order duly entered, shall be empowered to immediately terminate any such contract of employment as is provided for by this Section. [Acts 1943, 48th Leg., p. 382, ch. 257, § 3.]

Section 5 of the Act of 1943 provided that if any part of section of this Act shall be held unconstitutional, it shall not in anywise affect the remaining part of the Act; section 6 repealed all conflicting laws.

Acts 1943, 48th Leg., p. 382, ch. 257, authorizing employment of deputy assessor-collector of taxes in counties of 140,000 to 220,000, applicable to Jefferson county only, was unconstitutional as a special law and in violation of constitutional requirement that no bill shall contain more than one subject which shall be expressed in title. Oakley v. Kent, Civ.App., 181 S.W.2d 919.

Art. 3902h—1. Deputy assessor-collector of taxes in counties with assessed valuation of $20,000,000 to $25,000,000.—In all counties in this State having an assessed property valuation of not less than Twenty Million Dollars ($20,000,000) and not more than Twenty-five Million Dollars ($25,000,000) on the ad valorem tax rolls of said counties approved as provided by law for the year 1946, it shall be the duty of the Commissioners Court in said counties at the first regular meeting following the effective date of this Act to determine the advisability of increasing the compensation of the First Assistant or Chief Deputy to the Tax Assessor-Collector of said county. If deemed necessary, expedient or advisable, said Commissioners Court, by order effective thirty (30) days after the passage thereof, may fix the salaries or compensation of said First Assistant or Chief Deputy Tax Assessor-Collector in and for said counties at not less than the present minimum provided by law, and not to exceed Three Thousand, Six Hundred Dollars ($3,600) per annum, payable as present salaries of said officers are now paid, in equal monthly installments.

Sec. 2. All laws and parts of laws in conflict herewith are hereby repealed, with the exception that said repeal shall apply only to the counties designated by

this Act, and only as to the officers affected. [Acts 1947, 50th Leg., p. 377, ch. 211, § 1.]

Art. 3903. [3903] Special deputy district clerk.—In counties of two hundred thousand inhabitants and over containing a city of over one hundred and sixty thousand inhabitants, and in which counties there are more than one district court, including criminal district courts, the clerk of the district courts shall appoint a special deputy for each court when directed so to do by the judge of any such court. Any such special deputy shall be paid out of the general fund of the county, a salary not in excess of the maximum salary per annum provided herein for deputies, payable monthly and such compensation shall not be paid out of the fees or compensation of the district clerk, and shall not be taken into consideration in arriving at the maximum compensation and excess fees allowed the clerk of the district courts. [Acts 1925, 39th Leg., p. 189, ch. 52, § 1.]

Art. 3903a. Special deputy district clerks in counties of 355,000.—That in counties of more than three hundred and fifty-five thousand (355,000) population according to the last preceding Federal Census, and in which counties there are more than one District Court, including Criminal District Courts, the Clerk of the District Court may appoint a special Deputy for each Court when directed so to do by the Judge of any such Court. Any such special Deputy shall be paid out of the General Funds of the county a salary to be fixed by the Commissioners' Court of said county not to exceed the maximum amount fixed by Article 3902 of the Revised Civil Statutes, as amended by the Acts of the Forty-third Legislature, for salaries of Deputies and/or heads of departments, other than the first assistant or chief Deputy. [Acts 1934, 43rd Leg., 2nd C.S., p. 122, ch. 57, § 1.]

Art. 3903b. Special deputy in counties of more than 132,000 and less than 150,000, salary.—In counties having a population of more than one hundred and thirty-two thousand (132,000), and less than one hundred and fifty thousand (150,000) inhabitants as shown by the latest United States Census, and in which counties there is more than one District Court, including a Criminal District Court, the Clerk of the District Court may appoint a special deputy for each Court when directed so to do by the Judge of any such Court. Any such special deputy shall receive a salary of One Hundred and Seventy-five Dollars ($175) per month, to be paid out of the General Funds of the county and such compensation shall not be paid out of the fees or compensation of the District Clerk, and shall not be taken into consideration in arriving at the maximum compensation and excess fees allowed the Clerk of the District Courts. [Acts 1935, 44th Leg., p. 740, ch. 321, § 1.]

Art. 3903c. Assistant to County Judge in counties of 48,600 to 49,000; salary.—Section 1. The County Judge in all counties in Texas having a population of not less than forty-eight thousand, six hundred (48,600) nor more than forty-nine thousand (49,000) according to the last preceding or any future Federal Census be empowered to appoint an Assistant.

Sec. 2. The salary of such Assistant shall be in an amount not to exceed Eighteen Hundred Dollars ($1800) per annum and shall be subject to the consent and approval of the Commissioners Court of such counties. [Acts 1939, 46th Leg., Spec.L., p. 750.]

Section 3 of the Act of 1939 repealed all conflicting laws and parts of laws.

Art. 3903d. Assistant to County Judge in certain counties over 90,000; Secretary in lieu of stenographer.—Section 1. In all counties in Texas of more than ninety thousand (90,000) population, according to the last preceding Federal Census, and in which counties the last preceding assessed tax valuation was in excess of Ninety Million ($90,000,000.00) Dollars, and in which counties there is no County Court-at-Law, the County Judge is empowered to appoint an Assistant. The salary of such Assistant shall be in an amount not to exceed Four Thousand Two Hundred ($4,200.00) Dollars per annum and shall be subject to the consent and approval of the Commissioners Court of such counties.

Sec. 2. The County Judge in any such county may also appoint one Secretary in lieu of the stenographer which he may now appoint as provided by law. The salary of such Secretary shall be set by the Commissioners Court of such county at an amount not to exceed Two Thousand Seven Hundred ($2,700.00) Dollars per annum, and such Secretary shall be removable at the will of the County Judge of such county. [Acts 1947, 50th Leg., p. 775, ch. 384.]

Art. 3904. [3906—7—12—23] No fee allowed.—No clerk or justice of the peace shall be entitled to any fee for the examination of any paper or record in his office, nor for filing any process or paper issued by him and returned into court, nor for motions or judgments upon motions for security for costs, nor for taking and approving a bond for costs. A judgment containing several orders shall be considered as one judgment, and only one fee shall be charged by said clerk or justice for entering or rendering the same. [Acts 1876, p. 285; G. L. vol. 8, p. 1120.]

Art. 3905. [3908] [2478] [2414] Fee for acknowledgment.—Officers authorized by law to take acknowledgment or proof of deeds or other instruments of writing shall receive the same fees for taking such acknowledgment or proof as are allowed notaries public for the same services. [Id.]

Art. 3906. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 140.

Art. 3907. [3913] [2483] [2419] Fee book.—Every officer entitled by law to charge fees for services shall keep a fee book, and shall enter therein all fees charged for services rendered, which fee book shall, at all times be subject to the inspection of any person wishing to see the amount of fees therein charged. [Acts 1876, p. 285.]

Art. 3908. [3914] [2484] [2420] To itemize costs.—None of the fees mentioned in this title shall be payable to any person whomsoever until there be produced, or ready to be produced, unto the person owing or chargeable with the same, a bill or account in writing containing the particulars of such fees, signed by the clerk or officer to whom such fees are due, or by whom the same are charged, or by the successor in office, or legal representative of such clerk or officer. [Id.]

Art. 3909. [3915] [2485] [2421] Extortion.—If any officer named in this title shall demand and receive any higher fees than are prescribed to them in this title, or any fees that are not allowed by this title, such officer shall be liable to the party aggrieved for fourfold the fees so unlawfully demanded and received by him. [Id.]

Art. 3910. [3916] [2486] [2422] Fees posted.—County judges, clerks of the district and county courts, sheriffs, justices of the peace, constables and notaries public of the several counties shall keep posted up, at all times, in a conspicuous place in the [1] respective offices a complete list of fees allowed by law to be charged by them respectively. [Id.]

[1] So in enrolled bill. Probably should read "their".

Art. 3911. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rule 17.

Art. 3912. [Repealed by Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 10.]

Art. 3912a. County judge as budget officer in counties of over 300,000; compensation of officers; preparation.

Budget, preparation of

Sec. 1. The County Judge of each county in which the population according to the last preceding Federal Census exceeds three hundred thousand (300,000) inhabitants and does not exceed three hundred fifty-five thousand (355,000) inhabitants, in his capacity as budget officer for the Commissioners Court in each county shall, during the month of November of each year, assisted by the County Auditor, prepare a budget to cover all proposed expenditures for the offices of the Sheriff, County Clerk, District Clerk, Tax Assessor, Tax Collector, and/or Tax Collector-Tax Assessor, Criminal District Attorney, Constables and Justices of the Peace for the year beginning the following January 1st. Such budget shall be carefully itemized and shall include the salaries and number of deputies and assistants in each of said offices, and all other expense necessary for the operation of said offices. Such budget shall provide for the amount to be paid for each office out of the fees of office and the amount to be appropriated out of the General Fund by the Commissioners Court, and such appropriations shall be within the discretion of the Commissioners Court. In the preparation of the budget for each of said offices the County Judge shall make such investigation as may be deemed necessary and shall also have authority to require any officer of the county and/or officer-elect of the county to furnish such information concerning his office as may be necessary in the preparation of such budget.

Hearing; filing; expenditures; amendment

Sec. 2. Prior to the 15th day of December of each year the County Commissioners Court shall provide for a public hearing on the proposed budget, after notice in some paper of general circulation in the county. Any citizen of such county shall have the right to be present and participate in said hearing. Prior to the 20th day of December of each year the budget shall be acted upon by the Commissioners Court, and the Court in entering its order shall take into consideration any and all information obtained, and may make such changes in the proposed budget as it may deem advisable for the interests of the people. When the budget for the said offices has been finally approved by the Commissioners Court the order approving same, together with a copy of the budget, shall be filed with the Clerk of the County Court, and a certified copy thereof filed in the office of the State Comptroller. The expenditures of the officers shall be in strict conformity with the budget adopted by the Commissioners Court; provided and except, however, that the Commissioners Court is authorized to make, from time to time such amendments increasing or decreasing appropriations provided for in such budget as are in the judgment of the Court necessary, and no additional expense and/or change in the expenditures may be made until after such expense and/or change has been authorized by the Court. In every case where the budget is amended by the Court the order amending same shall state fully the reasons and the necessity for such amendment; and a copy of same shall be filed with the Clerk of the County Court and attached to the budget originally adopted.

Deputies, assistants and employees

Sec. 3. The Commissioners Court in providing such budget is expressly authorized to fix the compensation for each deputy, assistant, and employee of said officers named in Section 1, regardless of the limitations and maximums now provided by any other law or laws, and to determine the number of the deputies, assistants, and employees of said officers named in Section 1, regardless of the number provided and/or required by any other law or laws.

Penalty for failure to comply

Sec. 4. If any of the officers named in Section 1 hereof shall fail to comply with the provisions of this Act such officer shall be liable to a penalty of Twenty-five Dollars ($25.00) for each day such officer fails to comply with each of the provisions hereof; and in case of such failure it shall be the duty of the Commissioners Court to bring suit to recover against such officer for such purpose.

Repeal

Sec. 5. All laws and parts of laws in conflict herewith are hereby repealed as applied to all counties coming within the provisions of this Act. [Acts 1933, 43rd Leg., p. 107, ch. 54.]

Art. 3912a—1. County judge as budget officer in counties of 7,050 to 7,075; compensation.— The County Judge of each county containing a population of not less than seven thousand and fifty (7,050) and not more than seven thousand and seventy-five (7,075) inhabitants, according to the last preceding Federal Census, shall receive and be paid out of the General Fund of such counties the sum of Three Hundred Dollars ($300) per annum, payable in equal monthly installments, as compensation for his services as budget officer in such counties and said compensation herein provided shall be in addition to all salaries and/or compensations now provided by law for County Judges to receive. [Acts 1941, 47th Leg., p. 742, ch. 463, § 1.]

Section 2 of the Act of 1941 repealed all conflicting special or general laws. Section 3 made the Act effective Jan. 1, 1943.

Art. 3912b. [Repealed.]

Acts 1933, 43rd Leg., p. 128, ch. 60, § 1, constituting this article is a special law relating only to Bexar County and repealed by Acts 1933, ch. 220, see Bexar County v. Tynan (Civ.App.) 69 S.W.(2d) 193.

Art. 3912c. Compensation of county judge in counties of 195,000 to 200,000; stenographer; salary.—Sec. 1. That in all counties of the State which have a population of not less than one hundred and ninety-five thousand (195,000) and not more than two hundred thousand (200,000), according to the last preceding census of the United States, there shall be paid to the County Judge out of the General Funds of the county the sum of Three Hundred and Seventy-five Dollars ($375.00) per month on the first day of each calendar month, which sum shall be accounted for as fees of office, and provided said compensation from all sources, including this, shall not exceed the maximum sum now or hereafter allowed by law.

Sec. 2. The Commissioners' Court of such county shall, on application to the County Judge, authorize the County Judge to employ a stenographer at a salary of from One Hundred Dollars ($100.00) to One Hundred and Twenty-five Dollars ($125.00) per month, and such extra help as the Commissioners' Court may deem advisable and necessary at a salary of not exceeding Thirty Dollars ($30.00) per week, providing such extra help shall not be employed for more than one person for three (3) months in any one calendar year. The salary of such stenographer and such extra help shall be paid out of the General Funds of the county. [Acts 1934, 43rd Leg., 3rd C.S., p. 36, ch. 20.]

Art. 3912d. Compensation of officers in counties of 355,000 or over.

Compensation of certain officers; expenses; fees, use of

Sec. 1. In all counties having a population of three hundred fifty-five thousand (355,000) inhabitants or more according to the last preceding or any future Federal Census, the County Judge, Sheriff, County Clerk, Criminal District Attorney, District Clerk, Assessor and Collector of Taxes, Justices of the Peace and Constables thereof, shall, subject to the conditions hereinafter set out, be entitled to draw and receive such annual compensation as is

allowed them under the terms of Article 3883 of the Revised Civil Statutes, as amended by Section 1 of Chapter 220 of the Acts of the Forty-third Legislature, appearing at Page 734 of said Acts, in monthly installments in all cases in which the earnings and/or collections are sufficient for the purpose, and such of the deputies, assistants, and employees of said officials as are now or may be compensated from fees of office shall also be authorized to receive such compensation as is now or may hereafter be provided for them by law in monthly installments provided the earnings and/or collections are sufficient for the purpose, and the payment of such compensation to such officials and their deputies, assistants, and employees is hereby authorized to be made in twelve monthly installments, the same to be as nearly equal as the circumstances will permit, the same to be paid as nearly as possible on the first day of each calendar month for services rendered during the preceding month. Provided that all of the expenses which said officials are now or may hereafter be authorized by law to incur and pay in any calendar year from the fees of their respective offices, in the operation of said offices, other than the compensation allowed to such officers by said Article 3883 as amended as aforesaid, and that allowed or to be allowed by law to the deputies, assistants, and other employees of said officers, shall first be paid from and out of the fees earned and collected in cash by such officer during the calendar year in which such expense was incurred, and the balance remaining, if any, of the fees earned and collected in such calendar year, after the payment of the expenses incurred in such calendar year (exclusive of the said compensation of such officers and their deputies, assistants, and employees), shall then be applied ratably to the payment of said then earned or proportionate monthly compensation of such officers and their deputies, assistants, and other employees. Provided that whenever the balance of current fees is insufficient to pay such officers and their said deputies, assistants, and employees one-twelfth (1/12th) of the said compensation so authorized, or to be authorized, for them annually and due for services rendered during the preceding month, then the balance of such compensation for such services may be paid from such sums, if any, as such officers may then have on hand in cash, resulting from the collection of fees earned by their respective offices in previous years and not payable to the then, or any former, holders of said offices under the terms of Article 3892 of the Revised Civil Statutes, as amended by Section 4 of Chapter 20 of the Acts of the Forty-first Legislature, Fourth Called Session, appearing at Page 30 of the Acts of said Session under the terms and conditions hereinafter set out.

Fees earned in prior years

Sec. 2. Nothing contained in this Act shall authorize the use of fees earned in prior years and collected in the current year when current fees collected are available and sufficient for the payment (in installments as herein provided) of the Officer's primary compensation fixed by said Article 3883, his current expenses, and the authorized salaries of deputies for the current year payable from fees, and the right to use delinquent fees monthly for the purposes named herein shall in no wise alter the final application of such fees and their accounting as provided in Articles 3883, 3891, 3892, and 3902, all as amended by the Acts of the Forty-third Legislature, but each such officer shall, at the close of each calendar year, finally adjust and settle his accounts with the County as provided by the said articles last above referred to, it being the intention of this Act that the provision for the use of delinquent fees is intended to facilitate and expedite payment of salaries and expenses without repealing the provisions of the named statutes with respect to the use of current and/or delinquent fees collected during the calendar year.

Unpaid warrants; sale

Sec. 3. Subject to the terms and provisions hereinbefore set out, when, in any county subject to the terms and provisions of this Act, any of the officers hereinbefore mentioned and/or their predecessors in office, and/or the said deputies, assistants, or employees of such officers and those of their predecessors in office, are or shall be entitled to any wages, salaries, or compensation for services heretofore rendered, or hereafter to be rendered, which wages, salaries, or compensation have not been paid, and which are or may become due under the terms of this or any former or other law, and which said wages, salaries, or compensation are or may be represented by, or payable in whole or in part, from any warrants issued by the State Comptroller for fees and remaining unpaid by the State for a period of not less than thirty days, any of said officers in office may, apply to the Commissioners' Court of his County in writing for authority to sell, at the market price prevailing therefor, so many of such warrants as shall be necessary to meet and defray such unpaid wages, salaries, or compensation, setting up in his application the amount thereof unpaid; provided that such Court shall hear such application within five (5) days from the date of the filing thereof, and at such hearing shall enter its order granting the application, if the facts are found to be as alleged and the application conforms to the requirements of this Act, and shall in such order find and declare the true market price prevailing for such warrants, whereupon such officer may sell such warrants at a price not less than that fixed in the order relating thereto, and the proceeds arising from such sale shall be deposited and accounted for as fees of office as provided by law, and said officer shall be authorized to pay off and discharge said unpaid wages, salaries, and compensation in the manner provided by law; provided further that the difference between the sale price and the face value of any warrant so sold shall never be chargeable against any such officer in any settlement with his County.

Indorsement of warrants; proceeds of redemption

Sec. 4. The Commissioners' Courts of such counties are authorized to purchase such warrants from any such officers and to pay therefor, from any available county funds, the market price prevailing as determined by the Court, and such officer, upon receiving from such county an amount equivalent to such market value of such warrants is authorized to indorse over and deliver such warrants to such county, provided that whenever such warrants become redeemable in cash and such county shall obtain from the State the proceeds of such redemption, such proceeds shall be paid into and shall become a part of the general fund of such county.

Laws not repealed

Sec. 5. Nothing herein contained shall be construed as repealing, or affecting the provisions of, Article 3892 of the Revised Civil Statutes of 1925, as amended by the Acts of the Forty-first Legislature, and otherwise known as Section 4 of Chapter 20 of the Acts of the Fourth Called Session of said Legislature, appearing at page 30 of said Acts, nor as increasing or diminishing the salaries now authorized by law to be paid to any such officer, his deputies, assistants, and employees, nor as repealing, altering or affecting any of the provisions of Chapter 98 of the Acts of the Regular Session of the Forty-third Legislature, otherwise known as House Bill No. 875.[1]

[1] Articles 1656a and 1656b, ante.

Partial invalidity

Sec. 6. The invalidity of any part or portion of this Act shall be without effect upon or prejudice to the other and remaining portions thereof, which shall, nevertheless, be and remain valid, operative, and in full force and effect. [Acts 1935, 44th Leg., p. 100, ch. 34.]

Art. 3912e. Method of compensation of district and certain designated county and precinct officers.

Officers not to be paid fees or commissions

Sec. 1. No district officer shall be paid by the State of Texas any fees or commission for any service performed by him; nor shall the State or any county pay to any county officer in any county containing a population of twenty thousand (20,000) inhabitants or more according to the last preceding Federal Census any fee or commission for any service by him performed as such officer; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for, all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund or funds created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State, but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties.

Determination by Commissioners' Court as to precinct officers and officers in counties of less than 20,000

Sec. 2. The Commissioners' Court of each county in the State of Texas, at its first regular meeting in January of each calendar year, shall, by order made and entered in the minutes of said court, determine whether precinct officers of such county (except public weighers and registrars of vital statistics) shall be compensated on a salary basis as provided for in this Act, or whether they shall receive as their compensation, such fees of office as may be earned by them in the performance of the duties of their offices, and it shall be the duty of the county clerk of each county to forward to the Comptroller of Public Accounts of the State of Texas on or before the 31st day of January a certified copy of such order. In counties having a population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census, it shall likewise be the duty of the Commissioners' Court, by its order duly made and entered of record at its first regular meeting in January of each calendar year, to determine whether county officers of such county (excluding county surveyors, registrars of vital statistics and notaries public) shall be compensated for the fiscal year on the basis of an annual salary or whether they shall be compensated on the basis of fees earned by them in the performance of their official duties, and it shall also be the duty of the county clerk to forward to the Comptroller of Public Accounts of the State of Texas, on or before the 31st day of January, a certified copy of said order of said Commissioners' Court.

Additional fees of precinct officers

Sec. 2a. In all counties of this State containing a population of less than one hundred and ninety thousand (190,000) inhabitants, according to the last preceding Federal Census, wherein the precinct officers are compensated on a salary basis under the provisions of this Act, such precinct officers shall receive, in addition to the salary fixed by the Commissioners Court, all fees, commissions, or payments for performing marriage ceremonies and for acting as registrar for the Board of Vital Statistics, and for acting as ex-officio notary public. [Added Acts 1937, 45th Leg., p. 351, ch. 171, § 1.]

Payments of salaries in lieu of fees

Sec. 3. In all cases where the Commissioners' Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties.

Officers' Salary Fund in counties of less than 190,000

Sec. 4. In all counties of this State containing a population of less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census wherein the county or precinct officers are compensated on a salary basis under the provisions of this Act, there shall be created a fund to be known as the "Officers' Salary Fund of ——— County, Texas." Such fund shall be kept separate and apart from all other county funds, and shall be held and disbursed for the purpose of paying the salaries of officers and the salaries of deputies, assistants and clerks of officers who are drawing a salary from said fund under the provisions of this Act, and to pay the authorized expenses of their offices. Such fund shall be deposited in the county depository and shall be protected to the same extent as other county funds.

Fees collected deposited in Officers' Salary Fund

Sec. 5. It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. In event the Commissioners' Court finds that the failure to collect any fee or commission was due to neglect on the part of the officer charged with the responsibility of collecting same, the amount of such fee or commission shall be deducted from the salary of such officer. Before any such deduction is made, the Commissioners' Court shall furnish such officer with an itemized statement of the uncollected fees with which his account is to be charged, and shall notify such officer of the time and place for a hearing on same, to determine whether such officer was guilty of negligence, which time for hearing shall be at least ten days subsequent to the date of notice. Unless an officer is charged by law with the responsibility of collecting fees, the Commissioners' Court shall not in any event make any deductions from the authorized salary of such officer.

Apportionment of appropriations

Sec. 6. (a) In counties wherein the county officials are on a salary basis, in addition to the monies depos-

ited in said Officers' Salary Fund or funds under the provisions of Sections 1, 3 and 5 of this Act there shall be deposited therein quarterly on the first day of January, April, July and October of each year, such sums as may be apportioned to such county under the provisions of this Act, out of the available appropriations made by the Legislature for such purposes, provided, however, that in counties wherein the Commissioners' Court is authorized to determine whether county officers shall be compensated on a salary basis, no apportionment shall be made to such county until the Comptroller of Public Accounts shall have been notified of the order of the Commissioners' Court that the County officers of such county shall be compensated on a salary basis for the fiscal year, and in that case the first quarterly payment of such apportionment shall be made in fifteen (15) days after receipt of such notice by the Comptroller, and the remaining payments on the dates hereinabove prescribed. It shall be the duty of the Comptroller of Public Accounts to annually apportion to all counties in which the county officers are to be compensated on the basis of a salary any monies, appropriated for said year for such apportionment; each county entitled to participate in such apportionment shall receive for the benefit of its Officers' Salary Fund or funds its proportionate part of the appropriation which shall be distributed among the several counties entitled to participate therein, on the basis of the per capita population of each county according to the last preceding Federal Census; provided that the annual apportionment for such purposes shall not exceed fourteen (14¢) cents per capita of said population of each county where county officers are compensated on a salary basis under the provisions of this Act. Provided that in all counties which had a population of less than sixty thousand (60,000) inhabitants in 1930 according to the last preceding Federal Census and which now have ad valorem valuations for all purposes according to the last approved tax roll of such county, which have increased at least fifty (50) per cent over the valuation for 1930, the amount to be paid to each of said counties for its salary fund shall be the sum not to exceed twenty-five (25¢) cents per capita based on the 1930 population. The quarterly payment of such apportionment of such appropriation shall be made on warrants drawn by the State Comptroller upon the State Treasury payable to the county treasurer of the county in whose favor the apportionment is made and said warrants shall be registered by the Comptroller and the Treasurer and shall be mailed by the Comptroller to the treasurer of the county.

(b) No officer receiving a salary shall hereafter receive any ex officio compensation; provided, however, the Commissioners' Court shall transfer from the General Fund of the County to the Officers' Salary Fund or funds of such county such funds as may be necessary to pay the salaries and other claims chargeable against the same when the monies deposited therein are insufficient to meet the claims payable therefrom.

(c) Any monies remaining in the Officers' Salary Fund or funds of any county at the end of any fiscal year after all salaries and authorized expenses incurred against said fund for said year shall have been paid may be, by order of the Commissioners' Court, transferred to the credit of the General Fund of the county.

Warrants on Officers' Salary Fund

Sec. 7. All monies drawn from said Officers' Salary Fund or funds shall be paid out only on warrants approved by the county auditor in counties having a county auditor; otherwise all claims against said fund shall first have been audited and approved by the Commissioners' Court of said county and the monies shall be disbursed on such approved claims by warrants drawn by the county treasurer on said fund.

No warrant shall be drawn on said fund or funds in favor of any person indebted to the State, county or to said fund or in favor of his agent or assignee until such debt is paid.

Amendment of acts

Sections 8 to 12 amend articles 3896 to 3901, ante.

Commissioners' Court to fix salaries of certain officers; increase

Sec. 13. The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessor and collector of taxes, county judge, county attorney, including criminal district attorneys and county attorneys who perform the duties of district attorneys, district clerk, county clerk, treasurer, hide and animal inspector. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; provided that in counties having a population of twenty thousand (20,000) and less than thirty-seven thousand five hundred (37,500) according to the last preceding Federal Census, and having an assessed valuation in excess of Fifteen Million ($15,000,000.00) Dollars, according to the last approved preceding tax roll of such county the maximum amount allowed such officers as salaries may be increased one (1%) per cent for each One Million ($1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Fifteen Million ($15,000,000.00) Dollars valuation over and above the maximum amount allowed such officers under laws existing on August 24, 1935; and provided that in counties having a population of thirty-seven thousand five hundred (37,500) and less than sixty thousand (60,000) according to the last preceding Federal Census, and having an assessed valuation in excess of Twenty Million ($20,000,000.00) Dollars, according to the last preceding approved tax roll of such county, the maximum amount allowed such officers as salaries, may be increased one (1%) per cent for each One Million ($1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Twenty Million ($20,000,000.00) Dollars valuation over and above the maximum amount allowed such officer under laws existing on August 24, 1935.

(a) The Commissioners Court may authorize the employment of a stenographer by the county judge and pay for such services out of the General Fund of the county to an amount not to exceed Fifteen Hundred Dollars ($1500) per year. [As amended Acts 1945, 49th Leg., p. 626, ch. 356, § 1.]

(b) The compensation of a criminal district attorney or county attorney performing the duties of district attorney, together with the compensation of his assistants, shall be paid out of the County Officers' Salary Fund, but the State shall pay into such fund each year an amount equal to a sum which bears the same proportion to the total salary of such criminal district attorney or county attorney performing the duties of a district attorney, together with the salary of his assistants, as all felony fees collected by such official during the year of 1935 bear to the total fees collected by such official during such year.

(c) The Commissioners Courts of the respective counties of Texas having a population of more than forty-six thousand, one hundred (46,100) and less than forty-six thousand, two hundred (46,200), according to the last preceding Federal Census, are hereby authorized to fix the salary of the County Treasurer of their particular county at any sum not less than Fifty Dollars ($50) per month. In the determination of such

salary the Court will consider the fees received by such office during the preceding fiscal year, the expenses of that office during the same period, and the relative duties incumbent on such officer; and shall in their discretion affix to such office such compensation as they deem just and necessary for the services rendered, within the limits hereinbefore provided. [Added Acts 1939, 46th Leg., Spec.L., p. 608, § 1.]

Section 2 of the Act of 1939 repealed conflicting laws and provided that this Act shall be interpreted as an express modification of Article 3912e, Section 13, Revised Civil Statutes of Texas of 1925, to the extent hereinbefore provided. Section 3 declared an emergency.

(d) The Commissioners Courts of the respective counties of Texas having a population of more than ninety thousand (90,000), and less than one hundred and twelve thousand (112,000), according to the last preceding Federal Census, are hereby authorized to fix the salary of the County Treasurer of the particular county at a sum not less than Six Hundred Dollars ($600) per year, nor more than Thirty-Six Hundred Dollars ($3600) per year. [Added Acts 1941, 47th Leg., p. 74, ch. 61, § 1; amended Acts 1947, 50th Leg., p. 170, ch. 107, § 1.]

(e) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing the compensation of the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred ($3600.00) Dollars. [Added Acts 1945, 49th Leg., p. 244, ch. 179, § 3.]

Section 2 of the Act of 1947 provided that "All laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict. It is the purpose and intent of this Act that this Act shall supersede and take the place of all Statutes pertaining to the salaries of County Treasurers in the counties included within the provisions of this Act, notwithstanding the provisions of any other Statute pertaining to the salaries of the Treasurers of said counties."

Amendment of act

Section 14 amends article 3902, ante.

Commissioners' Court to fix salaries of county and precinct officers in counties of less than 20,000; increase

Sec. 15. The Commissioners' Court in counties having a population of less than twenty thousand (20,000) inhabitants, according to the last preceding Federal Census at the first regular meeting in January of each calendar year, may pass an order providing for compensation of all county and precinct officers on a salary basis. The Commissioners' Court in each of such counties is hereby authorized, and it shall be its duty, to fix the salaries of Criminal District Attorneys. In the event such Court passes such order they shall pay to each of said District and County officers in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by said officer in his said official capacity for the fiscal year of 1935 and not more than the maximum allowed such officer under laws existing August 24th, 1935, and not more than the maximum amount allowed such officer under laws existing August 24, 1935 [1]; provided, that in counties having a population of less than twenty thousand (20,000) inhabitants, according to the last preceding Federal Census, and having an assessed valuation in excess of Ten Million ($10,000,000.00) Dollars according to the last preceding approved tax roll of such county the maximum amount allowed such officers as salaries may be increased one (1%) per cent for each One Million ($1,000,000.00) Dollars valuation, or fractional part thereof, in excess of said Ten Million ($10,000,000.00) Dollars valuation over and above the maximum amount allowed such officers under laws existing on August 24, 1935; provided, however, no salaries covered by this Section shall exceed the sum of Four Thousand Five Hundred ($4,500.00) Dollars regardless of the percentage of increase in population and valuation and provided further that in all counties having a population of not less than twenty thousand and one (20,001) and not more than twenty-five thousand (25,000), according to the last preceding Federal Census, and which has an assessed valuation in excess of Twenty-five Million ($25,000,000.00) Dollars according to the last preceding approved tax roll of such counties, the county judge, sheriff, county attorney, assessor and collector of taxes, county clerk and district clerk, the maximum salary is hereby fixed at Three Thousand Seven Hundred and Fifty ($3,750.00) Dollars.

[1] Duplication of words "and not more than the maximum allowed such officer under laws existing August 24, 1935" appears in enrolled bill.

(a) The compensation of a Criminal District Attorney, or County Attorney who performs the duties of District Attorneys, together with the compensation of his assistants, shall be paid out of the County Officers' Salary Fund, but the State shall pay into such Fund each year an amount equal to a sum which bears the same proportion to the total salary of such Criminal District Attorney, or County Attorney performing the duties of a District Attorney, together with the salary of his assistants, as all felony fees collected by such official during the year of 1935 bear to the total fees collected by such official during such year.

(b) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing the compensation of the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred ($3600.00) Dollars. [Added Acts 1945, 49th Leg., p. 244, ch. 179, § 4.]

County judge's salary in counties of 24,500 to 24,700

Sec. 15a. Provided further that in all counties having a population of not less than twenty-four thousand, five hundred (24,500) and not more than twenty-four thousand, seven hundred (24,700), according to the last preceding Federal Census, and which have an assessed valuation of not less than Twenty Million Dollars ($20,000,000), according to the last preceding approved tax rolls in such counties, the county judge's salary is hereby fixed at Three Thousand, Four Hundred and Twenty Dollars ($3,420). [Added Acts 1941, 47th Leg., p. 543, ch. 338, § 1.]

Fees continued until otherwise determined in counties between 15,140 and 15,160 population; additional allowance

Sec. 16. In counties having a population of not less than fifteen thousand one hundred and forty (15,140) and not more than fifteen thousand one hundred and sixty (15,160) inhabitants according to the last preceding Federal Census, all county officers shall continue to be compensated for their services on a fee basis until the Commissioners' Court shall have determined otherwise, in accordance with the provisions of Section 2 of this Act. Provided that in counties having a population of not less than fifteen thousand one hundred and forty (15,140) and not more than fifteen thousand one hundred and sixty (15,160) inhabitants according to the last preceding Federal Census heads of departments may be allowed by the Commissioners' Court, when such allowance is justified, the sum of Two Hundred ($200.00) Dollars per annum in addition to the regular salary when such heads of departments so to be appointed shall have previously served the county or political subdivision thereof for not less

than two continuous years. [As amended Acts 1937, 45th Leg., p. 647, ch. 317, § 1.]

Precinct officers' fees continued

Sec. 17. (a) The term "Precinct Officers" as used in this Act means justices of the peace and constables.

In all counties in this State such precinct officers shall continue to be compensated for their services on a fee basis until the Commissioners' Court shall have determined otherwise in accordance with the provisions of Section 2 of this Act.

In counties wherein the Commissioners' Court shall have determined that precinct officers shall be compensated on an annual salary basis, but wherein they have determined that county officers shall not be so compensated, the Officers' Salary Fund of said county shall be composed and made up of fees, commissions and other compensation collected by the precinct officers of such county and deposited in said fund, and such funds as may be transferred to said fund by the Commissioners' Court of the county.

(b) In counties where it shall have been determined that precinct officers shall be compensated on an annual salary basis it shall be the duty of the Commissioners' Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation earned by him in his official capacity for the fiscal year 1935 and not more than the maximum amount allowed such officer under laws existing August 24, 1935.

In counties in which precinct officers are paid a salary as compensation for their services, such officers desiring to appoint one or more deputies or assistants shall make application to the Commissioners' Court for authority to appoint such deputy or deputies, in the manner and form prescribed for applications for deputy county officers by Article 3902, Revised Civil Statutes 1925, as amended within the provisions of this Act; the Commissioners' Court shall not authorize the appointment of any deputy constable at a salary exceeding Fifteen Hundred ($1500.00) Dollars per year. The salaries of deputies authorized to be appointed under the provisions of this Section shall be paid out of the Officers' Salary Fund.

In counties wherein the county officers named in this Act are compensated on the basis of an annual salary, the State of Texas shall not be charged with and shall not pay any fee or commission to any precinct officer for any services by him performed, but said officer shall be paid by the County out of the Officers' Salary Fund such fees and commissions as would otherwise be paid him by the State for such services.

Salary of criminal district attorney

Sec. 18. (a) Each criminal district attorney in this State serving a district comprising two or more counties, the population of which district exceeds one hundred and fifty thousand (150,000) inhabitants, according to the last preceding Federal Census, shall receive an annual salary of Four Thousand Five Hundred ($4,500.00) Dollars, to be paid in twelve (12) equal monthly installments, upon warrants drawn by the Comptroller of Public Accounts upon the State Treasury; provided nothing in this Section shall be construed as repealing any existing laws providing for assistants for said criminal district attorney.

(b) Such criminal district attorneys shall be allowed a sum not to exceed Five Hundred ($500.00) Dollars per annum for the necessary expenses of such office, said sum to be paid only upon the itemized sworn statement of such officer showing the necessity therefor and approved by the state auditor.

Provision applicable to counties in excess of 190,000

Sec. 19. Provisions of this Section shall apply to and control in each county in the State of Texas having a population in excess of one hundred and ninety (190,000) thousand inhabitants, according to the last preceding Federal Census.

(a) The Commissioners' Court of each such county, at its first regular meeting in January of each calendar year, shall determine by order made and entered in the minutes of said court, whether the precinct officers of such county shall be compensated on a salary basis as provided for in this Section, or whether they shall receive as their compensation such fees of office as may be earned and collected by them in the performance of the duties of their offices, subject to the limitations hereinafter provided; and it shall be the duty of the county clerk of each such county to forward to the Comptroller of Public Accounts of the State of Texas, on or before the 31st day of January, a certified copy of such order.

(b) Where the Commissioners' Court shall have determined that precinct officers in such county shall be compensated for their services by the payment of an annual salary, such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided that the provisions of this subsection shall not affect the payment of costs in civil cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Section to account for fees, commissions, and costs collected from private parties.

(c) The term "Precinct Officers" as used in this section means Justices of the Peace and Constables.

Such Precinct Officers shall continue to be compensated for their services on a fee basis until the Commissioners' Court shall have determined otherwise in accordance with the provisions of this section.

The annual fees that may be retained by any such Precinct Officer shall be Four Thousand ($4,000.00) Dollars each; provided that in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, such Precinct Officers may retain not to exceed Four Thousand, Five Hundred ($4,500.00) Dollars each.

All fees and commissions earned by such official shall be applied first to the payment of his Deputies, authorized expenses of his office and to make up the maximum provided for such officers.

All fees and commissions over and above the amount necessary to pay authorized expenses and Deputies' salaries, and to make up the maximum compensation above provided for, shall be deemed excess fees, and all excess fees not permitted to be retained shall be paid into the General Fund of the county.

Delinquent fees may be used to defray the salaries of Deputies if current fees are insufficient for that purpose; and may be used also to make up the maximum compensation, exclusive of excess fees, allowed to such officers for the fiscal year within which such fees were earned. Delinquent fees collected in excess of the amount above provided for shall be paid by the Officer collecting the same into the General Fund of the county.

Precinct Officers, as defined in this section, shall be compensated after an order duly enacted by the Commissioners' Court as herein provided, on an annual salary basis from said Officer's Salary Fund; such salaries shall be fixed by the Commissioners' Court at a reasonable sum not to exceed Four Thousand ($4,000.00) Dollars each; provided that in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, such salaries shall be fixed by the Commissioners' Court at a reasonable sum not to exceed Four Thousand, Five Hundred ($4,500.00) Dollars each; provided further that in such counties in which the Commissioners' Court determines to place Justices of the Peace and Constables on a salary basis, said Commissioners' Court shall not be required to place said sal-

aries in all precincts within the county at equal amounts, but said Commissioners' Court shall have discretion to determine the amount of salary to be paid to each of said Justices of the Peace and to each of said Constables in the several precincts in said counties within the limitations hereinabove set out. In counties where the Commissioners' Court determine to place the Justices of the Peace on a salary basis the Justice of the Peace shall receive in addition thereto all fees, commissions, or payments for performing marriage ceremonies and for acting as Registrar for the Board of Vital Statistics and when acting as Ex-officio Notary Public. [As amended Acts 1937, 45th Leg., p. 32, ch. 26, § 1.]

(d) The County Judge, Sheriff, District Attorney or Criminal District Attorney, as the case may be, District Clerk, County Clerk, and Assessor and Collector of taxes shall receive a salary of Six Thousand, Five Hundred ($6,500.00) Dollars per annum from the Officer's Salary Fund herein provided for; provided that in counties having a population of more than 355,000 inhabitants, according to the last preceding or any future Federal Census, the said officers shall receive a salary of Seven Thousand, Four Hundred ($7,400.00) Dollars per annum from the said Officer's Salary Fund. The compensation herein fixed for the Sheriff or Constable shall be exclusive of any reward received for the apprehension of criminal fugitives from justice and rewards received for the recovery of stolen property. The County Commissioners in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, shall each receive a salary of Four Thousand Eight Hundred ($4,800.00) Dollars per annum, and said salaries shall be paid in equal monthly installments, three-fourths (¾) out of the Road and Bridge Fund and one-fourth (¼) out of the General Fund of the county. The Judge of the County Court at Law of Harris County, Texas and the Judge of the County Court at Law No. 2 of Harris County, Texas each shall receive a salary of Six Thousand ($6,000.00) Dollars per annum to be paid out of the County Treasury by the Commissioners' Court in equal monthly installments. [As amended Acts 1937, 45th Leg., p. 32, ch. 26, § 1-a.]

(e) The Commissioners' Court of each county shall determine annually the salary to be paid to the County Treasurer at a reasonable sum not to exceed Three Thousand, Six Hundred ($3,600.00) Dollars per annum; provided that in counties having a population in excess of 355,000 inhabitants, according to the last preceding or any future Federal Census, the salary to be paid to the County Treasurer shall not exceed Three Thousand, Nine Hundred ($3,900.00) Dollars per annum. Said Treasurer shall be allowed to appoint one Assistant at a reasonable salary not to exceed One Thousand, Eight Hundred ($1,800.00) Dollars per annum; and said Court may allow one additional Assistant upon adequate proof of necessity at a reasonable salary not to exceed One Thousand, Five Hundred ($1,500.00) Dollars per annum. Said Assistants shall be appointed by the Treasurer and shall take the usual oath of office and, in addition thereto, shall give such surety bond as may be required by the County Treasurer or by the Commissioners' Court. Said Assistants shall have authority to do and perform in the name of the Treasurer such acts of a clerical or ministerial character as may be required of them by the County Treasurer. The County Treasurer may designate, subject to the approval of the Commissioners' Court, a named person to act for him and in his stead when he shall be absent, unavoidably detained or incapacitated. The particulars justifying such appointment shall be placed before the Commissioners' Court and such Court may require any proof in connection therewith desired. Upon approval of the Court of the appointment of the person so designated, and the recording of such appointment in the minutes of the Court, thereupon such person may act for such Treasurer during such period of absence, detention or incapacity; provided, however, that such appointment shall not become effective until such named person shall have given a surety bond in favor of the county and the County Treasurer as their interests may appear and in such amounts as the Commissioners' Court may require. [As amended Acts 1937, 45th Leg., p. 32, ch. 26, § 1-b.]

(f) The district attorney or criminal district attorney shall be authorized to appoint nine (9) assistants and fix their salaries at a rate not to exceed the following amounts: two (2) of said assistants, Four Thousand, Five Hundred Dollars ($4,500) per annum each; two (2) of said assistants, Four Thousand, Two Hundred Dollars ($4,200) per annum each; one (1) of said assistants, Three Thousand, Six Hundred Dollars ($3,600) per annum; one (1) of said assistants, Three Thousand Dollars ($3,000) per annum; and three (3) of said assistants, Two Thousand, Seven Hundred Dollars ($2,700) per annum each. He may employ three (3) investigators and fix their salaries at not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum each. He may employ two (2) court reporters and fix their salaries at not to exceed Two Thousand, Two Hundred and Eighty Dollars ($2,280) per annum each. He may employ one (1) combination stenographer and accountant and fix his salary at not to exceed Two Thousand, One Hundred Dollars ($2,100) per annum. He may employ one (1) stenographer and fix his salary at not to exceed One Thousand, Eight Hundred Dollars ($1,800) per annum. He may employ one (1) chief civil clerk and fix his salary at not to exceed Two Thousand, One Hundred Dollars ($2,100) per annum. He may employ two (2) abstracters and fix their salaries as follows: one (1) of said abstracters at not to exceed Two Thousand, One Hundred Dollars ($2,100) per annum, and the other abstracter at not to exceed One Thousand, Eight Hundred Dollars ($1,800) per annum. All such salaries above mentioned shall be payable from the Officers Salary Fund, if adequate. If inadequate, the Commissioners Court shall transfer the necessary funds from the general fund of the county to the Officers Salary Fund.

In all counties in this State containing a population of not less than two hundred and ninety thousand (290,000) nor more than three hundred and twenty thousand (320,000) inhabitants, according to the last preceding Federal Census, the district attorney or criminal district attorney shall be authorized to employ two (2) court reporters and fix their salaries as follows: one (1) of said court reporters at a salary not to exceed Three Thousand Dollars ($3,000) per annum, and one (1) of said court reporters at a salary not to exceed Two Thousand, Seven Hundred Dollars ($2,700) per annum.

Should a district or criminal district attorney be of the opinion that the number of assistants, stenographers, investigators, or other employees above provided for is not adequate for the proper investigation and prosecution of crime, and the efficient performance of the duties of his office, with the advice and consent of the Commissioners Court he may appoint additional assistants and employees as hereinafter limited and fix their salaries as follows: one (1) additional assistant to receive a salary not to exceed Four Thousand, Two Hundred and Fifty Dollars ($4,250) per annum; one (1) additional assistant or employee to receive a salary not to exceed Three Thousand, Six Hundred Dollars ($3,600) per annum; one (1) additional assistant to receive a salary not to exceed Three Thousand Dollars ($3,000) per annum; and two (2) additional assistants to receive a salary not to exceed Two Thousand, Seven Hundred Dollars ($2,700) per annum each. He may employ one (1) additional court reporter and fix his salary at a rate not to exceed Two Thousand, One Hundred and Sixty

Dollars ($2,160) per annum. He may employ one (1) stenographer and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars ($1,500) per annum. He may employ one (1) civil clerk and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars ($1,500) per annum. He may employ one (1) information clerk and fix his salary at a rate not to exceed Nine Hundred Dollars ($900) per annum, but such additional assistants or employees so appointed, before qualifying and entering upon the duties of such office and employment, shall be approved as to number and salaries by the Commissioners Court of the county in which such appointments are made, these salaries being payable from the Officers Salary Fund, if adequate. If inadequate, the Commissioners Court shall transfer the necessary funds from the general fund of the county to the Officers Salary Fund. In addition to the salary herein provided for investigators for district attorneys and criminal district attorneys, each of such investigators shall be allowed a sum not to exceed Fifty Dollars ($50) per month for repair and maintenance expense of an automobile used by said investigator in the investigation of crime, said allowances to be paid monthly by such county by warrant drawn upon said Officers Salary Fund upon the written claim of such investigator showing that said automobile was in official use, and such claim shall bear the approval of the district attorney before being paid. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1996, ch. 68, § 1.]

(f-1) The District Attorney or Criminal District Attorney in any county having a population of not less than three hundred twenty-five thousand (325,000) nor more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, shall be authorized to appoint fourteen (14) assistants and fix their salaries at a rate not to exceed the following amount: Two (2) of said assistants, Five Thousand One Hundred Seventy-five ($5,175.00) Dollars per annum each; one (1) of said assistants, Four Thousand Eight Hundred Eighty Seven ($4,887.00) Dollars per annum; two (2) of said assistants, Four Thousand Eight Hundred Thirty ($4,830.00) Dollars per annum each; two (2) of said assistants, Four Thousand One Hundred Forty ($4,140.00) Dollars per annum each; two (2) of said assistants, Three Thousand Four Hundred Fifty ($3,450.00) Dollars per annum each; and five (5) of said assistants, Three Thousand One Hundred Five ($3,105.00) Dollars per annum each. He may employ one additional assistant or employee at a salary not to exceed Two Thousand Seven Hundred Sixty ($2,760.00) Dollars per annum. He may employ two (2) Court Reporters and fix their salaries as follows: one (1) of said Court Reporters at a salary not to exceed Four Thousand One Hundred Forty ($4,140.00) Dollars per annum, and one (1) of said Court Reporters at a salary not to exceed Three Thousand Four Hundred Fifty ($3,450.00) Dollars per annum. He may employ three (3) investigators and fix their salaries not to exceed Two Thousand Seven Hundred Sixty ($2,760.00) Dollars per annum each. He may employ one (1) chief civil clerk and fix the salary not to exceed Two Thousand Four Hundred Fifteen ($2,415.00) Dollars per annum. He may employ one (1) combination stenographer and accountant and fix the salary not to exceed Two Thousand Four Hundred Fifteen ($2,415.00) Dollars per annum. He may employ two (2) abstractors and fix their salaries not to exceed Two Thousand Four Hundred Fifteen ($2,415.00) Dollars per annum each. He may employ two (2) stenographers and fix their salaries not to exceed Two Thousand Seventy ($2,070.00) Dollars per annum each. He may employ one (1) stenographer at a salary not to exceed One Thousand Seven Hundred Twenty-five ($1,725.00) Dollars per annum. He may employ one (1) information clerk at a salary not to exceed One Thousand Seven Hundred Twenty-five ($1,725.00) Dollars per annum. All of such salaries above mentioned shall be payable from the Officers' Salary Fund, if adequate. If inadequate, the Commissioners Court shall transfer necessary funds from the General Fund of the County to the Officers' Salary Fund. In addition to the salaries herein provided for investigators for District Attorneys and Criminal District Attorneys, each of such investigators shall be allowed a sum not to exceed Fifty ($50.00) Dollars per month for repair and maintenance expense of an automobile used by said investigator in the investigation of crime, said allowance to be paid monthly by such county by warrant drawn upon said Officers' Salary Fund upon the written claim of such investigator, showing that said automobile was in official use; and such claim shall bear the approval of the District Attorney or Criminal District Attorney before being paid.

Should a District Attorney or Criminal District Attorney in any county having a population of not less than three hundred twenty-five thousand (325,000) nor more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, be of the opinion that the number of assistants, stenographers, investigators or other employees above provided for is not adequate for the proper investigation and prosecution of crime and the efficient performance of the duties of his office, with the advice and approval of the Commissioners Court he may appoint such additional assistants or employees as the Commissioners Court may allow and fix their salaries in such amounts as the Commissioners Court may provide. All such salaries may be paid either from the Jury Fund or from the Officers' Salary Fund, if adequate. If inadequate, the Commissioners Court shall transfer the necessary funds from the General Fund of the county to such Officers' Salary Funds. [Acts 1941, 47th Leg., p. 1309, ch. 585, § 1; Acts 1947, 50th Leg., p. 237, ch. 137, § 1.]

(g) In addition to other sums provided in this section, the district attorney or criminal district attorney may be allowed by order of the Commissioners' Court of his county such amount as said court may deem necessary to pay for, or aid in, the proper administration of the duties of such office, not to exceed Two Thousand Five Hundred ($2,500.00) Dollars in any one calendar year; provided, that such amounts as may be allowed shall be allowed upon written application of such district attorney or criminal district attorney showing the necessity therefor, and provided further that said Commissioners' Court may require any other evidence that it may deem necessary to show the necessity for any such expenditures, and that its judgment in allowing or refusing to allow the same shall be final. No payment therefor shall be made except upon an itemized sworn statement of such expenses filed in the manner provided in this section for other expenses.

(h) Whenever any district or county officer, or precinct officer when such officer is compensated on a salary basis, with the exception of district attorneys and criminal district attorneys, shall require the services of deputies, assistants, and employees in the performance of his duties he shall apply to the Commissioners' Court for authority to appoint such deputies, assistants, and employees, stating by sworn application the number needed, the position to be filled, the duties to be performed, and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions, and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants, and clerks and fix the compensation to be paid them within the limitations herein prescribed and determined the number to be appointed as in the discretion of said court may be proper;

provided that in no case shall the Commissioners' Court or any member thereof attempt to influence the appointment of any person as deputy, assistant, or clerk in any office. Upon the entry of such order the officers applying for such deputies, assistants, and employees shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The maximum compensation which may be allowed to the deputies, assistants, or clerks above named for their services shall be as follows:

First Assistant or Chief Deputy not to exceed Three Thousand Six Hundred ($3,600.00) Dollars per annum; one assistant or deputy not to exceed Three Thousand ($3,000.00) Dollars per annum; other assistants, deputies, and employees not to exceed Two Thousand Four Hundred ($2,400.00) Dollars per annum each; provided that bailiffs serving criminal district courts shall be paid not less than One Hundred and Seventy-five ($175.00) Dollars per month each; provided further that chief clerks or chief deputies in county and district offices shall receive not less than Three Thousand ($3,000.00) Dollars per annum each and heads of departments in county or district offices shall receive not less than Twenty-five Hundred ($2,500.00) Dollars per annum each. No payment shall be made to any deputy, assistant or employee for any service performed prior to the authorization of his appointment and until he shall have subscribed to the constitutional oath of office and such appointment and oath have been filed with the county clerk for record. The amounts allowed to be paid to deputies, assistants and employees shall be paid after rendition of service out of said Officers' Salary Fund as provided for in this Act.

Provided, that in counties having a population of three hundred and fifty-five thousand (355,000) or more, according to the last preceding Federal Census, whenever any district or county officer, or precinct officer when such precinct officer is compensated on a salary basis, with the exception of district attorneys and criminal district attorneys, shall require the services of deputies, assistants, and employees, in the performance of his duties, he shall apply in writing to the Commissioners Court of his county for authority to appoint such deputies, assistants, and employees, such written application to be sworn to and to set forth the number needed, the positions to be filled, the duties to be performed, and the amount of compensation to be paid. Each such application shall be accompanied by a statement showing the probable receipts from fees, commissions, and compensation to be collected by the office of the officer so applying during the fiscal year and the probable disbursements to be made by such office during such fiscal year, which shall include all salaries and expenses of such office, and said Court shall make its order authorizing the appointment of such deputies, assistants, and employees, and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed, as in the discretion of said Court may seem proper; provided that in no case shall the Commissioners Court, or any member thereof, attempt to influence the appointment of any person as a deputy, assistant, or employee in any office. Upon the entry of such order the officer applying for such deputies, assistants, and employees, shall be authorized to appoint them, provided that the compensation to be paid them shall not exceed the maximum amount hereinafter set out. The maximum compensation which may be allowed to the deputies, assistants, and employees of the officers hereby affected for their services shall be as follows:

First Assistant or Chief Deputy not to exceed Three Thousand, Six Hundred Dollars ($3,600) per annum, one Assistant Chief Deputy not to exceed Three Thousand Dollars ($3,000) per annum; other assistants, deputies, and employees not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum each; provided further that the First Assistant or Chief Deputy in county and district offices affected hereby shall receive not less than Three Thousand Dollars ($3,000) per annum; provided further that heads of departments may each be allowed by the Commissioners Court, when necessary in the judgment of such Court, to receive respective salaries not to exceed the rate of Two Thousand, Five Hundred Dollars ($2,500) per annum, when such heads of departments sought to be appointed shall have previously served the county or district by which they are employed for not less than two (2) continuous years, but no head of a department shall be created except where the person sought to be appointed is to be in actual charge of the department with deputies or assistants under his supervision, and such heads of departments shall only be appointed in offices capable of a bona fide subdivision into departments; provided further, that in all counties affected by this Act, having more than one District Court or Criminal District Court, the deputies or assistants of the District Clerk, who are regularly assigned to serve in such Courts as clerks, shall be considered as heads of departments within the meaning of this Act, and Sheriffs' deputies regularly assigned to and serving in such District Courts or Criminal District Courts, not to exceed one deputy to each such Court, shall be paid a salary of not less than Two Thousand, One Hundred Dollars ($2,100) per annum each. No payment shall be made to any deputy, assistant, or employee for any service performed prior to the authorization of his appointment and until he shall have subscribed to the Constitutional Oath of Office and such appointment and Oath have been filed with the County Clerk and County Auditor for record. The amounts allowed to be paid to deputies, assistants, and employees shall be paid only after rendition of service out of said Officers' Salary Fund or General Fund as provided for in this Act. [Added Acts 1939, 46th Leg., Spec.L., p. 744, § 1.]

(h-2): In any county of this State with a population of two hundred fifty thousand (250,000) inhabitants and over and less than three hundred twenty-five thousand (325,000) inhabitants, according to the last preceding Federal Census, the District Clerk may make written application to the District Judges of said county for the appointment of assistants and/or deputies and the salaries to be paid same, setting forth the number of assistants and/or deputies sought to be appointed and the salary to be paid each, such salaries to be not more than allowed by law in Senate Bill 5, Acts of the Forty-fourth Legislature, Second Called Session, and amendments thereto. Said application shall be accompanied by a statement showing the probable receipts and disbursements of said office, and shall be presented to the District Judges, who shall then carefully consider same; and, if, after such consideration, a majority of the District Judges shall approve the appointments sought to be made, and shall also approve the salary to be paid each, they shall certify said list to the Commissioners' Court of said county; and said application and the order of the District Judges thereon shall be recorded in the minutes of the District Court.

The Commissioners' Court shall thereupon order the amount approved to be paid from the General Fund, officers' salary fund, or any other fund of the county, as herein provided, upon the performance of the services required, and said Commissioners' Court shall appropriate adequate funds for that purpose. All assistants to the District Clerk shall be paid from the General Fund of the county or the Officers' Salary Fund, as per the order of the Commissioners' Court, except as herein provided; and be it further provided that the Commissioners' Court may authorize that

the court clerks, the index clerk, and the clerk handling the jury in each such county can be paid either from the General Fund or the Jury Fund of said county.

The deputies appointed by the District Clerk shall be authorized to discharge such duties as may be assigned to them by the District Clerk and provided for by law, and all of said assistants shall take the oath of office for faithful performance of duty. The District Clerk shall have the right to discontinue the services of any assistants employed in accordance with the provisions of this Article, but no assistant shall be employed except in the manner herein provided. In like manner, the Judges of the District Court may authorize the appointment of additional assistants when, in the judgment of the District Clerk, a necessity exists therefor. [Added Acts 1939, 46th Leg., Spec.L., p. 742, § 1.]

(h-3): In any county of this State with a population of two hundred and ninety thousand (290,000) inhabitants and over, and less than three hundred and ninety thousand (390,000) inhabitants, according to the last preceding Federal Census, the District Clerk may make written application to the Commissioners Court of said county, subject to the approval by the Court, for the appointment of assistants and/or deputies and the salaries to be paid same, setting forth the number of assistants and/or deputies sought to be appointed and the salaries to be paid each, such salaries to be not more than allowed by law in Senate Bill 5, Acts of the Forty-fourth Legislature, Second Called Session,[1] and amendments thereto.

1 Articles 3896-3899, 3901, 3902, 3912e.

The Commissioners Court, upon approval of the application, shall thereupon order the amount approved to be paid from the General Fund, officers' salary fund, or any other fund of the county, as herein provided, and said Commissioners Court shall appropriate adequate funds for that purpose. Assistants to the District Clerk shall be paid from the General Fund of the county or the officers' salary fund, provided the Commissioners Court may authorize that the Court clerks, the index clerk, and the clerk handling the jury in each such county can be paid either from the General Fund or the Jury Fund of said county; and be it further provided that the per capita payments made by the State to the counties in lieu of felony fees formerly paid to the officers shall be apportioned by the County Auditor, as follows: after paying the fees to precinct officers rendering services in felony cases, pay to the District Clerk and the Sheriff the same amount each officer earned in felony fees during the year 1935, and the remaining balance shall be paid to the District Attorney or Criminal District Attorney, as the case may be.

The deputies appointed by the District Clerk shall be authorized to discharge such duties as may be assigned to them by the District Clerk and provided for by law, and all of said assistants shall take the oath of office for faithful performance of duty. The District Clerk shall have the right to discontinue the services of any assistants employed in accordance with the provisions of this Article, but no assistant shall be employed except in the manner herein provided. In like manner, the Commissioners Court may authorize the appointment of additional assistants when, in the judgment of the District Clerk, a necessity exists therefor. [Added Acts 1941, 47th Leg., p. 240, ch. 169, § 1.]

(i) There shall be created a fund for each officer affected by the provisions hereof to be known as the "——— Salary Fund of ——— County, Texas" (insert the title of the officer affected and the name of the county) and such fund shall be kept separate and apart from all other county funds and shall be held and disbursed for the purpose of paying the salary of such officer, the salaries of his deputies, assistants, clerks, stenographers, and investigators who are authorized to draw a salary from said fund under the provisions of this Section and to pay the authorized and approved expenses of his office. Such fund shall be deposited in the county depository and shall be protected to the same extent, and draw the same interest, as other county funds. The Commissioners' Court of each county affected by the provisions of this Section, at its first regular meeting in January of each calendar year, may determine, by order made and entered in the minutes of said court, that all fees, costs, compensation, salaries, expenses, etc., provided for in this Section, shall be paid into and drawn from the general fund of such county; in which event each reference in this Section to a salary fund shall be read as and interpreted to be "General Fund".

(j) Each district, county, and precinct officer who shall be compensated on a salary basis shall continue to charge for the benefit of the Officers' Salary Fund of his office provided for in this Section, all fees and commissions which he is now or hereafter may be authorized to charge against and collect from the State of Texas for services performed by him in civil proceedings and to file claims for the fees or commissions due for such services in the manner now or hereafter provided by law; and it shall be the duty of said officer to account for and cause to be paid to the salary fund created for such officer all such commissions and fees when paid by the State in like manner as for costs collected from private parties; provided further, that such warrants issued by the State Comptroller of Public Accounts shall be made payable jointly to the officer in office at the date of payment and to the county treasurer, and that upon endorsement thereof such warrants shall be deposited forthwith by said county treasurer in the salary fund created for such officer.

(k) No officer receiving a salary shall receive any ex-officio compensation from the county; provided, however, the Commissioners' Court shall transfer from the general fund of the county to any Officers' Salary Fund of such county such funds as may be necessary to pay the salaries and other legally authorized claims chargeable against such fund when the moneys deposited to the credit of such fund are insufficient to meet the claims against it.

(l) Each district, county, and precinct officer receiving an annual salary as compensation shall be entitled, subject to the provisions of this Section, to issue warrants against the salary fund created for his office in payment of the services of deputies, assistants, clerks, stenographers, and investigators, for such amounts as said employees may be entitled to receive for services performed under their authorizations of employment. And such officer shall be entitled to file claims for and issue warrants in payment of all actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, traveling expenses, premiums on deputies' bonds, and other necessary expenses. If such expenses be incurred in connection with any particular case, such claim shall state such case. All such claims shall be subject to the audit of the county auditor; and if it appears that any item of such expense was not incurred by such officer, or such item was not a necessary expense of office, or such claim is incorrect or unlawful, such item shall be by such auditor rejected, in which case the correctness, legality, or necessity of such item may be adjudicated in any Court of competent jurisdiction. Provided, the Assessor and Collector of Taxes shall be authorized in like manner annually to incur and pay for insurance premiums in a reasonable sum for policies to carry insurance against loss of funds by fire, burglary, or theft.

At the close of each month of the tenure of his office, each officer named herein shall make as a part of the report required by Subsection (o) of this Section an itemized and sworn statement of all expense claims paid during said month. And said report shall give the name, position, and amount paid to each authorized employee of such officer. Such deputies, assistants, clerks, or other employees as well as expenses shall be paid from the Officers' Salary Fund in cases in which the officer is on a salary basis, and from fees earned and collected by such officer in all cases in which the officer is compensated on a basis of fees earned by him.

The Commissioners Court may allow, upon the written and sworn application of the sheriff showing the necessity therefor, one or more automobiles to be used by the sheriff or his deputies in the discharge of his official duties, which, if purchased by the county, shall be bought in the manner prescribed by law for the purchase of supplies, and shall be paid for out of the Officers' Salary Fund, and said automobiles shall be and remain the property of the county. The expense of operating and maintaining said automobile shall be paid in the manner and subject to the provisions herein provided for other expense items. The Commissioners Court by an order entered of record may make provision for payment of depreciation upon automobiles owned personally by the sheriff or his deputies.

The Commissioners Court may, upon the written and sworn application of the District Attorney or Criminal District Attorney stating the necessity therefor, allow one or more automobiles to be used by him in the discharge of his official duties, which if purchased shall be bought by the county in the manner prescribed by law for the purchase of supplies and paid for out of the Officers' Salary Fund, and they shall be and remain the property of the county. The amount to be expended for the purchase of an automobile or automobiles shall not exceed the sum of One Thousand, Two Hundred Dollars ($1,200) for the first year, and shall not exceed the sum of Five Hundred Dollars ($500) for any year thereafter. The expense of the maintenance and operation of such automobile or automobiles as may be allowed shall be paid for by the District Attorney or the Criminal District Attorney from the Officers' Salary Fund, and the amount thereof shall be reported in detail by the District Attorney or the Criminal District Attorney on his monthly report, as is required by this Section in reporting expenses incurred by him in the conduct of his office. Such expense account for the maintenance and operation of such automobile or automobiles shall be subject to audit as hereinabove provided. [As amended Acts 1937, 45th Leg., 1st C.S., p. 1801, ch. 26, § 1.]

(m) All moneys drawn from said Officers' Salary Funds shall be paid out only on warrants approved by the county auditor. No warrants shall be drawn on said fund in favor of any person indebted to the State, county, or to said fund or in favor of his agent or assignee until such debt is paid, when notice of such indebtedness has been filed with the county auditor.

All moneys remaining in any Officers' Salary Fund of the county at the end of any fiscal year after all salaries and authorized expenses incurred against said fund for said year shall have been paid and the accounts of said officer have been audited and approved by the county auditor shall be by order of the Commissioners' Court transferred by warrant issued by the county clerk when approved to the credit of the general fund of the county.

(n) Each district, county and precinct officer shall keep a correct detailed statement of all amounts earned by him and of sums coming into his hands as fees, costs, and commissions, in a book to be provided for him by the proper authorities of the county for that purpose in which the officer at the time when fees or moneys are earned or shall come into his hands shall enter the same in such form as may be lawfully required.

(o) The fiscal year, within the meaning of this Section, shall begin on January 1st of each year; and each district, county, and precinct officer shall file his annual report and make the final settlement required in this Act by January 15th of each year; provided, however, that officers receiving an annual salary as compensation for their services shall on or before the fifth day of each month file with the county auditor on forms prescribed by him and as part of the report required by subsection *l* of this Section, a detailed and itemized report of all fees, commissions, and compensations collected by him during the preceding month, and shall forthwith pay into the Officers' Salary Fund for his office, all fees, commissions, and compensations collected by him during said month. Whenever such officer serves a fractional part of the fiscal year, he shall, nevertheless, file his report and make final settlement for such part of the year as he serves and shall be entitled to such proportionate part of his compensation as the time of his service bears to the entire year.

(p) It shall be the official duty of each clerk of the district and county courts and of all justices of the peace to require at the commencement of any civil suit adequate security for costs; provided a pauper's oath may be filed and contested as provided by law. No district, county or precinct officer shall under the penalties now provided by law waive any fees or costs but it shall be the duty of all officers to assess and collect all fees and commissions which they are permitted or directed by law to assess and collect for services performed by them. Where any officer receives a salary payable from the salary fund created for such officer all fees, commissions, and other compensation received by him in his official capacity shall be by him deposited and paid monthly, or oftener, into the salary fund created for such officer, and such remittance shall be accompanied by his official report thereof, as provided for in this Section.

(q) Each district, county, and precinct officer, at the close of each fiscal year (December 31st), shall make to the district court of such county a sworn statement in triplicate (on forms designed and approved by the State Auditor), a copy of which statement shall be forwarded to the State Auditor by the clerk of the district court of said county within fifteen (15) days after the same has been filed in his office, and one copy shall be filed with the county auditor. Said report shall show the amount of all fees, commissions, and compensations whatever earned by said officer during the fiscal year; and the amount of fees, commissions, and compensations collected by him during the fiscal year and their disposal. Said report shall contain an itemized statement of all fees, commissions, and compensations earned during the fiscal year which were not collected, together with the style of the case and number, the name of the party owing said fees, commissions, and compensations, the nature of the security for costs, and the reason for non-collection. Said report shall show the names of the deputies and assistants employed by him during the year, the time served, and the amount paid or to be paid each. Said report shall be filed not later than January 15th following the close of the fiscal year. For failure to file said report said officer shall be subject to removal from office. The county auditor shall audit such report and file his report with the Commissioners' Court, and said county auditor also shall prepare and file with the district or criminal district attorney a detailed report of all fees, commissions, and compensations uncollected which have been due and payable to any officer of the county for a period of more than six (6) months; and a similar report of all fees, commis-

sions, and compensations collected by said officers and not reported by them and a list of cases filed since January 1, 1936, in which any county or district clerk or justice of the peace has not taken adequate security for costs or required a pauper's oath. It shall be the duty of the district or criminal district attorney to institute proceedings for the collection of such fees, commissions, and compensations, all of which are declared to be the property of the county and shall be deposited in the general fund.

(r) The moneys received from the State by each such county under the provisions of Section 6 and subsection b of Section 13 of this Act shall be apportioned by the Commissioners' Court to the proper Officers' Salary Fund of each such county.

(s) Notaries Public, public weighers, and county surveyors are expressly exempted from the provisions of this Section.

(t) It is hereby declared to be the intention of the Legislature that the provisions of this Section control in all things as to the counties affected hereby. Nothing herein shall be held to repeal Chapter 122, Page 330, Acts of the 44th Legislature, 1935, Regular Session,[1] except insofar as its provisions may be in direct conflict herewith, in which event the terms of this Section shall prevail, nor shall anything herein contained affect or be construed as repealing Chapter 34, Acts of the 44th Legislature, Regular Session, appearing at Page 100, et sequente, of said Acts,[2] or Art. 3912a, Revised Civil Statutes of Texas, the same being Acts 1933, 43rd Legislature, Page 107, Chapter 54.

(u) The provisions of this Section shall be severable and if any subsection, sentence, clause, phrase, word or part of the same shall be held unconstitutional or invalid for any reason, the same shall not be construed to affect the validity of any of the remaining provisions of this Section. It is hereby declared to be the Legislative intent that this Section would have been adopted had such invalid provision not been included therein.

[1] Article 1256a, ante.
[2] Article 3912d, ante.

Appropriation

Sec. 20. Any unexpended balance in the appropriation made by the Regular Session of the 44th Legislature, for the payment of fees and costs of sheriffs, attorneys and clerks in felony cases, fees of county judges, county attorneys, justices of the peace, sheriffs and constables in examining trials actually held and where indictments are returned, in the sum of Five Hundred Fifty Thousand ($550,000.00) Dollars for each of the fiscal years ending August 31, 1936, and August 31, 1937, in addition to the purposes therein specified, is hereby appropriated and authorized to be disbursed by the Comptroller and Treasurer in the payment of any apportionment which may become due to any counties in this State under the provisions of this Act for the fiscal year for which the appropriation is available.

Effective date

Sec. 21. The provisions of this Act shall become effective January 1, A.D., 1936.

Provisions cumulate

Sec. 22. The provisions of this Act shall be cumulative of all laws not in conflict herewith. It is hereby declared to be the intention of the Legislature that the compensation, limitations and maximums fixed in this Act for the named officers, their deputies, assistants and employees control over any other provisions contained in all laws, general and special

Repeals

Sec. 23. All general laws in conflict with the provisions of this Act, fixing or attempting to fix the compensation of officers enumerated herein, are hereby in all things repealed, except such general or special laws that do not have a statewide application. Special and local laws or general laws of local application which do not have a statewide application shall remain in full force and effect. [Acts 1935, 44th Leg., 2nd C.S., p. 1762, ch. 465.]

The title and sections 1, 1a, 1b, of the amendatory act of 1937, 45th Leg., p. 32, ch. 26, amended Acts 1935, 44th Leg., First Called Session, instead of Second Called Session.

Section 2 of the Act of 1937, ch. 26; Act 1939, Spec.L. p. 742; Act 1939, Spec.L. p. 744; Act 1941, ch. 169, and Act 1941, ch. 338, repealed all conflicting laws and parts of laws.

Section 2 of the Act of 1939, 46th Spec.L., p. 608, provided that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict; and this Act shall be interpreted as an express modification of Article 3912e, Section 13, Revised Civil Statutes of Texas of 1925, to the extent hereinbefore provided.

Section 3 of the Act of 1939, 46th Leg., Spec.L. p. 742, and Act 1941, 47th Leg., p. 240, ch. 169, provided that if any part of section of this Act shall be held unconstitutional, it shall not in anywise affect the remaining part of the Act.

Section 2 of the Act of 1941, 47th Leg., p. 74, ch. 61, read as follows: "All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict; and this Act shall be interpreted as an express modification of Chapter 465, General and Special Laws, 44th Legislature, Second Called Session, to the extent provided."

Section 3 provided that the Act should take effect January 1, 1943.

Section 2 of the Act of 1947 provided: "If any subsection, paragraph, clause or sentence in this Act is declared by any court to be unconstitutional, it shall not affect the remaining portions of this Act. The Legislature expressly declares the provisions of this Act to be severable, and if any shall be invalid, it shall not affect any other provision herein."

Saved From Repeal. Acts 1947, 50th Leg., p. 545, ch. 322, appearing as art. 3912e—11, provides in section 7 thereof that such Act shall not repeal any of the provisions of chapters 169 and 585, 47th Leg., pp. 240, 1309, 1941 appearing as this article, section 19(f-1) and (h-2) and that the fifteen per cent increase in salary provided for therein shall be in addition to the salaries provided for in such acts but specifies limits of increases.

Art. 3912e—1. Compensation of designated officers in counties of 225,000 to 500,000.—(a) The provisions of this Section shall apply to and control in each county in the State of Texas having a population of two hundred and twenty-five thousand (225,000) inhabitants or more, and less than five hundred thousand (500,000) inhabitants according to the last preceding Federal Census.

(b) From and after the effective date of this Act up to January 1, 1946, the County Judge, the Sheriff, District Attorney, Criminal District Attorney, District Clerk, County Clerk and the Assessor and Collector of Taxes of such counties shall each receive a salary of Sixty-five Hundred Dollars ($6500) per annum. The County Treasurer of such counties shall receive Thirty-six Hundred Dollars ($3600) per annum salary. The Judges of the County Courts at Law and the County Criminal Courts of such counties shall each receive a salary of Five Thousand Dollars ($5000) per annum. All of such salaries enumerated in this subsection shall be paid out of the General Fund of such counties.

(c) The County Commissioners of such counties shall each receive a salary of Forty-eight Hundred Dollars ($4800) per annum, Thirty-six Hundred Dollars ($3600) of which shall be paid out of the General Fund and Twelve Hundred Dollars ($1200) of which shall be paid out of the Road and Bridge Funds of such counties.

(d) All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law shall be entitled to retain annual fees not to exceed Four Thousand Dollars ($4000) each. All Justices of the Peace and Constables of such counties who are compensated on a salary basis as provided by law shall receive an annual salary of not to exceed Four Thousand Dollars ($4000) each, such salary to be fixed by the Commissioners Court. Provided, however, that all

fees and Commissions whether current or delinquent which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office and to make up the maximum compensation provided for in this subsection. No such officers shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office.

(e) Provided further that from and after January 1, 1946, the salaries of the hereinabove enumerated officers shall be as hereinafter set out.

(f) The Sheriff, District Attorney, District Clerk, County Clerk and the Assessor and Collector of Taxes of such counties shall each receive a salary of Seventy-four Hundred Dollars ($7400) per annum. The County Treasurer of such counties shall receive per annum a salary of Thirty-nine Hundred Dollars ($3900). The Judges of the County Courts at Law and the County Criminal Courts of such counties shall each receive a salary of Six Thousand Dollars ($6000) per annum. The County Judge of such counties shall each receive a salary of Seventy-four Hundred Dollars ($7400) per annum in lieu of all other compensation now provided by law. All of such salaries enumerated in this subsection shall be paid out of the General Fund of such counties.

(g) The County Commissioners of such counties shall each receive a salary of Fifty-five Hundred Dollars ($5500) per annum and such salaries shall be out of the Road and Bridge Funds of such counties.

(h) All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law shall be entitled to retain annual fees not to exceed Forty-five Hundred Dollars ($4500) each. All Justices of the Peace and Constables of such counties who are compensated on a salary basis as provided by law shall receive an annual salary of not to exceed Forty-five Hundred Dollars ($4500) each, such salary to be fixed by the Commissioners Court. Provided, however, that all fees and commissions whether current or delinquent which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office and to make up the maximum compensation provided for in this subsection. No such officer shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office. [Acts 1937, 45th Leg., p. 151, ch. 81, § 1; Acts 1945, 49th Leg., p. 106, ch. 74, § 1; Acts 1945, 49th Leg., p. 428, ch. 271, § 1.]

For repeal of the provisions of this article insofar as in conflict with the provisions of art. 3912e—9, see section 8 of art. 3912e—9.

Section 3 of the Act of 1937 and section 2 of the Acts of 1945 repealed all conflicting laws and parts of laws.

Repeal in Part. Acts 1947, 50th Leg., p. 545, ch. 322, appearing as art. 3912e—11, provides in section 8 thereof that Section 1 of Chapter 81, Acts 45th Leg., Reg.Sess., p. 151, 1937, appearing as this article, is repealed in so far as it is in conflict with the provisions of such Act, but not otherwise.

Art. 3912e—2. Compensation of certain district, county, and precinct officers in counties of 355,000; appointment of assistants to district attorneys.—Provisions of this Section shall apply to and control in each county in the State of Texas having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants according to the last preceding or any future Federal Census.

(a) The term "Precinct Officers" as used in this section means Justices of the Peace and Constables.

Precinct Officers in such counties shall be compensated for their services on a fee basis unless the Commissioners Court shall have determined otherwise as provided by law.

The annual fees that may be retained by any such Precinct Officer shall be Four Thousand, Five Hundred Dollars ($4,500) each.

All fees and commissions earned by such official shall be applied first to the payment of his deputies, authorized expenses of his office, and to make up the maximum provided for such officers.

All fees and commissions over and above the amount necessary to pay authorized expenses and Deputies' salaries, and to make up the maximum compensation above provided for, shall be deemed excess fees, and all excess fees not permitted to be retained shall be paid into the General Fund of the county.

Delinquent fees may be used to defray the salaries of Deputies if current fees are insufficient for that purpose; and may be used also to make up the maximum compensation, exclusive of excess fees, allowed to such officers for the fiscal year within which such fees were earned. Delinquent fees collected in excess of the amount above provided for shall be paid by the officer collecting the same into the General Fund of the county.

Precinct Officers, as defined in this Section, shall be compensated after an order duly enacted by the Commissioners Court, on an annual salary basis from said Officers' Salary Fund or the General Fund, as the case may be; such salaries shall be fixed by the Commissioners Court at a reasonable sum not to exceed Four Thousand, Five Hundred Dollars ($4,500) each; provided further that in such counties in which the Commissioners Court determines to place Justices of the Peace and Constables on a salary basis, said Commissioners Court shall not be required to place said salaries in all precincts within the county at equal amounts, but said Commissioners Court shall have discretion to determine the amount of salary to be paid to each of said Justices of the Peace and to each of said Constables in the several precincts in said counties within the limitations hereinabove set out. In counties where the Commissioners Court determines to place the Justices of the Peace on a salary basis the Justice of the Peace shall receive in addition thereto all fees, commissions or payments for performing marriage ceremonies and for acting as Registrar for the Board of Vital Statistics and when acting as Ex-officio Notary Public.

(b) The County Judge, Sheriff, District Attorney or Criminal District Attorney, as the case may be, District Clerk, County Clerk, and Assessor and Collector of Taxes in such counties shall receive a salary of Seven Thousand, Four Hundred Dollars ($7,400) per annum from the Officers' Salary Fund or General Fund, as the case may be. The compensation herein fixed for the Sheriff or Constable shall be exclusive of any reward received for the apprehension of criminal fugitives from justice and rewards received for the recovery of stolen property.

(c) The County Commissioners in such counties shall each receive a salary of Four Thousand, Eight Hundred Dollars ($4,800) per annum, and said salaries shall be paid in equal monthly installments, three-fourths (3/4) out of the Road and Bridge Fund and one-fourth (1/4) out of the General Fund of the county.

(d) The Judge of the County Court at Law of Harris County, Texas, and the Judge of the County Court at Law No. 2 of Harris County, Texas, each shall receive a salary of Six Thousand Dollars ($6,000) per annum to be paid out of the County Treasury by the Commissioners Court in equal monthly installments.

(e) The Commissioners Court of each county in the State of Texas having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants according to the last preceding Federal Census shall determine annually the salary to be paid the County Treasurer of each of such counties from county funds for his services to the county at a reasonable sum not to exceed Three Thousand,

Nine Hundred Dollars ($3,900) per annum. Where such Treasurer acts also as Treasurer of any Navigation and Drainage Districts, he shall receive and be entitled to retain such compensation from such districts as is provided by Articles 8221 and 8148, Revised Civil Statutes of Texas, 1925. Said County Treasurer shall be allowed to appoint one assistant at a reasonable salary, not to exceed One Thousand, Eight Hundred Dollars ($1,800) per annum, and the Commissioners Court of such county may allow one additional assistant upon adequate proof of necessity therefor at a reasonable salary not to exceed One Thousand, Five Hundred Dollars ($1,500) per annum. Said assistants shall be appointed by such County Treasurer and shall take the usual oath of office, and, in addition thereto, shall give such surety bond as may be required by such County Treasurer or by the Commissioners Court of such county. Said assistants shall have authority to do and perform in the name of such County Treasurer such acts of a clerical or ministerial character as may be required of them by such County Treasurer. The County Treasurer of each of such counties may designate, subject to the approval of the Commissioners Court, any named person to act for him and in his stead when he shall be absent from the county, unavoidably detained, or incapacitated. The particulars justifying such appointment shall be placed before the Commissioners Court and such Court may require any desired proof in connection therewith. Upon the approval by the Commissioners Court of the appointment of any such person so designated, and the recording of such appointment in the minutes of the Commissioners Court, thereupon such person may act for such County Treasurer during such periods of absence, detention or incapacity; provided, however, that such appointment shall not become effective until such named person shall have given such additional surety bond, if any, in favor of such county and the County Treasurer thereof as their interests may appear and in such amounts as the Commissioners Court may require. [As amended Acts 1939, 46th Leg., Spec.L., p. 607, § 1.]

(f) The Criminal District Attorney or District Attorney in such counties shall be authorized to appoint nine (9) assistants and fix their salaries at a rate not to exceed the following amounts: two (2) of said assistants, Four Thousand, Five Hundred Dollars ($4,500) per annum each; two (2) of said assistants, Four Thousand, Two Hundred Dollars ($4,200) per annum each; one (1) of said assistants, Three Thousand, Six Hundred Dollars ($3,600) per annum; one (1) of said assistants, Three Thousand Dollars ($3,000) per annum; and three (3) of said assistants, Two Thousand, Seven Hundred Dollars ($2,700) per annum each. He may employ three (3) investigators and fix their salaries at not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum each. He may employ two (2) court reporters and fix their salaries at not to exceed Two Thousand, Two Hundred Eighty Dollars ($2,280) per annum each. He may employ one (1) stenographer and fix his salary at not to exceed One Thousand, Eight Hundred Dollars ($1,800) per annum. He may employ one (1) chief civil clerk and fix his salary at not to exceed Two Thousand, One Hundred Dollars ($2,100) per annum. He may employ three (3) abstracters and fix their salaries as follows: Two (2) of said abstracters at not to exceed Two Thousand, One Hundred Dollars ($2,100) per annum each, and the other abstracter at not to exceed One Thousand, Eight Hundred Dollars ($1,800) per annum. All such salaries above mentioned shall be payable from the Officers' Salary Fund or General Fund, as the case may be.

Should such Criminal District Attorney or District Attorney be of the opinion that the number of assistants, stenographers, investigators, or other employees above provided for is not adequate for the proper investigation and prosecution of crime, and the efficient performance of the duties of his office, with the advice and consent of the Commissioners Court he may appoint additional assistants and employees as hereinafter limited and fix their salaries as follows: One (1) additional assistant to receive a salary not to exceed Four Thousand, Two Hundred Fifty Dollars ($4,250) per annum; one (1) additional assistant to receive a salary not to exceed Three Thousand, Six Hundred Dollars ($3,600) per annum; one (1) additional assistant to receive a salary not to exceed Three Thousand Dollars ($3,000) per annum; and two (2) additional assistants to receive a salary not to exceed Two Thousand, Seven Hundred Dollars ($2,700) per annum each. He may employ one (1) additional court reporter and fix his salary at a rate not to exceed Two Thousand, One Hundred Sixty Dollars ($2,160) per annum. He may employ one (1) additional stenographer and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars ($1,500) per annum. He may employ one (1) additional stenographer and fix his salary at a rate not to exceed Eighteen Hundred Dollars ($1,800) per annum. He may employ one (1) civil clerk and fix his salary at a rate not to exceed One Thousand, Five Hundred Dollars ($1,500) per annum. He may employ one information clerk and fix his salary at a rate not to exceed Nine Hundred Dollars ($900) per annum, but such additional assistants or employees so appointed, before qualifying and entering upon the duties of such office and employment, shall be approved as to number and salaries by the Commissioners Court of the county in which such appointments are made, these salaries being payable from the Officers' Salary Fund or General Fund, as the case may be. In addition to the salary herein provided for investigators for Criminal District Attorneys or District Attorneys, each of such investigators shall be allowed a sum not to exceed Fifty Dollars ($50) per month for repair and maintenance expense of an automobile used by said investigator in the investigation of crime, said allowances to be paid monthly by such county by warrant drawn upon said Officers' Salary Fund or General Fund, as the case may be, upon the written claim of such investigator showing that said automobile was in official use, and such claim shall bear the approval of the District Attorney before being paid.

(g) The County Auditor in such counties shall receive for his services to the county an annual salary of Six Thousand, Five Hundred Dollars ($6,500) payable from county funds. This shall not be construed nor shall it operate to repeal Article 1672, Revised Civil Statutes of Texas, nor Article 8245, Revised Civil Statutes of Texas, as amended by Acts 1935, 44th Legislature, page 316, Chapter 119, Section 1. [Acts 1937, 45th Leg., p. 151, ch. 81, § 2.]

Section 3 of the Act of 1937 and section 2 of the Act of 1939 repealed all conflicting laws and parts of laws.

Art. 3912e—3. Salary of county judge in counties of 12,227 to 12,230.—Hereafter, the County Judge in counties having a population of not less than twelve thousand, two hundred and twenty-seven (12,227) and not more than twelve thousand, two hundred and thirty (12,230) according to the last preceding Federal Census of 1930, shall receive an annual salary of Eighteen Hundred Dollars ($1800) per year, payable in twelve (12) equal monthly installments, and said payments shall be paid out of the funds as now provided by the general laws governing the payment of County Judges in Texas. [Acts 1937, 45th Leg., p. 398, ch. 199, § 1.]

Art. 3912e—4. District, County and Precinct officers in counties of over 500,000, payment of assistants and expenses of conduct of offices.—Section 1. Each District, County and Precinct officer in counties having a population of more than five hundred thousand (500,000) inhabitants according to the

last preceding or any future Federal Census, receiving an annual salary as compensation, shall be entitled, subject to the provisions of Section 19 of Chapter 465 of the Acts of the 44th Legislature, First Called Session,[1] generally known as the "Fee Bill," and subject to the amendments to said Act subsequently adopted, to issue warrants against the salary fund created for his office in payment of the services of deputies, assistants, clerks, stenographers and investigators, for such amounts as said employees may be entitled to receive for services performed under their authorizations of employment. And such officers shall be entitled to file claims for and issue warrants in payment of all actual and necessary expenses incurred by them in the conduct of their offices, such as stationery, stamps, telephone, traveling expenses, premiums on official bonds of themselves and of their deputies, and premiums on burglary, theft and robbery insurance protecting public funds, and other necessary expenses. If such expenses be incurred in connection with any particular case, such claims shall state such case. All such claims shall be subject to the audit of the County Auditor, and if it appears that any item of such expense was not incurred by such officer, or such item was not a necessary expense of office, or such claim is incorrect or unlawful, such item shall be by such Auditor rejected, in which case the correctness, legality or necessity of such item may be adjudicated in any court of competent jurisdiction.

Sec. 2. In addition to any other sums now provided for by law, the District Attorney or Criminal District Attorney in each of the counties affected hereby may be allowed, by order of the Commissioners' Court of his county, such amount as said Court may deem necessary to pay for or aid in the proper administration of the duties of his office, which sum may be expended in aid of the discharge of the duties of his office for any purposes, whether similar or dissimilar to the type of expense authorized by Article 3899 of the Revised Civil Statutes, as amended by Chapter 37 of the Acts of the First Called Session of the 45th Legislature, and whether for a purpose similar or dissimilar to those authorized by the preceding Section of this Act; provided further that all sums expended under the authority of this Section of this Act shall not exceed Two Thousand, Five Hundred ($2,500.00) Dollars in any one calendar year; and provided further that such amounts as may be authorized hereunder shall be allowed by said Court upon written application of such District Attorney or Criminal District Attorney showing the necessity therefor, and the Commissioners' Court may require any other evidence that it may deem necessary to show the necessity for any such expenditures, and its judgment in allowing or refusing to allow any such expenditure shall be final; provided no payment for any such expenditure shall be made except upon an itemized sworn statement of such expense filed in the manner provided for by Section 19 of Chapter 465 of the Acts of the 44th Legislature,[1] generally known as the "Fee Bill," and all such expenditures and the accounts therefor shall be subject to approval of the County Auditor and audit by such Auditor as in the case of other claims and expenditures.

Sec. 3. In addition to the other sums provided for by law and allowed by this Act, the District Attorney or Criminal District Attorney may expend such sums as in his opinion may be reasonably necessary to aid the Grand Juries of this County in the investigation of crime, provided that the expenditures authorized by this Section shall never exceed Two Thousand, Five Hundred ($2,500.00) Dollars in any one calendar year, and the same shall be made only when three-fourths (¾) of the members of the Grand Jury to be aided thereby and a Judge of a District Court having general criminal jurisdiction in the county shall join the District Attorney in certifying to the necessity therefor. In making any expenditure hereby authorized, neither the District Attorney nor the Grand Jury shall be required, in order to obtain necessary warrants against the county funds, to state beforehand the case or cases being investigated, nor to disclose the identity of the person or persons suspected to be guilty, and such warrants shall issue, subject to the above limitations; provided, that from time to time, additional sums may be requested and allowed in like manner and subject to the same limitations; and provided further, that such District Attorney and his bondsmen shall be and remain liable for any illegal expenditures of such funds; and provided that within twelve (12) months after the termination of the Grand Jury's investigation of the matter from which said funds were expended, the District Attorney or Criminal District Attorney expending the same shall duly account under oath in writing for the same by proper accounts, vouchers and receipts to the County Auditor in such form as said Auditor shall require, and the County Auditor shall, upon the receipt of any such accounts, vouchers or receipts, keep secret all matters pertaining to the same for twelve (12) months after his receipt thereof. Nothing herein contained shall be construed as authorizing any Grand Jury to investigate any matter that it may not by law now be authorized to investigate.

Sec. 4. Nothing herein contained shall be construed as repealing any other Act now in effect authorizing the officers hereby affected to make expenditures of public funds in connection with their respective offices for purposes other than those herein named, but this law shall be cumulative of all such laws. [Acts 1941, 47th Leg., p. 174, ch. 127.]

[1] Article 3912e, § 19.

Art. 3912e—4a. District and county officers in counties of over 500,000; compensation; assistants to county treasurer and district attorneys.

Application

Section 1. The provisions of this law shall apply to and control in each county in this state having a population of 500,000 or more, according to the last preceding or any future Federal Census.

County treasurer and assistants

Sec. 2. The County Treasurer in such counties shall have one assistant at a reasonable salary, to be determined by the Commissioners Court, not exceeding that allowed assistants or deputies of other officers, and the Commissioners Court of such counties may allow one additional assistant upon adequate written sworn proof of necessity therefor for a limited emergency period at a reasonable salary to be determined by the Commissioners Court. Said assistants shall be appointed in the same manner as the assistants of other officers and subject to the same legal requirements. They shall take the usual oath of office, and, in addition thereto, shall give such surety bond as may be required by the Commissioners Court of such counties, to run in favor of the County Treasurer or the county as their interests may appear. Said assistants shall have authority to do and perform in the name of the County Treasurer such acts of a clerical or ministerial character as may be required of them by such County Treasurer. The County Treasurer of each of such counties may designate, subject to the approval of the Commissioners Court, one of said assistants or any named person to act for him and in his stead when he shall be absent from the county, unavoidably detained, incapacitated, or be unable to act. The particulars justifying such appointment shall be placed before the Commissioners Court, which is authorized to make full inquiry into the necessity for such appointment. Upon approval by the Commissioners Court of such appointment, it shall be recorded in the minutes of the court, and thereupon such person may act for the County Treasurer dur-

ing such periods of absence, detention, incapacity, or inability to act; provided, however, that such appointment shall not become effective until such named person shall have given such additional surety bond in favor of the county and the County Treasurer, as their interests appear, in such amount or amounts as the Commissioners Court may in its order require, and provided any person named other than a regularly appointed assistant shall receive no salary from the county.

Commissioners Court, authority as to appointments, salaries etc.; applications for increases in salaries; hearing

Sec. 3. The provisions of this Act shall not apply where the laws in effect on January 1, 1945, in such counties place no limit upon the salaries authorized for deputies, assistants, employees or department heads; and it shall apply only to those salaries or compensations of deputies, assistants, employees or department heads on which the laws in effect January 1, 1945, placed a fixed limit.

The Commissioners Court of counties coming within the terms of this Act may continue to appoint or approve the appointment of deputies, assistants, employees or department heads and fix their salaries where such matters come within its jurisdiction, and may continue in the manner provided by law to approve the number and fix or approve the salaries of deputies, assistants, employees or department heads legally appointed by county or flood control district officials or department heads within the limitations of number and amount of salaries now or hereafter fixed by law.

In cases in which an officer of said county or any flood control district or conservation or reclamation district wholly within the boundaries of said county desires to increase the salary of any deputy, assistant, employee or department head beyond the limit now fixed by existing law, he shall file a sworn application addressed to the Commissioners Court with the County Clerk and County Auditor, giving full data and information to the extent and in the manner required by the regulations of the court previously adopted and entered in its minutes; and where such sworn applications have been filed, the court shall fix a date for the hearing and consideration thereof, and shall give public notice of the date of such hearing. All such applications shall be acted upon in open court at such public hearing, and any citizen or taxpayer may appear in favor of or in opposition to such application. Such hearing may be continued by the court from day to day. If, after such hearing, the court be of the opinion that such application should be granted in whole or in part, it shall have authority to grant, or authorize the grant of, an increase in salary of any deputy, assistant, employee or department head appointed by the court, or under its authority, or appointed by any other elected or appointed officials, or department heads, in such sum as the court may in its discretion determine without regard to existing limitations of amounts: provided, however, that the amount so allowed or the total amount so allowed when added to funds previously budgeted shall not create any deficit for the current year in any fund, or create an obligation against future revenues; provided further, such increases shall not become effective until approved by the County Auditor and he shall have affixed his certificate to the application that funds are, or will be, available for payment thereof when due.

Regulations, hours of work, vacations, sick leaves

Sec. 4. The Commissioners Court of such counties shall have the authority to adopt and enforce all reasonable regulations applying to all such deputies, assistants, employees or department heads governing the hours of work, vacations, and sick leaves, in the interest of obtaining uniform restrictions, conditions, and regulations governing all such deputies, assistants, employees or department heads in the manner now provided by law.

Budget adjustments or revisions; notice; hearing

Sec. 5. In all cases where the appointment of any deputy, assistant, or employee, or the fixing of any salary, or the approval thereof by the Commissioners Court and the County Auditor shall make necessary an adjustment in the previously adopted budget of such counties, such adjustment or revision may be made to the extent and in the manner made necessary by the appointment and increase or approval of any salaries of any such deputies, assistants, employees or department heads, or by any increase in salary of any officials herein authorized; provided, that in case of necessity to amend any previously adopted budget, it shall be done only upon submission to the Commissioners Court of a supplemental budget by the County Auditor as Budget Officer of the county which shall be advertised and set for hearing in the same manner as for adoption of the original county or flood control district budget for the year. Only one supplemental budget may be filed and adopted in each calendar year.

Assistants to district attorneys and criminal district attorneys; investigators; clerks and other employees; transfers of funds

Sec. 6. (a) The District Attorney or Criminal District Attorney, in the counties to which this bill applies are hereby authorized to appoint not exceeding twelve assistants and to fix their salaries at a rate not to exceed the following amounts: one First Assistant District Attorney or First Assistant Criminal District Attorney, not to exceed Six Thousand Dollars ($6,000.00) per annum; two assistants, not to exceed Four Thousand Eight Hundred Dollars ($4,800.00) per annum each; four assistants not to exceed Four Thousand Six Hundred Dollars ($4,600.00) per annum each; five assistants not to exceed Three Thousand Six Hundred Dollars ($3,600.00) per annum each. He may employ three investigators and fix their salaries at not to exceed Three Thousand Dollars ($3,000.00) per annum each. He may employ three court reporters and fix their salaries at not to exceed Three Thousand Dollars ($3,000.00) per annum each. He may employ one combination stenographer and accountant and fix his salary at not to exceed Two Thousand Four Hundred Dollars ($2,400.00) per annum. He may employ one combination information clerk and switchboard operator, who shall also handle all telephone calls for the various courts in the Criminal Courts Building, and fix a salary of not exceeding One Thousand Five Hundred Dollars ($1,500.00) per annum. He may employ one chief civil clerk and fix his salary at not to exceed Two Thousand Four Hundred Dollars ($2,400.00) per annum. He may employ three abstracters and fix their salaries at not to exceed Two Thousand Four Hundred Dollars ($2,400.00) per annum each. All such salaries above mentioned shall be payable from the Officers' Salary Fund, if adequate; if inadequate, the Commissioners Court shall transfer the necessary funds from the General Fund of the County to the Officers' Salary Fund. All salaries provided for in the above Section in excess of Three Thousand Six Hundred Dollars ($3,600.00) per annum shall be subject to the approval of the Commissioners Court before becoming effective in the manner provided in Section 2 of this Act.

(b) Should such a District Attorney or Criminal District Attorney be of the opinion that the number of assistants, stenographers, investigators or other employees above provided for is not adequate for the proper investigation and prosecution of crime, and the efficient performance of the duties of his office, with the advice and approval of the Commissioners Court, he may appoint additional assistants and employees as hereinafter limited and fix their salaries as follows: one additional Assistant District Attorney or

Assistant Criminal District Attorney at a salary not to exceed Four Thousand Five Hundred Dollars ($4,500.00) per annum; four additional assistants at salaries not to exceed Three Thousand Six Hundred Dollars ($3,600.00) per annum each. He may employ two additional stenographers and fix their salaries at a rate not to exceed Two Thousand One Hundred Dollars ($2,100.00) per annum each. He may employ one stenographer additionally, at a salary not to exceed One Thousand Eight Hundred Dollars ($1,800.00) per annum. He may employ one civil clerk and fix his salary at a rate not to exceed One Thousand Eight Hundred Dollars ($1,800.00) per annum. But such additional assistants or employees so appointed, before qualifying and entering upon the duties of such office and employment, shall be approved as to number and salaries by the Commissioners Court of such county, all such salaries to be paid from the Officers' Salary Fund, if adequate; if inadequate, the Commissioners Court shall transfer the necessary funds from the General Fund of the County to such Officers' Salary Fund. In addition to the salary herein provided for investigators for District Attorneys or Criminal District Attorneys, each of such investigators may be allowed a sum not to exceed Fifty Dollars ($50.00) per month for repair and maintenance expense of an automobile owned and maintained by said investigator and used by him in the investigation of crime, said allowance, or allowances, to be paid monthly by the county upon warrants drawn upon the Officers' Salary Fund, or General Fund, as the case may be, upon the written claim of such investigator showing that said automobile was in official use, and such claim shall bear the approval of the District Attorney and shall be paid as provided by law for other claims.

Provisions cumulative

Sec. 7. This Act shall be cumulative of all laws in force on its effective date, or subsequently enacted, with respect to reports, auditing, accounting, budgets, and approval and disapproval of claims for salaries, compensation, or other expenses, and all such laws shall remain in force, it being the intention of the Legislature that all statutes prescribing the form, time, method, and manner of reports and accounting for all public funds shall continue in full force and effect. [Acts 1945, 49th Leg., p. 122, ch. 85.]

Section 8 of the Act of 1945 provided that partial invalidity should not affect the remaining portions of the act.

Art. 3912e—5. Additional salary to county judge in counties of 105,000 to 125,000 as member of Juvenile Board.—In all counties having a population of not less than one hundred five thousand (105,000) nor more than one hundred twenty-five thousand (125,000) according to the last preceding or any future Federal Census, the County Judge shall receive the sum of Fifteen Hundred ($1500.00) Dollars annually in addition to his salary now or hereafter provided by law, such addition in salary to be paid such County Judge as a member of the Juvenile Board provided by Article 5139, Revised Civil Statutes, 1925; such additional salary shall be paid in twelve (12) equal installments out of the General Funds of such county, upon the order of the Commissioners' Court. [Acts 1941, 47th Leg., p. 549, ch. 345, § 1.]

Art. 3912e—6. Salaries of officers in counties of 100,000 to 190,000 to be computed at maximum allowable under laws existing August 24, 1935.—The Commissioners Courts in all counties of Texas having a population of not less than one hundred thousand (100,000) and not more than one hundred and ninety thousand (190,000) inhabitants, according to the last preceding Federal Census, in fixing the annual salary that shall be paid an officer named in Section 13 of Chapter 465 of the Acts of the Second Called Session of the Forty-fourth Legislature, where such officer's salary is determined in compliance with the laws which existed on August 24, 1935, and is based upon population, shall compute and fix the salary of each of such officers at the maximum amount which could have been paid each of such officers under the laws existing on August 24, 1935, according to the Federal Census of 1940 and thereafter according to the last preceding Federal Census; provided the Commissioners Courts in said counties are authorized to amend the present order of said Court fixing the maximum salary of said officers for the fiscal year 1941 from and after the effective date of this Act for the balance of said fiscal year, according to the Federal Census of 1940, and thereafter according to the last preceding Federal Census. [Acts 1941, 47th Leg., p. 597, ch. 366, § 1.]

Art. 3912e—7. Salaries of certain officers in counties of 100,000 to 190,000.—The Commissioners Courts in all counties of Texas having a population of not less than one hundred thousand (100,000) and not more than one hundred and ninety thousand (190,000) inhabitants, according to the last preceding Federal Census, in fixing the annual salary that shall be paid an officer named in Section 13 of Chapter 465 of the Acts of the Second Called Session of the Forty-fourth Legislature, where such officer's salary is determined in compliance with the laws which existed on August 24, 1935, and is based upon population, shall compute and fix the salary of each of such officers at the maximum amount which could have been paid each of such officers under the laws existing on August 24, 1935, according to the Federal Census of 1940 and thereafter according to the last preceding Federal Census; provided the Commissioners Courts in said counties are authorized to amend the present order of said Court fixing the maximum salary of said officers for the fiscal year 1941 from and after the effective date of this Act for the balance of said fiscal year, according to the Federal Census of 1940 and thereafter according to the last preceding Federal Census. [Acts 1941, 47th Leg., p. 1326, ch. 597, § 1.]

Art. 3912e—8. Counties over 190,000—salaries of county attorneys; assistants—stenographers.—Section 1. County Attorneys in counties having a population of more than one hundred ninety thousand (190,000) inhabitants, according to the last preceding Federal Census, general or special, where there is no resident District Attorney or Criminal District Attorney shall receive a salary not to exceed Seventy-four Hundred ($7400.00) Dollars per annum. All such salaries shall be paid out of the Officers' Salary Fund.

Sec. 2. County Attorneys in counties to which this bill applies are hereby authorized to appoint not exceeding nine (9) assistants, and fix their salary rate at not to exceed the following amounts; one First Assistant, not to exceed Six Thousand ($6,000.00) Dollars per annum; two assistants at not to exceed Fifty-five Hundred ($5500.00) Dollars per annum each; four assistants at not to exceed Forty-six Hundred ($4600.00) Dollars per annum each; two assistants at not to exceed Thirty-six Hundred ($3600.00) Dollars per annum each. He may employ three investigators and fix their salaries at not to exceed Thirty-six Hundred ($3600.00) Dollars per annum each. He may employ two court reporters and fix their salaries at not to exceed Three Thousand ($3,000.00) Dollars each. He may employ two stenographers and fix their salaries at not to exceed Twenty-four Hundred ($2400.00) Dollars per annum each. He may employ one chief clerk and fix his salary at not to exceed Thirty-six Hundred ($3600.00) Dollars per annum. All such salaries mentioned in Sections 1 and 2 shall be payable from the Officers' Salary Fund, if adequate; if inadequate, the Commissioners Court shall transfer necessary funds from the General Fund of the county to the Officers' Salary Fund. In addition to the salaries provided for the investigators herein, each of such investi-

gators may be allowed a sum not to exceed Fifty ($50.00) Dollars per month for repair and maintenance expense for automobile owned and maintained by such investigator, and used by him in investigation of crime; such allowance to be paid monthly by the county upon warrants drawn upon the Officers' Salary Fund or the General Fund, as the case may be, upon written claim of such investigator, showing that said automobile was in official use; and such claim shall bear the approval of the County Attorney, and shall be paid as provided by law for other claims.

Sec. 3. Should such County Attorney be of the opinion that the number of assistants or stenographers above provided is not adequate for the proper investigation and prosecution of crime and the effective performance of the duties of his position, with the advice and approval of the Commissioners Court he may appoint additional assistants and stenographers or other employees, as hereinafter limited, and fix their salaries as follows: one additional assistant County Attorney, with a salary not to exceed Forty-five Hundred ($4500.00) Dollars per annum; one additional assistant County Attorney with a salary not to exceed Thirty-six Hundred ($3600.00) Dollars per annum. He may employ two additional stenographers and fix their salaries at not to exceed Twenty-one Hundred ($2100.00) Dollars per annum each. [Acts 1945, 49th Leg., p. 505, ch. 307, § 1; Acts 1947, 50th Leg., p. 90, ch. 61, § 1.]

Art. 3912e—9. Salaries of certain officers in counties of 300,000 to 500,000.

Application

Section 1. The provisions of this Act shall apply to and control in each of the counties in this state having a population of not less than 300,000, nor more than 500,000, according to the last preceding Federal Census.

Salaries of certain officers

Sec. 2. The County Judge, Sheriff, District Attorney, Criminal District Attorney, District Clerk, County Clerk, and the Assessor-Collector of Taxes of such counties shall each receive a salary of Seventy-seven Hundred ($7700.00) Dollars per annum. The County Auditor of such counties shall receive a salary of Seventy-four Hundred ($7400.00) Dollars per annum, in lieu of any and all compensation now provided by law; provided that any salary or compensation now provided by law to be paid such County Auditors out of any special funds, including compensation rendered navigation, levee, drainage, road or school districts, shall be charged and collected, but shall be paid into the general fund of such counties. The County Treasurer of such counties shall each receive a salary of Forty-two Hundred ($4200.00) Dollars per annum. The Judges of the County Courts-at-Law and the County Criminal Courts of said counties shall each receive a salary of Sixty-three Hundred ($6300.00) Dollars per annum. All such salaries shall be paid out of the officers' salary fund or the general fund of such counties, as the case may be.

County treasurer's assistants

Sec. 3. The County Treasurer, upon the approval of the Commissioners Court, shall be allowed to appoint one (1) assistant at a salary not to exceed Twenty-four Hundred ($2400.00) Dollars per annum, and a second assistant at a salary not to exceed Twenty-one Hundred ($2100.00) Dollars per annum. Said assistants shall be appointed by the Treasurer and shall take the usual oath of office, and in addition thereto, shall give such surety bond as may be required by the County Treasurer or by the Commissioners Court. Said assistants shall have authority to do and perform in the name of the Treasurer such acts of a clerical or ministerial character as may be required of them by the County Treasurer. All of said salaries enumerated in this section shall be paid from the general fund of such counties.

Increase in salaries

Sec. 4. The Commissioners Court of each of said counties shall grant an increase in the employees' salary budget and amend said budget for the necessary amount for all of said county offices named in Sections 1 and 2 above, equal to a fifteen (15%) per cent increase in the salary of all the employees, deputies and assistants for all of said offices, based on the pay roll of the particular office as of March, 1945. The salaries of the officials named in this Act shall not be increased beyond the salaries fixed in this Act. Said increase in salaries shall be paid from the general fund or officers salary fund, or road and bridge fund of such counties.

County Commissioners' salaries

Sec. 5. The County Commissioners of such counties shall each receive a salary of Fifty-five Hundred ($5500.00) Dollars per annum and such salaries shall be paid out of the Road and Bridge Funds or the General Fund of such counties, as the case may now be.

Justices of the Peace; constables

Sec. 6. All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law shall be entitled to retain annual fees and/or salary of Forty-seven Hundred Fifty ($4750.00) Dollars each; provided, however, that all fees and commissions, whether current or delinquent, which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office, and to make up the maximum compensation provided for in this section. No such officers shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office.

Laws not repealed

Sec. 7. This Act shall not repeal any of the provisions of Chapters 169 and 585, 47th Legislature, Regular Session, page 240, 1309 (1941) now appearing as Article 3912—e, Section 19(f-1) and (h-2), Vernon's Annotated Civil Statutes. The fifteen (15%) per cent increase in salary herein provided for shall be in addition to the salaries of employees, deputies and assistants provided for in said Acts.

Repeal

Sec. 8. Section 1 of Chapter 81, Acts 45th Legislature, Regular Session, page 151 (1937), now appearing as Article 3912e—1, Vernon's Annotated Civil Statutes, and all other laws in conflict herewith be, and the same are hereby repealed, insofar as the same are in conflict with the provisions of this Act, but not otherwise.

County engineer

Sec. 9. The salary of the County Engineer of such county shall not exceed Fifty-two Hundred Fifty ($5250.00) Dollars per annum, said salary to be fixed by the Commissioners Court and paid out of the road and bridge fund of such counties.

County superintendent

Sec. 10. The salary of the County School Superintendent of such counties shall be Five Thousand Fifty ($5050.00) Dollars per annum, said salary to be paid out of the school equalization fund.

Road and bridge employees

Sec. 11. It is further provided that the minimum wage to be paid any road and bridge employee of such counties shall be not less than Fifty (50¢) cents per hour.

Partial invalidity

Sec. 12. If any section, paragraph, clause or sentence in this Act is declared to be unconstitutional, the same shall not effect the remaining portions of this Act. It is further the intention of the Legislature, in the event this Act shall be declared unconstitutional, that the salaries and compensations of the employees, deputies and assistants of the public officers named in this Act and the maximum amount of salaries and compensations which may be paid to said employees, deputies and assistants, shall remain the same as may now be fixed by existing law. [Acts 1945, 49th Leg., p. 510, ch. 312.]

Repeal in Part. Acts 1947, 50th Leg., p. 545, ch. 322, appearing as art. 3912e—11, provides in section 12 thereof that such Act is amendatory of Acts 49th Leg., ch. 312, p. 510, appearing as this article, and that all provisions of this article in conflict with such Act are repealed, but not otherwise.

Art. 3912e—10. [Repealed by Acts 1947, 50th Leg., p. 943, ch. 402, § 3.]

The repealed article was Acts 1947, 50th Leg., p. 248, ch. 144.

Art. 3912e—11. Counties of 300,000 to 500,000, salaries of certain officers in.

Application

Section 1. The provisions of this Act shall apply to and control in each of the counties in this State having a population of not less than three hundred thousand (300,000), nor more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census.

Salaries of certain officers

Sec. 2. The County Judge, Sheriff, District Attorney, Criminal District Attorney, District Clerk, County Clerk, and the Assessor-Collector of Taxes of such counties shall each receive a salary of Seven Thousand, Seven Hundred Dollars ($7,700) per annum. The County Auditor of such counties shall receive a salary of Seven Thousand, Four Hundred Dollars ($7,400) per annum, in lieu of any and all compensation now provided by law to be paid such County Auditors out of any special funds, including compensation rendered navigation, levee, drainage, road or school districts, shall be charged and collected, but shall be paid into the General Fund of such counties. The County Treasurer of such counties shall each receive a salary of Four Thousand, Two Hundred Dollars ($4,200) per annum. The Judges of the County Courts-at-Law and the County Criminal Courts of said counties shall each receive a salary of Six Thousand, Three Hundred Dollars ($6,300) per annum. Justices of the Peace and Constables of such counties whose offices are located in the Courthouse of such counties and whose precincts shall contain not less than two hundred thousand (200,000) inhabitants, according to the last or any future Federal Census, and who shall be compensated on a salary basis, shall receive a salary of Four Thousand, Seven Hundred and Fifty Dollars ($4,750) per annum. All such salaries shall be paid out of the officers Salary Fund or the General Fund of such counties as the case may be.

County treasurer's assistants

Sec. 3. The County Treasurer, upon the approval of the Commissioners Court, shall be allowed to appoint one (1) assistant at a salary not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum, and a second assistant at a salary not to exceed Two Thousand, One Hundred Dollars ($2,100) per annum. Said assistants shall be appointed by the Treasurer and shall take the usual Oath of Office, and in addition thereto, shall give such surety bond as may be required by the County Treasurer or by the Commissioners Court. Said assistants shall have authority to do and perform in the name of the Treasurer such acts of a clerical or ministerial character as may be required of them by the County Treasurer. All of said salaries enumerated in this Section shall be paid from the General Fund of such counties.

Increase in salaries

Sec. 4. The Commissioners Court of each said counties shall grant an increase in the employees' salary budget and amend said budget for the necessary amount of all of said County Officers named in Sections 1, 2 and 9, hereof, equal to a fifteen per cent (15%) increase in the salary of the employees, deputies and assistants for all of said offices, based on the pay roll of the particular office as of March 1945. The salaries of the Officials named in this Act shall not be increased beyond the salaries fixed in this Act. Said increase in salaries shall be paid from the General Fund or Officers Salary Fund, or Road and Bridge Fund of such counties.

County Commissioners' salaries

Sec. 5. The County Commissioners of such counties shall each receive a salary of Five Thousand, Five Hundred Dollars ($5,500) per annum and such salaries shall be paid out of the Road and Bridge Funds or the General Funds of such counties, as the case may be.

Justices of the Peace; constables

Sec. 6. (a) All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law, shall be entitled to retain annual fees of Four Thousand, Seven Hundred and Fifty Dollars ($4,750) each; provided, however, that all fees and commissions, whether current or delinquent, which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office, and to make up the maximum compensation provided for in this Section. No such Officer shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office.

(b) All Justices of the Peace and Constables of such counties who are compensated on a salary basis, whose offices are located in the Courthouse of such counties and whose precincts shall contain not less than two hundred thousand (200,000) inhabitants, according to the last or any future Federal Census, shall receive the annual salary provided in Section 2, hereof. All other Justices of the Peace and Constables in said counties who are being compensated on a salary basis, shall be paid in accordance with the provisions of Article 3912-e, Section 19(c), Vernon's Annotated Civil Statutes.

Laws not repealed; maximum increase

Sec. 7. This Act shall not repeal any of the provisions of Chapters 169 and 585, Forty-seventh Legislature, Regular Session, Page 240, 1309 (1941), now appearing as Article 3912-e, Section 19 (f-1) and (h-2) Vernon's Annotated Civil Statutes. The fifteen per cent (15%) increase in salary herein provided for shall be in addition to the salaries of employees, deputies and assistants provided for in said Acts, but in no event shall the salary of any employee, deputy or assistant be increased beyond a maximum of Four Thousand, Two Hundred Dollars ($4,200) per year except the deputies, assistants and employees of the District Attorney or Criminal District Attorney, whose salaries are now fixed by law as greater than such maximum of Four Thousand, Two Hundred Dollars ($4,200) per year.

Repeal

Sec. 8. Section 1 of Chapter 81, Acts, Forty-fifth Legislature, Regular Session, page 151 (1937), now appearing as 3912e-1, Vernon's Annotated Civil Statutes, and all other laws in conflict herewith be, and the same are hereby repealed, in so far as the same are in conflict with the provisions of this Act, but not otherwise.

County engineer

Sec. 9. The salary of the County Engineer of such county shall not exceed Five Thousand, Two Hundred and Fifty Dollars ($5,250) per annum, said salary to be fixed by the Commissioners Court and paid out of the Road and Bridge Fund of such counties.

County superintendent

Sec. 10. The salary of the County School Superintendent of such counties shall be Five Thousand and Fifty Dollars ($5,050) per annum, said salary to be paid out of the School Equalization Fund.

Road and bridge employees

Sec. 11. It is further provided that the minimum wage to be paid any Road and Bridge Fund employee of such counties shall be not less than fifty cents (50¢) per hour.

Act amends Article 3912e—9

Sec. 12. This Act is amendatory of Senate Bill No. 246, Acts, Forty-ninth Legislature, Regular Session, page 510, now appearing as Article 3912e-9 Vernon's Annotated Civil Statutes, and all provisions of said Act in conflict herewith are hereby repealed, but not otherwise.

Partial invalidity

Sec. 13. If any section, paragraph, clause or sentence in this Act is declared to be unconstitutional, the same shall not affect the remaining portions of this Act. It is further the intention of the Legislature, in the event this Act shall be declared unconstitutional, that the salaries and compensation of the employees, deputies and assistants of the public officers named in this Act and the maximum amount of salaries and compensations which may be paid to said employees, deputies and assistants, shall remain the same as may now be fixed by existing law. [Acts 1947, 50th Leg., p. 545, ch. 322.]

Art. 3912e—12. Counties over 20,000; salary basis; fixing of salaries.—In all counties of this State having a population of less than twenty thousand (20,000), according to the last preceding Federal Census, and in which counties the Commissioners Courts have determined that the county officials shall be compensated on a salary basis, such Commissioners Courts are authorized to fix the salaries of county officials in such counties, their deputies, clerks and assistants. Said compensation shall be paid in monthly or semimonthly installments, as said Court may determine. Provided, however, that no salary fixed herein by such Commissioners Court shall be in an amount to exceed Five Thousand, Four Hundred Dollars ($5,400) for the County Officers and in an amount of Three Thousand, Six Hundred Dollars ($3,600) for Deputies, Assistants, and Clerks; provided, further that no salary shall be set at a figure lower than that paid for the Calendar Year 1946. [Acts 1947, 50th Leg., p. 772, ch. 381, § 1.]

Section 2 of the Act of 1947 provided that "All laws and parts of laws, in so far as the same apply to counties within the provisions of this Act, shall be" repealed to the extent of such conflict.

Art. 3912e—13. Counties of 300,000 to 500,000; appointment and compensation of deputies, assistants and employees.—Section 1. In all counties in this state having a population of more than three hundred thousand (300,000) inhabitants and less than five hundred thousand (500,000) inhabitants, according to the last preceding Federal Census, whenever any district or county officer, with the exception of District Attorneys and Criminal District Attorneys, shall require the services of deputies, assistants, and employees in the performance of his duties he shall apply to the Commissioners Court for authority to appoint such deputies, assistants, and employees, stating by sworn application the number needed, the position to be filled, the duties to be performed, and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions, and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants, and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners Court or any member thereof attempt to influence the appointment of any person as deputy, assistant, or clerk in any office. Upon the entry of such order the officers applying for such deputies, assistants, and employees shall be authorized to appoint them. The compensation which may be allowed to the deputies, assistants, or clerks above named for their services shall be as follows:

First assistant or chief deputy not less than Three Thousand Six Hundred ($3,600.00) Dollars per annum; one assistant or deputy not less than Three Thousand ($3,000.00) Dollars per annum; other assistants, deputies, and employees not to exceed Two Thousand Four Hundred ($2,400.00) Dollars per annum each; provided that bailiffs serving Criminal District Courts shall be paid not less than One Hundred Seventy-five ($175.00) Dollars per month each; and heads of departments in county or district offices shall receive not less than Twenty-five Hundred ($2500.00) Dollars per annum each. No payment shall be made to any deputy, assistant or employee for any service performed prior to the authorization of his appointment and until he shall have subscribed to the constitutional oath of office, and such appointment and oath have been filed with the County Clerk for record. The amounts allowed to be paid to deputies, assistants and employees shall be paid after rendition of service out of said Officers' Salary Fund as provided for by law.

Sec. 2. In addition to the compensation as provided in Section 1, the Commissioners Court of each of said Counties shall grant an increase in the employees' salary budget and amend said budget for the necessary amount for all of said county offices named in Section 1 above, equal to a fifteen (15%) per cent increase in the salary of all the employees, deputies, and assistants for all of said offices, based on the pay roll of the particular office as of March, 1945. The salaries of the officials named in this Act shall not be increased beyond the salaries fixed in this Act. Said increase in salaries shall be paid from the general fund or officers' salary fund, or road and bridge fund of such counties. [Acts 1947, 50th Leg., p. 943, ch. 402.]

Section 3 of the Act of 1947, read as follows: "Senate Bill No. 303, Acts 1947, 50th Legislature [Article 3912e—10], and all other laws and parts of laws in conflict herewith, are hereby repealed as to all counties coming within the provisions of this Act; but nothing, except as herein provided, shall be construed as in any manner modifying or changing the provisions of the present law or any amendments thereto providing for the preparation of the county budget, it being the purpose and intention of this Act to repeal the said Senate Bill No. 303 and to re-enact the law fixing the compensation of the deputies, assistants, and employees in the counties within the provisions of this Act as it was prior to the passage of said Senate Bill No. 303, Acts 1947, 50th Legislature."

Art. 3912f—1. Salaries of sheriffs and deputies in counties of 27,235 to 27,300 population; appointment of deputies.—Section 1. In all counties of the State of Texas having a population of not less than twenty-seven thousand, two hundred and thirty-five (27,235) and not more than twenty-seven thousand, three hundred (27,300), according to the last preceding Federal Census, in which there are no District Attorneys, the Commissioners Courts of such counties shall, from and after effective date of this Act, compensate the Sheriffs of such counties upon an annual salary basis and shall fix the salaries of such Sheriffs in such counties at not less than Three Thou-

sand, Three Hundred Dollars ($3,300) and not more than Three Thousand, Six Hundred Dollars ($3,600) per annum, payable in twelve (12) equal monthly installments, out of the Officers Salary Fund of such counties, by warrant drawn upon said fund.

Sec. 2. The Sheriffs of such counties are hereby authorized and empowered to appoint at least one Deputy Sheriff and one special Deputy Sheriff; the powers and duties of the special Deputy Sheriff shall be the same as those of other Deputy Sheriffs and, in addition, his special duty shall be to assist such Sheriffs in all matters arising in and connected with the efficient conduct of said office, including the finger printing, photography work, and investigation work of said office. The Commissioners Courts of such counties shall, from and after effective date of this Act, compensate such Deputy Sheriffs and such special Deputy Sheriffs upon an annual salary basis and shall fix the salary of such special Deputy Sheriff at not exceeding One Thousand, Two Hundred Dollars ($1,200) per annum, payable in twelve (12) equal monthly installments out of the Officers Salary Fund in such counties by warrant drawn upon said fund by the Commissioners Courts. The compensation of the Deputy Sheriff shall likewise be fixed at an annual salary of not exceeding One Thousand Dollars ($1,000), payable in twelve (12) equal monthly installments in like manner as provided for the payment of the salaries of special Deputy Sheriffs, hereinabove set out.

Sec. 3. This Act is not intended and shall not be considered or construed as repealing any law or laws now on the Statute books except those in conflict herewith and to the extent of the conflict only, but in other respects shall be construed as being cumulative thereof. [Acts 1939, 46th Leg., Spec.L., p. 749.]

Art. 3912f—2. Salary of chief deputy in office of Sheriff, Tax Collector and Assessor in counties of 6,000 to 6,200 population.—Section 1. From and after the effective date of this Act in all counties in this State having a population of not less than six thousand (6,000), and not more than six thousand, two hundred (6,200) according to the last Federal Census, and where the duties of Sheriff, Tax Collector and Assessor are performed by one official, the Commissioners Court is hereby authorized to pay the chief deputies of such officers in such counties a sum not exceeding Two Thousand, One Hundred Dollars ($2,100) per annum, payable in equal monthly installments.

Sec. 2. The salaries hereinabove stipulated shall be paid in whole or in part from such funds as the Commissioners Court may designate. [Acts 1939, 46th Leg., Spec.L., p. 733.]

Section 3 of the Act of 1939 repealed all conflicting laws and parts of laws to the extent of the conflict only.

Art. 3912f—3. Salaries of sheriffs and deputies in counties of 25,600 to 25,889 in which there are no district attorneys.—Section 1. In all counties of the State of Texas having a population of not less than twenty-five thousand, six hundred (25,600) and not more than twenty-five thousand, eight hundred and eighty-nine (25,889), according to the last Federal Census, in which there are no district attorneys, the Commissioners Courts of such counties shall, from and after effective date of this Act, compensate the sheriffs of such counties upon an annual salary basis and shall fix the salaries of such sheriffs in such counties at not less than Thirty-three Hundred Dollars ($3300) and not more than Thirty-six Hundred Dollars ($3600) per annum, payable in twelve (12) equal monthly installments, out of the Officers Salary Fund of such counties, by warrant drawn upon said fund.

Sec. 2. The sheriffs of such counties are hereby authorized and empowered to appoint at least one deputy sheriff and one special deputy sheriff; the powers and duties of the special deputy sheriff shall be the same as those of other deputy sheriffs and, in addition, his special duty shall be to assist such sheriffs in all matters arising in and connected with the efficient conduct of said office, including the finger printing, photography work, and investigation work of said office. The Commissioners Courts of such counties shall, from and after effective date of this Act, compensate such deputy sheriffs and such special deputy sheriffs upon an annual salary basis and shall fix the salary of such special deputy sheriffs at not exceeding One Thousand, Two Hundred Dollars ($1,200) per annum, payable in twelve (12) equal monthly installments out of the Officers Salary Fund in such counties by warrant drawn upon said fund by the Commissioners Courts. The compensation of the deputy sheriffs shall likewise be fixed at an annual salary of not exceeding One Thousand Dollars ($1,000), payable in twelve (12) equal monthly installments in like manner as provided for the payment of the salaries of special deputy sheriffs, hereinabove set out.

Sec. 3. This Act is not intended and shall not be considered or construed as repealing any law or laws now on the statute books except those in conflict herewith and to the extent of the conflict only, but in other respects shall be construed as being cumulative thereof. [Acts 1941, 47th Leg., p. 546, ch. 342.]

CHAPTER 2.—ENUMERATION

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Article 3913. [3833 to 36] Certain State officers.—The Secretary of State, Land Commissioner, Comptroller, State Treasurer, Commissioner of Agriculture, Commissioner of Insurance, Banking Commissioner, State Librarian, Adjutant General, and the Attorney General, shall furnish to any person who may apply for the same with a copy of any paper, document or record in their respective offices, or with a certificate under seal, certifying to any fact or facts contained in the papers, documents or records of their offices; provided neither of said officers shall demand nor collect any fee from any officer of the State for copies of any papers, documents or records in their offices, or for any certificate in relation to any matter in their offices, when such copies are required in the performance of any of the official duties of such office. Each of said officers shall keep a fee book in his office in which he shall enter all the fees received for any service named in this title, and shall quarterly file with the Comptroller a verified account of all fees so received by them, respectively, and such officers shall also at the end of each quarter pay over to the State Treasurer all money received by them, respectively, under the provisions of this title. Each said officer shall be entitled to demand and receive the following fees for the services mentioned, except as otherwise provided by this title:

For copies of any paper, document, or record in their offices, in the English language, including certificate and seal, for each hundred words ..... $ .15
For copies of any paper, document or record in their offices, in any other language than the English, including certificate and seal, for each hundred words..... .25
For each translated copy of any paper, document, or record in their offices, including certificate and seal, for each hundred words..... .30
For the copy of any plat or map in their offices, such fee as may be established by the officer in whose office the same is made, to be determined with reference to the amount of labor required.
For each certificate not otherwise provided for.. $ .50
[Acts 1848, p. 184; G. L. vol. 3, p. 184; Acts 1907, p. 283.]

Art. 3914. [3837] [2439] Secretary of State.—The Secretary of State is authorized and required to charge for the use of the State the following other fees:

Upon filing each charter, amendment, or supplement thereto of a channel and dock, railroad, magnetic telegraph line, street railway or express corporation, a filing fee of Two Hundred ($200.00) Dollars, provided, that if the authorized capital stock exceeds One Hundred Thousand ($100,000.00) Dollars, an additional filing fee of Fifty Cents for each One Thousand ($1,000.00) Dollars authorized capital stock or fractional part thereof, after the first One Hundred Thousand ($100,000.00) Dollars, shall be paid.

Upon filing each charter, amendment or supplement thereto of a corporation for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of a public cemetery not for profit and the encouragement of agriculture and horticulture, to aid its members in producing and marketing agricultural products, or for acquiring, raising, breeding, fattening or marketing live stock, a filing fee of Ten ($10.00) Dollars, and for filing the semi-annual financial statement of such agricultural products or live stock corporation, Ten ($10.00) Dollars, which shall include the annual license fee.

Upon filing each charter, amendment or supplement thereto, of a private corporation created for any other purpose intended for mutual profit or benefit, a filing fee of Fifty ($50.00) Dollars, provided that if the authorized capital stock of said corporation shall exceed Ten Thousand ($10,000.00) Dollars it shall be required to pay an additional fee of Ten ($10.00) Dollars for each additional Ten Thousand ($10,000.00) Dollars of its authorized capital stock or fractional part thereof after the first.

Upon obtaining a permit under Article 1529 and upon filing a certified copy of any amendment or supplement under Article 1537, each foreign corporation shall pay the following fees for the privilege of being admitted to do an intrastate business in this State: Fifty ($50.00) Dollars for the first Ten Thousand ($10,000.00) Dollars of its issued capital stock employed in Texas, as hereinafter determined, and Ten ($10.00) Dollars for each additional Ten Thousand ($10,000.00) Dollars or fractional part thereof. The amount of the issued capital stock so taxable shall be that proportion of the whole thereof, as the gross assets employed in whole or in part in intrastate business in Texas, plus the gross receipts from intrastate Texas business, bear to the entire assets and receipts of the corporation. In the case of a beginner corporation obtaining a permit to do business in Texas for the first time, where it has theretofore employed no capital stock in Texas, the basic filing fee of Fifty ($50.00) Dollars shall be paid as hereinabove provided and within ninety (90) days after the expiration of the first year under its permit, the corporation shall file an affidavit with the Secretary of State executed by one of its executive officers, showing the amount of gross assets employed in whole or in part in intrastate business in Texas and the amount of its entire gross assets at the end of such first year with all other data required to calculate the fee, and at such time shall pay to the Secretary of State the balance of the filing fee on the proportion of its issued capital stock as hereinbefore determined, in excess of Ten Thousand ($10,000.00) Dollars at the rate of Ten ($10.00) Dollars for each additional Ten Thousand ($10,000.00) Dollars or fractional part of such excess. If, during any year of the life of any such permit, additional capital stock is issued under an amendment increasing the capital stock, such corporation shall, within ninety (90) days from the end of such permit year, file a similar affidavit and pay the balance of the filing fee on any such additional issued capital stock employed in Texas as shown in such report in the same manner as provided herein for the payment on the excess in the case of a beginner corporation; provided that the minimum filing fee for any amendment or supplement shall be Fifty ($50.00) Dollars. Where the assets employed in Texas are used jointly in intrastate and interstate business, only that portion of the gross value thereof shall be used in calculating such fees as the intrastate Texas receipts bear to the inter-

state Texas receipts from the entire operation in Texas.

The gross receipts in all cases shall be for the permit year preceding the date the fee is payable; provided that where no intrastate Texas business has been done for such period, then the ratio used shall be simply that of the Texas gross assets to the entire gross assets. Where such corporation has no capital stock, the amount of its net assets shall be used in the place of issued capital stock. Issued capital stock without par value shall be taken at the amount received for its issuance.

The maximum filing fees to be paid by any domestic or foreign corporation shall be Twenty-five Hundred ($2500.00) Dollars.

For each commission to every officer elected or appointed in this State, One ($1.00) Dollar.

For each official certificate, One ($1.00) Dollar.

For each warrant of requisition, Two ($2.00) Dollars.

For every remission of fine or forfeiture, One ($1.00) Dollar.

For copies of any paper, document or record in this office, Fifty Cents per legal size page.

For recording each contract for the conditional sale, lease or hire of railroad equipment and rolling stock, and for recording each declaration of performance of such contract, Five ($5.00) Dollars; and for entering such declaration on the margin of the record of such contract, One ($1.00) Dollar.

For recording each certificate of consolidation of cities, and for recording each certificate of adoption of a city charter or amendment under the "Home Rule Act," Fifty Cents per legal size page; provided, such fee shall not be less than Two ($2.00) Dollars. [Acts 1919, p. 79; Acts 1931, 42nd Leg., p. 204, ch. 120, § 1.]

Section 2 of Acts 1931, provides that its provisions are separable and if any section is held invalid, such decision shall not affect the remainder.

This article and article 7085, imposing a franchise tax on any foreign corporation, as a condition to its right to do business in Texas, of a given percentage of all the corporation's capital and surplus, representing all of its property, wherever situated, and all of its business, both intrastate and interstate, thereby placing a tax on the corporation's property rights beyond the jurisdiction of the state for taxation purposes, are unconstitutional. Crane Co. v. Looney, D.C., 218 F. 260, affirmed 245 U.S. 178, 38 S.Ct. 85, 62 L.Ed. 230.

Art. 3915. [3838] Certain foreign corporations.—All foreign building and loan associations shall pay to the Secretary of State the following fees: for filing each application for admission to do business in this State, fifty dollars; for each certificate of authority and annual renewal of the same, twenty-five dollars; and an annual franchise tax of two hundred and fifty dollars. The fee required to be paid by any foreign corporation for a permit to do the business of loaning money in this State shall in no event exceed one thousand dollars. [Acts S. S. 1909, p. 267; Acts 1st C. S. 1913, p. 72.]

Art. 3916. [3840] Disposition of fees.—All fees mentioned in the two preceding articles shall be paid in advance into the office of the Secretary of State, and shall be by him paid into the State Treasury monthly. [Id.]

Art. 3917. [3841] [2440] [2375] Attorney General.—The Attorney General shall be entitled to the following fees:

For each affirmance of judgment in cases to which the State may be a party involving pecuniary liabilities to the State, ten per cent on the amount collected if under one thousand dollars, and five per cent for all above that sum, to be paid out of the money when collected.

For all cases involving the forfeiture of charters, heard on appeal before the Supreme Court or Courts of Civil Appeals, twenty-five dollars.

But the whole amount of fees allowed the Attorney General shall not exceed the sum of two thousand dollars per annum, and the excess of such fees over two thousand dollars per annum shall be paid into the State Treasury. [Acts 1876, p. 284; G. L. vol. 8, p. 1120.]

Art. 3918. [3842] [2441] [2376] Land Commissioner.—The Land Commissioner is authorized and required to charge for the use of the state, the following fees:

FILING FEES

Deed transferring one tract of land or a decree of court relating to one tract of land	$1.00
Each additional tract in a deed or decree	.50
Affidavit of ownership	.50
Original Field Notes	1.00
Transfer or relinquishment of each Mineral Award, Mineral Prospect Permit, Grazing Lease, or Mineral Lease or part thereof, except those transfers subject to 10¢ per acre transfer fees, and those Relinquishments subject to $1.00 per area relinquishment fees	1.00
Transfer or relinquishment of Mineral Leases or parts thereof, which transfers are subject to 10¢ per acre transfer fees, and which Relinquishments are subject to $1.00 per area relinquishment fees	1.00
Certificates of Facts covering one tract of land	2.00
Each additional tract	1.00
Each other certificate not otherwise provided for	.50

CERTIFIED COPIES

Certificate of the class of Toby Scrip	$2.50
All other Land Certificates	1.00
Applications for survey	1.00
Field Notes	1.00
Mineral Application	1.00
Mineral Permit or Mineral Lease	2.00
Purchase Application and Obligation	1.25
Purchase Application	1.00
Obligation for Deferred Payment on Land	1.00
File Wrapper	1.00
Proof of Occupancy	1.50
Deed, Bond for Title, Power of Attorney, Decree of Court or other similar instrument	1.50
Patent	1.25
Affidavit of Settlement, Non-settlement and Rebuttal Affidavits, each	1.00
Other Affidavits	1.00
Lease Application or Contract not exceeding five tracts	1.00
Each additional tract add	.25
Letters and Impressions of Letters	1.00
Extract of Muster Roll, Traveling Land Board Reports, Clerk's Returns relating to Land Certificates, Patent Delivery Books, School Land Sales, records and books and other similar records, each	2.00
Copy of any record, document or papers in the English language not otherwise provided for herein, 20¢ for each 100 words, provided that no charge shall be less than	1.00
Plain or certified copy of any other paper, document or record in any other language than the English, 40¢ for each 100 words, provided no charge shall be less than	1.00
Blue Print, White Print, or other Cloth Map of any county	4.00
Blue or White Print Paper Map of any county	2.00
Certificate on either Cloth or Paper Map of any county	.50
Plain or certified copy of a portion of a map or sketch or plat made by print or hand, and for a working sketch, the fee shall be determined by the amount of material used and the time consumed, at the rate of, per hour	1.00

For examination of any filed papers, for each survey .50
When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one person or where search is necessary to compile information, minimum fee to be charged at 50¢, and if the examination is extended beyond thirty (30) minutes, an additional sum shall be charged at the rate of, per hour 1.00

PATENT FEES

Eighty Acres or less $5.00
Each additional eighty acres or fractional part thereof contained in a patent 1.00

DEED OF ACQUITTANCE FEES

Eighty acres of excess or less 5.00
Each additional eighty acres of excess or fractional part thereof contained in a Deed of Acquittance 1.00

[Acts 1919, p. 86; Acts 1945, 49th Leg., p. 18, c. 13, § 1.]

Art. 3919. [3843] [2442] [2377] Comptroller.—The Comptroller shall charge the following fees:

For examinations in which the State, or any county, has no interest, for each hour or fraction of an hour spent in such examination..... $ .50
For each sealed certificate issued..... .50

[Acts 1875, p. 182; G. L. vol. 8, p. 554.]

Art. 3920. [3844] [2443] [2378] Commissioner of Insurance.—The Board of Insurance Commissioners shall charge and receive for the use of the State the following fees:

For filing each declaration or certified copy of charter of an Insurance Company $25.00
For filing the annual statement of an Insurance Company, or certificate in lieu thereof $20.00
For certificate of authority and certified copy thereof ..... $ 1.00
For every copy of any paper filed in the Department of Insurance, for each 100 words, not to exceed ..... $ .20
For affixing the official seal and certifying to the same ..... $ 1.00
For valuing policies of Life Insurance, and for each one million of insurance or fraction thereof $10.00

All fees collected by virtue of this Article shall be deposited in the State Treasury and until September 1, 1939, are hereby appropriated to the use and benefit of the Board of Insurance Commissioners to be used in the payment of salaries and other expenses arising out of and in connection with the examination of Insurance Companies and/or the licensing of Insurance Companies and investigations of violations of the insurance laws of this State.

After August 31, 1939, all fees collected by virtue of this Article shall be deposited in the State Treasury and appropriated to the use and benefit of the Board of Insurance Commissioners to be used in the payment of salaries and other expenses arising out of and in connection with the examination of Insurance Companies and/or the licensing of Insurance Companies and investigations of violations of the Insurance Laws of this State in such manner as provided in the general appropriation bill for the Life Insurance Division and Examining Division and Agents' License Division of the Board of Insurance Commissioners. [Acts 1876, p. 223; G.L. vol. 8, p. 1059; Acts 1907, p. 127; Acts 1931, 42nd Leg., p. 252, ch. 152, § 1; Acts 1939, 46th Leg., p. 384, § 1.]

Art. 3921. Banking Commissioner.—The Banking Commissioner shall charge and receive for the use of the State the following fees:

For making an investigation of an application for the organization of a State Bank, not to exceed $50.00

For each charter, amendment or supplement thereto, of a bank or bank and trust company, a fee of fifty dollars shall be paid when said charter is filed, and if the authorized capital stock of such corporation exceeds ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars of its authorized capital stock or fractional part thereof after the first, provided such fee shall not exceed twenty-five hundred dollars. [Acts 1913, p. 212; Acts 1917, p. 469; Acts 1919, p. 169; Acts 3rd C. S. 1920, p. 89.]

Art. 3922. [3845] Railroad Commission.—The Railroad Commission of Texas shall be authorized to charge fees for copies of all papers furnished by it, except such as may be furnished to some department of the State government, as follows:

For copies of any paper, document or record in its office, including certificate and seal, to be applied by the secretary, for each one hundred words, fifteen cents; provided, that this article shall not be construed to authorize the charging of such fees for railroad companies or other persons for tariff sheets for their own use, which such tariff sheets are in force.

The fees so charged and collected shall be accounted for by the secretary of the Railroad Commission and paid into the Treasury as provided in Article 3913. [Acts 1899, p. 297.]

Art. 3923. [3846] [2445] [2380] Clerk of Supreme Court; deposits to cover costs.—The Clerk of the Supreme Court shall receive the following fees and costs:

1. For the filing of records, applications, motions, briefs, and other necessary and proper papers; for the docketing and docket and minute book entries; for issuing notices, citations, processes, mandates; and for the performance of other proper and necessary clerical duties in cases before the court, he shall receive the fee set out opposite each class of the following cases:

(a) Application for writ of error.....$ 10.00
(b) If application for writ of error is granted, an additional fee of..... 25.00
(c) Motion for leave to file petition for writ of mandamus, prohibition, injunction, and other like proceedings originating in the Supreme Court 10.00
(d) If motion for leave to file petition for writ of mandamus, prohibition, injunction, certiorari, or other like proceeding be granted, an additional fee of.. 15.00
(e) Certified questions from the Court of Civil Appeals to the Supreme Court.. 25.00
(f) In cases appealed to the Supreme Court from the District Court by direct appeal 25.00
(g) Each and every other proceeding filed in the Supreme Court..... 25.00
2. Administering an oath or affirmation.. .50
3. Administering an oath or affirmation and giving certificate thereof, with seal 1.00
4. Making copies of any papers of record in offices, including certificate and seal, for each 100 words..... .20
5. Issuing each attorney's license or certificate with seal..... 1.00

Provided the Supreme Court may by order or rule fix a reasonable fee for any official service performed by its Clerk not otherwise provided herein.

The Supreme Court shall provide by order or rule for the making of deposits to cover the costs in cases before the Court as classified above, but nothing herein shall be construed as requiring a deposit in

any case in which the petitioner, relator, or appellant in the Supreme Court is exempt from the giving of a bond. [Acts 1876, p. 285; G.L. vol. 8, p. 1121; Acts 1919, p. 64; Acts 1947, 50th Leg., p. 350, ch. 198, § 1.]

Art. 3923a. Other services by Clerk of Supreme Court; fees; disposition.—Section 1. The Clerk of the Supreme Court for every service not otherwise provided by law shall receive such fees as may be allowed by the Court, not to exceed the fees allowed by law for services requiring a like amount of labor.

Sec. 2. Such fees, when collected, shall be accounted for by the Clerk, and paid into the State Treasury as provided by law for other fees collected by him. [Acts 1939, 46th Leg. p. 328.]

Art. 3924. [3847] [1011] Clerk of Civil Appeals.—The clerks of the Courts of Civil Appeals shall receive the following fees:

Entering appearances of either party, in person or by attorney, to be charged but once	$ .50
Docketing each cause, to be charged but once	.50
Filing the record in each cause	.50
Entering each rule or motion	.25
Entering the order of court upon any rule or motion, or entering any interlocutory judgment	.50
Administering an oath or affirmation, without a certificate	.15
Administering an oath or affirmation and giving a certificate thereof with seal	.25
Entering each continuance	.20
Entering each final judgment or decree	1.00
Each writ issued	1.00
Making out and transmitting the mandate and judgment of the court to any inferior court	1.50
Making copies of any papers or records in their offices, including certificate and seal, for each 100 words	.10
Recording the opinions of the judges, for each 100 words	.15
Taxing the bill of costs in each case	.50
Filing each brief, or other paper necessary to be filed	.10
For certificate and seal, where same is necessary	.50
Recording sheriff's return on execution	.50
For issuing copies of each notice ordered by court	.50

[Acts 1893, p. 165; G. L. vol. 10, p. 595.]

Art. 3925. [3849] [2447] [2383] County judge.—The county judge shall receive the following fees in probate matters:

Probating a will	$2.00
Granting letters testamentary, of administration or of guardianship	.50
Each order of sale	.50
Each approval and confirmation of sale	.50
Each decree refusing order of sale, or refusing confirmation of sale	.50
Each decree of partition and distribution	2.00
Each decree approving or setting aside the report of commissioner of partition and distribution	2.00
Each decree removing an executor, administrator or guardian to be paid by such executor, administrator or guardian	1.00
Each fiat or certificate	.50
Each continuance	.10
Each order, not otherwise provided for	.50
Administering oath or affirmation with certificate and seal	.50
Administering oath or affirmation without certificate and seal	.25

[Acts 1876, p. 284; G. L. vol. 8, p. 1120.]

Art. 3926. [3850 to 3853] Other fees of county judge.—The county judge shall also receive the following fees:

1. A commission of one-half of one per cent upon the actual cash receipts of each executor, administrator or guardian, upon the approval of the exhibits and the final settlement of the account of such executor, administrator or guardian, but no more than one such commission shall be charged on any amount received by any such executor, administrator or guardian.

2. For each case of lunacy disposed of by him, Five Dollars ($5), to be paid out of the county treasury. For each civil cause finally disposed of by him by trial or otherwise, Five Dollars ($5), to be taxed against the party cast in the suit; provided, that if said party has filed his oath of inability to pay costs during the progress of the cause, or be unable to pay costs, then the county judge shall be allowed by the Commissioners Court such compensation as it may deem proper, not to exceed Three Dollars ($3) for each State case. [As amended Acts 1945, 49th Leg., p. 662, ch. 368, § 2.]

3. For presiding over the Commissioners' Court, ordering elections and making returns thereof, hearing and determining civil causes, if any, and transacting all other official business not otherwise provided for, the County Judge shall receive such salary from the County Treasury as the Commissioners' Court may allow him by order, payable monthly from the general funds of the county, provided, that in counties having $290,000,000.00 assessed valuation, or more, and which have established therein institutions for the care of both dependent and delinquent boys and girls, the County Judge shall receive as ex-officio salary, not to be accounted for as fees of office, and in addition to all amounts allowed under the Maximum Fee Bill, the further sum of $3,000.00 per annum, payable monthly out of the general funds of the county. [As amended Acts 1929, 41st Leg., p. 64, ch. 30, § 1.]

4. For testing any steelyard, balance or beam, fifty cents, and for every weight or measure, ten cents.

5. For examining and approving the bond of a live stock commission merchant, one dollar. [Acts 1876, p. 284; G.L. vol. 8, p. 1120; Acts 1921, p. 176.]

Acts 1929, 41st Leg., p. 64, ch. 30, § 1, amended subdivision 3 of this article.

Art. 3927. [3855] [2453] [2389] District clerk.—The clerks of the District Courts shall receive the following fees in civil cases for their services:

Certificate and seal on any copy	$ .50
Each writ of citation	.75
Each copy of citation	.75
Docketing each cause, to be charged but once	.50
Every other order, judgment, or decree, not otherwise provided for	1.00
Docketing each rule or motion, including rule for cost	.15
Filing each paper	.15
Filing original petition	1.50
Entering appearance of each party to a suit, to be charged but once	.15
Each continuance	.15
Swearing each witness	.10
Administering an oath, affirmation, or taking affidavit, certificate and seal; provided, that he shall only be allowed pay for one certificate to each witness claim for attendance in behalf of plaintiff, and one each in behalf of defendant, at any one term of Court	.50
Each subpoena issued	.25
Each additional name inserted in subpoena	.15
Approving bond (except for costs)	1.50
Swearing and impaneling a jury	.35
Receiving and recording a verdict of a jury	.35

Each commission to take depositions	.75
Taking depositions, each 100 words	.15
Issuing copies of interrogatories with certificate and seal per 100 words	.15
Each final judgment	1.50
Where judgment exceeds 300 words, an additional fee for each 100 words in excess of 300 words	.15
For each order of sale	1.00
For each execution	1.00
For each writ of possession or restitution	1.00
For each injunction writ	.75
For each copy of injunction writ	.75
For every other writ not otherwise provided for	.75
For each copy of writ not otherwise provided for	.75
Recording return of any writ, including the return on all writs, except subpoenas	.50
Each certificate to any facts contained in his office	1.00
Making out and transmitting the records and proceedings in a cause to any inferior Court, for each 100 words	.10
Making out and transmitting mandate or judgment of the District Court upon appeal from the County Court	1.00
Filing a record in a cause appealed to the District Court	.50
Transcribing, comparing and varifying record books of his office, payable out of the county treasury, upon warrants issued upon the order of Commissioners Court, for each 100 words	.15
Making transcript of records and papers in any cause upon appeal, or writ of error, with certificate and seal, for each 100 words	.15
Making copy of all records, judgments, orders, petitions, pleadings, or papers on file in his office, whether to be certified or not, for any party applying for same, for each 100 words	.15
Taxing the bill of costs in any case with copy of same	.25
Filing and recording the declaration of intention to be a citizen of the United States	2.00
Issuing certificate of naturalization	2.50

[Acts 1901, p. 24; Acts 1941, 47th Leg., p. 641, ch. 387, § 1; Acts 1945, 49th Leg., p. 662, ch. 368, § 3.]

Art. 3928. [3856–7–8] Other fees of district clerk.—The District Clerk shall also receive the following fees:

1. Whenever in any suit a certified or uncertified copy of any petition or any other instrument, judgment or order is necessary in the District Court, it shall be lawful for the plaintiff or defendant to prepare such copy and submit the same to the District Clerk, who shall be entitled to a fee of Ten (10¢) Cents per 300 words to the page, for his services in comparing same with the original. If a certified copy is necessary, he shall attach his certificate of true copy, and for such service he shall receive Fifty (50¢) Cents for each certificate and seal. In no event shall the fee be less than Twenty-five (25¢) Cents for the copy, with or without certificate and seal.

2. In matters relating to estates of deceased persons and minors, when the same are transacted in the District Court, he shall receive the same fees that are allowed therefor to County Clerks.

3. For the care and preservation of the records of his office, keeping the necessary indexes, and other labor of the like kind, to be paid out of the County Treasury on the order of the Commissioners' Court, such sum as said Court shall determine. [Acts 1901, p. 24; Acts 1879, p. 92; G.L. vol. 8, p. 1392; Acts 1941, 47th Leg., p. 641, ch. 387, § 2.]

Art. 3928a. Disposition of and accounting for fees received by District Clerk.—In those counties where the District Clerk is compensated on a fee basis, the Clerk shall receive such fees and account for such as fees of office; and in those counties where the District Clerk is compensated on a salary basis, such fees shall be collected and paid into the officer's salary fund as now or hereafter provided by law. [Acts 1941, 47th Leg., p. 641, ch. 387, § 3.]

Art. 3929. [3859–63] Clerks assessing damages.—No district or county clerk shall receive any compensation for assessing damages in any case. [Acts 1st C. S. 1897, p. 13.]

Art. 3930. [3860] [2457] [2393] County clerk.—Clerks of the county Court shall receive the following fees:

Filing each paper	.10
Issuing notices, including copies for posting or publication	.75
Docketing each application, complaint, petition, or proceeding, to be charged but once	.20
Each writ or citation, including copy thereof	.75
Each copy of any paper that is required to accompany any writ or citation with certificate and seal, for each 100 words	.15
Issuing letters testamentary, of administration or guardianship	.75
Each final judgment or decree	1.00
Every other order or decree, not exceeding 100 words	.15
Where such other order or decree contains 100 words and not more than 200 words	.25
When any final judgment or decree or any other order or decree exceeds 200 words, an additional fee for each 100 words in excess of 200 words	.15
Recording all papers required to be recorded by them in relation to estates of decedents or wards, for each 100 words	.15
Administering oath to executor, administrator, or guardian	.10
Administering oath in other cases without certificate and seal	.15
Administering oath with certificate and seal	.50
Entering each order of the Court approving or disapproving a claim against an estate	.25
Filing each paper, except subpoenas	.10
Each appearance, to be charged but once	.10
Entering each continuance, except in estates	.10
Each subpoena	.25
Each additional name inserted in a subpoena	.15
Approving bond, except bond for costs and notarial bond	1.00
Approving notarial bond	.50
Swearing each witness	.10
Swearing and empaneling a jury	.25
Receiving and recording a verdict	.25
Each commission to take depositions	.50
Taking depositions, each 100 words	.15
Each execution, order of sale, writ of possession, restitution or other writ not otherwise provided for	.75
For recording return of any writ, when any such return is required by law to be recorded	.50
Where the return exceeds 300 words, for each 100 words in excess of 300 words	.15
Copies of interrogatories, cross-interrogatories and all other papers or records required to be copied by him, including certificate and seal, where the copy does not exceed 200 words, for each 100 words	.15
Where the copy exceeds 200 words, for each additional 100 words in excess of 200 words	.15

Transcript in any case where appeal or writ of error is taken, with certificate and seal, for each 100 words	.15
Each certificate to any fact or facts contained in the records of his office, with certificate and seal, when not otherwise provided for	.50
For filing, recording and certifying to each tax receipt	.25
Taxing the bill of costs in each cause, with a copy thereof	.25
For recording attachments and returns, the same fees allowed for recording deeds.	
For filing and recording each rental lien deposited	.40
For filing and registering and entering satisfaction and release of each chattel mortgage	.75
Recording all papers required or permitted by law to be recorded, not otherwise provided for, including certificate and seal, for each 100 words	.15
Transcribing records for new counties and added territory, for each 100 words	.15
Transcribing, comparing, and verifying record books of his office, payable out of the county treasury upon warrant issued under the order of the Commissioners Court, for each 100 words	.15
Issuing and recording marriage license	2.00
Recording each mark and brand or either	.50
Issuing each license, other than marriage license, where the law provides for him to issue same	1.00
Recording and certifying bills of sale under the stock laws, for each 100 words	.15
Recording each mark and brand and giving certificate thereof	.75
Revising the list of marks and brands, such compensation as the Commissioners Court may allow.	
Qualifying a notary public	.50
For filing and recording the bond and sworn statement of a livestock commission merchant	1.00
For making a certified copy of such bond and statement	1.00

[Acts 1st C.S.1897, p. 13; Acts 1919, p. 170; Acts 1921, p. 177; Acts 1945, 49th Leg., p. 662, ch. 368, § 5.]

Art. 3931. [3861] [2458] [2394] County clerk: preserving records.—At each term of his court the county judge shall inquire into and examine the amount of labor actually and necessarily performed by the clerk of his court in the care and preservation of the records of his office, in making and keeping necessary indexes thereto, and other labor of a like class, and allow said clerk a reasonable compensation therefor, not to exceed the fees allowed him by law for like services, and not to exceed one hundred dollars annually, to be paid out of the county treasury upon the sworn account of such clerk, approved in writing thereon by the county judge. [Acts 1876, p. 287; G. L. vol. 8, p. 1123.]

Art. 3932. [3862] [2459] [2395] County clerk: ex-officio services.—For all ex-officio services in relation to roads, bridges and ferries, issuing jury script, county warrants, and taking receipts therefor, services in habeas corpus cases, making out bar dockets, keeping records of trust funds, filing and docketing all papers for Commissioners' Court, keeping road overseers' books and list of hands, recording all collection returns of delinquent insolvents, recording county treasurer's reports, recording reports of justices of the peace, recording reports of animals slaughtered, and services in connection with all elections, and all other public services not otherwise provided for to be paid upon the order of the Commissioners' Court out of the treasury, the county clerk shall receive such sum as the Commissioners' Court may determine under the provisions of Article 3895, to be paid quarterly. No county clerk shall be compelled to file or record any instrument of writing permitted or required by law to be recorded until the payment or tender of payment of all legal fees for such filing or recording has been made. Nothing herein shall be held to include papers or instruments filed or recorded in suits pending in the county court. [Acts 1881, p. 99; G.L. vol. 9, p. 191; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 6.]

Art. 3933. [3864] [2460] [2396] Sheriffs and constables.—Sheriffs and Constables shall receive the following fees:

Serving each original citation in a civil suit	$1.25
Summoning each witness	.75
Levying and returning each writ of attachment or sequestration	2.00
Copy of attachment writ and return for recording	1.00
Levying each execution	1.00
Return of execution	1.00
Serving each writ of garnishment or other process not otherwise provided for	1.00
Serving each writ of injunction	1.50
Taking and approving each bond, and returning same to the proper Court when necessary	1.00
Endorsing the forfeiture of any bond required to be endorsed by him	.50
Executing and returning each writ of possession or restitution	3.00
Posting the advertisements for sale under the execution or any order of sale	1.00
Posting any other notices required by law and not otherwise provided for	1.00
Executing a deed to each purchaser of real estate under execution or order of sale	2.00
Executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by purchaser	2.00
For each case tried in the district or county Court, a jury fee shall be taxed for the sheriff of	.50
For services in designating a homestead	2.00
For traveling in the service of any civil process, sheriffs and constables shall receive Ten (10) Cents for each mile going and coming; if two (2) or more persons are mentioned in the writ, he shall charge for the distance actually and necessarily traveled in the service of same.	

Collecting money on an execution of an order of sale, when the same is made by a sale, for the first One Hundred Dollars ($100) or less, four per cent (4%); for the second One Hundred Dollars ($100), three per cent (3%); for all sums over Two Hundred Dollars ($200) and not exceeding One Thousand Dollars ($1,000), two per cent (2%); for all sums over One Thousand Dollars ($1,000) and not exceeding Five Thousand Dollars ($5,000), one per cent (1%); for all sums over Five Thousand Dollars ($5,000), one-half (½) of one per cent (1%).

When the money is collected by the sheriff or constable without a sale, one-half (½) of the above rates shall be allowed him.

For every day the sheriff or his deputy shall attend the district or county Court he shall receive Four Dollars ($4) a day to be paid by the county for each day that the sheriff by himself or a deputy, shall attend said Court. [Acts 1923, p. 397; Acts 1937, 45th Leg., p. 437, ch. 224, § 1; Acts 1945, 49th Leg., p. 662, ch. 368, § 5.]

Art. 3934. [3865—6] Sheriff: other compensation.—Sheriffs shall also receive the following compensation:

1. For all process issued from the Supreme Court or Courts of Civil Appeals, and served by them, the

same fees as are allowed them for similar service upon process issued from the district court.

2. [Repealed by Acts 1945, 49th Leg., p. 244, ch. 179, § 4.]

[Acts 1875, p. 70; G. L. vol. 8, p. 442; Acts 3rd C.S. 1920, p. 82.]

Art. 3935. [3867] [2463] [2399] Justice of the peace.—Justices of the peace shall receive the following fees:

Each citation	$1.00
Each subpoena for one witness	.25
Each additional name inserted in a subpoena	.10
Docketing each cause	.20
Filing each paper	.10
Each continuance	.10
Each bond not otherwise provided for	.50
Swearing each witness in Court	.10
Administering an oath without a certificate	.10
Administering an oath with certificate	.50
Administering the oath, approving bond and issuing a writ of attachment or sequestration	1.50
Issuing any other writ or process not otherwise provided for	1.00
Causing a jury to be summoned and swearing them	.25
Receiving and recording verdict of jury	.25
Each order in a cause not otherwise provided for	.50
Each final judgment	1.00
Each abstract of judgment	.75
Each application to set aside a judgment or for a new trial, with the final judgment thereon	.50
Each appeal bond	1.00
Each commission to take depositions	.50
Copy of interrogatories or cross-interrogatories, for each 100 words including certificate	.15
Making and certifying a transcript of the entries on his docket, and filing the same, together with the original papers in the case, in the proper Court, in each case of appeal or certiorari	1.50
Each execution or order of sale	1.00
Each writ of possession or restitution	1.00
Receiving and recording the return on each execution, order of sale, writ of possession or restitution, if a levy is returned or the writ executed	.50
If no levy is returned or the writ not executed	.25
Making copies of any papers or records in his office for any person applying for the same, for each 100 words including certificate	.15
Taxing costs, including copy thereof, in each case	.25
Each certificate not otherwise provided for	.50
Taking acknowledgment for stay of judgment	.50

[Acts 1st C.S.1897, p. 13; Acts 1945, 49th Leg., p. 666, ch. 368, § 6.]

Art. 3935a—1. Expense allowance to justice of peace in counties of 355,000 or more population.—In all counties containing a population of three hundred and fifty-five thousand (355,000) or more inhabitants, according to the last preceding Federal Census, the Commissioners Court of each of such counties may make a reasonable allowance, not to exceed Fifty Dollars ($50) a month, for the operation of the automobiles in connection with his official duties, to be paid from the General Fund of each of such counties to each Justice of the Peace, whose courtroom is located in the county courthouse at the county seat of each of such counties, in addition to any and all other expenses now authorized by law to be defrayed by such counties for such Justices of the Peace. [Acts 1939, 46th Leg., Spec.L., p. 752, § 1.]

Section 2 of the Act of 1939 repealed all laws and parts of laws in conflict therewith insofar, but only insofar, as they relate to and affect the several justices of the peace affected by such act.

Art. 3936. [Repealed by Acts 1937, 45th Leg., p. 437, ch. 224, § 2.]

Art. 3936a. Constables fees in counties of more than 200,000 and less than 300,000 with city of more than 10,000.—Constables whose precincts lie in counties having a population of more than 200,000 and less than 300,000 by the last preceding Federal Census, and whose precincts lie in whole or in part in an incorporated city or town having a population of more than 10,000 by the last preceding Federal Census, who execute process and perform services in civil and criminal actions shall receive the same fees allowed to Sheriffs for the same services, and provided further that like fees shall be paid by the county in all criminal cases where the defendant is convicted or pleads guilty; and such Constable shall present to the Commissioners' Court of his county a written account specifying each criminal action in which he claims such fee, certified to by the Justice of the Peace to be correct and filed with the County Clerk. The Commissioners' Court shall approve such account for such amount as they may find to be correct and order a draft to be issued upon the County Treasurer in favor of such Constable for the amount so approved. [Acts 1935, 44th Leg., p. 421, ch. 170, § 1.]

Art. 3936b. Fees of justices of the peace and constables in counties of 11,980 to 12,100.—In counties containing not less than eleven thousand, nine hundred and eighty (11,980) inhabitants, and not more than twelve thousand, one hundred (12,100) inhabitants, according to the last preceding Federal Census, the Justices of the Peace and Constables in such counties may retain annual fees to the amount of One Thousand, Five Hundred Dollars ($1,500); provided that if the current fees of such Justices of the Peace and Constables collected in any year be more than the amount needed to pay the amounts above specified, the same shall be deemed excess fees and shall be disposed of as follows: Said Justices of the Peace and Constables shall retain one-third of such excess fees until such one-third, together with the amount hereinabove specified, amounts to the sum of One Thousand, Eight Hundred Dollars ($1,800). [Acts 1937, 45th Leg., p. 172, ch. 88, § 1.]

Art. 3936c. Salary of constable and justice of the peace in counties of 25,500 to 26,200 having military camp and city of 14,000 to 14,500.—From and after the effective date of this Act in all counties in this State having a population of not less than twenty-five thousand, five hundred (25,500) and not more than twenty-six thousand, two hundred (26,200), and containing a city having a population of not less than fourteen thousand (14,000) and not more than fourteen thousand, five hundred (14,500), according to the last preceding Federal Census, within the boundaries of which is located a military camp, the salary of the constable and justice of peace shall each be not less than Twenty-seven Hundred Dollars ($2700) plus one-third of all fees collected above such amount. The salary of each shall be paid in the manner and in accordance with existing laws governing the office of justice of peace and constable. [Acts 1941, 47th Leg., p. 440, ch. 273, § 1.]

Art. 3936d. Justice of the peace; county containing main unit of Texas Prison System; maximum fees.—Hereafter in any county in the State of Texas, where the main unit of the Texas Prison System is located, the Justice of the Peace shall be allowed to retain sufficient fees of office, provided said office makes the same, until said fees reach the sum of Two Thousand, Five Hundred Dollars ($2,500) per year, and in the event that said fees of office of said Justice of the Peace reach the sum of Two Thousand, Five Hundred Dollars ($2,500), he

shall not be entitled to any excess fees. [Acts 1947, 50th Leg., p. 459, ch. 260, § 1.]

Section 2 of the Act of 1947 repealed all conflicting laws.

Art. 3936e. Justice of the peace; salary in certain counties of 23,000 to 27,000.—Section 1. In all counties having a population of not less than twenty-three thousand (23,000) and not more than twenty-seven thousand (27,000), according to the last preceding Federal Census, and having one or more cities with a population of not less than eleven thousand (11,000) according to said last preceding Federal Census, and which county has an assessed valuation for ad valorem tax purposes for the preceding year of not less than Twenty-five Million Dollars ($25,000,000) according to the tax rolls of said county; and where it shall have been determined that precinct officers shall be compensated on an annual salary basis it shall be the duty of the Commissioners Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments. In precincts where the election of two (2) Justices of the Peace is authorized by Law said annual salary of Justices of the Peace shall not exceed Two Thousand, Four Hundred Dollars ($2,400); and in such precincts in such counties where the election of two (2) Justices of the Peace is authorized by Law, but where there is only one Justice of the Peace acting, the annual salary of such Justice of the Peace shall be fixed by said Commissioners Court not to exceed Three Thousand, Six Hundred Dollars ($3,600).

Sec. 2. In addition to the said salary which may be allowed as provided in the preceding Section, such Justice of the Peace shall have and retain as unaccountable fees, all fees, commissions or payments for performing marriage ceremonies, and for acting as Registrar for the Board of Vital Statistics, and for acting as ex-officio notary public. [Acts 1947, 50th Leg., p. 482, ch. 279.]

Section 2 of the Act of 1947 repealed all conflicting laws.

Art. 3936f. Justices of the peace and constables; maximum fees in counties of 20,700 to 20,800.—Section 1. The maximum annual fees that may be retained by Justices of Peace and the Constables in counties containing more than twenty thousand, seven hundred (20,700) inhabitants and less than twenty thousand, eight hundred (20,800) inhabitants, according to the last preceding Federal Census, shall be for Justices of Peace Two Thousand, Four Hundred Dollars ($2,400), and for Constables Two Thousand, Four Hundred Dollars ($2,400), provided that in addition to said fees that may be retained by said officers, they may be allowed expenses, including office expenses, stenographic help and traveling expenses, not to exceed Six Hundred Dollars ($600) for each of said officers, as may be fixed by the Commissioners Court of such county.

Sec. 2. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict, but it is not the intention of this Act to change or amend the law pertaining to any officers other than as stated herein, and this Act shall apply only to the certain counties as herein specified. [Acts 1947, 50th Leg., p. 958, ch. 412.]

Art. 3937. [3871] Tax assessor.—Each Assessor of taxes shall receive the following compensation for his services which shall be estimated on the total value of the property assessed as follows: For assessing the State and County Taxes on all sums for the first Two Million Dollars ($2,000,000.00) or less, five (5) cents for each One Hundred Dollars ($100.00) of property assessed. On all sums in excess of Two Million Dollars ($2,000,000.00) and less, than Five Million Dollars ($5,000,000.00), two and one-half (2½) cents on each One Hundred Dollars ($100.00), and on all sums in excess of Five Million Dollars ($5,000,000.00), two and one-fourth (2¼) cents on each One Hundred Dollars ($100.00), provided, that in counties in which the population does not exceed twelve thousand, five hundred (12,500) inhabitants, the Assessor shall receive on all sums for the first Four Million Dollars ($4,000,000.00), the sum of five (5) cents for each One Hundred Dollars ($100.00), and on all sums above such amount the fee shall be as above stated, one-half of the above compensation shall be paid by the State and one-half by the county; for assessing the taxes on all drainage districts, road districts, or other political subdivisions of the county, the Assessor shall be paid three-fifths of one cent for each One Hundred Dollars ($100.00) of the assessed value of such districts or subdivisions.

Provided that in counties in which the population is not more than forty-two thousand (42,000) nor less than forty-one thousand, fifty (41,050) inhabitants according to the preceding United States Census, the Tax Assessor shall be paid for assessing the taxes, in all drainage districts, road districts, or other political subdivisions of the county, two (2) cents for each One Hundred Dollars ($100.00) of the assessed value of such districts or subdivisions, provided further that such compensation as is paid to the Assessor shall be prorated among the various drainage districts, road districts and other political subdivisions of the county, according to the value of the property assessed in each district or other political subdivision, and for assessing the poll tax, five (5) cents for each poll, which shall be paid by the State. The Commissioners Court shall allow the Assessor of taxes such sums of money to be paid monthly from the County Treasury as may be necessary to pay for clerical work, taking assessments and making out the tax rolls of the county, but such sums so allowed to be deducted from the amount allowed to the Assessor as compensation upon the completion of said Tax rolls, provided the amount allowed the Assessor by the Commissioners Court shall not exceed the compensation that may be due the county to him for assessing.

It is further hereby provided that from and after January 1, 1934, in the counties having a population of more than seventy thousand (70,000), inhabitants according to the last preceding Federal Census, the Tax Collector shall advance to the Tax Assessor, out of State taxes collected by the Tax Collector, such sums of money to be paid weekly, as may be necessary to pay the salaries of said Tax Assessor, but such sums shall not total, before the annual tax rolls are submitted by him to the Comptroller of Public Accounts, more in one year than 60% of the estimate for said year hereinafter provided for.

In counties of the class last mentioned on January 1st of each year the Assessor of taxes shall submit to the Comptroller of Public Accounts and County Auditor an estimate of State fees for assessing taxes for said year, which, if approved by said County Auditor and said Comptroller of Public Accounts, shall authorize the payment out of State taxes of the salaries in the next paragraph hereinabove provided; and at the time the Assessor of taxes submits his tax rolls each year, he shall be paid such balance due him from the State as shall be determined by the said Comptroller of Public Accounts and County Auditor and such balance shall be paid out of State taxes upon the warrant of the Comptroller of Public Accounts drawn upon the Tax Collector.

Sec. 2. It is not the purpose of this Act to change the salary of Tax Assessors as now fixed by law. [Acts 1925, 39th Leg., p. 358, ch. 150, § 1; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20; Acts 1931, 42nd Leg., p. 138, ch. 94; Acts 1933, 43rd Leg., 1st C.S., p. 310, ch. 112.]

Art. 3937a. Tax assessor in counties having large city.—That hereafter there shall be paid to county tax assessors in counties containing a city with a population of over 125,000 according to the last

United States census, where the county assessor of taxes compiles and makes a transfer book or card index compiled from the real estate transfers recorded in the county clerk's office showing the names transferred to, last owner assessed to, volume and page, description of property, assessed valuation and the consideration in the transfer; keeps a building permit record or card index of all building permits issued, showing name of owner, date of permit, description of property on which building is located, description of the improvement, the permit valuation and the final valuation of the building inspector; keeps a record of the builder's liens recorded in the county clerk's office; and also keeps a card index file of all automobiles, busses, and trucks, licensed and owned on January 1st of each year, showing owner of auto, owner's address, State Highway license number, make and year model of auto, all of said information for the facilitating of the work in said assessor's office and for the more correctly assessing such classes of property and for the purpose of keeping a close check on same, by the Commissioners' Court to said assessor who compiles and uses such records, extra compensation not to exceed Three Thousand Dollars annually beginning with the fiscal year 1927, to be paid in twelve monthly payments, same to be retained by said assessor as ex-officio salary exclusive of the maximum salary allowed by law. [Acts 1927, 40th Leg., 1st C. S., p. 100, ch. 33, § 1.]

Section 2 of Acts 1927, repeals all conflicting laws and parts of laws.

Art. 3938. [7584–5] Payment of assessor.—The Comptroller, on receipt of the rolls, shall give the assessor an order on the collector of his county for the amount due him by the State for assessing the State taxes, to be paid out of the first money collected for that year. The commissioners court shall issue an order on the county treasurer of their county, to the assessor, for the amount due him for assessing the county tax of their county, to be paid out of the first money received from the collector on the rolls of that year. [Acts 1876, p. 272; G. L. vol. 8, p. 1108.]

Art. 3939. [3872–7654–5] Tax collector.—There shall be paid for the collection of taxes as compensation for the services of the collector, beginning with the first day of September of each year, five per cent on the first ten thousand dollars collected for the State, and four per cent on the next ten thousand dollars so collected for the State, and one per cent on all collected over that sum; for collecting the county taxes, five per cent on the first five thousand dollars of such taxes collected, and four per cent on the next five thousand dollars collected, and one and one-fourth per cent on all such taxes collected over that sum. For collecting the taxes in all drainage districts, road districts, or other political subdivisions of the county, the tax collector shall be paid one-half of one per cent on all such tax collected; provided that the amount to be paid the tax collector shall be paid by the various drainage districts, road districts, or other political subdivisions of the county on a pro rata basis in accordance with the amount collected for such districts; and in counties owing subsidies to railroads the collector shall receive only one per cent for collecting such railroad taxes, and in cases where property is levied upon and sold for taxes he shall receive the same compensation as allowed by law to sheriffs or constables on making the levy and sale in similar cases, but in no case to include commission on such sales; and on all occupation and license taxes collected, five per cent. [Acts 1919, p. 300.]

Art. 3940. [7656] [5208] [4768] Charge for one levy only.—In making levies upon different tracts of land belonging to the same individual, corporation or company, the collector shall be entitled to charge for only one levy; and in all cases of advertisement of lands for tax sales he shall be entitled to charge for any one tract the exact proportion of the amount paid for the whole advertisement which said tract bears to all other tracts advertised, and no more.

Art. 3941. [3873] [2467] [2403] County treasurer.—The county treasurer shall receive commissions on the moneys received and paid out by him, said commissions to be fixed by order of the commissioners court as follows: For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent, and not exceeding two and one-half per cent for paying out the same; provided, that he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office. [Acts 1st C. S. 1897, p. 8.]

Art. 3942. [3874] [2468] Treasurer: other commissions.—The treasurers of the several counties shall be treasurers of the available public free school fund and also of the permanent county school fund for their respective counties. The treasurers of the several counties shall be allowed for receiving and disbursing the school funds one-half of one per cent for receiving, and one-half of one per cent for disbursing, said commissions to be paid out of the available school fund of the county; provided, no commissions shall be paid for receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided, that he shall receive no commissions on money transferred. [Acts 1891, p. 147; G. L. vol. 10, p. 149.]

Art. 3943. [3875] [2469] [2405] Treasurer: commissions limited; increase in compensation.—(a) The commissions allowed to any county treasurer shall not exceed Two Thousand Dollars ($2,000) annually; provided, that in all counties in which the assessed value of the property of such counties shall be One Hundred Million Dollars ($100,000,000) or more as shown by the preceding assessment roll, the treasurers thereof shall receive as their commissions a sum not exceeding Two Thousand, Seven Hundred Dollars ($2,700) annually; provided, that in all counties having a population of not less than seventy-five thousand (75,000) inhabitants, and not more than eighty thousand (80,000) inhabitants, according to the last preceding Federal Census, in which counties, road or road and bridge bonds in the amount of Six Million Dollars ($6,000,000) or more and flood protection bonds in the amount of One Million Dollars ($1,000,000) or more have been voted by the people, the treasurers thereof shall receive as their commissions a sum not to exceed Two Thousand, Seven Hundred Dollars ($2,700) annually; and, shall be allowed an assistant at a salary not to exceed One Thousand, Two Hundred Dollars ($1,200) annually; provided, that in all counties having a population of one hundred and fifty thousand (150,000) inhabitants or more, and less than two hundred and ten thousand (210,000) inhabitants, according to the last preceding Federal Census, the treasurers thereof shall receive as their commissions a sum not exceeding Two Thousand, Seven Hundred Dollars ($2,700) annually, and shall be allowed an assistant at a salary not to exceed One Thousand Dollars ($1,000) per annum; provided, that in all counties containing a population of not less than forty-two thousand, one hundred (42,100) inhabitants nor more than forty-two thousand, two hundred and fifty (42,250) inhabitants, according to the last preceding Federal Census, and that in all counties containing a population of lot less than forty-five thousand (45,000) inhabitants nor more than forty-seven thousand (47,000) inhabitants, according to the last preceding Federal Census, the commissions and compensation to be paid to the county treasurers in said Counties shall be Three Thousand, Six Hundred Dollars ($3,600) per annum, payable in twelve (12) equal monthly installments, and such compensation shall be fixed by the Commissioners Courts of said Counties.

(b) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the county treasurer justify the increase, to enter an order increasing the compensation of the county treasurer in an additional amount not to exceed twenty-five per cent (25%) of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year 1944 did not exceed the sum of Three Thousand, Six Hundred Dollars ($3,600). [Acts 3rd C.S., 1920, p. 60; Acts 1927, 40th Leg., p. 341, ch. 230; Acts 1931, 42nd Leg., p. 833, ch. 346, § 1; Acts 1937, 45th Leg., p. 501, ch. 252, § 1; Acts 1941, 47th Leg., p. 527, ch. 323, § 1; Acts 1947, 50th Leg., p. 53, ch. 40, § 1.]

Acts 1941, ch. 323, §§ 2-4 read as follows:

"Sec. 2. This Act shall be cumulative of the General Laws of this State pertaining to commissions and compensation to County Treasurers when not in conflict with the provisions of this Act, but in case of such conflict herewith, then the provisions of this Act shall be effective and shall take precedence and control.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby specifically repealed only in so far as such laws or parts of such laws are in conflict with the provisions of this Act.

"Sec. 4. In the event any section, parts of sections, subdivision, paragraph, phrase, sentence, or word, of this Act shall be declared unconstitutional, or invalid, or inoperative, then such holding shall not affect the validity of the remaining sections and portions of this Act, and such remaining sections and portions of this Act shall remain in full force and effect; and, it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding any invalid portion or portions of this Act."

Section 2 of the Act of 1947 repealed all conflicting laws.

Art. 3943a. Additional compensation of treasurer in certain counties.—Sec. 1. That in counties having a population of not less than two hundred fifty thousand (250,000), and where in such counties the County Treasurer prepares the payrolls and makes payment thereunder in cash, and acts as paymaster for the county, in addition to the duties of a custodian of a county fund, there shall be paid to such County Treasurer out of the General Funds of the county an added compensation now allowed to him by the law the sum of Twenty-five Dollars ($25.00) per month, and be paid to him on the first day of each calendar month, provided said compensation from all sources shall not exceed the sum of Three Thousand Two Hundred Dollars ($3,200.00) per year. [Acts 1931, 42nd Leg., p. 770, ch. 308; Acts 1933, 43rd Leg., p. 47, ch. 21.]

Sec. 2. The County Treasurer of such counties shall be authorized to employ an assistant at a salary not to exceed the sum of One Hundred Fifty ($150.00) Dollars per month, to be paid out of the General Funds of the county. [Acts 1931, 42nd Leg., p. 770, ch. 308.]

Art. 3943b. Compensation of treasurer as custodian of road district funds.—Section 1. In all counties in the State of Texas having a population of not less than one hundred and twenty-five thousand (125,000) nor more than one hundred and seventy-five thousand (175,000) inhabitants, according to the last Federal Census, and containing two (2) cities of more than forty thousand (40,000) inhabitants, according to the last Federal Census, and in which said counties there exists or is created any Road District or Road Districts under authority, Article 3, Section 52 of the Constitution of the State of Texas and/or Acts of the Thirty-ninth Legislature, First Called Session, Chapter 16, Page 23, the County Treasurer in such counties shall receive as salary for acting as custodian of the funds of such Road District or Road Districts a sum not to exceed Six Hundred Dollars ($600) per annum to be fixed and determined by the Commissioners Court of such county; such salary shall be in addition to all other salary and compensation received and allowed to the County Treasurer by law, and shall be paid out of any available fund of said Road District or Road Districts in equal monthly installments. [Acts 1937, 45th Leg., p. 208, ch. 110.]

Art. 3943c. Counties of 145,000 to 300,000; county treasurer's compensation; assistant.—The Commissioners Court in each county in the State of Texas, having a population of not less than one hundred forty-five thousand (145,000) inhabitants and not more than three hundred thousand (300,000) inhabitants according to the last preceding Federal Census, shall determine annually the salary to be paid to the County Treasurer at a reasonable sum not to exceed Three Thousand Nine Hundred ($3,900.00) Dollars per annum. Where such Treasurer acts also as Treasurer of any Navigation and Drainage Districts, he is to receive and be entitled to retain such compensation from such Districts as is provided by Articles 8221 and 8148, Revised Civil Statutes of Texas, 1925. Said Treasurer shall be allowed to appoint one assistant at a reasonable salary not to exceed Two Thousand One Hundred ($2,100.00) Dollars per annum. Said assistant shall have the authority to do and perform in the name of such County Treasurer such acts either clerical or ministerial in character as may be required of him by said County Treasurer. The maximum salary and compensation of said Treasurer shall not exceed Six Thousand ($6,000.00) Dollars in the aggregate for any one calendar year. [Acts 1947, 50th Leg., p. 438, ch. 244, § 1.]

Art. 3944. [3876] [2470] [2406] County surveyor.—County surveyors shall receive the following fees:

Inspecting and recording the field-notes and plat of a survey for any tract of land over one-third of a league	$3.00
One-third of a league	2.00
Less than one-third of a league	1.00
For recording surveys and plats required by law to be placed upon the map of a new county, for each 100 words	.20
Examination of papers and records in his office at the request of any person	.25
Copies of all field-notes and plats, or any other papers or records in his office, for each 100 words, including certificate	.20
Surveying any tract of land, including all expenses in making the survey, and returning the plat and field notes of the survey, for each English lineal mile actually run	3.00
Surveying any tract of land, including all expenses of making the survey, and returning the plat and field notes, when the distance actually run is less than one English lineal mile	2.50
For services in designating a homestead, to include pay for chain carriers, for each day's service	5.00

[Acts 1881, p. 71; G. L. vol. 9, p. 163; Acts 1st C. S. 1897, p. 8.]

Art. 3945. [3878] [2472] [2408] Notary public.—Notaries public shall receive the following fees:

Protesting a bill or note for non-acceptance or non-payment, register and seal	[$] 1.00
Each notice of protest	.25
Protesting in all other cases, for each 100 words	.25
Certificate and seal to such protest	.50
Taking the acknowledgment or proof of any deed or other instrument in writing, for registration, including certificate and seal	.50
Taking an acknowledgment of a married woman to any deed or other instrument of writing authorized to be executed by her, including certificate and seal	.50
Administering an oath or affirmation with certificate and seal	.50
All certificates under seal not otherwise provided for	.50

Copies of all records and papers in their office, including certificate and seal, if less than 200 words ..... .50
If more than 200 words, for each 100 words in excess of 200 words, in addition to the fee of fifty cents ..... .25
All notarial acts not provided for ..... .50
Taking the depositions of witnesses, for each 100 words ..... .15
Swearing a witness to depositions, making certificate therefor with seal, and all other business connected with taking such deposition .. .50
[Acts 1915, p. 36.]

Art. 3946. [3879] [2473] [2409] Public weighers.—Public weighers shall receive the following fees:

For each bale of cotton weighed, not exceeding $ .10
When he shall run a cotton yard in connection with his weighing, his compensation shall not exceed, as yardage for the first month after same is received for storage, per bale ..... .15
Thereafter per bale per month, not exceeding ... .10
For each bale or sack of wool, or hogshead of sugar or wagon load of hay, pecans or grain .. .10
For each part of a wagon load of hay, grain or pecans, not exceeding ..... .05
For each barrel weighed ..... .10
For each bale of hides weighed ..... .10
For each loose hide weighed ..... .02

And he shall not be obligated to deliver any such articles so weighed until his fee therefor shall have been paid. [Acts 1903, p. 217.]

TITLE 62—FENCES

Art.
3947. "Sufficient fence."
3948. Complaint of trespass.
3949. Stock impounded.
3950. Owner not liable.
3951. Persons injuring stock.
3952. Removing adjoining fence.
3953. How to separate fence.
3954. Adjacent owner to remove fence.

Article 3947. [3927] [2496] [2431] "Sufficient fence."—Every gardener or farmer, except as otherwise provided by law, shall make a sufficient fence about his cleared land in cultivation, at least five feet high, and make such fence sufficiently close to prevent hogs passing through the same; but it shall be unlawful for any person whomsoever, by joining fences or otherwise, to build or maintain more than three miles lineal measure of fence running in the same general direction without a gateway in the same, which gateway must be at least ten feet wide, and shall not be locked. [Act Feb. 5, 1840, p. 179; Acts 1884, p. 18; Acts 1887, p. 90; G. L. vol. 2, p. 353; G. L. vol. 9, p. 550 and 888.]

Art. 3948. [3928] [2497] [2432] Complaint of trespass.—When any trespass shall have been done by any cattle, horses, hogs or other stock, on the cleared and cultivated ground of any person, such person may complain thereof to any justice of the peace of the county where such trespass shall have been done, and such justice upon such complaint being filed shall cause two disinterested and impartial freeholders to be summoned, who, with such justice, shall view and examine on oath whether complainant's fence be sufficient or not, and what damages he has sustained by such trespass, and certify the same in writing; and if it shall so appear that said fence be sufficient, then the owner of such cattle, horses, hogs or other stock shall make full satisfaction for the trespass to the party injured to be recovered by suit therefor.

Art. 3949. [3929] [2498] [2433] Stock impounded.—In case of a second trespass by the same cattle, horses, hogs or other stock, the owner, lessee or proprietor of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises, or the crops growing thereon, cause such stock to be penned and turned over to the sheriff or constable and held responsible to the person damaged for all damages caused by said stock and all costs thereon.

Art. 3950. [3930] [2499] [2434] Owner not liable.—If it appears that the said fence is insufficient, then the owner of such cattle, horses, hogs or other stock, shall not be liable to make satisfaction for such damages.

Art. 3951. [3931] [2500] [2435] Persons injuring stock.—If any person whose fence shall be adjudged insufficient shall, with guns, dogs or otherwise maim, wound or kill any horses, cattle, hogs or other stock, or cause or procure the same to be done, such person so offending shall be liable to the person injured for all damages by such person sustained.

Art. 3952. [3932] [2501] Removing adjoining fence.—It shall be unlawful for any person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to, or connected with any fence owned or controlled by any other person to remove the same, except by mutual consent or as hereinafter provided. [Act March 17, 1887; Act April 6, 1889, p. 45; G. L. vol. 9, p. 30 and 1073.]

Art. 3953. [3933] [2502] How to separate fence.—Any person who is the owner or part owner of any fence connected with or adjoined to any fence owned in part or in whole by any other person, shall have the right to withdraw or separate his fence or part of fence from the fence of any other person, upon giving notice in writing to such person, his agent, attorney, or lessee, of his intention to separate or withdraw his fence, or part thereof, for at least six months prior to the time of such intended withdrawal or separation. [Id.]

Art. 3954. [3934] [2503] Adjacent owner to remove fence.—Whoever is the owner of any fence wholly upon his land to which the fence of another is adjoined or connected in any manner, may require the owner of such fence to disconnect and withdraw the same back on his own land by giving notice in writing, for at least six months, to such person, his agent, attorney, or lessee, to disconnect and withdraw his fence back on his own land. [Id.]

TITLE 63—FIRE ESCAPES

Art.
3955. Owner to provide.
3956. Hotels, theaters, etc.
3957. Offices and plants.
3958. Warehouses and mills.
3959. State, county, city and school buildings.
3960. Officials to provide.
3961. "Owner" defined.
3962. "Story" defined.
3963. "Adequate fire escape."
3964. Location.
3965. Guide signs and exit lights.
3966. Minimum specifications.
3967. Painting.
3968. Tests.
3969. Affidavit.
3970. Completion before occupancy.
3971. Inspection.
3972. Injunction.

Art. 3955. Owner to provide.—The owner of each building, which is or may be constructed within this State, three or more stories in height or in case of schoolhouses two or more stories in height, constructed, used, or intended to be used in whole or in part as any of the following buildings, shall provide

and equip such building with at least one adequate fire escape, and such additional fire escapes, as provided in the three succeeding Articles. [Acts 1923, p. 361; Acts 1941, 47th Leg., p. 659, ch. 401, § 1.]

Art. 3956. Hotels, theaters, etc.—For each hospital, seminary, college, academy, school house, dormitory, hotel, lodging house, apartment house, rooming house, boarding house, house for the accommodation of transient guests, lodge hall, theater, public place of amusement, or hall or place used for public gatherings, having a lot area in excess of five thousand square feet, there shall be provided one additional adequate fire escape for each five thousand square feet of such excess or fraction thereof if such fraction exceeds two thousand square feet. [Acts 1923, p. 361.]

Art. 3957. Offices and plants.—For each office building, wholesale or retail mercantile establishment or store, work shop, or manufacturing establishment or industrial plant, having a lot area in excess of six thousand square feet, there shall be provided one additional adequate fire escape for each six thousand square feet of such excess or fraction thereof if such fraction exceeds twenty-five hundred square feet. [Id.]

Art. 3958. Warehouses and mills.—For each warehouse, storage house or mill building, having a lot area in excess of eight thousand square feet, there shall be provided one additional adequate fire escape for each eight thousand square feet of such excess, or fraction thereof if such fraction exceeds thirty-five hundred square feet. The provisions of this title requiring the construction of standard fire escapes, shall not apply to grain elevators of steel, or steel and concrete construction, nor to wooden elevators where less than five persons are employed. [Id.]

Art. 3959. State, county, city and school buildings.—Each building which is or may be constructed within this State of three or more stories in height, or in case of a schoolhouse two or more stories in height, which is owned by this State, or by any city, county, or school district, and in which building public assemblies are permitted or intended to be permitted, or in which schools of any kind are conducted, or in which sleeping apartments are permitted or intended to be permitted on any floor above the first, shall be provided and equipped with at least one adequate fire escape if the lot area of such building shall not exceed five thousand (5,000) square feet, and one additional adequate fire escape for each five thousand (5,000) square feet, or fraction thereof if such fraction exceeds two thousand (2,000) square feet in excess of the first five thousand (5,000) square feet of lot area. [Acts 1923, p. 361; Acts 1941, 47th Leg., p. 659, ch. 401, § 2.]

Art. 3960. Officials to provide.—Each board, commission, official or person having charge or supervision of any building included in the preceding article, or having charge or supervision of the letting of contracts for the construction of such buildings, shall fully comply with the provisions of this title relating to providing and equipping such buildings with adequate fire escapes. [Acts 1923, p. 361.]

Art. 3961. "Owner" defined.—The term "owner" within the meaning of this title shall include persons, firms, associations, and private corporations. [Id.]

Art. 3962. "Story" defined.—The word "story" as used in this title, shall be construed to have its usual and ordinary meaning as applied to architecture, and in addition thereto shall be construed to include a basement of any building that extends five feet or more above grade line on one or more sides of such building, a balcony or mezzanine floor of any building, a roof of any building used as a roof garden, and an attic of any building used for any purpose. [Id.]

Art. 3963. "Adequate fire escape."—An "adequate fire escape" within the meaning of this title, is defined to be an exterior iron, steel or concrete stairway type fire escape, or an exterior iron or steel straight chute type fire escape, or an exterior iron or steel spiral chute type fire escape, or a combination of said three types, or an interior type fire escape enclosed with non combustible material and having self-closing fireproof shutters on all door and window openings thereof. Each type of such fire escape shall be so constructed and arranged as to permit exit upon such fire escape from each floor of the building above the first floor and shall provide a continual egress upon it from such building to grade, and the material, construction, erection and test of such fire escapes shall comply at least with the minimum specifications for each respective type thereof, as hereinafter set forth. [Id.]

Art. 3964. Location.—All such fire escapes shall, consistent with accessibility, be located as far as possible from stairways, elevator hatchways and other openings in the floors, and where possible, they shall be located at the ends of hallways or corridors or unobstructed passageways, and as far as is consistent with the construction and location of the building. [Id.]

Art. 3965. Guide signs and exit lights.—In all such buildings there shall be installed and maintained therein in good condition at all times, at least one red light at each exit to each fire escape, and one guide sign at each hall or corridor intersection, and one additional guide sign for every twenty-five lineal feet of hallway or corridor leading to such fire escape. All exit lights shall have painted thereon the words "Fire Escape Exit," and all guide signs shall have painted thereon the words "Fire Escape," and an arrow or hand pointing to the nearest fire escape exit. It shall be unlawful for any person to obstruct any fire escape in any manner that would prevent free access thereto or free use thereof, or to obstruct any hallway, corridor or entrance leading to such fire escape by means of any door provided with locks requiring a key to operate, or by partitions or by any objects of any kind whatsoever. [Id.]

Art. 3966. Minimum specifications.—The minimum specifications for the several types of adequate fire escapes required by this law are as follows:

Exterior Stairway Type:

(1) Shall consist of balconies and stairways on the exterior of the building and be constructed of iron, steel or reinforced concrete, and shall be in superimposed form, or straight run form, or superimposed form with intermediate balconies, or a combination of any such form and type.

(2) Balconies: Balconies for stairs in superimposed form attached to the building at two or more floors, shall equal in length the horizontal length of the stair runs, plus an amount at each end equal to the width of the stairs, and shall be as long as the width of the opening for exit in the building wall and shall be at least fifty inches wide inside of railings. Balconies for stairs in superimposed form with intermediate balconies attached to the building at two or more floors shall be not less in width than the combined width of the stairways connected therewith leading both up and down, and the landings at the head and the foot of the stairs shall be as deep as the width of the stairs, and shall be as long as the width of the opening for exit in the building wall. Balconies for stairs in straight run form shall be not less in width than the width of the stairs and as long as the width of the opening for exit in the building wall. The minimum unobstructed width of any exterior passageway in the entire fire escape, whether parallel to the building or at right angles to it, shall be twenty-four inches. The floors of iron or steel balconies shall be solid or of slats and if solid, shall have scoriated surface to prevent slipping and pitched not less than one-half inch in ten feet to secure drainage, or if of slats, shall be

placed not more than three-quarters of an inch apart and secured in place with rivets or bolts. Material in floors shall be not less than three-sixteenths of an inch thick. Railing enclosures of all balconies shall be not less than two feet nine inches high, and if of vertical and horizontal slat or grill construction, no space shall have the horizontal width of more than eight inches, and if of truss construction the span of each panel shall not exceed three feet. No opening in railing enclosures on any construction shall exceed two square feet in area. All railing enclosures throughout their lengths shall be free from obstructions tending to break handholds and the passage space shall be smooth and free from obstructions or projections. All railing enclosures shall be designed to withstand a horizontal pressure of two hundred pounds per running foot of railing without serious deflection. Balconies shall be anchored to building with bolts not less than one inch in diameter, extending through the wall and provided with wall bearing plate on the inside not less than five inches square and three-eighths inch thick or anchored by such bolts set in concrete or masonry or made integral in new buildings. Balconies shall never be placed above and not more than one foot below the top of the sill of the opening for exit in building wall, preferably level with sill. Concrete balconies shall comply with all requirements herein set forth and be made of reinforced concrete, the concrete to be one part cement, two parts sand and four parts stone or gravel. Railing enclosures of concrete balconies shall be as herein specified, or of reinforced concrete, with balusters spaced not over one foot apart.

(3) Stairs: The pitch of stairways shall not exceed forty-five degrees. Treads shall be not less than eight inches wide, exclusive of nosings, and not less than twenty-four inches long and placed so that the rise, either open or closed, shall not exceed eight inches and if solid shall have scoriated surface, and if made of slats they shall be placed not more than three-quarters of an inch apart and be well secured in place by bolts or rivets. Material in treads shall be not less than three-sixteenths of an inch thick. Railings shall be provided on both sides of stair, not less than two feet nine inches high as measured vertically from the center of the stair treads, and supported by balusters spaced not exceeding five feet apart. Intermediate rail shall be provided midway between top rail and stair stringers, or if intermediate rail is omitted, balusters shall be placed not over one foot apart. Railings on stairs shall permit not less than twenty-four inches unobstructed passageway, and shall be designed to withstand a horizontal pressure of two hundred pounds per running foot of railing without serious deflection. Concrete stairs shall comply with all requirements herein set forth and be made of reinforced concrete, concrete mixture to be as herein specified for concrete balconies. Railing enclosures of concrete stairs shall be as herein specified, or of reinforced concrete balustrade with balusters spaced not over one foot apart. Stairways shall be built stationary to grade where possible, and this shall be required in such buildings as schools and hospitals. Where fire escapes terminate over streets, alleys or private driveways, or like condition, and shall terminate in a hinged and counter-balanced section of stairway, the construction of such section of stair shall conform with the stationary parts of stairways and shall be so balanced that the weight of one person on third or fourth tread will lower same to landing. Bearings for such counter-balanced stairs shall be either bronze bushings or have sufficient clearance provided to prevent sticking on account of corrosion. No latch or lock shall be attached to the counter-balanced stair in up position but latch shall be provided to hold stair in down position when same has once been swung to ground. The connection between stair railings on the stationary part and the counter-balanced part of stairways shall be designed to prevent probability of injury to persons using said fire escape. Where necessary a suitable opening shall be provided in any awning, roof or other intervening obstruction, to admit counter-balanced stair and permit passage of persons thereon.

(4) Roof Connection: Exterior stairway type fire escapes shall be connected with the roof of building to which attached. If the roof of the building is such that escape by way of the roof might be necessary the fire escape shall extend to the roof. If the connection is only for fire department use, it shall be made with a ladder of the goose neck type, the stringers of which shall be of material at least three-eighths of an inch thick and the rungs shall be at least three quarters of an inch in diameter sixteen inches long and not exceeding fourteen inches apart. Said ladder shall be anchored to the wall.

(5) Clearance: The minimum clearance at all points on balconies and stairs as measured vertically shall be six feet six inches.

Exterior Chute Type:

(1) Shall consist of balconies and straight gravity chutes on the exterior of the building and constructed of iron or steel and placed at an angle not to exceed forty-five degrees and shall be in superimposed form, parallel to or at right angles to the building, or straight run form, parallel to or at right angles to the building, or a combination of these two forms.

(2) Balconies: Shall be the same as herein specified in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escape.

(3) Chute: Shall be made of material of not less than number fourteen gauge iron or steel, blue annealed or equal, and shall be such as will take a smooth or polished surface. The chute shall be twenty inches wide and eighteen inches deep, inside dimensions, and free of obstructions or sharp edges throughout its length, and in cross section shall have concave bottom and straight sides. The top edges of the chute shall be stiffened and protected throughout its length with iron or steel angles, free from any sharp edges, and the angles of size necessary to carry the maximum loading possible and the chute shall be reinforced crosswise underneath with iron or steel angles. A landing of same material as the chute shall be provided at the lower end of the chute, and shall be of sufficient length, in proportion to the length of the chute and the concavity of its surface, to check the momentum attained through gravity and afford a safe stop. Such landing shall be six inches wider on each side than the chute, where wall construction will not interfere, and there shall be no sharp edges or ragged projections exposed, and said landing shall rest upon and be anchored to concrete base not less than six inches thick. All rivets exposed inside of chute and on top side of landing to be countersunk and ground down smooth. Intervening balconies, and the chute also, shall be so constructed that a continuous gravity slide will be afforded from the top floor to the grade, and the chute shall be accessible at all floors.

Exterior Spiral Chute Type:

(1) Shall consist of balconies in superimposed form and spiral gravity chute on the exterior of the building and constructed of iron or steel.

(2) Balconies: To be the same as herein specified in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escape.

(3) Chute: Slideway shall be made of material of not less than number sixteen guage iron or steel, blue annealed or equal, and shall be such as will take a smooth or polished surface. The chute shall be not less than thirty inches wide inside, with the slideway banked at the outer edge to prevent a passenger being thrown against guard rail or enclosure, and enclosed by either a continuous wall or a guard rail, the material of which shall not be less than number eighteen guage iron or steel and said guard rail shall be not less than thirty inches high. The entire slideway shall be free from obstructions or sharp edges and all rivets

exposed inside to be countersunk and ground down smooth. The chute shall be constructed in helical or spiral form around a central column, resting on and anchored to concrete base not less than eighteen inches thick. The chute shall terminate not more than two feet above the grade and be so constructed and arranged that normal landing will be in a standing position. Intervening balconies, and the chute also, shall be so constructed that a continuous gravity slide will be afforded from the top floor to the grade, and the chute shall be accessible at all floors.

Interior Type:

(1) Shall be a stairway type constructed of iron, steel or concrete or straight chute type constructed of iron or steel or spiral chute type constructed of iron or steel, either of which types erected on the interior of the building to be enclosed with non-combustible material and all door and window openings in such enclosure protected with self-closing fireproof shutters.

(2) Balconies or Landings: Balconies or landings to be the same construction as specified for balconies in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escapes, except that such balconies shall permit not less than forty inches unobstructed passageway, and such balconies or landings shall be provided and erected on the interior of the enclosing walls on a level with the floors of the building to be served.

(3) Stairway Type: Stairs to be same construction as specified for stairs in subdivision three of specifications for exterior iron, steel or concrete stairway type fire escapes, except that such stairs shall permit not less than forty inches unobstructed passageway in all its parts. Stairs known as "spirals" or "winders" shall not be permitted.

(4) Straight chute type: The chute to be same as herein specified in subdivision three of specifications for exterior iron or steel straight chute type fire escape.

(5) Spiral chutes: The chute to be same as herein specified in subdivision three of specifications for exterior iron or steel spiral chute type fire escape.

(6) Access: They shall be accessible from all parts of the building which they are designed to serve, and all lobbies, halls and passageways on each floor leading to fire escapes and in connection therewith, shall be not less than thirty-six inches wide, and not less than six feet six inches high, and shall be level with the floor upon which it opens and serves. They shall be so constructed at lower end as to permit direct egress to the outside of the building at grade. All interior stairway type fire escapes shall be continuous starting at ground floor and shall never descend to any basement, and shall extend through roof of the building and terminate in a pent house constructed of noncombustible material with self-closing fire door as herein specified.

(7) Enclosing walls: The following materials may be used for enclosing walls of interior escapes:

(a) Brick or plain solid concrete not less than eight inches in thickness for the uppermost thirty feet, increasing four inches in thickness for each lower section of thirty feet or part thereof, or eight inches in thickness for the entire height when wholly supported at intervals not exceeding thirty feet.

(b) Reinforced stone or gravel concrete not less than five inches in thickness for the uppermost thirty feet, increasing two inches in thickness for each lower section of thirty feet or part thereof, or three inches in thickness for entire height when supported at vertical intervals not exceeding twenty feet, and braced where necessary with lateral supports or suitable steel uprights.

(c) Reinforced cinder concrete not less than five inches in thickness for the entire height when supported at vertical intervals not exceeding fifteen feet, and braced where necessary with lateral supports or suitable steel uprights.

(d) Hollow terra cotta blocks laid in cement mortar not less than five inches thick over all, or hollow concrete blocks of either stone or cinder concrete mortar, not less than five inches thick over all, or solid or hollow blocks consisting of gypsum containing not more than twenty-five per cent by weight of cinders, asbestos fibre, wood chips or vegetable fibre, laid in gypsum plaster or cement mortar tempered with lime, not less than five inches thick over all, or metal lath on steel studding covered with Portland cement mortar or gypsum plaster of a finished thickness of not less than two inches in the case of solid partitions, nor less than three inches in the case of hollow partitions. All openings in such walls or partitions shall have substantial steel framing, the vertical members of which shall be securely attached to the floor construction above and below.

(8) Door and window openings: All door openings shall be protected by the use of an automatic or self-closing fire doors of standard manufacture, bearing Underwriters label, and where automatic fire doors are used the same shall be enclosed in recess partitions. All doors shall be so arranged and equipped to remain in closed positions at all times and under all conditions except during actual use. All window openings shall have metal sash, bearing Underwriters label, and wire glass.

(9) Lighting: All interior fire escapes shall be provided with not less than one light at each landing equal to a ten watt electric globe, in a separate circuit from that of the building, arranged to operate should the regular lighting system of the building be disabled. [Id.]

Art. 3967. Painting.—All fire escapes of any type constructed of iron or steel shall have at least two coats of good metalic paint when erected and shall be painted as frequently thereafter as may be necessary to preserve from rust or climatic influences and at least once every two years. The sliding surface of either the straight chute or spiral chute type fire escape shall be thoroughly cleaned and painted at least once each year.

Art. 3968. Tests.—Upon completion and before final approval of any fire escape of any of the types specified herein, both exterior and interior, such fire escape shall be tested by the erector by the application of a live load of one hundred and sixty pounds per square foot of area of balcony floor and stair treads, or a dead load of two hundred and forty pounds per square foot of area of balcony floor and stair treads, in either case simultaneously imposed upon each balcony and the stairways connected therewith leading both up and down. Sand, gravel, concrete blocks or any other suitable commodity may be used in applying these tests, but the load must be accurately weighed and applied as specified herein. By the dead load is meant a load placed in position in whole or in part by any mechanical means and without any person being on the fire escape at the time the test is made, and by live load is meant a load placed in position by mechanical means or by persons and with persons on the fire escape as part of the load at the time the test is made. [Id.]

Art. 3969. Affidavit.—Such tests shall be conducted in the presence of the State Fire Marshal or a representative duly appointed by him, or the chief of any fire department, or the city fire marshal of an [1] city or town. If the State Fire Marshal or his representative or a chief of a fire department, or a city fire marshal cannot be present to witness such test, such officials may permit the erector to furnish an affidavit setting forth that the minimum test herein specified has been made and that the fire escape has fully withstood said test and may accept such affidavit in lieu of the personal presence of such officials. [Id.]

[1] So in enrolled bill. Should probably read "any".

Art. 3970. Completion before occupancy.—All buildings constructed hereafter and within the provisions of this title providing for the equipment of buildings with fire escapes, shall be so provided and equipped, and otherwise meet all requirements of this law, before such buildings are occupied or used in whole or in part. [Id.]

Art. 3971. Inspection.—All fire escapes, extensions and additions to fire escapes constructed and erected under the provisions of this law, shall be inspected by the State Fire Marshal, or any inspector of the State Insurance Commission, or the chief of the fire department of any city or town, or any city fire marshal, before being approved, and no fire escape, extension or addition shall be approved, unless the same conforms to and meets all the provisions of this law. [Id.]

Art. 3972. Injunction.—The Attorney General, or the county attorney of any county in which any building is maintained in violation of any provision of this title, or the district attorney of any district in which such building is located, may proceed by suit or injunction against the owner, or person, board, commission or official having charge of such buildings, to enforce the provisions of this title. Such suit or injunction shall be brought in the name of this State in the district court of the county in which such building is located. Such suit or injunction may be prosecuted by the Attorney General, county or district attorney upon their own motion or upon the relation of any individual, or of any person mentioned in the preceding article. District courts and the judges thereof may issue mandatory injunctions and other writs against any such owner, person, board, commission or official, to enforce the provisions of this title. A disobedience of such injunction shall constitute a contempt of court and be punishable as now provided by law for contempts. Injunctions in such cases may be heard and granted either in term time or vacation, after the defendant has been given ten days notice of the time and place set for the hearing of same. [Id.]

TITLE 64—FORCIBLE ENTRY AND DETAINER

Art.
3973. When action lies.
3974. "Forcible entry."
3975. Other cases.
3976–3991. [Repealed.]
3992. Judgment on appeal.
3993. [Repealed.]
3994. No bar.

Article 3973. [3940–43] When action lies.—If any person (1) shall make an entry into any lands, tenements or other real property, except in cases where entry is given by law, or (2) shall make any such entry by force or (3) shall wilfully and without force hold over any lands, tenements or other real property after the termination of the time for which such lands, tenements or other real property were let to him, or to the person under whom he claims, after demand made in writing for the possession thereof by the person or persons entitled to such possession, such person shall be adjudged guilty of forcible entry and detainer, or of forcible detainer, as the case may be. Any justice of the peace of the precinct where the property is situated shall have jurisdiction of any case arising under this title. [Acts 1876, p. 155; G. L. vol. 8, p. 991.]

Art. 3974. [3941] [2520] [2441] "Forcible entry."—A "forcible entry," or an entry where entry is not given by law, is:

1. An entry without the consent of the person having the actual possession.

2. As to a landlord, an entry upon the possession of his tenant at will or by sufferance, whether with or without the tenant's consent. [Id.]

Art. 3975. [3942] [2521] [2442] Other cases.—A person shall be adjudged guilty of forcible detainer also in the following cases:

1. Where a tenant at will or by sufferance refuses, after demand made in writing as aforesaid, to give possession to the landlord after the termination of his will.

2. Where the tenant of a person who has made a forcible entry refuses to give possession, after demand as aforesaid, to the person upon whose possession the forcible entry was made.

3. Where a person who has made a forcible entry upon the possession of one who acquired it by forcible entry refuses to give possession on demand, as aforesaid, to him upon whose possession the first entry was made.

4. Where a person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord upon demand as aforesaid, after the term expires; and, if the term expire whilst a writ of forcible entry sued out by the tenant is pending, the landlord may, at his own cost and for his own benefit, prosecute it in the name of the tenant. It is not material whether the tenant shall have received possession from his landlord or have become his tenant after obtaining possession. [Id.]

Arts. 3976–3991. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, rules 738–753.

Art. 3992. [3962] [2540] [2461] Judgment on appeal.—The judgment of the county court finally disposing of the cause shall be conclusive of the litigation, and no further appeal shall be allowed, except where the judgment shall be for damages in an amount exceeding one hundred dollars.

Art. 3993. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, rule 755.

Art. 3994. [3964] [2542] [2463] No bar.—The proceedings under a forcible entry, or forcible detainer, shall not bar an action for trespass, damages, waste, rent or mesne profits.

TITLE 65—FRAUDS AND FRAUDULENT CONVEYANCES

Art.
3995. Writing required.
3995a. Promise to pay commission for sale or purchase of oil, gas, or mining leases or royalties; writing required.
3996. Conveyance to defraud.
3997. Voluntary conveyance.
3998. Gift.
3999. Loan of chattels.
4000. Chattel mortgage.
4001. Sales in bulk.
4002. Liability of purchaser.
4003. Exceptions.
4004. Actionable fraud.

Art. 3995. [3965] [2543] [2464] Writing required.—No action shall be brought in any court in any of the following cases, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereunto lawfully authorized:

1. To charge any executor or administrator upon any promise to answer any debt or damage due from his testator or intestate, out of his own estate; or,

2. To charge any person upon a promise to answer for the debt, default or miscarriage of another; or,

3. To charge any person upon any agreement made upon consideration of marriage; or,

4. Upon any contract for the sale of real estate or the lease thereof for a longer term than one year; or,

5. Upon any agreement which is not to be performed within the space of one year from the making thereof. [Acts 1840, p. 28; P. D. 3875; G. L. vol. 2, p. 202.]

Art. 3995a. Promise to pay commission for sale or purchase of oil, gas, or mining leases or royalties; writing required.—No action shall be brought in any court in this state for the recovery of any commission for the sale or purchase of oil and/or gas mining leases, oil and/or gas royalties, minerals or mineral interests, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereunto lawfully authorized. [Acts 1939, 46th Leg., p. 333, § 1.]

Section 2 of the Act of 1939 provided that such law should not apply to any actions for commissions pending in any court in the state at or prior to the effective date of the 1939 Act.

Art. 3996. [3966] [2544] [2465] Conveyance to defraud.—Every gift, conveyance, assignment, or transfer of, or charge upon, any estate real or personal, every suit commenced, or decree, judgment or execution suffered or obtained and every bond or other writing given with intent to delay, hinder or defraud creditors, purchasers, or other persons of or from what they are, or may be, lawfully entitled to, shall, as to such creditors, purchasers or other persons, their representatives or assigns, be void. This article shall not affect the title of a purchaser, for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor. [Acts 1840, p. 28; P.D. 3876; Acts 1927, 40th Leg., p. 42, ch. 30, § 1.]

Art. 3997. [3967] [2545] [2466] Voluntary conveyance.—Every gift, conveyance, assignment, transfer or charge made by a debtor, which is not upon consideration deemed valuable in law, shall be void as to prior creditors, unless it appears that such debtor was then possessed of property within this State subject to execution sufficient to pay his existing debts; but such gift, conveyance, assignment, transfer or charge shall not on that account merely be void as to subsequent creditors, and though it be decreed to be void as to a prior creditor, because voluntary, it shall not for that cause be void as to subsequent creditors or purchasers. [Acts 1840, p. 28; P.D. 3876–77.]

Art. 3998. [3968] [2546] [2467] Gift.—No gift of any goods or chattels shall be valid unless by deed or will, duly acknowledged or proven up and recorded, or unless actual possession shall have come to, and remained with, the donee or some one claiming under him. [Id. P. D. 3876.]

Art. 3999. [3969] [2547] [2468] Loan of chattels.—Where any loan of goods or chattels shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained for the space of two years without demand made and pursued by due process of law on the part of the pretended lender; or when any reservation or limitation shall be pretended to have been made of a use of property, by way of condition, reversion, remainder or otherwise in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to the creditors and purchasers, of the persons aforesaid so remaining in possession, to be fraudulent, within this title, and that the absolute property is with the possession, unless such loan, reservation or limitation of use of property were declared by will, or by deed or other instrument in writing, duly acknowledged or proved and recorded. [Id.]

Art. 4000. [3970] [2548] Chattel mortgage.—Every mortgage, deed of trust, or other form of lien attempted to be given by the owner of any stock of goods, wares or merchandise daily exposed to sale, in parcels, in the regular course of business of such merchandise, and contemplating a continuance of the possession of said goods by said owner, shall be deemed fraudulent and void; provided that this Article shall not apply to farm products when offered for sale by the producer. [Acts 1879, p. 60; G.L. vol. 8, p. 1360; Acts 1935, 44th Leg., p. 302, ch. 115, § 1.]

Penal Code, art. 1436—1 repealed prior registration statutes pertaining to chattel mortgages, this article and article 5497a, in so far as they related to motor vehicles. Motor Inv. Co. v. City of Hamlin, 142 T. 486, 179 S.W.2d 278.

Art. 4001. [3971] Sales in bulk.—The sale or transfer in bulk of any part or the whole of a stock of merchandise, or merchandise and fixtures pertaining to the conducting of said business otherwise than in the ordinary course of trade, and in the regular prosecution of the business of the seller or transferor, shall be void as against the creditors of the seller or transferor, unless the purchaser or transferee demand and receive from the transferor a written list of names and addresses of the creditors of the seller or transferor with the amount of the indebtedness due or owing to each and certified by the seller or transferor under oath to be a full, accurate and complete list of his creditors, and of his indebtedness; and unless the purchaser or transferee shall at least ten days before taking possession of such merchandise or merchandise and fixtures, or paying therefor, notify personally or by registered mail each creditor whose name and address is stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms and conditions thereof. Any purchaser or transferee who shall not conform to the provisions of this law shall, upon application of any of the creditors of the seller or transferor become a receiver, and be held accountable to such creditors for all goods, wares, merchandise and fixtures that have come into his possession by virtue of such sale or transfer. [Acts 1909, p. 66; Acts 1915, p. 171.]

Art. 4002. [3972] Liability of purchaser.—Any purchaser or transferee who shall conform to the provisions of the preceding article, shall not in any way be held accountable to any creditor of the seller or transferor for any of the goods, wares, merchandise or fixtures that have come into possession of said purchaser or transferee by virtue of such sale or transfer. [Id.]

Art. 4003. [3973] Exceptions.—The two preceding articles shall not apply to sales by executors, administrators, receivers or any public officer conducting a sale in his official capacity, nor to a sale or transfer of stocks of merchandise and fixtures for the payment of bona fide debts, where all creditors share in proportion to their respective claims, and without preference in the sale or transfer or the proceeds thereof. [Id.]

Art. 4004. Actionable fraud.—Actionable fraud in this State with regard to transactions in real estate or in stock in corporations or joint stock companies shall consist of either a false representation of a past or existing material fact, or false promise to do some act in the future which is made as a material inducement to another party to enter into a contract and but for which promise said party would not have entered into said contract. Whenever a promise thus made has not been complied with by the party making it within a reasonable time, it shall be presumed that it was falsely and fraudulently made, and the burden shall be on the party making it to show that it was made in good faith but was prevented from complying therewith by the act of God, the public enemy or by some equitable reason. All persons guilty of such fraud shall be liable to the person defrauded for all actual damages suf-

fered, the rule of damages being the difference between the value of the property as represented or as it would have been worth had the promise been fulfilled, and the actual value of the property in the condition it is delivered at the time of the contract. All persons making the false representations or promises and all persons deriving the benefit of said fraud, shall be jointly and severally liable in actual damages, and in addition thereto, all persons willfully making such false representations or promises or knowingly taking the advantage of said fraud shall be liable in exemplary damages to the person defrauded in such amount as shall be assessed by the jury, not to exceed double the amount of the actual damages suffered. [Acts 1919, p. 77.]

Statute making promises inducing contract not performed within reasonable time presumptively fraudulent held violative of due process clause. Tripplehorn v. Ladd-Hannon Oil Corporation, Civ.App., 8 S.W.2d 217, error dismissed, 118 T. 195, 13 S.W.2d 666; Clem v. Evans, Com.App., 291 S.W. 871.

Provision of this article apparently making one merely deriving benefit from fraud practiced by others liable not only for all actual damages suffered, but also for exemplary damages as well, is an unreasonable and discriminatory requirement. Ulrich v. Krueger, Civ.App., 272 S.W. 824.

TITLE 66—FREE PASSES, FRANKS AND TRANSPORTATION

Art.
4005. Free passes prohibited.
4006. Exceptions.
4006—A. Free transportation to Indian War Veterans.
4007. Definitions.
4008. Special rates.
4009. Free transportation.
4010. Advertising.
4011. Discrimination as to persons.
4012. Evidence of authority.
4013. Discrimination by device.
4014. Reports, etc.
4015. Penalty.

Article 4005. Free passes prohibited.—No steam or electric railway company, street railway company, interurban railway company or other chartered transportation company, express company, sleeping car company, telegraph company, telephone company or person or association of persons operating the same, nor any receiver or lessee thereof, nor any officer, agent or employee or receiver of any such company in this State shall knowingly haul or carry any property free of charge, or give or grant to any person, firm or association of persons a free pass, frank, privilege or substitute for pay or a subterfuge which is used or which is given to be used instead of the regular fare or rate of transportation or any authority or permit whatsoever to travel or to pass or convey or transport any person or property free, nor sell any transportation for anything except money, or for any greater or less rate than is charged all persons under the same conditions, over any railway or transportation lines or part of line in this State; or shall knowingly permit any person to transmit any message free in this State; or shall give any frank or right or privilege to transmit any message free in this State or property free of charge or for greater or less fare or rate than is charged other persons in this State for similar service, except as hereinafter provided in this title.

Art. 4006. Exceptions.—The preceding Article shall not be held to prevent any steam or electric interurban railway, telegraph company, or chartered transportation company, or sleeping car company, or the receivers or lessees thereof, or persons operating same, or the officers, agents, or employees thereof, from granting or exchanging free passes or free transportation, franks, privileges, substitutes for pay, or other thing prohibited by the provisions of the preceding Article to any of the following named persons: The actual bona fide employees of any such person or corporation, company, association, or the members of their families; persons actually employed on sleeping cars and express cars; newsboys employed on trains; railway mail service employees, and their families; furloughed, pensioned, superannuated employees, and members of their families; the widows of deceased former superannuated and/or pensioned employees; persons who have been disabled or who have become infirm in the service of any such corporation, company, association, or person; the remains of any persons killed or who may have died in the employment of a common carrier; members of the family of persons killed while in the service of any such common carrier; the family or any person who was, for a period of ten (10) years or more, an employee of such common carrier and who died while in the service of the same; ex-employees traveling for the purpose of entering the service of any such common carrier; post office inspectors; the chairman of bona fide members of grievance committees of employees; bona fide custom and immigration inspectors employed by the government; State Health Officer and one assistant; Federal health officers; county health officers; members of the Industrial Accident Board or any employee thereof; State Railroad Commissioners; Secretary of the Railroad Commission; Engineer of the Railroad Commission; Inspector of the Railroad Commission; Auditor of the Railroad Commission; State Game, Fish and Oyster Commissioners and the Executive Secretary and two (2) assistants; government representatives from the Texas fish hatcheries; shipments of fish for free distribution in the waters of this State; the necessary caretakers while en route and return of any shipments of livestock, poultry, fruit, melons, or other perishable produce; trip passes to indigent poor when application therefor is made by any religious or charitable organization; Sisters of Charity, or members of any religious society of like character; any Minister of religion on intrastate trips in this State; any citizen of the State who served in the War between the States of the Union, either on the Confederate side or on the Union side of said War; veterans of the Spanish-American War, and the wife or widow of any such citizen or veteran; veterans of the Texas Ranger force who served the State prior to the year 1900, and their wives or widows; delegates to different farmers' institutes, farmers' congresses, and farmers' union; delegates to State and district firemen's conventions from volunteer fire companies; managers of Young Men's Christian Associations, or other eleemosynary institutions while engaged in charitable work; the officers or employees of industrial fairs; provided that no more than four (4) officers or employees of any one fair or fair association shall receive free passage in any one year; persons injured in wrecks upon the road of any such company immediately after such injury, and the physicians and nurses attending such persons at the time thereof; persons and property carried in cases of general epidemic, pestilence, or other calamitous visitation at the time thereof or immediately thereafter; United States Marshals and no more than two (2) of the deputies of each such Marshal; State Rangers; the Adjutant General and Assistant Adjutant General of this State; members of the State Militia in uniform and when called into the service of the State; Sheriffs and no more than two (2) of their deputies; Constables and no more than two (2) of their deputies; Chiefs of Police or city marshals, whether elected or appointed; members of the Livestock Sanitary Commission of Texas and their inspectors not to exceed twenty-five (25) in number for any one year; and any other bona fide peace officer when his duty is to execute criminal process;

bona fide policemen or firemen in the service of any city or town in Texas when such policemen or firemen are in the discharge of their public duty; but this provision shall not be construed so as to apply to persons holding commissions as special policemen or firemen. [As amended Acts 1939, 46th Leg., p. 334, § 1; Acts 1941, 47th Leg., p. 15, ch. 8, § 1.]

Section 2 of the Act of 1941 repealed all inconsistent laws and parts of laws.

Art. 4006—A. Free transportation to Indian War Veterans.—Article 4005 shall not be held to prevent any railway company or other companies mentioned therein from granting free transportation, franks, privileges, or passes to Indian War Veterans, subject to the same limitations as apply to other Veterans provided in Article 4006. [Acts 1931, 42nd Leg., p. 335, ch. 202, § 1.]

Art. 4007. Definitions.—The word "employee" as used in this title shall be held to include all officers, agents or employees, actually employed and engaged in the service of such corporation, company, association of persons, including its officers, bona fide ticket and freight agents, physicians, surgeons and general attorneys, and attorneys who appear in court to try cases and receive a reasonable annual salary therefor. The word "family" as used in this title shall include the wife, minor children and dependents of any such employé or person. The words "minister of religion" shall be construed to mean only those whose principal occupation is that of a minister of religion, priest or rabbi.

Art. 4008. Special rates.—Nothing in this title shall be held to prevent any corporation, association or person mentioned in the first article of this title from granting transportation at the rate of one cent per mile to veterans mentioned in the preceding article, or their wives or widows; honorably discharged soldiers, sailors, marines and Red Cross nurses of the late world war to or from the annual convention, Department of Texas American Legion; any minister of religion for intrastate trips, or from granting to ministers of religion reduced rates of one-half the regular fare, or to prohibit the making of special rates for special occasions or under special conditions, provided authority therefor shall first be obtained from the Railroad Commission of Texas; or to prohibit transportation between points wholly within this State at the reduced rate of one cent per mile while traveling on official business connected with their respective offices, the following named peace officers, to wit: Adjutant General of this State; State rangers; the sheriff of any county, his deputies to be designated by him; constables; chiefs of police and assistant chiefs and captains; city marshals, chief of the detectives of any county or city, and assistant detectives. [Acts 1907, p. 94; Acts 1911, p. 151; Acts 1921, pp. 171, 191, 214; Acts 1923, p. 175; Acts 2nd C. S. 1923, p. 100.]

Art. 4009. Free transportation.—Nothing in this title shall be construed to prohibit any express company from hauling or carrying free of charge any package or property of its actual bona fide officers, attorneys, agents and employees while in the service of such express company, nor to prevent any article being sent free to any orphan home or other charitable institution, nor to prohibit any telegraph or telephone company from transmitting free of charge any message of its bona fide officers, attorneys, agents or employees and their families while in the actual employment of such company or its receiver or lessee; provided the actual bona fide officers and employees upon annual salaries of railway telephone companies and telegraph companies are hereby permitted to exchange frank privileges and free transportation over their respective lines of railway and telegraph or telephone.

Art. 4010. Advertising.—Nothing in this title shall be construed to prevent any of the parties named in the first article hereof, publishers, editors or proprietors of newspapers or magazines, from making an exchange of mileage for advertising space in such newspaper or magazine, provided the contract between the railway companies and publishers, editors or proprietors of such newspapers or magazines shall be at the same rate as is charged the public generally for like service, providing that such contract shall be in writing and shall not be operative until approved by the Railroad Commission of this State, and filed in the office of such Commission, subject at all times to a reasonable public inspection.

Art. 4011. Discrimination as to persons.—If any corporation, company, association, or person mentioned in Article 4005 shall grant to any sheriff, constable, or marshal a free pass over its lines of railroad, it shall issue like free transportation to each and every sheriff, constable, or marshal who may make application therefor. [As amended Acts 1927, 40th Leg., 1st C. S., p. 239, ch. 87, § 1.]

Art. 4012. Evidence of authority.—Any veteran of any of the wars mentioned in this title, their wives, widows or members of their families, and any minister of religion, or any fireman, sister of charity or member of any religious society of like character, who desires to receive the benefits of free or reduced transportation as mentioned in this title shall present to the president, manager, officer, or person authorized to issue such transportation satisfactory evidence that he or she is entitled thereto, as herein provided. The officers entitled to the benefits of this law shall, when presenting themselves to the agent of any such railway or interurban railway company for the purchase of a ticket or to pay his fare, exhibit to such agent in case of the Adjutant General and State Rangers a certificate of the Secretary of State under seal, in case of sheriffs and constables and their deputies a certificate under seal of the county judge of the county where they hold office and in case of officers of a city or town a certificate under seal of the mayor of such city or town stating that such person is entitled to the reduced fare herein provided for. Sheriffs and constables shall designate in writing the two deputies entitled to the reduced rates herein provided for. If the sheriff or constable has designated two deputies who are entitled to such reduced rates, then no deputy of such sheriff or constable shall be entitled to free transportation under the provisions of the pass laws of this State. [Acts 1921, p. 171.]

Art. 4013. Discrimination by device.—No corporation, company or person mentioned in the first article of this title shall directly or indirectly, by any special rate, rebate, drawback, or other device, demand, exchange, collect or receive from any person, firm, association or corporation a greater or less or different compensation for any service rendered or to be rendered, in the transportation of passengers, properties or messages, than it or he charges, demands, collects or receives from any other corporation, person, firm or association of persons doing business in this State for a like service under substantially similar circumstances and conditions except as is provided in this title, nor shall grant any free transportation or franking privilege to any corporation or person except as provided in this title. [Acts 1907, p. 96.]

Art. 4014. Reports, etc.—Each corporation, company or persons subject to the provisions of this title shall, as and when requested by the Railroad Commission of Texas, furnish said Commission with any and all information which may at any time be requested by said Commission relating to free transportation or right thereto which has been given to travel, or to have property or messages transported or transmitted, free over the lines of any such corporation, company or person, and if requested by said Commission to give the name and address of such person or persons to whom said rights have been granted, either free or at a reduced

rate; any corporation, company or person, who shall fail or refuse to comply with the request of the Railroad Commission of Texas, under the provisions of this Act, shall, for each such failure and refusal, be subject to a penalty not exceeding One Thousand ($1,000.00) Dollars, to recover which suit shall be brought by the Attorney General of Texas under the direction of the Railroad Commission; provided, however, that each such corporation, company or person, who complies with the provisions of this Act, from and after January 1, 1931, shall not be required to furnish the reports provided for under Article 4014, Revised Civil Statutes of 1925, which is hereby amended. [As amended Acts 1931, 42nd Leg., p. 261, ch. 156, § 1.]

Art. 4015. Penalty.—Any corporation, company, association of persons or any person named in the first article of this title violating any provision of this title, except Article 4014, shall forfeit and pay to the State of Texas a penalty of five thousand dollars for each violation, to be recovered in suit by the State, brought by the Attorney General or by any county or district attorney under the direction of the Attorney General.

TITLE 67—FISH, OYSTER, SHELL, ETC.

Chap. Art.
1. Commissioner and deputies....4016
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CHAPTER 1.—COMMISSIONER AND DEPUTIES

Art.
4016. The Commissioner.
4017. Oath and bond.
4018. Duties and powers.
4019. To report to Governor.
4020. To keep record.
4021. Fish and Oyster Deputies.
4022. Oath and bond of deputies.
4023. Salaries and expenses.
4024. Fees of Commissioner.
4025. Disposition of money.

Article 4016. The Commissioner.—The Game, Fish and Oyster Commissioner [1] shall have his office in the State Capitol in the city of Austin, Texas, during his term of office which shall be two years, the first term to begin September 1, 1925.

Source of article: Acts 1925, 39th Leg., ch. 178, p. 438, § 1.

[1] Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4017. Oath and bond.—The Game, Fish and Oyster Commissioner [1] shall file with the Secretary of State a good and sufficient bond to be approved by that official in the sum of ten thousand ($10,000.00) dollars, with a surety company, conditioned that he will faithfully perform the duties of his office; the premium on such bond to be paid from any available funds appropriated to the use of the Game, Fish, and Oyster Commission. He shall take the oath prescribed for sheriffs, and when he shall file said bond and take said oath, he shall enter on the duties of his office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of the State or any person injured, until the whole amount has been recovered. [Acts 1925, p. 438.] [39th Leg., ch. 178, § 1.]

[1] Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4018. [3879] Duties and powers.—The duties of the Commissioner [1] shall be in the execution of the laws relating to game, fish, oysters and marine life, and such further duties as are imposed upon him by legislation. In the execution of these laws he shall exercise the power and authority given to sheriffs. The Commissioner is authorized to collect and enforce the payment of all taxes, licenses, fines and forfeitures, and all money due his department, by deputies or persons employed for that purpose, and to inspect all products so taxed, and to verify the weights and measures thereof; to examine, or have examined, all streams, lakes or ponds when requested to do so, for the purpose of stocking such waters with fish best suited to such locations and he shall superintend and have control in the propagation of fish in the State fish hatchery and the distribution of such fish, and he shall have superintendence and control of the propagation and distribution of birds and game in the State reservation over which he may have control, or which may be established for such propagation. The Commissioner, or any of his deputies, may arrest without warrant anyone found violating any of the fish, game or oyster laws of Texas, and shall have the same right to execute original process as sheriffs. [Id. p. 192; Acts 1907, p. 255.]

[1] Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4019. [4003] To report to Governor.—The Commissioner [1] shall make on the 31st day of August of each year, or as soon as practicable, not later than October 1st, a report to the Governor, showing the condition of the fish and oyster industry, which shall show the special taxes collected, the number and class of all boats engaged in the fish and oyster trade, the number of licenses issued and license fees collected, the number, place and acreage of private oyster beds and rents received therefor, and all other amounts collected from whatever source and the disbursements therefor, with such observations as pertain to the industry. The report shall contain a statement of all stock furnished, to whom furnished, the cost of same, the streams, lakes or ponds stocked, the number and kind of fish used in each, and the condition of such plants, with any other data he may obtain on the subjects. The Governor shall order a sufficient number of copies of such report to be printed and filed in the Secretary of State's office for the purpose of free distribution to parties interested therein. For failure to make such report within the time specified, the Commissioner may, in the discretion of the Governor, be dismissed from his office. [Id. p. 212.]

[1] Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4020. [4001] To keep record.—The Commissioner [1] shall keep a well bound record book in which shall be recorded all special taxes collected, all licenses issued and license fees collected, all certificates issued for location of private oyster beds, showing the date of certificate and application, when and how the applications were executed and the manner in which the bottoms were examined and rents collected for such locations, showing also all stock fish furnished, to whom furnished, and the cost of same, the streams, lakes or ponds stocked and the number and kinds of fish used in each; and showing all collections and disbursements in and from his office. The Commissioner shall keep an account with each person, firm or corporation holding certificates for the location of private oyster beds in this State, showing the amounts received as rents, etc. [Id. p. 213.]

[1] Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4021. Fish and Oyster Deputies.—The Commissioner [1] is authorized to appoint deputies for each of the vessels owned by the State and employed in the Fish and Oyster Department, and such other shore and interior deputies as he may deem necessary for the enforcement of the law. All such deputies shall have and exercise the same powers and duties as the Commissioner, and be at all times subject to his orders, and shall hold their office at his pleasure.

Each Deputy Fish and Oyster Commissioner shall be ex-officio game commissioner. No person shall hold such office of Deputy Commissioner who is not a citizen of the United States and of this State. All such Deputy Commissioners shall make a monthly report to the Commissioner of all funds collected by them, remitting along with said report all moneys collected by them during the said month. [Acts 2nd C. S. 1919, p. 213.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4022. Oath and bond of deputies.—Before entering upon the duties of his office, each deputy shall file with the Commissioner [1] a good and sufficient bond, with two or more sureties, in the sum of one thousand dollars, and take the same oath of office as the Commissioner, and said bond and oath shall be governed by the provisions of Article 4017. [Id.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4023. Salaries and expenses.—Out of any available funds, the Commissioner [1] and all Fish and Oyster Deputies and employees of the Game, Fish and Oyster Commission shall be paid their salaries and expenses monthly, upon approval of the Commission, the Comptroller drawing his warrant in favor of each of said persons on the special funds appropriated for said purposes as follows: The Commissioner, thirty-six thousand dollars per annum, and not more than fifteen hundred dollars per annum for traveling and other expenses, to be paid on vouchers approved by the Governor, showing that such amounts have been actually expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State Laws and charts necessary to the execution of the duties of his office; the chief deputy game, fish and oyster commissioner and all other deputy fish and oyster commissioners and employees of the Game, Fish, and Oyster Commission, except special game deputies, deputies employed at fresh water fish hatcheries and sand, shell and gravel deputies, shall be paid their salaries and expenses monthly upon approval of the Game, Fish and Oyster Commissioner out of the fish and oyster fund, the Comptroller drawing his warrant in favor of each of said persons on the fish and oyster fund, appropriated for said purposes, as follows: chief deputy game, fish and oyster commissioner, twenty-five hundred dollars per annum; deputies on boats, not to exceed one hundred twenty-five dollars per month; mates on boats, eighty dollars per month; shore deputies, not to exceed one hundred twenty-five dollars per month; lake deputies, not to exceed one hundred twenty-five dollars per month; assistant lake deputies, not to exceed seventy-five dollars per month; supervisor of coastal fisheries not to exceed one hundred fifty dollars per month. It shall be the duty of the Game, Fish and Oyster Commissioner to collect all taxes, licenses and fines as imposed by law, and enforce their payment, to inspect all products so taxed, and to verify the weights and measures thereof, to collect license fees, to collect all rents on locations for planting oysters, to examine or have examined, all streams, lakes or ponds, when requested to do so, for the purpose of stocking such waters with fish best suited to such locations, and he shall superintend and have control in the propagation of fish in the State fish hatcheries, and the distribution of such fish, and he shall have superintendence and control of the propagation and distribution of birds and game in the State reservations over which he may have control, or which may be established for such propagation. He shall also be allowed a sum not to exceed fifteen hundred dollars per annum for traveling and other expenses to be paid on vouchers showing that such amounts have actually been expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State laws and charts necessary to the execution of the duties of his office. [Id. p. 446.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4024. [4017] Fees of Commissioner.—In making arrests, summoning witnesses and serving process, the Commissioner [1] or his deputies shall be allowed the same fees and mileage as sheriffs, the same to be charged and collected as are sheriff's fees. [Acts 1895, p. 70.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4025. [4013] Disposition of money.—Of all fines collected for infraction of the fish and oyster laws, ten per cent shall go to the prosecuting attorney, and the residue thereof shall go to the general fund of this State. All funds collected by deputy commissioners along the coast for register certificates, licenses, and rents for locating private oyster beds, and such other charges relating to the fish and oyster laws as may be prescribed, shall be by such deputies paid over weekly to the Commissioner,[1] who in turn shall deposit the same monthly in the State Treasury to the credit of the general revenue fund. [Acts 1913, p. 297; Acts 1923, 2nd C. S. p. 61.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

CHAPTER 2.—FISH AND OTHER MARINE LIFE

Art.
4026. Property of State.
4026a. Prohibiting sale of Trinity River bed and reservation for hunting and fishing.
4027. Oyster beds.
4028. Riparian rights prescribed.
4029. Private fresh waters.
4030. Fish and oyster fund.
4031. [Repealed.]
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4032a. License to fish in fresh waters; fees.
Sec.
1. License required.
2. Fees.
3. Violations.
4. "Non-resident" defined.
5. Disposition of license fees.
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4035. Application for oyster bed.
4036. Examining location.
4037. Locator's certificate.
4038. Rights of locator.
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4040. To maintain markings.
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4045. Seining, etc., in closed waters.
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4047. Permit to use shrimp seine.
4048. Dredging reefs or beds.
4049. Protection of reservation.
4049a. Hatcheries and propagation.
4049b. Condemnation of lands and water rights, etc., for hatcheries.
4049c. Purchase or condemnation of lands, water rights, etc., for fresh water hatcheries and for constructing and maintaining channels.
4050. May take brood fish.
4050a. Consent to establishment of migratory bird reservations by Federal Government.
4050b. Consent to Federal statute providing for Federal aid to states in wildlife restoration projects.

Article 4026. Property of State.—All fish and other aquatic animal life contained in the fresh water rivers, creeks and streams and in lakes or sloughs subject to overflow from rivers or other streams within the borders of this State are hereby declared to be the property of the people of this State. All of the public rivers, bayous, lagoons, creeks, lakes, bays and inlets in this State, and all that part of the Gulf of Mexico within the jurisdiction of this State, together with their beds and bottoms, and all of the products thereof, shall continue and remain the property of the State of Texas, except in so far as the State shall permit the use of said waters and bottoms, or permit the taking of the products of such bottoms and waters, and in so far as this use shall relate to or affect the taking and conservation of fish, oysters, shrimp, crabs, clams, turtle, terrapin, mussels, lobsters, and all other kinds and forms of marine life, or relate to sand, gravel, marl, mud shell and all other kinds of shell, the Game, Fish and Oyster Commissioner [1] shall have jurisdiction over and control of, in accordance with and by the authority vested in him by the laws of this State. [Acts 1925, p. 438.] [39th Leg., ch. 178, § 1 (art. 7).]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4026a. Prohibiting sale of Trinity River bed and reservation for hunting and fishing.—Sec. 1. That the river bed of the Trinity River in Henderson and Navarro Counties shall remain the property of the State and shall not be sold and that all portions of this river bed, that are now the property of this State, shall not be sold, even though the channel of such river has been changed or may be changed, and providing further, that the people of this State shall have full right to fish in the waters of said Trinity River and in such waters that are in abandoned channels of this river, the bottoms of which are owned by this State, and shall have full right to hunt within the confines of such State property, provided that such fishing or hunting is in accordance with the laws of this State or such laws or regulations that may hereafter be provided.

Sec. 2. The Commissioners' Court of the County of Henderson or the County of Navarro is hereby granted full power to condemn rights of way in order that the public may reach the Trinity River or the waters of the abandoned channels of said river and such condemnation is hereby declared a public necessity.

Sec. 4. It shall be the duty of the Game, Fish and Oyster Commission to make investigations to determine how game and fish may be conserved in those portions of this State to which this Act applies. Any regulations provided shall be filed in the office of the County Clerk in the Counties of Henderson and Navarro and a copy of said regulations filed with the Secretary of State and a copy of said regulations shall be published in one issue of a newspaper regularly published in each of the Counties of Henderson and Navarro and such regulations shall become effective ten (10) days after copies of such regulations are published in each newspaper in accordance with the provisions of this Act.

Sec. 5. All laws or parts of laws in conflict with this Act are hereby repealed and all laws or parts of laws effecting the taking of game or fish or the manner or means of taking game or fish or in any way pertaining to same, in that portion of this State to which this Act applies, be, and the same are hereby specifically repealed in their application to this area, provided that if any portion of this law is held to be unconstitutional, that all laws in effect at this time applying to the areas specified in this Act, shall remain in full force and effect. [Acts 1931, 42nd Leg., 2nd C.S., p. 42, ch. 23.]

Section 3 of Acts 1931, being a penal provision is published as Pen.Code, Art. 978i.

Art. 4027. Oyster beds.—All oyster beds not designated private shall be public. All natural oyster beds and reefs of this State shall be public. A natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found therein within twenty-five hundred square feet of any position of said reef or bed; and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Commissioner,[1] but this shall not apply to a reef or bed that has been exhausted within a period of eight years. [Acts 1919, p. 289.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4028. Riparian rights prescribed.—Whenever any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location of land in this State, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting or sowing oysters. The Commissioner [1] may require the owner of oysters claimed to be produced on such lands, when such oysters are offered for sale, to make an affidavit that such oysters were produced on such lands. If said creek, bayou, lake or cove is not so included, then the exclusive right of the riparian owner shall, wherever the width of such creek, bayou, lake or cove is two hundred yards or less, extend to the middle thereof, and wherever the width of such waters is more than two hundred yards, extend one hundred yards from shore. The right of the riparian owner for planting oysters along any bay shore in this State shall extend one hundred yards into the bay from high water mark or where the land survey ceases. The riparian owner's right to any natural oyster bed located on such one hundred yard reservation shall not be exclusive. [Acts 1895, p. 70.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4029. Private fresh waters.—Such of the fresh water lakes, rivers, creeks and bayous within this State as may be embraced in any survey of private land shall not be sold, but shall remain open to the public. If the Commissioner [1] stocks them with fish, he is authorized to protect same for such time and under such rules as he may prescribe. [Acts 2nd C. S. 1919, p. 216.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4030. Fish and oyster fund.—All funds collected by the Game, Fish and Oyster Commission from the sale of commercial fishermans' licenses, fish dealers licenses, taxes on fish, crabs, oysters and shrimp, and all other taxed marine life, and all fines and penalties collected for any infraction of any laws relating to commercial fishermen, shall be placed in the State Treasury to the credit of a fund to be known as "Fish and Oyster Fund" and, together with the money now to the credit of this fund, is hereby appropriated and shall be used by the Game, Fish and Oyster Commissioner [1] in the enforcement of the fish and oyster laws of this State, and in the dissemination of useful information pertaining to the economic value of fish and oyster marine life; the making of scientific investigations and surveys of the principal sea food fishes and marine life for purpose of the better protection and conservation of same, the propagation and distribution of sea food fishes, oysters, and other marine life; the purchase, repair and operation of boats and the employment of deputies to carry out and enforce the provisions of this Act. [Acts 1925, p. 446.] [39th Leg., ch. 178, § 2.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4031. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7.]

Art. 4032. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7.]

Art. 4032a. License to fish in fresh waters; fees.

License required

Section 1. No person who is a nonresident of the State of Texas or who is an alien shall fish in the fresh waters of this State without first having procured from the Game, Fish and Oyster Commission of Texas, or a Deputy Game Warden thereof, or from a County Clerk in Texas, or other legally authorized agent, a license to fish; and no person who is a resident of this State shall fish with artificial lures of any kind in the fresh waters of this State without first having procured from the Game, Fish and Oyster Commission of Texas, or a Deputy Game Warden thereof, or from a County Clerk of Texas, or other legally authorized agent, a license to fish. [As amended Acts 1931, 42nd Leg., p. 381, ch. 227, § 1; Acts 1941, 47th Leg., p. 360, ch. 199, § 1.]

Fees

Sec. 2. Any officer, deputy of [1] legally authorized agent, issuing any license to fish under the provisions of this Act, shall collect from the person to whom the license is issued the following fees:

(1) If issued to a resident, the sum of One Dollar and Ten Cents ($1.10), of which amount he shall retain as his fee Ten (10¢) Cents, the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner on or before the 10th day of the month next succeeding that during which said license was issued.

(2) If issued to a non-resident or an alien, the sum of Five Dollars ($5.00), of which amount he shall retain as his fee Twenty Five (25¢) cents, the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner as required under subdivision One (1) of this section; provided that he may issue to such nonresident a license good for only five (5) days, including the day of issuance, upon payment by the licensee of One Dollar and Ten Cents ($1.10), of which amount the officer so issuing said license shall retain as his fee Ten (10¢) Cents, and the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner as provided for in subdivision One (1) of this section.

The officer issuing such license shall keep a complete and correct record of each fishing license issued, showing the name and place of residence of each licensee and the serial number and date of issuance of said license, on such form as the Game, Fish and Oyster Commissioner may prescribe; and the stubs of such licenses and the record thereof shall belong to the State of Texas and shall be filed with said Commissioner as and when he may direct.

The licenses provided for herein shall entitle the holder thereof to fish in the waters described in this Act until and including August 31st next succeeding the date of issuance thereof, except that the five (5) days license shall be good only for the five days from and including the day of the issuance thereof; and every license issued under the provisions of this Act shall contain; the true date of issuance thereof, the name of licensee, his age, height, weight, color of hair, color of eyes, county of residence, if a resident of Texas, State or County of residence, if a nonresident of Texas or an alien, and such other information as the Commissioner may deem advisable to require, and the licensee shall sign upon said license a pledge to obey the laws of Texas as to fishing.

[1] So in enrolled bill. Should probably read "or".

Violations

Sec. 3. Any person required under the provisions of this Act to procure a license to fish who shall fish in, or who shall take by any means fish, oysters, shrimp or other marine life in any of the waters of this State in violation of the provisions of this Act without first procuring such license, or who shall fail or refuse, on demand by any officer, to show such officer his fishing license required of him, by this Act, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than Ten ($10.00) Dollars nor more than One Hundred ($100.00) Dollars; provided, the provisions of this Act shall not apply to a resident citizen of Texas who holds a license for commercial fishing under Article 4032 of the Revised Civil Statutes of Texas of 1925, so long as he does only commercial fishing. [As amended Acts 1931, 42nd Leg., p. 381, ch. 227, § 2.]

"Non-resident" defined

Sec. 4. By the term non-resident, as used in this Act, shall be meant any citizen of the United States of America who is not a citizen of the State of Texas, who has continuously for four months next preceding the issuance of the fishing license to him been an actual bona fide resident of the State of Texas.

Disposition of license fees

Sec. 5. All funds obtained from the sale of the licenses provided herein, after the payment of the fees allowed under this Act, shall be deposited by the Game, Fish and Oyster Commissioner in a special fund to be known as the Special Fish Propagation and Protection Fund; and this fund shall be used for the purpose of building and maintaining fish hatcheries, fairly distributed over the State of Texas and for the propagation, distribution and protection of fish in the State of Texas. [Acts 1927, 40th Leg., p. 396, ch. 268.]

Acts 1931, 42nd Leg., p. 381, ch. 227, §§ 1, 2 amended sections 1 and 3 of this Article.

Art. 4033. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7.]

Art. 4034. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7.]

Art. 4035. Application for oyster bed.—Any person who is a citizen of the United States or any domestic corporation shall have the right of obtaining a location for planting oysters and making private oyster beds within the public waters of this State, by making written application to the Commissioner [1] describing the location desired. A fee of twenty dollars cash must accompany such application. [Acts 2nd C. S. 1919, p. 197.]

[1] Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4036. Examining location.—When the application and fee provided for in the preceding article have been received by the Commissioner [1] he shall examine thoroughly the location desired, as soon as practicable, with tongs, dredge or any other efficient means. If the same be not a natural oyster bed or reef, and exempt from location by any article of this chapter, he shall have the location surveyed by a competent surveyor. In making said location, said surveyor shall plant two iron stakes or pipes on the shore line nearest to the proposed location, one at each end of the proposed location, which said stakes or pipes shall be not less than two inches in diameter, and be set at least three feet in the ground. Said stakes or pipes shall be placed with reference to bearings of not less than three natural or permanent objects or land marks. And the locator shall place and maintain under the direction of the Commissioner a buoy at each corner of his oyster claim farthest from the land. No person shall locate water or ground covered with water for planting oysters along any bay shore in this State, nearer than one hundred yards from shore. [Id. p. 197.]

[1] Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4037. Locator's certificate.—The Commissioner [1] shall give the locator a certificate signed and sealed by the Commissioner. Such certificate shall show the date of application, date of survey, number, description of metes and bounds with reference to the points of the compass and natural and artificial ob-

jects by which said location can be found and verified. The locator shall, before such certificate is delivered to him, pay the Commissioner surveyor's fees and all other expenses connected with establishing such location. If such sums, as costs of the location and establishment of the claim, are less than the twenty dollar paid to the Commissioner, the difference in amount shall be returned to such locator by the Commissioner. If such expenses amount to more than twenty dollars, the deficit shall be paid to the Commissioner by the locator.

At any time not exceeding sixty days after the date of such certificate of location, the locator must file the same with the county clerk of the county in which the location is situated, who shall record the same in a well bound book kept for that purpose, and the original with a certificate of registration shall be returned to the owner or locator; the clerk shall receive for the recording of such certificate the same fee as for recording deeds; the original or certified copies of such certificate shall be admissible in evidence under the same rule governing the admission of deeds or certified copies thereof. [Id. p. 198.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4038. Rights of locator.—Any person who shall be granted a certificate of location as provided for in the preceding article shall be protected in his possession thereof against trespass thereon in like manner as freeholders are protected in their possessions, as long as he maintains all stakes and buoys in their original and correct position, and complies with all laws, rules and regulations governing the fish and oyster industries. [Id. p. 198.]

Art. 4039. Limiting location.—No person, firm or corporation shall ever own, lease or otherwise control more than one hundred acres of land covered by water, the same being oyster locations under this chapter, and within the public waters of this State; and any person, firm or corporation that now holds more than one hundred acres of oyster locations, shall not be permitted hereafter to acquire, lease or otherwise control more; provided that no corporation shall lease or control any such lands covered by water unless such corporation shall be duly incorporated under the laws of this State. [Id. p. 198.]

Art. 4040. To maintain markings.—Any person, firm or corporation who has secured, or may hereafter secure a location for a private oyster bed in this State, shall keep the two iron stakes or pipes and buoys as provided for by law, in place, and shall preserve the marks so long as he is the lessee of said location, and this shall apply also to any person, firm or corporation acquiring any location by purchase or transfer of any nature, and said locator or the assignee of any locator shall have the right to fence said location or any part thereof; provided that said fence does not obstruct navigation through or into a regular channel or cut leading to other public waters. [Id. p. 198.]

Art. 4041. Rental on location.—The owner or locator of private oyster beds under the foregoing provisions shall not be required to pay any rentals on such locations for a period of five years, or till such time as he shall begin to market or sell oysters from such location or bed. When such locator shall begin to sell or market oysters from such location, he shall pay the State one dollar and fifty cents per acre per annum and two cents a barrel on oyster sales. Failure to pay such rental by the first day of March of each year shall annul and be a forfeiture of his lease. And if oysters are not marketed or sold from such location within five years from the date of location, such location shall become void. [Id. p. 199.]

Art. 4042. Oyster permit.—Any person who is a citizen of the State of Texas, or any corporation chartered by the State to engage in the culture of oysters or transact business in the purchase and sale of oysters and fish, and composed of American citizens, wishing to plant oysters on their own oyster locations or to take oysters from oyster reefs and public waters of the State for the purpose of preparing them for market, shall make application to the Commissioner 1 for permission to do the same. In such application the applicant shall set out distinctly the purpose for which he desires such oysters and also the number or amount that he desires to take from the beds and waters mentioned. The Commissioner may grant such permit or he may refuse to do so. If he should grant such permit, he shall require the applicant to take the oysters he is authorized to take from beds or reefs designated by such Commissioner and name them in the permit, and it shall be unlawful for any person to take oysters of less size than three and one-half inches from hinge to mouth from any such designated beds or reefs unless authorized to do so by the Commissioner; he shall mark off the exact area of such beds or reefs from which such oysters shall be taken; he shall designate the bottoms on which such oysters shall be deposited, if they are taken to be prepared for market; he shall require the applicant to cull the oysters on the grounds where they are to be located; he shall state what implements such as tongs and dredges shall be used in taking such oysters, and he shall make and enforce all other regulations he may think necessary to protect and conserve the oysters on such public reefs or beds. All oysters taken from or deposited in the public waters of this State as herein provided shall become the personal property of the person or corporation so taking or depositing them. Such person or corporation shall, by buoys or stakes or by fences, clearly and distinctly mark the boundaries of the private bed planted, or the boundaries of the deposit of oysters made for preparation for market; and no prosecution of any one shall be permitted for taking such oysters unless the boundaries of such beds and deposits are established and maintained. [Id. p. 199.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4043. Shipment of oysters.—It shall be unlawful for any transportation company operating within this State, its officers, agent or employees, to receive for shipment, or to ship, within the boundaries of this State from the first day of May to the first day of September of any year, any oysters from any public bed or reef for depositing or for marketing. Nothing in this chapter shall be construed as to prohibit any such transportation company, its officers, agents or employés, from shipping or receiving for shipment, any oysters taken from a private bed located under the laws of this State, offered for shipment by the owner or owners, locator or locators, of such bed; such fact to be established by the affidavit of the person or persons offering such oysters for shipment. [Id. p. 203.]

Art. 4044. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7.]

Art. 4045. Seining, etc., in closed waters.—It shall be unlawful for any person at any time to place, to set or drag any seine or net, or to carry on, over or into the waters hereinafter referred to, or to have in his possession or to carry such seine or net by vehicle or in any other way to any point or place within one mile of such waters, or to use any other device or method for taking fish, other than the ordinary pole and line or cast-net or minnow-seine of not more than twenty feet in length for catching bait, within the waters described in Article 941 of the Penal Code. Nothing in this article shall prevent the use of spear or gig and light for the purpose of securing flounders from such passes as are therein enumerated at any time of the year except during the months of November and December, which months shall constitute a

closed season on flounders in all coastal waters of the State. The Commissioner,[1] when he has reason to believe it is best for the protection and increase of fish life, or to prevent their destruction in the bays or parts thereof, or such tidal water, is hereby authorized to close such waters against fishing with any seine, net, spear, gig, light or other devices, except with a hook and line or cast-net or minnow-seine of not more than twenty feet in length. Before so closing any such waters, the Commissioner shall give notice of his intention to do so at least two weeks prior to such closing, giving the reason why action is deemed necessary, and which notice shall contain a designation of the area which it is proposed to close, a statement that after the date indicated in such notice it shall be unlawful to drag a seine or set a net or use a gig or spear and light in taking fish from such waters for the period which the Commissioner in said notice shall declare same to be closed. The Commissioner shall have the authority, when proper hearing has been had and investigation been made, and he has determined that any such closed area in the tidal waters of this State does not promote conservation of fish, to open such area to seining, netting, gigging and fishing of all sorts. The Commissioner shall have power to seize and keep such seines as are used in violation of any provision of this article, in his possession as evidence until trial of defendant, and no suit shall be maintained against him therefor. [Acts 1923, p. 297.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4046. Seining for drum.—Any person leasing an oyster claim or oyster reef in waters where seining is prohibited may apply to the Commissioner [1] for permission to seine for drum fish in such waters. In his application for permission to seine for drum he shall make oath that such fish are seriously damaging his oysters, and that if he is permitted to seine for such fish in such waters, he will not take or destroy any other food fish, but will throw them back into the water. If the Commissioner is satisfied that such damage is being done, he may grant such permission, specifying in such permit the length of time in which it is to be used, and the claim or reef on which it is to be used. Such Commissioner shall assign a deputy fish and oyster commissioner to superintend such seining, and no seine shall be dragged except in his presence, and for which a person obtaining the permission to seine as set forth above, shall pay to the Commissioner two dollars and fifty cents per day. [Id., p. 202.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4047. Permit to use shrimp seine.—The Commissioner [1] may permit the use of any shrimp seine or other device for catching shrimp in the tidal waters of this State. Any person desiring to use such seine shall apply to the Commissioner for a permit to use such seine, net or other device for catching shrimp, and the Commissioner shall fix and establish the mesh, construction, depth and length of such seine or net or other device so that it shall not be used for other purposes than in taking shrimp, and he shall tag such seine or other device officially and issue such permit, and shall designate in what waters and localities such seines or nets shall be used. Any such nets or seines or devices used in violation of this article shall be declared a nuisance and the Commissioner shall abate and destroy the same, and no suit shall be maintained in the courts for such abatement and destruction. [Id. p. 205.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4048. Dredging reefs or beds.—Any person who is an American citizen or any firm or corporation composed of American citizens desiring to use scrapers or dredges in removing oysters from the natural oyster reefs of this State shall procure from the Commissioner [1] a license to do so, and such applicant shall pay to the Commissioner a license fee of five dollars when using scrapers or hand dredges, and fifteen dollars when using power-dredges, which license shall be for one year from the date of issuance thereof, and shall obligate the holder to observe all the laws of the State enacted to conserve the marine life of such public waters. Whenever the Commissioner believes that a natural oyster reef or bed is too open and exposed to be fished with hand-tongs, and that such reef or bed can be improved by the use of dredges, he may grant the use of dredges on such reef or bed regardless of the depth of the body of water or exposure thereof, but only under the supervision and direction of a deputy fish and oyster commissioner; and the Commissioner is authorized to purchase boats and implements and employ labor to work such public oyster reefs and beds as he may think can be improved thereby, the expense of which shall be paid on warrants issued by the Comptroller on the sworn statement as to the correctness of such expense by the Commissioner. [Acts 1923, p. 298.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4049. Protection of reservation.—It shall be unlawful to bring into or keep on any fish hatchery or reservation for the propagation or exhibition of any birds, fowls or animals, any cat, dog or other predacious animal, and any such animal found on the grounds of such hatcheries or reservation is held to be a nuisance, and the deputy in charge shall abate and destroy it as a nuisance, and no suit for damages shall be maintained therefor. [Acts 2nd C. S. 1919, p. 209.]

Art. 4049a. Hatcheries and propagation.—The Game, Fish and Oyster Commissioner [1] of this State is hereby authorized to construct and maintain salt water hatcheries, and propagation farms for fish, oysters and game, or either of same, on islands owned by the State of Texas in the costal waters of the Gulf of Mexico touching this State; and the cost and expenses thereof shall be borne out of the money available to said Commissioner for the enforcement of the game, fish and oyster laws of this state. [Acts 1927, 40th Leg., p. 258, ch. 180, § 1.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish, and Oyster Commission, see Vernon's Ann.P.C., art. 978f.

Art. 4049b. Condemnation of lands and water rights, etc., for hatcheries.—Sec. 1. The State of Texas through the Game, Fish and Oyster Commission shall have the right, power and authority to enter upon, condemn and appropriate lands, water rights, easements, right of ways, and property of any person or corporation in Smith County, Texas, for the purpose of erecting, constructing, enlarging and maintaining fish hatcheries, buildings, necessary equipments, roads and passageways to said hatcheries in Smith County, Texas, provided the manner and method of such condemnation, assessment, payment of damages therefore shall be the same as now provided by law in the case of railroads.

Sec. 2. Condemnation suits brought under this Act shall be brought in the name of the State by the Attorney General in Smith County. All costs in such proceedings shall be paid by the State or by the person against whom such proceedings are had, to be determined as in the case of railroad condemnation proceedings and all damages and pay or compensation for property awarded in such proceedings shall be paid by the State of Texas by warrant drawn by the Comptroller against any fund in the State Treasury appropriated to the Game, Fish and Oyster Commission for the use

of constructing, and maintaining fish hatcheries. [Acts 1929, 41st Leg., 1st C.S., p. 67, ch. 31.]

Art. 4049c. Purchase or condemnation of lands, water rights, etc., for fresh water hatcheries and for constructing and maintaining channels.—Section 1. The State of Texas, through the Game, Fish and Oyster Commission, shall have the right to acquire by purchase any and all land in this State that may be deemed necessary for the construction, maintenance, enlargement and operation of fresh water fish hatcheries, and for the construction and maintenance of passes leading from one body of tide-water to another. Upon approval of the title by the Attorney General of this State said Game, Fish and Oyster Commission is hereby authorized to pay for such land so purchased out of any money that has been, or may be hereafter appropriated to it by the Legislature.

Sec. 2. The State of Texas, through the Game, Fish and Oyster Commission, shall have the right, power and authority to enter upon, condemn, and appropriate lands, easements, rights-of-way and property of any person or corporation in the State of Texas for the purpose of erecting, constructing, enlarging and maintaining fish hatcheries, buildings, equipment, roads, passage-ways to said hatcheries and also shall have the right, power and authority to enter upon, condemn and appropriate lands, easements, rights-of-way and property of any person or corporation in this State for the purpose of constructing, enlarging and maintaining passes or channels from one body of tide-water to another body of tide-water in this State. Provided that the manner and method of such condemnation, assessment, and payment of damages therefor shall be the same as is now provided by law in the case of railroads.

Sec. 3. Condemnation suits brought under this Act shall be brought in the name of the State of Texas by the Attorney General at the request of the Game, Fish and Oyster Commission in Travis County, Texas. All costs in such proceedings shall be paid by the State or by the person against whom such proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in such proceedings shall be paid by the State of Texas by warrant drawn by the Comptroller against any fund in the State Treasury heretofore or hereafter appropriated to the Game, Fish and Oyster Commission. [Acts 1939, 46th Leg., p. 338.]

Art. 4050. May take brood fish.—It shall be lawful for the Commissioner [1] or the United States Commissioner of Fisheries and his duly authorized agents to take at any time and in any manner from the public fresh waters of this State all brood fish required by them in operation of the State and Federal Hatcheries. [Acts 2nd C.S. 1919, p. 214.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4050a. Consent to establishment of migratory bird reservations by Federal Government.—Consent of the State of Texas is given to the acquisition by the United States of America by purchase, gift, devise, or lease of such areas of land or water, or of land and water, in the State of Texas, as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the Act of Congress approved February 18, 1929, entitled: "An Act to more effectively meet the obligations of the United States under the Migratory Bird Treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes"; reserving, however, to the State of Texas, full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection and control thereof by the United States under the terms of said Act of Congress. [Acts 1931, 42nd Leg., p. 38, ch. 30, § 1.]

Art. 4050b. Consent to Federal statute providing for Federal aid to states in wildlife restoration projects.—The State of Texas hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes," approved September 2, 1937 (Public, No. 415, 75th Congress),[1] and the Game, Fish and Oyster Commission is hereby authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration projects, as defined in said Act of Congress, in compliance with said Act and Rules and Regulations promulgated by the Secretary of Agriculture thereunder. [Acts 1939, 46th Leg., p. 337, § 1.]

1 16 U.S.C.A. §§ 669–669j.

CHAPTER 3.—MARL, SAND AND SHELL

Art.
4051. Property of the State.
4052. Powers of Commissioner.
4053. Permit to use marl, etc.
4053a–4053c. [Transferred.]
4053d. Sale of marl, gravel, sand, etc.
4053e. Partial invalidity.
4054. Use in municipal road work.
4054a. Material for protective work along coast.
4054b. Removal of sand and deposits in Corpus Christi Bay.
4055. Condemnation of land.
4056. License for mussels, etc.
4056a. Lease of part of Brazos Island.

Article 4051. Property of the State.—All the islands, reefs, bars, lakes, and bays within the tide-water limits from the most interior point seaward coextensive with the jurisdiction of this State, and such of the fresh water islands, lakes, rivers, creeks and bayous within the interior of this State as may not be embraced in any survey of private land, together with all the marl and sand of commercial value, and all the shells, mudshell or gravel of whatsoever kind that may be in or upon any island, reef or bar, and in or upon the bottoms of any lake, bay, shallow water, rivers, creeks and bayous and fish hatcheries and oyster beds within the jurisdiction and territory herein defined, are included within the provisions of this chapter, and are hereby placed under the management, control and protection of the Commissioner.[1] None of the marl, gravel, shells, mudshells or sand included herein shall be purchased, taken away or disturbed, except as provided herein, nor shall any oyster beds or fish hatcheries within the territory included herein be disturbed except as herein provided. [Acts 2nd C. S. 1919, p. 216.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4052. Powers of Commissioner.—The Commissioner [1] is hereby invested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion over all matters pertaining to the sale, the taking, carrying away or disturbing of all marl, sand or gravel of commercial value, and all gravel and shells or mudshell and oyster beds and their protection from free use and unlawful disturbing or appropriation of same, with such exceptions as may be provided herein. [Acts 2nd C. S. 1919, p. 216.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4053. Permit to use marl, etc.—Anyone desiring to purchase any of the marl and sand of commercial value and any of the gravel, shells or mudshell included within the provisions of this chapter, or otherwise operate in any of the waters or upon any island, reef, bar, lake, bay, river, creek or bayou included in this chapter, shall first make written application therefor to the Commissioner [1] designating the limits of the territory in which such person desires to operate. If the Commissioner is satisfied that the taking, carrying away or disturbing of the marl, gravel, sand, shells or mudshell in the designated territory would not damage or injuriously affect any oysters, oyster beds, fish inhabiting waters thereof or adjacent thereto and that such operation would not damage or injuriously affect any island, reef, bar, channel, river, creek or bayou used for frequent or occasional navigation, nor change or otherwise injuriously affect any current that would affect navigation, he may issue a permit to such person after such applicant shall have complied with all requirements prescribed by said Commissioner. The permit shall authorize the applicant to take, carry away or otherwise operate within the limits of such territory as may be designated therein, and for such substance or purpose only as may be named in the permit and upon the terms and conditions of the permit. No permit shall be assignable, and a failure or refusal of the holder to comply with the terms and conditions of such permit shall operate as an immediate termination and revocation of all rights conferred therein or claimed thereunder. No special privilege or exclusive right shall be granted to any person, association of persons, corporate or otherwise, to take or carry away any of such products from any territory or to otherwise operate in or upon any island, reef, bay, lake, river, creek, or bayou included in this chapter. [Acts 2nd C. S. 1919, p. 216.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Arts. 4053a-4053c. [Transferred.]

The text of these articles was from Acts 1925, 39th Leg., p. 231, ch. 74, § 1, which amended Acts 1923, 38th Leg., 2nd C.S. p. 11, ch. 6, which was incorporated in Rev.Civ. St.1925, art. 4055, post.

See note under article 4055, post.

Art. 4053d. Sale of marl, gravel, sand, etc.—The Game, Fish and Oyster Commissioner [1] by and with the approval of the Governor, may sell the marl, gravel, sand, shell or mudshell included within this Act, upon such terms and conditions as he may deem proper, but for not less than four (4c) cents per ton, and payment therefor shall be made to said Commissioner. The proceeds arising from such sale shall be transmitted to the State Treasurer and be credited to a special fund hereby created to be known as the sand, gravel and shell fund of the State, and may be expended by the said Commissioner in the enforcement of the provisions of the sand, shell and gravel laws and in the establishment and maintenance of fish hatcheries, when provided by legislative appropriation, and in the payment of refunds provided for in Section 7, Chapter 161, of the General Laws of the Regular Session of the Thirty-eight Legislature, to counties, cities or towns or any political subdivision of a county, city or town, as provided for in Section 7, Chapter 161, of the General Laws of the Regular Session of the Thirty-eighth Legislature. And also providing that the authorization of refunds on sand, gravel and shell shall be extended to include refunds to the State Highway Commission of money paid the State through the Game, Fish and Oyster Commission for sand, gravel and shell used by the State Highway Commission on public roads upon application for such refunds in the manner prescribed for cities and counties. Provided further that not less than seventy-five per cent of the proceeds derived therefrom, after refunds above referred to have been cared for, shall go for the establishment and maintenance of fish hatcheries; and the sand, gravel, and shell fund is hereby appropriated for the purpose of carrying out the provisions of this Act. Said hatcheries to be established from time to time in the State of Texas by the Fish, Game and Oyster Commission, when in their judgment a suitable location is secured and arrangements therefor have been completed. [Acts 1925, 39th Leg., ch. 183, p. 452, § 1.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4053e. Partial invalidity.—If any section of this bill shall be held unconstitutional, it shall not affect any other section of this bill, and all sections, save the one that may be declared unconstitutional, shall continue to be in full force and effect, and all laws in conflict are hereby repealed. [Acts 1925, 39th Leg., ch. 183, p. 453, § 2.]

Art. 4054. Use in municipal road work.—If any county, or subdivision of a county, city or town should desire any marl, gravel, sand, shell or mudshell included in this chapter for use in the building of any road or street, which work is done by said county, or any subdivision of a county, city or town, such municipality may be granted a permit without charge and shall have the right to take, carry away or operate in any waters or upon any islands, reefs or bars included herein; such municipality to do the work under its own supervision, but shall first obtain from the Commissioner a permit to do so, and the granting of same for the operation in the territory designated by such municipality shall be subject to the same rules, regulations and limitations and discretion of the Commissioner [1] as are other applicants and permits. When such building of roads or taking of such products is to be done by contract, then the said municipality may obtain a refund from the Commissioner of the tax levied and collected on said products as fixed by the Commissioner at the time of the taking thereof, by warrant drawn by the Comptroller upon itemized account sworn to by the proper officer representing such municipality and approved by the Commissioner, and under such other rules and regulations as may be prescribed by the Commissioner. [Acts 1923, p. 342.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Act 1933, 43rd Leg., p. 29, ch. 23 provides for payment of certain refunds.

Art. 4054a. Material for protective work along coast.—If any county, city or town authorized by Title 118 of the Revised Civil Statutes of 1925 to construct, extend, protect, strengthen, maintain, keep in repair and otherwise improve any seawall or breakwater, levee, dike, floodway and drainway, shall desire any marl, gravel, sand, shell or mudshell, included in this Chapter, for use in the building, constructing, extending, protecting, strengthening, maintaining keeping in repair and otherwise improving any such seawall, or breakwater, levee, dike, floodway and drainway, such municipality shall be granted a permit without charge, and shall have the right, without payment therefor by such county, city or town to the Game, Fish and Oyster Commissioner,[1] or to the State of Texas, to appropriate, dredge, take and carry away any such marl, gravel, sand, shell or mudshell from any of the waters, reefs, or bars included herein; provided that such permit shall be granted and such marl, gravel, sand, shell or mudshell shall be taken under such rules and regulations as the Commissioner may make and establish. Provided, further, that none of the benefits accruing under and by virtue of this Act shall inure to any person, firm or corporation holding a contract at the present time where marl, gravel, shell or mudshell shall be used as herein provided. [Acts 1927, 40th Leg., p. 265, ch. 186, § 1.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Art. 4054b. Removal of sand and deposits in Corpus Christi Bay.—That there may be taken and appropriated from beneath the waters of Corpus Christi Bay and Nueces Bay, sand and other deposits having on [no] commercial value for filling and raising the grade of the salt flats in the northern portion of the City of Corpus Christi and the lowlands lying north of the north boundary line of the City of Corpus Christi, in Nueces County, Texas, and South of the South boundary line of the town of Portland in San Patricio County, Texas, without making payment therefor to the Game, Fish and Oyster Commissioner [1] or to the State of Texas. [Acts 1929, 41st Leg., p. 692, ch. 311, § 1.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

This act added this Article as Article 4054a conflicting with a previous Article of the same number.

Art. 4055. Condemnation of land.—Sec. 1. That where the State of Texas, through the Game, Fish and Oyster Commissioner,[1] has issued a permit to excavate and take from any island, reef, bar, lake, river, creek, bayou or bay of this State[,] marl, mud-shell, oyster shell, sand and gravel, the State, at the request of the permit holder, shall have the right and power to enter upon and condemn and appropriate the lands, right of ways, easements and property of any person or corporation for the purpose of erecting dredges and necessary equipment and for the purpose of laying and maintaining the railway spurs to the nearest railroad, and for the purpose of operating and maintaining necessary roads and passageways to said place of operations, including all such lands, right of ways, easements and property aforesaid for the purpose of establishing and maintaining landing places and providing moorings for barges and dredges and all equipments as may be determined by said permit holder necessary in carrying on said business, provided that such right of way should not invade improvements such as buildings or orchards; and provided, further, the manner and method of such condemnation and assessment and payment of damages therefor shall be the same as provided for by law in the case of railroads.

Sec. 2. Condemnation suits brought under this Chapter shall be brought in the name of the State by the county attorney of the county in which the property or a part thereof affected is situated and the county attorney shall receive a fee of $10.00 for his services upon the institution of such proceedings, the same to be taxed and collected as a part of the cost in such suit. All costs in such proceedings shall be paid either by the permit holder, at whose instance such proceedings are had, or by the person against whom such proceedings are had, to be determined as in case of railroad condemnation proceedings, and all damages and pay for property awarded in such proceedings shall be paid by the permit holder and in no event shall the State be liable for any cost, damages or any sum whatsoever with respect to such proceedings.

Sec. 3. The importance of this legislation to the people of this State on account of scarcity of available sand, gravel and shell to be used in building and highway construction in Texas, creates an emergency and an imperative public necessity that the constitutional rule requiring that bills be read on three several days in each House be suspended, and that this Act shall take effect and be in force from and after its passage and said rule is hereby suspended, and it is so enacted. [Acts 2nd C.S. 1923, p. 11; Acts 1925, 39th Leg., ch. 74, p. 231, § 1.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

The text of this article, as appearing in Rev.Civ.St.1925, was taken from Acts 1923, 38th Leg., 2nd C.S., p. 11, ch. 6, which was amended by Acts 1925, 39th Leg., p. 231, ch. 74, § 1. The text of the amendatory Act of 1925 was formerly set out in articles 4053a–4053c, but is now incorporated in this article.

Art. 4056. License for mussels, etc.—It shall be unlawful for any person, firm or corporation to take from the public waters of the State for sale any mussels, clams, or naiad or shells thereof without first obtaining a license from the Commissioner to do so. Said license shall expire one year from the date of issuance, and shall be in such form as prescribed by the Commissioner, but shall state the water in which the licensee may operate. The applicant shall pay to the Commissioner, as a license fee, the sum of ten dollars and in addition thereto the sum of twenty-five dollars for permission to use a dredge. [Acts 2nd C. S. 1919, p. 214.]

Art. 4056a. Lease of part of Brazos Island.—The Game, Fish and Oyster Commissioner [1] is hereby authorized to lease the South 216.4 acres more or less of Brazos Island for the sole purpose of erecting and maintaining hunting, fishing and bathing resorts thereon. Leases of such lands shall, at the discretion of the Commissioner, run for any term of years not more than ten, at a fixed annual rental of not less than ten cents nor more than 50 cents per acre, at the discretion of the Commissioner, for each acre of land so leased, and before entering into any such lease the Commissioner in his discretion, may require such survey of the leased premises to be made at the expense of the applicant therefor, as may be necessary to determine the exact acreage of the lease. Lessees shall have, during the terms of their respective leases, the exclusive right to the use, occupation and enjoyment of such leased premises during the term and for the purposes of such lease only, but such use shall not be inconsistent with any other use of such leased premises as shall have been or may be granted by law or authority of law. All leases shall provide that the annual rentals therefor shall be paid to the Commissioner, annually in advance; and failure to pay any installment of annual rental therefor, when due, shall, at the option of the Commissioner, forfeit such lease. Lessees, under the terms of this Article shall have the right to remove from the leased premises, within one month after the termination of the lease, any and all improvements erected thereon by them. All rentals collected by the Commissioner under the provisions of this Act shall be placed in the State Treasury to the credit of the "Fish and Oyster Fund" as provided by Article 4030 of this Title. [Acts 1929, 41st Leg., 1st C.S., p. 240, ch. 99, § 1.]

1 Office of Commissioner abolished and powers and duties conferred on Game, Fish and Oyster Commission, see Penal Code, art. 978f.

Arts. 4057–4075.

Articles 4057 to 4075, inclusive, have been omitted in the Acts of 1925. For additional legislation on subject "Game, Fish and Oysters," see Penal Code, pp. 195 to 234, inclusive, Penal Code 1925 (Penal Code, arts. 871–978e).

TITLE 68—GARNISHMENT

Art.
4076. Who may issue and when.
4077. Bond.
4078–4083. [Repealed.]
4084. Effect of service of writ.
4085–4092. [Repealed.]
4093. Effect of such sale.
4094, 4095. [Repealed.]
4096. Trial when garnishee is nonresident.
4097, 4098. [Repealed.]
4099. Current wages.
4100, 4101. [Repealed.]

Article 4076. [271] [217] [183] Who may issue and when.—The clerks of the district and county courts and justices of the peace may issue writs of garnishment, returnable to their respective courts, in the following cases:

1. Where an original attachment has been issued.

2. Where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid, and that

the defendant has not within his knowledge property in his possession within this State, subject to execution, sufficient to satisfy such debt; and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.

3. Where the plaintiff has a valid, subsisting judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within this State, subject to execution, sufficient to satisfy such judgment. [Acts 1874, p. 113; P.D. 157-3785; G.L. vol. 8, p. 115.]

Art. 4077. [272] [218] [184] Bond.—In the case mentioned in subdivision two of the preceding article, the plaintiff shall execute a bond, with two or more good and sufficient sureties, to be approved by the officer issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, conditioned that he will prosecute his suit to effect and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment. [Id.]

Arts. 4078–4083. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 658–663.

Art. 4084. [279] [225] [191] Effect of service of writ *.—From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects; nor shall the garnishee, if an incorporated or joint stock company in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment or delivery, sale or transfer, shall be void and of no effect as to so much of said debt, effect, shares, or interest as may be necessary to satisfy the plaintiff's demand. The defendant may, at any time before judgment, replevy any effects, debts, shares, or claims of any kind seized or garnisheed, by giving bond, with two or more good and sufficient sureties to be approved by the officer who issued the writ of garnishment, payable to the plaintiff, in double the amount of the plaintiff's debt, and conditioned for the payment of any judgment that may be rendered against the said garnishee in such suit, which when properly approved shall be filed among the papers in the cause in the court in which the suit is pending. In all proceedings in garnishment where the defendant gives bond as herein provided for, such defendant may make any defense which the defendant in garnishment could make in such suit. [Acts 1889, p. 1; G. L. vol. 9, p. 1029.]

* *Repealed in part, Rules of Civil Procedure, Rule 664*

Arts. 4085–4092. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 665–672.

Art. 4093. [298] [244] [210] Effect of such sale.—Such sale shall be valid and effectual to pass to the purchaser all right, title and interest which the defendant had in such shares of stock, or in such company; and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the same had been made by the defendant himself. [Acts 1875, p. 104.]

Arts. 4094, 4095. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 673, 674.

Art. 4096. [302] [248] [214] Trial when garnishee is nonresident.—Should the garnishee be a foreign corporation, not incorporated under the laws of this State, and should its answer be controverted, the issues thus formed shall be tried in the court where the main suit is pending, or was tried; but if the garnishee whose answer is controverted, resided in some county other than the one in which the main case is pending or was tried, and is not a foreign corporation, then upon the filing of a controverting affidavit by any party to the suit, the plaintiff may file in any court in the county of residence of the garnishee having jurisdiction of the amount of the judgment in the original suit, a duly certified copy of the judgment in such original suit and of the proceedings in garnishment, including a certified copy of the plaintiff's application for the writ, the answer of the garnishee, and the affidavit controverting such answer. The court wherein such certified copies are filed shall try the issues made as provided by law. [Acts 1921, p. 207.]

Arts. 4097, 4098. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 675, 676.

Art. 4099. [306] [252] [218] Current wages.—No current wages for personal service shall be subject to garnishment; and where it appears upon the trial that the garnishee is indebted to the defendant for such current wages, the garnishee shall nevertheless be discharged as to such indebtedness. [Const., art. 16, sec. 28.]

Arts. 4100, 4101. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 677, 678.

TITLE 68A—GOOD NEIGHBOR COMMISSION OF TEXAS

Art.
4101—1. [Expired.]
4101—2. Good Neighbor Commission continued; powers and duties; compensation [New].
Sec.
1. Purpose; creation of Commission; terms.
2. Vacancies; quorum.
3. Duties
4. Powers.
5. Offices; reports.
6. Compensation; expenses.
7. Assistance by officers, etc.; payment of expenses.

Art. 4101—1. [Expired.]

Acts 1945, 49th Leg., p. 133, c. 91 created a Good Neighbor Commission of Texas. It provided for the appointment of members for a term of two years at the end of which period the act should cease to exist unless otherwise provided by law. The Good Neighbor Commission was continued by Acts 1947, 50th Leg., p. 1019, c. 435. See art. 4101—2.

Good Neighbor Commission continued, see Art. 4101—2.

Art. 4101—2. Good Neighbor Commission continued; powers and duties; compensation; expenses.

Purpose; creation of Commission; terms

Section 1. The purpose of this Act is to continue the Good Neighbor Commission of Texas as originally created by Acts, 1945, Forty-ninth Legislature, page 133, Chapter 91, by House Bill No. 804 of said Session of the Legislature,[1] and the same is hereby continued in so far as the same is not inconsistent with the provisions of this Act; and so far as said Act of the Forty-ninth Legislature is inconsistent with this Act, the same is amended hereby as herein provided. There is hereby created the Good Neighbor Commission of Texas which shall be composed of nine (9) members, each of whom shall be a citizen of the United States and a resident of the State of Texas, and shall be appointed by the Governor with advice and consent of the Senate. Three (3) of such members shall be appointed for terms of two (2) years from the effective date of this Act; three (3) shall be appointed for terms of four (4) years from such effective date; and three (3) for terms of six (6) years from such date. Each two (2) years after the effective date of this Act the

Governor shall appoint three (3) members of this Commission for a term of six (6) years.

1 Article 4101—1.

Vacancies; quorum

Sec. 2. Vacancies in the membership of the Commission shall be filled, as in the first instance, for the unexpired term. Five (5) members of the Commission shall constitute a quorum for the transaction of business.

Duties

Sec. 3. It shall be the duty of the Commission to devise and put into effect methods by which inter-American understanding and good will may be promoted and inter-American relations advanced without resort to punitive measures or the application of civil or criminal sanctions.

Powers

Sec. 4. The Commission shall have power:

a. To elect from its members a chairman and other such officers as it may be deemed desirable; provided that the first chairman of the Commission shall be named by the Governor and shall call the first meeting of the Commission and serve as such until his successor shall be elected by the Commission. All officers of the Commission shall serve as such only during the pleasure of the Commission.

b. To hold such meetings, at such places within the State of Texas and at such times, as the Commission may designate.

c. To conduct such research, investigations, and inquiries as may be necessary to inform the Commission as to matters concerning inter-American relations.

d. To appoint committees from its membership and prescribe their duties.

e. To appoint consultants to the Commission.

f. To make rules and regulations for its government and that of its officers and committees; and to prescribe the duties of its officers, consultants, and employees.

g. To employ a secretary and other such clerical employees as it may think necessary and to fix the pay and compensation of such employees within the limits of funds made available to it for such purposes by appropriation from time to time.

h. To receive and extend in payment of salaries and necessary expenses any funds donated to it. Such funds, when received by the Commission, shall be deposited with the State Treasurer and shall be placed to the credit of a special account to be known as "Good Neighbor Commission of Texas Fund." Expenditures from such Fund shall be only to defray the salaries or other necessary expenses of the Commission.

Offices; reports

Sec. 5. The Commission shall maintain its office in the City of Austin and shall hold at least one meeting each year in the City of Austin. On or before the first day of December of each year the Commission shall make in writing a complete and detailed report to the Governor and to the presiding officer of each House of the Legislature of its activities.

Compensation; expenses

Sec. 6. No member, consultant, or officer of the Commission shall receive any compensation for his services in acting in such capacity but shall be paid his actual traveling and other necessary expenses incurred in attending the meetings of the Commission and in the discharge of his duties as a member, consultant, or officer, upon verified and itemized accounts approved by the chairman of the Commission. The necessary clerical and other expenses of the Commission shall be paid in like manner.

Assistance by officers, etc.; payment of expenses

Sec. 7. All officers, departments, and agencies of the State government shall, when requested by the Commission, render to it such assistance as it may require in the discharge of its duties. All expenses incident to the rendering of such assistance, other than the salaries of the officers or employees of such departments and agencies, shall be paid from the Fund made available to the Commission by appropriation. [Acts 1947, 50th Leg., p. 1017, ch. 435.]

Section 8 of the act of 1947 made an appropriation to defray the expenses of the Commission for the fiscal years ending August 31, 1948 and August 31, 1949.

TITLE 69—GUARDIAN AND WARD

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CHAPTER 1.—GENERAL PROVISIONS

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Article 4102. [4043] [2550] [2469] Jurisdiction of county court.—The County Court shall appoint guardians of minors, persons of unsound mind and habitual drunkards, and other persons where it is necessary that a guardian be appointed to receive funds or money due such persons from the Federal Government, settle accounts of guardians, and transact all business appertaining to the estates of minors, persons of unsound mind, habitual drunkards, and other persons for whom a guardian is appointed. [Const. art. 5, sec. 16; Acts 1876, p. 19; G. L. vol. 8, p. 855; Acts 1927, 40th Leg., p. 257, ch. 179, § 1.]

Art. 4103. [4044] [2551] [2470] Jurisdiction of district court.—The district court shall have appellate jurisdiction over the county court in all matters of guardianship, and original control and juris-

diction over guardians and wards, under such regulations as may be prescribed by law. [Const. art. 5, sec. 8.]

Art. 4104. [4045–6–7–54] Definitions.—As used in this title:

1. A term of the county court means a term of such court held for the transaction of probate business.

2. Females under twenty-one years of age who have never been married and males under said age are minors.

3. Idiots, lunatics or insane persons are persons of unsound mind.

4. An habitual drunkard is one whose mind has become so impaired by the use of intoxicating liquors or drugs that he is incapable of taking care of himself.

Art. 4105. [4048] [2555] [2474] Record books.—The record books used for the business of estates of decedents shall also be used for the business of guardianships.

Art. 4106. [4049] [2556] [2475] Registration.—The following papers shall be copied at length into the minutes of the court:

1. All applications, citations and returns upon citations.

2. All notices, whether published or posted, with the returns thereon.

3. All bonds and official oaths.

4. All inventories, appraisements and lists of claims, after the same have been approved by the court.

5. All reports of sales approved by the court, renting or leasing of property, and of loaning or investing money.

6. All accounts and exhibits of the guardian, after approved by the court. [Id. p. 191.]

Art. 4107. [4050] [2557] [2476] Orders of court.—Each decision, order, and judgment of the court in matters of guardianship, shall be rendered in open court at a regular term thereof except in cases where it is otherwise specially provided.

Art. 4108. [4051] [2558] [2477] Laws applicable.—The provisions, rules and regulations which govern estates of decedents shall apply to and govern such guardianships, whenever the same are applicable and not inconsistent with any provision of this title.

Art. 4109. [4052] [2559] [2479] May contest proceedings.—Any person has the right to appear and contest the appointment of a particular person as guardian, or to contest any proceeding which he deems to be injurious to the ward, or to commence any proceeding which he considers beneficial to the ward, such person being liable for the costs occasioned by him in the case of his failure. [Id. p. 170.]

Art. 4110. [4053] [2560] [2479] Call of docket.—The county judge, at each regular term of his court, shall call each case of guardianship upon his docket, and make such orders therein as may be necessary, and see that such orders, together with all papers required to be recorded, are entered upon the minutes, and hold guardians and the officers of his court to a strict accountability for the performance of their duties with reference to guardianships.

Art. 4111. [4056–60] Venue.—A proceeding for the appointment of a guardian shall be begun:

1. For the estate of a minor in the county where the parents of such minor reside, or in the county where the parent having custody of the minor resides when the parents do not reside in the same county, and both are living.

2. For the person and estate (or of either) of a minor, in the county where the surviving parent resides, if only one is living, or in the county where the last surviving parent of such minor resided at the time of the death of such parent, if both parents are dead, or in the county where such minor is found, or in the county where the principal estate of such minor may be.

3. For the person and estate, or of either, of a person of unsound mind or an habitual drunkard, in the county where such person resides, or where the principal estate of such person may be.

4. Where a guardian has been appointed by will, proceedings for letters of guardianship shall be begun in the county where the will has been admitted to probate.

5. For the estate of a person requiring the appointment of a guardian to receive funds or money from the Federal Government, in the county where such person resides.

6. Providing no guardian shall be a non-resident of Texas. [Acts 1876, p. 176; G.L. vol. 8, p. 1012; Acts 1927, 40th Leg., p. 257, ch. 179, § 2; Acts 1929, 41st Leg., p. 65, ch. 31, § 1.]

Art. 4112. Unnecessary publications avoided.—The provisions of this title relating to citations and notice shall be held as special provisions complete within themselves, and no other or further publication of citation or notice in a newspaper than those provided for herein shall be required, the provisions of any other law to the contrary notwithstanding.

Art. 4112a. Payment to county clerk of liquidated and uncontested claims under $250 of minors and incompetents without guardians.

Receipt of County Clerk

Section 1. Whenever any minor, lunatic, idiot, or non compos mentis, who has no legal guardian shall be entitled to any sum or sums of money not exceeding Two Hundred and Fifty Dollars ($250) from any person, firm, corporation, administrator, executor, guardian, or trustee, arising out of any liquidated and uncontested claim, such person, firm, corporation, administrator, executor, guardian, or trustee holding such sum may pay same over to the County Clerk of the county in which said minor, lunatic, idiot, or non compos mentis resides, for the account of said minor, lunatic, idiot, or non compos mentis, and the receipt of the County Clerk therefor shall be forever binding on said minor, lunatic, idiot, or non compos mentis, as of the date and to the extent of the payment so made.

Deposit of money in trust

Sec. 2. Whenever any such sum shall be received by any County Clerk, he shall forthwith deposit said sum in his Trust Account in the name and for the account of said minor, lunatic, idiot, or non compos mentis.

Right of parent to withdraw deposit; bond

Sec. 3. The father or mother of such minor, lunatic, idiot, or non compos mentis, if either be living within the State, or if both the father and mother be dead or living without the State, then such person having custody of the person of said minor, lunatic, idiot, or non compos mentis, may, upon application approved by the County Judge of the county in which said minor, lunatic, idiot, or non compos mentis resides, withdraw and take charge of said money for the benefit of said minor, lunatic, idiot, or non compos mentis, upon executing and filing with the County Clerk a proper bond, approved by the County Judge in a sum at least double the amount of said fund, payable to the County Judge, conditioned that he will use said money for the benefit of said minor, lunatic, idiot, or non compos mentis under the direction of the County Court or the Judge thereof, and that he will account for said money and the increase thereof, if any, to the minor when he becomes of age or to the lunatic, idiot, or non compos mentis when he is restored to sanity or to the legally qualified guardian of such person, when called upon to do so.

Commission for receiving or handling money not allowed

Sec. 4. Such person who takes such money shall receive no fees or commissions for caring for or handling the same.

Sworn report of person expending money; filing and approval, effect of

Sec. 4–a. When the person to whom said money has been paid by the County Clerk for the benefit of said minor, lunatic, idiot, or non compos mentis, shall have expended said money for the benefit of said minor, lunatic, idiot, or non compos mentis as directed by the County Court or Judge thereof or shall have otherwise complied with the provisions of his aforesaid bond by accounting for said money and the increase thereof, if any, he shall file with the County Clerk from whom said money was received, his sworn report thereof; which report when so filed and approved by the County Court or Judge thereof shall operate as a discharge of said person and his sureties from any and all further liability under and by reason of the aforesaid bond. The County Court or Judge thereof shall satisfy himself that said report speaks the truth, and to that end may require said person to submit proof thereon.

Provisions cumulative

Sec. 5. This Act and the provisions thereof shall be cumulative of all other laws upon the same subject, and is not intended to repeal any other law upon the subject of the right of minors, lunatics, idiots, or non compos mentis, or money belonging to such persons. [Acts 1937, 45th Leg., p. 579, ch. 289.]

CHAPTER 2.—COMMENCEMENT OF PROCEEDINGS

Art.
4113. Application.
4114. Notice.
4115. Service and return.
4116. Personal citation; waiver of service; absentees and non-residents.
4117. By judge.

Article 4113. [4061–62] Application.—A proceeding for the appointment of a guardian shall be begun by written application filed in the County Court of the county having jurisdiction thereof. Any person may make such application. Such application shall state:

1. The name, sex, age and residence of the person for whom the appointment of a guardian is sought.
2. The estate of such person, if any, and the probable value thereof.
3. If the application is for the appointment of a guardian for an adult person, or his estate, or both, then such application shall allege whether or not such person has been adjudged to be a person of unsound mind or an habitual drunkard, and if so, the time when, and the Court by which, such adjudication was had.
4. Such other facts as show the jurisdiction of the Court. [Acts 1876, p. 177; G.L. vol. 8, p. 1013; Acts 1941, 47th Leg., p. 867, ch. 541, § 1.]

Art. 4114. [4063] [2570] [2489] Notice.—Upon the filing of such application, the Clerk shall issue a notice setting forth that such application has been filed for the guardianship of the person or estate, or both, as the case may be, of the person for whom such guardian is sought, naming such person, and by whom filed; which notice shall cite all persons interested in the welfare of such person to appear at the time and place stated therein, and contest such application if they see proper. [As amended Acts 1941, 47th Leg., p. 867, ch. 541, § 1.]

Art. 4115. [4064–5] [2571–2] [2490–1] Service and return.—Such notice shall be served by posting a copy thereof at the courthouse door for not less than ten (10) days before the return day thereof, and the sheriff or other officer posting the same shall return the original signed officially stating thereon in writing the time and place when and where he posted said copy. [As amended Acts 1935, 44th Leg., p. 640, ch. 254, § 1.]

Acts 1929, 41st Leg., p. 479, ch. 225, § 1 validated all guardianship proceedings where guardians had been appointed by probate courts of the several counties of the State after citation was published as provided in chapter 179, Acts, Regular Session, 1917, being now Article 28, ante, and without service of citation or notice by posting as provided in this article.

Certain notices in guardianship proceedings, under Article 28, ante, were validated by Acts 1927, 40th Leg., ch. 232, p. 346.

Art. 4116. [4066] [2573] [2492] Personal citation; waiver of service; absentees and non-residents.—(1) In addition to posting notice as provided in Article 4115, Revised Civil Statutes of 1925, as amended by Chapter 254, Acts of 1935, minors fourteen (14) years of age or over, persons alleged to be of unsound mind or habitual drunkards, and persons for whom or for whose estates it is alleged to be necessary to have a guardian appointed to receive funds from the State and/or the Federal Government, shall be personally served with citations to appear and answer such application, unless within six (6) months prior to filing such application the adult person, for whom or for whose estate such guardian is sought, shall have been adjudged by a Court of competent jurisdiction in this State, after due notice, to be a person of unsound mind or an habitual drunkard.

(2) Minors over fourteen (14) years of age may, by writing filed with the Clerk, waive the issuance and personal service of such citation, and make choice of a guardian, subject to the Court's approval of such choice.

(3) If a minor or other person, for whose estate the appointment of a guardian is sought, be a resident of but absent from this State, or be a non-resident of this State, the personal service of citation on such person as provided by paragraph (1) hereof, together with a certified copy of the application for such appointment, shall be made in the manner prescribed by Article 2038, Revised Civil Statutes, 1925, for service of the notice therein mentioned, by the persons therein authorized, and return made as therein prescribed; provided, however, that the return day for citation served without this State shall be the first Monday after the expiration of thirty (30) days after the date of service thereof without this State. [Acts 1876, p. 177; G. L. vol. 8, p. 1013; Acts 1941, 47th Leg., p. 867, ch. 541, § 1.]

Art. 4117. [4067] [2574] [2493] By judge.—Whenever it comes to the knowledge of the County Judge that any person whose legal domicile is in his County, or who may be found therein, is a minor, a person of unsound mind or habitual drunkard, and is without a guardian of his person or of his estate within this State, and there is probable cause for the exercise of his jurisdiction, he may cause proper proceedings to be commenced and application made as provided in Article 4113, as amended, for the appointment of a guardian of the person and of such estate, or either; but this Article as amended shall not be construed to repeal or modify Article 4113. Upon the filing of application, process shall be issued and served as provided by Articles 4114, 4115, and 4116 of this Chapter. The return day thereof shall be determined, and shown therein, as provided by Chapter 48, Acts of the First Called Session of the 41st Legislature, as amended by Chapter 123 of the 42nd Legislature. [Acts 1876, p. 177; G.L. vol. 8, p. 1013; Acts 1941, 47th Leg., p. 867, ch. 541, § 1.]

CHAPTER 3.—APPOINTMENT OF GUARDIANS

1. REGULAR APPOINTMENTS

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1. REGULAR APPOINTMENTS

Article 4118. [4068–69–70] Natural guardian.—If the parents live together, the father is the natural guardian of the person of the minor children by the marriage. If one parent is dead, the survivor is the natural guardian of the person of the minor children. The natural guardian is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, taking into consideration the interest of the child alone. [Acts 1876, p. 175; G. L. vol. 8, p. 1011.]

Art. 4119. [4071] [2578] [2497] By will.—The surviving parent of a minor may, by will or written declaration, appoint any person qualified to be guardian of the persons of his or her children after the death of such parent; and such person shall also be entitled to be appointed guardian of their estates, after the death of such parent. [Id.]

Art. 4120. [4072–75] Orphans.—These rules shall govern as to orphans:

1. If the parent has appointed no guardian, the nearest ascendant in the direct line of such minor is entitled to the guardianship of both the person and estate of such minor.

2. If there be more than one ascendant in the same degree in the direct line, they are equally entitled. The guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the orphan alone.

3. If the orphan has no ascendant in the direct line, the guardianship shall be given to the nearest of kin in the collateral line who comes immediately after the presumptive heir or heirs of the orphan. If there be two or more in the same degree, the guardianship shall be given to the one or the other, according to circumstances, taking into consideration the interest of the orphan alone.

4. If there be no relative of the minor qualified to take the guardianship, or if no person entitled to such guardianship applies therefor, the court shall appoint some proper person to be such guardian. [Id.]

Art. 4121. [4076] [2583] [2502] Persons entitled to guardianship.—In the case of a person of unsound mind, or an habitual drunkard, or a person for whom it is necessary to have a guardian appointed to receive funds or money due from the State and/or Federal Government, the nearest of kin to such person, who is not disqualified, shall be entitled to the guardianship. Where two or more are equally entitled, the guardianship shall be given to one or the other, according to the circumstances, taking into consideration the interest of the ward alone. If such ward have a husband or wife who is not disqualified, such husband or wife shall be entitled to the guardianship in preference to any other person. [As amended Acts 1941, 47th Leg., p. 867, ch. 541, § 2.]

Art. 4122. [4078] [2585] [2504] Persons disqualified.—The following persons shall not be appointed guardians:

1. Minors, except the father or mother.
2. Persons whose conduct is notoriously bad.
3. Persons of unsound mind.
4. Habitual drunkards.
5. Those who are, themselves, or whose father or mother are, parties to a lawsuit on the result of which the condition of the minor, person of unsound mind, or habitual drunkard, or part of his fortune, may depend.
6. Those who are debtors to the minor, person of unsound mind, or habitual drunkard, unless they discharge the debt prior to such appointment, or who are asserting claim to any property, real or personal, adverse to the person for whom or whose estate the appointment is sought.
7. Those who are unable to read and write the English language.
8. Those who by reason of inexperience or lack of education, or for other good reason, are shown to be incapable of properly and prudently managing and controlling the ward or his estate. [Acts 1876, p. 175; G.L. vol. 8, p. 1011; Acts 1941, 47th Leg., p. 867, ch. 541, § 2.]

Art. 4123. [4080–81] What facts must appear.—At a regular term of the Court, after the issuance and service of process as required by law, the Court may proceed to the appointment of a guardian. Before appointing a guardian, the Court must be satisfied:

1. That the person for whom a guardian is sought to be appointed is either a minor, a person of unsound mind, an habitual drunkard, or a person for whom it is necessary to have a guardian appointed to receive funds or money due such person from the State and/or Federal Government.

2. That the Court has jurisdiction of the case.

3. That the person to be appointed guardian is not disqualified to act as such, and is entitled thereto; or, in case no person who is entitled thereto applies therefor, that the person appointed is a proper person to act as such guardian.

4. That the rights of persons or property are to be protected. All issues herein shall be determined by the Court on hearing, unless a jury is demanded; but it shall not be a prerequisite to such appointment that there has been a jury trial, verdict and judgment that the person is of unsound mind, or is an habitual drunkard, nor is such person required to be present at the trial.

5. If, within six (6) months prior to the filing of application for the appointment of a guardian of the estate of a person alleged to be of unsound mind or an habitual drunkard, such person by appropriate proceedings in a Court of competent jurisdiction in another State or territory of the United States, or of the District of Columbia, after personal service of process therein within such other jurisdiction, has been adjudged therein to be a person of unsound mind or habitual drunkard, the Court may appoint a guard-

ian of such person's estate situated within this State, after issuance and service of notice as required by Articles 4114, 4115, and 4116, as amended, the same as if such person had been adjudged by a Court of this State to be a person of unsound mind or an habitual drunkard.

6. If the legal domicile of such person be in this State, or if he shall have been served within this State with citation, the Court may also appoint a guardian of his person upon due application therefor.

The remedy herein provided is cumulative of that provided in Chapter 12 hereof, for the guardianship of persons of unsound mind and habitual drunkards, and may be resorted to without invoking the latter remedy. [Acts 1921, p. 15; Acts 1927, 40th Leg., p. 257, ch. 179, § 3; Acts 1941, 47th Leg., p. 867, ch. 541, § 2.]

Art. 4123a. Certificate of head of department, etc., of State or Federal government as prima facie evidence.—When a petition is filed for the appointment of a guardian for a person for whom it is necessary to have a guardian appointed to receive funds or money from the State and/or Federal Government, a certificate of the executive head, or his representative of the bureau, department, or agency through which such funds are to be paid, to the effect that the appointment of a guardian is a condition precedent to the payment of any moneys due such persons, shall be prima facie evidence of the necessity for such appointment. [Acts 1941, 47th Leg., p. 867, ch. 541, § 6.]

Art. 4123a—1. Fees or costs; exemption from in cases of receipt of moneys from State or Federal government.—Whenever a guardian is appointed for the purpose of enabling a person to receive not more than Forty ($40.00) Dollars a month from the State and/or Federal Government, the Court may, in its discretion, order that no costs or fees shall be charged in connection with the proceeding. [Acts 1941, 47th Leg., p. 867, ch. 541, § 7.]

Art. 4124. [4082] [2589] [2508] Single appointment.—Only one guardian can be appointed of the person or estate; but one person may be appointed guardian of the person, and another of the estate, whenever the court shall be satisfied that it will be for the advantage of the ward to do so. Nothing in this article shall be held to prohibit the joint appointment of husband and wife. [Acts 1870, p. 141; G. L. vol. 6, p. 315.]

Art. 4125. [4083] [2590] [2509] Order of appointment.—The order of the court appointing a guardian shall be entered upon the minutes of the court and shall specify:

1. The name of the person appointed.
2. The name of the ward.
3. Whether the guardian of the person, of the estate, or of both the person and estate of such ward.
4. The amount of the bond required of such guardian.
5. If it be the guardianship of the estate, the order shall also appoint three or more disinterested persons to appraise such estate, and return such appraisement to the court.
6. It shall direct the clerk to issue letters of guardianship to the person appointed when such person has qualified according to law.

Art. 4126. [4084] [4079] Minor may select.—A minor upon attaining the age of fourteen years, may select another guardian either of his person or estate, or both, if such minor has a guardian appointed by the court, or if, having a guardian appointed by will or written declaration of the parent of such minor, such last named guardian dies, resigns or is removed from guardianship; and the court shall, if satisfied that the person selected is suitable and competent, make such appointment and revoke the letters of guardianship to the former guardian. Such selection may be made in open court, in person, or by attorney, by making application therefor as provided by law.

Art. 4127. [4085] [2592] [2511] Failure to qualify.—If a person appointed guardian fails to qualify as such according to law, or dies, resigns, or is removed, the court shall appoint another guardian in his stead.

Art. 4128. [4086–87] Term of appointment.—The guardian of a minor continues in office unless discharged according to law, until the minor dies or becomes twenty-one (21) years of age, or, being a female, marries. The guardian of a person of unsound mind, or of an habitual drunkard, shall continue as such, unless sooner discharged according to law, until the ward shall die or be restored to sound mind or to sober habits. The guardian of a person for whom it is necessary to have a guardian appointed to receive funds or money due from the State and/or Federal Government shall continue as such, unless sooner discharged according to law, until the ward shall die or the necessity for having such guardian no longer exists. [Acts 1876, p. 178; G.L. vol. 8, p. 1014; Acts 1941, 47th Leg., p. 867, ch. 541, § 3.]

Art. 4129. [4088] [2595] Receiver.—When from any cause, the estate of a minor, person of unsound mind or of an habitual drunkard is without a guardian, and such estate is likely to injure or waste, the county judge shall, with or without application, in term time or in vacation, appoint some suitable person to take charge of such estate, as receiver, until a guardian can be regularly appointed, and shall make such other orders as may be necessary for the preservation of such estate. Such appointment and orders shall be recorded in the minutes of the court, and shall specify the duties and powers of such receiver. The provisions of the law governing in the case of a temporary administration upon the estate of a decedent shall govern in the case of a receiver appointed under this article, so far as the same are applicable. [Acts 1885, p. 81; G. L. vol. 9, p. 702.]

Art. 4130. [4088] [2595] Receivership; expenditures.—If, during the pendency of such receivership, the wants of such minor, person of unsound mind or habitual drunkard should require the use of the means of such estate for their subsistence, clothing or education, the county judge, with or without application, in term time or in vacation, shall appropriate, by an order entered upon the minutes, out of the effects of such estate, an amount sufficient for such purpose; said amount to be paid by such receiver upon such claims for such subsistence, clothing or education as may have been presented to such county judge and approved, and by him ordered to be paid. [Id.]

Art. 4131. [4088] [2595] Receivership; loans.—If, at any time, the receiver shall have on hand any money belonging to such estate beyond what may be necessary for the present necessities and the current expenses of the beneficiary of said estate, he may, under the direction of the county judge, loan said money for such length of time as such judge may direct, for the highest legal rate of interest that can be obtained therefor, in the manner and upon the security and terms provided in Chapter 7 of this title.[1] [Id.]

1 Article 4174 et seq.

Art. 4132. [4089] [2596] [2515] Non-resident minor.—When a non-resident minor or person of unsound mind owns property in this State, guardianship of such estate may be granted when it is made to appear that a necessity exists therefor, in like manner as if such minor or person of unsound mind resided in this State. The court making such grant of guardianship shall take all such action and make all such orders in reference to the estate of the ward, for the maintenance and support or education and care of

such ward, out of the proceeds of such ward's estate, in like manner as if the ward had resided in this State and guardianship of the person of said ward had been granted by said court, and the ward had been sent abroad by order of court for education or treatment. [Acts 1876, p. 176; G. L. vol. 8, p. 1012.]

Art. 4133. [4090] [2597] [2516] Letters of guardianship.—When a person appointed guardian has qualified as such, by taking the oath and giving the bond required by law, the clerk shall issue to him a certificate under seal, stating the fact of such appointment and qualification and date thereof; which certificate shall constitute letters of guardianship, and be evidence of the authority of such person to act as guardian.

2. TEMPORARY APPOINTMENTS

Art. 4134. [4091–94] Temporary guardian.—Whenever it appears to the county judge that the interest of any minor and his or her estate, or either, requires immediate appointment of a guardian, he shall, either in term time or in vacation, without citation and with or without written application therefor, appoint some suitable person temporary guardian of the person of such minor and his or her estate or either. Such appointment shall not take effect until such appointee has taken the oath and given the bond required by law. The appointment so made may be made permanent. [Acts 1905, p. 18.]

Art. 4135. [4092] Order.—The order of the court in making such appointment shall state that unless the same is contested at the next regular term of the court, after notice, the same shall be made permanent. [Id.]

Art. 4136. [4093] Contest.—If such appointment is contested, the court shall hear and determine the same as the law and the facts require. During the pendency of such contest, the person so appointed as temporary guardian shall continue to act as such. If such appointment is set aside, the court shall require the person so appointed to make out and file in court a complete sworn exhibit of the condition of such minor's estate, and what disposition he has made of the same. [Id.]

Art. 4137. [4095] Notice.—Immediately after the appointment of a temporary guardian, the clerk of the court shall issue notice which shall state the name of the person appointed and when so appointed, and the name of the minor, or minor's estate, or both, which notice shall cite all persons interested in the welfare of such minor to appear at the term of court named in such notice, and contest such appointment if they so desire; and, that, if such appointment is not contested at the term of court so named in the citation, then the same shall become permanent. [Id.]

Art. 4138. [4096] Provisions applicable.—All the provisions of this title relating to the guardianship of the persons and estates of minors shall apply to temporary guardianship of the persons and estates of minors, in so far as the same are applicable. [Id.]

CHAPTER 4.—OATH AND BOND OF GUARDIANS

Art.
4139. Oath of guardian.
4140. Guardian of person: bond.
4141. Guardian of estate, bond.
4142. Sureties.
4143. Bond premiums.
4144. Of person and estate.
4145. Appointee under will.
4146. Married woman, bond.
4147. Parents under age.
4148. New bond.
4149. Temporary disqualification.
4150. Release of surety.
4151. Oath and bond.
4152. Sureties on old bond.

Article 4139. [4097] [2598] [2517] Oath of guardian.—The guardian shall take an oath to discharge faithfully the duties of guardian of the person (or of the estate, or of the person and estate, as the case may be) of the ward, according to law; which oath shall be indorsed on the bond of such guardian. [Acts 1876, p. 177; G. L. vol. 8, p. 1013.]

Art. 4140. [4098] [2599] [2518] Guardian of person: bond.—The bond of a guardian of the person of a ward shall be in an amount to be fixed by the court granting such guardianship, not to exceed one thousand dollars, and shall be made payable to and to be approved by the county judge of the county where such guardianship is pending, conditioned that such guardian will faithfully discharge the duties of guardian of the person of such ward. [Id.]

Art. 4141. [4099] [2600] [2519] Guardian of estate, bond.—The bond of the guardian of the estate of a ward shall be in an amount equal to the estimated value of the personal property belonging to such estate, plus a reasonable amount to be fixed by the County Judge, to cover rents, revenues and income derived from renting or use of real estate belonging to such estate, together with any additional sum that may be found necessary by the County Judge to protect such estate, provided such bond is made by either domestic or foreign corporations or companies permitted to do business in this State for the purpose of issuing surety, guaranty, or indemnity bonds guaranteeing fidelity of executors, administrators, and guardians. However, if personal bonds are filed, the bonds shall be in double the value of the above-described property. However, in instances where the ward will receive moneys in installments from any source or periodical payments of any character, the County Judge shall only require, with respect to such payments or installments, that the guardian give bond covering the aggregate amount of the installments and periodical payments that the Court shall estimate will actually come into the ward's estate during the succeeding twelve (12) months. With respect to such installments and periodical payments, the guardian's bond, if made by either a domestic or foreign corporation or company of the class above mentioned, shall be equal to the aggregate amount so estimated to accrue during such year from such installments or periodical payments, but, if such bond is made by personal sureties, the bond shall be double such aggregate amount so estimated to accrue during such twelve (12) months from such installments and periodical payments. But regardless of whether the guardian's bond is made by such a corporation or company or by personal sureties, nothing herein shall be construed as meaning that the guardian shall not be required to make bond with respect to any other funds or property of the ward derived from any other source, as and in the amounts hereinabove provided, and nothing herein shall be construed to mean that, after the end of such twelve-month period or periods, the guardian should not be required to give bond to cover any amounts received from such installments or periodical payments and unexpended during the year in which received, but the guardian shall be required to make bond with respect thereto, if the bond is not already sufficient to cover same, as hereinabove provided with respect to other personal property of such ward, just as if such sums collected during such twelve (12) months period from such installments and periodical payments shall not have been received by means of installments or periodical payments. Such bonds shall be payable to and approved by the County Judge of the County where such guardianship is pending, and conditioned that such guardian will faithfully discharge the duties of guardian of the estate of such

ward according to law. It shall be the duty of such County Judge to use reasonable diligence in the supervision of the estate of the ward, and he shall annually examine into the condition of the estate of the ward, and the solvency of such guardian's bond, and to require such guardian at any time it may appear that such bond is not ample security to protect such estate in the interest of his ward, to execute a new bond in accordance with law. In such case, he shall notify the guardian as in other cases; and should damage or loss result to such ward through the failure of such County Judge to use reasonable diligence in the performance of such duties, such County Judge shall be liable on his official bond to such ward. [Acts 1895, p. 223; Acts 1913, p. 321; G.L. vol. 10, p. 953; Acts 1945, 49th Leg., p. 525, ch. 316, § 3; Acts 1947, 50th Leg., p. 453, ch. 256, § 1.]

Art. 4142. [4100] [2601] [2520] Sureties.—Any bond required by the provisions of this Chapter to be given by a guardian shall be subscribed by such guardian and at least two good and sufficient sureties, to be approved by the county judge of the county in which the guardianship is pending; or such bond shall be subscribed by such guardian and by one or more corporations authorized to execute surety bonds; provided that the county judge may, if in his opinion it would be to the best interest of the estate so to do, require the guardian of the estate to give a bond with one or more corporations authorized to execute surety bonds in this State as surety. [Acts 1897, p. 52; Acts 1899, p. 229; Acts 1929, 41st Leg., p. 289, ch. 133, § 1.]

Art. 4143. [4101] [2601] [2520] Bond premiums.—If such bond is made by a corporation authorized to issue and execute guaranty or indemnity bonds, the premium on such bond shall be paid by the guardian, and shall be paid out of the estate of his ward, unless the court shall otherwise direct. [Acts 1897, p. 52; G.L. vol. 10, p. 1106; Acts 1929, 41st Leg., p. 283, ch. 128, §§ 1, 2.]

Art. 4144. [4103] [2602] [2521] Of person and estate.—Where one person is appointed guardian of both the person and estate of a ward, only one bond shall be given by such guardian. [Acts 1876, p. 177; G. L. vol. 8, p. 1013.]

Art. 4145. [4104] [2603] [2522] Appointee under will.—When the surviving parent of a minor has provided by will, regularly probated, that a guardian appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such guardian is mismanaging the property, or is about to betray his trust; in which case, upon proper proceedings had for that purpose, such guardian may be required by the court to give bond as in other cases. [Id.]

Art. 4146. [4105] [2604] [2523] Married woman, bond.—Where a married woman is appointed guardian, she may, either jointly with her husband or without him, if he is absent from the State or refuses to join in the bond with her, execute a bond as guardian, and acknowledge the same before a proper officer. Such bond, when signed by her, alone, shall bind her estate in the same manner as if she were unmarried. [Id.]

Art. 4147. [4106] [2605] [2524] Parents under age.—A bond executed by the father or mother of a minor, as guardian of such minor, when such father or mother is under twenty-one years of age, shall be as valid as if he or she were of full age. [Id.]

Art. 4148. [4107] [2606] [2525] New bond.—The county judge shall have power to require new bonds of guardians in any case where he has the power to require new bonds of executors or administrators and under the same rules and regulations, and with like effect. The county judge shall also have power and authority to decrease the amount of any guardian's bond upon the submission of proof showing that a smaller bond than the one in effect would be adequate to meet the requirements of the law and to protect the estate of the ward. [As amended Acts 1929, 41st Leg., p. 285, ch. 130, §§ 1, 2.]

Art. 4149. [4108] [2607] [2526] Temporary disqualification.—When a guardian has been required to give a new bond, he shall thereafter refrain from acting as such guardian except to preserve the property in his charge, until he gives such new bond and the same has been approved, as such guardian. [Acts 1876, p. 177; G.L. vol. 8, p. 1013.]

Art. 4150. [4109] [2608] [2527] Release of surety.—A surety upon the bond of a guardian may be relieved from his bond in the same manner and with like effect, as is provided in the case of a surety upon the bond of an executor or administrator. [Id.]

Art. 4151. [4110–11] Oath and bond.—The oath and bond of a guardian shall be presented to the county judge within twenty days after the order appointing such guardian, either in term time or vacation, for the action of such judge. If approved, the same shall be immediately filed with the county clerk and recorded in the minutes of said court and safely preserved.

Art. 4152. [4112] [2611] [2530] Sureties on old bond.—When a new bond has been given and approved, the sureties upon the former bond of such guardian shall not be liable for the acts of such guardian occurring after the approval of such new bond. [Id.]

CHAPTER 5.—INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Art.
4153. Inventory.
4154. List of claims.
4155. Affidavit.
4156. Property held in common.
4157. Additional inventory.
4158. Appraisers appointed.
4159. May order supplement.
4160. Corrections.
4161. Inventories.

Article 4153. [4113] [2612] [2531] Inventory.—It shall be the duty of every guardian of an estate, as soon as he shall have collected the estate, and within thirty days after he has taken the oath and given bond, with the assistance of any two of the appraisers appointed by the court, to make and return to the court a correct inventory of all the property, real and personal belonging to said estate, which has come to his knowledge. Each article of such property shall be appraised by such appraisers, and the appraised value thereof stated opposite the same in the inventory; and the same shall be subscribed and duly sworn to by such appraisers. [Acts 1876, p. 179; G. L. vol. 8, p. 1015.]

Art. 4154. [4114] [2613] [2532] List of claims.—The guardian shall also make out and attach to such inventory and appraisement a list of all claims belonging to the estate. Such list shall state:

1. The name of each person indebted to the estate.
2. The nature of such indebtedness, whether by note, bill, bond or other written obligation, or by account or verbal contract.
3. The date of such indebtedness, and the date when the same was due or will be due.
4. The amount of each claim and the rate of interest thereon, and the time for which the same bears interest. [Id.]

Art. 4155. [4115] [2614] [2533] Affidavit.—The guardian shall annex to the inventory, appraisement, and list of claims, an affidavit in substance as

follows: "I, A. B., guardian of the estate of C. D., do solemnly swear that the inventory and list of claims annexed hereto are a true and perfect inventory and list of all the property, real and personal, belonging to said estate that has come to my knowledge;" which affidavit shall be subscribed and sworn to by such guardian.

Art. 4156. [4116] [2615] [2534] Property held in common.—If any property be held or owned by the ward in common with another, it shall be distinctly stated in the inventory or list of claims, the items thereof that are so held or owned, the names and the relationship, if any, of the other part owner or owners, and the interest or share of such ward in such property. [Id.]

Art. 4157. [4117] [2616] [2535] Additional inventory.—Whenever any guardian of an estate shall discover any property belonging to such estate which has not been inventoried and appraised, or any claim that has not been embraced in the list of claims, he shall forthwith make out and return to the court an additional inventory or list of claims, embracing such property or claims. [Acts 1848, p. 285; P.D. 3899; G. L. vol. 3, p. 285.]

Art. 4158. [4118] [2617] [2536] Appraisers appointed.—Where an additional inventory of property has been returned by the guardian, the court shall appoint appraisers to appraise such property as in the case of original inventories, or such appraisers may be appointed before the return of such additional inventory either in term time or in vacation, by an order of the court. [Id.]

Art. 4159. [4119] [2618] [2537] May order supplement.—Whenever it shall be shown to the county judge that any guardian has not returned to the court an inventory and appraisement and list of claims of all the property belonging to his ward, such judge shall cause such guardian to be cited, either in term time or in vacation, and require him to return to the court an additional inventory and appraisement, or an additional list of claims, as the case may be, in the same manner as in the case of original inventories and appraisements and lists of claims are required to be returned, and within the same time; but such inventory and appraisement and list of claims shall only embrace such property as has been omitted in previous inventories and appraisements and lists of claims. [Id.]

Art. 4160. [4120] [2619] [2538] Corrections.—Erroneous inventories, appraisements and lists of claims may be corrected, and new appraisements may be ordered, under the same rules and regulations as are provided in the case of estates of decedents.

Art. 4161. [4121] [2620] [2539] Inventories.—All inventories, appraisements, or lists of claims, when approved by the court, or the record thereof, or copies of the same or the record thereof, duly certified under the seal of the county clerk, may be given in evidence in any suit by or against such guardian, but shall not be conclusive against the ward, if it be shown that there is other property or claims of such ward not included therein, or that the estate or claims were actually worth more than the value at which they are set down in such inventories, appraisements or lists. [Id. P. D. 3900.]

CHAPTER 6.—POWERS AND DUTIES

Art.
4162. Of the person, powers.
4163. Of the person, duties.
4164. Of the estate, powers.
4165. Of the estate, duties.
4166. Of person and estate.
4167. Records.
4168. To collect claims, etc.
4169. Discharge of debt.
4170. Expenses of ward.
4171. Education of ward, etc.
4172. Property held in common.
4173. Ward's title.

Article 4162. [4122] [2621] [2540] Of the person, powers.—The guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. [Acts 1876, p. 181; G. L. vol. 8, p. 1017.]

Art. 4163. [4123] [2622] [2541] Of the person, duties.—It is the duty of the guardian of the person of a minor to take care of the person of such minor, to treat him humanely, and to see that he is properly educated, and, if necessary for his support, that he learn a trade or adopt some useful profession. [Id.]

Art. 4164. [4124] [2623] [2542] Of the estate, powers.—The guardian of the estate is entitled to the possession and management of all property belonging to the ward, to collect all debts, rents or claims due such ward, to enforce all obligations in his favor, to bring and defend suits by or against him; but in the management of the estate, the guardian shall be governed by the provisions of this title. [Id.]

Art. 4165. [4126] [2625] [2544] Of the estate, duties.—It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits and revenues as the estate would have produced by such prudent management. [Id.]

Art. 4166. [4125] [2624] [2543] Of person and estate.—The guardian of both person and estate has all the rights and powers and shall perform all the duties of the guardian of the person and of the guardian of the estate. [Id.]

Art. 4167. [4127] [2626] [2545] Records.—The guardian of the estate, immediately after receiving letters, shall collect, and take into possession, the personal property, books, title papers, and other papers belonging to the estate. [Id.]

Art. 4168. [4128] [2627] [2546] To collect claims, etc.—The guardian of the estate shall use due diligence to collect all claims or debts owing to the ward, and to recover possession of all property to which the ward has a title or claim; provided, there is a reasonable prospect of collecting such claims or debts, or of receiving such property; and if he neglects to use diligence, he and his sureties shall be liable for all damages occasioned by such neglect. [Id.]

Art. 4169. [4129] [2628] [2547] Discharge of debt.—The guardian of the estate may receive property in payment of debts due to the ward, if he believes the interests of his ward will be advanced thereby, being responsible for the prudent exercise of the discretion hereby conferred. [Id.]

Art. 4170. [4130] [2629] [2548] Expenses of ward.—When different persons have the guardianship of the person and estate of a ward, the guardian of the estate shall pay to the guardian of the person, semi-annually, a sum fixed by the court, for the education and maintenance of the ward, and, on failure, shall be compelled to do so by order of the court, after being duly cited. [Id.]

Art. 4171. [4131] [2630] [2549] Education of ward, etc.—The court may direct the guardian of the person to expend, for the education and maintenance of his ward, a sum in excess of the income of the ward's estate; otherwise the guardian shall not be allowed, for the education and maintenance of the ward, more than the clear income of the estate. [Id.]

Art. 4172. [4132] [2631] [2550] Property held in common.—If the wards hold or own any property in common, or as part owner with another, the guardian shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common or joint owners would be entitled. [Id.]

Art. 4173. [4133] [2632] [2551] Ward's title.—The guardian, or his heirs, executors, administrators or assigns shall not dispute the right of the ward to any property that came into the possession of such guardian, as guardian, except such property as shall have been recovered from the guardian, or there be a personal action pending on account of it. [Id.]

CHAPTER 7.—FISCAL MANAGEMENT

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Article 4174. [4134] [2633] [2552] Continuation of business.—If there be a farm, plantation, manufactory or business belonging to the estate, and if the same be not required to be at once sold for the payment of debts, the guardian of such estate, upon order of the court, shall carry on such farm, plantation, manufactory or business, or rent the same, as shall appear for the best interest of the estate. In deciding, the court shall take into consideration the condition of the estate, and the necessity that may exist for the future sale of such property for the payment of debts, or the education and maintenance of the ward, and shall not extend the time of renting such property beyond what may be consistent with the interests of the estate and of the ward. [Acts 1876, p. 182, G. L. vol. 8, p. 1018.]

Art. 4175. [4135] [2634] [2553] Rentals.—When an order of the court is made directing property to be rented, it shall be the duty of the guardian to obey such order and rent the property for the best price that can be obtained therefor, taking good security for the payment of the rent, and that the tenant will not commit nor permit any other person to commit waste on the rented premises. [Id.]

Art. 4176. [4136] [2635] [2554] Without order.—The guardian may rent the improved property of the ward other than such property named in the second preceding article without an order of the court therefor, and either at public or private renting. When he rents without an order of the court, he shall be required to account to the estate of the ward for the reasonable value of the rent of such property for the time the same was so rented.

Art. 4177. [4137] [2636] [2555] Under order.—The court may order the farm, plantation, manufactory, business, or any improved property of the estate to be rented, either at public or private renting, for any length of time, not exceeding one year, and upon such terms and conditions as the court may deem for the best interests of the ward.

Art. 4178. [4138] [2637] [2556] Unimproved land.—If the ward own wild or unimproved real property, the guardian may let out the same on improvement leases, under order of the court, for such length of time, and upon such terms and conditions as the court may direct in its order. [Id.]

Art. 4179. [4139] [2638] [2557] Guardian may be cited.—Any person upon complaint in writing filed with the county clerk may cause the guardian of the estate of a ward to be cited to appear at a regular term of the court and show cause why he should not be required to rent out the farm, plantation or other improved property of the ward, or why he should not be required to lease for improvement the wild or unimproved lands of the ward. Upon the hearing of such complaint, the court shall make such order as he may deem to be for the best interest of the estate.

Art. 4180. [4140] [2639] [2558] Investments.—If, at any time, the Guardian of the estate shall have on hand money belonging to the ward or wards beyond that which may be necessary for the education and maintenance of such ward or wards, he shall invest such money in bonds of the United States; or in shares or share accounts of any Building and Loan Association organized under the laws of this State, provided the payment of such shares or share accounts are insured by the Federal Savings & Loan Insurance Corporation; or in the shares or share accounts of any Federal Savings & Loan Association domiciled in this State, where the payment of such shares and share accounts are insured by the Federal Savings & Loan Insurance Corporation; in tax-supported bonds of the State of Texas; in tax-supported bonds of any county, district, political subdivision, incorporated city or town in Texas; provided, that the bonds of counties, districts, subdivisions, cities and towns may be purchased subject only to the following restrictions: the net funded debt of said issuing unit shall not exceed ten (10%) per cent of the assessed value of taxable property therein; "net funding debt" meaning the total funded debt less sinking funds on hand; and further, in the case of cities, less that part of the debt incurred for acquisition or improvement of revenue producing utilities, the revenues of which are not pledged to support other obligations; provided, however, the above restrictions shall not apply to bonds issued for road purposes in this State under authority of Article III, Section 52 of the Constitution of Texas, which bonds are supported by a tax unlimited as to rate or amount, or such collateral bonds of companies incorporated under the laws of the State of Texas, having a paid-in capital of One Million ($1,000,000.00) Dollars or more, when such bonds are a direct obligation of the company issuing them, and are specifically secured by first mortgage real estate notes and other securities pledged with a Trustee, or loan the same for the highest rate of interest that can be obtained therefor (secured as provided in Article 4181, Revised Civil Statutes of Texas, 1925); or purchase for said ward or wards a contract for life insurance and/or annuity in a legal reserve life insurance company, operating under and complying with the laws of the State of Texas, that may be

approved by the Court having jurisdiction of the minor's estate. If a contract for life insurance and/or annuity has been issued on the life of the ward or wards (or for the benefit of the ward or wards in event of annuity) prior to date of guardianship, and it is made to appear that such contracts were issued by a company or companies operating under the legal reserve system, it shall be lawful to continue such contracts in full force and effect; all future premiums shall be paid out of the surplus funds of said ward or wards; provided, that said Guardian shall first apply to the Probate Court having jurisdiction and obtain an order therefrom to continue said contracts according to original terms, or modify the same to fit any new development affecting the welfare of said ward or wards; provided, that before any application is granted by the Probate Court, the Guardian shall file a report in said Court showing the financial condition of the ward's or wards' estate at the time said application is made, said report to be filed in detail; provided further, that before the Judge of the Probate Court shall approve the application, there shall be filed with said Probate Court a financial statement approved by the Chairman of the Board of Insurance Commissioners showing the solvency of said company.

The signatures of the Guardian and the Probate Judge having jurisdiction of the estate of the minor or minors shall appear on all applications, and any amendments thereto, made to any insurance company under the provisions of this Article.

It is expressly provided, that the Guardian shall in no event be authorized to contract for new life insurance on the life of such ward or wards wherein such Guardian is made the beneficiary of said policy, except in such cases where the Guardian is a natural parent of the ward or wards. Each and every right, benefit, and interest accruing under any contract for insurance or annuity coming under the provisions of this Title shall become the exclusive property of said ward or wards when disability has been terminated.

All contracts for new life insurance issued under the provisions of this Act shall be limited to some form of single premium endowment insurance or single premium annuity; and it is further provided, that all such contracts shall show the case surrender value available at the age of twenty-one (21) years, in excess of all premium deposits made prior thereto and according to the contract; provided, that at no time shall more than twenty-five (25%) per cent of the estate be invested in insurance premiums.

By the term "Life Insurance Company" is meant any stock or mutual legal reserve company that maintains the full legal reserve required under the laws of the State of Texas, and approved by the Commissioner of Insurance. [Acts 1913, p. 321; Acts 1929, 41st Leg., p. 684, ch. 305; Acts 1937, 45th Leg., p. 673, ch. 336, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1964, ch. 54, § 1; Acts 1943, 48th Leg., p. 65, ch. 56, § 1.]

Sec. 2. [Repealed Acts 1937, 45th Leg., p. 673, ch. 336, § 2.]

Art. 4181. [4141–42] [2640] [2559] Security for loan.—The guardian shall take the note of the borrower for money loaned, secured by mortgage with power of sale on unincumbered real estate situated in this State, worth at least twice the amount of such note, or on collateral notes secured by vendor's lien notes, as collateral, or may purchase vendor's lien notes; provided that at least one-half has been paid in cash or its equivalent, on the land for which said notes were given. When the guardian loans or invests the money of his ward he shall not pay over or transfer any money in consummation of such investment, loan or purchase until he shall have submitted all bonds, notes, mortgages, documents, abstracts and other papers pertaining to such investment, loan or purchase to some reputable attorney for examination, and shall have received a written opinion from such attorney, to the effect that all papers pertaining to such investment, loan or purchase are regular and that the title to such bonds, notes or real estate is good. The attorney making such examination shall be paid a reasonable fee, not to exceed one per cent of the amount so invested or loaned, which shall be paid by the guardian out of the funds of the ward. [Acts 1876, p. 182; Acts 1897, p. 196; Acts 1913, p. 321; G. L. vol. 8, p. 1018; G. L. vol. 10, p. 1250.]

Art. 4182. [4143] [2641] [2560] Investing in real estate.—When the guardian may think it best for his ward to have a surplus of money on hand invested in real estate, he shall file a written application in the court where the guardianship is pending, asking for an order of such court authorizing him to make such investment sought to be made, and the reasons why the guardian is of the opinion that it would be for the benefit of the ward to have the same made. [Acts 1876, p. 182; G. L. vol. 8, p. 1018.]

Art. 4183. [4144] [2642] [2561] Action of court.—When such application is filed, the attention of the judge of the court shall be called thereto, and he shall make such investigation as may be necessary to obtain all the facts concerning the investment; but shall not render an opinion or make any order on the application until after the expiration of five days from date of filing. [Acts 1876, p. 182; Acts 1913, p. 321; G. L. vol. 8, p. 1018.]

Art. 4184. [4145] [2643] [2562] Order of court.—Upon the hearing of such application, either in term time or vacation, if the court is satisfied that such investment will be beneficial to the ward, an order authorizing the same shall be made. Such order shall specify the investment to be made, and shall contain such other directions as the court may think advisable. [Id.]

Art. 4185. [4146] [2644] [2563] Approval of contract.—When any contract has been made for the investment of money in real estate under order of the court, such contract shall be reported in writing to the court by the guardian, and the court shall inquire fully into the same, and if satisfied that such investment will benefit the estate of the ward and that the title to such real estate is valid and unincumbered, the court may approve the contract and authorize the guardian to pay over the money in performance of the same; but no money shall be paid out by the guardian on any such contract until such contract has been approved by the court by an order to that effect. Such order may be made at a regular term or in vacation. [Id.]

Art. 4186. [4147] [2645] [2564] Title.—When the money of the ward has been invested in real estate, the title to such real estate shall be made to such ward; and such real estate shall be inventoried, appraised, managed and accounted for by the guardian as other real estate of the ward.

Art. 4187. [4148] [2646] [2565] Surplus.—When there is any surplus money of the estate in the hands of the guardian, any person may, by written complaint filed in the court in which such guardianship is pending, cause such guardian to be cited to appear at a regular term of such court to show cause why such surplus money should not be invested or loaned at interest, in accordance with the provisions of this chapter. Upon the hearing of such complaint, the court shall enter such order as the law and the facts may require.

Art. 4188. [4149] [2647] [2566] Duty of county judge.—When there is surplus money belonging to the ward in the hands of the guardian, the county judge shall cause such guardian to be cited to appear at a regular term of the court and show cause why said money should not be invested or be loaned at interest, under the provisions of this chapter.

Art. 4189. [4150] [2648] [2567] Liability for surplus.—If the guardian neglects to invest or loan surplus money on hand at interest when he can do so by the use of reasonable diligence, he shall be liable for the principal and also for the highest legal rate of interest upon such principal for the time he so neglects to invest or loan the same. [Id.]

Art. 4190. [4151] [2649] [2568] Liability for loans.—The guardian shall not be personally responsible for money loaned under the direction of the court, on security approved by the court, when the borrower is unable to pay the same, or because of failure of the security, unless such guardian has been guilty of fraud or negligence in respect to such loan or the collection of the same; in which case, he and the sureties upon his bond shall be liable for whatever loss his ward may have sustained by reason of such fraud or negligence. [Id.]

Art. 4191. [4152] [2650] [2569] Report.—The guardian shall report to the court in writing, verified by his affidavit, the renting or leasing of property or the investment or loaning of money belonging to the estate, within thirty days after such transaction, stating fully the facts thereof.

Art. 4192. Mineral lease.—Guardians of the estate of minors, and other persons, appointed under the laws of this State, may make oil and gas and other mineral leases upon the real estate belonging to the estates of their wards under the following rules:

1. The guardian shall file his sworn application with the County Clerk of the County where such Guardianship is pending for authority to make such oil and gas or mineral lease, and the County Judge either in term time or vacation shall hear such application and shall require proof as to the necessity or advisability of such lease, and if he shall approve the same he shall enter an order authorizing the guardian to make such oil and gas or mineral lease, which order shall set out the consideration for which said land may be leased for oil and gas or mineral purposes, shall give the name of the lessee and said order shall contain a copy of said oil and gas or mineral lease authorized to be made.

2. Previous notice thereof shall be given by the guardian for one week prior to the time the County Judge shall hear such application by publishing same in some newspaper of general circulation in the County where such guardianship is pending for one issue of said paper. Said notice shall say when and where such application shall be heard. If no such paper should be published in the County where such notice is required to be given, then said notice may be given by posting such notice at the Court House door of such County for seven days next preceding the date of such hearing. And said publishing or posting as herein provided may be shown by the return of the Sheriff or Constable or by the affidavit of any credible person made on a written copy of the notice so published or posted showing the fact of such publishing or posting.

3. No notice thereof shall be given by the County Clerk but such notice must be given by the Guardian as herein provided and when such an application is filed the Clerk shall immediately call the attention of the Judge of the Court in which such Guardianship is pending, to the filing of such application and the Judge shall designate a date to hear such application, and such date shall not be within seven days after the filing of said application and such hearing may be continued from time to time until he is satisfied concerning the application.

4. After hearing of said application and the granting of the same by the Court said guardian shall be fully authorized to make the oil and gas or mineral lease upon the real estate of the ward, in accordance with the judgment of the Court thereon, but such oil and gas or mineral lease shall not be valid until said guardian files a good and sufficient bond in double the amount of the cash bonus that may be paid for said oil and gas or mineral lease, or in the event no cash bonus is paid, then such sum as may be fixed by the County Judge, which bond shall be approved by the County Judge, filed with the County Clerk and recorded in the minutes of such Court. When such order has been made and such bond has been executed and approved, the guardian shall be fully authorized to execute and deliver such lease, and it shall not be necessary for the Court to make any order confirming said lease.

5. No such lease shall extend beyond the time that the ward shall become twenty-one years of age, unless at that time the lessee shall have discovered such minerals as are specified in the lease, or any of such minerals, upon the premises described in such lease, in which event the same shall remain in full force so long as such minerals or any of them shall be produced in paying quantities. The marriage of the female ward shall not terminate any lease made hereunder until such ward actually reaches the age of twenty-one years. [Acts 1913, p. 261; Acts 1915, p. 85; Acts 1919, p. 185; Acts 1927, 40th Leg., p. 237, ch. 164, § 1.]

Art. 4192a. Pooling or unitization agreements covering interest in gas rights in lands subject to leases.

Authority of guardians

Section 1. Guardians of estates of minors and other persons, appointed under the laws of this state, may make or enter into pooling or unitization agreements covering the interest of their wards in the gas and gas rights, including all liquid hydrocarbons in the gaseous phase in the reservoir, in any lands which are subject to gas leases or oil, gas and mineral leases heretofore or hereafter made and entered into, so as to pool or unitize such gas and gas rights with similar rights in other lands under the following rules:

Application; hearing; order

Sec. 2. The guardian shall file his sworn application with the County Clerk of the county where such guardianship is pending for authority to make or enter into such pooling or unitization agreement, and the County Judge, either in term time or vacation, shall hear such application and shall require proof as to the necessity or advisability of such pooling or unitization, and, if he shall approve the same, he shall enter an order authorizing the guardian to make or enter into such pooling or unitization agreement, and said order shall contain a copy of said pooling or unitization agreement authorized to be made or entered into which shall contain and include a description of the lands in the pool or unit.

Notice

Sec. 3. Previous notice thereof shall be given by the guardian for one week prior to the time the County Judge shall hear such application by publishing same in some newspaper of general circulation in the county where such guardianship is pending for one issue of said paper. Said notice shall say when and where such application shall be heard. If no paper shall be published in the county where such notice is required to be given, then said notice may be given by posting such notice at the courthouse door of such county for seven days next preceding the date of such hearing, and said publishing or posting as herein provided may be shown by the return of the Sheriff or Constable or by the affidavit of any credible person made on a written copy of the notice so published or posted showing the fact of such publishing or posting.

Giving of notice; calling to judge's attention; designation of date of hearing; continuance

Sec. 4. No notice thereof shall be given by the County Clerk, but such notice must be given by the guardian as herein provided, and when such an application is filed the clerk shall immediately call the attention of the judge of the court in which such guardianship is pending, to the filing of such application and the judge shall designate a date to hear such application, and such date shall not be within seven days after the filing of said application, and such hearing may be continued from time to time until the judge is satisfied concerning the application.

Making of agreement; bond of guardian

Sec. 5. After the hearing of said application and the granting of the same by the court, said guardian shall be fully authorized to make or enter into such pooling or unitization agreement upon the real estate of the ward, in accordance with the judgment of the court thereon. In the event the court considers the making or entering into of said pooling or unitization agreement of sufficient benefit to the estate of the ward, he may not require the payment of any cash consideration or bonus therefor, and shall so state in his order authorizing the execution of such pooling or unitization agreement. In such event, when such order has been made, the guardian shall be fully authorized to make and enter into, and execute and deliver, such pooling or unitization agreement, and it shall not be necessary for the court to make any order confirming said pooling or unitization agreement. In the event the order of the court requires a cash bonus to be paid, such pooling or unitization agreement shall not be valid until such guardian files a good and sufficient bond in double the amount of the cash bonus that may be paid for the execution of said pooling or unitization agreement, which bond shall be approved by the County Judge, filed with the County Clerk, and recorded in the minutes of such court. When such order has been made and such bond has been executed and approved, the guardian shall be fully authorized to make and enter into, and execute and deliver, such pooling or unitization agreement, and it shall not be necessary for the court to make any order confirming said pooling or unitization agreement.

Duration of lease

Sec. 6. No such pooling or unitization agreement shall have the effect of extending any lease heretofore or hereafter executed on the real estate belonging to the estate of the ward beyond the time that the ward shall become twenty-one (21) years of age, unless at that time the lessee or operator of the unit or pool in which the ward's real estate is included under the terms of such pooling or unitization agreement, shall have discovered gas upon the premises described in the pooling or unitization agreement and covered thereby, in which event said lease shall remain in full force so long as gas shall be produced in paying quantities from said pooled unit. [Acts 1945, 49th Leg., p. 117, ch. 80.]

CHAPTER 8.—SALES

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1. MODE

Article 4193. [4153] [2651] [2570] Perishable property.—The guardian of the estate, after appraisement, shall promptly apply for an order of the court to sell at public or private sale, for cash or on credit not exceeding six months, all the personal property belonging to the ward that is liable to perish, waste or deteriorate in value, or that will be an expense or disadvantage to the estate to keep. [Acts 1876, p. 181; G. L. vol. 8, p. 1017.]

Art. 4194. [4154] [2652] [2571] Wild stock.—If he shall represent to the court on oath that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes bearing interest at the rate of ten per cent per annum from the date of sale, with good and sufficient security for the purchase money. Such sale shall be advertised, made, returned and acted upon by the court the same as sales of real estate. [Id.]

Art. 4195. [4155] Guardian may sell real estate.—When the income of the ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay the debts against the estate, the guardian, or any person holding a valid claim against the estate, may, by written application to the court in which such guardianship is pending, ask for an order for a sufficient amount of real estate to be sold to make up the deficiency, or when the property of the ward consists in whole or in part of an undivided interest in real estate and the guardian believes it to be the best interest of the estate of the ward to sell such real estate, he may, by written application to the court in which such guardianship is pending, ask for an order for such real estate to be sold; or when the real estate of such minor is encumbered by a valid lien to secure a debt which

is due or is about to become due, or when the taxes are due on the property of said ward, or when the holder of such debt has applied for or is threatening to apply for an order of sale of the real estate of the minor and the guardian has not in his hands sufficient funds to pay such debts, such guardian may by written application to the court in which such guardianship is pending, apply in writing for an order to obtain an extension of such debt and to secure the same by a mortgage or deed of trust on the real estate of such minor; or if the real estate of such minor or any part thereof is not revenue producing, or the revenue therefrom could be increased by making improvements or additional improvements or repairs thereon, such guardian may make a written application to such court to make such improvements or repairs on such real estate as he may deem beneficial to the ward, and to secure the payment for the same by mortgage, deed of trust, mechanics contracts and materialmen lien.

Art. 4195a. Sale of unproductive real estate.—Whenever the estate of a ward consists in part of real estate, and any part or parcel of such real estate produces no revenue or does not produce sufficient revenue to make a fair return upon the value of such part or parcel of said real estate, and the Guardian of said estate does not deem it advisable or advantageous to said estate to improve such part or parcel of said estate, and said Guardian believes the sale of such part or parcel of said real estate and the investment of the money derived therefrom would be to the best interests of said estate under all the circumstances, said guardian may make a written application to the court in which such guardianship is pending, stating such facts and asking for an order to sell such part or parcel of said real estate, and the Court on hearing of such application, after notice as provided in Article 4198 may order the sale of said real estate, in whole or in part. [Acts 1927, 40th Leg., p. 43, ch. 31, § 2; Acts 1934, 43rd Leg., 3rd C.S., p. 49, ch. 26, § 1.]

Art. 4196. [4156] Application for sale.—The guardian shall apply for such order as is provided in the preceding article, whenever it appears that a necessity exists therefor, and set forth fully in his application with an exhibit, under oath, showing fully the condition of the estate. [Acts 1925, p. 338.] [39th Leg., ch. 134, § 1.]

Art. 4197. [4157] [2655] [2574] Guardian cited.—When the application for the sale of real estate is made by any other person than the guardian of the estate, the guardian of the estate shall be cited to appear at a regular term of the court and show cause why the order should not be made and also to present to the court an exhibit, under oath, showing fully the condition of the estate.

Art. 4198. [4158] [2656] [2575] Hearing on application.—Whenever an application for the sale of real estate is filed, the clerk shall immediately call the attention of the judge of the court in which such guardianship is pending to the filing of the application, and the judge shall designate a day to hear such application, which may be heard in term time or vacation, provided such application shall remain on file at least five days before any orders are made, and the judge may continue such hearing from time to time until he is satisfied concerning the application. [Acts 1876, p. 181; Acts 1913, p. 321; G. L. vol. 8, p. 1017.]

Art. 4199. [4160] [2658] [2577] Advantage of estate.—When a sale of real estate is ordered, it shall be of the property which the court may deem most advantageous to the estate to be sold. [Id.]

Art. 4200. [4161] [2659] [2578] Terms of sale.—A sale of real estate may be made for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to such indebtedness, or with an assumption of such indebtedness, at public auction or private sale, as may appear to the Court to be for the best interest of the estate. [Acts 1892, C.S., p. 9; Acts 1913, p. 321; G.L. vol. 10, p. 373; Acts 1931, 42nd Leg., p. 392, ch. 237, § 1.]

Section 2 of Acts 1931 repeals all conflicting laws and parts of laws.

Art. 4201. [4162] [2660] [2579] Order of sale; amount of bond.—An order for the sale of real estate shall state: (1) The property to be sold, giving such description of it as will identify it. (2) Whether it is to be sold at public auction or at private sale, and if at public auction, the time and place of such sale. (3) The necessity and purpose of such sale. (4) That no sale made by the guardian pursuant thereto shall be confirmed nor shall the title of the ward to such real estate pass to the purchaser unless and until it shall first be found and determined by the court, by an order duly made and entered to that effect, that the guardian's general bond, if the sureties thereon are natural persons, is in an amount equal to double the value of the personal property then on hand, including the amount for which said real estate may be sold, plus such additional sum as may, in the opinion of the court, be necessary to protect the estate of the ward, and that the sureties on such bond are solvent; but if the surety or sureties on said bond are either a domestic or foreign corporation or corporations permitted to do business in the State for the purpose of issuing surety, guaranty, or indemnity bonds, guaranteeing the fidelity of guardians, the bond shall be in an amount equal to the value of the personal property on hand, including the amount for which said real estate may be sold, plus such additional sum as may, in the opinion of the court, be necessary to protect the estate of the ward; provided in the event the guardian's general bond is not sufficient to protect the estate of the ward as above required, an additional bond shall be filed in accordance with the above requirements. However, where the sale of such real estate is made to the owner or holder of a secured claim against the estate and the same is of the real estate securing such claim and is in full payment, liquidation, and satisfaction thereof, only the amount of cash, if any, actually received by such guardian in excess of the amount necessary to pay, liquidate and satisfy such claim in full, shall be considered together with other property of the estate in passing upon the sufficiency of the bond as hereinabove required. (5) It shall require the sale to be made and the report to be returned to the court in accordance with the law. [Acts 1876, p. 180; Acts 1913, p. 321; G.L. vol. 8, p. 1016; Acts 1935, 44th Leg., p. 206, ch. 84, § 1; Acts 1943, 48th Leg., p. 684, ch. 378, § 1; Acts 1945, 49th Leg., p. 525, ch. 316, § 4.]

Art. 4201a. [Repealed by Acts 1941, 47th Leg., p. 658, ch. 399, § 1.]

Art. 4202. [4163] [2661] [2580] Place of sale.—All private sales of real estate shall be made in the county where the guardianship is pending; all public sales of real estate shall be made in the county where the real estate is situated. [Acts 1876, p. 180; Acts 1913, p. 321; G. L. vol. 8, p. 1016.]

Art. 4203. Notice of sale of real estate.—The time and place of making a public sale of real estate by a guardian under an order of the Court shall be advertised by the officer by having notice thereof published in the English language once a week for three consecutive weeks preceding such sale in some newspaper published in the county where the land is situated. The first of said publications shall appear not less than twenty (20) days immediately preceding the day of sale; said notice shall contain a statement of the authority by virtue of which the sale is to be made, and the time and place of sale. It shall also contain a brief description of the property to be sold, the number of acres of original survey, locality in the county, and the name

by which the land is most generally known. It shall not contain the field notes. If no newspaper is published in the county, or if published in the county refuses to publish the notice, the officer shall post notices in writing in three public places in the county, one of which shall be at the courthouse door, for at least twenty (20) days successively next before the day of the sale. The publisher's fee shall be Two (2) Cents per word for the first insertion of such publication and One Cent per word for each subsequent insertion, or such newspaper shall be entitled to charge for such publication at a rate equal to but not in excess of the lowest published word or line rate of that newspaper for classified advertising, which fee shall be taxed as part of the costs in such proceeding. [As amended Acts 1941, 47th Leg., p. 480, ch. 303, § 3.]

Partial invalidity of the amendatory Act of 1941, cited to the text, effect of, see section 6 of such act, set out under article 28a.

Art. 4204. [4164] [2662] [2581] Credit sale; powers of guardians of estate of wards.—When real estate is sold partly on credit, the cash payment shall not be less than one-third of the purchase price and the purchaser shall execute notes for the deferred payments maturing in equal annual amounts, the last note to mature not later than five years from date of deed, to bear interest from date at a rate not less than six per cent, payable annually. Default of the payment of principal or interest or any part thereof when due, shall mature the whole debt; all notes for the deferred payments to be secured by vendor's lien, retained in deed and notes upon the property sold and further secured by deed of trust upon the property sold with usual provisions for foreclosure and sale upon failure to make payments provided in deed and notes.

Provided, however, that when a ward owning real estate by virtue of the guardian having foreclosed upon certain real estate mortgage notes belonging to the estate of the ward, either by judicial sale or by a foreclosure suit or through sale under deed of trust or by having accepted a deed in cancellation of a mortgage owned by the ward, and it appearing to the court that an application to redeem the property foreclosed upon has been made by the former owner of the real estate to the Home Owners' Loan Corporation, the Federal Land Bank or any other entity, corporation or agency now created, or hereafter to be created, by any Act or Acts of the Congress of the United States or of the State of Texas in connection with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate, and it further appearing to the court that it would be to the best interest of the ward to own bonds of one of the above named Federal or State Corporations or Agencies instead of the real estate, that upon proper application and proof, the court may dispense with the provisions of credit sales as provided above, and may approve an order permitting the guardian to reconvey the property to the former mortgage debtor and former owner, reserving vendor's lien notes for the total amount of the indebtedness due or for the total amount of bonds which the corporation or agency above named might under their rules and regulations be allowed to loan, and upon obtaining such an order, it shall be proper for the guardian to indorse and assign these notes so obtained over to any one of the corporations or agencies above named in exchange for bonds of that corporation or agency. [Acts 1892, C.S., p. 9; Acts 1913, p. 321; G.L. vol. 10, p. 373; Acts 1935, 44th Leg., p. 35, ch. 13, § 1.]

Art. 4205. [4165] [2663] [2582] Purchase by guardian.—The guardian shall not become the purchaser either directly or indirectly of any property of the estate sold by him. If any guardian shall, directly or indirectly, become the purchaser of any property of his ward, at a sale made by such guardian, upon written complaint of any person, and after service of citation upon such guardian, and upon proof, such sale shall be held void and by the court set aside by order to that effect. The costs of such sale, and of suit, shall be adjudged against such guardian individually.

Art. 4206. [4166] [2664] [2583] Bidder's liability.—When any person shall bid off property offered for sale by a guardian, and shall fail to comply with the terms of the sale, the facts shall be reported to the court by the guardian; and such person so failing to comply shall be liable to pay such guardian for the use of the estate, ten per cent on the amount of his bid; and, also, the deficiency, if any, in price on the second sale of such property, to be recovered by suit in the county where such sale was made.

Art. 4207. [4167] [2665] [2584] May continue sale.—Public sales may be continued from day to day in case the day set apart for any such sale shall be insufficient to complete the same, by giving public notice verbally of such continuance at the conclusion of the sale each day. The continued sale shall commence and conclude within the hours prescribed for public sales under execution.

Art. 4208. [4169] [2667] [2586] Private sale.—Notice of a private sale of the property of the ward to be made by a guardian is not required to be given.

Art. 4209. [4170] [2668] [2587–2588] Mortgaged property.—Any person holding a claim against the estate of a ward, secured by mortgage or other lien, may obtain an order for the sale of the property upon which he has such mortgage or other lien, or so much thereof as may be required to satisfy the claim, by causing notice to be posted and the guardian to be cited to appear at a regular term of the court and show cause why such order should not be made. Such sale shall be made upon such terms as the court may direct, which shall be stated in the order of sale. The notice and other proceedings shall be the same as in other sales by guardians. [Acts 1892, C.S. p. 9; Acts 1913, p. 321; G.L. vol. 10, p. 373.]

Art. 4210. [4171] [2669] [2589] Lien, discharge of.—If it appears to the court that the discharge of such mortgage or other lien out of the general assets would be beneficial to the estate, the payment may be ordered to be so made, instead of ordering a sale of the property. [Id.]

Art. 4211. [4172] [2670] Interest on ward's debts.—Should an estate in the hands of a guardian be involved in debt, and it appears to the court that the guardian can discharge existing debts to the advantage of the estate by the hypothecation or mortgage of real estate at a lower rate of interest, or court may, in its discretion, by order, allow the guardian to pay off and discharge existing debts by the execution of a mortgage or deed of trust upon real estate to secure the person furnishing the money for that purpose; acts of guardians under this article shall be reported to the court and approved as in case of sales. No guardian shall renew any indebtedness or evidence thereof except by order of the court made upon application and notice as in case of sales of land. [Acts 1892, C. S., p. 10; G. L. vol. 10, p. 374.]

Art. 4212. [4173] [2671] May renew debt.—Should a guardian not have sufficient funds in hand belonging to the estate of his ward to pay and discharge any existing debt, he may renew the evidence of the same in like manner as his ward could if able to act; and such act of the guardian shall have the same force and effect with reference to such novated paper as if done by the ward. No such guardian shall renew the evidences of any debt against the estate of his ward barred by the statutes of limitations; nor shall such guardian renew the evidences of any debt that may have been made or contracted by his ward

during his minority or other disability. [Acts 1892, C. S., p. 10; Acts 1913, p. 321; G. L. vol. 10, p. 374.]

2. REPORTS AND APPROVAL OF SALES

Art. 4213. [4174] [2672] [2590] Time of report.—All sales of the property of the ward shall be reported by the guardian to the court in which the guardianship is pending within thirty days after the sale is made.

Art. 4214. [4175] [2673] [2591] Report of sale.—Reports of sale shall be in writing, and subscribed and sworn to by the guardian. They shall show:

1. The time and place of the sale.
2. The property sold, describing it.
3. The name of the purchaser of the property.
4. The amount for which each article or property was sold.
5. The date of the order of sale.
6. Whether such sale was at public auction or a private sale.
7. The terms of the sale.
8. Whether the purchaser has complied with the terms of the sale.

Art. 4215. [4176] [2674] [2592] Filing report.—A report of sale may be made in term time or vacation, and, when returned, shall be filed by the clerk, and the filing thereof noted in the case upon the judge's docket.

Art. 4216. [4177] [2675] [2593] Action of the court—Bond of guardian—Requisites and amount—Provisions mandatory.—At any time after the expiration of five days after the filing of a report of sale, the Court shall inquire into the manner in which such sale was made, and hear evidence in support of or against such report, and if satisfied that such sale was fairly made and in conformity with the law and that the guardian has on file a good and sufficient general bond in an amount, if the sureties thereon are natural persons, equal to double the value of the personal property then on hand, including the amount for which said real estate is being sold, plus such additional sum as may, in the opinion of the court, be necessary to protect the estate of the ward; but if the surety or sureties on said bond are either a domestic or foreign corporation or corporations permitted to do business in the State for the purpose of issuing surety, guaranty or indemnity bonds guaranteeing the fidelity of guardians the bond shall be in an amount equal to the value of the personal property on hand including the amount for which said real estate may be sold plus such additional sum as in the opinion of the court may be necessary to protect the estate of the ward; and if and when the guardian's general bond has been examined by the court and found to be in the amount above required with good and sufficient sureties thereon, or if the guardian's general bond is found to be insufficient, then an additional bond shall be filed in accordance with the above requirements; as evidenced by an order duly made and entered by the court to that effect, the court shall cause to be entered a decree confirming such sale, and order the report of sale to be recorded by the clerk, and the proper conveyance of the property sold to be made by the guardian to the purchaser, upon compliance by such purchaser with the terms of sale. The provisions of this Article shall be mandatory, and unless the court shall first determine that the guardian's bond is adequate and solvent as above set forth, as evidenced by an order made and entered by the court to that effect, any sale of real estate hereafter made under the provisions of this Title shall be void. [Acts 1876, p. 185; Acts 1913, p. 321; G.L. vol. 8, p. 1021; Acts 1935, 44th Leg., p. 196, ch. 79, § 1; Acts 1943, 48th Leg., p. 684, ch. 378, § 1; Acts 1945, 49th Leg., p. 525, ch. 316, § 5.]

Art. 4217. [4178] [2676] [2594] Order for resale.—If the court is not satisfied that the sale was fairly made, and in conformity with law, order shall be entered, setting the same aside, and ordering the property to be again sold if necessary.

Art. 4218. [4179] [2677] [2595] Conveyances.—After a sale has been confirmed by a decree of the court, and after the purchaser has complied with the terms of the sale, the guardian shall execute and deliver to the purchaser a proper conveyance of the property. In sales of personal property, no conveyance shall be necessary; but the decree of the court confirming the sale shall vest the title of the ward to the property sold in the purchaser, and shall be prima facie evidence that the law has been complied with in making such sale. [Acts 1876, p. 185; Acts 1913, p. 321; G.L. vol. 8, p. 1021.]

Art. 4219. [4180] [2678] [2596] Conveyance of real estate.—If real estate be sold, the conveyance shall be by deed, and shall refer to the decree of the court confirming the sale and ordering the conveyance to be made, by giving the date and term of the court of such order. Such conveyance shall vest the right and title of the ward to such real estate in the purchaser, and shall be prima facie evidence that the law has been complied with in making such sale. [Id.]

Art. 4220. [4181] [2679] [2597] Prerequisites of grant.—No conveyance of real estate sold shall be executed and delivered by the guardian to the purchaser until the terms of the sale shall have been complied with by such purchaser. When such sale has been made for part cash and part credit, the guardian shall, before delivering a conveyance of the property to the purchaser, take from such purchaser a note or notes for the deferred payment, bearing interest at the rate of not less than six per cent per annum, payable annually, secured by vendor's lien and a deed of trust, with usual provisions for foreclosure and sale, as additional security, and to file such deed of trust for record in the county where such real estate is situated. [Acts 1913, p. 321.]

Art. 4221. [4182] [2680] [2598] Penalty.—Should the guardian neglect to take the note, security and mortgage, and file such mortgage for record in the proper county before delivering a deed to the purchaser, such guardian and sureties upon his bond shall be liable for whatever loss may accrue to the estate of the ward by reason of such neglect.

Art. 4222. [4183] [2681] [2599] Vendor's lien.—All notes executed for the purchase money of real estate, under the provisions of this chapter, shall hold the vendor's lien on the real estate for which such notes were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not; and such lien shall in no case be waived.

Art. 4223. [4184] [2682] [2600] Failure to sell.—If, from any cause, the guardian shall fail to sell any real estate ordered to be sold at the time specified in the order, he shall report under oath the facts to the court or judge, and the judge in term time or vacation may by an order appoint another day for such sale. [Id.]

Art. 4223a. Partition of ward's interest in realty.

Agreement upon partition

Sec. 1. If the estate of a minor owns an interest in real estate in common with other part owner or owners, and it, in the opinion of the guardian of said minor's estate, is to the best interest of such ward's estate that said real estate be partitioned, the guardian may agree upon a partition with the other part owner or owners, subject to the approval of the Court in which the guardianship proceedings are pending.

Application for approval of agreement

Sec. 2. When a guardian has reached an agreement with the other part owner or owners as to how said real estate is to be partitioned, he shall file with the court an application to have such agreement approved; the application shall describe the land to be divided and state why it is to the best interest of the ward's estate that said real estate be partitioned, and shall show that the proposed partition agreement is fair and just to the ward's estate.

Hearing on application

Sec. 3. When such application is filed the Clerk of the Court shall immediately call the attention of the Judge of the court in which such guardianship is pending to the filing of the application, and the Judge shall designate a day to hear such application, which may be heard in term time or vacation, provided such application shall remain on file at least five days before any orders are made, and the Judge may continue such hearing from time to time until he is satisfied concerning the application.

Approval of partition

Sec. 4. If the Judge is satisfied that the proposed partition is for the best interest of the ward's estate, the court shall enter an order in term time or vacation approving partition and directing the guardian to execute the necessary agreement, or agreements, for the purpose of carrying such order and partition into effect.

Application for ratification of partition agreement

Sec. 5. Whenever it shall appear that a guardian has heretofore executed agreements, or may hereafter execute agreements, as to the partition of any lands in which the ward has an interest without having first secured the approval of the court as provided herein, such guardian may file with the court in which such guardianship proceedings are pending, an application for the approval and ratification of said partition agreements. The application shall refer to said agreements in such manner that the court or Judge can fully understand the nature of the partition and the lands divided. It shall also state that in the opinion of the guardian said agreement or agreements are fair and just to the ward's estate and for the best interest of said estate. When said application is filed the clerk shall immediately call to the attention of the judge of the court in which guardianship is pending, the filing of such application, and the Judge shall designate a day to hear such application, which may be heard in term time or vacation, provided such application shall remain on file at least five days before any orders are made, and the judge may continue such hearing from time to time, until he is satisfied concerning the application. If the Judge is of the opinion that such partition is fairly made and the same is for the best interest of the ward's estate, an order shall be entered ratifying and approving such partition agreement or agreements, and when so ratified and approved such partition shall be as effective and binding as if executed after an order of the court, as is provided in this Act.

Proceeding in District Court

Sec. 6. If the guardian of the estate of a minor is of the opinion that it is for the best interest of said ward's estate that any real estate which said ward owns in common with other part owner or owners should be partitioned he may apply to the court in which guardianship proceedings are pending for authority to bring suit in the District Court of the proper county against the other part owners for the partition of such real estate, and if the court hearing such application is of the opinion that such real estate should be partitioned, it shall enter an order authorizing suit to be brought for said purpose. [Acts 1933, 43rd Leg., p. 838, ch. 239.]

CHAPTER 9.—ANNUAL ACCOUNTS

Art.
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4226. Annual account, requisites of.
4227. Failure to return.
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Article 4224. [4185] [2683] [2601] Guardian of person.—The guardian of the person, where there is a separate guardian of the estate, shall annually return to the court his sworn account showing each item of expenditure since the last account for the education and maintenance of the ward. [Acts 1876, p. 186; G. L. vol. 8, p. 1022.]

Art. 4225. [4186] [2684] [2602] Annual account.—The guardian of an estate shall annually return to the Court an account showing:

1. Any property that may have come to his knowledge belonging to his ward which has not been previously inventoried or listed.
2. Any changes in the property of the ward which have not been previously reported.
3. A complete account of receipts and disbursements since the last annual account, and the source and nature thereof; receipts of principal and of income to be shown separately.
4. All claims that have been allowed by him against the estate since the last annual account that are still unpaid.
5. All claims that have been rejected by him since the last annual account, and whether the same have been sued upon or not.
6. A complete, accurate and detailed description of the property on hand belonging to the estate, including cash balance due the ward, and the name and location of the depository wherein such cash balance and the other personal property is kept. The description of property described in detail in a previous account may be shown by reference thereto, but such property shall be described in subsequent accounts sufficiently to identify the property. Each account shall also set forth the condition of the property and the use being made thereof, and if rented, the terms upon which and the price for which rented. The detailed description of personal property where required by this Act shall, in respect to bonds, notes and other securities, include the names of the obligor and of the obligee, (or if payable to bearer such fact shall appear) date of issue and of maturity, rate of interest, serial or other identifying numbers, in what manner secured, and any other data necessary to fully identify the same and disclose whether such investment is such as is lawful for the guardian to make or retain.
7. Such other facts as may be necessary to show the true and exact condition of the estate. [As amended Acts 1939, 46th Leg., p. 340, § 1.]

Sec. 2. Annexed to such account, shall be a certificate by an officer of the bank or trust company in which the money on hand is deposited showing the amount thereof, and the affidavit of the guardian that such account contains a correct and complete statement of the matters to which it relates.

Sec. 3. (A) The existence and possession of any securities owned by the estate as shown by the accounting shall be proved by one of the following means; viz., I. By an affidavit of the guardian of such estate;

(a) an officer of the bank or other depository wherein said securities are held for safe-keeping; provided, that if such depository is the guardian, such certifying officer shall be an officer other than the officer verifying the account; or

(b) an authorized representative of the corporation which is surety on the guardian's bond; or

(c) the clerk or a deputy clerk of a court of record in this State; or

(d) other reputable person designated by the court upon request of the guardian or other interested party. Such affidavit shall be to the effect that the affiant has examined the assets exhibited to him by the guardian as assets of the estate in which the accounting is made, and describing the assets by reference to the account or otherwise sufficiently to identify those so exhibited, and stating the time when and place where exhibited.

II. By the guardian exhibiting the said securities to the Judge of the Court who shall endorse on the account, or include in his order in respect thereof a statement that the securities shown therein as on hand were in fact exhibited to him and that those so exhibited were the same as those shown in the account, or note any variance. Such endorsement by said Judge or the affidavit of another as herein provided for shall be recorded in the minutes with such account.

B. No accounting shall be approved unless possession of the securities is proved as in this Section 3 provided; and if the securities are exhibited at any place other than where deposited for safe-keeping it shall be at the expense and risk of the guardian.

C. The Court may require any guardian to furnish such additional evidence as to the existence and custody of such securities and other personal property as in his discretion he may deem proper; and to exhibit them to the Judge of the Court or any person designated by him at any time at the place where held for safe-keeping. [Acts 1925, 39th Leg., p. 367, ch. 156, § 1; Acts 1939, 46th Leg., p. 340.]

Art. 4226. [4187–8–9–90] Annual account, requisites of.—These rules shall govern an annual account:

1. When presented, it shall be filed, and the filing thereof noted upon the judge's docket, and before being acted on shall remain on file five days.

2. At any time after five days from the filing of an annual account, the judge may act thereon, and may continue the hearing thereon until fully advised as to all items of such account.

3. The guardian must produce and file proper vouchers for each item of credit claimed by him in his account, or support the same by satisfactory evidence.

4. If the account be found incorrect, it shall be corrected. When correct, it shall be approved by an order of the court. [Acts 1876, p. 186; Acts 1913, p. 321.]

Art. 4227. [4191–2] Failure to return.—If the guardian fails to return an annual account, he shall be cited to return the same at the next term of the court, and to show cause for such failure. If the guardian fails to return such account after being so cited, or fails to show good cause for such failure, he may be fined by the court not exceeding five hundred dollars, for the use of the county; and he and his sureties shall be liable for any fine imposed and all damages sustained by reason of such failure. [Id.]

Art. 4227a. Notices to United States Veterans' Bureau.—Sec. 1. Whenever an annual or other account, or an application for the expenditure of funds or for the investment of funds is filed by any guardian whose ward is a beneficiary of the United States Veterans' Bureau, or when a claim against the estate of such a ward shall be filed, the court shall thereupon fix a date for the hearing of such account, application, petition, or claim, as the case may be, not less than twenty days from the date of the filing thereof. The clerk of the court in which such account, application, petition, or claim shall be filed shall give notice thereof not less than fifteen days prior to the date fixed for such hearing to the United States Veterans' Bureau in whose territory the court may be located by mailing a certified copy of such account, application, petition, or claim to said office of the United States Veterans' Bureau; provided that said Bureau may through its attorney waive the service of such notice and also the time within which a hearing may be had in such cases.

Sec. 2. Such account, application, petition, or claim shall be filed in duplicate, and the clerk of the court shall be entitled to a fee of twenty-five cents, taxable against the estate, for certifying to the copy thereof, which he shall forthwith mail to said Bureau as provided in Section 1 hereof. If not filed in duplicate, the clerk shall be entitled to a further fee of fifteen cents per one hundred words for making a copy thereof. Such additional cost of copying shall be taxed and collected from the guardian, individually, and shall not be chargeable to the ward's estate. [Acts 1929, 41st Leg., p. 281, ch. 126.]

CHAPTER 10.—DEATH, RESIGNATION AND REMOVAL

Art.
4228. Death, resignation, or removal.
4229. Resignation.
4230. Notice.
4231. Service.
4232. Resignation: proceedings.
4233. Removal without notice.
4234. Removal after citation.
4235. Order of removal.
4236. Disqualification.
4237. Transfer of property.
4238. Subsequent guardian.

Art. 4228. [4194] [2691] [2609] Death, resignation, or removal.—When a guardian dies, resigns or is removed, the Court, on application, and without notice or citation, shall appoint another if there be necessity therefor, and such appointment may be made prior to the filing of, or action upon, the final accounting of such former guardian. [Acts 1876, p. 179; G.L. vol. 8, p. 1015; Acts 1941, 47th Leg., p. 867, ch. 541, § 4.]

Art. 4229. [4195] [2692] [2610] Resignation.—A guardian who wishes to resign, shall present his written application to that effect to the Court, accompanied by a full and complete final account, duly sworn to, showing the true condition of the estate and of his guardianship. The Court may thereupon immediately accept such resignation and appoint a successor guardian, but shall not discharge such resigning guardian or release him or the sureties on his bond until the entire estate due the ward is delivered to the successor guardian, and final order or judgment shall have been rendered on his final account. [Acts 1876, p. 179; G.L. vol. 8, p. 1015; Acts 1941, 47th Leg., p. 867, ch. 541, § 4.]

Art. 4230. [4196] [2693] [2611] Notice.—Upon the filing of such application and account, the clerk shall issue a notice to all persons interested in such guardianship stating:

1. That such guardian has filed his application for leave to resign the guardianship, accompanied by an account for final settlement thereof.

2. It shall notify all persons interested in the guardianship that they may appear at a certain term of the court and contest the account of the guardian. [Acts 1876, p. 179; G. L. vol. 8, p. 1015.]

Art. 4231. [4197] [2694] [2612] Service.—Three copies of such notice shall be duly posted for at least twenty days before the return term thereof, in three public places in the county, one at the courthouse door, and the others at two public places, not in the same city or town. The officer posting such notices shall make due return of such posting. [Acts 1876, p. 179; G.L. vol. 8, p. 1015; Acts 1927, 40th Leg., p. 22, ch. 16, § 1.]

Art. 4232. [4198] [2695] [2613] Resignation: Proceedings.—Upon the hearing of such application and account, if it appear that such guardian

has accounted for all the estate according to law, the court shall enter an order that he deliver the estate remaining in his possession, or the person of his ward, or both, to some person who has or may be appointed and qualified as guardian in his place. Upon compliance with such order and surrender of his letters of guardianship, such guardian shall be permitted to resign his trust and be discharged, and an order to that effect shall be made by the court. [Acts 1876, p. 179; G.L. vol. 8, p. 1015.]

Art. 4233. [4199] [2696] [2614] Removal without notice.—Guardians shall be removed in the following cases, without notice, at a regular term of the court:

1. When they fail to return, within thirty days after qualification an inventory and list of claims of the property of the estate which has come to their knowledge.

2. When they have been required to give a new bond, and fail to do so within the time prescribed.

3. When they have removed from the State.

4. When notices or other process of the court cannot be served upon them on account of their whereabouts being unknown. [Acts 1876, p. 179; G.L. vol. 8, p. 1015; Acts 1929, 41st Leg., p. 282, ch. 127, §§ 1, 2.]

Art. 4234. [4200] [2697] [2615] Removal after citation.—A guardian may be removed by the court of its own motion or on the motion of any person interested in the ward, or his estate, after being cited to answer:

1. When he fails to return any account which is required to be returned by any provision of this title.

2. When he fails to obey any proper order of the court or judge.

3. When there is good cause to believe that he has misapplied, embezzled, or removed, or is about to misapply, embezzle or remove from the State the property committed to his charge, or any part thereof.

4. When he is proved to have been guilty of gross neglect or mismanagement in the performance of any of his duties as guardian.

5. When he becomes of unsound mind or becomes an habitual drunkard or is sentenced to imprisonment for a term of years.

6. When, if he be the guardian of the person, he cruelly treats the ward or neglects to educate and maintain the ward as liberally as the means of such ward and the circumstances of the case demand. [As amended Acts 1929, 41st Leg., p. 284, ch. 129, §§ 1, 2.]

Art. 4235. [4201] [2698] [2616] Order of removal.—The order removing a guardian shall state the cause of such removal, and shall require such guardian to surrender his letters of guardianship, and shall further require such guardian to deliver the person of the ward, or his estate, or both, to some person who has been appointed and has qualified as guardian in his place.

Art. 4236. [4202] [2699] [2617] Disqualification.—A person removed from the guardianship of the person or estate of a ward shall not be reappointed to such guardianship. [Acts 1876, p. 179; G.L. vol. 8, p. 1015.]

Art. 4237. [4203] [2700] [2618] Transfer of property.—If a guardian die, resign, or be removed, he or his legal representatives shall account for, pay and deliver to the person legally entitled to receive the same, all the property of every kind belonging to the estate of the ward at such time and in such manner as the court shall order. In case of refusal to comply with such order, the same may be enforced by contempt proceedings. [Id.]

Art. 4238. [4204–5] Subsequent guardian.—When a guardian succeeds another, he shall be required to account for all the estate which came into the hands of his predecessor and shall be entitled to any order or remedy which the court has power to give, in order to enforce the delivery of the estate, and the liability of the sureties of his predecessor for so much as is not delivered. Such subsequent guardian shall be excused from accounting for such of the estate as he has failed to recover after the use of due diligence. A subsequent guardian shall succeed to all the rights, powers, and duties of his predecessor, and shall proceed with the guardianship as if it were a continuation of the same by the former guardian. [Id.]

CHAPTER 11.—CLAIMS AGAINST THE ESTATE

Art.
4239. Payment.
4240. Claim of corporation.
4241. Affidavit of officer.
4242. Indorsement by guardian.
4243. Failure to endorse.
4244. Rejected claim: suit.
4245. Memorandum evidence.
4246. Allowance of claim.
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4254. "Exhibited claim."
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4256. Time of exhibit.
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4260. Cost of exhibition, etc.
4261. Claim docket.
4262. Payment of claims.
4263. Order for payment.
4264. Execution against guardian.
4265. Sureties cited.
4266. Citation and judgment.

Article 4239. [4206–7–8] Payment.—A guardian may pay an unauthenticated claim against the estate of his ward which he knows to be just. Otherwise he shall not allow, and the court shall not approve, a claim unless it be accompanied by an affidavit of the claimant that the claim is justly due, that nothing has been paid or delivered toward the satisfaction of such claim, except what is mentioned or credited; that there are no counter claims known to affiant which have not been allowed. If the claim is not founded on a written instrument or account, the affidavit must also state the facts upon which the claim is founded. [Acts 1876, p. 179; G. L. vol. 8, p. 1015.]

Art. 4240. [4209] [2706] [2624] Claim of corporation.—The cashier, treasurer or managing agent of a corporation shall make the affidavit required to authenticate a claim of a corporation. [Id.]

Art. 4241. [4210] [2707] [2625] Affidavit of officer.—When an affidavit authenticating a claim is made by an officer of a corporation, or an executor, administrator, trustee, assignee, agent or attorney, it shall be sufficient to state in such affidavit that he has made diligent inquiry and examination and that he believes that nothing has been paid and delivered toward the satisfaction of such claim except the amount credited, that there are no counter claims which have not been allowed, and that the sum claimed is justly due. [Id.]

Art. 4242. [4212] [2709] [2627] Indorsement by guardian.—When a duly authenticated claim is presented to the guardian, he shall indorse thereon or annex thereto a written memorandum signed by him, stating the time of its presentment, and that he

allows or rejects it, or what portion thereof he allows, if any. [Id.]

Art. 4243. [4213] [2710] [2628] Failure to endorse.—The failure of a guardian to indorse on, or annex to, a claim presented to him, his allowance or rejection thereof, shall be deemed a rejection of such claim. In such case, if the claim be established, the costs shall be adjudged against the guardian to be paid out of his own estate. [Id.]

Art. 4244. [4214] [2711] [2629] Rejected claim: suit.—When a claim or a part thereof has been rejected by the guardian, the claimant shall institute suit thereon within ninety days after such rejection, or the same shall be barred. [Id.]

Art. 4245. [4215] [2712] [2630] Memorandum evidence.—When a rejected claim is sued upon, the indorsement of its rejection thereon or annexed thereto shall be taken to be true without proof unless it be denied under oath. [Id.]

Art. 4246. [4216] [2713] [2631] Allowance of claim.—After a claim has been presented to the guardian and allowed, the claimant shall present it to the clerk of the court in which the guardianship is pending, who shall enter it upon the claim docket. [Id.]

Art. 4247. [4217] [2714] [2632] Examination of claim.—At each regular term of the court, all claims which have been allowed and entered on the claim docket shall be examined by the court and approved or disapproved, in the same manner as is provided for claims against the estates of decedents. [Id.]

Art. 4248. [4218] [2715] [2633] May contest claim.—Any person may contest the approval of a claim, or any part thereof, and shall be entitled to process for witnesses and the production of testimony as in ordinary suits. [Id.]

Art. 4249. [4219] [2716] [2634] Hearing.—Although a claim be properly authenticated and allowed, if the court is not satisfied that it is just, he shall examine the claimant and guardian under oath and hear other evidence. If not then entirely convinced by evidence other than the testimony of the claimant that the claim is just, it shall be disapproved. [Id.]

Art. 4250. [4220–22] Court indorsement.—When a claim is acted on by the court, he shall indorse thereon, or annex thereto, a memorandum in writing, signed officially, stating the action of the court upon such claim, and shall also enter such action upon the claim docket. Such order of approval or disapproval shall have the force and effect of a judgment. [Id.]

Art. 4251. [4223] [2720] [2638] Lost claim.—When a claim has been lost, the claimant may make an affidavit of the facts and present it to the guardian, with the same effect as the claim itself; but in such case, before the court shall approve it, the claim must be proved by competent testimony, other than such claimant's affidavit or oath, produced in court or taken by deposition. [Id.]

Art. 4252. [4221] [2718] [2636] Appeal.—When a claimant or any person interested in a ward shall be dissatisfied with the action of the court in approving or disapproving a claim in whole or in part, he may appeal therefrom to the district court, as in other cases.

Art. 4253. [4224] [2721] [2639] Guardian's claim.—A claim which the guardian held against the ward at the time of his appointment, or which has since accrued, is exhibited by being filed, verified by the affidavit of the guardian; after which it takes the same course as other claims. [Id.]

Art. 4254. [4225] [2722] [2640] "Exhibited claim."—A claim is said to be legally exhibited:

1. When it is properly presented to the guardian, and after being allowed by him, is filed.

2. When, after being rejected, suit is commenced thereon. [Id.]

Art. 4255. [4226] [2723] [2641] "Established claim."—A claim is said to be established:

1. When it has been allowed by the guardian and approved by the court.

2. When in a suit thereon, it has been sustained by the judgment of the proper court. [Id.]

Art. 4256. [4227] [2724] [2642] Time of exhibit.—Claims which have not been legally exhibited within the year may be exhibited at any time afterward, before the estate is closed, or suit on such claims will be barred by the general law of limitation. [Id.]

Art. 4257. [4228] [2725] [2643] Limitation interrupted.—The general law of limitations is interrupted:

1. By filing a claim which has been allowed.

2. By bringing a suit upon a rejected or disapproved claim within ninety days after such rejection or disapproval.

Art. 4258. [4229] [2726] [2644] Purchase by guardian.—It shall be unlawful for a guardian, either directly or indirectly, to purchase for his own use any claim against the estate of his ward. Upon satisfactory proof of the violation of this provision, the court shall disapprove the claim.

Art. 4259. [4230] [2727] [2645] Filing claim.—When a claim has been established by judgment, a certified copy of such judgment shall be filed with the clerk of the court in which the guardianship is pending, and entered upon the claim docket as other claims are entered. [Id.]

Art. 4260. [4231] [2728] [2646] Cost of exhibition, etc.—The costs incurred in the exhibition and establishment of claims shall be taxed as follows:

1. If a claim be allowed and approved, the estate shall pay the costs.

2. If a claim be allowed, but disapproved, the claimant shall pay the costs.

3. If a claim which has been rejected be established, the estate shall pay the costs. [Id.]

Art. 4261. [4232] [2729] [2647] Claim docket.—The claim docket required to be kept in the estates of decedents shall be used also for the estates of wards under the same rules as far as applicable.

Art. 4262. [4233] [2730] [2648] Payment of claims.—The guardian shall pay all claims against the estate of his ward that have been allowed and approved, or established by suit, as soon as practicable. The court may, either in term time or vacation, direct the order in which the claims against the estate shall be paid, and the amount to be paid on each claim, when the funds are not sufficient to pay them all in full.

Art. 4263. [4234] [2731] [2649] Order for payment.—Any creditor of an estate whose claim has been approved by the court, or established by judgment, may, upon written application to the court at a regular term thereof, obtain an order for the payment of such claim, where there are funds in the hands of the guardian subject thereto, or, if there be no funds, or not sufficient for the payment of such claim, and if to await the receipt of funds from other sources would involve an unreasonable delay, an order shall be made for the sale of property of the estate sufficient to pay the debt. [Id.]

Art. 4264. [4235] [2732] [2650] Execution against guardian.—If a guardian shall fail on demand to pay a claim ordered by the court to be paid, upon affidavit of the demand and failure to pay being filed with the clerk of the court making such order, an

execution shall be issued for the amount ordered to be paid such claimant, and for the costs of such proceeding against the property of such guardian. [Id.]

Art. 4265. [4236] [2733] [2651] Sureties cited.—If such execution be returned not satisfied, the sureties upon such guardian's bond may be cited to appear at a regular term of the court from which such execution issued to show cause why judgment should not be rendered against them for such debt, interest and costs. [Id.]

Art. 4266. [4237] [2734] [2652] Citation and judgment.—Citation in such case may be issued to any county in the State; and upon the return thereof duly served, if good cause to the contrary be not shown, the court shall render judgment against the sureties so served in favor of the claimant for the amount of the claim ordered to be paid as aforesaid, and remaining unpaid, and ten per cent damages thereon, together with interest and costs; and execution may issue thereon. [Id.]

CHAPTER 12.—LUNATICS AND DRUNKARDS

Art.
4267. Warrant.
4268. Duty of county officer.
4269. Requisites of information.
4270. Jury impaneled.
4271. Proceedings and trial.
4272. Appointment of guardian.
4273. New trial.
4274. Provisions applicable.
4275. Support of ward's family.
4276. Prior right.
4277. Confinement of ward.
4278. Apprehension.
4279. Liability for maintenance.
4280. Expenses of confinement.
4281. County may recover.
4282. Restoration.
4283. Trial.
4284. Order of discharge.

Article 4267. [4238] [2735] [2653] Warrant.—Upon information that any person of the county is of unsound mind, or is an habitual drunkard, and is without a guardian, if satisfied that there is a good cause for the exercise of his jurisdiction, the county judge shall, either in term time or in vacation, issue a warrant to the proper officer commanding that such person be brought before him at a time and place named in such warrant. [Acts 1876, p. 187; G. L. vol. 8, p. 1023.]

Art. 4268. [4239] [2736] [2654] Duty of county officer.—Any county officer who may discover any person who resides in the county to be of unsound mind, and without a guardian, shall file information thereof with the county judge, who shall issue a proper warrant.

Art. 4269. [4240] [2737] [2655] Requisites of information.—Such information shall state that to the best of the knowledge and belief of affiant that such person is of unsound mind, or is an habitual drunkard, and shall state the name of the person so charged; or if unknown, such person shall be described and such information shall be subscribed and duly sworn to by the informant.

Art. 4270. [4241] [2738] [2656] Jury impaneled.—When the person charged is brought before the judge he shall, either in term time or in vacation, cause to be impaneled a qualified jury to try the case and decide whether such person is of unsound mind, or is an habitual drunkard.

Art. 4271. [4242] [2739] [2657] Proceedings and trial.—The case shall be docketed in the name of the county as plaintiff, and the person against whom the information is filed as defendant, and the proceedings and trial therein shall be governed by the same rules that govern in ordinary suits in the county court.

Art. 4272. [4243] [2740] [2658] Appointment of guardian.—If it be found by the jury that the defendant is of unsound mind, or is an habitual drunkard, as charged, the Court shall, upon application filed within six (6) months after due adjudication thereof, proceed to appoint a guardian of the person and estate (or either) of such defendant, after the issuance and service of notice as required by Articles 4114 and 4115 of the Revised Civil Statutes, 1925, as amended by Chapter 254, Acts of 1935. [Acts 1876, p. 187; Acts 1941, 47th Leg., p. 867, ch. 541, § 5.]

Art. 4273. [4244] [2741] [2659] New trial.—The court may, for good cause shown, at any time within ten days after the verdict has been returned, set aside such verdict and grant a new trial to either party; but, when two juries have concurred in a case, the second verdict shall not be set aside. [Acts 1876, p. 187.]

Art. 4274. [4245] [2742] [2660] Provisions applicable.—Each provision of this title relating to the guardianship of the persons and estates of minors shall apply to the guardianship of the persons and estates of persons of unsound mind, and habitual drunkards, in so far as the same are applicable.

Art. 4275. [4246] [2743] [2661] Support of ward's family.—The court by which any person of unsound mind or habitual drunkard is committed to guardianship may make orders for the support of his family and the education of his children when necessary. [Id.]

Art. 4276. [4247] [2744] [2662] Prior right.—If the person committed to guardianship is married, the husband or wife of such person, as the case may be, shall be entitled first in order to the guardianship.

Art. 4277. [4248] [2745] [2663] Confinement of ward.—If any person shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, the guardian or other person under whose care he may be, and who is bound to provide for his support, shall confine him in some suitable place until the first regular term of the county court of his county, when the court shall make such order for the restraint, support and safe-keeping of such ward as the circumstances may require. [Id.]

Art. 4278. [4249] [2746] [2664] Apprehension.—If any such person of unsound mind as is specified in the preceding article shall not be confined by those having charge of him, or if there be no person having such charge, any magistrate may cause such insane person to be apprehended and may employ any person to confine him in some suitable place until the county court shall make further order thereon. [Id.]

Art. 4279. [4250] [2747] [2665] Liability for maintenance.—Where the person of unsound mind or habitual drunkard has no estate of his own, he shall be maintained:

1. By the husband or wife of such person, if able to do so.
2. By the father or mother of such person, if able to do so.
3. By the children and grandchildren of such person, if able to do so.
4. By the county in which said person has his residence [Id.]

Art. 4280. [4251] [2748] [2666] Expenses of confinement.—The expenses attending the confinement of an insane person shall be paid by the guardian out of the estate of the ward, if he has an estate; and if he has none, such expense shall be paid

by the person bound to provide for and support such insane person; and, if not so paid, the county shall pay the same. [Id.]

Art. 4281. [4252] [2749] [2667] County may recover.—In all cases of appropriations out of the county treasury for the support and confinement of any person of unsound mind or habitual drunkard, the amount thereof may be recovered by the county from the estate of such person, or from any person who, by law, is bound to provide for the support of such person, if there be any such person able to pay for same. [Id.]

Art. 4282. [4253] [2750] [2668] Restoration.—If any person shall allege in writing and under oath that a person who has been adjudged to be of unsound mind or an habitual drunkard has been restored to his right mind or to sober habits, the guardian of the person and of the estate of such ward shall be cited to appear before the county judge on a day and at a place named in such citation, either in term time or in vacation, and show cause why such ward should not be adjudged to be of sound mind or no longer an habitual drunkard and discharged from further guardianship, or the guardian may appear without such citation. Provided further that all judgments of the Courts of Texas heretofore declaring person to be of unsound mind or an habitual drunkard, and which have since been set aside, are hereby validated and recognized as valid judgments of restoration of sanity and sobriety. [Acts 1876, p. 187; G.L. vol. 8, p. 1023; Acts 1929, 41st Leg., p. 286, ch. 131, §§ 1, 2.]

Art. 4283. [4254] [2751] [2669] Trial.—If the facts of such alleged restoration be doubtful, the court shall, either in term time or in vacation, cause a qualified jury to be impaneled to try the issue as in the first instance, and if such just[1] finds that the ward has been restored to his right mind, or has reformed, he shall be adjudged a person of sound mind or no longer an habitual drunkard and discharged from guardianship by an order to that effect; and the guardian shall immediately settle his accounts and deliver all the property remaining in his hands to such ward. [Acts 1876, p. 187; G.L. vol. 8, p. 1023; Acts 1929, 41st Leg., p. 286, ch. 131, §§ 3, 4.]

[1] So in enrolled bill. Should probably read "jury".

Art. 4284. [4255] [2752] [2670] Order of discharge.—If the fact of such alleged restoration be not doubtful, the court may, without the intervention of a jury, make the order adjudging a person to be of sound mind or no longer an habitual drunkard and discharging the ward from guardianship, as provided in the preceding article. [Acts 1876, p. 187; G.L. vol. 8, p. 1023; Acts 1929, 41st Leg., p. 286, ch. 131, §§ 5, 6.]

CHAPTER 13.—NON-RESIDENT GUARDIANS AND WARDS

Art.
4285. Letters of guardianship.
4286. May remove property.
4287. Delivery of property.
4288. Requisites of removal.
4289. [Repealed.]

Art. 4285. [4256] [2753] [2671] Letters of guardianship.—Where a guardian and his ward are nonresidents, such guardian may file in the County Court of any county where all or part of said ward's estate is located, a full and complete transcript from the records of a Court of competent jurisdiction where he and his ward reside, showing that he has been appointed and has qualified as guardian of the estate of such ward; which said transcript shall be certified by the Clerk of the Court in which the proceedings were had, under the seal of such Court, if there be one, together with a certificate from the Judge, Chief Justice, or presiding Magistrate of such Court, as the case may be, that the attestation of such transcript is in due form; and upon the filing of such transcript the same may be recorded, and the guardian shall be entitled to receive letters of guardianship of the estate of such minor, person of unsound mind, or habitual drunkard situated in this State, upon filing a bond with sureties as provided in Article 4141. [Acts 1876, p. 180; G.L. vol. 8, p. 1011; Acts 1st C.S.1923, p. 13; Acts 1937, 45th Leg., 1st C.S., p. 1803, ch. 27, § 1.]

Art. 4286. [4257] [2754] [2672] May remove property.—Upon the recovery of the property of the ward, if it be personal property, such guardian may remove the same out of the State, unless such removal would conflict with the tenure of such property, or the terms and limitations under which it is held; and if it be real property, he may obtain an order from the Court in this State having jurisdiction of such estate for the sale of it and remove the proceeds; or he may obtain an order under the conditions and upon a proper application, as required of resident guardians, to rent or lease such real estate for agricultural, business, or residence purposes, or he may obtain an order to make oil and gas and other mineral leases upon such real property and may if the order of the Court so directs remove the proceeds. Such sale, leases, oil and gas and other mineral leases shall be made, returned, and acted upon by the Court as other sales of real estate, leases, oil and gas and other mineral leases by a resident guardian made in accordance with this title. [Acts 1876, p. 180; G.L. vol. 8, p. 1011; Acts 1st C.S.1923, p. 13; Acts 1937, 45th Leg., 1st C.S., p. 1803, ch. 27, § 2.]

Art. 4287. [4258] [2755] [2673] Delivery of property.—Any resident executor, administrator or guardian, having any of the estate of such ward may be ordered by the court to deliver the same to such non-resident guardian. [Acts 1876, p. 180; G. L. vol. 8, p. 1011.]

Art. 4288. [4259] [2756] [2674] Requisites of removal.—There shall be no removal from the State of any of such property, until all debts known to exist against the estate have been paid, or the payment thereof secured by bond payable to the county judge and approved by the clerk. [Id.]

Art. 4289. [Repealed by Acts 1937, 45th Leg., 1st C.S., p. 1803, ch. 27, § 3.]

CHAPTER 14.—REMOVAL OF GUARDIANSHIP

Art.
4290. Application.
4291. Citation to sureties.
4292. Action of court.
4293. Transcript.
4294. Prerequisites.
4295. Guardianship continued.
4295a. Removal of guardianships from one county to another county.

Sec.
1. Procedure for removal.
2. Removal ordered on hearing.
3. Application for appointment of new guardian.
4. Termination of guardianship in old county and transfer of records to new county.
5. Receipt by county clerk.
6. Delivery of estate to new guardian.
7. Discharge of old guardian; venue of action against former guardian.
8. Attorney fees in action against former guardian.

Article 4290. [4261] [2758] [2676] Application.—When a guardian desires to remove the transaction of the business of the guardianship from one county to another, he shall file in the court where such guardianship is pending a written application asking for authority to do so, and state in such appli-

cation his reasons for desiring such removal. [Acts 1876, p. 185; G. L. vol. 8, p. 1021.]

Art. 4291. [4262] [2759] [2677] Citation to sureties.—Upon the filing of such application, the clerk shall issue citation to the sureties upon the bond of such guardian, citing them to appear at the time fixed in such citation and show cause why such application should not be granted. [Acts 1876, p. 185; G.L. vol. 8, p. 1021; Acts 1935, 44th Leg., p. 664, ch. 279, § 1.]

Art. 4292. [4263] [2760] [2678] Action of court.—Upon the hearing of the application, if no good cause be shown to the contrary, and if it appears that the removal of the guardianship would be to the interest of the ward, the court shall enter an order authorizing such removal upon the payment of all costs that have accrued.

Art. 4293. [4264] [2761] [2679] Transcript.—When such order of removal has been made the clerk shall record all papers of the guardianship required to be recorded, and that have not already been recorded, and shall make out a full and complete certified transcript of all the orders, decrees, judgments and proceedings in such guardianship, and, upon the payment of his fees therefor, shall transmit such transcript, together with all the original papers in the case, to the county clerk of the county to which such guardianship has been removed.

Art. 4294. [4265] [2762] [2680] Prerequisites.—The order removing a guardianship shall not take effect until such transcript has been filed in the office of the county clerk of the county to which such guardianship has been ordered removed, and until a certificate of that fact from the clerk filing the same, under his official seal, has been filed in the court making such order of removal.

Art. 4295. [4266] [2763] [2681] Guardianship continued.—When a guardianship has been removed from one county to another, in accordance with the provisions of this chapter, it shall be proceeded with in the court to which it has been removed as if it had been originally commenced in said court; but it shall not be necessary to record any of the papers in the case that have been recorded in the court from which the same has been removed.

Art. 4295a. Removal of guardianships from one county to another county.

Procedure for removal

Sec. 1. From and after the passage of this Act, in all cases where guardianships have been pending, or may be hereafter begun, in one county of this State, and wherein in such cases the guardian of the ward's estate is in one person, or corporation, and the natural guardian, or the guardian of the person, is a different person, and where in such cases, the ward removes his residence to some other county of this State, and where, at the same time, the guardian of such ward's estate retains his, or its, residence in a different county, the parent or natural guardian, or any other proper person, acting for the ward, may make known by written application the desirability of the complete removal of such guardianship from the old county to that of the residence of the ward, and to which he has removed, and such application shall set forth such removal of the ward's residence, naming the adopted county and it shall be the duty of the Clerk of the Court where the guardianship has been pending to issue citations forthwith to the guardian of the ward's estate, and to the sureties on his or its bond, making known the filing of such application for the termination of the guardianship in such county, and such issuance of notices, or citations, and action thereon, and the return thereof shall be the same, as is now provided by law in probate matters.

Removal ordered on hearing

Sec. 2. Upon the hearing of such application, if it appears to the Court that the ward has changed his residence to the county named in such application, and if at such hearing it is further made to appear that for any reason, the guardian of such ward's estate cannot, or will not, remove his, or its, residence to such new county to which the ward has removed, it shall be mandatory for the Court hearing such application to enter its order for the complete removal of the guardianship to such other county named in the application, upon compliance with the conditions hereinafter provided.

Application for appointment of new guardian

Sec. 3. Any proper person or corporation, having bona fide residence in the county to which the ward has removed, may make written application to the Court in such county, setting forth the facts of the changed residence, and the necessity for the appointment in the new county of a guardian of the estate of the ward, whereupon the Clerk of the county shall issue due notices of the application, as the law now provides in matters pertaining to appointments of guardians, and upon due hearing of such application such applicant, or any other worthy and proper person, shall be appointed guardian of such ward's estate. Such newly appointed guardian shall forthwith qualify in the time and in the manner as now provided by law generally in guardianships.

Termination of guardianship in old county and transfer of records to new county

Sec. 4. When the fact of the appointment, and the due qualifications of the new guardian of such ward's estate, in the county to which the ward has moved his residence, is made to appear to the Court of the county from which the guardianship is being removed, it shall be the duty of the Court to enter its order removing such guardianship to such new county, and this order shall in all things terminate such guardianship in such old county, and in such order the Court shall direct the Clerk of the Court to enter such order, and thereupon to record all papers, by law required to be recorded, where not already recorded, and to make a complete certified transcript of all such papers, orders, decrees, judgments and other proceedings in such guardianship, and upon being paid all fees and costs for such service, to forthwith transmit such transcript, with all the original papers in the case, to the Clerk of the Court to which the guardianship is being removed, and wherein the newly appointed guardian resides, and has duly qualified, according to law.

Receipt by county clerk

Sec. 5. Upon receipt of the transcript and the papers, the Clerk of the county to which the guardianship is being removed, shall certify receipt of same, under the seal of his office, and shall forward such receipt to the Clerk from whom received, and this fact shall make effective and complete such removal, and such guardianship shall then proceed in the county to which removed the same as if originally commenced therein.

Delivery of estate to new guardian

Sec. 6. The newly appointed guardian of the ward's estate, in the county to which the guardianship has been moved, upon duly qualifying and giving of adequate and sufficient bond, as the law now directs, and in the time and manner as the law now directs, shall make known such fact to the old guardian of the ward's estate, in the county from which the guardianship has been removed, by exhibiting his letters of guardianship, and shall call upon the old guardian of the estate to deliver into his hands full and complete control of all properties, monies, and assets, of whatever nature, constituting and comprising the estate of the ward, and it shall be the duty of the old

guardian of such ward's estate forthwith to deliver the corpus of the estate into the hands of such new guardian. (And at the same time such old guardian shall render a detailed, full and complete accounting under oath, showing what monies and properties came into his hands, and what disposition has been made of the same; and shall exhibit with his or its report such receipts and disbursements as have been made, and such accounting shall be made to the Court to which the guardianship has been removed, and in all things shall be given under the rules and law as it now pertains to the closing of a guardianship, and final accounting); provided that in all such cases the old guardian shall have at least thirty (30) days from the date of his notification of the qualification of the new guardian of the estate of the ward, to deliver into such new guardian's hands the corpus of the ward's estate, and all properties comprising it, and provided further that such old guardian shall have thirty (30) days from date of his notification of the qualification of the newly appointed guardian in which to make and file his final account with the Clerk of the county to which the guardianship has been removed.

Discharge of old guardian; venue of action against former guardian

Sec. 7. If such final account of the old guardian shows prudent management of the ward's estate, and that it has been managed in all things according to the law now governing such matters, it shall be the duty of the Court to which the guardianship has been removed to enter its order fully discharging such guardian of the ward's estate, and his bondsmen, but if such report and final accounting shows gross irregularities in the lending of the funds of the estate, or illegal mismanagement of the estate, or conversion of the ward's estate, or any part thereof, or any other actionable negligent act, whether of omission or commission, or if the said old guardian fails and refuses, for any reason, to turn over to the newly appointed guardian of the ward's estate, the corpus of the same, and the assets comprising it, and suit therefor becomes necessary against the guardian, or his bondsmen, or if such old guardian has been guilty of actionable negligence in any manner in his management of the estate resulting in financial loss to the ward, whether in the manner of investment of the funds, or otherwise, or has failed to account to the new guardian fully for everything to which the ward is entitled, under the law, the venue of all such suits shall be in the county to which the guardianship has been removed, and in the Court having jurisdiction of the amount, or, at the election of the newly appointed guardian, or some other proper person acting for them, in the county of the residence of the old guardian.

Attorney fees in action against former guardian

Sec. 8. Provided futher, that in all suits for the recovery of the corpus of the ward's estate growing out of any actionable negligence on the part of the old guardian, where the old guardian shall be cast in such suit, the newly appointed guardian or any other proper person acting for the ward, shall be entitled to a reasonable attorney's fee against such old guardian and the sureties on his bond, and same shall be assessed against them as a penalty for his actionable wrongs, and shall be recoverable along with the corpus of the ward's estate. [Acts 1933, 43rd Leg., p. 96, ch. 47.]

Section 9 of this Act, provides that if any section is held invalid, such holding shall not affect the remainder and section 10 repeals all conflicting laws.

CHAPTER 15.—FINAL SETTLEMENT

Art.
4296. When settled.
4297. Account.
4298. Guardian may be cited.
4299. Citation to ward.
4300. Citation to executor.
4301. Publication of citation.
4302. Action of the court.
4303. Restatement of account.
4304. Proof of account.
4305. Ward's attorney.
4306. Bad debts.
4307. Offsets and credits.
4308. Failure of guardian.

Article 4296. [4267] [2764] [2682] When settled.—When the ward dies; or, when the estate of the ward is exhausted; or, if a minor, arrives at the age of twenty-one (21) years; or, if a minor, has his disabilities of minority removed as provided by law by a Court of competent jurisdiction; or, if a female, marries; or, if a person of unsound mind or habitual drunkard, is restored and discharged from guardianship, the guardianship shall be immediately settled and closed and the guardian discharged, as provided in this Chapter. [As amended Acts 1943, 48th Leg., p. 414, ch. 281, § 1; Acts 1947, 50th Leg., p. 51, ch. 39, § 1.]

Art. 4297. [4268] [2765] [2683] Account.—The guardian shall file with the clerk of the court in which the guardianship is pending his account for final settlement of such guardianship; which account shall show fully and completely:

1. The property, rents, revenues and profits received by the guardian and belonging to his ward during his guardianship.
2. The disposition made of such property, rents, revenues, and profits.
3. The expenses and debts, if any, against the estate remaining unpaid.
4. The property of the estate remaining in the hands of such guardian, if any.
5. Such other facts as may be necessary to a full and definite understanding of the exact condition of the guardianship.
6. Such account shall be subscribed and duly sworn to by the guardian.

Art. 4298. [4269] [2766] [2684] Guardian may be cited.—If the guardian fails to file his account for final settlement at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the estate, cause such guardian to be cited to appear at a regular term of the court and file such account.

Art. 4299. [4270] [2767] [2685] Citation to ward.—Upon the filing of an account for final settlement, the clerk shall, if the ward be living and resident in this State, and his residence be known, issue a citation notifying such ward of the filing of such account and of the time when the same will be acted upon, and that he may appear and contest such account. [As amended Acts 1935, 44th Leg., p. 640, ch. 255, § 1.]

Art. 4300. [4271] [2768] [2686] Citation to executor.—If the ward be not living but there is an executor or administrator of his estate legally qualified, such executor or administrator shall be cited as provided in the preceding article.

Art. 4301. [4272] [2769] [2687] Publication of citation.—If the ward be not living, and there be no executor or administrator of his estate, or if the ward be a non-resident of the State, or if his residence be unknown, citation shall be published once a week for three successive weeks in some newspaper published in the county if there be one regularly published therein; if not, then such citation shall be duly posted for at least twenty days before the return term thereof.

Art. 4302. [4273] [2770] [2688] Action of the court.—After citation has been duly served, the court shall proceed to examine the account for final settlement, and to hear any exception or objection

thereto, and the evidence in support of or against such account, and if the same is found to be just and correct, an order shall be entered approving it and directing the guardian to deliver the estate remaining in his hands to the ward or other person legally authorized to receive the same. Upon compliance with such order, the guardian shall be discharged, and such guardianship closed by an order to that effect entered upon the minutes.

Art. 4303. [4274] [2771] [2689] Restatement of account.—If the account be found to be incorrect in any particular, the court shall cause the same to be corrected and restated, and make such order in relation thereto as may be necessary to a full and fair settlement of the guardianship.

Art. 4304. [4275] [2772] [2690] Proof of account.—The guardian must produce and file proper vouchers for every item of credit claimed by him in his account, or support the same by other satisfactory evidence.

Art. 4305. [4276] [2773] [2691] Ward's attorney.—When the ward is dead and there is no executor or administrator of his estate, or when the ward is a non-resident, or his residence is unknown, the court shall appoint an attorney to represent the interest of such ward in the final settlement with the guardian, and shall allow such attorney reasonable compensation for his services out of the ward's estate.

Art. 4306. [4277] [2774] [2692] Bad debts.—In the settlement of the account of the guardian, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation. [Acts 1876, p. 185, § 130.]

Art. 4307. [4278] [2775] [2693] Offsets and credits.—In the settlement of any of the accounts of the guardian, he shall account for the reasonable value of the labor or services of his ward, or the proceeds thereof, if any such labor or services have been rendered by such ward. The guardian shall be entitled to reasonable credits for the board, clothing and maintenance of his ward.

Art. 4308. [4279] [2776] [2694] Failure of guardian.—When a guardian who has been ordered by the court, upon final settlement, to deliver the estate to the ward or other person legally authorized to receive the same fails to obey such order, he may be attached and punished as for a contempt of court.

CHAPTER 16.—COSTS OF GUARDIANSHIP

Art.
4309. Guardian of person.
4310. Commissions of guardian.
4311. Extra compensation.
4312. Expenses.
4313. Pay of appraisers.
4314. Costs against guardian.
4315. Costs against applicant.
4316. Unsound mind.
4317. Laws applicable.

Article 4309. [4280] [2779] [2697] Guardian of person.—The guardian of the person alone is entitled to no compensation. [Acts 1876, p. 187; G. L. vol. 8, p. 1023.]

Art. 4310. [4281] [2780] [2698] Commissions of guardian.—The guardian of the estate shall not be entitled to or receive any fee or commission on the estate of the ward when first delivered to him; but shall be entitled to a fee of five per cent on the gross income of the ward's estate and five per cent on all money paid out. The term "money paid out" shall not be construed to include any money loaned or invested or paid over on the settlement of the guardianship. [Acts 1876, p. 187; Acts 1913, p. 321; G. L. vol. 8, p. 1023.]

Art. 4311. [4282] [2781] [2699] Extra compensation.—If the guardian manages a farm, plantation, manufactory or other business of his ward, the court may allow him a reasonable compensation for such services. [Id.]

Art. 4312. [4283] [2782] [2700] Expenses.—All necessary and reasonable expenses incurred by the guardian in the preservation and management of the ward's estate, and in collecting or attempting to collect claims or debts due the ward, and in recovering or attempting to recover property to which the ward has a title or claim, and all reasonable attorneys' fees necessarily incurred in the management of such guardianship, shall be allowed the guardian, to be paid out of the estate on satisfactory proof thereof being made to the court. [Id.]

Art. 4313. [4284] [2783] [2701] Pay of appraisers.—Appraisers appointed by the court to appraise the property of the ward shall be allowed two dollars each for each day that they are necessarily engaged in the performance of such duty, to be paid out of the estate.

Art. 4314. [4285] [2784] [2702] Costs against guardian.—In any case where the guardian shall neglect the performance of any duty required of him and shall be cited to appear before the court on account thereof, he shall pay all costs of such proceeding out of his own estate; and the court shall adjudge the same against him. [Id.]

Art. 4315. [4286] [2785] [2703] Costs against applicant.—In any case where a party shall make any application or opposition, and on the trial thereof shall be defeated, all costs occasioned by such application or opposition shall be adjudged against such party by the court. [Id.]

Art. 4316. [4287–8] Unsound mind.—When any person is found to be of unsound mind or to be an habitual drunkard, the cost of the proceeding shall be paid out of his estate; or, if his estate be insufficient to pay the same, such costs shall be paid out of the county treasury, and the judgment of the court shall be accordingly. If the defendant be discharged, the person at whose instance the proceeding was had shall pay the costs of such proceeding; unless the informant be an officer acting in his official capacity in filing the information, in which case the costs shall be paid out of the county treasury. [Id.]

Art. 4317. [4289] [2788] [2706] Laws applicable.—The provisions of law regulating costs and security therefor shall apply to matters of guardianship when not expressly provided in this title. [Id.]

CHAPTER 17.—APPEAL

Art.
4318. Right of appeal.
4319–4327. [Repealed.]
4328. Bill of review.
4329. Certiorari.

Article 4318. [4290] [2789] [2707] Right of appeal.—Any person who may consider himself aggrieved by any decision, order or judgment of the court, or by any order of the judge thereof, in relation to guardianships, may appeal to the district court, as a matter of right, without bond. [Acts 1876, p. 192; G. L. vol. 8, p. 1028.]

Arts. 4319–4327. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, rules 316–343.

Art. 4328. [4300] [2799] [2717] Bill of review.—Any person interested may, by a bill of review, filed in the court in which the proceedings were had, have any decision, order or judgment rendered by such court, or by the judge thereof, revised and cor-

rected on showing error therein. But no process or action under such decision, order or judgment shall be stayed except by writ of injunction. [Acts 1876, p. 192.]

Art. 4329. [4301] [2800] [2718] Certiorari.—Any person interested may also have any decision, order or judgment of the county court or county judge revised and corrected by writ of certiorari from the district court under the same rules and regulations as are provided in estates of decedents.

TITLE 70—HEADS OF DEPARTMENTS

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CHAPTER 1.—SECRETARY OF STATE

Art.
4330. Appointment and bond.
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4339. Receipt for books.
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4341. Commission.

Article 4330. [4302–3] Appointment and bond.—By and with the advice and consent of the Senate, the Governor shall appoint a Secretary of State who shall continue in office during the term of service of the Governor by whom he was appointed. Such appointee shall first give a bond in the sum of twenty-five thousand dollars payable to and to be approved by the Governor, conditioned that he will faithfully execute the duties of his office. [Acts 1899, p. 3.]

Art. 4331. [4304–5–6–7–8–13–17–18] General duties.—Among other duties the Secretary of State shall:

1. Keep his office in the City of Austin or other place where the sessions of the Legislature may be held.

2. Appoint a chief clerk [1] and such number of assistant clerks as may be authorized by law.

3. Affix the seal of the State to all certificates of official character that may emanate from his office.

4. Keep a fair register of all the official acts of the Governor, and when required shall lay the same and all minutes and other papers in relation thereto before the Legislature or either branch thereof.

5. Keep in a separate suitable book a complete register of all the officers appointed and elected in this State, and commission them when not otherwise provided by law.

6. Arrange and preserve all the books, maps, parchments, records, documents, and all papers that have been or may be properly deposited there, and sealed with the seal of the State, and also similar copies of any act, law or resolution of the United States, or either of them, from the originals in his office, which copies shall be as legal and conclusive in evidence, and to all intents and purposes, in the courts of this State, as the originals would have been; and furnish on request such copies to the Governor, the Legislature or either branch thereof.

7. Attend at every session of the Legislature to receiving bills which have become laws, and immediately after the close thereof cause all enrolled joint resolutions thereof and all such bills to be bound together in a volume to be kept in his office, the date of the session to be placed thereon, and deliver a certified copy thereof and index thereof to the Board of Control, and carefully examine and compare the printed copy with the certified copy and correct each error contained in the former.

8. Distribute to the Governor and heads of departments, and to each member of the Legislature, a copy of the printed journals of both houses; and forward to the county judge of each county two copies of said journals, one to be deposited in the office of the clerk of the district court and the other in the office of the county clerk for the use of said courts respectively.

9. Turn over to the person in charge of the State Library, immediately upon their receipt, all books, maps, charts or other publications of a political or miscellaneous character received at his office, and all printed volumes of the statutes or laws of any Nation, State or Territory, and in like manner turn over to the Supreme Court Librarian all volumes of reports of any courts of any other Nation, State or Territory received by him.

10. Forward to the Librarian of Congress, the Secretary of State of the United States, the Secretary of the Treasury of the United States, and the executive departments of each State of the Union, to each foreign librarian or government with whom a system of library exchange may be established, as he may deem advisable, copies of all laws and judicial reports printed and published by order of the Legislature at the expense of the State.

11. Forward to each county clerk for the use of the county one copy of each Act of Congress which may be received in his office.

[1] Office of chief clerk abolished and office of Assistant Secretary of State created, see article 4340 post.

Art. 4331a. Duties as to records of receivers.—That it shall be the duty of the Secretary of State, on the payment of the sum of two dollars and fifty cents, to record in a well bound book to be kept in his office, the names of all trustees appointed by any State organization of any church communion in the State, provided such appointment is duly authenticated by some officer authorized by law in this State to take acknowledgment of deeds; and it shall be the further duty of the Secretary of State to furnish a certified copy of said appointments to any court in this State on application for the same by any judge or clerk of any court in this State, and the sum of one dollar and fifty cents shall be taxed as cost for copy in any proceeding in which such copy may be used, to be collected and paid for as any other costs; and it shall be the duty of the judge of any court before making the appointment of any receiver, to apply to the Secretary of the State to be furnished with such certified copy before such appointments are made. That any communion shall have the right from time to time to change, appoint or elect its trustee or trustees. [Acts 1927, 40th Leg., p. 68, ch. 45, § 4.]

Art. 4331b. Exchange of reports.—The Secretary of State is hereby authorized and directed in addition to the exchanges he is now authorized to make under existing law, to make exchanges of the reports of the several appellate courts of this State, of the Supreme Court and the Court of Criminal Appeals, of the Session Acts of the Legislature, of the existing and future revised Civil and Criminal Statutes of this State, and of other State publications and department reports of this State, for the court reports, session acts, revised statutes, civil and criminal, and other State publications and department reports of the United

States Government, of the other States of the Union, and of foreign countries, for the benefit of the law library of the University of Texas, provided that the Secretary of State shall always keep on hand a sufficient number of copies of all State publications to meet the reasonable current demands of the State. [Acts 1927, 40th Leg., p. 92, ch. 66, § 1.]

Art. 4332. Sale of reports.—The Secretary of State shall receive from the Supreme Court Reporter the printed and bound volumes of the Supreme Court Reports and the Reports of the Court of Criminal Appeals; he may sell single copies of such reports for the sum of the contract price for printing, exclusive of postage or express charges; he shall deliver to the State Treasurer the proceeds of all sales made by him, and shall make a full statement of such sales in his biennial report. [Acts 1919, p. 60.]

Art. 4333. Advance sheets.—The Secretary of State may transmit advance sheets of the reports as the publishing progresses, upon receipt of the price for the volume. The purchaser may return all the forms of the volume to the Secretary of State without further expense except the cost of transmitting the same to and from the State Department. [Id.]

Art. 4334. [4309] [2807] Reports sent to whom.—The Secretary of State shall deliver, by mail or otherwise, to each appellate judge, the Attorney General, the Governor, each district judge, each professor of law of the University of Texas, the librarian of said University, and to the county judge of each county for the use of the counties, one copy of the reports of said appellate courts hereafter issued; also furnish to each district judge of the United States for Texas one copy of each of said reports for each branch of his courts; and, when it appears that any of the reports of either of said courts have been heretofore furnished and not returned to the Department of State, or when they are hereafter delivered by the State to either of said officers or authorities, the Secretary shall have no authority to send another copy, except on proof that the same have been destroyed by fire, or have been rendered valueless by long use, to be evidenced by the certificate of the officer demanding to be resupplied with such report. [Acts 1887, p. 114; G. L. vol. 9, p. 912.]

Art. 4335. [4310] [2808] Officers entitled to laws.—The following officers shall be entitled to receive one copy of each of all general and special laws hereafter passed by the Legislature, to-wit: The Governor and heads of departments, each member of the Legislature, the judges of the several courts throughout the State, and the clerks of said courts, and each county attorney. The following officers shall be entitled to receive one copy each of all general laws hereafter passed by the Legislature, to-wit: county treasurer, county surveyor, sheriff, assessor of taxes, tax collector, inspector of hides and animals, justice of the peace, constable and county commissioner. [Acts 1885, p. 68; G. L. vol. 9, p. 688.]

Art. 4336. [4311] [2809] How distributed.—The Secretary of State shall distribute the printed laws of each session of the Legislature to the officers named in the preceding article, as follows: He shall mail or deliver in person to the Governor and heads of departments, and to all State or District officers, a copy each, and shall forward to the county judge of each county a sufficient number of said laws to supply each county officer named in the preceding article with a copy. [Acts 1850, p. 99; P. D. 4585; G. L. vol. 3, p. 537.]

Art. 4337. [4312] [2810] May sell copies of laws.—Said Secretary is authorized to sell copies of the general and special laws of the State of Texas that have or may be published at a price not exceeding twenty-five per cent above cost of publishing; provided, that a sufficient number of all laws published be reserved from sale for the use of the State. Any money realized in excess of the costs attending such sale shall be placed to the account of the general revenue in the State Treasury. [Acts 1883, p. 33; G. L. vol. 9, p. 339.]

Art. 4338. [4314–15] Revision.—Whenever a revision of the laws of the State has been or shall be subscribed for, or published by the State, a sufficient number of copies of each volume thereof shall be forwarded to the county judge of each county to furnish one of said copies to each judge of the appeliate and district courts, to each clerk of the district and county courts, and appellate courts, and to each justice of the peace that may be a resident in said county. The Secretary of State shall also deliver to each executive officer at the seat of government one of said copies. [Id.]

Art. 4339. [4316] [2811] Receipt for books.—Whenever any officer shall receive a copy of any report, statute, digest or journal, he shall receipt for the same to the officer distributing it, who shall file such receipt in his office. Said books shall be deemed to belong to the office of said officer to whom they are delivered, and shall, at all reasonable hours, be subject to the examination of any citizen of this State. If any said officer fails or refuses to deliver any said book to his successor in office when demanded by him, the officer so failing or refusing shall be liable to pay such successor the costs and charges that may be necessary to supply the office of such successor with any said book that he shall so fail or refuse to deliver. [Id. P. D. 4588.]

Art. 4340. [4319] [2817] Chief Clerk; Assistant Secretary of State.—The office of Chief Clerk to the Secretary of State is hereby abolished, and the office of Assistant Secretary of State is hereby created. The Assistant Secretary of State shall be an attorney-at-law, and he shall have had at least five (5) years actual practice in this State prior to his appointment and shall perform all the duties required by law to be performed by the Secretary of State when the said Secretary of State is absent or unable to act for any reason. Such assistant shall perform such other duties as shall be required of him by the Secretary of State and his compensation shall be four thousand dollars per annum. There is hereby appropriated out of the State Treasury the sum of $2,500.00 to pay the compensation of said Assistant Secretary of State for the remainder of this fiscal year ending August 31, 1927, and this appropriation shall supersede the present appropriation for the compensation of the Chief Clerk in the Secretary of State's office for the remainder of said fiscal year. The said Assistant Secretary of State shall serve as such so long as the Secretary of State appointing him is in office. [As amended Acts 1927, 40th Leg., p. 55, ch. 39, § 1.]

Art. 4341. Commission.—The Secretary of State shall not be required to forward copies of laws to nor attest the authority of any officer in this State who fails or refuses to take out his commission. [Acts 1919, p. 80.]

CHAPTER 2.—COMPTROLLER OF PUBLIC ACCOUNTS

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Article 4342. [4320] Election and term.—At each biennial general election a Comptroller of Public Accounts shall be elected for a term of two years. The word "Comptroller", whenever used in any law of this State, shall mean the Comptroller of Public Accounts of the State of Texas. [Acts 3rd C. S. 1910, p. 37.]

Art. 4343. [4322] Bond.—Within twenty days after receipt of notice of his election or appointment and before he enters upon the duties of his office, the Comptroller shall give a bond with a good and solvent surety company, authorized to do business in this state, in the sum of seventy-five thousand dollars, payable to and to be approved by the Governor, conditioned that he will faithfully execute the duties of his office. All expense necessary and incident to the execution of such bond shall be paid by the State by appropriation.

If the Comptroller shall willfully neglect or refuse to perform any duty of the Comptroller as set out in this Chapter or elsewhere in the Statutes of Texas he shall forfeit to the State a sum not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for each day that he shall so neglect or refuse to perform such duty; and it is hereby expressly provided that the surety company executing the Comptroller's bond, as herein provided for, shall be jointly and separately liable with the Comptroller for such sums to be forfeited.

The penalties provided for in this chapter shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas; and venue and jurisdiction of such suit is hereby conferred upon the courts of Travis County. [Acts 3rd C.S. 1910, p. 37; Acts 1930, 41st Leg., 5th C.S., p. 230, ch. 73, § 1.]

Art. 4344. Certain duties.—Among other duties the Comptroller shall:

1. Procure a seal with words "Comptroller's Office, State of Texas" engraved around the margin and a five-pointed star in the center, which shall be used as the seal of his office to authenticate all his official acts, except warrants drawn on the State Treasury.

2. Adopt such regulations not inconsistent with the constitution and laws as he may deem essential to the speedy and proper assessment and collection of the revenues of the State.

3. Superintend the fiscal concerns of the State, as the sole accounting officer thereof, and manage the same in the manner required by law.

4. Require all accounts presented to him for settlement not otherwise provided for by law to be made on forms prescribed by him, all such accounts to be verified by affidavit as to their correctness, and he may administer the oath himself in any case in which he may deem it necessary.

5. Prescribe and furnish the form to be used by all persons in the collection of the public revenue and the mode and manner of keeping and stating their accounts.

6. Prescribe forms of the same class, kind and purpose so as to be uniform in size, arrangement, matter and form.

7. From time to time require all persons receiving money or having the disposition or management of any property of the State, of which an account is kept in his office, to render statements thereof to him.

8. Require all persons who have received and not accounted for any money belonging to the State to settle their accounts.

9. Keep and settle all accounts in which the State is interested, including all moneys received by the State as interest and other payments on land and office fees of his and other departments of the State government, and all other moneys received by the State from whatever source and for whatever purpose.

10. Examine and settle the accounts of all persons indebted to the State and certify the amount or balance to the Treasurer, and direct and superintend the collection of all moneys due the State.

11. Audit the claims of all persons against the State in cases where provision for the payment thereof has been made by law, unless the audit of any such claim is otherwise specially provided for.

12. Keep a book to register and index all audited claims against the State, and on the meeting of the regular session of the Legislature make a minute report of the same to both houses thereof, giving the names and amounts of all audited claims.

13. Keep and state all accounts between this State and the United States.

14. Keep journals through which all entries are made in the ledger.

15. Remit or make an allowance to each tax collector in the auditing of his accounts for all sums of money which, in his judgment, have been illegally assessed.

16. Draw warrants on the Treasurer for the payment of all moneys directed by law to be paid out of the Treasury.

17. Suggest plans for the improvement and management of the general revenue.

18. Preserve the books, records, papers and other things belonging in his office and deliver the same in good condition to his successor. [Acts 3rd C.S. 1910, p. 37.]

Art. 4344a. Transfer of balance in dormant fund to General Revenue Fund.—The Comptroller, with the consent and approval of the State Auditor and Efficiency Expert, and the State Treasurer, may, at any time, transfer any balance in any dormant fund, the source of which is unknown or the purpose for which it was collected has become moot, into the General Revenue Fund. Any transfer so made may be subject to appropriation as a refund by the Legislature, should the source and purpose of such fund become known and active at any time in the future. [Acts 1945, 49th Leg., p. 199, ch. 152, § 2.]

Section 1 of the Act of 1945 directed and authorized the Comptroller to transfer certain described funds into the General Revenue Fund.

Art. 4345. [4336] Account of Comptroller.—The account of the Comptroller against the State shall not be passed to the Treasurer until approved by the Secretary of State. [Acts 3rd C. S. 1910, p. 37.]

Art. 4346. [4337] Custodian of obligations.—Except as otherwise specially provided, all deeds to the State, all liens, mortgages, bonds, notes and other securities for money given to the State or any officer for the use of the State, contracts involving pecuniary obligations to the State, and all other documents or instruments creating a pecuniary obligation in favor of the State, shall be deposited in the office of the Comptroller.

Art. 4347. [4339] When accounts closed.—The accounts of the Comptroller shall be annually

closed on the last day of August; and he shall exhibit all books, papers, vouchers and all other matters pertaining to his office, for the examination of either branch of the Legislature, or any committee which may be by them appointed, whenever required by them to do so. [Acts 3rd C. S. 1910, p. 37.]

Art. 4348. [4340] Statement to Governor.—In addition to the reports required by the Constitution, the Comptroller shall exhibit to the Governor, on the first Monday of November of each year, and at such other times as he shall require, an exact and complete statement of the funds of the State, of its revenues, and of the public expenditures during the preceding year (or for such other times as may be required), with a detailed estimate of the expenditures to be defrayed from the Treasury for the ensuing year, specifying therein each object of the expenditures and distinguishing between such as are provided for by general or special appropriation, and such as are required to be provided for by law, and showing the means from which such expenditures are to be defrayed. [Id.]

Art. 4349. [4330–1] Special claims.—Each sheriff, attorney or other party holding claims against the State for which no warrant has been issued, and the appropriation for which has been exhausted, shall present them to the Comptroller for his consideration at least thirty days before the meeting of each regular session of the Legislature. The Comptroller shall not audit any such claim not presented within said time until all claims presented prior to that time have been considered and passed upon by him. [Id.]

Art. 4350. [4332] Warrants on Treasurer.—No warrant shall be issued to any person indebted to the State, or to his agent or assignee, until such debt is paid. [Acts 3rd C.S. 1910, p. 37; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

Art. 4351. [4342] Notified of deficiencies.—All heads of departments, managers of State institutions or other persons intrusted with the power or duty of contracting for supplies, or in any manner pledging the credit of the State for any deficiency that may arise under their management or control, shall, at least thirty days before such deficiency shall occur, make out a sworn estimate of the amount necessary to cover such deficiency until the meeting of the next Legislature. Such estimate shall be immediately filed with the Governor, who shall thereupon carefully examine the same and approve or disapprove the same in whole or in part. When such deficiency claim, or any part thereof, has been so approved by the Governor he shall indorse his approval thereon, designating the amount and items thereof approved and the items disapproved, and file same with the Comptroller; and the same shall be authority for the Comptroller to draw his deficiency warrant for so much thereof as may be approved; but no claim, or any part thereof, shall be allowed or warrants drawn therefor by the Comptroller, or paid by the Treasurer, unless such estimate has been so approved and filed. If there is a deficiency appropriation sufficient to meet such claims, then a warrant shall be drawn therefor and the same shall be paid; but, if there is no such appropriation, or if such appropriation be so exhausted that it is not sufficient to pay such deficiency claim, then a deficiency warrant shall issue therefor; and such claim shall remain unpaid until provision be made therefor at some session of the Legislature thereafter. The provisions of this article shall not apply to fees and dues for which the State may be liable under the general laws. When any injury or damage shall occur to any public property from flood, storm or any unavoidable cause, the estimate may be filed at once but must be approved by the Governor as provided in this article. [Acts 3rd C.S. 1910, p. 37.]

Art. 4351½. Suit against state on claims.—That all concurrent resolutions heretofore adopted at any regular or special session of the legislature of the State of Texas for the purpose of granting to any persons, firms or corporations permission to sue the State of Texas through any of its courts, are hereby validated and made effective to grant such permission, both as to suits already filed and pending in the courts of this state and as to any suits which may hereafter be filed by virtue of the permission granted by such resolutions heretofore adopted. Provided, however, that nothing herein shall operate to create any cause of action against the State of Texas. [Acts 1934, 43rd Leg., 3rd C.S., p. 27, ch. 13, § 1.]

Art. 4351a. Limiting amount of deficiency warrants.—It shall be lawful for the Governor to approve deficiency warrants as provided for in Article 4351, Revised Civil Statutes, 1925, to any amount, the aggregate of which does not exceed Two Hundred Thousand ($200,000.00) Dollars, for all purposes for which he is permitted to approve such deficiency warrants. If any deficiency warrants are approved above this amount, such warrants are invalid and unredeemable by the State Treasurer. [Acts 1927, 40th Leg., p. 232, ch. 158, § 1.]

Art. 4352. [4343] Chief clerk.—The Comptroller shall appoint a chief clerk, who shall take the official oath and give bond in the sum of ten thousand dollars payable in like manner as the bond of the Comptroller, conditioned for the faithful performance of his duties. Said clerk shall perform the duties of the Comptroller when the Comptroller may be unavoidably absent or incapable, from sickness or other cause, to discharge said duties, and, under the direction of the Comptroller supervise the keeping of the books, records and accounts of the department, and perform such other duties as may be required of him by law and by the Comptroller. If the office of the Comptroller should become vacant by death, resignation or otherwise, said chief clerk shall act as Comptroller until a Comptroller is appointed and qualified. [Acts 3rd C.S. 1910, p. 37.]

Art. 4353. [4344] Deposit warrants.—The Comptroller shall have printed uniform deposit warrants, which shall be of four (4) classes: "State Revenue," "Available School," "Permanent School," and "Miscellaneous," and which shall be prepared in triplicate and marked "original," "duplicate" and "triplicate," respectively. Each class shall be separately serially numbered, and shall be on paper of a different color from the other classes. He shall provide for the use of his department a warrant register in which to enter such deposit warrants in consecutive order. When a deposit warrant is prepared, it shall be registered in the deposit warrant register. A distribution of the amount stated in each deposit warrant shall be entered on the revenue analysis record containing accounts for each source of revenue. The triplicate deposit warrant shall be, on receipt by the Treasurer of the amount stated therein, receipted by the Treasurer and delivered to the person making the deposit, the original shall be retained by the Treasurer, who shall file the same numerically; and the duplicate shall be, on the receipt of the amount stated therein, receipted by the Treasurer and by him returned to the Comptroller, who shall file the same numerically. The printed forms for these warrants shall be so prepared and arranged that the original, duplicate and triplicate may, by use of carbon sheets, all be prepared at one and the same writing. No deposit shall be received into the State Treasury on any account, except upon a deposit warrant issued as herein provided. The Comptroller shall furnish the Treasurer with a copy of the deposit warrant register for deposits made each day, which shall constitute the Treasurer's deposit warrant register. [Acts 3rd C.S. 1910, p. 37; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

Art. 4354. [4345] Deposit receipts.—The Comptroller shall have printed uniform deposit re-

ceipts, to be issued by the Comptroller, to cover moneys and other securities received and held by the State Treasurer for Bond Investment Surety and Insurance Companies, State Depository Banks and all others for which no deposit warrant is issued, or the issuance of a deposit warrant which is deferred. Such receipts shall be prepared in triplicate and marked "original," "duplicate" and "triplicate," respectively, and shall be serially numbered. The printed form for these receipts shall be so prepared and arranged that the original, duplicate and triplicate may, by the use of carbon sheets be prepared at one and the same writing. The triplicate deposit receipt shall be, on receipt by the Treasurer of the items stated therein, receipted by the Treasurer and delivered to the person making the deposit, the original retained by the Treasurer and the duplicate receipted by the Treasurer and by him returned to the Comptroller, who shall file the same numerically. The Comptroller shall provide his office with appropriate registers, in which he shall register the deposit receipts issued in like manner as is provided for the registration of deposit warrants, and shall provide a separate ledger in which shall be kept appropriate accounts for all matters for which such deposit receipts are issued. The Comptroller shall also provide separate series of deposit receipts or authorization certificates for the receiving of bonds or securities purchased for the permanent funds of the State, and relinquishment of bonds sold or redeemed. [Acts 3rd C.S. 1910, p. 37; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

Art. 4355. [4346] Claims and accounts.—All claims and accounts against the State shall be submitted on forms prescribed by the Comptroller and in duplicate, when required by him except claims for pensions, and shall be so prepared as to provide for the entering thereon, for the use of the Comptroller's department, as well as other appropriate matters, the following:

1. Signature of the head of the department or other person responsible for incurring the expenditure.
2. Appropriation number, account number and fund to be charged.
3. Initials of the person ascertaining if there are funds available.
4. Initials of the person auditing the claim.
5. Number and date of warrant issued.
6. Initials of the person comparing the claim and warrant. [Acts 3rd C.S. 1910, p. 37; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

Art. 4356. [4347] Claims classified.—There shall be three classes of claim forms as follows:

1. "General" which shall consist of: (a) payrolls, covering departmental and institutional services; (b) traveling expense vouchers; (c) purchases and services other than personal; and (d) sheriff and court claims; and under the head of sheriff and court claims the Comptroller may provide for different forms, such as those for sheriffs, county attorneys, district attorneys, district clerks, district judges, witnesses and all other like claims relating to the judiciary.
2. "Special," covering all claims for which special warrants are issued.
3. "Pensions," the form for which shall be prescribed by the Comptroller. [Acts 3rd C.S. 1910, p. 37.]

Art. 4357. [4348] List of claims to be kept.—When claims and accounts are received, it shall be ascertained if there are funds available therefor; and the person making the examination shall indicate such fact by marking his initials upon such claim; and if there are no funds available, that fact shall be written or stamped upon such claim; and the same shall be held to await the authority to issue a proper warrant therefor. No claim shall be paid from appropriations unless presented to the Comptroller for payment within two (2) years from the close of the fiscal year for which such appropriations were made, but any claim not presented for payment within such period may be presented to the Legislature as other claims for which no appropriations are available. When a claim has been audited and warrant drawn therefor, the claim shall be numbered with the same number as the warrant; and such claim shall be filed numerically according to class: "general," "special," "pension," respectively. There shall be kept an alphabetical index of claimants, either by filing the duplicate warrants in alphabetical order, or by such other method of indexing as may be found most advisable. After the expiration of two years, such claims shall be removed from the files and otherwise securely stored and preserved as records. [Acts 3rd C.S. 1910, p. 37; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

Art. 4358. [4349] Pay warrants.—The Comptroller shall have printed uniform pay warrants, which shall be of three classes: "general," "special" and "pension." Such warrants shall be prepared in duplicate, and shall be marked "original" and "duplicate," respectively; and each class shall be serially numbered and shall be of a color of paper different from the other class. A separate series of numbers may be used for warrants issued for payrolls to be paid from the General Revenue Fund, and for warrants issued for claims to be paid from "highway" or other special funds, when the Comptroller deems such special series of numbers advisable. Such warrants shall be prepared so as to provide for entering thereon in addition to other appropriate matters, the following:

1. Initials of the person in the Comptroller's Department comparing the warrant with the claim.
2. Designation of the fund against which the warrant is drawn.
3. Appropriation against which disbursement is to be charged. [Acts 3rd C.S. 1910, p. 37; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

Art. 4359. [4350] Pay warrants register.—The Comptroller shall provide a pay warrant register for each class of pay warrants, each volume of which shall be appropriately designated by class, number or otherwise. When a pay warrant is prepared, it shall be registered in the pay warrant register for the class to which it belongs; and such registry shall consist of an entry of the amount of the warrant, name of the payee, appropriation to which charged, and such other information as may be deemed advisable by the Comptroller. If a warrant is erroneously prepared, lost or destroyed, such fact shall be noted in the register opposite the number of such warrant in the register. One person shall be designated by the Comptroller as Chief of the Claims Division, and such person shall prepare or be responsible for the preparation of all pay warrants, and shall be accountable to the Comptroller for warrants coming into his possession. No warrant shall be prepared except on presentation to the warrant clerk of a properly audited claim, verified by affidavit to its correctness, the proper auditing of which claim shall be evidenced by the initials written thereon by the person auditing the same; and such claim so verified and audited shall be sufficient and the only authority for the preparation of a warrant or warrants. When a warrant has been properly prepared, such warrant shall be registered as herein provided and shall be checked against the claim, and the warrant number shall be entered on the claim papers. The initials of the person checking the warrant with the claim shall be shown on both the warrant and the claim papers. When a warrant is properly prepared, it shall be, with the claim upon which it is based, passed to the Comptroller for his signature or the signature of such person as may be authorized by law to sign the same in his stead. Such warrant shall then be passed to the Treasurer's Department, together with a copy of the warrant register, and registered in the Treasurer's Department and signed

by the State Treasurer or some person authorized by law to sign for him, and returned to the Comptroller's Department. Such warrant shall then be delivered by the Comptroller to the person entitled to receive it; and he shall at his option take a receipt from such person therefor and file it in his office. The printed forms for these warrants shall be so prepared and arranged that the original and duplicate shall, by the use of carbon sheets, be prepared at one writing. The Comptroller shall also keep a "warrants cancelled register", in which shall be entered the details of all warrants cancelled. Provided, however, a department, court, school, or other state agency, may prepare and present pay roll claims to the Comptroller prior to the end of the pay roll period, which said pay roll claims shall be verified by affidavit as to services theretofore actually performed within such pay roll period prior to the date of such pay roll claims; and such pay roll claims need not be verified by affidavit as to any services to be performed during such pay roll period subsequent to the date of such pay roll claims. Such claims when so presented shall be prepared and approved as otherwise provided below. The Comptroller shall accept such pay roll claim when presented and prepare warrants in payment thereof prior to date such claims become due and payable, and hold such warrants for delivery until the claims become due and payable. Such warrants shall be dated as of the due date of the claim and shall not be delivered to the claimant until the end of the pay period. The Treasurer is hereby authorized to countersign such warrants and to make such entry as to properly take them into account. In order that such warrants may be ready for delivery at the end of the pay period, the Comptroller is authorized to make such rules and regulations as may be necessary for filing pay roll claims in advance of the pay period, and for the preparation and writing of warrants in payment thereof to adequately and properly achieve such purpose. [Acts 3rd C.S.1910, p. 37; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1; Acts 1945, 49th Leg., p. 432, ch. 274, § 1.]

Art. 4360. [4351] Pension warrants.—Applications for pensions and the issuance of pension warrants shall not be subject to the provisions of this chapter. Such warrants shall be separately serially numbered. [Acts 3rd C.S. 1910, p. 37.]

Art. 4361. [4352] Registration of bonds.—The Comptroller shall procure for the use of his department suitable books to be known as "bond registers," the volumes of which shall be separately designated by number or otherwise, in which he shall register alphabetically all State, county, school, municipal and drainage or such other bonds required by law to be registered by him. Neither the bonds nor opinion of the attorney general, nor the record or other papers or documents relative thereto, shall be recorded in full; but only the name of the authority issuing and the names and official capacities of the officers signing such bonds, the date of the issue, date of registration, amount of principal, date of maturity, number, time of option of redemption, rate of interest and day of the month of each year when the interest shall fall due, of each bond so registered, shall be entered upon such register. On the same line where such entry is made, shall be provided blank spaces in which shall be entered the date of payment or redemption of each bond when the same is paid or redeemed. When any bond is paid or redeemed the proper officer or the authority paying such bond shall notify the Comptroller of the fact and date of such payment or redemption, and all papers and documents pertaining to such bonds shall be filed and appropriately numbered. [Id.]

Art. 4362. Bond clerk; assistants; duties.—The Comptroller shall appoint a bond clerk whose term of office shall be at the pleasure of the Comptroller, and who shall first take the official oath and give bond in the sum of Ten Thousand ($10,000.00) Dollars, payable to the Comptroller, conditioned upon the faithful performance of his duties. Such clerk shall, under the supervision, direction, and authority of the Comptroller, perform all duties with reference to the registration of bonds imposed upon the Comptroller by the provisions of the preceding and succeeding articles, and shall have authority to sign the name of the Comptroller to all certificates of registration of bonds required by law to be registered by the Comptroller, and which bonds are registered by such bond clerk, as provided herein. In the absence of the bond clerk the duties herein imposed upon such bond clerk may be performed in like manner by the chief clerk. The Comptroller shall also designate and appoint, from the personnel of his employees, assistants to the bond clerk. Such assistant or assistants, when designated by the Comptroller, shall, under the direction and authority of the Comptroller, perform all duties with reference to the registration of bonds imposed upon the Comptroller by the provisions of Title 70, Chapter 2, of the Revised Civil Statutes of 1925, of the State of Texas, and shall have authority to sign the name of the Comptroller to all certificates of registration of bonds required by law to be registered by the Comptroller, and which bonds are registered by such bond clerks as provided herein. The duties of such assistants when designated or appointed by the Comptroller, shall be in addition to and cumulative of any other duties that may be assigned to such employee. The appointment and designation of such assistant bond clerk or clerks shall be in writing, certified under the seal of the Comptroller and filed with the bond clerk. [Acts 2nd C.S., 1923, p. 23; Acts 1945, 49th Leg., p. 11, c. 7, § 1.]

Art. 4363. [4353] Account by funds kept separate.—The Comptroller shall keep appropriate accounts by funds, showing a short description of the essential features of each, of each bond, or of each purchase of similar or like bonds, or other securities purchased by and belonging to the permanent school and other funds of the State; each of which accounts shall be charged with the principal of such bond or purchase, and with each separate item of interest payments to accrue thereon, and shall be credited with payments as made. He shall also keep controlling or total accounts of such bonds or other securities, which accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund; and also controlling accounts for interest to accrue on such bonds, to be set up at the beginning of each fiscal year, on bonds or other securities owned at that time, for interest to accrue for the fiscal year, and for interest on subsequent purchases during the year to be set up when such bonds or securities are purchased, each of which controlling accounts shall be balanced monthly and shall correspond with the like accounts kept by the State Treasurer. [Acts 3rd C.S. 1910, p. 37; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

Art. 4364. [4354—5—6—7] Ledgers.—The Comptroller shall maintain a double entry system of bookkeeping and shall keep such ledgers and accounts as may be necessary to show the sources of the State's revenues and the purposes for which expenditures are made, and shall provide proper accounting controls for the protection of the finances of the State.

1. The Comptroller shall keep the following ledgers: State General Ledger, Tax Collectors' Control Ledger, Tax Collectors' Ledger for Cash Accounts, Tax Collectors' Ledger for Current Year Assessments, Tax Collectors' Ledger for Occupation Taxes, Tax Collectors' Ledgers for Insolvent Taxes, Tax Collectors' Ledger for Delinquent Taxes, Departmental Suspense Ledger, General Land Office Suspense Ledger, Bond Ledgers for State-owned Bonds, Securities Ledgers, Appropria-

tion Ledgers, or other ledgers as may be found necessary.

2. The Comptroller shall also keep supporting and analysis records as follows: General Journal, Deposit Warrant Registers, Pay Warrant Registers, Warrants Cancelled Register, Suspense Cash Book, Bond Authorization Register, Securities Register, Tax Collectors' Journal, Tax Collectors' Report Register, Occupation Tax Register, Revenue Analysis, Expense Analysis, or other records as may be found necessary.

3. The State General Ledger shall contain controlling and fund accounts. All accounts in the General Ledger shall be kept on a double-entry basis. All entries to the General Ledger shall be journalized and postings made from the General Journal. The following accounts shall be kept in the General Ledger: State Treasurer Cash Account, State Treasurer Bond Account, State Treasurer Securities in Trust, Warrants Payable, Departmental Suspense, General Land Office Suspense, Securities in Trust Fund Accounts Showing Net Balances, separate account for each fund, Fund Accounts for Bonds Owned, separate account for each fund, or other accounts as may be found necessary.

The accounts with the State Treasurer shall be charged with the cash on hand and in depository banks, and with all bonds and securities held for the funds of the State or in trust. The Comptroller shall charge the State Treasurer in totals of all deposit warrants and the deposit receipts as issued, and credit him with warrants paid, so that the balance in the Treasurer's hands, together with the balance in the State Depositories, shall agree with the balance shown by the accounts.

Accounts shall be kept for the purpose of showing the amounts of outstanding pay warrants of each class, which shall be credited with the warrants issued and charged with the warrants paid, so that the balances shall represent the aggregate amount of outstanding warrants.

Accounts shall be kept for funds, a separate account for each fund, which shall be credited with deposit warrants and charged with pay warrants issued: Balances of such accounts shall represent balances in the funds after taking into consideration all warrants issued. Accounts shall also be kept showing the bonds or securities owned by each fund.

4. REVENUE ANALYSIS.—A revenue analysis record shall be kept in which a distribution shall be made of the revenues derived by the State from all sources, and the amounts derived from each source. The sources of revenue received as represented by the deposit warrants issued therefor by the Comptroller shall be posted to this record.

5. EXPENSE ANALYSIS.—An expense analysis record shall be kept, in which a distribution shall be made of the disbursements made from State funds, which shall be classified by departments or institutions, by objects of expenditure, or other classifications as may be deemed advisable.

6. ACCOUNTS OF TAX COLLECTORS.—A ledger shall be kept which shall contain controlling accounts against which the individual accounts with Tax Collectors shall be balanced. This ledger shall be kept on a double-entry basis, shall be self-balancing, and shall be balanced at the close of each month. Individual accounts shall be kept with Tax Collectors, which shall be charged with all amounts of taxes due the State, and which are to be collected by the Tax Collectors, or which have been collected by the Tax Collectors and have not been paid over to the State Treasurer; and credited with all payments, commissions, cancellations and other adjustments of such taxes allowed by law, which accounts shall be balanced monthly with the controlling accounts. Separate accounts shall be kept for current taxes and for delinquent taxes, or other accounts as may be necessary.

7. SUSPENSE LEDGER.—A suspense ledger shall be kept in which the accounts of the State Treasurer shall be stated in respect to moneys held by him pending the issuance of deposit warrants and moneys and securities held other than those for State purposes, for all which the Comptroller shall issue deposit receipts, posting the same to this ledger. It shall also include the accounts with heads of departments for all moneys received by them and deposited with the State Treasurer in suspense.

8. APPROPRIATION LEDGERS.—The Comptroller shall keep accounts with all appropriations made by the Legislature, an account being kept for each appropriation, which shall be credited with the amount of the appropriation and charged with all pay warrants issued under the authority of appropriations. Each account shall show the law authorizing the appropriation. The total of all appropriations so credited shall be credited to a control accounts called "appropriations voted." The daily totals of the warrants issued shall be charged to this control account, so that the balance shall represent the amount of unused appropriations. The individual appropriation accounts shall be balanced monthly against the "appropriations voted" account. The heads of all State Departments, Institutions, Boards and Commissions or other officials or employees of the State who are or may be authorized to make purchases or incur any indebtedness to be paid from appropriated funds shall keep accounts for such appropriations as apply to their respective Departments, Institutions, Boards or Commissions, and shall balance such accounts monthly against the like accounts kept by the Comptroller. [Acts 3rd C.S. 1910, p. 37; Acts 1931, 42nd Leg., p. 400, ch. 243, § 1.]

Art. 4365. [4359] Duplicate warrants.—The Comptroller, when satisfied that any original warrant drawn upon the State Treasurer has been lost or destroyed, or when any certificate or other evidence of indebtedness approved by the auditing board of the State has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the Comptroller his affidavit, stating that he is the true owner of such instrument, and that the same is in fact lost or destroyed, and shall also file with the Comptroller his bond in double the amount of the claim with two or more good and sufficient sureties, payable to the Governor, to be approved by the Comptroller, and conditioned that the applicant will hold the State harmless and return to the Comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the State on collecting the same. After the issuance of said duplicate or copy if the Comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the State, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in Travis County. [Acts 3rd C.S. 1910, p. 37.]

Art. 4366. [4361] To examine and cancel warrants.—The State Auditor shall examine the disbursements of the Treasurer at the end of each quarter, and shall, together with the Treasurer, cancel the warrants which have been paid in such manner as to prevent their future circulation, and shall examine if the receipts acknowledged by the Treasurer during the quarter correspond with the deposits, and if the balance of money reported to be in his possession is actually in his hands. [Acts 3rd C.S. 1910, p. 37; Acts 1943, 48th Leg., p. 429, ch. 293, § 17.]

Art. 4366a. Money received under federal flood control law; disposition.—Section 1. The Comptroller of Public Accounts of this state is here-

by authorized to receive and receipt for all funds due or payable, or hereafter to become due or payable, by virtue of the Act of Congress of August 18, 1941, Chapter 377, Section 7, 55 Stat. 650, 33 U.S.C.A., Section 701c—3. All of such funds shall be placed in a separate account entitled "Flood Area School and Road Fund" to the credit of the Comptroller of Public Accounts and shall never become a part of the general funds of the state. The Comptroller shall annually pay over such funds to the school district or districts, county, or other political subdivision, as hereinafter provided, to be expended for school purposes, or on the roads, as contemplated by the Act of Congress.

Sec. 2. It shall be the duty of each school district tax collector, county tax collector, or other person charged with the duty of collecting school taxes or road taxes, the territory of which district, county or other political subdivision is within, or partly within, any flood control district, or flood control area, created or designated under authority of law, to prepare and file with the Comptroller of Public Accounts of this state a report under oath showing the total number of acres of land acquired by the United States for flood control purposes within the boundaries of such school district, county, or other political subdivision; and the tax rate per one hundred dollars of valuation for school purposes and for road purposes levied by such district, county, or other political subdivision for the year in which such report is made.

Sec. 3. On or before the 15th day of September of the year 1945 and each year thereafter, the Comptroller of Public Accounts shall pay to the school district or districts and to the county or other political subdivision collecting road taxes, their proportionate share of funds on deposit in such "Flood Area School and Road Fund" which were produced by leases upon lands acquired by the United States for flood control purposes located within such school district, county or other political subdivision, the pro rata to be allotted to the school districts and to the road taxing entity to be based upon the proportion which their respective tax rates bears to the sum of the two rates. The Comptroller shall add the school district tax rate and the road tax rate together and the school district shall be entitled to receive such a percentage of the "Flood Area School and Road Fund" as their tax rate bears to the sum of the school tax rate and the road tax rate; and the county, or other road taxing entity, shall be entitled to receive its proportionate part of such fund based upon the proportion which its tax rate bears to the sum of the two tax rates. If, during any school year, there shall be on hand in said "Flood Area School and Road Fund" any moneys which may be distributable to any school district, the Comptroller of Public Accounts may in his discretion, upon application of such school district or districts, make a distribution of such funds upon any dates other than those above fixed, as may be determined by him. [Acts 1945, 49th Leg., p. 387, ch. 250.]

CHAPTER 3.—STATE TREASURER

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Article 4367. [4362] [2849] Election and term.—At each biennial general election a State Treasurer shall be elected for a term of two years. [Acts 2nd C. S. 1909, p. 438.]

Art. 4368. [4364] [2850] Bond; special bond for Federal funds.—The State Treasurer shall, within twenty (20) days after he shall have received notice of his election, and before he enters upon the duties of his office, give a bond payable to and to be approved by the Governor, in the sum of Seventy Thousand Dollars ($70,000.00) with a good and solvent surety company authorized to do business in this State, conditioned that he will faithfully execute the duties of his office. All expense necessary and incident to the execution of such bond shall be paid by the State by appropriation. In addition to the above the State Treasurer shall make and enter into any special bond as may be required by an Act of Congress or by any Federal department or official to protect any and all Federal funds which shall have been secured or which may hereafter be received by the State of Texas from the Federal Government and deposited with the State Treasurer. Said bond shall be in such sum and conditioned and approved as may be prescribed by the Act of Congress or such department or official aforesaid. Said bond shall be a special bond, and shall be in addition to the official bond hereinabove required, and each of said bonds shall be separate and distinct contracts and obligations, and the liability under each of said bonds shall be separate and distinct obligations. All expense necessary and incident to the execution of such special bond shall be paid as in the Act of Congress may be provided or by appropriation made by the Legislature of Texas for such purposes. [Acts 1923, p. 310; Acts 1930, 41st Leg., 5th C.S., p. 230, ch. 73, § 2; Acts 1934, 43rd Leg., 3rd C.S., p. 105, ch. 54, § 1.]

Art. 4369. [4365—6] New bond required.—The Attorney General, with the Comptroller, shall on the first days of June and December of every year, examine the bond of the Treasurer and make diligent

inquiry into the condition of the sureties on said bond; and, if in the opinion of the Attorney General, said bond is not sufficient to secure the State in her rights, then, the Attorney General shall notify said Treasurer in writing of the insufficiency of said bond; and, should said Treasurer fail for the space of twenty days from the date of such notice to furnish a sufficient new bond, the Governor shall forthwith suspend said Treasurer from office. If the Treasurer be so suspended from office the Governor shall appoint some suitable person as Treasurer who shall give bond as required by the provisions of the preceding article. The appointee shall perform the duties of Treasurer until the suspended officer shall give a new bond to be approved by the Governor. [Acts 1873, p. 62; G. L. vol. 7, p. 514; Acts 2nd C. S. 1909, p. 438.]

Art. 4370. [4367] [2854] To receive moneys from Comptroller.—The Treasurer shall receive, on the warrants of the Comptroller, all moneys which shall from time to time be paid into the State Treasury, receipting for the same upon duplicate and triplicate warrants; which duplicate shall be deposited with the Comptroller, and the triplicate given to the person depositing such money. [Acts 1846, p. 10; G. L. vol. 2, p. 1316.]

Art. 4371. [4368] [2855] Money paid out, how.—The Treasurer shall countersign and pay all warrants drawn by the Comptroller on the Treasury which are authorized by law. No money shall be paid out of the Treasury except on the warrants of the Comptroller, and no warrant shall be paid by the Treasurer unless presented for payment within two years from the close of the fiscal year in which such warrant was issued, but claims for the payment of such warrants may be presented to the Legislature for appropriations to be made from which such claims may be paid. [Acts 1846, p. 10; G. L. vol. 2, p. 1316; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4372. [4369–70] To keep accounts.—The Treasurer shall keep true accounts of the receipts and expenditures of the public moneys of the Treasury, and close his accounts annually on the 31st day of August, with the proper legal vouchers for the same, distinguishing between the receipts and disbursements of each fiscal year. [Acts 1846, p. 10; G. L. vol. 2, p. 1316, P.D. 5287; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4373. [4371] [2859] Annual exhibit to Governor.—In addition to the reports required by the Constitution, the Treasurer shall submit to the Governor on the first Monday of November of each year, and at such other times as he shall require, an exact statement of the condition and situation of the Treasury, and of the balance of money remaining therein to the credit of the State, with a summary of the receipts and payments of the Treasury during the preceding year, or for such other period of time as may be specially required, and shall exhibit all books, papers, vouchers and other matters pertaining to his office, for the examination of the Legislature, or either branch thereof, or any committee which may be by them appointed, whenever required by them to do so. [Acts 1846, p. 10; G.L. vol. 2, p. 1316; P.D. 5288.]

Art. 4374. [4372] [2860] Only public moneys to be kept.—All moneys received by the Treasurer shall be kept in the safes and vaults of the Treasury; and the Treasurer shall not keep or receive into the building, safes or vaults of the Treasury any money, or the representative of money, belonging to any individual except in cases expressly provided for by law; nor shall said Treasurer appropriate to his own use, or lend, sell or exchange any money, or the representative of money, in his custody or control as such Treasurer. [Id. P. D. 5290.]

Art. 4375. [4373] [2861] Employés.—The Treasurer shall appoint a Chief Clerk who shall be required to give bond with a good and solvent surety company authorized to do business in this State, in the sum of twenty-thousand dollars, payable to and to be approved by the Governor, and conditioned as is the bond of the State Treasurer, and shall appoint such other employés and clerks as may be authorized by law. All such employés, whether clerks or otherwise, who, as a part of their duties, handle any money, drafts, checks, bills of exchange, warrants, or securities or other evidences of debt which are, or may be, convertible into money, shall give bond with a good and solvent surety company authorized to do business in this State, payable to the Treasurer in such sum as he may require, conditioned that he or she will faithfully execute and perform the duties of his or her position. The cost and expense incident to the execution of the bond of the chief clerk and of the bonds of the respective employés shall be paid by the State by appropriation. [Acts 1923, p. 310.]

Art. 4376. [4374] [2862] Chief clerk to act.—Whenever the Treasurer from sickness, unavoidable absence or other cause is not able to act, the chief clerk shall sign his own name as "Acting Treasurer" and do such other acts and things as the State Treasurer himself might legally do. The legal acts and signatures of such chief clerk as Acting Treasurer, shall be as valid as the acts and signatures of the Treasurer himself. [Acts 2nd C. S. 1909, p. 438.]

Art. 4377. [4375] [2863] Delivery to successor.—The Treasurer shall, at the close of his term of office, deliver into the possession of his successor the moneys, securities and all other property of the State together with books, vouchers, papers and evidences of property in his possession, and all other matters and things which pertain to that office. [Acts 1846, p. 10; G. L. vol. 2, p. 1316; Acts 1909, 2nd C. S. p. 438.]

Art. 4378. [4376–7] School fund bonds.—The Treasurer shall be the custodian of all bonds in which the school funds of the State have been or may hereafter be invested, and shall keep said bonds in his custody until the same have been paid off, discharged or otherwise disposed of by the proper authorities of this State, and shall upon the payment of any installment of interest see that the proper credit is given, and the coupons on said bonds, when paid, shall be properly separated therefrom and canceled by him. [Acts 1895, p. 9; G. L. vol. 10, p. 739; Acts 2nd C. S. 1909, p. 440.]

Art. 4379. [4378] Money returned to counties.—Whenever there is money in the State Treasury for the purpose of paying off any obligation due by any county, city or town, and it is made to appear to the Comptroller by certified copy of the records of the commissioners court, or by other satisfactory evidence, that said obligations are no longer outstanding against such county, city or town, then the Comptroller shall draw a warrant on the State Treasury in favor of such county, city or town, for the amount of money so remaining in the Treasury; and the Treasurer shall pay such money on said warrant of the Comptroller to the Treasurer of such county, city or town, for the benefit of its general fund. [Acts 1901, p. 19.]

Art. 4379a. [Expired Aug. 31, 1939.]

The article was Acts 1937, 45th Leg., p. 1271, ch. 475. Similar provisions, see article 4379b.

Art. 4379b. Obligations of municipalities and political subdivisions may be made payable at State Treasurer's office.

State Treasurer as ex officio treasurer and fiscal agent

Section 1. Any bond, warrant, or other evidence of indebtedness issued by any municipality or political subdivision of this State, including counties, cities, road, school, water improvement, irrigation, drainage, and navigation districts may at the discretion of

the municipality or political subdivision, together with interest thereon, be payable at the office of the State Treasurer of the State of Texas, in the City of Austin, and the State Treasurer is hereby designated as ex officio Treasurer and fiscal agent of said municipality or political subdivision for the purpose of receiving deposit of funds for the payment of such bonds and interest thereon, making payment of said obligation as provided therein and for all purposes herein designated and those necessary or incidental thereto.

Deposit and disposition of funds by State Treasurer; warrants of Comptroller of Public Accounts

Sec. 2. The State Treasurer shall deposit all funds coming into his hands as ex officio Treasurer, and on account of his designation as fiscal agent of such municipality or political subdivision, shall keep a separate account for each municipality or political subdivision of any moneys received for the credit of such municipality or political subdivision under the provisions of this Act. All moneys deposited to the credit of such municipality or political subdivision with the State Treasurer up to August 31, 1941, are hereby appropriated to said respective municipalities and political subdivisions and shall be received, payable, used, and applied by the State Treasurer as fiscal agent and the ex officio Treasurer of said respective municipality and political subdivision, to the payment of interest and principal due on obligations maturing on or prior to said time as may be directed in writing by said respective municipality or political subdivision, and each year thereafter all moneys deposited with the State Treasurer for such purposes and all moneys remaining therein from the previous year shall be received and held by him as fiscal agent and ex officio Treasurer of said municipality or political subdivision and shall be subject to appropriation for the payment of interest and principal from time to time upon any bonds made payable at the office of the State Treasurer in such manner as may be directed by such municipality or political subdivision. As payment of interest and principal becomes due upon any obligation, the Treasurer of said municipality or political subdivision shall remit to the State Treasurer, not later than fifteen (15) days prior to date of maturity all sums due or to become due on any maturity. Upon receipt of such funds by the State Treasurer, he shall request the State Comptroller of Public Accounts to issue his warrant to the State Treasurer for the payment thereof, and the State Treasurer shall pay the same at his office in Austin. Such warrants shall state on their face that the proceeds of the same are to be applied by the State Treasurer to the payment of certain specified bonds or interest coupons therein described, giving the names of the municipality or political subdivision of which they were issued, numbers, amounts, and dates of the maturities of the obligations and interest to be paid with instructions to the State Treasurer to return to the Treasurer of such municipality or political subdivision such obligations and interest coupons when the same are paid and the Treasurer of said municipality or political subdivision, upon receipt of same, shall cause to be duly entered a record of such payment and cancellation.

Commission for receiving and disbursing funds

Sec. 3. The State Treasurer shall collect for the use of the State, from said municipality or political subdivision for receiving and disbursing such funds, a commission of one-eighth of one per cent on interest, and one-twentieth of one per cent on principal. The Treasurer of said municipality or political subdivision shall remit to the State Treasurer as ex officio Treasurer of said municipality or political subdivision, the exchange or commission as herein provided at the time of such remittance for the payment of any maturing obligation or interest thereon. Upon receipt of such exchange or commission paid by the municipalities or political subdivisions, the State Treasurer shall credit the same to commissions and exchanges earned, and all commissions and exchanges earned, or so much as necessary, are hereby appropriated to the State Treasurer to be used by him in the administration of the provisions of this Act. Any balance remaining at the end of any fiscal year shall be available for use in the next fiscal year.

Purpose and construction of act

Sec. 4. It is the general intent of this Act to provide an inexpensive and feasible means for the payment of bonds and interest coupons issued by municipalities and political subdivisions in the State at the office of the State Treasurer, and this Act shall be broadly construed to carry out such intent and purpose, and any official or officials, or any municipality or political subdivision and the State Treasurer concerned in any way with the administration of the Act, is authorized and directed to perform any and all acts and duties necessary, requisite or appropriate to facilitate and expedite the operation of the Act to the end that such bonds and interest thereon may be promptly paid and the payment thereof clearly evidenced and accounted for.

Bonds and coupons cancelled and returned; balance returned; statement of account

Sec. 5. The State Treasurer shall return to the municipality or political subdivision depositing funds for the payment of interest coupons or the retirement of bonds, all such coupons and bonds as have matured or been retired by purchase, after cancelling the same, together with a statement of the account of such municipality or subdivision, showing the amounts received and placed to its credit, the service charges, and the amount of coupons or bonds retired. At the request of the municipality or political subdivision, the State Treasurer shall remit to said municipality or subdivision of the State any balance remaining in his hands more than two (2) years, for which bonds or coupons have not been presented for payment, and thereafter the municipality or political subdivision shall pay such coupons or bonds when presented. Any municipality or political subdivision shall have the right at any reasonable time to a statement of its account with the State Treasurer. [Acts 1939, 46th Leg., p. 620.]

Art. 4380. [4379] Deposit warrant register. —The Treasurer shall keep a deposit warrant register, designed with columns for State revenue, available school fund, miscellaneous, and such other columns as may be found necessary; all warrants to be entered consecutively and distributed to the proper columns. The deposit warrant register shall be prepared by the Comptroller as a carbon copy of the deposit warrant register kept by him and shall be furnished to the Treasurer together with the deposit warrants for moneys deposited each day. [Acts 2nd C.S. 1909, p. 438; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4381. [4380] Shall post daily totals.— The State Treasurer shall cause the daily totals of deposit warrants to be posted to the proper fund and control accounts in the general ledger. The Treasurer shall keep a "transit record," in which he shall record the essential details of all cash, checks, money orders, drafts or other items deposited or cashed each day, showing the items deposited in each depository bank or otherwise disposed of. The totals of deposits shall be charged to the accounts of the respective depositories on the books of the Treasury. The Treasurer shall keep a journal in which to enter all journal vouchers or other memoranda of transfers between funds or accounts. Postings shall be made from this journal to the proper accounts on the books of the Treasury.

[Acts 2nd C.S. 1909, p. 438; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4382. [4381] Register of warrants issued.—The Treasurer shall keep registers of warrants issued, one for each class of warrants. The Comptroller shall furnish lists of warrants issued, which lists shall be compared with the warrants and shall constitute the Treasurer's registers of warrants issued. The amounts of warrants issued shall be added by the Treasurer and proved against the totals of the warrant registers. The date of payment of all warrants shall be stamped on the above registers. The Treasurer shall keep a "warrants paid register." In this register the warrants shall be entered each day when paid; the number and amount of each warrant paid being entered. Warrants shall be grouped by classes and separate totals of warrants paid from each fund shall be shown, as well as the grand total of all warrants paid each day. The Treasurer shall furnish to the Comptroller each day a copy of the warrants paid register showing the warrants paid. The Treasurer shall keep a register of warrants cancelled, on which shall be entered the details of all warrants cancelled. [Acts 2nd C.S. 1909, p. 438; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4383. [4382] Other accounts.—He shall keep accounts called "warrants payable, general," "warrants payable, special," and "warrants payable, pensions," to which shall be credited the daily totals of the several registers of warrants issued and charged with the daily total of warrants paid of each class, so that the balance of these accounts shall represent the aggregate amount of outstanding warrants. [Acts 2nd C.S. 1909, p. 438.]

Art. 4384. [4383] Outstanding warrants.—Outstanding warrants shall be listed each month from the registers of warrants issued, and a list thereof sent to the Comptroller for his record. With this list the Treasurer shall furnish a statement showing the aggregate amount of general, special and pension warrants paid during the month. [Id.]

Art. 4385. [4384] General ledger accounts.—The Treasurer shall charge the daily totals of the general warrants, pension warrants, special warrants and all other classes of warrants to the respective fund and control accounts in the general ledger to which they apply. [Acts 2nd C.S. 1909, p. 438; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4385a. [Unconstitutional.]

The article was Acts 1943, 48th Leg., p. 469, ch. 313, § 2. It was held unconstitutional in Gulf Ins. Co. v. James, 143 T. 424, 185 S.W.2d 966.

Art. 4386. Certain special funds abolished.—All warrants on the State Treasury shall be general warrants, and shall be on an equal basis with each other except that in the event of a question and necessity arising as to the priority of payment of any such warrants, they shall be paid in order of their serial number, such warrants to be numbered at all times in the order of receiving the accounts in the Comptroller's office. This article shall not apply to warrants drawn on the Special Game Fund nor on funds collected for and appropriated to the State Highway Department nor to any special fund created or provided in the State Constitution, nor shall it apply to any special fund consisting of taxes set aside and remitted or donated by the Legislature to any county, city or locality. Such constitutional funds and special tax remitting funds and the warrants against the same shall be handled under present laws. [Acts 2nd C. S. 1923, p. 61.]

Acts 1935, 44th Leg., p. 798, ch. 341 created a commission to administer certain funds of the Spanish War Veterans.

Art. 4386a. State warrants payable to United States Post Office; priority.—Warrants for the purchase of United States postage stamps and for the payment of postoffice box rents by any board or department of the State Government shall be drawn upon the State Treasurer by the State Comptroller in favor of the United States Postoffice; and the State Treasurer shall pay warrants so issued out of any funds appropriated for such purposes, irrespective of the serial number of said warrants and irrespective of the priority of the issuance of said warrants, and such warrants shall be endorsed by the postmaster of the United States Postoffice to which they are made payable. [Acts 1933, 43rd Leg., p. 103, ch. 51.]

Art. 4386b. Special Game and Fish Fund; transfer from other funds; disposition.—Section 1. All moneys now on deposit in the State Treasury to the credit of the Special Game Fund, the Special Fish Propagation and Protection Fund, the Fish and Oyster Fund, the Sand, Shell and Gravel Fund, and the Lake Worth-Eagle Mountain Lake Fund, together with all moneys due and owing to any and all of said Funds, shall be transferred, deposited, and consolidated into a single fund, in the State Treasury, to be known as the Special Game and Fish Fund.

Sec. 2. All moneys collected or received by the Game, Fish and Oyster Commission, after the effective date of this Act, from any source now requiring that such moneys be deposited in the State Treasury to the credit of any of the Funds named in Section 1 of this Act, shall be deposited in the State Treasury to the credit of the Special Game and Fish Fund.

Sec. 3. The Special Game and Fish Fund shall be used for the aggregate purposes for which the Special Game Fund, the Special Fish Propagation and Protection Fund, the Fish and Oyster Fund, the Sand, Shell and Gravel Fund, and the Lake Worth-Eagle Mountain Lake Fund is now directed by law to be used.

Sec. 4. All moneys derived from the sale of property purchased out of any of the Funds referred to in Section 1 of this Act, and out of the Special Game and Fish Fund, after cost of advertising for sale has been deducted, shall be deposited in the State Treasury to the credit of the Special Game and Fish Fund.

Sec. 5. This Act shall be effective on and after September 1, 1947.

Sec. 6. All expenditures made by said Commission out of Special Game and Fish Fund shall be verified by affidavit to the Game, Fish and Oyster Commission and on the approval of such expenditures by the Executive Secretary of said Commission, it shall be the duty of the Comptroller of the State to draw his warrant on the Treasurer of the State for the amount of such expenditures in favor of the person claiming the same, such warrant to be paid out of the Special Game and Fish Fund.

Sec. 7. All laws or parts of laws in conflict with this Act are hereby repealed. It is expressly provided that all of the purposes for which the several Funds named in Section 1 shall be used shall remain in effect and be applied in the aggregate to the Special Game and Fish Fund. [Acts 1947, 50th Leg., p. 503, ch. 297.]

Art. 4387. [Repealed by Acts 1931, 42nd Leg., p. 396, ch. 242, § 2.]

Art. 4388. [4386] Daily statement from Departments.—The State Treasurer shall receive daily from the head of each Department, each of whom is specifically charged with the duty of making same daily, a detailed list of all persons remitting money the status of which is undetermined or which is awaiting the time when it can finally be taken into the Treasury, together with the actual remittances which the Treasurer shall cash and place in his vaults or in legally authorized depository banks, if the necessity arises. The report from the General Land Office shall include all money for interest, principal and leases of

school, university, asylum and other lands. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each Department; and the cashier of the Treasurer's Department shall keep a cash book, to be called "suspense cash book," in which to enter these deposit receipts, and any others issued for cash received for which no deposit warrants can be issued, or when their issuance is delayed. As soon as the status of money so placed with the Treasurer on a deposit receipt is determined, it shall be transferred from the suspense account by placing the portion of it belonging to the State in the Treasury by the issuance of a deposit warrant, and the part found not to belong to the State shall be refunded. When deposit warrants are issued, they shall be entered in this cash book, as well as any refunds, and the balance shall represent the aggregate of the items still in suspense. Refunds shall be made in a manner similar to that in present use, except that separate series of warrants shall be used for making such refunds, to be called "refund warrants," and such warrants shall be written and signed by the Comptroller and countersigned by the Treasurer, and charged against the suspense funds to which they apply. Such warrants shall then be returned to the Comptroller and delivered by him to the person entitled to receive them. [Acts 1909, 31st Leg., 2nd C.S., p. 438, ch. 21; Acts 1930, 41st Leg., 5th C.S. p. 230, ch. 73, § 3; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4389. [4387] Office fee book.—The Treasurer shall keep an office fee book in which shall be entered in detail all fees earned by the Treasury department; which fees shall be deposited in the Treasury to the credit of the general revenue at the end of each month on a deposit warrant issued by the Comptroller. [Acts 1909, 31st Leg., 2nd C.S., p. 438, ch. 21.]

Art. 4390. [4388] Cash balancing book.—The Treasurer shall keep a book, to be called "cash balancing book," for the purpose of arriving at the daily cash balance, in which shall be entered the daily totals of all receipts and disbursements. The amount of cash on hand and in depository banks shall also be shown. A copy of the cash balancing sheet shall be furnished to the comptroller each day. [Acts 1909, 31st Leg., 2nd C.S., p. 438, ch. 21; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4391. [4389] Ledger.—The general ledger kept by the Treasurer shall contain accounts for each fund, which shall be credited with the existing balances and with the daily totals of deposit warrants. The pay warrants issued shall be charged to the several fund accounts from the warrants issued registers in daily totals. The ledger shall also contain control accounts for cash, depository banks, bonds, interest, securities, warrants payable and such other accounts as may be necessary. Postings shall be made to the ledger daily from the deposit warrant register, warrants issued registers, warrants paid register and other supporting records. The ledger shall be balanced daily. [Acts 1909, 31st Leg., 2nd C.S., p. 438, ch. 21; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4392. [4390] Bond book.—The Treasurer shall keep a bond book in which to enter all warrants or authorizations to receive or relinquish bonds held by him and belonging to any State fund. The Treasurer shall also keep appropriate ledger accounts showing a short description of the essential features of each, of each bond or of each purchase of similar or like bonds, or other securities purchased by and belonging to the permanent school and other funds of the State; each of which accounts shall be charged with the principal of such bond or purchase, and with each separate item of interest payments to accrue thereon, and shall be credited with payments as made. He shall also keep controlling or total accounts of such bonds or other securities in the general ledger; which accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund; and also controlling accounts for interest to accrue on such bonds, to be set up at the beginning of each fiscal year, on bonds or other securities owned at that time, for interest to accrue for the fiscal year, and for interest on subsequent purchases during the year to be set up when such bonds or securities are purchased; each of which controlling accounts shall be balanced monthly with the sum of the individual accounts for bonds or securities; which accounts shall be balanced monthly and shall correspond with the like accounts kept by the Comptroller. [Acts 1909, 31st Leg., 2nd C.S., p. 438, ch. 21; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4393. [4391] Securities register.—The Treasurer shall keep a suitable register in which to enter all bonds, cash and other securities lodged with him by bond investment, surety and insurance companies, and State depository banks, and all other bonds or securities lodged with him under the provisions of the Statutes, the registration of which is not otherwise provided for by law; in which he shall enter the deposit receipts or other authorizations to receive or relinquish such bonds or securities. The receiving and relinquishment of these securities shall be on the authority of the Comptroller. He shall also keep a "securities ledger" in which shall be kept appropriate accounts for all matters for which such deposit receipts or authorizations are issued, which ledger shall be balanced monthly against control account to be kept in the "general ledger" and with like accounts to be kept by the Comptroller. [Acts 1909, 31st Leg., 2nd C.S., p. 438, ch. 21; Acts 1931, 42nd Leg., p. 396, ch. 242, § 1.]

Art. 4393a. Trust funds.—All moneys and other securities placed in the hands of the State Treasurer in trust for any legal purpose shall be received by the State Treasurer on a deposit receipt issued by the State Comptroller as provided in Article 4354, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 495, Chapter 243, Acts of the Regular Session, 42nd Legislature. Such moneys or other securities shall be held in trust by the State Treasurer in like manner as the Departmental Suspense Account is held under Article 4388, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 493, Chapter 242, Acts of the Regular Session, 42nd Legislature. Such moneys or other securities shall be withdrawn by trust and suspense draft in the case of money, and withdrawal authorization in the case of other securities, which instruments shall be issued serially and signed by the State Comptroller. Any and all moneys received in trust, or for any legal purpose for which a state deposit warrant has not or cannot immediately be issued, shall be handled by the Treasurer in the same manner as items deposited in departmental suspense accounts. All moneys and securities now held in trust in the State Treasury shall immediately be transferred to the trust and suspense section of the state's accounting, and thenceforth transferred, refunded or disposed of according to the provisions of this Act. Adequate registers, ledgers and and files shall be maintained by the State Treasurer, and by the State Comptroller, to account for the receiving and disposing of all trust and suspense moneys and other securities, which registers and ledgers shall be known as "Trust and Suspense Record."

Nothing herein shall be construed as amending Section 2 of House Bill No. 684, Chapter 3, Acts of the Regular Session, 46th Legislature; nor as amending Senate Bill No. 89, Chapter 324, Acts of the Regular Session of the 48th Legislature.[1] [Acts 1945, 49th Leg., p. 294, ch. 212, § 1.]

1 Article 6674q—1 et seq.

CHAPTER 4.—ATTORNEY GENERAL

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Article 4394. [4411–30] Election and term.—At each biennial general election an Attorney General shall be elected for a term of two years. He shall reside and keep his office in the city of Austin.

Art. 4395. [4413] [2886] To represent State in higher courts.—The Attorney General shall prosecute and defend all actions in the Supreme Court or the Courts of Civil Appeals in which the State may be interested. [Act May 11, 1846, p. 206; P. D. 198; G. L. vol. 2, p. 1512.]

Art. 4396. [4415–16] Collection suits.—He shall transmit to the proper district or county attorney, with such instructions as he may deem necessary, any certified account, bond or other demand which the Comptroller has delivered to him for prosecution and suit. He shall require the several district and county attorneys to report to him at the close of the courts of their respective districts and counties, in such form as he may prescribe, precise information of the situation of all suits instituted by them for the collection of public money. He shall report to the Comptroller annually, on the last day of October and at such other times as the Comptroller may request, a full and correct statement of the status of all such suits. [Id.]

Art. 4397. [4417] [2890] To prepare forms.—He shall whenever requested by the Comptroller, prepare proper forms for contracts, obligations and other instruments which may be wanted for use of the State. [Id.]

Art. 4398. [619] To examine bonds.—He shall carefully examine all county and municipal bonds sent to him as provided by Article 709, in connection with the facts and the Constitution and laws on the subject of the execution of such bonds, and if, as the result of such examination, he shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon the county, city, or town, by which they are executed, he shall so officially certify. [Acts 1893, p. 84; G. L. vol. 10, p. 514.]

Art. 4399. Whom to advise.—The Attorney General at the request of the Governor, or the head of any department of the State government, including the heads and boards of penal and eleemosynary institutions, and all other State boards, regents, trustees of the State educational institutions, committees of either branch of the Legislature, and county auditors authorized by law, shall give them written advice upon any question touching the public interest, or concerning their official duties. He shall advise the several district and county attorneys of the State, in the prosecution and defense of all actions in the district or inferior courts, wherein the State is interested, whenever requested by them, after said attorney shall have investigated the question, and shall with such question, also submit his brief. He shall advise the proper legal authorities in regard to the issuance of all bonds that the law requires shall be approved by him. He is hereby prohibited from giving legal advice or written opinions to any other than the officers or persons named herein. [Acts 1917, p. 376.]

Art. 4400. [4419] [2892] Shall inspect accounts.—He shall at least once a month inspect the accounts of the offices of the State Treasurer and the Comptroller, of all officers and persons charged with the collection or custody of funds of the State. He shall proceed immediately to institute, or cause to be instituted, against any such officer or person who is in default or arrears, suit for the recovery of funds in his hands. He shall also institute immediately criminal proceedings against whoever has violated the laws by misapplying, or retaining in his hands, funds belonging to the State.

Art. 4401. [4420] [2893] To attend sales and bid in land.—If any property shall be sold by virtue of any execution, order or sale issued upon any judgment in favor of the State or sale by virtue of any deed of trust—except executions issued upon judgments in cases of scire facias the agent representing the State by and with the advice and consent of the Attorney General is hereby authorized and required to attend such sales and bid on and buy in for the State said property when it shall be deemed proper to protect the interest of the State in the collection of such judgment and debt. His bid shall not exceed the amount necessary to satisfy said judgment and debt and all costs due thereon. [Acts 1879, S. S., pp. 9-10; G. L. vol. 9, p. 41; Acts 1927, 40th Leg., p. 361, ch. 243, § 1.]

Art. 4402. [4421] [2894] To execute deeds.—In all cases where property is so purchased by the State, the officer selling the same shall execute and deliver to the State a deed to the same, such as is prescribed for individuals in similar cases. [Acts 1879, S.S. p. 9, § 2.]

Art. 4403. [4422] [2895] May sell such property.—The agent or attorney of the State buying for the State such property at such sales shall be authorized by and with the advice and consent of the Attorney General, at any time to sell or otherwise dispose of said property so purchased in the manner acquired and upon such terms and conditions as he may deem most advantageous to the State. If sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment or debt, and all costs accrued thereon, the remainder shall be paid into the State Treasury to the credit of the general revenue. When such sale is made, the Attorney General shall, in the name of the State, execute and deliver to the purchaser a deed of conveyance to said property, which deed shall vest all the rights and title to the same in the purchaser thereof. [Id. sec. 3; Acts 1927, 40th Leg., p. 361, ch. 243, § 1.]

Art. 4404. [4423] [2896] Agent to bid and sell.—When any such property is sold under execution or order of sale issued upon any judgment in favor of the county, including executions issued upon judgments in cases of scire facias in the name of the State, the attorney or agent so representing the county, by and with the advice and consent of the commissioner's court, shall have the same authority to buy and dispose of such property for the county as the agent or attorney for the State is given in this law in similar cases. When any property is so purchased by the agent or attorney of the county, the officer so selling the same shall execute and deliver to the county a deed of conveyance to the same. Whenever the property so bought in for the county is sold, the commissioner's court shall execute and deliver to the purchaser

thereof a deed in the name of the county to such property. [Acts 1879, S.S., p. 9, § 4.]

Art. 4405. [4424] [2897] Judgments against insolvents.—If the principal and sureties upon any judgment held by the State are insolvent, so that under any existing process of law said judgment or any part thereof cannot be collected, there shall be, and is hereby constituted a board consisting of the Attorney General, Comptroller and State Treasurer, who are hereby empowered and authorized by such advertising as they may deem necessary to offer for sale at public outcry, or by private sale, as they may deem to the best interest of the State, all the right of the State to such judgment; and, if by public sale, the amount bid on the same shall not be deemed sufficient, they shall refuse to accept the same, and dispose of the same in any manner deemed by them to the best interest of the State, and upon sale shall make a proper assignment of said judgment to the purchaser. [Id. sec. 5.]

Art. 4406. [4425] [2898] [2803] Official register.—The Attorney General shall keep in proper books a register of all his official acts and opinions, of all actions and demands prosecuted or defended by him or any district or county attorney, in which any portion of the revenue of the State is involved, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office [Acts 1846, p. 204; Id. sec. 12; P. D. 209; G. L. vol. 2, p. 1512.]

Art. 4407. [4426] [2899] [2804] Collections.—He shall immediately pay into the State Treasury all money received by him for debts due or penalties. [Id. P. D. 208.]

Art. 4408. [4427] [2900] [2805] Forfeiture of charters.—The Attorney General, unless otherwise expressly directed by law, whenever sufficient cause exists therefor shall seek a judicial forfeiture of the charters of private corporations. He shall at once take steps to seek such forfeiture in any case where satisfactory evidence is laid before him that any corporation receiving State aid has, by the non-performance of its charter conditions or any violation of its charter, or by any act or omission, mis-user or non-user, forfeited its charter or any rights thereunder. [Acts 1876, p. 312; G. L. vol. 8, p. 1148.]

Art. 4409. [4428] [2901] [2806] Inquiry into charter rights.—He shall also inquire into the charter rights of all private corporations and, in the name of the State, take such legal action as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. [Const. Art. 4, sec. 22.]

Art. 4410. Escheats.—The Attorney General shall institute and prosecute, or cause to be instituted and prosecuted, all suits and proceedings necessary to recover for and on behalf of the State all properties, real, personal or mixed, that have escheated or may escheat to the State under the laws of the State. [Acts 1917, p. 376.]

Art. 4411. [4429] [2902] [2807] No admission to prejudice.—No admission, agreement or waiver, made by the Attorney General, in any action or suit in which the State is a party, shall prejudice the rights of the State. [Acts 1846, p. 206; P. D. 211; G. L. vol. 2, p. 1148.]

Art. 4412. [4431] First office assistant.—In case of the absence or inability of the Attorney General to act, the first office assistant of the Attorney General shall discharge the duties which devolve by law upon the Attorney General. [Act 1903, p. 117.]

Art. 4413. Biennial report.—The Attorney General shall report to the Governor biennially on the first Monday in December next preceding the expiration of his official term the number of indictments which have been found by grand juries in this State for the two preceding years; the offenses charged, the number of trials, convictions and acquittals for each offense; the number of dismissals and also a summary of the judgments rendered on conviction, the nature and amount of penalties imposed and the amount of fines collected. This report shall also give a general summary of all the business, civil and criminal, disposed of by the Supreme Court and Court of Criminal Appeals, so far as the State may be a party, and all civil causes to which the State is a party prosecuted or defended by him in any other courts, State or Federal. [Acts 1885, p. 61; G. L. vol. 9, p. 681.]

CHAPTER 4A.—STATE AUDITOR

Art.

4413a—1 to 4413a—7. [Repealed.]
4413a—8. Legislative audit committee.
4413a—9. State Auditor; appointment by committee; term.
4413a—10. Qualifications of State Auditor.
4413a—11. Written appointment; oath; bond; vacancies.
4413a—12. Approval of appointment by Senate.
4413a—13. Powers and duties of State Auditor in general.
4413a—14. Examination of state departments; reports; recommendations.
4413a—15. Files to be kept by State Auditor.
4413a—16. Improper practices; illegal transactions; reports; hearings; removal or replacement.
4413a—17. Office of State Auditor; compensation of auditor and assistants; traveling expenses; duties of First Assistant.
4413a—18. Personnel; suggested appointments forbidden.
4413a—19. Removal or discharge.
4413a—20. State auditor not to serve in other capacities.
4413a—21. Texas Prison System, auditing.
4413a—22. Definitions.
4413a—23. Partial invalidity.

Arts. 4413a—1 to 4413a—7. [Repealed by Acts 1943, 48th Leg., p. 429, ch. 293, § 1.]

The repealed articles were Acts 1929, 41st Leg., 1st C.S., p. 222, ch. 91, §§ 1–7.

Art. 4413a—8. Legislative Audit Committee.—There is hereby created a Legislative Audit Committee, which shall be composed of the Speaker of the House of Representatives, the Chairman of the Appropriations Committee of the House of Representatives, the Chairman of the Revenue and Taxation Committee of the House of Representatives, the Lieutenant-Governor, the Chairman of the Finance Committee of the Senate and the Chairman of the Committee on State Affairs of the Senate. In the absence of any such Chairman, the Vice-Chairman of such Committee shall act. The members of said Committee shall receive no compensation for the services performed under the provisions of this Act,[1] but each shall receive his actual and necessary expenses incurred in the discharge of his duties as such member. The Committee shall employ such clerical assistants as it may need within the limits of the appropriations made for such purpose.

The Committee, within ten (10) days from the passage of this Act, shall meet and organize by electing one (1) member of said Committee, Chairman; and another member of said Committee, Secretary. In voting on any question which this Act requires the Legislative Audit Committee to decide, if the full Committee is present and there is a tie vote, and the Committee cannot secure, within a reasonable time, a majority vote either for or against the proposition under consideration, then the Committee shall agree on a seventh member, selected from the membership of either the House or the Senate, and the member so

selected shall meet with the Committee and shall vote on the proposition under consideration. When he has voted and the proposition has been decided, his duties as a member of such Committee shall end. [Acts 1943, 48th Leg., p. 429, ch. 293, § 2.]

1 Articles 4366, 4413a—8 to 4413a—23 and Pen.Code, article 422b.

Section 1 of the Act of 1943 read as follows: "House Bill No. 170, Chapter 91, of the Acts of the First Called Session of the 41st Legislature of the State of Texas, 1929 [articles 4413a—1 to 4413a—7 and Pen.Code, article 422a], be and the same is hereby repealed, save and except that the State Auditor and Efficiency Expert and his employees shall continue to discharge the functions of the office under such House Bill No. 170 until a State Auditor has been appointed and has qualified."

Section 14, being a Penal provision, is published as Pen. Code, art. 422b.

Section 17 amends article 4366.

Art. 4413a—9. State Auditor; appointment by Committee; term.—Such Committee, or the majority of the membership thereof, shall appoint an investigator of all custodians of public funds, disbursing agents, and personnel of departments, the title of such officer to be State Auditor. The appointment shall be made during the period from February 1st to February 15th of each odd numbered year, and the person so appointed State Auditor shall hold the office until his successor is appointed and qualifies; provided, however, that within ten (10) days of the effective date of this Act,[1] or as soon thereafter as practicable, such Committee shall appoint an Auditor for the period expiring February 15, 1945. Such Auditor shall be a Certified Public Accountant of Texas. [Acts 1943, 48th Leg., p. 429, ch. 293, § 3.]

1 Articles 4366, 4413a—8 to 4413a—23 and Pen.Code, article 422b.

Art. 4413a—10. Qualifications of State Auditor.—The person appointed State Auditor shall have had at least five (5) years experience as a Certified Public Accountant immediately preceding his appointment, and he shall be a man of unquestioned integrity and moral character and who has had sufficient experience in business and finance to properly discharge the functions of the office. He shall have been a citizen and resident of Texas for at least five (5) years immediately preceding his appointment. He shall qualify by taking the Constitutional oath of office and executing a bond to be approved by the appointing power, payable to the Governor of the State of Texas and his successors in office, in the sum of Twenty-five Thousand ($25,000.00) Dollars, conditioned upon the faithful discharge of the duties of his office, with a solvent surety company as surety. The premium due the surety company for the execution of such bond shall be paid by the state. [Acts 1943, 48th Leg., p. 429, ch. 293, § 4.]

Art. 4413a—11. Written appointment; oath; bond; vacancies.—The Legislative Audit Committee, or a majority of the membership thereof, shall execute a written appointment of the person so appointed as such State Auditor and cause the same to be filed in the office of the Secretary of State. The person so appointed to such office, within ten (10) days after his appointment, shall file in the office of the Secretary of State his oath and approved bond; and if he shall fail to do so, the Committee, or a majority of the membership thereof, shall appoint some other qualified person to fill such office. All vacancies in the office of State Auditor shall be filled by the Committee or a majority of the membership thereof. [Acts 1943, 48th Leg., p. 429, ch. 293, § 5.]

Art. 4413a—12. Approval of appointment by Senate.—The appointment of the State Auditor shall be by the Legislative Audit Committee immediately certified to the Senate, if the same be in session, and if it not be then in session it shall be certified within ten (10) days after said Senate shall be officially convened for any purpose; and if, after consideration by the Senate, the person so appointed and certified shall not receive the approval of two-thirds (⅔) of the members of the Senate, he shall not be considered as approved, and the Legislative Committee shall at once proceed to the selection of another for such position. [Acts 1943, 48th Leg., p. 429, ch. 293, § 6.]

Art. 4413a—13. Powers and duties of State Auditor in general.—The State Auditor is hereby granted the authority and it shall be his duty:

1. To perform an audit of all accounts, books and other financial records of the State Government of any officer of the state, department, board, bureau, institution, commission or agency thereof, and to prepare a written report or reports of such audit or audits to the Legislative Audit Committee and such other person or persons hereafter designated in this bill.

2. To personally, or by his duly authorized assistants, examine and audit all fiscal books, records and accounts of all custodians of public funds, and of all disbursing officers of this state, making independent verifications of all assets, liabilities, revenues and expenditures of the state, its departments, boards, bureaus, institutions, commissions or agencies thereof now in existence or hereafter created.

3. To require such changes in the accounting system or systems and record or records of any office, department, board, bureau, institution, commission or state agency, that in his opinion will augment or provide a uniform, adequate, and efficient system of records and accounting.

4. To work with the executive officers of any and all state offices, departments, boards, bureaus, institutions, commissions or agencies thereof hereafter created, in outlining and installing a uniform, adequate and efficient system of records and accounting.

5. To require the aid and assistance of all executives and officials, auditors, accountants and other employees of each and every department, board, bureau, institution, commission or agency of the state at all times in the inspection, examination and audit of any and all books, accounts and records of the several departments.

The State Auditor shall have access at all times to all of the books, accounts, reports, confidential or otherwise, vouchers, or other records of information in any state office, department, board, bureau, or institution of this state.

In making any changes, the State Auditor shall take into consideration the present system of such books, records, accounts and reports in order that the transition may be gradual. The past and present records shall be co-ordinated into the new system. It is the object and purpose of this Act,[1] among other things, to install a unified and co-ordinated system of accounting and records in every department, bureau, board and institution of the State Government.

The State Auditor shall also perform such other duties as may be required of the State Auditor or State Auditor and Efficiency Expert by any other existing law or laws of this State. [Acts 1943, 48th Leg., p. 429, ch. 293, § 7.]

1 Articles 4366, 4413a—8 to 4413a—23 and Pen.Code, article 422b.

Art. 4413a—14. Examination of state departments; reports; recommendations.—In addition to the other duties provided for the State Auditor, he shall thoroughly examine all departments of the State Government with special regard to their activities and the duplication of efforts between departments and the quality of service being rendered by subordinate employees in each of the several departments.

Upon completing the examination of any department, he shall furnish the head thereof with a report of, among other things, (a) the efficiency of the subordinate employees; (b) the status and condition of

all public funds in charge of such department; (c) the amount of duplication between work done by the departments so examined and other departments of the State Government; (d) the expense of operating the department; (e) breaches of trust and duty, if any, by an officer, department, institution, board, bureau, or other custodian or disbursement officer of public funds; (f) any suggested changes looking toward economy and reduction of number of clerical and other employees, and the elimination of duplication and inefficiency. Copies of each report shall be filed with the Governor, the Lieutenant-Governor, the Speaker of the House of Representatives, the Secretary of State, and each member of the Legislature.

The State Auditor shall file an annual report with the Governor; copies of such report shall be filed with the Speaker of the House, the Lieutenant-Governor, and in the office of the Secretary of State. Such annual report shall contain, among other things, copies of, or the substance of reports made to the various departments, bureaus, institutions, and boards, as well as a summary of changes made in the system of accounts and records thereof.

Reports shall also contain specific recommendations to the Legislature for the amendment of existing laws or the passage of new laws designed to improve the functioning of various departments, boards, bureaus, institutions or agencies of State Government to the end that more efficient service may be rendered and the cost of government reduced.

All recommendations submitted by the State Auditor shall be confined to those matters properly coming within his jurisdiction, which is to see that the laws passed by the Legislature dealing with the expenditure of public moneys are in all respects carefully observed, and that the attention of the Legislature is directed to all cases of violation of the law and to those instances where there is need for change of existing laws or the passage of new laws to secure the efficient spending of public funds. The State Auditor shall not include in his recommendations to the Legislature any recommendations as to the sources from which taxes shall be raised to meet the governmental expense.

All reports by the State Auditor shall call attention to any funds, which, in his opinion, have not been expended in accordance with law or appropriations by the Legislature; and shall make recommendations to the Legislature as to the manner or form of appropriations, which will avoid any such improper expenditure of money in the future.

Each of the auditings herein provided for shall be made and concluded as directed by the Legislative Audit Committee, and in accordance with the terms of this Act;[1] but shall be concluded and reports thereof made not later than thirty (30) days before the convening of each Regular Session of the Legislature. The Committee shall direct the Auditor to make any special audit or investigation that in its judgment is proper or necessary to carry out the purpose of this Act, or to assist the Legislature in the proper discharge of its duties.

The Committee shall direct the printing or mimeographing of such number of any reports as it thinks necessary and proper.

All reports filed by the Secretary of State shall be open to public inspection. [Acts 1943, 48th Leg., p. 429, ch. 293, § 8.]

1 Articles 4366, 4413a—8 to 4413a—23 and Pen.Code, article 422b.

Art. 4413a—15. Files to be kept by State Auditor.—The State Auditor shall keep, or cause to be kept, a complete, accurate and adequate set of fiscal transactions of the State Auditor's office. He shall also keep a complete file of copies of all audit reports, examinations, investigations, and any and all other reports or releases issued by him or his office, and a complete file of audit work papers and other evidences pertaining to work of the office of State Auditor. [Acts 1943, 48th Leg., p. 429, ch. 293, § 9.]

Art. 4413a—16. Improper practices; illegal transactions; reports; hearings; removal or replacement.—If the State Auditor finds, in the course of his audit, evidence of improper practices of financial administration or of any general incompetency of personnel, inadequacy of fiscal records, he shall report same immediately to the Governor, the Legislative Audit Committee, and the Department head or heads affected. If the State Auditor shall find evidence of illegal transactions, he shall forthwith report such transactions to the Governor, the Legislative Audit Committee and the Attorney General.

Immediately upon receipt of a report from the State Auditor of incompetency of personnel and inadequacy of fiscal records, the Legislative Audit Committee shall review the State Auditor's report of same and hold hearings with the Department head or heads concerning such incompetency and inadequacy of fiscal records. The Legislative Audit Committee, after holding such hearings, shall make a report to the Department head or heads requesting the removal or replacement of the incompetent personnel or the installation of the necessary fiscal records. The Legislative Audit Committee shall report to the Legislature any refusal of the Department officials to remedy such incompetency or the installation of proper fiscal records. [Acts 1943, 48th Leg., p. 429, ch. 293, § 10.]

Art. 4413a—17. Office of State Auditor; compensation of Auditor and assistants; traveling expenses; duties of First Assistant.—The State Auditor shall devote his entire time to the discharge of the duties herein imposed upon him; shall maintain his office in the Capitol; and the Board of Control is directed to furnish suitable quarters, supplies and stationery for him and his assistants and employees. The State Auditor shall receive for his services compensation at the rate of Seven Thousand Five Hundred ($7,500.00) Dollars per annum until September 1, 1945, and thereafter such sum as may be provided in the biennial appropriation bill, together with the necessary traveling expense, payable monthly in the manner as other state officers are paid. All vouchers issued in the payment of salary and expenses to the State Auditor shall be approved by the Chairman of the Legislative Audit Committee before they are paid; and all vouchers issued for the payment of salaries of assistant auditors and for stenographic and clerical help, as well as all vouchers issued in the payment of other expenses incurred in the operation of the office of the State Auditor, shall be approved by the State Auditor before they are paid. Traveling expenses for all employees in the State Auditor's office, when engaged on official business, shall be paid to the extent authorized in the appropriation bill for the State Auditor's office. All sums appropriated to the State Auditor for that department shall be expended under the direction and subject to the control of the Legislative Audit Committee. Salaries shall be paid monthly. The salary of no assistant auditor shall exceed the sum of Four Thousand Two Hundred ($4,200.00) Dollars per annum, except the First Assistant, whose salary shall not exceed Six Thousand ($6,000.00) Dollars per annum. The First Assistant State Auditor shall perform such duties and assignments as the State Auditor may prescribe, and shall act as State Auditor in the absence of the State Auditor. All such assistant auditors and stenographic and clerical assistants shall be named and appointed by the State Auditor. The salaries paid shall in no event exceed the amounts paid in other departments for similar services. [Acts 1943, 48th Leg., p. 429, ch. 293, § 11.]

Art. 4413a—18. Personnel; suggested appointments forbidden.—The State Auditor shall be free to select the most efficient personnel available

for each and every position in his office, to the end that he may render to the members of the Legislature that service which they have a right to expect. It is the intention and desire of the Legislature to free the State Auditor and his staff from partisan politics; and it is hereby declared to be against public policy, and unlawful, for any member of the Legislature or any official or employee of the State Government or any board, bureau, department or institution thereof to recommend or suggest the appointment of any person to a position on the staff of the State Auditor. The State Auditor is hereby authorized to conduct such professional examinations as he may deem expedient in determining the qualifications of the persons whom he contemplates placing on his staff. [Acts 1943, 48th Leg., p. 429, ch. 293, § 12.]

Art. 4413a—19. Removal or discharge.—The State Auditor may be removed or discharged at any time by the Legislative Audit Committee, or a majority of the members thereof, for any reason satisfactory to said Committee or a majority thereof, and without a hearing, and such office or position filled by appointment, the same as though a vacancy existed in such office. The State Auditor may remove or discharge any assistant auditor or any stenographic or clerical assistants at any time and for any reason satisfactory to himself and without a hearing. [Acts 1943, 48th Leg., p. 429, ch. 293, § 13.]

Art. 4413a—20. State Auditor not to serve in other capacities.—The State Auditor shall not serve in any ex-officio capacity, on any administrative board or commission, or have any financial interest in the transactions of any department, board, bureau, institution, commission or agency of the state. [Acts 1943, 48th Leg., p. 429, ch. 293, § 15.]

Art. 4413a—21. Texas Prison System; auditing.—The provisions of Section 18 of Chapter 212 of House Bill No. 59, Acts of the Regular Session of the 40th Legislature,[1] shall in no way relieve the State Auditor from the duties and responsibilities of auditing the Texas Prison System the same as every other department, board, bureau or institution of this state. [Acts 1943, 48th Leg., p. 429, ch. 293, § 16.]

[1] Article 6166q.

Art. 4413a—22. Definitions.—Wherever the word "department", "board", "bureau", "institution", "commission", or other word or words of similar import appear in any prior Section of this Act,[1] such shall mean each and every department, board, bureau, institution, commission or agency of the State Government. [Acts 1943, 48th Leg., p. 429, ch. 293, § 18.]

[1] Articles 4366, 4413a—8 to 4413a—23 and Pen.Code, article 422b.

Art. 4413a—23. Partial invalidity.—If any part or parts of this Act[1] shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such invalid part or parts thereof would be so declared unconstitutional. [Acts 1943, 48th Leg., p. 429, ch. 293, § 19.]

[1] Articles 4366, 4413a—8 to 4413a—23 and Pen.Code, article 422b.

CHAPTER 4B.—INTERSTATE COOPERATION

Art.
4413b—1. Commission established; composition; functions.

Sec.
1. Governor's Committee.
2. Establishment and membership of Commission.
3. Standing committees of Senate and House; functions.
4. Functions of Commission.
5. Delegations and committees; establishment by Commission; duties.
6. Report to Governor and Legislature; no compensation.
7. Names of committees and Commission.
8. Joint governmental agency.
9. Fund to be appropriated by legislature.
10. Partial invalidity.

Art. 4413b—1. Commission established; composition; functions.

Governor's Committee

Section 1. There is hereby established a committee to be officially known as the Governor's Committee on Interstate Cooperation, and to consist of five (5) members. Its members shall be: The Secretary of State, ex officio; the Attorney General, ex officio; and three (3) other administrative officials or members of existing commissions to be designated by the Governor. The Governor shall appoint one (1) of the five (5) members of this Committee as its Chairman. In addition to the regular members, the Governor shall be an ex officio honorary non-voting member of this Committee.

Establishment and membership of Commission

Sec. 2. There is hereby established the Texas Commission on Interstate Cooperation. This Commission shall be composed of fifteen (15) regular members, namely:

The five (5) members of the Senate Committee on Interstate Cooperation:

The five (5) members of the House Committee on Interstate Cooperation;

The five (5) members of the Governor's Committee on Interstate Cooperation;

The Governor, the President of the Senate and the Speaker of the House of Representatives shall be ex officio honorary non-voting members of this Commission. The Chairman of the Governor's Committee on Interstate Cooperation shall be ex officio Chairman of this Commission. The Chairman of the Senate Committee on Interstate Cooperation shall be ex officio first Vice-Chairman of the Commission, and the Chairman of the House Committee shall be ex officio second Vice-Chairman of the Commission.

Standing committees of Senate and House; functions

Sec. 3. The said standing Committee of the Senate and the said standing Committee of the House of Representatives shall function during the Regular Session of the Legislature and also during the interim periods between such sessions; their members shall serve until their successors are designated; and they shall respectively constitute for this State the Senate Council and House Council of the American Legislators' Association. The incumbency of each member of the Governor's Committee shall extend until his successor is appointed.

Functions of Commission

Sec. 4. It shall be the function of this Commission:

(1) To carry forward the participation of this State as a member of the Council of State Governments;

(2) To encourage and assist the legislative, executive, administrative and judicial officials and employees of this State to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other States, of the Federal Government, and of local units of government;

(3) To endeavor to advance cooperation between this State and other units of government whenever it

seems advisable to do so by formulating proposals for, and by facilitating

(a) The adoption of compacts;

(b) The enactment of uniform or reciprocal statutes;

(c) The adoption of uniform or reciprocal administrative rules and regulations;

(d) The informal cooperation of governmental offices with one another;

(e) The personal cooperation of governmental officials and employees with one another, individually;

(f) The interchange and clearance of research and information, and

(g) Any other suitable process.

(4) In short, to do all such acts as will, in the opinion of this Commission, enable this State to do its part, or more than its part, in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose.

Delegations and committees; establishment by Commission; duties

Sec. 5. The Commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the Commission in obedience to its decisions. Subject to the approval of the Commission, the member or members of each such delegation or committee shall be appointed by the Chairman of the Commission. State officials or employees who are not members of the Commission on Interstate Cooperation may be appointed as members of any such delegation or committee, but private citizens holding no governmental positions in this State shall not be eligible. The Commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The Commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards.

Report to Governor and Legislature; no compensation

Sec. 6. The Commission shall report to the Governor and to the Legislature within fifteen (15) days after the convening of each regular legislative session, and at such other times as it deems appropriate. Its members and the members of all delegations and committees which it establishes shall serve without compensation for such service.

Names of committees and Commission

Sec. 7. The Committees and the Commission established by this Act shall be informally known, respectively, as the Senate Cooperation Committee, the House Cooperation Committee, the Governor's Cooperation Committee and the Texas Cooperation Commission.

Joint governmental agency

Sec. 8. The Council of State Governments is hereby declared to be a joint governmental agency of this State and of the other states which cooperate through it.

Fund to be appropriated by legislature

Sec. 9. It is contemplated that a fund will be appropriated by the Legislature for the purpose of enabling the Commission, by contribution to the Council of State Governments, to participate with other states in maintaining the said Council's District and central secretariats and its other governmental services. Out of any such fund appropriated, also, the members of the Commission and the members of all delegations and committees which it establishes shall be paid their necessary expenses in carrying out their obligations under this Act.

Partial invalidity

Sec. 10. If any clause or other portion of this Act is held to be invalid, that decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that all such remaining portions of this Act are severable, and that it would have enacted such remaining portions if the invalid portions had not been included in this Act. [Acts 1941, 47th Leg., p. 1109, ch. 569.]

CHAPTER 5.—DEPARTMENT OF PUBLIC SAFETY

Art.

4413(1). Creation of the Department of Public Safety.
4413(2). Creation of the Public Safety Commission.
4413(3). Organization of the Commission.
4413(4). Duties and powers of the Commission.
4413(5). Directors and assistant directors; salary.
4413(6). Duties and powers of the Director.
4413(7). Authority to issue commissions.
4413(8). Appointment of division and bureau chiefs.
4413(9). Appointment, promotions, and discharges.
4413(10). Department divisions.
4413(11). The Texas Rangers.
4413(12). The Texas Highway Patrol.
4413(13). The Headquarters Division.
4413(14). The Bureau of Identification and Records.
4413(15). The Bureau of Communications.
4413(16). The Bureau of Intelligence.
4413(17). The Bureau of Education.
4413(18). Establishment of district headquarters.
4413(19). Law enforcement officers shall be associate members.
4413(20). Director may call upon law enforcement officers for assistance.
4413(21). Director shall provide for cooperation.
4413(22). State supported educational institutions shall assist.
4413(23). State Officials and Departments shall assist.
4413(24). When the Governor shall command the Department.
4413(25). State shall provide necessary buildings, equipment, et cetera.
4413(26). Provisions for transfer of funds and appropriations.
4413(27). Provisions for transfer of pending business.
4413(28). Provision in event of unconstitutionality of a portion of this act.
4413(29). Repeal of inconsistent laws.

Art. 4413(1). Creation of the Department of Public Safety.—There is hereby created a Department of Public Safety of the State of Texas, hereinafter designated as "the Department," in which is vested the enforcement of the laws protecting the public safety and providing for the prevention and detection of crime. The Department shall have its principal office and headquarters in the City of Austin, where all of its records shall be kept. [Acts 1935, 44th Leg., p. 444, ch. 181, § 1.]

Art. 4413(2). Creation of the Public Safety Commission.—The control of the Department is hereby vested in the Public Safety Commission, hereinafter designated as "the Commission," which Commission shall consist of three citizens of this State. The Governor shall, within thirty days after this Act shall take effect, appoint the members of the Commission by and with the advice and consent of the Senate to hold office until December 31, 1935, and they shall constitute the Public Safety Commission; and on the 1st day of January, 1936, the Governor shall appoint one member to hold office for two years, one for four years, and one for six years, and at the end of every two years thereafter, the Governor shall in like manner, by and with the advice and consent of the Senate of the State of Texas, appoint one citizen of Texas as the successor of the member of the Commission whose term shall expire in that year, to serve as such

member of six years and until his successor is appointed and qualified. The Commission shall elect annually one member of the Commission to serve as chairman thereof. Two members of the Commission shall constitute a quorum. In the event of a vacancy occurring on said Commission, the Governor shall appoint a new member of the Commission to fill the said vacancy for such unexpired term, such appointment to be subject to the advice and consent of the Senate of the State of Texas, at the next session thereof. The members of the Commission shall be selected because of their peculiar qualifications fitting them for these positions. In the appointment of the members of the Commission, the following qualifications among others shall be observed: Knowledge of laws; experience in the enforcement of law; honesty, integrity; education, training and executive ability. They shall serve without compensation, but shall be entitled to receive Ten ($10.00) Dollars per day as an expense account and necessary mileage in the performance of their duties, such expense allowance shall not exceed Five Hundred ($500.00) Dollars annually for each member. [Acts 1935, 44th Leg., p. 444, ch. 181, § 2.]

Art. 4413(3). Organization of the Commission.—The Commission shall meet at such time and places as they may provide for by rules or as the chairman or any two members may call. [Acts 1935, 44th Leg., p. 444, ch. 181, § 3.]

Art. 4413(4). Duties and powers of the Commission.—(1) The Commission shall formulate plans and policies for the enforcement of the criminal laws and of the traffic and safety laws of the State, the prevention of crime, the detection and apprehension of violators of the laws, and for the education of the citizens of the State in the promotion of public safety and law observance.

(2) It shall organize the Department and supervise its operation; it shall establish grades and positions for the Department, and for each grade and position it shall designate the authority and responsibility within the limits of this Act. For each such grade and position so established, the Commission shall set standards of qualifications and shall fix prerequisites of training, education and experience, and shall make necessary rules and regulations for the appointment, promotion, reduction, suspension and discharge of all employees after hearings before the said Commission; that any officer or employee of the said Department who shall be discharged shall upon application to the Commission be entitled to a public hearing before said Commission and the Commission shall determine whether such discharge shall be affirmed or set aside. All persons inducted into the service of the Department shall be considered on probation for the first six months and at any time during such period they may be discharged if found to be unsuitable for the work by the director, with the advice and consent of the Commission, and, if so discharged, such persons shall not be entitled to the public hearing hereinabove provided for.

(3) The Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the Department as may be deemed necessary and as may not be inconsistent with the provisions of this Act or of the laws of the State.

(4) The Commission shall maintain records of all proceedings and official orders.

(5) The Commission shall biennially submit a report of its work to the Governor, and the Legislature, with its recommendations and those of the Public Safety Director. A quarterly statement containing an itemized list of all moneys received, and from what sources received, and all moneys expended and for what purposes expended, shall be prepared by the Director sworn to and filed in the records of the Department and a copy shall be sent to the Governor. [Acts 1935, 44th Leg., p. 444, ch. 181, § 4.]

Art. 4413(5). Directors and assistant directors; salary.—The Commission shall appoint a Public Safety Director hereinafter designated as the "Director," who shall be a citizen of this State and who shall hold his position until removed by the Commission. The Commission shall also appoint an Assistant Director who shall perform such duties as may be designated by the Director. The Director and Assistant Director shall be selected on the basis of training, experience, and qualifications for said positions, and shall have at least five (5) years experience, preferably police or public administration. The Director and Assistant Director shall draw annual salaries as fixed by the Legislature. The Director shall be directly responsible to the Commission for the conduct of all the affairs of the Department. [Acts 1935, 44th Leg., p. 444, ch. 181, § 5; Acts 1937, 45th Leg., p. 772, ch. 373, § 1.]

Art. 4413(6). Duties and powers of the director.—(1) The Director shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to the Commission detailed reports of the operation of the Department and statements of its expenditures.

(2) He shall be the executive officer of the Department, and subject to the approval of the Commission and to the provisions of this Act, he shall have authority to appoint, promote, reduce, suspend and discharge all officers and employees of the Department. He shall issue and sign requisition as provided by law for the purchase of supplies for the office and officers of the Department, suitable uniforms, arms and equipment; and make such rules and regulations, subject to the approval of the Commission, as are deemed necessary for the control of the Department. [Acts 1935, 44th Leg., p. 444, ch. 181, § 6.]

Art. 4413(7). Authority to issue commissions.—The Director, under the direction of the Commission, shall issue commissions as law enforcement officers to all members of the Texas Rangers, to all members of the Texas Highway Patrol, and to such other officers of the Department as may be employed by the said Department. [Acts 1935, 44th Leg., p. 444, ch. 181, § 7.]

Art. 4413(8). Appointment of division and bureau chiefs.—It shall be the duty of the Director with the advice and consent of the Commission to appoint the Chiefs of the several Bureaus provided for in this Act. [Acts 1935, 44th Leg., p. 444, ch. 181, § 8; Acts 1937, 45th Leg., p. 772, ch. 373, § 2.]

Art. 4413(9). Appointment, promotions, and discharges.—(1) The appointment and promotion of all officers and employees, shall be made on the basis of merit, to be determined by examinations under the rules and regulations of the Commission which shall take into consideration the age, physical condition, experience and education of the applicant. All persons who have applications on file for any position in the Department shall be given reasonable written notice of the place and time where said examinations are to be held.

(2) All applicants for positions in the Department shall be citizens of the United States of America, and shall have been bona fide residents of the State of Texas for a period of not less than one year immediately prior to the filing of the application. No applicant for a position in the Department shall be questioned at any time as to his religious faith or beliefs, or as to his political affiliations. No person in the Department shall contribute any money or other thing of value for political purposes, nor shall any person in the Department engage in political activities or campaign for or against any candidate for any public of-

fice in this State. Any person violating any provision of this subsection shall forfeit his position with the Department.

(3) No officer or employee of the Department shall be discharged without just cause. The Director shall determine whether or not the officer or the employee be discharged; and in case he is ordered discharged, he shall have the right to appeal to the Commission; during such appeal, he shall be suspended without pay.

(4) The chiefs of the several Divisions and Bureaus, after due investigation, shall once each six months make report to the Commission of the efficiency of each employee within such Division or Bureau. These reports shall be kept in the permanent files of the Commission, and shall be given proper consideration in all matters of promotion and discharge. [Acts 1935, 44th Leg., p. 444, ch. 181, § 9.]

Art. 4413(10). Department divisions.—The Department shall be composed of three divisions; i. e. (a) The Texas Rangers; (b) The Texas Highway Patrol; and (c) The Headquarters Division, and such other divisions as the Commission may deem necessary. [Acts 1935, 44th Leg., p. 444, ch. 181, § 10.]

Art. 4413(11). The Texas Rangers.—(1) The Texas Ranger Force and its personnel, property, equipment and records, now a part of the Adjutant General's Department of the State of Texas, are hereby transferred to and placed under the jurisdiction of the Department of Public Safety, and are hereby designated as the Texas Rangers, and as such, constitute the above mentioned division of the Department.

(2) The Texas Rangers shall consist of six (6) captains, one headquarters sergeant, and such number of privates as may be authorized by the Legislature, except in cases of emergency when the Commission, with the consent of the Governor, shall have authority to increase the force to meet extraordinary conditions. [As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 3.]

(3) The Compensation of the officers shall be such as allowed by the Legislature.

(4) The officers shall be clothed with all the powers of peace officers, and shall aid in the execution of the laws.

They shall have authority to make arrests, and to execute process in criminal cases; and in civil cases when specially directed by the judge of a court of record; and in all cases shall be governed by the laws regulating and defining the powers and duties of sheriffs when in the discharge of similar duties; except that they shall have the power and shall be authorized to make arrests and to execute all process in criminal cases in any county in the State. All officers operating by virtue of this Act shall have the authority to make arrests, as directed by warrants, and without a warrant under the conditions now authorized by law, and also in all cases when the alleged offender is traveling on a railroad, in a motor vehicle, aeroplane or boat. When any of said force shall arrest any person charged with a criminal offense, they shall forthwith convey said person to the county where he so stands charged, and shall deliver him to the proper officer, taking his receipt therefor. All necessary expenses thus incurred shall be paid by the State.

(5) Special Rangers: The Commission shall have authority to appoint such number of special rangers as may be deemed advisable, not to exceed Three Hundred (300) in number; such rangers shall not have any connection with any Ranger Company or Highway Motor Patrol, but they shall at all times be subject to the orders of the Commission and the Governor for special duty to the same extent as the other law enforcing officers provided for in this Act; such special rangers, however, shall not have the authority to enforce any laws except those designed to protect life and property, and such rangers are especially denied the authority to enforce any laws regulating the use of the State highways by motor truck and motor buses and other motor vehicles. Such rangers shall not receive any compensation from the State for their services, and before the issuance of the commission each such ranger shall enter into a good and sufficient bond executed by a Surety Company authorized to do business in Texas in the sum of Twenty-five Hundred ($2,500.00) Dollars, approved by the Director, indemnifying all persons against damages accruing as the result of any illegal or unlawful acts on the part of such special ranger. All special ranger commissions shall expire on January 1st of the odd year after appointment, and the Director can revoke any special ranger commission at any time for cause, and such officer shall be designated in the Commission as Special Ranger.

Provided further that the Commission shall not issue more than ten commissions to special rangers for employment by any one person, firm or corporation at any one time, except during an emergency, when in the opinion of the Commission it is necessary in the interest of the public justice to permit the employment of more than ten.

(6) In the execution of the laws of the State under the Department of Public Safety, the officials shall in all cases where it becomes necessary to seize property and destroy the same, to proceed as now provided by law; and all property so seized shall be stored and a list thereof presented to a District Judge in the District where such property is seized, who shall dispose of same in the mode and manner now provided by Articles Nos. 5112, 5113 and 5114, Revised Civil Statutes 1925.

Any official disregarding these provisions shall by virtue thereof be subject to removal rrom office. [Acts 1935, 44th Leg., p. 444, ch. 181, § 11.]

Art. 4413(12). The Texas Highway Patrol.—(1) The State Highway Motor Patrol of Texas and its personnel, property, equipment and records, now a part of the Highway Department of the State of Texas, are hereby transferred to and placed under the jurisdiction of the Department of Public Safety, and are hereby designated as the Texas Highway Patrol, and as such constitute the above mentioned division of the Department.

(2) The Texas Highway Patrol Division of the Department of Public Safety shall consist of Chief Patrol Officer, who shall be the executive officer of the Patrol, and not exceeding fifteen (15) captains, and not exceeding twenty (20) sergeants and not exceeding three hundred (300) privates, and such clerical help as may be determined by the Legislature in its biennium appropriation bill. Provided that if an applicant be otherwise qualified as a private thereunder, his literary attainment shall not preclude his appointment as such private. [As amended Acts 1937, 45th Leg., p. 174, ch. 91, § 1.]

Subd. (2) was also amended by Acts 1937, 45th Leg., p. 772, ch. 373, § 4. See subd. (2) post.

(2) The Texas Highway Patrol Division shall consist of the Chief Patrol Officer who shall be the executive officer of the Patrol and such number of captains, sergeants, and privates as may be authorized by the Legislature, and such administrative and clerical help as may be determined by the Commission. [As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 4.]

Subd. (2) was also amended by Acts 1937, 45th Leg., p. 174, ch. 91, § 1. See subd. (2) ante.

(3) The compensation of the officers shall be such as allowed by the Legislature.

(4) The officers, non-commissioned officers and enlisted men of the Texas Highway Patrol shall be, and they are hereby clothed with all the powers and authority which they now have and exercise as members of the State Highway Motor Patrol of Texas, and their duties and functions shall be the same as the duties and functions they are now performing. In addition they shall be, and they are hereby clothed with all the powers and authority which is in this Act or otherwise by

law given to members of the Texas Ranger force. [Acts 1935, 44th Leg., p. 444, ch. 181, § 12.]

Art. 4413(13). The Headquarters Division.—There is hereby created, as an integral part of the Department, a Headquarters Division, consisting of the Bureaus of Identification and Records, Communications, Intelligence and Education. With the advice and consent of the Commission, the Director shall employ such chiefs, experts, operators, instructors and assistants as may be necessary for the operation of this Division and the several Bureaus therein. [Acts 1935, 44th Leg., p. 444, ch. 181, § 13.]

Art. 4413(14). The Bureau of Identification and Records.—(1) It shall be the duty of the Director to appoint, with the advice and consent of the Commission, a Chief of the Bureau of Identification and Records, who shall be the executive officer. The Chief of the Bureau and at least one assistant shall be recognized identification experts, and with at least three years' actual experience. This Bureau shall procure and file for record, photographs, pictures, descriptions, fingerprints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of a felony within the State, and also of all well known and habitual criminals wheresoever the same may be procured. The Bureau shall collect information concerning the number and nature of offenses known to have been committed in this State, of the legal steps taken in connection therewith, and such other information as may be useful in the study of crime and the administration of justice. It shall be the duty of the Bureau to co-operate with the bureaus in other states, and with the Department of Justice in Washington, D. C. It shall be the duty of the Chief of the Bureau to offer assistance, and, when practicable, instruction, to sheriffs, chiefs of police, and other peace officers in establishing efficient local bureaus of identification in their districts.

(2) The Bureau shall make ballistic test of bullets and firearms, and chemical analyses of bloodstains, cloth, materials and other substances, for the officers of the State charged with law enforcement. [Acts 1935, 44th Leg., p. 444, ch. 181, § 12.]

Art. 4413(15). The Bureau of Communications.—(1) It shall be the duty of the Director with the advice and consent of the Commission to name the Chief of the Bureau of Communications. [As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 5.]

(2) This Bureau may, when funds are provided, install and operate a police radio broadcasting system for the broadcasting of information concerning the activities of violators of the law, and for the directing of the activities and functions of the law enforcement agencies of the State, the counties and the municipalities. It shall co-operate with county and municipal police authorities and with police radio stations, in this State and in other states.

(3) The Bureau shall establish and operate a State Roads Blockade System, in co-ordination with State, county and municipal law enforcement agencies.

(4) This Bureau shall provide for the rapid exchange of information, concerning the commission of crimes and the detection of violators of the law, between the law enforcement agencies of this State, its counties and municipalities and other states and the national government. [Acts 1935, 44th Leg., p. 444, ch. 181, § 15.]

This section was numbered 13 in the act, but should be section 15.

Art. 4413(16). The Bureau of Intelligence.—(1) It shall be the duty of the Director with the advice and consent of the Commission to name the Chief of the Bureau of Intelligence. [As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 6.]

(2) This Bureau shall, with the aid of the other Divisions and Bureaus of the Department, accumulate and analyze information of crime activities in the State, and shall make such information available for the use of the Department and of county and municipal police and law enforcement agencies.

(3) It shall aid in the detection and apprehension of violators of the law. [Acts 1935, 44th Leg., p. 444, ch. 181, § 16.]

Art. 4413(17). The Bureau of Education.—(1) It shall be the duty of the Director with the advice and consent of the Commission to name the Chief of the Bureau of Education. The Chief of said Bureau shall organize schools for the members of the Department and other peace officers, and shall give instruction in such schools, and he shall have had substantial experience in law enforcement work and in the instruction of law enforcement officers. [As amended Acts 1937, 45th Leg., p. 772, ch. 373, § 7.]

(2) This Bureau shall establish and operate schools for the training of the personnel of the Department in their respective duties and functions.

(3) This Bureau shall establish and operate schools for the training of county and municipal police officers who have been selected to attend such schools by the authorities of the law enforcement agencies by which they are employed.

(4) A comprehensive plan shall be established and carried out for the education of the citizens of this State in matters of public safety and crime prevention and detection.

(5) The Adjutant General shall provide suitable buildings, land and State owned equipment located in Camp Mabry, Austin, Texas, for the use of this Bureau in the conduct of its training schools. [Acts 1935, 44th Leg., p. 444, ch. 181, § 17.]

Art. 4413(18). Establishment of district headquarters.—The Commission may establish district headquarters and stations at various places in the State, with the personnel and equipment necessary for the proper functioning and operation thereof. [Acts 1935, 44th Leg., p. 444, ch. 181, § 18.]

Art. 4413(19). Law enforcement officers shall be associate members.—The sheriffs and constables of the several counties in this State, and the chiefs of police of all incorporated municipalities, are hereby made associate members of the Department, and are entitled to all rights and privileges granted to them by the Department. [Acts 1935, 44th Leg., p. 444, ch. 181, § 19.]

Art. 4413(20). Director may call upon law enforcement officers for assistance.—The director shall have the authority to call upon any sheriff or other police officer in any county or municipality within the limits of their respective jurisdictions, for aid and assistance in the performance of any duty imposed by this Act; and upon being notified or called upon for such aid and assistance, it shall be the duty of such officer concerned to comply with such order to the extent requested. [Acts 1935, 44th Leg., p. 444, ch. 181, § 20.]

Art. 4413(21). Director shall provide for co-operation.—The Director, with the advice and consent of the Commission, shall formulate and put into effect plans and means of cooperating with the sheriffs and local police and peace officers throughout the State for the purpose of the prevention and discovery of crimes and the apprehension of criminals and the promotion of public safety; and it shall be the duty of all such local police and peace officers to cooperate with the Director in such plans. Every telegraph and telephone company and radio station operating within this State shall grant priority of service to the police agencies and to the Department of Public Safety, when notified that such service is urgent in the interests of the public welfare. [Acts 1935, 44th Leg. p. 444, ch. 181, § 21.]

Art. 4413(22). State supported educational institutions shall assist.—The University of Texas and all other State supported educational institutions shall cooperate with the Department in carrying out the provisions of this Act, and shall aid and assist in the giving of instruction in the training schools conducted by the Bureau of Education, and shall aid and assist the Bureau of Identification and Records in the making of such chemical tests and analyses as are necessary, and in the making of statistical analyses, charts and reports of law enforcement and violations of law; the nature and extent of such aid and assistance is to be agreed upon and arranged for by the Commission and the President of the educational institution called upon for such aid and assistance. [Acts 1935, 44th Leg., p. 444, ch. 181, § 22.]

Art. 4413(23). State Officials and Departments shall assist.—The Attorney General of the State of Texas, the Highway Department, the Public Health Department and all other departments of the government of the State of Texas shall cooperate with the Department of Public Safety in the execution of the provisions of this Act and in the enforcement of the laws of the State concerning crime prevention and detection and the public safety. The Board of Control is hereby directed to provide suitable quarters for the Department of Public Safety in the basement of the Land Office Building until more suitable quarters are available. [Acts 1935, 44th Leg., p. 444, ch. 181, § 23.]

Art. 4413(24). When the Governor shall command the Department.—Upon the occurrence of a public disaster, riot, or insurrection, or the formation of a dangerous resistance to the enforcement of the law, or for the purpose of performing his constitutional duty to cause the laws to be enforced, the Governor of this State shall have the authority to assume the command of and direct the activities and functions of the Commission and of the Department during the existence of such emergency or necessity. In the event that the Governor of this State shall take such action, he shall first use the officers and personnel of the Department other than the Texas Highway Patrol and the said Patrol shall so be called upon or diverted from its regular duties only in the event that the Department is otherwise unable to cope with the emergency. [Acts 1935, 44th Leg., p. 444, ch. 181, § 24.]

Art. 4413(25). State shall provide necessary buildings, equipment, et cetera.—The State of Texas shall provide the necessary buildings, offices and quarters for the Department and its officers and employees in the City of Austin, Texas, and in such other places in the State as district headquarters shall be established, and it shall also provide for the equipment of the Department and the Divisions, bureaus and branches thereof, with the furniture, fixtures, automobiles, motorcycles, horses, firearms, ammunition, uniforms, appliances and materials necessary to the proper functioning and operation thereof. [Acts 1935, 44th Leg., p. 444, ch. 181, § 25.]

Art. 4413(26). Provisions for transfer of funds and appropriations.—For the purpose of carrying out the provisions of this Act, there is hereby transferred to the credit of an account to be designated and known as the Department of Public Safety of the State of Texas, any moneys in the General Fund credited to the Texas Ranger Force of the Adjutant General's Department, the Highway Motor Patrol Division of the Highway Department of the State of Texas for the remainder of the biennium commencing on the effective date of this Act, and there is hereby appropriated out of the General Revenue of this State the additional sum of Five Thousand ($5,000.00) Dollars for the purpose of carrying out the provisions of this Act for the biennium ending August 31, 1935, and thereafter by moneys to be appropriated by the Legislature of the State of Texas. All appropriations for the Texas Highway Patrol shall be made by the Legislature from and out of the State Highway Fund. [Acts 1935, 44th Leg., p. 444, ch. 181, § 26.]

Art. 4413(27). Provisions for transfer of pending business.—All matters and orders pending before or made by any office or department or unit transferred under this Act to this Department, shall be deemed to be continued with like status in such Department. [Acts 1935, 44th Leg., p. 444, ch. 181, § 27.]

Art. 4413(28). Provision in event of unconstitutionality of a portion of this act.—Should any section or provision of this Act be held to be unconstitutional by any court of competent jurisdiction, the same shall not affect the validity of the Act as a whole, or any part thereof, other than the portion so held to be invalid. The Legislature hereby declares that it would have passed this Act had such part been omitted. [Acts 1935, 44th Leg., p. 444, ch. 181, § 28.]

Art. 4413(29). Repeal of inconsistent laws.—All laws or parts of laws inconsistent or conflicting with the provisions of this Act are hereby repealed. [Acts 1935, 44th Leg., p. 444, ch. 181, § 29.]

CHAPTER 6.—VETERANS' PREFERENCES

Art.
4413(30). [Repealed.]
4413(31). Preference of veterans in appointment or employment.
Sec.
1. Persons entitled to preference.
2. Percentage of employees entitled to preference.
3. Age or service-connected disability as affecting rights.
4. Investigation as to qualifications.
5. Federal grants.
6. Inapplicable to certain positions.
7. Partial invalidity.
8. Repeal; Act as cumulative.

Art. 4413(30). [Repealed by Acts 1945, 49th Leg., p. 627, ch. 357, § 8.]

The article repealed was Acts 1939, 46th Leg., p. 6617.

Art. 4413(31). Preference of veterans in appointment or employment.

Persons entitled to preference

Section 1. From and after the effective date of this Act, in every public department, commission, board, and governmental agency, and upon all public works of this State, all honorably discharged soldiers, sailors, marines, members of the air corps and coast guard of the United States, nurses in military service of the United States, and all women in military service of the United States in the different auxiliary services thereof, in the Spanish-American War, Philippine Insurrection, China Relief Expedition, World War I and World War II, or in any other military conflict in which the United States of America has been a participant, who are and have been citizens of Texas for not less than five (5) years preceding the date of application in pursuance of this Act, and are competent and fully qualified, shall be entitled to preference in appointment or employment over other applicants for the same position having no greater qualifications; provided, that this Act shall not apply or benefit any person who was a conscientious objector at the time of his or her discharge from any of the military services herein mentioned.

Percentage of employees entitled to preference

Sec. 2. The person or persons whose duty it is or may be to appoint or employ persons for or on be-

half of the public departments, commissions, boards and other governmental agencies and public works as set out in Section 1 hereof, shall ascertain the number of employees therein and shall give preference to persons entitled thereto under and in accordance with this Act, to the extent that not less than forty per cent (40%) of the total number of employees so employed shall be selected from those by this Act given preference; provided, however, that on and after the effective date of this Act those public departments, commissions, boards, and other governmental agencies and public works of this State which do not have a forty per cent (40%) quota as herein prescribed, shall, upon replacing employees in vacancies existing give preference to persons granted preference hereby, until such time as it or they shall have reached the prescribed total of forty per cent (40%); provided, however, that not less than twenty-five per cent (25%) of said employees hereby given preference shall be so employed not later than January 1, 1947, and not less than the full forty per cent (40%) by January 1, 1948; provided further, however, that wherever possible ten per cent (10%) of those given preference under this Act shall be taken from those veterans who have been discharged from the armed services of the United States within the preceding eighteen (18) months.

Age or service-connected disability as affecting rights

Sec. 3. Persons entitled to preference under this Act shall not be disqualified from holding any position or employment hereinbefore mentioned on account of age or by reason of any service-connected disability, provided such age or disability does not render him or her incompetent to properly and capably perform the duties of the position or employment applied for. In all public departments, commissions, boards and other governmental agencies and public works of this State which now require or may hereafter require a competitive examination under a Merit System or Civil Service Plan of either or both selecting and promoting employees, such person who is otherwise eligible and qualified for and entitled to preference under this Act, who shall have been so examined and shall have attained at least the minimum required score for such test or tests, shall have a service credit amounting to five (5) points added to the earned rating, and a service credit amounting to five (5) additional points shall be added to the earned rating of each such person who has a service-connected disability which has been or may be established by official records, which records such disabled person shall furnish to the person or persons whose duty it is to fill the position or employment applied for. In any public departments, commissions, boards, governmental agencies and public works of this State where competitive examinations for such purposes are not now or hereafter held, those entitled to preference under this Act and having such service-connected disability so to be established and proof of the existence thereof furnished as hereinbefore provided, shall be entitled to preference for employment or appointment over all other applicants for the same position without any such disability and having no greater qualifications.

Investigation as to qualifications

Sec. 4. When any person entitled to preference under Section 1 of this Act shall apply for appointment or employment under this Act, the officer, executive head of the department or person or persons whose duty it is to appoint or employ some person to fill the position or employment applied for, shall, before appointing or employing any one to fill such position or employment, make an investigation as to the qualifications of such applicant for such position or employment, and if the applicant is a person of good moral character, and can perform the duties of the position or employment applied for as hereinabove provided, such officer, head of department, or other person or persons having the appointive duty and power shall appoint or employ the applicant to such position or employment. Provided, however, that the provision of this Section shall not be operative if the said department, board, commission, governmental agency or public works shall have in its employment at the time the percentage required under Section 2 hereof of those entitled to preference under this Act.

Federal grants

Sec. 5. If any provision of this Act shall be found to be in conflict with the Federal Laws, or any limitations fixed by Federal grants of funds to the public departments or governmental agencies, this Act shall be so construed as to operate to the extent only with reference to such Federal grants as it may be found to be in harmony therewith, and shall be in force with reference to said funds, to the extent of its harmonious provisions, and no further.

Inapplicable to certain positions

Sec. 6. Nothing in this Act shall be construed to apply to the position of private secretary or deputy of any official or department or to any person holding a strictly confidential relation to the appointing or employing officer.

Partial invalidity

Sec. 7. If any section, subsection or paragraph hereof be held unconstitutional or invalid for any reason, it shall be presumed that this Act would have been passed by the Legislature without such invalid section, subsection, paragraph, sentence, provision, clause or phrase and such holding shall not in any way affect the remainder of the Act.

Repeal; Act as cumulative

Sec. 8. Senate Bill No. 190, Chapter 1 of the Acts of the Forty-sixth Legislature, 1939, Regular Session, is hereby repealed.[1] The provisions of this Act shall be cumulative of all laws on this subject, and whenever the provisions of this Act are in conflict with any existing law or laws on this subject, the provisions hereof in so far as same are in conflict with any existing law or laws, shall govern and control. [Acts 1945, 49th Leg., p. 627, ch. 357.]

1 Article 4413(30).

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CHAPTER 1.—HEALTH BOARDS AND LAWS

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4414a.	State department of health established.
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Art.
4415a. Composition of State Board of Health, appointment, term of office.
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Article 4414. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11.]

Art. 4414a. State department of health established.—To better protect and promote the health of the people of Texas, there is hereby established the State Department of Health, which Department shall consist of a State Board of Health, a State Health Officer and his administrative staff, and which shall have the general powers and duties authorized and imposed by the provisions of this act.[1] [Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 1.]

[1] Articles 4414a, 4415a, 4416a, 4417a, 4418a to 4418f.

Section 11 of the Act of 1927 repealed Rev.Civ.St. arts. 4414–4418, 4465 and vested the powers and duties of the Director of the Food and Drug Division of the State Department of Health in the State Health Officer to be exercised by him or by a division director within his department. It further continued in force certain laws. Section 12 provided that partial invalidity should not affect the remainder of the act.

Art. 4415. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11.]

Art. 4415a. Composition of State Board of Health, appointment, term of office.—The State Board of Health shall consist of nine (9) members, who shall be appointed by the Governor and confirmed by the Senate, and who shall have the following qualifications: Six (6) of the members shall be legally qualified practicing physicians, who shall have had not less than five (5) years' experience in the actual practice of medicine within the State of Texas, of good professional standing, and graduates of recognized medical colleges; of the six (6) members of the Board first appointed under the provisions of this Act, two (2) shall serve for a period of two (2) years, two (2) for a period of four (4) years, and two (2) for a period of six (6) years, or until their successors shall be appointed and shall have qualified, unless sooner removed for cause. Upon the passage of this Act, the Governor shall appoint three (3) members of the Board in addition to the six (6) members now constituting the State Board of Health; one (1) such new member shall be a Doctor of Dentistry, of reputable character, licensed under the laws of this State to practice his profession, and who has had at least five (5) years' practical experience in the actual practice of Dentistry in this State; one (1) such member shall be a Pharmacist, of reputable character, licensed under the laws of this State to practice his profession, and who has had at least five (5) years' practical experience in the actual practice of Pharmacy in this State; and one (1) such member shall be a graduate of some reputable engineering school upon whom such school has conferred the degree of Civil Engineering, and who, since graduation for at least five (5) years, has specialized in sanitary engineering in actual work in this State. The terms of office of the six (6) present members of the Board shall not be affected by this Act, and the terms of office of the three (3) additional members shall be so arranged that one (1) shall serve for two (2) years, one (1) for four (4) years, and one (1) for six (6) years. After the expiration of the terms of the first appointees to the Board the terms of all members shall be for six (6) years. The additional members shall be allowed the same compensation in attending meetings of the Board, as well as traveling expenses, as provided by this Chapter. The State Health Officer shall be a member ex-officio of the Board, but shall not have the right to vote. The Board shall elect a Chairman from among the nine (9) members of the Board, who shall serve for a period of two (2) years or until his successor is elected. [Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 2; Acts 1931, 42nd Leg., p. 445, ch. 266, § 1.]

Art. 4416. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11.]

Art. 4416a. Organization and meetings of State Board of Health.—A majority of the members of the State Board of Health, exclusive of the members ex-officio, shall constitute a quorum for the transaction of business. The Board shall elect one of its members a Vice-Chairman, who shall proceed in the absence of the Chairman. The Board shall meet at Austin quarterly, on a date to be fixed by the Board, and shall hold such special meetings as may be called by the State Health Officer or any two members of the Board. Timely notice of such special meetings shall be given to each member. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 3.]

Art. 4417. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11.]

Art. 4417a. Compensation of members of State Board of Health.—The six members of the State Board of Health, excepting the member ex-officio, shall receive no fixed salary, but each member shall be allowed, for each and every day in attending the meetings of the Board, the sum of Twenty Dollars ($20.00), including time spent in travel to and from such meetings, and said members shall be allowed traveling and other necessary expenses while in the performance of official duty, to be evidenced by vouchers approved by the State Health Officer, provided no member shall receive more than Five Hundred Dollars ($500.00) annually, including expenses. The members of the State Board of Health and the State Health Officer shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this State, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue Commissions to them, which shall be evidence of their authority to act as such. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 4.]

Art. 4418. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11.]

Art. 4418a. Powers and duties of the State Board of Health.—The State Board of Health shall have the following powers and duties:

(1) To elect, by a majority vote of the whole membership of the Board, a State Health Officer, who shall be executive of the State Department of Health, subject to the further provisions of this Act; [1] and to suspend or remove said officer for good and sufficient cause, sustained by a majority of the Board membership; provided, that said officer shall not be removed until he has been given a hearing before said Board, if he so elects. Immediately after the appointment of a new State Board of Health, as provided in this Act said Board shall organize, and appoint a State Health Officer, who shall serve as such, unless sooner removed as above provided, until the last regular quarterly meeting of the Board in 1928; and at such meeting, and every two years thereafter, the State Board of Health shall appoint a State Health Officer, who shall serve, unless sooner removed as above provided, for a term of two years and until his successor shall be appointed and shall have qualified.

(2) To investigate the conduct of the work of the State Department of Health, and for this purpose to have access, at any time, to all books and records thereof, and to require written or oral information from any officer or employee thereof.

(3) To adopt rules, not inconsistent with law, for its own procedure, a copy of which rules shall be filed in the State Department of Health. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 5.]

[1] Articles 4414a, 4415a, 4416a, 4417a, 4418a to 4418f.

Art. 4418b. State Health Officer, qualifications, appointment, compensation.—The State Health Officer shall be a legally qualified physician, who shall have had not less than five years' experience in the actual practice of medicine within the State of Texas, of good professional standing, and a graduate of a recognized medical college. The State Health Officer shall be the executive head of the State Depart-

ment of Health; he shall devote his whole time to the duties of this office, and shall not engage in the private practice of medicine during his term of office. He shall receive an annual salary of Four Thousand Five Hundred Dollars ($4,500.00), and shall be allowed his actual traveling expenses while in the performance of official duties away from the Capitol, to be evidenced by vouchers approved by the State Board of Health; provided, that he shall be permitted to charge against his traveling expense account any expenses incurred in travel outside of this State on official business; said out-of-State traveling expenses not to exceed Five Hundred Dollars ($500.00) per annum. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 6.]

Art. 4418c. State Health Officer to execute bond.—The State Health Officer shall execute a bond, in the sum of Ten Thousand Dollars ($10,000.00), payable to the Governor, with two or more good and sufficient sureties thereon, or with some Surety Company authorized to do business in this State, as surety, conditioned for the faithful performance of his official duties, the bond to be approved by the Governor and filed in the office of the Secretary of State. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 7.]

Art. 4418d. Duties of State Health Officer.—The State Health Officer shall be the executive head of the State Department of Health, and he shall, subject to the provisions of this Act,[1] exercise all the powers and discharge all the duties now vested by law in the Texas State Department of Health and the State Health Officer, as well as all powers now vested by law in any officer, assistant, director or bureau head of the State Department of Health, excepting only such powers as may be conferred by this Act upon the State Board of Health hereby created. The State Health Officer, with the approval of the State Board of Health, may organize and maintain within his Department such divisions of service as are deemed necessary for the efficient conduct of the work of the Department. From time to time, he shall appoint directors of such divisions, as well as other employees of the Department, and shall designate the duties and supervise the work of all such directors and employees. He shall have the power, with the approval of the State Board of Health, to prescribe and promulgate such administrative rules and regulations, not inconsistent with any law of the State, as may be deemed necessary for the effective performance of the duties imposed by this or any other law upon the State Department of Health and its several officers and divisions. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 8.]

[1] Articles 4414a, 4415a, 4416a, 4417a, 4418a to 4418f.

Art. 4418e. Acting State Health Officer.—The State Health Officer, with the approval of the State Board of Health, shall from time to time designate one of the directors of the Department Divisions, who is a legally qualified physician, as acting State Health Officer, and the persons so designated shall have the full authority and perform the duties of the State Health Officer in the event of his absence from the Capitol or inability to act. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 9.]

Art. 4418f. Commissioners' Court to make appropriations.—It shall be lawful for the State Department of Health to accept donations and contributions, to be expended in the interest of the public health and the enforcement of public health laws. The Commissioners Court of any County shall have the authority to appropriate and expend money from the general revenues of its County for and in behalf of public health and sanitation within its County. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 10.]

Section 11 of Acts 1927, cited to the text, is set out as article 4465a, post, and section 12 related to partial invalidity.

Art. 4419. [4528] General duties and powers.—The State Board of Health shall have general supervision and control of all matters pertaining to the health of citizens of this State, as provided herein. It shall make a study of the causes and prevention of infection of contagious diseases affecting the lives of citizens within this State and except as otherwise provided in this chapter shall have direction and control of all matters of quarantine regulations and enforcement and shall have full power and authority to prevent the entrance of such diseases from points without the State, and shall have direction and control over sanitary and quarantine measures for dealing with all diseases within the State and to suppress same and prevent their spread. The president of the board shall have charge of and superintend the administration of all matters pertaining to State quarantine. [Acts 1909, 1st C.S., p. 340; Acts 1913, p. 147.]

Art. 4419a. Cooperation with United States Public Health Service for eradication of malaria.—The State Board of Health is hereby authorized, empowered and directed to co-operate with the United States Public Health Service in instituting an intense campaign toward the control and eradication of malaria in Texas. The work shall first be begun in such sections as may be deemed by said Board and Health Service as sufficiently affected to need immediate relief and attention. Efforts shall be made immediately to suppress and remedy the conditions existing in the rural areas of Texas, shown to exist by the recent survey to be acutely infested with malaria, where the greatest need for control and eradication of this impoverishing disease exists. [Acts 1931, 42nd Leg., p. 61, ch. 41, § 1.]

Section 2 of this Act makes certain appropriations for the purposes of the act.

Art. 4419b. Cooperation with United States in controlling malaria.—The State Board of Health is hereby authorized and empowered to cooperate with the United States Public Health Service in continuing the campaign toward the control and eradication of malaria in Texas. [Acts 1933, 43rd Leg., 1st C.S., p. 80, ch. 26, § 1.]

Art. 4419c. Crippled children, restoration service for; Crippled Children's Division's powers; transfer of funds; federal funds.

Creation of service

Section 1. There is hereby created in the State Department of Health a physical restoration service for crippled children under twenty-one (21) years of age. This service shall make provisions for locating, examining, and physically restoring crippled children of the State as hereinafter provided.

"Crippled child" defined; eligibility

Sec. 2. A crippled child is defined as any person of normal mentality, under twenty-one (21) years of age, whose physical functions or movements are impaired by reason of a joint, bone, or muscle defect or deformity, to the extent that the child is or may be expected to be totally or partially incapacitated for education or remunerative occupation. To be eligible for rehabilitation service under this Act, the child's disability must be such that it is reasonable to expect that such child can be improved through hospitalization, medical or surgical care, artificial appliances, or through a combination of these services.

Powers of Crippled Children's Division; rules and regulations

Sec. 3. The Crippled Children's Division of the State Department of Health is empowered to take census, make surveys and establish permanent records of crippled children; to procure medical and surgical service for crippled children, provided that only physicians legally qualified to practice medicine and surgery in Texas be employed for purposes of diagnosis and treatment, that not more than the

customary minimum fees be paid for such services, and that physicians or surgeons so employed shall be approved by the State Board of Health as qualified to render such service; to select and designate hospitals for the care of crippled children contemplated by this Act, and to take such other steps as may be necessary in order to accomplish the purposes of this Act.

At the discretion of the State Department of Health, transportation, appliances, braces and material necessary in the proper handling of crippled children may be in part or entirely provided.

The State Department of Health is directed to provide in Rules and Regulations, the necessary details for the conduct of this work, in accordance with the purposes of this Act, which shall permit as far as possible, the free choice of patients in their selections of physicians and hospitals, and shall arrange with hospitals, brace departments and other services providing for crippled children's work, compensation for such services, provided that such fees or charges shall not exceed the average charges for the same services rendered to patients in the hospitals approved for purposes of this Act.

Right to care and treatment; entering homes

Sec. 4. No child shall be entitled to the care and treatment provided in this Act unless the county judge of the county in which the child resides shall certify to the State Department of Health upon sworn petition of the parents of said child, or persons standing in loco parentis, proven to the satisfaction of said judge, that the parents of said child, or persons standing in loco parentis, are financially unable to provide for said care and treatment.

That children whose parents, or those in loco parentis are financially able to pay in part for such treatment and care may be provided for by the State Department of Health under such rules and regulations as may be prescribed by the Department of Health.

Provided further that said county judge must also certify that one or more physicians, regularly practicing under the laws of the State of Texas, have examined said child and have recommended said child as coming under the provisions and intent of this Act. Provided further that no judge or official agent shall, by virtue of this Act, have any right to enter any home over the objection of the parents, or either of them, or the person standing in loco parentis of such child, and nothing in this Act shall be construed as limiting the power of a parent or guardian or person standing in loco parentis over such child.

Rules and regulations; personnel

Sec. 5. The State Board of Health is authorized to make such rules, regulations, policies, and employ such personnel as is necessary to carry out the provisions of this Act, and to secure such clerical assistance, equipment and supplies as are needed.

Gifts and donations

Sec. 6. The State Department of Health is authorized to receive gifts and donations for this work. All gifts and donations for crippled children's work shall be paid into the State Treasury and the same are hereby reappropriated for the purposes of this Act. The Treasurer of the State of Texas shall pay out all money and funds provided for in this Act upon proper warrant issued by the Comptroller of the State of Texas drawn upon vouchers approved by the State Department of Health and the Department of Health shall report annually to the Governor amounts received and expended and work accomplished.

State Department of Health; duties

Sec. 8. The State Department of Health is empowered and directed to take all action necessary to accomplish the purposes provided or implied by this Act, and to cooperate with public agencies, Federal, State, county and local, and with private agencies and individuals interested in the welfare of crippled children.

The State Department of Health is hereby designated as the agency to receive funds which are appropriated by the Federal Government to be used in the State of Texas in matching State funds which are appropriated by the Legislature, or to receive any other funds which are not required to be matched by the Legislature for the physical restoration of crippled children as provided for in this Act. [Acts 1945, 49th Leg., p. 298, ch. 216.]

Section 7 of the Act of 1945 provided for the transfer to the Division of Crippled Children within the State Department of Health of moneys in custody of crippled children's section of the Vocational Rehabilitation Division of the State Department of Education and authorized the State Treasurer and Comptroller of Public Accounts to transfer such accounts.

Section 9 repealed all conflicting laws and parts of laws.

Art. 4419d. Payment for treatments of crippled children and of patients from State Eleemosynary Institutions.—The State Comptroller of Public Accounts is hereby authorized to draw proper warrants in favor of either the University of Texas School of Medicine, the John Sealy Hospital, or the State Hospital for Crippled and Deformed Children at Galveston based on vouchers or claims submitted by said institutions covering reasonable fees and charges for hospitalization and professional services rendered by members of the staffs of said institutions in the care, diagnosis, and treatment of crippled children under the provisions of Chapter 216, Acts, Regular Session, Forty-ninth Legislature,[1] and in the hospitalization, care, and treatment of patients forwarded to said institutions from the State Eleemosynary Institutions under the direction of the State Board of Control, and the State Treasurer is hereby authorized and directed to pay warrants so issued against any available funds appropriated, granted, or donated to the Crippled Children's Division of the State Department of Health or the State Department of Health for the purpose of defraying the expenses of the treatment of crippled children under said Act and out of available funds appropriated to the State Board of Control for the hospitalization, care, and treatment of patients in and from the State Eleemosynary Institutions under the direction of said State Board of Control. Such payments made to said institutions shall be credited and deposited to the local institutional funds of said institution receiving such payments. [Acts 1947, 50th Leg., p. 474, ch. 274, § 1.]

1 Article 4419c.

Art. 4420. [4536] May enter and inspect.—The members of the State Board of Health or any person duly authorized by them, upon presentation of proper authority in writing, are hereby empowered, whenever they may deem it necessary in pursuance of their duties, to enter into, examine, investigate, inspect and view any ground, public building, factory, slaughter house, packing house, abattoir, dairy, bakery, manufactory, hotel, restaurant and any other public place and public building where they deem it proper to enter for the discovery and suppression of disease and for the enforcement of the rules of the sanitary code for Texas and of any health law, sanitary law or quarantine regulation of this State. [Acts 1909, 1st C. S. p. 340.]

Art. 4421. [4537] Investigations by board.—The members of said Board of Health and its officers are severally authorized to administer oaths and to summon witnesses and compel their attendance in all matters proper for said board to investigate, such as the determination of nuisances, investigation of public water supplies, of any sanitary conditions, of the existence of infection, or the investigation of any

matter requiring the exercise of the discretionary powers invested in said board and its officers and members, and in the general scope of its authority invested by this chapter. The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of the provisions of this chapter; and if any witness summoned by said board or any of its officers or members shall prove disobedient or disrespectful to the lawful authority of such board, officer or member, such person shall be punished by the district court of the county in which such witness is summoned to appear, as for contempt of said court. [Id.]

Art. 4422. [4538] No county physician.—The office of county health officer shall be filled by a competent physician legally qualified to practice under the laws of this State and of reputable professional standing. [Id.]

Art. 4423. [4539] County health officer.—The commissioners court by a majority vote in each organized county shall biennially appoint a proper person for the office of county health officer for his county, who shall hold office for two years. Said county health officer shall take and subscribe to the official oath, and shall file a copy of such oath and a copy of his appointment with the Texas State Board of Health; and, until such copies are so filed, said officer shall not be deemed legally qualified. Compensation of said county health officer shall be fixed by the commissioners court; provided, that no compensation or salary shall be allowed except for services actually rendered. [Id.]

Art. 4424. [4540] No city physician.—The office of city physician is abolished, and instead the office of city health officer is created. The office of city health officer shall be filled by a competent physician, legally qualified to practice medicine within this State, of reputable professional standing. [Id.]

Art. 4425. [4541] City health officer.—The governing body of each incorporated city and town within this State shall elect a qualified person for the office of city health officer by a majority of the votes of the governing body, except in cities which may be operated under a charter providing for a different method of selecting city physicians, in which event the office of city health officer shall be filled as is now filled by the city physician, but in no instance shall the office of city health officer be abolished. The city health officer, after appointment, shall take and subscribe to the official oath, and shall file a copy of such oath and a copy of his appointment with the Texas State Board of Health, and shall not be deemed to be legally qualified until said copies shall have been so filed. [Id.]

Art. 4426. [4542] Health officers appoint [appointed] by board, when.—If said authorities shall fail, neglect or refuse to fill the office of county or city health officer as in this chapter provided then the State Board of Health shall have the power to appoint such county or city health officer to hold office until the local authorities shall fill said office, first having given ten days notice in writing to such authority of the desire for such appointment. [Id.]

Art. 4427. [4543] Duties of county health officer.—Each county health officer shall perform such duties as have been required of county physicians, with relation to caring for the prisoners in county jails and in caring for the inmates of county poor farms, hospitals, discharging duties of county quarantine and other such duties as may be lawfully required of the county physician by the commissioners court and other officers of the county, and shall discharge any additional duties which it may be proper for county authorities under the present laws to require of county physicians; and, in addition thereto, he shall discharge such duties as shall be prescribed for him under the rules, regulations and requirements of the Texas State Board of Health, or the president thereof, and is empowered and authorized to establish, maintain and enforce quarantine within his county. He shall also be required to aid and assist the State Board of Health in all matters of local quarantine, inspection, disease prevention and suppression, vital and mortuary statistics and general sanitation within his county; and he shall at all times report to said State board, in such manner and form as it shall prescribe, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction; and he shall make such other and further reports in such manner and form and at such times as said State board shall direct; touching on such matters as may be proper for said State board to direct; and he shall aid said State board at all times in the enforcement of its proper rules, regulations, requirements and ordinances, and in the enforcement of all sanitary laws and quarantine regulations within his jurisdiction. [Id.]

Art. 4428. [4544] Removal of county health officer.—In all matters with which the State Board of Health may be clothed with authority, said county health officer shall at all times be under its direction; and any failure or refusal on the part of said county health officer to obey the authority and reasonable commands of said State Board of Health shall constitute malfeasance in office, and shall subject said county health officer to removal from office at the relation of the State Board of Health; and pending charges for removal, said county health officer shall not receive any salary or compensation. Said cause shall be tried in the district court of the county in which such county health officer resides. [Id.]

Art. 4429. [4546] Charges against county health officer.—If any county health officer shall fail or refuse to properly discharge the duties of his office, as prescribed by this chapter, the State Board of Health shall file charges with the commissioners court for the proper county, specifying wherein such officer has failed in the discharge of his duties; and at the same time the State Board of Health shall file a protest with the county clerk and the county treasurer against the payment of further fees, salary or allowance to said county health officer; and, pending such protest and charges, it shall not be lawful for such county health officer to be paid or to receive any subsequently earned salary, fees or allowances on account of his office, unless such charges are shown to be untrue and are not sustained. After five days notice in writing to said county health officer, the commissioners court shall hear the charges, at which hearing the county judge shall preside, and the State Board of Health may be represented. Either party, the State Board or the county health officer, may appeal from the decision of said court to the district court of the county; and, pending such appeal, no salary, fees or allowances shall be paid to said county health officer for any subsequently earned salary; and, if the charges shall be sustained, the county health officer shall be adjudged to pay all costs of court, and shall forfeit all salary, fees and allowances, earned subsequently to the date of filing the charges and protests. [Id.]

Art. 4430. [4548] Duties of city health officer.—Each city health officer shall perform such duties as may be required of him by general law and city ordinances with regard to the general health and sanitation of towns and cities, and perform such other duties as shall be legally required of him by the mayor, governing body or the ordinances of his city or town. He shall discharge and perform such duties as may be prescribed for him under the directions, rules, regulations and requirements of the State Board of Health and the president thereof. He shall be required to aid and assist the State Board of Health in all mat-

ters of quarantine, vital and mortuary statistics, inspection, disease prevention and suppression and sanitation within his jurisdiction. He shall at all times report to the State Board of Health, in such manner and form as said board may prescribe, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction, and shall make such other and further reports in such manner and form and at such times as said State board shall direct, touching all such matters as may be proper for said board to direct, and he shall aid said State board at all times in the enforcement of proper rules, regulations and requirements in the enforcement of all sanitary laws, quarantine regulations and vital statistics collection, and perform such other duties as said State board shall direct. [Id.]

Art. 4431. [4549] City health officer removed.—In all matters in which the State Board of Health may be clothed with authority, said city health officer shall at all times be governed by the authority of said board, and failure or refusal on the part of said city health officer to properly perform the duties of his office as prescribed by this chapter shall constitute malfeasance in office, and shall subject said city health officer to removal from office at the relation of the State Board of Health. Said cause shall be tried in the district court of the county in which such city health officer resides. [Id.]

Art. 4432. [4550] Charges against city health officer.—If said city health officer fails or refuses to properly discharge his duties of his office, the State Board of Health shall file charges against said city health officer with the governing body of the proper town or city, which shall specify in what particulars said city health officer has failed in respect to the discharge of his duties, and shall at the same time file a protest with the city secretary and city treasurer against the payment to said city health officer of further fees, salary or allowance; and, pending such charges and protest, no further salary, fees or allowance shall be paid to said city health officer, unless such charges are shown to be untrue and not sustained. After five days notice in writing to said city health officer, the charges shall be heard before the mayor and governing body of the town or city in which said city health officer shall reside, at which hearing the State Board of Health may be represented, and either the city health officer or the State Board of Health shall have the right of appeal to the county court of the county in which the city or town is situated. If said charges be sustained, said city health officer shall be adjudged to pay all costs of court, and forfeit all salary, fees and allowances accrued subsequent to the date of filing of the charges and protest originally and which may be due him on account of his office. [Id.]

Art. 4433. [4552] Annual conference.—An annual conference of county and city health officers of this State shall be held at such time and place as the State Board of Health shall designate, at which conference the president or some member of said State board shall preside. The several counties, towns and cities may provide for and pay the necessary expense of its county health officer or city health officer for attendance upon said conference. [Id.]

Art. 4434. [2251] [1547] Co-operation.—The municipal authorities of towns and cities, and commissioners courts of the counties wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as said authorities and courts may deem necessary to improve the public health and to promote efficient sanitary regulations; and, by mutual arrangement, they may provide for the construction of said improvements and the payment therefor. [Acts S. S. 1879, p. 9; G. L. vol. 9, p. 41.]

Art. 4435. [2248–49] In unincorporated towns.—The commissioners court of any county in which an unincorporated town or village may be situated, shall have power to designate the lines of such town or village, and may appoint a board of health for it, consisting of three persons, two or more of whom shall be regular practicing physicians. Said court when such appointments are made shall at once notify the State Health Officer. Said board shall elect one of their members as presiding officer; and such presiding officer, if the premises of any citizen residing within the prescribed limits of said town or village are in an unclean or unhealthy condition, shall notify him of the fact, and that he must proceed at once to clean the same. [Acts 1889, p. 139; Acts 1st C. S. 1901, p. 29.]

Art. 4436. [984] Health control in certain cities.—In cities of thirty-five thousand population, or over, the governing body of a city or town whether acting under a special charter or incorporated under the general laws of Texas, shall have the power to require the filling up, drainage, and regulating of any lot or lots, grounds or yards, or any other places in the city or town which shall be unwholesome, or have stagnant water therein, or from any other cause be in such condition as to be liable to produce disease; to cause all premises to be inspected and to impose fines on the owners of houses under which stagnant water may be found, or upon whose premises such stagnant water may be found, and to pass such ordinances as they may deem necessary for the purposes aforesaid and for making, filling up, altering or repairing of all sinks, and privies, and directing the mode and material for constructing them in the future, and for cleaning and disinfecting the same; and for cleansing of any house, building, establishment, lot, yard or ground from filth, carrion or other impure or unwholesome matter of any kind; to require the owner of any lot or lots within such city or town to keep the same free from weeds, rubbish, brush and any and all other objectionable, unsightly or unsanitary matter of whatever nature, and if such owner fails or refuses to do so, within ten days after notice in writing, or by letter addressed to such owner at his post-office address, or by publication as many as two times within ten consecutive days, if personal service may not be had as aforesaid, or the owner's address be not known, such city or town may do such work or may cause the same to be done and may pay therefor and charge the expenses incurred in doing or having such work done or improvements made, to the owner of such property as herein provided; and to punish any owner or occupant violating the provisions of any ordinance so passed, as aforesaid; and the governing body of such town or city shall also, in addition to the foregoing remedy, have the power to cause any of the improvements above mentioned to be done at the expense of the city or town, on account of the owners, and cause the expense thereof to be assessed on the real estate, or lot or lots upon which such expense is incurred. On filing with the county clerk of the county in which the city or town is situated, a statement by the mayor or city health officer of such city or town of such expenses, such city or town shall have a privileged lien thereon, second only to tax liens and liens for street improvements to secure the expenditures so made, and ten per cent interest on the amount from the date of such payment. For any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure had in the name of the corporation; and the statement so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended in any such work or improvements. [Acts 1875, p. 113; G. L. vol. 8, p. 485; Acts 1917, p. 405.]

Art. 4436a—1. City-County Health Units in counties containing city of 90,000 to 120,000 population.

Cooperation by Commissioner's Court and City Council

Section 1. In any county in this State containing an incorporated city having a population of not less than ninety thousand (90,000) inhabitants nor more than one hundred and twenty thousand (120,000) inhabitants, as shown by the last preceding Federal Census, the Commissioners Court of such county and the City Council of such city may co-operate in forming a City–County Health Unit and combine the health units of each political subdivision for such purpose, and appropriate funds to the combined health unit in such proportion as may be agreed to between said Commissioners Court and said City Council.

City-County Board of Health; appointment; qualifications; term of office

Sec. 2. Said Health Unit shall be under the direction and supervision of the City–County Board of Health, which shall consist of seven (7) members, resident citizens of the county, who shall have resided in said county for a period of more than three (3) years next preceding the time of their appointment. All of such members shall be appointed by the joint action of the Commissioners Court and the City Council. Three (3) of the members shall be legally qualified, licensed, and practicing physicians, and shall be approved by the Medical Society of the county; one of the members shall be a qualified, licensed, and practicing dentist, and shall be approved by the Dental Society of the county; all members shall serve without compensation. Of the first members of said Board, four (4) shall serve for a period of one (1) year and three (3) for a period of two (2) years, and thereafter, all appointments shall be for a period of two (2) years, except those appointees who fill the unexpired term of some member. All vacancies caused by the expiration of a term, death, resignation, or removal of members shall be filled by the appointing bodies as above prescribed. No member shall be removed from office except for neglect of duty, incompetence, malfeasance, or conviction of a felony, and then only after notice of the charge made and a full hearing before the appointing bodies with the right of the member removed to appeal to the Courts and have a trial de novo, provided, however, that if any member misses any three (3) consecutive regular meetings without being excused by the Board as a whole, the Board shall declare a vacancy and notify the appointing authority of such fact, so that same may be filled. The Board shall make such rules and regulations for the proper conduct of its duties as it shall find necessary and expedient, and shall possess full supervisory powers over the public health of the county and over the functioning and personnel of the City–County Health Unit, and shall be authorized to make any and all such rules and regulations not in conflict with the ordinances of the city and laws of the State, as they may deem best to promote and preserve the health of the county. All matters of public health involving the expenditure of public funds shall be submitted to the Board for its study and recommendations before final action is taken thereon by the City Council and Commissioners Court.

Budget

Sec. 3. Prior to preparation of the budget by the City Council and the Commissioners Court, for the operation of the City–County Health Unit, recommendation shall be obtained from the Board with regard thereto and after the budget has been fixed, the Board shall have the same power of transferring funds from item to item as is possessed by the City Council and Commissioners Court over budgets of city and county.

Managing director; appointment and removal

Sec. 4. A director shall be appointed to actively manage the operation of the Health Unit under the supervision of the City–County Board of Health. Said director shall be appointed jointly by the Commissioners Court and the City Council, subject to the approval of the City-County Board of Health. The director may be removed at will by the appointing authorities. Likewise, the director may be removed by the City–County Board of Health, provided that such action shall be subject to review by the appointing authorities, and if requested by the director, a hearing will be had before the appointing authorities to pass upon the action of the Board in removing said director, and said appointing authorities may reinstate said director. No County Health Officer and no City Health Officer shall be appointed in any such health unit.

Employees; salaries

Sec. 5. The Commissioners Court and the City Council shall determine the number of employees to constitute the Health Unit and shall fix the salaries of such employees, provided however, that prior to eliminating any or creating any such position in said Unit or to fixing or changing any salary of any employee thereof, the Commissioners Court and City Council shall request recommendation from the City–County Board of Health with regard thereto, although such recommendation shall not be binding on such bodies. Salaries of said employees being once fixed, no increase or decrease shall become effective without approval of the Board of Health, provided further, however, that nothing herein shall prevent the Commissioners Court and City Council, for reason of economy, in eliminating any position or in generally decreasing the salaries. All employees of the Health Unit, other than the director as hereinabove set out, shall be appointed and may be discharged or suspended without pay by the director, subject to the approval of the Board of Health and of the Commissioners Court and City Council.

Duration of existence of unit

Sec. 6. After the City Council and Commissioners Court have, by resolution, determined to create a City–County Health Unit under the terms of this Act, said Unit shall remain in existence for at least a period of two (2) years, during which time said Commissioners Court and City Council shall be without authority to abolish said Unit, but at the end of every two-year period, said respective bodies shall determine, by resolution, whether said Unit shall be continued as a City–County Health Unit or shall be operated separately as now provided by law.

Co-operation with other counties

Sec. 7. Any City–County Health Unit created under this Act, having determined by resolution in joint action of the Commissioners Court and City Council that it is to the best interest of the county and city to co-operate with one or more counties having a population of not more than fifteen thousand (15,000) inhabitants in the operation of a Health Unit, may co-operate with such county or counties under such arrangement as may be entered into between the City Council and the Commissioners Court of said City–County Health Unit and the Commissioners Court of said county or counties. Any county having a population of not more than fifteen thousand (15,000) inhabitants which desire to co-operate with any City–County Health Unit created under the terms of this Act, may, through action of its Commissioners Court, co-operate with said City-County Health Unit as provided in this Section. [Acts 1939, 46th Leg., Spec.L., p. 844.]

Art. 4436a—2. Tax levy to create health units in counties of 22,200 to 22,500 authorized.— Section 1. The Commissioners Courts of each county of this State having a population of not less than

twenty-two thousand, two hundred (22,200) nor more than twenty-two thousand, five hundred (22,500) according to the last preceding Federal Census are hereby authorized to levy a tax not to exceed Ten (10) Cents on each one hundred dollars valuation upon personal or real property for the purpose of creating a county health unit and for the purpose of buying the necessary vaccines and to pay for the necessary medical services required for the immunization of school children and indigent people from communicable diseases and to pay as much as one-half or any portion thereof as they may deem reasonable and necessary for medical treatment and hospitalization of indigent people who are not paupers. Nothing herein shall be construed as being mandatory upon said Commissioners Court and is hereby declared to be optional and within the discretion of the Commissioners Courts of such counties.

Sec. 2. The Commissioners Court of each county that creates a county health unit in accordance with the provisions of Section 1 hereof, shall create and set up a fund to be known as the County Health Unit Fund, in which is to be placed the proceeds of the tax provided for in Section 1 hereof, and from which shall be drawn the funds necessary for the creation of the county health unit and for the purposes set out in Section 1 of this Act. [Acts 1939, 46th Leg., Spec.L., p. 847.]

Art. 4436a—3. Tax levy to create health units in counties under 22,000 authorized.—Section 1. The Commissioners Court of each County of this State having a population of less than twenty-two thousand (22,000), according to the last preceding Federal Census, is hereby authorized to levy a tax, not to exceed five (5) cents on each One Hundred Dollars valuation, upon personal or real property for the purpose of creating a County Health Unit, and for the purpose of buying necessary vaccines, and to pay for necessary medical services required for the immunization of school children and indigent people from communicable diseases, and to pay as much as one half, or any portion thereof, as they may deem reasonably necessary, for the medical treatment and immunization of indigent people who are not paupers. This Act is not to be construed as mandatory upon said Commissioners Courts, but shall only become effective in any county having a population of less than twenty-two thousand (22,000) after being approved by a majority of the property taxpaying voters of that county at an election called for that purpose by the Commissioners Court after receiving a petition signed by not less than five (5) per cent of the property taxpaying voters of said county requesting such an election.

Sec. 2. The Commissioners Court of each County which creates a County Health Unit, in accordance with the provisions of Section 1 hereof, shall create and set up a fund, to be known as "The County Health Unit Fund," in which is to be placed the proceeds of the tax provided for in Section 1, and from which shall be drawn the funds necessary for the creation of the County Health Unit, and for the purposes set out in Section 1. [Acts 1943, 48th Leg., p. 687, ch. 380.]

Art. 4437. Hospitals.—If by will or otherwise a fund of fifty thousand dollars or more was or may be left to establish and maintain a hospital in a city of ten thousand or more inhabitants, in which hospital the sick and wounded of such city or of this State may be admitted and receive medical and surgical attention, the commissioners court of the county and the governing body of the city in which said hospital shall be established, either or both, may from time to time appropriate and pay toward the maintenance of such hospital such sums of money as in the judgment of such court or body making such appropriation may be proper to provide hospital accommodations and medical and surgical attention for the sick and wounded of such county or city who are indigent. [Acts 1921, p. 93.]

Art. 4437a. Hospital control in counties of 200,000 or over; tuberculosis control.

Designation of either county or city government to take control

Section 1. All counties in Texas having a population of 200,000 or more inhabitants as shown by the last preceding Federal Census, in which are established hospitals jointly owned and operated by any city and county, in which said hospital is located, the said counties or cities under the terms of a mutual agreement, and not otherwise, are hereby authorized to designate either the county or city government for the purpose of taking over the entire ownership and control of such hospitals upon such terms as may be mutually agreed upon between the city and county owning such hospitals and operating the same, and providing further that such portions of the tax hereinafter referred to shall, if voted by a majority of the qualified voters, be used to take care of the interest and sinking fund required by law on all outstanding bonds of the city or county heretofore issued which have been incurred against the building or maintenance of said hospitals or that may hereafter be issued. That in case it is determined by said mutual agreement for the city to take over the said hospitals and operate the same, the board of managers may be appointed by the governing body of the city in accordance with the terms of its charter or in accordance with its judgment. [As amended Acts 1945, 49th Leg., p. 466, ch. 295, § 1.]

Election

Sec. 2. That if in the judgment of the combined boards of County Commissioners and City Councils of such cities, as may be part owners of such hospitals, a countywide election to determine the future ownership and operation of the hospitals is desirable, such countywide election may be ordered on the initiative of such combined boards, and a majority vote on the questions submitted shall govern the future ownership and operation of the hospitals, the expense of such election to be paid by the Commissioners' Court from county funds.

Tax

Sec. 3. A direct tax of not over 20¢ on the valuation of $100.00 may be authorized and levied by the Commissioners Court of such county for the purpose of erecting buildings or other improvements and for operating and maintaining such hospital; provided that all such levy of taxes shall be submitted to the qualified taxpaying voters of the county, and a majority vote shall be necessary to levy the tax. Successive elections may be held to authorize additional taxes hereunder provided the total tax shall not exceed the maximum of 20¢ per $100.00 valuation, as hereinabove provided. [As amended Acts 1945, 49th Leg., p. 466, ch. 295, § 2.]

Board of managers or directors

Sec. 4. The Board of Managers or Directors of such hospital shall be elected, when so taken over, by the County Commissioners' Court, and said Board shall consist of not less than three members, or more than nine members, and when so elected shall be responsible for and have full and complete control of the management of the conduct of such hospital or hospitals, giving a report of their management at least once every quarter to the Commissioners' Court, and as much oftener as said Court may request, upon any and all acts, rules and regulations performed by them. They shall also give a quarterly financial statement to the Commissioners' Court showing all money expended and received by them and showing fully for what purposes the money has been expended.

Free service

Sec. 5. The said hospital or hospitals shall give free service to all sick and injured indigent citizens of the entire county.

Terms

Sec. 6. Said Board of Managers shall be appointed for such terms that the terms of one-third of the number of the members of the Board will expire every two years and the term of office for such members of the Board shall be for six years. [Acts 1927, 40th Leg., p. 322, ch. 219.]

Tuberculosis control

Sec. 6A. (a). The governing bodies of the county, and of the city or cities within said county adopting the provisions hereof as herein provided, are hereby authorized to conduct a joint program of tuberculosis control within said city or cities and county, having for its object the protection of public health be[1] the alleviation, suppression and prevention of the spread of tuberculosis. Such program may include co-operation with all public or private agencies, federal, state or local, having the same objective, and shall include providing economic aid in the discretion of the Board hereinafter created, under medical certification as hereinafter provided, to indigents suffering from tuberculosis and to dependent members of their immediate family as a part of the total treatment of and as an aid in the prevention of the spread of the disease, for the protection of the public health.

(b). The County Commissioners Court is hereby authorized to levy a direct annual tax of not to exceed 10¢ on the $100.00 valuation, which shall be in addition to the tax authorized by Section 3 herein, and the funds produced thereby shall be kept separate from other funds and shall be used solely for the purposes set forth in this section; provided that such levy of taxes shall be first submitted to the qualified taxpaying voters of the county, and a majority vote shall be necessary to levy the tax. The governing body of the city or cities acting hereunder shall likewise be authorized to levy a direct tax of not to exceed 5¢ on the $100.00 valuation to provide funds to be used for the same purpose, and in such joint program of tuberculosis control, provided that such tax shall be first submitted to and approved by a majority vote of the taxpaying voters of said city or cities, in accordance with the city charter, or charters, which charter or charters may be amended to provide said fund by means of such tax or otherwise according to law in cities operating under general law. Such fund shall be kept separate from other city funds and shall be used only for the purpose herein stated.

(c). For the purpose of administration of this section, in the event such county and city or cities engage in such program and vote such special taxes, such city or cities and county shall have power to create a City-County Tuberculosis Control Board, to be composed of five or more members, one to be appointed by the County Health Board of the county, one by the City Health Board of the city having the largest population according to the last preceding Federal Census, one by the County Judge of the county, one by the Mayor of each city participating in such program, and one by the majority action of the District Judges of the county. Members of such Board shall serve without compensation.

(d). The first term of office for the Board members appointed by the County Health Board and by the Mayor or Mayors shall be for one year from date of appointment. The first term of office for the two Board members appointed by the City Health Board and the County Judge shall be for two years from date of appointment. The first term of the member appointed by the District Judges shall be for three years from date of appointment. Upon the expiration of the first terms, their successors shall each serve for three year terms, and such successors shall be appointed by the original appointing authority in each case. Vacancies caused by death or resignation shall be filled for the unexpired term by the original appointing authority.

(e). The Board shall have power to carry out the terms of this section in order to alleviate, suppress and prevent the spread of tuberculosis within the county, as a public health function, subject to the provisions hereof. The funds derived from the special taxes herein authorized shall be combined together by joint action of the county and city or cities and be expended by or under the direction of such Board subject to the limitations herein; provided that such funds shall be expended to provide necessary economic aid to indigent persons suffering from tuberculosis and dependent members of their immediate family, upon certification in each case to the Board by the city or county health officer, to the effect that the persons receiving such aid are indigents, and that they are bona fide residents of the county and have been for more than six months; and such funds may also be expended to provide for administration expenses hereunder, including case investigation and necessary equipment and services, but for no other purposes.

(f). The Board shall make quarterly reports to the governing boards of the county and city or cities acting hereunder, stating the condition of the fund and expenditures made therefrom, and the services performed; and the county, and city or cities participating, shall have the right to examine and audit the books and records of said Board.

(g). This section shall be cumulative of other laws, and shall not operate to repeal any other part of this title. [Added Acts 1945, 49th Leg., p. 466, ch. 295, § 3.]

[1] So in enrolled bill. Probably should read "by."

Section 4 of the Act of 1945 provided that partial invalidity should not affect the remaining portions.

Art. 4437b. Tax for county hospitals.—That in all counties in Texas having a population of at least 202,000 inhabitants and less than 210,000 inhabitants as shown by the Census of 1920, in which are established hospitals jointly owned or operated by any city and county in which said hospital is located, a direct tax of not over ten cents on the valuation of One Hundred Dollars may be authorized and levied by the Commissioners' Court of such county for the purpose of erecting buildings and other improvements, and for maintaining such hospitals, provided that all such levy of taxes shall be submitted to the qualified taxpaying voters of the county and a majority vote shall be necessary to levy the taxes. [Acts 1929, 41st Leg., 2nd C.S., p. 5, ch. 4, § 1.]

Art. 4437c. Lease of city and county hospitals.—Sec. 1. Any county in this State having a population of not less than 38,000 and not more than 39,000 according to the United States Census of 1920, shall have authority to lease any county hospital belonging to said county to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court and the lessee. The action of the Commissioners' Court in leasing such hospital shall be evidenced by order of the Commissioners' Court, which order shall be recorded in the minutes of said Court.

Sec. 2. The authority herein granted to certain counties shall also extend to cities in such counties owning a joint interest with any such counties in a hospital. Any such hospital may be leased to be operated by the lessee as a hospital upon such terms and conditions as may be agreed upon by the Commissioners' Court, the proper authorities of such cities and the lessee. The action of such cities in leasing such hospital shall be evidenced by order of the proper authorities of such cities, which order shall be recorded

in the minutes of said authorities. [Acts 1930, 41st Leg., 5th C.S., p. 198, ch. 55.]

Art. 4437d. Texas Hospital Survey and Construction Act.

PART A—GENERAL

Title

Section 1. This Act may be cited as the "Texas Hospital Survey and Construction Act."

Definitions

Sec. 2. As used in this Act:

(a) "Board" means the State Board of Health.

(b) "The Federal Act" means Public Law 725 of the Seventy-ninth Congress, approved August 13, 1946, entitled the Hospital Survey and Construction Act.[1]

(c) "Hospital" includes public health centers and general, tuberculosis, mental, chronic diseases, and other types of hospitals, and related facilities, such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care.

(d) "Public Health Center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(e) "Nonprofit hospital" means any hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

[1] 42 U.S.C.A. §§ 291a–291m.

Administration

Sec. 3. Division of Hospital Survey and Construction. There is hereby established in the Department of Health a Division of Hospital Survey and Construction which shall be administered by a full-time salaried director under the supervision and direction of the State Board of Health. The State Board of Health, through such Division, shall constitute the sole agency of the State for the purpose of making an inventory of existing hospitals, surveying the need for construction of hospitals, and developing a program of hospital construction, as provided in Part B of this Act.

General Powers and Duties

Sec. 4. In carrying out the purposes of the Act, the State Health Officer, with the advice of the Advisory Hospital Council, is authorized and directed

(a) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(b) To provide such methods of administration, appoint a director and other personnel of the Division and take such other action as may be necessary to comply with the requirements of the Federal Act and the regulations thereunder;

(c) To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(d) To the extent that he considers desirable to effectuate the purposes of this Act, to enter into agreements for the utilization of the facilities and services of other departments, agencies and institutions, public or private;

(e) To accept on behalf of the State and to deposit with the State Treasurer any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this Act, and to expend the same for such purpose;

(f) To make an annual report to the Board on activities and expenditures pursuant to this Act, including recommendations for such additional legislation as the State Health Officer considers appropriate to furnish adequate hospital, clinic and similar facilities to the people of this State.

Advisory Hospital Council

Sec. 5. The Governor, within thirty (30) days after this Act takes effect, shall appoint a Hospital Advisory Council, hereinafter referred to as "the council," consisting of twelve (12) members, who shall advise and consult with the State Board of Health and the State Health Officer in carrying out the administration of this Act. The State Health Officer shall serve as an ex officio member of said Advisory Council. Of the members of the Hospital Advisory Council first appointed, four (4) shall serve for a term of two (2) years, or until their successors shall be appointed and qualified; four (4) shall serve for a term of four (4) years, or until their successors shall be appointed and qualified; and the remaining four (4) members shall serve for a term of six (6) years, or until their successors shall be appointed and qualified. Thereafter, at the expiration of the term of each member of the Council just appointed, his successor shall be appointed by the Governor for, and he shall serve for, a term of six (6) years, or until his successor shall be appointed and qualified. All members so appointed shall be confirmed by the Senate. On the death, resignation or removal of any member, the Governor shall fill the vacancy by appointment for the unexpired portion of the term. Each member shall serve until his successor is appointed and qualified. Of the twelve (12) members of the Council to be appointed, four (4) shall be persons of recognized ability in the field of hospital administration; two (2) members of the Council shall be persons of recognized ability and licensed to practice medicine in the State of Texas; one (1) member of the Council shall be a person of recognized ability and licensed as a registered nurse in this State; one (1) member of the Council shall be a person of recognized ability and licensed to practice architecture in this State; four (4) of the members of the Council shall be persons with broad civic interests, representing varied segments of the population, knowing the needs for hospitals in rural areas and in no way connected with Hospital Administration. Council members while serving on business for the Council shall be entitled to receive actual and necessary travel and subsistence expenses while so serving away from their places of residence. The Council shall meet as frequently as the State Health Officer deems necessary, but not less than once each year. Upon request by five (5) or more members, it shall be the duty of the State Health Officer to call a meeting of the Council.

PART B—SURVEY, PLANNING AND CONSTRUCTION

Coordination of Federal Act

Sec. 7. The Board is authorized to establish methods of administration and with the approval of the Hospital Advisory Council promulgate regulations for the purpose of meeting the requirements prescribed by the Federal Act relative to survey, planning and construction of hospitals and public health centers.

Hospital Construction Fund

Sec. 8. The State Health Officer is hereby authorized to accept on behalf of the State, and to deposit with the State Treasury any grant, gift or contribution and to receive Federal funds made to assist in meeting the cost of carrying out the purpose of this Act, and to expend the same for such purpose. When such gifts, grants, contributions or moneys from the Federal Government are received, the State Health Officer shall deposit same in the State Treasury in a separate account from all other public moneys to be

known as the Hospital Construction Fund, and any disbursements from this fund shall be made by warrants issued by the Comptroller of Public Accounts on claims filed and approved by the State Health Officer. Moneys received from the Federal Government for a construction project approved by the Surgeon General of the United States Public Health Service shall be deposited to the credit of this fund, and shall be used solely for the payments to applicants for works performed and for purchases made in carrying out approved projects.

PART C—MISCELLANEOUS

Severability

Sec. 9. If any provision of this Act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable. [Acts 1947, 50th Leg., p. 948, ch. 405.]

Section 6 of the Act of 1947 made an appropriation. Section 10 repealed conflicting laws.

Art. 4438. [2247] [1543] [1520] Indigent sick.—If there is a regular established public hospital in the county, the commissioners court shall provide for sending the indigent sick of the county to such hospital. If more than one such hospital exists in the county, the indigent patient shall have the right to select which one of them he shall be sent to. [Acts 1876, p. 51; G.L. vol. 8, p. 890.]

Art. 4439. Isolation of lepers.—The unexpended sum remaining in the State treasury heretofore appropriated for the purpose of establishing a home for lepers, is hereby appropriated and made available to be expended by and under the direction of the State Health Officer for the isolation and care of persons in this State now known and who may hereafter be found to be affiicted with leprosy. [Acts 1909, p. 334; Acts 1st C. S. 1917, p. 29; Acts 1919, pp. 261 and 262.]

Art. 4440. [4545] Indigent consumptives.—When any indigent person suffering from tuberculosis is sojourning in any other county than his residence and makes application for financial relief to any county health officer or commissioners court or to the mayor or health officer of any city, before any relief is granted, he shall make an affidavit that he is indigent and unable to provide for himself. When such affidavit is made, the county health officer, mayor, city health officer or county judge shall forthwith notify the State Health Officer of the case, giving the name of the patient and the place of his residence. If such patient is a bona fide citizen of any county within this State, it shall be the duty of the State Health Officer, and he shall have the power, to purchase a ticket for said patient and furnish him with sufficient means to purchase food en route to his former home, and return such patient thereto. [Acts 1st C. S. 1909, p. 337.]

Art. 4441. Protecting eyes of new-born.—All doctors, midwives, nurses, or those in attendance at child birth, shall use prophylactic drops in the child's eyes of a one per cent solution of silver nitrate or other prophylactic solution approved by the State Board of Health, to prevent opthalmia neonatorum in the new-born, and said board shall furnish such solution or other prophylactic drops free of cost to the poor of the State, namely those upon whom it would work a hardship to buy the same. [Acts 1921, p. 172.]

Art. 4442. Maternity home.—1. Every individual, firm, association, or corporation, owning, keeping, conducting or managing an institution or home for the boarding or sheltering of infant children, or so-called "Baby Farm," or any lying-in hospital, hospital ward, maternity home or other place for the reception, care and treatment of pregnant women, and charging a fee or receiving or expecting compensation in the way of room rent or board, shall obtain an annual license which shall be issued by the State Board of Health without fee, shall not be transferable to other persons or other premises, and shall expire on the thirty-first day of December next following the issuance. The application for such license shall state the name and address of the licensee, the specific location of the building used, and the number of inmates which may be boarded there at one time, and shall be approved by the local health officer. No greater number of inmates shall be housed at one time in the building than is authorized by the license, and no pregnant woman or infant shall be kept in a building or place not designated in the license. A record of licenses issued shall be kept by the State Board of Health.

2. Whenever any such license is issued, the board shall forthwith give notice of the granting and terms to the local health officer, who shall keep informed of the nature and reputation of every such institution in his jurisdiction, and shall visit and inspect the same from time to time, and for such purposes shall at all reasonable hours be given free and unrestricted access to such institution.

3. Every such licensee shall report to the local health officer, within twenty-four hours next after it occurs, the birth of any child, including stillborn or prematurely born children at such institution; the arrival of any child, stating the name, sex, age, color, and from whom received; and the removal of any child, stating its name, age, and disposition made of it.

4. Whenever a keeper, manager or owner of any such institution as is defined in this article shall be convicted of keeping or conducting a "disorderly house" as that term is defined in the Penal Code, the State Board of Health shall forthwith revoke the license issued authorizing the keeping of such house; and should any such manager, keeper or owner refuse to permit any person authorized by this article to inspect such house at any reasonable hour, or should they fail to make such reports to the local health officer within the time and in the manner required by this article, then said State Board of Health may suspend said license for any period of time not to exceed six months. Upon any subsequent failure to permit such visits of inspection or to make said reports, said State Board of Health is authorized to revoke the license issued for the conducting of such house. [Acts 1921, p. 146.]

Sec. 5. Whenever a keeper, manager or owner of any such institution defined in Article 4442, Revised Civil Statutes of the State of Texas, 1925,[1] shall operate same without a license issued by the State Board of Health, or shall attempt to blackmail or extort money from another for any purpose, or shall maintain or keep in said institution tubercular people, persons of unsound mind or persons suffering from infectious or contagious disease, except that in cases of women suffering from venereal disease, that proper place for isolation and treatment is provided, or keep or maintain such an institution for any other purpose, except for the treatment of pregnant women, as may be provided by their license, may be enjoined from operating said institution in a suit brought by the Attorney General, District or County Attorney, and the petition need not be verified; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of. [Acts 1921, p. 146; Acts 1935, 44th Leg., p. 294, ch. 108, § 1.]

[1] Article 4442, post.

Section 2 of the act of 1935 provides that the remedies and penalties provided in section 1 hereof (section 5 of the above text) shall be cumulative of all other remedies and penalties now provided by statute in such cases.

Art. 4442a. Day nursery for care and custody of children.

Membership; term; vacancies; oath

Sec. 1. Every person, association or corporation, whether operating for charity or revenue, who shall own, conduct or manage a day nursery, children's boarding home, or child placing agency, or other place for the care or custody of children under fifteen years of age, or who shall solicit funds in this State for any such place or institution, shall obtain an annual license from the State Board of Health, which license shall be issued without fee, and under such reasonable and uniform rules and regulations as said Board shall prescribe. Provided that if said funds are solicited by said associations or corporations through any agent or agents thereof, only one such license shall be required by each said association or corporation for each county of the State of Texas in which county said funds are solicited.

Visitation and inspection by State Board of Health

Sec. 2. The State Board of Health shall have authority to visit and inspect all such places and institutions embraced within this Act at all reasonable times to ascertain if the same are being conducted in conformity with law or if any conditions exist which need correction.

Record of children placed in custody of others

Sec. 3. Any person, association or corporation licensed to keep and care for children, as provided in Section 1 of this Act, who shall place out or give to any person the care and custody of any child, shall keep and preserve a record of the full name of such child, the actual or apparent age of such child, the names and residence of its parents so far as known, and name and residence of the person with whom such child is placed; and if the child is removed from the care or custody of the person with whom it was placed the fact of such removal and the disposition of such child shall be entered on the record.

Quarterly reports to State Board of Health

Sec. 4. Such person, association or corporation shall report to the State Board of Health quarterly and at such times as said Board shall direct, specifying the matters and things required in the record mentioned in the next preceding Section.

Visitation of children placed in custody of others

Sec. 5. The State Board of Health, or such person as it may authorize, may visit any child so placed, who has not been legally adopted, with a view to ascertaining whether such child is being properly cared for and living in moral surroundings.

Complaints against persons mistreating child

Sec. 6. Whenever the State Department of Health has reason to believe that any person having the care or custody of a child placed out and not legally adopted, is an improper person for such care or custody, or subjects such child to cruel treatment, or neglect, or immoral surroundings, it shall cause complaint to be filed in the proper Juvenile Court.

Traffic in placement of minor children prohibited; restraining practice

Sec. 6-a. It shall be unlawful for any person, association or corporation operating as a licensed child placing agency, as defined in said Chapter 204 of the Acts of the Regular Session, 41st Legislature, to charge or receive compensation in cash, or in anything of value, for the placement and/or transfer of guardianship of a child under fifteen (15) years of age, and such act or attempted act, shall be deemed as trafficking in the sale and placement of minor children; and such person, association or corporation, may be enjoined in a suit brought by the Attorney General of the State of Texas, or district or county attorney of any county in which said act or acts may have occurred; provided that nothing herein shall be deemed to prohibit, (1), a parent or guardian paying a reasonable amount for the board of a child in a private foster home, or (2), a licensed child placing agency or institution receiving from a parent or guardian a reasonable amount for the current board of a child in a private foster home or institution. [As added Acts 1935, 44th Leg., p. 170, ch. 69, § 1.]

Cumulative remedy

Sec. 6-b. The remedies and penalties provided in Section 1 hereof shall be cumulative of all other remedies and penalties now provided by Statute in such cases. [Acts 1929, 41st Leg., p. 444, ch. 204; Acts 1935, 44th Leg., p. 170, ch. 69, § 2.]

Section 8 of said Acts 1929, 41st Leg., p. 444, ch. 204, repeals all conflicting laws or parts of laws except Rev.St. 1925, Art. 4442 and Pen.Code, Art. 701. Section 9 provides that if any provision shall be held invalid, the remainder shall remain in force. Section 7 is a penal provision classified as Pen.Code, Art. 701a.

Art. 4442b. Convalescent homes.—Section 1. It shall be unlawful for any person, firm or corporation to establish, operate or maintain a convalescent home in this State without first having obtained from the State Department of Public Health a license for such purpose, as hereinafter provided.

Sec. 2. Definition. A convalescent home, as covered by this Act,[1] is hereby defined as any place or establishment where three (3) or more pension or old age assistance recipients are housed for hire or profit; provided, however, any place or establishment operating as an hotel, hospital, inn, or tourist camp shall not come under the provisions of this Act.

Sec. 4. The licenses herein provided for shall be prepared and issued by the State Department of Public Health in pursuance to proper applications therefor. The form of such applications shall be prepared by said Department. A license fee of One Dollar ($1) shall be charged and collected by said Department for each license so issued by it. Such fees shall be deposited in the State Treasury to the credit of the General Fund.

Sec. 5. The State Department of Public Health shall make a proper investigation concerning each application for license hereunder, and shall deny a license to any applicant when such investigation so warrants. Said Department is further authorized and empowered to revoke any license issued hereunder at any time, after reasonable notice and hearing, upon satisfactory proof of the existence of unsanitary and/or unwholesome conditions in such convalescent home so licensed.

Sec. 6. Such convalescent homes shall be open at all reasonable times to inspection by the State Department of Public Health, and each home shall be inspected by said Department at least once every three (3) months. Said Department shall make and file with the Governor of this State during the month of January of each year an annual report concerning the condition of such homes. [Acts 1945, 49th Leg., p. 577, ch. 342.]

1 Article 4442b and Pen.Code, art. 701b.
Section 3 of the Act of 1945, being a Penal provision, is published as Pen.Code, art. 701b.

Art. 4443. [Omitted.]

The article omitted was Acts 1923, p. 68, contained provisions identical with Acts 1927, 40th Leg., p. 260, ch. 182, §§ 1, 2 incorporated in article 4443a, post, and is, therefore, omitted.

Art. 4443a. Federal aid accepted.—Sec. 1. That the State of Texas hereby accepts the provisions of the Act of Congress [1] mentioned in the caption hereof and the State Board of Health is hereby authorized and directed through its bureau of Child Hygiene to co-operate with the Federal Childrens'

Bureau in the administration of the provisions of said Act of Congress and do all things necessary to entitle the State of Texas to receive all the benefits thereof. Provided that no official, agent, or representative of the Bureau of Child Hygiene, or any department having to do with the administration of this Act, shall, by virtue of this Act, have any right to enter any home over the objection of the owner thereof, or to take charge of any child over the objection of the parents, or either of them or of the person standing in loco parentis, or having the custody of such child, or without the express permission of the owner of such home, or the parents or either of them or the person standing in loco parentis, or having the custody of such child. Nothing in this Act shall be construed as limiting the power of the parent or guardian or person standing in the position of loco parentis to determine what treatment or correction shall be provided for the child, or the agency or agencies to be employed for such purpose.

All correspondence between the Bureau of Child Hygiene or any official agent or representative thereof, and any parent, owner of a home, or person standing in loco parentis of any child, shall be held confidential, and not publicly disclosed, except by the permission of such parent, owner of the home or person standing in loco parentis, unless the public welfare shall demand that it be disclosed, or used in furtherance of public welfare.

Sec. 2. The Treasurer of the State of Texas is hereby designated as the custodian of all funds allotted to the State of Texas from appropriations made by Congress or in pursuance of said Act to be disbursed in accordance with law through the State Health Board. [Acts 1927, 40th Leg., p. 260, ch. 182.]

1 Act Nov. 23, 1921, c. 135, §§ 1–14, 42 Stat. 224–226, as amended, repealed as of June 30, 1929, by Act Jan. 22, 1927, ch. 53, § 2, 44 Stat. 1024.

Section 4 of Acts 1927, cited to the text, declared purpose of act.

Art. 4444. Polluting public body of water.—No person, firm or corporation, private or municipal, shall pollute any water course or other public body of water, by throwing, casting or depositing or causing to be thrown, cast or deposited any crude petroleum, oil or other like substance therein, or pollute any water course, or other public body of water from which water is taken for the uses of farm livestock, drinking and domestic purposes, in this State, by the discharge, directly or indirectly, of any sewage or unclean water or unclean or polluting matter or thing therein, or in such proximity thereto that it will probably reach and pollute the waters of such water course or other public body of water from which water is taken, for said uses. Drain ditches, where waste oil finds its way into water courses or public bodies of water, shall be equipped with traps of sufficient capacity to arrest the flow of oil. In so far as concerns the protection of fish and oysters, the Game, Fish and Oyster Commissioner or his deputies, may have jurisdiction in the enforcement hereof. This article shall not apply to any place or premises of manufacturing plants whose affluents contain no organic matter that will putrify, or any poisonous compounds, or any bacteria dangerous to public health or destructive of the fish life of streams or other public bodies of water. Upon the conviction of any person for violating this law, the court or judge thereof in which such conviction is had, shall issue a writ of injunction enjoining and restraining the person or corporation responsible for such pollution. For a violation of such injunction, the said court and the judge thereof shall have the power of fine and imprisonment as for contempt of court within the limits prescribed by law in other cases, and this remedy by injunction and punishment for violation thereof shall be cumulative of the fine imposed. The State Board of Health shall enforce the provisions of this article. The Governor shall appoint an inspector to act under the direction of said board and the State Health Officer, and said inspector shall make such investigations, inspection and reports and perform such other duties in respect to the enforcement hereof as the said health officer may require. [Acts 1913, p. 90; Acts 1915, p. 38; Acts 1923, p. 177.]

Art. 4445. Venereal diseases.—Syphilis, gonorrhea and chancroid, hereinafter designated venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health:

Declaration

Sec. 1. Any physician or other person who makes a diagnosis in, or treats, a case of syphilis, gonorrhea or chancroid, and every superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of venereal disease, shall report such case immediately, in writing, to the local health officer, stating the name and address or the office number, age, sex, color, and occupation of the diseased person, and the date of the onset of the disease, and the probable source of infection, provided that the name and address of the diseased person need not be stated, except as hereinafter specifically required in Section 5, and provided, further, that all information and reports concerning persons having venereal disease shall be held secret in accordance with provisions in Section 8. The report shall be enclosed in a sealed envelope and sent to the local health officer who shall report weekly on the prescribed form to the State Board of Health, all cases reported to him. The physicians and others residing in cities having no city health officer, shall make reports required in this section direct to the county health officer, where there is a county health officer in the county in which they reside, and where there is no county health officer, all such reports shall be made direct to the State Board of Health.

Information to diseased persons

Sec. 2. It shall be the duty of every physician and of every other person who examines or treats a person having syphilis, gonorrhea or chancroid, to instruct him in measures for preventing the spread of such disease, and of the necessity for treatment until cured, and to hand him a copy of the circular of information obtainable for this purpose from the State Board of Health.

Examinations

Sec. 3. All city, county, or other health officers shall use every available means to ascertain the existence of, and to investigate all cases of syphilis, gonorrhea, and chancroid within their several territorial jurisdictions, and to ascertain the sources of such infections. Local health officers are hereby empowered and directed to make such examinations of persons reasonably suspected of having syphilis, gonorrhea or chancroid as may be necessary for carrying out the provisions of this law. Owing to the prevalence of such diseases among prostitutes and persons associated with them, all such persons are to be considered within the above class.

Measures for protection; quarantine; detention

Sec. 4. Upon receipt of a report of a case of venereal disease, the local health officer shall institute measures for protection of other persons from infection by such venereally diseased person:

1. Local health officers are authorized and directed to quarantine persons who have, or are reasonably suspected of having syphilis, gonorrhea, or chancroid, whenever, in the opinion of said local officer, or the State Board of Health, or its executive officer, quarantine is necessary for the protection of the public health. In establishing quarantine the local health officer shall designate and define the limits of the area in which the person known to have, or reasonably suspected of having syphilis, gonorrhea, or chancroid, and his immediate attendant, are to be quarantined, and

no person other than the attending physician, shall enter or leave the area of quarantine without the permission of the local health officer.

No one but the local health officer shall terminate said quarantine, and this shall not be done until the quarantined person has become non-infectious, as determined by the local health officer or his authorized deputy through clinical examination and all necessary laboratory tests, or until permission has been given him to do so by the State Board of Health or its executive officer.

2. The local health officer shall inform all persons who are about to be released from quarantine for venereal disease, in case they are not cured, what further treatment should be taken to complete their cure. Any person not cured, before released from quarantine, shall be required to sign the following statement after the blank spaces have been filled to the satisfaction of the health officer:

"I ——— residing at ——— hereby acknowledge the fact that I am at this time infected with ———; and agree to place myself under the medical care of ———, (name of physician or clinic) ——— (address) within ——— hours, and that I will remain under the treatment of said physician or clinic until released by the health officer of ——— or until my case is transferred, with the approval of said health officer, to another regular licensed physician or an approved clinic.

"I hereby agree to report to the health officer within four days after beginning treatment as above agreed, and will bring with me a statement from the above physician or clinic of the medical treatment applied in my case, and thereafter will report as often as may be demanded of me by the health officer.

"I agree further, that I will take all precautions recommended by the health officer to prevent the spread of the above disease to other persons and that I will not perform any act which will expose other persons to the above disease.

"I agree, until finally released by the health officer, to notify him of any change of address and to obtain his consent before moving my abode outside of his jurisdiction.

———
Signature.

———
Date

All such agreements shall be filed with the health officer and kept inaccessible to the public.

The commissioners courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered and directed to provide suitable places for the detention of persons who may be subject to quarantine and who should be segregated for the execution of the provisions of this law; and such commissioners courts and governing bodies of incorporated cities and towns are hereby authorized to incur, on behalf of their said counties, cities or towns, the expenses necessary to the enforcement of this law.

Notice to physician previously consulted

Sec 5. 1. When a person applies to a physician or other person for the diagnosis or treatment of syphilis, gonorrhea or chancroid, it shall be the duty of the physician or person so consulted to inquire of, and ascertain from, the person seeking such diagnosis or treatment, whether such person has heretofore consulted with, or has been treated by, any other physician or person, and if so, to ascertain the name and address of the physician or person last consulted. It shall be the duty of the physician or other person whom the applicant consults to notify the physician or other person last consulted of the change of advisers. Should the physician or person previously consulted fail to receive such notice within ten days after the last date upon which the patient was instructed by him to appear, it shall be the duty of such physician or person to report to the local health officer the name and address of such venereally diseased person.

2. If an attending physician or other person knows or has good reasons to suspect that a person having syphilis, gonorrhea, or chancroid is so conducting himself or herself as to expose other persons to infection, or is about so to conduct himself or herself, he shall notify the local health officer of the name and address of the diseased person and the essential facts in the case.

Cooperation

Sec. 6. All local and State health officers are directed to co-operate with proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

Certificates

Sec. 7. Physicians, health officers, and all other persons are prohibited from issuing certificates of freedom from venereal disease, provided this section shall not prevent the issuance of statements of freedom from infectious diseases written in such form, or given under such safeguards, that their use for solicitation for sexual intercourse would be impossible.

Information inaccessible to public

Sec. 8. All information and reports concerning persons infected with venereal diseases shall be inaccessible to the public except in so far as publicity may attend the performance of the duties imposed by the laws of the State.

Failure of health officer or physician to perform duties

Sec. 9. Any health officer or other physician who shall wilfully fail to perform the duties required of him in this article shall, in addition to the fines imposed by law, forfeit his right and license to practice medicine within this State; and the district courts of the State shall have jurisdiction of suits for the forfeiture of such license in such cases, and the suit may be filed by any citizen of the State in a court having jurisdiction, under the ordinary rules of venue, and it shall be the duty of the county and district attorneys to represent the petitioners in such suit. [Acts 4th C. S. 1918, p. 179.]

Art. 4446. [4547–53] Legal proceedings.—In all matters wherein the State Board of Health shall invoke the aid of the courts, the action shall run in the name of the State of Texas. The Attorney General shall assign a special assistant to attend to all legal matters of the board. Upon demand of the board, the Attorney General shall furnish the necessary assistance to the board to attend to all its legal requirements. No bond for costs, or bond on appeal or writ of error, shall be required of the State Board of Health or State officials in any action brought or maintained under this chapter. [Id. Acts 1909, 1st C. S., p. 340.]

Art. 4447. Charbon districts.—All of that portion of this State in which charbon or anthrax has been prevalent or any district of this State in which charbon or anthrax may become prevalent, shall be known as charbon districts and shall be subject to the following provisions:

1. Bacteriologist.—The State Board of Health shall employ a bacteriologist at a salary of not more than $300.00 per month and during the time that charbon or anthrax is prevalent he shall make an examination and analysis and a scientific research for the purpose of combating with said disease and he may be kept in the district affected by charbon as many months each year as said board deems necessary.

2. Visits and isolation.—The State Board of Health acting through one of the members or through the local health office in the county where charbon is reported to be prevalent shall in person or through some one employed by them, visit all stock reported to have charbon or anthrax and see that proper steps be taken for the isolation of same from other stock, and also isolate other stock which have been exposed to said

disease and so keep same isolated for such period as it may deem necessary.

3. Proclamation.—The proclamation of the county health officer shall be sufficient if it name the kinds or classes of stock to which it shall apply. It shall be published in some newspaper published in the county, if there be one; and if none, it shall be posted in three public places in said county, one of which shall be at the courthouse door of such county if the proclamation pertains to the whole county, but if only a subdivision of the county, then in any three public places in such subdivision. One insertion in a newspaper shall be sufficient, and such proclamation shall be effective three days after such notice is given.

4. Elections.—In all counties now or which may become affected with charbon or anthrax, the qualified voters of such county or any political subdivision thereof may, in the manner hereinafter provided, prohibit the running at large of cattle, horses, sheep, goats and hogs or any of such animals within such county or subdivision thereof; upon the petition of ten per cent of the qualified voters of such county or subdivision thereof presented to the commissioners court of such county in open session, requesting such court to order an election to be held in such county or political subdivision thereof, said petition to state the territory within which an election is requested, the kinds of animals to be affected, and also for what portions of the year it is desired to prohibit such stock from running at large, or whether the entire year, said court shall order such election to be held within such territory as may be petitioned for, naming the kinds of animals to be affected thereby and as designated in the order for such election; and the court shall also designate in said order of election the time within which such stock is to be prohibited from running at large, whether for the entire year or for portions thereof; which the said court is hereby authorized to do in accordance with the petition therefor. It is made the duty of said court to provide for the holding of such elections and compensation of officers thereof. The expense of such election shall be borne by the county wherein such election is ordered and held. In any such election so to be held the ballots shall read as follows:

"For the Running at Large of Domestic Animals," and

"Against the Running at Large of Domestic Animals."

Returns of such election shall be made by the presiding officers of the precinct or precincts of the county where such election is held, to the county judge of such county, who shall forthwith call the commissioners court together for the purpose of canvassing the returns; and if it shall be found by the commissioners court, upon a canvass of such returns, that a majority of the qualified voters of the county or subdivision thereof wherein such election was held, is in favor of prohibiting the running at large of such domestic animals as herein named, then said court shall forthwith declare the result of said election and give public notice thereof by proclamation of such court to be issued and posted within three public places of the county or subdivision thereof in which such election has been held. [Acts 1913, p. 147.]

CHAPTER 2.—SPECIAL QUARANTINE REGULATIONS

Art.
4448. Governor's proclamation.
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4451. Local subordinate to State authorities.
4452. Shelter to those detained.
4453. Expenses of quarantine.
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4456. Incoming vessels stopped.
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4460. County quarantine.
4461. Health officer at Galveston.
4462. To prescribe rules, etc.
4463. Sale of condemned property.
4464. Vessels disinfected.

Article 4448. [4554] [4321] Governor's proclamation.—The Governor is empowered to issue his proclamation declaring quarantine on the coast, or elsewhere within this State, whenever in his judgment quarantine may become necessary; and such quarantine may continue for any length of time as in the judgment of the Governor the safety and security of the people may require. [Acts 1891, p. 188; G. L. vol. 10, p. 190.]

Art. 4449. [4555] [4324] May issue proclamation.—Whenever the Governor has reason to believe that the State of Texas is threatened at any point or place on the cost [1] border or elsewhere within the State with the introduction of [2] dissemination of yellow fever contagion, or any other infectious and contagious disease that can and should, in the opinion of the Texas State Board of Health, be guarded against by State quarantine, he shall by proclamation, immediately declare said quarantine against any and all such places, and direct the State Board of Health to promptly establish and enforce the restrictions and conditions imposed and indicated by said quarantine proclamation; and when from any cause the Governor can not act, and the exigencies of the threatened danger require immediate action, the Texas State Board of Health is empowered to declare quarantine as prescribed in this article, and maintain the same until the Governor shall officially take such action as he may see proper. [Acts 1891, p. 189; G. L. vol. 10, p. 191.]

[1] So in enrolled bill. Should probably read "coast".
[2] So in enrolled bill. Should probably read "or".

Art. 4450. [4556] [4326] Local quarantine.—The law in regard to local quarantine by the inhabitants of any point or points on the coast or elsewhere in the State shall remain in full force when in conformity with this title; provided, that in all differences and disputes between any such points, contiguous or remote, within this State, such differences and disputes shall be immediately by the local health authorities, if any, and if none, by the inhabitants themselves, reported and submitted to the Governor; and, on the receipt of such report, he shall forthwith order the State Health Officer to such points with instructions to investigate the same and report the exact condition of things, and upon investigation of such report shall issue his proclamation declaring the determination of the issue, and by said proclamation the aforesaid differences shall be governed and determined. [Id.]

Art. 4451. [4557] [4328] Local subordinate to State authorities.—Whenever quarantine is declared by the Governor or by any county or corporate authorities in the State, such authorities shall establish a quarantine station or stations where any person may be detained for such length of time as, in the discretion of the quarantine officers, the public safety may demand; provided, that all county and municipal quarantine shall be subordinate, subject to and regulated by such rules and regulations as may be prescribed by the Governor or Texas State Board of Health. [Id.]

Art. 4452. [4558] [4329] Shelter to those detained.—The State Board of Health shall furnish persons detained by them with necessary shelter and subsistence (not including crews of vessels, except such as are removed by the quarantine officers from infected vessels), and provide all other things essential for the protection and comfort of those held in quarantine, and

all such expenses authorized by the said board and approved by the Governor shall be paid by the State. [Id.]

Art. 4453. [4559] [4330] Expenses of quarantine.—All quarantine officers appointed by the Governor shall be selected and commissioned by the Governor, and shall be paid by the State, and all health authorities of the State, or of any county or city thereof, shall obey the rules and regulations prescribed by the Governor or State Board of Health. The regular officers in charge of regular established quarantine stations on the coast shall be allowed one hundred and fifty dollars per month while on duty at their respective stations; except that the officer in charge of the station at Galveston shall receive two hundred dollars per month. Temporary officers, or those commissioned by the Governor to guard against threatened epidemics, and those stationed at railway crossings on the Rio Grande shall receive one hundred and fifty dollars per month while on duty, and such other pay for extra expenses actually incurred as may be deemed just by the Governor and the State Board of Health. [Acts 1891, p. 188; G. L. vol. 10, pp. 188 and 872; Acts 1895, p. 142.]

Art. 4454. [4560] [4331] Stations provided.—Each county, town or city authority upon the coast or elsewhere in Texas, at as early a day as practicable after the promulgation of the Governor's proclamation declaring quarantine, shall provide suitable stations where they are not now provided, at sufficient distance from the usual places of landing of vessels, or the depots of railroads coming into their respective counties, towns, or cities, and select, appoint and employ a competent physician as health officer, subject to the approval of the Governor, at such stations, and furnish said officer with such guards, employés and other things as may be necessary to render such quarantine effective; and said county, town or city authorities may provide for the establishment and maintenance of quarantine, subordinate, subjected to, and regulated by, such rules and regulations as the Governor and State Board of Health may prescribe. [Acts 1883, p. 17; G. L. vol. 9, p. 323.]

Art. 4455. [4561] [4332] Local health officer.—Whenever on the coast of Texas or elsewhere in this State the authorities of any county, town or city fail, refuse or neglect to establish quarantine as provided in the preceding article, then the Governor shall appoint a health officer and prescribe such regulations for the government of the same as he may deem necessary. [Acts 1891, p. 190; G. L. vol. 10, p. 192.]

Art. 4456. [4562] [4333] Incoming vessels stopped.—All health officers and all quarantine authorities shall, if deemed necessary, stop each and every vessel from any infected port or district, tho the said vessel may have a clean bill of health. Such health officers or quarantine authorities shall have power to take the affidavit of the master of said vessel as to the health of himself and crew from the time of sailing from said infected port or district. Such officers and authorities shall detain said vessel at quarantine for such length of time as the Governor and State Board of Health may prescribe in their rules and regulations governing quarantine. All such officers and authorities may use force if necessary in order to discharge the duties imposed upon them by the provisions of this title and the rules and regulations of the Governor and Texas State Board of Health. [Acts 1883, p. 17; G. L. vol. 9, p. 323.]

Art. 4457. [4563–64] Vessels from infected ports.—Any vessel arriving at any quarantine station of this State, designated by the proper authorities, from any infected port or district, without a clean bill of health from the proper officers from said port or district, shall be taken possession of by the health officer or other quarantine authority at the station at which said vessel arrives, and be held by the same until all fines that may have been assessed against the master of said vessel for a violation of the quarantine laws, rules and regulations have been paid, or until said vessel shall have been replevied in accordance with law. The payment of the fine which may be assessed against the master of such vessel shall not operate as a release or discharge of the vessel from quarantine, but the same rules shall apply as in case of other vessels placed in quarantine. [Acts 1891, p. 190; G. L. vol. 10, p. 192.]

Art. 4458. [4565] [4336] Expenses itemized.—The county, town or city authorities aforesaid, as soon as quarantine ceases to exist, shall forward to the Comptroller an itemized account of all receipts and expenditures made by them, and when approved by the Governor and State Board of Health, said Comptroller shall draw his warrant upon the treasurer for the payment of any balance that may be due said authorities, or either of them, and pay into the treasury any excess of receipts over expenditures. [Acts 1883, p. 18; G. L. vol. 9, p. 324.]

Art. 4459. [4566] [4337] Local quarantine.—No provision of this title shall be construed to prevent any town, city or county from establishing any quarantine which they may think necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of this title, and be consistent with, and subordinate to, said provisions and the rules and regulations prescribed by the Governor and State Board of Health. [Id.]

Art. 4460. [4568] [4340] County quarantine.—Whenever the commissioners court of any county has reason to believe that they are threatened at any point within or without the county limits with the introduction or dissemination of a dangerous, contagious or infectious disease that can and should be guarded against by quarantine they may direct their county health officer to declare and maintain said quarantine against any and all such dangerous diseases; to establish, maintain and supply stations or camps for those held in quarantine; to provide hospitals, tents or pest houses for those sick of contagious and infectious disease; to furnish provisions, medicine and all other things absolutely essential for the comfort of the well and the convalescence of the sick. The county physician shall keep an itemized account of all lawful expenses incurred by local quarantine, and his county shall assume and pay them as other claims against the county are paid. Chartered cities and towns are embraced within the purview of this article, and the mere fact of incorporation does not exclude them from the protection against epidemic diseases given by the commissioners court to other parts of their respective counties. The medical officers of chartered cities and towns may perform the duties granted or commanded in their several charters, but must be amenable and obedient to rules prescribed by the State Board of Health. This article, however, must not be construed as prohibiting any incorporated town or city from declaring, maintaining and paying for local quarantine. [Id.]

Art. 4461. [4569] [4341] Health officer at Galveston.—The quarantine or health officer at Galveston shall give bond, with two or more good and sufficient sureties, payable to the Governor, in the sum of ten thousand dollars, conditioned for the care and preservation of any steam vessel or vessels belonging to the State at his station, and for the faithful performance of his duty. [Id.]

Art. 4462. [4570] [4342] To prescribe rules, etc.—The Governor and State Board of Health shall prescribe such rules and regulations as may be necessary for the disinfection of all vessels and their cargoes and passengers arriving at any port on the coast

of Texas from any infected port or district, the object of such rules and regulations being to provide safety for the public health of the State without unnecessary restrictions upon commerce and travel. [Id.]

Art. 4463. [4571] [4342a] Sale of condemned property.—The State Health Officer is hereby authorized, with the advice and consent of the Governor, to sell to the best advantage of the State, for cash, any property in the quarantine service that is useless, and to apply the proceeds thereof to the general revenue of this State, and make due report of said sale or sales to the Governor. [Acts 1895, p. 2; G. L. vol. 10, p. 732.]

Art. 4464. [4572] Vessels disinfected.—Any vessel arriving at a port of this State, and required to be disinfected by the terms of the Governor's quarantine proclamation, shall be disinfected by the quarantine officer of such port and before being released from quarantine shall pay to such quarantine officer such fees as the Governor may prescribe. All vessels boarded by the quarantine officer of any port shall pay to such officer such fees as the Governor prescribes. The quarantine officer receiving such fees shall give bond in such sum as may be prescribed by the Governor for the safe keeping of such collections and shall report and remit them to the State Board of Health at least once every month. [Acts 1901, p. 266.]

CHAPTER 3.—FOOD AND DRUGS

Art.
4465. [Repealed.]
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4467. Administration and expenses.
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Article 4465. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11.]

Art. 4465a. Public health laws continued in force.—Articles 4414, 4415, 4416, 4417, and 4418, Revised Civil Statutes of 1925, are hereby repealed, Article 4465, Revised Civil Statutes of 1925, is hereby repealed, and the powers and duties vested by Chapter 3 of Title 71, R. S. 1925, in the Director of the Food and Drug Division of the State Department of Health are hereby vested in the State Health Officer, to be hereafter exercised by him or by a division director within his Department and subject to his control under the terms of this Act. All other laws or parts of laws now in force, relating to the State Health Department. the State Board of Health and the State Health Officer, and all other laws relating to public health, sanitation and the control and prevention of communicable, contagious and infectious diseases, shall remain in full force and effect, except insofar as the same may be in conflict with the provisions of this Act. [Acts 1927, 40th Leg., 1st C. S. p. 131, ch. 42, § 11.]

Art. 4466. Duties.—The director [1] shall:

1. Keep his office and laboratory in Austin.

2. Make, publish and enforce rules consistent with this law, and adopt standards for foods, food products, beverages, drugs, etc., and the modern methods of analysis authorized as official by the Federal Department of Agriculture.

3. Inquire into the quality of the foods and drug products manufactured or sold or exposed for sale, or offered for sale in this State, and for such purpose he may enter any creamery, factory, store, salesroom, drug store or laboratory or place where he has reason to believe foods or drugs are made, prepared, sold or offered for sale or exchange, and open any cask, tub, jar, bottle or package containing or supposed to contain any article of food or drug and examine or cause to be examined the contents thereof, and he shall take samples therefrom and make analysis thereof. When making such inspection he shall seal and mark such sample and tender to the vendor or person having custody of same the value thereof, and a written statement stating the reason for taking such sample.

4. Make complaint and institute proceedings against any manufacturer or person who violates any provision of the food and drug laws of this State. He need not give security for costs in proceedings so instituted.

5. Report to the Governor on or before the 31st day of August of each year, showing the entire work of his office for the preceding year, the number of factories and other places inspected and by whom, the number of specimens of food and drug articles analyzed, and the number of complaints entered for violations of such laws, the number of convictions had, and the amount of fines imposed therefor, together with recommendations relative to the laws in force. Such report shall be published at the expense of the State. [Acts 1911, p. 76.]

[1] Powers and duties of Director of the Food and Drug Division transferred to the State Health Officer, see Article 4465a, ante.

Art. 4467. Administration and expenses.—The Director [1] may appoint two inspectors who shall make inspections and perform such duties as he may require. With the consent of the State Health Officer he may appoint two assistant chemists, who shall each enter into bond in the sum of five thousand dollars, payable, approved and conditioned as the Director's bond. The Director may appoint one stenographer, and such additional inspectors, chemists, clerks and other assistants as he deems necessary. The actual and necessary expenses of the Director and his assistants and depu-

ties shall be paid by the State, the amounts thereof to be audited by the Comptroller. [Id.]

[1] Powers and duties of Director of the Food and Drug Division transferred to the State Health Officer, see article 4465a, ante.

Art. 4468. Bulletins.—The Director [1] may issue bulletins quarterly, or as often as he deems advisable, showing the work of his division.

[1] Powers and duties of Director of the Food and Drug Division transferred to the State Health Officer, see article 4465a, ante.

Art. 4469. Registration.—All manufacturers of foods and drugs doing business in the State of Texas and all such persons, firms, corporations, who import or bring into the State of Texas, for sale or distribution, from any place not a part or possession of the United States any article of food, drug or chemical, shall annually register with the Director [1] and pay him a fee of One ($1.00) Dollar for such registration on or before the 1st day of September. Where a person, firm or corporation operates more than one establishment, then a separate registration and fee shall be required for each establishment operated.

The term "manufacture" as used in this Article shall mean the process of combining or purifying articles of food or drugs and packaging same for sale to the consumer, either by wholesale or retail, provided however, that a pharmacist, registered under the laws of this State, shall not be deemed a manufacturer, when he fills a regular licensed physician's prescription, or when such pharmacist compounds or mixes drugs or medicines in his professional capacity. Any person, firm or corporation who represent themselves as responsible for the purity and the proper branding of any article of food or drug, by placing or having placed their name or names and address upon the label of any food or drug, shall be deemed a manufacturer and included within the meaning of this Article. Any person, firm or corporation who imports into this State from any place not within the continental limits of the United States, any article of food or drug, shall be importers within the meaning of this Article.

This Article shall be cumulative of all other laws on the subject matter, but where any other law is inconsistent with the provisions hereof, this Article shall control. [Acts 1911, p. 76; Acts 1931, 42nd Leg., p. 265, ch. 159, § 1.]

[1] Powers and duties of Director of the Food and Drug Division transferred to the State Health Officer, see article 4465a, ante.

Art. 4470. Condemnation.—Any article of food or drug that is adulterated or misbranded within the meaning of this law shall be liable to be condemned, confiscated and forfeited by a suit to be brought in the district court of the county where said article of food or drug is located, in the name of the State of Texas as plaintiff, and in the name of the owner thereof as defendant, if said owner be known; if he be unknown, then in the name of said article of food or drug, and service shall be obtained as in civil cases. Upon a trial of said case, if it be determined by the court or jury trying said case that said article of food or drug is misbranded or adulterated, or of a poisonous or deleterious character within the meaning of this law, the same shall be disposed of by destruction or sale in accordance with the judgment of the court, and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the State Treasury. District and county attorneys shall file forfeiture and condemnation suits under this law at the request of the Director. Said attorney shall be entitled to a fee of $15.00, to be paid out of the proceeds arising from the sale of the property condemned, said fee to be in addition to all other fees allowed by law, and shall be over and above the fees allowed under the General Fee Act [1] of this State. Upon payment of the costs of such forfeiture or condemnation proceeding by the owner of the property proceeded against and by his executing and delivering a good and sufficient bond in double the value of the goods proceeded against, payable to the State of Texas, conditioned that said articles shall not be sold or otherwise disposed of contrary to the provisions of this law, the court may by order direct that said goods be delivered to the owner thereof. In all proceedings begun under this article, either party may demand trial by jury, of any issue of fact joined in any such case. [Acts 1911, p. 76.]

[1] Articles 3882-3912e, ante.

Art. 4471. Adulterated or misbranded food or drug.—No person, firm or corporation shall within this State manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sell or exchange any article of food or drug which is adulterated or misbranded within the meaning of this chapter. The term "food" shall include all articles used by man for food, drink, flavoring, confectionery or condiment, whether simple, mixed or compounded. The term "drug" shall include all medicines and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animal. [Id.]

Art. 4472. Definitions.—The terms "adulterated" and "misbranded," as used in this chapter, shall be held to have the same meaning as is given those terms in chapter two of title 12 of the Penal Code. [Id.]

Art. 4473. Preservatives added; regulations by State Board of Health.—No person shall manufacture, sell, offer or expose for sale or exchange any article of food to which has been added formaldehyde, boric acid or borates, benzoic acid or benzoate, sulphurous acids or sulphites, salicylic acid or salicylates, abrastol, beta naphthol, fluorine compounds, dulcin, glucin, cocaine, sulphuric acid or other mineral acid except diluted phosphoric acid, any preparation of lead or copper or other ingredients injurious to health; provided, however, that organic salicylates used for flavoring, such as methyl salicylate, oil of betula lenta or oil of gaultheria procumbens shall not be prohibited. Nothing herein shall be construed as prohibiting the sale of foods or drinks preserved with one-tenth of one percent of benzoate of soda, or the equivalent benzoic acid, when a statement of such fact is plainly indicated on the label.

The State Board of Health is hereby authorized, for the protection of the public health, to promulgate regulations limiting the quantity of oxides of sulphur and other bleaching, clarifying or refining agents, that may be used for bleaching, clarifying or refining fruits, vegetables and other foods. [Acts 1911, p. 76; Acts 1937, 45th Leg., p. 539, ch. 265, § 1.]

Art. 4474. Milk.—No person either by himself or agent shall sell or expose for sale or exchange any unwholesome, watered, adulterated, or impure milk, or swill milk, or colostrum, or milk from cows kept upon garbage, swill, or any other substance in a state of putrefaction or other deleterious substances, or from sick or diseased cows, or from cows kept in connection with any family in which there are infectious diseases. Skim milk may be sold if on the container from which such milk is sold, the words "skim milk" are distinctly printed in letters not less than one inch in length. [Acts 1911, p. 76.]

Art. 4475. Baking powder compound.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange or sells any baking powder or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound a label distinctly printed in plain capital letters in the English lan-

guage, containing the name and residence of the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than 10 per cent of available carbon dioxide shall be deemed to be adulterated. [Id.]

Art. 4476. Self-rising flour.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange, or sells any Self-rising Flour, or compound intended for use as a Self-rising Flour, under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can, sack or package containing such Self-rising Flour or like mixture or compound, a label distinctly printed in plain capital letters in the English language, containing the name and domicile of the manufacturer or dealer, and the percentage by weight of each of the chemical leavening ingredients of the contents thereof. Such Self-rising Flour or any compound so termed or styled, when sold for use shall produce not less than one-half of one per cent, by weight, of available carbon dioxide gas, and there shall not be contained in such Self-rising Flour more than three and one-half per cent of chemical leavening ingredients, otherwise such flour or compound shall be deemed adulterated. Self-rising Flour is defined to be a combination of flour, salt, and chemical leavening ingredients. The flour shall be of the grade of "straight" or better, and the chemical leavening ingredients shall be Bicarbonate of Soda, and either Calcium Acid Phosphate, Sodium Aluminum Sulphate, Cream of Tartar, Tartaric Acid or combinations of the same. [Acts 1923, p. 96.]

Art. 4476—1. Flour and bread, manufacture, baking and sale; enrichment; penalties for violating state or federal laws or regulations.

Definitions

Section 1. (a) The term "flour" includes and shall be limited to flour of every kind and description made wholly or partly from wheat which conforms to the definition and standard of identity of flour, white flour, wheat flour and plain flour as promulgated by the Federal Security Agency (Federal Register, Vol. 6, pp. 2574–82, May 27, 1941), but excludes whole wheat flour made only from the whole wheat berry with no part thereof removed, and also excludes special packaged flours not used for bread baking, such as cake, pancake, cracker, and pastry flours;

(b) The term "bread" includes and shall be limited to bread of every kind and description made wholly or partly from wheat flour which conforms to the definition and standard of identity of bread as promulgated by the Federal Security Agency (Federal Register, Vol. 6, pp. 2771–72, June 7, 1941), but excludes bread containing no wheat flour or bread containing no wheat flour or breads made from whole wheat flour;

(c) The term "enrichment" as applied to flour or bread means the addition thereto of vitamins and other ingredients of the nature required by this Act; and the terms "enriched flour" (as defined in Federal Register, Vol. 6, pp. 2579–81, May 27, 1941), and "enriched bread" (as defined in Federal Register, Vol. 6, p. 2772, June 7, 1941), means flour or bread, as the case may be, which has been enriched to conform to the requirements of this Act.

(d) The term "person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any unincorporated organization.

(e) The term "appropriate federal agency" means the Federal Security Agency, or any agency or department or administrative federal officer charged with the enforcement and administration of the Federal Food, Drug and Cosmetic Act.[1]

Enrichment of flour; ingredients; application

Sec. 2. On and after the effective date of this Act it shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, any flour (as above defined) unless the following vitamins and other ingredients are contained in each pound of such flour:

(a) Not less than 1.66 milligrams of Vitamin B1 (thiamin); not less than 6 milligrams of nicotinic acid (also recognized under the name of niacin) or nicotinic acid amide (also known under the name of niacin amide); and not less than 6 milligrams of iron (Fe). These ingredients and amounts are in accordance with the definition of enriched flour as promulgated by the Federal Security Agency, (Federal Register, Vol. 6, pp. 2579–82, May 27, 1941; and Vol. 6, pp. 6175–76, December 3, 1941), postponing the effective date for the addition of riboflavin as a required ingredient to enriched flour.

(b) The enrichment of flour shall be accomplished by a milling process, addition of vitamins from natural or synthetic sources, addition of minerals, or by a combination of these methods, or by any method which is permitted by the Federal Security Agency with respect to flour introduced into interstate commerce.

(c) The State Health Officer is empowered with the authority and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to the State or Federal definition of enriched flour when promulgated or as may be from time to time amended.

(d) Iron shall be added only in forms which are assimilable and harmless and which do not impair the enriched flour.

Provided, however, that the terms of this Act shall not apply to flour sold to bakers who elect to enrich their products by other means than by the use of enriched flour as provided in Section 4.

(e) The terms of this Act shall not apply to flour or bread which is made from the entire wheat berry with no parts of the wheat removed from the mixture. In cases of flour or bread containing mixtures of the whole wheat berry and white flour or mixture of various portions of the wheat berry such products shall have a vitamin and mineral potency at least equal to enriched flour or enriched bread as described herein.

(f) The terms of this Act shall not apply to flour ground for the wheat producer whereby the miller is paid in wheat or feed for the grinding service rendered, except insofar as such a mill may manufacture toll wheat into flour and sell or offer for sale such flour, whereupon this Act shall be applicable; nor shall the provisions of this Act apply to farmers in exchanging their wheat for flour, or having the same ground into flour and disposing of the same for their own use or the use of farm labor on their farms.

Interstate shipments

Sec. 3. On and after the effective date of this Act it shall be unlawful for any person to manufacture, bake, sell, or offer for sale, or to receive in interstate shipment for sale for human consumption in this state, any bread or flour (as above defined) unless the following vitamins and other ingredients are contained in each pound of such bread or flour:

(a) Not less than 1.0 milligram of Vitamin B1 (thiamin); not less than 4.0 milligrams of nicotinic acid (niacin) or nicotinic acid amide (niacin amide); and not less than 4.0 milligrams of iron (Fe);

(b) The State Health Officer is empowered with the authority and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to the Federal definition of enriched bread when promulgated or as from time to time amended.

Enrichment of bread; ingredients

Sec. 4. (a) The enrichment of bread may be accomplished through the use of enriched flour, enriched yeast, other enriched ingredients, synthetic vitamins, harmless iron salts, or by any combination of harm-

less methods which will produce enriched bread which meets the requirements of Section 3.

(b) Iron shall be added only in forms that are assimilable and harmless and which do not impair the enriched bread.

Labelling

Sec. 5. It shall be unlawful to sell or offer for sale in this state any enriched flour or enriched bread which fails to conform to the labeling of the State Food and Drug and of the Federal Food, Drug and Cosmetic Act,[1] and the regulations promulgated thereunder by the appropriate federal or state agency, with respect to flour or bread introduced into interstate commerce.

State Health Officer, powers under act

Sec. 6. (a) The State Health Officer is authorized as the administrative agency and is hereby directed:

(1) To make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this Act, including, but without being limited to, such orders, rules, and regulations as he is hereinafter specifically authorized and directed to make.

(2) From time to time to adopt such regulations changing or adding to the required ingredients for flour or bread specified in Sections 2 and 3 as shall be necessary to conform to the definitions and standards of identity of enriched flour and enriched bread from time to time promulgated by the appropriate federal agency pursuant to the Federal Food, Drug and Cosmetic Act.[1]

(b) In the event of the finding by the State Health Officer that there is an existing shortage or imminent shortage of any ingredient required by Sections 2 and 3 of this Act, with the result that the sale and distribution of flour or bread may be substantially impeded by the enforcement of this Act, the State Health Officer shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredients from flour and bread. Whenever the State Health Officer finds that such shortage no longer exists, he shall issue an order, to be effective not less than ten days after publication thereof, revoking such order. Any such findings as to the existence or imminence of any such shortage, or the cessation thereof, may be made by the State Health Officer without any hearing, on the basis of an order of, or factual information supplied by the appropriate federal agency (as hereinbefore defined) or the War Production Board or any similar federal agency. In the absence of any such order or factual information the State Health Officer, upon receiving the sworn statement of any persons subject to this Act that such a shortage exists or is imminent or has ceased, shall, within ten days thereafter, hold a public hearing with respect thereto, at which time any interested person may present evidence in support of such sworn statement, and any such finding by the State Health Officer may be based upon the evidence so presented. The State Health Officer shall publish notice of any such hearing at least ten days prior thereto.

(c) All orders, rules, and regulations adopted by the State Health Officer pursuant to this Act shall be published in the manner hereinafter prescribed, and within the limits specified by this Act, shall become effective upon such date as the State Health Officer shall fix.

(d) Whenever under this Act publication of any notice, order, rule or regulation is required, such publication shall be made at least three times in ten days in newspapers of general circulation in three different sections of the state.

(e) The State Health Officer is authorized to collect samples for analysis and to conduct examinations and investigations for the purposes of this Act, through any officers or employees under his supervision; and all such officers and employees shall have authority to enter to inspect any factory, mill, warehouse, shop, or establishment where flour or bread is manufactured, processed, packed, sold, or held, or any vehicle and any flour or bread therein, and all pertinent equipment, materials, containers and labeling.

Violations of Act or rules and regulations

Sec. 7. Any person who violates any of the provisions of this Act, or the orders, rules or regulations promulgated by the State Health Officer under authority thereof, shall, upon conviction thereof, be subject to fine for each and every offense, in a sum not exceeding One Hundred ($100.00) Dollars or to imprisonment for not more than thirty days, or both such fine and imprisonment. [Acts 1943, 48th Leg., p. 305, ch. 199.]

1 21 U.S.C.A. §§ 301–392.
Section 8 of the Act of 1943 allowed processors, distributors, millers, wholesalers and retailers sixty days to dispose of flour on hand not conforming to provisions of Act.
Federal Food, Drug and Cosmetic Act, see 21 U.S.C.A. § 301 et seq.

Art. 4476—2. Oleomargarine; regulation of sale, distribution and possession; enrichment; violations; label.—Section 1. On and after the passage of this Act it shall be unlawful for any manufacturer, processor or dealer in oleomargarine in the State of Texas to sell or offer for sale any such product within this state which does not contain at least 9,000 United States Pharmacopeia Units of Vitamin A per pound. Oleomargarine is defined for the purpose of this Act in the Federal Register, Vol. 6, p. 2762–63, June 7, 1941.

Sec. 2. The State Health Officer is authorized as the administrative agency and is hereby authorized and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to any changes in the ruling of the Federal Security Agency concerning the addition of vitamins to oleomargarine, established in the Federal Register, Vol. 6, pp. 2761–63, June 7, 1941, or as may be from time to time amended.

Sec. 3. The State Health Officer is empowered and directed to enforce this Act through any officers or employees under his supervision, and to enter upon the premises of any manufacturer, processor or refiner, or upon the premises of any person engaged as a retail or wholesale dealer in oleomargarine, for the purpose of collecting samples for analyses or making such investigations as may be necessary to properly enforce the same. Any person found by a court of competent jurisdiction to be guilty of violating the terms of this Act shall be punishable by a fine of not more than One Hundred ($100.00) Dollars, or by imprisonment for not more than thirty days for each and every offense.

Sec. 4. Whenever any person, firm or corporation subject to the provisions of this Act shall submit to the State Health Officer an affidavit claiming a shortage or imminence of shortage of any vitamin added to or to be added to oleomargarine as required by this Act, the State Health Officer shall request information from the War Production Board or other Federal agency responsible for information concerning said availability. If factual information from said source can be obtained within ten days this information shall be considered as final and the State Health Officer is hereby instructed to act thereon. However, if said information is not available within the prescribed time the State Health Officer shall call for a public hearing to be held within ten days after notice. If the testimony presented shows that the sale and distribution of oleomargarine may be substantially impeded by the enforcement of the provisions of this Act, he shall authorize the sale and distribution of oleomargarine until adequate supplies of such vitamins become available in the judgment of the State Health Officer, based

on information from said Federal agencies or testimony at a public hearing.

Sec. 5. All oleomargarine sold in the State of Texas must be labeled in accordance with the State Food and Drug Laws and with the regulations of the Federal Security Agency governing the labeling of oleomargarine with added Vitamin A sold in interstate trade. Oleomargarine labeled in accordance with Federal Laws, rules and regulations shall be deemed sufficient compliance with the laws, rules and regulations of the State of Texas.

Sec. 6. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency.

Sec. 7. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. [Acts 1943, 48th Leg., p. 348, ch. 227.]

Section 8 of the Act of 1943 allowed processors, jobbers, distributors, wholesalers and retailers sixty days to dispose of oleomargarine on hand not conforming to the provision of Act.

Federal Food, Drug and Cosmetic Act, see 21 U.S.C.A. § 301 et seq.

Art. 4476—3. Meat inspection.

Style of Act

Section 1. This Act[1] shall be styled "The Meat Inspection Law."

Interpretation

Sec. 2. This Act shall be construed so as to effectuate its general purpose, to prohibit and prevent the sale of food for human consumption of meat from animals where said animals suffer from diseases communicable to human beings, and to provide adequate and uniform regulations for inspection of meat and meat products intended for human consumption, thereby protecting the public health.

Definitions

Sec. 3. The following definitions shall apply in the interpretations in this Act:

(a) Meat Product: Any edible part of the carcass of any cattle, calf, sheep, swine, or goat which is not manufactured, cured, smoked, processed, or otherwise treated.

(b) Meat food product: Any article of food or any article which enters into the composition of food for human consumption, which is derived or prepared in whole or in part from any portion of the carcass of any cattle, calf, sheep, swine, or goat, if such portion is all or a considerable and definite portion of the article, except such articles as organotherapeutic substance, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.

(c) Meat and products: Carcass, parts of carcass, meat, products, food products, meat products, and meat food products, of or derived from, cattle, calf, sheep, swine, and goats, which are capable of being used as food by man.

(d) Prepared meats: The products obtained by subjecting meat to a process of comminuting, drying, curing, smoking, cooking, seasoning, or flavoring, or any combination of such process.

(e) Official establishment: Any slaughtering, meat canning, curing, smoking, salting, packing, rendering, or other similar establishments at which inspection is maintained under these regulations.

(f) Person: Natural persons, individuals, firms, partnerships, corporations, companies, societies, and associations, and every agent, officer, or employee of any thereof. This term shall import both the plural and the singular as the case may be.

(g) Subsidiary: Any individual, firm, partnership, corporation, company, or association, in whose name any business is controlled, or owned, in whole or in part, directly or indirectly, by another.

(h) Inspection Legend: A mark or statement authorized by these regulations on an article or on the container of an article indicating that the article has been inspected and passed for human food by a representative of the Food and Drug Division of the State Department of Public Health of the State of Texas, or by persons authorized by the State Department.

(i) Label: A display of written, printed, or graphic matter upon any meat, meat by-product, prepared meat, or meat food product, or the immediate container thereof, and a requirement made by or under authority of this Act that any word, statement, or other information also appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if there be, of the retail package of such meat, meat by-product, prepared meat or meat food product, or is easily legible through the outside container or wrapper.

(j) Labeling: All labels and other written, printed, or graphic matter (1) upon any meat, meat by-products, prepared meat, or meat food products or any of its containers or wrappers, or (2) accompanying such meat, meat by-product, prepared meat, or meat food products.

(k) "Texas State Inspected and Approved Establishment No. ——": That the carcass, parts of carcass, meat, meat products, prepared meat, or meat food products so marked have been inspected, passed, and labelled under the provisions of this Act and under the regulations and specifications promulgated by the State Board of Health under the authority of this Act, and that at the time they were inspected, passed, and so marked they were found to be sound, healthful, wholesome and fit for human food.

Rules and Regulations

Sec. 4. The State Health Officer is hereby authorized and empowered, from time to time, to make such rules and regulations as are necessary to prevent and prohibit the sale of meat for food for human consumption when such meat is unfit for human consumption and dangerous to human health, and for the efficient execution of the provisions of this Act; and all inspections and examinations made under this Act shall be such and shall be made in such manner as prescribed in the rules and regulations promulgated by the State Health Officer and shall not be inconsistent with or an enlargement upon the provisions of this Act.

Meat Inspection

Sec. 5. The meat inspection provided by this Act shall be under the supervision of the State Health Officer of the State of Texas.

Enforcement of Act

Sec. 6. The Board of Health, through its representatives, shall supervise and regulate the processing, handling, and labeling of meat, meat by-products, prepared meat, or meat food products in conformity with the definitions, specifications, and standards which the State Health Officer promulgates and in conformity with the provisions of this Act; and the State Board of Health shall have the power to revoke permits as herein provided, when upon examination and hearing it is found that any provisions or Section of this Act or any provision of any regulation promulgated by authority of this Act have been violated.

Inspection mark, stamp, tag, or label

Sec. 7. The State Health Officer is hereby authorized and empowered to have designed a distinctive inspection mark, stamp, tag, or label which shall state

"Texas State Approved Establishment No. —" and said mark, stamp, tag, or label shall be applied by an authorized person to all products found to be sound, healthful, wholesome, and fit for food for human consumption and shall contain no chemicals, dyes, preservatives, or ingredients which render such meat, prepared meat or meat food products unfit for human food. The State Health Officer is hereby authorized and empowered to condemn such meat or meat products or meat food products or prepared meat found unsound, unhealthful, and unwholesome or shall contain chemicals, dyes, preservatives, or ingredients which render such meat or meat food products unsound, unhealthful, unwholesome or unfit for human food and all such condemned meat food products shall not be sold for human consumption. Provided further that meats bearing the inspection mark, stamp, tag, or label of the United States Department of Agriculture shall be considered as conforming to this Act.

False use of inspection mark, stamp, tag, or label prohibited

Sec. 8. That for the purposes hereinbefore set forth the State Health Officer or his representatives shall cause to be made by inspectors provided for that purpose, such inspections of all slaughtering, meat canning, sausage factories, salting, packing, rendering, or similar establishments in which cattle, calves, sheep, swine, or goats are slaughtered and the meat or meat food products thereof prepared for sale for human food within the State of Texas, as may be necessary to inform himself concerning the sanitary conditions of the same and to prescribe rules and regulations of sanitation under which such establishment shall be maintained not inconsistent with United States Department of Agriculture Bureau of Animal Industry Order No. 211 as revised; and where the sanitary conditions of such establishment are such that the meat or meat food products are rendered unclean, unsound, unhealthful, unwholesome or otherwise unfit for human food, he shall refuse to allow such meat or meat food products to be labeled, marked, stamped, or tagged as "Texas State Approved Establishment No. ——".

Application for Texas State approved establishment No. ——

Sec. 9. Any person, firm, association, or corporation desiring to use the inspection mark, stamp, tag or label as provided in Section 7 of this Act in representing, publishing, or advertising any meat or meat food products offered for sale or to be sold within this State shall make application for a permit to the State Board of Health at Austin, Texas, who shall take the necessary steps to determine and award the permit for the use of a Texas State Approved Establishment No. —— to such application, all in accordance with the rules and regulations of the State Board of Health as provided for herein.

All meats or meat food products bearing the inspection mark, stamp, tag, or label shall be permitted to be offered for sale, sold, or transported anywhere within the geographical limits of the State of Texas.

Meat to conform to label

Sec. 10. No meat or meat products sold, produced, or offered for sale within this State by any person, firm, association, or corporation shall carry a label, device, or design marked "Texas State Approved Establishment No. ——," or any other grade, statement, design, or device regarding the safety, sanitary quality, or the wholesomeness and fitness of said food for human consumption which is misleading or which does not conform to the definition and requirements of this Act.

No meat or meat products, except those produced or processed by a person, firm, association, or corporation having a permit to use the "Texas State Approved" label under the provisions of this Act and which are produced, treated, and handled in accordance with the specifications and requirements promulgated by the State Board of Health for sound, healthful, and wholesome meat and meat products shall be represented, published, labeled, or advertised as being "Texas State Approved Meat Products."

Regulations of inspection and labeling by State Board of Health

Sec. 11. The State Board of Health through the State Health Officer is hereby authorized and empowered to supervise and regulate the inspecting and labeling of meat and meat products in conformity with the standards, specifications, and requirements which it promulgates for the purpose set forth in this Act and in conformity with the definitions of this Act. The State Board of Health shall have the power, after due notice to the affected permittee sent by registered mail and after the hearing to be had in accordance with regulations to be issued covering this subject, to revoke permits issued when, upon such hearing, it shall be found that such permittee has violated some provision of this Act, or has failed to comply with some proper regulation issued under the provisions of this Act.

Adoption by cities

Sec. 12. The governing body of any city in the State of Texas may make mandatory the provisions of this Act and the inspection and labeling of meat and meat food products produced, sold, or offered for sale within their respective jurisdictions by adopting any ordinance to that effect and by providing the necessary facilities for inspection and for the enforcement of this Act.

Any city adopting any specifications and regulations as a basis for issuing any permit for the use of the "Texas State Approved Meat for Human Food" label on meat and meat food products shall be governed by the specifications and regulations promulgated by the State Board of Health as herein authorized.

Application for permits

Sec. 13. Any person, firm, association, or corporation desiring to use the "Texas State Approved" meat label in representing, publishing, or advertising any meat, or meat food products offered for sale or to be sold within this State for food for human consumption shall make application to the State Board of Health, prior to the use of such a label for a permit to use any such label in advertising, representing, or labeling such meat or meat food products.

Authority to issue and revoke permit

Sec. 14. The State Health Officer receiving such applications as provided for in Section 4 of this Act is hereby authorized and empowered to award to such applicant a permit to use the "Texas State Approved" meat label according to the requirements of this Act. The State Board of Health shall have the power to revoke any permit issued, after notice by registered mail to the affected permittee and after a hearing to be held in accordance with regulations issued covering this subject, when upon examination and hearing it is found that any penal provision or Section of this Act has been violated. The State Health Officer shall keep a record for public inspection of all reports received, and the issuance or revocation of permits under this Act.

Constitutionality

Sec. 20. In the event any Section, or part of Section, or provision of this Act, be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining Sections or parts of Sections of this Act, but the same shall continue in full force and effect. [Acts 1945, 49th Leg., p. 554, ch. 339.]

1 Article 4476—3 and Pen.Code, art. 719d.
Sections 15–19 of the Act of 1945 being Penal provisions, are published as P.C. 719d.
Section 21 of the Act of 1945 repealed all conflicting laws.

CHAPTER 3A.—BEDDING

Art.
4476a. Bedding—Manufacture, repair or renovating.
Sec.
1. Definitions.
2. Labelling of bedding required.
3. Use of materials from dump-grounds and hospitals.
4. Germicidal treatment of materials.
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8c. Expenditure of moneys.
9. Penalties.
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Art. 4476a. Bedding—Manufacture, repair or renovating.

Definitions

Section 1. (a). The term "bedding" as used in this Act shall mean mattresses, pillows, bolsters, feather beds and other filled bedding of any description.

(b). The term "Department" when used in this Act shall mean the State Board of Health.

(c). The term "person" as used in this Act shall include persons, partnerships, companies, corporations and associations.

(d). The term "renovate" as used in this Act shall mean to restore to former condition or to place in a good state of repair.

(e). The term "materials" as used in this Act shall mean all articles, or portions thereof, used as filling or covering in the manufacture, repair or renovation of bedding.

(f). The term "new" as used in this Act shall mean any article or material which has not been previously used for any purpose.

(g). The term "second-hand" as used in this Act shall mean any article or material, or portion thereof, of which former use has been made in any manner whatsoever.

(h). Wherever in this Act the singular is used, the plural shall be included; and where the masculine gender is used, the feminine and neuter shall be included.

Labelling of bedding required

Sec. 2. (a). All bedding shall bear securely attached thereto and plainly visible, a substantial white cloth tag upon which shall be indelibly stamped or printed with black ink, in the English language, a statement showing whether new materials or second-hand materials have been used in filling such bedding, and type or grade of cotton and all other materials used in filling mattress to which attached when new materials are used, with approximate percentages when mixed; what germicidal treatment, if any, has been applied to the materials or to the bedding; the date of such germicidal treatment; the number of the permit of the person manufacturing the bedding; and the number of the permit of the person applying such germicidal treatment, if any.

(b). The terms used on the tag to describe materials shall be restricted to those defined in the regulations of the Department, and no trade or substitute terms shall be used.

(c). It shall be unlawful to make any false or misleading statements on the tag required by this Section. It shall be unlawful for any person to remove, deface, alter, or cause to be removed, defaced or altered, any tag or statement contained thereon for the purpose of defeating any of the provisions of this Act. The placing of registration stamps required in Section 7 of this Act over any lettering on the tag, shall be construed to be defacement of the tag.

(d). The size of the tag to be affixed to new bedding required by this Section shall be not less than six (6) square inches, and the lettering thereon, covering the statement of filling materials, shall be in plain type not less than one-eighth (1/8) inch in height.

(e). Every article of bedding manufactured for resale containing second-hand material, shall bear, securely sewn thereto on all four sides of the tag, attached to both sides of the article of bedding, a substantial white cloth tag four (4) by eight (8) inches in size, upon which shall be indelibly stamped or printed in red ink, in the English language, in plain type not less than one-half (1/2) inch in height, stating: "second-hand material".

Use of materials from dump-grounds and hospitals

Sec. 3. No person shall manufacture, repair or renovate into bedding or batting, using discarded materials obtained from dump-grounds, junk yards, or hospitals within or without the State of Texas.

Germicidal treatment of materials

Sec. 4. All second-hand materials, or portions thereof, for resale, shall be subjected to a germicidal treatment currently recommended by the Department.

Enforcement of act

Sec. 5. The State Board of Health is hereby charged with the enforcement of this Act, for the protection of health and to prevent the spread of disease. It is further empowered, and its duty shall be to make, amend, alter or repeal general rules and regulations of procedure for carrying into effect all the provisions of this Act, and to prescribe means, methods, and practices to make effective such provisions.

Permits

Sec. 6. (a). No person shall engage in the business of manufacturing, repairing or renovating any bedding unless he shall have obtained a permit from the Department.

(b). No person shall be considered to have qualified to apply an acceptable germicidal process until such process has been registered with and approved by the Department, after which a numbered permit shall then be issued by the Department. Such permit shall expire one year from date of issue and shall thereafter be annually renewed at the option of the permit holder upon submission of proof of continued compliance with the provisions of this Act and the regulations of the Department. Every person to whom a permit has been issued shall keep such permit conspicuously posted on the premises of his place of business near the treatment device. Holders of permits to apply germicidal treatment shall be required to keep an accurate record of all materials which have been subjected to germicidal treatment, including the source of material, date of treatment, and name and address of the buyer of each, and such records shall be available for inspection at any time by authorized representatives of the Department.

(c). For all initial permits issued, as required by the preceding paragraph (a) of this Section, there shall, at the time of issuance thereof, be paid by the applicant to the Department, a fee of Five ($5.00) Dollars. An annual renewal charge of Two and 50/100 ($2.50) Dollars shall be paid to the same Department.

(d). For all initial permits issued, as required by the preceding paragraph (b) of this Section, there shall, at the time of issuance thereof, be paid by the applicant, to the Department, a fee of Twenty-five ($25.00) Dollars. An annual renewal charge of One ($1.00) Dollar shall be paid to the same Department.

(c). Any permit issued in accordance with the provisions may be revoked by the State Health Officer upon proof of violation of any of the provisions of this Act. A reissuance of said permit shall be subject to provisions as set forth for an initial permit.

Registration for selling

Sec. 7. (a). No person shall manufacture, renovate, sell or lease or have in his possession with intent to sell or lease in the State of Texas, any bedding covered by the provisions of this Act, unless there be affixed to the tag required by this Act by the person manufacturing, renovating, selling or leasing the same, an adhesive stamp prepared and issued by this Department.

(b). The Department shall register all applicants for stamps and assign to every such person a registration number, which thereafter shall constitute his identification record, and said identification shall not be used by any other person.

(c). Adhesive stamps as provided for by this Act shall be furnished by the Department in quantities of not less than five hundred (500), for which the applicant shall pay at the rate of Five ($5.00) Dollars for each five hundred (500) stamps. The State Health Officer is hereby authorized to prepare and cause to be printed, adhesive stamps which shall contain a replica of the seal of the State of Texas, the registry number of the person applying therefor, and such other matter as the State Health Officer shall direct.

Proceeds placed in general fund

Sec. 8. All moneys obtained from the sale of stamps, fees and other moneys collected in the administration of this Act shall be payable to the Department, and when collected shall thereafter be transmitted to the State Treasury and be placed in the General Fund and be appropriated out in such amounts that may be deemed necessary by the Legislature. In the administration of this enactment the Regular Departmental Appropriation Bill will be adopted.

Expenditure of moneys

Sec. 8c. The expenditure of any moneys under this Act shall never exceed the amount of money obtained from the collection of money required by any fee, permit, license or registration required by the provisions of this Act.

Penalties

Sec. 9. (a). Any person, who shall be convicted of violation of any of the provisions of this Act, or of the rules and regulations established thereunder, shall be sentenced to pay a fine of not less than Fifty ($50.00) Dollars nor more than One Hundred ($100.00) Dollars for each offense.

(b). Each day of violation shall constitute a separate offense.

Sanitary premises

Sec. 10. Every bedding manufacturer or renovator shall keep his place of business in a sanitary condition satisfactory to the Health Department, and failure to do so shall be sufficient cause to revoke his permit.

Exceptions

Sec. 11. The provisions of this Act shall apply to all bedding manufactured, repaired, renovated and/or sold after the effective date hereof; but the same shall not apply to bedding; which has been manufactured, repaired or renovated prior to the effective date hereof. [Acts 1939, 46th Leg., p. 376.]

Section 8a of the Act of 1939, made an appropriation to carry out purposes of Act for remainder of fiscal year ending August 31, 1939.

Section 8b appropriated specific sums for salaries and expenses for the period from September 1, 1939 to August 31, 1941.

Section 11a, added by Acts 1943, 48th Leg., p. 273, ch. 172, § 1, providing that this article did not apply to bedding sold under contract to United States for war purposes, provided that the act should be effective until cessation of hostilities of World War II. By Proclamation No. 2714, the President of the United States proclaimed the cessation of hostilities effective twelve o'clock noon, Dec. 31, 1946.

Section 12 provided that a holding of partial invalidity should not affect any remaining portion of the Act.

CHAPTER 4.—SANITARY CODE

Art.
4477. Sanitary code.

QUARANTINE AND DISINFECTION

Rule
1. Physician to report.
2. "Local health authority."
3. "Contagious diseases."
4. Health officers to keep record.
5. Rules to quarantine and disinfection.
6. Disinfection.
7. Health authority shall placard all houses where contagious diseases exist.
8. Going to or leaving quarantined premises.
9. Person exposed to diseases shall obey authority.
10. Certain persons not allowed on thoroughfares.
11. Placard not to be destroyed or removed.
12. Quarantinable pestilential disease.
13. Dangerous contagious diseases; modified quarantine.
14. Non-quarantinable contagious disease.
15. Quarantinable for school purposes.
16. Minor diseases to be excluded during illness.
17. Rules not exclusive.
18. Authorities to investigate reported cases.
19. Shall see that quarantine and disinfection is carried out.
20. Premises to be disinfected before re-occupied.
21. Placard premises on failure to disinfect.
22. Nurses to report redness of eyelids or inflammation.
23. Householders to report contagious diseases.
24. Employes with reportable diseases.
25. To send physician printed matter.
26. Persons excluded from schools.
27. Schools temporarily closed.
28. Schools to open after disinfection.
29. To notify superintendents of pupils from infected houses.
30. Children with diseases shall not attend school.
31. Health authorities to assume control of quarantine.
32. These rules not to prevent local rules.
33. Authorities may pass through quarantine lines.

VITAL STATISTICS

34. [Repealed.]
34a. State department of health.
35. [Repealed.]
35a. State health officer and registrar of vital statistics.
36. [Repealed.]
36a. Registration districts.
37. [Repealed.]
37a. Local registrar.
38. [Repealed.]
38a. Dead bodies.
39. [Repealed.]
39a. Report of stillborn.
40. [Repealed.]
46a. Death certificates.

Art.
4477. Sanitary code.—Cont'd.
Rule
41. [Repealed.]
41a. Death without medical attendance.
42. [Repealed.]
42a. Undertaker's certificate.
43. [Repealed.]
43a. Burial permit within state.
44. [Repealed.]
44a. Report as to internment.
45. [Repealed.]
45a. Births.
46. [Repealed.]
46a. Birth certificates.
47. [Repealed.]
47a. Contents of birth certificate.
48. [Repealed.]
48a. Child's name.
49. [Repealed.]
49a. Registration of physicians, midwives, and undertakers.
50. [Repealed.]
50a. Records of inmates of hospitals and institutions.
51. [Repealed.]
51a. Blanks and registration forms; index of births and deaths; records; transcripts; fees; trial of issue regarding birth or death absent affidavit.
52. [Repealed.]
52a. Duties of local registrars.
53. [Repealed.]
53a. Fees.
54. [Repealed.]
54a. Copies of records.
55. [Repealed.]
55a. Reports of violations of Act.
56 and 57. [Repealed.]

DEPOTS, COACHES AND SLEEPERS

58. Diseases barred from public vehicles.
59. Ventilation and heat.
60. Cuspidors.
61. Dry cleaning prohibited.
62. Coaches.
63. Railway stations.
64. Parlor, buffet and dining cars.
65. Interurban and street cars.
66. Sleeping cars.
67. Record of disinfection.
68. Water coolers.
69. Expectorating on floors.
70. Expectorating in basins.
71. Separate compartment of porter.
72. Negro porter not to sleep in berth.
73. Certain floor covering prohibited.
74. Water closets.
75. Railway premises shall be drained.
76. Water containers screened.

TRANSPORTATION OF DEAD BODIES.

77. Bodies dead of pestilential diseases.
78. Bodies dead of contagious diseases.
79. Bodies dead of non-quarantinable contagious disease.
80. Bodies dead with other diseases.
81. Persons accompanying bodies dead of contagious diseases.
82. Bodies not shipped by express.
83. Bodies shipped by express.
84. Disinterred bodies treated as contagious.
85. Transfer of bodies in transit.
86. Certificate by undertaker.

Art. 4477. Sanitary code.—The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit:

QUARANTINE AND DISINFECTION

Rule 1. Physician to report.—Every physician in this State shall report in writing or by an acknowledged telephone communication to the local health authority, immediately after his or her first professional visit, each patient he or she shall have or suspect of suffering with any contagious disease. If such disease is of a pestilential nature, he shall notify the President of the State Board of Health at Austin by telegraph or telephone at State expense, and report to him every death from such disease immediately after it shall have occurred. The attending physician is authorized to and he shall place the patient under restrictions of the character described herein in the case of each respective disease.

Rule 2. "Local health authority."—For the purpose of these regulations, the term "local health authority" shall be held to designate the city or county health officer, or local board of health, within their respective jurisdictions.

Rule 3. "Contagious diseases."—The term "contagious disease" as used in these regulations shall be held to include the following diseases, whether contagious or infectious; and as such shall be reported to all local health authorities and by said authority reported in turn to the President of the State Board of Health: Asiastic cholera, bubonic plague, typhus fever, yellow fever, leprosy, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebrospinal meningitis, dengue typhoid fever, epidemic dysentery, trachoma, tuberculosis and anthrax.

Rule 4. Health officers to keep record.—City and county health authorities shall keep a careful and accurate record of all cases of contagious diseases as reported to them, with the date, name, age, sex, race, location and such other necessary data as may be prescribed by the State Board of Health. They shall also make a monthly report of all contagious diseases of which they may be cognizant, to the President of the State Board of Health, before the fifth of the following month, upon blank forms provided by the State Board of Health. The reports on tuberculosis are to be privately kept and are to be considered in the light of a confidential communication, not for the purpose of isolation, but with the object of education in sanitary precautions, and to supply literature of the State Board of Health.

Rule 5. Rules to quarantine and disinfection.—The following rules of instruction for the regulation of quarantine, isolation and disinfection in the several contagious diseases, hereinbefore mentioned, are to be observed by all boards of health, health officers, physicians, school superintendents and trustees, and others. All health authorities of counties, cities, and towns in this State are hereby directed and authorized to establish local quarantine, hold in detention, maintain isolation and practice disinfection as hereinafter provided for, of all such infected persons, vehicles or premises which are infected or are suspected of being infected with any of the above named diseases whenever found.

(a) Absolute quarantine includes, first, absolute prohibition of entrance to or exit from the building or conveyance except by officers or attendants authorized by the health authorities, and the placing of guards if necessary to enforce this prohibition; second, the posting of a warning placard stating "contagious disease," in a conspicuous place or places on the outside of the building or conveyance; third, the prohibition of the passing out of any object or material from the

quarantined house or conveyance; fourth, provision for conveying the necessaries of life under careful restrictions to those in quarantine.

(b) Modified quarantine includes prohibition of entrance and exit, and in absolute quarantine except against certain members of the family authorized by the health authorities to pass in and out under certain definite restrictions; the placing of a placard as before; isolation of patient and attendant; prohibition of the carrying out of any object or material unless the same shall have been thoroughly disinfected.

(c) Absolute isolation includes, first, the confinement of the patient and attendants to one apartment or suite of apartments, to which none but authorized officers or attendants shall have admission; second, screening of room and entire house if necessary with not less than 16-mesh wire gauze; third, the prohibition of passing out of the sick room of any object or material until the same has been thoroughly disinfected; fourth, protection of the air of the house by hanging a sheet, kept constantly moist with a disinfectant solution, over the doorway of the patient's room or rooms and reaching from the top of the door; fifth, if in the opinion of the local health authority the patient can not be treated, with reasonable safety to the public, at home, the removal of the patient and exposures to a contagious disease hospital or pest house.

(d) Modified isolation includes the confinement of the patient and attendants to one room or suite of rooms, to which none but authorized officers or attendants shall have admission, but allowing the attendants to pass out of the room after disinfection of person and complete change of clothing; screening as above mentioned; the prohibition of passing any object or material out of the sick room until it has been disinfected; protection of the doorway as before.

(e) Special isolation includes, first, prohibition of patient from attending any place of public assemblage; second, the providing of separate eating utensils for the patient; third, prohibition of sleeping with others, or using the same towels or napkins.

(f) By complete disinfection is meant disinfection during illness, under direction of attending physician, of patient's body, of all excretions or discharges of patient and of all articles of clothing and utensils used by patient, and after recovery, death or removal, the disinfection of walls, woodwork, furniture, bedding, etc.

(g) By partial disinfection is meant disinfection of discharges or excretions of patients and their clothing and the room or rooms occupied by the patient during illness.

Rule 6. Disinfection.—All disinfection prescribed in these regulations shall be a part of the control of the disease, and shall be done according to the direction of the Texas State Board of Health in its circular on disinfection.

Rule 7. Health authority shall placard all houses where contagious diseases exist.—Upon notice that smallpox, diphtheria, scarlet fever, or other quarantinable disease exists within his jurisdiction, it shall be the duty of the local health authority to have the house in which such disease prevails placarded by placing a yellow flag or card not less than eight inches wide and twelve inches long with the words "contagious disease" and the quarantine regulations printed thereon in a conspicuous place on said house.

Rule 8. Going to or leaving quarantined premises.—After the house is flagged or placarded, all persons except the attending physician or health officer are forbidden from going in or leaving such premises, without the permission of the local health authority, and the carrying off, or causing to be carried off, of any material whereby such disease may be conveyed, is prohibited until after the disease has abated and the premises, dwelling and clothing have been disinfected and cleaned as the local health authority may direct.

Rule 9. Person exposed to diseases shall obey authority.—It shall be the duty of all persons infected with any contagious disease, or who, from exposure to contagion from such disease, may be liable to endanger others who may come in contact with them, to strictly observe such instructions as may be given them by any health authority of the State, in order to prevent the spread of such contagious disease, and it shall be lawful for such health authorities to command any person thus infected or exposed to infection to remain within designated premises for such length of time as such authority may deem necessary.

Rule 10. Certain persons not allowed on thoroughfares.—All persons having any quarantinable disease are prohibited from riding on any public vehicle or conveyance, and from being upon public thoroughfares or in public assemblages.

Rule 11. Placard not to be destroyed or removed.—No person shall alter, deface, remove, destroy or tear down any card posted by a local health authority. The occupant or person having possession or control of a building upon which a quarantine notice has been placed shall within twenty-four hours after the destruction or removal of such notice by other than the proper health authority, notify the local health authority of such destruction or removal.

Rule 12. Quarantinable pestilential disease.—In the management and control of the following pestilential diseases: cholera, plague, typhus fever and yellow fever, the house must be placarded, premises placed in absolute quarantine, patient in absolute isolation and a complete disinfection done upon death or recovery taking place.

Rule 13. Dangerous contagious diseases; modified quarantine.—In the management and control of leprosy, smallpox, scarlet fever (scarletina) [scarlatina] diphtheria (membranous croup), and dengue, it is required that the house be placarded, premises placed in modified quarantine, patient in modified isolation, and complete disinfection done upon death or recovery.

Rule 14. Non-quarantinable contagious disease.—The management and control of typhoid fever, cerebro-spinal meningitis (epidemic), epidemic dysentery, trachoma (acute catarrhal conjunctivitis), tuberculosis and anthrax require special isolation and partial disinfection.

Rule 15. Quarantinable for school purposes.—Persons suffering from measles, whooping cough, mumps, German measles (rotheln) and chickenpox, shall be required to be barred from school for twenty-one days (at the discretion of the local health officer) from date of onset of the disease, with such additional time as may be deemed necessary; and may be readmitted on a certificate by him attesting to their recovery and non-infectiousness.

Rule 16. Minor diseases to be excluded during illness.—Those actually suffering from tonsilitis, scabies (itch), impetigo contagiosa, favus, shall be excluded from school during such illness and be readmitted on the certificate of the attending physician attesting to their recovery and non-infectiousness.

Rule 17. Rules not exclusive.—The above requirements shall in no sense be construed as abrogating any additional precautionary measures enforced by local health authorities, but it is expected that additional restrictive measures will be taken at the discretion of the local health authority when the necessity arises, more especially in the more densely populated cities and towns, or when violations of quarantine occur.

Rule 18. Authorities to investigate reported cases.—Whenever a local health authority is informed or has reason to suspect that there is a case of smallpox, scarlet fever, or other reportable disease within the territory over which he has jurisdiction, he shall immediately examine into the facts of the case and

shall adopt the quarantine or employ the sanitary measures as herein provided.

Rule 19. Shall see that quarantine and disinfection is carried out.—Within his jurisdiction, each and every local health authority shall see that the quarantine or disinfection of any house, building, car, vessel, or vehicle, or any part thereof, and of any articles therein likely to retain infection, is carried out, and that all persons who have been in quarantine are required to take a disinfecting bath before the same are released. In the event of the disease having been smallpox, all persons exposed shall be isolated for eighteen days from the time of last exposure unless successfully vaccinated.

Rule 20. Premises to be disinfected before re-occupied.—No person shall offer for hire or cause or permit any one to occupy apartments, previously occupied by a person ill with smallpox, scarlet fever, diphtheria or tuberculosis, or any quarantinable disease, until such apartments shall have been disinfected under the supervision of the local health authority.

Rule 21. Placard premises on failure to disinfect.—Whenever these rules and regulations, or whenever the order or direction of the local health authority requiring the disinfection of articles, premises or apartments, shall not be complied with, or in case of any delay, said authority shall forthwith cause to be placed upon the door of the apartment or premises a placard as follows: "These apartments have been occupied by a patient suffering with a contagious disease and they may have become infected. They must not again be occupied until my orders directing the renovation and disinfection of same have been complied with. This notice must not be removed, under penalty of the law, except by an authorized health official."

Rule 22. Nurses to report redness of eyelids or inflammation.—Whenever any nurse, midwife or other person not [a] legally qualified practitioner of medicine shall notice inflammation of the eyes or redness of the lids in a new-born child under his or her care, it shall be the duty of such person to report the same to the local health authority or in his absence, any reputable physician, within twelve hours of the time the disease is first noticed.

Rule 23. Householders to report contagious diseases.—Every hotel proprietor, keeper of a boarding house or inn, and householder or head of a family in a house wherein any case of reportable contagious disease (including tuberculosis) may occur, shall report the same to the local health authority within twelve hours of the time of his or her first knowledge of the nature of such disease, unless previous notice has been given by the physician in attendance; and in cases of quarantinable diseases until instructions are received from the said local health authority shall not permit any clothing or other article which may have been exposed to infection to be removed from the house; nor shall any occupant of said house change his residence elsewhere without the consent of the said local health authority.

Rule 24. Employés with reportable diseases.—No person who resides in a house in which there exists a case of smallpox, scarlet fever, diphtheria, or typhoid fever, shall work or be permitted in or about any dairy, or any establishment for the manufacture of food products, until the local health authority has given such a person a written certificate to the effect that no danger to the public will result from his or her employment or presence in such establishment.

Rule 25. To send physician printed matter.—Immediately after being notified of any case of smallpox, scarlet fever, diphtheria, typhoid fever, or tuberculosis, the local health authority shall send to the attending physician, or with his approval directly to the patient the printed matter published by the State Board of Health relative to the prevention and control of such diseases.

Rule 26. Persons excluded from schools.—Persons afflicted with trachoma, granulated lids, or contagious catarrhal conjunctivitis must be excluded from schools, public assemblages, and from close association with other individuals, unless they are under the constant care and strict supervision of a competent physician, and hold a certificate from said physician stating that active inflammation has subsided, said certificate to be countersigned by a local health authority.

Rule 27. Schools temporarily closed.—A schoolhouse wherein a child suffering from smallpox, scarlet fever or diphtheria has been present, shall be deemed infected and must be temporarily closed and thoroughly disinfected and cleaned under the supervision of the local health authority before reopening of the school.

Rule 28. School to open after disinfection.—In the event of the aforementioned disease being smallpox and in the case the Board of Trustees having passed a regulation requiring a successful vaccination of all teachers and pupils, the school may be reopened immediately after the disinfection and cleaning, and all teachers and pupils who have been successfully vaccinated may return; otherwise the school shall be kept closed eighteeen days or until the local health authority directs otherwise.

Rule 29. To notify superintendents of pupils from infected houses.—The local health authority shall notify the superintendent or principal of any school of the location of quarantinable diseases, and if the superintendent or principal finds any attendants in such school who live in said houses, he shall deny them admission to the said schools, only admitting them again upon presenting a certificate from the attending physician, countersigned by the local health authority, that there is no longer danger from contagion.

Rule 30. Children with diseases shall not attend school.—No superintendent, principal or teacher of any school, and no parent, master or guardian of any child or minor, having the power and authority to prevent, shall permit any child or minor, having any quarantinable disease, or any child residing in any house in which any such disease exists or has recently existed, to attend any public, private, parochial, church or Sunday school until the requirements of these rules have been complied with.

Rule 31. Health authorities to assume control of quarantine.—In all incorporated cities and towns the city health authorities shall assume control and management of contagious diseases and exposures and practice quarantine, isolation and disinfection as herein provided. In those portions of all counties outside of incorporated cities and towns the county health officer shall assume management and control of contagious diseases and exposures and practice quarantine, isolation and disinfection as herein provided.

Rule 32. These rules not to prevent local rules.—These regulations shall not be construed to prevent any city, county or town from establishing any quarantine which they deem necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of these regulations and be subordinate to said provisions, and the rules and regulations prescribed by the Governor and State Board of Health. The local health authority shall at once furnish the President of the State Board of Health with a true copy of any quarantine orders and regulations adopted by said local authorities.

Rule 33. Authorities may pass through quarantine lines.—All health authorities shall be allowed to pass through all quarantine lines, whether instituted at the instance of State or local authorities, they first requesting permission and acquainting the officers or

guards in charge with the fact of their being properly authorized health officers, and with the additional statement that they are fully acquainted with the nature of the disease that they are visiting, and further that they will take proper precautions to prevent carrying the infection themselves.

VITAL STATISTICS

Rule 34. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 34a. State department of health.—That the State Department of Health shall have charge of the registration of births and deaths; shall prepare the necessary instructions, forms and blanks for obtaining and preserving such records and shall procure the faithful registration of the same in each primary registration district as constituted in Section 3 of this Act,[1] and in the central bureau of vital statistics at the capitol of the state. The said department shall be charged with the uniform and thorough enforcement of the law throughout the state, and shall from time to time recommend any additional legislation that may be necessary for this purpose. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 1.]

[1] Rule 36a, post.

Section 24 of Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, repeals Rules 34–57, Rev. St. 1925, art. 4477, and all conflicting laws.

Rule 35. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 35a. State health officer and registrar of vital statistics.—That the State Health Officer shall have general supervision over the central bureau of vital statistics, which is hereby authorized to be established by said department, and which shall be under the immediate direction of the state registrar of vital statistics, whom the State Health Officer shall appoint within thirty days after the taking effect of this law, and who shall be a medical practitioner of not less than five years' practice in his profession, and a competent vital statistician. The state registrar of vital statistics shall hold office for two years and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other causes. Any vacancy occurring in such office shall be filled for the unexpired term by the State Health Officer. At least ten days before the expiration of the term of office of the state registrar of vital statistics, his successor shall be appointed by the State Health Officer. The state registrar of vital statistics shall receive an annual salary at the rate of Four Thousand dollars ($4,000.00) from the date of his entering upon the discharge of the duties of his office. The State Department of Health shall provide for such clerical and other assistants as may be necessary for the purposes of this Act,[1] who shall serve during the pleasure of said department, and shall fix the compensation of persons thus employed within the amount appropriated therefor by the legislature. The Board of Control shall provide suitable offices for the bureau of vital statistics in the state capitol or in other suitable public building at Austin, which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this Act. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 2.]

[1] Rules 34a–55a and Pen.Code, Art. 781a.

Rule 36. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 36a. Registration districts. For the purposes of this Act[1] the State shall be divided into Primary Registration Districts as follows: Each Justice of the Peace Precinct and each incorporated town of two thousand, five hundred (2,500) or more population, according to the last United States Census, shall constitute a Primary Registration District, provided the State Board of Health may combine two or more Registration Districts, or may divide a Primary Registration District into two or more parts, so as to facilitate registration, and in the Justice of the Peace Precinct, the Justice of the Peace shall be Local Registrar, and in cities of two thousand, five hundred (2,500) or more, according to the last United States Census reports, the City Clerk or City Secretary shall be the Local Registrar of Births and Deaths.

It is hereby declared to be the duty of the Justice of the Peace in the Justice of the Peace Precinct, and the City Clerk or City Secretary in the city of two thousand, five hundred (2,500) or more population, to secure a complete record of each birth and death that occurs within their respective jurisdictions, and have same recorded in the County Clerk's office in their respective counties on or before the tenth of the following month. [Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 3; Acts 1929, 41st Leg., 1st C.S., p. 7, ch. 4, § 1; Acts 1941, 47th Leg., p. 782, ch. 486, § 1.]

[1] Rules 34a–55a and Pen.Code, Art. 781a.

Rule 37. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 37a. Local registrar.—Every Local Registrar shall select a Deputy-Registrar to the end that at all times a Registrar may be available for the registration of births and deaths, and all reports made to the Bureau of Vital Statistics shall be over the signature of the Local Registrar.

In any district where the Local Registrar fails or refuses to secure the registration of all births and deaths in his district, or neglects to discharge the duties of his office as set forth in this Act,[1] the State Board of Health shall declare that district to be without a Local Registrar of Births and Deaths, and shall, with the confirmation of the County Judge or the City Mayor, as the case may be, appoint a Local Registrar of Births and Deaths for that District. [Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 4; Acts 1929, 41st Leg., 1st C.S., p. 7, ch. 4, § 2.]

[1] Rules 34a–55a and Pen.Code, Art. 781a.

Rule 38. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 38a. Dead bodies—That the body of any person whose death occurs in this state, or which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than 72 hours after death, unless a permit for burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. And no such burial or removal permit shall be issued by any registrar until, wherever practicable, a complete and satisfactory certificate of death has been filed with him as hereinafter provided; provided, that when a dead body is transported from outside the State into a registration district in Texas for burial, the transit or removal permit, issued in accordance with the law and health regulations of the place where the death occurred shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit; he shall note upon the face of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death, and no local registrar shall receive any fee for the issuance of burial or removal permits under this Act[1] other than the compensation provided in Section 20.[2] [Acts 1927, 40th Leg., 1st C.S. p. 116, ch. 41, § 5.]

[1] Rules 34a–55a and Pen.Code, Art. 781a.
[2] Rule 53a, post.

Rule 39. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 39a. Report of stillborn.—That a stillborn child shall be registered as a birth and also as a death, and separate certificates of both the birth and the death shall be filed with the local registrar, in the usual form and manner, the certificate of birth to contain in place of the name of the child, the word "stillbirth"; provided, that a certificate of birth and a certificate of death shall not be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided in Section 8 of this Act.[1] [Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 6.]

[1] Rule 41a, post.

Rule 40. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 40a. Death certificates.—That the certificate of death shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

(1) Place of death, including state, county, precinct, town or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name of the camp to be given.

(2) Full name of decedent. If an unnamed child, the surname preceded by "Unnamed."

(3) Sex.

(4) Color or race—as white, black, mulatto (or other negro descent), Indian, Chinese, Japanese, or other.

(5) Conjugal condition—as single, married, widowed or divorced.

(6) Date of birth, including the year, month, and day.

(7) Age, in years, months and days. If less than one day the hours or minutes.

(8) Occupation. The occupation to be reported of any person, male or female, who had any remunerative employment, with the statement of (a) trade, profession or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(9) Birthplace; at least state or foreign country, if known.

(10) Name of father.

(11) Birthplace of father; at least state or foreign country, if known.

(12) Maiden name of mother.

(13) Birthplace of mother; at least state or foreign country, if known.

(14) Signature and address of informant.

(15) Official signature of registrar, with the date when certificate was filed, and registered number.

(16) Date of death, year, month, and day.

(17) Certification as to medical attendance on decedent, fact and time of death, time last seen alive, and the cause of death, with contributory (secondary) cause of complication, if any, and duration of each, and whether attributed to dangerous or insanitary conditions of employment; signature and address of physician or official making the medical certificate.

(18) Length of residence (for inmates of hospitals and other institutions; transients or recent residents) at place of death and in the state, together with the place where disease was contracted, if not at place of death, and former or usual residence.

(19) Place of burial or removal; date of burial.

(20) Signature and address of undertaker or person acting as such.

The personal and statistical particulars (Items 1 to 13) shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive and the hour of the day at which death occurred. And he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause) and the contributory (secondary) cause, if any, and the duration of each. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial or removal permit; and any certificate containing only such terms, as defined by the state registrar, shall be returned to the physician or persons making the medical certificate for correction and more definite statement.

Causes of death which may be the result of either disease or violence shall be carefully defined; and if from violence, the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal. And for deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required under this head (Item 18), if he is able to do so, and may state where, in his opinion, the disease was contracted. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 7.]

(21) That if the deceased shall have rendered service in any war, campaign or expedition of the United States of America, the Confederate States of America or the Republic of Texas, or which at the time of death was in the service of the United States of America, or a wife or widow of any person who has served in any way,[1] campaign or expedition of the United States of America, the Confederate States, or the Republic of Texas, the undertaker or person burying the body shall show the following facts on the reverse side of the death certificate:

(1) The organization in which service is or was rendered;

(2) The serial number taken from the discharge papers, if discharged, or the number from the Adjusted Service Certificate;

(3) The name and postoffice address of the next of kin or next friend of the deceased.

And provided that when such a death certificate is filed, the local Registrar shall immediately notify the nearest American Legion Post.

And provided further, that the State Registrar, when such certificate is filed with the State Bureau of Vital Statistics, shall notify the State Service Officer of the Adjutant General's Department and the State Adjutant of the American Legion and the State Comptroller. [Acts 1929, 41st Leg., 1st C.S., p. 7, ch. 4, § 5; Acts 1933, 43rd Leg., p. 57, ch. 28.]

[1] So in enrolled bill. Should probably read "war". Section 6 of Acts 1929, cited to the text, related to effect of partial invalidity.

Rule 41. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 41a. Death without medical attendance. In case of any death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of permit, inform the local health officer and refer the case to him for immediate investigation and certification; provided

that when the local health officer is not a physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; provided further, that if the registrar or the local health officer, as the case may be, as in doubt as to the cause of death, or if the case be one other properly referable to a Justice of the Peace for inquest into the cause of death, he shall then refer the case to a proper Justice of the Peace for inquest, investigation, and certification. And the Justice of the Peace or other proper officer whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, or, if from external causes, (1) the means of death; and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death; provided, further, that when a death of any person not a resident of that district, or unknown in that district, occurs, the Justice of the Peace or person acting as coroner shall secure the finger prints of the deceased and the following physical marks of identification:

(a) Color or hair
(b) Color of eyes
(c) Height
(d) Weight
(e) Deformities
(f) Tattoo marks
(g) Such other facts as set forth by the State Board of Health as will be of assistance in identifying the deceased.

The finger prints and the physical identification marks shall be placed on a form prescribed by the State Board of Health, and shall be attached to the death certificate. The State Registrar shall forward to the State Department of Public Safety the report showing the finger prints and other physical marks of identification. [Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 8; Acts 1939, 46th Leg., p. 343, § 1; Acts 1947, 50th Leg., p. 745, ch. 369, § 6.]

Rule 42. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 42a. Undertaker's certificate.—That the undertaker, or person acting as undertaker, shall file the certificate of death with the local registrar of the district in which the death occurred and obtain a burial or removal permit prior to any disposition of the body; provided that any person who furnishes a casket, coffin or box in which to bury the dead and who renders service like or similar to that usually rendered by an undertaker, shall for the purposes of this Act [1] be deemed an undertaker. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer, justice of peace, or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in Sections 7 [2] and 8.[3] And he shall then state the facts required relative to the date and place of burial or removal, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a permit for burial, removal or other disposition of the body. The undertaker or person acting as such shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company; said permit to accompany the corpse to its destination, where, if within the state of Texas, it shall be delivered to the person in charge of the place of burial.

Every person, firm, or corporation selling a casket, coffin or box for burial, shall keep a record showing the name of the purchaser, purchaser's postoffice address, name of deceased, date of death, and place of death of deceased, which record shall be open to inspection of the state registrar at all times. On the first day of each month the person, firm, or corporation, selling caskets, coffins or burial boxes, shall report to the state registrar each sale for the preceding month, on a blank provided for that purpose; provided, however, that no person, firm or corporation selling caskets, coffins or burial boxes to dealers or undertakers only shall be required to keep such record nor shall such report be required from undertakers when they have direct charge of the disposition of a dead body.

Every person, firm, or corporation selling a casket, coffin, or burial box, at retail, and not having charge of the disposition of the body, shall inclose within the casket, coffin or burial box a notice furnished by the state registrar calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the State Department of Health, concerning the burial or other disposition of a dead body. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 9.]

[1] Rules 34a–55a and Pen.Code, Art. 781a.
[2] Rule 40a, post.
[3] Rule 41a, post.

Rule 43. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 43a. Burial permit within state.—That if the interment, or other disposition of the body is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permissions granted to inter, remove, or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state registrar. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 10.]

Rule 44. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 44a. Report as to interment.—That no person in charge of any premises on which interments are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial removal or transit permit, as herein provided. And such person shall indorse upon the permit the date of interment, over his signature, and shall return all permits so indorsed to the local registrar of his district within ten days from the date of interment, or within the time fixed by the local health authorities. He shall keep a record in a permanent bound book of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker and such other information as the state registrar may direct; which record shall at all times be open to official inspection; and he shall before the tenth day of the following month make a report to the state registrar of all deceased persons deposited in the premises during the preceding month; provided, that the undertaker or person acting as such, when burying a body in a cemetery or burial ground having no person in charge, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words, "No person in charge," and file the burial or removal permit within ten days with the registrar of the district in which the cemetery is located. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 11.]

Rule 45. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 45a. Births.—That the birth of each and every child born in this state shall be registered as hereinafter provided. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 12.]

Rule 46. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 46a. Birth certificates.—That within five days after the date of each birth, there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the State Department of Health with a view to procuring a full and accurate report with respect to each item of information enumerated in Section 14 [1] of this Act.

In each case where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician, midwife, or person acting as midwife, to file in accordance herewith the certificate herein contemplated.

In each case where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of such birth, to report to the local registrar the fact of such birth. In such case and in case the physician, midwife, or person acting as midwife, in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information contemplated in Section 14 of this Act, it shall then be the duty of the local registrar to secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the certificate of birth herein contemplated, and it shall be the duty of the person reporting the birth or who may be interrogated in relation thereto to answer correctly and to the best of his knowledge all questions put to him by the local registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by said Section 14, and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by his signature, when requested so to do by the local registrar. [Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 13.]

[1] Rule 47a, post.

Rule 47. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 47a. Contents of birth certificate.—That the certificate of birth shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

(1) Place of birth, including state, county, precinct, town, or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

(2) Full name of child. If the child dies without a name, before the certificate is filed, enter the words "Died unnamed." If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

(3) Sex of child.

(4) Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural births.

(5) For plural births, number of each child in order of birth.

(6) Whether legitimate or illegitimate.

(7) Date of birth, including the year, month, and day.

(8) Full name of father.

(9) Residence of father.

(10) Color or race of father.

(11) Age of father at last birthday, in years.

(12) Birthplace of father; at least state or foreign country, if known.

(13) Occupation of father. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(14) Maiden name of mother.

(15) Residence of mother.

(16) Color or race of mother.

(17) Age of mother at last birthday, in years.

(18) Birthplace of mother; at least state or foreign country, if known.

(19) Occupation of mother. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(20) Number of children born to this mother, including present birth.

(21) Number of children of this mother living.

(22) The certification of attending physician or midwife as to attendance at birth, including statement of year, month, day (as given in Item 7), and hour of birth, and whether the child was born alive or stillborn. This certification shall be signed by the attending physician or midwife with date of signature and address; if there is no physician or midwife in attendance, then by the father or mother of the child, householder owner of the premises, or manager or superintendent of public or private institution where the birth occurred, or other competent person, whose duty it shall be to notify the local registrar of such birth, as required by Section 13 of this Act.[1]

[1] Rule 46a, ante.

(23) Exact date of filing in office of local registrar, attested by his official signature, and registered number of birth, as hereinafter provided.

(24) Whether prophylactic precautions were taken at time of birth to prevent ophthalmia neonatorium. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 14.]

(25) And provided that the name of the father, or any information by which he might be identified, shall not be written into the birth or death certificate of any illegitimate child; and provided, further, that any statement that the father of an illegitimate child wishes to make as to its parentage, may, when placed in the form of an affidavit, be attached to the original birth record. Neither the State Registrar nor any local Registrar shall issue a certified copy of any birth or death certificate, wherein a child or an adult is stated to be illegitimate, unless such certified copy is ordered by the County Court in the county in which said child was born or died, or by a Court of competent jurisdiction, or by said illegitimate person or the guardian or legal representative thereof. [Acts 1929, 41st Leg., 1st C.S., p. 7, ch. 4, § 3; Acts 1945, 49th Leg., p. 618, ch. 354, § 1.]

(26) Provided further upon entry of final order of adoption the Judge or Clerk of Court shall notify the Registrar of vital statistics in State Department of Health of action taken, giving the names and addresses of the natural parents if known or of the child's next kin, the date of birth and name of such child before and after adoption and the name and addresses of foster parents. Said registrar of vital statistics shall likewise be notified of any subsequent revocation of such order of adoption or any

annulment of adoption. Copies of all reports of adoptions and reports of revocation of order of adoption and of annulments shall within thirty (30) days after such order be mailed to the registrar of vital statistics of the State Department of Health. Upon receipt of copy of any final order of adoption the State Registrar of Vital Statistics shall cause to be made a record of the birth in the new name or names of the adopting parents or parent. He shall then cause to be sealed and filed the original certificate of birth, if any, with the adoption decree of the Court and such sealed package may be opened only upon order of a Court of record. Upon receipt of copy of annulment of adoption said Registrar of Vital Statistics shall restore the original name of the child and the names of his natural parents or parent to the record of birth of such child. Provided further that adoption made under existing law prior to the passage of this Act, may be registered with the Bureau of Vital Statistics upon sworn application of either adoptive parent or guardian of the adopted child, show the names and addresses of the natural parents if known or of the child's next kin, the date of birth and the name of such child before and after adoption, the names and addresses of foster parents, together with proof of adoption, either by certified copy of the record of the affidavit of adoption, or the Court order of adoption.

Upon the adoption of said child, the State Registrar shall notify the Local Registrar of that adoption, and shall forward to the Local Registrar a copy of the birth certificate showing the names of the parents by adoption, provided that no statement of the adoption shall appear on that record. The Local Registrar shall return to the State Registrar, or shall cancel the certificate of the natural birth of said child, and shall substitute in its place a certificate forwarded him by the State Registrar.

And provided further that the State Registrar, upon the written request signed by the parent, or parents, of the adopted child, may retain the certificate of the natural birth in the file and may attach a certificate showing the names of the parent, or parents, by adoption to the original certificate as an amendment. The State Registrar shall furnish the Local Registrar with a copy of the said birth certificate to be attached to the original birth certificate.

Upon the marriage of a mother of a child, or children, her husband may file with the Local Registrar the certificate of marriage, to which may be attached a birth certificate for each child showing the father's name and other data referring to him as the father of the child or children.

And provided that if the husband is deceased, divorced, or permanently or temporarily outside the limits of the United States, or when the husband's whereabouts are not known, the mother shall have all the rights granted the husband in filing said certificate or certificates.

When the Local Registrar is satisfied that the marriage has occurred and that the statements made on the birth certificate are true and correct, he shall place his file date and signature on the certificate and forward it to the State Bureau of Vital Statistics. The State Registrar shall attach the certificate as a correction to the certificate of the natural birth of the child; and provided further, that neither the State Registrar nor a Local Registrar shall, except where ordered by a court of competent jurisdiction, make a certificate of, or furnish any information to any person as to the birth certificate of an illegitimate child, but shall issue a certified copy of the birth certificate filed after the marriage of the mother of the child. [Acts 1935, 44th Leg., p. 441, ch. 179, § 1; Acts 1943, 48th Leg., p. 289, ch. 184, § 1.]

(27) Provided that the above provisions shall not, in any way, be construed as affecting the property rights of said husband, or said child, or children, and provided further that the above provisions shall not, in any way, be construed as amending, modifying, or repealing any of the present laws of the State of Texas governing descent and distribution of property. [Acts 1937, 45th Leg., p. 1289, ch. 480, § 1; Acts 1939, 46th Leg., p. 346, § 1.]

Rule 48. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 48a. Child's name.—That when any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 15.]

Rule 49. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 49a. Registration of physicians, midwives and undertakers.—That every physician, midwife, and undertaker shall, without delay, register his or her name, address and occupation with the local registrar of the district in which he or she resides, or may hereafter establish a residence; and shall thereupon be supplied by the local registrar with a copy of this Act,[1] together with such rules and regulations as may be prepared by the state registrar relative to its enforcement. Within thirty days after the close of each calendar year each local registrar shall make a return to the state registrar of all physicians, midwives, and undertakers or persons who have acted as such who have been registered in his district during the whole or any part of the preceding calendar year; provided, that no fee or other compensation shall be charged by the local registrars to physicians, midwives, or undertakers or persons acting as such for registering their names under this section or making returns thereof to the state registrar. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 16.]

[1] Rules 34a–55a and Pen.Code, Art. 781a.

Rule 50. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 50a. Records of inmates of hospitals and institutions.—That all superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of approval of this Act,[1] which are required in the forms of the certificates provided for by this Act, as directed by the state registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. And in case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they can not be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 17.]

[1] Rules 34a–55a and Pen.Code, Art. 781a.

Rule 51. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 51a. Blanks and registration forms; index of births and deaths; records; transcripts; fees; trial of issue regarding birth or death absent affidavit. The State Department of Health shall prepare, print, and supply to all registrars all

blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this Act, and each city and incorporated town shall print and supply its local registrar, and each county shall print and supply the County Clerk with permanent record books, in form approved by the State Registrar, for the recording of all births and deaths occurring within their respective jurisdictions. The State Registrar shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms shall be used than those approved by the State Department of Health. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Department of Health, or upon the original certificate, such information as they may possess regarding any birth or death, upon demand of the State Registrar in person, by mail, or through the local registrar; provided, that no certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this Act shall be altered or changed in any regard otherwise than by the amendments properly dated, signed and witnessed. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the name of decedents, and in the case of births, by the names of fathers and mothers. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable, and dangerous to the public health, as decided by the State Department of Health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. If any cemetery company or association or any church or historical society or association, or any other company, society or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this State, such company, society, association, or individual, may file such record, or a duly authenticated transcript thereof, with the State Registrar, and it shall be the duty of the State Registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the State Department of Health may prescribe. If any person desires a transcript of any record in accordance herewith, the State Registrar shall furnish same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of ten cents (10¢) per folio, fifty cents (50¢) per hour or fraction of an hour necessarily consumed in making such transcript, and to a fee of twenty-five cents (25¢) for the certificate, which fees shall be paid by the applicant; provided, that before the issuance of any such transcript, the Registrar shall be satisfied that the applicant is properly entitled thereto, and that it is to be used only for legitimate purposes.

And providing further that any citizen of the State of Texas wishing to file the record of any birth or death, not previously registered may submit to the Probate Court in the county where the birth or death occurred, a record of that birth or death, written on the adopted forms of birth and death certificates; and provided further, that any citizen of the State of Texas wishing to file the record of any birth or death that occurred outside the State of Texas, not previously registered, may submit to the Probate Court in the County where he resides a record of that birth or death written on the adopted forms of birth and death certificates. The certificate shall be substantiated by the affidavit of the medical attendant present at the time of the birth, or in case of death, the affidavit of the physician last in attendance upon the deceased, or the undertaker who buried the body. When the affidavit of the medical attendant or undertaker cannot be secured, the certificate shall be supported by the affidavit of some person who was acquainted with the facts surrounding the birth or death, at the time the birth or death occurred with a second affidavit of some person who is acquainted with the facts surrounding the birth or death, and who is not related to the individual by blood or marriage. Provided, however, that when application is made, as provided in this paragraph, a fee of One Dollar ($1.00) shall be collected by the Probate Court, fifty cents (50¢) of which shall be retained by the Court, and fifty cents (50¢) of which shall be retained by the Clerk of the County Court for recording said birth or death certificate. If the affidavit hereinbefore mentioned of some person acquainted with the facts at the time the birth or death occurred cannot be secured, then the County Judge shall order a trial of the issue as to the applicant's birth and hear the evidence of such witnesses and consider such documents relating thereto as may be available including testimony regarding the family history, and after such hearing if the Court concludes that it has been established beyond a reasonable doubt that the applicant was born within the United States, and at the time and place stated in the certificate, he shall enter judgment finding such facts relating to the applicant which judgment shall be accepted in lieu of the affidavit mentioned above, and sufficient, and shall order the State Registrar to accept the certificate of the applicant's birth. The fee for this hearing shall be the same as those set out in Articles 3925 and Article 3930 Revised Civil Statutes of Texas, 1925, as heretofore amended. Within seven (7) days after the certificate has been accepted and ordered filed by the Probate Court, the clerk of that Court shall forward the certificate to the State Bureau of Vital Statistics with an order from the court to the State Registrar that the certificate be accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act.[1] Certified copies of said birth or death certificate shall be issued by either the County Clerk or the State Registrar and fee for said certified copy shall be fifty cents (50¢). Such certified copies shall be prima facie evidence in all Courts and places of the facts stated thereon. The State Bureau of Vital Statistics shall furnish the forms upon which such records are filed, and no other form shall be used for that purpose; provided further, that at the end of each month the County Clerks of the State of Texas shall forward to the State Bureau of Vital Statistics an itemized list of all certified copies made and delivered during said month of any birth or death or delayed birth or death certificate.

No prescribed form for recording birth certificates shall indicate that any birth recorded or certified was illegitimate. [Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 18; Acts 1939, 46th Leg., p. 346, § 2; Acts 1941, 47th Leg., p. 850, ch. 525, § 1; Acts 1941, 47th Leg., p. 933, ch. 564, § 1; Acts 1943, 48th Leg., p. 112, ch. 83, § 1.]

1 Rule 54a of this article.

Rule 52. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 52a. Duties of local registrars.—That each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; provided, that in case the death occurred from some disease which is held by the State Department of Health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the State Department of Health. If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the beginning with number 1 for the first birth and the first death in each calendar year, and sign his name as certificates of birth and death, in two separate series, registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied in accordance with provisions of Section 18 of this Act,[1] to be preserved permanently in his office as the local record, in such manner as directed by the state registrar, or in the event that local ordinances require that all reports of births and deaths be made in duplicate, he may permanently bind the duplicate reports and index them in the manner prescribed in section 18 for the state registrar. And he shall, on the tenth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for such purposes. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 19.]

[1] Rule 51a, ante.

Rule 53. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 53a. Fees. Each Local Registrar shall be paid the sum of Fifty (50) Cents for each birth and death certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the State Bureau of Vital Statistics, as required by this Act,[1] unless such Local Registrar shall be acting as Registrar of Births and Deaths in an incorporated city where the compensation of the Registrar is otherwise fixed by city ordinance.

The State Registrar shall annually certify to the County Commissioners Court or County Auditor, as the case may be, the number of birth and death certificates filed by each Local Registrar at the rate fixed herein, and provided that the State Registrar may render such statements monthly or quarterly, at the discretion of the State Board of Health, and the Commissioners Court or County Auditor, as the case may be, shall audit such statement and the County Treasurer shall pay such fees as are approved by the Commissioners Court or the County Auditor, at the time such statement is issued.

And provided further, that the Justice of the Peace, City Clerk or Secretary, and the appointed Local Registrar shall submit to the Commissioners Court or County Auditor, as the case may be, a true and accurate copy of each birth and death certificate filed with him, and such copies shall bear his file date and signature and shall be deposited in the County Clerk's office. The County Clerk shall be paid for indexing and preserving such records, such compensation as may be agreed upon by the Commissioners Court. [Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 20; Acts 1929, 41st Leg., 1st C.S., p. 7, ch. 4, § 4; Acts 1941, 47th Leg., p. 782, ch. 486, § 2.]

[1] Rules 34a–55a and Pen.Code, Art. 781a.

Rule 54. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 54a. Copies of records. The State Registrar shall, upon request, supply to any properly qualified applicant a certified copy of the record of any birth or death registered under provisions of this Act,[1] for the making and certification of which he shall be entitled to a fee of fifty cents (50¢), to be paid by the applicant. And any such copy of the record of a birth or death, when properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the State Registrar shall be entitled to a fee of fifty cents (50¢) for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. And the State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the State Treasurer at the close of each month, and all such fees shall be kept by the State Treasurer in a special and separate fund, to be known as the "Vital Statistics Fund," and the amounts so deposited in this Fund may be used for defraying expenses incurred in the enforcement and operation of this Act; and provided further, that the State Registrar shall, upon request of any parent or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment; and provided further, that the United States Census Bureau may obtain, without expense to the State, transcripts or certified copies of births and deaths without payment of the fees herein prescribed; and provided further, that the State Registrar is hereby authorized to enter into an agreement with the United States Bureau of the Census to act as special agent for that Bureau in accepting the use of the franking privilege and blanks furnished by that Bureau and is authorized to act as disbursing agent in order to have transcribed for that Bureau copies of the birth and death certificates filed with the State Bureau of Vital Statistics; and provided that the State Registrar shall issue free of cost to any veteran, his widow, orphan, or other descendants a photostatic copy of any record not otherwise prohibited by law when such record is to be used in the settlement of a claim against the Government; and provided that the State Registrar may issue, upon court order, without fee, a certified copy of the birth certificate in cases relating to child labor, and the public schools. [Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 20; Acts 1939, 46th Leg., p. 343, § 2.]

[1] Rules 34a–55a and Pen.Code, Art. 781a.

Rule 55. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

Rule 55a. Reports of violations of Act.—That each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this Act,[1] in his registration district, under the supervision and direction of the state registrar. And he shall make an immediate report to the state registrar of any violation of this law coming to his knowl-

edge, by observation or upon complaint of any person, or otherwise.

The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and subregistrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this Act to the county attorney, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the county attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. And upon request of the state registrar, the attorney general shall assist in the enforcement of the provision of this Act. [Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 23.]

[1] Rules 34a–55a and Pen.Code, Art. 781a.

Rules 56 and 57. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.]

DEPOTS, COACHES AND SLEEPERS

Rule 58. Diseases barred from public vehicles.—No person known to be suffering with any contagious diseases such as smallpox, scarlet fever, diphtheria, measles, or whooping cough shall be allowed to enter or ride in any day coach, sleeping car, interurban car or street car, and when any such person is discovered to be in any car as mentioned above, it shall be the duty of the conductor or other person in charge of said car to notify the nearest or most accessible county or city health officer and the latter shall remove and isolate said patient as is proper in such case.

Rule 59. Ventilation and heat.—Each depot, railway coach, sleeping car, interurban car and street car while in use for the accommodation of the public shall be properly ventilated, and, if necessary, heated, and a sufficient amount of heat shall be furnished in time of need so that fresh air can be supplied without causing it to become unduly uncomfortably cold; and the janitor, conductor or other person in charge shall see to it that the air is replenished with fresh air from time to time as needed to prevent the same from becoming foul, unsanitary and oppressive.

Rule 60. Cuspidors.—Cuspidors must be provided in adequate numbers in all waiting rooms of depots and railway stations; each day coach shall be provided with one cuspidor for each seat or every two chairs and two in each smoking apartment, except in each parlor car there may be as few as one cuspidor to every three seats and two cuspidors used in the smoking apartment; in each sleeping car shall be placed one cuspidor to each section and three cuspidors in the smoking apartment, one of which cuspidors, in the absence of a dental lavatory, shall be of an unusually large size and placed near the wash basin for use in washing the teeth; each said cuspidor shall contain not less than one-third of a pint of an approved disinfectant solution, and the cuspidor shall be emptied, washed in a similar solution and replenished each trip or every twenty-four hours.

Rule 61. Dry cleaning prohibited.—Dry cleaning and dry sweeping is prohibited at all times in waiting rooms of depots and railway stations, or in railway coaches, sleeping cars, interurban cars and street cars.

Rule 62. Coaches.—Railway day coaches shall be thoroughly cleaned at the end of each trip, and in no instance shall the day coach go uncleaned longer than two days when such coach is in use; the thorough cleaning of day coaches shall consist as follows:

(a) Windows and doors shall be first opened and the aislestrip, if any, removed and when possible thoroughly sunned.

(b) All upholstery shall be dusted and brushed, using the vacuum process cleaning apparatus whenever possible.

(c) The floor shall be mopped or swept after it has been sprinkled with an approved disinfectant solution or preferably cleaned by sprinkling with sawdust moistened with said disinfectant and sweeping. After cleaning as described, the floor must be scrubbed with soap and water, to which may be added the same disinfectant solution.

(d) Closet floors, urinals, toilet bowls, and walls must be cleaned by washing, scouring and wiping with an approved disinfectant solution, to which soda ash or other cleansing agent may be added.

(e) All arms of seats and window ledges must be wiped free of dust with a damp cloth, preferably one wet with disinfectant solution.

(f) Provided, that where the vacuum cleaning apparatus is installed and coaches are thoroughly cleaned with this method daily, the afore-mentioned method of brushing, cleansing and scrubbing may be used as seldom as once in each period of seven days.

Rule 63. Railway stations.—The sanitary method of cleaning as prescribed in the foregoing rule must be followed in the sanitation of waiting rooms of depots and railway stations once in every twenty-four hours.

Rule 64. Parlor, buffet and dining cars.—Parlor, buffet and dining cars must be cleaned at cleaning terminals, as set forth in the article relating to day coaches. Carpets and draperies to be removed, dusted, sunned and aired. Food boxes, refrigerators, closets, drawers and cupboards to be cleaned, scalded and treated with a solution containing 2 per cent formaldehyde or other approved disinfectant.

Rule 65. Interurban and street cars.—Interurban and street cars must be washed with a hose and scrubbed thoroughly once every twenty-four hours, and must be disinfected with formaldehyde gas under the supervision of the local health authority immediately after any case of contagious disease has been discovered therein.

Rule 66. Sleeping cars.—All sleeping cars shall be cleaned at cleaning terminals according to the methods set forth in the article relating to day coaches at least twice during a period of every seven days; shall be disinfected with formaldehyde gas at least twice during a period of seven days; upon routes designated by the President of the State Board of Health all sleeping cars shall be disinfected as seldom as once during a period of seven days. In addition to the foregoing all sleeping cars shall be disinfected immediately after any case of contagious or infectious disease is discovered therein. All blankets used in sleeping cars must be thoroughly sterilized and washed at intervals of not more than ninety days.

Rule 67. Record of disinfection.—On each passenger car operated in this State a disinfection record must be kept and preserved and on same the following records are to be entered and kept: (1) place and date of each disinfection; (2) length of time devoted to each such thorough disinfection; and (3) each item in said record shall be inserted immediately after each act recorded, and the signature of the person or persons doing said cleaning or disinfection must appear beneath the said records.

Rule 68. Water coolers.—All depots, railway coaches, sleeping cars or interurban cars must be provided with a water cooler for the use of patrons and the traveling public; such water cooler must be so constructed as to be easily removed for the purpose of

cleaning; must be emptied, rinsed and cleaned, and must be scalded and sunned when possible once in each period of twenty-four hours, and must be filled with good and wholesome drinking water when in service. Ice for use in water coolers must not be dumped on floors, sidewalks or car platform, but must be washed and must be handled with ice-tongs.

Rule 69. Expectorating on floors.—Expectorating on the floor or walls or furniture of any waiting room in any depot, on any depot platform, in any railway coach, sleeping car, interurban car, or street car is prohibited. Placards calling attention of passengers and employés shall be hung in a conspicuous place in each of the said rooms and cars.

Rule 70. Expectorating in basins.—Brushing of teeth or expectorating in basins used for lavatory purposes is prohibited, and placards calling attention of passengers and employés shall be hung in a conspicuous place in the dressing room of passenger coaches.

Rule 71. Separate compartment for porter.—Sleeping car companies shall provide compartments and bedding for their negro porters separate from those provided for their white passengers.

Rule 72. Negro porter not to sleep in berth.—Negro porters shall not sleep in sleeping car berths nor use bedding intended for white passengers.

Rule 73. Certain floor covering prohibited.—No waiting room in any depot or railway station shall be floored in part or entirely with burlap, cocoa matting or sacking cloth.

Rule 74. Water closets.—All depots and railway stations shall provide adequate urinals and water closets for patrons and the traveling public; must keep them in proper sanitary condition, and if within five hundred feet of any public sewer must make permanent sanitary connection with same. Any privy or box closet furnished by such railway company shall be protected from flies by screening or other effective method including hinged lids or other device for covering the opening in the seats of said closets. Such privies and closets as are not in connection with a sanitary sewer shall be provided with a water-tight box or other receptacle underneath, and when full or at any time when its condition shall create a nuisance or become unsanitary, it must be emptied, and in no instance shall such box closet go longer than one month before it must be emptied and disinfected with 5 per cent carbolic acid solution or other approved disinfectant solution.

Rule 75. Railway premises shall be drained.—The premises of all depots and railway stations shall be thoroughly drained so that no stagnant water will collect on said premises.

Rule 76. Water containers screened.—All cisterns, fire water barrels, or other water containers upon the premises of any depot or railway station shall be screened with not less than 16 mesh wire gauze.

TRANSPORTATION OF DEAD BODIES

Rule 77. Bodies dead of pestilential diseases.—No body or [1] any person dead of Asiatic cholera, bubonic plague, typhus fever or smallpox shall be transported except in a hearse or undertaker's wagon unless said body shall have been cremated.

[1] So in enrolled bill. Should probably read "of".

Rule 78. Bodies dead of contagious diseases.—The bodies of those who have died of diphtheria (membranous croup), scarlet fever (scarlatina, scarlet rash), glanders, anthrax or leprosy, shall not be accepted for transportation unless prepared for shipment by being thoroughly disinfected by (a) arterial and cavity injection with an approved disinfectant fluid, (b) disinfecting and stopping all orifices with absorbent cotton, and (c) washing the body with the disinfectant, all of which must be done by a licensed embalmer, holding a certificate as such. After being disinfected as above, such body shall be encased in an air-tight zinc, tin, copper or lead-lined coffin, or iron casket, all joints and seams hermetically soldered, and all enclosed in a strong, tight wooden box. Or, the body being prepared for shipment by disinfecting as above, may be placed in a strong coffin or casket and said coffin or casket enclosed in an air-tight copper or tin case, all joints and seams hermetically soldered and all enclosed in a strong outside wooden box.

Rule 79. Bodies dead of non-quarantinable contagious disease.—The bodies of those dead of typhoid fever, puerperal fever, erysipelas, tuberculosis and measles, or other dangerous communicable disease, other than those specified in rules 77 and 78, may be received for transportation when prepared for shipment by filling cavities with an approved disinfectant, washing the exterior of the body with the same, and stopping all orifices with absorbent cotton and encased in an air-tight coffin or casket; provided, that this shall apply only to bodies which can reach their destination within forty-eight hours from time of death. In all other cases such bodies shall be prepared for transportation in conformity with Rule 78. But when the body has been prepared for shipment by being thoroughly disinfected by an embalmer holding a certificate, as in Rules 78, the air-tight sealing may be dispensed with.

Rule 80. Bodies dead of other diseases.—The bodies of those dead of diseases that are not contagious, infectious or communicable may be received for transportation when encased in a sound coffin or casket and enclosed in a strong outside box; provided, they reach their destination within thirty hours from time of death. If the body can not reach its destination within thirty hours from time of death, it must be prepared for shipment by filling cavities with an approved disinfectant, washing the exterior of the body with the same, and stopping all orifices with absorbent cotton, and encased in an air-tight coffin or casket. But when the body has been prepared for shipment by being thoroughly disinfected by a licensed embalmer as in Rule 78, the air-tight sealing may be dispensed with.

Rule 81. Persons accompanying bodies dead of contagious diseases.—In cases of contagious or infectious diseases, the body must not be accompanied by persons or articles which have been exposed to the infection of the disease, unless certified by the health officer as having been properly disinfected; and before selling passage tickets, agents shall carefully examine the transit permit and note the name of the passenger in charge and of any other proposing to accompany the body, and see that all necessary precautions have been taken to prevent the spread of disease. The transit permit in such cases shall specifically state who is authorized by the health authorities to accompany the remains. In all cases where bodies are forwarded under Rule 78, notice must be sent by telegraph to health officer at destination, advising the date and train on which the body may be expected. This notice must be sent by or in the name of the health officer of the initial point, and is to enable the health officer at destination to take all necessary precautions at that point.

Rule 82. Bodies not shipped by express. For every dead body not shipped by express there must be presented to the railroad company transporting same two passenger tickets of the first class, having endorsed thereon or marked the word "corpse", which said tickets shall be sufficient authority of the railroad company to transport said dead body, provided, however, a transit permit showing physician's or coroner's certificate; name of deceased, date and hour of death, place of death, cause of death, and if of a contagious or infectious disease, the point to which the body is

to be shipped and when death is caused by any of the diseases specified in Rule 78 of the Sanitary Code, the names of those authorized by the Health Authorities who may accompany said body. The transit permit must be made in duplicate and the signatures of the physician or coroner, health officer and undertaker must be on both the original and the duplicate copies. The undertaker's certificate and paster of the original shall be detached from the transit permit and pasted on end of the coffin box. The physician's certificate and transit permit shall be handed to any person who may accompany or be in charge of the corpse, if any such there be. The whole duplicate copy shall be sent to the official in charge of the baggage department of the initial line and by him to the Secretary of the State Board of Health at Austin. [As amended Acts 1941, 47th Leg., p. 225, ch. 155, § 1.]

Rule 83. Bodies shipped by express.—When dead bodies are shipped by express, the whole original transit permit shall be pasted upon the outside box, and the duplicate forwarded by the express agent to the Secretary of the State Board of Health at Austin.

Rule 84. Disinterred bodies treated as contagious.—Every disinterred body, dead from any disease or cause, shall be treated as contagious or dangerous to the public health and shall not be accepted for transportation unless removal has been approved by the State or local health authorities having jurisdiction where such body is disinterred, and the consent of the health authorities of the locality to which the corpse is consigned has first been obtained; and all such disinterred remains shall be enclosed in a hermetically sealed (soldered) zinc, tin or copper-lined coffin or box. Bodies deposited in receiving vaults shall be treated and considered the same as buried bodies.

Rule 85. Transfer of bodies in transit.—When necessary to transfer dead bodies in transit from one railway train to another, or from one station to another, or from a station to a ferry, the affidavit of the undertaker and permit of the local health officer accompanying the remains shall be in all cases sufficient authority for such transfer.

Rule 86. Certificate by undertaker.—No common carrier shall accept for transportation any body unless a certificate is furnished by the undertaker preparing such body for shipment to the effect that the foregoing rules have been complied with in the preparation for transportation of said body. [Acts 1911, p. 173; Acts 1917, p. 328.]

CHAPTER 4A.—SANITATION AND HEALTH PROTECTION

Art.
4477—1. Minimum standards of sanitation and health protection measures.

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Art. 4477—1. Minimum standards of sanitation and health protection measures.

Definitions

Section 1. (a) The following terms wherever found in this Act, unless otherwise defined, shall be understood to mean:

(b) APPROVED PRIVY: Any unit for the disposal of human excreta constructed and maintained in conformity with the specifications of the State Department of Health.

(c) COMMON CARRIER: Any licensed firm, corporation or establishment which solicits and operates public freight or passenger transportation service. The term "Common Carrier" shall also include any vehicle employed in such transportation service.

(d) COMMON DRINKING CUP: Any receptacle used for serving water or other beverage to two or more persons in any public place or any establishment catering to the public; provided this term shall not apply to receptacles properly washed and sterilized after such service.

(e) DRINKING WATER: All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleansing of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(f) HUMAN EXCRETA: The urinary and bowel discharges of any human being.

(g) NUISANCE: Any object, place or condition which constitutes a possible and probable medium of transmission of disease to or between human beings or any other object, place or condition which may be specifically declared by this Act to be a nuisance.

(h) PUBLIC HEALTH ENGINEER: Any engineer who has been duly licensed to practice as a registered professional engineer and who is further versed in the sciences of water purification, sewage, treatment, and in the public health principles of conditioning the environment.

(i) SANITARIAN: Any trained worker who has a practical knowledge of sanitation as it pertains to disease control.

(j) SANITARY: Any condition of good order and cleanliness which precludes the probability of disease transmission.

(k) SEPTIC TANK: Any covered water-tight tank, designed for the treatment of sewage.

(*l*) SEWERAGE PLANT OPERATOR: Any person, trained in the collection, treatment, or disposal of sewage who has a practical working knowledge of the mechanics, maintenance and operating principles of the collection, treatment, and disposal of sewage.

(m) SWIMMING POOL: Any body of water maintained expressly for public recreational purposes, swimming and similar acquatic sports.

(n) TOILET: The hopper device for the deposit and discharge of human excreta into a water carriage system.

(*o*) TOURIST COURT: Any camping place or group of two or more mobile or permanent housing units operated as rental property for the use of transient

trade or any or all trailer units housing human beings.

(p) WATER PLANT OPERATOR: Any person trained in the purification or distribution of a public water supply who has a practical working knowledge of the chemistry and bacteriology essential to the practical mechanics of water purification and who is capable of conducting and maintaining the purification processes in an efficient manner.

(q) WATER SUPPLY: Any source or reservoir of water distributed to and used for human consumption.

Nuisances

Sec. 2. (a) Any and all of the following conditions are hereby specifically declared to be nuisances dangerous to the public health;

(b) Any condition or place allowed to exist in populous areas which constitutes a breeding place for flies;

(c) Any spoiled or diseased meats intended for human consumption;

(d) Any restaurant, food market, bakery, or other place of business or any vehicle where food is prepared, packed, stored, transported, sold or served to the public which is not constantly maintained in a sanitary condition;

(e) Any place, condition or building controlled or operated by any governmental agency, state or local, which is not maintained in a sanitary condition;

(f) All sewage, human excreta, waste water, garbage, or other organic wastes deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in the transmission of disease to or between any person or persons;

(g) Any vehicle or container used in the transportation of garbage, human excreta, or other organic material which is defective and allows leakage or spilling of contents;

(h) Any collection of water in which mosquitoes are breeding within the limits of any city, town or village;

(i) Any condition which may be proven to injuriously affect the public health and which may directly or indirectly result from the operations of any bone boiling, fat rendering, tallow or soap works or other similar establishments;

(j) Any place or condition harboring rats in populous areas;

(k) The presence of ectoparasites (bedbugs, lice, mites, et cetera) suspected to be carriers of disease in any place where sleeping accommodations are offered to the public;

(l) The maintenance of any open surface privy or of any overflowing septic tank, the contents of either of which may be accessible to flies.

Abatement of nuisances

Sec. 3. (a) Every person, possessing any place in or on which there is a nuisance shall, as soon as its presence comes to his knowledge, proceed at once and continue to abate the said nuisance.

(b) Every local health officer who receives information and proof of the existence of a nuisance within his jurisdiction shall issue a written notice to any person responsible for the said nuisance ordering the abatement of same. He shall at the same time send a copy of the said notice to the local city, county, or district attorney. Such notice shall specify the nature of the nuisance and shall designate a reasonable time within which such abatement shall be accomplished. In the event such notice is not complied with within the specified time, the local prosecuting attorney who received the copy of the original notice shall be so advised by the local health officer, and he shall immediately institute proceedings for the abatement thereof.

Garbage and refuse

Sec. 4. (a) All premises occupied or used for residential, business or pleasure purposes shall be kept in a sanitary condition.

(b) No kitchen waste, laundry waste, or sewage shall be allowed to accumulate, discharge or flow into any public place, gutter, street, or highway.

(c) No waste products, offal, polluting material, spent chemicals, liquors, brines or other wastes of any kind shall be stored, deposited or disposed of in any manner as may cause the pollution of the surrounding land or the contamination of the well waters to the extent of endangering the public health.

(d) All persons, firms, corporations or municipalities using or permitting the use of any land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited thereon and for the disposition of other waste materials and rubbish to the extent of eliminating any and all possibility that such materials and rubbish might constitute breeding places for insects, rodents or flies.

(e) No person shall permit any vacant or abandoned property owned or controlled by him to be or remain in such a condition as will afford the creation of a nuisance or other conditions prejudicial to the public health.

Disposal of human excreta

Sec. 5. (a) All human excreta in populous areas must be disposed of through properly managed sewers, treatment tanks, chemical toilets, approved privies, or by other methods approved by the State Department of Health. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of any drinking water supply, the infection of any flies, cockroaches, or the creation of any other nuisance.

(b) All effluent from septic tanks hereafter constructed shall be disposed of through a subsurface drainage field designed in accordance with good public health engineering practice or any other method which does not create a nuisance.

(c) No privy shall hereafter be constructed within seventy-five (75′) feet of any drinking water well or of a human habitation other than to which it is appurtenant without approval by the local or State Health Officer, and no privy shall be erected or maintained over any abandoned well or over any stream.

(d) The superstructure and floor surrounding the seat riser and hopper device of every approved privy shall be kept in a sanitary condition at all times, and shall have adequate lighting and ventilation.

(e) All material and human excreta removed from any privy vault or from any other place shall be handled so as not to create a nuisance. Such matter shall not be deposited within three hundred (300′) feet of any highway unless buried or otherwise treated in accordance with the instructions of the local or State Health Officer.

Toilet facilities

Sec. 6. (a) All operators, managers, or superintendents of any public buildings, school houses, theaters, filling stations, tourist courts, bus stations and taverns shall provide and maintain sanitary toilet accommodations.

Unincorporated villages

Sec. 7. (a) Every person in possession of or owning any properties used for human habitation within any unincorporated village which shall hereafter come within the provisions of Article 4434–35 of the Revised Civil Statutes of Texas, 1925, shall:

(b) Install, remodel or maintain an approved privy or other approved type of disposal unit;

(c) Protect all wells providing drinking water from contamination;

(d) Dispose of all garbage and other waste matter in a sanitary manner;

(e) Abate all mosquito and fly breeding areas or mediums;

(f) Exterminate and destroy all rodents by poisoning, trapping or other appropriate means.

Public buildings

Sec. 8. Any and all public buildings hereafter constructed shall have incorporated therein all such heating, ventilation, plumbing, screening, and rat-proofing features as may be necessary to properly protect the health and safety of the public.

Ice plants

Sec. 9. (a) No person except officers, employees, or others whose duties require such shall be permitted to go upon the platform covering the tanks in which ice is frozen in ice factories. All employees whose services are required on tanks shall be provided with clean shoes or boots which shall be used for no other purpose.

(b) No ice contaminated with sand, dirt, cinders, lint, or any other foreign substances shall be sold or offered for sale for human consumption.

(c) All water used in the manufacturing of ice shall be from an approved source and be of a safe quality.

(d) Every ice plant operator shall provide sanitary handwashing and toilet facilities for the use of all employees thereof.

Drinking water

Sec. 10. (a) All drinking water for public use shall be free from deleterious matter and shall comply with the standards established therefor by the State Department of Health or the United States Public Health Service.

(b) The use of the common drinking cup is hereby prohibited in this state. No drinking water shall be served except in sanitary containers or through other sanitary mediums.

Protection of public water supplies

Sec. 11. (a) No district, municipality, firm, corporation, or individual shall furnish to the public any drinking water for which any charge is made, unless the production, processing, treatment, and distribution is at all times under the supervision of a competent water works operator holding a valid certificate of competency issued under direction of the Texas State Department of Health.

(b) No owner, agent, manager, or operator or other person having charge of any water works supplying water for public or private use shall knowingly furnish to any person any contaminated drinking water or permit the appliances thereof to become insanitary.

(c) The owner or manager of every water supply system furnishing drinking water to 25,000 or more persons shall have the water tested at least once daily for the determination of its sanitary quality and shall furnish the State Department of Health with monthly reports thereof. The owner or manager of any water plant supplying drinking water to less than 25,000 persons, according to the latest Federal Census and such revised Federal Census as may hereafter be taken and established, or by other population-determining methods in all such cases where Federal Census are not taken, shall submit to the State Department of Health at least four (4) specimens of water taken from the supply for the purpose of bacteriological analysis during each monthly period of the operation of such service.

(d) No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless such other water is of a safe sanitary quality and the interconnection is approved by the State Department of Health. No water connection from any public drinking water supply shall be made to any sprinkling, condensing, cooling, plumbing, or any other system unless the said connection is of such a design as will insure against any backflow or siphonage of sewage or contaminated water from said system into the drinking water supply. Upon discovery of any condition contrary to these provisions, written notice shall be given to the owner or agent maintaining such condition by the local health officer, and such owner or agent shall make such corrections as are necessary to eliminate the condition complained of.

(e) No part of sub-sections (a), (b), and (c) of Section 11 shall apply to the production, distribution or sale of raw, untreated surface water.

Approved plans required for public water supplies and sewerage systems

Sec. 12. (a) Every person, firm, corporation, public or private, contemplating the establishment of any drinking water supply or sewage disposal system for public use shall, previous to construction thereof, submit completed plans and specifications therefor to the State Department of Health and the said Department shall approve same; provided said plans conform to the water safety and stream pollution laws of this state. The said water supply or sewage disposal system shall be established only after approval has been given by the State Department of Health.

(b) Any governing body of any municipality or any other agency supplying drinking water or sewage disposal service to the public desiring to make any material or major changes in any water or sewerage system that may affect the sanitary features of such utility shall, before making such changes, give written notice of such intentions to the State Department of Health.

(c) No water supply owner, manager, operator or agent thereof shall advertise or announce any water supply as being of any quality other than is disclosed by the latest rating by the State Department of Health. It shall be the duty of the State Department of Health to assemble and tabulate all necessary data relative to public drinking water supplies, which shall form the basis of an official comparative rating of all public drinking water supply systems, at least once each year and as often during the year as conditions may demand or justify. All supply systems attaining an approved rating shall have the privilege of erecting signs of a design approved by the State Department of Health on highways approaching the city of such supply; and these signs shall be immediately removed upon due notice from the State Department of Health in the event the supply system fails to continue to meet the specified standards.

Sanitary defects

Sec. 13. (a) All sanitary defects existent at public drinking water plants which obtain their supply from underground sources shall be immediately corrected.

(b) No public drinking water supply system furnishing drinking water from underground sources to the public shall be established in any place subject to possible pollution by any flood waters, unless adequately protected against flooding.

(c) All suction wells or suction pipes, used in any public drinking water supply system shall be constantly protected by practical safeguards against surface or sub-surface pollution.

(d) No livestock shall be permitted to enter or remain within the wellhouse enclosure of a public drinking water supply system.

(e) All public drinking water distribution lines shall be constructed of impervious material with tight joints, a reasonably safe distance from sewer lines.

(f) No water from any surface public drinking water supply shall be made accessible or delivered to any consumer for drinking purposes unless it has first received treatment essential to rendering it safe for human consumption. All treatment plants including aeration, coagulation, mixing, settling filtration, and chlorinating units shall be of such size and type as may be prescribed by good public health engineering practices.

(g) Clear water reservoirs shall be covered and be of such type and construction as will prevent the entrance of dust, insects, and surface seepage.

Impounded water

Sec. 14. All persons, firms, corporations, and governmental agencies that impound any body of water for public use shall cooperate with the state and local departments of health in the control of disease bearing mosquitoes on the impounded area.

Swimming pools and bath houses

Sec. 15. (a) All owners, managers, operators, and other attendants in charge of any public swimming pool shall maintain all such pools in a sanitary condition. The bacterial content of the water in any public swimming pool shall not be allowed to exceed safe limits as prescribed by established standards of the State Department of Health. Residual chlorine from 0.2 to 0.5 parts per million units of water shall be maintained in every public swimming pool throughout the period of their use.

(b) No water in any swimming pool open for the public shall ever be permitted to show an acid reaction to a standard pH test.

(c) Any and all parts of any public bath house and the surroundings thereto shall at all times be kept in a sanitary condition.

(d) No comb or hairbrush used by two or more persons shall be permitted or distributed in any bath house of a public swimming pool.

(e) Facilities shall be provided in all swimming pools for adequate protection of bathers against sputum contamination.

(f) All persons known or suspected of being infected with any transmissible condition of a communicable disease shall be excluded from the pool.

(g) The construction and appliances of all public swimming pools shall be such as to reduce to a practical minimum any possibility of drowning or injury of bathers. All swimming pools hereafter constructed shall be in conformity with good public health engineering practices.

(h) All bathing suits and towels furnished to bathers by any person or persons shall be thoroughly washed with soap and hot water and thoroughly rinsed and dried after each use.

(i) All dressing rooms of any swimming pool shall contain shower bath facilities.

(j) The operator or manager of any public swimming pool shall provide adequate and proper approved facilities for the disposal of human excreta by the bathers thereof.

School houses and grounds

Sec. 16. (a) Every school building shall be located on grounds that are well drained and maintained in a sanitary condition.

(b) Every school building shall be properly ventilated and provided with an adequate supply of drinking water and approved sewage disposal system, handwashing facilities, a heating system, and lighting facilities, all of which shall conform with established standards of good public health engineering practices.

(c) All public school lunch rooms maintained and operated shall comply with the State Food and Drug Regulations.

(d) All public school buildings and appurtenances thereto shall be maintained in a sanitary manner.

(e) All building custodians and janitors employed on a full-time basis shall be versed in the fundamentals of safety and school sanitation.

Tourist courts, hotels, inns and rooming houses

Sec. 17. (a) Every agency, person, firm, or corporation operating any tourist court and hotels, inns and rooming houses in this state shall provide a safe and ample water supply for the general conduct thereof and shall submit samples of said water at least once each year before the month of May to the State Department of Health for bacteriological analysis.

(b) Every tourist court and hotels, inns and rooming houses shall be equipped with an approved system of sewage disposal maintained in a sanitary condition.

(c) All owners or operators of any tourist court and hotels, inns and rooming houses shall provide every practical facility essential to keeping the entire area of each of said courts in a sanitary condition.

(d) Every owner or operator of a tourist court and hotels, inns and rooming houses providing gas stoves for the heating of any unit thereof shall determine that such stoves are properly installed and maintained in properly ventilated rooms.

(e) All owners, operators, or managers of every tourist court and hotels, inns and rooming houses shall maintain all sanitary appliances situated therein in good repair.

(f) All food offered for sale at any tourist court and hotels, inns and rooming houses shall be adequately protected from flies, dust, vermin, spoilage, and shall be kept in a sanitary condition at all times.

(g) No owner, manager or agent shall rent or furnish any unit of any tourist court and hotels, inns and rooming houses to any person succeeding a previous occupant without having first thoroughly cleaned the said unit, and having provided clean and sanitary sheets, towels, and pillow cases therefor.

(h) Every tourist court and hotels, inns and rooming houses failing to conform to any provision of this Act is hereby declared to constitute a nuisance.

(i) All owners, operators, or managers of any hotel, inn, or rooming house shall maintain all such premises in a sanitary condition.

Fair grounds, public parks and amusement grounds

Sec. 18. Every fair ground, public park or amusement center of any kind shall be maintained in a sanitary condition and any and all food and beverages which may be sold in any part of such place shall be adequately protected against flies, dust, vermin, spoilage, and shall be kept in a sanitary condition.

Industrial establishments

Sec. 19. (a) No person, firm, corporation or other employer shall use, or permit to be used in the conduct of any business, manufacturing establishments or other place of employment, any process, material, or condition known to have any possible adverse effect on the health of any person or persons employed therein unless arrangements have been made to maintain the occupational environment to the extent that such injury will not result. Every industrial establishment shall be continually maintained in a sanitary condition.

(b) The Texas State Department of Health shall make available to the citizens of Texas current information concerning minimum allowable concentrations of toxic gases and such environmental standards as may pertain to the health and safety of the employees of industrial establishments in this state.

(c) The Texas State Department of Health shall make health and sanitary surveys and studies of industrial establishments including such special items as water supplies and distribution, waste disposal, adverse conditions caused by processes which may be responsible for or cause ill health of industrial workers. Such Texas State Department of Health shall bring to the attention of each surveyed establishment a summary of the studies and findings resultant thereof, together with any recommendations which may be deemed necessary for the adequate protection of the health, safety and well-being of the workers.

Sewage

Sec. 20. (a) The management of every public sewerage treatment plant shall employ a sewerage plant operator holding a valid certificate of competency issued under the direction of the Texas State Department of Health. Such sewerage plant operator shall be in charge of said plant. This certificate shall

not apply to sewerage treatment plants using septic tanks and subsoil treatment.

(b) The Texas State Department of Health shall take all necessary procedures essential to the protection of any spring, well, pond, lake, reservoir, or other streams in Texas, from any condition or pollution resulting from sewage, that may endanger the public health, and shall have full authority to enforce all the laws of this state relating thereto.

Typhus and pest control

Sec. 21. (a) The word "place" as used in this Section shall be construed as meaning any enclosed structure frequented or inhabited by or operated for public trade.

(b) Every person, firm or corporation possessing any place that is infested with rodents shall, as soon as each such condition comes to their knowledge, proceed and continue in good faith to endeavor to exterminate and destroy all such rodents by the process of poisoning, trapping, fumigation or any other appropriate means and shall immediately proceed to provide every possible practical means of rat stoppage in any such place.

(c) All new public buildings which may hereafter be constructed shall have rat proofing features incorporated therein.

(d) The State Health Officer is directed to promote rodent control programs in all rat infested areas and in localities where typhus fever has appeared.

(e) It shall hereafter be unlawful for any person, firm or corporation to engage in commercial pest control activities in any structure used as a domicile, or otherwise used by human beings, to employ or distribute lethal gases, or other poisons used for the purpose of exterminating pests, unless such exterminating agency conforms to commonly accepted standards for safety in pest control.

Common carriers

Sec. 22. (a) All persons, firms or corporations managing or operating bus lines or airlines in the State of Texas, or any person, firm or corporation operating any coastwise vessel along the shores of the State of Texas shall maintain sanitary conditions in all of their equipment and at all terminals or docking points.

(b) All drinking water provided by common carriers or their agents, shall be taken only from supplies certified as meeting the standards established by the Texas State Department of Health. All such water shall be kept and dispensed in a sanitary manner.

(c) Every place where drinking water is placed aboard any vehicle operated as a common carrier shall be known as a common carrier watering point. Every common carrier's watering point shall meet all required standards of sanitation, and water handling practices as may be established for such purposes by the State Board of Health. All common carrier watering points meeting such standards shall be so certified by the State Department of Health.

(d) In the event any sanitary defects exist at the watering point, the Texas State Department of Health shall issue or cause to be issued a supplemental certification showing that the watering point is only provisionally approved; and if said defects are suffered to continue after a reasonable time for the correction of same has expired, then the State Health Department shall notify or cause to be notified the common carriers not to receive drinking water at the watering point involved.

Authority of Home Rule Cities not affected

Sec. 23. All provisions of this Act are hereby declared to constitute minimum requirements of sanitation and health protection within the State of Texas and shall in no way affect the authority of Home Rule Cities to enact more stringent ordinances pertaining to the matters herein referred to, and shall in no way affect the authority of Home Rule Cities to enact ordinances as granted to them under Article XI, Section V of the State Constitution, and Articles 1175-76 of the Revised Civil Statutes of Texas of 1925.

Penalty

Sec. 24. Any person, firm or corporation who shall violate any of the provisions of any Section or subdivision of this Act, shall be fined not less than Ten Dollars ($10.00) and not more than Two Hundred Dollars ($200.00), and each day of such violation shall constitute a separate offense. The penalties of this Act shall not apply where a person or persons have exercised due diligence, and have violated the same without any intent. [Acts 1945, 49th Leg., p. 234, ch. 178.]

Section 25 of the Act of 1945 repealed all conflicting laws or parts of laws.

Section 25A provided that partial invalidity should not affect the remaining portions.

CHAPTER 5.—COUNTY HOSPITALS

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4494j. Sale or lease of county hospital in counties having assessed valuation under $20,000,000.

Article 4478. Authority.—The commissioners court of any county shall have power to establish a county hospital and to enlarge any existing hospitals for the care and treatment of persons suffering from

any illness, disease or injury, subject to the provisions of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital and shall have the following powers:

1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.

2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital and for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

5. To appoint a board of managers for said hospital.

6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift. [Acts 1913, p. 71.]

Acts 1939, 46th Leg., Spec.L., p. 850, authorizes a direct tax of not exceeding Ten (10¢) Cents on the One Hundred ($100.00) Dollars assessed valuation in counties of 12,190 to 12,195 for health purposes generally, and specifically for the purpose of building, equipping and maintaining a hospital, employing physicians and all other necessary persons; purchasing medicine, supplies, etc. for the indigent people of such county.

Art. 4479. Board of managers.—When the commissioners' court shall have acquired a site for such hospital and shall have awarded contracts for the necessary buildings and improvements thereon, it shall appoint six resident property taxpaying citizens of the county who shall constitute a board of managers of said hospital. The term of office of each member of said board shall be two years, except that in making the first appointments after this Act takes effect three members shall be appointed for one year and three members for two years so that thereafter three members of said board will be appointed every two years. In case of a tie vote of said board the deadlock may be voted off one way or the other by the county judge of the county. Appointments to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Failure of any manager to attend three consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board of managers. The managers shall receive no compensation for their services, but shall be allowed their actual and necessary traveling and other expenses within this State to be audited and paid by the commissioners' court in the same manner as other expenses of the hospital. Any manager after being cited may at any time for cause be removed from office by said court. [Acts 1913, p. 71; Acts 1927, 40th Leg., p. 268, ch. 189, § 1.]

Art. 4480. Powers of board.—The board of managers shall elect from among its members a president, and one or more vice-presidents and a secretary and a treasurer. It shall appoint a superintendent of the hospital who shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board, and shall be a qualified practitioner of medicine, or be specially trained for work of such character.

The board shall also appoint a staff of visiting physicians who shall serve without pay from the county, and who shall visit and treat hospital patients at the request either of the managers or of the superintendent.

Said board shall fix the salaries of the superintendent and all other officers and employés within the limit of the appropriation made therefor by the commissioners court, and such salaries shall be compensation in full for all services rendered. The board shall determine the amount of time required to be spent at the hospital by said superintendent in the discharge of his duties. The board shall have the general management and control of the said hospital, grounds, buildings, officers and employees thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof; and make such rules and regulations as may seem to them necessary for carrying out the purposes of such hospital. They shall maintain an effective inspection of said hospital and keep themselves informed of the affairs and management thereof; shall meet at the hospital at least once in every month, and at such other times as may be prescribed in the by-laws; and shall hold an annual meeting at least three weeks prior to the meeting of the commissioners court at which appropriations for the ensuing year are to be considered. [Acts 1913, p. 71.]

Art. 4481. Clinics.—The board of managers may also establish and operate an outpatient department or free dispensary and clinic at the hospital or in the city nearest to which the hospital is located, with branch dispensaries or clinics in every city or town in the county of five thousand population and over. They shall appoint a physician or physicians, who shall serve at such dispensaries or clinics, and shall determine the amount of time required to be spent at such dispensaries or clinics by such physicians, and shall fix the salaries, if any, of such physicians. Said board shall also appoint one or more trained visiting nurses to serve in connection with each such dispensary or clinic, and in connection with the hospital, and shall fix their salaries within the limits of the appropriation made therefor by the commissioners court. [Id.]

Art. 4482. School for children.—The board may also establish, at the hospital or in the city nearest to which the hospital is situated, or in the largest city in the county, a special and separate school for the education, care and treatment of children suffering from tuberculosis. Said school shall be conducted as a branch of the hospital and the pupils and inmates of said school shall be considered as inmates of the hospital and subject to all the provisions of this law. Said board shall appoint a teacher or teachers, specially qualified, to instruct and care for the pupil inmates of said school. Said board shall delegate the superintendent of the hospital, a member or members of the staff of visiting physicians, a physician or physicians in attendance upon any county dispensary, or shall employ a physician, to attend the inmates of said school, and to supervise their care and treatment, and shall delegate one of the hospital nurses, or a visiting nurse, or shall employ a nurse to assist in the care and treatment of said pupils. [Id.]

Art. 4483. Health bulletins.—The State Board of Health, from time to time, shall make rules and regulations for the care of persons suffering from communicable disease and for the prevention and

spread of such diseases; and prepare bulletins and other publications giving information as to the cause, nature, treatment and prevention of disease. The board of managers, shall from time to time, purchase from the State Board of Health, at the actual cost of printing, printed copies of such rules and regulations, bulletins and other publications, or shall have same printed, and shall send or deliver such copies to all practicing physicians in the county, to all public schools and to such private schools as request such copies, and such organizations, churches, societies, unions and individuals as may present written requests for copies of circulars, pamphlets, bulletins and such other publications prepared by the State Board of Health.

Art. 4484. Records.—The board of managers shall keep in a book provided for that purpose a proper record of its proceedings, which shall be open at all times to the inspection of its members, to the members of the commissioners court and to any citizen of the county. The board shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners court, who shall provide for their payment in the same manner as other charges against the county are paid.

The board of managers shall make to the commissioners court annually, and at such times as said court shall direct, a detailed report of the operation of the hospital dispensaries and school during the year, showing the number of patients received and the methods and results of their treatment, together with suitable recommendations and such other matter as may be required of them, and shall furnish full and detailed estimates of the appropriations required during the ensuing year for all purposes, including maintenance, the erection of buildings, repairs, renewals, extensions, improvements, betterments or other necessary purposes. [Id.]

Art. 4485. Superintendent.—The superintendent shall be the chief executive officer of the hospital, but shall at all times be subject to the by-laws, rules and regulations thereof, and to the powers of the board of managers.

He shall, with the consent of the board of managers, equip the hospital with all necessary furniture, appliances, fixtures and all other needed facilities for the care and treatment of patients, and for the use of officers and employés thereof, and shall purchase all necessary supplies, not exceeding the amount provided for such purposes by the commissioners court.

He shall have general supervision and control of the records, accounts and buildings of the hospital, and all internal affairs, and maintain discipline therein, and enforce compliance with and obedience to all rules, by-laws and regulations adopted by the board of managers for the government, discipline and management of said hospital and the employés and inmates thereof. He shall make such further rules, regulations and orders as he may deem necessary, not inconsistent with law or with the rules, regulations and directions of the board of managers. He shall, with the consent of the board of managers, appoint such resident officers and such employés as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties; and for cause stated in writing, he may discharge any such officer or employé at his discretion, after giving such officer or employé an opportunity to be heard.

He shall cause proper accounts and records of the business and operations of the hospital to be kept regularly from day to day in books and on records provided for that purpose; and shall see that such accounts and records are correctly made up for the annual report as required by this law, and present the same to the board of managers who shall incorporate them in their report to the commissioners court.

He shall receive into the hospital, under the general direction of the board of managers, in order of application, or according to the urgency of need of treatment, any person found to be suffering from any illness, disease or injury, who has been an actual resident and inhabitant of the county for a period of at least one year prior to his application for admission to said hospital. He shall also receive into the hospital, patients sent by the commissioners court of any adjacent county, which has contracted with the board for the care and treatment of its sick and diseased and injured persons, resident in such counties for a period of at least one year. Such patients shall not be received and cared for unless there is sufficient provision for the care of the sick, diseased and injured of the county in which the hospital is situated. Said superintendent shall cause to be kept proper accounts and records of the admission of all patients, their names, age, sex, color, marital condition, residence, occupation and place of past employment.

He shall cause a careful examination to be made of the physical condition of all persons admitted to the hospital and provide for the treatment of each such patient according to his need; and shall cause a record to be kept of the condition of each patient when admitted and from time to time thereafter.

He shall temporarily or permanently discharge from said hospital any patient who shall wilfully or habitually violate the rules thereof; or who is found not to be sick, diseased or injured; or who is found to have recovered therefrom; or who for any other reason is no longer a suitable patient for treatment therein; and shall make a full report thereof at the next meeting of the board, and the said board shall make such final disposition of the case as they may think proper. From the decision of the board of managers there shall be no appeal.

He shall collect and receive all moneys due the hospital, keep an accurate account of the same, report the same at the monthly meeting of the board of managers, and transmit the same to the county collector within ten days after such meeting.

He shall before entering upon the discharge of his duties, give a bond in such sum as the board of managers may determine, to secure the faithful performance of the duties of his office. [Id.]

Art. 4486. Admission of patients.—Any resident of the county in which the hospital is situated, desiring treatment in such hospital, may apply in person to the superintendent or to any reputable physician for examination, and such physician, if he finds that such person is suffering from any illness, disease or injury may apply to the superintendent of the hospital for his admission. Blank forms for such application shall be provided by the hospital and shall be forwarded by the superintendent thereof free to any reputable physician in the county upon request. So far as practicable, applications for admission to the hospital shall be made upon such forms. The superintendent upon receipt of such application, if it appears therefrom that the patient is suffering from illness, disease or injury, and if there be a vacancy in said hospital, shall notify the person named in such application to appear in person at the hospital. If, upon personal examination of such patient, or of any patient applying in person for admission, the superintendent is satisfied that such person is suffering from any illness, disease or injury, he shall admit him to the hospital as a patient. All such applications shall state whether, in the judgment of the physician, the person is able to pay in whole or in part for his care and treatment while at the hospital. Every application shall be filed and recorded in a book kept for that purpose in the order of its receipt. No discrimination shall be made in the accommodations, care or treatment of any patient because of the fact that the patient or his relatives contribute to the cost of his maintenance, in whole or in part. No patient shall be permitted to pay for his

maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital. No officer or employee of such hospital shall accept from any patient thereof, any fee, payment or gratuity whatsoever for his services. [Id.]

Art. 4487. Support of patients.—Whenever a patient has been admitted to said hospital from the county in which the hospital is situated, the superintendent shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he finds that such patient or said relatives are liable to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the treasurer of such hospital for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The superintendent shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the manner provided by law for the collection of expenses of the last illness of a deceased person. If the superintendent finds that such patient, or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the county. Should there be a dispute as to the ability to pay, or doubt in the mind of the superintendent, the county court shall hear and determine same, after calling witnesses, and shall make such order as may be proper, from which there shall be no appeal. [Id.]

Art. 4488. Inspection.—The resident officer of the hospital shall admit the managers into every part of the hospital and the premises and give them access on demand to all books, papers, accounts, and records pertaining to the hospital, and shall furnish copies, abstracts, and reports whenever required by them. All hospitals established or maintained under the provisions of this law shall be subject to inspection by any duly authorized representative of the State Board of Health, or any State board of charities that may hereafter be created, and of the commissioners court of the county; and the resident officers shall admit such representatives into every part of the hospital and its buildings and give them access on demand to all records, reports, books, papers and accounts pertaining to the hospital. [Id.]

Art. 4489. Poorhouse.—Wherever a county hospital for the care and treatment of persons suffering from any illness, disease or injury exists in connection with, or on the grounds of a county poorhouse or elsewhere, the commissioners' court shall appoint a board of managers for such hospital, and such hospital and its board of managers shall thereafter be subject to each provision of this law, in like manner as if it had been originally established hereunder. Any hospital which may hereafter be established by any commissioners court shall in like manner be subject to each provision of this law. [Id.]

Art. 4490. Additional hospitals.—When deemed advisable by the commissioners court, and approved by the State Board of Health, a county may maintain more than one county hospital for the purpose aforesaid. [Id.]

Art. 4491. Contract with hospital.—Any commissioners court of any county which has no city with a population of more than ten thousand persons, may contract for a period not exceeding one year, with any regularly incorporated society or hospital or municipality within the county maintaining a hospital, or with any other adjacent county, for the care of any or all of the sick, diseased or injured inhabitants of the county, upon such terms and conditions as they may by agreement think proper. Where a county has established such hospital, the board of managers may contract with any regularly incorporated society or hospital or city or town within the county maintaining a hospital, for the care of some of the sick, injured or diseased persons applying for admission to the county hospital. [Id.]

Art. 4492. Contracts with cities.—Any commissioners court may co-operate with and join the proper authorities of any city having a population of ten thousand persons or more in the establishment, building, equipment and maintenance of a hospital in said city, and to appropriate such funds as may be determined by said court, after joint conference with the authorities of such city or town, and the management of such hospital shall be under the joint control of such court and city authorities. [Id.]

Art. 4493. Adequate facilities.—Where no county hospital is now provided for the purpose aforesaid, or where such provision is inadequate, the commissioners court of each county which may have a city with a population of more than ten thousand persons, within six months from the time when such city shall have attained such population, such population to be ascertained by such court in such manner as may be determined upon resolution thereof, shall provide for the erection of such county hospital or hospitals as may be necessary for that purpose, and provide therein a room or rooms, or ward or wards for the care of confinement cases, and a room or rooms or ward or wards for the temporary care of persons suffering from mental or nervous disease, and also make provision in separate buildings for patients suffering from tuberculosis and other communicable diseases, and from time to time add thereto accommodations sufficient to take care of the patients of the county. This time may be extended by the State Board of Health for good cause shown. Unless adequate funds for the building of said hospital can be derived from current funds of the county available for such purpose, issuance of county warrants and script, the commissioners court shall submit, either at a special election called for the purpose, or at a regular election, the proposition of the issuance of county bonds for the purpose of building such hospital. If the proposition shall fail to receive a majority vote at such election said court may be required thereafter at intervals of not less than twelve months, upon petition of ten per cent of the qualified voters of said county, to submit said proposition until same shall receive the requisite vote authorizing the issuance of the bonds. [Id.]

Art. 4493a. Validation of county hospital bond elections in counties containing large city.—Section. 1. In each instance where a county containing a city of not less than one hundred and fifty thousand (150,000) population, according to the last preceding Federal Census, has held an election resulting favorably to the issuance of bonds for the purpose including any one or more of the following: constructing, building, equipping, improving, extending, or enlarging a county hospital or sanitarium, or for the purpose including any one or more of the following: constructing, building, equipping, improving, extending, or enlarging a city-county hospital or sanitarium, the act of the Commissioners Court in calling and noticing said election, the election, the act of the Commissioners Court in canvassing the returns of such election and declaring the results thereof, each and all are hereby expressly validated; all such bonds heretofore executed, approved by the Attorney General, registered by the Comptroller, sold and delivered, are hereby in all things validated; and all such bonds so voted but not heretofore sold, when they shall have been executed, approved by the Attorney General, and registered by the Comptroller, shall constitute valid and binding obligations of such county.

Sec. 2. Provided however, that this Act shall not affect any litigation pending at the time this Act becomes effective, in which the validity of any such

election or bonds is being questioned. [Acts 1937, 45th Leg., 2nd C.S., p. 1920, ch. 37.]

Art. 4494. Counties may join.—Where found to be more practicable, and when approved by the State Board of Health, two or more adjacent counties, having each a population of less than fifteen thousand persons, may join for the purposes of this law, and erect one or more hospitals for their joint use, under the terms and conditions above set forth for a single county.

In such cases such combined counties shall have the same powers and be subject to the same liabilities as a single county, herein provided for. [Acts 1913, p. 71.]

Art. 4494a. Lease of county hospital.—Any county in this State having a population of not less than 46,600 and not more than 48,000 according to the United States Census of 1920, shall have authority to lease any county hospital belonging to said county to be operated as a county hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court and the lessee. The action of the Commissioners' Court in leasing such hospital shall be evidenced by order of the Commissioners' Court, which order shall be recorded in the minutes of said Court. [Acts 1929, 41st Leg., 2nd C.S., p. 170, ch. 86, § 1.]

Art. 4494b. Lease of county hospitals in counties of 30,900 to 31,000 population.—Any county in this State having a population of not less than thirty thousand nine hundred (30,900) and not more than thirty-one thousand (31,000) according to the United States Census of 1930, shall have authority to lease any county hospital belonging to said county to be operated as a county hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court of said county and the lessee. The action of the Commissioners' Court in leasing such hospital shall be evidenced by order of the Commissioners' Court, which order shall be recorded in the minutes of said Court. [Acts 1937, 45th Leg., 1st C.S., p. 1754, ch. 9, § 1.]

Art. 4494c. Construction, maintenance, and operation of hospitals by counties of 17,600 to 17,700 population; leasing of hospital.—Section 1. In any County in this State having a population of not less than seventeen thousand six hundred (17,600) or not more than seventeen thousand seven hundred (17,700) according to the United States Census of 1930, in which are established hospitals or in which hospitals may be constructed, a direct tax of not over Ten Cents (10¢) on the valuation of One Hundred Dollars ($100.00) on all real and personal property within such County may be authorized and levied by the Commissioners' Court of such County for the purpose of erecting buildings and other improvements, equipping such hospital, and for maintaining and operating such hospital, provided that all such levy of taxes shall be submitted to the qualified tax paying voters of the County and a majority vote shall be necessary to levy such taxes.

Sec. 2. Any County in this State having a population of not less than seventeen thousand six hundred (17,600) and not more than seventeen thousand seven hundred (17,700) according to the United States Census of 1930, shall have authority to lease any County Hospital belonging to said County now in existence or that may hereafter be constructed, to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court and the lessee. The action of the Commissioners' Court on leasing such hospital shall be evidenced by order of the Commissioners' Court which shall be recorded in the minutes of said Court. [Acts 1939, 46th Leg., Spec.L., p. 851.]

Art. 4494d. Lease of county hospitals in counties of 23,825 to 23,850.—Any county in this State having a population of not less than twenty-three thousand, eight hundred and twenty-five (23,825) and not more than twenty-three thousand, eight hundred and fifty (23,850) inhabitants according to the last preceding Federal Census of 1930, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by order of the Commissioners Court, which order shall be recorded in the Minutes of said Court. [Acts 1939, 46th Leg., Spec.L., p. 849, § 1.]

Art. 4494e. Lease of county hospitals in counties of 7,680 to 7,700.—Any county in this State having a population of not less than seven thousand, six hundred and eighty (7,680) and not more than seven thousand and seven hundred (7,700), according to the last preceding Federal Census, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by order of the Commissioners Court, which order shall be recorded in the Minutes of said Court. [Acts 1939, 46th Leg., Spec.L., p. 848, § 1.]

Art. 4494f. Leases of hospitals in counties of 29,760 to 29,960.—Any county in this State having a population of not less than twenty-nine thousand, seven hundred and sixty (29,760) and not more than twenty-nine thousand, nine hundred and sixty (29,960) inhabitants, according to the last preceding Federal Census, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by the order of the Commissioners Court, which order shall be recorded in the Minutes of said Court. [Acts 1941, 47th Leg., p. 428, ch. 258, § 1.]

Art. 4494g. Establishment of hospital in counties of over 92,600 and having a city of over 57,250 population; lease of hospital.—Section 1. In all counties of the State having a population of not less than ninety-two thousand, six hundred (92,600), according to the last preceding United States Census, containing an incorporated city or cities or an incorporated town or towns of not less than fifty-seven thousand, two hundred and fifty (57,250) population, each according to the last preceding United States Census, the Commissioners Court of such county and the governing body of any such city or town may establish, erect, equip, maintain and operate a hospital for the care and treatment of sick, infirm, and/or injured inhabitants of such county and/or city or town. By agreement between such bodies, the cost thereof may be divided between such county and city or town.

Sec. 2. If there be insufficient moneys in the respective general funds of such county and/or city or town for such purpose, the Commissioners Court and/or governing body of the city or town may submit to the qualified, taxpaying voters of the county and/or city or town, respectively, at a special or regular election or elections the proposition of whether such a hospital should be established, erected, equipped, maintained and operated by the county and city or town and a tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town levied

for such purpose and/or whether the county and/or city or town should issue its bonds in an amount not exceeding that specified in such proposition to wholly or partially defray the expense of establishing, erecting, and/or equipping such hospital, and provide for the payment of interest on such bonds and the creation of a sinking fund for the payment thereof out of a direct tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town.

Sec. 3. If such proposition shall receive a majority of the votes cast by the voters at such elections, the Commissioners Court and/or governing body of the city or town may assess and levy a tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town respectively, for such purpose. If, however, the Commissioners Court and/or the governing body of such city or town deem it advisable and the question has received a majority vote at the election called for in the preceding Section, either or both of such bodies may, in the manner provided for the issuance of other bonds of such county and/or city or town in an amount not exceeding that specified in the proposition submitted at such election, assess and levy a tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town for the purpose of paying the interest on such bonds and creating a sinking fund for the payment thereof.

Sec. 4. Any hospital heretofore or hereafter erected, established, equipped, maintained, or operated by such a county and such a city may be leased by such county and city or town upon such terms as are agreeable to such county and city or town and the lessee. [Acts 1941, 47th Leg., p. 420, ch. 250.]

Art. 4494h. Lease of hospitals in counties of 10,380 to 10,390.—Any county in this State having a population of not less than ten thousand, three hundred and eighty (10,380) and not more than ten thousand, three hundred and ninety (10,390) inhabitants according to the last preceding Federal Census, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by order of the Commissioners Court, which order shall be recorded in the Minutes of said Court. [Acts 1941, 47th Leg., p. 142, ch. 107, § 1.]

Art. 4494i. Joint establishment and operation of hospitals by counties and cities or towns.

Establishment and operation authorized; tax to pay bonds

Section 1. Any county of the State and any incorporated city or town within such county, acting through the Commissioners Court of such county and the governing body of such city or town, may jointly establish, erect, equip, maintain and operate a hospital or hospitals for the care and treatment of the sick, infirm, and/or injured; and for the purposes of establishing, erecting, equipping, maintaining and operating such a hospital or hospitals, the Commissioners Court of any county and the governing body of any city or town within such county may, by resolution or other appropriate action, confer upon, delegate to and grant to a Board of Managers, as hereinafter provided, full and complete authority to establish, erect, equip, maintain and operate such hospital or hospitals. Such cities or towns and counties that have heretofore issued and sold bonds for the specific purpose of jointly establishing, erecting, equipping, maintaining and operating such joint county-city hospital may finance such hospital or hospitals out of general revenues and are each, respectively, hereby authorized to levy and collect a tax, not to exceed Ten (10) Cents per one hundred dollar valuation on the property subject to taxes therein, for such purposes.

Board of Managers; membership; term; vacancies

Sec. 2. The Board of Managers shall be composed of seven (7) members; three (3) of this number shall be appointed by the Commissioners Court of such county, three (3) shall be appointed by the governing body of such city or town, and one shall be appointed by the Commissioners Court of such county and the governing body of such city or town acting jointly as one appointive body. The Commissioners Court of such county shall appoint to the Board one member for a term of office expiring at the end of two (2) years from date of appointment, one member for a term of office expiring four (4) years from date of appointment, and one member for a term of office expiring six (6) years from date of appointment. In like manner, the governing body of such city or town shall appoint to the Board one member for a term of office expiring two (2) years from date of appointment, one member for a term of office expiring four (4) years from date of appointment, and one member for a term of office expiring six (6) years from date of appointment; and similarly, the Commissioners Court and the governing body of such city or town, acting together as an appointive body, shall appoint one member for a term of office expiring six (6) years from date of appointment. Thereafter, at the expiration of each term of office of the members so appointed to such Board, the Commissioners Court and the governing body of such city or town acting jointly as an appointive body, shall each, respectively make, and continue to make, similar appointments to such Board for a term of office of six (6) years each. Any vacancy occurring during the term of office of any member, whether by resignation or death, shall be filled for the unexpired portion of such term by the particular appointive body previously making the appointment of the resigning or deceased member.

Presiding officer; quorum

Sec. 3. Such Board of Managers shall select a chairman or presiding officer from among their number who shall preside over all meetings of the said Board, and shall sign all contracts, agreements and other instruments made by said Board on behalf of such county and such city or town. A majority of the members of the Board shall constitute a quorum with full authority and power to act.

Powers of Board

Sec. 4. Such Board of Managers shall have full and complete authority to enter into any contract connected with or incident to the establishment, erection, equipping, maintaining or operating such hospital or hospitals, and in this connection shall have authority to disburse and pay out all funds set aside by such county and such city or town for purposes connected with such hospital or hospitals, and such action by such city or town as though such action had been taken by the Commissioners Court of such county or governing body of such city or town.

Financial statement; budget

Sec. 5. Once each year such Board of Managers shall prepare and present to such Commissioners Court and the governing body of such city or town a complete financial statement of the financial status of such hospital or hospitals, and shall submit therewith a proposed budget of the anticipated financial needs of such hospital or hospitals for the ensuing year. On the basis of such financial statement and budget the Commissioners Court of such county and the governing body of such city or town shall appropriate or set aside for the use of such Board of Managers in the operation of such hospital or hospitals the amount

of money which seems proper and necessary for such purpose.

Contributions

Sec. 6. The Commissioners Court of such county and the governing body of such city or town may contribute to the funds necessary for such hospital or hospitals in whatever proportion may be determined by them by agreement.

Management and control

Sec. 7. In connection with the erection and equipping of such hospital or hospitals said Board of Managers shall have the authority to determine the manner of expending any funds that may have been provided by such county and such city or town for such purpose, whether by the issuance of bonds or other obligations, or by appropriations from other funds of such county and city or town, it being the intention by this Act to grant to such Boards the complete authority to manage and control all matters affecting such hospitals, reserving to such county and city or town the right only to appoint members to such Board of Managers and to approve the annual budget hereinabove provided for.

Act cumulative

Sec. 8. This Act is cumulative of all other Acts relating to city and county hospitals. [Acts 1943, 48th Leg., p. 691, ch. 383.]

Art. 4494j. Sale or lease of county hospital in counties having assessed valuation under $20,000,000.—Any county in this State having an assessed valuation of property for State and ad valorem tax purposes of less than Twenty Million Dollars ($20,000,000) and having a county hospital belonging to said county and operated by such county, may, and such county is hereby authorized to sell or lease such hospital, provided the Commissioners Court of such county shall find and determine by an order entered in the minutes of such Court that it is to the best interests of such county to sell or lease said county hospital. The proposed sale or lease shall not be considered by such Commissioners Court unless and until said proposed sale or lease shall be approved by a majority vote in an election to be held in such county for the purpose of determining the will of property taxpaying voters living in the county, in reference to such subject. Such election shall be ordered by the Commissioners Court of any such county upon petition of not less than ten per cent (10%) of such voters and shall be otherwise held under and governed by the election provisions of Article 4478, Revised Civil Statutes, 1925, of the State of Texas. [Acts 1947, 50th Leg., p. 257, ch. 152, § 1.]

CHAPTER 6.—MEDICINE

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Art. 4495. [5733] Medical board.—The Texas State Board of Medical Examiners shall consist of twelve men, learned in medicine, legal and active practitioners in the State of Texas; who shall have resided and practiced medicine in this State, under a diploma from a legal and reputable college of medicine of the school to which said practitioner shall belong, for more than three years prior to their appointment on said Board. No school shall have a majority representation on said Board. Within thirty days after this Act becomes effective, the members of the first Board, as provided in this Act, shall be appointed by the Governor of the State. Of the members first appointed, four shall serve for a term of two years, or until their successors shall be appointed and qualified; four shall serve for a term of four years, or until their successors shall be appointed and qualified; and the remaining four members shall serve for a term of six years, or until their successors shall be appointed and qualified. Thereafter, at the expiration of the term of each member of the Board first appointed, his successor shall be appointed by the Governor of the State, and shall serve for a term of six years, or until his successor shall be appointed and qualified. The present members of the State Board of Medical Examiners, as created by Article 4495, Revised Statutes of 1925, shall remain in office until the members of the Texas State Board of Medical Examiners provided for in this Act shall have been appointed by the Governor and shall have qualified. No member of said Texas State Board of Medical Examiners shall be a stockholder or a member of the faculty or a board of trustees of any medical school. Vacancies occurring in the Board shall be filled by the Governor. The word "medicine," as used in this Article, shall have the same meaning and scope as is given to it in Article 4510, Revised Civil Statutes of 1925. [Acts 1907, p. 224, § 1; Acts 1931, 42nd Leg., p. 74, ch. 49, § 1.]

Section 3 of Acts 1931, 42nd Leg., p. 74, ch. 49, being a penal provision is published as Penal Code, Art. 739. Section 4 provides that the provisions of the act shall not affect pending prosecutions for the unlawful practice of medicine and further provides that the act is intended as an amendment of the Articles specified and shall be construed in connection with other Articles constituting part of the same chapters of the Revised Civil Statutes and the Penal Code, and shall not have the effect of repealing or in any way affecting Rev.Civ.Sts.1925, Title 71, ch. 11. Section 5 provides that if any provision is held invalid such holding shall not affect the remainder.

Art. 4496. [5734] Organization and meetings.—Each member of said board shall qualify by taking the official oath in the county of his residence. At the first meeting of said board after each biennial appointment, the board shall elect a president, vice-president and secretary-treasurer. Regular meetings shall be held at least twice a year, at such times and places as the board shall deem most convenient for applicants. Due notice of such meetings shall be given by publication in such papers as may be selected by the board. Special meetings may be held upon a call of three members of the board. The board may prescribe rules, regulations and by-laws, in harmony with the provisions of this title, for its own proceedings and government for the examination of applicants for the practice of medicine and obstetrics. [Acts 1907, p. 224, § 2.]

Art. 4497. [5735] Board shall keep register.—The board shall preserve a record of its proceedings in a book kept for that purpose, showing name, age, place and duration of residence of each applicant, the time spent in medical study in respective medical schools, and the year and school from which degrees were granted; said register shall also show whether

applicants were rejected or licensed, and shall be prima facie evidence of all matters contained therein. The Secretary of the board shall on March 1 of each year, transmit an official copy of said register to the Secretary of State for permanent record, a certified copy of which, with hand and seal of the secretary of said board, or the Secretary of State, shall be admitted in evidence in all courts. [Id. sec. 3.]

Art. 4498. [5736] Physicians to register.—It shall be unlawful for any one to practice medicine, in any of its branches, upon human beings within the limits of this State who has not registered in the District Clerk's office of every County in which he may reside, and in each and every County in which he may maintain an office or may designate a place for meeting, advising with, treating in any manner, or prescribing for patients, the certificate evidencing his right to practice medicine, as issued to him by the Texas State Board of Medical Examiners, together with his age, post office address, place of birth, name of medical college from which he graduated, and date of graduation, subscribed and verified by oath, when, if wilfully false, shall subject the affiant to conviction and punishment for false swearing, as provided by law. The fact of such oath and record shall be endorsed by the District Clerk upon the certificate. The holder of every such certificate must have the same recorded upon each change of residence to another county, as well as in each and every County in which he may maintain an office, or in which he may designate a place for meeting, advising with, treating in any manner or prescribing for patients; and the absence of such record in any place where such record is hereby required shall be prima facie evidence of the want of possession of such certificate. [Acts 1923, p. 292; Acts 1931, 42nd Leg., p. 74, ch. 49, § 2.]

Art. 4498a. Registration of practitioners with State Board of Medical Examiners; disposition of fees.—It shall be the duty of all persons now lawfully qualified and engaged in the practice of medicine in this State as defined in Article 4510, Revised Statutes of 1925, or who shall hereafter be licensed for such practice by the Texas State Board of Medical Examiners, to be registered as such practitioners with the Texas State Board of Medical Examiners on or before the 1st day of January, A.D. 1932, and thereafter to register in like manner annually, on or before the 1st day of January of each succeeding year. Each person so registering with the Texas State Board of Medical Examiners shall pay, in connection with each annual registration and for the receipt hereinafter provided for, a fee of Two ($2.00) Dollars, which fee shall accompany the application of every such person for such registration. Such payment shall be made to the Texas State Board of Medical Examiners. Every person so registering shall file with the Texas State Board of Medical Examiners a written application for annual registration, setting forth his full name, his age, his Post Office address, his place of residence, the county or counties in which his certificate entitling him to practice medicine has been registered, and the place or places where he is engaged in the practice of medicine, as well as the school of medicine to which he professes to belong and the number and date of his license certificate.

Upon receipt of such application, accompanied by the registration fee of Two ($2.00) Dollars, the Texas State Board of Medical Examiners, after ascertaining, either from the records of the Board or from other sources deemed by it to be reliable, that the applicant is a licensed practitioner of medicine in this State, shall issue to the applicant an annual registration receipt, certifying that the applicant has filed such application and has paid the registration fee mentioned for the year in question; provided, that the filing of such application, the payment of the registration fee, and the issuance of such receipt shall not entitle the holder thereof to lawfully practice medicine within the State of Texas, unless he has in fact been previously licensed as such practitioner by the Texas State Board of Medical Examiners, as prescribed by law, and has recorded his license certificate entitling him to practice, as issued by said Board, in the District Clerk's Office of the several counties in which the same may be required by law to be recorded, and unless his license to practice medicine is in full force and effect; and provided further that, in any prosecution for the unlawful practice of medicine as denounced in Chapter 6, Title 12, of the Penal Code of Texas, such receipt showing payment of the annual registration fee required by this Act shall not be treated as evidence that the holder thereof is lawfully entitled to practice medicine. [Acts 1931, 42nd Leg., p. 55, ch. 37, § 1.]

All annual registration fees collected by the Texas State Board of Medical Examiners under this Act shall be placed in the State Treasury, to the credit of a special fund to be known as the "Medical Registration Fund," and all of the current revenues to be derived and placed to the credit of said fund during the two years ending August 31, 1933, are hereby appropriated and shall be used by the Texas State Board of Medical Examiners, and under its direction, in the enforcement of the laws of this State prohibiting the unlawful practice of medicine, and in the dissemination of information to prevent the violation of such laws and to aid in the prosecution of those who violate such laws. The Texas State Board of Medical Examiners shall be authorized to employ and to compensate from such special fund employees and such other persons as may be found necessary to assist the local prosecuting officers of any county in the enforcement of all the laws of the State prohibiting the unlawful practice of medicine, and to carry out the other purposes for which said fund is hereby appropriated. Provided that all such prosecutions shall be subject to the direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

In performing the duties devolved by this Act upon the Board of Medical Examiners, said Board shall act through the Secretary-Treasurer of the Board of Medical Examiners. The Secretary-Treasurer shall receive a salary to be fixed by the Legislature in its General Appropriation Bill for the performance of such duties under this Act, and shall make and file a surety bond in favor of the Texas State Board of Medical Examiners in the sum of not less than Ten Thousand ($10,000.00) Dollars, conditioned that he will faithfully discharge the duties of his [1] office. Such salary shall be paid out of said "Medical Registration Fund" and shall not be, in any way, a charge upon the general revenue of the State. The Texas State Board of Medical Examiners shall employ and provide such clerks and employees as may be necessary to assist the Secretary-Treasurer in performing his duties and in carrying out the purposes of this Act; provided, that the compensation of all persons authorized to be employed under this chapter, shall be paid only out of said "Medical Registration Fund." All disbursements from said fund shall be made only upon written approval of the President and Secretary-Treasurer of the State Board of Medical Examiners and upon warrants drawn by the Comptroller to be paid out of said fund. [Acts 1931, 42nd Leg., p. 55, ch. 37, § 3.]

[1] So in enrolled bill. Session Law reads "this".

Section 2 of this Act, being a penal provision, is published as Penal Code Art. 743. Section 4 provides that the act shall not be construed as repealing any part of Rev. Civ.St.1925. Title 71, Ch. 6 or Pen.Code 1925, Title 12, Ch. 6.

Art. 4499. [5737] Medical Register.—Every district clerk shall keep as a permanent record of his

office a book of suitable size, to be known as the "Medical Register," and shall record therein all licenses to practice medicine issued by the State Board of Medical Examiners which shall be presented to him for registration and all the matters and things required by the preceding article to be recorded, and shall, as required by law, make therein notation of the cancellation of licenses so registered, and of the death and removal from the county of physicians whose licenses are so registered. When any district court shall cancel the license of any person to practice medicine, the clerk of said court shall, if said license is registered in his county, note the cancellation of said license upon the medical register of said county, and shall forthwith certify to the Secretary of the Board of Medical Examiners, under the seal of said court, the fact that said license was so canceled by said court, giving the exact date of said cancellation, and shall tax the fee for making said certificate as part of the costs of the suit to cancel said license. Each county health officer shall keep informed of the death and removal of all registered physicians residing in the county where he resides, and upon the death or removal of any such physician from said county shall certify such death or removal, giving the name of the physician who has died, or so removed, the date, or approximate date of such death or removal, and shall date and sign such certificate and deliver the same either in person or by registered mail, to the district clerk of said county, and said clerk shall forthwith make notation of said death or removal in said Medical Register, and notify the Secretary of the State Board of Medical Examiners of the said death or removal. The notation of such cancellation, if made by a district court, shall consist of writing in large, legible letters across the face of the record of the license cancelled the words "Cancelled by the district court of ———— County, on the ——— day of ————, 19—," (filling the blanks so as to correctly indicate the name of the county and the date of the cancellation) and such notation shall be dated and signed officially by the clerk. The notation of the death or removal of a registered physician by the district clerk shall consist of noting the fact of such death or removal upon the record of the license of the physician who has died or removed from the county in large, legible letters; the date of said notation, and the official signature of the clerk. The district clerk shall collect from each physician who presents a license for registration the sum of one dollar at the time such license is presented to him for registration, and that sum shall be full compensation for recording said license and making all notations in the medical register required by law to be so made in reference to the physician named in said license. All matters pertaining to each physician shall be kept and written upon one page of said medical register, and no other entry or registration shall ever be made on said page. It shall be unlawful for any district clerk to make a certified copy of any page or entry in said medical register, or any part thereof, which is not an exact copy of the entire page, or which does not include all notations regarding the cancellation of license, death, or removal of the physician in question, appearing in the office of said clerk. A copy from the medical register pertaining to any person whose license is registered therein certified to by the district clerk having the custody of said medical register under the seal of said court shall be competent evidence in all trial courts. The certificate of a district clerk under the seal of his office certifying that the person named in said certificate is not registered as a physician in the office of said district clerk shall also be prima facie evidence in all trial courts. [Acts 1907, p. 224; Acts 1923, p. 285.]

Art. 4500. [5738] Reciprocal arrangements. —The State Board of Medical Examiners may, in its discretion, upon payment by an applicant of a fee of Fifty Dollars ($50), grant license to practice medicine to any reputable physician who is a citizen of the United States, and a graduate of a reputable medical college, or who has qualified on examination for a certificate of medical qualification for a commission in the Medical Corps of the United States Army or Navy, and to licentiates of other States or Territories having requirements for medical registration and practice equal to those established by the laws of this State. Applications for license under the provisions of this Article shall be in writing, and upon a form to be prescribed by the State Board of Medical Examiners. Said application shall be accompanied by a diploma, or a photograph thereof, awarded to the applicant by a reputable medical college, and, in the case of an Army or Naval officer, a certified transcript or a certificate, or license, or commission issued to the applicant by the Medical Corps of the United States Army or Navy, or by a license, or a certified copy of license to practice medicine, lawfully issued to the applicant, upon examination, by some other State or Territory of the United States. Said application shall also be accompanied by an affidavit made by an executive officer of the Medical Corps of the United States Army or Navy, the President or Secretary of the Board of Medical Examiners which issued the said license, or by a legally constituted medical registration officer of the State or Territory by which the certificate or license was granted, and on which the application for medical registration in Texas is based, reciting that the accompanying certificate or license has not been canceled or revoked, except by honorable discharge from the Medical Corps of the United States Army or Navy, and that the statement of the qualifications made in the application for medical license in Texas is true and correct. Applicants for license under the provisions of this Article shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of said application, stating that the license, certificate, or authority under which the applicant practiced medicine in the State or Territory from which the applicant removed, was at the time of such removal in full force, and not suspended or canceled. Said application shall also state that the applicant is the identical person to whom the said certificate, license, or commission, and the said medical diploma were issued, and that no proceeding has been instituted against the applicant for the cancellation of said certificate, license, or authority to practice medicine in the State or Territory by which the same was issued; and that no prosecution is pending against the applicant in any State or Federal court for any offense which under the law of Texas is a felony. A reputable physician within the meaning of this Article shall be one who would be eligible for examination by the Board of Medical Examiners under the provisions of Article 4505 of the Revised Civil Statutes of Texas of 1925, as amended by this Act. A reputable medical college within the meaning of this Article shall be such as is defined in Article 4501 of the Revised Civil Statutes of Texas of 1925, as amended by this Act. It is provided, however, that the Board may, under the provisions of this Article, in its discretion, grant license to any reputable physician of another State, Territory, or District, who graduated prior to the year 1907 from a medical college which at the time of his graduation required only three (3) courses of instruction of not less than six (6) months each for attainment of its diploma, or the degree of Doctor of Medicine, and which at the time of his graduation was generally recognized by the medical examining boards of the States of the Union as maintaining entrance requirements and courses of instruction equal to those maintained by the then better class of medical schools of the United States; and provided further that the said applicant for license to practice medicine in this State shall appear before the Board in executive session and pass a

satisfactory oral examination in practical subjects as may be prescribed by the Board. The said Board shall not, under the provision of this Article, grant a license to practice medicine in this State to an applicant who does not hold a license issued by another State, Territory, or District of the United States, giving to him the same right to practice medicine in the State, Territory, or District issuing said license which a license to practice medicine in this State gives to a physician of this State in Texas. [Acts 1907, p. 224; Acts 1915, p. 112; Acts 1923, p. 286; Acts 1939, 46th Leg., p. 352, § 1.]

Section 2 of the Act of 1939 added art. 4500a. Section 3 amended art. 4501. Sections 4–8 amended articles 4503–4507 and sections 9 and 10 amended Pen.Code, arts. 740, 742.

Section 11 of the Act of 1939 provided that a holding of partial invalidity should not affect the remaining portions or any other penalty, right or remedy created. Section 12 repealed all conflicting laws.

Art. 4500a. Foreign nations, reciprocal arrangements with.—The Board of Medical Examiners shall not, under the provisions of Article 4500, grant a license to practice medicine to any applicant whose authority to practice medicine in any other nation or country was granted by a nation or country, in which a similar law in reference to granting license to practice medicine under a reciprocal arrangement does not exist in favor of physicians of this State. [Added Acts 1939, 46th Leg., p. 352, § 2.]

Art. 4501. [5739] Examination.—All applicants for license to practice medicine in this State not otherwise licensed under the provisions of law must successfully pass an examination by the Board of Medical Examiners. The Board is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. Applicants to be eligible for examination must be citizens of the United States and must present satisfactory evidence to the Board that they are more than twenty-one (21) years of age, of good moral character, who have completed sixty (60) semester hours of college courses, other than in a medical school, which courses would be acceptable, at time of completing same, to the University of Texas for credit on a Bachelor of Arts Degree or a Bachelor of Science Degree, and who are graduates of bona fide reputable medical schools; a reputable medical school shall maintain a course of instruction of not less than four (4) terms of eight (8) months each; shall give a course of instruction in the fundamental subjects named in Article 4503 of the Revised Civil Statutes of Texas of 1925, as amended by this Act; and shall have the necessary teaching force, and possess and utilize laboratories, equipment, and facilities for proper instruction in all of said subjects. Applications for examination must be made in writing, verified by affidavit, and filed with the Secretary of the Board, on forms prescribed by the Board, accompanied by a fee of Twenty-five Dollars ($25). All applicants shall be given due notice of the date and place of such examination. Provided further that all students regularly enrolled in medical schools whose graduates are now permitted to take the medical examination now prescribed by law in this State shall upon completion of their medical college courses be permitted to take the examination prescribed herein.

If any applicant, because of failure to pass the required examination, shall be refused a license, he or she, at such time as the Board of Medical Examiners may fix, shall be permitted to take a subsequent examination, upon such subjects required in the original examination as the Board may prescribe, upon the payment of such part of Twenty-five Dollars ($25) as the Board may determine and state. In the event satisfactory grades shall be made in the subjects prescribed and taken on such reexamination, the Board may grant to the applicant a license to practice medicine. The Board shall determine the credit to be given examinees on the answers turned in on the subjects of complete and partial examination, and its decision thereupon shall be final. [Acts 1907, p. 224; Acts 1915, p. 112; Acts 1923, p. 287; Acts 1939, 46th Leg., p. 352, § 3.]

Art. 4502. [5740] Disposition of fees.—The fund realized from the aforesaid fees shall be applied first to the payment of necessary expenses of the board of examiners; any remaining funds shall be applied by the order of the board to compensating members of the board in proportion to their labors. [Acts 1907, p. 224.]

Art. 4503. Details of examinations.—All examinations for license to practice medicine shall be conducted in writing in the English language, and in such manner as to be entirely fair and impartial to all individuals and to every school or system of medicine. All applicants shall be known to the examiners only by numbers, without names, or other method of identification on examination papers by which members of the Board may be able to identify such applicants or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on anatomy, physiology, chemistry, histology, pathology, bacteriology, diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence. Upon satisfactory examination conducted as aforesaid under the rules of the Board, applicants shall be granted license to practice medicine. All questions and answers, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board and signed by all members of the Board, or a quorum thereof. The Board may in its discretion give examination for license in two (2) parts. The first part shall include such of the required scientific branches of medicine above-named as may be prescribed by the Board. The second, or final, part of the examination shall not be given until the applicant has graduated and has received a diploma from a reputable medical college, as the term, "reputable medical college," is defined in Article 4501 of the Revised Civil Statutes of Texas of 1925, as amended by this Act. The Board may in its discretion admit to partial examination applicants who have successfully completed the work of the first two (2) years of the college course required of licentiates. The application for partial examination must be in writing, accompanied by an affidavit made by the dean, or registrar, of a reputable medical college within the meaning of the law, showing that the applicant has successfully completed the work of the first two (2) years of said course, and by a fee of Fifteen Dollars ($15). The Board may prescribe all other prerequisites of such applications. No license shall be granted to any applicant who has successfully passed such partial examination until all legal requirements for granting license have been complied with. All partial examinations must be conducted in the same manner and under the same rules prescribed for complete, or full, examination. The fee for second, or final, examination shall be Twenty-five Dollars ($25). [Acts 1907, p. 224; Acts 1923, p. 288; Acts 1939, 46th Leg., p. 352, § 4.]

For sections 2, 3, 5–12 of the Act of 1939, see note under article 4500, ante.

Art. 4504. [5742] Construction of this law.—Nothing in this Chapter shall be so construed as to discriminate against any particular school or system of medical practice, nor to affect or limit in any way the application or use of the principles, tenets, or teachings of any church in the ministration to the sick or suffering by prayer, without the use of any

drug or material remedy, provided sanitary and quarantine laws and regulations are complied with; and provided, further, that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets, or teachings of the church of which they are bona fide members. The provisions of this Chapter do not apply to dentists, duly qualified and registered under the laws of this State, who confine their practice strictly to dentistry; nor to duly licensed optometrists, who confine their practice strictly to optometry as defined by Statute; nor to nurses who practice nursing only; nor to duly licensed chiropodists, who confine their practice strictly to chiropody as defined by Statute; nor to masseurs in their particular sphere of labor; nor to commissioned or contract surgeons of the United States Army, Navy, or Public Health and Marine Hospital Service, in the performance of their duties, and not engaged in private practice; nor to legally qualified physicians of other States called in consultation, but who have no office in Texas, and appoint no place in this State for seeing, examining, or treating patients. This law shall be so construed as to apply to persons other than registered pharmacists of this State not pretending to be physicians who offer for sale on the streets or other public places contraceptives, prophylactics or remedies which they recommend for the cure of disease. [Acts 1907, p. 224; Acts 1923, p. 289; Acts 1939, 46th Leg., p. 352, § 5.]

For sections 2–4, 6–12 of the Act of 1939, see note under article 4500, ante.

Art. 4505. [5743] May refuse to admit certain persons.—The State Board of Medical Examiners may refuse to admit persons to its examinations, and to issue license to practice medicine to any person, for any of the following reasons:

(1) The presentation to the Board of any license, certificate, or diploma, which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

(2) Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or procuring or aiding or abetting the procuring of a criminal abortion.

(3) Habits of intemperance, or drug addiction, calculated, in the opinion of the Board, to endanger the lives of patients.

(4) Grossly unprofessional or dishonorable conduct, or [1] a character which in the opinion of the Board is likely to deceive or defraud the public.

(5) The violation, or attempted violation, direct or indirect, of any of the provisions of this Act, either as a principal, accessory, or accomplice.

(6) The use of any advertising statement of a character tending to mislead or deceive the public.

(7) Advertising professional superiority, or the performance of professional service in a superior manner.

(8) The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use, any medical degree, license, certificate, diploma, or transcript of license, certificate, or diploma, in or incident to an application to the Board of Medical Examiners for license to practice medicine.

(9) Altering, with fraudulent intent, any medical license, certificate, diploma, or transcript of medical license, certificate, or diploma.

(10) The use of any medical license, certificate, diploma, or transcript of any such medical license, certificate, or diploma, which had been fraudulently purchased, issued, counterfeited, or materially altered.

(11) The impersonation of, or acting as proxy for, another in any examination required by this Act for a medical license.

(12) The impersonation of a licensed practitioner, or permitting, or allowing, another to use his license, or certificate to practice medicine in this State, for the purpose of treating, or offering to treat, sick, injured, or afflicted human beings.

(13) Employing, directly or indirectly, any person whose license to practice medicine has been suspended, or association in the practice of medicine with any person or persons whose license to practice medicine has been suspended, or any person who has been convicted of the unlawful practice of medicine in Texas or elsewhere.

Any applicant who may be refused admittance to examination shall have his right to have such issue tried in the District Court of the county in which he resides or in which any Board member resides. All orders of the Board shall be prima facie valid. [Acts 1907, p. 224, § 11; Acts 1939, 46th Leg., p. 352, § 6.]

[1] Probably should read "of."

For sections 2–5, 7–12 of the Act of 1939, see note under article 4500, ante.

Art. 4506. [5744] Revocation, cancellation or suspension of license.—The District Courts of this State shall have the right to revoke, cancel, or suspend the license of any practitioner of medicine upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the State Board of Medical Examiners shall be authorized to refuse to admit persons to its examination, as provided in Article 4505 of the Revised Civil Statutes of Texas of 1925, as amended by this Act, and it shall be the duty of the several District and County Attorneys of this State to file and prosecute appropriate judicial proceedings for such revocation, cancellation, or suspension, in the name of the State, on request of the Board of Medical Examiners. [Acts 1907, p. 224, § 12; Acts 1939, 46th Leg., p. 352, § 7.]

For sections 2–6, 8–13 of the Act of 1939, see note under article 4500, ante.

Art. 4507. Proceedings for revocation, cancellation, or suspension of license.—All judicial proceedings which shall be instituted by any District or County Attorney under the provisions of the last preceding Article shall be in writing, shall state the grounds thereof, and shall be signed officially by the prosecuting officer instituting the same. Citation thereon shall be issued in the name of the State of Texas, and in the manner and form as in other cases, and the same shall be served upon the defendant at least ten (10) days before the trial day set therein. Upon the return of said citation, executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial, and conducted in the name of the State of Texas against the defendant. The State shall be represented by the County or District Attorney. A jury of twelve (12) men shall be empaneled, unless waived by the defendant, and the cause shall be tried in like manner as other cases. If the said practitioner of medicine shall be found guilty, or shall fail to appear and deny the charge, after being cited as aforesaid, the said Court may, by proper order entered on the minutes, suspend his license for a time, or revoke and cancel it entirely; and may also give proper judgment for costs. [Acts 1919, p. 231; Acts 1921, p. 145; Acts 1923, p. 290; Acts 1939, 46th Leg., p. 352, § 8.]

For sections 2–7, 9–12 of the Act of 1939, see note under article 4500, ante.

Art. 4508. Duty of Attorney General.—Upon the application of the Board of Medical Examiners, or a majority thereof, to the Attorney General, setting forth that the county or district attorney of a county or district has failed to prosecute or proceed against any person violating the terms of this chapter, setting forth that application and request has been made of such county or district attorney and that such request or application has been neglected or refused, the Attorney General shall proceed against such a per-

son in the county of residence of the person complained against, either by civil or criminal proceedings. [Acts 1923, p. 291.]

Art. 4509. Injunction.—The actual practice of medicine in violation of the provisions of this title, or in violation of any provision of Title 12, chapter 6, of the Penal Code, shall be enjoined at the suit of the State, but such suit for injunction shall not be entertained in advance of the previous final conviction of the party sought to be enjoined of the violation of any provision of said chapter of the Penal Code. In such suits for injunction, it shall not be necessary to show that any person is personally injured by the acts complained of. Any person who may be or about to be so unlawfully practicing medicine in this State, may be made a party defendant in said suit. The Attorney General, the district attorney of the district in which the defendant resides, the county attorney of the county in which the defendant resides, or any of them, shall have the authority, and it shall be their duty, and the duty of each of them, to represent the State in such suits. No injunction, either temporary or permanent, shall be granted by any court, until after a hearing on complaint is had by a court of competent jurisdiction on its merits. In such suit no injunction or restraining order shall be issued until final trial and final judgment on the merits of the suit. If on the final trial it be shown that the defendant in such suit has been unlawfully practicing medicine, or is about to practice medicine unlawfully, the court shall by judgment perpetually enjoin the defendant from practicing or continuing the practice of medicine in violation of law as complained of in said suit. Disobedience of said injunction shall subject the defendant to the penalties provided by law for the violation of an injunction. The procedure in such cases shall be the same as in any other injunction suit as nearly as may be. The remedy by injunction given hereby shall be in addition to criminal prosecution. Such causes shall be advanced for trial on the docket of the trial court, and shall be advanced and tried in the appellate courts in the same manner and under the same laws and regulations as other suits for injunction. [Acts 1923, p. 291.]

Art. 4510. [5745] Who regarded as practicing medicine.—Any person shall be regarded as practicing medicine within the meaning of this law:

1. Who shall publicly profess to be a physician or surgeon and shall treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof;

2. Or who shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method, or to effect cures thereof and charge therefor directly or indirectly, money or other compensation. [Acts 1907, p. 224.]

Art. 4511. [5746] Definitions.—The terms, "physician," and "surgeon," as used in this law, shall be construed as synonymous, and the terms, "practitioners," "practitioners of medicine," and, "practice of medicine," as used in this law, shall be construed to refer to and include physicians and surgeons. [Acts 1907, p. 224.]

Art. 4512. [5747] Malpractice cause for revoking license.—Any physician or person who is engaged in the practice of medicine, surgery, osteopathy, or who belongs to any other school of medicine, whether they use the medicines in their practice or not, who shall be guilty of any fraudulent or dishonorable conduct, or of any malpractice, or shall, by any untrue or fraudulent statement or representations made as such physician or person to a patient or other person being treated by such physician or person, procure and withhold, or cause to be withheld, from another any money, negotiable note, or thing of value, may be suspended in his right to practice medicine or his license may be revoked by the district court of the county in which such physician or person resides, or of the county where such conduct or malpractice or false representations occurred, in the manner and form provided for revoking or suspending license of attorneys at law in this State. [Acts 1905, p. 370.]

CHAPTER 6A.—CHIROPRACTORS

Arts. 4512a—1 to 4512a—18. [Unconstitutional.]

These articles were Acts of 1943, 48th Leg., p. 627, ch. 359, regulating the practice of chiropractic were unconstitutional as being violative of Const. art. 16, § 31, as according a preference to chiropractic system of healing art by failure to require same educational qualifications of chiropractors as are required of medical practitioners by Medical Practice Act, or to require chiropractors to pass satisfactory examinations on same subjects as all others similarly situated, and prohibiting licensed medical practitioners from employing chiropractic system of treating diseases and disorders without passing examination required by Chiropractic Act. See Ex parte Halsted, 147 Tex.Cr.R. 453, 182 S.W.2d 479

CHAPTER 7.—NURSES

Art.
4513. Board of examiners.
4514. Organization of board.
4515. Salaries.
4516. Educational secretary.
4517. Bond and salary of secretary.
4518. Qualifications of Nurses' Training Schools and applicants.
4518a. Certification of graduates, examination by State Board of Nurse Examiners.
4519. Examination and fee.
4520. Exempt from examination.
4521. Certificate from another state.
4522. Use of title "R.N."; registration bureaus.
4523. Temporary permit.
4524. Recording certificate.
4525. Revoking certificate.
4526. Re-registration.
4527. Fees.
4528. Exceptions.
4528a. Employment for public schools and compensation.

Article 4513. Board of Examiners.—The Governor shall biennially appoint a Board of Nurse Examiners to consist of six members, and the term of office of those so appointed shall be two for six years; two for four years; and two for two years. Each member of said Board shall be a registered, graduate nurse at least twenty-five years of age, of good moral character and a graduate of a School of Nursing connected with a general hospital or sanitarium of good standing presided over by a graduate nurse, where a two or more years' training with a systematic course of instruction is given, and shall have at least three years' teaching experience in educational work among nurses. The members of the Board and the Educational Secretary shall each make and subscribe to the official oath, and the same shall, within thirty days after their appointment, be filed with the Secretary of State. [Acts 1923, p. 413; Acts 1929, 41st Leg., p. 261, ch. 115, § 1; Acts 1931, 42nd Leg., p. 35, ch. 28, § 1.]

Section 2 of Acts 1931, 42nd Leg., p. 35, ch. 28, repeals all conflicting laws and parts of laws.

Art. 4514. Organization of board.—The members of the board shall elect from their number a president, and a secretary who shall also act as treasurer. Special meetings of said board shall be called by the president and secretary, acting jointly, upon the written request of any two members. The board may make such by-laws and rules as may be necessary to govern its proceedings and to carry into effect the purpose of this law. The secretary shall be required to keep a record of each meeting of said board, in-

cluding a register of the names of all nurses registered under this law, which shall be at all times open to public inspection. Said board shall assist the proper legal authorities in the prosecution of all persons violating any provision of this law. [Acts 1923, p. 413; Acts 1929, 41st Leg., p. 261, ch. 115, § 2.]

Art. 4515. Salaries.—The members of said board shall receive such per diem as may be fixed by the board, not to exceed ten dollars per day for each day they are actually engaged in the work of the board, and the board may defray all necessary traveling and other expenses incurred by its members in attending meetings. [Acts 1923, p. 413.]

Art. 4516. Educational secretary.—The board shall appoint an educational secretary, who shall be at least thirty years old, and who shall have had at least five years teaching experience in educational work among nurses. The duties of said secretary shall be to visit all schools of nursing in the State at least once a year to confer with superintendents of hospitals and superintendents of nursing schools as to the system of instruction given and as to accommodations and rules governing said school in reference to its students. The board shall prescribe such methods and rules of visiting, and such methods of reporting by said secretary as may in its judgment be deemed proper. [Acts 1923, p. 413; Acts 1929, 41st Leg., p. 261, ch. 115, § 3.]

Art. 4517. Bond and salary of secretary.—The secretary-treasurer of the board shall, within thirty days of her election by the board, execute a bond in the sum of one thousand dollars payable to the Governor, conditioned that she shall faithfully perform the duties of her office and account for all funds coming into her hands as secretary-treasurer; said bond to be signed by two or more good and sufficient sureties or by a surety company authorized to do business in this State, to be approved by the president of said board. The salary of the secretary shall be fixed and paid by the board and shall be exclusive of such traveling and other expenses as may be incurred with the approval of the board in the discharge of the official duties of said secretary. [Acts 1923, p. 414.]

Art. 4518. Qualifications of Nurses' Training Schools and Applicants.—All special hospitals approved by the Board of Nurse Examiners, and general hospitals, which are equipped with not less than twenty-five (25) beds, and which have a daily annual average of not less than fifteen (15) patients, and which teach the course of study prescribed by the Board of Nurse Examiners of the State of Texas, are hereby constituted duly qualified and accredited nursing schools. A general hospital, as the term is here used, is a public or private institution where men, women and children are treated for all kinds of diseases, bodily injury, or physical deformity by means of both medical and surgical treatment, and which maintains an organized staff of physicians and surgeons licensed to practice medicine in the State of Texas. [Acts 1923, p. 414; Acts 1935, 44th Leg., p. 157, ch. 67, § 1.]

Art. 4518a. Certification of graduates; examination by State Board of Nurse Examiners.—No person shall be certified as a graduate of any such nursing school unless such person has had three (3) full years of work and study in such school under a registered nurse, two (2) years of which must be continuous in the school of nursing from which she has graduated, or two (2) continuous years in a special hospital and one (1) continuous full year in a general hospital. And such graduate upon presenting such certificate to the State Board of Nurse Examiners shall upon the payment of required fees be entitled to take the examinations prescribed by the State Board; and upon making the passing grades prescribed by the Board, shall be entitled to receive from said Board a certificate certifying that such person is a graduate nurse and entitled to practice as a registered nurse in the State of Texas. [Acts 1935, 44th Leg., p. 157, ch. 67, § 2.]

Section 3 of this Act provides that if any provision of the act is declared invalid, it shall not invalidate the other provisions.

Art. 4519. Examination and fee.—Upon filing application for examination each applicant shall pay an examination fee of fifteen dollars which shall in no case be returned to applicant. If the applicant passes the examination, then no further fee shall be required for registration. Any applicant for registration who fails to successfully pass the examination herein provided for shall have the right after six months and within one year to stand a second examination on those subjects wherein he or she has failed to make a grade of seventy per cent, without payment of any additional fees. If more than three examinations are necessary, an additional fee of two dollars shall be charged for each. A grade of not less than seventy on any one subject shall be required to pass the examination. The examination shall be of such character as to determine the fitness of the applicant to practice professional nursing. If the result of the examination be satisfactory to the board, a certificate shall be issued to the applicant, signed by the president and secretary and attested by the seal of said board, which certificate shall qualify the person receiving the same to practice professional nursing in this State. [Acts 1923, p. 414.]

Art. 4520. Exempt from examination.—No nurse who is engaged in professional nursing at the time of the passage of this law and who has qualified under any previous law of this State and received a certificate from the board under such provisions of law regulating professional nursing, shall be required to stand any further examination under this law, but shall register with the county clerk in the county where she then resides. [Id.]

Art. 4521. Certificate from another State.—Any applicant of good character who holds a registration certificate as a professional nurse from another State whose requirements are equal to those of Texas, and whose individual qualifications shall be equivalent to those required in this law, may be granted a license to practice nursing in this State without examination, provided a fee of fifteen dollars is paid to the board by such applicant. [Id.]

Art. 4522. Use of title "R.N."; registration bureaus.—A nurse who has received his or her license or permit according to the provisions of this law, shall be styled a "Registered Nurse," and may use the title or abbreviation "R. N."

Such registered nurses of any County in this State may maintain one or more Registration Bureaus, not for profit, to be conducted by recognized professional Registered Nurses' organizations for the enrollment of its professional members only, for the purpose of providing professional service to the public. When so operated, such Registration Bureaus shall not be liable for the payment of any occupation tax or license fee unless such Registration Bureaus are named specifically in any law imposing such occupation tax or license fee. [Acts 1923, p. 414; Acts 1941, 47th Leg., p. 194, ch. 140, § 1.]

Section 2 of the amendatory Act of 1941 repealed conflicting laws. Section 3 declared an emergency.

Art. 4523. Temporary permit.—Any graduate registered nurse from an accredited school of nursing, who is actually engaged in the pursuit of her profession, coming to this State to remain three months or less, shall be permitted to practice under a permit issued by the board of nurse examiners. upon the payment of a fee of two dollars.

(a) Any graduate nurse from an accredited school of nursing coming to this State, before registering in the State in which she graduated, may practice

under a permit until the time of the next State Board Examination. A fee of Fifteen Dollars shall be sent with the application for such permit, which shall constitute her registration fee.

(b) All nurses graduating from an accredited school of nursing between the time of regular examinations, may practice under a permit until the time of the next regular examination. A fee of Fifteen Dollars shall be sent with the application for such permit, which shall constitute her registration fee. [Acts 1923, p. 414; Acts 1929, 41st Leg., p. 261, ch. 115, § 4.]

Art. 4524. Recording certificate.—Every person receiving a certificate of registration as provided in this law shall within thirty days thereafter file the same for record with the county clerk of the county where such person resides, together with a certificate of his or her identity as the person to whom the same was issued, and his or her place of residence at the time of the examination and registration. The county clerk shall record such certificate together with the certificate of identity, in a book kept for that purpose, for which service he shall be paid by the holder of such certificate a fee of fifty cents. The county clerk shall furnish annually on the first day of January to the Board of Nurse Examiners, upon blanks supplied by said Board, a duplicate list of all certificates so recorded by him during the preceding year, including therein the date of recording and the name and residence of the person filing the same, for which the board shall pay him a fee of two and one-half dollars. [Acts 1923, p. 414.]

Art. 4525. Revoking certificate.—The Board of Nurse Examiners may by unanimous vote file a complaint against any registered nurse in the county court where such certificate is recorded, charging gross incompetency, malpractice, dishonesty, intemperance or any other act derogatory to the morals and standing of the profession of nursing. Thereupon the person against whom such complaint is filed shall be cited in writing to appear before said court on a date named in such citation not less than ninety days from the issuance of said notice, to which citation there shall be attached a certified copy of the complaint so filed. If such court shall decree a revocation of the certificate of such nurse, he or she shall have the right to appeal to the district court of such county. Such certificate shall upon such appeal remain in full force and effect until the same shall be disposed of by such district court, the decision of which shall be final. Upon the revocation of any certificate as herein provided, the secretary of said board shall strike the name of the holder of such certificate from the roll of registered nurses kept by such board. [Id.]

Art. 4526. Re-registration.—On or before the first day of March of each year, the secretary of the board shall mail to each nurse registered in this State a blank application for re-registration, addressing the same to the post-office address as shown by the records of said board. Upon receipt of such application blank, which shall contain space for such information as the board shall deem necessary, he or she shall sign and swear to the accuracy of the same before some officer authorized to administer oaths, after which he or she shall forward such sworn statement and application for renewal of his or her registration certificate to the secretary of the board, together with a fee of fifty cents. Upon receipt of such application and fee and having verified the accuracy of the same by comparison with the applicant's initial registration statements, the secretary of the board shall issue and mail to the applicant a certificate of re-registration which shall render the holder thereof a legally qualified registered nurse for the ensuing year. In case of refusal, notice of such fact shall be given. Certificates of re-registration shall bear the date of April of the year of issue, and shall expire on the last day of March in the year following. Should any registered nurse continue to practice nursing and caring for the sick beyond the time for which he or she is registered or re-registered, he or she shall be deemed to be an illegal practitioner and his or her license may be suspended or revoked by the board. All nurses already registered in this State at the time of the passage of this law shall make application to the secretary of the board for a re-registration blank, upon receipt of which he or she shall, in the manner hereinbefore prescribed, make application for re-registration, failing which the delinquent may be dealt with as provided in regard to the suspension or revocation of license. [Id.]

Art. 4527. Fees.—All fees received by said Board under this law shall be paid to the treasurer thereof; who shall pay the same out only on vouchers issued and signed by the president and secretary of said board. All money so received and placed in said fund may be used by said board in defraying its expenses in carrying out the provisions of this law. No expenses incurred by said board shall be paid by the State. [Id.]

Art. 4528. Exceptions.—This law shall not be construed to apply to the gratuitous nursing of the sick by friends, nor any person nursing the sick for hire who does not in any way assume or profess to practice as a graduate certified registered nurse. [Id.]

Art. 4528a. Employment for public schools and compensation.—Sec. 1. That the Commissioners Court of the various Counties in the State of Texas shall have the authority, when in their judgment it shall be deemed to be necessary or advisable, to employ one or more Graduate Registered nurses whose duty it shall be to visit the public schools in the county in which they are employed, and to investigate the health conditions and sanitary surroundings of such schools, and the personal, physical and health condition of pupils therein, and to co-operate with the duly organized Board of Health and local health authorities in general public health nursing and perform such other and further duties as may be required of them by the Commissioners Court.

Sec. 2. That said nurses when so appointed shall be employed on a monthly salary to be fixed by the Commissioners Court and shall at all times be subject to removal by the Commissioners Court without prior notice.

Sec. 3. The Commissioners Court shall be empowered to appropriate from any funds of the respective Counties the necessary money to cover the salary of such nurses, not to exceed the sum of $1,800.00 to each nurse, and in addition thereto may appropriate additional funds to cover all expenses that may be proper and necessary in the visiting of such schools, and General Public Health Nursing including transportation and other incidental expenses. [Acts 1927, 40th Leg., p. 243, ch. 169.]

CHAPTER 8.—PHARMACY

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Arts. 4529–4542. [Repealed by Acts 1929, 41st Leg., p. 242, ch. 107, § 18.]

Art. 4542a. State Board of Pharmacy to regulate practice of Pharmacy.

Membership; qualifications; term; vacancies; oath

Sec. 1. The State Board of Pharmacy shall be composed of six (6) members to be appointed by the Governor, each of whom shall have been a registered pharmacist in this state under the provisions of law for a period of five (5) years next preceding the appointment, and who continues to be actively engaged in the practice of pharmacy while serving the term for which he is appointed; and shall at the time of such appointment be in good standing and engaged in retail pharmacy and who is not a member of the faculty of any college or school of pharmacy, or shall have a financial interest in such school or college, and the majority of the Board shall be graduates of a recognized college or school of pharmacy. The term of office of each member of said Board shall be six (6) years. In case of death, resignation or removal of any member of the Board, the vacancy of the unexpired term shall be filled by the Governor in the same manner as other appointments. Each appointee to the State Board of Pharmacy shall within fifteen (15) days from the date of his appointment qualify by taking the Constitutional Oath of office. Provided that the present members of the Board shall serve the term for which they have been appointed. [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 1.]

Order of appointment of members; vacancies

Sec. 2. In making the first appointment the Governor shall appoint two members of said board for two years, two for four years and two for six years, and thereafter the term of each member shall be six years so that the terms of two members shall expire every two years. Vacancies on the board shall be filled by the Governor for the unexpired term only.

Funds received, use of

Sec. 3. The fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the Board, and the remainder is to be applied by order of the Board to compensate members of said Board, said compensation to each member of the Board not to exceed Ten ($10.00) Dollars per day, or Three Hundred ($300.00) Dollars per year, exclusive of necessary expenses in performance of his duties. Provided, however, that the premium on any bond required of the Secretary, or any other employee of the Board, shall be paid out of said fund, as well as the expenses of any employee incurred in the performance of his duties. The State Board of Pharmacy shall defray all expenses under this law from fees provided in this Act, and the State of Texas shall never be liable for the compensation or expenses of any member of the Board, or its officers or employees, or any other expenses thereof. [As amended Acts 1935, 44th Leg., p. 251, ch. 98, § 1; Acts 1943, 48th Leg., p. 710, ch. 395, § 2.]

Officers of board; salary; bond; by-laws and regulations

Sec. 4. Said Board with [1] thirty (30) days after appointment shall meet and organize by electing a president and vice-president and treasurer from its membership, and a secretary who may or may not be a member of the Board, whose salary shall be fixed by the Board not to exceed $300.00 per month. The secretary and Treasurer shall each be required to execute a bond in the sum of $10,000.00 for the faithful performance of his duties, payable to the State of Texas. The Board shall have the power to make by-laws and regulations, not inconsistent with the law, for the proper performance of its duties and the duties of its officers and employés, and shall have the power to employ the necessary employés to carry out the provisions of this Act.

[1] So in enrolled bill. Should probably read "within".

Powers and duties of Board; records

Sec. 5. The Board shall preserve a record of its proceedings in a book kept for that purpose. A record shall be kept showing the name, age and last known mailing address of each applicant for examination, the name and location of the University, School or College of Pharmacy from which he holds credentials, and time devoted to the study and practice of pharmacy, together with such other information as the Board may desire to record. Said record shall also show whether applicants were rejected or licensed, and shall be prima facie evidence of all matters therein contained.

The Board shall have power to appoint committees from its own membership. The duties of such committee shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith as shall be referred to said Committees, and they shall make recommendations to the Board with reference thereto.

The Board, any Committee, or any member thereof, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents; to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall not be bound by strict rules of procedure or by the rules of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it. The Board may be represented by the Attorney General, or by the District Attorney or the County Attorney, and by other counsel when necessary.

The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law.

If a witness refuses to comply with said subpoena issued by said Board, or if a witness in attendance before the Board, or one of its duly appointed Committees, refuses without reasonable cause to be examined or to answer a legal or pertinent question, or to produce books, records or papers, or to furnish other information when ordered to do so by the Board, the Board may apply to the Judge of the District Court of any county, and, upon proof of affidavit of the fact, have a rule or order, returnable in not less than one (1) nor more than five (5) days, direct-

ing such witness to show cause before the court who made the order, or any other District Judge of said county, why he should not be punished for contempt. Upon the return of such order, the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard, and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce such books, records and documents as he was ordered to bring or produce, he shall forthwith punish the offenders as for contempt of court.

Subpoenas shall be served and witnesses' fees and mileage paid, as in civil cases in the District Court in the county to which such witnesses shall be called. Witnesses subpoenaed at the instance of the Board shall be paid their fees and mileage by the Board out of the funds provided for in this Act.

The Board shall adopt an official seal and license of suitable design and shall maintain an office where all of the permanent records shall be kept. [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 3.]

Meetings for examination of applicants; reports to Governor

Sec. 6. The State Board of Pharmacy shall hold regular meetings for the examination of applicants for registration, and for the transaction of such other business as may legally come before it twice a year, and may hold such additional special meetings as may be necessary. The time and place of the regular meetings shall be designated at a regular session of the Board, and the additional meetings to be held at such places and on such dates as may be designated by the President of the Board.

The Board shall make annually to the Governor of the state a regular report of its receipts and disbursements; also the names of all pharmacists duly registered under this Act during the fiscal year for which the report is made, and the names of all pharmacists whose licenses or permits have been cancelled during the fiscal year. [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 4.]

Enforcement of laws

Sec. 7. It shall be the duty of the State Board of Pharmacy to see that all laws which pertain to the practice of pharmacy are enforced, and to co-operate with other State and Federal Agencies regarding any violations of the Narcotic Law. [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 5.]

Distribution of drugs or medicines, except in original packages, unlawful; exceptions

Sec. 8. It shall be unlawful for any person who is not a registered pharmacist under the provisions of this Act to compound, mix, manufacture, combine, prepare, label, sell or distribute at retail or wholesale any drugs or medicines, except in original packages. Provided that all persons now registered as pharmacists in this state shall have all the rights granted to pharmacists under this Act. Provided, however, that nothing in this Act shall apply to or interfere with any licensed practitioner of medicine, dentistry or chiropody, who is duly registered as such by his respective State Board of Examiners of this state, who shall supply his or her patients, as a physician, dentist or chiropodist, and by them employed as such, with such remedies as he or she may desire and who does not keep a pharmacy, open shop or drug store, advertised or otherwise, for the retailing of medicines or poisons; and provided, further, that nothing contained in this Act shall be construed to prevent the personal administration of drugs and medicines carried by any physician, surgeon, dentist, chiropodist or veterinarian licensed by his respective Board of Examiners of this state, in order to supply the immediate needs of his patients; nor to prevent the sale by persons, firms, joint stock companies, partnerships or corporations, other than registered pharmacists, of patent or proprietary medicines, or remedies and medicaments generally in use and which are harmless if used according to instructions as contained upon the printed label; and insecticides and fungicides and chemicals used in the arts, when properly labeled; nor insecticides or fungicides that are mixed or compounded for purely agricultural purposes. [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 6.]

Examinations; application; qualifications; license; persons from other states

Sec. 9. Every person desiring to practice pharmacy in the State of Texas shall be required to pass the examination given by the State Board of Pharmacy. The applicant shall make application by presenting to the Secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that he has attained the age of twenty-one (21) years, is of good moral character, is a citizen of the United States, and has at least graduated from a first grade high school, or has a preliminary education equivalent thereto, permitting matriculation in the University of Texas, and that he has attended and graduated from a reputable university, school or college of pharmacy which meets with the requirements of the Board, and shall have had at least one (1) year of practical experience in a retail pharmacy under the direct supervision of a registered pharmacist. A university, school or college of pharmacy is reputable whose entrance requirements and course of instruction are as high as those adopted by recognized universities, schools or colleges of pharmacy, and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each, and approved by the Board.

The examination shall consist of written, oral and/or practical tests in pharmacy, chemistry, pharmaceutical jurisprudence, posology, toxicology, bacteriology, physiology and materia medica, and in such other subjects as may be regularly taught in all recognized universities, schools and colleges of pharmacy.

Each applicant for license to practice pharmacy in Texas shall be given due notice of the time and place of examination. All examinations shall be conducted in writing and by such other means as the State Board of Pharmacy shall deem adequate to ascertain the qualifications of applications, and in such manner as shall be entirely fair and impartial to all individuals in every recognized school of pharmacy. All applicants examined at the same time shall be given the same regular examinations, and each applicant successfully passing the examination and meeting all requirements of the State Board of Pharmacy shall be registered by the Board as possessing the qualifications required by this law, and shall receive from said Board a license to practice pharmacy in this state. Provided that the State Board of Pharmacy may in its discretion, upon the payment of Twenty-five ($25.00) Dollars, grant a license to practice pharmacy to persons who furnish proof that they have been registered as such in some other state or territory, and that they are of good moral character, provided that such other Board in its examination required the same general degree of fitness required by this state, and grants the same reciprocal privileges to pharmacists of this state. [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 6.]

Unlawful to impersonate applicant or fraudulently acquire license

Sec. 10. It shall be unlawful for any person to impersonate before the Board an applicant applying for registration or license under this Act, or to fraudu-

lently acquire a license in any other manner than provided for in this Act.

Fees; examination of books and records

Sec. 11. The State Board of Pharmacy shall charge a fee of Ten ($10.00) Dollars for examining an applicant for license, which fee must accompany the application. If an applicant who, because of failure to pass the examination, is refused a license, he shall be permitted to take a second examination without additional fee, provided the second examination is taken within a period of one (1) year. The State Auditor of the State of Texas shall, not less than once each year, examine and audit the books and records of the State Board of Pharmacy, and report his findings to the Governor of the State of Texas. [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 9.]

Revocation or suspension of license; appeal

Sec. 12. The State Board of Pharmacy may in its discretion refuse to issue a license to any applicant, and may cancel, revoke or suspend the operation of any license by it granted for any of the following reasons:

(a) That said applicant is guilty of gross immorality;

(b) That said applicant or licensee is guilty of any fraud, deceit or misrepresentation in the practice of pharmacy or in his seeking admission to such practice;

(c) That said applicant or licensee is unfit or incompetent by reason of negligence;

(d) That said applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

(e) That said applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effect, or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

(f) That said licensee, directly or indirectly, aids or abets in the practice of pharmacy any person not duly licensed to practice under this Act;

(g) That said applicant or licensee has been convicted in either a State or Federal Court of the illegal use, sale or transportation of intoxicating liquor or narcotic drugs.

Revocation, cancellation or suspension of a license shall be only after ten (10) days notice and a full hearing. Any person whose license to practice pharmacy has been refused, revoked or suspended by the Board may, within twenty (20) days after the effective date of the order, decision or ruling of the Board, take an appeal to any of the District Courts, where said applicant resided at the time said license was refused, revoked, or suspended. [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 9.]

Display of certificate in place of business

Sec. 13. All certificates and current renewal receipts for pharmacists as herein provided shall be at all times conspicuously displayed in the place of business where registrant is engaged as such. Any certificate to practice pharmacy in Texas which shall be found displayed in any place of business where the person to whom said certificate was originally issued is not regularly employed as a pharmacist, and actually engaged in the service of filling prescriptions, may be cancelled, suspended or revoked by the Board, and any inspector, member or official of the Board is hereby empowered to take charge of such certificate pending final hearing before the Board as to revocation of same. [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 10.]

Annual renewal fee; practicing without renewal certificate; persons in military service

Sec. 14. On or before the first day of each year every licensed pharmacist in this state shall pay to the Secretary of the State Board of Pharmacy an annual renewal fee of Five ($5.00) Dollars for the renewal of his license to practice pharmacy for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed and other information for the records of the Board which said Board may deem necessary. When a pharmacist shall have failed to pay his annual renewal fee before March 1st of each year, it shall be the duty of the Board to notify such pharmacist at his last address known to the Board that such annual renewal fee is due and unpaid, and if payment of the fee is not received by the Secretary of the State Board of Pharmacy within twenty (20) days after notification, said license shall be suspended, and such person in order to be re-instated shall be required to pay one (1) annual renewal fee as a penalty, in addition to the sum of all fees such person may be in arrears. Said renewal fee shall be due on January 1st of each year, and shall become delinquent on March 1st of each year.

Practicing pharmacy without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect, and be subject to all penalties of practicing pharmacy without a license.

Any registered pharmacist whose certificate of registration has expired while he has been engaged in Federal service or in active duty with the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, or the State Militia called into service or training of the United States of America, or in training or education under the supervision of the United States, preliminary to induction into the military service may have his certificate of registration renewed without paying any lapsed renewal fee or registration fee, or without passing any examination, if within one (1) year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the State Board of Pharmacy with affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated. [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 11.]

Stores to display "Pharmacy"

Sec. 15. In all stores in which a registered pharmacist is continuously employed and where the provisions of this Act have been fully complied with, there shall be displayed in a prominent place in or on the front of said store the word "pharmacy". [As amended Acts 1943, 48th Leg., p. 710, ch. 395, § 12.]

Unlawful use of "Pharmacy"

Sec. 16. It shall be unlawful for any person to display in or on any store or place of business the word "pharmacy", either in English or any foreign language, unless there is continuously employed therein a registered pharmacist. [As amended Acts 1935, 44th Leg., p. 251, ch. 98, § 3; Acts 1943, 48th Leg., p. 710, ch. 395, § 13.]

Permits for stores or factories; fee

Sec. 17. Every person, firm, joint stock company, partnership or corporation desiring to operate a retail pharmacy or drug store in this state, as the same is defined herein; and every manufacturer of drugs and medicines, as defined herein, after the passage of this Act, shall procure from the State Board of Pharmacy a permit for each store or factory to be operated by making an application to the Board, upon a form to be furnished by the Board, setting forth under oath ownership and location, and the name and certificate number of the pharmacist registered in this state who is to be continually employed by the drug store or pharmacy, or the pharmaceutical chemist or chemist qualified by scientific training, who is to be

employed by the factory or manufacturer; provided that the Board may in its discretion refuse to issue such permit to such applicant unless furnished with satisfactory proof that such applicant is engaged in the business of conducting a pharmacy, drug store or factory for the purpose of manufacturing drugs.

Provided further, that at any time after the issuance of a permit by the State Board of Pharmacy to such applicant, the Board may revoke, suspend or cancel the permit when satisfactory proof has been presented to the Board that said permit holder is not conducting a bona fide pharmacy or drug store. The permit provided for herein shall be issued annually by the Board upon receipt of proper application accompanied by a fee of Two ($2.00) Dollars. This permit is to be displayed conspicuously at all times in the pharmacy, drug store or factory to which it is issued.

All such permits shall expire on May 31st of each year and must be renewed on or before June 1st of each year.

Every person, firm, joint stock company, partnership, corporation or manufacturer desiring to open a new pharmacy, drug store or factory shall procure the permit above mentioned before beginning its operation as such, and the same discretionary powers may be used by the Board in passing upon such application; not more than one (1) store or factory may be operated under one (1) permit.

In case of a change in personnel of registered pharmacists, the Board shall be notified of such change within ten (10) days; provided the same pharmacist's name shall not appear on more than one permit. [As amended Acts 1935, 44th Leg., p. 251, ch. 98, § 4; Acts 1943, 48th Leg., p. 710, ch. 395, § 14.]

Repeals

Sec. 18. Chapter 8 of Title 71 of the Revised Civil Statutes of 1925 and all other laws and parts of laws in conflict with this Act are hereby repealed, provided that nothing herein contained shall be construed to amend or repeal any acts or sections of Acts which govern the manufacture, sale or distribution of narcotics or spirituous liquors.

"Pharmacy" or "drug store" defined

Sec. 19. A pharmacy or drug store, as used in this Act, is any store or place where drugs or medicines are sold or furnished in any manner at retail to the consumer, wherein a registered pharmacist is continuously employed. [As amended Acts 1935, 44th Leg., p. 251, ch. 98, § 5; Acts 1943, 48th Leg., p. 710, ch. 395, § 15.]

Definitions

Sec. 20. A "pharmacist", as used in this Act, shall mean a person licensed by the State Board of Pharmacy to prepare, compound and dispense physicians' prescriptions, drugs, medicines and poisons.

A "manufacturer", as used in this Act, shall mean one who processes, combines, mixes, compounds, prepares, labels, packages or manufactures medicines or drugs for sale or distribution, either at wholesale or retail.

The term "Board" as used in this Act shall mean the State Board of Pharmacy. [Acts 1929, 41st Leg., p. 242, ch. 107; Acts 1943, 48th Leg., p. 710, ch. 395, § 16.]

Section 22 of the Act of 1929 provides that if any section is held invalid, such decision shall not affect the remainder. Section 21 being a penal provision is published as Art. 758a, Penal Code.

Section 18 of the Act of 1943 provided that a holding of partial invalidity should not affect the remaining provisions. Section 19 repealed all conflicting laws.

CHAPTER 9.—DENTISTRY

Art.
4543. Appointment and qualification.
4544. Examination for license to practice dentistry.
4544a. Board to aid in enforcing statutes.
4545. Qualifications of applicants.
4545a. Reciprocal arrangements.
4546. County clerk to record license; fee.
4547. Persons already licensed.
4548. License required to practice.
4549. Refusing examination or license, revocation of license.
4549a. False or misleading statements to patients prohibited; posting of school diploma.
4550. Record of board.
4550a. Application, registration fund, and secretary.
4551. Fees and expenses.
4551a. Persons regarded as practicing dentistry.
4551b. Dentistry defined.
4551c. Restraining practice in violation of law; duties of Attorney General, District or County Attorneys.

Art. 4543. Appointment and qualification.—The State Board of Dental Examiners shall consist of six reputable, practicing dentists who have resided in the State of Texas and have been actively engaged in the practice of dentistry for five years next preceding their appointment, none of whom shall be members of the faculty of any dental college or of the dental department of any medical college or shall have a financial interest in any such college. The term of office of each member of said Board shall be six years, except that as to the first Board appointed hereunder two of its members shall serve for a term of two years, two of its members for a term of four years, and two of its members for a term of six years, the respective terms of the first members so appointed to be designated by the Governor in appointing them. Within thirty (30) days after this Act becomes effective the six members of said Board shall be appointed by the Governor of the State; two to serve for two years, two for four years, and two for six years, or until their successors shall be appointed and qualify. Thereafter, at the expiration of the term of each member first appointed, his successors shall be appointed by the Governor of the State and he shall serve for a term of six years or until his successor shall be appointed and qualify. The present members of the State Board of Dental Examiners shall remain in office and perform their duties until the new members of the State Board of Dental Examiners provided for in this Act shall have been appointed by the Governor of the State and shall have qualified. Before entering upon the duties of his office each member of the Board shall take the Constitutional Oath of office, same to be filed with the Secretary of State. At its first meeting the Board shall organize by electing one member President and one Secretary chosen to serve one year. Said Board shall hold regular meetings at least twice a year at such times and places as the Board shall deem most convenient for applicants for examination. Due notice of such meetings shall be given by publication in such papers as may be selected by the Board. The Board may prescribe rules and regulations, in harmony with the provisions of this title governing its own proceedings and the examinations of applicants for the practice of dentistry. [Acts 1919, p. 50; Acts 1935, 44th Leg., p. 606, ch. 244, § 1.]

Art. 4544. Examination for license to practice dentistry.—It shall be the duty of the Board to examine all applicants for license to practice dentistry in this State; and the Board shall examine and grade all papers submitted by such applicants and report to such applicants within a reasonable time after the date of such examination, and said

report shall give to each applicant the grades made by said applicant upon each and every subject which he or she was examined by said Board. Each person applying for an examination shall pay to said Board a fee of Twenty-five Dollars ($25) and shall be granted a license to practice dentistry in this State upon his satisfactorily passing an examination before said Board on subjects and operations pertaining to dentistry which shall include Anatomy, Anaesthesia, Biochemistry, Dental Materials, Diagnosis, Treatment Planning, Ethics, Jurisprudence, Hygiene, Materia Medica, Operative Dentistry, Oral Surgery, Orthodontia, Periodontia, Prosthetic Dentistry, and such other subjects, as are regularly taught in reputable Dental Schools, as the Board may in its discretion require. The examination shall be taken either orally or in writing, or by giving a practical demonstration of the applicant's skill, or by any combination of such methods or subjects as the Board may in its discretion require. [Acts 1919, p. 50; Acts 1935, 44th Leg., p. 606, ch. 244, § 2; Acts 1943, 48th Leg., p. 576, ch. 340, § 1; Acts 1947, 50th Leg., p. 752, ch. 371, § 1.]

Section 2 of the amending Act of 1947 amends art. 4550a.
Section 3 amends Pen.Code, art. 752c.
Section 4 amends Pen.Code, art. 752b.
Section 5 read as follows:
"Sec. 5. It is hereby specifically provided that Article 752a, Penal Code, 1925, as added by Section 16, Chapter 244, General Laws Forty-fourth Legislature, Regular Session, 1935, shall in no way be affected by the provisions of this Act."
Section 6 repealed conflicting laws. Section 7 related to partial invalidity.

Art. 4544a. Board to aid in enforcing statutes.—The State Board of Dental Examiners is charged with the duty of aiding in the enforcement of the Statutes of this State regulating the practice of dentistry and any member of said Board may present to a prosecuting officer complaints relating to violations of such Statutes; and said Board, through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violations of said Statutes subject to the control of the prosecuting officers. [Acts 1935, 44th Leg., p. 606, ch. 244, § 3.]

Art. 4545. Qualifications of applicants.—Each applicant for a license to practice dentistry in this state shall be not less than twenty-one (21) years of age, a citizen of the United States of America, and shall present a diploma from a reputable dental college and evidence of good moral character. A dental college shall be held reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of dental colleges of the United States, and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each. [Acts 1919, p. 50; Acts 1935, 44th Leg., p. 603, ch. 244, § 4; Acts 1943, 48th Leg., p. 576, ch. 340, § 2; Acts 1945, 49th Leg., p. 462, ch. 292, § 1.]

Art. 4545a. Reciprocal arrangements.—The State Board of Dental Examiners may, in the discretion of the Board in each instance, upon payment by the applicant for registration of a fee of Fifty ($50.00) Dollars, grant license to practice dentistry to any reputable dentist who is a graduate of a reputable dental college or has qualified on examination for the certificate of dental qualification for a commission as a dentist in the medical corps of the United States Army or Navy and to licentiates of other States or territories having requirements for dental registration and practice equal to those established by this law. Applications for license under the provisions of this Article shall be in writing and upon a form to be prescribed by the State Board of Dental Examiners. Said application shall be accompanied by a diploma or a photograph thereof, awarded to the applicant by a reputable dental college, or a certified transcript of the certificate or license or commission issued to the applicant by the medical corps of the United States Army or Navy, or by a license or a certified copy of license to practice dentistry, lawfully issued to the applicant by some other State or territory; and shall also be accompanied by an affidavit from an executive officer of the medical corps of the United States Army or Navy, the President or Secretary of the Board of Dental Examiners who issued the said license, or by a legally constituted dental registration officer of the State or territory in which the certificate or license was granted upon which the applications for dental registration in Texas is based. Said affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked except by honorable discharge by the dental corps of the United States Army or Navy, and that the statement of qualifications made in the application for dental registration in Texas is true and correct. Applicants for license under the provisions of this Article shall subscribe to an oath in writing which shall be a part of said application, stating that the license, certificate, or authority under which the applicant practiced dentistry in the State or territory from which the applicant removed, was at the time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate, license, or commission and the said dental diploma were issued, and that no proceeding was pending at the time of such removal, or is at the present time pending against the applicant for the cancellation of such certificate, license or authority to practice dentistry in the State or territory in which the same was issued, and that no prosecution was then, or is at the time of the application, pending against the applicant in any State or Federal Court for any offense which under the law of Texas is a felony. [Acts 1935, 44th Leg., p. 606, ch. 244, § 4.]

Art. 4546. County clerk to record license; fee.—Every person to whom a license is issued by the State Board of Dental Examiners shall, before beginning the practice of dentistry at any place in this State, present the same to the County Clerk of the county in which he resides and offers to practice, and to the County Clerk of each and every other county in which he may practice or offer to practice; said County Clerk shall record said license in a book provided for the purpose, and receive fifty (50¢) cents therefor. Absence of the record of such license in any place where such license is hereby required to be recorded shall be prima facie evidence in any court of this State of the want of possession of such license. [Acts 1919, p. 50; Acts 1935, 44th Leg., p. 606, ch. 244, § 5.]

Art. 4547. Persons already licensed.—Any person who has heretofore been licensed, authorized, or granted permission to practice dentistry or dental surgery under the laws of this State, and who has so practiced under said license, authorization or permit, previous to the passage of this law, and who desires to obtain a license of authority from the board created under this law, upon presentation and surrender to the board of said license, authorization or permit, and an affidavit that he is the same person to whom same was originally granted, shall be granted a license under this law. No person shall be required to surrender an old license for a new one unless he so desires. If any license issued under this or any former law in Texas shall be lost or destroyed, the holder of said license may present his application to the board for a duplicate license together with his affidavit of such loss or destruction and that he is the same person to whom said license was issued, and shall be granted a license under this law. If the records of said board fail to show that such person was ever licensed, the board may exercise its discretion in granting said duplicate license. [Acts 1919, p. 50.]

Art. 4548. License required to practice.—No person shall practice or offer, or attempt to practice dentistry or dental surgery in this State, without first

having obtained a license from the State Board of Dental Examiners, as provided for in this law, provided that physicians and surgeons may, in the regular practice of their profession, extract teeth or make application for the relief of pain. Nothing herein applies to any person legally engaged in the practice of dentistry in Texas at the time of the passage of this law. [Id.]

Art. 4549. Refusing examination or license; revocation of license.— The State Board of Dental Examiners shall have authority to refuse to examine any person or refuse to issue a license to any person for any one or more of the following causes:

(a) Proof of presentation to the Board of any dishonest or fake evidence of qualification or being guilty of any illegality, fraud or deception in the process of examination, or for the purpose of securing a license.

(b) Proof of chronic or habitual intoxication or addiction to drugs on the part of the applicant.

(c) Proof that the applicant has been guilty of dishonest or illegal practices in or connected with the practice of dentistry.

The State Board of Dental Examiners shall have authority after notice and hearing, as hereinafter provided, to suspend or revoke a dental license for any one or more of the following causes:

(a) Proof of insanity of the applicant or holder of a license, as adjudged by the regularly constituted authorities.

(b) Proof of conviction of the applicant or holder of a license of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

The District Courts of the State shall have the authority, after a proper hearing, to revoke or suspend any dental license issued in the State of Texas for any one or more of the following causes:

1. That the holder thereof has been guilty of dishonorable conduct, malpractice or gross incompetency in the practice of dentistry.

2. That the holder thereof has been guilty of any deception or misrepresentation for the purpose of soliciting or obtaining patronage.

3. That the holder thereof procured a license through fraud or misrepresentation.

4. That the holder thereof is addicted to habitual intoxication or the use of drugs.

5. That the holder thereof employs or permits or has employed or permitted persons to practice dentistry in the office or offices under his control or management, who were not licensed to practice dentistry.

6. That the holder thereof has failed to use proper diligence in the conduct of his practice to safeguard his patients against avoidable infections.

7. That the holder thereof has failed or refused to comply with any of the provisions of this Act.

Proceedings to suspend or revoke a dental license on account of any one or more of the causes set forth in this Article shall be taken as follows:

(a) Where the cause involves a criminal conviction or a conviction of insanity in some court of competent jurisdiction, upon the receipt by the Board of a certified copy of the records of the Court of Conviction showing a final conviction, the Board shall then proceed to set a time and place, not less than ten (10) nor more than thirty (30) days, for a hearing to consider the revocation or suspension of such license or licenses, and shall mail by registered mail to the last known address of such person or persons a copy of such record of conviction together with notice of hearing, and such notice shall state the grounds to be relied upon by said Board for suspension or revocation of such license. Such hearing shall be governed by such rules and regulations as may be prescribed by the Board. After such hearing, the Board shall enter an order in its minutes, as in the opinion of the Board the facts brought out at such hearing justify and require; provided, however, certified copies of the records of the court of conviction shall be sufficient to justify the Board in revoking or suspending a dental license. Provided, however, that any order revoking or suspending such license or licenses shall be signed by a majority of such Board and by all the members of such Board present at such hearing.

If said Board shall make and enter any order revoking or suspending any license or licenses as hereinabove provided, the person or persons whose license shall have been so revoked or suspended may, within thirty (30) days after the making and entering of such order, take an appeal to the District Court of the County of the residence of the person or persons whose license shall have been so revoked or suspended, by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party or parties filing same, as plaintiff, and the State Board of Dental Examiners, as defendants. It shall be the duty of said Board, upon the filing of a petition asking for an appeal and review of such proceedings of said Board by the person or persons accused, and after citation in such cause has been issued and served as in other civil cases, to prepare and transmit to such District Court upon notice from such Court a transcript of the orders hereinabove provided for, the same to be certified as true and correct by the Secretary of said Board. Such District Court shall thereafter and under the rules of procedure applicable to other civil cases, proceed to set such cause for hearing as in other civil cases. Upon the hearing of such cause, if such Court shall find that the action of such Board, in revoking or suspending such license or licenses is not well taken, such Court shall by appropriate order and judgment set aside such action of said Board; but if such Court or jury shall sustain such action of said Board in revoking or suspending such license or licenses an order shall be made and entered in appropriate form sustaining and affirming the action of such Board, provided, however, that the person or persons whose license shall have been so revoked or suspended may waive the empanelling of a jury, from which order an appeal may be taken to the Court of Civil Appeals, as in other civil causes.

(b) Where the suspension or revocation is based upon any other cause set forth in Article 4549, the proceedings shall be before a District Court of the State or the county in which the alleged offense occurred by complaint to the court and it shall be the duty of the several District and County Attorneys of the State to file and prosecute appropriate judicial proceedings in the name of the State on the request of any member of the State Board of Dental Examiners, and/or when complaint is made to the court, by any County or District Attorney as herein provided, said court shall order the accused dentist to show cause why his license shall not be suspended or revoked. Such complaint shall be made in writing. The charge and grounds thereof shall be set out distinctly and the same shall be subscribed and sworn to by the prosecutor and filed with the Clerk of the Court. Citation thereon shall be issued in the name of the State of Texas and in manner and form as in other cases and the same shall be served upon the defendant at least ten (10) days before the trial date set therein. Upon the return of said citation executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. A jury of twelve (12) men shall be summoned as in cases during term time of the court when no regular jury is available and as prescribed by law and shall be impaneled unless waived by the defendant, and the cause shall be tried in like manner as in other civil cases. If the said accused dentist be found guilty or shall fail to appear and deny the charge after being cited as aforesaid, the court may by proper order entered on the minutes, suspend his

license for a time or revoke and cancel it entirely and may also give proper judgment of costs. [Acts 1919, p. 50; Acts 1935, 44th Leg., p. 606, ch. 244, § 6; Acts 1941, 47th Leg., p. 1336, ch. 605, § 1.]

Section 2 of the Act of 1941 repeals conflicting laws and section 3 provides that partial invalidity shall not affect the remaining portions.

Third subdivision a of this article, which, with second subdivision b, provides for the revocation of the license of a dentist for a felony involving moral turpitude, and which does not provide for notice, is unconstitutional as denying due process of law. Francisco v. Board of Dental Examiners, Civ.App., 149 S.W.2d 619, error refused.

Art. 4549a. False or misleading statements to patients prohibited; posting of school diploma.—Provided further, that it shall be unlawful for any dentist, as defined in this Act, in the practice of dentistry to make any oral or other misrepresentation, or false or misleading statement to any patient or prospective patient within the office of such dentist or out of it; and, provided further, that each dental office shall have posted at or near the entrance thereof, the name, the degree or degrees, and the school or schools attended of each dentist who is practicing or offering to practice said profession in said office. [Acts 1935, 44th Leg., p. 606, ch. 244, § 7.]

Art. 4550. Record of Board.—Said Board shall keep a record in which shall be registered the name and residence or place of business of all persons authorized under this law to practice dentistry or dental surgery in this State. [Acts 1919, p. 50.]

Art. 4550a. Application, registration fund, and secretary.—1. It shall be the duty of all persons now lawfully qualified and engaged in the practice of dentistry in this State, or who shall hereafter be licensed for such practice by the State Board of Dental Examiners, to be registered as such practitioners with the State Board of Dental Examiners on or before March first of each calendar year. Each person so registering shall pay in connection with such annual registration for the receipt hereinafter provided for, a fee of not less than Two Dollars ($2) nor more than Twelve Dollars ($12) as determined by said Board according to the needs of said Board. Such payment to be made by each licensee to such Board after notice of the amount of such fee. Every person so registering shall file with said Board a written application setting forth such facts as the Board may require. Upon receipt of such applications, accompanied by such fees, said Board, after ascertaining either from its records or other sources deemed by it to be reliable, that the applicant is a duly licensed practitioner of dentistry in this State, shall issue to the applicant an annual registration certificate or receipt certifying that he has filed such application and has paid the required fee; provided, that the filing of such application, the payment of such fee, and the issuance of such receipt therefor, shall not entitle the holder thereof to lawfully practice dentistry within the State of Texas unless he has in fact been previously licensed as such practitioner by the State Board of Dental Examiners, as provided by this Law, and has duly recorded his license in the county or counties in which the same may be required by law to be recorded, and unless said license is in full force and effect; and provided further, that in any prosecution for the unlawful practice of dentistry such receipt showing payment of the annual registration fee required by this Chapter shall not be treated as evidence that the holder thereof is lawfully entitled to practice dentistry.

2. If any person required to register as a practitioner of dentistry under the provisions hereof, shall fail or refuse to apply for such registration and pay such fee on or before March first of each calendar year, as hereinabove set forth, his license to practice dentistry, issued to him, shall thereafter stand suspended so that thereafter in practicing dentistry, he shall be subject to the penalties imposed by law upon any person unlawfully practicing dentistry. Provided, that such license shall be reinstated at any time upon written application of the holder made to said Board with such information or facts which the Board may require, accompanied by the payment of the annual registration fees in arrears and an additional fee of Five Dollars ($5). Provided, however, that the requirements governing the payment of annual registration fees and penalties for late registration shall not apply to licensees who are on active duty with the Armed Forces of the United States of America, and are not engaged in private or civilian practice.

3. All annual registration fees collected by the State Board of Dental Examiners under this Act shall be placed in the State Treasury every thirty (30) days, as collected, to the credit of a special fund to be known as the "Dental Registration Fund," and all expenditures from this fund shall be on order of the State Board of Dental Examiners, on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature in the general appropriation bills. On August thirty-first, of each year, all money in excess of Thirty Thousand Dollars ($30,000) remaining in said "Dental Registration Fund" shall revert to the General Revenue Fund in the State Treasury. The State Board of Dental Examiners shall be authorized to employ and to compensate from such special fund employees and such other persons as may be found necessary to assist the local prosecuting officers of any county in the enforcement of all laws of the State prohibiting the unlawful practice of dentistry, and to carry out the other purposes for which said fund is hereby appropriated. Provided, that all such prosecutions shall be subject to the direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

To aid the Board in performing the duties prescribed in this Section, the Board is hereby authorized to employ a Secretary who shall receive a salary to be fixed by the Board, and who shall make and file a surety bond in a sum not less than Five Thousand Dollars ($5,000) conditioned for the faithful performance of all the duties of his office and the safekeeping and proper disbursement of said "Dental Registration Fund" and all other funds coming into his hands; such salary shall be paid out of said "Dental Registration Fund" and shall not be in any way a charge upon the general revenue of the State. Said Board shall employ and provide such clerks and employees as may be needed to assist the Secretary in performing his duties and in carrying out the purposes of this Act, provided, that their compensation shall be paid only out of the said "Dental Registration Fund." All disbursements from "Dental Registration Fund" shall be made only upon the written approval of the President and Secretary of said Board and upon warrants drawn by the Comptroller to be paid out of said fund. [Acts 1935, 44th Leg., p. 606, ch. 244, § 8; Acts 1943, 48th Leg., p. 576, ch. 340, § 3; Acts 1947, 50th Leg., p. 752, ch. 371, § 2.]

Art. 4551. Fees and expenses.—Each member of the State Board of Dental Examiners shall receive for his service Ten ($10.00) Dollars per day for each day he is actually engaged in the duties of his office together with all legitimate expenses incurred in the performance of such duties. All per diem and expenses accruing hereunder shall be paid from moneys received by said Board from applicants for examination and from the "Dental Registration Fund" as provided in this law; no money shall ever be paid to any member of the Board from the General Fund. [Acts 1919, p. 50; Acts 1935, 44th Leg., p. 606, ch. 244, § 9.]

Art. 4551a. Persons regarded as practicing dentistry.—Any person shall be regarded as practicing dentistry within the meaning of this Chapter:

(1) Who publicly professes to be a dentist or dental surgeon or who uses or permits to be used for himself or for any other person, the title of "Doctor", "Dr.", "Doctor of Dental Surgery", "D.D.S.", "Doctor of Dental Medicine", "D.M.D.", or any other letters, title, terms or descriptive matter which directly or indirectly represents him as being able to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, alveolar process, gums or jaws.

(2) Who shall offer or undertake, by any means or methods whatsoever, to diagnose, treat, remove stains, or concretions from teeth, or shall treat, operate or prescribe, by any means or methods, for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, alveolar process, gums or jaws, and charge therefor, directly or indirectly, money or other compensation.

(3) Any person, firm, association, or corporation who professes, advertises, sells, offers, or undertakes to construct, produce, reproduce, make, repair, fit, adjust, substitute, or deliver to or accepts from the general public, any model or impression of the human mouth, teeth, alveolar process, gums or jaws, or any prosthetic or orthondontia appliance, denture, or structure.

(4) Any one who owns, maintains or operates any office or place of business where he employs or engages under any kind of contract whatsoever, any other person or persons to practice dentistry as above defined shall be deemed to be practicing dentistry himself, and shall himself be required to be duly licensed to practice dentistry as hereinabove defined and shall be subject to all of the other provisions of this Chapter, even though the person or persons so employed or engaged by him shall be duly licensed to practice dentistry as hereinabove defined. [Acts 1935, 44th Leg., p. 606, ch. 244, § 10; Acts 1943, 48th Leg., p. 576, ch. 340, § 4.]

Art. 4551b. Dentistry defined.—The definition of dentistry as contained in this Act shall not apply to physicians and surgeons legally authorized to practice medicine as defined by the law of this State. [Acts 1935, 44th Leg., p. 606, ch. 244, § 11.]

Art. 4551c. Restraining practice in violation of law; duties of Attorney General, District or County Attorneys.—The actual practice of dentistry in violation of the laws of this State shall be enjoined at the suit of the State, but such suit for injunction shall not be entertained in advance of the previous final conviction in a criminal proceeding of the party sought to be enjoined. In such suits for injunction it shall not be necessary to show that any person is personally injured by the acts complained of. Any person who may be or is about to be, so unlawfully practicing dentistry in this State may be made a party defendant in said suit, which must be filed in the county in which defendant is practicing or threatening to practice dentistry. The Attorney General, the District Attorney of the district or the County Attorney of the county in which the unlawful acts complained of are taking place shall have the authority and it shall be their duty and the duty of each of them, to file such suits and to represent the State therein. No injunction, either temporary or permanent, shall be granted by any court in such a suit except after final trial on the merits. If on final trial it be shown that the defendant has been unlawfully practicing dentistry or is about to practice dentistry unlawfully the court shall, by injunction, perpetually enjoin the defendant from practicing or continuing the practice of dentistry in violation of law; and disobedience of said injunction shall subject the defendant to the penalties provided by law for violation of an injunction. The procedure in such cases shall be the same as in any other injunction suit as nearly as may be. The remedy by injunction given hereby shall be in addition to criminal prosecution and cumulative of all other remedies provided for the prevention of the unlawful practice of dentistry. Such causes shall be advanced for trial on the docket of the trial court and shall be advanced and tried in the appellate courts in the same manner and under the same laws and regulations as are applicable to other suits for injunction. [Acts 1935, 44th Leg., p. 606, ch. 244, § 12.]

Section 19 of this Act provides that if any part is held unconstitutional such decision shall not affect the validity of the remainder.

CHAPTER 10.—OPTOMETRY

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4566. Exceptions.
4566—1. Leasing space on percentage basis—Transferring accounts receivable.

Art. 4552. Optometry.—The practice of optometry is defined to be the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drug or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the laws of this State. Nothing herein shall be construed to prevent selling ready-to-wear spectacles or eye glasses as merchandise at retail, nor to prevent simple repair jobs. [Acts 1st C.S. 1921, p. 159; Acts 1929, 41st Leg., p. 276, ch. 122, § 1.]

Art. 4553. Board of Examiners—vacancies—oath.—The Texas State Board of Examiners in Optometry shall be composed of six (6) members who shall possess the necessary qualifications to practice optometry, and who shall have been residents of this State actually engaged in the practice of optometry

in this State for at least five (5) years immediately preceding their appointment, none of whom shall be members of the faculty of any college of optometry or agents of any wholesale optical company, or shall have a financial interest in any such college or company.

In case of death, resignation or removal of any members, the vacancy of the unexpired term shall be filled by the Governor in the same manner as other appointments. Each appointee to the Texas State Board of Examiners in Optometry shall, within fifteen (15) days from the date of his appointment, qualify by taking the constitutional oath of office. [Acts 1st C. S.1921, p. 159; Acts 1931, 42nd Leg., 1st C.S., p. 11, ch. 7, § 1; Acts 1939, 46th Leg., p. 360, § 1.]

Section 7 of the Act of 1939 repealed article 4560 and section 11 repealed article 4565b. Section 14 provided that a holding of partial invalidity should not affect the remaining portions of the Act and section 15 repealed conflicting laws.

Art. 4554. Term of office.—The members of the Board, to be appointed by the Governor, shall be divided into three classes; one, two and three, and their term of office shall be determined by lot at the first meeting of the Board. Two members shall hold their offices for two years, two members for four years, and two members for six years, respectively, from the time of their appointment. The members of one of the above classes of said Board shall thereafter be appointed biennially by the Governor and shall hold office for six years. Only optometrists licensed under the laws of Texas and actively engaged in the practice of optometry shall be eligible for appointment on said Board. [Acts 1st C.S. 1921, p. 159; Acts 1931, 42nd Leg., 1st C.S., p. 11, ch. 7, § 2.]

Art. 4555. Organization and meetings.—The Board shall elect a President, a Vice-President and a Secretary-Treasurer at its first meeting after the appointment of a member of said Board. The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. Not less than ten (10) days notice of such meetings shall be given by publication in at least three (3) daily newspapers of general circulation to be selected by the Board. Special meetings shall be held upon request of a majority of the members of the Board or upon the call of the President. Four (4) members of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present, provided such period shall not be longer than three successive days. [Acts 1st C.S. 1921, p. 159; Acts 1939, 46th Leg., p. 360, § 2.]

For sections 7, 11, 14, 15 and 17 of the Act of 1939, see note under article 4553, ante.

Art. 4556. Record of proceedings—powers of board—proceedings before board—enjoining violations—bond of Secretary-Treasurer—seal—license—office.—The Board shall preserve a record of its proceedings in a book kept for that purpose. A record shall be kept showing the name, age, and present legal and mailing address of each applicant for examination, the name and location of the school of optometry from which he holds credentials, and the time devoted to the study and practice of optometry, together with such information as the Board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. The Secretary of the Board shall on or before March 1st of each year send a certified copy of said record to the Secretary of State for permanent record. A certified copy of said record with the hand and seal of the Secretary of said Board to the Secretary of State, shall be admitted as evidence in all courts. Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the Secretary of the Board. The Board shall have the power to make such rules and regulations not inconsistent with this law as may be necessary for the performance of its duties, the regulation of the practice of optometry and the enforcement of this Act. The Board shall have power to appoint committees from its own membership, the duties of such committees shall be to consider such matters, pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith, as shall be referred to said committees, and they shall make recommendations to the Board with respect thereto. The Board shall have the power to employ the services of stenographers, inspectors, and other necessary assistants in carrying out the provisions of this Act. The Board shall be represented by the Attorney General and the County and District Attorneys of the State. The Board, any committee, or any member thereof, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law. Before entering upon the discharge of the duties of his office, the Secretary-Treasurer of the Board shall give such bond for the performance of his duties as the Board may require, the premium of which is to be paid from funds in the possession of the Board. The Board shall adopt an official seal and license of suitable design and shall have an office where all of the permanent records shall be kept. [Acts 1st C.S.1921, p. 159; Acts 1939, 46th Leg., p. 360, § 3.]

For sections 7, 11, 14, 15 and 17 of the Act of 1939, see note under article 4553, ante.

Art. 4557. Examination; application; schools considered reputable; registration; exception of persons in armed service.—Every person desiring to practice optometry in the State of Texas shall be required to pass the examination given by the Texas State Board of Examiners in Optometry. The applicant shall make application, furnishing to the Secretary of the Board, on forms to be furnished by the Board, satisfactory sworn evidence that he has attained the age of twenty-one (21) years, is of good moral character, is a citizen of the United States, and has at least graduated from a first grade high school, or has a preliminary education equivalent to permit him to matriculate in the University of Texas, and that he has attended and graduated from a reputable University or College of Optometry which meets with the requirements of the Board, and such other information as the Board may deem necessary for the enforcement of this Act. A University or School of Optometry is reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of Universities and Schools of Optometry and whose course of instruction shall be equivalent to not less than four terms of eight months each, and approved by the Board. Provided that no provision of this Section shall apply to any qualified person who in good faith began the study of optometry and so filed intention with the Texas State Board of Examiners in Optometry under the provisions of Title 71, Chapter 10 of the Revised Civil Statutes of Texas, 1925, as amended, prior to the effective date of this Act. Any person failing to register with the Secretary of the Board within thirty (30) days after the effective date of this Act under proper rules of the Board and other related facts as the Board may

require shall be deemed to have waived all rights under the provisions of Title 71, Chapter 10, Article 4557, Revised Civil Statutes of Texas, 1925, as amended. Provided that any person who in good faith began the study of optometry and so filed his intention with the Texas State Board of Examiners in Optometry under the provisions of Title 71, Chapter 10, Revised Civil Statutes of Texas, as amended, prior to the effective date of this Act, and who has been engaged in Federal service or in active duty with the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, the United States Maritime Service, or the State Militia called into service or training or education under the supervision of the United States preliminary to induction into the military service, may register with the State Board of Examiners in Optometry within six (6) months after termination of his said service, training or education, other than by dishonorable discharge, provided he furnishes the State Board of Examiners in Optometry with affidavit to the effect that he has been so engaged, and that his service, training or education has been so terminated, and complete his unfinished work as shown by the records of the Board. Provided that any person who desires to study Optometry, and who has been engaged in Federal service or in active duty with the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, the United States Maritime Service, or the State Militia called into service or training or education under the supervision of the United States preliminary to induction into the Military service shall register with the State Board of Examiners in Optometry within six (6) months after termination of his said service, training or education, other than by dishonorable discharge, provided he furnishes the State Board of Examiners in Optometry with affidavit to the effect that he has been so engaged, and that his service, training or education has been so terminated. [Acts 1st C.S. 1921, p. 159; Acts 1939, 46th Leg., p. 360, § 4; Acts 1945, 49th Leg., p. 513, ch. 313, § 1.]

Section 4 of the Act of 1945 repealed conflicting laws. Section 5 provided that partial invalidity should not affect the remaining portions.

Art. 4558. Subjects of examinations.—The examination shall consist of written, oral or practical tests, in practical, theoretical, and physiological optics, in theoretical and practical optometry, and in the anatomy, physiology and pathology of the eye as applied to optometry and in such other subjects as may be regularly taught in all recognized standard optometric universities or schools. [Acts 1st C.S. 1921, p. 159; Acts 1939, 46th Leg., p. 360, § 5.]

For sections 7, 11, 14 and 15 of the Act of 1939, see note under article 4553, ante.

Art. 4559. Examinations—notice—conduct of—registration—license—inapplicable to whom.—Each applicant shall be given due notice of the date and place of examination. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given the same written examinations. Every candidate successfully passing the examination and meeting all requirements of the Board shall be registered by the Board as possessing the qualifications required by this law and shall receive from said Board a license to practice optometry in the State.

Provided that no provision of this section shall apply to any qualified person who in good faith began the study of optometry under the provisions of Chapter 51, Acts of the Thirty-seventh Legislature, First Called Session,[1] prior to the effective date of this Act, and who shall, within thirty (30) days after such effective date, register with the Secretary of the Board, under proper rules of the Board, satisfactory proof of the beginning of such study, together with such other related facts as the Board may require. Any person failing to register with the Secretary to the Board as herein provided shall be deemed to have waived all rights under the provisions of Chapter 51, Acts Thirty-seventh Legislature, First Called Session. [Acts 1st C.S.1921, p. 159; Acts 1939, 46th Leg., p. 360, § 6.]

1 This chapter.

For sections 7, 11, 14 and 15 of the Act of 1939, see note under article 4553, ante.

Art. 4560. [Repealed by Acts 1939, 46th Leg., p. 360, § 7.]

Art. 4561. To record license.—It shall be unlawful for any person to begin to practice optometry within the limits of this State who has not registered in the county clerk's office of the county in which he resides, and in each county in which he practices, his license for so practicing as herein prescribed, together with his age, post-office address, place of birth, subscribed and verified by his oath. The fact of such oath and record shall be endorsed by the county clerk upon the license. The absence of record of such license in the county clerk's office shall be prima facie evidence of the lack of possession of such license to practice optometry. [Acts 1st C. S. 1921, p. 159.]

Art. 4562. Optometry register.—Each county clerk in this State shall purchase a book of suitable size to be known as the "Optometry Register" of such county, and set apart at least one full page for the registration of each optometrist, and record in said Optometry Register the name and record of each optometrist who presents for record a license or certificate issued by the State Board of Examiners in Optometry. The county clerk shall receive one dollar for each document registered as provided in this article, which shall be his full compensation for all duties herein required. When an optometrist shall have his license revoked, said county clerk, upon being notified by the board, shall make a note of the fact beneath the record in the Optometry Register, which entry shall close the record. On the first day of January in each year, said county clerk shall, upon the request of the board, certify to the secretary of the board a correct list of the optometrists then registered in the county, together with such other information as said board may require. [Id.]

Art. 4563. Refusal to license—revocation or suspension of license—grounds—procedure—reissuance—deceased optometrist, carrying on practice of.—The Texas State Board of Examiners may, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license by it granted for any of the following reasons:

(a) That said applicant or licensee is guilty of gross immorality;

(b) That said applicant or licensee is guilty of any fraud, deceit or misrepresentation in the practice of optometry or in his seeking admission to such practice;

(c) That said applicant or licensee is unfit or incompetent by reason of negligence;

(d) That said applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

(e) That said applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

(f) That said licensee has directly or indirectly employed, hired, procured, or induced a person, not

licensed to practice optometry in this State, to so practice;

(g) That said licensee directly or indirectly aids or abets in the practice of optometry any person not duly licensed to practice under this Act;

(h) That said licensee directly or indirectly employs solicitors, canvassers or agents for the purpose of obtaining patronage;

(i) That said licensee lends, leases, rents or in any other manner places his license at the disposal or in the service of any person not licensed to practice optometry in this State;

(j) That said applicant or licensee has wilfully or repeatedly violated any of the provisions of this Act.

Proceedings under this Article shall be begun by filing charges with the Board in writing and under oath. Said charges may be made by any person or persons. The President of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service cannot be effected, the Board shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to practice, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the last date of the publication of the notice. At said hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses and evidence on his behalf, to cross examine witnesses and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits.

Any person whose license to practice optometry has been refused or has been revoked or suspended by the Board, may, within twenty (20) days after the making and entering of such order, take an appeal to any of the district courts of the county of his residence, but the decision of the Board shall not be stayed or enjoined except upon application to such district court after notice to the Board.

Upon application, the Board may reissue a license to practice optometry to a person whose license has been revoked but such application shall not be made prior to one (1) year after the revocation and shall be made in such manner and form as the Board may require.

Provided, however, that nothing in this law shall be construed to prevent the administrator or executor of the estate of a deceased optometrist from employing a licensed optometrist to carry on the practice of such deceased during the administration of such estate nor to prevent a licensed optometrist from working for such person during the administration of the estate when the legal representative thereof has been authorized by the county judge to continue the operation of such practice. [Acts 1st C.S.1921, p. 159; Acts 1939, 46th Leg., p. 360, § 8.]

For sections 7, 11, 14 and 15 of the Act of 1939, see note under article 4553, ante.

Art. 4564. Duty of licensee.—Every person practicing optometry in this State shall display his license or certificate in a conspicuous place in the principal office where he practices optometry, and whenever required, exhibit such license or certificate to said board, or its authorized representative, and whenever practicing said profession of optometry outside of, or away from said office or place of business, he shall deliver to each person fitted with glasses a bill, which shall contain his signature, post-office address, and number of his license or certificate, together with a specification of the lenses and material furnished and the prices charged for the same respectively. [Acts 1st C. S. 1921, p. 159.]

Art. 4565. Fees and expenses.—The Board shall charge a fee of Twenty-five Dollars ($25) for examining an applicant for license, which fee must accompany the application. If the applicant who, because of failure to pass the examination, be refused a license, he shall be permitted to take a second examination without additional fee, provided the second examination is taken within a period of one (1) year. The fee for issuing a license shall be Ten Dollars ($10), to be paid to the Secretary of the Board. If anyone successfully passing the examination and meeting the requirements of the Board has not paid the fee for issuance of a license within ninety (90) days after having been notified by registered mail at the address given on his examination papers, or at the time of the examination that he is eligible for same, such person shall by his own act have waived his right to obtain his license, and the Board may at its discretion refuse to issue such license until such person has taken and successfully passed another examination.

The fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the Board, and the remainder shall be applied by Order of the Board to compensate members of said Board. Said compensation to each member of the Board shall not exceed Ten Dollars ($10) per day, or Three Hundred Dollars ($300) per year, exclusive of the necessary expenses in performance of their duties; except the Secretary of the Board shall receive compensation to be set by the Board, exclusive of necessary expenses in performance of his duties.

The Texas State Board of Examiners in Optometry shall defray all expenses under this law from fees provided in this Act, and no appropriation shall ever be made from the State Treasury for any expenditure made necessary by this law. [Acts 1st C.S.1921, p. 159; Acts 1939, 46th Leg., p. 360, § 9; Acts 1945, 49th Leg., p. 513, ch. 313, § 2.]

For sections 7, 11, 14 and 15 of the Act of 1939, see note under article 4553, ante.

Art. 4565—a. Annual renewal fee—certificate—suspension or cancellation of license for nonpayment—lost or destroyed license—renewal by persons in armed service.—On or before the 1st day of January of each year every licensed optometrist in this State shall pay to the Secretary-Treasurer of the Texas State Board of Examiners in Optometry an annual renewal fee of Ten Dollars ($10) for the renewal of his license to practice optometry for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed and other information for the records of the Board which said Board may deem necessary for the proper enforcement of this Act. When an optometrist shall have failed to pay his annual renewal fee by March 1st, it shall be the duty of the Board to notify such optometrist at his last known address by registered mail that said annual renewal fee is due and unpaid. Thirty (30) days after the date of mailing such notice, it shall be the duty of the Board under this Act to suspend the license for nonpayment of annual renewal fee and to notify such optometrist of such suspension by registered letter addressed to his last known address. The Board shall notify the county clerk of the County in which such license may have been recorded of such suspension and such clerk, upon receipt of notice from said Board shall enter upon the optometry register of such County the fact that such license has been suspended for nonpayment of annual renewal fee and shall notify the Board in writing that such entry has been made. Provided, that if said annual renewal fee is not paid

within sixty (60) days from the date of notice of suspension, and unless good cause is shown why such fee has not or cannot be paid, the Board shall then cancel such license. The Board shall notify the County clerk of the County in which such license may have been recorded of such cancellation, and such clerk, upon receipt of such notice from said Board, shall enter upon the optometry register of such County the fact that such license has been cancelled and is void for nonpayment of annual renewal fee and shall notify the Board in writing that such entry has been made. Practicing optometry without an annual renewal certificate for the current year as provided herein, shall have the same force and effect and be subject to all penalties of practicing optometry without a license. After the Board has declared a license void as provided for in this Article, the Board may thereafter, in its discretion, refuse to issue a new license until such optometrist whose license has been declared void for nonpayment of annual renewal fee, has passed the regular examination for license as provided for by this Act.

If any license issued under this law shall be lost or destroyed, the holder of said license may present his application to the Board for a duplicate license, together with his affidavit of such loss or destruction, and that he is the same person to whom said license was issued, and other information regarding its loss as is required by the Board, and shall upon the payment of a fee of Two Dollars and fifty cents ($2.50) be granted a license under this Law.

Any licensed optometrist whose renewal certificate has expired while he has been engaged in Federal service or in active duty with the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, or the United States Maritime Service, or the State Militia called into service or training, or education under the supervision of the United States, preliminary to induction into the military service, may have his renewal certificate reinstated without paying any lapsed renewal fee or registration fee, or without passing an examination, if within one (1) year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the State Board of Examiners in Optometry with affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated. [As amended Acts 1939, 46th Leg., p. 360, § 10; Acts 1945, 49th Leg., p. 513, ch. 313, § 3.]

For sections 7, 11, 14 and 15 of the Act of 1939, see note under article 4553, ante.

Art. 4565b. [Repealed by Acts 1939, 46th Leg., p. 360, § 11.]

Art. 4565c. Defining terms.—For the purpose of this Act, the words "Ascertaining and measuring the powers of vision of the human eye," as employed in Article 4552, shall be construed to include:

(1) The examination of the eye to ascertain the presence of defects or abnormal conditions which may be corrected, remedied, or relieved, or the effects of which may be corrected, remedied or relieved by the use of lenses or prisms, or

(2) The employment of any objective or subjective, means to determine the accommodative or refractive condition, or the range or powers of vision of muscular equilibrium of the human eye, or

(3) The employment of any objective or subjective means for the examination of the human eye for the purpose of ascertaining any departure from the normal, measuring its power of vision or adapting lenses or prisms for the aid or relief thereof, and it shall be construed as a violation of this Act, for any person not a licensed optometrist or a licensed physician to do any one act or thing, or any combination of acts or things, named or described in this article; provided, that nothing herein shall be construed to permit optometrists to treat the eye for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever, unless said optometrist is a duly licensed physician and surgeon, under the laws of this State.

Art. 4565d. "Fitting Lenses."—For the purpose of this Act the words "and fitting lenses or prisms," as employed in Article 4552, shall be construed to include:

(1) Prescribing or supplying, directly or indirectly, lenses or prisms, by the employment of objective or subjective means or the making of any measurements whatsoever involving the eyes or the optical requirements thereof;

(2) The adaptation or supplying of lenses or prisms to correct, relieve or remedy any defect or abnormal condition of the human eye or to correct, relieve or remedy or attempt to correct, relieve or remedy the effect of any defect or abnormal condition of the human eye.

(3) It shall be construed as a violation of this Act for any person not a licensed optometrist or a licensed physician to do any one thing or act, or any combination of things or acts, named or described in this article.

Art. 4565e. Selling as merchandise.—For the purpose of this Act the words "Persons who sell spectacles and eye-glasses as merchandise," as employed in Article 4566, shall be construed to mean merchants who do not practice optometry, or offer to practice optometry, but who sell spectacles or eye-glasses as merchandise, after they have been selected by their customers alone without aid from the merchant, either in person or indirectly, or by the provision of any mechanical or eye-testing machine or self-testing eye-machine, either for purposes of exhibition or use, or offering to provide or providing any self-testing system or methods, or other means, either for purposes of exhibition or use, other than the particular and complete and ready-to-wear spectacles or eye-glasses selected by the customer in person from trays or other containers, containing such merchandise, and any other method of sale or delivery shall be construed as practicing optometry.

This article was held invalid in Bruhl v. State, 111 Cr.R. 233, 13 S.W.(2d) 93, as abridging a citizen's privileges and immunities, contrary to Const.U.S. Amend. 14, and as depriving him of liberty or property otherwise than by due course of law, in violation of Const.Tex. art. 1, § 19.

Art. 4565f. Acts unlawful.—In the interest of public health, welfare, safety and comfort, after the passage of this Act, it shall be unlawful, and a violation hereof to:

(1) Sign or cause to be signed, a prescription for an ophthalmic lens without first making a personal examination of the eyes of the person prescribed for, or

(2) For any person licensed under this Act to practice optometry, when he, or she, is knowingly suffering from a contagious or infectious disease.

Art. 4565g. Optical mechanics.—Nothing in this Act shall be so construed as to prevent an optical mechanic from doing the merely mechanical work of manufacturing ophthalmic lenses or to prevent the sale of such ophthalmic lenses to those who are licensed and legally qualified to prescribe them, nor to prevent such optical mechanic, who does not practice optometry, from following the specific directions of a competently and legally signed prescription where he does no more than manufacture or dispense the spectacles or eye-glasses, or component parts thereof, called for by such prescription. Nor shall this Act be so construed as to prevent selling ready-to-wear spectacles or eye-glasses as merchandise at wholesale to merchants for purposes of re-sale as merchandise, as provided for in this Act when neither the wholesaler nor merchant to whom he sells practices optometry.

Art. 4565h. Spectacles as premiums.—It shall be unlawful for any person in this State to give, or

cause to be given, deliver, or cause to be delivered, in any manner whatsoever, any spectacles or eye-glasses, separate or together, as a prize or premium, or as an inducement to sell any book, paper, magazine or any work of literature or art, or any item of merchandise whatsoever.

Art. 4566. Exceptions.—Nothing in this Act shall be construed to apply to persons who sell spectacles and eye-glasses as merchandise; officers or agents of the United States or the State of Texas, in the discharge of their official duties; nor to prevent physicians and surgeons, duly licensed as such under the laws of the State of Texas regulating the practice of medicine, from treating the human eye or prescribing lenses or glasses, or fitting lenses or glasses for the aid thereof. [Acts 1925, p. 149.] [39th Leg., ch. 31.]

Art. 4566—1. Leasing space on percentage basis—Transferring accounts receivable.—Provided that it shall not be construed as a violation of this Act for any optometrist to lease space from an establishment on a percentage or gross receipts basis or to sell, transfer or assign accounts receivable. [Acts 1939, 46th Leg., p. 360, § 16.]

For sections 7, 11, 14 and 15 of the Act of 1939, see note under article 4553, ante.

CHAPTER 11.—CHIROPODY

Art.
4567. Definitions.
4568. State Board of Chiropody Examiners; appointment; terms of members; oath; bond of secretary-treasurer; meetings; regulations and by-laws; powers; records.
4569. Examination; grades; fees; subjects; reexamination.
4570. Application for license.
4571. Annual renewal fee; lost or destroyed license; display of license and certificate.
4572. Registration fee; license to graduates of reputable colleges and to licentiates of other state; application.
4573. Revoking license.
4574. Compensation and expenses.
4575. Exceptions.

Article 4567. Definitions.—"Chiropody" means the diagnosis, medical and surgical treatment of the human foot. A chiropodist is one who practices chiropody. [Acts 1923, p. 357.]

Art. 4568. State Board of Chiropody Examiners; appointment; terms of members; oath; bond of secretary-treasurer; meetings; regulations and by-laws; powers; records.—The State Board of Chiropody Examiners shall consist of six (6) reputable practicing chiropodists who have resided in the State of Texas, and who have been actively engaged in the practice of chiropody for a period of five (5) years immediately preceding their appointment, none of whom shall be members of the faculty of any chiropody college, or the chiropody department of any medical college, or shall have a financial interest in such colleges. The term of office of each member of said Board shall be six (6) years, except as to the first Board appointed hereunder. Two (2) of its members shall serve for a period of two (2) years; two (2) of its members shall serve for a period of four (4) years; and two (2) of its members shall serve for a period of six (6) years. The respective terms of the first members so appointed shall be designated by the Governor so appointing them, within thirty (30) days after this Act becomes effective. The six (6) members of said Board shall be appointed by the Governor of this State, two (2) to serve two (2) years, two (2) to serve four (4) years, and two (2) to serve six (6) years, or until their successors have been appointed and qualified. Thereafter, at the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of this State and he shall serve for a term of six (6) years, or until his successor shall be appointed and qualified. The members of the State Board of Chiropody Examiners shall, before entering upon the duties of their offices, qualify, by subscribing to, before a notary public or other officer authorized by law to administer oaths, and filing with the Secretary of State, the constitutional oath of office. They shall, as soon as organized, and biennially thereafter in the month of January, elect from their number a president, vice-president and secretary-treasurer. The secretary-treasurer, before entering upon his duties, shall file a bond with the Secretary of State for such sum as will be twice the amount of cash on hand at the time the bond is filed; provided, however, that the amount of said bond shall, in no case, be less than Five Thousand Dollars ($5,000). Said bond shall be payable to the Governor of this State, for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer; and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the State Board of Chiropody Examiners.

Said State Board of Chiropody Examiners shall hold meetings at least twice a year and special meetings when necessary at such times and places as the Board deems most convenient for applicants for examinations for license. Due notice of such meetings shall be given by publication in two (2) daily newspapers as may be selected by the Board. Special meetings shall be held upon request of a majority of the members of the Board, or upon the call of the president. Four (4) members of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present.

The Board shall adopt all reasonable or necessary rules, regulations, and bylaws, not inconsistent with this Act, the laws of this State, or of the United States, to govern its proceedings and activities, the regulation of the practice of chiropody and the enforcement of this Act. The Board shall have power to appoint committees from its own membership, the duties of which shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith as shall be referred to said committees, and to make recommendations to the Board with respect thereto; to employ the services of stenographers, inspectors, and other necessary assistants in the carrying out of the provisions of this Act. The Board, any committee, or any members thereof shall have the power to issue subpoenas and to compel the attendance of witnesses and the production of books, records, and documents, to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall not be bound by the strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act or the regulations promulgated in accordance therewith, and in such connection a temporary injunction may be granted. Said action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law. The Board shall adopt a seal, which shall be used on official documents. The design of the seal shall be similar to the seal of other departments of the State, in that it shall contain the five-pointed star with a circular border, and within the border shall contain the words, "Texas State Board of Chiropody Examiners." The secretary

treasurer of the Board shall keep a correct record of all the proceedings of the Board, and of all moneys received or expended by the Board, which record shall be open to public inspection at all reasonable times. The records shall include a record of proceedings relating to examination of applicants, and the issuance, renewal, or refusal of certificates of registration; and they shall also contain the name, age, known place of residence, the name and location of the school of chiropody from which he holds credentials and the time devoted to the study and practice of the same, together with such other information as the Board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. A certified copy of said record, with the hand and seal of the secretary of said Board, shall be admitted as evidence in all courts. Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the secretary-treasurer of the Board. The records shall be kept by the secretary-treasurer of the Board, and such records shall be audited biennially during the month of January by a certified public accountant, a report of the findings of such audit shall be made to the Governor of this State, and a copy of said report shall be delivered to the secretary-treasurer of the Board, who shall retain same as a permanent record of the office.

The Board shall cause the prosecution of all persons violating any of the provisions of this Act and may incur the expense reasonably necessary in that behalf. [Acts 1923, p. 357; Acts 1939, 46th Leg., p. 368, § 1.]

Section 8 of the Act of 1939 repealed conflicting laws. Section 9 provided that a holding of partial invalidity should not affect the remaining portions of the Act.

Art. 4569. Examination; grades; fee; subjects; reexamination.—It shall be the duty of the Board to examine all applicants for license to practice chiropody in this State, and the Board shall examine and grade all papers submitted by such applicants and report to such applicants, within sixty (60) days from the date of any meeting of said Board, and said report shall give to such applicant the grades made by such applicant upon each and every subject upon which he or she was examined by said Board. Each person applying for examination shall pay to the Board a fee of Thirty-five Dollars ($35) at least fifteen (15) days before the date set by the Board for the examination, and upon passing a satisfactory examination before said Board on subjects pertaining to chiropody, shall be granted a license to practice chiropody in this State. The subjects one must be examined in are anatomy, chemistry, dermatology, diagnosis, materia-medica, pathology, physiology, chiropody, bacteriology, and mechanical orthopedics, limited in their scope to the treatment of ailments of the human foot, and the examinations are to be written in the English language. Any applicant failing in the examination and being refused a license shall be entitled to a re-examination, at the next regular session of said Board within one year. Any applicant failing on re-examination shall be required to pay an additional fee and shall be required to be re-examined in all subjects. [Acts 1923, p. 357; Acts 1939, 46th Leg., p. 368, § 2.]

For sections 8 and 9 of the Act of 1939, see note under article 4568, ante.

Art. 4570. Application for license.—All applicants for license to practice chiropody in this State, not otherwise licensed under the provisions of law, shall present satisfactory evidence to the State Board of Chiropody Examiners that such applicants have attained the age of twenty-one (21) years, are of good moral character and are free of all contagious and communicable diseases, and furnish a certified certificate of health to that effect, and are citizens of the United States of America and who are graduates of at least a sixteen (16) unit high school, whose credits are acceptable without condition for matriculation at the State University of the State in which applicant's high school graduation was attained. The applicant shall present satisfactory evidence of graduation from a bona fide reputable school of chiropody in the form of a diploma which has conferred the degree of Doctor of Surgical Chiropody, to the State Board of Chiropody Examiners. Such chiropody schools may be considered reputable, within the meaning of this Act, whose entrance requirements and course of instruction are as high as those adopted by the University of Texas, and whose course of instruction shall embrace at least four (4) terms of at least eight (8) months each, and which meets the requirements of the State Board of Chiropody Examiners. Provided, however, the Board may, in its discretion, accept applicants from chiropody schools whose course of instruction embraces at least three (3) terms of at least eight (8) months each; and provides for one term of eight (8) months instruction in a recognized college of liberal arts or sciences shall be approved by this Board. [Acts 1923, p. 357; Acts 1939, 46th Leg., p. 368, § 3.]

For sections 8 and 9 of the Act of 1939, see note under article 4568, ante.

Art. 4571. Annual renewal fee; lost or destroyed license; display of license and certificate.—On or before the first day of September, 1939, and on or before September 1st of each succeeding year, every chiropodist licensed in this State shall pay to the Secretary-Treasurer of the State Board of Chiropody Examiners an annual renewal fee of Ten Dollars ($10) for the renewal of his license to practice chiropody for the current year. On receipt of said renewal fee the Board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed and other information from the records of said Board that said Board may deem necessary. When a chiropodist shall fail to pay his annual renewal fee by March 1st, it shall be the duty of the Board of Chiropody Examiners to notify such chiropodist at his last known address, by mail, that said annual renewal fee is due and unpaid. Thirty (30) days after the date of mailing said notice, it shall be the duty of the Board under this Act to declare the license suspended or revoked for nonpayment of the annual renewal fee. The Board shall notify the district clerk of the county in which such license may have been recorded and such clerk, upon receipt of notification from said Board, shall enter upon the chiropody register of such county the fact that such license is suspended or revoked for nonpayment of the annual renewal fee, and shall notify the Board in writing that such entry has been made. Practicing chiropody without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect and subject to all penalties of practicing chiropody without a license. After the Board has declared a license suspended or revoked, as provided for in this Act, the Board may thereafter in its discretion refuse to reinstate such license or issue a new license until such chiropodist, whose license has been declared suspended or revoked for nonpayment of annual renewal fee, has passed a regular examination for license, as provided for by this Act. If any license issued under this or any former law in Texas shall be lost or destroyed, the holder of said license may present his application to the Board for duplicate license; together with his affidavit of loss or destruction, and that he is the same person to whom said license was issued, and shall, upon the payment of a fee of Ten Dollars ($10), be granted a license under this law. If the records of said Board fail to show that such

person was ever licensed, the Board may exercise its discretion in granting said duplicate license.

Every person practicing chiropody in this State shall display the license and annual renewal certificate in a conspicuous place in the office wherein he practices chiropody and whenever required shall exhibit such license or certificate to the Board or its authorized representative. [Acts 1923, p. 358; Acts 1939, 46th Leg., p. 368, § 4.]

For sections 8 and 9 of the Act of 1939, see note under article 4568, ante.

Art. 4572. Registration fee; license to graduates of reputable colleges and to licentiates of other state; application.—The State Board of Chiropody Examiners may, in its discretion, upon payment by the applicant of a registration fee of One Hundred Dollars ($100), grant a license to practice chiropody to any reputable chiropodist who is a graduate of a reputable college of chiropody, and to licentiates of other States or territories having requirements for chiropody registration and practice equal to those established by this law. Application for license, under provisions of this Act, shall be in writing and upon a form to be prescribed by the State Board of Chiropody Examiners. Said application shall be accompanied with a diploma or photograph thereof awarded to the applicant by a reputable college of chiropody lawfully issued to the applicant by some other State or territory, and also be accompanied by an affidavit from the President or Secretary of the Board of Chiropody Examiners who issued the said license, or by the legally constituted chiropody registration office of a State or territory in which the certificate or license was granted upon which the application for chiropody registration in Texas is based. Said affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked and that the statement of qualifications made in the application for chiropody registration in Texas is true and correct. Applicants for license under provisions of this Act shall subscribe to an oath in writing, which shall be a part of said application stating that the license or certificate or authority under which the applicant practiced chiropody in the State or territory from which the applicant removed was, at the time of such removal, in full force and not suspended or cancelled. That the applicant is the identical person to whom said certificate or license or said chiropody diploma was issued and that no proceedings were pending at the time of such removal, or are at the present time pending, against the applicant for the cancellation of such certificate, license or authority to practice chiropody in the State or territory in which the same was issued, and that no prosecution was then or is at the time of the application pending against the applicant in any State or Federal Court for any offense, which, under the laws of Texas, is a felony. [Acts 1923, p. 358; Acts 1939, 46th Leg., p. 368, § 5.]

For sections 8 and 9 of the Act of 1939, see note under article 4568, ante.

Art. 4573. Revoking license.—The board may, after due hearing, refuse to grant or renew and may revoke any license issued under the provisions of this law to a person, otherwise qualified, who obtained such license by fraudulent representation or dishonesty in taking an examination; or who makes use of untruthful and improbable statements to patients or in his advertising, or for habitual intoxication, or for unprofessional and immoral conduct; or who gives away or sells drugs or alcohol for other than legitimate purposes in his practice; or who may be convicted of amputating the human foot or toe or of using an anesthetic other than local. When a license has been granted it shall not be revoked or the renewal thereof refused without at least fifteen days notice to the licensee, who shall be entitled to a hearing by the board, and shall have the right to be represented by counsel. At least ten days prior to the date of such hearing the licensee shall be notified of the filing of the charges and of the nature thereof. Any person licensed to practice chiropody in this State whose license shall be cancelled by such board may, within thirty days after the cancellation thereof, and not thereafter, have his right of action for reinstatement against such board in the district court of Travis county. If the person whose license has been canceled by the board shall, within ten days after receiving information of such cancellation, give written notice to the secretary of the board of his intention to file such suit, the action of the board in cancelling the license of such person shall be suspended for a period of thirty days, but unless such suit shall be filed within said time, the action of the board shall be final. If suit shall be filed against the board to reinstate such license within said time, the action of the board shall remain suspended until the validity of the license in question shall be determined by the court. In such suit the burden shall be upon the plaintiff to show cause for reinstatement of his license. The board may, at its discretion, in case license has been revoked or the renewal thereof refused, reissue such license at the expiration of six months from the time such license was revoked. [Acts 1923, p. 358.]

Art. 4574. Compensation and expenses.—Each member of the board shall receive for his services ten dollars a day and necessary traveling and incidental expenses, while actually engaged in the service of the board. The secretary shall receive his necessary expenses for services actually performed for the board. All printing, postage and other contingent expenses, necessarily incurred in administering this law shall be paid from the fees received by the board, and all expenses shall be itemized, verified, audited and an account kept thereof by the secretary of the board, who shall pay the same out of said fees which accrue to it. [Id.]

Art. 4575. Exceptions.—This law shall not apply to the physicians licensed by the State Board of Medical Examiners, nor to surgeons of the United States Army, Navy and United States Public Health Service, when in actual performance of their official duties. [Id.]

CHAPTER 12.—EMBALMING

Art.
4576. [Omitted.]
4576a. Embalming Board.
4577. Duties and powers.
4578. Application for license.
4579. Renewal of license.
4580. License revoked.
4581. Department self-sustaining.
4582. Provisions do not apply.
4582a. Additional duties of Board.
Sec.
1. Standard of proficiency; rules and regulations.
2. Application and license of funeral directors.
3. Annual renewal license fee.
3a. Exemption of licensed embalmers from fee.
4. Revocation of license; appeal.
5. Date after which license required.
6. Board to pay own expenses.
7. Funeral director defined.
9. Partial invalidity.

Art. 4576. [4596–7–8] [Omitted.]

This article contained provisions now covered by Acts 1939, 46th Leg., p. 375, incorporated in article 4576a.

Art. 4576a. Embalming Board.—Section 1. The State Board of Embalming shall consist of six (6) members who shall be licensed embalmers experi-

enced in the business and in the care and disposition of dead human bodies. The members of said Board holding office at the time of the effective date of this Act shall continue to hold office for the duration of the terms for which they were appointed. Any vacancies existing on the Board at the time of the effective date of this Act shall be filled by the Governor of Texas subject to confirmation by the Senate, and the Governor shall thereafter have the power to fill vacancies on the Board as they occur, and shall in appointing said members so designate their terms that two (2) places on the Board shall become vacant each two (2) years. The term of office of each member shall be six (6) years. All appointments shall be confirmed by a two-thirds vote of the Senate of Texas. Any vacancy in an unexpired term shall be filled by appointment of the Governor for the unexpired term. The Governor may, after hearing, remove any member of said State Board of Embalming for neglect of duty, incompetency or fraudulent or dishonest conduct. Each person appointed to said Board shall be furnished by the Governor with a certificate of appointment upon which it shall be noted that the appointee has taken the official oath provided by the Constitution.

Sec. 2. The State Board of Embalming is hereby granted the powers and there is imposed upon it the duties provided in Articles 4577 to 4582, inclusive, Revised Civil Statutes of Texas, 1925, and in Chapter 287, Acts of the Regular Session of the Forty-fourth Legislature,[1] and said Board shall have the powers and perform the duties provided for by said Statutes and other Acts that hereafter may be passed relating to the powers and duties of said Board. [Acts 1939, 46th Leg., p. 375.]

1 Article 4582a and Pen.Code, art. 762a.

Art. 4577. [4599] Duties and powers.—The Board of Embalming shall have the power and it shall be its duty:

1. To prescribe and maintain a standard of proficiency as to the qualifications of those engaged, and who may engage in the practice of embalming in connection with the care and disposition of dead human bodies in this State, and shall have the right, to be exercised at its discretion, to employ capable and efficient lecturers and demonstrators in the science of embalming for the benefit of all licensed embalmers in this State. The said lecturers and demonstrators shall meet not more than once in each year with annual session of the Texas Funeral Directors' and Embalmers' Association.

2. To meet in regular session once a year at such time and place as may be determined by said board at its previous annual meeting. Special meetings may be held at such time and place as may be determined by the president of said board. Notice of such special meetings shall be given in at least three daily newspapers published in different cities in the State. The board shall make an annual report to the State Health Officer on or before June first of each year on the condition of embalming in Texas, which shall embrace all the proceedings of the board and give an itemized account of money received and paid out and for what purpose; also the names of all embalmers duly licensed under this chapter. A copy of said report shall be furnished to each licensed embalmer in this State. The secretary of said board shall deliver all money on hand at the end of the term of each board to his successor in office.

3. To elect a president and secretary from the members of said board who shall serve for one year, or until their successors shall be elected and qualified.

4. To adopt rules, regulations and by-laws from time to time not inconsistent with the laws of this State or the United States, whereby the performance of all the duties of said board and the practice of embalming dead human bodies shall be regulated. [Acts 1903, p. 123; Acts 1915, p. 211.]

See, also, Article 4582a, post.

Art. 4578. [4600] Application for license.—Any person engaged or desiring to engage in the practice of embalming in connection with the care and disposition of dead human bodies within this State shall make a written application to the State Board of Embalming for a license, accompanying the same with a license fee of ten dollars, whereupon the applicant shall come before said board at its regular annual meeting or at a special meeting thereof. If the board finds that the applicant is of good moral character, possessed of knowledge of the arterial system, the location of the heart, lungs, and other organs of the human body, and the location of abdominal, pleural and thoracic cavities, location of the carotid, bracharal, radial, ulner, femoral and tibinal arteries, a knowledge of the science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of the bodies of diseased persons, and the apartment, clothing and bedding in case of death by infectious or contagious diseases, the board shall issue to said applicant a license as a duly licensed embalmer, authorizing him to practice the science of embalming. Such license shall be signed by a majority of the board. All persons receiving license under the provisions of this law shall have said license registered in the county clerk's office in the county in which it is proposed to carry on said practice, and shall display said license conspicuously in the place of business of the licensee. [Id.; Acts 1915, p. 180.]

Art. 4579. [4601] Renewal of license.—Every registered embalmer, who desires to continue the practice of his profession, shall annually thereafter during the time he shall continue in such practice, on such date as said board may determine, pay to the secretary of said board a fee of five dollars for the renewal of said license. [Id.]

Art. 4580. [4602] License revoked.—The Board of Embalming is hereby authorized for good cause to revoke any license issued by it subject to the right of appeal to the State Board of Health, whose decision shall be final. [Acts 1903, p. 123.]

Art. 4581. [4603] Department self-sustaining.—All expenses, salaries and per diem to the members of this board shall be paid from fees received under the provisions of this law, and shall in no manner be an expense to the State. All moneys received in excess of per diem allowance, and other expenses provided for, shall be held by the secretary of said board as a special fund for meeting the expenses of the board. [Id.]

Art. 4582. [4605] Provisions do not apply.—Nothing in this law shall apply to, or in any manner interfere with, the duties of any municipal, county and State officer, or State institution, nor apply to any person simply engaged in the furnishing of burial receptacles for the dead, but only to such person or persons engaged in the business of embalming in connection with the care and disposition of the dead. [Id.]

Art. 4582a. Additional duties of Board.

Standard of proficiency; rules and regulations

Sec. 1. The State Board of Embalming in addition to the powers and duties now held by it, shall have the power and it shall be its duty:

To prescribe and maintain a standard of proficiency as to the qualifications of those engaged, and who may engage, in the practice of funeral directing in connection with the care and disposition of dead human bodies in this State.

To adopt rules, regulations and by-laws from time to time not inconsistent with the laws of this State and of the United States, whereby the examination and licensing of funeral directors and the said prac-

tice of funeral direction and the registration of apprentices shall be regulated.

Application and license of funeral directors; fee

Sec. 2. Any person or persons engaged in, or desiring to engage in, the practice of funeral directing in connection with the care and disposition of dead human bodies within this State shall make a written application to the State Board of Embalming for a license, accompanying the same with a license fee of Five ($5.00) Dollars, whereupon the applicant shall come before said Board at its regular annual meeting or at a special meeting thereof. If the Board finds that the applicant is of good moral character, and has a reasonable knowledge of sanitation and the disinfection of the bodies of deceased persons, and the apartment, clothing and bedding in case of death by infectious or contagious diseases, the Board shall issue to said applicant a license as a duly licensed funeral director, authorizing him to practice the science of funeral directing. Such license shall be signed by a majority of the Board. All persons receiving license under the provisions of this law shall have said license registered in the County Clerk's office in the County of which it is proposed to carry on said practice, and shall display said license conspicuously in the place of business of the licensee. Any partnership or corporation engaging in the business of funeral directing as contemplated by this Article must have at least one partner or officer, active in the business, who is a licensed funeral director.

Annual renewal license fee

Sec. 3. Every registered funeral director, who desires to continue the practice of his profession, shall annually thereafter during the time he shall continue in such practice, on such date as said Board may determine, pay the Secretary of said Board a fee of Five ($5.00) Dollars for the renewal of said license.

Exemption of licensed embalmers from fee

Sec. 3-a. That a licensed embalmer in good standing with the State Board of Embalming shall be exempt from the Five ($5.00) Dollars fee, all others appearing and applying for a license shall be charged the annual fee of Five ($5.00) Dollars.

Revocation of license; appeal

Sec. 4. The State Board of Embalming is hereby authorized for good cause to revoke any license of a funeral director issued by it subject to the right of appeal to the State Board of Health, and subject further to the right of appeal from the State Board of Health to the District Court of the county of the said funeral director. Said funeral director shall have thirty days in which to appeal to said State Board of Health, and shall likewise have thirty days in which to appeal from the decision of the State Board of Health to the District Court. Trial in the District Court shall be de novo; and pending any appeal either to the State Board of Health or from the State Board of Health to the District Court, said license shall remain in full force and effect.

Date after which license required

Sec. 5. After the 31st day of May, 1935, it shall be unlawful for any person to practice, or attempt to practice, funeral directing without a Funeral Director's license issued by the State Board of Embalming.

Board to pay own expenses

Sec. 6. The exercise by the State Board of Embalming of the powers and duties granted it by this Act shall not be an expense to the State, and all moneys received under the provisions of this Act shall be held by the Secretary of said Board as a fund for meeting all expenses, salaries and per diem to the members of said Board.

Funeral director defined

Sec. 7. A "Funeral Director" is a person engaged in or conducting or holding himself out as engaged in or conducting the business of, (a) preparing, other than by embalming, for the burial or disposal and directing and supervising the burial or disposal of dead human bodies, (b) providing for or maintaining a place for the preparation, for the disposition or for the care of dead human bodies, or (c) who shall, in connection with his name or business, use the words "Funeral Director," "Undertaker," "Mortician," or any other title implying that he is engaged in the business here described.

Partial invalidity

Sec. 9. If any section, sub-section, subdivision, paragraph, sentence, clause or words of this Act be held to be unconstitutional, the remaining portions shall nevertheless be valid and it is declared that such remaining portions would have been included in this Act, though the unconstitutional portions had been omitted therefrom. [Acts 1935, 44th Leg., p. 676, ch. 287.]

Section 8 of this Act is a penal provision, see Pen.Code, Art. 762a. Section 10 repeals all conflicting laws and parts of laws.

CHAPTER 13.—ANATOMICAL BOARD

Art.
4583. Board and duties.
4584. Regulations for delivering bodies.
4585. Distribution of bodies to institutions.
4585A. Delivery of bodies to State Board of Embalming and to Schools of Embalming.
4586. Regulations for moving bodies.
4587. May dissect bodies.
4588. Parties receiving bodies to give bond.
4589. Expenses.
4590. Compensation of board.

Article 4583. [5756] Board and duties.—The professor of anatomy and the professor of surgery of each of the medical schools or colleges now incorporated, and of the several medical and dental schools and colleges which may hereafter be incorporated in this State are constituted a board, to be known as the Anatomical Board of the State of Texas, for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions as, under the provisions of this law, are entitled thereto. The board shall have power to establish rules and regulations for its government, and to appoint and remove proper officers of such board, and shall keep full and complete minutes of its transactions. Records sufficient for identification shall also be kept, under its direction, of all bodies received and distributed by said board and of persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney or county attorney of this State. [Act 1907, p. 117, sec. 1.]

Art. 4584. [5757] Regulations for delivering bodies.—All public officers, agents, and servants, and all officers, agents and servants of any county, city, town, district or other municipality, and of any and every almshouse, prison, morgue, hospital, or any other public institution, having charge or control of dead human bodies required to be buried at public expense are hereby required, after notification in writing by said board or its duly authorized officers, or persons designated by the authorities of said board, then and thereafter to announce to said board, its authorized officer or agent, whenever such body or bodies come into his or their possession, charge or control, and shall without fee or reward greater than the value of such fee as was paid in any county, city, town, or municipality on the third day of April 1907, for the burial of pauper bodies, deliver such body or bodies, and permit the said board and its agents and

the physicians and surgeons, from time to time designated by them who may comply with the provisions of this law, to take and remove all such bodies as are not desired for post mortem examination by the medical staff of public hospitals or institutions for the insane, to be used within this State for the advancement of medical science, but no notice need be given, nor any such body be delivered, if any [1] person claiming to be and satisfying the authorities in charge of such body that he or she is of a kindred or is related by marriage to the deceased, or is a bona fide friend or representative of an organization of which the deceased was a member, shall claim the said body for burial, but it shall be surrendered without cost to such claimant for interment, or shall upon such claimant's request, be interred in the manner provided for the interment of bodies not coming within the operation of this law. No notice shall be given for the body to be delivered, if the deceased died of contagious disease, save tuberculosis, or syphilis, nor shall notice be given if such deceased person were a traveler who died suddenly, in which cases the body shall be buried. It is further required that due effort be made by those in charge of such almshouse, prison, morgue, hospital or other public institution having charge or control of such dead human bodies, to find kindred or relatives of such deceased and notify him or her of the death; and failure to claim such body by kindred or relation within twenty-four hours after receipt of such notification shall be recognized as bringing such body under the provisions of this law, and delivery shall be made as soon thereafter to said board, its officers, or agents as may be possible. Such person in charge of such public institution shall file with the county judge an affidavit that he has made diligent inquiry to find the kindred or relatives of the deceased stating such inquiry as he has made. In case a body is claimed by relatives within ten days after it has been delivered to an institution or persons entitled to receive the same under the provisions of this law, it shall be delivered to them for burial and without cost. [Acts 1907, p. 117, § 2; Acts 1929, 41st Leg., p. 328, ch. 152, § 1.]

[1] So in R.S.1925. Enrolled bill of amendatory Act of 1929 duplicates and transposes at this point the words "person need be given, nor any such body be delivered, if any".

Art. 4585. [5758] Distribution of bodies to institutions.—The board, or their duly authorized agents, may take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver them to and among the schools, colleges, physicians and surgeons aforesaid in the manner following: Those bodies needed for lecture and demonstration in the said incorporated schools and colleges shall first be supplied; the remaining bodies shall then be distributed proportionately and equitably, the number assigned to each to be based upon the number of students receiving instruction or demonstration in normal or morbid anatomy and operative surgery, which number shall be certified by the dean of each school or college to the board at such times as it may direct. Instead of receiving and delivering said bodies themselves through their agent or servant, the said board may, from time to time, either directly or by their designated officer or agent authorize physicians and surgeons to receive them, and the number which each shall receive. [Acts 1907, p. 117, § 3.]

Art. 4585A. Delivery of bodies to State Board of Embalming and to Schools of Embalming.—The Board, or their duly authorized agents, may, upon receiving such bodies, deliver to the State Board of Embalming such number of the same as may be necessary for the use of said State Board of Embalming in conducting its semiannual examinations; and may further deliver to any School of Embalming in this State that is recognized and certified by the State Board of Embalming such number of said bodies as the Board may in its judgment think necessary for use in instruction given in such School. [Acts 1931, 42nd Leg., p. 310, ch. 184, § 1.]

Art. 4586. [5759] Regulations for moving bodies.—The board may employ public carriers for the conveyance of said bodies, which shall be carefully deposited, with the least possible public display. The sender shall keep on permanent file a description by name, color, sex, age, place and cause of death of each body transmitted by him; or where the body shall be one of a person unknown, the color, age, sex, place and supposed cause of death; and any other data available for identification, such as scars, deformities, etc., shall be put on record. A duplicate of this description shall be mailed, or otherwise safely conveyed, to the person or institution to whom the body is being sent; and the person or institution receiving such body shall, without delay, safely transmit to the sender a receipt for the same in the full terms of the description furnished by the sender. All these records shall be filed in a manner to be determined by the board so that they may be at any time available for inspection by the board, or any district or county attorney of this State. [Acts 1907, p. 117, § 4.]

Art. 4587. [5760] May dissect bodies.—Any and all schools, colleges, and persons who may be designated by said Anatomical Board shall be authorized to dissect, operate upon, examine, and experiment upon such bodies hereinbefore described and distributed for the furtherance of medical science; and such dissections, operations, examinations, and experiments shall not be considered as amenable under any existing laws for the prevention of mutilation of dead human bodies. Such persons, schools, or colleges shall keep a permanent record, sufficient for identification of each body received from such anatomical board or agent, which record shall be subject to inspection by the board, or its authorized officer or agent. The board shall also have power to authorize incorporated schools or colleges and individual physicians and surgeons to experiment on the lower animals under bond as hereinafter designated. [Id. sec. 5.]

Art. 4588. [5761] Parties receiving bodies to give bond.—No school, college, physician, or surgeon shall be allowed or permitted to receive any such body or bodies until bond shall have been given to the State by such physician or surgeon, or by or in behalf of such school or college, to be approved by the clerk of the county court in and for the county in which such physician or surgeon may reside, or in which such school or college may be situated, and to be filed in the office of said clerk; which bond shall be in the penal sum of one thousand dollars, conditioned that all such bodies which the said physician or surgeon, or said college, shall receive thereafter shall be used, and that all experiments on the lower animals shall be conducted only for the promotion of medical science. [Id. sec. 6.]

Art. 4589. [5762] Expenses.—Neither the State, nor any county, nor municipality, nor any officer, agent or servant thereof, shall be at any expense by reason of the delivery or distribution of any such body; but all expense thereof, and of said board of distribution, shall be paid by those receiving the bodies in such manner as may be specified by said Anatomical Board, or otherwise agreed upon. [Id. sec. 7.]

Art. 4590. [5763] Compensation of board.—No compensation other than actual traveling expenses shall be received for their services in this capacity by members of this board. [Id. sec. 9.]

CHAPTER 14.—GROUP HOSPITAL SERVICE

Art.
4590a. Nonprofit corporations for group hospital service.
Sec.
1. Incorporation.
1-a. Supervision by Board of Insurance Commissioners; requirements.
2. Applications.
3. Corporations to be nonprofit organizations; maximum salaries; claim and expense funds.
4. Authority of corporations to contract.
5. Prohibition against contracting for medical services.
6. Personnel of directors.
7. Supervision.
8. Approval of rates.
9. Membership certificates.
10. Bond of treasury.
11. Finance procedure.
12. Reports to insurance commission.
13. Compensation and expenses.
14. Examination of books and records.
15. Dissolution.

Art. 4590a. Nonprofit corporations for group hospital service.

Incorporation

Section 1. From and after the passage of this Act, any seven (7) or more persons, a majority of whom are superintendents of hospitals or physicians or surgeons licensed by the State Board of Medical Examiners, upon application to the Secretary of State of the State of Texas for a corporate charter may be incorporated for the purpose of establishing, maintaining and operating a nonprofit hospital service plan, whereby hospital care may be provided by said corporation through an established hospital or hospitals, and sanitariums with which it has contracted for such care, as is hereinafter defined.

Supervision by Board of Insurance Commissioners; requirements

Sec. 1-a. All corporations organized under the provisions of this Act shall be under the direct supervision of the Board of Insurance Commissioners of the State of Texas, and shall be subject to the following requirements:

(a) Upon incorporation, and as a condition thereof, they shall have collected in advance from at least five hundred (500) applicants the application fee and at least one (1) month's payment for insurance. It shall be a condition of continued operation that a minimum membership of five hundred (500) be maintained;

(b) They shall file a statement of their operations for the year ending December 31 each year, said statement to reach the Board of Insurance Commissioners not later than March 1 of the succeeding year. The statements shall be on such forms and shall reveal such information as shall be required by the Board;

(c) They shall maintain solvency in both funds, i. e., the admitted assets of each fund shall exceed the liability of each fund, and it shall be a condition of licensing by the Board that such solvency be maintained;

(d) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this Act, the Board shall issue it a certificate authorizing it to transact business for a period of not more than fifteen (15) months, and not extending beyond May 31, next following the date of said certificate;

(e) All certificate forms and application forms shall be approved by the Board of Insurance Commissioners and all rate schedules shall be filed with the Board before they may be used by the corporation;

(f) Each such corporation shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to One Hundred Dollars ($100) for each one thousand (1,000) of its members and fractional part of such number, provided that the maximum deposit shall be Two Thousand Dollars ($2,000). The deposit shall be liable for the payment of all judgments against the corporation and subject to garnishment after final judgment against the corporation. When such deposit becomes impounded or impaired, it shall at once be replenished by the corporation; and if not replenished immediately on demand by the Board, the corporation may be regarded as insolvent and dealt with accordingly;

(g) They shall furnish a bond for the officer or employee responsible for the handling of the funds, the bond to be in some Surety licensed by the Board of Insurance Commissioners to do business in Texas, and the bond to be in a minimum amount of One Thousand Dollars ($1,000), to be at all times at least equal to the assets on hand, with a maximum bond of Twenty-five Thousand Dollars ($25,000). In addition, it shall furnish to all employees who have access to any of the funds separate bonds, or a blanket bond, in amounts to be reasonably fixed by the Board with a minimum of Five Hundred Dollars ($500), and a maximum of Ten Thousand Dollars ($10,000). All such bonds shall be made payable to the Board of Insurance Commissioners for the use and benefit of the corporation;

(h) It is required of all such corporations that all claims under certificates be paid in full within sixty (60) days after the services called for by the particular certificate have been rendered, and after receipt of due proof of claim. Written notice of claims given to the corporation shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the claimant within fifteen (15) days such forms as are usually furnished by it for filing such claims.

The Board of Insurance Commissioners shall cancel the certificate of authority of any corporation found to be operating fraudulently or improperly contesting its claims, or which fails to pay its valid claims in accordance with the provisions of this Section;

(i) Provided, further, a corporation operating under this Act may be dissolved at any time by a vote of its Board of Directors, and after such action has been approved by the Board of Insurance Commissioners. In the case of such voluntary dissolution, the disposition of the affairs of the corporation shall be made by the officers, and when such liquidation has been completed and a final statement, in acceptable form, filed with the Board of Insurance Commissioners, the facts shall be certified to the Attorney General who shall bring suit in a District Court in Travis County to declare the charter of the corporation cancelled.

In all other cases where a corporation operating under this Act is found to be insolvent, or to have violated the provisions of this Act, upon a determination of such condition, and after due notice and hearing, the affairs of such corporation shall be disposed of by a liquidator appointed by and under the supervision of the Board of Insurance Commissioners, or, in appropriate cases, under the direction of a court of competent jurisdiction in Travis County;

(j) The Board of Insurance Commissioners shall charge a fee of Twenty Dollars ($20) for filing the annual statement of each corporation operating under this Act, and a fee of One Dollar ($1) for the issuance of each certificate of authority to such corporation. (Acts 1943, 48th Leg., p. 371, ch. 249, § 1-a.]

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

Applications

Sec. 2. Such corporations when organized shall be authorized to accept applicants, who may become members of said corporations furnishing group hospital service under a contract, which shall entitle each member to such hospital care for such period of time as is provided therein; and that such corporations shall be governed by this Act and shall not be construed as being engaged in the business of insurance under the laws of this State. That such corporations organized and operated under the provisions of this Act shall not be required by any department of this State to post bond, or place deposits with any department of this State to begin and/or operate under this Act and the provisions of Title 78 of the Revised Civil Statutes of Texas of 1925, are hereby declared inapplicable to corporations organized and/or operated under this Act.

Corporations to be nonprofit organizations; maximum salaries; claim and expense funds

Sec. 3. Said corporations shall be governed and conducted as nonprofit organizations for the purpose of offering and furnishing hospital services to their members, in consideration of the payment by such members of a definite sum for hospital care and services so contracted to be furnished; and provided that no paid officer or employee of said corporations shall receive more than Twelve Thousand Five Hundred Dollars ($12,500) per annum for his services.

Provided, further, that there shall be two funds, namely, the Claim Fund and the Expense Fund.

The Claim Fund shall be composed of at least eighty (80) per cent of the regular payments by members, except the application fees.

The Expense Fund shall be composed of not more than twenty (20) per cent of regular payments by members, and the application fees.

The Application Fees shall be paid by applicants prior to becoming members, for the privilege of becoming members, and shall not apply as a part of the cost of receiving benefits under policies issued.

Both funds shall be invested only in such securities as are legal investments for the funds, except surplus funds of stock casualty insurance companies licensed under the laws of the State of Texas. The net income from the investments shall accrue to the funds, respectively, from which the investments were made.

The Claim Fund shall be disbursed only for the payment of valid claims and to the extent approved by the Board of Insurance Commissioners for the cost of settling contested claims, and necessary expenses directly incurred on investments of the Claim Fund. [As amended Acts 1943, 48th Leg., p. 371, ch. 249, § 1.]

Authority of corporations to contract

Sec. 4. Such corporations shall have the authority to contract with hospitals charging for services rendered, in such manner as to assure to each person holding a contract of said corporation the furnishing of such hospital care as may be agreed upon in the contract between said corporation and said member, with the right to said corporation to limit in said contract the types of disease for which it shall furnish hospital care.

Prohibition against contracting for medical services

Sec. 5. Such corporations shall not contract to furnish to the member a physician or any medical services, nor shall said corporation contract to practice medicine in any manner, nor shall said corporation control or attempt to control the relations existing between said member and his or her physician, but said corporation shall confine its activities to rendering hospital service only through such type of hospitals with whom it has contracts, without restricting the right of the patient to obtain the services of any licensed doctor of medicine.

Personnel of directors

Sec. 6. At least a majority of the directors of such corporation must be at all times directors, superintendents or trustees of hospitals, which have contracted or may contract with such corporation to render its subscribers hospital service.

Supervision

Sec. 7. Such corporation shall, before accepting applications for membership in said nonprofit hospital service plan, submit to the State Insurance Commission a plan of operation, together with a schedule of its dues to be charged and the amount of hospital service contracted to be rendered; which plan shall first be approved by the Insurance Commission as fair and reasonable before said corporation shall engage in business.

Approval of rates

Sec. 8. The Insurance Commission shall likewise approve the rates of payment to be made by said corporations to hospitals for the rendering of hospital care to the members of said corporation as being reasonable and just. Said hospitals shall guarantee the benefits of the certificates of membership issued by the corporation.

Membership certificates

Sec. 9. Every such corporation shall issue to its members certificates of membership, set forth the contract between the corporation and the member, and the period of such service, and the rate per day or week payable by said corporation for hospital service rendered to said member at any hospital other than the hospitals with which said corporation shall have contracted.

Bond of treasurer

Sec. 10. The treasurer of such corporation shall be required to give a fidelity bond with corporation surety in such sum as may be determined by the officers of said corporation for the faithful handling of the funds of said corporation and all funds collected from members or subscribers of said corporation shall be deposited to the account of said corporation in a bank, which is a State depository.

Finance procedure

Sec. 11. Said corporations shall not pay any of the funds collected from members or subscribers to any hospital until after said hospitals shall have rendered the necessary hospital care to such subscriber or member.

Reports to insurance commission

Sec. 12. Every such corporation shall annually on or before the first day of March file in the office of the Insurance Commission a statement verified by at least two (2) of the principal officers of said corporation, showing its condition on the 31st day of December then next preceding. The report to the Commission shall include an itemization of all expenses incurred for the period shown in the report, which expenses shall be in all things approved by said Commission. If the Commission finds any expense item unnecessary or unreasonable it shall make necessary rules eliminating same and the Commission is expressly authorized and empowered to provide for the expenses to be incurred and the amounts which must be within the limits provided for in this Act.

Compensation and expenses

Sec. 13. No director of any corporation created by this Act shall receive any salary, wages or compensation for his services, but shall be allowed reasonable and necessary expenses incurred in attending any meeting called for the purpose of managing or directing the affairs of said corporation. Provided, however, that the directors may not have more than one (1) meeting per month, which meeting shall not last

more than five (5) days. [As amended Acts 1943, 48th Leg., p. 371, ch. 249, § 2.]

Examination of books and records

Sec. 14. Every such corporation shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the Insurance Commission annually, the expense of such examination to be borne by said corporation.

Dissolution

Sec. 15. Any dissolution or liquidation of any such corporation subject to the provisions of this Act shall be under the supervision of the Insurance Commission. In case of dissolution of any group formed under the provisions of this Act, certificate holders of such group shall be given priority over all other claims except cost of liquidation. [Acts 1939, 46th Leg., p. 123.]

Section 16 of the Act of 1939 amended article 1302. Section 17 provided that a holding of partial invalidity should not affect the remaining portions of the Act. Section 18 repealed conflicting laws.

Section 3 of the amendatory Act of 1943 provided that all laws or parts of laws in conflict with this Act are hereby declared inapplicable to any and all corporations chartered and operated under this Act. Section 4 provided that if any article, section, subsection, sentence, clause or phrase of this Act shall for any reason be held unconstitutional or invalid, such decision shall not affect the validity of any remaining portion of this Act.

CHAPTER 15.—AMBULANCES

Art.
4590b. Regulation of public and private emergency ambulances; permits.

Sec.
1. Permit required.
2. Equipment required.
3. Persons trained in first aid on ambulances.
4. Permits; sirens and warning signals.
5. Violations.
6. Partial invalidity.

Art. 4590b. Regulation of public and private emergency ambulances; permits.

Permit required

Section 1. No person, firm or corporation shall operate or cause to be operated in the State of Texas, any emergency ambulance, public or private, or any other vehicle commonly used for the transportation or conveyance of the sick or injured, without first securing a permit therefor from the State Board of Health as hereinafter provided.

Equipment required

Sec. 2. Every ambulance, patrol automobile or vehicle hereinafter described, before permit is issued therefor, shall be equipped with and, when in service, carry as minimum equipment the following:

(a) A first aid kit;

(b) Traction splints for the proper transportation of fractures of the extremities.

Persons trained in first aid on ambulances

Sec. 3. Every such ambulance or vehicle hereinabove described, when in service, shall be accompanied by at least one person who has acquired theoretical or practical knowledge in first aid as prescribed and certified by the American Red Cross, evidenced by a certificate issued to such person by the State Board of Health.

Provided, however, that after the passage of this Act, firms or establishments operating ambulances will be given sixty days in which to furnish such Red Cross First Aid Course as specified herein; and, further, that in the future, new employees employed for the purpose of operating ambulances will be given sixty days in which to complete said first aid course.

Permits; sirens and warning signals

Sec. 4. Application for a permit to operate any such ambulance or other vehicle hereinabove described, on the streets of any city or on the highways of this state, shall be made upon a form prescribed by the State Board of Health. Said application shall be made to any public health officer of any of the political sub-divisions of this state where said applicant's principal place of business is located, and if said public health officer finds that the applicant has complied with the provisions of this Act and the rules and regulations prescribed by the State Board of Health for the purpose of carrying out this Act, it shall be the duty of the State Board of Health to issue a permit to said applicant, which permit shall expire two years from the date of its issuance. Such permit shall be renewed by the State Board of Health upon finding by a health officer of a political sub-division of this state that the holder of said permit is complying with the provisions of this Act and the rules and regulations of the State Board of Health. Provided, however, that all incorporated cities and towns are hereby authorized to regulate the use of sirens, warning signals, warning lights and illuminating and sound devices used on ambulances or other vehicles for the transportation or conveyance of sick or injured.

Each permit shall be numbered and posted as such place in the interior of the ambulance or vehicle as the State Board of Health may prescribe.

Any such permit may be subject to revocation by the State Board of Health upon the finding by a public health officer of any political sub-division of this state that said permittee has failed to comply with the provisions of this Act or the rules and regulations of the State Board of Health; provided, however, that said permittee is given notice and an opportunity to be heard.

Violations

Sec. 5. Any person violating any provision of this Act shall, upon conviction thereof, be punished by a fine of not to exceed One Hundred ($100.00) Dollars.

Partial invalidity

Sec. 6. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional. [Acts 1943, 48th Leg., p. 633, ch. 360.]

Section 7 of the Act of 1943 repealed all conflicting laws.

TITLE 72—HOLIDAYS—LEGAL

Art.
4591. Enumeration.
4591a. Texas Pioneers' Day.
4591b. Stephen F. Austin day; designation and commemoration.
4591c. General Pulaski Memorial Day.
4591d. Legal holidays for bank purposes; bills and notes.

Art. 4591. [4606] [2939] Enumeration.— The 1st day of January, the 19th of January, the 22nd day of February, the 2nd day of March, the 21st day of April, the 3rd day of June, the 4th day of July, the 1st Monday in September, the 12th day of October, the 11th day of November, and the 25th day of December, of each year, and all days appointed by the President of the United States or by the Governor, as days of fasting and thanksgiving, and every day on which an election is held throughout the State, are declared legal holidays, on which all the public offices of the State may be closed and shall be considered and treated as Sunday or the Christian Sabbath for all purposes regarding the presenting for the payment or ac-

ceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. [Acts 1893, p. 4; Acts 1911, p. 52; Acts 1921, p. 99; Acts 1931, 42nd Leg., p. 9, ch. 8, § 1.]

Art. 4591a. Texas Pioneers' Day.—The 12th of August of each year hereafter shall be designated and observed as Texas Pioneers' Day, and the Governor of Texas shall issue a proclamation at least thirty days in advance of such date each year, in which he shall call upon the people of the State of Texas to assemble in mass-meetings preferably to be held in the open air and in the form of Pioneers' Picnics and Old Settlers' Reunions and similar celebrations, to do honor to the memory of the heroic pioneers who by their sacrifices and hardships converted the primeval wilderness into the great empire of peace and plenty which we today enjoy;

The purpose of these celebrations shall be patriotic and educational, to preserve the traditions and memories of pioneer days, and in nowise of a political, sectarian or partisan nature;

The State Association of Texas Pioneers is hereby requested to assume the initiative in the organization of Pioneer Day celebrations each year and to prepare and circulate suitable programs for the observance of the same.

Nothing in this resolution shall be construed to make Texas Pioneers' Day a legal holiday. [Acts 1925, 39th Leg., p. 689, H. C. R. No. 12.]

Art. 4591b. Stephen F. Austin day; designation and commemoration.—That the Third day of November of each year is hereby designated and fixed, and is to be hereafter known as, "Father of Texas Day" in memory of Stephen F. Austin, the real and true Father of Texas, and that said day and date be regularly observed by appropriate and patriotic programs, being given in the Public Schools and other places that will properly commemorate the birthday of that great pioneer patriot, Stephen F. Austin, and thereby inspire a greater love for our beloved Lone Star State; provided, however, that said day shall not be a legal holiday. [Acts 1933, 43rd Leg., p. 68, ch. 37.]

Art. 4591c. General Pulaski Memorial Day.—Therefore be it Resolved, by the Legislature of the State of Texas, that the Governor of the State of Texas is authorized and directed to issue a proclamation calling upon officials of the Government to display the flag of the United States on all governmental buildings on October 11th of each year and inviting the people of the State of Texas to observe the day in schools and churches, or other suitable places, with appropriate ceremonies in commemoration of the death of General Casimir Pulaski. [Acts 1931, 42nd Leg., p. 899, S.C.R. #12.]

Art. 4591d. Legal holidays for bank purposes; bills and notes.—All of the dates in each year enumerated in Article 4591 of the Revised Civil Statutes of the State of Texas, and in addition May 30 and February 12 of each year, and when any of such dates fall upon Sunday, then the Monday next following such Sunday, are declared to be legal holidays, for bank purposes, on which any bank or trust company in Texas may remain closed, and shall be considered and treated as Sunday or the Christian Sabbath for all purposes regarding the presenting for the payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. [Acts 1947, 50th Leg., p. 424, ch. 230, § 1.]

TITLE 73—HOTELS AND BOARDING HOUSES

Art.
4592. Liability for valuables.
4593. Gratuitous bailee.
4594. Lien.
4595. Sale to satisfy lien.
4596. Definition.
4596a. Hotels, tourist cabins, inns, etc., admittance of blind persons accompanied by "Seeing Eye" dogs.

Article 4592. Liability for valuables.—Any hotel, apartment hotel or boarding house keeper, who constantly has in his hotel, apartment hotel or boarding house a metal safe or vault in good order and fit for the custody of money, jewelry, articles of gold or silver manufacture, precious stones, personal ornaments, or documents of any kind, and who keeps on the doors of the sleeping rooms used by guests suitable locks or bolts and proper fastening on the transom and window of said room, shall not be liable for the loss or injury suffered by any guest on account of the loss of said valuables in excess of the sum of fifty dollars, which could reasonably be kept in the safe or vault of the hotel, unless said guest has offered to deliver such valuables to said hotel, apartment hotel or boarding house keeper for custody in such metal safe or vault, and said hotel, apartment hotel or boarding hotel or boarding house keeper has omitted or refused to deposit said valuables in such safe or vault and issue a receipt therefor; provided, such loss or injury does not occur through the negligence or wrong doing of said hotel, apartment hotel or boarding house keeper, his servants, or employés, and that a printed copy of this law is posted on the door of the sleeping room of such guest. [Acts 1923, p. 317.]

Art. 4593. Gratuitous bailee.—Whenever any person shall allow his baggage or other property to remain in any hotel, apartment hotel or boarding house after the relation of innkeeper and guest has ceased without checking same, or shall leave his baggage or other property in the lobby of any hotel, apartment hotel or boarding house prior to checking it or becoming a guest, or shall forward any baggage to such hotel, apartment hotel or boarding house before becoming a guest, said hotel, apartment hotel or boarding house keeper may, at his option, hold such baggage or other property at the risk of said owner. If any person should check his baggage or other property at any hotel, apartment hotel or boarding house and leave it there free of charge for a period of one week without being a guest, said hotel, apartment hotel or boarding house keeper may, after the expiration of such time and in the absence of any special agreement, hold such baggage or other property at the risk of the owner. [Id.]

Art. 4594. [5663] [3318] [3182] Lien.—Proprietors of hotels or boarding houses shall have a lien on the baggage and other property of guests in such hotel or boarding house, for all sums due for board, lodging, extras furnished or money advanced at the request of such guest, and shall have the right to retain possession of such baggage or other property until the amount of such charges is paid. Such baggage and other property shall be exempt from attachment or execution while in the possession of such proprietor. [Acts 1874, p. 200; G. L., vol. 8, p. 202; Acts 1919, p. 117.]

Art. 4595. Sale to satisfy lien.—The keeper of the inn, boarding house, or hotel shall retain such baggage and other property upon which he has a lien for a period of thirty (30) days, at the expiration of which time if such lien is not satisfied, he may sell such baggage or other property at public auction, first giving ten days' notice of the time and place of sale by posting at least three (3) notices thereof in public places in the county where the inn, hotel, or

boarding house is situated and also by mailing a copy of such notice to said guest or boarder at the place of residence shown on the register of such inn or hotel, if shown. After satisfying the lien and any costs that may accrue, the residue shall on demand, within sixty (60) days be paid such guest or boarder. If not demanded within sixty (60) days, from date of sale, such residue shall be deposited by such keeper with the treasurer of the county in which said hotel, inn, or boarding house is located, accompanied with a sworn true and correct statement. Such residue shall be retained by the County Treasurer and if not claimed within one year by the owner thereof, such Treasurer shall pay the same into the State Treasury, and it shall be placed to the credit of the escheat fund. [Acts 1919, p. 117; Acts 1939, 46th Leg., p. 383, § 1.]

Art. 4596. Definition.—As used herein, a hotel or inn includes rooming houses, and is a place where the business is to furnish food and lodging or either, to all who apply and pay therefor. [Acts 1919, p. 117.]

Art. 4596a. Hotels, tourist cabins, inns, etc., admittance of blind persons accompanied by "Seeing Eye" dogs.—Section 1. Blind persons and their "Seeing-Eye" dogs shall not be denied admittance to any hotel, tourist cabin, public inn, public cafe, public elevator, or any other similar place within the State of Texas, because of such "Seeing-Eye" dogs; and such blind persons shall not be required to pay any additional charges for their "Seeing-Eye" dogs; provided said "Seeing-Eye" dogs shall be securely muzzled by their owners.

Sec. 2. Any person, or persons, firm, association, or corporation, or the agent of any person, firm, association, or corporation, who shall violate the provisions of this Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than Fifty Dollars ($50), nor more than Two Hundred Dollars ($200). [Acts 1945, 49th Leg., p. 487, ch. 303.]

TITLE 74—HUMANE SOCIETY

Art.
4597. Appointment of Bureau.
4598. Duty of Bureau.
4599. Annual meeting.
4600. Annual Report.
4601. Distribution of Report.

Article 4597. Appointment of Bureau.—The Governor shall appoint a State Bureau of Child and Animal Protection which shall not have less than nine nor more than twenty-one members from the members of the directorate of the Texas State Humane Society. The Governor, the Superintendent of Public Instruction and the Attorney General shall be ex-officio members of the Board of Directors of said State Bureau. [Acts 1913, p. 108.]

Art. 4598. Duty of Bureau.—It shall be the duty of said bureau to secure the enforcement of the laws for the prevention of wrongs to children and dumb animals as now or hereafter defined by law; to appoint local and State agents to assist in this work; to assist the organization of district and county societies, and to give them representation in the State Bureau; to aid such societies and agents in the enforcement of the laws for the prevention of wrongs to children and dumb animals as prescribed by law; and to promote the growth of education and sentiment favorable to the protection of children and dumb animals. [Id.]

Art. 4599. Annual meeting.—Said bureau shall hold its annual meeting on the second Monday in November in each year, at the State capitol, for the transaction of its business and the election of officers, at which meeting all questions relating to child and animal protection may be considered. [Id.]

Art. 4600. Annual Report.—The said bureau shall make an annual report before the first day of January of each year to the Secretary of State, embracing the proceedings of the Bureau for the preceding year, and statistics showing the work of the Bureau and its agents and county and district societies throughout the State, together with such papers, facts and recommendations as they may deem useful to the interests of the children and dumb animals in the State, said report to be fully prepared for publication. The Secretary of State shall cause the same to be published in pamphlet or book form by the State, under the supervision of the Bureau. [Id.]

Art. 4601. Distribution of Report.—The number of copies of said report to be published shall not be less than five thousand, all bound in uniform style, every two years in one volume, and shall be distributed by the Secretary of State as follows: ten copies, each, to the Governor, Secretary of State, Comptroller and State Treasurer, five to each judge of the Supreme Court, and the Attorney General, two to each member of the Legislature, and one to each judge and clerk of the district, county and federal courts, one to each county commissioner, one to each newspaper office in the State, ten each to the State University, State Industrial Schools, and the Warden of the penitentiary, two to each college of learning in the State, two to each of the other State Boards, and the remainder to the Bureau of Child and Animal Protection. [Id.]

TITLE 75—HUSBAND AND WIFE

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CHAPTER 1.—CELEBRATION OF MARRIAGE

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4604a. [Repealed.]
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4605. Consent of parent or guardian.
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4607. Certain intermarriages prohibited.
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4609. Cohabitation of slaves.

Article 4602. [4608] [2954] [2838] Who authorized to celebrate.—All licensed or ordained ministers of the gospel, Jewish rabbis, judges of the district and county courts, and justices of the peace are authorized to celebrate the rites of matrimony between persons legally authorized to marry. [Acts 1866, p. 72; Acts 1891, p. 96; P. D., 7119; G. L., vol. 5, p. 990; G. L., vol. 10, p. 98.]

Art. 4603. [4609] [2955] [2839] Who shall not marry.—Males under sixteen and females under fourteen years of age shall not marry. [Id.]

Art. 4604. [4610] [2956] [2840] License.—Persons who desire to marry shall procure from the County Clerk a license directed to all persons authorized by law to celebrate the rites of matrimony, which shall be sufficient authority to celebrate such marriage. [Acts 1837, p. 234; G.L. vol. 1, p. 1294; Acts 1929, 41st Leg., p. 260, ch. 114; Acts 1933, 43rd Leg., p. 284, ch. 113.]

Art. 4604a. [Repealed by Acts 1933, 43rd Leg., p. 284, ch. 113, § 2.]

Article repealed was Acts 1929, 41st Leg., p. 260, ch. 114, § 1.

Art. 4604b. [Repealed by Acts 1933, 43rd Leg., p. 284, ch. 113, § 2.]

Act repealed was Acts 1929, 41st Leg., p. 260, ch. 114, § 1.

Art. 4604c. Medical certificate.—Before the County Clerk shall issue any marriage license the man shall produce a certificate from a reputable licensed physician to snow that he is free from all venereal diseases. [Acts 1929, 41st Leg., p. 260, ch. 114, § 1.]

Art. 4605. [4611] [2957] [2841] Consent of parent or guardian.—No clerk shall issue a license without the consent of the parent or guardian of the parties applying, if there be a guardian. Such consent may be given in person, or in writing signed and acknowledged by said parent or guardian before an officer authorized to take acknowledgments, unless the parties so applying are, in the case of the male twenty-one years of age, and in case of the female eighteen years of age. If there be any doubt in the mind of the clerk, he shall not issue said license unless there shall be presented to him a sworn certificate from the parent or guardian or some person other than the contracting parties that the contracting parties have attained the ages aforesaid. Nothing herein shall be construed to affect the issuance of marriage license in seduction prosecution. If a minor has neither parent nor guardian, then the clerk shall not issue a license without the consent of the county judge of the county of the residence of such minor, such consent to be in writing and signed and acknowledged by such county judge. [P. D., 4667; Acts 1911, p. 63.]

Art. 4606. [4612] [2958] [2842] Record and return of license.—The clerk shall record all licenses so issued by him in a well bound book kept for that purpose. It shall be the duty of the person solemnizing the rites of matrimony to indorse the same on the license and return it to the county clerk within sixty days after the celebration aforesaid; such return shall be recorded with the license. [P. D., 4668.]

Art. 4607. [4613] [2959] [2843] Certain intermarriages prohibited.—It shall not be lawful for any person of Caucasian blood or their descendants to intermarry with Africans or the descendants of Africans. If any person shall violate any provision of this article, such marriage shall be null and void. [P. D., 4670; P. C., 346.]

Art. 4608. [4614–15] [2960–61] [2844–45] Marriages by bond, etc., validated.—All marriages by bond or those performed by officers of justice not authorized to celebrate the rites of matrimony, and those marriages celebrated agreeably to the custom of the times, which occurred prior to the passage of an Act approved June 5, 1837, regulating marriages and for other purposes, are legal and valid, and the issue of such persons are legitimate children capable of inheritance. [Acts 1841, p. 126; P. D., 4671; G. L., vol. 2, p. 640.]

Art. 4609. [4616] [2962] [2846] Cohabitation of slaves.—All persons who at any time heretofore have lived together as man and wife, and both of whom by the laws of bondage, were precluded from the rites of matrimony, and continue to live together until the death of one of the parties shall be considered as having been legally married, and the issue of such cohabitation is declared legitimate; and all such persons as were so living together in such relation on the fifteenth day of August, 1870, shall be considered as having been legally married, and the children born of such cohabitation are declared legitimate. [Acts 1870, p. 127; P. D., 7120; G. L., vol. 6, p. 301.]

CHAPTER 2.—MARRIAGE CONTRACTS

Art.
4610. Stipulations.
4611. How authenticated.
4612. Reservation by wife recorded.

Article 4610. [4617–19] Stipulations.—Parties intending to marry may enter into such stipulations as they may desire, provided they be not contrary to good morals or to some rule of law; and in no case shall they enter into an agreement, or make any renunciation, the object of which would be to alter the legal orders of descent, either with respect to themselves, in what concerns the inheritance of their children or posterity, which either may have by any other person, or in respect to their common children; nor shall they make any agreement to impair the legal rights of the husband over the persons of their common children. No matrimonial agreement shall be altered after the celebration of the marriage. [Acts 1840, p. 3; P. D., 4632; G. L., vol. 2, p. 177.]

Art. 4611. [4618] [2964] [2848] How authenticated.—Every matrimonial agreement must be acknowledged before an officer authorized to take acknowledgments to deeds and attested by at least two witnesses; the minor capable of contracting matrimony may give his consent to any agreement which this contract is susceptible of, but such agreement must be made by the written consent of both parents, if both be living; if not, by that of the survivor; if both be dead, then by the written consent of the guardian of such minor. [P. D., 4633.]

Art. 4612. [4620] [2966] [2850] Reservation by wife recorded.—When the wife, by a marriage contract, reserves to herself any property, or rights to property, whether such rights be in esse or expectancy, such reservation to be valid as to the subsequent purchasers or creditors of her husband, must be acknowledged and recorded as provided by law. [P. D., 4635.]

CHAPTER 3.—RIGHTS OF MARRIED WOMEN

Art.
4613. Husband's separate property.
4614. Wife's separate property.
4615. Compensation for personal injuries to wife.
4616. Wife's separate property protected.
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4626. Application to be feme sole.
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Art. 4613. [4621] [2967] [2851] Husband's separate property.—All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands thus acquired, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessaries furnished herself and children after her marriage with him, nor for torts of the wife. During marriage the husband shall have the sole management, control, and disposition of his separate property, both real and personal. [Const. art. 16, § 15; Acts 1848, p. 77; G.L. vol. 3, p. 77; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251; Acts 1929, 41st Leg., p. 66, ch. 32, § 1.]

Section 2 of Acts 1929, 41st Leg., p. 66, ch. 32, repeals all conflicting laws and parts of laws.

Art. 4614. [4621] [2967] [2851] Wife's separate property.—All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, as also the increase of all lands thus acquired, shall be the separate property of the wife. The wife shall have the sole management, control, and disposition of her separate property, both real and personal; provided however, the joinder of the husband in the manner now provided by law for conveyances of the separate real estate of the wife shall be necessary to the incumbrance or conveyance by the wife of her lands, and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law. [Const. art. 16, § 15; Acts 1848, p. 77; G.L. vol. 3, p. 77; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251; Acts 1929, 41st Leg., p. 66, ch. 32, § 1.]

Section 2 of Acts 1929, 41st Leg., p. 66, ch. 32, repeals all conflicting laws and parts of laws.

Art. 4615. Compensation for personal injuries to wife.—All property or moneys received as compensation for personal injuries sustained by the wife shall be her separate property, except such actual and necessary expenses as may have accumulated against the husband for hospital fees, medical bills and all other expenses incident to the collection of said compensation. [Acts 1915, p. 103.]

This article held unconstitutional. Fairchild v. Davis, Civ.App., 295 S.W. 640, reversed Com.App., 15 S.W.2d 585, on other grounds; Northern Texas Traction Co. v. Hill, Civ.App., 297 S.W. 778.

Art. 4616. [4621] [2967] [2851] Wife's separate property protected.—Neither the separate property of the wife, nor the rents from the wife's separate real estate, nor the interest on bonds and notes belonging to her, nor dividends on stocks owned by her, nor her personal earnings, shall be subject to the payment of debts contracted by the husband nor of torts of the husband. [Acts 1848, p. 77; G. L., vol. 3, p. 77; Const., Art. 16, sec. 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251.]

This article, in so far as undertaking to make wife's earnings separate property, was held invalid as contrary to Const. art. 3, § 35 and art. 16, § 15. See Arnold v. Leonard, 114 T. 535, 273 S.W. 799; In re Gutierrez, D.C. 33 F.2d 987.

Art. 4617. [4621] [2967] [2851] When wife may convey, etc.—If the husband be insane or shall have permanently abandoned his wife, or shall refuse to join in such encumbrance, conveyance or transfer of such property, the wife may apply to the district court of the county of her residence, and the court, in term time or vacation, upon satisfactory proof that such encumbrance, conveyance or transfer would be advantageous to the interests of the wife, shall make an order granting her permission to make such encumbrance, conveyance or transfer without the joinder of her husband, and she may then encumber, convey or transfer said property without such joinder.

In event the wife is a non-resident, she may apply to the district court of the county where the property, or a portion thereof, is situated, and the court shall hear and determine such application and grant relief the same as if the applicant were a resident of this State. [Acts 1848, p. 77; G.L. vol. 3, p. 77; Const. Art. 16, § 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251; Acts 1937, 45th Leg., p. 1343, ch. 499, § 1.]

Art. 4618. [4621] [2967] [2651] Sale of homestead.—The homestead, whether the separate property of the husband or wife, or the community property of both, shall not be disposed of except by the joint conveyance of both the husband and the wife, except where the husband is insane or has permanently abandoned the wife, in which instances the wife may sell and make title to any such homestead, if her separate property, in the manner herein provided for conveying or making title to her other separate property. [Acts 1848, p. 77; G. L. vol. 3, p. 77; Const. Act 16, § 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251.]

Art. 4619. [4622–3] Community property.

Property deemed common property; disposition; disappearance of husband

Sec. 1. All property acquired by either the husband or wife during marriage, except that which is the separate property of either, shall be deemed the common property of the husband and wife; and all the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved. During coverture the common property of the husband and wife may be disposed of by the husband only; provided, however, if the husband shall have disappeared and his whereabouts shall have been and remain unknown to the wife continuously for more than twelve months, the wife shall after such twelve month period and until the husband returns to her and the affidavit hereinafter provided for is made and filed for record, have full control, management and disposition of the community property, and shall have the same powers with reference thereto as are conferred by law upon the husband, and her acts shall be as those of a feme sole.

Petition by wife

Sec. 2. If the wife shall hereafter desire to exercise any of the powers herein conferred upon her, she shall file a petition in writing under oath in the district court of the county in which the husband resided at the time of such disappearance, if he then resided in this State, or in the district court of the county in which the wife resided, if the husband was a nonresident of this State at the time of disappearance, or of any county in which the community property or part thereof is situated in which petition the wife shall set forth the facts entitling her to control, manage and dispose of the community property under the provisions of this article.

Hearing

Sec. 3. After the filing of said petition the judge of said court shall set the same down for hearing, either in term time or vacation.

Notice

Sec. 4. Notice of the filing of said petition and the date set for the hearing thereon shall be issued by the clerk of the court in which the petition is filed and the same shall be published in some newspaper of general circulation published in the county in which the petition is filed, if there be a newspaper published in said county, but if not then in the nearest county where a newspaper of general circulation is published, once in each week for two consecutive weeks previous to the date set for said hearing, the first of which publications shall be not less than ten days prior to such date set for such hearing.

Order entitling wife to manage property; return of husband

Sec. 5. If, upon the hearing of said petition, the judge shall be satisfied that the facts alleged therein are true, and that facts exist which entitle the wife to control, manage and dispose of the community property under the provisions of Section 1 of this Act, he shall make his order finding and setting out such facts, and thereafter the wife shall have the same powers over the community property as are conferred by law upon the husband, until the husband shall have returned to the wife, and until either the husband or wife shall make and file for record in the office of the county clerk of the county in which said petition was filed, his or her affidavit stating the fact of such return. Said affidavit shall be recorded in the deed rec-

ords of said county and may be recorded in the deed records of other counties in which the property of said community estate may be situated. [Acts 1840, p. 3; G. L. vol. 2, p. 177; Acts 1913, p. 61; Acts 1927, 40th Leg., p. 219, ch. 148.]

Section 6 of Acts 1927, 40th Leg., p. 219, ch. 148, provides that if any provision or provisions of the act be held invalid such holding shall not affect the validity of the other provisions.

Art. 4620. [4627] [2973] [2857] Community property liable for debts.—The community property of the husband and wife shall be liable for their debts contracted during marriage, except in such cases as are specially excepted by law. [Acts 1856, p. 51; G. L. vol. 4, p. 469; P. D. 4646.]

Art. 4621. [4621] [2967] [2851] Community property not liable.—The community property of the husband and wife shall not be liable for debts or damages resulting from contracts of the wife except for necessaries furnished herself and children, unless the husband joins in the execution of the contract; provided, that her rights with reference to the community property on permanent abandonment by the husband shall not be affected by this provision. [Acts 1848, p. 77; Const. art. 16, sec. 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 252.]

Art. 4622. [4622] [2968] [2852] Funds in bank.—Funds on deposit in any bank or banking institution, whether in the name of the husband or wife, shall be presumed to be the separate property of the party in whose name they stand, regardless of who made the deposit, and unless said bank or banking institution is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account. [P. D. 4642; Acts 1913, p. 61.]

Art. 4623. [4624] [2970] [2854] Subject to debts of wife.—Neither the separate property of the husband nor the community property other than the personal earnings of the wife, and the income, rents and revenues from her separate property, shall be subject to the payment of debts contracted by the wife, except those contracted for necessaries furnished her or her children. The wife shall never be the joint maker of a note or a surety on any bond or obligation of another without the joinder of her husband with her in making such contract. [Id. Acts 1848, p. 77; G. L. vol. 3, p. 77.]

Art. 4624. [4625] [2971] [2855] Judgment and execution.—Upon the trial of any suit as provided for in the preceding article, if it shall appear to the satisfaction of the court and jury that the debts so contracted or expenses so incurred were for the purposes enumerated in said article, and also that the debts so contracted or expenses so incurred were reasonable and proper, the court shall decree that execution may be levied upon either the common property or the separate property of the wife at the discretion of the plaintiff. [P. D. 4644.]

Art. 4625. [4628] [2974] [2958] Female emancipated by marriage.—Every female under the age of twenty-one years who shall marry in accordance with the laws of this State, shall, from and after the time of such marriage, be deemed to be of full age and shall have all the rights and privileges to which she would have been entitled had she been at the time of her marriage of full age. [Acts 1848, p. 77; G. L. vol. 3, p. 77.]

Art. 4626. Application to be feme sole.—Any married woman, with the consent of and joined by her husband, may apply by written petition addressed to the district court of the county in which she may desire to transact business for judgment or orders of the said court removing her disabilities of coverture and declaring her feme sole for mercantile and trading purposes; such petition shall set out the causes which make it to the advantage of said married woman to be so declared feme sole, and shall be filed and docketed as in other cases, and at any time thereafter the district court may, in term time, take up and hear said petition and evidence in regard thereto. If upon a hearing of said petition and evidence relating thereto, it appears to the court that it would be to the advantage of the woman applying, then said court shall enter its decree declaring said married woman feme sole for mercantile or trading purposes, and thereafter she may, in her own name, contract and be contracted with, sue and be sued, and all of her separate property not exempt from execution under the laws of Texas shall thereafter be subject to her debts and liable under execution therefor, and her contracts and obligations shall be binding on her. [Acts 1911, p. 92; Acts 1937, 45th Leg., p. 1343, ch. 499, § 2.]

Art. 4627. [4629] [2975] [2859] Rights of persons married elsewhere.—The marital rights of persons married in other countries who may remove to this State shall, in regard to property acquired in this State, during the marriage, be regulated by the laws of this State. [P. D. 4639.]

CHAPTER 4.—DIVORCE

Art.
4628. Annulment.
4629. Grounds for divorce.
4630. Adultery and seduction.
4631. Residence of plaintiff.
4632. Procedure.
4633. Testimony of husband or wife.
4634. Debts created after suit.
4635. Inventory and appraisement.
4636. Temporary orders.
4637. Alimony.
4638. Division of property.
4639. Children.
4639a. Further provision as to children, petition, judgment.
4640. Remarriage.
4641. Costs.

Article 4628. [4630] [2976] [2860] Annulment.—The marriage relation may be dissolved where the causes alleged therefor shall be natural or incurable impotency of body at the time of entering into the marriage contract, or any other impediment that renders such contract void, and the court may decree the marriage to be null and void. [Acts 1841, p. 19; G. L. vol. 2, p. 483.]

Art. 4629. [4631–2] Grounds for divorce.—A divorce may be decreed in the following cases:

(1) Where either party is guilty of excesses, cruel treatment, or outrages toward the other, if such ill treatment is of such a nature as to render their living together insupportable.

(2) In favor of the husband, where his wife shall have been taken in adultery, or where she shall have voluntarily left his bed and board for the space of three (3) years with the intention of abandonment.

(3) In favor of the wife, where the husband shall have left her for three (3) years with intention of abandonment, or where he shall have abandoned her and lived in adultery with another woman.

(4) Where a husband and wife have lived apart without cohabitation for as long as ten (10) years.

(5) In favor of either the husband or wife, when the other shall have been convicted, after marriage, of a felony and imprisoned in the State penitentiary; provided, that no suit for divorce shall be sustained because of the conviction of either party for felony until twelve (12) months after final judgment of conviction, nor then if the Governor shall have pardoned the convict; provided, that the husband has not been convicted on the testimony of the wife; nor the wife on the testimony of the husband.

(6) When either the husband or wife has become permanently and incurably insane; provided, however, that no divorce shall be granted unless such insane

person shall have been duly and legally adjudged to be insane and confined in a public or private insane asylum or other institution for psychopathic patients of this State, or of a sister State, for at least five (5) years next preceding the commencement of the action for divorce, nor unless it shall appear to the Court that such insanity is permanent and incurable; provided, however, that no costs shall be adjudged against an insane spouse in divorce action. [Acts 1876, p. 16; G.L. vol. 8, p. 852; Acts 1913, p. 183; Acts 1941, 47th Leg., p. 383, ch. 214, § 1.]

Art. 4630. [4632–5] Adultery and seduction.—In any suit for divorce for the cause of adultery, if it shall be proved that the complainant has been guilty of the like crime, or has admitted the defendant into conjugal society or embraces after he or she knew the criminal fact, or that the complainant, if the husband, connived at his wife's prostitution, or exposed her to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defense and a perpetual bar against said suit; or if it appears that the adultery complained of is occasioned by collusion of the parties, and done with the intention to procure a divorce, or where both parties shall be guilty of adultery, then no divorce shall be decreed. A man who to escape prosecution for seduction marries the woman he seduced shall not be entitled to a divorce for any cause within three years after such marriage. [Acts 1873, p. 117; G. L. vol. 7, p. 569; Acts 1913, p. 183.]

Art. 4631. [4632] [2978] [2862] Residence of plaintiff.—No suit for divorce shall be maintained in the Courts of this State unless the petitioner for such divorce shall at the time of exhibiting his or her petition, be an actual bona fide inhabitant of this State for a period of twelve (12) months, and shall have resided in the county where the suit is filed for six (6) months next preceding the filing of same. A citizen of this State who is or has been absent from this State for more than six (6) months in the military or naval service or other service of the United States or of this State, shall be entitled to sue for divorce in this State and in the county in which such person had his or her residence before entering such service. [Acts 1873, p. 117; G.L. vol. 7, p. 569; Acts 1913, p. 183; Acts 1921, p. 163; Acts 1935, 44th Leg., p. 603, ch. 242, § 1.]

Art. 4632. [4632–3] Procedure.—Suit shall not be heard or divorce granted before the expiration of thirty days after the same is filed. In all such suits the defendant shall not be compelled to answer upon oath nor shall the petition be taken as confessed for want of answer, but the decree of the court shall be rendered upon full and satisfactory evidence, upon the judgment of the court affirming the material facts alleged in the petition. Either party may demand a jury. [Acts 1873, May 27, p. 117; P.D. 3459; Acts 1913, p. 183, § 1.]

Art. 4633. [4633] [2979] [2863] Testimony of husband or wife.—In all such suits and proceedings the husband and wife shall be competent witnesses for and against each other, but neither party shall be compelled to testify as to any matter that will criminate himself or herself; and where the husband or wife testifies, the court or jury trying the case shall determine the credibility of such witness and the weight to be given such testimony; but no divorce shall be granted upon the evidence of either husband or wife, if there be any collusion between them.

Art. 4634. [4637] [2983] [2867] Debts created after suit.—On and after the day on which the suit for divorce shall be brought, it shall not be lawful for the husband to contract any debts on account of the community, nor to dispose of the lands belonging to the same; and any alienation made by him after that time shall be null and void, if it be proved to the satisfaction of the court that such alienation was made with a fraudulent view of injuring the rights of the wife. [P. D. 3457.]

Art. 4635. [4638] [2984] [2868] Inventory and appraisement.—At any time during a suit for divorce the wife may, for the preservation of her rights, require an inventory and an appraisement to be made of both real and personal estate which are in the possession of the husband, and an injunction restraining him from disposing of any part thereof in any manner. [P. D. 3458.]

Art. 4636. [4639] [2985] [2869] Temporary orders.—Pending suit for a divorce the court, or the judge thereof, may make such temporary orders respecting the property and parties as shall be deemed necessary and equitable. [P. D. 3454.]

Art. 4637. [4640] [2986] [2870] Alimony.—If the wife, whether complainant or defendant, has not a sufficient income for her maintenance during the pendency of the suit for a divorce, the judge may, either in term time or in vacation, after due notice, allow her a sum for her support in proportion to the means of the husband, until a final decree shall be made in the case. [P. D. 3456.]

Art. 4638. [4634] [2980] [2864] Division of property.—The court pronouncing a decree of divorce shall also decree and order a division of the estate of the parties in such a way as the court shall deem just and right, having due regard to the rights of each party and their children, if any. Nothing herein shall be construed to compel either party to divest himself or herself of the title to real estate. [P. D. 3452.]

Art. 4639. [4636–41] Children.—A divorce shall not in anywise affect the legitimacy of the children of the parents so divorced. The court shall have power, in all divorce suits, to give the custody and education of the children to either father or mother, as the court shall deem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the children, to be determined and decided on the petition of either party; and in the meantime to issue any injunction or make any order that the safety and well-being of any such children may require. [P. D. 3461.]

Art. 4639a. Further provision as to children, petition, judgment.—Sec. 1. Each petition for divorce shall set out the name, age, sex and residence of each child under sixteen (16) years of age born of the marriage sought to be dissolved, if any such child or children there be; and if there be no such child or children, then the petition shall so state. No Court having jurisdiction of suits for divorce shall hear and determine any such suit for divorce unless such information is set out in such petition or in each cause of action for divorce. Upon the trial of any such cause, and in the event a divorce is granted by the Court, if there are such minor children, it shall be the duty of such trial Court to inquire into the surroundings and circumstances of each such child or children, and such Court shall have full power and authority to inquire into and ascertain the financial circumstances of the parents of such child or children, and of their ability to contribute to the support of same, and such Court shall make such orders regarding the custody and support of each such child or children, as is for the best interest of same; and said Court may by judgment, order either parent to make periodical payments for the benefit of such child or children, until same have reached the age of sixteen (16) years, or, said Court may enter a judgment in a fixed amount for the support of such child or children, and such Court shall have full power and authority to enforce said judgments by Civil Contempt proceedings after ten (10) days notice to such parent of his or her failure or refusal to carry out the terms thereof, and for the purpose of ascertaining the ability of the parents of such child or children to contribute to the support of

same, they may be compelled to testify fully in regard thereto, under penalty of contempt of Court, as in other cases. Said Court shall have power and authority to alter or change such judgments, or suspend the same, as the facts and circumstances and justice may require, upon notice to such parent as above provided for, or with his or her consent.

Sec. 1a. The person or persons to whom the payments above provided for are made under the judgment of the Court shall file sworn monthly reports with the Clerk of the Court before which the cause is pending setting out an itemized statement of the expenditure of such sum or sums of money as may have been received showing in detail the manner in which such money has been spent. The report so filed shall be examined and approved or disapproved by the Judge before which said cause is pending.

Sec. 2. This Act shall be cumulative of all other laws upon the same subject, and is not intended to repeal any other law upon the subject of the care or support of such minors. [Acts 1935, 44th Leg., p. 111, ch. 39.]

Sec. 3. The authority herein conferred upon the Court to alter, change, or supersede the provisions of judgments providing for the support of minor children, and the authority conferred upon the Court to enforce such judgments may be exercised by the Judge of said Court in vacation. [Added Acts 1941, 47th Leg., p. 660, ch. 402, § 1.]

Art. 4640. [4632] [2978] [2862] Remarriage.—Neither party to a divorce suit, where a divorce is granted upon the ground of cruel treatment, shall marry any other person for a period of twelve months next after such divorce is granted, but the parties so divorced may marry each other at any time. In all other cases either party may marry again after the dissolution of the marriage. [Acts 1873, p. 117; G. L. vol. 7, p. 569; Acts 1913, p. 183; Acts 1921, p. 163.]

Art. 4641. [4642] [2988] [2872] Costs.—The court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as the court shall deem reasonable.

TITLE 76—INJUNCTIONS

1. IN GENERAL

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4644. Against well or mine operator.
4645. Against a judgment.
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1. IN GENERAL

Article 4642. [4643] [2989] Grounds for.—Judges of the district and county courts shall, in term time or vacation, hear and determine applications for and may grant writs of injunction returnable to said courts in the following cases:

1. Where the applicant is entitled to the relief demanded and such relief or any part thereof requires the restraint of some act prejudicial to him.

2. Where a party does some act respecting the subject of pending litigation or threatens or is about to do some act or is procuring or suffering the same to be done in violation of the rights of the applicant when said act would tend to render judgment ineffectual.

3. Where the applicant shows himself entitled thereto under the principles of equity, and the provisions of the statutes of this State relating to the granting of injunctions.

4. Where a cloud would be put on the title of real estate being sold under an execution against a party having no interest in such real estate subject to the execution at the time of the sale, or irreparable injury to real estate or personal property is threatened, irrespective of any legal remedy at law. [Acts 1907, p. 206; Acts 1909, p. 354; Const., Art. 5, secs. 8, 16.]

Art. 4643. [4643] [2989] Issuance by non-resident judge.—No district judge shall grant a writ of injunction returnable to any other court than his own except in the following cases:

1. Where the resident judge cannot hear and act upon the application by reason of his absence, sickness, inability, inaccessibility, disqualification or refusal to act, when such facts are fully set out in the application or in an affidavit accompanying same, and if such judge refuses to act, such refusal shall be indorsed by said judge on such writ with his reasons therefor. In such case no district judge shall grant the writ when the application therefor has once been acted upon by another district judge of this State.

2. To stay execution, or to restrain foreclosure, sales under deeds of trust, trespasses, the removal of property, or acts injurious to or impairing riparian or easement rights, when satisfactory proof is made to such non-resident judge that it is impracticable for the applicant to reach the resident judge and procure his action in time to effectuate the purpose of the application.

3. When the resident judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to effectuate the purpose of the writ sought. In such case the applicant or his attorney seeking a writ on the ground of such inaccessibility shall attach to his application an affidavit fully stating the facts of such inaccessibility and his efforts made to reach and communicate with said judge, and the result thereof, and unless such efforts appear to have been fair and reasonable the application shall not be heard. Such injunction may be subsequently dissolved upon it being shown that the petitioner did not first make reasonable efforts to procure a hearing upon said application before the resident judge. [Id.]

Art. 4644. Against well or mine operator.—No injunction or temporary restraining order shall ever be issued prohibiting sub-surface drilling or mining operations on the application of an adjacent land owner claiming injury to his surface or improvements or loss of or injury to the minerals thereunder, unless the party against whom drilling or mining operations is alleged as a wrongful act is shown to be unable to respond in damages for such injury as may result from such drilling or mining operations; provided, however, that the party against whom such injunction is sought shall enter into a good and sufficient bond in such sum as the judge hearing the application shall fix, securing the complainant in the payment of any injuries that may be sustained by such complainant as the result of such drilling or mining operations. The court may, when he deems it necessary to protect the interests involved in such litigation, in lieu of such

bond, appoint a trustee or receiver with such powers as the court may prescribe, to take charge of and hold the minerals produced from the lands of those complained against or the proceeds thereof subject to the final disposition of such litigation. [Acts 1919, p. 311.]

Art. 4645. [4647] [2990] Against a judgment.—No injunction shall be granted to stay any judgment or proceeding at law, except so much of the recovery or cause of action as the complainant shall in his petition show himself equitably entitled to be relieved against and so much as will cover the costs. [Acts 1848, p. 363; P. D. 3930.]

Art. 4646. [4648] [2991] To stay execution.—No injunction to stay an execution upon any valid and subsisting judgment shall be granted after the expiration of one year from the rendition of such judgment, unless it be made to appear that an application for such injunction has been delayed in consequence of the fraud or false promises of the plaintiff in the judgment, practiced or made at the time, or after rendition, of such judgment, or unless for some equitable matter or defense arising after the rendition of such judgment. If it be made to appear that the applicant was absent from the State at the time such judgment was rendered and was unable to apply for such writ within the time aforesaid, such injunction may be granted at any time within two years from the date of the rendition of the judgment. [Id. P. D. 3931.]

Art. 4646a. Prohibiting injunction against closing streets.—No injunction shall be granted to stay or prevent the vacating, abandonment or closing, by the City Council or governing body of any incorporated city of this State, of any street or alley in any such incorporated city of this State, except at the suit of the owner or lessee of real property actually abutting on that part of such street or alley actually vacated, abandoned or closed, and then only in the event that the damages of said owner or lessee shall not have been released or shall not have been ascertained and paid in a condemnation suit by such city.

Sec. 2. Provided that any person, who under existing laws has the right to enjoin a city from vacating, abandoning or closing any street or alley of such city and whose right to such injunction is denied by this Act, shall have the right to an action for damages for any injury that he may sustain by reason of the vacating, abandoning or closing of any street or alley by such city. [Acts 1930, 41st Leg., 5th C.S., p. 257, ch. 84.]

Art. 4646b. Usurious loans; collecting or charging usurious interest; injunction against.—Section 1. The State of Texas through its Attorney General, or any District or County Attorney, may institute a suit in the District Court to enjoin any person, firm, or corporation or any officer, agent, servant or employee of such person, firm, or corporation who is engaged in the business of habitually loaning money for the use and detention of which usurious interest has been charged against or contracted to be paid by the borrower, from demanding, receiving or by the use of any means attempting to collect from the borrower usurious interest on account of any loan, or from thereafter charging any borrower usurious interest, or contracting for any usurious interest. All persons, firms, or corporations, and their agents, officers, servants and employees similarly engaged in making loans of money as herein defined, who reside in the same county, may be joined in a single suit and no plea of misjoinder of parties defendant shall ever be available to any defendant in such suit.

Sec. 2. By the term "habitually" as used in this Act, is meant the making of as many as three (3) loans on which or in connection with which usurious interest is charged or contracted for within a period of six (6) months next preceding the filing of any such suit.

By the term "usurious interest" as used in this Act, is meant interest at a rate in excess of ten (10%) per centum per annum.

Sec. 2a. Nothing in this Act shall in any way modify, alter or change any valid provision of Article 8 of Chapter 5 of House Bill No. 79, Acts of the Regular Session, 48th Legislature,[1] nor shall anything in this Act prevent charging of any actual and necessary expense, now or hereafter permitted and authorized by law, and such shall not be considered interest.

In the trial of any application for injunction under this Act there shall exist a prima facie presumption that the actual and necessary expenses of making any such loan was One ($1.00) Dollar for each Fifty ($50.00) Dollars, or fractional part thereof loaned; but this prima facie presumption shall extend only to the first note or debt owing at the same time by an individual to any person, firm, corporation, partnership or association, and shall not apply to any renewal or extension thereof unless the original note or debt and all extensions thereof were for a period of not less than sixty (60) days.

Sec. 3. In any such suit venue shall lie in the county of the residence of a defendant, or in a county where such business of loaning money is being conducted by such defendant.

Sec. 4. If any section, sentence, phrase, or part of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining portions thereof. [Acts 1943, 48th Leg., p. 227, ch. 144.]

[1] Article 342—508.

Arts. 4647–4655. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 680, 682, 684–689.

Art. 4656. [4653] [2996] Jurisdiction for trial.—Writs of injunction granted to stay proceedings in a suit, or execution on a judgment, shall be returnable to and tried in the court where such suit is pending, or such judgment was rendered; writs of injunction for other causes, if the party against whom it is granted be an inhabitant of the State, shall be returnable to and tried in the district or county court of the county in which such party has his domicile, according as the amount or matter in controversy comes within the jurisdiction of either of said courts. If there be more than one party against whom a writ is granted, it may be returned and tried in the proper court of the county where either may have his domicile. [Acts 1846, p. 363; P. D. 3932; G. L. vol. 2, p. 1669.]

Arts. 4657–4659. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 690, 691.

Art. 4660. [4667] [3010] Damages for delay.—Upon the dissolution of an injunction, either in whole or in part, on final hearing, where the collection of money has been enjoined, if the court be satisfied that the injunction was obtained only for delay, damages thereon may be assessed by the court, at ten per cent on the amount released by the dissolution of the injunction exclusive of costs. [P. D. 3935.]

Art. 4661. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 692.

Art. 4662. [4644–5–6] Appeals.*—Any party to a civil suit wherein a temporary injunction may be granted or refused or when motion to dissolve has been granted or over-ruled, under any provision of this title, in term time or in vacation, may appeal from such order or judgment to the Court of Civil Appeals by filing the transcript in such case with the clerk of the said appellate court not later than twenty days after the entry of record of such order or judgment. Such appeal shall not have the effect to suspend the order appealed from unless it shall be so ordered by the court or judge who enters the order. Such case

may be heard in the Court of Civil Appeals or Supreme Court on the bill and answer and such affidavits and evidence as may have been admitted by the judge of the court below. If the appellant desires to file a brief in said appellate court he shall furnish the appellee with a copy thereof not later than two days before the case is called for submission in such court, and the appellee shall have until the day the case is called for submission to answer such brief. Such case may be advanced in the Court of Civil Appeals or Supreme Court on motion of either party, and shall have priority over other cases pending therein. [Acts 1909, p. 354; Acts 1907, p. 206; Acts 1919, p. 22.]

Repealed in part, Rules of Civil Procedure, Rule 385.

Art. 4663. [4671] [3014] Principles of equity applicable.*—The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with the provisions of this title or other law.

Repealed in part, Rules of Procedure, Rule 693.

2. IN PARTICULAR CASES

Art. 4664. Nuisance.—Any hotel, rooming house or boarding house, country club, garage, rent car stand or other place to which the public commonly resort for board or lodging or commonly congregate for business or pleasure, where intoxicating liquors are kept, possessed, sold, manufactured, bartered or given away, or to which persons resort in assembling of two or more persons to the room for the purpose of drinking intoxicating liquor, or where intoxicating liquors are furnished to minors or to students of any educational institution, or where persons resort for the purpose of gambling, or for the purpose of prostitution, is hereby declared to be a common nuisance. Any person who knowingly maintains or assists in maintaining such a place is guilty of maintaining a nuisance. [Acts 2nd C. S. 1923, p. 57.]

This article was repealed, in so far as it related to intoxicating liquor, by the Liquor Control Act, Vernon's Ann.Pen.Code art. 666—1 et seq. Trent v. Kennedy, Civ. App., 109 S.W.2d 327.

Art. 4665. Nuisance; evidence.—Proof that any of said prohibited acts are frequently committed in any of said places shall be prima facie evidence that the proprietor knowingly permitted the same, and evidence that persons have been convicted of committing any said act in a hotel, boarding house or rooming house, is admissible to show knowledge on the part of the defendants that this law is being violated in the house. The original papers and judgments or certified copies thereof in such cases of convictions may be used in evidence in the suit for injunction and oral evidence is admissible to show that the offense for which said parties were convicted was committed in said house. Evidence of general reputation of said houses shall also be admissible to prove the existence of said nuisance. [Id.]

Art. 4666. Nuisance; prosecution.—Whenever the Attorney General, or the district or county attorney has reliable information that such a nuisance exists, either of them shall file suit in the name of this State in the county where the nuisance is alleged to exist against whoever maintains such nuisance to abate and enjoin the same. If judgment be in favor of the State, then judgment shall be rendered abating said nuisance and enjoining the defendants from maintaining the same, and ordering that said house be closed for one year from the date of said judgment, unless the defendants in said suit, or the owner, tenant or lessee of said property make bond payable to the State at the county seat of the county where such nuisance is alleged to exist, in the penal sum of not less than one thousand nor more than five thousand dollars, with sufficient sureties to be approved by the judge trying the case, conditioned that the acts prohibited in this law shall not be done or permitted to be done in said house. On violation of any condition of such bond, the whole sum may be recovered as a penalty in the name and for the State in the county where such conditions are violated, all such suits to be brought by the district or county attorney of such county. [Id.]

This article was repealed, in so far as it related to intoxicating liquor, by the Liquor Control Act, Vernon's Ann.Pen.Code art. 666—1 et seq. Trent v. Kennedy, Civ. App., 109 S.W.2d 327.

Art. 4667. [4685–93] Gaming and disorderly houses.—The habitual use, actual, threatened or contemplated, of any premises, place or building or part thereof, for any of the following uses shall be enjoined at the suit of either the State or any citizen thereof:

1. For gaming or keeping or exhibiting games prohibited by law.
2. For keeping, being interested in, aiding or abetting the keeping of a bawdy or disorderly house, as those terms are defined in the Penal Code.
3. For carrying on bucket shops as defined in the Penal Code, or the habitual use by or permitting to remain in any such bucket shop, any telegraph or telephone wires or instruments, under circumstances prohibited by the Penal Code.
4. For the voluntary engaging in a fight between a man and a bull for money or other thing of value, or for any championship, or upon result of which any money or anything of value is bet or wagered, or to see which any admission fee is charged either directly or indirectly, as prohibited by the Penal Code.

Any person who may use or be about to use, or who may aid or abet another in the use of any such premises for any purpose mentioned in this Article may be made a party defendant in such suit. The Attorney General or any District or County Attorney may bring and prosecute all suits that either may deem necessary to enjoin such uses, and need not verify the petition; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of. [As amended Acts 1937, 45th Leg., p. 664, ch. 331, § 1.]

Art. 4668. Pool halls.—No person acting for himself or others shall maintain or operate a pool hall within this State. The term "Pool Hall," as used herein, includes any room, hall, building or part thereof, tent or enclosure of any kind similar to those named, or any inclosed open space, in which are exhibited for hire, revenue, fees or gain of any kind, or for advertising purposes of any kind, any pool or billiard table or stand or structure of any kind or character on which may be played pool or billiards, or any game similar to pool or billiards played with balls, cues or pins or any similar device. Any such table, stand or structure of any kind used or exhibited in connection with any place where goods, wares or merchandise or other things of value are sold or given away or where or upon which any money or thing of value is paid or exchanged shall be regarded as a place where is exhibited the same for hire, revenue or gain. The habitual, actual, or contemplated use of any premises, place, room, building or part thereof or tent, or any kind or character of enclosure similar to those named, or any uninclosed open space for the purpose of exhibiting any table, stand or structure of any kind described in this article may be enjoined at the suit of either the State or any citizen thereof. The Attorney General of this State, or any district or county attorney, or any citizen of any county in which any pool hall is maintained, operated or contemplated may, either in term time or vacation, apply to the district judge of the district in which is located the place where such pool hall is maintained, operated or contemplated, or to any district judge in Travis County, for an injunction to prohibit the maintenance and operation of any such pool hall. Such judge upon the presentation of a petition for such injunction shall is-

sue a temporary injunction or restraining order, and, if upon final hearing thereof the fact be shown that the defendant is guilty of keeping, maintaining, or operating a pool hall, or of contemplating such act, the court before which the case is tried shall grant a permanent injunction against such party as prayed for in the petition. Any person operating or contemplating the operation of any pool hall in violation of any provision of this article, or anyone aiding or abetting such person may be made a party defendant in such suit. [Acts 1919, p. 18.]

Art. 4669. [4672] [3015] Revenue laws.—The full right, power and remedy of injunction may be invoked by the State at the instance of the county or district attorney or Attorney General, to prevent, prohibit or restrain the violation of any revenue law of the State. [Acts 1888, p. 8; G. L. vol. 9, p. 1006.]

Art. 4670. [Repealed.]

TITLE 77—INJURIES RESULTING IN DEATH

Art.
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4677. Damages apportioned.
4678. Death in foreign State.

Article 4671. [4694] [3017] [2899] Cause of action.—No agreement between any owner of any railroad, street railway, steamboat, stage-coach or other vehicle for transporting passengers or goods, or any industrial or public utility plant, or other machinery, and any person, corporation, trustee, receiver, lessee, joint stock association or other person in control of, or operating the same, shall release such owner, person, trustee, lessee, corporation or joint stock association from any liability fixed by the provisions of this article. An action for actual damages on account of the injuries causing the death of any person may be brought in the following cases:

1. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness, or default of another person, association of persons, joint stock company, corporation or trustee or receiver of any person, corporation, joint stock company, or association of persons, his, its or their agents or servants, such persons, association of persons, joint stock company, corporation, trustee or receiver, shall be liable in damages for the injuries causing such death. The term "corporation," as used in this article, shall include all municipal corporations, as well as all private and public and quasi public corporations, except counties and common and independent school districts.

2. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness, or default of the proprietor, owner, charterer or hirer of any industrial or public utility plant, or any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or by the unfitness, wrongful act, neglect, carelessness, unskilfulness or default of his, their or its servants or agents, such proprietor, owner, charterer or hirer shall be liable in damages for the injuries causing such death.

3. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness or default of the receiver, trustee or other person in charge of or in control of any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or any industrial plant, public utility plant, or any other machinery, or by the wrongful act, neglect, carelessness, unfitness, unskilfulness or default of his or their servants or agents, such receiver, trustee, or other person shall be liable in damages for the injuries causing such death, and the liability here fixed against such receiver, trustee, or other person shall extend to all cases in which the death is caused by reason of any bad or unsafe condition of the railroad, street railway or other machinery under the control or operation of such receiver, trustee or other person, and to all other cases in which the death results from any other reason or cause for which an action may be brought for damages on account of personal injuries, the same as if said railroad, street railway or other machinery were being operated by the owner thereof. [Acts 1860, p. 32; G. L. vol. 4, p. 1394; Acts 1887, p. 44; G. L. vol. 9, p. 842; Acts 1913, p. 288; Acts 1921, p. 212.]

Section 2 of this article as amended by Acts 1913, 33rd Leg., p. 288, ch. 143, was held to be in violation of Const. art. 3, § 35, requiring subject of act to be expressed in title, in so far as it attempts to fix liability for death of a person when caused by negligence of agents or servants of another person. See Hamilton v. St. Louis, S. F. & T. Ry. Co., 115 T. 455, 283 S.W. 475.

Art. 4672. [4695] [3018] [2900] Character of wrongful act.—The wrongful act, negligence, carelessness, unskilfulness or default mentioned in the preceding article must be of such character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury. [Acts 1860, p. 32; Acts 1887, p. 44; Acts 1st C. S. 1892, p. 5; G. L. vol. 10, p. 369.]

Art. 4673. [4696] [3019] [2901] Exemplary damages.—When the death is caused by the wilful act or omission, or gross negligence of the defendant, exemplary as well as actual damages may be recovered. [Const., Art. 16, sec. 26.]

Art. 4674. [4697] [3020] [2902] Crime no bar.—The action may be commenced and prosecuted, although the death has been caused under circumstances amounting in law to a felony, and without regard to any criminal proceedings that may or may not be had in relation to the homicide. [Id.]

Art. 4675. [4698–9–4700] Institution of suit.—Actions for damage arising from death shall be for the sole and exclusive benefit of and may be brought by the surviving husband, wife, children, and parents of the person whose death has been caused or by either of them for the benefit of all. If none of said parties commence such action within three calendar months after the death of the deceased, the executor or administrator of the deceased shall commence and prosecute the action unless requested by all of such parties not to prosecute the same. The amount recovered shall not be liable for the debts of the deceased. [Const. Art. 16, sec. 26; Acts 1927, 40th Leg., p. 356, ch. 239, § 2.]

Art. 4676. [4703] Executor, etc., made party, when.—If the defendant die pending the suit, or if the person or persons against whom such suit might have been instituted, if alive, die before the suit is instituted, his or their executors or administrators may be made a party or parties defendant, and the suit instituted and prosecuted to judgment as though such defendant or person or persons had continued to live. The judgment in such case, if rendered in favor of the plaintiff, shall be, to be paid in due course of administration. [Acts 1925, p. 298.] [39th Leg., ch. 115, § 1.]

Art. 4677. [4704] [3027] [2909] Damages apportioned.—The jury may give such damages as they think proportionate to the injury resulting from such death. The amount so recovered shall be divided among the persons entitled to the benefit of the action, or such of them as shall then be alive, in such shares as the jury shall find by their verdict. [Id.]

Art. 4678. Death in foreign State.—Whenever the death or personal injury of a citizen of this State

or of the United States, or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any foreign State or country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign State or country, such right of action may be enforced in the courts of this State within the time prescribed for the commencement of such actions by the statutes of this State. The law of the forum shall control in the prosecution and maintenance of such action in the courts of this State in all matters pertaining to the procedure. [Acts 1913, p. 338; Acts 1917, p. 365.]

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CHAPTER 1.—COMMISSIONER OF INSURANCE

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Article 4679. [Repealed by Acts 1927, 40th Leg., p. 329, ch. 224, § 7.]

Art. 4679a. Board of Insurance Commissioners.—There is hereby created a Board of Insurance Commissioners, who shall be appointed by the Governor with the advice and consent of the Senate. There shall be three members of the said Board, one of whom shall be known as the Life Insurance Commissioner, who shall also be the Chairman of the Board; there shall be a Fire Insurance Commissioner, and there shall be a Casualty Insurance Commissioner. [Acts 1927, 40th Leg., p. 329, ch. 224, § 1.]

Section 7 of this Act repeals Articles 4679, 4876, 4877, and all conflicting laws or parts of laws.

Art. 4679b. Terms of office.—Until their present terms shall expire the present Commissioner of Insurance shall be the Life Insurance Commissioner and Chairman of the Board. The Secretary of the State Insurance Commission shall be the Fire Insurance Commissioner, and the State Fire Marshal shall be the Casualty Insurance Commissioner. At the expiration of such present terms the Governor shall appoint a Casualty Insurance Commissioner, whose term of office shall expire on February 10, 1929; a Fire Insurance Commissioner whose term of office shall expire on February 10, 1931; and a Life Insurance Commissioner whose term shall expire on February 10, 1933. At the conclusion of the initial terms the regular terms of such offices shall thereupon commence. and thereafter shall run for six years, so that each membership shall run for six years, and so that one membership of said Board shall expire every two years. Vacancies occurring in any office during any term shall with the advice and consent of the Senate be filled by appointment of the Governor, which appointment shall extend only to the end of the unexpired term. [Acts 1927, 40th Leg., p. 329, ch. 224, § 2.]

Art. 4679c. Duties of commissioners.—Generally, the Life Insurance Commissioner shall have supervision of matters relating to Life Insurance, to the chartering of companies, certificates of authority, and as to the solvency of persons and corporations engaged in the Insurance business; the Fire Insurance Commissioner shall have general supervision of matters relating to Fire Insurance; and the Casualty Insurance Commissioner shall have general supervision of matters relating to casualty, workmen's compensation, fidelity, guaranty and miscellaneous insurance. The Board shall nevertheless operate as a whole, and a majority vote of the members shall be necessary to official action. [Acts 1927, 40th Leg., p. 329, ch. 224, § 3.]

Art. 4679d. Bond.—Sec. 6. Each of the members of the Board of Insurance Commissioners shall, before entering upon the duties of his office, give a good bond to the State of Texas in the sum of five thousand ($5,000.00) dollars, to be approved by the Governor, conditioned upon the faithful discharge of the duties of his office.

Sec. 6A. Compensation to be paid the Commissioners shall be such sums as are provided for by the appropriation bills from time to time.

Sec. 6B. Nothing in this bill [1] shall be construed to in any manner affect the duties now imposed by law on the Industrial Accident Board or to take from said board the performance of the duties now imposed on said board by law. [Acts 1927, 40th Leg., p. 329, ch. 224.]

[1] Articles 4679–4679c, 4681, 4682a, 4876, 4877.

Art. 4680. [4489–90] Clerks.—The Commissioner [1] may appoint a chief clerk and such other clerks as the work of his office may require. All clerks shall be removable at the will of the Commissioner. The chief clerk shall possess all the power and perform all the duties attached by law to the office of Commissioner during the necessary absence of the Commissioner, or his inability to act from any cause. The Commissioner shall be responsible for the acts of his chief clerk, who shall, before entering upon the duties of his position, take the oath required of the Commissioner; he may also be required by the Commissioner to enter into bond with security, payable to said Commissioner, for the faithful performance of the duties of his position. [Acts 1876, p. 219; G.L. vol. 8, p. 1055; Acts 3rd C. S. 1923, p. 178.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, ante, and 4682a, post.

Art. 4681. [4492] [2915] [2818] Ineligibility of certain persons.—No person who is a director, officer or agent of, or directly or indirectly interested in any insurance company, except as insured, shall be a Commissioner or a Clerk. [As reenacted Acts 1927, 40th Leg., p. 329, ch. 224, § 4.]

Art. 4682. [4493] [3050] Duties of Commissioner.—In addition to the other duties required of the Commissioner,[1] he shall perform duties as follows:

1. Shall execute the laws.—See that all laws respecting insurance and insurance companies are faithfully executed.

2. File articles of incorporation and other papers.—File and preserve in his office all acts or articles of incorporation of insurance companies and all other papers required by law to be deposited with him, and, upon application of any party interested therein, to furnish certified copies thereof upon payment of the fees prescribed by law.

3. Calculate net value of policies.—He shall, as soon as practicable in each year, calculate or cause to be calculated in his office by an officer or employé of his department, the net value on the thirty-first day of December of the previous year of all the policies in force on that day in each life or health insurance company doing business in the State, upon the basis and in the manner prescribed by law.

4. See that net value of policies are [2] on hand.—Having determined the net value of all the policies in force, he shall see that the company has in safe securities of the class and character required by the laws of this State the amount of said net value of all its policies, after all its debts and claims against it and at least one hundred thousand dollars of surplus to policy holders have been provided for.

5. May accept valuation of other States.—He may accept the valuation made by the insurance commissioner of the State under whose authority a life insurance company was organized, when such valuation has been properly made on sound and recognized principles, as a legal basis as above. The company shall furnish to him a certificate of the insurance commissioner of such States, setting forth the value calculated on the data designated above of all the policies in force in the company on the previous thirty-first day of December, and stating that, after all other debts of the company and claims against it at that time, and one hundred thousand dollars surplus to policy holders, were provided for, the company had, in safe securities of the character required by the laws of this State, an amount equal to the net value of all its policies in force, and that said company is entitled to do business in its own State.

6. That company furnishes certificate.—Every life insurance company doing business in this State during the year for which the statement is made that fails promptly to furnish the certificate aforesaid shall be required to make full detailed lists of policies and securities to the Commissioner, and shall be liable for all charges and expenses consequent upon such failure.

7. Shall calculate reserve on fire insurance.—For every company doing fire insurance business in this State, he shall calculate the reinsurance reserve for unexpired fire risks by taking fifty per cent of the premiums received on all unexpired risks that have less than one year to run, and a pro rata of all premiums received on risks that have more than one year to run. When the reinsurance reserve, calculated as above, is less than forty per cent of all the premiums received during the year, the reinsurance reserve in this case shall be the whole of the premiums received on all of its unexpired risks. For every company transacting any kind of insurance business in this State, for which no basis is prescribed by law, he shall calculate the reinsurance reserve upon the same basis prescribed in this article as to companies transacting fire insurance business.

8. Shall charge premiums.—In marine and inland insurance, he shall charge all the premiums received on unexpired risks as a reinsurance reserve.

9. When company's capital is impaired.—Having charged against a company other than life, the reinsurance reserve, as prescribed by the laws of this state, and adding thereto all other debts and claims against the company, he shall, in case he finds the capital stock of the company impaired to the extent of twenty per cent, give notice to the company to make good its whole capital stock within sixty days, and, if this is not done, he shall require the company to cease to do business within this State, and shall thereupon, in case the company is organized under authority of the State immediately institute legal proceedings to determine what further shall be done in the case.

10. Shall publish results of investigation.—The Commissioner shall publish the result of his examination of the affairs of any company whenever he deems it for the interest of the public.

11. Shall suspend or revoke certificate.—He shall suspend the entire business of any company of this State, and the business within this State of any other

company, during its noncompliance with any provision of the laws relative to insurance, or when its business is being fraudulently conducted, by suspending or revoking the certificate granted by him. He shall give notice thereof to the Insurance Commissioner or other similar officer of every state, and shall publish notice thereof. He shall give such company at least ten days notice in writing of his intention to suspend its right to do business or revoke the certificate of authority granted by him, stating specifically the reason why he intends such action.

12. Report to Attorney General.—He shall report promptly and in detail to the Attorney General any violation of law relative to insurance companies or the business of insurance.

13. Shall furnish blanks.—He shall furnish to the companies required to report to him the necessary blank forms for the statements required.

14. Shall keep records.—He shall preserve in a permanent form a full record of his proceedings and a concise statement of the condition of each company or agency visited or examined.

15. Give certified copies.—At the request of any person, and on the payment of the legal fee, he shall give certified copies of any record or papers in his office, when he deems it not prejudicial to public interest, and shall give such other certificates as are provided for by law.

16. Report to Governor.—He shall report annually to the Governor the names and compensations of his clerks, the receipts and expenses of his department for the year, his official acts, the condition of companies doing business in this State, and such other information as will exhibit the affairs of said department.

17. Send copies of reports to.—He shall send a copy of such annual report to the Insurance Commissioner or other similar officer of every state and to each company doing business in the State.

18. Report laws to other States.—On request, he shall communicate to the Insurance Commissioner or other similar officer of any other State, in which the substantial provisions of the law of this State relative to insurance have been, or shall be, enacted, any facts which by law it is his duty to ascertain respecting the companies of this State doing business within such other State.

19. See that no company does business.—He shall see that no company is permitted to transact the business of life insurance in this State whose charter authorizes it to do a fire, marine, lightning, tornado or inland insurance business, and that no company authorized to do a life or health insurance business in this State be permitted to take fire, marine or inland risks.

20. Admit mutual companies.—He shall admit into this State mutual insurance companies organized under the laws of other states and who have two hundred thousand dollars assets in excess of liabilities engaged in cyclone, tornado, hail and storm insurance. [Acts 1909, p. 211, sec. 59.]

[1] See note under Article 4680, ante.
[2] So in enrolled bill. Should probably read "is".

Art. 4682a. Duties of the Commission.—All the powers, duties and prerogatives heretofore vested in or devolving upon the Commissioner of Insurance or the State Insurance Commission or any member thereof as now constituted by statute shall hereafter be had, enjoyed, and exercised by the Board of Insurance Commissioners as herein created. The duties heretofore placed upon and the powers and privileges heretofore exercised by the State Fire Marshal are now to be placed upon and exercised and enjoyed by the Fire Insurance Commissioner. [Acts 1927, 40th Leg., p. 329, ch. 224, § 5.]

Art. 4682b. Fixing rate of automobile insurance.

Filing classification of risks and premium rates

Section 1. Every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyd's or other insurer, hereinafter called insurer, writing any form of motor vehicle insurance in this State, shall annually file with the Board of Insurance Commissioners, hereinafter called Commissioner, on forms prescribed by the Commissioner, a report showing its premiums and losses on each classification of motor vehicle risks written in this State. The Commissioner shall have the sole and exclusive power and authority, and it shall be its duty to determine, fix, prescribe, and promulgate just, reasonable and adequate rates of premiums to be charged and collected by all insurers writing any form of insurance on motor vehicles in this State, including fleet or other rating plan, designed to discourage losses from fire and theft and similar hazards and to take account of the peculiar hazards of individual risks, and an experience rating plan designed to encourage the prevention of accidents, and to take account of the peculiar hazards of individual risks, provided that only one such plan shall be fixed or promulgated for each form of insurance hereunder. Said Commissioner shall have the authority also to alter or amend any and all of such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same or any part thereof. Said Commissioner shall have authority to employ clerical help, inspectors, experts, and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law; provided, however, that the number of employees and salary of each shall be fixed in the General Appropriation Bill passed by the Legislature. Said Commissioner shall ascertain as soon as practicable the annual insurance losses incurred under all policies on motor vehicles in this State, make and maintain a record thereof, and collect such data as will enable said Commissioner to classify the various motor vehicles of the State according to the risk and usage made thereof, and to classify and assign the losses according to the various classes of risks to which they are applicable; the Board shall also ascertain the amount of premiums on all such policies for each class of risks, and maintain a permanent record thereof in such manner as will aid in determining just, reasonable and adequate rates of premiums.

Motor vehicle or automobile insurance as referred to in this Act shall be taken and construed to mean every form of insurance on any automobile or other vehicle hereinafter enumerated and its operating equipment or necessitated by reason of the liability imposed by law for damages arising out of the ownership, operation, maintenance, or use in this State of any automobile, motorcycle, motor-bicycle, truck, truck-tractor, tractor, traction engine, or any other self-propelled vehicle, and including also every vehicle, trailer or semi-trailer pulled or towed by a motor vehicle, but excluding every motor vehicle running only upon fixed rails or tracks. Workmen's Compensation Insurance is excluded from the foregoing definition and from the terms of this Act. [As amended Acts 1937, 45th Leg., p. 671, ch. 335, § 1.]

Approved rates as controlling

Sec. 2. On and after the filing and effective date of such classification of such risks and rates, no such insurer shall issue or renew any such insurance at premium rates which are greater or less than, or different from, those approved by the Commissioner as just, reasonable and adequate for the risks to which they respectively apply, and not confiscatory as to any class of insurance carriers authorized by law to write such insurance.

Experience as factor

Sec. 3. To insure the adequacy and reasonableness of rates the Commissioner may take into consideration experience gathered from a territory sufficiently broad to include the varying conditions of the risks involved and the hazards and liabilities assumed, and over a period sufficiently long to insure that the rates determined therefrom shall be just, reasonable and adequate, and to that end the Commissioner may consult any rate making organization or association that may now or hereafter exist.

Reports on experience

Sec. 4. The Commissioner is hereby authorized and empowered to require sworn statements from any insurer affected by this Act, showing its experience on any classification or classifications of risks and such other information which may be necessary or helpful in determining proper classifications and rates, or other duties or authority imposed by law. The Commissioner shall prescribe the necessary forms for such statements and reports, having due regard to the rules, methods and forms in use in other states for similar purposes in order that uniformity of statistics may not be disturbed.

Policy forms and endorsements

Sec. 5. In addition to the duty of approving classifications and rates, the Commissioner shall prescribe policy forms for each kind of insurance uniform in all respects except as necessitated by the different plans on which the various kinds of insurers operate, and no insurer shall thereafter use any other form in writing automobile insurance in this State; provided, however, that any insurer may use any form of endorsement appropriate to its plan of operation, provided such endorsement shall be first submitted to and approved by the Commissioner; and any contract or agreement not written into the application and policy shall be void and of no effect and in violation of the provisions of this Act, and shall be sufficient cause for revocation of license of such insurer to write automobile insurance within this State.

Participating policies

Sec. 6. Nothing in this Act shall be construed to prohibit the operation hereunder of any stock company, mutual company, reciprocal or inter-insurance exchange or Lloyds association or to prohibit any stock company, mutual company, reciprocal or inter-insurance exchange or Lloyds association issuing participating policies; provided no distribution of profits or dividends to insured shall take effect or be paid until the same shall have been approved by the Commissioner; and provided further that no such distribution shall be approved until adequate reserves shall have been provided, such reserves to be computed on the same basis for all classes of insurers operating under this Act.

Special favors and profit sharing

Sec. 7. It shall be unlawful for any insurer, as defined in this Act, or its officers, directors, general agent, State agents, special agents, local agents or other representatives, to grant to or contract with insured for any special favor or advantage in dividends or other profits, or any commissions or divisions of commissions or profits to accrue thereon, or any compensation or any valuable consideration not specified in the policy contract, or any inducement not specified in the policy contract, for the purpose of writing the insurance of any insured. Nothing in this Section, however, shall be construed to prohibit an insurer from sharing its profits after the same have been earned with its policy holders under and in accordance with an agreement as to such profit sharing contained in its policy contract. Any profit sharing under any policy with insured shall be uniform as between such insured, and shall consist only and solely of an equitable distribution under and in accordance with the terms of the policy of earnings between such insured, and no such insurer shall discriminate in any distribution of profits between insured of a class, and no classes for such distribution shall be made or established except on the approval of the Commissioner. No part of any profit shall be distributed to any insured under any such policy until the expiration of the policy contract. Any violation of the terms of this Section shall constitute unjust discrimination and shall constitute rebating, and shall be sufficient grounds for the revocation of the permit of the insurer or of the license of the agent being guilty of such unjust discrimination and rebating.

Discriminations or distinctions

Sec. 8. No insurer coming within the terms of this Act shall, in its business in this State, make or permit any distinction or discrimination in favor of the insured having a like hazard, in the matter of the charge of premiums for insurance, or in dividends or other benefits payable under any policy, nor shall any such insurer or agent make any contract of insurance, or agreement as to such insurance, other than expressed in the policy, nor shall any such insurer or its agents or representatives pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insured, any rebate payable upon the policy or any special favor or advantage in dividends or other benefits to accrue, or anything of value whatsoever, not specified in the policy; provided that nothing in this Act shall be construed to prohibit the modification of rates by an experience rating plan designed to encourage the prevention of accidents and to take account of the peculiar hazards of individual risks, provided such plan shall have been approved by the Commissioner; and provided further that only one such plan shall be approved for each form of insurance hereunder.

Rules and regulations

Sec. 9. The Commissioner is hereby empowered to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of this Act as are necessary to carry out its provisions, including full power and control over any administrative agencies and/or stamping office which may be organized or established by insurer with his approval to carry into effect the provisions of this Act.

Hearing on grievances

Sec. 10. Any policyholder or insurer shall have the right to a hearing before the Commissioner on any grievance occasioned by the approval or disapproval by the Commissioner of any classification, rate or endorsement or policy form, or any rule or regulation established under the terms hereof, such hearing to be held in conformity with rules prescribed by the Commissioner. Upon receipt of request that such hearing is desired, the Commissioner shall forthwith set a date for the hearing, at the same time notifying all interested parties in writing of the place and date thereof, which date, unless otherwise agreed to by the parties at interest, shall not be less than ten nor more than thirty days after the date of said notice. Any party aggrieved shall have the right to apply to any Court of competent jurisdiction to obtain redress.

No hearing shall suspend the operation of any classification, rate or policy form unless the Commissioner shall so order.

Rates, forms, etc., pending determination

Sec. 11. Until the insurer shall file, as provided herein, its classification of risks and rates, and the same shall be approved or become effective under the terms hereof, and the Commissioner shall have approved other or different rates, classifications, policy forms, rules and regulations under the Act, the rates, classifications, policy forms, rules and regulations now in use by the insurers now writing automobile insur-

ance in this State shall remain in effect. [Acts 1927, 40th Leg., p. 373, ch. 253.]

[1] See note under Article 4680, ante.

Tax on gross motor vehicle insurance premiums

Sec. 11-a. The State of Texas shall assess and collect an additional one-fifth of one per cent of the gross motor vehicle insurance premiums, of all insurers writing motor vehicle insurance in this State, according to the reports made to the Board of Insurance Commissioners as required by law. The tax herein required shall supercede the tax heretofore collected upon fire premiums of automobile insurance for the support of the Board of Insurance Commissioners. Said taxes when collected shall be deposited with the State Treasurer to the credit of a special fund to be designated as the Motor Vehicle Insurance Division Fund, to be used for the sole purpose of administering this Act; and to be expended only on warrants issued by the Comptroller upon vouchers drawn by the Board of Insurance Commissioners, such vouchers to be accompanied by itemized sworn statements of the expenditures, and to be in addition to all taxes now imposed, or which may hereafter be imposed, not in conflict with this Section of this Act. Should there be an unexpended balance at the end of any year in said fund, the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the Treasury will not exceed the amount necessary for the current year to pay all expenses of maintaining the Motor Vehicle Division of the Board of Insurance Commissioners. [Added Acts 1937, 45th Leg., p. 671, ch. 335, § 2.]

Section 12 of this Act being a penal provision is published as Pen.Code, art. 571a. Section 13 provides that if any part is held invalid, such holding shall not affect the remainder.

Art. 4682c. [Expired Dec. 31, 1933.]

This article was Acts 1933, 43d Leg., p. 104, ch. 52. Section 2 provided that it should expire Dec. 31, 1933. It related to the regulation and stabilization of the payment of premiums to life insurance companies and fraternal benefit societies, payment of policy reserve loans, withdrawals of cash surrender values, and similar matters during the emergency period provided in the Act.

Art. 4683. [4494] May change form of annual statement.—The Commissioner [1] may, from time to time make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to him best adapted to elicit a true exhibit of their condition and methods of transacting business. Such form shall elicit only such information as shall pertain to the business of the company. [Acts 1909, p. 213, sec. 60.]

[1] See note under Article 4680, ante.

Art. 4684. [4495] When parties refuse to testify.—If any person refuses to appear and testify or to give information authorized by this chapter to be demanded by the Commissioner,[1] such Commissioner may file his sworn application with any district judge or district court within this State, where said witness is summoned to appear; and said judge shall summon said witness and require answers to such questions. [Id. sec. 63.]

[1] See note under Article 4680, ante.

Art. 4685. [4496] Officers shall execute service.—Peace officers shall execute process directed to them by the Commissioner [1] and make return thereof to him, as in the case of process issued from any court. [Id. sec. 64.]

[1] See note under Article 4680, ante.

Art. 4686. [4497] Shall issue certificate of authority.—1. No individual, group of individuals, association or corporation, unless now or hereafter otherwise permitted by Statute, shall be permitted to engage in the business of insuring others against those losses which may be insured against under the laws of this State. Should the Board of Insurance Commissioners be satisfied that any insurance carrier applying for a certificate of authority has in all respects fully complied with the law; and that if a stock company, its capital stock has been fully paid up, that is has the required amount of capital and surplus to policyholders; it shall be its duty to issue to such carrier a certificate of authority under its seal authorizing such carrier to transact insurance business, naming therein the particular kinds of insurance, for the period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next following the date of said certificate. Any such carrier who may now be doing business within the State of Texas shall on and after the first day of January, 1944, be required to comply with all of the provisions as set out by this Act.

2. The word "carrier" as herein used is defined as that type of insurer which, in consideration of premium, issues policies to others insuring against those losses which may be insured against under the provisions of the law, including stock companies, mutual companies, reciprocals or inter-insurance exchanges, and Lloyd's Associations. Provided that the Board of Insurance Commissioners shall give preference to applications of domestic companies in checking and approving annual statements and issuing certificates of authority. [Acts 1909, p. 205, § 40; Acts 1933, 43rd Leg., p. 420, ch. 164, § 1; Acts 1943, 48th Leg., p. 607, ch. 352, § 1.]

Section 2 of the amendatory Act of 1943 repealed all conflicting laws.

Art. 4687. [4497] Revocation of certificate—If any such insurance company organized under the laws of any State or country, after having obtained a certificate of authority from the Commissioner [1] or other officer authorized to issue such permit to do business in this State, shall bring in any Federal court any suit or action against any citizen of this State, or shall remove any suit or action heretofore or hereafter commenced in any court of this State, to which it is a party, to any Federal court, the Commissioner shall forthwith revoke and recall the certificate of authority of such insurance company to transact business in this State. No renewal of authority shall be granted to such insurance company to do business in this State for a period of three years after such revocation; and such insurance company shall be prohibited from transacting any business in this State until again duly authorized by law. [Acts 1909, p. 205, § 40.]

[1] See note under Article 4680, ante.

Art. 4688. [4498) (1) To Compute Reserve Liability.—The Board of Insurance Commissioners, as soon as practicable in each year shall compute or cause to be computed the reserve liability on the 31st day of December of the preceding year, of every company organized under the laws of this state, or authorized to transact business in this state, which has outstanding policies of insurance on the lives of citizens of this state. In making such computation the Board may use group methods and approximate averages for fractions of a year or otherwise. The reserve liability of all outstanding policies of group insurance and of policies of insurance issued by mutual companies organized under the provisions of Chapter 7 of this Title [1] shall be computed in accordance with the laws relating specifically to such policies. The reserve liability of all other outstanding policies of insurance and annuity contracts shall be computed upon the net premium basis and in accordance with their terms and the following rules:

(a) As respects policies issued prior to the first day of January, 1910, the computation shall be on the basis of the American Experience Table of Mortality and four and one-half (4½%) per cent interest per annum.

(b) As respects policies issued after the 31st day of December, 1909, and prior to January 1, 1948, the com-

putation shall be on the basis of the Actuaries' or Combined Experience Table of Mortality with four (4%) per cent interest per annum, if the interest rate guaranteed in the policy is four (4%) per cent per annum or higher. If any such policies were issued upon a reserve basis of an interest rate lower than four (4%) per cent per annum, then the computation shall be made on the basis of the American Experience Table of Mortality with interest at such lower specified rate.

(c) As respects policies issued after the 31st day of December, 1947, the computation shall be on the basis of the mortality table and interest rate specified in the respective policies, provided that (1) the specified rate of interest shall not exceed three and one-half (3½%) per cent per annum; (2) the specified table for policies other than policies of industrial life insurance shall be the American Experience Table of Mortality, the American Men Ultimate Table of Mortality, or the Commissioners 1941 Standard Ordinary Mortality Table; and (3) the specified table for policies of industrial life insurance shall be the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Sub-standard Industrial Mortality Table, the 1941 Standard Industrial Mortality Table, or the 1941 Sub-standard Industrial Mortality Table.

(d) As respects policies issued on sub-standard risks and annuity contracts and contracts or policies for disability benefits and accidental death benefits, the computation shall be on the basis of the standards and methods adopted by the respective companies and approved by the Board of Insurance Commissioners.

(2) If the gross premium charged by any life insurance company on any policy or contract is less than the net premium for the policy or contract, according to the mortality table, rate of interest and method used in computing the reserve liability thereon as aforesaid, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity, the amount of which shall equal the difference between the premium charged and such net premium required by the rules above stated and the term of which in years shall equal the number of annual premiums for the remainder of the premium paying period. [Acts 1909, p. 205; Acts 1947, 50th Leg., p. 428, ch. 235, § 1.]

[1] Article 4800 et seq.

Art. 4689. [4499] To calculate reinsurance reserve.—On the thirty-first day of December of each and every year, or as soon thereafter as may be practicable, the Commissioner [1] shall have calculated in his office the reinsurance reserve for all unexpired risks of all insurance companies organized under the laws of this State, or transacting business in this State, transacting any kind of insurance other than life, fire, marine, inland, lightning or tornado insurance, by taking fifty per cent of the gross premiums on all unexpired risks that have less than one year to run and a pro rata of all premiums received on risks that have more than one year to run. [Acts 1909, p. 205, sec. 53.]

[1] See note under Article 4680, ante.

Art. 4690. [4500] To examine companies.—The Chairman of the Board of Insurance Commissioners shall, once in each two years, or oftener if he deems necessary, in person or by one or more examiners commissioned by him in writing, visit each company organized under the laws of this State and examine its financial condition and its ability to meet its liabilities, as well as its compliance with the laws of Texas affecting the conduct of its business; and he may similarly, in person or by one or more commissioned examiners, visit and examine, either alone or jointly with representatives of the insurance supervising departments of other States, each Insurance Company not organized under the laws of this State but authorized to transact business in this State. He or his commissioner examiners shall have free access to all the books and papers of the company or agents thereof relating to the business and affairs of such company, and shall have power to summon and examine under oath the officers, agents and employees of such company and any other person within the State relative to the affairs of such company. He may revoke or modify any certificate of authority issued by him or by any predecessor in office when any condition or requirement prescribed by Law for granting it no longer exist. He shall give such company at least ten days' written notice of his intention to revoke or modify such certificate of authority, stating specifically the reasons for the action he proposes to take. [Acts 1909, p. 205, § 41; Acts 1931, 42nd Leg., p. 252, ch. 152, § 2.]

Art. 4690a. Expenses of examinations; disposition of sums collected.—The expenses of all examinations of domestic insurance companies made on behalf of the State of Texas by the Chairman of the Board of Insurance Commissioners or under his authority shall be paid by the corporations examined in such amount as the Chairman of the Board of Insurance Commissioners shall certify to be just and reasonable.

Assessments for the expenses of such domestic examination, which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Act, shall be made by the Chairman of the Board of Insurance Commissioners upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets and/or insurance in force; provided such assessments shall be made and collected only at the time such examinations are made.

All sums collected by the Chairman of the Board of Insurance Commissioners, or under his authority, on account of the cost of examinations assessed as hereinabove provided for shall be paid into the State Treasury to the credit of the Insurance Examination Fund; and the salaries and expenses of the actuary of the Board of Insurance Commissioners and of the examiners and assistants, and all other expenses of such examinations, shall be paid upon the certificate of the Chairman of the Board of Insurance Commissioners by warrant of the Comptroller drawn upon such fund in the State Treasury.

If at any time it shall appear that additional pro rata assessments are necessary to cover all of the expenses and disbursements required by law and necessary to comply with this Act, the same shall be made, and any surplus arising from any and all such assessments, over and above such expenses and disbursements, shall be applied in reduction of subsequent assessments in the proportion assessed so that there shall be so assessed and collected the funds necessary to meet such expenses and disbursements and no more.

In case of an examination of a company not organized under the laws of Texas, whether such examination is made by the Texas authorities alone, or jointly with the insurance supervisory authorities of another state or states, the expenses of such examination due to Texas' participation therein, shall be borne by the company under examination. Payment of such cost shall be made by the company upon presentation of itemized written statement by the Chairman, and shall consist of the examiners' remuneration and expenses, and the other expenses of the Department of Insurance properly allocable to the examination. Payment shall be made directly to the Chairman, and all money collected by assessment on foreign companies for the cost of examina-

tion shall be deposited in the State Treasury by the Chairman to the credit of the Insurance Examination Fund out of which shall be paid, by warrant of the State Comptroller of Public Accounts on voucher of the Chairman of the Board of Insurance Commissioners, the examiners' remuneration and expenses in the amounts determined by the method hereinafter provided, when verified by their affidavit and approved by the Chairman; and said money is hereby appropriated for that purpose, the balance, if any, to remain in the Insurance Examination Fund in the State Treasury subject to be expended for the purposes as are other funds placed therein. Examiners' remuneration and expenses shall be the same as that which would be paid by the home state of a company under examination to persons conducting the examination of a Texas company admitted to do business in that State. If there be no recognized charge for such service, the Chairman shall fix the remuneration and expense allowance of the examiners at such reasonable figure as he may determine. [Acts 1931, 42nd Leg., p. 252, ch. 152, § 3; Acts 1939, 46th Leg., p. 385, § 1.]

Art. 4690b. Appointment of examiners and assistants and actuary by Board of Insurance Commissioners; salaries.—The Chairman of the Board of Insurance Commissioners shall appoint such number of examiners, one of whom shall be the chief examiner, and such number of assistants as he may deem necessary for the purpose of making on behalf of the State of Texas and of the Board of Insurance Commissioners all such examinations of insurance companies, at the expense of such companies or corporations, as are required to be made or provided for by law; and, after this Act shall take effect he shall also appoint an actuary to the Board of Insurance Commissioners to advise the Board in connection with the performance of its duties and for aid and advice and counsel in connection with all such examinations required by law. Such examiners and assistants shall, as directed by the Chairman of the Board of Insurance Commissioners, perform all the duties relative to all examinations provided by law to be made by the Board of Insurance Commissioners of the State of Texas, and it is the purpose of this Act to provide for the examination hereunder by the Chairman of the Board of Insurance Commissioners of all corporations, firms or persons engaged in the business of writing insurance of any kind in this State whether now subject to the supervision of the Insurance Department or not.

All such examiners and assistants and such actuary shall hold office subject to the will of the Chairman of the Board of Insurance Commissioners and the number of such examiners and assistants may be increased or decreased from time to time to suit the needs of the examining work. The actuary and all such examiners and assistants shall be paid out of the Insurance Examination Fund, such salaries as shall be fixed from time to time by the Legislature, and their necessary traveling expenses shall be paid out of said fund upon sworn, itemized accounts thereof, to be rendered monthly and approved by the Chairman of the Board of Insurance Commissioners before payment.

Where the Chairman of the Board shall deem it advisable he may commission the actuary of the Board, the chief examiner, or any other examiner or employee of the Department, or any other person, to conduct or assist in the examination of any company not organized under the laws of Texas and allow them compensation as herein provided, except that they may not be otherwise compensated during the time they are assigned to such foreign company examinations. Other than as thus provided, neither the actuary of the Board of Insurance Commissioners nor any examiner or assistant shall continue to serve as such if, while holding such position, he shall directly or indirectly accept from any insurance company any employment or pay or compensation or gratuity on account of any service rendered or to be rendered or any account whatsoever. [Acts 1931, 42nd Leg., p. 252, ch. 152, § 3aa; Acts 1939, 46th Leg., p. 385, § 2.]

Art. 4690c. Oath and bond of examiners and assistants; action on bond for false reports.—Each examiner and assistant examiner, before entering upon the duties of his appointment shall take and file in the office of the Secretary of State an oath to support the Constitution of this State, to faithfully demean himself in office, to make fair and impartial examinations, and that he will not accept as presents or emoluments any pay, directly or indirectly, for the discharge of his duty, other than the remuneration fixed and accorded to him by law; and that he will not reveal the condition of, nor any information secured in the course of any examination of any corporation, firm or person examined by him, to anyone except the Members of the Board of Insurance Commissioners, or their authorized representative, or when required as witness in Court.

Every such examiner shall enter into a bond payable to the State in the sum of $10,000.00 and every assistant examiner shall enter into a bond in the sum of $5,000.00, to be approved by the Commissioner and deposited in the office of the State Comptroller, conditioned that he will faithfully perform his duties as such examiner.

In case any such examiner or assistant examiner shall knowingly make any false report or give any information in violation of law relative to any such examination of any corporation, firm or person so examined, any such corporation, firm or person shall have a right of action on such bond for his injuries, in a suit brought in the name of the State at the relation of the injured party. [Acts 1931, 42nd Leg., p. 252, ch. 152, § 3—A.]

Art. 4691. [4501] In case of examination.—The Commissioner,[1] for the purpose of examination authorized by law, has power either in person or by one or more examiners by him commissioned in writing:

1. To require free access to all books and papers within this State of any insurance companies, or the agents thereof, doing business within this State.

2. To summon and examine any person within this State, under oath, which he or any examiner may administer, relative to the affairs and conditions of any insurance company.

3. To visit at its principal office, wherever situated, any insurance company doing business in this State, for the purpose of investigating its affairs and conditions, and shall revoke the certificate of authority of any such company in this State refusing to permit such examination. The reasonable expenses of all such examinations shall be paid by the company examined.

4. He may revoke or modify any certificate of authority issued by him when any conditions prescribed by law for granting it no longer exist.

5. He shall also have power to institute suits and prosecutions, either by the Attorney General or such other attorneys as the Attorney General may designate, for any violation of the law of this State relating to insurance. No action shall be brought or maintained by any person other than the Commissioner for closing up the affairs or to enjoin, restrain or interfere with the prosecution of the business of any such insurance company organized under the laws of this State. [Acts 1909, p. 214, § 66.]

[1] See note under Article 4680, ante.

Art. 4692. [4502] [3054] Transfer of securities by Commissioner.—No transfer by the Commissioner [1] of securities of any kind, in any way held by

him in his official capacity, shall be valid unless countersigned by the State Treasurer. [Acts 1876, p. 224, vol. 8, G. L. p. 1060.]

[1] See note under Article 4680, ante.

Art. 4693. [4503] [3055] Duty of State Treasurer.—It is the duty of the State Treasurer:

1. To countersign any such transfer presented to him by the Commissioner.[1]

2. To keep a record of all transfers, stating the name of the transferee, unless transferred in blank, and a description of the security.

3. Upon countersigning, to advise by mail the company concerned, the particulars of the transaction.

4. In his annual report to the legislature, to state the transfers and the amount thereof, countersigned by him. [Id.]

[1] See note under Article 4680, ante.

Art. 4694. [4504] [3056] Free access to records.—To verify the correctness of records, the Commissioner [1] shall be entitled to free access to the treasurer's records, required by the preceding article, and the Treasurer shall be entitled to free access to the books and other documents of the insurance department relating to securities held by the Commissioner. [Id. Sec. 14.]

[1] See note under Article 4680, ante.

Art. 4695. [4505] [3057] Instruments and copies evidence.—Every instrument executed by the Commissioner of Insurance [1] of this or any other State, in which the substantial provisions of the laws of this State relating to insurance have been or shall be enacted pursuant to authority conferred by law, and authenticated by his seal of office, shall be received as evidence; and copies of papers and records in his office certified by him, and so authenticated, shall be received as evidence with the same effect as the originals. [Id. p. 223, Sec. 11.]

[1] See note under Article 4680, ante.

Art. 4696. [4506] [3058] To make inquiries of company.—The Commissioner [1] is authorized to address any inquiries to any insurance company in relation to its business and condition, or any matter connected with its transactions which he may deem necessary for the public good or for a proper discharge of his duties. It shall be the duty of the addressee to promptly answer such inquiries in writing. [Act Feb. 17, 1875, p. 39, vol. 8, G. L. p. 411.]

[1] See note under Article 4680, ante.

Art. 4697. [4507] [3059] Annual statement to legislature.—The Commissioner [1] shall cause the information contained in the annual statements of companies to be arranged in tabular form and prepare the same for printing in a single document and submit the same to the legislature as a portion of his regular report to that body. [Id. p. 43, Sec. 28.]

[1] See note under Article 4680, ante.

Art. 4698. Co-operative Savings Companies.—All assets arising from the business of the liquidation of Co-operative Savings and Contract Loan Companies created under the provisions of Chapter Five of the General Laws of Texas passed at the First Called Session of the Thirty-fourth Legislature and Chapter Forty-five of the General Laws passed at the Fourth Called Session of the Thirty-fifth Legislature, shall remain under the supervision and control of the Insurance Commissioner.[1] Such corporations shall continue in existence until June 14, 1933, within which time the officers of such respective corporations shall liquidate the same, but such corporations, from and after June 14, 1923, shall not sell any further contracts or receive further payments on any contract heretofore sold. [Acts 1923, p. 336.]

[1] See note under Article 4680, ante.

Art. 4698a. Board of Insurance Commissioners; control over casualty, fidelity, surety and guaranty insurance; licensing and rating organizations.

Scope of Act

Section 1. This Act applies to every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyds or other organization or insurer writing any of the characters of insurance business herein set forth, hereinafter called "Insurer"; provided that nothing in this entire Act shall ever be construed to apply to any county mutual insurance company or association, as exempted under Senate Bill No. 121, Acts of the 45th Legislature, 1937.[1]

[1] Article 4860a—20.

This Act applies to the writing of casualty insurance and the writing of fidelity, surety, and guaranty bonds, on risks or operations in this state except as herein stated.

This Act does not apply to the writing of motor vehicle, life, health, accident, reinsurance, aircraft, fraternal benefit, fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or openings in buildings or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or containers, workmen's compensation, inland marine, ocean marine, marine, or title insurance; nor does this Act apply to the writing of explosion insurance, except insurance against loss from injury to person or property which results accidentally from steam boilers, heaters or pressure vessels, electrical devices, engines and all machinery and appliances used in connection therewith or operated thereby.

This Act shall not be construed as limiting in any manner the types or classes of insurance which may be written by the several types of insurers under appropriate statutes or their charters or permits.

The regulatory power herein conferred is vested in the "Board of Insurance Commissioners of the State of Texas" hereinafter referred to as the "Board". Within the Board, the Casualty Insurance Commissioner shall have primary supervision of regulation herein provided, subject however, to the final authority of the entire Board.

Making of rates

Sec. 2. All rates shall be made in accordance with the following provisions:

1. Due consideration shall be given to the past and prospective loss experience within and outside the state, to castastrophe hazards, if any, to expenses of operation, to a reasonable margin for profit and contingencies, and to all other relevant factors, within and outside the state.

2. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in such risks on the basis of any or all of the factors mentioned in the preceding paragraph.

3. Rates shall be reasonable, adequate, not unfairly discriminatory, and non-confiscatory as to any class of insurer.

Filing of rates and rating information; approval

Sec. 3. (a) Every insurer shall file with the Board every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the character and extent of the coverage contemplated and shall be accompanied by the policies and endorsement forms proposed to be used, and the information upon which the insurer supports the filing.

The filings to be made in the first instance hereunder shall be made as and when, and in the manner the Board shall require after the effective date hereof, and after not less than ninety days' written notice to the insurers affected, but in no case later than January 1, 1948.

(b) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the Board to accept such filings on its behalf.

(c) Any filing made pursuant to this Section shall be approved by the Board unless it finds that such filing does not meet the requirements of this Act. As soon as reasonably possible after the filing has been made the Board shall in writing approve or disapprove the same; provided, that any filing shall be deemed approved unless disapproved within thirty days; provided, that the Board may by official order postpone action for such further time not exceeding thirty days as it deems necessary for proper consideration.

(d) Any filing for which there is no approved rate shall be deemed approved from the date of filing to the date of such formal approval or disapproval.

(e) If at any time the Board finds that a filing so approved no longer meets the requirements of this Act, it may, after a hearing held on not less than twenty days' notice specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order withdrawing its approval thereof. Said order shall specify in what respects the Board finds that such filing no longer meets the requirements of this Act and shall be effective not less than thirty days after its issuance. Copies of such order shall be sent to every such insurer and rating organization.

(f) Any person or organization aggrieved by the action of the Board with respect to any filing may, within thirty days after such action, make written request to the Board for a hearing thereon. The Board shall hear such aggrieved party within thirty days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing to the insurer or rating organization which made the filing and to any other aggrieved party. Within thirty days after such hearing the Board shall affirm, reverse or modify its previous action. Pending such hearing and decision thereon the Board may suspend or postpone the effective date of its previous action.

(g) Until the insurer shall make filings, as provided herein, and the same shall be approved, or become effective under the terms hereof, and the Board shall have approved other or different classifications, rules, rates or rating plans, policy forms or endorsements, under this Act, the rates, rules, classifications, rating plans and policy forms now in use by the insurers now writing the character of insurance herein defined in this state shall remain in effect.

Rating organizations

Sec. 4. (a) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside the state, may make application for license as a rating organization for such kinds of insurance or subdivisions thereof as are specified in its application and shall file therewith (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its by laws and rules governing the conduct of its business; (2) a list of its members and subscribers; (3) the name and address of a resident of the state upon whom notices or orders of the Board affecting such rating organizations may be served and (4) a statement of its qualification as a rating organization. If the Board finds that the applicant is qualified, it shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the Board within sixty days of the date of its filing with it. Licenses issued pursuant to this Section shall remain in effect until suspended or revoked by the Board. The fee for said license shall be Twenty-five Dollars ($25.00).

A rating organization shall not be granted a license as to any class of insurance unless and until two or more insurers have designated it to act for them as to such class of insurance in the manner prescribed herein.

(b) Each rating organization shall, subject to reasonable rules and regulations, permit any insurer, not a member, to become a subscriber to its rating services, and shall furnish such services without discrimination to its members and subscribers. The refusal of any rating organization to admit an insurer as a subscriber shall, at the request of such insurer, be reviewed by the Board at a hearing held upon at least ten days' written notice to such rating organization and such insurer. Every rating organization shall notify the Board promptly of every change in the list of its members and subscribers.

(c) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends to policyholders.

(d) The Board shall, at least once in five years, make or cause to be made an examination of each rating organization licensed in this state. The reasonable costs of such examination shall be paid by the rating organization examined upon presentation to it of a detailed account of such cost. The officers, managers, agents and employees of such rating organization may be examined under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The Board may waive such examination upon proof that such rating organization has, within a reasonably recent period, been examined by the insurance supervisory official of another state, pursuant to the laws of such state, and upon the filing with the Board of a copy of the report of such examination.

Appeal by minority

Sec. 5. Any member of or subscriber to a rating organization may appeal to the Board from the decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization; and the Board shall, after a hearing held on not less than ten days' written notice to the appellant and to such rating organization, issue an order approving the decision of such rating organization or directing it to give further consideration to such proposal.

Information to be furnished insureds; hearings and appeals of insureds

Sec. 6. Every insurer which files its own rates and every rating organization shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charges as it may make, furnish to any person then or there-

after affected by such rate or any modification thereof properly made, or to the authorized representative of such person, all information pertinent thereto.

Every insurer which files its own rates and every rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. Any party affected by the action of such rating organization or such insurer on such request may, within ten days after written notice of such action, appeal to the Board.

Rate administration

Sec. 7. (a) Recording and Reporting of Loss Experience and other data.

The Board shall, after due consideration, promulgate reasonable rules and statistical plans, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss experience and such other data as may be required, in order that the total loss and expense experience of all insurers may be made available at least biennially in such form and detail as may be necessary to aid in determining whether rating plans comply with the standards set forth in Section 2. In promulgating such rules and plans, the Board shall have due regard for the rating plans approved by it, and in order that such rules and plans may be as uniform as is practicable, to the rules and to the form of the plans used in other states. The Board may designate one or more rating organizations or other agencies to gather and compile such experience.

(b) Interchange of Rating Plan Data.

Reasonable rules and plans may be promulgated by the Board after due consideration, requiring the interchange of loss experience necessary for the application of rating plans.

(c) Consultation with other States.

In order to further uniform administration of rating laws, the Board and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult and cooperate with them with respect to rate-making and the application of rating systems.

(d) Rules and Regulations.

The Board may make reasonable rules and regulations necessary to effect the purposes of this Act.

Rebates prohibited

Sec. 8. No insurer or employee thereof, and no broker or agent shall knowingly issue any policy of insurance nor charge, demand or receive a premium thereon except in accordance with the applicable filing which has been approved by the Board. No insurer or employee thereof, and no broker or agent shall pay, allow or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in such applicable filing. No insured named in a policy of insurance, nor any employee of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatements, or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing in this Section, however, shall be construed to prohibit an insurer from sharing its profits after the same have been earned with its policyholders under and in accordance with an agreement as to such profit sharing contained in its policy contract. Any profit sharing under any policy with insured shall be uniform as between such insured, and shall consist only and solely of the equitable distribution under and in accordance with the terms of the policy of earnings between such insured, and no such insurer shall discriminate in any distribution of profits between insured of a class, and no classes for such distribution shall be made or established except on the approval of the Board. No part of any profit shall be distributed to any insured under any such policy until the expiration of the policy contract, provided no distribution of profits or dividends to insured shall take effect or be paid until the same shall have been approved by the Board; and provided further, that no such distribution shall be approved until adequate reserves shall have been provided, such reserves to be computed on the same basis for all classes of insurers operating under this Act. Any violation of the terms of this Section shall constitute unjust discrimination and shall constitute rebating, and shall be sufficient grounds for the revocation of the permit of the insurer or of the license of the agent being guilty of such unjust discrimination and rebating; provided further, that nothing in this Act shall be construed to prohibit the modification of rates by any rating plan approved by the Board as hereinbefore provided.

As used in this Section the word "insurance" includes suretyship, and the word "policy" includes bond.

False or Misleading Information

Sec. 9. No person or organization shall knowingly give false or misleading information to the Board, to any insurer, or to any rating organization, which will in any manner affect the proper determination of rates or premiums.

Penalties

Sec. 10. The Board may suspend the license of any rating organization or insurer which fails to comply with an order of the Board within the time limited by such order, or any extension thereof which the Board may grant. The Board shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The Board may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by it, unless it modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

No license shall be suspended except upon a written order of the Board, stating its findings, made after a hearing held upon not less than ten days' notice to such person or organization specifying the alleged violation.

Judicial review

Sec. 11. Any order or decision of the Board shall be subject to review, which shall be on the basis of the record of the proceedings before the Board and shall not be limited to questions of law, by direct action in the District Court of Travis County, instituted by any party aggrieved by any action taken under this Act.

Pending final disposition of any proceedings which attack the correctness of a rate, any insurer affected by such order may continue to charge the rate which obtained prior to such order of decrease or may charge the rate resulting from such order of increase, on condition that the difference in the premiums be deposited in a special account by said insurer, to be held in trust by said insurer, and to be retained by said insurer or paid to the holders of pol-

icies issued after the order of the Board, as the court may determine.

In all other cases, the court shall determine whether the filing of the appeal shall operate as a stay. The court may, in disposing of the issue before it, modify, affirm or reverse the order or decision of the Board in whole or in part.

Maintenance tax

Sec. 12. The State of Texas shall assess and collect not exceeding an additional two-fifths of one per cent of the gross premiums on all classes of insurance covered by this Act, of all insurers writing such insurance in this state, according to the reports made to the Board of Insurance Commissioners as required by law. Said taxes when collected shall be deposited with the State Treasurer to the credit of a special fund to be designated as the Casualty Insurance Fund, which fund shall be kept separate and apart from all other funds and moneys in his hands, to be used for the sole purpose of administering this Act; and to be expended only on warrants issued by the Comptroller upon vouchers drawn by the Board of Insurance Commissioners, such vouchers to be accompanied by itemized sworn statements of the expenditures, and to be in addition to all taxes now imposed, or which may hereafter be imposed, not in conflict with this Section of this Act. Should there be an unexpended balance at the end of any year in said fund, the Board shall reduce the assessment for the succeeding year so that the amount produced and paid into the Treasury will not exceed the amount necessary for the current year to pay all expenses of maintaining the division of the Board of Insursurance Commissioners administering the law. [Acts 1945, 49th Leg., p. 207, ch. 160.]

Section 13 of the Act of 1945 repealed all inconsistent laws. Section 14 provided that a holding of partial invalidity should not affect the remaining portion of the act.

CHAPTER 2.—INCORPORATION OF INSURANCE COMPANIES

Art.
4699. Formation of company.
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Article 4699. [4705] [3028] [2910] Formation of company.—Any number of persons desiring to form a company for the purpose of transacting insurance business shall adopt and sign articles of incorporation, and submit the same to the Commissioner [1] who in turn shall submit the same to the Attorney General. If said articles shall be found by the Attorney General to be in accordance with the law of this State, and of the United States, he shall attach thereto his certificate to that effect, whereupon such articles shall be deposited with the Commissioner of Insurance.

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, 4682a, ante.

Art. 4700. [4706] [3029] [2911] Articles of incorporation.—Such articles of incorporation shall contain:

1. The name of the company; and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public.

2. The locality of the principal business office of such company.

3. The kind of insurance business in which the company proposes to engage.

4. The amount of its capital stock, which shall in no case be less than one hundred thousand dollars.

Art. 4701. [4707] [3030] [2912] Certificate of authority.—When the said articles of incorporation have been deposited with the Commissioner,[1] and the law in all other respects has been complied with by the company, the Commissioner shall make or cause an examination to be made by some competent and disinterested person appointed by him for that purpose; and if it shall be found that the capital stock of the company, to the amount required by law, has been paid in, and is possessed by it, in money, or in such stocks, notes, bonds or mortgages, as are required by law, and that the same is the bona fide property of such company, and that such company has in all respects complied with the law relating to insurance, then the Commissioner shall issue to such company a certificate of authority to commence business as proposed in their articles of incorporation. [Act Feb. 17, 1875, p. 33; G. L. vol. 8, p. 405.]

[1] See note under Article 4699, ante.

Art. 4702. [4708] [3031] [2913] Oath as to capital.—The corporators or officers of any such company shall be required to certify under oath to the Commissioner [1] that the capital exhibited to the person making the examination is the bona fide property of such company. The certificate shall be filed and recorded in the office of the Commissioner. [Id.]

[1] See note under Article 4699, ante.

Art. 4703. [4709] [3032] [2914] Certificate of examiner.—If the examination be made by one other than the Commissioner,[1] the finding shall be certified under the oath of the examiner. Such finding and certificate shall be filed and recorded in the office of the Commissioner. [Id.]

[1] See note under Article 4699, ante.

Art. 4704. [4710] [3033] [2915] Shares of stock.

Division

Sec. 1. The stock of any insurance company organized under the laws of this State, if stock with a nominal or par value, shall be divided into shares of not less than Ten ($10.00) Dollars each, and not more than One Hundred ($100.00) Dollars each. [As amended Acts 1927, 40th Leg., p. 155, ch. 104, § 1; Acts 1935, 44th Leg., p. 492, ch. 205.]

Nominal or par value shares; conditions of issuance

Sec. 2. Upon the incorporation or upon the amendment of the charter in the manner now or hereafter provided by law, of any insurance company organized under the laws of this State, provision may be made for the issuance of shares of its stock without a nominal or par value. Every such share shall be equal in all respects to every other such share; provided,

however, that the stockholders of any such company authorizing the issuance of its stock without nominal or par value, shall be required in good faith to subscribe and pay for at least fifty (50%) per cent of the authorized shares to be issued without nominal or par value, before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without nominal or par value; and provided further that in no event shall the amount so paid be less than Two Hundred Fifty Thousand ($250,000.00) Dollars.

Disposition of authorized capital stock; nominal or par value shares fully paid and unassessable

Sec. 3. Such companies may issue and dispose of their authorized shares having no nominal or par value for money or those notes, bonds, mortgages and stocks of which the law requires that capital stock of insurance companies shall consist. Any and all shares without nominal or par value issued for the consideration prescribed or fixed in accordance with the provisions of this Section shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments.

Filing certificate and articles of incorporation; approval of Attorney General; fee

Sec. 4. Insurance companies authorizing the issuance of shares of their stock without a nominal or par value, shall furnish to and file with the Insurance Commissioner [1] at the time of the filing of the charter or amendment to the charter, authorizing the issuance of such stock, a certificate authenticated by the incorporators as to the original charter and by a majority of the directors as to an amendment, setting forth the number of shares without nominal or par value subscribed, and the actual consideration received by the company for such shares, and upon receiving such certificate, together with a charter fee of Twenty ($20.00) Dollars, it shall be the duty of the Insurance Commissioner to submit such certificate and the articles of incorporation to the Attorney General for examination; and if he approves the same as conforming with law, he shall so certify and deliver same to the Commissioner, who shall, upon receipt thereof, record the same in a book kept for that purpose; and upon receipt of a fee of One ($1.00) Dollar, he shall furnish a certified copy of the charter to the incorporators or of the amendment to the directors, and same shall be effective. In case of original incorporation, said companies shall proceed to organize in the manner now provided by law for the organization of insurance companies.

Certificate covering shares of nominal or no par value sold or issued

Sec. 5. In the event all of the shares of stock without nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares of stock without nominal or par value are sold and issued, the company shall file with the Insurance Commissioner, within ninety days after the issuance of such shares a certificate authenticated by a majority of the directors setting forth the number of such shares so issued and the actual consideration received by the company for such shares.

Powers granted additional to existing powers

Sec. 6. The privileges and powers conferred by this Act shall be in addition to any and all powers and privileges conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to such companies; life, health or accident insurance companies organized or amending their charter under this Act shall be subject to and controlled by the provisions of Chapter 3, Title 78, Revised Civil Statutes of Texas, 1925, except where the provisions of said Chapter are inconsistent or in conflict with the provisions of this Act. [Acts 1935, 44th Leg., p. 492, ch. 205.]

[1] See note under Article 4699, ante.

Acts 1935, 44th Leg. p. 492, ch. 205, in effect, amended section 1 of this article and added sections 2 to 6, inclusive.

Section 7 of this Act repeals all conflicting laws and section 8 provides that should any be held invalid, the validity of the other provisions shall not be affected or impaired thereby.

Art. 4705. [4711] [3034] [2916] Items of capital stock.—The capital stock of any such insurance company, except any writing Life, Health, and Accident Insurance, shall consist:

1. In lawful money of the United States; or
2. In the bonds of this State or any county or incorporated town or city thereof, or in the stock of any national bank; or
3. In first mortgages upon unincumbered real estate in this State, the title to which is valid, and the market value of which is not less than forty (40) per cent more than the amount loaned thereon. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for not less than sixty (60) per cent of the value thereof, with loss clause payable to such company. Provided, that the provisions of this Article, with respect to the value of real estate, compared to the amount loaned thereon, shall not apply to loans secured by real estate which are insured by the Federal Housing Administrator. [Acts 1889, p. 11; G.L. vol. 9, p. 1039; Acts 1939, 46th Leg., p. 394, § 1.]

Section 2 of the Act of 1939 repealed art. 5006.

Art. 4706. [4712] [3035] [2917] Investments of funds.—No company, except any writing Life, Health and Accident Insurance, organized under the provisions of this Chapter, shall invest its funds over and above its paid-up capital stock in any other manner than as follows:

(a) In bonds of the United States or of any of the States of the United States provided such bonds are, at the time of purchase, interest-bearing or not in default.

(b) In bonds or first liens on unincumbered real estate in this state or in any other state, country, or province in which such company may be duly licensed to conduct an insurance business, and providing in each instance such real estate shall be worth at least forty (40%) per cent more than the amount loaned thereon. The value of such real estate shall be determined by a valuation made under oath by two (2) freeholders of the county where the real estate is located, and if the buildings are considered a part of the value of the real estate, they must be insured against loss by fire for not less than sixty (60%) per cent of the value thereof, with loss-payable clause to such company.

(c) In bonds or other interest-bearing evidence of indebtedness of any county, road district, water district, municipality, any subdivision of a county, incorporated city, town, school district, sanitary or navigation district; any municipally owned revenue water system or sewer system bonds or warrants, when special revenues to meet the principal and interest payments of such municipally owned revenue water system and sewer system bonds or warrants shall have been appropriated, pledged or otherwise provided for by such municipality. Provided, before bonds or other interest-bearing evidence of indebtedness of navigation districts shall be eligible investments, such navigation districts shall contain a population of not less than three hundred and fifty-nine thousand (359,000) according to the last preceding Federal Census, and provided further that such navigation bonds and other evidence of indebtedness of navigation districts shall be issued by authority of law and the interest due thereon must never have been defaulted.

(d) 1. In the stocks, bonds, debentures, bills of exchange or other commercial notes or bills and secur-

ities of any solvent dividend paying corporation, incorporated under the laws of this state, or of the United States, or of any state, which has not defaulted in the payment of any of its obligations for a period of five (5) years, immediately preceding the date of the investment; provided such funds may not be invested in the stock of any oil, manufacturing or mercantile corporation organized under the laws of this state, unless such corporation has at the time of investment a net worth of not less than Two Hundred Fifty Thousand ($250,000.00) Dollars, nor in the stock of any oil, manufacturing or mercantile corporation, not organized under the laws of this state, unless such corporation has a combined capital, surplus and undivided profits of not less than Two Million Five Hundred Thousand ($2,500,000.00) Dollars.

2. The surplus funds of such insurance companies may be invested in the stocks, bonds or debentures of any solvent corporation organized under the laws of this state, or of the United States, or of any state.

3. Notwithstanding any and all provisions of subdivisions 1 and 2 of this section (d), no such insurance company shall invest any of its funds in its own stock or in any stock on account of which the holders or owners thereof may, in any event, be or become liable to any assessment, except for taxes.

(e) In loans upon the pledge of any mortgage, stock, or bonds, or other evidence of indebtedness, acceptable as investments under the terms of this law if the current value of such mortgage, stock, bonds, or other evidence of indebtedness is at least twenty-five (25%) per cent more than the amount loaned thereon.

(f) That the restrictions contained in Subsection (b) hereof that such real estate shall be worth at least forty (40%) per cent more than the amount loaned thereon, and that the value of such real estate shall be determined by a valuation made under oath by two (2) freeholders of the county where the real estate is located and if buildings are considered as a part of the value of such real estate they must be insured for the benefit of the mortgagee, shall not apply to loans secured by real estate in Texas which are insured by the Federal Housing Administrator.

(g) In interest-bearing notes or bonds of the University of Texas issued under and by virtue of Chapter 40,[1] Acts of the 43rd Legislature, Second Called Session. [Acts 1875, p. 33; G.L. vol. 8, p. 405; Acts 1939, 46th Leg., p. 394, § 1; Acts 1941, 47th Leg., p. 564, ch. 357, § 1; Acts 1943, 48th Leg., p. 61, ch. 54, § 1.]

[1] Article 2603d.

Art. 4707. [4713] [3036] [2918] Re-investment of capital stock.—Any such company may exchange and re-invest its capital stock in like securities, as occasion may require. [Id.]

Art. 4708. [4714—15—16] Directors.—The affairs of any insurance company organized under the laws of this State shall be managed by not fewer than seven directors, all of whom shall be stockholders in the company. Within thirty days after the subscription books of the company have been filed, a majority of the stockholders shall hold a meeting for the election of directors, each share entitling the holder thereof to one vote. The directors then in office shall continue in office until their successors have been duly chosen and have accepted the trust. The annual meeting for the election of directors of any such company shall be held during January, as the by-laws of the company may direct. [Acts 1875, p. 33; G. L. vol. 8, p. 405; Acts 1927, 40th Leg., p. 155, ch. 104, § 1.]

Art. 4709. [4717] [3040] [2922] Special meeting to elect directors.—If from any cause the stockholders should fail to elect directors at an annual meeting, they may hold a special meeting for that purpose, by giving thirty days notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located. The directors chosen at such special meeting shall continue in office until their successors are duly elected and have accepted. [Acts 1875, p. 33; G.L. vol. 8, p. 405.]

Art. 4710. [4718] [3041] [2923] Quorum of stockholders.—No meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present, in person or by proxy, a majority in value of the stockholders equal to two-thirds of the stock of such company. [Id.]

Art. 4711. [4719] [3042] [2924] Directors shall choose officers.—The directors shall choose by ballot from their own number a president and such other officers as the by-laws require, who shall perform such duties, receive such compensation and give such security as the by-laws may require. [Id.]

Art. 4712. [4720] [3043] [2925] May ordain by-laws.—The directors may establish such by-laws and regulations, not inconsistent with law, as shall appear to them necessary for regulating and conducting the business of the company. [Id.]

Art. 4713. [4721] [3044] [2926] Business records.—The directors shall keep a full and correct record of their transactions, to be open during business hours to the inspection of stockholders and others interested therein. [Id.]

Art. 4714. [4722] [3045] [2927] Shall fill vacancies; quorum.—The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of business.

Art. 4715. [4723] [3046] [2928] Governed by other laws.—The laws governing corporations in general shall apply to and govern insurance companies incorporated in this State in so far as the same are not inconsistent with any provision of this title.

CHAPTER 3.—LIFE, HEALTH AND ACCIDENT INSURANCE

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Article 4716. [4724] Terms defined.—A life insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned on the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities. An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water. A health insurance company shall be deemed to be a corporation doing business under any charter involving the payment of any amount of money, or other thing of value, conditioned upon loss by reason of disability due to sickness or ill-health. When consistent with the context and not obviously used in a different sense, the term "company," or "insurance company," as used herein, includes all corporations engaged as principals in the business of life, accident or health insurance. The term "home," or domestic company, as used herein, designates those life, accident or life and accident, health and accident, or life, health and accident insurance companies incorporated and formed in this State. The term "foreign company," means any life, accident or health insurance company organized under the laws of any other state or territory of the United States or foreign country. The term "home office" of a company means its principal office within the State or country in which it is incorporated and formed. The "insured" or "policy holder" is the person on whose life a policy of insurance is effected. The "beneficiary" is the person to whom a policy of insurance effected is payable. By the term, "net assets" is meant the funds of the company available for the payment of its obligations in this State, including uncollected premiums not more than three months past due and deferred premiums on policies actually in force, after deducting from such funds all unpaid losses and claims, and claims for losses, and all other debts, exclusive of capital stock. The "profits" of a company are that portion of its funds not required for the payment of losses and expenses, nor set apart for any other purpose required by law. [Acts 1909, p. 192, sec. 1.]

Art. 4717. [4725] Who may incorporate.—Any three or more citizens of this State, may associate themselves for the purpose of forming a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company. No such company shall transact more than one of the foregoing classes of business except in separate and distinct departments. In order to form such a company, the corporators shall sign and acknowledge its articles of incorporation and file the same in the office of the Commissioner.[1] Such articles shall specify:

1. The name and place of residence of each of the incorporators.

2. The name of the proposed company, which shall contain the words, "Insurance Company" as a part thereof.

3. The location of its home office.

4. The kind or kinds of insurance business it proposes to transact.

5. The amount of its capital stock, not less than $100,000, all of which capital stock must be subscribed and fully paid up and in the hands of the corporators before said articles of incorporation are filed.

6. The period of time it is to exist, which shall not exceed five hundred years.

7. The number of shares of such capital stock.

8. Such other provisions not inconsistent with the law as the corporators may deem proper to insert therein. [Id. sec. 2.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, 4682a, ante.

Art. 4718. [4726] Charter and organization.—When such articles of incorporation are filed with the Commissioner,[1] together with an affidavit made by two or more of its incorporators that all the stock has been subscribed in good faith and fully paid for, together with a charter fee of twenty dollars, it shall be the duty of the Commissioner to submit such articles of incorporation to the Attorney General for examination; and if he approves the same as conforming with the law, he shall so certify and deliver such articles of incorporation, together with his certificate of approval attached thereto, to the Commissioner, who shall, upon receipt thereof, record the same in a book kept for that purpose; and upon receipt of a fee of one dollar, he shall furnish a certified copy of the same to the corporators, upon which they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders, who shall adopt by-laws for the government of the company, and elect a board of directors not less than five, composed of stockholders; which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this State. The board of directors so elected shall serve until the second Tuesday in March thereafter, on which date annually thereafter, there shall be held a meeting of the stockholders at the home office, and a board of di-

rectors elected for the ensuing year. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum. [Id. sec. 3.]

[1] See note under Article 4717, ante.

Art. 4719. [4727] Amendment of charter.—At any regular or called meeting of the stockholders. they may by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the president and secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock shall in no case, be reduced to less than one hundred thousand dollars fully paid up. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter or amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as other evidence of stock in exchange for new certificates issued in lieu thereof. The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership. [Id. sec. 3.]

Art. 4720. [4728] Examination by Commissioner.—When the first meeting of the stockholders shall be held and the officers of the company elected, the president or secretary shall notify the Commissioner; [1] and he shall thereupon immediately make, or cause to be made, at the expense of the company, a full and thorough examination thereof. If he finds that all of the capital stock of the company, amounting to not less than one hundred thousand dollars, has been fully paid up and is in the custody of the officers, either in cash or securities of the class in which such companies are authorized by this chapter to invest or loan their funds, he shall issue to such company a certificate of authority to transact such kind or kinds of insurance business within this State as such officers may apply for and as may be authorized by its charter; which certificate shall expire on the last day of February next after the date of its issuance. Before such certificate is issued, not less than two officers of such company shall execute and file with the Commissioner a sworn schedule of all the assets of the company exhibited to him upon such examination, showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company and are worth the amounts stated in such schedule. No original or first certificate of authority shall be granted, except in conformity herewith, regardless of the date of filing of the articles of incorporation with the Commissioner. [Id. sec. 4.]

[1] See note under Article 4717, ante.

Art. 4721. [4729] Shall file annual statement.—Each life insurance company, or accident insurance company, or life and accident, health and accident, or life [1] health and accident insurance company, organized under the laws of this State, shall, after the first day of January of each year and before the first day of March following, and before the renewal of its certificate of authority to transact business, prepare, under oath of two of its officers, and deposit in the office of the Commissioner,[2] a statement accompanied with the fee for filing annual statements of ten dollars, showing the condition of the company on the thirty-first day of December the next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, moneys received and how expended during the year, and the number and amount of its policies, in force on that date in Texas, and the total amount of its policies in force. [Id. sec. 5.]

[1] So in enrolled bill. A comma should probably be inserted between the words "life" and "health".
[2] See note under Article 4717, ante.

Art. 4722. [4830] Renewal certificate.—Whenever any such company, transacting insurance business in this State, shall have filed its annual statement in accordance with the preceding article, showing a condition which entitles it to transact business in this State in accordance with the provisions of this chapter, the Commissioner [1] shall, upon a receipt of a fee of one dollar, issue a renewal certificate of authority to such company, which shall expire on the last day of February of the subsequent year. [Id. sec. 6.]

[1] See note under Article 4717, ante.

Art. 4723. [4731] Copy of certificate for agents.—Any such company organized under the laws of this State, having received authority from the Commissioner [1] to transact business in this State, shall receive from such Commissioner, upon written request therefor, a certified copy of its certificate of authority for each of its agents in this State. [Id. sec. 7.]

[1] See note under Article 4717, ante.

Art. 4724. [4732] To sue and be sued.—Actions may be maintained by a company organized under the laws of this State against any of its policyholders, stockholders, or other person for any cause relating to the business of such company. Suits may also be prosecuted and maintained by any policyholder or his heirs or his legal representatives against the company for losses which accrue on any policy. No action shall be brought or maintained by any person other than the Commissioner [1] for the enjoining, restraining or interfering with the prosecution of the business of the company. [Id. sec. 8.]

[1] See note under Article 4717, ante.

Art. 4725. [4734] May invest in what securities.—A life insurance company organized under the laws of this State may invest in or loan upon the following securities, and none others, viz:

1. It may invest any of its funds and accumulations in the bonds of the United States, the Dominion of Canada, or of any state, county, or city of the United States, or any province or city of the Dominion of Canada; or in any bonds, or interest-bearing warrants issued by authority of law by any county, city, town, school district or other municipality or subdivision or by any educational institution of the State of Texas which is now or hereafter may be constituted or organized under the laws of this State, and is authorized to issue such bonds and warrants under the Constitution and laws of this State, provided legal provision has been made by a tax to meet said obligations, or in the bonds and warrants of any educational institution of the State of Texas, or any municipally owned water system or sewer system when special revenues to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such municipality or educational institution; or in any paving certificates issued by any city in the State of Texas and secured by a first lien on real estate; or in bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,[1] when such bonds are issued against and se-

cured by promissory notes or obligations, the payment of which is secured by mortgage, deed of trust or other valid lien upon unencumbered real estate situated in this State; or in first mortgage bonds on real or personal property of any solvent corporation, and which has not at any time within a period of five (5) years defaulted in the payment of any of its debts; or, in the debentures of any such corporation with a capital stock of not less than Five Million Dollars ($5,000,000) where no prior lien exists, or, under the provisions of the indenture providing for the issuance of such debentures, can be created against the real or personal property owned by such corporation at the time the debentures were issued; but in no event shall the amount of such investment in the bonds or debentures of any one such corporation exceed five per cent (5%) of the admitted assets of the insurance company making the investment; or in interest-bearing notes or bonds of the University of Texas issued under and by virtue of Chapter 40, Acts of the Forty-third Legislature, Second Called Session.[2]

Any company legally authorized to transact business in a foreign country may invest in the same kinds of securities of said country as hereinbefore authorized in the United States of America for an aggregate amount not exceeding the reserve on the business in force in said country.

2. It may loan any of its funds and accumulations, taking as security therefor such collateral as under the previous subdivision it may invest in. It may also make loans upon first liens upon real estate, the title to which is valid and the value of which is forty per cent (40%) more than the amount loaned thereon, or upon first liens upon leasehold estates in real property and improvements, situated thereon, the title to which is valid, and the leasehold has not less than thirty (30) years to run before expiration; provided that the duration of any loan upon such leasehold estates shall not exceed a period of ten (10) years; or upon any obligations secured collaterally by any such first liens. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for at least fifty per cent (50%) of the value thereof with loss clause payable to such company. It may also make loans upon the security of or purchase of its own policies. No loan on any policy shall exceed the reserve value thereof. No investment or loan, except policy loans, shall be made by any such insurance company, unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such investments or loans. No such company shall subscribe to, or participate in, any underwriting of the purchase or sale of securities or property or enter into any such transaction for such purpose, or sell on account of such company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its Board of Directors; provided that the provisions of this sub-division as to the value of the real estate compared to the amount loaned thereon and as to the duration of such loan shall not apply to loans secured by real estate which are insured under the provisions of Title II of the "National Housing Act", enacted by the Congress of the United States and approved by the President June 27, 1934,[3] or which are guaranteed in whole or in part under the provisions of Title III of the "Servicemen's Readjustment Act of 1944", enacted by the Congress of the United States and approved June 22, 1944.[4]

3. Any life insurance company of the State, for the purpose of investing its capital and surplus or any part thereof, over and above the amount of its reserves, may purchase and hold as collateral security, or otherwise, and sell and convey the capital stock, bonds, bills of exchange or other commercial notes or bills and securities of any solvent dividend paying corporation which has not defaulted in the payment of any of its obligations for a period of five (5) years, the current market value of which such stock, bonds, bills of exchange or other commercial notes or bills and securities shall be at all times during the continuance of such loan at least fifty per cent (50%) more than the sum loaned thereon; provided that no such company shall loan or invest in its own stock, nor more than ten per cent (10%) of the amount of its capital, surplus and contingent funds in the stock of any corporation, and provided further that no such company shall invest any of its funds in any stock on account of which the holders or owners thereof may in any event, be or become liable to any assessment except for taxes, nor in the stock of any oil company or manufacturing company unless such corporation has capital stock of not less than Five Million Dollars ($5,000,000) and unless such corporation has paid dividends for a period of five (5) years and has not defaulted in the payment of any of its debts for a period of five (5) years.

That in any case in which a life insurance company organized under the laws of this State, shall re-insure the business and take over the assets of another life insurance company, either domestic or foreign, all investments of such re-insured company that were authorized, when made, by the laws of the state in which it was organized, as proper securities for investment of the funds of a life insurance company, and which are taken over by such re-insuring company, shall be considered as valid securities of such re-insuring company under the laws of this State, provided such investments are approved by the Board of Insurance Commissioners of this State, and same are taken over on terms satisfactory to said Board; and upon the condition that the Board of Insurance Commissioners shall have the power to require the re-insuring company to dispose of such investments upon such notice as it may deem reasonable. [Acts 1909, p. 196, § 10; Acts 1929, 41st Leg., p. 497, ch. 237; Acts 1931, 42nd Leg., p. 256, ch. 153; Acts 1935, 44th Leg., p. 28, ch. 10, § 1; Acts 1937, 45th Leg., p. 330, ch. 168, § 1; Acts 1939, 46th Leg., p. 397, § 1; Acts 1943, 48th Leg., p. 192, ch. 111, § 1; Acts 1945, 49th Leg., p. 267, ch. 196, § 1].

4. It may invest not to exceed ten (10%) per cent of its capital, surplus, and contingency funds, in not more than twenty (20%) per cent of the capital stock of any other insurance company, now or hereafter organized under this Chapter, whose principal business is the reinsurance, either partially or wholly, of risks ceded to it by other life insurance companies. The investment herein authorized may be made by purchase of stock then issued and outstanding or by subscription to and payment for the increase in the capital stock of such reinsurance corporation. [Added Acts 1947, 50th Leg., p. 425, ch. 232, § 1.]

5. It may invest any of its funds and accumulations in shares or share accounts of Building and Loan Associations organized under the laws of this state, or in the shares or share accounts of Federal Savings and Loan Associations, where such shares are insured under and by virtue of the Federal Savings and Loan Insurance Corporation; and in the stock of banks, either state or national, that are members of the Federal Deposit Insurance Corporation; provided, however, that under this Section 5, and except as authorized in Section 3 of this Article, no more than five (5%) per cent of the admitted assets of the insurance company making the investment may be made in such shares or share accounts of Building and Loan Associations or Savings and Loan Associations or in the stock of such banks, and no such investment shall exceed twenty (20%) per cent of the total outstanding shares of any such individual

Building and Loan Association, Savings and Loan Association, or stock of such bank. The investment powers conferred by this Section 5 are in addition to those conferred by Section 3 of this Article and are not to be construed as restricting the powers already granted by said Section 3, and this Section 5 and the powers conferred herein are cumulative with respect to the said Section 3 and the powers conferred therein. [Added Acts 1947, 50th Leg., p. 425, ch. 232, § 1.]

1 39 Stat. 360, 12 U.S.C.A. § 641 et seq.
2 Article 2603d.
3 12 U.S.C.A. §§ 1707–1715.
4 38 U.S.C.A. § 693 et seq.
Section 2 of the Act of 1947 provided that a holding of partial invalidity should not affect any other portion of the Act.

Art. 4726. [4735] May hold real estate.—Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

1. One building site and office building for its accommodation in the transaction of its business and for lease and rental; and such office building may be on ground on which the Company owns a lease having not less than fifty years to run from the date of its acquisition by the Company, provided that the Company shall own, or be entitled to the use of, all the improvements thereon, and that the value of such improvements shall at least equal the value of the ground, and shall be not less than twenty times the annual average ground rental payable under such lease; and provided, such office building shall have an annual average net rental of at least twice such annual ground rental; and, provided, further, that such Company shall be liable for and shall pay all State and local taxes levied and assessed against such ground and the improvements thereon which for purposes of taxation, shall be deemed real estate owned by the Company. Provided, that an acquisition of such an office building on leased ground shall be approved by the Board of Insurance Commissioners of the State of Texas before such investment.

2. Such as have been acquired in good faith by way of security for loans previously contracted or for moneys due.

3. Such as have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings.

4. Such as have been purchased at sales under judgment or decrees of court, or mortgage or other liens held by such companies.

All such real property specified in sub-divisions 2, 3 and 4 of this Article which shall not be necessary for its accommodation in the convenient transaction of its business shall be sold and disposed of within five years after the Company shall have acquired title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business. It shall not hold such property for a longer period, unless it shall procure a certificate from [1] the Commissioner that its interests will suffer materially by the forced sale thereof; in which event the time for the sale may be extended to such time as the Commissioner shall direct in such certificate. [Acts 1909, p. 196, § 11; Acts 1931, 42nd Leg., p. 96, ch. 62, § 1.]

[1] So in enrolled bill. Session Law reads "for".

Art. 4727. [4736] Director not to do certain things.—No director or officer of any insurance company transacting business in or organized under the laws of this State, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary in any such purchase, sale or loan. Nothing in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof. [Acts 1909, p. 197, § 12.]

Art. 4728. [4737] May reinsure.—Any life insurance company organized under the laws of this State may reinsure in any insurance company authorized to transact business in this State, any risk or part of a risk which it may assume. No such company shall have the power to so reinsure its entire outstanding business until the contract therefor shall be submitted to the Commissioner,[1] and be by him approved, as protecting fully the interests of all the policy holders. [Id. Sec. 13.]

[1] See note under Article 4717, ante.

Art. 4729. [4738] Dividends to be paid from expense loading and profits.—No life insurance company organized under the laws of this state shall declare or pay any dividends to its policyholders, except from the expense loading and profits made by such company; provided, however, an insurance company not showing a profit may pay dividends on its participating policies from the expense loading on such policies; and provided further, that any payment of dividends from the expense loading shall not be discriminatory as between policy holders. This shall not prohibit the issuance of policies guaranteeing a definite payment or reduction in premiums, not exceeding the expense loading on said premiums. Where said reduction exceeds said expense loading, the proper reserve therefor must be held by the company to provide for the deficiency so arising in the net premium, but this shall not apply to payments to holders of special or board contracts heretofore issued. No such life insurance company shall declare or pay any dividends to its stockholders, except from the profits made by said company, not including surplus arising from the sale of stock. [Acts 1909, p. 197, § 14; Acts 1943, 48th Leg., p. 304, ch. 198, § 1.]

Art. 4730. [4739] Salaries; pension, retirement or group insurance to officers and employees.—No domestic life insurance company shall pay any salary, compensation or emolument to any officer, trustee, or director thereof, nor any salary, compensation or emolument amounting in any year to more than Five Thousand ($5,000.00) Dollars to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such company. The limitation as to time contained herein shall not be construed as preventing a life insurance company from entering into contracts with its agents for the payment of renewal commissions. Such company may grant and pay pensions, retirement or group insurance to its officers and employees according to a plan which shall first be submitted to and approved by the stockholders of the company, or in the case of a mutual company by the policyholders, at a regular meeting or at some special meeting called for the purpose in which such plan shall be set forth in detail.

Any amendment or modification of any such plan originally adopted shall be similarly approved before it becomes effective. [Acts 1909, p. 197, § 20; Acts 1947, 50th Leg., p. 352, ch. 200, § 1.]

Art. 4730a. Renewal or service commissions to agents of companies discontinuing business in state; statements and reports.—If any life insurance company now engaged or which hereafter may be engaged in the business of issuing policies of life insurance upon the lives of citizens of this State shall discontinue such business, it shall nevertheless continue to be liable for the payment of renewal or service commissions on policies of life insurance theretofore written in accordance with the terms of its agency contracts theretofore made with agents residing in the State of Texas.

Every such company shall furnish monthly to each person who may be entitled to receive service or renewal commissions from such company a statement showing such policies written by such person for such company as shall have terminated during the month for which the statement is made, and shall furnish to each such person not less than quarterly a detailed statement of all policies written by such person for such company on the lives of residents of the State of Texas, showing the policies in force, the policies which have terminated, and the reason for termination. Provided, however, that no such statements need be furnished after the period during which service or renewal commissions are payable has ended as to all of the policies written by such person for such company.

In any suit against any such company for the recovery of service or renewal commissions, it shall be presumed that all policies written in such company upon the lives of residents of Texas by the person bringing such suit have continued in effect unless and until the contrary is proven by the defendant by competent evidence. [Acts 1941, 47th Leg., p. 1358, ch. 620, § 1.]

Art. 4731. [4740] Disbursements by vouchers.—No domestic life insurance company shall make any disbursement of one hundred dollars or more, unless the same be evidenced by a voucher signed by, or on behalf of, the person, firm or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements, the voucher shall set forth the service rendered and statement of the disbursement made. If the expenditure be in connection with any matter pending before any legislature or public body, or before any department or officer of any State or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained, the expenditure shall be evidenced by a paid check or an affidavit describing the character and object of the expenditure and stating the reason for not obtaining such voucher. [Acts 1909, p. 197, Sec. 21.]

Art. 4732. [4741] Policies shall contain what.—No policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company organized under the laws of this State, unless the same shall contain provisions substantially as follows:

1. That all premiums shall be payable in advance either at the home office of the company or to an agent of the company upon delivery of a receipt signed by one or more of the officers who are designated in the policy.

2. For a grace of at least one month for the payment of every premium after the first, which may be subject to an interest charge, during which month the insurance shall continue in force, which may stipulate that if the insured shall die during the period of grace, the overdue premium will be deducted in any settlement under the policy.

3. That the policy, or policy and application, shall constitute the entire contract between the parties and shall be incontestable not later than two years from its date, except for nonpayment of premiums; and which provision may or may not, at the option of the company, contain an exception for violations of the conditions of the policy relating to naval and military services in time of war.

4. That all statements made by the insured shall, in the absence of fraud be deemed representations and not warranties.

5. That if the age of the insured has been understated, the amount payable under the policy shall be such as the premium paid would have purchased at the correct age.

6. After three (3) full years premiums have been paid, the company, at any time while the policy is in force, will advance upon proper assignment of the policy and upon the sole security thereof at a specified rate of interest a sum equal to, or at the option of the owner of the policy less than, the cash value of the policy and of any dividend additions thereto; and that the company may deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premiums for the current policy year, and may collect interest in advance on the loan to the end of the current policy year, which provision may also provide that such loans may be deferred for not exceeding six (6) months after the application therefor is made. It shall also be stipulated in the policy that failure to repay any such advance, or to pay interest, shall not void the policy until the total indebtedness thereon to the company shall equal or exceed the cash value. No condition other than as herein provided shall be exacted as a prerequisite to any such advance. This provision shall not be required in term insurance, nor in pure endowments issued or granted as original policies, or in exchange for lapsed or surrendered policies. [As amended Acts 1947, 50th Leg., p. 330, ch. 189, § 1.]

7. A provision which, in the event of default in the premium payments after premiums shall have been paid for three (3) full years, shall secure a stipulated form of insurance on the life of the insured, the net value of which shall be equal to the reserve (exclusive of any reserve for disability or accidental death benefits) at the date of default on the policy, and on any dividend additions thereto, according to the mortality table, rate of interest and method adopted for computing such reserve, less a sum of not more than two and one-half (2½%) per cent of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy; provided, however, that if the mortality table adopted for computing such reserve is either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table, then in calculating the value of paid-up term insurance with accompanying pure endowment, if any, a rate of mortality may be assumed which is not more than one hundred thirty (130%) per cent of the rate of mortality according to such adopted table or, in case of substandard policies, the adopted multiple thereof. The policy shall state: (1) the amount and term of the stipulated form of insurance calculated upon the assumption of no indebtedness on the policy and no dividend additions thereto; and (2) the method, rate of interest, and mortality table for computing the policy reserve, which must be such as may be authorized by law for use in computing the reserve liability of the company on such policy. Such provision shall also stipulate that the policy may be surrendered to the company at its home office within one month from the due date of any premium for its cash value, which shall be specified in the policy and which shall be at least equal to the sum which would otherwise be available for the purchase of insurance, as aforesaid, but not more than the reserve on the policy, and may stipulate that the company may defer payment for not more than six (6) months after the application therefor is made. This provision shall not be required in term insurance. [As amended Acts 1947, 50th Leg., p. 330, ch. 189, § 1.]

8. A table showing in figures the cash values, and the options available under the policy each year, upon default in premium payments during the first twenty (20) years of the policy or the period during which premiums are payable, beginning with the year in which such values and options become available. [As amended Acts 1947, 50th Leg., p. 330, ch. 189, § 1.]

9. That if, in event of default in premium payments, the value of the policy shall be applied to the purchase of other insurances; and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three years from such default upon evidence of insurability satisfactory to the company and payments of arrears of premiums with interest.

10. That when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of or not later than two months after due proof of death and the right of the claimant to the proceeds.

11. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

12. In all family group life insurance policies there shall be included on the face of the policy the name and age of each insured; the name of the beneficiary; the maximum amount which is payable to the payee in the policy in the case of death of such insured person or persons together with a designation of all paragraphs or provisions limiting or reducing the payment to less than the maximum provided in the policy. Regardless of what the maximum amount of said policy is or may be, any provision for payment other than the full amount of said policy shall be clearly stated in the policy, and this provision shall apply to all such family group life insurance policies sold in this State. [Added Acts 1943, 48th Leg., p. 639, ch. 364, § 1, amended Acts 1945, 49th Leg., p. 152, ch. 102, § 1.]

Any foregoing provision not applicable to single premium policies, shall, to that extent, not be incorporated therein. [Acts 1909, p. 197.]

Section 2 of the Act of 1943 and section 2 of the Act of 1945 provided that the law should be cumulative and repealed all conflicting laws.

Art. 4733. [4742] Policies shall not contain what; provisions for benefit less than full benefit in certain cases permitted.—No policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company incorporated under the laws of this State, if it contains any of the following provisions:

1. A provision limiting the time within which any action at law or in equity may be commenced to less than two years after the cause of action shall accrue.

2. A provision by which the policy shall purport to be issued or to take effect more than six (6) months before the original application for the insurance was made, if thereby the insured would rate at any age younger than his age at date when the application was made, according to his age at nearest birthday.

3. A provision for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions, if any, less any indebtedness to the company on the policy, and less any premium that may by the terms of the policy be deducted; provided, however, that any company may issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations, or in the event the death of the insured should result from aviation activities under the conditions specified in the policy, to be approved by the Board of Insurance Commissioners, as provided in Chapter 3, Title 78, of the Revised Civil Statutes of Texas of 1925. This provision shall not apply to purely accident and health policies. No foregoing provision relating to policy forms shall apply to policies issued in lieu of, or in exchange for, any other policies issued before July 10, 1909. [Acts 1909, p. 197, § 23; Acts 1941, 47th Leg., p. 519, ch. 315, § 1.]

Art. 4734. [4743] Policies of foreign companies.—The policies of a life insurance company not organized under the laws of this State may contain any provision which the law of the State, territory, district or county under which the company is organized, prescribes shall be in such policies when issued in this State; and the policies of a life insurance company organized under the laws of this State may, when issued or delivered in any other State, territory, district or country, contain any provision required by the laws of the State, territory, district or country in which the same are issued, anything in this chapter to the contrary notwithstanding. [Acts 1909, p. 197, Sec. 24.]

Art. 4735. [4745] Service of process.—Process in any civil suit against any domestic life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, may be served only on the president, or any active vice president, or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company during business hours. [Id. Sec. 34.]

Art. 4736. [4746] Losses shall be paid promptly.—In all cases where a loss occurs and the life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company liable therefor shall fail to pay the same within thirty days after demand therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve per cent damages on the amount of such loss together with reasonable attorney fees for the prosecution and collection of such loss. Such attorney fee shall be taxed as a part of the costs in the case. The Court in fixing such fees shall take into consideration all benefits to the insured incident to the prosecution of the suit, accrued and to accrue on account of such policy. [Acts 1909, p. 204, § 35; Acts 1931, 42nd Leg., p. 135, ch. 91, § 1.]

Art. 4736a. Payments to designated beneficiaries.—Sec. 1. Whenever any person shall procure the issuance of a policy of insurance on his or her life in any legal reserve life insurance company, and designate in writing filed with the company the beneficiary to receive the proceeds thereof, the company issuing such policy shall, in the absence of the receipt by it of notice of an adverse claim to the proceeds of the policy from one having a bona fide legal claim to such proceeds or a part thereof, pay such proceeds becoming due on the death of the insured to the person so designated as beneficiary, and such payment so made, in the absence of such notice received by the insurance company prior to the date of the payment of the proceeds, shall discharge the company from all liability under the policy.

Sec. 2. The provisions of this Act shall apply to all policies now in existence as well as to all policies hereafter written. [Acts 1931, 42nd Leg., p. 328, ch. 195.]

Art. 4737. [4747] Certificate null and void, when.—If any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company fails to pay off and satisfy any execution that may lawfully issue on any final judgment against said company within thirty days after the officer holding such execution has demanded payment thereof from any officer or attorney of record of such company, in this State, or out of it, such officer shall immediately certify such demand and failure to the Commissioner; [1] and thereupon the Commissioner shall forthwith declare null and void the certificate of authority of such company; and such company shall be prohibited from transacting any business in this State until such execution shall be fully satisfied and discharged, and until such commissioner shall renew

his certificate of authority to such company. [Acts 1909, p. 204, § 36.]

[1] See note under Article 4717, ante.

Art. 4738. [4748] Limitation of business.—It shall be unlawful for any life insurance company, accident insurance company, life and accident, health and accident, and life, health and accident insurance company to take any kind of risks or issue any policies of insurance, except those of life, accident or health; nor shall the business of life, accident or health insurance in this State be in any wise conducted or transacted by any company which in this or any other State or country, is engaged or concerned in the business of marine, fire, or inland insurance. [Id. Sec. 37.]

Art. 4739. [4749] Deposit of securities.—Any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, organized under the laws of this State, may at its option, deposit with the State Treasurer securities equal to the amount of its capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited in the treasury in lieu thereof other securities equal in value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the Commissioner.[1] When any such deposit is made, the Treasurer shall execute to the company making the deposit a receipt therefor, giving such description to such securities as will identify the same; and such company shall have the right to advertise such fact, or print a copy of the treasurer's receipt on the policies it may issue; and the proper officers or agents of each insurance company making such deposit shall be permitted, at all reasonable times, to examine such securities and to detach coupons therefrom and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the Treasurer, and the Commissioner. Such deposit when made by any company shall thereafter be maintained as long as said company shall have outstanding any liability to its policy holders. For the purpose of State, county, and municipal taxation, the situs of all personal property belonging to such companies shall be at the home office of such company. [Id. Sec. 38.]

[1] See note under Article 4717, ante.

Art. 4740. [4750] Deposits for benefit of insured.—Any life insurance company now or which may hereafter be incorporated under the laws of this state may deposit with the Board of Insurance Commissioners for the common benefit of all the holders of its policies and annuity bonds, securities of the kinds in which, by the laws of this state, it is permitted to invest or loan its capital, surplus, and/or reserves, equal to the legal reserve on all its outstanding policies in force, which securities shall be held by said Board of Insurance Commissioners in trust for the purpose and objects herein specified. The physical delivery of such securities to the Board of Insurance Commissioners shall be sufficient without being accompanied by a written transfer of any lien securing them. Any such company may deposit lawful money of the United States in lieu of the securities above referred to, or any portion thereof, and may also, for the purposes of such deposit, convey to said Board of Insurance Commissioners in trust the real estate in which any portion of its said reserve may be lawfully invested. In such case, the Board of Insurance Commissioners shall hold the title thereto in trust until other securities in lieu thereof shall be deposited with it, whereupon it shall reconvey the same to such company. Said Board of Insurance Commissioners may cause any such securities or real estate to be appraised and valued prior to their being deposited with, or conveyed to, it in trust as aforesaid, the reasonable expense of such appraisement or valuation to be paid by the company. Under the provisions of this Article, registered as well as unregistered United States Government securities may be deposited. [Acts 2nd C.S. 1909, p. 448; Acts 1943, 48th Leg., p. 206, ch. 125, § 1.]

Art. 4741. [4751] Effect and value of deposits.—After making the deposit mentioned above, no company shall thereafter issue a policy of insurance or endowment or annuity bond, except policies of industrial insurance, unless it shall have upon its face a certificate substantially in the following words: "This policy is registered, and approved securities equal in value to the legal reserve hereon are held in trust by the Commissioner of Insurance [1] of the State of Texas," which certificate shall be signed by such Commissioner and attested by his seal. All policies and bonds of each kind and class issued and the forms thereof filed in the office of said Commissioner shall have printed thereon some appropriate designating letter or figure, combination of letters or figures or terms identifying the particular form of contract, together with the year of adoption of such form. Whenever any change or modification is made in the form of contracts, policy or bond, the designating letters, figures or terms and the year of adoption thereon shall be correspondingly changed. The Commissioner shall prepare and keep such registers thereof as will enable him to compute their value at any time. Upon written proof attested by the president or vice president and secretary of the company which shall have issued such policies or annuity bonds that any of them have been commuted or terminated, the Commissioner shall commute or cancel them upon his register. Until such proof is furnished all registered contracts shall be considered in force for the purposes of this chapter. The net value of every policy or annuity bond, according to the standard prescribed by the laws of this State for the valuation of policies of life insurance companies, when the first premium shall have been paid thereon, less the amount of such liens as the company may have against it (not exceeding such value), shall be entered opposite the record of said policy or annuity bond in the register aforesaid at the time such record is made. On the first day of each year, or within sixty days thereafter, the Commissioner shall cause the policies and annuity bonds of each company accepting the terms of this chapter to be carefully valued; and the actual value thereof at the time fixed for such valuation, less such liens as the company may have against it, not exceeding such value, shall be entered upon the register opposite the record of such policy or bond, and the Commissioner shall furnish a certificate of the aggregate of such value to the company. The Commissioner shall cancel mutilated or surrendered policies and annuity bonds issued by any such company, and register other like policies or bonds issued in lieu thereof. Each company, which shall have made the deposit herein provided for, shall make additional deposits from time to time, in amounts not less than five thousand dollars, and of such securities as are permitted by this chapter to be deposited, so that the market value of the securities deposited shall always be equal to the net value of the policies and annuity bonds issued by said company, less such liens as the company may have against them, not exceeding such net value. So long as any company shall maintain its deposits as herein prescribed at an amount equal to, or in excess of, the net value of its policies and annuity bonds as aforesaid, it shall be the duty of said Commissioner to sign and affix his seal to the certificates before mentioned on every policy and annuity bond presented to him for that purpose by any company so depositing. The Commissioner shall keep a careful record of the securities deposited by each company, showing by item the amount and market value thereof. If at any time it shall appear therefrom that the value of the securities held on deposit

is less than the actual value of the policies and annuity bonds issued by such company and then in force, it shall be unlawful for the Commissioner to execute the certificate on any additional policies or annuity bonds of such company until it shall have made good the deficit. Any company depositing under the provisions of this chapter may increase its deposits at any time by making additional deposits of not less than five thousand dollars of such securities as are authorized by this chapter. Any such company whose deposits exceed the net value of all policies and annuity bonds it has in force less such liens (not exceeding such net value) as the company may hold against them, may withdraw such excess; and it may withdraw any of such securities at any time by depositing others of equal value and of the character authorized by this chapter in their stead; and it may collect the interest coupons, rents and other income on the securities deposited as the same accrue.

The securities deposited under this chapter by each company shall be placed and kept by the Commissioner in some secure safe-deposit, fire-proof box or vault in the city or town in or near which the home office of the company is located. The officers of the company shall have access to such securities for the purpose of detaching interest coupons and crediting payment and exchanging securities as above provided, under such reasonable rules and regulations as the Commissioner may establish. [Acts 2nd C. S. 1909, p. 448, sec. 2.]

[1] See note under Article 4717, ante.

Art. 4742. [4752] Fees for making deposits.—Every company making deposit under the provisions of this Chapter shall pay to the Life Insurance Commissioner of the State of Texas for each certificate placed on registered policies or annuity bonds issued by the company, after the original or first deposit is made hereunder, a fee of Twenty-five (25) Cents; and the fee so received shall be disposed of by the said Life Insurance Commissioner as follows:

1. The payment of the annual rental or hire of the safety deposit fireproof box or vault mentioned in Article 4741.

2. The payment of the compensation and expense of a competent and reliable representative of the Life Insurance Commissioner, to be appointed by him, who shall have direct charge of the securities and safety deposit boxes containing the same, and through whom and under whose supervision the insurance company may have access to its securities for the purposes provided in this Chapter.

3. The payment of the expense incurred in connection with the certification, registration, and valuation of such policies or annuity bonds.

4. The balance of such fees shall be paid to the State Treasurer to the credit of the general fund. [Acts 2nd C.S.1909, p. 448; Acts 1941, 47th Leg., p. 486, ch. 304, § 1.]

Art. 4743. [4753] What deposits may include.—Any life insurance company organized under the laws of this State and making the deposit provided for by this chapter, may include, as a part thereof, securities representing its capital stock, and any deposits of its securities heretofore or hereafter made in compliance with the laws of this State representing its capital stock, and shall only be required to deposit in addition thereto the remainder of its total reserve on outstanding policies and annuity bonds after deducting therefrom the amount of its capital stock securities so deposited. Deposits of securities made hereunder to the value of the reserve on all outstanding policies and annuity bonds shall be added to, and maintained from time to time as the reserve values increase, by the company issuing such contracts, or by any company which may reinsure or assume them; and such securities shall be held by the Commissioner [1] and his successors in office in trust for the benefit of such policies and annuity bonds so long as the same shall remain in force. No company making the deposit provided for herein shall reinsure its outstanding business, or the whole of any one or more of its risks, except in or with a company or companies incorporated and organized under the laws of this State, or a company having permission to do business in this State. [Acts 2nd C. S. 1909, p. 448, Secs. 4 and 5.]

[1] See note under Article 4717, ante.

Art. 4744. [4755] No commissions paid officers.—If any life insurance company doing business under the laws of this State has written or assumed risks that are substandard or extra hazardous and has charged therefor more than its published rates of premium, the Board of Insurance Commissioners shall in valuing such policies compute and charge such extra reserves thereon as is warranted by reason of the extra hazard assumed and the extra premium charged. If the Board of Insurance Commissioners shall find, after notice and hearing, that a particular risk or class of risks is substandard or extra hazardous, then and in that event no such company shall thereafter write or assume any such risks unless they charge therefor such extra premium as is warranted by reason of the extra hazard assumed. [Acts 1909, 2nd C.S., p. 448, § 6; Acts 1945, 49th Leg., p. 137, ch. 93, § 1.]

Art. 4745. [4755] No commissions paid officers.—No life insurance company transacting business in this State shall pay, or contract to pay, directly or indirectly, to its president, vice president, secretary, treasurer, actuary, medical director or other physician charged with the duty of examining risks or applications for insurance or to any officer of the company other than an agent or solicitor, any commission or other compensation contingent upon the writing or procuring of any policy of insurance in such company, or procuring an application therefor by any person whomsoever, or contingent upon the payment of any renewal premium, or upon the assumption of any life insurance risk by such company. Should any company violate any provision of this article, it shall be the duty of the Commissioner of Insurance [1] to revoke its certificate of authority to transact business in this State. [Id. Sec. 7.]

[1] See note under Article 4717, ante.

Art. 4746. [4756] Co-operative companies.—The provisions of the six preceding articles shall likewise apply to and govern co-operative life insurance companies organized under the laws of this State. [Id. Sec. 8.]

Art. 4747. [4757] To deposit funds in name of company.—Any director, member of a committee, or officer, or any clerk of a home company, who is charged with the duty of handling or investing its funds, shall not deposit or invest such funds, except in the corporate name of such company; shall not borrow the funds of such company; shall not be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, a loan made by or on behalf of such company. [Act 1909, p. 192; Sec. 39.]

Art. 4748. [4758] Impairment of capital stock.—Any such insurance company transacting business within this state, whose capital stock shall become impaired to the extent of thirty-three and one-third (33⅓%) per cent thereof, computing its liabilities in the manner provided by the laws of this state, shall make good such impairment within sixty (60) days, by reduction of its capital stock (provided such capital stock shall in no case be less than One Hundred Thousand ($100,000.00) Dollars), or otherwise; and failing to make good such impairment within said time shall forfeit its right to write new business in this state until said impairment shall have

been made good. The Board of Insurance Commissioners may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty (50%) per cent thereof, computing its reserve liability in the manner provided by the laws of this state for the computation of such reserve liability. No company shall write new business in Texas when its net surplus to policyholders is less than One Hundred Thousand ($100,000.00) Dollars. [Acts 1909, p. 192, § 43; Acts 1947, 50th Leg., p. 428, ch. 235, § 2.]

Art. 4749. [4759] Form of policies to be filed.—Life insurance companies shall, within five days after the issuance of, and the placing upon the market, any form of policies of life insurance, file a copy of such form of policy with the Insurance Department. [Acts 1909, p. 192, Sec. 44.]

Art. 4750. [4760] Commissioner to approve policy.—No insurance company transacting business in this State shall hereafter be permitted to issue or sell any policy of industrial life insurance, or any policy of accident or health insurance, until the form thereof has been submitted to the Commissioner.[1] If the Commissioner shall approve the form of such policy as complying with the laws of this State, the same may thereafter be issued and sold. If he shall disapprove the same, any such company may institute a proceeding in any court of competent jurisdiction to review his action thereon. [Id. Sec. 45.]

[1] See note under Article 4717, ante.

Art. 4751. [4761] Must have certificate of authority.—No foreign or domestic insurance company shall transact any insurance business in this State, other than the lending of money, unless it shall first procure from the Commissioner [1] a certificate of authority, stating that the laws of this State have been fully complied with by it, and authorizing it to do business in this State. Such certificate of authority shall expire on the last day of February in each year, and shall be renewed annually so long as the company shall continue to comply with the laws of the State, such renewals to be granted upon the same terms and considerations as the original certificate. [Id. Sec. 46.]

[1] See note under Article 4717, ante.

Art. 4752. [4762] Limited capital stock companies.—Companies may be incorporated in the manner prescribed by this Chapter for the incorporation of life, accident and health insurance companies generally, and to issue no policy promising to pay more than Five Thousand ($5,000.00) Dollars in the event of death of the insured from natural causes, nor more than Ten Thousand ($10,000.00) Dollars in the event of death of any person from accidental causes, which may issue, combined or separately, life, accident, or health insurance policies with not less than an actual paid up capital of Twenty-five Thousand ($25,000.00) Dollars. Provided, however, that when the net capital and surplus of any such company is not more than Thirty-five Thousand ($35,000.00) Dollars, the excess over One Thousand ($1,000.00) Dollars natural death benefit and Two Thousand ($2,000.00) Dollars accidental death benefit under any policy issued by it shall be reinsured in some legal reserve company licensed in Texas; that when the net capital and surplus is Thirty-five Thousand and One ($35,001.00) Dollars to Fifty Thousand ($50,000.00) Dollars, the natural death benefit over Two Thousand ($2,000.00) Dollars and accidental death benefit over Four Thousand ($4,000.00) Dollars shall be so reinsured; that when the net capital and surplus is Fifty-Thousand and One ($50,001.00) Dollars to Seventy-five Thousand ($75,000.00) Dollars, the natural death benefit over Three Thousand ($3,000.00) Dollars and accidental death benefit over Six Thousand ($6,000.00) Dollars shall be so reinsured; and when the net capital and surplus is Seventy-five Thousand and One ($75,001.00) Dollars to less than One Hundred Thousand ($100,000.00) Dollars, the natural death benefit over Four Thousand ($4,000.00) Dollars and accidental death benefit over Eight Thousand ($8,000.00) Dollars shall be so reinsured. All such companies shall be subject to all laws regulating life insurance companies in this state not inconsistent with the provisions of this Article. Such companies shall not be permitted to invest their assets in other than Texas securities as defined by the laws of this state regulating the investments of life insurance companies. [Acts 1909, p. 192, § 56; Acts 1941, 47th Leg., p. 797, ch. 495, § 1; Acts 1947, 50th Leg., p. 351, ch. 199, § 1.]

Art. 4753. [4763] Unlawful dividends.—It shall not be lawful for any insurance company organized under the laws of this State to make any dividend, except from surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks and also the amount of all unpaid losses, whether adjusted or unadjusted, and all other debts due and payable, or to become due and payable, by the company. Any dividends made contrary to any provision of this article shall subject the company making them to a forfeiture of its charter; and the Commissioner [1] shall forthwith revoke its certificate of authority. He shall give such company at least ten days notice in writing of his intention to revoke such certificate, stating specifically the reasons why he intends to revoke same. [Acts 1909, p. 192, Sec. 61.]

[1] See note under Article 4717, ante.

Art. 4754. [4764] Taxation of domestic company.—Insurance companies incorporated under the laws of this State shall hereafter be required to render for State, county and municipal taxation all of their real estate as other real estate is rendered. All personal property of such insurance companies shall be valued as other property is valued for assessment in this State in the following manner: From the total valuation of its assets shall be deducted the reserve being the amount of the debts of insurance companies by reason of their outstanding policies in gross, and from the remainder shall be deducted the assessed value of all real estate owned by the company and the remainder shall be the assessed taxable value of its personal property. Home insurance companies shall not be required to pay any occupation or gross receipt tax. [Id. Sec. 25.]

Art. 4755. [4765] Foreign companies, statement.—Any life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated under the laws of any other State, territory or country, desiring to transact the business of such insurance in this State, shall furnish said Commissioner [1] with a written or printed statement under oath of the president or vice president, or treasurer and secretary of such company, which statement shall show:

1. The name and locality of the company.
2. The amount of its capital stock.
3. The amount of its capital stock paid up.
4. The assets of the company, including: first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how secured; sixth, debts for premiums; seventh, all other moneys and securities.

5. Amount of liabilities to the company, stating the name of the person or corporation to whom liable.
6. Losses adjusted and due.
7. Losses adjusted and not due.
8. Losses adjusted.
9. Losses in suspense and for what cause.
10. All other claims against the company, describing the same.

The Commissioner may require any additional fact to be shown by such annual statement. Each such company shall be required to file a similar statement not later than March 1 of each year. [Acts 1909, p. 192, Sec. 26.]

[1] See note under Article 4717, ante.

Art. 4756. [4766] Articles of incorporation, filed.—Such foreign life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company shall accompany such statement with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors. The same shall be certified under the hand of the president or secretary of such company. [Id. Sec. 27.]

Art. 4757. [4767] Paid up capital stock.—No such foreign life insurance company, accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, shall transact any business of insurance in this State, unless such company is possessed of at least one hundred thousand dollars of actual paid up cash money capital invested in such securities as provided under the laws of the State, territory or country of its creation. No mutual life insurance or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company operating on the old line or legal reserve basis, shall transact any business of insurance in this State, unless such company is possessed of at least one hundred thousand dollars of net surplus assets invested in securities provided for under the laws of the State, territory or country of its creation. [Id. Sec. 28.]

Art. 4758. [Repealed by Acts 1945, 49th Leg., p. 442, ch. 279, § 4.]

Art. 4759. [4769] Alien companies to deposit.—No foreign life insurance company or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated by or organized under the laws of any foreign government, shall transact business in this State, unless it shall first deposit and keep deposited with the Treasurer of this State, for the benefit of the policy holders of such company, citizens or residents of the United States, bonds or securities of the United States or the State of Texas to the amount of one hundred thousand dollars. [Acts 1909, p. 203, § 30.]

Art. 4760. [4770] Deposit liable for judgment.—The deposit required by the preceding article shall be held liable to pay the judgments of policy holders in such company, and may be so decreed by the court adjudicating the same. [Id. Sec. 30.]

Art. 4761. [4771] When alien companies need not deposit.—If the deposit required by Article 4759 has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policy holders of such company who are citizens and residents of the United States, then no deposits shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Commissioner.[1] [Id. Sec. 32.]

[1] See note under Article 4717, ante.

Art. 4762. [4772] Assets invested.—The assets of any company not organized under the laws of this State shall be invested in securities or property of the same classes permitted by the laws of this State as to home companies or by other laws of this State in other securities approved by the Commissioner [1] as being of substantially the same grade. [Id. Sec. 57.]

[1] See note under Article 4717, ante.

Art. 4763. [4773] Shall file power of attorney.—Each life insurance company engaged in doing or desiring to do business in this State shall file with the Commissioner [1] an irrevocable power of attorney, duly executed, constituting and appointing the Commissioner and his successors in office, or any officer or board which may hereafter be clothed with the powers and duties now devolving upon said Commissioner, its duly authorized agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this State, by any person, or by or to or for the use of the State of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service; and such appointment, agency and power of attorney shall, by its terms and recitals, provide that it shall continue and remain in force and effect so long as such company continues to do business in this State or to collect premiums of insurance from citizens of this State, and so long as it shall have outstanding policies in this State, and until all claims of every character held by the citizens of this State, or by the State of Texas, against such company, shall have been settled. Said power of attorney shall be signed by the president or a vice president and the secretary of such company, whose signature shall be attested by the seal of the company; and said officer signing the same shall acknowledge its execution before an officer authorized by the laws of this State to take acknowledgments. The said power of attorney shall be embodied in, and approved by, a resolution of the board of directors of such company, and a copy of such resolution, duly certified to by the proper officers of said company, shall be filed with the said power of attorney in the office of the Commissioner, and shall be recorded by him in a book kept for that purpose, there to remain a permanent record of said department. [Act 1909, p. 240, Sec. 12.]

[1] See note under Article 4717, ante.

Art. 4764. [4774] Commissioner's duty in accepting service.—Whenever the Commissioner [1] shall accept service or be served with citation in any suit pending against any life insurance company in this State, he shall immediately enclose the copy of the citation served upon him, or a substantial copy thereof, in a letter properly addressed to the general manager or general agent of the company against whom such service is had, if it shall have a general manager or general agent within this State, and if not, then to the home office of the company, and shall forward the same by registered mail, postage prepaid. No judgment by default shall be taken in any such cause until after the expiration of at least ten days after the general agent or general manager of such company, or the company at its home office, as the case may be, shall have received such copy of such citation; and the presumption shall obtain, until rebutted, that such notice was received by such agent or company in due course of mail after being deposited in the mail at Austin. [Id. Sec. 13.]

[1] See note under Article 4717, ante.

Art. 4764a. Group life insurance; standard provisions.

Group life insurance definition

Section 1. No policy of group life insurance shall be delivered in this State unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term 'employees' shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term 'employees' shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term 'employees' shall include retired employees.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's fund or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five per cent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five (25) employees at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds Twenty Thousand Dollars ($20,000).

(2) A policy issued to a labor union, which shall be deemed the employer and policyholder, to insure the members of such union who are actively engaged in the same occupation and who shall be deemed to be the employees of such union within the meaning of this Act.

(3) A policy issued to an independent school district, incorporated city, town or village which has assumed control of the public school system within such municipality, State colleges or universities, any association of State employees, any association of State and County employees, and any department of the State Government, which employer or association shall be deemed the policyholder, to insure the employees of any such independent school district and of the public school system of any such municipality, of any such State colleges and universities, of any such department of the State Government, members of any association of State employees, and members of any association of State and County employees for the benefit of persons other than the policyholder subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof determined by conditions pertaining to their employment.

(b) The premium for the policy shall be paid by the policyholder wholly from funds contributed by the insured employees; provided, however, that any moneys or credits received by or allowed to the policyholder pursuant to any participation agreement contained in or issued in connection with the policy shall be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contributions therefor; and provided further, that the employer may deduct from the employees' salaries the required contributions for the premiums when authorized in writing by the respective employees so to do. Such policy may be placed in force only if at least seventy-five per cent (75%) of the eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder.

(c) The policy must cover at least twenty-five (25) employees at date of issue.

(d) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the employees or by the policyholder.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall be all members of a group of persons numbering not less than fifty (50) at all times, who became borrowers from one financial institution, or who became purchasers of securities, merchandise or other property from one vendor under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property purchased to the extent of their respective indebtedness to said financial institution or vendor, but not to exceed Ten Thousand Dollars ($10,000) on any one life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or both.

(c) The insurance issued shall not include annuities or endowment insurance.

(d) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

Group life insurance standard provisions

Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the Board of Insurance Commissioners of the State of Texas and formally approved by such Board, nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provisions, or provisions which in the opinion of the Commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder, provided, however, (a) that provisions (6) to (10) inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor; (b) that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and (c) that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the Commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies:

(1) A provision that the policyholder is entitled to a grace period of thirty-one (31) days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue

in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

(2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two (2) years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two (2) years during such person's lifetime nor unless it is contained in a written instrument signed by him.

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

(5) A provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

(6) A provision that any sum becoming due by reason of the death of a person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding Two Hundred and Fifty Dollars ($250) to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(7) A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in (8), (9), and (10) following.

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination, and provided further that:

(a) The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(b) The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purpose of this provision, be included in the amount which is considered to cease because of such termination; and

(c) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five (5) years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by (8) above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one (31) days after such termination, and (b) Two Thousand Dollars ($2,000).

(10) A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with (8) or (9) above and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

Reserve values

Sec. 3. The reserve values of all policies of group insurance issued prior to the effective date of this Act shall be computed upon the basis of the American Men Ultimate Table of Mortality with interest at the rate of three per cent (3%) or three and one-half per cent (3½%) per annum as provided in such policies. The reserve values of all policies of group insurance issued on and subsequent to the effective date of this Act shall be computed upon the basis of either the American Men Ultimate Table of Mortality or The Commissioner's 1941 Standard Ordinary Mortality Table with interest at a rate not in excess of three and one-half per cent (3½%) per annum as provided in such policies.

Computation of reserve values, see, also, amendment to original section 5 of the Act of 1931, by Acts 1947, 50th Leg., p. 428, ch. 235, § 3, set out as section 5 of this article.

Group policies unlawful except as authorized

Sec. 4. Except as may be provided in this Act, it shall be unlawful to make a contract of life insurance covering a group in this State, and the license to do business in Texas of any company making a contract of life insurance covering a group in this State except as may be provided in this Act may be forfeited by a suit brought for that purpose by the Attorney General of the State of Texas at the request of the Board of Insurance Commissioners. [Acts 1931, 42nd Leg., p. 172, ch. 101; Acts 1941, 47th Leg., p. 1346, ch. 610, § 1; Acts 1943, 48th Leg., p. 602, ch. 347, § 1; Acts 1943, 48th Leg., p. 604, ch. 349, § 1; Acts 1947, 50th Leg., p. 366, ch. 208, § 1.]

Reserve values

Sec. 5. The reserve values of all policies of group insurance issued prior to January 1, 1948, shall be

computed upon the basis of the American Men Ultimate Table of Mortality, with interest at the rate of three (3%) per cent or three and one-half (3½%) per cent per annum, as provided in such policies. The reserve values of all policies of group insurance issued subsequent to December 31, 1947, shall be computed upon the basis of either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table, with interest at a rate not in excess of three and one-half (3½%) per cent per annum, as provided in such policies. [Acts 1931, 42nd Leg., p. 172, ch. 101, § 5; Acts 1947, 50th Leg., p. 428, ch. 235, § 3.]

Art. 4764b. Industrial life insurance.

Definitions

Section 1. For the purposes of this Act, industrial life insurance shall mean that form of life insurance either

(a) under which the premiums are payable weekly, or

(b) under which the premiums are payable monthly or oftener, but less often than weekly, if the face amount of insurance provided in the policy is not more than One Thousand Dollars ($1,000);

provided that in either case the words "Industrial Policy" are printed on the face of the policy as part of the descriptive matter thereof. When an industrial life insurance policy is issued providing for accident and health benefits, in addition to natural death benefits, the provisions of this Act shall apply only to the life insurance benefits provided in the policy, except as hereinafter otherwise specifically provided.

Required policy provisions

Sec. 2. No policy of industrial life insurance shall be delivered or issued for delivery in this State, unless the same shall contain in substance the following provisions:

a. A provision that the insured is entitled to a stated period of grace of at least four (4) weeks within which the payment of any premium after the first may be made. During such period of grace the policy shall continue in full force, but in case the policy becomes a claim during the grace period, before the overdue premiums are paid, the amount of overdue premiums may be deducted in any settlement under the policy.

b. A provision that the policy shall constitute the entire contract between the parties, but if the insurer desires to make the application a part of the contract it may do so, provided a copy of such application shall be endorsed upon or attached to the policy when issued, and in such case the policy shall contain a provision that the policy and the application therefor shall constitute the entire contract between the parties. The policy shall also contain a provision that all statements made by the insured or on his behalf shall in the absence of fraud be deemed representations and not warranties.

c. A provision that the policy shall be incontestable not later than two (2) years from its date, except for nonpayment of premiums, and except for violation of the conditions of the policy, if any, relating to naval or military service in time of war, and except as to provisions and conditions granting or relating to benefits in the event of total or permanent disability, as defined in the policy, and those granting or relating to additional insurance specifically against death by accident or by accidental means, or to additional insurance against loss of, or loss of use of, specific members of the body.

d. A provision that if the age of the insured has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age. [Acts 1941, 47th Leg., p. 111, ch. 89.]

e. A provision that in event of default in premium payments after premiums shall have been paid for three (3) full years there shall be available a stipulated form of insurance effective from the due date of the defaulted premium; and in event of default in premium payments after premiums shall have been paid for five (5) full years there shall be available, in lieu of the stipulated form of insurance, at the option of the insured, a specified cash surrender value. The net value of the stipulated form of insurance, and the specified cash surrender value, shall not be less than the reserve on the policy at the end of the last completed quarter of the policy year for which premiums shall have been paid, including the reserve for any paid-up additions thereto and the amount of any dividends standing to the credit of the policy, and excluding any reserve on total and permanent disability, as defined in the policy, and additional accidental death benefits, less a sum of not more than:

(1) Two and one-half (2½%) per cent of the maximum amount insured by the policy and dividend additions thereto, if any, when the issue age is under ten (10) years;

(2) Two and one-half (2½%) per cent of the current amount insured by the policy and dividend additions thereto, if any, when the issue age is ten (10) years or older; and less any existing indebtedness to the insurer on or secured by the policy.

"If the mortality table adopted for computing such reserve is the 1941 Standard Industrial Mortality Table or the 1941 Sub-standard Industrial Mortality Table, then in calculating the value of the paid-up term insurance with accompanying pure endowment, if any, a rate of mortality may be assumed which is not more than one hundred thirty (130%) per cent of the rate of mortality according to the table used. The policy shall state the amount and term of the stipulated form of insurance calculated upon the assumption of no indebtedness on the policy and no dividend additions thereto.

The policy may be surrendered to the insurer at its home office within the period of grace after the due date of the defaulted premium for the specified cash surrender value, provided that the insurer may defer payment for not more than six (6) months after the application therefor is made. In the event that application, which must be in writing, for a stipulated form of insurance or the specified cash surrender value when the same are available, is not made within the grace period, it shall be provided that a stipulated form of insurance shall automatically become effective. [As amended Acts 1947, 50th Leg., p. 331, ch. 189, § 2.]

f. A provision specifying the mortality table, rate of interest, and method of valuation, if other than net level premium, adopted for computing the life insurance reserves on the contract.

g. A table showing in figures the nonforfeiture options available under the policy at the end of each year upon default in premium payments during the premium paying period, but not to exceed the first twenty (20) years of the policy. Such table is to begin with the year in which such values become available. At the expiration of the period for which such values are shown in the policy, the insurer will furnish upon request an extension of such table.

h. A provision that the policy may be reinstated within one year, or, at the option of the insurer, within fifty-two (52) weeks from the date of default in payment of premiums, unless the cash surrender value has been paid or the period of extended insurance has expired, upon payment of all overdue premiums, the payment or reinstatement of any other indebtedness due to the insurer upon said policy, and upon the presentation of evidence of insurability satisfactory to the insurer. The overdue premiums may, at the

option of the insurer, be subject to interest at a rate not exceeding six (6) per cent per annum as may be specified in the policy.

i. A provision that when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of, at the insurer's home office, or not later than two (2) months after such receipt of, proof of death satisfactory to the insurer and the right of the claimant to the proceeds.

j. A title on the face of the policy briefly describing its form.

k. In the case of an insurer issuing participating policies in this State, a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy.

l. A provision that no agent shall have the power or authority to waive, change, or alter any of the terms or conditions of any application or any policy delivered or issued for delivery pursuant to the terms of this Act.

Any of the provisions of Section 2, or portions thereof, not applicable to nonparticipating or term policies shall, to that extent, not be incorporated therein.

The provisions of Section 2 shall not apply to policies issued or granted pursuant to the nonforfeiture provisions prescribed in clause (e) of said Section, nor shall clauses (e) and (g) of said Section be required in term insurances of twenty (20) years or less.

Application to existing policies

Sec. 3. Any policy of industrial life insurance delivered or issued for delivery in this State prior to the effective date of this Act, and pursuant to the provisions of Article 4750, Revised Civil Statutes of Texas, 1925, and upon which premiums have been paid for three (3) full years, which does not by its terms secure, upon default in payment of premiums, to the insured or beneficiary thereof, a stipulated form of insurance, shall nevertheless entitle such insured or beneficiary to either extended or paid-up insurance, the net value of which shall be determined as is provided in clause (e) of Section 2 of this Act, providing such insured or beneficiary elects and notifies the home office of the insurer in writing, prior to the expiration of the period of extended insurance, which of said two (2) forms he has elected to take; and any such insured or beneficiary failing to elect and notify the insurer in writing of such election within such time shall be deemed to have elected extended insurance.

Authorized provisions

Sec. 4. In addition to the provisions required by Section 2, any policy of industrial life insurance delivered or issued for delivery in this State may contain, in substance, the following provisions, in addition to any other provision or provisions not elsewhere prohibited by this Act:

a. A provision excluding liability or promising a benefit less than the full amount payable as a death benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations.

b. A provision limiting the maximum amount payable on the death of an infant under fifteen (15) years of age.

Prohibited provisions

Sec. 5. No industrial life insurance policy delivered or issued for delivery in the State of Texas shall contain any provision which (a) limits the time within which any action at law or in equity may be commenced to less than two (2) years after the cause of action shall accrue; (b) except as otherwise provided herein, provides for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions thereto, if any, less any indebtedness to the insurer on the policy, and less any premium that may, by the terms of the policy, be deducted, and provided also that this provision shall not prevent an additional accidental death benefit being limited so as not to be payable in event of death from certain causes of accidents; and further providing that any company may issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand while sane or insane or by following stated hazardous occupations or in the event the death of the insured should result from aviation activities under the conditions specified in the policy to be approved by the Board of Insurance Commissioners as provided in Chapter 3, Title 78 of the Revised Civil Statutes of the State of Texas of 1925. [As amended Acts 1943, 48th Leg., p. 603, ch. 348, § 1.]

Approval of policy, rider, endorsement, etc., by Board of Insurance Commissioners

Sec. 6. No insurance company transacting business in this State shall hereafter deliver or issue for delivery in this State any policy of industrial life insurance, or any policy of industrial life insurance providing for accident and health benefits in addition to natural death benefits, or attach to, or print or stamp upon such policy, any rider, or endorsement, until the form of such policy, rider, or endorsement has been submitted to and approved by the Board of Insurance Commissioners of the State of Texas. It shall be the duty of the Board of Insurance Commissioners to disapprove any such policy, rider, or endorsement if it violates any of the provisions of this Act, and to give written notice to the insurer of such disapproval in which notice the Board shall specify the particulars in respect to which the policy, rider, or endorsement violates the provisions of this Act. If the Board of Insurance Commissioners shall disapprove any such policy, rider, or endorsement, the insurer may, within ninety (90) days after the mailing of the written notice of such disapproval by the Board, institute proceedings in the District Court of Travis County, Texas, to review the action of the Board thereon.

Associations excepted

Sec. 7. This Act shall not apply to local mutual aid associations or state-wide mutual life, health, and accident companies and burial associations operating under Senate Bill No. 135, Acts of the Regular Session of the Forty-sixth Legislature,[1] but this Act and no other shall apply to and govern the form and content of industrial life insurance policies, as they are defined herein, issued by all other insurance companies.

[1] Article 5068—1.

Certain non-profit organizations excepted

Sec. 7a. Nothing contained in this Act shall be so construed as to affect or apply to orders, societies, associations, or labor organizations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business, and who do not operate for profit; nor shall this Act apply to the ladies societies or ladies auxiliaries to such orders, societies, associations, or labor organizations, nor to fraternal orders, associations, and societies.

Extension of time to comply with Act

Sec. 8. Upon proper showing to the Board of Insurance Commissioners of inability of an insurer to comply with this Act immediately upon the same becoming effective, such insurer may, at the discretion of the Board, have sixty (60) days from and after the effective date of the Act in which to make full compliance with the provisions of this Act.

Partial invalidity

Sec. 9. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the con-

trolling legislative intent that if any provisions of this Act, or the application thereof to any circumstances, are held invalid, the remainder of the Act and the application of such provisions to circumstances other than those as to which it is held invalid, shall not be affected thereby. [Acts 1941, 47th Leg., p. 111, ch. 89.]

CHAPTER 4.—TEXAS SECURITIES AND GROSS RECEIPTS TAX

Art.
4765. Investment in Texas securities.
4766. "Texas securities."
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Sec.
1. Annual statement of gross premiums; tax.
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4770. Taxes to be paid before certificate is issued.
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Article 4765. [4775] Investment in Texas securities.—Each life insurance company now engaged, or that may hereafter engage in transacting the business of life insurance in this State, shall, as a condition of its right to transact such business in this State, invest and keep invested in Texas securities and in Texas real estate as hereinafter provided, a sum of money equal to at least seventy-five per cent of the aggregate amount of the legal reserve required by the laws of the State of its domicile, to be maintained on account of its policies of insurance in force written upon the lives of the citizens of this State, which reserve is hereafter denominated as its "Texas Reserves." And each such company, securing a certificate of authority to do business in this State, shall be deemed to have accepted such certificate subject to all the conditions and requirements of this chapter. [Acts 1909, p. 240.]

Art. 4766. [4776] Texas securities.—The term "Texas Securities", as used in this Chapter, shall be held to include all bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,[1] when such bonds are issued against and secured by promissory notes or other obligations the payment of which is secured by mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this state; bonds of the State of Texas; bonds or interest-bearing warrants of any county, city, town, school district, or other municipality or subdivision which is now or may hereafter be constituted or organized and authorized to issue such bonds or warrants under the Constitution and laws of this state, notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator; the cash deposits in regularly established National or State Banks or trust companies in this state on the basis of average monthly balances throughout the calendar year; that percentage of a life insurance company's investments in the bonds of the United States of America that its Texas reserves are of its total reserves; but this provision shall apply only to United States Government bonds purchased between December 8, 1941, and the termination of the war in which the United States is now engaged; promissory notes and other obligations, the payment of which is secured by a mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this state, the title to which real estate is valid and the market value of which is forty (40%) per cent more than the amount loaned thereon, exclusive of buildings unless such buildings are insured against fire and kept insured in some company authorized to transact business in the State of Texas, and the policy or policies transferred to the company taking such mortgage or lien; or upon first liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid, and the leasehold has not less than thirty (30) years to run before expiration, provided that the duration of any loan upon such leasehold estates shall not exceed a period of ten (10) years. If any part of the value of such real estate is in buildings, such buildings shall be insured against fire and kept insured for at least fifty (50%) per cent of the value thereof in some company authorized to transact business in this state and the policy or policies shall be transferred to the company taking such mortgage or lien.

The term "Texas Securities", as used in this Chapter, shall also be held to include obligations secured collaterally by such first lien notes, first mortgage bonds of any solvent corporation incorporated under the laws of this state and doing business in this state, and which has paid, out of its actual earnings, dividends of an average of at least five (5%) per cent per annum on the par value of all of its par value stock outstanding and on the sale value of all of its no par value stock outstanding for a period of at least five (5) years next preceding the date of such investment, and which has not at any time defaulted in the payment of interest on any of its obligations, any such investment in the bonds of any one such corporation not to exceed five (5%) per cent of the admitted assets of the insurance company making the investment, and loans made to policyholders on the sole security of the reserve values of their policies. The investments required by this Chapter may be made by the purchase of not more than one building site, and in the erection thereon of not more than one office building, or in the purchase, at its reasonable market value, of such office building already constructed and the ground upon which the same is located in any city of the state of more than four thousand (4,000) inhabitants. All real estate owned by life insurance companies in this state on December 31, 1909, and all thereafter acquired under the provisions of this Chapter, or by foreclosure of a lien thereon shall be treated, to the extent of its reasonable market value, as a part of the investment required by this Chapter. And "Texas Securities" shall be held to include every character of investment authorized by the terms of this Article; provided that the above restrictions concerning mortgage loans shall not apply to loans insured by the Federal Housing Administrator. [Acts 1909, p. 240; Acts 1917, p. 122; Acts 1929, 41st Leg., p. 497, ch. 237; Acts 1935, 44th Leg., p. 24, ch. 8, § 1; Acts 1941, 47th Leg., p. 848, ch. 524, § 1; Acts 1943, 48th Leg., p. 303, ch. 197, § 1.]

[1] 12 U.S.C.A. § 641 et seq.

Art. 4767. [4777] Investments, how made.—The investments required by this chapter shall be made as follows:

1. Each life insurance company which had a certificate of authority to transact business in this State April 2, 1909, the total amount of whose investments in Texas securities as of December 31, 1908, was equal to or exceeded seventy-five per cent of the amount of

its Texas reserves as of that date, shall have so invested not later than January 31, in each year, a sum of money equal to seventy-five per cent of the amount of its Texas reserves as of the preceding December 31.

2. Each life insurance company which had a certificate of authority to transact business in this State on April 2, 1909, the amount of whose investments in Texas securities as of December 31, 1908, was less than seventy-five per cent of the amount of its Texas reserves as of said date, shall have so invested, not later than January 31 in each year, a sum at least equal to seventy-five per cent of the amount by which its Texas reserves as of December 31 preceding exceeded the amount of its Texas reserves as of December 31, 1908, added to the amount of its total investments in Texas securities as of said date; and each such company, shall in addition, have so invested not later than January 31, 1910, a sum at least equal to ten per cent of the amount by which seventy-five per cent of its Texas reserves as of December 31, 1908, exceeded the amount of its investments in Texas securities as of said date, and annually thereafter it shall have invested, not later than January 31, an additional ten per cent of the amount of such excess, until the total amount of its investments in Texas securities shall at least equal seventy-five per cent of its Texas reserves.

3. Each life insurance company not having a certificate of authority to do business in this State on April 2, 1909, or that may thereafter discontinue writing new business under such certificate, shall, if it again obtain a certificate of authority to transact business in this State, be required to have invested in Texas securities annually as above provided, a sum equal to seventy-five per cent of its Texas reserves. If on December 31 preceding the issuance of such certificate of authority, the amount of its investments in Texas securities was less than seventy-five per cent of the amount of its Texas reserves, it shall be required to have so invested annually as above provided, a sum equal to seventy-five per cent of the increase of its Texas reserves since December 31, last preceding the issuance of its certificate of authority, added to the amount of its total investment in Texas securities as of said date; and, in addition, it shall, not later than January 31 in each year after the issuance of its certificate of authority, have so invested ten per cent of the amount by which seventy-five per cent of its Texas reserves as of December 31 preceding the date of said certificate exceeded the amount of its total investments in Texas securities as of that date, and shall have invested annually thereafter, not later than January 31, an additional ten per cent of such excess, until the total amount of its investments in Texas securities shall at least equal seventy-five per cent of the amount of its Texas reserves. The proportionate amount of the Texas reserves required by this section to be invested in Texas securities as of any date shall thereafter be maintained. Such investment shall not be required to be made by any life insurance company after it has ceased to do the business of life insurance or to write policies of life insurance in this State. [Acts 1909, p. 240.]

Art. 4768. [4778] Report showing amount of reserve.—Each life insurance company doing business in this State shall, not later than ten days after January 31 of each year, file with the Commissioner [1] on a blank prepared and furnished by him for that purpose, a report showing the entire amount of the reserve on its entire business in force in this State on December 31, preceding, and an itemized schedule of its investments in Texas securities, which report shall be sworn to by either the president or a vice president and the secretary of such company. Such report shall contain such other information as may be required by the Commissioner to determine whether or not such company has continuously and in good faith complied with this law; and for that purpose the Commissioner may, whenever he shall deem it proper, require such special or supplemental reports as he may deem necessary. [Id.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4079–4079d, 4082a, ante.

Art. 4769. [Repealed by Acts 1945, 49th Leg., p. 442, ch. 279, § 4.]

Art. 4769a. Report of premiums; annual tax; report of investments; payment of tax; exclusiveness.

Annual statement of gross premiums; tax

Section 1. Every group of individuals, society, association, or corporation (all of which shall be deemed included in the term "insurance organization" wherever used in this Act) transacting the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, or for mutual benefit, or protection in this State shall on or before the first day of March of each year file its annual statement showing the gross amount of premiums collected during the year ending December 31, preceding, from persons residing or domiciled in this State on policies of insurance, and showing in separate columns the first year premiums and the renewal premiums collected on such Texas policies, and each such insurance organization, except local mutual aid associations, fraternal benefit societies, and fraternal insurance associations or societies that limit their membership to one occupation, shall pay an annual tax of three and five-tenths per cent (3.5%) of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas on policies of insurance. Each such insurance organization shall also report to the Board of Insurance Commissioners on or before the first day of March of each year the amount that it had invested on the 31st of December, preceding, in Texas securities as defined by Article 4766 of the Revised Civil Statutes of Texas, 1925, as amended, and the amount that it had invested on said date in similar securities in the state in which it had its highest percentage of admitted assets invested, and in computing the amount of such investments in such other state it shall include as a part thereof that percentage of its investment in bonds of the United States of America purchased between December 8, 1941, and the termination of the war in which the United States is now engaged that its reserves on policies of insurance issued on the lives of persons residing or domiciled in such state are of its total reserves on all policies outstanding. If the report of such insurance organization as of December 31, preceding, shows that such organization had invested in Texas securities as defined by Article 4766 of the Revised Civil Statutes of Texas, 1925, as amended, an amount which is not less than seventy-five per cent (75%) nor more than eighty per cent (80%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be three per cent (3%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty per cent (80%) and not more than eighty-five per cent (85%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be two and seventy-five one-hundredths per cent (2.75%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-five per cent (85%) and not more than eighty-eight per cent (88%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage

of its admitted assets invested, its tax shall be two and twenty-five one-hundredths per cent (2.25%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-eight per cent (88%) and not more than ninety per cent (90%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be one and seventy-five one-hundredths per cent (1.75%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of ninety per cent (90%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be ninety-five one hundredths of one per cent (.95 of 1%) of such gross premium receipts; provided, however, that all such insurance companies whose gross premium receipts are less than Four Hundred Fifty Thousand Dollars ($450,000) for the preceding years ending December 31st, wherever and irrespective of from whom collected, according to its annual statement which shall disclose such information, shall pay a tax of five-eighths of one per cent (⅝ of 1%) of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas except as to first year premiums as provided herein; provided, however, that the gross premium taxes herein imposed shall not be applicable to first year premiums; and provided further that where any policy is written on a term plan only the premium collected during the first year shall be deducted on such policy or any renewal, extension or substitution thereof by the company issuing such term policy. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance of business in Texas and there shall be no deduction for premiums paid for reinsurance. If any such insurance organization does more than one kind of insurance business, then it shall pay the tax herein levied upon the gross premiums on each kind of insurance written. The report of the gross premium receipts and the invested assets shall be made upon the sworn statement of two (2) principal officers.

Upon receipt by it of the sworn statement above provided, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by such insurance organization which shall be paid to the State Treasurer on or before the fifteenth day of March, following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this State during the calendar year ending December 31, in which such premiums were collected, or for that portion of the year during which the insurance organization transacted business in this State. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State from any such insurance organization, foreign or domestic, except, and only except unemployment compensation taxes levied under Senate Bill No. 5, passed at the Third Called Session of the Forty-fourth Legislature and amendments thereto; and the fees provided for under Article 3920 of the Revised Civil Statutes of Texas, 1925, and amendments thereto; and in the case of companies operating under Article 4742 of the Revised Civil Statutes of Texas, 1925, the deposit fees prescribed by that Article and amendments thereto; and in case of companies writing workmen's compensation insurance, the taxes otherwise provided by law on account of such business; and no other taxes shall be levied or collected by the State or any county, city, or town except State, county, and municipal ad valorem taxes upon real or personal properties of such insurance organization.

Application; permit

Sec. 2. This Act shall apply to the premiums collected during 1945 and subsequent years and shall not affect the obligation of any such insurance organization for the payment of any taxes that have accrued on premium receipts for insurance issued during 1944 or in prior years, but the obligation as now provided by law for the payment of such taxes shall continue in full force and effect. No such insurance organization shall receive a permit to do business in Texas until all premium taxes due by it to the State of Texas are paid.

Investments in Texas securities

Sec. 3. This Act shall not in any manner affect the obligation of any such insurance organization to make investments in Texas securities in proportion to the amount of Texas reserves as required by Article 4765 of the Revised Civil Statutes of Texas, 1925, as amended.

Repeal

Sec. 4. Article 7064a and Article 4769 of the Revised Civil Statutes of Texas, 1925, as amended, are repealed except for the continuing obligation of any such insurance organization for the payment of any taxes that have accrued under the provisions of either of said Articles. This Act shall be cumulative of all other laws but shall repeal Article 4758, Revised Civil Statutes of 1925, as amended; and shall repeal all other laws only in so far as they levy any tax on any of the organizations affected by this Act or otherwise conflict with this Act, except as provided herein.

Partial invalidity

Sec. 5. If any section, paragraph, sentence or clause of this Act shall be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining portions of this Act, but the remainder of the Act shall be given effect as if such invalid, unconstitutional, or inoperative portion had not been included. [Acts 1945, 49th Leg., p. 442, ch. 279.]

Art. 4770. [4780] Taxes to be paid before certificate is issued.—Upon the receipt of sworn statements showing the gross premium receipts of such company, the Commissioner of Insurance [1] shall certify to the State Treasurer the amount of taxes due by such company for the preceding year, which taxes shall be paid to the State Treasurer for the use of the State, by such company. Upon his receipt of such certificate, and the payment of such tax, the Treasurer shall execute a receipt therefor, which receipt shall be evidence of the payment of such taxes. No such life insurance company shall receive a certificate of authority to do business in this State until such taxes are paid. If, upon the examination of any company, or in any other manner, the Commissioner of Insurance shall be informed that the gross premium receipts of any year exceed in amount those shown by the report thereof, theretofore made as above provided, it shall be the duty of such Commissioner to file with the State Treasurer a supplemental certificate showing the additional amount of taxes due by such company, which shall be paid by such company upon notice thereof. The State Treasurer if, within fifteen days after the receipt by him of any certificate or supplemental certificate provided for by this article, the taxes due as shown thereby have not been paid, shall report the facts to the Attorney General, who shall immediately institute suit in the proper court in Travis County to recover such taxes. [Acts 1909, 1st C. S., p. 264.]

[1] See note under Article 4768, ante.

Art. 4771. [4781] Taxes imposed exclusive.—No occupation tax other than herein imposed shall be levied by the State or any county, city or town, upon any life insurance company herein subject to the occupation tax in proportion to its gross premium receipts, or its agents. The occupation tax imposed by this law shall be the sole occupation tax which any company doing business in this State under the provision of this chapter shall be required to pay. [Acts 1909, p. 240.]

Art. 4772. [4782] Law deemed accepted.—Each life insurance company not organized under the laws of this State, hereafter granted a certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact such business hereunder subject to the conditions and requirements that, after it shall cease to transact new business in this State under a certificate of authority, and so long as it shall continue to collect renewal premiums from citizens of this State, it shall be subject to the payment of the same occupation tax in proportion to its gross premiums during any year, from citizens of this State, as is or may be imposed by law on such companies transacting new business within this State, under certificates of authority during such year. The rate of such tax to be so paid by any such company shall never exceed the rate imposed by this chapter upon insurance companies transacting business in this State. Each such company shall make the same reports of its gross premium receipts for each such year and within the same period as is or may be required of such companies holding certificates of authority and shall at all times be subject to examination by the Commissioner of Insurance [1] or some one selected by him for that purpose, in the same way and to the same extent as is or may be required of companies transacting new business under certificates of authority in this State, the expenses of such examination to be paid by the company examined. The respective duties of the Commissioner in certifying to the amount of such taxes and of the State Treasurer and Attorney General in their collection shall be the same as are or may be prescribed respecting taxes due from companies authorized to transact new business within this State. [Id.]

[1] See note under Article 4768, ante.

Art. 4773. [4783] Companies renewing business.—Any life insurance company which has heretofore been, may now be, or may hereafter be, engaged in writing policies of insurance upon the lives of citizens of this State, which has heretofore ceased, or may hereafter cease writing such policies, and which does not now or may not hereafter have a certificate of authority to transact the business of life insurance in this State, but which has continued or may continue to collect renewal or other premiums upon such policies, shall, before it may again obtain a certificate of authority to transact the business of life insurance in this State, report under oath to the Commissioner [1] the gross amount of premiums so collected from citizens of this State upon policies of insurance during each calendar year since the end of the period covered by the last preceding report by such company of gross premium receipts upon which it paid an occupation tax, and shall pay to the State a sum equal to the percentage of its gross premium receipts for each such year that was required by law to be paid as occupation taxes by companies doing business in this State, during such year or years; and, upon the payment of such sum and securing a certificate of authority to do business in this State, the penalties provided for the failure to pay such taxes and make such report in the past shall be remitted. [Id.]

[1] See note under Article 4768, ante.

Art. 4774. [4784] Failure to renew certificate.—Any company which shall fail to renew its certificate of authority or continue to write new business in this State, shall, nevertheless, have the right to maintain agents in Texas for the purpose of collecting renewal premiums on outstanding business written by it under certificate of authority, and also for the purpose of making investments as provided by this chapter. [Id.]

Art. 4775. [4785] Commissioner may revoke certificate.—If any life insurance company, while holding a certificate of authority to transact business in this State, shall fail or refuse to comply with any of the provisions or requirements of this chapter, the Commissioner [1] upon ascertaining such fact, shall notify such company by actual notice in writing delivered to an executive officer of such company, of his intention to revoke its certificate of authority to transact business in this State at the expiration of thirty days after the mailing of such registered letter, or the date upon which such actual notice is served. If such provisions or requirements are not fully complied with upon the expiration of said thirty days, it shall be the duty of said Commissioner to revoke the certificate of authority of such company. In case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one year, and until it shall have fully and in good faith complied with all such provisions and requirements of this chapter. Any company feeling itself aggrieved by the action of the Commissioner in revoking its certificate of authority to do business in this State may bring suit against him in Travis County to annul and vacate the order revoking such certificate. [Id.]

[1] See note under Article 4768, ante.

Art. 4776. [4786] Failure to report or invest.—If any company shall intentionally fail or refuse to make the investments required by this chapter, or make any report required by this chapter, or to make any special report requested by the Commissioner [1] under authority of this chapter, or generally to comply with any provision or requirements of this chapter, while holding a certificate of authority to transact business in this State, or after it shall cease to write new business or cease to hold such certificate, such failure or refusal shall subject such company, in addition to the penalty provided in the preceding article, in cases to which said article may be applicable, to the payment of a penalty of twenty-five dollars per day for each day that such company shall remain in default after the Commissioner shall notify such company of such default, in the manner provided in the preceding article, to be recovered in a suit that may be brought by the Attorney General in behalf of the State in the District Court of Travis County. In any suit brought to recover such penalty, there shall be a prima facie presumption subject to rebuttal, that any default that may have occurred was intentional; that the notice required by this chapter was given, and the burden of proof shall be on the defendant company to prove that the investments required by this chapter were made as herein required whenever the question of whether or not such investments were thus made is in issue. [Id.]

[1] See note under Article 4768, ante.

Art. 4777. [4787] Deposit by domestic company.—Any life insurance company, organized under the laws of this State, may, at its option, deposit with the Treasurer of this State, securities in which its capital stock is invested, or securities equal in amount to its capital stock, of the class in which the law of this State permits insurance companies to invest their capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited with the Treasurer, in lieu thereof, other securities of like class and equal amount and value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the Commissioner; [1] and, when any such deposit is made, the Treasurer shall execute to the company making such deposit a receipt therefor, giving such description of said stock or securities as will identify the same, and

stating that the same are held on deposit as the capital stock investments of such company; and such company shall have the right to advertise such fact or print a copy of the Treasurer's receipt on the policies it may issue; and the proper officer or agent of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the Treasurer and the Commissioner. The deposit herein provided for, when made by any company, shall thereafter be maintained so long as said company shall have outstanding any liability to its policy holders in this State. [Id.]

[1] See note under Article 4768, ante.

Art. 4778. [4788] Not to apply to certain companies.—The provisions of this chapter requiring investments in Texas securities shall not apply to any life insurance company, the total amount of whose Texas reserves does not exceed five thousand dollars, or to any such company doing only a reinsurance business in this State, but all other provisions of this chapter shall apply to such companies. [Id.]

Art. 4779. [4789] Not to apply to fraternal societies.—Nothing in this chapter shall be held to apply to fraternal benefit societies as defined by the laws of this State. [Id.]

Art. 4780. [4790] Companies desiring to loan money.—Any life insurance company not desiring to engage in the business of writing life insurance in this State, but desiring to loan its funds in this State, may obtain a permit to do so by complying with the laws of this State relating to foreign corporations engaged in loaning money in this State, without being required to secure a certificate of authority to write life insurance in this State. [Id.]

CHAPTER 5.—ASSESSMENT OR NATURAL PREMIUM COMPANIES

Art.
4781. [Repealed.]
4782. Foreign mutual assessment life insurance companies; report of premiums or assessments; occupation tax in lieu of other taxes.
4782a. Repeals.
4782b. Application of act.
4782c. Taxation of premium receipts of foreign assessment life and casualty companies on reorganization or amendment of charter.
4783. [Repealed.]

Art. 4781. [Repealed by Acts 1929, 41st Leg., 1st C. S., p. 90, ch. 40, § 18; Acts 1929, 41st Leg., 2nd C. S., p. 90, ch. 60, § 1.]

Art. 4782. [4792] Foreign mutual assessment life insurance companies; report of premiums or assessments; occupation tax in lieu of other taxes.—Section 1. Each and every foreign mutual assessment life insurance company doing business in the State of Texas under the provisions of Chapter 5, Title 78, Revised Civil Statutes of Texas, 1925, shall file with the Board of Insurance Commissioners of Texas not earlier than the first day of January of each year nor later than the first day of March of each year, a report duly sworn to by two principal officers of such company. Such report shall be in addition to any and all other reports required by the laws of Texas to be filed by such companies, and shall contain the exact amount of money received by such companies from its Texas policyholders by way of premiums and/or assessments.

Sec. 2. There is hereby imposed upon such companies a tax of one (1) per cent of the gross amount of the receipts of such companies in Texas from premiums and/or assessments, as shown by the report provided for in Section 1 hereof. Such tax shall be paid by each and every such company in the manner as provided in Section 4 hereof.

Sec. 3. Upon the receipt of the report provided in Section 1 hereof the Board of Insurance Commissioners shall immediately certify to the State Treasurer the amount of taxes due by each of said companies.

Sec. 4. Each and every such company shall immediately pay to the State Treasurer the amount of tax due as shown by the certificate of the Board of Insurance Commissioners. Upon collection of the tax herein imposed upon such companies, the State Treasurer shall immediately certify such fact to the Board of Insurance Commissioners.

The tax herein imposed shall constitute an occupation tax and no company included in the provisions shall receive a license or certificate to do business in Texas for the year following March 1st of each year unless and until said tax has been paid.

Sec. 5. The tax herein imposed upon the companies herein included shall constitute all taxes and license fees collectable under the laws of this State except the fee provided for under Article 3920, Revised Civil Statutes of Texas, 1925, Section 1, Regular Session, and no other taxes shall be collected or levied against such companies by any county, city, or town except State, county, and municipal ad valorem taxes on personal and real property of such companies. [Acts 1889, p. 98; G.L. vol. 9, p. 1126; Acts 1937, 45th Leg., 2nd C.S., p. 1913, ch. 33, § 1.]

This article prior to the 1937 amendment constituted a part of chapter 5 of the Revised Civil Statutes of 1925, which was repealed with a saving provisions by Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18, as amended Acts 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1, see article 4860a—18.

Art. 4782a. Repeals.—All laws or parts of laws of this State in conflict herewith are hereby expressly repealed; however, it is hereby expressly provided that no part of Acts of 1929, First Called Session, Forty-first Legislature, Chapter 40,[1] as amended Acts 1929, Forty-first Legislature, Second Called Session, Chapter 60 or Senate Bill No. 81, Acts of the Regular Session of the Forty-fifth Legislature,[2] shall in any manner be affected by the terms hereof. [Acts 1937, 45th Leg., 2nd C.S., p. 1913, ch. 33, § 2.]

[1] Articles 4860a—1 to 4860a—19, and Pen.Code, art. 1117a.

[2] Article 4858a.

Art. 4782b. Application of act.—It is expressly provided that nothing herein is to authorize the Board of Insurance Commissioners to issue a permit to do business in Texas to any foreign mutual assessment life insurance company that is not now doing business here. It is the intention of this Act to regulate and levy a tax on those companies that are now doing business here. [Acts 1937, 45th Leg., 2nd C.S., p. 1913, ch. 33, § 3.]

Art. 4782c. Taxation of premium receipts of foreign assessment life and casualty companies on reorganization or amendment of charter.—If any foreign assessment life or casualty company now licensed to do business in this State under the provisions of Chapter V, Title 78, Revised Civil Statutes of Texas, 1925, as amended by Senate Bill No. 37, Chapter 40, Acts of 1929, First Called Session, Forty-first Legislature, as amended by Senate Bill No. 106, Chapter 60, Acts of 1929, Second Called Session, Forty-first Legislature,[1] shall hereafter reorganize, amend its charter or otherwise change its plan of operation so that it shall no longer be subject to the provisions of said Chapter and the other laws then applicable to such companies, it shall thereafter, as to all policies written before such change, be governed and taxed as provided by the particular laws under which it operated and was taxed at the time of such change, but as to all policies thereafter written it shall be governed and taxed under the laws

to which it has then become subject by such change. [Acts 1939, 46th Leg., p. 424, § 1.]

1 Article 4860a—18.

Art. 4783. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18; Acts 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1.]

Repeal does not apply to or affect any company or association doing business under repealed law, see Article 4860a—18 post.

CHAPTER 6.—MUTUAL ASSESSMENT ACCIDENT COMPANIES

Art.
4784—4799. [Repealed.]

Arts. 4784—4799. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18; Acts 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1.]

Acts 1947, 50th Leg., p. 349, ch. 197, § 1 incorporated in art. 5068—6, provides that every mutual assessment life, health and accident insurance company chartered by authority of Chapter 6, Title 78 and licensed by the Insurance Department under such chapter and art. 4860a—18a, shall, within six months from its effective date effect a compliance with and conform to and be governed by arts. 4859f, 5068—1.

Section 2 thereof repeals Chapter 6 of Title 78, (these articles) in so far as they apply to the mutual assessment life, health and accident insurance companies mentioned in section 1.

Repeal does not apply to or affect any company or association doing business under repealed law, see article 4860a—18, post.

CHAPTER 7.—MUTUAL LIFE INSURANCE COMPANIES

Art.
4800. Incorporation; life, health and accident policies authorized.
4801. Certificate of authority.
4802. Directors.
4803. Annual meeting of policy-holders.
4804. Bonds of officers.
4805. Annual statement; renewal certificate.
4806. Annual examination.
4807. Agents and commissions.
4808. Annual valuation of policies.
4809. Net premiums.
4810. Contingency reserve.
4811. Surplus and dividends.
4812. Policies.
4813. [Repealed.]
4814. Table of guaranteed values.
4815. Incurring debts.
4816. Advances to company.
4817. Liabilities.
4818. Investment of funds.
4819. Other laws to govern.

Article 4800. [4809] Incorporation; life, health and accident policies authorized.—Nine or more persons, residents of this state, may form a Mutual Life Insurance Company for the purposes of insuring the lives of individuals on the mutual, level premium, legal reserve plan, and any such company, heretofore or hereafter created, may issue, combined or separately, life, health, and accident insurance policies, subject to the provisions of this Chapter, by executing and acknowledging articles of incorporation for that purpose. Such articles of incorporation shall set forth:

1. The name and residence of each incorporator;

2. The name of the proposed company, which shall contain the words, "Mutual Life Insurance Company", as a part thereof;

3. The location of the principal office from which the business of the company is to be transacted;

4. The number of directors and the name and residence of each one who is to serve until the first regular election of directors. [Acts 1921, p. 148; Acts 1947, 50th Leg., p. 532, ch. 312, § 1.]

Art. 4801. Certificate of authority.—If the Attorney General approves such articles of incorporation, he shall so certify thereon in writing, and return them to the Commissioner,[1] who shall file the same in his office and issue to the company a certificate of authority to which shall be attached a certified copy of the articles of incorporation authorizing such company to receive applications for insurance as provided in this chapter, to collect premiums thereon and to issue receipts therefor. Such certificate shall expressly state that such company is not authorized to issue policies of insurance or transact any business other than that specifically authorized therein until it has received bona fide applications for insurance on the lives of at least two hundred individuals for not less than five hundred dollars each, aggregating at least two hundred thousand dollars of insurance on which the aggregate net premiums shall be at least equal to the largest net risk assumed on any one life, which applications have been approved by a competent physician and on which the first annual premiums at adequate rates have been paid to the company, nor until these facts shall have been fully shown to the Commissioner and he shall have issued to the company a certificate of authority to transact business as a mutual life insurance company. If this showing is not made within six months after the date upon which such articles of incorporation are filed with the Commissioner, it shall be his duty to cancel the certificate of authority of such company to receive applications for insurance, and to notify each incorporator of such action. When the Commissioner shall be notified that any such company has complied with all the provisions of this and the preceding article, he shall make, or cause to be made, at the expense of such company, an examination thereof; and if he shall find that the law has been fully complied with, it shall be his duty to issue to it a certificate of authority to transact the business of a mutual life insurance company, in accordance with the terms of this chapter. [Acts 1921, p. 148.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, 4682a, ante.

Art. 4802. [4810] Directors.—The business of a mutual life insurance company shall be controlled and directed by a board of directors consisting of not less than five (5) members, who shall be elected annually as provided in this Chapter. The directors who are to serve until the first annual election shall be named in the charter, and they shall hold office until their successors shall be elected and qualified, or until they shall be removed for improper practices. The board of directors shall elect the officers of the company, which shall be a president, and such number of vice presidents as the by-laws may provide; a secretary, a treasurer, a medical director and such other officers as the by-laws may provide for; and shall fix the compensation of all such officers. The duties of all officers shall be prescribed by the by-laws. The by-laws governing the company until the date of its first annual meeting shall be adopted by the board of directors at their first meeting after the certificate of authority shall be issued authorizing the company to transact the business of a mutual life insurance company. [Acts 1921, p. 148; Acts 1943, 48th Leg., p. 580, ch. 341, § 1.]

Section 8 of the Act of 1943 provided that a holding of partial invalidity should not affect any other portion of the act.

Art. 4803. Annual meeting of policy-holders.—There shall be an annual meeting of all the policy-holders of each mutual life insurance company at the home office of such company or at such other place as may be properly announced to the policy-holders, on the second Tuesday in March after it shall have received a certificate of authority to transact the business of life insurance, and annually thereafter, at which the directors shall be elected for the succeeding

year, and at which by-laws for the government of the company, not inconsistent with the provisions of this chapter or with the laws of this State may be adopted, and at which the existing by-laws may be repealed or amended. At such annual meeting, each policy-holder shall be entitled to one vote for each five hundred dollars of insurance held by him. Any policy-holder may execute his proxy authorizing and entitling the holder to exercise his voting powers, unless such proxy shall be revoked previous to such annual meeting. [Acts 1921, p. 148.]

Art. 4804. Bonds of officers.—The president, secretary and treasurer shall each give bond for the protection of the policy-holders in amount and with securities to be approved by the Commissioner,[1] conditioned for the faithful performance of their respective duties. [Id.]

[1] See note under Article 4801, ante.

Art. 4805. Annual statement; renewal certificate.—Such mutual life insurance companies shall file their annual statements with the Commissioner,[1] and receive from him their certificates of authority to transact the business of life insurance. [Id.]

[1] See note under Article 4801, ante.

Art. 4806. Annual examination.—The Commissioner [1] shall have made, once in each calendar year, a thorough examination of the affairs of each such mutual life insurance company, the report of which examination shall be made to such Commissioner under oath. The Commissioner, if he approves the report of such examination, shall furnish the company with certificate of approval. The expense of such examination shall be borne by the company examined. [Id.]

[1] See note under Article 4801, ante.

Art. 4807. Agents and commissions.—Any such mutual life insurance company which has received authority from the Commissioner [1] to transact business in this State shall receive from such Commissioner, upon written request therefor, a certificate of authority for each of its agents in this State. Contracts between such companies and such agents shall not provide for commissions or other compensation to such agents in excess of the expense loading in the premiums of policies issued upon the applications procured by such agents, collected therefor, and paid to the company in cash. [Id.]

[1] See note under Article 4801, ante.

Art. 4808. Annual valuation of policies.—(A) The Board of Insurance Commissioners shall annually make valuations of all outstanding policies of mutual life insurance companies as of December 31st of each year. In making such valuation the Board may use group methods and approximate averages for fractions of a year or otherwise. In making such valuation the reserve liability of all outstanding policies of substandard insurance shall be computed in accordance with the laws relating specifically to such policies. In making such valuation the reserve liability of all other outstanding policies of insurance and annuity contracts shall be computed on the net-premium basis and in accordance with their terms and the following rules:

(1) As respects policies issued prior to January 1, 1948, the computation shall be on the basis of the American Experience Table of Mortality, with interest at such rate as may be specified in such policy contracts.

(2) As respects policies issued after the 31st day of December, 1947, the computation shall be on the basis of the mortality table and interest rate specified in the respective policies, provided that (I) the specified rate of interest shall not exceed three and one-half (3½%) per cent per annum, (II) the specified table for policies other than policies of industrial life insurance shall be the American Experience Table of Mortality, the American Men Ultimate Table of Mortality, or the Commissioners 1941 Standard Ordinary Mortality Table, and (III) the specified table for policies of industrial life insurance shall be the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Substandard Industrial Mortality Table, the 1941 Standard Industrial Mortality Table, or the 1941 Substandard Industrial Mortality Table.

(3) As respects annuity contracts and contracts or policies for disability benefits and accidental death benefits, the computation shall be on the basis of the standards and methods adopted by the respective companies and approved by the Board of Insurance Commissioners.

(B) If the gross premium charged by any mutual life insurance company on any policy or contract is less than the net premium for the policy or contract, according to the mortality table, rate of interest and method used in computing the reserve liability thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period. [Acts 1921, p. 148; Acts 1943, 48th Leg., p. 580, ch. 341, § 2; Acts 1947, 50th Leg., p. 498, ch. 293, § 1.]

Art. 4809. Net premiums; surplus and contingency reserve requirements.—The net premiums upon all policies issued by any such company shall be computed in accordance with the provisions of the preceding Article; no portion of such net premiums collected upon any such policy shall ever be used or applied for the payment of any expenses of the company of any kind or character, or for any other purpose than the payment of death losses, surrender values, or lawful dividends to policyholders, loans on policies, or for the purpose of such investments of the company as are prescribed in the laws of this state, provided however, that whenever the surplus of a mutual life insurance company, whether earned or contributed, and the contingency reserve, as provided in Article 4810 of this Chapter, when taken together, are at least equal to One Hundred Thousand ($100,000.00) Dollars, such company shall no longer be subject to the restrictions imposed by this Article, but shall thereafter, as long as such minimum surplus and contingency reserve is maintained, be entitled to use the net premiums as above defined, for all purposes; provided that during the time such net premiums are used for any purpose, other than the payment of death losses, surrender values, loans on policies or for the purpose of such investments of the company as are prescribed by the laws of this state, dividends to policyholders will be paid from the divisible surplus of the company in accordance with Article 4811. Provided that as to Mutual Assessment Associations organized and operating under the laws of this state at the effective date of this Act, which convert to a mutual legal reserve basis and qualify under this Chapter,[1] the surplus and contingency reserve requirement shall be as follows:

A minimum of Five Thousand ($5,000.00) Dollars for each One Million ($1,000,000.00) Dollars or less of insurance in force and an additional Two Thousand Five Hundred ($2,500.00) Dollars for each additional One Million ($1,000,000.00) Dollars of insurance in force, with a maximum of Fifty Thousand ($50,000.00) Dollars;

And further provided that such converted Mutual Assessment Associations shall within five (5) years from the date of conversion bring the maximum surplus and contingency reserve to Five Thousand ($5,000.00) Dollars for each One Million ($1,000,000.00) Dollars of insurance in force, with a maximum sur-

plus and contingency reserve requirement in all cases of One Hundred Thousand ($100,000.00) Dollars, such increase to be at the rate of at least twenty (20%) per cent each year from such conversion date, provided, however, that the Board of Insurance Commissioners shall have the discretion to extend the time for such increase.

Providing further that nothing in this Act or in the provisions of Chapter 7, Title 78, Revised Civil Statutes of 1925, as amended,[1] or Chapter 3, Title 78, Revised Civil Statutes of 1925, as amended,[2] shall ever be construed to mean that any of the associations or other similar concerns, by whatsoever name or class designated, whether specifically named herein or not, shall be required by the Board of Insurance Commissioners to make the change herein provided for unless they voluntarily decide to do so, and that this Act is purely permissive and if such associations do not so voluntarily decide to come under this Act, or laws amended by it, then this bill shall not in any way apply to such associations.

The provision of this Act that dividends to policyholders shall be paid in accordance with Article 4811 may be waived until the maximum surplus and contingency reserve requirement has been met by converted Mutual Assessment Associations. [Acts 1921, p. 148; Acts 1943, 48th Leg., p. 580, ch. 341, § 3.]

1 Articles 4800–4819.
2 Articles 4716–4764b.

Art. 4810. Contingency reserve.—Every such company may maintain and set aside, before declaring any dividends to policy-holders, in addition to an amount equal to the net value of all its policies, computed as required by this chapter, a contingency reserve not exceeding the following respective percentages of said net values, to wit: When said net values are less than one hundred thousand dollars, twenty per cent thereof, or the sum of ten thousand dollars, whichever is the greater; the percentage thereof measuring the contingency reserve shall decrease one-half of one per cent. for each one hundred thousand dollars of said net values up to one million dollars, and thereafter, one-half of one per cent for each additional one million dollars of said net values; provided, that as the said net values of said policies increase, and as the maximum percentage measuring the contingency reserve decreases, such company may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the maximum percentage. [Acts 1921, p. 148.]

Art. 4811. Surplus and dividends.—Each such company shall make an annual accounting and apportionment of divisible surplus to each policyholder, beginning not later than the end of the second policy year on all policies issued; and each such policyholder shall be entitled to and credited with or paid, such portion of the entire divisible surplus as may be equitably apportioned to his policy. Upon the 31st day of December of each year, or as soon thereafter as may be practicable, each such company shall truly ascertain the surplus earned by it during such year; and after setting aside from such surplus the contingency reserve provided for in this Chapter,[1] it shall apportion to each of its policies upon which all premiums due and payable for at least two (2) years have been paid, an equitable proportion of the remainder of such surplus, and shall immediately submit a detailed report of such apportionment under oath of its president or secretary to the Board of Insurance Commissioners. If such Board shall find such apportionment to be equitable and just to the policyholders and in accordance with the provisions of this Chapter, it shall approve the same, and it shall become effective. If it shall not approve such apportionment, it shall make such changes therein as it shall deem equitable and just and necessary to make the same comply with the provisions of this Chapter, and shall certify such changes to such company, whereupon such apportionment as changed by such Board shall become effective. Each dividend declared as aforesaid shall be paid in cash, or in the equivalent of its cash value in any option stated in the policy and selected by the policyholder, notice of which selection by the policyholder shall be given to the company in writing. [Acts 1921, p. 148; Acts 1943, 48th Leg., p. 580, ch. 341, § 4.]

1 Articles 4800—4819.

Art. 4812. Policies.—Mutual life insurance companies are authorized to transact business throughout this State and in other States to which they may be admitted; they shall issue no policies except upon the participating plan with dividends payable annually as provided in this chapter; the forms of all policies issued by any such company shall be approved by the Commissioner,[1] and all such policies shall have plainly printed on both the face and the reverse sides thereof the words, "The form of this policy is approved by the Commissioner of Insurance of the State of Texas," and the Commissioner shall revoke the certificate of authority of any such company which shall issue any policy except upon such form so approved. No such company shall issue any policy or policies by which, after deducting reinsurance, if any, it shall be bound for more than five thousand dollars upon any one life at any time when the total amount of its insurance in force is less than ten million dollars. [Acts 1921, p. 148.]

1 See note under Article 4801, ante.

Art. 4813. [Repealed by Acts 1943, 48th Leg., p. 580, ch. 341, § 5].

Section 5 of the Act of 1943 read as follows: "That Article 4813 of the Revised Civil Statutes of Texas, 1925, be and the same is hereby repealed, both as to existing insurance companies and those which may be formed hereafter under this amended Chapter [arts. 4800–4819]."

Art. 4814. Table of guaranteed values.—Each policy issued by such company shall contain a table of guaranteed values, which shall become non-forfeitable not later than upon the payment of the third full annual premium; such tables of values shall be drawn in accordance with the law governing life and accident insurance companies. [Acts 1921, p. 148.]

Art. 4815. Incurring debts.—No mutual life insurance company shall have the power except as provided in this chapter, to borrow money for any purpose other than the payment of death losses. No such company shall have the power to incur any debt on any account except under policies issued by it or for money borrowed to pay death losses, for which any portion of its assets over and above that which may represent or be derived from the expense loading of the premiums collected by it, shall, in any event be subject to execution upon a judgment therefor. [Id.]

Art. 4816. Advances to company.—Any officer or director of a mutual life insurance company or any person so authorized in Article 4871a (Acts 1931, 42nd Legislature, page 200, Chapter 118) may advance to such company any sum of money for the purpose of promoting or conserving its business, or to enable it to comply with any requirement of the law; and such money, together with such interest thereon as may have been agreed upon, not exceeding ten (10%) per cent per annum, shall be payable only out of the surplus remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advance shall be reported in each annual statement. [Acts 1921, p. 148; Acts 1943, 48th Leg., p. 580, ch. 341, § 6.]

Art. 4817. Liabilities; receivership; reinsurance may be ordered.—At any time when the liabilities of any such company, computing its reserve liability upon the mortality tables and the interest rates specified in its policy contracts, shall be in excess of its assets, the company shall cease the issuance of new policies until the impairment of its reserve shall be made good. Whenever the liabilities of any such company, computing its reserve liability upon the mortality tables specified in its policy contracts and three and one-half (3½%) per cent interest per annum, exceeds its assets, the Board of Insurance Commissioners may request the Attorney General to file suit in the name of the state in the District Court of the county in which such company is located for the appointment of a receiver to terminate and liquidate the affairs of the company, and such action may be maintained. In any such action, such District Court, or the Judge thereof, in vacation, shall have the power, if in his opinion the interests of the policyholders of the company require it, to enter an order for the reinsurance of all outstanding risks of such company in some other life insurance company authorized to do business in this state upon such terms and conditions as may be approved by the Board of Insurance Commissioners, and by such court, or the Judge thereof, in vacation, and such court or Judge may for that purpose direct the conveyance of the entire assets of any such company, or any portion thereof, to such reinsuring company in consideration of such reinsurance. [Acts 1921, p. 148; Acts 1943, 48th Leg., p. 580, ch. 341, § 7; Acts 1947, 50th Leg., p. 498, ch. 293, § 2.]

Art. 4818. [4811] Investment of funds.—Mutual life insurance companies shall invest their funds in accordance with the provisions of the third chapter of this title, concerning investments of life insurance companies in this State; all moneys of mutual life insurance companies, coming into the hands of any officer thereof, when not invested as prescribed, shall be deposited in the name of such company in some bank which is subject to either State or national regulation and supervision, and which has been approved by the Commissioner [1] as a depository therefor. [Acts 1921, p. 148.]

[1] See note under Article 4801, ante.

Art. 4819. Other laws to govern.—The provisions of chapter 3 of this title when not in conflict with the articles of this chapter, shall apply to and govern mutual life insurance companies organized under the provisions of this chapter. [Id.]

CHAPTER 8.—FRATERNAL BENEFIT SOCIETIES

Art.
4820. Fraternal benefit societies defined.
4821. Lodge system defined.
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4825. Benefits upon life of child.
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Art. 4820. Fraternal benefit societies defined.—Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government, and which shall make provision for the payment of benefits in accordance with Section 4 hereof, is hereby declared to be a Fraternal Benefit Society. [Acts 1913, p. 220; Acts 1931, 42nd Leg., p. 71, ch. 48, § 1.]

Section 7 of this Act repeals all conflicting laws and parts of laws.

Art. 4821. Lodge system defined.—Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known into which members shall be admitted in accordance with its constitution, laws, ritual, rules and regulations, and which shall be required by the laws of such society to hold periodical meetings, shall be deemed to be operating on the lodge system. [Acts 1913, p. 220; Acts 1931, 42nd Leg., p. 71, ch. 48, § 2.]

Art. 4822. Representative form of government defined.—Any society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with

such other members as may be prescribed by its constitution and laws; provided, that the elective members shall constitute a majority in number and not less than the number of votes required to amend its constitution and laws; and provided, further, that the meetings of the supreme or governing body, and the election of officers, representatives or delegates shall be held as often as once in four calendar years. No member under age sixteen shall have voice or vote in the management of the society. No member, officer, representative or delegate shall vote by proxy. [Acts 1913, p. 220; Acts 1931, 42nd Leg., p. 71, ch. 48, § 3.]

Art. 4823. Exemptions.—Except as herein provided, such societies shall be governed by this law, and shall be exempt from all provisions of the insurance laws of this State, not only in governmental relations with the State, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein. [Acts 1913, p. 220.]

Art. 4824. Benefits.—Subsec. 1. Every society transacting business under this Act shall provide for the payments of benefits upon the death of its members either within a term of years or at any time, and may provide for benefits payable upon its members reaching seventy years of age, and may also provide, for the payment of benefits in case of total and permanent disability, and may provide also for the payment of benefits in the event of temporary disability and for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits.

Subsec. 2. Any society may also enter into contracts in such other forms and granting such benefits as its laws may authorize when it shall provide for the accumulation and maintenance of assets required for the payment of such benefits when valued upon an interest basis not exceeding four (4%) per cent per annum and mortality standards adopted by it within the limitations provided in the statutes relating to Fraternal Benefit Societies, or at the option of the society in the statutes relating to life insurance companies. [Acts 1913, p. 220; Acts 1931, 42nd Leg., p. 71, ch. 48, § 4.]

Art. 4825. Benefits upon life of child.—That any Fraternal Benefit Society authorized to do business in this State may provide in its laws, in addition to other benefits provided for therein, for insurance, annuities, or for insurance and annuities, upon the lives of children at any age, upon the application of some adult person related to or interested in said child as the laws of such society may provide. Any such society may at its option organize and operate branches for such children and membership in local lodges, and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. [Acts 1917, p. 430; Acts 1929, 41st Leg., 2nd C.S., p. 28, ch. 16, § 1.]

Section 6 of Acts 1929, 41st Leg., 2nd C.S., p. 28, ch. 16, repeals all conflicting laws and parts of laws.

Art. 4826. Certificates as to child.—The contributions to be made upon such certificate shall be based upon the "Standard Industrial Mortality Table Three and one-half per cent" or the "English Life Table Number Six," or such other mortality table as may be approved by the Chairman of Board of Insurance Commissioners. [Acts 1917, p. 430; Acts 1929, 41st Leg., 2nd C.S., p. 28, ch. 16, § 2.]

Art. 4827. Reserve and rights of child.—Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the standard mortality and interest tables adopted by the society for computing contributions, same to be first approved by the Chairman of the Board of Insurance Commissioners. [Acts 1917, p. 430; Acts 1929, 41st Leg., 2nd C.S., p. 28, ch. 16, § 3.]

Art. 4828. Statement as to children.—Any society shall have the full power to provide for means of enforcing payment of contribution, designations, and in all other respects for the regulation, government and control of such certificate and all rights, obligations and liabilities incident thereto and connected therewith not at variance with the provisions of this Act. [Acts 1917, p. 430; Acts 1929, 41st Leg., 2nd C. S., p. 28, ch. 16, § 4.]

Art. 4829. Specified payments.—Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide. [Acts 1917, p. 430.]

Art. 4830. Child membership.—In the event of the termination of membership in the society by the person responsible for the support of any child, on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child, provided, the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions. [Id.]

Art. 4831. Members and beneficiaries.—Any person may be admitted to beneficial, or general, or social membership in any society in such manner and upon such showing of eligibility as the laws of the society may provide, and any beneficial member may direct any benefit to be paid to such person or persons, entity, or interest as may be permitted by the laws of the society; provided, that no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable in conformity with the provisions of the contract of membership, and the member shall have full right to change his beneficiary, or beneficiaries, in accordance with the laws, rules, and regulations of the society. Nothing contained in this Act shall be construed to affect or apply to societies which admit to membership only persons engaged in one or more hazardous occupations, in the same or similar lines of business. [Acts 1923, p. 116; Acts 1929, 41st Leg., 2nd C.S., p. 28, ch. 16, § 6; Acts 1931, 42nd Leg., p. 71, ch. 48, § 5.]

Art. 4831a. Liability for damages and attorney's fees on failure to pay within sixty days after demand.—Provided that when a Fraternal Benefit Society operates under the provisions of this Act, and in all cases where a loss occurs and the society liable therefor shall fail to pay the same within sixty (60) days after the demand therefor, such society shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve (12%) per cent damages on the amount of such loss together with reasonable attorney's fees for the prosecution and collection of such loss. [Acts 1931, 42nd Leg., p. 71, ch. 48, § 5a.]

Art. 4832. Organizations as beneficiary.—Fraternal benefit societies, heretofore or hereafter incorporated by the State of Texas or licensed to do business therein, shall be authorized to provide in their constitutions, by-laws or fundamental laws for the issuance of benefit certificates to their members, wherein any association, society or corporation, organized and operated for religious, eleemosynary or educational purposes may be named as beneficiary. [Acts 1917, p. 372.]

Art. 4833. [Repealed by Acts 1931, 42nd Leg., p. 71, ch. 48, § 6.]

Art. 4834. Certificate.—Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation or, if a voluntary association, the articles of association, the constitution and laws of the society, and the applica-

tion for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions or amendments to said charter or articles of incorporation, or articles of association, or constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership. [Acts 1913, p. 220.]

Art. 4835. Funds.—Any society may create, maintain, invest, disburse and apply an emergency surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment of the surrender of any part thereof, except as provided in the fifth article of this chapter. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. No society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this State which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard with interest assumption not more than four per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent per annum. Deferred payments or installments of claims shall be considered as fixed liabilities on the happenings of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities. [Id.]

Art. 4836. Investments.—Every society shall invest its funds only in securities permitted by the laws of this State for the investment of the assets of life insurance companies. Any foreign society permitted or seeking to do business in this State which invests funds in accordance with the laws of the State in which it is incorporated shall be held to meet the requirements of this law for the investment of funds. In case the Constitution and by-laws of the Grand Lodge or governing body of any such association provides that all or any part of the beneficiary or mortuary or insurance fund of such association that is paid in by or collected from the members of such subordinate or local lodge may be retained in the custody of and controlled and managed by such subordinate or local lodge, and designate what officer of such subordinate or local lodge shall have the custody and control of such fund and authorize such local officers to loan or invest the same, and such local officer shall have executed and filed, and shall from time to time when required by the Commissioner,[1] file with such Commissioner such bond or other written instrument to be prescribed and approved in terms and amount by such Commissioner as will indemnify such fund against waste, depletion or loss through loans, investment or otherwise, then such fund so secured shall be exempt from the provisions of this chapter. [Id.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, 4682a, ante.

Art. 4837. Distribution of funds.—Every provision of the laws of the society for payment by members of such society, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses. No part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses. [Id.]

Art. 4838. Organization.—Seven or more persons, citizens of the United States, and a majority of whom are citizens of this State, who desire to form a fraternal benefit society, as defined by this law, may make and sign, giving their addresses, and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

1. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this State as to mislead the public or to lead to confusion.

2. The purpose for which it is formed, which shall not include more liberal powers than are granted by this law. Any lawful, social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised.

3. The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

4. Such articles of incorporation and duly certified copies of the Constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the Commissioner,[1] conditioned upon the return of the advance payments, as provided in this article, to applicants, if the organization is not completed within one year, shall be filed with such Commissioner, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this law, and all provisions of law have been complied with, said Commissioner shall so certify and retain and record or file the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the Commissioner, said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its Table of Rates as provided by its Constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examination have been duly filed and approved by the chief

medical examiner of such society; nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated; nor until there has been submitted to said Commissioner, under oath of the president and secretary or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation, contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent per annum; nor until it shall be shown to the Commissioner by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars; all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

Said advanced payments shall, during the period of organization, be held in trust, and if the organization is not completed within one year as hereinafter provided, returned to said applicants.

The Commissioner may make such examination and require such further information as he may deem advisable; and upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The Commissioner shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provisions of this article shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the Commissioner upon cause shown; unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided; and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society has completed its organization and commenced business as herein provided. When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void. Every such society shall have the power to make a Constitution and by-laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to, or amend such Constitution and by-laws and shall have such other powers as are necessary and incidental to carrying into effect its object and purposes. [Id.]

[1] See note under Article 4836, ante.

Art. 4838a. Societies issuing certificates on weekly or monthly premium plan.—Societies may be incorporated in the manner prescribed by this Chapter for the organization of fraternal benefit societies, which shall have power only to transact business within the State of Texas; and to issue certificates providing for a maximum benefit of not exceeding Three Hundred ($300.00) Dollars, on the weekly or monthly premium plan. Such Society or Societies shall be issued a certificate of authority in accordance with the provisions of this Chapter. When it shall have received five hundred (500) bona fide applications on which at least one monthly payment has been made, which said payments in the aggregate shall in no case be less than Eight Hundred ($800.00) Dollars.

Sec. 2. Provided that the advantages and privileges granted under this Act shall be as follows: Permits to organize under this Act may be granted until January 1, 1934, at which date it shall be necessary for the holder or holders of such permits to have two hundred and fifty (250) bona fide applications on which at least one monthly payment has been made, and the remaining two hundred and fifty (250) bona fide applications, on which one monthly payment has been made, shall be completed within a period of six (6) months before a permanent certificate may be issued, provided that all other provisions in Section 1 of this Act have been met. [Acts 1933, 43rd Leg., p. 853, ch. 243.]

Art. 4839. Powers retained—amendments.—Any society now engaged in transacting business in this State may exercise all of the rights conferred hereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this chapter, if incorporated; or if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its Constitution and laws, and all such amendments shall be filed with the Commissioner [1] and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, Constitution or laws. [Acts 1913, p. 220.]

[1] See note under Article 4836, ante.

Art. 4840. Mergers and transfers.—No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the Commissioner,[1] together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such a merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of said societies.

Upon the submission of said contract, financial statements and certificates, said Commissioner shall examine the same, and if he shall find such statements to be correct and the said contract to be in conformity with the provisions of this article, and that such merger or transfer is just and equitable to the members of each of said societies, he shall approve said merger or transfer, issue his certificate to that effect, and thereupon the said contract or merger or transfer shall be of full force and effect. In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by said Commissioner. [Id.]

[1] See note under Article 4836, ante.

Art. 4841. Annual license.—Societies which are now authorized to transact business in this State may continue such business until the first day of April next succeeding the passage of this law, and the authority of such societies may thereafter be renewed annually; force and effect until the new license be issued or specifically refused. For each such license or renewal but in all cases to terminate on the first day of the succeeding April. The license shall continue in full

the society shall pay the Commissioner [1] ten dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter. [Id.]

[1] See note under Article 4836, ante.

Art. 4842. Admission of foreign society.—No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Commissioner of Insurance.[1] Any such society shall be entitled to a license to transact business within this State upon filing with said Commissioner a duly certified copy of its charter or articles of association; a copy of its Constitution and laws, certified by its secretary or corresponding officer; a power of attorney to said Commissioner as hereinafter provided; a statement of its business under oath of its president and secretary or corresponding officers in the form required by said Commissioner, duly verified by an examination made by the supervising insurance official of its home State or other State satisfactory to the Commissioner; a certificate from the proper official in its home State, province or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical or other payments by persons holding similar contracts; and upon furnishing the Commissioner such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the State, territory, district, province or country where it is organized, he shall issue a license to such society to do business in this State until the first day of the succeeding April, and such license shall, upon compliance with the provisions of this law, be renewed annually, but in all cases to terminate on the first day of the succeeding April. The license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this State shall have the qualifications required of domestic societies organized under this law and have its assets invested as required by the laws of the State, territory, district, country or province where it is organized. For each such license or renewal the society shall pay the Commissioner of Insurance ten dollars. When said Commissioner refuses to license any society or revokes its authority to do business in this State, he shall reduce his decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of said Commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within the State. Nothing in this or the preceding article shall be construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein. [Id.]

[1] See note under Article 4836, ante.

Art. 4843. Service of process.—Every society, whether domestic or foreign, hereafter applying for admission, shall before being licensed, appoint in writing the Commissioner [1] and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this State.

Copies of such appointment certified by said Commissioner shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon said Commissioner or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such society. No such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than thirty days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said Commissioner he shall forthwith forward by registered mail, one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein. [Id.]

[1] See note under Article 4836, ante.

Art. 4844. Place of meeting.—Each domestic society shall have its principal office in this State, but may provide that the meetings of its legislative or governing body may be held in any State, district, province or territory wherein such society has subordinate branches. All business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State. [Id.]

Art. 4845. No personal liability.—Officers and members of the supreme, grand or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society. The same shall be payable only out of the funds of such society and in the manner provided by its laws. [Id.]

Art. 4846. Waiving provisions of law.—The Constitution and laws of the society may provide that no subordinate body nor any of its subordinate officers or members shall have the power or authority to waive any provision of the laws and Constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members. All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this State upon the passage of this law as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single State organizations, and all reports required by the provisions of this charter shall be made and furnished by the officers of such supreme State governing body and shall embrace and contain the transactions, liabilities and assets of such State organization. [Id.]

Art. 4847. Benefit not attachable.—No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debtor liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment. [Id.]

Art. 4848. Constitution and laws.—Every society transacting business under this law shall file with the Commissioner [1] a duly certified copy of all amendments of, or additions to its Constitution and laws within ninety days after the enactment of the same. Printed copies of the Constitution and laws, as amended, changed, or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof. [Id.]

[1] See note under Article 4836, ante.

Art 4849. Annual reports.—Every society transacting business in this State shall annually, on or before the first day of March, file with the Commissioner [1] in such form as he may require, a statement un-

der oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and its transactions for the year ending on that date, and shall furnish such other information as said Commissioner may deem necessary to a proper exhibit of its business and plan of working. The Commissioner may at other times require any further statement he may deem necessary to be made relating to such society. In addition to such annual report, each society shall annually report to said Commissioner a valuation of its certificates in force on December 31st last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses. Such report of valuation shall show as contingent liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under the certificates subject to valuation; and as contingent assets the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the Department of Insurance of the home State of the society, and shall be filed with the Commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society, any higher table; or, at its option, it may use a table based upon the society's own experience of at least twenty years, and covering not less than one hundred thousand lives with interest assumption not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences, and in such cases a separation of the funds shall not be required. The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities. A report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed, shall be printed and mailed to each beneficiary member of the society not later than June 1st, of each year; or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum. [Id.]

[1] See note under Article 4836, ante.

Art. 4850. Provisions to insure security.—If the valuation of the certificates, as hereinbefore provided, on December 31st, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter maintain said financial condition at each succeeding triennial valuation as to the degree of deficiency as shown in the valuation as of December 31, 1917. If at any succeeding triennial valuation such society does not show at least the same condition, the Commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the condition required herein, said Commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, or in the case of a foreign society, its license may be cancelled in the manner provided in this chapter. Any such society, shown by any triennial valuation, subsequent to December 31, 1917, not to have maintained the condition herein required, shall, within two years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December 31, 1917, or thereafter, as to all new members admitted, be subject so far as stated rates of contributions are concerned, to the provisions of this chapter applicable to the organization of new societies. The net mortuary or beneficiary contributions and funds of new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation, then the said new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds. [Id.]

Art. 4851. Accumulation basis.—In lieu of the requirements of the two preceding articles, any society accepting in its laws the provisions of this article may value its certificates on a basis herein designated, "accumulation basis," by crediting each member with the net amount contributed for each year and with interest at approximately the next rate earned and by charging him with his share of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this State, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member. Except as specifically provided in its articles or laws or contracts no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit, including the contribution for the year, the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund or contribution especially created or required for such purpose. Any member may transfer to any plan adopted by the society with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society. Certificates issued, rerated or adjusted [1] on a basis providing for adequate rates with adequate reserves to mature such certificates upon assumption for mortality and interest recognized by the law of this State

shall be valued on such basis, herein designated the "Tabular Basis." If on the first valuation under this article a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis.

Whenever in any society having members upon the tabular basis and upon the accumulation basis, the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve or from increased contributions or by an increase in the number of assessments applied to the society, as a whole or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be specified in its laws. If the laws of the society so provide, the assets representing the reserves of any separate class of members may be carried separately for such class as if in an independent society. The required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life, or other plan of insurance, specified in the contract, according to assumptions for mortality and interest recognized by the law of this State and adopted by the society, shall be filed by the society with each annual report, and also be furnished to each member before July 1st of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis. For this purpose individual bookkeeping accounts for each member shall not be required and all calculation may be made by the actuarial methods.

Nothing herein shall prevent the maintenance of such surplus over and above the credits on the accumulation basis, and the reserves on the tabular basis pursuant to its laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society. [Id.]

[1] So in enrolled bill. Should probably read "readjusted".

Art. 4852. Examination of domestic societies.—The Commissioner [1] or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employés or other person in relation to the affairs, transactions and conditions of the society. The expense of such examination shall be paid by the society examined, upon statement furnished by the Commissioner, and the examination shall be made at least once in three years. Whenever after examination the Commissioner is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred, or shall determine to discontinue business, said Commissioner may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and if it shall then appear upon the trial that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society, and to distribute its funds to those entitled thereto. No such proceedings shall be commenced by the Attorney General against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date named in said notice, to show cause why such proceeding should not be commenced. [Id.]

[1] See note under Article 4836, ante.

Art. 4853. Application for receiver, etc.—No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in the State unless the same is made by the Attorney General. [Id.]

Art. 4854. Examination of foreign societies.—The Commissioner,[1] or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this State. The said Commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and conditions of the society. He may, in his discretion, accept in lieu of such examination the examination of the Insurance Department of the State, territory, district, province or country where such society is organized. The actual expense of examiners making such examination shall be paid by the society, upon statements furnished by the Commissioner. If any such society or its officers refuse to permit such examination or to comply with the provisions of the law relative thereto, the authority of such society to write new business in this State shall be suspended, or license refused, until satisfactory evidence is furnished the Commissioner relating to the condition and affairs of the society, and during such suspension the society shall not write any new business in this State. [Id.]

[1] See note under Article 4836, ante.

Art. 4855. No adverse publications.—Pending, during, or after an examination or investigation of any such society, either domestic or foreign, the Commissioner [1] shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon such society, at its home office, nor until such society has been afforded a reasonable opportunity to answer any such financial statement or report of finding, and to make such showing in connection therewith as it may desire. [Id.]

[1] See note under Article 4836, ante.

Art. 4856. Revocation of license.—When the Commissioner [1] on investigation is satisfied that any foreign society transacting business under this law has exceeded its powers, or has failed to comply with any provision of this chapter, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not

be revoked. If, on the date named in said notice, such objections have not been removed to the satisfaction of said Commissioner, or the society does not present good and sufficient reason why its authority to transact business in this State should not at that time be revoked, he may revoke the authority of the society to continue business in this State. All decisions and findings of said Commissioner made under the provisions of this article may be reviewed by proper proceedings in any court of competent jurisdiction. [Id.]

[1] See note under Article 4836, ante.

Art 4857. Examination of certain societies.—Nothing in this chapter shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge Knights of Pythias) and the Junior Order of the United American Mechanics (exclusive of their beneficiary degree or insurance branch) or societies which limit their membership to any one hazardous occupation nor to similar societies which do not issue insurance certificates nor to an association of local lodges of a society now doing business in this State which provides death benefits not exceeding five hundred dollars to any one person or disability benefits not exceeding three hundred dollars in any one year to pay one person or both, nor to any contracts of reinsurance business on such plan in this State nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description which do not provide for a death benefit of more than one hundred dollars or for disability benefits of more than one hundred and fifty dollars to any person in one year. The Commissioner [1] may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this law.

Any fraternal benefit society heretofore organized and incorporated and operating within the definition set forth in the first three articles of this chapter, providing for the benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this law and shall have all the privileges and shall be subject to all the provisions and regulations of this law, except that the provisions of this law requiring medical examinations, valuations of benefit certificates and that the certificates shall specify the amount of benefits, shall not apply to such society. [Id.]

[1] See note under Article 4836, ante.

Art. 4858. Taxation.—Except as to premium on gross receipt taxes levied by this Article or other provisions of laws of this State, fraternal benefit societies organized or licensed under this Chapter are hereby declared to be exempt from all and every State, county, municipal and school district taxes other than taxes on real estate and office equipment when same is used for other than lodge purposes, inasmuch as such societies are charitable and benevolent institutions.

Each fraternal benefit society not organized under the laws of this State but transacting business in this State shall, when it makes its annual report to the Commissioner, make a report, which shall be sworn to by two executive officers of the society, showing the total amount of premiums or contributions made to the society for or on account of its policies or beneficial certificates, providing for death or other disability benefits, during the year ending December 31st, preceding, for or on the lives of citizens of this State. Each such society or association shall pay annually at the time of making such report, an occupation tax equal to three and three-quarter per cent (3.75%) of such total contributions. At the time of making the report, as above required, each society or association shall also file a report showing the amount of the reserve accumulated and on hand with respect to its beneficial certificates on the lives of citizens or residents of this State. Each society or association shall also show in such report the amount it has invested in Texas securities as that term is defined in Chapter 4, Title 78, Revised Civil Statutes, 1925, and amendments thereto. When such report shall show that on December 31st, preceding, such society or association had invested as much as thirty per cent (30%) of the reserves above mentioned in promissory notes or other obligations secured by mortgage, deed of trust or other lien on Texas real estate and/or in loans to Texas citizens or residents secured solely by the legal reserve on the respective policies or certificates held by such borrowers, the rate of such tax shall be reduced to three and one-quarter per cent (3.25%) and when such report shall show that as much as sixty per cent (60%) of such reserve has been so invested the rate of such tax shall be reduced to two and nine-tenths per cent (2.9%), and when such report shall show that as much as seventy-five per cent (75%) of such reserve has been so invested the rate of such tax shall be reduced to two and one-half per cent (2.5%). No such society or association shall receive a license or permit to do business for the year in which such tax is due until same has been paid. [Acts 1913, p. 220; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 5d.]

Section 4858a repealed by necessary implication the 1936 amendment to this article which imposed a gross premium tax on fraternal benefit societies. Lockhart v. American Mut. Life Ins. Co., Civ.App., 194 S.W.2d 285.

Art. 4858a. Exemption from taxation of fraternal benefit societies.—Every fraternal benefit society organized or licensed under the provisions of Chapter 8 of Title 78 of the Revised Civil Statutes of Texas, is hereby declared to be a charitable and benevolent institution, and all of the funds of such fraternal benefit society shall be exempt from all and every state, county, district, municipal and school tax, including occupation taxes, other than taxes on real estate and office equipment when used for other than lodge purposes. [Acts 1937, 45th Leg., p. 16, ch. 14, § 1.]

Arts. 4859–4859d. [Repealed by Acts 1929, 41st Leg., p. 563, ch. 274, § 31.]

These Articles were from Acts 1925, 39th Leg., p. 672, ch. 203, § 1.

Art. 4859e. Conversion of fraternal benefit society into mutual or stock company.

Authority granted

Sec. 1. Any Fraternal Benefit Society with a lodge system and representative form of government, doing business in the State of Texas, may convert itself into a Mutual Benefit Company, or into an incorporated Stock Company by conforming to the provisions of this Act.[1]

Notice and plan of change submitted to members and subordinate lodges

Sec. 2. When it shall be determined by the governing body of a Fraternal Benefit Society to submit the proposed change to the members of the Society, a meeting shall be called not less than ninety days hence, and notice of such purpose with a general plan of the changes shall be mailed to each member or policy holder of the Society to their post office address as shown by the Society records, and all the subordinate lodges or branches of the Society, which notice shall be mailed at least forty (40) days prior to the day named in the call by the governing body. Within twenty (20) days after the receipt of such notice, each lodge or subordinate branch shall in Regular or Called Session pass upon the proposal and choose a representative or delegate, by whatever name the representative may be known, to the

governing body for the State (if such Society be operating in more than one State). When the delegates or representatives so chosen to the State body shall have assembled they shall choose the requisite number of representatives or delegates to which the State may be entitled to the Supreme or Grand Lodge, if same be located in the State of Texas. Provided that no such society shall convert itself into a mutual benefit or incorporated stock company except upon such terms and conditions as in the opinion of the Board of Insurance Commissioners of Texas shall fully protect the rights and interests of its members and policy holders; and the plan of such change shall be submitted to and approved by the Board of Insurance Commissioners before it shall be submitted to the members or policy holders and the subordinate lodges or branches as hereinbefore provided.

Resolution authorizing change adopted by 60 per cent of membership; contents of amended charter

Sec. 3. Pursuant to said notice and convening of the Supreme governing body, there shall be adopted a resolution by delegates representing lodges which comprise not less than sixty per cent of the total membership of the association, authorizing the conversion of the said Fraternal Benefit Society into a Mutual or Stock Life Insurance Company, and shall set forth or ratify a certificate of incorporation, amending the Society's charter, and shall set forth:

(a) The name of the Society, and the name of the new corporation by which it shall thereafter be known, which shall preferably be a continuation of the same name. Provided that if the new corporation shall change from the former name of the Society it shall not adopt the same name as that of any other such Society doing business in this State nor a name similar to that of any other such Society doing business in this State.

(b) The object of the corporation.

(c) The location of its principal offices, which must be within the State of Texas, and the names of the principal officers of such corporation, who shall serve until their successors are elected and qualified.

(d) The period, if any, for the duration of the corporation.

(e) The amount of the capital stock authorized, if any, and the number of shares into which it is divided, and the amount of capital stock to be immediately paid in, which shall not be less than $100,000.00 and generally comply with laws of Texas governing the organizations of Insurance Companies.

(f) Any other provisions which the supreme or governing body may choose to insert to protect the membership of the retiring Society and insure the business and the conduct of the affairs of the new corporation.

Certificate of incorporation filed with Commissioner of Insurance

Sec. 4. The certificate of incorporation so adopted or amended shall be filed with the Commissioner of Insurance for the State of Texas, and be incorporated in the charter of the proposed Company.

Report of meeting filed with Commissioner of Insurance

Sec. 5. A report of said meeting certified to by the presiding officers under the corporate seal of such Society shall also be filed with the Commissioner of Insurance for the State of Texas.

Preference in subscription to stock

Sec. 6. If such Fraternal Benefit Society be converted into a Stock Life Insurance Company, each and every policy holder, certificate holder, or other member of such Society, shall have a preference right for ninety days after such determination to subscribe for the proportion of the total capital stock offered for sale, which the amount of his insurance bears to the Society's total insurance in force at the time of the conversion, which time shall be that at which the supreme governing body authorize the change. Provided, further, that before any of the stock shall be offered for public sale and the membership of the Society shall have a preference in the purchase thereof, but that no one member shall be allowed to subscribe or purchase more than twenty-five per cent of the capital stock of the new company, nor shall he subscribe or be allowed to purchase more than ten per cent of the capital stock of the new company if there be other members applying in writing for the purchase of stock whose subscriptions are not filled. If the membership shall not have subscribed for the total capital stock authorized, then others who were not members of the Society at the time of the conversion may be permitted to subscribe for stock and be allowed equal rights in the ownership thereof with all other stockholders. It shall be the duty of such Fraternal Benefit Society desiring to be converted into a Stock Company to advise every member or policy holder of his right to subscribe for and purchase the stock of such Stock Life Insurance Company and of the amount of such stock for which he is entitled to subscribe and all other terms and conditions, in a form to be approved by the Board of Insurance Commissioners within ten days after such Society shall be voted to so convert itself into a Stock Company. Proof of depositing a letter addressed to all members or policy holders, conveying the advice, in the approved form as herein provided for, shall be deemed proof of compliance with the foregoing requirement.

Completion of conversion

Sec. 7. When such Fraternal Benefit Societies shall have complied with the provisions of this Act and the other laws of this State regulating the incorporation of Life Insurance Companies, and shall have received from the Commissioner of Insurance its charter or certificate of authority to transact business as a Stock Life Insurance Company, its reorganization and conversion into such Stock Company shall be complete. Such reorganization and converted corporation shall be deemed in law to have all the rights, privileges, powers, and authority of any other Stock corporation organized for doing a Life Insurance business in the State of Texas, and controlled by the laws applying thereto. The new corporation shall be deemed in law to be a continuation of the business of the Fraternal Benefit Society when the reorganization and conversion shall have been accomplished by the formation of a new Company or by amendment to its former charter, and such reorganized corporation shall succeed to and become invested with all and singular the rights, privileges, franchises, and all property, real, personal, or mixed, of the former Society, and all debts due on any account and all other things and choses in action heretofore belonging to such Fraternal Benefit Society, and all property rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as they were the property of the former Fraternal Benefit Society, and the title to any real estate by deed or otherwise vested in the former Fraternal Benefit Society shall forthwith vest in such organized converted corporation, and the title thereto shall not in any way be impaired by reason of such change or reincorporation.

Rights of members unimpaired; reorganized corporation to assume liabilities

Sec. 8. The rights of all members, policy holders, creditors, and the standing of all claims under the former Fraternal Benefit Society shall be preserved unimpaired under the new corporation, and all debts, liabilities, and duties of the former Fraternal Benefit Society shall thenceforth attach to the reorganized corporation, and may be enforced against it to the

same extent as if said debts and liabilities had been incurred or contracted by the new corporation, and all outstanding benefit certificates or policies issued by the said Fraternal Benefit Society shall be valid obligations of the new incorporation, without the issuance of new policies.

Obligations enforceable against converted corporation

Sec. 9. Such organized and converted corporation shall be obliged to carry out and perform all of the obligations of every kind and character owing by the former Fraternal Benefit Society to the holders of its policies or beneficial certificates, and the same may be enforced against it to the extent as if said policies and beneficial certificates had been issued by it after conversion. Any pending suits wherein the former Fraternal Benefit Society was a party shall be unaffected by the conversion thereof and shall be prosecuted by or against such reorganized and converted corporation the same as if the conversion had not taken place.

Local clubs of members without voice in management

Sec. 10. The members of such Fraternal Benefit Society, or the policy holders in the chartered incorporated Company, may form local clubs for social and charitable purposes, but the same shall have no connection with the management of the affairs of the corporation or affect its liability or the insurance in effect. [Acts 1929, 41st Leg., 1st C.S., p. 189, ch. 75.]

[1] Article 4859e.

CHAPTER 8A.—MUTUAL ASSESSMENT LIFE INSURANCE

Art.
4859f. Mutual assessment life insurance corporations.

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Art. 4859f. Mutual assessment life insurance corporations.

Corporations which may comply with act

Sec. 1. Any corporation organized and incorporated under a preexisting law in this State without capital stock and not for profit, which law has been amended or repealed or reenacted, and which was operating and actually carrying on in this State immediately prior to January 1, 1933, the state-wide business of mutually protecting or insuring the lives of its members by assessments made upon its members may comply with the terms of this Act, subject to the subsequent provisions hereof.

Application for certificate

Sec. 2. Any corporation entitled to and desiring to avail itself of the provisions of this Act shall within six (6) months after the effective date of this Act make application to the Board of Insurance Commissioners for a certificate and permit to do business under the terms of said Act. Said application shall be sworn to by the President or General Manager of said corporation and shall contain the following:

(1) It shall have attached as exhibits a certified copy of the charter of said corporation, certified copies of all amendments, and a copy of all by-laws of said corporation certified by the Secretary or General Manager of the corporation to be true and correct.

(2) The name of the corporation.

(3) The location of its principal office.

(4) The titles of the officers of the corporation and the number of directors and the names of persons who will serve as officers and directors until another election is held.

(5) It shall state the facts with reference to the corporation as set out in the preceding section, to-wit:

(a) that said corporation was organized under a pre-existing law;

(b) that said law has been amended or repealed or reenacted;

(c) that said corporation was operating and actually carrying on in this State immediately prior to January 1, 1933, the statewide business of mutually protecting or insuring the lives of its members by assessments made upon its members.

(6) That the corporation at the time of making its application has a membership of at least five hundred (500) members and that there is not outstanding against said corporation an unpaid final judgment of any court of competent jurisdiction more than ninety (90) days past due.

(7) The application shall be accompanied by a financial statement on the form prescribed by the Board of Insurance Commissioners.

Certificate and permit

Sec. 3. The Board of Insurance Commissioners may require such reasonable additional proof of the truth of the facts stated in said application as they may deem necessary, and upon consideration of said application and the proof furnished the said Board of Insurance Commissioners, if the corporation has in all things complied with the pertinent requirements and provisions of this Act, then the Board of Insurance Commissioners shall issue to the corporation a certificate and permit, the form of same to be prescribed by the said Board, authorizing and permitting the said corporation to carry on its business in the State of Texas under the provisions of this Act.

But if it appears from said application or otherwise, that the corporation has not fully complied with the pertinent requirements and provisions of this Act, then the Board of Insurance Commissioners shall refuse said application and shall refuse to issue said permit.

No such corporation shall continue to operate in this State if the Board has notified it in writing of the refusal of the Board to issue it a certificate and permit. But any such corporation may within sixty (60) days after receiving such notice file a suit in any district court of Travis County, Texas, to review the said action of the Board and may by trial de novo have all necessary relief both in law and equity to enforce its rights under this Act.

Nothing in this Act shall be construed to validate or otherwise sanction any unlawful act of any such corporation, except when such unlawful act may have been construed to be unlawful simply by reason of the fact that the law under which said corporation was created has since been repealed or amended so as to omit therefrom such corporations as are described in this Act.

Deposits

Sec. 4. Before any certificate or permit shall issue to any corporation under the terms of this Act, the corporation shall furnish the Board of Insurance Commissioners with evidence of the fact that the corporation has on deposit with some bank or trust company in this State subject to the payment of its obligations for benefits due under its policies or certificates wheresoever incurred a sum equal to the face value of the maximum loss insured by said corporation in any individual policy issued by it. Said deposit shall not be subject to check by the corporation, but the corporation may draw the interest, if any, accruing on said deposit. Said deposit shall be held for the protection of policyholders and claimants wheresoever the rights of said policyholders and claimants may have accrued or been incurred, the purpose of said fund being to guarantee the payment of the amount owing by the corporation on any valid claim against such corporation for benefits under a policy or certificate after determination by a court of final jurisdiction wherever rendered. Said deposit shall be subject to the extraordinary writs of attachment and garnishments as provided by the laws of this State, but said writs shall not issue until final judgment has been rendered against the corporation. If said fund shall become depleted or shall become impounded by some process of a court, then the Board of Insurance Commissioners shall require the corporation to immediately restore said deposit to its original sum, and upon the failure of the corporation to so restore said deposit within ten (10) days after such notice, the Board of Insurance Commissioners shall call upon the Attorney General to proceed against the corporation as provided in Section 13 of this Act.

Annual statement

Sec. 5. On or before the first day of March of each year each corporation availing itself of the provisions of this Act shall file with the Board of Insurance Commissioners complete and full sworn statement of its financial condition on the thirty-first day of December next preceding. Such statement shall plainly exhibit all real and contingent assets, and all liabilities and an account of income and disbursements to and from the mortuary fund during the year, and on blanks which the Commissioners shall furnish for the making of such annual statements. Upon examination of said report the Board of Insurance Commissioners, if such report shows that the corporation is in all things complying with this law shall issue such corporation a certificate of authority to transact its business in this State for the year next succeeding the filing of said report.

Examination

Sec. 6. In addition to the annual report required by said House Bill No. 303,[1] the Life Insurance Commissioner shall, once in every two (2) years or oftener if he deems it advisable, require the books, records, accounts, and affairs of any corporation or association qualifying and acting under said Act to be examined and audited by an accountant or accountants or examiner designated and commissioned by him. For the purpose of an examination, the Commissioner and the auditors and examiners shall have free access to all books, records, papers, and accounts of the corporation; and the cost for the time required in making such examination and audit and all necessary expenses in connection therewith shall be paid by the corporation upon presentation of a bill showing the charges made by the Department, which shall include the salaries, traveling expenses, hotel bills, and other expenses of such auditors and/or examiners, together with all other expenses in connection with such examination. Each corporation or association shall be charged with the salary of the auditors and examiners for the time required in making such examination and the time required in connection with going to and coming from the place or places necessary in connection with such examination, together with all expenses incurred by such auditors and/or examiners, and in addition thereto such corporation or association shall be charged by the Commissioner with an amount equal to the salaries of the actuary, examination clerk or clerks, stenographers, and all other employees employed in connection with the examination work in the Department for the time said employees are performing duties in connection with the examination of each corporation so examined. The amounts so collected shall be paid into the Examination Fund of the State Treasury Department and paid out in accordance with the general examination laws.

The Commissioner or his deputy or any examiner shall have the right to require any officer, agent, or employee of any company or association operating under this law, or any other person, to be sworn and to answer under oath any questions regarding the affairs or activities of said association or company, and the Commissioner, his deputy, and/or any examiner or auditor is hereby authorized to administer such oath. It shall be the duty of the Commissioner to require any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization to have a certificate of authority before being authorized to carry on any insurance business in this State. If, in any event, any such company, person, firm, association, corporation, local aid association, or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Commissioner to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit; provided no provisions of this Act shall be construed to apply to associations which limit their membership to the employees and the families of employees of any particular designated firm, corporation, or individual, and which are not operated for profit and which pay no commissions to anyone and whose operating expenses do not exceed One Hundred Dollars ($100) per month; provided however, that all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures, and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. Such permit shall be for the current year or fractional part thereof and shall expire on the first day of March thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners. All such organizations shall have twelve (12) months from and after the effective date of this Act in which to comply with its provisions and conditions. If any organization fails to qualify under this Act or fails to comply with its requirements in any manner, it shall be the duty of the Board of Insurance Commissioners to report the same to the Attorney General who shall, at the request of the said Board, file such suit as may be necessary to wind up the affairs of such association and if necessary have a receiver appointed for that purpose. The venue of such suit shall be laid in the District Court of Travis County, Texas, providing however, that any organization, association, or corporation, acting under the provisions of this Act and organized thereunder, who, because of

lack of time to complete said organization have failed to comply with the provisions of House Bill No. 893,[2] may be reinstated and have their rights and status thereof renewed and extended, provided they qualify by complying with the terms, requisites, and conditions of this Act within the time prescribed hereinabove. [As amended Acts 1935, 44th Leg., p. 651, ch. 264, § 1; Acts 1937, 45th Leg., p. 522, ch. 257, § 1; Acts 1939, 46th Leg., p. 414, § 1; Acts 1941, 47th Leg., p. 860, ch. 535, § 1.]

1 This article.
2 This section.

Administration of oath

Sec. 6a. The Commissioner or his deputy or any examiner shall have the right to require any officer, agent or employee of any company or association, operating under this law, or any other person to be sworn and answer under oath any questions regarding the affairs or activities of said association or company, and the Commissioner, his deputy and any examiner or auditor is hereby authorized to administer such oath. All laws or parts of laws with reference to the examination of organizations operating under House Bill 303, Acts of the Forty-third Legislature that are in conflict with this Act are hereby expressly waived. [Acts 1935, 44th Leg., p. 651, ch. 264, § 2.]

Certificate of authority required

Sec. 6b. It shall be the duty of the Commissioner to require any corporation, person, firm, association, local mutual aid association or any local association, company or organization, to have a certificate of authority before being authorized to carry on any insurance business in this State. If, in any event, any such company, person, firm, association, corporation, local aid association or local organization is writing any form of insurance whatsoever without a permit, or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Commissioner to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County to restrain such corporation, person, firm, association, company, local aid association or organization from writing any insurance of any kind or character without a permit. [Acts 1935, 44th Leg., p. 651, ch. 264, § 2a.]

Officers' bond

Sec. 7. (a) Such corporation shall, by resolution adopted and entered on its minute books, a copy of which properly certified by President, Secretary, or General Manager, shall be filed with the Board of Insurance Commissioners, designate some officer who shall be responsible in the handling of the funds of the corporation. Such officer shall make and file a surety bond with a corporate surety company authorized to write surety bonds in this State, as surety, in the sum of not less than Five Thousand Dollars ($5,000.00), payable to the Board of Insurance Commissioners for the use and benefit of said corporation, and which shall at all times be equal to the amount of the mortuary fund on hand, not to exceed Twenty Thousand Dollars ($20,000.00), which said bond shall obligate the principal and surety to pay such pecuniary loss, not exceeding the penalty of the bond, as the corporation shall sustain of money or property by any act or acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or wilful misapplication on the part of the said officer, directly or through connivance with others, while employed as such officer or exercising powers of such office. In lieu of such bond any such officer may deposit with the Board of Insurance Commissioners cash (or securities approved by the Commission) which cash or securities shall be in the amount and subject to the same conditions as provided for said bond.

Recovery on bond

(b) When the Board of Insurance Commissioners is informed that any officer of any such corporation has violated the terms of his said bond, the Board shall cause an audit or examination to be made, and if same reveal a violation, it shall immediately notify the company executing said bond, and if the Board deem it necessary, request the Attorney General to bring suit against such company under said bond or to enforce the liability against said cash or securities. It shall be the duty of the Attorney General to immediately file such suit in the name of the Board of Insurance Commissioners for the benefit of the corporation or its claimants. Such suit shall be brought in some court of competent jurisdiction in Travis County, Texas.

Branch offices

Sec. 8. No corporation operating under this Act shall be permitted to operate any independent branch office, separate group, club, or class, under any other name than that of said corporation, but all of its policies shall be issued in the home office of said corporation. Nothing herein shall be construed, however, as to prohibit any corporation hereunder from providing by its by-laws for the creation of separate groups, clubs, or classes, based upon such a reasonable classification as specified in the by-laws, and providing in the policies issued to the members of such groups, clubs, or classes that the benefits under said policies shall be limited to the assessments made, levied, and collected from any such particular group, club, or class, respectively. It is further provided that no stock or assets or benefits of any such particular group, club or class, shall be pledged, sold, or transferred without the consent of three-fourths of the members of such particular group, club, or class.

Benefits

Sec. 9. The relief funds of any corporation complying with and operating under the terms of this Act shall be created by assessments levied upon the members of said corporation. Such assessments may be made periodically upon such contingencies as may be provided in the by-laws of the corporation, or at such stated periods as in the discretion of the managing officer or officers of the corporation may be deemed necessary. The benefits to be paid by such corporation shall be dependent upon the amount realized from assessments upon the membership, and the certificate shall so provide; and the certificate shall also state the maximum to be paid. Such corporation shall provide in its by-laws for the portion of its assessments to be allotted to the mortuary fund and may provide for the payment out of said mortuary fund of all attorneys' fees and necessary expenses arising out of the defense, settlement, or payment of contested claims.

The interest of a beneficiary in a life insurance policy or contract heretofore or hereafter issued shall be forfeited when the beneficiary is the principal or an accomplice in wilfully bringing about the death of the insured. When such is the case the nearest relative of the insured shall receive said insurance.

By-laws

Sec. 10. Each corporation shall submit to the Board of Insurance Commissioners a copy of its by-laws. Such by-laws shall contain all things required by this Act and shall not contain any provision in conflict with this Act. The by-laws shall provide for the periodical meetings of the membership and for special meetings, at which meetings all members shall be permitted to vote. The Board of Insurance Commissioners shall examine such by-laws, and if the same comply with the provisions of this Act shall signify their approval of same. If they shall not be

in accordance with the provisions hereof, then the corporation shall make said by-laws conform hereto. Upon approval of the by-laws a copy duly certified to by the President or General Manager and the Secretary of the corporation shall be filed with the Board of Insurance Commissioners, and a copy duly certified by such Board shall be received in evidence in all the courts of this State. All policies issued by a corporation under this Act shall provide that said policy is subject to the by-laws of the corporation and all future amendments thereto. All amendments shall be filed with the Board of Insurance Commissioners in a like manner as the original by-laws. A certified copy of any changes in the by-laws of each such corporation shall be mailed to each of the stockholders and/or members at the next assessment after such change in the by-laws is made.

Policies

Sec. 11. No corporation hereunder shall issue any certificate or policy upon a limited payment plan, nor guarantee or promise to pay any type of endowment or annuity benefits, but shall confine its operation to the issuance of certificates looking to continuous payment premiums or assessments during the life time of the policyholder. And provided further that no such corporation shall issue any certificate or deposit agreeing to pay any benefits until a copy of such certificate or policy has been filed with the Board of Insurance Commissioners and approved by them as being in compliance with this Act.

Every policy or certificate issued by any such corporation after the passage of this Act shall contain a provision that if said policy has been continuously in force for a period of two (2) years before the death of the insured member, then said policy shall be incontestable except for non-payment of dues or assessments. Nothing in any application for the policy shall constitute a defense against any claim or loss under the policy unless a copy of said application is attached to the policy, and no misrepresentation therein shall constitute a defense unless same shall be shown to be material to the risk assumed, and any person who shall solicit an application for insurance upon the life of another shall in any controversy between the insured and his beneficiary and the company issuing any policy upon such application, be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have power to waive, change or alter any of the terms or conditions of the application or policy.

Limitation of benefit

Sec. 12. No corporation operating under this Act shall write any policy or certificate of insurance calling for a maximum benefit in excess of Five Thousand Dollars ($5,000.00), nor any policy or certificate of insurance unless the membership of said corporation, liable for assessments on said policy or certificate or group or class or club liable therefor shall be sufficient in number at the assessment rate charged said class to pay fifty per cent (50%) of the maximum benefit set forth in said policy or certificate. In the event the membership in any group, class, or club of said corporation shall fall below such number, then the corporation shall immediately notify the members of such group, class, or club, and if said membership is not increased to said number within six (6) months thereafter, said group, class, or club shall be consolidated with some other group, class, or club, or discontinued. In the event any corporation hereunder has only one class, group, or club, then in the event the membership of said corporation shall at any time fall below fifty per cent (50%) of the number required at the assessment rate charged to pay the maximum benefit provided by any one of its policies or certificate, the corporation shall immediately notify the members of the corporation, and unless the membership is increased to said number within six (6) months thereafter, the Attorney General shall take steps under Section 13 of this Act to bring about the liquidation of said corporation.

Insolvency

Sec. 13. At any time the Board of Insurance Commissioners, after investigation, shall be satisfied that any corporation operating under the provisions of this Act in this State is insolvent, because the death claims due and unpaid which have matured under policies written after such corporation complied with the terms of this Act exceed the assets of the corporation and assessments or periodical payments called, or to be called, or in the process of collection, or which may reasonably be made against the members subject to assessment, or has exceeded its powers, failed to comply with any provisions of the laws of this State applicable to it, or has a membership of less than five hundred (500) paying their assessments, the Board shall report the fact to the Attorney General of this State who shall thereupon apply to any court in Travis County having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such corporation or to require it to comply with the law or to satisfy the Board as to its solvency. The court may, in its discretion, appoint agents or receivers to take charge of the effects and wind up the business of the corporation, under usages and practices of equity, and may make disposition of the business and membership of the corporation as in the discretion of the court may seem proper. No suit for receiver shall be filed against any such corporation, nor shall any receiver be appointed, except upon the application therefor by the Attorney General, and in no event shall any receiver for any such corporation be appointed until after reasonable notice has issued and a hearing had before the court.

Corporations not complying

Sec. 14. No person, firm, unincorporated association, or corporation shall carry on in this State the statewide business of mutually protecting or insuring the lives of its members by assessments made upon its members except under the terms of and by complying with the provisions of this Act. The charter of each corporation in this State entitled to comply with the terms of this Act which does not make application to do so within six (6) months after the Act shall go into effect is hereby expressly repealed and revoked, and such corporation is hereafter forever prohibited from carrying on its business in this State. Each and every charter of every corporation and mutual relief or benefit association granted by the State of Texas under the authority of the Secretary of State of this State, which was or is exempt from the provisions of the insurance laws of this State by the terms of Article 2971a, R.S. 1879, (Article 3096, Revised Statutes 1895) and Article 3096w, Revised Statutes 1895, which corporations do not make application to comply with the terms of this Act within six (6) months after the Act takes effect, is hereby expressly repealed and revoked and said corporations are hereafter forever prohibited from carrying on any business in this State. It is the expressed intent of this section and this Act to revoke, repeal and cancel the charter of every corporation, dormant, or otherwise, exempt from the insurance laws of this State by Article 2971a, Revised Statutes 1879, and Articles 3096 and 3096w, Revised Statutes of 1895, which fails to comply with the terms of this Act. The charters of all corporations complying with this Act are expressly continued in force during the terms of said charters subject to the provisions hereof. It shall be the duty of the Attorney General of this State immediately upon the expiration of six (6) months after the effective date of this Act to take necessary action by quo warranto, application for receiver, or otherwise to enforce the forfeiture of charters as

provided herein and to liquidate and close the affairs of any corporation herein referred to which has failed to comply with the terms of this Act.

Penalty

Sec. 15. Any person or persons violating any of the provisions of this law shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not more than Five Hundred Dollars ($500.00). Any responsible officer of any corporation permitting or participating in the violation of this law by any corporation shall be deemed guilty of a violation of this Act and subject to the penalties herein.

The Attorney General shall be authorized to enforce in addition to the rights of forfeiture provided herein the penalty provided in this section against any corporation or unincorporated association which shall be guilty of the violation of any of the provisions of this law. The venue of any suit or prosecution under this section may be in Travis County, Texas.

Service of process

Sec. 16. In all law suits brought against a corporation operating under this Act, service of citation shall be served upon the president, any active vice-president, secretary, or general manager of said corporation or upon the Chairman of the Board of Insurance Commissioners of this State within the time required for service upon individuals. The Board, when served with citation for such a corporation shall forthwith transmit the same by Registered Mail to the corporation at the postoffice address as designated in records on file with the Board of Insurance Commissioners.

Venue

Sec. 17. In all actions brought against corporations operating under this Act growing out of or based upon any right of claim or loss or proceeds due, arising from or predicated upon any claim for benefits under any policy or contract of insurance issued by such corporation, venue shall lie in the county where the policyholder or beneficiary instituting such suit resides or in the county of the principal office of such corporation.

Fees

Sec. 18. For filing original application for certificate to operate under this Act each corporation shall pay a filing fee of Twenty Dollars ($20.00), to the Board of Insurance Commissioners. The Board shall also charge a fee of One Dollar ($1.00) per each certificate and permit to do business issued. For filing each annual report the Board shall charge a filing fee of Ten Dollars ($10.00). All of said fees upon receipt shall be paid into the General Fund of the State.

Exceptions and exemptions

Sec. 19. This Act shall in no wise affect or apply to companies operating as local mutual aids, as fraternal benefit societies, reciprocal exchanges, or to foreign assessment companies operating under any other law in this State, or any other form of insurance other than those corporations carrying on in this State the state wide business of mutually protecting or insuring the lives of their members by assessments made upon their members. Except as herein expressly provided, no insurance law of this State shall apply to any corporation operating under this Act, and no law hereafter enacted shall apply to them unless they be expressly designated therein.

Constitutionality

Sec. 20. If any section, subsection, sentence or phrase of this Act is held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act, it being the intent of the Legislature that such remaining portion shall operate as a valid law. [Acts 1933, 43rd Leg., p. 856, ch. 245.]

Section 2 of the Act of 1941 amending section 6 repealed all laws with reference to the examination of organizations operating under H. B. No. 303, Acts of 43rd Leg. and amendments thereof in conflict with such Act.

CHAPTER 9.—MUTUAL INSURANCE COMPANIES

Art.
4860. [Repealed.]
4860a—1. Who may incorporate.
4860a—2. Articles of incorporation.
4860a—3. Name of company.
4860a—4. Certificate of incorporation.
4860a—5. Powers and by-laws.
4860a—6. Kinds of insurance; surplus required of companies writing fidelity and surety bonds; rates.
4860a—6a. Mutual companies to meet same requirements as other companies writing bonds.
4860a—7. Conditions for obtaining license.
4860a—8. Corporations may contract with company.
4860a—9. Votes of members.
4860a—10. Policy provisions.
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Sec.
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17. Annual reports to policy holders and Commissioner of Insurance.
18. Biennial examination by Insurance Commission.
19. Companies regarded as County Mutual Insurance Companies.
20. Reciprocal insurance contracts.
21. Organization of local chapters.
22. Removal of officers or employees.
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4861–4871. [Repealed.]
4871a. Plan for changing Stock Insurance Company to Mutual Insurance Company.
Sec.
1. Requirements.
2. Acquisition of shares in trust; appointment of trustees.

Art.
4871a. Plan for changing Stock Insurance Company to Mutual Insurance Company.—Cont'd.
Sec.
3. Annuity bonds in payment of stock.
4. Distribution of dividends.
4872–4875. [Repealed.]

Art. 4860. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18, 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1.]

Repeal does not apply to or affect any company or association doing business under repealed law, see Article 4860a—18, post.

Art. 4860a—1. Who may incorporate.—Any number of persons, not less than twenty, a majority of whom shall be bona fide residents of this state, by complying with the provisions of this Act[1] may become, together with others who may hereafter be associated with them or their successors, a body corporate for the purpose of carrying on the business of mutual insurance as herein provided. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 1.]

[1] Articles 4860a—1 to 4860a—19 and Pen.Code, Article 1117a.

Section 20 being a penal provision is published as Pen. Code, Article 1117a.

Section 21 of this Act directs that if any part of the act is held invalid, no other part shall be affected, and if any exception or limitation on any general provision is held invalid, the general provision shall stand effective and valid.

Art. 4860a—2. Articles of incorporation.—Any person proposing to form any such company shall subscribe and acknowledge articles of incorporation specifying:

(a) The name, the purpose for which formed, and the location of its principal or home office, which shall be within this State;

(b) The names and addresses of those composing the board of directors in which management shall be vested until the first meeting of members;

(c) The names of places of residence of the incorporators. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 2.]

Art. 4860a—3. Name of company.—No name shall be adopted by such company [in] which does not contain the word "mutual," or which is so similar to any name already in use by any such existing corporation, company or association, organized or doing business in the United States, as to be confusing or misleading. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 3.]

Art. 4860a—4. Certificate of incorporation.—Such articles of incorporation shall be submitted to the Board of Insurance Commissioners, herein called "The Board", who shall submit them to the Attorney General for examination, and if such Articles are prepared in accordance with this Act[1] the Attorney General shall so certify and deliver such articles of incorporation, together with his certificate of approval attached thereto, to the Board, who shall upon receipt thereof issue a certificate of incorporation to the company which shall constitute its authority to commence business and issue policies as hereinafter provided. Such articles of incorporation may be amended in the manner provided for other corporations or as may be provided in said certificate. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 4.]

[1] Articles 4860a—1 to 4860a—19 and Penal Code, Article 1117a.

Art. 4860a—5. Powers and by-laws.—The company shall have legal existence from and after the date of issuance of said certificate. The company shall have such powers as are necessary or incident to the transaction of its business. The Board of Directors named in such articles may thereupon adopt by-laws, accept applications for insurance, and proceed to transact the business of such company; provided, that no insurance shall be put into force until the company has been licensed to transact insurance as provided by this Act[1]. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 5.]

[1] Articles 4860a—1 to 4860a—19 and Pen.Code, Article 1117a.

Art. 4860a—6. Kinds of insurance; surplus required of companies writing fidelity and surety bonds; rates.—Any company organized under the provisions of this Act is empowered and authorized to write any kinds of insurance, which may lawfully be written in Texas, except life insurance. Any such company writing fidelity and surety bonds shall be possessed of a surplus over and above all of its liabilities equal to the capital stock required of a stock insurance company transacting the same kinds of business and shall keep on deposit with the State Treasurer cash or securities approved by the Board equal in amount to that required of domestic stock companies. It is further provided that Mutual Insurance Companies operating under the provisions of this Act should be required to charge the rates prescribed by the State Insurance Commission and to be subject to the same rates and reserve supervision that Domestic Insurance Companies are subject to by law. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 6; Acts 1947, 50th Leg., p. 430, ch. 236, § 1.]

Art. 4860a—6a. Mutual companies to meet same requirements as other companies writing bonds.—Providing that any Mutual Insurance Company qualifying under this Act shall meet the same legal requirements as all other insurance companies who are writing bonds under this Act. [Acts 1947, 50th Leg., p. 430, ch. 236, § 1a.]

Art. 4860a—7. Conditions for obtaining license.—No company organized under this Act[1] shall issue policies or transact any business of insurance unless it shall comply with the conditions following, or until the Board has, by formal license authorized it to do so, which license he shall not issue until the corporation has complied with the following conditions:

(a) It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least twenty policies to at least twenty members for the same kind of insurance upon not less than three hundred separate risks each within the maximum single risk described herein;

(b) The "maximum single risk" shall not exceed twenty per cent of the admitted assets, or three times the average risk or one per cent of the insurance in force, whichever is the greater, and reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk;

(c) For the purpose of transacting workmen's compensation insurance such company shall have applications from at least fifty employers for insurance on which policies are to be issued covering not less than two thousand employees, each such employee being considered a separate risk; and the provisions with regard to maximum single risk shall not apply;

(d) It shall have collected a premium in advance upon each application the total of which premium shall be held in cash or securities in which stock fire and casualty insurance companies are under the Texas law authorized to invest. It shall have and at all times maintain cash and invested assets of not less than fifty thousand dollars, if it be a casualty insurance company and not less than twenty thousand dollars if it shall be other than casualty insurance company. If at any time the company shall have assets or surplus in less amount than is required for the insurance of policies and the transaction of business upon organization, the company shall cease writing new business and shall immediately report such condition to the Board of Insurance Commissioners, which may in its discretion order a rein-

surance of the outstanding liabilities of the company in some other company transacting business in this State or proceed to a liquidation of the same. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 7.]

[1] Articles 4860a—1 to 4860—19 and Pen.Code, Article 1117a.

Art. 4860a—8. Corporations may contract with company.—Any public or private corporation, board or association in this State or elsewhere may make application, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this State to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 8.]

Art. 4860a—9. Votes of members.—Every member of the company shall be entitled to one vote, or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premium paid, as may be provided in the by-laws. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 9.]

Art. 4860a—10. Policy provisions.—The policies shall provide for a premium or premium deposit payable in cash, and except as herein provided for a contingent premium at least equal to the premium or premium deposit. Such a mutual company may issue a policy without a contingent premium while, but only while, it has a surplus equal to the capital required of a domestic stock insurance company transacting the same kinds of insurance, but any such company may issue a policy providing that the holder of any such policy shall be liable for no greater amount than the premium or premium deposit expressed in the policy. If at any time the admitted assets are less than the unearned premium reserve, other liabilities and the required surplus, the company shall immediately collect upon policies with a contingent premium a sufficient proportionate part thereof to restore such assets, provided no member shall be liable for any part of such contingent premium in excess of the amount demanded within one year after the termination of the policy. The Board may, by written order, direct that proceedings to restore such assets be deferred during the time fixed in such order. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 10.]

Art. 4860a—11. Advancements by directors or officers.—Any director, officer or member of such company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirements of the law and such moneys and interest thereon as may have been agreed upon, not exceeding ten per cent per annum shall be payable only out of the surplus remaining after providing for all reserve, other liabilities and lawful surplus, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company and the amount of such advances shall be reported in each annual statement. [Acts 1929, 41st Leg., 1st C. S., p. 90, ch. 40, § 11.]

Art. 4860a—12. Reserves.—Such company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic stock insurance companies transacting the same kind of insurance. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 12.]

Art. 4860a—13. Foreign mutual company.—Any such mutual insurance company organized outside of this State and authorized to transact the business of insurance on the mutual plan in any state, district or territory, shall be admitted and licensed to transact the kinds of insurance authorized by its charter or articles to the extent and with the powers and privileges specified in this Act[1] when it shall be solvent under this Act, and shall have complied with the following requirement:

(a) Filed with the Board of Insurance Commissioners a copy of its by-laws certified to by its secretary;

(b) Filed with the said Board a certified copy of its charter or articles of incorporation;

(c) Appointed the Chairman of the said Board its agent for the service of process, in any action, suit or proceedings in any court of this State, which authority shall continue as long as any liability shall remain outstanding in this State;

(d) Filed a financial statement under oath, in such form as the Board may require, and have complied with the other provisions of law applicable to the filing of papers and furnishing information by stock companies on application for authority to transact the same kind of insurance;

(e) Its name shall not be so similar to any name already in use by any such existing corporation, company or association organized or licensed in this State as to be confusing or misleading. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 13.]

[1] Articles 4860a—1 to 4860a—19 and Pen.Code, Article 1117a.

Art. 4860a—14. Subject to general laws.—Every such mutual insurance company, whether organized within or without the State, shall be subject, except as otherwise provided by law, to all general provisions of law applicable to stock insurance companies transacting the same kinds of insurance, investments, valued policies, policy forms and rates reciprocal or retaliatory laws, insolvency and liquidation, publication and defamatory statements, and shall make its annual report in such form and submit to such examination and furnish such information as may be required by the Board. As far as practicable such examinations of mutual insurance companies organized outside of this State shall be made in cooperation with the insurance departments of other states and the forms of annual report shall be such as are in general use throughout the United States. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 14.]

Art. 4860a—15. No exemption from general laws.—That nothing in this Act[1] shall be construed to mean that any company or association incorporated or organized hereunder shall be exempt from the provisions of the General Laws of this State, heretofore or hereafter enacted governing the incorporation, organization, regulation and operation of companies or organizations writing insurance in this State. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 15.]

[1] Articles 4860a—1 to 4860a—19 and Pen.Code, Article 1117a.

Art. 4860a—16. Re-insurance.—Any such mutual insurance company organized or admitted to transact insurance in this State may by policy, treaty or other agreement cede to or accept from any insurance company or insurer reinsurance upon the whole or any part of any risk which reinsurance shall be without contingent liability or participation or membership unless the contract provides otherwise and shall not be affected with any company or insurer disapproved therefor by written order of the Board of Insurance Commissioners filed in his office. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 16.]

Art. 4860a—17. Taxes and fees.—Every such company whether organized within or without this State shall be subject to such fees as are now provided by law for stock companies doing the same kind of business and to such taxes as may be provided by law for such mutual companies. The tax shall be paid upon the gross premium received for direct insurance upon property or risks located in this State, deducting amounts paid for reinsurance in admitted companies, premiums upon policies not taken, premiums returned on cancelled policies and any refund or return made to the policy holders other than for losses. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 17.]

This article, in so far as it relates to payment of taxes, was repealed by Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, art. 4, § 5a, and Acts 1937, 45th Leg., p. 525, ch. 258, § 1a.

Art. 4860a—18. Repeals and effect.—Chapters 5, 6, 9, 12, 13, 14 and 15 of Title 78 of the Revised Civil Statutes of 1925, and all other laws or parts of laws in conflict with the provisions of this Act,[1] are hereby repealed; provided that such repeals and the provisions of this Act shall not apply to or affect any Company or Association of this State now doing business under the laws repealed, and they shall continue to be governed by the regulatory provisions of such laws. Any Company organized and transacting business under any of the laws repealed by this Act, or any general law of this State other than Article 8308 or any other article under Title 130, Revised Civil Statutes of Texas, 1925, may, however, by resolution of its Board of Directors, duly approved by the majority of the members, at a meeting specially called for that purpose, and duly certified to by the President and Secretary, and filed with the Board of Insurance Commissioners elect to adopt and become subject to the provisions of this Act, in lieu of any Act or Acts theretofore governing such Company or Association.

Any Company or Association so electing and fully complying with this Act, may thereafter effect such kinds of Insurance as is authorized by this Act, and specified in its Articles of Association then in force, or as then or thereafter amended, together with such additional kinds of insurance as are specified in such resolution and authorized by this Act. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18; Acts 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1.]

[1] Articles 4860a—1 to 4860a—19 and Pen.Code, Article 1117a.

Repealed in part. See art. 5068—6.

Art. 4860a—18a. Death benefits by mutual assessment health and accident associations.—Mutual Assessment Health and Accident Associations organized under the provisions of Chapter 6, Revised Statutes 1925 which are in existence when this Act[1] shall take effect, may pay to beneficiaries of their deceased members a funeral benefit which shall not exceed the sum of Three Hundred ($300.00) Dollars, in event of the death of any such member resulting from sickness or disease. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18a.]

[1] Articles 4860a—1 to 4860a—19 and Pen.Code, Article 1117a.

Repealed in part. See art. 5068—6.

Art. 4860a—19. Provisions controlling as to mutual insurance.—No sort of mutual insurance other than life insurance, may be conducted in this State except under the provisions of this law, or under some law remaining on the Statutes authorizing the same. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 19.]

See note to article 4860a—1, ante.

Art. 4860a—20. County Mutual Insurance Companies.

Definitions

Section 1. County Mutual Insurance Companies are companies organized for the purpose of insurance on the mutual or cooperative plan against loss or damage by fire, lightning, gas explosion, theft, windstorm and hail, and for all or either of such purposes.

Unless they are restricted by their charters, they may write insurance against said hazards:

(a) On both rural and urban dwellings and attendant out-houses and yard buildings and all their contents for home and personal use—including family vehicles, musical instruments and libraries;

(b) On barns and other farm, dairy, truck garden, hennery and ranch buildings and improvements of every description;

(c) On all vehicles, harness, implements, tools and machinery of every kind and description used on and about farms, truck gardens, dairies, henneries or ranches;

(d) On all fruits and products, other than growing crops, and all fowls, domestic animals and livestock of every description, produced, raised, grown, kept or used on truck gardens, henneries, farms, ranches and dairies; and

(e) On church houses, country school houses, country lodge rooms and country recreation halls, other than road houses and public dance halls and their contents.

Kinds of insurance authorized

Sec. 1a. County Mutual Insurance Companies operating under the provisions of Article 4860a-20 shall after the passage of this Act be authorized to write insurance against loss or damage from any hazard provided therein or that any other fire or windstorm insurance company operating in Texas may write on property described in Section 1 of Article 4860a-20. [Added Acts 1947, 50th Leg., p. 739, ch. 367, § 1.]

Formation of company

Sec. 2. Any number of bona fide inhabitants, not less than twenty-five, residing in any one or more adjoining counties in this State, who each own insurable property in such counties of the value of not less than One Thousand ($1,000.00) Dollars, who desire to have the same insured for a sum not less than said amount, and have applied in writing for insurance on the same in the company, may form a County Mutual Insurance Company, and have the same incorporated under the laws of the State of Texas.

Companies subject to provisions of article; requirements

Sec. 2a. Any company operating under the provisions of Article 4860a-20 or subject to the provisions of said Article, excepting those companies which out of the total amount of insurance in force maintain more than sixty per cent (60%) in force on rural property and those companies operating on the assessment-as-needed plan, which shall hereafter be known as "Farm Mutual Insurance Companies," shall become subject to the provisions of this Act and shall comply with the following requirements, to-wit:

(a) The following terms when used in this Act shall be defined:

"Company" shall refer to and include all types of organizations, corporations, associations, companies or groups subject to the provisions of this Act.

"Board" shall refer to the Board of Insurance Commissioners of the State of Texas.

"Member" shall include policyholders or any persons insured by a company, by whatsoever means the insurance may be effective.

"Policy" shall include any insurance certificate or contract or insurance, certificate of membership or other document through which insurance is effected or evidenced.

"Assessment-as-needed plan" shall refer to companies that other than for nominal reserve purposes assess members only when a loss or losses occur and

who use not more than twenty-five per cent (25%) of their gross income for expenses.

"Insolvent" shall refer to and include any condition or situation which is so designated herein and which is violative of the provisions of this Law.

"Rural Property" as the term is used in this Law shall mean any property which has at least five (5) acres of cultivated or grazing land used exclusively with such insured property.

"Paid in full" or "full payment" shall mean the payment of the full amount of loss actually sustained not to exceed the maximum stated in the policy on the happening of the contingency insured against.

(b) Each such company shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to the largest amount assumed on any one risk, or upon a showing of reinsurance acceptable to the Board, the largest amount retained on any one risk after reinsurance, which deposit may be in cash or in convertible securities subject to approval of the Board. Such deposit shall be liable for the payment of all judgments against the company, and subject to a garnishment after final judgment against the company. When such deposit becomes impounded or depleted it shall at once be replenished immediately on demand by the Board, or the company may be regarded as insolvent.

In addition to the statutory deposit, the company shall have and at all times maintain cash or invested assets equal to the amount of the statutory deposit, exclusive of the policyholders contingent liability for excess claims.

When any company shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

(c) Every policy form issued by such company shall be filed with, and must be approved by the Board of Insurance Commissioners if said policy form is in compliance with this Law and so worded as not to be misleading to the policyholders and the public before it is used by the company. It is not mandatory that these forms be uniform for all companies, but the Board is directed to bring about as great uniformity as is feasible as early as practicable by cooperation with the several companies. All policy forms hereafter used must be in accord with the provisions of this Act regulating such companies.

(d) Such companies shall file with the Board schedule of its rates, the amount of policy fee, inspection fee, membership fee, or initial charge by whatever name called, to be charged its policy holders or those applying for policies.

(e) The Board shall make investigation of the individuals who shall make application for charter under and in the manner provided by Section 3, Article 4860a-20, Vernon's Civil Statutes of the State of Texas, and when the Board shall be satisfied that the organizers are responsible persons and of the probability that the territory to be served can support such company, that the Articles of Association, constitution, by-laws, and certificates are in proper form as prescribed by this Act and so worded as not to be misleading to the policyholders and the public, that the statutory deposit has been posted in the required amount, and the bond shall have been approved, it shall issue a permit to the organizers authorizing them to solicit applications for insurance as provided under Section 5 of Article 4860a-20. In addition to the other requirements of Article 4860a-20, Vernon's Civil Statutes of Texas, and of this Law before the company shall be eligible for its permanent certificate, it shall have on hand assets equal to the amount of the statutory deposit.

(f) All the records and books of each company shall be kept in the shape, form and manner as to reflect truly and accurately the condition of the company, or the facts essential to its faithful and effective operation. The company shall at once adopt forms or systems which will serve the purpose most effectively.

(g) Such company shall also file with the Board, and secure license for, each of its agents, or solicitors, upon payment of license fee of One Dollar ($1) for each agent or solicitor under the provisions of Article 5068b.

(h) The Board of Insurance Commissioners shall not issue to any company a certificate of authority to do business in Texas, when it shall find after notice and hearing any officer or member of the board of directors to be unworthy of the trust or confidence of the public. After a certificate has been granted, the Board shall order, after notice and hearing, the removal of any officer or director found unworthy of trust, and if such officer or director be not then removed, the Board shall cancel the certificate and proceed to deal with the company as though it were insolvent. The provisions herein shall supersede Section 22 of Article 4860a-20, Vernon's Civil Statutes of Texas, which is hereby repealed.

(i) Such companies shall furnish a bond for the officer responsible for the handling of funds of the members in some surety licensed by the Board to do business in Texas in the minimum amount of One Thousand Dollars ($1,000), said bond to be kept at all times at least equal to the cash assets on hand, with a maximum of Twenty Thousand Dollars ($20,000), said bond shall be made payable to the Board of Insurance Commissioners for the use and benefit of the members of the company, and shall obligate the principal and surety to pay such pecuniary loss as the company shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others.

In addition to the bond required in the preceding paragraph each company shall procure a like bond for all other office employees, who may have access to any of its funds, in an amount or amounts fixed by the Board with a minimum of One Thousand Dollars ($1,000) and a maximum of Five Thousand Dollars ($5,000). Successive recoveries on any of the bonds provided for in this Section may be had on such bonds until same are exhausted.

(j) It shall not be unlawful for a company to contest claims for valid reasons; but claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. Therefore, if liability is to be denied on any claim, the company is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

The Board, after notice and hearing, shall cancel the certificate of authority of any company found to be operating fraudulently or improperly contesting its claims.

(k) By-laws of any company may be amended by a majority of the members of the company present or represented by proxy when ratified by the board of directors, but only at meetings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners as being in conformity with this Act. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered must be mailed or delivered personally to all members.

(l) If, upon an examination or at any other time, and after proper notice and hearing, it appears to the Board of Insurance Commissioners that such company be insolvent, or its condition be, in the opinion

of the Board, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such company appears to have exceeded its powers or failed to comply with the law, then the Board shall notify the company of its determination and said company shall have thirty (30) days under the supervision of the Board within which to comply with the requirements of the Board; and in the event of its failure to so comply within such time, the Board, acting for itself or through a conservator appointed by the Life Insurance Commissioner for that purpose, shall immediately take charge of such company, and all of the property and effects thereof. If the Board is satisfied that such company can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Board, pending the election of new directors and officers by the membership in such manner as the Board may determine, the same shall be done. If the Board, however, is satisfied that such company is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Board shall proceed to reinsure the outstanding liabilities in some solvent company, authorized to transact business in this State, or the Board shall proceed through such conservator, to liquidate such company, or the Board may give notice to the Attorney General as provided under the General Laws relating to insurance corporations. It shall be in the discretion of the Board to determine whether or not it will operate the company through a conservator, as provided above, or proceed to liquidate the company, as herein provided, or report it to the Attorney General. When the liabilities of a company are reinsured or liquidated, as herein provided, the Board shall report the same to the Attorney General who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the company so reinsured or liquidated. Where the Board lends its approval to the merger, transfer or consolidation of the membership of one company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the company from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of companies reinsured or liquidated. No merger or transfer shall be approved unless the company assuming the members transferred or merged is operating under the supervision of the Board of Insurance Commissioners. The cost incident to the conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds of the company to be allowed and paid as the Board may determine.

(m) Should any agent or solicitor for any company be found guilty of making a charge greater than that filed with the Board or guilty of misrepresentation, he shall have his license cancelled and shall not thereafter be again licensed by said Board. Any agent or solicitor who, upon conviction, is found guilty of overcharge or misrepresentation, shall be punished by a fine of not less than Fifty Dollars ($50) nor more than Five Hundred Dollars ($500).

(n) If any director, officer, agent, employee, attorney at law or attorney in fact, of any association under this Act, shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such company, knowing that he is not entitled to receive it, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner, or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

(o) If any director, officer, agent, employee, attorney at law, or attorney in fact of any company under this Act, shall wilfully borrow, withhold or in any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any company under this Act, which has been set apart by law, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

(p) The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such company whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the company. If any officer, director, agent, employee, attorney at law or attorney in fact, of any company under this Act, shall willfully make any false affidavit in connection with the requirements of this Act, he shall be punished by a fine not to exceed Five Hundred Dollars ($500), or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years. The provisions herein shall supersede Section 17 of Article 4860a-20, Vernon's Civil Statutes of Texas, which is hereby repealed.

(q) If any director, officer, agent, employee or attorney at law or attorney in fact of any company under this Act, or any other person, shall violate any of the provisions of this Act not specifically set out in Subsections (n), (o) and (p) of this Act, he shall be punished by fine not to exceed Five Hundred Dollars ($500), or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

(r) The contingent liability of policyholders required under Section 6 of Article 4860a-20, Vernon's Civil Statutes of Texas, shall be fixed in the by-laws of each company and shall never be less than One Dollar ($1) nor more than Five Dollars ($5) for each One Hundred Dollars ($100) of property insured in any policy issued by companies subject to the provisions of this Act. Where any risk is insured against more than one hazard, for the purposes of Article 4860a-20, Vernon's Civil Statutes of Texas, and of this Law, the amount of risk or insurance in any policy shall be the maximum loss that may be sustained at any one time by the company under the policy, regardless of the number of hazards insured against.

(s) Companies chartered and operating in this State prior to May 1, 1947, shall have ninety (90) days from the effective date of this Act within which to comply with its provisions. This Law is effective as to all other companies from and after the effective date of this Law.

(t) It shall be the right and privilege of any individual or company to appeal within sixty (60) days from any Board order or ruling to the District Court in the County of Travis, Texas. The trial shall be de novo, and in the event of appeal the orders of the Board shall be suspended pending final judgment of the courts. [Added Acts 1947, 50th Leg., p. 739, ch. 367, § 1.]

Application for permission to solicit insurance

Sec. 3. Any five or more of such inhabitants, desiring to form a County Mutual Insurance Company, may apply to the Board of Insurance Commissioners of the State of Texas for permission to solicit insurance on mutual or cooperative plan, which application shall state:

(a) The name of the company, which name shall include the words "County Mutual Insurance Company";

(b) The locality of the principal business of such company;

(c) The kind of insurance business the company proposes to engage in;

(d) The names and places of residence of not less than five persons making such application;

(e) An affidavit of at least one of said applicants correctly stating the names and residences of such applicants.

Upon receipt of such application, together with a Ten ($10.00) Dollar fee for filing of same, the Board of Insurance Commissioners shall at once file it and issue a permit (for a period of six months), authorizing said applicant or applicants to solicit insurance on the mutual or cooperative plan in accordance with the terms of the application, but not to issue policies of insurance or pay losses. Such permit may be renewed as often and as long as the Board of Insurance Commissioners finds it necessary upon application therefor and upon payment of Five ($5.00) Dollars for each renewal. Moneys collected from applicants other than charter members shall be held in trust for them until incorporation and returned in the event the organization is not perfected.

Charter and articles of incorporation; contents

Sec. 4. The charter and articles of incorporation of a county mutual insurance company shall state the names and post office addresses and be signed by not less than twenty-five (25) of its charter members, and be acknowledged before a notary public by not less than five (5) of them.

It shall also state the name of the company, which shall include the words "County Mutual Insurance Company", the place of its principal office; the number, names and post office addresses of its first Directors, the number never to be less than five; and such other provisions as the incorporators may desire to set out therein.

Conditions of incorporation

Sec. 5. Before a charter shall be granted a county mutual insurance company, the incorporators must have on hand:

(a) Not less than twenty-five (25) applications in writing for insurance on not less than one hundred (100) separate risks; provided that no one risk shall be for more than one per cent (1%) of the total amount of insurance applied for in the new company, and that a separate risk shall be one or more items of real and/or personal property which is not exposed to any other property on which insurance is applied for in the new company;

(b) Not less than One ($1.00) Dollar for each One Hundred ($100.00) Dollars of insurance applied for, at the time of incorporation, in cash or in approved legal assets, and in addition thereto a like amount of written valid extra premium or assessment obligations; provided the cash or legal assets required may be advanced by one or more persons and may be secured by the legal assets of the company—other than the assets so advanced; and

(c) Said application for charter shall also be accompanied by a copy of the by-laws of the company, and the bond of the Secretary or Manager of the same in such sum and conditioned as the Directors may determine.

When the foregoing requirements have been complied with to the satisfaction of the Commissioner of Insurance, the Commissioner of Insurance, upon the payment of a fee of Fifty ($50.00) Dollars, shall issue such Company a charter to do business as an incorporated company.

By-laws

Sec. 6. The by-laws shall state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

They shall also fix the liability of the policy-holders for all losses accrued while the policies are in force, in addition to the regular premium or assessments for the same; and the time and manner of the payment of such liability; provided that the amount of such liability shall never be less than One ($1.00) Dollar for each One Hundred ($100.00) Dollars of insurance in such policy; and provided further that such liability shall be a part of the assets of the Company and in the statement of the assets and liabilities of the Company shall be listed separately as "contingent liability of policy-holders".

County Mutual Companies may adopt all rules, regulations, provisions and requirements contained in the standard policies of companies writing fire, gas explosion, lightning, windstorm or hail insurance as promulgated from time to time by the Commission of Insurance of the State of Texas, insofar as they are applicable to County Mutual Insurance Companies, as a part of their by-laws and contracts of insurance, which adoption shall be evidenced either by statement to that effect in the by-laws or in the policies.

The by-laws may also provide that when a loss occurs, the Companies may, at their option provide and require that all or a certain percent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed, provided such provision may be equally made applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homestead and exempt personal property. Provided also that County Mutual Companies may in their by-laws provide that the requirements of Article 4929, Revised Civil Statutes 1925 shall not be applicable to their contracts of insurance.

Premiums and assessments

Sec. 7. All premiums and assessments, including the contingent liability of policy-holders for all insurance written by County Mutual Insurance Companies shall be fixed, levied and paid as and when required by the by-laws of the Companies and the whole premium or assessment for a policy shall be secured by a lien on each item of real or personal property other than homesteads covered by such policy including the land on which the insured buildings are situated, as long as the same remains the property of the insured.

If default is made by a policy-holder in the payment of an assessment or premium, suit may be brought against him for the same in any court of competent jurisdiction in the home County of the Company and the Company shall be entitled to have judgment against him for such delinquent premiums or assessments, and for a foreclosure of said lien, together with all costs of suit including a reasonable attorney's fee in a sum of not less than Five ($5.00) Dollars.

Policy holders' liabilities

Sec. 8. Policy-holders shall be liable for losses of the Company only as prescribed in the by-laws of the Company, and that only in proportion that the premiums or assessments for the insurance of any policy bear to the total amount of the premiums or assessments for all the insurance in the class to which the policy belongs.

Directors power to borrow

Sec. 9. The Board of Directors of County Mutual Insurance Companies may, at any time, borrow such sum or sums of money as they shall deem necessary to pay its losses, accrued or unaccrued, and may pledge the assets of the Company including the contingent liability of the policy-holders for such losses as security for such loans.

Solvency

Sec. 10. A County Mutual shall be considered solvent and entitled to continue business of its assets, including the contingent liability of its policy-holders for its losses, are reasonably sufficient to pay its losses, according to the terms of the policies.

If there are unpaid losses after all the assets of the Company have been exhausted, and a rehabilitation of the Company is not effected within six months after the exhaustion of such assets, then the Attorney General of the State shall at the request of the Commission of Insurance of the State, bring suit in the District Court in and for Travis County to cancel the charter of such Company.

Directors; qualifications; term

Sec. 11. Directors of County Mutual Insurance Companies shall hold their office for one year after their election, and until their successors qualify, unless otherwise provided in their by-laws.

Only bona fide policy-holders who carry insurance on their property in an amount not less than One Thousand ($1,000.00) Dollars each in a Company, shall be eligible to become or remain Directors of the same. When a Director reduces his said insurance below such amount, he shall no longer be qualified to act as such Director.

Charter to prescribe power of directors

Sec. 12. The Board of Directors of County Mutual Insurance Companies shall have such discretion, power and authority as their charter shall provide.

Voting by policy holders

Sec. 13. Each policy-holder in a County Mutual Insurance Company shall be entitled to only one vote in all policy-holders' meetings.

No voting by proxy shall be permitted unless it is specially authorized by the by-laws.

Meetings

Sec. 14. The meetings of the policy-holders of County Mutual Insurance Companies shall be held at such time or times, in such place or places, and in such manner for the purpose of electing Directors and transacting any business coming before them as prescribed in their by-laws.

Special meetings may be held upon the call of the President, the General Manager, one-third of the Directors of the Company, or the Commissioner of Insurance of the State of Texas.

Location of business

Sec. 15. A County Mutual Insurance Company may write insurance (a) in any County adjoining the County in and for which it is organized, or (b) in any County in which no County Mutual Insurance Company has been organized, or (c) anywhere, if its reserve fund, or policy-holders contingent liability, or both such reserve fund and contingent liability taken together, exceeds the sum of Fifty Thousand ($50,000.00) Dollars.

Reserve funds

Sec. 16. The Board of Directors of County Mutual Insurance Companies may provide for the accumulation of reserve funds, to be invested in such securities as the reserve funds of other Insurance Companies are by law required to be invested.

Annual reports to policy holders and Commissioner of Insurance

Sec. 17. [Repealed Acts 1947, 50th Leg., p. 739, ch. 367, § 1.]

This section is repealed and superseded by section 2a(p) of this article.

Biennial examination by Insurance Commission

Sec. 18. The Insurance Commission of the State of Texas shall biennially, or oftener, if they deem it necessary, examine the County Mutual Insurance Companies.

Companies regarded as County Mutual Insurance Companies

Sec. 19. All incorporated or unincorporated mutual fire, storm and lightning insurance companies or associations in this State that do not do a general fire insurance business, but limit their business to the insuring of farm, residential and/or household property, real and/or personal, anywhere in this State against any one or more of the hazards against which County Mutuals may insure, or when it so limits its insurance business, shall, for the purpose of this Act, be considered County Mutual Insurance Companies.

Any such company or association, which has been or hereafter shall be in business for more than twenty years may, at any time before its charter expires by lapse of time, have its charter extended for a period of fifty years from the time of expiration of the original charter, and shall, under the extended charter, continue to have and enjoy all the rights, privileges and immunities that it had under the original charter; provided, however, that it is first authorized to extend its said charter either by a two-thirds majority vote of all of its Directors, or by a simple majority vote at a meeting of its policy-holders. The application for such extension shall set out in haec verbae the charter to be extended, and it shall state the time for which it is to be extended and be signed and acknowledged by the President and Secretary of the Company.

Any such Company whose charter has expired or may hereafter expire by lapse of time, but is or shall be still doing business in this State, may have its charter renewed for a term of fifty years from the time of the expiration of the original charter in like manner as charters may be extended, and from the time of such renewal it shall be entitled to all the rights, privileges and immunities it had and enjoyed under the original charter.

Any such unincorporated Mutual Fire Insurance Company which has heretofore been in business continuously for a period of five years or more, and has paid all its losses promptly according to contract, may, at any time hereafter, when authorized to do so by two-thirds of its Directors, or by a majority vote of its policy-holders, apply for a charter and be incorporated for a term of fifty years as a County Mutual Insurance Company under the laws of Texas without complying with Sections 2 to 5 inclusive, of this Act. The application for such charter shall state its name, its purposes, the location of its principal office, the number and names of its Directors, and the nature and value of its assets, and it shall be signed and acknowledged by its President and Secretary. It shall thereupon be entitled to a charter and to function and do business as a County Mutual Insurance Company, and enjoy the same rights, privileges and immunities that it had and enjoyed as an unincorporated company, except as otherwise herein provided. Provided, however, that any such unincorporated company or association organized solely for mutual protection of property of its members and not for profit, which has heretofore been doing business for a period of ten years or more, and has paid all of its losses promptly according to contract, may continue to do business as an unincorporated association, and in such event, such association shall be exempt from all insurance laws of this State, except that such Company or association shall make the annual reports to the Commission of Insurance of the State of Texas as provided in Section 17, hereof, and shall be subject to examination by the Insurance Commission of the State of Texas as provided in Section 18, hereof.

Reciprocal insurance contracts

Sec. 20. County Mutual Insurance Companies may reinsure any or all of their risks against any or all hazards which they are permitted to insure against with any other company or companies.

They shall have power and authority to make and enter into mutual or reciprocal reinsurance contracts with other Companies on the mutual or cooperative

plan; provided that no County Mutual shall write or assume the reinsurance on any other property than the property it is permitted to insure, or on property situated outside of the State of Texas; and when such a County Mutual reinsures the property of another Company, it shall not by reason of such fact be, or become a member or partner, of such other Company, but shall only become liable for the losses of such other Company as specified in the contract of interinsurance and not otherwise; and provided further, that a County Mutual shall only have authority to reinsure the risks of another Company in consideration of the fact that such other Company reinsures its risks; and for that purpose it may pay or collect additional assessments and/or premiums as the case may be.

Organization of local chapters

Sec. 21. The by-laws of County Mutual Insurance Companies may provide for the organization of local chapters for the transaction of their business and for the creation of Districts in and for which their Directors may be elected. The by-laws may also provide that delegates from local chapters constitute the supreme governing body of the Company. In the organization of local chapters, and the creation of the districts, the hazards insured against, and classes of risks, as well as the territory of operation, may be taken into consideration.

Removal of officers or employees

Sec. 22. [Repealed by Acts 1947, 50th Leg., p. 739, ch. 367, § 1.]

This section is repealed and superseded by section 2a(h) of this article.

Exemption from insurance laws

Sec. 23. County Mutual Insurance Companies shall be exempt from the operation of all insurance laws of this State, except as herein specifically provided.

By laws as part of contracts

Sec. 24. By-laws of the Company shall always constitute a part of the contract with the insured and the policy shall so state.

Provision against waiver of by laws

Sec. 25. Such Companies may provide in their by-laws that local chapters and officers and agents elected by them do not have the power to waive any provision of such by-laws.

Partial invalidity

Sec. 26. If any part, section, subsection, paragraph, sentence, clause, phrase or word contained in this Act shall be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity. [Acts 1937, 45th Leg., p. 184, ch. 99.]

Section 2 of the Act of 1947 repealed all conflicting laws. Section 3 provided that a holding of partial invalidity should not affect the remaining portion of the Act.

Arts. 4861–4871. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18, 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1.]

Art. 4871a. Plan for changing Stock Insurance Company to Mutual Insurance Company.

Requirements

Sec. 1. Any Stock Insurance Company which is a home or domestic company, as defined by Law, may become a Mutual Company owned and controlled by its policyholders, and to that end may carry out a plan for the acquisition of shares of its capital stock; provided, however, that such plan:

(1) Shall enable each stockholder to dispose of the same proportion of his holdings at the same price per share and on the same terms.

(2) Shall have been adopted by a vote of a majority of the directors of such corporation;

(3) Shall have been approved by a vote of stockholders representing a majority of the capital stock at a meeting of stockholders called for the purpose;

(4) Shall have been approved by a majority vote of the policyholders voting at a meeting, called for the purpose of policyholders, each insured in at least One Thousand ($1,000.00) Dollars and whose insurance shall then be in force and shall have been in force for at least one year prior to such meeting; but no such meeting shall be called for such purpose nor shall such plan be submitted to the policy holders unless and until the plan shall first have been approved and adopted by a majority of the directors of such corporation and approved and adopted by its stockholders representing at least a majority of the capital stock of the corporation at meetings of the directors and stockholders, respectively, duly called and held for the purpose of considering the adoption of such plan, notice of such meeting shall be given by mailing such notice from the home office of such corporation at least thirty days prior to such meeting in a sealed envelope, postage prepaid, addressed to such policyholders at their last known postoffice addresses, and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan; provided, however, that policyholders may vote in person, by proxy or by mail; that all votes shall be cast by ballot and the Chairman of the Board of Insurance Commissioners shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualification of the voters, and the canvass of the vote, and who shall certify to the Chairman of the Board of Insurance Commissioners and to the corporation the result thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the Chairman of the Board of Insurance Commissioners; that all necessary expenses incurred by the Chairman of the Board of Insurance Commissioners shall be paid by the corporation as certified to by him; and

(5) Shall have been submitted to the Chairman of the Board of Insurance Commissioners and shall have been approved by him in writing, provided that every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the Chairman of the Board of Insurance Commissioners and provided that neither such plan, nor any such payment, shall be approved by the Chairman of the Board of Insurance Commissioners, unless at the time of such approvals respectively the corporation, after deducting the aggregate sum appropriated by such plan, to be paid in cash or other assets of the corporation, for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to separate approval as aforesaid after the approval of such plan, after deducting also the amount of such payment, shall be possessed of assets sufficient to equal the entire liability of the corporation, including the net values of its outstanding contracts computed as required by law, and also all funds, contingent reserves, and a surplus over and above all liabilities of not less than Five Hundred Thousand ($500,000.00) Dollars.

Acquisition of shares in trust; appointment of trustees

Sec. 2. If any Insurance Corporation shall determine to become a Mutual Insurance Corporation in accordance with the provisions of Section 1 of this Act, it may, in carrying out any plan to that end under such provisions, acquire any shares of its own stock by gift, bequest or purchase; and until all

of such shares are acquired, any shares so acquired shall be acquired in trust for the policyholders of the corporation as hereinafter provided, and shall be assigned and transferred on the books of the corporation to three trustees and be held by them in trust and be voted by such trustees at all corporate meetings at which stockholders have the right to vote, until all the capital stock of such corporation is acquired, and the purchase price therefor, including all annuity bonds issued on account thereof shall be fully paid off, whereupon the entire capital stock shall be retired and cancelled, and thereupon the corporation shall be and become a Mutual Insurance Corporation without capital stock, and shall thereafter be controlled by the Laws of Texas governing such Mutual Companies. Said trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under Section 1 of this Act. Said trustees shall file with the corporation a verified acceptance of their appointments and declaration that they will faithfully discharge their duty as such trustees. All dividends and other sums received on said shares of stock so acquired, after paying the necessary expenses of executing said trust, shall be immediately repaid to said corporation for the benefit of all who are, or may become, policyholders of said corporation, and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said corporation and be apportionable accordingly, as a part of said surplus among said policyholders.

Annuity bonds in payment of stock

Sec. 3. The plan provided for in Section 1 of this Act may provide that part or all of the purchase price of any part or all of the shares of stock of the corporation acquired by the corporation under the provisions of such plan may be paid by the corporation issuing its annuity bonds to be payable in such annual amounts, and to run for such number of years as may be provided for in said plan, provided that such annuity bonds issued by any such Company shall expressly provide, on the face thereof, that they shall be payable only out of the surplus of the Company remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the Company or any of its assets, as is provided by Art. 4816 of the Revised Civil Statutes of Texas with respect to advances made to Mutual Life Insurance Companies; and provided that not more than three-fourths of the net earnings of the corporation during any Calendar year shall be used or applied to the payment of such annuities.

With the approval of the Chairman of the Board of Insurance Commissioners, the corporation issuing such annuity bonds, or any Life Insurance Company may invest its funds in such annuity bonds, provided that no such Company shall have so invested at any one time an amount in excess of 10% of its total admitted assets.

Distribution of dividends

Sec. 4. All dividends or earnings accruing to the corporation as the result of the acquisition of any or all of the shares of its stock under the provisions of this Act, shall be annually distributed among the policyholders of the corporation under terms and conditions to be approved by the Chairman of the Board of Insurance Commissioners. [Acts 1931, 42nd Leg., p. 200, ch. 118.]

Section 5 repeals all conflicting laws and parts of laws.

Arts. 4872–4875. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18, 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1.]

See note under Article 4860, ante.

CHAPTER 9A.—LOCAL MUTUAL AID ASSOCIATIONS

Art.
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Art. 4875a—1. Scope of Act.—This Act shall apply to and regulate the business of local mutual aid associations operating for the purpose of providing benefit for members and death benefit for the beneficiaries of deceased members, and shall comprehend and include all societies and associations of any sort operating an insurance business and paying such benefits where funds are provided by assessments upon the members as needed, except those hereinafter exempted. [Acts 1929, 41st Leg., p. 563, ch. 274, § 1.]

Section 32 of this Act provides that if any section is held to be unconstitutional, such decision shall not affect the remaining portions of the act. Section 31 expressly repeals articles 4859, 4859—a, 4859—b, 4859—c, 4859—d, and all conflicting laws and parts of laws.

Art. 4875a—2. Definition.—Any person or persons desiring to organize a local mutual aid association to be operated upon the assessment as needed or similar plan shall be permitted to do so upon the terms and conditions hereinafter set forth. No person, firm or corporation shall hereafter operate in this State any sort of a local mutual aid society or association paying a death benefit or other benefits and providing its funds by assessments as needed, except under the provisions hereof, or under other specific provisions of the laws of this State. [Acts 1929, 41st Leg., p. 563, ch. 274, § 2.]

Art. 4875a—3. Territorial limitation of association.—No Local Mutual Aid Association shall be permitted to operate in this State except it confine its operations in the writing of business to one county or to a territory embraced within a radius of seventy-five (75) miles of the city or town wherein the home office of such association is located, including all parts of all counties traversed by said radius, or in event where the home office of an association is located within less than thirty (30) miles of the border line of this State, such operations may be extended to and permitted in all of the territory embraced within a radius of one hundred (100) miles of the city or town in which the home office of such

association is located and may include all parts of all counties traversed by said radius, and any person, officer or agent of any association writing or soliciting any business in violation of this Section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not more than Five Hundred Dollars ($500). [Acts 1929, 41st Leg., p. 563, ch. 274, § 3; Acts 1935, 44th Leg., p. 550, ch. 235, § 2.]

Art. 4875a—4. Independent associations.—There shall be no connection between any two associations operating under this law and no one association shall contribute anything by way of salary or compensation to any executive officer for the purposes of such other association. [Acts 1929, 41st Leg., p. 563, ch. 274, § 4.]

Art. 4875a—5. Organization.—Any number of persons not less than five, all of whom must be citizens of the United States and residents of the territory to be embraced within their field of operation may organize a local mutual aid association in the following manner:

(1) They shall draw up Articles of association which shall be executed in triplicate, acknowledged as required for instruments intended to be recorded, and which shall state:

(a) The name of the association, which must be distinctly different from associations operating in the same radius.

(b) The location of the principal office and the territory to which its operation shall be confined.

(c) The object for which the association is created, including the upper and lower age limits of persons to whom benefit certificates may be issued.

(d) Titles of the officers of the association and the number of directors, and the names of the persons who will, pending permanent organizations, fill such offices.

(2) The said Articles of association so executed shall be presented to the Board of Insurance Commissioners of the State of Texas, together with the application for a permit to solicit members, and together with the bond in a sum of five thousand ($5,000.00) dollars which said bond shall be payable to the Board of Insurance Commissioners, executed by the organizers as principals and one surety company, acceptable to the Commissioners as surety, conditioned that if the persons organizing the association shall fail to secure the requisite number of members, or for any other reason shall not consummate the organization of the association within six months from its date, then the advance membership dues and assessments shall be returned to the parties paying same.

(3) The constitution and by-laws under which the association will operate pending permanent organization together with the certificate of membership which the association proposes to issue shall be submitted to the Board for approval.

(4) The Board shall make an investigation of the individuals who shall make such application, and when the Board shall be satisfied that the organizers are responsible persons, and of the probability that territory to be served can support such association and that the Articles of association, constitution, by-laws and certificates are in proper form and the bond shall have been approved, it shall issue a permit to the organizers authorizing them to solicit membership in the association and to collect the membership fee and one death assessment.

(5) When such permit to solicit membership has been issued by the Commissioners, the organizers may solicit members, and when they shall have received not less than five hundred (500) bona fide applications for membership in the association in all classes and when they shall have collected from such members the membership fees and one advance assessment, they shall make a showing to the Board of Insurance Commissioners of Texas in such form as is required, setting forth the facts. Such membership must be completed within six months from date of filing application. Thereupon the Board shall require, and the officer of the association designated to have charge of the funds of the Association shall make and file a surety bond executed by a surety company authorized to do business in the State of Texas, satisfactory to the Commission as surety, as surety,[1] in the sum of not less than Two Thousand Five Hundred ($2500.00) Dollars, payable to the Board of Insurance Commissioners for the use and benefit of said corporation, and which shall at all times be equal to the amount of the mortuary fund on hand, not to exceed Twenty Thousand ($20,000.00) Dollars, which said bond shall obligate the principal and surety to pay such pecuniary loss, not exceeding the penalty of the bond, as the corporation shall sustain of money or property by an act or acts of Fraud, Dishonesty, Forgery, Theft, Embezzlement, Wrongful Abstraction or Willful Misapplication on the part of the said officer, directly or through connivance with others, while employed as such officer or exercising powers of such office. In lieu of such bond any such officer may deposit with the Board of Insurance Commissioners cash (or securities approved by the Commission) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond. Provided, however, that the provisions of this section shall not apply to any local mutual aid association now organized and operating whose total membership shall at no time exceed one thousand (1,000) members and which shall never charge for annual dues or assessments in excess of One ($1.00) Dollar each, and whose membership fee shall at no time exceed Two Dollars Fifty Cents ($2.50). However, such association thus exempted shall file a bond, conditioned as herein above provided, in the amount of One Thousand ($1,000.00) Dollars with the Board of Insurance Commissioners of Texas. [As amended Acts 1933, 43rd Leg., p. 577, ch. 190.]

(6) The Board shall then issue to such association a certificate of authority to do business in Texas, which shall expire on March 1, following, together with a certified copy of the charter. [Acts 1929, 41st Leg., p. 563, ch. 274, § 5.]

[1] So in enrolled bill. Second phrase "as surety" is superfluous.

Acts 1933, 43rd Leg., p. 577, ch. 190 amended subdivision 5 of this Article.

Art. 4875a—6. Failure to consummate organization.—If the organizers shall not complete the membership within the time required, the money collected shall be returned and the temporary permit issued shall be revoked. [Acts 1929, 41st Leg., p. 563, ch. 274, § 6.]

Art. 4875a—7. Recovery of bond.—When the Board is informed that any officer of any such association has violated the terms of either of said bonds it shall demand a written explanation of such officer as to such charge, and if after such explanation the Board is not satisfied as to the existing facts in controversy it shall notify such officer to be and appear in Travis County with such records, writings, and other correspondence and facts as the Board deems proper, not earlier than ten days or later than fifteen days from service of notice, and it shall there conduct an examination into such affair, and if upon such examination the Board shall become satisfied that the terms of said bond has been violated by said officer the Board shall prepare a written statement covering said facts and deliver same to the Attorney General of Texas, whose duty it shall be to investigate said charges and if satisfied that the terms of said bond have been violated he shall file suit on said bond in the name of the Board of Insurance Com-

missioners of Texas for the benefit of the beneficiaries thereof against said officer as principal and the sureties of his bond for the recovery of said amounts due by said officer, and all costs of suit in some court of competent jurisdiction, in Travis County, Texas. [Acts 1929, 41st Leg., p. 563, ch. 274, § 7.]

Art. 4875a—8. Shall be mutual in operation.—All associations operating under this law shall be mutual in character, but no liability shall rest upon any officer, director or member in an individual capacity by virtue of any policy issued or claims arising thereon. [Acts 1929, 41st Leg., p. 563, ch. 274, § 8.]

Art. 4875a—9. By-laws.—The Constitution, by-laws and form of certificates of each association submitted to the Board and approved before writing of business is commenced, shall be effective until the first annual meeting of the association, at which time they must be confirmed by such meeting, with or without amendments as the association may decide. The constitution and by-laws of such association shall not violate any of the provisions of this law, but shall be in harmony herewith.

By-laws of any association may be amended by a majority of the members of the association present when ratified by the Board of Directors at any meeting called by the Secretary, but shall not be effective until approved by the Board of Insurance Commissioners. [Acts 1929, 41st Leg., p. 563, ch. 274, § 9.]

Art. 4875a—10. Membership.—Membership in the association shall be confined to persons qualified under the provisions of the by-laws. [Acts 1929, 41st Leg., p. 563, ch. 274, § 10.]

Art. 4875a—11. Groups or class of members.—The constitution and by-laws of each association shall state the number of members to be admitted in a class or group of the association. Accounts of the mortuary assessments of the several classes shall be kept separately, and the funds of one group or class shall not be used to pay claims for any other classes. [Acts 1929, 41st Leg., p. 563, ch. 274, § 11.]

Art. 4875a—12. Kinds of benefits.—Any association hereafter organized under the provisions of this Act shall provide for the payment of death benefits only and may not provide for old age benefits and benefits in case of accidental injuries or sickness. Any association heretofore organized and paying death, old age and accident benefits may continue to pay same. Anyone or all of said benefits and the benefits to be provided shall be clearly set out in the policy issued by the association. [Acts 1929, 41st Leg., p. 563, ch. 274, § 12.]

Art. 4875a—13. Amount of benefits.—The benefits to be paid by such association shall be dependent upon the amount realized from assessments upon the membership, and the certificates issued shall so provide; and the certificates shall also state the maximum to be paid. [Acts 1929, 41st Leg., p. 563, ch. 274, § 13.]

Art. 4875a—14. May not issue guaranteed certificates.—An association shall not issue certificates providing for a level premium or guaranteed benefits, nor for surrender of loan values. [Acts 1929, 41st Leg., p. 563, ch. 274, § 14.]

Art. 4875a—15. Certificates.—Certificates issued by an association shall state that said certificate is issued subject to all the terms of the constitution and by-laws of the association then in force and as the same might thereafter be amended and that said certificate shall be governed by such by-laws and constitutional provisions that the Board of Insurance Commissioners shall theretofore and thereafter approve. [Acts 1929, 41st Leg., p. 563, ch. 274, § 15.]

Art. 4875a—16. Beneficiaries.—The payment of death benefits shall be confined to the wife or husband of a member, or relatives by blood to the fourth degrees, or by marriage to the third degree, or to persons actually dependent upon the member, and creditor, estate or any one having an insurable interest or any purely charitable or religious institution. [Acts 1929, 41st Leg., p. 563, ch. 274, § 16.]

Art. 4875a—17. Revenues.—The funds of the association shall be derived from membership fees and assessments. Assessments shall be made upon the membership to meet benefit claims and for surplus funds and for expenses. Calls for assessments must specify the purpose for which made. Before suspending any member from membership it shall be necessary for the Association to mail a notice, by first class mail, to the member which notice shall state the final date of payment. All funds collected that belong to the Association shall be deposited within five days in a state or national bank. [Acts 1929, 41st Leg., p. 563, ch. 274, § 17.]

Art. 4875a—18. Investments.—Any surplus funds on hand belonging to any such association must be invested if at all, in such securities as the funds of life insurance companies may be invested in. [Acts 1929, 41st Leg., p. 563, ch. 274, § 18.]

Art. 4875a—19. Reports.—Annually, not later than March first in every year, the associations operating under this statute shall make a report to the Board of Insurance Commissioners showing the business transacted during the calendar year preceding, which report shall be on forms which shall be prescribed by the Board. [Acts 1929, 41st Leg., p. 563, ch. 274, § 19.]

Art. 4875a—20. Renewal of certificates of authority.—After the annual report of an association shall have been filed and examined by the Board, if said business has been conducted fairly and honestly and in conformity with the provisions of the law, the Board shall issue a renewal of the certificate of authority to do business for one year ending on March first following. [Acts 1929, 41st Leg., p. 563, ch. 274, § 20.]

Art. 4875a—21. Examination.—The Life Insurance Commissioner in addition to the annual report, shall once in every two (2) years or oftener, if deemed advisable, require the books and affairs of such corporation or association to be examined and audited by accountants or auditors designated and commissioned by the Commissioner. For the purpose of an examination, the Commissioner and the auditors shall have free access to all books, papers, accounts and records of the corporation or association, and the cost for the time required in making such examination and audit, and all necessary expenses in connection therewith shall be paid by the corporation upon presentation of a bill showing the charges made by the Department, which shall include the salaries, traveling expenses, hotel bills, and other expenses of said auditors, and /or examiners, together with all other expenses in connection with such examination. Each corporation or association shall be charged with the salary of the auditor, and /or examiners, for the time required in making such examination and the time required in connection with going to and from the place, or places, necessary in connection with such examination, together with all expenses incurred by such auditors, and/or examiners, and in addition thereto each corporation or association shall be charged by the Commissioner with an amount equal to the salaries of the actuary, examination clerk, or clerks, stenographers, and all other employees employed in connection with the examination work in the Department for the time said employees are performing duties in connection with the examination by each corporation so examined. The amounts so collected shall be paid into the Examination Fund of the State Treasury Department and paid out in accordance with the general examination laws. The Commissioner or his deputy or

any examiner shall have the right to require any officer, agent or employee of any association, or any other person to be sworn and answer under oath any questions regarding the affairs or activities of said association, and the Commissioner, his deputy and any examiner or auditor is hereby authorized to administer such oath. All laws or parts of laws with reference to the examination of Local Mutual Aid Associations that are in conflict with this Act are hereby expressly repealed. [Acts 1929, 41st Leg., p. 563, ch. 274, § 21; Acts 1935, 44th Leg., p. 550, ch. 235, § 1.]

Art. 4875a—22. Dissolution.—The Board shall not revoke the right of any association to do business in this State except upon the judgment of a court of competent jurisdiction or upon the filing of Articles of dissolution by the members of said association or the officers for them or upon a statement being filed with said Board showing that said membership had been merged and taken over by another society or association. [Acts 1929, 41st Leg., p. 563, ch. 274, § 22.]

Art. 4875a—23. Acceptance of existing associations.—Any local mutual aid association now doing business in this State may avail itself of the provision of this Act by filing its articles of Incorporation, its constitution, by-laws and form of certificates with the Board of Insurance Commissioners of Texas, together with an application for authority to continue business as such, and if such documents, when submitted, are in conformity with the law, the Board shall file the same and issue certificates of authority. Such application must be made by associations now in existence not later than six months after effective date of this Act. Any association which fails to take advantage of the provisions of this Act shall immediately begin winding up its affairs and shall dissolve itself not later than six months after the Act takes effect. [Acts 1929, 41st Leg., p. 563, ch. 274, § 23.]

Art. 4875a—24. Corporation existence.—Any association organized under the provisions hereof or accepting the provisions hereof shall for the purposes of operation be and become a body corporate with authority to sue and be sued in its own name and to exercise the other powers and functions specifically herein granted, but not otherwise. Except as herein provided, such association shall be governed by this law and shall be exempted from all provisions of the insurance laws of this State. No law hereafter enacted shall apply to them unless they be expressly designated therein. [Acts 1929, 41st Leg., p. 563, ch. 274, § 24.]

Art. 4875a—25. Service of process.—In any lawsuit brought against an association operating under this Act, it shall be deemed sufficient service of citation if the same shall be served upon the Chairman of the Board of Insurance Commissioners of this State within the time required for service upon individuals. The Board when served with citation upon such association shall forthwith transmit the same by registered mail to the association at the post-office address as designated in the records on file with the Board of Insurance Commissioners of Texas. [Acts 1929, 41st Leg., p. 563, ch. 274, § 25.]

Art. 4875a—26. Dissolution and forfeitures.—Associations may dissolve at any time by vote of the majority of the members at a regular meeting called by the Secretary or a Special meeting called for the purpose of considering dissolution; any class or group which has been in existence for six months or more shall also be dissolved automatically and shall forfeit its right to do business at any time the membership shall fall below fifty per cent of the maximum value of the policy issued, or when any class or group shall cease to operate for a period of one year and no action by any supervisory officer of the State shall be necessary to such dissolution or forfeiture. In the event of said membership becoming less than fifty per cent of the maximum amount provided in said class or group, said members by a majority vote of said officers for them shall have the right to transfer and merge said members with any other Society or Association after obtaining the approval of the Board of Insurance Commissioners; provided, however, that if any such association or society shall have engaged in business continuously for a period of ten (10) years, then it shall not automatically be dissolved nor forfeit its right to do business, at any time the membership shall fall below fifty per cent of the maximum value of the policy issued, but it shall become dissolved only in the event the membership shall fall below twenty-five per cent of the maximum value of the policy issued. Provided, further, that when membership becomes less than fifty per cent, the association will be dissolved automatically in event it fails to notify each member when assessment is made of the amount paid on the next preceding death claim. [Acts 1929, 41st Leg., p. 563, ch. 274, § 26; Acts 1931, 42nd Leg., p. 334, ch. 201, § 1.]

Art. 4875a—27. Winding up affairs.—If any association heretofore or hereafter doing a local mutual aid business as herein defined shall cease to operate, or shall fall below the requirements of this Act, or shall undertake to operate without a permit or certificate of authority, or shall fail or refuse to make the reports as and when herein required, or shall refuse to submit to examination or pay the cost thereof, or shall conduct its business in a fraudulent, illegal or dishonest manner, or shall violate any of the terms of this Act, shall, in addition to any other penalties imposed on it or on its members or officers, subject itself to forfeiture of its right to do business and to dissolution; and the Attorney General shall at the request of the Board of Insurance Commissioners file such suit as may be necessary to wind up the affairs of such association and if necessary have a receiver appointed for that purpose, the venue of all of which suits shall be laid in Travis County, Texas. [Acts 1929, 41st Leg., p. 563, ch. 274, § 27.]

Art. 4875a—28. Penalty.—Any person or persons who shall violate any of the provisions of this law shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not more than five hundred ($500.00) dollars. [Acts 1929, 41st Leg., p. 563, ch. 274, § 28.]

Art. 4875a—29. Exemptions.—The provisions of this Act shall not apply to labor unions, domestic orders or associations which do not provide a death benefit of more than one hundred and fifty ($150.00) dollars, nor to the associations which are now described in Article 4857 Revised Statutes 1925 nor any society or association if any, heretofore legally operating state wide on an assessment basis under any charter heretofore granted under any valid statute of this State. [Acts 1929, 41st Leg., p. 563, ch. 274, § 29.]

This article is repealed insofar as in conflict with the provisions of Acts 1939, p. 401, incorporated in Article 5068—1, relative to burial associations. See article 5068—1, § 21, post.

Art. 4875a—30. Fraternal law not applicable.—The provision of the Fraternal Society Act, which is Chapter 8 of Title 78 Revised Statutes 1925,[2] and Chapter 3 of Title 78, Revised Statutes of 1925,[1] shall not apply to associations coming within purview of this Act. [Acts 1929, 41st Leg., p. 563, ch. 274, § 30.]

[1] Articles 4716–4764a, ante.
[2] Articles 4820–4859f, ante.

Art. 4875a—31. Fees.—For filing Articles of association and approval of constitution, by-laws and certificates prior to organization, the Board shall charge a filing fee of twenty ($20.00) dollars for filing of each annual report it shall charge a fee of

five ($5.00) dollars, and it shall also charge a fee of one ($1.00) dollar for issuance of a certificate of authority to do business, which amount shall be paid into the general fund. Article 4859, 4859–A, 4859–B, 4859–C and 4859–D of the Revised Civil Statutes of Texas, 1925, is hereby repealed and all laws and parts of laws in conflict herewith. [Acts 1929, 41st Leg., p. 563, ch. 274, § 31.]

CHAPTER 10.—STATE INSURANCE COMMISSION

Art.
4876, 4877. [Repealed.]
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4903. Exceptions.
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4905b. Application to inland marine insurance, rain insurance, or hail insurance; definitions; rates and rating plans filed; policy forms; checking offices.
4905c. County mutual associations excepted from Act.
4906. [Repealed.]
4907. Workmen's compensation rates.
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4911. Experience rating.
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4917. Definitions.
4918. Cancellation of license.
4918a. Tax on gross premiums for Workmen's Compensation Insurance.
4918b. National Defense projects; special rates and rating plans for Workmen's Compensation, motor vehicle, and other casualty insurance.

Articles 4876, 4877. [Repealed by Acts 1927, 40th Leg., p. 329, ch. 224, § 7.]

Art. 4878. Commission shall fix rates.—The State Insurance Commission [1] shall have the sole and exclusive power and authority and it shall be its duty to prescribe, fix, determine and promulgate the rates of premiums to be charged and collected by fire insurance companies transacting business in this State. Said Commission shall also have authority to alter or amend any and all such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same, or any part thereof, as herein provided. Said Commission shall have authority to employ clerical help, inspectors, experts and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law. Such expenses, including the salaries of the members of the Commission, shall not exceed in the aggregate, for any fiscal year, the sum of one hundred and thirty thousand dollars. Said Commission shall ascertain as soon as practicable the annual fire loss in this State; obtain, make and maintain a record thereof and collect such data with respect thereto as will enable said Commission to classify the fire losses of this State, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will aid in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates of the State, or sub-divisions of the State. [Acts 1917, p. 136.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4879. Maximum rate fixed.—A maximum rate of premiums to be charged or collected by all companies transacting in this State the business of fire insurance, as herein defined, shall be exclusively fixed and determined and promulgated by the State Insurance Commission,[1] and no such fire insurance company shall charge or collect any premium or other compensation for or on account of any policy or contract of fire insurance as herein defined in excess of the maximum rate as herein provided for, but may write insurance at a less rate than the maximum rate as herein provided for. When insurance is written for less than the maximum rate, such lesser rate shall be applicable to all risks of the same character situated in the same community. [Acts 1913, p. 195.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4880. No company exempt.—Every fire insurance company, every marine insurance company, every fire and marine insurance company, every fire and tornado insurance company, and each and every insurance company of every kind and name issuing a contract or policy of insurance, or contracts or policies of insurance against loss by fire on property within this State, whether such property be fixed or movable, stationary or in transit, or whether such property is consigned or billed for shipment within or beyond the boundary of this State or to some foreign country, whether such company is organized under the laws of this State or under the laws of any other State, territory or possession of the United States, or foreign country, or by authority of the Federal government, now holding certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact business thereunder, upon condition that it consents to the terms and provisions of this chapter and that it agrees to transact business in this State, subject thereto; it being intended that every contract or policy of insurance against the hazard of fire shall be issued in accordance with the terms and provisions of this chapter, and the company issuing the same governed thereby, regardless of the kind and character of such property and whether the same is fixed or movable, stationary or in transit, including the shore end of all marine risks insured against loss by fire. [Id.]

Art. 4881. Statements and books.—Said Commission [1] is authorized and empowered to require sworn statements for any period of time from any insurance company affected by this law, and from any of its directors, officers, representatives, general agents, State agents, special agents and local agents of the rates

and premiums collected for fire insurance on each class of risks, on all property in this State and of the causes of fire, if such be known, if they are in possession of such data, and information, or can obtain it at a reasonable expense; and said Commission is empowered to require such statements showing all necessary facts and information to enable said Commission to make, amend and maintain the general basis schedules provided for in this law and the rules and regulations for applying same and to determine reasonable and proper maximum specific rates and to determine and assist in the enforcement of the provisions of this law. The said Commission shall also have the right, at its discretion, either personally, or by some one duly authorized by it, to visit the office whether general, local or otherwise, of any insurance company doing business in this State, and the home office of said company outside of this State, if there be such, and the office of any officers, directors, general agents, State agents, local agents or representatives of such company, and there require such company, its officers, agents or representatives to produce for inspection by said Commission or any of its duly authorized representatives all books, records and papers of such company or such agents and representatives; and the said Commission or its duly authorized agents or representatives shall have the right to examine such books and papers and make or cause to be made copies thereof; and shall have the right to take testimony under oath with reference thereto, and to compel the attendance of witnesses for such purpose. Said Commission shall be further empowered to require the fire insurance companies transacting business in this State or any of them, to furnish said Commission with any and all data which may be in their possession, either jointly or severally, including maps, tariffs, inspection reports and any and all data affecting fire insurance risks in this State, or in any portion thereof and said Commission shall be empowered to require any two or more of said companies, or any joint agent or representative of them, to turn over any and all such data in their possession, or any part thereof, to said Commission for its use in carrying out the provisions of this law. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4882. Schedule and report.—The rates of premium fixed by said Commission [1] in pursuance of the provision of this law shall be at all times reasonable and the schedules thereof made and promulgated by said Commission shall be in such form as will in the judgment of the Commission, most clearly and in detail disclose the rate so fixed and determined by said Commission to be charged and collected for policies of fire insurance. Said Commission may employ and use any facts obtainable from and concerning fire insurance companies transacting business in this State, showing their expense and charges for fire insurance premiums for any period or periods said Commission may deem advisable, which in their opinion will enable them to devise and fix and determine reasonable rates of premium for fire insurance. The said Commission in making and publishing schedules of the rates fixed and determined by it shall show all charges, credits, terms, privileges and conditions which in any wise affect such rates, and copies of all such schedules shall be furnished by said Commission to any and all companies affected by this law applying therefor, and the same shall be furnished to any citizens of this State applying therefor, upon the payment of the actual cost thereof. No rate or rates fixed or determined by the Commission shall take effect until it shall have entered an order or orders fixing and determining same, and shall give notice thereof to all fire insurance companies affected by this law, authorized to transact business in the State. The State Insurance Commission, and any inspector or other agent or employee thereof, who shall inspect any risk for the purpose of enabling the Commission to fix and determine the reasonable rate to be charged thereon, shall furnish to the owner of such risk at the date of such inspection, a copy of the inspection report, showing all defects that may operate as charges to increase the insurance rate. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4883. Analysis of rate.—When a policy of fire insurance shall be issued by any company transacting the business of fire insurance in this State, such company shall furnish the policyholder with a written or printed analysis of the rate or premium charged for such policy, showing the items of charge and credit which determine the rate, unless such policyholder has theretofore been furnished with such analysis of such rate. All schedules of rates promulgated by said Commission [1] shall be open to the public, and every local agent of such fire insurance company shall have and exhibit to the public copies of such schedules covering all risks upon which he is authorized to write insurance. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4884. Change or limit of rate.—Said Commission [1] shall have full power and authority to alter, amend, modify or change any rate fixed and determined by it on thirty days' notice, or to prescribe that any such rate or rates shall be in effect for a limited time, and said Commission shall also have full power and authority to prescribe reasonable rules whereby in cases where no rate of premium shall have been fixed and determined by the Commission, for certain risks or classes of risks, policies may be written thereon at rates to be determined by the company. Such company or companies shall immediately report to said Commission such risk so written, and the rates collected therefor, and such rates shall always be subject to review by the Commission. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4885. Petition for change.—Any such fire insurance company shall have the right at any time to petition the Commission [1] for an order changing or modifying any rate or rates fixed and determined by the Commission, and the Commission shall consider such petition in the manner provided in this law and enter such order thereon as it may deem just and equitable. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4886. Reducing hazard.—The Commission [1] shall have full authority and power to give each city, town, village or locality credit for each and every hazard they may reduce or entirely remove, and also for all added fire fighting equipment, increased police protection, or any other equipment or improvement that has a tendency to reduce the fire hazard of any such city, town, village or locality, and also to give credit for a good fire record made by any city, town, village or locality. Said Commission shall also have the power and authority to compel any company to give any or all policyholders credit for any and all hazards that said policyholder or holders may reduce or remove. Said credit shall be in proportion to such reduction or removal of such hazard and said company or companies shall return to such policyholder or holders such proportional part of the unearned premium charged for such hazard that may be reduced or removed. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4887. Revising rates.—The Commission [1] shall have authority after having given reasonable notice, not exceeding thirty days, of its intention to do so, to alter, amend or revise any rates of premium fixed and determined by it in any schedules of such rates promulgated by it, and to give reasonable notice of such alteration, amendment or revision to the public, or to any company or companies affected thereby. Such altered, amended or revised rates shall be the rates thereafter to be charged and collected by all fire insurance companies affected by this law. No policy in force prior to the taking effect of such changes or amendments shall be affected thereby, unless there shall be a change in the hazard of the risk, necessitating a change in the rate applicable to such risk, in which event such policy shall be subject to the new rates. [Id.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4888. Uniform policies.—The Commission [1] shall make, promulgate and establish uniform policies of insurance applicable to the various risks of this State, copies of which uniform policies shall be furnished each company now or hereafter doing business in this State. After such uniform policies shall have been established and promulgated and furnished the respective companies doing business in this State, such companies shall, within sixty days after the receipt of such forms of policies, adopt and use said form or forms and no other; also all companies which may commence business in this State after the adoption and promulgation of such forms of policies, shall adopt and use the same and no other forms of policies. [Id.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4889. Standard forms.—The Commission [1] shall prescribe all standard forms, clauses and endorsements used on or in connection with insurance policies. All other forms, clauses and endorsements placed upon insurance policies shall be placed thereon subject to the approval of the Commission. The Commission shall have authority in its discretion to change, alter or amend such form or forms of policy or policies, and such clauses and endorsements used in connection therewith, upon giving notice. [Id.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4890. Lien on insured property.—Any provision in any policy of insurance issued by any company subject to the provisions of this law to the effect that if said property is encumbered by a lien of any character or shall after the issuance of such policy become encumbered by a lien of any character then such encumbrance shall render such policy void shall be of no force and effect. Any such provision within or placed upon any such policy shall be null and void. [Id.]

Art. 4891. Co-insurance clauses.—No company subject to the provisions of this law may issue any policy or contract of insurance covering property in this State, which shall contain any clause or provision requiring the assured to take out or maintain a larger amount of insurance than expressed in such policy, nor in any way providing that the assured shall be liable as a co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy, and any such clause or provisions, except as herein provided, shall be null and void, and of no effect; provided, co-insurance clauses and provisions may be inserted in policies written upon cotton, grain, or other products in process of marketing, shipping, storing or manufacturing.

Provided, further, it shall be optional with an insured to accept a policy or contract of insurance containing such clause or provision covering other classes of property, except private dwellings, and except stocks of merchandise offered for sale at retail when of a value less than Ten Thousand Dollars, ($10,000.00) when a reduction in the rate is allowed for such policy, and said clause in such policy shall be valid and binding; and the Board of Insurance Commissioners shall have power to name the rates to apply when such co-insurance clause or provision shall be used.

Provided, further, that by appropriate order the Board of Insurance Commissioners may authorize, and in its discretion require the use of any form of co-insurance clauses on or in connection with insurance policies covering against the hazards of tornado, windstorm and hail, on any or all classes of property; the Board to make such rules and regulations with reference to such clauses and the use thereof, as well as credits in premium rates for the use thereof on policies covering against the hazards mentioned as it may deem proper. [Acts 1913, p. 195; Acts 1929, 41st Leg., 1st C.S., p. 84, ch. 37, § 1; Acts 1935, 44th Leg., p. 192, ch. 77, § 1.]

Art. 4892. Complaints of rates or orders.—Any citizen or number of citizens of this State or any policyholder or policyholders, or any insurance company affected by this law, or any Board of Trade, Chamber of Commerce, or other civic organization, or the civil authorities of any town, city, or village, shall have the right to file a petition with the State Insurance Commission, setting forth any cause of complaint that they may have as to any order made by this Commission,[1] or any rate fixed and determined by the Commission, and they shall have the right to offer evidence in support of the allegations of such petition by witnesses, or by depositions, or by affidavits; upon the filing of such petition, the party complained of, if other than the Commission, shall be notified by the Commission of the filing of such petition and a copy thereof furnished the party or parties, company or companies, of whom complaint is made, and the said petition shall be set down for a hearing at a time not exceeding thirty days after the filing of such petition and the Commission shall hear and determine said petition; but it shall not be necessary for the petitioners or any one of them to be present to present the cause to the Commission, but they shall consider the testimony of all witnesses, whether such witnesses testify in person or by depositions, or by affidavits, and if it be found that the complaint made in such petition is a just one, then the matter complained of shall be corrected or required to be corrected by said Commission. [Acts 1913, p. 195.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4893. Hearing of protests.—The Commission [1] shall give the public and all insurance companies to be affected by its orders or decisions, reasonable notice thereof, not exceeding thirty days, and an opportunity to appear and be heard with respect to the same; which notice to the public shall be published in one or more daily papers of the State, and such notice to any insurance company to be affected thereby shall be mailed addressed to the State or general agent of such company, if such address be known to the Commission, or if not known, then such letter shall be addressed to some local agent of such company, or if the address of a local agent be unknown to the Commission, then by publication in one or more of the daily papers of the State, and the Commission shall hear all protests or complaints from any insurance company or any citizen or any city, or town, or village or any commercial or civic organization as to the inadequacy or unreasonableness of any rates fixed by it or approved by it, or as to the inadequacy or unrea-

sonableness of any general basis schedules promulgated by it or the injustice of any order or decision by it, and if any insurance company, or other person, or commercial or civic organization, or any city, town or village, which shall be interested in any such order or decision, shall be dissatisfied with any regulation, schedule or rate adopted by such Commission, such company or person, commercial or civic organization, city, town or village shall have the right, within thirty days after the making of such regulation or order, or rate, or schedule or within thirty days after the hearing above provided for, to bring an action against said Commission in the district court of Travis county to have such regulation or order or schedule or rate vacated or modified; and shall set forth in a petition therefor the principal grounds of objection to any or all of such regulations, schedules, rates or orders. In any such suit the issue shall be formed and the controversy tried and determined as in other civil cases. The court may set aside and vacate or annul any or all or any part of any regulation, schedule, order or rate promulgated or adopted by said Commission, which shall be found by the court to be unreasonable, unjust, excessive or inadequate, without disturbing others. No injunction, interlocutory order or decree suspending or restraining directly or indirectly the enforcement of any schedule, rate, order or regulation of said Commission shall be granted. In such suit, the court, by interlocutory order, may authorize the writing and acceptance of fire insurance policies at any rate which in the judgment of the court is fair and reasonable, during the pending of such suit, upon condition that the party to such suit in whose favor the said interlocutory order of said court may be, shall execute and file with the Commissioner of Insurance [2] a good and sufficient bond to be first approved by said court, conditioned that the party giving said bond will abide the final judgment of said court and will pay to the Commissioner of Insurance whatever difference in the rate of insurance, it may be finally determined to exist between the rates as fixed by the State Insurance Commission complained of in such suit, and the rate finally determined to be fair and reasonable by the court in said suit, and the said Commissioner of Insurance, when he receives such difference in money, shall transmit the same to the parties entitled thereto.

Whenever any action shall be brought by any company under any provision of this article within said period of thirty days, no penalties nor forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the orders, schedules, rates or regulations sought to be vacated in such action until the final determination of the same.

Either party to any such action, if dissatisfied with the judgment or decree of said court, may appeal therefrom as in other civil cases. No action shall be brought in any court of the United States to set aside any orders, rates, schedules or regulations made by said Commission under the provisions of this law until all of the remedies provided herein shall have been exhausted by the party complaining. [Id.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

[2] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, 4682a, ante.

Art. 4894. Rebating or discrimination.—No company shall engage or participate in the insuring or re-insuring of any property in this State against loss or damage by fire except in compliance with the terms and provisions of this law; nor shall any such company knowingly write insurance at any lesser rate than the rates herein provided for, and it shall be unlawful for any company so to do, unless it shall thereafter file an analysis of same with the Commission,[1] and it shall be unlawful for any company, or its officers, directors, general agents, State agents, special agents, local agents, or its representatives, to grant or contract for any special favor or advantages in the dividends or other profits to come thereon, or in commissions in the dividends or other profits to accrue thereon, or in commissions or division of commission, or any position or any valuable consideration or any inducement not specified in the policy contract of insurance; nor shall such company give, sell or purchase, offer to give, sell or purchase, directly or indirectly as an inducement to insure or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, partnership or individual, or any dividends or profits accrued or to accrue thereon, or any thing of value whatsoever, not specified in the policy. Nothing in this chapter shall be construed to prohibit a company from sharing its profits with its policyholders, if such agreement as to profit-sharing shall be placed on or in the face of the policy, and such profit-sharing shall be uniform and shall not discriminate between individuals or between classes. No part of the profit shall be paid until the expiration of the policy. Any company, or any of its officers, directors, general agents, State agents, special agents, local agents or its representatives, doing any of the acts in this article prohibited, shall be deemed guilty of unjust discrimination. If any agent or company shall issue a policy without authority, and any policyholder holding such policy shall sustain a loss or damage thereunder, said company or companies shall be liable to the policyholder thereunder, in the same manner and to the same extent as if said company had been authorized to issue said policies, although the company issued said policy in violation of the provisions of this chapter. But this shall not be construed to give any company the right to issue any contract or policy of insurance other than as provided in this chapter. [Id.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4895. Not retroactive.—The provisions of this law shall not deal with the collection of premiums, but each company shall be permitted to make such rules and regulations as it may deem just between the company, its agents, and its policyholders; and no bona fide extension of credit shall be construed as a discrimination, or in violation of the provisions of this chapter. All policies heretofore issued which provide that said policies shall be void for nonpayment of premiums at a certain specified time, shall be and the same are in full force and effect, provided, that the company or any of its agents have accepted the premium on said policies after the expiration of the dates named in said provisions fixing the date of payment.

Art. 4896. Duty of Fire Marshal.—The State Fire Marshal,[1] at the discretion of the board, and upon the request of the mayor of any city or village, or the chief of a fire department of any city or village, or any fire marshal where a fire occurs within such city or village, or of a county or a district judge, or of a sheriff or county attorney of any county where a fire occurs within the district or county of the officers making such request, or of any fire insurance company, or its general, State or special agent, interested in a loss, or of a policyholder sustaining a loss, or upon the direction of the Insurance Commission shall forthwith investigate at the place of such fire before loss can be paid, the origin, cause and circumstances of any fire occurring within this State, whereby property has been destroyed or damaged, and shall ascertain if possible whether the same was the result of any accident, carelessness or design, and shall make a written report thereof to the Commission.[2] The State Fire Marshal shall have the power to administer oaths, take testimony, compel the attendance of witnesses and the production of documents. When, in his opinion, further investigation is necessary, he shall take

or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing, and if he shall be of the opinion that there is evidence sufficient to charge any person with arson, or with attempt to commit arson, or of conspiracy to defraud or criminal conduct in connection with such, he shall arrest or cause to be arrested such person, and shall furnish to the proper prosecuting attorney all evidence secured, together with the names of witnesses and all information obtained by him, including a copy of all material testimony taken in the case, and it shall be the duty of the State Fire Marshal to assist in the prosecution of all such complaints filed by him. All investigations held by or under the direction of the State Fire Marshal may, in his discretion, be private and persons other than those required to be present may be excluded from the place where such investigation is held, and the witnesses may be kept separate from each other and not allowed to communicate with such others until they have been examined; and all testimony taken in an investigation under the provisions of this law may, at the election of the State Fire Marshal, be withheld from the public. [Acts 1917, p. 137.]

1 Transfer of powers and duties of State Fire Marshal to Fire Insurance Commissioner, see article 4682a, ante.
2 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4897. Authority of Fire Marshal.—The State Fire Marshal [1] is hereby authorized to enter at any time any buildings or premises where fire occurred or is in progress, or any place contiguous thereto, for the purpose of investigating the cause, origin and circumstances of such fire. The State Fire Marshal, upon complaint of any person, shall, at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within this State, and it shall be his duty to enter upon and make or cause to be entered upon and made, at any time, a thorough examination of mercantile, manufacturing and public buildings, and all places of public amusement, or where public gatherings are held, together with the premises belonging thereto. Whenever he shall find any building or other structure which for want of repair or by reason of age or dilapidated condition, or which for any cause is liable to fire, and which is so situated as to endanger other buildings or property, or is so occupied that fire would endanger persons or property therein, and whenever he shall find an improper or dangerous arrangement of stoves, ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flues and pipes with which the same may be connected, or dangerous arrangement or lighting systems or devices, or dangerous storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, combustible, inflammable and refuse materials, or other conditions which may be dangerous in character, or liable to cause or promote fire, or create conditions dangerous to firemen or occupants, he shall order the same to be removed or remedied, and such order shall be forthwith complied with by the occupant or owner of such building or premises, and the State Fire Marshal is hereby authorized, when necessary, to apply to a court of competent jurisdiction for the necessary writs or orders to enforce the provisions of this article and in such case he shall not be required to give bond. [Id.]

1 Transfer of powers and duties of State Fire Marshal to Fire Insurance Commissioner, see article 4682a, ante.

Art. 4898. Acting Fire Marshal.—If for any reason the State Fire Marshal [1] is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the State Fire Marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as the State Insurance Commission [2] may allow. If the investigation of a fire is made at the request of an insurance company, or at the request of a policyholder sustaining loss, or at the request of the mayor, town clerk or chief of the fire department of any city, village or town in which the fire occurred, then the expenses of the Fire Marshal, clerical expenses, witnesses and officers fees incident and necessary to such investigation shall be paid by such insurance company, or such policyholder of such city or town as the case may be, otherwise the expenses of such investigation are to be paid as part of the expenses of the State Insurance Commission. The party or parties, company or companies, requesting such investigation, shall before such investigation is commenced deposit with the State Insurance Commission, an amount of money in the judgment of said Commission sufficient to defray the expenses of said Fire Marshal in conducting such investigation. [Acts 1913, p. 198.]

1 Transfer of powers and duties of State Fire Marshal to Fire Insurance Commissioner, see article 4682a, ante.
2 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4899. Result of investigation.—No action taken by the State Fire Marshal [1] shall affect the rights of any policyholder or any company in respect to a loss by reason of any fire so investigated; nor shall the result of any such investigation be given in evidence upon the trial of any civil action upon such policy, nor shall any statement made by any insurance company, its officers, agents or adjusters, nor by any policy holder, or any one representing him, made with reference to the origin, cause or supposed origin or cause of a fire to the Fire Marshal or to any one acting for him, or under his direction, be admitted in evidence or made the basis for any civil action for damages. [Id.]

1 Transfer of powers and duties of State Fire Marshal to Fire Insurance Commissioner, see article 4682a, ante.

Art. 4900. To cancel authority.—If any insurance company affected by the provisions of this law shall violate any provision of this chapter, the Commissioner [1] shall, by and with the consent of the Attorney General, cancel its certificate of authority to transact business in this State. [Id.]

1 Transfer of powers and duties of Commissioner of Insurance to Board of Insurance Commissioners, see article 4682a, ante.
See note under Article 4893, ante.

Art. 4901. Revocation of certificate.—The Commissioner of Insurance,[1] upon ascertaining that any insurance company or officer, agent or representative thereof, has violated any provision of this chapter, may, at his discretion, and with the consent and approval of the Attorney General, revoke the certificate of authority of such company, officer, agent or representative; but such revocation of any certificate shall in no manner affect the liability of such company, officer, agent or representative to the infliction of any other penalty provided by law. Any action, decision or determination of the Commissioner and the Attorney General in such cases shall be subject to the review of the courts of this State as herein provided. [Id.]

1 Transfer of powers and duties of Commissioner of Insurance to Board of Insurance Commissioners, see article 4682a, ante.
See note under Article 4893, ante.

Art. 4902. Tax on premiums as additional tax.—The State of Texas shall assess and collect not exceeding an additional one and one-fourth per cent of the gross fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries,

bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lock-out, explosion as defined in Article 4905A, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, insurance premiums of all companies doing such character of insurance business in this state according to reports made to the Board of Insurance Commissioners of Texas as required by law; and said taxes, when collected, shall be placed with the State Treasury, in a separate fund, which shall be known as the Fire Insurance Division Fund, which fund shall be kept separate and apart from other funds and moneys in his hands; and said special fund, or so much thereof as may be necessary, shall be held and expended for the purpose of carrying out the provisions of this Chapter; and should there be any unexpended balance at the end of any year, said balance shall remain in said fund and the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury, together with said unexpended balance in said fund in the Treasury, will be sufficient to pay all expenses for the current year and not exceed the amount necessary to pay all necessary expenses of maintaining the Fire Insurance Division of said Board, so that no deficit shall occur in said fund, which fund shall be paid out upon requisition made out and filed by a majority of the Commission, when the Comptroller shall issue warrants therefor. The taxes levied and assessed by this Section shall be independent of and in addition to all other taxes now imposed, or which may hereafter be imposed by law, against any company mentioned herein. [Acts 1920, 3rd C. S., p. 105; Acts 1931, 42nd Leg., p. 306, ch. 180, § 2; Acts 1937, 45th Leg., p. 29, ch. 24, § 1; Acts 1945, 49th Leg., p. 214, ch. 161, § 3.]

Art. 4903. Exceptions.—This law shall not apply to purely mutual or to purely profit-sharing fire insurance companies incorporated or unincorporated under the laws of this State, and carried on by the members thereof solely for the protection of their property and not for profit; nor to purely co-operative inter-insurance and reciprocal exchange carried on by the members thereof solely for the protection of their property and not for profit. [Acts 1920, 3rd C. S., p. 105.]

Art. 4904. Compensation of Commission.—The necessary compensation of experts, clerical force, and other persons employed by said Commission,[1] and all necessary traveling expenses, and such other expenses as may be necessary, incurred in carrying out the provisions of this chapter, shall be paid by warrants drawn by the Comptroller upon the State Treasurer upon the order of said Commission. The total amount of all salaries and said other expenses shall not exceed the sum produced by the assessment on the gross premiums of all fire insurance companies doing business in this State. [Acts 1917, p. 136.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4905. Additional compensation.—The necessary compensation of experts, the clerical force and other persons employed by the Commission [1] to carry out the purposes of the succeeding articles of this chapter, and all necessary traveling expenses and such other expenses as may be necessarily incurred in carrying out such provisions, shall be paid as provided in the preceding article. [Acts 1923, p. 408.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4905A. Provisions governing lightning, windstorm, hail, invasion, riot, vandalism, strikes, lockouts and other insurance; "explosion" defined.—The writing of insurance against loss by lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lock-out, explosion, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or openings in buildings, or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or containers, and the rates to be collected therefor in this state, and all matters pertaining to such insurance except as hereinafter set out as to inland marine insurance, rain insurance and insurance against loss by hail on farm crops, shall be governed and controlled by the provisions of Articles 4878 to 4901, inclusive, and also Articles 4903 to 4905, inclusive, of Chapter 10, Title 78, Revised Civil Statutes of 1925, including amendments to Article 4891, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said Articles of said Chapter.

The term "explosion" as used above shall not include insurance against loss of or damage to any property of the insured, resulting from the explosion of or injury to (a) any boiler, heater, or other fired pressure vessel; (b) any unfired pressure vessel; (c) pipes or containers connected with any of said boilers or vessels; (d) any engine, turbine, compressor, pump, or wheel; (e) any apparatus generating, transmitting or using electricity; (f) any other machinery or apparatus connected with or operated by any of the previously named boilers, vessels or machines; nor shall same include the making of inspections and issuance of certificates of inspections upon any such boiler, apparatus or machinery, whether insured or otherwise. Said term shall include, but shall not be limited to (1) the explosion of pressure vessels (except steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four families; (2) explosion of any kind originating outside of the insured buildings or outside of the building containing the property insured; (3) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jets; (4) electric disturbance causing or concomitant with an explosion in public service or public utility property. [Acts 1931, 42nd Leg., p. 306, ch. 180, § 1; Acts 1945, 49th Leg., p. 214, ch. 161, § 1.]

Art. 4905b. Application to inland marine insurance, rain insurance, or hail insurance; definitions; rates and rating plans filed; policy forms; checking offices.—The provisions of this Section shall apply to all insurance which is now or hereafter defined by statute, by ruling of the Board of Insurance Commissioners of Texas, hereinafter called Board, or by lawful custom, as inland marine insurance, rain insurance, or insurance against loss by hail on farm crops. None of the terms contained in this Act shall be deemed to include insurance of vessels or craft, their cargoes, marine builder's risk, marine protection and indemnity, or other risk commonly insured under marine as distinguished from inland marine insurance policies.

Whenever used in this Act the term "Marine Insurance" shall mean and include insurance and reinsurance against any and all kinds of loss or damage to the following subject matters of insurance and interest therein:

Marine Insurance. Hulls, vessels and craft of every kind, aids to navigation, dry docks and marine railways, including marine builders' and repairers' risks, and whether complete or in process of or awaiting construction; also all marine protection and indemnity risks; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation on or under any seas, lakes, rivers, or other waters or in the air, or on land in connection with or incident to export, import or waterborne risks, or while being assembled, packed, crated, baled, compressed or similarly prepared for such shipment or while awaiting the same, or during any delays, storage, trans-shipment or reshipment incident thereto, including the insurance of war risks in respect to any or all of the aforesaid subject matters of insurance.

(a) As to all classes of insurance contained in this Section 2, for which class rates or rating plans are customarily fixed by rating bureaus or associations of underwriters, rates or rating plans, together with applicable policy forms and endorsements, shall be filed by all authorized insurers writing such classes with the Board in such manner and form as it shall direct; and all rates on risks not falling within a recognized class fixed by any such bureau or association, together with applicable policy forms and endorsements, shall be similarly filed. Due consideration shall be given to past and prospective loss experience within and outside the state, including catastrophe hazard, to a reasonable margin for profit and contingencies, and to all other relevant factors within and outside the state.

(b) As soon as reasonably possible after the filing has been made, the Board shall in writing approve or disapprove the same; provided that any filing of class rates or rating plans, together with applicable policies and endorsements, shall be deemed approved unless disapproved within thirty days; provided the Board may by official order postpone action for such further time not exceeding thirty days, as it deems necessary for proper consideration; and provided further that rates on risks not falling within a recognized class fixed by a rating bureau or association of underwriters, together with applicable policies and endorsements, shall be deemed approved from the date of filing to the date of formal approval or disapproval. The Board may investigate rates not required to be filed under the provisions of this Section and may require the filing of any particular rate, together with applicable policies and endorsements, not otherwise required to be filed.

(c) Any filing by an insurer of a rate less than an approved rate relative to any of the rates mentioned in sub-division (a) of this Section may be used by such insurer after same shall have been approved by the Board, or after same shall have been on file with the Board without action for thirty days.

(d) If at any time the Board finds that an approved filing no longer meets the requirements of this Act, it may after hearing issue an order withdrawing its approval thereof.

(e) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the Board to accept such filings on its behalf. A corporation, an unincorporated association, a partnership, or an individual, whether located within or outside the state, may be licensed as a rating organization in connection with any of the sorts of insurance mentioned in this Section 2, subject to the conditions, not inconsistent herewith, prescribed by law for such organizations in connection with other kinds of insurance, provided two or more insurers have designated it to act for them as to any such class or classes of insurance in the manner prescribed herein. An insurer may belong or subscribe to rating bureaus or associations for other types of insurance.

(f) Insurers may, subject to the supervision of the Board, operate any checking office or offices deemed necessary or advisable.

(g) The writing of inland marine insurance, rain insurance and insurance against loss by hail on farm crops, shall be governed by the provisions of Articles 4878 to 4901, inclusive, and also Articles 4903 to 4905, inclusive, of Chapter 10, Title 78, Revised Civil Statutes of 1925, including amendments to Article 4891, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said Articles, except that whereever in any of said Articles reference is made to making, fixing, prescribing, determination or promulgation by the Board of rates or policy forms or endorsements, the provisions of this Section 2 shall control. [Acts 1945, 49th Leg., p. 214, ch. 161, § 2.]

Art. 4905c. County mutual associations excepted from Act.—Nothing in this entire Act [1] shall ever be construed to apply to any County mutual insurance company or association, as exempted under Senate Bill 121, Acts of the 45th Legislature, 1937.[2] [Acts 1945, 49th Leg., p. 214, ch. 161, § 4.]

[1] Articles 4902, 4905A, 4905B, 4905C.
[2] Article 4860a—20.

Art. 4906. [Repealed by Acts 1937, 45th Leg., p. 30, ch. 25, § 2.]

Art. 4907. Workmen's compensation rates.—The said Commission shall make, establish and promulgate all classifications of hazards and rates of premiums respectively applicable to each, contemplated and provided for by Title 130, known as the Workmen's Compensation Law [1] and/or by the "Longshoremen's and Harbor Workers' Compensation Act" as enacted by the Congress of the United States.[2] Said Commission shall publish all rates promulgated by it as affecting Compensation Insurance in this State, and said rates, or any change therein, shall be published fifteen days before they become effective and in force. [Acts 1923, p. 408; Acts 1931, 42nd Leg., p. 290, ch. 171, § 1.]

[1] Articles 8307–8309a, post.
[2] 33 U.S.C.A. §§ 901–950.

Art. 4908. To prescribe standard forms.—The Commission [1] shall prescribe standard policy forms to be used by all companies or associations writing workmen's compensation insurance in this State. No company or association authorized to write workmen's compensation insurance in this State shall, except as hereinafter provided for, use any classifications of hazards, rates of premium, or policy forms other than those made, established and promulgated and prescribed by the Commission. [Acts 1923, p. 408.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4909. To assemble data.—The Commission [1] shall assemble all necessary data for its use in establishing classifications of hazards and making and promulgating premium rates. [Id.]

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4910. May require statements.—The Commission [1] may require sworn statements from any in-

surance company or association affected by this law showing the payroll reported to it and incurred losses by classifications and such other information which in the judgment of the Commission may be necessary in determining proper classifications, rates and forms. The Commission shall prescribe the necessary forms for such statements and reports, having due regard to the methods and forms in use in other States for similar purpose in order that uniformity of statistics may not be disturbed. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4911. Experience rating.—The Commission [1] shall determine hazards by classes and fix such rates of premium applicable to the payroll in each of such classes as shall be adequate to the risks to which they apply and consistent with the maintenance of solvency and the creation of adequate reserves and a reasonable surplus, and for such purpose may adopt a system of schedule and experience rating in such manner as to take account of the peculiar hazard of each individual risk, provided such rate shall be fair and reasonable and not confiscatory as to any class of insurance carriers authorized by law to write workmen's compensation insurance in this State. To insure the adequacy and reasonableness of rates, the Commission shall take into consideration an experience gathered from a territory sufficiently broad to include the varying conditions of the industries in which the classifications are involved, and over a period sufficiently long to insure that the rates determined therefrom shall be just, reasonable, and adequate rates. The Commission shall exchange information and experience data with the rate-making bodies of other States and shall consult any national organization or association now or hereafter existing for the purpose of assembling data for the making of compensation insurance rate. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4912. Hearing before Commission.—Any policyholder, insurance company or association shall have the right to a hearing before the Commission [1] on any grievance occasioned by the promulgation of any classification, rate or policy form by the Commission; such hearing to be held in conformity with rules to be prescribed by the Commission. No hearing shall suspend the operation of any classification, rate or policy form unless the Commission shall so order. Provided that any party aggrieved shall have the right to apply to any Court of competent jurisdiction to obtain redress. [Acts 1923, p. 408; Acts 1943, 48th Leg., p. 614, ch. 355, § 1.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4913. Uniform policy.—The Commission [1] shall prescribe a uniform policy for workmen's compensation insurance and no company or association shall thereafter use any other form in writing workmen's compensation insurance in this State, provided that any company or association may use any form of endorsement appropriate to its plan of operation, if such endorsement shall be first submitted to and approved by the Commission, and any contract or agreement not written into the application and policy shall be void and of no effect and in violation of the provisions of this chapter, and shall be sufficient cause for revocation of license to write workmen's compensation insurance within this State. [Acts 1923, p. 408.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4914. Adequate reserves.—Nothing in this chapter shall be construed to prohibit the operation hereunder of any stock company, mutual company, reciprocal or inter-insurance exchange, or Lloyd's association, to prohibit any stock company, mutual company, reciprocal, or inter-insurance exchange or Lloyd's association, issuing participating policies, provided no dividend to subscribers under the Workmen's Compensation Act shall take effect until the same has been approved by the Commission.[1] No such dividend shall be approved until adequate reserve has been provided, said reserves to be computed on the same basis for all classes of companies or associations operating under this chapter, as prescribed under the insurance laws of the State of Texas. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4915. Commission to make rules.—The Commission [1] is hereby empowered to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of this law as are necessary to carry out its provisions. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4916. Scope of law.—No provision of the Act creating the State Insurance Commission,[1] with regard to the fixing and promulgation of rates for fire insurance or the prescribing of fire insurance policies and forms shall be applicable to the fixing of compensation insurance classifications or the making of compensation insurance rates or the prescribing of compensation insurance policy forms; but the provisions of this Act shall be construed and applied independently of any other law or laws, or parts of laws, having to do with the matter of insurance rates and forms or of fixing the duties of the State Insurance Commission. [Id.]

1 Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 4917. Definitions.—The words "Company" and "Association" used in this Act mean the Texas Employers Insurance Association, or any stock company, or any mutual company, or any reciprocal, or any inter-insurance exchange, or Lloyd's association authorized to write Workmen's Compensation Insurance in this State. [Id.]

Art. 4918. Cancellation of license.—The Commissioner [1] shall cancel the license of any insurance company or association of persons to transact workmen's compensation insurance business in this State upon a second conviction of any officer or representative of such company or association for a violation of any provision of this chapter relating to such business. [Id.]

1 Transfer of powers and duties of Commissioner of Insurance to Board of Insurance Commissioners, see article 4682a, ante.
See note under Article 4893, ante.

Art. 4918a. Tax on gross premiums for Workmen's Compensation Insurance.—To defray the expense of carrying out the provisions of Articles 4907 to 4918, inclusive, Chapter 10, Title 78, Revised Civil Statutes of Texas of 1925, there shall be annually assessed and collected by the State of Texas from each stock company, mutual company, reciprocal or interinsurance exchange, or Lloyds association writing Workmen's Compensation Insurance in this State, in addition to all other taxes now imposed, or which may hereafter be imposed by law, a tax of three-fifths of one per cent of gross premiums collected by such company or association during the preceding year, under Workmen's Compensation policies written by said companies or associations covering risks in this State, according to the reports made to the Commissioner as required by law. Said taxes when collected shall be placed in a separate fund with the State Treasury which shall be kept separate and apart from other funds and moneys in his hands, and shall be known as the Compensation

Insurance Division Fund, said Fund to be expended during the current and succeeding years, or so much thereof as may be necessary, in carrying out such provisions. Such expenditures hereunder shall not exceed in the aggregate the sum assessed and collected from said companies and associations; and should there be an unexpended balance at the end of any year, the Board of Insurance Commissioners shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the Treasury will be sufficient to pay all expenses of carrying out the provisions of said Articles, which funds shall be paid out upon requisition made out and filed by a majority of the Board of Insurance Commissioners when the Comptroller shall issue warrants therefor. Any amount remaining in said Fund at the end of any year shall be carried over and expended in accordance with the provisions of this Act during the subsequent year or years. [Acts 1937, 45th Leg., p. 30, ch. 25, § 1.]

Section 2 of the Act of 1937 repealed art. 4906 and section 3 provided that partial invalidity should not affect the remainder of the Act.

Art. 4918b. National Defense projects; special rates and rating plans for Workmen's Compensation, motor vehicle, and other casualty insurance.—Section 1. The Board of Insurance Commissioners of Texas is hereby authorized and empowered to make and promulgate special rates and special rating plans for Workmen's Compensation, Motor Vehicle and other lines of Casualty insurance to be applicable only to the construction or operation of National Defense Projects in Texas, and to make such special rates and special rating plans separately for each class of insurance, or in combination of all such classes. The Board shall also have authority to make and promulgate such rules and regulations as may be necessary, proper or advisable in placing such rates and plans in effect.

Sec. 2. The Board of Insurance Commissioners is hereby authorized and empowered to promulgate special rates and forms for fire and windstorm insurance, and other types of material damage insurance required or used upon such National Defense Projects, and the Board may also promulgate rules and regulations incidental to said business and necessary to place its special rates and forms in effect.

Sec. 3. This Act shall be cumulative of existing laws and applicable only to rates upon insurance in relation to National Defense Projects, and to the extent of such subject constitutes an exception to existing laws. [Acts 1941, 47th Leg., p. 796, ch. 494.]

CHAPTER 11.—FIRE AND MARINE COMPANIES

Art.
4919. What may be insured.
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Article 4919. [4862] What may be insured.—It shall be lawful for any insurance company doing business in this State under the proper certificate of authority, except a life or health insurance company, to insure houses, buildings and all other kinds of property against loss or damage by fire; to take all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water, or any vessel afloat, wherever the same may be; to lend money on bottomry or respondentia; to cause itself to be insured against any loss or risk it may have incurred in the course of its business and upon the interest which it may have in any property by means of any loan or loans which it may have on bottomry or respondentia; and generally to do and perform all other matters and things proper to promote these objects; insure automobiles or other motor vehicles, whether stationary or being operated under their own power, against all or any of the risks of fire, lightning, wind storms, hail storms, tornadoes, cyclones, explosions, transportation by land or water, theft and collisions, upon filing with the Commissioner [1] notification of their purpose to do so. [Acts 1875, p. 34; G. L. vol. 8, p. 406; Acts 1913, p. 209.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, 4682a, ante.

Art. 4920. [4865] [3077] Reduction of capital stock.—Whenever the joint stock of any fire, fire and marine, or marine insurance company of this State becomes impaired, the Commissioner [1] may, in his discretion, permit the said company to reduce its capital stock and par value of its shares in proportion to the extent of impairment. In fixing such reduced capital, no sum exceeding twenty-five thousand dollars shall be deducted from the assets and property on hand, which shall be retained as surplus assets. No part of such assets and property shall be distributed to the stockholders, nor shall the capital stock of a company in any case be reduced to an amount less than one hundred thousand dollars. [Acts 1876, p. 222; G. L., vol. 8, p. 1058.]

[1] See note under Article 4919, ante.

Art. 4921. [4864] [3078] Capital stock to be made good.—Any fire, marine or inland insurance company having received notice from the Commissioner [1] to make good its whole capital stock within sixty days shall forthwith call upon its stockholders for such amounts as shall make its capital equal to the amount fixed by the charter of such company. [Id]

[1] See note under Article 4919, ante.

Art. 4922. [4865] [3079] Stockholder failing to pay.—If any stockholder of such company shall neglect or refuse to pay the amount so called for, after notice personally given, or by advertisement for such time and in such manner as said Commissioner [1] shall approve, it shall be lawful for said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue a new certificate for such number of shares as such defaulting stockholders may be entitled to in the proportion that the ascertained value of the funds of said company may be found to bear to the original capital of said company; the value of such shares for which new certificates are issued shall be ascertained under the direction of said Commissioner, and the company shall pay for the fractional parts of shares. [Id.]

[1] See note under Article 4919, ante.

Art. 4923. [4866] [3080] New stock.—It shall be lawful for such company to create new stock and dispose of the same and to issue new certificates therefor, to any amount sufficient to make up the original capital of the company. [Id.]

Art. 4924. [4869] [3076] Holding real estate.—No fire, marine or inland insurance company organized under the laws of this State shall purchase or hold any real estate, except—

1. Such as shall be requisite for its convenient accommodation in the transaction of its business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due.

4. Such as shall have been purchased at sales under judgments, decrees or mortgages obtained or made for such debts.

All lands purchased or held in violation of this article shall be forfeited to the State. [Id.]

Art. 4925. [4870] Shall file bond.—Every fire insurance company, not organized under the laws of this State, applying for a certificate of authority to transact any kind of insurance in this State, shall, before obtaining such certificate, file with the Commissioner a bond, with good and sufficient surety or sureties, to be approved by and to be payable to the Commissioner and his successors in office, in a sum equal to twenty-five (25%) per cent of its premiums collected from citizens or upon property in this State during the preceding calendar year, as shown by its annual report for such year. The bond in no case shall be less than Ten Thousand ($10,000.00) Dollars, nor more than Seventy-five Thousand ($75,000.00) Dollars, conditioned that said company will pay all its lawful obligations to citizens of this State. Such bonds shall be subject to successive suits by citizens of this State so long as any part of the same shall not be exhausted, and the same shall be kept in force until all claims of such citizens arising out of obligations of said company have been fully satisfied, but in no event shall the total recoveries permitted on said bonds exceed the face value thereof. Such bonds shall provide that in the event the company shall become insolvent or cease to transact business in this State, at any time, when it has outstanding policies of insurance in favor of citizens of this State, or upon property in this State, the Commissioner shall have power, after having given ten (10) days notice to the officers of such company, or any receiver in charge of its property and affairs, to contract with any other insurance company transacting business in this State for the assumption and reinsurance by it of all the insurance risks outstanding in this State of such company which is insolvent, or which has ceased to transact business in this State, which contract shall also provide for the assumption by such reinsurance company of all outstanding and unsatisfied lawful claims then outstanding against such company which has become insolvent, or ceased to transact business in this State. In the event of the Commissioner making any such contract, and if the same shall be approved as reasonable by the Attorney General and the Governor of this State, the reinsuring company shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agreed upon for such reinsurance. Any company desiring to do so may, at its option, in lieu of giving the bond required by this Article, deposit securities of any kind in which it may lawfully invest its funds with the State Treasurer upon such terms and conditions as will in all respects afford the same protection and indemnity as herein provided for to be afforded by said bond. [Acts 1909, p. 182; Acts 1937, 45th Leg., p. 1255, ch. 472, § 1.]

Art. 4926. [4871] May deposit securities.—Every fire insurance company, not organized under the laws of this State, hereafter issuing or causing or authorizing to be issued, any policy of insurance other than life insurance, shall first have filed with the Commissioner [1] during the calendar year in which such policy may issue, or authorize or cause to be issued, a bond of good and sufficient sureties to be approved by such Commissioner in a sum of not less than Ten Thousand ($10,000.00) Dollars, conditioned for the payment of all lawful obligations to citizens of this State arising out of any policies or contracts issued by such fire insurance company; which such bonds shall be subject to successive suits by citizens of this State so long as any part of the same shall not be adjusted, and so long as there remains outstanding any such obligations or contracts of such fire insurance company, but in no event shall the total recoveries permitted on said bond exceed the face value thereof. This Article shall not apply to any person, firm or corporation, or association, doing an inter-insurance, co-operative or reciprocal business. [Acts 1909, p. 182; Acts 1937, 45th Leg., p. 1255, ch. 472, § 2.]

[1] See note under article 4919, ante.

Art. 4927. [4872] [3083] Annual statement.—The president or vice-president and secretary of each fire, marine or inland insurance company doing business in this State, annually, on the first day of each year, or within sixty days thereafter, shall prepare under oath and deposit with the Commissioner [1] a full, true and complete statement of the condition of such company on the last day of the month of December preceding. [Act Feb. 17, 1875, p. 37; G. L., vol. 8, p. 409.]

[1] See note under Article 4919, ante.

Art. 4928. [4873] [3084] Details of annual statement.—Such annual statement shall exhibit the following items and facts:

1. The name of the company and where located.
2. The names and residence of the officers.
3. The amount of the capital stock of the company.
4. The amount of capital stock paid up.
5. The property or assets held by the company, viz: The real estate owned by such company, its location, description and value as near as may be, and if said company be one organized under the laws of this State, shall accompany such statement with an abstract of the title to the same; the amount of cash on hand and deposited in banks to the credit of the company, and in what bank or banks the same is deposited; the amount of cash in the hands of agents, naming such agents: the amount of cash in course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, its value and the name of the mortgagor; the amount of all bonds and other loans, with the rate of interest thereon and how secured; the amount due the company in which judgments have been obtained, describing such judgments; the amount of stock of this State, of the United States, of any incorporated city of this State, and of any other stock owned by the company, describing the same and specifying the amount and number of shares, and the par and market value of each kind of stock; the amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; the amount of interest actually due to the company and unpaid; all other securities, their description and value.
6. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the cause thereof; losses resisted and in litigation; dividends, either in scrip or cash, specifying the amount of each declared but not due; dividends declared and due; the amount required to reinsure all outstanding risks on the basis of forty per cent of the premium on all unexpired fire risks and one hundred per cent of the premium on all unexpired marine and inland transportation risks; the amount due banks or other creditors, naming such banks or other creditors and the amount due to each; the amount of money borrowed by the company, of whom borrowed, the rate of interest thereon and how secured; all other claims against the company, describing the same.
7. The income of the company during the preceding year, stating the amount received for premiums, specifying separately fire, marine and inland transportation premiums, deducting reinsurance; the amount received for interest, and from all other sources.

8. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid for return premiums, commissions, salaries, expenses, and other charges of officers, agents, clerks and other employés; the amount paid for local, state, national, internal revenue and other taxes and duties; the amount paid for all other expenses such as fees, printing, stationery, rents, furniture, etc.

9. The largest amount insured in any one risk, naming the risk.

10. The amount of risks written during the preceding year.

11. The amount of risks in force having less than one year to run.

12. The amount of risks in force having more than one and not over three years to run.

13. The amount of risks having more than three years to run.

14. Whether or not dividends are declared on premiums received for risks not terminated. [Id.]

Art. 4929. [4874] [3089] Policy a liquidated demand.—A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. The provisions of this article shall not apply to personal property. [Acts 1879, p. 83.]

Art. 4930. Breach by insured.—No breach or violation by the insured of any warranty, condition or provision of any fire insurance policy, contract of insurance, or application therefor, upon personal property, shall render void the policy or contract, or constitute a defense to a suit for loss thereon, unless such breach or violation contributed to bring about the destruction of the property. [Acts 1913, p. 194; Acts 1927, 40th Leg., p. 48, ch. 33, § 1.]

Art. 4931. Interest of mortgagee or trustee.—The interest of a mortgagee or trustee under any fire insurance contract hereafter issued covering any property situated in this State shall not be invalidated by any act of neglect of the mortgagee or owner of said described property or the happening of any condition beyond his control, and any stipulation in any contract in conflict herewith shall be null and void. [Acts 1919, p. 20.]

Acts 1919, p. 20, ch. 15, § 1, from which the above article is taken, reads "act or neglect of the mortgagor," instead of "act of neglect of the mortgagee" in line 5.

Art. 4932. [4875] [3075] Re-insurance.—1. No fire, fire and marine, marine or inland insurance company doing business in this state shall expose itself to any one risk, except when insuring cotton in bales, and grain, to an amount exceeding ten (10%) per cent of its paid up capital stock and surplus, in the case of companies incorporated under the laws of the United States or of any state of the United States, unless the excess shall be insured by such company in some other solvent insurance company legally authorized to do business in this state. In the case of companies incorporated under some other jurisdiction than the United States or a state of the United States, the maximum net retention under this Article shall not exceed ten (10%) per cent of the deposit with the statutory officer in the state through which the company gained admittance to the United States, plus ten (10%) per cent of the other surplus to policy-holders of the company's United States branch; and the re-insurance in all such cases shall be with some other solvent insurance company legally authorized to do such business in this state. [As amended Acts 1943, 48th Leg., p. 584, ch. 342, § 1.]

2. Every fire, fire and marine, marine or inland insurance company doing business in this State may reinsure the whole or any part of any policy obligation in any other insurance company legally authorized to do business in this State. The Commissioner [1] shall require every year from every insurance company doing business in this State a certificate sworn to before an officer in this State to the effect that no part of the business written by such company in this State has been re-insured in whole or in part by any company, corporation, association or society not authorized to do business in this State. Every insurance company doing business shall also furnish the Commissioner with a list of re-insurances during the year in authorized companies, showing the name, amount and premium effected in each company.

3. Any insurance company authorized to transact the business of fire, fire and marine, marine and inland insurance in this State failing to comply with any provisions of this article, shall forfeit its authority to do business for a period of one year. The Commissioner shall investigate any complaint as to such violation and upon satisfactory proof that any company authorized to transact the business of fire, fire and marine, marine or inland insurance in this State has violated any provision of this article, the Commissioner shall revoke the certificate of authority of the offending company.

4. The Commissioner upon payment of license fee of twenty-five dollars, may issue to an agent who is regularly commissioned to represent one or more fire, fire and marine insurance companies authorized to do business in this State, a certificate of authority to place excess lines of insurance in companies not authorized to do business in this State, provided the party desiring such excess insurance shall first file with the Commissioner an affidavit that he has exhausted all the insurance obtainable from companies duly authorized to do business in the State.

5. Before receiving license provided for in section 4 of this article, the party applying for same shall file with the Commissioner a bond in the sum of one thousand dollars, payable to the Governor for the faithful observance of the provisions of this article. Said bond to be approved by the Commissioner, and to be for the benefit of the State of Texas.

6. Every agent so licensed shall report, under oath, to the Commissioner within thirty days from the first day of January and July of each year, the amount of gross premiums received by him for such excess insurance, and shall pay the Commissioner a tax of five per cent thereon. The agent procuring a license as provided in this article shall keep a separate record of all transactions herein provided open at all times to the inspection of the Commissioner, or his legally appointed representative. In default of the payment of any sum which may be due the State under this article, the Commissioner may sue for the same. [Act Feb. 17, 1875, p. 34; G. L., vol. 8, p. 406; Acts 1905, p. 112.]

[1] See note under Article 4919, ante.

Section 2 of the Act of 1943 provided that a holding of partial invalidity should not affect the remaining portions of the act.

CHAPTER 12.—FIRE, LIGHTNING, HAIL AND STORM COMPANIES

Art.
4933–4940. [Repealed.]
4941. Investment of funds.
4942–4949. [Repealed.]

Arts. 4933–4940. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18; Acts 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1.]

Repeal does not apply to or affect any company or association doing business under repealed law, see Article 4860a—18, ante.

Art. 4941. Investment of funds.—Funds of mutual companies may be invested in United States Bonds, Texas State Bonds, county or city bonds of this State, if such bonds are issued by authority of law and interest upon them has never been defaulted; or in first mortgages on improved real estate within the State where the first mortgage does not exceed fifty (50) per cent of the value of the land and improvements thereon; or in notes or bonds secured by mortgage or deed of trust insured by the Federal Housing Administrator; provided that the above restrictions concerning mortgage loans shall not apply to such insured securities. [Acts 1935, 44th Leg., p. 20, ch. 5, § 1; Acts 1937, 45th Leg., p. 1297, ch. 483, § 1.]

Arts. 4942–4949. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 18, 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1.]

See note under Article 4933, ante.

CHAPTERS 13–15.—MUTUAL HAIL, PRINTERS FIRE AND STORM, AND THIEVERY

Art.
4950–4968. [Repealed.]

Arts. 4950–4968. [Repealed by Acts 1929, 41st Leg.,1st C.S., p. 90, ch. 40, § 18, 1929, 41st Leg., 2nd C.S., p. 99, ch. 60, § 1.]

Repeal does not apply to or affect any company or association doing business under repealed laws, see article 4860a—18, ante.

CHAPTER 16.—SURETY AND TRUST COMPANIES

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1. FIDELITY, GUARANTY AND SURETY COMPANIES

Article 4969. [4928] To act as surety.—Private corporations may be created to act as trustee, assignee, executor, administrator, guardian and receiver, when designated by any person, corporation or court to do so; to do a general fiduciary and depository business; to act as surety and guarantor of the fidelity of employees, trustees, executors, administrators, guardians or others appointed to, or assuming the performance of any trust, public or private, under appointment of any court or tribunal, or under contract between private individuals or corporations; also upon any bond or bonds that may be required to be filed in any judiciary proceedings; also to guarantee any contract or undertaking between individuals, or between private corporations, or between individuals or private corporations and the State and municipal corporations or counties or between corporations and individuals; to act as executor and testamentary guardian when designated by such decedents; or to act as administrator or guardian when appointed by any court having jurisdiction; also on any bond or bonds that may be required of any State official, district official, county official or official of any school district or of any municipality, provided that the commissioners courts of each county shall have the right to reject any or all official bonds made by surety companies and in their discretion may require any or all officials to make their official bonds by personal sureties. Any such bond may be accepted and approved by the officer charged by law with the duty of accepting and approving the same without being signed by other securities than such corporation. When any such bond shall exceed fifty thousand dollars in penal sum, the officer charged by law with the duty of approving and accepting such bond, may require that such bond be signed by two or more surety companies, or by one surety company and two or more good and sufficient personal sureties, in the discretion of the principal or official of whom the bond is required, and any statute or law to the contrary, or requiring any such bond to be signed by two or more good and sufficient sureties, shall be governed and controlled by the provisions of this article. Each corporation, making or offering to make any bond under this article, shall publish in some newspaper of general circulation in the county where such company is organized or has its principal office on the first day of February of each year, a statement of its condition on the previous thirty-first day of December, showing under oath its assets and liabilities. A copy of said statement shall be filed with the Commissioner [1] before the 1st day of March of the year following, and a fee of twenty-five dollars be paid to that office for filing the same, and an examination of its affairs may be made at any time by said Commissioner at the expense of the company. Said corporation organized under the provisions of this article shall have a paid up capital stock of not less than $100,000.00 and shall keep on deposit with the State Treasurer money, bonds or other securities in an amount not less than $50,000.00. Said securities shall be approved by the Commissioner and this amount shall be kept intact at all times. All foreign corporations transacting the business of a guaranty and fidelity company in this State shall file with the Commissioner an affidavit showing that such foreign company has on deposit with the State Treasurer of its home state $100,000.00 or more, in money, bonds or other securities for the protection of its policyholders. [Acts 1897, p. 128; 1903, p. 197; 1913, p. 123.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, 4682a, ante.

Art. 4970. [4929] Bond of surety company.—Whenever any bond, undertaking, recognizance or other obligation is, by law or the charter, ordinances, rules and regulations of a municipality, board, body, organization, court, judge or public officer, required or permitted to be made, given, tendered or filed, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a surety company, qualified as hereinbefore provided; and such execution by such company of such bond, undertaking, obligation, recognizance or guarantee shall be in all respects a full and complete compliance with every law, charter, rule or regulation that such bond, undertaking, obligation, recognizance or guarantee shall be executed by one surety or by one or more sureties, or that such sureties shall be residents, or householders, or freeholders, or either, or both, or possess any other qualification and all courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat such bond, undertaking, obligation, recognizance or guarantee when so executed by such

company, as conforming to, and fully and completely complying with, every requirement of every such law, charter, ordinance, rule or regulation. Any suit on any bond issued under this and the preceding article shall be brought at the place as provided for in this chapter, and if the corporation issuing the bond sued on has no agent in the county where said bond was issued then the Commissioner [1] is made, by consent of the said company, its agent on whom service of process may be held. [Id.]

[1] See note under Article 4969, ante.

Art. 4971. [4930] Requirements to be complied with.—Such company to be qualified to so act as surety or guarantor, must comply with the requirements of every law of this State applicable to such company doing business therein; must be authorized under the laws of the State where incorporated, and under its charter, to become surety upon such bond, undertaking, obligation, recognizance or guarantee; must have a fully paid up and safely unimpaired capital of at least one hundred thousand dollars; must have good available assets exceeding its liabilities, which liabilities for the purpose of this subdivision shall be taken to be its capital stock, its outstanding debts and a premium reserve at the rate of fifty per cent of the current annual premiums on each outstanding bond, undertaking, recognizance and obligation of like character in force; must file with the Commissioner,[1] a certified copy of its certificate of incorporation, a written application to be authorized to do business under this subdivision and also, with such application, and in each year thereafter, a statement verified under oath made up to December 31, preceding, stating the amount of its paid up cash capital, particularizing each item of investment, the amount of premiums upon existing bonds, undertakings, recognizances and obligations of like character in force upon which it is surety; the amount of liability for unearned portion thereof estimated at the rate of fifty per cent of the current annual premiums on each such bond, undertaking, recognizance and obligation in force, stating also the amount of its outstanding debts of all kinds, and such further facts as may be by the laws of this State required of such company in transacting business therein. If such company be organized under the laws of any other state it must also have on deposit with a State officer of one of the states of the United States, not less than one hundred thousand dollars in good securities, deposited with and held by such officer for the benefit of the holders of all obligations wheresoever incurred; must also appoint an attorney in this State upon whom process of law can be served, which appointment shall continue until revoked or another attorney substituted, and must file with the Commissioner written evidence of such appointment, which shall state the residence and office of such attorney; and such service of process may also be made upon the Commissioner, by virtue of his office, and shall be as effective as if made upon said attorney; and must, also, have on deposit with the Treasurer of this State at least fifty thousand dollars in good securities worth at par and market value, at least that sum of the value of which securities the Commissioner shall judge, held for the benefit of the holders of all the obligations of such company wheresoever incurred; said securities so deposited with said Treasurer to remain with him in trust to answer any default of said company as surety upon any such bond, undertaking, recognizance or other obligation established by final judgment in whatsoever court and wheresoever rendered upon which execution may lawfully be issued against said company; said Treasurer and his successors in office being hereby directed to so receive and hereafter retain such deposit under this law in trust for the purposes hereof; such company, however, at all times to have the right to collect the interest, dividends and profits upon such securities, and from time to time, to withdraw such securities, or portions thereof, substituting therefor others of equally good character and value, to the satisfaction of said Treasurer; and such securities and substitutes therefor shall be at all times, exempt from and not subject to levy under writ or process of attachment; and shall not be sold under any process against such company until after thirty days notice to said company, specifying the time, place, and manner of such sale, and the process under which and purposes for which it is to be made, accompanied by a copy of such process. Whenever any such company, domestic or foreign, has been engaged in this State in the business contemplated by this law, has made a deposit in this state, in trust or otherwise, of securities, to answer any default of such company upon any such bond, undertaking, recognizance, guaranty or stipulation, such securities so deposited shall be by the trustee or custodian thereof transferred and delivered to the State Treasurer in trust for the same purposes and subject to all the rights and equities of all parties interested, and to the terms and provisions of this law; and thereupon, such deposit shall remain in trust under and subject to the terms and provisions of this law. Whenever such deposit has been made with a trustee by order of any court or other authority, it shall be the duty of the court or other authority, by order or otherwise, to direct such transfer to said Treasurer; and in case such deposit is less than the sum of fifty thousand dollars, then said company must deposit with said Treasurer securities sufficient to increase said deposit to the sum of fifty thousand dollars as required by this subdivision. Domestic corporations chartered for the purpose of doing business under this subdivision within this State alone shall be required to deposit securities as hereinbefore provided for to the amount of twenty-five thousand dollars. [Acts 1897, p. 244; Acts 1st C. S. 1921, p. 4.]

[1] See note under Article 4969, ante.

Art. 4972. [4931] Certificate to issue.—The Commissioner [1] upon due proof by any such company of its possessing the qualifications in this subdivision specified, shall issue to such company a certificate setting forth that such company has qualified, and is authorized for the ensuing year to do business under this subdivision, which said certificate shall be evidence of such qualification of such company, and of its authorization to become and to be accepted as sole surety on all bonds, undertakings, recognizances and obligations required or permitted by law or the charter, ordinance, rules or regulations of any municipality, board, body, organization or public officer, and the solvency or credit of such company for all purposes, and its sufficiency as such surety. [Acts 1897, p. 244.]

[1] See note under Article 4969, ante.

Art. 4973. [4932] Certificate to be surrendered.—Any such company, domestic or foreign, may at any time surrender to the Commissioner [1] its said certificate of qualification, and shall thereupon cease to engage in said business of suretyship; and such company shall thereupon be entitled to the release and return of its said deposit as aforesaid in manner following: Said company shall file with said Commissioner a statement in writing, under oath, giving the date, name and amount of all its then existing obligations of suretyship in this State, briefly stating the facts of each case to said commissioner, who after examination of the facts, shall require said company to file with the State Treasurer a bond payable to the State, in a sum equal to the whole amount of its liability in this State, under its contracts, conditioned for the faithful performance and fulfillment of all its outstanding obligations, or it may, at its option, reinsure its risks in some surety company authorized to do business in this State, or cancel all bonds on which it is liable, and return a pro rata of the premium re-

ceived thereon, whenever such cancellation and return can be done without impairing its obligation to third parties. [Id. sec. 4.]

[1] See note under Article 4969, ante.

Art. 4974. [4933] May withdraw from bond.—Any surety company may withdraw from the bond of any trustee, guardian, assignee, receiver, executor, administrator or other fiduciary, in like manner and by like proceeding as is now provided by law in the case of individual sureties. [Id. sec. 5.]

Art. 4975. [4934] Venue of suit on bond.—If any suit shall be instituted upon any bond or obligation of any surety company, the proper court of the county wherein said bond is filed shall have jurisdiction of said cause. Service therein shall be made, either upon the attorney for said company, by this subdivision required to be appointed, or upon the Commissioner; [1] and such service shall be to all intents valid and effectual as service upon said company. Such guaranty, fidelity and surety companies shall be deemed resident of the counties wherever they may do business, and the doing or performing any business in any county shall be deemed an acceptance of the provisions of this subdivision. [Id. sec. 6]

[1] See note under Article 4969, ante.

Art. 4976. [4935] Defaulting company; claims paid.—Should any company of the character mentioned in this subdivision fail or refuse to pay any loss by it whatsoever [1] incurred within sixty days after its liability thereupon shall have been finally determined by the judgment of any court of competent jurisdiction wheresoever rendered, then upon satisfactory proof to the Treasurer of this State of such liability and of its nonpayment, said Treasurer shall, out of the deposits so made with him, as by this subdivision provided, pay said loss and when he shall have done so he shall at once certify to the Commissioner [2] the fact of such default on the part of said company; whereupon said Commissioner shall forthwith cancel and annul the certificate of authority of such company to do business in this State. Such payment shall not operate to release the company from payment of any balance which it still may owe after such payment by the Treasurer of this State has been made. [Id. Acts 1st C. S. 1921, p. 5.]

[1] So in enrolled bill. Should probably read "wheresoever."
[2] See note under Article 4969, ante.

Art. 4977. [4936] Who are agents.—Any person who solicits business for or on behalf of such corporation, or makes or transmits, for any person other than himself, any application for guaranty or security, or who advertises or otherwise gives notice that he will receive or transmit same, or who shall receive or transmit same, or who shall receive or deliver a contract of guaranty or security, or who shall examine or investigate the character of any applicant for guaranty or security other than himself, or who shall refer any applicant for guaranty or security to such corporation, whether any of said acts shall be done at the instance and request, or by the employment of such corporation or other corporation or person, or any person who shall issue indemnifying bonds or contracts, whose solvency and compliance with his said bonds or obligations is guaranteed, directly or indirectly, by any corporation, shall be held to be the agent of such corporation so far as relates to all the liabilities and penalties prescribed by this subdivision. [Acts 1897, p. 244, sec. 8.]

Art. 4978. [4937] Penalty.—Any person, association of persons, or corporations, who shall accept any corporation created for the purposes, or either of them, mentioned in the first article of this subdivision without such corporation having previously complied with the provisions and requirements of this subdivision and having received from the Commissioner [1] of Insurance the certificate of authority provided for in this subdivision shall forfeit as a penalty the sum of five hundred dollars to be recovered by suit in the name of the State. [Id. sec. 9.]

[1] See note under Article 4969, ante.

Art. 4979. [4938] Cancellation of bond.—When any corporation shall cancel a bond of guaranty or indemnity, or shall notify the employer of the person whose fidelity is guaranteed that said corporation will no longer guarantee or be security for the fidelity of said person, or when said corporation has once guaranteed the fidelity of any person, or acted as security therefor, and on application refuses to do so again, it shall furnish to such person a full statement in writing of the facts on which the action of the corporation is based, and if such action be based in whole or in part on information, all such information. Any such corporation failing or refusing to furnish any such written statement within thirty days after a request therefor, shall be liable to such person injured in the sum of five hundred dollars, in addition to all other damages caused thereby. [Id. sec. 10.]

This article is, in a proper proceeding, subject to objection that it is not within the police power and that it interferes with constitutional rights to contract and to free speech. Fidelity & Deposit Co. of Maryland v. Pence, Civ.App., 272 S.W. 234.

Art. 4980. [4939] Authority revoked, when.—If any such corporation shall fail or refuse to comply with the provisions of this subdivision, the Commissioner [1] shall revoke its certificate of authority. [Id. sec. 11.]

[1] See note under Article 4969, ante.

Art. 4981. [4940] Charged with public use.—Corporations created for the purposes mentioned in Article 4969 are hereby declared to be charged with a public use. [Id. sec. 12.]

2. TRUST COMPANIES

Art. 4982. [540–44] Powers.—Any person or association of persons, any State banking corporation or any other domestic corporation, or any corporation organized under the laws of any other State, provided such foreign corporation complies with the laws of this State relating to insurance other than life, may exercise the following powers by complying with the provisions of this subdivision:

1. Qualify as guardian, curator, executor, administrator, assignee, receiver, trustee by appointment of any court or under will, or depositary of money in court, without giving bond as such.

2. Become sole guarantor or surety in or upon any bond required to be given under the laws of this State, any other statute to the contrary notwithstanding. [Acts 1st C. S. 1905, p. 513.]

Art. 4983. [540–41–43] Requirements.—Those included in the provisions of this subdivision shall:

1. Deposit with the State Treasurer fifty thousand dollars consisting of cash, treasury notes of the United States, or government, State, county, municipal or other bonds, notes, or debentures, secured by first mortgages or deeds of trust, or mortgages or deeds of trust on unencumbered real estate in Texas worth at least double the amount loaned thereon, or such other first class securities as the Commissioner [1] may approve. Said bonds or securities shall not be received or held at a rate above par, but if their market value is less than par they shall not be held above their actual market value. The State Treasurer shall require any such depositor to replace any securities so deposited on which the interest shall not be paid within six months after maturity, by other securities equal in amount to those removed, upon which the interest has not been defaulted. The funds so deposited shall be primarily liable for the obligations of the depositor in any capacity herein authorized, and shall not be liable for any other debt or obligation of the depositor until all such trust liabilities have been discharged.

2. Satisfy the Commissioner of its solvency. The Commissioner shall issue any such depositor, when satisfied it is solvent and has made the required deposit, a certificate showing such facts.

3. Maintain a premium reserve of the amount required to reinsure all outstanding risks, to be determined by taking fifty per cent of the premiums of all unexpired risks that have less than one year to run, and a pro rata of all gross premiums on risks that have more than one year to run.

4. File with the Commissioner, within sixty days after the first day of each January, a report sworn to by its president and secretary or by two of its principal officers, as to the surety and bond business done by the same during the preceding year.

5. Pay taxes on its surety and bond business as required of other surety companies. [Id.]

[1] See note under Article 4969, ante.

Art. 4984. [540] Authority to act.—Whenever any such depositor shall exhibit said certificate to the court, judge, clerk or other officer making the appointment herein authorized, or whose duty it is to approve any bond, such court or officer may appoint such depositor to such office or trust, or permit it to become surety on such bond. [Id.]

Art. 4985. [545] Other trust powers.—Those complying with the provisions of this law shall not exercise any other powers conferred by law upon State banking and trust companies, except those herein authorized, unless such depositor shall have, at the time of making such deposit, a paid up capital or surplus of at least one hundred thousand dollars in addition to said deposit. [Id.]

Art. 4986. [542] Statutes applicable.—All articles of the statutes so far as the same are applicable and not inconsistent with the provisions of law governing banks and banking corporations shall apply to all companies doing business hereunder. [Id.]

CHAPTER 17.—EMPLOYERS LIABILITY INSURANCE COMPANIES

Art.
4987. Calculation and report of reserve.
4988. Certificates from other States.

Article 4987. [4941] Calculation and report of reserve.—Every insurance company which has for ten years or more undertaken to insure persons, firms or corporations against loss or damage on account of the bodily injury or death by accident of any person, for which loss or damage said persons, firms or corporations are respectively responsible, shall, on or before the first day of October in each year, render to the Commissioner of Insurance [1] a statement in writing of its business transacted in the United States, which shall show separately for each of the five calendar years constituting the first half of the period of ten years next preceding the thirty-first day of December of the year in which the statement is made:

1. The number of persons reported injured under all its forms of liability policies, whether such injuries were reported to the home office of the company or to any of its representatives, and whether such injury resulted in loss to the company or not.

2. The amount that, on or before the thirty-first day of August of the year in which the statement is made, had been paid on account or in consequence of all injuries so reported, including therein all payments on suits arising from such injuries.

3. The number of suits or actions under such policies on account of injuries reported which have been settled, either by payments or compromise.

4. The amount paid in settlement of such suits or actions on or before the thirty-first day of August of the year when the statement is made, including therein all payments made on account or in consequence of injuries from which the suits arose, whether prior to or later than the date when the suits were brought. Every such company shall, in its financial statements hereafter made in this State, use the experience so ascertained for computing its outstanding losses under all its forms of liability policies, irrespective of the date when the policies were issued. The average cost per suit of settling such cases, as computed by the data required in this article, shall be multiplied by the number of suits or actions pending on account of injuries reported prior to eighteen months previous to the date on which the condition of the company is to be ascertained and shown, which suits or actions are being defended for or on account of a holder of any such policy, also the average cost on account of each injured person, determined as aforesaid from the company's experience, shall be multiplied by the number of injuries reported within the eighteen months prior to making the statement of the company's condition, whether such injuries were reported to the home office of the company or to any of its representatives. From the sum of these two products so ascertained there shall be deducted the amount of all payments made on account or in consequence of said injuries reported within eighteen months, this amount so deducted to be taken as of the date at which the said statement is made. The sum remaining after making this deduction shall be charged as the liability of the company on account of outstanding losses. Any admitted company issuing liability contracts, which, by reason of its limited experience in liability underwriting, cannot furnish the information required by this article shall, nevertheless, until it is able to comply with said requirements, be charged with a liability for outstanding losses upon all kinds of its liability policies an amount not less than the amount resulting from the following process:

The number of suits or actions pending on account of injuries reported prior to eighteen months previous to the date of making up the statement, whether such injuries were reported to the home office of the company or to any of its representatives, which are being defended on account of the holder of any policy, shall be multiplied by the average cost per suit as shown by the average experience of all other admitted liability companies ascertained from the data required by this article, also the number of injuries reported under said policies at any time within eighteen months of making up the statement, whether reported to the home office of the company or to any of its representatives, and whether such injuries resulted in loss to the company or not, shall be multiplied by the average cost for each injured person as shown by the average of said experience of all other admitted liability companies, ascertained from the data required by this article. From the sum of these two products there shall be deducted the amount of all payments made on account of or in consequence of said injuries reported within eighteen months, this amount to be taken as of the date at which the statement is made. A sum not less than the amount remaining after this deduction shall be charged as a liability for outstanding losses to the liability companies covered by the provisions of this paragraph. The average costs for suits and for injured persons required by this paragraph shall, on or before the first day of December of each year, be furnished by the Commissioner [1] to every such company which has not had an experience of ten years in liability underwriting. Besides the reserve provided for in this article, each such company shall be charged as a liability with all unpaid losses of which the company received notice on or before December 31, and all other debts and liabilities. If the capital stock of any such company, computing its liabilities in accordance with the provisions of this article shall be at any time impaired to the extent of twenty per cent thereof, the Commissioner shall give notice to the company to make good its whole capital stock within sixty days; and, if this is not done, he shall require the company to

cease to do business within this State, and shall thereupon, in case the company is organized under the authority of this State, immediately institute legal proceedings to wind up the affairs of such company. [Acts 1909, p. 193.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, 4682a, ante.

Art. 4988. [4942] Certificates from other States.—The Commissioner,[1] in calculating the reserve liability of any such company, may accept the certificate of the officer of any other State charged with the duty of supervising such company as to any such company organized under the laws of such State; provided, such certificate shows that such liability has been computed in accordance with the provisions of Article 4987.

[1] See note under Article 4987, ante.

CHAPTER 18.—GENERAL CASUALTY COMPANIES

Art.
4989. May incorporate.
4990. Articles of incorporation.
4991. Organization.
4992. Officers and records.
4993. Capital and deposits.
4994. Powers.
4995. Annual statement.
4996. Additional information.
4997. Failure of duty.
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5000. Change of securities.
5001. Increase of capital.
5002. Dividends.
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5005. Suits for penalties.
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5007. Real estate.
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5012. Decrease of stock.
5012a. Mexican casualty insurance companies; policies in force while insured persons or property are in Mexico; requirements for issuance in state; deposit.

Article 4989. May incorporate.—Any three or more persons, a majority of whom are residents of this State, may associate in accordance with the provisions of this chapter and form an incorporated company for any one or more of the following purposes:

1. To insure any person against bodily injury, disablement or death resulting from accident and against disablement resulting from disease.

2. To insure against loss or damage resulting from accident to or injury sustained by an employé or other person for which accident or injury the assured is liable.

3. To insure against loss or damage by burglary, theft or house breaking.

4. To insure glass against breakage.

5. To insure against loss from injury to person or property which results accidentally from steam boilers, elevators, electrical devices, engines and all machinery and appliances used in connection therewith or operated thereby; and to insure boilers, elevators, electrical devices, engines, machinery and appliances.

6. To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water pipes.

7. To insure against loss resulting from accidental damage to automobiles or caused accidentally by automobiles.

8. To insure against loss or damages resulting from accident to or injury suffered by any person for which loss and damage the insured is liable; excepting employers liability insurance as authorized under subdivision 2 of this article.

9. To insure persons, associations or corporations against loss or damage by reason of giving or extending of credit.

10. To insure against loss or damage on account of circumstances upon, or defects in the title to, real estate, and against loss by reason of the non-payment of the principal or interest of bonds, mortgages or other evidences of indebtedness.

11. To write marine insurance in which may be included the hazards and perils incident to war.

12. To insure against any other casualty or insurance risk specified in the articles of incorporation which may be lawfully made the subject of insurance and the formation of a corporation for issuing against which is not otherwise provided for by this law, excepting fire and life insurance. [Acts 1911, p. 237; Acts 4th C. S. 1918, p. 33.]

Art. 4990. Articles of incorporation.—Such persons shall associate themselves together by written articles of incorporation for the purpose of forming an accident or casualty insurance company, which articles shall specify the general object of the company, and the proposed duration of the same. [Acts 1911, p. 237.]

Art. 4991. Organization.—When such articles of incorporation are filed with the Commissioner,[1] together with an affidavit made by two or more of its incorporators, that all the stock has been subscribed in good faith and fully paid for together with a charter fee of twenty dollars, the Commissioner shall record the same in a book kept for that purpose, and upon receipt of a fee of one dollar he shall furnish a certified copy of the same to the corporators, upon which they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders who shall adopt by-laws for the government of the company and elect a board of directors composed of stockholders, which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this State. [Id.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, 4682a, ante.

Art. 4992. Officers and records.—The subscribers to said articles of incorporation shall choose from their number a President, a Secretary, a Treasurer and such number of directors not less than three who shall continue in office for the period of one year from the date of filing articles of incorporation, and until their successors shall be duly chosen and qualified. They shall open books for the subscriptions of stock in the company at such times and places as they shall deem convenient and proper, and shall keep them open until the full amount specified in the certificate is subscribed. [Id.]

Art. 4993. Capital and deposits.—Only companies organized and doing business under the provisions of this Chapter shall be subject to its provisions. Such company shall have not less than One Hundred Thousand Dollars ($100,000) of capital stock subscribed, paid in, in cash, with an additional Fifty Thousand Dollars ($50,000) of capital stock subscribed and fully paid in, in cash, for every kind of insurance more than one which it is authorized to transact. Such companies with Two Hundred Thousand Dollars ($200,000) of capital stock subscribed and fully paid in, in cash, shall be authorized to transact all and every kind of insurance specified in the first Article of this Chapter;

all of which capital shall be paid up or invested in bonds of the United States, or of this State, or of any county or municipality of this State, or in notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator, or in bonds or first liens upon unincumbered real estate in this State, or in any other State in which such company may previously have been licensed to conduct an insurance business. In either instance, such real estate shall be worth not less than forty (40) per cent more than the amount loaned thereon. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for not less than sixty (60) per cent of the value thereof, with loss-payable clause to the company. The value of such real estate shall be determined by a sworn valuation made by two freeholders of the county where the real estate is situated. Provided that such restriction shall not apply to mortgages insured by the Federal Housing Administrator. Upon such company furnishing evidence satisfactory to the Commissioner [1] that the capital stock as herein prescribed has been all subscribed and paid up in cash in good faith, and that such capital stock has been invested as herein prescribed, and upon the deposit of the sum of Fifty Thousand Dollars ($50,000) of such securities or in cash with the State Treasurer, then said Commissioner shall issue to said company a certificate authorizing it to do business. No part of the capital paid in shall be loaned to any officer of said company. In the event any such company shall be required by the law of any other State, country, or province as a requirement prior to doing an insurance business therein to deposit with the duly appointed officer of such other State, country, or province, or with the State Treasurer of this State, any securities or cash in excess of the said deposit of Fifty Thousand Dollars ($50,000) hereinbefore mentioned, such company, at its discretion, may deposit with the State Treasurer securities of the character authorized by this law, or cash sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and to hold it exclusively for the protection of all policyholders of the company. Any deposits so made to meet the requirements of any other State, country, or province shall not be withdrawn by the company except upon filing with the Commissioner evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liabilities outstanding in any such other State, country, or province by which such additional deposit was required, and upon the filing of such evidence the company may withdraw such additional deposit at any time. [Acts 1911, p. 237; Acts 1935, 44th Leg., p. 31, ch. 11, § 1; Acts 1937, 45th Leg., p. 422, ch. 216, § 1; Acts 1939, 46th Leg., p. 394, § 1.]

[1] Transfer of powers and duties of Commissioner of Insurance to Board of Insurance Commissioners, see article 4682a.

Art. 4994. Powers.—A corporation organized or doing business under the provisions of this law shall, by the name adopted by such corporation, in law, be capable of suing or being sued, and may make or enforce contracts in relation to the business of such corporation; may have and use a common seal, and in the name of the corporation or by a trustee chosen by the board of directors, shall in law, be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of their organization; and may by their board of directors, trustees, or managers, make by-laws and amendments thereto not inconsistent with the laws or the Constitution of this State or of the United States, which by-laws shall define the manner of electing directors, trustees or managers and officers of such corporation, together with the qualifications and duties of the same, and fixing the term of office. [Acts 1911, p. 237.]

Art. 4995. Annual statement.—The president, vice president and secretary or a majority of directors or trustees of such company organized under the provisions of this law shall annually, on the first day of January or within sixty days thereafter, prepare and deposit in the office of the Commissioner [1] a verified statement of the condition of such company on the 31st day of December of the preceding year, showing:

1. Name and where located, (a) names of officers, (b) the amount of capital stock, (c) the amount of capital stock paid in.

2. Assets, (a) the value of real estate owned by said company, (b) the amount of cash on hand, (c) the amount of cash deposited in bank or trust company, (d) the amount of bonds of the United States, and all other bonds, giving names and amounts with par and market values of each kind, (e) the amount of loans secured by first mortgage on real estate, (f) the amount of all other bonds, loans and how secured, with rate of interest, (g) the amount of notes given for unpaid stock and how secured, (h) the amount of interest due and unpaid, (i) all other credits or assets.

3. Liabilities, (a) the amount of losses due and unpaid, (b) the amount of claims for losses unadjusted, (c) the amount of claims for losses resisted.

4. Income during the year, (a) the amount of fees received during the year, (b) the amount of interest received from all sources, (c) the amount of receipts from all other sources.

5. Expenditures during the year, (a) the amount paid for losses, (b) the amount of dividends paid to stockholders, (c) the amount of commissions and salaries paid to agents, (d) the amount paid to officers for salaries, (e) the amount paid for taxes, (f) the amount of all other payments or expenditures.

6. Miscellaneous, (a) the amount paid in fees during the year, (b) the amount paid for losses during the year, (c) the whole amount of insurance issued and in force on the 31st day of December of the previous year. [Id.]

[1] See note under Article 4991, ante.

Art. 4996. Additional information.—The Commissioner [1] is authorized to amend the form of statement and to exact such additional information as he may think necessary in order that a full exhibit of the standing of such companies may be shown. [Id.]

[1] See note under Article 4991, ante.

Art. 4997. Failure of duty.—Upon the failure of any company to make such deposit or to file the statement in time, the Commissioner [1] shall notify such company to issue no new insurance until the law is complied with, and it shall be unlawful for any such company to thereafter issue any policy of insurance until such requirements shall be complied with. [Id.]

[1] See note under Article 4991, ante.

Art. 4998. Examination.—The Commissioner [1] may at any time make or authorize any suitable person to make a personal examination of the books, papers and securities of any such company. For the purpose of securing a full and true exhibit of its affairs, he or the person selected by him shall have power to examine under oath any officer of said company relative to its business management. [Id.]

[1] See note under Article 4991, ante.

Art. 4999. Revoking certificate.—If the Commissioner [1] shall at any time from the report of examination determine that the company has not complied with any provision of this law, he shall revoke its certificate of authority to do business in this State, and shall refer the facts to the Attorney General, who shall proceed to ask the proper court to appoint a receiver for said company, who shall, under the direction of the court, wind up the affairs of said company. In no other way can the Commissioner or any other person restrain or interfere with the prosecution of business of any company doing business under the

provisions of this law, except in actions by judgment creditor or in proceedings supplementary to execution. [Id.]

[1] See note under Article 4991, ante.

Art. 5000. Change of securities.—Such companies shall have the right at any time to change their securities on deposit with the State Treasurer by substituting for those withdrawn a like amount in other securities of the character provided for in this law. [Id.]

Art. 5001. Increase of capital.—Any such company may increase its capital stock at any time after the intention to so increase the capital stock shall have been ratified by a two-thirds vote of the stockholders, and after notice of the purpose to so increase the capital stock has been given by publication in some newspaper of general circulation for four consecutive weeks. No increase of capital stock in less amount than fifty thousand dollars is hereby authorized. [Id.]

Art. 5002. Dividends.—The directors of any such company shall not make any dividends except from the surplus profit arising from their business. No dividends shall be declared except at the close of the year. [Id.]

Art. 5003. Interest on deposits.—The State Treasurer shall permit companies having securities on deposit with him under the provisions of this law to collect the interest as the same may become due, and shall deliver to such companies respectively the coupons or other evidences of interest pertaining to such deposits. Upon failure of any company to deposit additional security as called for by the Commissioner,[1] or pending any proceedings to close up or enjoin it, the State Treasurer shall collect the interest as it becomes due and hold the same as additional security in his hands belonging to such company. [Id.]

[1] See note under Article 4991, ante.

Art. 5004. Penalty.—Any company organized or doing business under this law without a certificate as provided for in this chapter shall forfeit one hundred dollars for every day it continues to write new business in this State without such certificate. [Id.]

Art. 5005. Suits for penalties.—Suits to recover any penalty provided for in this law shall be instituted in the name of the State of Texas, by the Attorney General or by a district or county attorney under his direction, either in the county where the principal office is situated, or in Travis County. Such penalties, when recovered, shall be paid into the State Treasury for the use of the school fund. [Id.]

Art. 5006. [Repealed by Acts 1939, 46th Leg., p. 394, § 2.]

The repealed article was amended by Acts 1933, 43rd Leg., p. 851, ch. 242; Acts 1935, 44th Leg., p. 22, ch. 7, § 1; Acts 1937, 45th Leg., p. 1123, ch. 451, § 1.

Art. 5007. Real estate.—No such company shall be permitted to purchase, hold or convey real estate, except for the purpose and in the manner herein set forth:

1. For the erection and maintenance of buildings at least ample and adequate for the transaction of its own business.

2. Such as shall have been mortgaged to it in good faith for money due.

3. Such as shall have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings and which must be taken in by the company on account of the debt secured by such mortgage.

4. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts. No company incorporated as aforesaid shall purchase, hold or convey real estate in any other cases or for any other purpose. [Acts 1911, p. 237.]

Art. 5008. Sale of real estate.—All real estate so acquired, except as is occupied by buildings used in whole or in part for the accommodation of such companies in the transaction of its business, shall, except as hereinafter provided, be sold and disposed of within ten years after such company shall have acquired title to the same. No such company shall have such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the Commissioner [1] that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the Commissioner shall direct in said certificate. [Id.]

[1] See note under Article 4991, ante.

Art. 5009. Certificate of authority.—The Commissioner [1] upon due proof by a company organized under the provisions of this law, of its possessing the qualifications required, shall issue a certificate setting forth that it has qualified and is authorized for the ensuing year to do business under the law, which certificate or a copy thereof shall be evidence of such qualifications and of the company's authority to transact business authorized by this law, and of its solvency and credits. [Id.]

[1] See note under Article 4991, ante.

Art. 5010. Fees.—The Commissioner [1] shall charge for filing the preliminary statement and for filing the annual statement required by this chapter, a fee of ten dollars. [Id.]

[1] See note under Article 4991, ante.

Art. 5011. Service of process.—Process in any civil suit against any casualty company organized under the laws of this State may be served only on the president, or any active vice president or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company, during business hours. [Id.]

Art. 5012. Decrease of stock.—Any such company may decrease its capital stock at any time after the intention to so decrease the capital stock shall have been ratified by a majority vote of the stockholders, and after notice of such purpose has been published in some newspaper of general circulation for a period of four consecutive weeks. [Id.]

Art. 5012a. Mexican casualty insurance companies; policies in force while insured persons or property are in Mexico; requirements for issuance in state; deposit.—Section 1. Any insurance carrier lawfully organized under the laws of the Republic of Mexico, or under the laws of any state thereof, and duly authorized by such laws and by its charter or articles of association and by current license of the appropriate insurance regulatory authority of such Republic or any state thereof to underwrite risks of the kinds and in the circumstances hereinafter mentioned, may issue in the State of Texas, under license of the Board of Insurance Commissioners of Texas, policies of insurance affording any and all kinds of automobile coverage, accident insurance and/or other casualty coverage, upon persons and/or personal property, to be in force only while such persons and/or personal property shall be physically within the boundaries of the Republic of Mexico, by complying with the following requirements:

(a) Such insurance carrier shall file with the Board of Insurance Commissioners of the State of Texas (called Board) a written application for certificate to do business in this state, accompanied by a correct English translation of its charter and by-laws, duly certified by two of its principal officers and by the insurance regulatory officials under whose supervision it operates in the Republic of Mexico, and of all of its policy forms, application forms, claim forms, and other forms of every nature which it uses or expects

to use in underwriting the coverage hereby authorized to be written in Texas, all of which shall be subject to the approval of such Board.

(b) Before admission, and annually thereafter, such carrier shall also file with such Board a photostatic copy of its current license or licenses to operate in the Republic of Mexico, and shall file a copy of its latest financial reports or statements, and of the latest examination reports of its affairs and financial condition by the insurance regulatory authorities under which it operates in Mexico.

(c) Such carrier shall deposit with the Treasurer of the State of Texas at least Twenty-five Thousand ($25,000.00) Dollars in lawful money of the United States or in securities eligible for other casualty insurers licensed in Texas and approved by such Board, which deposit shall be liable for all lawful claims and final judgments against such insurance carrier, including taxes due the State of Texas, and policy claims and other debts and obligations incurred in the course of operations hereunder as provided herein, and such deposit shall be kept replenished from time to time with like cash or approved securities to maintain a minimum total deposit of Twenty-five Thousand ($25,000.00) Dollars. Such deposit or the unincumbered balance thereof shall be returned to such carrier with approval of such Board upon withdrawing from the business authorized hereby and upon a showing to such Board that all of its policies written in Texas hereunder have expired or have been cancelled and that all of its claims and obligations upon policies written in this state which would constitute lawful charges against such deposit have been satisfied.

(d) Such carrier shall file with the Board a power of attorney, in a form designated by the Board, designating an agent or attorney-in-fact upon whom legal process may be served within this state, which appointment shall continue until revoked and a successor duly appointed by the carrier, and further authorizing service of legal process upon the Chairman of the Board of Insurance Commissioners of Texas and his successors in office as alternate attorney-in-fact for such carrier upon whom service of process may be had in event such process cannot be served upon the designated agent or attorney-in-fact for service as herein provided, upon suits for any alleged liability incurred in operations of the carrier pursuant to this Act, with like effect as if such process had been served personally upon the appropriate persons, representatives or officials of such carrier within its home jurisdiction in the Republic of Mexico. In event process shall be served upon the Chairman of the Board, as provided above, he shall immediately give written notice thereof to such carrier and shall forward such process by registered mail, postage prepaid, and properly addressed to the president of such carrier at its home office as furnished to the Board; and no judgment by default shall be taken in any such cause until after the expiration of forty (40) days after said process and notice shall have been received at the home office of such carrier. Until rebutted, the presumption shall obtain that such notice and process was received at the home office of the carrier on the fifth (5th) day after being deposited in the mail at Austin, Texas, as herein provided. The State Treasurer, upon the approval of the Board, shall pay from the deposit required herein any unsatisfied final judgment obtained against such carrier in any court of competent jurisdiction in Texas based upon such substituted service as authorized herein.

(e) Such carrier shall pay the State of Texas annually a premium or occupation tax upon its gross premium income from policies issued in Texas according to the reports made to the Board each year, and shall pay such other fees, charges and taxes upon the same basis as like insurers licensed to do the same kinds of business in the State of Texas are required by law to pay; and shall make the same reports as such other licensed carriers, but in such adapted forms as may be prescribed by such Board for such purposes.

(f) The coverage hereby authorized shall be underwritten only at rates prescribed or approved from time to time by such Board.

(g) Such Board shall have the authority to examine at any or all times, at the expense of such carrier, the affairs and condition and all books and records of such carrier for the purpose of ascertaining its financial condition and solvency, and its compliance with the applicable laws of this state and of its home jurisdiction.

(h) Such carrier shall file in English a document executed by its officials expressly accepting the terms of this Act and agreeing that such Board may at any time in its lawful discretion revoke, suspend or refuse to grant or renew the license of such Board to such carrier to conduct in Texas the business hereby authorized, upon a determination by such Board that it is insolvent or in dangerous financial condition, or that it has violated any applicable law of this state or of its home jurisdiction.

(i) It shall underwrite business in Texas only through its resident Texas agents thereunto duly authorized by it in writing and duly licensed by such Board under the provisions of Article 5062b (Acts 1941, 47th Legislature, Page 374, Chapter 212), as the same now exists or as it may be amended hereafter, and the license issued to such Texas agents shall specially authorize them to write for such foreign carriers complying herewith the risks authorized hereby.

Sec. 2. All laws and parts of laws in conflict herewith are hereby repealed only to the extent of such conflict.

Sec. 3. If any Section or portion of Section of this Act shall for any reason be declared invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of any other Section or portion of Section of this Act. [Acts 1943, 48th Leg., p. 436, ch. 295.]

CHAPTER 19.—LLOYD'S PLAN

Art.
5013. "Underwriters" defined.
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5023. This law exclusive.
5023a. Promotion of Lloyd's.

Art. 5013. "Underwriters" defined.—Individuals, partnerships, or associations of individuals, hereby designated "underwriters," are authorized to make any insurance, except life insurance, on the Lloyd's Plan by executing articles of agreement expressing their purpose so to do and complying with the requirements set forth in this chapter.[1] [Acts 1921, p. 238; Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] Articles 5013–5023a.

Art. 5014. "Attorneys" defined.—Policies of insurance may be executed by an attorney or by attorneys in fact or other representative, hereby designated "attorney" authorized by and acting for such underwriters under power of attorney. The principal office of such attorney shall be maintained at such place as may be designated by the underwriters in their articles of an agreement; provided that no license shall be issued to any attorney at Lloyd's to bind risks or insurance in Texas, or with citizens of Texas or covering property in Texas, unless their attorneys in fact be residents of this State and maintain their office in this State, except as may be hereinafter specifically provided. [Acts 1921, p. 238; Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

Art. 5015. Application for license.—The attorney shall file with the Board of Insurance Commissioners, a verified application for license setting forth and accompanied by:

(a) The name of the attorney and the title [1] which the business is to be conducted, which title shall contain the name Lloyd's and shall not be so similar to any name or title in use in this State as to be likely to confuse or deceive.

(b) The location of the principal office.

(c) The kinds of insurance to be affected, which kinds of insurance may be as follows:

1. Fire insurance, which term shall be construed to include tornado, hail, crop and floater insurance.
2. Automobile insurance, which term shall be construed to include fire, theft, transportation, property damage, collision liability and tornado insurance.
3. Liability insurance.
4. Marine insurance.
5. Accident and health insurance.
6. Burglary and plate glass insurance.
7. Fidelity and surety bonds insurance.
8. Any other kinds of insurance not above specified, the making of which is not otherwise unlawful in this State, except life insurance.

(d) A copy of each form of policy or contract by which such insurance is to be affected.

(e) A copy of the form of power of attorney by virtue of which the attorney is to act for and bind the several underwriters and a copy of the articles of agreement entered into between the underwriters themselves and the attorney.

(f) The names and addresses of all underwriters, whose number shall not be less than ten.

(g) A financial statement showing in detail the assets contributed or accumulated in the hands of the attorneys in fact, committee of underwriters, trustees and/or other officers of such underwriters at Lloyd's, together with the liabilities incurred and outstanding and the income received and disbursements made by the attorney for the underwriters.

(h) An instrument executed by each and all of the underwriters specially empowering the attorney to accept services of process for each underwriter in any action on any policy or contract of insurance and an instrument from the attorney to such Board delegating the Attorney's powers in this respect to such Board. [Acts 1921, p. 238; Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] So in enrolled bill. The word "under" should probably be inserted between the words "title" and "which".

Art. 5016. License.—Upon compliance with the requirements of this chapter [1] and upon a showing of net assets as provided in the succeeding article the Board of Insurance Commissioners shall, upon payment of a fee of ten dollars, issue a license to any attorney applying therefor specifying the kind or kinds of insurance which he is authorized to make and containing the name of the attorney, the location of his principal office, and the title under which such business is to be conducted. Such license shall continue in force until the first day of March succeeding, at which time it may be renewed for the period of another year by the Board if and when said Board shall be satisfied from a report filed by such underwriters at Lloyd's showing that the provisions of the law applicable thereto have been complied with, and that such underwriters are entitled to a renewal of such license. Such license shall be renewed from year to year thereafter on the same conditions. [Acts 1921, p. 238; Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] Articles 5013–5023a, ante.

Art. 5017. Assets.—No attorney shall be licensed for the underwriters at a Lloyd's under this Chapter unless the net assets contributed to the attorney, a committee of underwriters, trustees or other officers as provided for in the articles of agreement, shall be at least Sixty Thousand Dollars ($60,000) in cash or securities that are eligible for investment of the capital stock of stock insurance companies transacting the same sort of business; nor shall any attorney be licensed for any underwriters at a Lloyd's to transact more than one kind of business as defined in Article 5015 of this Chapter, unless the net assets, as they are herein defined, belonging to such underwriters at Lloyd's, shall be as much as Ten Thousand Dollars ($10,000) additional for each additional kind of insurance designated in the application for license; and such additional amounts to be invested, if at all, in like securities as required for the minimum sum mentioned. [Acts 1921, p. 238; Acts 1929, 41st Leg., 1st C. S., p. 32, ch. 11, § 1; Acts 1943, 48th Leg., p. 605, ch. 350, § 1.

Section 2 of the Act of 1943 provided that partial invalidity should not affect any other portion of the Act.

Art. 5017a. Limitation of business.—The underwriters at a Lloyd's shall not assume nor write insurance obligations in Texas nor for citizens of Texas, nor covering property located in Texas which produce a net premium income in excess of ten times the net assets of such underwriters, and if at any time the liabilities assumed upon such insurance shall produce a net premium income greater than ten times such net assets then no further insurance obligation shall be assumed until the net assets have been increased so as to admit of additional insurance obligations which will produce a premium income not greater than ten times such net asset; provided that when the net assets at a Lloyd's shall equal the sum of money which will be required of a stock insurance company doing the same characters of business in Texas, then his limitation upon the volume of business to be written shall not apply further; provided further that if in the judgment and discretion of the Board of Insurance Commissioners such underwriters [at] a Lloyd's shall have effected reinsurance, or other contracts, with responsible and solvent insurance carriers reducing the net lines at risk carried by such underwriters at a Lloyd's so that their operations are safe and their solvency not in danger, then such Board may renew or extend the licenses of such underwriters, irrespective of this limitation. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

Art. 5017b. Solvency.—In determining the solvency and arriving at the amount of net assets on hand belonging to underwriters at a Lloyd's for the purpose of this chapter, there shall be considered all the funds contributed to the Guaranty Fund by the Underwriters and the funds accumulated during the progress of the business and held for such underwriters by the attorney in fact, trustees or other officers. Underwriters at a Lloyd's shall be deemed solvent when the net assets on hand shall meet the requirements of this Chapter [1] after deducting from its gross assets all outstanding liabilities, including reserve liabilities, and when the contributed guaranty fund at least to the minimum required herein shall be unimpaired. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] Articles 5013–5023a, ante.

Art. 5017c. Reserves.—Underwriters at a Lloyd's are required to compute reserve liabilities for all outstanding business and for all incurred losses upon the same basis required for stock insurance companies doing the same classes and character of business in Texas. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

Art. 5017d. Investments.—The assets of underwriters at a Lloyd's to the extent of the minimum required under the provisions of Article 5017, as amended, of this Chapter, shall be cash or shall be invested in such securities as are eligible for investment of the capital stock of stock insurance companies transacting the same sort of business, and the other assets of underwriters shall be invested, if at all, in such property or securities as the funds of a stock insurance company doing the same sort of business may be invested in, except real estate, and except that only the surplus of a Lloyd's may be invested in the securities eligible for investment of surplus of such similar stock insurance company.

Provided, however, that no Lloyd's already organized and doing business under license from the Board of Insurance Commissioners of this State shall be required to conform to this Article as hereby amended except as to securities hereafter acquired, whether in substitution for securities now held or from additional, successor, or substituted underwriters. [Acts 1929, 41st Leg., 1st C. S., p. 32, ch. 11, § 1; Acts 1943, 48th Leg., p. 606, ch. 351, § 1.]

Section 5 of the Act of 1943 provided that a holding of partial invalidity should not affect the remaining portions of the act.

Art. 5017e. Control of net assets.—The assets of underwriters at a Lloyd's to the extent of the minimum required under the provisions of this Chapter [1] shall be submitted to and subjected to the joint control of the attorney in fact for such underwriters, and the Board of Insurance Commissioners, in some manner satisfactory to the Board so that the same may not be withdrawn or diverted, or expended, except with the approval of the Board and the purposes provided for in this Chapter. Such underwriters, however, shall be entitled to the interest or income accruing from such property or securities as may be placed under the joint control of such attorney in fact and the Board as and when the same is payable. Provided, however, in lieu of such joint control any attorney in fact at a Lloyd's now doing business in this State may give bond in the sum of Twenty-five Thousand Dollars for the safe keeping of assets, to be released only on approval of the Board of Insurance Commissioners, and in such form and with co-operate [2] surety as shall be approved by the Board of Insurance Commissioners. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] Articles 5013–5023a.
[2] Probably should read "corporate."

Art. 5018. Examination of affairs.—The Board of Insurance Commissioners is hereby required to make a biennial examination either in person or through a duly appointed examiner of the books and affairs of the attorney for underwriters at a Lloyd's or of any attorney for such underwriters at a Lloyd's wherever such books may be kept and its affairs may be conducted. The expense of such examinations must be borne by the underwriters; and the attorneys and their deputies shall facilitate such examination and furnish all such information which the commissioners may demand. [Acts 1921, p. 238; Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

Art. 5018a. Annual reports.—The attorneys for such underwriters shall annually file with the Commissioners of Insurance a verified report of the business done by the attorney for such underwriters during the previous year, and of the condition of its affairs, together with such other information as the Board of Insurance Commissioners may demand; such report shall be filed upon blanks prepared by the Commissioners and shall cover the report of all the business of such underwriters, wherever the same may be conducted. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

Art. 5018b. Limitation of liability.—An underwriter at a Lloyd's may limit his total liability by contract with the persons insured to the proportionate part of the loss represented by the ratio which his subscription paid in, in cash and/or securities such as allowed by this Law, bears to the total guaranty fund contributed by the several underwriters and his total liability on all risks may be limited to the amount of his subscription as expressed in his power of attorney and agreement with the attorney in fact, provided at least half of the subscription of each underwriter must be paid or contributed to the guaranty fund in cash and/or admissible securities. Each underwriter shall be responsible solely for his own liability as fixed in the contract of insurance and not be liable as a partner. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

Art. 5019. Liability of substitutes.—Additional or substituted underwriters shall be found [1] in the same manner and to the same extent as original subscribers to the articles of agreement and power of attorney on file with the Board; and the acts of the duly appointed deputy or substitute attorney of any attorney licensed under this chapter accepting powers of attorney from underwriters and in making and issuing policies and contracts of insurance and in doing any additional acts incident thereto shall be deemed authorized by the license issued to the original attorney. [Acts 1921, p. 238; Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] Probably should read "bound."

Art. 5019a. Division of profits.—No profits shall accrue to an underwriter, except upon the basis of his actual investment in cash or convertible securities, disregarding any obligation or subscription to pay in additional cash or securities at a later date. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

Art. 5020. Assuming risk.—No attorney for underwriters at a Lloyd's shall assume any one insurance risk exceeding one-tenth of the amount of the net assets of the underwriters as defined in this chapter and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured. [Acts 1921, p. 238; Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

Art. 5021. Action on policy.—Action on any policy or contracts of insurance made by the attorney for the underwriters may be brought against the attorney or against the attorney and the underwriters or any of them. In such action, summons and process shall be served on either Commissioner of Insurance or on the attorney-in-fact and when so served shall have the same force and effect as if served on the attorney and on each underwriter personally. A judgment in any such action against the attorney or against any of the underwriters shall be binding upon and be a judgment against each and all of the underwriters as their several liabilities may appear in the contract of insurance on which the action is brought.

And such summons or other process shall be served in duplicate, and the Board of Insurance Commissioners shall forthwith by registered mail send one copy thereof to the attorney for the underwriters at the principal office designated in the application for license or latest amendments thereof. The party commencing any action against the underwriters at a Lloyd's and securing service of process in this manner shall at the time of such service pay to such Commissioner for the use of the Department a fee of two dollars, which he shall be entitled to collect as taxable costs in the action if he shall prevail.

[Acts 1921, p. 238; Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

Art. 5022. Winding up affairs.—Whenever it shall appear to the Board that the minimum assets provided for in Article 5017 have become impaired the Board shall immediately give notice to the attorney-in-fact for such Lloyd's to appear and show cause why the license of such attorney shall not be revoked, and if within thirty days from the giving of such notice the impairment or insolvency shall not be made good by such underwriters, or their attorney, such license shall immediately be cancelled. If such attorney or other person shall make any advancement to make good such impairment, the claim for such advancement against the assets of such underwriters shall be deferred to the claims for losses under policies or contracts of insurance. If such impairment is not made good within the time prescribed, then the Board shall proceed to take charge of the assets of such underwriters, and to effect a reinsurance of all business outstanding in Texas or covering property located in Texas, and for that purpose, the Board shall have the right to use the net assets, and to make provision for the payment of outstanding claims and losses. In case reinsurance cannot be effected by the said Board, then the affairs of such underwriters at Lloyd's shall be wound up through receivership proceedings instituted by the Attorney General of Texas at the request of the Board.

In case underwriters at a Lloyd's shall desire to withdraw from the insurance business, they may be permitted to do so, if and when they shall satisfy the Board that adequate provision has been made, through reinsurance or otherwise, for the payment of all unadjusted losses, and for the reinsurance of all outstanding risk in favor of citizens of Texas, or covering property in Texas, and thereupon, any bond of the attorney-in-fact shall be released, and said Board shall release to such underwriters the net assets over which it may have been given joint control. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

This Article 5022 is a new provision. Rev.St.1925, Art. 5022 as amended is now Article 5022d, post.

Art. 5022a. Foreign Lloyd's.—In case underwriters at a Lloyd's who are non-residents of Texas, or who maintain their principal office outside of Texas, apply for a permit to do business in Texas, such permit shall not be granted unless such underwriters have and maintain net assets in Texas which are subject to the joint control of their attorney-in-fact and the Board of Insurance Commissioners of this State sufficient to meet the minimum requirements of this Chapter [1] relative to the amount of net assets which underwriters at Lloyd's must have; or unless they submit to and file with the Board a bond executed by such corporate sureties as the Board may require (which corporate sureties must be licensed to do guaranty, fidelity and surety business in Texas) in a principal amount which would be required for net assets of underwriters at Lloyd's under foregoing provisions of this Chapter which said bond shall be payable to the Board of Insurance Commissioners, and which shall be conditioned for the payment of all claims arising upon contracts issued in Texas, or issued to residents and citizens of Texas, or covering property located in Texas, and which bond shall be held by the Board for the benefit of all persons having valid claims arising upon contracts issued in Texas, or to residents or citizens of Texas, or covering property located in Texas. It shall also provide that in the event the underwriters shall become insolvent or cease to transact business in this State at any time when there are outstanding policies of insurance in favor of citizens of this State, or upon property in this State, the Board shall have power, after having given ten days' notice to the attorneys for such underwriters, or any receiver in charge of its property and affairs, to contract with any other insurance carrier transacting business in this State for the assumption and reinsurance by it of all insurance risks outstanding in this State of such underwriters which contract shall also provide for the assumption by such reinsurance carrier of all outstanding and unsatisfied lawful claims then outstanding against such underwriters. In the event of the Board making any such contract, and if the same shall be approved as reasonable by the Attorney General, the reinsuring carrier shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agrees [agreed] upon for such reinsurance. Such bond shall also bind any additional or substitute underwriters at such Lloyd's. If any underwriters desiring to do so, at their option, in lieu of giving the bond authorized by this article, shall submit admissible securities subject to the joint control of its attorney-in-fact and the Board of Insurance Commissioners such deposits of securities shall be deemed to have been made upon such terms and conditions as provided by such bond.

If there shall be any recovery upon the bond or from the deposit hereinabove provided for, then the Board shall immediately demand additional security so as to bring the amount of the bonds up to the minimum sum required hereunder, which additional bond must be posted within thirty days from the date of such demand. Provided, there may be successive recoveries on said bond until the principal sum thereof is exhausted. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] Articles 5013–5023a, ante.

Art. 5022b. Foreign Lloyd's Continued.—All of the provisions of this Chapter [1] as the same are modified by the foregoing articles are applicable to underwriters at a Lloyd's who are nonresidents of Texas, or who maintain their principal office outside of Texas, in the same manner that they are applicable to underwriters of a Lloyd's who are residents of Texas and who maintain their principal office in this State. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] Articles 5013–5023a, ante.

Art. 5022c. Reinsurance.—The provisions of this Act [1] relative to foreign Lloyd's shall not prevent any Texas Lloyd's from reinsuring its excess lines with a solvent foreign Lloyd's, acceptable to the Board of Insurance Commissioners, which has no license to do business in Texas now from re-insuring any business from such foreign Lloyd's. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] Articles 5013–5023a, ante.

Art. 5022d. Revocation and suspension of license.—If any attorney-in-fact or underwriters at Lloyd's shall violate any of the provisions of this Chapter [1] or any of the other laws of the State of Texas, which are applicable to them, the license of such attorney shall be revoked and the right to do business in Texas shall be cancelled. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] Articles 5013–5023a, ante.

Art. 5023. This law exclusive.—Except as herein provided no other insurance law of this State shall apply to insurance on the Lloyd's plan unless it is specifically so provided in such other law that the same shall be applicable. [Acts 1921, p. 238; Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

Art. 5023a. Promotion of Lloyd's.—(1) No person or persons, firm or corporation shall be instrumental in the origination of a Lloyd's business if in such organization any money or property shall be paid over to such person, persons, firm or corporation, or their agent or representative by way of commission or other compensation for procuring underwriters or guaranty

fund for such Lloyd's, unless such person, persons, firm or corporation shall in advance make application to the Board of Insurance Commissioners and shall receive a permit from such Board to organize such Lloyd's and charge a commission in connection with such organization.

(2) In no event shall more than ten per cent of the total amount of the subscription to such an enterprise by any underwriter be paid to any person by way of commission for the sale of "units" or interest in such Lloyd's business or in the procuring of underwriters therefor.

(3) This article shall not apply to the organization or the enlargement of a Lloyd's in which no promotion expense is deducted from the contributions made by the underwriters, and no commission of any sort is paid for the procuring of underwriters or subscriptions to the guaranty fund of such business.

(4) This Article shall apply to the continued organization or the continued extension of any Lloyd's business which has heretofore been licensed by the Insurance Department of this State, if [1] such further extension of such business any commission is to be paid but such permit shall not be refused because of the contemplated size or amount of the guaranty fund of such Lloyd's.

(5) After such permission shall have been granted for the organization of enlargements of a Lloyd's, no securities shall be accepted as contributions to the guaranty fund of such Lloyd's, unless such securities shall have been approved in advance by the Board of Insurance Commissioners as complying with this Law relative to the investment of the funds of such organizations. [Acts 1929, 41st Leg., 1st C.S., p. 32, ch. 11, § 1.]

[1] So in enrolled bill. The word "in" should probably be inserted between the words "if" and "such".

CHAPTER 20.—INDEMNITY CONTRACTS

Art.
5024. May exchange contracts.
5025. Attorney for subscribers.
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5029. Financial requirements.
5029a. May advance money.
5030. Financial report.
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Article 5024. May exchange contracts.—Individuals, partnerships and corporations of this State hereby designated subscribers are hereby authorized to exchange reciprocal or inter-insurance contracts with each other, or with individuals, partnerships and corporations of other States and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance. [Acts 1915, p. 269.]

Art. 5025. Attorney for subscribers.—Such contracts may be executed by a duly appointed attorney in fact duly authorized and acting for such subscribers. The office or offices of such attorney may be maintained at such place or places as may be designated by the subscribers in the power of attorney.

Any person, firm or corporation may act as such attorney in fact, provided such attorney in fact shall make a good and sufficient fidelity bond acceptable to the Board of Insurance Commissioners of Texas and payable to the subscribers at the exchange, or, in lieu thereof, payable to the said Board of Insurance Commissioners, such bond to be in the sum of Twenty-five Thousand Dollars ($25,000) in the case of an individual or firm, and Fifty Thousand Dollars ($50,000) in the case of a corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss, not exceeding the penalty of the bond, as the exchange shall sustain of money or property by an act or acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or wilful misapplication on the part of the said attorney in fact directly or through connivance with others, and in the event of any violation of the conditions of said bond, the insurance supervisory authority of any State in which the attorney in fact is authorized to transact the business of the exchange may bring suit to enforce the penalty of the bond on behalf of the subscribers; provided, that a deposit with the proper lawful authority of the home State of such exchange of cash or securities of the kind in which general casualty companies may invest their funds, in like amount, conditioned, approved and payable in like manner, may be used in lieu of such bond. [Acts 1915, p. 269; Acts 1939, 46th Leg., p. 417, § 1.]

Art. 5026. Declaration of subscribers.—Such subscribers, so contracting among themselves, shall, through their attorney in fact, file with the Board of Insurance Commissioners a declaration verified by the oath of such attorney in fact setting forth:

1. The name or the title of the office at which subscribers propose to exchange such indemnity contracts. Said name or title shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of said Board of Insurance Commissioners is calculated to confuse or deceive. The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or interinsurance exchanges.

2. The kind or kinds of insurance to be effected or exchanged, provided that same shall not include life insurance.

3. A copy of the form of policy, contract or agreement under or by which such insurance is to be effected or exchanged.

4. A copy of the form of power of attorney or other authority of such attorney in fact under which such insurance is to be effected or exchanged, which form shall be subject to approval by the Board of Insurance Commissioners of Texas; provided, however, that, except as to matters concerning which specific provision is made in this Chapter, nothing herein contained shall be so construed as to permit the said Board to require the filing or use of uniform forms of such instruments. Such power of attorney or other authority executed by the subscribers at any such exchange shall provide that such subscribers shall be liable, in addition to the premium or premium deposit specified in the policy contract, to a contingent liability equal in amount to one additional annual premium or premium deposit. Such subscribers at such exchange may provide by agreement that the premium or premium deposit specified in the policy contract on all forms of insurance except life shall constitute their entire liability through the exchange while, but only while, the free surplus of the reciprocal exchange is equal to Two Hundred Thousand Dollars ($200,000); provided that if such exchange does not or is not applying to exchange workmen's compensation, employers' liability, or contracts providing indemnity against legal liability to third persons, except automobile public liability and property damage which is not subject to the regulations of the Interstate Commerce Commission, the Railroad Commission of Texas, or other similar bodies in the various States, such exchange may provide by agreement that the premium or premium deposit specified in the policy contract shall constitute the subscriber's entire liability through the exchange while, but only while, it maintains a free surplus of not less than Fifty Thousand Dollars ($50,000) if only one kind of insurance is exchanged, with an additional Ten

Thousand Dollars ($10,000) of free surplus for each additional kind of insurance exchanged (including automobile public liability and property damage which is not subject to the regulations of the Interstate Commerce Commission, the Railroad Commission of Texas, or other similar bodies in the various States), but not more than One Hundred Thousand Dollars ($100,000) surplus shall be required; provided, however, that any domestic reciprocal organized prior to the effective date of this Act which has been and is exchanging contracts without contingent liability and which does not have the minimum surplus required by this Section to exchange such contracts, may continue to exchange contracts without contingent liability until December 31, 1943, provided that

(a) On December 31, 1939, December 31, 1940, December 31, 1941, and December 31, 1942, it shall have increased its surplus by respective amounts of twenty-five (25) per centum of the difference between the surplus existing on December 31, 1938, and the surplus herein required of a reciprocal before it is permitted to exchange contracts without contingent liability; and

(b) At no time during each calendar year of the period above referred to shall the surplus be less than thirty (30) per centum of the premiums written during each such year; and

(c) All other provisions of this Act shall be complied with; and

(d) If such reciprocal fails to increase its surplus in accordance with this subsection, such reciprocal shall be subject to the minimum surplus as abovementioned, or discontinue exchanging policies without contingent liability.

5. The location of the office or offices from which such contracts or agreements are to be issued.

Provided, further, that, as to all classes of insurance permitted to be written under the provisions of this Chapter, such verified declarations shall disclose the following:

(a) In case of workmen's compensation insurance, that applications have been made for indemnity by at least fifty (50) separate subscribers who have not less than two thousand (2,000) employees, as represented by executed contracts or bona fide applications to become concurrently effective.

(b) As to all other classes of insurance permitted to be written under the provisions of this Chapter, that applications for indemnity have been made by at least seventy-five (75) separate subscribers for each class of risk to be exchanged, aggregating not less than Five Hundred Thousand Dollars ($500,000) as to each class of risk, as represented by executed contracts or bona fide applications to become concurrently effective. [Acts 1915, p. 269; Acts 1939, 46th Leg., p. 417, § 2.]

Art. 5027. Service of process.—Concurrently with the filing of such declaration, the attorney shall file with the Board of Insurance Commissioners an instrument in writing executed by him for said subscribers conditioned that upon the issuance of certificates of authority as hereinafter provided, service of process may be had upon the chairman of such Board in all suits in this State arising out of such policies, contracts or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Three copies of such process shall be served and said chairman of such Board shall file one copy, forward one copy to said attorney, and return one copy with his admission of service. It is provided, however, that in lieu of the method hereinabove provided, service of process may be had upon such attorney in fact in all suits, which service shall likewise be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. If said attorney in fact be a corporation, either foreign or domestic, or joint stock company, or association, service of process thereon may be had in any manner provided by general law for service of process on corporations, joint stock companies, or associations. [Acts 1915, p. 269; Acts 1939, 46th Leg., p. 417, § 3.]

Art. 5028. Statement of indemnity.—Such attorney shall file with the Commissioner [1] a statement under the oath of such attorney showing the maximum amount of indemnity upon any single risk, and such attorney shall, whenever and as often as the same shall be required, file with such Commissioner a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers, and that from such examination or from other information in his possession it appears that no subscriber has assumed on any single risk an amount greater than 10 per cent of the net worth of such subscriber. [Acts 1915, p. 269.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see articles 4679–4679d, 4682a, ante.

Art. 5029. Financial requirements.—There shall be maintained at all times such reserves as are required, or which, by the laws of this State or by the lawful rules and regulations of the Board of Insurance Commissioners, hereafter may be required, to be maintained by stock insurance companies transacting the same kind or kinds of insurance business.

There shall be maintained at all times assets in a sum sufficient to discharge all liabilities, including reserves, and to provide a surplus over all liabilities, including reserves, of not less than Fifty Thousand Dollars ($50,000), and if at any time such surplus shall not equal that amount the attorney may make up such deficiency in the manner provided by Article 5029a of this Chapter.

The required assets of such exchanges shall be maintained in cash or securities of the kind in which general casualty companies are authorized by law to invest or lend their funds. Any exchange whose attorney in fact now has a certificate of authority to transact business in this State shall have until December 31, 1941, to fulfill the foregoing financial requirements specified in this Article; provided, however, that, upon good cause shown, the Board of Insurance Commissioners may, in the exercise of reasonable discretion, extend such period of time for not to exceed three (3) years thereafter; provided further, however, that any exchange requiring such additional time to fulfill such financial requirements shall not have, at any time after the passage of this Act, a surplus less than its said surplus as the same existed on January 1st, 1939.

If fidelity and surety bond insurance is exchanged in this State by any reciprocal exchange, there shall be kept on deposit with the State Treasurer of Texas, money, bonds, or other securities, in an amount not less than Fifty Thousand Dollars ($50,000). Such securities shall be approved by the Board of Insurance Commissioners, and this amount shall be kept intact at all times. Any foreign exchange writing fidelity and surety bonds in this State shall file with the Board of Insurance Commissioners evidence, satisfactory to the Board of Insurance Commissioners, that it has on deposit with the State Treasurer or other proper officials of its home State or in escrow under his supervision and control in some reliable bank or trust company One Hundred Thousand Dollars ($100,000) or more, in money, bonds or other securities for the protection of its policyholders; provided, further, that if said bonds and securities herein referred to are not acceptable to and approved by the Board of Insurance Commissioners of Texas, said Board shall have the right and authority to deny

the attorney in fact a certificate of authority. [Acts 1915, p. 269; Acts 1939, 46th Leg., p. 417, § 4.]

Art. 5029a. May Advance Money.—Any attorney in fact of such exchange may advance to such exchange any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirement of law, and such moneys and interest thereon as may have been agreed upon, not exceeding ten (10) per cent per annum, shall be payable, subject to the approval of the Board of Insurance Commissioners (which approval shall not be arbitrarily refused), only out of the surplus remaining, after providing for all reserves, other liabilities and required surplus, and shall not otherwise be a liability or claim against the exchange or any of its assets. No commission or promotion expenses, or other bonus, shall be paid in connection with the advance of any such money to the exchange, and the amount of all such advances shall be reported in each annual statement. [Added Acts 1939, 46th Leg., p. 417, § 5.]

Art. 5030. Financial report.—Such attorney shall make an annual report to the Commissioner [1] for each calendar year, which report shall be made on or before March 1st, for the previous calendar year ending December 31, showing the financial condition of affairs at the office where such contracts are issued is in accordance with the standard of solvency provided for herein, and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses. Such attorney shall not be required to furnish the name and address of any subscriber. The business affairs and assets of said reciprocal or inter-insurances exchanges, as shown at the office of the attorney thereof, shall be subject to examination by such Commissioner. [Acts 1915, p. 269.]

[1] See note under Article 5028.

Art. 5031. Any corporation may exchange.—Any corporation, public, private or municipal, now or hereafter organized under the laws of this State, shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purpose for which such corporations are organized and as much granted as the rights and powers expressly conferred. [Acts 1915, p. 269; Acts 1939, 46th Leg., p. 417, § 6.]

Art. 5032. Certificate of authority.—Such attorney by whom or through whom are issued any policies of or contracts for indemnity of the character referred to herein shall procure from the Board of Insurance Commissioners annually a certificate of authority stating that all of the requirements have been complied with, and upon such compliance and the payment of the fees required by law, the Board of Insurance Commissioners shall issue such certificate of authority. Such Board of Insurance Commissioners may revoke or suspend any certificate of authority issued hereunder in case of breach of any condition imposed by this law, after reasonable written notice has been given said attorney so that he may appear and show cause why action should not be taken; provided, that said attorney by whom and through whom are issued any policies of or contracts for indemnity of the character herein referred to shall have the right of appeal to any District Court of Travis County, Texas, and shall have twenty (20) days from the date of any adverse ruling to effect such appeal; and the further right of appeal by any such attorney from the ruling or decision of any such District Court is hereby expressly granted. Any attorney who may have procured a certificate of authority hereunder shall renew same annually thereafter. Any certificate of authority shall continue in effect until the new certificate of authority be issued or specifically refused. The schedule of fees set out in Article 3920, so far as pertinent, shall apply to reciprocal exchanges and their attorneys in fact. Said exchanges shall pay a tax of three and one-fourth (3¼) per cent on all premiums collected, except fire and workmen's compensation premiums, under the provisions of Article 7064, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 8, Chapter 495, Page 2040, Article 4, Acts of the Third Called Session, Forty-fourth Legislature, 1936, as amended Acts 1937, Forty-fifth Legislature, House Bill No. 441, Section 1, as amended Acts 1939, Forty-sixth Legislature, House Bill No. 556, subject to reduction by investment in Texas securities as therein provided; and exchanges writing workmen's compensation insurance shall pay a tax of one-half (½) of one (1) per cent of the workmen's compensation premiums collected under the provisions of Article 7064a, Revised Civil Statutes of Texas, 1925, as enacted by House Bill No. 8, Chapter 495, Page 2040, Article 4, Acts of the Third Called Session, Forty-fourth Legislature, 1936, as amended Acts 1937, Forty-fifth Legislature, by House Bill No. 441, Section 1–b, as amended Acts 1939, Forty-sixth Legislature, House Bill No. 557; and a further tax of three-fifths (3/5) of one (1) per cent or such lesser amount as the Board of Insurance Commissioners may assess, on workmen's compensation premiums collected in this State under the provisions of Chapter 25, Section 1, Acts of 1937, Forty-fifth Legislature.[1]

Provided further, that an additional tax of one-fifth (1/5) of one (1) per cent or such lesser amount as the Board of Insurance Commissioners may assess shall be paid by such exchanges on gross premiums collected for motor vehicle insurance under the provisions of Chapter 253, Acts of the Fortieth Legislature, as amended Acts of 1937, Forty-fifth Legislature by Senate Bill No. 77.[2] [Acts 1915, p. 269; Acts 1939, 46th Leg., p. 417, § 7.]

[1] Article 4918a.
[2] Article 4682b.

Art. 5033. What insurance law applies.—Except as provided in this Chapter, no insurance law of this State shall apply to the exchange of such indemnity contracts unless reciprocal or interinsurance exchanges are specifically mentioned in such other laws. [Acts 1915, p. 269; Acts 1939, 46th Leg., p. 417, § 8.]

Art. 5033a. Severability.—If any word, phrase, clause, sentence, paragraph or section, or part thereof, of this Chapter shall be held invalid, unconstitutional or inoperative, such holding shall not affect the validity of the remainder of this Chapter, and the Legislature declares hereby that it would have enacted the remainder of said Chapter, despite any such invalidity. If any exception to or limitation upon any general provision contained herein shall be held to be invalid, unconstitutional or inoperative, the general provision, nevertheless, shall stand effective and valid as if the same had been enacted without such limitation or exception. [Added Acts 1939, 46th Leg., p. 417, § 9.]

CHAPTER 21.—GENERAL PROVISIONS

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Article 5034. [4943] [3086] Must publish certificate.—Every insurance company doing business in this State, whether life, health, fire, marine or inland, shall publish annually, within thirty days after the issuance thereof, a certificate from the Commission [1] that such company has in all respects complied with the laws in relation to insurance.

[1] Transfer of powers and duties of State Insurance Commission or any member thereof to Board of Insurance Commissioners, see article 4682a, ante.

Art. 5035. [4946] [3082] Publication of notices.—Whenever, by any provision of this title, any notice or other matter is required to be published, it shall, unless otherwise provided, be published for three successive weeks in two newspapers printed in this State which have a general circulation in this State.

Art. 5036. [4967–4868–4944] Unlawful dividend.—No life, health, fire marine or inland insurance company, organized under the laws of this State, shall make any dividend except from the sur-

plus profits arising from its business. In estimating such profits, there shall be reserved therefrom a sum equal to forty per cent of the amount received as premiums on unexpired fire risks and policies, and one hundred per cent of the premiums received on unexpired life, health, marine or inland transportation risks and policies, which amount so reserved is hereby declared to be unearned premiums. There shall also be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosures or collections has not been commenced, or which after judgment has been obtained thereon shall have remained more than two years unsatisfied, and upon which interest shall not have been paid. In case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. Any dividend made contrary to the provisions of this article shall subject the company making it to a forfeiture of its charter, and the Commissioner [1] shall forthwith revoke its certificate of authority. [Acts 1875, p. 36; G. L. vol. 8, p. 408.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see article 4679–4679d, 4682a, ante.

Art. 5037. Live stock, etc.—Fire, marine, life and live stock insurance companies may be organized under the provisions of this title. Such live stock insurance companies may be organized with an authorized and paid up capital stock of not less than ten thousand dollars. [Acts 1907, p. 292.]

Art. 5038. [4956] Extension of powers.—Corporations may be incorporated under the laws of this State to transact any one or more kinds of insurance business other than life, fire, marine, inland, lightning or tornado insurance business in the same manner, and by complying with the same requirements, as prescribed by law for the incorporation of life insurance companies. No such company shall be incorporated having the power to do a fidelity and surety business or a liability insurance business with a paid up capital stock of less than two hundred thousand dollars. [Acts 1909, p. 192.]

Art. 5039. [4945] [3081] Association of companies.—In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance, such association shall not be permitted to do business in this State until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and fees, and to fully comply with the requirements of law, shall be refused permission by the Commissioner [1] to do business in this State.

[1] See note under Article 5036, ante.

Art. 5040. What companies may consolidate.—Any two or more insurance companies doing a similar line of business which are and have been substantially owned by same controlling stockholders and which have never been companies actually competing with each other, and where all of them have been previously organized under the laws of this State, may unite or consolidate upon compliance with the terms of this law. Such consolidation shall not be effectuated in violation of the anti-trust and anti-monopoly laws of this State. Before any such consolidation shall take place the parties holding at least two-thirds of the capital stock of each of the companies shall vote in favor thereof at a separate meeting of the stockholders of each company called for such purpose. Such meeting may be called in the manner provided in the by-laws of the respective companies or the laws under which such companies are organized, for calling special meetings of stockholders, except that each stockholder shall be notified by mail of the time and place and object of such meeting. [Acts 1919, p. 97.]

Art. 5041. Consolidation.—Such companies proposing to consolidate may unite their assets or any part thereof and become incorporated in one body under the name of any one or more of such companies or under any other name that may be agreed upon, and issue stock in such corporation to the stock holders of each of the companies consolidated, the actual value of which stock in the new company shall bear the same proportion to the actual value of the stock surrendered by such stockholders as the entire assets of the company surrendering such stock bears to the entire assets of the new company, which value shall be agreed upon by the board of directors of each company; provided, that said stockholders (holding two-thirds of the stock) may at the meeting provided for in the preceding article, delegate the valuation of assets to a committee of stockholders appointed by their respective boards of directors; or

2. One company may take over all the assets of the other companies proposing to consolidate and issue stock to their stockholders in the proportion that the value of their stock bears to the entire value of the assets of the company in which they are stockholders, and for this purpose the capital stock of such purchasing company may be increased, as now or may be hereafter provided by law.

3. In case of consolidation under the first option provided in the first subdivision hereof, the Commissioner [1] shall upon proof furnished of compliance with the terms hereof and being satisfied that the proposed consolidation is for the best interests of the policy holders of the respective companies and made in accordance with law, and upon the filing of articles of incorporation and other due proceedings had as required by the laws of this State, issue and deliver a charter to such new company.

4. Such consolidation shall work a dissolution of the companies absorbed, but shall in no wise prejudice the right of any creditor of any such corporation to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of, nor prejudiced in any right of action then pending or existing or which may thereafter arise against said company, and service or summons of the proper officers or agents of such new or reorganized corporation shall be deemed sufficient as to all or any of such companies.

5. All policies of insurance outstanding against all such companies shall by reason of such consolidation be assumed by the reorganized company, and they shall carry out the terms of such policy on the part of the insurer and be entitled to all the rights and privileges thereof and the reserves accumulating on such policy prior to such consolidation.

[1] See note under Article 5036, ante.

Art. 5042. [4957] Other laws for certain companies.—No provision of this chapter shall apply to companies carrying on the business of life or casualty insurance on the assessment or annual premium plan, under the provisions of this title. [Id.]

Art. 5043. [4947] Misrepresentation by policy holder.—Any provision in any contract or policy of insurance issued or contracted for in this State, which provides that the answers or statements made in the application for such contract or in the contract of insurance, if untrue or false, shall render the contract or policy void or voidable, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract, unless it be shown upon the trial thereof that the matter or thing misrepresented was material to the risk or actually contributed to the contingency or event on which said policy became due and payable, and whether it was material and so contributed in any case shall be a question of

fact to be determined by the court or jury trying such case. [Acts 1903, p. 94.]

Art. 5044. [4948] Notice of misrepresentation.—In all suits brought upon insurance contracts or policies hereafter issued or contracted for in this State, no defense based upon misrepresentations made in the applications for, or in obtaining or securing the said contract, shall be valid, unless the defendant shall show on the trial that, within a reasonable time after discovering the falsity of the representations so made, it gave notice to the assured, if living, or, if dead, to the owners or beneficiaries of said contract, that it refused to be bound by the contract or policy; provided, that ninety days shall be a reasonable time; provided, also, that this article shall not be construed as to render available as a defense any immaterial misrepresentation, nor to in any wise modify or affect Article 5043.

Art. 5045. [4959] Immaterial misrepresentation.—No recovery upon any life, accident or health insurance policy shall ever be defeated because of any misrepresentation in the application which is of an immaterial fact and which does not affect the risks assumed. [Acts 1909, p. 192.]

Art. 5046. [4949] Misrepresenting loss or death.—Any provision in any contract or policy of insurance issued or contracted for in this State, which provides that the same shall be void or voidable, if any misrepresentations or false statements be made in proofs of loss or of death, as the case may be, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract or policy, unless it be shown upon the trial of such suit that the false statement made in such proofs of loss or death was fraudulently made, and misrepresented a fact material to the question of the liability of the insurance company upon the contract of insurance sued on, and that the insurance company was thereby misled, and caused to waive or lose some valid defense to the policy. [Acts 1903, p. 94.]

Art. 5047. Forfeiture of beneficiary's rights.—The interest of a beneficiary in a life insurance policy or contract heretofore or hereafter issued shall be forfeited when the beneficiary is the principal or an accomplice in willfully bringing about the death of the insured. When such is the case, the nearest relative of insured shall receive said insurance. [Acts 1919, p. 21.

Art. 5048. Life insurance beneficiaries.—Any corporation, partnership, joint stock association or any trust estate doing business for profit, may be named beneficiary in any policy of insurance issued by a legal reserve life insurance company on the life of any officer or stockholder of said corporation, joint stock association or trust estate; or any partnership or member thereof may be the beneficiary in any policy of insurance issued by a legal reserve life insurance company upon the life of any member of said partnership; or any religious, educational, eleemosynary, charitable or benevolent institution or undertaking may be named beneficiary in any policy of life insurance issued by any legal reserve life insurance company upon the life of any individual. The beneficiaries aforenamed shall have an insurable interest for the full face of the policy and shall be entitled to collect same. On all policies of life insurance heretofore issued by legal reserve companies in which any of the aforenamed shall have been designated beneficiaries in the policies, said beneficiaries shall have an insurable interest to the full extent of the face of the policy and be entitled to collect same. [Acts 1921, p. 165.]

Art. 5049. [4951] Policies and applications.—Every contract or policy of insurance issued or contracted for in this State shall be accompanied by a written, photographic or printed copy of the application for such insurance policy or contract, as well as a copy of all questions asked and answers given thereto. The provisions of the foregoing articles shall not apply to policies of life insurance in which there is a clause making such policy indisputable after two years or less, provided premiums are duly paid; provided, further, that no defense based upon misrepresentation made in the application for, or in obtaining or securing, any contract of insurance upon the life of any person being or residing in this State shall be valid or enforceable in any suit brought upon such contract two years or more after the date of its issuance, when premiums due on such contract for the said term of two years have been paid to, and received by, the company issuing such contract, without notice to the assured by the company so issuing such contract of its intention to rescind the same on account of misrepresentation so made, unless it shall be shown on the trial that such misrepresentation was material to the risk and intentionally made. [Acts 1903, p. 94.]

Art. 5050. [4953] Policies to contain entire contract.—Every policy of insurance issued or delivered within this State by any life insurance company doing business within this State, shall contain the entire contract between the parties, and the application therefor may be made a part thereof. [Acts 1909, p. 192.]

Art. 5051. [4952] Level premium policies.—No level premium policy of life insurance shall be issued or sold by any company in this State which provides for more than one year preliminary term insurance. [Id.]

Art. 5052. [4958] Misrepresentation of policies.—No life insurance company doing business in this State, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it, or benefits or advantages to be promised thereby, or the dividends or share of surplus to be received thereon. [Id.]

Art. 5053. [4954] Discrimination.—No insurance company of any kind doing business in this State shall make or permit any distinction or discrimination in favor of individuals between the insured of the same class and of equal expectation of life in the amount of, or payment of, premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon; nor shall any such company, or any officer, agent, solicitor, or representative thereof, pay, allow, or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for service of any kind or anything of value whatsoever, or any valuable consideration or inducement whatever not specified in the policy or contract of insurance; nor shall any such company, or any officer, agent, solicitor, or other representative thereof, give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance, or in connection with any policy of insurance, or in connection with the sale thereof, any stocks, bonds or other securities of the company writing the insurance or of any other insurance company, or of any other corporation, association or partnership, then organized or thereafter to be organized or any dividends or profits to accrue thereon; nor shall any such company issue any policy containing any special or board contract or similar provision, by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy. Any

company or any officer or agent thereof violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred nor more than five hundred dollars, and the said company shall, as an additional penalty, forfeit its certificate of authority to do business in this State and the said agent shall, as an additional penalty, forfeit his license to do business in this State for one year. The company shall not be held liable under this article for any unauthorized act of its agent, unless the company shall acquiesce in such action. [Acts 1909, p. 192; Acts 1929, 41st Leg., 1st C.S., p. 5, ch. 3, § 1.]

Art. 5053a. Group insurance for employees of State and its subdivisions and college and school employees.—Section 1. The State of Texas and each of its political, governmental and administrative subdivisions, departments, agencies, association of public employees, and the governing boards and authorities of each State university, college, common and independent school districts or of any other agency or subdivision of the public school system of the State of Texas are authorized to procure contracts insuring their respective employees or any class or classes thereof under a policy or policies of group health, accident, accidental death and dismemberment, and hospital, surgical and/or medical expense insurance. The dependents of any such employees may be insured under group policies which provide hospital, surgical and/or medical expense insurance. The employees' contributions to the premiums for such insurance issued to the employer or to an association of public employees as the policyholder may be deducted by the employer from the employees' salaries when authorized in writing by the respective employees so to do.

Sec. 2. All group insurance contracts effected pursuant hereto shall conform and be subject to all the provisions of any existing or future laws concerning group insurance.

Sec. 3. If any section or part whatsoever of this Act shall be held invalid, such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such section or part so held to be invalid. [Acts 1947, 50th Leg., p. 956, ch. 410.]

Art. 5054. [4950] Texas laws govern policies.—Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed, and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same. [Acts 1903, p. 94.]

Art. 5055. [4960] [3061] [2943] Certificate of authority.—It shall not be lawful for any person to act within this State, as agent or otherwise, in soliciting or receiving applications for insurance of any kind whatever, or in any manner to aid in the transaction of the business of any insurance company incorporated in this State or out of it, without first procuring a certificate of authority from the Commissioner.[1]

[1] See note under Article 5036, ante.

Art. 5056. [4961] [3093] Who are agents.—Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of, or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter. The provisions of this chapter shall not apply to citizens of this State who arbitrate in the adjustment of losses between the insurers and insured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters who have paid an occupation tax of two hundred dollars for the year in which the adjustment is made nor to practicing attorneys at law in the State of Texas, acting in the regular transaction of their business as such attorneys at law, and who are not local agents, nor acting as adjusters for any insurance company. Any person who shall do any of the acts mentioned in this article for or on behalf of any insurance company without such company having first complied with the requirements of the laws of this State, shall be personally liable to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same. [Acts 1879, S. S. p. 32.]

Art. 5057. [4962] [3094] Assessment of taxes.—Whenever any person shall do or perform within this State any of the acts mentioned in the preceding article for or on behalf of any insurance company therein referred to, such company shall be held to be doing business in this State, and shall be subject to the same taxes, State, county and municipal, as insurance companies that have been legally qualified and admitted to do business in this State by agents or otherwise are subject, the same to be assessed and collected as taxes are assessed and collected against such companies; and such persons so doing or performing any of such acts or things shall be personally liable for such taxes. [Id.]

Art. 5057a. Tax assessment of fire and casualty companies.—Fire insurance companies and casualty insurance companies incorporated under the laws of this State shall hereafter be required to render for State, County and municipal taxation, all of their real estate as other real estate is rendered. All personal property of such insurance companies shall be valued as other personal property is valued for assessment in this State, and in the following manner: From the total valuation of their assets shall be deducted the reserves, which reserves shall be computed in such manner as may be prescribed by the rules and regulations of the Board of Insurance Commissioners, for unearned premiums and for all bona fide outstanding losses, and from the remainder shall be deducted the assessed value of all real estate owned by such companies, and the remainder shall be the taxable personal property of such companies, to be assessed as other property.

All real estate, furniture, fixtures and automobiles, owned by any such company shall be rendered for taxation in the city and in the county where such property is located. All other personal property owned by such company shall be rendered for taxation in the city and county where the principal business office of any such company is fixed by its charter. [Acts 1927, 40th Leg., p. 269, ch. 190, § 1; Acts 1939, 46th Leg., p. 425, § 1.]

Art. 5058. [4963] Resident agents, companies excepted.—Any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety, or fidelity insurance company, legally authorized to do business in this State, is hereby prohibited from authorizing or allowing any person, agent, firm or corporation that is a nonresident of the State of Texas to issue, or cause to be issued, to sign or countersign, or to deliver, or cause to be delivered, any policy or policies of insurance on property, person or persons located in this State, except through regularly licensed local recording agents of such companies in Texas. The term Local Recording Agents as used here shall be construed to be the same as defined in Section 2, Chapter 96, page 150, Acts of the 42nd Legislature 1931.[1]

This law shall not apply to property owned by the railroad companies or other common carriers. Upon oath made in writing by any person that he can not procure insurance on property through such agents in Texas it shall be lawful for any insurance company not having an agent in Texas to insure property of any person upon application of said person, upon his filing said oath with the county clerk of the county in which such person resides, and with the Board of Insurance Commissioners.

This Act shall not apply to insurance companies whose general plan of operation does not contemplate the use of local recording agents, and such companies may issue policies signed by any of their other resident licensed agents. [Acts 1903, p. 232; Acts 1935, 44th Leg., p. 227, ch. 91, § 1.]

[1] Article 5062a, post.

Art. 5059. [4964] Affidavit of company.—Before a certificate or license to any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company is issued authorizing it to transact business in this State, the Commissioner [1] shall require in every case, in addition to the other requirements already made and provided by the law, that each such insurance company shall file with him an affidavit that it has not violated any provision of this law. [Acts 1903, p. 232.]

[1] See note under Article 5036, ante.

Art. 5060. [4965] Commissions to non-residents.—Any person, agent, firm or corporation licensed by the Commissioner [1] to act as a fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent in the State of Texas, is hereby prohibited from paying, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies covering property, person or persons, in this State, to any person, persons, agent, firm or corporation that is a non-resident of this State, or to any person or persons, agent, firm or corporation not duly licensed by the Commissioner of Insurance of this State as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent. [Id.]

[1] See note under Article 5036, ante.

Art. 5061. [4967] Commissioner may examine.—The Commissioner [1] is hereby authorized and it is made his duty, at the expense of the company investigated, to examine at the head office, located within the United States of America, all books, records and papers of such company and also any officers or employees thereof under oath, as to violations of this law, and he is further empowered to examine person or persons, administer oaths, and send for papers and records, and failure or refusal upon the part of any life, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person or persons, agent, firm or corporation, licensed to do business in the State of Texas, to appear before the Commissioner [1] when requested to do so, or to produce records and papers, or answer under oath, shall subject such fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person, persons, agent, firm or corporation to the penalties of this law. [Id.]

[1] See note under Article 5036, ante.

Art. 5062. [4966] Penalty for violation.—Whenever the Commissioner [1] shall have or receive notice or information of any violation of any provision of this law, he shall immediately investigate, or cause to be investigated, such violation, and if a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company has violated any of such provisions, he shall immediately revoke its license for not less than three months, nor more than six months for the first offense, and, for each offense thereafter, for not less than one year; and, if any person, agent, firm or corporation licensed by such Commissioner as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent shall violate or cause to be violated any provision of this law, he shall, for the first offense, have his license revoked for all companies for which he has been licensed, for not less than three months, and for the second offense he shall have his license revoked for all companies for which he is licensed and shall not thereafter be licensed for any company for one year from date of such revocation. [Id.]

[1] See note under Article 5036, ante.

Art. 5062a. Regulations for the licensing of local recording agents and solicitors to represent insurance companies, exceptions.

Classes of insurance agents

Sec. 1. Insurance agents, as that term is defined in the laws of the State, shall for the purpose of this Act be divided into two classes; Local Recording Agents and Solicitors.

Definitions

Sec. 2. By the term "Local Recording Agent" is meant a person or firm engaged in soliciting and writing insurance, being authorized by an Insurance Company or Insurance Carrier, including Fidelity and Surety Companies, to solicit business and to write, sign, execute and deliver policies of insurance, and to bind companies on insurance risks, and who maintain an office and a record of such business and the transactions which are involved, who collect premiums on such business and otherwise perform the customary duties of a Local Recording Agent representing an Insurance Carrier in its relation with the public.

By the term "Solicitor" is meant a person officing with, and engaged in, soliciting insurance on behalf of a Local Recording Agent, who does not sign and execute policies of insurance, and who does not maintain company records of such transactions. This shall not be construed to make a Solicitor of a Local Recording Agent who places business of a class which the rules of the company or carrier require to be placed on application or to be written in a supervisory office. [As amended Acts 1935, 44th Leg., p. 204, ch. 83, § 1.]

Licenses issued on application except to corporations

Sec. 3. When any person or firm shall desire to engage in business as a Local Recording Agent for an Insurance Company or Insurance Carrier, he shall make application for a license to the Board of Insurance Commissioners, in such form as the Board may require, and such license may be issued by said Board in the form

prepared by it when he shall be found of good character and good reputation. The Board is authorized to issue licenses to firms or to individuals engaging as partners in the insurance business provided the names of all persons interested in such firm are named in the license, and provided, further, that all licensed agents must be residents of Texas. Provided, that a person who may reside in a town through which the State line may run and whose residence is in the town in the adjoining State may be licensed, if he has during the last preceding two years been licensed by the State, and if his business office has been and is being maintained in this State. The Board shall not issue a license to a corporation.

Acting without license forbidden

Sec. 4. No person shall be permitted to act as a Local Recording Agent or Solicitor in procuring business for any Insurance Company, corporation, inter-insurance exchange, Mutual, Reciprocal, Association, Lloyds or other Insurance Carrier, until he shall have procured the license provided for herein.

License for soliciting insurance generally

Sec. 5. No license shall be granted to any person or firm, either as Local Recording Agent or Solicitor, for the purpose of writing any form of insurance, unless such person or firm is writing or soliciting, or intends to write or solicit insurance from the public generally. Nothing herein contained shall prohibit his insuring his own property or properties in which he has an interest; but it is the intent of this Section to preserve to each citizen the right to choose his own Agent or Insurance Carrier, and to prohibit the licensing of an individual or firm to engage in the insurance business principally to handle business which he controls only through ownership, mortgage, or sale. The term "principally" as herein used, shall mean seventy-five per cent (75%). [As amended Acts 1935, 44th Leg., p. 204, ch. 83, § 2.]

Notice to Insurance Commissioners of appointment of Local Recording Agent by insurance carrier

Sec. 6. After a person or firm shall have been granted a license as Local Recording Agent in this State, he shall be authorized to act as such Local Recording Agent only after and while having been authorized so to do by an Insurance Carrier or Carriers, having a permit to do business in this State, and when so authorized each Company or Carrier or its General and/or State and/or Special Agent making the appointment shall immediately notify the Board of Insurance Commissioners in such form as the Board may require, of the appointment, and such person or firm shall be presumed to be the agent for such company in this State until such company or its General and/or State and/or Special Agent shall have delivered written notice to the Board of Insurance Commissioners that such appointment has been withdrawn.

Application for solicitor's license

Sec. 7. When any Local Recording Agent who has been appointed by an Insurance Carrier having a permit to do business in this State shall desire to employ a Solicitor in the operation of his business, he and a company jointly shall make application for a license for such Solicitor to the Board of Insurance Commissioners, in such form as the Board may require, and such license may be issued by said Board on the form prepared by it, when it shall be found that such person is a resident of Texas, and is of good character and good reputation, and that he intends to engage in good faith in the business of soliciting insurance, and that he intends in good faith to maintain his principal office with said Local Recording Agent, and that he is not making application for a Solicitor's license in order to evade the law against rebating or discrimination, either for himself or for some other person; and the employment of such Solicitor shall be presumed to continue until the Board shall have been notified in writing that such appointment has been discontinued. [As amended Acts 1935, 44th Leg., p. 204, ch. 83, § 3.]

Notice to Insurance Commissioner of solicitor's appointment

Sec. 8. No Solicitor shall be authorized to solicit insurance until after the Board of Insurance Commissioners shall have been notified by a Local Recording Agent of his employment, and no Local Recording Agent shall accept business tendered by a Solicitor until such Local Recording Agent has given notice to the Board of Insurance Commissioners of such Solicitor's appointment as such and until such Solicitor has been licensed by the Board of Insurance Commissioners. No Solicitor shall have outstanding at any time a notification of employment from more than one Local Recording Agent.

Limitation of insurance

Sec. 9. It shall be unlawful for any Local Recording Agent or Solicitor for a Fire Insurance Company or carrier knowingly to grant, write or permit a greater amount of insurance against loss by fire than the reasonable value of the subject of insurance.

Cancellation of license; grounds

Sec. 10. The license of any Local Recording Agent or Solicitor may be cancelled by the Board of Insurance Commissioners, after a hearing following not exceeding ten days' notice shall have been accorded to such Local Recording Agent or Solicitor, for violation of any Insurance Laws of this State, and if any Local Recording Agent or Solicitor shall be guilty of rebating any Insurance premiums or of discrimination as between assured; or if any Local Recording Agent or Solicitor shall fail to account or to pay promptly for premiums coming to his hands as such Local Recording Agent or Solicitor, or if it shall be made to appear that such person or firm has obtained a license and is not legally entitled thereto. The license of any Local Recording Agent or Solicitor may be voluntarily surrendered upon giving written notice thereof to the Board of Insurance Commissioners, and shall be automatically cancelled if such Local Recording Agent shall not have outstanding a valid appointment to act as agent for a company or carrier or if such Solicitor shall not have outstanding a valid appointment to act as a Solicitor for a Local Recording Agent.

Authority of Insurance Commissioners to inquire into business; submission of books and records

Sec. 11. The Board of Insurance Commissioners is given power and authority as a requisite for granting a license to Insurance Companies or Insurance Carriers, their Local Recording Agents or Solicitors, to require answers under oath to any question propounded by the said Board or under its authority, and touching any phase of insurance business in the State of Texas in which said Insurance Company or Insurance Carrier or such person or firm shall be engaged, and to require such person or firm seeking appointment as Local Recording Agent to submit his books, records, and accounts insofar as they may be material to any phase of insurance business, to examination and inspection by the Board or any person acting under its authority.

Life Insurance and other exceptions

Sec. 12. No provision of this Act shall apply to the Life Insurance business or the Life Department of the companies engaged therein, nor shall it apply to any of the following, namely:

(a) Any home office or salaried traveling representative of any Insurance Carrier licensed to do business in Texas.

(b) The Attorney-in-Fact of any Reciprocal Exchange admitted to do business in Texas:

(c) Any adjuster of losses, and/or inspector of risks, for an Insurance Carrier licensed to do business in Texas.

(d) Any General Agent or State Agent or Branch Manager representing an admitted and licensed Insurance Company or Carrier, or Insurance Companies or Carriers in a supervisory capacity.

(e) The Attorney-in-Fact for any Lloyds.

[1] So in enrolled bill. Session Laws read "or".

Appeal to courts by persons aggrieved

Sec. 13. Any person or firm or any insurance company or Insurance Carrier feeling aggrieved at any act or order of the Board of Insurance Commissioners with reference to the issuance, refusal, or revocation of a license may apply to a Court of Competent Jurisdiction to obtain redress for any injury unlawfully done. [Acts 1931, 42nd Leg., p. 150, ch. 96.]

Section 14 repeals all conflicting laws and parts of laws and makes the provisions of the act cumulative of all other laws not in conflict therewith.

Provision of Acts 1935, p. 204, ch. 83 § 2, incorporated in § 5 of this article dealing with regulations of licensing of local recording agents to represent insurance companies, that it is the intent to preserve to each citizen the right to choose his own agent or insurance carrier was not covered by title of act and, hence, had no legislative significance. Feldman v. Costa, Civ.App., 171 S.W.2d 200, error refused.

Art. 5062b. Licensing of local recording agents and solicitors; life, health and accident insurance excepted; other exceptions.

Classes of agents

Section 1. Insurance agents, as that term is defined in the laws of this State, shall for the purpose of this Act be divided into two classes: Local Recording Agents and Solicitors.

Definitions; certain orders, societies or associations not affected

Sec. 2. By the term "Local Recording Agent" is meant a person or firm engaged in soliciting and writing insurance, being authorized by an Insurance Company or Insurance Carrier, including Fidelity and Surety Companies, to solicit business and to write, sign, execute, and deliver policies of insurance, and to bind companies on insurance risks, and who maintain an office and a record of such business and the transactions which are involved, who collect premiums on such business and otherwise perform the customary duties of a Local Recording Agent representing an Insurance Carrier in its relation with the public; or a person or firm engaged in soliciting and writing insurance, being authorized by an Insurance Company or Insurance Carrier, including Fidelity and Surety Companies, to solicit business, and to forward applications for insurance to the Home Office of the Insurance Companies and Insurance Carriers, where the Insurance Company's and Insurance Carrier's general plan of operation in this State provides for the appointment and compensation of agents for insurance and for the execution of policies of insurance by the Home Office of the Insurance Company or Insurance Carrier, or by a Supervisory Office of such Insurance Company or Insurance Carrier, and who maintain an office and a record of such business and the transactions which are involved, and who collect premiums on such business and otherwise qualify and perform the customary duties of a Local Recording Agent representing an Insurance Carrier in its relation with the public.

By the term "Solicitor" is meant a person who is a bona fide Solicitor in the office of, and engaged in the business of soliciting insurance on behalf of a Local Recording Agent, and who offices with such Local Recording Agent, and who does not sign and execute policies of insurance, and who does not maintain company records of such transactions. This shall not be construed to make a Solicitor of a Local Recording Agent, who placed business of a class which the rules of the Company or Carrier require to be placed on application or to be written in a supervisory office.

By the term "Board", as used in this Act, is meant the Board of Insurance Commissioners.

Where reference is made in this Act to "Company" or "Carrier" such reference means any Insurance Company, corporation, inter-insurance exchange, Mutual, Reciprocal, Association, Lloyds or other Insurance Carrier licensed to transact business in the State of Texas other than as excepted herein.

Nothing contained in this Act shall be so construed as to affect or apply to orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business, and the ladies' societies, or ladies' auxiliary to such orders, societies or associations, or any secretary of a Labor Union or organization, or any secretary or agent of any Fraternal Benefit Society, which does not operate at a profit.

Application for license; to whom license may be issued; corporations not to be licensed

Sec. 3. When any person or firm shall desire to engage in business as a Local Recording Agent for an Insurance Company or Insurance Carrier, he shall make application for a license to the Board of Insurance Commissioners, in such form as the Board may require, which application shall require a signed endorsement by General or State or Special Agent of a qualified Insurance Company or Insurance Carrier that applicant is a resident of Texas, trustworthy, of good character and good reputation, and is worthy of a license. The Board is authorized to issue licenses to firms or to individuals engaging as partners in the insurance business, provided the names of all persons interested in such firm are named in the license, and each named as active in the business of the partnership qualify, and it be established that none not active have interest in partnership principally to have written and be compensated therefor for insurance on property controlled through ownership, mortgage or sale, family relationship, or employment; and provided further, that all licensed agents must be residents of Texas. Provided, that a person who may reside in a town through which the State line may run and whose residence is in the town in the adjoining State may be licensed, if his business office is being maintained in this State. All persons acting as Agent or Solicitor for health and accident insurance within the provisions hereof, and who represent only fire and casualty companies, and not life insurance companies, shall be required to procure only one license and such license as is required under the provisions of this Act. The Board shall not issue a license to a corporation.

Acting without license forbidden

Sec. 4. It shall be unlawful for any person or firm or partnership to act as a Local Recording Agent or Solicitor in procuring business for any Insurance Company, corporation, inter-insurance exchange, Mutual, Reciprocal, Association, Lloyds or other Insurance Carrier, until he shall have in force the license provided for herein.

Active agents or solicitors only to be licensed

Sec. 5. No license shall be granted to any person, firm or partnership, either as a Local Recording Agent or Solicitor, for the purpose of writing any form of insurance, unless it is found by the Board of Insurance Commissioners that such person or firm is, or intends to be, actively engaged in the soliciting or writing of insurance from the public generally; that each person or individual of a firm is a resident of Texas, of good character and good reputation, worthy of a license, and is to be actively engaged in good faith in the business of insurance, and that application is not being made in order to evade the laws against rebating and discrimination either for the applicant or for some other person. Nothing herein contained shall

prohibit his insuring his own property or properties in which he has an interest; but it is the intent of this section to prohibit coercion of insurance and to preserve to each citizen the right to choose his own Agent or Insurance Carrier, and to prohibit the licensing of an individual or firm to engage in the insurance business principally to handle business which he controls only through ownership, mortgage or sale, family relationship or employment, which shall be taken to mean that an applicant who is making an original application for license shall show the Board of Insurance Commissioners that he has a bona fide intention to engage in business in which at least twenty-five (25%) per cent of the total volume of premiums shall be derived from persons other than himself and from property other than that on which the applicant shall control the placing of insurance through ownership, mortgage, sale, family relationship or employment; and which shall be taken to mean, in the case of application for renewal of license, that at least twenty-five (25%) per cent of applicant's total volume of premiums, during the year preceding such application for renewal, shall have been derived from persons other than himself and from property other than that on which the applicant controlled the placing of insurance through ownership, mortgage, sale, family relationship or employment.

Examination required; exceptions

Sec. 6. If applicant for a Local Recording Agent's license has not prior to date of such application, been licensed as a Local Recording Agent, or if the applicant for a Solicitor's license has not been licensed as a Local Recording Agent or as a Solicitor prior to date of such application, the Board of Insurance Commissioners shall require such applicant to submit to a written examination covering all kinds of insurance or contracts, which license if granted, will permit the applicant to solicit. Any applicant for Local Recording Agent's license who has prior to the date of such application been licensed as a Local Recording Agent, shall be entitled to a Local Recording Agent's license without examination, provided the other requirements of this Act are met. Any applicant for a Solicitor's license who has been licensed as a Local Recording Agent or as a Solicitor prior to date of such application, shall be entitled to a Solicitor's license without an examination, provided the other requirements of this Act are met.

Death, disability or insolvency; emergency license without examination

Sec. 6a. In event of death or disability of a Local Recording Agent or in event a Local Recording Agent is found to be insolvent and unable to pay for premiums coming to his hands as such Local Recording Agent, the Board may issue to an applicant for a Local Recording Agent's license an emergency Local Recording Agent's license for a period of not longer than ninety (90) days in any twelve (12) consecutive months without an examination provided the other requirements of this Act are met and if it is established to the satisfaction of the Board that such emergency license is necessary for the preservation of the agency assets of a deceased or disabled Local Recording Agent or of an insolvent Local Recording Agent.

Conduct of examinations; notice; manual of questions and answers

Sec. 7. All examinations provided by this Act shall be conducted by the Board of Insurance Commissioners, and shall be held not less frequently than once each sixty (60) days every year at times and places prescribed by the Board of Insurance Commissioners, of which applicants shall be notified by the Board of Insurance Commissioners in writing, ten (10) days prior to the date of such examinations, and shall be conducted in writing, except that the applicant upon notice to the Board of Insurance Commissioners shall be entitled to be examined in the county seat of the county of his residence. Provided, further, that printed copies of a manual of questions and answers thereto pertaining to the examination published under the direction of the Board of Insurance Commissioners shall be made available to all companies, general agents, and managers for the use of their prospective agents, to all agents for the use of their prospective solicitors in preparing for such examination. The questions to be asked on such examination shall be based upon the questions and answers contained in the manual.

Expiration of license; renewal

Sec. 8. Every license issued to a Local Recording Agent or Solicitor shall expire on the first day of March each year, unless an application to qualify for the renewal of any such license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the license sought to be renewed shall continue in full force and effect until renewed or renewal is refused.

Fees payable before examination

Sec. 9. Applicants required to be examined shall, at time and place of examination, pay prior to being examined; for a Local Recording Agent's license in a town or village exceeding five thousand (5,000) population, a fee of Ten ($10.00) Dollars; for a Local Recording Agent's license in any other place, a fee of Five ($5.00) Dollars; for a Solicitor's license in town or village exceeding five thousand (5,000) population, a fee of Two and 50/100 ($2.50) Dollars; for a Solicitor's license in any other place, a fee of One ($1.00) Dollar. Population shall be determined according to last Federal Census.

Renewal fee

Sec. 10. An applicant for the renewal of a Local Recording Agent's license or for the renewal of a Solicitor's license shall pay, at the time the renewal application is filed, a fee of One ($1.00) Dollar.

Issuance of license

Sec. 11. Whenever the provisions of this Act have been complied with, the Board shall issue to any applicant the license applied for where such applicant shall have satisfactorily passed the examination given by the Board of Insurance Commissioners, and who shall possess the other qualifications required by this Act.

Notice to insurance commissioners of appointment of Local Recording Agent by insurance company

Sec. 12. After a person or firm shall have been granted a license as Local Recording Agent in this State, he shall be authorized to act as such Local Recording Agent, only after and during the time such person or firm has been authorized so to do, by an Insurance Company or Carrier having a permit to do business in this State; and when so authorized each Company or Carrier or its General or State or Special Agent making the appointment shall immediately notify the Board of Insurance Commissioners, in such form as the Board may require, of the appointment, and such person or firm shall be presumed to be the agent for such company in this State until such company or its General or State or Special Agent shall have delivered written notice to the Board of Insurance Commissioners that such appointment has been withdrawn.

Application for solicitor's license

Sec. 13. When any Local Recording Agent who has been appointed by an Insurance Carrier having a permit to do business in this State shall desire to appoint a Solicitor in the operation of his business, he and a company jointly shall make application for

a license for such Solicitor to the Board of Insurance Commissioners, in such form as the Board may require.

Notice to insurance commissioners of solicitor's appointment; authority to solicit

Sec. 14. No Solicitor shall be authorized to solicit insurance until after the Board of Insurance Commissioners shall have been notified by a Local Recording Agent of his appointment, and no Local Recording Agent shall accept business tendered by a Solicitor until such Local Recording Agent has given notice to the Board of Insurance Commissioners of such Solicitor's appointment as such, and until such Solicitor has been licensed by the Board of Insurance Commissioners. No Solicitor shall have outstanding at any time, a notification of appointment from more than one Local Recording Agent, and a Solicitor shall solicit insurance only in the name of and for the account of the Local Recording Agent by whom he has been appointed.

Fire insurance in excess of value, writing of forbidden

Sec. 15. It shall be unlawful for any Local Recording Agent or Solicitor for an Insurance Company or Insurance Carrier knowingly to grant, write or permit a greater amount of insurance against loss by fire than the reasonable value of the subject of insurance.

Suspension, cancelation or surrender of license

Sec. 16. The license of any Local Recording Agent or Solicitor may be suspended or canceled by the Board of Insurance Commissioners, after a hearing following not less than ten (10) days' notice shall have been accorded to such Local Recording Agent or Solicitor, for violation of this Act or of any Insurance Laws of this State; or if any Local Recording Agent or Solicitor shall be guilty of rebating any insurance premium or discriminate as between assureds; or if any Local Recording Agent or Solicitor shall fail to account or to pay promptly for premiums coming to his hands as such Local Recording Agent or Solicitor, or if it shall be made to appear that such person or firm has obtained a license and is not legally entitled thereto. The license of any Local Recording Agent or Solicitor may be voluntarily surrendered upon giving written notice thereof to the Board of Insurance Commissioners, and shall be automatically suspended or canceled if such Local Recording Agent shall not have outstanding a valid appointment to act as agent for an Insurance Company or Insurance Carrier, or if such Solicitor shall not have outstanding a valid appointment to act as a Solicitor for a Local Recording Agent.

Notice and hearing; witnesses; books; records

Sec. 17. The Board shall neither refuse to issue nor to renew, nor to suspend, nor to revoke, any license provided for in this Act for any of the causes enumerated herein, unless the applicant or the person accused has been given at least ten (10) days' notice in writing of the specific charge against him, and shall have been given a hearing before the Board. Upon the hearing of such proceeding the applicant or accused shall have the right to be represented by counsel and the Board shall, if it so requests, be represented by the District Attorney or the County Attorney of the County in which the hearing is held. The Board shall have the power to summon witnesses and require the production of books, records, and papers for the purpose of such hearing, and to administer oaths. Any District Court or any Judge of such Court in this State, in term time or in vacation, upon application by the accused or of the Board or a member thereof, may, by order duly entered, require the attendance of witnesses and production of relevant books, records and papers before the Board, in any hearing relating to the refusal, suspension, renewal, or revocation or issuing of any license provided for in this Act, and may order the Sheriff or any other peace officer of the County wherein said order is made and entered, to serve such process as may be issued, in order to compel the attendance of witnesses before said Board, for which services so rendered by such officer or officers, the fees and mileage of the Sheriff for all witnesses shall be the same as allowed in criminal cases, and shall be paid from the fund of the Board as herein provided for; however, the officers shall make claim for fees as in criminal cases and be paid upon warrant drawn by the Comptroller as in criminal cases. If the applicant or the accused shall prevail at such hearing, the Board shall grant him the proper relief without delay. Any of the investigations, inquiries or hearings thus authorized may be entertained or held by or before any member or members of the Board of Insurance Commissioners, and the finding or order of such member or members, when approved and confirmed by the Board, shall be deemed a finding or order of the Board. The Board or any member thereof may hold any of such hearings provided for in this Act, in Austin or in the County seat of the County of the residence of the applicant or the accused, at the discretion of the Board. If the applicant or accused shall fail or refuse to appear for any hearing, after the notice provided herein, the Board shall have the authority to proceed with such hearing, and enter the proper orders the same as if the applicant or accused were present in person.

Appeal

Sec. 18. If the said Board shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit in any of the District Courts of Travis County, Texas, or in any District Court in the County of the applicant's residence, and not elsewhere within twenty (20) days from the date of the order of said Board, such appeal to the District Court shall be by a trial de novo, as such term is commonly used and intended in an appeal from justice court to county court. On the date of the rendition of any such order of the Board, a registered letter containing a copy of such order shall be mailed by the Board to the applicant or the accused involved.

Notice to last address

Sec. 19. Where notice to the applicant or accused is provided for in any part of this Act, notice by registered mail to his last known address shall be sufficient.

Life, health and accident insurance, inapplicable to; other exceptions

Sec. 20. No provision of this Act shall apply to the Life, Health and Accident Insurance business or the Life, Health and Accident Department of the companies engaged therein, nor shall it apply to any of the following, namely:

(a) Any actual full-time home office or salaried traveling representatives of any Insurance Carrier licensed to do business in Texas.

(b) Any actual attorney in fact and its actual traveling salaried representative as to business transacted through such attorney in fact or salaried representative of any reciprocal exchange or inter-insurance exchange admitted to do business in Texas.

(c) Any adjuster of losses, and/or inspector of risks, for an Insurance Carrier licensed to do business in Texas.

(d) Any General Agent or State Agent or Branch Manager representing an admitted and licensed Insurance Company or Carrier, or Insurance Companies or Carriers, in a supervisory capacity.

(e) The actual attorney in fact for any Lloyds.

(f) All incorporated or unincorporated Mutual Insurance Companies, their agents and representatives, organized and/or operating under and by authority of Senate Bill No. 121, 45th Legislature, Acts 1937.[1]

(g) Nothing in this entire Act shall ever be construed to apply to any member, agent, employee, or representative of any County Mutual Fire Insurance Company as exempted under Senate Bill No. 121, 45th Legislature, Acts 1937.[1]

Fees, disposition of; appropriations

Sec. 21. The fees herein provided for, when collected, shall be placed with the State Treasurer in a separate fund, which shall be known as the Local Recording Agents' and Solicitors' License Fund, provided that no expenditures shall be made from said fund except under authority of the Legislature as set forth in the General Appropriation Bill; provided further that no appropriation shall ever be made out of the General Revenue Fund for the purpose of administering this Act or any provision thereof.

Rebates or inducements forbidden

Sec. 22. It shall be unlawful for any Local Recording Agent to pay, allow, give or offer to pay, allow or give, directly or indirectly, any rebate of premiums payable, any commission, or any paid employment or contract for service of any kind or anything of value whatsoever, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance for or on account of the solicitation or negotiation of contracts of insurance on property or risks in this State to any person, firm or corporation, other than a duly licensed Solicitor appointed by such Local Recording Agent, or to another Local Recording Agent.

It shall be unlawful for any Solicitor to pay, allow or give or offer to pay, allow or give, directly or indirectly, any rebate of premiums payable, any commission, or any paid employment or contract for service of any kind, or anything of value whatsoever, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance, for or on account of the solicitation or negotiation of contracts of insurance on property or risks in this State to any person, firm or corporation.

Repeal; laws not in conflict not affected; act cumulative

Sec. 23. All laws or parts of laws pertaining to any phase of the Insurance business, which are in conflict herewith, shall be and the same are hereby repealed; but all laws, Civil and Criminal, affecting Insurance Agents, and/or Insurance Companies or Insurance Carriers or the Insurance business, which are not in conflict herewith, shall not be affected by the provisions of this Act; but this Act shall be deemed cumulative of laws.

Violations of act

Sec. 24. Any person or any member of any firm who violates any of the provisions of Sections 4, 15 and 22 of this Act shall be guilty of a misdemeanor, and upon conviction in a Court of competent jurisdiction, shall be punished by a fine of not less than One ($1.00) Dollar nor more than One Hundred ($100.00) Dollars.

Enforcement of act

Sec. 25. The Attorney General, or any District or County Attorney, or the Board of Insurance Commissioners, may institute any injunction proceeding or such other proceeding to enforce the provisions of this Act, and to enjoin any person, firm or corporation from engaging or attempting to engage in any of the business in violation of this Act or any of the provisions thereof. The provisions of this section are cumulative of the other penalties or remedies provided for in this Act.

Administration of act

Sec. 26. The administration of the provisions of this Act shall be vested in the Board of Insurance Commissioners, and of the administrative officers of the various Counties in which the violation of any provision of this Act may occur; and the personnel charged with the direct supervision of the Act, except the regularly elected law enforcement officers and their appointees, shall be responsible to and serve at the will of the Board of Insurance Commissioners. It shall be the duty of the Board of Insurance Commissioners and the Attorney General, and of the District and County Attorneys in Counties where violations of this Act may occur, to see that its provisions are at all times obeyed, and to make such investigations as will prevent or detect the violation of any provision thereof. The Board of Insurance Commissioners shall at once lay before the District or County Attorney of the proper County, any evidence which shall come to its knowledge, of criminality or threatened criminality under this Act. In the event of the neglect or refusal of such Attorney to institute and prosecute such violation, or to enforce the other remedies provided by this Act, the Board shall submit such evidence to the Attorney General, who is hereby authorized to proceed therein with all the rights, privileges and powers conferred by law upon District or County Attorneys. Provided, any person having knowledge of the violation of the provisions of this Act may file a complaint for such violation with the proper officers as in other misdemeanor cases. The Board of Insurance Commissioners is given the power and authority, as a requisite for granting or renewing a license to Insurance Companies or Insurance Carriers, their Local Recording Agents or Solicitors, to require answers under oath to any questions propounded by the said Board or under its authority, and touching any phase of insurance business in the State of Texas in which said Insurance Company or Insurance Carrier, or such person or firm, shall be engaged, and to require such person or firm seeking appointment as Local Recording Agent to submit his books, records, and accounts, insofar as they may be material to any phase of insurance business, to examination and inspection by the Board or any person acting under its authority.

Partial invalidity

Sec. 27. If any section, subsection, sentence, clause, or phrase of this Act shall for any reason be held to be void or unconstitutional, such provision shall not affect the validity of the remaining portions of this Act. [Act 1941, 47th Leg., p. 374, ch. 212.]

[1] Article 4860a—20.

Art. 5063. [4968] Solicitor deemed company's agent.—Any person who shall solicit an application for insurance upon the life of another shall in any controversy between the assured and his beneficiary and the company issuing any policy upon such application be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have the power to waive, change or alter any of the terms or conditions of the application or policy. [Acts 1909, p. 192.]

Art. 5064. [4969] Who may not be agents.—No corporation or stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life insurance policies or contracts in the State. No life insurance company shall be granted a certificate of authority to transact business in this State, which has or is bound by any valid subsisting contract with any other corporation, by virtue of which such other corporation is entitled to receive, directly or indirectly, any percentage or portion of the premium or other income of such life insurance company for any period. No person shall be granted a certificate of authority as the agent of any

life insurance company who enters into any contract with any corporation other than such life insurance company, by virtue of which such other corporation is entitled to receive, directly or indirectly, any compensation earned by him as agent for such life insurance company, or any percentage or portion thereof for any period. [Id.]

Art. 5065. [4970] Certificates for agents.—Each such foreign insurance company shall, by resolution of its board of directors, designate some officer or agent who is empowered to appoint or employ its agents or solicitors in this State, and such officer or agent shall promptly notify the Commissioner [1] in writing of the name, title and address of each person so appointed or employed. Upon receipt of this notice, if such person is of good reputation and character, the Commissioner shall issue to him a certificate which shall include a copy of the certificate of authority authorizing the company requesting it to do business in this State, and the name and title of the person to whom the certificate is issued. Such certificate, unless sooner revoked by the Commissioner for cause or canceled at the request of the company employing the holder thereof, shall continue in force until the first day of March next after its issuance, and must be renewed annually. [Id.]

[1] See note under Article 5036, ante.

Art. 5066. [4971] Revocation of agent's certificate.—Cause for the revocation of the certificate of authority of an agent or solicitor for an insurance company may exist for violation of any of the insurance laws, or if it shall appear to the Commissioner [1] upon due proof, after notice that such agent or solicitor has knowingly deceived or defrauded a policy holder or a person having been solicited for insurance, or that such agent or solicitor has unreasonably failed and neglected to pay over to the company, or its agent entitled thereto, any premium or part thereof, collected by him on any policy of insurance or application therefor. The Commissioner shall publish such revocation in such manner as he deems proper for the protection of the public; and no person whose certificate of authority as agent or solicitor has been revoked shall be entitled to again receive a certificate of authority as such agent or solicitor for any insurance company in this State for a period of one year. [Id.]

[1] See note under Article 5036, ante.

Art. 5067. [4508] [3060] Revocation of certificate of authority.—Should any insurance company fail or neglect to pay off and discharge any execution, issued upon a valid final judgment against said company, within thirty days after the notice of the issuance thereof, then in that event the certificate of authority of said company to transact business of insurance shall be revoked, canceled and annulled, and said company shall be prohibited from transacting business of insurance in this State until said execution be satisfied. [Acts 1879, p. 159.]

Art. 5068. [4972] Foreign insurance corporations.—The provisions of this title are conditions [1] upon which foreign insurance corporations shall be permitted to do business within this State, and any such foreign corporation engaged in issuing contracts or policies within this State shall be held to have assented thereto as a condition precedent to its right to engage in such business within this State. [Acts 1903, p. 94.]

[1] So in enrolled bill. R.S.1925 reads "conditioned".

Art. 5068a. Exemption of insurance benefits from seizure under process.—Sec. 1. No money or benefits of any kind to be paid or rendered on a weekly, monthly or other periodic or installment basis to the insured or any beneficiary under any policy of insurance issued by a life, health or accident insurance company, including mutual and fraternal insurance, or under any plan or program of annuities and benefits in use by any employer, shall be liable to execution, attachment, garnishment or other process or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of the insured or of any beneficiary, either before or after said money or benefits is or are paid or rendered, except for premiums payable on such policy or a debt of the insured secured by a pledge thereof.

Sec. 2. Wherever any policy of insurance or plan or program of annuities and benefits mentioned in Section 1 of this Act shall contain a provision against assignment or commutation by any beneficiary thereunder of the money or benefits to be paid or rendered thereunder, or any rights therein, any assignment or commutation or any attempted assignment or commutation by such beneficiary of such money or benefits or rights in violation of such provision shall be wholly void. [Acts 1927, 40th Leg., p. 348, ch. 234.]

Art. 5068b. Licensing of agents.

Issuance of license

Sec. 1. Hereafter when any person shall desire to become an agent for a life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, local mutual aid association, or state-wide mutual association, soliciting or writing insurance in the State of Texas, as the term agent is elsewhere defined in the law, he shall, in such form and giving such information as may be required, make application to the Board of Insurance Commissioners for a license to act as such agent. After the Board of Insurance Commissioners shall determine that such person is of good character and reputation, it shall issue the license to such person in such form as it may prepare. [As amended Acts 1935, 44th Leg., p. 679, ch. 289, § 1.]

Annual license; surrender or cancellation

Sec. 2. Any license so issued by the Board of Insurance Commissioners to any person shall remain in force and effect for a period of one year; at the end of which time he may be issued a new license. Such agent may at any time he desires surrender, voluntarily, his license by filing notice with such Board of Insurance Commissioners or said license may be cancelled by the Board of Insurance Commissioners for cause, or if such person shall not have outstanding a legal and definite appointment by some life insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, or local mutual aid association, or statewide mutual association soliciting or writing insurance in the State of Texas, to act as its agent, in which latter event the license shall be forfeited. [As amended Acts 1935, 44th Leg., p. 679, ch. 289, § 2.]

Notice to Insurance Commissioners of persons appointed

Sec. 3. When any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, or local mutual aid association, or statewide mutual association soliciting or writing business in this State shall employ any such person who has received such license, as its agent, such company shall notify the Board of Insurance Commissioners of such appointment and employment and thereafter such person shall prima facie be deemed, for the purposes of this Act, to be the agent of such life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, or local mutual aid association, or statewide mutual association for a period of twelve (12) months and/or until such employment and appointment has been terminated and withdrawn under other provisions

of this Act. [As amended Acts 1935, 44th Leg., p. 679, ch. 289, § 3.]

Cancellation of licenses

Sec. 4. It shall be the duty of the Board of Insurance Commissioners to make diligent inquiry into the fitness of agents to continue as such, and to cancel a license once issued, or to refuse the application for a new license of any person found not to be of good character or reputation, or who shall wilfully violate any of the provisions of this Act, or other of the insurance laws of the State of Texas. Before cancelling, for cause, any license issued, the Board shall notify the licensee to appear at Austin, Travis County, Texas, at any named date after ten (10) days and show cause why the license should not be cancelled, and shall hear what the licensee may have to offer touching the question of cancellation and the cause therefor. Any licensee whose license is cancelled, or any applicant to whom a license is refused may have redress in the Courts as in other civil suits. [As amended Acts 1935, 44th Leg., p. 679, ch. 289, § 4.]

License required as precedent to transacting business

Sec. 5. No person shall be authorized to engage in business as the agent of any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association or organization, local mutual aid association, or statewide mutual association soliciting or writing business in this State, until he shall have procured a license from the Board of Insurance Commissioners as herein provided, and no such company shall appoint any person to act as its agent or solicitor unless such person shall have first obtained a license under the provisions hereof, and no person who shall have obtained a license as such agent shall engage in business as such agent, or shall have been appointed to act as such agent by some duly authorized life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, local mutual aid association, or statewide mutual association, nor shall he under any circumstances solicit or write insurance for any person or any company not authorized to do a life, health or accident business in Texas. [Acts 1933, 43rd Leg., p. 356, ch. 138, as amended Acts 1935, 44th Leg., p. 679, ch. 289, § 5.]

Penal Provision

Section 6 of this act being a penal provision is published as Penal Code, Article 570a.

Fees and use of funds

Sec. 7. It shall be the duty of the Life Insurance Commissioner to collect from every agent of any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association or organization, local mutual aid association or statewide mutual association soliciting or writing insurance in the State of Texas under the provisions of this Act, an annual fee of One Dollar ($1), which fees shall constitute a fund to be used by the Life Insurance Commissioner to enforce the provisions of this Act and all laws of this State governing and regulating agents of such Insurance Companies; and the Life Insurance Commissioner is hereby given full power and authorized under authority to use any portion of the fund herein created for the purpose of enforcing the provisions of this Act and any and all such laws; and said Commissioner is authorized to employ such person or persons as he may deem necessary to investigate and make reports upon any and all alleged violations of said laws and misconduct on the part of such agents and to pay the salaries and expenses of such person or persons so designated by him and all office employees and expenses necessary in the enforcement of this Act out of the funds created hereunder and such person or persons so appointed by the Commissioner are hereby authorized and empowered to administer the oath and to examine under oath any person deemed necessary in gathering information and evidence and to have the same reduced to writing if deemed necessary and all such expenses shall be paid out of said fund. If any residue for any years shall remain in said fund over and above the amount necessary to carry on the work and investigation and pay the expenses herein provided for, the same shall be carried over to the following year or years and used in the continuation of the enforcement of this Act and the insurance laws of this State and all such funds are hereby appropriated for such purpose. The funds collected under this provision shall be paid into the State Treasurer [1] at least once each week and kept in a Special Fund and shall be paid out for salaries, traveling expenses, office expenses and other incidental expenses incurred by the Commissioner hereunder out of the funds created hereunder and such person or persons so appointed by the Commissioner are hereby authorized and empowered to administer authority and to examine under oath any person deemed necessary in gathering information and evidence and to have the same reduced to writing if deemed necessary and all such expenses shall be paid out of said fund. The funds collected under this provision shall be paid into the State Treasurer [1] at least once each week and kept in a Special Fund and shall be paid out for salaries, traveling expenses and other incidental expenses incurred by the Commissioner hereunder upon proper account duly approved by the Life Insurance Commissioner. [Acts 1935, 44th Leg., p. 679, ch. 289.]

[1] So in enrolled bill. Should probably read "Treasury".

Annual license

Sec. 7a. Any agent complying with the terms of this Act shall be licensed annually as of date March 31, it being the intent of this Act to have all licenses renewed March 31 of each year. The licenses of all agents licensed under the terms of this Act shall expire March 31 of each year. [Acts 1935, 44th Leg., p. 679, ch. 289.]

Section 6 of the acts of 1933 and 1935, being penal provision, is published as Penal Code, art. 570a.

Section 8 of Act 1935, repeals all conflicting laws and parts of laws.

Art. 5068c. Liquidation, rehabilitation, reorganization or conservation of insurers.

Definitions

Section 1. For the purposes of this Act:

(a) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of the Board of Insurance Commissioners.

(b) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

(c) "General assets" means all property, real or personal, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all in excess of the amount necessary to discharge the sum or sums secured. Assets held in trust and assets held on deposit, for the security or benefit of all policyholders, or all policyholders and creditors, in the United States, shall be deemed general assets.

(d) "Liquidator" means the person designated by the Board of Insurance Commissioners as receiver, liquidator, rehabilitator or conservator of all insurers as defined herein.

(e) "Board" shall mean the Board of Insurance Commissioners of the State of Texas.

Conduct of delinquency proceedings against domiciliary insurers

Sec. 2. Whenever under the law of this State a court of competent jurisdiction finds that a receiver

should take charge of the assets of an insurer domiciled in this State, the liquidator designated by the Board of Insurance Commissioners as hereinafter provided for shall be such receiver. The liquidator so appointed receiver shall forthwith take possession of the assets of such insurer and deal with the same in his own name as receiver or in the name of the insurer as the court may direct.

The said receiver and his successors in office shall be vested by operation of law with the title to all of the property, contracts and rights of action of such insurer, wherever located, as of the date of entry of the order directing possession to be taken. The filing or recording of such an order in any record office of the State shall impart the same notice as would be imparted by a deed, bill of sale or other evidence of title duly filed or recorded by such insurer. The receiver shall be responsible, on his official bond hereinafter provided for, for all assets coming into his possession. The court may require an additional bond, or bonds, from the said receiver, and, if deemed desirable for the protection of the assets, may require a bond, or bonds, of any special deputy liquidator, or other assistant or employee appointed by or under the authority of this Act.

Upon taking possession of the assets of a delinquent insurer the receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer, or to take such steps as may be necessary to conserve the assets and protect the rights of policyholders and claimants for the purpose of liquidating, rehabilitating, reinsuring, reorganizing or conserving the affairs of the insurer. An inventory in duplicate of the insurer's assets shall be prepared forthwith by the liquidator, one of which shall be filed in the office of the Board and one in the office of the clerk of the court having jurisdiction, which inventories shall be open to inspection. The liquidator may sell or compound doubtful debts and may sell real or personal property under order of the court, but no such order shall be entered or sale made without notice and hearing. All money collected by the liquidator shall be forthwith deposited in such bank or banks in this State as may be designated by the Board, which banks shall be members of the Federal Deposit Insurance Corporation. The funds collected or realized from the assets of each insurer shall be kept separate and apart from all other funds. Whenever any account in any such bank exceeds the maximum amount insured by said Federal Deposit Insurance Corporation, the Board is hereby authorized and directed to make such contracts and require such security as it may deem proper for the safeguarding of such deposit.

If it shall appear to the court that the interests of creditors will be best served by liquidation of insurer's affairs, the liquidator shall cause weekly notice to be published for three (3) consecutive months in two (2) or more newspapers. The notice shall call upon all persons having claims against the insurer to present them to the liquidator and make legal proof thereof at a designated place within ninety (90) days after the date of the first insertion of the notice. The liquidator shall mail a similar notice to all persons whose names appear as creditors upon insurer's books.

Under direction of the court, the liquidator may pay one or more dividends after the date fixed for presentation of claims, and may pay a final dividend after one year from the date of the first published notice to creditors. Delayed claims may participate only in future dividends.

The liquidator shall have the discretion to approve or reject any claim filed against the insurer. Objections to any claim not rejected may be made by any party interested, by filing the objections with the liquidator, who shall forthwith present them to the court for determination after notice and hearing. Upon the rejection of each claim, the liquidator shall notify the claimant of such rejection either by registered mail or by written notice personally served. Action upon a claim so rejected must be brought within six (6) months after service.

The Board shall have power to appoint and fix the compensation of the liquidator and of such special deputy liquidators, counsel, clerks, or assistants, as it may deem necessary. The payment of such compensation and all expenses of liquidation shall be made by the liquidator out of funds or assets of the insurer on approval of the Board. An itemized report of such expenses, sworn to by the liquidator and approved by the Board, shall be presented to the court from time to time, which account shall be approved by the court unless objection is filed thereto within ten (10) days after the presentation of the account. The objection, if any, must be made by a party at interest and shall specify the item or items objected to and the ground of such objection. The court shall set the objection down for hearing, notifying the parties of the setting. The burden of proof shall be upon the party objecting to show that the items objected to are improper, unnecessary or excessive.

Unclaimed dividends on approved claims remaining in the liquidator's hands after payment of the final dividend shall be delivered to the Board. If funds or assets remain after the liquidator has paid in full every approved claim filed and has paid all expenses of the liquidation, he shall pay over to the Board an amount equal to the unclaimed liabilities according to insurer's books. Such funds shall be deposited by the Board in trust in a special account to be maintained in the State Treasury.

On receipt of satisfactory written and verified proof of ownership within seven (7) years from the date such funds are so deposited in the State Treasury, the Board shall certify such facts to the Comptroller of Public Accounts, who shall issue proper warrant therefor in favor of the parties respectively entitled thereto drawn on the State Treasurer. Any such money remaining unclaimed with the Board for seven (7) years shall automatically escheat to and become the property of the General Revenue Fund of the State of Texas.

When the liquidator shall have made provision for unclaimed dividends and liabilities, he shall call a meeting of the stockholders of the insurer by giving notice thereof in one or more newspapers in the county where the principal office of the insurer was located, and by written notice to the stockholders of record at their last known address. At such meeting, the stockholders shall appoint an agent or agents to take over the affairs to continue the liquidation for benefit of the stockholders. Voting privileges shall be governed by the insured's bylaws. A majority of the stock shall be represented at the agent's appointment. Such agent or agents shall execute and file with the court such bond or bonds as shall be approved by it, conditioned on the faithful performance of all the duties of the trust. Under order of the court, the liquidator shall then transfer and deliver to such agent or agents for continued liquidation under the court's supervision all assets of insurer remaining in his hands, whereupon the liquidator and the Board, and each member and employee thereof, shall be discharged from any further liability to such insurer and its creditors and stockholders; provided, however, that nothing herein contained shall be so construed as to permit the insurer to continue in business as such, but the charter of such insurer and all permits and licenses issued thereunder or in connection therewith shall be ipso facto revoked and annulled by such order of the court directing the liquidator to transfer and deliver the remaining assets of such insurer to such agent or agents.

Ancillary delinquency proceedings

Sec. 3. Whenever under the laws of this State, a receiver is to be appointed in delinquency proceedings for an insurer domiciliary in another State, a court of competent jurisdiction in this State shall, on the petition of the Board of Insurance Commissioners of this State, appoint the liquidator herein provided as ancillary receiver in this State of such insurer. The Board shall file such petition (a) if it finds that there are sufficient assets of such insurer located in this State to justify the appointment of an ancillary receiver, or (b) if ten (10) or more persons resident in this State, having claims against such insurer, file a petition or petitions in writing with the Board, requesting the appointment of such ancillary receiver. Such ancillary receiver shall have the right to sue for and reduce to possession the assets of such insurer in this State, and shall have the same powers and be subject to the same duties with respect to such assets, as are possessed by a receiver of a domiciliary insurer under the laws of this State. The remaining provisions of this Act shall be applicable to the conduct of such ancillary proceedings.

Appointment of liquidator

Sec. 4. The liquidator herein named shall be appointed by a majority of the said Board of Insurance Commissioners, and shall be subject to removal by a majority of said Board, and before entering upon the duties of said office, shall file with the Board of Insurance Commissioners a bond in the sum of Ten Thousand Dollars ($10,000), payable to the Board of Insurance Commissioners, and conditioned upon the faithful performance of his duties and the proper accounting for all moneys and properties received or administered by him.

Said liquidator shall file reports with the Board of Insurance Commissioners upon its request showing the operation, receipts, expenditures and general condition of any organization of which he may have charge at that time, and, upon request, shall file a copy of said report with the court in which said receivership proceeding is pending. He shall also file a final report of each organization which he has liquidated or handled showing all receipts and expenditures, and giving a full explanation of the same and a true statement of the disposition of all of the assets of each organization.

If, within two (2) years after the receivership shall have been closed by final order of the court, the liquidator shall discover assets not known to him during receivership, he shall report his findings to the court. It shall be within the discretion of the court as to whether the value of the after discovered assets shall justify the reopening of the receivership for continued liquidation.

Bonds

Sec. 5. All bonds required under the terms of this Act shall be upon such forms as may be prescribed by or satisfactory to the Board, and shall be executed by some solvent corporate company authorized to transact its surety bond business in Texas.

Conflicts of laws

Sec. 6. In the event of conflict between the provisions of this Act and the provisions of any existing law, the provisions of this Act shall prevail, and all laws, or parts of laws, in conflict with the provisions of this Act are hereby repealed to the extent of such conflict; provided, however, that to the extent of the conflicts between this Act and the provisions of Senate Bill No. 135, Acts of the Regular Session, Forty-sixth Legislature,[1] the latter shall prevail, and the provisions of this Act are hereby declared to be inapplicable to insolvency proceedings instituted under the provisions of said Senate Bill No. 135. [Acts 1939, 46th Leg., p. 389.]

[1] Article 5068—1, effective May 12, 1939.

Art. 5068d. Officers, directors or trustees, personal non-liability for tax payments.—No officer, trustee, or director of any insurer shall, in complying with the Statutes, be subject to any personal liability by reason of any payment, or determination not to contest payment, deemed by the board of directors or trustees to be in the corporate interest of such insurer, of any license, excise, privilege, premium, occupation, or other fee or tax to any State, territory, or political subdivision thereof, unless prior to such payment the Statute, ordinance, or other law imposing such fee or tax shall have been expressly held invalid by the State Court having final appellate jurisdiction in the premises, or by the Supreme Court of the United States; provided, however, that nothing contained herein shall be construed as directly or indirectly limiting, minimizing, or interpreting the rights and powers of insurers and their officers, trustees, and directors heretofore existing. [Acts 1945, 49th Leg., p. 51, c. 34, § 1.]

CHAPTER 22.—PROVISIONS APPLICABLE TO CERTAIN SPECIFIED COMPANIES

Art.

5068—1. Mutual assessment companies.

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Art. 5068—1. Mutual Assessment Companies.

Scope of Act

Section 1. This Act shall apply to and embrace all insurance companies and associations, whether incorporated or not, which issue policies or certificates of insurance on the lives of persons, or provide health and accident benefits, upon the so-called mutual assessment plan, or whose funds are derived from the assessments upon its policyholders or members, and shall, in fact apply to all life, health and accident companies or associations which do not come within the provisions of Chapter 3, Chapter 5, Chapter 7, Chapter 8, Chapter 9, Chapter 18, Chapter 19, or Chapter 20, Title 78 of the Revised Civil Statutes of Texas, except that it shall not apply to associations not operated for profit composed only of the members of a particular religious denomination, and which do not provide insurance benefits in excess of One Thousand ($1,000.00) Dollars, on any one person and which do not pay any officer a salary in excess of One Hundred ($100.00) Dollars per month. This Act shall include local mutual aid associations; statewide life; or life, health and accident associations; mutual assessment life, health and accident associations; burial associations; and similar concerns by whatsoever name or class designated, whether specifically named or not.

This Act does not enlarge the powers or rights of any of such associations nor enlarge the scope of their legal or corporate existence; nor authorize the creation of any association or corporation to do any of the sorts of business above indicated, where such creation is not now specifically permitted by law. The laws prohibiting or limiting such creation and the exercise of corporate power are not affected by this Act. [As amended, Acts 1941, 47th Leg., p. 871, ch. 542, § 1.]

Definitions

Sec. 2. The following terms when used in this Act shall be defined:

"Association" shall refer to and include all types of organizations, corporations, firms, associations, or groups subject to the provisions of this Act.

"Board" shall refer to the Board of Insurance Commissioners of the State of Texas.

"Member" shall include policyholders or any persons insured by an association, by whatsoever means the insurance may be effective.

"Certificate" shall include any insurance policy or contract of insurance, certificate of membership or other document through which insurance is effected or evidenced.

"Face of certificate" shall refer to the maximum amount of promised benefits, as shown on the certificate.

"Paid in full" or "full payment" shall mean the payment of the full amount of maximum benefit due on the happening of the contingency insured against.

"Insolvent" shall refer to and include any condition or situation which is so designated herein and which is violative of the provisions of this law.

"Assessment" shall include premiums and mean any and all money or valuable thing paid in consideration of such insurance as is afforded by the certificate.

"Membership fee" shall be the amount of the first assessment or assessments permitted by the Board to be placed in the expense fund of associations, representing cost of soliciting or procuring the member.

Names of associations

Sec. 3. Upon application for charter to do business in Texas the Board of Insurance Commissioners may determine whether the name of the association would be confusing and misleading to the public; if so, it may refuse the certificate or charter, and prohibit the doing of business under the name.

Any amendment to the charter of an association operating under this Act, changing the name of the association, must be submitted to the Board of Insurance Commissioners for approval; and the charter of any association operating under this Act may not be amended to provide for changing its name to a name that is determined by the Board of Insurance Commissioners to be confusing and misleading to the public.

Officers of associations

Sec. 4. The Board of Insurance Commissioners shall not issue to any association a certificate of authority to do business in Texas, when it shall find any officer, employee, or member of the Board of Directors to be unworthy of the trust or confidence of the public. After a certificate has been granted, the Board shall order the removal of any officer, employee, or Director found unworthy of the trust, and if such officer, employee, or Director be not removed, the Board shall cancel the certificate and proceed to deal with the association as though it were insolvent.

Bonds of officers and employees

Sec. 5. Associations not already required by law to furnish a bond for the officer responsible for the handling of funds of the members, shall furnish a bond in some surety licensed by the Board to do business in Texas in the minimum amount of One Thousand ($1,000.00) Dollars, said bond to be kept at all times at least equal to the mortuary or relief fund balance on hand, with a maximum of Twenty Thousand ($20,000.00) Dollars. Said bond shall be made payable to the Board of Insurance Commissioners for the use and benefit of the members of the association, and shall obligate the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others.

In addition to the bond required in the preceding paragraph, and in addition to the bond already required by law of certain associations subject to this Act, each association shall procure for all other office employees, or other persons who may have access to any of its claim funds, separate bonds or blanket bonds with some surety licensed by the Board to do business in Texas, in an amount or amounts fixed by the Board with a minimum of One Thousand ($1,000.00) Dollars and a maximum of Five Thousand ($5,000.00) Dollars, payable to the Board of Insurance Commissioners for the use and benefit of the association obligating the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided for in this section may be had on such bonds until same are exhausted.

Deposits

Sec. 6. Each association, not already required by existing laws to do so, shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to the largest risk assumed on

any one life or person, which may be in cash or in convertible securities subject to approval by the Board. Such deposit shall be liable for the payment of all judgments against the association, and subject to garnishment after final judgments against the association. When such deposit becomes impounded or depleted it shall at once be replenished by the association, and if not replenished immediately on demand by the Board, the association may be regarded as insolvent and dealt with as hereinafter provided.

When any association shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

Membership

Sec. 7. Each association shall keep a complete and correct roster of its members with proper statistical records for the purpose of determining proper cost of insurance, by ages or otherwise, and shall keep accurate records of groups, classes or clubs or other division of memberships, if any; and shall keep records to show amounts paid in on assessments by each member and each group; and as to groups, must show how the funds are distributed between expense and mortuary or relief funds, and showing the amounts paid out of the funds of the whole membership or each group in death claims or other benefits.

The associations subject to this law are hereby expressly prohibited from merging with another association, are prohibited from "transferring" any part or group of membership, or all the membership to another association, or from merging groups or transferring members from one group to another in an association without the consent in advance of the Board of Insurance Commissioners which may be given only after complete investigation into the facts and determination that such transfer or merger is to the advantage of members of the association or groups to be affected.

Books and records

Sec. 8. All the records and books of each association shall be kept in the shape, form and manner acceptable to the Board, and if such records and books of any association are kept in such manner as not to reflect truly and accurately the condition of the association, or the facts essential to its faithful and effective operation, the association shall at once adopt forms or systems acceptable to the Board which will serve the purpose most effectively.

Policies or certificates

Sec. 9. Every policy or certificate of insurance issued by an association shall state definitely on the front page the amount of death benefit to be paid, and the circumstances or conditions under which it shall be paid shall be plainly stated in the policy. Every health, accident or other benefit shall be plainly stated in the policy, and the terms and conditions under which they shall be paid shall be stated plainly in the policy.

An application for each certificate must be signed by the applicant, unless the applicant is a minor, in which event the application may be signed by a parent or guardian; and a copy thereof must be attached to and made part of such certificate. If the certificate is to provide that misstatement as to the health or physical condition of the applicant may void the policy within the contestable period, the application shall so state in not less than ten point type in language acceptable to the Board. All statements in the application shall in the absence of fraud be regarded as representations and not warranties.

All conditions of the certificate must be stated thereon, including such portions of the by-laws of the association as may affect the insurance rights of the parties in any material way; and amendments to the by-laws which might affect such rights of members must forthwith be mailed by first-class mail to each certificate holder affected. In case of controversy the burden of proof shall be on the company to prove the amendment was mailed to the member. Each certificate must provide that it shall be incontestable, after having been in force during the lifetime of the insured for a period of two years from date of issue, except for non-payment of assessments; provided, however, any association may issue a certificate providing a benefit less than the maximum benefit named in the face of the certificate in case of the death of the member by his own hand while sane or insane. It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on rates in force at the time of the death of the insured. No certificate issued by such association, nor any application for the certificate shall contain language or be in such form as to mislead the applicant or the policyholder as to the type of insurance afforded.

It shall be unlawful for any association to assume liability on a life insurance risk on any one life in an amount in excess of Five Thousand ($5,000.00) Dollars.

Every certificate issued must be approved by the Board as to form and language before it is used by an association. It is not mandatory that these forms be uniform for all associations, but the Board is directed to bring about as great uniformity as is feasible as early as practicable by cooperation with the several associations. All certificate forms hereafter used must be in accord with the provisions of this Act and with all other laws regulating such associations as are embraced in this Act.

It will not be required that an association call in and reissue outstanding certificates if upon proper application to the Board and if special permission is granted by the Board, it shall by appropriate resolution or other action declare that claims and other obligations on outstanding certificates will be settled and met as though the requirements of this Act were contained in such certificates; and provided further that the association acts accordingly.

Renewals of certificates

Sec. 10. In case a certificate shall terminate for any reason, and in case it shall be a rule of the association that all reinstated certificates shall be regarded as new certificates, then the application for reinstatement shall carry the statement in at least ten point type that the same rules apply to it as to the original certificate, and that it can be invalidated within the contestable period for false statements respecting the health or physical condition of the applicant, or other matters material to the risk. A true and correct copy of the application for reinstatement shall be mailed by first-class mail to the certificate holder upon the reinstatement of the certificate. In case of controversy the burden of proof shall be on the association to prove the copy of reinstatement application was mailed to the member. In the event a renewal certificate is issued, such renewal certificate shall have a copy of the application for reinstatement attached and made a part thereof.

It is specially provided, however, that in case an association shall renew or reinstate a certificate after termination, the payments by the reinstated member shall be divided between the funds in the same percentage as is required of regular payments in the particular by-laws, unless nine (9) months have elapsed between termination and reinstatement. If

nine (9) months have elapsed between termination and reinstatement, a reinstatement fee not in excess of the membership fee may be charged and placed in the expense fund. Furthermore, in case of renewal or reinstatement, the renewal or reinstatement certificate shall not be contestable for any cause except non-payment of assessments for longer than six (6) months from date thereof, unless the reinstatement or renewal is within the original two (2) year contestable period, in which case the same may be extended for six (6) months from the date on which it would have originally expired.

Assessments

Sec. 11. Each association shall levy regular and periodical assessments by whatever name they may be called. These assessments must be in such amounts and at such proper intervals as will meet the reasonable operating expenses of the association, and pay in full the claims arising under its certificates. When or if in the course of operation it shall be apparent that the claims cannot be met in full from current assessments and funds on hand, the amount must be increased until they are adequate to meet such claims, and the Board shall so order.

When any association shall refuse to comply with the Board's recommendations or requirements respecting rates of assessments, it shall be treated as insolvent, and shall be dealt with as is hereinafter provided.

Each association operating under the provisions of this Act shall file its rate schedules with the Board of Insurance Commissioners.

Funds

Sec. 12. Assessments when collected shall be divided into at least two (2) funds. One (1) of these shall be the mortuary or relief fund, by whatever name it may be called in the different associations, from which claims under certificates shall be paid, and to a limited extent the cost of defending contested claims, and nothing else; and the other funds shall be the expense funds from which expenses may be paid. At least sixty (60%) per cent of assessments collected, except the membership fee, must be placed in the mortuary or relief fund. The mortuary or relief funds may be invested only in such securities as are a legal investment for the reserve funds of stock life insurance companies.

Such association shall provide in its by-laws for the portion of its assessments to be allotted to the mortuary or relief fund and may provide for the payment out of said mortuary or relief fund of attorneys' fees and necessary expenses arising out of the defense, settlement, or payment of contested claims. Any such payments out of the mortuary or relief fund for other than claims shall be subject to approval of the Board of Insurance Commissioners.

A separate record shall be kept of the mortuary or relief funds of each group, club, or class, and the mortuary or relief funds of one group, club, or class shall not be used to pay the claims or obligations of any other group, club, or class.

Payment of claims

Sec. 13. It is the primary purpose of this Act to secure to the members of the associations and their beneficiaries the full and prompt payment of all claims according to the maximum benefit provided in their certificates. It is therefore required of all associations that all claims under certificates be paid in full within sixty (60) days after receipt of due proof of claims.

Written notice of claim given to the association shall be deemed due proof in the event the association fails upon receipt of notice to furnish the claimant, within fifteen (15) days, such forms as are usually furnished by it for filing claims.

Any association which shall become unable to pay its valid claims in full within sixty (60) days after due proofs are received, shall for the purpose of this Act be regarded as insolvent, and dealt with as is more fully provided hereinafter.

Contests

Sec. 14. It shall not be unlawful for an association to contest claims for valid reasons; but claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. Therefore, if liability is to be denied on any claim, the association is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

The Board shall cancel the certificate of authority of any association found to be operating fraudulently or improperly contesting its claims.

Reports regarding the cost of contests must be made under oath of an officer of the association, with the annual report of all associations to the Board.

Assessment-as-needed groups

Sec. 15. The provisions of this Act requiring the full payment of claims shall not apply to any groups, club, or class previously organized and now operating on the post-mortem or assessment-as-needed plan and any association having such a group, club, or class may continue to operate it on said plan so long as any such group, club, or class has a sufficient membership at the assessment rate charged to produce, and so long as it does produce, for the mortuary or relief fund at least fifty (50%) per cent of the maximum value of the largest policy in said group, club, or class. In the event the membership of any group, club or class is only sufficient in number to pay between fifty (50%) per cent and one hundred (100%) per cent of the maximum value, it shall be the duty of the officer of said association to have printed on each assessment notice the percentage of the maximum value of the certificate actually paid on the last death claim in said group, club, or class. Provided further, that no association and no group, club, or class in any association shall hereafter be organized to operate on the post-mortem or assessment-as-needed plan.

If on any assessment the amount realized is not sufficient to pay fifty (50%) per cent of the face of the certificate, the association shall be deemed insolvent and dealt with as hereinafter provided.

Creation of new groups

Sec. 16. In the creation of a new group, club, or class, an association may have six (6) months from the date of its creation within which to build said group, club, or class up to the required membership to pay claims in full, provided in the interim the certificates provide for no more than a Five Hundred ($500.00) Dollar benefit, unless the association has funds out of which it may lawfully make and actually does make the full payment of benefits in the interim. Creation of any new group shall be subject to advance approval by the Board of Insurance Commissioners.

Payments on certificates already in force

Sec. 17. If the payments of the members of any association coming within the scope of this Act, on certificates issued and in force when this Act takes effect, or the reinsurance or renewals of such certificates, shall prove insufficient to pay matured death and disability claims in the maximum amount stated in such policies or certificates, and to provide for the creation and maintenance of the funds required by its laws, such association may with the approval of the Board of Insurance Commissioners and after proper hearing before said Board provide for meeting such

deficiency by additional, increased, or extra rates of payment, or by reduction in the maximum benefits stated in such policies or certificates then in force, or by both such increased payments and reduced maximum benefits, or the members may be given the option of agreeing to reduced maximum benefits, or of making increased payments.

Amending by-laws

Sec. 18. By-laws of any association may be amended by a majority of the members of the association present when ratified by the Board of Directors, but only at meetings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered, must be mailed to all members. Such notices must contain full copies of the proposed changes in the by-laws and fair explanations of the intent and effect thereof.

Conservator

Sec. 19. If, upon an examination or at any other time, it appears to the Board of Insurance Commissioners that such association be insolvent, or its condition be, in the opinion of the Board, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such association appears to have exceeded its powers or failed to comply with the law, then the Board shall notify the association of its determination and said association shall have thirty (30) days under the supervision of the Board within which to comply with the requirements of the Board; and in the event of its failure to so comply within such time, the Board, acting for itself, or through a conservator appointed by the Life Insurance Commissioner for that purpose, shall immediately take charge of such association, and all of the property and effects thereof. If the Board is satisfied that such association can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Board, pending the election of new Directors and officers by the membership in such manner as the Board may determine, the same shall be done. If the Board, however, is satisfied that such association is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Board shall proceed to reinsure the outstanding liabilities in some solvent association or company, authorized to transact business in this State, or the Board shall proceed through such conservator, to liquidate such association, or the Board may give notice to the Attorney General as provided under the general laws relating to insurance corporations. It shall be in the discretion of the Board to determine whether or not it will operate the association through a conservator, as provided above, or proceed to liquidate the association, as herein provided, or report it to the Attorney General. When the liabilities of an association are reinsured or liquidated, as herein provided, the Board shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the association so reinsured or liquidated. Where the Board lends its approval to the merger, transfer or consolidation of the membership of one association with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the association from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of associations reinsured or liquidated. No merger or transfer shall be approved unless the association assuming the members transferred or merged is operating under the supervision of the Board of Insurance Commissioners. The cost incident to the conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds of the association to be allowed and paid as the Board may determine.

Special disability provision

Sec. 20. If any of the provisions of this Act may appear obscure when applied to health, accident or disability provisions in certificates issued by associations authorized to issue health, accident or disability certificates, then the Board is directed to interpret same in accord with the expressed purpose and spirit of the Act looking to the full payment of claims, and at the same time preserving to members the benefit of the protection afforded by such association.

Partial repeal of certain section

Sec. 21. Section 29, Chapter 274, Acts of the Forty-first Legislature, 1929, (page 563),[1] be and the same is hereby repealed, insofar as same is in conflict with the provisions hereof relative to burial associations.

1 Article 4875a—29.

Partial repeal of certain section

Sec. 22. Part of Section 6, Chapter 245, Acts of the Forty-third Legislature, as amended by Chapter 257, Acts of the Forty-fifth Legislature,[1] exempting from its provisions any corporation, association or partnership, individual or joint stock company engaged in the undertaking business, or to any advertising corporation, association and/or partnership, individual, or joint stock company with whom they have contracts, be and the same is hereby repealed.

1 Article 4859f, § 6.

Burial association

Sec. 23. Any individual, individuals, firms, co-partnerships, corporations or associations doing the business of providing burial or funeral benefits, which under any circumstances may be payable partly or wholly in merchandise or services, not in excess of One Hundred and Fifty ($150.00) Dollars, or the value thereof, are hereby declared to be burial companies, associations or societies, and shall organize under provisions of Chapter 274, Acts of the Forty-first Legislature, 1929, and amendments thereto;[1] and shall operate under and be governed by Chapter 274, Acts of the Forty-first Legislature, 1929, and amendments thereto, and this Act. It shall be unlawful for any individual, individuals, firms, co-partnerships, corporations, or associations, other than those defined above, to engage in the business of providing burial or funeral benefits, which under any circumstances may be paid wholly or partly in merchandise or services.

1 Article 4875a—1 et seq.

Certificate of burial association

Sec. 24. Policies or certificates issued by burial associations shall provide for payment of the benefit in certain stipulated merchandise and burial service, which shall be scheduled in the policy or certificate and approved by the Board of Insurance Commissioners as being of the reasonable value as stated in the face of the policy, unless the insured shall at the time said policy is issued elect to have same paid in cash. The policy shall show in writing the election made. If the association issuing said policy shall fail or refuse to furnish the merchandise and services provided for in the policy, same shall be paid in cash.

Rules and regulations

Sec. 25. The Board is hereby authorized to promulgate reasonable rules and regulations to carry out the purposes of this Act.

Mutual fire insurance companies not affected

Sec. 26. Nothing in this Act shall ever be construed to include or affect in any manner mutual fire insurance companies.

Penalty; unlawful conversion

Sec. 27. If any Director, officer, agent, employee, attorney at law or attorney in fact, of any association under this Act, shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such association, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner, or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Penalty; diversion of special funds

Sec. 28. If any Director, officer, agent, employee, attorney at law, or attorney in fact of any association under this Act, shall willfully borrow, withhold or in any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any association under this Act, which has been set apart by law or by any valid rule or regulation of the Board of Insurance Commissioners of the State of Texas for a specific use, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Penalty; false reports

Sec. 29. The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such association whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the association. If any officer, Director, agent, employee, attorney at law or attorney in fact, of any association under this Act, shall willfully make any false affidavit in connection with the requirements of this Act, he shall be punished by a fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years.

Penalty; violation of board order

Sec. 30. If any Director, officer, agent, employee, or attorney at law or attorney in fact of any association under this Act, shall willfully refuse or fail to comply with any lawful order of the Board of Insurance Commissioners of this State he shall be punished by fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Penalty; violation of other provisions of act

Sec. 31. If any Director, officer, agent, employee or attorney at law or attorney in fact of any association under this Act, or any other person, shall violate any of the provisions of this Act not specifically set out in Sections 26, 27, 28, and 29 of this Act, he shall be punished by fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not to exceed (6) months, or by both such fine and imprisonment.

Effective date

Sec. 32. Upon proper showing to the Board of inability of associations to comply with this Act immediately, associations shall have until January 1, 1940, to bring themselves to full compliance with this law in all particulars. By such date, in the event they shall not have done so, they shall be regarded as insolvent as provided herein, and dealt with accordingly. It is specially provided that if associations cannot so arrange their affairs as to make full payment of claims as herein required by such date, they may reduce the benefits of the outstanding certificates by appropriate action having the approval of the Board, so as to make possible full payment of claims. All members must be given prompt notice of such amendment of such certificates.

Fees appropriated

Sec. 35. All fees paid to the Board of Insurance Commissioners by all associations regulated by this Act shall be and the same are here and now appropriated for the balance of the fiscal year ending August 31st, 1939, to the use and benefit of the Life Insurance Division of the Board of Insurance Commissioners, to be used by the Life Insurance Commissioner for the purpose of enforcing and carrying out the provisions of this Act and other laws relating to the regulation and supervision of such associations; provided, however, that thereafter such fees shall be expended under such limitations as the Legislature may designate in the general departmental appropriation bill; such fees to be deposited in the State Treasury as a special fund to be used as and for the purposes aforesaid and are here and now appropriated for such purposes and all laws or parts of laws to the contrary are here and now expressly repealed to the extent of such conflict only. [Acts 1939, 46th Leg., p. 401.]

Section 33 of the Act of 1939 repealed conflicting laws. Section 34 of the Act of 1939 and section 2 of the Act of 1941 provided that a holding of partial invalidity should not affect the other provisions of the Act.

Art. 5068—2. Reduced benefits or excluded coverage; mutual life policies authorized to provide in cases of military service, hazardous occupations, etc.—Any company or association licensed and operating under Senate Bill No. 135, Acts of the Regular Session of the Forty-sixth Legislature,[1] may with the approval of the Board of Insurance Commissioners issue policies providing for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service, or aerial flight in time of peace or war; or while engaged in certain hazardous occupations to be named in the policy; or if death or injury is caused by mob violence or legal execution; or reduce or exclude benefits for sickness from certain named causes. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided herein, and the circumstances or conditions under which such reduction or exclusion of benefits are applicable shall be plainly stated in the policy. The provisions of this Act shall apply to all outstanding policies already containing such limitations. [Acts 1941, 47th Leg., p. 694, ch. 433, § 1.]

1 Article 5068—1.
Section 2 of the Act of 1941 provided that partial invalidity should not affect the remainder of the Act. Section 3 repealed conflicting laws.

Art. 5068—2a. Health and accident policies, article 5068—2 inapplicable to.—The provisions of Section 1, of Chapter 433, Acts of the Regular Session of the 47th Legislature,[1] shall not apply to health and accident policies. [Acts 1945, 49th Leg., p. 229, ch. 172, § 1.]

1 Article 5068—2.

Art. 5068—3. Conversion or reinsurance of certain associations into legal reserve companies operating under chapter 7; reinsurance by companies operating under chapter 3.—Section 1. (a) Any domestic local mutual aid association; statewide life, or life, health and accident association; mutual assessment life, health and accident association; burial association; or any other similar concern, by

whatsoever name or class designated, whether specifically named herein or not, organized and operating under the laws of the State of Texas, may convert or reinsure itself into a legal reserve insurance company operating under the provisions of Chapter 7, Title 78, Revised Civil Statutes of Texas, 1925, as amended,[1] or be reinsured by any legal reserve insurance company operating under the provisions of Chapter 3, Title 78 of the Revised Civil Statutes of Texas, 1925, as amended,[2] by conforming to the provisions of this Act. When it shall be determined by a majority vote of the Board of Directors of any such association to submit the proposed change to the members of the association, said board of directors shall prepare in detail plans for making such change, and such plans shall be submitted to the Board of Insurance Commissioners. Upon receipt of such Board's written approval of such plans, or of such plans amended to meet the requirements of such Board in accordance with the provisions of said chapters, said board of directors or such officer of such association as may be authorized by its by-laws to call a meeting of its members, shall mail to each member a copy of the proposed plans and shall enclose with each copy of such plans a notice of a meeting of said members to be held not earlier than fifteen (15) days after the date of mailing of such notice.

(b) Such meeting shall be held for the purpose of ratification or rejection of the proposed change, and the members may vote in person, by proxy, or by mail; provided that all votes shall be cast by ballot, and the Chairman of the meeting shall supervise and direct the method of procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting, who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the Chairman of the Board of Insurance Commissioners and to the Association the result thereof, under such rules and regulations as shall be prescribed by the Board of Insurance Commissioners. A majority vote cast shall be sufficient for ratification of said change.

(c) When such association shall have complied with the provisions of this Act and the other laws of this State regulating the incorporation of such mutual legal reserve insurance companies, and shall have received from the Board of Insurance Commissioners its charter and certificate of authority to transact business as a mutual insurance company, its reorganization and conversion shall be complete. Such reorganized and converted or reinsured corporation shall be deemed in law to have all the rights, privileges, powers and authority of any other corporation organized in accordance with the provisions of said chapters. The new corporation shall be deemed in law to be a continuation of the business of the former association and shall succeed to and become invested with all and singular the rights and privileges not inconsistent with the provisions of said chapters, and all property, real, personal or mixed of the former association, and all debts due on any account, and all other things and choses in action theretofore belonging to such association, and all property rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as if they were the property of the former association, and the title to any real estate by deed or otherwise vested in the former association shall forthwith vest in such organized converted corporation and the title thereto shall not in any way be impaired by reason of such change or reincorporation. The standing of all claims under the former association shall be preserved unimpaired under the new corporation, and all debts, liabilities and duties of the former association shall thenceforth attach to the reorganized corporation and may be enforced against it to the same extent as if said debts and liabilities had been incurred or contracted by the new corporation, except that the liabilities created under the terms of policies or certificates outstanding at the date of conversion or reorganization may be altered in accordance with the provisions of said plans approved by the Board of Insurance Commissioners.

Sec. 2. The sums of any mortuary funds belonging to such association shall thereafter be effectually the property of such organized and converted corporation or corporation reinsuring the membership of such association, but may be disbursed for payment of valid claims outstanding and arising thereafter from policies issued by the legal reserve company to the members of the assessment association under the approved agreement; to set up the legal reserve on new policies issued by the legal reserve company to the members of the assessment association under said agreement; and to pay their actuarial portion of such mortuary fund to members of such association who refuse to accept the new policies offered them, and who make request therefor within sixty (60) days from the date of conversion or reinsurance.

The effective date of the legal reserve policies may be the effective date of the reinsurance contract. On conversion ten (10) per cent of the Mortuary Fund credit allocated to each policy may be credited to the Contingency Reserve Fund of the Company for the benefit of the policyholders, and the balance of the Mortuary credit may be applied in either of the following ways:

(a) As a reserve credit to permit the legal reserve policy issued to be dated back as far as the reserve credit will permit; or

(b) As an annuity to reduce the required premium either for a given term or for the whole of life.

(c) No change shall ever be made until same shall have been approved by the Board of Insurance Commissioners.

Sec. 3. Providing further that nothing in this Act or in the provisions of Chapter 7, Title 78, Revised Civil Statutes of 1925, as amended,[1] or Chapter 3, Title 78, Revised Civil Statutes of 1925, as amended,[2] shall ever be construed to mean that any of the associations or other similar concerns, by whatsoever name or class designated, whether specifically named herein or not, shall be required by the Board of Insurance Commissioners to make the change herein provided for unless they voluntarily decide to do so, and that this Act is purely permissive and if such associations do not so voluntarily decide to come under this Act, or laws amended by it, then this bill shall not in any way apply to such associations.

Sec. 4. If any section or portion of section of this Act shall for any reason be declared invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of any other section or portion of this Act. [Acts 1943, 48th Leg., p. 608, ch. 353.]

[1] Articles 4800–4819.
[2] Articles 4716–4764b.

Art. 5068—4. Mortuary or relief funds; taxes on income.—Any company or association operating under the provisions of Senate Bill No. 135, Acts of the Regular Session of the 46th Legislature, Chapter 6, page 401,[1] may pay from the mortuary or relief funds by whatever name it may be called any taxes that may be assessed against or required to be paid by the company or association because of income to such funds. [Acts 1943, 48th Leg., p. 693, ch. 386, § 1.]

[1] Article 5068—1.

Section 2 of the Act of 1943 repealed all conflicting laws.

Art. 5068—5. Premium plan.—Any insurance company or association licensed by the Board of Insurance Commissioners to operate under Senate Bill No. 135, Acts of the Regular Session of the 46th Legislature,[1] may issue policies on the stipulated or speci-

fied premium plan which allow the insured the privilege of paying regular premiums weekly, monthly, quarterly, semiannually, or annually, as he may choose from time to time. Such policies may also provide that upon the maturity of benefits payable under the policy or certificate any balance of premium for the current policy year remaining unpaid shall be deducted from the benefits payable. The provisions of this Act shall apply to all outstanding policies already containing such a provision. [Acts 1945, 49th Leg., p. 191, ch. 146, § 1.]

1 Article 5068—1.
Section 2 of the Act of 1945 repealed all conflicting laws.

Art. 5068—6. Mutual assessment life, health and accident companies to be governed by articles 4859f and 5068—1.—Section 1. Every mutual assessment life, health and accident insurance company chartered by authority of Chapter 6, Title 78, Revised Civil Statutes of Texas,[1] and licensed by the Insurance Department of Texas under said Act and Section 18a of Senate Bill No. 37, Acts of the First Called Session of the 41st Legislature,[2] shall, within six (6) months from the effective date of this Act, effect a compliance with, conform to, and be governed by, the provisions of House Bill No. 303, Acts of the 43rd Legislature,[3] as amended by Senate Bill No. 135, Acts of the 46th Legislature,[4] in such manner and form as may be prescribed by the Life Insurance Department of Texas, and from and after its qualification under said Act, may transact the business of life, health and accident insurance under the provisions of its charter and said Act. Provided further, that any such company may amend or extend its charter by compliance with the same requirements provided in the general corporation laws of Texas.

Sec. 2. Chapter 6, Title 78,[1] Section 18a of Senate Bill No. 37, Acts of the First Called Session of the 41st Legislature [2] and Section 18 of the same Act,[5] insofar as it applies to these companies, are hereby repealed. [Acts 1947, 50th Leg., p. 349, ch. 197.]

1 Arts. 4784–4799, repealed.
2 Art. 4860a—18a.
3 Art. 4859f.
4 Art. 5068—1.
5 Art. 4860a—18.

Art. 5068—7. Burial Association Rate Board; no connection between associations.

Burial Association Rate Board

Section 1. (A) There is hereby created, a Board to be known as the "Burial Association Rate Board," to be composed of seven (7) members of which the Life Insurance Commissioner shall be an ex officio member and Chairman. The other six (6) members shall be appointed by the Governor by and with the advice and consent of the Senate. Each of said six (6) members shall be an officer or director of a Burial Association and shall have had three (3) years experience as such prior to his appointment. The appointed members of the Board shall serve for a period of six (6) years from dates of their appointments and qualification and until their successor has qualified, except the term of two (2) of the members of the first board shall be two (2) years and of two (2) others of its members, shall be four (4) years from the dates of appointment and qualification. In making his appointments for the first Board, the Governor shall designate which two (2) shall serve for two (2) years, which for four (4) years, and which for six (6) years. Upon their appointment, each member shall take and subscribe to the Constitutional Oath of Office and file same with the Secretary of State. Members of this Board are specifically exempted from the provisions of Article 4681, Vernon's Civil Statutes of Texas.

(B) As compensation for their services, each member of said Burial Association Rate Board shall receive Ten Dollars ($10) per day for each day actually and necessarily used in attending and going to and returning from Board meetings plus their reasonable traveling and hotel expenses. Same shall be paid from the funds herein provided for upon vouchers drawn by the Secretary of the Board and countersigned by its Chairman, but provided no appropriation shall ever be made to defray the expenses of said Board except from the fund herein created; provided however, that no more than One Thousand, Five Hundred Dollars ($1,500) shall be expended in any single year for per diem expenses of said Board.

(C) There is here now levied upon each Burial Association having a permit to do business in Texas and upon each Burial Association which may hereafter be granted a permit to do business in Texas, an annual assessment of one-half of one cent (½ of 1¢) per member in the Association as of December thirty-first of each year but not less than Five Dollars ($5) annually, which shall be in addition to any other fees now payable and which assessment shall be paid by each Association between January first and March first of each year. Said assessments shall be paid to the Board of Insurance Commissioners of Texas along with and at the same time each Association files with said Board its annual statement. Said assessment shall be based upon the calendar year and a proportionate part of said assessment for the remaining part of the current calendar year shall become payable not less than thirty (30) days after the enactment of this Act. All assessments paid to the Board of Insurance Commissioners under this Act shall be and the same are here and now appropriated for and to the use and benefit of the Life Insurance Division of the Board of Insurance Commissioners; first, for the payment of the per diem and expenses of the Burial Association Rate Board including Seventy-five Dollars ($75) per month as compensation to the ex officio member and Chairman of the Board for additional duties incident to this Act which shall be in addition to his compensation as Life Insurance Commissioner; and second, the balance of such fund may be expended under direction of the Board herein created for the purpose of obtaining advice, information, and knowledge relative to adequate and reasonable rates to be charged by Burial Associations of Texas and compiling records thereof. All assessments collected under this Act shall be deposited in the State Treasury as a special fund to be known as the Burial Association Rate Fund to be used as and for the purposes aforesaid and are here and now appropriated for such purposes and all laws or parts of laws in conflict herewith are here and now expressly repealed to the extent of such conflict only.

There is hereby appropriated such amount out of the fees and assessments herein levied as is necessary to carry out the provisions of this Act for the fiscal years ending August 31, 1948 and August 31, 1949.

(D) Said Board shall convene within ninety (90) days after this Act becomes effective or sooner if called by its chairman and shall organize and elect one of its members as Vice-Chairman and one as Secretary and shall proceed with its duties. It may adjourn from time to time and shall always be subject to call by its Chairman or by a written call signed by a majority of its members. Its meetings shall be held at the office of the Board of Insurance Commissioners of Texas or such other place as the Chairman of the Board may designate.

(E) It shall be the duty of said Board to make and file with the Board of Insurance Commissioners of Texas a schedule of reasonable and adequate rates, giving the maximum and minimum rates which may be charged per week, per month, per quarter, per six (6) months and per annum by Burial Associations for the definite benefits at the definite ages, which ages will be in convenient groups as designated by said Rate Board. Such schedule of rates shall be made and filed only after hearing, notice of which shall be sent by the Rate Board by first class mail to each

Burial Association within this State not less than ten (10) days before the hearing. To insure the adequacy and reasonableness of rates the Rate Board may take into consideration experience gathered from a territory within this State sufficiently broad to include the varying conditions of the risks involved and over a period sufficiently long to insure that the minimum and maximum rates determined therefrom shall be just and reasonable as they may apply to the insuring public, and adequate and non-confiscatory as they may apply to the Burial Associations. The Rate Board is hereby authorized and empowered to require sworn statements from any Burial Association within this State showing its experience in assessments collected and claims paid over a reasonable period of time and such other information as the Rate Board shall find to be necessary or helpful in making the maximum and minimum rate schedules. After said rate schedules have been so fixed and filed with the Board of Insurance Commissioners of Texas, said last named Board shall cause to be mailed a copy of such rate schedule to each Burial Association having a permit to do business in Texas.

(F) After such rate schedule has been so mailed by the Board of Insurance Commissioners of Texas, it shall be the duty of the officers and directors of each Burial Association to convene and to fix and adopt a rate schedule to be thereafter used and charged by such Association for the different benefits at the different ages and which schedule shall use the same age groups and benefits as is given in the rate schedule so mailed to it by the Board of Insurance Commissioners of Texas and which rates so adopted shall not be less than the minimum nor more than the maximum rates so fixed by the Burial Association Rate Board. Each Burial Association shall file with the Board of Insurance Commissioners, duplicate copies of the rate schedule so fixed and adopted by it and which rate schedule must be so filed at least within thirty (30) days from the date the rate schedule was so mailed by the Board of Insurance Commissioners. Such copy shall be endorsed by the Board of Insurance Commissioners, showing the date of its filing and one of such copies shall be retained by the Commission and the other copy returned to the Association to be kept as a part of its permanent files. With the consent of the Board of Insurance Commissioners, an Association may change its rates by adopting and filing with the Board of Insurance Commissioners, a new rate schedule in all respects similar to the first schedule but in each instance each rate must be within the maximum and minimum as promulgated by the Burial Association Rate Board.

(G) It shall be unlawful for any Burial Association, its officers, agents, or employees to charge, receive, or collect any rate, premium, or assessment from any member of said Association other than the rate, premium, or assessment applicable for the age and benefit as named in said Association's rate schedule on file with the Board of Insurance Commissioners and in force at that time. Any officer, agent, or employee of any Burial Association who charges, receives, or collects any premium or assessment in violation of this Section, or any officer, of any Burial Association who knowingly permits it to be done, shall be guilty of misdemeanor and upon conviction shall be fined not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200). The Board of Insurance Commissioners may cancel the permit of any Burial Association violating the provisions of this Section.

(H) It shall be the duty of said Burial Association Rate Board to gather such data, statistics, and information as it can from time to time as to the death rates, lapses, experiences and other information relative to Burial Association Rates within, and without the State of Texas as may be deemed beneficial in fixing reasonable and adequate Burial Association rates and which information may be disseminated by the Board among the Burial Associations of Texas.

(I) The Rate Board's duties and power shall not cease upon the filing of its first rate schedule, but it shall continue to study the statistics, rates, and experiences of Burial Associations and at any time it deems proper, it may make, adopt and file with the Board of Insurance Commissioners, a new rate schedule or amendment to a previous schedule and when any such amendment or new schedule is so filed, it shall thereafter be considered the official rate schedule of Burial Associations. When so filed, copy thereof, shall be forwarded by the Board of Insurance Commissioners of Texas, its rate schedule to be thereafter used by it as to members thereafter accepted and such procedure shall be followed from time to time, when and as often as the Burial Association Rate Board shall make and file an amended or new rate schedule for the State.

(J) Rates which have heretofore been adopted and are in use by each Association when this Act becomes effective may be continued to be used by such Burial Association as to its then members, but with the consent and approval of the Board of Insurance Commissioners of Texas, any Association may change such rates and make the same comply and correspond with the rate schedule last filed by such Association with the Board of Insurance Commissioners as herein designated.

No connection between associations

Sec. 2. (A) There shall be no connection directly or indirectly between two (2) or more Burial Associations. No member, director, or officer of one Burial Association shall be a member, director, or officer of any other Burial Association. No person whose husband, wife, or employee is an officer or director of one Burial Association shall be an officer or director of any other Burial Association. No funeral director, undertaker, or funeral home directly or indirectly connected with or designated by one Burial Association as its funeral director, undertaker, or funeral home shall be connected with or designated by any other Burial Association as its funeral director, undertaker, or funeral home to furnish its members with its services and/or merchandise or to service its policies or to be in any manner connected with its affairs.

(B) It is against the public policy of this State for a Funeral Home or for those who own it in whole or in part to be connected directly or indirectly or affiliated with more than one Burial Association and the provisions of this Act shall be liberally construed and the Board of Insurance Commissioners shall make such rules and regulations as may be necessary to carry out the spirit and purpose of this Section.

Payment in lieu of merchandise and services

Sec. 3. If a Burial Association is not given the opportunity to provide the merchandise and services stipulated in the policy it shall be required to pay not less than the total amount paid into its mortuary fund for account of said policy in lieu of the stipulated merchandise and services unless a greater per cent of the face value is specified in the policy.

This act cumulative

Sec. 4. This Act is cumulative of and in addition to existing laws governing Burial Associations in Texas, and except where in conflict herewith, all existing laws shall remain in full force and effect, but such laws as are directly in conflict with any provision hereof are here now repealed.

Constitutionality

Sec. 5. The provisions of this Act are severable and in the event any clause, sentence, or Section hereof be declared invalid, all of the other provisions of this Act shall nevertheless remain in full force and effect. [Acts 1947, 50th Leg., p. 734, ch. 365.]

TITLE 79—INTEREST

Art.
5069. Definitions.
5070. Legal rate applicable.
5071. Limit on rate.
5072. Rate on judgments.
5073. Action on usurious rate.
5074. [Repealed.]

Article 5069. [4973–4974–4975] Definitions.—"Interest" is the compensation allowed by law or fixed by the parties to a contract for the use or forbearance or detention of money: "legal interest" is that interest which is allowed by law when the parties to a contract have not agreed upon any particular rate of interest; and "conventional interest" is that interest which is agreed upon and fixed by the parties to a written contract, not to exceed ten per cent per annum. "Usury" is interest in excess of the amount allowed by law; all contracts for usury are contrary to public policy and shall be void.

Art. 5070. [4977–4978] Legal rate applicable.—When no specified rate of interest is agreed upon by the parties, interest at the rate of six per cent per annum shall be allowed on all written contracts ascertaining the sum payable, from and after the time when the sum is due and payable; and on all open accounts, from the first day of January after the same are made. [Acts 1892, p. 4; G. L. vol. 10, p. 368.]

Art. 5071. [4979–4980] Limit on rate.—The parties to any written contract may agree to and stipulate for any rate of interest not exceeding ten per cent. per annum on the amount of the contract; and all written contracts whatsoever, which may in any way, directly or indirectly, provide for a greater rate of interest shall be void and of no effect for the amount or value of the interest only; but the principal sum of money or value of the contract may be received and recovered. [Id.]

Restriction in this statute as to written contracts violates Const. art. 16, § 11. Dunman v. Harrison, Civ.App., 41 S.W. 499.

Art. 5072. [4981] Rate on judgments.—All judgments of the courts of this State shall bear interest at the rate of six per cent per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than six per cent per annum and not exceeding ten per cent per annum, in which case the judgment shall bear the same rate of interest specified in such contract and after the date of such judgment. [Id.]

Art. 5073. [4982] Action on usurious rate.—Within two years after the time that a greater rate of interest than ten per cent shall have been received or collected upon any contract, the person paying the same or his legal representative may by an action of debt recover double the amount of such interest from the person, firm or corporation receiving the same. Such action shall be instituted in any court of this State having jurisdiction thereof, in the county of the defendant's residence, or in the county where such usurious interest shall have been received or collected, or where said contract has been entered into, or where the parties who paid the usurious interest resided when such contract was made. [Acts 1907, p. 277.]

Art. 5074. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure,

TITLE 80—INTOXICATING LIQUOR

Arts. 5075—5114. [Repealed by Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, § 49.]

TITLE 81—JAILS

Art.
5115. Jails provided.
5116. Sheriff and jailer.
5117. Marshal may use jail.
5118. Prisoner sent to another jail.

Article 5115. [5108–5111] Jails provided.—The commissioners court shall provide safe and suitable jails for their respective counties, and shall cause the same to be kept in good repair. They shall see that the jails of their respective counties are kept in a clean and healthy condition, properly ventilated, and not over-crowded with prisoners, and that they are furnished with clean and comfortable mattresses and blankets sufficient for the comfort of the prisoners. When there is no jail in a county, the sheriff may rent a suitable house and employ guards, the expense to be paid by the proper county. [Act July 22, 1876, p. 52; G. L. vol. 8, p. 888.]

Art. 5116. [5109] [3133] Sheriff and jailer.—Each sheriff is the keeper of the jail of his county. He shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners. The sheriff may appoint a jailer to take charge of the jail, and supply the wants of those therein confined; but in all cases the sheriff shall exercise a supervision and control over the jail. [Act May 12, 1846, p. 268; G. L. vol. 2, p. 1574; Act August 26, 1856, p. 88; G. L. vol. 4, p. 506.]

Art. 5117. [5112–3] Marshal may use jail.—Sheriffs and jailers shall receive into their jails such prisoners as may be delivered or tendered to them by any United States Marshal or his deputy for any district of Texas, and shall safely keep such prisoners until they are demanded by such marshal or his deputy, or are discharged by due course of law. The marshal by whose authority such prisoners are received and kept shall be directly and personally liable to the sheriff or jailer for the jail fees and all other expenses of the keeping of such prisoners, such fees and expenses to be estimated according to the laws regulating the same in other cases. [Id.]

Art. 5118. Prisoner sent to another jail.—A county to which a prisoner is sent, for want of a safe jail in the proper county, may by suit recover from the county from which such prisoner was sent a sum not exceeding seventy-five cents per day on account of the expense attending the safekeeping of such prisoner.

TITLE 82—JUVENILES

Art.
5119. Instruction of inmates.
5119a. Gatesville State School for Boys.
5119b. Gainesville State School for Girls.
5120. The superintendent.
5121. Powers and duties of the superintendent.
5122. Employment of officers, etc.
5123. Religious services.
5124. Conveying male to school.
5125. [Repealed.]
5126. Promotion and discharge of inmates.
5127. Escape and apprehension.
5128. Limitation of term.
5129. Care of inmates.
5130. Punishment of inmates.
5131. [Repealed.]
5132. [Repealed.]
5133. Superintendent and officers.
5134. Rules and regulations.
5135. [Repealed.]
5136. Conveying to school.
5137. Dismissal of inmates.
5138. Detention homes and parental schools.

Art.
5138a. Parental homes and schools for delinquents in certain counties.
Sec.
1. Establishment—commitments.
2. Purchase, establishment, building, equipment and maintenance.
3. Bond issue.
4. Board of managers.
5. Acceptance of grants, devises and donations.
6. Instructional or educational work.
7. Validation of bonds.
5139. County Juvenile Board.
5139A. [Repealed.]
5139B. [Repealed.]
5139C. Laws saved from repeal, County Judges' compensation not counted as fees.
5140. Powers of Board.
5141. Sessions of Board.
5142. Qualifications, duties, appointment, salaries and removal of juvenile officers.
5142a. Juvenile officer and salary—Counties of 350,000 population.
Sec.
1. Appointment — compensation — duties —assistants—expenses.
1-a. Compensation for additional services.
2. Record of desertion cases; investigation as to support payments.
3. Probation officer to disburse payments in desertion cases.
4. Bond of probation officer.
5. Records of receipts and disbursements.
6. Investigation and report in divorce suits between parties having children under 16; supervising head of county institutions as probation officer.
7. Reports by supervising head to Juvenile Board.
5142b. Juvenile officers in counties of 190,000 to 320,000.
Sec.
1. Application of law.
2. Juvenile board.
3. Chief probation officer and assistants; appointment.
4. Terms of office.
5. Compensation.
6. Juvenile Board; powers.
7. Supervision of institutions by Juvenile Board; superintendent.
8. Records and visitation by Probation Officer.
9. Juvenile Court to direct change of custody of juveniles.
10. Visitations by Juvenile Board; orders and regulations.
11. Suspension of assistants by Chief Probation Officer.
12. Bonds of officers.
13. Investigations and reports by Probation Officer; record of receipts and expenditures.
14. Assistant district attorney to represent Juvenile Board and Probation Officers.
15. Compensation of Juvenile Board members.
16. Partial invalidity; clause.
5143. Incorrigible boy.
5143a. Juvenile Training Schools for delinquent children.
Sec.
1. "Delinquent child".
2. Who received at said schools.
3. Girls' Training School.
4. Juveniles disqualified.
5. Unruly child excluded—transfers.
Art.
5143b. Clothing, money and transportation furnished on release from Gatesville and Gainesville training schools.

Article 5119. [5224] Instruction of inmates.—The Board of Control and the Superintendent of the State Juvenile Training School shall provide for and maintain suitable instruction and training of the inmates of said school. Said instruction shall include common school or agricultural branches, or all as may be deemed desirable by said Board and superintendent. The Board and superintendent shall arrange for each inmate to receive a reasonable amount of instruction in the school of letters and industrial branch each year. Each inmate shall be given definite instruction and training in some useful occupation and shall be given such moral training and discipline as he is capable of receiving. [Acts 1st C. S. 1913, p. 7.]

Art. 5119a. Gatesville State School for Boys.—The name of the State Juvenile Training School which is located at Gatesville, Texas, be, and the same is hereby changed and shall hereafter be known and designated as the Gatesville State School for Boys. [Acts 1939, 46th Leg., p. 432, § 1.]

Art. 5119b. Gainesville State School for Girls.—The name of the Girls' Training School which is located as Gainesville, Texas, be, and the same is hereby, changed and shall hereafter be known and designated as the Gainesville State School for Girls. [Acts 1939, 46th Leg., p. 431, § 1.]

Art. 5120. [5225] The superintendent.—The superintendent shall be a man of high moral character, education and training, and shall have had experience in handling wayward boys. He shall take the official oath and shall give a sufficient bond in the sum of ten thousand dollars payable to the Governor or his successors in office, conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the Secretary of State. [Acts 1st C.S. 1913, p. 7.]

Art. 5121. [5226] Powers and duties of the superintendent.—The superintendent shall: 1. Keep a register in which he shall enter the name of each inmate, date of reception, previous moral character, habits and education, so far as can be ascertained, his conduct and department, educational and vocational advancement while in said school, the discharge, death, escape, commutation of time, parolment and punishment of each person admitted to said school

2. See that the buildings and premises are kept in good and sanitary order.

3. Cause to be kept the books of the institution fully exhibiting all moneys received and disbursed, the source from which received and purposes for which same is expended. All supplies for the school shall be purchased in the same manner as for other similar institutions. Said books shall give a full record of all products produced on the farm, whether sold or consumed, and shall at all times be open for the inspection of the Board or the Governor.

Art. 5122. [5227] Employment of officers, etc.—The superintendent shall employ subordinate officers, teachers and employees necessary to the conduct, administration and maintenance of said institution up to the standards of efficiency and utility essential to accomplish the best results. Any employee who uses tobacco or intoxicating liquor in any form while on duty shall be discharged by the superintendent. The superintendent with the consent of the Board may discharge any employee for cause.

The salaries and compensation of all subordinate officers, teachers and employees shall be fixed by the Board in the form of an itemized account to be sworn to by the superintendent. Such salaries shall not ex-

ceed the amounts appropriated for same and shall be paid monthly on the Comptroller's warrants based upon such account. Said account shall contain the name and address of each person and the amount due and for what service. No account for salary shall be presented by said superintendent until the same has been fixed by said Board. [Id.]

Art. 5123. [5228] Religious services.—The Board shall provide for religious services at said institution for the benefit of the inmates thereof, and shall employ a chaplain who shall be an ordained minister of the gospel. The superintendent shall require all inmates in said institution who are physically able to attend at least one religious service on each Sunday. Such chaplain shall, under the direction of the superintendent, devote his time to the religious and moral training and education of said inmates, and to visiting sick inmates whenever necessary, and shall receive an annual salary not to exceed seven hundred and twenty dollars. Such chaplain may also be a teacher, such as is provided in the preceding article. [Acts 1911, p. 211.]

Art. 5124. Conveying male to school.—The officer conveying any male to any State training school shall be paid by the county in which such child was convicted the actual traveling expenses of such officer and child, and five dollars additional. [Acts 1909, p. 100.]

Art. 5125. [Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6.]

Art. 5126. [5230] Promotion and discharge of inmates.—The Board shall establish and maintain in said school a system of grading and promotion on a basis of the moral, intellectual and industrial advancement of the inmates. When the superintendent is satisfied that any inmate has acquired sufficient self-control, moral habits and industrial efficiency, and suitable employment under a responsible, sober and moral person can be found for said inmate, he shall, with the approval of said Board, grant said inmate "leave of probation." To secure homes and employment for inmates and of visiting and supervising them while on probation, a furlough officer shall be employed who shall, when not engaged with his duties as such officer, assist in teaching and in the general work of the school under the direction of the superintendent. When employment has been secured for any inmate he shall be sent out on a furlough with the condition that the person furloughed and his employer shall send a written report at the end of each month thereafter for a period of twelve months to the furlough officer stating the habits and demeanor of said furloughed person. If each report be favorable the superintendent shall recommend to the Governor that a full release be granted such juvenile and that his term of commitment be terminated. If any monthly report shall be deemed unfavorable, or be not sent as herein provided, and the superintendent should become convinced before the expiration of the said twelve months that said furloughed person should be returned to the school for further training or discipline, the said inmate shall in that event forfeit his leave of probation, and shall be returned to school. If his employer shall fail or refuse to return said furloughed person to said school it shall be the duty of the furlough officer or any peace officer, upon notice from the superintendent, to take such furloughed person into custody, under the same conditions as if he were an escaped inmate, and return him to said school in the manner prescribed in the succeeding article. The Governor shall at any time have power to grant a pardon to any inmate of said school. [Acts 1909, p. 103; 1st C.S. 1913, p. 10.]

Art. 5127. [5234] Escape and apprehension.—If any inmate of said school shall escape therefrom, or if on leave of probation or furlough and is ordered returned and the employer of said furloughed person fails or refuses to return him it shall be the duty of the superintendent of said institution or any officer or employé of same, or any peace officer to apprehend him. Any person may lawfully apprehend such escaped inmate and forthwith deliver him to any peace officer. Any such escaped inmate shall be returned to said school by any furlough, probation or peace officer. The cost of his return shall be paid by the county from which said inmate was committed. [Id.]

Art. 5128. [5231] Limitation of term.—Commitments to such school shall be upon the indeterminate sentence plan. No juvenile shall remain or be detained therein or upon parole under the control of the officers of said school after he becomes twenty-one years old. [Id.]

Art. 5129. [5232] [5233] Care of inmates.—The superintendent shall divide the inmates into such classes and shall house, feed and train them in such manner as he deems best for the development and advancement of the child. All inmates shall be provided with shelter, wholesome food and suitable clothing, books, means of healthful recreation and other material necessary for their training, at the expense of the State, except as otherwise provided by law. [Id.]

Art. 5130. Punishment of inmates.—Section 1. Corporal punishment in any form shall not be inflicted upon any boy who is an inmate of said institution except as a last resort to maintain discipline and then only after the evidence has been presented to the Superintendent and the Chaplain and they have carefully considered same. In the event they deem it necessary they shall first have the school physician carefully examine the boy to determine the condition of his health. If he is found to be in good health the Superintendent and the Chaplain shall sign a whipping order. The whipping shall take place in the presence of the Superintendent, the Chaplain and the school physician and not in the presence of any other inmate. The boy shall not receive over ten (10) licks with a light strap for any offense for which he is being punished. The child being whipped shall at no time ever have the skin broken or shall ever be struck except as hereinabove provided by any guard or employee of said school or shall he be in any way abused or threatened by any guard or employee.

Sec. 2. If any employee be found guilty of abusing, threatening, striking, breaking the skin or whipping any boy without first complying with the above set out requirements, he shall be deemed guilty of and filed on for aggravated assault. If any Superintendent in possession of information about any employee guilty of any of the above offenses fails to investigate such offenses and discharge the employee or employees guilty thereof, he shall himself be discharged by the Board of Control after a proper hearing before said Board.

Sec. 3. All whipping orders issued in the said school shall be preserved as permanent records and shall reflect the offense for which said inmates are punished. Said orders shall also have attached thereto and preserved therewith the written report of the examination by the physician, the name of the person administering the whipping and the names of the witnesses present at the whipping. [Acts 1913, 1st C.S. p. 11; Acts 1945, 49th Leg., p. 385, ch. 247, § 1.]

Art. 5131. [Repealed by Acts 1927, 40th Leg., p. 233, ch. 159, § 1.]

Art. 5132. [Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6.]

Art. 5133. Superintendent and officers.—The Board shall employ as superintendent of such school a man or a woman of business experience necessary for such management, who shall have power to appoint and discharge all subordinate officials and

teachers for the school. The Board shall fix the salary of the superintendent and all employees as provided for by appropriation. The Board shall have power to remove the superintendent for cause, and the decision of said Board in such matter shall be final. [Acts 1913, p. 289; Acts 1945, 49th Leg., p. 174, ch. 132, § 1.]

Art. 5134. Rules and regulations.—The superintendent with the approval of the Board shall make all necessary rules and regulations for the government of the training school, and shall provide that the time of the pupils is properly distributed between the school of letters and the industrial and domestic pursuits, according to the needs of the pupil and the facilities at hand. Provision shall be made for giving diplomas or certificates of proficiency for graduates from the nurses training school or any industrial school that may be established by such Board. [Acts 1913, p. 289.]

Art. 5135. [Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6.]

Art. 5136. Conveying to school.—The court committing any girl to the Girls' Training School, in addition to the commitment, shall annex a carefully prepared transcript of the trial to aid the officials of the institution in better understanding and classifying the girl. The court shall also designate some reputable woman to convey the girl to the institution. The cost of conveying any girl committed to this institution shall be paid by the county from which she is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the girl conveyed. [Acts 1913, p. 289.]

Art. 5137. Dismissal of inmates.—No girl shall be discharged or paroled until some suitable home has been found for her and only then upon the written recommendation of the superintendent to the Board, or unless she has become married with the consent of the Board and superintendent. The Governor shall have power to issue a pardon or commute the sentence of any inmate. Any girl who is thus paroled from the school shall be under the supervision and guidance of the superintendent who shall require that she write bi-weekly letters to the superintendent or matron of the school for the first six months and monthly letters thereafter. The person under whose care or employ the girl is placed shall write monthly letters to the superintendent or matron of the school for the first six months and semi-annually thereafter.

The Board, superintendent or any employee of said school may visit the place where the girl is and it shall be the duty of the person having the girl in custody to answer inquiries of said visiting committee concerning the conduct, employment or treatment of said girl. If, in the judgment of the Board, it should be to the best interests of the girl that she be returned to the school, the Board is empowered to have her returned. [Id.]

Art. 5138. Detention homes and parental schools.—All counties in this State may establish detention homes and parental schools for dependent and delinquent juveniles. It shall be lawful for the commissioners court to appropriate from the general fund of the county such sums as may be necessary to establish, equip and maintain such detention homes and parental schools as may be necessary to care for the dependent and delinquent children of the county. In like manner any county in which no such detention home or parental school exists may appropriate such funds as may be necessary to pay for the board and for the proper care and training of its dependent and delinquent juveniles in the detention home or parental school of any county that may agree to receive them and at such rates of board and tuition as shall be agreed upon by the commissioners courts of the counties concerned. When in the opinion of the commissioners court, it is desirable to levy a special tax for establishing and maintaining such detention home or parental school, or for paying the board and tuition of dependent and delinquent children as herein provided the said court may bring the question of levying such special tax to a vote of the qualified voters of the county at a special election held for that purpose, and the said court must submit the said question to the voters when requested to do so by a petition signed by ten per cent of the qualified voters of the county. All elections held under the provisions of this article shall be governed in all respects not herein specified to the contrary by the laws of this State governing elections for the levy of special school taxes. [Acts 1913, p. 218.]

Art. 5138a. Parental homes and schools for delinquents in certain counties.

Establishment—commitments

Section 1. Counties having a population of not less than three hundred ninety thousand (390,000) and not more than five hundred thousand (500,000), according to the last preceding Federal Census, and containing a city having a population of not less than two hundred ninety thousand (290,000) and not more than three hundred fifty thousand (350,000), according to the last preceding Federal Census, shall be jointly empowered and authorized with said city to establish, own and operate a parental home and school for the training of dependent and delinquent youth resident of that county or city. All juveniles of the county who may be declared to be dependent by any of the District Courts of the county, or found to be delinquent by any of the District Courts or the County Court of the county may be committed to the parental home owned and operated by the city and county, or to any home, school, institution or reformatory as now provided by law. The commitment of any dependent child to said parental home shall be in the manner now provided in Title 43 of the Revised Civil Statutes of 1925.[1] The commitment of any delinquent child to said parental home shall be in the manner now provided in Title 16 of the Code of Criminal Procedure of 1925.[2] [As amended, Acts 1941, 47th Leg., p. 372, ch. 209, § 1; Acts 1941, 47th Leg., p. 1340, ch. 606, § 1.]

[1] Article 2329 et seq.
[2] Pen.Code arts. 1083–1093.

Purchase, establishment, building, equipment and maintenance

Sec. 2. The Commissioners' Court shall have authority to cooperate with and join the proper authority of the city in the purchase, establishment, building, equipment, and maintenance of a parental home and school for the care and training of dependent and delinquent youth, and it shall be lawful for the Commissioners' Court to appropriate from the General Fund of the county such sum as may be necessary to purchase, establish, equip, and maintain such home and school.

Bond issue

Sec. 3. Unless adequate funds for the building of said home and school can be derived from the current funds of the county, available for such purpose, issuance of county warrants and scrip, the Commissioners' Court may submit either at a special election called for the purpose or at a regular election, the proposition of the issuance of county bonds for the purpose of building and equipping such a home and school. The Commissioners' Court shall be required to submit said proposition of the issuance of bonds upon petition of five hundred (500) qualified taxpaying voters of said county. The Commissioners' Court is hereby authorized to assess, levy, and collect such taxes upon real and personal property situated in the county as it may deem necessary to provide the

funds for the erection and maintenance of said home and school and for such other necessary expenditures therefor.

Board of managers

Sec. 4. Upon the establishment of said home and school, the authorities of the city and the County Commissioners' Court, at a joint meeting, shall select a board of managers of five (5) citizens of the county who shall serve for the period of two years. Said board of managers will have authority to receive all funds provided by the city and county for the establishment and maintenance of said home and school, and shall have the general management and control of said home and school, the grounds, buildings, offices, and employees thereof, of the inmates therein and of all matters relating to the government, discipline, and conduct thereof, and make such rules and regulations as may seem to be necessary for carrying out the purpose of said home and school.

Acceptance of grants, devises and donations

Sec. 5. Subject to the approval of the authorities of the city and the Commissioners' Court, said board shall have power and authority to accept and hold in trust for said home and school any grant or devise of land or any gift or bequest of money or other personal property, or any donation to be applied for the benefit of said home and school and to apply same in accordance with the terms of such gift.

Instructional or educational work

Sec. 6. The board of managers of said home and school shall have authority to arrange with the Board of Education of the city for instructional work in said home and school, and it shall be the duty of the Board of Education of the city to cooperate with said board of managers in carrying out the purpose of said home and school, and said Board of Education of the city is hereby authorized to appropriate such funds as may be necessary for employing teachers and carrying on the necessary educational work in said home and school, whether the same is located within the limits of the independent school district of the city or outside the limits of the independent school district of the city.

Validation of bonds

Sec. 7. Any city which has heretofore authorized bonds to be issued for such a home or institution are hereby validated. [Acts 1931, 42nd Leg., Spec.L., p. 189, ch. 88.]

Art. 5139. County Juvenile Board.—In any county having a population of less than seventy thousand (70,000) inhabitants according to the last preceding Federal Census, which county is included in, and forms a part of a Judicial District of seven (7) or more counties having a combined population of more than fifty-two thousand (52,000) inhabitants, or which county is included in and forms a part of a Judicial District of five (5) or more counties having a combined population of more than seventy-two thousand (72,000) and less than ninety-five thousand (95,000) inhabitants according to the last preceding Federal Census, or which county is included in and forms a part of a Judicial District of five (5) or more counties, in one (1) or more of which counties the civil and criminal jurisdiction vesting by General Law in the County Court has been, or hereafter shall be, transferred to the exclusive jurisdiction of the District Court of such county or counties, and having a combined population in such Judicial District of more than thirty-five thousand (35,000) inhabitants, according to the last preceding Federal Census; or which county is included in and forms a part of a Judicial District composed of four (4) counties having a combined population of not more than sixty-two thousand (62,000) inhabitants according to such last preceding Federal Census, one (1) or more counties in which districts border on the International Boundary between the United States and the Republic of Mexico; the Judge of such Judicial District, together with the County Judge of such county are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in each such county shall each be allowed additional compensation of not less than One Hundred Dollars ($100) per annum, and not more than Three Hundred Dollars ($300) per annum, which shall be paid in twelve (12) equal installments out of either the general fund or the jury fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

In any county having a population of more than seventy thousand (70,000) inhabitants and less than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, the Judges of the several District and Criminal District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in such county shall each be allowed additional compensation of not less than Six Hundred Dollars ($600) per annum, nor more than One Thousand, Two Hundred Dollars ($1,200) per annum, which shall be paid in twelve (12) equal installments out of the general fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

In any county having a population of one hundred thousand (100,000), or over, according to the preceding Federal Census, the Judges of the several District and Criminal District Courts of such county, together with the County Judge of each county, are hereby constituted a Juvenile Board of such county. The annual salary of each of the Judges of the Civil and Criminal District Courts of such county as members of said Board shall be One Thousand, Five Hundred Dollars ($1,500) in addition to that paid the other District Judges of the State, said additional salary to be paid monthly out of the general fund of such county, upon the order of the Commissioners Court. [Acts 1917, p. 27; Acts 1921, p. 273; Acts 1945, 49th Leg., p. 422, ch. 268, § 1; Acts 1947, 50th Leg., p. 560, ch. 326, § 1.]

Section 2 of the Act of 1945 repealed art. 5139A and section 3 repealed art. 5139B.

Section 2 of the Act of 1947 appears as article 5139c. Section 3 read as follows: "If any part of this Act is declared unconstitutional the remainder shall nevertheless be valid."

Art. 5139A. [Repealed by Acts 1945, 49th Leg., p. 422, ch. 268, § 2.]

The article repealed was Acts 1939, 46th Leg., Spec.L., p. 853, § 1.

Art. 5139B. [Repealed by Acts 1945, 49th Leg., p. 422, ch. 268, § 2.]

The article repealed was Acts 1941, 47th Leg., p. 552, ch. 349, § 1.

Art. 5139C. Laws saved from repeal; County Judges' compensation not counted as fees.—It is expressly declared that nothing in this Act[1] shall be construed to repeal Article 6819a, Acts of the Forty-ninth Legislature, Chapter 200, page 271, nor any law fixing other compensation for the Judges of the District Courts or County Judges, and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office. [Acts 1947, 50th Leg., p. 560, ch. 326, § 2.]

1 Amending Article 5139.

Art. 5140. Powers of Board.—Such Board shall neither have nor exercise judicial power or function. In the event such Board desires to make inquiry as to whether any child should be adjudged either dependent, neglected or delinquent, it shall have power to direct one of the probation officers of said Board to file complaint against such child in some court of such county having jurisdiction to hear and determine such

complaint. Such board or the members thereof may be present at such hearing, either in person or by one or more of its probation officers, and make such inquiry concerning such child as may be proper under the established rules of procedure in such court. [Acts 1917, p. 27; Acts 1921, p. 273.

Art. 5141. Sessions of Board.—Such Board shall hold meetings in accordance with the rules which it may prescribe, and at intervals of not less than once in three months, and shall keep such records as it desires, and shall hear and consider such facts as may be brought to its attention, under such rules as it may prescribe, concerning the welfare of any child in such county or under the jurisdiction of any of its courts. If such child has been adjudged to be dependent, neglected or delinquent by any court of such county, it may make to the court or person having custody of such child, such recommendation in writing as it may think proper as to the care and custody of such child. [Id.]

Art. 5142. Qualifications, duties, appointment, salaries and removal of juvenile officers.—There may be appointed, in the manner hereinafter provided, discreet persons of good moral character to serve as juvenile officers, for periods not to exceed two (2) years from date of appointment.

Such officers shall have authority and it shall be their duty to make investigations of all cases referred to them as such by such Board; to be present in Court and to represent the interest of the juvenile when the case is heard, and to furnish to the Court and such Board any information and assistance as such Board may require, and to take charge of any child before and after the trial and to perform such other services for the child as may be required by the Court or said Board, and such juvenile officers shall be vested with all the power and authority of police officers or sheriffs incident to their offices.

The clerk of the Court shall, when practicable, notify such juvenile officer when any juvenile is to be brought before the Court. It shall be the duty of such juvenile officer to make investigation of any such case, to be present in Court to represent the interest of the juvenile when the case is tried; to furnish to such Court such information and assistance as the Court may require and to take charge of any juvenile before and after the trial as the Court may direct. In counties having a population of less than eighty thousand (80,000), one (1) juvenile officer may be appointed by the Commissioners Court, when in its opinion, such officer is needed, who shall receive a compensation not to exceed One Hundred and Twenty-five Dollars ($125) per month. Provided that in counties having a population of not less than thirty-five thousand (35,000) and not more than eighty thousand (80,000) and containing a city of more than twenty-nine thousand (29,000) population, one (1) juvenile officer may be appointed by the Commissioners Court, when in its opinion the services of such officer are needed, whose salary shall not exceed Two Hundred Dollars ($200) per month and expenses not to exceed Two Hundred and Fifty Dollars ($250) per year, and in such counties the Commissioners Court may appoint an assistant to the said juvenile officer, when in its opinion such assistant is necessary, whose salary shall not exceed One Hundred and Fifty Dollars ($150) per month. Provided further that, in counties having a population of not less than twenty thousand (20,000) and not more than eighty thousand (80,000) as shown by the 1940 Federal Census or any future Federal Census, and which have an assessed valuation of taxable property of not less than Fourteen Million, Five Hundred Thousand Dollars ($14,500,000), and not more than Twenty-five Million Dollars ($25,000,000), one (1) juvenile officer may be appointed by the Commissioners Court, when in its judgment such officer is needed, who shall receive a salary not to exceed Two Hundred Dollars ($200) per month.

Provided further that in counties having a population of not less than nineteen thousand (19,000) and not more than fifty thousand (50,000) as shown by the 1940 Federal Census and which have an assessed valuation of taxable property not less than Twenty-five Million Dollars ($25,000,000), one (1) juvenile officer may be appointed by the Commissioners Court, whose salary may not exceed Three Hundred Dollars ($300) per month and expenses not to exceed Six Hundred Dollars ($600) per year.

Provided that in counties having a population of eighty thousand (80,000) and less than one hundred and fifty thousand (150,000), the county judge may appoint a juvenile officer subject to the approval of the County Juvenile Board for a period not to exceed two (2) years from date of appointment at a salary not to exceed Three Hundred and Fifty Dollars ($350) per month and expenses as recommended by the Board and approved by the Commissioners Court. Such juvenile officer may select such assistant juvenile officers as are necessary to carry out the provisions of this Act, subject to the approval of the county judge and the County Juvenile Board; provided the number may not exceed ten (10). The salaries and expenses of such assistant juvenile officers shall be in amounts recommended by the Board subject to approval of the Court.

Provided that in counties having a population of one hundred and fifty thousand (150,000) or more, and containing a city of one hundred thousand (100,000) or more, the county judge may appoint a juvenile officer, subject to the approval of the County Juvenile Board, to serve for a period not to exceed two (2) years from the date of appointment, and whose extra duties shall be to make investigations for the Commissioners Court on applications for charity, or admittance into detention homes or orphan homes created by such counties. The salary of such juvenile officer shall not exceed Three Hundred Dollars ($300) per month, his allowance for expenses not to exceed Two Hundred Dollars ($200) a year. Such juvenile officer may select assistant juvenile officers, subject to the approval of the county judge and the County Juvenile Board, the number of such assistant juvenile officers not to exceed one (1) assistant to each twenty-five thousand (25,000) population. The salaries of such assistant juvenile officers shall be the same as that fixed by the General Law in Article 3902 of the Revised Civil Statutes of Texas, 1925, for assistants to other county officials. Such assistant juvenile officers may be allowed expenses not to exceed Two Hundred Dollars ($200) per year each.

In the appointment of all juvenile officers, the county judge and the County Juvenile Board may select for such office any school attendance officer or officers of the county, or of school districts in the county, that may be authorized by law, and the salary and expense of such joint juvenile officer or officers and attendance officers shall be paid jointly by the county and school authorities upon any basis of division they may agree upon.

Salaries of paid juvenile officers and their assistants shall be fixed by the Commissioners Court, not to exceed the sums herein mentioned, and any bill for the expenses not exceeding the sums herein provided for, shall be certified by the county judge as being necessary in the performance of the duties of a juvenile officer. The Commissioners Court of the county shall provide the necessary funds for the payment of salaries and expenses of the juvenile officers provided for in this Act. The appointment of said juvenile officers shall be filed in the office of the clerk of the County Court. Juvenile officers shall take the oath to perform their duties and file such oath in the office of the county clerk. As a basis for reckoning the population of any county the preceding Federal Census shall be used.

Provided that any juvenile officer appointed under the provisions of this Act may be removed from office by the power appointing him at any time. [Acts 2nd C.S.1919, p. 130; Acts 1927, 40th Leg., p. 335, ch. 228; Acts 1937, 45th Leg., p. 545, ch. 269, § 1; Acts 1945, 49th Leg., p. 282, ch. 205, § 1; Acts 1947, 50th Leg., p. 65, ch. 50, § 1; Acts 1947, 50th Leg., p. 1026, ch. 440, § 1.]

Section 2 of the Act of 1947, ch. 440, repealed conflicting laws. Section 3 provides that a holding of partial invalidity should not affect the validity of the remaining portion of the Act.

Art. 5142a. Juvenile officer and salary—Counties of 350,000 population.

Appointment—compensation—duties—assistants—expenses

Section 1. Provided that in counties having a population of more than three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census the County Juvenile Board shall appoint a juvenile officer for a term of two (2) years at a salary not to exceed Five Thousand Dollars ($5,000) per annum, to be fixed by the County Juvenile Board subject to the approval of the Commissioners Court to be paid monthly by the county, whose extra duties will be to make investigations for the Commissioners Court on applications for charity or admission into detention homes or orphan homes created by such counties. The Commissioners Court is authorized in its discretion to furnish such juvenile officer an automobile, and provide an allowance for the expense of operating the same; or, if the Court does not furnish an automobile, it may allow such juvenile officer such reasonable amount as it may think proper for the use and operation of his automobile. Such juvenile officer may select assistant juvenile officers subject to the approval of such Board, the number of such assistants to be determined by the Juvenile Board subject to the approval of the Commissioners Court. The salaries of such assistants shall be the same as that fixed in Article 3902 of the Revised Civil Statutes of Texas, of 1925, and as amended for assistants to other officials, except that the head of a department need not have before served for any particular period of time, efficiency being called for in such counties. Such assistant juvenile officers may be allowed such expenses as such Commissioners Court may think reasonable and proper. [As amended Acts 1947, 50th Leg., p. 496, ch. 291, § 1.]

Compensation for additional services

Sec. 1-a. For the additional services and duties required by this Act each District Judge in any county coming under the terms of this Act shall receive in addition to all other compensation now provided by law, the sum of Seventy-five Dollars ($75) per month out of the General Fund of such county.

Record of desertion cases; investigation as to support payments

Sec. 2. One or more probation officers out of the probation department in counties with a population in excess of three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census, having a County Juvenile Board as may be determined necessary by the County Juvenile Board shall keep a record of all wife and child desertion cases wherein criminal charges are pending in said county and shall immediately investigate the facts in each case and the defendant's ability to support his wife and/or children, and shall upon complaint that any payment under the order of the Court for the support of the defendant's wife and/or children make investigations into the reasons why such payments are not being made and shall make reports of all such matters immediately upon the making of such investigation to the District Attorney and/or the Court in which such case is pending.

Probation officer to disburse payments in desertion cases

Sec. 3. All payments made under the order of the Court in such county in wife and child desertion cases for the support of wives and children shall be paid in to said probation officer working in said Court as an officer of the Court, and said probation officer shall disburse said funds for the benefit of the wife and/or children of the defendant making such payment in such manner as shall appear to the Court to be for the best interest of said wife and/or children.

Bond of probation officer

Sec. 4. Said probation officer shall make a surety bond in some solvent surety company authorized to make such bonds in Texas conditioned upon the faithful performance of the duties of his position and further conditioned upon his properly accounting for any moneys entrusted to him, said bond to be in such amount as may be fixed by the county auditor and subject to the approval of the county auditor.

Records of receipts and disbursements

Sec. 5. Said probation officer in such county with a population in excess of three hundred and fifty thousand (350,000) inhabitants according to the last preceding Federal Census, shall keep a complete record of all his investigations and of his receipts and disbursements of all moneys which shall be a public record open to the inspection of the public, and it shall be the duty of the county auditor to inspect and examine such records and audit such accounts quarterly making due report of his findings and recommendations with respect thereto to the County Juvenile Board.

Investigation and report in divorce suits between parties having children under 16; supervising head of county institutions as probation officer

Sec. 6. In all suits for divorce in counties having a population in excess of three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census where it appears from the petition or otherwise that the parties to such suit have a child or children under sixteen (16) years of age it shall be the duty of the Probation Department subject to the direction of the Court to make a complete and thorough examination into the merits of the claim for divorce and to report its findings to the Court in connection therewith and to make a thorough and complete investigation as to the necessities of the child or children and the disposition that should be made of such child or children and to make report thereof to the Court prior to the trial of said case, and if desired by the Court, produce such evidence as may have been developed in connection with such matters on the trial of such case. The County Juvenile Board in counties having a population of over three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census, is hereby authorized and required to appoint a supervising head of county institutions having to do with juveniles, delinquents and dependents of such county which said supervising head of county institutions may be the county probation officer of said county who, if appointed, shall serve without additional salary or in the discretion of the County Juvenile Board; any person may be selected by such Board as the supervising head of county institutions, who shall be paid a salary not in excess of Five Thousand Dollars ($5,000) a year to be agreed upon by said Juvenile Board and the County Commissioners Court, and said County Juvenile Board is hereby authorized and required to appoint the heads of all county institutions having to do with juveniles, delinquents, and dependents, including county poor farms and old folks' homes. Said supervising head of the county institutions is hereby authorized and required to direct the policies and con-

duct of such institutions under the supervision and direction of the County Juvenile Board. The heads of various institutions shall be authorized to select such other employees for their institutions as may be determined or needed, by the County Juvenile Board, at such salary as may be fixed by said County Juvenile Board, and such salaries are to be subject to the approval of the County Commissioners Court.

Reports by supervising head to Juvenile Board

Sec. 7. Said supervising head of the County Institutions in such counties or other county officers under his direction, is hereby required to follow up and supervise all cases committed to such institutions as are provided or may be provided for juveniles, delinquents and dependents until they become of age, reporting to the Juvenile Board from time to time as required by it for its approval and action. The Commissioners Court shall provide the necessary funds for the operation of all such institutions. [Acts 1931, 42nd Leg., p. 759, ch. 302; Acts 1935, 44th Leg., p. 401, ch. 156, § 1.]

Section 2 of Acts 1935 repeals all conflicting laws and parts of laws to the extent of such conflict and section 3 provided that if any part of the act is held unconstitutional, such decision shall not affect the validity of the remainder.

Art. 5142b. Juvenile officers in counties of 190,000 to 320,000.

Application of law

Section 1. The provisions of this Act shall apply to all counties of the State of Texas containing a population of not less than one hundred and ninety thousand (190,000) inhabitants, nor more than three hundred and twenty thousand (320,000) inhabitants, according to the last preceding or any future Federal Census, general or special. [As amended Acts 1947, 50th Leg., p. 955, ch. 409, § 1.]

Juvenile board

Sec. 2. The Juvenile Board of such counties shall be composed of the Judges of the several District and Criminal District Courts, thereof, together with the County Judge thereof.

Chief probation officer and assistants; appointment

Sec. 3. There shall be one Chief Probation Officer who shall be appointed by the Juvenile Board. Said Chief Probation Officer shall appoint Assistant Probation Officers, subject to confirmation by the Juvenile Board. The number of such Assistant Probation Officers shall be determined by the Juvenile Board subject to the approval of the Commissioners Court, provided such power of appointment and confirmation shall become effective immediately upon final passage of this Act, and the budget shall be amended, if necessary, to provide sufficient funds for the operation of this Act. [As amended Acts 1943, 48th Leg., p. 450, ch. 299, § 1; Acts 1947, 50th Leg., p. 782, ch. 389, § 1; Acts 1947, 50th Leg., p. 955, ch. 409, § 2.]

Terms of office

Sec. 4. The term of office of Chief Probation Officer and Assistant Probation Officers shall be for a period of two years; provided, however, that the Juvenile Board may at any time, for good cause, suspend or remove any Juvenile Officer, whether Chief or Assistant.

Compensation

Sec. 5. The compensation of all probation officers shall be fixed by the Juvenile Board subject to the approval of the County Commissioners Court, which shall not exceed Four Hundred Dollars ($400) per month for the Chief Probation Officer, and not to exceed Three Hundred Dollars ($300) per month for the First Assistant of Chief Deputy, and not to exceed Two Hundred and Fifty Dollars ($250) per month for one Assistant or Deputy, and not to exceed Two Hundred Dollars ($200) per month for all other Deputy Assistants. [As amended Acts 1945, 49th Leg., p. 251, ch. 185, § 1.]

Juvenile Board; powers

Sec. 6. The Juvenile Board shall have direction and control over all Juvenile Officers and may make rules and regulations relating thereto.

Supervision of institutions by Juvenile Board; superintendents

Sec. 7. All homes, schools, farms and any and all other institutions or places of housing maintained and used chiefly by the County for the training, education, and support or correction of juveniles shall be under the control and supervision of the Juvenile Board, and the Superintendent of each such institution shall be appointed by the Chief Probation Officer for a term of two (2) years, and each such appointment shall be confirmed by the Juvenile Board. The salaries of all of the Superintendents shall be fixed by the County Commissioners Court. [As amended Acts 1945, 49th Leg., p. 251, ch. 185, § 2.]

Records and visitation by Probation Officer

Sec. 8. It shall be the duty of the Probation Officers to keep a record which will, at all times, show the names of all dependent or delinquent juveniles within their county, and the names and addresses of the person having custody of any such juveniles; and visitations by such officers shall be made at such reasonable times as may be directed by the Juvenile Board, and written report shall be made to the Juvenile Board showing such facts relating to the environment, treatment, education and welfare of such minors as shall be directed by the Juvenile Board.

Juvenile Court to direct change of custody of juveniles

Sec. 9. It shall be unlawful for any person or institution having the lawful custody of any such juveniles to deliver such juveniles to the custody of another person without an order of court of competent jurisdiction in said county sitting as a Juvenile Court authorizing same, and a copy of such order shall be transmitted to the Juvenile Officers of such county.

Visitations by Juvenile Board; orders and regulations

Sec. 10. It shall be the duty of the members of the Juvenile Board of said county to make visitations, at reasonable intervals, to the institutions in said county in which dependent or delinquent juveniles may be kept, maintained or educated; and a majority of said Juvenile Board may adopt any order or regulation pertaining to the welfare of such juveniles which may be found necessary or for the welfare of such juveniles, and it shall be the duty of all persons having such juveniles in charge to comply with such order or regulation. Any such order or regulation shall be entered of record by the Chief Probation Officer in a book kept for such purpose, and shall be open for public inspection, and copy of any such order or regulation certified by such Probation Officer shall be delivered to the Superintendent, or person in charge, or control of any such institution; and said Board may by order or regulation require of the Superintendent, or person in charge, of such juveniles in said county reports giving said Board such information relating to such juveniles or such institutions as may be required by such Juvenile Board.

Suspension of assistants by Chief Probation Officer

Sec. 11. The Chief Probation Officer may at any time, with the approval of the Juvenile Board, for good cause shown, suspend, or entirely terminate the employment and service of any assistant after such assistant has been duly notified and afforded an opportunity to be heard by said Juvenile Board.

Bonds of officers

Sec. 12. The Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any Juvenile Officer or Superintendent of any of the institutions enumerated in this Act, in such sum as may be determined by said Board.

Investigations and reports by Probation Officer; record of receipts and expenditures

Sec. 13. The Juvenile Board, or any member thereof, may at any time require any Probation Officer to make investigation and report the facts relating to the welfare of any minor, or any child abandonment or desertion cases or proceedings, and may require any such officer to receive and disburse under orders of the Board for the benefit of any such minor any sums of money required to be paid into Court for the maintenance of such minor; and such officer shall enter all such receipts and disbursements in a well-bound book kept for such purpose in the Probation Office subject to public inspection, showing all such receipts and disbursements, and the same shall be audited by the County Auditor; and the bond required to be executed under the provisions of this Act shall be liable for the faithful performance of all such duties.

Assistant district attorney to represent Juvenile Board and Probation Officers

Sec. 14. The District Attorney and the Criminal District Attorney of all such counties coming under the provisions of this law, is hereby authorized and directed, to assign an Assistant District Attorney in his office for the special duty of representing the Juvenile Board and the Probation Officers in safeguarding and protecting the rights relating to the welfare of any minor or juvenile in child abandonment and desertion cases or proceedings.

Compensation of Juvenile Board members

Sec. 15. The members composing said Juvenile Board in such counties, on account of the additional duties hereby imposed on them, are each hereby allowed an additional compensation of Seventy-five ($75.00) Dollars per month to be paid by the Commissioners' Court in such counties, and the same to be in addition to all other compensation now allowed by law to such officers.

Partial invalidity clause

Sec. 16. It is further enacted that if any section, clause or part of this bill is found to be unconstitutional, or invalid, it is hereby declared to be the purpose and intention of the Legislature that such fact shall not in any manner invalidate or impair the remaining portions of this Act.

It is further provided that all laws and parts of laws in conflict with the provisions of this bill be and the same are hereby repealed to the extent of such conflict only. [Acts 1937, 45th Leg., p. 76, ch. 46; Acts 1943, 48th Leg., p. 450, ch. 299, § 1.]

Art. 5143. Incorrigible boy.—Any parent or guardian of any incorrigible boy under the age of seventeen years, may present a petition to the judge of the juvenile court of the county of his residence, setting forth under oath the age and habits of any such boy and praying that said boy be committed as a delinquent child. The court shall set the case down for hearing and shall take testimony, and if, in his judgment, the child should be committed, said judge may enter an order committing said child to said institution. The parent or guardian shall pay all necessary expenses of carrying said child to said institution and in addition shall pay at least one quarter in advance, the amount necessary for the maintenance of said child at said institution, as estimated by the superintendent of said institution. Said parent or guardian shall also deposit with the superintendent of said institution an amount sufficient to pay the fare of said child from said institution to its home; and, if said parent or guardian shall fail or refuse to make any subsequent quarterly payment for maintenance, in advance, said commitment shall terminate; and the superintendent of said school shall discharge such boy and return him to his home.

The expense of conveying all boys committed to said school shall be paid by the county from which said commitment is made; and the sheriff, probation, or any peace officer, as the court may direct, shall convey all boys committed to said institution to such Training School as the court and said parents or guardians may agree upon. The court may send the boy to school without escort. [Acts 1913, p. 219.]

Art. 5143a. Juvenile Training Schools for delinquent children.

"Delinquent child"

Section 1. The term "delinquent child" shall include any boy between the ages of ten (10) and seventeen (17) years and/or any girl between the ages of ten (10) and eighteen (18) years who violates any penal law of this State, or who is incorrigible, or who knowingly associates with thieves, vicious or immoral persons, or who knowingly visits a house of ill repute, or who is guilty of immoral conduct in a public place, or who knowingly patronizes or visits any place where a gambling device is being operated, or who habitually wanders about the streets in the nighttime without being on any business or occupation or who habitually wanders about any railroad yard or tracks, or habitually jumps on and off of moving trains or who enters any car or engine without lawful authority. Any such child committing any of the acts herein mentioned shall be deemed a delinquent child, and shall be proceeded against as such in the manner hereinafter provided, and as otherwise so provided by the law, so as to effect the object of this law.

Who received at said schools

Sec. 2. Any male person between the ages of ten (10) and seventeen (17) years who shall be lawfully committed to the State Juvenile Training School as a delinquent child, and not possessing any of the disqualifications hereinafter mentioned, shall be received as an inmate of said training school.

Girls' Training School

Sec. 3. The Girls' Training School for delinquent girls shall be under the control and management of the State Board of Control which shall provide wholesome and proper quarters and exercise and diversion, and shall make provisions for training in all of the useful arts and sciences to which women are adapted, to prepare them for future womanhood and independence, and shall provide instruction in nursing, sanitation and hygiene.

Juveniles disqualified

Sec. 4. Whenever any girl between the ages of ten (10) and eighteen (18) years or boy between the ages of ten (10) and seventeen (17) years shall be tried or brought before any juvenile court upon indictment or information or before the District Court on petition of any person in this State or the Humane Society or any institution of a similar purpose or character, charged with being a delinquent child as this term is herein defined, the Court may, if in the opinion of the judge, the Juvenile Training School is the proper place for him, if a boy, or the Girls' Training School is the proper place for her, if a girl, commit such person to the Juvenile Training School for boys or the Girls' Training School for girls during the minority of said person. No person shall be committed to either school who is feeble-minded, epileptic or insane, but if so committed the State Board of Control shall have the authority to immediately transfer to the

proper eleemosynary institution. Any person committed to either school who is afflicted with a venereal, tubercular or other communicable disease shall be assigned to a distinct and separate building of the institution and shall not be allowed to associate with the other wards until cured of said disease or diseases. No person shall be admitted to either of said schools until he or she has been examined by the school physician and such physician has issued a certificate showing said person's exact state or condition in reference to said qualifications hereinabove enumerated.

Unruly child excluded—transfers

Sec. 5. All juvenile courts shall give preference to those children of tender age, and said courts shall not commit to said Home for Dependent and Neglected Children any children under the age of sixteen (16) years who are known to be habitual violators of the laws of this State or who have been inmates of any State juvenile correctional school, provided however, that the State Board of Control is hereby authorized to transfer to this Home from any State juvenile correctional school any child of tender years whose record is satisfactory, upon the recommendation of the superintendent of such correctional school or any interested citizen. If the conduct of any child in said Home becomes sufficiently uncontrollable as to impair the better interests of other children in the Home, the Board, upon application of the superintendent, shall have the authority to transfer such child to any State juvenile correctional school admitting juveniles of similar age and sex and it shall be the duty of the respective superintendents to transfer, transport and admit such child. Said Board may transfer children from said Juvenile Training Schools or said Home to the State Orphans' Home and from said Orphans' Home to said Training Schools. [Acts 1937, 45th Leg., p. 1328, ch. 492.]

Section 6 of Acts 1937, 45th Leg., p. 1328, ch. 492, repeals Articles 3258, 5125, 5132, and 5135 of the Revised Civil Statutes of 1925, and Article 1083 of the Code of Criminal Procedure. Section 7 provides that partial invalidity shall not affect the remaining portions.

Art. 5143b. Clothing, money and transportation furnished on release from Gatesville and Gainesville training schools.—Section 1. Upon the discharge or parole of any person committed to the Gatesville State School for Boys or the Gainesville State School for Girls, the Superintendent of the Institution from which such person is discharged or paroled shall provide them with a complete suit of suitable clothing, and Five Dollars ($5) in money, and procure transportation for them to their homes, if resident of this State, or to the county in which they may have been convicted or to such other place in the State at which said discharged or paroled person may have procured employment or to a place where a suitable home has been found for such person.

Sec. 2. The furnishing of clothing and transportation and the payment of money may be made from appropriations for support and maintenance made to the Institution from which such person was discharged or paroled, or from local funds, or from any appropriation specifically made for such purposes by the Legislature of the State of Texas. [Acts 1945, 49th Leg., p. 155, ch. 106.]

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CHAPTER 1.—BUREAU

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Article 5144. [5236] Appointment of Commissioner.—A Commissioner of Labor Statistics, whose office shall be in the Capitol building, shall be biennially appointed by the Governor for a term of two years. The Commissioner may be removed for cause by the Governor, record thereof being made in his office. The Commissioner shall give a good bond in the sum of two thousand dollars, to be approved by the Governor, conditioned for the faithful discharge of the duties of his office. [Acts 1909, p. 59.]

Art. 5145. [5235–6–7] Duties of Commissioner.—The Bureau of Labor Statistics shall be under the charge and control of the Commissioner of Labor Statistics. The Commissioner shall collect, systematize and present in biennial reports to the Governor, statistical details relating to all departments of labor in Texas, especially as bearing upon the commercial, social, educational, and sanitary conditions of the employees and their families, the means of escape from dangers incident to their employment, the protection of life and health in the factories and other places of employment, the labor of women and children, and the number of hours of labor exacted of them, and, in general, all matters and things which affect or tend to affect the prosperity of the mechanical, manufacturing and productive industries of this State, and of the persons employed therein.

Said Commissioner shall, also, as fully as may be done, collect reliable reports and information from each county, showing the amount and condition of the mechanical, mining and manufacturing interest therein, and all sites offering natural or acquired advantages for the location and operation of any of the different branches of industry. He shall, by correspondence with interested parties in other parts of the United States, or in foreign countries, impart to them such information as may tend to induce the location of manufacturing and producing plants within the State, together with such information as may tend to increase the employment of labor and the products of such employment in Texas. Except as hereinafter provided he shall safely keep and deliver to his successor all records, papers, documents, correspondence and property pertaining to or coming into his hands by virtue of his office. [Id.]

Art. 5146. [5238] Report.—In each biennial report, the Commissioner shall give a full statement of the business of the bureau since the last preceding report, and such information as may be of value to the industrial interests and their employees, showing, among other things, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics and apprentices, the wages earned, the savings from the same, the age and sex of the persons employed, the number and character of accidents, the sanitary

conditions of places where persons are employed, the restrictions put upon apprentices when indentured, the proportion of married employees living in rented houses, with the average rental paid, the value of property owned by such employees, and a statement as to the progress made in schools in operation for the instruction of students in mechanic arts, and what systems have been found most practical. Such reports shall not contain more than six hundred printed pages, and the same shall be printed and distributed in such manner as may be provided by law. [Id.]

Art. 5147. [5240] Preservation of records.—No report or return made to the bureau under the provisions of this chapter or the Penal Code, and no schedule, record or document gathered or returned by its officers or employees shall be destroyed within two years of the collection or receipt thereof. At the expiration of two years all such reports, returns, schedules, records and documents as shall be considered by the Commissioner to be of no further value, shall be destroyed, if the permission of the Governor therefor be first obtained. [Id.]

Art. 5148. [5241] May enter factories, etc.—Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information in accordance with the provisions of this law, the Commissioner shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place where five or more persons are employed at work when the same is open and in operation, for the purpose of gathering facts and statistics such as are contemplated by this chapter, and for the purpose of examining into the methods of protecting employees from danger and the sanitary conditions in and around such building or place, of all of which the said Commissioner shall make and return to the Bureau of Labor Statistics a true and detailed record in writing.

Art. 5149. [5242] To report violations.—If the Commissioner shall learn of any violation of the law with respect to the employment of children, or fire escapes, or the safety of employees, or the preservation of health, or in any other way affecting the employés, he shall at once give written notice of the facts to the proper county or district attorney. [Id.]

Art. 5150. [5239] To take testimony.—The Commissioner shall have power to issue subpœnas and take testimony in all matters relating to the duties herein required of said Bureau. Such testimony must be taken in the vicinity of the residence or office of the person testifying. [Id.]

Art. 5151. [5243] Expenses.—The Commissioner shall be allowed necessary postage, stationery, printing, and other expenses to transact the business of the Bureau, and he and any employé of the Bureau shall be allowed his actual necessary traveling expenses while in the performance of duties required by this chapter, and within the limits of the appropriations made therefor. [Id. Acts 1919, p. 164.]

CHAPTER 2.—LABOR ORGANIZATIONS

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Article 5152. [5244] Right to organize.—It shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service in their respective pursuits and employments. [Acts 1899, p. 262.]

Art. 5153. [5245] Other rights and privileges.—It shall be lawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment or to enter or refuse to enter any pursuit or quit or relinquish any particular employment or pursuit in which such person may then be engaged. Such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof. [Id.]

Art. 5154. [5246] Organizations excepted.—The preceding Article shall not be held to apply

to any combination or combinations, or to any act by any member of such trades union or other organization or association, or any other person, or to an agreement between two or more persons, formed or taken for the purpose of limiting the production, transportation, use or consumption of labor's products, or which creates a "Trust" or "Conspiracy in Restraint of Trade", as defined by the laws of this state. Nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service or other stipulations between employers and employees. Nothing herein shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies. [Acts 1899, p. 262; Acts 1947, 50th Leg., p. 530, ch. 310, § 2.]

Art. 5154a. Labor unions, regulation of.

Preamble of public policy

Section 1. Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

Definitions

Sec. 2. The words and terms hereafter defined, as used in this Act, shall have the meaning herein stated, except where the context of the Act shows that the same are used in some other sense or meaning; (a) the words "Secretary of State" shall mean the Secretary of State of the State of Texas; (b) "labor union" shall mean every association, group, union, lodge, local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing for the purpose of protecting themselves, and improving their working conditions, wages, or employment relationships in any manner, but shall not include associations or organizations not commonly regarded as labor unions; (c) "labor organizer" shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union; (d) "enforcement officer" means the Attorney General, District Attorney and the County Attorney; (e) "working agreement" means a collective bargaining contract with an employer for union labor employees in any business or industry, and shall include any renewal, extension, supplementation or change whatever in respect to any such agreement.

Reports

Sec. 3. It shall be the duty of every labor union to file with the Secretary of State, annually, and not later than the first day of February, except as hereafter provided, a report containing, (a) the name and address of such union; (b) the name and address of its local officers; (c) the name and address of the State, national, and international organization or union, if any, with which it is affiliated; (d) a complete financial statement of all fees, dues, fines, or assessments levied or received, together with an itemized list of all expenditures, with names of recipients and purposes therefor, covering the preceding twelve (12) months; and, (e) a complete statement of all property owned by the labor union, including any moneys on hand or accredited to such union, which said report shall be duly verified by the oath of the president, secretary, or some other regularly selected and acting officer of the union acquainted with the facts therein stated. Provided, however, that any union which closes its books at a date not convenient to file not later than the first of February may file such reports once each year as provided, and the Secretary of State shall set the time for such filing at a time convenient to the union. Each such labor union shall file with its first such report, duly attested copies of its constitution, or other organization papers and records, and shall thereafter report any changes or amendments to such constitution or organization papers and records within twenty (20) days after such changes are made.

Such reports shall be available only to the Secretary of State, the Commissioner of Labor Statistics, and the Attorney General but shall also be open to grand juries and judicial and quasi-judicial inquiries in legal proceedings.

Officers

Sec. 4. All officers, agents, organizers, and representatives of such labor union shall be elected by majority vote of the members present and participating; provided, however, that labor unions, if they so desire, may require more than a majority vote for election of any officer, agent, organizer or representative, and may take any such vote of the entire membership by mailed ballots. Such election shall be held at least once each year, and the determination taken by secret ballot, of which election the membership shall be given at least seven (7) days' notice by written or printed notice mailed to the member's last known address, or by posting notice of such election in a place public to the membership, or by announcement at a regular stated meeting of the union, whichever is most convenient to the union. The result of such election when held shall be ascertained and declared by the president and the secretary at the time in the presence of the members or delegates participating.

Provided, the requirement for annual elections herein made, or the methods of holding same, shall not apply to any labor union that for four (4) years prior to the effective date of the law shall have held its elections for officers, delegates and the like representatives less frequently than annually but which have held such elections either every three (3) years or every four (4) years under their constitution, bylaws, or other organization rules, and which unions have during the last ten (10) years charged not more than Ten Dollars ($10) initiation fee to members.

Aliens or convicts as officers

Sec. 4a. It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This Section shall not apply to a person who may have been convicted of a felony and whose rights of citizenship shall have been fully restored.

Political contributions prohibited

Sec. 4b. It shall be unlawful for any labor union to make any financial contribution to any political party or to any persons running for political office as a part of the campaign expenses of such individual.

Organizers

Sec. 5. All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b) his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the

applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation, "labor organizer"; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership.

Working agreements

Sec. 6. All labor unions are hereby required to forward to the Secretary of State a copy of all existing working agreements with employers under which that organization is operating, within twenty (20) days after the execution of such working agreements, but only if such agreements contain a clause, or as a part of such agreement, which provides that the dues or any other collections for the benefit of the labor union are deducted from the worker's check or salary by the employer. Such working agreements shall be available only to the Secretary of State, the Commissioner of Labor Statistics, and the Attorney General, but shall also be open to grand juries, judicial and quasi-judicial inquiries. This shall not in anywise be construed to vitiate the Statute of Frauds.[1]

1 Art. 3995.

Fees, dues, fines and assessments

Sec. 7. It shall be unlawful for any labor union, its officers, agent or any member to make any charge or exaction, or to receive any moneys for initiation fees, dues, fines, assessments, or other pecuniary exactions, which will create a fund in excess of the reasonable requirements of such union, in carrying out its lawful purpose or activities, if such fees, dues, fines, assessments, or other pecuniary exactions create, or will create, an undue hardship on the applicant for initiation to the union, or upon the union members. Nothing in this Section shall be deemed or construed to prevent the collection by a labor union of dues or assessments for purposes which are beneficial to the members of the union according to the established practice, and/or to maintain funds or make investments of funds for such beneficial purposes. Neither shall this Section be construed to prevent dues, collections or other assessments for old age benefits, death and burial benefits, hospitalization, unemployment, health and accident, retirement or other forms of mutual insurance, for legislative representation, grievance committee, or for gifts, floral offerings, or other charitable purposes, or any other legitimate purposes when the union engages in or decides to engage in such a field or practice; provided that the members contributing share or can reasonably expect to share in the benefits for which they are assessed; neither shall this Section be construed to prevent assessments, dues, or other collections, except initiation fees, to be placed in the funds or as a part of the funds of the union for the use by the union in paying its members while such members are on a strike; provided such funds shall remain under control of the labor union members. This Section shall be liberally construed, however, to prevent excessive initiation fees.

Advance fees

Sec. 8. It shall be unlawful for any labor organizer, union official or officer, or member of a labor union, or their agents, to collect any fees, dues, or sum of money whatsoever, in respect to membership in a labor union, or for the privilege to work or as a permit to work, from any person, without giving such person at that time a receipt therefor signed by such labor organizer, union official or officer, or member of the labor union, or their agent, reciting that such sum of money so received is to be delivered to the labor union, and be held intact until said person has been duly elected, and has become a bona fide voting member of said labor union. Provided that it shall be unlawful for any labor organizer, union official or officer, or member of a labor union, or their agents to collect any fee for the privilege to work or as a permit to work and no charge shall ever be made nor shall any fee ever be collected for the privilege to work in this State. Provided, however, this shall not prevent the collection of reasonable initiation fees as provided in this Act. Upon the payment in full by an applicant for membership in a labor union of any and all initiation fees or dues regularly assessed by such union, such labor union shall (a) elect such applicant to membership, or (b) shall forthwith return in full said money thus paid by the applicant. Upon such election, however, such advance fees thus paid may be applied by the labor union to the purposes and uses for which same were advanced. All unions, its members, officers, or agents, shall collect all fees in good faith, and no union shall elect a person to membership merely for the purpose of obtaining his initiation fee. Neither shall any labor union engage in the practice of collecting initiation fees from members and proceeding thereafter to discharge, suspend or drop such member, or cause his employer to discharge such employee, without reasonable and just cause. If any labor union shall engage in such practice, it shall be guilty of a violation of this Act, and shall be subject to the civil penalties herein prescribed. Nothing hereinabove stated shall be construed to prevent a closed shop contract or other type of bargaining agreement or to limit the bargaining power of a labor union.

Collecting fees for privilege to work forbidden

Sec. 8a. It shall be unlawful for any labor union, any labor organizer, any officer, any agent or representative or any member of any labor union to collect, receive or demand, directly or indirectly, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege to work from any person not a member of the union; provided, however, this shall not prevent the collection of initiation fees as above stated.

Books of accounts

Sec. 9. It shall be the duty of any and all labor unions in this State to keep accurate books of accounts itemizing all receipts from whatsoever source and expenditures for whatsoever purpose, stating such sources and purposes. Any member of such labor union shall be entitled at all reasonable times to inspect the books, records and accounts of such labor union, and any enforcement officer shall be entitled upon demand, subject to the approval of the Attorney General at all reasonable times, to inspect such books, records, and accounts of such labor union. Such books, records, and accounts shall also be open to grand juries and judicial and quasi judicial inquiries in legal proceedings.

Members' rights

Sec. 10. It shall be unlawful for any labor union to refuse to give any person desiring membership therein a reasonable time, after obtaining the promise of employment, within which to decide whether or not he desires to become a member of such labor organization, as a condition to such person's employment by the employer. It shall also be unlawful for any labor union to expel any member thereof except for good cause, and upon a fair and public hearing by and within the organization, after due notice and an opportunity to be heard on specific charges preferred. Any Court of competent jurisdiction upon his petition therefor, shall order reinstatement of any member of the labor organization who shall be expelled without good cause.

Members in armed forces

Sec. 10a. Any employee who is a member of any union, who, because of services with the armed forces of the United States, has been unable to pay any dues, assessments, or sums levied by any union, shall not hereafter be required to make such back payments as a condition to reinstatement in good standing as a member of any union to which he belonged.

Penalties

Sec. 11. If any labor union violates any provision of this Act, it shall be penalized civilly in a sum not exceeding One Thousand Dollars ($1,000) for each such violation, the sum recovered as a penalty in a Court of competent jurisdiction, in the name of the State, acting through an enforcement officer herein authorized. Any officer of a labor union and any labor organizer who violates any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof in a Court of competent jurisdiction, shall be punished by a fine not to exceed Five Hundred Dollars ($500) or by confinement in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Enforcement by civil procedure

Sec. 12. The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunctions, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts.

Enforcement officer

Sec. 13. It is hereby made the duty of the Attorney General and the District Attorneys and County Attorneys of this State, within their respective jurisdictions, to prosecute any and all criminal proceedings and to institute and maintain any and all civil proceedings herein authorized for the enforcement of this Act.

Liberal construction required

Sec. 14. The provisions of this Act are to be liberally construed so as to effectuate the purposes expressed in the preamble and in such manner as to protect the rights of laboring men to work and/or to organize for their mutual benefit in connection with their work; nor shall anything in this Act be construed to deny the free rights of assembling, bargaining, and petitioning, orally or in writing with respect to all matters affecting labor and employment.

Separability clause with respect to constitutional invalidity

Sec. 15. If any Section or part whatsoever of this Act shall be held to be invalid, as in contravention of the Constitution, such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such Section or part so held to be invalid. [Acts 1943, 48th Leg., p. 180, ch. 104.]

Section 5 of this article was unconstitutional as applied to national labor leader who was invited to Texas to address a mass meeting and who, in giving prepared speech, invited one person specifically and all his hearers generally to join the union violated the First Amendment in abridging freedom of speech and freedom of assembly. Thomas v. Collins, 65 S.Ct. 315, 323 U.S. 516, 89 L.Ed. 430, rehearing denied 65 S.Ct. 557, 323 U.S. 819, 89 L.Ed. 630.

Section 6 of this article is invalid as having no reasonable relation to objective sought to be attained by the act. American Federation of Labor v. Mann, Civ.App., 188 S.W.2d 276.

Section 3(d) of this article, which was intended to be correlated with invalid section 7, is invalid as not having a substantial relation to object sought to be attained by the act. American Federation of Labor v. Mann, Civ.App., 188 S.W.2d 276.

That part of section 10 of this article making it unlawful for any labor union to refuse to give any person desiring membership therein a reasonable time, after obtaining promise of employment, within which to state whether he desires to become a member of such labor organization as a condition to such person's employment by employer is invalid for uncertainty. American Federation of Labor v. Mann, Civ.App., 188 S.W.2d 276.

Art. 5154b. Liability of labor organizations for damages.—Section 1. A labor organization whose members picket or strike against any person, firm or corporation shall be liable in damage for any loss resulting to such person, firm or corporation by reason of such picketing or strike in the event that such picketing or strike is held to be breach of contract by a Court of competent jurisdiction.

Sec. 2. The term "labor organization" means any organization of any kind, or any agency or employee, representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

The term "picketing" as used in this Act, shall include the stationing or posting of one person or of others for and in behalf of any organization in order to induce or attempting to induce, anyone not to enter the premises in question, or to apprise the public, by signs, banners, or by any other means, of the existence of a dispute, or to observe the premises so as to ascertain who enters or patronizes the same, or to follow employees or patrons of the place being picketed either to or from said place so as either to observe them or to attempt to persuade them to cease entering or of patronizing the premises being picketed.

Sec. 3. If any clause, sentence or paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be judged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the persons or circumstances involved. [Acts 1947, 50th Leg., p. 228, ch. 132.]

Art. 5154c. Public employees, collective bargaining contracts with organizations representing; strikes; loss of civil service and other rights.

Collective bargaining contracts void

Section 1. It is declared to be against the public policy of the State of Texas for any official or group of officials of the State, or of a County, City, Municipality or other political subdivision of the State, to enter into a collective bargaining contract with a labor organization respecting the wages, hours, or conditions of employment of public employees, and any such contracts entered into after the effective date of this Act shall be null and void.

Recognizing labor organization as bargaining agent

Sec. 2. It is declared to be against the public policy of the State of Texas for any such official or group of officials to recognize a labor organization as the bargaining agent for any group of public employees.

Strikes and work stoppages

Sec. 3. It is declared to be against the public policy of the State of Texas for public employees to engage in strikes or organized work stoppages against the State of Texas or any political subdivision thereof. Any such employee who participates in such a strike shall forfeit all civil service rights, re-employment rights and any other rights, benefits, or privileges which he enjoys as a result of his employment or prior employment, providing, however, that the right of an

individual to cease work shall not be abridged so long as the individual is not acting in concert with others in an organized work stoppage.

No person to be denied public employment

Sec. 4. It is declared to be the public policy of the State of Texas that no person shall be denied public employment by reason of membership or nonmembership in a labor organization.

"Labor organization" defined

Sec. 5. The term "labor organization" means any organization of any kind, or any agency or employee, representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Grievances, right to present

Sec. 6. The provisions of this Act shall not impair the existing right of public employees to present grievances concerning their wages, hours of work, or conditions of work individually or through a representative that does not claim the right to strike.

Partial invalidity

Sec. 7. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the person or circumstances involved. [Acts 1947, 50th Leg., p. 231, ch. 135.]

Art. 5154d. Picketing.

Definitions

Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"Mass picketing," as that term is used herein, shall mean any form of picketing in which:

1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions.

The term "picket," as used in this Act, shall include any person stationed by or acting for and in behalf of any organization for the purpose of inducing, or attempting to induce, anyone not to enter the premises in question or to observe the premises so as to ascertain who enters or patronizes the same, or who by any means follows employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

The term "picketing," as used in this Act, shall include the stationing or posting of one's person or of others for and in behalf of any organization to induce anyone not to enter the premises in question, or to observe the premises so as to ascertain who enters or patronizes the same, or to follow employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

Interference with another's right to work

Sec. 2. It shall be unlawful for any person, singly or in concert with others, by use of insulting, threatening or obscene language, to interfere with, hinder, obstruct, or intimidate, or seek to interfere with, hinder, obstruct, or intimidate, another in the exercise of his lawful right to work, or to enter upon the performance of any lawful vocation, or from freely entering or leaving any premises.

Picketing accompanied by slander, etc.

Sec. 3. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activities, where any part of such picketing is accompanied by slander, libel, or the public display or publication of oral or written misrepresentations.

Picketing for purpose of inducing breach of labor agreement

Sec. 4. It shall be unlawful for any person, singly or in concert with others, to engage in picketing, the purpose of which, directly or indirectly, is to secure the disregard, breach or violation of a valid subsisting labor agreement arrived at between an employer and the representatives designated or selected by the employees for the purpose of collective bargaining, or certified as the bargaining unit under the provisions of the National Labor Relations Act.[1]

Picketing in violation of injunction

Sec. 4a. It shall be unlawful for any person, singly or in concert with others, to declare, publicize or advertise the continued existence of picketing, actual or constructive, at any point or directed against any premises after a court of competent jurisdiction has enjoined and restrained the continuance of such picketing at said point or premises.

Violations

Sec. 5. Any person guilty of violating any of the Sections of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500), or be imprisoned in jail not to exceed ninety (90) days, or both. Each separate act of violation shall constitute a separate offense.

Partial invalidity

Sec. 6. If any clause, sentence, paragraph or part of this Act or the application thereof, to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act and the application thereof, it being the expressed intention of the Legislature to enact such Act without respect to such Section or part so held to be invalid. [Acts 1947, 50th Leg., p. 239, ch. 138.]

1 29 U.S.C.A. § 151 et seq.

Art. 5154e. Contracts for withholding union dues from employee's wages invalid without employee's consent.—Any contract which permits, requires, prescribes or provides for the retention of any part of the compensation of an employee for the purpose of paying dues or assessments on his part to any labor union, without the written consent of the employee delivered to the employer authorizing the retention or the withholding of such sum shall be null and void and against public policy. The provisions of this Section shall not apply to any contract or contracts heretofore executed but shall apply to any renewal or extension of existing contracts and to any new agreement or contract executed after the effective date of this Act. [Acts 1947, 50th Leg., p. 487, ch. 284, § 1.]

Art. 5154f. Secondary strikes, picketing and boycotts prohibited.

Unlawful acts

Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

Definitions

Sec. 2. As used in this Act:

a. The term "labor union" means every association, group, union, national and local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing in part for the purpose of protecting themselves and improving their working conditions, wages, or employment relationships in any manner, and shall include the local, state, national and international affiliates of such organizations or unions.

b. "Secondary strike" shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

c. The term "picket" shall include any person stationed by or acting in behalf of any organization for the purpose of inducing anyone not to enter the premises in question; or for apprising the public by signs, banners, or other means, of the existence of a labor dispute at or near the premises in question; or for observing the premises so as to ascertain who enters or patronizes the same; or any person who by any means follows employees or patrons of the place being picketed either to or from such place so as to either observe them or to attempt to persuade them to cease entering or patronizing the premises being picketed.

d. The term "secondary picketing" shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

e. The term "secondary boycott" shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation for whom they are not employees, by

(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

(2) Picketing such person, firm or corporation; or

(3) Refusing to handle, install, use or work on the equipment or supplies of such person, firm or corporation; or

(4) Instigating or fomenting a strike against such person, firm or corporation; or

(5) Interfering with or attempting to prevent the free flow of commerce; or

(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute.

f. The term "employer" means any person, firm or corporation who engages the services of an employee.

g. The term "employee" shall include any person, other than an independent contractor, working for another for hire in the State of Texas.

h. The term "labor dispute" is limited to and means any controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, a controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act.

Violations a misdemeanor

Sec. 3. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding Five Hundred ($500.00) Dollars, or by confinement in the county jail not to exceed six months, or by both such fine and imprisonment.

Liability for damages

Sec. 4. Any person who violates any of the provisions of this Act shall be liable to the person suffering the same for all damages resulting therefrom, and the person damaged is hereby given right of action and access to the courts to redress such wrong or damage, including injunctive relief; and any association or labor union, local, state, national or international, which represents or purports to represent any such person violating any of the provisions of this Act shall be jointly and severally liable with any such person for all such damages resulting thereby.

Suit for injunction

Sec. 5. The State of Texas, through its Attorney General or any District or County Attorney, may institute a suit in the District Court to enjoin any person, association of persons, labor union, firm or corporation, or any officer, agent, servant or employee of such person, association of persons, labor union, firm or corporation, from violating any provision of this Act.

Venue

Sec. 6. In any suit or cause of action arising under this Act, venue shall lie: (1) in the county where such violation is alleged to have occurred; (2) in the county of the residence of the defendant; (3) in the county of the residence of either defendant if there be two or more defendants.

Repeal

Sec. 7. All laws and parts of laws in conflict herewith are hereby repealed.

Partial invalidity

Sec. 8. If any section, sentence, phrase or part of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining portions thereof; it being the intention of the Legislature to pass the constitutional sections, sentences, phrases and parts of this Act even though some one or more sections, sentences, phrases or parts shall be held to be invalid. [Acts 1947, 50th Leg., p. 779, ch. 387.]

CHAPTER 3.—PAYMENT OF WAGES

Art.
5155. Pay days.
5156. If not paid on pay day.
5157. Penalty for failure to pay.
5158. Attorneys fees.
5159. Duty of Commissioner.
5159a. Construction of public works in State and municipal or political subdivisions; prevailing wage rate to be maintained.
Sec.
1. Prevailing wages as minimum; persons deemed employed on public works.
2. Prevailing wage rate to be maintained.
3. Record of laborers.
4. Definitions.
5159b. Coupons, chips, scrip, store orders, or other evidence of indebtedness to laborers to be redeemable on demand in money.
Sec.
1. Redemption.
2. Actions to redeem; penalty.

Art. 5155. Pay days.—Each manufacturing, mercantile, mining, quarrying, railroad, street railway, canal, oil, steamboat, telegraph, telephone and express company, employing one or more persons, and each and every water company not operated by a municipal corporation, and each and every wharf company, and every other corporation engaged in any business within this State, or any person, firm or corporation engaged in or upon any public work for the State or for any county or any municipal corporation thereof, either as a contractor or a subcontractor, therewith, shall pay each of its employees the wages earned by him or her as often as semimonthly, and pay to a day not more than sixteen (16) days prior to the day of payment. [Acts 1915, p. 43; Acts 1933, 43rd Leg., p. 730, ch. 217.]

Art. 5156. If not paid on pay day.—An employé who is absent at the time fixed for payment, or who for any other reason is not paid at that time, shall be paid thereafter on six days' demand. Any employee leaving his or her employment, or discharged therefrom, shall be paid in full on six days' demand. [Acts 1915, p. 43.]

Article 5157. Penalty for failure to pay.—Every person, partnership or corporation, willfully failing or refusing to pay the wages of any employee at the time and in the manner provided in this statute shall forfeit to the State of Texas the sum of fifty dollars for each and every such failure or refusal. Suits for penalties accruing under this law shall be brought in any court having jurisdiction of the amount in the county in which the employé should have been paid, or where employed. Such suits shall be instituted at the direction of the Commissioner of Labor Statistics by the Attorney General or under his direction, or by the County or District Attorney for the county or district in which suit is brought. [Id.]

Art. 5158. Attorneys fees.—The attorney bringing any such suit shall be entitled to receive and shall receive as compensation for his service therein ten dollars of the penalty or penalties recovered in such suit, and the fees and compensation so allowed shall be over and above the fees allowed to the county or district attorneys under the General Fee Act. [Id.]

Art. 5159. Duty of Commissioner.—The Commissioner of Labor Statistics shall inquire diligently for violations of this chapter and institute prosecutions and see that the same are carried to final termination and generally to see to the enforcement of the provision hereof. [Id.]

Art. 5159a. Construction of public works in State and municipal or political subdivisions.

Prevailing wages as minimum; persons deemed employed on public works

Sec. 1. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work, shall be paid to all laborers, workmen and mechanics employed by or on behalf of the State of Texas, or by or on behalf of any county, city and county, city, town, district or other political subdivision of the State, engaged in the construction of public works, exclusive of maintenance work. Laborers, workmen, and mechanics employed by contractors or subcontractors in the execution of any contract or contracts for public works with the State, or any officer or public body thereof, or in the execution of any contract or contracts for public works, with any county, city and county, city, town, district or other political subdivision of this State, or any officer or public body thereof, shall be deemed to be employed upon public works.

Prevailing wage rate to be maintained

Sec. 2. The public body awarding any contract for public work on behalf of the State, or on behalf of any county, city and county, city, town, district or other political subdivision thereof, or otherwise undertaking any public work, shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workman or mechanic needed to execute the contract, and shall specify in the call for bids for said contract, and in the contract itself, what the general prevailing rate of per diem wages in the said locality is for each craft or type of workman needed to execute the contract, also the prevailing rate for legal holiday and overtime work, and it shall be mandatory upon the contractor to whom the contract is awarded, and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen and mechanics employed by them in the execution of the contract. The contractor shall forfeit as a penalty to the State, county, city and county, city, town, district or other political subdivision on whose behalf the contract is made or awarded, Ten Dollars ($10.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by him, or by any subcontractor under him, and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to this effect. It shall be the duty of such public body awarding the contract, and its agents and officers, to take cognizance of complaints of all violations of the provisions of this Act committed in the course of the execution of the contract, and, when making payments to the contractor of monies becoming due under said contract, to withhold and retain therefrom all sums and amounts which shall have been forfeited pursuant to the herein said stipulation and the terms of this Act; provided, however, that no sum shall be so withheld, retained or forfeited, except from the final payment, without a full investigation by the awarding body. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the said subcontractor's failure to comply with the terms of this Act, and if payment has already been made to him the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

Record of laborers

Sec. 3. The contractor and each subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed by him, in connection with the said public work, and showing also the actual per diem wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the public body awarding the contract, its officers and agents.

Definitions

Sec. 4. Any construction or repair work done under contract, and paid for in whole or in part out of public funds, other than work done directly by any public utility company pursuant to order of the Railroad Commission or other public authority, whether or not done under public supervision or direction, or paid for wholly or in part out of public funds, shall be held to be "public works" within the meaning of this Act. The term "locality in which the work is performed" shall be held to mean the county, city and county, city, town, district or other political subdivision of this State in which the building, highway, road, excavation, or other structure, project, development or improvement is situated in all cases in which the contract is awarded by the State, or any public body thereof, and shall be held to mean the limits of the county, city and county, city, town, district or other political subdivisions on whose behalf the

contract is awarded in all other cases. The term "general prevailing rate of per diem wages" shall be the rate determined upon as such rate by the public body awarding the contract, or authorizing the work, whose decision in the matter shall be final. Nothing in this Act, however, shall be construed to prohibit the payment to any laborer, workman or mechanic employed on any public work as aforesaid of more than the said general prevailing rate of wages. [Acts 1933, 43rd Leg., p. 91, ch. 45.]

Sections 5 and 6 of this Act, being a penal provision are published as Pen.Code, Art. 1581a.

Art. 5159b. Coupons, chips, scrip, store orders, or other evidence of indebtedness to laborers to be redeemable on demand in money.

Redemption

Section 1. All persons, firms, partnerships, or corporations using coupons, chips, scrip, punchouts, store orders, or other evidence of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employe, or bona fide holder in good and lawful money of the United States; provided, the same is presented and redemption demanded of such person, firm, partnership, or corporation using same as aforesaid, at a regular payday, such redemption to be at the face value of said scrip, chips, punchouts, coupons, store order, or other evidence of indebtedness; provided further, said face value shall be in cash the same as its purchasing power in goods, wares, and merchandise at the commissary store or other repository of such persons, firms, partnerships, or corporations aforesaid.

Actions to redeem; penalty

Sec. 2. Any employe, laborer, or bona fide holder referred to in Section 1 of this Act, upon presentation and demand for redemption of such scrip, chips, coupon, punchout, store order, or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, partnership, or corporation to redeem the same in good and lawful money of the United States the owner of any such evidence of indebtedness may maintain in his, her, or their own name an action before any Court of competent jurisdiction against such person, firm, partnership, or corporation, using same as aforesaid for the recovery of the value of such coupon, scrip, chips, punchout, store order, or other evidence of indebtedness, as defined in Section 1 of this Act. If the plaintiff shall recover judgment in such case, it shall include a penalty of twenty-five (25) per cent of the amount due and a reasonable fee for the plaintiff's attorney for his services in the suit, all of which, as well as to costs, shall be taxed against the defendant. [Acts 1937, 45th Leg., p. 705, ch. 354.]

CHAPTER 4.—BOND TO SECURE WAGES

Art.
5160. Bond for wages.
5161. Creditor may sue.
5162. Time to sue.
5163. Prorating claims.
5164. Notice of suit.

Art. 5160. Bond for wages.—Any person, or persons, firm or corporation, entering into a formal contract with this State or its counties or school districts or other subdivisions thereof or any municipality therein for the construction of any public building, or the prosecution and completion of any public work shall be required, before commencing such work, to execute the usual Penal Bond, with the additional obligation that such contractor shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract. Any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the State or any municipality on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claims and judgment of the State or municipality. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the State or municipality, the remainder shall be distributed pro rata among said intervenors. Provided further, that all claims for labor and material furnished to said contractor, and all claims for labor and material furnished to any contractor shall be itemized and sworn to as required by Statutes as to mechanic's lien claims, and such claims shall be filed with the County Clerk of the County, in which said work is being prosecuted, within ninety days from the date of the delivery of said material and the performance of said work. The County Clerk shall note on the mechanic's lien record, the name of the claimant, the amount claimed, the name of the contractor and the name of the county, school district, other subdivisions, or municipality with which the contract was made; and the County Clerk shall index the claim under the name of the contractor and under the name of the county, school district, other subdivisions or municipality; with which the contract was made.

Provided further that after completion and acceptance of completed project all moneys due contractor under said contract shall be held by the State or its counties or school districts or other subdivision thereof or any municipality until such a time that satisfactory evidence is submitted and affidavits made by the contractor that all just bills for labor and material under this contract has [1] been paid in full by the contractor. [Acts 1913, p. 185; Acts 1929, 41st Leg., p. 481, ch. 226, § 1.]

[1] So in enrolled bill. Should probably read "have".

Section 2 of Acts 1929, repeals Acts 1927, 40th Leg. 1st C. S. p. 114, ch. 39, § 1, which amended this article. Art.

Art. 5161. Creditor may sue.—If no suit should be brought by the State or municipality within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the State or municipality that labor or materials for the prosecution of such work has been supplied by him or them, and the payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action for his or their use and benefit, against said contractor and his surety, and to prosecute the same to final judgment and execution. [Acts 1913, p. 185.]

Art. 5162. Time to sue.—When suit is instituted by any creditor on the bond of the contractor, it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later; provided that if the contractor quits or abandons the contract before its consummation, suit may be instituted by any of such creditors on the bond of the contractor, and shall be commenced within one year after abandonment of said contract and not later. Where suit is so instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contractor and not later. [Id.]

Art. 5163. Prorating claims.—If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be

given to each creditor pro rata of the amount of the recovery, subject to the provisions in the first article of this chapter giving to the State or municipality the right of priority in the proceeds of such judgment. The sureties on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to-wit: the penalty named in the bond, less any amount which said surety may have had to pay to the State or municipality by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability. [Id.]

Art. 5164. Notice of suit.—In all suits instituted under the provisions of this law notice of the pendency of such suits shall be made by publication in some newspaper of general circulation, published in the county or town where the contract is being performed, for at least three successive weeks, the last publication to be at least one week before the trial of such case. [Id.]

CHAPTER 5.—HOURS OF LABOR

Art.
5165. Eight hours a day's work.
5166. [Repealed.]
5167. Hours of patrolmen.

Article 5165. Eight hours a day's work.—Eight hours shall constitute a day's work for all laborers, workmen or mechanics who may be employed by or on behalf of the State of Texas, or by or on behalf of any county, municipality, or political subdivision of the State, county or municipality in any one calendar day, where such employment, contract or work is for the purpose of constructing, repairing or improving buildings, bridges, roads, highways, streams, levees, or other work of a similar character, requiring the service of laborers, workmen or mechanics. [Acts 1913, p. 127].

Art. 5166. [Repealed by Acts 1935, 44th Leg., p. 644, ch. 259, § 2.]

Art. 5167. Hours of patrolmen.—In all incorporated cities and towns however incorporated, having a population of fifty thousand inhabitants or more, according to the preceding Federal census, the patrolmen thereof, or those performing duties ordinarily performed by patrolmen, shall be required to serve on actual duty as patrolmen not longer than eight hours in every twenty-four hours of the day; provided that in case of riot or other emergency, such patrolmen shall perform such duty and for such time as the directing authority of the departments shall require. [Acts 1917, p. 403.]

CHAPTER 6.—FEMALE EMPLOYEES

Art.
5168–5172. [Repealed.]
5172a. Hours of work for female employees; seats; exceptions.

Sec.
1. Factories, mines, mills, etc.
2. Laundry and cleaning establishments.
3. Cotton, woolen or worsted goods workers.
4. Seats for female employees.
5. Exceptions as to certain employments.
6. Exceptions during war or national emergencies.
7. Application for hearing.
8. Notice of application for hearing.
9. Order granting exemption; effect.
10. Requirements as to notice.
11. Hearing; findings; order; extensions.
12. Failure to comply; cancellation of exemption.
13. Punishment for violations.
15. Partial invalidity.

Art. 5168–5172. [Repealed by Acts 1943, 48th Leg., p. 94, ch. 68, § 14.]

Art. 5172a. Hours of work for female employees; seats; exceptions.

Factories, mines, mills, etc.

Section 1. No female shall be employed in any factory, mine, mill, workshop, mechanical or mercantile establishment, hotel, restaurant, rooming house, theater, moving picture show, barber shop, beauty shop, road side drink and/or food vending establishment, telegraph, telephone or other office, express or transportation company, or any State institution, or any other establishment, institution or enterprise where females are employed, for more than nine (9) hours in any one calendar day, nor more than fifty-four (54) hours in any one calendar week.

Laundry and cleaning establishments

Sec. 2. No female shall be employed in any laundry or cleaning and pressing establishment for more than fifty-four (54) hours in one calendar week; the hours of such employment to be so arranged as to permit the employment of such female at any time so that she shall not work more than a maximum of eleven (11) hours during the twenty-four hours period of one day. If such female is employed for more than nine (9) hours in any one day she shall receive pay at the rate of double her regular pay for such time as she is employed for more than nine (9) hours per day.

Cotton, woolen or worsted goods workers

Sec. 3. No female shall be employed in any factory engaged in the manufacture of cotton, woolen or worsted goods or articles of merchandise manufactured out of cotton goods for more than ten (10) hours in any one calendar day, nor more than sixty (60) hours in any one calendar week. If such female is employed for more than nine (9) hours in any one day she shall receive pay at the rate of double her regular pay for such time as she may be employed for more than nine (9) hours per day.

Seats for female employees

Sec. 4. Every employer owning or operating any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, beauty shop, telegraph or telephone company, or other office, express or transportation company; the superintendent of any State institution or any other establishment, institution or enterprise where females are employed as provided in the three preceding Sections, shall provide and furnish suitable seats, to be used by such employees when not engaged in the active duties of their employment and shall give notice to all such employees by posting a notice in a conspicuous place on the premises of such employment, in letters not less that one inch in height, that all such employees will be permitted to use such seats when not so engaged.

Exceptions as to certain employments

Sec. 5. The four (4) preceding Sections shall not apply to stenographers and pharmacists, nor to mercantile establishments, nor telephone and telegraph companies in rural districts, and in cities or towns or villages of less than three thousand (3,000) inhabitants as shown by the last preceding Federal Census, nor to superintendents, matrons and nurses and attendants employed by, in, and about such orphans' homes as are charitable institutions not run for profit, and not operated by the State; and all employees who are engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables. In case of extraordinary emergencies, such as great public calamities, or

where it becomes necessary for the protection of human life or property, longer hours may be worked; but for such time not less than double time shall be paid such female with her consent. [As amended Acts 1947, 50th Leg., p. 792, ch. 393, § 1.]

Exceptions during war or national emergencies

Sec. 6. In addition to the foregoing exemptions, in time of war and/or when the President of the United States proclaims a state of national emergency to exist, female workers employed in industries coming within the jurisdiction of the Fair Labor Standards Act of 1938 and amendments thereto,[1] the Act of June 30th, 1936, C. 881, 49 Statute 2036, U.S.Code, Supplement II, Title 41, Paragraph 35-45, as amended by Act of May 13, 1942, Public No. 552, 77th Congress, 2nd Session, commonly known as the Walsh-Healey Act,[2] or the Act of March 3, 1931, C. 411, 46 Statute 1494, as amended August 30, 1935, C. 825, 49 Statute 1011; U.S.Code Title 40, Paragraph 276A and Supplement V, Title 40, Paragraph 276A-276A-6, commonly known as the Bacon-Davis Act,[3] are exempted from the provisions of Sections 1, 2, 3, 4, 5, and 13 of this Act, and female workers in such industries may be employed not exceeding ten (10) hours per day provided such hours of employment in such industries are not injurious to the health or morals of female employees, or working such hours does not add to the hazards of their occupations and such hours of employment are in the public interest. Provided, however, that in time of war and/or when the President of the United States proclaims a state of national emergency to exist, all female office employees of such employers coming within the purview of Section 6 hereof are exempt from the provisions of this Act.

1 29 U.S.C.A. §§ 201–219.
2 41 U.S.C.A. §§ 35–45.
3 40 U.S.C.A. §§ 276a to 276a—5.

Application for hearing

Sec. 7. Employers, or one-third (⅓) the female employees of employers, coming within the jurisdiction of any of the Federal Acts enumerated in Section 6 may apply to the Commissioner of Labor Statistics for a hearing under the terms of this Act, and it shall be the duty of the Commissioner of Labor Statistics, on the filing of the application, to designate a date for a hearing not later than thirty (30) days after the date of the receipt of the application; and he shall within five (5) days from the date of the receipt of such application, set a date for a hearing, and notify such applying employer or employees of such date; but for good cause shown by employer or employees, the Commissioner may postpone such hearing for as much as five (5) days, and he shall designate the place of such hearing, which may be anywhere in the State of Texas, but at a place convenient to the employer, employees and the Commissioner or any representative duly authorized by him for such purpose; and the Commissioner or his representative shall hold such hearing at the time and place designated.

Notice of application for hearing

Sec. 8. When any employer shall apply for a hearing, such employer shall give notice of the application to the employees affected by posting notices in the plant, yard and/or place of business of such employer at places readily accessible to the affected employees and in such manner that the employees in the usual course of their employment shall have an opportunity to read and inspect such notices.

Order granting exemption; effect

Sec. 9. In time of war the Commissioner of Labor Statistics may, based upon private investigation and without notice or hearing, if he finds that the employment of female employees in any designated industry for ten (10) hours per day will not injure the health or morals and/or add to the hazards of their occupation, and that such hours of labor are in the public interest, file his findings as required herein, and make an order granting an exemption; and the employer affected shall be exempt for thirty (30) days from the provisions of this Act, during which time if further exemption is desired by employers affected, notice and hearing as provided herein shall be had as though no temporary exemption had previously been in effect.

Requirements as to notice

Sec. 10. The employer's notice to employees required herein shall state that the application for a hearing is made, and the date which has been set for the hearing, and if an emergency exemption under the foregoing provisions of this Act is in effect insofar as the employer's business, trade, or industry is concerned, it shall state the date a hearing shall be had to extend the exemption for a period of six (6) months. The affidavit of an employer or an officer of an employer that such notice has been given shall be prima facie evidence that the notice provisions of this Act have been complied with. Failure to give such notice shall be sufficient cause to reject such application.

Hearing; findings; order; extensions

Sec. 11. On the date designated for a hearing, the Commissioner of Labor Statistics, or his authorized representative, shall hold an informal hearing under such rules as the Commissioner of Labor Statistics may make, at which anyone interested may offer information; and if the Labor Commissioner finds as a matter of fact from the evidence presented that the employment of female workers in the business, trade, and/or industries concerned, for ten (10) hours per day is not injurious to the health or morals of the females employed therein and/or does not add to the hazards of their occupation, and that ten (10) hours per day of labor is in the public interest, he shall make written findings of such facts and file such with the Secretary of State, and draw an order granting such employer affected exemption from the provisions of Sections 1, 2, 3, 4, 5, and 13 herein for a period of six (6) months, which order shall be made within five (5) days after the conclusion of the hearing and shall be filed with the Secretary of State. Such orders of the Commissioner during wartime shall be extended at the end of six (6) months for a like period of six (6) months without further notice or hearing, unless prior to such automatic extension, a protest is filed with the Commissioner, notice of which protest is furnished to the employer, by a sufficient number of employees to lead the Commissioner to believe that there is no longer a necessity for such exemption. If he finds the facts adversely to the applicant he will so state in his findings and no order will issue.

Failure to comply; cancellation of exemption

Sec. 12. Wilful failure of the employer to comply with any law or laws as to payment of wages of employees shall be sufficient grounds for the Commissioner to cancel such exemption; and any employer violating any such law after notice from the Commissioner, shall not plead such exemption as a defense to any prosecution for violation of this law arising after such notice.

Punishment for violations

Sec. 13. Any employer, overseer, superintendent, foreman, or other agent of any such employer who shall permit any female to work in any place mentioned in Sections 1, 2 and 3 of this Act more than the number of hours provided therein in any one day of twenty-four hours in any one calendar week, or who shall violate any of the other provisions or requirements of the Act in any respect, or who having furnished and provided suitable seats as provided for in

Section 4, shall by intimidation, instruction, threats, or in any manner, prevent such female from sitting thereon, when not attending the duties of her position, shall be fined not less than Fifty ($50.00) Dollars nor more than Two Hundred ($200.00) Dollars. Each day of such violation and each calendar week of such violation, and each employee permitted to work in said places more than the hours so specified in this Chapter, and every other violation of the provisions of this Chapter, shall be considered a separate offense. However, no employer having an exemption as provided for herein shall be prosecuted so long as such exemption is valid and in effect.

Partial invalidity

Sec. 15. Saving Clause. That in the event any Section or part of a Section of the provision of this Act be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining Sections, or parts of Sections of this Act; but the remainder of the Act shall be given effect as if said invalid, unconstitutional or inoperative Section, or part of Section or provision, had not been included. In the event any penalty, right or remedy created or given in any Section or part of this Act is held invalid, unconstitutional or inoperative, this shall not affect the validity of any other penalty, right or remedy created or given either in the whole Act or in the Section thereof containing such invalid, unconstitutional or inoperative part; and if any exception to, or any limitation upon any general provision herein contained shall be held to be unconstitutional or invalid, the general provisions shall nevertheless stand effective and valid as if the same had been enacted without such limitation or exceptions. [Acts 1943, 48th Leg., p. 94, ch. 68.]

Section 14 of the Act of 1943 read as follows: "Chapter 56 of the General Laws of 1915, Regular Session of the 34th Legislature, Chapters 86 and 87 of General Laws of 1929, 41st Legislature, First Called Session; Chapter 114 of General Laws of 1933, Regular Session of the 43rd Legislature, Articles 1569, 1570, 1571, 1572, of Title 13, Chapter 3 of the Penal Code of Texas, Articles 5168, 5169, 5170, 5171 and 5172 of Chapter 6, Title 83 of the Revised Civil Statutes of Texas, are hereby specifically repealed, and all other laws and parts of laws in conflict herewith are hereby repealed."

CHAPTER 7.—PROTECTION OF FEMALE EMPLOYEES

Art.
5173. Temperature and humidity.
5174. Odors and dust.
5175. Cleaning and wet floors.
5176. Exits and hand rails.
5177. Toilets.
5178. Immoral influences.
5179. Order to correct conditions.
5180. Suit to set order aside.

Article 5173. Temperature and humidity.—In every factory, mill, workshop, mercantile establishment, laundry, or other establishment, adequate measures shall be taken for securing and maintaining a reasonable, and as far as possible, an equable temperature consistent with a reasonable requirement of the manufacturing process. No unnecessary humidity which would jeopardize the health of employees shall be permitted. In every room, apartment, or building used as a factory, mill, workshop, mercantile establishment, laundry or other place of employment, sufficient air space shall be provided for every employee, and which in the judgment of the Commissioner of Labor Statistics or of his deputies and inspectors is sufficient for their health and welfare. [Acts 4th C. S. 1918, p. 132.]

Art. 5174. Odors and dust.—All factories, mills, workshops, mercantile establishments, laundries and other establishments shall be kept free from gas or effluvia arising from any sewer, drain, privy or other nuisance on the premises; all poisonous or noxious gases arising from any process, and all dust which is injurious to the health of persons employed, which is created in the process of manufacturing within the above named establishment, shall be removed as far as practicable by ventilators or exhaust fans or other adequate devices. [Id.]

Art. 5175. Cleaning and wet floors.—All decomposed, fetid or putrescent matter, and all refuse, waste and sweepings of any factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be removed at least once each day and be disposed of in such manner as not to cause a nuisance. All cleaning, sweeping and dusting shall be done as far as possible outside of working hours, but if done during working hours, shall be done in such manner as to avoid so far as possible the raising of dust and noxious odors. In all establishments where any process is carried on which makes the floors wet, the floors shall be constructed and maintained with due regard for the health of the employès, and gratings or dry standing room shall be provided whereever practicable, at points wherever employès are regularly stationed, and adequate means shall be provided for drainage and for preventing leakage or seepage to lower floors. [Id.]

Art. 5176. Exits and hand rails.—All doors used by employés as entrances to, or exits from factories, mills, workshops, mercantile establishments, laundries or other establishments of a height of two stories or over, shall open outward, and shall be so constructed as to be easily and immediately opened from within in case of fire or other emergencies. Proper and substantial hand rails shall be provided on all stairways, and lights shall be kept burning at all main stairs, stair landings and elevator shafts in the absence of sufficient natural light. The provisions of this article shall not apply to any mercantile establishment having seven female employees or less. [Id.]

Art. 5177. Toilets.—Every factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be provided with a sufficient number of water closets, earth closets or privies, and such water closets, earth closets or privies shall be supplied in the proportion of one to every twenty-five male persons, and one to every twenty female persons, and whenever both male and female persons are employed, said water closets, earth closets or privies shall be provided separate and apart for the use of each sex, and such water closets, earth closets, or privies shall be constructed in an approved manner and properly enclosed, and at all times kept in a clean and sanitary condition, and effectively disinfected and ventilated, and shall at all times during operation of such establishment be kept properly lighted.

In case there be more than one shift of not more than eight hours each of employees, the average number of persons in the establishment at any one time should be used in determining the number of toilets required. [Id.]

Art. 5178. Immoral influences.—It shall be unlawful for the owner, manager, superintendent or other person in control or management of any factory, mill, workshop, mercantile establishment, laundry or other establishment where five or more persons are employed, all or part of whom are females, to permit in such place of employment any influence, practices or conditions calculated to injuriously affect the morals of such female employees. [Id.]

Art. 5179. Order to correct conditions.—The Commissioner of Labor Statistics, or any of his deputies or inspectors, shall have the right to enter any factory, mill, workshop, mercantile establishment, laundry, or other establishment where five or more persons are employed, for the purpose of making inspections and enforcing the provisions of this chapter; and they are hereby empowered, upon finding any vio-

lation of this law by reason of unsanitary conditions such as endanger the health of the employees therein employed, or of neglect to remove and prevent fumes and gases or odors injurious to employees, or by reason of the failure or refusal to comply with any requirement of this law, or by reason of the inadequacy or insufficiency of any plan, method, practice or device employed in assumed compliance with any of the requirements of this law, to pass upon and to make a written finding as to the failure or refusal to comply with any requirement of this law, or as to the adequacy or sufficiency of any practice, plan or method used in or about any place mentioned in this law in supposed compliance with any of the requirements of this law, and, thereupon they may issue a written order to the owner, manager, superintendent, or other person in control or management of such place or establishment, for the correction of any condition caused or permitted in or about such place or establishment in violation of any of the requirements of this law, or of any condition, practice, plan, or method used therein or thereabouts in supposed compliance with any requirement of this law, but which are found to be inadequate or insufficient, in any respect, to comply therewith, and shall state in such order how such conditions, practices, plans or methods, in any case, shall be corrected and the time within which the same shall be corrected, a reasonable time being given in such order therefor. One copy of such order shall be delivered to the owner, manager, superintendent or other person in control or management of such place or establishment, and one copy thereof shall be filed in the office of the Bureau of Labor Statistics. Such findings and orders shall be prima facie valid, reasonable and just, and shall be conclusive unless attacked and set aside in the manner provided in the succeeding article. Upon the failure or refusal of the owner, manager, superintendent, or other person in control or management of such place or establishment, to comply with such order within the time therein specified, unless the same shall have been attacked and suspended or set aside as provided for in the succeeding article, the Commissioner of Labor Statistics or his deputy or inspectors shall have full authority and power to close such place or establishment, or any part of it that may be in such unsanitary or dangerous condition or immoral influences in violation of any requirement of this law or of such order, until such time as such condition, practice or method shall have been corrected. [Id.]

Art. 5180. Suit to set order aside.—The owner or owners, manager, superintendent, or other person in control or management, of any place or establishment covered by this law, and directly affected by any finding or order provided for in the preceding article, may, within fifteen days from the date of the delivery to him or them of a copy of any such order as provided for in the preceding article, file a petition setting forth the particular cause or causes of objection to such order and findings in a court of competent jurisdiction against the Commissioner of Labor Statistics. Said action shall have precedence over all other causes of a different nature, except such causes as are provided for in the statutes relating to the Railroad Commission, and shall be tried and determined as other civil causes in said court. If the court be in session at the time such cause of action arises, the suit may be filed during such term and stand ready for trial after ten days' notice. Either party may appeal, but shall not have the right to sue out a writ of error from the trial court. Said appeal shall at once be returnable to the proper appellate court at either of its terms, and shall have precedence in such appellate court over other causes of a different nature, except as above provided for. In any trial under this article the burden shall be upon the plaintiff to show that the findings and order complained of are illegal, unreasonable, or unjust to it or them. [Id.]

CHAPTER 8.—CHILD LABOR

Article 5181. Permit for child to work.—Upon application being made to the county judge of any county in which any child over the age of twelve (12) years shall reside, the earnings of which child are necessary for the support of itself, its mother when widowed, or in needy circumstances, or invalid father, or of other children younger than the child for whom the permit is sought, the said county judge may upon the sworn statement of such child or its parents or guardian, that the child for whom the permit is sought is over twelve (12) years of age, that the said child has completed the fifth grade in a public school or its equivalent, and that it shall not be employed in or around any mill, factory, workshop, or other place where dangerous machinery is used, nor in any mine, quarry or other place where explosives are used, or where the moral or physical condition of the child is liable to be injured, and that the earnings of such child are necessary for the support of such invalid parent, widowed mother or mother in needy circumstances, or of younger children, and that such support cannot be obtained in any other manner, and that suitable employment has been obtained for such child, which sworn statement shall be accompanied by the certificate of a licensed physician showing that such child is physically able to perform the work or labor for which the permit is sought, issue a permit for such child to enter such employment. Every person, firm or corporation employing any such child between the ages of twelve (12) years and fifteen (15) years shall post in a conspicuous place where such child is employed, the permit issued by the county judge; provided that no permit shall be issued for a longer period than twelve (12) months, but may be renewed from time to time upon satisfactory evidence being produced that the conditions under which the former permit was issued still exist,[1] and that no physical or moral injury has resulted to such child by reason of its employment. In every case where a permit is sought for any child between the ages of twelve (12) years and fifteen (15) years, the parent, guardian or other person in charge or control of such child shall appear before the county judge in person with such child for whom a permit is sought before such permit shall be issued. There shall be nothing in this Act to prevent the working of school children of any age from June 1 to September 1 of each year except that they shall not be permitted to work in factory, mill, workshop, and the places mentioned in Sections 2 and 5 of this Act; [2] nor shall their hours of labor conflict with [3] Section 4 of this Act.[4] [Acts 1925, 39th Leg., ch. 42, p. 176, § 5.]

[1] So in enrolled bill. R.S.1925 reads "exists".
[2] Section 2 is Pen.Code art. 1574; Section 5 is this article and Pen.Code art. 1577.
[3] So in enrolled bill. R.S.1925 omits words "Sections 2 and 5 of this Act; nor shall their hours of labor conflict with".
[4] Pen.Code, art. 1576.

CHAPTER 9.—PROTECTION OF WORKMEN ON BUILDINGS

Article 5182. Protection of workmen on buildings.—1. To prevent workmen from falling.—Any building three or more stories in height, in the course of construction or repair, shall have the joists, beams or girders of each and every floor below the floor level where any work is being done, or about to be done, covered with planking laid close together, said planking to be of not less than one and one-half inches of thickness in buildings that have steel framework, and what is commonly known as one-inch plank in all others where joists are set on two foot centers or less, to protect the workmen engaged in the erection or construction of such buildings from falling through joists,

girders, and from falling planks, bricks, rivets, tools or other substances, whereby life and limb are endangered. Where any scaffolding is placed on the outside of any of said buildings, over any public street or alley where persons are in the habit of passing, then said scaffolding shall be so constructed as to prevent any material, tools or other things from falling off and endangering the life of passersby. Such flooring shall not be removed until the same is replaced by a permanent flooring in such building.

2. To inclose elevators and shafts.—If elevators, elevating machines or hod hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction, the contractor or owners, or the agents of the owners, shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides, two sides of which must be at least six feet, and two sides where material is taken off or on shall be protected by automatic safety gates.

3. Duty of general contractors.—The general contractor having charge of the erection and construction of such building shall provide for the flooring as herein required, and make such arrangements as may be necessary with the sub-contractor in order that the provisions of this article may be carried out.

4. Duty of owner.—The owner, or the agent of the owner of such building, shall see that the general contractor or sub-contractors carry out the provisions of this article.

5. Owner to see to flooring.—If the general contractor or sub-contractor of such building fails to provide for the flooring of such buildings as herein provided, then the owner or the agent of the owner of such building shall see that the provisions of this article are carried out. [Acts 1919, p. 281.]

CHAPTER 10.—INDUSTRIAL COMMISSION

Art.
5183. Appointment of members.
5184. Expenses.
5185. Officers.
5186. Controversies referred to.
5187. Hearing and report.
5188. Hearing to be public.
5189. Report to Legislature.
5190. Power of Commission.

Article 5183. Appointment of members.—There is hereby created an Industrial Commission, composed of five members, one to represent employers of labor, one to represent the employés or laborers, and three to represent the general public. The members of this commission shall be appointed biennially by the Governor, to hold office for a term of two years. [Acts 4th C. S. 1920, p. 19.]

Art. 5184. Expenses.—The members of this commission shall serve without pay or salary. The actual expenses incurred during hearings had by or before the commission and railway fare and hotel bills incurred by them shall be paid out of appropriations made to the executive office for the payment of rewards and the enforcement of the law, until such time as the Legislature may make appropriations to cover such items.

Art. 5185. Officers.—This commission shall elect one of their members as chairman of the commission, to preside at all hearings had under the provisions of this law, with power and authority usually exercised by chairmen in such capacity. The commission shall have authority to employ and pay a stenographer to act as secretary of such commission. The salary shall be paid out of the fund or funds described in article 5184. [Id.]

Art. 5186. Controversies referred to.—When the Governor becomes convinced or has reason to believe that controversies between employers and employés are of such nature and character as to be of public concern or interest he shall refer, by proclamation, such controversies to the commission here created for hearing and report. [Id.]

Art. 5187. Hearing and report.—The commission, and the members thereof, shall forthwith proceed to the place where the employees in the controversy may be located, or to such other place as may appear best to said commission for the purpose of making investigation and report. The commission shall make investigation and hear testimony concerning the controversy between the employers and employees. After said investigation is completed a full report shall be made to the Governor, covering the facts established by the investigations made and hearing had. Said commission shall make recommendations to the Governor as to what action should be taken in reference to the controversy or the settlement thereof. [Id.]

Art. 5188. Hearing to be public.—All hearings had by this commission shall be open to the public; and the findings and recommendations of the commission shall be furnished to the news agencies and newspapers of the State, to be published by the several papers of this State as news items. [Id.]

Art. 5189. Report to Legislature.—The commission shall also make full report to the Legislature, if in session, and if not in session, then to the succeeding session, setting forth the findings and recommendations, accompanied by a transcript of the testimony taken at the hearings provided for herein. [Id.]

Art. 5190. Power of commission.—The commission shall have power to summon witnesses, to issue subpœnas, to compel attendance of witnesses, to compel production of books and records by witnesses, to punish for contempt, to hold sessions and to take testimony in or out of the State of Texas, and to pay witnesses as paid in felony cases. [Id.]

CHAPTER 10A.—TEXAS RELIEF COMMISSION

Art. 5190a. Creation and term of office.—[Repealed by Acts 1934, 43rd Leg., 3rd C.S., p. 59, ch. 34, § 39.]

The article repealed was Acts 1933, 43rd Leg., p. 365, ch. 141, §§ 1–4, 6, as amended by Acts 1933, 43rd Leg., 1st C.S., p. 118, ch. 37, § 11. Section 5 was an appropriation for the biennium ending August 31, 1935.

Sections 1–10, 12–19 of Acts 1933, 43rd Leg., 1st C.S., p. 118, ch. 37, are published as Article 842b, ante. Sections 20 and 21, being penal provisions, were published as Pen. Code, Art. 107c (now repealed.)

CHAPTER 11.—STEVEDORES

Art.
5191. "Contracting stevedore."
5192. Bond.
5193. Suits on bond.
5194. License.
5195. Bond and license.

Article 5191. "Contracting stevedore."—A contracting stevedore, within the meaning of this chapter, is any person, firm or association of persons, or corporation that contracts with any ship, agent, owners, masters, managers or captains of vessels, or with any other person or corporation, for the purpose of loading or unloading, or having loaded or unloaded any vessel, ship or water craft. [Acts 1913, p. 153.]

Art. 5192. Bond.—Each contracting stevedore shall make bond in the sum of five thousand dollars, with two or more good and sufficient sureties, who are residents of this State, or with any surety company authorized to transact business in this State, payable to the county judge of the county in which such stevedore pursues his occupation and to his successor in

office, as trustee for all persons who may become entitled to the benefits of this law; conditioned that said contracting stevedore will promptly on Saturday of each week pay each laborer his wages for labor performed in loading and unloading any such ship, vessel or water craft according to the scale of wages agreed upon, and that all agreements entered into with each of said laborers in respect to the loading and unloading of said water craft, will be faithfully and truly performed. Such bond shall be approved by the county clerk of the county in which said contracting stevedore is pursuing said business or occupation and by him shall be filed and recorded. [Id.]

Art. 5193. Suits on bond.—Suits may be maintained upon such bond by any person to whom wages are due and unpaid for such labor as is hereinbefore mentioned. The same may be sued upon until the full amount thereof is exhausted, or suits sufficient to exhaust the bond are pending, and when so exhausted, said contracting stevedore shall make and file a new bond in amount and conditioned as provided for the first. [Id.]

Art. 5194. License.—Said contracting stevedore shall, before beginning such business, file written application to such county clerk for a license to pursue the occupation of a contracting stevedore for the county mentioned. On approval of the bond and payment of an occupation tax of five dollars the clerk shall issue a license to pursue said occupation, the license fee to be paid into the general fund of the county. [Id.]

Art. 5195. Bond and license.—Such bond shall be made and such license shall be obtained in each county in which said contracting stevedore pursues said occupation. Said contracting stevedore shall be required to execute a new bond and to obtain a new license at the expiration of every year from the issuance of the former license. [Id.]

CHAPTER 12.—RESTRICTIONS ON LABOR

Art.
5196. Discrimination.
5197. Discrimination prohibited, etc.
5198. Foreign corporations to forfeit permit.
5199. Liability.
5200. Fees of attorney.
5201. Prima facie evidence of agency.
5202. May examine witnesses.
5203. Sworn statement.
5204. Failure of witness to appear.
5205. Immunity of witness.
5206. Statement of cause of discharge.
5207. Detectives.
5207a. Right to bargain freely not to be denied; membership in labor union.

Article 5196. [594] Discrimination.—Either or any of the following acts shall constitute discrimination against persons seeking employment:

1. Where any corporation, or receiver of the same, doing business in this state, or any agent or officer of any such corporation or receiver, shall blacklist, prevent, or attempt to prevent, by word, printing, sign, list or other means, directly or indirectly, any discharged employee, or any employee who may have voluntarily left said corporation's services, from obtaining employment with any other person, company, or corporation, except by truthfully stating in writing, on request of such former employee or other persons to whom such former employee has applied for employment, the reason why such employee was discharged, and why his relationship to such company ceased.

2. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver shall, by any means, directly or indirectly, communicate to any other person or corporation any information in regard to a person who may seek employment of such person or corporation, and fails to give such person in regard to whom the communication may be made, within ten days after demand therefor, a complete copy of such communication, if in writing, and a true statement thereof if by sign or other means not in writing, and the names and addresses of all persons or corporations to whom said communication shall have been made; provided that if such information is furnished at the request of a person other than the employee, a copy of the information so furnished, shall be mailed to such employee at his last known address.

3. Where any corporation, or receiver of the same, doing business in this state, or any agent or employee of such corporation or receiver, shall have discharged an employee and such employee demands a statement in writing of the cause of his discharge, and such corporation, receiver, agent or employee thereof fails to furnish a true statement of the same to such discharged employee, within ten days after such demand, or where any corporation or receiver of the same, or any officer or agent of such corporation or receiver shall fail, within ten days after written demand for the same, to furnish to any employee voluntarily leaving the service of such corporation or receiver, a statement in writing that such employee did leave such service voluntarily, or where any corporation or receiver of the same, doing business within this state, shall fail to show in any statement under the provision of this title the number of years and months during which such employee was in the service of the said corporation or receiver in each and every separate capacity or position in which he was employed, and whether his services were satisfactory in each such capacity or not, or where any such corporation or receiver shall fail within ten days after written demand for the same to furnish to any such employee a true copy of the statement originally given to such employee for his use in case he shall have lost or is otherwise deprived of the use of the said original statement.

4. Where any corporation, or receiver of same, doing business in this state, or any agent or officer of the same, shall have received any request, notice or communication, either in writing or otherwise, from any person, company or corporation, preventing, or calculated to prevent, the employment of a person seeking employment, and shall fail to furnish to such person seeking employment, within ten days after a demand in writing therefor, a true statement of such request, notice or communication, and, if in writing, a true copy of same, and, if otherwise than in writing, a true statement thereof, and a true interpretation of its meaning, and the names and addresses of the persons, company or corporation furnishing the same.

5. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, discharging an employee, shall have failed to give such employee a true statement of the causes of his discharge, within ten days after a demand in writing therefor, and shall thereafter furnish any other person or corporation any statement or communication in regard to such discharge, unless at the request of the discharged employee.

6. Where any corporation, or receiver of same, doing business in this state, or any officer or agent of such corporation or receiver, shall discriminate against any person seeking employment on account of his having participated in a strike.

7. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, shall give any information or communication in regard to a person seeking employment having participated in any strike, unless such person violated the law during his participation on such strike, or in connection therewith, and unless such information is given in compliance with subdivision 1 of this article. [Acts 1907, p. 142; Acts 1909, p. 160; Acts 1929, 41st Leg., p. 509, ch. 245, § 1.]

Art. 5197. [595] Discrimination prohibited, etc.—Any and all discriminations against persons seeking employment as defined in this chapter are hereby prohibited and are declared to be illegal. [Acts 1907, p. 142.]

Art. 5198. [596] Foreign corporations to forfeit permit.—Any foreign corporation violating any provision of this chapter is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney General to enforce this provision, by injunction or other proceeding in the district court of Travis County, in the name of the State of Texas. [Id.]

Art. 5199. [597] Liability.—Each person, company or corporation, who shall in any manner violate any provision of this chapter shall, for each offense committed, forfeit and pay the sum of one thousand dollars, which may be recovered in the name of the State of Texas, in any county where the offense was committed, or where the offender resides, or in Travis County; and it shall be the duty of the Attorney General, or the district or county attorney under the direction of the Attorney General, to sue for the recovery of the same. [Id.]

Art. 5200. [598] Fees of attorney.—The fees of the prosecuting attorney for representing the State in proceedings under this chapter shall not be accounted for as fees of office. [Id.]

Art. 5201. [599] Prima facie evidence of agency.—In prosecutions for the violation of any provision of this chapter, evidence that any person has acted as the agent of a corporation in the transaction of its business in this State shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation. [Id.]

Art. 5202. [600] May examine witnesses.—Upon the application of the Attorney General, or of any district or county attorney, made to any justice of the peace in this State, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice is an officer, knows of a violation of any provision of this chapter, the justice to whom such application is made shall have summoned and examined such witness in relation to such violations. [Id.]

Art. 5203. [601] Sworn statement.—Such witness shall be summoned as provided for in criminal cases. He shall be duly sworn, and the justice shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such statement shall be delivered to the attorney upon whose application the witness was summoned. [Id.]

Art. 5204. [602] Failure of witness to appear.—If the witness summoned as aforesaid fails to appear or to make statements of the facts within his knowledge under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in jail until he shall make a full statement of all facts within his knowledge with reference to the matter inquired about. [Id.]

Art. 5205. [603] Immunity of witness.—Any person so summoned and examined shall not be liable to prosecution for any violation of any provision of this chapter about which he may testify fully and without reserve. [Id.]

Art. 5206. [604] Statement of cause of discharge.—Any written statement of cause of discharge, if true, when made by such agent, company or corporation, shall never be used as the cause for an action for libel, either civil or criminal, against the agent, company or corporation so furnishing same. [Id.]

Art. 5207. [2475–2476] Detectives.—Any person, corporation, or firm who shall employ any armed force of detectives, or other persons not residents of this State, in the State of Texas, shall be liable to pay to the State as a penalty not less than twenty-five nor more than one thousand dollars, to be recovered before any court of competent jurisdiction in this State. Nothing herein shall be construed to deprive any person, firm or corporation of the right of self-defense, or defense of the property of said person, firm, or corporation by such lawful means as may be necessary to such defense. [Acts 1893, p. 159; G. L., vol. 10, p. 589.]

Art. 5207a. Right to bargain freely not to be denied; membership in labor union.—Section 1. The inherent right of a person to work and bargain freely with his employer, individually or collectively, for terms and conditions of his employment shall not be denied or infringed by law, or by any organization of whatever nature.

Sec. 2. No person shall be denied employment on account of membership or nonmembership in a labor union.

Sec. 3. Any contract which requires or prescribes that employees or applicants for employment in order to work for an employer shall or shall not be or remain members of a labor union, shall be null and void and against public policy. The provisions of this Section shall not apply to any contract or contracts heretofore executed but shall apply to any renewal or extension of any existing contract and to any new agreement or contract executed after the effective date of this Act.

Sec. 4. Definitions. By the term "labor union" as used in this Act shall mean every association, group, union, lodge, local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing for the purpose of protecting themselves and improving their working conditions, wages, or employment relationships in any manner, but shall not include associations or organizations not commonly regarded as labor unions.

Sec. 5. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the person or circumstances involved. [Acts 1947, 50th Leg., p. 107, ch. 74.]

CHAPTER 13.—EMPLOYMENT AGENTS

Art.
5208–5210. [Repealed.]
5210a. [Expired.]
5211–5221. [Repealed.]
5221a—1. [Repealed.]
5221a—2. State system of public employment officers.
Sec.
1. Acceptance of Federal Act.
2. Bureau of Labor Statistics as State Agency.
3. Division of State Employment Service.
4. Commissioner of Labor Statistics to appoint officers and employees.
5. Federal funds payable to State Treasurer.
5221a—3. Political subdivisions may contract with State Employment Service.
5221a—4. Employment or labor agencies.
Sec.
1. Definitions.
2. Exceptions.

Art.
5221a—4. Employment or labor agencies—Cont'd.
Sec.
3. Application and bond.
4. Disposition of license fees collected.
5. Suits on bond.
6. Occupation tax on agencies sending employees out of state.
7. Agents to keep record.
8. Cancellation of license.
9. Out-of-state agencies.
10. Reports to Commissioner on out-of-state workers.
11. Fees.
12. Receipt forms prescribed.
17. Authority of the Commissioner.
18. Injunction.
19. License as evidence.
21. Saving clause.

Arts. 5208–5210. [Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22.]

Art. 5210a. [Expired.]

This article was Acts 1926, 39th Leg., 1st C.S., p. 11, ch. 7, § 1, which made an appropriation of license fees collected, for use of Commissioners of Labor from September 1, 1926, to August 31, 1927.

Arts. 5211–5221. [Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22.]

The repealed articles 5215 and 5216 were amended by Acts 1937, 45th Leg., 2nd C.S.1895, ch. 21, § 1.

Art. 5221a—1. [Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22.]

Art. 5221a—2. State system of public employment officers.

Acceptance of Federal Act

Sec. 1. The State of Texas accepts the provisions of the Wagner-Peyser Act approved June 6, 1933 (48 Stat. 113, U.S.Code Title 29, Section 49) "an act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes," in conformity with Section 4 thereof, and will observe and comply with the requirements of said Act.

Bureau of Labor Statistics as State Agency

Sec. 2. The Bureau of Labor Statistics is hereby designated and constituted the agency of the State of Texas for the purposes of such Act. Said Bureau, its officers and employees, are hereby given full power to cooperate with all authorities of the United States having powers or duties under such Act and to do and perform all things necessary to secure to the State of Texas the provisions of such Act in the promotion and maintenance of a system of public employment offices.

Division of State Employment Service

Sec. 3. There is hereby created within the Bureau of Labor Statistics a division to be known as the Texas State Employment Service, responsible for administering a system of public employment offices for the purpose of assisting employers to secure employees, and workers to secure employment. The Commissioner of Labor Statistics is authorized and directed to establish such offices in such parts of the State as he deems necessary and to prescribe rules and regulations not inconsistent with any of the provisions of this Act.

Commissioner of Labor Statistics to appoint officers and employees

Sec. 4. The Commissioner of Labor Statistics, in accordance with the regulations prescribed by the Director of the United States Employment Service, shall appoint the officers and other employees of the Texas State Employment Service created under this Act.

Federal funds payable to State Treasurer

Sec. 5. All Federal funds made available to this State under said Act of Congress shall be paid into the Treasury of this State, and said funds are hereby appropriated and made available to the Bureau of Labor Statistics to be expended as provided by said Act of Congress and this Act. [Acts 1935, 44th Leg., p. 552, ch. 236.]

Section 6 of this Act, makes an appropriation for the purposes of the act for July and August, 1935, and for the fiscal year ending August 31, 1936.

Art. 5221a—3. Political subdivisions may contract with State Employment Service.—The Commissioners Court of any county of this State or the governing body of any other political subdivision of this State is authorized to enter into agreements with the agents of the Texas State Employment Service for the purpose of establishing or maintaining or assisting in the establishing or maintaining of a free public employment service within such county or political subdivision, upon such terms and conditions as may be agreed upon by the Commissioners Court or other governing body and the agent of the Texas State Employment Service, and may employ such means and may appropriate and expend such sums of money as may be necessary to effectively establish and carry on such free public employment service in such county or political subdivision. As a part of such agreement the Commissioners Court or governing body of any other political subdivision of this State may enter into agreements with the Texas State Employment Service or its agents and as a part of such agreement may provide for the payment of agreed sums of money for rent of premises, payment for services rendered, purchase of equipment, or other purposes as may be deemed advisable by said Commissioners Court or other governing body. [Acts 1939, 46th Leg., p. 461, § 1.]

Art. 5221a—4. Employment or labor agencies.

Definitions

Section 1. (a) The term "person" means an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, or receiver.

(b) "Fee" means anything of value including money or other valuable consideration or services or the promise of any of the foregoing received by an employment agency from or on behalf of any person seeking employment or employees in payment for any service, either directly or indirectly.

(c) "Employer" means any person employing or seeking to employ any employee.

(d) "Employee" means any person performing or seeking to perform work or service of any kind for hire.

(e) "Employment or Labor Agent" means any person in this State who for a fee offers or attempts to procure or procures employment for employees, or without a fee offers or attempts to procure or procures employment for common laborers or agricultural workers, or any person who for a fee offers or attempts to procure or procures employees for employers, or without a fee offers or attempts to procure or procures common laborers or agricultural workers for employers, or any person, regardless of whether a fee is received or due, offers or attempts to supply or supplies the services of common or agricultural workers to any person.

(f) "Commissioner" shall mean the Commissioner of the Bureau of Labor Statistics.

(g) "Deputy or Inspector" shall mean any person who is duly authorized by the Commissioner to act in that capacity.

(h) "Agent" shall mean either employment agent or labor agent as defined by this Act.[1]

[1] This article and Pen.Code, art. 1593a.

Exceptions

Sec. 2. The provisions of Acts of 1943, Forty-eighth Legislature, Chapter 67, page 86 [1] shall not apply to persons who charge a fee of not more than Two Dollars ($2) for registration only for procuring employment for school teachers; provisions of said Act shall not apply to any employment agency established and operated by this State, the United States Government or any municipal government of this State; the provisions of said Act shall not apply to any person who may operate a labor bureau or employment office in conjunction with his own business for the sole and exclusive purpose of employing help for his own use within this State, nor to any common carrier operating in this State who may operate an employment office in conjunction with his own business for the exclusive purpose of employing help for his own use within or without this State, provided, that no fee or other charge or reduction is exacted from the salary or wages of the worker for employment given. If a fee or charge of any kind, either directly or indirectly, is exacted of the worker, then said employer is deemed an employment or labor agent and is subject to the provisions of said Act. The provisions of said Act shall not apply to farmers or stock raisers acting jointly or severally in securing laborers for their own use in this State where no fee is charged or collected, either directly or indirectly, for employment given; the provisions of said Act shall not apply to any person, corporation, or charitable association chartered under the laws of Texas for the purpose of conducting a free employment bureau or agency; nor to any veterans' organization or labor union; nor to any nurses' organizations operated not for profit, to be conducted by recognized professional registered nurses for the enrollment of its professional members only for the purpose of providing professional service to the public. It is further provided that said Act shall not apply to agencies engaged solely in the procurement of employment for public school teachers and administrators. [As amended Acts 1947, 50th Leg., p. 286, ch. 176, § 1.]

[1] Incorporated in Arts. 5221a—4 and Pen.Code, art. 1593a.

Application and bond

Sec. 3. Application and bond for an employment or labor agency license shall be executed on blank forms prescribed and furnished by the Commissioner. Application for license to act as an employment or labor agency may be made in person or by mail to the Commissioner upon blank application form which shall be verified by the applicant. Where the application is made by a firm, partnership, or association of persons, it must be verified by each person for whose benefit the application is made, and such application shall also be accompanied by affidavits of at least five (5) creditable citizens who have resided in the county in which such applicant desires to conduct the business of an employment or labor agency for at least three (3) years, to the effect that the applicant or applicants are residents of the county in which such person desires to become an employment or labor agent, and that such person or persons are of good moral character. The Commissioner may require additional evidence of the moral character of applicants and may make such additional investigation of said applicant as he deems necessary, and no license shall be granted to any persons except those of good moral character.

Such application shall be examined by the Commissioner and if he finds that the same complies with the law and that the applicant is entitled to a license, then he shall issue a license to the applicant for each county for which application is made, and shall deliver such license to the applicant upon the payment of a license fee of One Hundred and Fifty Dollars ($150) for each county in which the employment or labor agent intends to operate. Not more than one office shall be operated for each license issued. Each person making application for an employment or labor agency license and before such license is issued, shall make and file with the Commissioner a good and sufficient bond executed by the applicant with good and sufficient surety in the penal sum of Five Thousand Dollars ($5,000), payable to the State of Texas, for each county in which the agent intends to operate; said bond shall be conditioned that the obligor will not violate any of the duties, terms, conditions and requirements of this Act, and that the principal, his agents or representatives will not make any false representation or statement to any person soliciting any assistance from him for employees or employment, or solicited by him to accept employment.

Said bond shall further recite that any person injured or aggrieved by any false or fraudulent statement of such agent, his sub-agents or representatives, or any violation of the provisions thereof by such agent, sub-agent or representative, shall be entitled to bring suit thereon. Each license issued by the Commissioner shall be good for a period of one year from the date of issuance.

Disposition of license fees collected

Sec. 4. Until September 1, 1943, the Commissioner shall deposit with the State Treasurer as provided by law all moneys received by him from license fees under the provisions of this Act, to be held in a separate fund known as the "Employment Agency Fund" and to be used for expenses incurred in inspecting, regulating and printing blank forms to be furnished such employment agencies by the Commissioner and the same, together with balance on hand in such fund on the effective date of this Act, is hereby appropriated for said purposes, and all such expenditures shall be verified by the person to whom such payments are made and on the approval of such expenditures by the Commissioner it shall be the duty of the Comptroller of the State to draw his warrant on the Treasurer of the State for the amount of such expenditures in favor of the person claiming the same, to be paid out of the "Employment Agency Fund." On September 1, 1943, all moneys remaining in such special fund and all moneys thereafter received by the Commissioner from license fees under this Act shall be paid into and become a part of the General Revenue Fund.

Suits on bond

Sec. 5. Any person injured or aggrieved by any action, conduct, false representation or false statement of any such employment agent, his sub-agents or representatives may bring suit for damages against such agent on said bond in any county where such action, conduct, false representation or false statement was made in any Court of competent jurisdiction, without the necessity of making the State a party thereto. Where the bond has become impaired by recoveries thereon to the extent of fifty (50) per cent of the penal sum named therein, the Commissioner may, by a notice in writing, demand the execution of a new bond, which if not executed and submitted to the Commissioner within twenty (20) days for his approval, such failure to execute a new bond shall ipso facto forfeit and cancel the license issued to the principal named in said bond.

Occupation tax on agencies sending employees out of state

Sec. 6. In addition to the license fee and bond required in Section 3 of this Act, every employment or labor agent hiring, enticing, or soliciting common or agricultural workers in this State to be employed beyond the limits of this State, shall pay an annual State tax of Six Hundred Dollars ($600) and in each county where said employment or labor agent operates, an annual tax on a population basis according to the preceding Federal census as follows: In counties

under one hundred thousand (100,000) population the sum of One Hundred Dollars ($100); in counties having a population from one hundred thousand (100,000) to two hundred thousand (200,000) inclusive, the sum of Two Hundred Dollars ($200); and in counties over two hundred thousand (200,000) population the sum of Three Hundred Dollars ($300). This tax shall be paid to the Commissioner at the time such employment or labor agency license or licenses are issued and shall be forwarded by him to the proper tax collection agencies. Such tax shall be good for the same period of time as the employment agency license.

Agents to keep record

Sec. 7. Every licensed employment or labor agent shall keep and maintain an office in this State at which a complete record of the business transacted shall be kept; he shall keep such records of his business transacted as deemed necessary by the Commissioner, and on a form prescribed by the Commissioner. All of the books, correspondence, memoranda, papers and records of every kind and character incident to the business of an employment or labor agent licensed under this Act shall be subject to inspection at any time by the said Commissioner of the Bureau of Labor Statistics, his deputies or inspectors, and a failure to keep such records as deemed necessary by the Commissioner or a failure to permit said Commissioner, his deputies or inspectors to inspect such books, correspondence, memoranda, papers and records at any time shall be sufficient grounds for the Commissioner to cancel the license of such agents, and he shall have the authority and it shall be his duty to do so.

Cancellation of license

Sec. 8. The Commissioner shall have the authority, and it shall be his duty, to cancel the license of any employment agent when it shall appear to his satisfaction, upon hearing, that such agent has been convicted in a State or Federal Court of an offense which under the laws of this State is a felony, or for any offense involving moral turpitude, or that the agent had obtained his license illegally or fraudulently or was guilty of fraud, false swearing, or deception in securing his license, or has violated any provision of this Act.

The Commissioner shall not cancel the license of any agent until complaint in writing, made by a credible person, shall be filed with him, specifying in general terms the grounds of the proposed cancellation, and a full and fair hearing given to him thereon. Upon the filing of such complaint, the Commissioner shall fix a time and place, reasonably accessible to the agent complained against, for the hearing of said complaint. The Commissioner shall notify the agent so complained against of the time and place fixed for said hearing by a registered letter addressed to him at his post office address as the same appears upon his application for license, accompanied by an exact copy of the complaint against him; and mailing of such notice and copy shall be sufficient and conclusive evidence of proper service of the procedure upon the agent so complained against. The agent so complained against shall have at least ten (10) days after the date said notice is mailed, exclusive of the day of mailing and the day of hearing, before hearing upon said complaint shall be had, and shall have the right to file answer, introduce evidence and to be heard both in person and by counsel. The Commissioner shall have the power to summon and compel the attendance of witnesses before him to testify in relation to any such complaint, and may require the production of any book, paper or document deemed pertinent thereto. Said Commissioner shall also have the power to provide for the taking of depositions of witnesses and evidence may be heard either from witnesses present testifying orally, or by deposition taken under such rules, and in such fair and impartial manner as the Commissioner may prescribe. Said hearing shall be had before the Commissioner and shall be conducted in a fair and orderly manner, and in accordance with rules of procedure to be adopted by the Commissioner.

At the conclusion of the hearing the Commissioner shall enter his findings and judgment in writing and the same shall be recorded by him in a permanent record to be kept by him, and a copy thereof furnished to the agent complained against. Any agent whose license shall be cancelled by the Commissioner, may, within thirty (30) days after the cancellation thereof, and not thereafter, have his right of action for reinstatement against the Commissioner in the District Court of Travis County. If the agent whose license has been cancelled by the Commissioner shall, within ten (10) days after receiving information of such cancellation, give notice to the Commissioner in writing of his intention to file such suit, the action of the Commissioner in cancelling the said license shall be suspended for a period of thirty (30) days, but unless such suit shall be filed within said time, the action of the Commissioner shall be final. If suit shall be filed against the Commissioner to reinstate said license within said time, the action of the Commissioner shall remain suspended until the validity of the license in question shall be adjusted by the Court in said suit. In such suits the burden shall be upon the agent to show good cause for reinstatement of his license.

Out-of-state agencies

Sec. 9. No foreign labor agent, labor bureau or labor agency or other person or corporation resident of or domiciled in any other State or Territory of the United States shall enter this State and attempt to hire, entice, or solicit or take from this State any common or agricultural workers, singly or in groups, for any purpose without first applying to the Commissioner of the Bureau of Labor Statistics for a license as an employment or labor agent as provided by this Act.

Reports to Commissioner on out-of-state workers

Sec. 10. Any employment or labor agent hiring, enticing, or soliciting common or agricultural workers in this State to be employed beyond the limits of this State, shall make monthly reports to the Commissioner on the first day of each and every month covering the preceding month, correctly showing the name and address of every representative, sub-agent, contractor, solicitor, or recruiter engaged in any part of the work of that agency connected with the hiring, enticing, or soliciting of common or agricultural workers in this State to be employed beyond the limits of this State, and correctly showing:

(a) The name, age, sex, race, and address of each person solicited to be employed beyond the limits of this State.

(b) The name and address of the employer of every such person.

(c) The kind of work every such person is employed to do.

(d) The place where every such person is to be employed.

(e) The term of employment of every such person.

(f) The wages to be paid to every such person for his work, and

(g) The number, name and address of each party, if any, returned to the State of Texas, by said agent, which report shall be filed with the said Commissioner of the Bureau of Labor Statistics, and

(h) Whether or not transportation is to be furnished, arranged for, or paid for any such common laborer or agricultural worker either leaving or returning to this State.

The said Commissioner shall have the authority and it shall be his duty to cancel the license of every agent who fails to make and file such monthly reports

on or before the tenth day of each month, respectively, for the preceding month in accordance with the cancellation procedure provided in this Act.

Fees

Sec. 11. Where a fee is charged for obtaining employment such fee in no event shall exceed the sum of Three ($3) Dollars, which may be collected from the applicant only after employment has been obtained and accepted by the applicant; provided, however, employment or labor agents engaged exclusively in providing employment for skilled, professional, or clerical positions may charge, with the written consent of the applicant, a fee, not to exceed thirty (30) per centum of the first month's salary, which may be collected from the applicant only after employment has been obtained and accepted by the applicant.

Receipt forms prescribed

Sec. 12. A receipt shall be given by the employment agent to all applicants for all fees collected from such applicants. The form of such receipt shall be prescribed by the Commissioner of Labor and shall contain the name of the applicant, the amount of the fee paid, the date, the character of the work or the position secured, the name of the employer, together with his post office address and the location of the work the applicant is to perform.

Authority of the Commissioner

Sec. 17. The Commissioner of the Bureau of Labor Statistics and his deputies or inspectors are hereby empowered to enforce the provisions of this Act, and shall have the authority of peace officers in making arrests of any person or persons who violate, in their presence, any of the provisions of this Act; and when such arrest has been made, the Commissioner or his duly appointed deputies or inspectors may enter any employment office at any time when such employment office is open for business and inspect the registers and all other records of whatsoever kind and character of such employment or labor agent for the purpose of ascertaining whether the provisions of this law are being violated, and the refusal of any employment or labor agent to permit such inspection shall be a violation of the Act, and be sufficient reason for the Commissioner to cancel the license of such agent in accordance with the provisions of Section 5 of this Act.

Injunction

Sec. 18. Any person who shall act as an employment or labor agent, or who shall conduct an employment office, without first procuring a license as required and provided for in this Act may be enjoined from unlawfully pursuing such business or occupation, and the Attorney General shall bring suit for such purpose in the name of the State of Texas in Travis County, and the district or county attorney of any county wherein such person engages in such business or conducts an employment office in violation of this Act is hereby authorized to maintain in the proper Court of said county a suit in the name of the State of Texas to enjoin and prevent such person from unlawfully pursuing such occupation. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute any bond as a condition precedent to the issuing of any injunction or restraining order hereunder.

License as evidence

Sec. 19. Any application made by an employment or labor agent for a license, or a certified copy thereof under the hand and seal of the Commissioner, shall be received as evidence in any Court in this State without the necessity of proving the execution thereof.

Saving Clause

Sec. 21. In the event any section, or part of section or provision of this Act be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining sections, or parts of sections of this Act, but the remainder of the Act shall be given effect as if said invalid, unconstitutional or inoperative section, or part of section or provision, had not been included. In the event any penalty, right or remedy created or given in any section or part of this Act is held invalid, unconstitutional or inoperative, this shall not affect the validity of any other penalty, right or remedy created or given either in the whole Act or in the section thereof containing such invalid, unconstitutional or inoperative part, and if any exception to or any limitation upon any general provision herein contained shall be held to be unconstitutional or invalid, the general provisions shall nevertheless stand effective and valid as if the same had been enacted without such limitation or exceptions. [Acts 1943, 48th Leg., p. 86, ch. 67.]

Sections 13–16, 20 of Acts 1943, 48th Leg., p. 86, ch. 67, are set out as Pen.Code, art. 1593a.

Section 22 of the Act of 1943 read as follows: "Repealing Conflicting Laws. The Employment Agency Law as passed by the Thirty-eighth Legislature in 1923, and amended by the Forty-fifth Legislature, Second Called Session, 1937, being Articles 5208 through Article 5221, Revised Civil Statutes of Texas of 1925, and Articles 1584 through Article 1593, Penal Code of Texas, 1925, and the Emigrant Agency Law as passed by the Forty-first Legislature, Second Called Session, 1929, being Senate Bill No. 127, Chapter 96, Page 203, and House Bill No. 102, Chapter 11, Page 16 of said Session Acts, are hereby specifically repealed and all other laws and parts of laws in conflict herewith are hereby repealed."

CHAPTER 14.—UNEMPLOYMENT COMPENSATION

Art.
5221b—1. Benefits; amount and payment; duration.
5221b—1a. Payment of benefits.
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Article 5221b—1. Benefits; amount and payment; duration.—(a) Payment of benefits: On and after January 1, 1938, benefits shall become payable from the fund. All benefits shall be paid through the Texas Unemployment Compensation Commission, in accordance with such regulations as the Commission may prescribe.

(b) Benefit amount for total unemployment: Each eligible individual who is totally unemployed in any benefit period shall be paid with respect to such benefit period, benefits at the rate of one-thirteenth (1/13) of his wages received from employment by employers during that quarter in his base period in which such wages were highest, provided that:

(1) If such rate is not an even multiple of One Dollar ($1), it shall be adjusted to the next higher multiple of One Dollar ($1), and

(2) Such rate shall not be more than Thirty-six Dollars ($36) per benefit period nor less than Ten Dollars ($10) per benefit period.

(c) Benefit for partial unemployment: Each eligible individual who is partially unemployed in any benefit period shall be paid with respect to such benefit period a partial benefit, provided that such individual shall meet the requirements of Section 4(a) of this Act.[1] Such partial benefit shall be the benefit amount plus Four Dollars ($4) less the wages earned during such benefit period, provided that if the result of such computation is not an even multiple of One Dollar ($1), it shall be adjusted to the next higher multiple of One Dollar ($1).

(d) Duration of benefits: The Commission shall establish wage credits for each individual by crediting him with the wages received by him for employment by employers during his base period, up to a maximum of One Thousand, Six Hundred and Twenty Dollars ($1,620). The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed whichever is the lesser of:

(1) Nine (9) times his benefit amount, or

(2) One-fifth (1/5) of such wage credits. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 3; Acts 1937, 45th Leg., p. 121, ch. 67, § 1; Acts 1939, 46th Leg., p. 436, § 1; Acts 1943, 48th Leg., p. 585, ch. 343, § 1; Acts 1945, 49th Leg., p. 589, ch. 347, § 1.]

1 Article 5221b—2.

Purpose of act. Sections 1 and 2 of Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, contained a recital of the economic factors giving rise to the need for an unemployment compensation system and declared the purpose of the Act.

Art. 5221b—1a. Payment of benefits.—Notwithstanding any of the provisions of this Chapter, wages earned for services with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress, irrespective of when performed, shall not be included for purposes of determining eligibility conditions, including a determination of the benefit amount, for the duration of benefits, or the wages earned during the qualifying period, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on or after July 1, 1939, be payable on the basis of such wages. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 3a, added Acts 1939, 46th Leg., p. 459, § 1.]

Section 2 of amendatory Act of 1939, added art. 5221b—7a; section 3 added article 5221b—9a.

Art. 5221b—2. Benefit eligibility conditions.—An unemployed individual shall be eligible to receive benefits with respect to any benefit period only if the Commission finds that:

(a) He has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulations as the Commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of Section 6(a) of this act;[1]

(c) He is able to work;

(d) He is available for work;

(e) He has within his base period received wages from employment by employers equal to not less than nine (9) times his benefit amount;

(f) Prior to the first payment of any series of benefits based on an initial claim, he has been totally or partially unemployed for a waiting period of one week. No week shall be counted as a waiting period week for the purposes of this subsection:

(1) Unless he has registered at an employment office in accordance with Section 4(a) of this Act;[2]

(2) Unless it is the week immediately preceding or the week immediately following the filing of an initial claim, as the Commission may by regulation prescribe;

(3) If benefits have been paid with respect thereto. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 4; Acts 1937, 45th Leg., p. 121, ch. 67, § 2; Acts 1939, 46th Leg., p. 436, § 2; Acts 1943, 48th Leg., p. 585, ch. 343, § 2; Acts 1945, 49th Leg., p. 589, ch. 347, § 2.]

1 Article 5221b—4.
2 Article 5221b—2.

Art. 5221b—3. Disqualification for benefits.—An individual shall be disqualified for benefits:

(a) If the Commission finds that he has left his last employment voluntarily without good cause connected with his employment. Such disqualification shall be for not less than one (1) nor more than eight (8) benefit periods immediately following the filing of a valid claim, as determined by the Commission according to the circumstances in each case.

(b) If the Commission finds that he has been discharged for misconduct connected with his last employment. Such disqualification shall be for not less than one (1) nor more than eight (8) benefit periods immediately following the filing of a valid claim, as determined by the Commission in each case according to the seriousness of the misconduct.

(c) If the Commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall be for not less than one (1) nor more than four (4) benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act,[1] no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not ap-

ply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work;

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this sub-section, be deemed to be a separate factory, establishment, or other premises.

(e) For any benefit period with respect to which he is receiving or has received remuneration in the form of:

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability, temporary total disability or total and permanent disability under the Workmen's Compensation Law of any state or under a similar law of the United States;

(3) Old Age Benefits under Title II of the Social Security Act as amended,[2] or similar payments under any Act of Congress, or a State Legislature, or employer pension plan, provided, that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration.

(f) In determining the number of benefit periods during which any individual is entitled to receive benefits in a benefit year, the Commission shall deduct any period of disqualification as provided in subsections (a), (b), and (c) of this Section from the total number of benefit periods during which he would otherwise be entitled to receive benefits except for such disqualification; provided, that in no case shall the number of benefit periods so deducted exceed the number of benefit periods during which the claimant is then eligible to receive benefits except for such disqualification. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 5; Acts 1939, 46th Leg., p. 436, § 3; Acts 1941, 47th Leg., p. 1378, ch. 625, § 1(a); Acts 1943, 48th Leg., p. 585, ch. 343, § 3.]

[1] Article 5221b—1 et seq.
[2] 42 U.S.C.A. § 401 et seq.

Art. 5221b—4. Claims for benefits; review of decisions; appeals; procedure.—(a) Filing: Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service, and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the Commission to each employer without cost to him.

(b) Initial Determination: A representative designated by the Commission, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the date on which benefit shall commence, the benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeal tribunal or to the Commission, which shall make its determinations with respect thereto in accordance with the procedure described in subsection (c) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 5(d) of this Act,[1] the deputy shall promptly transmit his full finding of fact with respect to that subsection to the Commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issues involved under the subsection. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. Unless the claimant or any such interested party, within ten (10) calendar days after the delivery of such notification, or within twelve (12) calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period prior to the final determination of the Commission, shall be paid only after such determination; provided, that if an appeal tribunal affirms a decision of a deputy, or the Commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

(c) Appeals: Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be final decision of the Commission, unless within ten (10) days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (a)[2] of this section.

(d) Appeal Tribunals: To hear and decide disputed claims, the Commission, if it is necessary to insure prompt disposal of cases on appeal, shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three (3) members, one of whom shall be a salaried examiner, who shall serve as Chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of labor; each of the latter two members shall serve at the pleasure of the Commission and be paid a fee of not more than Ten ($10.00) Dollars per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the Commission in any case in which he is an interested party. The Commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The Chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the Chairman of the appeal tribunal is present.

(e) Commission Review: The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and by the deputy whose decision has been overruled or modified by an appeal tribunal. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard by a quorum thereof in accordance with the requirements in subsection (c) of this section. The Commission shall promptly notify the interested parties of its findings and decision, and shall send a certified copy of its order to all interested parties.

(f) Procedure: The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance

with rules prescribed by the Commission for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness Fees: Witnesses subpœnaed pursuant to this section shall be allowed fees at a rate fixed by the Commission. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this Act.[3]

(h) Appeal to Courts: Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final ten (10) days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the Commission and has been designated and appointed for that purpose by the Attorney General of Texas.

(i) Court Review: Within ten (10) days after the decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in any court of competent jurisdiction in the county of claimant's residence against the Commission for the review of its decision, in which action any other party to the proceeding before the Commission shall be made a defendant. Such trial shall be de novo. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the Commission or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. Such action shall be given precedence over all other civil cases except cases arising under the Workmen's Compensation Law of this State.[4] An appeal may be taken from the decision of the trial court, in the same manner, as is provided in other civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 6; Acts 1939, 46th Leg., p. 436, § 3-A.]

[1] Article 5221b—3(d).
[2] Probably should read "subsection (e)" as prior to the amendment.
[3] Articles 5221b—1 to 5221b—22b.
[4] Article 8306 et seq.

Art. 5221b—4a. Preservation of benefits for members of armed forces.—Any provisions in this Act[1] to the contrary notwithstanding, any individual who entered upon active duty in the military or naval service of the United States on or after September 19, 1940, shall, if he files a claim for unemployment benefits within ninety (90) days after his discharge or release from such military or naval service of the United States, have the same benefit rights that he had at the time of his entry into the service, and such benefit right shall be determined in the same manner as if he had filed such claim for unemployment benefits upon the day on which he entered upon active duty in the military or naval service of the United States, provided:

(1) He shall present to the Commission satisfactory evidence of the date on which he entered active duty in the military or naval service of the United States and the date on which he was discharged or released therefrom; and

(2) He shall have (a) made application for the job or position, if any, which he had at the time of entry into the service, within forty (40) days from his discharge or release from active military or naval service; or (b) satisfied the Commission that he has had reasonable cause for not having made such application within said period of forty (40) days, and, in addition, satisfied the Commission that he has subsequently made reasonable effort to re-enter his former job or position or secure other suitable employment.

Provided, however, that the provisions of this Section 6-A shall be inoperative from the effective date of any legislation by the Congress of the United States providing for financial assistance, other than medical service or disability compensation, to the said discharged or released members of the military or naval services of the United States. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 6-A, added Acts 1943, 48th Leg., p. 585, ch. 343, § 4.]

[1] Article 5221b—1 et seq.

Art. 5221b—5. Contributions.—(a) Payment: On and after January 1, 1936, contributions shall accrue and become payable by each employer for each calendar year, or portion thereof, in which he is subject to this Act,[1] with respect to wages payable for employment occurring during such calendar year; provided, however, that on and after July 1, 1943, contributions shall accrue and become payable by each employer for each calendar year, or portion thereof, in which he is subject to this Act, with respect to wages paid for employment occurring on or after July 1, 1943, and during such calendar year, or portion thereof. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the pages[2] of individuals in such employer's employ.

(b) Rate of contributions: Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(1) Nine-tenths of one per centum (9/10 of 1%) with respect to employment during the calendar year 1936;

(2) One and eight-tenths per centum (1-8/10%) with respect to employment during the calendar year 1937;

(3) Two and seven-tenths per centum (2-7/10%) with respect to employment during the calendar year 1938, 1939, and 1940;

(4) With respect to employment after December 31, 1940, the percentage determined pursuant to Subsection (c) of this Section; except that with respect to employment occurring on and after July 1, 1943, the determination shall be made with respect to wages paid by him.

(c) Experience Rating: (1) For each calendar year commencing after December 31, 1940, the contribution rate of each employer who has had three (3) years of compensation experience shall be determined by the fund's maximum liability for benefits to his employees who have received benefits, modified by the state experience as to average duration of benefit payments, as provided below.

(2) When in any benefit year total benefits paid to an individual for total or partial unemployment first exceed his benefit amount for total unemployment, his wages received during his base period shall be termed "benefit wages", and shall be treated for the purposes of this Subsection 7(c) as though they had been paid in the calendar year in which such individual's payments for his current benefit year first exceed his benefit amount for total unemployment. "Benefit wages" shall include only the wages from employers available

for wage credits in a base period, and shall not exceed One Thousand, Six Hundred and Twenty Dollars ($1,620) for any one employee or former employee. Each "employer's benefit wages" for a given calendar year shall be the total of the "benefit wages" received from him by all of his employees or former employees with respect to such year.

(3) For the purposes of this Section, benefits shall be deemed to have been paid at the time the claim therefor shall have been certified by the Commission to the State Comptroller.

(4) The benefit wage ratio of each employer shall be a percentage equal to the total of his "employer's benefit wages" for the most recent three (3) consecutive completed calendar years divided by his total taxable payroll for the same three (3) years on which contributions have been paid to the Commission on or before January 31 of the calendar year with respect to which his benefit wage ratio is determined.

(5) For any calendar year the total benefits paid from the fund, less all amounts credited to the fund except employers' contributions collected under this Section, and except interest earned on the fund, shall be termed the "amount required from employers." The amount required from employers, divided by the state-wide total of "employer's benefit wages" of all employers for that calendar year, after adjustment to the nearest multiple of one per centum (1%) shall be termed the "State experience factor". The state experience factor for any year shall be determined prior to the due date of the first contribution payment on wages for employment in that year and such determination shall be made upon the basis of figures for the preceding calendar year.

(6) The contribution rate for each employer shall be in accordance with the following table based upon the state experience factor and his benefit wage ratio:

When the State Experience Factor is	If the Employer's Benefit Wage Ratio Does Not Exceed:				
1%	50%	100%	150%	200%	250%
2	25	50	75	100	125
3	17	33	50	66	83
4	13	25	38	50	63
5	10	20	30	40	50
6	8	17	25	34	42
7	7	14	21	29	36
8	6	13	19	25	31
9	6	11	16	22	28
10	5	10	15	20	25
11	5	9	14	18	23
12	4	8	13	17	21
13	4	8	12	15	19
14	4	7	11	14	18
15	3	7	10	13	17
16	3	6	9	12	16
17	3	6	9	12	15
18	3	6	8	11	14
19	3	5	8	11	13
20	3	5	8	10	13
21	2	5	7	10	12
22	2	5	7	9	11
23	2	4	7	9	11
24	2	4	6	8	10
	The Employer's Contribution Rate Shall Be:				
	0.5%	1.0%	1.5%	2.0%	2.5%

If the employer's benefit wage ratio for any year exceeds the amount in the last column of the table on the line for the state experience factor for the same year, his contribution rate for that year shall be two and seven-tenths per centum (2-7/10%).

(7) For the purposes of this Section, two or more employing units which are parties to or the subject of a merger, consolidation, or other form of reorganization effecting a change in legal identity or form, shall be deemed to be a single employing unit if the Commission finds that (i) immediately after such change the employing enterprises of the predecessor employing unit or units are continued solely through a single employing unit as successor thereto; and (ii) immediately after such change such successor is owned or controlled by substantially the same interests as the predecessor employing unit or units; and (iii) the successor has assumed liability for all contributions required of the predecessor employing unit or units; and (iv) the consideration of such two or more employing units as a single employing unit for the purposes of this Section would not be inequitable.

No rate of less than two and seven-tenths per centum (2-7/10%) will be permitted an employing unit succeeding to the experience of another employing unit pursuant to this Section for any period subsequent to such succession except in accordance with regulations prescribed by the Commission, which regulations will be consistent with Federal requirements for additional credit allowance in Section 1602 of the Internal Revenue Code,[3] and consistent with the provisions of this Act, except that such regulations may establish a computation date for any such period different from the computation date generally prescribed by this Act, and may define the words "calendar year" as meaning a twelve (12) consecutive month period ending on the same day of the year as that on which such computation date occurs.

(8) Nothing in this Section shall be construed as authorizing or requiring the refund of any contributions or portions thereof due and paid prior to July 1, 1943, under this Section, or as waiving the right to collect any contributions or portions thereof due and unpaid under this Section on June 30, 1943.

(d) Each employer's rate shall be two and seven-tenths per centum (2-7/10%) except as otherwise provided in this Section. No employer's rate shall be less than two and seven-tenths per centum (2-7/10%) for any year, unless and until his account has been chargeable with benefits throughout the thirty-six (36) consecutive calendar months immediately preceding the beginning of the calendar year for which rates are determined. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 7; Acts 1937, 45th Leg., p. 121, ch. 67, § 3; Acts 1939, 46th Leg., p. 436, § 4; Acts 1941, 47th Leg., p. 2, ch. 2, § 1; Acts 1941, 47th Leg., p. 101, ch. 83, § 1; Acts 1943, 48th Leg., p. 585, ch. 343, § 5; Acts 1945, 49th Leg., p. 589, ch. 347, § 3.]

1 Articles 5221b—1 to 5221b—22b.
2 Probably should read "wages."
3 26 U.S.C.A. § 1602.

Section 2 of Acts 1941, 47th Leg., p. 2, ch. 2, repealed Gen. and Sp.Laws 44th Leg. 3rd C.S., as amended by Acts 46th Leg., arts. 5221b—1 to 5221b—22b and all conflicting laws.

Art. 5221b—6. Duration of coverage.—(a) Any employing unit which is or becomes an employer subject to this Act[1] within any calendar year shall be subject to this Act during the whole of such calendar year.

(b) (1) An employing unit, not otherwise subject to this Act, which files with the Commission its written election to become an employer subject hereto for not less than two (2) calendar years, shall, with the written approval of such election by the Commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval.

(2) Any employing unit for which services that do not constitute employment as defined in this Act are performed, may file with the Commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this Act for not less than two (2) calendar years. Upon the written approval of such election by the Commission, such services shall be deemed to constitute employment subject to this Act from and after the date stated in such approval, and during the period of the election.

(c) An employing unit shall cease to be an employer subject to this Act only as of the 1st day of

January of any calendar year, if it files with the Commission, on or before the 31st day of March of such year, a written application for termination of coverage, and the Commission finds that there were no twenty (20) different days, each day being in a different week within the preceding calendar year, within which such employing unit employed eight (8) or more individuals in employment subject to this Act. For the purposes of this subsection the two or more employing units mentioned in Paragraph (2) or (3) or (4) of section 19(f)[2] shall be treated as a single employing unit.

(d) Any employing unit which is or becomes an employer subject to this Act, and which under the provisions of this Section ceases to be an employer subject to this Act and subsequent to such time again becomes an employer subject to this Act by reason of any of the provisions thereof, shall upon again becoming an employer subject to this Act be considered a new employer without regard to any rights acquired by it during the time that it had theretofore been an employer. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 8; Acts 1939, 46th Leg., p. 436, § 5; Acts 1945, 49th Leg., p. 589, ch. 347, § 4.]

1 Articles 5221b—1 to 5221b—22b.

2 Article 5221b—17.

Art. 5221b—6a. [Repealed by Acts 1943, 48th Leg., p. 585, ch. 343, § 8.]

The article repealed was Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 8-A, as added Acts 1939, 46th Leg., p. 436, § 8a, and amended Acts 1941, 47th Leg., p. 746, ch. 467, § 1.

Section 3 of the amendatory Act of 1941 read as follows: "The provisions of this Act shall repeal all parts of Chapter 482, General and Special Laws. Forty-fourth Legislature, Third Called Session, as amended, in conflict herewith, and all other laws or parts of laws in conflict herewith."

Art. 5221b—7. Unemployment compensation fund.—(a) Establishment and Control: There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compensation Fund, which shall be administered by the Commission exclusively for the purposes of this Act[1]. This fund shall consist of (1) all contributions collected under this Act; (2) interest earned upon any moneys in the fund; (3) any property or securities acquired through the use of moneys belonging to the fund; (4) all earnings of such property or securities; and (5) all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided.

(b) Accounts and Deposits: The State Treasurer shall be treasurer and custodian of the fund. He shall administer such fund in accordance with the directions of the Commission, and the Comptroller shall issue warrants upon it in accordance with such regulations as the Commission shall prescribe. The Treasurer shall maintain within the fund three (3) separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the Commission, shall be forwarded to the Treasurer who shall immediately deposit them in the clearing account. All moneys in the clearing account, after clearance thereof, shall, except as herein otherwise provided, be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended,[2] any provisions of the law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. Refunds payable pursuant to Section 14 of this Act[3] may be paid from the clearing account or the benefit account upon warrants issued by the Comptroller under the direction of the Commission, except that refund of penalties which are erroneously collected, and which are to be refunded in accordance with the provisions of Subsection 14(j) of this Act, shall be paid out of the Unemployment Compensation Special Administration Fund. The benefit account shall consist of all moneys requisitioned from this State's account in the Unemployment Trust Fund in the United States Treasury. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the Treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. All moneys in this fund shall be deposited, administered and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable, on his official bond, for the faithful performance of his duties in connection with the Unemployment Compensation Fund provided under this Act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to the liability on any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered for losses sustained by the fund shall be deposited therein.

(c) Withdrawals: Moneys requisitioned from this State's account in the Unemployment Trust Fund shall be used exclusively for the payment of benefits and for refunds pursuant to Section 14. The Commission shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits and refunds for a reasonable future period. Upon receipt thereof, the Treasurer shall deposit such moneys in the benefit account, and the Comptroller shall issue his warrants for payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account, and refunds from the clearing account, shall not be subject to any provision of law which may require itemization or other formal release by State officers of money in their custody. All warrants issued for the payment of benefits and refunds shall bear the signature of the Treasurer and the countersignature of a member of the Commission, or its duly authorized agent, for that purpose. Any balance of moneys requisitioned from the Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned, shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the Unemployment Trust Fund as provided in Subsection (b) of this Section.

(d) If a warrant has been issued by the Comptroller in payment of benefits as provided under this Act, and if the claimant entitled to receive such warrant has lost or loses, or for any reason failed or fails to receive such warrant after such warrant is or has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue to claimant a duplicate warrant as provided for in Article 4365, Revised Civil Statutes of Texas, 1925, but in no event shall a duplicate warrant be issued after one year from the date of the original warrant.

If, after any warrant has been issued by the Comptroller payable to a claimant for benefits under the provisions of this Act, and such warrant shall have been lost or misplaced, or if claimant for any reason fails or refuses to present said warrant for payment within twelve (12) months after the date of issuance of such warrant, such warrant shall be cancelled,

and thereafter no payment shall be made by the Treasurer on such warrant, and no duplicate warrant in place thereof shall ever be issued.

(e) Management of Funds Upon Discontinuance of Unemployment Trust Fund: The provisions of Subsections (a), (b), (c), and (d) to the extent that they relate to the Unemployment Trust Fund, shall be operative only so long as such Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such Unemployment Trust Fund, from which no other State is permitted to make withdrawals. If and when such Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the Unemployment Compensation Fund of this State, shall be transferred to the Treasurer of the Unemployment Compensation Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Commission, in accordance with the provisions of this Act; provided, that such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest-bearing obligations of the United States of America; and provided further, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The Treasurer shall dispose of securities or other properties belonging to the Unemployment Compensation Fund only under the direction of the Commission. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 489, § 9; Acts 1939, 46th Leg., p. 436, § 6; Acts 1941, 47th Leg., p. 261, ch. 178, § 1; Acts 1945, 49th Leg., p. 589, ch. 347, § 5.]

1 Articles 5221b—1 to 5221b—22b.
2 42 U.S.C.A. § 1104.
3 Article 5221b—12.

Art. 5221b—7a. Transfer of funds.—Notwithstanding any requirements of this Chapter, the Commission shall, prior to whichever is the later of (1) thirty (30) days after the close of this Session of the Legislature and (2) July 1, 1939, authorize and direct the Secretary of the Treasury of the United States to transfer from this State's account in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act as amended,[1] to the Railroad Unemployment Insurance Account, established and maintained pursuant to Section 10 of the Railroad Unemployment Insurance Act,[2] an amount hereinafter referred to as the preliminary amount; and shall, prior to whichever is the later of (1) thirty (30) days after the close of this Session of the Legislature and (2) January 1, 1940, authorize and direct the Secretary of the Treasury of the United States to transfer from this State's account in said Unemployment Trust Fund to said Railroad Unemployment Insurance Account an additional amount, hereinafter referred to as the liquidating amount. The Social Security Board shall determine both such amount after consultation with the Commission and the Railroad Retirement Board. The preliminary amount shall consist of that proportion of the balance in the Unemployment Compensation Fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term "employer" is defined in Section 1(a) of the Railroad Unemployment Insurance Act)[3] and credited to the Unemployment Compensation Fund bears to all contributions theretofore collected under this Act and credited to the Unemployment Compensation Fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" (as the term "employer" is defined in Section 1(a) of the Railroad Unemployment Insurance Act) pursuant to the provisions of this Act during the period July 1, 1939, to December 31, 1939, inclusive. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 9a, added Acts 1939, 46th Leg., p. 459, § 2.]

1 42 U.S.C.A. § 1104.
2 42 U.S.C.A. § 1104; 45 U.S.C.A. § 360.
3 45 U.S.C.A. § 351.

Art. 5221b—7b. Moneys appropriated to pay benefits and refunds.—It is hereby specifically provided that all moneys now on deposit to the credit of the Unemployment Compensation Fund and any moneys received for the credit of such fund, are hereby appropriated for the payment of benefits and refunds as authorized by the provisions of the Act.[1] [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 9-A, added Acts 1941, 47th Leg., p. 261, ch. 178, § 2.]

1 Articles 5221b—1 to 5221b—22b.

Art. 5221b—8. Unemployment Compensation Commission.—(a) Organization: There is hereby created a Commission to be known as the Texas Unemployment Compensation Commission. The Commission shall consist of three (3) members, one of whom shall be a representative of labor, one of whom shall be a representative of employers, and one of whom shall be impartial and shall represent the public generally. Each of the three (3) members of the Commission shall be appointed by the Governor immediately after the effective date of this Act[1] or after any vacancy occurs in the membership of the Commission. During his term of membership on the Commission, no member shall engage in any other business, vocation or employment. Each member shall hold office for a term of six (6) years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed[2] for the remainder of such term; and (2) the terms of office of the members first taking office after the date of enactment of this Act shall expire, as designated by the Governor at the time of appointment, one at the end of two (2) years, one at the end of four (4) years, and one at the end of six (6) years after the date of his appointment.

(b) Chairman: The Chairman of the Texas Unemployment Compensation Commission shall be the impartial member of the Commission, and shall in addition serve as the executive director of all divisions of the Texas Unemployment Compensation Commission.

(c) Divisions: The Commission shall establish two coordinate divisions; the Texas State Employment Service Division pursuant to Section 12 of this Act,[3] and the Unemployment Compensation Division. Each division shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the Commission may find that such separation is impracticable.

(d) Salaries: The Chairman of the Texas Unemployment Compensation Commission and executive director shall be paid from the Unemployment Compensation Administration Fund a fixed monthly salary at the rate of Seventy-five Hundred ($7,500.00) Dollars per year, and each of the other two (2) Commissioners shall from the same fund be paid a fixed monthly salary at the rate of Five Thousand ($5,000.00) Dollars per year. From and after September 1, 1937, any sums of money paid by the state out of state funds as salaries paid the Commission shall be fixed in the regular departmental appropriation bill of the State of Texas.

(e) Quorum: Any two (2) Commissioners shall constitute a quorum. No vacancy shall impair the right of the remaining Commissioners to exercise all of the powers of the Commission.

(f) Employees: No person shall ever be employed by the Unemployment Compensation Commission who is not at the time of his employment a bona fide citizen

of the State of Texas or who will not have been a bona fide citizen of the State of Texas for at least five (5) consecutive years immediately next preceding the date of employment. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 10; Acts 1943, 48th Leg., p. 585, ch. 343, § 6.]

1 Articles 5221b—1 to 5221b—24.
2 The words "shall hold office" or some similar words have probably been omitted.
3 Article 5221b—10.

Art. 5221b—9. Administration.—(a) Duties and Powers of Commission: It shall be the duty of the Commission to administer this Act;[1] and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Act, and shall have an official seal which shall be judicially noticed. Not later than the first day of February of each year, the Commission shall submit to the Governor a report covering the administration and operation of this Act during the preceding calendar year and shall make such recommendations for amendments to this Act as the Commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

(b) Regulations and General and Special Rules: General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten (10) days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten (10) days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission.

(c) Publication: The Commission shall cause to be printed for distribution to the public the text of this Act, the Commission's regulations and general rules, its annual reports to the Governor, and any other material the Commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

(d) Personnel: Subject to other provisions of this Act, the Commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The Commission shall not employ or pay any person who is an officer or committee member of any political party organization. The Commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this Act, and may, in its discretion, bond any person handling moneys or signing checks hereunder.

(e) Records and Reports: Each employing unit shall keep true and accurate employment records, containing such information as the Commission may prescribe and which is deemed necessary to the proper administration of this Act. Such records shall be open to inspection and subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary. The Commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it which the Commission deems necessary for the effective administration of this Act. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant at a hearing before an appeal tribunal or the Commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the Commission who violates any provision of this section shall be fined not less than Twenty ($20.00) Dollars, nor more than Two Hundred ($200.00) Dollars, or imprisonment[2] for not longer than ninety (90) days, or both.

(f) Oaths and Witnesses: In the discharge of the duties imposed by this Act, the chairman of an appeal tribunal and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Act.

(g) Subpoenas: In case of contumacy by, or refusal to obey a subpoena issued to any person, any County or District Court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before a commissioner, the Commission, or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the Commission, shall be punished by a fine of not less than Two Hundred ($200.00) Dollars, or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(h) Protection against Self Incrimination: No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission or in obedience to the subpoena of the Commission or any member thereof or any duly authorized representative of the Commission in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, documentary or otherwise, except

that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(i) State-Federal Cooperation: In the administration of this Act, the Commission shall cooperate to the fullest extent consistent with the provisions of this Act, with the Social Security Board, created by the Social Security Act, approved August 14, 1935, as amended; [3] shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act [4] for the purpose of assisting in the administration of this Act.

Upon request therefor, the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this Act. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 11.]

1 Articles 5221b—1 to 5221b—22b.
2 So in enrolled bill. Probably should read "imprisoned."
3 42 U.S.C.A. §§ 301–1305.
4 42 U.S.C.A. §§ 501–503.

Art. 5221b—9a. Use of records.—The Commission may make the State's records relating to the administration of this Act [1] available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the expense of such Board, such copies thereof as the Railroad Retirement Board deems necessary for his purposes.

The Commission may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 11a, added Acts 1939, 46th Leg., p. 459, § 3.]

1 Articles 5221b—1 to 5221b—22b.

Art. 5221b—9b. Destruction of records or documents.—Any records or documents received or maintained by the Commission under the Texas Unemployment Compensation Law,[1] or rules and regulations promulgated thereunder, may be destroyed under such safeguards as will protect the confidential nature of such records to (2) years after the date on which such records or documents last served any useful, legal, or administrative purpose in the administration of the Texas Unemployment Compensation Law, or in the protection of the rights of anyone on orders from the Commission; or the Commission may destroy such records prior to such time on providing for authentic photographs, calligraphs, or other processes to be taken thereof under the rules and regulations prescribed by the Commission. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 11-B, added Acts 1941, 47th Leg., p. 261, ch. 178, § 3.]

1 Articles 5221b—1 to 5221b—22b.

Art. 5221b—10. Employment service.—(a) Texas State Employment Service, as provided for under Act of the Forty-fourth Legislature, Regular Session, Chapter 236, page 552,[1] is hereby transferred to the Commission as a division thereof. The Commission, through such division, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Act,[2] and for purposes of performing such duties, as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system and for other purposes," approved June 6, 1933, (48 Stat. 113; U.S.C., Title 29, Section 49(c)) as amended.[3] It shall be the duty of the Commission to cooperate with any official or agency of the United States having powers or duties under the provisions of the said Act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said Act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said Act of Congress, as amended, are hereby accepted by this State in conformity with Section 4 of said Act,[4] and this State will observe and comply with the requirements thereof. The Texas Unemployment Compensation Commission is hereby designated and constituted the agency of this State for the purposes of said Act. The Director, other officers and employees of the Texas State Employment Service shall be appointed by the Commission in accordance with regulations prescribed by the Director of the United States Employment Service.

(b) Financing: All monies received by this State under the said Act of Congress, as amended, shall be paid into the special "Employment Service Account" in the Unemployment Compensation Administration Fund, and said monies are hereby made available to the Texas Unemployment Compensation Commission to be expended as provided by this Section and by said Act of Congress, and any unexpended balance of funds appropriated or allocated either by the State of Texas or the Federal Government to the Texas State Employment Service as a division of the Bureau of Labor Statistics, is hereby, upon the passage of this Act, transferred to the special "Employment Service Account" in the Unemployment Compensation Administration Fund. For the purpose of establishing and maintaining free public employment offices, the Commission is authorized to enter into agreements with any political subdivision of this State or with any private, and/or non-profit organization, and as a part of any such agreement the Commission may accept monies, services, or quarters as a contribution to the special "Employment Service Account."

(c) Invalidity of Transfer: In the event that this Act, or any section thereof, in so far as the same shall affect the Texas State Employment Service, shall be held or declared unconstitutional or invalid, then in that event Chapter 236, page 552, Acts of the Regular Session of the Forty-fourth Legislature establishing the Texas State Employment Service shall be and remain in full force and effect as it was prior to the passage of this Act. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 12; Acts 1937, 45th Leg., p. 121, ch. 67, § 4.]

1 Article 5221a—2.
2 Articles 5221b—1 to 5221b—22.
3 29 U.S.C.A. §§ 49 to 49l.
4 29 U.S.C.A. § 49c.

Art. 5221b—11. Unemployment Compensation Administration Fund.—(a) Special Fund: There is hereby created in the State Treasury a special fund to be known as the Unemployment Compensation Administration Fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the Commission and shall be continuously available to the Commission for expenditure in accordance with the provisions of this Act,[1] and shall not lapse at any time or be transferred to any other fund. All moneys in this fund which are received from the Federal Government or any agency thereof shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board for the proper and efficient administration of this Act. The fund shall consist of all moneys appropriated by this State; all moneys received from the United States of America, or any agency thereof, including the Social Security Board; all moneys received from any other source for such purpose; all moneys collected by the Commission as costs or fees

charged by the Commission for furnishing photostatic or certified copies of records of the Commission, or fees charged by the Commission for making audits pursuant to the authority granted in this Act, and shall also include any moneys received from any agency of the United States of America or any other State as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Unemployment Compensation Administration Fund, or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of such equipment or supplies which may no longer be necessary for the proper administration of this Act. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Unemployment Compensation Administration Fund provided under this Act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any Surety Bond for losses sustained by the Unemployment Compensation Administration Fund shall be deposited in said fund.

(b) The Commission is authorized to furnish to any person entitled thereto upon application therefor photostatic or certified copies of any records in its possession, the publication of which is not prohibited by this Act, and the Commission shall charge therefor a fee at the rate of Fifty (50) Cents per page for each and every photostatic or certified copy of any record or document so furnished.

(c) Reimbursement of Fund: If any moneys received after June 30, 1941, from the Social Security Board under Title III of the Social Security Act,[2] or any unencumbered balances in the Unemployment Compensation Administration Fund as of that date, or any other Federal moneys granted to the Unemployment Compensation Commission for the administration of this Act, are found by the Social Security Board, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Social Security Board for the proper administration of this Act, it is the policy of this State that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this State to the Unemployment Compensation Administration Fund for expenditure as provided in Subsection (a) of this section. Upon receipt of notice of such a finding by the Social Security Board, the Commission shall promptly report the amount required for such reimbursement to the Governor and the Governor shall, at the earliest opportunity, submit to the Legislature a request for the appropriation of such amount. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 13; Acts 1937, 45th Leg., p. 121, ch. 67, § 5; Acts 1939, 46th Leg., p. 436, § 7; Acts 1941, 47th Leg., p. 594, ch. 364, § 1.]

[1] Articles 5221b—1 to 5221b—22b.
[2] 42 U.S.C.A. §§ 501–503.
Section 2 of the Act of 1941 repealed conflicting laws.

Art. 5221b—12. Collection of contributions.—(a) Interest and penalties on past due contributions: If any employer subject to the provisions of this Act shall fail to pay contributions due under this Act on the date on which they are due and payable as prescribed by the Commission, such employer shall forfeit to the State of Texas a penalty of one per cent (1%) thereof, and after the expiration of one (1) month such employer shall forfeit an additional penalty of one per cent (1%) thereof, for each month or fraction thereof, until such contributions and penalties shall have been paid in full; provided, however, that the penalties applicable to the contributions due for any period (as prescribed by the regulations of the Commission) shall not at any time from and after the enactment of this Act exceed twenty-five per cent (25%) of the amount of contributions due at due date nor shall penalties in excess of twenty-five per cent (25%) of the amount of contributions due at due date, be collected on any contributions now due and owing for any period (as prescribed by the regulations of the Commission) unless such contributions and penalties have, at the time of the enactment of this Act, been reduced to final judgment or paid.

(b) Collections: If, after due notice, any employer defaults in any payment of contributions, penalties or interest thereon, the amount due shall be collected by civil action in the name of the State and the Attorney General, and the employer adjudged in default shall pay the costs of such action; provided, however, that no Court action shall be begun to collect contributions or penalties for an employer after the expiration of three (3) years from the due date of such contributions, except that, in any case of a willful attempt in any manner to evade any of the provisions of the Unemployment Compensation Law[1] or Commission rules and regulations promulgated thereunder, such action may be begun at any time. The three-year period of limitation herein described shall apply to Court action for collection of contributions and penalties due at the time of the enactment of this Act, except that a period of six (6) months from the date of enactment of this Act shall be allowed for the beginning of any action for the collection of contributions more than three (3) years past due as of the date of enactment of this Act, together with the penalties which may be due thereon, not exceeding twenty-five per centum (25%) of the amount of contributions due at due date, and except that the three-year period of limitation herein prescribed shall not be applicable to suits pending at the time of the enactment of this Act for the collection of contributions and penalties past due.

(c) If any employer shall (a) fail to keep any of the records required to be kept by the provisions of this Act, or (b) shall fail to make any reports to the Commission, required herein to be made, or required by regulations of the Commission to be made, or (c) make a false or incomplete report to the Commission, or (d) fail or refuse to abide by the provisions hereof, or the rules and regulations promulgated hereunder, or violate the same, he shall forfeit to the State as a penalty the sum of not less than Twenty-five Dollars ($25), nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid may be recovered in a suit by the Attorney General in a Court of competent jurisdiction in Travis County, Texas.

(d) If any employer fails or refuses to pay any contributions, penalties or interest within the time and manner provided by this Act, or by the rules or regulations adopted by the Commission hereunder, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceeding, any report filed in the offices of the Texas Unemployment Compensation Commission by such employer or his agents or representatives, or a certified copy thereof certified to by the Chairman or any member of said Commission, or the Chief Accountant of said Commission, showing the amount of wages paid by such employer or his agents or representatives, with respect to which contributions, penalties or interest have not been paid, or any audit made by the Texas Unemployment Compensation Commission or its representatives from the

books of such employer when signed and sworn to by such representative as being made from the records of said employer, such report or audit shall be admissible in evidence in such proceedings and shall be prima-facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

(e) In the event the Attorney General shall file suit or a claim for contributions, penalties or interest, as provided in this Act, and attach or file as an exhibit any report or audit of such employer, and an affidavit made by any member of the Texas Unemployment Compensation Commission, or any representative of the Commission, that the contributions, penalties or interest shown to be due by said report or audit are past due and unpaid, that all payments and credits have been allowed, then unless the party resisting the same shall file an Answer in the same form and manner as provided by Article 3736, Revised Civil Statutes of Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima-facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect contributions, penalties or interest hereunder.

(f) All contributions, penalties, and interest due by any employer to the fund shall become a lien upon all the property both real and personal of any employer, used by such employer in performing or aiding in the performance of the service which his employees have contracted to perform on his behalf. Such lien shall attach at the time any contributions or penalties or interest become delinquent as provided herein.

(g) If any employer shall fail to remit proper contributions when due, or if any employer shall fail to make such reports to the Commission as are required by this Act, or, as are required by the regulations adopted by the Commission pursuant to authority granted in this Act, the Commission may employ auditors or other persons to ascertain the correct amount of contributions due and to prepare the correct reports due, and if such contributions have not been properly remitted, or, if such reports have not been properly made, the employer shall pay the reasonable expenses incurred in such investigation which shall be paid as additional penalty, and such additional penalty may be collected by the Commission in the manner prescribed in this Section; provided that nothing herein shall prevent the Commission from using other funds available to it for the purpose of making audits and preparing or assisting in preparing reports of employers when the Commission determines that such action is necessary.

(h) Whenever any suit shall be instituted on behalf of the Commission, or at the request of the Commission under this Section or under Section 17 of this Act,[2] the costs adjudged against the State or the Commission shall be paid by the Commission out of the administrative fund herein provided for. All such costs as are chargeable against the Commission shall be paid by the Commission to the officers of the Courts of Texas at the time that the same become due under the provisions of the General Laws of this State.

(i) Priorities under legal dissolutions or distributions: In the event of any distribution of an employer's assets pursuant to an order of any Court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceedings, contributions then or thereafter due shall be entitled to the same priority as is now accorded by the General Laws of the State of Texas to other tax claims.

(j) (1) Where any employing unit has made a payment to the Commission of contributions alleged to be due, and it is later determined that such contributions were not due, in whole or in part, the employing unit making such payment may make application to the Commission for an adjustment thereof in connection with contribution payments then due, or for a refund thereof because such adjustment cannot be made, and if the Commission shall determine that such contributions or penalty, or any portion thereof, were erroneously collected, the Commission shall allow such employing unit to make an adjustment thereof without interest in connection with contribution payments then due by such employing unit, or, if such adjustment cannot be made, the Commission shall refund said amount without interest from the fund, provided that no application for adjustment or refund shall ever be considered by the Commission unless the same shall have been filed within four (4) years from the date on which such contributions or penalties would have become due, had such contributions been legally collectible by the Commission from such employing unit. For like cause, and within the same period, adjustment or refund without interest may be so made on the Commission's own initiative.

(2) When an employing unit has made a payment to the Commission of contributions and/or penalties alleged to be due and has, within four (4) years from the date on which such contributions and/or penalties would have become due had such contributions and/or penalties been legally collectible by the Commission from such employing unit, made application to the Commission for a refund thereof and such application for refund has been denied by the Commission, such employing unit may within one (1) year after the denial of such application for refund commence an action in any Court of competent jurisdiction in Travis County, Texas, against the Commission for a refund of the contributions and/or penalties so paid to the Commission, the provisions of Article 7057(b), Revised Civil Statutes of Texas of 1925, as amended, to the contrary notwithstanding. Such action shall be de novo; and such recovery, if any, shall be without interest.

(k) Whenever it shall appear that any individual or employing unit is violating or threatening to violate any of the provisions of this Act, or of any rule, regulation or order of the Commission promulgated under this Act, relative to the collection of contributions, penalties, or interest, or the filing of reports relative to employment, the Commission, through the Attorney General, shall bring suit, in the name of the State of Texas against such employing unit or individual in any Court of competent jurisdiction in the county of the residence of the defendant, or if there be more than one (1) defendant, in the county of the residence of any of them, or in the county in which such violation is alleged to have occurred, to restrain such person or employing unit from violating such statute, or such rules, regulation or order of the Commission or any part thereof, and in such suit the Commission in the name of the State of Texas may obtain such injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant.

The violation by any person or employing unit of any injunction granted under the provisions of this Act shall be sufficient grounds for the appointment by the Court, either upon its own motion or that of the Commission in the name of the State of Texas, of a receiver to take charge of such properties of such person or employing unit and to exercise such powers as in judgment of the Court shall be necessary in order to bring about compliance with such injunction; provided, however, that no such receiver shall be appointed except after notice and hearing. The power to appoint a receiver as herein provided shall be in addition to and cumulative of the power to punish for contempt. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 14; Acts 1939, 46th Leg., p. 436, ch. 8; Acts

1943, 48th Leg., p. 572, ch. 339, § 1; Acts 1947, 50th Leg., p. 766, ch. 379, § 1.]

1 Article 5221b—1 et seq.
2 Article 5221b—15.

Repeals. Section 2 of the amendatory Act of 1943 repealed all parts of Section 14 of Chapter 482, Acts of the 44th Legislature, Third Called Session, as amended, in conflict therewith, and all laws or parts of laws in conflict therewith, but provided that it should not forfeit or waive in no way the rights to collect contributions that accrued under said Chapter 482, as amended, or penalties, not exceeding twenty-five (25%) per centum of the amount of contributions due at due date, that accrued under said Chapter 482, as amended, nor the right of prosecution for violating any provision thereof.

Miscellaneous. Section 2 of the amendatory Act of 1947 added art. 5221b—22c.

Sections 3 repealed conflicting laws but provided that the repeals should not forfeit or waive any rights of the State of Texas or of the Texas Unemployment Compensation Commission which had accrued under the repealed sections of law, including, without limiting or without being limited thereto, the right to collect contributions, interest or penalties that had accrued, and the right of prosecution for any violation thereof.

Section 4 provided that partial invalidity should not affect the remaining portions.

Art. 5221b—13. Protection of rights and benefits.—(a) Waiver of Rights Void: No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Act [1] shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violated [2] any provision of this subsection shall, for each offense, be fined not less than One Hundred ($100.00) Dollars, nor more than One Thousand ($1,000.00) Dollars, or be imprisoned for not more than six (6) months, or both.

(b) Limitation of Fees: No individual claiming benefits shall be charged fees of any kind in any proceeding under this Act by the Commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the Commission or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the Commission. Any person who violates any provision of this subsection shall for each such offense, be fined not less than Fifty ($50.00) Dollars, nor more than Five Hundred ($500.00) Dollars, or imprisoned for not more than six (6) months, or both.

(c) No Assignment of Benefits; Exemptions: No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 15.]

1 Articles 5221b—1 to 5221b—22b.
2 So in enrolled bill. Probably should read "violates."

Art. 5221b—14. Penalties.—(a) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this Act [1], either for himself or for any other person, shall be punished by a fine of not less than Twenty ($20.00) Dollars, nor more than Fifty ($50.00) Dollars, or by imprisonment for not longer than thirty (30) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this Act, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than Twenty ($20.00) Dollars, nor more than Two Hundred ($200.00) Dollars, or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall willfully violate any provision of this Act or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than Twenty ($20.00) Dollars, nor more than Two Hundred ($200.00) Dollars, or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this Act while any conditions for the receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Commission, either be liable to have such sum deducted from any future benefits payable to him under this Act or shall be liable to repay to the Commission for the Unemployment Compensation Fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in Section 14(b) of this Act [2] for the collection of past due contributions.

(e) Any person who by wilful nondisclosure or misrepresentation by him, or by another for him, of a material fact, has received any sum as benefits under this Act while any conditions for receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, forfeits his rights to benefits for the benefit year during which such nondisclosure or misrepresentation occurred. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 16; Acts 1939, 46th Leg., p. 436, § 9.]

1 Articles 5221b—1 to 5221b—22b.
2 Article 5221b—12.

Art. 5221b—15. Representation in court.—(a) In any civil action to enforce the provisions of this Act [1] the Commission and the State shall be represented by an Assistant Attorney General who shall be appointed by the Attorney General and designated to perform such legal duties as may be required of him by the Commission, and who shall institute in the name of the State and in the name of the Attorney General any civil action requested of him by the Commission. Such Assistant Attorney General shall be paid by the Unemployment Compensation Commission for the services performed by such Assistant

Attorney General solely for the Commission. Such Assistant Attorney General may be assisted by any other qualified attorneys who are regularly employed by the Commission.

(b) All criminal actions for violations of any provision of this Act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the Attorney General of the State; or, at his request and under his direction, by the Prosecuting Attorney of any county in which the employer has a place of business or the violator resides. [Acts 1936, 44th Leg., 3rd C. S., p. 1993, ch. 482, § 17.

1 Articles 5221b—1 to 5221b—22b.

Art. 5221b—15a. Reciprocal arrangements.—(a) The Commission is hereby authorized to enter into arrangements with the appropriate agencies of other States or of the Federal Government whereby individuals performing services in this and other States for a single employing unit shall be deemed to be engaged in employment performed entirely within either:

(1) This State or within one of such other States where some portion of his services are performed, or

(2) The State in which such individual has his residence, or

(3) The State in which the employing unit maintains a place of business.

(b) The Commission is also authorized to enter into arrangements with the appropriate agencies of other States or the Federal Government whereby potential rights to benefits accumulated under the unemployment compensation laws of one or more States or under one or more such laws of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(c) The Commission is authorized to make to other State or Federal agencies and to receive from such other State or Federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to Subsection (b) of this Section. Reimbursements paid from the fund pursuant to this subsection shall be deemed to be benefits for the purposes of this Act [1].

(d) The Commission is also authorized to enter into reciprocal arrangements with appropriate duly authorized agencies of other States or of the Federal Government, or both, whereby services on vessels engaged in interstate or foreign commerce for a single employer, wherever they are performed, shall be deemed performed within this State or within any such other State. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 17A, as added Acts 1937, 45th Leg., p. 121, ch. 67, § 6; Acts 1945, 49th Leg., p. 121, ch. 67, § 6.]

1 Articles 5221b—1 to 5221b—22b.

Art. 5221b—16. Nonliability of state.—Benefits shall be deemed to be due and payable under this Act [1] only to the extent provided in this Act and to the extent that moneys are available therefor to the credit of the Unemployment Compensation Fund, and neither the State nor the Commission shall be liable for any amount in excess of such sums. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 18.]

1 Articles 5221b—1 to 5221b—22.

Art. 5221b—17. Definitions.—As used in this Act, unless the context clearly requires otherwise:

(a) (1) "Act" means the Texas Unemployment Compensation Act, which is Senate Bill No. 5, Chapter 482, General and Special Laws of the Forty-fourth Legislature, Third Called Session, as amended.[1]

(2) "Base period" means the first four (4) out of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

(3) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commission may by regulation prescribe.

(b) (1) "Benefits" means the money payments payable to an individual, as provided in this Act, with respect to his unemployment.

(2) "Benefit amount": An individual's "benefit amount" means the amount of benefits he would be entitled to receive for one benefit period of total unemployment.

(3) "Benefit period": An individual's "benefit period" means such period of fourteen (14) consecutive calendar days as the Commission may by regulation prescribe.

(4) "Benefit year", with respect to any individual, means the fifty-two (52) consecutive week period beginning with the day on which the first valid claim for benefits is filed, and thereafter the fifty-two (52) consecutive week period beginning with the day on which his next valid claim for benefits is filed after the termination of his last preceding benefit year.

(c) "Commission" means the Unemployment Compensation Commission established by this Act.

(d) "Contributions" means the money payments to the State Unemployment Compensation Fund required by this Act.

(e) "Employing unit" means any individual or type of organizations, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or, subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all purposes of this Act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this Act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(f) "Employer" means:

(1) Any employing unit which for some portion of a day but not necessarily simultaneously, in each of twenty (20) different weeks, whether or not such weeks are or were consecutive within either the current or the preceding calendar year has or had in employment eight (8) or more individuals (irrespective of whether the same individuals are or were employed in each such day);

(2) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this Act) and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under Paragraph (1) of this subsection;

(4) Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise), directly or indirectly by the same interest, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which if treated as a single unit with such other employing

unit, would be an employer under Paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under Paragraphs (1), (2), (3), or (4), has not, under Section 8,[2] ceased to be an employer subject to this Act;

(6) For the effective period of its election pursuant to Section 8(b) any other employing unit which has elected to become fully subject to this Act.

(7) Any employing unit which is liable for the payment of taxes under the Federal Unemployment Tax Act [3] for the calendar year 1946 or for any subsequent calendar year.

(g) (1) "Employment" means any service performed prior to October 1, 1941, which was employment as defined in this Section prior to such date, and subject to the provisions of this Subsection, services performed on and after October 1, 1941, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied, provided that any services performed by an individual for wages shall be deemed to be employment subject to this Act unless and until it is shown to the satisfaction of the Commission that such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this State, if:

(A) The service is localized in this State; or

(B) The service is not localized in any state but some of the service is performed in this State and (i) the base of operations, or, if there is no base of operations then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this State.

(3) (A) Service not covered under Paragraph (2) of this subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state, shall be deemed to be employment subject to this Act if the individual performing such services is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Act.

(B) Services covered by reciprocal agreements authorized by this Act between the Commission and the agency charged with the administration of any other state or Federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this State, shall be deemed to be employment, if the Commission has approved an election of the employing unit for whom such services were performed pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment subject to this Act.

(4) Service shall be deemed to be localized within a state, if:

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) The term "employment" shall not include:

(A) Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions;

(B) Service with respect to which unemployment compensation is payable under an Unemployment Compensation System established by an Act of Congress; provided that the Commission is hereby authorized to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in Section 11(b) of this Act [4] for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act;

(C) Agricultural labor;

(D) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(E) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his father or mother;

(F) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

(G) Service performed in any calendar quarter in the employ of any organization exempt from income tax under Section 101 of the Internal Revenue Code,[5] if (i) the remuneration for such service does not exceed Forty-five Dollars ($45), or (ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, or (iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(H) Service performed in the employ of this State or of any other state, or of any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by this State or by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of this State or of one or more states or political subdivisions to the extent that the instrumentality is with respect to such service, exempt under the Constitution of the United States from the tax imposed by Section 1600 of the Federal Internal Revenue Code; [6]

(I) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual; and (ii) eighty-five per cent (85%) or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(J) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government; and (ii) no part of the net earnings of such association inures (other than through

such payments) to the benefit of any private shareholder or individual;

(K) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under Section 101 of the Federal Internal Revenue Code,[5] if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed Forty-five Dollars ($45) (exclusive of room, board and tuition);

(L) Service performed in the employ of a foreign government (including wages as a consular or other officer or employee, or a non-diplomatic representative);

(M) Service performed in the employ of an instrumentality wholly owned by a foreign government (i) if the service is of a character similar to that performed in foreign countries by the employees of the United States Government or of an instrumentality thereof; and (ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(N) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an interne in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(O) Service performed by an individual for a person as an insurance agent or an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(P) Service performed by an individual under the age of eighteen (18) years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(Q) Service covered by an arrangement between the Commission and the agency charged with the administration of any other state or Federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such Federal law;

(R) Service performed in the employ of the United States Government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Act, except that to the extent that the Congress of the United States shall permit States to require any instrumentalities of the United States to make payments into an unemployment fund under a State unemployment compensation law, all of the provisions of this Act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; Provided, That if this State shall not be certified for any year by the Social Security Board under Section 1603(c) of the Federal Internal Revenue Code,[7] the payments required of such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in Section 14(j) of this Act[8] with respect to contributions erroneously collected;

(6) Included and Excluded Service. If the services performed during one-half or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing him. This subsection shall not be applicable with respect to services performed in any pay period by an individual for the person employing him, where any of such service is excepted by Section 19(g) (5) (B).[9]

(h) "Employment office" means a free public employment office, or branch thereof, operated by this State or maintained as a part of a state controlled system of public employment offices.

(i) "Fund" means the Unemployment Compensation Fund established by this Act, to which all contributions required and from which all benefits provided under this Act shall be paid.

(j) "Partial Unemployment": An individual shall be deemed "partially unemployed" in any benefit period of less than full-time work if his wages payable for such benefit period fail to equal Four Dollars ($4) more than the benefit amount he would be entitled to receive if totally unemployed and eligible.

(k) "State" includes, in addition to the States of the United States of America, Alaska, Hawaii, and the District of Columbia.

(*l*) "Total Unemployment": An individual shall be deemed "totally unemployed" in any benefit period during which he performs no services and with respect to which no wages are payable to him. An individual's benefit period of total unemployment shall be deemed to commence only after his registration pursuant to Section 4(a) of this Act.[10] As used in this Subsection (*l*) and Subsection (j), the term "wages" shall include only that part of remuneration for odd jobs or subsidiary work, or both, which is in excess of Six Dollars ($6) in any one benefit period, and the term "services" shall not include that part of odd jobs or subsidiary work or both, for which remuneration equal to or less than Six Dollars ($6) in any one benefit period is payable.

(m) "Valid claim" means a claim filed for benefits by an unemployed individual who has earned qualifying wages as provided in Section 4(e) of this Act.[10]

(n) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid him by his employing unit. The reasonable cash value of all remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Commission; providing, however, that after October 1, 1941, the term "wages" shall not include:

(1) That part of the remuneration which, after remuneration equal to Three Thousand Dollars ($3,000) has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year;

(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer

for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment, or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and (ii) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under Section 1400 of the Internal Revenue Code [11] or (B) of any payment required from an employee under a state unemployment compensation law; or

(4) Dismissal payments which the employer is not legally required to make.

(o) "Week" means such period of seven (7) consecutive calendar days as the Commission may prescribe. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 19; Acts 1937, 45th Leg., p. 121, ch. 67, § 7; Acts 1939, 46th Leg., p. 436, § 10; Acts 1941, 47th Leg., p. 1378, ch. 625, § 1; Acts 1943, 48th Leg., p. 585, ch. 343, § 7; Acts 1945, 49th Leg., p. 589, ch. 347, § 7.]

1 Article 5221b—1 et seq.
2 Article 5221b—6.
3 26 U.S.C.A. §§ 1600–1611.
4 Article 5221b—9.
5 26 U.S.C.A. § 101.
6 26 U.S.C.A. § 1600.
7 26 U.S.C.A. § 1603.
8 Article 5221b—12.
9 Subsection (g) (5) (B) of this article.
10 Article 5221b—2.
11 26 U.S.C.A. § 1400.

Art. 5221b—17a. Repeal; saving clause.—The provisions of this Act [1] shall repeal all parts of Chapter 482, General Laws of the Forty-fourth Legislature, Third Called Session, as amended by Chapter 67, General Laws of the Forty-fifth Legislature, Regular Session,[2] in conflict herewith, and all laws or parts of laws in conflict herewith, but shall in no way be construed as forfeiting or waiving rights to collect contributions, interest, or penalties that have accrued under said Chapter, nor the right of prosecution for violating any provision thereof; provided, that any individual becoming unemployed and otherwise eligible during a benefit year established subsequent to April 1, 1938, and prior to the effective date of this Act, shall be paid during such benefit year only those benefits established by his most recent determination applicable to such benefit year and prior to the effective date of this Act, except that the Commission may determine the method of making such payments in accordance with the other provisions of this Act. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 19-b, added Acts 1939, 46th Leg., p. 436, § 12.]

1 Articles 5221b—1 to 5221b—7, 5221b—11, 5221b—12, 5221b—14, 5221b—17.
2 Articles 5221b—1 to 5221b—22b.

Art. 5221b—18. Political activities.—No department included in this Act [1] shall use any of the means or funds appropriated to such department, either directly or indirectly, for the purpose of telephoning, telegraphing or sending out literature, propaganda, letters or bulletins, or any other matter, printed or written, that will influence or tend to influence, in any way, the election of any candidate for office or the passage or defeat of any law or appropriation affecting any department included in this bill; and provided, further, that no stenographer or other employee whose salary is paid from funds provided under this Act, may be used or employed in any manner in the preparation or mailing out, or in any way handling such literature, propaganda, letters or bulletins, or any other matter, printed or written, that will influence, or tend to influence, in any way the election of any candidate for office or the passage or defeat of any law or appropriation affecting any department included in this Act, and no such work shall be done or performed in any of the offices or rooms of the Capitol or any other State building.

It is hereby declared unlawful for any person employed in any capacity in any of the departments to engage in or take part in any political campaign in relation to matters directly affecting the particular department in which the particular employee is employed, and/or concerning the election or re-election of any candidate for the head of the particular department by which such employee is employed; by "engaging in a political campaign" or "taking part in a political campaign" is meant and shall include distributing circulars, hand bills, posting pictures, handing out cards, making speeches, thereby soliciting or opposing the election of any candidate for office as the head of such department whereby the offending employee is employed.

It is further declared unlawful for any employee of this department to go outside of the county of the residence of such employee and in any manner campaign for or against the election and/or re-election of any candidate for public office other than such department head of the department in which such employee is employed.

Any such employee, engaging in such inhibited and unlawful conduct, shall be subject to removal from his position and restraint from re-employment in such department or any other department of government or subdivision thereof, for a period of five (5) years by a judgment in the District Court of the County wherein such unlawful activity occurred. Any five (5) or more qualified voters, residents of such county, shall have the authority to institute a suit in a District Court of such County, praying for the removal of such employee from such department, citing such employee and the head of the department, and upon final hearing the allegations of the petition being sustained, the judgment shall be to discharge the employee and restraining the head of the department from re-employing such employee for a period of one (1) year from the date of the judgment.

It is hereby further declared unlawful for any person authorized to use a State owned automobile, in connection with any business of the State, to use such automobile in connection with any campaign in which such department is directly interested, or in behalf of the campaign for re-election of the head of any department, and/or in any other manner, time or place than when such automobile is being used in the interest of and for the purpose of carrying out departmental State business. Any person violating this section shall, upon final conviction, be subject to a fine of not less than Fifty ($50.00) Dollars, nor more than Two Hundred ($200.00) Dollars. In the event such use of such automobile is being made with the knowledge of the head of any department, having charge of such automobile, then such department head shall also be liable to punishment in a fine of Two Hundred ($200.00) Dollars. Any Court of competent jurisdiction in the county where this law is violated shall have jurisdiction to try such cause.

It is hereby made the duty of every department head to furnish every employee of his department a copy of the law set out in the preceding three (3) paragraphs, and to take the receipt of such employee therefor. These receipts shall at all times be kept accessible for public inspection and failure of any department head to comply with this mandate, shall constitute malfeasance in office, and upon judgment

so adjudicating such department head shall be removed from office. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 20.]

1 Articles 5221b—1 to 5221b—22b.

Art. 5221b—19. Repeal or amendment.—Saving Clause: The Legislature reserves the right to amend or repeal all or any part of this Act[1] at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Act or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this Act at any time. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 21.]

1 Articles 5221b—1 to 5221b—22b.

Art. 5221b—20. Partial invalidity; separability of provisions.—(a) If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act,[1] or the application thereof to any person or circumstance, is held invalid, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

(b) In the event that the provisions of this Act which impose a compulsory contribution be declared invalid or void for any reason, the remainder of the Act shall nevertheless remain in full force and effect; and it is declared to be the intention of the Legislature that the remainder of the Act would have been enacted without the provisions imposing contributions. It is further enacted that in the event the provisions of this Act which impose contributions, are held invalid or void, all payments which have been voluntarily made under the provisions of the Act shall be and remain the property of the fund to which they are deposited; and that employers shall have the right to continue to make voluntary contributions for unemployment insurance under this Act.

(c) In the event it shall be determined and held by the courts that the provisions of this State Act imposing compulsory contributions is invalid and void, it shall be the duty of the Commission to make such refunds to individual contributors as are entitled to the same. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 22.]

1 Articles 5221b—1 to 5221b—22b.

Art. 5221b—21. Powers of Commission.—General Provisions: In all cases where the Commission is given authority to make investigations, to assemble information and to require the submission of documentary or oral testimony it is the intention of the Legislature to grant to the commission only such powers as are necessary for the Commission to exercise in order that they may properly administer this Act.[1] [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 23.]

1 Articles 5221b—1 to 5221b—22b.

Art. 5221b—22. Termination of act.—Provisions for Termination of Act and Return of Contribution: In the event the Supreme Court of the United States hold the Federal Social Security Act approved by the President August 14, 1935,[1] unconstitutional or inoperative for any reason whatsoever, then in that event the powers, duties and levies herein provided for, shall have no further force or effect and the Commission shall cease to function and all payments of levies and taxes made hereunder and then remaining unexpended shall be upon proper proof returned ratably to those making such payments, and it shall be the duty of the Unemployment Compensation Commission to perform this Act,[2] and the Unemployment Compensation Commission shall remain in performance of this duty only until such Act has been performed. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 24.]

1 42 U.S.C.A. §§ 301–1305.
2 Articles 5221b—1 to 5221b—22b.

Art. 5221b—22a. Unemployment compensation special administration fund.—There is hereby created in the State Treasury a special fund to be known as the Unemployment Compensation Special Administration Fund. All interest and penalties collected under the provisions of this Act[1] shall be paid into this fund. Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution for (or a corresponding reduction in) Federal funds which would, in the absence of said moneys, be available to finance expenditures for the administration of the Texas Unemployment Compensation Act. Nothing in this section however shall prevent said moneys from being used as a revolving fund, to cover expenditures, necessary and proper under the Texas Unemployment Compensation Act,[1] for which Federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The Commission may, by resolution duly entered in its minutes, authorize to be charged against said moneys any expenditures which it deems proper in the interest of good administration of this Act, provided the Commission in such resolution finds that no other funds are available or can properly be used to finance such expenditures. All moneys which are deposited or paid into the Unemployment Compensation Special Administration Fund are hereby appropriated and made available to the Commission and shall be continuously available to the Commission for expenditure in accordance with the provisions of this Act, and shall not lapse at any time or be transferred to any other fund. All moneys in this Unemployment Compensation Special Administration Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Unemployment Compensation Special Administration Fund provided herein. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any Surety Bond for losses sustained by the Unemployment Compensation Special Administration Fund shall be deposited in said Unemployment Compensation Special Administration Fund. If it be determined by the Commission in accordance with the provisions of Subsection 14(j) of this Act[2] that the Commission should refund penalties which have been erroneously collected and which have been deposited in the Unemployment Compensation Special Administration Fund, the refund of such penalties shall be made, without interest, out of the Unemployment Compensation Special Administration Fund, notwithstanding the provisions of Subsection 14(j) of this Act[2] that payment of all refunds shall be made out of the Unemployment Compensation Fund. Such refunds paid out of the Unemployment Compensation Special Administration Fund shall be paid upon warrants issued by the Comptroller under the direction of the Commission. [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 26, added Acts 1945, 49th Leg., p. 589, ch. 347, § 8.]

1 Articles 5221b—1 to 5221b—22b.
2 Article 5221b—12.

Art. 5221b—22b. Title.—The body of law originally enacted in Senate Bill No. 5, Chapter 482, General and Special Laws of the Forty-fourth Legislature, Third Called Session, as amended, providing for

an unemployment compensation system and an employment service in Texas, shall be known and may be cited as the "Texas Unemployment Compensation Act." [1] [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 27, added Acts 1945, 49th Leg., p. 589, ch. 347, § 9.]

[1] Articles 5221b—1 to 5221b—22b.

Art. 5221b—22c. Unemployment Compensation Commission.—Wherever the name "Texas Unemployment Compensation Commission" appears in the Texas Unemployment Compensation Act, such name shall for all purposes be changed to the "Texas Employment Commission." [Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 28, added Acts 1947, 50th Leg., p. 766, ch. 379, § 2.]

Art. 5221b—23. [Expired.]

The expired article was Acts 1937, 45th Leg., p. 550, ch. 271, section 4 of which provided that the Act should be in force and effect for a period of two years from the date of its enactment.

Art. 5221b—24. Repeal; saving clause.—The provisions of this Act[1] shall repeal all parts of Chapter 482, General and Special Laws, Forty-fourth Legislature, Third Called Session, as amended by Chapter 67, General and Special Laws, Forty-fifth Legislature, Regular Session, as amended by Chapter 2, Title "Labor," General Laws, Forty-sixth Legislature, Regular Session,[2] in conflict herewith, and all laws or parts of laws in conflict herewith, but shall in no way be construed as forfeiting or waiving any rights of the State of Texas or the Texas Unemployment Compensation Commission, including without limiting the foregoing, the right to collect contributions, interest, or penalties that have accrued under said Chapter, and the right of prosecution for violating any provision thereof. [Acts 1941, 47th Leg., p. 1378, ch. 625, § 2.]

[1] Articles 5221b—3, 5221b—17.
[2] Article 5221b—1 et seq.

CHAPTER 15.—INSPECTION OF STEAM BOILERS

Art.
5221c. Inspection and inspectors.

Sec.
1. Definitions.
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3. Exemptions from act.
4. Inspections; ordering repairs to unsafe boiler; hearing; temporary certificate.
5. Insurance companies to file reports of inspections; boilers inspected by insurance companies exempt from other inspections; certificate of operation.
6. Commissioner to promulgate rules and regulations; exchange of information.
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8. Inspector, appointment and qualification; deputy inspectors.
9. Salaries and expenses.
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11. Reports of inspections.
12. Fees for inspections.
13. Penalties for violations by persons in charge of steam boilers.
14. Violations by operators of factories, mills, mines, stores, or business houses, misdemeanors.
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17. Disposition of funds collected; State Boiler Inspection Fund.
18. Appropriation.
19. Partial invalidity.

Art. 5221c. Inspection and inspectors.

Definitions

Section 1. The following terms as used in this Act shall be construed as follows:

"Commissioner" as used herein shall mean the Commissioner of the Bureau of Labor Statistics of the State of Texas;

"Inspector" as used herein shall mean the inspector of steam boilers appointed under the provisions of this Act;

"Deputy" as used herein shall mean any deputy inspector of boilers appointed under the provisions of this Act;

"Boiler" as used herein shall mean any vessel used for generating steam for power or heating purposes;

"Owner or user" as used herein shall mean any person, firm or corporation owning or operating, or in charge of or in control of any boiler as herein defined;

"Safety device" as used herein shall mean any appurtenance attached to any boiler for the purpose of diminishing the danger of accidents;

"Code of Rules" as used herein shall mean the standard code of rules promulgated and adopted by the Commissioner under the provisions of this Act.

Registration of boilers; certificate of operation; injunction against operation of unsafe boiler

Sec. 2. No steam boiler, unless otherwise specifically exempted in this Act, shall be operated within the State of Texas unless such boiler has been registered with the Bureau of Labor Statistics and there shall have been issued a Certificate of Operation for such boiler, as hereinafter provided for, and such Certificate of Operation shall remain in full force and effect until expiration unless cancelled for cause by the Commissioner; such Certificate of Operation shall be placed under glass in a conspicuous place on or near the boiler for which it is issued; and no prosecution shall be maintained where the issuance of or the renewal for such Certificate of Operation shall have been requested and shall remain unacted upon; provided, however, if the operation of such boiler without such Certificate of Operation shall constitute a serious menace to the life and safety of any person or persons in or about the premises, the Commissioner or the inspector of boilers or any deputy inspector, as hereinafter provided for, shall apply to the District Court in a suit brought by either the Attorney General of the State, or any District or County Attorney, in the county in which such boiler is located, for an injunction restraining the operation of said boiler until the unsafe condition restraining its use shall be corrected and a Certificate of Operation issued. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute a bond as a condition precedent to the issuing of any injunction or restraining order hereunder. The affidavit of the Commissioner that no application for or no Certificate of Operation exists for such boiler, and the affidavit of any inspector or deputy inspector that its operation constitutes a menace to the life and safety of any person or persons in or about the premises, shall be

sufficient proof to warrant the immediate granting of a temporary restraining order.

Exemptions from act

Section 3. The following boilers are exempt from the provisions of this Act:

(1) Boilers under Federal control and stationary boilers at round houses, pumping stations and depots of railway companies under the supervision or inspection of the Superintendent of Motive Power of such railway companies;

(2) Boilers on which the pressure does not exceed fifteen (15) pounds per square inch;

(3) Automobile boilers and boilers on road motor vehicles;

(4) Boilers used exclusively for agriculture purposes;

(5) Boilers for heating in buildings occupied solely for residence purposes with accommodations not to exceed four (4) families;

(6) Boilers used for cotton gins. [As amended Acts 1939, 46th Leg., p. 433, § 1.]

Inspections; ordering repairs to unsafe boiler; hearing; temporary certificate

Sec. 4. The Commissioner shall cause to be inspected internally and externally not less frequently than once each twelve (12) months each stationary steam boiler subject to the provisions of this Act. Each portable steam boiler subject to the provisions of this Act shall be inspected externally each time it is moved to a new location, provided that an internal inspection shall be made of each such boiler at least once each twelve (12) months. If such boilers referred to herein are found, upon inspection, to be in a safe condition for operation, a Certificate of Operation shall be issued by the Commissioner for its operation for a period not longer than one year from the date of such inspection. If any inspection authorized hereunder shall show the inspected boiler to be in an unsafe or dangerous condition, the boiler inspector or any deputy may issue a preliminary order requiring such repairs and alterations to be made to such boiler as may be necessary to render it safe for use, and may also order the use of such boiler discontinued until such repairs and alterations are made or such dangerous and unsafe conditions are remedied. Unless such preliminary order be complied with by the owner or user, a hearing before the Commissioner shall be allowed, upon written request, at which the owner or user, making the request, shall have opportunity to appear and show cause why he should not comply with said preliminary order. If it shall thereafter appear to the Commissioner that such boiler is unsafe and that the requirements contained in said preliminary order should be complied with, or that other things should be done to make said boiler safe, the Commissioner may order or confirm the withholding of the Certificate of Operation for said boiler and may make such requirements as he deems proper for the repair or alteration of said boiler or the correction of such dangerous and unsafe conditions. The inspector in his discretion may issue a temporary Certificate of Operation for not to exceed thirty (30) days, pending the making of replacements or repairs. Nothing in this Section shall be construed to limit the authority of the Commissioner as set forth in Section 6 of this Act. "Certificate of Operation" used in this Section shall mean the "Certificate of Operation" referred to in Section 2 of this Act.

Insurance companies to file reports of inspections; boilers inspected by insurance companies exempt from other inspections; certificate of operation

Section 5. Every insurance company insuring boilers in this State shall, within thirty (30) days after inspecting any steam boiler, file a duplicate report of such inspection with the Commissioner showing the date of such inspection together with the name of the person making such inspection, and such report shall show fully the condition and location of such boiler at the time such inspection was made. Such report shall also state when the policy of insurance was issued by the insurance company on said boiler and the date of expiration of such policy of insurance.

The owner or user of every boiler inspected by an inspector for an insurance company authorized to do business in this State on which such insurance company has issued a policy of insurance after inspection thereof, shall be exempt from other inspections and inspection fees under the provisions of this Act; provided nothing in this Section shall prevent the Commissioner from authorizing the inspection of any insured boiler at any reasonable time when, in the opinion of the Commissioner, such insured boiler may be in an unsafe condition, provided the Commissioner shall contact the insurance company carrying insurance on said boiler and that the inspector for the insurance company carrying such insurance and the inspector or deputy inspector shall jointly and together inspect the boiler, within twenty (20) days, for which inspection no additional charge shall be made as set forth in Section 12 of this Act. The Commissioner is authorized and has authority to issue a Certificate of Operation to the owner or user of all boilers subject to inspection under this Act, and the owner or user of an insured boiler shall pay the sum of One Dollar ($1) for each Certificate of Operation issued, and the owner or user of a State inspected boiler shall pay a like sum of One Dollar ($1) for each Certificate of Operation issued, which said fee shall be and is absorbed by the internal and external inspection fee authorized in Section 12 of this Act. Every insurance company shall notify the Commissioner in writing of the cancellation or expiration of every policy of insurance issued by it with reference to boilers in this State, within twenty (20) days after the expiration or cancellation of said policy, giving the cause or reason for such cancellation or expiration. Such notice of cancellation or expiration shall show the date of the policy and the date when the cancellation or expiration has or will become effective. [As amended Acts 1939, 46th Leg., p. 433, § 2.]

Commissioner to promulgate rules and regulations; exchange of information

Sec. 6. The Commission is hereby authorized and empowered to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, installation, use, maintenance and operation of steam boilers and appurtenances thereof; including the boiler room; and to require such devices and safeguards and other reasonable means and methods to insure safe operation of steam boilers, including the registration thereof with the Bureau of Labor Statistics.

The Commissioner may exchange information and experience data with the department or other administrative authorities of States having boiler inspection divisions or departments in assembling data for the promulgation of rules and regulations authorized under the provisions of this Act.

Before any rule, regulation or order is promulgated, adopted, enforced, amended, modified or repealed by the Commissioner a public hearing shall be held by him, and not less than ten (10) days before such hearing notice thereof shall be published in at least three (3) newspapers published and having general circulation in the State of Texas, such newspapers to be selected by the Commissioner. After the adoption of rules, regulations and orders by the Commissioner, a complete copy of same shall be published in at least three (3) newspapers, as in the notice of the hearing prior to their adoption, on two (2) different days not more than ten (10) days apart, and within thirty (30) days after the adoption of such rules, regulations and orders; provided that in lieu of pub-

lishing in newspapers the rules, regulations and orders by the Commissioner, as stated above, the Commissioner may publish and circulate said rules, regulations and orders or the repeal, modification or amendment of any such rule, regulation or order in such form or manner as he may determine; and such rules, regulations and orders shall become effective within ten (10) days after date of notice of adoption thereof or final publication, or at such later time as the Commissioner may, in the rules, regulations and orders, determine. The Commissioner is hereby authorized and empowered, in case of extreme emergency, to promulgate and enforce temporary rules, regulations and orders as he may deem necessary, without publishing the same as hereinabove directed; provided, however, that when such temporary rules, regulations or orders are adopted the same shall not be effective for a period of more than twenty (20) days and no criminal prosecution, as hereinafter provided, shall be had until the provisions of Section 16 of this Act have been complied with.

Party aggrieved by rule or regulation; procedure; hearing; modification of rules

Sec. 7. When any interested person shall deem himself aggrieved by any fundamental rule, regulation or order promulgated by the Commissioner, he shall notify the Commissioner of such grievance by formal notice in writing, whereupon the Commissioner shall give consideration of such grievance and may modify, change, alter or amend same upon his own motion; upon failure or refusal of the Commissioner, within ten (10) days, to change, alter or modify such fundamental rule, regulation or order, the Commissioner, shall, upon written application for hearing, cause the same to be held within five (5) days thereafter, at which the person complaining shall have opportunity to show cause, if any, why such fundamental rule, regulation or order complained of should be set aside, altered, amended or repealed.

Inspector, appointment and qualification; deputy inspectors

Sec. 8. Within thirty (30) days after the passage of this Act the Commissioner shall appoint a suitable person to be inspector of steam boilers for the State of Texas. Said inspector of steam boilers shall be a resident citizen of Texas for at least five (5) years next preceding to the time of his appointment and shall have had, at the time of such appointment, not less than five (5) years practical experience with steam boilers as a steam engineer, boilermaker or boiler inspector and by examination enable him to judge the safety of boilers for use, and who is neither directly nor indirectly interested in the manufacture, ownership or agency of steam boilers or their appurtenances. It shall be the duty of the Commissioner to appoint one (1) or more deputy inspectors as needed with like qualifications of the inspector of steam boilers, and such clerical assistants as may be necessary to carry out the provisions of this Act.

Salaries and expenses

Sec. 9. The salary of the inspector of steam boilers shall not exceed Three Thousand Dollars ($3,000) per annum and the salary of each deputy inspector shall not exceed Two Thousand, Four Hundred Dollars ($2,400) per annum, and in addition thereto all inspectors shall be allowed their actual expenses incurred in the performance of their official duties, and for such equipment as may be deemed necessary by the Commissioner. All expenses incident to carrying out the provisions of this Act shall be paid out of the funds in the State Treasury to the credit of the "State Boiler Inspection Fund" on vouchers or warrants issued and signed by the Commissioner and the Comptroller of Public Accounts. The Commissioner may incur such expense for clerical assistants and office supplies as may be necessary, not exceeding Seven Thousand, Five Hundred Dollars ($7,500) annually, said sums to be paid by the State Treasurer on warrants drawn by the Comptroller of Public Accounts.

Persons authorized to inspect; commission from commissioner showing qualifications; power of commissioner

Sec. 10. The Commissioner may cause the inspection provided for in this Act to be made either by the inspector of boilers or any deputy inspector, or by any qualified boiler inspector employed by any county, or city and county, or city, or any insurance company, provided that such persons making inspections (other than the inspector of boilers or deputy inspectors regularly employed by the Commissioner) shall first obtain from the Commissioner a commission as inspector showing his qualifications to make such inspections. The Commissioner is vested with full power and authority to determine the qualifications of any applicant or other person seeking a commission as inspector, by examination. At the discretion of the Commissioner he may accept, after proper investigation by him, the commission issued to an inspector by any other state having an examination equal to that of the State of Texas. The Commissioner may rescind at any time, upon good cause being shown therefor, any commission as inspector issued by him to any person, and he may at any time, upon good cause being shown therefor and after notice and opportunity for hearing thereon, revoke any Certificate of Operation issued for any steam boiler within this State.

Reports of inspections

Sec. 11. Every inspector receiving a commission as inspector shall forward to the Commissioner on forms furnished the inspector by the Commissioner, within thirty (30) days after an inspection is made, a report of such inspection, in default of which the commission as inspector may be cancelled by the Commissioner.

Fees for inspections

Sec. 12. The Commissioner shall fix and collect fees for the inspection of steam boilers covered by this Act which exceed thirty (30) inches in diameter. Two Dollars and Fifty Cents ($2.50) for each external inspection, and not to exceed Seven Dollars and Fifty Cents ($7.50) for each internal inspection in each twelve (12) months period; and for boilers exceeding twenty-four (24) inches in diameter and not exceeding thirty (30) inches in diameter, Five Dollars ($5) for each complete inspection in each twelve (12) months period; and boilers not exceeding twenty-four (24) inches in diameter, Two Dollars and Fifty Cents ($2.50) for each complete inspection in each twelve (12) months period. Provided that, when a boiler is found unfit for further use no Certificate of Inspection shall be issued and the use of such condemned boiler may be prohibited. Provided further that the Commissioner or any of his employees shall not have authority to prescribe the make, brand or kind of boilers to buy or purchase. And provided that when any inspector or employee of the Commissioner tears down a boiler in a cleaning and pressing establishment, said inspector or employee shall assist the owner to repair and assemble said boiler as it was before it was dismantled, and if he fails to assist said owner said fee shall not be paid. Such fees must be paid by the owner or user before the issuance of a Certificate of Operation for the boiler inspected. No fees shall be charged the owner or user by the Commissioner when the inspection herein provided for has been made by an inspector holding a commission as inspector from said Commissioner if the holder of such commission as inspector is employed by any county, or city and county, or city, or insurance company, except the charge fixed for Certificate of Operation in Section 5 hereof. All fees

collected by the Commissioner under this Act shall be paid into the State Treasury to the credit of the "State Boiler Inspection Fund" together with a detailed report of same, and said monies so deposited in said special fund are hereby appropriated for the purpose of paying the expenses of the administration of this Act. [As amended Acts 1939, 46th Leg., p. 433, § 3.]

Penalties for violations by persons in charge of steam boilers

Sec. 13. Any person, firm, corporation, or agent thereof, owning or having the custody, management, use or operation of any steam boiler in this State, who shall violate any provision of this Act, or who violates any rule, regulation or order promulgated by authority hereof by the Commissioner or any regularly employed inspector authorized to enforce any provision or any rule, regulation or order authorized herein, or any person, firm, corporation, or agent thereof coming within any provision of this Act, or any rule, regulation or order authorized herein, who shall fail or refuse to comply therewith, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be subject to a fine of not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Violations by operators of factories, mills, mines, stores, or business houses, misdemeanors

Sec. 14. Any owner, manager, superintendent or other person in charge or in control of any factory, mill, workshop, mine, store, business house, public or private work, or the lessee or operator of same, or the owner or lessee of any mineral estate in land, or any other place where a steam boiler subject to inspection hereunder is located, who shall refuse to allow any official or employee of the Bureau of Labor Statistics to enter the same and remain thereon or therein for such time as is reasonably necessary, or who shall hinder any such official or employee in any way, or who shall in any way prevent or deter him from carrying out the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed One Hundred Dollars ($100) or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Notice of violation of act or rule or regulation prerequisite to criminal prosecution

Sec. 15. Whenever there shall have been adopted, after notice and hearing as provided for under this Act, any rule, regulation or order, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Comissioner shall have given notice of such rule, regulation or order by publishing a complete copy of same in three (3) newspapers published and having general circulation in the State of Texas, such newspapers to be selected by the Commissioner, once each day for two (2) consecutive days; on and after the fifteenth calendar day following the date of the last publication, such rule, regulation, and order shall be effective and enforceable in any criminal action brought pursuant to this Act. No criminal action shall be maintained against any person involving the violation of any provision or any amendment or modification of any rule, regulation or order of the Commissioner until and unless the said Commissioner shall have promulgated such amendment or modification after its adoption by publishing a complete copy of such amended rule, regulation or order in three (3) newspapers published and having general circulation in the State of Texas once each day for two (2) consecutive days; on and after the fifteenth calendar day following the date of the last publication, such amendment or modification of such rule, regulation or order shall become effective and enforceable in any criminal action brought pursuant to this Act; provided that in lieu of the publishing in newspapers of rules, regulations, orders, amendments and modifications, as stated above, the Commissioner may publish and circulate said rules, regulations, orders, amendments or modifications in such form or manner as he may determine.

Affidavit of Commissioner stating terms of order and publication thereof prima facie evidence

Sec. 16. An affidavit under the Seal of the Commissioner executed by the said Commissioner or the inspector of boilers or any deputy inspector, setting forth the terms of any order of the Commissioner and that it has been adopted, promulgated and published, and was in effect at any date during any period specified in such affidavit, shall be prima facie evidence of all such facts, and such affidavit shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

Disposition of funds collected; State Boiler Inspection Fund

Sec. 17. The funds collected under the provisions of this Act shall be paid into the State Treasury and kept in a special fund to be known as the "State Boiler Inspection Fund" and shall be paid out for salaries, traveling expenses and other necessary expenses specified in this Act and upon proper account duly approved by the Commissioner.

Appropriation

Sec. 18. There is hereby appropriated out of the General Revenue Fund of the State of Texas the sum of Twenty Thousand Dollars ($20,000), or so much thereof as may be necessary not otherwise appropriated, for the purposes of carrying out the provisions of this Act; said amount that may be expended out of this appropriation shall be replaced and refunded to the General Revenue Fund by the Commissioner from fees collected under the terms of this Act during the first year of the operation of this Act. However, any monies remaining in said fund at the end of the fiscal year ending August 31, 1937, are re-appropriated to the use of the Commissioner for the purpose of carrying out the provisions of this Act. Any unexpended balance or funds remaining in the "State Boiler Inspection Fund" at the end of the fiscal year ending August 31, 1938, not exceeding Ten Thousand Dollars ($10,000) is hereby appropriated for the use of the Commissioner to carry out the purposes of this Act, and for each succeeding fiscal year any unexpended balance remaining in the "State Boiler Inspection Fund" not exceeding Ten Thousand Dollars ($10,000) shall be carried forward for the purpose of the enforcement of this Act, provided, however any amount remaining in said fund in excess of Ten Thousand Dollars ($10,000) at the end of any fiscal year after 1938 shall revert to the General Revenue Fund of the State of Texas.

Partial invalidity

Sec. 19. Should any section, subsection, sentence, clause, phrase, provision or exemption of this Act be declared unconstitutional or invalid for any reason such invalidity shall not affect the remaining portions or provisions hereof. [Acts 1937, 45th Leg., p. 893, ch. 436; Acts 1939, 46th Leg., p. 433, §§ 1-3.]

TITLE 84—LANDLORD AND TENANT

Art.
5222. Landlord's lien.
5223. When lien expires.
5224. Does not apply.
5225. Tenant not to remove property.
5226. Removal not a waiver.

Art.
5227. Distress warrant.
5228–5231. [Repealed.]
5232. Judgment against sureties.
5233–5235. [Repealed.]
5236. Rights of tenant.
5237. Tenants shall not sub-let.
5238. Owners of buildings lien.
5239. Distress warrant.

Article 5222. [5475] [3235] Landlord's lien.—All persons leasing or renting lands or tenements at will or for a term of years shall have a preference lien upon the property of the tenant, as hereinafter indicated, upon such premises, for any rent that may become due and for all money and the value of all animals, tools, provisions and supplies furnished or caused to be furnished by the landlord to the tenant to make a crop on such premises; and to gather, secure, house and put the same in condition for marketing, the money, animals and tools and provisions and supplies so furnished or caused to be furnished being necessary for that purpose, whether the same is to be paid in money, agricultural products or other property; and this lien shall apply only to animals, tools and other property furnished or caused to be furnished by the landlord to the tenant and to the crop raised on such premises. Provided, further, that all persons leasing or renting lands or tenements at will or for a term of years where the landlord furnishes everything except the labor and the tenant furnishes the labor shall have a preference lien upon the crop or crops grown on such premises for any rent that may become due and for all money, provisions and supplies furnished or caused to be furnished by the landlord to the tenant, to make a crop on such premises; and to gather, secure, house, and put the same in condition for marketing, the money, provisions and supplies so furnished or caused to be furnished being necessary for that purpose, whether the same is to be paid in money, agricultural products or other property, and this lien shall apply only to the crop or crops grown on the premises for the year in which the same is furnished or caused to be furnished.

This article shall not apply in any way or in any case where any person leases or rents lands or tenements at will or for a term of years for agricultural purposes where the same is cultivated by the tenant who furnishes everything except the land, and where the landlord charges a rental of more than one-third of the value of the grain and more than one-fourth of the value of the cotton raised on said land; nor where the landlord furnishes everything except the labor and the tenant furnishes the labor and the landlord directly or indirectly charges a rental of more than one-half the value of the grain and more than one-half of the value of the cotton raised on said land, and any contract for the leasing or renting of land or tenements at will or for a term of years for agricultural purposes stipulating or fixing a higher or greater rental than that herein provided for shall not carry any statutory lien nor shall such lien attach in favor of the landlord, his estate or assigns, upon any of the property named, nor for the purpose mentioned in this article. [Acts 1874, p. 55; P.D. 7418c; G.L. vol. 8, p. 57; Acts 1915, p. 77; Acts 1931, 42nd Leg., p. 171, ch. 100, § 1.]

Art. 5223. [5477] [3237] When lien expires.—Such preference lien shall continue as to such agricultural products and as to animals, tools and other property furnished to the tenant, as aforesaid, so long as they remain on such rented or leased premises, and for one month thereafter; and such lien as to agricultural products, if stored in public or bonded warehouses controlled or regulated by the laws of the State within thirty days after the removal of said products from said rented premises, shall continue so long as they remain in such warehouses; and such lien, as to agricultural products and as to animals and tools furnished as aforesaid, shall be superior to all laws exempting such property from forced sale. [Acts 1874, p. 55; P.D. 7418c; G.L. vol. 8, p. 57; Acts 1914, 2nd C.S., p. 33.]

Art. 5224. [5478] [3238] Does not apply.—Such lien shall not attach to the goods, wares and merchandise of a merchant, trader or mechanic, sold and delivered in good faith in the regular course of business to the tenant. [Id.]

Art. 5225. [5476] [3236] Tenant not to remove property.—The tenant, while the rent and advances remain unpaid, shall not without the consent of the landlord remove or permit to be removed from the premises so leased or rented any agricultural product produced thereon, or any of the animals, tools or property furnished as aforesaid. [Id.]

Art. 5226. [5478a] [3239] Removal not a waiver.—The removal of the agricultural products with the consent of the landlord for the purpose of being prepared for market shall not be considered a waiver of such lien, but such lien shall continue and attach to the products so removed the same as if they had remained on such rented or leased premises. [Id.]

Art. 5227. [5479] [3240] Distress warrant.—When any rent or advances shall become due, or the tenant shall be about to remove from such leased or rented premises, or to remove his property from such premises, the person to whom the rents or advances are payable, his agent, attorney, assigns, heirs or legal representatives may apply to a justice of the peace of the precinct where the premises are situated, or in which the property upon which a lien for rents or advances exists may be found, or to any justice having jurisdiction of the cause of action, for a warrant to seize the property of such tenant. If a distress warrant shall be issued by any justice, other than the justice of the peace of the precinct in which the rented premises may be situated or in which the defendant may reside, such warrant shall be made returnable to, and the affidavit and bond upon which it is issued shall be transmitted by the justice issuing such distress warrant to some justice of the precinct in which the rented premises may be situated, or in which the defendant may reside. [Acts 1881, p. 98; G. L. vol. 9, p. 190.]

Arts. 5228–5231. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 612–614.

Art. 5232. [5484] [3245] Judgment against sureties.—When the property levied on has been replevied and if final judgment is rendered against the defendant, such judgment shall also be against him and his sureties on his replevy bond for the amount of the judgment and interest or for the value of the property replevied and interest, according to the terms of such bond.

Arts. 5233–5235. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 602, 615, 616, 619, 620.

Art. 5236. [5488] [3249] Rights of tenant.—Should the landlord, without default on the part of the tenant or lessee, fail to comply in any respect with his part of the contract, he shall be responsible to said tenant or lessee for whatever damages may be sustained thereby; and to secure such damages to such tenant or lessee, he shall have a lien on all the property of the landlord in his possession not exempt from forced sale, as well as upon all rents due to said landlord under said contract. [Acts 1876, p. 137; G. L. vol. 8, p. 973.]

Art. 5237. [5489] [3250] Tenants shall not sub-let.—A person renting said lands or tenements shall not rent or lease the same during the term of said lease to any other person without first ob-

taining the consent of the landlord, his agent or attorney. [Id.]

Art. 5238. [5490] [3251] Owners of buildings lien.—All persons leasing or renting any residence, storehouse or other building, shall have a preference lien upon all property of the tenant or of any subtenant of such tenant in such residence, storehouse or other building, for the payment of rents due and to become due provided that in order to secure the lien for rents that are more than six (6) months due, it shall be necessary for the person leasing or renting any storehouse or other building which is used for commercial purposes, to file in the office of the county clerk of the county in which such storehouse or such other building is situated, a sworn statement of the amount of rent due, itemized as to the months for which it is claimed to be due, together with the name and address of the tenant and/or subtenant, a description of the rented premises, the date on which the rental contract began and that on which it is to terminate, verified by the person claiming such lien, his agent or attorney, and such statement when so verified shall be recorded by the county clerk in a book to be provided for such purpose. No lien for rent more than six (6) months past due upon any storehouse or other building rented for commercial purposes shall be valid as against bona fide purchasers or unsecured or lien creditors of said tenant and/or subtenant, unless said statement shall be verified, filed and recorded as above provided.

Each county clerk shall keep an alphabetical index for the purpose of recording the rental liens above described. The lien for rents to become due shall not continue or be enforced for a longer period than the current contract years, it being intended by the term "current contract years" to embrace a period of twelve (12) months, reckoning from the beginning of the lease or rental contract, whether the same be in the first or any other year of such lease or rental contract. Such lien shall continue and be in force so long as the tenant shall occupy the rental premises, and for one (1) month thereafter; but this Article shall not be construed as in any manner repealing or affecting any Act exempting property from forced sale. [Acts 1889, p. 11; Acts 1919, p. 170; Acts 1933, 43rd Leg., p. 282, ch. 112.]

Art. 5239. [5491] [3252] Distress warrant.—When any rent shall become due, or the tenant about to remove from such leased or rented buildings, or remove his property therefrom, it shall be lawful for the person to whom the rent is payable, his agent, attorney or assignee, to apply to a justice of the peace of the precinct where the building is situated for a distress warrant, which shall be issued on an affidavit and bond; and the same proceedings shall be had on the issuance, trial and return of such warrant and the same rights conferred on the owners of storehouses and residences as is provided in this title in cases of other landlords. [Acts 1879, p. 128; G. L. vol. 8, p. 1428.]

TITLE 85—LANDS—ACQUISITION FOR PUBLIC USE

1. STATE USE

Art.
5240. Mode of acquisition.
5241. State railroad.

2. FEDERAL USE

5242. Authorized uses.
5243. Condemnation proceedings.
5244. Immediate occupancy.
Art.
5244a. Municipal corporations and political subdivisions or districts; conveyances to United States in aid of navigation, flood control, etc.; prior conveyances validated.
5244a—1. Highway Commission authorized to grant easements or interests in land to United States for flood control in counties near Mexican boundary.
5244a—2. Commissioners' Court authorized to convey land to United States for flood control near Mexican boundary.
5245. State land.
5246. To record title.
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5248a. Granting easement to the United States in certain lands.
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5248c. Counties authorized to convey lands to United States.
5248d. Lands conveyed to the United States for military purposes.
5248e. Cities or counties, acting separately or jointly, may acquire lands for use of United States Government; contracts; validation of agreements.
Sec.
1. Authority to acquire.
2. Appropriations; warrants.
3. Condemnation.
4. Contracts.
5. Partial unconstitutionality.
5248f. Payments or gifts in lieu of taxes by federal agencies.

1. STATE USE

Article 5240. [5247–8] Mode of acquisition.—When any land shall be required by the State for any character of public use, the Governor is authorized to purchase said land, or the right to the use thereof, for such purpose; or, failing to agree with the owner on the price therefor, such land may be condemned for such public use in the name of this State. Upon the direction of the Governor, proceedings shall be instituted against the owner of the land by the Attorney General or under his direction by the district or county attorney. Should the award of damages in the opinion of the Governor be excessive, such award shall not be paid but the State shall pay the costs of the proceedings and no further action shall be taken. [Acts 1903, 1st C. S., p. 10.]

Art. 5241. [5251] State railroad.—If any land is acquired by purchase or condemnation to obtain right of way for any railroad or tram road, to be built or extended and operated in connection with, or for the use of, any of the penitentiaries of this State, or any of the farms of this State, and used in connection with the State penitentiaries, the penitentiary board is hereby authorized and required to pay, out of any money authorized by law to be used for the support and maintenance of said penitentiaries, the damages and costs of condemnation, or the purchase price of said property. [Id.]

2. FEDERAL USE

Art. 5242. [5252] Authorized uses.—The United States Government through its proper agent, may purchase, acquire, hold, own, occupy and possess such lands within the limits of this State as it deems expedient and may seek to occupy and hold as sites on which to erect and maintain light houses, forts, military stations, magazines, arsenals, dock yards, custom houses, post offices and all other needful public buildings, and for the purpose of erecting and constructing locks and dams, for the straightening of

streams by making cutoffs, building levees, or for the erection of any other structures or improvements that may become necessary in developing or improving the waterways, rivers and harbors of Texas and the consent of the Legislature is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this law. [Acts 1905, p. 101.]

Lease of Camp Hulen to United States: Acts 1941, 47th Leg., p. 70, ch. 57, provided for the lease of Camp Hulen to the United States for renewable one year periods not exceeding 25 years, with reservation of oil, gas and mineral rights.

Lease of Camp Wolters to United States: Acts 1941, 47th Leg., p. 72, ch. 58 authorized the lease of Camp Wolters to the United States for renewable one year periods but not exceeding 25 years.

Art. 5243. [5253] Condemnation proceedings.—Whenever the land owner and the authorized Federal agent cannot agree upon the purchase price, then such agent may institute condemnation proceedings against such owner. [Id.]

Art. 5244. [5271] Immediate occupancy.—Upon the filing of the award of the commissioners with the county judge, if the United States Government shall deposit the amount of the award of the commissioners, together with all costs adjudged against the United States, they may proceed immediately to the occupancy of the said land and to the construction of their said improvements without awaiting the decision of the county court. [Id.]

Art. 5244a. Municipal corporations and political subdivisions or districts; conveyances to United States in aid of navigation, flood control, etc.; prior conveyances validated.—Section 1. When any County one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any County contiguous to any County of such described class, and when any City, Town, Independent School District, Common School District, Water Improvement District, Water Control and Improvement District, Navigation District, Road District, Levee District, Drainage District, or any other municipal corporation, political subdivision or District organized and existing under the Constitution and laws of this State, which may be located within any County of such described class, may be the owner of any property, land, or interest in land desired by the United States of America to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, any such County, City, Town, or other municipal corporation, political subdivision, or District of this State is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title or easement to any part of such property, land, or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to convey the same with or without monetary consideration therefor to the United States of America, or to any other of the political subdivisions herein enumerated which by resolution of its governing body may have heretofore agreed or may hereafter agree to acquire and convey the same, for ultimate conveyance to the United States of America and all such conveyances heretofore made are hereby ratified and confirmed. Provided that nothing in this Act is intended, nor shall this Act cede any of the rights of the Arroyo-Colorado Navigation District of Cameron and Willacy Counties, which District was formed in 1927 under the Acts of the Thirty-ninth Legislature, from dredging, widening, straightening, or otherwise improving the Arroyo-Colorado and all other lakes, bays, streams or bodies of water within said Navigation District or adjacent or appurtenant thereto, as a Navigation Project or the construction of turning basins, yacht basins, port facilities, reserving to said District all rights conferred by law in developing said Navigation Project and all improvements incident, necessary or convenient thereto.

Sec. 2. If any section, word, phrase, or clause in this Act be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby. [Acts 1937, 45th Leg., p. 145, ch. 77.]

Art. 5244a—1. Highway Commission authorized to grant easements or interests in land to United States for flood control in counties near Mexican boundary.—Whenever the State of Texas shall be the owner of any land, or interest in land, acquired for use as a right-of-way for any State highway in any County, one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or in any county contiguous to any county of such described class, which is used or proposed to be used as a part of the site for flood control works, constructed or to be constructed by any such county or by the United States of America, for the purpose of controlling the flood waters of any navigable stream of this State, the State Highway Commission is hereby authorized and empowered, upon request by the United States through its proper officers, or upon the request of the County Judge of any such County, to convey to the United States of America, or to any such County, (which has agreed to convey said lands or interest therein to the United States pursuant to an Act of Congress), without monetary consideration therefor, an easement or interest in such land which may be necessary for the construction, operation, and maintenance of such works; and in the event the fee simple title to such lands is not vested in the State and the owner of the fee has executed an easement to such lands for flood control purposes, the Highway Commission is authorized and empowered to join in and assent to such easement. The State Highway Commission is authorized at its discretion to execute the necessary deeds, conveyances, or agreements for the purposes stated, to be signed by the Chairman pursuant to the order of the Commission, and all such conveyances and agreements heretofore made are hereby ratified and confirmed. The Commission may in lieu of the monetary consideration waived herein above, make such reservations and agreements as it deems necessary for the best interests of the State and its highway system, with reference to the alteration, construction, reconstruction, operation and maintenance of such structures and facilities now used, or hereafter to be used, for highway purposes in, upon, or across the lands, or interest therein, desired for flood control purposes. [Acts 1939, 46th Leg., p. 480, § 1.]

Section 2 of the act of 1939 provided that a holding of partial invalidity should not affect the remaining portions of the Act.

Art. 5244a—2. Commissioners' Courts authorized to convey land to United States for flood control near Mexican boundary.—Section 1. The Commissioners' Court of any county one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any county contiguous to any such county, which may have entered into an agreement with the United States of America to acquire and upon request convey to the United States, with or without monetary consideration, land or interest in land desired by the United States to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, irrigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title to land or interest in land, which may be necessary for the construction,

operation, and maintenance of such works, to secure by gift, purchase or by condemnation, for ultimate conveyance to the United States, the land or interest in land described in such request from the United States, and to pay for the same out of any special flood control funds or any available county funds. Provided, that in the event of condemnation by the county the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271 inclusive, Revised Civil Statutes of Texas of 1925, and Acts amendatory thereof, and supplementary thereto; Provided, further, that at any time after the award of the Special Commissioners the county may file a declaration of taking signed by the County Judge, after proper resolution by the Commissioners' Court, declaring that the lands, or interest therein, described in the original petition are thereby taken for a public purpose and for ultimate conveyance to the United States. Said declaration shall contain and have annexed thereto—

(1) A description of the land taken sufficient for the identification thereof.

(2) A statement of the estate or interest in said land taken, and the public use to be made thereof.

(3) A plan showing the lands taken.

(4) A statement of the amount of damage awarded by the Special Commissioners or, by the jury on appeal for the taking of said land.

Sec. 2. Upon the filing of said declaration of taking with the County Clerk and the deposit of the amount of the award in money with the County Clerk, subject to the order of the defendant, and the payment of the costs, if any, awarded against the county, title in fee simple, or such less estate or interest therein specified in said declaration, shall immediately vest in the county, and said land shall be deemed to be condemned and taken for the uses specified, and may be forthwith conveyed to the United States and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said eminent domain proceeding and established by judgment therein against the county filing the said declaration; provided, further, that no appeal from such award nor service of process by publication shall have the effect of suspending the vesting of title in said county and the only issue shall be the question as to the amount of damages due to the owner from said county for the appropriation of said lands or interest therein for such public purpose. [Acts 1939, 46th Leg., p. 482.]

Art. 5245. [5273] [372] [331] State land.—When this State may be the owner of any land desired by the United States for any purpose specified in this title, the Governor may sell such land to the United States, and upon payment of the purchase money therefor into the Treasury, the Land Commissioner, upon the order of the Governor, shall issue a patent to the United States for such land in like manner as other patents are issued. [Acts 1854, p. 102; P. D. 5450; G. L. vol. 3, p. 1546.]

Art. 5246. [5274] [373] [332] To record title.—All deeds of conveyances, decrees, patents, or other instruments vesting title in lands within this State in the United States, shall be recorded in the land records of the county in which such lands, or a part thereof, may be situated, or in the county to which such county may be attached for judicial purposes and until filed for record in the proper county they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice. [Acts 1871, p. 19; P. D. 7693, G. L. vol. 6, p. 921.]

Art. 5247. [5275–6] Federal jurisdiction.—Whenever the United States shall acquire any lands under this title, and shall desire to acquire constitutional jurisdiction over such lands for any purpose authorized herein, it shall be lawful for the Governor, in the name and in behalf of the State, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose, which application shall be in writing and accompanied with the proper evidence of such acquisition, duly authenticated and recorded, containing or having annexed thereto, an accurate description by metes and bounds of the lands sought to be ceded. No such cession shall ever be made except upon the express condition that this State shall retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded, in like manner and like effect as if no such cession had taken place; and such condition shall be inserted in such instrument of cession. [Acts 1849, p. 12; G. L. vol. 3, p. 450.]

Art. 5248. [5277] [376] [335] Exempt from taxation.—The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements thereon shall be exempt from any taxation under the authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title and not otherwise. [Acts 1871, p. 19; G. L. vol. 6, p. 921.]

Art. 5248a. Granting easement to the United States in certain lands.—Sec. 1. That there is hereby granted and conveyed to the Government of the United States of America the free and uninterrupted use, liberty, and easement of constructing and maintaining the proposed Louisiana and Texas Intra-Coastal Waterway over and through disconnected portions of the stream beds of Mud Bayou and East Bay Bayou from approximately Station 1519 to approximately Station 1914 as shown on United States Engineer Department map, "Louisiana and Texas Intra-Coastal Waterway, Sabine River-Galveston Bay Section, Survey of 1926–7, Sheet No. 12, File 16-2-16," the said portions of the stream beds of Mud Bayou and East Bay Bayou covered by this easement being 300 feet wide and located in Chambers and Galveston Counties where the proposeed [proposed] Intra-Coastal Waterway will intersect the meanderings of the bayous.

Sec. 2. Provided, however, that should the United States of America fail or refuse to construct said Intra-Coastal Waterway prior to January 1, 1939, or should said Government cease to maintain or to have maintained said Intra-Coastal Waterway at any time, then this right of easement shall cease and determine, and all right of whatsoever nature shall revert and be vested in the State of Texas.

Sec. 3. Provided, further, that nothing in this Act shall be construed to affect or impair any vested rights, or the right to use and maintain any bridge or bridges now in existence on or across said Mud Bayou, or East Bay Bayou, and the right of the owner of any such bridge to use and maintain the same is hereby expressly recognized and confirmed. [Acts 1929, 41st Leg., 1st C.S., p. 175, ch. 66.]

Art. 5248b. Granting easement to United States for Louisiana and Texas intracoastal waterway.—Section 1. There is hereby granted and conveyed to the United States of America the free and uninterrupted use, liberty, and easement to construct and maintain the Louisiana and Texas Intracoastal Waterway over and through disconnected portions of bays and any tidal lands owned by the State of Texas within an area three hundred (300) feet in width extending from the Galveston-Brazoria County line to the nine-foot contour in Aransas Bay along the route of the projected Louisiana and Texas Intracoastal Waterway as shown in red on map, in four (4) sheets, prepared by the United States Engineer Office,

Galveston, Texas, entitled "Louisiana and Texas Intracoastal Waterway, Survey of 1927-1928," Index Sheets Nos. 1, 2, 3, and 4, File No. 16-4-4, and the further free and uninterrupted use, liberty, and easement to deposit dredged material during construction and maintenance of the waterway in bays and on tidal lands owned by the State of Texas within two thousand (2,000) feet of the above described area, said portions of bays and tidal lands being located in Brazoria, Matagorda, Calhoun, and Aransas Counties.

Sec. 2. Provided, however, that should the United States of America fail or refuse to construct said Intracoastal Waterway prior to January 1, 1947, or should said Government cease to maintain or to have maintained said Intracoastal Waterway at any time, then this right of easement shall cease and determine, and all right of whatsoever nature shall revert and be vested in the State of Texas.

Sec. 3. Provided, further, that nothing in this Act shall be construed to affect or impair any vested rights. [Acts 1937, 45th Leg., p. 801, ch. 393.]

Art. 5248c. Counties authorized to convey lands to the United States.—Section 1. Any county having title to a plot of ground used for public purposes which is of area in excess of the needs of the county for its public purposes may sell, at private sale, for any fair consideration, and approved by its Commissioners Court, such excess area or any part thereof to the United States of America under the provisions of the Statutes of the United States of America authorizing the acquisition of sites for public buildings. The Commissioners Court of any county is hereby invested with full power to determine whether such excess of area exists, and the extent to which such excess may be sold and conveyed for any such purpose.

Sec. 2. All conveyances to the United States of America under the provisions of this Act must be authorized by the Commissioners Court of the county by an order entered upon its minutes in which it shall describe the portion of such plot of public ground to be conveyed, the consideration to be paid and shall direct that the County Judge of such county execute in the name of the county by him as County Judge a conveyance to the United States of America and make due delivery thereof upon payment of such consideration to its proper officer, which conveyance shall be in such form and contain such covenants and warranties as may be prescribed by said Commissioners Court.

Sec. 3. All proceedings and orders heretofore had and made by the Commissioners Court of any county undertaking to sell and provide for the conveyance of a part or parts of any plot of ground such as is described in Section 1 hereof to the United States of America, pursuant to any advertisement by its officers inviting proposals to sell site for any public building be and the same are hereby validated, and legalized, as well as any deed executed and delivered or hereafter executed and delivered carrying out any such sale.

Sec. 3a. Provided, however, said Commissioners Court shall incorporate in any deed of conveyance to the United States of America a provision reserving concurrent jurisdiction over said lands for the purpose of serving all State criminal and civil process. [Acts 1939, 46th Leg., p. 158.]

Art. 5248d. Lands conveyed to the United States for military purposes.—Section 1. There is hereby granted and conveyed to the Government of the United States of America the free and uninterrupted use, liberty, and easement of, in, and to that certain area three (3) miles square or larger, or of different form, in Nueces County Navigation District, in Nueces Bay, in Nueces County, Texas, as the proper agent or agents of the United States Government may designate for the erection and maintenance of forts, military stations or camps, magazines, arsenals, dock yards, barracks, lighthouses, navy yards, naval basis, naval air bases, naval air stations, channels, approaches for battleships, or for other needful military purposes.

Sec. 2. If the United States of America shall not desire to utilize said area for said purposes or any of said purposes, and shall fail or refuse to erect said forts, military stations or camps, barracks, naval bases, naval air bases or stations, or other needful military purposes, prior to January 1, 1949, or should said Government cease to maintain or to have maintained said forts, military stations or camps, barracks, naval bases, naval air bases or stations, channels and approaches, at any time, then the right of easement, use, and liberty herein granted shall cease and determine, and all right of whatsoever nature by virtue hereof shall revert and be revested in the State of Texas.

Sec. 3. If and when the proper authority or agent of the United States of America may demand, the Governor of the State of Texas shall convey said area to the Government of the United States of America for the purposes herein set forth. The use, liberty, and easement herein authorized shall be upon the express condition that the State of Texas shall retain all of the oil and gas and mineral rights, and that the State of Texas shall convey said public domain to the United States of America under the limitation in Articles 8225, 5242, 5245, and 5247 of the Revised Civil Statutes of Texas, and such approval and authorization of the Legislature of the State of Texas is hereby given. [Acts 1939, 46th Leg., Spec.L., p. 546.]

Art. 5248e. Cities or counties, acting separately or jointly, may acquire lands for use of United States Government; contracts; validation of agreements.

Authority to acquire

Section 1. Any city or county in the State, separately or jointly, is authorized to acquire lands for the use of the United States Government, either by a lease for a term of years or in fee simple title; said lands shall lie within the limits of the county acquiring same, or if acquired by a city, within the limits of the county in which said city is located.

Appropriations; warrants

Sec. 2. For the purpose of acquiring lease-hold interest or fee simple title to lands for the use of the United States Government, authorized above, the said city or county is authorized to appropriate any available funds and also to issue time warrants in payment thereof; provided, however, that in the event time warrants are proposed to be issued, the provisions of Article 2368-a of the Revised Civil Statutes of the State of Texas shall be followed in the issuance of said time warrants.

Condemnation

Sec. 3. For the purpose of acquiring lease-hold or fee simple estate in lands for the use of the United States Government, any city or county may condemn lands for such purpose, and said condemnation may be for any period of years or in fee simple title, and in the acquisition of said interest desired, said city or county may, immediately after filing condemnation suit, as now provided by law, take possession of said lands by depositing with the County Clerk the amount of money estimated by the Commissioners' Court or City Council of the city or county involved, to be the just compensation for the interest in the land taken. Said petition for condemnation shall set forth the amount of said money so found by the Commissioners' Court or City Council, to be just, and such finding shall be made by said body prior to the filing of the petition of condemnation. In the event the Special Commissioners appointed under the condemnation statutes, after a hearing as provided by law, find the just compensation to be greater than

the amount fixed by the Commissioners' Court or City Council, then an additional amount shall be deposited with the County Clerk by the taking authority, so as to equal the amount found by the Commissioners. Condemnation may be in the name of the city or county and said city or county may at any time after the taking, which shall be from the date the deposit of the money estimated by the Commissioners' Court or City Council, or the date of deposit of the amount fixed by the Special Commissioners in the event the taking is not desired until after the Commissioners have acted thereon, transfer the interest acquired by the taking to the United States Government.

Contracts

Sec. 4. Any city or county may contract with the United States Government or its agencies obligating itself to acquire a lease-hold interest, or fee simple title in land as above authorized and any agreement heretofore executed by any city or county with the United States Government binding itself to acquire interest in land for the Government is hereby validated.

Partial unconstitutionality

Sec. 5. If any section, sub-section, sentence, clause or phrase of this Act shall be held unconstitutional for any reason, such fact shall not affect the remaining portions hereof. [Acts 1941, 47th Leg., p. 239, ch. 168.]

Art. 5248f. Payments or gifts in lieu of taxes by federal agencies.—Section 1. All moneys, funds, assets, or gifts authorized by Federal Statute to be paid to the State of Texas in lieu of taxes or as a gift by the Federal Public Housing Authority or any other Federal Agency, be and the same is hereby accepted by the State of Texas; that this acceptance applies to any such tenders, gifts, or offers, whether they be made in the past, present, or future.

Sec. 2. The Comptroller of Public Accounts is hereby directed and authorized to execute such instruments as may be proper or necessary to effect the acceptance of such moneys, gifts, or assets, and when so received by the Comptroller, he shall deposit same in the State Treasury to the credit of the General Revenue Fund.

Sec. 3. The Comptroller may direct that such moneys, when so paid by the Federal Public Housing Authority, be remitted through the county tax assessor-collector in the county where lands are located on which the payment or tender is made in lieu of taxes by such Federal Authority, and require the tax assessor-collector of such county to make remittance to the State Treasury in the same manner as he is now required to do when remitting for ad valorem taxes; but in no event shall any tax assessor-collector or any other county or state official be entitled to any fee for services in handling these funds. [Acts 1945, 49th Leg., p. 198, ch. 151.]

TITLE 86—LANDS—PUBLIC

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CHAPTER 1.—ADMINISTRATION

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1. THE COMMISSIONER

Article 5249. [4392] [2864] Election.—The Commissioner of the General Land Office, hereinafter called the Commissioner, shall be elected at each general election for a term of two years, and shall reside at Austin during his continuance in office. [Const. art. 4, secs. 2, 23.]

Art. 5250. [4394] [2866] Bond.—The Commissioner shall give bond with three or more sureties for fifty thousand dollars, payable to and to be approved by the Governor, conditioned for the faithful discharge of his official duties. All other bonds required by law of employees of the General Land Office shall be executed and approved in like manner. [Acts 1846, p. 232; G. L. vol. 2, p. 1538.]

Art. 5251. [4396–4397] General duties.—The Commissioner shall superintend, control and direct the official conduct of all subordinate officers of the General Land Office, and execute and perform all acts and things touching or respecting the public land of this State or rights of individuals in relation thereto, as may be required by law, and make and enforce suitable rules consistent therewith. He shall give information to the Governor and Legislature concerning the public lands, or the General Land Office, when required.

Art. 5252. [5389] [4215] Abstract clerk.—The Commissioner shall make it the special duty of one of his clerks to constantly correct the abstract of patented, titled and surveyed lands required to be kept in his office according to errors discovered, changes by cancellation of patents, changes of county lines, and creation of new counties, and to add all new patented surveys at the date of the patent. [Acts 1837, p. 62; P. D. 4090; G. L. vol. 1, p. 1404.]

Art. 5253. [Repealed by Acts 1945, 49th Leg., p. 61, ch. 42, § 1.]

Art. 5254. [5391–5392] May print abstracts.—The Commissioner of the General Land Office may have not more than fifteen hundred (1500) copies of said Supplementary Abstracts of patented, titled and surveyed lands printed and bound annually for distribution among those officers of the state and counties whose duties require its use, the surplus copies to be sold at a reasonable price to parties applying for them. The costs so incurred shall be paid out of the General Land Office appropriation for printing, and the Commissioner of the General Land Office shall pay all money received from such sales into the Treasury to the credit of the General Revenue Fund. [Acts 1837, p. 62; P.D. 4090; G.L. vol. 1, p. 1404; Acts 1945, 49th Leg., p. 61, ch. 42, § 1.]

Art. 5254a. Revision and compilation of abstracts of patented, titled and surveyed land.—Section 1. The Commissioner of the General Land Office shall prepare a revision and compilation of the various volumes of the abstracts of patented, titled, and surveyed land, which have heretofore been made by this Office. The various counties of the State shall be apportioned into appropriate districts not to exceed eight (8) in number for the purpose of revising and compiling said abstracts, and all of the abstracts of each particular district shall be compiled into a separate volume. The Commissioner of the General Land Office shall retain as many complete sets of said abstract volumes as are necessary for the use of his Office, and deliver the balance of said printed volumes to the Comptroller of Public Accounts, who shall distribute to those offices of the State requiring its use, one complete set of said abstract volumes, and shall deliver to the Tax Assessor-Collector of each county a copy of the volume containing the abstracts of his county. The surplus volumes may be sold by the Comptroller to persons applying for them at a price of not less than Twelve Dollars and Fifty Cents ($12.50) per volume. The Comptroller shall pay all moneys so received into the General Revenue Fund of the State.

Sec 2. The sum of Fifteen Thousand Dollars ($15,000), or as much thereof as is necessary, be and the same is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, to be used by the Commissioner of the General Land Office to defray the expense of printing and binding said abstract volumes. The Commissioner may cause to be printed not more than two thousand (2,000) volumes. All such printing and binding is to be done within the State of Texas.

Sec. 3. Nothing contained herein shall affect the laws pertaining to the preparation, printing, and distribution of supplementary abstract volumes. [Acts 1941, 47th Leg., p. 465, ch. 291.]

Section 3 of the Act of 1945 authorized the Commissioner of the General Land Office to distribute to state officers a set of Abstract Volumes of patented, titled and surveyed lands provided for by Acts of 1941, 47th Leg., ch. 291 and to sell the remaining surplus volumes. Section 4 repealed all conflicting laws.

Art. 5255. [4398–4399] Chief clerk.—The Commissioner shall appoint a chief clerk who shall give bond in the sum of twenty thousand dollars. He shall be authorized to perform all of the duties required of the Commissioner in case of his sickness, absence, death or resignation. [Acts 1846, p. 232; G. L. vol. 2, p. 1538.]

Art. 5256. [4400–4401] Spanish translator.—The Commissioner shall appoint a translator who shall thoroughly understand Spanish and English languages, who shall give bond as required of the chief clerk, and take the official oath. He shall translate into English and record in a book all laws and public contracts relating to titles of lands, and all original titles or papers relating thereto on file in the General Land Office, which are written in the Spanish language. [Id.]

Art. 5257. [4402–3–4–5] Receiving clerk.—With the consent of the Governor, the Commissioner shall appoint a suitable person as receiving clerk for the Land Office. Such person shall give bond in the sum of twenty-five thousand dollars. The receiving clerk shall:

1. Receive all funds required by law to be paid to the Commissioner and give the person depositing money a certificate of deposit stating the amount, name of party, and character of claim upon which deposited; and if any funds are received of a general character in advance of fees and dues, it shall be so stated; and said clerk shall be responsible therefor to the state or individual.

2. Keep books in which he shall enter each deposit separately, giving name of party, number of claim and situation of land sought to be perfected, and shall keep all letters and other vouchers filed in neat and regular order and number corresponding with his books. He shall report to the Treasurer on the last day of each month all funds in his hands due the State, paying the same in kind and taking the receipt in his own name. He shall keep separate columns in his books, showing the amount of specie or the amount of currency or other funds paid in. Upon his removal or resignation, he shall turn over his books, accounts and money in hand to his successor, when properly qualified, or to the Commissioner, taking a receipt for the same.

3. Furnish the Governor, through the Commissioner, on or before the meeting of the Legislature, a correct report of the condition of his office, the money received, giving character of claim, the money paid out and character of payment. [Acts 1866, p. 161; G. L. vol. 5, p. 1079.]

Art. 5258. [4406] [2879] Examination of books.—The Commissioner shall examine the books and accounts of the receiving clerk and note that they are properly kept, and if any defalcation is found he shall at once report the same to the Governor, who shall suspend said clerk from office until an examination is made, and if found guilty he shall be removed and suit instituted for recovery upon his bond. [Id.]

Art. 5259. [4407] [2880] Draftsmen.—The Commissioner shall appoint a chief draftsman and such number of compiling or assistant draftsmen as authorized by law, who shall make out and complete maps of all surveys made in the several counties from the maps furnished by county surveyors; and they shall plot additional surveys upon the proper county maps as forwarded to the Land Office. They shall perform all drafting and other duties required of them by the Commissioner for the benefit of the State or individuals. [Acts 1841, p. 150; G. L. vol. 2, p. 614.]

Art. 5260. [4408–9–10] Conditions of employment.—The Commissioner shall appoint such number of clerks as authorized by legislative appropriation or other law of this State. All clerks and employees of the Land Office shall hold their offices and positions at the pleasure of the Commissioner, and may be removed by him at any time for satisfactory cause.

Art. 5260a. Additional clerks.—That the Commissioner of the General Land Office of the State of Texas be, and is hereby authorized to employ two additional clerks to be designated as Research and Sales Clerks, one of whom shall be a licensed lawyer and the other experienced in Land Office work, at a salary of Twenty-four Hundred ($2400.00) Dollars each per year, to assist him in ascertaining vacant areas of land belonging to the Public Free School Fund of Texas and disposing of said areas, and to compile a record and assemble information for the State Board of Education. [Acts 1935, 44th Leg., 1st C.S., p. 1652, ch. 422, § 1.]

Section 2 of this Act, makes an appropriation for salaries of the above clerks for the biennium ending Aug. 31, 1937.

2. GENERAL LAND OFFICE

Art. 5261. [5280] [4042] Office established.—There shall be one general land office at Austin, where all land titles emanating from the State shall be registered when not prohibited by the Constitution. The term "land office," as used in this title shall mean the General Land Office of this State. [Const. art. 14, sec. 1; Acts 1846, p. 232; G. L. vol. 2, p. 1538.]

Art. 5262. [5281] [4043] Custody of records.—All books, accounts, records, papers, maps and original documents appertaining to land titles and which were termed archives by law, shall be the books and papers of said office, under the control and custody of the Commissioner. He shall keep in the Land Office a copy of each permit, lease or other paper is-

sued by authority of law. [Acts 1837, p. 63; G. L. vol. 1, p. 1405.]

Art. 5263. [5283] Filing papers.—The Commissioner shall adopt the most convenient method for filing papers and preserving the records of said office. A list of all papers in each file shall be retained in the file. Each employee who files a paper shall place his own name thereon. [Acts 1909, p. 429.]

Art. 5264. [5284–5285] Public access to papers.—One desiring to examine any paper, record or file shall first obtain the written consent of the Commissioner or the chief clerk, and an order for the detail of a clerk to be present and superintend such examination. After the examination, the clerk shall carefully examine the papers of said file and see that they are all in place. [Acts 1873, p. 180; G. L. vol. 7, p. 632.]

Art. 5265. [5290] [4053] Removal of papers.—No transfer or deed that may be a link in any chain of title to any certificate on file in the Land Office shall be withdrawn by any one. The Commissioner shall deliver to the interested party on demand certified copies thereof which shall have the same force and effect as the originals. If the genuineness of any such original paper is questioned in any suit, the Commissioner shall deliver the same to the proper party on the order of the court where such suit is pending; and the Commissioner shall retain a duly certified copy thereof, which shall have the same force and effect as the original in the event of its loss. [Acts 1879, p. 40; G. L. vol. 8, p. 1340.]

Art. 5266. [5291] [4061] Receipts for papers.—No paper, certificate, copy or document, other than a patent, shall be delivered to the owner until he has receipted for the same. The receipt shall state his residence and post office, and, if delivered to an agent or attorney, it shall also state his residence and post office. The Commissioner shall file such receipt with the other papers. When the Commissioner has good reason to doubt the genuineness of any transfer, power of attorney, or other paper on file in his office, he shall not permit any one to obtain an official copy thereof until such doubts have been removed. [Id.]

Art. 5267. [5292] [4062] Liability of Commissioner.—The Commissioner and the sureties on his official bond shall be responsible to any party injured by removal, withdrawal or alteration of any record or file in said office, unless said Commissioner can show that such act has taken place by permission of the party owning said file or record. [Id.]

CHAPTER 2.—SURVEYORS AND SURVEYS

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1. LICENSED LAND SURVEYORS

Article 5268. Board of Examiners.—The Board of Examiners of State Land Surveyors shall be composed of the Commissioner of the General Land office, who shall be Chairman, and two reputable Licensed State Land Surveyors of not less than fifteen year practical and active experience in the field as land surveyor, who shall be appointed by the Governor upon the recommendation of the Commissioner, and with the advice and consent of two-thirds (2/3) of the Senate. At the time of such appointment the Governor shall designate one (1) member to serve a term of two (2) years and another a term of four (4) years from and after the date of appointment and thereafter one (1) member shall be appointed biennially for a term of four (4) years. Nothing in this Act shall affect or limit the terms of office of the present members of such board and they shall continue to hold such office until the expiration of the terms for which they have been appointed, and then the Governor shall make the two (2) and four (4) year appointments as provided herein. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

Art. 5269. Organization of Board; quorum; meetings.—Within thirty (30) days after the effective date of this Act, the Board shall meet in the General Land Office and elect one (1) of their number Secretary-Treasurer, who shall keep an accurate record of the proceedings of the Board, and a correct list of all persons licensed by the Board, and in addition shall keep an account of all receipts and expenditures of the Board. Such records shall be deposited in the General Land Office and become records of that office. Should the Board consider it advisable it may authorize the Commissioner to designate some employee of his office as assistant Sec-

retary-Treasurer, who shall attend to all clerical work of the Board. The presence of two (2) members of the Board shall constitute a quorum for the transaction of any business, and the concurrence of two (2) members shall be necessary for the adoption or rejection of any question upon which they shall be called to pass.

The Commissioner, as Chairman of the Board, may call a meeting thereof at any time the accumulated business for the attention of the Board may warrant. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

Art. 5270. Duties of Board.—All applications for licenses shall be made to the Board in writing. The Board shall prepare written questions upon the theory of surveying, practical surveying, theory and use of surveyor's instruments, calculation of areas, closing field notes, the law of land boundaries, the history and functions of the General Land Office, and such other matters pertaining to surveying as the Board may deem important. Upon receipt of a written application for license the Board shall prepare written questions as herein provided and shall forward the same, together with the application, to the County School Superintendent of the county where the applicant resides, with suitable words on the enclosure indicating the contents, and the name and address of the applicant. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

Art. 5271. Examination.—Upon receipt of the questions by the County School Superintendent he shall hold the same unopened and shall notify the applicant of the time and place of the examination. The applicant shall appear at the time and place set, and the envelope containing the questions shall be opened in his presence only, and the examination shall be conducted in the same manner and under the same restrictions as required for teachers' certificates. Before taking the examination each applicant shall deposit with the County Superintendent the sum of Ten ($10.00) Dollars, who shall retain Two ($2.00) Dollars of said sum, said Two ($2.00) Dollars shall be disposed of as are the fees paid by applicants for teachers' certificates. When the examination has been completed the examining authority shall return both questions and answers to the Chairman of the Board of Examiners of Land Surveyors, together with Eight ($8.00) Dollars of the Ten ($10.00) Dollars deposited by applicant.

When the questions prepared by the Board and the answers thereto shall have been returned to the Chairman of the Board as herein provided, he shall either convene the Board for the purpose of passing upon such answers and the issuance or refusal of the license, or he may transmit the questions and answers to the other members of the Board for their consideration and action, and shall issue a license to the applicant if he shall have passed a successful examination; provided, however, such license shall not issue until applicant has taken the oath of office and filed the bond as hereinafter required. Such questions and answers shall be deposited in the General Land Office and there safely kept for at least two years.

If a license be refused an applicant he may take any subsequent examination under the same conditions as in the first instance, and by the payment of the same fee, provided that such examination shall not be given before the expiration of at least six months after the preceding examination. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

Art. 5272. Seal of licensee.—Each licensed state land surveyor shall procure a seal of office. Around the margin shall be the words "Licensed State Land Surveyor," which shall be his official title, and between the points of the star in said seal shall be the word "Texas." He shall attest with said seal all his official acts authorized under the provisions of the law. No act, paper, or map of a licensed state land surveyor shall be filed in the county records or the General Land Office unless certified to under the seal of such surveyor. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

Art. 5273. License: term of; grounds of revocation; resignation.—A license issued to an applicant under these provisions shall be valid for life unless the licensee resigns as herein provided or the license is revoked by the Board for any of the following causes: That the holder has been found by a court of competent jurisdiction guilty of a felony or adjudged to have committed a theft, or fraud, or to be insane, or shall be found by the Board to be incompetent or to have unlawfully given information concerning any undisclosed public land or to have been directly or indirectly interested in the purchase or in the acquisition of title to any public land or to have been found by the Board guilty of any act or default discreditable to the surveying profession.

A licensed state land surveyor may resign as such surveyor at any time he may so desire by filing his resignation in writing with the Commissioner of the General Land Office. On receipt of such resignation the Commissioner shall cause to be made an entry on his records showing such act on the part of the licensee, and thereupon the duties of such licensee as a licensed state land surveyor shall cease, but such resignation shall not operate to relieve the principal and sureties of said surveyor's official bond of any liability that may have accrued prior to the effectiveness of such resignation. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

Art. 5274. Revocation of license.—Before any license issued under these provisions shall be revoked, the holder thereof shall have been notified by registered mail notice from the Board addressed to him at his last known address, at least thirty (30) days before the day fixed for the hearing, stating the charges and the time and place for such hearing. The evidence adduced on such hearing shall be reduced to writing. If the Board finds the charges sustained by the evidence, the license of such surveyor shall be revoked. The surveyor whose license has been revoked may within sixty (60) days from the date the charges are sustained by the Board, appeal from such revocation to the District Court of Travis County. Such case may be carried to the appellate courts, as in other cases, by either the Board or such surveyor. Upon such appeal the court shall admit in evidence the written record of the Board together with such other evidence as may be offered on either side in accordance with the rules of evidence in such courts. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

Art. 5275. Oath and bond.—Before a surveyor's license issues, and before one who has successfully passed the examination as provided in this Act [1] shall be authorized to perform the duties of a Licensed State Land Surveyor, he shall take the official oath and shall make a good and sufficient bond in the sum of One Thousand ($1,000.00) Dollars, payable to the Governor, conditioned that he will faithfully, impartially and honestly perform all the duties of a Licensed State Land Surveyor to the best of his skill and ability in all matters wherein he may be employed. No surveyor's license shall be issued hereunder to any person residing outside the State of Texas.

Such bond may be executed by two (2) or more solvent personal sureties, or by some solvent surety company authorized to transact business in this State. Should the bond be signed by personal sureties each shall take and subscribe to an oath that he is worth over and above all debts and exemptions at least

double the penalty of the Bond. Such personal bond shall also be approved by the Commissioners' Court of the County where the applicant resides. After the oath and bond have been executed as herein provided they shall be recorded in the office of the County Clerk of the county in which the applicant resides, and after being so recorded shall be filed in the General Land Office, accompanied with One ($1.00) Dollar filing fee, and thereupon a license shall be issued to applicant and he shall be authorized to enter upon the discharge of the duties of a licensed State land surveyor. If for any reason the liability on the bond herein provided for shall be terminated, said licensee shall not be authorized to perform the duties of a licensed State land surveyor until a new bond is made as in the first instance. No surety on such bond, however, shall be relieved of liability thereon without first giving the Governor and the Commissioner of the General Land Office thirty (30) days notice in writing. The termination of said bond as herein provided, or the revocation of such surveyor's license, shall not relieve the sureties thereon from any liability that may have theretofore accrued thereon. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

[1] Evidently means the amendatory Act, arts. 5268–5282.

Art. 5276. Authority of licensee.—Land surveyors licensed under this Act [1] are hereby authorized to perform the duties that may be performed by the county surveyors, and shall be subject to the direction of the Commissioner of the General Land Office in matters of land surveying in such cases as may come under the supervision of such authorities. The jurisdiction of such licensees shall be co-extensive with the limits of the State. They may hold the office of county surveyor, and if so elected shall qualify as provided by law for county surveyors, but such election for any particular county shall not limit the jurisdiction of said surveyor to such county, nor shall the election of a county surveyor for any particular county prevent any licensed State land surveyor from performing the duties of a surveyor in such county. All official field notes made by one licensed under this law shall be signed by such surveyor, followed by the designation: "Licensed State Land Surveyor." [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

[1] Articles 5268–5282.

Art. 5277. Field notes to be recorded.—The field notes and plats of every survey of public land made by any surveyor licensed under this Act [1] shall be recorded in the county surveyor's records of the county in which the land may be situated. The field notes and plats of public land made by any licensed state land surveyor affecting the lines, boundaries, and areas of such land shall be forwarded to the General Land Office after the same have been recorded under the provisions of this Act. All field notes made by licensed state land surveyors in any county in this state shall have the same force and effect and be admissible in evidence the same as field notes made by a county surveyor. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

[1] Articles 5268–5282.

Art. 5278. Undisclosed land.—If a licensed State land surveyor shall discover any undisclosed tract of public land he shall not make known that fact to anyone except to such person as may have it enclosed, but he shall forward to the Commissioner of the General Land Office a report of the existence of such tract and the acreage therein, and its probable value. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

Art. 5279. Compensation.—A licensed State land surveyor shall receive as compensation for his services such sums as may be mutually agreed upon between the surveyor and the interested party, including other expenses incident to the survey, whether the same be a private person, a county, a court or the State. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

Art. 5280. County Surveyor alone authorized to record field notes and documents in County Surveyor's records; exceptions; fees; access to records; examination fees.—In cases where a county has a County Surveyor, such Surveyor alone shall be authorized to file and record field notes and plats of all surveys made in his county, and other documents subject by law to being recorded in the County Surveyor's records, and issue Certificates of Fact and certify the correctness of copies of any document or record or entry shown by the records of a County Surveyor, provided, however, that when a County Surveyor or his authorized deputy or deputies are absent from his office, the County Clerk of the county shall have free access to the County Surveyor's Office and public records, and shall, in such event, be authorized to record field notes, plats, and other documents subject to being recorded in the County Surveyor's records, and issue Certificates of Fact and certify the correctness of copies of any document or record or entry shown on the official records of the County Surveyor; and provided further that in cases where a county has no County Surveyor, the County Clerk of the county shall be the legal custodian of the Surveyor's records, and is authorized to make all such certificates and certify such copies as a legally authorized County Surveyor may make.

The fees for recording documents in the Surveyor's records and issuing certificates and making certified copies shall be such as are now provided by law. The County Surveyor shall be entitled to fees for all documents recorded by him or his deputies, and for all certificates and certified copies issued by him or his deputies, and the County Clerk shall be entitled to all fees for documents recorded by him and for all certificates and certified copies issued by him under the provisions of this law.

All licensed State Land Surveyors shall, for the purpose of information and examination, have access to the records of County Surveyors, and no examination fees shall be charged in cases where an investigation of the records is being made with a view to making surveys of public lands under the laws regulating the sale or lease of the same or of identifying and establishing the boundaries thereof. All examinations shall be made under such regulations as may be provided by the County Surveyor of the Commissioners Court for the safe-keeping and preservation of the records. Examination fees for other purposes shall not exceed One Dollar ($1) an hour, and fees for copies shall not exceed Thirty-five (35) Cents for one hundred words. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1; Acts 1943, 48th Leg., p. 213, c. 133, § 1.]

Art. 5281. Disposition of fees.—The sums received by the Board or so much thereof as may be necessary may be used to defray the actual expense incurred by the members of said Board in the execution of this law, and other expense necessary for the proper administration hereof, and the remainder shall be deposited annually in the State Treasury to the credit of the General Revenue Fund. No appropriation shall ever be made to defray the expenses of said Board or to carry into effect the provisions of this law. [Acts 2nd C.S.1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1.]

Art. 5282. Examinations and licenses.—No person shall be authorized to perform the duties of a licensed State Land Surveyor without first standing and passing the examination herein provided for, and obtaining a license as provided by this Act.[1]

Provided, however, that no Surveyor holding a license as a "Licensed State Land Surveyor" issued under former law shall be required to stand and pass the examination provided for by this Act, and the authority of such Surveyor to act as a "Licensed State Land Surveyor" shall not be questioned by reason of his failure to stand and pass said examination. [Acts 2nd C.S., 1919, p. 173; Acts 1941, 47th Leg., p. 806, ch. 501, § 1; Acts 1943, 48th Leg., p. 213, ch. 133, § 2.]

1 Articles 5268–5282.

2. COUNTY SURVEYORS

Art. 5283. [5300–5325–5326] Election.—A county surveyor shall be elected in each county at each general election for a term of two years. He shall reside in the county and keep his office at the courthouse or some suitable building at the county seat, the rent therefor to be paid by the commissioners' court on satisfactory showing that the rent is reasonable, the office necessary and that there is no available office at the courthouse. [Const., art. 6, sec. 44; Acts 1858, p. 66; Acts 1876, p. 196; G. L. vol. 4, p. 938; vol. 8, p. 1032.]

Art. 5284. [5301] [4069] Bond.—The county surveyor shall first give bond in such sum as the commissioners' court may fix, not less than five hundred nor more than ten thousand dollars, and conditioned that he will faithfully perform the duties of his office. [Acts 1837, p. 63; P. D. 1081, 4522; Acts 1897, p. 26; G. L. vol. 1, p. 1405.]

Art. 5285. [5308] [4076] Deputy.—Each County Surveyor may appoint a Deputy Surveyor as he may deem necessary, and shall administer his official oath and take his bond in the sum of not less than Five Hundred Dollars ($500) nor more than Ten Thousand Dollars ($10,000), conditioned for the faithful performance of the duties of his office. The Deputy may do all acts authorized or required by law to be done by the County Surveyor. [Acts 1837, p. 63; P.D. 4522; G.L. vol. 1, p. 1405; Acts 1937, 45th Leg., p. 380, ch. 187, § 1.]

Art. 5286. [5309] [4077] Chain carriers.—Each county surveyor may employ persons sixteen years of age or over as chain carriers or markers, and shall administer to each an oath to faithfully perform his duties as such in accordance with the instructions given him. [Acts 1837, p. 63; P. D. 4522; G. L. vol. 1, p. 1405.]

Art. 5287. [5303–5307] Duties.—Each county surveyor shall receive and examine all field notes of surveys made in said county upon which patents are to be obtained, and shall certify to the same according to law and record such field notes in a book to be kept by him for that purpose; and he shall perform such other duties as may be required of him by law. The commissioners' court shall furnish him all necessary books of record. [Id.]

Art. 5288. [5304] [4072] Inclosed school lands.—He shall report to the commissioners' court on the first Monday in June each year the number of sections of public school lands in his county inclosed during the past year, and the names of the persons controlling same, and the number of sections controlled by each person. [Acts 1879, p. 101; G. L. vol. 9, p. 1401.]

Art. 5289. [5343] [4153] Failure to survey.—If any county surveyor fails, neglects or refuses, when the amount of lawful surveying fees of any location of land may be tendered to him by any person legally entitled to the survey, to make or cause such survey to be made within one month after such tender, he and his sureties shall be liable on his official bond to such injured parties in the amount of damages or injury said parties may sustain by reason of such neglect, refusal or failure. [Acts 1837, p. 63; G. L. vol. 1, p. 1405.]

Art. 5290. [5305] [4073] To record field notes.—Each county surveyor shall record in a well bound book all the surveys in his county, with the plats thereof that he may make, whether private or official. Such record shall be open to the inspection of the public. For such service the surveyor may charge in addition to the fees allowed by law for field work, twenty cents per hundred words for such record. [Acts 1881, p. 71; G. L. vol. 9, p. 163.]

Art. 5291. [5306–5312] Record of surveys.—Each county surveyor shall quarterly plat upon the map of his county all surveys made during the preceding quarter and transmit sketches and field notes of same to the Commissioner. Such map shall be free to public inspection. [Acts 1858, p. 66; P. D. 1087; G. L. vol. 4, p. 938.]

Acts 1935, 44th Leg., p. 194, ch. 78, passed as a general law but in fact relating to surveys in one county related to the acceptance and filing of corrected field notes of surveys in Swisher County.

Art. 5292. [5328] [4098] Right to examine books.—Any person interested, for himself, or as agent or attorney of another, shall at all times have the right to examine the books, papers, plats, maps or other archives belonging to the office of any surveyor, on the payment of the fee fixed by law. [Id.]

Art. 5293. [5313] [4081] Change of county boundary.—When any county boundaries are changed the surveyor of the county from which territory may be so taken shall furnish the surveyor of the county including such territory with a complete copy of all the field notes of surveys made in the same. [Acts 1840, p. 191; G. L. vol. 2, p. 365.]

Art. 5294. [5324] [4092] Lost records.—Whenever the maps, field notes of surveys, or other records, or any part thereof of the surveyor's office shall from any cause be lost or destroyed, such surveyor shall obtain from the Commissioner a transcript of such lost records certified to as required by law, and which certified copy shall have the same force and effect as the original. Such surveyor shall receive five cents and the State ten cents per hundred words for such transcript to be paid by the commissioners court. [Acts 1885, p. 92; Amend. Sen. Jour. p. 482, 1895; G. L. vol. 9, p. 712.]

Art. 5295. [5330–1] Standards of measure.—Each surveyor shall, in some convenient place at the county seat, establish a true meridian by a substantial monument, to be erected at the expense of the county, and shall adjust to the said meridian all compasses or other such instruments before being used; and shall keep in his office a standard chain of the true measurement of ten varas, to which all of his chains shall be adjusted before being used. All surveyors shall be responsible to parties interested for any cost that may accrue in rectifying any errors that may occur in their work by reason of neglect or failure to comply with the requirements of this article. [Acts 1873, p. 173; P. D. 7099; G. L. vol. 7, p. 625.]

Art. 5296. [5332] [4103] Removal: delivery of records.—Upon removal from office, or at the expiration of his term of office, each county surveyor shall deliver to his successor all records, books, papers, maps and other things appertaining to his office.

Art. 5297. [5333] [4104] Custody of records in absence.—Whenever an organized county from any cause has not a qualified county surveyor, the county clerk of such county shall take charge of all records, maps and papers belonging to the county surveyor's office and safely keep the same in his office. [Acts 1866, p. 31; G. L. vol. 5, p. 949.]

Art. 5298. [5334] [4105] Bound records.—Whenever the commissioners court deems it necessary it shall order the surveyor's record to be transcribed in good and substantial books, by the surveyor or special deputies sworn to make true copies of the same,

for which services they shall be allowed not more than fifteen cents per hundred words, to be paid out of the county treasury. [Acts S.S. 1871, p. 18; G.L. vol. 7, p. 20.]

3. SURVEYS AND FIELD NOTES

Art. 5299. [5335] [4142] Authorized surveys.—All surveys of public lands shall be made by authority of law, and by a surveyor duly appointed, elected or licensed, and qualified.

Art. 5300. [5336] [4144] Field notes; requisites.—The field notes of every such survey shall state:

1. The county in which the land is situated.
2. The authority under or by virtue of which it is made, giving a true description of the same.
3. The land by proper field notes with the necessary calls and connections for identification (observing the Spanish measurement by varas).
4. A diagram of the survey.
5. The variation at which the running was made.
6. The names of the chain carriers.
7. The date thereof, and the signature of the surveyor.
8. The surveyor shall officially certify to the correctness of the survey, that it was made according to law; that such survey was actually made in the field, and that the field notes have been duly recorded, giving book and page.
9. When the survey has been made by a deputy, the county surveyor shall certify officially that he has examined the field notes, has found them correct, and that they are duly recorded giving book and page of record.

Art. 5300a. Texas Co-ordinate System.

Zones; descriptions of lands

Section 1. The system of plane rectangular co-ordinates which has been established by the United States Coast and Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State of Texas is hereby adopted and will be known and designated as the "Texas Co-ordinate System."

For the purpose of the use of this System the State is divided into five zones: the "North Zone," the "North Central Zone," the "Central Zone," the "South Central Zone," and the "South Zone."

The area now included in the following Counties shall constitute the North Zone:

Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

The area now included in the following Counties shall constitute the North Central Zone:

Andrews, Archer, Bailey, Baylor, Borden, Bowie, Callahan, Camp, Cass, Clay, Cochran, Collin, Cooke, Cottle, Crosby, Dallas, Dawson, Delta, Denton, Dickens, Eastland, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Grayson, Gregg, Hale, Hardeman, Harrison, Haskell, Henderson, Hill, Hockley, Hood, Hopkins, Howard, Hunt, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lubbock, Lynn, Marion, Martin, Mitchell, Montague, Morris, Motley, Navarro, Nolan, Palo Pinto, Panola, Parker, Rains, Red River, Rockwall, Rusk, Scurry, Shackelford, Smith, Somervell, Stephens, Stonewall, Tarrant, Taylor, Terry, Throckmorton, Titus, Upshur, Van Zandt, Wichita, Wilbarger, Wise, Wood, Yoakum, and Young.

The area now included in the following Counties shall constitute the Central Zone:

Anderson, Angelina, Bastrop, Bell, Blanco, Bosque, Brazos, Brown, Burleson, Burnet, Cherokee, Coke, Coleman, Comanche, Concho, Coryell, Crane, Crockett, Culberson, Ector, El Paso, Falls, Freestone, Gillespie, Glasscock, Grimes, Hamilton, Hardin, Houston, Hudspeth, Irion, Jasper, Jeff Davis, Kimble, Lampasas, Lee, Leon, Liberty, Limestone, Llano, Loving, McLennan, McCulloch, Madison, Mason, Menard, Midland, Milam, Mills, Montgomery, Nacogdoches, Newton, Orange, Pecos, Polk, Reagan, Reeves, Robertson, Runnels, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Shelby, Sterling, Sutton, Tom Green, Travis, Trinity, Tyler, Upton, Walker, Ward, Washington, Williamson, and Winkler.

The area now included in the following Counties shall constitute the South Central Zone:

Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Brazoria, Brewster, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Dimmit, Edwards, Fayette, Fort Bend, Frio, Galveston, Goliad, Gonzales, Guadalupe, Harris, Hays, Jackson, Jefferson, Karnes, Kendall, Kerr, Kinney, LaSalle, Lavaca, Live Oak, McMullen, Matagorda, Maverick, Medina, Presidio, Real, Refugio, Terrell, Uvalde, Val Verde, Victoria, Waller, Wharton, Wilson, and Zavala.

The area now included in the following Counties shall constitute the South Zone:

Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio, Starr, Webb, Willacy, and Zapata.

Names to be used in land description

Sec. 2. (a) As established for use in the North Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, North Zone."

(b) As established for use in the North Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, North Central Zone."

(c) As established for use in the Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, Central Zone."

(d) As established for use in the South Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, South Central Zone."

(e) As established for use in the South Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, South Zone."

Terms of "x co-ordinate" and "y co-ordinate" set up

Sec. 3. The plane rectangular co-ordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone, of this System, shall consist of two distances, expressed in feet and decimals of a foot. One of these distances, to be known as the "x co-ordinate," shall give the position in an east-and-west direction; the other, to be known as the "y co-ordinate" shall give the position in a north-and-south direction. These co-ordinates shall be made to depend upon and conform to the plane rectangular co-ordinates of the triangulation and traverse stations of the United States Coast and Geodetic Survey within the State of Texas, as those co-ordinates have been determined by the said Survey.

Lands in more than one zone

Sec. 4. When any tract of land to be defined by a single description extends from one into another of the above co-ordinate zones, the positions of all points on its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description.

Definitions

Sec. 5. For purposes of more precisely defining the Texas Co-ordinate System, the following definition by the United States Coast and Geodetic Survey is adopted:

The Texas Co-ordinate System, North Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 34° 39′ and 36° 11′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 101° 30′ west longitude and the parallel 34° 00′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas).

The Texas Co-ordinate System, North Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 32° 08′ and 33° 58′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 97° 30′ west longitude and the parallel 31° 40′ north latitude. This origin is given the co-ordinates: x=2,000,000 feet (720,000 varas) and y=0 feet (0 varas).

The Texas Co-ordinate System, Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 30° 07′ and 31° 53′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 100° 20′ west longitude and the parallel 29° 40′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas).

The Texas Co-ordinate System, South Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 28° 23′ and 30° 17′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian of 99° 00′ west longitude and the parallel 27° 50′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas).

The Texas Co-ordinate System, South Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 26° 10′ and 27° 50′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 98° 30′ west longitude and the parallel 25° 40′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas).

The unit of measurement in this Act shall have the following values, based on the International Meter established by the National Bureau of Standards:

1 meter = 39.37 inches exactly
1 foot = 12.0 inches exactly
1 vara = 33⅓ inches exactly

The position of the Texas Co-ordinate System shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States Coast and Geodetic Survey for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927, and whose co-ordinates have been computed on the system herein defined. Any such station may be used for establishing a survey connection with the Texas Co-ordinate System.

Use of term

Sec. 6. The use of the term "Texas Co-ordinate System" on any map, report or survey, or other document, shall be limited to co-ordinates based on the Texas Co-ordinate System as defined in this Act.

Purpose of act

Sec. 7. The sole and only purpose of this Act is to recognize the above system for use in the State of Texas as definitely ascertaining positions on the surface of the earth. Nothing in this Act shall in any manner whatsoever require the use of such system. The provisions of this Section shall control over all other portions of this Act, anything in such other portions to the contrary notwithstanding; and nothing in this Act shall be construed to set aside or disturb any corner or survey now already established. [Acts 1943, 48th Leg., p. 611, ch. 354.]

Art. 5301. [5337] [4146] Loss of field notes.—When the original field notes of any authorized survey are lost or destroyed, the owner thereof or his agent, on making affidavit of such fact and filing same in the office of the surveyor where the survey was made, may obtain from him a certified copy of the record thereof. Such copy shall be as valid and efficient in law as the original and shall secure to the party all the rights before the Commissioner that the original would have done. [Acts 1841, p. 293; G. L. vol. 2, p. 1599.]

Art. 5302. [5338–9] Surveys on navigable streams.—All lands surveyed for individuals, lying on navigable water courses, shall front one-half of the square on the water course and the line running at right angles with the general course of the stream, if circumstances of the lines previously surveyed under the laws will permit. All streams so far as they retain an average width of thirty feet from the mouth up shall be considered navigable streams within the meaning hereof, and they shall not be crossed by the lines of any survey. All surveys not made upon navigable water courses shall be in a square, so far as lines previously surveyed will permit. [Acts 1837, p. 63; P. D. 4529, G.L. vol. 1, p. 1405.]

Art. 5303. [5340] [4150] Division line: notice.—Before running a division line between two settlers or occupants claiming lands, the surveyor shall give written notice to the interested parties. Any survey made contrary to the true intent and meaning of this article shall be unlawful. [Id.]

Art. 5304. [5341] [4151] Disputed line: trial.—When persons cannot agree to a division line of any land which has never been surveyed agreeably to law, either party may apply to the nearest justice of the peace, and make oath that he has tried and has not been able to settle such dispute, naming the parties thereto; and said justice shall issue a warrant to any lawful officer to summon the parties defendant, together with six disinterested jurors, to meet upon the premises in dispute, together with such witnesses as either party may summon, to give evidence on a certain day, naming the time and place. The justice shall meet the parties, examine all the testimony before the jury, who shall on oath hear and determine the case in dispute and who shall pay the costs. Each juror shall receive two dollars per day for such services, and the other officers such fees as allowed by law for similar services. If the land in dispute is on a county line, a justice of either county in which part of the land lies may act in such case. Either party may appeal to the county court within ten days upon giving bond and security for the costs. [Id.]

Art. 5305. [5344–5–6] Incorrect field notes.—The Commissioner shall cause a plain statement of the errors in any field notes in the land office, with a sketch of the map, to be forwarded by mail, or by the party interested, to the surveyor who made the survey, with a requisition to correct and return the same; and said surveyor shall do so at once without further charge. If the conflict exists only on the map or in the field notes, the surveyor need only officially certify to the facts, and furnish a true sketch of the survey with its connections. [Acts S. S. 1871, p. 11; P. D. 7091; G. L. vol. 7, p. 13.]

Art. 5305a. Validating land grants in cities and towns; General Land Office records conclusive as to non-existence of vacancies.—Sec. 1. The surveys of all lands heretofore or hereafter made, ei-

ther actually on the ground or by protraction, and returned to the General Land Office and upon which patents have been issued or sale and award been made, and all valid grants by former governments, and which said surveys are located in whole or in part within the corporate limits of any city, town or village are hereby declared valid surveys and the titles to the land included within the lines of said surveys as returned to the General Land Office are hereby vested in the parties for which the same were made, their heirs, successors and assigns; provided, however, in all cases of law or equity involving boundary, title, or possession of land where the location of any such surveys or the extent or boundaries thereof shall be in issue, the corners, lines, and boundaries thereof which at the date of such incorporation were generally recognized and which have for ten years prior to filing of said suit been generally recognized and acquiesced in, shall be conclusively presumed to be the original corners, lines and boundaries of said surveys.

Sec. 2. In all cases involving boundary, title, or possession of surveys, partly or wholly included in any such incorporated city, town or village in Texas, where there is sought to be established a vacancy between surveys, the field notes and official maps in use in the General Land Office at the date of such incorporation, shall be conclusive as to the non-existence of such vacancy, and if no vacancy appears from said field notes or maps, it shall be conclusively presumed that no such vacancy exists. [Acts 1931, 42nd Leg., p. 422, ch. 254.]

Section 3 of this Act provides that if any provision is declared unconstitutional, such division shall not affect the remainder.

CHAPTER 3.—SURFACE AND TIMBER RIGHTS

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1. GENERAL PROVISIONS

Article 5306. [5405] Sale and lease of public lands provided for.—All lands set apart for the benefit of the public free schools, the lunatic asylum, the blind asylum, the deaf and dumb asylum, and the orphan asylum shall be sold and leased under the provisions of this chapter. All tracts of less than eighty acres shall be sold as a whole for cash. All such lands shall be sold without condition of settlement and residence, but shall not be sold to corporations. [Acts 1895, p. 63; G. L. vol. 170, p. 793; Acts 1919, p. 312.]

Art. 5307. [5406] Duties of Commissioner.—The Commissioner is hereby vested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy and from unlawful inclosure, with such exceptions and under such restrictions as may be imposed by the Constitution and laws of this State. He shall adopt such regulations not inconsistent therewith as may be deemed necessary for carrying into effect the provisions of this chapter, and may alter or amend such regulations so as to protect the public interest; but all such regulations shall first be submitted to the Governor for his approval. The Commissioner shall adopt all forms necessary or proper for the transaction of the business imposed upon him by this chapter, and may call upon the Attorney General to prepare such forms, and said officer shall also furnish the Commissioner with such advice and legal assistance as may be requisite for the due execution of the provisions

hereof. The Commissioner shall furnish all available data to the State Board of Education on its request. [Acts 1895, p. 63; G. L. vol. 10, p. 793.]

Art. 5308. [5449] Accounts.—The Commissioner shall retain in his custody as records of his office each application, affidavit, obligation and paper relating to the sales and leases of said lands, and shall cause to be kept accurate accounts with each purchaser or lessee. [Id.]

2. SALES

Art. 5309. Land subject to sale.—On the first day of September, 1925, and the first day of each January, May and September of each year thereafter all of the surveyed public free school land then unsold and portions of same and all tracts theretofore surveyed for which field notes were returned to and filed in the General Land Office and which reverted to the public domain or the public free school fund, and those surveys for which field notes were returned to and filed in the General Land Office and cannot be legally patented under existing law; and such sold public free school and asylum land as may be forfeited or canceled for any cause prior to the sale date for which the land may be advertised and such unsurveyed land as may hereafter be recovered for the public free school fund upon suit by the Attorney General filed prior to the acquisition of rights to purchase the area as unsurveyed land, shall be subject to and offered for sale by the Commissioner of the General Land Office under the regulations and upon the terms and conditions provided in this Act.

Art. 5310. [5407] Classification and valuation.—The Commissioner shall from time to time, as the public interest may require, classify or reclassify, value or revalue, any of the lands included in this chapter, designating the same as agricultural, grazing, or timber, or a combination of said classifications, according to the facts in the particular case, and when entry of the classification and the appraisement is made on the records of the Land Office, no further action on the part of the Commissioner, nor notice to the county clerk shall be required to give effect thereto. No land classed as agricultural shall be sold for less than one dollar and fifty cents per acre, and no land classed as grazing shall be sold for less than one dollar per acre. The land included in this chapter shall be sold with the reservation of the oil, gas, coal and all other minerals that may be therein to the fund to which the land belongs, and all applications shall so state. [Acts 1897, p. 184; Acts 1905, p. 159; Acts 1919, p. 312.]

Art. 5311. [5408] Commissioner shall classify and advertise.—In cases where any land included in this Act[1] may be leased and the same may come on the market by reason of the expiration or cancellation of such leases and in cases where land may be sold and become subject to forfeiture or cancellation for non-payment of interest and thereby subject to revert to the fund to which it originally belonged by reason of the forfeiture or cancellation of the sale, it shall be the duty of the Commissioner to classify and value same before some sale date thereafter and adopt such means as may be at his command that will give wide publicity and general information as to when such land will be forfeited or canceled, and when it and other land will be on the market for sale together with the regulations, terms and conditions upon which the land may be purchased if past due interest should not be paid. No tract of land shall be subject to sale, except unsurveyed school land, until it shall have been advertised. If there are no other satisfactory or sufficient means at the command of the Commissioner that will give the necessary publicity he shall have printed at the expense of the State, to be paid out of the appropriation for public printing, lists of the land for free distribution to the public. The list shall contain a brief statement of how one shall proceed to buy the land and also state the year to which delinquent interest must be paid to prevent a forfeiture and cancellation. No corporation shall buy any land under this Act.

[1] This article and arts. 5309, 5311a, 5311b.

Art. 5311a. Sold in whole tracts without settlement.—The land included in this Act shall be sold in whole tracts only and without condition of settlement and residence. Any unsold land may be leased subject to sale, at not less than five cents per acre per annum, payable in advance each year and for a term not to exceed five years. All land so leased shall be subject to sale on any sale date for which it may be advertised to come on the market.

Art. 5311b. Validating sales.—In cases where public free school and asylum land has been advertised as being subject to forfeiture for non-payment of interest and to be forfeited and canceled and come on the market for sale at some future sale date and such land was declared forfeited and the sale canceled on the records of the General Land Office and sale awards issued upon applications filed at such sale date, and said sale award has been held by the Supreme Court to be void and all other sale awards which may be void or voidable or the titles to which may have become defective from any cause, are hereby validated, and when the said land shall be fully paid for together with payment of all fees it shall be patented; provided, in cases where the sale award of the land advertised as aforesaid has not stood one year the owner of said land at date of forfeiture shall have the right to apply to the General Land Office for a re-instatement of said former sale upon the payment of all past due interest at any time within six months after the taking effect of this Act. [Acts 1925, p. 332.] [39th Leg., ch. 130, § 4.]

Art. 5312. [5409] Application to purchase.—One desiring to buy any portion of such surveyed land shall make separate written application to the Commissioner for each tract applied for as a whole, designating the same and stating the price offered, and make affidavit that he desires to purchase the land for himself and that no other person or corporation is interested in the purchase thereof either directly or indirectly, and pay one-fifth of the aggregate price offered for the land, and submit his obligation in a sum equal to the amount of the unpaid purchase price offered for the land, binding the purchaser to pay to the State at the General Land Office at Austin, Texas, on the first day of each November thereafter until the whole purchase price is paid, one-fortieth of the unpaid balance with interest on the unpaid purchase price at the rate of five (5) per cent per annum. Upon receipt and filing of the application, affidavit, obligation and the one-fifth of the price offered, the sale shall be held effective from that date. [Acts 1895, p. 65; Acts 1919, p. 313; Acts 1941, 47th Leg., p. 351, ch. 191, § 2.]

Art. 5313. [5410] Application: opening.—The application shall be delivered to the Land Office in a sealed envelope addressed to the Commissioner at Austin, and the envelope shall have indorsed thereon in effect: "Application to buy land," and date when the land will be on the market. Applications received at the Land Office in envelopes not so indorsed shall nevertheless be valid. All such envelopes shall remain unopened and the applications shall remain unfiled and all shall be safely and securely kept by the Commissioner or his Chief Clerk until the day following the day when the land comes on the market and at ten o'clock a. m. on said day one or both of them shall begin to open the envelopes and file all applications; provided, if the opening day should be Sunday or other legal holiday, the opening shall be postponed

until the first work day thereafter. Those desiring to be present at such opening may do so. All sales shall be made to, and date from the filing of the application of, the applicant who offers the most for the land, at a price not less than that fixed by the Commissioner, and shall be made by or under the direction of the Commissioner. Should two or more applicants offer the same price for any tract, the same being the highest price offered therefor on any sale date, all bids shall be rejected and the land offered for sale on the next sale date, but a subsequent bid shall not be considered if less than the former price offered. [Acts 1905, p. 159; Acts 1919, p. 314.]

Art. 5314. [5416] Individual bids.—Land that is or may be on the market, and not filed on as provided in the preceding article, may be filed on and sold to any one any time upon proper applications filed in the Land Office as provided by law, except the envelope enclosing the application shall not be required to have any memorandum thereon, and, if two or more applications should be filed the same day for the same land, the one offering the highest price shall be accepted, but if two or more applicants should offer the same price, the Commissioner shall proceed as herein provided for in the first filing. [Acts 1905, p. 159.]

Art. 5315. [5411] Cash payments, how remitted.—All such applicants shall transmit with their applications the required first payment in the form of money or remittance collectible on demand in Austin, and convertible at par into money on the order of the State Treasurer, without liability; provided, that, should a remittance be made payable to the Commissioner, such payment shall not be invalid for that reason, but the Commissioner shall indorse it to the State Treasurer without incurring liability and the same shall be treated as if payable to the Treasurer. The application shall be void if the payment is not made as required in this article. [Acts 1909, p. 429.]

Art. 5316. [5407] Notice of sale.—The Commissioner shall notify the clerk of the proper county of the sale of each tract, giving the name and address of the purchaser together with the price of the land. When informed of the sale of any land the clerk shall enter on his books opposite the description of the land sold, the name of the purchaser and the date sold, and the notice of such sale and the books of record and entry shall be considered public records. [Acts 1897, p. 184; Acts 1905, p. 159; Acts 1919, p. 312.]

Art. 5317. [5413] Awards.—Notice of awards shall be prepared and issued by the Commissioner, and shall be appropriately numbered and shall be so worded as to constitute a receipt for first payment when signed by the Commissioner. Books shall be prepared containing two copies of the notice of award and a suitable number of coupons to be used by the applicant in making subsequent payments on the land. The notice of awards shall be prepared in duplicate, one to be detached from the book and retained in the Land Office, the other, with the coupons attached, to be sent to the applicant. The coupons in each book shall be prepared in duplicate, each of which shall be numbered with the same number as that on the notice of award. The form of the coupon shall be so prepared as to be suitable for, and shall be used by the remitter in making all subsequent payments on the land, the original to be so worded as to be used as a receipt for remittances when signed as such by the Commissioner. The remitter shall describe each tract of land on which he is making remittance by properly filling in the blanks on both the original and duplicate coupons, and shall enter in the proper blanks the amounts remitted as interest and principal, and both the original and duplicate shall be mailed to the Commissioner with the remittance. [Acts 1909, p. 429.]

Art. 5318. [5415] Purchaser's name to be given.—Persons making payments of interest, principal or lease rentals on land shall give the name of the original purchaser or lessee and sufficiently designate the land. [Id.]

Art. 5319. [5412] First payment accounts.—When an envelope inclosing an application to purchase land is opened and the remittance for the first payment is in the Land Office, the Commissioner shall cause such remittance to be listed in triplicate daily, and in such form as to show the purpose and amount of each remittance, the name and address of the applicant, and transmit the remittance and two of the lists to the Treasurer. On receipt thereof, the Treasurer shall check the remittances with the lists, and, if found correct, he shall receipt one of the lists and return it to the Commissioner and retain the other list; and thereupon the Commissioner shall deliver the third list retained by him to the Comptroller. The Treasurer shall at once collect all collectible remittances and report to the Commissioner and Comptroller all remittances not collectible in Austin. The items not collected shall be returned to the Commissioner. All first payments thus collected by the Treasurer shall be retained by him until he receives notice from the Commissioner of the final disposition of the applications to purchase, and thereupon he shall at once return to each applicant the amount shown to have been paid on his rejected applications. A duplicate of the notice to the Treasurer of accepted and rejected applications and the amount of first payment shall be transmitted to the Comptroller. On the last working day of each month, the Treasurer shall deposit in the Treasury to the credit of the proper fund the sum collected by him on accepted applications during that month. [Id.]

Art. 5320. [5414] Other accounts.—Payments on interest, principal and lease rentals shall be listed and accounted for separate from, but in a similar manner to, first payments. The Treasurer shall deposit eighty per cent of all such remittances received each month to the credit of the probable fund to which they belong, as indicated by the Commissioner; and he shall hold the remaining twenty per cent upon deposit receipts furnished by the Comptroller until receipt of definite notice from the Commissioner of the proper fund, which shall then be credited with the full amount received. The Commissioner shall give such definite notice to the Treasurer and Comptroller immediately after he issues receipts to the remitters. The Commissioner, Treasurer and Comptroller shall each keep an account with each fund according to advices given by them, retaining such advices as permanent records.

Art. 5321. [5429] Timber lands.—Timber on lands shall be sold in full tracts for cash at its fair market value, and the Commissioner shall adopt such regulations for the sale thereof as may be deemed necessary and judicious, subject to the provisions of this chapter. By timbered lands is meant lands valued chiefly for the timber thereon. [Acts 1901, p. 296; Acts 1919, p. 312.]

Art. 5322. [5430] Timber: sale.—Application to purchase timber shall be made in the manner provided for the filing of applications for the purchase of lands. If two or more persons each apply to purchase the timber and land on the same day, the one who offers more for the timber but less for the land than a competitor shall have an option for thirty days to take the land at the highest price offered by such competitor, or he may be awarded the timber without the land. If the timber is so sold without the land such competitor shall have an option for thirty days to purchase the land. If such first party buys neither the timber nor the land, then the land and timber shall be awarded to the one offering the highest price for the land, and next highest price for the timber. If two or more applications for timber alone be filed on the same day the one offering the most therefor shall be

accepted. The purchaser of timber without the land shall have the right of ingress and egress upon the land for a period of five years after date of award to remove or protect all the timber thereon. After that time the title to the timber shall revert to the fund to which the land belonged and be again subject to sale by the State, unless the land shall sooner be sold and fully paid for and patent issued thereon; and in that event the timber shall revert to the owner of the land. [Acts 1907, p. 490; Acts 1919, p. 312.]

Art. 5323. [Repealed by Acts 1931, 42nd Leg., p. 452, ch. 271, § 13.]

Art. 5323a. Reclassification of scrap school land.—The Commissioner of the General Land Office is hereby authorized to revalue and to reclassify all tracts of unsold scrap school land that was heretofore valued and classified on March 26, 1926, and which remains unsold when this Act takes effect. Within sixty days after such revaluation and reclassification the person for whom the survey was originally made shall file in the General Land Office his application for the purchase of said land together with the full cash payment for the tract applied for at the value per acre fixed thereon by the said Commissioner. [Acts 1927, 40th Leg., p. 158, ch. 107, § 1.]

Art. 5323b. Withdrawal of land from sale or lease.—Sec. 1. That the surface and the minerals therein of all river beds and channels, and of all unsurveyed public free school lands, and portions of the same, in the State of Texas, are hereby withdrawn from sale or lease until otherwise provided by law.

Sec. 1a. Provided however that such withdrawal from sale and lease of unsurveyed public school land shall not apply in cases where application of inquiry has been heretofore made therefor and on which suit is now pending. [Acts 1929, 41st Leg., 3rd C.S., p. 526, ch. 22.]

Art. 5324. [5434] Sale of gayule and lechuguilla.—The Commissioner may, with the consent and approval of the Governor and Attorney General, sell the gayule or lechuguilla growing or found upon the public free school land, exclusive of timber. The sales may be upon such terms, conditions and limitations as they may deem most advantageous, having in view the protection of the interest of the school fund and the State. They may also enter into such contracts as they may deem wise for the purpose of having determined the commercial properties and value of any and all such material, and for such purpose they may enter into executory contracts of sale; provided, they shall not in such contracts cause the expenditure of public money nor incur any liability on the State. [Acts 1907, p. 251.]

Art. 5325. [5433] Unlawful use of minerals.—If any person who has no authority or right to do so, cuts or removes any mineral, gayule or lechuguilla from the school land belonging to the public free school fund, judgment shall be rendered against the defendant in behalf of the State in a sum of money equal to the value of the substance so cut or removed, which shall be collected as under execution; and when collected, the money shall be remitted to the State Treasurer, and by him credited to the fund to which the land belongs. [Acts 1907, p. 490.]

Art. 5326. [5423] Forfeiture for nonpayment of interest; reinstatement; outstanding grazing leases.—If any portion of the interest on any sale should not be paid when due, the land shall be subject to forfeiture by the Commissioner entering on the wrapper containing the papers "Land Forfeited," or words of similar import, with the date of such action and sign it officially, and thereupon the land and all payments shall be forfeited to the State, and the lands may be offered for sale on a subsequent sale date. In any case where lands may hereafter be forfeited to the State for non-payment of interest, the purchasers, or their vendees, heirs, or legal representatives, may have their claims reinstated on their written request, by paying into the Treasury the full amount of interest due on such claim up to the date of reinstatement, provided that no rights of third persons may have intervened. The right to reinstate shall be limited to the last purchaser from the State or his vendees or their heirs or legal representatives. Such right must be exercised within five (5) years from the date of the forfeiture, and the right to reinstate any claim heretofore forfeited by the Commissioner must be exercised within five (5) years from the effective date of this Act, but not thereafter. In case there is an outstanding valid grazing lease which would prevent reinstatement within the time prescribed by this Act then such claim may be reinstated within sixty (60) days after the expiration of such grazing lease, provided application for reinstatement shall have been filed in the General Land Office within the five-year period above prescribed accompanied with payment of all interest due thereon. In all such cases, the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred. If any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death before the Commissioner shall forfeit the land belonging to such deceased purchaser, and should such forfeiture be made by the Commissioner within said time, upon proper proof of such death being made such forfeiture shall be set aside. Nothing in this Article shall inhibit the State from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to recover the full amount of the interest and such penalties as may be due the State at the time such forfeiture occurred, or to protect any other right to such land. [Acts 1897, pp. 39, 184; Acts 1919, p. 314; Acts 1941, 47th Leg., p. 351, ch. 191, § 3.]

The additional legislative act of 1925, referred to in note to this section as appearing in R.S.1925, is now set out in article 5326a, post.

Art. 5326a. Repurchase of land forfeited.

Right of repurchase

Section 1. In case of [1] any of the public free school lands that have been heretofore purchased from the state have been forfeited for nonpayment of interest and have not been resold, and that which may hereafter be forfeited for nonpayment of interest, either with or without advertisement as being subject to forfeiture for nonpayment of interest that may have accrued prior to November 1, 1925, the owner of such land or a part thereof at the date of forfeiture shall have the right for a period of ninety days after the date of the notice of revaluation of such lands as herein provided to repurchase same upon the terms and conditions in this act any or all of the land in whole tracts according to the forfeiture; provided, that two or more portions of the same section or tracts may be combined into one purchase as may be desired by the applicant.

Procedure for repurchase

Section 2. Where any of the lands included in the preceding section may hereafter be forfeited for the non-payment of interest in the manner provided by law for such forfeiture and either before or after advertisement of land as being subject to forfeiture for non-payment of interest, the Commissioner of the General Land Office shall forward such list of land to the clerk of the county in which the land is wholly or partly located or to the clerk of the county to which such county may be attached for judicial purposes and include therein such land as may have heretofore been forfeited and remains unsold and on which valid oil and gas applications have not been filed. Within sixty

days after a list of such forfeited land was forwarded to the proper clerk the owner or part owner mentioned in the preceding section, who may desire to repurchase such land as provided herein, shall advise the said Commissioner of such desire and pay one cent per acre for each acre such person desires revalued. As soon as practicable after the receipt of such advice and the one cent per acre by the Commissioner, he shall proceed to ascertain the reasonable value of such land and appraise the same accordingly. Duplicate notices of said appraisement shall be prepared and one shall be sent to the person requesting the revaluation and the other shall be retained for the General Land Office. One of two or more part owners of land who request a revaluation shall be deemed as having acted for the other owners, and a repurchase by such one or more persons shall likewise be deemed as made on behalf of all of them and shall inure to the benefit of every owner of a part thereof to the extent of each ones ownership. If such forfeiting owner desires to repurchase the land at the appraised value placed thereon, he shall file his application therefor in the General Land Office within ninety days after the date in the notice of appraisement, together with one-fortieth of the appraised value and his obligation for the remaining portion of the purchase price bearing the same rate of interest per annum as the forfeited purchase bore. The one-fortieth cash payment and future interest and principal payments and forfeiture for non-payment shall be the same and conform to the present or any future law regulating the purchase and forfeiture of public free school land. The one cent per acre received by the Commissioner, or so much thereof as may be necessary, shall be used by him to defray the expenses incident to the revaluation and the remainder, if any, shall be by him returned pro rata to those for whom it was paid into the General Land Office. If land should be purchased under this act by one or more part owners, such purchase shall inure to the benefit of each and every owner at date of forfeiture according to each one's former interest.

Failure to exercise right of repurchase

Section 3. If the owner at the date of forfeiture shall not exercise his right to repurchase, the Commissioner shall place the land on the market for sale in the manner that is now or may hereafter be provided by law for the sale of other forfeited public free school lands. One-sixteenth of the oil and gas, and all of other minerals in the lands included herein, whether known or unknown, are expressly reserved to the public free school fund in the event the forfeited sale was with mineral reservation. Forfeited land, on which the owner requests a revaluation as herein provided, shall not be subject to oil and gas application until such forfeiting owner fails to repurchase as herein provided.

Liens; forfeitures and sale thereon validated

Section 4. Whenever any land affected by this act is repurchased under the rights of repurchase given herein, any lien, legal or equitable, in behalf of any person or the State, and any valid contractual right in favor of any person or persons existing in and to said land, or any part thereof, at the time of forfeiture, shall remain unimpaired and in full force and effect as if no such forfeiture had occurred; also all forfeitures without advertisement of the land for which land the owner or owners of part thereof requested a revaluation within the time prescribed herein and for which applications to repurchase were filed in the General Land Office in legal form after expiration of the time required by law and on which the first one-fortieth cash payment was made, such forfeitures and applications and the sale and award thereon are hereby authorized and in all things validated and shall not be questioned by the State or any person whose rights did not accrue prior to the taking effect of this Act.

Emergency declared

Section 5. The fact that several consecutive years drought in that portion of the State in which most of the public lands are located caused the original enactment of this law and the fact that the validity of forfeitures without first advertising the land as being subject to forfeiture and naming the date of forfeiture and sale as provided in Chapter 130 of an act approved March 28, 1925, has been questioned and the fact that this original Chapter 94 could not have been executed without great expense to the State, except in the manner it has been administered by the General Land Office, which has attained the purpose of the Legislature in its enactment, and the importance of placing land titles beyond question, creates an emergency and an imperative public necessity exists, that the constitutional rule requiring bills to be read on three separate days in each house be suspended and that this be placed upon third reading and final passage, and take effect from and after its passage and it is so enacted. [Acts 1925, 39th Leg., p. 267, ch. 94: Acts 1926, 39th Leg., 1st C. S., p. 43, ch. 25, § 1.]

[1] So in enrolled bill. The word "of" is superfluous.

Art. 5326b. Acceptance and award of applications for repurchase.—Sec. 1. In cases where public school land in Gaines, Yoakum, Kinney, San Augustine and Hudspeth Counties was forfeited and came under the terms of either Chapter 94, an Act approved March 19, 1925, or Chapter 25, an Act approved October 27th, 1926, and was reappraised by the Commissioner of the General Land Office, and for the repurchase of which the forfeiting owner filed his application, and which land is located in Gaines, Yoakum, Kinney, San Augustine and Hudspeth Counties, Texas, together with the first payment therefor, after the expiration of the time by those Acts for so doing, the said Commissioner shall accept such applications and award the land upon the return of the first payment to the said Land Office, provided such application and first payment shall be filed within one year from the passage of this Act. [As amended Acts 1929, 41st Leg., 1st C.S., p. 157, ch. 58; Acts 1929, 41st Leg., 2nd C.S., p. 196, ch. 92, § 1.]

Sec. 2. The acceptance of such applications and issuance of awards thereon shall constitute a sale effective from the date on which such applications were filed in the Land Office; but said sales shall be subject to any rights, if any, heretofore acquired by one who may have heretofore filed a valid oil and gas application for a permit to develop said substances. [Acts 1929, 41st Leg., p. 622, ch. 283; Acts 1929, 41st Leg., 1st C.S., p. 157, ch. 58.]

Acts 1929, 41st Leg., 1st C.S., p. 157, ch. 58, amended sections 1 and 2 of this Article. Acts 1929, 41st Leg., 2nd C.S., p. 196, ch. 92, § 1, also amended section 1.

Art. 5326c. Application for repurchase of school lands in Montgomery County.—Sec. 1. In cases where public school land located in Montgomery County, Texas was forfeited and came under the terms of either Chapter 94, An Act approved March 19, 1925, or Chapter 25, An Act approved October 27, 1926, and was reappraised by the Commissioner of the General Land Office, and for the repurchase of which the forfeiting owner filed his application, together with the first payment therefor, after the expiration of the time fixed by those Acts for so doing, the said Commissioner shall accept such applications and award the land upon the return of the first payment to the said Land Office.

Sec. 2. The acceptance of such applications and issuance of awards thereon shall constitute a sale effective from the date on which such applications were filed in the Land Office; but said sales shall be subject to any rights, if any, heretofore acquired by one who may have heretofore filed a valid oil and gas application for a permit to develop said substances. [Acts 1930, 41st Leg., 4th C.S., p. 7, ch. 6.]

Art. 5326d. Repurchase of school land in El Paso County.—Sec. 1. In cases where public school land located in El Paso County, Texas, was forfeited and came under the terms of either Chapter 94, an Act approved March 19, 1925, or Chapter 25, an Act approved October 27, 1926, and was re-appraised by the Commissioner of the General Land Office, and for the repurchase of which the forfeiting owner filed his application, together with the first payment therefor, after the expiration of the time fixed by those Acts for so doing, the said Commissioner shall accept such applications and award the land upon the return of the first payment to the said Land Office.

Sec. 2. The acceptance of such applications and issuance of awards thereof shall constitute a sale effective from the date on which such applications were filed in the Land Office; but said sales shall be subject to any rights, if any, heretofore acquired by one who may have heretofore filed a valid oil and gas application for a permit to develop said substances. [Acts 1930, 41st Leg., 5th C.S., p. 210, ch. 64.]

Art. 5326e. Repurchase of school land in Jeff Davis County.—Sec. 1. In cases where public school land located in Jeff Davis County, Texas, was forfeited and came under the terms of either Chapter 94, an Act approved March 19, 1925, or Chapter 25, an Act approved October 27, 1926, and was re-appraised by the Commissioner of the General Land Office, and for the repurchase of which the forfeiting owner filed his application, together with the first payment therefor, after the expiration of the time fixed by those Acts for so doing, the said Commissioner shall accept such applications and award the land upon the return of the first payment to the said Land Office.

Sec. 2. The acceptance of such applications and issuance of awards thereon shall constitute a sale effective from the date on which such applications were filed in the Land Office; but said sales shall be subject to any rights, if any, heretofore acquired by one who may have heretofore filed a valid oil and gas application for a permit to develop said substances. [Acts 1930, 41st Leg., 5th C.S., p. 244, ch. 80.]

Art. 5326f. Repurchase of land in Dallam and Hartley Counties previously set aside for State Capitol Building.—Section 1. Where land heretofore set apart in Dallam and Hartley Counties, Texas, to build the Capitol Building of the State of Texas, that has been recovered by the State and appropriated as provided by law and heretofore purchased from the State, has been forfeited or is subject to being forfeited for nonpayment of interest and such lands in Block 76 in Loving County, Texas, not forfeited, reappraised, and repurchased under the provisions of Chapter 94, Page 267, Acts of 1925, as amended by the Acts of 1926, Thirty-ninth Legislature, First Called Session, Chapter 25,[1] Page 43, and/or principal accrued prior to the date of the passage of this Act, said lands shall be forfeited and reappraised by the State Land Commissioner, or his duly authorized agent, and that notice of the reappraisement shall be given to the former owner or owners, who shall have a preference of ninety (90) days after the date of notice to repurchase the same upon the terms and conditions provided in Chapter 94, Page 267, Acts of 1925, as amended by the Acts of 1926, Thirty-ninth Legislature, First Called Session, Chapter 25, Page 43. And provided further, that any person, or persons, owning any of such land which is not subject to being forfeited as now provided by law, may have the right, at his option, to have said land forfeited and reappraised in the same manner hereinabove provided and that he be given the same preference right to repurchase said land at the newly appraised value by the same method as hereinabove provided; provided that in repurchasing said land, all persons shall be given credit for all principal which has heretofore been paid upon said land and that when such person, or persons, has paid the amount of the new appraisal, he shall be entitled to a patent to said land from the State Land Commissioner as provided by law, and, provided that in no event shall any money heretofore paid on said land be refunded to any purchaser or purchasers of said land.

Sec. 1-a. When the Commissioner of the General Land Office has reappraised the above mentioned land, he shall submit a statement to the Governor and the Attorney General showing the valuation placed upon each separate tract and it shall be the duty of the Governor and the Attorney General to approve or disapprove the valuations placed upon said property and to advise the Commissioner of the General Land Office of such approval or disapproval of said valuations and if said valuations are approved by both the Governor and the Attorney General, the same shall be sold as above provided, but unless both the Governor and the Attorney General approve such valuations, no such sale shall be made.

Sec. 2. Any person wishing to repurchase any of said land against which any taxes of any nature are delinquent shall pay said taxes and any interest, penalties, and costs that may have accrued on said land and shall provide the Land Commissioner with a tax receipt showing said taxes to be paid, said taxes to be paid within the ninety (90) days provided in which time said person, or persons, are entitled to repurchase said land. [Acts 1937, 45th Leg., p. 665. ch. 332.]

[1] Article 5326a.

Art. 5326g—1. Resales and awards of school lands to spouse of forfeiting owner validated in counties of 6,400 to 6,500 population.—In cases where public school land in counties with a population of not less than six thousand four hundred (6,400) nor more than six thousand five hundred (6,500) according to the last preceding Federal Census, was forfeited prior to January 1, 1938, and came under the terms of either Acts 1925, Thirty-ninth Legislature, Regular Session, Chapter 94, page 267, an Act approved March 19, 1925,[1] or Acts 1926, Thirty-ninth Legislature, First Called Session, Chapter 25, page 43, an Act approved October 27, 1926, or any amendments to either of said Acts, and either the forfeiting owner or the spouse of the forfeiting owner filed, prior to January 1, 1935, his request for the re-valuation of such lands and said request was granted, and said lands were re-valuated by the Commissioner of the General Land Office and such lands re-sold or awarded by the Commissioner of the General Land Office, prior to January 1, 1938, to the spouse of such forfeiting owner, then such resale or award to such spouse of such forfeiting owner is hereby confirmed and validated and shall be deemed as valid as if such resale or award had been made to and in the name of the forfeiting owner himself. [Acts 1939, 46th Leg., p. 702, § 1.]

[1] Article 5326a.

Art. 5327. Lien.—To secure the payment of all principal and interest due upon any sale of public free school land, University land, and the several asylums land, the State shall have an express lien for the use and benefit of the fund to which the land belongs in addition to any right and remedy that it has for the enforcement of the payment of any principal or interest that may become due and unpaid. [Acts 1917, 3rd C. S., p. 95.]

Art. 5328. Transfer of indebtedness.—If any person, firm or corporation or the Federal Farm Loan Bank with the consent of the owner of any lands mentioned in the preceding article, pays to the State the principal and interest due upon any obligation given for such land, the Commissioner shall be authorized, upon written request of such owner duly acknowledged in the manner required for the conveyance of real estate, coupled with an affidavit of ownership, to exe-

cute, acknowledge and deliver a written transfer of the indebtedness held by the State to such person, firm or corporation or the Federal Farm Loan Bank which shall thereupon be subrogated to all the rights, liens and remedies held by the State to secure and enforce the payment on the amount of principal and interest so paid to the State. If the land claimed by the one representing himself to be the owner should be held under such evidence of titles as the law or rules of the Land Office will not authorize or permit to be filed in said office, then the Commissioner may admit the owner to be such person as the person, firm or corporation or the Federal Farm Loan Bank paying the indebtedness shall admit to be the owner, and upon such admission the instrument of transfer shall be executed. Nothing herein shall change in any particular whatever, the law or rules that obtain in the Land Office relative to titles to land and the issuance of patents thereon. [Id.]

Art. 5329. [5435] Transfers.—Owners of public free school land and asylum land purchased from the State may sell their land or a definite portion of the same in any size tract. If in any of the succeeding conditions the land that is desired to be separated from another portion should not be sufficiently designated by metes and bounds in the papers offered for filing, to identify it with certainty, the Commissioner shall require that proper field notes accompany the papers before he files them and separates the land.

1. PERSONAL TRANSFERS.—A vendee through personal transfer executed for a whole survey or for a whole portion of a survey purchased from the State as a whole or for a portion of a survey purchased from the State as a whole or in a quantity less than the whole survey, shall have the right to become a substitute purchaser direct from the State in the manner provided herein. With the approval of the Commissioner such vendee may file in said office a complete and valid chain of title through personal transfers which have been duly executed and recorded in the counties in which the land or a part thereof is situated or in the county to which to [1] such county or counties may be attached for judicial purposes, and pay the lawful fees. When said papers have been filed in said office the substituted purchaser shall have his portion of land separated from the other portion, if any, on the records of the Land Office and thereby he shall assume and become liable to the State for all unpaid principal and interest due and to become due the State for the land conveyed in the deeds so filed, together with all obligations and penalties attaching to the original purchase the same as was the original purchaser. The obligation of the original purchaser and the obligation of all vendors of such substituted purchaser shall be enforceable against the substituted purchaser the same as if he were the original purchaser from the State, and the obligation of the vendor or vendors of the substituted purchaser shall be deemed canceled.

[1] So in enrolled bill. The word "to" is superfluous.

2. OTHER TRANSFERS.—One who claims title through a source other than by personal transfer, to a definite portion of a survey less than a whole as it was purchased from the State may, with the approval of the Commissioner, have that portion of land so claimed separated from the other portion of the survey upon the records of said office by filing therein such evidence of claims as may be required by said Commissioner and pay the lawful fees for the papers filed as evidence of the claim or a right to a separation of such area.

3. LIABILITY OF VENDEE.—When a separation of the land has been made upon the records of the Land Office in either manner provided for herein, that portion so separated shall be charged and credited with its pro-rata part of the principal and interest due and paid to the first day of November preceding the date of the filing of the transfers or other papers.

4. PATENT.—If any owner or claimant of any land included in this chapter, which ownership or claim is shown on the records of said office, should desire a patent upon a portion thereof less than the whole, such owner or claimant may, with the approval of the Commissioner, file field notes with lawful filing fee for that portion on which patent is desired and obtain a patent therefor when the land is fully paid for with all lawful fees. If the ownership should be evidenced by personal transfers the patent shall be issued to such owner and his assigns. If the claimant claims title through other evidence than by personal transfer, the patent shall be issued in the name of the person and his assigns that holds title by original purchase or in the name of the person and his assigns who appears on said records to hold title through the last personal transfer. If a patent should be issued in the name of one other than the legal owner, such patent and the rights granted therein shall inure to the benefit of the legal owner. Where any land has been purchased from the State on condition of residence, no patent shall be issued until proper proof of such residence either by the vendor or vendee, or both consecutively, has been filed and the Commissioner is satisfied therewith. Every vendee before the completion of the required residence by his vendor shall file in the Land Office an application, affidavit and obligation, such as is required of an original purchaser, together with the partial proof of his vendor's continuous residence to the date of the deed of transfer. On the filing of proof of the required three years' residence, the Commissioner shall issue a certificate of its sufficiency upon the payment of the lawful fees. The said certificate may be recorded in the deed records of the proper county, and when so recorded it shall become a muniment of title. After a certificate has been recorded, neither the sale nor the occupancy of said land shall be questioned by the State nor any person whose rights did not accrue prior to the completion of said residence. The effect of the issuance of said certificate shall include and extend to all land purchased as additional to a home tract on which the said certificate may have been issued. No sale made without condition of settlement shall be questioned by the State or any person after one year from the date of such sale. All purchasers shall have the option of paying the purchase price in full at any time, together with full fees, and obtain a patent for the land. [Acts 1907, p. 490; Acts 1919, p. 316; Acts 1921, p. 118.]

Art. 5330. [5438] Patents for town sites.—Whenever a town shall be located and established upon any lands sold under this or any former law, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the State upon such land and obtain a patent therefor at any time; but no such payment shall be permitted or patent issued until such a purchaser or owner of such land shall file in the land office a certified plat of such town, made by a surveyor, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein and is being occupied by bona fide citizens, twenty business and resident houses, or either or both. [Acts 1895, p. 66; G. L. vol. 10, p. 796.]

Art. 5330a. Regulating sale and patenting of lands formerly part of Oklahoma; Special Land Board; powers and duties.

Land offered to claimants; consideration

Section 1. All of the lands along the 100th degree of west longitude on the East side of the Panhandle of the State of Texas and the west side of the State of Oklahoma, found to be in the State of Texas by the

final decree of the Supreme Court of the United States, entered March 17th, 1930, in the case of the State of Oklahoma vs. the State of Texas, the United States of America, Intervenor, theretofore claimed by Oklahoma but now located in Lipscomb, Hemphill, Wheeler, Collingsworth and Childress Counties, are hereby offered for sale to the claimants of said lands as reflected by the Deed Records or other public records of the State of Oklahoma and under the laws of the State of Oklahoma at the time of the rendition of said decree by the Supreme Court of the United States, and said lands shall be sold to such claimants as would have then owned said lands had the same been a part of Oklahoma, or who have acquired or may hereafter acquire title by foreclosure of a lien valid and enforceable under the laws of Oklahoma at the time of the rendition of such decree. The consideration for such sale shall be the sum of One ($1.00) Dollar per acre.

Special land board; members; employees; powers

Sec. 2. The Commissioner of the General Land Office, the Attorney General, and the Governor, are hereby designated and constituted a Special Land Board to ascertain the persons entitled to purchase said lands. Said Board is hereby authorized to employ as many as three persons, if deemed necessary, to assist in ascertaining the bona fide claimants of said lands as shown by the public records and under the laws of the State of Oklahoma, and to make such surveys and investigations as may be necessary to carry out the provisions of this Act, and said Board is hereby authorized to adopt such rules, regulations and forms as it may deem expedient.

Application; fee; investigation and award

Sec. 3. Any claimant to any portion of said lands who would have had title to same had it been located in Oklahoma, may make application to the Commissioner of the General Land Office to purchase the land claimed. Such application shall be accompanied by field notes of the tract claimed, together with a filing fee of One ($1.00) Dollar, an examination fee of Fifteen (.15¢) Cents per acre, and with such other information as the Land Board may require to be given, including certified copies of all muniments of title under the laws of Oklahoma. Upon receipt of such application the Land Board shall cause an investigation to be made as to the status of the public records of the State of Oklahoma, and in event it is found that the applicant would have been the owner of said land at the time of the decree of the Supreme Court of the United States had the same been located in Oklahoma, or holds title by reason of foreclosure of a lien valid and enforceable under the laws of Oklahoma at the time of such decree of the Supreme Court of the United States, such application shall be approved, and said land awarded to said applicant. Within sixty days after such award such applicant shall pay to the Commissioner of the General Land Office the sum of One ($1.00) Dollar per acre for said land, and upon receipt of such payment the Commissioner of the General Land Office shall issue to the claimant a patent to said lands in such form as the Land Commissioner shall prescribe.

Sale to lien holder

Sec. 4. In event the claimant fails or refuses to purchase same or to apply for a patent as provided for herein, then the holder of a lien against any of said lands may make such purchase or apply for such patent on behalf of said owner and pay the consideration provided for, and all fees and expenses, and such amounts when paid by such lien holder shall be added to and become a part of the total amount secured by the lien. A failure on the part of the said owner to make purchase, or application for patent, for a period of four months after the last publication by said Land Board as provided in this Act shall constitute such failure to apply as will warrant the lien holder in making such application to purchase. The patent issued upon application and purchase of a lien holder shall be in the name of the person, persons or company who would have owned said lands had the same been a part of Oklahoma.

Recording deeds, mortgages, etc.; evidence; force and effect

Sec. 5. All deeds, mortgages, contracts and instruments of every nature, or in case of loss of any such instrument a certified copy from the record in the Oklahoma County may be so used, affecting the title to said lands, or that would have formed a part of the chain of title to the same under the laws of the State of Oklahoma, and now of record on the public records of the State of Oklahoma, may be filed and recorded in the county in Texas in which the land is now located. All deeds, mortgages, conveyances and all other instruments which would be valid under the laws of the State of Oklahoma and admissible in evidence under the laws of said State, shall be valid in Texas and shall be admissible in evidence in any court in this State, and copies of said instruments certified as provided by the laws of Oklahoma, as well as the originals thereof, may be introduced in evidence in the same manner as if executed with the formalities required by the laws of the State of Texas, and as if certified as required by the laws of this State. All such deeds, deeds of trust, mortgages, conveyances and contracts, affecting the title to any of said lands shall be given the same force and effect in the State of Texas as same would have been given in the State of Oklahoma, and all bona fide liens, incumbrances, or debentures, now outstanding and unsatisfied, and existing against said lands at the time of the rendition of said decision of the Supreme Court of the United States are here expressly validated, save and except as to purchase money due to the State of Oklahoma, or the United States, and except taxes, general or special, due to the State of Oklahoma, or any city, county, school district or other political subdivision of the State of Oklahoma. In determining whether any lien against said land shall be enforced, the period of time intervening between the rendition of the decision by the Supreme Court of the United States and the issuance of a patent to the land involved by the State of Texas, shall not be computed in applying the Statutes of Limitation of either the State of Oklahoma or the State of Texas, and this Act shall be liberally construed in the enforcement of liens against said land, it being the intention of the Legislature that all sections and parts hereof are independent of each other, and if any section or part hereof be held unconstitutional such invalid section shall not affect the remaining sections or parts hereof.

Deposit and use of fees

Sec. 6. The examination fees provided for in Section 3 of this Act shall be deposited with the State Treasurer in a special fund to the credit of the Land Board created in Section 2 hereof. All such moneys so paid into the State Treasury are hereby specifically appropriated to said Land Board for the purpose of defraying the authorized and necessary expenses incident to the enforcement of this Act incurred by said Board in determining the identity of persons entitled to the benefits of this Act. The Comptroller shall, from time to time, upon requisition of the Commissioner of the General Land Office, draw warrants upon the State Treasurer for the amounts specified in such requisition, not exceeding, however, the amount of such fund on deposit at the time of the making of any requisition therefor. Any sum remaining in such fund after all expenses have been paid shall be transferred to the Permanent School Fund. The amount of money accruing to the State of Texas as consideration for the sale of the land as provided for in Section 3 hereof shall be placed to the

credit of the Permanent School Fund. [As amended Acts 1941, 47th Leg., p. 242, ch. 170, § 1.]

Determination by board; proclamation; time for application

Sec. 7. The Land Board, upon the passage of this Act, is authorized to determine when such lands are available for purchase, and said Board shall by proper proclamation give notice to all persons desiring to file an application to purchase said land, by causing such proclamation to be published once each week for two consecutive weeks in some newspaper of general circulation in each county in which any part of said lands may be located, and by filing a copy of such proclamation with the County Clerk of each such county. Applications to purchase such lands shall be filed with the Commissioner of the General Land Office within four months from and after the last publication, and if said claims are not filed within said time an additional filing fee of Ten (10¢) Cents per acre shall be required. No land shall be patented or sold under the provisions of this Act unless claimed and applied for within twelve months after the publication of said proclamation, and the proclamation shall so state. [Acts 1931, 42nd Leg., p. 311, ch. 185.]

Art. 5330b. Sale of public lands along western Oklahoma and eastern Texas boundary authorized.—From and after the effective date of this Act all public lands in this State situate along the western boundary of the State of Oklahoma and the eastern boundary of the State of Texas and along the 100th degree of west longitude, found to be in the State of Texas by final decree of the Supreme Court of the United States entered March 17, 1930, in the case of the State of Oklahoma vs. the State of Texas, the United States of America, intervenor, theretofore claimed by Oklahoma but now located in Lipscomb, Hemphill, Wheeler, Collingsworth and Childress Counties, are to be offered for sale in accordance with the provisions of Article 5330A, Revised Civil Statutes of Texas Acts 1931, Forty-second Legislature, Page 311, Chapter 185. [Acts 1939, 46th Leg., p. 478, § 1.]

Section 2 of the Act of 1939 repealed conflicting laws.

3. LEASES

Art. 5331. Lease of unsold tracts.—Any unsold land may be leased at any time at not less than five cents per acre, payable in advance each year and for a term not to exceed five years, but all land so leased and unsold shall be subject to sale on each succeeding sale date. [Acts 1919, p. 314.]

Art. 5332. [5451] To advertise lands.—All leases under the provisions of this chapter may be advertised by the Commissioner in such manner as he deems best, and let to the highest responsible bidder in such quantities and under such regulations as he deems to the best interest of the State, not inconsistent with the equities of the occupant. Any bid or offer to lease may be rejected by him prior to signing the lease contract, for fraud or collusion, or other good and sufficient cause.

Art. 5333. [5452] Application and delivery.—One desiring to lease said lands shall make written application to the Commissioner specifying and describing the particular lands he desires to lease; and thereupon the Commissioner shall notify the applicant in writing who offers the highest price, that his proposition to lease is accepted; and shall execute to the lessee in the name and by authority of the State of Texas a lease on such lands. When the lessee has paid the rent for one year in advance, the Commissioner shall deliver said lease to the clerk of the county in which the land is situated, who shall record in a well-bound book kept in his office, a memorandum or abstract of said lease, showing the number of the survey or surveys leased, the name of the original grantee, the amount leased. the name of the lessee, the date of the lease and the number of years it has to run, and no other record of leases shall be required. The clerk shall be entitled to twenty-five cents for entering said memorandum. Upon payment of said fee, the clerk shall deliver the lease to the lessee. When any such lease is filed for record the clerk shall make the memorandum or abstract above provided for. [Acts 1901, p. 292.]

Art. 5334. [5455] Water supply: option.—Any person desiring to lease any lands on which no permanent water supply exists, shall notify the Commissioner in writing that he desires to lease lands, specifying and describing them, provided he can obtain the necessary supply of water by boring or otherwise, and that he will within ninety days lease said lands, provided such water supply can be obtained; he shall also make and file with the Commissioner his bond, with good and sufficient personal security, to be approved by the Commissioner, in a sum equal to one year's rental of the quantity of land applied for, payable to the State, conditioned that he will diligently and in good faith try to secure water on such land during such ninety days, and if secured will lease the designated lands for the term prescribed herein; and thereupon the Commissioner shall, for such ninety days, withhold such lands from lease to any other person. Within or at the expiration of the said ninety days, and annually thereafter, such applicant shall pay to the State in advance, one year's rental of the land applied for by him; on satisfactory proof of which payment the Commissioner shall execute and deliver to the lessee a lease of the said lands, signed by himself officially, and attested by the seal of the Land Office, together with which he shall deliver up the bond of said lessee, marked, "Satisfied." If said lessee fails to apply for his lease and make the payment aforesaid within said ninety days, and shall also within said ninety days fail to prove to the satisfaction of the Commissioner within that time that he has in good faith diligently used proper means and made proper efforts to secure a water supply on such land and failed, then the Commissioner shall mark said bond, "Forfeited", and shall deliver the same to the Attorney General, who shall at once cause said bond to be sued upon and collected, and paid to the available school fund. The penalty stated in such bond is hereby declared to be liquidated damages, and judgment for that sum shall in all cases be recovered by the State. Proof satisfactory to the Commissioner that proper, suitable and diligent effort has been made by such applicant to secure water, and that sufficient water could not be secured, shall relieve the principal and sureties on said bond from all responsibilities therein, and it shall be marked, "Satisfied", by said Commissioner and delivered to the principal therein. No lease of less than four sections of unwatered pasture lands shall be made, unless such less number includes all unleased land in that vicinity belonging to the several funds mentioned in this chapter. Lessees or their vendees who shall have at their own expense secured water on their leaseholds in accordance with the provisions of this article, shall at the expiration of their lease contract, have a right to a renewal of their leases for another term of five years at the price then provided by law, by giving sixty days written notice to the Commissioner. [Acts 1895, p. 63; G. L. vol. 10, p. 793.]

Art. 5335. [5454] Expired leases.—When a lease expires, or is canceled for any cause within ninety days from any sale date, the Commissioner shall not consider an application to lease the land within said time. An original lessee, or the assignee of an entire leasehold, who was such at the date of the termination thereof, shall have a preference to another lease of the land at the expiration of the ninety days over another applicant to lease, provided he will pay as much therefor as another, after due publicity. [Acts 1905, p. 159; Acts 1919, p. 314.]

Art. 5336. [5456] Forfeiture: lien.—If any lessee fails to pay the annual rent due for any year within sixty days after such rent becomes due, the Commissioner shall cancel said lease by a writing under his hand and seal of office, and filing it with the other papers relating to such lease, when such lease shall immediately terminate. During the continuance of all leases, and after forfeiture, the State shall have a lien upon all property owned by the lessee upon the leased premises to secure the payments of all rents due, which lien shall be superior to all other liens whatsoever. A reservation of such lien in said lease shall not be essential to the preservation or validity thereof. [Acts 1901, p. 29.]

Art. 5337. [5457] Lessees may remove improvements.—All improvements made by lessees on lands leased by them are hereby declared to be personal property, which may be removed by such lessees on the expiration of their lease contracts; and they shall have sixty days after such expiration in which to remove the same. [Id.]

CHAPTER 4.—OIL AND GAS

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10. Rentals not payable during drilling operations preceding discovery of oil, gas, or minerals; duration of lease; duty to develop and prevent drainage; penalty.

Art.
5382a. Camp Hulen Lease Board—Cont'd.

Sec.
11. Title to rights purchased; assignment of rights; relinquishment of rights; pipe lines, telephone lines, and roads.
12. Royalty, payment for use of National Guard Division; time of payment; sworn statement; books and records filed and subject to inspection.
13. Protection of leased land from drainage or depletion from adjacent lands; effect of failure to protect.
14. Forfeiture for default; suit to declare; reinstatement of lease; suit for damages; lien to secure payments under lease.
15. Surveys, files, contracts, and records filed in General Land Office; payments of bonus, rentals and royalties; deposit and expenditure by Board.
16. Warrants to pay expenses; appropriation.
17. Forms, rules, and regulations of Board; withdrawal of lands advertised.

1. UNIVERSITY AND OTHER LANDS

Article 5338. [Repealed by Acts 1931, 42nd Leg., p. 452, ch. 271, § 13.]

Art. 5339. Application for surveyed lands.—One desiring to obtain the right to prospect for and develop oil and natural gas that may be in any surveyed area included herein shall file with the county clerk a written application designating it sufficiently to identify it. Such clerk shall, upon receipt of one dollar as a filing fee, file and record the application and note the same on his record of surveys opposite the entry of the proper survey, giving the time of filing. When one has obtained four sections, or the equivalent, eligible to be embraced in one permit, such applicant shall not obtain any more land within two miles thereof, but if one obtains less than four sections eligible to be embraced in one permit, such one may obtain such additional area within two miles of the other area as will equal four sections. One shall not obtain more than one thousand acres within one mile of a well producing petroleum. [Acts 1917, p. 158.]

Art. 5340. Unsurveyed lands: application.—One desiring to obtain the right to prospect for and develop oil and natural gas in any unsurveyed areas named in this law shall file with the county surveyor a written application for each area applied for, designating it sufficiently to identify it, but such areas shall not exceed 2,560 acres. Upon receipt of one dollar filing fee the surveyor shall file and record the application. [Id.]

Art. 5341. Issuance of permit.—When the Commissioner receives an application that was filed with the county clerk or with the surveyor and the field notes and plat, one dollar filing fee and ten cents per acre for each acre applied for, which shall also be paid annually thereafter during the life of the permit, and an affidavit by the applicant showing what interest he has in any other permit, lease or patent issued under this law and in good standing, he shall file the same, and if upon examination the application and field notes are found correct and the area applied for is within the provisions of this law, the Commissioner shall issue to the applicant or his assignee a permit conferring upon him an exclusive right to prospect for and develop petroleum and natural gas within the designated area for a term not to exceed two years. [Id.]

Art. 5341a. Extension of permits.—All permits to prospect for oil and gas heretofore issued on river beds or channels, fresh water lakes and islands therein which have not expired and on which as much as twenty-five thousand dollars ($25,000.00) has been spent in prospecting for oil and gas and on which actual work is now being done, are hereby extended for a period of ten years from date the permit was issued, upon condition that the owner will pay annually in advance the acreage rental due thereon under the law as provided in the permit. This Act shall not be construed to relieve the owner of such permits from the obligations to drill such offset wells as are required by the law under which the permit was issued. [Acts 1925, p. 349.] [39th Leg., ch. 141, § 1.]

Art. 5341b. Extension of oil leases.—All oil and gas permits heretofore or hereafter issued upon lands included herein and which have not expired shall be extended for a term of five years from date thereof, conditioned only upon the payment of the annual rental, as provided by law, in advance and whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual rental money. After production is secured in paying quantities, the owner shall be entitled to a lease which shall run so long as the area covered by his lease produces oil or gas in paying quantities, subject to the provisions of this Act. [Acts 1925, p. 351.] [39th Leg., ch. 143, § 1.]

The Act of 1925, cited to the text, applying to University lands, amended section 14 of Acts 1925, 39th Leg., ch. 71, p. 225. Acts 1929, 41st Leg., ch. 2, p. 6, § 1, repealed ch. 71 of Acts of 1925 without making any reference to the amendatory Act of 1925.

Art. 5341c. Suspension of running of terms of leases while owner is denied access by United States.—Section 1. If the owner of any valid oil and gas lease granted by the State is denied access to or is denied a permit to drill upon or produce from the leased premises by any duly constituted authority of the United States of America, after a bona fide attempt has been made by such owner to obtain access or permit to drill upon or produce from the leased premises, such owner may file with the School Land Board an application describing and giving the date of the action which deprives him of the right of access or the right to drill upon or produce from the premises, and if said Board is satisfied that the facts set forth in the application are true, the Board may enter an order upon its minutes suspending the running of both the primary and the principal term of such lease, or suspending any condition, obligation or duty thereunder as of the date of the origin of the cause of suspension and during the existence of the cause of suspension, so long as the lessee continues to make on each anniversary date of such lease the annual rental payments stipulated in the lease during the period of suspension. Such oil and gas lease shall remain in status quo, and all obligations and conditions existing under such lease or such of them as may be suspended by said Board, shall be inoperative and of no force and effect, except the obligation to pay delay rentals as provided for herein, until ninety (90) days after the School Land Board shall enter an order upon its minutes reciting that the cause for suspension has ceased to exist, at which time such oil and gas lease shall, provided the rental payments have been made during the period of suspension, again become operative and all of the suspended obligations and conditions, including the payment of rentals under same, shall again attach and be in force, and in the case of the suspension of the primary and/or principal terms of the lease, the lease shall thereafter continue in force for a period equivalent to the unexpired term of the lease on the date of origin of the cause for suspension. The Commissioner of the General Land Office shall give notice immediately to the lessee of the entry of the order that the cause for suspension has ceased to exist; provided, however, that the annual rental payments have been met.

Sec. 2. Nothing contained herein shall be construed as abridging any rights or privileges conveyed by Chapter 287, Acts of the Forty-seventh Legislature, Regular Session.[1] [Acts 1943, 48th Leg., p. 248, ch. 149.]

[1] Article 5366a.

Art. 5341d. Extension of leases on University land; war agency restrictions.—Section 1. In the case of any non-producing oil, gas or mineral lease on University land, if one hundred twenty (120) days before expiration of the primary term there be in effect any restrictions issued by a Federal war agency prohibiting the drilling or completion of a well thereon, the holder of such lease shall have the right to negotiate an extension or renewal of such lease for a period of not longer than two (2) years with the Board of Regents of the University of Texas and the Commissioner of the General Land Office.

The Board of Regents of the University of Texas and the Commissioner of the General Land Office, in considering an application for an extension or renewal of any such lease above described, shall take into consideration in establishing the consideration for such lease the diligence with which the lessee has followed his duties under the existing lease, the present value of the land upon which an extension or renewal of the lease is sought, and all other good business practices. The lessee in presenting his application for extension or renewal of such lease or leases shall present evidence to the Board of Regents of the University of Texas and to the Commissioner of the General Land Office showing it was impossible for him or any of his co-owners to comply with the restrictions which he claims prohibited the drilling or completion of the well on said tract.

If the lessee should claim as grounds for an extension or renewal of any such lease that there is insufficient acreage within the tract under lease by him to comply with the Federal restriction then no extension or renewal shall be granted unless said lessee also show that there is no adjacent and adjoining acreage to said tract wherein said applicant is a party in interest that could have been combined with the tract upon which the application for extension or renewal is made in order to comply with the Federal restriction.

Sec. 2. The Commissioner of the General Land Office is hereby authorized to issue to the lease owner such instrument in writing in the nature of an extension or renewal of such lease as may be necessary or proper to carry into effect the foregoing provision of this Act.

Sec. 3. The provisions of this Act are and shall be held and construed to be cumulative of all General Laws of this state on the subject treated of and embraced in this Act when not in conflict herewith, but in case of conflict, in whole or in part, this Act shall control.

Sec. 4. If any section, subdivision, paragraph, sentence, or clause of this Act be held to be unconstitutional, the remaining portions of same shall nevertheless be held valid and binding. [Acts 1943, 48th Leg., p. 359, ch. 238.]

Art. 5341e. Suspension of running of terms of leases while owner is denied access by United States.—If the owner of any valid oil and gas lease granted by the State covering University lands is denied access to or is denied a permit to drill upon or produce from the leased premises by any duly constituted authority of the United States of America, after a bona fide attempt has been made by such owner to obtain access or permit to drill upon or produce from the leased premises, and denial of access as used herein shall include agreements by the lessee or his assigns under any such lease with a duly constituted authority of the United States not to enter upon and engage in drilling operations on any such oil and gas lease made under compulsion or threat of condemnation by such duly constituted authority of the United States, such owner may file with the Board for Lease of University Lands an application describing and giving the date of the action which deprives him of the right of access or the right to drill upon or produce from the premises, and if said Board is satisfied that the facts set forth in the application are true, the Board may enter an order upon its minutes suspending the running of both the primary and the principal term of such lease, or suspending any condition, obligation, or duty thereunder as of the date of the origin of the cause of suspension and during the existence of the cause of suspension, so long as the lessee continues to make on each anniversary date of such lease the annual rental payments stipulated in the lease during the period of suspension. Such oil and gas lease shall remain in status quo, and all obligations and conditions existing during such lease or such of them as may be suspended by said Board, shall be inoperative and of no force and effect, except the obligation to pay delay rentals as provided for herein, until ninety (90) days after the Board for Lease of University Lands shall enter an order upon its minutes reciting that the cause for suspension has ceased to exist, at which time such oil and gas lease shall, provided the rental payments have been made during the period of suspension, again become operative and all of the suspended obligations and conditions, including the payment of rentals under same, shall again attach and be in force, and in the case of the suspension of the primary and/or principal terms of the lease, the lease shall thereafter continue in force for a period equivalent to the unexpired term of the lease on the date or origin of the cause for suspension. The Commissioner of the General Land Office shall give notice immediately to the lessee of the entry of the order that the cause for suspension has ceased to exist; provided, however, that the annual rental payments have been met. [Acts 1945, 49th Leg., p. 300, ch. 217, § 1.]

Art. 5342. Development work.—Before the expiration of twelve months after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of said area. If petroleum and natural gas is not sooner developed in commercial quantities the owner or manager shall within thirty days after the expiration of one year from the date of the permit, file in the Land Office an affidavit supported by two disinterested credible persons that such actual work was begun within the first twelve months aforesaid, and that a bona fide effort to develop the said area was made during the twelve months preceding the filing of the statement, and showing what work was done and expenditures incurred and whether or not petroleum or natural gas had been discovered in commercial quantities. A failure to file said affidavit within the time specified, or the filing of an affidavit false in material matters shall subject the permit to forfeiture. The owner of a permit shall not take, carry away or sell any petroleum or natural gas before obtaining a lease therefor; provided such quantity as may be necessary for the continued development of the area before obtaining a lease may be used without accounting therefor. [Acts 1917, p. 158.]

Art. 5342a. Permits extended.—All oil and gas permits issued on other than public school or university land, by the Commissioner of the General Land Office of the State of Texas under date of February 3, 1920, and heretofore extended for three years by act of the Legislature, are hereby renewed and extended for an additional period of two years; provided however, that this Act shall apply only to those permits on which all rentals have been paid and under which, as extended, a well has been drilled to a depth of 3000 or more feet, and on which drilling operations for oil and gas are being actively conducted in good faith. Rights hereunder shall be conditioned on regular pay-

ment of annual rentals covering the two year extension period, and also on owner making report to the Commissioner of the General Land Office within sixty days after this Act becomes effective, showing drilling operations and depth of well. [Id.]

Art. 5343. University permits.—The provisions of subdivision 3 of this Chapter, so far as they relate to a combination of permits and extension of time for beginning development and time for development thereunder, shall apply to permits upon University land.

Additional legislation, Acts 1925, 39th Leg., ch. 71, p. 225, set out under this article in Rev.Civ.St.1925, was repealed by Acts 1929, 41st Leg., ch. 2, p. 6.

In addition to repealing Acts 1925, 39th Leg., ch. 71, p. 225, the repealing act withdraws from lease or sale all oil and gas in University lands until such time the Legislature may enact laws deemed adequate for the protection of the University fund.

Art. 5343a. Withdrawal of University land from lease.—If, in cases now pending in the Supreme Court or in cases hereafter filed, the said Court should decide that the mineral lease or sales Act of March 10, 1925, Chapter 71, Acts Regular Session, 39th Legislature, is invalid or ineffective, then and in that event the minerals in all University land are hereby withdrawn from lease or sale until such time as the Legislature may enact legislation deemed adequate for the protection of the University available and permanent funds; and the Commissioner of the General Land Office shall not, in the event such sales act is declared unconstitutional, thereafter issue any oil and gas permits on said land upon any application heretofore or hereafter filed, until further legislation as to same. [Acts 1927, 40th Leg., p. 368, ch. 249, § 1.]

Senate concurrent resolution No. 8 passed by the 42nd Leg., 1st C.S. 1931, omitting the preamble reads as follows: "Resolved by the Legislature of Texas, that all mineral deposits, other than oil and gas, in University lands, be and there are hereby withdrawn from sale, lease or mineral permit until such time as the Legislature may, by adequate law, provide for their orderly development."

Art. 5344. Oil leases.—Upon the payment of $2.00 (two dollars) per acre for each acre in the permit a lease shall be issued for a term of ten (10) years, or less, as may be desired by the applicant, and with the option of a renewal or renewals for an equal or shorter period, and immediately after the expiration of the first year after the date of the lease, the sum of two ($2.00) dollars per acre shall be paid during the life of the lease, and in addition thereto, the owner of the lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the metre output of all gas disposed of off the premises; provided, however, that the provisions hereof as to the payment of two ($2.00) dollars per acre during the lease period and the life of said lease shall not apply to leases of bays, marshes, reefs, salt-water lakes or other submerged lands containing as much as one hundred (100) acres but not in excess of five hundred (500) acres upon which as many as five wells have been drilled, and upon which an expenditure of as much as one hundred thousand ($100,000.00) dollars has been made. The drilling of said wells and the expenditure of said amount to be established to the satisfaction of the commissioner of the land office. [Acts 1925, p. 348.] [39th Leg., ch. 140, § 1.]

Art. 5344a. Terms of lease.—A lease shall then be issued for a term of ten years or less, with the option of a renewal or renewals for an equal or shorter period, and the owner of the lease shall pay a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises. [Id.]

Art. 5344b. Offset wells.—The permit or lease shall contain the terms upon which it is issued, including the authority of the Commissioner to require the drilling of wells necessary to offset wells drilled upon adjacent private land, and such other matters as the Commissioner may deem important to the rights of the applicant or the State.

Art. 5344c. Oil, gas and mineral leases; terms; extension.—Section 1. All leases for the production of minerals (except gold, silver, platinum, cinnabar or other metals) covering any area within river beds and channels, unsold school lands, both surveyed or unsurveyed, or any area within tidewater limits, including islands, lakes, salt water lakes, bays, inlets, marshes, reefs, the bed of the sea and that portion of the Gulf of Mexico now or hereafter within the jurisdiction of the State of Texas, hereafter granted by the Commissioner of the General Land Office or the School Land Board, shall be granted for a primary term of five (5) years and as long thereafter as oil, gas, or other mineral covered by such lease is produced therefrom, providing that all leases for minerals, except oil and gas, shall be granted on separate leases and for separate considerations.

Sec. 2. Any lease heretofore granted and in good standing covering any of the lands or areas referred to in Section 1 of this Act, upon application by any owner thereof to the Commissioner of the General Land Office before October 1, 1948, may be amended under the terms of this Act so as to provide that such lease shall remain in effect as long after the expiration of its primary term as oil, gas, or other mineral covered by such lease is produced therefrom, provided any amendment executed by virtue of this Act shall include only those minerals covered in the original agreement to which said amendment is made, and providing further that in amending such leases same shall be amended and renewed separately as to each mineral thereunder, except as to "oil and gas" which may be contained in one lease and each such lease shall remain in effect as long after the expiration of its primary term as such mineral covered by such lease is produced therefrom in paying quantities. The School Land Board shall fix the consideration for each such amendment, which shall not be less than Two Dollars ($2) per acre, provided that any such amendment shall not change the original consideration in any lease to the extent that the State shall thereafter receive less than the original royalty provided in said leases. If the consideration so fixed is paid in cash within ninety (90) days after such consideration has been fixed, the Commissioner of the General Land Office shall execute and deliver to the owner of such lease an instrument evidencing such amendment. If the consideration is not paid within the ninety (90) days, the application shall be conclusively presumed to have been withdrawn. This Act shall not authorize the Commissioner of the General Land Office or the School Land Board to change or amend the lease involved in any other respect.

Sec. 2-A. Provided that before any lease is extended the School Land Board shall have the right in any case, at the expense of the lessee involved, to do or have done such geological work as it may deem necessary for the purpose of determining the value of the lease and what amount should be charged for any extension, and all applications shall contain an agreement by the lessee that such work may be done at lessee's expense.

Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only.

Sec. 4. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any phrases, sentences, clauses, or sections of this Act shall be declared unconstitutional shall in no event affect the validity of any of the other provisions hereof. [Acts 1947, 50th Leg., p. 139, ch. 82.]

Art. 5345. Damages to surface.—If the surface of an area included within the operations of this law, has been acquired by one prior to the filing of an application under the provisions herein, such area shall nevertheless be subject to prospect and lease as provided herein, but the owner of the permit or lease shall pay ten cents per acre to the owner of the surface annually in advance during the life of the permit or lease. The sum so paid and accepted by the surface owner shall be full compensation for all damages to the surface. [Acts 1917, p. 158; Acts 2 C. S., 1919, p. 241.]

Art. 5346. Statement of holdings.—Whoever applies for a permit or lease shall file with the application an affidavit showing what interest the applicant has in any other permit or lease issued by the State and in good standing at the date of the statement. [Id.]

Art. 5347. Distribution of funds.—The proceeds arising from activities under this law, and Chapter 5 thereof, which affect lands belonging to the public free school funds and the permanent fund of the several asylums, shall be credited to the permanent funds of said institutions. All proceeds paid or collected from activities under this law affecting the lands belonging to the Permanent Fund of the University of Texas (except such funds as are required by the Constitution to be credited to the Permanent University Fund) shall be credited by the State Treasurer to the available fund of such institution; Provided that all such funds shall be held by the Board of Regents of the University in a special building fund and shall be expended only for the erection of buildings and equipping same, or for other permanent improvements. All proceeds, including those collected after this Act takes effect and those collected prior to September 1, 1925, now being held in suspense fund, arising from the activities affecting lands other than those belonging in the public free school fund, the University and the several asylums, shall be credited to the General Revenue Fund. Provided that the funds herein apportioned shall not include proceeds and royalties derived from the Sand, Gravel and Shell Fund, the disposition of which is now fixed by Statute. [Id.; Acts 3 C. S. 1920, p. 120(102); Acts 1927, 40th Leg., 1st C. S., p. 135, ch. 43, § 1.]

Acts 1925, 39th Leg., ch. 175, § 2, which amended this article so as to place proceeds of oil and gas leases on University lands in available building fund of University, was held, in State v. Hatcher, 115 T. 332, 281 S.W. 192, to be in violation of Const. art. 7, § 15, providing that all lands belonging to the University, "together with all the proceeds of sales of the same," shall constitute and become a permanent University fund.

Art. 5348. General provisions.—The general provisions in this article shall apply to each foregoing provision so far as applicable.

Surveyed lands within the meaning of this law shall include all tracts for which there are approved field notes on file in the Land Office and eighty acre tracts and multiples thereof of such surveys.

Unsurveyed areas within the meaning of this law shall include all areas for which there are no approved field notes on file in the General Land Office.

All applications for surveyed land shall be filed with the clerk of the county in which the tract or a portion thereof is situated, or with the clerk of the county to which such county may be attached for judicial purposes, and shall be filed in the Land Office within thirty days after it was filed with the county clerk.

All applications for unsurveyed areas shall be filed with the county surveyor of the county in which the area or part thereof is situated. The area shall be surveyed within ninety days, and the application, field notes and plat shall be filed in the Land Office within one hundred days after the date of filing of the application.

A separate written application shall be made for the area desired in a permit. No permit or lease shall embrace the area in two or more applications.

No application, permit or lease shall embrace a divided area.

Whole tracts of surveyed lands may be applied for as a whole or in eighty acre tracts or multiples thereof without furnishing field notes therefor.

The area in each permit shall be developed independently of other areas.

When one desires a lease, any one or more whole tracts in the permit may be abandoned by relinquishment filed in the Land Office as herein provided and thereupon obtain a lease upon the remaining area; provided such remaining area is in a solid body.

An owner may relinquish a permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk and filed in the Land Office accompanied by one dollar filing fee. The Commissioner shall mail notice to the proper county clerk of the filing of the relinquishment and when said notice has had time through the due course of mail to reach said clerk the area shall be subject to applications as in the first instance. [Acts 1917, p. 158; Acts 2nd C.S., 1919, p. 241; Acts 3rd C.S., 1920, p. 120 (102).]

For provisions covering the same subject matter, see Acts 1931, 42nd Leg., p. 452, ch. 271, as amended, set out as Article 5421c.

Art. 5349. Transfer of rights.—The owner of a file or permit or lease under any provision of this subdivision may sell same and the rights secured thereby at any time, also fix a lien of any kind thereon to any person, association of persons, corporate or otherwise, who may be qualified to receive a permit or lease in the first instance; provided, the instrument evidencing the sale or lien shall be recorded in the county where the area or part thereof is situated, or in the county to which such county may be attached for judicial purposes, and same shall be filed in the Land Office within sixty days after the date thereof accompanied with a filing fee of one dollar. If not so filed the contract evidenced by said instrument shall be void and the obligations therein assumed shall not be enforceable. A sublease contract need not be filed in the Land Office. [Acts 1917, p. 165.]

Art. 5349a. Transfer of not less than forty acres.—Owners of oil and gas permits and leases that have heretofore been issued and those that may hereafter be issued on University land may sell and transfer same as a whole or in tracts not less than forty acres, and the assignee may have the instruments evidencing such transfer filed in the General Land Office and that portion so transferred separated from the parent tract or parent subdivision of a tract permit or lease on the records of said office upon the payment of one dollar as a filing fee for each transfer and an additional fee of ten cents per acre for each acre in such transfer. The Commissioner of the General Land Office may, when deemed necessary, require field notes before filing a transfer. All transfers shall be recorded in the county or counties in which the area or a part thereof is located before offering same for filing in the Land Office. The one dollar filing fee shall be turned into the State Treasury to the credit of the general revenue and the acreage fee shall be turned into the State Treasury to the credit of the available fund of the State University. The provisions of this Act shall apply to permits and leases that may be held singly or in combination with other permits or leases. [Acts 1925, p. 23.] [39th Leg., ch. 7, § 1.]

Art. 5349b. May dissolve combination at wish of owner.—Owners of oil and gas permits, and leases based thereon, that were heretofore issued and those that may hereafter be issued that have been combined under the provisions of existing law and those that may hereafter be so combined, may dissolve such com-

binations in such manner as may be satisfactory to the owners thereof, and conditioned only upon the payment of the fees prescribed herein when transfers are presented for filing in the General Land Office after having been recorded in the county or counties in which the area or part thereof may be located; provided no acreage fee shall be charged under this Act; when a transfer includes a whole permit or a whole lease or a whole tract in a permit or lease. [Id.] [39th Leg., ch. 7, § 2.]

See note to article 5349c, post.

Art. 5349c. Assignee substituted for original permittee or lessee.—When the transfers provided for herein shall have been filed in the General Land Office the assignee or assignees in such transfer shall become substituted for the original permittee or lessee, as the case may be, and thereby assume all the obligations, pains and penalties that the law imposed upon the original permittee or lessee. [Acts 1925, p. 23.] [39th Leg., ch. 7, § 3.]

This article was not assigned a separate number in R.S. 1925, but was set out under article 5349b, ante.

Art. 5350. Forfeiture of rights.—If a permit or lease should be issued upon a statement by the applicant which is false or untrue in material matters, or should the owner of a permit fail or refuse to begin in good faith the work necessary to the development of the area within the time required, or to proceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development, or to apply for a lease within the prescribed time, or should the owner of a lease fail or refuse to make proper remittances in payment of royalty or other payments, or to make the proper statement, or to furnish the required evidence of the output and market value and material matters relating thereto when requested, or fail to make the annual payment on the area when requested so to do, the permit or lease, shall be subject to forfeiture. When the Commissioner is sufficiently informed of such facts he may declare the permit or lease forfeited by proper entry upon the duplicate thereof in his office; and he shall mail a notice of that fact to the proper county clerk and the area shall be subject to the application of another than the forfeiting owner when the notice has had time to reach the county clerk through due course of mail; provided, the Commissioner may exercise large discretion in the matter of requiring one to develop gas wells. All forfeitures may, within the discretion of the Commissioner, be set aside and all rights reinstated before the rights of another intervene. [Id.]

Art. 5351. Pollution of streams.—All development in water or on islands, or river beds and channels shall be done under such regulations as will prevent the pollution of the water and for the prevention of such pollution the Commissioner may call upon the Game, Fish and Oyster Commissioner for assistance in the adoption and enforcement of rules and regulations for the protection of the waters from such pollution. The Commissioner of the General Land Office may cancel a permit or lease for a failure or refusal of the owner to comply with such rules and regulations as may be adopted. [Id.]

Art. 5352. Properties taxable.—Rights acquired under this law shall be subject to taxation as is other property. [Id.]

2. GULF LANDS

Art. 5353. Lands subject to lease.—All islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and unsold unsurveyed public free school lands, shall be subject to lease by the Commissioner to any person, firm or corporation for the production of oil and natural gas that may be therein or thereunder, in accordance with the provisions of this law. [Acts 2nd C. S. 1919, p. 51; Acts 1st C. S. 1921, p. 112.]

Art. 5354. Notice for bids.—The Commissioner shall fix the day and hour when an area or areas will be subject to lease and advertise or readvertise such areas at least thirty days before such lease date, except as provided in case of tie bids. The Commissioner may give such notice by distributing printed lists as provided for sales of surface rights of public lands. [Acts 2nd C. S. 1919, p. 51.]

Art. 5355. Application for lease.—Application for separate areas and the first payment thereon shall be delivered into the Land Office on or before the day and hour on which the area will be subject to lease, in sealed envelopes indorsed, "Application to lease Minerals," with the date the area will be subject to lease. All envelopes so indorsed shall be securely kept by the Commissioner or his chief clerk unopened until the date on which applications are to be opened, and at said hour either or both of them shall open the envelopes in the presence of such persons as desire to be present. All applications received up to the opening hour, whether open or sealed, indorsed or not indorsed, shall be considered as properly delivered. An application which includes two or more areas, or is for a price less than the fixed royalty and price per acre shall be void. [Id.]

Art. 5356. Tie bids.—If the highest bid for the same area is made by more than one applicant, all such applications shall be rejected and a date fixed within the discretion of the Commissioner, not later than the fifteenth day of the following month, when the area will be subject to lease as in the first instance, but no bids therefor shall be considered if the price is less than the former sum offered. The State Treasurer shall return all sums paid upon rejected applications. [Id.]

Art. 5357. Acceptance of bid.—When an application has been filed and considered and the area found to be subject to lease, the lease shall be issued for a term not to exceed twenty-five years to the applicant that pays the most for the area in addition to the fixed price per acre and the stipulated royalty. If production should not be secured in ten years, the lease shall terminate and the area again be subject to lease. [Id.]

Art. 5358. Terms of lease.—The areas included herein shall be leased for one-eighth of the gross production of oil, or the value of same, that may be produced and saved, and one-eighth of the gross production of gas or the value of same, that may be produced and sold off of the area, and ten cents per acre in advance for the first year, and thereafter in advance an additional sum of twenty-five cents per acre for the second year, and fifty cents per acre for the third year, and one dollar per acre for each year thereafter. When production has been secured in commercial quantities and the payment of royalty begins and continues to be paid, the owner shall be exempt from further annual payments on the acreage. If production should cease and royalty not be paid, the owner of the lease shall, at the end of the lease year in which royalty ceased to be paid, and annually thereafter in advance, pay one dollar per acre so long as such owner may desire to maintain the rights acquired under the lease, not to exceed ten years from the date of said lease. [Id.]

Art. 5359. Offset wells.—If oil or gas should be produced in commercial quantities in a well on an area privately owned when such well is within one thousand feet of an area leased hereunder, the owner of the lease on such State area shall, within sixty days after the initial production on such privately owned area, begin in good faith and prosecute diligently the drilling of an offset well or wells on the area so leased from the State. Such offset wells shall be drilled to

such depth and such means shall be used as may be necessary to prevent the undue drainage of oil or gas from beneath such State area. A log of each well shall be filed in the Land Office within thirty days after the well has been completed or abandoned. [Id.]

Art. 5360. Forfeiture of rights.—The provisions of subdivision 3 of this chapter governing the forfeiture of rights thereunder and a reinstatement thereof, shall apply to leases under this subdivision, and on forfeiture of such lease, after due advertisement, it shall be subject to lease by another than such forfeiting owner. [Id.]

Art. 5361. Access to lands.—Whenever it becomes necessary for the owner of a lease acquired hereunder to enter the inclosed land of another for the purpose of ingress and egress to and from the area so leased from the State, and such lessee and owner or his agent cannot agree upon the place of such entry, nor the conditions thereof, the lessee or his agent may petition the commissioners courts of the counties in which such inclosure is situated in whole or in part for the opening of such way of ingress and egress as may be necessary. Upon the filing of such petition, said courts shall lay out and establish in the manner provided for the laying out of third class public roads, such roads as may be necessary for the purpose named herein. [Id.]

Art. 5362. Assignments of leases.—One may transfer his lease at any time. Such transfer shall be recorded in the counties in which the area or part thereof is situated and within ninety days after the date of its execution the recorded transfer or certified copy of same shall be filed in the Land Office accompanied by one dollar as filing fee, and thereby the assignee shall succeed to all the rights and be subject to all the obligations and penalties of the original lessee. [Id.]

Art. 5363. Relinquishment of lease.—An owner may relinquish his lease to the State at any time by having the relinquishment recorded in the counties in which the area or part thereof is situated, and within ninety days after the date of its execution the recorded relinquishment or certified copy of same shall be filed in the Land Office accompanied by one dollar as filing fee, and thereby the owner of such lease shall be relieved of any further obligations to the State, but such relinquishment shall not have the effect to release the owner from any obligations or liabilities theretofore accrued in favor of the State. [Id.]

Art. 5364. Disposition of payments.—The State Treasurer shall credit the permanent free school fund with all amounts received from the unsurveyed school lands, and with two-thirds of the amount so received from other areas, and shall credit the general revenue fund with the remaining one-third from said other areas. [Id.]

Art. 5365. Classification of surveys.—To administer this law to the best interest of the State, the Commissioner may recognize or decline to recognize any survey heretofore made of any area included herein. Recognized surveys shall be advertised and shall be subject to lease as a whole. Surveys not recognized shall be deemed, together with all adjacent unsurveyed areas, as one unsurveyed area, and the Commissioner shall advertise the whole or designated portions thereof for lease. The Commissioner may require field notes for unsurveyed areas before issuing a lease therefor. [Id.]

Art. 5366. Pollution of streams.—The development of wells and the development and operation upon the areas included herein shall be done so far as practicable in such manner as to prevent such pollution of the water as will destroy fish, oysters and other sea food. The Game, Fish and Oyster Commissioner shall enforce such rules as the Commissioner of the General Land Office may prescribe for that purpose. [Id.]

Art. 5366a. Extension of oil and gas leases on areas covered by coastal waters or within Gulf.—Section 1. In each case in which an oil and gas mineral lease has heretofore been granted or may hereafter be granted by the State of Texas on an area covered by the coastal waters of the State or within the Gulf of Mexico and in which the War Department of the United States refuses to grant a permit to the lessee or owner of such lease to drill a well thereon for oil, gas or other minerals (the area included in such lease being within the navigable waters of the United States) and in the event the primary term of such lease should expire during the period of time in which the War Department of the United States may continue to refuse to issue such permit, then and in such event the primary term of such lease is hereby extended for successive periods of one (1) year from and after the end of the original primary term of such lease while and so long as the War Department may continue such refusal to issue to the lessee or to the owner of such lease a permit to drill for oil, gas or other minerals, on the area covered thereby; provided, that in order to make such extensions effectual the lessee or the owner of such lease shall, during each of the annual periods during which the primary term of the lease is so extended, apply to and seek to obtain from the War Department a permit to drill a well for oil, gas or other minerals on the area covered by such lease and be unsuccessful in its attempts to obtain a permit, or, if successful in obtaining a permit, commence operations for drilling a well upon the leased premises within sixty (60) days after obtaining such permit; and provided further that the lessee or the owner of such lease continues to pay the annual renewal rentals at the rate provided for in such lease for the period of time involved in such extensions. Should such lease be so extended and should the War Department at any time while such lease is still in force and effect issue a permit to the lessee or to the owner of such lease to drill a well thereon for oil, gas or other minerals, such lease shall continue in force and effect if the lessee commences drilling operations upon the leased premises within sixty (60) days after obtaining such permit, and so long as the lessee or the owner of such lease shall continue to conduct drilling or mining operations thereon, or if oil, gas or other mineral be discovered thereon by the lessee or the owner of such lease, so long as oil, gas or other mineral is produced from such leased premises. Should the production of oil, gas or other mineral on said leased premises after once secured, cease from any cause, such lease shall not terminate if the lessee or owner of such lease commences additional drilling, reworking or mining operations within thirty (30) days thereafter or if it be within the original primary term of such lease, commences or resumes the payment or tender of rental on or before the rental paying date, if any, next ensuing; but if there be no rental paying date next ensuing, the lease shall in no event terminate prior to the expiration of the primary term.

Sec. 2. The Commissioner of the General Land Office is hereby authorized to issue to the lessee or owner of said lease such instrument in writing in the nature of an extension of said lease as may be necessary or proper to carry into effect the foregoing provisions of this Act. [Acts 1941, 47th Leg., p. 456, ch. 287.]

Section 3 of the Act of 1941 repealed conflicting laws.

3. SOLD ASYLUM AND SCHOOL LANDS

Art. 5367. School and asylum lands.—The State hereby constitutes the owner of the soil its agent for the purposes herein named, and in consideration therefor, relinquishes and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas which has been undeveloped and the value of the same that may be upon and within the surveyed and unsur-

veyed public free school land and asylum lands and portions of such surveys sold with a mineral classification or mineral reservation, subject to the terms of this law. The remaining undivided portion of said oil and gas and its value is hereby reserved for the use of and benefit of the public school fund and the several asylum funds. [Acts 2nd C. S. 1919, p. 249; Acts 1st C. S. 1921, p. 112.]

Art. 5367a. Commissioner's duty to ascertain bonus and rental money due state.

Duty of commissioner

Sec. 1. It shall be the duty of the Commissioner of the General Land Office to ascertain and determine as soon as practicable the amounts of bonus and rental money due the State and by whom due as a result of the execution of oil and gas leases by owners of the soil as agents of the State under the provisions of the Relinquishment Act. The term "Relinquishment Act," as used in this Act, refers to and includes Chapter 81, Printed Acts of the Second Called Session of the 36th Legislature and the amendment thereof enacted by the First Called Session of the 37th Legislature.

Cash or deferred payments of rental or bonus due state

Sec. 2. When the Land Commissioner has ascertained and determined the amounts due the State, and by whom due, as in Section 1 of this Act provided, in every case where he finds that the lessee in an oil and gas lease executed by a land owner under the terms and conditions of the Relinquishment Act is indebted to the State under the terms and provisions of said Relinquishment Act, and in every case where the Land Commissioner finds that a lessor, who executed an oil and gas lease under the terms and provisions of the Relinquishment Act, has received bonus and rental money under such lease and has failed to remit to the State that portion of such bonus and rental money due the State under the terms of said Relinquishment Act, all such indebtedness shall be paid to the State in cash; or if any such lessee or lessor is unable to pay said indebtedness in cash, such lessee or lessor shall file with the Land Commissioner an affidavit to the effect that such debtor is unable to pay such debt in cash. In addition to the affidavit of the debtor, the Land Commissioner may require such additional affidavits or substantiating evidence as he may deem sufficient to establish the true condition of the debtor's financial condition. Upon the filing of such affidavit and additional proof, if required, and the finding of the Land Commissioner that the affidavit speaks the truth, the debtor shall pay one-twentieth (1/20) of the debt found to be due in cash and make and execute an obligation to the State for the balance due which obligation shall provide for the payment of the balance in twenty (20) equal annual payments, the first of which shall be due and payable one (1) year after the date of the obligation, and a similar payment each year thereafter until the twenty (20) deferred annual payments have been made. The obligation shall be in the form of a promissory note and shall bear interest at the rate of four per cent (4%) per annum, and such interest shall be payable annually; principal and interest shall be payable at Austin, Travis County, Texas, and all past due interest and principal shall bear interest at the rate of five per cent (5%) per annum. The note shall provide that failure to pay any installment of principal or interest when due, shall, at the option of the State to be exercised by the Attorney General, mature the whole amount of said indebtedness and cause same to become then due and payable.

Purpose of Act

Sec. 3. If the courts should hold that the Legislature may not grant an extension of time in which to pay said debts to those unable to pay in cash without granting the same extension upon like terms and conditions to those who are able to pay, then and in that event, it is the intent and purpose of the Legislature in enacting this law that all debts due the State for bonus and rental money arising from the execution of any oil and gas lease under the provisions of the Relinquishment Act may be paid by the debtor executing the obligation as provided in Section 2 of this Act.

Release of State's lien

Sec. 4. Nothing in this Act shall ever be construed as releasing any lien that the State may now have to secure the indebtedness due the State after the same has been ascertained and determined and the obligation executed, nor shall the liability of any party be changed.

Demand and collection

Sec. 5. When the amount of indebtedness mentioned in Section 1 of this Act has been ascertained and determined, the Land Commissioner shall make demand upon the debtor for the payment of the amount due, and unless the debtor pays such obligation in cash within ninety (90) days or executes his obligation in lieu thereof as provided in Section 2 within such time, the Attorney General shall take such steps as in his opinion are necessary or proper for the immediate collection of such obligation.

Suit by state, limitations

Sec. 6. No suit may be instituted or maintained by the State for the collection of any debt due the State for bonus and rental money because of the execution of any oil and gas lease under the provisions of the Relinquishment Act until the Land Commissioner has ascertained the amount of such debt and the debtor has had an opportunity to make affidavit of inability to pay, as provided in this Act; and providing further that no suit may be instituted or maintained for any debt or alleged debt due the State for bonus and rental money under the Relinquishment Act, unless such suit be instituted within five (5) years from and after the date this Act becomes effective, but this limitation shall not apply to the obligation made to the State as provided in Section 2 of this Act, or to any suit for the collection of such debt where the State in its petition alleges that the affidavit of inability to pay made by the debtor is false or fraudulent, and such allegation is established to the satisfaction of the court trying said cause.

Not applicable to bonus or rental in escrow or held in suspense

Sec. 7. The terms and provisions of this Act shall not apply to any bonus or any rental money derived from a lease on any section or part of a section of land producing oil or gas at the effective date of this Act, or that has theretofore produced oil and/or gas in commercial or paying quantities, or to any indebtedness due the State which may accrue subsequent to the date this Act becomes effective, or to any debt due the State for bonus or rental where such amount has not been paid to the landowner, but has been placed in escrow or held in suspense by the lessee.

Partial unconstitutionality

Sec. 8. If any section, clause, provision or sentence of this Act contained should ever be held to be unconstitutional, such holding shall not affect the remaining portions of this Act, it being the intent of the Legislature that effect shall be given to so much of this Act as may be valid, even if a portion of this Act shall be held invalid.

Pending suits

Sec. 9. The provisions of this Act shall not apply to the obligations of any lessee for the collection of which suit was pending in any court of the State on May 22, 1933. [Acts 1933, 43rd Leg., p. 560, ch. 183.]

Art. 5368. Sale and lease by agent.—The owner of said land is hereby authorized to sell or lease to any person, firm or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions hereof, and he may have a second lien thereon to secure the payment of any sum due him. All leases and sales so made shall be assignable. No oil or gas rights shall be sold or leased hereunder for less than ten cents per acre per year plus royalty, and the lessee or purchaser shall in every case pay the State ten cents per acre per year of sales and rentals; and in case of production shall pay the State the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil. [Acts 2nd C. S. 1919, p. 249.]

Art. 5368a. [Unconstitutional.]

The article, Acts 1931, 42nd Leg., p. 28, ch. 23, was declared invalid in its entirety by the Supreme Court in Empire Gas & Fuel Co. v. State, 121 T. 138, 47 S.W.2d 265. This holding of invalidity was recognized by the Supreme Court in Golden v. Alexander, 141 T. 134, 171 S.W.2d 328.

Art. 5368b. Pooling state's royalty interest in natural gas with other interests, exceptions.

Authority to enter into agreements

Section 1. The Commissioner of the General Land Office, with the approval of the School Land Board, is hereby authorized to enter into agreements whereby the royalty interests in natural gas reserved to the State of Texas in any patent or contract of sale under the terms of any lease executed by an agent of the state under the Relinquishment Act,[1] or the royalty interest in natural gas reserved under the terms of any lease executed and issued by the Commissioner of the General Land Office (except leases covering lands belonging to The University of Texas), are pooled and consolidated with other interests in natural gas so as to form thereby a pooled area for the exploration, development, and production of the natural gas underlying such area.

Terms of agreement

Sec. 2. The terms of any such agreement shall be fixed by the Commissioner of the General Land Office and approved by the School Land Board, and may contain drilling obligations and production requirements which, when complied with as to the pooled area so formed, will constitute full and complete satisfaction of the drilling and production obligations now required by law or by the terms of any oil, gas and mineral lease on lands within such pooled area; provided, however, that the number of acres included in any such pooled area shall not exceed the number of acres authorized or required, at the time such pooled area is created, to be assigned to any natural gas well under the spacing rules or regulations of the Railroad Commission of the State of Texas or any other regulatory body, State or Federal, having jurisdiction, and shall conform in all other respects with such rules and regulations, and provided further that no such agreement shall be entered into that does not reserve to the state a free royalty on all natural gas produced and saved from such pooled area equivalent to the royalty fixed in the lease or contract under which the state's royalty is created or reserved, multiplied by a fraction whose numerator is a figure equal to the number of mineral acres owned by the state in such pooled area, and whose denominator is a figure equal to the total number of mineral acres included within the pooled area.

Crude petroleum oil and casinghead gas

Sec. 3. No authority is hereby granted for the Commissioner of the General Land Office and the School Land Board to enter into pooling agreements relating to crude petroleum oil or casinghead gas. "Crude petroleum oil" for the purpose of this statute is defined as any combination of liquid hydrocarbons produced at the mouth of the well by ordinary production methods without resort to the condensation of natural gas after the same leaves the reservoir. "Casinghead gas" is defined as any natural gas produced with crude petroleum oil from the same underground stratum.

Effect on other laws

Sec. 4. The provisions of this Act are and shall be held and construed to be cumulative of all General Laws of this state on the subject treated of and embraced in this Act when not in conflict herewith, but in case of conflict, in whole or in part, this Act shall control.

Partial unconstitutionality

Sec. 5. If any section, subdivision, paragraph, sentence, or clause of this Act be held to be unconstitutional, the remaining portions of this Act shall nevertheless be held valid and binding. [Acts 1945, 49th Leg., p. 507, ch. 309.]

[1] Articles 5367, 5368, 5369 et seq.

Art. 5369. Offset wells.—If oil or gas should be discovered in paying quantities on land not included in this law, and within one thousand feet of land that is so included, the owner, lessee, sub-lessee, receiver or other agent in control of such land included herein, shall in good faith begin the drilling of an offset well or wells upon such land within one hundred days after the first discovery, and prosecute same with diligence to completion. Every offset well shall be drilled to the depth necessary for effective protection against undue drainage by other wells on other lands in that locality. [Acts 2nd C.S., 1919, p. 249.]

Art. 5370. Failure to drill offset.—If such persons fail or refuse to begin drilling such offset wells within the time required, or to drill such offset well or wells diligently and in good faith, or to drill such wells to the depth necessary for the purpose intended, or to use the means necessary to the development of any well or wells thereon within the time required, or to drill such well drilled thereon, thereupon the relinquishment herein granted shall ipso facto terminate and the rights acquired thereunder shall likewise terminate, and the oil and gas relinquished herein shall revert to and become the property of the State's general revenue fund. When the Commissioner is sufficiently informed of the facts which so terminate such rights, he shall, on the wrapper containing the papers relating to the sale of the land, write and sign officially, words indicating such termination. [Id.]

Art. 5371. Sale of forfeited rights.—When the relinquishment granted herein and the rights acquired thereunder have been so terminated, the Commissioner shall take possession of the land and advertise the oil and gas therein for sale. All such sales shall be made at such times as the Commissioner may determine and in the manner provided for the sale of public free school land. The sale shall be made to the person, firm or corporation that will pay the highest price therefor in addition to one-eighth of the oil and gas produced or the value of the same, which shall be reserved to the public free school fund. The sum received in addition to the reserved one-eighth shall be divided equally between the General Revenue Fund and the owner of the soil, after deducting the expenses incident to the advertisement and sale. Purchasers at such sales shall begin the drilling of the necessary offset wells within sixty days after the acceptance of their offer, and the failure to do so and the failure to comply with the provisions of this law relating to the drilling of offset wells shall likewise operate as a termination of the rights acquired thereunder and the substances therein shall again be subject to sale. [Id.]

Art. 5372. Forfeiture of rights.—If any person, firm or corporation operating under this law shall fail or refuse to make the payment of any sum within thir-

ty days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the Land Office a correct log of any well, the rights acquired under the permit or lease shall be subject to forfeiture by the Commissioner, and he shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and the oil and gas shall be subject to sale in the manner provided for the sale of other forfeited rights hereunder, except that the owner of the soil shall not thereby forfeit his interest in the oil and gas. Such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this law. [Id.]

Art. 5373. Rights of subsequent purchaser.—If one acquires a valid right by permit or lease to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil and gas that may be therein, but when the rights under such permit or lease terminate in the manner provided in the law under which they were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished, and shall be thereafter subject to the provisions of this law. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the State. A relinquishment to the State of a lease producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in said lease. [Id.]

Art. 5374. [Repealed by Acts 1931, 42nd Leg., p. 452, ch. 271, § 13.]

Art. 5375. Operation under permit.—The owner of a permit or combination of permits shall have eighteen months from the date or average date thereof in which to begin drilling a well for oil and gas on some portion of the land included therein. The drilling on one permit shall be sufficient protection against forfeiture of all the permits included in a combination. Owners of permits or combination of permits included herein shall have three years after the date or average date thereof in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this law relating to the relinquishment of oil and gas to the owner of the soil. [Acts 2nd C.S., 1919, p. 249.]

Art. 5376. Lease under permit.—If oil or gas should be produced in paying quantities upon any land included in this law, the owner of the permit shall report the development to the Commissioner within thirty days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased, and accompany the application with a log of the wells, and the correctness of the log shall be sworn to by the owner, manager or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed ten years, subject to renewal or renewals. [Id.]

Art. 5377. Payments under permit.—The owner of a permit or combination of permits who desires to avail himself of the terms of this law, shall pay the State ten cents per acre, annually in advance, for the second and third years, and shall likewise pay the owner of the soil ten cents per acre for the first year of such permit, before availing himself of the privileges hereof, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the Commissioner, and when sufficiently informed of the facts which subject the permits to forfeiture, said Commissioner shall forfeit the same by an indorsement of forfeiture upon the wrapper containing the papers relating to the permits and sign it officially. The payment of ten cents per acre to the owner of the soil may be made to him or to the county clerk of the county in which the land is situated, and said clerk shall deposit such payment as he receives, in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil refuses to accept such payment, said clerk shall withdraw such deposit and return it to the owner of the permit. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or part owner or county clerk filed among the papers in the Land Office relating to such permits. [Id.]

Art. 5378. Relinquishment under permit.—The owner of a permit or combination of permits may relinquish to the State a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the counties in which the land or part thereof is situated, and by filing it in the Land Office within sixty days after its execution, with one dollar as a filing fee. [Id.]

Art. 5379. Damages to soil.—The payment of the ten cents per acre and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil. [Id.]

4. GENERAL PROVISIONS

Art. 5380. Payment of royalty.—All royalties shall be paid to the State on or before the twentieth day of each month for the preceding month during the life of the lease, accompanied by the affidavit of the owner, manager or other authorized agent, showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the area, and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into pipe lines, tanks, or pools and gas lines or gas storage. The books and accounts, receipts and discharges of all lines, tanks, pools and meters and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at any time be subject to inspection and examination by the Commissioner, the Attorney General, the Governor, or the representative of either. [Acts 2nd C. S. 1919, p. 51.]

Art. 5381. Form of payments.—All payments shall be in the form of cash, bank draft on some State or National bank in Texas, post-office or express money order, or such other form as the law may prescribe for making remittances to the State Treasury, and shall be due and payable to the Commissioner at Austin. [Id.]

Art. 5382. Lien.—The State shall have a first lien upon all oil and gas produced upon any lease area to secure the payment of all unpaid royalty and other sums that may become due hereunder. [Id.]

Art. 5382a. Camp Hulen Lease Board.

Board created

Section 1. A Board is hereby created to consist of the Governor of the State of Texas, the Adjutant General of the State of Texas, and the four senior

active general officers of the Thirty-sixth Division, Texas National Guard, who shall perform the duties hereinafter set out. The Board shall be known as "Camp Hulen Lease Board." The term "Board" whenever used in this Act shall mean "Camp Hulen Lease Board". This Board shall keep a complete record of all of its proceedings. A majority of said Board shall constitute a quorum for the transaction of business.

Oil, gas, and mineral leases by Board authorized

Sec. 2. All lands, or any parcel of the same, now owned or that may be owned, and held in trust for the use and benefit of the Thirty-sixth Division, Texas National Guard, by the State of Texas, as a permanent camp site for the said Thirty-sixth Division, Texas National Guard, and those now owned and so held in trust at or near Palacios, Matagorda County, Texas, known as Camp Hulen, may be leased by the Board to any person or persons, firms or corporations, subject to and as provided for in this Act for the purpose of prospecting, or exploring for and mining, producing, storing, caring for, transporting, preserving, selling and disposing of the oil, gas and sulphur and other sub-surface minerals therein belonging to the State, and by it held in trust for the Thirty-sixth Division, Texas National Guard.

Surveys and subdivision of lands into lots, blocks, or tracts; Board authorized to perfect title

Sec. 3. The Board is hereby authorized to cause said lands to be surveyed and sub-divided into such lots, blocks or tracts as will be conducive or convenient to facilitate the advantageous sale of oil and gas and sulphur leases thereon, and identify such lots and blocks by permanent markings on the ground, and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board is authorized to obtain complete abstracts of title to such lands and to cause same to be examined, to take such steps by court action or otherwise, as it may deem necessary to perfect a merchantable title to such lands in the State of Texas, in trust for the use and benefit of the Thirty-sixth Division, Texas National Guard; such abstracts of title and other title papers shall be held on file in the General Land Office as public documents for the inspection of any prospective purchaser of oil and gas or sulphur or other sub-surface mineral leases on said lands.

Board to place oil, gas, and mineral leases on market when conditions favorable; mode of sale determined by Board; advertisement and notice; rejection of bids

Sec. 4. Whenever, in the opinion of the Board, there shall be such a demand for the purchase of oil, gas, and sulphur or other sub-surface mineral leases on any lot or tract of said land as will reasonably insure an advantageous sale thereof, the Board shall place such oil and gas or sulphur or other sub-surface mineral leases on the market in such blocks or tracts as the Board may designate. The Board shall have the power to determine whether said proposed sale or lease of said land shall be by public auction on the front steps of the State Capitol to the highest bidder or shall be by proposals submitted in the form of sealed bids for the purchase of said oil and gas or sulphur or other minerals by lease; provided, however, that said sale or lease in any event shall be only made after due advertisement thereof has been given in three daily papers of general circulation, published in the State of Texas, giving fifteen (15) days' notice of the proposed sale or lease of said lands, and giving a brief description of said land proposed to be leased for oil, gas, sulphur or mineral purposes. That where said land is to be sold under sealed bids for development by lease, said notice shall designate the day when sealed bids will be opened at ten o'clock A. M. on that day. The Board may in its discretion, in addition to said advertisement in newspapers, cause such other additional advertisements to be made as they might deem advantageous. Provided, further, that the Board shall have the right to reject any and all bids.

Sealed bids

Sec. 5. Where said land is to be leased for oil, gas or sulphur or other mineral development under sealed bids, all bids shall be directed to the said Board in care of the General Land Office of the State of Texas, and shall be retained by the Commissioner of the General Land Office until the day designated for the opening of bids, and upon that day the said Board, or a majority of its members, shall open said bids and shall list, file and register all bids and money received. A separate bid shall be made for each whole survey or sub-division thereof. No bid shall be accepted which offers a royalty of less than one-eighth (⅛) of the gross production of oil, gas, or sulphur in the land bid upon, and this minimum royalty may be increased at the discretion of the Board, two-thirds of the members concurring before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than One ($1.00) Dollar annually per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five years unless in the meantime production in paying quantities is had upon the land.

Drilling and production operations subject to State laws and orders of Railroad Commission; provision to be incorporated in lease

Sec. 5a. The operations for drilling for oil and gas and the production therefrom under any lease made by the Board under the authority given in this Act shall be subject to all laws of the State of Texas and valid orders made by the Railroad Commission of Texas under such laws regulating and controlling the development of leases for the production of oil and gas, and the production of oil and gas therefrom. The Board shall incorporate this provision in each and every lease executed under the authority of this Act.

Bid to be accompanied by payment and indicate royalty and additional payments

Sec. 6. Every bid shall be accompanied by a payment equal to the minimum price fixed on the land per acre for delay in drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth (⅛) of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and the annual payment provided for, and shall be accompanied by cash or checks collectable in Austin to cover said amounts.

Leasing to be consistent with use of camp for annual field training; rejection of bids and new offer to lease

Sec. 7. If any one of the bidders shall offer a reasonable and proper price therefor, not less than the price fixed by the Board, the lands advertised, or any whole survey or sub-division thereof, may be leased for oil, gas, sulphur or other mineral purposes under the terms of this Act and such regulations as the Board may prescribe, which are in the opinion of the Board not inconsistent with the use of said lands for the annual field training of the Thirty-sixth Division, Texas National Guard, and are not inconsistent with the provisions of this Act, If after any bidding by sealed bids, the Board should reject all bids as it is hereby authorized to do, it may thereafter offer for sale, and sell the oil, gas, and sulphur or other minerals in the land in separate whole surveys, or sub-divisions thereof, by open public auction, or in such other manner as said Board may deem to be desirable.

Satisfactory bid filed in General Land Office; discontinuance of yearly payment; termination of lease

Sec. 8. If the Board shall determine that a satisfactory bid has been received for said oil, gas, sulphur, or other minerals, it shall be filed in the General Land Office. Whenever the royalty shall amount to as much as the yearly payment as fixed by the Board, the yearly payment may be discontinued. If before the expiration of five years, oil, gas, sulphur or other minerals, shall not have been produced in paying quantities, the lease shall terminate.

Sale of oil, gas, or minerals by public auction

Sec. 9. The Board may at its option, offer for sale and sell the oil, gas, sulphur, or other minerals, in said lands by open public auction on the front steps of the State Capitol in lieu of the method of selling said oil, gas, sulphur or other minerals by sealed bids. Where oil, gas, sulphur or other minerals in said lands is to be sold at public auction, the Board shall cause to be advertised a brief description of the land from which the oil, gas, sulphur or other minerals is proposed to be sold, fixing a designated day and hour for said sale at the State Capitol steps at Austin, Texas. Whenever any sale of the oil, gas, sulphur or other minerals is to be made at public auction, the Board prior to the promulgation of its advertising, shall fix a minimum price at which oil, gas, sulphur, or other minerals in such land shall be sold, not less than one-eighth (1/8) of the gross production of gas, oil, sulphur or other minerals in the land proposed to be sold and in an amount of not less than One Dollar per acre for annual rental for delay in drilling. That all leases shall terminate after a period of five years unless production in paying quantities is had upon the land within said period. That no auctioneer, or person acting in said capacity, shall be paid a fee for the sale of said minerals in said lands in excess of One Hundred ($100.00) Dollars per day. The successful bidder at public auction shall be required to immediately post with the Board in cash or by check payable in Austin, Texas, as evidence of good faith, the amount of his bid, being the amount of bonus and the one payment of annual rental in advance for delay in drilling.

Rentals not payable during drilling operations preceding discovery of oil, gas, or minerals; duration of lease; duty to develop and prevent drainage; penalty

Sec. 10. If during the time of any lease issued under the terms of this Act, the lessee shall be engaged in actual drilling operations for the discovery of oil, gas, sulphur or other minerals on land covered by any such lease, no rental shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil, gas, sulphur or other minerals are discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as gas, oil, sulphur or other minerals are produced in paying quantities from such tract. In the event of the discovery of oil, gas, sulphur or other minerals on any tract covered by any such lease, then the lease as to such tract shall remain in force so long as oil, gas, sulphur or other minerals are produced in pay quantities from such tract. In the event of the discovery of oil, gas, sulphur or other minerals on any tract covered by a lease issued hereunder, or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract from such lease and to properly develop the same. Failure to comply with the obligations provided by this section shall subject the holder of the lease to the penalties provided in Sections 12 and 13 of this Act.

Title to rights purchased; assignment of rights; relinquishment of rights; pipe lines, telephone lines, and roads

Sec. 11. Title to all rights purchased may be held by the owner so long as the area produces oil, gas, sulphur or other minerals in paying quantities. All rights purchased may be assigned in quantities of not less than forty (40) acres unless there be less than forty (40) acres remaining in any survey or tract, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred (100) days after the date of the first acknowledgment thereof accompanied by Ten (10¢) Cents per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State in trust for the Thirty-sixth Division, Texas National Guard, at any time by having an instrument of relinquishment recorded in the county or counties in which the area may be situated, and filed in the Land Office accompanied by One ($1.00) Dollar for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe lines, telephone lines and the opening of such roads as may by it be deemed reasonably necessary for and incident to the purposes of the lease.

Royalty, payment for use of National Guard Division; time of payment; sworn statement; books and records filed and subject to inspection

Sec. 12. Royalty as stipulated in the sale and in all leases on said land and all other moneys accruing or arising from the effects of this bill or the operations of the Board shall be paid to the General Land Office, Austin, Texas, for the exclusive use and benefit of the Thirty-sixth Division, Texas National Guard, on or before the 20th day of each succeeding month, for the preceding month during the life of the rights purchased, and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report, and the amount of gas produced and sold off the premises and the market value of the oil and gas, or in the case of sulphur, or other minerals, the amount produced and sold and the market price therefor, together with all gauges of tanks, gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks or pools and gas lines or gas storage and/or sulphur vats or sulphur or other minerals storage. The books and accounts and all bids, receipts and discharges of all wells, tank pools, meters, pipe lines and vats and other storage and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil, gas, sulphur or other minerals shall at all times be on file in the General Land Office and be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor or any member of the Board.

Protection of leased land from drainage or depletion from adjacent lands; effect of failure to protect

Sec. 13. In every case where the area in which oil, gas, sulphur or other minerals are sold shall be contiguous or adjacent to land that is not within the area known as Camp Hulen land, the acceptance of the bid and the sale thereof will carry with it the obligation to adequately protect the land leased from drainage or depletion from the adjacent lands. In cases where the area in which the oil, gas, sulphur or other minerals are sold as a lesser royalty, the owner shall likewise protect the State and the Thirty-sixth Division, Texas National Guard, from drainage or depletion from the land so leased or sold for lesser royalty. Upon failure to protect the land

from drainage as herein provided, the sale and all rights thereunder may be forfeited by the Board as elsewhere provided herein for forfeiture.

Forfeiture for default; suit to declare; reinstatement of lease; suit for damages; lien to secure payments under lease

Sec. 14. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production, within thirty days after same shall become due, or if such owner, or his authorized agent, should make any false return, or false report concerning production, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority access to other records and other data pertaining to operations under this Act, or if such owner or his authorized agent should fail or refuse to give correct information to the proper authority, or fail or refuse to furnish the log of any well within thirty days after completion or abandonment or cessation of work for thirty days, or if any material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board, by an order entered upon the minutes of the Board, reciting the facts constituting the default and declaring the forfeiture. The Board may, if it so desires, have a suit instituted for forfeiture through the Attorney General of the State who shall be the legal advisor and attorney for the Board. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeiture, the lease may, at the discretion of the Board, and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State, acting for the benefit of the Thirty-sixth Division, Texas National Guard, by forfeiture shall not be the exclusive remedy, but suit for damages or specific performance or both, may be instituted. The State, for the use and benefit of the Thirty-sixth Division, Texas National Guard, shall have a first lien upon all oil, gas, sulphur or other minerals produced upon the leased area and upon all rigs, tanks, pipe lines, telephone lines, machinery and other material and appliances used in the production and handling of oil, gas, sulphur or other minerals produced thereon to secure any amount due thereon by the owner of said lease.

Surveys, files, contracts, and records filed in General Land Office; payments of bonus, rentals and royalties; deposit and expenditure by Board

Sec. 15. All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized, shall be filed in the General Land Office and shall constitute archives thereof. All payments of bonus, rentals and royalties hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall deposit said money with the State Treasurer in a special fund for the exclusive use and benefit of the Thirty-sixth Division, Texas National Guard, and all other payments, including filing assignments and relinquishment fees hereunder shall be credited to said fund; and said funds may be expended only upon the order of said Board for such purposes as may be deemed by said Board to be for the benefit of the Thirty-sixth Division, Texas National Guard, and the costs and expenses of administration of and under this Act, and none other.

Warrants to pay expenses; appropriation

Sec 16. The expenses of executing the provisions of this Act shall be paid by warrants authorized by the Board and drawn by the State Comptroller on the State Treasury, and shall be paid by the State Treasurer out of the following appropriation, and for that purpose the sum of Two Thousand ($2,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the State Treasury, not otherwise appropriated, for the biennium ending August 31, 1938.

Forms, rules, and regulations of Board; withdrawal of lands advertised

Sec. 17. The Board shall adopt proper forms and regulations, rules and contracts as will, in its judgment, protect the income from the lands leased hereunder, and for the use and expenditure of such incomes for the exclusive use and benefit of the Thirty-sixth Division, Texas National Guard. The Board shall have the right to withdraw any lands advertised for lease prior to receiving and opening of bids, and prior to the sale at public auction. [Acts 1937, 45th Leg., p. 697, ch. 352.]

CHAPTER 5.—MINERALS

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1. COAL AND LIGNITE

Article 5383. Lands included.—Any person, association of persons, corporate or otherwise that may desire to acquire the right to prospect for and mine coal or lignite in or under any of the following lands: all unsold public free school land, University land, asylum land or any such lands sold with a reservation of minerals therein, and either of said substances that may be in or upon said land that was purchased with the relinquishment of the minerals therein, and all lands of which the mineral rights therein have reverted to this State as the Sovereign Government, and either of said substances that may be in or upon any other public lands including islands and river beds and channels which belong to the State, may do so by complying with the following conditions:

1. Notice of location.—Date and post up a notice to the effect that the applicant has located a coal or lignite mine, stating the area desired, not to exceed 2560 acres or four sections of 640 acres each, more or less, and give the approximate courses and the approximate distances that the lines shall extend from the point at which the notice is posted.

2. Application for survey.—Within thirty days after the date of such posting, the applicant shall file an application for a survey of the claim with one dollar as a filing fee. The application shall state when the claim was first posted. If an applicant files on whole tracts or upon eighty acres or multiples thereof of surveyed land, the application shall be filed in the office of the clerk of the proper county with one dollar as a filing fee, and after being recorded by the clerk shall be filed in the Land Office without field notes within thirty days after being filed with the county clerk, with one dollar as a filing fee.

3. Boundary line.—The application and survey shall not differ so materially from the original posted notice as to defeat the rights of subsequent locators. Lines of previous surveys need not be regarded by an applicant unless he may desire to do so.

4. Application for permit.—Within ninety days from the filing of the application, the surveyor shall survey the area in substantial compliance with the posted notice, record the field notes and make a plat of the survey. The application, field notes and plat shall be filed in the Land Office within one hundred days after the application was filed with the surveyor, accompanied by one dollar as a filing fee and ten cents per acre for each acre included within the area embraced in the field notes or in the application if no field notes are required, and accompanied by a sworn statement by the applicant showing what interest he has in any other permit, lease or patent issued under this law and in good standing. [Acts 1917, p. 161.]

Art. 5384. Permit and lease.—When the foregoing conditions have been complied with and the application, field notes and plat have been approved by the Commissioner, he shall issue to the applicant or his assignee a separate permit for each area applied for, conferring upon him an exclusive right to prospect for, develop and put out coal and lignite therein upon the following conditions:

1. The permit shall be void after five years from the date of issue.

2. Development work shall commence within the first year and continue until the discovery of such minerals in paying quantities.

3. Within thirty days after the expiration of each year, except the fifth, the owner or manager shall file in the land office a sworn statement supported by the affidavit of two disinterested credible persons, showing a performance in good faith of the development work required in this article, and expenditures thereunder. If the Commissioner is satisfied that such statement is true, the owner shall have the right to prospect the area for another year.

4. During the life of the permit, and within thirty days after the discovery of such minerals in paying quantities, the owner shall apply for a lease to develop and put out such minerals in the area included in the permit, or forfeit all rights under such permit.

5. Such lease may be granted for not to exceed ten years, with right of renewals for the same or less term.

6. Royalty of ten cents a ton on coal, and seven cents a ton on lignite shall be paid monthly on each ton mined under such permit or lease.

7. The owner shall annually pay ten cents per acre in advance for each acre covered by his permit or lease.

8. Each mine shall be kept in reasonably continuous operation, and shall be operated in conformity with rules and regulations prescribed by the State Mining Inspector and the laws relating to such mines.

9. On the termination of the rights under a permit, the area shall again be subject to the prospect and development by another than the forfeiting owner. [Id.]

Art. 5385. Patent.—At any time during the life of a permit but prior to accepting a lease upon any area, the owner of a permit may elect to pay one hundred dollars per acre for the area embraced in his permit and obtain a patent for all the minerals that may be in such area except petroleum and natural gas, in lieu of the payment of the royalty as provided in this law; provided, however, one shall pay the prescribed royalty on all coal or lignite put out and disposed of while developing the area prior to obtaining a patent. [Id.]

Art. 5386. Surface rights.—An owner of any claim may fell and remove for building or mining purposes any timber upon any of the unsold areas included within this law, and shall also have the right to occupy within the limits of his application, permit or lease, so much of the surface thereof as may be necessary for the development of the minerals and substances therein, and shall have the right of ingress to and egress from the area embraced in the file, permit, lease or patent. Ten cents per acre per year in advance shall be paid to the owner of the surface and when accepted by the owner, it shall be deemed full compensation for such damages as may be occasioned to the surface through the occupancy and operation by the owner of the permit, lease or patent. [Id.]

Art. 5387. Laws applicable.—In so far as applicable, the provisions of Subdivision 1 of Chapter 4 governing the sale or transfer of a permit or lease, the forfeiture of rights thereunder for a violation of the conditions of said law, the relinquishment of whole tracts under a permit, and the subjection of rights thereunder to taxation, shall all apply to those operating hereunder.

2. OTHER MINERALS

Art. 5388. Lands and minerals included.—All valuable mineral bearing deposits, placers, veins, lodes and rock carrying metallic or non-metallic substances of value except oil, natural gas, coal and lignite, that may be in any lands included in this chapter shall be subject to development, sale and patenting as provided in this subdivision. [Acts 2nd C. S. 1919, p. 241.]

Art. 5389. Extent of claim.—A mining claim upon mineral lands hereunder may equal, but shall not exceed fifteen hundred feet in length and six hundred feet in width. Such claims may be of unlimited depth, but shall be bounded by four vertical planes from the side and end lines. All claims shall be in the form of a parallelogram unless such form is prevented by adjoining rights. The locator shall be entitled to the use of all superficial area bounded by the enclosed lines of the claim, and to all minerals therein, upon the terms of this law. [Id.]

Art. 5390. Boundary marks.—The locator of any mining claim shall conspicuously post up at the center of one of the end lines of the claim a written notice giving his name and that of the claim, and date of posting, and shall describe the claim by giving the number of feet in length, width and approximate directions the claim lies, in length from the notice, with the section number, if known, and the county; and shall place temporary posts, or stone markers at the four approximate corners of the claim at the time of making the location. The temporary monuments shall be replaced by permanent monuments at the four corners as given by the county surveyor within one hundred days after the issuance of an award to said claim. The permanent monuments shall be of four inch timber posts or their equivalent of stone or concrete, and shall be not less than three feet high. In all conflicts, priority of location shall decide.

Art. 5391. Application for survey.—Within thirty days after posting the required notice the locator shall file with the county surveyor of the county in which the land or part thereof is situated, a written application for the survey of the claim. Such application shall be accompanied by one dollar as a filing fee, and the application shall be recorded by the surveyor. The application shall give the name of the claim and the locator and such description of the boundary and location as will enable the surveyor to identify the area of the land. [Id.]

Art. 5392. Requisites of survey.—In making the survey, the surveyor shall locate and mark the corners of the claim on the ground as described in the location notice, and he shall determine the direction and distance to a corner of a section on which the claim is located, as well as the direction and distance to some prominent and permanent land mark other than a section corner, which may serve as a mineral monument or marker, and in case of any conflict this direction and distance to said prominent and permanent land mark shall have priority over all other distances and directions in serving to locate the mining claim. The directions and distances herein required shall be incorporated in and made a part of the record of the field notes and plat of the survey. The surveyor shall not charge more than ten dollars per day for his services hereunder. [Id.]

Art. 5393. Issue of award.—Within one hundred days after the application for survey has been filed with the surveyor, the application and field notes of the area applied for shall be filed in the Land Office accompanied by the filing fee of one dollar. When the application has been considered and all things have been done in compliance with the law, the Commissioner shall issue to the applicant an award for the area. Nothing in this article shall interfere with the right of the locator to proceed with the development and operation of the property after the posting of the location, if such operation does not conflict with the mineral rights of a prior locator or owner. [Id.]

Art. 5394. Development of claim.—After the date of an award, the owner shall have the exclusive right to the possession and use of the minerals within the area of the claim so long as he continues to do or causes to be done the annual assessment work for each claim consisting of excavation in the form of shaft or tunnel or an open cut to the extent of ten feet in depth or length and at least four feet by five feet for the other dimensions, in event the mineral sought to be mined is such as is usually and customarily produced by means of shafts, tunnels or open cuts, but in event the mineral sought is usually and customarily produced from drilling holes by means of machinery, except such minerals as oil, natural gas, coal or lignite, then the drilling of a hole to such depth or length in lieu of the digging of shaft or tunnel or open cut shall constitute the annual assessment required. If an award is issued prior to the first day of October of any year the first annual assessment work shall be done before the end of that calendar year, and during the month of January following, such owner shall file in the Land Office his affidavit that such work has been done and shall state the extent thereof. Such owner shall, during each succeeding calendar year beginning January first next after the date of such award, perform the required annual assessment work and file an affidavit thereof as in the first instance. All the assessment work for a contiguous group of claims may be done on one claim. [Id.; Acts 1927, 40th Leg., p. 417, ch. 278, § 1.]

Art. 5395. Rental and royalty.—The owner of each claim shall pay fifty (50) cents per acre annually in advance after the award and during the month of each succeeding January of each year thereafter; provided, that such owner may, at his option pay such fifty (50) cents per acre due in the month of January, A. D. 1934, within two years from the effective date of this Act, and that due in the month of January, A. D. 1935, within one year from the effective date of this Act without suffering the forfeiture of rights provided for in Article 5397, Revised Civil Statutes of Texas, 1925. In addition to rental payments, the owner of such claim shall pay a royalty of six and one-fourth per cent (6¼%) of the value of the production of the minerals upon such claim as shown by the net smelter, mill, mint, or refinery returns or of the gross sums arising from the sale of the ore or products from the claim and received by the owner. Royalties on existing mineral claims shall be paid on the basis provided for in the law under which this lease or claim was issued. Royalty payments arising from the sale of ores, minerals, or other products shall be due quarterly in January, April, July, and October for the quarters preceding. [Acts 2nd C.S., 1919, p. 241; Acts 1934, 43rd Leg., 2nd C.S., p. 61, ch. 20, § 1; Acts 1935, 44th Leg., p. 77, ch. 29, § 1.]

Section 3 of Act 1935, 44th Leg., p. 77, ch. 29, suspends rental payments due in January 1934 and January 1935 for two years and one year respectively and provides that all rental payments upon such mineral claims shall be thereafter paid as provided by law without further extension of payment.

Art. 5396. Joint claimants.—Any mining claim may be filed upon by one or more persons separately or jointly, and if any one or more of them shall fail to perform his part of the conditions, imposed by this law, their right, interest, title and claim shall ipso facto cease, and the same shall revert to the State. The co-owners performing their proportional part of the conditions shall have the prior right within ninety days after such forfeiture to make the delinquent payments and do the work so defaulted, and thereupon they shall have thirty days after the expiration of said ninety days within which to make affidavit to the Commissioner to the effect that all of said conditions have been performed within said time in the same manner as if no location had been made by said defaulting co-owner. [Acts 2nd C.S. 1919, p. 241.]

Art. 5397. Forfeiture of rights.—If the locator or owner of any claim obtained under the provisions of this law or operating under this law shall fail or refuse to make the payment of any sum within thirty days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production, mining or development, or if such one should fail or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the Land Office all correct reports required by this law, the rights acquired under the location or claim shall be subject to forfeiture by the Commissioner, and he shall forfeit the same when sufficiently informed of the facts which authorize the forfeiture, and the minerals covered by such location and claim shall be subject to sale in the manner provided for the sale of minerals under the present law. Such forfeiture may be set aside and all rights thereto may be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provision of this law. [Acts 2nd C.S. 1919, p. 241; Acts 1929, 41st Leg., p. 655, ch. 291, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 61, ch. 20, § 2; Acts 1935, 44th Leg., p. 77, ch. 29, § 2.]

Art. 5398. Patent.—At any time after five years from the date of the award, the owner may pay the balance due on the purchase price of the claim and obtain a patent thereto, and after the issuance of the patent no further assessment work shall be required, but the royalty shall be perpetual. The purchase price shall be ten dollars per acre, and the annual payments of

fifty cents per acre shall be applied thereon. [Acts 2nd C.S. 1919, p. 241.]

Art. 5399. Prison and juvenile lands.—All State lands belonging to or under the jurisdiction and control of the Prison Commission or the Board of Control for the State Juvenile Training School, and all other farms belonging to the State and administered by other boards, shall become subject to the provisions of this law; but with the express reservation that in sales of the mineral rights in or under such farms, the annual payments and the royalties shall be made so long as the purchasers of said rights desire to operate their respective claims; and in no event shall a patent issue upon any claim filed upon any such farms belonging to the State, and all rights of the claimant to any land or filings hereunder shall terminate upon permanent cessation by such claimant of operation under such claim. [Id.]

Art. 5399a. Board of Managers for the State Iron Industries near Rusk.—That a board of managers for said State properties be created, said board to consist of the Senator and Representative from the district in which said properties heretofore mentioned are situated together with a third member to be appointed by the Lieutenant Governor of Texas, which board shall exercise full and plenary control and management of said properties. [Acts 1925, 39th Leg., ch. 88, p. 261, § 1.]

Art. 5399b. Transfer of property.—Immediately after the taking effect of this Act it shall be the duty of the Board of Prison Commissions of the State of Texas, upon demand of the Board of Managers of said State properties, to deliver to said Board of Managers the possession of said properties including all lands except such lands as the Board of Control of the State of Texas has heretofore or shall hereafter designate as suitable and necessary for the use of the East Texas Hospital for the Insane at Rusk, Texas, and the necessary conveyances shall be prepared by the Attorney General of the State of Texas. [Acts 1925, 39th Leg., ch. 88, p. 261, § 2.]

Art. 5399c. Sale or lease of property.—The Board of Managers of said State properties is hereby authorized, upon approval of the Governor of the State of Texas, and given full authority to sell or lease any and all of said properties upon the best terms obtainable to any person, firm or corporation and to execute and deliver to the purchaser or purchasers thereof deeds and leases to the same. Said Board of Managers is further authorized to collect any obligations which are now outstanding against said properties and to execute release therefor or to extend such obligations upon such terms as may appear to be to the best interests of the State. And all such contracts shall be prepared by the Attorney General and approved by the Governor of the State of Texas. [Acts 1925, 39th Leg., ch. 88, p. 262, § 3.]

Art. 5399d. Reports to comptroller.—Said Board of Managers shall make reports to the Comptroller of all receipts, expenditures and disbursements, which report shall cover all funds from whatever source received by said board and shall be filed as soon as practicable after the receipt of such funds, said reports shall be accompanied by a remittance to the Comptroller of all moneys so received by said Board of Managers for the sale or lease of any of said property or from the collection of any outstanding indebtedness. [Acts 1925, 39th Leg., ch. 88, p. 262, § 4.]

Art. 5399e. Compensation.—Said Board of Managers shall serve without pay except such actual and necessary expenses incurred while in the performance of their duties as herein defined, and the sum of $5.00 per day for each day the board is actually engaged in the performance of said duties and said board is authorized and directed to deduct the amount of said expenses and per diem from any funds coming into its possession and to include said amount so deducted as part of the report hereinabove required to be made to the Comptroller of Public Accounts. [Acts 1925, 39th Leg., ch. 88, p. 262, § 5.]

Art. 5399f. Report to Legislature.—The said Board of Managers is hereby directed to make a report of all transactions in connection with the sale, lease or management of said properties to the Regular Session of the Fortieth Legislature. [Acts 1925, 39th Leg., ch. 88, p. 262, § 6.]

Art. 5400. Surface rights.—The locator or owner of a mining claim shall have the right to occupy within the limits of his claim so much of the surface ground as is strictly necessary for the use and exploration of the mineral deposits and for the building and works necessary for mining operations and for the treating and smelting of the ore produced on such claims and to occupy within and without the limits of his claim the necessary land for right of way, for ingress and egress to and from his claim for roadways and railways. If the locator or owner cannot agree with the owner or lessee of the surface right in regard to the acquiring of same and in regard to the compensation for the injury incident to the opening and the working of such mine and the access thereto, he may apply to the county judge of the county in which such mining claim is located by filing a written petition so setting forth with a sufficient description the property and surface right sought to be taken and the purpose for which the same is to be taken. Such judge shall then appoint three disinterested freeholders to examine, pass upon and determine the damages and compensation to be paid to the owner of such surface right or other property necessary to be taken, and all proceedings thereunder shall be had in accordance with the law regulating the exercise of the right of eminent domain. Nothing herein shall give the prospector or locator any grazing right, or rights to any surface or well water in use for livestock, or to any timber rights either on or off the claim, to the detriment of the surface owner or lessee. [Id.]

Art. 5400a. Lease of lands of political subdivisions.

Political subdivisions authorized to lease land for mineral development

Section 1. Political subdivisions which are bodies corporate with recognized and defined areas, are hereby authorized to lease for mineral development purposes any and all lands which may be owned by any such political subdivision.

Boards or bodies authorized to exercise right; procedure

Sec. 2. The right to lease such lands shall be exercised by the governing board, the commission or commissioners of such political subdivision which are by law constituted with the management, control, and supervision of such subdivision, and when in the discretion of such governing body they shall determine that it is advisable to make a lease of any such lands belonging to such district or subdivision, such governing body shall give notice of its intention to lease such lands, describ ng same, by publication of such notice in some newspaper published in the county, having a general circulation therein, once a week for a period of three (3) consecutive weeks, designating the time and place after such publication where such governing body will receive and consider bids for such mineral leases as such governing body may determine to make. On the date specified in said notice, such governing board or body shall receive and consider any and all bids submitted for the leasing of said lands or any portions thereof which are advertised for leasing, and in the discretion of such governing body shall award the lease to the highest and best bidder submitting a bid therefor, provided that if in the judgment of such governing body the bids submitted do not represent the

fair value of such leases, such governing body in their discretion may reject same and again give notice and call for additional bids, but no leases shall in any event be made except upon public hearing and consideration of said bids and after the notice as herein provided.

Public auction; amount of royalty; term of lease

Sec. 2a. Provided that all such leases may be granted by public auction and that no leases shall be executed in any case except and unless the lessor shall retain at least one-eighth royalty, provided further that in no case shall the primary term of said lease be for more than a period of ten (10) years from the date of execution and approval thereof. [Acts 1937, 45th Leg., p. 568, ch. 279.]

3. GENERAL PROVISIONS

Art. 5401. Payments.—All royalties and other payments under this chapter shall be paid to the State through the Commissioner at Austin. All royalty payments shall be accompanied by the affidavit of the owner or manager showing the number of tons mined, to whom sold, and the selling price, as shown by copies of smelter, mint, mill, refinery or other returns or documents attached to such statement. All books, accounts, weights, wage contracts, correspondence, and other papers in any way pertaining to any mine being operated hereunder shall be open to the inspection of the Commissioner, or his representative and any representative of the State appointed by the Governor or Attorney General.

Art. 5402. Sale of surface rights.—The issuance of an award, permit or lease on unsold land hereunder shall not prevent the sale of such land without minerals under the laws applicable to such land. In case of such sale after an application has been filed with the Commissioner, the purchaser of such land shall not be entitled to any part of the proceeds of such minerals or mining location nor other compensation, nor shall such purchaser have any action for damages done to such land by or resulting from the proper working of or operation under such award or prospector's location.

Art. 5403. Discovery: right of locator.—If any mineral or substance included in this chapter, other than those included in the permit or lease under which one is operating, be discovered while the area is being worked under such permit or lease, the owner thereof shall have a preference right for sixty days after such discovery in which to file on the area allowed one for such minerals or other substances by complying with the provisions of this law relating to the mineral or substances discovered.

CHAPTER 6.—PATENTS

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Article 5404. [5361] [4175] Requisites of patent.—Every patent for land emanating from the State shall be issued in the name and by authority of the State, under the seal of the State and of the land office, signed by the Governor and countersigned by the Commissioner; and before the delivery thereof to the party entitled thereto, it shall be registered in the land office patent book. [Acts 1846, p. 234; G. L. vol. 2, p. 1540.]

Art. 5405. [5363] [4177] Doubtful claim.—Should it appear to the Commissioner from the records of his office or from information on oath given him that there is some illegality in the claim, he shall, if he deems it necessary, refer the matter to the Attorney General, whose written decision shall be sufficient authority for him to issue or withhold the patent.

Art. 5406. [5448] Church and schoolhouse sites.—The Commissioner is hereby authorized to patent in quantities of not less than one nor more than five acres any of the vacant and unappropriated public domain of Texas, or any public school or asylum lands, as sites for cemeteries, churches or schoolhouses. When the land is desired as a location for a schoolhouse, the patent shall issue to the county judge of the proper county and his successors in office in trust for that purpose; and when desired for a church house or a cemetery, it shall be issued to trustees designated by those requesting the patent. If the land has been previously sold by the State and not patented, the owner thereof shall execute a deed therefor to the county judge, or trustees, as the case may be, and cause the same to be recorded in the office of the county clerk of the proper county, and be filed in the Land Office, and shall be entitled to credit on his account with the State for the value thereof. Such land shall be taken from the margin of a tract or section, or of a subdivision thereof, as the case may be. [Acts 1895, p. 68; G. L. vol. 10, p. 798.]

Art. 5407. [5365] [4179] Patents on surveys in two counties.—The Commissioner shall issue patents upon all surveys of land in two or more counties where no conflict between such surveys and others exist, and to which there is no other objection than that of a division in said surveys occasioned by a county boundary passing through them; provided, the field notes have been recorded in the office of the county surveyor of both counties. [Acts 1846, p. 188; G. L. vol. 2, p. 1494.]

Art. 5408. [5367] [4181] Conflicting surveys.—Where conflicts exist between surveys, the Commissioner shall issue patents to such portions of such surveys as are free from conflicts. [Id.]

Art. 5409. [5374] [4189] Conflicting title: cancellation.—Where a patent to land through mistake is issued upon any valid claim for land, which is afterwards found to be in conflict with any older title, it shall be competent for the owner of such patent, or of any part of the land embraced therein, and within such conflict, to return the same to the Commissioner for cancellation, or in case the owner of such land in conflict cannot obtain the patent, then he shall return instead thereof legal evidence of his title to such patent, or part thereof. In either case he shall make and file with said Commissioner an affidavit that he is still the owner of the same, and has not sold or transferred it. If it appears from the Land Office records or from a duly certified copy of a judgment of any court of competent jurisdiction before which the title to such land may have been adjudicated, that such conflict really exists, it shall be lawful for the Commissioner to cancel the patent, or such part thereof as shall appear to belong to the party so applying.

Art. 5410. [5375] [4190] Cancellation: partial conflict.—In cases where there is only a partial conflict, the Commissioner may, under like circum-

stances and in like manner as provided in the preceding article, cancel any patent presented to him, and issue a patent to the applicant for such portion of the land covered by his patent as may not be in conflict with the older title, where from the field notes the same may be done. [P. D. 4302.]

Art. 5411. [5378–5404] Purchase money refunded.—Upon proper proof that money has been in good faith paid into the State Treasury upon lands for taxes, lease and purchase money, for which, on account of conflicts, erroneous surveys, or illegal sales, patents cannot legally issue, or upon lands on which patents have issued and afterwards are legally canceled, the Comptroller may issue his warrant in favor of the proper parties for the amounts so paid. Proof of such payments may be made upon the certificate of the Commissioner thereto when such facts are disclosed by the records of the Land Office. This article shall not apply to surveys, the errors in which may be corrected. [Acts 1883, p. 113; G. L. vol. 9, p. 419.]

Art. 5411a. Refunds to purchasers and lessees where funds to which payments are accredited are not entitled to the moneys.—Section 1. Upon proper proof as hereinafter provided, the Comptroller of the State of Texas is hereby authorized and directed to draw his warrant in refund of monies paid into the State Treasury on public lands in good faith but where the funds to which such monies may be accredited or may have been accredited, are not entitled thereto in any of the following instances:

(a) Through error made in good faith, to be supported by the official signature of the Commissioner of the General Land Office, or of the Attorney General, to whom such payment is made;

(b) Where the payment is made in accordance with law, but title cannot issue or possession cannot pass, because of conflict in boundaries, erroneous sales, erroneous lease or other cause;

(c) In case of sale of leased lands;

(d) Where lease money has been paid on previous forfeited sales, the same having been reinstated and all interest paid;

(e) Where erroneous timber sales or leases have been made;

(f) Where overpayments have been made in final payments to the State Treasurer due to decreased acreage or other causes;

(g) Where reduction has been made in acreage of timber sold or leased;

(h) Where payments are made or have been made in good faith by claimants of lands in instances where the applicants have no right to purchase said lands as revealed by investigations of titles as provided by law.

Sec. 2. All refunds herein provided for are to be paid out of the respective funds to which said payments have been made or may be accredited after specific appropriations have been made according to law, and all claims for refunds except those embraced in sub-division (a) of Section 1 shall be certified by the certificate of the Commissioner of the General Land Office, and all such claims shall be verified by the affidavit of the claimant and approved by the Attorney General as to the correctness of the claim and as to whom due, provided that the money so paid by any purchasers or lessees in case of sale of land by the purchaser, or assignment of the lease by the lessee after payment of such money, shall be refunded so that such refund shall be paid to the person upon whom the loss falls in case of failure of title, or right of possession. [Acts 1945, 49th Leg., p. 190, ch. 145.]

Art. 5412. [5372] [4186] Order of issue.—The Commissioner shall patent surveys in the order in which they may be made ready for patenting, without regard to the order of filing in the Land Office or the order of application; but an application made for patent on any claim accompanied by the office fees therefor shall have preference over claims for which no application has been made; provided, such surveys have been regularly mapped, or there is sufficient evidence that no previous survey has been legally filed in the land office covering the same ground as represented on the maps of the office. [Acts 1861, p. 51; Acts 1879, p. 23, S. S.; G. L. vol. 5, p. 387.]

Art. 5413. [5376] [4191] Issuance and delivery.—The Commissioner shall issue patents when it appears from the books of his office that full payment for the land has been made where payment is required, and all legal fees due thereon have been paid into said office and not withdrawn, including the legal fees for the recording of said patent in the counties in which the land may be located. When one applies for a patent such person, shall, in addition to all other payments required by law, remit to the land office one dollar for each county in which the land may be wholly or partially located and give the name and address of the owner or agent. When the patent is ready for delivery the Commissioner shall send it by registered mail to the clerk of any such county with the receivers check for one dollar for each such county and accompany the same with the name and address of the owner or his agent. Upon receipt thereof the clerk shall record the patent and send the same by registered mail with such name and address and the remaining fees to the clerk of another proper county until the patent has been recorded in each such county, and thereupon the patent shall be delivered to the proper party by registered mail. [Acts 1891, p. 182; G. L. vol. 10, p. 184; Acts 4th C. S. 1918, p. 119.]

Art. 5414. [5371] [4185] Deceased patentee.—All patents issued in the names of persons deceased at the time of issuance shall convey and secure valid title to the heirs or assignee of such deceased persons. [Acts 1851, p. 21; P. D. 4228a; G. L. vol. 3, p. 899.]

Art. 5414a. Validating patents on lands lying across or partly across water courses or navigable streams.—Sec. 1. All patents to and awards of lands lying across or partly across water courses or navigable streams and all patents and awards covering or including the beds or abandoned beds of water courses or navigable streams or parts thereof, which patents or awards have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited, are hereby confirmed and validated.

Sec. 2. The State of Texas hereby relinquishes, quit-claims and grants to patentees and awardees and their assignees all of the lands, and minerals therein contained, lying across, or partly across water courses or navigable streams, which lands are included in surveys heretofore made, and to which lands patents or awards have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited, and the State of Texas hereby relinquishes, quit-claims and grants to patentees and awardees and their assignees all of the beds, and minerals therein contained, or water courses or navigable streams, and also all of the abandoned beds, and minerals therein contained, of water courses or navigable streams, which beds or abandoned beds or parts thereof are included in surveys heretofore made, and to which beds or abandoned beds, or parts thereof, patents or awards have been issued and outstanding for a period of ten years from the date thereof, and have not been cancelled or forfeited; provided that nothing in this Act contained shall impair the rights of the general public and the State in the waters of streams or the rights of riparian and appropriation owners in the waters of such streams, and provided further that with respect to lands sold by the State of Texas expressly reserving title to minerals in the State, such reservation shall not be affected by this Act; nor shall

relinquish or quit-claim any number of acres of land in excess of the number of acres of land conveyed to said patentees or awardees in the original patents granted by the State, but the patentees or awardees and their assignees shall have the same rights, title and interest in the minerals in the beds or abandoned beds, or parts thereof, of such water courses or navigable streams, that they have in the uplands covered by the same patent or award; provided that this Act shall not in any way affect the State's title, right or interests in and to the sand and gravel, lying within the bed of any navigable stream within this State, as defined by Article 5302, Revised Statutes of 1925.

Sec. 3. All of the provisions of this Act shall apply equally to all Spanish and Mexican land grants and titles issued by the Spanish or Mexican Governments prior to the Texas Revolution of 1836, which have subsequently been recognized by the Republic of Texas, or by the State of Texas as valid. [Acts 1929, 41st Leg., p. 298, ch. 138.]

Art. 5414b. [Unconstitutional.]

This article Acts 1931, 42nd Leg., p. 193, ch. 114, § 1, in Armstrong v. Walker, 123 T. 508, 73 S.W.2d 520, the Commission of Appeals, in an opinion adopted by the Supreme Court, held it void because in violation of Const. art. 7 § 4, relating to the disposal of lands set apart to the public free school fund.

Art. 5414c. Effect of judgment in action to recover abandoned land titled before adoption of common law.—That in any case where any land in the State of Texas was titled prior to the adoption of the Common Law on March 20, 1840, and there has been a judicial finding that the original grantee of said land abandoned said land prior to the adoption of the Common Law, and the State of Texas has at any time instituted suit for the recovery of said land, resulting in a final judgment adverse to the State of Texas whether on demurrer, exception, or a jury finding of fact, it shall be conclusively presumed that those now claiming said land under conveyance from, or judgment against, the original grantee or his heirs, are vested with all title to said land which was vested in said original grantee by virtue of any patent or title from the sovereignty of the soil to him. [Acts 1933, 43rd Leg., p. 398, ch. 156.]

CHAPTER 7.—GENERAL PROVISIONS

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Article 5415. [5279] [4036] Public domain.—To bring the provisions of law relating to the public domain together, the following extract is made from the joint resolutions of the Congress of the United States for annexing Texas to the United States, approved June 23, 1845: "Said State, when admitted into the Union, ... shall also retain all the

vacant and unappropriated lands lying within its limits, to be applied to the payment of debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct," etc.

Art. 5415a. Gulfward boundary fixed; sovereignty over waters, beds and shores of gulf; Permanent Public Free School Fund, lands granted to.—Section 1. The Gulfward boundary of the State of Texas is hereby fixed and declared to be a line beginning in the Gulf of Mexico at the mouth of the Sabine River; thence on a grid bearing S. 35 degrees 55 minutes and 22 seconds E. to the farthermost edge of the continental shelf from the Gulf Shore line; thence in a Westerly and Southerly direction with the edge of the continental shelf to a point opposite the mouth of the Rio Grande River; thence to the mouth of the Rio Grande River. [As amended Acts 1947, 50th Leg., p. 451, ch. 253, § 1.]

Sec. 2. Subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Texas has full sovereignty over all the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Texas, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Texas, as herein fixed.

Sec. 3. The State of Texas owns, in full and complete ownership, the waters of the Gulf of Mexico and of the arms of the said Gulf, and the beds and shores of the Gulf of Mexico, and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms, either at low tide or high tide, within the boundaries of Texas, as herein fixed; and that all of said lands are set apart and granted to the Permanent Public Free School Fund of the State, and shall be held for the benefit of the Public Free School Fund of this State according to the provisions of law governing the same.

Sec. 4. This Act shall never be construed as containing a relinquishment by the State of Texas of any dominion sovereignty, territory, property or rights that the State of Texas already had before the passage of this Act. [Acts 1941, 47th Leg., p. 454, ch. 286.]

Art. 5415b. Adjacent territory acquired under convention between United States and Mexico; acceptance by State; inclusion in counties and water improvement or conservation districts.—Section 1. The State of Texas hereby accepts the Act of Congress approved February 9, 1940, H.R.6124, 54 Stat. 21,[1] and hereby accepts as part of its territory, and hereby assumes civil and criminal jurisdiction over, all those certain parcels or tracts of land lying adjacent to the territory of the State of Texas which were acquired by the Government of the United States of America by virtue of the convention between the United States of America and the United Mexican States signed February 1, 1933.

Sec. 2. All of said parcels or tracts of land acquired by the State of Texas in the manner stated in Section 1 of this Act, shall constitute and form part of the respective counties within whose boundaries they shall lie, by extending the present county boundary lines to the Rio Grande, and said parcels or tracts of land shall be subject to the civil and criminal jurisdiction of said counties; and any of such parcels or tracts of land that may lie partly in one county and partly in another county, shall be surveyed by the county surveyors of both counties, whose duty it is to ascertain the portion of said parcels or tracts of land that lie within the jurisdiction of their respective counties, and they shall file the field notes of said lands in the county surveyor's office of their respective counties, together with a true map of said parcels or tracts of land, in the map records of the county; and for such purposes the boundary lines of said parcels or tracts of land as given by the American Section of the International Boundary Commission, United States and Mexico, shall be accepted as the true boundaries. It shall also be the duty of the county surveyors of the counties in this State, within whose boundaries said parcels or tracts of land shall lie, to report to the tax assessor of their respective counties the quantity of land thus acquired by their respective counties, within ninety (90) days after the effective date of this Act.

Sec. 3. Any of the parcels or tracts of land acquired by the State of Texas in the manner stated in Section 1 hereof, lying adjacent to, or contiguous to a water improvement district or conservation and reclamation district, formed and organized under the laws of Texas, may be included within such water improvement or conservation and reclamation district, by means of a written contract entered into between the owners of title to such land and the board of directors of such district, which said written contract shall specifically describe the land to be included in such district, the character of water service to be furnished to said land, and the terms and conditions upon which said lands are to be included within said district. When said contract shall have been executed by the owners of title to said land, and the board of directors of said district, the same shall be acknowledged by the parties, in the manner and form required in the acknowledgment of deeds, the same shall be recorded in the deed records of the county in which said lands are situated.

Sec. 4. Nothing in this Act contained shall be construed to affect the ownership of said lands. [Acts 1943, 48th Leg., p. 278, ch. 175.]

[1] Act Feb. 9, 1940, c. 22, 54 Stat. 21.

Art. 5416. [5278–5385] School fund.—All lands heretofore set apart under the Constitution and laws of Texas, and all of the unappropriated public domain remaining in the State, of whatever character and wheresoever located, including any lands recovered by the State, except that included in lakes, bays, and islands along the Gulf of Mexico within tidewater limits and except pine forest lands as defined in Article 2613, as amended in Section 1 hereof, is set apart and granted to the permanent school fund of the State. All such lands heretofore or hereafter recovered from railway companies, firms, persons, or other corporations by the State, by suit or otherwise, and constituting a part of said school fund as herein provided, shall be disposed of as other school lands, except as otherwise provided by law. In all cases where said land, or any portion thereof, has been surveyed into tracts of six hundred and forty acres, more or less, and field notes thereof returned to and filed in the land office, the same is hereby declared a sufficient designation of said land and the Commissioner shall dispose of the same by the survey and block numbers contained in said field notes. [Acts 1899, p. 123; Acts 1900, p. 29; Acts 1935, 44th Leg., p. 720, ch. 312, § 2.]

Art. 5416a. Income from mineral development of river beds.—All income from the mineral development of river beds in the State of Texas is hereby dedicated to the Permanent School Fund of Texas, and from and after the effective date of this Act all of such mineral income from said river beds shall be permanently deposited to the credit of the Permanent School Fund of Texas. [Acts 1935, 44th Leg., p. 378, ch. 140, § 2.]

Sections 1 and 1-a of this Act, relate to extension of oil and gas permit No. 11,752 in Pecos river bed.

Art. 5417. [5386] [4253] University fund.—After the payment of the amounts due from the

State to the common free school fund out of the proceeds of the sales of that portion of the public lands set aside for the payment of the public debt by an Act approved July 14, 1879, and an Act amendatory thereof approved March 11, 1881, and the payment directed to be made to the common school and University funds by an Act approved February 23, 1883, the remainder of said land not to exceed two million acres, or the proceeds thereof, shall one-half thereof constitute a permanent endowment fund for the University of Texas and its branches, including the branch for the instruction of colored youths. [Acts 1883, p. 71; G. L. vol. 9, p. 377.]

Art. 5418. [5387] [4254] Asylum fund.—The four hundred thousand acres of land set apart for the lunatic asylum, the blind asylum, the asylum for the deaf and dumb, and an orphan asylum, in equal portions of one hundred thousand acres for each of said asylums, by the provisions of an act of the legislature entitled, "An Act setting aside and appropriating land for the benefit of asylums," approved August 30, 1856, is hereby recognized and set apart to provide a permanent fund for the support, maintenance and improvement of such asylums. [Const. art. 7; Acts 1856, p. 76; G. L. vol. 8, p. 494.]

Art. 5419. [5467] Unlawful inclosures.—If the Governor shall at any time be credibly informed that any portion of the public lands or the lands belonging to any of the several funds named in this title, have been inclosed or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the Attorney General to institute suit in the name of the State for the recovery of such lands and damages, and a fee of not less than ten dollars for the attorney when the sum recovered is less than one hundred dollars, and, when it is over that sum, the fee shall be ten per cent, to be paid by the defendant for the use and occupancy of the same, and the removal of such inclosure and fences; and such damages shall not be for a less sum than five cents per acre per annum during such occupancy. In suits provided for in this article the court shall issue a writ of sequestration directed to any sheriff of the State, commanding and requiring such officer to take into his actual custody such land and all property thereon belonging to the persons so unlawfully occupying said lands, and hold the same subject to further orders of the court. Such writ of sequestration may be executed by any sheriff into whose hands it may be delivered, and he shall proceed to execute such writ. The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law; and such cases and all appeals therefrom shall have precedence over all other cases; and, if judgment is recovered by the State in such suit, the court shall order such inclosure or fences to be removed, and shall tax the costs of the suit against the defendant; and all property found upon the land belonging to the defendant, not exempt from execution, shall be liable to the payment of such costs and damages in addition to the personal liability of the defendant. [Acts 1895, p. 63, § 24; Acts 1895, p. 75, § 1; G.L. vol. 10, pp. 793, 805.]

Art. 5420. [5468] Adverse claimant; suit.—When any public lands are held, occupied, or claimed by any person, association or corporation, adversely to the State, or to any fund or when lands are forfeited to the State for any cause, the Attorney General shall institute suit therefor, for rent thereon, and for any damages thereto. Any and all suits brought by the State under this Article and under the preceding Article must be brought in the county in which the land or any part thereof may lie. Nothing in this Act shall affect or apply to any suit or suits pending at the time this Act shall become effective. [Acts 1900, p. 29; Acts 1939, 46th Leg., p. 464, § 1.]

Section 2 of the amendatory Act of 1939 repealed all conflicting laws.

Art. 5421. [5469–70–71–72–73–74] Suits for minerals and timber.—The Commissioner and the county attorneys of the State shall report to the Attorney General semi-annually, or oftener if they desire, the name and residence of each person, firm, association of persons or corporation who has cut, used, destroyed, sold or otherwise appropriated any timber from any public lands or taken any minerals or other property of value therefrom, and such other data within their knowledge, and the county attorneys shall assist the Attorney General in whatever way he requests in relation thereto. The Attorney General shall bring suit for the value of such property in any county where the injury or a part thereof occurs, or in the county where the defendant resides, or he may, with the consent of the Governor, compromise and settle with or without suit any of the aforesaid liabilities. The Attorney General shall pay all sums so collected or received to the permanent funds to which they belong. Of all amounts recovered by suit, the Attorney General shall receive a fee of ten per cent, and the county attorney five per cent, and on amounts recovered by compromise, each shall receive one-half of such fees to be taxed against the defendant as costs. No county attorney shall receive compensation from cases not reported by him to the Attorney General. [Acts 1905, p. 38.]

Art. 5421a. Lands involved in Oklahoma boundary suit.—Sec. 1. If the State of Texas should be awarded any area of land along the 100th degree of west longitude on the east side of the Panhandle of Texas and the west side of the State of Oklahoma by the final decree of the Supreme Court of the United States at Washington, D. C., in the case of the State of Oklahoma against the State of Texas, the United States Intervenor, such area shall thereby and at once become a portion, part and parcel of and incorporated into the several counties of the State of Texas adjacent thereto, the same as if such area had been originally included therein for all governmental purposes when they were created, and the north and south lines of said adjacent counties, namely, Lipscomb, Hemphill, Wheeler, Collingsworth and Childress are hereby extended east to the said 100th degree of west longitude as it may be fixed by and in the final judgment and decree of said court; and said land shall be assessed for taxes and the taxes collected thereon by the proper officers of each of said respective counties under the provisions of existing laws.

Sec. 2. Such area of land, if any, as may be awarded to the State of Texas, as set out in the preceding section, shall not be subject to sale or other disposition until such time as the Legislature may hereafter provide.

Sec. 3. The Commissioner of the General land office shall immediately proceed to ascertain the number of acres of said land, its probable value per acre in each of said counties as the lines thereof have been extended by this Act, the nature and value of the improvements thereon, the nature of the occupancy and length of time of same by those who are occupying any of said land under any claim of title, the nature and character of such claim and title thereto, if any, and all such other information as to him may be deemed of service to the Legislature. All such information so acquired shall be immediately transmitted to the Legislature, if then is [1] session, and if not in session, to the Governor of the State.

Sec. 3a. This Act shall be in force and go into effect immediately upon the approval by the Supreme Court of the United States of the report of the Commissioner appointed by said Court to locate and mark upon the ground the 100th degree of West longitude and the line for which provision is herein made to which the lines of the several counties herein mentioned shall be extended, shall be the line fixed by the Supreme Court of the United States in its approval

of the report of said Commissioner. [Acts 1929, 41st Leg., p. 335, ch. 155.]

[1] So in enrolled bill. Should probably read "in".

Art. 5421b. Withdrawal from market of lands adjacent to Caddo Lake.—Sec. 1. That all public land lying beneath or adjacent to the waters of Caddo Lake in Marion, Harrison and adjoining counties, and all such public lands heretofore sold by the State that may hereafter revert to the State and become a part of the public domain, be and the same is hereby withdrawn from the market and the title thereto shall remain in the State of Texas to be enjoyed by the public for fishing and hunting and for State park purposes as may hereafter be provided by Law; and the Land Commissioners is hereby directed to offer no portion of said land for sale nor to receive any bids therefor.

Sec. 2. The Commissioner of the General Land Office may lease any or all of said land for mineral purposes, as now provided by Law, but before the same shall be leased it shall be advertised in some newspaper published at Marshall or Jefferson Texas, stating what land is to be leased and the prices offered therefor; and such advertisement shall invite other and additional bids thereon, and the lease shall only be made to the highest bidder. [Acts 1929, 41st Leg., p. 430, ch. 198.]

Art. 5421c. Regulating sale and lease of school lands, public lands and river bed; Board of Mineral Development created.

Lands subject to control and sale

Section 1. All lands heretofore set apart to the public free school funds under the Constitution and laws of Texas, and all of the unappropriated and unsold public domain remaining in this State of whatever character, except river beds, and channels, and islands, lakes and bays, and other areas within tide water limits, are subject to control and sale under the provisions of this Act.

Surveyed public free school land

Sec. 2. Surveyed public free school land may be sold by the Commissioner on the first day of any month to the person offering the highest price for it after the same has been advertised for sale in accordance with this Act and the provisions of subdivision 2 of Chapter 3, Title 86, Revised Civil Statutes, 1925,[1] relating to school land, provided that all such land within five miles of a well producing oil or gas in commercial quantities shall be subject to lease only, and the surface rights shall not be sold.

[1] Article 5309 et seq.

Surveyed land defined

Sec. 3. Surveyed land within the terms of this Act is defined to be all tracts or parts of tracts heretofore surveyed either on the ground or by protraction, and set apart for the public school funds and which is unsold, and for which field notes are on file in the General Land Office or which may be delineated on the maps of said Office as such, and unsurveyed land is defined to be all areas not included in surveys on file in the General Land Office or surveys delineated on the maps thereof.

Conditions as to sale

Sec. 4. All land shall be sold without condition of settlement and with a reservation of one-sixteenth (1/16) of all minerals, as a free royalty to the State, which two conditions shall be expressed in the application to purchase and in the notice of award, the minimum price to be fixed by the Commissioner and in no case to be less than One Dollar ($1.00) an acre. Provided, that one-eighth (1/8) of all sulphur and other mineral substances from which sulphur may be derived or produced shall be reserved as a free royalty to the State.

Prior surveys, sold, patents for

Sec. 5. Any headright survey, homestead donation, pre-emption survey, scrip survey or other survey heretofore awarded or sold, which survey has been held and claimed in good faith by any party for a period of ten years prior to the date of application for patent and which surveys cannot be patented under existing laws, may be patented on payment of One Dollar ($1.00) an acre to the Land Commissioner. In such cases the patent shall be issued to the owner now of record in the General Land Office and inure distributively to the true and lawful owners of the land, provided that in all cases where a tract of school land has been occupied by mistake as a part of another tract, such occupant shall have a preference right for a period of six months after the discovery of the mistake, or after the passage of this Act, to purchase the land at the same price paid or contracted to be paid for the land actually conveyed to him.

Definitions; vacant and unsurveyed land subject to sale or lease; royalties; applications and procedure thereon

Sec. 6. (a) Wherever the reference is made in this Act to "Commissioner," the same shall mean the Commissioner of the General Land Office.

Wherever the term "Good Faith Claimant" or "Claimant" is used in this Act, the same shall mean any person, firm, or corporation, occupying or using, or theretofore occupying or using, or whose predecessors in interest, have occupied or used a vacancy for purposes other than exploring for or removing oil, gas, sulphur, or other minerals therefrom with a good faith belief that the same was included within the boundaries of a survey or surveys previously titled, awarded or sold under circumstances that would, at the time the vacancy issue arose, have vested title thereto had said area actually been located within said survey or surveys, and whose said boundaries are shown to have been recognized boundaries in the community. Provided a person, firm, or corporation, or those under whom he claims, shall have said land in his inclosure or under definite recognized boundaries and be in possession thereof for a period of ten (10) years with a good faith belief that he was the owner thereof and that same was included within his survey, except that whenever the owner of the tract of land adjoining the alleged vacant area makes application to buy the same, and no prior application to purchase or lease such alleged vacant area is on file, then such owner of said adjoining tract of land, who otherwise qualifies as a good faith claimant, shall be considered a good faith claimant without regard to the length of time he may have owned said adjoining land, or had such alleged vacant tract inclosed, or under definite recognized boundaries and in possession with the belief that the vacant area was included within his survey.

"Vacancy," when used in this Act, means an area of unsurveyed school land not in conflict on the ground with lands previously titled, awarded, or sold, which has not been listed on the records of the Land Office as school lands and which on the date of the filing was neither subject to an earlier subsisting application to purchase or lease by a discoverer or claimant nor involved in pending litigation brought by the State to recover the same.

"Applicant," when used in this Act, means any person, other than a good faith claimant, who discovers and files application to purchase or lease a vacancy.

(b) The vacant and unsurveyed land included within this Act shall be subject to sale or lease under the terms of this Act. Any of such land shall be subject to sale to a good faith claimant whether the same shall be within five (5) miles of a well producing oil, gas, or other minerals in commercial quantities, or not; but such lands lying within five (5) miles of a well producing oil or gas in commercial quantities

shall not be subject to sale to any other person than a good faith claimant, but where there is no good faith claimant, or such claimant fails to exercise his preferential right, lands within such five-mile distance shall be subject to lease only, and all of such leases shall reserve to the State at least a one-eighth free royalty on oil, gas, sulphur, and other minerals. In all cases where the good faith claimant purchases the land within five (5) miles of a well producing oil, gas, or other minerals in commercial quantities, there shall be reserved to the State a free royalty of one-eighth of all oil, gas, sulphur, and other minerals. On all other vacancies sold there shall be a free royalty of one-sixteenth reserved to the State on all oil and gas production and one-eighth on sulphur and other minerals. Such royalty reserved by the State shall be one-eighth on oil and gas and one-sixth on sulphur and other minerals if a good faith claimant fails to exercise his preference right to purchase within ninety (90) days after the Commissioner determines the existence of the vacancy as hereinafter provided. Such sales shall provide that the purchaser shall have the right to execute oil, gas, and mineral leases on the land without the joinder or approval of the Commissioner, and all bonus money and rentals therefor shall be paid to and be the property of the purchaser, but any and all of such mineral leases shall provide for and reserve to the State the above-mentioned free royalty on all oil, gas, sulphur, and other minerals. On all vacancies leased by the State, there shall be reserved not less than a one-eighth free royalty on oil, gas, sulphur, and other minerals.

(c) Any applicant who claims that a vacancy exists and desires to lease or purchase same shall file in duplicate with the County Surveyor of the county in which any part of the land is situated a written application to purchase or lease, describing the land claimed to be a vacancy, and stating that he desires to purchase or lease same under the provisions of this Act. The application shall also state the names and addresses of all owners or claimants of land or any interest therein and of leases of any character thereon, adjoining, overlapping, or including the land claimed to be vacant, so far as the same may be ascertained from the records of the General Land Office, and of the office of the County Clerk of the county in which the land is located and from the tax rolls of such county. The application shall also state the names and addresses of all persons who, from facts known to the applicant, assert any right to said alleged vacant land, and same shall be sworn to and shall state the applicant knows of no other claimants than those listed.

Contemporaneously with the filing of the application, the applicant shall pay to said surveyor a filing fee of Five Dollars ($5). The surveyor shall mark on the original and duplicate the exact hour and date of filing, shall return one application to the applicant and shall record the other in a book to be kept by him for that purpose. The application which is returned to the applicant shall, within ten (10) days after the date of filing with the surveyor of the county, be filed with the Commissioner who shall note thereon the date of filing. Applicant shall also pay a filing fee of One Hundred Dollars ($100) to the Commissioner. Failure to file the application with the Commissioner within the time fixed, and to pay the filing fee, shall be a waiver of all rights under the application. As between applicants, priority shall date from the time of filing with the surveyor. In counties which have no County Surveyor, such preliminary filing shall be with the County Clerk and shall be recorded in a book to be kept for that purpose, but not in the deed records.

The Commissioner shall notify the applicant by letter of the estimate of the cost of proceedings under the application, and, within thirty (30) days after the date of such letter, the applicant shall make a deposit with the Commissioner to cover costs of all work which may be necessary in order to comply with the request contained in such application. Upon failure to make the deposit as required, all rights under the application shall be lost. In the event such deposit shall prove to be insufficient, the applicant shall be requested by letter to make a further deposit of a sum to be fixed by the Commissioner and, if such additional deposit be not made within thirty (30) days after the date of such letter, the work shall be discontinued and the application cancelled, and such cancellation shall be so endorsed on the application. Upon cancellation, the right to purchase or lease under such application shall be lost. The deposits provided for in this Section shall be a special trust fund to be used only for the purpose authorized by this Act. Provided that the applicant shall have the right of appeal from the estimate of cost so made by the Commissioner, to the District Court of Travis County by giving notice to the Commissioner in writing thereof within fifteen (15) days after the receipt of said estimate from said Commissioner as herein provided. And provided that said applicant shall have fifteen (15) days after the decision of said District Court as to amount in which to make payment thereof.

Upon filing of any such application with the Commissioner and upon the making of the required deposit as provided for herein, the Commissioner shall forthwith cause a notice of intention to survey to be mailed to all persons named in the application as interested persons, and at the addresses given therein, and to the Attorney General of Texas. The notices shall be deposited in the Post Office at Austin, Texas, at least ten (10) days prior to the date fixed for the beginning of such survey.

The Commissioner shall appoint a surveyor to make a survey in accordance with the notice. Such surveyor shall be a surveyor licensed by the State, or the County Surveyor of the County in which the land or a part thereof is situated. The fees and expenses to be paid for such work shall be such as may be fixed by law, or, if not so fixed, then such as the Commissioner and the surveyor may agree upon, but not in excess of such as may be reasonable for the work performed, all of which shall be paid by applicant.

A written report of the survey with field notes describing the land and the lines and corners so surveyed together with a plat showing the results of such survey shall be filed in the General Land Office within one hundred and twenty (120) days from the filing of the application, unless the time be extended by the Commissioner for good cause shown, which shall be stated in writing and filed as a part of the record of the proceedings, but such extension shall not exceed sixty (60) days. The report shall state the names and the Post-Office addresses of all persons in possession of the land described in the application, and of all persons found by the surveyor to have or claim any interest therein. Any interested party may at his own expense cause any surveying to be done as he deems desirable.

As soon as the total expense properly charged against the deposit has been determined, the Commissioner shall render a complete statement to applicant, accompanied by payment of the balance, if any, shown to be remaining in such fund.

Within sixty (60) days after the surveyor has made his report as provided herein, a hearing may be held before the Commissioner on the date fixed in a notice which he shall give to all persons thought to be interested parties and to all persons shown by the record of the proceeding to be interested parties, including the Attorney General, to determine whether there is a vacancy. Such notice shall be deposited in the Post Office at Austin, at least ten (10) days prior to the date fixed for such hearing. At the hearing, the State and

each interested party, whether or not he received notice, shall have a right to be heard.

(d) If the Commissioner should decide that the area so alleged to be a vacancy is not vacant, then the Commissioner shall so endorse said application and file it with his finding, and shall promptly notify the applicant of his finding by registered mail, and shall file all reports and papers received in connection with said application, and then shall take no further steps with respect to same unless the existence of the alleged vacant area shall have been determined by a Court of competent jurisdiction. Thereupon, the applicant's application and all preference rights acquired thereby, to buy, or lease, such alleged vacancy shall become null and void, unless within a period of ninety (90) days after the mailing of such notice the applicant shall file suit in the District Court of the county wherein any part of such land is located, for the purpose of litigating the question of the existence of a vacant unsurveyed area.

(e) If it shall appear to the Commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the State, the Commissioner shall give prompt notice of such finding to the applicant and to all those who have been previously identified as interested parties, and thereafter, subject to the further provisions hereof, such applicant shall have a right for one hundred and twenty (120) days to purchase or lease such portion of said land as is vacant at the price fixed by the School Land Board as hereinafter provided, with the royalty reservation provided hereinabove in subsection (b); provided that no such award shall be made by the Commissioner except after a hearing, and provided further that no presumption shall obtain in any suit involving the existence of a vacancy, as a result of the action of the Commissioner in this respect.

(f) Any good faith claimant who ascertains that a vacancy exists or that a claimed vacancy may exist, or who has been notified by the Commissioner that a vacancy has been found to exist upon lands claimed by him shall, at any time, until ninety (90) days after a decision of the Commissioner declaring the existence of a vacancy, have a preference right to purchase or lease same by applying in writing to the Commissioner for such purchase or lease, and by furnishing such proof as may be satisfactory to the Commissioner that he is a good faith claimant. Such good faith claimant shall then be entitled to purchase or lease such portion of said land as is vacant, at the price fixed by the School Land Board, subject to the royalty reservations herein provided, effective as of the date such application is filed.

Where there is no valid and subsisting prior filing by an applicant covering the alleged vacant area upon the date of the filing of a good faith claimant's application to purchase or lease, such application shall be accompanied by a filing fee of One Dollar ($1), by a written report of a surveyor licensed by the State, or the County Surveyor of the county in which the land or a part thereof is situated, with field notes describing the land and the lines and corners so surveyed, together with a plat showing the results of such survey, and by such proof as may be satisfactory to the Commissioner that he is a good faith claimant. Such good faith claimant may, however, if he so desires, file his application to purchase or lease, and within one hundred and twenty (120) days from the date of filing with the Commissioner, cause a survey of the alleged vacancy to be made, and file the written report, field notes, and plat in the General Land Office, together with the proof that he is a good faith claimant. If it shall appear to the Commissioner that the alleged vacancy is not in conflict with the land previously titled, awarded or sold by the State, the Commissioner shall grant such application under the provisions of this Act; provided, however, that prior to granting the application, the Commissioner may have a hearing at which any interested persons may appear.

The application by a good faith claimant shall not be used or considered, in any way, as an admission on his part that a vacancy exists.

Any good faith claimant shall also have a preference right until ninety (90) days after final judicial determination of the existence of a vacancy to purchase the land alleged or adjudicated to be vacant; provided, however, that if such good faith claimant shall not have exercised his preference right until after ninety (90) days after the decision of the Commissioner determining the existence of the vacancy, then the sale made to the good faith claimant shall be subject to a reservation in favor of the State of a free one-eighth (1/8) royalty of all oil, gas, sulphur and other minerals, and subject to any lease made or to be made by the State to applicant, if any, of not more than thirteen-sixteenths (13/16) mineral interest as in this Act provided. If the Commissioner has theretofore executed a mineral lease on a larger portion of the minerals under said land, then such lease shall be amended to cover only thirteen-sixteenths (13/16) of the minerals so as to conform with the preference rights hereby given to good faith claimants.

Any good faith claimant of a vacant or unsurveyed tract of land shall have ninety (90) days after the sale or lease by the Commissioner of said tract to institute suit to set aside the sale or lease of said tract of land. If said suit be not instituted by the good faith claimant within said ninety-day period, he shall lose all preference rights to buy or lease said land.

If the Commissioner has failed to determine whether or not there is a good faith claimant, or if his decision is questioned by applicant or one asserting to be a good faith claimant, then such issue shall be determined in any suit brought under this Act to determine the existence of the alleged vacancy.

Provided the good faith claimant shall pay back to the applicant the amount of expenses incurred in determining the existence of the vacancy, as provided for in Section 1, Subsection (c), except the filing fees, within ninety (90) days after the Commissioner has declared the vacancy to exist, or he shall lose all preference rights to lease or buy said land.

(g) The purchase by any good faith claimant under such preferential right shall inure distributively to the benefit of all owners holding title under him or an interest in the title under which he claims to be a good faith claimant, provided that such co-owners or lessees shall accept the provisions hereinafter set out and contribute their proportionate part of the royalty reserved to the State and the royalty awarded to the applicant. Such reservation shall be deducted distributively and proportionately from the mineral interest of each owner, including mineral leases, if the area should be under mineral lease. As a condition to the benefits conferred by this law, it is expressly provided that such claimants receiving patents or awards, or for whose benefit such patents or awards are received, shall recognize the proportionate interests of other owners benefiting by the award of preference rights hereby. The consideration for such purchase shall be determined by the Commissioner without considering the potential mineral value or any improvements thereon, but shall not be less than One Dollar ($1) per acre, and the State shall retain its right to recover from the party or parties liable therefor the market value, when produced, of all oil, gas, sulphur, and other minerals that may have been produced from such area prior to the effective date of the said patent or award, but against such liability there shall be allowed as an offset to the operator the actual cost of developing and producing the same. Provided that no mineral lease executed by the good faith claimant previous to the filing of the vacancy

claim shall give the lessee any interest in, or to, any vacancy.

No title to either land or mineral interest in land acquired from the State under preference right shall ever be held to pass as an after-acquired title by reason of any covenant of general warranty, description, or other provision, contained in any conveyance executed prior to the date of award under such preference.

(h) Where there is a valid, subsisting prior filing by an applicant upon the date of the filing of a good faith claimant's application to purchase under preferential right, and where the good faith claimant shall have exercised his preference right to purchase within ninety (90) days after a decision of the Commissioner under the provisions of this Act, then in such patent as shall be issued to good faith claimant, there shall be added to the free royalty interest reserved to the State and deducted proportionately from good faith claimant's award, as provided in paragraph (g), a free royalty of one-sixteenth of all oil, gas, sulphur, and other minerals which may be produced from such land, which royalty shall be awarded by the State to the applicant. But, if the good faith claimant shall not have exercised his preferential right to purchase within ninety (90) days after a decision of Commissioner under the provisions of this Act, then the applicant shall be awarded an oil, gas and mineral lease on not more than seven-eighths of the minerals for not less than One Dollar ($1) per acre, and for a five-year primary term, subject to such other consideration and terms as may be fixed by School Land Board, and subject to the preference right of a good faith claimant until ninety (90) days after final judicial determination under subsection (f) hereof. Should there be no good faith claimant, or should no good faith claimant exercise his preferential right within the time allowed, then the applicant shall be entitled to buy or lease accordingly, as he may have applied, the vacancy applied for by him and found to exist, for a consideration to be fixed by the School Land Board as hereinafter provided, but without consideration of potential mineral value.

(i) Any application made under prior laws to purchase or lease unsurveyed school land which is on file in the office of the Commissioner or with any county surveyor and which has not been granted upon the effective date of this Act, shall become null, void, and of no further effect unless there is then pending a suit, or suits, involving the question of whether the land so affected or a part thereof is vacant, or unless the Commissioner shall within nine (9) months after the effective date hereof grant said application, or unless the applicant shall within sixty (60) days after the end of such nine-months period, file an action in the District Court, for the purpose of litigating the question of the existence of a vacant unsurveyed area.

(j) Any person, firm, or corporation aggrieved by any action taken by the Commissioner under the provisions of this Act, or with reference to any application to purchase or lease vacancies, may institute suit in the District Court of the county where any part of the land is situated, but not elsewhere, and there try the issues of boundary, title, and ownership of any alleged vacancy involved, as well as the issues of the preference rights of such person, firm, or corporation, as herein provided. The plaintiff in such suit shall within thirty (30) days after the filing thereof cause a certified copy of the original petition therein to be served by any sheriff or constable of Travis County upon the Attorney General of Texas and the Commissioner, and cause such officer's return showing said service to be filed with the papers in said cause. Whether the Attorney General answers or intervenes in said cause or institutes suit in the first instance, following the filing of such application, the venue of all such suits shall be in the county where such land, or any part thereof, is located. When such litigation shall have been prosecuted to a final judgment, said judgment shall be binding upon the State of Texas. It shall be mandatory for the Attorney General to intervene in behalf of the State in such cases. [As amended Acts 1939, 46th Leg., p. 465, § 1.]

Unpaid and delinquent interest on sales of school land

Sec. 7. From and after the passage of this Act all unpaid and delinquent interest on sales of public school land, and annually on November 1st of each year as it becomes delinquent all unpaid interest on public school land sales shall bear interest at the rate of five (5) per cent compounded annually as it accrues on November 1st of each year; and no patent shall be issued upon any land until all compounded interest shall be paid to the time of issuing patent.

Lands subject to lease; rights and powers of surface owner

Sec. 8. All islands, salt water lakes, bays, inlets, marshes, and reefs owned by the State within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and all unsold public free school land, both surveyed and unsurveyed, shall be subject to lease by the Commissioner to any person, firm, or corporation for the production of minerals, except gold, silver, platinum, cinnabar, and other metals, that may be therein or thereunder, in accordance with the provisions of Chapter 271, Acts of the Forty-second Legislature, as amended,[1] and Subdivision 2, Chapter 4, Title 86, Revised Civil Statutes of Texas of 1925,[2] relating to leasing public areas, in so far as same is not in conflict herewith. Provided, however, that nothing in this Act shall be construed as removing from or interfering with the rights and powers of the surface owner of land sold or to be hereafter sold by the State, with a mineral reservation, to act as agent of the State in making and executing mineral leases covering and affecting such lands, but the authority of such surface owner shall remain the same as provided by law, and is in no wise abridged, modified or removed by this Act. [As amended Acts 1939, 46th Leg., p. 465, § 2.]

1 Article 5414a.
2 Probably means section 8A of this article.

River beds belonging to State, development and lease of; Board of Mineral Development created, powers and duties

Sec. 8–A. The beds of rivers and channels belonging to the State shall be subject to development by the State and to lease or contract for the recovery of petroleum oil and/or natural gas, in tracts of such size as may from time to time be determined by the hereinafter created board, subject to the conditions contained in this Section.

Subsection 1. There is hereby created the Board of Mineral Development,[1] which shall consist of the Governor, the Commissioner of the General Land Office and the Chairman of the Railroad Commission of this State, which board shall have the authority to carry out the provisions of this Section, and to employ such assistants as may be necessary from time to time for the accomplishment of the purposes herein set forth.

Subsection 2. The Board of Mineral Development is hereby authorized and it is made its duty to advertise for:

(1) Proposals to lease for oil and/or gas development of the River Beds and Channels in this State.

(2) For proposals to drill said River Beds and Channels upon considerations involving compensation in oil and/or gas and/or money of the State, whereby the State will receive a proportion of the oil and/or gas as the same is produced, or by way of Advanced Royalties paid in money.

(3) And for proposals to purchase said minerals in place, or recoverable, without requirement of mineral development.

Subsection 3. The Board of Mineral Development is hereby expressly authorized to receive bids on all propositions provided for in Subsection 2, and may accept any bid which it may deem to be to the best interests of the State, or it may reject any and all bids. The board shall advertise such proposals not less than fifteen days before lease or sale date as provided in Section 9 of Chapter 271, Acts of the Regular Session of the Forty-Second Legislature.

Subsection 4. In the event the board shall deem it advisable to reject all bids it may readvertise for bids or may enter into a contract for the drilling of such wells as it may deem advisable, provided, however, that any well or wells which may be drilled by order of the Board of Mineral Development shall be by contract let upon competitive bids to the lowest and best bidder for a completed well and providing further that any contractor drilling under contract with the Board of Mineral Development shall be required to carry Workmen's Compensation Insurance for all employees engaged in such drilling operation.

Subsection 5. Said Board of Mineral Development shall not be authorized to lease or otherwise contract for the development of, and shall not have the power to authorize or contract for the drilling of any river beds or channels situated at the time of executing said lease or contract, more than two miles from a well producing or capable of producing oil or gas in paying quantities.

Subsection 6. All leases and contracts involving development of river beds and channels shall be executed on forms to be approved by the Attorney General and the Board of Mineral Development and shall require of the lessee or contracting party or his or its successors or assigns, the use of the highest degree of care and of all proper safeguards to prevent the pollution of streams, and in the event of failure to meet such requirements the State shall have the right immediately to take charge of said properties, and for such failure said lease may be cancelled at the option of the State.

Subsection 6a. It is hereby declared, as to any and each lease and/or contract hereafter made by the Board of Mineral Development, to be the policy of this State, with reference to the development of all portions of beds of rivers and channels described in such lease and/or contract, that the activities of the State and of all lessees or contracting parties, their heirs, successors or assigns, under such lease and/or contract, shall conform to the valid laws of this State, and to the valid orders, rules and regulations of any agency of this State, applicable to the development, by others than this State, of petroleum and/or natural gas bearing land within the State; and each lease and/or contract hereafter made by the Board of Mineral Development shall be subject hereto. [As added Acts 1933, 43rd Leg., p. 309, ch. 120, § 1.]

Subsection 6b. As to any and each lease and/or contract heretofore made by the Board of Mineral Development, such Board shall be, and it is hereby, authorized and empowered to revise the same, with the consent of the lessees and/or contracting parties thereunder, their heirs, successors or assigns, in such wise as to subject such lease and/or contract thenceforth to the public policy declared in Subsection 6a. Such revision shall be accomplished by supplemental or modificatory instrument on such terms as the Board of Mineral Development may deem fair and advantageous to this State, but only after a proposal for such revision shall be formally made, in a public document, to the said Board of Mineral Development, by the lessees and/or contracting parties under such lease and/or contract, their heirs, successors or assigns; and provided that in consideration of the consent by such lessees and/or contracting parties, their heirs, successors or assigns, to such revision the Board of Mineral Development shall not reduce the State's share of the oil and/or gas to be received in the future under such lease and/or contract to less than one-fourth of the gross production of oil and/or gas from the land described in such lease and/or contract.

Provided that any revision made under this Act as referred to hereinbefore shall contain in such supplemental or modificatory instrument the power and authority on the part of the Board of Mineral Development to re-instate any money requirement or reduced royalty requirement at any time that in the opinion of the Board such re-instatement should, in view of the then existing conditions and fairness to the State of Texas under the original lease or contract, be made; and the Board of Mineral Development shall exercise such power whenever in its opinion the interest of the State of Texas requires the exercise of such power; provided, further that said Board may modify said contract as aforesaid by adjusting up or down from time to time the State's portion of said oil and/or money payment as the conditions hereinbefore set forth may justify and which may be equitable to the State and to said contractors or their assigns, but in no event shall the State's portion be less than one-fourth nor more than now provided in said contracts, and in no event shall the Board of Mineral Development have any authority to modify or change said original leases as to gas. Provided, further that no revision made under this Act shall release the lessees or their assigns from the payment to the State for any oil and/or gas produced or the delivery to the State of any oil produced and due the State under the original contracts and produced prior to the effective execution of any revision hereunder.

Provided further, that nothing in such revision shall in anywise relieve any lessee and/or contracting party from any obligation now existing to drill any well either as an offset or otherwise.

"And/or" as used in this Act shall mean and include both and either of the words "and" and "or." [As added Acts 1933, 43rd Leg., p. 309, ch. 120, § 1.]

Subsection 6c. No change shall be made by the Board of Mineral Development that will relieve, release and/or suspend the lessees from the payment of any money and/or royalty now due and payable to the State for oil and/or gas produced to the date that the Board makes any change in the present existing lease contracts. [As added Acts 1933, 43rd Leg., p. 309, ch. 120, § 1a.]

Subsection 7. This Section is in no wise intended, or shall be held, to repeal or supersede Chapter 138, Acts of the Regular Session, Forty-First Legislature,[2] which validated, relinquished, quit-claimed, and granted to patentees and awardees and their assignees lands, and minerals therein contained, which lands are included in surveys lying across, or partly across water courses or navigable streams in this State, and which have been patented or awarded as provided in said Chapter 138.

Subsection 8. All moneys collected under the provisions of this Section by the Board of Mineral Development shall be deposited in the State Treasury to the credit of the Mineral Development Fund, out of which disbursements may be made by the Board to carry out the provisions of this Section, for which purposes so much of said fund as may be necessary is appropriated. All portions of said fund not needed for such purpose shall be from time to time paid into the General Revenue Fund, provided that any portion thereof belonging to the Public Free School Fund under the Constitution and Laws of this State shall be paid to such Fund. And until such time as the Mineral Development Fund shall be ample for the purposes of this Section there is hereby appropriated out of the General Revenue Fund, not otherwise appropriated, the sum of Sixty Thousand ($60,000.00) Dollars, as an advance to such Fund which

shall be repaid out of the funds derived under the operation of this Section.

Subsection 9. The Governor shall serve as Chairman of the Board of Mineral Development, and no business shall be transacted by said Board except at a meeting of such Board, attended by two or more members, of which meeting notice to all other members shall have been given in writing by the member calling the meeting, and all orders or contracts made or entered into by said Board shall only be authorized at such a meeting and shall be signed by at least two members of the Board, and be approved by the Attorney General as to their legality.

Subsection 10. In no event shall the Board of Mineral Development enter into any contract to lease any lands without reserving to the State at least one-eighth interest or royalty.

Subsection 11. The venue of any suit arising out of this Act [3] either by or against said board and of whatever kind or nature is hereby fixed in Travis County.

Subsection 12. No injunction shall be granted against the board, or its agents, or parties under contract with it, to restrain it from enforcing its orders, or contracts, or carrying out any development entered into or contemplated by it under this Act except after notice to the board and its agents or parties with whom it contracted or contemplates contracting, and a hearing is held thereon. Before any injunction or restraining order is issued or becomes effective against the board or any of the parties named in the foregoing sentence the complaining party or parties shall be required by the Court to give bond with good and sufficient sureties in an amount to be fixed by the Court which amount shall be sufficient to protect the State from loss by reason of drainage of the river bed or channel in question or by reason of loss of lease or bonus, consideration, or loss from any other reason whatsoever. The Court in considering the amount of the bond shall take into consideration the probable and possible loss to the State by reason of granting of any such injunction. Such bond shall be made payable to the then Governor of the State of Texas and his successors in office, and recovery for loss to the State occasioned by said action may be had in a suit on such bond brought by the Attorney General. Any bond made or executed by any bonding or surety company as surety shall be by some bonding or surety company authorized to do business in Texas.

Subsection 13. Either party to said suit has the right of appeal from the final judgment therein and said appeal shall at once be returnable to the appellate Court and said action so appealed shall have precedence in said appellate Court over all cases, proceedings and causes of a different character therein pending. In the Court of Civil Appeals such Court shall immediately and at as early a date as possible decide the questions involved therein; and in the event any question or questions shall be certified to the Supreme Court, or writ of error thereto be requested or granted, it is here made the duty of the Supreme Court to immediately set down said cause for hearing and decide the cause at as early a date as possible, and such cause shall have precedence over all other cases, proceedings and causes of a different character in such court. All laws and parts of laws in conflict with the provisions of this Section are hereby repealed.

Subsection 14. The Board, or any person or corporation holding a contract with said Board, including all leaseholders or assignees, or any leaseholder or assignee holding a lease contract with the State or under the State Land Commissioner prior to the enactment of Acts 1931, 42nd Legislature, 2nd Called Session, Page 64, Chapter 40, or [4] what is commonly known as the River Bed or Board of Mineral Development Law, for the development of oil and/or gas resources, in State-owned river beds, streams or channels, is hereby granted the right of Eminent Domain and Condemnation as provided by the General Laws of the State of Texas for the following purposes:

(1) Of securing such additional adjoining lands as may be necessary for erection of power machinery, and construction of storage tanks and slush pits in the operation of said channel or river development and to prevent or lessen the dangers of pollution involved in the drilling of any well in any such river beds or channels.

(2) For the purpose of securing a right of way to and from any well which may be drilled in said river beds or channels so as to enable the Board or any of its contract or leaseholders to go to and from said wells and to transport any materials necessary in the development of said river beds or channels and to transport oil and/or gas away from any wells.

Provided, that at any time hereafter, in all cases, where the landowner and/or other interested parties and the leaseholder to said river beds and/or Board are unable to agree on the measure of damages, if any, and it is necessary to resort to condemnation proceedings, that in the event it should become necessary for any offset well to be drilled by said landowner or other interested party within the area or surface of the land taken, condemned or thus sought to be condemned, the mineral rights of the condemned party shall at all times be superior to the surface rights of the condemning party, and in the event of any conflict on account of the drilling of any offset well or wells, under and by virtue of a permit from the Railroad Commission, the condemning party shall be compelled to move any interference or hindrance whatsoever therewith, or to go around such offset well, and in the event of his failure or refusal to immediately move any such interfering object or hindrance, upon demand, the owner of the mineral rights shall have the right to immediately do so himself without any liability.

It is the intent of this Act that the mineral rights of the owner shall at all times be superior to the surface rights of the condemning party, and in determining the measure of damages, if any, in such condemnation proceeding, the Commissioners or any other tribunal shall not take into consideration the value of the oil or gas lying under said rights of way of such condemned properties, and this Act, as amended, which same is remedial only, shall apply to all cases or proceedings now pending. [Acts 1931, 42nd Leg., 2nd C.S., p. 64, ch. 40; Acts 1933, 43rd Leg., p. 192, ch. 88.]

[1] Abolished and functions transferred to School Land Board, see art. 5421c—3.
[2] Article 5414a.
[3] Probably means section 8A of this article.
[4] So in enrolled bill, Session Law reads "of."

Notice for bids

Sec. 9. The Commissioner shall fix the minimum price of not less than One Dollar ($1.00) per acre to be paid, and the day and hour when an area or areas will be subject to lease, and advertise or readvertise such areas at least thirty (30) days before such lease date, except as provided in case of tie bids, under Article 5356 of the Revised Statutes of 1925. The Commissioner may give such notice by distributing printed lists as provided for sales of surface rights of public lands.

Terms of lease

Sec. 10. The areas included herein shall be leased for a consideration, in addition to the cash amount bid therefor, of not less than one-eighth (1/8) of the gross production of oil, or the value of same, that may be produced and saved, and not less than one-eighth (1/8) of the gross production of gas, or the value of same, and not less than one-eighth (1/8) of the gross production of sulphur, or the value of same

that may be produced, that may be produced and sold off the area, and not less than one-sixteenth (1/16) of the value of all other minerals that may be produced, and an additional sum of twenty-five cents an acre per year for each year thereafter until production is secured. When production has been secured in commercial quantities and the payment of royalty begins and continues to be paid, the owner shall be exempt from further annual rental payments on the acreage. The provisions of this Article in respect to payments of rental after production and the cessation of production shall apply to leases heretofore issued by the State on any area except lands belonging to the State University and eleemosynary institutions. If production should cease and royalty not be paid, the owner of the lease shall, at the end of the lease year in which the royalty ceased to be paid and annually thereafter in advance, pay twenty-five cents per acre so long as such owner may desire to maintain the rights acquired under the lease, not to exceed five (5) years from the date of said lease.

Payments received by Commissioner of General Land Office

Sec. 11. All payments received by the Commissioner of the General Land Office shall be transmitted to the State Treasurer to be credited to the proper funds. All payments for land and for mineral leases and rentals thereon, and for royalties on minerals produced, shall be credited to the permanent school fund, and all interest collected hereunder shall be credited to the available school fund. Payments received on purchase price of a tract of land shall be credited to the permanent school fund, and all payments of interest and rentals shall be credited to the available school fund; and all payments constituting the purchase price of a lease for minerals shall be transmitted to the State Treasurer to the credit of the permanent school fund, and likewise all payments of royalty received from minerals sold under leases, as well as all rentals, shall be credited to the permanent school fund.

Prospecting land

Sec. 12. Any person or corporation desiring to prospect a tract of land belonging to the State for gold, silver, platinum, cinnabar, and other metallic ores and precious stones may file an application with the Commissioner of the General Land Office designating the area to be prospected, which must be accompanied by a rental payment of Ten (10) Cents per acre, and such applicant shall have a period of one year from date of filing such application within which to prospect the area designated. Within the period of said year he may file an application to lease the area designated for the purpose of mining gold, silver, platinum, cinnabar and other metallic ores and precious stones and remit Fifty (50) Cents an acre as first annual payment of rental on the lease and continue to make such payments from year to year for a period of five (5) years, unless some of the minerals mentioned herein shall be discovered sooner in paying quantities. On discovery of any such minerals, the payments of such rentals shall cease. On the 20th day of each month the owner of the mine or mines shall pay the royalty due the State, which shall be one-sixteenth (1/16) of the value of the minerals sold or moved off the premises. Such payments shall be remitted to the Commissioner of the General Land Office and credited to the account of the Permanent School Fund. The leases shall be drawn and the mines operated in accordance with regulations prescribed by the Governor, Attorney General, and Commissioner of the General Land Office. [Acts 1931, 42nd Leg., p. 452, ch. 271; Acts 1941, 47th Leg., p. 596, ch. 365, § 1; Acts 1943, 48th Leg., p. 453, ch. 301, § 1.]

Acts 1931, 42nd Leg., 2nd C.S., p. 64, ch. 40, added section 8-A to this Article. Acts 1933, 43rd Leg., p. 309, ch. 120, §§ 1, 1a, added subsections 6a to 6c to section 8-A of this Article. Acts 1933, 43rd Leg., p. 192, ch. 88, amended subsection 14.

Section 13 repeals Articles 5323, 5338 and 5374, ante.

Acts 1931, 42nd Leg., 1st C.S., S.C.R. # 4, p. 101 omitting the preamble read as follows:

"Now, therefore, be it resolved by the Legislature of the State of Texas that it was the intention of the Legislature, and is now the intention of the Legislature that public school land occupied by mistake as provided in said Section 5 be sold to the occupant at the same price which such occupant paid or contracted to pay for his adjoining tract and of which he in good faith thought such public school land a part, and it is further declared that it was not and is not intended that said privilege of purchasing such land shall be abridged, limited, subject to or burdened with any other provision of said Act or pre-existing law, except as to the reservations of said Section 4; and,

Be it further resolved by the Legislature that all River Beds are off of the market and not subject to sale or lease."

Section 3 of Acts 1939, 46th Leg., p. 465, provides that the Act shall not affect filings or applications which are involved in pending litigation, nor to the title to the land involved in any suit to which the State is a party, nor to any pending suit.

Section 4 is published as article 5421c—1; section 4-a as article 5421c—2; section 5 as article 5421c—3.

Section 6 repeals all conflicting laws and parts of laws.

Section 7 provides that partial invalidity shall not affect the remaining portions of the Act.

Art. 5421c—1. Excess acreage where tract of land titled or patented.—In all cases where the area of a tract of land titled or patented exceeds the quantity called for in the title or patent, and where under the existing law the title to all or any part thereof shall or may be affected by the existence of such excess, then any person owning such survey or having an interest therein may pay for such excess acreage at such price as the empowered authority may fix. Any person owning any interest in a titled or patented survey in which excess acreage exists who desires to pay for such excess acreage, shall file with the Land Commissioner a request for an appraisement of the land with corrected field notes in the form now provided by law, together with a statement of the facts pertaining to his right to purchase, which statement shall be sworn to, and such other evidence of his right to purchase as the Commissioner may require. Should it appear that such excess actually exists and that the applicant is entitled to the benefits of the law, then the Commissioner shall execute a deed of acquittance covering such land in the name of the original patentee or his assignees with such reservation of minerals or with no mineral reservation, accordingly as may have been the case when the survey was titled or patented. Such transfer shall inure distributively to the benefit of the true and lawful owners of the survey in proportion to their holdings. [Acts 1939, 46th Leg., p. 465, § 4.]

Art. 5421c—2. Mineral leases under Relinquishment Act.—No mineral lease executed by an owner or owners of land or minerals under what is commonly known as the Relinquishment Act[1] shall be effective until a certified copy of such lease is filed in the Land Office. No such lease executed after the effective date hereof shall be binding upon the State unless it recites the actual and true consideration paid or promised therefor. [Acts 1939, 46th Leg., p. 465, § 4-a.]

1 Articles 5367, 5368, 5369–5379.

Art. 5421c—3. Control and disposition of lands set apart for permanent free school fund and asylum funds and mineral estate within tidewater limits; dedication of mineral estate to permanent school fund; School Land Board, creation and duties; Board of Mineral Development abolished.—1. All lands set apart for the permanent free school fund and the several asylum funds by the Constitution and the laws of this State and the mineral estate in river beds and channels, and the mineral estate in all areas within tidewater limits including islands, lakes, bays, and the bed of the sea, belonging to the State of Texas, are subject to control and disposition in accordance with the provisions of this Section and other pertinent provisions of this Act

and other laws not in conflict herewith; provided, however, that the provisions of this Act shall not apply to those lands awarded to the State of Texas by decree of the Supreme Court of the United States on March 17, 1930, in Cause entitled: The State of Oklahoma vs. The State of Texas, the United States of America, Intervenors,[1] but said lands shall be sold and disposed of in accordance with the provisions of Chapter 185, Acts of the Regular Session of the Forty-second Legislature.[2]

2. The mineral estate in river beds and channels and in all areas within tidewater limits, including islands, lakes, bays, and the bed of the sea, belonging to the State of Texas, are hereby set apart and dedicated to the permanent school fund.

3. There is hereby created a board to be known as the School Land Board, and to be composed of three (3) members, namely: the Commissioner of the General Land Office, who shall be chairman, the Governor and the Attorney General.

4. The duties of the School Land Board shall be to set all dates for the leasing and the sale of surveyed lands, and to determine the prices at which any land, whether surveyed or unsurveyed, shall be leased or sold, and to perform any other duties that may be imposed upon them by law. All such lands shall be sold and leased subject to the terms and conditions provided by law, except that no land shall be appraised at a less price than Two Dollars ($2) per acre; provided, however, that lands lying and being situated west of the Pecos River may be appraised at a price not less than One Dollar ($1) per acre.

5. The School Land Board shall meet on the first and third Tuesdays of each month in the General Land Office, where its sessions shall be held and continued until its docket is cleared, subject to recesses at the discretion of the Board. The Board shall select a secretary who shall be nominated by the Commissioner of the General Land Office and approved by a majority of the Board. The Commissioner of the General Land Office is authorized to employ other employees which may be necessary for the discharge of the duties of the Board, and particularly is authorized to employ a geologist and mineralogist, who shall keep informed with reference to the minerals on public school lands and all activities under pending applications and previous leases and sales, and shall report to the Board all information obtained with reference thereto. The employees of the Board shall be deemed to be employees of the General Land Office, and all civil and criminal laws regulating the conduct and relations of the employees of the General Land Office shall apply in all things to the employees of the Board.

6. The School Land Board shall keep a record of its proceedings to be called its minutes which shall include a docket on which the secretary shall enter all matters to be considered by the Board, the minutes and docket to be subject to inspection by any citizen of Texas desiring to make an examination thereof on payment of such fees as may be prescribed by law for the examination of other Land Office records, the examination to be in all cases in the presence of the secretary of the Board or some clerk designated for that purpose as prescribed by law. All records and proceedings of the Board shall be records and archives of the General Land Office.

7. The School Land Board, as soon after the passage of this Act as may be practicable, shall adopt rules of procedure and regulation for the sale and leasing of areas included herein not inconsistent with this Act and other laws on the subject for the sale and lease of school and asylum lands and the lease of the mineral estate in river beds and channels and islands, lakes and bays within tidewater limits and the bed of the sea, belonging to the State of Texas.

8. The description of public free school land offered for sale or lease shall be in accord with such descriptions as may be found in the School Land Registry of the General Land Office and shall be entered on the docket; and when applications to purchase either the land or the lease, as the case may be, are filed, the name of the applicant and the amount of his bid shall also be entered on the docket. The minutes shall show the fact of acceptance of a bid or the rejection of a bid and the approval of the minutes will constitute the approval of the act of acceptance or the act of rejection, as the case may be.

9. It shall be the duty of the Commissioner of the General Land Office to furnish the Board from time to time a list of all lands subject to the provisions of this Section.

10. All awards or leases shall be issued by the Commissioner of the General Land Office in accordance with the minutes as approved by the School Land Board.

11. It shall be the duty of the School Land Board to advise the Commissioner in all matters submitted to it for such purpose.

12. The Board shall insert, in at least four (4) daily newspapers in at least three (3) issues of each, thirty (30) days in advance of a sale date, which shall be the first Tuesday in any month, an advertisement to the effect that leases or land will be offered for sale on a certain date and that lists describing the land may be had at the General Land Office.

13. The School Land Board shall have the right to reject any and all bids, but unless the Board elects to reject any and all bids, it shall be required to accept the best bid submitted.

14. (a) All functions now vested by law in the Board of Mineral Development created by Chapter 40, Acts of the Second Called Session of the Forty-second Legislature,[3] are hereby transferred to and vested in the School Land Board, subject to the same powers, rights, duties, restrictions and limitations imposed by law upon the Board of Mineral Development. The Board of Mineral Development is hereby abolished.

(b) Upon the taking effect of this Act, all books, papers, records, property and pending business heretofore made, used, acquired or conducted by the Board of Mineral Development in the exercise of its functions hereby transferred, shall be transferred to and vested in the School Land Board.

(c) All officers and employees of the Board of Mineral Development may be transferred to the School Land Board, and shall perform the duties of the Board as directed by the Commissioner of the General Land Office, subject to the conditions hereinabove set forth. The Commissioner of the General Land Office shall have the power to eliminate unnecessary positions, to transfer officers and employees between positions, and to change the duties, titles and compensation of the existing offices and positions necessary to effect an efficient administration of the Board.

(d) The balances of the appropriations heretofore made to the credit of the General Land Office for the use of the Board of Mineral Development are hereby made available for expenditure by the Commissioner of the General Land Office in the exercise of such functions hereby transferred to and vested in the School Land Board.

15. The Sum of Ten Thousand Dollars ($10,000), or so much thereof as may be necessary, is hereby appropriated annually out of any funds in the State Treasury, not otherwise appropriated, to pay the salaries and expenses of all persons employed or appointed by the Board as herein provided, and all other expenses necessary for the proper discharge of the duties of the Board. The compensation of all persons employed by the Board shall be in line with salaries paid other State officials and employees hold-

ing similar positions and doing similar work. [Acts 1939, 46th Leg., p. 465, § 5.]

1 See State of Oklahoma v. State of Texas, 50 S.Ct. 247, 281 U.S. 109, 74 L.Ed. 731, 1122.
2 Article 5330a.
3 Article 5421c, § 8a.

Art. 5421c—4. Easements or surface leases of Gulf lands to United States for national defense.

Authority of School Land Board

Section 1. The School Land Board, created by House Bill No. 9 of the Forty-sixth Legislature (being Title: Public Lands, Chapter 3, of the General Laws of the Forty-sixth Legislature, 1939,[1]) is hereby authorized to grant and issue easements or surface leases to the United States of America in accordance with the conditions hereinafter set out, on any island, salt water lake, bay, inlet, or marsh within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of the State of Texas, to be used exclusively for any purpose essential to the National Defense.

1 Articles 5421c to 5421c—3.

Easement or surface leases authorized

Sec. 2. When the proper authority or agency of the United States of America shall make application to the School Land Board describing the area which is deemed necessary for use in the National Defense said Board shall issue an easement or surface lease to the United States of America granting and conveying to it the free and uninterrupted use of the area described. Provided that before such lease or leases be granted in any county that the Board shall notify the County Judge of said county and shall fix a date for hearing at which time all interested persons may be heard in protest or otherwise. Such easement or surface lease shall be effective only so long as the area is used for the purpose of National Defense, and it shall cease and terminate and the State of Texas shall be revested with full title and possession of the area when same is no longer used for such purpose.

Oil, gas and mineral rights retained

Sec. 3. The easements or surface leases granted hereunder shall be upon the express condition that the State of Texas shall retain all of the oil, gas, and other mineral rights in and under the area affected. The consideration to be paid for the use of said areas shall be agreed upon by the School Land Board and the United States of America and it shall be payable to the State of Texas on an annual basis.

Grazing leases; oil and gas leases

Sec. 4. All leases for grazing purposes heretofore issued by the Commissioner of the General Land Office which are covered or partially covered by any easement or surface lease granted hereunder are hereby made subordinate to such easement or surface lease. If the lessee under any existing oil and gas lease heretofore granted by the State on any area affected by an easement or surface lease granted hereunder, shall file or cause to be filed in the General Land Office an agreement, subordinating to the easement or surface lease granted hereunder all rights held by such lessee under such oil and gas lease, then and in that event the running of both the primary and principal terms of such lease shall be suspended during the existence of such easement or lease; provided, however, that lessee continues the annual rental payment stipulated in the lease during such suspended period. Such oil and gas lease shall remain in status quo, and all obligations, duties, rights and privileges existing under such lease shall be inoperative and of no force and effect until the expiration of said easement or surface lease, at which time said oil and gas lease shall again become operative and all of the obligations, duties, rights and privileges, including the payment of rentals under same, shall again attach and be in force as they were on the date of the suspension and continue for the unexpired term of such lease. The School Land Board shall give notice immediately to such lessees that their leases are again in force when said easement or surface lease has terminated; provided, however, that the annual rental payments have been met.

Areas excluded

Sec. 5. All areas on which there now exists oil, gas, or other mineral production are specifically excluded from the terms of this Act. [Acts 1941, 47th Leg., p. 20, ch. 10.]

Art. 5421c—5. Leasing of islands, salt water lakes, bays, inlets, marshes, and certain other lands; determination of price.—Section 1. All islands, salt water lakes, bays, inlets, marshes, and reefs owned by the State within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas; all beds of rivers and channels belonging to the State; and all unsold public free school land, both surveyed and unsurveyed, shall be subject to lease by the Commissioner of the General Land Office to any person, firm, or corporation for the production of minerals, except gold, silver, platinum, cinnabar, and other metals, that may be therein or thereunder, in accordance with the provisions of Chapter 271, Acts of the 42nd Legislature as amended,[1] Subdivision 2, Chapter 4, Title 86, Revised Civil Statutes of Texas of 1925,[2] and Title: Public Lands, Chapter 3, Acts of the 46th Legislature, (1939)[3] relating to leasing public areas, insofar as same is not in conflict herewith.

Sec. 2. The price at which any of said land may be leased shall be determined by the School Land Board as created by Title: Public Lands, Chapter 3, Acts of the 46th Legislature (1939). All such leases shall be for a primary term of five (5) years, with such annual delay rental as may be fixed by said Board. [Acts 1941, 47th Leg., p. 803, ch. 498.]

1 Article 5421c.
2 Articles 5353-5366.
3 Articles 5421c to 5421c—3.

Art. 5421c—6. Patents validated.—Section 1. All patents issued prior to the effective date of Article 5421-c as amended by House Bill No. 9 of the Forty-sixth Legislature, such effective date being September 21, 1939, by the authority of the State, under the seal of the State and of the Land Office, signed by the Governor and countersigned by the Commissioner of the General Land Office to parties who for a period of ten (10) years prior to the date of application for the patent had held and claimed the same in good faith, under the provisions of Section 5 of Chapter 271, Acts of the Forty-second Legislature Regular Session,[1] are hereby ratified and title validated and confirmed in such patentees, their heirs or assigns, subject only to the mineral reservation as contained in Section 4, Chapter 271, Acts of the Forty-second Legislature, Regular Session,[2] and without regard to whether or not such land was located within five (5) miles of a well producing oil or gas in commercial quantities at the time of such patent. [Acts 1943, 48th Leg., p. 368, ch. 247, § 1.]

1 Section 5 of article 5421c.
2 Section 4 of article 5421c.

Art. 5421d. Patents to lands formerly claimed as in New Mexico.—Sec. 1. That the Commissioner of the General Land Office is authorized and requested to prepare and issue, and the Governor is authorized to execute and deliver, patents for the lands and accretions thereto, heretofore claimed by New Mexico to be in that state, but determined by the Supreme Court of the United States by Decree entered April 9, 1928 (New Mexico against Texas, 276 U.S. 556) to be in Texas, to the persons who, on April 9, 1928, were in actual bona fide possession of said lands and claiming title to such lands under patent from the United States.

Sec. 2. In order to receive a patent under this Act, the person desiring such patent shall first make written application to the Commissioner of the General Land Office, describing the land for which a patent is sought and shall show in such application the facts necessary under this Act to entitle applicant to a patent hereunder, and the applicant shall verify the allegations in the application by any accompanying Affidavit, stating that such allegations are true to the best of the knowledge and belief of the applicant, and it shall be necessary that any such application be filed in the office of the Commissioner of the General Land Office within five (5) years from the date upon which this Act goes into effect, and the applicant shall, upon filing said application, deposit with the Commissioner of the General Land Office One Dollar ($1.00) for each acre or fractional part of an acre in the land covered by the application, which shall constitute the purchase price for said land, and upon the delivery of any patent to any person under this Act, the purchase price shall be applied to the Public School Fund of the State of Texas.

Sec. 3. It is further provided that any land acquired by patent issued under this Act shall be subject to the same liens other than liens for taxes and water and like quasi public charges that would have been against such land had it been in New Mexico.

Sec. 4. It is provided that patents issued under this Act shall be merely quitclaims, and the title conveyed by such patents shall be subject to any prior conveyances by this State, and the patents shall so read.

Sec. 5. As used in this Act, the term "person" applies to and includes an individual, corporation, partnership, or association. [Acts 1933, 43rd Leg., p. 634, ch. 212.]

Art. 5421e. Division of profits between State and United States from land improvements.—Sec. 1. That where as a result of improvements made on lands owned by the State or by any county or city of the State by the Federal Government with funds appropriated and expended under the provisions of Public No. 5, an Act of the Seventy-third Congress of the United States, approved March 31, 1933, and providing "for the relief of unemployment through the performance of useful public work and other purposes," there accrues upon the sale of said lands or from the sale of its products, a direct profit to the State resulting directly from such work, the profits so arising shall be divided equally between the State and the Federal Government until the State shall have paid for the work done on each particular tract of land, or its products so sold, at the rate of One ($1.00) Dollar per day per man for the time spent on such work, not to exceed, however, Three ($3.00) Dollars per acre so improved.

Sec. 2. The provisions of this Act shall not apply to lands held by the State, or by any county of the State for public free school purposes or for university purposes. [Acts 1933, 43rd Leg., p. 799, ch. 233.]

Art. 5421f. Extension of payment of unpaid balances of principal on purchases of school lands.—The time for the payment of all notes or obligations executed prior to November 1, 1901, by purchasers of school land for the unpaid balances of principal due the State thereon is hereby extended for a period of ten (10) years from and after the passage of this Act, subject to all the pains and penalties provided in the Acts under which the purchases were made, provided that the extension of time herein granted shall apply only to installments of principal, and shall not apply to any installment of interest; and provided further that the unpaid balances of principal upon which an extension of time for payment is hereby granted shall bear interest during said period of extension at the rate provided for in the contract of purchase hereby extended, and past due installments of interest shall bear interest at the rate provided for in Section 7, Chapter 271,[1] General Laws Regular Session Forty-second Legislature. [Acts 1934, 43rd Leg., 3rd C.S., p. 76, ch. 37, § 1.]

[1] Article 5421c, ante.

Art. 5421f—1. Extension of time for payment of installments of principal of school land purchase contracts.—The time for the payment of all notes or obligations executed by purchasers of school land for the unpaid balance of principal due the State thereon which are due or will become due prior to November 1, 1951, is hereby extended to November 1, 1951, subject to all the pains and penalties provided in the Acts under which the purchases were made, provided that the extension of time herein granted shall apply only to installments of principal, and shall not apply to any installment of interest; and provided further that the unpaid balances of principal upon which an extension of time for payment is hereby granted shall bear interest during said period of extension at the rate provided for in the contract of purchase hereby extended, and past due installments of interest shall bear interest at the rate provided for in Section 7, Chapter 271, General Laws, Regular Session, Forty-second Legislature.[1] [Acts 1941, 47th Leg., p. 351, ch. 191, § 1.]

[1] Article 5421c.

Art. 5421f—2. Reinstatement of claims to lands forfeited under article 5326.—The purchasers or their vendees, heirs or legal representatives who have used, occupied, and made improvements on lands prior to the date of forfeiture, and which lands have been forfeited under the provisions of Article 5326, Revised Civil Statutes of Texas as amended by said House Bill No. 56;[1] and who shall have, within six months after the expiration of the five year limitation period provided for reinstatement in Section 3 of said House Bill No. 56,[2] and prior to January 1, 1947, paid or tendered payment to the Commissioner of the General Land Office of all delinquent interest, accompanied by written requests for reinstatement, may have their claims reinstated by renewing such requests and paying all delinquent interest up to the date of reinstatement. [Acts 1941, 47th Leg., p. 351, ch. 191, § 3-A, added Acts 1947, 50th Leg., p. 275, ch. 169, § 1.]

[1] Acts 1941, 47th Leg., p. 351, ch. 191.
[2] Article 5326.

Art. 5421g. [Expired.]

The article was Acts 1939, 46th Leg., p. 463.

Art. 5421h—1. Functions, officers, employees, records, etc., of State Reclamation Engineer transferred to General Land Office; office abolished.—Section 1. All functions now vested by law in the State Reclamation Engineer are hereby transferred to and vested in the Commissioner of the General Land Office. Every act performed in the exercise of such functions by the Commissioner of the General Land Office shall be deemed to have the same force and effect as if done by the State Reclamation Engineer.

Sec. 2. Upon the taking effect of this Act, all books, papers, records, property and pending business theretofore made, used, acquired or conducted by the State Reclamation Engineer in the exercise of functions hereby transferred shall be transferred to and vested in the Commissioner of the General Land Office.

Sec. 3. All officers and employees of the State Reclamation Department shall be transferred to the General Land Office and shall perform such duties as may be directed by the Commissioner of the General Land Office, who shall have the power to eliminate unnecessary positions, to transfer officers and employees between positions, and to change the duties, titles and compensation of existing offices and positions necessary to effect an efficient administration of the office.

Sec. 4. The balances of appropriations to the credit of the State Reclamation Department available for expenditure in the exercise of such functions shall be

transferred to the credit of the General Land Office for expenditure by the Commissioner of the General Land Office in the exercise of such functions in accordance with law.

Sec. 5. The office of State Reclamation Engineer, authorized under the provisions of Chapter 5, Title 128, Revised Civil Statutes of Texas, 1925, is hereby abolished. [Acts 1939, 46th Leg., p. 704.]

Art. 5421i. Suspension of running of primary term of oil and gas lease pending litigation.—The running of the primary term of any oil, gas, or mineral lease heretofore or hereafter issued by the Commissioner of the General Land Office, which lease has been, is, or which may hereafter become involved in litigation relating to the validity of such lease or to the authority of the Commissioner of the General Land Office to lease the land covered thereby, shall be suspended, and all obligations imposed by such leases shall be set at rest during the period of such litigation. After the rendition of final judgment in any such litigation the running of the primary term of such leases shall commence again and continue for the remainder of the period specified in such leases and all obligations and duties imposed thereby shall again be operative; provided such litigation has been instituted at least six (6) months prior to the expiration of the primary term of any such leases. [Acts 1941, 47th Leg., p. 1405, ch. 637, § 1.]

Art. 5421j. Grant of filled in land to city of Corpus Christi.—Section 1. All right, title and interest of the State of Texas in and to all land within the area hereinafter mentioned, hitherto lying and situated under the waters of Corpus Christi Bay for and in consideration of the sum of Ten Thousand Dollars ($10,000) cash, is hereby relinquished, confirmed and granted unto the said City of Corpus Christi, its successors and assigns, for public purposes, to-wit:

Being all of that filled-in land lying and being situated in Nueces County, Texas, landward behind the seawall and easterly of the shoreline of Corpus Christi Bay as shown in Survey No. 803 and in the patent from the State of Texas to the City of Corpus Christi, Texas, said patent being dated January 4, 1924, and being Patent No. 86, Volume 21–A.

Sec. 2. All exchanges, sales and conveyances hitherto made by the City of Corpus Christi of property within the area described in Section 1 are hereby ratified; and such property is confirmed, relinquished and granted unto the respective assignees of the City of Corpus Christi, and to their heirs, successors, and assigns, without limitation as to the use thereof to be made by them.

Sec. 3. All exchanges of property, sales of property and conveyances thereof that may be made in the future by the City of Corpus Christi of property, within the area described in Section 1, that has been laid out and platted into lots, blocks or tracts for uses of private ownership as shown on a plat of the Bay Front Plan of said City of Corpus Christi, on file in the General Land Office of Texas and that may be necessary to adjust the titles and boundaries between the City and other owners are hereby authorized and said City of Corpus Christi is hereby empowered to make such exchanges, sales and conveyances; and all such property as may be so exchanged, sold and conveyed, is hereby confirmed, relinquished and granted unto the respective assigns of the City of Corpus Christi, and to their heirs, successors and assigns forever, without limitation as to use thereof to be made by them.

Sec. 4. The consideration for this land shall be paid to the Commissioner of the General Land Office of the State of Texas for the benefit of the Permanent Public Free School Fund; and a patent to said lands shall be issued to the City of Corpus Christi by the Governor and the Commissioner of the General Land Office of the State of Texas. Upon the payment of the said consideration and the issuance of said patent, the title of the City of Corpus Christi to the said lands shall become absolute, subject to the reservations herein made.

Sec. 5. All mines and minerals, and the mineral rights including oil and gas are hereby specially reserved to the State under that part of said area described in Section 1, which has been filled, laid out and constructed for use by the City of Corpus Christi as streets, public drives, parks, boulevards, and seawall, and all minerals and mineral rights under the remainder of said land are hereby relinquished and released unto the City of Corpus Christi and its assigns.

Sec. 6. This Act shall be and is cumulative of all former grants and authorities from the State of Texas to the City of Corpus Christi. [Acts 1945, 49th Leg., p. 391, ch. 253.]

Art. 5421k.—Submerged lands across Nueces Bay and Pass conveyed to State Highway Commission.—Section 1. In order that the State Highway Commission may have title to and control of the more or less submerged right of way necessary for the construction and maintenance of a proposed Causeway and its Approaches, across Nueces Bay and the Pass connecting Nueces Bay and Corpus Christi Bay in San Patricio and Nueces Counties, as described in Section 2 of this Act, and as shown on the right of way map on file in the State Highway Department at Austin, Texas, and entitled, Control 101-5 & 6 in San Patricio and Nueces Counties, Causeway across Nueces Bay and the Pass connecting Nueces Bay with Corpus Christi Bay on Highway U. S. 181 from Beach Drive in Portland, San Patricio County, and North Beach in Corpus Christi, Nueces County, the State hereby conveys title to and control of the submerged right of ways described in Section 2 of this Act, and as shown on the right of way map above stated, but no part of this Act is to be construed so as to interfere nor conflict with the rights and authority of the State Game, Fish and Oyster Commission, except that the State Highway Commission shall have the full right and authority to take and use, at any time and in any quantity desired, any and all materials within the limits of these tracts, and is exempted from the payment of any and all compensation for any and all materials taken therefrom.

Sec. 2. Field Notes of a survey of 385.638 acres, more or less, of submerged lands and tidewater flats, and situated under the waters of Nueces Bay between Engrs. centerline Sta. 774/50 and Sta. 991/20, about Latitude 27°51′ North and Longitude 97°22′ West, taken from U.S.C. & G.S. Chart No. 1117, and being more particularly described as follows: [1]

* * * * * * * *

The above described three parcels contain 385.638 Acres, more or less, and include all those submerged lands, reefs, and tidewater flats within the above described boundaries. [Acts 1947, 50th Leg., p. 162, ch. 101.]

[1] The detailed description of the parcels conveyed has been omitted.

Art. 5421k—1. Conveyance of lands to widen State Highway No. 24 in Denton County.—Section 1. In order that the expansion and improvement program of the State Highway Commission may be carried forward in an orderly and expeditious manner the title to and control of that certain narrow strip of land consisting of six (6) separate tracts or parcels and being 4.89 acres, more or less, owned by the State of Texas and the Texas State College for Women, are hereby transferred and conveyed to the Texas Highway Commission for the widening and material improvement of State Highway No. 24 in Denton County, Texas, from North Locust Street in the City of Denton easterly to the Denton-Collin County Line, as shown on the right-of-way map on file in the State Highway Department at Austin, Texas, and more particularly described as follows, to wit: [1]

* * * * * * * *

Sec. 2. The fact that the improvement and widening of State Highway No. 24 from a point on North Locust Street in the City of Denton easterly to the Denton-Collin County Line has been long delayed because of the inability of the State Highway Commission to obtain the right of way necessary for the widening and improvement of such Highway, creates an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted. [Acts 1947, 50th Leg., p. 268, ch. 164.]

[1] The detailed description of the lands conveyed has been omitted.

Art. 5421*l*. Control of certain property in Austin transferred to University Regents.—From and after the effective date of this Act the control and management of, and all rights, privileges, powers and duties in connection with the property owned by the State of Texas and located on the west side of Red River Street between East Nineteenth and Eighteenth Streets, being the East One-half (½) of Outlot No. Sixty-three (63), consisting of Lots Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) of Division "E" of the City of Austin, Travis County, Texas, which were formerly vested in and exercised by the State Board of Control, shall be transferred to, vested in, and exercised by the Board of Regents of The University of Texas, and hereafter, the aforesaid property shall be used for the purposes and activities of The University of Texas. [Acts 1947, 50th Leg., p. 472, ch. 272, § 1.]

TITLE 87—LEGISLATURE

Art.
5422. Time of meeting.
5423. Who may organize.
5424. Who shall preside.
5425. Duties of clerk.
5426. Credentials.
5427. If no quorum.
5428. Election of Speaker.
5429. Election of officers.
5429a. Witnesses before legislature or committees thereof.
Sec.
1. Administering oaths.
2. Refusal of witnesses to testify.
3. Privilege of witnesses.
4. Witnesses failing to testify.
5. Witnesses failing to testify or produce records.

Article 5422. [5505] [3271] Time of meeting.—The Fortieth Legislature shall assemble to hold its biennial session on the second Tuesday in January, A. D. 1927, at 12 o'clock m., and shall meet biennially thereafter on the same day and hour until otherwise provided by law. [Const. art. 3, sec. 5.]

Art. 5423. [5506] [3272] Who may organize.—Those persons receiving certificates of election to the Senate and House of Representatives of the Legislature, and those Senators whose terms of office shall not have terminated, and none others, shall be competent to organize the Senate and House of Representatives. [Acts 1876, p. 311; G. L. vol. 8, p. 1147.]

Art. 5424. [5507–8–16] Who shall preside.—For the purpose of such organization the Secretary of State shall preside at each recurring session of the Legislature. Should there be no Secretary of State, or in case he be absent or unable to attend, the Attorney General shall attend and perform the duties prescribed. He shall attend at the time and place designated for the meeting of the Legislature, and shall appoint a clerk who shall have been chief clerk of the House the preceding session, if he be present, to take a minute of the proceedings.

Art. 5425. [5509–10–11] Duties of clerk.—The clerk, under the direction of the Secretary of State, shall:

1. Call all the counties in alphabetical order. Should returns of election in any county for members of the Legislature not be made to the office of Secretary of State, he shall nevertheless call such county.

2. When the counties are called and the members elect appear and present their credentials, administer to each the official oath.

Art. 5426. [5512] [3278] Credentials.—Any person appearing at said call and presenting the proper evidence of his election shall be admitted or qualified in the same manner as though the return of his election had been made to the office of Secretary of State. [P. D. 5438.]

Art. 5427. [5513] [3279] If no quorum.—If no quorum is in attendance on the day appointed for the meeting of the Legislature, the Secretary of State and clerk shall attend from day to day until a quorum shall appear and be qualified as above. [P. D. 5439.]

Art. 5428. [5514] [3280] Election of Speaker.—When a quorum has appeared and been qualified, the House shall proceed to the election of a Speaker, unless a majority of the members present shall decide to defer said election. [P. D. 5440.]

Art. 5429. [5515] [3281] Election of officers.—When an election for Speaker shall have been had, the Speaker elect shall immediately take the chair, and the House proceed to its further organization by electing the necessary officers, to whom the Speaker shall administer the official oath. [P. D. 5441.]

House concurrent resolution No. 9, 1933, 43rd Leg., p. 903, adopted certain rules governing the House and Senate. See Vernon's Annotated Statutes, Art. 5422, note, for text of rules.

Art. 5429a. Witnesses before legislature or committees thereof.

Administering oaths

Section 1. The President of the Senate, the Speaker of the House of Representatives, or a chairman of a Committee of the Whole, or of any Committee of either House of the Legislature, is empowered to administer oaths to witnesses in any case under their examination. Any member of either House of the Legislature may administer oaths to witnesses in any matter pending in either House of the Legislature of which he is a member, or any Committee thereof.

Refusal of witnesses to testify

Sec. 2. Every person who having been summoned as a witness by the authority of either House of the Legislature, to give testimony or to produce papers upon any matter under inquiry before either House, or any Committee of either House of the Legislature, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than One Thousand ($1,000.00) Dollars nor less than One Hundred ($100.00) Dollars, and imprisonment in jail for not less than thirty days nor more than twelve months.

Privilege of witnesses

Sec. 3. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of the Legislature, or by any Committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or

otherwise render him infamous. Any person called upon to testify or to give testimony or to produce papers upon any matter under inquiry before either House or in the Committee of either House of the Legislature or Joint Committee of both Houses, who refuses to testify, give testimony or produce papers upon any matter under inquiry upon the ground that his testimony or the production of papers would incriminate him, or tend to incriminate him, shall nevertheless be required to testify and to produce papers, but when so required, over his objections for the reasons above set forth, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produces evidence, documentary or otherwise.

Witnesses failing to testify

Sec. 4. Whenever a witness summoned as mentioned in Section 2 hereof shall fail to testify, and the facts are reported to either House of the Legislature, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or the House of Representatives to the District Attorney of Travis County, Texas, whose duty it shall be to bring the matter before the grand jury for their action.

Witnesses failing to testify or produce records

Sec. 5. Whenever a witness summoned as mentioned in Section 2 hereof shall fail to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House or any Committee or Sub-Committee of either House of the Legislature, and the fact of such failure or failures is reported to either House while the Legislature is in session, or when the Legislature is not in session, a statement of facts constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the District Attorney of Travis County, Texas, whose duty it shall be to bring the matter before the grand jury for its action. [Acts 1937, 45th Leg., p. 67, ch. 41.]

TITLE 88—LIBEL

Art.
5430. Definitions.
5431. Mitigation of damages.
5432. Privileged matters.
5433. Construction.

Article 5430. [5595] Definitions.—A libel is a defamation expressed in printing or writing, or by signs and pictures, or drawings tending to blacken the memory of the dead, or tending to injure the reputation of one who is alive, and thereby expose him to public hatred, contempt or ridicule, or financial injury, or to impeach the honesty, integrity, or virtue, or reputation of any one, or to publish the natural defects of any one and thereby expose such person to public hatred, ridicule, or financial injury. [Acts 1901, p. 30.]

Art. 5431. [5596] Mitigation of damages.—In any action for libel, in determining the extent and source of actual damage and in mitigation of exemplary or punitive damage, the defendant may give in evidence, if specially pleaded, all material facts and circumstances surrounding such claim of damage and the defense thereto, and also all facts and circumstances under which the libelous publication was made, and any public apology, correction or retraction made and published by him of the libel complained of, and may also give in evidence, if specially pleaded in mitigation of exemplary or punitive damage, the intention with which the libelous publication was made. The truth of the statement, or statements, in such publication shall be a defense to such action. [Id.; Acts 1927, 40th Leg., p. 121, ch. 80, § 1.]

Art. 5432. [5597] Privileged matters.—The publication of the following matters by any newspaper or periodical shall be deemed privileged and shall not be made the basis of any action for libel.

1. A fair, true and impartial account of the proceedings in a court of justice, unless the court prohibits the publication of same when in the judgment of the court the ends of justice demand that the same should not be published and the court so orders, or any other official proceedings authorized by law in the administration of the law.

2. A fair, true and impartial account of all executive and legislative proceedings, including all reports of and proceedings in or before legislative committees and before each and all such committees heretofore appointed by the Legislature or either branch of the Legislature or hereafter to be appointed by such bodies or either of them and of any debate or statement in or before the Legislature or either branch thereof or any of its committees, and including also all reports of and proceedings in or before the managing boards of educational and eleemosynary institutions supported from the public revenue, of city councils or other governing bodies of cities or towns, of the commissioners' court of any county, and of the board of trustees of the public schools of any district, city or county, and of any debate or statement in or before any such body.

3. A fair, true and impartial account of the proceedings of public meetings, dealing with public purposes, including a fair, true and impartial account of statements and discussion in such meetings, and of other matters of public concern, transpiring and uttered at such public meetings.

4. A reasonable and fair comment or criticism of the official acts of public officials and of other matters of public concern published for general information.

5. The privilege provided under Sections 1, 2, 3, and 4, of this article shall extend to any first publication of such privileged matter by any newspaper or periodical, and to subsequent publications thereof by it when published as a matter of public concern for general information; but any re-publication of such privileged matter, after the same has ceased to be a matter of such public concern, shall not be deemed privileged, and may be made the basis of an action for libel upon proof that such matter had ceased to be of such public concern and that same was published with actual malice. [Id.; Acts 1919, p. 34; Acts 1927, 40th Leg., p. 121, ch. 80, § 2.]

Art. 5433. [5598] Construction.—Nothing in this title shall be construed to amend or repeal any penal law on the subject of libel, nor to take away any now or at any time heretofore existing defense to a civil action for libel, either at common law or otherwise, but all such defenses are hereby expressly preserved. [Acts 1901, p. 30; Acts 1917, p. 474.]

TITLE 89—LIBRARY AND HISTORICAL COMMISSION

Art.
5434. Organization.
5435. Purpose.
5436. Powers and duties.
5437. Seal.
5438. Custody of records.
5438a. Historical relics.
5438b. Title to relics.
5438c. Removal of relics.
5439. Exchange of records.
5439a. Photographic Reproductions as Public Records.

Art.
5440. State Librarian.
5441. Duties of Librarian.
5441a. Records Administration Division.
5442. Distribution of publications.
5443. Sale of archives.
5444. Legislative reference section.
5445. Assistants.
5446. Report to Governor.

Article 5434. [5600–5601] Organization.—The Governor shall, by, and with the advice and consent of the Senate, appoint five persons who shall constitute the Texas Library and Historical Commission. Appointments shall be made for a term of six years, the classification to continue as constituted by law. The Commission shall be assigned suitable offices at the capitol where they shall hold at least one regular meeting annually, and as many special meetings as may be necessary. Each such member while in attendance at said meetings shall receive five dollars per day and the actual expenses incurred in attending the meetings. [Acts 1909, p. 122; Acts 2nd C. S. 1919, p. 151.]

Art. 5435. [5599] Purpose.—The Commission shall control and administer the State Library, adopt and enforce reasonable rules and regulations governing its administration and control, aid and encourage libraries, collect materials relating to the history of Texas and the adjoining states, preserve, classify and publish the manuscript archives and such other matters as it may deem proper, diffuse knowledge in regard to the history of Texas, encourage historical work and research, mark historic sites and houses and secure their preservation, and aid those who are studying the problems to be dealt with by legislation. [Acts 1909, p. 122.]

Art. 5436. [5602–3] Powers and duties.—(a) The Commission is authorized and empowered to purchase within the limits of the annual appropriation allowed by Act of the Legislature from time to time suitable books, pictures, etc., the same to be the property of the State. The Commission shall have power and authority to receive donations or gifts of money or property upon such terms and conditions as it may deem proper; provided, no financial liability is thereby entailed upon the State. It shall give advice to such persons as contemplate the establishment of public libraries, in regard to such matters as the maintenance of public libraries, selection of books, cataloging and library management. The Commission shall conduct library institutes and encourage library associations.

(b) The Commission shall have the power and authority to transfer books and documents to other libraries which are supported by State appropriation when, in the opinion of the Commission, such transfer would be desirable for the benefit of the Texas State Library, and provided further that such transfer shall be permanent or temporary as may be decided by the Commission. The Commission shall have further power to exchange duplicate books and documents or to dispose of such books and documents to any public library, state or local, when such books and documents are no longer needed by the Texas State Library. No books or documents which constitute the archives of the Texas State Library shall ever be affected by this Act. [Acts 1909, p. 122; Acts 1943, 48th Leg., p. 423, ch. 289, § 1.]

Art. 5437. Seal.—The style of the Library governed by the Commission shall be "Texas State Library." A circular seal of not less than one and one-half inches, and not more than two inches in diameter, bearing a star of five points, surrounded by two concentric circles, between which are printed the words, "Texas State Library," is hereby designated the official seal of said Library. Said seal shall be used in authentication of the official acts of the State Library. [Acts 2nd C. S. 1919, p. 152.]

Art. 5438. [5604–5] Custody of records.—The custody and control of books, documents, newspapers, manuscripts, archives, relics, mementos, flags, works of art, etc., and the duty of collecting and preserving historical data, is under the control of the Commission. The gallery of the portraits of the Presidents of the Republic and the Governors of this State constitutes a part of the State Library. All books, pictures, documents, publications and manuscripts, received through gift, purchase or exchange, or on deposit, from any source, for the use of the State, shall constitute a part of the State Library, and shall be placed therein for the use of the public. [Acts 1909, p. 122.]

Art. 5438a. Historical relics.—The Texas Library and Historical Commission is hereby authorized in their discretion to place temporarily in the custody of the Daughters of the Republic of Texas and the United Daughters of the Confederacy, Texas Division, all or part of the historical relics belonging to the Texas State Library, under such conditions and terms of agreement as will insure the safekeeping of these relics in the Texas Museum. [Acts 1925, 39th Leg., ch. 146, p. 354, § 1.]

Art. 5438b. Title to relics.—The title of the State to these relics shall not be affected by this transfer. [Acts 1925, 39th Leg., ch. 146, p. 354, § 2.]

Art. 5438c. Removal of relics.—The Texas Library and Historical Commission shall retain the right to remove these relics at any time they may see fit. [Acts 1925, 39th Leg., ch. 146, p. 354, § 3.]

Art. 5439. [5606] Exchange of records.—Any State, county or other official is hereby authorized in his discretion to turn over to the State Library for permanent preservation therein any official books, records, documents, original papers, maps, charts, newspaper files and printed books not in current use in his office, and the State Librarian shall receipt for the same. [Acts 1909, p. 122; Acts 2nd C. S. 1919, p. 152.]

Art. 5439a. Photographic Reproductions as Public Records.—When any State official has had photographic reproductions (as defined in Article 5441a) made of any public records (as defined in Article 5441a) in his office, even though such records be current, he may designate such photographic reproductions as original records for all legal purposes and may thereupon transfer the records which have been replaced by the photographic reproductions to the State Librarian, who shall receipt therefor. The State Librarian with the consent of the State Auditor may dispose of transferred records by further transfer or by destruction. Furthermore, when such photographic reproductions have been designated as original records, then copies thereof, in any form, may be introduced in evidence when properly certified or authenticated according to law. [Added Acts 1947, 50th Leg., p. 945, ch. 403, § 2.]

Art. 5440. State Librarian.—The Commission shall elect a State Librarian, not of their number, who shall be a man or woman of at least one year's training in a library school and at least three years' administrative experience as head of a free public or institutional library, or as an assistant of high rank in such library. Said Librarian shall serve at the will of the Commission, and shall give bond in the sum of five thousand dollars for the proper care of the State Library and its equipment. He shall be allowed his actual expenses when traveling in the service of the Commission, on his sworn account showing such expenses in detail. [Acts 2nd C. S. 1919, p. 151.]

Art. 5441. [5606] Duties of Librarian.—The duties of the State Librarian, acting under the direction of said Commission, shall be as follows:

1. He shall record the proceedings of the Commission, keep an accurate account of its financial transactions, and perform such other duties as said Commission may assign him; and he shall be authorized to approve the vouchers for all expenditures made in connection with the State Library.

2. He shall have charge of the State Library and all books, pictures, documents, newspapers, manuscripts, archives, relics, mementos, flags, etc., therein contained.

3. He shall endeavor to collect all manuscript records relating to the history of Texas in the hands of private individuals, and where the originals cannot be obtained he shall endeavor to procure authenticated copies. He shall be authorized to expend the money appropriated for the purchase of books relating to Texas, and he shall seek diligently to procure a copy of every book, pamphlet, map or other printed matter giving valuable information concerning this State. He shall collect portraits or photographs of as many of the prominent men of Texas as possible. He shall endeavor to complete the files of the early Texas newspapers in the State Library; and he shall cause to be bound the current files of not less than ten of the leading newspapers of the State and the current files of not less than four leading newspapers of other states, and of as many county papers, professional journals, denominational papers, agricultural papers, trade journals and other publications of this State as seem necessary to preserve in the State Library an accurate record of the history of Texas.

4. He shall demand and receive from the officers of State departments having them in charge, all books, maps, papers, manuscripts, documents, memoranda and data not connected with or necessary to the current duties of said officers, relating to the history of Texas, and carefully classify, catalogue and preserve the same. The Attorney General shall decide as to the proper custody of such books, etc., whenever there is any disagreement as to the same.

5. He shall endeavor to procure from Mexico the original archives which have been removed from Texas and relate to the history and settlement thereof, and if he cannot procure the originals, he shall endeavor to procure authentic copies thereof. In like manner he shall procure the originals or authentic copies of manuscripts preserved in other archives beyond the limits of this State, in so far as said manuscripts relate to the history of Texas.

6. He shall preserve all historical relics, mementos, antiquities and works of art connected with and relating to the history of Texas, which may in any way come into his possession as State Librarian. He shall constantly endeavor to build up an historical museum worthy of the interesting and important history of this State.

7. He shall give careful attention to the proper classification, indexing and preserving of the official archives that are now or may hereafter come into his custody.

8. He shall make a biennial report to the Commission, to be by it transmitted to the Governor, to be accompanied by such historical papers and documents as he may deem of sufficient importance.

9. He shall ascertain the condition of all public libraries in this State and report the results to the Commission. He is authorized in his discretion to withhold from libraries refusing or neglecting to furnish their annual reports or such other information as he may request, public documents furnished the Commission for distribution, or interlibrary loans desired by such libraries. [Id.; Acts 1909, p. 122.]

Art. 5441a. Records Administration Division. —1. The Texas Library and Historical Commission is hereby authorized to establish and maintain in the State Library a records administration division which (1) shall manage all public records of the State with the consent and cooperation of the heads of the various departments and institutions in charge of such records and (2) shall also conduct a photographic laboratory for the purpose of making photographs, microphotographs, or reproductions on film, or to arrange for all or part of such work to be done by an established commercial agency which meets the specifications established by this Article for the proper accomplishment of the work. The assistant who shall be appointed by the Commission to head such division shall have had appropriate training and experience in the field of public records administration.

2. For the purpose of this Article:

"Photographic reproduction" shall mean reproduction by any photographic process, including that by microprint or by microphotography on film, including both negative and positive copies.

"Public records" shall mean originals or copies of written or printed books, newspapers, magazines, documents, correspondence, papers, maps, drawings, charts, indexes, plans, memoranda, sound recordings, motion-picture or other photographic records, which are the property of any State department or institution.

"Department or institution" shall mean any State department, institution, board or commission, whether executive, educational, judicial or eleemosynary in character.

"Head of department or institution" shall mean the official or officials, whether appointive or elective, who has or have authority over the records of the department or institution involved.

"Local units of government" shall mean all local units of government, including cities, towns, counties, and districts.

3. With the consent and cooperation of the heads of the various departments and institutions the public records of such departments and institutions shall be surveyed, indexed and classified under the direction of the records administration division. Furthermore, with the approval of the State Librarian the head of any department or institution may destroy any public records in his custody which, in his opinion, have no further legal, administrative or historical value, provided, however, that he shall first file application to do so with the State Librarian, describing in such application the original purposes and contents of such public records, and provided further, that the approval of the State Auditor shall also be required with regard to the destruction of public records of a fiscal or financial nature.

4. The State Librarian, either on his own initiative or upon request of the head of any department or institution, may provide for the making of photographic reproductions of the public records of any department or institution, and such public records shall be open to the State Librarian for such purpose; provided, however, that no such action shall be taken except with the consent of the head of such department or institution.

5. Any photographic reproduction made by microprint or by microphotography on film shall comply with the minimum standards of quality approved for permanent photographic records by the National Bureau of Standards, and the devices used to reproduce such public records shall be those which accurately reproduce the original thereof in all details.

6. The State Librarian is hereby authorized to make photographic reproductions for private and public use on the following basis: (1) For official use of departments and institutions no charge shall be made; (2) for the official use of local units of government charge shall be made on a cost basis; (3) for copies of public records for private use charge shall be at a rate to be fixed by the State Librarian in keeping with standard commercial rates. All moneys received by the State Library in payment for charges for photographic reproduction shall be paid into the State

Treasury. [Added Acts 1947, 50th Leg., p. 945, ch. 403, § 1.]

Section 2 of the Act of 1947 added art. 5439a. Section 3 provides that partial invalidity shall not affect the remaining portions. Section 4 repealed conflicting laws.

Art. 5442. Distribution of publications.—On the requisition of the State Librarian therefor, the Board of Control shall cause to be printed and furnished to the State Library for distribution and exchange the following publications, or such additional number as said Librarian shall request: 150 copies of all annual, biennial and special reports of State departments, boards and institutions, findings of all investigations, bulletins, circulars, laws issued as separates, and legislative manuals, 75 copies of all daily legislative journals, bound journals, bills, resolutions, session laws and compiled statutes, and 150 copies of all other publications, except routine business forms and court reports. All such printed daily legislative journals, bills, resolutions and other legislative documents shall be delivered daily to the State Library, and at the close of each legislative session all daily journals, bills and resolutions in the hands of the sergeant-at-arms of the House and Senate shall be delivered to the State Library to be disposed of at the discretion of the Librarian. No accounts for such printing shall be approved and no warrants shall be issued therefor, until the Board of Control is furnished by the contract printer with the receipt of the Librarian for such publications. [Acts 1913, p. 281; Acts 2nd C. S. 1919, p. 154.]

Art. 5443. Sale of archives.—The Commission is authorized to sell copies of the Texas Archives, printed with funds appropriated for that purpose, at a price not to exceed twenty-five per cent above the cost of publishing, and all moneys received from such sale shall be paid into the State Treasury. One copy of each such volume may be distributed free to the Governor, the members of the Legislature, and to the libraries, indicated in the preceding article. [Acts 1913, p. 281.]

Art. 5444. [5608] Legislative reference section.—The Commission shall maintain for the use and information of the members of the Legislature, the heads of the several State departments, and such other citizens as may desire to consult the same, a section of the State Library for legislative reference and information. This section shall possess available for use, explanatory check lists and catalogues of the current legislation of this and other states, catalogues of the bills and resolutions presented in either branch of the Legislature, check lists of the public documents of the several states, including all reports issued by the various departments, boards and commissions of this State, and digests of such public laws of this and other states as may best be made available for legislative use. Such section shall give the members of the Legislature such aid and assistance in the drafting of bills and resolutions as may be asked. [Acts 1909, p. 122; Acts 2nd C. S. 1919, p. 155.]

Art. 5445. Assistants.—The Commission shall appoint an assistant librarian who shall rank as head of a department and who in the absence of the State Librarian may sign and certify accounts and documents in the same manner and with the same legal authority as the State Librarian. Said assistant shall give bond to the Governor in the sum of three thousand dollars and shall take the official oath. Other assistants in the State Library shall be appointed by the Commission and be divided into four grades: Heads of departments, library assistants, clerks and laborers. Heads of departments and library assistants shall be required to have technical library training; and heads of departments shall have had at least one year of experience in library work prior to appointment. Clerks shall be required to hold a diploma from a first class high school according to the standards of the State Board of Education or the University of Texas, or to present satisfactory evidence of educational training equal to that provided by such high school, and also to present satisfactory evidence of proficiency in stenography and typewriting or book-keeping. Laborers must present satisfactory evidence of education sufficient to do such elementary clerical work as shall be required of them. The archivist must present satisfactory evidence of one year's advanced work in American or Southwestern history in a standard college and of a fluent reading knowledge of Spanish and French; provided, that the archivist shall not be required to have technical library school training or any library experience. [Acts 2nd C. S. 1919, p. 151.]

Art. 5446. [5609] Report to Governor.—The Commission shall make a biennial report to the Governor, which shall include the biennial report of the State Librarian. Said report shall present a comprehensive view of the operation of the Commission in the discharge of the duties imposed by this title, shall present a review of the library conditions in this State, present an itemized statement of the expenditures of the Commission, make such recommendations as their experience shall suggest, and present careful estimates of the sums of money necessary for the carrying out of the provisions of this title. Said report shall be made and printed, and by the Governor laid before the Legislature as other departmental reports. [Acts 1909, p. 122.]

TITLE 90—LIENS

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CHAPTER 1.—JUDGMENT LIENS

Art.
5447. Abstracts of judgments.
5448. Recording judgments.
5449. Lien of judgment.
5450. Satisfaction of judgment.
5451. Federal court judgments.

Article 5447. [5611–2–3] Abstracts of judgments.—Each clerk of a court, when the person in whose favor a judgment was rendered, his agent, attorney or assignee, applies therefor, shall make out, certify under his hand and official seal, and deliver to such applicant upon the payment of the fee allowed by law, an abstract of such judgment showing:

1. The names of the plaintiff and of the defendant in such judgment.
2. The number of the suit in which the judgment was rendered.
3. The date when such judgment was rendered.
4. The amount for which the judgment was rendered and balance due thereon.
5. The rate of interest specified in the judgment.

Each justice of the peace shall also make and deliver an abstract of any judgment rendered in his court in the manner herein provided, certified under his hand.

Art. 5448. [5610–4–5–9] Recording judgments.—Each county clerk shall keep a well bound book called the "judgment record," and he shall immediately file and therein record all properly authenticated abstracts of judgment when presented to him for record, noting therein the day and hour of such record. He shall at the same time enter it upon the alphabetical index to such judgment record, showing the name of each plaintiff and of each defendant in the judgment, and the number of the page of the

book upon which the abstract is recorded. He shall leave a space at the foot of each such abstract for the entry of credits upon and satisfaction of such judgment, and shall enter the same when properly shown.

Art. 5449. [5516–7] Lien of judgment.—When any judgment has been so recorded and indexed, whether it be the first or a subsequent abstract of said judgment, it shall, from the date of such record and index, if said judgment is not then dormant, operate as a lien upon all of the real estate of the defendant situated in the county where such record and index are made, and upon all real estate which the defendant may thereafter acquire, situated in said county. Said lien shall continue for ten (10) years from the date of such record and index, except that if during said ten-year period the judgment becomes dormant said lien shall thereupon cease to exist, provided, that the lien of any judgment so recorded and indexed prior to the effective date of this Act, if then valid, shall continue for ten (10) years from the effective date of this Act, except that if during said ten (10) years the judgment becomes dormant said lien shall thereupon cease to exist. [As amended Acts 1935, 44th Leg., p. 685, ch. 291, § 1; Acts 1937, 45th Leg., p. 553, ch. 273, § 1.]

Art. 5450. [5618] Satisfaction of judgment.—Satisfaction of any judgment in whole or in part may be shown:

1. By return upon an execution issued upon said judgment, or by a certified copy of such return, certified by the officer to whom the return is made, such certificate showing the names of the parties to the judgment, the number and style of the suit, the court in which rendered, the date and amount of the judgment, and the dates of the issuance and return of the execution.

2. By a receipt, acknowledgment or release signed by the party entitled to receive payment of the judgment, or his agent, or attorney of record, and acknowledged or proven for record as required for deeds.

Art. 5451. [5620] [3293] Federal court judgments.—An abstract of a judgment rendered in this State by any United States Court may be recorded and indexed in the same manner and with like force and effect as provided for judgments of the Courts of this State, upon the certificates of the clerks of such United States courts.

CHAPTER 2.—MECHANICS, CONTRACTORS AND MATERIAL MEN

Art.
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5453. Securing lien.
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Article 5452. [5621] [3294] Lien prescribed.—Any person or firm, lumber dealer or corporation, artisan, laborer, mechanic or sub-contractor who may labor or furnish material, machinery, fixtures or tools; (a) to erect or repair any house, building or improvement whatever; (b) for the construction or repair of levees or embankments to be erected for the reclamation of overflow lands along any river or creek in this State; (c) or who may furnish any material for the construction or repair of any railroad within this State under or by virtue of a contract with the owner, owners, or his or their agent, trustee, receiver, contractor or contractors; upon complying with the provisions of this chapter shall have a lien on such house, building, fixtures, improvements, land reclaimed from overflow, or railroad, and all of its properties, and shall have a lien on the lot or lots of land necessarily connected therewith, or reclaimed thereby, to secure payment for the labor done, lumber, material, machinery or fixtures and tools furnished for construction or repair. The word "improvement" as used herein shall be construed so as to include clearing, grubbing, draining or fencing of land, and shall include wells, cisterns, tanks, reservoirs or artificial lakes or pools made for supplying or storing water and all pumps, siphons, and wind mills or other machinery or apparatus used for raising water for stock, domestic use or for irrigation purposes. [Acts 1895, p. 194; Acts 1913, p. 252; Acts 1917, p. 383; G. L. vol. 10, p. 924.]

Art. 5453. [5622–3] Securing lien.—The lien provided for in Article 5452 may be fixed and secured in the following manner:

1. Every original contractor, within four months, and every journeyman, day laborer, or other person, within three months after the indebtedness accrues, shall file his contract in the office of the County Clerk of the county where the property is situated to be recorded in a book kept by the county clerk for that purpose. [As amended Acts 1929, 41st Leg., p. 478, ch. 224, § 1.]

2. If a journeyman, day laborer or other person has no written contract, it shall be sufficient to file an itemized account of the claim supported by affidavit showing that the account is just and correct and that all just and lawful offsets, payment and credits known to affiant have been allowed.

3. Within ninety days after such indebtedness accrues, each person, firm or corporation who furnished material to or performed labor for a contractor or subcontractor to construct or repair a house, building, improvement or railroad or its properties, shall give written notice to the owner of such house, building or improvement, or to his agent, or to such railroad company or its agent or receiver of each and every item furnished and showing how much there is due and unpaid on each bill of lumber or material furnished or labor performed by such person, firm or corporation, and shall file with the county clerk of the county in which such property is located or through or into which such railroad may extend, an itemized account of his or their claim to be recorded by such clerk in a book kept for that purpose.

Acts 1929, 41st Leg., p. 478, ch. 224, § 1, amended subdivision 1 of this Article.

Art. 5454. [5634] [3307] Owner to furnish contractor with account.—Whenever any such account shall be placed in the hands of such owner, or his authorized agent, it shall be the duty of such owner, or his agent, to furnish his contractor with a true copy of said attested account; and, if said contractor shall not, within ten days after the receipt of said copy of attested account, give the owner written notice that he intends to dispute said claim, he shall be consid-

ered as assenting to the demand, which shall be paid by the owner when it becomes due.

Art. 5455. [5624] [3297] Form of claim on unwritten contract.—If there be no written contract in cases where the labor is performed for or the material is furnished to the owner of the building or improvements, or the owner or receiver of a railroad, the following form or the substance thereof may be used for filing the claimant's account, and will be sufficient to fix the meaning contemplated by this chapter:

The State of Texas,

County of ———.

A. B., affiant, makes oath and says that the annexed is a true and correct account of the labor performed (or material furnished) for C. D. of ——— County, Texas, and that the prices thereof as set forth in said account hereto annexed are just and reasonable, and the same is unpaid; that said labor was performed (or material furnished, or both) for said C. D. at the time in said account mentioned, under and by virtue of a contract between affiant (or affiant's principal) and C. D. and that due notice was given by affiant (or his principal) of the labor performed (or material furnished) in accordance with law; and affiant further makes oath and says that he is informed that C. D. was at the time said contract was made and entered into and said labor was performed (or material furnished) the owner of the house (or improvements) described as follows: (Here describe the house or improvements). And the said house (or improvements) is situated upon a certain lot or tract of land which affiant is informed is owned by said C. D. and which is described as follows: (Here describe the lot or lots or the land). And this affiant (or his principal) claims a lien upon said house or improvements and upon said land. (Or if the material was furnished to any railroad company, its agent or receiver, to construct or repair its railroad or other property, then the affiant shall describe said railroad by giving its charter name and the name of the receiver, if any, and the agent of said company, if any, with whom the contract was made, and that affiant or his principal claims a lien on said railroad and its property.) [Acts 1889, p. 110; G. L. vol. 9, p. 1138; Acts 1895, p. 194; G. L. vol. 10, p. 924.]

Art. 5456. [5625] [3298] Form when the debtor is not the owner.—If the labor is performed for, or the material is furnished to a contractor, builder, agent or receiver, and not the owner of the property, then the following form shall be deemed sufficient to fix the lien provided for by this chapter:

The State of Texas,

County of ———,

A. B., affiant, makes oath and says that the annexed is a true and correct account of the labor performed for (or the material furnished to) C. D., a contractor (builder, agent, or receiver) by affiant (or his principal) and the prices therefor as set forth in the annexed account are just and reasonable, and that the same is unpaid (or the sum of $———, as shown by said account, is unpaid) after allowing all just and lawful offsets, payments and credits known to affiant; that said labor was performed (or material furnished, or both) for (or to) said C. D. to be used in the erection of a house (or building or improvements, or in the repair of the house, building or improvement, or in the construction or improvement of the railroad or its property), owned, as affiant is informed and believes, by E. F., of ——— County, Texas, and that said labor was performed (or material furnished, or both) to (or for) said C. D. under and by virtue of his contract between affiant (or his principal) and said C. D. (And in case of material furnished, affiant shall further swear that he has given to the owner, his agent or representative or receiver, notice in writing of each item of said account as required in this chapter as the same was furnished to said C. D.) [Id.]

Art. 5457. [5626–7] [3299–3300] Description of property.—In case the contract is filed and recorded as provided for in Section 1 and 2 of Article 5453, a like description of the house, building or improvement, and the lot or tract of land, shall accompany the same, as is required in the foregoing forms, except that the same is not required to be under oath. When a contract or account is filed and recorded, it shall be deemed sufficient diligence to fix and secure this lien. [Acts 1889, p. 110.]

Art. 5458. [5627] [3300] What included on property in city and country.—If this lien is against land in a city, town or village, it shall extend to or into the lot or lots upon which such house, building or improvement is situated, or upon which such labor was performed; and if the lien is against land in the country, it shall extend to and include fifty acres upon which such house, building or improvements are situated, or upon which such labor has been performed; and, if the lien is against a railroad company, it shall extend to and include all of its property. [Acts 1889, p. 110; Acts 1895, p. 194.]

Art. 5459. [5628] [3301] Priority of lien.—The lien herein provided for shall attach to the house, building, improvements or railroad for which they were furnished or the work was done, in preference to any prior lien or encumbrance or mortgage upon the land upon which the houses, buildings or improvements, or railroad have been put, or labor performed, and the person enforcing the same may have such house, building or improvement, or any piece of the railroad property, sold separately; provided, any lien, encumbrance or mortgage on the land or improvement at the time of the inception of the lien herein provided for shall not be affected thereby, and holders of such liens need not be made parties in suits to foreclose liens herein provided for. [Id.]

Art. 5460. [5631] [3304] Lien on homestead.—When material is furnished, labor performed, or improvements as defined in this title are made, or when erections or repairs are made upon homesteads, if the owner thereof is a married man, then to fix and secure the lien upon the same it shall be necessary for the person or persons who furnish the material or perform the labor, before such material is furnished or such labor is performed, to make and enter into a contract in writing, setting forth the terms thereof, which shall be signed by the owner and his wife, and privily acknowledged by her, as is required in making sale of homestead. And such contract shall be recorded in the office of the county clerk in the county where such homestead is situated, in a well bound book to be kept for that purpose. When such contract has been made and entered into by the husband and wife and the contractor or builder, and the same has been recorded, as heretofore provided, then the same shall inure to the benefit of any and all persons who shall furnish material or labor thereon for such contractor or builder. [Acts 1889, p. 110; G. L. vol. 9, p. 1138; Acts 1917, p. 383.]

Art. 5461. [5632] [3305] Notice of subcontractor or laborer to owner of property.—Every person, except the original contractor or builder, or those claiming under Section 3 of Article 5453 who may wish to avail himself of the benefits of this law, shall give at least ten days' notice in writing before the filing of the lien, as herein required, to the owner or owners, or agent, that he holds a claim against such house, building or improvement, setting forth the amount, and from whom the same is due; and thereafter said owner, or owners, or agent, shall be authorized to retain in his hands the amount claimed until the same is settled or determined not to be owing. [Acts 1889, p. 110.]

Art. 5462. [5633] [3306] Diligence, what is sufficient.—A compliance with the provisions of the preceding article shall be deemed sufficient diligence

to fix the liability of the owner of such house, building or improvement for the payment of such demand, subject to the subsequent provisions of this law. [Id.]

Art. 5463. [5635] [3308] Contractor to defend suits.—When a lien is filed under a provision of this chapter by any person other than the original contractor or builder, the original contractor shall defend the action brought thereupon, at his own expense; and, the owner may detain the amount of money for which such lien is filed, and in case of judgment against the owner or his property upon the lien, he shall be entitled to deduct from the amount due the contractor the amount of said judgment and costs; and, if he shall have settled with the contractor or builder in full, he shall be entitled to recover from the contractor or builder any amount so paid for which the contractor or builder was originally liable. But the owner shall in no case be required to pay, nor his property be liable for, any money that he may have paid to the contractor before the fixing of the lien or before he has received written notice of the existence of the debt. [Acts 1889, p. 110; G. L. vol. 9, p. 1138.]

Art. 5464. [5635] [3308] Preference lien.—All sub-contractors, laborers and material men shall have preference over other creditors of the principal contractor or builder. [Id.]

Art. 5465. [5635] [3308] Copy of bill furnished to owner.—A copy of each bill of lumber furnished to the contractor or builder as the same is furnished shall be delivered to the owner of said homestead, said bill specifying each item so furnished, how much is paid thereon, and what is due for lumber or material furnished for said contract prior thereto. [Id.]

Art. 5466. [5635] [3308] Relinquishment entered.—When the debt is paid under the contract for such building or improvements, the party for whose interest the contract was recorded shall enter a relinquishment showing a full compliance of said contract to the extent of all money due them from the original contractor or builder on account of labor done or material furnished; and the money due said original contractor or builder from the person owning or having improvements made shall not be garnisheed by other creditors to the prejudice of such sub-contractors, mechanics, laborers or material men. [Acts 1889, p. 110; G. L. vol. 9, p. 1138.]

Art. 5467. [5636] [3309] Accrual of indebtedness.—When labor is performed by the day or week, then the indebtedness shall be deemed to have accrued at the end of each week during which labor is performed. When material is furnished, the indebtedness shall be deemed to have accrued at the date of the last delivery of such material, unless there is an agreement to pay for such material at a specified time. [Acts 1889, p. 110; G. L. vol. 9, p. 1138.]

Art. 5468. [5637] [3310] Equality of liens.—Except as provided in the succeeding article, the liens for work and labor done or material furnished, as provided in this chapter, shall be upon an equal footing without reference to date of filing the account or lien. In case of foreclosure, if the proceeds of the sale of any property described in any account or lien are insufficient to discharge all the liens against the same, such proceeds shall be paid pro rata on the respective liens; provided, such accounts or liens shall have been filed and suit brought as provided by this law. Nothing in this law shall in any manner affect the contract between the owner and original contractor as to the amount, manner or time of payment of said contract price. [Id.]

Art. 5469. [5638] Mechanic's fund.—Whenever any mechanic or artisan shall perform any labor or service for any contractor, sub-contractor, agent or receiver, in the erection or repair of any house, building, fixture or improvement, or as a necessary incident in connection with such work of construction or repair, such owner, agent or receiver shall retain in his hands during the progress of such work and for thirty days after the completion thereof, to secure the payment of said artisans and mechanics, ten per cent of the contract price of such building, fixture or improvement, or the repair thereof, or ten per cent of the value of such building, fixture or improvement, or the repair thereof, measured by the proportion that the work done bears to the work to be done thereon, and using the contract price or the reasonable value of the completed building, fixture or improvement, or the repair thereof, as a basis of computation of value. All mechanics or artisans who may file a mechanic's lien upon said building, fixture or improvement so made or erected or repaired in accordance with the law applying thereto, shall have ratably among themselves, a preference lien upon said fund so retained in the hands of such owner, or agent, or receiver. If such owner, receiver or agent refuses or fails to comply with the provisions of this law, the mechanics and artisans performing work thereon and in connection therewith, who may file liens thereon in accordance with law, shall have ratably among themselves preference liens, to be preferred above all other liens and claims whatsoever upon such house, building, structure, fixture, or improvement, and all its properties, and on the lot or lots of land necessarily connected therewith to secure payment for such labor thereon. [Acts 1909. p. 184.]

Art. 5470. [5639] [3311] Release.—All parties who are authorized under this law to file a lien, and have done so, and had such lien recorded, shall, when such lien is paid or satisfied, or have received their proper lienable parts for which the owner of the building would be liable under this law, shall record a relinquishment and satisfaction of such lien. [Acts 1876, p. 91; G. L. vol. 8, p. 927; Acts 1889, p. 110; G. L. vol. 9, p. 1138.]

Art. 5471. [5629] [3302] Separate sales.—When the house, building, improvement, or any piece of the railroad's property is sold separately, the officer making the sale shall place the purchaser in possession thereof; and such purchaser shall have the right to remove the same within a reasonable time from the date of purchase. [Acts 1889, p. 110; G. L. vol. 9, p. 1138; Acts 1895, p. 194; G. L. vol. 10, p. 924.]

Art. 5472. [5630] [3303] Requisites of sale.—Every sale must be upon judgment rendered by some court of competent jurisdiction foreclosing such lien and ordering sale of such property. [Acts 1889, p. 110; G. L. vol. 9, p. 1138.]

Art. 5472a. Lien for material furnished public contractor.—That any person, firm or corporation, or trust estate, furnishing any material, apparatus, fixtures, machinery or labor to any contractor for any public improvements in this State, shall have a lien on the moneys, or bonds, or warrants, due or to become due to such contractors for such improvements; provided, such person, firm, corporation, or stock association, shall, before any payment is made to such contractor, notify in writing the officials of the State, county, town or municipality whose duty it is to pay such contractor of his claim. [Acts 1925, 39th Leg., ch. 17, p. 44, § 1.]

Art. 5472b. Retention of funds.—That no public official, when so notified in writing, shall pay all of said moneys, bonds or warrants, due said contractor, but shall retain enough of said moneys, bonds or warrants to pay said claim, in case it is established by judgment in a court of proper jurisdiction. [Acts 1925, 39th Leg., ch. 17, p. 44, § 2.]

Art. 5472b—1. Bond for release of lien.—Sec. 1. That whenever any claim or claims shall be filed attempting to fix a lien, secured or claimed by any instrument filed under the provisions of Chapter 17, of

the General Laws of the State of Texas, passed by the Thirty-ninth Legislature in Regular Session, that the contractor or contractors against whom such claim or claims are made, may file a bond with the officials of the State, county, town or municipality whose duty it is to pay the moneys, bonds or warrants to such contractor or contractors. Said bond shall be double the amount of the claims filed, and shall be payable to the claimant or claimants. It shall be executed by the party filing same as principal, and by a corporate surety authorized under the laws of Texas to execute such bond as surety, and shall be conditioned substantially that the principal and surety will pay to the obligees named, or their assigns, the amount of the claim or claims, or such portion or portions thereof as may be proved to have been liens, under the terms of Chapter 17, General Laws of the State of Texas, passed by the Regular Session of the Thirty-ninth Legislature. The filing of said bond and its approval by the proper official of the State, county, town or municipality, shall release and discharge all liens fixed or attempted to be fixed by the filing of said claim or claims, and the official or officials whose duty it is to pay the moneys, bonds or warrants shall pay or deliver the same to the contractor or contractors or their assigns. Said official shall send by registered mail an exact copy of said bond to all claimants.

Sec. 2. At any time within six months from the date of filing of said surety bond, the party making or holding such claim or claims may sue upon such bond, but no action shall be brought on such bond after the expiration of such period. One action upon said bond shall not exhaust the remedy thereon, but each obligee or assignee of an obligee named therein may maintain a separate suit thereon in any court and in any jurisdiction. If any claimant or claimants in an action establish the fact that they were entitled to a lien under the provisions of Chapter 17 of the General Laws of the State of Texas, passed at the Regular Session of the Thirty-ninth Legislature, and shall recover judgment for not less than the full amount for which claim was made, the court shall fix a reasonable attorney's fee in favor of the claimant or claimants, which shall be taxed as part of the costs in the case. The bond provided in Section One of this Act shall also be conditioned that the principal and surety will pay all court costs adjudged against the principal in actions brought by claimant or claimants thereon. [Acts 1929, 41st Leg., 2nd C.S., p. 154, ch. 78.]

Art. 5472c. Bond to indemnify against liens.—Sec. 1. Whenever any lien or liens, other than liens granted by written contracts of the owners of property, shall be fixed or attempted to be fixed, secured or claimed by any instrument filed of record under the provisions of Chapter 2, of Title 90 of the Revised Civil Statutes of 1925, then the owner of the property on which the lien or liens are claimed or the contractor or subcontractor through whom such lien or liens are claimed or either of them, may file a bond with the County Clerk of the County in which the property is located as herein provided. Such bond shall describe the property on which lien or liens are claimed, shall refer to the lien or liens claimed in manner sufficient to identify them and shall be in double the amount of the claimed lien or liens referred to and shall be payable to the party or parties claiming same. Such bond shall be executed by the party filing same as principal and by a corporate surety authorized under the Laws of Texas, to execute such bonds as surety and shall be conditioned substantially that the principal and surety will pay to the obligees named or their assigns the amounts of the liens so claimed by them with all costs in the event same shall be proven to be liens on such property.

Sec. 2. Upon the filing of such bond, the County Clerk shall issue a notice thereof to all obligees named therein. Such notice shall have attached thereto a copy of the bond. Such notice may be served upon each of such obligees by having a copy thereof delivered to him by any person competent to make oatb thereof. The original notice shall be returned into the office of the County Clerk issuing same and the person making service of any copies thereof shall make oath on the back thereof showing on whom and on what date such copies were served.

Sec. 3. Such bond, when filed, and such notice, when issued, and returned together with the return thereon shall be recorded by the County Clerk in the Mechanic's Lien Records, and any purchaser or lender may rely upon the record of such bond, notice and return in acquiring any interest in said property and shall absolutely be protected thereby.

Sec. 4. No action shall be brought or maintained in any court to establish, enforce or foreclose any lien or claim of lien referred to in such bond unless same shall be brought within thirty days after the service of notice thereof as herein provided. After such 30 days and at any time within one year from the date of such service, the party making or holding such claim of lien may sue upon such bond but no action shall be brought upon such bond after the expiration of such period. One action upon said bonds shall not exhaust the remedies thereon but each obligee or assignee of an obligee named therein may maintain a separate suit thereon in any court having jurisdiction.

Sec. 4a. In case the lien holder shall recover in a suit upon his lien or in a suit upon the bond he shall be entitled to recover in addition to his debt, a reasonable attorney's fee. [Acts 1929, 41st Leg., p. 452, ch. 211.]

Section 5 of this Act, provides that if it is held invalid as applied to any lien granted by the Constitution, it shall nevertheless be valid as to statutory liens.

CHAPTER 3.—OIL AND MINERAL PROPERTY

Art.
5473. Contractor's lien.
5474. Sub-contractor's lien.
5475. Priority of lien.
5476. Proceedings to fix lien.
5477. Sale or removal of property.
5478. Extent of liability of owner.
5479. Remedy cumulative.

Art. 5473. Contractor's lien.—Any person, corporation, firm, association, partnership, artisan, materialman, laborer or mechanic, who shall, under contract, express or implied, with the owner of any land, mine or quarry, or the owner of any gas, oil or mineral leasehold interest in land, or the owner of any gas pipe line or oil pipe line, or the owner of any oil or gas pipe line right-of-way, or with the trustee, agent or receiver of any such owner, perform labor, furnish or haul material, machinery or supplies used in digging, drilling, torpedoing, operating, completing, maintaining or repairing any such oil or gas well, water well, mine or quarry, or oil or gas pipe line, shall have a lien on the whole of such land or leasehold interest therein, or oil pipe line, or gas pipe line, including the right-of-way for same, or lease for oil and gas purposes, the buildings and appurtenances, and upon the materials and supplies so furnished or hauled, and upon said oil well, gas well, water well, oil or gas pipe line, mine or quarry for which the same are furnished or hauled, and upon all of the other oil wells, gas wells, buildings and appurtenances, including pipe line, leasehold interest, and land used in operating for oil, gas and other minerals, upon such leasehold or land or pipe line and the right-of-way therefor, for which said material and supplies were furnished or hauled or labor performed. Provided, that if labor, supplies, machinery or material is furnished to or hauled for a leaseholder, the lien hereby created shall not attach to the underlying fee

title to the land. [Acts 1917, p. 28; Acts 1929, 41st Leg., p. 477, ch. 223, § 1.]

Art. 5474. Sub-contractor's lien.—Any person, corporation, firm, association, partnership or materialman who shall furnish or haul such machinery, material or supplies to a contractor or subcontractor, or any person who shall perform such labor under a subcontract with a contractor, or who as an artisan or day laborer in the employ of such contractor or subscontractor shall perform any such labor, shall have a lien upon all such property or interest described in the preceding article, including right-of-way, for which said material and supplies were furnished or hauled and labor performed, in the same manner and to the same extent as the original contractor, for the amount due him for material furnished or for such hauling or labor performed. [Acts 1917, p. 28; Acts 1929, 41st Leg., p. 477, ch. 223, § 2.]

Art. 5475. Priority of lien.—The lien herein provided for shall attach to the machinery, material, supplies and the specific improvements made, in preference to any prior lien or encumbrance or mortgage upon the land or leasehold interest upon which the said machinery, material, supplies or specific improvements are placed or located, provided, however, that any lien, encumbrance, or mortgage upon the land or leasehold interest at the time of the inception of the lien herein provided for shall not be affected thereby, and the holders of such liens upon such land or leasehold interest shall not be necessary parties in suits to foreclose the liens hereby created. [Acts 1917, p. 28.]

Art. 5476. Proceedings to fix lien.—The liens herein created shall be fixed and secured and notice thereof shall be given and such liens shall attach and be enforced in the same manner, and the materialman's statement, or the lien of any laborer herein mentioned shall be filed and recorded within the same time and in the same manner as provided for in the preceding chapter. Whenever any person shall remove any such property to a county other than the one in which the lien has been filed, the lien holder may within ninety days thereafter file an itemized inventory of the property so removed showing the amount due and unpaid thereon, with the clerk of the county to which it has been removed, which shall be recorded in the materialman's lien records of such county, and such filing shall operate as notice of the existence of the lien and the lien shall attach and extend to the land or leasehold and other premises, properties and appurtenances to which said properties so removed shall attach, of the kind and character enumerated in Article 5473. [Id.]

Art. 5477. Sale or removal of property.—When the lien herein provided for shall have attached to the property covered thereby, neither the owner of the land, nor the owner of said oil, gas or mineral leasehold interest therein, nor the owner of any gas or oil pipe line, nor the contractor, nor the sub-contractor, nor the purchaser, nor the trustee, receiver or agent, of any such owner, lessor, lessee, contractor, sub-contractor or purchaser shall either sell or remove the property subject to said lien or cause same to be removed from the land or premises upon which they were to be used, or otherwise sell or dispose of the same, without the written consent of the holder of the lien hereby created; and in case of any violation of the provisions of this article, the said lienholder shall be entitled to the possession of the property upon which said lien exists wherever found, and to have the same then sold for the payment of his debt, whether said debt has become due or not. [Id.]

Art. 5478. Extent of liability of owner.—Nothing in this chapter shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated to be paid in the contract under which such material is furnished, or labor performed. [Id.]

Art. 5479. Remedy cumulative.—The provisions of this law shall not be construed to deprive or abridge materialmen, artisans, laborers, or mechanics of any rights and remedies now given them by law, and the provisions of this law shall be cumulative of the present lien laws. [Id.]

CHAPTER 4.—LIENS OF RAILROAD LABORERS

Art.
5480. Lien prescribed.
5481. Enforcement.
5482. Venue.

Article 5480. [5640–43] Lien prescribed.—All mechanics, laborers and operatives who may have performed labor, or worked with tools, teams or otherwise, in the construction, operation or repair of any railroad locomotive, car or other equipment of a railroad, and to whom wages are due or owing for such work, or for the work of tools or teams thus employed, or for work otherwise performed, shall have a lien prior to all others upon such railroad and its equipments for the amount due them for personal services, or for the use of tools or teams. Such lien shall cease to be operative in twelve months after its creation, if no steps are sooner taken to enforce it. [Acts 1887, p. 17; G. L. vol. 9, p. 815.]

Art. 5481. [5641] [3313] Enforcement.—In all suits for wages due by a railroad company for such labor, upon proof being satisfactorily made that such labor had been performed, either at the instance of said company, a contractor, or subcontractor or agent of said company, and that such wages are due, and the lien given by the preceding article is sought to be enforced, the court having jurisdiction shall try the same, render judgment for the amount of wages found to be due, and adjudge and order said railroad and equipments, or so much thereof as may be necessary, to be sold to satisfy said judgment. In all suits of this kind, it shall not be necessary for the plaintiff to make other lienholders defendants hereto, but such lienholders may intervene and become parties thereto and have their respective rights adjusted and determined by the court. [Acts 1879, p. 8; G. L. vol. 8, p. 1308.]

Art. 5482. [5642] [3314] Venue.—Such suits may be brought in any county in this State where such labor was performed, or in which the cause of action or part thereof accrued or in the county in which the principal office of such railroad company is situated. [Id.]

CHAPTER 5.—FARM, FACTORY AND STORE OPERATIVES

Art.
5483. Lien prescribed.
5484. Newspaper office employees.
5485. Payment of wages.
5486. Liens, how fixed.
5487. Right of assignment.
5488. Duration of lien.

Art. 5483. [5644] Lien prescribed.—Whenever any clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, artisan, craftsman, factory operator, mill operator, mechanic, quarryman, common laborer, farm hand, male or female, may labor or perform any service in any office, store, hotel, rooming house, boarding house, restaurant, cafe, shop, factory, mine, quarry or mill of any character, or perform any service in the cutting, preparation, hauling, handling, or transporting to any mill or other point for sale, manufacture or other disposition, logs or timber, or perform any service upon

any wagon, cart, tram, or railroad, or other means or methods of transporting such logs or timber, and in the construction or maintenance of such tram or railroad, constructed or used for the transportation of logs or timber to or for such mills to its owner or operator, or to points for sale, shipment or other disposition, or any farm hands, under or by virtue of any contract or agreement, written or verbal, with any person, employer, firm or corporation, or his, her, or their agent, receiver or trustee, in order to secure the payment of the amount due or owing under such contract or agreement, written or verbal, the hereinbefore mentioned employees shall have a first lien upon all products, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, chattels, wagons, carts, tram roads, railroads, rolling stock and appurtenances, or thing or things of value of whatsoever character that may be created in whole or in part by the labor or that may be used or useful by such person or persons or necessarily connected with the performance of such labor or service, which may be owned by or in the possession or under the control of the aforesaid employer, person, firm, corporation, or his or their agent or agents, receiver or receivers, trustee or trustees; provided, that the lien herein given to a farm hand shall be subordinate to the landlord's lien provided by law. [Acts 1897, p. 218; Acts 1913, p. 151; G.L.Vol. 10, p. 1272; Acts 1937, 45th Leg., p. 1257, ch. 473, § 1.]

Art. 5484. Newspaper office employees.—Whenever any newspaper worker in the editorial or reportorial department of any newspaper, publication or periodical, whether daily or otherwise, also any solicitor, clerk or other employee, in the advertising or business office of any newspaper publication or periodical, whether daily or otherwise, shall labor or perform any service in any of the departments or offices of such newspaper or periodical, under or by virtue of any contracts or agreements, written or verbal, with any person, employer, firm or corporation, or his, her or their agent, receiver or trustee, in order to secure the payment of the amount due by such contract or agreement, written or verbal, the hereinbefore mentioned employee shall have a first lien upon all products, papers, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, subscription contracts, chattels, or things of value of whatsoever character that may be created in whole or in part by the labor of such persons, or necessarily connected with the performance of such labor or service, which may be owned by, or in possession of the aforesaid employer, person, firm, corporation, or his, her or their agent, receiver or trustee. [Acts 1917, p. 324.]

Art. 5485. [5646] Payment of wages.—Under the operation of this law, all wages, if service is by agreement performed by the day or week, shall be due and payable weekly, or if by the month, shall be due and payable monthly; all payments to be made in lawful money of the United States. [Acts 1897, p. 218; G. L. vol. 10, p. 1272.]

Art. 5486. [5645] Liens, how fixed.—Whenever any person, employer, firm, corporation, his, her or their agent or agents, receiver or receivers, trustee or trustees, shall fail or refuse to make payments as hereinafter prescribed in this law, the said clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, farm hand, artisan, craftsman, operative, mechanic, quarryman, or laborer, who shall have performed service of any character, shall make or have made duplicate accounts of such service, with amount due him or her for the same, and present, or have presented, to aforesaid employer, person, firm or corporation, his, her, or their agent or agents, receiver or receivers, trustee or trustees, one of the aforesaid duplicate accounts within thirty (30) days after the said indebtedness shall have accrued. The other of the said duplicate accounts shall, within the time hereinbefore prescribed, be filed with the county clerk of the county in which said service was rendered, and shall be recorded by the county clerk in a book kept for that purpose. The party or parties presenting the aforesaid account shall make affidavit as to the correctness of the same. A compliance with the foregoing requirements in this Article shall be necessary to fix and preserve the lien given under this law; and the liens of different persons shall take precedence in the order in which they are filed; provided, that all persons claiming the benefit of this law shall have six months within which to bring suit to foreclose the aforesaid lien; and provided, further, that a substantial compliance with the provisions of this Article shall be deemed sufficient diligence to fix and secure the lien hereinbefore given; provided, that any purchaser of such products from the owner thereof shall acquire a good title thereto, unless he has at the time of the purchase actual or constructive notice of the claim of such lienholder upon such products, said constructive notice to be given by record of such claim, as provided for in this law, or by suit filed. [Acts 1897, p. 218; Acts 1937, 45th Leg., p. 1257, ch. 473, § 2.]

Art. 5487. [5647] Right of assignment.—Any party entitled to such lien may transfer or assign his rights hereunder, and his assignee or assignees shall have the same rights and privileges as are conferred upon him. [Acts 1897, p. 218.]

Art. 5488. [5648] Duration of lien.—The lien created by this chapter shall cease to be operative after six months after the same is fixed, unless suit is brought within said time to enforce said lien. [Id.]

CHAPTER 6.—CHATTEL MORTGAGES

Art.
5489. Vendor's security.
5490. Chattel mortgages.
5491. Combined with Article 5490.
5492. Duty of clerk.
5493. Copy of instrument: evidence.
5494. Chattel mortgage record.
5495. Satisfaction to be entered.
5496. Property not to be removed.
5497. Effect of registration.
5497a. Registration of chattel mortgages on motor vehicles.
5498. Record of chattels on realty.
5499. Destruction of chattel mortgages.

Article 5489. [5654] [3327] Vendor's security.—All reservation of the title to or property in chattels, as security for the purchase money thereof, shall be held to be chattel mortgages, and shall, when possession is delivered to the vendee, be void as to creditors and bona fide purchasers, unless such reservations be in writing and registered as required of chattel mortgages. Nothing in this law shall be construed to contravene the landlord and tenant law. [Acts 1885, p. 76; G. L. vol. 9, p. 696.]

Art. 5490. Chattel mortgages.—Every chattel mortgage, deed of trust, or other instrument of writing, intended to operate as a mortgage, or lien upon personal property, and every transfer thereof which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the property mortgaged, pledged, or affected by such instrument, shall be absolutely void as against the creditors of the mortgagor or person making same, as against subsequent purchasers and mortgagees or lien holders in good faith, unless such instrument, or a true copy thereof, shall be forthwith deposited with and filed in the office of the County Clerk of the county where the property shall then be situated, or if the mortgagor or person making the same be a resident of this State, then, of the county

of which he shall at that time be a resident; provided, that written contracts for the conditional sale, lease or hire of railroad equipment and rolling stock, by which the purchase money is therein agreed to be paid at any time or times after the date of such contract, with a reservation of title or lien in the vendor, lessor or bailor until the same has been fully paid, and chattel mortgages, deeds of trust and other instruments of writing intended to operate as a mortgage or lien upon railroad equipment and rolling stock as security for any indebtedness, shall be recorded in the office of the Secretary of State, in a book of records to be kept by him for that purpose; and on payment in full of the purchase money or indebtedness and the performance of the terms and conditions stipulated in any such contract, chattel mortgage, deed of trust or other instrument, a declaration in writing to that effect may be made by the vendor, lessor, bailor, mortgagee or lien holder, or his or its assignee, which declaration may be made on the margin of the record of the contract, chattel mortgage, deed of trust or other instrument of writing, duly attested, or it may be made by a separate instrument to be acknowledged by the lessor, vendor, bailor, mortgagee or lien holder, or his or its assignee, and recorded as aforesaid; and for such services the Secretary of State shall be entitled to a fee of Five Dollars ($5) for recording each of said written contracts, chattel mortgages, deeds of trust, and other instruments of writing, and each of said declarations, and a fee of One Dollar ($1) for entering such declaration on the margin of the record. [As amended Acts 1947, 50th Leg., p. 459, ch. 261, § 1.]

Section 2 of the amendatory act of 1947 is published as article 6645.

Section 3 of the act of 1947 repealed all conflicting laws.

Repeal as to Liens on Motor Vehicles

Article 5490 was repealed insofar as it affects the filing and recording of liens on motor vehicles by Acts 1941, 47th Leg., p. 343, ch. 187, § 7.

Art. 5491. Combined with Article 5490.

Art. 5492. [5656] [3329] Duty of clerk.—Upon the receipt of such instrument, the clerk shall indorse thereon the day and hour when the same was deposited in his office for record, and shall keep the same on file in his office for the inspection of all parties interested until satisfaction thereof shall be entered, as provided for in this chapter. If a copy be presented to the clerk for filing, instead of the original instrument, he shall carefully compare such copy with the original, and the same shall not be filed unless it is a true copy thereof, and unless the original has been witnessed by two subscribing witnesses or acknowledged or proven for record and certified as required in case of other instruments for the purpose of being recorded. [Sen. Jour. 1895, p. 479.]

Art. 5493. [5657] [3330] Copy of instrument: evidence.—A certified copy of any such instrument so filed as aforesaid, certified to under the hand and seal of said clerk, shall be admitted in evidence in like manner as the original might be, unless the execution of the original has been denied under oath by the party sought to be charged thereby. The party desiring to use such instrument shall file the same in the papers of the cause before announcing ready for trial, and not afterwards. Such certified copy shall in all cases be received as evidence of filing and entry thereof in the chattel mortgage record according to the indorsement of the clerk thereon. [Id., p. 480.]

Art. 5494. [5658] Chattel mortgage record.—The county clerk shall keep a book in which shall be entered a minute of all such instruments, which shall be ruled off into separate columns, with heads as follows: Time of reception, name of mortgagor, name of mortgagee or trustee and cestui que trust, date of instrument, amount secured, when due, property mortgaged, and remarks; and the proper entry shall be made under each of such heads. Under the head of "property mortgaged" it will be sufficient to enter a general description of the property pledged and the particular place where located, and an index shall be kept in the manner as required for other records. When the instrument is the transfer of a lien the county clerk shall enter on the margin, or under the head "remarks" in connection with the original record of registration of such lien, a notation, "transferred by ——— to ——— this ——— day of ———, 19—," filling the blanks with the names of the parties and the date of such transfer, and note the date it is filed for registration. Provided, however, that the failure of the transferee of any note or lien to have the records so noted shall not operate as a release of the lien then in existence in any manner whatsoever to affect the validity of said lien or to operate so as to give the transferee of said note or lien any less rights than those held by the original payee in the note. [Acts 1925, p. 368.] [39th Leg., ch. 157, § 2.]

Art. 5495. [5659] [3332] Satisfaction to be entered.—When the debt secured by any such instrument has been paid or satisfied, the mortgagee, his assignee, attorney or legal representative shall enter or cause to be entered, and attested by the clerk, as aforesaid, satisfaction thereof, in the record book in which the instrument is entered, which may be done under the head of "remarks." Any instrument acknowledging payment or satisfaction need not be recorded at length, but the entry as above provided showing the same has been paid shall be sufficient, and the original instrument or copy thereof on file shall then be delivered to the mortgagor or maker upon demand, or the clerk may mail the same to him. [Id.]

Art. 5496. [5660] [3333] Property not to be removed.—The person making any such instrument shall not remove the property pledged from the county, nor otherwise sell or dispose of the same, without the consent of the mortgagee; and in case of any violation of the provisions of this article, the mortgagee shall be entitled to the possession of the property, and to have the same then sold for the payment of his debt, whether the same has become due or not. [Id.]

Art. 5497. [5661] [3334] Effect of registration.—Chattel mortgages and other instruments intended to operate as mortgages or liens upon personal property shall not be recorded at length, and all persons shall be thereby charged with notice thereof, and of the rights of the mortgagee, his assignee or representatives thereunder. [Acts 1879, p. 134; Acts 1917, p. 361; G. L. vol. 8, p. 1434.]

Art. 5497a. Registration of chattel mortgages on motor vehicles.—That all chattel mortgages hereafter given as security for money advanced for the purchase of motor vehicles shall, when registered as required by law of chattel mortgages, be and are superior to the claim or claims of other creditors even though such motor vehicle or vehicles are daily exposed for sale. Provided, however, any such chattel mortgage shall be void as to bona fide purchasers when such motor vehicles are daily exposed for sale. [Acts 1933, 43rd Leg., p. 305, ch. 117.]

Art. 5498. [5661] [3334] Record of chattels on realty.—When any machinery or other manufactured article is susceptible of being attached to the realty in such a way as to become a fixture thereto and is located upon real estate in such manner as the same may be deemed a fixture thereto, and at the time of its location upon such real estate there is a lien or mortgage evidenced by written instrument or any instrument reserving title in such machinery or other manufactured article to secure an indebtedness thereon, executed by the purchaser or owner of such machinery or other manufactured article at the time of

its location on such real estate, and the instrument evidencing said lien, mortgage or reservation of title contains a description of said machinery or other manufactured article, as well as the real estate upon which it is to be located or situated, reasonably sufficient to identify said real estate, and such instrument is registered under the provisions of this Act, then the registration of such instrument evidencing said lien, mortgage, or reservation of title as provided for by this Act, shall be notice to all persons thereafter dealing with or acquiring any right or interest in said machinery or other manufactured article, or the realty upon which the same is located or other improvements or property situated on said real estate, of all of the rights of the owners or holders of the indebtedness secured by said instrument the same as if recorded at length in the deed records or records of mortgages upon realty of the county where the real estate is situated, and such lien, mortgage or reservation of title upon or to such machinery or other manufactured article shall be as to such machinery and other manufactured article superior to any lien or rights existing in any one to said real estate or other improvements or other property located and situated thereon existing at the time of the location of said machinery or other manufactured article thereon, but nothing herein contained shall be held to give the holder of such lien, mortgage or reservation of title any right to or claim upon the real estate save and except the right to establish and foreclose his lien, mortgage or reservation of title upon such machinery or other manufactured article, and to enforce his rights thereto under the instrument evidencing his lien, mortgage or reservation of title, as in other cases of liens upon personal property hereunder. All such instruments shall be endorsed on the back thereof, to wit, "Liens on machinery situated on realty," and shall be registered in the county where the real estate is located in the manner as other chattel mortgages except that there shall be kept, indexed and recorded, as now herein provided for chattel mortgages, a separate book to be endorsed "chattel mortgage records on realty." The record thereof shall in addition to the other requirements of this Act contain a brief description of said real estate to which said fixtures are to be attached. [Acts 1879, p. 134; Acts 1917, p. 361; G. L. vol. 8, p. 1434.]

Art. 5499. [5662] Destruction of chattel mortgages.—All chattel mortgages filed with the county clerks of this State in accordance with law shall be prima facie presumed to have been paid after the expiration of six years from the date of the maturity of the debts such mortgages were intended to secure, unless the owner or holder of such mortgages, his agent or attorney, shall, within three months next before the expiration of said time, file an affidavit in writing with the county clerk stating that such debt has not been paid, and the amount still due thereon. If such affidavit is not filed, the clerk shall, at the expiration of said time, either deliver such mortgage to the maker or destroy the same. [Acts 1907, p. 272.]

CHAPTER 7.—OTHER LIENS

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Article 5500. [5650–51] Lien on vessels.—Every person who may furnish supplies or materials, or do repairs or labor for or on account of any domestic vessel, owned in whole or in part in this State, shall have a lien on such vessel, her tackle, apparel, furniture and freight money for the security and payment of the same. The provisions of this article shall not be construed to alter or affect in any way the general law regulating the liens of seamen on foreign vessels. [Acts Feb. 5, 1848; P. D. 4600, 4601; G. L. vol. 3, p. 22.]

Art. 5501. [5652–53] Stock breeder's lien.—The owner or keeper of any stallion, jack, bull or boar, who keeps the same confined for the purpose of standing him for profit, shall have a preference lien upon the progeny of such stallion, jack, bull or boar to secure the payment for the amount due such owner or keeper for the services of such stallion, jack, bull or boar, and such lien shall exist by reason of the force and effect of the provisions hereof, and it shall never be necessary in order to secure and fix said lien to secure, file or register any contract or statement thereof with any officer, nor shall it be necessary that the owner of such progeny execute any contract whatever, but such preference lien may be foreclosed in the same manner as the statutory landlord's lien is by law enforced; provided, that where parties misrepresent their stock by false pedigree, no lien shall obtain. Said lien shall remain in force for a period of ten months from the birth of said progeny, but shall not be enforced until five months shall have elapsed after such birth. [Acts 1889, p. 115; Acts 1905, p. 24; G. L. vol. 9, p. 1143.]

Art. 5502. [5664] [3319] Livery stables, etc.—Proprietors of livery or public stables shall have a special lien on all animals placed with them for feed, care and attention, as also upon such carriages, buggies or other vehicles as may have been placed in their care, for the amount of the charges against the same; and this article shall apply to and include owners or lessees of pastures, who shall have a similar lien on all animals placed with them for pasturage. [Acts 1874, p. 200; Acts 1895, p. 96; G. L. vol. 8, p. 202; G. L. vol. 10, p. 826.]

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

Art. 5503. [5665–6] Mechanics may retain property.—Whenever any article, implement, utensil or vehicle shall be repaired with labor and material, or with labor and without furnishing material by any carpenter, mechanic, artisan, or other workman in this State, such carpenter, mechanic, artisan, or other workman is authorized to retain possession of said article, implement, utensil, or vehicle until the amount due on same for repairing by contract shall be fully paid off and discharged. In case no amount is agreed upon by contract, then said carpenter, mechanic, artisan, or other workman shall retain possession of such article, implement, utensil or vehicle, until all reasonable, customary and usual compensation shall be paid in full. [Acts 1874, p. 68; P. D. 711a; G. L. vol. 8, p. 70.]

Art. 5504. [5667–8] Sale of property.—When possession of any of the property embraced in the preceding article has continued for sixty days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said property to notify the owner, if in the State and his residence be known, to come forward and pay the charges due, and on his failure within ten days after such notice has been given him to pay said charges, the persons so holding said property, after twenty days notice, are authorized to sell said property at public sale and apply the proceeds to the payment of said charges, and shall pay over the balance to the person entitled to the same. If the owner's residence is beyond the State or is unknown, the person holding said property shall not be required to give such notice before proceeding to sell. [Id.]

Art. 5505. [5669–70] Unclaimed proceeds.—If the person who is legally entitled to receive the balance mentioned in this chapter is not known, or has removed from the State or from the county in which such repairing was done, or such property was so held, the person so holding said property shall pay the balance to the county treasurer of the county in which said property is held and take his receipt therefor. Whenever such balance shall remain in the possession of the county treasurer for the period of two years unclaimed by the party legally entitled to the same, such balance shall become a part of the county fund of the county in which the property was sold, and shall be applied as any other county fund or money of such county is applied or used. [Id.]

Art. 5506. [5671] [3326] Other liens not affected.—Nothing in this title shall be construed or considered as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute of this State, or any other lien not treated of under this title.

Art. 5506a. Hospital or clinic's lien for services on cause of action of persons injured.

Right to lien

Sec. 1. Every association, individual, corporation, or other institution maintaining a hospital or clinic rendering hospital services in the State of Texas shall be entitled to a lien upon any and all rights of action, suits, claims, counter-claims, or demands of any persons admitted to any such hospital and receiving treatment, care, and maintenance therein, on account of any personal injuries received in any accident as the result of the alleged negligence of any other person or firm or corporation or joint stock association, his, its, or their agent, servant or employee, which any such injured person may or shall have, assert, or maintain against any such other person or firm or corporation or joint stock association for damages on account of such injuries, for the amount of the charges of such hospital or clinic for such treatment, care and maintenance as may have been given to the injured persons. Provided the lien provided for herein shall not exist or attach unless the injured person is received in such hospital within seventy-two (72) hours after the happening of the accident causing the injury.

Lien to attach to judgment or orders in actions or proceedings

Sec. 2. The lien of any such hospital shall also attach to any verdict, report, decision, decree, award, judgment, or final order made or rendered in any action or proceeding, in any Court in Texas, or any public board or bureau in any suit, action or proceeding brought by such injured persons, by any person entitled thereto in case of death of such injured person against any other person or corporation or joint stock association for the recovery of damages or compensation on account of injuries received in any such accident, as well as the proceeds of any settlement thereof, or the settlement of any such claim or demand effected by any such injured person or other person entitled thereto with any other person or firm or corporation or joint stock association whose negligence is claimed or alleged to have been the cause of the said accident.

Release ineffectual as against claims; exceptions as to liens

Sec. 3. No release of any claim or demand on account of any such injuries, or in respect of any such verdict, report, decision, decree, award, judgment, or final order, made or rendered, as hereinbefore mentioned, executed by any such injured person, or by any person entitled thereto, shall be valid or effectual between the parties thereto or otherwise, unless prior to the execution and delivery thereof all such charges of any such hospital or institution or clinic, furnishing hospital services, which has filed its, his, or their lien as hereinafter provided, shall have been paid in full, or to the extent of a full and true consideration paid and given to the injured person by the other party or parties to such release named therein, or paid and given by any other person or corporation in behalf of such other party or parties, or unless such release shall also have been executed by the person, corporation, association, or institution maintaining such hospital; and every such verdict, report, decision, decree, award, judgment, or final order shall remain in force and effect until all such charges of any such hospital or institution shall have been paid in full or to the extent of any such verdict, report, decision, decree, award, judgment, or order; provided such hospital, institution or clinic furnishing said services does not charge more than a reasonable rate for such accommodations, in no event to exceed more than Five Dollars ($5.00) per day for not longer than one hundred (100) days; provided that a notice in writing containing the name and address of the injured person, the date of the accident, the name and location of the hospital or clinic rendering the service, and if known, the name or the person or persons, firm or firms, corporation or corporations, alleged to be liable to pay damages to such injured person for such injuries so received, shall be filed in the office of the County Clerk of the county in which such injury shall have occurred, prior to the payment of any moneys to such injured person or his legal representative or other person entitled thereto as damages for or on account of such injuries. Provided further that this lien shall not attach to any claim for amounts due the injured person under the Workmen's Compensation Act of the State of Texas, or Federal Liability Act,[1] or Federal Longshoremen's or Harbor Workers' Act,[2] or Workmen's Compensation Act of Texas, nor to any insurance company, corporation, or joint stock association furnishing hospitalization under the Workmen's Compensation Act of the State of Texas. Provided further, that the lien provided for in this Act

shall not attach to any claim for amounts due the injured person by any person, firm, association, corporation, or the receiver, or receivers thereof, owning and/or operating a railroad in this State, where such person, firm, association, corporation, or receiver, or receivers, or his, its, or their employes, maintain a hospital, furnishing hospitalization to injured persons.

1 45 U.S.C.A. §§ 51–59.
2 33 U.S.C.A. §§ 901–950.

County clerk to provide hospital lien docket

Sec. 4. Every County Clerk shall at the expense of the county, provide a suitable, well bound book, to be called the "Hospital Lien Docket," upon which, on the filing of lien claims under the provisions of this Act he shall enter the name of the injured person, the date of the accident, the name and address of the hospital or clinic or other institution making the claim, and the amount thereof.

And the said Clerk shall make a proper index of the same in the name of the injured person, and such Clerk shall be entitled to twenty-five (25) cents for filing each claim and such fee shall be accountable as fees of office.

The term "corporation," as used in this Article shall include all municipal corporations, as well as all private, public and quasi-public corporations, except coun ty and common and independent school districts.

Hospital records subject to inspection

Sec. 4a. Any person or persons, firm or firms, corporation or corporations legally liable or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the records of any such association, corporation, or other institution or body maintaining such hospital in reference to such treatment, care and maintenance of such injured person, under such reasonable rules and regulations as such hospital may require; and the hospital record with respect to injured persons may be admitted in evidence in any proceeding with respect to the recovery of damages.

Discharge of lien entered on hospital lien docket

Sec. 4b. To discharge any notices filed under the provisions of this Act the hospital authorities or person in charge of the finances of said hospital to whom said lien has been duly paid shall execute a certificate to the effect that the claim filed by such hospital for treatment, care and maintenance therein has been duly paid or released and authorizing the Clerk of the County in whose office said notice of hospital lien has been filed, to discharge the same; and thereupon such Clerk shall enter upon the margin of the hospital lien docket in which the said hospital lien notice has been entered, a memorandum of such filing and the date when such certificate of payment or release was filed in his office, which certificate and entry shall constitute a discharge of lien, for which the Clerk shall receive the sum of twenty-five (25) cents and such fee shall be accountable as fees of office.

Partial invalidity

Sec. 4c. If any part of this Act is declared by the courts to be unconstitutional such decision shall not affect the validity of the remaining part of this Act, unless the part held unconstitutional is indispensable to the operation of the remaining part and the Leg slature hereby declares that it would have passed those parts of this Act which are valid and omitted any parts which may be unconstitutional, if it had been advised of such unconstitutionality at the time of the passage of this Act.

Insurance excepted from claim of lien

Sec. 4d. The provisions of this Act shall not give to any such hospital, or any person, firm or corporation claiming under it, any lien, claim, right, or demand upon the proceeds of any insurance policy in favor of the injured party, his beneficiaries, or legal representatives, and none of the provisions of this Act shall have application thereto. Provided, however, this section shall not include public liability insurance carried by the insured to protect him against loss or damage as a result of any accident or collision covered by said public liability insurance policy. [Acts 1933, 43rd Leg., p. 182, ch. 85.]

Art. 5506b. Lien for repairing, altering, dyeing, cleaning, or pressing, wearing apparel.

Possession, retention of

Section 1. Whenever any article of wearing apparel or garment shall be left with any person, firm, or corporation for the purpose of being repaired, altered, dyed, cleaned, or pressed, or laundered, such person, firm, or corporation is authorized to retain possession of said wearing apparel or garment until the amount due on same for repairing, altering, dyeing, cleaning, pressing, or laundering by contract shall be fully paid off and discharged. In case no amount is agreed upon by contract, then said person, firm, or corporation shall retain possession of such wearing apparel or garment until all reasonable, customary, and usual compensation shall be paid in full.

Sale of property

Sec. 2. When possession of any of the articles of wearing apparel or garments embraced in the preceding Article has continued for sixty (60) days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said wearing apparel or garments to notify the owner, if in the State and his residence be known, to come forward and pay the charges due, and on his failure within ten (10) days after such notice has been given him to pay said charges, the persons so holding said wearing apparel or garments, after twenty (20) days notice, are authorized to sell said wearing apparel and garments at public or private sale and apply the proceeds to the payment of said charges, including a reasonable cost incurred in holding said sale, and shall pay over the balance to the person entitled to the same. If the owner's residence is beyond the State or is unknown, the person holding said wearing apparel or garments shall not be required to give such notice before proceeding to sell.

Unclaimed proceeds

Sec. 3. If the person who is legally entitled to receive the balance mentioned in this Chapter is not known, or has removed from the State or from the county in which such repairing, altering, dyeing, cleaning, pressing, or laundering was done, or such wearing apparel or garments were so held, the person, firm, or corporation so holding said property shall pay the balance to the County Treasurer of the county in which said articles of wearing apparel or garments are held and take his receipt therefor. Whenever such balance shall remain in the possession of the County Treasurer for the period of two (2) years unclaimed by the party legally entitled to same, such balance shall become a part of the General Fund of the county in which the articles of wearing apparel or garments were sold. [Acts 1937, 45th Leg., p. 1138, ch. 459.]

Art. 5506c. Lien upon merchandise in favor of factor advancing money.

Definitions

Section 1. Wherever used in Sections 1 to 7, inclusive, the term "merchandise" shall mean materials, goods in process, and finished goods intended for sale, whether or not requiring further manufacturing or processing, but shall not include machinery, equip-

ment, or trade fixtures of the borrower; the terms "factor" and "factors", wherever so used, shall mean persons, firms, banks and corporations, and their successors in interest, who advance money on the security of merchandise, whether or not they are employed to sell such merchandise; and the term "borrower", wherever so used, shall mean the owner of merchandise, or his agent, who creates a lien in favor of a factor.

Agreement for lien; notice

Sec. 2. If so provided by any written agreement with the borrower, a factor shall have a lien upon such merchandise in the custody or possession of the borrower as is from time to time after the execution of said written agreement designated in separate written statements dated and signed by the borrower and delivered to the factor, and such lien shall secure the factor for all his loans and advances to or for the account of the borrower, together with interest thereon, and also for the commissions, obligations, indebtedness, charges and expenses properly chargeable against or due from said borrower and for the amounts due or owing upon any notes or other obligations given to or received by him for or upon account of any such loans or advances, interest, commissions, obligations, indebtedness, charges and expenses. Such lien shall be valid from the time of filing the notice hereinafter and in Sections 2 to 7, inclusive, referred to, whether such merchandise shall be in existence at the time of the execution of the written agreement providing for the creation of the lien, or at the time of filing such notice, or shall come into existence subsequently thereto, or shall subsequently thereto be acquired by the borrower; provided, that there shall be placed on the door of, or in a conspicuous place at, one of the principal entrances of the place of business at which such merchandise shall be located, kept or stored, the name of the factor in legible lettering in the English language and a designation of said factor as factor; and provided, further, that a notice of the lien is filed as provided in Section 3 stating:

(a) The name of the factor; the name under which the factor does business, if an assumed name; the principal place of business of the factor within the state, or if he has no place of business within the state his principal place of business outside of the state; and, if the factor is a partnership or association, the names of the partners; and if a corporation, the state under whose laws it was organized.

(b) The name of the borrower; the name under which the borrower does business, if an assumed name; the principal place of business of the borrower within the state; or, if he has no place of business within the state, the principal place or places at which the merchandise shall be located or stored.

(c) The general character of merchandise subject to the lien, or which may become subject thereto, and the period of time during which such loans or advances may be made under the terms of the written agreement providing for such loans or advances and for such lien. Amendments of the notice may be filed from time to time in the same manner to record any changes in the information contained in the original, subsequent, or amended notices.

Verification of notice; filing

Sec. 3. Such notice of lien shall be verified by the factor to the effect that the statements therein contained are true to the best of the factor's knowledge, and may be filed at any time after the execution of the written agreement providing for the creation of said lien, with the County Clerk in each county where the merchandise subject to the lien, or any part thereof, is located, who shall cause each notice of lien filed to be marked with a file number and with the date and hour of filing, to be kept in a separate file, and to be noted and indexed in a suitable index, arranged according to the name of the borrower and containing a notation of the factor's chief place of business as given in the notice of lien. The fee for filing any such statements shall be One ($1.00) Dollar.

Operation and effect of lien

Sec. 4. Upon such filing and posting, the lien of the factor shall be effectual on and attach to the property from time to time designated in the written statements provided for in Section 2 as against all claims of unsecured creditors of the borrower and as against subsequent liens of creditors; except that specific liens arising out of contractual acts of the borrower with reference to the processing, warehousing, shipping, or otherwise dealing with the merchandise in the usual course of the borrower's business, preparatory to their sale, shall attach against the lien of the factor in said merchandise, whether or not filing or posting has occurred under Sections 1 to 8, inclusive; but this section shall not obligate the factor personally for any debt secured by such lien. When merchandise subject to the lien provided for by Sections 1 to 8, inclusive, is sold in the ordinary course of the business of the borrower, the purchaser shall take the said merchandise free and clear of the lien, whether or not he has knowledge of the existence thereof, and the lien shall attach to the proceeds arising out of such sale in the hands of the borrower.

Payment or satisfaction of indebtedness

Sec. 5. Upon the payment or satisfaction of the indebtedness secured by any lien specified in Sections 1 to 8, inclusive, the factor or his legal representative, upon the request of any person interested in said merchandise, shall sign and acknowledge a certificate setting forth such payment or satisfaction. The County Clerk shall, on receipt of such certificate or a copy thereof certified as required by law, file the same in the file in which the original notice of lien was entered. All notices of lien shall be deemed to be and remain in full force and effect under said sections without further or other filing until the certificate of discharge hereinabove referred to shall have been filed.

Assigned accounts; adjustments, returned goods etc.

Sec. 6. Where accounts receivable, whether or not arising out of the sale of merchandise which has become subject to the lien provided for by this Act by compliance with the provisions of Section 2 hereof, are assigned to a factor, the right to or lien of the factor upon any balance remaining owing on such accounts receivable assigned to him by the assignor after adjustments, payments, or credits for returned or recovered merchandise, shall not be invalidated by reason of such adjustments, payments, or credits for returned or recovered merchandise, whether or not the factor may have known of or acquiesced in such acts by the assignor.

General lien; goods in possession of factor or third person

Sec. 7. When any factor, or any third party for the account of any such factor, shall have possession of merchandise, such factor shall have a continuing general lien, as set forth in Section 2 of this Act, without placing the name of the factor or filing the notice provided for in this Act.

Liberal construction; substantial compliance sufficient

Sec. 8. This Act is to be construed liberally to secure the beneficial interest and purposes thereof. A substantial compliance with its several provisions shall be sufficient for the validity of a lien and to give jurisdiction to the courts to enforce the same. Nothing in this Act shall be construed as affecting or limiting any existing or future lien at common law, or any rights at common law, or any right given by any other statute to the factor; and as to any transaction falling within the provisions both of this Act and of

any other statute of this state requiring or permitting filing, recording, consent, publication, notices, or formalities of execution, the factor shall not be required to comply with the provisions of any such other statute.

Partial invalidity

Sec. 9. If any provision of Sections 1 to 8, inclusive, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of said sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are declared to be severable.

Application

Sec. 10. The provisions of this Act shall not apply to any stock of goods, wares or merchandise daily exposed to sale at retail in parcels in the regular course of business of such merchandise. [Acts 1947, 50th Leg., p. 294, ch. 180.

TITLE 91—LIMITATIONS

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1. LIMITATIONS OF ACTIONS FOR LANDS

Article 5507. [5672] [3340] [3191] Three years' possession.—Suits to recover real estate, as against a person in peaceable and adverse possession thereof under title or color of title, shall be instituted within three years next after the cause of action accrued, and not afterward. [Acts 1841, p. 119; P. D. 4622; G. L. vol. 2, p. 621.]

Art. 5508. [5673] [3341] [3192] "Title" and "color of title" defined.—By the term "title" is meant a regular chain of transfers from or under the sovereignty of the soil, and by "color of title" is meant a consecutive chain of such transfers down to such person in possession, without being regular, as if one or more of the memorials or muniments be not registered, or not duly registered, or be only in writing, or such like defect as may not extend to or include the want of intrinsic fairness and honesty; or when the party in possession shall hold the same by a certificate of headright, land warrant, or land scrip, with a chain of transfer down to him in possession. [Id.]

Art. 5509. [5674] [3342] [3193] Five years' possession.—Every suit to recover real estate as against a person having peaceable and adverse possession thereof, cultivating, using or enjoying the same, and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after cause of action shall have accrued, and not afterward. This article shall not apply to one in possession of land, who deraigns title through a forged deed. And no one claiming under a forged deed, or deed executed under a forged power of attorney shall be allowed the benefits of this article. [Id., Acts 1879, p. 132; G. L. vol. 8, p. 1432.]

Art. 5510. [5675–5676] [3343] Ten years' possession.—Any person who has the right of action for the recovery of lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward. The peaceable and adverse possession contemplated in this article, as against the person having right of action, shall be construed to embrace not more than one hundred and sixty acres, including the improvements or the number of acres actually enclosed, should the same exceed one hundred and sixty acres; but when such possession is taken and held under some written memorandum of title, other than a deed, which fixes the boundaries of the possessor's claim and is duly registered, such peaceable possession shall be construed to be co-extensive with the boundaries specified in such instrument. [Id.; P. D. 4621–24.]

Art. 5511. [5677] [3345] Land surrounded by other lands.—A tract of land owned by one person, entirely surrounded by a tract or tracts owned, claimed or fenced by another, shall not be considered inclosed by a fence inclosing the circumscribing tract or tracts, or any part thereof; nor shall the possession by the owner or claimant of such circumscribing land of such interior tract be the peaceable and adverse possession contemplated by Article 5510 unless the same be segregated and separated from the circumscribing land by a fence, or unless at least one-tenth thereof be cultivated and used for agricultural purposes, or used for manufacturing purposes. [Acts 1891, p. 76; G. L. vol. 10, p. 78.]

Art. 5512. [5678] [3346] Possession by adjacent owner.—Possession of land belonging to another by a person owning or claiming five thousand acres or more of lands inclosed by a fence in connection therewith, or adjoining thereto, shall not be the peaceable and adverse possession contemplated by Article 5510 unless said land so belonging to another shall be segregated and separated by a substantial fence from said lands connected therewith or thereto adjoining or unless at least one-tenth thereof shall be

cultivated and used for agricultural purposes or used for manufacturing purposes, or unless there be actual possession thereof. [Id.]

Art. 5513. [5679] [3347] [3196] Title by possession.—Whenever an action for the recovery of real estate is barred by any provision of this title, the person having such peaceable and adverse possession shall be held to have full title, precluding all claims.

Art. 5514. [5680] [3348] [3197] "Peaceable possession."—"Peaceable possession" is such as is continuous and not interrupted by adverse suit to recover the estate. [Acts 1841, p. 163; P. D. 4621; G. L. vol. 2, p. 627.]

Art. 5515. [5681] [3349] [3198] "Adverse possession."—"Adverse possession" is an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another.

Art. 5516. [5682] [3350] [3199] Possession by different persons.—Peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them.

Art. 5517. [5683] [3351] [3200] Right of the State.—The right of the State shall not be barred by any of the provisions of this Title, nor shall any person ever acquire, by occupancy or adverse possession, any right or title to any part or portion of any road, street, alley, sidewalk, or grounds which belong to any town, city, or county, or which have been donated or dedicated for public use to any such town, city, or county by the owner thereof, or which have been laid out or dedicated in any matter to public use in any town, city, or county in this State. [Acts 1841, p. 163; P.D. 4622-4; Acts 1887, p. 28; G.L. vol. 9, p. 826; Acts 1939, 46th Leg., p. 485, § 1.]

Art. 5518. [5684] [3352] Person under disability.—If a person entitled to sue for the recovery of real property or make any defense founded on the title thereto, be at the time such title shall first descend or the adverse possession commence:

1. A person, including a married woman, under twenty-one years of age, or
2. In time of war, a person in the military or naval service of the United States, or
3. A person of unsound mind, or
4. A person imprisoned, the time during which such disability or status shall continue shall not be deemed any portion of the time limited for the commencement of such suit, or the making of such defense; and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title; provided, that notwithstanding a person may be or may have been laboring under any of the disabilities mentioned in this article, one having the right of action for the recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying same, shall institute his suit therefor within twenty-five years next after his cause of action shall have accrued and not thereafter. [Acts 1841, p. 163; P. D. 4621-4; Acts 1895, p. 35; Acts 1919, 2nd C. S., p. 139; G. L. vol. 2, p. 627; G. L. vol. 10, p. 765.]

Art. 5519. [5684a] [3352] Action barred in twenty-five years.—No person who has a right of action for the recovery of real estate shall be permitted to maintain an action therefor against any person having peaceable and adverse possession of such real estate for a period of twenty-five years prior to the filing of such action, under claim of right, in good faith, under a deed or deeds, or any instrument or instruments, purporting to convey the same, which deed or deeds or instrument or instruments purporting to convey the same have been recorded in the deed records of the county in which the real estate or a part thereof is situated; and one so holding and claiming such real estate under such claim of title and possession shall be held to have a good marketable title thereto, and on proof of the above facts shall be held to have established title by limitation to such real estate regardless of coverture, minority, insanity or other disability in the adverse claimant, or any person under whom such adverse claimant claims, existing at the time of the accrual of the cause of action, or at any time thereafter. Such peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them. The adverse possession of any part of such real estate shall extend to and be held to include all of the property described in such deed or instrument conveying or purporting to convey, under which entry was made upon such land or any part thereof, and by instrument purporting to convey shall be meant any instrument in the form of a deed or which contains language showing an intention to convey even though such instrument, for want of proper execution or for other cause is void on its face or in fact. [Acts 1919, 2nd C. S., p. 139; Acts 1927, 40th Leg., p. 369, ch. 250, § 1.]

Art. 5519a. Title to land by limitation.—In all suits involving the title to land not claimed by the State, if it be shown that those holding the apparent record title thereto have not exercised dominion over such land or have not paid taxes thereon, one or more years during the period of twenty-five years next preceding the filing of such suit and during such period the opposing parties and those whose estate they own are shown to have openly exercised dominion over and asserted claim to same and have paid taxes thereon annually before becoming delinquent for as many as twenty-five years during such period, such facts shall constitute prima facie proof that the title thereto had passed to such persons so exercising dominion over, claiming and paying taxes thereon.

Sec. 2. This Act shall in no way affect any Statute of Limitation or the right to prove title by circumstantial evidence under the present Rule of Decision in the Courts of this State nor to suits between trustees and their beneficiaries nor to suits now pending. [Acts 1930, 41st Leg., 5th C.S., p. 162, ch. 30; Acts 1931, 42nd Leg., p. 288, ch. 169.]

Art. 5520. [5694] Actions by vendors and on voluntary mechanic's or materialman's lien; tolling; presumption of payment.—All actions for the recovery of real estate by virtue of a superior title retained by the vendor in a deed of conveyance or purchase money note, or for the foreclosure of any vendor's, mortgage, deed of trust or voluntary mechanic's or materialman's lien on real estate, securing a note or other written obligation, shall be instituted, and all sales of real estate in the exercise of a power of sale under a mortgage or deed of trust securing any such lien debts shall be made, within four (4) years after the cause of action shall have accrued, and not afterward.

No time shall be counted out by a toll of limitations under any other Statutes, except Article 5538, Revised Civil Statutes of Texas, 1925, in calculating any aforesaid limitation period invoked by a bona fide purchaser, lien holder or lessee who has no notice or knowledge of any such toll of limitations and acquires his interest in the property at a time when any said lien debt is more than four (4) years past due and there is no written extension of record.

At the expiration of such four (4) year period payment of any such lien debt shall be conclusively presumed to have been made, and the lien for the security of same and any power of sale for the enforcement thereof shall be void and cease to exist, unless said lien is extended by written agreement of the party or parties primarily liable for the payment of the indebtedness, as provided by law; but any such extension agreement shall be a nullity against aforesaid bona

fide third persons dealing with said property without actual notice thereof and before same is filed and recorded in the manner provided for the acknowledgment and record of conveyances of real estate.

Where a series of notes or other obligations or one payable in installments is secured by such lien on real estate, the aforesaid limitation period shall not begin to run until the maturity date of said last note, obligation or installment.

Provided that as to any aforesaid cause of action heretofore accrued, where the period of limitation has been tolled or interrupted by any other statute so that the same is not barred by limitation prior to the effective date of this Act, the limitation period applicable thereto shall be either one (1) year from the effective date of this Act or four (4) years from the maturity of the lien debt, whichever is longer. [Acts 1905, p. 334; Acts 1913, p. 250; Acts 1931, 42nd Leg., p. 230; ch. 136, § 2; Acts 1945, 49th Leg., p. 441, ch. 278.]

Section 2 of the Act of 1945 repealed conflicting laws.

Art. 5521. [Repealed by Acts 1931, 42nd Leg., p. 230, ch. 136, § 1.]

Art. 5522. [5695] Lien continued in force.—When the date of maturity of either debt referred to in either of the foregoing articles is extended, if the contract of extension is signed and acknowledged as provided for in the law relating to the execution of deeds of conveyance by the party or parties obligated to pay such indebtedness as extended and filed for record in the county clerk's office in the county in which the land is situated, the lien shall continue and be in force until four years after maturity of the notes as provided in such extension, the same as in the original contract and the lien shall so continue for any succeeding or additional extension so made and recorded. The date of maturity set forth in the deed of conveyance or deed of trust or mortgage, or the recorded renewal and extension of the same, shall be conclusive evidence of the date of maturity of the indebtedness therein mentioned. Provided the owner of the land and the holder of the note or notes may at any time enter into a valid agreement renewing and extending the debt and lien, so long as it does not prejudice the rights of lien holders or purchasers subsequent to the date such liens became barred of record under laws existing prior to the taking effect of, or under this Act; as to all such lien holders or purchasers any renewal or extension executed or filed for record after the note or notes and lien or liens were, or are, barred of record and before the filing for record of such renewal or extension, such renewal or extension shall be void. [Acts 1925, p. 216.] [39th Leg., ch. 64, § 2.]

Art. 5523. [Repealed by Acts 1931, 42nd Leg., p. 230, ch. 136, § 1.]

Art. 5523a. Ten year limitation in action for land.—Any person who has the right of action for the recovery of land because of any one or more of the following defects in any instrument, where it has not been signed by the proper officer of any corporation; or where the corporate seal of the corporation has not been impressed on such instrument; or where the record does not show such corporate seal; or because the record does not show authority therefor by the Board of Directors and Stockholders (or either of them) of a corporation; or where such instrument was executed and delivered by a corporation which had been dissolved or whose charter had expired, or whose corporate franchise had been canceled, withdrawn or forfeited; or where the executor, administrator, guardian, assignee, receiver, Master in Chancery, agent or trustee, or other agency making such instrument, signed or acknowledged the same individually instead of in his representative or official capacity; or where such instrument is executed by a trustee without record of Judicial or other ascertainment of the authority of such trustee or of the verity of the facts therein recited; or where the officer taking the acknowledgment of such instrument having an official seal did not affix the same to the certificate of acknowledgment; or where the notarial seal is not shown of record; or where the wording of the consideration may or might create an implied lien in favor of grantor (By this is not meant an express vendor's lien retained); shall institute his suit therefor not later than 10 years next after the date when such instrument has been or hereafter may be actually recorded in the office of the County Clerk of the county in which such real estate is situated and not afterwards; provided that such person, if not already barred by limitation or otherwise, shall in case of instruments of record for nine years or more, prior to the effective date of this Act, have the right within one year after the effective date of this Act, to bring proceedings to contest the effect of such instrument but not afterward; and providing further that nothing herein contained shall be construed to operate on any suit or action now pending or which may have been heretofore determined in any court of this State in which the validity of the making, execution or acknowledgment of any such instrument has been or may hereafter be drawn in question; and provided further, this Act is cumulative of all other laws on this subject and if any portion of this Act be declared unconstitutional the remaining portion shall not be affected thereby and shall remain in full force and effect. This Act shall not apply to forged instruments, and shall be subject to the provisions of Article 5518, Revised Civil Statutes of 1925. [Acts 1929, 41st Leg., p. 394, ch. 181, § 1.]

2. LIMITATION OF PERSONAL ACTIONS

Art. 5524. [5685] [3353] [3202] Actions to be commenced in one year.—There shall be commenced and prosecuted within one year after the cause of action shall have accrued, and not afterward, all actions or suits in courts of the following description:

1. Actions for malicious prosecution or for injuries done to the character or reputation of another by libel or slander.

2. Actions for damages for seduction, or breach of promise of marriage. [Acts 1897, p. 12; Act Feb. 5, 1841; Acts Feb. 2, 1860; G. L. vol. 2, p. 627; G. L. vol. 10, p. 1066.]

Art. 5525. [5686] Survival of cause of action.—All causes of action upon which suit has been or may hereafter be brought for personal injuries, or for injuries resulting in death, whether such injuries be to the health or to the reputation, or to the person of the injured party, shall not abate by reason of the death of the person against whom such cause of action shall have accrued, nor by reason of the death of such injured person, but, in the case of the death of either or both, all such causes of action shall survive to and in favor of the heirs and legal representatives and estate of such injured party and against the person, or persons liable for such injuries and his or their legal representatives, and may be instituted and prosecuted as if such person or persons against whom same accrued were alive. [Acts 1925, p. 299.] [39th Leg., ch. 115, § 2; Acts 1927, 40th Leg., p. 356, ch. 239, § 1.]

Art. 5526. [5687–98] [3354–63] [3203–12] Actions to be commenced in two years.—There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions of trespass for injury done to the estate or the property of another.

2. Actions for detaining the personal property of another, and for converting such property to one's own use.

3. Actions for taking or carrying away the goods and chattels of another.

4. Actions for debt where the indebtedness is not evidenced by a contract in writing.

5. Actions upon stated or open accounts, other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents. In all accounts, except those between merchant and merchant, as aforesaid, their factors and agents, the respective times or dates of the delivery of the several articles charged shall be particularly specified, and limitation shall run against each item from the date of such delivery, unless otherwise specially contracted. [Acts 1841, p. 163; G. L. vol. 2, p. 627.]

6. Action for injury done to the person of another.

7. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured. [Acts 1897, p. 12; Acts 1841, p. 163; Acts 1852, p. 128; P. D. 4604; G. L. vol. 10, p. 1066; G. L. vol. 2, p. 627; G. L. vol. 3, p. 1006.]

8. Actions of forcible entry and forcible detainer.

Art. 5526a. Two years limitations on claims for closing or abandoning streets or highways.—Sec. 1. In all cases where the governing body of any incorporated city or town has heretofore passed, or shall hereafter pass, an ordinance closing and abandoning, or attempting to close and abandon, any public street or alley, or any part thereof, other than a State highway, within such city or town, and in all cases where the commissioners' court of any county has heretofore passed, or shall hereafter pass, an order closing and abandoning, or attempting to close and abandon, any public road or thoroughfare, or any part thereof, other than a State highway, within such county, any person, firm, private corporation or public corporation having a cause of action (not already barred by existing limitation laws of this State at the time this Act takes effect) for the recovery of any kind of relief in the matter, whether damages or reopening or both, may bring suit upon such cause of action within the following time, to wit: (1) within two (2) years after the effective date of this Act in cases where the cause of action has accrued or shall accrue before such effective date and not thereafter; (2) within two (2) years after the passage of the ordinance or order for closing and abandonment, and not thereafter, in cases where the cause of action shall accrue on or after the effective date of this Act.

Sec. 2. In all cases where suit is not brought within the time fixed by Section 1 hereof, the person, firm or corporation (public or private) having possession of the land in question shall thereupon become vested with a complete limitation title to same; and not only shall the causes of action mentioned in said Section 1 hereof be barred, but also the right of the city, town or county to revoke or rescind the ordinance or order hereinbefore referred to shall be barred. [Acts 1934, 43rd Leg., 2nd C.S., p. 86, ch. 34.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 5527. [5688] [3356] [3205] What actions barred in four years.—There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing.

2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

3. Actions by one partner against his co-partner for a settlement of the partnership accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together. [Acts 1841, p. 163; P. D. 4604; G. L. vol. 2, p. 627.]

Art. 5528. [5689] [3357] [3206] On bond of executor, administrator or guardian.—All suits on the bond of any executor, administrator or guardian shall be commenced and prosecuted within four years next after the death, resignation, removal or discharge of such executor, administrator or guardian, and not thereafter. [Acts 1876, p. 102; P. D. 1375, 3923; G. L. vol. 8, p. 938.]

Art. 5529. [5690] [3358] [3207] All other actions barred, when.—Every action other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same shall have accrued and not afterward.

Art. 5530. [5691] [3359] [3208] Actions on foreign judgments.—Every action upon a judgment or decree rendered in any other State or territory of the United States, in the District of Columbia or in any foreign country, shall be barred, if by the laws of such State or country such action would there be barred, and the judgment or decree be incapable of being otherwise enforced there; and whether so barred or not, no action against a person who shall have resided in this State during the ten years next preceding such action shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

Art. 5531. [5692] [3360] [3209] Actions for specific performance.—Any action for the specific performance of a contract for the conveyance of real estate shall be commenced within four years next after the cause of action shall have accrued, and not thereafter. [Acts 3rd C. S. 1917, p. 87.]

Art. 5532. [5696] [3361] [3210] Judgment revived, when.—A judgment in any court of record, where execution has not issued within twelve months after the rendition of the judgment, may be revived by scire facias or an action of debt brought thereon within ten years after date of such judgment, and not after. [Acts 1841, p. 163; P. D. 4608; G. L. vol. 2, p. 627.]

Art. 5533. [5697] [3362] [3211] On motion for returning execution.—Where execution has issued and no return is made thereon, the party in whose favor the same was issued may move against any sheriff or other officer and his sureties for not returning the same, within five years from the day on which it was returnable, and not after. [Id.; P. D. 4608.]

Art. 5534. [5699] [3364] [3213] On actions to contest a will.—Any person interested in any will which shall have been probated under the laws of this State may institute suit in the proper court to contest the validity thereof, within four years after such will shall have been admitted to probate, and not afterward. [Acts 1876, p. 94; G. L. vol. 8, p. 930.]

Art. 5535. [5708] [3373] [3222] Limitations against infants.—If a person entitled to bring any action mentioned in this subdivision of this title be at the time the cause of action accrues either a minor, a married woman, a person imprisoned or of unsound mind, the time of such disability shall not be deemed a portion of the time limited for the commencement of the action and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title.

Art. 5536. [5700] [3365] [3214] In forgery or fraud.—Any heir at law of the testator, or other person interested in his estate, may institute suit in the proper court to cancel a will for forgery or other fraud within four years after the discovery of such forgery or fraud, and not afterward. [Id.]

3. GENERAL PROVISIONS

Art. 5537. [5702] [3367] [3216] Temporary absence.—If any person against whom there shall be cause of action shall be without the limits of this State at the time of the accruing of such action, or at any time during which the same might have been maintained, the person entitled to such action shall be at liberty to bring the same against such person after his return to the State and the time of such person's absence shall not be accounted or taken as a part of the time limited by any provision of this title. [Act Feb. 5, 1841; G. L. vol. 2, p. 627.]

Art. 5538. [5703–5704] Limitation after death.—In case of the death of any person against whom or in whose favor there may be a cause of action, the law of limitation shall cease to run against such cause of action until twelve months after such death, unless an administrator or executor shall have sooner qualified according to law upon such deceased person's estate; in which case the law of limitation shall only cease to run until such qualification. [Id. P. D. 4606.]

Art. 5539. [5705] [3370] [3219] Acknowledgment must be in writing.—When an action may appear to be barred by a law of limitation, no acknowledgment of the justness of the claim made subsequent to the time it became due shall be admitted in evidence to take the case out of the operation of the law, unless such acknowledgment be in writing and signed by the party to be charged thereby. [Act Feb. 5, 1841; G. L. vol. 2, p. 630.]

Art. 5539a. Limitations on dismissal for want of jurisdiction and refiling action in proper court.—When an action shall be dismissed in any way, or a judgment therein shall be set aside or annulled in a direct proceeding, because of a want of jurisdiction of the Trial Court in which such action shall have been filed, and within sixty (60) days after such dismissal or other disposition becomes final, such action shall be commenced in a Court of Proper Jurisdiction, the period between the date of first filing and that of commencement in the second Court shall not be counted as a part of the period of limitation unless the opposite party shall in abatement show the first filing to have been in intentional disregard of jurisdiction. [Acts 1931, 42nd Leg., p. 124, ch. 81, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 5539b. Limitations as affecting amended and supplemental pleading.—Whenever any pleading is filed by any party to a suit embracing any cause of action, cross-action, counterclaim, or defense, and at the time of filing such pleading such cause of action, cross-action, counterclaim, or defense is not subject to a plea of limitation, no subsequent amendment or supplement changing any of the facts or grounds of liability or of defense shall be subject to a plea of limitation, provided such amendment or supplement is not wholly based upon and grows out of a new, distinct or different transaction and occurrence. Provided, however, when any such amendment or supplement is filed, if any new or different facts are alleged, upon application of the opposite party, the court may postpone or continue the case as justice may require. [Acts 1931, 42nd Leg., p. 194, ch. 115, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 5540. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 94.

Art. 5541. [5707] [3372] [3221] Presumption of death.—Any person absenting himself for seven years successively shall be presumed to be dead, unless proof be made that he was alive within that time; but an estate recovered on such presumption, if in a subsequent action or suit the person presumed to be dead shall be proved to be living, shall be restored to him with the rents and profits of the estate with legal interest during such time as he shall be deprived thereof. [Act Feb. 5, 1841; G. L. vol. 2, p. 627; P. D. 23.]

Art. 5542. [5709] [3374] [3223] Action against immigrant.—No action shall be brought against an immigrant to recover a claim which was barred by the law of limitation of the State or country from which he emigrated; nor shall any action be brought to recover money from an immigrant who was released from its payment by the bankrupt or insolvent laws of the State or country from which he emigrated. [Id. sec. 13; P. D. 4618.]

Art. 5543. [5710] [3375] [3224] Debts incurred prior to removal.—No demand against a person who has removed to this State, incurred prior to his removal, shall be barred by the statute of limitation until he shall have resided in this State for the space of twelve months. Nothing in this article shall be construed to affect the provisions of the preceding article. [Id.]

Art. 5544. [5711] [3376] [3225] One disability not tacked to another.—The period of limitation shall not be extended by the connection of one disability with another; and, when the law of limitation shall begin to run, it shall continue to run, notwithstanding any supervening disability of the party entitled to sue or liable to be sued.

Art. 5545. [5713] [3378] Agreement shortening period invalid.—No person, firm, corporation, association or combination of whatsoever kind shall enter into any stipulation, contract, or agreement, by reason whereof the time in which to sue thereon is limited to a shorter period than two years. And no stipulation, contract, or agreement for any such shorter limitation in which to sue shall ever be valid in this State. [Acts 1891, p. 20; G. L. vol. 10, p. 22.]

Art. 5546. [5714] [3379] Notice of claims for damages.—No stipulation in a contract requiring notice to be given of a claim for damages as a condition precedent to the right to sue thereon shall ever be valid unless such stipulation is reasonable. Any such stipulation fixing the time within which such notice shall be given at a less period than ninety days shall be void, and when any such notice is required, the same may be given to the nearest or to any other convenient local agent of the company requiring the same. No stipulation in any contract between a person, corporation, or receiver operating a railroad, or street railway, or interurban railroad, and an employé or servant requiring notice of a claim by an employé or servant for damages for injury received to the person, or by a husband, wife, father, mother, child or children of a deceased employé for his or her death, caused by negligence as a condition precedent to liability, shall ever be valid. In any suit brought under this and the preceding article it shall be presumed that notice has been given unless the want of notice is especially pleaded under oath. [Acts 1891, p. 20; Acts 1907, p. 241.]

This article, making invalid the provision in a contract of a telephone company that the company shall not be liable for failure to deliver the message unless notified of the claim for damages within sixty days is void under the constitution so far as it applies to messages sent into and received from another state. Western Union Telegraph Company v. Burgess, Civ.App., 43 S.W. 1033.

TITLE 92—LUNACY—JUDICIAL PROCEEDINGS IN CASES OF

Art.
5547–5549. [Repealed.]
5550. Cause docketed, etc.
5551. Jury impaneled and sworn.
5552. Special issues submitted.
5553. Verdict.
5554. Judgment.
5555, 5556. [Repealed.]
5557. Warrant to convey lunatic to asylum.
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5559. Record of proceedings and notice.
5560. Clothing to be provided.
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Sec.
1. Warrant; hearing; notice.
2. Warrant, form of; duties of officer.
3. Jury summoned.
4. Restoration hearing; procedure; appeal.
5. Provisions cumulative.
6. Validation of proceedings, judgments, and orders.
7. Contracts and conveyances by persons subsequently adjudged incompetent.
8. Pending proceedings or actions unaffected; partial invalidity.
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Articles 5547–5549. [Repealed by Acts 1925, 39th Leg., p. 414, ch. 174, § 23.]

Art. 5550. [153] Cause docketed, etc.—The cause shall be docketed on the probate docket of the Court in the name of the State of Texas as plaintiff, and the person charged to be insane as defendant. The County Attorney or the District Attorney in counties having no County Attorney, shall appear and represent the State on the hearing, and the defendant shall be also be entitled to counsel; and in proper cases the County Judge may appoint counsel for that purpose.

In cases in which the County Judge may deem it necessary to appoint counsel for the defendant, such appointment shall be noted upon the docket giving the name of the attorney so appointed, and in cases in which the County Judge deems it necessary a fee may be allowed to counsel for the defendant in such sum as may be fixed by the County Judge, and noted on the docket, in an amount not to exceed Five Dollars ($5.00), to be taxed as costs in the case. [Acts 1878, p. 138, § 1; Acts 1937, 45th Leg., p. 1048, ch. 445, § 1.]

Section 2 of the Act of 1937 repealed conflicting laws.

Art. 5551. [154] Jury impaneled and sworn.—At the time appointed for the hearing or at any other time to which the proceeding may have been postponed, the cause shall be called for trial and a jury of six men impaneled, to whom shall be administered the following oath:

"You and each of you do solemnly swear that upon all the issues about to be submitted to you in the matter of the State of Texas against A B, you will a true verdict render according to the evidence. So help you God."

Art. 5552. [155] Special issues submitted.—After the evidence is heard the county judge shall submit the matter to the jury upon the following special issues:

1. Is A B, the defendant, of unsound mind?
2. If the defendant is of unsound mind, is it necessary that he should be placed under restraint?
3. If you answer both the foregoing questions in the affirmative, then what is the age and nativity of the defendant?
4. How many attacks of insanity has he had, and how long has the present attack existed?
5. Is insanity hereditary in the family of defendant or not?
6. Is defendant possessed of any estate, and if so, of what does it consist and its estimated value?
7. If the defendant is possessed of no estate, are there any persons legally liable for his support? If yea, name them. [Acts 1876, p. 138.]

Art. 5553. [156] Verdict.—The jury shall return plain answers in writing to the issues named in the preceding article, but, if they find either the first or second issues in the negative, they need not determine further, and the defendant shall be discharged.

Art. 5554. [157] Judgment.—"Upon return of a verdict finding that the defendant is of unsound mind and that it is necessary that he be placed under restraint, judgment shall be entered adjudging the defendant to be a person of unsound mind and ordering him to be committed for restraint and treatment to any insane asylum operated by the State of Texas in which there may be available room, or delivered into the custody of the United States Veterans' Bureau, or to any other agency or department of the United States Government required or authorized by law to furnish care or treatment to such person of unsound mind in those cases where such agency of the United States will accept such person." [Acts 1925, 39th Leg., p. 234, ch. 76, § 1.]

Arts. 5555, 5556. [Repealed by Acts 1925, 39th Leg., p. 414, ch. 174, § 23.]

Art. 5557. [161] Warrant to convey lunatic to asylum.—"Immediately after any person is adjudged a person of unsound mind, the county judge shall communicate with the superintendents of the insane asylums within this State, and if it is ascertained that there is a vacancy in any of such asylums, or that the patient may be accommodated therein, he shall issue his warrant to the sheriff or to some other suitable person directing him to convey the person of unsound mind to the asylum designated in such warrant, which warrant shall also prescribe the number of guards to be allowed, not to exceed two, and the same shall be executed with all convenient dispatch, provided, that in any case where the United States Veterans' Bureau or any other agency or department of the United States Government will accept such person of unsound mind for care or treatment, that he shall be delivered into the custody of such bureau or department of the United States instead of to the insane asylum of the State; provided further that the State of Texas shall not in any event become liable for any expense in connection with the care or treatment of those persons delivered to the United States Government as provided herein." [Acts 1925, p. 234.] [39th Leg., ch. 76, § 2.]

Art. 5558. [162] Relative or friend may give bond, etc.—No warrant to convey a lunatic to the asylum shall issue if some relative or friend of the lunatic will undertake, before the county judge, his care and restraint and will execute a bond in a sum to be fixed by the county judge, payable to the State of Texas, with two or more good and sufficient sureties to be approved by the county judge, conditioned that the party giving such bond will restrain and take proper care of the lunatic so long as his mental unsoundness continues or until he is delivered to the sheriff of the county or other person, to be proceeded with according to law, which bond shall be filed with and constitute a part of the record of the proceedings, and may be sued and recovered upon by any party injured, in his own name. [Id.]

Art. 5559. Record of proceedings and notice.—Only the judgments which are rendered in lunacy proceedings by the County Court, or by the Judge

thereof, shall be required to be entered in the minutes of such Court by the County Clerk, and such Clerk shall not be required to enter any other proceedings in said minutes. Before any patient is sent to any asylum or is delivered to the United States for care and treatment as provided by Articles 5554 and 5557 of the Revised Civil Statutes of Texas, the County Judge shall cause a complete transcript of the proceedings to be made up and certified by the Clerk of the County Court under the seal of said Court, which transcript shall be forwarded by said Clerk to the superintendent of the asylum or to the medical officer in charge of the United States Government hospital to which such patient may be sent. [Acts 1925, 39th Leg., p. 235, ch. 76, § 3; Acts 1937, 45th Leg., 2nd C.S., p. 1969, ch. 57, § 1.]

Section 2 of the amendatory Act of 1937 repealed all conflicting laws.

Art. 5560. [164] Clothing to be provided.—Before sending any patient to the asylum, the county judge shall take care that the patient is provided with two full suits of substantial summer clothing and one full suit of substantial winter clothing.

Art. 5561. Officers' and jury fees.—In such cases the officers shall be allowed the same fees as are now allowed for similar services performed in misdemeanor cases, and the jurors shall each be allowed a fee of One ($1.00) Dollar, to be paid out of the estate of the defendant if he have an estate, otherwise by the County on accounts approved by the County Judge. [Acts 1903, p. 110; Acts 1929, 41st Leg., 1st C.S., p. 243, ch. 101; Acts 1933, 43rd Leg., p. 603, ch. 200.]

Art. 5561a. Apprehension, arrest, and trial of persons not charged with criminal offense; information; warrant; notice of hearing.

Warrant; hearing; notice

Section 1. If information in writing under oath be given to any county judge that any person in his county, not charged with a criminal offense, is a person of unsound mind, and that the welfare of either such person or any other person or persons requires that he be placed under restraint, and such county judge shall believe such information to be true, he shall forthwith issue a warrant for the apprehension of such person, or, if such like information be given to any justice of the peace in such county, said justice may issue a warrant for the apprehension of said person, making said complaint and warrant returnable to the county court of said county, and said county judge in either event shall fix a time and place for the hearing and determination of the matter, either in term time or in vacation, which place shall be either at the court house of the county, or at the residence of the person named, or at any other place in the county, as the county judge may deem best for such hearing. Notice of the time, place and purpose of such hearing shall be served upon the person charged, such notice to be under the hand and seal of the county clerk of said county, and served and returned by the sheriff or a constable of such county, and the return to state the time and place of service. Such notice shall be served not less than three days prior to the day of hearing.

Warrant, form of; duties of officer

Sec. 2. The warrant provided for herein shall run in the name of "The State of Texas," and shall be directed to the sheriff or any constable of the county, and the officer receiving same shall forthwith take into custody the person named therein, and at the designated time and place shall have him and the return of said warrant before the County Judge for examination and trial, provided, however, that the sheriff, or any constable, upon the execution of the warrant provided for herein, may, with the consent of the Superintendent of any State Hospital, place said person so taken into custody in a place especially provided therefor at such State Hospital by the Superintendent of said State Hospital, to be remanded into the custody of the sheriff or any constable to be taken before the County Judge for examination and trial. [As amended Acts 1941, 47th Leg., p. 635, ch. 383, § 1.]

Jury summoned

Sec. 3. At the time of issuing the warrant mentioned in the preceding sections, or upon receipt of the complaint from the justice of the peace, the county judge shall issue an order to the sheriff or any constable directing him to summon a jury of six competent jurors of the county to be and appear before such judge at the time and place designated in said order for the purpose of hearing and determining the issues to be submitted in said matter.

Restoration hearing; procedure; appeal

Sec. 4. Whenever one or more adult citizens of this State shall file an affidavit with the County Judge of the county where any one of the affiants resides, alleging under oath that there is located within said county, or confined within said county, a person who has theretofore been declared to be of unsound mind, or an habitual drunkard, and that in the opinion of affiants such person has been restored to his right mind, or to sober habits, and that there is no criminal charge pending against such person, the County Judge shall forthwith, either in termtime or in vacation, set a day for a hearing to determine the sanity, or sobriety, of such person. The County Judge shall cause notice of the date set for the hearing to be issued by the County Clerk, to the guardian of such person, if any, and to those having custody of such person, if any there be, and in the event such person be a beneficiary of the Veterans Administration, or his estate consists in whole or in part of money or other assets derived from compensation, pension or insurance paid by the United States, like notice shall be served on the chief attorney of the Veterans Administration in this State by delivering a copy of said notice to his office, of the filing of such affidavit, and that a hearing is to be had thereon, giving the time and place thereof. The County Judge shall direct the Sheriff of the county where such person is located or confined to bring such person into open court for said hearing, if such action be necessary to procure his presence at the trial.

(a) A jury may be demanded by any person interested in the ward or his estate to pass on the question of whether or not such person has been restored to his right mind, or to sober habits, but if a jury is not demanded, the County Judge may pass upon such question, or he may cause a jury to be empanelled to hear such cause.

(b) If the trial of the cause, either before a jury or the County Judge, results in a finding that such person has been restored to his right mind, or to sober habits, a judgment shall be entered upon the minutes of the court reciting such facts, and adjudging such person to be of sound mind, or sober habits, and said person, if then under restraint, shall be discharged immediately.

(c) If such person be under guardianship at the institution of such proceedings and shall be adjudged to have been restored to his right mind, or to sober habits, under the provisions of this Act, and if such restoration takes place in a court other than that in which the guardianship is pending, then said former ward shall file a certified copy of the judgment of restoration to sanity, or sobriety, in the court where the guardianship is pending; and, immediately after the filing of such certified copy of such judgment in the court where the guardianship is pending, the former guardian shall file his final account, and deliver to his former ward the estate remaining in his hands. If the restoration be had in the court where the

guardianship is pending, then immediately after such judgment of restoration is entered, the former guardian shall file his final account and deliver over to his former ward the estate remaining in his hands, in the time and manner provided for in probate proceedings.

(d) From a judgment rendered by the County Court upon any restoration hearing as provided an appeal may be taken to the District Court of the county wherein said cause originally was tried. The appeal from the judgment of the County Court to the District Court to be perfected in the manner and in the time provided by law for the appeal of probate proceedings from the County Court to the District Court; and provided further, that the trial in the District Court shall be de novo as in other probate proceedings and that the judgment of the District Court shall be final.

(e) Any person who has heretofore been declared to be of unsound mind, or an habitual drunkard, and has been tried under the provisions of this Act and found to be of unsound mind, or an habitual drunkard, shall not again be tried for a period of six (6) months.

(f) This Act shall be cumulative of Articles 4282, 4283, and 4284 of the 1925 Revised Civil Statutes of the State of Texas. [As amended Acts 1941, 47th Leg., p. 562, ch. 356, § 1.]

Provisions cumulative

Sec. 5. This Act shall be cumulative of Articles 5550 to 5561 inclusive of Title 92, Revised Civil Statutes of the State of Texas, 1925 revision.

Validation of proceedings, judgments, and orders

Sec. 6. All actions, proceedings, judgments and orders made and entered by any probate or county court of this State pursuant to which any person has been adjudged insane and committed to a state hospital for the insane, are hereby validated and declared to be in full force and effect, notwithstanding any irregularity thereof prior to the enactment of this Act.

Contracts and conveyances by persons subsequently adjudged incompetent

Sec. 7. A contract valid on its face, made with, or likewise a conveyance made by a person, who at the time has not been legally adjudged to be of unsound mind, or otherwise incompetent, and who is subsequently shown to have been insane, or otherwise incompetent, at the time of the execution of such contract or conveyance, shall not be set aside or avoided where any such contract or conveyance has been executed in good faith in whole or in part, and was entered into in good faith without fraud or imposition and for a valuable consideration, without notice of such infirmity, unless the parties to such contract or conveyance shall have been first equitably restored to their original position. The provisions of this Article shall not apply in cases where one of the parties to any such contract or conveyance is insane, and has been so adjudged by a court of competent jurisdiction prior to the date of such contract or conveyance.

Pending proceedings or actions unaffected; partial invalidity

Sec. 8. This Act shall not affect any proceedings or action pending in any court, of competent jurisdiction, on the effective date hereof and any such pending proceedings or action shall be determined in accordance with pre-existing law.

Unconstitutionality

Sec. 9. In the event any section, subdivision, paragraph, or sentence of this Act shall be declared unconstitutional or void, the validity of the remainder of this Act shall not be affected thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding any invalid portions. [Acts 1937, 45th Leg., p. 1049, ch. 446.]

Section 2 of the amendatory Act of 1941, p. 635, ch. 383, provided that partial invalidity should not affect the remaining portions.

TITLE 93—MARKETS AND WAREHOUSES

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CHAPTER 1.—COMMISSIONER OF AGRICULTURE

Art.
5562. Appointing Board.
5563. The Commissioner.
5564. Employees and expenses.
5565. [Repealed.]
5566. Statistics.
5567. To establish agencies.

Article 5562. Appointing Board.—The Governor, the Commissioner of Agriculture and the Banking Commissioner shall constitute a board [1] which with the consent of the Senate, shall appoint biennially a suitable person as Commissioner of Markets and Warehouses [2] to fill such office for a term of two years. Said Commissioner may for cause be removed at any time by the board. [Acts 1st C. S. 1917, p. 65.]

[1] Board abolished. See article 5611, post.

[2] Office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department and the Weights and Measures Department, were abolished and powers, duties and functions transferred to the Commissioner of Agriculture, see article 5611, post.

Art. 5563. The Commissioner.—The word "Commissioner," as used in this title, shall mean the Commissioner of Markets and Warehouses of the State of Texas.[1] He shall be furnished proper quarters to be selected by the Governor, to meet the requirements of his department. He shall give bond in the sum of ten thousand dollars payable to the Governor and conditioned for the faithful performance of his duties. [Id.]

[1] See note under Article 5562, ante.

Art. 5564. Employees and expenses.—The Commissioner [1] with the consent of said Board may employ a chief clerk, and such other help as may be necessary. Such help, other than the chief clerk, shall receive such salaries as may be fixed by the Commissioner and approved by the Board. The Commissioner and such employees when traveling on official business shall receive actual necessary expenses. All expenditures, including expenses of administering this department shall be paid by a warrant drawn by the Comptroller on the State Treasurer, on accounts approved by the Commissioner or on his authority. [Id.]

[1] See note under Article 5562, ante.

Art. 5565. [Repealed by Acts 1933, 43rd Leg., p. 7?[1], ch. 218.]

Art. 5566. Statistics.—The Commissioner [1] shall collect, from every source available, information concerning stocks on hand and the probable yield of farm and ranch products, and disseminate the same. [Acts 1st C.S. 1917, p. 65.]

[1] See note under Article 5562, ante.

Art. 5567. To establish agencies.—The Commissioner [1] shall establish agencies for the sale of farm, orchard, and ranch products, wherever it may be deemed advisable, in which event he is empowered to prescribe all regulations for the conduct of such agencies as may be found necessary. [Id.]

[1] See note under Article 5562, ante.

CHAPTER 2.—WAREHOUSES AND WAREHOUSEMEN

Art.
5568. "Public Warehousemen" and "Warehouse."
5569. Certificate and bond.
5570. Receipts and duplicates.
5570a. Receipts containing statement of cotton grade and staple; penalty.
5571. Cotton under lien.
5572. Exchange of receipt.
5573. Delivery must precede receipt.
5574. Delivery from warehouse.
5575. Cannot limit liability.
5576. Receipt negotiable.
5577. Exceptions.

Article 5568. [7819] "Public Warehousemen" and "Warehouse."—Any person, firm, company, or corporation who shall receive cotton, wheat, rye, oats, rice, or any kind of produce, wares, merchandise, or any personal property in store for hire, shall be deemed and taken to be public warehousemen.

A warehouse, within the meaning of this law shall be a house, building, or room in which any of the above mentioned commodities are stored and are protected from damage thereto by action of the elements. [Acts 1901, p. 251, Acts 1st C. S. 1913, p. 93, Acts 2nd C. S. 1919, p. 138.]

[1] Office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department and the Weights and Measures Department, were abolished and powers, duties and functions transferred to the Commissioner of Agriculture, see article 5611, post.

Art. 5569. [7820] Certificate and bond.—The owner, proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such public warehouse shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the State of Texas, which certificate shall be issued by said clerk upon a written application, setting forth the location and name of such warehouse or warehouses, and the name of each person, individual or a member of the firm, interested as owner or principal in the management of the same, or, if the warehouse is owned or managed by a corporation, the name of the president, secretary and treasurer of such corporation shall be stated, which application shall be received and filed by such clerk and preserved in his office, and the said certificate shall give authority to carry on and conduct the business of a public warehouse and shall be revocable only by the district court of the county in which the warehouse or warehouses are situated, upon a proceeding before the court, by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof, as in other civil cases. The person receiving a certificate, as herein provided for, shall file with the county clerk granting same, a bond payable to the State of Texas, with good and sufficient surety, to be approved by said clerk, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman, which bond shall be filed and preserved in the office of such county clerk. [Acts 1901, p. 251, Acts 1st C. S. 1913, p. 93.]

Art. 5570. [7821] Receipts and duplicates.—On application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto; which receipt shall purport to be issued by a public warehouse, shall bear the date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored. Where such receipt is for cotton it shall state the class and weight, and the date on which it was originally received in warehouse, and that it is deliverable upon return of the receipt properly indorsed by the person to whose order it was issued, and on payment of all charges for storage, and insurance, which charges shall be stated on the face of the receipt. All such receipts shall be numbered consecutively, in the order of their issue. A correct record of such receipts shall be kept in a well bound book, which shall be at all reasonable hours, open to an examination by any interested person. No two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipts be issued, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face, "duplicate." No such duplicate receipt shall be issued by the public warehouseman until adequate security acceptable to the warehouseman be deposited with or to the order of said warehouseman, to protect the party or parties who may finally hold the original receipt in good faith and for a valuable consideration. [Acts 1901, p. 251; Acts 1st C. S. 1913, p. 94.]

Art. 5570a. Receipts containing statement of cotton grade and staple; penalty.—Sec. 1. From and after the passage of this Act, it shall be the duty of every owner, proprietor, lessee, and manager of any public warehouse, whether an individual, firm or corporation to, upon delivery to him of any cotton, and upon the request of the owner of said cotton said warehouseman shall issue a public warehouse receipt therefor which receipt shall contain in addition to the information now required by Article 5570 of the Statutes of this State, a statement of the grade and staple of the cotton represented by the receipt, said grade and staple to have been determined by a public cotton classer, licensed as required by law, for which statement of grade and staple the warehouseman shall not collect any charge in excess of twenty-five (25¢) cents per bale; provided, however, that in event no public cotton classer, licensed as required by law is available at any public warehouse, the warehouseman shall be authorized to issue a temporary receipt, which receipt need not contain the aforementioned statement of class and staple and which shall have the words "temporary receipt" plainly stamped across the face thereof; and which receipt shall be exchangeable at any time after five (5) days after its date of issuance for a permanent warehouse receipt, containing all of the information afore required.

Sec. 2. Any warehouseman who shall fail or neglect to comply with any of the provisions of this Act shall be deemed guilty of the violation of law contemplated in Article 5569 of the Revised Statutes of this State, and upon proof of such failure or neglect shall be deemed liable to revocation of his certificate by any Court of competent jurisdiction as provided in the aforementioned Article. [Acts 1931, 42nd Leg., 2nd C.S., p. 45, ch. 25.]

Art. 5571. Cotton under lien.—If there is any incumbrance or lien of any kind on said cotton at the time of its storage the nature and amount of same shall be clearly set out and it is hereby made the duty of the public warehouseman or his authorized agent issuing the receipt, to have said blank filled in and signed by the owner of the cotton before issuing a negotiable receipt against same. Such statement need not be made if a non-negotiable receipt is desired, but in such cases the public warehouseman issuing said receipt shall write or stamp across the face thereof the words "not-negotiable." [Acts 1st C. S. 1913, p. 95.]

Art. 5572. Exchange of receipt.—If a person holding a non-negotiable receipt for cotton as is herein provided for, shall desire to obtain a negotiable receipt in lieu thereof, he shall return said non-negotiable receipt to the public warehouse issuing same and thereupon shall comply in every respect with the pro-

visions of this chapter relating to negotiable receipts, and upon compliance therewith a negotiable receipt shall be issued to him in lieu of said non-negotiable receipt, and said negotiable receipt thereupon shall be canceled, and the word "canceled" plainly marked in ink across the face thereof. [Id.]

Art. 5573. Delivery must precede receipt.—No public warehouse receipt shall be issued except upon the actual previous delivery of the goods in the public warehouse or on the premises, and under the control of the public warehouseman by whom it purports to be issued; and the name of the warehouse shall invariably be specified in such receipt. [Id.]

Art. 5574. Delivery from warehouse.—On the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman who shall issue a receipt for goods shall, under any circumstances or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued, until the said receipt shall have been surrendered and canceled except in case of lost receipts. In default of strict compliance with the provisions of this article, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall also be liable to the special penalty herein provided. Upon delivery of the goods from the warehouse, upon any receipt, such receipt shall be plainly marked in ink across its face with the words "Canceled" with the name of the person canceling the same, and shall thereafter be void, and shall not again be put in circulation. [Id.]

Art. 5575. Cannot limit liability.—No public warehouseman shall insert in the public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws of this State, excepting, "not accountable for leakage or depreciation," or words of like import and meaning. [Id.]

Art. 5576. Receipt negotiable.—The receipt issued against property stored in a public warehouse, as herein provided for shall be negotiable and transferable by endorsement in blank or by special endorsement; and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without other formality; and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and privilege of the public warehouseman for storage and other warehouse charges; provided, however, that all such public warehouse receipts as shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this article; and provided, further, that no public warehouseman shall issue a warehouse receipt against his own property in his own warehouse; but, upon sale of such property in good faith may issue to the purchaser his public warehouse receipt in form and manner as herein provided, which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of said receipt for his own goods in his own public warehouse, from complying with and being subject in all respects, to all other articles of this chapter. [Id.]

Art. 5577. Exceptions.—Nothing in this law shall be construed to apply to private warehouses or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws. Such private warehouse receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall, on the contrary, bear on its face, in large characters, the words, "not a public warehouse receipt." [Id.]

CHAPTER 3.—MARKETS AND WAREHOUSE CORPORATIONS

Art.
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Acts 1925, p. 35, ch. 13

Sec.
1. Office of Commissioner of Markets and Warehouses abolished.
2. Board for appointment of Commissioner abolished.
3. Board of Supervisors of Warehouses abolished.
4. Commissioner of Agriculture; powers and duties.
5. Commissioner of Agriculture; administering certain laws.
6. Appropriations available.

Article 5578. Application for charter.—Any number of persons, not less than ten, at least sixty per cent of whom shall be engaged in agriculture, horticulture, or stock-raising as a business, and not less than three-fourths of whom shall be resident citizens of Texas, may apply to the Commissioner of Markets and Warehouses [1] for a charter to permit them to organize and operate as a co-operative association, under the provisions of this chapter. In cities of a population of forty thousand or over, the above provisions shall not apply. The application for such charter shall contain the information required by the general corporation laws, and also state the number of its directors, which shall not be less than three, nor more than twenty-five and the name and residence of those selected for the first year.

The application shall be accompanied by the affidavit of three of such applicants, showing that no less

than fifty per cent of the capital stock is actually paid in, which capital stock shall be, in no instance, less than five hundred dollars, divided into shares of five dollars each. If the same has been paid in otherwise than in cash, then a detailed statement as to the kind, character, and value of the property in which paid shall be made a part of the affidavit. [Acts 1st C. S. 1917, p. 65.]

[1] Office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department and the Weights and Measures Department, were abolished and powers, duties and functions transferred to the Commissioner of Agriculture, see article 5611, post.

Art. 5579. Powers of corporation.—Corporations chartered hereunder shall have the right to act and do, and perform generally, all things which may be done and performed by warehousemen. Such corporations may sell in the market all products of the farm, ranch or orchard, on a commission basis, or such other basis as may be agreed upon by them with their customers. They may purchase, construct or lease all such warehouses, landings and buildings, as may be necessary for their business. They may employ such other instrumentalities and agencies as may be necessary for the storage, preservation and marketing of farm, ranch, and orchard products, to the best advantage of the members and customers. They may loan money upon products placed in their warehouses; provided, that the amount loaned thereon shall not exceed seventy-five per cent of the market value of the property so placed with them. They may loan money upon chattel mortgages, to their members only, for the purpose of enabling them to make and mature their crops, but such chattel mortgages shall always be upon property of at least double the value of money loaned thereon. They may loan money on crop mortgages, but such crop mortgages must always be the first mortgage thereon, exclusive of the landlord's lien, and shall always be secured by an acreage, which, under ordinary general conditions, would produce double the amount loaned thereon. They may invest their capital stock and surplus in a home office building, and may also invest such capital stock, surplus, and undivided profits in United States bonds, Texas State bonds, county, city district, and municipal bonds, and road bonds in the State of Texas; provided, such bonds are issued by authority of law, and interest upon them has never been defaulted. Such corporations shall never receive deposits, nor discount commercial paper generally, but may make such character of loans and investments as are herein provided for; provided, such corporations shall never be permitted to loan money upon chattel mortgages, crop mortgages, or personal security, except to their members, and then only to enable them to make, mature, and gather their crops, or market their farm, ranch or orchard products. They may erect, purchase or lease, and operate warehouses, buildings, elevators, gins, storage tanks, silos, and such other places of storage and security as may be necessary for the storage, grading, weighing and classification of cotton, and all farm products, and for the purpose of preparing such products for the market.

Art. 5580. May issue bonds.—Such corporations shall have authority to contract debts, as have other business corporations, and may issue special bonds, to be known as "sinking fund bonds" as follows: They may invest all or any part of their capital stock in such securities as are herein designated for the payment or investment of their capital, which, when approved by the Commissioner,[1] shall be deposited in the State Treasury. The interest on such investments shall be annually paid into the State Treasury, and be placed to the credit of the sinking fund for the liquidation of bonds of such corporations, and the interest shall be invested from time to time by the Commissioner in similar securities, which in turn shall be deposited in the State Treasury. Such securities, when so deposited in the State Treasury, shall remain there as the sinking fund out of which the principal sum of the bonds herein provided for shall be paid, and said securities shall not be used for any other purpose than to liquidate the bonds herein provided for, unless, and until, such sinking fund bonds have been paid; in which event, the securities herein provided for shall be returned to the corporation owning same, and shall become a part of the general assets of the corporation. After the investment in such securities has been made, the Commissioner shall grant authority to the corporation to issue bonds in double the amount of such original capital stock, to bear not greater than six per cent interest, and to run not exceeding thirty years. When said bonds have been issued and signed by the proper officers of the corporation, they shall be registered by the Commissioner. Said bonds shall show on their face that the principal thereon is secured by the securities herein required to be deposited in the State Treasury, and shall have plainly written, printed, lithographed, or engraved, on their face the words, "Sinking Fund Bonds of ——— State Bonded Warehouse," with the post-office address of the corporation, the blank space to be filled in with the name of the corporation. Said bonds shall show on their face that the interest contracted to be paid therein is secured to them by the general assets of the corporation. After said bonds have been issued and registered by the Commissioner they shall be returned to the proper officer of the corporation issuing them, and may then be by such corporation placed on the market and sold; but they shall never be sold at less than ninety per cent of their face value. [Id.]

[1] See note under Article 5578, ante.

Art. 5581. Fees and certificate.—When such an application for charter is filed with said Commissioner,[1] and approved by him, the Secretary of State shall, upon notice of such filing and approval, and the payment of the following fees: Five dollars for five thousand dollars, or less; ten dollars for ten thousand dollars, or more than five thousand dollars; and twenty-five dollars for all over that amount, issue a charter to the applicants; and thereupon the Commissioner shall record said charter, and furnish the corporation a certified copy thereof; and he shall issue to the corporation a certificate of authority showing that it has complied with the laws of the State of Texas, and is authorized to do business until the last day of April of the succeeding year. No charter fee shall exceed twenty-five dollars. [Id.]

[1] See note under Article 5578, ante.

Art. 5582. Bond.—Before said charter is delivered to the corporation, and before said certificate is furnished, the corporation shall execute, by its proper officers, a bond, payable to the State of Texas, the amount of such bond to be determined by the Commissioner.[1] The amount of any such bond may be changed from time to time, in accordance with the volume of business done or to be done by the corporation; and such bond shall be approved by the Commissioner before it is filed. Such bond shall be conditioned that the corporation will observe all provisions of this law, and the rules of the Commissioner, in so far as its business is regulated and controlled by them; and that the corporation will exercise ordinary care in the storage, preservation, and handling of all farm, ranch, and orchard products intrusted to it for storage or sale, or both; and shall also guarantee the classification, weights, grades and measures made by the corporation, or under its authority, as approximately correct. [Id.]

[1] See note under Article 5578, ante.

Art. 5583. Breach and new bond.—The bond herein provided for shall indemnify any person who may be damaged by any statement made by the corporation, or under its authority, in any certificate it may issue for such product stored with it. Such bond may be sued upon by any person sustaining damage by

reason of any breach of its condition, growing out of any fault or dereliction of duty by said corporation, or any person authorized to act for it. If any such bond shall become impaired from any cause, the Commissioner [1] may require the maker to furnish a new and sufficient bond, by written notice, and if such impairment is not made good within thirty days after notice, the Commissioner shall have authority to proceed to close the doors of the corporation, liquidate its affairs, and discharge its debts, as is provided for in this chapter. In the event the Commissioner shall take charge of such corporation, he is empowered to collect by suit, or otherwise, the full amount of the bond, or so much thereof as is necessary, which taken with the other assets of the corporation, may be found sufficient to discharge its obligations. [Id.]

[1] See note under Article 5578, ante.

Art. 5584. Directors and meetings.—The property and business of corporations chartered hereunder shall be controlled and managed by a board of directors of not less than three, nor more than twenty-five in number, who shall be members of the corporation, and bona fide citizens of Texas, and no member of the board of directors of one such corporation shall be a member of a board of directors of any other such corporation. The directors shall be elected annually, at a general meeting of the directors of such corporation, which meeting shall be held at such time and place as may be prescribed by the by-laws of the corporation. The notice of such meeting shall be mailed to each member at least two weeks before the date set for the same. Each member of the corporation, at all general and special meetings of the same, shall have one vote, and no more. The directors may appoint, or remove any officer or employee at pleasure. [Id.]

Art. 5585. Statement of affairs.—The Commissioner [1] shall, also, at least twice each year, and more if deemed necessary, require each such corporation to file in his office upon forms prescribed by him, a statement of its affairs, showing the condition of its reserve fund, its assets and liabilities, and such other information as he may deem advisable. Such statement shall be made upon the oath of one of the managing officers of the corporation, and shall be attested by at least a majority of its directors. [Id.]

[1] See note under Article 5578, ante.

Art. 5586. Examination of affairs.—Every bonded warehouse corporation chartered under the laws of this State shall be subject to the supervision and control of the Commissioner,[1] and he shall make, or cause to be made, an examination of the affairs and dealings of each such corporation, at its expense, at least once each year, and at such other times as the Commissioner may deem necessary. If, upon examination, any such corporation is found to be insolvent, or has exceeded its powers, or its business is being conducted in an unsafe manner, or it has failed to comply with any provision of this chapter within a reasonable time, not to exceed, in any event, thirty days, the Commissioner shall report the condition of the corporation to the Attorney General, who may bring such action as the necessities of the case and law may require.

[1] See note under Article 5578, ante.

Art. 5587. Expense of examination.—The expense of each regular and special examination of corporations chartered under this chapter shall be paid by the corporation examined, in such an amount as the Commissioner [1] shall certify to be just and reasonable. Such expense shall be paid in proportion to the capital stock of the various corporations, as follows: Those with a capital stock of less than twenty-five hundred dollars shall not pay more than five dollars; those with a capital stock of two thousand five hundred dollars, and not exceeding ten thousand dollars, not exceeding ten dollars; those with a capital stock of twenty-five thousand dollars, and not less than ten thousand dollars, not exceeding twenty dollars; those with a capital stock of one million dollars or more, shall pay not exceeding two hundred dollars, for each examination. All money collected as examination fees shall be paid by the Commissioner directly into the State Treasury to the credit of the general revenue fund. [Id.]

[1] See note under Article 5578, ante.

Art. 5588. Amenable to general laws.—Every corporation organized under this chapter shall be amenable to and subject to all laws of this State governing corporations generally. [Id.]

Art. 5589. Limitation of authority.—No officer or employee shall have power to indorse, sell, pledge, or hypothecate any bond, note or other obligation received by such corporation, or any property deposited with it as warehousemen, until such power and authority shall have been given such officer or employee by the board of directors, in a meeting of the board, regularly called and held, a written record of which proceedings shall have first been made upon the minutes of the corporation; and all such acts of any officer or employé, indorsing, selling, pledging, or hypothecating any such pledge or property, shall, without the authority of the board of directors, as herein provided, be null and void. [Id.]

Art. 5590. Division of profits.—Every corporation organized hereunder may divide its profits among its members, in proportion to the amount of business transacted for each said member, after having paid dividends to each member, on the amount which each of said members has paid into the capital stock of the company, subject, however, to the following provisions: Twenty per cent of the net profit on each years business shall annually be paid into the reserve fund, until the reserve fund shall equal twice the amount placed in the capital stock at the time the corporation was chartered; the balance of the net profits shall be divided in accordance with the by-laws of the corporation; provided, that the subscribers to the capital stock shall first be entitled to a ten per cent dividend, or such less amount as may be stated in the by-laws for each year, before the remainder thereof is divided among the members in proportion to the amount of business transacted for each member. [Id.]

Art. 5591. Failure to obey law.—If any corporation subject to the provisions of this chapter shall refuse to submit its books, and papers, and correspondence, for inspection, to the Commissioner [1] or any of his authorized examiners; or, if any officer or directors of any such corporation shall refuse to be examined on oath touching the business and property of the corporation; or, if it shall be found to have violated its charter, or any law of the State binding upon it, the Commissioner shall report the facts to the Attorney General, who shall institute such proceedings against such corporation as is authorized to be instituted against insolvent corporations. [Id.]

[1] See note under Article 5578, ante.

Art. 5592. Certificate of qualification.—Before any such corporation shall be permitted to open its doors for business and in order for it to continue to transact business, the employé or officer in active management shall obtain a certificate from the Commissioner,[1] certifying that he is qualified and authorized to perform the duties of said corporation. In order to receive such certificate such person must present satisfactory evidence to the Commissioner that he is competent to discharge the duties of such position. Upon receiving satisfactory evidence of qualification, and upon the payment of a filing fee of one dollar, the Commissioner may issue to any applicant therefor a certificate showing that such applicant is qualified. The life of any such certificate shall not exceed two years, at the expiration of which time the applicant must obtain a new certificate. [Id.]

[1] See note under Article 5578, ante.

Art. 5593. Unsafe corporation.—Whenever, after examination, the Commissioner [1] shall have reason to believe that the capital stock of any corporation subject to the provisions of this chapter is impaired, he shall, by written notice, require the corporation to make good the impairment. Whenever it shall appear to the Commissioner, from any examination made by an examiner, that such corporation is conducting its business in an unsafe, and unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such unsafe and unauthorized practice, and shall require a strict compliance with the requirements of the law. If wrong entries are made in the books of a corporation, or if wrong or unlawful uses of its funds have been made, the Commissioner shall require that such entries be corrected and such sums as were unlawfully paid out shall be restored to the corporation by the person or persons responsible for the wrongful use thereof. If any corporation shall refuse or neglect to make any such report as hereinafter required, or to comply with any such order as aforesaid, or whenever it shall appear to the Commissioner that it is unsafe or inexpedient for any such corporation to continue to transact business, by reason of neglect or mismanagement, or that any officer or director has abused his trust, or has been guilty of misconduct, or of malversation of his official position, injurious to the institution, or that it has suffered a serious loss by fire, repudiation, or otherwise, the Commissioner shall communicate the facts to the Attorney General, who shall institute such proceedings as the nature of the case may require. [Id.]

[1] See note under Article 5578, ante.

Art. 5594. Forced liquidation.—The court, or judge, in term time or vacation, before whom such proceedings may be instituted, shall have power to grant such orders as may be necessary to grant such relief as the evidence and the situation of the parties may require. If, from any examination made by the examiner, it shall be discovered that any such corporation is insolvent, or that its continuance in business will seriously jeopardize the interest of its stockholders or its creditors, the Commissioner [1] shall immediately close such corporation, and shall take charge of all its property and effects. Upon taking charge of any such corporation, the Commissioner shall, as soon as practicable, ascertain by a thorough examination into its affairs, its actual financial condition. If the Commissioner shall become satisfied that such corporation cannot resume business or liquidate its indebtedness to the safety of its shareholders and its creditors, he shall report the fact of its insolvency to the Attorney General. Upon receipt of such notice and information, the Attorney General shall institute proper proceedings, for the purpose of having a receiver appointed to take charge of such corporation, and to wind up its affairs and business for the benefit of its creditors and members; and the court, or judge thereof, in term time or vacation, after such notice and hearing, if it appear necessary, shall appoint a receiver to take possession of the property and effects of said corporation, for the purpose of winding up the business thereof. The Commissioner may appoint a special agent to take charge of the affairs of any such insolvent corporation, until a receiver is appointed. The special agent so appointed shall qualify, give bond, and receive compensation, the same as regularly appointed warehouse examiners; such compensation to be paid by the corporation out of its assets, when allowed by the court as costs in the case of the appointment of a receiver. In no case shall any corporation continue in charge of such special agent for a longer period than sixty days. [Id.]

[1] See note under Article 5578, ante.

Art. 5595. Voluntary liquidation.—Any such corporation may place its affairs and effects under the control of the Commissioner,[1] on notice to him, and by posting a notice on its front door as follows: "This institution is in the hands of the Commissioner of Markets and Warehouses of the State of Texas." The posting of this notice, or a similar notice, by the Commissioner, or under his direction, that he has taken possession of any corporation, shall be sufficient to place the property and assets of the corporation, of whatever nature, in possession of said Commissioner and shall operate as a bar to any and all attachment proceedings. [Id.]

[1] See note under Article 5578, ante.

Art. 5596. Warehouse examiners.—The Commissioner [1] shall, from time to time, appoint such number of State warehouse examiners as he may deem necessary to make examination of public warehouses, and corporations chartered under this chapter, which number shall at no time exceed one examiner for each fifty corporations and public warehouses subject to examination under this chapter and laws of this State. As full compensation for the performance of the duties of examiner, each person so appointed shall be entitled to receive a salary of not exceeding two thousand dollars per annum, and all reasonable necessary expenses, including hotel bills. An itemized and sworn account of such expenses shall be presented to the Commissioner for approval. Every warehouse examiner appointed by the Commissioner shall be a cotton grader and classer, and a competent book-keeper. Such examiner shall first make and file with the Commissioner an affidavit that he will make fair and impartial examinations; that he will not accept directly or indirectly any gift or pay for any service done in the line of his duty other than the pay fixed by law, and that he will not reveal the condition of any corporation or public warehouse examined by him, or give out any information secured in the course of any examination to any one except the Commissioner and except when requested to do so in court. [Id.]

[1] See note under Article 5578, ante.

Art. 5597. Appointment of examiners.—No such examiner shall be appointed who is, at the time, an officer or stockholder in any warehouse company or corporation, or who owns any interest in any warehouse; or in any firm or corporation engaged in the purchase or sale of farm, ranch or orchard products, on commission or otherwise. No such examiner shall be appointed receiver of any State bonded or public warehouse company whose papers and affairs he shall have examined. Each such examiner shall give a bond payable to the State of Texas, in the sum of five thousand dollars, to be approved by the Commissioner,[1] conditioned that he will faithfully perform his duties as such examiner. [Id.]

[1] See note under Article 5578, ante.

Art. 5598. May deny or revoke permit.—The Commissioner [1] shall have power to deny a permit to do business under this chapter and to revoke a permit when in his judgment there are sufficient warehouse facilities at the point where a new corporation may desire to do business. [Id.]

[1] See note under Article 5578, ante.

Art. 5599. Safety first.—The Commissioner [1] shall have power to prohibit the storage of cotton or other inflammable commodities in an unsafe building, or require a storage house to be remodeled within certain specified dates, so as not to unduly hamper the conduct of the business and the convenience of the public. [Id.]

[1] See note under Article 5578, ante.

Art. 5600. Fire insurance.—The Commissioner [1] shall require fire insurance by blanket policies or individual policies, in some solvent insurance company chartered under the laws of this State or having a permit to do business in the State, to be carried by all public warehouses and all warehouse corporations operating under this chapter, and to require such other means and methods of protection from fire and weath-

er, or depreciation of warehouse property, as the Commissioner may deem necessary in each case. No fire, fire and marine, marine or inland insurance company, doing business in this State shall expose itself to any one risk, either upon buildings of any character, or their contents, except when insuring cotton in bales, and grain, in an amount exceeding ten per cent of the aggregate of the paid up capital stock, and surplus, unless the excess shall be reinsured by such company in some other solvent insurance company legally authorized to do business in this State. [Id.]

[1] See note under Article 5578, ante.

Art. 5601. Charge for storage.—All charges for storage in warehouses operating under the provisions of this and the preceding chapter, shall be subject to limitation and regulation by the Commissioner [1] to the extent of fixing a minimum charge therefor. The charges so fixed need not be the same at all places or at all times, but the Commissioner may take into consideration the local conditions, and the volume of business of each warehouse. In fixing charges for gin compressed cotton, consideration shall be given to the size of the bale. [Id.]

[1] See note under Article 5578, ante.

Art. 5602. Standards of weights and measures.—The standards of weights and measures of this State shall be the standards of weights and measures used under the terms and provisions of this chapter. It shall be the duty of the Commissioner [1] to establish standards of classifications of cotton, corn, and other farm and ranch products, of whatever kind and character, which may be subject to classification, and originals of such standards so established shall be maintained, subject to public inspection, in the office of the Commissioner at all reasonable times; and duplicates of such standards as well as the standards of weights and measures, shall be furnished by the Commissioner to all persons who may apply therefor, under the payment of the necessary cost thereof. It shall be the duty of each public warehouse company to keep a duplicate of said standards, as well as the standards of weights and measures, at its warehouse, subject to inspection and comparison of grades and classification by persons storing products therein; provided, that the standards of classification shall always be the standards established by the Government of the United States, or of this State. [Id.]

[1] See note under Article 5578, ante.

Art. 5603. Liability of corporation.—The liability of a corporation chartered and operating under this chapter for warehouse purposes, shall be that of a public warehouseman, and it shall have the same rights as a public warehouseman, including a lien for storage, insurance, and other warehouse charges, as well as for charges for any service performed by it. [Id.]

See note under Article 5578, ante.

Art. 5604. Lien of corporation.—Such corporation shall also have a lien for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such goods; and also, all reasonable charges and expenses for notice and advertisement of sale of goods, where sale has been made in satisfaction of the warehouseman's lien. [Id.]

Art. 5605. Satisfaction of lien.—A warehouseman's lien for a claim which has become due may be satisfied as provided in the succeeding chapter. No publication fee shall be charged in excess of the rate now allowed by statute for the publication of legal notices. One notice of sale shall be placed at the court house door of the county in which the warehouse is located. If any goods are delivered to any person paying for the same and the warehouseman desires it, he may require a bond of indemnity as protection from claims of other persons. [Id.]

Art. 5606. Landlord's lien.—The landlord's lien on cotton or other farm products shall continue so long as the same are on storage in any warehouse, whether the same be a warehouse operated under this law or a private warehouse, provided a negotiable receipt has not been issued therefor. [Id.]

Art. 5607. Delivery of goods.—Upon the presentation and return to the warehouse of any warehouse receipt issued by its manager, and properly endorsed, and the tender of all proper warehouse charges upon the property presented by it, such property shall be delivered immediately to the holder of such receipt; but the manager of such warehouse shall not, under any circumstances, or upon any other guarantee, deliver the property upon which said receipts were issued until such receipts have been delivered and cancelled, except in case of lost receipts. Any such receipt, when returned and cancelled, shall be kept by the manager in his office, until ordered destroyed by the directors, for one year from date of cancellation. Upon delivery of the goods in a warehouse, upon any receipt, such receipt shall be plainly marked, or stamped in ink, across its face, with the word "cancelled," together with the name of the manager cancelling the same; and shall thereafter be void, and shall not again be put into circulation. [Id.]

Art. 5608. Forms.—The Commissioner [1] shall prescribe all the forms of receipts, certificates and records, of whatsoever description necessary in the conduct of warehouses under this chapter, but all such receipts, certificates and forms shall be drawn in accordance with the terms of this title. All warehouse receipts shall be of uniform character, in the same class as prescribed by the Commissioner. [Id.]

[1] See note under Article 5578, ante.

Art. 5609. Negotiable receipt.—A negotiable receipt issued against goods or products stored in a warehouse under this chapter shall be negotiable and transferable by endorsement in blank, or by a special endorsement and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without any formality. The transferee or holder of such warehouse receipt shall be considered and held as actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to lien and privileges of the warehouse for storage, insurance, and other warehouse charges. All such warehouse receipts with the word "non-negotiable" plainly marked or stamped on the face thereof shall be exempt from the provisions of this article. [Id.]

Art. 5610. Receipts.—All receipts shall be numbered consecutively, in the order of their issuance, and a record of such receipt shall be kept at the office of the company. No two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipt be issued, except in case of a lost or destroyed receipt, in which case a new receipt shall be issued, which shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." In addition to the other provisions, each receipt shall have a blank form on the back thereof, to be filled in and signed by the owner of the cotton or other products for which it is issued, showing whether a preexisting and unsatisfied lien of any kind exists against it. If there be a landlord's lien, or such unsatisfied lien, or incumbrance, or lien of any kind, on said cotton, or other products, at the time of its storage, the amount of the claim shall be clearly set out; and it is made the duty of the manager issuing the receipt to have said blank filled in and signed by the owner of the cotton, or other product before issuing a negotiable receipt for the same; provided, however, such statement may not be made if a nonnegotiable receipt is desired. When cotton grown on rented or leased premises is tendered for storage in a State warehouse,

in addition to the foregoing instruments, all receipts issued therefor shall be issued jointly, in the name of the owner and the landlord, showing their respective interests in such cotton, unless the tenant or person storing the same presents authority from the landlord, or from the tenant, as the case may be, requesting the issuance of a receipt in the name of the one or the other, which request shall be in writing, and filed with the manager of the warehouse. If the person holding a non-negotiable receipt desires to obtain a negotiable receipt in lieu thereof, he shall return the non-negotiable receipt to the warehouse issuing the same and thereupon shall comply in every respect with the provisions of this Act, relating to negotiable receipts, and upon compliance with which a negotiable receipt shall be issued to him in lieu of the non-negotiable receipt. When the non-negotiable receipt is surrendered or canceled, the word "canceled" shall be plainly marked or stamped in ink, across the face thereof. No warehouse receipt shall be issued except on the actual previous delivery of the goods in the warehouse or on the premises under the control of the manager thereof. [Id.]

Art. 5611. All warehouses included.—All warehouses now or hereafter operating under an Act passed by the Thirty-third Legislature of Texas, and known as the "Public Warehouse Act," are hereby placed under the management and control of the Commissioner,[1] and all chartered warehouses for the storing of farm, ranch or orchard products, not incorporated under this Act, may, by a majority vote of its stockholders, upon application to the Secretary of State, upon payment of a fee of ten dollars, amend their charter so as to come under this Act. Such warehouses shall make such bonds as the Commissioner may require, and such warehouses shall issue such receipts as are authorized by the Commissioner. [Id.]

1 See note under article 5578.

Acts 1925, 39th Leg., p. 35, ch. 13.

Abolition of officers, boards, etc., and transfer of duties and functions.

Office of Commissioner of Markets and Warehouses abolished

Section 1. The office of Commissioner of Markets and Warehouses of the State of Texas is hereby abolished, and the authority, duties, powers, functions, rights, and liabilities, heretofore vesting in said commissioner, shall hereafter vest in and be had and performed by the Commissioner of Agriculture. The Markets and Warehouse Department and the Weights and Measures Department of the State of Texas are hereby abolished, and the duties and functions of the same shall hereafter vest in the Commissioner of Agriculture.

Board for appointment of Commissioner abolished

Sec. 2. The board, consisting of the Governor, the Commissioner of Agriculture, and the Commissioner of Insurance and Banking, created by Chapter 5, of the General Laws enacted at the Second Called Session of the Thirty-third Legislature, for the purpose of appointing a Commissioner of Markets and Warehouses, is hereby abolished.

Board of Supervisors of Warehouses abolished

Sec. 3. The Board of Supervisors of Warehouses, consisting of the Governor, Commissioner of Agriculture, and the Commissioner of Insurance and Banking, created by Chapter 5, of the General Laws enacted at the Second Called Session of the Thirty-third Legislature, is hereby abolished, and any authority, duties, powers, functions, rights, and liabilities of said board, existing under the law, shall hereafter vest in and be had and performed by the Commissioner of Agriculture.

Commissioner of Agriculture; powers and duties

Sec. 4. The Commissioner of Agriculture shall hereafter have and perform all the authority, duties, powers, rights, and liabilities heretofore vesting in the Commissioner of Insurance and Banking, or the Banking Commissioner of Texas or the Commissioner of Insurance, if any, relative to warehouses, except such as are conferred upon said Commissioner of Insurance and Banking by the provisions of Chapter 3 of the General Laws of the Second Called Session of the Thirty-third Legislature of this State.

Commissioner of Agriculture; administering certain laws

Sec. 5. The power and authority to administer the provisions of Chapter 5 of the General Laws of the Second Called Session of the Thirty-third Legislature; Chapter 41 of the General Laws of the First Called Session of the Thirty-fifth Legislature, and Chapters 116 and 126 of the General Laws of the Regular Session of the Thirty-sixth Legislature and such powers and duties as are conferred upon the Commissioner of Markets and Warehouses by Chapter 22, Acts of the Regular Session of the Thirty-seventh Legislature and Chapter 38 of the Second Called Session of the Thirty-eighth Legislature shall hereafter vest in the Commissioner of Agriculture, and it shall be his duty to administer said laws, or so much of same as may be in force.

Appropriations available

Sec. 6. All appropriations heretofore made for the Markets and Warehouse Department and the Weights and Measures Department shall hereafter be available to the Commissioner of Agriculture to expend, as provided by law, in the execution of the work and the performance of the duties herein transferred; provided that the Commissioner of Agriculture shall be authorized to re-apportion and rearrange the duties of the office and of the employees and fix the salaries of said employees, where not fixed by law, and shall be authorized to discontinue any duties, work, or employees, in order to prevent a duplication of work already being performed, or authorized to be performed by the Department of Agriculture. [Acts 1925, 39th Leg., ch. 13, §§ 1–6.]

The Act of 1925, cited to the text, abolished the office of Commissioner of Markets and Warehouses and conferred some, if not all, of his powers and duties on the Commissioner of Agriculture. Chapters 1, 2 and 3 of Title 93 are retained herein in order that it may be ascertained therefrom what are the powers and duties of the Commissioner of Agriculture under said Act of 1925.

CHAPTER 4.—UNIFORM WAREHOUSE RECEIPTS ACT

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5614. Conditions of receipt.
5615. Non-negotiable receipt.
5616. Negotiable receipt.
5617. Duplicate receipts.
5618. Non-negotiable receipt.
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Art.
5635. Care of mingled goods.
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5663. Interpretation.
5664. Definitions.
5665. Citation of Act.

Article 5612. Issue of warehouse receipts.—Warehouse receipts may be issued by any warehouseman. [Acts 1919, p. 215.]

[1] Office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department and the Weights and Measures Department, were abolished and powers, duties and functions transferred to the Commissioner of Agriculture, see article 5611, ante.

Art. 5613. Form of receipt.—Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

1. The location of the warehouse where the goods are stored.

2. The date of issue of the receipt.

3. The consecutive number of the receipt.

4. A statement whether the goods received will be delivered to a specified person, or to a specified person or his order.

5. The rate of storage charges.

6. A description of the goods or of the packages containing them.

7. The signature of the warehouseman, which may be made by his authorized agent.

8. If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

9. A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

10. When a negotiable receipt is issued under the terms of this Act for cotton or other agricultural products stored in any warehouse operating under the terms of this Act, it shall, in addition to the other conditions mentioned herein, state the weight, grade, and condition of the same and shall state plainly whether such agricultural products are insured or not. [Id. sec. 2.]

Art. 5614. Conditions of receipt.—A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

1. Be contrary to the provisions of this chapter.

2. In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him, which a reasonably careful man would exercise in regard to similar goods of his own. [Id. sec. 3.]

Art. 5615. Non-negotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt. [Id. sec. 4.]

Art. 5616. Negotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the order of any person named in such receipt is a negotiable receipt. No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted shall be void. [Id. sec. 5.]

Art. 5617. Duplicate receipts.—When more than one negotiable receipt is issued for the same goods the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damages caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. [Id. sec. 6.]

Art. 5618. Non-negotiable receipt.—A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it, "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This action shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. [Id. sec. 7.]

Art. 5619. Bound to deliver goods.—A warehouseman, in the absence of some lawful excuse provided by this law, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with:

1. An offer to satisfy the warehouseman's lien.

2. An offer to surrender the receipt of negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and

3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is required by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. [Id. sec. 8.]

Art. 5620. Justified in delivery.—A warehouseman is justified in delivering the goods, subject to the provisions of the three following articles, to:

1. The person lawfully entitled to the possession of the goods, or his agent.

2. A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either endorsed upon the receipt or written upon another paper, or

3. A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. [Id. sec. 9.]

Art. 5621. Delivery to wrong person.—Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by Subdivision 1 and 2 of the preceding article and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either:

1. Been requested, by or on behalf of the person lawfully entitled to a right of property in or possession of the goods, not to make such delivery, or

2. Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. [Id. sec. 10.]

Art. 5622. Failure to cancel receipt.—Except as hereinafter provided, where a warehouseman delivers goods for which he has issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. [Id. sec. 11.]

Art. 5623. Partial delivery; failure to cancel.—Except as hereinafter provided, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. [Id. sec. 12.]

Art. 5624. Alteration of receipt.—The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was immaterial, authorized or made without fraudulent intent. If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. [Id. sec. 13.]

Art. 5625. Loss of receipt.—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient securities to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The Court may also in its discretion order the payment of the warehouseman's reasonable costs. The delivery of the goods under an order of the Court shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [Id. sec. 14.]

Art. 5626. Effect of duplicate receipt.—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability. [Id. sec. 15.]

Art. 5627. Title in warehouseman.—No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. [Id. sec. 16.]

Art. 5628. May make claimants interplead.—If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. [Id. sec. 17.]

Art. 5629. Adverse claim.—If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [Id. sec. 18.]

Art. 5630. Failure to deliver.—Except as provided otherwise in this chapter, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. [Id. sec. 19.]

Art. 5631. Relying on labels.—A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor. [Id. sec. 20.]

Art. 5632. Must exercise care.—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. [Id. sec. 21.]

Art. 5633. Care of goods.—Except as provided in the following article, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited. [Id. sec. 22.]

Art. 5634. Mingled goods.—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common

and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. [Id. sec. 23.]

Art. 5635. Care of mingled goods.—The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. [Id. sec. 24.]

Art. 5636. Surrender of receipt.—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court. [Id. sec. 25.]

Art. 5637. Rights of creditor.—A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from the courts, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process. [Id. sec. 26.]

Art. 5638. Lien of warehouseman.—Subject to the provisions of the second succeeding article, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of goods where default has been made in satisfying the warehouseman's lien. [Id. sec. 27.]

Art. 5639. Lien enforced against goods.—Subject to the provisions of the second succeeding article, a warehouseman's lien may be enforced:

1. Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

2. Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted if such person has been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in the good faith for value would have been valid. [Id. sec. 28.]

Art. 5640. Loss of lien.—A warehouseman loses his lien upon goods by surrendering possession thereof, or by refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this law. [Id. sec. 29.]

Art. 5641. Lien for charges.—If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of this law, although the amount of the charges so enumerated is not stated in the receipt. [Id. sec. 30.]

Art. 5642. May refuse to deliver goods.—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. [Id. sec. 31.]

Art. 5643. Collection of charges.—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. [Id. sec. 32.]

Art. 5644. Satisfaction of lien.—A warehouseman's lien for a claim which has become due may be satisfied as follows: The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

1. An itemized statement of the warehouseman's claims, showing the sum due at the time of the notice and the date or dates when it became due;

2. A brief description of the goods against which the lien exists;

3. A demand that the amount of the claim as stated in the notice, and of such further claims as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; and

4. A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If no newspaper is published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. From the proceeds of such sale, the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisements and sale. The balance, if any, of such proceeds shall be deposited with the county clerk of the county in which the warehouse is located and shall be delivered, on demand, to the person to whom the warehouseman would have been bound to deliver, or justified in delivering the goods, for which the receipt was issued. At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this Act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract or deposit. [Id. sec. 33.]

Art. 5645. Perishable or dangerous goods.—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give

such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made upon the terms of this article shall be disposed of in the same way as the proceeds of sales made under the terms of Article 5644. [Id. sec. 34.]

Art. 5646. Remedy not exclusive.—The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. [Id. sec. 35.]

Art. 5647. Effect of sale.—After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. [Id. sec. 36.]

Art. 5648. Negotiation and transfer of receipts.—A negotiable receipt may be negotiated by delivery:

1. Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

2. Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or when a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. [Id. sec. 37.]

Art. 5649. Negotiation by indorsement.—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. [Id. sec. 38.]

Art. 5650. Non-negotiable receipt.—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable receipt can not be negotiated, and the indorsement of such receipt gives the transferee no additional right. [Id. sec. 39.]

Art. 5651. Who may negotiate receipt.—A negotiable receipt may be negotiated by the owner thereof or by any person to whom the possession or custody thereof has been entrusted by the owner, if, by the terms of the receipt the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery. [Id. sec. 40.]

Art. 5652. Title by negotiation.—A person to whom a negotiable receipt has been duly negotiated acquires thereby:

1. Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

2. The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. [Id. sec. 41.]

Art. 5653. Title acquired by transfer.—A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferrer, the title of the goods, subject to the terms of any agreement with the transferrer. If the receipt is nonnegotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferrer or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the warehouseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer. [Id. sec. 42.]

Art. 5654. Who may compel indorsement.—Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. [Id. sec. 43.]

Art. 5655. Warranty.—A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants:

1. That the receipt is genuine;

2. That he has a legal right to negotiate or transfer it;

3. That he has knowledge of no fact which would impair the validity or worth of the receipt; and

4. That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. [Id. sec. 44.]

Art. 5656. Liability of indorser.—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. [Id. sec. 45.]

Art. 5657. Implied warranty.—A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. [Id. sec. 46.]

Art. 5658. Innocent purchaser.—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom

the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. [Id. sec. 47.]

Art. 5659. Subsequent negotiation.—Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. [Id. sec. 48.]

Art. 5660. Purchaser for value.—Where a negotiable receipt has been issued for goods, no seller's lien or right or stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transit. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller, unless the receipt is first surrendered for cancellation. [Id. sec. 49.]

Art. 5661. Who may become public warehouseman.—Any person, firm, corporation, partnership, or association of persons, may become a public warehouseman under the provisions of this chapter by filing with the county clerk of the county in which he is located and proposes to do business, a good and sufficient bond in the sum of five thousand dollars conditioned that he will conduct his business in accordance with the provisions of this chapter. Upon the filing and approval of such bond with the county clerk, it shall be the duty of the county clerk to immediately certify such fact to the Commissioner of Markets and Warehouses.[1] Any one injured by the violation of the terms of the bond, and the provisions of this chapter may recover damages to the extent of said bond. Should said bond become impaired by recovery, or otherwise, said Commissioner may require such public warehouseman to file an additional bond, but in no event shall such additional bond be for a greater amount than five thousand dollars. The bond required hereunder shall be good for the term of one year from the date of filing and the right to continue as a public warehouseman shall be conditioned upon the renewal of said bond from year to year, according to the terms of this chapter. The form of the bond required hereunder shall be prescribed by said Commissioner, and the bond may be made by any surety company authorized to do business under the laws of this State; or by two solvent sureties to be approved by the county clerk of the county in which such public warehouseman may desire to do business. [Id. sec. 56.]

[1] See note under Article 5612, ante.

Art. 5662. Commissioner to supervise.—The Commissioner[1] may exercise a general supervision over all private warehouses operating under the provisions of this chapter, and may, in his discretion, prescribe rules and regulations for the conduct of same not inconsistent with the provisions of this chapter. [Id. sec. 57.]

[1] See note under Article 5612, ante.

Art. 5663. Interpretation.—In any case not provided for in this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. This law shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [Id. secs. 59 and 60.]

Art. 5664. Definitions.—In this chapter, unless the context or subject-matter otherwise requires:

"Action" includes counter claim, set-off and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is from its nature or by mercantile custom treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

A thing is done "in good faith" within the meaning of this law when it is in fact done honestly, whether it is done negligently or not. [Id. sec. 61.]

Art. 5665. Citation of Act.—This Act may be cited as the Uniform Warehouse Receipts Act. [Id. sec. 63.]

CHAPTER 5.—GINNERS AND COTTON

Art.
5666. "Ginners."
5667–5669. [Repealed.]
5670. Ginner to take sample.
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5672. Certificate of guarantee.
5673. Duty of Commissioner.
5674. Cotton board.
5675. Marking cotton.
5676. Wrapping cotton.
5677. Baling of cotton regulated.
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5679. Duty of Commissioner.
5679a. Regulating public cotton classers.
Sec.
1. Defining cotton classers.
2. Qualifications.
3. Bond.
4. Record of classer.
5. Form of receipts and records.
6. Fees.
7. Right.
8. Rights to class own cotton.
11. Collections and appropriations.
5679b. Deduction from agreed price for deficiency in weight.
5679c. Recovery of double amount of unlawful deductions.

Article 5666. "Ginners."—All persons, partnerships, joint stock companies or corporations operating in this State any gin ginning cotton for commercial purposes shall be known as ginners, and shall be charged with the public use. [Acts 1st C. S. 1917, p. 65.]

Arts. 5667–5669. [Repealed by Acts 1933, 43rd Leg., p. 731, ch. 218, § 2.]

Art. 5670. Ginner to take sample.—Each licensed ginner shall take from each bale of cotton ginned by him one fair, true, and correct sample of cot-

ton, unless requested in writing by the owner of the cotton, not to do so. When a sample of cotton is taken, such sample shall weigh not less than four nor more than six ounces; and the ginner shall wrap the same tightly in a sample wrapper, to secure a reasonable degree of compactness. Such sample shall be taken in three draws, as nearly as practicable, representing three parts of a bale. Any ginner who takes a sample from a bale of cotton, under the provisions of this Act, may, at his option, take and file a like sample from such bale for protection under the bond given by such ginner. [Acts 1st C.S. 1917, p. 65.]

Art. 5671. Certificate with sample.—With each sample of cotton there shall be placed a certificate, under the signature of the ginner, that same is a fair and true sample, as far as said ginner may be able to determine; and that the ginner guarantees no fraud was practiced in taking such sample; and that it was taken from the bale in such manner as to secure a correct sample of the cotton in the bale. [Id.]

Art. 5672. Certificate of guarantee.—Whether or not a sample of the bale of cotton so ginned shall be requested and taken by the ginner, the ginner shall nevertheless, place with each bale of cotton ginned by him a certificate guaranteeing under his bond that during the process of ginning, or thereafter, while the cotton was in the possession of the ginner, no water or foreign substance of any nature had been placed with such cotton, with intent to defraud. Such certificate shall bear the name and address of the person for whom the cotton was ginned, the number of the bale on the books of the ginner, and the weight of the bale at the gin. [Id.]

Art. 5673. Duty of Commissioner.—The Commissioner [1] shall have power and authority, and it shall be his duty to enforce all provisions of this chapter relating to ginners and to regulate and control them in all matters relating to the performance of their duties as such. [Id.]

[1] Office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department and the Weights and Measures Department, were abolished and powers, duties and functions transferred to the Commissioner of Agriculture, see article 5611, ante.

Art. 5674. Cotton Board.—All matters relating to the issuance of a ginners license, and all rules and regulations pertaining to gins, ginning, and ginners, as authorized and required by any provision of this chapter shall be subject to review for affirmation, modification or rejection, by a board hereby created to be known as the Cotton Board, which Board shall be composed of the Commissioner of Agriculture, Banking Commissioner, and the Commissioner of Markets and Warehouses.[1] The last named Commissioner shall be chairman of the said board, and shall have the power, and it shall be his duty, to convene said board at all reasonable necessary times, to hear and decide all questions properly coming before it for review and decision. All rules, regulations, and acts of the Commissioner of Markets and Warehouses, or of said board, pertaining to gins, ginners, and ginning, shall be subject to review by any court of competent jurisdiction in this State. [Id.]

[1] See note under Article 5673, ante.

Art. 5675. Marking cotton.—Each ginner shall place on one side of each bale of cotton ginned by him "B————," filling in the blank by placing the same number therein as that of the bale as shown on the books of the gin ginning the same. [Acts 1st C.S. 1917, p. 65; Acts 1935, 44th Leg., p. 657, ch. 271, § 1.]

Art. 5676. Wrapping cotton.—Each bale of cotton ginned by a licensed and bonded ginner in this State shall be so wrapped that the bale will be completely covered when compressed and that the ends of the bale shall be closed and well sewed. The quality of the bagging shall at all times be such that the markings thereon will, under ordinary conditions, remain intact and visible. [Acts 1st C.S. 1917, p. 65.]

Art. 5677. [1322] Baling of cotton regulated.—Every person, firm, corporation or association of persons, owning or operating a compress in this State, and their agents and employés, are hereby required, in compressing, recompressing, baling or rebaling cotton bales, to so bind and tie every bale of cotton by them compressed, recompressed, baled or rebaled, that no such bale shall be delivered to any railroad company, or other common carrier, by such person, firm, corporation or association of persons, their agents or employés, unless such bale of cotton shall be free from all or any dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part of the ties, bands, buckles or splices used in tying or binding such bale of cotton. Any such person, firm, corporation or association of persons, who shall fail to bind or tie any such bale of cotton by them compressed, recompressed, baled or rebaled, in the manner above provided, and shall deliver or cause to be delivered, any such bale of cotton to any railroad company, or other common carrier, shall forfeit and pay to the State of Texas not less than fifty nor more than two hundred and fifty dollars, which may be recovered in a civil suit brought in the name of the State. [Acts 4th C. S. 1910, p. 118.]

Art. 5678. [1323] Liability.—Any person, firm, corporation or association of persons, receiving for storage, loading for transportation, or transporting, any such compressed bale or bales of cotton, in this State, containing any dangerously exposed ends of bands or buckles, or any dangerously protruding part or parts of the ties, bands, buckles or splices used in tying or binding such bale or bales of cotton, shall be liable in damages for injury to any person in the employ of such person, firm, corporation or association of persons, occasioned by reason of such dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part or parts of the ties, bands, buckles, or splices used in tying or binding such bale or bales of cotton while in the discharge of the duties of such employment. The duty of inspection of such bales of cotton shall be on the employer and not the employee. [Id.]

Art. 5679. [1324] Duty of Commissioner.—The Commissioner of Labor Statistics shall see that the provisions of the two preceding articles are observed and enforced. He shall obtain and collect evidence of any violation thereof upon the part of any person, firm, corporation, or association of persons engaged in the business of compressing cotton, who shall fail to comply with said provisions. Said commissioner shall file annual statements with the Governor, showing in detail all expenses incurred by him in connection with his duties under this law. [Id.]

Art. 5679a. Regulating public cotton classers.

Defining cotton classers

Sec. 1. All persons in this State, who shall hereafter grade cotton for the public, or who shall hereafter issue or cause to be issued, a receipt or ticket for cotton, and place on said ticket the grade of said cotton, which said ticket is intended for the use of the public in buying and selling said cotton, shall be known as Public Cotton Classers and before entering upon such duties, shall comply with the provisions of this Act. After complying with said provisions, such Classers shall be known as Registered Public Cotton Classers. Classers as herein referred to shall include every person, or persons who shall grade or staple cotton.

Qualifications

Sec. 2. All Public Cotton Classers shall furnish evidence of their good moral character, and, as evidence of their qualifications as Cotton Classers, they shall be required to obtain from the Secretary of Agriculture of

the United States, a license to grade or staple cotton and to certify the grade and staple thereof in accordance with the official cotton standards of the United States Cotton Standards Act, and file with the Commissioner of Agriculture of this State, hereafter called the "Commissioner", a duplicate thereof.

Bond

Sec. 3. Before any such licensee shall issue a certificate of classification in this State, except as provided in United States Cotton Standards Act, he shall file a bond with the Commissioner to be approved by him, in the sum of One Thousand ($1,000.00) Dollars, which bond shall be so conditioned as to bind its maker and his sureties to guarantee as approximately correct, his work in classing and stapling cotton. It shall also bind the maker and his sureties to promptly indemnify any person who may sustain financial loss by reason of any false class or staple he may make, or by reason of any untrue or misleading certificate issued by him or under his authority, with intent to defraud. Such bonds shall be payable to the State of Texas for the use and benefit of any person or persons who may be damaged by the breach of its conditions, but it shall not be necessary to join the State in any suit on any such bond, the venue of such suit on any such bond shall be that of the general venue by suit or otherwise, the Commissioner may, by written notice to the maker, require such impairments to be made good. If any such impairment is not made good, to the satisfaction of the Commissioner, within a reasonable time after notice, which time shall in no event, exceed thirty (30) days, such bond shall become null and void.

Record of classer

Sec. 4. Each Public Cotton Classer in this State shall keep a complete record of cotton classed and for whom classed, in a well bound book, and shall issue a certificate to each person showing the class and other grade of the cotton classed by him. He shall also keep on hand, a set of the United States Standards of grades and staples and his books, records and standards shall be open to inspection of the public at all reasonable hours.

Form of receipts and records

Sec. 5. It shall be the duty of the Commissioner to prescribe all forms of receipts, certificates and records of whatever description necessary, but all such receipts, certificates and forms shall be drawn in compliance with this Act. He shall prescribe such rules and regulations as he shall deem proper, not in conflict with any provisions hereof. The Commissioner shall have power and authority and it shall be his duty to enforce the provisions of this Act.

Fees

Sec. 6. Before any Public Cotton Classer is registered under this Law, he shall pay over to the Commissioner a fee of Five ($5.00) Dollars, said fee shall be paid annually along with the renewal of his said bond, such fee to be deposited in the State Treasury to the credit of the general revenue.

Right

Sec. 7. All Registered Public Cotton Classers shall have the right, at any time within this State, to engage in the business of Public Cotton Classers and shall be authorized to class and staple cotton generally, and to charge for their services. A certificate of classification of cotton issued by any person or persons under authority of this Act, shall be accepted in all the courts of this State, as prima facie evidence of the facts stated therein.

Rights to class own cotton

Sec. 8. This Act shall not affect the right of anyone to class his own cotton or of any cotton buyer or other person to class cotton purchased by him for himself, or purchased for another, but applies to all other persons who engage in the business of classing cotton for the public or of issuing receipts and tickets therefor with the grade thereon, for the use of the public, as herein above provided.

Collections and appropriations

Sec. 11. All moneys so collected shall be paid over by the Commissioner to the State Treasurer and shall be placed in the General Fund of the State. [Acts 1931, 42nd Leg., p. 101, ch. 68; Acts 1931, 42nd Leg., 2nd C.S., p. 24, ch. 13.]

Sections 9 and 10 of Acts 1931, 42nd Leg., 2nd C.S., p. 24, ch. 13, being penal provisions are published as Pen. Code Art. 1027a.

Art. 5679b. Deduction from agreed price for deficiency in weight.—When any buyer of spot cotton has made a bona fide bid for same from sample or bale and the sale price is agreed to between the buyer and seller, the buyer shall not make any deductions from the total value thereof as agreed to between the parties by reason of the weight of said bale of cotton, unless such bale shall weigh less than four hundred (400) pounds. If the bale weighs less than four hundred (400) pounds a deduction of not more than One Dollar ($1.00) may be made by the buyer. Nothing contained herein shall prevent the buyer from refusing to accept a bale of cotton weighing less than three hundred and fifty (350) pounds. [Acts 1933, 43rd Leg., p. 379, ch. 150, § 1.]

Art. 5679c. Recovery of double amount of unlawful deductions.—If deductions or charges are made contrary to this Act, then the seller or grower of such cotton may recover from the buyer or ginner twice the amount of the deductions or charges in the same manner as is allowed for recovery by law for usury. [Acts 1933, 43rd Leg., p. 379, ch. 150, § 2.]

CHAPTER 6.—PUBLIC WEIGHER

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Article 5680. "Public weigher" defined.—Any person engaged in the business of public weighing for hire, or any person, who shall weigh or measure any commodity, produce or article, and issue therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce or article is based, shall be known as a public weigher, and shall comply

with the provisions of this chapter. The provisions of this article shall not apply to the owners, managers, agents or employees of any compress or any public warehouse in their operation as a warehouseman. This exemption shall not apply in any manner to any Texas port. [Acts 1919, p. 168.]

Art. 5681. [7828] [4308] Appointment.—The Governor is authorized and required to appoint five persons as public weighers in every city which receives annually one hundred thousand bales of cotton on sale or for shipment. In all cities and towns which receive as much as fifty thousand bales of cotton, twenty-five thousand tons of cotton seed; one hundred thousand bushels of grain or rice, one hundred thousand pounds of wool; five thousand barrels of sugar, or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient number of public weighers for such city or town to carefully and accurately weigh all produce tendered for the purpose of weighing for shipment. [Acts 1883, p. 83; Acts 1899, p. 264; Acts 1919, p. 124.]

Art. 5682. Recommendation for appointment.—No man shall be appointed as such weigher unless he shall receive the endorsement of the senator and a majority of the representatives from the senatorial district where such appointee would hold such office. [Acts 1919, p. 124.]

Art. 5683. [7828] [4308] Election.—In all counties in which there are no city or cities in which the Governor is authorized to appoint public weighers, there shall be elected at each general election a public weigher for each justice precinct in the manner and form governing the election of other precinct officers. The commissioners court at the regular February term preceding the election may unite two or more justice precincts for the purpose of electing such public weighers. [Id.]

Art. 5683a. Office in counties of not less than 25,600 nor more than 25,700 population.—In and for all counties in this State having a population, according to the United States census of 1920, of not less than 25,600 people and not more than 25,700 people, there is created the office of public weigher, whose official headquarters shall be at the county seat of such county and who shall discharge and perform at the county seat only, all the duties required by law of any public weigher, and whose qualifications shall be the same as required by law of public weighers elected in precincts, and who shall appoint a sufficient number of deputies to enable him to discharge his duties.

2. Such public weigher shall take the oath required by the Constitution of public officers, and shall give a bond in the sum of $2,500.00, payable, conditioned and to be approved as required in cases of bonds of precinct public weighers, and shall procure a like certificate of authority from the Commissioner of Markets and Warehouses.[1] The deputies of such public weigher shall take such oath and give bond in like manner, which bond, however, shall in the case of such deputies be in the sum of $1,000.00.

3. At the first regular term of the commissioners' court of such counties, following the passage of this Act, such commissioners' court shall appoint a public weigher for its county, who shall serve until the next general election when his successor shall be elected.

4. This Act shall not be construed to suspend the operation of the present law, providing for the election of precinct public weighers, in the counties effected [affected] by this law.

[1] Office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department and the Weights and Measures Department, were abolished and powers, duties and functions transferred to the Commissioner of Agriculture, see article 5611, ante.

Art. 5683b. Office in counties with not less than 55,700 nor more than 55,800 population.—In and for all counties in this State having a population according to the United States census of 1920 not less than 55,700 and not more than 55,800 people, there is created the office of public weigher to be filled by two officers of equal rank, whose official headquarters shall be in the county seat of such county and who shall discharge and perform at the county seat only, all the duties required by law of any public weigher and whose qualifications shall be the same as required by law of public weighers elected in precincts, and who shall appoint a sufficient number of deputies to enable them to discharge their duties.

Sec. 2. Each of said public weighers shall take the oath required by the Constitution of public weighers and give a bond in the sum of $2,500, payable, conditioned and to be approved as required in cases of bonds of precinct public weighers, and shall procure a like certificate of authority from the Commissioner of Markets and Warehouses.[1]

Sec. 3. Such public weighers shall be elected by popular vote of the entire county as other county officers. One of said weighers shall fill a place called Place No. 1 and the other shall fill the place called Place No. 2.

Sec. 4. This Act shall not be construed to suspend the operations of the present law providing for the election of Precinct Public Weighers in the counties affected by this law, except the precinct in which the county seat is located, and it shall not disturb the present Public Weighers, but shall take effect and be in force on and after January 1, A. D. 1927. [Acts 1925, 39th Leg., ch. 91, p. 265; Acts 1926, 39th Leg., 1st C. S., p. 21, ch. 14, § 1.]

[1] See note under Article 5683a, ante.

Art. 5684. [7828] [4308] Qualifications of weigher.—No person shall be appointed or elected public weigher unless he is a qualified voter in the city or precinct for which he is appointed or elected and is of a good moral character and unquestioned integrity. He shall have a fair education and be able to keep an accurate set of books as required by this law. No person shall be appointed or elected public weigher, or deputy public weigher who is interested in the buying or sale of cotton, wool, sugar or grain to be weighed, either as principal, agent, factor, commission merchant or employee. [Acts 1919, p. 124.]

Art. 5685. Term and removal.—All public weighers appointed by the Governor or elected for any precinct shall hold their office for the term of two years. [Id.]

Art. 5686. Abolishing elective office.—When the people of any subdivision of a county that has an elective weigher may wish to abolish said office of public weigher, the commissioners court of said county shall, upon petition to abolish said office signed by qualified voters at least one-third in number of the whole vote cast for Governor at the last preceding election in the weigher's precinct, order an election to decide whether such office of public weigher of the subdivision named in the petition, shall be abolished or not. Said election shall be held in the same manner as other elections. If a majority of the votes of the subdivision of the county ordering said election shall be cast in favor of abolishing any office of public weigher, the commissioners court shall declare such office to be abolished within thirty days after the election; and another election for this purpose shall not be held for two years.

Art. 5687. Bond of appointed weigher.—Every public weigher appointed by the Governor, shall file a bond payable to the State of Texas in the sum of five thousand dollars, conditioned that he will accurately weigh, or measure all produce tendered to him for weighing or measuring, and that all certificates of weights issued by him shall represent a true and ac-

curate weight of the produce so weighed and that he will comply with the laws governing public weighers, and that he will not permit any one to molest, mutilate or destroy any article, produce or commodity while in his possession. Such bond shall not be void on first recovery, but may be sued on by any person injured by such public weigher. All bonds given by such public weighers or their deputies shall be subject to approval by the Commissioner of Markets and Warehouses.[1] [Acts 1919, p. 122.]

[1] See note under Article 5683a, ante.

Art. 5688. [7829] Bond of elective weigher.—Each public weigher elected for a precinct shall execute a bond payable to the county judge in the sum of five thousand dollars to be approved by the commissioners court, conditioned upon the faithful and impartial performance of the duties of his office. The bond of a weigher for a precinct where not over five thousand bales of cotton are received for sale or shipment shall be two thousand five hundred dollars. [Acts 1903, p. 216.]

Art. 5689. Filing bond and oath of office.—Each public weigher, whether elected or appointed, before entering upon his duties as such, shall take and subscribe to the official oath and file said oath and his bond with the county clerk of the county in which he resides. [Id.]

Art. 5690. Certificate of authority.—All public weighers or deputy public weighers, appointed or elected shall obtain from the Commissioner of Markets and Warehouses [1] a certificate of authority to carry on the business of public weigher or deputy public weigher within the city, town, precinct or shipping point for which he was elected or appointed. [Acts 1919, p. 124.]

[1] See note under Article 5683a, ante.

Art. 5691. Deputy weighers.—Each public weigher, appointed or elected, shall have the right, and it shall be his duty to appoint a sufficient number of deputies in each precinct, to weigh all produce tendered for the purpose of weighing, at any and all points within such precinct. He shall require of each of said deputies to file a bond in the penal sum of one thousand dollars, under the same terms and conditions as the bond which he filed with the commissioners court of the county in which he resides, before he shall be permitted to engage in the business of deputy public weigher; such bond so filed, shall be payable to the State of Texas, and shall be subject to the approval of the commissioners court of the county in which he resides, and certified to the Commissioner of Markets and Warehouses,[1] before such deputy public weigher shall be entitled to engage in the business of public weighing. Such public weigher shall have the right to appoint a sufficient number of deputies to serve at will of the public weigher, to aid him in weighing or measuring any commodity that is tendered to him for weighing.

[1] See note under Article 5683a, ante.

Art. 5692. Special weighers.—In all counties of this State in which there are two or more cities, towns or shipping points that receive as much as fifty thousand bales of cotton, or twenty-five tons of cotton seed, or one hundred thousand bushels of grain, or two hundred thousand bushels of rice, or one hundred thousand pounds of wool, or five thousand barrels of sugar, or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient number of weighers for such county to carefully and accurately weigh all commodities tendered for the purpose of weighing for shipment, sale or purchase. This article shall not apply to Galveston and Nueces counties. All such appointments shall be made by the Governor on the recommendation of the Senator from whose senatorial district such appointment is made, together with a majority of the representatives in the Legislature from such senatorial district. No man shall be appointed unless he shall receive the endorsement of the Senator and a majority of the representatives from such district. Every public weigher so appointed shall file a bond payable to the State of Texas, in the sum of five thousand dollars, conditioned that he will accurately weigh, or measure, all commodities tendered to him in said county for weighing or measuring, and that all certificates of weight issued by him shall represent a true and accurate weight of such produce so weighed, and otherwise complying with the law governing the conditions of bonds required of public weighers. Such bond so given shall not be void upon first recovery but may be sued on successively by any and all persons who are injured by such public weigher. Such public weigher shall have the right to appoint a sufficient number of deputies to aid him in weighing or measuring any commodity that is tendered to him for weighing. All bonds given by such public weighers or their deputies shall be subject to the approval of the Commissioner of Markets and Warehouses,[1] and all bonds and oaths of such public weighers or their deputies shall be filed with said Commissioner. [Acts 1st C. S. 1921, p. 35.]

[1] See note under Article 5683a, ante.

Art. 5693. Must comply with law.—No one shall be allowed to pursue the business of weighing for the public or grant a certificate or weight sheet upon which a purchase or sale is made unless he comply with the provisions of this chapter. [Id. Acts 1919, p. 124.]

Art. 5694. Commissioner to supervise.—All public weighers in this State as provided for in this chapter, shall be under the supervision of the Commissioner of Markets and Warehouses [1] and all weights made by them shall be subject to his approval. In any case where any discrepancy arises as to weights or measures of cotton or other farm products, made between public weighers in different sections of this State, or between public and private weighers, the difference shall be subject to review by the Commissioner; and any party who may be dissatisfied with the weights or measures of any public or private weigher, may appeal to the Commissioner, and have such cotton or other farm products re-weighed or re-measured, for the purpose of ascertaining and deciding the correct weight and measure thereof. The scales of all public and private weighers weighing cotton and other products shall at all reasonable times be subject to inspection by the Commissioner, or his duly authorized representative. Compliance with this article shall be absolute prerequisite to the right to institute and maintain any action concerning the subject matter hereof, in any court of this State. The authority herein conferred upon the Commissioner, to review the weights, shall not be construed as in any manner affecting the selection of public weighers or of fixing the charge to the public of such public weighers. [Acts 1st C. S. 1917, p. 68.]

[1] See note under Article 5683a, ante.

Art. 5695. Duty of Commissioner.—The Commissioner of Markets and Warehouses [1] shall issue a certificate of authority to all persons engaged in the business of weighing for the public; carefully and accurately test all scales, weights, beams and measures, used by such public weighers at least once every twelve months, and charge such public weigher a fee of five dollars for such inspection, which fee shall be paid, by the Commissioner into the State Treasury; such inspection fee to be collected at the time of the certificate of authority is issued to any public weigher or deputy public weigher in this State, and such fee shall be collected annually thereafter from all persons engaged in the business of public weigher. [Id. p. 126.]

[1] See note under Article 5683a, ante.

Art. 5696. Weight certificates.—The Commissioner [1] shall prescribe the form of weight certificate to be used by all public weighers in this State, which certificate shall be known as a State certificate of

Weights and Measures. Such certificate shall state thereon the kind of produce; the number of same, the date of the receipt of the produce, the owner, agent, or consignee, the total weight of the produce, the vessel, railroad, or other means by which the produce was received, and any trade or other mark thereon; and such other information as may be necessary to distinguish or identify the produce from a like kind. No certificate other than the one herein prescribed shall be used by any public weigher in this State, and such certificate when so made and properly signed, shall be prima facie evidence of such weight. All certificates of weights and measures or weight sheets as provided for in this chapter shall contain the accurate and correct weight of any and all commodities weighed when issued by public weighers. [Id. p. 126.]

[1] See note under Article 5683a, ante.

Art. 5697. Seal.—Every public weigher in this State shall provide himself with a seal, consisting of a star of five points, and shall have inscribed on the outer margin thereof the words, "Public Weigher, Precinct No. —, ——— County, Texas" or "Public Weigher, ——— city, Texas" which seal shall be impressed upon each weight certificate issued by such public weigher, or deputy public weigher, on all weight sheets made out by them. [Id. p. 125.]

Art. 5698. Record of weights.—All public weighers shall keep and preserve in a well bound book a correct and accurate record of all weights by them, as provided in this chapter, which record shall at all times be open for inspection to the public and to the Commissioner of Markets and Warehouses,[1] his deputies or inspectors. Such record shall be uniform throughout the State, and the form of such record shall be prescribed by the Commissioner. [Id.]

[1] See note under Article 5683a, ante.

Art. 5699. Piled or stored separately.—All amounts, lots, or shipments or consignments of produce, after having been weighed, shall be piled or stored separately as nearly as can be, in order that amounts, lots, shipments or consignments, may be distinguished from other lots, shipments, or consignments of like kind. [Id. p. 127.]

Art. 5700. To tag or mark article.—All public weighers in weighing any commodity, produce, or article, shall immediately tag or mark such commodity, produce or article that has been weighed by him so as to distinguish same from that which has not been weighed. [Id.]

Art. 5701. Re-weighing.—When any doubt or difference arises as to the correctness of the net or gross weight of any amount, or a part of a commodity, produce or article, for which a certificate of weight or measure has been issued, as provided in this State, by the public weigher, the owner, agent or consignee, may, upon complaint to the Commissioner of Markets and Warehouses,[1] have said amount, or part of any commodity, produce or article re-weighed by the Commissioner, or his deputy, or by a public weigher designated by the Commissioner by depositing with the Commissioner sufficient money to defray the cost of re-weighing such article or commodity. If on re-weighing, it is discovered that fraud or carelessness, or any faulty weighing apparatus was the cause of a discrepancy in weights, the cost of re-weighing shall, in all instances, be borne by the public weigher who issued the weight sheet or weight certificate. [Id.]

[1] See note under Article 5683a, ante.

Art. 5702. Suspension or dismissal.—Whenever any public weigher, or deputy public weigher appointed or elected under the provisions of this chapter shall be guilty of malfeasance in office, or who is grossly incompetent in the performance of his duties, he shall be subject to suspension or dismissal from office by the commissioners court of the county in which he resides, or by the Governor, should he be appointed by the Governor. In all cases it shall be the duty of the Commissioner of Markets and Warehouses,[1] to file with the commissioners court or the Governor the specific charges alleging malfeasance, misfeasance, dishonesty or incompetency or other cause. Such case may be set down for hearing not less than ten nor more than thirty days from the filing of such charges. The accused shall be furnished a copy of such charges and be notified of the date set for hearing of his case. He shall have the right to be represented by an attorney, to introduce evidence in his own behalf, and to have compulsory process for witnesses and the production of records. If he is found guilty, the commissioners court or Governor shall immediately discharge him as a public weigher, provided, he may have the right of appeal to the district court of his county or to the district court of Travis county. [Id.]

[1] See note under Article 5683a, ante.

Art. 5703. [7833] [4314] Factor or commission merchant.—It shall not be lawful for any factor, commission merchant, or other person or persons, to employ any other than a public weigher, or his deputies to weigh cotton, wool, sugar, hay, or grain, or other produce, sold or offered for sale in any city or justice precinct having a public weigher duly qualified. Whoever violates any provision of this article shall be liable at the suit of the public weigher to damages in any sum not less than five dollars for each bale of cotton, bale or sack of wool, ton of hay, or ton of grain, so unlawfully weighed. [Id.]

Art. 5704. [7834] [4316] Owner may weigh, etc.—Nothing in this chapter shall prevent any person, firm or corporation from weighing his own cotton, wool, sugar, hay, grain or pecans in person. In places where there are no public weighers appointed or elected, any person who shall weigh cotton, wool, sugar, grain, hay, or pecans for compensation shall be required before weighing such produce to enter into a bond for twenty-five hundred dollars approved and payable as in case of public weighers referred to in this chapter, and conditioned that he will faithfully perform the duties of his office and turn over all property weighed by him on demand of the owner. This article shall not apply to merchant flouring mills. [Acts 1905, p. 117.]

Art. 5704—A. Public weighers in counties of 290 000 to 320,000; election; deputies; bonds of deputies.—In precincts located in counties having a population of not less than two hundred ninety thousand (290,000) and not more than three hundred twenty thousand (320,000) inhabitants according to the last preceding or any future Federal Census, where a Public Weigher is elected by the people in any last election held for that purpose, no Public Weigher shall be appointed to perform the same or similar services and the authority now vested in the Governor, the Commissioner of Agriculture and the Commissioners' Courts to so appoint or authorize other persons to perform the same duties, or similar duties as elected Public Weighers is hereby repealed only to the extent of its conflict with this Act. The elected Public Weigher in such counties shall have authority to appoint a sufficient number of deputies to conveniently serve the public need; and such deputies, before taking the oath of office, shall be required to give a bond approved by the Commissioners' Court of the county where appointed to serve as a deputy, in the sum of One Thousand ($1,000.00) Dollars conditioned as provided in the bond required to be given by the elected Public Weigher, as to liability. [Added Acts 1939, 46th Leg., Spec.L., p. 854, § 1.]

CHAPTER 7.—WEIGHTS AND MEASURES

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Article 5705. Commissioner to enforce law.—The Commissioner of Markets and Warehouses [1] shall have power and authority to enforce, or cause to be enforced, any provision of this chapter. He shall appoint a chief deputy, who shall be known as Chief Deputy of Weights and Measures. In the absence or inability of the Commissioner, such deputy may perform any duty required by the provisions of this chapter. The Commissioner shall also appoint such additional deputies from time to time to serve as sealers of weights and measures, as may be provided for by appropriation. He may also designate such inspectors, lecturers, or employés, serving under him as Commissioner, as sealers of weights and measures. [Acts 1919, p. 237.]

[1] Office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department and the Weights and Measures Department, were abolished and powers, duties and functions transferred to the Commissioner of Agriculture, see article 5611, ante.

Art. 5706. Expenses.—Such deputies, together with the chief deputy and the Commissioner,[1] shall be entitled to their actual traveling expenses when traveling on business for the State, and the Legislature shall provide from time to time by appropriation other estimated expenses to fully carry out the provisions of this chapter. [Id.]

[1] See note under Article 5705, ante.

Art. 5707. Duty of Commissioner.—The Commissioner [1] shall investigate conditions throughout the State, and especially in all the cities and towns in the State, with respect to weights and measures, and the sale of goods, wares and merchandise, commodities, food stuff and feed stuff sold in packages or containers, and also all kinds of feed, fuel or ice that is sold by weight or measure. The Commissioner shall annually report to the Governor, and shall, prior to each regular session of the Legislature, file a copy of such report made by him to the Governor, together with his recommendations, with the Legislature of the State. [Id.]

[1] See note under Article 5705, ante.

Art. 5708. Rules and regulations.—The Commissioner [1] shall issue instructions and make such rules and regulations for the government of all State sealers of weights and measures, deputy sealers, inspectors and local sealers, as he may see proper in order to carry out the purposes of this chapter. All such rules and regulations so issued by him shall have the same force and effect as if they were enacted into law. [Id.]

[1] See note under Article 5705, ante.

Art. 5708a. County sealers in certain counties; deputies.—Section 1. The Commissioners Court in each county having a population of not less than sixty-nine thousand, four hundred (69,400) and not more than seventy thousand (70,000), according to the last or any succeeding United States Census, may in its discretion appoint a county sealer of weights and measures. He shall be paid a salary to be determined by said Court, said salary not to be less than Fifteen Hundred Dollars ($1500) a year, and no fee shall be charged by him or by the county for the inspecting, testing, or sealing or the repairing or adjusting of any weights, measures, or weighing or measuring devices. Whenever the Court shall deem it necessary, one or more deputy sealers of weights and measures may be appointed to hold office under the same conditions as those specified for the sealer of weights and measures, and the salaries of such deputies shall be fixed as in the case of the sealer of weights and measures. All deputies appointed shall have the same powers and may perform the same duties as the county sealer, when acting under his instructions and at his direction. Provided that the appointments of all county sealers and deputy sealers being made under the provisions of this Chapter shall be subject to the approval of the Commissioner of Agriculture.

Section 2. All county sealers appointed under the terms of this Act shall have the same power, authority, duties, and responsibilities as are conferred upon all State and local sealers, in the performance of their official duties by the laws of this State. The jurisdiction of all county sealers and deputy sealers appointed by the Commissioners Court of any county in this State shall be coextensive with the limits of said county.

Section 3. Nothing in this Act shall be construed to prevent two (2) or more counties, or a county and a city situated therein, from combining the whole or any part of their districts, as may be agreed upon by the Commissioners Courts of the counties, or such Court of the county and the Mayor and the Common Council of the city, with one set of standards and one sealer, upon the written consent of the Commissioner of Agriculture. A sealer appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority, jurisdiction, and duties as if he had been appointed by each of the authorities who are parties to the agreement. [Added, Acts 1941, 47th Leg., p. 1319, ch. 592, § 1.]

Art. 5709. Jurisdiction.—The jurisdiction of all State sealers, deputy sealers and inspectors appointed by the Commissioner [1] shall be co-extensive with the limits of the State and they shall have a right to inspect weights and measures in any and all districts or localities designated by the Commissioner. The jurisdiction of all local sealers of weights and meas-

ures appointed by the governing body of any city in this State shall be co-extensive with the limits of said city. [Acts 1919, p. 237.]

[1] See note under Article 5705, ante.

Art. 5710. Same power as peace officer.—The Commissioner,[1] his deputy, sealers or inspectors and all local sealers and their deputies in the performance of their official duties, shall have the same power as peace officers in this State. [Id.]

[1] See note under Article 5705, ante.

Art. 5711. Record of acts and reports.—The Commissioner [1] shall keep in his office a complete record of all acts done by him; of all inspections made throughout the State, and a record of all prosecutions for the violation of any provision of this chapter. He shall keep an accurate record of the reports of all the various sealers of weights and measures, deputy sealers and inspectors appointed by him, or under his direction, as well as a record of the inspections of all local sealers of weights and measures appointed by the various cities of the State; such record shall always be open to the inspection of the public. Copies of such record may be had by application therefor, together with the necessary cost of making such copies. [Id.]

[1] See note under Article 5705, ante.

Art. 5712. Test of standard.—The standard of weights and measures received from the United States under a resolution of Congress, approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto, or in renewal thereof, and such as shall be procured by the State in conformity therewith and certified by the bureau of standards, shall be the State's standards by which all State and municipal standards of weights and measures shall be tried, authenticated, proved and sealed. [Id.]

Art. 5713. To keep and maintain standards.—The standards referred to in the preceding article shall be kept by the Commissioner [1] in a safe and suitable place in his office, from which they shall not be removed except for repairs or certification. He shall maintain such standards in good order and shall submit them, at least once in ten years to the National Bureau of Standards for certification. He shall purchase such apparatus as shall be found necessary to a proper prosecution of the work of the office. [Id.]

[1] See note under Article 5705, ante.

Art. 5714. Penal provision.

Acts 1931, 42nd Leg., p. 125, ch. 89, § 1, in amending this article makes it a penal provision and it is, therefore, classified as Pen.Code, Art. 1057d.

Art. 5714a. County sealer; deputies; combining districts.—(1) The Commissioners Court in each county in Texas may in its discretion appoint a county sealer of weights and measures. He shall be paid a salary to be determined by said Court and no fee shall be charged by him or by the county for the inspecting, testing, or sealing or the repairing or adjusting of any weights, measures, or weighing or measuring devices. Whenever the Court shall deem it necessary, one or more deputy sealers of weights and measures may be appointed to hold office under the same conditions as those specified for the sealer of weights and measures, and the salaries of such deputies shall be fixed as in the case of the sealer of weights and measures. All deputies appointed shall have the same powers and may perform the same duties as the county sealer, when acting under his instructions and at his direction.

(2) All county sealers appointed under the terms of this Act shall have the same power, authority, duties and responsibilities as are conferred upon all State and local sealers, in the performance of their official duties by the laws of this State. The jurisdiction of all county sealers and deputy sealers appointed by the Commissioners Court of any county in this State shall be co-extensive with the limits of said county.

(3) Nothing in this Act shall be construed to prevent two (2) or more counties or a county and a city or cities situated therein, from combining the whole or any part of their districts, as may be agreed upon by the Commissioners Courts of the counties, or such Court of the county and the mayor and the common council of the city or cities, with one set of standards and one sealer. A sealer appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority, jurisdiction and duties as if he had been appointed by each of the authorities who are parties to the agreement. [Acts 1945, 49th Leg., p. 261, ch. 193, § 1.]

Section 2 of the Act of 1945 repealed all conflicting laws. Section 3 read as follows:

"Sec. 3. If any Article, Section, provision, sub-division, or part of this Act should be held invalid for any reason, it is the legislative intent that the remainder of the Act shall remain in full force and effect."

Art. 5715. Copies to cities.—The Commissioner [1] shall, at the request of any city council, town council, city commission or any other such town or city body, furnish to them copies of the standard weights and measures of the State; such copies shall be furnished at the expense of any such city or town requesting the same. He shall, upon request of any such city council, town council, or city commission, test and accurately approve copies of the State's standards of weights and measures procured for the use of any such city or town, to be used by the sealer of weights and measures for such city or town. All copies furnished or copies tested and approved by the Commissioner shall be true and correct; shall be sealed and certified by the Commissioner and stamped with the letter "C." Such copies need not be of the same material or construction as the standards of the State and such copies may be furnished in any suitable materials or construction that the city or town requiring the same may specify, subject, however, to the approval of the Commissioner. [Id.]

[1] See note under Article 5705, ante.

Art. 5716. Correcting standards of cities.—The Commissioner [1] shall inspect and correct the standards used by any incorporated city or town in this State at least once every two years and compare the same with others in his possession, and keep a record of the state of inspection and character of weights and measures so compared. [Id.]

[1] See note under Article 5705, ante.

Art. 5717. Sale of false devices.—The Commissioner [1] shall have general supervision over all weights and measures and weighing and measuring devices sold or offered for sale in this State. If any false weights or measures are being sold, offered for sale, or about to be sold, he shall have full authority to condemn same and prohibit the sale and distribution of such false weights and measures, or weighing and measuring devices in this State. [Id.]

[1] See note under Article 5705, ante.

Art. 5718. Certified standard.—All sealers of weights and measures, or deputy sealers of weights and measures appointed under the terms and provisions of this law are prohibited from using for the purpose of comparison or verification in any official capacity any weights or measures, unless same have been certified to by the Commissioner.[1] All expenses incurred in certifying to the correctness of the weights and measures or copies of the same used by any incorporated city or town in this State shall be paid by such city or town for whom the comparison or test is made. [Id.]

[1] See note under Article 5705, ante.

Art. 5719. Copies of original standard.—In addition to the standards heretofore referred to, and required to be kept by the State, the State shall also have a complete set of copies of such original standards of weights and measures adopted by this chapter, which shall be used for adjusting municipal standards by the Commissioner [1] or his deputy in the performance of their duties, and the original standards shall not be used, except for the adjustment of this set of copies and for certification purposes. Additional complete sets of copies for such original standards of weights and measures may be purchased by the Commissioner when the same are necessary for use by any State sealer of weights and measures, or deputy State sealer of weights and measures. In all instances where the State shall furnish true and correct copies of weights and measures for the use of any incorporated city or town in this State, such city or town shall reimburse the State for the actual cost thereof, plus such expenses as are necessary to pay the freight, express and cost of certification thereof. [Id.]

[1] See note under Article 5705, ante.

Art. 5720. Tests for State institutions.—The Commissioner [1] or his deputy shall at least once annually, or oftener if requested so to do by the Board of Control, or board of supervisors, regents or other governing body of any State institution or penitentiary commission or the governing body of any other penal institution of the State, test all scales, weights and measures used in checking the receipt and distribution of supplies of any such institution under the control of the State, and shall report his findings to the Chairman of the Board, or the superintendent of such institution. He shall also test all scales, weights and measures used for any other purpose by such institution. [Id.]

[1] See note under Article 5705, ante.

Art. 5721. Charges against city sealer.—The Commissioner,[1] if he finds that any sealer or deputy sealer of weights and measures appointed by any incorporated city or town in this State, by virtue of the authority given them under the law, is neglecting to perform the duties of his office, or has refused to accept the recommendations and instructions of the Commissioner and be guided thereby, or is guilty of any malfeasance in office, or who is incompetent, he shall present to the governing body or officer who has control or supervision of such city sealer of weights and measures, or deputy sealer of weights and measures, a written charge and accusation based upon and clearly stating the offense of such sealer or deputy sealer and request such officer or governing body to hear and determine such accusation. Upon receipt of such charge and accusation, such officer or city commission with whom the same has been filed, shall make an order setting the same for a hearing at a time which shall be not less than ten nor more than twenty days from the date of filing of such charge and accusation and shall in such order fix the time and place for such hearing. A copy of such charge and accusation, together with a copy of such order, shall be served upon the accused at least seven days prior to the time fixed for such hearing. At such hearing the accused shall have the right to be represented by counsel and to produce evidence in his defense. If, upon such hearing, he shall be found guilty of malfeasance, or misfeasance in office or adjudged to be incompetent to perform the duties of the office, the officer or governing body before whom such hearing is had must forthwith remove him from office. Whenever it shall become known to the Commissioner or his deputy that any local sealer of weights and measures for any city or town in this State, or deputy sealer of weights and measures, is guilty of accepting any bribe, gift or money from any one who is interested in procuring false weights and measures, as soon as such fact shall become known, or be made known to the officer or governing body employing such sealer or deputy sealer, he or they shall immediately suspend such sealer from office. [Id.]

[1] See note under Article 5705, ante.

Art. 5722. To supervise local sealers.—Every local sealer of weights and measures, or deputy sealer, appointed by any governing body of any town or city shall be under the supervision of the Commissioner,[1] and shall be required to report to him regularly and carry out all the instructions of the Commissioner. Failure or refusal to do so shall be grounds for dismissal from the service. [Id.]

[1] See note under Article 5705, ante.

Art. 5723. Duty of sealer and inspector.—Each sealer of weights and measures, deputy sealer, inspector, or local sealer shall carefully preserve all copies of the standards of weights and measures used by him in his inspection work, and keep the same safe and in good order, when not in actual use. He shall keep a record of all work done by him showing the inspections made, for whom made, giving the name and postoffice address of each party for whom any measurement, test weight, inspection, condemnation or prosecution is made; such record shall be preserved by him, from which he shall compile his reports at regular intervals to the Commissioner [1] when required to make a report. He shall keep a careful record of all violations of the weights and measures law and report in detail to the Commissioner. [Id.]

[1] See note under Article 5705, ante.

Art. 5724. Sealing and marking.—Every person, firm or corporation, or association of persons, using or keeping for use, or having or offering for sale, weights, scales, beams or measures of any kind, instruments or mechanical devices for weighing or measuring, and tools, appliances and accessories connected with any or all of such instruments or measurements within this State, shall cause the same to be sealed and marked by the sealer of weights and measures as to their correctness, and no instrument shall be sold for the purpose of weighing or measuring unless it shall bear the seal of the inspector of weights and measures as to its correctness. [Id.]

Art. 5725. Subject to inspection.—When any weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measuring; also all tools and appliances necessary or connected with any such instruments of measure have been tested and found correct by any sealer appointed under the provisions of this chapter, the same may be used, kept for use, offered for sale, sold or kept for sale anywhere within this State for one year without being further tested. Any weight, scale, beam, measures of every kind, instruments or mechanical devices for weighing or measuring, or appliances and accessories connected with any or all of such instruments or measure, which have been tested and sealed and certified as correct by the National Bureau of Standards may be kept for sale, sold or offered for sale without being tested and sealed by a sealer under the provisions of this chapter, but all such weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measuring; also all tools and appliances necessary connected with any or all of such instruments or measures shall always be subject to inspection and testing as herein provided, notwithstanding that the same have been tested and sealed, either by a sealer appointed under the provisions of this chapter, or by the National Bureau of Standards. Any scale, beam or mechanical device for weighing or measuring, which, after being sold, and before being used for weighing and measuring, is found necessary to assemble and set up, may be sold, kept for sale or offered for sale without first being tested and sealed, but such scale, beam or measuring device for weighing or measuring, before being used for weighing or measuring,

without the consent of the Commissioner,[1] must be tested and sealed as provided in this chapter. [Id.]

[1] See note under Article 5705, ante.

Art. 5726. Testing weights and devices.—All sealers, deputy sealers, inspectors, and local sealers shall inspect, try and test all weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measuring and all tools, appliances and accessories connected with any or all such instruments or measures kept for the purpose of sale, sold or used by any proprietor, agent, lessee or employee in proving the size, quantity, extent, area, weight or measurement of quantities, things, produce, articles for distribution or consumption, purchased or offered or submitted by such person or persons for sale, hire, or award. and ascertain if the same are correct, and he shall have the power to and shall from time to time weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale or sold, or in the process of delivery, in order to determine whether the same contains the quantity or amount represented and whether they are being offered for sale or sold in accordance with law and may seize for use as evidence such amounts of commodities or packages which shall be found to contain a less amount than that represented. He shall at least once each year, or as much oftener as may be found necessary, and directed by the Commissioner,[1] see that the weights, measures and all weighing and measuring apparatus, used in any locality to which he is assigned for the purpose of inspection, are correct. All local sealers of weights and measures shall test at least once each year all scales, weights and measures of every kind and device within any such city to which they are appointed, and oftener, if required so to do. Any sealer, or deputy sealer, or inspector for the purposes above mentioned, and in the general performance of his duty may, without warrant, enter, go into or upon any stand, place, building or premises, or stop any vendor, peddler, junk dealer, driver of a coal wagon, ice wagon or delivery wagon or the driver of any wagon containing commodities for sale or delivery, and if necessary require him to proceed to some place which the sealer may specify for the purpose of making the proper tests. [Id.]

[1] See note under Article 5705, ante.

Art. 5727. Marking and tagging.—Whenever a sealer, deputy sealer, or inspector of weights and measures compares weights and measures, or weighing or measuring instruments and finds that they correspond, or causes them to correspond to the standards, he shall seal or mark under his name such weight or measure or weighing or measuring instrument with an appropriate device showing that the weight or measure, or weighing or measuring instrument is correct, and the date of the inspection, which device shall be placed so as to be easily seen. He shall condemn and seize and may destroy incorrect weights and measures and weighing and measuring instruments, which in his best judgment are not susceptible of repair, but any weights and measures, or weighing or measuring instruments which shall be found to be incorrect, but which, in his best judgment are susceptible of repair, he shall cause to be marked with a tag or other suitable device with the words "Out of Order." The owner or user of any weights or measures, or weighing or measuring instruments, which have been marked "Out of Order," as in this article provided, may have the same repaired or corrected within thirty days, but until the same have been repaired or corrected and tested as herein provided, the owner or user thereof must neither use nor dispose of the same in any way, but shall hold the same at the disposal of the Commissioner or any deputy or local sealer. When the same have been repaired or corrected, the owner or user thereof shall notify the Commissioner [1] or his deputy or local sealer and they shall again be tested for the purpose of proving the weight, measure or weighing or measuring instrument which had been found to be incorrect and marked as in this article, and until such weight, measure or weighing or measuring instrument has been re-inspected by the sealer and found correct, the same shall not be used or in any way disposed of by the owner. When any weight, measure or weighing or measuring instrument has been repaired and corrected, and has been re-inspected and found correct by the sealer of weights and measures, the sealer of weights and measures shall remove the tag or device with the words "Out of Order" and shall mark such weight, measure or weighing or measuring instrument in the manner provided for the marking of same where upon inspection they were found to be correct. [Id.]

[1] See note under Article 5705, ante.

Art. 5728. Fees.—The Commissioner [1] shall have the right and power to fix and collect a nominal fee for testing all weights, scales, beams and any kind of instruments or mechanical devices for weighing or measuring; all tools, appliances and accessories connected with all such instruments before they are offered for sale; such fee, however, to be reasonable and to be graduated according to the cost of such instrument, and it shall be unlawful for anyone to sell any weights, scales, beams, measuring instruments or mechanical devices for weighing or measuring, or to lease or rent same, unless such instruments have been duly inspected, tested and approved by the Commissioner, or one of his duly accredited deputies. All moneys collected by the Commissioner shall be paid into the State Treasury. [Id.]

[1] See note under Article 5705, ante.

Art. 5729. Definitions.—The word "person," whenever used in this chapter, shall be deemed to include person, firm or corporation and all officers, directors and managers of corporations shall comply with the provisions of this chapter on behalf of their respective corporations. [Id.]

Art. 5730. Legal standards.—The standard of weights and measures adopted and used by the Government of the United States is hereby declared the legal standard of weights and measures of this State; provided, that as to commodities for which the Congress of the United States provided no standard of weights or measures, the standards adopted by this State shall be the standards of weights and measures for such commodities. The unit of standard of length and surface, from which all the other measures of extension, whether lineal, superficial or solid, shall be derived and ascertained, is the standard yard designated in this chapter, which is divided into three equal parts called feet, and each foot into twelve equal parts called inches. For measures of cloth, and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths. The rod, pole or perch contains five and one-half yards; the mile one thousand seven hundred and sixty yards. The Spanish vara, thirty-three and one-third inches. Where land is measured by the English rule, the chain for measuring land shall be twenty-two yards long and divided into one hundred equal parts called links. The acre for land measure shall be measured horizontally and shall contain forty eight hundred and forty square yards; six hundred and forty acres shall constitute a square mile. [Acts 1919, p. 232.]

Art. 5731. Standard of avoirdupois and troy weights.—The units or standards of weight from which all the other weights shall be derived and ascertained shall be the standard of avoirdupois and troy weights designated in this chapter, and avoirdupois pounds shall bear to the troy pounds the ratio of seven thousand to five thousand seven hundred and sixty grains, and the avoirdupois pound shall be divided into sixteen equal parts called ounces. The hundred weight shall consist of one hundred avoirdupois

pounds, and twenty hundred weight shall constitute a ton. The troy ounce shall be one twelfth of a troy pound. [Id.]

Art. 5732. Standard for liquids; liquid measing device.—The units or standards of measure of capacity for liquids from which all other measurements shall be derived and ascertained, shall be the standard gallon and its parts designated in this Chapter. The barrel shall constitute 31½ gallons and two barrels shall make a hogshead. All other measures of capacity for liquids shall be derived from the liquid gallon by continual division by the number two, so as to make half gallons, quarts, pints, and half pints and gills. Provided, however, that a liquid measuring device which indicates fractional parts of a gallon shall indicate such fractional parts in terms of binary sub-multiple subdivisions or in terms of tenths of a gallon.

For the purposes of this Article, the term "liquid measuring device" shall be construed to mean a mechanism or machine adapted to measure and deliver liquid by volume. [Acts 1919, p. 232; Acts 1945, 49th Leg., p. 146, ch. 96, § 1.]

Art. 5733. Standard for solids.—The unit or standard measure of capacity for substance not liquids, from which all measures of such substance shall be derived and ascertained, is the standard half bushel mentioned in this chapter. The peck, half peck, quarter peck, quart and pint measure for measuring commodities which are not liquid shall be derived from the half bushel by successively dividing that measure by two. The standard bushel measure shall constitute two thousand one hundred fifty and forty-two one hundredths cubic inches; the standard half-bushel measure shall contain ten hundred seventy-five and twenty one-hundredths cubic inches; the standard gallon shall contain two hundred thirty-one cubic inches. All measures for measuring dry commodities shall not be heaped but shall be stricken with a straight stick or roller. [Acts 1919, p. 232.]

Art. 5734. Weights per bushel; ton; cord.—Wherever the articles hereinafter named shall be sold by the bushel, and no special agreement as to the measurement or weights thereof shall be made by the parties, the bushel shall consist of the following number of pounds: Barley, 48 pounds; shelled corn, 56 pounds; flax seed, 56 pounds; oats, 32 pounds; rye, 56 pounds; wheat, 60 pounds; cotton seed, 32 pounds.

The term "ton" shall be understood to mean a unit of 2,000 pounds avoirdupois weight. The term "cord" shall be understood to mean 128 cubic feet, or the contents of a space eight (8) feet long, four (4) feet wide, and four (4) feet high.

When the term "cord" is used in connection with wood intended for fuel purposes, it shall be understood to mean the amount of wood which is contained in a space of 128 cubic feet, when the wood is ranked and well stowed and one-half the kerf of the wood is included. [Acts 1907, p. 244; Acts 1919, p. 233; Acts 1929, 41st Leg., p. 531, ch. 256, § 1; Acts 1943, 48th Leg., p. 322, ch. 206, § 1.]

Section 2 of the amendatory Act of 1943 repealed article 5735 and all conflicting laws.

Art. 5735. [Repealed by Acts 1943, 48th Leg., p. 322, ch. 206, § 2.]

Art. 5736. This law to govern contracts.—All contracts hereafter to be executed and made within this State for any work to be done, or for anything to be sold, delivered, done or agreed for, by weight or measure, shall be construed to be made according to the standard weight and measure ascertained as hereinbefore provided, unless there is an express contract to the contrary. In making any adjustment of weights or measures under the laws of this State, the standard given in this chapter shall be taken as the guide for making such adjustment. [Acts 1907, p. 244; Acts 1919, p. 233.]

See note under Article 5705, ante.

Art. 5736a. Babcock test for butter fat.—The Babcock test is hereby adopted as the official dairy test for use in the State of Texas, to be used by every person, firm, association, partnership, and/or corporation paying for milk or cream on the basis of the butter fat content of such commodity or commodities, and the method of operating the test shall comply in every detail with the standard rules governing the Babcock test, and the Commissioner of Agriculture is hereby authorized to enforce the correct operation of the Babcock test and to issue all rules and regulations necessary to enforce the provisions of this Act. [Acts 1931, 42nd Leg., p. 735, ch. 287, § 1.]

Arts. 5736b, 5736c. Penal provisions.

Art. 5736b of Acts 1931, 42nd Leg., p. 735, ch. 287, § 1, being penal provisions is classified as Pen.Code Art. 1057b.

Article 5736c of Acts 1931, 42nd Leg., p. 375, ch. 287, § 1, was amended by Acts 1943, 48th Leg., p. 174, ch. 99. It is published as Pen.Code, art. 1057e.

Art. 5736d. Entry on premises for samples for tests; standard weights and measures from United States.—In addition to the rights and powers given to the Commissioner of Agriculture and his inspectors and agents by the provisions of Chapter 7, Title No. 93, of the Revised Civil Statutes of 1925, as amended by Acts of the Regular Session of the Forty-first Legislature, the said Commissioner, his inspectors and agents, are hereby authorized to enter any creamery, cheese factory, building, premises or place where milk, cream and dairy products are handled for the purpose of securing samples and/or checking tests on same, and except as herein provided, all of the provisions of said Chapter and Title shall apply to the purchase of cream, milk and butter fat in this State, and particularly as pertains to the standard of weights and measures received from the United States under a resolution of Congress, approved June 14, 1836, and particularly such new weights and measures as shall be received from the United States or which have been received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be procured by the State in conformity therewith and certified by the Bureau of Standards. [Acts 1931, 42nd Leg., p. 735, ch. 287, § 1.]

Art. 5736e. Units or standards of measure for use in Babcock test.—The units or standards of measure of capacity for use in the Babcock test shall be the true cubic centimeter, or the weight of one (1) gram of distilled water, at four (4) degrees Centigrade, and all other units and weights shall be in conformity with the standards prescribed by the United States Bureau of Standards, as aforesaid. The said Commissioner of Agriculture shall from time to time make tests of individual bottles and pipettes used by various persons, firms and corporations in the State in order to ascertain whether the above provisions are being complied with, and shall report any violations found to the Attorney General, County or District Attorney in the county where such alleged violation occurs. All glassware and/or measuring devices found not to be standard in capacity shall be seized and destroyed by the Commissioner of Agriculture or his authorized agents. [Acts 1931, 42nd Leg., p. 735, ch. 287, § 1.]

Art. 5736f. Duties of district or county attorney.—It shall be the duty of the District or County Attorney of any county in which the provisions of this Act may be violated to make due investigation and prosecute in the Court having jurisdiction of the offense all persons guilty of such violations, and if necessary to file suits to enjoin further violations of this Act. [Acts 1931, 42nd Leg., p. 735, ch. 287, § 1.]

CHAPTER 8.—MARKETING ASSOCIATIONS

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Art. 5737. Declaration of policy.—In order to promote, foster and encourage the intelligent and orderly production, cultivation and care of citrus groves and marketing through cooperation and to eliminate speculation and waste; and to make production and distribution of agricultural products as direct as can be effectively done between the producer and consumer; and to stabilize the production and marketing problems of agricultural products, this law is passed. [Acts 1921, p. 45; Acts 1943, 48th Leg., p. 601, ch. 346, § 1.]

Art. 5738. Definitions.—(a) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, live stock, poultry, bee, and any farm and ranch products; (b) the term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock; (c) the term "association" means any corporation organized under this Act or any association organized under the co-operative marketing acts of any other State of the United States; provided, such foreign association is composed of persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers, acting together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons, so engaged; provided, further, that such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

(1) That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or

(2) That the association does not pay dividends on stock or membership capital in excess of eight per centum per annum, and in any case to the following:

(3) That any association shall be permitted to deal in the products of non-members to an amount not greater in value than such as are handled by it for its members; and (d) the term "person" shall include individuals, firms, partnerships, corporations and associations. Associations organized hereunder shall be deemed non-profit, inasmuch as they are organized not to make profits for themselves, as such, or for their members, as such, but only for their members as producers. This Act shall be referred to as the "Co-operative Marketing Act." [Acts 1921, p. 45; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 1; Acts 1930, 41st Leg., 5th C.S., p. 145, ch. 20, § 1.]

Art. 5739. Who may organize.—Five or more persons engaged in the production of agricultural products or three or more associations may form a non-profit co-operative association with or without capital stock, under the provisions of this chapter. [Acts 1921, p. 45; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 2.]

Art. 5740. Purpose.—An Association may be organized to engage in any activity in connection with the production, cultivation and care of citrus groves or the marketing or selling of agricultural products and citrus fruits produced by and marketed for its members, or in the harvesting, preserving, drying, processing, canning, storing, handling, shipping or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. Provided, however, any such activities may extend to non-members and to the production, cultivation and care of lands owned or cultivated by them and their products limited by Article 5738 as heretofore amended. [Acts 1921, p. 45; Acts 1934, 43rd Leg., 2nd C. S., p. 81, ch. 31, § 1; Acts 1943, 48th Leg., p. 601, ch. 346, § 2.]

Art. 5741. Preliminary investigation.—Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the Commissioner of Markets and Warehouses,[1] who will inform it, whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates, regarding probable success. [Acts 1921, p. 45.]

[1] Office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department and the Weights and Measures Department were abolished and powers, duties and functions transferred to the Commissioner of Agriculture, see article 5611, ante.

Art. 5742. Powers.—Each association incorporated under this Chapter shall have the following powers:

(a) To engage in any activity in connection with the production, cultivation and care of citrus groves and the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling or utilization of any agricultural products produced or delivered to it by its members, or the production, manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this Article. [As amended Acts 1943, 48th Leg., p. 601, ch. 346, § 3.]

(b) To borrow money and make advances to members.

(c). To act as the agent or representative of any member or members in any of the above mentioned activities.

(d). To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association; including the power to subscribe, pay for and own the capital stock of Banks for Cooperatives organized under the "Farm Credit Act of 1933" passed by the Congress of the United States and approved June 16, 1933.

(e). To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f). To buy, hold and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto.

(g). To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this Act; and to do any such thing anywhere.

(h). To extend its activities to the products and supplies of non-members to an amount not greater in value than such as are handled by it for its members. [Acts 1921, p. 45; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 3; Acts 1930, 41st Leg., 5th C.S., p. 145, ch. 20, § 2; Acts 1934, 43rd Leg., 2nd C.S., p. 81, ch. 31, § 1.]

Art. 5742—A. Powers conferred on Farmer's Co-operative Societies as organized.—All the power and authority authorized or given in Article 5742 is hereby conferred and given to Farmer's Co-operative Societies now organized, or may be hereafter organized, under Chapter 5 of Title 46, of the Revised Civil Statutes of 1925, including the power to organize, own stock in, manage and control a joint agency or corporation for the accomplishment of the purpose for which they are incorporated. [Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 3.]

Art. 5743. Members.—(a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises. (b) If a member of a non-stock association be other than a natural person, such member may be presented by any individual, associate officer or member thereof, duly authorized in writing. (c) Any association as defined in Article 5738 (c) may become a member or stockholder of any other association or associations organized hereunder. [Acts 1921, p. 45; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 4.]

Art. 5744. Articles of incorporation.—Each Association formed under this Act must prepare and file Articles of Incorporation, setting forth: (a) The name of the association. (b) The purposes for which it is formed. (c) The place where its principal business will be transacted. (d) The term for which it is to exist, not exceeding fifty (50) years. (e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors. (f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the Articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the Articles of Incorporation shall not be altered, amended or repealed except by the written consent or the vote of three-fourths of the members. (g) If organized with capital stock, the amount of such capital stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the Articles of Incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preferences and privileges granted to each. The Articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this State; and when so filed the said Articles of Incorporation, or certified copies thereof, shall be received in all courts of this State, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the Articles of Incorporation shall also be filed with the Commissioner of Markets and Warehouses; [1] provided, however, no part of such capital stock shall be required to be subscribed and/or paid in as a prerequisite to the filing of such Articles of Incorporation; provided further that such associations may, from time to time, sell and issue to their members or stockholders, shares of capital stock in such manner and upon such terms and conditions as shall be provided in their By-Laws; and provided further, however, that no such shares of capital stock shall be sold and issued to any one not a member or stockholder of such association without first complying with the Blue Sky Laws of Texas. [Acts 1921, p. 45; Acts 1934, 43rd Leg., 2nd C.S., p. 81, ch. 31, § 1.]

[1] See note under Article 5741, ante.

Art. 5745. Amendments to articles of incorporation.—The Articles of Incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of all the members of the Association. Amendments to the Articles of Incorporation when so adopted shall be filed in accordance with the provisions of the general corporation law of this State. [Acts 1921, p. 45.]

Art. 5746. By-laws.—Each association incorporated under this Act must, within thirty days after its incorporation, adopt for its government and management, a code of by-laws, not inconsistent with the powers granted by this law. A majority vote of the members or stockholders, or their assent, is necessary to adopt such by-laws. Each association, under its by-laws may also provide for any or all of the following matters: (a) The time, place and manner of calling and conducting its meetings. (b) The number of stockholders or members constituting a quorum. (c) The right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner and effects of such vote and the method and manner in which an association which is a member may cast its vote. (d) The number of directors constituting a quorum. (e) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof. (f) Penalties for violations of the by-laws. (g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they must be used. (h) The amount which each member or stockholders (stockholder) shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign. (i) The

number and qualification of members or stockholders of the association and the conditions precedent to members of ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and time when membership of any member shall cease. The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or, at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal. [Acts 1921, p. 45; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 5.]

Art. 5747. General and special meetings.—In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting. The by-laws may require instead that such notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association. [Acts 1921, p. 45.]

Art. 5748. Directors—Election.—The affairs of the association shall be managed by a board of not less than five directors elected by the members or stockholders from their own number. Any association which is a member or stockholder may designate any of its members or stockholders to cast its vote as prescribed by the by-laws of the association holding the meeting and any member or stockholder so designated may be considered as a member or stockholder of the association holding the meeting, for the purpose of election or service as director thereof. [Acts 1921, p. 45; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 6.]

Art. 5749. Election of officers.—The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer, who need not be a director, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors. [Acts 1921, p. 45.]

Art. 5750. Stock—Membership Certificates.—When a member of an association established without capital stock, has paid his membership fee in full, he shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof. No stock-holder of a co-operative association shall own more than one-twentieth of the issued common stock of the association; and an association, in its by-laws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock. No member or stock-holder shall be entitled to more than one vote. Any association organized with stock, under this law may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the Articles of Incorporation and printed on the face of the certificate. The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto. The association may at any time except when the debts of the association exceed fifty per cent of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter. [Id.]

Art. 5751. Removal of officer or director.—Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity. In case the by-laws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty per cent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office. [Id.]

Art. 5752. Referendum.—Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting. A special meeting may be called for that purpose. [Id.]

Art. 5753. Marketing contract.—The association and its members may make and execute marketing contracts, requiring the members to sell, for a period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding eight per cent per annum, and reserves for retiring the stock, if any, and other proper reserves; and interest not exceeding eight per cent per annum upon common stock. The by-laws and the marketing contract may fix, as liq-

uidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this State. In the event of any breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member. [Id.]

Art. 5754. Purchasing business of others.—Whenever an association organized hereunder with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquiring interest, shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued. [Id.]

Art. 5755. Annual reports.—Each association formed under this Act shall prepare and make out an annual report on forms furnished by the Commissioner of Markets and Warehouses,[1] containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received, if a non-stock association; the total expenses of operation; the amount of its indebtedness, or liability, and its balance sheets. [Id.]

[1] See note under Article 5741, ante.

Art. 5756. Conflicting laws not to apply.—Any provision of law which is in conflict with this chapter shall not be construed as applying to the associations herein provided for. [Id.]

Art. 5757. Bond.—Each and all officers, employees and agents, handling funds or property of the corporation created under the provisions of this Act, or any property or funds of any person placed under the control of or in the possession of said corporation, shall be required to execute and deliver to the corporation a bond of indemnity, indemnifying the corporation and members against any fraudulent, dishonest or unlawful act on the part of such officers and employees and other acts as provided in the By-Laws of the association. In case the officers and directors of any corporation authorized to be created under the provisions of this Act, shall fail to have all officers, employees and agents handling such funds or property, execute the bond provided for herein, each and all of said officers and directors shall be personally liable for all losses occasioned by such failure, and which might have been recovered on said bond. [Acts 1921, p. 45; Acts 1934, 43rd Leg., 2nd C.S., p. 81, ch. 31, § 1.]

Art. 5758. Interest in other corporations or associations.—An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, pressing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this State or the United States, its warehouse receipts shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association. [Acts 1921, p. 45.]

Art. 5759. Contracts and agreement with other associations.—Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other co-operative corporation, association or associations, formed in this or any other State for the co-operative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses. [Id.]

Art. 5760. Associations heretofore organized.—Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the Secretary of State, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this chapter. Articles of Incorporation shall be filed as required in the eighth article of this chapter, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to Articles of Incorporation. [Id.]

Art. 5761. Breach of contract or false reports.—Any person or persons or any corporation whose officers or employés knowingly induce or attempt to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spread false reports about the finances or management thereof shall be liable to the association aggrieved thereby in a civil suit for damages suffered in three times the amount of actual damage proven for each offense. [Id.]

Art. 5762. Associations not in restraint of trade.—No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and its members nor any agreements authorized in this chapter, be considered illegal or in restraint of trade. [Id.]

Art. 5763. Application of general laws, etc.—The provisions of the general corporation laws of this State, and all powers and rights thereunder shall apply to associations organized hereunder except when in conflict with the provisions of this chapter. Provided, however, that any co-operative marketing association incorporated under the laws of any other State may apply for and be granted a permit to do business in this State and pay the same filing fee as required of domestic corporations organized for a similar purpose. Provided further, that such foreign cooperative marketing associations shall not be required to

have a paid-up capital or any portion of the capital paid-up in order to be entitled to such permit. [Acts 1921, p. 45; Acts 1930, 41st Leg., 4th C.S., p. 12, ch. 12, § 7.]

Section 8 of Acts 1930, provides that if any provision of this act or what is commonly known as the Co-operative Marketing Act of Texas, the same being Articles 5737 to 5764, inclusive, of the Revised Civil Statutes of 1925, as amended should be held to be unconstitutional or invalid for any reason, the remainder of same shall nevertheless remain in force and effect.

Art. 5764. Fees.—Each association organized hereunder shall pay to the Commissioner [1] an annual license fee of ten dollars but shall be exempt from all franchise or license taxes. For filing articles of incorporation, an association organized hereunder shall pay ten dollars, and for filing an amendment thereto, two dollars and fifty cents. [Acts 1921, p. 45.]

[1] See note under Article 5741, ante.

CHAPTER 9.—MARKETING AGREEMENTS

Art.
5764a. Citrus marketing agreements.

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Art. 5764a. Citrus marketing agreements.

Purpose of act

Section 1. The unreasonable waste and inefficient use of the citrus resources, occasioned by the marketing within the State of Texas of greater quantities of fresh citrus fruits than are reasonably necessary to supply the demands of the market, are opposed to public interest. The difficulty inherent in any attempt of individuals to correlate within a reasonable degree the citrus production current demand creates chaotic economic conditions in the citrus areas of the State as defined in this Act of such severity as to imperil the ability of citrus producers to contribute in appropriate amounts to the support of ordinary governmental and educational functions, thus tending to increase, and increasing the tax burdens of other taxpayers for the same purposes, and is rendering it impossible for producers to be reasonably assured of adequate standard of living for themselves and their families. In the interest of the public welfare and general prosperity of the State, the unreasonable waste and inefficient use of citrus resources involved in the marketing in this State of citrus fruits should be eliminated, while at the same time preserving to citrus producers of the areas covered by this Act an equality of opportunity.

Definitions

Sec. 2. As used in this Act, the following terms shall mean:

(a). "Commissioner" means the Commissioner of Agriculture of the State of Texas.

(b). "Person" means individual, partnership, corporation, association, and/or any other business unit.

(c). "Producer" means any person engaged in the production of citrus fruits in the State of Texas for commercial purposes, or who is a substantial stockholder in a corporation engaged in the production of citrus fruits in the State of Texas for commercial purposes.

(d). "Handler" means any person who packs or ships citrus fruits, or causes citrus fruits to be packed or shipped in the current of intrastate commerce so as not to directly burden, obstruct, or affect interstate and/or foreign commerce.

(e). "Ship" means to convey citrus fruits, or cause citrus fruits to be conveyed, in the current of intrastate commerce, by rail, boat, truck, or any other means whatsoever (except by express or parcel post), whether as owner, agent, or otherwise.

(f). "Shipment" shall be deemed to take place when citrus fruits, or citrus fruit, is loaded into a car, or any other conveyance for transportation in the current of intrastate commerce.

(g). "Citrus fruits" or "citrus fruit" means grapefruit, oranges, and tangerines grown in the area of Texas covered by this Act.

(h). "Variety" or "varieties" as used in this Act means classifications or groups in the case of oranges as follows: (a) early season oranges, and (b) valencias, including all varieties of valencias and Lou Gim Gongs; in the case of grapefruit as follows: (a) Marsh and other seedless varieties except pinks, (b) Duncan and other seeded varieties except pinks, (c) pinks of the seeded type, and (d) pinks of the seedless type. All tangerines and temple oranges are grouped together as one variety.

(i). "Intrastate commerce," as used in this Act, means all commerce other than that which is in the current of interstate or foreign commerce, or which directly burdens, affects, or obstructs interstate or foreign commerce.

(j). "Standard packed box" as used in this Act means a unit of measure equivalent to one and three-fifths (1-3/5) U. S. bushels of citrus fruit, irrespective of the container in which same is held.

Marketing agreements and licenses as to intrastate transactions

Sec. 3. Subject to the provisions of this Act, the Commissioner is hereby authorized and empowered to execute marketing agreements and to issue licenses under this Act to persons engaged in transactions of intrastate commerce within the areas of this State in the marketing, processing, packing, shipping, handling, or distribution of citrus fruits.

Notice of hearing; procedure

Sec. 4. Whenever the Commissioner has reason to believe that the execution of a marketing agreement or the issuance of a license, or both, will tend to effectuate the declared policy of this Act with respect to citrus fruits, he shall, either upon his own motion, or upon application of any producer or handler of such commodity give due notice of, and an opportunity for hearing upon a proposed marketing agreement or license, or both. Such notice shall be given by posting at the office of the Commissioner at Austin, and by mailing a copy of such notice to the last known address of all known handlers affected by such agreement or license whose names appear upon the most recent lists in the office of the Commissioner. Such notice shall also be mailed to any such person who shall have filed with the Commissioner a request for such notice.

Such hearing shall be held within the citrus area of the State of Texas as defined in this Act. At said hearing the Commissioner shall receive and hear the evidence offered by any interested person in support of, or in opposition to, the issuance of such marketing agreement or license. All evidence and exhibits used by the Commissioner or introduced at such hearing shall, within a reasonable time after being so used or so introduced, be available at a central point to all interested parties. Such hearings may be adjourned from time to time and from place to place in the discretion of the Commissioner. A transcript of the proceedings at such hearings shall be made by the Commissioner and shall be open for inspection by any interested party.

Findings of fact prerequisite to marketing agreement or license

Sec. 5. If upon such hearing it shall be found by the Commissioner that the following facts actually exist:

1. The supply of citrus fruits available for marketing exceeds or is likely to exceed the demand therefor at prices which will provide a reasonable return to representative producers of such citrus fruits;

2. The return to producers of such citrus fruits will tend to be increased through the operation of the marketing plan;

3. The marketing plan may be operated without permitting unreasonable profits to producers of such citrus fruits and without unreasonably enhancing prices of such citrus fruits to consumers;

4. The plan will tend to advance public welfare and conserve the agricultural wealth of the State by preventing threatened economic or agricultural waste; and will tend to prevent disorderly marketing of citrus fruits;

he shall make written findings to that effect and shall enter into a marketing agreement or agreements and issue licenses, or both. If the Commissioner shall find against the existence of any of the facts required to be present under this Section, he shall not issue such marketing agreement or license.

Findings, matters considered in making

Sec. 6. The Commissioner shall base the findings required by Section 5 hereof upon such of the following matters as shall be relevant, and in the administration of such marketing agreement or license, when and if issued, shall take the same into consideration:

(a) The quantity of the several grades, varieties and qualities of the particular citrus fruits under consideration and available for distribution to consumers in the marketing season or seasons during which the proposed program is to be effective.

(b) The quantity of the various grades, varieties and quality of such citrus fruits required by consumers during the marketing season or seasons during which the proposed program is to be effective.

(c) The cost of production of such citrus fruits.

(d) The general purchasing power of consumers thereof.

(e) The general level of prices of commodities which farmers buy.

(f) The general level of prices of other commodities which compete with or are used as substitutes for such citrus fruits.

(g) Any other relevant evidence.

Terms and conditions of agreements or licenses

Sec. 7. Marketing agreements executed and licenses issued pursuant to this Act shall contain one or more of the following terms and conditions and no others, except as provided in Section 6 of this Act:

(1) Limiting, or providing methods for the limitation of the total quantity of any variety of citrus fruit, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in, or transported to, any or all markets in intrastate commerce.

(2) Allotting, or providing methods for allotting, the amount of citrus fruits, or any grade, variety, size, or quality thereof, which each handler may market in or transport to any or all markets other than in the current of interstate or foreign commerce or so as directly to burden, obstruct, or effect interstate or foreign commerce in such citrus fruits, under a uniform rule based upon (1) the amounts of such citrus fruits, or any grade, variety, size, or quality thereof, which each such handler has available for current shipment, or (2) upon the amounts shipped by each such handler in such prior period as the Commissioner determines to be representative, or both, to the end that the total quantity of such citrus fruits, or any grade, variety, size, or quality thereof, to be marketed in, or transported to any or all markets, other than in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate of foreign commerce in such citrus fruits, during any specified period or periods, shall be equitably apportioned among all of the handlers thereof.

(3) Determining, or providing methods for determining, the existence and extent of the surplus of such citrus fruits, or of any grade, variety, size, or quality thereof, and providing for the control and disposition of such surplus, but so as not to burden or obstruct interstate of foreign commerce in such citrus fruits, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

Additional terms and conditions

Sec. 8. Marketing agreements executed and licenses issued under this Act shall, in addition, contain one or more of the following terms and conditions:

(1) Providing for the selection by the Commissioner, or a method for the selection by the Commissioner, of an administrative committee or committees and defining their powers and duties. Such powers shall be limited:

(a) To administering such license in accordance with its terms and provisions;

(b) To making rules and regulations to effectuate the terms and provisions of such license;

(c) To receiving, investigating, and reporting to the Commissioner complaints of violations of such license;

(d) To recommending to the Commissioner amendments to such license;

(e) To collecting from each handler a fee or assessment representing his pro rata share of such estimated expenses, including expenses incurred in hearings held on, and in the execution of such marketing agreement, as the Commissioner, after the submission to him by such administrative agency or agencies of a proposed budget, finds [1] will probably be required

to cover expenditures necessarily to be incurred by such agency or agencies, during any period specified by him, for the maintenance and functioning of such agency or agencies; to receiving, expending, and accounting for the funds so collected, and to return to such handler his pro rata share of any unexpended balances which the administrative committee or committees, with the approval of the Commissioner, finds are not so required.

(2) Any other terms and conditions incidental to, and not inconsistent with, the terms and conditions specified in Section 7.

1 Probably should read "funds"

Assent of handlers and producers; procedure

Sec. 9. Pursuant to the provisions of this Act, the Commissioner may, with respect to citrus fruits, enter into a marketing agreement or issue a license thereunder, but no license issued pursuant to this Act shall become effective (a) unless and until the handlers of not less than fifty-one (51) per cent of the volume of the commodity covered by such license, or fifty-one (51) per cent of the number of such handlers, have assented thereto in writing, and (b) unless and until the Commissioner determines that the issuance of such license is approved or favored, (1) by at least sixty-six and two-thirds (66-2/3) per cent of the producers who, during a representative period, determined by the Commissioner, have been engaged within the area covered by such license in the production for market of the citrus fruits covered thereby in commercial quantities, or, (2) by producers who, during such representative period, have produced for market for sale at least sixty-six and two thirds (66-2/3) per cent of the volume of such citrus fruits produced for market within the area covered by such license.

Such representative period may by the Commissioner be determined to be the next preceding crop season prior to the holding of said hearing, or may be such other representative period as the Commissioner may determine.

In the determination of whether the issuance of such license is approved or favored pursuant to the provisions of this Section, the Commissioner is required to determine the approval or disapproval of producers with respect to the issuance of any license or order, or any term or condition thereof, or the termination thereof, and the Commissioner shall consider the approval or disapproval by any Cooperative Association of Producers, bona fide engaged in marketing citrus fruits or products thereof covered by such license or order, or in rendering services for or advancing the interest of the producers of such citrus fruits, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with such cooperative association of producers.

Such approval, when executed by such cooperative marketing association may be executed in the name of such association and need not set forth the names of the producers on whose behalf it signs.

License, issuance of; notice

Sec. 10. (1) Whenever any member of any class of handlers, processors, or distributors is licensed hereunder, an identical license shall be issued to all members of the same class of handlers, processors, or distributors.

(2) Upon the issuance of any license, or any amendment thereof, a notice of said license or amendment shall be posted on a public bulletin board to be maintained by the Commissioner in his office and a copy of such notice shall be published in a daily newspaper of general circulation published in the citrus area covered by this Act, and in such other paper or papers as the Commissioner may prescribe. No license or any amendment thereof shall become effective until three (3) days after such posting and publication. It shall also be the duty of the Commissioner to mail a copy of the notice of said license to all known licensees whose names and addresses may be on file in the office of the Commissioner and to every person who files in the office of the Commissioner a written request for such notice.

Termination or suspension of license by Commissioner

Sec. 11. (1) Whenever, upon his own investigation, or otherwise, the Commissioner finds that any marketing agreement theretofore executed or any license issued under this Act, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this Act, he shall terminate, or suspend for a specified period, the operation of such marketing agreement or license or such provision thereof.

(2) If the Commissioner finds that the termination of any license or marketing agreement is favored by a majority of the producers who, during such representative period determined by the Commissioner, have been engaged in the production within the area in the State of Texas as covered by this Act for marketing of citrus fruits specified in such marketing agreement, or license, and who during such representative period, produced for market more than sixty-six and two-thirds (66-2/3) per cent of the volume of such citrus fruits produced for market within the area in the State of Texas covered by this Act, or produced within the area in the State of Texas covered by this Act for marketing elsewhere, the Commissioner shall terminate, or suspend for a specified period, such marketing agreement or license or any term or provision thereof, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or license.

Amendment of agreement or license; notice; hearing; findings necessary

Sec. 12. Whenever the Commissioner shall have reason to believe that an amendment of any marketing agreement or license is necessary, or desirable, in order to effectuate the policy of this Act, he shall call a hearing upon such amendment. Such hearing shall be held in the same manner and upon the same notice as upon an original marketing agreement or license. The notice of hearing shall refer by name and date of execution of the agreement or to the issuance of license, or both, to which the amendment is proposed. At such hearing the Commissioner shall receive and hear evidence offered for and against the proposed amendment by any interested person.

If upon such hearing upon said proposed amendment it shall be found by the Commissioner that the following facts actually exist:

1. The proposed amendment will not prevent such marketing agreement and license, or either, from meeting the requirements of Section 5 of this Act;

2. The proposed amendment will tend to facilitate the administration of such marketing agreement and license, or will enable such marketing agreement and license to better meet the requirements of Section 5 of this Act;

he shall make written findings to that effect, and shall execute such amendment to such marketing agreement, or shall issue such amendment to such license, or both. If the Commissioner shall find against the existence of any of the facts required to be present under this Section, he shall not issue such amendment to such marketing agreement or license. Such findings, if against the existence of any such facts, shall in no way impair or affect the marketing agreement or license to which said amendment was proposed.

In considering such amendment, the Commissioner shall take into consideration the evidence presented at the original hearing on the marketing agreement, or license to which such amendment is proposed, and upon any prior amendment thereto.

No amendment to a marketing agreement or license shall be effective until approved in the same manner as required by Section 9 of this Act for the original marketing agreement or license to which such amendment was proposed.

Rules, regulations and orders of Commissioner

Sec. 13. The Commissioner may adopt and enforce all rules, regulations, and orders necessary or desirable to carry out the provisions of this Act and not inconsistent with law. Every general rule, regulation, or order of the Commissioner shall be posted for public inspection in the main office of the Commissioner at least three (3) days before it shall become effective, and shall be given such further publicity, by advertisement in a daily newspaper of general circulation in the territory affected by the issuance of such rule, regulation, or order, or otherwise as the Commissioner shall deem advisable. An order applying only to a person or persons named therein shall be served on the person or persons affected: (1) by personal delivery of a certified copy; or (2) by mailing a certified copy in a sealed envelope with postage prepaid to each natural person or in the case of a corporation in like manner to any officer of or agent thereof. Compliance with these provisions shall constitute due and sufficient notice to all persons affected by such rule or order. The Commissioner shall upon request mail to any person affected by any general rule or regulation promulgated by him, a copy of the same and may charge a reasonable fee therefor.

Revocation or suspension of license for violation thereof; criminal penalty; civil liability; injunction

Sec. 14. (1) The Commissioner may, after reasonable notice and opportunity to be heard, revoke or suspend the license of any person issued hereunder for violation of such license or any provision thereof.

(2) Every person who violates any provision of any marketing agreement or license to which he is subject or who, after due revocation of his license, or while the same stands duly suspended, engages in transactions mentioned therein and regulated thereby, shall be guilty of a misdemeanor and on conviction thereof, punished by a fine of not less than Fifty Dollars ($50) nor more than Five Hundred Dollars ($500), or by imprisonment of not less than ten (10) days nor more than six (6) months, or by both such fine and imprisonment. Each day during which any of the violations above referred to continue shall constitute a separate offense.

(3) Any person willfully exceeding any quota, allotment, or salable percentage fixed for him by or under any license issued by the Commissioner, or any amendment thereto or any rule, regulation, or order issued by the Commissioner, or who shall make any shipment without first obtaining a required allotment or quota or qualifying to ship his salable percentage, or any other person knowingly participating or aiding in so doing, shall become civilly liable to the State in a sum equal to three times the current market value of any excess or shipment, such sum to be recoverable in a civil suit, brought in the name of the State of Texas or in the name of the administrative agency under the particular license involved. The funds so collected shall be used in the administration of the particular license.

(4) The Attorney General of this State, or any District Attorney of this State or any County Attorney, may, upon his own initiative, and shall upon complaint of any person, if after investigation he believes a violation to have occurred, bring an action in the name of the State of Texas in any court of competent jurisdiction of the State of Texas for an injunction against any person violating any provisions of any marketing agreement or license or order, rule, or regulation duly made or promulgated thereunder to which he is subject or who, after due revocation of his license or while the same stands duly suspended, engages in transactions mentioned therein and regulated thereby.

(5) Any administrative agency under any marketing agreement or license may, with the approval of the Commissioner, bring an action similar to that described in paragraph (3) of this Section.

(6) In any action brought to enforce any of the provisions of this Act, as provided in this Section 14:

(a) The judgment, if in favor of the plaintiff, shall provide that the defendant pay to the plaintiff a reasonable attorney's fee and any and all costs of suit.

(b) Any such action may be commenced either in the county where any defendant resides, or where any act or omission or part thereof complained of occurred.

(7) The penalties and remedies herein prescribed with regard to any violation mentioned in this Section 14 shall be concurrent and neither singly nor combined shall the same be exclusive and either singly or combined the same shall be cumulative with any and all other civil, criminal, or administrative rights, remedies, forfeitures, or penalties provided or allowed by law with respect to any such violation.

Assessments and fees; collection; record; reports

Sec. 15. (1) Any assessment or fee duly fixed and levied pursuant to any such marketing agreement or license, in accordance with Section 8, paragraph (2), subdivision (e) of this Act, shall constitute a personal debt of every person so assessed and shall be immediately due and payable to the administrative agency charged with the collection thereof and the latter may in its own name, with the approval of the Commissioner, bring an action in a State Court of competent jurisdiction for the collection thereof.

(2) Any funds collected by the administrative agency from the levying of such fees and assessments shall be used for the purpose set forth in the marketing agreement or license under which it was collected. A full and complete record thereof shall be kept to which the Commissioner may have access at any time, and a report of the activities and proceedings shall be filed with the Commissioner from time to time as he may require.

Records and books of persons subject to agreement or license; information furnished Commissioner; Commissioner to take testimony and issue subpœnas; perjury

Sec. 16. (1) All persons subject to a marketing agreement or license issued hereunder shall maintain books and records reflecting their operations under said marketing agreement or license and shall furnish to the Commissioner or his duly authorized or designated representative, such information as may be requested by them relating to operations under said marketing agreement and license, and shall permit the inspection by said Commissioner or his duly authorized or designated representative, of such portions of such books and records as relate to operations under the said marketing agreement and license.

(2) Information obtained by any person hereunder shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same or any attorney employed by an administrative agency to give legal advice thereon, or by Court order.

(3) For the purpose of carrying out the terms of this Act the Commissioner may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of relevant books, records, or documents of any kind.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the Commissioner in obedience to the subpoena

of the Commissioner on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the Commissioner in obedience to a subpoena issued by him; provided that no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Filing fee and deposit; collection of funds by committee; custody of funds; distribution of unexpended funds

Sec. 17. Every application for a marketing agreement and license submitted to the Commissioner for approval shall be accompanied by a filing fee of Ten Dollars ($10), and shall be accompanied by a deposit from the applicant in such amount as the Commissioner may deem sufficient and necessary to defray the expenses of preparing and making effective such marketing agreement and license. The Commissioner shall thereafter exact and require, by requisition on the appropriate administrative committee or committees, charged with the collection of funds for expenses under such marketing agreement, that such committee or committees collect, report, and pay over monthly to the Commissioner the amount deemed necessary and sufficient, and requisitioned from such administrative committee or committees by the Commissioner, to defray the actual expenses of the Commissioner to be incurred during the subsequent month in the administration and enforcement of any such marketing agreement or license, under such rules and regulations as he may prescribe.

But all moneys collected from assessments, or otherwise, imposed under this Act and under marketing agreements executed in pursuance thereof, or licenses issued thereunder, by the administrative committee or committees created under this Act, not requisitioned by the Commissioner for administrative expenses as hereinbefore provided in this Section, shall remain in the custody of such administrative committee or committees until the close of the current marketing season or year for which same was collected (not to extend further than the period covered by such marketing agreement), at which time the administrative committee or committees shall return to such handler or handlers his pro rata share of such unused, unexpended, and unrequisitioned assessment or assessments.

Reports by Commissioner as to moneys received; deposit in State Treasury; Agriculture Department officers and employés used in carrying out act

Sec. 18. (1) All moneys received by the Commissioner hereunder shall be by him, at the end of each month, reported to the State Comptroller and at the same time deposited in the State Treasury. All moneys so credited are hereby appropriated for use of said Commissioner to be expended in accordance with law in carrying out the provisions hereof.

(2) Within thirty (30) days prior to each Regular Session of the Legislature, the Commissioner shall submit to the Governor a full and true report of transactions under this Act during the preceding biennium, including a complete statement of receipts and expenditures under this Act during the period and shall submit quarterly to the administrative agency under each marketing agreement or license a complete statement of receipts and expenditures in connection with the administration of each marketing agreement or license during the quarter.

(3) The Commissioner is authorized to use, and to permit the administrative agency or agencies, committee, authority, or body created pursuant to any marketing agreement executed or license issued under this Act, to use the various employees or officers of the State Department of Agriculture in carrying out the provisions of this Act or any marketing agreement executed or license issued pursuant thereto.

Anti-trust laws unaffected

Sec. 19. Nothing in this Act shall alter, repeal, change or modify the anti-trust laws of this State, and if any section and/or subsection of this Act is in violation of the anti-trust laws, such section and/or subsection shall fall and the anti-trust laws both civil and criminal shall stand and prevail over said section and/or subsection held to be in contravention of the anti-trust laws of this State.

Cooperating with other states and Federal government to secure uniformity of administration

Sec. 20. The Commissioner may confer and cooperate with the legally constituted authorities of other States and of the United States, in order to secure uniformity in the administration of Federal and State marketing agreements, standards, licenses, or orders and in the regulations thereby prescribed, and said Commissioner of Agriculture shall have power to conduct hearings jointly with the Secretary of Agriculture of the United States, and may exercise his powers under this Act to effect such uniformity of administration and regulations not inconsistent with the provisions of this Act.

Application of act limited to certain areas

Sec. 21. This Act shall apply and be effective only in the areas of any three (3) citrus fruit producing counties whose boundaries are contiguous to each other and whose aggregate population according to the last preceding Federal Census was not less than one hundred and sixty-five thousand and forty-three (165,043) inhabitants.

Name of act

Sec. 22. This Act may be known and cited as the "Texas Citrus Marketing Act."

Partial invalidity

Sec. 23. If any section, sentence, clause, or part of this Act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, sentence, clause, and part thereof despite the fact that one or more sections, sentences, clauses, or parts thereof be declared unconstitutional. [Acts 1937, 45th Leg., p. 724, ch. 362.]

TITLE 94—MILITIA—SOLDIERS, SAILORS AND MARINES

Chap. Art.
1. General provisions....5765
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CHAPTER 1.—GENERAL PROVISIONS

Art.
5765. Active and reserve.
5766. Who are subject.
5767. Exemptions.
5768. Commander-in-chief.
5769. Expenditures.
5769a. Honorable discharge; dishonorable discharge.

Art. 5765. [5764] Active and reserve.—The militia of this State shall be divided into two (2) classes, the active and reserve militia. The active

militia shall consist of organized and uniformed military forces of this State which shall be known as the Texas National Guard or the Texas State Guard as the case may be; the reserve militia shall consist of all those liable to service in the militia, but not serving in the Texas National Guard or the Texas State Guard. [Acts 1905, p. 167; Acts 1943, 48th Leg., p. 464, ch. 311, § 1.]

Art. 5766. [5765] Who are subject.—All able-bodied male citizens, and able-bodied males of foreign birth who have declared their intention to become citizens, who are residents of this State and between eighteen and forty-five years of age, and who are not exempted by the laws of the United States or of this State, shall constitute the militia and be subject to military duty. [Acts 1905, p. 167.]

Art. 5767. [5766] Exemptions.—In addition to those exempted by the laws of the United States, the following persons shall be exempt from military duty in this State:

1. The Lieutenant-Governor and the heads of the several departments.
2. The judges and clerks of all courts of record.
3. The members and officers of both houses of the Legislature.
4. Each sheriff, district attorney, county attorney, county assessor, county collector, county treasurer, and county commissioner.
5. The mayor, aldermen, assessor and collector of incorporated cities and towns.
6. The officers and guards of State prisons, houses of correction, and the officers and instructors and attendants of other State institutions; keepers, attendants and assistants of poor houses; superintendents, nurses, and assistants of all hospitals.
7. The members of any regularly organized and paid fire or police department in any city or town, but no member of the active militia shall be relieved from duty because of his joining any such fire company or department.
8. All ministers of the gospel exclusively engaged in their calling; all teachers engaged in public institutions and public schools.
9. All persons who shall have served in the active militia of this State for the term of seven years, and have been honorably discharged therefrom.
10. Idiots, lunatics, vagabonds, confirmed drunkards, persons addicted to the use of narcotic drugs, and persons convicted of infamous crimes.
11. Any person who conscientiously scruples to bear arms; provided he shall pay an equivalent for personal service.
12. All such exempted persons, except those enumerated in subdivision 10, shall be liable to military duty in case of war, insurrection, invasion or imminent danger thereof. [Id.]

Art. 5768. [5767] Commander-in-chief.—The Governor by virtue of his office, shall be commander-in-chief of the military forces of this State, except such portions as may at times be in the service of the United States. Whenever the Governor is unable to perform the duties of commander-in-chief, the Adjutant General shall command the military forces of this State, except in cases where the Lieutenant-Governor, or the president of the Senate, under the laws of this State is required to perform the duties of Governor. [Id.]

Art. 5769. Expenditures.—All amounts expended from appropriations made for the military forces of this State shall be paid only on itemized accounts sworn to by the party expending the same and showing the time, purpose and for what said amount was expended and by whom, approved by both the Adjutant General and the Governor before their payment. The Comptroller shall not issue warrants upon the State Treasury for any moneys expended under this title until said itemized accounts have been filed in the Comptroller's office. [Id.]

Art. 5769a. Honorable discharge; dishonorable discharge.—At the termination of the appointment of an officer in the Military Forces of Texas and at the termination of any enlistment in such Forces, either for expiration of term or for any other cause, the person affected shall be furnished, on his request, a certificate of discharge which shall evidence that the discharge was honorable; provided, however, that, in any case where such termination is prescribed by a sentence of court martial so providing, a certificate of dishonorable discharge shall be issued and delivered to the person affected. [Acts 1943, 48th Leg., p. 464, ch. 311, § 3.]

CHAPTER 2.—RESERVE MILITIA

Art.
5770. Military duty.
5771. Enrollment.
5772. Notice.
5773. Assessment rolls.
5774. Drafts.
5775. Drafts: report.
5776. Drafts: substitute.
5777. Civil officers' duty.
5778. Power of Governor.
5779. Muster.

Article 5770. [5768] Military duty.—The reserve militia shall not be subject to active military duty, except when called into the service of this State, or of the United States, in case of war, insurrection, invasion, or for the prevention of invasion, the suppression of riot, tumults and breaches of the peace, or to aid the civil officers in the execution of the law and the service of process, in which case, they or so many of them as the necessity requires, may be ordered out for actual service by draft or otherwise as the Governor may direct. The portion of the reserve militia ordered out or accepted shall be mustered into the service for such period as may be required, and the Governor may assign them to existing organizations of the active militia, or organize them as the exigency of the occasion may require. [Acts 1905, p. 167.]

Art. 5771. [5769] Enrollment.—Whenever the Governor deems it necessary, he may order the county tax assessors or may designate other persons to make an enrollment of all persons liable to military duty, other than members of the active militia. Such enrollment shall state the name, residence, age, color and occupation of the persons enrolled. Enrolling officers may question under oath, which they are hereby authorized to administer, any person deemed liable to perform military duty, but who denies the same; and, if any person refuses to be sworn, the enrolling officer shall enroll his name in the same manner as though he had admitted his liability. Said enrolling officers shall, within such time as the Governor may require, prepare and file three copies of such enrollment, properly certifying that he has enrolled all persons residing in his county, who are liable to perform military duty, one copy to be filed in the office of the Adjutant General, one in the office of the county clerk of the county in which the enrollment was made, and one copy retained by the enrolling officer. Upon filing such lists the enrolling officer shall be paid out of the county treasury eight cents for each person so enrolled and notified as hereinafter set out. [Id.]

Art. 5772. [5770] Notice.—The enrolling officer shall at the time of making the enrollment, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him, or leaving it with some person over fourteen years old at his place of residence, or by mailing such notice at the expense of the county to his last known place of residence or abode. All persons claiming exemption, must within

ten days after receiving such notice, file a written verified statement of such exemption in the office of the county clerk. Such clerk shall thereupon, if such person be exempted according to law, mark the word "exempt" opposite his name; and the remainder of all thus enrolled and not thus found to be exempt shall constitute the militia of this State and be subject to military duty. Such clerk shall transmit a copy of such corrected list of enrollment to the Adjutant General within twenty days after the filing of the original list of enrollment for which he shall be allowed two cents for each name on such list, to be paid by the county. The officer highest in rank in the active militia, and the heads of the fire and police departments in each city or town, shall whenever an enrollment is ordered, file within ten days in the office of such county clerk a certified list of the names of all persons in the active militia of such county or in such department. [Id.]

Art. 5773. [5771] Assessment rolls.—Each county assessor shall allow persons appointed to make such enrollment, if persons other than the assessor be appointed, at all times to examine their assessment rolls and make copies thereof. All persons shall, upon the application of any person making such enrollment, give the name of and all other information concerning any person within their knowledge liable to be enrolled, under penalty of ten dollars for every concealment or false information, or refusal to give the information requested, to be recovered in the name of the State of Texas by a judge advocate, district or county attorney in the justice court at Austin, or in the precinct of his residence with costs. The officer making the enrollment shall, within ten days, report to the Adjutant General all persons who fail or neglect to give information. [Id.]

Art. 5774. [5772] Drafts.—Whenever it shall be necessary to call out any portion of the reserve militia for active duty, the Governor may apportion the number by draft according to the population of the several counties of the State, or otherwise, as he shall direct. The Governor shall direct his order to the sheriff of each county from which any draft is required, setting forth the number of persons such county is to furnish. Upon the requisition of the Governor being received by the sheriff, he shall immediately personally notify the county clerk, who shall copy by name or number, from the corrected list of enrollment of such county on file in his office, all persons who are so returned as liable to perform military duty; such names or their corresponding numbers, shall be placed on slips of paper of the same size and appearance, as near as practicable, which slips so named or numbered, shall be placed in a box suitable for that purpose, and the number required to fill such draft or requisition shall be drawn therefrom, in the same manner provided by law for drawing jurors. All persons so drawn and liable to perform military duty shall be determined to be legally held to serve, in the manner and for the purpose and time specified in the requisition; and the sheriff shall notify the persons so drafted by registered letter, or personally in writing, at what time and place they shall appear, for which he shall receive expense of postage and five cents each to be paid by the county. [Id.]

Art. 5775. [5773] Drafts: report.—Every member of the reserve militia ordered out, or who volunteers, or is drafted, under the provisions of this law, who does not appear at the time and place so designated by the sheriff, or his commanding officer within twenty-four hours from such time, or furnish a substitute or who does not produce a sworn statement of physical disability from a physician in good standing of his inability to so appear, shall be deemed to be a deserter and dealt with as prescribed by law for deserters. [Id.]

Art. 5776. [5774] Drafts; substitute.—Any person in the reserve militia of this State, who has been drawn to perform military duty, may at any time, be exempt until again required in his turn to serve, by furnishing an acceptable substitute on or before the day fixed for his appearance; but if during any period of service, any man who is serving in the active militia as a substitute for another, becomes liable to service in his own person, he shall be taken for such service, and his place as substitute shall be supplied by the man in whose stead he was serving, or another substitute. [Id.]

Art. 5777. [5775] Civil officers' duty.—Any sheriff, or constable, county assessor or county clerk who neglects or refuses to perform any duty enjoined upon him by this law, in addition to criminal liability, shall be liable to a penalty of not less than one hundred nor more than one thousand dollars to be recovered against him or his bondsmen in the name of the State by suit instituted by a judge advocate or district or county attorney, in the proper court of Travis County, or the county of which such person is the sheriff, constable, assessor or clerk. [Id.]

Art. 5778. [5776] Power of Governor.—The Governor shall have power in the case of insurrection, invasion, tumult, riot or breach of peace, or imminent danger thereof, to order into the active service of this State any part of the militia that he may deem proper. When the militia of this State, or any part thereof, is called forth under the Constitution and laws of the United States, the Governor shall order out for service the active militia, or such part thereof as may be necessary; and, if the number be insufficient, he shall order out such part of the reserve militia as he may deem necessary. During the absence of organizations of the militia in the service of the United States, their State designations shall not be given to new organizations. [Id.]

Art. 5779. [5777] Muster.—The portion of the reserve militia ordered out or accepted into the service, as indicated in Articles 5770 and 5774 of this chapter, shall be immediately mustered into service for such period as the Governor may direct, and shall be organized into troops, batteries, companies and such other organizations as may be necessary, which may be arranged in squadrons, batallions, regiments or corps, or assigned to organizations of the active militia already existing. The Governor is authorized to appoint the officers necessary to commence or complete, or to command any organization thus created. Such new organization shall be equipped, disciplined and governed according to the military laws and military regulations of this State. [Id.]

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ORGANIZATION

Art. 5780. [5778] Strength.—The Texas National Guard shall consist of the existing military organizations, and such others as may be organized hereafter, and such persons as are held to military duty under the laws of this State, or such persons as are exempt under said laws who may accept appointment or voluntarily enlist therein, or of such persons of the reserve militia as may be mustered therein, but at no time, except in case of war, insurrection, invasion, the prevention of invasion, the suppression of riot, or the aiding of the civil authorities in the execution of the laws of this State, shall the maximum strength thereof exceed thirty-seven thousand (37,000) officers and enlisted men. [Acts 1905, p. 167; Acts 1947, 50th Leg., p. 758, ch. 373, § 1.]

Art. 5781. [5779] Regulations.—The Governor shall prescribe such regulations as he may see fit for the organization of the Texas National Guard; and he shall, from time to time, as he may deem for the best interests of the service, change such regulations, which shall be in accordance with this chapter, and conform as near as practicable to the organization of the regular army of the United States. He may, at any time for cause deemed good and sufficient by him, muster out of the service or reorganize any portion of the Texas National Guard or the reserve militia, or discharge any officer or enlisted man thereof, and he shall have full control and authority over all matters touching the military forces of this State, its organization, equipment and discipline. [Acts 1905, p. 167.]

Art. 5782. [5780] Publication.—The Governor shall make and publish regulations in accordance with existing military laws, for the government of the military forces of this State, which shall embrace all necessary orders and forms of general character for the performance of all duties incumbent on officers and men in the military service, including the rules for the government of courts martial; the existing regulations to remain in force until the Governor shall have published such regulations. The Governor shall, as he may see fit from time to time, create new regulations, or amend, modify, or repeal existing regulations. [Id.]

Art. 5783. [5781] Governor's staff.—The Governor shall have a staff consisting of the Adjutant General and twelve aides-de-camp. The Adjutant General shall have rank and be appointed as provided by this law; the twelve aides-de-camp shall have the rank of lieutenant-colonel while also serving, and shall be appointed by, and serve during the pleasure of the Governor. Three of the aides-de-camp shall be selected from the officers of the Texas National Guard below the grade of colonel, and nine shall be selected without restriction as to the source of selection; provided, further, that said aides-de-camp shall not be ineligible from holding any office of emolument, trust or honor within this State, nor shall said aides-de-camp be ineligible from serving as chairman or member of any committee of any political party or organization. [Acts 1907, p. 224; Acts 1911, p. 25.]

Art. 5784. [5782] Bodies corporate.—Whenever any troop, battery, company, signal corps or band is mustered into the active militia of this State by the authority of the Governor, such troop, battery, company, signal corps or band shall, from the date of such muster in, be deemed and be held in law a body corporate and politic, with power under its corporate name to take, purchase, own in fee simple, hold, transfer, mortgage, pledge and convey real or personal property to an amount in value, at the time of its acquisition, of two hundred thousand dollars (provided that the natural enhancement in value of any property properly acquired by any such company shall not affect the right of such company to hold or otherwise handle such property), and with like power under its corporate name to sue and be sued, plead and be impleaded, and to prosecute and defend in the courts of this State or elsewhere; to have and use a common seal of such device as it may adopt; to ordain, establish, alter or amend by-laws for the government and regulation of the company affairs not inconsistent with the Constitution and laws of this State and of the United States, and the orders and regulations of the Governor; and generally to do and perform any and all things necessary and proper to be done in carrying out and perfecting the purpose of its organization, of which the officers, and in case of a band, the non-commissioned officers, shall be directors, the senior the president. [Acts 1907, p. 224; Acts 1911, p. 149.]

Art. 5785. [5783] Discipline.—The system of discipline and exercise of the active militia of this State shall conform generally to that of the army of the United States, as prescribed by the President, and to the provisions of the laws of the United States, except as otherwise provided by law, or by the regulations issued by the Governor. [Acts 1905, p. 167.]

Art. 5786. [5784] Prohibiting organization.—No body of men, other than the regularly organized militia of this State and the troops of the United States, shall associate themselves together as a military company or organization or parade in public with firearms in any city, or town of this State; provided that students in the educational institutions where military science is a prescribed part of the course of instruction, and soldiers honorably discharged from the service of the United States, and Confederate veterans, may, with the consent of the Governor, drill and parade with firearms in public. Nothing herein shall be construed to prevent parades by the active militia of any other State as hereinafter provided. [Id.]

ADJUTANT GENERAL

Art. 5787. [5785–6–7] Department.—The Adjutant General shall be the head of the Adjutant General's Department, and shall have the rank of Major General. He shall be biennially appointed for a term of two (2) years by the Governor, by and with the advice and consent of the Senate, if in Session. [Acts 1905, p. 167; Acts 1947, 50th Leg., p. 634, ch. 335, § 1.]

Art. 5788. [5788] Oath and bond.—The person appointed Adjutant General shall first enter into a bond with two or more good and sufficient sureties payable to and to be approved by the Governor, which bond shall be in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of said office. [Acts 1905, p. 167.]

Art. 5789. [5789] Seal.—The device upon the seal of the Adjutant General shall consist of a star of five points with the words, "Office of Adjutant General, State of Texas," around the margin. [Id.]

Art. 5790. [5790] Powers.—The Adjutant General shall be in control of the military department of this State, and subordinate only to the Governor in matters pertaining to said Department, or the military forces of this State; and he shall perform such duties as the Governor may from time to time entrust to him, relative to the military commissions, the military forces, the military stores and supplies, or to other matters respecting military affairs of this State; and he shall conduct the business of the Department in such manner as the Governor shall direct. He shall have the custody and charge of all books, records, papers, furniture, fixtures and other property relating to his Department, and shall perform as near as practicable, such duties as pertain to the Chief of Staff, the Military Secretary and other Chiefs of Staff Departments, under the regulations and customs of the United States Army.

For and on behalf of the State of Texas, the Adjutant General is authorized to execute leases or subleases between the State of Texas, as lessee or sublessee, and the Texas National Guard Armory Board, as lessor or sub-lessor, for any building or buildings and the equipment therein and the site or sites therefor to be used for armory and other proper purposes, and to renew such leases or sub-leases from time to time; and the Adjutant General shall not lease or sub-lease any property for armory purposes in or about any municipality from any person other than the Texas National Guard Armory Board, so long as adequate facilities for such armory purposes in or about such municipality are available for renting from the Texas National Guard Armory Board. [Acts 1905, p. 167; Acts 1939, 46th Leg., p. 486, § 1.]

Art. 5791. [5791] Duties.—The Adjutant General shall, from time to time, define and prescribe the kind and amount of supplies to be purchased for the military forces of this State, and the duties and powers respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several camps, stations of companies, or other necessary places for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may, by virtue of such regulations, be entrusted with the same; and shall fix and make reasonable allowance for the store rent and storage necessary for the safe-keeping of all military stores and supplies; and shall control and supervise the transportation of troops, munitions of war, equipment, military property and stores throughout the State. [Acts 1905, p. 167.]

Art. 5792. [5792] Bids.—The Adjutant General may prescribe rules and regulations to be observed in the preparation and submission and opening of bids for contracts under his department; and at his discretion may require any bid to be accompanied by a good bond in such penal sum as he deems advisable, conditioned that the bidder will enter into a contract agreeable to the terms of his bid, if the same be awarded to him, within sixty days from the date of the opening of the bids, or otherwise pay the penalty. No bid shall be withdrawn by the bidder within said period of sixty days. [Id.]

Art. 5793. [5793] Regulations and duties.—The Adjutant General shall prescribe regulations not inconsistent with law for the government of his department and the custody, use and preservation of the records and property appertaining to it whether belonging to this or the United States, such regulations to be operative and in force when promulgated in the form of general orders, circulars or letters of instruction and shall:

1. Superintend the preparation of such returns and reports as may be required by the laws of the United States from this State.
2. Keep a register of all officers of the militia of Texas, and keep in his office all records and papers required to be kept and filed therein.
3. Have printed at the expense of the State, when necessary, the military law and regulations of Texas, and distributed to the commissioned officers, sheriffs, clerks and assessors of the counties of Texas at the rate of one copy to each.
4. Issue to each commissioned officer and headquarters one copy of the necessary text books, and of such annual reports concerning the militia as the Governor may direct.
5. Cause to be prepared and issued all necessary blank books, blanks, forms and notices required to carry into full effect the provisions of this law. [Id.]

Art. 5794. [5793–94] Report to Governor.—He shall report annually to the Governor the following information to be laid before the Legislature:

1. A statement of all moneys received or disbursed by him since his last annual report.
2. An account of all arms, ammunition, and other military property belonging to this State, or in possession of this State, from what source received, to whom issued, and its present condition, so far as he may be informed.
3. The number, condition and organization of the Texas National Guard and reserve militia.
4. Any suggestions which he may deem of importance to the military interests and conditions of this State, and the perfection of its military organization. [Id.]

Art. 5795. [5795–6] Assistants.—The Adjutant General shall have one assistant who shall fill the position of chief clerk, with the rank of colonel, one assistant quartermaster general, with the rank of colonel. All necessary clerks and employees may be employed and laborers hired by the Adjutant General as may be required to carry on the operations of his department. [Id.]

Art. 5796. [5797–8] Assistant Adjutant General.—The Governor shall appoint the Assistant Adjutant General on the recommendation of the Adjutant General. He shall have the rank of Brigadier General. He shall remain in office during the pleasure of the Governor, and shall be entitled to all the rights, privileges and immunities granted officers of like rank in the Texas National Guard. He shall before entering upon the duties of his office, take and subscribe to the oath of office prescribed for officers of the Texas National Guard, which oath shall be deposited in the office of the Adjutant General. He shall aid the Adjutant General by the performance of such duties as may be assigned him, and shall, in case of absence or inability of the Adjutant General to act, perform all such portions of the duties of Adjutant General as the latter may expressly delegate to him, and shall on application and without compensation therefor, administer oaths of office to officers of the active militia, and to employees of the Adjutant General's office required to be taken on their appointment or promotion. [Acts 1905, p. 167; Acts 1947, 50th Leg., p. 678, ch. 343, § 1.]

Art. 5796a. Salary of Assistant Adjutant General.—That on and after the passage of this Act there shall be paid to the Assistant Adjutant General a salary of three thousand dollars annually, payable monthly. [Acts 1929, 41st Leg., p. 500, ch. 238, § 1.]

Art. 5797. [5799] To issue certificates.—On the muster-in to the active militia of this State of any troop, battery, company, signal corps, or band, the Adjutant General shall issue to such organization a certificate to the effect that such organization has been duly organized in accordance with the laws and regulations of the militia service of this State, and that such organization is entitled to all the rights, powers, privileges and immunities conferred by such laws and regulations. Such certificate shall be in such form as the Adjutant General may prescribe. Such certificate shall be evidence in all the courts of this State that the organization therein named is duly incorporated. [Acts 1905, p. 167.]

Texas State Guard, this article inapplicable to, see article 5891a.

Art. 5798. [5800] To purchase stores.—The Adjutant General, after the appropriations are made for that purpose, may purchase and keep ready for use, or issue to the military forces of this State, as the best interests of the service may require, such amount and kind of quartermasters, ordnance, subsistence, medical, signal, engineers, and all other military stores and supplies as shall be necessary; he shall see that all military stores and supplies both the property of this State and of the United States are properly cared for and kept in good order, ready for use; and all accounts which may accrue against this

State under the provisions of this chapter shall, if correct, be certified and approved by the Adjutant General and paid out of the State Treasury as other claims are paid. Any military stores belonging to this State which may become unserviceable, obsolete, or unfit for further use, may be disposed of in such manner as the Governor or Adjutant General may prescribe by regulations or order; and the Adjutant General may sell or destroy as he may see fit for the best interests of the service, any unserviceable, or obsolete, or unsuitable military stores belonging to this State, the sums realized from the sale thereof to be turned into the State Treasury, or he may in his discretion, exchange such stores for such other military stores as the interest of the service may require, for the use of the active militia of this State. [Id.]

Art. 5798a. [Repealed by Acts 1947, 50th Leg., p. 728, ch. 363, § 14.]

The article repealed was Acts 1937, 45th Leg., 1st C.S., p. 1782, ch. 21, § 1; Acts 1945, 49th Leg., p. 219, ch. 163, § 1.

Art. 5798a—1. [Repealed by Acts 1945, 49th Leg., p. 16, c. 12, § 8.]

The article repealed was Acts 1943, 48th Leg., p. 557, ch. 330.

Art. 5798a—2. Veterans county service office

Creation; maintenance; salaries

Section 1. The office of Veterans County Service Office is hereby created. When the Commissioners Court of a county shall determine that such an office is a public necessity in order that those residents of the county who have served in the armed forces may promptly, properly and rightfully obtain the benefits to which they are entitled, it shall, by a majority vote of the full membership thereof, maintain and operate such an office and shall appoint a Veterans County Service Officer and such Assistant Veterans County Service Officers as shall be deemed necessary by the County Commissioners Court. Such Veterans County Service Officer and/or Assistant Veterans County Service Officer, shall receive a salary fixed by the County Commissioners Court, to be paid in equal monthly installments out of the general funds of the county and all salaries and travel expense of such Veterans County Service Officer and/or Assistant Veterans County Service Officer and all salaries of the personnel of such office and other expenses of such office shall be paid on order of the Commissioners Court; provided, however, that no salary paid to any such Veterans County Service Officer shall exceed the sum of Two Hundred Seventy-five ($275.00) Dollars per month and no salary paid to any such Assistant Veterans County Service Officer shall exceed the sum of Two Hundred ($200.00) Dollars per month; and provided further, that the population of the county, and the number of ex-service men and women in the county, shall definitely be taken into account in fixing the salary of the Veterans County Service Officer, and such Assistant Veterans County Service Officers as may be appointed.

Appointment of officers; term; qualifications

Sec. 2. Such Veterans County Service Officer and/or Assistant Veterans County Service Officer shall, if so appointed, serve for the remainder of the current county fiscal year during which they are appointed and thereafter shall be appointed for and serve for a term of two years, unless sooner removed for cause by the appointing authority. Such Veterans County Service Officer and such Assistant Veterans County Service Officer shall be qualified by education and training for the duties of such office. They shall be experienced in the law, regulations and rulings of the United States Veterans Administration controlling cases before them, and shall themselves have served in the active military, naval or other armed forces or nurses corps of the United States during the Spanish American War, World War I or World War II, for a period of at least four months, and have been honorably discharged from such service. Such persons shall have had at least two years' experience as a Service Officer in a nationally recognized veterans organization engaged in service work to veterans, as defined by the United States Veterans Administration, either as a Post, State, Department, or National Service Officer, which shall be evidenced by a statement of qualifications filed by the individual seeking appointment, with the County Commissioners Court, upon forms supplied by the Veterans State Service Officer of the State of Texas, which shall be certified to by the State Commander of the veterans organization to which such applicant shall belong, or shall have had one year's experience as a County Service Officer or Assistant County Service Officer, or shall have been given a certificate by the Veterans State Service Officer, who is hereby authorized to prescribe the training and qualifications required for the issuance of such certificate. A statement showing that applicant possesses one or more of the above qualifications, accompanied by supporting certificate, shall be filed with the County Commissioners Court at or before the time said appointments are made, and the filing thereof shall be a condition precedent to such appointment.

Duties; fees forbidden

Sec. 3. The duty of the Veterans County Service Officer and/or the Assistant Veterans County Service Officer shall be to aid all residents of the county and/or counties providing for such officers who served in the military, naval or other armed forces or nurses corps of the United States during any war or peacetime enlistment, and/or veterans and/or orphans and/or dependents in preparing, submitting and presenting any claim against the United States or any state, for compensation, hospitalization, insurance or other item or benefits to which they may be entitled under the existing laws of the United States, or of any state, or such laws as may hereafter be enacted, pertinent thereto. It shall also be their duty to defeat all unjust claims that may come to their attention. No fees, either directly or indirectly, for any service rendered by such Veterans County Service Officer and/or Assistant Veterans County Service Officer shall be charged of applicant, nor shall they permit the payment of any fee by applicant to any third person for services that might be rendered by them, nor seek to influence the execution of a power of an attorney to one national service organization over that of another.

Entry into records of institutions

Sec. 4. Said officers shall be given official entry into records of the eleemosynary and penal institutions of the State of Texas under the rules and regulations of the Board of Control governing eleemosynary institutions, and under the rules and regulations of the Texas Prison Board governing the Texas prison system, for the purpose of determining the status of any person confined therein in regard to any benefit to which such person may be entitled.

Joint employment by two or more counties

Sec. 5. The Commissioners Court of any county may make an arrangement or agreement with one or more other contiguous counties whereby all such counties, parties to the arrangement or agreement, may jointly employ and compensate a Veterans County Service Officer under the provisions of this Act, in which event the amount of compensation which would be paid by each such county under said agreement and the travel and such other miscellaneous expenses authorized by the Commissioners Court which would be paid by each such county under said agreement, shall be expressly stipulated in said agreement and said office shall be established and said arrangement and agreement entered into and such officers ap-

pointed and employed by a majority vote of the full membership of the County Commissioners Court of the respective counties who are parties to said arrangement and agreement. [Acts 1945, 49th Leg., p. 16, c. 12.]

Section 6 of this Act repealed all conflicting laws.
Section 7 of this Act provided that partial invalidity should not affect the remaining portions of the act.

Art. 5798a—3. Veterans education; State Treasurer authorized to accept funds from Veterans Administration; disposition.—Pursuant to and in compliance with Public Law 679 [1]—Seventy-ninth Congress to authorize the Veterans Administration, to reimburse State and local agencies for expenses incurred in rendering services in connection with the administration of certain training programs for veterans and for other purposes, the State Treasurer of the State of Texas is hereby authorized to accept such funds or moneys as may be tendered or granted by the Veterans Administration to the Adjutant General of the State of Texas for the use and benefit of the State Approval Agency for Veterans Education under Public Law 346 [2] for salaries and traveling expense of supervisors, inspectors, and secretarial or administrative help, or for such other expenses as may be necessary in establishing the training program for veterans of World War II. When such funds or moneys are received by the State Treasurer, he shall deposit same to the credit of the State Approval Agency for Veterans Education under Public Law 346 Account in the General Revenue Fund of the State. In order that the Director, State Approval Agency for Veterans Education under Public Law 346, may establish the training program immediately, there is hereby appropriated out of the General Revenue Fund of the State of Texas not otherwise appropriated the sum of Fifty-five Thousand Dollars ($55,000) to the Adjutant General for the use and benefit of the Director, State Approval Agency for Veterans Education under Public Law 346; and in addition thereto, any and all of such funds or moneys as may be received and deposited in the State Treasury from the Veterans Administration are hereby appropriated to the Adjutant General's Department for the use and benefit of the Director, State Approval Agency for Veterans Education under Public Law 346, for the specific purpose authorized by and under Public Law 679—Seventy-ninth Congress. Any balances of the Fifty-five Thousand Dollars ($55,000) herein appropriated at the end of the term for which the Veterans Administration program exists shall revert to the General Revenue of the State of Texas. Any and all moneys appropriated hereunder shall be disbursed in compliance with the same rules, riders and limitations as control the disbursement of funds under the current Departmental Appropriation Bill. [Acts 1947, 50th Leg., p. 365, ch. 207, § 1.]

1 Veterans Regulations, 38 U.S.C.A. foll. ch. 12.
2 5 U.S.C.A. §§ 611a, 611b.

Art. 5798a—4. Veterans' Affairs Commission

Declaration of purpose

Section 1. It is hereby declared that the purpose of this Act is to take care of the tremendous increase in veterans population in the State of Texas, which has resulted from the Spanish-American War, World War I, World War II, and other wars in which residents of the State have participated, by giving proper care and assistance to Texas veterans of all wars.

Veterans' Affairs Commission—creation, membership

Sec. 2. There is hereby created and established by this Act, a Veteran's Affairs Commission of the State of Texas. The Commission shall be composed of five (5) members who shall be appointed by the Governor, with the advice, consent, and confirmation of the Senate. The members of the Commission and all male personnel are to be veterans of the Spanish-American War, World War I, World War II, or of other wars in which the United States participated. They shall have received honorable discharges from the service of the United States; shall be citizens and bona fide residents of the State of Texas, and at least three (3) members of the Commission shall have been finally separated from the Service under honorable conditions as an enlisted man. No two (2) members of the Commission shall reside in the same Senatorial District, and not more than one (1) shall be from a Senatorial District composed of one (1) county. The Commission shall continue in office, as designated by the Governor at the time of appointment, through the last day of the second, fourth, and sixth calendar years respectively, following the effective date of this Act. The successors of members initially appointed shall be appointed for terms of six (6) years in the same manner as the members originally appointed under this Act, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed only for the remainder of such term. Each member shall serve until the appointment and qualification of his successor. Each member shall serve without pay, except he shall be paid the sum of Ten Dollars ($10) per diem for regular and called meetings of the Commission and shall be reimbursed for actual and necessary expenses incurred by him and authorized by the Commission.

Duties

Sec. 3. It shall be the duty of the Commission to:

(a) Make a compilation of the Laws, Federal, State, and Local, enacted for the benefit of members of the Armed Forces; for veterans and their families and dependents; collect data and information as to services and facilities available to veterans; to co-operate with veterans' service agencies throughout the State; to inform members of the Armed Forces, veterans, their families and dependents, and military and civilian authorities regarding the existence or availability of (1) Educational training, and re-training facilities; (2) Health, medical, rehabilitation and housing services and facilities; (3) Employment and re-employment services; (4) Provisions of Federal, State, and Local Laws affording rights, privileges, and benefits to members of the Armed Forces, veterans, their families, and dependents; and (5) Other matters of similar, related or appropriate nature.

(b) Assist veterans and their families and dependents in presentation, proof and establishment of such claims, privileges, rights and other benefits as they may have under Federal, State or Local Laws;

(c) Co-operate with all national, state and local governmental and private agencies securing services or any benefits to veterans, their families and dependents;

(d) Investigate abuses or exploitation of veterans, their families or dependents, to correct where possible, and to recommend legislation where necessary for full correction; and

(e) Co-ordinate the services and activities of all State Departments or divisions having services and resources affecting veterans, their families or their dependents;

(f) Co-operate with and assist in training of County Service Officers. No fees, either directly or indirectly, shall be charged applicant for any service rendered by the Veterans' Affairs Commission, nor shall the Commission permit the payment of any fee by applicant to any third person for services that may be rendered.

Organization, meeting, reports

Sec. 4. The Commission shall, within thirty (30) days after its appointment, organize, adopt a seal and make such rules and regulations for its administration as it may deem necessary and may from time to time amend such rules and regulations. At the organ-

ization meeting, the Commission shall elect from among its members a Chairman, a Vice-chairman, and a Secretary, to serve for one (1) year, and annually thereafter shall elect such officers who shall serve until their successors are appointed and qualified. Three (3) members shall constitute a quorum and no action shall be taken by less than a majority of the Commission. The Commission shall hold regular meetings at least once in every three (3) months. At the initial meeting, the regular meeting dates and places shall be fixed. Special meetings may be called as provided by the rules and regulations. The Commission shall on or about December first of each year make a written report to the Governor giving a summary of its proceedings during the preceding fiscal year and such other information deemed necessary or useful. The fiscal year of the Commission shall conform to the fiscal year of the State.

Offices and expenses

Sec. 5. Suitable offices and office equipment shall be provided by the State of Texas for the Veterans' Affairs Commission in the City of Austin. The Commission may incur the necessary expenses for office furniture, stationery, printing, incidentals, and other expenses necessary to perform its work, and sufficient office personnel, stenographers, typists, and clerical help shall be employed to maintain the efficient operation of the office. The Commission shall be authorized to pay the expenses provided in paragraph 5 hereof from the appropriation hereinafter transferred to the Commission.

Executive Director

Sec. 6. The Commission shall employ a well-qualified Executive Director at a salary not to exceed Five Thousand, Five Hundred Dollars ($5,500). He shall be appointed with due regard to his fitness by past experience and training and should be well-qualified to administer the policies of the Commission. He shall devote his entire time to the duties of the office, as prescribed by this Act, and shall not actively engage or be employed in any other business, vocation, or profession while serving as Executive Director. The Director shall be responsible for placing into operation the policies and instructions promulgated by the Veterans' Affairs Commission, and shall serve as Executive Officer of the Commission, but he shall not have the power to vote. The Director shall be in charge of the offices of the Commission, shall direct the paid personnel of the Commission, and be responsible to the Commission for all reports, data, and so forth, required by the Commission.

Assistant directors

Sec. 7. There shall be employed by the Commission, upon recommendation of the Executive Director, two (2) assistant directors who shall, by training and experience, be well-qualified to perform the duties assigned to them, and one (1) of whom must have been finally separated from the Service under honorable conditions as an enlisted man. The salaries for the assistant directors shall not exceed Four Thousand, Eight Hundred Dollars ($4,800) per year. One (1) assistant director, in addition to other duties which may be assigned to him by the Commission, shall, subject to the supervision and control of the Commission and the Executive Director, be in charge of claims and shall assist in such manner as the Commission may deem proper in the co-ordination of veterans' claims work throughout the State. One (1) assistant director, in addition to such other duties as may be assigned to him by the Commission, shall be in charge of records, contacts, and co-ordination of the various agencies pertaining to veterans' affairs.

State Approval Agency for Veterans' Education

Sec. 8. The State Approval Agency for Veterans' Education, as established by the Governor, under terms of United States Public Law 346, Acts of the Seventy-eighth Congress[1] and Public Law 679, Acts of the Seventy-ninth Congress,[2] shall be attached to the Veterans' Affairs Commission for administration only. Policies for the administration of the training program for veterans have been established in a contract signed by the Governor, in behalf of the State, and the Veterans Administration of the United States. Under the terms of this agreement, the Director of this Agency is named by the Governor. The Agency is hereby attached to the Veterans' Affairs Commission for administration purposes only. Under agreement with the Veterans' Administration, the government of the United States pays salaries and travel expenses of personnel engaged in the training program. Incidental expenses for the operation of the Agency—such as postage, stationery, telephone and telegraph, and other contingent expenses—shall be paid by the Veterans' Affairs Commission from funds appropriated for the purpose by the Legislature.

1 38 U.S.C.A. § 693 et seq.
2 38 U.S.C.A. ch. 12 note.

Powers of Director and assistants

Sec. 9. The Executive Director, and the assistant directors to be appointed under this Act shall have power to administer oaths, certify under the seal of the Commission to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records and documents.

Term of Director and assistants

Sec. 10. The Director and the assistant directors and all representatives and employees appointed under this Act shall serve subject to the will of the Commission.

Intent

Sec. 11. It is the intent and purpose of this Act that the functions heretofore performed by the State Service Office of the State of Texas shall be absorbed by the Veterans' Affairs Commission, as created herein.

Appropriations

Sec. 12. At such time as the functions and services now performed by the Veterans' State Service Officer, are taken over and absorbed by the Veterans' Affairs Commission hereby created, then all unexpended balances in all funds heretofore and hereafter appropriated to the Veterans' State Service Office are hereby reappropriated to the Veterans' Affairs Commission, to be expended in accordance with the provisions of the departmental appropriation bill, making the appropriation to the Veterans' State Service Office provided that the Veterans' Affairs Commission shall have the authority to change within the total amounts appropriated herein the designation of service officers and assistant service officers and their reassignment to conform with any changes in the location of Veterans Administration regions, veterans hospitals, and similar establishments, and be it further provided that the assistant service officers designated in the available appropriation may be authorized to handle any and all veterans' claims as ordered by the Veterans' Commission. Acts 1947, 50th Leg., p. 728, ch. 363.

Section 13 of the Act of 1947 provided that partial invalidity should not affect the remaining portions of the Act.

Section 14 repealed Chapter 141, Acts, Fortieth Legislature, Regular Session, as amended by Chapter 246, Acts, Forty-second Legislature, Regular Session, and House Bill No. 321, Regular Session, Forty-fifth Legislature, and Chapter 21, Acts, Forty-fifth Legislature, First Called Session, and as amended by Chapter 163, Senate Bill No. 291 of the Regular Session of the Forty-ninth Legislature, and all other laws in conflict therewith. [Art. 5798a].

Section 15 provided for the transfer of all books, papers, records, property and pending business thereof made, used, acquired, or conducted by the Veterans' State Service Office of the State of Texas, in the exercise of its functions to the Veterans' Affairs Commission.

ASSISTANT QUARTERMASTER GENERAL

Art. 5799. [5801] Assistant.—The Assistant Quartermaster General shall be appointed by the Governor on the recommendation of the Adjutant General, and shall remain in office during the pleasure of the Governor. He shall be entitled to all the rights, privileges and immunities granted officers of like rank in the Texas National Guard. He shall first enter into bond in the sum of ten thousand dollars, payable to and to be approved by the Governor, and conditioned faithfully to discharge the duties of his office and disburse and account for all moneys, and to faithfully keep, issue and and [1] account for all military stores, supplies and other property of this State, or of the United States, coming into his possession or entrusted to his care for the use of the military forces of this State. He shall take and subscribe the oath of office prescribed for officers of the Texas National Guard. He shall, under the immediate direction of the Adjutant General, perform as near as may be, the duties pertaining to the chiefs of the quartermaster, subsistence, and ordnance department under the regulations and customs of the United States army. Upon assuming his duties he shall receipt to the Adjutant General for all military property of whatever kind belonging to this State, or to the United States, which may be on hand and intended for the use of or issued to the military forces of this State, and receipt to the Adjutant General for such other military property as may be received from the United States or other sources. He shall be responsible for all quartermasters, subsistence, ordnance, medical, signal, and all other military stores and supplies belonging to this State, or which may be issued to this State by the United States, except such of the above mentioned stores and supplies as may be issued to the officers and organizations of the military forces of this State in accordance with the regulations in force. He shall issue and receive such quartermasters, subsistence, ordnance, medical, signal, and all other military stores and supplies as the Governor or the Adjutant General may direct; attend to the care, preservation, safekeeping, and repairing of the arms, ordnance, accoutrements, equipments and all other military property belonging to this State, or issued to this State by the United States, for the purpose of arming and equipping the military forces of this State; prepare such returns of all quartermasters, subsistence, ordnance, medical, signal and other military stores and supplies that have been issued to this State by the United States at the times and in the manner required by the Secretary of War, and render semi-annually to the Adjutant General returns of all military stores and supplies on hand or issued, in such manner as the Adjutant General may require. He shall render to the Adjutant General annually, or oftener, if required, a statement of all moneys received or disbursed by him since last report. He shall perform the duties of the quartermaster, commissary, and paymaster of the Ranger force, and such other duties as the Governor or the Adjutant General may require of him. [Acts 1905, p. 167.]

[1] So in enrolled bill. Second "and" should probably be omitted.

COMMISSIONED OFFICERS

Art. 5800. [5802] Term.—All officers of the National Guard of Texas shall be appointed and commissioned by the Governor, and shall hold their positions until they shall have reached the age of sixty-four years, unless sooner retired by reason of resignations, disability or for cause to be determined by a court martial or an efficiency board legally convened for that purpose. [Acts 1905, p. 167; Acts 1917, 1st C. S. p. 3.]

Article 5800 inapplicable to Texas State Guard, see article 5891a.

Art. 5801. [5803] Commissions.—All commissions in the military service of this State shall be in the name and by authority of the State of Texas, sealed with the State seal, signed by the Governor and attested by the Secretary of State, and recorded by the Adjutant General in a record book kept in his office for that purpose. No fee for issuing such commissions shall be charged, or collected. [Acts 1905, p. 167.]

Art. 5802. [5804] Qualifications.—Staff officers, including officers of the pay, inspection, subsistence and medical departments, shall have had previous military experience. Vacancies among said officers shall be filled by the appointment from the officers of the militia of the State of Texas. All other officers of the National Guard of Texas shall be selected from the following classes: officers and enlisted men of the National Guard; officers on the reserve or unassigned list of the National Guard; officers, active or retired, and former officers of the United States Army, Navy, and Marine Corps; graduates of the United States Military and Naval Academies, and graduates of schools, colleges and universities where military science is taught under the supervision of an officer of the Regular Army; for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein. [Acts 1905, p. 167; Acts 1st C. S. 1917, p. 3.]

Article 5802 inapplicable to Texas State Guard, see article 5891a.

Art. 5803. Other qualifications.—All officers of the National Guard of Texas shall be citizens of the United States, over twenty-one and under sixty-four years of age, and shall take and subscribe the official oath, and shall have successfully passed the physical examination as prescribed by the laws of the United States. [Id.]

Article 5803 inapplicable to Texas State Guard, see article 5891a.

Art. 5804. [5805] Examination.—Before receiving a commission consequent upon an original appointment or before commissioned to a higher grade as a result of promotion, each officer must pass a satisfactory examination before a board as to his knowledge of military affairs and general knowledge and fitness for the service. No one failing to pass such examination shall be eligible for an office in the militia of this State, or for promotion, for the period of one year from the date of such failure. Judge advocates, medical officers, and veterinary surgeons shall be examined as to their general and professional knowledge and fitness for such service only. The following are exempt from examination: General officers, chaplains and enlisted men placed on the retired list as brevet second lieutenants. [Acts 1905, p. 167.]

Article 5804 inapplicable to Texas State Guard, see article 5891a.

Art. 5805. [5806] Boards of examiners.—Boards of examination under the preceding article shall be appointed by the Governor. Such boards shall consist of not less than three officers, and shall have the same power to take evidence, administer oaths, and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court martial. When returns of appointments are received by a board, the persons appointed shall by it be ordered before it for examination, and the result of the examination, with all papers in the case, shall be forwarded to the Adjutant General. [Id.]

Article 585 inapplicable to Texas State Guard, see article 5891a.

Art. 5806. [5807] Oath.—Every officer duly commissioned shall, within ten days after his commission is tendered him, or within ten days after he shall have been notified personally or by mail that the same is held in readiness for him by a superior officer, take and subscribe the official oath. Such oath shall be

taken and subscribed before an officer authorized to administer an oath, or some general or field officer or an officer who shall hold the assimilated grade of a field officer, who has taken the oath himself, and who is hereby authorized to administer the same. In case of neglect or refusal to take and subscribe such oath within the time mentioned such commission shall be canceled by the Governor, and a new appointment shall be made. Such oath of office shall be filed in the office of the Adjutant General. [Id.]

Article 5806 inapplicable to Texas State Guard, see article 5891a.

Art. 5807. [5808] Brevet commissions.—The Governor may, upon the recommendation of their commanding officers, confer brevet commissions of a grade higher than the ordinary or brevet commissions ever held by them, upon the officers of the military service of this State for gallant conduct, or meritorious service of not less than twenty-five years. He may also confer upon officers in active service in the military service of this State, who have previously served in the forces of the United States in time of war, brevet commissions of a grade equal to the highest grade in which they previously served. Such commissions shall carry with them only such privileges or rights as are allowed in like cases in the military service of the United States. [Id.]

Art. 5808. [5809] Supernumerary list.—Officers who shall be rendered surplus by reduction or disbandment of organizations, or in any manner provided by this law, shall at the discretion of the Governor, be withdrawn from active service and placed upon the supernumerary list. The Governor may detail supernumerary officers for active duty, in which case they shall rank in their grade from the date of such detail, and he may relieve them from such duty and return them to the supernumerary list at his discretion.

Article 5808 inapplicable to Texas State Guard, see article 5891a.

Art. 5809. [5810] Retirement.—Any officer of the active militia who has reached the age of sixty-four years may be placed upon the retired list by the Governor. Any officer who shall have served as an officer in the same grade in the military service of this State for the continuous period of eight years, or as an officer in the military service of this State continuously for ten years, or as an officer in the military service of this State for twelve years or as an officer and enlisted man in the military service of this State for eighteen years may, upon his own request, be placed upon the retired list and withdrawn from active service and command by the Governor. Any officer who becomes disabled, and thereby incapable of performing the duties of his office, shall be withdrawn from active service and placed on the retired list by the Governor. Any officer who becomes unfit or incompetent, and thereby incapable of performing the duties of his office, shall be discharged upon the recommendation of his commanding officer, or the recommendation of an inspecting officer. Such retirement or discharge shall be by order of the Governor, and in either case, shall be subject to the provisions of this article. Before making such order the Governor shall, at his discretion, appoint a board of not less than five commissioned officers, one of whom shall be a surgeon, whose duty it shall be to determine the facts as to the nature and cause of incapacity of such officer as appears disabled or unfit, or incompetent from any cause, to perform military service, and whose case shall be referred to it. No officer whose grade or promotion would be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Such board is hereby invested with the powers of courts of inquiry and courts martial, and whenever it finds an officer incapacitated for active service, shall report such fact to the Governor, stating cause of incapacity, whether from disability, unfitness, or incompetency, and if he approves such finding such officer shall be placed on the retired list or discharged as herein provided. The members of the board shall first be sworn to honestly and impartially perform their duties as members of such board. No officer shall be placed upon the retired list, or discharged by the action of such board, if appointed by the Governor, without having had a fair and full hearing before the board, if upon notice he shall demand it, and the Governor in his discretion shall think proper to appoint such board. No case need be referred for the action of such board, under this article, unless the officer designated to be placed on the retired list, or discharged shall, within twenty days after being notified that he will be so retired or discharged, serve on the Adjutant General a written notice that he demands a hearing and examination before such board, and the Governor approve such demand. The Governor may withdraw from active service and command and place upon the retired list any officer who has been twenty-five years in the military service of this State, on the recommendation of the commanding officer of the brigade or division. Vacancies created by the operations of this article shall be filled in the same manner as other vacancies. [Id.]

Article 5809 inapplicable to Texas State Guard, see article 5891a.

Art. 5810. [5811] Board to examine officers.—The Governor may whenever he may deem that the good of the service requires it, order any officer before a board of examination, to consist of not less than three nor more than five officers above the grade of captain, which is hereby invested with the powers of courts of inquiry and courts martial, and such board shall examine into the moral character, capacity, and general fitness for the service of such officer, and record and return the testimony taken and a record of its proceedings. If the findings of such board be unfavorable to such officer and be approved by the Governor, he shall be discharged from the service. No officer whose grade or promotion would in any way be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Failure to appear when ordered before a board constituted under this article shall be sufficient ground for a finding by such board that the officer ordered to appear be discharged. [Id.]

Article 5810 inapplicable to Texas State Guard, see article 5891a.

Art. 5811. [5812] Bond of officers.—When required to do so by the Governor, any officer of the active militia of this State shall give good and sufficient bond in such sum as the Adjutant General may direct, payable to the Governor conditioned faithfully to discharge the duties of his office, and faithfully to expend all public money of this State and account for the same, and to account for and safely keep all public property of this State or of the United States issued and intended for the use of the military forces of this State, which he may receive from time to time, and to promptly turn over the same to whomsoever the Governor may direct. Such bond shall be in such sum as prescribed by the Adjutant General, and shall be approved by him and filed in his office; and such bond shall not apply to the reasonable wear and tear of arms, equipments, and other military supplies, incident to the military service. The commanding officer of every troop, battery, company, or signal corps and the chief musician of every band mustered into the military service of this State shall file such bond in the office of the Adjutant General, before the commission of such officer shall be issued for the use of his organization. When required to do so by the Governor, any noncommissioned officer or enlisted man of the military forces of this State shall make and file

the bond as provided by this article. Such bond shall provide for the payment of a reasonable attorney's fee, not to exceed ten per cent, nor be less than ten dollars. [Id.]

Art. 5812. [5813] Records admissible.—Copies of all bonds and other papers filed in the office of the Adjutant General, in accordance with the provisions of any law of this State, certified under the hand and seal of office of the Adjutant General, shall be admitted in evidence in all the courts of this State, in the same manner and with like effect as the original would be if duly proven. [Id.]

Art. 5813. [5814] Pay deductions.—The commanding officer of any troop, battery, company, signal corps or band is hereby authorized to deduct from any pay for military service due any officer or enlisted man of his organization such amount as such officer or enlisted man may owe his organization for dues and fines, as provided by the by-laws of such organization. [Id.]

Art. 5814. [5815] Company funds.—The commanding officer of each company shall be the custodian of the company fund, and shall receive, safely keep, and properly disburse, as may be required by the Governor, all money that may be entrusted to his care, and to render on June 30 and December 31 of each year, to the Adjutant General, an itemized statement of all money by him received and disbursed for the preceding six months. [Id.]

Art. 5815. [5816] Absence of commander.—The duties assigned to an officer by title in this chapter shall devolve in case of absence or disability to command of the officer named, upon the line officer next in rank, except as otherwise provided in this chapter. [Id.]

Art. 5816. [5817] Absence of men.—The officer ordering any military duty may excuse any officer or enlisted man for absence therefrom upon good and sufficient grounds. [Id.]

Art. 5817. [5818] To furnish arms, etc.—Every commissioned officer shall provide himself with the arms, uniforms, and equipments prescribed and approved by the Governor. [Id.]

Art. 5818. [5819] Examination exemption.—Any person who graduates from any college or school of this State, wherein there is a prescribed course of military instruction under the supervision of an officer of the United States army, or an officer of the active militia of this State shall, if he applies for appointment as a commissioned officer in the active militia of this State, in the grade of second lieutenant, within two years after graduation, be exempt from examination in all military subjects, except the militia law of this State, and examination as to personal qualifications and physical condition. In no case shall such graduate be drafted to serve in any capacity other than that of commissioned officer; provided, that when an officer of the active militia of this State is a military instructor, the Adjutant General shall prescribe the course of military instruction to be given, and when such colleges or schools do not follow the course of instructions so prescribed, the graduates thereof shall not be entitled to the exemptions and privileges specified in this article. [Id.]

NON-COMMISSIONED OFFICERS AND ENLISTED MEN

Art. 5819. [5820] Enlistment.—Any male citizen of the United States, or any male who has declared his intention to become such citizen, who is a resident of this State, if more than eighteen or less than forty-five years of age, able-bodied, free of disease, and of good character and temperate habits, may voluntarily enlist in the active militia of this State; provided, persons not within such ages may enlist on the written authority of the Adjutant General. [Id.]

Article 5819 inapplicable to Texas State Guard, see article 5891a.

Art. 5820. [5821] Three year enlistment.—All enlistments in the active militia of this State shall be for the term of three years. No soldier shall be again enlisted in the active militia of this State whose service during his last preceding term of enlistment has not been honest and faithful. [Id.]

Art. 5821. [5822] Oath.—Every person who enlists or reenlists in the active militia of this State shall sign and make oath to an enlistment paper, which shall be filed in the office of the Adjutant General. Such oath may also be taken and subscribed to before a field officer, or the commanding officer of a signal corps, troop, battery or company, who are hereby authorized to administer such oaths. [Id.]

Art. 5822. [5830] Administering oaths.—No civil or military officer shall be entitled to charge or receive any fee or compensation for administering or certifying any oath administered or certified under any provision of this title. [Id.]

Art. 5823. [5823] Disqualifications.—No minor shall be enlisted without the written consent of his parents or guardian. One who has been expelled or dishonorably discharged from military service of this State or of the United States shall not be eligible for enlistment or re-enlistment, unless he produce the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged, and of the commanding officer who approved such expulsion, or issued such dishonorable discharge. [Id.]

Art. 5824. Federal laws applicable.—The terms of and requirements for enlistments and the qualifications of enlisted men in the National Guard shall be that prescribed by the laws of the United States. [Acts 1st C. S. 1917, p. 3.]

Article 5824 inapplicable to Texas State Guard, see article 5891a.

Art. 5825. [5824] Officers, how appointed.—Commanding officers of regiments and of battalions and squadrons not part of regiments shall appoint and warrant the non-commissioned staff officers of their respective regiments, battalions, or squadrons, and they shall, in their discretion, warrant the non-commissioned officers of the troops, batteries and companies of their respective regiments, battalions and squadrons from the members thereof, upon the written nomination of the commanding officer of the troops, batteries and companies, respectively. In troops, batteries and companies not a part of a regiment, battalion or squadron, and in signal and hospital corps, the non-commissioned officers shall be warranted by the commanding officer of the brigade or division, in his discretion, to which such organization may be attached, from the members of such organization upon the written nomination of the commanding officer of the troop, battery, company, signal or hospital corps. To be eligible for appointment as sergeant, first class of the hospital corps, a candidate must be a registered pharmacist. A sergeant of the hospital corps must be appointed from the hospital corps. The officer warranting a non-commissioned officer shall have power to reduce to the ranks for good and sufficient reasons the non-commissioned officers herein named. [Acts 1905, p. 167.]

Article 5825 inapplicable to Texas State Guard, see article 5891a.

Art. 5826. [5825] Re-enlistments.—Men who have been discharged by reason of disbandment may be re-enlisted, and shall then receive credit for the period served at the time of such disbandment. A man discharged from physical disabilities shall, if

such disability cease, and he again enlists, or a man discharged upon his own request shall, if he again enlists, receive credit for the period served prior to such discharge. [Id.]

[1] So in enrolled bill. Should probably read "for".

Art. 5827. [5826] Second lieutenants.—The Governor may appoint and commission enlisted men, who have served well and faithfully in the active militia of this State for a period of not less than twenty-five years, without examination, second lieutenants by brevet; provided, such enlisted men, so appointed and commissioned, shall be immediately placed on the retired list. [Id.]

Article 5827 inapplicable to Texas State Guard, see article 5891a.

Art. 5828. [5827] Physical examination.—No applicant for appointment or enlistment in the active militia of this State will be commissioned or enlisted without first passing a satisfactory physical examination. [Id.]

Art. 5829. [5828] Assignment of pay.—No assignment of pay by any officer or an enlisted man shall be valid, except as otherwise provided by the Governor. [Id.]

SERVICE AND DUTIES

Art. 5830. [5831] Governor may call.—When an invasion of, or an insurrection in, this State is made or threatened, or when the Governor may deem it necessary for the enforcement of the laws of this State, he shall call forth the active militia or any part thereof, to repel, suppress, or enforce the same, and if the number available is insufficient he shall order out such part of the reserve militia as he may deem necessary. [Id.]

Art. 5831. [5832] Impending riot.—When there is in any county, city or town in this State tumult, riot or body of men acting together by force with intent to commit a felony, or breach of the peace, or to do violence to person or property, or by force to break or resist the laws of this State, or when such tumult, riot, mob or other unlawful act or violence is threatened and that fact is made to appear to the Governor, he may issue his order to any commander of a division, brigade, regiment, squadron, battalion, troop, battery or company of the active militia of this State to appear at the time and place directed, to aid the civil authorities to suppress or prevent such violence and in executing the laws; provided, whenever the necessity for military aid in preventing or suppressing such violence and in executing the law is immediate and urgent, and when it is impracticable to furnish such information to the Governor in time to secure military aid by his order, the district judge of the judicial district in which the disturbance occurs, or the sheriff of such county, or the mayor of such city, or town, may call in writing for aid upon the commanding officer of the active militia stationed therein, or adjacent thereto; and the civil officer making the call shall at once notify the Governor of his action. [Id.]

Art. 5832. [5833] Mobilization order.—The officer to whom the order of the Governor, or the call of the civil authority, is directed shall, upon its receipt, forthwith order his command, or such portion thereof as may be ordered or called for, to parade at the time and place appointed, and shall immediately notify the Governor of his action. [Id.]

Art. 5833. [5834] Commanding officer's duty.—When such troops have appeared at the appointed place, the commanding officer thereof shall obey and execute such general instructions, which shall be in writing, if practicable, otherwise verbal instructions given in the presence of two or more credible witnesses, as he may there and then receive from the civil authorities charged by law with the suppression of riot, or tumult or the preservation of the public peace, but such commanding officer shall exercise his discretion as to the proper method of practically accomplishing the instructions received; the kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil authority shall be left solely to such commanding officer. [Id.]

Art. 5834. [5835] Active militia.—The Governor may order the active militia, or any part thereof, to assist the civil authorities in guarding prisoners, or in conveying prisoners from and to any point in this State, or discharging other duties in connection with the execution of the law as the public interest or safety at any time may require. [Id.]

Art. 5835. [5836] Sale of arms.—Whenever any part of the active militia of this State is on active duty pursuant to the order of the Governor, or call of civil authority, to aid in the enforcement of the law, the commanding officer of such troops may order the closing of any place where arms, ammunition, dynamite or other explosives are sold, and forbid the sale, barter, loan or gift of any said article so long as any of the troops remain on duty in such place, or in the vicinity where such place may be located. [Id.]

Art. 5836. [5837] Regular training.—Officers and enlisted men of each troop, battery, and company of the active militia of this State shall assemble for and undergo drill and instruction at company, battalion, or regimental armories (troop, squadron, or battery armories for cavalry or field artillery) or rendezvous or for target practice, not less than twenty-four times during each calendar year preceding the annual allotment of funds under Section 1661 Revised Civil Statutes of the United States as amended. During the same period there shall be at least one inspection of each troop, battery, and company by an officer of the active militia of this State, or by an officer of the regular army of the United States, at such times as the Governor may direct. In addition to such drills and parades, the commanding officer of any organization may require the officers and enlisted men of his command to meet for parade, drill or instruction at such times and places as he may appoint. [Id.]

Art. 5837. [5838] Practice marches, etc.—Each troop, battery or company of the active militia of this State, not especially excused by the Governor, will be required to participate for at least five consecutive days annually in practice marches or camps of instruction, under such regulations as the Governor may prescribe, and under such instructors as he may appoint. [Id.]

Art. 5837a. President's call of National Guard.—The State of Texas recognizes the right of the President of the United States to call into the military service of the United States, the Texas National Guard and Texas National Guard Reserve for service within or without the United States, and when Congress shall have authorized the use of the armed land forces of the United States for any purpose requiring the use of troops in excess of those of the Regular Army, the right and power of the President of the United States is recognized under such regulations as he may prescribe, to draft the military service of the United States to serve therein for the period of the war or emergency unless sooner discharged, the Texas National Guard and the Texas National Guard Reserve. On the termination of the emergency all persons so called or drafted who shall be discharged from the army shall resume their membership in Texas National Guard and in the Texas National Guard Reserve, and shall continue to serve until the dates upon which their commissions or enlistments entered into prior to the call or draft, would have expired if uninterrupted, unless sooner discharged. [Acts 1927, 40th Leg., p. 262, ch. 183, § 2.]

Art. 5837b. National Guard funds.—Sec. 1. That the Governor shall upon passage of this Law deposit in the Treasury of the State of Texas the fund of $2862.94, which is in the form of a Treasury Warrant of the United States, being funds to the credit of World War Units formed in whole or in part from the National Guard of Texas, which will not be reconstituted, held by him, as Trustee, for the benefit of the National Guard of this State, and that such fund shall be held by the Treasurer in a special fund to be known as the "National Guard Fund."

Sec. 2. That the Adjutant General of Texas is authorized to expend such fund for the planting of trees and shrubs and the beautification of all lands held by the State of Texas for the use and benefit of the National Guard of Texas and for any other purposes looking to the benefit of the National Guard of this State.

Sec. 3. That the Comptroller is authorized to draw his warrant against said fund upon sworn accounts approved by the Adjutant General of this State.

Sec. 4. That the entire amount of said fund be, and it is hereby appropriated, for the benefit of the National Guard of this State and the purposes set out in this Act. [Acts 1929, 41st Leg., 2nd C. S., p. 45, ch. 29.]

COMPENSATION AND PRIVILEGES

Art. 5838. [5839] Active state service.—The Military Forces of this State, including the Texas State Guard, when called into active service of this State in time of war, insurrection, invasion, or imminent danger thereof, or in the prevention thereof, or in preparation against the same, or under the authority of either one or more of Articles 5830, 5831, 5832, 5833 and 5834 of the said Revised Civil Statutes, shall, during their time of service, be entitled to and shall receive the same pay and allowances, (except money allowances for clothing), as are now or may hereafter be established by the laws for the Army of the United States. [Acts 1905, p. 167; Acts 1943, 48th Leg., p. 464, ch. 311, § 4.]

Art. 5839. [Repealed by Acts 1943, 48th Leg., p. 464, ch. 311, § 5.]

Art. 5840. [5841] Tax exemptions.—All officers and enlisted men of the active militia of this State, who comply with their military duties as prescribed by this chapter, shall be entitled to exemption from the payment of all poll taxes, except the poll tax prescribed by the Constitution for the support of the public schools; exemption from the payment of any road or street tax, and from any road duty whatsoever under the laws of this State, and exemption from jury service or duty of every character and description. [Acts 1905, p. 167.]

Art. 5841. [5842] Poll tax exemptions.—To entitle any troop, battery, company, signal corps, or band of the active militia of this State to the exemption from the payment of poll taxes as specified in the preceding article, the commanding officer of such organization shall, between the first days of January and April of each year, file with the assessor of taxes for his county a list of all members of his command who have discharged the military duties required of them for the preceding year, and who have been present for at least twenty-four drills or parades, or have been excused for non-attendance thereof by reason of illness or other necessary cause; such list shall be certified to by such commanding officer, and the persons whose names appear on such list, shall not be assessed for any poll taxes whatever, other than the poll tax of one dollar prescribed by the Constitution for the support of public schools for the current year; and each assessor with whom such lists are filed shall note the exemptions on his assessment roll as set forth in such lists, and furnish such information to all concerned as may be necessary in carrying out the provisions of this article. [Id.]

Art. 5842. [5843] Road and jury exemptions.—To entitle any troop, battery, company, signal corps or band of the active militia of this State to exemption from the payment of road or street taxes, jury service or duty, and road duty as specified in Article 5840 of this chapter, the commanding officer of such organization shall, between the first and thirty-first days of January of each year, file lists similar to that set forth in the preceding article, certified to him, one copy with clerk of the district court of his county and one copy with the clerk of the county court of his county; and the names appearing on such lists shall thereafter be exempt from jury service or duty of every character and description, from the performance of any road duty, and from the payment of any road or street tax in such county for the current year. County clerks shall furnish information of those so exempt to the proper road overseers and to all others concerned. [Id.]

Art. 5843. [5844] Staff officers exempt.—To entitle any general, field or staff officer of the active militia of this State to said exemptions as set forth in this chapter, such officer shall between the first days of January and April of each year, file with the assessor of taxes for his county his certificate to the effect that he is an officer of the active militia of this State in good standing, and that he has faithfully discharged all the military duties required of him during the preceding year, and, on filing the certificate as herein required, such officer shall not be assessed for any poll tax whatever other than the poll tax of one dollar prescribed by the Constitution for the support of public schools for the current year; and such officer shall file similar certificates between the first and thirty-first days of January of each year, with the district and county clerks of his county, and on filing such certificates, shall thereafter be exempt from jury service or duty of every character and description, from the performance of any road duty and from the payment of any road or street tax in such county for the current year. [Id.]

Art. 5844. [5845] Non-commissioned officers exempt.—To entitle any non-commissioned staff officer, member of the engineer or hospital corps, or any other enlisted man of the active militia of this State not belonging to the regular organization, to the exemptions as set forth in the fourth preceding article, such non-commissioned officer or soldier shall prepare and file affidavits similar to the certificate provided in the preceding article for officers, with the assessor, district and county clerks of his county; such affidavits shall be filed during the same period and in the same manner as set forth above for officers. On filing such affidavits, such non-commissioned officer or soldier shall be entitled to the same exemptions in the same manner as provided for such officers. [Id.]

Art. 5845. [5846] Disabled men.—Every member of the military forces of this State who shall be wounded or disabled while in the service of this State, in case of riot, tumult, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, shall be taken care of and provided for at the expense of this State. [Id.]

Art. 5846. [5847] Transportation, etc.—The State shall make suitable provision for the pay, transportation, subsistence and quarters of all troops of this State who may attend at any annual encampment, or when called into active service of this State. [Id.]

Art. 5847. [5848] Exempt from arrest.—No persons belonging to the active militia of this State shall be arrested on any civil process while going on duty or returning from any place at which he may be required to attend for military duty, except in cases of treason, felony or breach of the peace. [Id.]

ARMS, EQUIPMENT, ETC.

Art. 5848. [5849] To return property.—An enlisted man who has not returned all the public property for which he is responsible, shall under no circumstances, receive a full and honorable discharge. [Id.]

Art. 5849. [5850] Liable for damage.—The cost of arms, equipment, and all other military supplies and stores, and the cost of repairs or damages done to arms, equipment and all other military supplies and stores, shall be deducted from the pay of any officer or soldier in whose care or use the same were when such loss, destruction or damage occurred, if said loss, destruction or damage was occasioned by the carelessness, neglect or abuse of said officer or soldier. [Id.]

Art. 5850. [5851] Private use.—No officer or enlisted man of the active militia of this State having property in charge shall lend for private use, or permit to be used for any other purpose than the legitimate purpose intended, any public property that he may be responsible for to the Governor. All property issued to a brigade, regimental, battalion, or company commander, or to any band, corps, or auxiliary squad or to any military organization whatever, when not in legitimate use, shall be carefully stored and protected from waste, theft, loss or injury. [Id.]

Art. 5851. [5852] Provided by State.—All organizations shall be provided by this State with such arms, equipments, books of instruction and of record and other supplies as may be necessary for the proper performance of the duty required of them by this chapter. Each organization shall keep such property in proper repair and in good condition. [Id.]

Art. 5852. [5853–54] Warrant for seizure.—Whenever it comes to the knowledge of the Governor, on the affidavit of a credible person, that the persons having arms, equipment, or other military property issued by this State for the use of the military forces of this State without authority of law, fail or refuse to deliver up such property, he shall issue his warrant to the sheriff of the county where such persons may be or reside, commanding such sheriff to seize and take into his possession such arms, equipments, or other military property, and keep the same subject to the further order of the Governor. Any sheriff receiving such warrant shall without delay execute the same as directed, and in executing such warrant he may summon to his aid the power of the county and any command of the active militia of this State that may be convenient. [Id.]

Art. 5853. [5855] Sheriff to collect arms.—Each sheriff shall, from time to time, collect such arms or property as may be liable to loss or in the hands of unauthorized persons, and such property when collected shall be kept safely subject to the order of the Governor, to whom a report of such collection shall be made. The official bond of sheriffs shall extend to and include the faithful performance of their duties under this and the preceding articles. [Id.]

Art. 5854. [5856] Exempt from execution.—Arms, equipments, clothing or other military supplies issued by this State to organizations or members of the active militia for military purposes, shall be exempt from levy and sale by virtue of an execution for debt, or any other legal proceedings. [Id.]

Art. 5855. [5857] Governor to draw arms.—The Governor in his official capacity is authorized to draw from the United States government all arms, equipment, munitions, or other military stores to which this State may, from time to time, be entitled, for the use of the militia, and may execute such bonds in the name of the State as may be necessary or requisite to secure their issuance. [Id.]

Art. 5856. [5858] Storing arms.—The Governor shall cause all arms, equipment, munitions, or other military property belonging to or under the control of this State, to be stored at such points as he may deem to the best interests of this State. [Id.]

Art. 5857. [5859] Uniform.—The uniform for officers and enlisted men of the active militia of this State shall be the same as that prescribed for the United States army, with such modifications as the Governor may deem necessary from time to time. All uniforms and other military property issued by this State shall be used for military purposes only, and when issued shall be receipted for, and kept and accounted for in such manner as the Adjutant General may prescribe. [Id.]

ARTICLES OF WAR

Art. 5858. [5860] Rules.—The military forces of this State shall be governed by the following rules known as articles:

The word "officer" as used therein, shall be held to designate commissioned officers: the word "soldier" includes non-commissioned officers, musicians, artificers, privates and enlisted men; the word, "company" shall be understood to include troops, batteries, companies, signal corps, hospital corps, bands and detachments, and the convictions mentioned therein shall be understood to be convictions by court martial.

1. Enlistment in the active militia of this State shall be vountary, and every person who enlists therein shall take and subscribe an oath in the following form:

"I, ..., do solemnly swear that I will bear true faith and allegiance to the State of Texas and to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the Governor of Texas, and the orders of the officers appointed over me, according to the laws, rules and articles for the government of the military forces of the State of Texas."

2. Every officer who knowingly enlists or musters into the military service of this State any minor over the age of sixteen years without the consent of his parents or guardian, or any minor under the age of sixteen years, or any insane or intoxicated person, or any deserter from the military service of this State or of the United States, or any person who has been convicted of any infamous crime, shall upon conviction, be dismissed from the service or suffer such other punishment as a court martial may direct.

3. No enlisted man, duly sworn, shall be discharged from service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the Governor, the Adjutant General, or by order of a court martial.

4. Any officer who knowingly musters as a soldier a person who is not a soldier, shall be deemed guilty of knowingly making a false muster, and punished as a court martial may direct.

5. Any officer who takes money, or other thing by way of gratification, on mustering any regiment or company, or on signing muster rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment, civil or military, in the service of the State of Texas, or suffer such other punishment as a court martial may direct.

6. Every commanding officer shall, in the beginning of January and July of each year, and oftener if required by the Governor, transmit to the Adjutant General's department an exact return of the troops under his command, specifying the names of the officers absent from their posts, with the reasons for and the time of their absence. Such returns shall be made in the form and forwarded in the manner prescribed

by the Adjutant General; and any such officer, who through neglect or design omits to send such return shall, on conviction thereof, be punished as a court martial may direct.

7. Every officer who knowingly makes a false return to the Adjutant General's department, or to any of his superior officers authorized to call for such returns, of the state of the regiment or company under his command, or of any arms, ammunition, clothing or other stores thereunto belonging, shall be punished as a court martial may direct.

8. Every officer who signs a false certificate relating to the absence or pay of any officer or soldier shall be dismissed from the service, or suffer such other punishment as a court martial may direct.

9. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows, the signing of any muster roll, knowing the same to contain a false muster shall, upon proof thereof by two witnesses before a court martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment, civil or military in the service of the State of Texas.

10. Any officer who wilfully or through neglect suffers to be lost, damaged or spoiled any military stores or supplies belonging to this State, or to the United States, which has been received for use of the military forces of this State, shall make good the loss or damage, and suffer such punishment as a court martial may direct.

11. Any soldier who sells or through neglect loses or spoils the arms, uniforms, equipments, accoutrements, or any other military stores or supplies issued to him for his use or in his charge, shall make good the loss or damage, and suffer such punishment as a court martial may direct.

12. Any officer or soldier who shall strike his superior officer, or offers any violence to him, the said superior officer being engaged in the reasonable execution of his official duties, or any officer or soldier who disobeys any lawful command of his superior officer shall be punished as a court martial may direct.

13. Any officer or soldier who begins, excites, causes or joins in any mutiny or sedition in any regiment, company quarters or guard, shall suffer such punishment as a court martial may direct.

14. Any officer or soldier, who being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having any knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer such punishment as a court martial may direct.

15. All officers, of what conditions soever, have power to quell all quarrels, frays and disorders, whether among persons belonging to their own or to any regiment or company, and to order officers into arrest and non-commissioned officers and soldiers into confinement who take part in same, until their proper superior officer is acquainted therewith. Whoever being so ordered refuses to obey such officer or non-commissioned officer, or draws a weapon upon him, shall be punished as a court martial may direct.

16. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court martial may direct.

17. Any soldier who absents himself from his company or guard, without leave from his commanding officer, shall be punished as a court martial may direct.

18. Any officer or soldier who fails except when prevented by sickness or other necessity, to repair at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court martial may direct.

19. Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court martial may direct.

20. Any officer who is found drunk on his guard, party or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court martial may direct.

21. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer such punishment as a court martial may direct.

22. Any officer or soldier who quits his guard without leave from his superior officer, except in case of urgent necessity, shall be punished as a court martial may direct.

23. Any officer who, by any means whatsoever, occasions false alarms in camp, command or quarters, shall suffer such punishment as a court martial may direct.

24. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any place, post or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer such punishment as a court martial may direct.

25. Any officer or soldier who, having been duly enlisted or drafted in the military service of this State, deserts the same shall suffer such punishment as a court martial may direct.

26. Every soldier who deserts the military service of this State shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

27. Any officer who, having tendered his resignation, quits his post or proper duties, without leave and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

28. No soldier shall enlist himself in any other regiment or company, without a regular discharge from the regiment or company in which he last served, on a penalty of being reputed a deserter and suffering accordingly. And in case any officer shall knowingly receive and entertain such soldier, or shall not, after his being discovered to be a deserter, immediately give notice thereof to the command in which he last served, the said officer shall, by court martial be dismissed.

29. In time of war, insurrection or rebellion, larceny, robbery, burglary, arson, rape or assault with intent to rape, mayhem, manslaughter, murder, assault and battery with attempt to kill, wounding by shooting or stabbing with intent to commit murder, shall be punished by the sentence of a general court martial when committed by persons in the military service of the State; and punishment in every such case shall not be less than the punishment provided for like offenses by the Penal Code of this State.

30. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of this State, which is punishable by the laws of this State, the commanding officer and the officers of the regiment or company to which the person so accused belongs are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil authority and to aid the officers of justice in apprehending and securing him in order to bring him to trial. If, upon application, any officer refuses or wilfully neglects, except in time

of war, to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending him, he shall be punished as a court martial may direct.

31. Any person in the military service of this State, who makes or causes to be made, any claim against this State or the United States, or any officer thereof, knowing such claim to be false or fraudulent; or who presents or causes to be presented, to any person in the civil or military service thereof, for approval or payment, any claim against this State, or the United States, or against any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud this State or the United States, by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who for the purpose of obtaining or aiding others to obtain, the approval, allowance or payment of any claim against this State, or the United States, or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other papers knowing the same to contain any false or fraudulent statement; or

Who for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against this State or the United States, or any officer thereof, makes or procures or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

Who for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against this State, or the United States, or any officer thereof, forges or counterfeits or procures or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses or procures or advises the use of any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody or control of any money or other property of this State, or the United States, furnished or intended for the military service of this State, knowingly delivers or causes to be delivered to any person having authority to receive the same, any amount less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any papers certifying the receipt of any property of this State, or the United States, furnished or intended for the military service of this State, makes or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, or with intent to defraud this State, or the United States; or

Who steals, embezzles, knowingly and wilfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipment, ammunition, clothing, subsistence stores, money or other property of this State, or the United States, furnished or intended for the military service of this State; or

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer or other person who is part of, or employed in, said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores or other property of this State, or the United States, such soldier or officer, or other person not having lawful right to sell or pledge the same shall on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court martial may adjudge, or by any or all of said penalties. If any person, being guilty of any of the offenses aforesaid, while in the military service of this State, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court martial, in the same manner and to the same extent as if he had not received such discharge or been dismissed.

32. Any officer who is convicted of conduct unbecoming to an officer and a gentleman shall be dismissed from the service.

33. All crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, are to be taken cognizance of by a general or regimental, or a summary court martial, according to the nature and degree of the offense, and punished at the discretion of such court.

34. Whenever, by these articles of war for the government of the military forces of this State, the punishment or conviction of any military offense, is left to the discretion of the court martial, the punishment therefor shall not be in excess of a limit which the Governor may prescribe.

35. The officers and soldiers of any troops whether active or reserve militia of this State or otherwise appointed, enlisted, mustered or drafted into the military forces of this State, shall at all times, and in all places be governed by these articles, and shall be tried by courts martial.

36. All retainers of the camp and all persons serving with the military forces of this State in the field, though not enlisted soldiers, shall be subject to these rules and articles in the same manner as enlisted men.

37. Officers charged with crime shall be arrested and confined in their quarters or tents, or other place, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service, and suffer such other punishment as a court martial may direct.

38. Soldiers charged with crime shall be confined until tried by court martial, or released by proper authority.

39. Any provost marshal, or any officer commanding a guard, who shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the military forces of this State shall suffer such punishment as a court martial may direct, provided the officer committing shall, at the same time, deliver a statement in writing, signed by himself, of the crime charged against the prisoner.

40. Every officer to whose charge a prisoner is committed, shall within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the crime charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court martial may direct.

41. Any officer who presumes without proper authority, to release a prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court martial may direct.

42. No officer or soldier put in arrest shall be continued in confinement more than five days, or until such time as a court martial can be assembled.

43. When an officer is put in arrest for the purpose of trial, except at remote stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within five days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

44. The Governor, or any general, or other officer commanding a division or brigade, may appoint general courts martial whenever necessary. But when

any such general or other officer is the accuser or prosecutor of any officer under his command, the court shall be appointed by the Governor; and its proceedings and sentence shall be sent directly to the Adjutant General, by whom they shall be laid before the Governor for his approval or orders in the case.

45. Officers who may appoint a court martial shall be competent to appoint a judge advocate for the same.

46. General courts martial may consist of any number of officers, from five to thirteen inclusive, but they shall not consist of less than thirteen when that number can be convened without injury to the service. A decision of the appointing authority as to the number that can be assembled without injury to the service is conclusive.

47. When the requisite number of officers to form a general court martial is not present in any command or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the Governor, who shall thereupon order a court to be assembled at the nearest and most convenient place at or near which there may be such a requisite number of officers, and shall order the party accused, with the necessary witnesses to be transported to the place where the said court shall be assembled.

48. Every officer commanding a camp or other place where the troops consist of different corps, and every officer commanding a regiment, separate squadron or battalion, shall be competent to appoint for such camp or other place, or such regiment, separate squadron or battalion, regimental courts martial, consisting of three officers, to try enlisted men for offenses not capital; but such courts martial shall be appointed and the officers designated by superior authority when by him deemed desirable. Such courts martial shall have power to award punishment not to exceed confinement at hard labor for thirty days, or forfeiture of thirty dollars pay, or a fine of thirty dollars, or any or all of such confinement, forfeiture of pay and fine, and in case of a non-commissioned officer, reduction to the ranks in addition thereto.

49. Every commanding officer of each camp or other place, regiment or corps, detached battalion or company, and the commanding officer of each company at its home station, shall have power to appoint for such place, command or station summary courts martial to consist of one officer to be designated by him, to try enlisted men for offenses not capital, but such summary courts martial may be appointed and the officer designated by superior authority when by him deemed desirable; and, when but one commissioned officer is present with a command, he shall hear and finally determine such cases. Such summary courts shall have power to adjudge punishment not to exceed confinement at hard labor for thirty days, forfeiture of thirty dollars pay, or a fine of thirty dollars or any or all of such confinement, forfeiture of pay and fine, and, in case of non-commissioned officers, reduction to the ranks in addition thereto; provided such summary courts shall not adjudge confinement for more than ten days, forfeiture of more than ten dollars pay, or a fine of more than ten dollars, or any or all of such confinement, forfeiture of pay and fine, unless the accused shall, before trial, consent in writing to trial by said court; but in case of refusal to so consent, the trial may be had either by general, regimental or by said summary court, but in case of trial by said summary court without the consent as aforesaid, the court shall not adjudge confinement for more than ten days, or forfeiture of more than ten dollars pay, or a fine of more than ten dollars, or any or all of such confinement, forfeiture of pay and fine. The officer holding the summary court shall have power to administer oaths and to hear and determine cases cognizable by said court, and when satisfied of the guilt of the accused, adjudge the punishment to be inflicted which shall not exceed the limit prescribed in this article.

50. There shall be a summary court record kept at the headquarters of the proper command in the field, each regiment or corps, detached battalion or company, and each company at its home station, for which summary courts martial have been appointed, in which shall be entered a record of all cases heard and determined and the action had thereon. The commanding officer of each camp or other place, regiment or corps, detached battalion or company, and each company at its home station, for which summary courts martial have been appointed shall, on the last day of every month and oftener if required, make a report to the Adjutant General of the number of cases determined by summary courts, during the period, setting forth the offenses committed and the penalties awarded.

51. The judge advocate of any general or regimental court martial shall administer to each member of such court, before they proceed upon any trial, the following oath: "You, A. B., do solemnly swear that you will well and truly try and determine according to evidence, the matter now before you, between the State of Texas and the prisoner to be tried, and that you will duly administer justice, without partiality, favor or affection, according to the provisions of the rules and articles for the government for the military forces of this State, and if any doubts should arise, not explained by said articles, then according to your conscience, and the best of your understanding, and the customs in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

52. When the oath has been administered to the members of a court martial, the president of the court shall administer to the judge advocate, or person officiating as such an oath in the following form: "You do swear that you will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice in due course of law; nor divulge the sentence of the court to any but the proper authority until it shall be duly disclosed by the same. So help you God."

53. A court martial may punish, at discretion, any person who uses any menacing words, signs or gestures in its presence, or who disturbs its proceedings by any riot or disorder.

54. All members of a court martial are to behave with decency and calmness.

55. Members of a court martial may be challenged by a prisoner, but only for causes stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

56. When a prisoner, arraigned before a court martial, from obstinacy and deliberate design, stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty.

57. The judge advocate general or some person deputied by him, or by the Governor, or general or officer commanding the division, brigade, camp or other place, regiment, separate squadron or battalion shall prosecute on [1] the name of the State of Texas; but when the prisoner has made his plea he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses and to any question to the prisoner, the answer to which might tend to criminate himself. Whenever a court martial shall sit in closed session the judge advocate shall withdraw, and, whenever his legal advice or his assistance in referring to recorded evidence is required, it shall be obtained in open court.

[1] So in enrolled bill. Should probably read "in".

58. The judge advocate general and the officers of his department, the judge advocate of court martial and the trial officers of summary courts are hereby authorized to administer oaths for the purpose of administration of military justice and for other military purposes.

59. The deposition of witnesses for the accused residing beyond the limits of the State, or the county in which any military court may be ordered to sit, may be taken and read in evidence as provided by the laws of this State.

60. All persons who give evidence before a court martial shall be examined on oath administered by the judge advocate in the following form: "You swear that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

61. A court martial for reasonable cause shall grant a continuance to either party for such time and as often as may appear to be just; provided, that if the prisoner be in close confinement the trial shall not be delayed for more than sixty days.

62. Members of a court martial in giving their votes, shall begin with the youngest in commission.

63. Officers shall be tried only by general courts martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.

64. No officer shall be discharged or dismissed from the service except by order of the Governor, or by sentence of a general court martial.

65. When an officer is dismissed from the service for cowardice or fraud, the sentence shall direct that the crime, punishment, name and place of abode of the delinquent shall be published in the newspapers in and about the State and in the county in which the offender lives, or where he usually resides; and, after such publication, it shall be scandalous for an officer to associate with him.

66. When a court martial suspends an officer from command it may also suspend his pay and emoluments for the same time according to the nature of his offense.

67. No person shall be tried for the second time for the same offense.

68. No person shall be liable to be tried or punished by a general court martial for any offense except for desertion in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall have meanwhile absented himself from this State, in which case the time of his absence shall be excluded in computing the period of the limitation; provided that said limitation shall not begin until the end of the term for which said person was mustered into service.

69. No sentence of a court martial respecting a general officer, and no sentence of a court martial directing the dismissal of any officer, shall be carried into execution until it shall have been confirmed by the Governor.

70. No sentence of a court martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being.

71. All sentences of a court martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where the confirmation by the Governor is not required by these articles.

72. Any officer who is authorized to confirm and carry into execution the sentence of a court martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of dismissal of an officer; and the Governor shall have power to pardon or mitigate any punishment adjudged by any court martial.

73. Every judge advocate, or person acting as such, at any general or regimental court martial shall, with such expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentences of such court to the Adjutant General in whose office they shall be carefully preserved.

74. Every party tried by general or regimental court martial shall, upon demand thereof, made by himself or any person in his behalf, be entitled to a copy of the proceedings and sentences of such court.

75. A court of inquiry to examine into the nature of any such transaction of, or accusation or imputation against, any officer or soldier may be ordered by the Governor, or by any commanding officer; but such courts of inquiry shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.

76. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder to reduce the proceedings and evidence to writing.

77. The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partially,[1] favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You do swear that you will according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

[1] So in enrolled bill. Should probably read "partiality".

78. A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts martial and the judge advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts martial and the party accused shall be permitted to examine and cross-examine them so as to fully investigate the circumstances in question.

79. A court of inquiry shall not give an opinion on the merits of the case inquired of, unless specially ordered to do so.

80. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.

81. The proceedings of a court of inquiry may be admitted as evidence by a court martial in cases not extending to the dismissal of an officer; provided, that the circumstances are such that oral testimony can be obtained.

82. The foregoing articles shall be read once in every twelve months to every company in the military service of this State, and shall be duly observed and obeyed by all officers and soldiers in said service. [Id.]

Article 5858 inapplicable to Texas State Guard, see article 5891a.

COURTS MARTIAL

Art. 5859. [5861] Evidence.—The rules of evidence in all courts martial shall follow in general, so far as apposite, the common law rules of evidence as observed by the courts of this State in criminal cases; but a certain latitude in the introduction of evidence and the examination of witnesses by an avoidance of restrictive rules is permissible, when it is in the administration of military justice.

Article 5859 inapplicable to Texas State Guard, see article 5891a.

Art. 5860. [5862] Privileges of accused.—In all trials before courts martial, the accused shall have the right to demand the nature and cause of the accusation against him, and to be presented with a copy of the charges. He shall have the right of being heard by himself or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. [Id.]

Art. 5861. [5863] Counsel for defendant.—The officer ordering a general or regimental court martial will at the request of any prisoner who is to be arraigned, detail as counsel for his defense a suitable officer, one not acting as a summary court; provided such request is made within a reasonable time before trial. If there be no such officer available, the fact will be reported to the Adjutant General for his action. An officer so detailed shall perform such duties as usually devolve upon counsel for defendant before civil courts in criminal cases. [Id.]

Art. 5862. [5864] Reporter.—The judge advocate of a military court shall have power to appoint a reporter, who shall record the proceedings of, and testimony taken before such court, and may set down the same, in the first instance in shorthand. The reporter shall, before entering upon his duty, be sworn faithfully to perform the same. [Id.]

Art. 5863. [5865] May issue process.—The president or judge advocate of every general or regimental court martial shall have the power to issue like process to compel witnesses to appear and testify, which courts of criminal jurisdiction within this State may lawfully issue; and such process shall be issued in the same style and manner and executed by the same officers as when issued by such court. [Id.]

Art. 5864. [5866] Process generally.—The president of any court martial, and any summary court officer, shall have authority to issue, under his hand, in the name of the State of Texas, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpoenas, attachments, warrants of arrest and warrant of commitment. [Id.]

Art. 5865. [5867] Penalty.—Every person, who being duly subpœnaed to appear as a witness before a regimental or general court martial, who wilfully neglects or refuses to appear, or refuses to qualify as a witness or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be deemed guilty of a misdemeanor, and prosecuted in the proper justice court, and punished by a fine not exceeding one hundred dollars; provided, such witness may plead as a defense that he was not tendered or paid one day's fee and mileage for the journey to and from the place of trial, as provided in this chapter, such amounts to be paid by the Adjutant General's department out of any appropriation of funds available for that purpose; provided, that no witness shall be compelled to incriminate himself, or to answer any questions which may tend to incriminate or degrade him. [Id.]

Art. 5866. [5868] Witnesses' expenses.—Persons in the employ of this State, but not belonging to the military forces thereof, when traveling upon summons as witnesses before military courts, are entitled to transportation from their place of residence to the place where the court is in session and return. If no transportation be furnished they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not to exceed two dollars per day for each day actually and unavoidably consumed in travel, or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their place of residence. [Id.]

Art. 5867. [5869] Compensation of.—A person not in the employ of this State and not belonging to the active military forces thereof, who has been duly summoned to appear as a witness before a military court, will receive one dollar and fifty cents per day for each day actually in attendance upon the court, and six cents a mile for going from his place of residence to the place of trial or hearing, and six cents a mile for returning. Civilian witnesses will be paid by the Adjutant General's department. [Id.]

Art. 5868. [5870] Account.—The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel. [Id.]

Art. 5869. [5871] Attachment for witnesses.—If a witness has been subpœnaed and fails to attend, attachment shall issue, and he shall be liable for the costs of such attachment unless good cause be shown to the court why he failed to obey the subpœna, which cost may be recovered by civil suit. [Id.]

Art. 5870. [5872] Witness fees.—No fees shall be allowed to a person as witness fees, unless such person has been subpœnaed, attached, or recognized as a witness in the case.

Art. 5871. [5873] Governor may order arrest.—When charges against any person in the military service of this State are made to the Governor, or any officer authorized to order a court martial for the trial of such person, and the Governor or such officer, believes that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, the Governor, or such officer, may issue a warrant of arrest to the sheriff or any constable of the county in which the person so charged resides, or wherein he is supposed to be, commanding the sheriff or constable to take the body of the person so charged and confine him in jail until such time as his case may be finally disposed of; and the sheriff or constable, on the order of the Governor, or officer ordering the court, shall bring the person so charged before the court martial for trial, or turn him over to whoever the order may direct; the Governor, or the officer issuing the warrant of arrest, shall indorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such person desires it, permit him to give bail in the sum indorsed on the warrant, conditioned for his appearance, from time to time, before such court martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the reviewing authority of the court martial before which he may be ordered for trial. [Id.]

Art. 5872. [5874] Suit on bonds, etc.—Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court martial, or upon the failure of any person admitted to bail to appear as a witness in any case before a court martial, as conditioned in the bail bond of any such person, the court martial shall certify the fact of such failure to so appear to the officer ordering the court martial, or to the officer commanding for the time being, as the case may be; and such officer shall cause a judge advocate, district or county attorney to file suit in Travis County therefor. [Id.]

Art. 5873. [5875] Laws applicable.—The rules laid down in the Code of Criminal Procedure of this State relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided in this chapter. [Id.]

Art. 5874. [5876] Warrant of arrest.—A warrant of arrest issued by the Governor, or other officer authorized to order a general court martial, and all subpœnas and other process issued by general

courts martial shall extend to every part of the State; but warrants of arrest issued by an officer, other than those named above, and all subpœnas and other process issued by other military courts can not be executed in any other county than the one in which they were issued, except they be indorsed by the Governor, or an officer authorized to order a general court martial, in which case they can be executed anywhere in the State. The indorsement may be "Let this process be executed in any county in the State of Texas." The indorsement shall be dated and signed officially by the Governor or officer making it. [Id.]

Art. 5875. [5877–78] Officers' fees.—Upon conviction of any person by a court martial, all costs including the cost accruing for witness fees and the fees for sheriffs or constables for executing the process, subpœnas, writs of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be taxed against defendant; and any sheriff or constable executing any process, subpœna, writ of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be allowed the same fees as provided by the Code of Criminal Procedure in this State. When the defendant is imprisoned for costs the Adjutant General shall pay said costs out of any fund that may be available. [Id.]

Art. 5876. [5879] Felony.—When the sentence of a court martial adjudges confinement, and the reviewing authority has approved the same in whole or in part, and such sentence as approved exceeds two years confinement, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which the court martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county until taken charge of by a duly accredited agent of the State penitentiary; and such reviewing authority, or the commanding officer for the time being, as the case may be, shall certify a copy of the proceedings, as approved, of the court martial in the case of such person to be confined to the superintendent of the State penitentiary, which shall be sufficient authority for, and such superintendent shall send for and confine such person in said penitentiary for the period named in the proceedings of the court martial as approved, or until he may be directed to release him by proper authority; and the State penitentiary board shall make such provision as may be necessary for receiving from the sheriff as aforesaid and confining such person in such manner as persons are received and confined in the State penitentiary on sentence of district courts in this State. [Id.]

Art. 5877. [5880] Misdemeanor.—When the sentence of a court martial adjudges confinement, and the reviewing authority has approved the same in whole or in part, and such sentence as approved, does not exceed two years confinement, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by proper authority; and such confinement shall be carried out as prescribed for confinement in jail by the Code of Criminal Procedure of this State. [Id.]

Art. 5878. [5881] Fine and costs.—When the sentence of a court martial adjudges a fine and cost against any person, and such fine and cost has not been fully paid within ten days after the confirmation thereof, the Governor or officer ordering the court or the officer commanding for the time being, as the case may be; shall issue a warrant of commitment directed to the sheriff of the county in which the court martial was held, directing him to take the body of the person so convicted and confine him in the county jail; and the sheriff shall take the body of the person convicted and confine him in the county jail for one day for any fine not exceeding one dollar, and one additional day for every dollar above that sum, and one additional day for each dollar of cost. [Id.]

Art. 5879. [5882] Payment of fines.—All fines and forfeitures imposed by general or regimental courts martial, shall be paid to the officer ordering such courts, or to the officer commanding for the time being, and by said officer, within five days from the receipt thereof, paid to the Adjutant General, who shall disburse the same as he may see fit for military purposes. [Id.]

Art. 5880. [5883] Fines.—All fines and forfeitures imposed by summary courts martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within five days from the receipt thereof, placed to the credit of the company fund of the company of which the person fined was a member when the fine was imposed. [Id.]

Art. 5881. [5884] Sheriff to execute process.—When any lawful process, issued by the proper officer of any court martial, comes to the hands of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this chapter imposed or authorized to be performed by any sheriff or constable. [Id.]

Art. 5882. [5885] Jurisdiction presumed.—The jurisdiction of the courts and boards established by this chapter shall be presumed and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding. [Id.]

Art. 5883. [5886] Exemption from sentence.—No action or proceeding shall be prosecuted or maintained against a member of the military forces of this State or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of any fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court. [Id.]

Art. 5884. [5887] Change of venue.—Any officer or member of the military forces of this State, who is sued for any injury to persons or property done while performing, or endeavoring to perform, any duty required of him by this law, shall have the right, and the court in which suit is pending, upon the application of the person sued, shall remove the venue of such cause to some court of competent jurisdiction in another county not subject to the same or some other disqualification; provided, such application is supported by the affidavit of two credible persons to the effect that they have good reason to believe that the defendant cannot have a fair and impartial trial before such court. [Id.]

GENERAL PROVISIONS

Art. 5885. [5888] Assistance.—Each Commissioners' Court and the Council or Commission of each City or Town in this State is hereby authorized in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the administrative units of the National Guard of this State located in their respective Counties and in or near their respective Cities or Towns, not to exceed the sum of One Hundred ($100.00) Dollars per month for such expenses from any one such Court, Council or Commission for any one organization; and in addition, in behalf of their respective Counties, Cities or Towns, to donate, either in fee simple or otherwise, to the Texas National Guard Armory Board, or to any one or more of said units for conveyance to

said Board, one or more tracts of land as sites upon which to construct Armories and other buildings suitable for use by such units; and any and all such donations heretofore made to said Board are hereby validated and any such donation heretofore made to any such administrative unit, either as a corporation or otherwise, and conveyed or to be conveyed to said Board, is hereby validated. [Acts 1905, p. 167; Acts 1939, 46th Leg., p. 495, § 1.]

Art. 5886. [5889] Right of way on street.—The commanding officer of any portion of the active militia of this State, parading or performing any military duty in any street or highway, may require any or all persons in such street or highway to yield to the right of way to such militia; provided, that the carriage of the United States mails, the legitimate functions of the police and the progress and operations of hospital ambulances, fire engines and fire departments shall not be interfered with thereby. [Acts 1905, p. 167.]

Art. 5887. [5890] Penalties.—Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the active militia of this State, or in any manner pawn or pledge any arms, uniforms, equipment, or other military property issued under the provisions of this chapter, or of the military regulations of this State, or any person who shall wear any uniform or part thereof, or device, strap, knot, or insignia of any design or character used as a designation of grade, rank of office, such as are by law or by general regulations duly promulgated, prescribed for the use of the active militia of this State, or similar thereto, except members of the army of the United States or the active militia of this State; or any person who shall subject or cause to be subjected any other person to the deprivation of any right, privilege or immunity usually enjoyed by the public on account of membership in the army, navy, marine corps or revenue cutter service of the United States, or of the National Guard or naval service of this State, or otherwise in the military or naval service of the United States or of this State, wearing the uniform prescribed for him at that time by law, regulation of the service or custom, on account of his wearing such uniform or of being in such service; or who on account of such membership or the wearing of such uniform shall make or cause to be made such discrimination, shall forfeit to the State one hundred dollars for each offense, to be sued for in the name of the State of Texas by a judge advocate, district or county attorney. All money recovered by any action under this article shall be paid to the Adjutant General, who shall apply the same to the use of the active militia of this State. [Acts 1905, p. 167, sec. 72; Acts 1st C. S. 1917, p. 20.]

Art. 5888. [5891] Gambling, etc.—The commanding officer upon any occasion of duty may place in arrest, during the continuance thereof, any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to and returning from any duty. He may prohibit and prevent the holding of huckster or auction sales, and all gambling within the limit of the post, camp ground, place of encampment, parade or drill under his command, or within limits not exceeding one mile therefrom as he may prescribe. And he may in his discretion, abate as a common nuisance all such sales. [Acts 1905, p. 167.]

Art. 5889. [5892] Insurrection.—Whenever any portion of the military forces of this State is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order will thereby be promoted may, by proclamation, declare the county or city in which the troops are serving, or any special portion thereof, to be in a state of insurrection. [Id.]

Art. 5890. [5893] Foreign troops.—No armed military force from another State, territory or district shall be permitted to enter this State without the permission of the Governor, unless such force is a part of the United States army. [Id.]

Art. 5890a. Leave of absence of State or municipal employes with pay.—All officers and employees of the State of Texas and of any county or political subdivision thereof, including municipalities, who shall be members of the National Guard of Texas and of the National Guard Reserve of Texas and of the Organized Reserves of the United States Army and of the Naval Reserves of the Navy of the United States shall be entitled to leave of absence from their respective duties, without loss of efficiency rating, on all days during which they shall be engaged in field or coast defense training, ordered or authorized under the provisions of law, and without loss of pay for the first twelve (12) days of such leave of absence; but such officers and employees shall not be entitled to pay from the State of Texas or any county or political subdivision thereof during such leave of absence for a longer period than twelve (12) days during any one calendar year. Such leave of absence shall be in lieu of any and all other vacations with pay, and said employee shall not be entitled to any other vacation with pay during that fiscal year.

The provisions of Section 1 of this Act, limiting such leaves of absence with pay to twelve (12) days in any one calendar year, shall not apply to members of the Legislature, but members of the Legislature shall be entitled to pay on all days, without limitation as to the number thereof, when they may be absent from the sessions of the Legislature and engaged in such field or coast defense training. [Acts 1931, 42nd Leg., p. 330, ch. 197, § 1; Acts 1941, 47th Leg., p. 108, ch. 87, § 1.]

Art. 5890b. National Guard Armory Board.—Section 1. There is hereby created the Texas National Guard Armory Board to be composed of five (5) members who shall serve without compensation other than their actual, necessary expenses while traveling on the business of the Board. Those three (3) individuals who are acting as members of the Texas National Guard Armory Board as created and defined by Chapter 366 of the Regular Session of the Forty-fifth Legislature of the State of Texas on the effective date of this Act, together with the senior active officer of the National Guard of Texas, not of the three (3) above mentioned, and the senior cavalry officer of said Guard, shall constitute the initial membership of the Board created by this Act. Of the three (3) individuals first above mentioned, the oldest shall have the initial term of six (6) years, the next oldest the four (4) year and the youngest of the three (3) the two (2) year initial term. Of the other two (2) members, the cavalry officer shall have the three (3) year term, and the other the one (1) year term. All such initial terms shall date from the date this Act becomes effective. Except as above provided, the terms of membership on said Board shall be of six (6) years' duration.

Each member of said Board shall, within fifteen (15) days from the day upon which this Act becomes effective, or from the date of his receipt of notice of his eligibility to serve to fill a vacancy, qualify by taking and filing with the Secretary of State the constitutional oath of office. Failure to qualify, expiration of the term of a member, or the occurrence of his death, resignation or ineligibility to serve, shall create a vacancy in such membership which shall be filled in the following manner: Within five (5) days after the occurrence of a vacancy the Adjutant General of Texas shall certify to the Secretary of State and to the officer concerned, the name of the senior active

officer of the National Guard of Texas who is not then occupying an unexpired term as a member of said Board, together with the length of term in which the vacancy exists.

The officer whose name is so certified, or those later certified as hereinafter provided, shall be eligible to fill such vacancy. In case such officer shall, for any reason, fail to qualify within a period of fifteen (15) days from the date of such certification, the said Adjutant General shall forthwith certify that fact to the Secretary of State, and shall certify to him and to the officer concerned the name of the next senior active officer of the said Guard in like manner as hereinabove provided, and so on until an officer so certified qualifies to fill the vacancy.

An active officer, within the meaning of the above provisions, shall be any regularly commissioned officer of the line of the said Guard, other than retired officers. No change in military status while a member and no retirement of an active officer for age or length of service shall affect his eligibility to serve out his term as a member of said Board; but if he shall resign from or be separated from active service in said National Guard, otherwise than by such retirement, he shall thereby become ineligible for designation to or service on the membership of said Board.

Seniority among active officers shall, for the purposes of the provisions of this Act, be determined, first, by grade in which commissioned; second, by date of commission in grade, the earliest in date to be senior; third, if that be the same, by date of birth; fourth, if both date of commission in grade and date of birth be the same, seniority shall be determined by the Governor of Texas.

The oldest and youngest, in age, of the members of said Board shall be, respectively, Chairman and Treasurer thereof, and the persons holding such offices shall change as age may determine when changes in the membership of said Board occur.

The Board shall act by resolution adopted at a meeting thereof called and held in accordance with its by-laws or rules and regulations. Three (3) members of the Board shall constitute a quorum for the transaction of business at all meetings and any action taken by the majority of the members of the Board present at any meeting thereof shall be deemed to be the action of the Board for all purposes; but if four (4) members are present and voting, an equal vote in both affirmative and negative shall defeat the proposition.

It shall be the duty of the Board to select a place for the headquarters of said Board, and such place of headquarters may be changed, from time to time, as the majority of said Board may determine.

Sec. 2. The Board hereby created shall be and it is hereby constituted a body politic and corporate. It shall succeed to the ownership of all property of, and all lease and rental contracts entered into by, the Texas National Guard Armory Board that was created by prior statutes and all of the obligations contracted or assumed by the last mentioned Board with respect to any such property and contracts shall be the obligations of the Board created by this Act. With this exception, no obligation of said former Board shall be binding upon the Board hereby created. It shall be the duty of said Board to have charge of the acquisition, construction, rental, control, maintenance and operation of all Texas National Guard Armories, including stables, garages, rifle ranges, hangers and all other property and equipment necessary or useful in connection therewith, and the said Board shall possess all powers necessary and convenient for the accomplishment of such duty, including, but without being limited thereto, the following express powers:

(a) To sue and be sued.

(b) To enter into contracts in connection with any matter within the objects, purposes or duties of the Board. It shall be the duty of the State Board of Control of the State of Texas to, for and on behalf of the said Armory Board, supervise the taking and tabulation of bids for work approved for bids by the said Armory Board and the construction under contracts executed by said Armory Board and the purchase of furniture and equipment such as is desired by the said Armory Board.

(c) To have and use a corporate seal.

(d) To appoint, employ and pay and dismiss an Executive Secretary, and, also, such other officials, counsel, lawyers, agents and employes as may be necessary to carry out the objects, purposes and duties of the Board, and to prescribe their duties and fix their compensation.

(e) To adopt, and from time to time change or amend, all necessary by-laws, rules and regulations for the conduct of the business and affairs of the Board.

(f) To acquire, by gift or by purchase, for use as building sites or for any other purposes deemed by said Board to be necessary or desirable in connection with or for use of units of the Texas National Guard, property of any and every description, whether real, personal or mixed, including, but without limitation on the foregoing, leasehold estates in real property, and hold, maintain, sub-lease, convey and exchange such property, in whole or in part, and/or to pledge the rents, issues and profits thereof in whole or in part; also, to acquire, by gift or purchase, or by construction of the same, furniture and equipment suitable for Armory purposes and to hold, maintain, sublease, convey and exchange such furniture and equipment, in whole or in part.

(g) To construct buildings on any of its real property, whether held in fee simple or otherwise, and to furnish and equip the same and to hold, manage and maintain all of said property and to lease to the State of Texas, in the same manner as hereinafter provided with respect to other property, the buildings, and the sites thereon situated, which it may construct at Camps Mabry, Hulen and Wolters, and to lease and sub-lease, convey and exchange, in whole or in part, all of its property not located in either of said camps, and/or to pledge the rents, issues and profits of all of said property, wherever located, in whole or in part; provided, however, that before any building is constructed by said Board on the lands comprising either of said camps, the site therefor, in maximum area two hundred thousand (200,000) square feet, shall, promptly on said Board's request therefor to the said Adjutant General, be selected and described by a Board of Officers appointed from time to time for the purpose by the said Adjutant General, and such description shall be certified to said Armory Board and a copy thereof shall be furnished to and preserved in the office of said Adjutant General; and, provided, further, that when so selected and described and constructed upon, such sites shall be and become the property of the said Armory Board, for all the purposes contemplated by the Act of which this section is a part, as fully and absolutely as if the same had been acquired by a gift to or purchase by said Armory Board.

All such property, together with the rents, issues and profits thereof shall be exempt from taxation by the State of Texas or by any municipal corporation, county or other political subdivision or taxing district of this State.

(h) From time to time, to borrow money, and to issue and sell bonds, debentures and other evidences of indebtedness for the purpose of acquiring one or more building sites and buildings, and for the purpose of constructing, remodeling, repairing and equipping one or more buildings, such bonds, debentures or other evidences of indebtedness to be fully negotiable and to be secured as follows: By a pledge of, and payable

solely from, the rents, issues and profits of all the property of the Board; or by a pledge of, and payable solely from the rents, issues and profits, of the property acquired or constructed by the Board, in whole or in part, with the proceeds of the borrowing transactions. Provided, however, that interest falling due within twenty-four (24) months after the issuance and sale of any particular bonds, debentures or other evidences of indebtedness, or any series thereof, may be paid out of the proceeds of the sale thereof. Any such bonds, debentures or other evidences of indebtedness may be issued in series, and, if so issued, all series thereof issued under or secured by the same trust indenture or trust agreement, shall rank equally, without preference or priority of one series over another, whether by reason of the date of issue or negotiation thereof or date of maturity thereof or for any other reason. All such bonds, debentures or other evidences of indebtedness and the interest thereon, shall be exempt from taxation (except inheritance taxes) by the State of Texas or by any municipal corporation, county or political subdivision or taxing district in the State. All bonds, debentures or other evidences of indebtedness authorized and issued under authority of this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for all public funds of the State of Texas including, but not limited to, the permanent free school fund, and for the sinking funds of cities, towns, villages, counties, school districts or other political corporations or subdivisions of the State of Texas. Such bonds, debentures, or other evidences of indebtedness shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds, debentures or other evidences of indebtedness shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto. Said bonds, debentures, or other evidences of indebtedness may be sold by the Board in any manner it may determine; provided that no bonds, debentures or other evidences of indebtedness shall be issued and sold at a price which will be such that the interest costs of the money received by the Board from the sale thereof will exceed six (6%) per cent per annum, computed to maturity according to standard tables of bond values, and provided further that no bonds, debentures or other evidences of indebtedness shall be sold unless and until same shall have been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts. The Board shall have power from time to time to execute and deliver trust deeds and trust agreements whereunder any bank or trust company authorized by the laws of the State or of the United States of America to accept and execute trusts in the State, or any individual selected by the Board, may be named and act as Trustee. Any such trust deed or trust agreement shall be signed in the name and on behalf of the Board by the Chairman of the Board and countersigned by the Treasurer thereof and the corporate seal of the Board shall be thereto affixed and such seal attested by the Secretary of the Board; and any such trust deed or trust agreement may, if it name such bank or trust company to act as Trustee, contain provisions for the deposit with the Trustee thereunder and the disbursement by such Trustee of the proceeds of the bonds, debentures or other evidences of indebtedness issued thereunder or secured thereby, and/or the rents, issues and profits of all property acquired or constructed out of such proceeds, and, whether or not such bank or trust company be named as Trustee, may also contain such provisions for the protection and enforcement of the rights and remedies of the Trustee and the holders of such bonds, debentures or other evidence of indebtedness as the Board may approve, including provisions for the acceleration of the maturity of any such bonds, debentures or other evidences of indebtedness upon default by the Board in the performance or observance of any of the covenants or provisions of such bonds, debentures or other evidences of indebtedness or of the trust deed or trust agreement whereunder the same are issued or secured. Any such trust deed or trust agreement shall provide that all bonds, debentures or other evidences of indebtedness issued at any time thereunder shall be equally secured thereby but any such trust deed or trust agreement may contain and impose upon the Board limitations and conditions governing the right of the Board to issue additional bonds, debentures or other evidence of indebtedness. All such bonds, debentures or other evidence of indebtedness shall be signed by the Chairman of the Board, countersigned by the Treasurer thereof, and the corporate seal of the Board shall be thereto affixed, and such seal attested by the Secretary of the Board, and in case any officer of the Board who shall have signed or attested any such bond, debenture or other evidence of indebtedness shall cease to be such officer before such bond, debenture or other evidence of indebtedness shall have been actually issued by the Board, such bond, debenture or other evidence of indebtedness may nevertheless be validly issued by the Board. Such bonds, debentures or other evidence of indebtedness may be issued in fully registered form without interest coupons, or in coupon form registerable as to principal only, or in bearer form with coupons attached. All of coupons shall be authenticated by the facsimile signature of the Treasurer of the Board; and

(i) To execute and deliver leases, or sub-leases in the case of buildings located upon leasehold estates acquired by the Board, demising and leasing to the State of Texas through the Adjutant General, who shall execute the same for said State, for such lawful term as may be determined by the Board, any building or buildings and the equipment therein and the site or sites therefor, to be used for Armory and other purposes and to renew such leases or subleases from time to time; provided, however, that if at any time the State of Texas shall fail or refuse to pay the rental reserved in any such lease or sublease, or shall fail or refuse to lease or sub-lease any such building and site, or to renew any existing lease or sub-lease thereon at the rental provided to be paid, then the Board shall have the power to lease or sub-lease such building and equipment and the site therefor to any person or entity and upon such terms as the Board may determine. The law requiring notice and competitive bids shall not apply to leasing or sub-leasing of such property. The annual rental (which may be made payable in such installments as the Board shall determine) to be charged the State of Texas for the use of such property leased or sub-leased to it by the Board shall be sufficient to provide for the operation and maintenance of the property so leased or sub-leased, to pay the interest on the bonds, debentures or other evidences of indebtedness, if any, issued for the purpose of acquiring, constructing or equipping such property, to provide for the retirement of such bonds, debentures or other evidences of indebtedness, if any, and the payment of the expenses incident to the issuance thereof, as well as the necessary and proper expenses of the Board not otherwise provided for.

Sec. 3. As and when any of the property owned by the Board shall be fully paid for, free of all liens, and all debts and other obligations incurred in connection

with the acquisition or construction of such property have been fully paid, the Board shall donate, transfer and convey such property, by appropriate instruments of transfer and conveyance, to the State of Texas, and such instruments of transfer and conveyance shall be kept in the custody of the Adjutant General's Department.

Sec. 4. The Board shall cause to be kept accurate minutes of its meetings and accurate records and books of account in conformity with approved methods of bookkeeping, clearly reflecting the income and expenses of the Board and all transactions in relation to its property. In the execution and administration of objects and purposes herein set forth, the Board shall have power to adopt means and methods reasonably calculated to accomplish such objects and purposes and this Act shall be construed liberally in order to effectuate such objects and purposes. [Acts 1935, 44th Leg., p. 462, ch. 184; Acts 1937, 45th Leg., p. 740, ch. 366; Acts 1939, 46th Leg., p. 487, § 1.]

Section 2 of the amendatory act of 1939 provided that partial invalidity should not affect the remaining parts of the Act.

Art. 5890c. Bonds, debentures, etc. of Texas National Guard Armory Board as legal and authorized investments.—Section 1. All bonds, debentures, or other evidences of indebtedness authorized and issued by the Texas National Guard Armory Board, under authority of Senate Bill No. 326, passed at the Regular Session of the Forty-sixth Legislature of Texas and approved May 1, 1939,[1] and laws amendatory thereof, shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for all public funds of the State of Texas including, but not limited to, the permanent free school fund, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds, debentures, or other evidences of indebtedness shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds, debentures or other evidences of indebtedness shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

Sec. 2. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional. [Acts 1939, 46th Leg., p. 494.]

[1] Article 5890b.

CHAPTER 4.—STATE NAVAL MILITIA

Article 5891. Texas Naval Board.—The "Texas Naval Board" shall consist of the Governor, and one other person to be appointed by him, which board shall have power to make, adopt and promulgate all such rules, orders and regulations as may be advisable and necessary to create and maintain an efficient naval militia, and is further empowered to co-operate with the Secretary of the Navy of the United States in putting into effect in the State of Texas, the provisions of an Act passed by the Sixty-third Congress, entitled: "An Act to promulgate the efficiency of the naval militia, and for other purposes." [Acts 1915, p. 124.]

CHAPTER 5.—TEXAS DEFENSE GUARD

Art.
5891a. Organization authorized—authority and name.
Sec.
1. Composition; name.
2. Organization; rules and regulations.
3. Pay and allowances.
4. Requisitions; armories; other buildings.
5. Use without this State.
6. Permission to forces of other States.
7. Federal service.
8. Civil groups.
9. Disqualifications.
10. Oath of officers.
11. Enlisted men.
12. Articles of War; freedom from arrest; jury duty.
13. Severability.
14. Repeal.
15. Short title.
5891b. [Expired.]

Art. 5891a. Organization authorized—authority and name.

Composition; name

Sec. 1(a). Whenever any part of the National Guard of this State is in active Federal service, the Governor is hereby authorized to organize and maintain within this State during such period, under such regulations as the Secretary of War of the United States may prescribe for their organization, standards of training, instruction and discipline, such military forces as the Governor may deem necessary to defend this State. Such forces shall be composed of officers appointed and commissioned and assigned by the Governor or under his authority, to hold office and assignment during the pleasure of the Governor, and such able-bodied male citizens of the State and such able-bodied residents of the State who shall have declared their intention to become citizens of the United States, as shall volunteer for service therein, supplemented, if necessary, by men of the reserve militia enrolled by draft or otherwise as provided by law. Provided that any male person (of any age over sixteen (16) years) who is otherwise qualified under the provisions of this Act and who has attained the age of sixteen (16) years may be appointed or enlisted in such State Guard unless he falls within one or more of the following categories in which event he shall not be eligible for such appointment or enlistment: 1. Minors whose affiliation with such State Guard has not been consented to, in writing, by their parents or guardians. 2. Persons who have been convicted of a felony and have not thereafter received a full pardon and restoration of civil rights. 3. Persons who have been expelled or dishonorably discharged from the military service of this or any other State or of the United States who do not produce the written consent to such appointment or enlistment on the part of the commanding officer of the organization from which such expulsion or discharge occurred and of the commanding officer who approved or issued the same. 4. Idiots, lunatics, vagabonds, confirmed drunkards, and persons addicted to the use of narcotic drugs. 5. Persons who, on examination, are determined to be physically or mentally incapable of performing the kind of military duty that may be required of them. 6. Persons whose moral character is known to be bad.

(b) Such forces shall be a part of the active militia and a component of the Military Forces of Texas and shall be additional to and distinct from the National Guard and shall be known as the Texas State Guard: Provided, however, that members of the Texas National Guard who are not at the time in Federal service may be used, under the authority of the Adjutant General, to command, instruct, train and ad-

minister all or any component of the Military Forces of this State, including such State Guard. [As amended Acts 1943, 48th Leg., p. 464, ch. 311, § 2.]

Organization; rules and regulations

Sec. 2(a). The Governor is hereby authorized to prescribe rules and regulations not inconsistent with the provisions of this Act governing the enlistment, organization, administration, uniforms, equipment, maintenance, command, training and discipline of such forces; provided such rules and regulations, in so far as he deems practicable and desirable, shall conform to existing law governing and pertaining to the National Guard and the rules and regulations promulgated thereunder.

(b). Provided, however, that the following enumerated Articles of the Revised Civil Statutes of Texas shall not be applicable to the Texas State Guard, viz: Articles 5766, 5780, 5781, 5784, 5797, 5800, 5802, 5803 to 5806 inclusive, 5808 to 5810 inclusive, 5819, 5824, 5825, 5827, and Article of War numbered 1 which is contained in Article 5858 of the said Revised Civil Statutes of Texas, 1925. [As amended Acts 1943, 48th Leg., p. 464, ch. 311, § 2.]

Pay and allowances

Sec. 3. [Repealed by Acts 1943, 48th Leg., p. 464, ch. 311, § 7.]

Requisitions; armories; other buildings

Sec. 4. For the use of such forces, the Governor is hereby authorized to requisition from the Secretary of War such arms and equipment as may be in possession of, and can be spared by, the War Department; and to make available to such forces the facilities of State armories and their equipment and such other State premises and property as may be available. Authorization is hereby provided for school authorities to permit the use of school buildings by the Texas Defense Guard; provided further that County Commissioners Courts, city authorities, communities, and civic and patriotic organizations are empowered and authorized by this Act to provide funds, armories, equipment, material, transportation, or other appropriate services or facilities, to the Texas Defense Guard.

Use without this State

Sec. 5. Such forces shall not be required to serve outside the boundaries of this State except:

(a) Upon the request of the Governor of another State, the Governor of this State may, in his discretion, order any portion or all of such forces to assist the military or police forces of such other State, who are actually engaged in defending such other State. Such forces may be recalled by the Governor at his discretion.

(b) Any organization, unit, or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces beyond the borders of this State into another State until they are apprehended or captured by such organization, unit, or detachment, or until the military or police forces of the other State, or the forces of the United States, have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided such other State shall have given authority by law for such pursuit by such forces of this State. Any such person who shall be apprehended or captured in any other State by an organization, unit, or detachment of the forces of this State shall without unnecessary delay be surrendered to the military or police forces of the State in which he is taken, or to the United States, but such surrender shall not constitute a waiver by this State of its right to extradite or prosecute such person for any crime committed in this State.

Permission to forces of other States

Sec. 6. Any military forces or organization, unit, or detachment thereof, of another State, who are in fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces, may continue such pursuit into this State until the military or police forces of this State or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, and are hereby authorized to arrest or capture such persons within this State while in fresh pursuit. Any such person who shall be captured or arrested by the military forces of such other State while in this State shall without unnecessary delay be surrendered to the military or police forces of this State to be dealt with according to law. This Section shall not be construed so as to make unlawful any arrest in this State which would otherwise be lawful.

Federal service

Sec. 7. Nothing in this Act shall be construed as authorizing such forces, or any part thereof, to be called, ordered, or in any manner drafted, as such, into the military service of the United States, but no person shall by reason of his enlistment or commission in any such forces be exempted from military service under any law of the United States.

Civil groups

Sec. 8. No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.

Disqualifications

Sec. 9. [Repealed by Acts 1943, 48th Leg., p. 464, ch. 311, § 6.]

Oath of officers

Sec. 10. The Adjutant General of this State shall formulate a written form of oath of office for commissioned officers and for enlisted men of the Texas State Guard and all officers and enlisted men shall take and subscribe to such oath before entering upon the discharge of their military duties. Such oath shall conform, as nearly as may be appropriate, to the oath now prescribed for the officers and men of the Texas National Guard. The Adjutant General or any commissioned officer of the Military Forces of Texas may administer the oath of office. Members of such Forces who have heretofore taken the oath heretofore provided will not be required to take another oath. [As amended Acts 1943, 48th Leg., p. 464, ch. 311, § 2.]

Enlisted men

Sec. 11. Persons shall be enlisted in the Texas State Guard for three (3) years unless sooner demobilized, mustered out, or discharged by authority of the Governor. It shall be the duty of the Governor to muster out or demobilize units of the Texas State Guard and the officers thereof, ratably and progressively, upon the release of the Texas National Guard units from active Federal service and return to their home stations, provided that the Governor shall in his judgment accomplish the mustering out and demobilization of Texas State Guard units in conjunction with the return of the National Guard units so as to preserve in any locality or area of the State or in the State as a whole, the proper defense of such areas; and provided further that upon the return of all of the Texas National Guard units to home stations, or, at any time, when the Governor shall determine that the continued maintenance thereof is not necessary, all or any remaining units of the Texas State Guard will be mustered out or demobilized. [As amended Acts 1943, 48th Leg., p. 464, ch. 311, § 2.]

Articles of War; freedom from arrest; jury duty

Sec. 12(a). Until and unless otherwise provided by regulations of the Secretary of War of the United States, the Articles of War as contained in Article 5858 of the Revised Civil Statutes of Texas, 1925, shall be applicable to the Texas State Guard except that Article of War numbered 1 shall not be so applicable. When it is so provided by said Secretary of War his regulations shall govern.

(b). The appointment of and the procedure with respect to courts martial within the Texas State Guard shall be governed by Articles 5859 to 5883, inclusive, of the Revised Civil Statutes of Texas, 1925, and the Articles of War aforesaid and such other rules and regulations as the Governor of Texas may from time to time prescribe; provided, however, that, in the absence of any rules and regulations prescribed by the Governor that are to the contrary, or if the said Secretary of War shall so provide, the rules and regulations contained in the Manual for Courts Martial for the Army of the United States shall be observed, in so far as is practicable, in all matters affecting courts martial in the Texas State Guard; provided, further, that the Governor shall, before the use of courts martial for the trial of offenses in the Texas State Guard, prescribe and promulgate the limit or limits of punishment that may be administered by such courts.

(c). No officer or enlisted man of the Texas State Guard shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from a place where he is ordered to attend for military duty. Every officer and enlisted man of such forces shall, during his service therein, be exempt from service upon any posse comitatus and from jury duty. [As amended Acts 1943, 48th Leg., p. 464, ch. 311, § 2.]

Severability

Sec. 13. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Repeal

Sec. 14. All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed.

Short title

Sec. 15. This Act may be cited as the Texas Defense Guard Act, 1941. [Acts 1941, 47th Leg., p. 17, ch. 9; Acts 1943, 48th Leg., p. 464, ch. 311, §§ 2, 6, 7.]

Section 7 of the amendatory Act of 1943 also repealed all conflicting laws and parts of laws.

Art. 5891b. [Expired.]

This article, Acts 1943, 48th Leg., p. 541, ch. 326 provided for Workmen's Compensation insurance for members of the Texas Defense Guard. By section 18 thereof, as amended by Acts 1945, 49th Leg., p. 150, ch. 100, § 1 it was expressly provided that the Act should expire at twelve o'clock midnight August 31, 1947 except as to liabilities already incurred under the Act on or before that date.

CHAPTER 6.—TEXAS STATE GUARD RESERVE CORPS

Art.
5891c. Organization authorized.
Sec.
1. Texas State Guard Reserve Corps.
2. Personnel.
3. Advisory Board.
4. Honorary Reserve.
5. Pay and allowances; removal of personnel from Honorary Reserve.
6. Maintenance of records.
7. Command and administration.
8. Severability.
9. Repeal.

Art. 5891c. Organization authorized.

Texas State Guard Reserve Corps

Section 1. In order to provide a reservoir of military strength for use by the State of Texas in time of national emergency when the National Guard shall have been called into Federal Service, and to eliminate any delay in the organization of an adequate and efficient State Military Force under such circumstance, there is hereby authorized and created a Texas State Guard Reserve Corps as hereinafter provided.

Personnel

Sec. 2. As units of the Texas State Guard are inactivated, the Texas State Guard Reserve Corps shall be organized to include former members of the Texas State Guard, Texas Defense Guard, Texas National Guard, and former members of the armed forces of the United States of America. Such Corps shall be composed of officers appointed and commissioned and assigned by the Governor, or under his authority, to hold office and assignment during the pleasure of the Governor, and such other able-bodied male citizens of the state, meeting the above qualifications, as shall volunteer for such service as enlisted men therein. Members of this organization will be subject to the call of the Governor of Texas to serve in time of emergency, with the same objectives and missions previously assigned to State Guard personnel.

Advisory Board

Sec. 3. An advisory Board of ten (10) State Guard Reserve Officers shall be appointed by the Governor of Texas to meet with the Adjutant General and Commanding General of the Texas National Guard at frequent intervals to work out all policies pertaining to the State Guard Reserve Corp, plans for inactive duty training, promotion and procurement of officer and enlisted personnel, tables of organization, and other matters pertaining to the administration and policies of the Texas State Guard Reserve Corps.

Honorary Reserve

Sec. 4. Members of the Texas State Guard Reserve Corps who shall have reached the age of sixty (60) years, or who become physically disabled or incapacitated prior to having reached such age, shall be transferred to the Texas State Guard Honorary Reserve. Such officers and men may, in the discretion of the Governor, be advanced one grade or rank at the time of such transfer.

Pay and Allowances; Removal of Personnel from Honorary Reserve

Sec. 5. No pay and allowances will accrue to a member of the State Guard Reserve or State Guard Honorary Reserve except when called to active duty, in which case he shall receive the same pay and allowances provided for the Texas National Guard. Officers and enlisted men will not be removed from the State Guard Honorary Reserve except for death, misconduct, or upon written request to the Adjutant General of Texas by the officer concerned. Misconduct shall be construed to mean conduct unbecoming an officer and gentleman or conduct of a nature to bring discredit upon the military service.

Maintenance of Records

Sec. 6. The Adjutant General of Texas is hereby charged with the care, maintenance and preservation of the individual, unit, and organization records of the Texas Defense Guard, Texas State Guard, Texas State Guard Reserve Corps, and Texas State Guard Honorary Reserve.

Command and Administration

Sec. 7. The Governor is hereby authorized to prescribe rules and regulations not inconsistent with the provisions of this Act governing the enlistment, or-

ganization, administration, uniforms, equipment, maintenance, command, training and discipline of such forces; provided such rules and regulations, insofar as he deems practicable and desirable, shall conform to existing law governing and pertaining to the National Guard and the rules and regulations promulgated thereunder.

Severability

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

Repeal

Sec. 9. All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed. [Acts 1947, 50th Leg., p. 398, ch. 226.]

TITLE 95—MINES AND MINING

1. MINING BOARD AND INSPECTOR

Art.
5892. Mining Board.
5893. Board to select inspector.
5894. Qualifications and term.
5895. Supervision and removal.
5896. Meetings of board.
5897. Compensation of board.
5898. Duties of inspector.
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1. MINING BOARD AND INSPECTOR

Article 5892. [5923–4] Mining Board.—The Governor shall biennially appoint for a term of two years a board of seven members to be known as the State Mining Board, who shall make formal inquiry into and pass upon the qualifications and personal fitness of those seeking appointment as State Mining Inspector. Three members of said board shall be practical miners and three shall be mine operators. These six members shall nominate to the Governor a suitable person for appointment as the seventh member. If the said nomination is not made within ten days after their appointment, the Governor shall appoint the seventh. [Acts 1907, p. 331.]

Art. 5893. [5925] Board to select inspector.—The board shall meet biennially in the State Capitol to hear applications for the office of State Mining Inspector, and shall examine thoroughly all applicants who may come before it and select from among them the one who in its opinion is best qualified to perform the duties of said office, and upon their nomination, the Governor shall appoint their nominee. [Id. sec. 16.]

Art. 5894. [5926] Qualifications and term.—The State Mining Inspector shall be a citizen of the United States, and shall have resided in this State for one year, a man at least thirty years old, of good repute, personal integrity and temperate habits, without any pecuniary interest in any mine in this State, and with at least five years experience working in and around coal mines. He shall hold office for a term of two years. [Id. sec. 17.]

Art. 5895. [5927] Supervision and removal.—The board shall exercise supervision over the acts of said inspector, and in the event of his incompetency or the neglect of his duty being proved to the board, they shall recommend to the Governor that he be removed from office, and his successor shall be chosen as herein provided. [Id. sec. 18.]

Art. 5896. [5928] Meetings of board.—The board shall meet twice each year at such time and place as the majority may select for the purpose of receiving reports from the inspector and instructing him in the performance of his duties. [Id. sec. 19.]

Art. 5897. [5929] Compensation of board.—The members of said board shall receive as compensation for their services five dollars a day not exceeding thirty days in any one year, and traveling expenses going to and returning from board meetings. [Id. sec. 20.]

Art. 5898. [5930] Duties of inspector.—Said inspector under the instruction of said board shall enforce the provisions of this title, and shall make a report to said board at its semiannual meeting and oftener if required. He shall file an itemized statement showing the number of times he inspected each mine and the actual amounts expended. [Id. Acts 1909, p. 163.]

Art. 5899. [5931] Discrimination.—Neither the instructions of said board nor the acts of said inspector shall ever discriminate in favor of or against any mine or against any owner, operator or employé of any mine, but said acts, either of the board or of the inspector, shall be impartial, fair and just to all persons or corporations subject to this law. [Id.]

Art. 5900. [5932] Bond and liability.—Before receiving his appointment by the Governor, said inspector shall enter into and deliver to the Governor a bond in the sum of ten thousand dollars, with at least three good and sufficient sureties, conditioned for the faithful and impartial performance of his duty, which bond shall be payable to and approved by the Governor. His sureties shall make affidavit that they, in their own right, are worth over and above all exemptions the full amount of the bond they sign as sureties. On proof that said inspector has discriminated against and to the injury of any owner, operator or employee of any mine, the said owner, operator or employee may sue upon said bond and shall be entitled to recover such damages as may be proved in such suit. [Id.]

2. MINING REGULATIONS

Art. 5901. [5933] Shafts, cages and passways.—Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds, shall be subjected to the provisions of this and the thirteen succeeding articles. At the bottom of each shaft and every caging place therein, a safe commodious passageway must be cut around said landing place, to serve as a traveling way by which employés shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft, shall be clear and free from loose materials and shall be se-

curely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice cannot be distinctly heard, there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope and each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description, shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge. [Acts 1907, p. 331.]

Art. 5902. [5934] Props and timbers.—Every mine shall be supplied with props and timbers of suitable length and size; and, if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed. [Id.]

Art. 5903. [5925] Abandoned workings.—All openings connecting with worked-out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbed and blocked off from the operated portions thereof, so as to protect every person working in such mines from all danger that may be caused or produced by such worked-out portions of such mines. [Id.]

Art. 5904. [5936] Ventilation.—Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein, and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated. The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal, in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector whenever in his judgment unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder smoke and deleterious air of any kind. The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast and at the working face of each division or split of the air current. The main current of air shall be split or subdivided so as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary. The air current for ventilating the stables shall not pass into the intake air current for ventilating the working parts of the mine. Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current; and, upon his refusal or neglect to act promptly, the inspector may order the endangered men out of the mine. [Id. sec. 2.]

Art. 5905. [5937] Cut-throughs.—The mine foreman shall see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation; and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places; and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway, or other working place, being driven in advance of the air current contrary to the requirements of this article, he shall order the workmen in such places to cease work at once until the law is complied with. [Id. sec. 6.]

Art. 5906. [5938] Notice of fire damp.—Immediate notice must be conveyed by the miner or mine owner to the inspector upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the occurrence of any serious fire within the mine or on the surface. [Id. sec. 3.]

Art. 5907. [5939] Mining cage.—Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or material with him on a cage in motion, except for use in making repairs; and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon. [Id. sec. 4.]

Art. 5908. [5940] Powder.—No miner or other person shall carry powder into the mine except in the original keg or in a regulation powder can securely fastened, and the can in otherwise air tight condition. [Id. sec. 5.]

Art. 5909. [5941] Safety lamps.—At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary. [Id. sec. 7.]

Art. 5910. [5942] Endangering life or health.—It shall be unlawful for any miner, workman or other person knowingly or carelessly to injure any shaft, safety lamp, instrument, air-course or brattice, or to obstruct or throw open an airway, or to carry any open lamp or lighted pipe or fire in any form, into a place worked by the light of safety lamps, or within three feet of any open powder, or to handle or disturb any part of the hoisting machinery, or to enter any part of the mine against caution, or to do any wilful act whereby the lives or health of persons working in the mines, or the security of the mine machinery thereof is endangered. [Id. sec. 8.]

Art. 5911. [5943] Posting mine rules.—Every operator shall post on the engine house and at the pit top of his mine, in such manner that the employees of the mine can read them, rules not inconsistent with this law, plainly printed in the English language,

which shall govern all persons working in the mine. The posting of such notice shall charge all employees of such mine with legal notice of the contents thereof. [Id. sec. 9.]

Art. 5912. [5944] Coal scales.—The owner or operator of every coal mine shall provide adequate and accurate scales for weighing coal; the mine inspector shall examine such scales, and if same are not found to be accurate, he shall notify the owner to repair same; and, if such owner fails or refuses to repair same within a reasonable time, said inspector shall institute proceedings under the law against the proper parties. [Id. sec. 10.]

Art. 5913. [5945] Check weighman.—The employees in any mine shall have the right to employ a check weighmen [1] at their own option and their own expense. [Id. sec. 11.]

[1] So in enrolled bill. Should probably read "weighman".

Art. 5914. [5946] Oil used.—No miner or other person employed in a mine shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts. [Id. sec. 12.]

Art. 5915. Insulating live wires.—In all mines where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, the owners or operators of every such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated or protected in a safe manner, so that the person or animal coming in contact therewith shall not be injured thereby. All wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines cannot come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines. It shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height, where there is sufficient height in existing entries to permit this; but where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded. Where it is impracticable in existing entries to place trolley wires six inches outside the rail, or five feet and six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded. This article shall not apply to entries that are not used as travel ways for workmen or work animals, nor to mines in operation on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand feet distance from the shaft to the face of the coal being operated, except as to extensions of trolley wires made in such mines. [Acts 1911, p. 196.]

Art. 5916. Duty of inspector.—The State Mining Inspector shall see that the provisions of this title are complied with and shall report all violations hereof to the State Mining Board and to the proper district or county attorney. [Id.]

Art. 5917. Map of mine.—Every operator of a coal mine in this State shall make a map of the underground workings of every mine in his charge. Said map shall be drawn on a scale of one inch to one hundred feet, and shall indicate the surface land lines as well as the rooms, entries or openings under ground. It shall be brought up to date at least once each month, covering operations for the preceding month. The original of said map shall be on file at the office of the operator at or near said mine. Said map shall be extended or brought up to date at any time requested by the State Mine Inspector, at least every three months. If, for any reason, a mine should be closed, then a final map shall be made and filed; but maps existing may be continued on the same scale as begun, if not smaller than one-half inch to one hundred feet. [Id.]

Art. 5918. Animals in mines.—It shall be unlawful for any person, association of persons, corporation or receiver, owning, operating or managing any mine in this State to permit any work animal under his control to remain in any mine longer than ten consecutive hours, or to feed or permit to be fed any work animal in said mine, or to store or keep any feed for such animals in said mine. Each person, company, corporation or receiver who shall in any manner violate any provision of this article shall for each offense committed forfeit and pay to the State a penalty of not less than one hundred nor more than five hundred dollars, and the district or county attorney shall institute suit in the name of the State for the recovery of same. [Acts 1911, p. 205.]

Art. 5919. Exceptions.—The preceding article shall not apply when the stables in which work animals are kept are equipped with fireproof doors at each opening, with doorframes of concrete, stone or brick, laid in mortar, and which door is kept closed during working hours, and where not more than twenty-four hours' supply of grass, cane, hay or other like inflammable feed, except corn, corn chops, bran and shelled oats, is taken down in any mine in any one day, and where no such feed, except corn, corn chops, bran and shelled oats, is taken down in the mine until after the regular day shift is out of the mine, and where no open light is taken into any underground stable in any mine. [Id.]

Art. 5920. Bath facilities.—The operator, owner, lessee or superintendent of every coal mine in this State employing ten or more men shall provide a suitable building convenient to the principal entrance of such mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employees. The employees shall furnish their own towels, soap and locks for their lockers, and shall exercise control over and be responsible for all property by them left in such house. The baths and lockers for negroes shall be separate from those for whites, but may be in the same building. No operator, owner, lessee or superintendent or company, its officers or agents, maintaining such a bath house at his or its mine as required herein shall be liable for the loss or destruction of any property left at or in said house. The Commissioner of Labor Statistics of the State of Texas shall enforce the provisions of this article. [Acts 1915, p. 100.]

TITLE 96—MINORS—REMOVAL OF DISABILITIES OF

Art.
5921. Requisites of removal.
5921a. Minors honorably discharged from armed forces.
5922. Petition and hearing.
5923. Citation and procedure.

Article 5921. [5947–5949] Requisites of removal.—Minors above the age of nineteen years, where it shall appear to their material advantage, may have their disabilities of minority removed, and be thereafter held, for all legal purposes, of full age, ex-

cept as to the right to vote. [Acts 1881, p. 16; G. L., vol. 9, p. 108.]

Art. 5921a. Minors honorably discharged from armed forces.—In addition to and cumulative of the provisions of Article 5921, minors above the age of eighteen (18) years who have been honorably discharged from the Armed Forces of the United States, where it shall appear to their material advantage, may have their disabilities of minority removed, and be thereafter held, for all legal purposes, of full age, except as to the right to vote. [Added Acts 1945, 49th Leg., p. 453, ch. 284, § 1.]

Art. 5922. [5947] [3499] Petition and hearing.—The petition for such removal shall state the grounds relied on, whether the parents of the minor are living or dead, and the name and residence of each living parent. Such petition shall be sworn to by the father or mother of said minor or by any other credible person cognizant of the facts, and shall be filed in the District Court of the County where the minor resides, and a hearing had on any day of any term of said Court, or during a vacation of said Court. Provided that in District Courts of Districts having more than one county within such District, upon the filing of such petition, for removal of disabilities, in the County in which such minor resides, the District Judge of said Court may hold such hearing and remove the disabilities of such minor, in any County within such District wherein he may be then holding Court or may be found. [Acts 1881, p. 16; G.L., Vol. 9, p. 108; Acts 1927, 40th Leg., p. 102, ch. 71, § 1; Acts 1939, 46th Leg., p. 497, § 1.]

Art. 5923. [5948–50] Citation and procedure.—A copy of the petition shall be served upon the father of the minor, if living within the State. If the father be dead, or living without the State, then such service shall be had upon the county judge of the county in which the petition was filed, in which event the trial court shall appoint a special guardian, who shall in connection with the county judge, represent the true interests of the minor in aiding or resisting his application. The judge shall make an allowance to such guardian, which shall be paid out of the estate of such minor, and shall, if the petition be granted, order a certified copy of the decree to be recorded in the deed records of the county where the estate of the minor is situated, the fee for recording to be paid out of the estate of the minor. If the court grants such petition the decree shall specifically adjudge the minor of full age for all legal purposes except as to the right to vote. [Acts 1881, p. 16; G.L. vol. 9, p. 108.]

TITLE 97—NAME

Chap. Art.
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CHAPTER 1.—ASSUMED NAME

Art.
5924. Business under assumed name.
5925. Change of ownership.
5926. Index of certificate.
5927. Exceptions.

Article 5924. Business under assumed name.—No person shall conduct or transact business in this State under any assumed name or under any designation, name, style, corporate or otherwise other than the real name of each individual conducting or transacting such business, unless such person shall file in the office of the county clerk of the counties in which such person conducts, or transacts or intends to conduct or transact such business, a certificate setting forth the name under which such business is, or is to be, conducted or transacted, and the true full name or names of each person conducting or transacting the same, with the post-office address of each. Said certificate shall be executed and duly acknowledged by the persons so conducting or intending to conduct said business in the manner provided for acknowledgment of conveyance of real estate. [Acts 1921, p. 142.]

Art. 5925. Change of ownership.—Whenever there is a change in ownership of any business operated under any such assumed name each person disposing of his interest therein or withdrawing therefrom shall file with the county clerk of each county in which such business is being conducted and has a place of business, a certificate setting forth the fact of such withdrawal from or disposition of interest in such business, which certificate shall be executed and duly acknowledged as directed in the preceding article. [Id.]

Art. 5926. Index of certificate.—Each county clerk shall keep an alphabetical index of all persons filing certificates provided for herein, and for indexing and filing each certificate shall receive a fee of one dollar. A copy of such certificate duly certified to by the county clerk in whose office the same was filed shall be presumptive evidence in all courts in this State of the facts therein contained. [Id.]

Art. 5927. Exceptions.—The three preceding articles shall not apply to any domestic or foreign corporation lawfully doing business in this State. [Id.]

CHAPTER 2.—CHANGE OF NAME

Art.
5928. Application.
5929. Changing minor's name.
5930. Not to injure third persons.
5931. In divorce suits.

Article 5928. [5951] [377] [336] Application.—Whoever desires to change either his Christian or surname, or both, and to adopt another name instead, shall file his application in the district court of the county of his residence, setting forth the causes for such desire. The judge of said court, if in his opinion it is for the interest or benefit of the applicant to so change his name shall decree that the adopted name of the party shall be substituted for the original name. [Act Feb. 5, 1856; G. L. vol. 4, p. 260.]

Art. 5929. [5952] [378] [337] Changing minor's name.—Whenever it shall be to the interest of any minor to change his name, the guardian or next friend of said minor shall file his application in the district court of the county of said minor's residence, alleging the reason for the change and giving the full name which the minor wishes to adopt. The judge of said court, if the facts alleged and proven satisfy him that such change will be for the benefit and interest of the minor shall grant authority to change his original name and adopt another. [Id.]

Art. 5930. [5953] [379] [338] Not to injure third persons.—Whenever any person shall change his original name and adopt another, it shall not operate to release him from any responsibility which he may have incurred by the original name nor defeat or destroy any rights or property or action which the person had or held in his original name. [Id.]

Art. 5931. [5954] [380] [339] In divorce suits.—On the final disposition of a divorce suit, the court, may in its discretion, enter a decree changing the name of either party specially praying for such change. [Id.]

TITLE 98—NEGOTIABLE INSTRUMENTS ACT

NEGOTIABLE INSTRUMENTS IN GENERAL

Art.
5932. Form and interpretation.
5933. Consideration.

Art.
5934. Negotiation.
5935. Rights of the holder.
5936. Liabilities of parties.
5937. Presentment for payment.
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5939. Discharge of negotiable instruments.

BILLS OF EXCHANGE

5940. Form and interpretation
5941. Acceptance.
5942. Presentment for acceptance.
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5944. Acceptance for honor.
5945. Payment for honor.
5946. Bills in a set.

PROMISSORY NOTES AND CHECKS

5947. Promissory notes and checks.

GENERAL PROVISIONS

5948. General provisions.

NEGOTIABLE INSTRUMENTS IN GENERAL

Article 5932. Form and interpretation.—Sec. 1. An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;

2. It must contain an unconditional promise or order to pay a sum certain in money;

3. Must be payable on demand, or at a fixed or determinable future time;

4. Must be payable to order or to bearer; and

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Sec. 2. The sum payable is a sum certain within the meaning of this Act, although it is to be paid:

1. With interest; or

2. By stated installments; or

3. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate; or

5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Sec. 3. An unqualified order or promise to pay is unconditional within the meaning of this Act, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction which gives rise to the instrument; but an order or promise to pay out of a particular fund is not unconditional.

Sec. 4. An instrument is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Sec. 5. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

2. Authorizes a confession of judgment if the instrument be not paid at maturity; or

3. Waives the benefit of any law intended for the advantages or protection of the obligor; or

4. Gives the holder an election to require something to be done in lieu of payment of money.

Nothing in this section shall validate any provision or stipulation otherwise illegal.

Sec. 6. The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or

2. Does not specify the value given, or that any value has been given therefor; or

3. Does not specify the place where it is drawn or the place where it is payable; or

4. Bears a seal; or

5. Designates a particular kind of current money in which payment is to be made.

Nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

Sec. 7. An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or

2. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

Sec. 8. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer, or drawee; or

2. The drawer or maker; or

3. The drawee; or

4. Two or more payees jointly; or

5. One or some of several payees; or

6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

Sec. 9. The instrument is payable to bearer:

1. When it is expressed to be so payable; or

2. When it is payable to a person named therein or bearer; or

3. When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or

4. When the name of the payee does not purport to be the name of any person; or

5. When the only or last indorsement is an indorsement in blank.

Sec. 10. The instrument need not follow the language of this Act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

Sec. 11. Where the instrument or an acceptance or any indorsement thereon is dated, such date is prima facie evidence of the true date of the making, drawing, acceptance, or indorsement as the case may be.

Sec. 12. The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

Sec. 13. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

Sec. 14. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper

delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Sec. 15. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Sec. 16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Sec. 17. Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign he is to be deemed an indorser;

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Sec. 18. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. One who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Sec. 19. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Sec. 20. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Sec. 21. A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Sec. 22. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Sec. 23. When a signature is forced or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. [Acts 1919, p. 190.]

Art. 5933. Consideration.—Sec. 24. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Sec. 25. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Sec. 26. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Sec. 27. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Sec. 28. Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

Sec. 29. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. [Id.]

Art. 5934. Negotiation.—Sec. 30. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Sec. 31. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Sec. 32. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Sec. 33. An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

Sec. 34. A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Sec. 35. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Sec. 36. An indorsement is restrictive, which either:

1. Prohibits the further negotiation of the instrument; or

2. Constitutes the indorsee the agent of the indorser; or

3. Vests the title in the indorsee in trust for or to the use of some other person.

The mere absence of words implying power to negotiate does not make an indorsement restrictive.

Sec. 37. A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument;

2. To bring any action thereon that the indorser could bring;

3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

All subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Sec. 38. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Sec. 39. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof subject to the rights of the person indorsing conditionally.

Sec. 40. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery, but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Sec. 41. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

Sec. 42. Where an instrument is drawn or indorsed to a person as "Cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

Sec. 43. Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

Sec. 44. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Sec. 45. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

Sec. 46. Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

Sec. 47. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Sec. 48. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Sec. 49. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Sec. 50. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this Act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. [Id.]

Art. 5935. Rights of the holder.—Sec. 51. The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

Sec. 52. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;

2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

3. That he took it in good faith and for value;

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Sec. 53. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Sec. 54. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

Sec. 55. The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Sec. 56. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Sec. 57. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

Sec. 58. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Sec. 59. Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became

bound on the instrument prior to the acquisition of such defective title. [Id.]

Art. 5936. Liabilities of parties.—Sec. 60. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Sec. 61. The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

Sec. 62. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse.

Sec. 63. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Sec. 64. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser, in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Sec. 65. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be;

2. That he has a good title to it;

3. That all prior parties had capacity to contract;

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

When the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

Sec. 66. Every indorser who indorses without qualification warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivision one, two and three of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

In addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Sec. 67. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Sec. 68. As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

Sec. 69. Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section sixty-five of this Act, unless he discloses the name of his principal, and the fact that he is acting only as agent. [Id.]

Art. 5937. Presentment for payment.—Sec. 70. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. Except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Sec. 71. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

Sec. 72. Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf;

2. At a reasonable hour on a business day;

3. At a proper place as herein defined;

4. To the person primarily liable on the instrument or if he is absent or inaccessible, to any person found at the place where the presentment is made.

Sec. 73. Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

Sec. 74. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

Sec. 75. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Sec. 76. Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

Sec. 77. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them even though there has been a dissolution of the firm.

Sec. 78. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

Sec. 79. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require the drawee or acceptor to pay the instrument.

Sec. 80. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

Sec. 81. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

Sec. 82. Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this Act cannot be made;

2. Where the drawee is a fictitious person;

3. By waiver of presentment, express or implied.

Sec. 83. The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid.

Sec. 84. Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Sec. 85. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due (or becoming payable) on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Sec. 86. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Sec. 87. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

Sec. 88. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. [Id.]

Art. 5938. Notice of dishonor.—Sec. 89. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Sec. 90. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

Sec. 91. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Sec. 92. Where notice is given by or on behalf of the holder it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Sec. 93. Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Sec. 94. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice himself the same time for giving notice as if the agent had been an independent holder.

Sec. 95. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact mislead thereby.

Sec. 96. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate, that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

Sec. 97. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Sec. 98. When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Sec. 99. Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

Sec. 100. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Sec. 101. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

Sec. 102. Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the time fixed by this Act.

Sec. 103. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

Sec. 104. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

Sec. 105. Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Sec. 106. Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the post-office department.

Sec. 107. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Sec. 108. Where a party has added an address to his signature, notice of dishonor must be sent to that

address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters or

2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

Where the notice is actually received by the party within the time specified in this Act, it will be sufficient, though not sent in accordance with the requirements of this section.

Sec. 109. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Sec. 110. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

Sec. 111. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

Sec. 112. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.

Sec. 113. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

Sec. 114. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;

2. When the drawee is a fictitious person or person not having capacity to contract;

3. When the drawer is the person to whom the instrument is presented for payment;

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

5. Where the drawer has countermanded payment.

Sec. 115. Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

2. Where the indorser is the person to whom the instrument is presented for payment;

3. Where the instrument was made or accepted for his accommodation.

Sec. 116. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

Sec. 117. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Sec. 118. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange. [Id.]

Art. 5939. Discharge of negotiable instruments.—Sec. 119. A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor;

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

3. By the intentional cancellation thereof by the holder;

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

Sec. 120. A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;

2. By the intentional cancellation of his signature by the holder;

3. By the discharge of a prior party;

4. By a valid tender of payment made by a prior party;

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

Sec. 121. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

Sec. 122. The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Sec. 123. A cancellation made unintentionally, or under mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake without authority.

Sec. 124. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

When an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Sec. 125. Any alteration which changes:

1. The date;

2. The sum payable, either for principal or interest;

3. The time or place of payment;

4. The number or the relations of the parties;

5. The medium of currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. [Id.]

BILLS OF EXCHANGE

Art. 5940. Form and interpretation.—Sec. 126. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determina-

ble future time a sum certain in money to order or to bearer.

Sec. 127. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Sec. 128. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Sec. 129. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Sec. 130. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Sec. 131. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. [Id.]

Art. 5941. Acceptance.—Sec. 132. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

Sec. 133. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

Sec. 134. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

Sec. 135. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon the faith thereof, receives the bill for value.

Sec. 136. The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation.

Sec. 137. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

Sec. 138. A bill may be accepted before it has been signed by the drawee, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

Sec. 139. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Sec. 140. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

Sec. 141. An acceptance is qualified, which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;

5. The acceptance of some one or more of the drawees, but not of all.

Sec. 142. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. [Id.]

Art. 5942. Presentment for acceptance.—Sec. 143. Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Sec. 144. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

Sec. 145. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf, and;

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative.

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

Sec. 146. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this Act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

Sec. 147. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

Sec. 148. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where, after the exercise of reasonable diligence, presentment cannot be made.

3. Where, although presentment has been irregular, acceptance has been refused on some other ground.

Sec. 149. A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted.

Sec. 150. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

Sec. 151. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. [Id.]

Art. 5943. Protest.—Sec. 152. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

Sec. 153. The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment;

2. The fact that presentment was made and the manner thereof;

3. The cause or reason for protesting the bill:

4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

Sec. 154. Protest may be made by:

1. A notary public; or

2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

Sec. 155. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Sec. 156. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

Sec. 157. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Sec. 158. Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Sec. 159. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Sec. 160. When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. [Id.]

Art. 5944. Acceptance for honor.—Sec. 161. Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Sec. 162. An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Sec. 163. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Sec. 164. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

Sec. 165. The acceptor for honor, by such acceptance engages that he will on due presentation pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him.

Sec. 166. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

Sec. 167. Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Sec. 168. Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four.

Sec. 169. The provisions of section eight-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Sec. 170. When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him. [Id.]

Art. 5945. Payment for honor.—Sec. 171. Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Sec. 172. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

Sec. 173. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Sec. 174. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Sec. 175. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Sec. 176. Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

Sec. 177. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. [Id.]

Art. 5946. Bills in a set.—Sec. 178. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Sec. 179. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Sec. 180. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

Sec. 181. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Sec. 182. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Sec. 183. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. [Id.]

PROMISSORY NOTES AND CHECKS

Art. 5947. Promissory notes and checks.—Sec. 184. A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

Sec. 185. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

Sec. 186. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Sec. 187. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

Sec. 188. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

Sec. 189. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

GENERAL PROVISIONS

Art. 5948. General provisions.—Sec. 190. This act may be cited as the Uniform Negotiable Instruments Act.

Sec. 191. In this Act, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "Writing" includes print.

Sec. 192. The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

Sec. 193. In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

Sec. 194. Where the day, or the last day, for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

Sec. 195. The provisions of this Act do not apply to negotiable instruments made and delivered prior to the taking effect hereof.

Sec. 196. In any case not provided for in this Act the rules of law and equity including the law merchant shall govern. [Id.]

TITLE 99—NOTARIES PUBLIC

Art.
5949. Notary Public Act of 1943.
5950–5953. [Repealed.]
5954. Authority of notary; printing or stamping of name under signature.
5955. Notaries' records.
5956. Copies of records.
5957. Removal.
5958. Office to become vacant.
5959. Effect of vacancy.
5960. Seal.

Art. 5949. [6002] [3503] Notary Public Act of 1943.—1. The Secretary of State of the State of Texas shall appoint a convenient number of Notaries Public for each county of the State. Such appointments may be made at any time, and the terms of all appointments made shall end on the first day of June of each odd numbered year. [As amended Acts 1945, 49th Leg., p. 393, ch. 254, § 1.]

2. To be eligible for appointment as Notary Public for any county, a person shall be a citizen of this state and at least twenty-one (21) years of age, and a resident of the county for which he is appointed; provided, that where such person resides within the limits of a county containing an incorporated city, town or village partially located in another county, said person may be appointed Notary Public for either of such counties, but shall be authorized to act only in the county for which such appointment is made; provided further, that nothing herein shall invalidate any commission as Notary Public which has been issued and is outstanding at the time this Act becomes effective. [As amended Acts 1945, 49th Leg., p. 674, ch. 373, § 1; Acts 1947, 50th Leg., p. 548, ch. 323, § 1.]

3. Any person desiring appointment as Notary Public shall furnish to the County Clerk of the county of residence of the applicant, or the county in which the applicant seeks to act as Notary Public, his name as it will be used in acting as such Notary Public, his post office address, and shall satisfy the Clerk that

he is at least twenty-one (21) years of age and otherwise qualified by law for the appointment which is sought. The names of all such persons shall be sent forthwith in duplicate by the County Clerk to the Secretary of State with the certificate of the County Clerk certifying that according to the information furnished him, such person is eligible for appointment as Notary Public for such county. The Secretary of State shall act upon all such names submitted at the earliest practicable time and notify the County Clerk whether such appointment or appointments have been made. Upon receiving notice from the Secretary of State of any such appointments, the County Clerk shall forthwith notify all persons so appointed to appear before him within ten (10) days from the date of such notice, (but not before the first day of June of odd numbered years in the case of appointments for the term beginning on such date, or reappointments hereinafter provided for) and qualify as hereinafter provided. The appointment of any person failing to qualify within such ten (10) day period shall be void, and if any such person desires thereafter to qualify, his name shall be re-submitted in the same manner as hereinabove provided. [As amended Acts 1947, 50th Leg., p. 548, ch. 323, § 1.]

4. At the time of such qualification the County Clerk shall collect the fees allowed him by law for administering the oath and approving and filing the bond of such Notary Public, togther with the fee allowed by law to the Secretary of State for issuing a commission to such Notary Public.

5. Immediately after the qualification of any such Notary Public the County Clerk shall forthwith notify the Secretary of State that such person has qualified and the date of such qualification, and shall remit with such notice the fee due the Secretary of State, whereupon, the Secretary of State shall cause a commission to be issued to each such qualified Notary Public, which commission shall be effective as of the date of qualification. All such commission shall be forwarded to the County Clerk for delivery to such persons entitled to receive them. Nothing herein shall prevent any qualified Notary Public from performing the duties of his office from and after his qualification and before the receipt of his commission.

6. Any qualified Notary Public whose term is expiring may be re-appointed by the Secretary of State without the necessity of the County Clerk re-submitting his name to the Secretary of State, provided such appointment is made in sufficient time for such Notary Public to re-qualify on the expiration date of the term for which he is then serving; and provided further, that if any such Notary has removed his residence to a county other than the one for which he was appointed, his office shall be automatically vacated, and if he desires to act as Notary Public in such other county his commission shall be surrendered to the Secretary of State and his name shall be submitted by the Clerk of such other county as hereinabove provided.

7. Any person appointed a Notary Public, before entering upon his official duties, shall execute a bond in the sum of One Thousand ($1,000.00) Dollars with two or more solvent individuals, or one solvent surety company authorized to do business in this state, as surety, such bond to be approved by the County Clerk of his county, payable to the Governor, and conditioned for the faithful performance of the duties of his office; and shall also take and subscribe the official oath of office which shall be endorsed on said bond with the certificate of the official administering the same. Said bond shall be deposited in the office of the County Clerk and shall not be void on the first recovery, and may be sued on in the name of the party injured from time to time until the whole amount thereof has been recovered. Any such person shall be deemed to be qualified when he has taken the official oath of office, furnished the bond and paid the fees herein provided for, all within the ten (10) days allowed therefor.

8. If any County Clerk fails or refuses to forward the names of persons requesting appointments, notices of qualification, or to remit any fees due to the Secretary of State, or to notify any applicant of his appointment within sixty (60) days after receipt of same by the County Clerk, the Secretary of State shall certify such failure or refusal to the State Comptroller, the County Auditor and Commissioners Court of such county, after which no claim or account in favor of such Clerk shall be approved or paid until the Secretary of State shall certify to such officials that all requirements hereunder have been complied with.

9. All matters pertaining to the appointment and qualification of Notaries Public shall be public records in the offices of the County Clerks and in the office of the Secretary of State after any such Notary Public has qualified, and shall be open to inspection of any interested person at such reasonable times and in such manner as will not interfere with the affairs of office of the custodian of such records; but neither a County Clerk nor the Secretary of State shall be required to furnish lists of the names of persons appointed before their qualification nor lists of unreasonable numbers of qualified Notaries Public. [Acts 1881, p. 94; Acts 1885, p. 17; G.L., Vol. 9, pp. 186. 637, Acts 1903, p. 158; Acts 1st C.S. 1913, p. 2; Acts 1927, 40th Leg., p. 14, ch. 9, § 1; Acts 1939, 46th Leg., p. 498, § 1; Acts 1941, 47th Leg., p. 853, ch. 528, § 1; Acts 1943, 48th Leg., p. 459, ch. 309, § 1.]

Section 2 of the Act of 1943 repealed articles 5950–5953 and all conflicting laws and parts of laws.

Section 3 provided that partial invalidity should not affect the remaining portions.

Section 4 provided that the act should be known and cited as the Notary Public Act of 1943.

Section 2 of the amendatory Act of 1941 read as follows: "Nothing in this Act shall affect the term of office of any person qualifying as a notary public prior to the effective date hereof." Section 3 declared an emergency and provided that the Act should take effect from and after its passage.

Sec. 2 of the Act of 1939, provided that nothing in the Act should affect the term of office of any person qualifying as a notary public prior to the effective date hereof. Sec. 3 provided that the Act should become effective in the event and when the amendment to the Constitution of Texas proposed by Senate Joint Resolution No. 6 of the Regular Session of the Forty-sixth Legislature becomes a part of the Constitution. Section 4 declared an emergency and provided that the act should take effect from and after its passage.

Section 3 of Acts 1939, 46th Leg., p. 498, provided that acts 1939 amending this article should become effective with adoption of amendment to Constitution Art. IV, § 26, proposed by Senate Joint Resolution No. 6 of the Regular Session of the Forty-sixth Legislature, adopted at general election, Nov. 5, 1940.

Arts. 5950–5953. [Repealed by Acts 1943, 48th Leg., p. 459, ch. 309, § 2.]

Art. 5954. [6008–6010–6012] Authority of notary; printing or stamping of name under signature.—Notaries Public shall have the same authority to take acknowledgments or proofs of written instruments, protests [1] instruments permitted by law to be protested, administer oaths, and take depositions, as is now or may hereafter be conferred by law upon County Clerks, and provided further that all Notaries Public shall print or stamp their names under their signatures on all such written instruments, protests [1] instruments, oaths, or depositions; provided that failure to so print or stamp their names under their signatures shall not invalidate such acknowledgment. [Acts 1881, p. 94; G.L., Vol. 9, p. 186; Acts 1941. 47th Leg., p. 120, ch. 94, § 1.]

[1] "Protests" probably should be "protest."

Art. 5955. [6011] [3512] Notaries' records.—Each notary public shall keep a well bound book, in which shall be entered the date of all instruments acknowledged before him, the date of such acknowledgments, the name of the grantor or maker, the place

of his residence or alleged residence, whether personally known or introduced, and, if introduced, the name and residence or alleged residence of the party introducing him; if the instrument be proved by a witness, the residence of such witness, whether such witness is personally known to him or introduced; if introduced, the name and residence of the party introducing him; the name and residence of the grantee; if land is conveyed or charged by such instrument, the name of the original grantee shall be kept, and the county where the land is situated. The book herein required to be kept, and the statements herein required to be entered shall be an original public record, open to inspection by any citizen at all reasonable times. Each notary public shall give a certified copy of any record in his office to any person applying therefor on payment of all fees thereon. [Acts 1881, p. 94; G.L., vol. 9, p. 186.]

Art. 5956. [6013] [3514] Copies of records.—Copies of all records, declarations, protests, and other official acts of notaries public may be certified by the county clerk with whom they are deposited, and shall have the same authority as if certified by the notary by whom they were originally made. [Id. sec. 11.]

Art. 5957. [6004] [3505] Removal.—Any notary public who shall be guilty of any wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law. [Id. sec. 3.]

Art. 5958. [6005] [3506] Office to become vacant.—Whenever any notary public shall remove permanently from the county for which he was appointed, or an ex officio notary public from his precinct, his office shall thereupon be deemed vacant. [Id.]

Art. 5959. [6007–6009] Effect of vacancy.—Whenever the office of notary public shall be vacated by resignation, removal or death, the county clerk of the county where said notary resides shall obtain and deposit in his office the record books and all public papers belonging in the office of said notary. The seal of any notary vacating his office may be sold by the owner thereof to any qualified notary public in the county. [Id.]

Art. 5960. [6006] [3507] Seal.—Each notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words, "Notary Public, County of ———, Texas," around the margin (the blank to be filled with the name of the county for which the officer is appointed), and he shall authenticate all his official acts therewith. [Id. sec. 5; Acts 1889, p. 121; G. L. vol. 9, p. 1149.]

TITLE 100—OFFICERS—REMOVAL OF

Art.
5961. By impeachment.
5962. Impeachment.
5963. Trial by Senate.
5963a–5963c. [Repealed.]
5964. Removal by address.
5965. Judges removed by Supreme Court.
5966. Jurisdiction of Supreme Court.
5967. State Officers appointed by Governor.
5968. Convictions work removal.
5969. Appeal supersedes order of removal.
5970. By district judge.
5971. Cause to be in writing.
5972. "Incompetency."
5973. "Official misconduct."
5974. Articles apply to cities.
5975. Failure to give bond.
5976. Proceedings.
5977. Requisites of petition.
5978. General issue submitted.
5979. Citation.
5980. Time to answer.
5981. How trial conducted.
5982. How suspended—action on bond of appointee.
5982—a. Compensation of temporary officer—retention of fees earned and collected.
5982—b. Removed officer compensated out of General Fund of County on establishing right to office.
5983. Appeal or writ of error.
5984. Against district attorneys.
5985. Criminal district attorney.
5986. Not retroactive.
5987. Precedence on appeal.
5988. Notary public.
5989. Public weigher.
5990. District clerk removed.
5991. Mayor and aldermen.
5992. Alderman.
5993. Against mayor.
5994. Procedure.
5995. Not to apply to all cities.
5996. Nepotism.
5997. Suits by Attorney General.

Article 5961. [6017] [3518] By impeachment.—The Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Commissioner of the General Land Office, Comptroller, Commissioner of Insurance, Banking Commissioner, Judges of the Supreme Court, of the Court of Criminal Appeals, of the Courts of Civil Appeals, of the district courts, of the criminal district courts, and all other State officers and heads of State departments or institutions of any kind, and all members, regents, trustees, commissioners having control or management of any State institution or enterprise, shall be removed from office or position by impeachment in the manner provided in the Constitution and in this title, the remedy by impeachment as herein provided for being cumulative of all other remedies with respect to the impeachment or removal of public officers. [Const. art. 15, secs. 1, 2; Acts 3rd C. S. 1917, p. 102.]

Art. 5962. Impeachment.—The power of impeachment shall be vested in the House of Representatives. If the House shall be in session at a regular or called session of the Legislature when it is desired to present articles of impeachment, or to make any investigation pertaining to a contemplated impeachment, it may proceed without further call or action at its pleasure and may continue to meet and proceed for such purposes until such time as the matters under consideration, pertaining to impeachments, may be disposed of. If the House shall be in session at a regular or called session of the Legislature, at the time it undertakes any investigation pertaining to impeachments, and the legislative session shall expire by limitation, or it shall in conjunction with the Senate, decide to adjourn in so far as legislative matters are concerned, before said investigation has been completed and before such impeachment matters have been finally disposed of, it may continue such investigation through committees, or by itself, and may continue in session for such purposes, or may adjourn the House to such time as it may desire for reconvention for the final disposition of such matters, and, in the meantime, it may continue such investigations through committees or agents. The members of such committees and the members of the House and Senate, when either shall be sitting for impeachment purposes, and when not in session for legislative purposes, shall receive the per diem fixed for members of the Legislature during legislative sessions or out of the contingent funds of the respective Houses, and the agents of the House or Senate or of such committees shall be paid as may be provided in the resolutions providing therefor, out of said contingent funds.

If the House be not in session when the cause for impeachment may arise or be discovered, or when it is desired to institute any investigation pertaining to a contemplated impeachment, the House may be convened for the purpose of impeachment in the following manner:

1. By proclamation of the Governor; or

2. By proclamation of the Speaker of the House, which proclamation shall be made only when petitioned in writing by not less than fifty members of the House; or

3. By proclamation in writing signed by a majority of the members of the House.

Such proclamation shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be furnished in person or by registered mail to each member of the House who may be within the State and accessible, by the Speaker of the House, or under his direction, or, in case the same is issued under the authority of subparagraph 3, as above, by the members signing the same or some one or more of them designated by such signers for such purpose. Such proclamation shall in general terms, state the cause for which it is proposed to convene the House, and shall fix the time for the convention thereof. Two-thirds of the members of the House, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members. The House, when so convened, may proceed in the manner, and shall have all the powers, pertaining to impeachments and investigations with respect thereto given it by the Constitution and by the terms of this law. The members of the House when so convened, shall receive the same mileage and per diem pay as is provided for members of the Legislature when in legislative session, and the members of the committees of the House, when so convened and serving upon such committees when the House itself is not in session, shall receive the said per diem pay, to be paid out of the appropriations then existing, or which thereafter may be made, for the per diem pay of members of the Legislature, and the agents of the House so convened or of such committees acting when the House itself is not in session shall receive such pay as may be provided for in the resolutions of such House out of the appropriations then existing, or thereafter to be made, to defray the contingent expenses of the House or to pay the mileage and per diem of members.

The House, at any time when considering impeachment matters or making investigations pertaining thereto, shall have the power itself, or through committees, to send for persons and papers and to compel the giving of testimony, and to punish for contempt, to the same extent as the district courts of the State.

Any committee of the House, acting under the terms of this law, shall have and exercise all the powers which may be conferred upon it by the House. [Id.]

Art. 5963. Trial by Senate.—All officers, agents or employés against whom articles of impeachment may be preferred by said House shall be tried by the Senate sitting as a court of impeachment in the manner provided by Article XV of the Constitution of Texas.

If the Senate be in session, at a regular or called session of the Legislature when articles of impeachment are preferred against any officer, agent or employee by the House, it shall receive such articles from the House and as soon as practicable, organize a court of impeachment and dispose of such matters. If the session in which such articles are preferred and presented shall, for legislative purposes expire by limitation, or by adjournment in so far as legislative purposes are concerned, before the matters presented by such articles shall have finally been disposed of by the Senate, the Senate shall continue in session, for such purpose, so long as may be necessary to dispose of such matters, or may adjourn to some day certain, when it shall reconvene for the purpose of disposing of such matters and thereupon such matters shall be considered and disposed of as expeditiously as possible.

If the Senate be not in session at a regular or called session of the Legislature when articles of impeachment may be preferred by the House, the House shall cause a certified copy of such articles of impeachment to be delivered, by personal agent or registered mail, to the Governor and each member of the Senate who may be within the State and accessible, and a copy thereof shall be delivered to the Lieutenant Governor and the President Pro Tempore of the Senate. Thereupon the Senate shall be convened for the purpose of considering and disposing of such articles of impeachment in the following manner:

1. By proclamation of the Governor; or if the Governor shall fail to issue such proclamation within ten days after such articles of impeachment are preferred by the House then,

2. By proclamation of the Lieutenant Governor; or if the Lieutenant Governor shall fail to issue such proclamation within fifteen days from the date upon which articles of impeachment were preferred by the House then,

3. By proclamation of the President Pro Tempore of the Senate; or, if the President Pro Tempore of the Senate shall fail to issue such proclamation within twenty days from the date upon which such articles of impeachment were preferred by the House then,

4. By proclamation in writing signed by a majority of the members of the Senate.

Such proclamation, in either case, shall be in writing, shall state in general terms the purpose for which the Senate is to be convened, shall fix the date for the convening thereof for such purposes, which shall not be later than twenty days from the issuance of the proclamation, and shall be filed in the office of the Secretary of State as a public record. Such proclamation, in either case, shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be sent by registered mail to each member of the Senate by, or under the direction of the author or authors thereof. Upon the day fixed for the convening of the Senate for such purposes it shall be the duty of each member of the Senate to be in attendance thereupon, and upon such date the Senate shall convene. Two-thirds of the members of the Senate, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, and the Senate at such a session may compel the attendance of any absent member whether a quorum is present or not.

The Senate so convened shall continue in session until such matters are finally disposed of, or it may from time to time, adjourn to a day certain when the consideration of such matters shall be resumed and disposed of.

The Senate, at any time, shall have and exercise all the powers itself, or through committees or agents, which is or may be conferred upon it by law as in other cases when it is in session. It may send for persons, papers, records, books, etc., and compel the giving of testimony, and punish for contempt to the same extent as the district courts.

Members of the Senate when so convened, and the Lieutenant Governor when acting, shall receive the same mileage and per diem as is provided for members of the Legislature; the same, together with the pay of all agents, appointees, employees and other expenses incident to such impeachment trial, shall be paid from such appropriations as have been or shall be made for the contingent expenses of the Legislature or for the mileage and per diem of members. [Id.]

Arts. 5963a–5963c. [Repealed by Acts 1927, 40th Leg., p. 360, ch. 242, § 1.]

Art. 5964. [6018–19–20–21] Removed by address.—The judges of the Supreme Court, Court of Criminal Appeals, Courts of Civil Appeals, district courts and criminal district courts, the Commissioner of Agriculture, Commissioner of Insurance, and Banking Commissioner shall be removed from office by the Governor on the address of two-thirds of each house of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, breach of trust, or other reasonable cause which shall not be sufficient ground for impeachment. The cause for such removal shall be stated at length in such address, and entered on the journals of each house. The officer so intended to be removed shall have notice of the cause assigned for his removal, and shall be admitted to a hearing in his own defense before any vote for such address shall be heard. The vote in all such cases shall be taken by yeas and nays and entered on the journals of each house respectively. [Acts 1876, p. 226; G. L. vol. 8, p. 1062.]

Art. 5965. [6022–3] Judges removed by Supreme Court.—The Supreme Court may remove any judge of the district court or of any criminal district court who is incompetent to discharge the duties of his office, or who shall be guilty of partiality or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business of his court. [Const. art. 15, sec. 6.]

Art. 5966. [6024–5–6] Jurisdiction of Supreme Court.—The Supreme Court shall have original jurisdiction to hear and determine the cases aforesaid when presented in writing, upon the oaths taken before some judge of a court of record, of not less than ten lawyers practicing in the courts held by such judge, and licensed to practice in the Courts of Civil Appeals. Such presentment shall be founded either upon the knowledge of the person making it, or upon the written oaths of credible witnesses as to facts. The Supreme Court may issue all needful process, and prescribe all needful rules to give effect to the preceding article. Such cases shall have precedence and be tried as soon as practicable.

Art. 5967. [6027] [3528] State officers appointed by Governor.—All State officers appointed by the Governor, or elected by the Legislature, where the mode of their removal is not otherwise provided by law, may be removed by him for good and sufficient cause, to be spread on the records of his office, and to be reported by him to the next session of the Legislature thereafter. [Id.]

Art. 5968. [6028] [3529] Convictions work removal.—All convictions by a petit jury of any county officers for any felony, or for any misdemeanor involving official misconduct, shall work an immediate removal from office of the officer so convicted. Each such judgment of conviction shall embody within it an order removing such officer. [Id.]

Art. 5969. [6029] [3530] Appeal supersedes order of removal.—When an appeal is taken from such judgment by the officer removed, such appeal shall have the effect of superseding such judgment, unless the court rendering such judgment shall deem it to the public interest to suspend such officer from the office pending such appeal; and in that case the court shall proceed as in other cases of the suspension of officers from office as provided herein. [Id.]

Art. 5970. [6030] By district judge.—All district and county attorneys, county judges, commissioners, clerks of the district and county courts and single clerks in counties where one clerk discharges the duties of district and county clerk, county treasurer, sheriff, county surveyor, assessor, collector, constable, cattle and hide inspector, justice of the peace and all county officers now or hereafter existing by authority either of the Constitution or laws, may be removed from office by the judge of the district court for incompetency, official misconduct or becoming intoxicated by drinking intoxicating liquor, as a beverage, whether on duty or not; provided such officer shall not be removed for becoming intoxicated when it appears upon the trial of such officer that such intoxication was produced by drinking intoxicating liquors upon the direction and prescription of a duly licensed practicing physician of this State. [Acts 1923, p. 235.]

Art. 5971. [6031] [3532] [3391] Cause to be in writing.—In every case of removal from office for the causes named in the preceding article, the cause or causes thereof shall be set forth in writing, and the truth of said cause or causes be found by a jury. [Const. art. 5, sec. 24.]

Art. 5972. [6032] [3533] [3392] "Incompetency."—By "incompetency" as used herein is meant gross ignorance of official duties, or gross carelessness in the discharge of them; or an officer may be found to be incompetent when, by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office. [R. S. 1879.]

Art. 5973. [6033] [3534] [3393] "Official misconduct."—By "official misconduct," as used herein with reference to county officers, is meant any unlawful behavior in relation to the duties of his office, wilful in its character, of any officer intrusted in any manner with the administration of justice, or the execution of the laws; and includes any wilful or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on him by law. [R. S. 1879.]

Art. 5974. [6034] [3535] [3394] Articles apply to cities.—The two preceding articles shall apply also to mayors and aldermen. [R. S. 1879.]

Art. 5975. [6040] [3541] [3400] Failure to give bond.—All county officers who are required to give official bonds, who shall fail to execute their bonds within the time prescribed by law, or who, when required in accordance with law to give a new bond or additional bond or security, and shall fail to do so, may also be removed from office for such failure by the district judge, on the matter being brought before him in the manner hereinafter provided for bringing such matters before the court. [Id.]

Art. 5976. [6041] [3542] [3401] Proceedings.—The proceedings for the removal of said officers may be commenced, either in term time or vacation, by first filing a petition in the district court of the county where the officer resided, by a citizen of the State who has resided for six months in the said county where he proposes to file such petition, and who is not himself at the time under indictment in said county. [Id.]

Art. 5977. [6042] [3543] [3402] Requisites of petition.—The petition shall be addressed to the district judge of the court in which it is filed, and shall set forth in plain and intelligible words the cause or causes alleged as the grounds of removal, giving in each instance, with as much certainty as the nature of the case will admit of, the time and place of the occurrence of the alleged acts; the petition shall in every instance be sworn to at or before the filing of the same by at least one of the parties filing the same, and the proceedings shall be conducted in the name of "The State of Texas," upon the relation of the person filing the same. [Id.]

Art. 5978. [6043] [3544] [3403] General issue submitted.—In these cases, the judge shall not submit special issues to the jury, but shall, under a proper charge applicable to the facts of the case, in-

struct the jury to find from the evidence whether the cause or causes of removal set forth in the petition are true in point of fact or not; and, when there are more than one distinct cause of removal alleged, the jury shall by their verdict say which cause they find sustained by the evidence before them, and which are not sustained. [R. S. 1879.]

Art. 5979. [6044—5—6—52] Citation.—After such petition is filed, the person or persons so filing the same shall make a written application to the district judge for an order for a citation and a certified copy of the said petition to be served on the officer against whom the petition is filed, requiring him at a certain day named, which day shall be fixed by the judge, to appear and answer to the said petition; and until such order is granted and entered upon the minutes of the court (if application is made during term time) no action whatever shall be had thereon; and, if the judge shall refuse to issue the order so applied for, then the petition shall be dismissed at the cost of the relator, and no appeal or writ of error shall be allowed from such action of the judge. If the application for said citation is made to the judge in vacation, he shall indorse his action, whatever it may be, on such petition, and shall order it spread on the minutes of the court at the next ensuing term. Upon the order being granted during term time, also spread upon the minutes, the clerk shall issue the citation, accompanied with a certified copy of the petition. The clerk may demand of the relator security for costs as in other cases. [Id.]

Art. 5980. [6047] [3548] [3407] Time to answer.—In no case whatever shall the period fixed by the judge in his order in which the officer is to answer, be less than five days from the date of such service, to be computed as time is computed in other suits. [Id.]

Art. 5981. [6048] [3549] [3408] How trial conducted.—The trial and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the court in other civil cases. [Id.]

Art. 5982. How suspended—Action on bond of appointee.—At any time after the issuance of the order for the citation, as herein provided, the District Judge may, if he sees fit, suspend temporarily from office, the officer against whom the petition is filed, and appoint for the time being, some other person to discharge the duties of the office; but in no case shall such suspension take place until after the person so appointed shall execute a bond in such sum as the Judge may name, with at least two good and sufficient sureties, and on such conditions as the Judge may see fit to impose, to pay the person so suspended from office, all damages and costs that he may sustain by reason of such suspensions from office, in case it should appear that the cause or causes of removal are insufficient or untrue; provided, however, that in any action to recover upon such bond it shall be necessary to allege and prove that the person so temporarily appointed actively aided and instigated the filing and prosecution of such removal suit, and, that within ninety days after such person's execution of such bond, the person so removed, shall serve or cause to be served upon such temporary appointee and his bondsmen, notice, in writing, stating that such person so removed intends and expects to hold such temporary appointee and his bondsmen liable upon such bond, and the grounds of such claimed liability. [R.S. 1879, art. 3409; Acts 1935, 44th Leg., p. 138, ch. 56, § 1.]

Art. 5982-a. Compensation of temporary officer—retention of fees earned and collected.—That when any District Judge, acting under the authority reposed in him by Title 100 of the Revised Civil Statutes of the State of Texas (1925) shall suspend temporarily from office any person holding the office of County Clerk in any County, having a population of more than Two Hundred Seventy-five Thousand persons, according to the last preceding Federal Census, and shall appoint for the time being some other person to discharge the duties of such office, such person so appointed for the time being shall be allowed to have and retain out of the fees earned and collected by him as such temporary officer the same amount now allowed or hereafter to be allowed and provided by law as compensation for the person so removed by such District Judge; and provided, further, that such person appointed by such District Judge shall be allowed to have and retain out of fees earned and collected by him during a period of less than one year an amount proportionate to the amount allowed by law to the person so removed in the proportion which the fraction of the year he serves bears to the whole year. Such compensation herein provided shall belong solely to such temporary officer and shall be payable to him monthly out of fees earned and collected; and such compensation shall be his absolutely, and such temporary officer shall not be required to account to the officer so removed for such compensation, nor shall such officer so removed be permitted to recover such compensation from such temporary officer in any action at law or in equity. [Acts 1935, 44th Leg., p. 138, ch. 56, § 2.]

Art. 5982-b. Removed officer compensated out of General Fund of County on establishing right to office.—If the officer so removed from such office shall by final judgment establish his right to such office he shall be paid from the General Fund of the County a sum equal to all compensation received by such temporary officer during the period of his occupancy of such office. [Acts 1935, 44th Leg., p. 138, ch. 56, § 3.]

Art. 5983. [6050—51] Appeal or writ of error.—An appeal or writ of error to the Court of Civil Appeals may be sued out by either party from the final judgment in these cases as in other civil cases. If the party has not been temporarily suspended from office, no other bond when an appeal is taken or writ of error sued out by him, shall be necessary than a bond for all the costs that have or may accrue in the district and Courts of Civil Appeals. [R.S. 1879, arts. 3410, 3411.]

Art. 5984. [6053] [3554] Against district attorneys.—Proceedings under this title may be commenced against any district attorney either in the county of his residence or the county where the alleged cause of removal occurred, if in a county of his judicial district. [Id.]

Art. 5985. [6054] [3555] Criminal district attorney.—Under the name of "district attorney," as used in this chapter, is included any criminal district attorney and the judge of each criminal district court shall have the same power as to his removal and proceed in the same manner as the district judges of the State have in reference to all county officers. [Id.]

Art. 5986. [6055] [3556] [3415] Not retroactive.—No officer in this State shall be removed from office for any act he may have committed prior to his election to office. [R.S. 1879, Arts. 3410, 3411; Acts 1939, 46th Leg., p. 499, § 1.]

Art. 5987. [6056—7] Precedence on appeal.—In these cases, an appeal may be taken or writ of error be made returnable to the Court of Civil Appeals, and such cause shall have precedence of the ordinary business of the court and be decided with all convenient dispatch. When so decided, unless the judgment be for some cause set aside or suspended, the mandate of the court shall issue within five days after the judgment of the court is rendered. [R. S. 1879.]

Art. 5988. [6058—9] Notary public.—Any notary public indicted for and convicted of any wilful neglect of duty or official misconduct shall be removed from office. The order for his removal shall in each

instance be embodied in the judgment of the court. [Acts 1876, p. 29.]

Art. 5989. [6060] [3561] [3420] Public weigher.—Any public weigher who is incompetent or shall be guilty of official misconduct shall be removed by the Governor, who shall keep a record of such removal, and report the same with his reasons therefor to the next legislature. [Acts 1875, p. 162; G. L. vol. 8, p. 534; Acts 1919, p. 126.]

Art. 5990. [6063–4] District clerk removed.—The clerk of the district court may also be removed by information or by indictment and conviction by a petit jury. When so removed, the order for his removal shall be embodied in the judgment of conviction. [Const. art. 5, sec. 9; R. S. 1879.]

Art. 5991. [6065] [3566] [3425] Mayor and aldermen.—The mayor and aldermen of any incorporated town or city may be removed from office for official misconduct, wilful violation of any ordinance of such town or city, habitual drunkenness, incompetency, or for such other cause as may be prescribed by the ordinances of such town or city. [Acts 1875, p. 63, G. L. vol. 8, p. 435.]

Art. 5992. [6066–7] Alderman.—When written sworn complaint charging any alderman with any act or omission which may be cause for his removal shall be presented to the mayor, he shall file the same and cause the alderman so charged to be served with a copy of such complaint, and shall set a day for the trial of the case, and notify the alderman so charged and the other aldermen of such town or city to appear on such day. The mayor and aldermen of such town or city, except the aldermen against whom complaint is made, shall constitute a court to try and determine the case. [Id.; sec. 2.]

Art. 5993. [6068–9] Against mayor.—When any such complaint is made against the mayor of any incorporated town or city it shall be presented to an alderman of such town or city who shall file the same, and cause such mayor to be served with a copy thereof, and shall set a day for a trial of the case, and notify the mayor and other aldermen to appear on such day. A majority of the aldermen shall constitute a court to try and determine the complaint against the mayor, and they shall select one of their number to preside during such trial. [Id.]

Art. 5994. [6070–1–2] Procedure.—The rules governing other proceedings and trials in the courts of justices of the peace shall govern. If two-thirds of the members of the court present upon the trial of the case, find the defendant guilty of the charges contained in the complaint, and find that such charges are sufficient cause for removal from office, the presiding officer of the court shall enter judgment, removing such mayor or aldermen from office and declaring such office vacant. If the defendant be found not guilty, judgment shall be entered accordingly. Any municipal officer so removed shall not be eligible to re-election to the same office for two years from the date of such removal. [Id.]

Art. 5995. [6073] [3574] Not to apply to all cities.—The provisions of this title as to municipal officers shall not apply to any town or city except such as are incorporated under the general laws of this State. [Id.]

Art. 5996. [6074–75] Nepotism.—Whoever violates any provision of the Penal Code relating to nepotism and the inhibited acts connected therewith shall be removed from his office, clerkship, employment or duty, as therein mentioned. Such removal from office shall be made in conformity to the provisions of the Constitution of this State concerning removal from office in all cases to which they may be applicable. All other removals from office under the provisions of this law shall be by quo warranto proceedings. All removals from any such position, clerkship, employment or duty aforesaid shall be summarily made, forthwith, by the appointing power in the particular instance, whenever the judgment of conviction in a criminal prosecution in the particular case shall become final; provided, that, if such removal be not so made within thirty days after such judgment of conviction shall become final, the person holding such position, clerkship or employment, or performing such duty, may be removed therefrom as herein provided with reference to removal from office. [Acts 1909, p. 85.]

Art. 5997. [6076–77] Suits by Attorney General.—All quo warranto proceedings mentioned shall be instituted by the Attorney General in any district court of Travis County or in the district court of the county in which the defendant resides; the district or county attorney of the county in which such suit may be filed shall assist the Attorney General therein whenever he shall so direct. [Id.]

TITLE 101—OFFICIAL BONDS

Art.
5998. Sureties.
5999. Depository of bonds.
6000. Bond to be recorded.
6001. Sureties relieved.
6002. Requiring new bond.
6003. Suit on bond.
6003a. Bond to inure to benefit of persons aggrieved; limitations.

Article 5998. Sureties.—The official bond of each officer shall be executed by him with two or more good and sufficient sureties or a solvent surety company authorized to do business in this State.

Art. 5999. Depository of bonds.—The bond of each officer who is required by law to give an official bond payable to the Governor or to the State shall be deposited with the Comptroller by the officer who approves the same, except that of the Comptroller which shall be deposited with the Secretary of State.

Art. 6000. [6078] [3575] [3434] Bond to be recorded.—All official bonds of county officers that are required by law to be approved by the commissioners court, and which have been so approved, shall be made payable to the county judge and safely kept and recorded by the county clerk in a book kept for that purpose.

Art. 6001. [6079–80–81–82] Sureties relieved.—Any surety on any official bond of any county officer may apply to the commissioners court to be relieved from his bond, and the county clerk shall thereupon issue a notice to said officer, with a copy of the application, which shall be served upon said officer by the sheriff or any constable of the county, and said officer so notified shall upon such service cease to exercise the functions of his office, except to preserve any records or property in his charge, and in case of a sheriff or constable, to keep prisoners, preserve the peace and execute warrants of arrest, and his office shall become vacant unless he give a new bond within twenty days from the time of receiving such notice. If a new bond is given and approved, the former sureties shall be discharged from any liability for the misconduct of the principal after the approval of the new bond. [Acts 1876, p. 132; G. L. vol. 8, p. 963.]

Art. 6002. [6083–4–5] Requiring new bond.—When the commissioners court becomes satisfied that the bond of any county officer which has been approved by said court is from any cause insufficient, they shall require a new bond or additional security to be given. Said court shall cause said officer to be cited to appear at a term of their court not less than five days after service, and shall take such action as they deem best for the public interest, and their decision shall be final and no appeal shall lie therefrom. [Acts 1876, p. 54; G. L. vol. 8, p. 890.]

Art. 6003. Suit on bond.—No official bond of any state, county or precinct officer shall be void upon first recovery, but may be sued upon by the party injured in separate actions until exhausted. [As amended Acts 1935, 44th Leg., p. 657, ch. 270, § 1.]

Art. 6003a. Bond to inure to benefit of persons aggrieved; limitations.—In all suits on account of the defalcation of, or misapplication, or misappropriation of money by, any public officer in this State the official bond or bonds of such officers executed after this Act takes effect shall inure to the benefit of the persons aggrieved by such defalcation, misapplication, or misappropriation occurring during the period covered by such bonds, and that for all purposes of limitation such suits by such persons on such bonds shall be considered and treated as actions for debt founded upon a contract in writing and governed by the four-year Statute of Limitation. [Acts 1941, 47th Leg., p. 383, ch. 213, § 1.]

TITLE 102—OIL AND GAS

GENERAL PROVISIONS

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6005. Abandoned wells.
6006. Illumination.
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6008. Production and use of natural gas.
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General Provisions

Article 6004. [7847] Casing.—The owner or operator of any well being drilled for oil or gas shall, before drilling into the oil or gas bearing rock, incase such well with good and sufficient wrought iron or steel casing, in such manner as shall exclude all surface or fresh water from the lower part of such well from penetrating the oil or gas bearing rock. Should any well be drilled through the first into a lower oil or gas bearing rock, the same shall be cased in such manner as will exclude all fresh water above the last oil or gas bearing rock penetrated. [Acts 1899, p. 68.]

Art. 6005. [7848] Abandoned wells.—The owner or operator of any such well, when about to abandon or cease operating the same and before drawing the casing therefrom, shall securely fill such well with rock, sediment, or with mortar, composed of two parts sand and one part cement or other suitable material, to the depth of two hundred feet above the top of the first oil or gas bearing rock, and also in such manner as shall prevent the gas and oil from escaping therefrom. If the owner or operator of any such well shall fail to or shall inefficiently comply with the provisions of this article, then the owner of the land upon which the well is situated shall forthwith comply therewith. If all the persons hereinbefore named shall fail to or inefficiently fill such well in the manner hereinbefore described, then it shall be lawful for any person, after written demand therefor to any of said persons, to enter the premises where such well is situated, take possession thereof and fully comply with the provisions of this article. The reasonable cost and expenses thereof shall forthwith be paid by the owner or operator of the well, and on his default by the owner of the land. The amount of such reasonable cost and expense shall forthwith be a lien upon the fixtures and machinery and leasehold interest of the owner and operator of said well, as upon the title and interest of the land owner in the land upon which said well is situated, and may be recovered and enforced against said owner or operator, in the order named, in any court of competent jurisdiction. [Id.]

Art. 6006. [7850] Illumination.—No person, co-partnership or corporation shall use natural gas for illuminating purposes by what are known as flambeau lights. Nothing herein shall prohibit the use of "Jumbo" burners or any other burners consuming no more gas than such "Jumbo" burners, but the person, co-partnership, or corporation, consuming such gas and using such burners in the open air, shall inclose the same in glass globes or lamps; and any one using such gas in the open air, or in or around derricks, shall turn off said gas not later than eight o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of eight o'clock a. m. and five o'clock p. m. [Id.]

Art. 6007. [Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.]

Art. 6008. [7849] Production and use of natural gas.

Declaration of policy

Sec. 1. In recognition of past, present, and imminent evils occurring in the production and use of natural gas, as a result of waste in the production and use thereof in the absence of correlative opportunities of owners of gas in a common reservoir to produce and use the same, this law is enacted for the protection of public and private interests against such evils by prohibiting waste and compelling ratable production.

Definitions

Sec. 2. Unless the context otherwise requires, the words defined in this Section shall have the following meaning when used in this Article to wit:

(a) "Commission" means the Railroad Commission of Texas;

(b) "Person" means any natural person, corporation association, partnership, receiver, trustee, guardian, executor, administrator and a fiduciary or representative of any kind;

(c) The term "Common Reservoir" as used in this Article shall mean any oil and/or gas field or part thereof which comprises and includes any area which is underlaid, or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlaid by a common pool or accumulation of oil and/or gas;

(d) The term "gas well" is any well (a) which produces natural gas not associated or blended with crude petroleum oil at the time of production, or (b) which produces more than one hundred thousand (100,000) cubic feet of natural gas to each barrel of crude petroleum oil from the same producing horizon, or (c) which produces natural gas from a formation or producing horizon productive of gas only encountered in a well bore through which crude petroleum oil also is produced through the inside of another string of casing.

(e) The term "oil well" is any well which produces one (1) barrel or more of crude petroleum oil to each one hundred thousand (100,000) cubic feet of natural gas.

(f) "Dry Gas" is any natural gas produced from a stratum that does not produce crude petroleum oil.

(g) The term "sour gas" shall mean any natural gas containing more than one and one-half (1½) grains of hydrogen sulphide per one hundred (100) cubic feet or more than thirty (30) grains of total sulphur per one hundred (100) cubic feet, or gas which in its natural state is found by the Commission to be unfit for use in generating light or fuel for domestic purposes.

(h) The term "sweet gas" shall mean all natural gas except "sour gas" and "casinghead gas."

(i) The term "casinghead gas" shall mean any gas and/or vapor indigenous to an oil stratum and produced from such stratum with oil.

(j) The term "natural gasoline" shall apply to gasoline manufactured from casinghead gas or from any natural gas.

(k) For the purposes of this Article, by the term "cubic foot of gas" is meant volume of gas expressed in cubic feet and computed at a base pressure of four (4) ounces per square inch above the average barometric pressure of 14.4 pounds per square inch, a standard base and flowing temperature of sixty (60) degrees Fahrenheit; correction to be made for pressure according to Boyle's Law, and for specific gravity according to test made by the Balance Method.

Waste defined and prohibited

Sec. 3. The production, transportation, or use of natural gas in such manner, in such amount, or under such conditions as to constitute waste is hereby declared to be unlawful and is prohibited. The term "waste" among other things shall specifically include:

(a) The operation of any oil well, or wells with an inefficient gas-oil ratio.

(b) The drowning with water of any stratum or part thereof capable of producing gas in paying quantities.

(c) Underground waste or loss however caused and whether or not defined in other subdivisions hereof.

(d) Permitting any natural gas well to burn wastefully.

(e) The creation of unnecessary fire hazards.

(f) Physical waste or loss incident to, or resulting from, so drilling, equipping, or operating well or wells as to reduce or tend to reduce the ultimate recovery of natural gas from any pool.

(g) The escape into the open air, from a well producing both oil and gas, of natural gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(h) The production of natural gas in excess of transportation or market facilities, or reasonable market demand for the type of gas produced.

(i) The use of natural gas for the manufacture of carbon black without first having extracted the natural gasoline content from such gas, except where it is utilized in a plant producing an average recovery of not less than five (5) pounds of carbon black to each one thousand (1,000) cubic feet of gas it shall not be necessary to first extract the natural gasoline content from such gas.

(j) The use of sweet gas produced from a gas well for the manufacture of carbon black unless it is utilized in a plant producing an average recovery of not less than five (5) pounds of carbon black to each one thousand (1,000) cubic feet and unless such sweet gas is produced from a well located in a common reservoir producing both sweet and sour gas.

(k) Permitting any natural gas produced from a gas well to escape into the air before or after such gas has been processed for its gasoline content.

(l) The production of natural gas from a well producing oil from a stratum other than that in which the oil is found, unless such gas is produced in a separate string of casing from that in which the oil is produced.

(m) The production of more than one hundred thousand (100,000) cubic feet of gas to each barrel of crude petroleum oil unless such gas is put to one or more of the uses authorized for the type of such gas so produced under allocations made by the Commission. [As amended Acts 1941, 47th Leg., p. 117, ch. 91, § 1.]

(m) The production of more than one hundred thousand (100,000) cubic feet of gas to each barrel of crude petroleum oil unless such gas is put to one or more of the uses authorized for the type of such gas so produced under allocations made by the Commission.

Oil or gas wells

Sec. 4. (a) If oil and/or gas be produced through different strings of casing set in the same well bore, the inner string through which oil and/or gas be produced shall be regarded as one well, and each successive additional string of casing through which oil and/or gas shall be produced, from a different producing horizon, the others producing through the same well bore, shall be regarded as another well.

(b) No person in possession of or operating any oil well shall produce from such well natural gas found in a horizon productive of natural gas only.

Commission's authority to determine gas-oil ratio

Sec. 5. The Commission is given authority to fix and determine the gas-oil ratio of all oil wells in this State, but nothing in this Act shall be construed to authorize the limitation of the production of marginal wells as such marginal wells are defined, below the amount fixed by statute. If any restriction imposed by the Commission upon the production of oil from any oil well operates to increase the gas-oil ratio of such well so as to then classify it as a gas well under the provisions of this Article, such well shall be deemed to be an oil well nevertheless.

Commission to make and enforce rules and regulations

Sec. 6. The Commission shall make and enforce rules, regulations, or orders for the conservation of natural gas, to prevent the waste thereof, and otherwise to accomplish the purposes of this Article, including rules, regulations, or orders for the following purposes:

(1) To prevent the waste, as hereinbefore defined, of natural gas in drilling and producing operations and in the piping and distribution thereof.

(2) To require dry or abandoned wells to be plugged in such way as to confine natural gas, and water in the strata in which they are found and to prevent them from escaping into other strata.

(3) For the drilling of wells and preserving a record thereof.

(4) To require wells to be drilled and operated in such manner as to prevent injury to adjoining property.

(5) To prevent natural gas and water from escaping from the strata in which they are found into other strata.

(6) To require records to be kept and reports made.

(7) To provide for the issuance of permits, and other evidences of permission when the issuance of such permits,[1] or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law.

[1] So in enrolled bill. Session Laws duplicate words "or permission when the issuance of such permits".

Limiting escape of gas encountered in well and purpose of utilization of gas

Sec. 7. After the expiration of ten (10) days from the time of encountering gas in a gas well, no gas from such well shall be permitted to escape into the air, and all gas produced therefrom shall be utilized for the following purposes:

(1) No sweet gas shall be utilized except for:

(a) Light or fuel.

(b) Efficient chemical manufacturing, other than the manufacture of carbon black, provided, however, that sweet gas produced from wells located in a common reservoir producing both sweet and sour gas may be used for the manufacture of carbon black where it is utilized in a plant producing an average recovery of not less than five (5) pounds of carbon black to each one thousand (1,000) cubic feet of gas.

(c) Bona fide introduction of gas into oil, or gas bearing horizon, in order to maintain or increase the rock pressure or otherwise increase the ultimate recovery of oil or gas from such horizon.

(d) The extraction of natural gasoline therefrom when the residue is returned to the horizon from which it is produced.

(2) In addition to the purposes for which sweet gas produced from a gas well may be used, sour gas may be used for efficient chemical manufacturing purposes including the manufacture of carbon black provided it is utilized in a plant producing a recovery of not less than one pound of carbon black to each one thousand (1,000) cubic feet of gas, and provided further that the gasoline content is removed and saved from such sour gas before the same is utilized for carbon black.

(3) Casinghead gas may be used for any beneficial purpose, which includes the manufacture of natural gasoline.

(4) Any producer of either sweet or sour gas or casinghead gas may use the same as gas lift in the bona fide production of oil where such gas is not used in excess of ten thousand (10,000) cubic feet per barrel of oil produced; provided that in order to prevent waste in any case where the facts in such case warrant it, the Commission may permit the use of additional quantities of gas to lift oil, provided all such gas so used in excess of ten thousand (10,000) cubic feet for each barrel of oil shall be processed for natural gasoline and the residue burned for carbon black when same is reproduced. [As amended Acts 1941, 47th Leg., p. 117, ch. 91, § 2.]

(d) The extraction of natural gas therefrom when the residue is returned to the horizon from which it is produced.

(2) In addition to the purposes for which sweet gas produced from a gas well may be used, sour gas may be used for efficient chemical manufacturing purposes including the manufacture of carbon black provided it is utilized in a plant producing a recovery of not less than one (1) pound of carbon black to each one thousand (1000) cubic feet of gas, and provided further that the gasoline content is removed and saved from such sour gas before the same is utilized for carbon black.

(3) Casinghead gas may be used for any beneficial purpose, which includes the manufacture of natural gasoline.

(4) Any producer of either sweet or sour gas or casinghead gas may use the same as gas lift in the bona fide production of oil where such gas is not used in excess of ten thousand (10,000) cubic feet per barrel of oil produced; provided that in order to prevent waste in any case where the facts in such case warrant it, the Commission may permit the use of additional quantities of gas to lift oil, provided all such gas so used in excess of ten thousand (10,000) cubic feet for each barrel of oil shall be processed for natural gasoline and the residue burned for carbon black when same is reproduced.

Determination and report to Commission of open flow and rock pressure of natural gas well, reports open to inspection

Sec. 8. It shall be the duty of all persons, companies or corporations producing natural gas from any gas well to ascertain and determine during the months of January, and July, respectively, of each year hereafter, through appropriate tests, to be made in the presence of and under the supervision of a representative of the Commission, and under uniform and generally recognized methods, and under regulations which shall be prescribed by the Commission, the open flow and rock pressure of each gas well from which natural gas shall be produced, and verified reports thereof shall be filed with the Commission on or before the tenth day of each of the months aforesaid; which said reports shall be kept on file with the Commission and shall become a permanent public record and shall be open to the inspection and examination of the public, and which said reports shall disclose the name of the representative of the Commission who was actually present when such tests were made. If any person producing gas from the same common reservoir be dissatisfied with the test as made and reported, such person may demand a second test to be made in the manner herein provided and in the presence of such person or his representative.

Inspection of meters by agent of Railroad Commission

Sec. 9. The Railroad Commission shall require one of its duly authorized agents to inspect, read or test any meter, or meters, through which natural gas is being measured, or gauged, upon the request of any lessor, lessee, operator, or royalty owner from whose land, lease, or royalty interest natural gas is being produced.

Commission to prorate and regulate daily production

Sec. 10. It shall be the duty of the Commission to prorate and regulate the daily gas well production from each common reservoir in the manner and method herein set forth. The Commission shall prorate and regulate such production for the protection of public and private interests:

(a) In the prevention of waste as "waste" is defined herein;

(b) In the adjustment of correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell such gas as permitted in this Article.

Commission to exercise authority, when

Sec. 11. The Commission shall exercise the authority to accomplish the purpose designated under item (a) of Section 10 when the presence or imminence of waste is supported by a finding based upon the evidence introduced at a hearing to be held as herein provided.

The Commission shall exercise the authority to accomplish the purpose designated under item (b) of Section 10 when evidence introduced at a hearing to be held as herein provided will support a finding made by the Commission that the aggregate lawful volume of the open flow or daily potential capacity to produce of all gas wells located in a common reservoir, is in excess of the daily reasonable market demand for gas from gas wells that may be produced from such common reservoir, to be utilized as permitted in this Article.

Determination of status of gas production; proration and regulation

Sec. 12. It shall be the duty of the Commission to determine the status of gas production from all reservoirs in this state. If and when the Commission finds that waste exists or is imminent in the production of gas from any reservoir, or that the capacity of the wells to produce gas from any reservoir exceeds the market demand for gas from such reservoir, the Commission shall then proceed by proper order to prorate and regulate the gas production from such reservoir on a reasonable basis. On or before the 20th day of each month, the Commission, after notice and hearing, shall determine (1) the lawful market demand for gas to be produced from each such reservoir during the following month; and (2) the volume of gas that can be produced from such reservoir and each well therein during the following month, without waste. The Commission shall then fix the monthly reservoir allowable of gas to be produced from such reservoir at the lawful market demand therefor or at the volume that can be produced from such reservoir without waste, whichever is the smaller quantity. The

monthly reservoir allowable shall be allocated among all wells entitled to produce gas therefrom so as to give each well its fair share of the gas to be produced from the reservoir, provided that each well shall be restricted to the amount of gas that can be produced from it without waste. The volume of gas so allocated to each well shall be regarded as the monthly allowable for such well. The daily market demand for gas, and the daily allowable, shall be determined by dividing the monthly demand and the monthly allowable by the number of days in the month. [As amended Acts 1947, 50th Leg., p. 1059, ch. 453, § 1.]

Factors in determining daily allowable production

Sec. 13. In determining the daily allowable production for each gas well the Commission shall take into account the size of the tract segregated with respect to surface position and common ownership upon which such gas well or wells are located; the relation between the daily producing capacity of each gas well and the aggregate daily capacity of all gas wells producing the same kind of gas in the same common reservoir or zone; and all other factors which are pertinent; provided that the Commission shall not take into account the size of the tract upon which any gas well or wells are located in excess of the efficient drainage area of such well or wells, producing at twenty-five per cent (25%) of the daily productive capacity, which drainage area shall be determined by the Commission. In ascertaining the drainage area of a well, the Commission shall take into account such factors as are reflected in the productive capacity of a gas well, including formation pressure, the permeability and porosity of the producing formation, and the well bore's structural position, together with all other factors taken into account by a reasonably prudent operator in determining the drainage area for a gas well.

Production and sale of gas from common reservoir where demand is seasonable

Sec. 14. In order to adjust the correlative rights and opportunities of each owner to produce, use and sell gas from a common reservoir from which a portion of the market demand is seasonal or where a portion thereof fluctuates from month to month, the Commission may permit the wells in such reservoir to be produced in excess of the monthly allowable if no waste is occasioned thereby, provided (1) no well shall in any one month be permitted to produce in excess of twice its monthly allowable or to produce at a rate in excess of twenty-five (25%) per cent of the daily producing capacity of such well as found by the Commission; that (2) when any well that has produced twice its allowable for six successive months shall be closed in until its production and allowable are in balance, and that (3) the Commission shall, on the 1st day of March and September of each year, restrict production from all wells that are then overproduced to such fractional part of their monthly allowable as will bring the accumulated allowables and the accumulated monthly production in balance during the next six months. In like manner the Commission may by appropriate order permit any gas well to be underproduced for a period of six consecutive months and may allow the accumulated underproduction to be produced in addition to the regular monthly allowable during the following six months period. [As amended Acts 1947, 50th Leg., p. 1059, ch. 453, § 2.]

Percentage of daily productive capacity allowable

Sec. 15. Nothing contained in this Article shall require that the production from any gas well with a daily natural open flow of two hundred thousand (200,000) cubic feet of natural gas or more to be restricted to a quantity less than fifty thousand (50,000) cubic feet of natural gas daily; and nothing herein shall require that the production from any gas well with a daily natural open flow of less than two hundred thousand (200,000) cubic feet of gas be reduced to a quantity less than twenty-five per cent (25%) of its natural open flow.

In all common reservoirs producing both sweet and sour gas, no gas well shall be permitted to produce in excess of twenty-five per cent (25%) of its daily productive capacity; provided the Commission, upon a finding that reservoir conditions require that such percentage be increased to prevent waste, and that such increase will not create a drainage condition as between sweet and sour gas lands, may authorize an increase in such allowable production. Where the allowable production theretofore allocated to any well is more than fifteen per cent (15%) of its daily producing capacity, and the Commission finds that the production of its daily allowable from such well will cause waste due to the intermingling of sweet and sour gas, the Commission may order the production from such well restricted to fifteen per cent (15%) of its daily producing capacity, but this sentence shall not be construed to militate against the right of the Commission to fix the allowable production of any well below fifteen per cent (15%) of its daily producing capacity in carrying out the requirements of Sections 13 and 14 of this Act.

Production in violation of valid orders

Sec. 16. It shall be unlawful for any person to produce gas from a gas well in violation of the valid orders of the Railroad Commission of Texas. [As amended Acts 1947, 50th Leg., p. 1059, ch. 453, § 3.]

Restriction as to wells producing gas from one stratum and oil and gas from another stratum

Sec. 17. Where gas is produced from one stratum and oil and gas is produced from another stratum in the same well bore, the Commission shall take into account the amount of gas produced from the oil stratum in determining the amount of gas that may be produced from the stratum producing gas only and may subtract the amount of the casinghead gas produced from the dry gas that would be allocated to said well if it produced dry gas and may restrict the dry gas production accordingly.

Increase of demand for gas

Sec. 18. When unforeseen contingencies increase the demand for gas required by any distributor, transporter or purchaser to an amount in excess of the total allowable production of the wells to which he is connected, such distributor, transporter or purchaser is authorized to increase his take ratably from all such wells in order to supply his demand for gas, provided, however, that notice of such increase and the amount thereof shall be given to the Commission within five (5) days; and provided further that the Commission, at its next hearing, shall adjust the inequality of withdrawals caused by such increase in fixing the allowable production of the various wells in the common reservoir or zone.

Zoning common reservoirs

Sec. 19. If the Commission finds upon consideration of the evidence introduced at a hearing that either or both of the purposes designated under Section 10 of this Article may be more adequately accomplished by zoning a common reservoir, the Commission shall zone such common reservoir. If the Commission zones such common reservoir, each zone shall be regarded as a separate common reservoir in making allocations of daily allowable production as provided in this Article. The Commission shall allocate to each zone its just proportion of the market demand for gas from the common reservoir, and shall establish appropriate rules and regulations applicable to each zone and shall have the right to adjust its orders to the practicable conditions which exist and to enter any reasonable order which is nec-

essary to effectuate the purpose of this law. The Commission is expressly authorized to segregate a sour gas area from a sweet gas area and shall not be required to restrict the allowable production of the sour gas zone to the same percentages that may be produced from the sweet gas zone.

Exclusion of well not utilized in allocating daily allowable production from reservoir or zone

Sec. 20. In the event the Commission finds that the owner of any gas well has failed or refused to utilize or sell the allowable production from his well when such owner has been offered a connection or market for such gas at a reasonable price, such well shall be excluded from consideration in allocating the daily allowable production from the reservoir or zone in which same is located until the owner thereof signifies to the Commission his desire to utilize or sell such gas. In all other cases all gas wells shall be taken into account in allocating the allowable production among wells producing the same type of gas.

Agreement for coöperative development

Sec. 21. In order that land owners and operators that have undeveloped land within a proven natural gas field may secure a market for their natural gas, and in order that the market for natural gas may be more equitably distributed among the various land owners and operators, and in the interest of the conservation and development of natural gas, it is declared to be lawful for any two or more lessors, lessees, operators, or other persons, firms, or corporations owning or controlling production, leases, royalties or other interests in the separate properties of the same producing gas field, with the approval of the Attorney General of Texas, to enter into agreements for the purpose of bringing about cooperative development and/or operation of all or a part, or parts of such field, or for the purpose of fixing the time, location and manner of drilling and operating wells for the production, storage, marketing or the repressuring of gas, or for the purpose of the equitable distribution of royalty payments. Any such agreement shall bind only the parties thereto, and their successors and assigns of such having knowledge or notice thereof, and shall be enforceable in an action for specific performance.

Discretion of Commission

Sec. 22. The Commission shall be vested with a broad discretion in administering this law, and to that end shall be authorized to adopt any and all rules, regulations or orders which it finds are necessary to effectuate the provisions and purposes of said law.

Penalty and suits to enforce

Sec. 23. Any person violating any of the provisions of this Article shall be liable to a penalty not to exceed One Thousand Dollars ($1,000) for each offense, and each day's violation shall be a separate offense. Such penalty may be recovered by the State of Texas with the cost of suit in a civil action instituted in Travis County or in the County where the violation occurred by the Attorney General or by the County or District Attorney when joined by the Attorney General of Texas; and any and all violations or threatened violations of this Article may be enjoined by any Court of competent jurisdiction in which the suit for penalty may be brought, and in such cases the Court may issue such writs of injunction, mandatory or prohibitory, as the facts justify.

Appeals to courts

Sec. 24. Any person may appeal for judicial review from any rule, order, or regulation of the Commission made and promulgated under the authority conferred by this Article, in the same manner, upon the same conditions and to the same court or courts as prescribed in this Chapter for appeals from other rules, regulations or orders of the Commission, promulgated under the general Oil Conservation Statutes of this State.

Repeal and effective date

Sec. 25. All laws or parts of laws in conflict with any of the provisions of this Act are hereby expressly repealed; provided that on account of the absence of pipe lines necessary to accomplish transportation of gas to carbon black plants from many areas producing sour gas in one or more of the common reservoirs of this State and in as much as many wells producing sweet gas are without market outlet for gas used as light and fuel which will require considerable time to make connection after hearing to determine the allowable production, it is provided that gas from a well producing sour gas only may be utilized as provided in said Article 6008 of the Revised Civil Statutes of 1925 as amended by Acts of the First Called Session of the Forty-second Legislature, as amended by Acts of the Regular Session of the Forty-third Legislature as aforesaid, until October 1, 1935, and the gas from a well producing sweet gas may be utilized as authorized under said Act as amended until August 1, 1935, at which time this Article shall be effective as to sweet gas wells; provided, however, that nothing in this Act contained shall repeal, modify or impair any of the provisions of House Bill No. 782,[1] relating to oil and gas conservation, enacted at this session of the Legislature, or shall impair the power of the Commission, proceeding under the oil and gas conservation laws of this State, to prevent waste.

[1] Articles 6014, 6014a, 6029, 6033, 6036, 6036a, 6049c, §§ 5, 7, 6049d, §§ 6, 6-a, 8, 6049e, post.

Partial invalidity

Sec. 26. If any section or sections, clause, sentence or provision of this Article should, for any reason, be held to be invalid or unconstitutional, it shall not affect in anywise the remaining parts of this Article, not so held, and all that portion not held invalid shall remain in full force and effect. [Acts 1899, p. 68; Acts 1913, p. 212; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 2; Acts 1933, 43rd Leg., p. 222, ch. 100; Acts 1933, 43rd Leg., 1st C.S., p. 229, ch. 88, § 1; Acts 1935, 44th Leg., p. 318, ch. 120.]

Sections 3 and 4 of the amendatory Act of 1941, provided as follows:

"Sec. 3. If any section, or sections, clause, sentence, or provision of this Act should for any reason be held to be invalid or unconstitutional, it shall not affect in anywise the remaining parts of this Act and such remaining parts shall remain in full force and effect.

"Sec. 4. All laws or parts of laws in conflict with any of the provisions of this Act are hereby repealed, but where the same are not in conflict, the provisions of this Act shall be cumulative of existing laws."

Interstate Compact to Conserve Oil and Gas as extended to Sept. 1, 1951, see article 6008—1 and notes thereto.

The provision of this article authorizing Texas Railroad Commission to reduce production of sweet gas by pipe line owners for sole purpose of furnishing market for sweet gas produced by owners of wells without pipe line connections held unconstitutional. Thompson v. Consolidated Gas Utilities Corporation, 57 S.Ct. 364, 300 U.S. 55, 81 L.Ed. 510.

This article held violative of due process clause in so far as providing for $1000 penalty for each day's violation. F. C. Henderson, Inc. v. Railroad Commission of Texas, D.C., 56 F.2d 218, Appeal dism. 53 S.Ct. 4, 287 U.S 672, 77 L.Ed. 579.

Art. 6008—1. Interstate Compact to Conserve Oil and Gas; Extension of Compact.

Governor authorized to execute agreement

Section 1. The Governor of the State of Texas is hereby authorized and empowered, for and in the name of the State of Texas, to execute an agreement with other states now members of the Interstate Oil Compact Commission, by the terms of which the Interstate Compact to Conserve Oil and Gas, executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of

State of the United States shall be extended for a period of four (4) years from its expiration date (September 1, 1947), subject to the approval of Congress.

Compact

Sec. 2. The Interstate Compact to Conserve Oil and Gas referred to in the above section and which was ratified, approved, and confirmed by the Regular Sessions of the Texas Legislature in 1935, 1937, 1939, 1941 and 1943, and which it is hereby proposed to extend by agreement subject to the approval of Congress, reads as follows:

"AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

"ARTICLE I

"This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico have ratified, and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

"ARTICLE II

"The purpose of this Compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

"ARTICLE III

"Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

"(a) The operation of any oil well with an inefficient gas-oil ratio;

"(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities;

"(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well;

"(d) The creation of unnecessary fire hazards;

"(e) The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof;

"(f) The inefficient, excessive, or improper use of the reservoir energy in producing any well.

"The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

"ARTICLE IV

"Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid order and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

"ARTICLE V

"It is not the purpose of this Compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

"ARTICLE VI

"Each state joining herein shall appoint a representative to a Commission hereby constituted and designated as The Interstate Oil Compact Commission, the duty of which said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas; and at such intervals as said Commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

"The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

"No action shall be taken by the Commission, except: (1) by the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting; and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

"ARTICLE VII

"No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

"ARTICLE VIII

"This Compact shall expire September 1, 1937. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.

"The representatives of the signatory states have signed this agreement in a single original, which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

"This Compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified."

Sec. 3. The agreement to extend said Interstate Compact to Conserve Oil and Gas, and which the Governor of this state is hereby authorized and empowered to execute for and in the name of the State of Texas, shall be in substance as follows:

"It is hereby agreed that the Interstate Compact to Conserve Oil and Gas executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of State of the United States, be and the same is hereby extended for a period of four (4) years from its date of expiration (September 1, 1947), this agreement to become effective when executed by any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico, and consent thereto is given by Congress."

Sec. 4. The Governor of the State of Texas is further authorized and empowered, for and in the name of the State of Texas, to execute agreements for the further extension of the expiration date of the said Interstate Compact to Conserve Oil and Gas, and to determine if and when it shall be for the best interest of the State of Texas to withdraw from said Compact upon sixty days notice as provided by its terms. In the event he shall determine that the state should withdraw from said Compact, he shall have full power and authority to give necessary notice and take any and all steps necessary and proper to effect

the withdrawal of the State of Texas from said Compact.

Sec. 5. The Governor shall be the official representative of the State of Texas on the Interstate Oil Compact Commission, provided for in the Compact to Conserve Oil and Gas, and shall exercise and perform for the State of Texas all the powers and duties as a member of the Interstate Oil Compact Commission; provided that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the State of Texas as a member of said Commission. Said representative shall take the oath of office prescribed by the Constitution, which shall be filed with the Secretary of State. [Acts 1939, 46th Leg., Spec.L. p. 527; Acts 1941, 47th Leg., p. 76, ch. 63; Acts 1943, 48th Leg., p. 15, ch. 15; Acts 1947, 50th Leg., p. 69, ch. 52, § 1.]

This compact was ratified by the State of Illinois, Laws 1935, p. 1418 (Smith-Hurd Ill.St. ch. 104, §§ 19–23); by the State of Oklahoma, Laws 1935, p. 242, S.B.No.208 (52 Okl.St.Ann. § 204) effective March 6, 1935; by the State of New Mexico, Laws 1935 ch. 128, p. 312, effective Feb. 25, 1935; by the State of Kansas, Laws 1935, ch. 215, p. 305, effective March 20, 1935. The consent of Congress was given by Resolution of Aug. 27, 1935, c. 781, 49 Stat. 939–941.

Extensions of Compact:

Extension to Sept. 1, 1941, Acts 1939, 46th Leg., Spec.L., p. 527; extension to Sept. 1, 1943, Acts 1941, 47th Leg., p. 76, ch. 63; extension to Sept. 1, 1947, Acts 1943, 48th Leg., p. 15, ch. 15.

Complementary Laws

Extension to Sept. 1, 1939: Resolution of Congress Aug. 10, 1937, c. 572, 50 Stat. 617; Illinois, Laws 1935, p. 1418, § 6, as added by L.1937, p. 940 (Smith-Hurd Ill. Stats. ch. 104, § 24); Oklahoma, Laws 1936, Ex.Sess., p. 49, § 1 (52 Okl.St.Ann. § 201 note); Kansas, Laws 1937, ch. 264; New Mexico, Laws 1937, ch. 16, § 3.

Extension to Sept. 1, 1941: Resolution of Congress July 20, 1939, c. 337, 53 Stat. 1071; Arkansas Laws 1941, Act No. 86, p. 179; Illinois, Laws 1939, p. 795 (Smith-Hurd Ill.Stats. ch. 104, § 24); Kansas, Laws 1939, ch. 228; New Mexico, Laws 1939, ch. 31; New York, L.1941, c. 501; Oklahoma, Laws 1939, ch. 59, § 1 (52 Okl.St.Ann. § 201 note); Pennsylvania, Act 1941, July 23, P.L. 435 (58 P.S. §§ 191–196.)

Extension to Sept. 1, 1943: Resolution of Congress Aug. 21, 1941, c. 400, 55 Stat. 666; Illinois, Laws 1941, p. 949 (Smith-Hurd Stats. ch. 104, § 24); Kansas Laws 1941, ch. 279; New Mexico, Laws 1941, ch. 14; Oklahoma Laws 1941, p. 211 (52 Okl.St.Ann. § 201 note).

Extension to Sept. 1, 1947: Resolution of Congress July 7, 1943, c. 194, 57 Stat. 383; Illinois Laws 1943, vol. 1, p. 952 (Smith-Hurd Stats. ch. 104, § 24); Kansas Laws 1943, ch. 211; Montana Laws 1945, c. 121; Ohio L.1943, p. 203; Florida Laws 1945, c. 22823. (F.S.A. §§ 377.01–377.-05).

Extension to Sept. 1, 1951: Resolution of Congress July 12, 1947, c. 244, 61 Stat. 316; Illinois Laws 1947, p. 1250; (Smith-Hurd Stats. ch. 104, § 24); Kansas Laws 1947, ch. 312; Tennessee Laws ch. 44, p. 280.

Art. 6008a. Production and use of sour gas from common reservoirs for carbon black; definitions.

Meaning of words

Sec. 1. Where used in this Act the following words shall have the meaning given to them by Section 2, Chapter 120,[1] Acts Forty-fourth Legislature, Regular Session, to-wit: "Commission", "person", "common reservoir", "gas well", "oil well", "sour gas", "sweet gas", "natural gasoline", "cubic foot of gas", "casinghead gas".

[1] Article 6008.

Maximum daily withdrawal for manufacture of carbon black; proration

Sec. 2. In any common reservoir in this State producing both sweet and sour gas, there shall never be produced from such common reservoir for utilization in carbon black manufacture, a maximum daily volume of sour gas from such gas wells in excess of seven hundred fifty million (750,000,000) cubic feet which daily volume of sour gas from gas wells shall be prorated by the Commission among all the sour gas wells in such reservoir so as to prevent cognizable and preventable drainage of gas from tracts of land in such sour gas producing area segregated as to surface position and common ownership on which such sour gas wells are located; provided that if the daily demand for sour gas from gas wells for utilization in carbon black manufacture is less than the daily maximum allowable hereinabove permitted, the total daily volume of gas from gas wells from such sour gas area for utilization in carbon black manufacture shall be equal to such daily demand which demand shall be determined by the Commission and shall be prorated among all the sour gas wells in such area as hereinabove provided.

If a lawful daily demand exists for sour gas from gas wells for purposes of utilization permitted by existing law, other than the manufacture of carbon black, such additional demand shall be added to such daily demand for carbon black manufacture as hereinabove set forth, which sum shall constitute the daily volume of sour gas from gas wells which may be withdrawn from such common reservoir for utilization. Such daily volume shall be prorated by the Commission among the sour gas wells in such area on the basis hereinabove set forth.

It shall be unlawful for any person to produce sour gas from any sour gas well in such reservoir in excess of the daily allowable production for such gas well as fixed by the orders and schedules of the Commission. The rate of production from any sour gas well shall be deemed to be the daily average rate of production for the calendar month.

Hearings, determination; rules and regulations of Commission

Sec. 2a. In administering the provisions of this law the Commission shall hold hearings, make determinations, and make and promulgate orders, rules and regulations as provided in Sections 12, 13, and 14 of Chapter 120,[1] Acts of the 44th Legislature, Regular Session. The Commission shall otherwise have the duty to make and promulgate any rule, regulation or order it may find necessary to carry out the provisions of this law, after notice and hearing for such purpose.

[1] Article 6008.

Commingling of casinghead gas with sweet or sour gas or of sweet and sour gas, without permit, prohibited; regulation of use of gases; carbon black, use for

Sec. 3. (a) In any common reservoir in this State producing both sweet and sour gas, it shall be unlawful for any person to operate a plant for the extraction of the natural gasoline content of gas in which plant casinghead gas is commingled with either sweet gas or sour gas, or both, or where sweet gas and sour gas are commingled, until such person secures from the Commission a permit authorizing the operation of such plant. It shall be the duty of the Commission to issue such permit when it shall appear that such plant is being operated, and the residue gas from same is and shall be disposed of, in accordance with the provisions of this section.

(b) Where any such plant in such common reservoir commingles casinghead gas with sweet gas or sour gas, or both, it shall not be lawful for the operator of such plant to blow, or permit to be blown, into the air any of the residue gas remaining after the gasoline content of such gas is extracted; provided, however, the operator of such plant shall be permitted to blow to the air such amount of residue gas from said plant as is determined by the Commission to be necessary in order to accomplish uninterrupted deliveries in required amounts to carbon black plants for carbon black manufacture.

(c) Where any such plant in such common reservoir commingles casinghead gas with sweet gas or where any such plant commingles sweet gas with sour gas, it shall be the duty of the Commission to ascertain the quantity of residue gas which is required to be used for fuel purposes in the efficient operation of the plant and also the quantity of residue gas which is required to be returned by the operator of such plant

to the leases to which the plant is connected for use as fuel in the operation of such leases. The operator of such plant shall be required to utilize or cause to be utilized for one or more of the uses provided for sweet gas by existing law a quantity of the residue gas from such plant which is equal to the quantity of sweet gas which is taken into said plant for processing, less the extraction loss from such processing, but such operator shall not be credited with use of such residue for plant-fuel or lease-fuel operations in an amount in excess of the quantity of such residue gas found by the Commission to be necessary for the efficient operation of such plant and return to such leases for fuel for lease operations.

(d) The commingling in any such plant of casinghead gas with sweet gas or sour gas, or both, or of sweet gas with sour gas, except upon the conditions and requirements set forth in Section 3 of this Act,[1] is hereby declared to be unlawful. Whenever it shall be made to appear to the Commission that any such plant is operating in violation of any of the provisions of this section, it shall be the duty of the Commission to cancel the permit so issued to such plant, and it shall thereafter be unlawful for the operator of such plant to commingle either casinghead gas with sweet gas or sour gas or to commingle sweet gas and sour gas in any such plant for the purpose of extracting the natural gasoline content thereof.

(e) Gas from any gas well completed on or before the effective date of this Act within a common reservoir producing both sweet and sour gas from which the gas has not been sold off the leased premises to an interstate pipeline company during the year immediately preceding the effective date of this Act, or gas from any gas well completed after the effective date of this Act within a common reservoir producing both sweet and sour gas, may be used for the manufacture of carbon black, without the prior extraction of its natural gasoline content provided: (1) it is utilized in a plant producing an average recovery of not less than one and one-half (1½) pounds of carbon black to each one thousand (1,000) cubic feet of such gas; and (2) that the royalty rate and price paid for such gas at the wellhead as least equals the royalty rate and market price paid at the wellhead in the immediate area for gas used for light and fuel purposes. In arriving at such market price in the case of sour gas a reduction of not to exceed one-half (½) cent per thousand cubic feet shall be allowed for purifying such gas to render it suitable for light and fuel purposes. If such gas be used by a producer any royalty rate paid shall be paid on the same basis. [Added Acts 1947, 50th Leg., p. 695, ch. 351, § 1.]

(f) It shall be the duty of the Railroad Commission, after due notice of hearing, to hold and conduct such annual or semi-annual hearings as they may deem necessary for the purpose of determining the market price that is being paid at the wellhead for gas being used and sold for light and fuel purposes. After such hearing and determination of such market price, the Railroad Commission shall thereafter post and publish such price in its main office in Austin, Texas, and its branch office, if any, in the area affected. Thereafter, all parties contracting for gas under the provisions of this Act shall be permitted to accept such posted and published price as the market price to be paid for such gas under the terms hereof. [Added Acts 1947, 50th Leg., p. 695, ch. 351, § 1.]

(g) Sweet gas produced from any gas well in this state may be utilized without the prior extraction of its gasoline content for the manufacture of carbon black where it is utilized in a plant producing an average recovery of not less than five (5) pounds of carbon black for each one thousand (1,000) cubic feet of gas. [Added Acts 1947, 50th Leg., p. 695, ch. 351, § 1.]

[1] This section.

Hearings by Commission; notice; inspection of books and records; sworn reports

Sec. 4. From time to time the Commission shall hold hearings, after notice to interested operators, for the purpose of hearing evidence, and to promulgate rules, regulations and orders to enforce the provisions of this law. In addition to the authority given by existing law, the Commission or its agents shall have the right to inspect the books and records of any person who is affected by the provisions hereof and to require sworn reports to be filed, such sworn reports to be filed from time to time as the Commission may find necessary. All rules, regulations and orders promulgated by the Commission under the terms of this law shall be deemed prima facie valid.

Penalty; injunction and prohibition

Sec. 5. Any person violating any of the provisions of this Act shall be liable to a penalty not to exceed One Thousand ($1,000.00) Dollars for each offense and each day's violation shall constitute a separate offense. Such penalty may be recovered by the State of Texas, with costs of suit, in a civil action instituted by the Attorney General in Travis County or in the county where the violation occurred. Any and all violations, and threatened violations, of this Act may be enjoined by any court of competent jurisdiction in which suit for penalty may be brought, and in such cases the court shall issue such writs or injunction, prohibitory or mandatory, as the facts justify.

Appeals to courts

Sec. 6. Any person affected thereby may sue to test the validity of any rule, regulation or order promulgated by the Commission under this Act in the same manner, upon the same conditions, and to the same court or courts, as prescribed for suits testing the validity of rules, regulations and orders of the Commission promulgated under the general oil conservation statutes of this State.

Repeal of conflicting laws; provisions cumulative

Sec. 7. All laws or parts of laws in conflict with any of the provisions of this Act are hereby repealed; but where same are not in conflict the provisions of this Act shall be cumulative of existing laws.

Partial invalidity

Sec. 8. If any clause, sentence, provision or section of this Act should for any reason be held to be invalid or unconstitutional, it shall not affect in anywise the remaining parts of this Act and such remaining parts shall remain in full force and effect. [Acts 1937, 45th Leg., p. 746, ch. 367.]

Section 2 of the Act of 1947, read as follows:

"Sec. 2. Repeal of Conflicting Laws. All laws or parts of laws in conflict with any of the provisions of this Act are repealed; but it is intended that this Act is cumulative of existing laws covering the uses of gas. Nothing herein contained shall be construed to restrict or affect the manufacture of carbon black from processed sour gas as now authorized by Subdivision 2, Section 7 of Article 6008, Revised Civil Statutes of 1925 as amended, or other existing laws."

Section 3 of the Act of 1947 provided that partial invalidity should not affect the remaining provisions.

Art. 6009. [Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.]

Art. 6010. [7852] Water in wells.—If any person or persons in this State, in boring any well or wells, for oil or gas, shall pierce any cap-rock or other geological formation in such manner as to cause a flow of salt water or fresh water injurious to any oil well already bored, or to any oil or gas deposits, and which shall or may probably result in the injury of such oil or gas field, or to such gas or oil wells already bored, such person or persons shall, if the flow of water cannot be cased off, immediately abandon all work upon such well and plug and fill the same in such manner and with such materials as will stop the flow of said water; and it shall be unlawful for any well owner,

or person boring any such well, to remove the casing from the well drilled until the flow of water shall be stopped, either by casing off or plugging such well. The provisions of this article shall only apply where such cap rock or other formation is pierced at a depth below the horizon at which oil or gas has already been discovered. [Acts 1905, p. 228.]

Art. 6011. [Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.]

Art. 6012. May plug or shut in.—If the owner of any such well shall neglect or refuse to cause said well to be plugged, or shut in, as herein provided, for a period of twenty days after a written notice to do so, which notice may be served personally upon such owner, or may be posted at a conspicuous place at or near the well, it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises where said well is situated and cause the same to be plugged if it be an abandoned well, or shut in if not abandoned, pursuant to the provisions hereof. The reasonable cost and expense incurred in so doing shall be paid by the owner of said well, and may be recovered as debts of like amount are by law recoverable. [Acts 1913, p. 212.]

Art. 6013. Petition to restrain waste.—In addition to the penalties provided in this title, it shall be the duty of any district judge, whether in term time or vacation, to hear and determine any petition which may be filed to restrain the waste of natural gas in the violation of this law, and to issue such mandatory or restraining orders as may in his judgment be necessary. Such petition may be filed by any citizen of this State, and the same need allege no further financial interest than the petitioner possesses in common with all citizens of the State in the natural resources thereof. [Id.]

Art. 6014. "Waste."—The production, storage or transportation of crude petroleum oil or of natural gas in such manner, in such amount, or under such conditions as to constitute waste is hereby declared to be unlawful and is prohibited. The term "waste" among other things shall specifically include:

(a) The operation of any oil well or wells with an inefficient gas-oil ratio, and the Commission is hereby given authority to fix and determine by order such ratio; provided that the utilization for manufacture of natural gasoline of gas produced from an oil well within the permitted gas-oil ratio shall not be included within the definition of waste.

(b) The drowning with water of any stratum or part thereof capable of producing oil or gas, or both oil and gas, in paying quantities.

(c) Underground waste or loss however caused and whether or not defined in other subdivisions hereof.

(d) Permitting any natural gas well to burn wastefully.

(e) The creation of unnecessary fire hazards.

(f) Physical waste or loss incident to, or resulting from, so drilling, equipping, locating, spacing or operating well or wells as to reduce or tend to reduce the total ultimate recovery of crude petroleum oil or natural gas from any pool.

(g) Waste or loss incident to, or resulting from, the unnecessary, inefficient, excessive or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this Act to require repressuring of an oil pool or that the separately owned properties in any pool be unitized under one management, control or ownership.

(h) Surface waste or surface loss, including the storage either permanent or temporary of crude petroleum oil, or the placing any product thereof, in open pits or earthen storage, and all other forms of surface waste or surface loss, including unnecessary or excessive surface losses, or destruction without beneficial use, either of crude petroleum oil or of natural gas.

(i) The escape into the open air, from a well producing both oil and gas, of natural gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(j) The production of crude petroleum oil in excess of transportation or market facilities or reasonable market demand. The Commission may determine when such excess production exists or is imminent and ascertain the reasonable market demand.

The Commission may consider any or all of the above definitions, whenever the facts, circumstances or conditions make them applicable, in making rules, regulations or orders to prevent waste of oil or gas.

Nothing in this Section shall be construed to authorize limitation of production of marginal wells, as such marginal wells are defined by Statute, below the amount fixed by Statute for such wells. [Acts 1919, p. 285; Acts 1929, 41st Leg., p. 694, ch. 313; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 1; Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 1; Acts 1935, 44th Leg., p. 180, ch. 76, § 2.]

Art. 6014a. Railroad Commission without power to declare any process of refining oil as waste.—The Commission shall have no authority to make any rule, regulation or order, or in any wise determine or hold that any mode, manner or process of refining crude petroleum oil constitutes waste.

Nothing in this Act shall be construed as granting to the Commission any power or authority to restrict, or in any manner limit the drilling of wells for the purpose of exploring for crude petroleum oil or natural gas or both in territory not known to produce either such oil or gas.

The Commission shall not, under the terms of Subdivision (j) of Section 2 [1] hereof, restrict the production of crude petroleum oil from any new field brought into production by such exploration until the total production therefrom aggregates ten thousand (10,000) barrels of crude petroleum oil per day, provided, however, the Commission's power to restrict the production from such new field under the remaining subdivisions of said Section 2 shall not be affected or limited by this paragraph. [Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 2; Acts 1935, 44th Leg., p. 180, ch. 76, § 3.]

[1] Article 6014, ante.

Art. 6015. Prevention of waste.—All operators, contractors, or drillers, pipe line companies, or gas distributing companies, drilling for or producing crude oil or natural gas or piping oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas or both, in drilling and producing operations, storage or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers or pipes. [Acts 1919, p. 285.]

Art. 6016. Confining gas in wells.—Whenever natural gas in such quantities, in a gas bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste and all such strata shall be adequately protected from infiltrating waters. [Id.]

Art. 6017. [Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.]

Art. 6018. Pipe line carriers.—Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatever;

1. Owning, operating or managing any pipe line or any part of any pipe line within the State of Texas for the transportation of crude petroleum to or for

the public for hire, or engaged in the business of transporting crude petroleum by pipe line; or

2. Owning, operating or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, to or for the public for hire, and which said pipe line is constructed or maintained upon, over or under any public road or highway, or in favor of whom the right of eminent domain exists; or

3. Owning, operating or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, and which said pipe line or pipe lines is or may be constructed, operated or maintained across, upon, along, over or under the right of way of any railroad, corporation or other common carrier required by law to transport crude petroleum as a common carrier; or

4. Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or part of any pipe line, for the transportation from any oil field or place of production within this State to any distributing, refining or marketing center or reshipping point thereof, within this State, of crude petroleum bought of others;

Is hereby declared to be a common carrier and subject to the provisions of this law. The provisions of this law shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as above defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system. [Acts 1917, p. 48.]

Art. 6019. Control of.—It is declared that the operation of common carrier pipe lines is a business in which the public is interested, and is subject to regulation by law. The business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this law to transport the crude petroleum so bought or sold, shall not be conducted, unless such pipe line so used is a common carrier within the purview of this law, and subject to the jurisdiction herein conferred upon the Railroad Commission. [Id.]

Art. 6020. Powers of carrier.—The right to lay, maintain and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such pipe lines along, across or under any public stream or highway in this State, is hereby conferred upon all said common carrier pipe lines. Any person, firm, limited partnership, joint stock association, or corporation may acquire such right by filing with said Commission a written acceptance of the provisions of this law expressly agreeing that in consideration of the rights so acquiring it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed by this law.

Art. 6020a. Telegraph, telephone and electric lines; pipe lines; grants of rights of way over public lands and waters; penalty for unauthorized use.

Grants of right of way

Section 1. The Commissioner of the General Land Office may execute grants of all easements for rights of way for telephone, telegraph, electric transmission and power lines, for oil pipe lines, gas pipe lines, sulphur pipe lines, and other electric and pipe lines of whatsoever nature, granted by this State, across all unsold Public Free School Land, and across all islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, and across that portion of the Gulf of Mexico within the jurisdiction of Texas. The Board of Regents of the University of Texas may continue to execute, under authority heretofore granted, all right-of-way easements for telephone, telegraph, electric transmission and power lines, for oil pipe lines, gas pipe lines, sulphur pipe lines, and other electric and pipe lines of whatever nature, across lands belonging to the State, and dedicated to the support and maintenance of the University of Texas. The Board of Regents of the University may continue to execute, under authority heretofore granted, easements or leases for the erection and maintenance of electric substations, pumping stations, loading racks, and tank farms on University Lands, and the Commissioner of the General Land Office may execute easements or leases for electric substations, for pumping stations, loading racks, and tank farms to be located on State Lands other than those owned by the University.

Forms approved by Attorney General

Sec. 2. All easements granted under Section 1 of this Act shall be on forms approved by the Attorney General.

Term of easement

Sec. 3. No right-of-way easement, electric substation, or tank farm, loading rack, or pumping station easement or lease of the character enumerated in Section 1 hereof may be granted for a longer term than ten (10) years, but any such easement may be renewed by the official or officials charged with the execution thereof, in his or their discretion.

Privilege fee for right of way

Sec. 4. From and after the passage of this Act every person or corporation occupying or using any unsold Public Free School Land, any islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, any portion of the Gulf of Mexico within the jurisdiction of Texas, and any unsold public land dedicated to the University of Texas, or any part thereof, as a telephone, telegraph, electric transmission and/or power line right of way, as an oil and/or gas pipe line right of way, shall, as a condition to such further use or occupancy, pay annually in advance for such privileges, to the Commissioner of the General Land Office at the General Land Office in Austin, Texas, a sum equal to two and one-half (2½) cents per lineal rod per annum for each and every rod of telephone, telegraph, electric transmission and power line, oil pipe line and/or gas pipe line used, possessed, or maintained by any such person or corporation on any unsold Public Free School Land, on any islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tidewater limits, on any portion of the Gulf of Mexico within the jurisdiction of Texas, and on any public land dedicated to the University of Texas. This annual privilege fee shall be paid by all such persons and corporations on all oil pipe line, gas pipe lines, telephone, telegraph, electric transmission and/or power lines now existing and situated on public lands of the classes above mentioned which have not heretofore paid such fee. All amounts due shall be paid annually unless the easement granted provides otherwise.

Terms of easements fixed by Land Commissioner and Board of Regents of University

Sec. 5. Hereafter all telephone, telegraph, electric transmission, power lines, and/or all pipe line right-of-way easements shall be executed on terms to be fixed by the Land Commissioner and by the Board of Regents of the University of Texas, respectively, but no oil and/or gas pipe line right-of-way easement, telephone, telegraph, electric transmission and/or power line right-of-way easement shall be granted which does not provide for an annual privilege fee of not less than two and one-half (2½) cents per lineal

rod per annum of oil and/or gas pipe line for which a right of way is sought. A higher fee may be fixed by contract between the officials named and any grantee of such easement.

Rentals for pumping stations, etc.

Sec. 6. The rental to be charged for an easement or lease for electric substation sites, pumping stations, loading racks, and tank farms shall be such as shall be agreed upon between the lessee and the Board of Regents with respect to University Lands, and the Commissioner of the General Land Office with respect to other State Lands.

Disposition of funds

Sec. 7. All income received by the Land Commissioner under this Act from Public School Land shall be credited to the Available School Fund; all income received by the Land Commissioner under this Act from University Lands shall be credited to the Available University Fund, and all income received by the Land Commissioner under this Act from the other lands herein set out shall be credited to the General Revenue Fund.

Interest on past due payments

Sec. 8. All past due payments under this Act shall bear interest at the rate of ten per centum (10%) per annum. In event the date of payment is not fixed by contract, or in event no written contract has been executed, all unpaid annual fees due shall bear interest at the rate of ten per centum (10%) calculated from the first day of January following the year for which such annual privilege fee was due.

Penalty for violations

Sec. 9. No person or corporation shall hereafter construct any telephone, telegraph, transmission and/or electric lines, pipe line, electric substation, tank farm, loading rack, and/or pumping station of the kind and character enumerated in Section 1 hereof across or on any section or part of a section of land of the character enumerated in Section 1 hereof and owned by the State of Texas, nor shall any person or corporation owning or possessing any telephone, telegraph, transmission and/or electric lines, pipe line, electric substation, tank farm, loading rack, and/or pumping station of the kind and character enumerated in Section 1 hereof now lying and situated on or across any section or part of a section of land of the character enumerated in Section 1 hereof and owned by the State of Texas, who has not obtained a proper easement as herein provided for, continue in possession of any such lands without obtaining from the Commissioner of the General Land Office, or the Board of Regents of the University of Texas, respectively, a grant of a right-of-way easement or other easement across or on such lands where such telephone, telegraph, transmission and/or electric lines, pipe line, electric substation, tank farm, loading rack, or pumping station is to be constructed. Any person or corporation violating this section of this Act shall be liable for a penalty of One Hundred Dollars ($100) per day for each day of such violation, said penalty to be recovered by the Attorney General.

Venue of suits

Sec. 10. The venue of all suits by the State arising out of this Act, or for violation of any provision of this Act, is hereby fixed in Travis County. [Acts 1933, 43rd Leg., p. 168, ch. 77; Acts 1943, 48th Leg., p. 275, ch. 174, § 1.]

Section 2 of the amendatory Act of 1943 read as follows: "If any section, clause, or part of this Act shall be held unconstitutional or otherwise invalid or unenforceable, such holding shall not have the effect of nullifying or in any wise affect the remainder of this Act, and the parts of this Act not so held to be unconstitutional or unenforceable shall remain in full force and effect."

Art. 6021. Injury to roads, etc.—The right to run pipe lines, telegraph and telephone lines along, across or over any public road or highway can only be exercised upon condition that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof to be subject also to the supervision of the commissioners court or other proper local authority. In the exercise of the privileges herein conferred, such pipe lines shall compensate the county or road district, respectively, for any damage done to such public road. Nothing herein shall be construed to grant any pipe line company the right to use any public street or alley of any incorporated or unincorporated city or town, except by express permission from the governing body thereof. [Acts 1917, p. 48.]

Art. 6022. Eminent domain.—Every person, firm, corporation, limited partnership, joint stock association, or association of any kind whatsoever owning, operating or managing any pipe line, or any part of any pipe line within this State for the transportation of crude petroleum that is declared by this title to be a common carrier, shall have the right and power of eminent domain in the exercise of which he, it or they may enter upon and condemn the lands, rights of way, easements and property of any person or corporation necessary for the construction, maintenance or operation of his, its or their common carrier pipe line; and shall have the right to lay his, its or their pipes or pipe lines under any railroad, railroad right of way, street railroad, canal or stream in this State; and along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town; and across and under any public road, provided that no pipes or pipe lines shall be laid parallel with and on any public highway closer than fifteen feet from the improved section thereof except with the approval and under the direction of the commissioners court of the county in which such public highway is located; and such other rights in the matter of laying pipes and pipe lines as are conferred by Article 1497, subject to the conditions, limitations and restrictions therein stated. [Acts 1919, p. 273.]

Art. 6023. Jurisdiction.—Power and authority are hereby conferred upon the Railroad Commission of Texas, over all common carrier pipe lines conveying oil or gas in Texas, and over all oil and gas wells in Texas, and over all persons, associations or corporations owning or operating pipe lines in Texas, and over all persons, associations and corporations owning or engaged in drilling or operating oil or gas wells in Texas; and all such persons, associations and corporations and their pipe lines, oil and gas wells are subject to the jurisdiction conferred by law upon the Commission, and the Commission is authorized and empowered to make all necessary rules and regulations for the government and regulation of such persons, associations and corporations and their operations, and the Attorney General shall enforce the provisions of this title by injunction or other adequate remedy and as otherwise provided by law. The word "Commission," as used in this title, shall mean the Railroad Commission of Texas. The word "Commissioner" shall mean any member of the Railroad Commission.

Art. 6024. Powers.—In all matters pertaining to the discharge of its duties and the enforcement of its powers and authority as provided by the terms of this title, the Commission shall institute suits, hear and determine complaints, require the attendance of witnesses, pay their expenses out of the fund herein created, and sue out such writs and process as may be necessary for the enforcement of its orders, and punish for contempt or disobedience of its orders as the district court may do.

Art. 6025. Attendance of witnesses.—If any witness fails or refuses to obey a subpœna from the Commission, or a Commissioner, the Commission or Commissioner may issue an attachment for such witness as in civil cases, and compel him to attend before the Commission or any Commissioner thereof, and give his testimony upon such matter as may be lawfully required of him, and to bring with him and produce on examination such records, books, vouchers, memoranda, true copies thereof, prints and such other matter as may be required, if any, in such subpœna.

Art. 6026. Criminating testimony.—If a witness fails or refuses to attend on being summoned, or to answer any question propounded to him, or to produce any record or data required to be produced by such subpœna, the claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying or producing such records and data, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Art. 6027. Witness fees.—Each witness who shall appear before the Commission or a Commissioner at a place outside the county of his residence shall receive for his attendance three dollars per day and three cents per mile traveled by the nearest practicable route, in going to and returning from the place of meeting of said Commission or Commissioner, which shall be ordered paid, upon the presentation of proper vouchers, sworn to by such witness and approved by the Commission or chairman thereof, provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any public utility involved in or concerning which, in any way, the investigation or hearing on account of which he is summoned, shall relate, or who is in anywise interested in any stock, bond, mortgages, security or earnings of any such utility, or who shall be the agent, attorney or employee of such utility, or any officer thereof, when summoned at the instance of such utility. No witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation.

Art. 6028. Officer's fees.—The sheriff or constable executing any process issued by the Commission or any Commissioner thereof under the provisions of this title shall receive such compensation as the Commission may allow.

Art. 6029. Rules and regulations.—The Commission shall make and enforce rules, regulations or orders for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, including rules, regulations or orders for the following purposes:

(1) To prevent the waste, as hereinbefore defined, of crude petroleum oil and natural gas in drilling and producing operations and in the storage, piping and distribution thereof.

(2) To require dry or abandoned wells to be plugged in such way as to confine crude petroleum oil, natural gas, and water in the strata in which they are found and to prevent them from escaping into other strata.

(3) For the drilling of wells and preserving a record thereof.

(4) To require wells to be drilled and operated in such manner as to prevent injury to adjoining property.

(5) To prevent crude petroleum oil and natural gas and water from escaping from the strata in which they are found into other strata.

(6) To establish rules and regulations for shooting wells and for separating crude petroleum oil from natural gas.

(7) To require records to be kept and reports made.

(8) It shall do all things necessary for the conservation of crude petroleum oil and natural gas and to prevent the waste thereof, and shall make and enforce such rules, regulations or orders as may be necessary to that end.

(9) To provide for the issuance of permits, tenders, and other evidences of permission when the issuance of such permits, tenders, or permission is necessary or incident to the enforcement of its rules, regulations, or orders for the prevention of waste. [Acts 1919, p. 285; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 15; Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 7; Acts 1935, 44th Leg., p. 180, ch. 76, § 4.]

Art. 6030. Supervisor and employees.—The Commission shall employ a Chief Supervisor of its Oil and Gas Division to aid the Commission in the enforcement of the provision of this Act and all Oil or Gas Conservation Laws of Texas, and all rules, regulations and orders of said Commission made thereunder. He shall also perform the duties placed upon the pipe line expert as set out in the pipe line statutes of this State. The Commission may also appoint a Chief Deputy Supervisor and such other Deputy Supervisors as may be necessary to assist in carrying out the provisions of this Act and related Statutes and shall employ such other assistants and clerical help as may be necessary for the same purpose. The salary of the Chief Supervisor and of Chief Deputy Supervisor and of the Deputy Supervisors shall be fixed by the Legislature in its appropriation bill for the Railroad Commission; provided such salaries shall not exceed the following amounts: That of the Chief Supervisor shall be Six Thousand ($6,000.00) dollars per annum, that of the Chief Deputy Supervisor shall be Five Thousand ($5,000.00) Dollars per annum, and that of the Deputy Supervisors shall be Thirty-six Hundred ($3,600.00) dollars each per annum. In addition to any other qualifications that may be required by the Commission, no one shall hereafter be appointed Chief Supervisor who has not had at least five years experience in some line of the oil or gas business, or in some other business or profession calculated to fit him for the performance of his duties. No one shall hereafter be appointed as Chief Deputy Supervisor who has not had at least three years experience in oil and gas field work, and no one shall hereafter be appointed deputy supervisor who has not had at least two years experience in oil and gas field work, a substantial portion of which shall be in the drilling or production department. All salaries and other expenses of every kind and character necessary in the administration and enforcement of this Act shall be paid out of the funds created in Chapter 30, Acts of 1917, being now Article 6032, Revised Civil Statutes of 1925, and in the manner therein provided. The Chief Supervisor, Chief Deputy Supervisor and all Deputy Supervisors and all other employees shall perform the duties prescribed by the Railroad Commission and in conformity to the rules and regulations of the Commission dealing with the production, transportation and conservation of crude oil and natural gas. [As amended Acts 1929, 41st Leg., p. 694, ch. 313, § 3.]

Art. 6031. Duties of supervisor.—The supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and conform to the rules and regulations of the Commission, dealing with the production and conservation of oil and gas. The supervisor shall gather information, and assist the Commission in the performance of its duties under this title. [Acts 1919, p. 285.]

Art. 6032. Tax.—There is hereby levied a tax of three-sixteenths (3/16) of one cent per barrel of forty-two (42) standard gallons of crude petroleum produced within this State, which shall be in addition to and collected in the same manner as the present gross receipts production tax on crude petroleum.

Producers of crude petroleum are hereby required to make reports of production in the same manner and under the same penalties as for the gross production tax. The tax thus collected shall be paid into the State Treasury and held in a Special Fund to be known as the Oil and Gas Enforcement Fund, and shall be paid out in warrants as other funds. The funds derived from this tax shall, so far as hereinafter provided, be used for the administration of the conservation laws of this State relating to oil and gas. [As amended Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 22; Acts 1933, 43rd Leg., p. 409, ch. 162, § 11; Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 1; Acts 1935, 44th Leg., p. 618, ch. 245, § 1.]

The Act of 1933, cited to the text, re-enacted article 6032 "to conform to the requirements of this Article and shall be paid monthly". Section 2 of Act of 1934, cited to the text, amended section 11 of the Act of 1933, which is now incorporated in article 6032a, post.

Sections 3, 6 and 7 of the Act of 1935 made appropriations for the balance of the fiscal year ending August 31, 1935.

Art. 6032a. Collection and report of tax.—The provisions made in Chapter 162, Acts Regular Session, Forty-third Legislature,[1] providing for the collection of the gross production tax on oil and reports required in connection with the collection of such tax, shall apply to the collection of taxes levied under the provisions of Section 1 of this Act,[2] and if any person, firm or corporation should fail to pay the tax herein provided for, or should fail to make the reports required in such Act or should make erroneous reports as provided in said Act, such person, firm or corporation shall be subject to the fines and penalties as provided in Section 8, Chapter 162, Acts Regular Session of the Forty-third Legislature.[3] [Acts 1933, 43rd Leg., p. 409, ch. 162, § 11; Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 2; Acts 1935, 44th Leg., p. 618, ch. 245, § 2.]

[1] Articles 6032, ante, and 7047, subd. 23, 7057a, 7105, post; Pen.Code, Art. 1111a.
[2] Article 7057a, post.
[3] Pen.Code, Art. 1111a.
See note to article 6032, ante.

Art. 6032b. Salaries and expenses paid from tax.—It is hereby expressly declared to be the intent of the Legislature that salaries and other expenses incurred against the funds appropriated to the Oil and Gas Division of the Railroad Commission of Texas by the General Appropriation Act of the Forty-third and Forty-fourth Legislatures, shall, after the effective date of this Act, be paid out of the funds derived from the tax levied by this Article, and none of said appropriations shall ever hereafter be paid out of the General Revenue Fund. In the event that there is an excess derived from the tax over and above the amount of money appropriated to the Oil and Gas Division of the Railroad Commission of Texas, and/or the Attorney General's Department, and/or the Department of Labor Statistics of the State, same shall revert to and be transferred into the General Revenue Fund of the State. [Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 3; Acts 1935, 44th Leg., p. 618, ch. 245, § 4.]

Art. 6032c. Additional employees for Railroad Commission.—The Railroad Commission of Texas is hereby authorized and directed in addition to the number of employees at the salaries and the expenses fixed by the General Appropriation Act of the Regular Session of the Forty-third Legislature for the Oil and Gas Division of said Commission to expend such sums to employ such gaugers, inspectors, investigators, supervisors and clerical help, including three employees who shall be Chief Engineer, Chief Petroleum Engineer and Administrative Chief, who shall be paid a salary not to exceed Three Thousand Seven Hundred Fifty Dollars ($3,750) per annum each, and the sum of Twenty-eight Hundred Twelve Dollars and Fifty Cents ($2812.50), or so much thereof as is necessary, is hereby appropriated to pay such salaries out of the Oil and Gas Enforcement Fund hereinbefore established. [Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 4; Acts 1935, 44th Leg., p. 618, ch. 245, § 5.]

Art. 6032c—1. Limitation on expenditure from appropriation.—The amounts appropriated herein to pay salaries to the Railroad Commission, the Attorney General's Department and the Department of Labor Statistics shall not exceed the maximum amounts fixed by this Act, and in no event to exceed the maximum amount fixed for the respective or similar positions by the General Appropriation Bills for said respective Departments of the State Government. [Acts 1935, 44th Leg., p. 618, ch. 245, § 8.]

Art. 6032c—2. Person designated to collect compensation.—The Commission is hereby expressly authorized and directed to designate some suitable person or persons to perform the services set forth in Article 6005, Title 102, Revised Civil Statutes of 1925, and permit such person or persons so designated to collect from the owner or operator of such wells or the owner of the land compensation for the services so performed and such person or persons so designated shall perform or cause such services to be performed under the rules and regulations of the Commission. [Acts 1935, 44th Leg., p. 618, ch. 245, § 9.]

Art. 6032d. Penal provision.

Section 10 being a penal provision is published as Pen. Code, Art. 1111A—1.

Art. 6032e. Transfer of surplus.—Any surplus remaining in the Oil and Gas Enforcement Fund at the end of each fiscal year shall be transferred into and become a part of the General Revenue Fund of this State. [Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 6; Acts 1935, 44th Leg., p. 618, ch. 245, § 11.]

Art. 6032f. Partial invalidity.—If any section, subsection, sentence, clause, or phrase of this Act is held, for any reason, to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, subsection, sentence and clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional. [Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 7; Acts 1935, 44th Leg., p. 618, ch. 245, § 12.]

Art. 6033. Certificate of compliance.—Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the Commission a certificate showing compliance with the oil or gas conservation laws of the State and conservation rules, regulations and orders of the Commission. No operator of a pipe line or other carrier shall connect with any oil or gas well until the owner or operator of such well shall furnish a certificate from the Commission that such conservation laws and such rules, regulations and orders have been complied with; provided, this Section shall not prevent a temporary connection with any well in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of such well to secure such certificate.

The Commission shall have the power to cancel any certificate of compliance issued under the provisions of this Section when it appears that the owner or operator of a well covered by the provisions of same has violated or is violating, in connection with the operation of said well or the production of oil or gas therefrom, any of the oil or gas conservation laws of this State or any of the rules, regulations or orders of the Commission promulgated thereunder. Upon notice from the Commission to the operator of any pipe line or other carrier connected to any such oil or gas well that the certificate of compliance with reference to such well has been cancelled by the Commission, the op-

erator of such pipe line or other carrier shall disconnect from such well and it shall be unlawful for the operator of such pipe line or other carrier to transport oil therefrom until a new certificate of compliance has been issued by the Commission. Upon notice from the Commission that a certificate of compliance as to any oil or gas well has been cancelled by it as herein provided, it shall be unlawful for the owner or operator of such well to produce oil or gas therefrom until a new certificate of compliance covering such well has been issued by the Commission as herein provided. [Acts 1919, p. 285; Acts 1935, 44th Leg., p. 180, ch. 76, § 11.]

Art. 6034. Books and records.—All owners and operators of oil and gas wells shall keep books, showing accurately the amount of stock sold and unsold and amount of promotion money paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the Commission or any accredited representative thereof, and of any stockholder or shareholder or royalty owner in said business, and shall report such information to the Commission for its information when required by the Commission to do so. [Acts 1919, p. 287; Acts 2nd C. S. 1919, p. 79.]

Art. 6035. Report to Commission.—Any person, firm, partnership, joint stock association, corporation or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another, for the purpose of drilling, owning or operating any oil or gas well, or owning or controlling leases of oil and mineral rights or the transportation of oil or gas by pipe line, shall immediately file with the Commission the name of the company or organization, giving the name and post-office address of the organization, the plan under which it was organized, and the names and post-office addresses of the trustee or trustees thereof, and the names and post-office addresses of the officers and directors. [Id.]

Art. 6036. Penalty.—In addition to being subject to any forfeiture that may be provided for by law and to any penalty that may be imposed by the Commission for contempt for the violation of its rules, regulations, or orders, any person violating any of the provisions of this Act or of Title 102, Revised Civil Statutes of Texas, 1925, as amended, or violating any rule, regulation, or order of the Commission promulgated thereunder, shall be subject to a penalty of not more than One Thousand Dollars ($1000) for each and every day of such violation, and for each and every act of such violation, to be recovered in any Court of competent jurisdiction in Travis County, or in the county of the residence of the defendant or, if there be more than one defendant, in the county of the residence of any of them, or in the county in which the violation is alleged to have occurred, such suit by direction of the Commission to be instituted and conducted in the name of the State of Texas by the Attorney General or by the county or district attorney where such suit is brought. The recovery or payment of any such penalty shall not authorize the violation of any provision of this Act, or Title 102, Revised Civil Statutes of Texas, 1925, as amended, or of any rule, regulation, or order of the Commission promulgated thereunder.

Any person aiding or abetting any other person in the violation of this Act, or of Title 102, Revised Civil Statutes of Texas, 1925, as amended, or of any rule, regulation, or order of the Commission promulgated thereunder, shall be subject to the same penalties as are prescribed herein for violation thereof by any such other person. [Acts 1919, p. 287; Acts 1929, 41st Leg., p. 694, ch. 313, § 4; Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26, § 3; Acts 1934, 43rd Leg., 3rd C.S., p. 120, ch. 64, § 2; Acts 1935, 44th Leg., p. 180, ch. 76, § 12.]

This article held violative of due process clause in so far as providing for $1000 penalty for each day's violation. F. C. Henderson, Inc., v. Railroad Commission of Texas, D.C., 56 F.2d 218. Appeal dism 53 S.Ct. 4, 287 U.S. 672, 77 L.Ed. 579.

Art. 6036a. Notice of hearing.—No rule, regulation or order shall be adopted by the Commission under the provisions of this Act or of Title 102 of the Revised Civil Statutes of Texas, 1925, as amended, dealing with the conservation of oil and gas and the prevention of the waste thereof, except after hearing upon at least ten (10) days notice given in the manner and form prescribed by the Commission; provided that in case an emergency is found by the Commission to exist which, in its judgment requires the making of a rule, regulation or order without notice and hearing, such emergency rule, regulation or order may be promulgated and shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order authorized herein shall remain in force no longer than fifteen (15) days from its effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

The Commission may, without prior notice, revoke any rule, regulation or order promulgated by it; and it may, without prior notice, amend the same, provided the subject matter of the amendment was considered at the hearing made the basis for such rule, regulation or order. The renewal or extension of any rule, regulation or order shall be based upon a hearing after proper notice, subject to the provisions of this Section with reference to emergency rules, regulations and orders. [Acts 1929, 41st Leg., p. 694, ch. 313, § 5; Acts 1935, 44th Leg., p. 180, ch. 76, § 7.]

Art. 6036b. [Repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.]

Article repealed was Acts 1929, 41st Leg., p. 694, ch. 313, § 6.

Art. 6037. [Repealed by Acts 1930, 41st Leg., 5th C.S., p. 171, ch. 36, § 6a, as added by Acts 1931, 42nd Leg., 1st C.S., p. 58, ch. 28.]

Art. 6038. Hearing, notice.—No order establishing or prescribing rates, rules and regulations shall be made except after hearing and at least ten days and not more than thirty days notice to the person, firm, corporation, partnership, joint stock association, or association, owning or controlling and operating the pipe line or pipe lines affected. [Id.]

Art. 6039. Reimbursement, when.—If any rate shall be filed by a pipe line and complaint against same or petition to reduce same shall be filed by a shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint. [Id.]

Art. 6040. Exchange of facilities.—Every common carrier as above defined shall exchange crude petroleum tonnage with each like common carrier and the Commission is authorized to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the Commission; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line. [Id.]

Art. 6041. Grades of oil carried.—No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the Commission, and the Commission shall make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. [Id.]

Art. 6042. Powers not limited.—Particular powers herein granted to the Commission shall not be construed to limit the general powers conferred by law, and until set aside or vacated by some order or decree of a court of competent jurisdiction, all orders of the Commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity. [Id.]

Art. 6043. Publication of tariffs.—Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as the Commission may prescribe, and the Commission shall require them to make reports, and may investigate their books and records kept in connection with such business. [Id.]

Art. 6044. Monthly reports.—The Commission shall require of such common carrier pipe lines duly verified monthly reports of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, but no publicity shall be given by the Commission as to stock of crude petroleum on hand of any particular pipe line; but the Commission in its discretion may make public the aggregate amounts held by all pipe lines making such reports, and of their aggregate storage capacity. [Id.]

Art. 6045. Discrimination prohibited.—No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under the same or similar circumstances in the transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operations shall directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the Commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the Commission. When there shall be offered for transportation more crude petroleum than can be immediately transported, the same shall be equitably apportioned. The Commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipment from any person, firm, corporation or association of persons, exceeding three thousand barrels of petroleum in any one day. [Id.]

Art. 6046. Rules for prevention of waste.—The Commission, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property. [Id.]

Art. 6047. Penalty.—Any common carrier as herein defined who shall violate any provision of this law, or who shall fail to perform any duty herein imposed, or any valid order of the Commission when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred nor more than one thousand dollars for each offense, recoverable in the name of the State. Such penalty may also be recovered by and for the use of any person, corporation or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved. [Id.]

Art. 6048. Transportation of crude petroleum.—Subject to the provisions of the law and the rules or regulations which may be prescribed by the Commission, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination. [Id.]

Art. 6049. Salary of expert and other expenses.—The salary of the expert for the Commission and all other employees shall be paid out of the fund created under Article 6032, by monthly warrants drawn by the Comptroller on the State Treasurer. All other expenses incurred in the administration and enforcement of the provisions of this subdivision shall be paid out of the same fund by like warrants issued upon duly verified statements of the persons entitled, with the approval of the chairman.

Art. 6049a. Regulating storage tanks for hire and pipe lines as public utilities.

Public utilities, who declared

Sec. 1. Every person, association of persons, or corporation owning, operating or managing any crude petroleum storage tanks or storage facilities for the public for hire, either in connection with a pipe line, pipe lines, or otherwise, is hereby declared to be a public utility, subject to the provisions of this law.

Discrimination forbidden

Sec. 2. No such public utility in its operations as such shall discriminate between or against its patrons in regard to facilities furnished or services rendered, or rates charged under the same similar circumstances, in the storage of crude petroleum.

Bond required for conformity to regulations

Sec. 3. All such public utilities as herein defined shall within thirty days after this Act takes effect, or in case of persons, associations or corporations, hereafter engaging in such business, before they actually engage therein, file a bond which shall not exceed Twenty-five Thousand Dollars ($25,000.00), properly executed, payable to the State of Texas, the amount of such bond and the sureties thereon to be subject to the approval of the Railroad Commission of the State of Texas. The amount of such bond may be changed from time to time by order of the Railroad Commission, after notice and hearing as prescribed by Article 6038, Revised Civil Statutes, in accordance with the volume of business done, or to be done, by such public utility and such bond or securities in lieu thereof as provided by Article 836 of the Revised Civil Statutes of Texas, shall be approved by the Railroad Commission before it is filed. Such bond shall be conditioned that the utility will observe the provisions of this law and the rules of the Railroad Commission in so far as its business is regulated and controlled by such Commission, and that the utility will exercise ordinary care in the storage, preservation, handling and delivery of all petroleum products entrusted to it and shall guarantee the classification, measurements and grades made by such public utility, under its authority in conformity herewith. The bond shall be for the benefit of the patrons of such utility and their assignees as though they were named obligees therein and they shall severally have the right of suit thereon.

Regulations by Railroad Commission

Sec. 4. The Railroad Commission of Texas shall establish and enforce rules and regulations governing the character of facilities to be furnished by such utilities, the forms of receipts to be issued by them, the rates, charges and regulations for the storage of crude petroleum by such public utilities in respect to their storage facilities and for the inspection, grading, measurement, deductions for waste or deterioration, the delivery of such products, and it shall also exercise such power upon petition of any person showing a substantial interest in the subject matter thereof.

Lien for storage charges

Sec. 5. Any such public utility shall have a lien on the commodity in its possession to secure it in the payment of all proper storage charges against such commodity, and/or the transportation charges accrued to or paid or advanced by it, superior to all other liens thereon, except lien for taxes.

Monthly statements as to quantity of petroleum

Sec. 6. Every common carrier of crude petroleum within this State as defined by law and every public utility as defined herein shall on or before the twentieth day of each calendar month file with the Railroad Commission of Texas, and post in a conspicuous place, accessible to the general public, in each of its division offices, and in its principal office in this State, a statement, duly verified, containing the following information concerning its business during the preceding calendar month:

1. How much petroleum, crude or refined, was in the actual and immediate custody of such carrier or public utility at the beginning and close of such month, and where same was located or held, including the location and designation of each tank or place of deposit, and the name of its owner.

2. How much petroleum, crude or refined, was received by such carrier or public utility during such month.

3. How much petroleum, crude or refined, was delivered by such carrier or public utility during such month.

4. What quantity of such petroleum, crude or refined, is held by it for the account of itself or parent or affiliated organizations.

5. The available empty storage owned or controlled by it and where located.

6. The foregoing information shall be set out in each statement separately as to crude petroleum and each refined product thereof.

Rates established by Railroad Commission after hearings

Sec. 6a. The Commission shall establish and promulgate rates of charges and regulations for gathering, transporting, loading and delivering crude petroleum by such common carriers in this State, and for the use of storage facilities necessarily incident to such transportation, and prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe line and receiving, transferring and loading facilities. Such rates shall include both single and joint line transportation, deductions for evaporation and shrinkage, demurrage, storage, and overage, charges, and all other similar items. The basis of such rates shall be such as will provide a fair return upon the aggregate value of the property of any such carrier used and useful in the services performed after providing reasonable allowance for depreciation and other proper factors, and for reasonable operating expenses under honest, efficient and economical management, and provided further that the Commission shall have reasonable latitude in the establishment and adjustment of competitive rates.

Immediately after this Act shall become effective it shall be the duty of the Commission to hold hearings as to rates now charged and shall reset them on all existing and operating lines, in accordance with the preceding article, taking into consideration the past earnings of such carrier.

When any carrier makes application or files tariff to establish a new rate, either for a new or old line, a temporary rate may be placed into effect immediately upon filing said tariff with the Commission. If any rates shall be filed, shippers who have paid the rates so filed by the pipe line company shall have the right to reparation or reimbursement of all excess rates or transportation charges so paid over and above the rate as finally determined on all shipments. When any person or persons at interest hereafter file an application for a change in a rate or rates the Commission shall call a hearing or hearings and shall immediately thereafter establish and promulgate a rate or rates in accordance with the basis herein set out. The Commission, shall on its own motion or motion of any interested person, hold a hearing or hearings when it has reason to believe that any rate or rates do not conform to the basis herein set out, said hearings or hearing to be for the purpose of adjusting, establishing and promulgating a proper rate or rates, and said Commission shall hold a general hearing once each year for the purpose of adjusting all rates to conform to the basis of rates and charges as herein set out. Article 6037, Revised Civil Statutes, is hereby repealed.

No common carriers by pipe line within this State shall hereafter abandon any of its connections or lines except under authority of a permit granted by the Railroad Commission, or with written consent of the owner or duly authorized agent of the wells to which collections are made. Before granting any such permit the Railroad Commission shall issue notice and have a hearing as now provided for in Section 6038 of the Revised Civil Statutes of Texas for 1925.

Hearing by Commission as to enlargement or extension of facilities

Sec. 7. The Railroad Commission of Texas may, after hearing in a proceeding upon complaint by a party at interest, or upon its own initiative without complaint, and after notice and hearing as provided by Article 6038, Revised Civil Statutes of Texas, 1925, authorize or require by order any person, association of persons, or corporation owning or operating pipe lines in the State of Texas, which is a common carrier as defined by law, or owning, operating, or managing any crude petroleum storage tanks, or crude petroleum facilities for the public for hire, to extend or enlarge such pipe lines, or storage facilities, provided such extension or enlargement shall be found to be reasonable and required in the public interest and that the expense involved will not impair the ability of such common carrier or public utility to perform its duty to the public.

Common purchaser of petroleum defined; discrimination forbidden

Sec. 8. Every person, association of persons or corporation who purchases crude oil or petroleum in this State, which is affiliated through stock-ownership, common control, contract, or otherwise, with a common carrier by pipe line, as defined by law, or is itself such common carrier, shall be a common purchaser of such crude petroleum and shall purchase oil offered it for purchase without discrimination in favor of one producer or person as against another in the same field, and without unjust or unreasonable discrimination as between fields in this State; the question of justice or reasonableness to be determined by the Railroad Commission, taking into consideration the production and age of wells in respective fields and all other proper factors. It shall be unlawful for any such common purchaser to discriminate between or against crude oil or petroleum of a similar kind or quality in favor of its own production, or production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the purchase of crude oil or petroleum to be marketed, such production

shall be taken in like manner as that of any other person or producer and shall be taken in the ratable proportion that such production bears to the total production offered for market in such field. The Railroad Commission of Texas shall have authority, however, to relieve any such common purchaser, after due notice and hearing as hereinafter provided, from the duty of purchasing petroleum of inferior quality or grade.

Purchases under regulations prescribed by Commission

Sec. 8a. That in order to further conserve the natural gas resources of this State every person, association of persons, joint stock company, limited co-partnership, partnership, corporation, gas pipe line company or gas purchaser now, or hereafter, claiming or exercising the right to carry or transport natual gas by pipe line, or pipe lines, for hire, compensation or otherwise within the limits of this State, or which is now engaged or shall hereafter engage in the business of purchasing, or taking, natural gas, or residue gas or casinghead gas shall be a common purchaser thereof, and shall purchase, or take, such gas under such rules or regulations as may be prescribed by the Commission, in the same manner, under the same inhibitions against discriminations and subject to the same provisions as are herein set out with respect to common purchasers of oil.

Additional persons as common purchasers

Sec. 8aa. In addition to persons enumerated in Section 8, hereof, any and all other persons, association of persons, or corporations, operating any pipe line, which may now, or hereafter, purchase crude oil, petroleum, or natural gas in this State, whether they be common carriers or affiliated with common carriers or not, shall be a common purchaser of such crude oil, petroleum or natural gas, and shall purchase crude oil, petroleum or natural gas, offered it for purchase without discrimination in favor of one producer or person as against another as provided in Section 8 hereof.

Rules and regulations by Railroad Commission

Sec. 8b. It shall be the duty of the Railroad Commission of Texas to see that the provisions of this Act are fully complied with, and it shall have the power, after notice and hearing, to make rules, regulations and orders, defining the distance that extensions or gathering lines shall be made to all oil or gas wells; and such other rules, regulations or orders as may be necessary to carry out the provisions of this Act, and to prevent discrimination in purchases.

Anti-trust laws unaffected

Sec. 8bb. It is expressly provided that no provision of this Act shall be construed as in any wise modifying, limiting, changing, repealing, or affecting any part of the present laws of this State defining and regulating trusts, monopolies, and conspiracies in restraint of trade; and that no provision of this Act shall be construed as authorizing any agreement and/or combination of capital, skill, or acts and/or any combination or consolidation now prohibited by the Anti-trust Laws of this State and/or the laws of this State prohibiting trusts, monopolies, and/or conspiracies in restraint of trade; and that no provision of this Act is intended or shall be construed as authorizing any agreement, act, combination, consolidation, or otherwise, which is now prohibited under the Anti-trust Laws of this State and/or the laws prohibiting and defining trusts, monopolies and/or conspiracies in restraint of trade.

Restrictions as to oil transported

Sec. 8c. No person, association of persons or corporation, whether a common carrier or otherwise, shall be permitted to transport crude oil or petroleum in this State unless such crude oil or petroleum has been produced and/or purchased in accordance with the laws of the State of Texas and/or any order, rule or regulation of the Railroad Commission made in pursuance thereof.

Enforcement by Railroad Commission

Sec. 9. The Railroad Commission of Texas shall have authority to make rules and regulations for the enforcement of the provisions of this Act.

Commission's jurisdiction to hear complaints

Sec. 10. Any person, association of persons or corporation, or the Attorney General of Texas on behalf of the State, may institute proceedings before the Railroad Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this Act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same after the notice provided by Article 6038, Revised Civil Statutes of Texas. The Commission shall not make any order establishing, prescribing or modifying rates, rules or regulations, as herein provided, except upon like notice and hearing as provided in said Article 6038.

Penalty for violations

Sec. 11. For the violation of any provision of this Act, or for the violation of any valid rule or regulation promulgated hereunder or any order passed by the Railroad Commission in pursuance of any such provision, rule or regulation, such person, association of persons, or corporation shall be subject to a penalty of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1000.00) for each offense recoverable in the name of the State in any District Court in Travis County, Texas, and each day of such violation shall constitute a separate offense. One half of such penalty may be recovered by and for the use of any person, association of persons or corporation against whom there shall have been an unlawful discrimination as herein defined, such suit to be brought in the name of and for the use of the party or parties aggrieved.

Attorney General may institute proceedings for forfeiture of charter for violations

Sec. 11a. For any violation of any provision of this Act, or for the violation of any valid rule or regulation promulgated hereunder by the Railroad Commission, in pursuance of such provision, by any domestic corporation, which is a common purchaser as defined herein, the Attorney General may bring suit in the District Court of Travis County, Texas, for the purpose of forfeiting the charter of such corporation, and enjoining and forever prohibiting such corporation from doing business in this State, and if adjudged guilty by the Court before whom the action is brought, the charter of such corporation may be forfeited and the injunction may be granted, provided said forfeiture and injunction shall be in addition to all other penalties.

Forfeiture of charters of foreign corporations

Sec. 11b. For any violation of any provision of this Act, or for the violation of any valid rule or regulation promulgated hereunder by the Railroad Commission in pursuance of such provision, by any foreign corporation, which is a common purchaser as defined herein, the Attorney General may bring suit in the District Court of Travis County for the purpose of cancelling the permit of such corporation and of enjoining and forever prohibiting such corporation from doing business in this State, and if adjudged guilty by the Court before whom the action is brought, the permit may be cancelled and the injunction may be granted, provided said cancellation and injunction shall be in addition to all other penalties.

Actions for damages for discriminations

Sec. 11c. When any person, persons, association or corporation is discriminated against by a common purchaser as defined herein in favor of the production of said common purchaser, a cause of action for damages, when such has occurred, shall lie against said common

purchaser and said person, persons, association or corporation may bring suit for same in any court of competent jurisdiction in the county in which the damage occurred.

Extension of lines and connections to prevent discriminations

Sec. 11d. The Railroad Commission shall make inquiry in each field concerning the connections of the various producers and when discrimination is found to be practiced by any common purchaser as defined in this Act the said Railroad Commission shall issue an order to such common purchaser to make such reasonable extensions of their lines and such reasonable connections as will prevent such discrimination.

Injunction by Attorney General to prevent discrimination

Sec. 11e. The Railroad Commission shall, upon information that discrimination is practiced in its purchases by any common purchaser, request the Attorney General to bring a mandatory injunction suit against said common purchaser to compel such reasonable extensions as are necessary to prevent discrimination.

Receiver at instance of Commission for violation of regulations

Sec. 11f. Whenever, any order, rule or regulation promulgated by the Commission pursuant to this Act has been finally adjudged to be valid, in whole or in part, in any suit to which the Commission is a party, and thereafter any party to the suit or other proceedings in which such matter has been so adjudged, shall violate such rule, regulation, order or judgment, or shall suffer any property owned or controlled by him to be used in violation of any such rule, regulation, order or judgment, the Commission shall have the power, and it shall be its duty, to make, application to the Judge of the trial court, setting out such rules, regulation, order or judgment and that such party, subsequent to the date of such judgment, has violated or is violating such rule, regulation, order, or judgment, and praying that a receiver be appointed as provided in this Section. Thereupon the judge of such trial court may after notice and hearing, appoint a receiver of the property involved or used in violating such rule, regulation, order, or judgment, and shall fix a proper bond for such receiver. As soon as such receiver has qualified, he shall take possession of such property, and such receiver thereafter shall perform his duties as receiver of such property under the orders of said court, strictly observing such rule, regulation, order or judgment. Any party whose property has been so placed in the hands of a receiver may move to dissolve such receivership and discharge the receiver only upon showing that such party has not wilfully violated nor suffered property owned or controlled by him to be used in violating such rule, regulation, order or judgment or upon other good cause shown. In its discretion such court may, before dissolving such receivership or discharging such receiver, require the party applying for such dissolution or discharge to give bond with good and sufficient sureties in an amount to be fixed by the court, sufficient reasonably to indemnify all persons who may suffer damage by reason of the violation of the rule, regulation or order so adjudged to be valid. In determining the amount of such bond, the judge shall take into consideration all of the facts and circumstances surrounding the parties which he may deem necessary to determine the reasonableness of the amount of such bond and any bond so executed, if made by any bonding or surety company, shall be by some company authorized to do business in Texas. Such bond shall be made payable to, and be approved by, the judge of said court and shall be for the use and benefit of, and may be sued on, by all persons who may suffer damage by reason of any further violation by the party giving the bond of the rule, regulation or order so adjudged to be valid, and who may bring suit thereon. From time to time on motion the court may increase or decrease the amount of such bond, and may require new or additional sureties as the facts may warrant or justify.

Discrimination as to royalty oil forbidden

Sec. 11g. Any common purchaser of oil or gas as herein defined shall, in making purchases of royalty oil, comply with all the provisions of this Act, and shall not discriminate between royalty and/or land owners in making such purchases. Neither shall said common purchaser unreasonably delay payments to said land and/or royalty owner for said oil or gas purchased. For violation whereof in addition to the other penalties herein set out, the land and royalty owner or owners damaged thereby shall have a cause of action against said common purchaser for damages and may file suit for same in any court of competent jurisdiction in the county where the royalty lies.

Provisions applicable to enforcement

Sec. 11h. All the provisions of Title 102 of the Revised Civil Statutes as amended shall apply in the enforcement of this Act.

Appropriation

Sec. 11i. There is hereby appropriated to the Railroad Commission of Texas for its use in complying with this Act an additional sum of Fifty Thousand Dollars ($50,000.00), or so much thereof as may be necessary, out of the money raised each year from the tax collected by virtue of Article 6032 Revised Civil Statutes of 1925, and if the money so raised by said tax is insufficient to pay this appropriation therefrom, then the balance of this appropriation shall be paid out of the General Revenue not otherwise appropriated.

Review by persons aggrieved

Sec. 12. Any person or party at interest aggrieved by any order of the Railroad Commission of Texas under this Act, may have such order reviewed by proceedings in the manner prescribed by Article 6453, Revised Civil Statutes of Texas. The proceedings upon appeal shall be in like manner as prescribed by Article 6453. [Acts 1930, 41st Leg., 5th C.S., p. 171, ch. 36; Acts 1931, 42nd Leg., 1st C.S., p. 58, ch. 28.]

Section 11j as added by Acts 1931, cited to the text, was repealed by Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 11.

Section 13 of Acts 1930, provides that the invalidity of any section or part of the act shall not affect the remainder and that it shall be construed as in addition to and cumulative of all other laws and not as an impairment or limitation of any law now in force.

Provisions of this article requiring pipe line carriers producing, selling, and transporting gas under prior contracts to purchase gas without discrimination between producers held void as forcing them to make new contracts, contrary to contract clauses of federal and state constitutions and as interfering with and burdening interstate commerce. Texoma Natural Gas Co. v. Railroad Commission of Texas, D.C., 59 F.2d 750.

Art. 6049b. Marginal wells defined; curtailing production.

Section 1. The term "marginal well" as used herein means any oil well which is incapable of producing its maximum capacity of oil except by pumping, gas lift, or other means of artificial lift, and which well so equipped is capable, under normal unrestricted operating conditions, of producing such daily quantities of oil as herein set out, as would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of same, if its maximum daily production were artificially curtailed. The following described wells shall be deemed "marginal wells" in this State:

(a) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this State and having a maximum daily capacity for production of ten (10) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a depth of two thousand (2,000) feet or less.

(b) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift,

or other means of artificial lift, within this State and having a maximum daily capacity for production of twenty (20) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than two thousand (2,000) feet and less in depth than four thousand (4,000) feet.

(c) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this State and having a maximum daily capacity for production of twenty-five (25) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than four thousand (4,000) feet and less in depth than six thousand (6,000) feet.

(d) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this State and having a maximum daily capacity for production of thirty (30) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than six thousand (6,000) feet and less in depth than eight thousand (8,000) feet.

(e) Any oil well incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift, within this State and having a maximum daily capacity for production of thirty-five (35) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than eight thousand (8,000) feet.

The words, "gas lift," when used in this Section shall mean gas lift by the use of gas not in solution with oil produced. [Acts 1931, 42nd Leg., p. 92, ch. 58; Acts 1933, 43rd Leg., p. 215 ch. 97; Acts 1941, 47th Leg., p. 892, ch. 550, § 1.]

Sec. 2. To artificially curtail the production of any "Marginal Well" below the marginal limit as set out above prior to its ultimate plugging and abandonment is hereby declared to be waste, and no rule or order of the Railroad Commission of Texas, or other constituted legal authority, shall be entered requiring restriction of the production of any "Marginal Well" as herein defined. [Acts 1931, 42nd Leg., p. 92, ch. 58.]

Section 3 of the Act of 1931 provides that if any provision is held invalid such decision shall not affect the remainder.

Art. 6049c. Oil and gas conservation.

Secs. 1–4.

Sections 1–3 amended articles 6014, 6008, 6036, ante.
Section 4 was repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.

Powers and duties of Railroad Commission

Sec. 5. The Commission shall have the power, and it shall be its duty, from time to time to inquire into the production, storage, transportation, refining, reclaiming, treating, marketing or processing of crude petroleum oil and natural gas, and the reasonable market demand therefor, in order to determine whether or not waste exists or is imminent, or whether the oil and gas conservation laws of Texas or the rules, regulations, or orders of the Commission promulgated thereunder are being violated. It shall be the duty of all persons producing, storing, transporting, refining, reclaiming, treating, marketing, or processing crude petroleum oil or natural gas or the products of either to keep in this State accurate records as to the amount produced, stored, transported, refined, reclaimed, treated, marketed or processed by such person; and as to the source from which such person has produced, obtained or received crude petroleum oil, natural gas or the products of either, and the disposition made of same. The Commission shall have the power to require all such persons to make and file with the Commission sworn statements or reports as to facts within their knowledge or possession pertaining to the reasonable market demand for crude petroleum oil and to the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of crude petroleum oil or natural gas and products of either, including those facts enumerated herein; and to require any well, lease, refinery, plant, tank or storage, or pipe line, or gathering line, belonging to or under the control of any such person to be inspected or gauged by the agents of the Commission whenever and as often and for such periods as the Commission may deem necessary; and the Commission and its agents and the Attorney General and his assistants and representatives may likewise examine the books and records of any such person as often as deemed necessary for the purpose of ascertaining the facts concerning the matters and things hereinabove set forth. The failure of any corporation chartered under the laws of this State to comply with the provisions of this Section and to keep such records in this State, or the refusal to permit the officers herein mentioned to inspect and examine the records herein required, shall constitute grounds for a forfeiture of its charter rights and privileges and the dissolution of its corporate existence. Any such violation by a foreign corporation shall be ground for enjoining and forever prohibiting such corporation from doing business in this State. It shall be the duty of the Attorney General when in his judgment the public interest requires it, upon his motion, and without leave or order of any judge or Court, to institute suit or other appropriate action in Travis County for forfeiture of charter rights of any domestic corporation and enjoining any foreign corporation from doing business in this State, when any such corporation is deemed guilty of violating the provisions of this Section; and, upon judgment against such defendant for violation of the provisions of this Section, the Court may, if in its judgment the public interest requires it, forfeit the charter rights of a defendant domestic corporation and enjoin a defendant foreign corporation from doing business in this State thereafter. [As amended Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 3; Acts 1934, 43rd Leg., 2nd C.S., p. 104, ch. 45, § 1; Acts 1935, 44th Leg., p. 180, ch. 76, § 5.]

Sec. 6.

Section 6 was repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.

Hearing by Commission as to waste

Sec. 7. Upon the initiative of the Commission, or upon the verified complaint of any person interested in the subject matter, that waste of crude petroleum oil or natural gas is taking place in this State, or is reasonably imminent, the Commission may hold a hearing, at such time and place as it may fix, to determine whether or not waste is taking place, or is reasonably imminent and what, if any, rule, regulation, or order should be made or what, if any, other action should be taken to correct, prevent or lessen such waste. At said hearing all parties interested shall be entitled to be heard and introduce evidence and to require the attendance of witnesses, and the production of evidence may be required as provided by law. If upon the hearing the Commission shall find that waste is taking place, or is reasonably imminent, the Commission shall make such rule, regulation or order as in its judgment is reasonably required to correct, prevent or lessen such waste.

In the event any such rule, regulation or order which the Commission may adopt provides for the limitation or fixing of the production of crude petroleum oil, or of natural gas from wells producing gas only, in any pool or portion thereof, the Commission shall distribute, prorate, or otherwise apportion or allocate, the allowable production among the various producers on a reasonable basis.

From and after the promulgation of any rule, regulation or order of the Commission it shall be the duty of each person affected thereby to comply with the same. [As amended Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 5; Acts 1935, 44th Leg., p. 180, ch. 76, § 6.]

Suits authorized by persons aggrieved by Commissions' regulations or orders

Sec. 8. Any interested person affected by the conservation laws of this State relating to crude petroleum oil or natural gas, and the waste thereof, including this Act, or by any rule, regulation or order made or promulgated by the Commission thereunder, and who may be dissatisfied therewith, shall have the right to file a suit in a Court of competent jurisdiction in Travis County, Texas, and not elsewhere, against the Commission, or the members thereof, as defendants, to test the validity of said laws, rules, regulations or orders. Such suit shall be advanced for trial and be determined as expeditiously as possible and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Court. In all such trials, the burden of proof shall be upon the party complaining of such laws, rule, regulation or order; and such laws, rule, regulation or order so complained of shall be deemed prima facie valid. [As amended Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 8; Acts 1935, 44th Leg., p. 180, ch. 76, § 14.]

Sec. 9.

Section 9 was repealed by Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, § 11.

Notice to Commission as condition precedent to injunction; procedure

Sec. 10. No injunction, whether temporary restraining order, temporary injunction, permanent injunction, or other character of injunctive relief, shall be granted against the Railroad Commission, its members, agents, and representatives, to restrain it or them from enforcing any rule, regulation, or order made and promulgated by the Railroad Commission under the conservation statutes of this State relating to oil and gas, or any amendments thereof, or restrain the enforcement of any such statute, except after notice to the Commission and a hearing as hereinafter provided; provided that when a petition or application is filed asking for any such character of temporary injunctive relief, the clerk of the court in which such petition or application is filed shall issue notice to the Commission in writing, which notice shall contain the docket number, style, and a brief statement of the nature of such suit, and such notice shall be served on the Commission by delivering a copy of such citation to the Commission or any member thereof, or to the Secretary thereof, in Travis County, for the service of other citations, and five (5) days from and after the service of such notice a hearing may be had on such application; provided further that the rule, regulation, or order complained of shall be taken as prima facie valid and the use and introduction of the verified petition of plaintiff shall not be sufficient to overcome the prima facie validity of the rule, regulation, or order complained of, or to empower the court to grant any injunctive relief against the enforcement of said rule, regulation, or order; provided further, that before any order granting any character of injunctive relief against any such statute or against any such rule, regulation, or order of the Commission shall become effective the plaintiff shall be required by the court to execute a bond with good and sufficient sureties in an amount to be fixed by the court reasonably sufficient to indemnify all persons when[1] the court may find from the facts proven will suffer damages by reason of the violation of the statute, rule, regulation, or order complained of, such persons to be named in the order of the judge when the amount of the bond is fixed by the court and entered of record; provided further, that the finding of the court that any party is likely to suffer damage shall not be admissible as evidence of damages in any suit on such bond. In determining the amount of such bond it shall be the duty of the judge to take into consideration all of the facts and circumstances surrounding the parties and the ability of the plaintiff to make such bond in order to determine the amount and the reasonableness thereof under the facts and circumstances. Any bond made or executed by any bonding or surety company shall be by some company authorized to do business in Texas. Such bond shall be made payable and approved by the judge of said court and shall be for the use and benefit of and may be sued upon by all persons named in said order who may suffer damages by reason of the violations of such statute, rule, regulation, or order. Upon motion and for good cause shown, the court, after notice to the parties, may from time to time increase or decrease the amount of such bond, and may add new beneficiaries, and may require new or additional sureties as the facts may justify. Any person interested in the subject matter may, in the discretion of the court, intervene in any such suit. All suits on such bonds shall be instituted within six (6) months from the date of the final determination of the validity in whole or in part of such rule, regulation, or order. [As amended Acts 1935, 44th Leg., p. 74, ch. 28, § 1.]

[1] So in enrolled bill. Should probably read "whom."

Appeals advanced in appellate court; jurisdiction of Courts of Civil Appeals to issue writs

Sec. 11. After notice and hearing is had upon application for any such injunctive relief either party to said suit has the right of appeal from any judgment or order therein granting or refusing any injunction, whether temporary restraining order, temporary injunction, permanent injunction, or other character of injunctive relief, or from any order granting or overruling a motion to dissolve any such injunction. Said appeal shall at once be returnable to the appellate court and said action so appealed shall have precedence in said appellate court over all cases, proceedings, and causes of a different character therein pending. The provisions and requirements of Article 4662, Revised Civil Statutes of 1925, relating to temporary injunctions shall likewise apply to appeals from any order granting or refusing a temporary restraining order, or granting or overruling a motion to dissolve such temporary restraining order, under the provisions of this Act. In the Court of Civil Appeals such court shall immediately and at as early a date as possible decide the questions involved therein; and in the event any question or questions shall be certified to the Supreme Court, or writ of error thereto be requested or granted, it is here made the duty of the Supreme Court immediately to set down said cause for hearing and decide the cause at as early a date as possible, and such cause shall have precedence over all other causes, proceedings and causes of a different character in such court.

The Courts of Civil Appeals and the judges thereof are hereby vested with jurisdiction to issue writs of prohibition, mandamus, and injunction to prevent the enforcement of any order or judgment of any trial court or judge granting any character of injunctive relief without notice and hearing in violation of the requirements of Section 10, Chapter 26, Acts of the First Called Session of the Forty-second Legislature, as amended by this Act. Whenever it shall appear that such requirements of said Section with respect to notice and hearing have not been complied with, upon proper application presented by the Railroad Commission to the Court of Civil Appeals having jurisdiction, the said Court of Civil Appeals shall be empowered and it shall be its duty to issue instanter the necessary writs of prohibition, mandamus, or injunction to prohibit and restrain the trial judge, from enforcing or attempting to enforce the provisions of the injunction issued by him, and to prohibit and restrain the party or parties in whose favor such order has been entered from acting or attempting to act under the protection of said order or from violating the statute or the

rule, regulation, or order of the Commission attacked. [As amended Acts 1935, 44th Leg., p. 74, ch. 28, § 2.]

Receiver for property involved in violations

Sec. 12. Whenever any order, rule or regulation promulgated by the Commission has been finally adjudged to be valid, in whole or in part, in any suit to which the Commission is a party, and thereafter any party to the suit or other proceedings in which such matter has been so adjudged, shall violate such rule, regulation, order or judgment, or shall thereafter suffer any property owned or controlled by him to be used in violation of any such rule, regulation, order, or judgment, the Commission shall have the power, and it shall be its duty to make application to the judge of the trial court, setting out such rule, regulation, order or judgment and that such party, subsequent to the date of such judgment, has violated or is violating such rule, regulation, order or judgment, and praying that a receiver be appointed as provided in this Section. Thereupon, the judge of such trial court may, after notice and hearing, appoint a receiver of the property involved or used in violation of such rule, regulation, order or judgment, and shall fix a proper bond for such receiver. As soon as such receiver has qualified, he shall take possession of such property, and such receiver thereafter shall perform his duties as receiver of such property under the orders of said court, strictly observing such rule, regulation, order or judgment. Any party whose property has been so placed in the hands of a receiver may move to dissolve such receivership and to discharge the receiver upon such terms as the court may prescribe.

Proceedings by Commission not to impair owner's action for damages

Sec. 13. Nothing herein contained or authorized, and no suit by or against the Commission, and no penalties imposed upon or claimed against any party violating any Statute of this State, or any rule, regulation or order of the Commission, shall impair or abridge or delay any cause of action for damages, or other relief, any owner of any land or any producer of crude petroleum oil or natural gas, or any other party at interest, may have or assert against any party violating any rule, regulation or order of the Commission, or any judgment herein mentioned. Any party owning any interest in any property or production which may be damaged by any other party violating this Act or any other Statute of this State prohibiting waste or violating any valid rule, regulation or order of the Commission, may sue for and recover such damages, and have such other relief as he may be entitled to in law or in equity.

Secs. 14, 15.

Section 14 as amended by Acts 1934, 43rd Leg., 3rd C.S., p. 120, ch. 64, § 1, was repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.

Section 15 amended article 6029, ante.

Obligations imposed by other acts unaffected

Sec. 16. Nothing in this Act contained shall be construed to relieve any party from the duties and obligations imposed by Chapter 36, Page 17,[1] of the Acts of the Forty-first Legislature at its Fifth Called Session, commonly known as the Common Purchaser Act and all amendments thereto,[2] nor to modify or change any provisions of said Acts. Nothing in this Act contained shall modify or change in any way the terms and provisions of Senate Bill No. 337, passed by the Forty-second Legislature at its Regular Session, commonly known as the Marginal Well Bill.[3] This Act shall not repeal any existing law except where it supersedes such existing law or is in conflict therewith.

[1] So in enrolled bill. Should read "Page 171".
[2] Article 6049a, ante.
[3] Article 6049b, ante.

Act cumulative

Sec. 17. This Act shall be cumulative of all laws of the State of Texas not inconsistent herewith, relative to crude petroleum oil and natural gas.

Persons enforcing orders of Commission as State employees

Sec. 18. All persons entrusted with the enforcement of the orders, rules, and regulations of the Commission shall be regular employees of the State of Texas and paid by the State of Texas, and no persons other than the regular employees of the State of Texas shall be charged with or relied upon for the performance of any such duties.

Partial invalidity

Sec. 19. If any of the sections, clauses, or any provisions of this Act or of any other Act referred to by this Act shall be held unconstitutional, or otherwise invalid or unenforceable, such holding shall not have the effect of nullifying or in any wise affecting the remainder of this Act, and the parts of this Act not so held to be unconstitutional or invalid shall remain in full force and effect.

Definitions

Sec. 20. The term "party" as used as this Act shall include all persons, firms, associations, corporations, trustees and receivers. The term "Commission" shall mean the Railroad Commission of Texas.

Anti-trust laws unaffected

Sec. 21. This Act shall not amend, repeal, change, alter or affect in any manner the Anti-trust Laws of this State.

Sec. 22.

Section 22 amended article 6032, ante.

Employees' and clerical help of Commission

Sec. 23. The Commission is hereby authorized and directed to employ such supervisors, deputy supervisors and umpires as may be necessary to carry out the provisions of this Act and all related laws and orders, rules and regulations of such Commission made thereunder, and it shall likewise employ such other assistants and clerical help as may be necessary from time to time for the same purpose, and there is hereby expressly appropriated out of the funds derived from the tax levied in this Act, a sufficient amount to pay such salaries and expenses. The salaries of such employees shall be fixed by the Railroad Commission until provided for by the next Session of the Legislature, such salaries to be reasonable and not to exceed salaries now being paid for similar service. [Acts 1931, 42nd Leg., 1st C.S., p. 46, ch. 26.]

Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2, amended sections 5, 7 and 8 of this Article.

Acts 1934, 43rd Leg., 2nd C.S., p. 104, ch. 45, also amended section 5.

Acts 1935, 44th Leg., p. 180, ch. 76, amended sections 5, 7 and 8.

Acts 1935, 44th Leg., p. 74, ch. 28, amended sections 10 and 11.

Section 2 of Acts 1934, 43rd Leg., 2nd C.S., p. 104, ch. 45, declares that this act shall not repeal any existing law not inconsistent therewith, but shall be considered to be cumulative of the same.

Section 3 of Acts 1935, 44th Leg., p. 74, ch. 28, repeals all conflicting laws and parts of laws.

Art. 6049d. Conservation of petroleum oil and natural gas; duties of Railroad Commission.

Secs. 1–3.

Sections 1, 2 and 3 amended articles 6014, 6014a, 6049c, § 5, ante.

Determining allowable production; allocation

Sec. 4. Whenever the full production, from wells producing gas only, from any common source of supply of natural gas in this State is in excess of the reasonable market demand, the Railroad Commission shall inquire into the production and reasonable market demand therefor and shall determine

the allowable production from such common source of supply, which shall be the reasonable market demand which can be produced without waste, and the Commission shall allocate, distribute or apportion the allowable production from such common source of supply among the various producers on a reasonable basis, and shall limit the production of each producer to the amount allocated or apportioned to such producer.

Sec. 5.

Section 5 amended article 6049c, § 5, ante.

Allocation among pools to prevent discrimination

Sec. 6. In order to prevent unreasonable discrimination in favor of one pool as against another, and upon written complaint and proof of such discrimination, the Commission is authorized to allocate or apportion the allowable production of crude petroleum oil upon a fair and reasonable basis among the various pools in the State; provided, however, that in allocating or ascertaining the reasonable market demand for the whole State the reasonable market demand of one pool shall not be discriminated against in favor of any other pool; and provided further, that the Commission shall ascertain the reasonable market demand of each such respective pool as the basis for determining the allotments to be assigned each such respective pool, to the end that such discrimination may be prevented. [As amended Acts 1935, 44th Leg., p. 180, ch. 76, § 9.]

Consideration in administration of act to consuming public

Sec. 6-a. It is further provided that in the administration of this Act the Commission shall, at all times, take into consideration and protect the rights and interests of the purchasing and consuming public of crude oil, and all of its products, such as gasoline, and lubricating oil; provided however, that if this Section be held for any reason unconstitutional the remaining sections of this Act shall, nevertheless, be valid; and it is declared that such remaining portions would have been included in this Act though this particular Section had been omitted. [As amended Acts 1935, 44th Leg., p. 180, ch. 76, § 15.]

Secs. 7, 8.

Sections 7 and 8 amended articles 6029, 6049c, § 8, ante.

Partial invalidity

Sec. 9. If any section, subdivision, paragraph, sentence, clause or word of this Act be held to be unconstitutional, the remaining portions of same shall, nevertheless be valid; and it is declared that such remaining portions would have been included in this Act though the unconstitutional portions had been omitted.

Act cumulative; definitions

Sec. 10. This Act shall be cumulative of all laws of the State of Texas, not inconsistent herewith and not hereby expressly repealed or amended, and the words "crude petroleum oil" and "natural gas" as used herein are not to be construed as referring to different substances than those referred to herein and in existing statutes by the use of the usual words "oil" and "gas." The word "Commission" shall mean the Railroad Commission of Texas. The words "pool," "common pool," "field," and "common source of supply" shall mean a common reservoir.

Sec. 11.

Section 11 repealed section 11j of article 6049a, ante, and section 9 of article 6049c, ante.

Construction as to acts repealed

Sec. 12. Nothing in this Act shall be construed to repeal Chapter Thirty-Six of Acts of the Forty-First Legislature, Fifth Called Session, known as the Common Purchaser Bill, and Amendments thereto,[1] except as specifically repealed hereby or inconsistent herewith; and this Act shall not be construed to repeal or modify Senate Bill No. 337, passed by the Forty-Second Legislature, at its Regular Session, known as the Marginal Well Bill.[2]

[1] Article 6049a, ante.
[2] Article 6049b, ante.

Anti-trust laws unaffected

Sec. 13. It is especially provided that nothing herein shall in any manner affect, alter, diminish, change or modify the anti-trust and/or monopoly statutes of this State, and that no provision of this Act shall in any manner directly or indirectly authorize a violation of such anti-trust and/or monopoly statutes, and in this connection it is hereby declared and especially provided by the Legislature of the State of Texas enacting this legislation that notwithstanding the provisions of Sections 10, 11 and 12, or any other sections of this Act, it is the legislative intent that no provision of this Act shall in any manner, affect, alter, diminish or amend any provision of the anti-trust and/or monopoly statutes of this State, or in any manner authorize a violation of such anti-trust and/or monopoly statutes; and it is further especially provided that if any provision of this Act shall be so construed by any court of this State as to in any manner affect, alter, diminish, or modify any provision of the anti-trust and/or monopoly statutes of this State, then in that event any such section, subsection, sentence or clause or any provision of this Act so construed as conflicting with said monopoly and/or anti-trust statutes, it is hereby declared null and void rather than the anti-trust and/or monopoly statutes of this State. The legislative intent herein expressed is to prevail and take precedence over the provisions of Sections 10, 11 and 12, or any other section or sections of this Act, regardless of any statement therein to the contrary. [Acts 1932, 42nd Leg., 4th C.S., p. 3, ch. 2.]

Sec. 14.

Section 14 was repealed by Acts 1935, 44th Leg., p. 180, ch. 76, § 17.

Acts 1935, 44th Leg., p. 180, ch. 76, §§ 9, 15, amended sections 6 and 6-a of this Article.

Art. 6049e. Definitions.—Sec. 1. Unless the context otherwise requires, the words defined in this Section shall have the following meaning when used in this Act, to-wit: "Commission" means the Railroad Commission of Texas. "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator and a fiduciary or representative of any kind. The word "pool" means an underground reservoir containing a connected accumulation of crude petroleum oil, or natural gas, or both. The words "crude petroleum oil," "crude petroleum," "crude oil," and "oil" mean the same thing whether used in this Act or elsewhere in the conservation Statutes of this State relating to oil and gas. The words "natural gas" and "gas" mean the same thing whether used in this Act or elsewhere in the conservation Statutes of this State relating to oil and gas. The words "product" or "product of crude petroleum oil or natural gas" mean any commodity or thing made or manufactured from crude petroleum oil or natural gas, and all derivatives or by-products of crude petroleum oil or natural gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, casinghead gas, casinghead gasoline, blended gasoline, and blends or mixtures of crude petroleum oil, or natural gas, or any derivatives or by-products thereof.

Secs. 2–7.

Sections 2–7 amended articles 6014, 6014a, 6029, 6049c, § 5, 6049c, § 7, 6036a, ante.

Newspaper publication of rules, regulations or orders of Commission

Sec. 8. The publication in any newspaper of any rule, regulation or order of the Commission shall not be required before such rule, regulation, or order shall become effective for any purpose except as may be required for the enforcement of the criminal provisions of Chapter 165, Acts of the Forty-third Legislature, Regular Session, or any amendment thereof.[1]

[1] Pen.Code, Art. 1112b.

Sec. 9.

Section 9 amended article 6049d, § 6, ante.

Prohibition of purchase, acquisition of sale in violation of statute

Sec. 10. The purchase, acquisition, or sale, or the transportation, refining, processing, or handling in any other way, of crude petroleum oil or natural gas, produced in whole or in part in violation of any oil or gas conservation Statute of this State or of any rule, regulation or order of the Commission thereunder, is hereby prohibited.

The purchase, acquisition, or sale, or the transportation, refining, processing, or handling in any other way, of any product of crude petroleum oil or natural gas which product is derived in whole or in part from any crude petroleum oil or natural gas or any product of either, which crude petroleum oil or natural gas or product was in whole or in part produced, purchased, acquired, sold, transported, refined, processed, or handled in any other way, in violation of any oil or gas conservation Statute of this State, or of any rule, regulation or order of the Commission thereunder, is hereby prohibited.

The Commission shall have the power to promulgate and enforce such rules, regulations and orders as may be necessary to carry the provisions of this Section into effect and to prevent a violation thereof; provided that whenever the Commission requires a showing that refined products were manufactured from oil legally produced, such requirement shall be of uniform application throughout the State; and provided that whenever such rule, regulation or order is promulgated for the purpose of controlling any condition in any local area or to prevent a violation in any local area, then upon the complaint of any person that the same or similar conditions exist in some other local area and the promulgation and enforcement of such rule could be beneficially applied to such additional area, the Commission shall determine whether or not such conditions do exist, and if it be shown that they do, then such rule, regulation or order shall be enlarged to include such additional area.

None of the provisions of this Section shall apply to the purchase of any products of crude petroleum when made by the ultimate consumer from a retail distributor thereof.

Secs. 11, 12.

Sections 11 and 12 amended articles 6033, 6036, ante.

Commission through Attorney General authorized to restrain by suit violation, jurisdiction of suits

Sec. 13. Whenever it shall appear that any person is violating or threatening to violate any provision of this Act, or of Title 102 of the Revised Civil Statutes of Texas, 1925, as amended, or of any rule, regulation or order of the Commission promulgated thereunder, the Commission, through the Attorney General, shall bring suit in the name of the State of Texas against such person in any Court of competent jurisdiction in Travis County, or in the county of the residence of the defendant or, if there be more than one defendant, in the county of the residence of any of them, or in the county in which such violation is alleged to have occurred, to restrain such person from violating such Statute or such rule, regulation, or order of the Commission, or any part thereof; and in such suit the Commission in the name of the State of Texas may obtain such injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant.

The violation by any person of any injunction granted under the provisions of this Section shall be sufficient grounds for the appointment by the Court, either upon its own motion or that of the Commission in the name of the State of Texas, of a receiver to take charge of such properties of such person, and to exercise such powers as in the judgment of the Court shall be necessary in order to bring about compliance with such injunction; provided, however, that no such receiver shall be appointed except after notice and hearing. The power to appoint a receiver as herein provided shall be in addition to and cumulative of the power to punish for contempt.

Secs. 14, 15.

Sections 14 and 15 amended article 6049c, § 8, 6049d, § 6a, ante.

Act cumulative

Sec. 16. This Act shall be cumulative of all laws of the State of Texas, not inconsistent herewith and not hereby expressly repealed or amended.

Repeals, penalties and pending prosecutions not affected

Sec. 17. Articles 6007, 6009, 6011, and 6017 of the Revised Civil Statutes of Texas, 1925; Section 6, Chapter 313, Acts of the Forty-first Legislature, Regular Session;[1] Sections 4 and 6, Chapter 26, Acts of the Forty-second Legislature, First Called Session;[2] Section 14, Chapter 2, Acts of the Forty-second Legislature, Fourth Called Session;[3] and Section 1, Chapter 64, Acts of the Forty-third Legislature, Third Called Session,[4] are hereby repealed. All other laws and parts of laws in conflict or inconsistent with any of the provisions of this Act are hereby repealed. No violation committed and no liability, penalty or forfeiture, incurred prior to the time when any Statute, or part thereof, repealed or altered by the provisions of this Act, shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such violations, liabilities, penalties and forfeitures, shall be instituted and proceeded with in all respects as if such prior Statute, or part thereof, had not been repealed or altered, except that where the mode of procedure or matters of practice have been changed by the provisions of this Act, the procedure had after this Act shall have taken effect in such prosecution or suit shall be, as far as is practicable, in accordance with the provisions of this Act. The amendment, repeal or expiration of a rule, regulation or order of the Commission, made or promulgated under the provisions of this Act, or of Title 102, Revised Civil Statutes of Texas, 1925, as amended, shall not have the effect of releasing or discharging any person violating said rule, regulation or order prior to the effective date of such amendment, repeal, or expiration from any liability, penalty or forfeiture incurred prior to such effective date; but prosecutions and suits for such violations, liabilities, penalties, or forfeitures shall be instituted and proceeded with in all respects as if such rule, regulation or order had not been amended, or repealed, or had not expired.

[1] Article 6036b, ante.
[2] Article 6049c, §§ 4, 6, ante.
[3] Article 6049d, § 14, ante.
[4] Article 6049c, § 14, ante.

Acts saved from repeal

Sec. 18. Nothing in this Act shall be construed to repeal Chapter 36, Acts of the Forty-first Legislature, Fifth Called Session, known as the "Common Purchaser Act," and the amendments thereto,[1] except as specifically repealed hereby or inconsistent herewith; and this Act shall not be construed to repeal or modify Chapter 97, Acts of the Forty-third Leg-

islature, Regular Session, known as the "Marginal Well Act." [2]

[1] Article 6049a, ante.
[2] Article 6049b, ante.

Anti-trust laws unaffected

Sec. 19. It is especially provided that nothing herein shall in any manner affect, alter, diminish, change or modify the anti-trust and/or monopoly Statutes of this State, and that no provision of this Act shall in any manner directly or indirectly authorize a violation of such anti-trust and/or monopoly Statutes, and in this connection it is hereby declared and especially provided by the Legislature of the State of Texas enacting this legislation that notwithstanding the provisions of any other sections of this Act, it is the legislative intent that no provision of this Act shall in any manner affect, alter, diminish or amend any provision of the anti-trust and/or monopoly Statutes of this State, or in any manner authorize a violation of such anti-trust and/or monopoly Statutes; and it is further especially provided that if any provision of this Act shall be so construed by any Court of this State as to in any manner affect, alter, diminish, or modify any provision of the anti-trust and/or monopoly Statutes of this State, then in that event any such section, sub-section, sentence, or clause or any provision of this Act so construed as conflicting with said monopoly and/or anti-trust Statutes, is hereby declared null and void rather than the anti-trust and/or monopoly Statutes of this State. The legislative intent herein expressed is to prevail and take precedence over the provisions of any other section or sections of this Act, regardless of any statement therein to the contrary.

Effective period

Sec. 20. Repealed by Acts 1941, 47th Leg., p. 907, ch. 559, § 1.

Prior to repeal of 1941 act, this section was amended by Acts 1939, 46th Leg., p. 500, § 1.

Partial invalidity

Sec. 21. If any section, portion, clause or part of this Act be invalid or unconstitutional, the same shall not affect any remaining parts of this Act and it is expressly hereby declared that the Legislature would have passed such remaining parts of this Act with such invalid or unconstitutional section, portion, clause or part omitted. [Acts 1935, 44th Leg., p. 180, ch. 76.]

Section 2 of the amendatory Act of 1939 provided that all of the other Sections of said Chapter 76 shall remain and continue in full force and effect. No offense committed against, and no liability, penalty, or forfeiture, either civil or criminal, incurred on account of a violation heretofore of any or all of the provisions of said Chapter 76, and said amendment thereof, or any rules, regulations, or orders issued pursuant thereto, shall be discharged or affected by the amendment of Section 20 of said Act as so amended, but prosecutions and suits, and such offenses, liabilities, penalties, or forfeitures shall be instituted and proceeded with in all respects as if said Section 20, and said amendment thereof, had read in its original enactment the same as provided for in this Act, and the procedure prescribed in said Chapter 76 or in any other applicable existing laws shall be followed in all prosecutions and suits, now pending or hereafter instituted on account of such offenses, liabilities, penalties, or forfeitures. Section 3 declared an emergency and provided that the act should take effect from and after its passage.

NATURAL GAS

Art. 6050. Classification.—The term "gas utility" and "public utility" or "utility," as used in this subdivision, means and includes persons, companies and private corporations, their lessees, trustees, and receivers, owning, managing, operating, leasing or controlling within this State any wells, pipe lines, plant, property, equipment, facility, franchise, license, or permit for either one or more of the following kinds of business:

1. Producing or obtaining, transporting, conveying, distributing or delivering natural gas: (a) for public use or service for compensation; (b) for sale to municipalities or persons or companies, in those cases referred to in paragraph 3 hereof, engaged in distributing or selling natural gas to the public; (c) for sale or delivery of natural gas to any person or firm or corporation operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (d) for sale or delivery of natural gas to the public for domestic or other use.

2. Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or may hereafter be acquired by the exercise of the right of eminent domain; or if said line or any part thereof is laid upon, over or under any public road or highway of this State, or street or alley of any municipality, or the right of way of any railroad or other public utility; including also any natural gas utility authorized by law to exercise the right of eminent domain.

3. Producing or purchasing natural gas and transporting or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and calling affected with a public interest, and the said business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the Commission as a gas utility.

Every such gas utility is hereby declared to be affected with a public interest and subject to the jurisdiction, control and regulation of the Commission as provided herein. [Acts 3rd C. S. 1920, p. 18.]

Art. 6051. May enjoin gas pipe line.—The operation of gas pipe lines for buying, selling, transporting, producing or otherwise dealing in natural gas is a business which in its nature and according to the established method of conducting the business is a monopoly and shall not be conducted unless such gas pipe line so used in connection with such business be subject to the jurisdiction herein conferred upon the Commission. The Attorney General shall enforce this provision by injunction or other remedy. [Id.]

Art. 6052. Utility office.—Every gas utility as defined herein shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in said office all books, accounts, papers, records, vouchers and receipts which the Commission shall require. No books, accounts, papers, records, receipts, vouchers or other data required by the Commission to be so kept shall be at any time removed from this State except upon such conditions as the Commission may prescribe. [Id.]

Art. 6053. Regulation of utilities.

Rates; rules and regulations

Sec. 1. The Commission after due notice shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, selling, and delivering gas by such pipe lines in this State; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings pertaining to the gas business in all their relations to the public, as the Commission may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to their gas

pipe lines and producing, receiving, transporting, and distributing facilities; and regulate and apportion the supply of gas between towns, cities, and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the Commission shall prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the Commission it is practicable to do so; and it shall exercise its power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county, or Commissioners precinct showing a substantial interest in the subject, or upon petition of the Attorney General, or of any County or District Attorney in any county wherein such business or any part thereof may be carried on. [As amended Acts 1939, 46th Leg., p. 501, § 1.]

Malodorants investigation and regulation

Sec. 2. In addition to the duties and powers of the Commission hereinabove set forth, it is empowered and it shall be its duty to investigate the use of malodorants by persons, firms, or corporations engaged in the business of handling, storing, selling, or distributing natural and liquefied petroleum gases, including butane and other odorless gases, for private or commercial uses, or supplying the same by pipe lines or otherwise, to any public building or buildings, or to the general public, and the Commission is empowered to require such persons, firms, or corporations to odorize such gas by the use of a malodorant agent of such character as to indicate by a distinctive odor the presence of gas; such malodorant agent so required to be used, however, shall be non-toxic and non-corrosive and not harmful to leather diaphrams in gas equipment, the method of its use and containers and equipment to be used in connection therewith to be under the direction of and as approved by the Railroad Commission of Texas; the Commission having full power and authority to prescribe such rules and regulations as in its wisdom may be deemed necessary to carry out the purposes of this Act. Nothing herein contained shall apply to gas transported out of the State of Texas. [As amended Acts 1939, 46th Leg., p. 501, § 1.]

Equipment for storing and dispensing liquefied petroleum gases

Sec. 3. All containers and pertinent equipment used or to be used in this state for the storage, transporting and/or dispensing of liquefied petroleum gases, by either industrial, commercial and/or domestic users, together with appliances used or to be used in this state with liquefied petroleum gases as a fuel, shall be designed, constructed, assembled, equipped and installed as specified by the rules and regulations of the Railroad Commission, adopted and/or promulgated as provided in this Act.

Violations of section

Sec. 4. The selling or exposing for sale, or constructing, or assembling, or repairing, or equipping, or installing, or filling with fuel, or storage of fuel within, or dispensing of fuel therefrom, or transporting fuel within such containers and/or pertinent equipment, and the selling or exposing for sale or using of such appliances using or to use liquefied petroleum gas as a fuel, without same having been designed, constructed, assembled, and equipped as specified by the rules and regulations of the Railroad Commission as provided for in this Act, shall be a violation of this Act and shall be subject to all fines, penalties and restrictions provided in this Act and Title 102, Revised Civil Statutes of Texas, 1925, as amended. The use of the term "fuel" herein means "liquefied petroleum gases."

Penalties

Sec. 5. In addition to and supplemental of injunctive relief and other penalties provided, any violation of this Act and/or the rules and regulations of the Railroad Commission promulgated hereunder, shall constitute a misdemeanor and be punishable in any court of competent jurisdiction by a fine of not less than Five ($5.00) Dollars and not more than Two Hundred ($200.00) Dollars. Each day such violation continues shall constitute a separate offense and be punishable as such.

Rules and regulations; exceptions; cooperation by Department of Public Safety

Sec. 6. In the manner provided in Section 4 of this Act, the Railroad Commission of Texas shall have full power and authority to adopt and promulgate such rules and regulations as shall be reasonably necessary to carry out the purpose of this Act and for the protection, health, welfare and safety of the public and persons using such materials and shall be in substantial conformity with generally accepted standards of safety concerning the same subject matter, such as the regulations recommended by the National Fire Protection Association and adopted and published by the National Board of Fire Underwriters. In addition to all other rules and regulations, the Railroad Commission shall be required to prescribe that trucks or trailers on which are mounted bulk tanks with facilities for unloading liquefied petroleum gas contents into other containers shall be so arranged that all rigid pipes or valves are recessed or otherwise protected by heavy guard rails to afford maximum protection against breaking off or dislocating said pipes or valves in case of an accident. Containers subject to the regulations of the Interstate Commerce Commission and containers which are owned or used by the Government of the United States of America are excepted from the provisions of this section. Provided, however, that nothing herein shall be construed to alter, modify, or amend the Motor Carrier Law of the State of Texas. The Department of Public Safety of the State of Texas shall cooperate with the Railroad Commission of Texas in the enforcement of the provisions of this Act.

Nothing contained in this Act shall apply to the sale in the ordinary course of business of any part of any appliance which may be employed for uses other than as an integral part of a liquefied gas system when the seller does not service, make repairs or permanent connection to any such liquefied gas system, as long as said appliance or container is approved under the standards set by the Railroad Commission of Texas. Nor shall this Act apply to containers subject to the regulation of the Interstate Commerce Commission, and containers which are owned and used by the Federal Government.

License; safety and protection of public

Sec. 7. (1) No person, firm or corporation shall engage in this state in the manufacturing, and/or assembling, and/or repairing, and/or selling, and/or installing of containers to be used with liquefied petroleum gases as a fuel, nor shall such person, firm, or corporation engage in the sale, transportation, dispensing or storage of liquefied petroleum gases within this state, except where stored by the ultimate consumer for consumption only, without having first obtained from the Railroad Commission of Texas under the provisions of this Act a license so to do. Applications for such licenses shall be in writing and shall contain such information as the Commission shall prescribe. No such license shall be issued until a hearing is had thereon and the Commission has determined that the applicant has made good and sufficient proof that he can and will meet all safety requirements provided in this Act and by the rules and regulations of the Railroad Commission, and the Commission finds that such applicant is qualified and the evidence adduced justifies issuance of such license. The Railroad Commission shall have the authority to

promulgate rules and regulations for the safety and protection of the public.

Employment of qualified person

Sec. 8. Provided further, that the Commission shall have the authority to require every person, firm or corporation who makes installations or repairs of containers, equipment, and/or appliances, or firms, persons or corporations using installation men, service men, and repair men, to have at least one person in their regular employ or organization who shall prove through an examination given by the Railroad Commission that he has a thorough knowledge and understanding of the containers, appliances and equipment they intend to install; and providing further that he is competent and qualified to properly install, service and/or repair such containers, appliances and equipment; such examination to be based upon recognized standard codes and practices as promulgated by the Railroad Commission. Persons, firms, corporations or associations who handle appliances exclusively for use with natural gas, and who do not offer their appliances for sale or use with liquefied petroleum gases, are exempted from the provisions of this Act.

License of present operators

Sec. 9. Provided further, that any operator or dealer in this state for which application is made who was in bona fide legal operation on and subsequent to May 1, 1945, upon written application for such license made to the Commission within sixty (60) days from the effective date of this Act, the Commission shall issue to such applicant, upon satisfactory proof that such operator or dealer was in bona fide legal operation in the state on May 1, 1945, and had been so continuously since such time, a license authorizing the continuance of such operation; and pending determination of such application the continuance of such operation shall be lawful; provided, same shall be subject to compliance with the terms and provisions of this Act.

Annual fees

Sec. 10. For the purpose of defraying the expenses of administering this Act, each person, firm, corporation or association engaged in one or more of the pursuits named in subsection (1) of this section, except as otherwise provided in this subsection, shall at the time of issuance of such license, and annually thereafter, on or between September 1st and September 15th of each calendar year pay to the Railroad Commission a special fee of Twenty-five ($25.00) Dollars; except that each person, firm, or corporation who operates a truck or trucks in the wholesale or retail delivery of liquefied petroleum gas, shall at the time of issuance of such license, and annually thereafter, on or between September 1st and September 15th of each calendar year, pay to the Railroad Commission a special fee of Fifty ($50.00) Dollars and when such fifty dollar fee is paid, said firm or corporation shall not be liable for the payment of the Twenty-five ($25.00) Dollar fee as provided herein.

If the license here provided for is issued after the month of September of any year, all fees shall be prorated to the remaining portion of the year to August 31st following, but in no case less than one-fourth of the total annual fee.

Bonds and insurance

Sec. 11. No license shall be issued pursuant to this section, unless such licensee shall first file with the Commission a surety bond in the sum of Two Thousand ($2,000.00) Dollars with a bonding company authorized to do business in Texas. All such bonds shall provide that the obligator therein will indemnify and pay the State of Texas, to the extent of the face amount thereof, all judgments which may be recovered in the name of the State of Texas against such licensee, during the term of such bond and proximately caused by any violation, by said licensee, of the terms of this Act or any orders or rules promulgated by the Railroad Commission as authorized by this Act.

In addition to the bond herein required, such licensee shall be obligated to procure from some reliable insurance or surety company qualified to do business in the State of Texas, and keep same in force so long as they shall continue in business, a policy of insurance or surety bond which shall guarantee the payment of all damages which proximately result from any act of negligence, while engaging in any of the activities as herein provided, on the part of said licensee, their agents and employees, to both the employees of said licensee and also to the public generally, said policy or bond to be in the sum of not less than Ten Thousand ($10,000.00) Dollars for personal injury for any one accident, and not less than Five Thousand ($5,000.00) Dollars for property damage for any one accident. Provided that this section shall not be applicable unless and until such bonds or policies of insurance are available for purchase and further provided that such bonds or policies of insurance shall be approved by the Railroad Commission of Texas.

Refusal or cancellation of license

Sec. 12. The Commission shall have the power and authority, and it shall be its duty, to refuse to grant a license to any applicant, or to cancel the license of any licensee, if it shall appear to the Commission, upon hearing as herein provided, that such applicant or licensee has violated or failed to comply with any provision of the Act.

Investigations; revocation or suspension of licenses

Sec. 13. Upon receipt of written complaint, in such form as it may prescribe, from one of its own authorized representatives, stating that a licensee hereunder has wilfully or negligently violated or failed to comply with any of the provisions of this Act, the Commission is authorized and empowered, and its duty shall be, to hold a hearing under the provisions of this Act, and under such rules and regulations not inconsistent therewith as the Commission may prescribe, to consider such complaint. If at such hearing the Commission finds that such licensee has violated or failed to comply with any of the provisions of this Act, then the Commission shall revoke or suspend such license as it may find the ends of justice will be better subserved. The Commission is authorized and empowered to investigate on its own motion any matters pertaining to the subject of this Act, and shall have the power to hold such hearing as it may deem necessary therefor, to summon and compel the attendance of witnesses, to require the production of any records or documents deemed by it to be pertinent to the subject matter of any investigation, and to provide for the taking of depositions of witnesses under such rules as it may prescribe.

Notice of hearings; right to be heard

Sec. 14. Notice of any hearing, and of the time and place thereof, shall be given by registered mail not less than ten (10) days exclusive of the day of mailing before such hearing, addressed to all parties whom the Commission may deem to be interested in the subject matter of such hearing. Any licensee against whom a complaint has been filed shall be notified of the hearing on such complaint as herein provided, and shall have the right to appear at such hearing, file answer, introduce evidence, and be heard both in person and by counsel.

Findings and judgment; action for reinstatement

Sec. 15. At the conclusion of any hearing held to consider a complaint filed against any licensee hereunder, the Commission shall enter its findings and judgment in writing, and the same shall be recorded in a permanent record to be kept by the Commission,

and a copy thereof shall be furnished to the licensee complained against. Any licensee whose license is cancelled or suspended by the Commission, may within thirty (30) days after such cancellation or suspension, and not thereafter, file an action for reinstatement against the Commission in the District Court of the residence of the licensee or applicant for license, and such appeal to said District Court shall be a trial de novo, and such trial on appeal shall be the same as if such suit had been filed originally in said court. If any licensee whose license has been cancelled or suspended by the Commission shall, within ten (10) days after the receipt of information of such cancellation or suspension, give notice in writing to the Commission of his intention to file such suit, the action of the Commission in suspending or cancelling such license shall be suspended for a period of thirty (30) days; but unless suit shall be filed within such time, the action of the Commission shall be final. If suit shall be filed against the Commission to re-instate such license within such time, the action of the Commission shall remain suspended until the validity of the license in question shall be determined by the court in said suit.

Procedure on refusal of license

Sec. 16. The same procedure, rights and penalties, as herein specified in cases of revocation or suspension of licenses are available, where applicable, in cases where the Commission refuses to grant a license. No formal notice of hearing on an application for license need be given applicant, other than that he be given a reasonable opportunity to appear in support of his application before the Commission renders its order refusing him a license. Appeal shall be to the District Court of the residence of the applicant in all cases where an application for a license hereunder is denied, subject to the same limits and restrictions as in cases of appeals from revocations and suspensions.

Witnesses; books, papers and documents

Sec. 17. For the purpose of enabling all parties to procure the personal attendance of witnesses in any suit brought in the District Court of Travis County, Texas, as provided in this Act, and in Title 102, Vernon's Annotated Revised Civil Statutes of the State of Texas, for purposes of injunctive relief, for collections of penalties, or for appeal from an order of the Commissioners, the clerk of said court when such suit or appeal is pending, on the application of the Attorney General or any of his assistants, or on the application of any other party to said suit, shall issue a subpoena for any witness or witnesses who may be represented to reside within any county in the State of Texas, or to be found therein at the time of the trial; provided the clerk shall not issue subpoenas in excess of five (5) to compel the attendance of state witnesses or a like number to compel the attendance of defense witnesses, without first obtaining a written order from the trial judge. Should any witness, summoned as aforesaid, fail to appear and testify in said case, he shall be guilty of contempt of court and may be fined not exceeding One Hundred ($100.00) Dollars, and may be attached and imprisoned in jail until he shall attend said court in person and testify as to all facts within his knowledge with reference to the matter inquired about; provided, however, that any witness who resides out of the county where such suit is pending shall not be required to attend said court and testify in person until the party or parties requesting his testimony shall have tendered him, if requested by said witness, sufficient money to defray his actual traveling expenses, not exceeding Four Cents (4¢) per mile going to and returning from the court by the nearest practical conveyance, and Two ($2.00) Dollars per day for each day he may necessarily be absent from home as a witness in such cases. In case the state is the party requesting the personal attendance of such witness, such expenses shall be paid in the same manner as costs in felony cases. All books, papers, documents, etc., desired as evidence may be produced in the above provided manner.

Disposition of fees

Sec. 18. All fees received by the state from licenses issued under this Act shall be made available to the Railroad Commission for use in paying the legitimate expenses incurred in administering and enforcing the provisions of this Act, and for no other purpose; provided, however, that any excess funds remaining at the end of each two-year period shall go to the General Fund.

Non-compliance with order, rule or regulation

Sec. 19. The failure of any person or persons, firm or corporation, municipal or otherwise, or any association engaged in manufacturing, distributing, storing, or handling such gases in this state or, manufacturing, selling, installing, using, fueling, or refueling such containers and pertinent equipment as set out in this Act, within forty-eight (48) hours after the receipt of any order of the Commission, to comply fully with this Act or any such order, rule, or regulation, shall be a violation of this Act, subjecting such person, or persons, and the officers and executives of such named concerns to a penalty of One Hundred ($100.00) Dollars for each day that they shall fail to comply with such Act; and the Attorney General is empowered to bring suit for the collection of the same in the District Court of Travis County, Texas. [Acts 1920, 36th Leg., 3rd C.S., p. 18, ch. 14, § 3; Acts 1937, 45th Leg., p. 737, ch. 364; Acts 1939, 46th Leg., p. 501, § 1; Acts 1945, 49th Leg., p. 629, ch. 358, § 1.]

Section 2 of the act of 1945, read as follows: "If any clause, provision, section, or part of this Act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not invalidate any other term or provision hereof and the Legislature hereby declares its intention to re-enact each and every clause, requirement, provision and part hereof independently of any such part so invalidated."

See, also, notes under article 6053a.

Section 19 of this article is void for uncertainty. Eubanks v. State, Civ.App., 203 S.W.2d 339.

Art. 6053a. [See Article 6053.]

This article, incorporated sections 2, 2a, 2b, 3, 4 and 5 of article 6053 as amended by Acts 1939, 46th Leg., p. 501, § 1. As subsequently amended and renumbered by Acts 1945, 49th Leg., p. 629, ch. 358, § 1, sections 2, 2a, 2b and 3 are incorporated in article 6053 as sections 2–19.

Sections 4 of article 6053a as amended by Acts 1939, 46th Leg., p. 501, § 1, read as follows:

"Section 4. Before the adoption or promulgation of any orders, rules, and regulations affecting the liquefied petroleum gas industry under the terms and provisions of this Act, the Railroad Commission shall give ten (10) days notice to all licensees embraced within this Act, by mailing to such licensees a copy of the orders, rules and regulations which the Commission proposes to adopt and promulgate, which notice shall state the time and place when the Railroad Commission will hear and consider any objections to any such orders, rules and regulations, and any person, firm or corporation affected by such orders, rules and regulations shall have the right to file written objections thereto and be heard in person or by counsel, and after such hearing the Railroad Commission shall, in its discretion, adopt and promulgate any such orders, rules and regulations as published in such notice, or shall make such amendments and modifications thereof as the Railroad Commission shall deem just and equitable, and if, as and when any such orders, rules and regulations are finally adopted, the Railroad Commission shall, within ten (10) days thereafter, cause the same to be published in at least three (3) newspapers of general circulation throughout the State, and a copy thereof to be mailed to each licensee hereunder.

Section 5 as amended by the Act of 1939 provided that nothing therein should be construed as enlarging or changing the powers and jurisdiction heretofore delegated to the Railroad Commission by the Acts of 1920, Thirty-sixth Legislature, Third Called Session, Chapter 14, except as herein specifically provided in Section 2a, 2b, and Section 4, and provided that partial invalidity should not affect the remaining parts of the Act.

Art. 6054. Orders, etc., reviewed.—All orders and agreements of any company or corporation, or any person or persons controlling such pipe lines establish-

ing and prescribing prices, rates, rules and regulations and conditions of service, shall be subject to review, revision and regulation by the Commission on hearing after notice as provided for herein to the person, firm, corporation, partnership or joint stock association owning or controlling or operating the gas pipe line affected. [Id.]

Art. 6055. To refund excess charges.—If any rate or charge for gas or for service or for meter rental or any other purpose pertaining to the operation of said business shall be made or promulgated by any person, firm or corporation owning or operating any gas pipe line, or in the event of an inadequate supply of gas or inadequate service in any respect, and complaint against same shall be filed by any person authorized by the preceding article to file such petition and such complaint is sustained in whole or in part, all persons and customers of said gas pipe line shall have the right to reparation or reimbursement of all excess in charges so paid over and above the proper rate or charge as finally determined by the Commission from and after the date of the filing of such complaint. [Id.]

Art. 6056. Operator's reports.—The Commission may require of all persons or corporations operating, owning or controlling such gas pipe lines sworn reports of the total quantities of gas distributed by such pipe lines and of that held by them in storage, and also of their source of supply, the number of wells from which they draw their supply, the amount of pressure maintained, and the amount and character and description of the equipment employed, and such other matters pertaining to the business as the Commission may deem pertinent. [Id.]

Art. 6057. Discrimination.—No such pipe line public utility shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes, or to prescribe rates and regulations for service from or to other or different places, as it may determine. [Id.]

Art. 6058. Appeal from city control.—When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal de novo. Whenever any local distributing company or concern, whose rates have been fixed by any municipal government, desires a change of any of its rates, rentals or charges, it shall make its application to the municipal government where such utility is located and such municipal government shall determine said application within sixty days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said sixty days, then the utility may appeal to the Commission as herein provided. But said Commission shall determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the Commission. [Id.]

Art. 6059. Appeal from orders.—If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court. Either party to said action may have the right of appeal; and said appeal shall be at once returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them. [Id.]

Art. 6060. Utility tax.—Every gas utility subject to the provisions of this subdivision on or before the first day of January and quarterly thereafter, shall file with the Commission a statement, duly verified as true and correct by the president, treasurer or general manager if a company or corporation, or by the owner or one of them if an individual or co-partnership, showing the gross receipts of such utility for the quarter next preceding or for such portion of said quarterly period as such utility may have been conducting any business, and at such time shall pay into the State Treasury at Austin a sum equal to one-fourth of one per cent of the gross income received from all business done by it within this State during said quarter. [Id.]

This article was repealed by Acts 1931, 42nd Leg., p. 111, ch. 73, § 10, except insofar as it imposed a license fee or tax of one-fourth of one per cent against persons owning, operating, or managing pipe lines, as provided in section 2 of article 6050, and it was further provided that "said fund shall be used for enforcing the provisions of Articles 6050 to 6066, inclusive".

Art. 6061. Report to Governor.—The Commission shall on December 1st of each year make a full detailed report to the Governor, who shall transmit the same to the next succeeding session of the Legislature, showing:

1. The proceedings of said Commission to such time with respect to the gas utilities defined herein.
2. The receipts of gross income taxes from all sources, indicating the sources.
3. The expenditures made under and in accordance with this subdivision, the nature of such expenditures, including in addition to other items of expenditures, the names, titles, nature of employment, salaries of and payments made to all persons employed for any purpose under the terms of this subdivision with statement of traveling and other expenses incurred by each of said persons and approved by the Commission. [Acts 3rd C.S., 1920, p. 18.]

Art. 6062. Penalties.—Any public utility as herein defined violating any provision of this subdivision or failing to perform any duty herein imposed or to comply with any valid order of the Commission when not stayed or suspended by order of the court, shall be subject to a penalty payable to the State of not less than one hundred nor more than one thousand dollars for each offense, each violation to constitute a separate offense, and each day that such failure continues shall constitute a separate offense. An additional penalty of a like amount together with reasonable attorney's fees may also be recoverable by and for the use of any person, corporation or association of persons against

whom there shall have been unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved. [Id.]

Art. 6063. Receiver.—Whenever any person, firm or corporation, owning, operating or controlling such gas pipe line shall violate any provision hereof or any rule or regulation of the Commission, the Commission shall, whenever in its judgment the public interests require it, apply to any court of this State having jurisdiction for a receivership of such concern guilty of such violation. Such receiver shall control and manage the property of such gas pipe line under the direction of the court as provided by law in receivership matters. The grounds for appointment of receiver provided for in this article shall be in addition to other grounds provided by law. [Id.]

Art. 6064. Duties of pipe line expert.—The supervisor shall likewise assist the Commission in the performance of its duties under this subdivision under the direction of the Commission, under such rules and regulations as it may prescribe. [Id.]

Art. 6065. Employees of Commission.—The Commission may employ and appoint, from time to time, such experts, assistants, accountants, engineers, clerks and other persons as it deems necessary to enable it at all times to inspect and audit all records or receipts, disbursements, vouchers, prices, pay rolls, time cards, books and official records, to inspect all property and records of the utilities subject to the provisions hereof, and to perform such other services as may be directed by the Commission or under its authority. Such persons and employees of the Commission shall be paid for the service rendered such sums as the Commission may fix. The number of employees and appointees employed or appointed under this subdivision and the sums of money paid to them for their services shall be subject to the approval of the Board of Control, and no employment or appointment hereunder shall be valid without such approval. [Id.]

Art. 6066. Expenditures limited.—The salary and expenses of the expert and his assistant and the salaries, wages, fees, and expenses of every other person employed or appointed by the Commission under the provisions of this subdivision, and all other expenses, costs, and charges, including witness fees and mileage incurred by or under authority of the Commission or a Commissioner in administering and enforcing the provisions of this subdivision or in exercising any power or authority hereunder, shall be paid out of the Gas Utilities Fund provided for by Article 6060,[1] as amended by H.B. No. 547, Acts of the Regular Session of the 42nd Legislature, by the State Treasurer on warrants of the Comptroller on orders or vouchers approved by the Commission or Chairman thereof. The entire amount derived from the tax imposed by Article 6060, as amended, shall be used for the purposes of enforcing the provisions of the preceding Articles 6050, et seq. Any surplus remaining in this fund after paying all such salaries and expenses as may be contracted to be paid and incurred and such as may be reasonably estimated by the Commission for its use shall be paid over to the General Revenue Fund on September First of each year, beginning September 1, 1932. Provided, that not more than Seventy Thousand ($70,000.00) Dollars shall ever be spent in any one Calendar year. [As amended Acts 1931, 42nd Leg., p. 319, ch. 190, § 1.]

[1] So in enrolled bill. Session Laws read "6066".

Art. 6066a. Regulation of transportation of oil or products thereof

Definitions

Sec. 1. (a) The word "Commission" shall mean the Railroad Commission of Texas. The phrase "order of the Commission" shall include any rule, regulation or order adopted by the Railroad Commission of Texas pursuant to the oil and gas conservation statutes of this State, including all provisions of Title 102 of the Revised Civil Statutes of Texas of 1925 and all amendments thereto.

(b) The word "oil" or phrase "crude oil" herein used shall include crude petroleum oil in its natural state as produced and crude petroleum oil from which only the basic sediment and water have been removed. The word "gas" herein used shall include natural gas, bradenhead gas, casinghead gas, and gas produced from an oil or gas well.

(c) The word "product" shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of petroleum and/or any and all liquid products or by-products derived from crude petroleum oil or gas, whether hereinabove enumerated or not.

(d) "Unlawful oil," as that term is used herein, shall include oil which has been produced within the State of Texas from any well or wells in excess of the amount allowed by any order of the Commission, and oil which has been produced within said State in violation of any law of said State or in violation of any order of the Commission, and shall include any oil transported in violation of any such law or in violation of any such order.

(e) "Unlawful product" shall be construed to include any product any part of which was processed or derived in whole or in part from unlawful oil or from any product of unlawful oil, or from unlawful gas, or which is transported in violation of any order of the Commission or in violation of any law of Texas.

(f) "Unlawful gas" shall be construed to include gas produced or transported in violation of any order of the Commission or so produced or transported in violation of any law of Texas.

(g) The word "tender" shall mean a permit or certificate of clearance for the transportation of oil or products approved and issued or registered under the authority of the Commission.

The form of any tender and the application therefor shall be prescribed by order of the Commission and shall show the name and address of the shipper or person tendering oil or products for transportation, name and address of the transporting agency (where such order requires the transporter to be designated), quantity and true classification of each commodity authorized to be transported, place or places where delivery will be made to the transporting agency, and such other related data as may be prescribed by order of the Commission. A tender shall bear a date and serial number, shall show its expiration date, and shall be executed by the agent or agents authorized by the Commission to deny, approve or register tenders. No tender shall be approved or registered by such agent authorizing the shipment or transportation of any unlawful oil or unlawful product.

(h) The word "manifest" shall be construed to include any document issued by a shipper covering oil or products to be transported by truck or other motor vehicle.

The form of a manifest may be prescribed by order of the Commission, and shall bear a certificate signed by the shipper stating the amount of oil or products and each of them to be transported. A manifest shall show, when required by order of the Commission, the date and serial number of the tender, if a tender is required, authorizing such transportation, or any seal or number or other evidence of such tender, the amount and classification of each such product to be transported, the name and address of the transporting agency, name and address of shipper, name and address of consignee, if known, the name and address

of the driver or operator of such truck or vehicle; the number on the license plate on such truck or vehicle; the day, hour and place where such truck or vehicle was loaded and the destination, if known, of such load, and such other related data as may be required by order of the Commission. If the form of manifest is not prescribed by order of the Commission, each shipper required to issue a manifest to a transporter shall utilize the form of manifest commonly used in commercial transactions or the form of manifest required by any State agency or Department of this State to accompany the movement of gasoline.

(i) The word "person" shall include natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, or representative of any kind.

(j) The phrase "shipping papers" shall be construed to include bills of lading covering oil or products transported by railway, manifest covering oil or products transported by truck or motor vehicle, and any written document covering oil or products transported by pipe line, boat or barge. The phrase "delivery ticket" shall be construed to include any expense bill or written document covering oil or products delivered.

Transportation; regulations

Sec. 2. (a) Whenever, by order of the Commission, a tender is required before oil or products may be transported, and whenever pursuant to such order, an agent of the Commission approves and issues or registers a tender authorizing the transportation of oil or products by trucks or motor vehicles, it shall be the duty of the person obtaining such tender to sign and issue a manifest to the operator of each such truck or motor vehicle, which manifest shall show the date and serial number of the tender authorizing such transportation; a separate manifest shall be issued for each load carried by such truck or motor vehicle. The person obtaining such tender shall not transport or deliver or cause or permit to be transported or delivered any more nor any different commodity than is authorized by such tender. Each transporter authorized to transport oil or products on a manifest issued by a shipper shall not receive for transportation any different commodity than is described in such manifest and shall not receive oil or products in excess of the amount authorized by such manifest. The person authorized to transport oil or products by a manifest issued by a shipper, which manifest bears on its face the date and serial number of such tender, may rely upon the manifest delivered to him, and each consignee or person to whom oil or a product covered by such manifest is delivered by such transporter may rely upon such manifest as authority for receiving the commodity delivered, provided such manifest appears to be valid on its face, is signed by the shipper, and bears the certificate of the shipper that the transportation of such oil or products is authorized by the tender the date and serial number of which is shown on such manifest.

(b) Whenever, pursuant to any order of the Commission, the transportation of oil or products by truck or motor vehicle is prohibited without a manifest showing the date and serial number of a tender authorizing such transportation, it shall be unlawful for any person to transport by truck or motor vehicle any oil or products without having or carrying in such truck or vehicle at all times between the point of origin and point of destination of such shipment a manifest bearing the date and serial number of the tender authorizing such transportation; and it shall be unlawful for any person to ship or transport or cause to be shipped or transported by truck or motor vehicle any oil or product without furnishing the operator of such truck or motor vehicle a manifest bearing the date and serial number of such tender, authorizing such shipment or transportation; provided, if the person to whom such tender is issued is the operator of such truck or motor vehicle and such tender identifies the truck or motor vehicle by license number and covers one load, such tender in lieu of a manifest may be carried in said truck or vehicle. Products shipped or transported in violation of this Section shall be deemed to be unlawful products. Oil shipped or transported in violation of this Section shall be deemed to be unlawful oil.

(c) It shall be the duty of every person who transports any oil or products by truck or motor vehicle, under conditions that require a tender or manifest as herein provided, to secure from each person to whom any part of such oil or products is delivered a receipt upon the reverse side of said tender or manifest, which receipt shall contain the number of gallons of oil and of each product delivered, the date of delivery and the signature and address of the purchaser or consignee of said oil or products. It shall be the duty of every person who transports any oil or products by truck or motor vehicle and makes deliveries thereof to keep in this State for a period of two (2) years every such tender or manifest issued to him, together with the receipts and endorsements thereon. Such tenders or manifests shall at all times be subject to the inspection of the Commission, its agents and inspectors.

Arrests for unlawful transportation

Sec. 3. In order to enforce the provisions of this Act every agent of the Commission, Highway patrolman, sheriff, constable and all peace officers of this State are empowered to stop any motor vehicle which may appear to be transporting oil or products, for the purpose of taking samples of the cargo and inspecting the shipping papers of such motor vehicle, provided such agent or officer shall have probable cause and reasonable grounds to believe that such vehicle is transporting any unlawful oil or unlawful products. If upon examination of such motor vehicle it is found that the same is transporting any unlawful oil or unlawful product, or is transporting any oil or product without authority of a tender required by order of the Commission, such authorized agent or officer shall, with or without warrant, arrest the driver thereof and carry him before the nearest Justice of the Peace and file a complaint under this Act against such driver. In any criminal action involving the provisions of this Act, no fee shall be allowed any such agent, patrolman, sheriff, constable or other officer for executing any warrant of arrest or capias or for making any arrest with or without a warrant.

Fines or penalties

Sec. 4. (a) Every person who transports by truck or motor vehicle, oil or products, who shall wilfully and knowingly fail to stop such truck or vehicle, when commanded to do so by any agent of the Commission or by any authorized officer or who shall wilfully fail to permit inspection by such agent or officer of the contents of or the shipping papers accompanying such truck or vehicle, shall be punished by a fine of not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200).

(b) Every person who shall knowingly violate any provision of Section two (2) of this Act, or who shall knowingly ship or transport or cause to be shipped or transported by truck or motor vehicle over any public highway, in this State any unlawful oil or unlawful product, or who shall knowingly ship or transport or cause to be shipped or transported by truck or motor vehicle any oil or product without authority of a tender whenever a tender is required by any order of the Commission, or who shall knowingly receive from any truck or motor vehicle or knowingly deliver to any truck or motor vehicle any oil or prod-

uct not covered by a tender authorizing the transportation thereof whenever a tender is required by any order of the Commission, shall be punished by a fine of not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200).

(c) Whenever by order of the Commission a tender is required before oil or products may be transported or received for transportation by pipe line, railroad, boat or barge, and whenever pursuant to such order an authorized agent of the Commission approves or registers and issues to an initial transporter by pipe line, railroad, boat or barge a tender covering oil or products, such initial transporter may deliver to any connecting carrier or consignee the amount of oil or products covered by such tender, but shall not transport or deliver any more nor any different commodity than is authorized by such tender. Whenever such order provides that connecting carriers or consignees may rely upon the shipping papers executed by such initial transporter as authority to transport or receive the oil or products covered by such shipping papers provided such shipping papers show the date and serial number of the tender issued to the initial transporter, each such connecting carrier receiving oil or products from another transporter by pipe line, railroad, boat or barge, and each consignee receiving oil or products by pipe line, railroad, boat or barge under authority of shipping papers bearing the date and serial number of a tender issued to an initial transporter shall be deemed to be receiving such oil or products by authority of a tender under the provisions of this Act.

(d) Every person who shall knowingly ship or transport or cause or permit to be shipped or transported by pipe line, railroad, boat or barge any unlawful product or unlawful oil, or who shall knowingly receive or deliver for transportation by pipe line, rail, boat or barge any unlawful product or unlawful oil, or who shall knowingly ship or transport or cause or permit to be shipped or transported by pipe line, rail, boat or barge oil or any product without authority of a tender whenever a tender is required by any order of the Commission, or who shall knowingly receive or deliver by pipe line, rail, boat or barge oil or any product without authority of a tender whenever a tender is required by any order of the Commission, shall be punished by a fine of not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200).

Promulgation of regulations prior to enforcement, except as to civil actions

Sec. 5. Whenever the Commission shall have adopted, after notice and hearing as provided under other statutes of the State, any rule, regulation or order pursuant to any statute of this State, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Commission shall have promulgated such rule, regulation or order by publishing a complete copy of same in three (3) newspapers of general circulation in the State of Texas (such newspapers to be selected by said Commission) once each day for three (3) consecutive days, and on and after the seventh (7th) day after the date of the last publication such rule, regulation or order shall be effective and enforceable in any criminal action, brought pursuant to this Act. No criminal action shall be maintained against any person involving the violation of any provisions of any amendment or modification of any order of the Commission until the Commission shall have promulgated such amendment or modification after its adoption by publishing a complete copy of such amended or modified rule, regulation or order in three (3) newspapers of general circulation once each day for three (3) consecutive days, and, on and after the seventh (7th) calendar day of the last publication, such amendment or modification of such rule, regulation or order shall become effective and enforceable in any criminal action brought pursuant to this Act. However, the absence of promulgation by publication as herein provided shall not affect the enforcement of any order of the Commission in any civil or quasi civil action brought pursuant to this Act or to any statute of this State.

Certificate of promulgation as prima facie evidence

Sec. 6. A certificate under the seal of the Commission executed by any member or the Secretary thereof, setting forth the terms of any order of the Commission and that it has been adopted, promulgated and published and was in effect at any date or during any period specified in such certificate shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

State Rangers authorized to serve process

Sec. 7. In all prosecutions, criminal actions, cases, proceedings or suits involving the enforcement of the provisions of this Act or of any order of the Commission all State Rangers and all agents of the Commission shall have the power and authority to serve any criminal or judicial process, warrant, subpœna or writ just the same and as fully as any sheriff, constable or peace officer is authorized under existing laws when so directed by the court issuing such process. Such rangers and such agents of the Commission may serve such process, warrant and subpœna anywhere within the State of Texas although it may be directed to any sheriff or constable of a particular county. They shall make the same return as any other officer, sign their name and add thereunder the title of (in the case of a State Ranger), "State Ranger," and (in the case of an agent of the Commission) the words "Agent, Railroad Commission of Texas," which shall be sufficient to make it valid if the writ is otherwise properly made out. No fees of any kind for such services shall be allowed such State Rangers or agents of the Railroad Commission other than their regular salary or compensation.

Pleading, proof and venue

Sec. 8. (a) In any complaint, information or indictment alleging a violation of an order of the Commission, it shall not be necessary to set forth fully the terms of such order, and it shall be sufficient therein to allege the substance of the order, or the pertinent term or terms thereof alleged to have been violated.

(b) In any criminal action filed pursuant to this Act, a certificate executed by any member of the Commission or by the Secretary thereof showing the amount of allowable oil which may be produced per day or during a stated period from any oil well or wells, proof of any production from which is involved in such criminal action, shall be admissible in evidence and shall be prima facie evidence of the facts therein stated.

(c) The venue of a criminal action maintained pursuant to this Act is hereby fixed in the county where the oil or products involved in such criminal action is received or delivered, or in any county in or through which such oil or product is transported.

(d) Nothing herein shall restrict or limit the power of the Commission to adopt rules, regulations or orders pursuant to the oil and gas conservation statutes of this State including all provisions of Title 102 of the Revised Civil Statutes of Texas of 1925 and all amendments thereto.

Review of rejection of tender

Sec. 9. Whenever an application for a tender is rejected by an authorized agent of the Commission, it

shall be the duty of such agent to return one copy of such application to the applicant endorsing thereon all the reasons for such rejection. Such applicant whose tender may be rejected shall have the right to appeal from any action of such agent by filing a petition in the District Court of Travis County, Texas, against the Commission, for a review of the ruling of such agent. The Court hearing such petition shall have the power to sustain, modify or overrule any action of such agent relative to a tender application and to issue such restraining orders or injunctions as the facts may warrant. It shall be the duty of the Clerk of the Court wherein such petition is filed to issue to the Commission a notice setting forth briefly the cause of action stated in such petition. But the Court shall not enter any order on any such petition until after a hearing thereon to be heard not less than five (5) days from the issuance of such notice. Any person whose application for tender is not acted on within twenty (20) days from the date of its filing shall have the right of appeal in the same manner above provided for appealing from a rejection of a tender application. Any person dissatisfied with the decision of the District Court may appeal to the Court of Civil Appeals.

Forfeiture of unlawful products; Attorney General duties

Sec. 10. (a) All unlawful oil and unlawful products, regardless of the date of production or manufacture thereof, are hereby declared to be a nuisance and shall be forfeited to the State as hereinafter provided. It shall be the duty of the Commission, its servants, agents, and employees, highway patrolmen, sheriffs, constables, and peace officers, upon the discovery of any unlawful oil or unlawful products, to file immediately with the Attorney General of Texas, a report giving a description of such unlawful oil and/or unlawful products, including the ownership, party in possession, the amount, the location and classification thereof.

(b) When the Attorney General is advised from any source of the presence and existence of unlawful oil and/or unlawful products it shall be his duty to institute a suit in rem against such unlawful oil and/or unlawful product and against all persons owning, claiming or in possession thereof, such suit to be brought in the name of the State of Texas in any court of competent jurisdiction in Travis County or in the county in which such oil or product is located. If it shall appear to the court from an examination of the petition or after hearing evidence thereon at a preliminary hearing that unlawful oil and/or unlawful products mentioned in the petition are in danger of being removed, wasted, lost, or destroyed, the court is authorized and required, in term time or in vacation, to issue restraining orders or injunctive relief, either mandatory or prohibitive, or to appoint a receiver to take charge of the oil or product in question, or to direct the sheriff of the county in which the unlawful oil or unlawful products are located to seize and impound the same until further orders of the court.

(c) Notice of pendency of such suit shall be served in the manner prescribed by law; either party to said suit may demand a trial by jury on any issue of fact raised by the pleadings and the case shall proceed to trial as other civil cases. If, upon the trial of such suit the oil or product in controversy is found to be unlawful oil or unlawful products, then the court trying said cause shall render judgment forfeiting the same to the State of Texas and authorizing the issuance of an order of sale directed to the sheriff or any constable of the county where the oil or products are located commanding such officer to seize and sell said property in the same manner as personal property is sold under execution. The court may order the oil or products sold in whole or in part as may be deemed proper and the sale shall be conducted at the court house door of the county where the oil and/or products are located and shall conform in all respects to the sale of personal property as aforesaid. The money realized from the sale of any such unlawful oil and/or products shall be applied, first, to the payment of the costs of suit and expenses incident to the sale of such oil and/or products after such expenses have been approved and allowed by the court trying the case, and all funds then remaining, shall be remitted forthwith to the State Treasurer and shall be by the Treasurer placed to the credit of the General Revenue Fund of the State of Texas.

(d) The officers of said Court shall receive the same fees provided by law for other civil actions. Provided further that the Sheriff executing said sale shall issue a bill of sale or certificate to the purchaser of said oil and/or products and the Commission shall, upon the presentation of said certificate of clearance, issue a tender, if a tender is required, permitting the purchaser of said oil and/or products to move the same into commerce.

Provisions cumulative

Sec. 11. The provisions of this Act shall be cumulative of all other provisions of the Civil Statutes, the Penal Code and the Code of Criminal Procedure, and the remedies herein provided shall be cumulative of all other remedies provided in the Civil Statutes, the Penal Code and the Code of Criminal Procedure.

See, also, Pen.Code, Art. 1111c.

Partial invalidity

Sec. 12. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any section, word, clause, sentence or part of this Act shall be declared unconstitutional shall in no event affect any other section, word, clause, sentence or part thereof.

Exception as to retail purchases

Sec. 13. The provisions of this Act shall not apply to the retail purchase of the products of petroleum where such products so purchased at retail are contained in the ordinary equipment of a motor vehicle and are used only for the operation of such motor vehicle in which contained. [Acts 1935, 44th Leg., p. 624, ch. 246.]

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1. STATE PARKS BOARD

Art. 6067. Creating Board.—There is hereby created a State Parks Board of six members to be appointed by the Governor, whose terms shall be six

(6) years from date of appointment, but in appointing the first Board he shall appoint two (2) members for two (2) years, two (2) members for four (4) years, and two (2) members for six (6) years. They shall serve without compensation, but shall be reimbursed for necessary traveling expenses and hotel bills out of State funds, except where localities pay such expenses. [Acts 1923, 38th Leg., 2nd C.S., p. 58, ch. 25, § 1; Acts 1937, 45th Leg., p. 687, ch. 345, § 1.]

Art. 6068. Soliciting donations of park sites or recreational areas—rejecting or transferring title where unsuitable—reversion clauses.—The said Board shall solicit donations to the State of tracts of land, large or small, to be used by the State for the purpose of public parks and/or recreational areas, and said Board is hereby authorized to accept in behalf of the State the title to any such tract or tracts of land, or, where the site proposed is not deemed suitable for a State Park by the State Parks Board, to reject or refuse title so that it shall not vest in the State, or if title to a site has become vested in the State for park purposes and the site is deemed unsuitable for a State Park by the State Parks Board, whether the United States of America has undertaken the development of any site in which title to same is now vested in the State for park purposes, the Board is hereby authorized and empowered to transfer title to another State Department or institution wishing the land, or where the land has been donated by a city or county or other donor, to transfer title to such city or county or other donor where they wish the site returned to them, or where the United States of America has undertaken the development of any site in which title to same is now vested in the State for park purposes to transfer title to the United States of America, or where the deed to the State Parks Board contains a revision clause providing that title shall revert to the donor when not used for park purposes, to declare that the park is unsuitable for State Park purposes and that title has reverted to the grantors; provided that in all instances where the Board acts under the authority of this statute, it must do so by a two-thirds (2/3) vote of the members of the Board, and providing that the Chairman of the Board shall sign all instruments authorized under this Act. [Acts 1923, 38th Leg., 2nd C.S., p. 58, ch. 25, § 2; Acts 1937, 45th Leg., p. 360, ch. 174, § 1; Acts 1939, 46th Leg., p. 516.]

Art. 6069. Duty of Board.—Said Board shall make investigations of any tract or tracts of land, of any size whatsoever, in the State with a view of determining whether the same is suitable for public park purposes, and, the terms on which it can be acquired; and shall report the result of their investigations, together with their recommendations and findings to each regular session of the Legislature, for such action as the Legislature may take. The purpose of this law is to initiate a movement looking to the establishment eventually of a system of State Parks for the benefit of the people, secured either by donation or purchase, or established on any land owned by the State available for such purpose. The said Board is especially directed to inspect the Davis Mountains in Jeff Davis County, to determine the feasibility of same as a park that might be made a National Park. If said Board should conclude that the Davis Mountains area is feasible as a great park, they are hereby authorized to outline the said park; take options or easements and outline a policy to finance the said Davis Mountains area as a park. Any options, easements or tentative deals that are made in regard to said Davis Mountains Park shall be subject to the action of the Legislature and shall not be binding on the State until the Legislature shall approve the action of the Parks Board.

It shall further be the duty of said Board to arrange for or employ a keeper in each of the State Parks under the control of said State Parks Board, who shall be clothed with all the powers and authority of a peace officer of the county, for the purposes of caring for and protecting the property within said parks. [Acts 1923, 38th Leg., 2nd C.S., p. 58, ch. 25, § 3; Acts 1937, 45th Leg., p. 360, ch. 175, § 1.]

Art. 6069a. Parkways and roads to parksites on Buchanan and Inks Lakes, establishment of.—Section 1. The State Parks Board be and it is hereby authorized and directed to acquire, construct and maintain parkways, roadways, roads, bridges and trails from public roads and highways to parksites located on and accessible to the waters of Buchanan and Inks Lakes in Burnet, Travis, Llano, Lampasas, Williamson and San Saba Counties, which parksites may either be conveyed to the State Parks Board or owned by the Lower Colorado River Authority and dedicated to public use for park purposes.

Sec. 2. The purpose of this Act is to authorize and direct the State Parks Board to acquire rights of way for parkways and roads, either by purchase, gift or condemnation, and to build, construct and maintain roads, bridges and trails from existing public roads and highways to sites on Buchanan and Inks Lakes in such manner as in the opinion of the Board may best make the waters of such lakes accessible to the general public; and to this end the State Highway Commission is hereby authorized and directed to cooperate fully with the Board, and the Board is authorized and directed to cooperate with and to match funds with any governmental agency, State or Federal, and to sponsor any State or Federal project, and to enter into such contracts and agreements in connection therewith as to the Board may seem proper and expedient. [Acts 1939, 46th Leg., p. 517.]

Section 3 of the Act of 1939 made an appropriation of $12,500 to carry out purposes of act.

Art. 6070. Traveling expenses.—Any locality desiring to do so may pay the expenses of said Board on any trip to such locality to inspect land and investigate in such locality in order to ascertain whether there is a suitable site there for a State Park; but if the expenses of the Board are so paid, no money shall be paid out of the State Treasury for traveling expenses or hotel bills of said board for such trip. [Acts 1923, 38th Leg., 2nd C.S., p. 58, ch. 25.]

Art. 6070a. Park concessions; funds; prison labor.—Section 1. The State Parks Board is hereby authorized to operate or grant concessions in State Parks and to operate concessions or make concession contracts for any causeway, beach drive, or other improvements in connection with State Park sites wherever feasible. The revenue thus earned by the State Parks Board shall, when collected, be placed in the State Treasury. The Board may make such rules and regulations for the carrying out of this Act and the laws of this State relative to State Parks, as it may deem necessary not in conflict with law. [As amended, Acts 1941, 47th Leg., p. 691, ch. 431, § 1.]

Sec. 2. The funds and revenue derived under the provisions of this Act and deposited in the State Treasury shall be deposited in a Special Fund to be known as the "State Parks Fund", and the State Treasurer is hereby authorized and directed to designate such Fund accordingly and carry on his records a separate account therefor; and not exceeding One Thousand ($1,000.00) Dollars per year is hereby appropriated by the Legislature of Texas out of said Fund for the payment of the traveling and contingent expenses of the members of the State Parks Board which have been necessarily incurred in the performance of their duties.

Sec. 3. The State Parks Board shall have the use of the labor of trusty State convicts on or in connection with State Parks, said labor to be performed as required by the State Parks Board, provided that such

convicts shall, at all times, be under the control of the State Prison Board and shall, during the time they are working in connection with State Parks, be considered as serving their terms in the penitentiary. [Acts 1931, 42nd Leg., p. 287, ch. 168.]

Acts 1933, 43rd Leg., Spec. L., p. 52, ch. 45, § 1, directs the Commissioner of General Land Office to convey to A. B. Mayhew a certain tract of land known as 26.5 acre Park Site situated near Con Can post office in Uvalde county, Texas.

Art. 6070b. Authorizing acquirement and improvement of park sites payable solely from revenue of parks.—Sec. 1. The Texas State Parks Board is hereby authorized and empowered to acquire State park sites by purchase, gift or otherwise, and to improve, beautify and equip, and to contract with any person, firm or corporation for the improvement, beautification or equipment of the State parks of this State to such an extent as to said Board might be deemed advisable. The authority herein given to purchase is limited to two years from the effective date of this Act.

Sec. 2. In payment for such sites and of the improvement, beautification and equipment of such parks and/or other improvements, or for the purpose of borrowing money from the Reconstruction Finance Corporation, or any other U. S. Federal Agency, or from any other person, firm or corporation, the Texas State Parks Board is further authorized and empowered to issue its evidences of indebtedness for such sum or sums of money and upon such conditions as may to said Board be deemed advisable, bearing interest at a rate not to exceed six (6%) per cent per annum, and as security for the payment thereof, said Board may pledge its rents, revenues and incomes from such improvements and/or any fees, rents or revenues from any source other than appropriations made by the State Legislature, and in furtherance thereof may have full authority to make concession contracts of any kind or character which in the judgment of said Board might be desirable.

Sec. 3. Projects financed in accordance with this law are hereby declared to be self-liquidating in character supported by charges other than by taxation.

Sec. 4. Nothing herein shall be construed as creating a debt or binding the State of Texas in any way except as to the pledge of the revenues as hereinbefore set forth. [Acts 1933, 43rd Leg., p. 571, ch. 187.]

Art. 6070c. Goose Island State Park established.—Resolved by the House of Representatives of the State of Texas, the Senate concurring, That Goose Island be set aside for use as a State Park and that it be placed under control and management of the Texas State Parks Board to be operated under the direction of such Board as a public park, and said island is hereby withdrawn from sale or lease for any purpose inconsistent with its use for park purposes. [Acts 1931, 42nd Leg., p. 917, H.C.R. #43.]

Art. 6070c—1. Brazoria County coast line designated a state park.—Section 1. The Brazoria County Coast between high and low tides, from the Galveston County line on the East to the Matagorda County line on the West, be hereby designated and declared a Texas State Park and dedicated to the general public for use as a Texas State Park, under the supervision of the Texas State Parks Board.

Sec. 2. Provided that nothing in this statute shall be interpreted as transferring to the State Parks Board anything other than those rights which the State of Texas has to all lands on the coast lying between high and low tides. [Acts 1939, 46th Leg., p. 526.]

Art. 6070d. Marking historical sites.—That the State Parks Board is authorized to locate, designate and suitably mark the historic grounds, battlefields and other historic spots in Texas and to erect and cause to be erected thereon fitting markers or monuments in memory of the heroes and the heroic achievements that consecrated, sanctified and made immortal the glorious and resplendent pages of Texas history. No expense shall be incurred by any one in the name of the State of Texas for this project. [Acts 1934, 43rd Leg., 3rd C.S., p. 110, ch. 58, § 1.]

2. SAN JACINTO STATE PARK

Art. 6071. [6395] Establishing State Park.—The lands owned and acquired by the State, called the San Jacinto battlefield, shall be known and styled, "The San Jacinto State Park," and, with the exception, reservations and limitations herein mentioned, the said San Jacinto State Park shall be under the care and direction of the State Board of Control. Said Board and the commissioners shall jointly endeavor to improve, preserve and protect the lands and property within and connected with said San Jacinto State Park. [Acts 1907, p. 104.]

Art. 6072. [6396] Commissioners.—The Governor shall biennially appoint three resident citizens of the State, who shall be known as "San Jacinto State Park Commissioners," who shall serve without compensation and whose duties shall be to advise with and assist the Board of Control in the improvement, care and preservation of the lands now owned and hereafter acquired by the State, known as the San Jacinto battlefield. One or more of said commissioners may, in the discretion of the Governor, be selected from the patriotic organization known as San Jacinto Chapter, Daughters of the Republic of Texas, or from any kindred organization. [Id., Sec. 6.]

Art. 6073. [6397] Duties of the commissioners.—It shall be the duty of said commissioners, acting with the advice and consent of the Board of Control, to cause to be erected upon a site by them selected a keeper's cottage and other necessary buildings; to arrange for or employ a keeper who shall reside upon the grounds and who shall be clothed with all the powers and authority of a peace officer of the county for the purposes of caring for and protecting the property of the State; to provide the necessary teams, implements and other utensils for the use of such keeper and other employés in the work of beautifying, improving and protecting said grounds; to cause to be erected around, about and upon said grounds such fences as shall, in the judgment of the commissioners and the Board, serve the best interests of the State in the care and protection of its property; to provide for and outline a plan, diagram and design of the work to be done from time to time, copies of which shall be kept in the office of the Board for reference, and to do any and all things necessary to be done, with the intent and purpose of beautifying, improving and protecting the State's interest therein. [Id., Sec. 7.]

3. GONZALES STATE PARK

Art. 6074. Establishing park.—The State accepts title to the ground tendered by the City of Gonzales, and dedicates it as a public State park in commemoration of the historic events that have occurred at Gonzales, and agrees to beautify and protect the same; which said ground shall be under the care and direction of the State Board of Control, and shall be styled "Gonzales State Park." [Acts 1913, p. 242.]

Art. 6075. Commissioners.—The Governor shall biennially appoint three resident citizens of the State, who shall be known as "Gonzales State Park Commissioners," who shall advise with and assist the Board of Control in the improvement, care and preservation of the said land. One or more of said commissioners may, in the discretion of the Governor, be selected from the patriotic organization known as Gonzales Chapter, Daughters of the Republic of Texas, or from any kindred organization. Said commissioner shall serve without compensation. [Id.]

4. WASHINGTON STATE PARK

Art. 6076. Washington State Park.—The lands situated in Washington County and which were acquired by the State and on which the first capitol of Texas stood, shall be known as "The Washington State Park." [Acts 1923, p. 123.]

Art. 6077. Commissioners.—The Governor shall biennially appoint for a term of two years five resident citizens of this State, who shall constitute "The Washington State Park Commission." The duties of said commissioners, acting with the advice and consent of the Board of Control, shall be the same as that provided by law for the San Jacinto State Park, as far as applicable. [Id.]

4A. GOLIAD STATE PARK

Art. 6077a. Goliad State Park Commissioners; powers and duties.—Sec. 2. The Board for Lease of Eleemosynary and State Memorial Lands shall have no right, power or authority to lease for any purpose any of the land composing the "Goliad State Park," or any other lands subsequently added to said park, and it is hereby expressly forbidden from leasing same.

Sec. 3. The Governor shall, as soon as practicable after the taking effect of this Act, appoint three resident citizens of this State, who shall be known as "Goliad State Park Commissioners," who shall serve without compensation except for such reasonable and necessary personal expense as may be incurred in the performance of their duties in this behalf. The term of office of each of said Commissioners shall be six years, except the members of the first Commission appointed hereunder, whose term shall be two, four and six years, respectively, and they shall decide by lots among themselves who is to have the two, four and six year terms; but after the expiration of the term of office of any member of the First Commission appointed hereunder, his successor shall hold for a term of six years. The duties of said Commissioners, acting with the advice and consent of the Board of Control, shall be the same as that provided by Law for the San Jacinto State Park Commissioners.

Sec. 4. The Goliad State Park Commission shall have authority to solicit further donations of land adjoining the Goliad State Park as established in this Act, and is hereby authorized to accept in behalf of the State the title to such adjoining land when and as tendered, subject to the approval of the State Board of Control, not to exceed 125 acres of such additional land.

Sec. 5. The government of the United States to have the permission, if same is necessary, to erect upon said parksite a memorial in the form of a monument, building or whatever it may desire as such memorial, the location of same to be agreed upon by the proper representatives of said United States government and the Board of Control of the State of Texas. Such memorial to be erected under the conditions required by such Government of the United States but without expense to the State of Texas. [Acts 1931, 42nd Leg., p. 39, ch. 31.]

Section 1 of Acts 1931, contains a preamble accepting the title to the land to be known as Goliad State Park.

BIG BEND STATE PARK

Art. 6077b. Creation of Canyons State Park.[1] —Sec. 1. The Texas Canyons State Park is hereby created as one of the State Parks of Texas, and shall consist of the lands hereinafter described in Section 2, of this Act.

Sec. 2. The Legislature of the State of Texas hereby withdraws from sale the following sections of land dedicated to the Public School Fund. All unsold public free school lands situated in the following blocks and abutting the Rio Grande River, to-wit:

Sections 42, 54 and 56, Block 341 T. C. Ry. Co. land in Brewster County, Texas.

Sections 2, 21, 23, 39 and 41, Block 16, G. H. & S. A. Ry. Co. land in Brewster County, Texas.

Sections 4, 12 and 14, Block G, 17, in Brewster County, Texas.

Sections 11, 12, 17 and 20 in Block B 2, G. H. & S. A. Ry. Co. land in Brewster County, Texas.

Said above described sections of land are hereby transferred and conveyed from the State School Fund to the State of Texas, for park purposes, and are hereby valued at the sum of Five (5) Cents per acre, and such amount shall be paid by the State Treasurer from the General Revenue into the Public School Fund as consideration for said lands and in lieu of said lands. The sum of One Thousand Dollars ($1,000.00), or so much thereof as may be required, is hereby appropriated out of the General Revenue of the State of Texas to be paid to the Permanent School Fund of the State of Texas for consideration of said land transferred and conveyed and in lieu of said lands. All minerals in and under the above described sections of land are reserved to the Public Free School Fund.

Sec. 3. The Texas State Park Board shall take over the maintenance of the Texas Canyons State Park as soon as the transfer of said lands shall be effected. [Acts 1933, 43rd Leg., Spec.L., p. 126, ch. 95.]

[1] The Texas Canyons State Park was renamed Big Bend State Park, see article 6077c, § 4, post.

Art. 6077c. Creation of Big Bend State Park. —Sec. 1. All lands south of parallel of latitude 29°, 25′ north, lying and being situated in Brewster and Presidio Counties heretofore or hereafter purchased by the State for delinquent taxes which are not redeemed within the time prescribed by law, shall become the property of the State of Texas for park purposes and shall be under the supervision and control of the Texas State Parks Board, and in such event the State shall not be required to pay to the counties any taxes which may have accrued on said lands, but the State of Texas shall take said lands free and clear of all claims of the counties of the State of Texas and free from the claims of all officers who have accrued costs by reason of the original sale of said lands for delinquent taxes. The Sheriff in each county affected by the provisions of this Act shall upon the expiration of the time when lands may be redeemed, or as soon thereafter as practicable, execute a deed to said land or lands affected by the provisions of this Act, giving a full description of the same to the State of Texas for park purposes. The said Texas State Parks Board shall take over the control and management of said lands. Should any of said lands, the title to which is thus acquired by the State of Texas, be State school lands on which there is an indebtedness to the Public School Fund, said lands shall not be sold or transferred by the Texas State Parks Board until said Board has paid any balance or balances then due and unpaid to the State School Fund, and no acquisition by the Texas State Parks Board of any lands which were at any time heretofore dedicated to the Permanent School Fund shall impair or decrease any obligation, debt or lien on said lands held by or due the Permanent School Fund.

Sec. 2. Upon the acquisition by the State of Texas of the title to any land under the provisions of this Act, all the mineral estate in and under said land shall be reserved to the State of Texas for the benefit of the Permanent Public Free School Fund to be disposed of under present or future laws. In the transfer of any such land, either by sale or exchange by the Texas State Parks Board, all instruments of sale or exchange shall expressly reserve to the State for the benefit of the Permanent School Fund all the mineral estate in and under said lands.

Sec. 3. Within sixty (60) days of the date of acquisition of the surface estate in any lands under this

Act, the Texas State Parks Board shall file in the General Land Office at Austin certified copies of the instruments of acquisition, together with accurate descriptions of the lands acquired, and the Commissioner of the General Land Office shall make proper records of the ownership of the minerals in said lands by the Permanent School Fund, and shall furnish to the State Parks Board, as soon as practicable after receipt of description of the land by the Land Commissioner, statements of any amounts due the Permanent School Fund on account of any such lands.

Sec. 4. The Texas Canyons State Park, created as one of the State Parks of Texas, by House Bill No. 771, of the Regular Session of the Forty-third Legislature,[1] is hereby renamed Big Bend State Park, and said Big Bend State Park shall consist of the lands described in said Act, and other lands as described in Section 1 of this Act, or falling within the boundaries of the area designated in a survey by the National Park Service as a proposed Big Bend National Park, more particularly described as follows:

Beginning on the international boundary line at a point on the Rio Grande River at latitude 29° 20′ and longitude 102° 53′, thence on a line which bears N. 29° 0′ W. a distance of 1.75 miles approximately to B. M. (3940), thence N. 49° 0′ W. a distance of approximately 6.75 miles to B. M. on Sue Peaks, thence N. 18° 0′ W. approximately 11.8 miles to an intersection with latitude 29° 35′ and longitude 100° 02½′, thence N. 52° 30′ W. an approximate distance of 9.4 miles to a point which is latitude 29° 40′ and longitude 103° 10′, thence due north on longitude 103° 10′ a distance of ½ mile, thence due west a distance of ½ mile, thence due south ½ mile to latitude 29° 40′, thence S. 5° 15′ E. an approximate distance of 5.8 miles to a point which is latitude 29° 35′ and longitude 103° 10′, thence due south on longitude 103° 10′ to a point on said longitude line 2 miles south of latitude 29° 30′, thence S. 83° 30′ W. an approximate distance of 13.7 miles to B. M. (4405), thence S. 42° 30′ W. an approximate distance of 20.6 miles to B. M. (2316), thence N. 6° 30′ W. about 9½ miles to the international boundary line on the Rio Grande River, thence following the international boundary line along the river in a general easterly direction to the point of beginning, containing approximately 736,000 acres. [As amended Acts 1937, 45th Leg., 2nd C.S., p. 1875, ch. 9, § 1.]

[1] Article 6077b.

Sec. 5. The Legislature of the State of Texas hereby withdraws from sale all unsold Public Free School Lands situated in Brewster County, Texas, South of North Latitude 29°, 25′; and said lands, estimated to consist of about one hundred and fifty thousand (150,000) acres, are hereby transferred and conveyed from the State Public School Fund to the State of Texas for park purposes, and shall become a part of the Big Bend State Park, and are hereby valued at the sum of one cent per acre, which amount shall be paid by the State Treasurer from the General Revenue into the Public School Fund as consideration for said lands, and in lieu of said lands. The sum of One Thousand, Five Hundred Dollars ($1,500.00), or so much thereof as may be required, is hereby appropriated out of the General Revenue of the State of Texas, to be paid to the Permanent School Fund of the State of Texas, in consideration of said lands transferred and conveyed, and in lieu of said lands. All minerals in and under the above described sections of land are hereby reserved to the Public Free School Fund, to be developed under present or future laws as minerals under other unsold school land. Upon the taking effect of this Act, the Commissioner of the General Land Office shall prepare a list of the lands affected by this Act, and shall deliver one copy to the Texas State Parks Board and one copy to the State Treasurer, and shall certify to the State Treasurer the number of acres contained in said land.

Sec. 5-A. The Legislature of the State of Texas hereby withdraws from sale and lease all unsold Public Free School land situated in Brewster County lying north of North latitude 29° 25′, which is included in the area set out as the proposed Big Bend National Park, as described in Section 4 of this Act, as amended. [Added Acts 1937, 45th Leg., 2nd C.S., p. 1875, ch. 9, § 2.]

Sec. 6. The Texas State Parks Board shall take over the maintenance of all lands included within the terms of this Act and within the Big Bend State Park area, and shall have supervision and control of said parks. Said Texas State Parks Board shall be authorized, and authority is hereby expressly given to them, to contract to exchange any lands included within the Big Bend State Parks with any person, firm or corporation, for any other lands in Brewster County, situated within the area bounded on the South by North Latitude 29°, 10′ and on the North by North Latitude 29°, 20′ and on the East by West Longitude 103°, 10′ and on the West by West Longitude 103°, 25′; considered more suitable, or better located for park purposes; said Texas Parks Board shall be authorized to make contracts for the exchange of such lands, with any person, firm or corporation, but said contracts shall not be effective until approved by the Governor, Attorney General, and Commissioner of the General Land Office. Upon the making of such contracts and approval by the above constituted Board, the Governor of the State of Texas, is authorized and directed to issue conveyances for same, reserving to the State School Fund, all minerals under said land. In case any lands sought to be acquired by the Texas State Parks Board by exchange, under the provisions of this Act, shall be unpatented State School Land, the indebtedness against said land shall be transferred to the land given in exchange. The State Parks Board, shall certify to the Commissioner of the General Land Office a description of any lands acquired by it from any source in said Big Bend State Park area within ninety (90) days of date of acquisition, together with a certified copy of the instrument of transfer, and the Commissioner of the General Land Office shall list said lands as mineral lands belonging to the Permanent School Fund and shall make proper record thereof in the Land Office.

Sec. 6-A. The Texas State Parks Board is hereby authorized and empowered to accept for park purposes any and all lands within said area that may be offered or conveyed to it by any individual, group of individuals or corporation, private or municipal, having title to such land. The Texas State Parks Board is also authorized to accept any and all donations of funds or property that may be made to it for the purchase of lands within this area, and is further authorized to use said monies or property so donated in acquiring title to lands within this area, and to pay for such lands and the cost of acquiring same, out of said fund, such sums as in its discretion it may deem advisable. Provided, however, that no commission shall be paid to anyone in the acquisition of said land. That the State Parks Board shall place any and all funds so received by it in a special fund to be used for the sole and only purposes provided herein. The Texas State Parks Board is also hereby authorized and empowered without condemnation proceedings, or purchase through condemnation proceedings, or by gift or donation, to acquire lands within the foregoing area not now owned by the State of Texas, to be used for park purposes. Said Board is hereby vested with the power of eminent domain, and in the exercise of said power shall have the right to condemn for park purposes within the said area, and may institute, maintain and prosecute suits in the name of the State

of Texas, for that purpose following the procedure applicable to the condemnation of lands by counties or by railroads or any other method authorized by law, and it is hereby made the duty of the Attorney General or the County or District Attorneys of Brewster County, Texas, to aid and assist the Board in the institution and prosecution of condemnation suits within said area. [Added Acts 1937, 45th Leg., 2nd C.S., p. 1875, ch. 9, § 3].

Sec. 7. If any part of this Act should be held unconstitutional, such decision shall not affect the validity of the remaining portions of this Act, it being the intention of the Legislature that such remaining portions shall operate as a valid law; and it is further the intention of the Legislature to withdraw from sale the surface estate in the public school lands, in the Big Bend Park areas.

Sec. 8. This Act shall be cumulative of all other laws on this subject, and in so far as it is inconsistent with the General Laws of this State it shall supersede the same in that part of the State to which this Act applies. [Acts 1933, 43rd Leg., 1st C.S., p. 275, ch. 100.]

Conveyances and transfers validated.

Acts 1943, 48th Leg., p. 425, ch. 291, effective May 8, 1943, validated conveyances and transfers, made by the Texas State Parks Board in pursuance to the purchase program established by Senate Bill No. 123, Acts of the 46th Legislature, Regular Session [art. 6077e], and Chapter 100, Acts of the 43rd Legislature, First Called Session [this article], validated all agreements of transfer, exchanges, or conveyances made by the Texas State Parks Board in pursuance to the purchase program established by Senate Bill No. 123, Acts of the 46th Legislature, Regular Session, and Chapter 100, Acts of the 43rd Legislature, First Called Session, validated agreements of the Texas State Parks Board to clear title to certain lands, and validated the abandonment for park purposes of certain lands transferred from the State of Texas for the benefit of certain school funds to the State Parks Board for park purposes, and section 5 thereof provided that partial invalidity should not affect the remaining portions.

Art. 6077d. State Park Board to execute quit claim deeds to record owners of property sold for taxes and acquired for parks where taxes not actually delinquent.—The Texas State Parks Board shall execute quit-claim deeds to any and all lands being and situated in the Big Bend National Park or the Big Bend State Park in Brewster County, which lands were sold for taxes and were acquired by the State of Texas for park purposes under such tax sales under the terms and provisions of Chapter 100, Acts of the First Called Session of the Forty-third Legislature to the record owners thereof at the time of such tax sales in all cases where the taxes on such lands were not actually delinquent, and in which cases the original owners can produce valid tax receipts or a tax certificate from the Tax Collector of Brewster County showing that all taxes on the lands were paid each year in accordance with the laws of this State in the required time and were not actually delinquent. [Acts 1939, 46th Leg., p. 519, § 1.]

4C. BIG BEND NATIONAL PARK

Art. 6077e. Creation of Big Bend National Park.

Area

Section 1. That when the title to the following described lands situated in Brewster County, Texas, shall have become vested in the State of Texas for park purposes under the terms of this Act or any previous Act or Acts or that have been acquired or that have become vested under any previous Act or Acts, such lands shall be and are hereby established, dedicated and set apart as a public park for the benefit and enjoyment of the people and shall be known and designated as the "Big Bend National Park" which area is approximately defined by the following metes and bounds:

Beginning at a point on the north bank of the Rio Grande River marked by a wooden monument painted white, about six feet high, and located at Long. 102° 50′ 47″ ; Lat. 29° 22′ 09″

Thence: N 65° 20′ W approximately 9.1 miles to B. M. 5857 on Sue Peaks;

Thence: N 18° 0′ W approximately 11.8 miles to a point at Long. 103° 2½′ ; Lat. 29° 35′ ;

Thence: N 52° 30′ W approximately 9.4 miles to a point at Long. 103° 10′; Lat. 29° 40′;

Thence: N ½ mile;

Thence: W ½ mile;

Thence: S ½ mile to a point ½ mile west of Long. 103° 10′ ; Lat. 29° 40′ ;

Thence: S 5° 15′ E approximately 5.8 miles to a point at Long. 103° 10′ ; Lat. 29° 35′ ;

Thence: S approximately 7.8 miles;

Thence: S 83° 30′ W approximately 13.7 miles to B. M. 4405;

Thence: S 42° 30′ W approximately 20.6 miles to B. M. 2316;

Thence: N 82° 30′ W approximately 9.5 miles to a monument similar to the one described at the point of beginning and located on the N. bank of the Rio Grande River at Long. 103° 46′ 17″ ; Lat. 29° 14′ 48″ ;

Thence: Following the international boundary line along the Rio Grande River in a generally easterly direction to point of beginning, containing approximately 788,000 acres.

Provided, however, in the event it should prove advantageous to the State of Texas in acquiring land within this area to include other and adjoining lands than that comprised within the foregoing boundaries, then it will be permissible under this Act to acquire such additional lands in such amounts just so the total amount purchased or acquired in said area does not exceed one million acres.

Authority of Texas State Parks Board

Sec. 2. The Texas State Parks Board is hereby empowered and authorized to carry out the purposes and provisions of this Act and to employ such employees or assistants as may be necessary from time to time for the accomplishment of the provisions herein set forth. That the members of said Parks Board shall not receive any additional compensation for their services, except to be reimbursed for all necessary and actual traveling expenses incurred in carrying out the provisions of this Act.

Said Board is hereby authorized and empowered to acquire either by purchase or condemnation proceedings, or by gift or donation lands within the foregoing area not now owned by the State of Texas or that it is not now owned by the State of Texas for park purposes, said land so acquired to be used only for park purposes. Said Board is hereby authorized and empowered to accept for park purposes any and all lands within said area that may be offered or conveyed to it by any individual, group of individuals or corporation, private or municipal, having title to such land. The Texas State Parks Board is also authorized to accept any and all donations of funds or property that may be made to it for the purchase of lands within this area, and is further authorized to use said monies or property so donated in acquiring title to lands within this area, and to pay for such lands and the cost of acquiring same, out of said fund, such sums as in its discretion it may deem advisable. Provided, however, that no commission shall be paid to anyone in the acquisition of said land. That the State Parks Board shall place any and all funds so received by it in a special fund in the State Treasury to be used for the sole and only purpose provided herein. Said Board is hereby vested with the power of eminent domain, and in the exercise of said power shall have the right to condemn for park purposes within the said area, and may institute, maintain and prosecute suits in the name of the State of Texas, for that purpose following the procedure

applicable to the condemnation of lands by counties or by railroads or any other method authorized by law, and it is hereby made the duty of the Attorney General or the County or District Attorneys of Brewster County, Texas, to aid and assist the Board in the institution and prosecution of condemnation suits within said area. That all land acquired by said Board shall be for the use and benefit of the State of Texas for recreational park purposes and shall be under the supervision and control of the Texas State Parks Board.

Withdrawal of school lands from sale; transfer

Sec. 3. The Legislature of the State of Texas hereby withdraws from sale or lease all unsold public free school lands situated within the boundaries of the area described in this Act and which has been designated as the Big Bend National Park and hereby transfers and conveys said land from the State Public School Fund to the State of Texas for park purposes only, and upon payment be made for said land as hereinafter set out the title thereto shall vest in the State of Texas for park purposes only, and said land shall become a part of the Big Bend National Park. Said land is hereby valued at the sum of one dollar per acre which amount shall be paid therefor to the State Treasurer of the State of Texas to be credited to the State Public School Permanent Fund as consideration for said lands and in lieu of said lands. Said lands hereby transferred and conveyed are conveyed in fee simple title without any mineral reservation. The amount of the consideration for said conveyance of said Public School lands is to be paid out of any appropriation hereinafter made in this Act, or that may hereafter be made for said purpose in any other Act or Acts or from any gift or donation of funds that may be made to the State Parks Board for the purchase of land within the area that has been designated by this Act as the Big Bend National Park. The Commissioner of the General Land Office shall prepare a list of the lands now owned by the State Public School Fund situated within this area and which has not heretofore been transferred or conveyed by the provisions of Chapter 100, Acts First Called Session of the Forty-third Legislature, and shall deliver one copy to the Texas State Parks Board and shall certify and furnish to the State Treasurer of the State of Texas a copy of said list showing the number of acres and a proper description thereof, and on the basis of said certificate the State Treasurer is hereby authorized to make proper settlement, credits, and transfers of monies from the General Fund of the State of Texas hereby appropriated to the State Public School Fund, and to make proper settlement and credits from payment received from the Texas State Parks Board out of any donations or gifts of monies made to said Board to the State Public School Fund for the purpose of purchasing said school lands for park purposes. That the Texas State Parks Board is hereby authorized and empowered in conjunction with the State Treasurer to designate the proper amount of acreage contained in said certificate in accordance with the payments so made in proportion to the amount paid therefor.

Conveyance of mineral estate

Sec. 4. Where the mineral estate has been severed from the surface estate in Public Free School lands situated within the boundaries of the area which has been designated herein as the Big Bend National Park, the Legislature of the State of Texas hereby transfers and conveys all the mineral estate now owned by the State of Texas for the benefit of its Public Free School Fund to the State of Texas for park purpose only and the title to said mineral estate shall vest upon the payment of the consideration hereinafter set out. The amount of consideration for said conveyance shall be at the rate of fifty cents per acre and shall be paid to the State Treasurer of the State of Texas to be credited to the Public School Permanent Fund as consideration for said mineral estates in said lands and in lieu of said mineral estates in said public school lands. That said consideration shall either be paid by a transfer to be made by the State Treasurer from the General Fund of the State of Texas to the Public School Fund from the appropriation hereinafter made in this Act or from appropriations that may be hereafter made for said purpose or may be made by proper credit to be made by the State Treasurer from payments that may be made by the Texas State Parks Board from the special fund established by this Act for purchase of lands situated within the area that has been designated as the Big Bend National Park. That upon the taking effect of this Act, the Commissioner of the General Land Office shall prepare a list of the lands in which the State of Texas owns only the mineral estate situated in the area designated as the Big Bend National Park herein for the benefit of the State Public School Fund and shall deliver one copy to the State Parks Board and one copy to the State Treasurer and shall certify to the State Treasurer the number of acres covered by said mineral estates and a proper description thereof which certificate shall form the basis for the credits to be made by the State Treasurer covering the transfer and conveyance of the mineral estates covered by this Act.

Exchange of lands

Sec. 5. The Texas State Parks Board is hereby authorized to exchange any lands that have been acquired for park purposes under the provisions of Chapter 100, Acts First Called Session of the Forty-third Legislature, and that may have been acquired for park purposes under Chapter 95, Acts Regular Session Forty-third Legislature, that are situated outside of the boundaries of the area described and designated in this Act as the Big Bend National Park, for lands not yet acquired for park purposes within the area which has been described in this Act and designated as the Big Bend National Park.

Limitation on price per acre

Sec. 6. The Board in the purchase of lands within said area from private owners thereof, shall not pay a greater price than Two ($2.00) Dollars per acre, exclusive of improvements thereon, for voluntary sales where the consideration is to be paid out of appropriations made from the General Fund of the State of Texas, provided this limitation shall not apply on lands acquired through condemnation proceedings. That all such lands shall be acquired in fee simple title without any reservation of any character whatsoever. That where lands have been sold by the State of Texas for the benefit of the State Public School Fund on the deferred payment plan and there are now outstanding balances due from the purchasers upon obligations executed for the purchase of said land and as a part of the consideration therefor, the Board shall place a value on the purchasers' equity therein and pay such purchaser or purchasers therefor not to exceed the amount of Two ($2.00) Dollars per acre, exclusive of improvements where said consideration is to be paid out of appropriations made from the General Fund of the State of Texas, and to pay the State of Texas for the benefit of the Public School Fund the amount of unpaid balance due thereon. The limitation as to the amount that shall be paid per acre for the land shall not apply to payments that are to be made out of the special fund created by this Act but shall only apply to payments or part-payments to be made out of the appropriations payable out of the General Fund of the State of Texas.

Transfer of lands

Sec. 7. All lands acquired by the State of Texas for park purposes under the provisions of Chapter 100, Acts First Called Session, Forty-third Legislature which is situated within the area herein defined and designated as the Big Bend National Park is hereby transferred and conveyed to the State of Texas for park purposes and shall be designated as the Big Bend National Park.

National Park; concurrent jurisdiction

Sec. 8. The United States Government, through the Secretary of the Interior or any other Agency, is hereby authorized to acquire title, to hold, occupy and possess the area herein defined as the Big Bend National Park and the Governor of the State of Texas is hereby authorized to execute a deed of conveyance to the United States Government covering the area acquired under the terms of this Act as the Big Bend National Park for the use of the public for recreational park purposes, in consideration of the United States Government agreeing to establish and maintain the said area as a National Park under an Act of Congress, being Public—No. 157, enacted by the Seventy-fourth Congress of the United States and to cede to the United States jurisdiction over said lands in conformity with the provisions of Article 5247, of the Revised Civil Statutes of Texas, 1925; reserving, however, to the State of Texas, the right to retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal, issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded as the area for the Big Bend National Park, in like manner and like effect as if no such cession had taken place; and, reserving further, to the State the right to levy and collect taxes on sales of products or commodities upon which a sales tax is levied in this State, and to tax persons and corporations, their franchises and properties, on land or lands deeded and conveyed under the terms of this Act; and reserving also, to persons residing in or on any of the land or lands deeded or conveyed under the terms of this Act to the United States Government the right to vote at all elections within the counties, in which said land or lands are located, upon like terms and conditions and to the same extent as they would be entitled to vote in such counties had not such lands been deeded or conveyed as aforesaid to the United States of America. [Acts 1939, 46th Leg., p. 520.]

4D. QUINTANA STATE PARK

Art. 6077f. Quintana State Park.—Section 1. Whereas, the citizens of Freeport and Brazoria County have tendered to the Texas State Parks Board as a donation certain land in the town of Quintana, in Brazoria County, Texas, adjacent to the West jetty and bordering on the Gulf of Mexico, including all of Block Numbered Twenty-seven (27) and the accretions thereto, all of Block Numbered Twenty-six (26) B and the accretions thereto, all of Block Numbered Twenty-eight (28) B, and all of Block Numbered Twenty-eight (28) C and the accretions thereto, according to the maps of said town of Quintana, aggregating about one hundred and twenty-five (125) acres of land, more or less, for the establishment and operation thereon of a State Park to be known as "Quintana State Park," and the Texas State Parks Board has adopted the following resolution, to-wit:

"WHEREAS, The citizens of Freeport, Texas, and Brazoria County are seeking to acquire certain lands on the Gulf of Mexico to be designated as a State Park, and improved by Convict Labor: and

"WHEREAS, Such a tract would provide a State Park with a sand beach and breakers;

"THEREFORE, Be it resolved by the Texas State Parks Board that the park site proposed by the Brazoria County workers be declared suitable for a State Park and be accepted when deeds and titles have been correctly prepared and given to the State Parks Board, and when all the conditions requisite to the establishment of a State Park have been met, and the Executive Secretary is charged with the duty of seeing that such conditions are complied with."

Sec. 2. The Legislature does hereby authorize and approve the acceptance by the Texas State Parks Board the donation of said land for the establishment and operation thereon of a State Park to be known as "Quintana State Park," subject to compliance with the conditions set forth in the foregoing resolution of the Texas State Parks Board. [Acts 1939, 46th Leg., p. 529.]

4E. STEPHEN F. AUSTIN STATE PARK

Art. 6077g. Stephen F. Austin State Park.—Section 1. The State of Texas accept title to said ground when conveyed in fee simple without reservations, conditions, or exceptions by San Felipe Park Association and Corporation of San Felipe de Austin, and dedicate it as a state park in commemoration of the historical events that have occurred at San Felipe de Austin, and agrees to beautify and protect the same; which said ground shall be under the care and direction of the Texas State Parks Board.

Sec. 2. The said land and grounds shall hereafter be known and styled "Stephen F. Austin State Park," and shall be under the care and direction of the Texas State Parks Board, which shall endeavor to improve, preserve, and protect the lands and property within said Stephen F. Austin State Park. [Acts 1939, 46th Leg., p. 527.]

4F. JIM HOGG MEMORIAL PARK

Art. 6077h. Jim Hogg Memorial Park.—The State of Texas accepts the title to approximately one hundred and eighty (180) acres of land, a part of the General Joseph L. Hogg homestead in Cherokee County, tendered as a donation by the heirs of Governor James Stephen Hogg and dedicates it as a public State Park in commemoration of the birth of Governor James Stephen Hogg, said park to be known as the Jim Hogg Memorial Park, and agrees to beautify and protect same, which said ground shall be under the care and direction of the State Parks Board, such improvements to include as far as possible a replica of the original Hogg home and grounds adjacent to the residence. [Acts 1941, 47th Leg., p. 266, ch. 180, § 1.]

4G. KING'S MEMORIAL STATE PARK

Art. 6077i. King's Memorial State Park.—Section 1. The State of Texas hereby accepts title to the ground tendered to it by the Town of Refugio and hereby dedicates it as a Public Memorial State Park, which park shall be under the care and direction of the State Board of Control and shall be styled King's Memorial State Park.

Sec. 2. The Governor shall biennially appoint three (3) resident citizens of Refugio County who shall be known as the King's Memorial State Park Commissioners who shall advise and assist the Board of Control in the improvement, care and preservation of said land. [Acts 1941, 47th Leg., p. 687, ch. 428.]

4H. PALO DURO CANYON STATE PARK

Art. 6077j. Palo Duro Canyon State Park—renewing outstanding indebtedness—entrance fees—leases—lands included.

Extension of outstanding indebtedness

Section 1. The Texas State Parks Board is hereby authorized and empowered to renew and extend out-

standing indebtedness secured by deeds of trust and a vendor's lien on the lands and properties comprising the Palo Duro Canyon State Park to the extent of Three Hundred Thousand ($300,000.00) Dollars; to evidence the renewed indebtedness by the issuance and delivery to the owners and holders thereof of its bonds, notes or warrants, payable over a period not to exceed forty (40) years, with interest, payable annually or semi-annually, at a rate not to exceed three per cent (3%) per annum; and to mortgage and encumber the lands and properties comprising said Palo Duro Canyon State Park, and the revenue and income derived therefrom, to secure the payment of said bonds, notes or warrants; provided, however, that all such indebtedness, over and above the sum of Three Hundred Thousand ($300,000.00) Dollars, shall be released and extinguished by the owners and holders thereof before such bonds, notes or warrants are delivered.

No state debt created; required clause

Sec. 2. Nothing herein shall be construed as creating a debt against the state of Texas or as binding the State of Texas in any way except as to the mortgage of the lands and properties comprising the Palo Duro Canyon State Park and as to the pledge of the revenues and income thereof as herein provided. Each bond, note or warrant issued hereunder shall contain this clause:

"The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Permissible provisions in mortgage

Sec. 3. The indenture of mortgage given by Texas State Parks Board to secure the payment of the renewed indebtedness may, among other things, provide the following:

(a) For the appointment of a trustee to sell the encumbered properties in event default is made in the payment of any installment of interest or of the principal of any bond, note or warrant secured by such mortgage, or in event any covenant or provision of the mortgage is violated, provided such default or violation has continued for a period of sixty (60) days.

(b) For the appointment of substitute trustees.

(c) For the sale of the encumbered properties by the trustee or substitute trustee in the manner now provided by law for the sale of real property under deed of trust.

(d) For the renewal, extension and preservation of the liens of the deeds of trust and the vendor's lien securing the renewed indebtedness at the time this Act becomes effective, and for the enforcement of the powers of sale under such deeds of trust and the exercise of the right of rescission under the vendor's lien in event either action becomes necessary to protect the rights of the owner and holder of any bond, note or warrant issued hereunder.

Approval of bonds; prima facie valid; defenses

Sec. 4. The bonds issued hereunder shall be approved by the Attorney General and registered with the Comptroller of Public Accounts. Such bonds, after receiving the certificate of the Attorney General, and having been registered in the Comptroller's office, shall be held in every action, suit or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligations. In every action brought to enforce collection of such bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of its validity, together with the coupons attached thereto. The only defense which can be offered against the validity of such bonds shall be forgery or fraud.

Entrance fees; concessions; board created; income

Sec. 5. The Texas State Parks Board is further authorized, in a manner not inconsistent with the terms and conditions of the mortgage indenture securing any bonds, notes or warrants issued hereunder, to fix all entrance fees to be charged for admission to Palo Duro Canyon State Park and all charges to be made and collected from the patrons thereof; to enter into contracts granting concessions in said park; to enter into grazing contracts or leases covering all or any part of the park lands; and to make such other contracts as may be necessary to properly carry out the provisions of this Act. All funds derived from the operation of Palo Duro Canyon State Park as well as all royalties, rentals and bonus money received from the sale of minerals therefrom or lease rentals paid for grazing privileges shall be applied to pay off and discharge outstanding indebtedness or used for maintaining, improving or operating said Park except as hereinafter provided. It is further provided that a Board of three (3) members is hereby created composed of the Commissioner of the General Land Office who shall act as Chairman, the Attorney General of Texas and the Chairman of the State Parks Board. This Board is hereby authorized to execute mineral leases on all lands comprising the Palo Duro Canyon State Park, each lease to provide for a minimum royalty of one-eighth (⅛) of all oil, gas or other minerals produced and sold.

The income derived from bonuses, rentals and royalties from such mineral leases shall first be applied to the payment and satisfaction of the indebtedness against the properties comprising Palo Duro Canyon State Park. After such indebtedness has been paid off and discharged, then all of such revenues as the State Parks Board may deem necessary for the improvement, beautification, and usefulness of such Park shall be used by said State Parks Board for that purpose; after which one-half (½) of the balance of the unexpended revenues may be used by said State Parks Board on other State Parks, and the other one-half (½), as well as any unexpended balances, shall go to the General Revenue Fund at the end of each biennium.

Discretion of Parks Board as to bonds, etc.

Sec. 6. Subject to the restrictions contained in Sections 1 and 2 hereof, Texas State Parks Board is given full and complete discretion in fixing the form, conditions and details of the bonds, notes or warrants to be issued hereunder, and full and complete discretion in prescribing the terms and conditions of the mortgage indenture to secure the same.

Lands included

Sec. 7. For the purposes of this Act, the Palo Duro Canyon State Park shall include those lands and premises located in Armstrong and Randall Counties, State of Texas, and described in that certain deed executed by Fred A. Emery and wife to Texas State Parks Board, dated July 28, 1933, and recorded in the Deed Records of Randall County, Texas, in Volume 69, pages 347 to 350 thereof.

Partial invalidity

Sec. 8. The provisions of this Act are hereby declared to be distinct and separable. If any section, paragraph, sentence or clause hereof shall be found to be invalid by a court of competent jurisdiction, such invalidity shall in no way affect any other provision of this Act. [Acts 1947, 50th Leg., p. 93, ch. 64, § 1.]

4I. NIMITZ–EISENHOWER PARKS

Art. 6077k. Nimitz-Eisenhower Parks.—Section 1. There is hereby created Nimitz-Eisenhower Parks, one to be located near Lake Texoma in Grayson County and one near Fredericksburg in Gillespie

County, upon lands furnished for such purpose by interested persons.

Sec. 2. The State Parks Board is hereby authorized to accept gifts of any nature or kind for the construction, building, advertising or in any manner creating the Nimitz-Eisenhower Parks, and to accept gifts for exhibition, dealing with Texas history or the lives of these men, and to advertise the affairs of said Parks and make rules and regulations for the administration of the affairs, and to hire such personnel upon such terms as seem advisable to carry out the duties in connection with the building, construction or exhibition of historical matters that may be exhibited.

Sec. 3. The State Parks Board is hereby empowered to administer the affairs of said Parks and to grant concessions and otherwise operate and maintain, under regulations for the carrying out of this Act and the laws of this state relative to State Parks, as it may deem necessary, not to conflict with any law. [Acts 1947, 50th Leg., p. 274, ch. 168.]

4J. PORT ISABEL LIGHTHOUSE

Art. 6077*l*. Port Isabel Lighthouse; rehabilitation; admission fees.—Section 1. The State Parks Board is hereby authorized to accept title in behalf of the State to the Port Isabel Lighthouse and the site on which it is located and that said lighthouse when so acquired be dedicated as a State Historical Monument and Park.

Sec. 2. The State Parks Board is authorized and empowered to rehabilitate, maintain, and preserve said property and collect admission fees from those visiting the site or operate it on a concession basis pursuant to the provisions of Chapter 1 of Title 103 of the Revised Civil Statutes of 1925.[1] [Acts 1947, 50th Leg., p. 721, ch. 357.]

[1] Article 6067 et seq.

4K. FANNIN STATE PARK

Art. 6077m. Fannin State Park; commissioners; powers and duties; memorial.—Section 1. The Governor shall, as soon as practicable after the taking effect of this Act, appoint three (3) resident citizens of this State, who shall be known as "Fannin State Park Commissioners," who shall serve without compensation except for such reasonable and necessary personal expense as may be incurred in the performance of their duties in this behalf. The term of office of each of said Commissioners shall be six (6) years, except the members of the first Commission appointed hereunder, whose term shall be two (2), four (4) and six (6) years, respectively, and they shall decide by lots among themselves who is to have the two (2), four (4) and six (6) year terms; but after the expiration of the term of office of any member of the First Commission appointed hereunder, his successor shall hold for a term of six (6) years. The duties of said Commissioners, acting with the advice and consent of the Board of Control, shall be the same as that provided by Article 6073, Revised Civil Statutes of Texas of 1925.

Sec. 2. The Fannin State Park Commission shall have authority to solicit further donations of land adjoining the Fannin State Park as established in this Act, and is hereby authorized to accept in behalf of the State the title to such adjoining land when and as tendered, subject to the approval of the State Board of Control.

Sec. 3. The government of the United States to have the permission, if same is necessary, to erect upon said park site a memorial in the form of a monument, building or whatever it may desire as such memorial, the location of same to be agreed upon by the proper representatives of said United States government and the Board of Control of the State of Texas. Such memorial to be erected under the conditions required by such Government of the United States but without expense to the State of Texas. [Acts 1947, 50th Leg., p. 959, ch. 414.]

4L. INDEPENDENCE STATE PARK

Art. 6077n. Independence State Park created; lands set aside for.—Section 1. There is hereby created a State Park in Washington County, Texas, to be known as "Independence State Park". There is hereby set aside for the purpose of said Park certain lands situated in the County of Washington, State of Texas, and described as follows:

First Tract: Being one lot of land conveyed by General Sam Houston to H. Clark. Beginning at the North East corner of a 4 acre lot known as the Independence Academy Lot. which is also the North West corner of a tract of land purchased by Sam Houston from James R. Hines. Thence N. 74 E. with North boundary line of said tract of land, 139.32 varas to a stone for the North East corner of this tract. Thence S. 16 E. 54 varas to a stone for the South East corner of this tract. Thence S. 74 W. 139 32 vas. to the East boundary line of the before mentioned Academy lot. Thence N. 16 W. 54 varas with said boundary line, to the place of beginning. Also a strip of land thirty feet in width and one hundred and twenty nine yards in length, lying South and East contiguous to said lot, for the purpose of forming and keeping open perpetually a street on the East and South sides of said lot. But out of the above land is reserved a strip 40 feet wide lying West on the above conveyed property, and being a part of the same, and running the entire length of the West side of said property, for a street for the use of the public perpetually, and being the same tract of land conveyed to the State of Texas by a deed now of record in Volume 109, page 517, Deed Records of Washington County, Texas.

Second Tract: Being out of the North side of a tract of land lying just West of the town of Independence, and being out of five tracts of land conveyed by J. Marshall Booker to Mrs. Katie Booker, and recorded in Deed Records of Washington County, Texas, in Vol. 73, page 190. Beginning at the North corner of the original tract, in the street leading to the Old Baylor Female College Property from Independence, and West corner of the Burford tract. Thence with the line between this and the Burford tract, S. 15-½ E. 28.8 vas. to a stake for corner. Thence West, parallel with, and 80 feet South of the North line of the original tract, 235 vas. to a stake for corner in the division line between this tract and the McCrocklin tract. Thence with said line, North 28.8 vas. to a stake for corner in street. Thence with center of said street, East 235 vas., to the place of beginning, containing an area of one and 1/10 (1.1) acres of land, eight-tenths of an acre being in the old road, and three-tenths of an acre being inside of the field fence. Being the same land described in deed from Mrs. Gertrude McCrocklin to the State of Texas, as shown in Volume 109, page 521, Deed Records of Washington County, Texas.

Third Tract: All that certain tract or parcel of land situated in Washington County, Texas, out of the Saules League, being the property upon which the Old Female College was formerly located, and being the same tract conveyed J. T. Hairston by the Union Baptist Association of Texas, and recorded in Deed Records of Washington County, Texas, in Vol. 62, page 202, and being land inherited by T. C. Hairston as the sole heir at law J. T. and Josephine Hairston, deceased, and described as follows: Beginning at the South West corner of a tract of land formerly known as the Brown Tract in the North East

line of the J. P. Cole League. Thence N. 74 E. 150 vas. to the North West corner of the Old Boarding House tract. Thence with the West line of same, and of the land conveyed the state by Mrs. Gertrude McCrocklin, S. 16 E. 150 vas. to a post for corner. Thence S. 74 W. with Mrs. McCrocklin's line, 150 vas. to a stake for corner in the North East line of the J. P. Cole League, the North West corner of the McCrocklin tract. Thence with said League line, N. 16 W. 150, vas. to the place of beginning, containing an area of four (4) acres of land. Being the same land described in deed from Dr. T. S. Hairston and wife to the State of Texas as shown in Volume 117, page 125, Deed Records of Washington County, Texas.

Sec. 2. The said Independence State Park shall be under the jurisdiction, supervision, care and direction of the State Parks Board; and said Parks Board shall have the powers and authority with regard to the management and control of said park as is provided by law with regard to other State Parks, insofar as said power and duties are applicable to the Park herein created. [Acts 1947, 50th Leg., p. 1040, ch. 450.]

5. COUNTY PARKS

Art. 6078. Tax for parks.—Each Commissioners Court is authorized to levy and collect a tax not to exceed five (5) cents on each one hundred dollars assessed valuation of the county for the purchase and improvement of lands for use as county parks. No such tax shall be levied and collected until the proposition is submitted to and ratified by the property taxpaying voters of the county at a general or special election called for that purpose, provided, a two-thirds majority of the property taxpaying voters of such county, at an election held for such purpose shall determine in favor of said tax. If said court desires to establish two or more of such county parks, they shall locate them in widely separated portions of the county. Said court shall have full power and control over any and all such parks and may levy and collect an annual tax sufficient in their judgment to properly maintain such parks and build and construct pavilions and such other buildings as they may deem necessary, lay out and open driveways and walks, pave the same or any part thereof, set out trees and shrubbery, construct ditches or lakes, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules and regulations as said court may prescribe.

Section 2. All parks acquired by authority of this Act shall be under the control and management of the county acquiring the same, provided that the Commissioners Court may by agreement with the State Parks Board turn the land over to the State Parks Board to be operated as a public park; the expense of the improvement and operation of such park to be paid by the county and/or cooperative Federal agencies according to the agreement to be made between such county and the State Parks Board.

Section 3. If any section, subsection, paragraph, sentence, clause, or provision of this Act shall, for any reason, be held invalid, such invalidity shall not affect any other portion of this Act or the application of such section, subsection, paragraph, sentence, clause, or provision to any other person or situation, but this Act shall be construed and enforced as if such invalid provisions had not been contained therein. [Acts 1915, p. 102; Acts 1941, 47th Leg., p. 437, ch. 270, § 1.]

Art. 6078a. Abandonment of County Parks.—If any parcel of land shall have been dedicated as such county park which may be undesirable for park purposes, the County Commissioners Court of such county, upon the application of any person, or upon its own motion shall hold a hearing to determine whether said parcel of land shall be closed and abandoned as a park. Notice of the time and place of such hearing and of the issues to be determined shall be published in the English language once a week for three (3) consecutive weeks preceding such hearing in some newspaper published in said county. The first of said publications shall appear not less than twenty-one (21) days immediately preceding the date set for such hearing. Said notice shall contain a brief description of such parcel of land and shall state that at such hearing such County Commissioners Court will determine whether or not such parcel of land shall be closed and abandoned as a park, and shall direct all persons interested to appear at the time and place of such hearing to contest the closing and abandonment of such parcel of land as a park if they desire to do so. If there be no newspaper published in the county, the County Commissioners Court shall then post such notice in writing at the Courthouse door of such county, for at least twenty-one (21) days successively next before the date set for such hearing.

At such hearing said County Commissioners Court shall hear evidence as to whether such parcel of land is desirable for park purposes, and shall make a full investigation as to whether the public interest would be better served by the retention and maintenance of said parcel of land as a county park or by closing and abandoning such parcel of land as a park, and, after such hearing, such County Commissioners Court shall enter an order in its minutes, either retaining said parcel of land as a park or closing and abandoning the same as such, according to its determination as to the best public interest.

Should said order direct the closing and abandonment of such parcel of land as a park, such previous dedication thereof shall cease, terminate and expire and the owner of such parcel of land shall thereafter hold the unencumbered fee simple title thereto, free and clear of such dedication. Provided said owner shall pay all taxes due the State and/or any subdivision thereof at the time said property was conveyed to the county for park purposes. [Acts 1935, 44th Leg., p. 376, ch. 138, § 1.]

Art. 6079. Privileges and concessions.—No person, firm or association of persons shall have the right to offer for sale or barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the commissioners court or its duly authorized agent, paying for such privilege or concession the sum agreed upon with said court or its duly authorized agent. All revenue from the sale of such privileges or concessions shall go into a fund for the maintenance of said parks. [Acts 1915, p. 102.]

Art. 6079a. [Blank.]

Art. 6079b. Community parks in counties of specified population.—In counties owning and maintaining community parks prior to 1941, and having a population of 50,000 to 78,000 inhabitants according to the last preceding Federal Census, the Commissioners Court is authorized to maintain and operate said parks provided said maintenance and operation expenses shall not exceed Two Thousand Dollars ($2,000.00) in any one year, and shall be paid out of the General Fund of the county. [Added Acts 1945, 49th Leg., p. 658, ch. 365, § 1.]

6. CITY PARKS

Art. 6080. City parks.—The governing body of any incorporated city may purchase, improve and maintain land for use as city parks. Such parks shall not exceed two in number for each two thousand inhabitants. If such body establishes more than one of such parks, it shall locate them in widely separated parts of the city. Such body is authorized to levy and collect a tax not to exceed five cents on each one hun-

dred dollars of its assessed valuation for the purchase and improvement of lands for use as such parks, and may levy and collect a like annual tax to properly maintain such parks. Said body shall have full power and authority over all such parks, and may build and construct such building as they may deem necessary, lay out and open driveways and walks, pave any part thereof, construct ditches or lakes, set out trees and shrubs, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules as said body may prescribe. [Acts 1917, p. 149.]

Acts 1939, 46th Leg., p. 525, § 1 authorized the Commissioner of the General Land Office of the State of Texas to convey by proper instrument all right, title, and interest which the State of Texas has in and to the Blanco State Park in the City of Blanco, Blanco County, Texas, to the City of Blanco, Texas.

Art. 6081. Concessions in city park.—No person, firm or association of persons shall have the right to offer for sale or barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the governing body, or its authorized agent, paying for such privilege or concession the sum agreed upon with said body or its agent. All revenue from the sale of such rights, privileges or concessions shall go into a fund for the maintenance of said parks. [Id.]

Art. 6081a. Sale or exchange by city of park property.—Any incorporated city in this State having a population of less than 45,000 according to the 1920 United States census and a city of more than 43,000 population, according to said census, is hereby authorized to sell any real property heretofore dedicated as a public park in said city which has never been used for public park purposes on account of its location and surroundings being unsuitable for such use, provided such dedication was not made by the State of Texas. Any such property may be sold by the city or exchanged for other real property within the city limits. Provided that in event of a sale the proceeds thereof shall be used exclusively for the purpose of acquiring other real property in the city to be used as a public play ground and in event of an exchange of such property for other property the property acquired shall be used as a public play ground. Provided further, that the purchaser of any property sold or exchanged as herein authorized shall not be responsible for the application or use of the proceeds or the property received, for such property, and in event of misapplication thereof the title to the property sold by the City shall not in any way be affected. [Acts 1929, 41st Leg., p. 48, ch. 18, § 1.]

Art. 6081b. Acquisition and maintenance of parks and playgrounds outside limits of certain cities.

Application

Sec. 1. That the governing body of any incorporated city in this State having more than 43,000 inhabitants according to the United States census of 1920, which city is in a county having a population of less than 100,000 inhabitants according to said census may receive through gift or dedication and is hereby empowered to, by purchase without condemnation or by purchase through condemnation proceedings, acquire and thereafter maintain and conduct for the use of the public [as] recreational parks or playgrounds, either or both, tracts of land without the corporate limits of such city, no one of such parks or playgrounds which may be acquired by purchase or through condemnation proceedings to exceed 320 acres in area and the total acreage outside the limits of the city which may be acquired by purchase and through condemnation proceedings, either or both, shall never exceed 640 acres.

Bonds; taxes

Sec. 2. For the purpose of condemning or purchasing without condemning, either or both, lands to be used and maintained as provided in Section 1 hereof, the governing body of any city falling within the terms of such section may issue negotiable bonds of the city and levy taxes to provide for the interest and sinking funds of any such bonds so issued, the authority hereby given for the issuance of such bonds and levy the collection of such taxes to be exercised in accordance with and subject to the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of 1925.

Control and management

Sec. 3. Any and all recreational parks and playgrounds acquired under and by virtue of the terms of this Act shall be under the control and management of the governing body of the city acquiring the same and such governing body is hereby expressly authorized and empowered to improve, maintain and conduct the same for the benefit of the public and to provide, improve, maintain and conduct suitable recreational facilities therein and in connection therewith and to fix such reasonable charges as the board shall deem fit for the use of such recreational facilities by members of the public, all proceeds from such charges to be devoted exclusively to the support, maintenance, upkeep, and improvement of the city's parks and playgrounds and the facilities, structures and improvements therein. Provided, that no city shall be liable for injuries to persons resulting from or caused by any defective, unsound, or unsafe condition of any such park or playground, or any part thereof, or thing of any character therein or resulting from or caused by any negligence, want of skill or lack of care on the part of any governing board, officer, servant, employee, or other person with reference to the construction, improvement, management, conduct, or maintenance of any such park or playground or any improvement, structure or thing of any character whatever located therein or connected therewith.

Special tax

Sec. 4. That in addition to and exclusive of any taxes which may be levied and collected for the interest and sinking funds of any bonds issued under the authority of this Act, the governing body of any city falling within the terms hereof may and is hereby empowered to levy and collect a special tax not to exceed for any one year five cents on each one hundred dollars of the assessed value of the taxable property within the city for the purpose of acquiring any such parks or playgrounds, either or both, and such governing body may and is hereby further empowered to levy and collect an annual special tax not to exceed five cents on each one hundred dollars assessed value of the taxable property in the city for the purpose of improving, maintaining, and conducting such parks and playgrounds as such city may acquire without its limits under the provisions of this Act and to provide, improve, maintain and conduct for use in connection therewith all such suitable recreational facilities and structures and other things as such governing body may deem fit. Provided that nothing contained in this Act shall be construed as authorizing any city to exceed the limits of indebtedness placed upon it under the Constitution.

Keeping open; concessions

Sec. 5. All parks and playgrounds acquired and maintained under the provisions of this Act shall remain open for the use of the public under such rules and regulations as the governing body having the control and management of the same may from time to time prescribe. However, no person, firm, association of persons, or corporation shall have the right to, in any such park or playground offer anything for barter or sale, or exhibit anything for pay or conduct any place of amusement for which a fee is charged or render personal service for hire without having first obtained from such governing body the privilege of so

doing under such rates of payment therefor and other terms as may be agreed upon with such governing body and all revenues arising from the sales of such privileges or concessions shall be devoted to the support, maintenance, upkeep and improvement of the city's parks and playgrounds and the facilities, structures, and improvements therein.

Repeal; act cumulative

Sec. 6. Nothing contained in this Act shall be construed as repealing any provisions of any special charter of any incorporated city, but shall be deemed and held to be cumulative thereof.

Closing of roadways

Sec. 7. Any roadway upon which land acquired for park purposes under the provisions of this Act abuts on both sides may be closed by order of the commissioners court of the county in which said roadway is located, and thereafter all rights which the State may have in and to such roads by reason of previous dedication shall be cancelled and surrendered back to the county. [Acts 1929, 41st Leg., p. 272, ch. 120.]

Art. 6081c. Development by certain cities of lands owned outside limits for parks and playgrounds.—Sec. 1. That whenever any incorporated city having a population of more than 43,000 according to the United States census of 1920, in any county having a population of less than 100,000 according to said census may own land without its limits, and devoted to use as a public park or playground, either or both, and which may be contiguous to any land owned by the county in which such city is situated and devoted to use as a public park, the governing body of such city may purchase for the city and the Commissioners' Court of such county may sell to the city, upon such terms as may be agreed upon, the lands so owned and held by the county, the same to be acquired by the city to be used exclusively in connection with its adjacent or contiguous lands devoted to park or playground purposes, either or both, and the land so acquired to be devoted to a like use; or the governing body of such city may sell to and the Commissioners' Court thereof may buy for such county, upon such terms as may be agreed upon, the lands so owned and held by the city, the same to be acquired by the county for the exclusive use in connection with its adjacent or contiguous lands devoted to use as a public park and to be devoted only to such purpose; provided, however, that in all cases of such sales the minimum consideration which may be agreed upon shall be adequate to pay, or provide for the payment of any portion of any unmatured bonded indebtedness which may have been incurred by the seller in originally acquiring the land so sold, all sums to the credit of the sinking fund of such indebtedness to be deducted from the face value of the unmatured bonds in determining the outstanding indebtedness within the meaning of this Act, and this provision to in no wise be deemed as prohibiting any agreement upon a greater consideration for the property.

Sec. 2. That whatever the governing body of any incorporated city may have under its management and control any property outside of the limits of such city and devoted to use as a public park or playground, either or both, and there may be adjacent or contiguous thereto property devoted to use as a public park under the control and management of the Commissioners' Court of the county in which such city is situated, the governing body of such city and the Commissioners' Court of such county may, and they are hereby expressly authorized to, by lease or otherwise, upon such terms and for such period as they may determine, provide for the single management, conduct and control of such contiguous or adjacent properties for the benefit of the public and for the uses to which the same may have been devoted, by vesting the exclusive management, maintenance, conduct and control thereof in either the governing body of the city or the Commissioners' Court of the county, as may be agreed upon, the vesting of such exclusive management and control in one of such bodies to in no wise affect the power or authority of each of them to contribute such funds as it might lawfully have expended under its own management and control for the maintenance, improvement and upkeep of such parks or playgrounds, or providing, improving, maintaining and conducting suitable recreational facilities, structures and improvements therein or in connection therewith.

Sec. 3. Any roadway upon which land acquired for park purposes under the provision of this Act abuts on both sides may be closed by order of the Commissioners' Court of the county in which said roadway is located, and thereafter all rights which the State may have in and to such roads by reason of previous dedication shall be cancelled and surrendered back to the county. [Acts 1929, 41st Leg., p. 274, ch. 121.]

Art. 6081d. Condemnation or purchase of lands without city limits for parks and playgrounds.

Acquisition of lands outside territorial limits

Sec. 1. That the governing body of any incorporated city in this State may receive and hold through gift or under dedication, and is hereby empowered to condemn or to purchase lands without its territorial limits and within the county in which such city is situated for the purpose of establishing and maintaining thereon public recreational parks and playgrounds, either or both, no one of such parks or playgrounds which may be acquired by purchase or through condemnation to exceed 320 acres in area and the total acreage outside of the limits of the city which may be acquired by purchase and through condemnation proceedings, either or both, shall not exceed 640 acres.

Bonds and taxes authorized

Sec. 2. For the purpose of condemning or purchasing, either or both, lands to be used and maintained as provided in Section 1 hereof, the governing body of any city falling within the terms of such Section may issue negotiable bonds of the city and levy taxes to provide for the interest and Sinking Funds of bonds so issued, the authority hereby given for the issuance of such bonds and levy of such taxes to be exercised in accordance with and subject to the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of 1925.

Management and control of parks and playgrounds

Sec. 3. Any and all recreational parks and playgrounds acquired under and by virtue of the terms of this Act shall be under the control and management of the governing body of the city acquiring the same and such governing body is hereby expressly empowered to improve, maintain and conduct the same for the benefit of the public and to provide, improve, maintain and conduct suitable recreational facilities therein and in connection therewith and to fix and collect such reasonable charges as the governing body shall deem fit for the use of such facilities by members of the public; all proceeds from such charges to be devoted exclusively to the support, maintenance, upkeep, and improvement of the city's parks and playgrounds and the facilities, structures, and improvements therein. Provided, that no city shall be liable for injuries to persons resulting from or caused by any defective, unsound, or unsafe condition of any such park or playground, or any part thereof, or thing of any character therein resulting from or caused by any negligence, want of skill, or lack of care on the part of any governing board, officer, servant, employee or other person with reference to the construction, management, conduct, or maintenance of any such park or playground or any improvement, structure, or thing of any character whatsoever located therein or connected therewith.

Special ad valorem tax authorized

Sec. 4. That in addition to and exclusive of any taxes which may be levied and collected for the interest and Sinking Fund of any bonds issued under the authority of this Act and of any taxes which may be authorized to be levied and collected for the acquisition or maintenance of parks or playgrounds within the limits of the City, the governing body of any city falling within the terms hereof may and is empowered to levy and collect a Special Ad Valorem Tax not to exceed for any one year five cents on each One Hundred Dollars of the assessed value of the taxable property subject to taxation by the city for the purpose of acquiring any park or playground, either or both, authorized by the terms of this Act to be acquired, and such governing body is hereby further authorized to levy and collect an annual Special Ad Valorem Tax not to exceed five cents on each One Hundred Dollars assessed value of the taxable property in the city for the purpose of improving, maintaining, and conducting such parks and playgrounds as such city may acquire without its limits under the provisions of this Act, and to provide, improve, maintain and conduct for use herein and in connection therewith all such suitable recreational facilities and structures and other things as such governing body may deem fit. Provided, that no tax shall be attempted to be levied or collected in violation of any limit or restriction placed upon the taxing power of the city by the Constitution.

Regulations of use; privileges or concessions

Sec. 5. All parks and playgrounds acquired and maintained under the provisions of this Act shall be open to the use of the public under such reasonable rules and regulations as the governing body having the control and management of the same may from time to time prescribe. However, no person, firm, association of persons, or corporation, shall have the right in any such park or playground to offer anything for barter or of amusement for which an admission fee is charged or sale, or exhibit anything for pay or conduct any place render personal service or transportation of any character for hire without having first obtained from such governing body the privilege of so doing under such rates of payment therefor and such other terms and conditions as may be agreed upon with such governing body, and all revenues arising from the grants of such privileges or concessions shall be devoted to the support, maintenance, upkeep and improvement of the city's parks and playgrounds and the facilities, structures, and improvements therein.

Powers additional to charter powers

Sec. 6. Nothing herein contained shall be construed as repealing any provisions of any special charter of any incorporated city, but the powers, terms and provisions hereof shall exist as alternative powers, terms and provisions of any such special charter and any city which shall hereafter adopt or amend its own charter under the terms of the Home Rule provisions of the Constitution may provide in any such charter or amendments thereto provisions on the subject covered hereby other than and differing from those herein provided.

Purchase or sale of adjoining park lands by city or county

Sec. 7. Whenever any incorporated city may own land without its limits and devoted to use as a public park or playground, either or both, and which may be contiguous or adjacent to any land owned by the county in which such city is situated, and devoted to use as a public park, the governing body of such city may purchase for the city and the Commissioners' Court of such county may sell to the city upon such terms as may be agreed upon the lands so owned and held by the county or the Commissioners' Court of such county may purchase for the county and the governing body of the city may so sell to the county the lands owned by the city any such land so purchased to be used by the purchaser exclusively in connection with its contiguous or adjacent lands devoted to playground or park purposes and the land so acquired to be devoted to like use. Provided, however, that in all cases of such sales the minimum consideration which may be agreed upon shall be adequate to pay, or to provide for the payment of, any portion of any outstanding bonded indebtedness which may have been incurred by the seller in originally acquiring the land sold, all sums to the credit of the Sinking Fund of such indebtedness to be deducted from the face value of the unpaid bonds in determining the outstanding indebtedness within the meaning of this Act and this provision in no wise to be deemed as prohibiting any agreement upon a greater consideration for the sale of the property.

Lease of contiguous lands by city or county

Sec. 8. Whenever any county and city situated therein may separately own contiguous or adjacent lands as described in the preceding section, the governing body of such city and the Commissioners' Court of such county may by lease, or other arrangements, upon such terms and for such period as they may determine provide for the single management, conduct, and control of such contiguous or adjacent properties in their entirety for the benefit of the public as a recreational park or playground by vesting the exclusive management, maintenance, conduct and control thereof either in the governing body of the city or the Commissioners' Court of the county as may be agreed upon, the vesting of such exclusive management and control in one of such bodies in no wise to affect the power or authority of each of them to contribute such funds as it might lawfully have expended under its own management and control for the maintenance, improvement and upkeep of such parks or playgrounds or providing, improving, maintaining and conducting suitable recreational facilities, structures and improvements therein or in connection therewith.

Closing roads through lands acquired

Sec. 9. Any roadway upon land acquired by any city under authority of this Act for the purposes herein prescribed or upon which there abut both sides lands of any city and county the exclusive control of which may be vested in the one or the other under the terms hereof may be closed by order of the Commissioners' Court of the county in which such roadway is located and thereafter all rights which the State may have in and to such roadway shall be considered as terminated and surrendered to the county or city as the case may be. [Acts 1931, 42nd Leg., p. 105, ch. 70.]

Art. 6081e. Condemnation or purchase by county or incorporated city of land for parks or playgrounds; cooperation with State Parks Board.

Acquisition of lands authorized

Sec. 1. That any county or any incorporated city of this State, either independently or in cooperation with each other, or with the Texas State Parks Board, may acquire by gift or purchase or by condemnation proceedings, lands to be used for public parks and playgrounds, such lands to be situated in any locality in this State and in any sized tracts deemed suitable by the governing body of the city or county acquiring same; provided, however, that lands to be acquired by any such city or county for said purposes may be, in the discretion of the governing body thereof, situated within the State, either within or without the boundary limits of such city, but within the boundary limits of said county and within the limits of said county wherein said city lies or is situated. [As amended and reenacted Acts 1935, 44th Leg., p. 38, ch. 15, § 1.]

Bonds and taxes

Sec. 2. To purchase and/or improve lands for park purposes, an incorporated city and/or county may issue bonds, and may levy a tax not exceeding Ten (10¢) Cents on the One Hundred ($100.00) Dollars valuation of taxable property in such city and/or county to pay the interest and provide a sinking fund to retire such bonds, the issuance of such bonds, and the collection of taxes in payment thereof to be in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of 1925, governing the issuance of bonds by cities, towns and/or counties in this State; this Section shall be construed to authorize the levying of said tax not exceeding Ten (10¢) Cents on the One Hundred ($100.00) Dollars of valuation notwithstanding the provisions of Article 6080 of the Revised Civil Statutes of 1925. [As amended and reenacted Acts 1935, 44th Leg., p. 38, ch. 15, § 2; Acts 1941, 47th Leg., p. 645, ch. 389, § 1.]

Bond issues validated

Sec. 2-a. That where a majority of the resident property taxpayers, being qualified electors of any city, town and/or county in this State, voting on the proposition having voted at an election held in such city, town and/or county in favor of the issuance of bonds of such city, town and/or county the levy of taxes upon the taxable property therein, for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof, for the purpose of purchasing and improving lands for a public park in and for said city, town and/or county, the canvass of said vote revealing such majority having been recorded in the minutes of the governing body of such city, town and/or county by ordinance or resolution adopted and recorded in its minutes, authorized the issuance of such bonds, prescribed the date and maturity thereof, the rate of interest the bonds were to bear, the place of payment of principal and interest, and providing for the levy of taxes upon taxable property in such city, town and/or county to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity under the authority of Section 2, Chapter 148, of the General Laws passed by the Forty-second Legislature at its Regular Session in 1931, and such bonds having been approved by the Attorney General and registered by the Comptroller of the State of Texas, each such election, and all acts and proceedings had and done in connection therewith by the governing body of such city, town and/or county in respect of such bonds and the levy of such taxes, are hereby legalized, approved and validated; and power and authority is hereby expressly conferred upon the governing body of such city, town and/or county to adopt all orders, resolutions and ordinances, and to do all other and further acts necessary in the issuance or sale of such bonds, and such governing body is hereby expressly authorized and empowered to levy a direct general ad valorem tax upon all taxable property in said city, town and/or county for the purpose of paying the interest on and the principal of said bonds; provided, that the aggregate amount of bonds issued for park purposes shall never reach an amount where the tax of Ten (10) Cents on the One Hundred Dollars ($100) valuation of property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity, and the amount of bonds issued for park purposes under Acts passed prior to the enactment of Chapter 148, of the General Laws, passed by the Forty-second Legislature at its Regular Session in 1931, shall be computed and estimated in the amount of bonds which may be issued by any city, town and/or county for park purposes; it being the intent of said Chapter 148 to repeal all laws, and parts of laws, in conflict therewith. [As added Acts 1935, 44th Leg., p. 38, ch. 15, § 3.]

Certain cities authorized to issue bonds and levy taxes

Sec. 2-b. That where a majority of the resident property taxpayers, being qualified electors of any city in this State having a population of not less than 1525 and not more than 1550 according to the last preceding Federal Census, and by any city having a population of not less than 4400 and not more than 4500 according to the last preceding Federal Census, voting on the proposition, having voted at an election held in such city in favor of the issuance of bonds of such city, and the levy of taxes upon taxable property therein for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof, for the purpose of park improvements in and for such city, the canvass of said vote revealing such majority having been recorded in the minutes of the governing body of such city, and the governing body of such city, by ordinance or resolution adopted and recorded in its minutes, having authorized the issuance of such bonds, prescribed the date and maturity thereof, the rate of interest the bonds were to bear, the place of payment of principal and interest, and provided for the levy of taxes upon the taxable property in such city to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity, each such election and all acts and proceedings had and done in connection therewith and in respect of such bonds and the levy of such taxes by the governing body of such city are hereby legalized, approved and validated; and power and authority is hereby expressly conferred upon the governing body of such city to adopt all orders, resolutions and ordinances and to do all and further acts necessary in the issuance or sale of such bonds, and such governing body is hereby expressly authorized and empowered to levy a direct general ad valorem tax upon all taxable property in such city for the purpose of paying the interest on and the principal of said bonds; provided, that the aggregate amount of bonds issued for park improvements shall never reach an amount where the tax of Ten (10¢) Cents on the One Hundred ($100.00) Dollars valuation of property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity. [Added 1937, 45th Leg., 2nd C.S., p. 1866, ch. 3, § 1.]

Management and control of parks

Sec. 3. All parks acquired by authority of this Act shall be under the control and management of the city or county acquiring same or by the city and county jointly, where they have acted jointly in acquiring same, provided that the Commissioners' Court and the City Commission or City Council may, by agreement with the State Parks Board, turn the land over to the State Parks Board to be operated as a public park, the expense of the improvement and operation of such park to be paid by the county and/or city, according to the agreement to be made between such municipalities and the State Parks Board.

All counties and incorporated cities are authorized to levy a tax of not exceeding five (5) cents on the One Hundred ($100.00) Dollars property valuation to create a fund for the improvement and operation of such parks.

Sale or lease of concessions

Sec. 4. The management in charge of any park created by authority of this Act shall have the right to sell and lease concessions for the establishment and operation of such amusements, stores, filling stations and all such other concerns as are consistent with the operation of a public park, the proceeds of such sales and rentals to be used for the improvement and operation of the park.

Parks and playgrounds open to public use; cooperation of State Park Board

Sec. 5. All parks and play grounds acquired and maintained under the provisions of this Act shall remain open for the use of the public under such rules and regulations as the governing body or bodies having the control and management of the same may from time to time prescribe. The Texas State Parks Board is hereby authorized to cooperate with any city and/or county in the acquisition and establishment of parks and play grounds, and the Texas State Parks Board is hereby authorized to make such rules and regulations for the acquisition, establishment and operation of such parks and play grounds with any city or county as said State Parks Board and city or county may deem advisable, and provided that the Governor and the State Prison Board may permit the use of State convicts for the improvement and maintenance of such parks under such provisions as may be made by the State Parks Board with said cities and/or counties. [Acts 1931, 42nd Leg., p. 248, ch. 148.]

Acts 1933, 43rd Leg., p. 179, ch. 84, amended sections 1, 2, 6 and added a section 2-a to the Act of 1931, cited to the text.

Acts 1933, 43rd Leg., p. 567, ch. 185, amended sections 1, 2, 6 and added a section 2-a to the Act of 1931. Section 4 of this Act, amending section 6 of the Act of 1931, repealed the prior amendment of 1933.

Acts 1935, 44th Leg., p. 38, ch. 15, amended and re-enacted sections 1, 2 and 6 of the Act of 1931, and added section 2-a. Section 4 of the Act of 1935 amending section 6 of the Act of 1931, repealed both of the above mentioned acts of 1933, and provided further that nothing contained in this Act should be construed as repealing any provisions of any special charter of any incorporated city, but should be deemed and held to be cumulative thereof, and repealed all General Laws, and parts of General Laws, in conflict therewith.

Art. 6081f—1. Cities, towns and villages prohibited from establishing streets, alleys or thoroughfares through parks; exceptions.

From and after the effective date of this Act all cities, towns, and villages in the State of Texas are hereby prohibited from establishing or dedicating thoroughfares, public streets and/or alleys through any property now dedicated or used as a park or for public park purposes or that may hereafter be dedicated or used as parks or for park purposes, and which park or parks include land, the title to which is in the State of Texas on which is situated a building or buildings owned by the State of Texas and in the construction of which building or buildings the State has expended as much as Fifty Thousand Dollars ($50,000), but this Act shall not apply to the campus of any educational institution or to the grounds on any eleemosynary institutions, provided, however, that driveways may be maintained in such parks for park purposes only and not as general thoroughfares, and provided further that such thoroughfares, streets, and/or alleys may be established only after the question of permitting such use has been submitted to a referendum vote of the people qualified to vote in such elections in such cities, towns, and villages and where said election has resulted in the majority having cast their vote for such use. When such election has been held and has resulted favorable to the opening of such thoroughfares, streets, and/or alleys then, and in that event and only in such event, shall the opening of such thoroughfares, streets, and/or alleys be lawful.

It being the purpose of this Act to prohibit the opening of thoroughfares, streets, and/or alleys in and through the parks located in the cities, towns, and villages of this State and such thoroughfares, streets, and/or alleys through such parks to be opened only after an election for that purpose has been approved by the legally qualified voters of such cities, towns, and villages. [Acts 1939, 46th Leg., p. 530, § 1.]

Section 2 of the act of 1937 repeals all conflicting laws and parts of laws.

Art. 6081g. Cities of 60,000 or more bordering on Gulf of Mexico granted use and occupancy for park purposes of tidelands and waters.

Right of use and occupancy granted; rights of city

Section 1. Any City in this State bordering upon the Gulf of Mexico, which has or hereafter may have a population of sixty thousand (60,000) or more inhabitants as shown by the next preceding Federal Census taken before any action by such City is taken hereunder, shall have, and is hereby granted for park purposes, the right of use and occupancy of the tidelands between the lines of the ordinary high tide and the ordinary low tide of the Gulf of Mexico and the adjacent waters of the Gulf of Mexico, and the bed thereof, for a distance into and over the waters and bed of the Gulf of Mexico, of not over two thousand (2,000) feet from the line of ordinary high tide, between extensions into the Gulf of Mexico of property lines of property above and fronting upon the tidelands owned or acquired by the City for park purposes, or in or to which it has, or may acquire easements, or other rights or privileges authorizing it to use and occupy the same for park purposes, and such City may declare abandoned for use as streets or highways and take, occupy and use for park purposes any lands, or parts thereof heretofore dedicated as public streets or highways which because of submersion by the waters of the Gulf of Mexico or the building of a seawall, breakwater, or other structure, have become unfit for use as streets or highways, if so found and declared by the governing body of the City; provided, however, that nothing in this Act contained shall be deemed as authorizing the taking of any private property or interest therein without compensation as required by the Constitution of the State of Texas.

The right of use and occupancy granted herein is upon the express condition that the State of Texas shall retain all of the oil, gas and other mineral rights in and under any of the land which it owns affected hereby.

The governing body of any such City shall have full rights of management and control of such tidelands, waters and bed of the Gulf of Mexico to the extent above allowed for park purposes including the right and power on the part of such governing body, within its discretion, to acquire, erect, build and construct, repair, enlarge, extend, improve and remodel, furnish and equip and conduct, operate and maintain upon, over and into such tidelands and waters and bed of the Gulf of Mexico, a pier extending from the shore, with structures thereon to provide facilities for recreation, amusement, comfort and assemblies of the public; provided, however, that no City shall maintain and operate more than one such pier and no such pier shall extend into the Gulf of Mexico a distance in excess of two thousand (2,000) feet from the line of ordinary high tide, nor shall any such pier be constructed or maintained in any part of any channel deepened or improved for commercial navigation or between the shore line and any such channel, or in any arm, inlet, bay or body of water other than the main body of the Gulf of Mexico.

Without limiting the authority of the governing body of any City erecting any pier as above authorized to determine the suitability of structures and facilities to be provided thereon for the purposes above authorized, it is here declared and enacted that for such purposes there may be erected, provided, operated and maintained thereon, among other facilities, a room for a theatre, a room for a restaurant, a convention hall, a dance hall, an aquarium, an exhibition hall, a stadium for aquatic sports, spaces and platforms for concessions and amusement devices, a platform from which fishing may be carried on, together

with walk-ways, rest room, toilet facilities and resting places and facilities for the comfort of the public; it being here expressly declared that the listing of such facilities as are just above named is not intended to and shall not exclude other facilities and uses reasonably adapted and suitable for park purposes upon, or in connection with any such pier.

Acquisition of privately owned lands for park purposes in connection with pier

Sec. 2. Any City of the class defined in the preceding Section, erecting, or to erect any such pier, as is authorized in such Section, shall be, and is hereby empowered to acquire by gift, purchase, or condemnation, such privately owned land and rights in privately owned land within the limits of the City, for use for park purposes in connection with such pier as the governing body of the City may determine to be necessary.

Bonds and taxes for pier; election

Sec. 3. For the purpose of obtaining funds to defray in whole, or in part, the costs of acquiring privately owned lands, if any, to be used in connection with any such pier or structure as is authorized in Section 1 hereof, and the cost of erecting, constructing, furnishing and equipping the same, any City of a class covered by this Act may borrow money and may issue its negotiable bonds and levy and collect annual ad valorem taxes not in excess of any Constitutional limitation sufficient to pay the interest on and provide a sinking fund for such bonds with which to pay them as they mature; provided, however, that the terms and requirements of Chapter 1, Title 22, Revised Civil Statutes of 1925 and Acts amendatory of and supplementary thereto, shall apply to and govern the issuance of all such bonds; and provided, further, that when any bonds to be issued for a purpose herein authorized have heretofore been duly authorized at an election called and conducted in the manner prescribed and required by the aforesaid Chapter 1, Title 22, Revised Civil Statutes of 1925 and Acts amendatory of and supplementary thereto, the governing body of the City wherein such election has been conducted may issue the bonds authorized at such election without another election thereon. If the governing body of the City so decides, the proceeds of bonds issued under authority of this Section may be used to pay in part the cost of building, erecting, constructing, furnishing and equipping any such structures, or improvements as are authorized by this Act which, together with lands and interest in lands occupied by, or used in connection therewith, and the income therefrom may have been, or are to be mortgaged and encumbered for the purpose of providing funds with which to pay additional costs of acquiring, building, erecting, constructing, furnishing, or equipping the same; or for any one or more of such purposes.

Mortgaging pier, equipment and income

Sec. 4. Any City acquiring, building, erecting, constructing, furnishing, or equipping any such pier, structure, or improvement as is authorized by this Act shall have the power through its governing body to mortgage and encumber such pier, structure or improvement, its furnishings and equipment and its income, together with all lands and interests, easements and other rights in lands acquired or to be acquired and used in connection therewith, including the right of use and occupancy of the tidelands and waters and bed of the Gulf of Mexico herein granted, for the purpose of securing the payment of bonds, notes or warrants which are hereby authorized to be issued by the governing body of the City to provide funds for the payment of all or any part of the costs of acquiring lands and interests in lands to be used in connection therewith and of building, erecting, constructing, furnishing or equipping such pier, structure, or improvement; and as additional security for such bonds, notes or warrants by the terms of such mortgage may grant to the purchaser under sale or foreclosure thereunder a franchise to operate the properties purchased for a period of not over thirty-five (35) years after the purchase thereof and during such period in the case of any pier or structure erected, wholly or in part, over and into the tidelands and waters and bed of the Gulf of Mexico, such purchaser, his, their, or its heirs, successors or assigns, shall have a like right of use and occupancy of the tidelands and waters and bed of the Gulf of Mexico in connection with such pier or structure for like purposes as are herein granted to the City; and such right of use and occupancy upon the termination of such period, or upon the cessation of the use of the properties for such purposes occurring prior to the termination of such period, shall revert to the City. The power to mortgage and encumber in this Section granted may be exercised as to property acquired, built, erected, constructed, furnished or equipped for the purposes in this Act authorized, whether the entire cost thereof shall be defrayed wholly from the proceeds of notes, bonds, or warrants secured by such mortgage, or encumbrance, or partly from such proceeds and partly with proceeds of bonds or warrants issued under authority of Section 3 and Section 5 hereof, or either of them, or with funds obtained from any other lawful source.

All bonds issued under the authority of this Section shall be made payable to bearer or the order of a named payee and shall be negotiable instruments and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of this State, but shall be payable solely from the special fund herein provided and shall be additional and secured by the mortgage and franchise above authorized. Such bonds shall bear such interest not exceeding six per cent (6%) per annum, have such dates and such maturities serially or otherwise not exceeding forty (40) years from their dates, be in such denominations and be payable as to principal and interest at such places which may be at any bank, either within or without the State, in such medium of payment, contain such provisions for redemption prior to maturity and be in such form with interest coupons in such form as the governing body of the City may determine. No such bond or interest coupon bearing the signature or facsimile signature of any official of the City duly authorized to sign the same at the time such signature may be actually affixed thereto, shall be invalid by reason of such official ceasing to hold office prior to the delivery of such bond, or not having held office on the date of such bond.

Interest on such bonds may be made payable in such manner as the governing body of the City may prescribe and any interest coupons may bear facsimile signatures. Such bonds may in the discretion of the governing body of the City be made registerable as to principal and interest, or as to principal only, under such terms as the governing body may prescribe or may be issued not subject to registration.

No obligation issued and secured under authority of this Section shall ever be a debt of the City issuing the same, but shall be solely a charge upon the properties and income thereof encumbered and shall never be reckoned in determining the power of such City to issue any bonds for any purpose authorized by law. Every such obligation shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised, or to be raised, by taxation."

The nature of the encumberance of the properties to secure any such obligations and the control, management and operation of such properties while any

such obligation remains unpaid, shall be subject to and be governed by Articles 1113, 1114, 1115, 1116, 1117 and 1118 of Revised Civil Statutes of 1925 in like manner as are parks and systems named in Article 1111 of Revised Civil Statutes of 1925.

The governing body of the City is hereby authorized to provide by ordinance for the issuance of revenue refunding bonds of the City for the purpose of refunding any revenue bonds issued under the provisions of this Section and then outstanding, together with accrued interest thereon. The issuance of such revenue bonds, the maturities and all other details thereof, the rights of the holders thereon and the duties of the City in respect to the same, shall be governed by the provisions of this Act insofar as the same may be applicable.

Additional taxes; limitation on rate

Sec. 5. In addition to any taxes authorized for the purpose of paying the interest on and principal of any bonds issued under authority of Section 3 hereof, the governing body of any City building or acquiring a pier, structure or improvements with proceeds of bonds or warrants issued under authority of Sections 3 and 4 hereof, either or both, shall have and is hereby given the power to levy and collect annual ad valorem taxes of, and at a rate not to exceed Five (5¢) Cents in any one (1) year on each One Hundred ($100.00) Dollars valuation of taxable property in such City for the purpose of defraying in part the cost of acquiring, building, constructing, erecting, furnishing or equipping such pier, structure, or improvement or the cost of land, or interest in land to be used in connection therewith, or for the purpose of repairing, enlarging, extending, altering or improving the same after completion; and within its discretion, such governing body for such purposes, or any of them, may issue interest-bearing time warrants of the City to be payable from taxes authorized to be levied and collected by this Section.

Partial invalidity

Sec. 6. Invalidity of any Section, term or provision hereof shall not render invalid the remaining Sections, terms and provisions hereof which would otherwise be valid.

Powers additional and supplemental

Sec. 7. The provisions of this Act shall be deemed to provide additional and alternative methods of doing the things herein authorized and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing, or which may hereafter be conferred by law. [Acts 1941, 47th Leg., p. 10, ch. 7.]

Art. 6081h. City warrants for park improvements, including swimming pools, and tax levies validated; refunding bonds.—Section 1. All time warrants heretofore issued or authorized by any city for the purpose of evidencing the indebtedness of such city for the contract price for the construction of improvements to the public park in the city, including the construction of a swimming pool, including all tax levies, proceedings and the authorization and issuance thereof, are hereby validated, ratified, approved and confirmed, notwithstanding the lack of statutory power of such city or the governing body thereof to levy a sum in excess of Ten (10¢) Cents on each One Hundred ($100.00) Dollars valuation of taxable property in such city in payment thereof. The governing body of such city is hereby authorized to refund said time warrants into negotiable bonds under the provisions of Chapter 163, Acts of the Regular Session of the 42nd Legislature, 1931,[1] and to levy a sufficient tax in excess of Ten (10¢) Cents on each One Hundred ($100.00) Dollars valuation of taxable property in such city, if necessary, in payment thereof, and such bonds when approved by the Attorney General of the State of Texas shall be binding, legal, valid, and enforceable obligations of such cities.

Sec. 2. Provided, however, that the provisions of this Act shall not be construed as validating any such tax levies, proceedings, warrants or bonds issued pursuant thereto, the validity of which has been contested or attacked in any suit or litigation pending at the time this Act becomes effective. [Acts 1947, 50th Leg., p. 225, ch. 129.]

[1] Article 2368a.

TITLE 104—PARTITION

1. PARTITION OF REAL ESTATE

Art.
6082. Joint owner may compel.
6083. Petition.*
6084. [Repealed.]
6085. Where defendant is unknown.
6086–6097. [Repealed.]
6098. Partition not prejudicial.
6099. Each party shall hold in severalty.
6100. Decree shall vest title.

2. PARTITION OF PERSONAL PROPERTY

6101. Part owners may compel partition.
6102. Suit begun in what court.*
6103–6105. [Repealed.]

3. MISCELLANEOUS PROVISIONS

6106, 6107. [Repealed.]
6108. Pay of commissioners.
6109. [Repealed.]

1. PARTITION OF REAL ESTATE

Article 6082. [6096] [3606] Joint owner may compel.—Any joint owner or claimant of any real estate or of any interest therein or of any mineral, coal, petroleum, or gas lands, whether held in fee or by lease or otherwise, may compel a partition thereof between the other joint owners or claimants thereof in the manner provided in this chapter. [Acts 1917, p. 295.]

Art. 6083. [6097] [3607] [3466] Petition.*—Such joint owner or claimant may file his petition in the district court of the county in which the real estate, or any part thereof, sought to be partitioned, is situated, which petition shall state:

1. The names and residence, if known, of each of the other joint owners, or joint claimants, of such property.

2. The share or interest which the plaintiff and the other joint owners, or joint claimants, of same own or claim so far as known to the plaintiff.

3. The land sought to be partitioned shall be so described as that the same may be distinguished from any other and the estimated value thereof stated.

* *Repealed in part, Rules of Civil Procedure, Rule 756.*

Art. 6084. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 757.

Art. 6085. [6099] [3609] Where defendant is unknown.—If the plaintiff, his agent, or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in the plaintiff's petition in said suit is owned by some person unknown to affiant, the clerk of the court shall issue a citation to the proper officer, which shall contain a brief statement of the nature of the suit, and a description of the interest of the unknown owner or owners, commanding such officer to summon such unknown owner or owners by making publication of the citation in some newspaper in the county where the writ issued, if there be a newspaper published

in said county, but if not, then in the nearest county where a newspaper is published, once each week for four (4) successive weeks previous to the return day of such process. When such notice is given, and no appearance is entered within the time prescribed for pleading, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication. It shall be the special duty of the court in all such cases to see that its decree protects the rights of the unknown parties thereto. The judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners. [As amended Acts 1939, 46th Leg., p. 532, § 1.]

Repeal by Rules of Civil Procedure. This article was included in the list of articles deemed repealed by the Rules of Civil Procedure. The Rule Making Act which repealed the laws governing practice and procedure in civil actions in Texas and which directed the Supreme Court, upon the adoption of the Rules of Civil Procedure, to file a list of all Articles deemed repealed by "Section 1 of this (Rule Making) Act" was approved and became effective May 15, 1939, while the Rules of Civil Procedure became effective September 1, 1941.

Arts. 6086–6097. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 760–771.

Art. 6098. [6113] [3623] [3481] Partition not prejudicial.—When a partition is made between a joint owner who holds an estate for a term of years or for life with others who hold equal or greater estates, such partition shall not be prejudicial to those entitled to the reversion or remainder of such estates. [R. S. 1879.]

Art. 6099. [6114] [3624] [3482] Each party shall hold in severalty.—When any partition is made, each party to whom a share has been allotted shall hold the same in severalty under the same conditions and covenants that it was held before such partition was made. No warranty, lease or right whatsoever shall be impaired or affected by such partition. [Id.]

Art. 6100. [6115] [3625] [3483] Decree shall vest title.—The decree of the court confirming the report of the commissioners in partition, when a partition has been made shall vest the title in each party to whom a share has been allotted, to such share as against the other parties to such partition suit, their heirs, executors, administrators or assigns, as fully and effectually as the deed of such parties could vest the same, and shall have the same force and effect as a full warranty deed of conveyance from such other parties and each of them. [Id.]

2. PARTITION OF PERSONAL PROPERTY

Art. 6101. [6116] [3626] [3484] Part owners may compel partition.—Part owners of personal property may be compelled to make partition between them in the manner hereinafter provided. [Acts Dec. 24, 1851, p. 20; G. L. vol. 3, p. 898.]

Art. 6102. [6117] [3627] [3485] Suit begun in what court.*—Suit for partition shall be commenced in the court having jurisdiction of the value of such property, in the same manner as other civil suits are commenced, and the several owners or claimants of such property shall be cited as in other cases. [Id.]

* *Repealed in part, Rules of Civil Procedure, Rule 772.*

Arts. 6103–6105. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 773–775.

3. MISCELLANEOUS PROVISIONS

Arts. 6106, 6107. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 776, 777.

Art. 6108. [6124] [3634] [3492] Pay of commissioners.—The commissioners in partition and the surveyor, if any has been appointed, shall receive for their services three dollars each per day for each day they are engaged in making and returning such partition, to be taxed and collected as other costs in the case. [R. S. 1879.]

Art. 6109. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 778.

TITLE 105—PARTNERSHIPS AND JOINT STOCK COMPANIES

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CHAPTER 1.—PARTNERSHIPS LIMITED

Art.
6110. Limited partnerships authorized.
6111. General and special partners.
6112. General partners only to act.
6113. Formation of such partnerships.
6114. Certificate to be acknowledged.
6115. Filing and recording certificate.
6116. Affidavit of general partner.
6117. Prerequisites indispensable.
6118. Terms to be published.
6119. Publisher's affidavit.
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6121. Certain alterations a dissolution.
6122. Firm name.
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6124. Capital of special partner.
6125. Reduction of special partner's capital.
6126. Powers of special partner.
6127. Partners to account.
6128. Assignments by partnership.
6129. Assignments contemplating insolvency.
6130. Concurrence by special partner.
6131. Partnership creditors preferred.
6132. Dissolution before time agreed on.

Article 6110. [6126] [3583] Limited partnerships authorized.—Limited partnerships for the transaction of any mercantile, mechanical, manufacturing or other business, except banking or insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed. [Act May 12, 1846, p. 279; P. D. 4717 et seq.; G. L. vol. 2, p. 1585.]

Art. 6111. [6127] [3584] General and special partners.—Such partnerships may consist of one or more persons, who shall be called the general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute in actual cash a specific sum, or its equivalent in other property, as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him, or them, to the capital, in cash or other property, and in case other property than cash is contributed, the partner contributing same shall certify as to the cash value thereof and should it be determined in a suit, or suits, by a creditor, or creditors, that said property did not at the time of contribution, have the cash value placed thereon by said special partner, the said special partner shall be liable to the amount that said property lacked of having the value placed thereon by said partner. [Act May 12, 1846, p. 279; P.D. 4717 et seq.; G.L. vol. 2, p. 1585; Acts 1937, 45th Leg., p. 473, ch. 238, § 1.]

Section 1a of the amendatory act of 1937 provides that nothing therein shall be construed to alter or amend Penal Code, Title 14, Chapter 7.

Art. 6112. [6128] [3585] General partners only to act.—The general partners only shall be authorized to transact business and sign for the partner-

ship and bind the same. [Act May 12, 1846, p. 279; P. D. 4717 et seq.; G. L. vol. 2, p. 1585.]

Art. 6113. [6129] [3586] Formation of such partnerships.—The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:

1. The name or firm under which the partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.
4. The amount of capital which each special partner shall have contributed to the common stock, and if all, or a part of such capital, has been contributed in property other than cash, a description of said property and the location of same and the cash value placed thereon by partner contributing same.
5. The period at which the partnership is to commence, and the period at which it is to terminate. [Act May 12, 1846, p. 279, P.D. 4717 et seq.; G.L. vol. 2, p. 1585; Acts 1937, 45th Leg., p. 473, ch. 238, § 1.]

See note to article 6111.

Art. 6114. [6130] [3587] Certificate to be acknowledged.—The certificate shall be acknowledged by the several persons signing the same, before any officer authorized to take acknowledgments for record, and such acknowledgment shall be made and certified in the same manner as the acknowledgment of the conveyances of land. [Act May 12, 1846, p. 279; P. D. 4717 et seq.; G. L. vol. 2, p. 1585.]

Art. 6115. [6131] [3588] Filing and recording certificate.—The certificate so acknowledged and certified shall be filed in the office of the clerk of the county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, the certificate and acknowledgment thereof shall be filed and recorded in like manner in the office of the county clerk of every such county. [Id.]

Art. 6116. [6132] [3589] Affidavits of general partner.—At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners, to the common stock, have been actually and in good faith paid in cash, or in the property as described in the certificate of partnership. [Act May 12, 1846, p. 279; P.D. 4717 et seq.; G.L. vol. 2, p. 1585; Acts 1937, 45th Leg., p. 473, ch. 238, § 1.]

See note to article 6111.

Art. 6117. [6133] [3590] Prerequisites indispensable.—No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and, if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners. [Acts May 12, 1846, p. 279; P.D. 4717 et seq.; G.L. vol. 2, p. 1585.]

Art. 6118. [6134] [3591] Terms to be published.—The partners shall publish such of the terms of the partnership as are required by Article 6113 to be set forth in the certificate once in each week for four (4) consecutive weeks after such registry, in such newspaper as shall be designated by the clerk in whose office such registry shall be made; and if such publication be not made the partnership shall be deemed general. [Act May 12, 1846, p. 279; P.D. 4717 et seq.; G.L. vol. 2, p. 1585; Acts 1945, 49th Leg., p. 312, ch. 227, § 1.]

Art. 6119. [6135] [3592] Publisher's affidavit.—An affidavit of the publication of such notice by the publisher of the newspapers in which the same shall be published may be filed with the clerk directing the same, and shall be evidence of the facts therein contained. [Acts May 12, 1846, p. 279; P. D. 4717 et seq.; G.L. vol. 2, p. 1585.]

Art. 6120. [6136] [3593] Renewal of partnership.—Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership. [Id.]

Art. 6121. [6137] [3594] Certain alterations a dissolution.—Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the preceding article. [Id.]

Art. 6122. [6138] [3595] Firm name.—The business of the partnership may be conducted under any name; provided, however, that if such name include any word or words other than the name or names of the general partners, there shall be added thereto the word "limited" or "ltd."; and if the name of a special partner is used as such name, or a part thereof, with his knowledge and consent, and is not followed by the word "limited" or "ltd.," such special partner shall be liable as a general partner with respect to all business transacted in that name. [Act May 12, 1846, p. 279; P.D. 4717 et seq.; G.L. vol. 2, p. 1585; Acts 1937, 45th Leg., p. 473, ch. 238, § 1.]

See note to article 6111.

Art. 6123. [6139] [3596] Suits by and against.—Suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners. [Acts May 12, 1846, p. 279; P. D. 4717 et seq.; G. L. vol. 2, p. 585.]

Art. 6124. [6140] [3597] Capital of special partner.—No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the character of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided he may also receive his portion of such profits. [Id.]

Art. 6125. [6141] [3598] Reduction of special partner's capital.—If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital, with interest. [Id.]

Art. 6126. [6142] [3599] Powers of special partner.—A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management. [Id.]

Art. 6127. [6143] [3600] Partners to account.—The general partners shall be liable to account to each other, and to the special partners, for

the management of the concern both in law and equity, as other partners are by law. [Id.]

Art. 6128. [6144] [3601] Assignments by partnership.—Every sale, assignment or transfer of any property or effects of the partnership made by such partnership when insolvent, or in contemplation of insolvency, or after, or in contemplation of insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien created, or security given, by any such partnership under the like circumstances and with like intent, shall be void as against the creditors of such partnership. [Id.]

Art. 6129. [6145] [3602] Assignments contemplating insolvency.—Every such sale, assignment, or transfer of any of the property or effects of a general or special partner made by such general or special partner when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership with the intent of giving to any creditor of his own, or of the partnership, a preference over the creditors of the partnership, and every judgment confessed, lien created, or security given, by any such partner under like circumstances and with like intent, shall be void as against the creditors of the partnership. [Id.]

Art. 6130. [6146] [3603] Concurrence by special partner.—Every special partner who shall violate any provision of the two preceding articles, and who shall concur in or assent to any such violation of the partnership by any individual partner, shall be liable as a general partner. [Id.]

Art. 6131. [6147] [3604] Partnership creditors preferred.—In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as creditor until the claims of all other creditors of the partnership shall be satisfied. [Id.]

Art. 6132. [6148] [3605] Dissolution before time agreed on.—No dissolution of such partnerships by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded and published once in each week for four weeks in a newspaper printed in each of the counties where the partnership may have a place of business, if there be such papers, and if there be no newspapers published in such county, then in a newspaper published in the nearest county where there is one. [Id.]

CHAPTER 2.—UNINCORPORATED JOINT STOCK COMPANIES

Art.
6133. Suit in company name.
6134. Service of citation.
6135. Judgment.
6136. Joint liability.
6137. Individual liability.
6138. This chapter cumulative.

Article 6133. [6149] Suit in company name.—Any unincorporated joint stock company or association, whether foreign or domestic, doing business in this State, may sue or be sued in any court of this State having jurisdiction of the subject matter in its company or distinguishing name; and it shall not be necessary to make the individual stockholders or members thereof parties to the suit. [Acts 1907, p. 240.]

Art. 6134. [6150] Service of citation.—In suits against such companies or associations, service of citation may be had on the president, secretary, treasurer or general agent of such unincorporated companies. [Id.]

Art. 6135. [6151] Judgment.—In suits by or against such unincorporated companies, whatever judgment shall be rendered shall be as conclusive on the individual stockholders and members thereof as if they were individually parties to such suits. [Id.]

Art. 6136. [6152] Joint liability.—Where suit shall be brought against such company or association, and the only service had shall be upon the president, secretary, treasurer or general agent of such company or association, and judgment shall be rendered against the defendant company, such judgment shall be binding on the joint property of all the stockholders or members thereof, and may be enforced by execution against the joint property; but such judgment shall not be binding on the individual property of the stockholders or members, nor authorize execution against it. [Id.]

Art. 6137. [6153] Individual liability.—In a suit against such company or association, in addition to service on the president, secretary, treasurer or general agent of such companies or association, service of citation may also be had on any and all of the stockholders or members of such companies or associations; and, in the event judgment shall be against such unincorporated company or association, it shall be equally binding upon the individual property of the stockholders or members so served, and executions may issue against the property of the individual stockholders or members, as well as against the joint property; but executions shall not issue against the individual property of the stockholders or members until execution against the joint property has been returned without satisfaction. [Id.]

Art. 6138. [6154] This chapter cumulative.—The provisions of this chapter shall not affect nor impair the right allowed unincorporated joint stock companies and associations to sue in the individual names of the stockholders or members, nor the right of any person to sue the individual stockholders or members; but the provisions of this chapter shall be construed as cumulative merely of other remedies now existing under the law. [Id.]

TITLE 106—PATRIOTISM AND THE FLAG

Art.
6139. Protecting the flag.
6140. Definition.
6141. Prima facie evidence.
6142. Exceptions.
6142a. Clarifying description of Texas Flag.
Sec.
1. Purpose.
2. Illustrating Texas Flag.
3. Saluate to flag.
4. Description of the Texas Flag.
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6144. Home Guard.
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6145. Texas Historical Board.
6145—1. Governor James Stephen Hogg Memorial Shrine.

Art.
6145—2. Battleship "Texas" as a permanent memorial; Commission of Control; maintenance and operation.

Sec.
1. Commission authorized to accept Battleship.
2. Commission created; membership; terms.
3. Duties of Commission.
4. Operating Board.
5. Co-ordinating and liaison group.
6. Fund.
7. Books of account and records.
8. Hiring of employees.
9. Employees.
10. Expenditures and contracts.
11. Appointments of members of Commission.
12. Unlawful acts; violations.
13. Compensation.
14. Partial invalidity.

Article 6139. Protecting the flag.—Whoever shall in any manner, for exhibition or display, place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag of the United States of America or State flag of this State, or shall expose or cause to be exposed to public view any such flag upon which, after this law takes effect shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall, after this law takes effect, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article or substance being an article of merchandise, or receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which, after this law takes effect, shall have been printed, painted, attached or otherwise placed, a representation of any such flag to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defy, or defile, trample upon or cast contempt, either by words or act, upon such flag, shall forfeit a penalty of fifty dollars for each such offense. Such penalty shall be recovered with costs in a civil suit brought by and in the name of any citizen of this State. Such penalty when collected, less the reasonable cost and expense of suit and recovery, to be certified by the county attorney of the county in which the offense is committed, shall be paid into the State Treasury. Two or more penalties may be sued for and recovered in the same suit. [Acts 3rd C. S. 1917, p. 81.]

Art. 6140. Definition.—The word "flag," as used in this title, shall include any flag, standard, color, ensign or any picture or representation of either made of any substance or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign of the United States of America, or a picture or representation, of either upon which shall be shown the colors, the stars and stripes in any number of either, or by which the person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America, [Id.]

Art. 6141. Prima facie evidence.—The possession by one, other than a public officer, as such, of any such flag on which shall be anything made unlawful at any time, by this title, or of any article or substance or thing on which shall be anything made unlawful at any time by this title, shall be presumptive evidence that the same is in violation of this law. [Id.]

Art. 6142. Exceptions.—The preceding article shall not apply to any act permitted by the statutes of the United States, or by the United States Army and Navy regulations, nor to any newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in correspondence, on any of which shall be printed, painted, or placed said flag, disconnected from any advertisement. [Id.]

Art. 6142a. Clarifying description of Texas Flag.

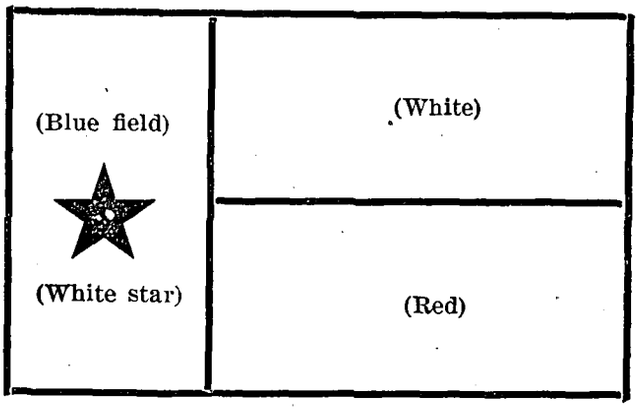
Purpose

Sec. 1. This act of the Legislature is not a substitute for any previous legislation pertaining to the Lone Star Flag of Texas which may have been passed by either the Republic of Texas or the Legislature of this State, but the sole purpose of this act is to clarify the description of the Texas Flag, to standardize the star in the blue field, and to outline some important rules to givern the correct use of the Texas Flag.

Illustrating Texas Flag

Sec. 2. A drawing of the Texas Flag to illustrate the general outline of the three stripes, and the star in the blue stripe:

THE TEXAS FLAG



Salute to flag

Sec. 3. Salute to the Texas Flag
"Honor the Texas Flag of 1836;
I pledge allegiance to thee—
Texas, one and indivisible."

Description of the Texas Flag

Sec. 4. The Texas Flag is an emblem of four sides, and four angles of ninety (90) degrees each. It is a rectangle having its width equal to two-thirds of its length. The flag is divided into three equivalent parts, called bars or stripes, one stripe being blood red, one white, and the other azure blue. These stripes are rectangles, also, and they are exact duplicates of one another in every respect. The width of each stripe is equal to one-half of its length, or one-third of the length of the Flag, while the length of each stripe is equal to the width of the Flag, or two-thirds of the length of the Emblem.

One end of the Flag is blue, and it is called the Flag's "right." This stripe is a perpendicular bar next to the staff or the halyard, and it is attached by means of a heading made of strong and very durable material. The remaining two-thirds of the Flag is made up of two horizontal bars of equal width, one being white and the other red, and this end of the Emblem is called the Flag's "left." Each one of the stripes is perpendicular to the blue stripe, and when the Flag is displayed on a flagpole or staff, or flat on a plane surface, the white stripe should always be at the top of the Flag, with the red stripe directly underneath it. Thus, each stripe on the Texas Flag touches each of the other stripes, which signifies that the three colors are mutually dependent

upon one another in imparting the lessons of the Flag: bravery, loyalty, and purity.

Description of the Star

Sec. 5. In the center of the blue stripe is a white star of five points. One point of this star is always at the top, and in a vertical line drawn from one end of the blue stripe to the other, and midway between its sides. This line is the vertical axis of the blue stripe, and it is perpendicular to the horizontal axis at the central point of the stripe. The two lowest points of the star are in a line parallel to the horizontal axis, and the distance from the topmost point of the star to the line through these two points is equal to approximately one-third of the length of the blue stripe, or one-third of the width of the Flag. The center of the star is at the point of intersection of the horizontal axis with the vertical axis, or at the central point of the blue stripe. The other two points of the star are above the horizontal axis, and near the sides of the blue stripe.

A few fundamental facts concerning the dimensions of the star and its position in the blue stripe are outlined here for the assistance of makers of the Texas Flag:

It is a white star of five points.

The center of the star is at the central point of the blue stripe.

The five points of the star are on a circle whose center is at the central point of the blue stripe.

The length of the diameter of the circle which passes through the five points of the star is always equal to three-fourths of the width of the blue stripe, or three-eighths of the width of the Flag.

The radius of the circle which passes through the five points of the star, then, is equal to three-eighths of the width of the blue stripe.

The topmost point of the star is at the point of intersection of this circle with the vertical axis of the blue stripe.

The two lowest points of the star are in a line parallel to the horizontal axis of the blue stripe, and the distance from the topmost point of the star to this line is equal to approximately one-third of the length of the blue stripe, or it is equal to approximately one-third of the width of the Flag.

The other two points of the star are above the horizontal axis, and near the sides of the blue stripe, and these two points are in a line parallel to the horizontal axis.

The five angles of the points of the star are equal to one another, and each angle contains thirty-six (36) degrees.

The geometrical figure in the center of the star is a regular pentagon, or polygon of five equal sides and five equal angles, and each angle of the pentagon contains one hundred and eight (108) degrees.

With the use of a ruler and a compass, this star is very easily constructed. First, draw the line through the middle points of the ends of the blue stripe, or draw the vertical axis; then, draw the line through the middle points of the sides of the blue stripe, or draw the horizontal axis. These two axes intersect in the central point of the blue stripe, and they bisect each other.

Now, divide the horizontal axis into eight equal parts, and draw a circle with its center at the central point of the blue stripe and its radius equal to three-eighths of the length of the horizontal axis. The point in which this circle intersects the vertical axis above the central point of the blue stripe is the topmost point of the star.

Next, find the middle point of the radius of this circle which coincides with one end of the horizontal axis. Using this point as a center, and with a radius equal to the distance to the topmost point of the star, describe an arc intersecting the opposite end of the horizontal axis. The distance from the last point found to the topmost point of the star is equal to one-fifth of the circumference of the circle.

Then, beginning at the topmost point of the star, and using the measure just found as a unit of length, divide the circumference of the circle into five equal parts. The four additional points found on the circle in this way are the remaining points of the star. Two of these points are above the horizontal axis and two of them are below it, while two of the points are at the left of the vertical axis and two are at the right of it.

Now, connect the topmost point of the star with the two points below the horizontal axis. Then, connect the point which is below the horizontal axis and at the left of the vertical axis with the point which is above the horizontal axis and at the right of the vertical axis. Likewise, connect the point which is below the horizontal axis and at the right of the vertical axis with the point which is above the horizontal axis and at the left of the vertical axis. Finally, connect the two points which are above the horizontal axis and on opposite sides of the vertical axis, and the symmetrical figure thus completed is the beautiful Lone Star of the Texas Flag.

Rules Governing the Use of the Texas Flag

Sec. 6. When the Texas flag is displayed out-of-doors, it must be on either a flagpole or a staff, and the staff should be at least two and one-half times as long as the Flag. The Flag is always attached at the spearhead end of the staff, and the heading must be made of material strong enough to protect the Colors.

The Texas Flag should not be unfurled out-of-doors earlier than sunrise, and it should be taken down, or furled, not later than sunset. Of course the Flag may be flown for any length of time between sunrise and sunset, as may be directed by proper authority.

It is disrespectful to the Texas Flag to leave it unfurled in inclement weather, such as rain, sleet, snow, hail, or storm, and it should never be left out-of-doors at night.

The Texas Flag shall be displayed on all State Memorial Days, and on special occasions of historical significance.

Every school in Texas should fly the Texas Flag on all regular school days. This courtesy is due to the Lone Star Flag of Texas.

The Texas Flag should always be hoisted briskly, and furled slowly with appropriate ceremonies.

The Texas Flag should not be fastened in such a manner that it can be torn easily.

When the Texas Flag is flown from a flagpole or staff, the white stripe should always be at the top of the Flag, except in cases of distress, and the red stripe should be directly underneath the white.

The Texas Flag should be on the marching left when it is carried in a procession in which the Flag of the United States of America is unfurled.

The Texas Flag should be on the left of the Flag of the United States of America, and its staff should be behind the staff of the National Colors, when the two are displayed against a wall from crossed staffs.

When the Texas Flag is flown from the same halyard as the Flag of the United States of America is flown, it must be underneath our National Colors.

When the Texas Flag is flown on a flagpole adjacent to the flagpole on which the Flag of the United States of America is flown, it must be unfurled after our National Colors, and it must be displayed at the left of the Flag of the United States of America.

When the Texas Flag and the Flag of the United States of America are displayed at the same time, they should be flown on separate flagpoles of equal length, and the Flags should be approximately the same size.

When the Texas Flag is flown from a window-sill, balcony, or front of a building, and flat against the wall, it should be on a staff, and the blue field should be at the observer's left.

When the Texas Flag and the Flag of the United States of America are displayed on a speaker's platform at the same time, the Texas Flag should be on the left side of the speaker, while our National Colors are on the right side of the speaker.

The Texas Flag should never be used to cover a platform or speaker's desk, nor to drape over the front of a speaker's platform.

When the Texas Flag is displayed flat on the wall of a platform, it should be above the speaker, and the blue field must always be at the Flag's right.

When the Texas Flag is displayed on a motor car, the staff should be fastened firmly to the chassis of the car, or clamped firmly to the radiator cap.

When the Texas Flag is displayed on a float in a parade, it should always be attached securely to a staff.

The Texas Flag should not be allowed to touch the ground or the floor, nor to trail in water.

The Texas Flag should not be draped over the hood, top, sides, or back of any vehicle, or of a railroad train, boat, or aeroplane.

The Texas Flag should not be used as a covering for a ceiling.

The Texas Flag should not be used as any portion of a costume or athletic uniform.

The Texas Flag should not be embroidered upon cushions or handkerchiefs, nor printed on paper napkins or boxes.

The Texas Flag must not be treated disrespectfully by having printing or lettering of any kind placed upon it.

The Texas Flag should not be used in any form of advertising, and, under no circumstances, may advertisements of any kind be attached to the flagpole or staff.

It is disrespectful to the Texas Flag to use it for purposes of decoration, either over the middle of streets, or as a covering for automobiles or floats in a parade, or for draping speakers' platforms or stands, or for any other similar purpose of decoration. For such purposes of decoration the colors of the Flag may be used in bunting or other cloth.

The Texas Flag should not be carried flat or horizontally, but always aloft and free, as it is carried in a parade.

The Texas Flag is flown at half-mast by first raising it to the top of the flagpole, and then slowly lowering it to a position one-fourth of the distance down the flagpole, and there leaving it during the time it is to be displayed, observing the rule, of course, that it must not be raised before sunrise, and it must be taken down each day before sunset. In taking the Flag down, it should first be raised to the top of the flagpole, and then slowly lowered with appropriate ceremony.

The Texas Flag should not be displayed, used, nor stored in such a manner that it can be easily soiled or otherwise damaged.

When the Texas Flag is in such condition of repair that it is no longer a suitable Emblem for displaying, it should be totally destroyed, preferably by burning, and that privately; or this should be done by some other method in keeping with the spirit of respect and reverence which all Texans owe the Emblem which represents the Lone Star State of Texas. [Acts 1933, 43rd Leg., p. 186, ch. 87.]

Art. 6143. State tree.—The Pecan Tree shall be the State tree of Texas and it shall be the duty of the State Board of Control and the State Parks Board to give due consideration to the Pecan Tree when planning beautification of State Parks or other public property belonging to the State. [Acts 1919, p. 155; Acts 1927, 40th Leg., p. 234, ch. 161, § 1.]

Art. 6143a. State motto.—Be it Resolved, By the House of Representatives, the Senate concurring, that the word "Friendship" be and is hereby adopted and declared to be the motto of the State of Texas. [Acts 1930, 41st Leg., 4th C.S., p. 105, H.C.R. #22.]

Art. 6143b. State song.—Resolved by the Senate, of the State of Texas, the House of Representatives concurring:

That, "Texas, our Texas" by William J. Marsh and Gladys Yoakum Wright be adopted as the State Song for the State of Texas. [Acts 1929, 41st Leg., 1st C.S., p. 286, S.C.R. #6.]

Art. 6143bb. State Flower Song.—Resolved by the House of Representatives, the Senate concurring, That it adopt the Bluebonnet song as the State Flower Song. [Acts 1933, 43rd Leg., p. 930, H.C.R. #24.]

Art. 6143c. State bird.—Resolved by the Senate of the State of Texas, the House of Representatives concurring:

That the recommendations of the Texas Federation of Women's Clubs be and are hereby adopted and that the mocking bird be and the same is hereby declared to be the state bird of Texas. [Acts 1927, 40th Leg., p. 486, S.C.R. #8.]

Art. 6144. Home Guard.—Whenever a state of war shall exist between the United States and another nation there may be organized and maintained without expense to this State, with the consent and under the direction of the county judge of any county, a Home Guard composed of adult citizens of the United States and of such county. Such Guard shall be organized to conform as nearly as practicable to the organization of military units, and shall at all times be subject to call to duty and to orders of the sheriff of such county. Each Guard shall be authorized to carry on and about his person pistols and other weapons as may be necessary when called to actual duty by the sheriff. Counties, cities and towns may through their lawful governing bodies appropriate from their public treasuries moneys to provide arms and ammunition for such Guard under such rules as they may prescribe, and those receiving arms from the county shall return all guns and ammunition to the county judge when not on duty. Such Guard may engage in drill at such time and place as the community officers may prescribe, and may be uniformed so as not to conflict with Section 125, Act of Congress, approved June 3, 1916. [Acts 3rd C. S. 1917, p. 79.]

Art. 6144a. Texas week.—Therefore, be it resolved, that the Senate of Texas, the House of Representatives concurring therein, does here and now approve this Resolution and set apart annually the entire week in which March the Second comes as a season to be known as Texas Week; and by this action of the Legislature His Excellency, the Governor of Texas, is hereby vested with the power and is besought to issue and to publish annually his proclamation outlining the purpose and the spirit of Texas Week and urging every citizen of this State to exalt and extol the highest and the best cultural and spiritual values of Texas throughout Texas Week; and

Be it further resolved, that it is now and ever shall be in direct violation of the purpose and spirit of Texas Week to observe it as a season of holidays; and the Legislature of the State of Texas does affirm that, under no condition, is Texas Week to be looked upon as a week of holidays; but on the other hand and quite to the contrary, it is hereby alleged that during Texas Week every citizen of this State is encouraged to work, insofar as he is able, and to do his work a bit better than he does it during other weeks of the year; and

Therefore, be it further resolved, that the Legislature by this Resolution does urge His Excellency, the Governor of Texas, to suggest to the citizens of this State in his annual proclamations that they observe the following forms of activity, and from time to time such other

forms of observance that he may deem wise, insofar as his suggestions do not conflict with the purpose and spirit of Texas Week as outlined in this Resolution:

First, it is enjoined that every home; every office, place of business and industry; every school, parochial, private, or public; every college and university; and all institutions of whatever class or character, educational or eleemosynary, be requested through this Resolution and the annual proclamations of the Governor of Texas to hoist a Texas Flag from some prominent point of vantage and let it be unfurled each day during Texas Week; and

Second, it is now and ever shall be expected that all teachers and pupils in every school of whatever class or classification shall observe Texas Week appropriately in general assemblies, in classes, clubs, and in any and all other groups as they may be assembled for school work; that schools be encouraged to assemble exhibits of Texas products, pictures, relics, books and documents, and hang in permanent places pictures of famous heroes of Texas; that schools which are in reach of battle fields, missions, and other places of historical interest and importance are hereby encouraged to make patriotic pilgrimages to such places of fame during Texas Week; but it is understood that no school is to celebrate Texas Week as a season of holidays. On the other hand, better work shall be expected of all schools throughout Texas Week; and

Third, it is enjoined upon commerce and industry, professional life and activity, civic activity, and every other kind of occupational pursuit, in which Texas citizens may be engaged, that they recognize and observe Texas Week in a fitting manner. To this end it is recommended that courts in session, luncheon clubs, women's organizations, churches, conventions, lodges, and the Legislature when in session, all departments of government, city, county, and State; and any and every other group of citizens for whatever purpose they may be assembled, be urged now and ever in the future to observe Texas Week appropriately by rendering programs in keeping with the purpose and spirit of this occasion as set forth in this Resolution; and

Fourth, that every citizen, old or young, within the borders of this great State be urged now and ever in the future, by this Act of the Legislature and in accordance with the proclamations of the Governor of Texas issued and published annually to be seen and read by all citizens of Texas, to exalt and extol the cultural and spiritual values which we cherish so fondly; the blessed and romantic traditions of our glorious history; the high standards and lofty ideals of statesmanship, of scholarship, of leadership, of character, and of service which our forefathers gave to us as our rare and rich heritage, and to give thanks for this marvelous inheritance as we faithfully and conscientiously observe Texas Week. [Acts 1932, 42nd Leg., 3rd C.S., p. 131, S.C.R. #8.]

Art. 6144b. [Expired.]

This article, derived from Acts 1934, 43rd Leg., 2nd C.S., p. 164, ch. 69, created "The Texas Centennial Commission" and provided for the holding, in 1936, of a celebration of a century of the independence and progress of Texas as a Republic and State.

S. C. R. No. 39, approved May 12, 1947, recited that the statute creating the Centennial Commission had expired and provided that the State Board of Control should have authority to lease or sell structures erected by the Centennial Commission.

See, also, note under Art. 6144c.

Texas Coronado Quarto Centennial Commission

Acts 1939, 46th Leg., Spec.L., p. 522, § 1, effective April 18, 1939, created a Texas Coronado Quarto Centennial Commission, to serve for a period of two years to act as an agency of the State of Texas, charged with the responsibility of causing appropriate public celebrations to observe and commemorate the four hundredth anniversary of the Coronado Expedition to the State of Texas.

Art. 6144c. [Executed.]

This article, derived from Laws 1935, 44th Leg., p. 427, ch. 174, made appropriations for the purpose of conducting celebrations celebrating a century of the independence and progress of Texas as a Republic and State, and provided for centennial celebrations. Laws 1937, 45th Leg., p. 641, ch. 314 reappropriated the unexpended balances of appropriations made by the Act of 1935 to be expended as provided in such Act of 1935, and as expenses in the administration of such Act. See, also, note under Art. 6144b.

Art. 6144cc. Audit of expenditures.—It is hereby declared the intention of the Legislature that an audit be made of the expenditure of the funds appropriated under the provisions of House Bill No. 11,[1] Acts of the Regular Session of the Forty-fourth Legislature, and all funds appropriated hereby. Said audit shall be made by the State Auditor or under his direction. It shall be the duty of such Auditor or those working under his direction to make such audit of the expenditure of funds appropriated under the provisions of House Bill No. 11, Acts of the Regular Session of the Forty-fourth Legislature and hereby appropriated as soon as practicable, and furnish the Legislature with a copy of said report. There is hereby appropriated out of the unexpended balance of said funds One Thousand ($1,000.00) Dollars or so much as may be necessary for the purpose of making such audit. [Acts 1937, 45th Leg., p. 641, ch. 314, § 4.]

[1] Article 6144c.

Art. 6144d. Texas conservation and beautification week.—Resolved, by the Senate of the State of Texas, the House of Representatives concurring, that Texas Conservation and Beautification Week be observed each year at that time which shall include April twenty-first, San Jacinto Day, and April twenty-fourth, National Wildflower Day, said week beginning two days before the twenty-first of April and ending two days after April twenty-fourth, and that said week shall be observed so that it contributes to the conservation and beautification of the State and to the happiness and lasting benefit of its people, thus making known, enforcing and teaching respect for the written and unwritten conservation laws of our country thus showing our respect and appreciation for all that is ours to cherish while we live and should preserve for posterity here where "The heavens declare the glory of God and the firmament showeth His handiwork." [Acts 1935, 44th Leg., p. 1275, S.C.R. #28.]

Art. 6145. Texas Historical Board.—The Governor shall appoint five patriotic citizens of this State, to serve without compensation, who shall constitute the Texas Historical Board. Two of the members of said Board shall serve for a period of two years and three shall serve for four years from the date of their qualification by taking the official oath. The Governor shall, at the time of making the appointments, designate which members shall serve for two years and which shall serve for four years. The Board shall select one member as chairman and another as secretary and may adopt such rules and regulations for its control and guidance as may be necessary to carry out the purposes for which it was created, and shall hold such meetings at such times and places as may be designated by it. Said Board shall gather data relating to the history of Texas from the earliest time to the present and submit to the Legislature at each regular session, for such action as it may deem necessary, such data and such recommendations as it may see fit looking to the preservation of historic relics, and marking of historic spots, the purchase of historic grounds and the erection of fitting monuments in memory of the heroes and the heroic achievements that consecrated, sanctified, and made immortal the glorious and resplendent pages of Texas history. [Acts 2nd C. S. 1923, p. 62.]

Article 6145—1. Governor James Stephen Hogg Memorial Shrine.—Article I. There is hereby created a Governor James Stephen Hogg Memorial Shrine to be located at Quitman, Wood County, Texas, upon lands furnished for such purpose without cost to the State of Texas.

Article II. The affairs of such Memorial Shrine shall be administered by a Commission of three, which Commission shall be designated as the "Governor James Stephen Hogg Memorial Shrine Commission". The members of such Commission shall be appointed by the Governor and shall hold office for a term of six years, and until their successors are appointed and have qualified; at the expiration of the terms of the present Commissioners, the Commission members first appointed shall serve for two years, four years and six years respectively. The Governor shall designate which appointee shall serve the two-year, four-year and six-year terms respectively. Appointment of such Commissioners by the Governor shall be with the advice and consent of two-thirds of the Senate present.

Article III. The "Governor James Stephen Hogg Memorial Shrine Commission" is authorized and empowered to accept on behalf of the state, gifts of every nature and kind, including real estate, to be used in connection with the Shrine, and is empowered to accept gifts and loan of items for exhibition dealing with Texas history and the life of James Stephen Hogg, and to administer the affairs of such Memorial Shrine, and make rules and regulations for the administration thereof; and is empowered to construct such buildings and improvements as it may deem necessary in connection with the Memorial Shrine, subject to legislative limitation, and hire such personnel upon such terms as it deems advisable to carry out the duties of the Commission in connection with the building, construction or exhibition of historical matter and advertising the Shrine. Provided, however, any appropriation made by the Legislature shall be extended as directed in the appropriation Act. [Acts 1941, 47th Leg., p. 269, ch. 183; Acts 1945, 49th Leg., p. 535, ch. 324, § 1.]

Art. 6145—2. Battleship "Texas" as a permanent memorial; Commission of Control; maintenance and operation.

Commission authorized to accept Battleship

Section 1. The "Commission of Control for the Battleship Texas," herein created, shall be and is hereby authorized to accept from the United States Government the Battleship "Texas" for all of the purposes herein specified, and including the establishment of same for exhibition as a permanent memorial for the purpose of commemorating the heroic participation of the State of Texas in the prosecution and victory of the Second World War.

Commission created; membership; terms

Sec. 2. There is hereby created a Commission of Control for the Battleship "Texas" to be known as the Battleship Texas Commission and which will hereinafter, in this Act, be referred to as merely the Commission, to be composed of nine (9) members appointed by the Governor of the State of Texas from the personnel comprising the following organizations, in the number stated:

General Public—Members at large	2 Members
Sons of the Republic of Texas	1 Member
Daughters of the Republic of Texas	1 Member
Texas Historical Association	1 Member
Texas Navy League	1 Member
Disabled Veterans (D.A.V.)	1 Member
American Legion	1 Member
Veterans of Foreign Wars of the U.S.	1 Member

The terms of such members shall be as follows: Three (3) members of said Commission shall be appointed for a term of two (2) years from the effective date of this Act; three (3) members of the Commission shall be appointed for a term of four (4) years from the effective date of this Act; three (3) members of the Commission shall be appointed for a term of six (6) years from the effective date of this Act. All appointees of the Governor shall be confirmed by a two-thirds (2/3) vote of the Senate of the State of Texas present.

Duties of Commission

Sec. 3. The duties of the Commission shall be: To provide a proper berth for the Battleship "Texas," to select a location adjacent to, or on, the San Jacinto Battlegrounds for such berth; to ready the vessel for visitation by the public; to ascertain and institute a proper charge for admission to said vessel; to maintain and operate said vessel as a permanent memorial and exhibition, and to allocate the money herein appropriated as may be necessary for the fulfillment of the duties contained herein. Said Commission is further authorized to perform all other duties in addition to those specifically named above or mentioned below which are necessary to carry out the provisions and purposes of this Act. The aforesaid Commission shall be and hereby is authorized to accept gifts or donations for the purposes of this Act.

Operating Board

Sec. 4. The members of the Commission shall, by a majority vote, appoint three (3) of their number to serve as an Operating Board to the Commission. The Commission may delegate to the Operating Board sufficient authority and power to fulfill, in the name of the Commission, any or all of the duties which are herein conferred upon the Commission.

Co-ordinating and liaison group

Sec. 5. Inasmuch as the Battleship "Texas" will be berthed adjacent to or within the confines of the present San Jacinto Battlegrounds, the Operating Board, in addition to its other duties, shall act as a co-ordinating and liaison group between the Commission of Control for the Battleship "Texas" and the present San Jacinto State Park Commission.

Fund

Sec. 6. The Commission shall maintain a fund composed of the proceeds from the admission or inspection fee, which fund will be used to pay all costs of maintaining and operating the vessel. At the expiration of each fiscal year, which shall be August 31 of each year, the residue of such fund, if any, remaining after all costs of maintaining and operating said vessel shall have been paid in full, may be retained by the Commission, at its option, in said fund, unless said surplus amounts to more than Twenty-five Thousand Dollars ($25,000); in the event said surplus does amount to more than Twenty-five Thousand Dollars ($25,000), all of the said surplus in excess of Twenty-five Thousand Dollars ($25,000) shall be paid into the Treasury of the State of Texas for the benefit of the General Fund.

Books of account and records

Sec. 7. The Commission shall maintain books of account and records concerning all revenue derived from the sale of admissions to the public and all expenses incurred in maintaining and operating the Battleship as a public memorial; such records and books shall be available for audit at any time by the Board of Control of the State of Texas.

Hiring of employees

Sec. 8. The Commission is hereby authorized to hire any laborers, artisans, caretakers, stenographic and administerial help as may be necessary to carry out the provisions and purposes of this Act. The Commission may further engage the employment of laborers and artisans and purchase materials necessary to maintain the Battleship "Texas" in a clean, neat and attractive condition satisfactory for exhibition to the public.

Employees

Sec. 9. Any employees hired by virtue of the provisions of the above Section of this Act shall be resi-

dents of the State of Texas. Any materials used for any purpose in connection with maintaining and operating the Battleship "Texas" shall be, as far as practicable, Texas materials.

Expenditures and contracts

Sec. 10. All expenditures and contracts authorized by the Commission or Operating Board shall be made, let, supervised and expended by the Board of Control of the State of Texas according to all legal requirements as to the expenditures of funds and the letting of contracts by the said Board of Control.

Appointments of members of Commission

Sec. 11. When the term of any of the above appointees expires, the Governor of the State of Texas shall appoint from the personnel of the organization to which the Commission member whose term expired belonged a person to serve on the Battleship Texas Commission; in the event a member of the Commission dies or resigns his position, the Governor of the State of Texas shall appoint a successor from the same organization to which the deceased or resigning member belonged to serve the portion remaining of the unexpired term; all appointments made by the Governor of the State of Texas to replace Commission members whose terms have expired shall be for a term of four (4) years from the date of the expiration of the preceding term; all appointments made by the Governor of the State of Texas to replace Commission members who have died or resigned their positions shall have as their term that portion remaining of the unexpired term of the deceased or resigning member. Such appointees of the Governor shall be confirmed by a two-thirds (2/3) vote of the Senate of the State of Texas present.

Unlawful acts; violations

Sec. 12. It shall be unlawful for any member of the Commission, or of the Operating Board, to charge, receive or obtain, directly or indirectly, any fee, commission, retainer or brokerage out of the funds hereby appropriated; and no member of the Commission or the Operating Board shall have any interest in any land, materials, concessions or contracts sold to or made with either the Commission or the Operating Board. Violation of any of the provisions of this Section shall be a misdemeanor and upon conviction, punishment shall consist of removal from such Commission or Operating Board and by a fine of not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000) or by confinement in the county jail at any time not to exceed six (6) months or by both such fine and imprisonment.

Compensation

Sec. 13. No member of the Commission or of the Operating Board shall receive any salary for the performance of his duties under this Act. No other person employed by virtue of the provisions of this Act shall receive, as salary, commission or compensation, out of the State funds herein appropriated, or from the fund which is to be maintained by the Commission, more than Four Thousand Dollars ($4,000) per year.

Partial invalidity

Sec. 14. It is understood and expressly provided that, should any Section, clause, or provision of this Act be hereafter held invalid for any reason, such invalidity shall not, in any way, affect any other provision of this Act. [Acts 1947, 50th Leg., p. 241, ch. 139.]

TITLE 106A—PASSENGER ELEVATORS

Art.
6145a. Safety Devices.
6145b. Approval of Industrial Board.

Article 6145a. Safety Devices.—It shall be unlawful, after the 1st day of January, 1926, to operate passenger elevators for the carriage of passengers in any building within this State, until the same shall be equipped with a device that will prevent moving said elevator when the gate or door thereto is open; provided, however, that the installation of any such device, the design of which shall have been approved either by the United States Bureau of Standards, or by the Industrial Accident Board of the State of Texas, shall be prima facie evidence of a compliance with this act. [Acts 1925, 39th Leg., ch. 29, p. 147, § 1.]

Art. 6145b. Approval of Industrial Board.—It is hereby made the duty of the Industrial Accident Board to inspect and approve or disapprove the model, drawing, or design of any such devices as may be submitted to it in Austin, Texas, and to charge therefor a fee of $10.00. [Acts 1925, 39th Leg., ch. 29, p. 147, § 2.]

TITLE 107—PAWNBROKERS AND LOAN BROKERS

1. PAWNBROKERS

Art.
6146. Pawnbroker.
6147. Bond.
6148. Register.
6149. Pawn ticket.
6150. Failure to redeem.
6151. How notice given.
6152. Advertisement.
6153. Hours of sale.
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6156. Owner entitled to surplus.
6157. Payment to county treasurer.
6158. Suit for surplus.
6159. Suit upon bond.
6160. May sue officer.
6161. Common law shall govern.

2. LOAN BROKERS

6162–6165. [Amended.]
6165a. Loan brokers and regulations.
Sec.
2. "Loan broker" defined.
3. Affidavit naming owners and designating agent.
4. Bond.
5. Usurious contracts void; register.
6. Filing of bond; assignments by married men.

1. PAWNBROKERS

Article 6146. [6155] [3636] [3494] Pawnbroker.—A pawnbroker is one who pursues the business of lending money upon interest and receiving upon deposit any personal property as security for the payment of such loan and interest.

Art. 6147. [6156–7] Bond.—No person shall pursue the business of a pawnbroker without first having given bond, with at least two good sureties in the sum of one thousand dollars, payable to the State of Texas, and approved by and filed with the county clerk of the county in which such person proposes to pursue said business, conditioned that he will faithfully comply with each requirement of the law governing such business. A new bond shall be given in the same manner as the first every twelve months during the continuance of such business. Such bond shall be recorded and safely kept in the office of the county clerk of the county in which such pawnbroker pursues such business, the recording fee to be paid by such pawnbroker. [Acts 1874, p. 153; G. L. vol. 8, p. 155.]

Art. 6148. [6158] [3639] [3497] Register.—Each pawnbroker shall keep a well bound book, to be kept open for inspection in which he shall register all his transactions as a broker at the time the same occurs. Such register shall show—

1. An accurate description of the article pawned.
2. From whom received.
3. The time and the amount for which the article is pawned; its probable value and the rate of interest agreed upon.
4. The final disposition made of such property, and if sold to whom sold and the amount for which each article was sold. [Id.]

Art. 6149. [6159] [3640] [3498] Pawn ticket.—The broker shall give to the party pledging a ticket corresponding to the entry on the book of registry. [Id.]

Art. 6150. [6160] [3641] [3499] Failure to redeem.—If any article deposited with such broker as a pawn shall not be redeemed at or before the time agreed upon, the broker shall sell the same at public auction to the highest bidder for cash, at his usual place of business, after giving at least five days' notice of such sale. [Id.]

Art. 6151. [6161] [3642] [3500] How notice given.—Such notice of sale shall be given by posting or [1] written or printed advertisements at not less than three public places in the county where such sale is to take place, one of which places shall be the courthouse of such county. [Id.]

[1] So in enrolled bill. Should probably read "of".

Art. 6152. [6162] [3643] [3501] Advertisement.—Such advertisements of sale shall state the time and place of such sale, and shall contain a full description of each article to be sold, and the name of the person depositing the same, and a copy thereof shall be filed in the office of the clerk of the county court of the county where such sale takes place. [Id.]

Art. 6153. [6163] [3644] [3502] Hours of sale.—All sales made by a pawnbroker shall be made between the hours of ten o'clock A. M. and four o'clock P. M., and no sales shall be made upon Sunday or upon a legal holiday. [Id.]

Art. 6154. [6164] [3645] [3503] Report of sales.—When a sale has been made the pawnbroker shall, within five days thereafter, file with the county clerk of the county where such sale was made, a report in writing and under oath, showing—

1. The time and place of such sale.
2. The notice given thereof.
3. A full description of the property sold and by whom deposited.
4. By whom purchased and the amount for which each article was sold.
5. The amount due the broker, principal, interest and expenses upon each article sold.
6. The amount of surplus of the proceeds of sale of each article, if any, after deducting the amount due the broker of principal, interest and expenses. [Id.]

Art. 6155. [6165] [3646] [3504] Expenses.—The expenses shall be such expenses as have been agreed upon by the parties to the contract, or if there be no agreement in regard thereto, then the reasonable expenses of the sale only, such as reasonable auctioneer's commissions, shall be allowed and deducted. [Id.]

Art. 6156. [6166] [3647] [3505] Owner entitled to surplus.—The owner or depositer of the property so sold shall be entitled upon demand to receive from such broker the surplus of the proceeds of such sale at any time within thirty days after such sale, and if no demand therefor be made within thirty days after such sale such surplus shall become the property of the county where such sale was made. [Id.]

Art. 6157. [6167] [3648] [3506] Payment to county treasurer.—Should there be any surplus of the proceeds of any sale made by a broker, he shall, at the expiration of thirty days from the day of such sale, pay such surplus to the county treasurer of the county where such sale was made, or he shall file with such county treasurer the receipt of the owner or depositor of the property sold, for such surplus, at the expiration of said thirty days. [Id.]

Art. 6158. [6168] [3649] [3507] Suit for surplus.—Suit may be brought upon the bond of the pawnbroker by the county, or by any party entitled to the surplus of any sale made by him, and upon recovery judgment shall be rendered against such pawnbroker and the sureties upon his bond for the amount of such surplus, together with ten per cent. per month on such amount for each month or fraction of a month that such surplus has been illegally withheld by such pawnbroker. [Id.]

Art. 6159. [6169] [3650] [3508] Suit upon bond.—Any person injured by the failure of a pawnbroker to comply faithfully with his contract, or with any requirement of law governing the business of pawnbrokerage, may sue upon the bond of such pawnbroker and recover such damages as he may prove himself entitled to, not to exceed the penalty of such bond. [Id.]

Art. 6160. [6170] [3651] [3509] May sue officer.—Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any provision of the law governing pawnbrokerage, shall have a right of action against such officer so failing, refusing or neglecting, for the recovery of all damages resulting from such failure, refusal or neglect. [Id.]

Art. 6161. [6171] [3652] [3510] Common law shall govern.—The rules of the common law shall govern the civil liability of pawnbrokers, except when inconsistent with any statute. [Id.]

2. LOAN BROKERS

Arts. 6162–6165. [Amended.]

Acts 1927, 40th Leg., 1st C. S., p. 30, ch. 17, § 1, amends articles 6162–6165 to read as provided in sections 2–8 without further specifying the particular articles, and is set out as article 6165a, post.

Art. 6165a. Loan brokers and regulations.

"Loan broker" defined

Sec. 2. A loan broker is a person, firm, or corporation, other than a lending institution subject to supervision or examination by the Department of Banking of the State of Texas, who pursues the business of lending money, purchasing salaries and taking for security for the payment of such loans and interest thereon an assignment of wages or assignment of wages with Power of Attorney to collect the same or other order for unpaid chattel mortgage or bill of sale upon household or kitchen furniture. [As amended Acts 1945, 49th Leg., p. 266, ch. 195, § 1.]

Affidavit naming owners and designating agent

Sec. 3. That all loan brokers now doing business is this State within thirty (30) days after this Act [1] takes effect, and such as may hereafter engage in business in this State, shall file an affidavit in the office of the County Clerk, of the County in which such loan broker is located or doing business, giving the true and correct name or names of the owner or owners of said business and name and designate some person or persons in each county or counties who is an agent, the residence of said owners, and the name or names of any and all persons in the county who are agents of the said loan broker, upon whom service may be had

or notice given in the event of any suit filed against such loan broker.

Bond

Sec. 4. That such loan brokers now doing business in this State or hereafter doing business in this State, shall, before beginning business in this State, execute and deliver a good and sufficient bond in the sum of One Thousand Dollars to such County Judge in the County in which said loan broker is located and doing business, to be approved by such Judge and payable to the said County Judge and his successors in office, conditioned that such loan broker shall comply with this Act and that all persons doing business with such loan broker who may be injured or damaged thereby may sue upon the said bond and recover for such injury or damage together with a reasonable attorney's fees to be allowed by the Court not to exceed the sum of Fifty Dollars, and also may sue in their own name and recover from said loan broker upon any and all usurious interest collected in double the amount now provided by law. Such persons may sue and recover upon said bond from time to time until the full amount is exhausted, and when said bond is exhausted said loan broker shall be required by the County Judge to execute a new bond as above provided.

Usurious contracts void; register

Sec. 5. All contracts for usurious or unlawful interest collected or received are declared to be contrary to public policy of this State, and all of such interest collected and contracted to be collected therefor shall be void; that each and every loan broker shall keep a well bound book in which he shall register all of his transactions with other persons as such loan broker at the time the same occur, which shall be at all times kept open for inspection, and such broker shall give to the borrower, or to all persons doing business with such broker, a ticket showing a true and correct statement of the amount of actual cash received by such borrower or person and the true and correct amount paid back by the borrower or person to such broker, giving correct dates of each and every payment or credit thereon, and said tickets shall correspond correctly with all of the entries on said register. Said register shall fully describe and show all of the articles of property securing the loan, if the same be secured by chattel mortgage or bill of sale on household or kitchen furniture, or if by a sale of wages or salary, or by an assignment of wages or salary, or assignment of wages or salary with a Power of Attorney to collect same, or of any other order for unpaid wages or salary given as security, giving the name of the person receiving the money, and the person by whom such person is employed or by whom it is expected he or she shall be employed or earn the wages or salary; said ticket shall further show the full amount of money actually received by the person and the full and total amount that is to be received back by such loan broker in full payment, and the full and correct rate of interest or discount agreed upon.

Filing of bond; assignments by married men

Sec. 6. Such bond when so approved by the County Judge shall be filed, together with the said affidavit, in the County Clerk's office in the County in which said loan broker is located and doing business, and the said bond shall be recorded at length by the County Clerk in a well bound book kept for that purpose. That each assignment of wages or contract providing for the purchase of wages, mortgages, Power of Attorney to collect or other transfer of the salary or wages of a married man and each bill of sale or chattel mortgage upon household or kitchen furniture of a married man shall be void unless the same be made and given with the consent of the wife, and such consent shall be evidenced by the wife joining in the assignment, mortgage, Power of Attorney to collect, or other transfer of salary or wages and the signing of her name thereto and by her separate acknowledgment thereon, taken and certified to by a proper officer, substantially in the mode provided for the acknowledgment of a wife in the conveyance of a homestead. [Acts 1927, 40th Leg., 1st C.S., p. 30, ch. 17.]

[1] This Article and Pen.Code, Article 1129a.

Section 7 of Acts 1927, 40th Leg., 1st C. S., p. 30, ch. 17, provides that if any part of the Acts is held invalid, such holding shall not affect the remainder, repeals all conflicting laws, and expressly repeals Penal Code, articles 1127, 1128, 1129.

Section 8 being a penal provision is published as Penal Code, article 1129a.

TITLE 108—PENITENTIARIES

1. PRISON COMMISSION

Art.
6166. [Repealed.]
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6166b. Texas prison board.
6166c. Pay of members.
6166d. Meetings.
6166e. Organization.
6166f. Removal or suspension of members.
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6166l. Manager's accounts.
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6166r. Transportation of prisoners.
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1. PRISON COMMISSION

Article 6166. [Repealed by Acts 1927, 40th Leg., p. 298, c. 212, § 1.]

Art. 6166a. Prison system.—It shall be the policy of this State, in the operation and management of the Prison System, to so manage and conduct the same in that manner as will be consistent with the operation of a modern prison system, and with the view of making the System self-sustaining; and that those convicted of violating the law and sentenced to a term in the State Penitentiary shall have humane treatment, and be given opportunity, encouragement and training in the matter of reformation. All prisoners shall be worked within the prison walls and upon farms owned or leased by the State; and in no event shall the labor of a prisoner be sold to any contractor or lessee to work on farms, or elsewhere, nor shall any prisoner be worked on any farm or otherwise, upon shares, except such farm be owned or leased by the State of Texas. [Acts 1927, 40th Leg., p. 298, ch. 212, § 2.]

Art. 6166b. Texas prison board.—There is hereby created the Texas Prison Board, which shall be composed of nine members to be appointed by the Governor with the advice and consent of the Senate, such appointments shall be made bi-annually, or on or before February 15. Each member of said Board shall be a State officer within the meaning of the Constitution, and before entering upon the discharge of his duties shall take the constitutional oath of office. The term of office of each member shall be six years, except that in making the first appointments the Governor shall appoint three members for a term of two years each, three members for terms of four years each, and three members for terms of six years each, so that the terms of three members shall expire every two years. Vacancies occurring in the Board shall be filled by appointment of the Governor for the unexpired term. [Acts 1927, 40th Leg., p. 298, ch. 212, § 3.]

Art. 6166c. Pay of members.—The members of the Texas Prison Board shall draw no salaries, but each member of the Board shall be entitled to a per diem of ten dollars per day and actual and necessary expenses when engaged in the discharge of his official duties. [Acts 1927, 40th Leg., p. 298, ch. 212, § 4.]

Art. 6166d. Meetings.—The Texas Prison Board shall hold a regular meeting on the first Monday in January, March, May, July, September and November of each year for the transaction of any and all official business. Special meetings of said Board may be called by the Chairman, and upon the petition of five members special meetings of said Board shall be called. Each member of the Board shall be given notice of special meetings and of the purpose thereof, and unless such notice has been given no official business shall be transacted at any special meeting. Six members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. [Acts 1927, 40th Leg., p. 298, ch. 212, § 5.]

Art. 6166e. Organization.—The Board shall organize by the election of a Chairman and a Vice-chairman from among its members, and shall provide for the appointment of such committees as may be expedient to the accomplishment of the duties of said Board. The Board shall have authority to employ such clerical assistance as may be necessary for the discharge of its duties. [Acts 1927, 40th Leg., p. 298, ch. 212, § 6.]

Art. 6166f. Removal or suspension of members.—If any member of the Board shall be guilty of malfeasance, misfeasance or non-feasance in office, or shall become incapable or unfit to discharge his official duties or shall willfully fail, refuse or neglect the discharge of the duties of his office, such member may be removed from office in either of the following ways:

(1) By the Governor in the manner provided by law.

(2) By suit brought by the Attorney General in the name of the State on his own motion or at the direction of the Governor on the relation of the Governor, in the District Court of Travis County or in the District Court of the county of residence of such member. The Attorney General shall bring such suit when directed by the Governor to do so, provided the Governor accompanies such direction with charges and evidence showing that the member is subject to removal as provided herein. Upon the application of the Attorney General in the name of the State of Texas, the District Judge before whom such suit is pending may immediately suspend the member from office, and such order of suspension shall be effective until set aside by the Court on motion. Such motion, when filed, shall have preference over all other causes pending in such Court. If the judgment of the Court be one of removal from

office, the member shall be forthwith suspended from office pending any appeal of the case. When the member is so suspended, the District Judge at the time of making such order of suspension, shall appoint for the duration of such suspension some other qualified person to perform the duties of the suspended member, and such appointee shall receive the same compensation as a member of the Board. The suit shall be a civil action, to be tried as other civil cases, with the right of appeal and review as in other cases. The Court shall have authority to issue all necessary writs to enforce its judgment or order of suspension and to protect its jurisdiction over each case. Such suit shall have precedence over all other cases in the trial and appellate courts. [Acts 1927, 40th Leg., p. 298, ch. 212, § 7.]

Art. 6166g. Control of prison system.—The Texas Prison Board, together with the manager hereinafter provided for, shall be vested with the exclusive management and control of the Prison System, and all properties belonging thereto, subject only to the limitations of this Act,[1] and shall be responsible for the management of the affairs of the Prison System and for the proper care, treatment, feeding, clothing and management of the prisoners confined therein. [Acts 1927, 40th Leg., p. 298, ch. 212, § 8.]

[1] Articles 6166a–6166z7, ante.

Acts 1929, 41st Leg., p. 527, ch. 252, §§ 1, 2, effective March 19, 1929, authorizes the Texas Prison Board to sell 5.72 acres of land adjoining the Imperial State Farm near Sugar Land, Fort Bend County to the highest bidder at not less than $200 per acre and directs the Chairman or Vice Chairman to execute deed attested by the Secretary.

Acts 1945, 49th Leg., p. 378, ch. 242, §§ 1–3, authorized the Prison Board to sell to the City of Huntsville at private sale for cash 630 acres of land, part of the Warren Birdsell League, Abstract No. 6, in Walker County, Texas.

Act 1945, 49th Leg., p. 380, ch. 244, §§ 1–3, authorized the Prison Board to purchase 190.4 acres of land, part of the P. Gray League, Abstract No. 24, in Walker County, Texas, and to pay therefor from the consideration received for the sale of land to the City of Huntsville.

Art. 6166h. Manager's reports.—The Texas Prison Board shall cause the manager hereinafter provided for to make full and complete reports to each regular meeting of said Board of the fiscal affairs of said Prison System and of the general conditions with relation thereto. On the first day of January of each year, said Board shall cause a full and complete inventory of all property of every description belonging to the Prison System to be made, and there shall be set opposite each item the book and actual market value of same. Said inventory shall further include a statement of the fiscal affairs of said System as of the first day of January; and a sufficient number of copies of such inventory and report shall be printed to give general publicity thereto. [Acts 1927, 40th Leg., p. 298, ch. 212, § 9.]

Art. 6166i. Suits by board.—The Texas Prison Board is authorized to bring and maintain suits for the collection and enforcement of all demands and debts owing to the prison system. The venue of such suits shall be in Travis County, and such suits shall be instituted and prosecuted by the Attorney General. No bond for costs, appeal bond, supersedeas bond, writ of error bond, or other security shall at any time be required of the Texas Prison Board in any civil suit of any kind brought by or against it or them in its or their official capacity as such Board or members thereon, except such suits as may be brought against it or them by the State of Texas. Nothing in this section shall authorize any civil suit of any kind whatsoever to be brought or prosecuted against said Board or any member thereof as such, except by way of offset or counter claim to an action originally brought by said Board. [Acts 1927, 40th Leg., p. 298, ch. 212, § 10.]

Art. 6166j. Manager's authority and pay.—The Texas Prison Board shall employ a general manager of the prison system, who shall possess qualifications and training which suit him to manage the affairs of a modern penal institution, and it shall be his duty to carry out the policies of the Texas Prison Board. The Board shall manage and control the prison system through the manager selected by it. In addition to his salary, which salary shall not exceed Eight Thousand ($8,000.00) Dollars per annum, said manager shall be furnished with a dwelling house by the State and all necessary traveling expenses when traveling on business for the prison system. The Board shall delegate to such manager authority to manage the affairs of the prison system, subject to its control and supervision. The duty of such manager shall extend to the employment and discharge, with the approval of the Board, of such persons as may be necessary for the efficient conduct of the prison system. The manager, with the consent of the Texas Prison Board, shall have power to prescribe reasonable rules and regulations governing the humane treatment, training and discipline of prisoners, and to make provision for the separation and classification of prisoners according to sex, color, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured. [Acts 1927, 40th Leg., p. 298, ch. 212, § 11.]

Art. 6166k. Manager's removal.—The Texas Prison Board shall have the power at any time to remove the manager for inefficiency, improper conduct, or for any other cause or reason after due notice to him of their intention, and an opportunity given to said manager to be heard. [Acts 1927, 40th Leg., p. 298, ch. 212, § 12.]

Art. 6166*l*. Manager's accounts.—The manager shall keep, or cause to be kept, correct and accurate accounts of each and every financial transaction of the Prison System, including all receipts and disbursements of every character. He shall receive and receipt for all money paid to him from every source whatsoever, and shall sign all warrants authorizing any disbursement of any sum or sums on account of the prison system, and no money shall be paid out on any account of the prison system except on a warrant signed by him and countersigned by the auditor of the prison system. He shall keep full and correct accounts with each industry, department and farm of the prison system, and with all persons, firms, or corporations having financial transactions with the prison system. He shall have power to require all necessary reports from any department, officers or employees of the prison system at stated intervals. [Acts 1927, 40th Leg., p. 298, ch. 212, § 13.]

Art. 6166m. Remittances to State Treasurer.—On Monday of each week, the manager shall remit to the State Treasury all moneys received by him during the preceding week and belonging to the prison system. Such funds when received shall be deposited by the State Treasurer upon the warrant of the Comptroller to the credit of the general revenue fund. The manager shall be furnished with a receipt for such money, and a duplicate of such receipt shall be sent to the chairman of the Texas Prison Board, and another duplicate to the State Prison auditor. All bills and accounts of said prison system shall be paid from appropriations made by the Legislature from the general revenue fund of the State, upon sworn accounts and warrants drawn by the State Comptroller on the State Treasurer in the same manner as provided by general law. Each account shall be approved by the manager and audited by the auditor of the prison system. The Comptroller shall have authority to issue warrants, and the Treasurer to pay the same, upon accounts approved by the manager and audited by the auditor, where the amount of such account does not exceed $5,000.00; and where the amount of the account is in excess of $5,000.00, before the Comptroller shall issue a warrant for the same or the Treasurer pay such warrant, such account shall be approved for payment by the chairman of the Prison Board. [Acts 1927, 40th Leg., p. 298, ch. 212, § 14.]

Art. 6166m—1. Discharged convicts revolving fund created.—From and after the effective date of this Act, the State Treasurer of the State of Texas, shall set aside sufficient amount of money received by him from the General Manager of the Texas Prison System as money earned by, and belonging to the State Prison System to be kept on deposit in Huntsville, Texas, Twenty-five Thousand Dollars ($25,000.00) to be known as the Discharged Convicts Revolving Fund, and the State Treasurer shall at all times keep said Discharged Convicts Revolving Fund up to the maximum amount out of funds above provided, and said funds shall be used for the prompt payment in cash to all discharged, pardoned or paroled convicts; such funds to be deposited in equal amount in the Huntsville Bank and Trust Company at Huntsville, and the First National Bank at Huntsville, and said banks shall deposit with the General Manager of the Prison System, bonds and/or other securities to be approved by the Attorney General of the State of Texas, sufficient to secure said deposits. [Acts 1933, 43rd Leg., 1st C.S., p. 288, ch. 104, § 1.]

Art. 6166m—2. Weekly reports by depositories to State Treasurer.—It shall be the duty of the depositories of the Discharged Convicts Revolving Fund so long as they retain such deposit to make a weekly report to the State Treasurer of the State of Texas as to the condition of the fund on deposit in said depository. [Acts 1933, 43rd Leg., 1st C.S., p. 288, ch. 104, § 2.]

Acts 1935, 44th Leg., 1st C.S., p. 1600, ch. 403 relates to the Industrial Revolving Fund of the Prison System.

Art. 6166n. Competitive bids for contracts.—All contracts for the purchase of materials, supplies, equipment and sustenance for the prison system shall be upon competitive bids, except as hereinafter provided. Where the amount to be expended is in excess of the sum of $2,000.00 the purchase shall be made upon sealed competitive bids received by the manager after ten days advertisement in some paper or papers of general circulation in this State. Where the amount of the purchase is less than $2,000.00 the manager shall, before letting any contract for such purchase, ask and receive not less than three sealed competitive bids for such contract. In cases of emergency where the contemplated expenditure does not exceed $500.00, the purchase may be made without for competitive bids. [Acts 1927, 40th Leg., p. 298, ch. 212, § 15.]

Art. 6166o. Sale of prison products.—The Board shall have power to authorize the manager to sell and dispose of all products of all farms and industries connected with the prison system and all personal and moveable property, at such prices and on such terms and render such rules as it may deem best and adopt; and it may lease any real estate for agricultural or grazing purposes or lease other fixed property and appurtenances belonging thereto upon such terms as it may deem advantageous to the interests of the prison system. [Acts 1927, 40th Leg., p. 298, ch. 212, § 16.]

Art. 6166p. Bonds of manager and others.—The Texas Prison Board shall require the manager to execute a good and sufficient bond payable to the State of Texas in the sum of $50,000.00, conditioned for the faithful performance of the duties of his office and the accurate accounting for all moneys and property coming into his hands; and it may require of other officers, employees and agents of the prison system a good and sufficient bond in such sum as it may determine upon, payable to the State of Texas upon like condition. Such bonds shall be approved by the Texas Prison Board and filed with the Comptroller, and shall be executed by a surety company authorized to do business under the laws of this State, and the premium on any such bond shall be paid by the State out of the support and maintenance fund of the prison system. [Acts 1927, 40th Leg., p. 298, ch. 212, § 17.]

Art. 6166q. Auditor appointed and duties.—On the taking effect of this Act and biennially thereafter, there shall be appointed by the Attorney General, Treasurer and Comptroller, a permanent auditor for the prison system, who shall hold his office for a term of two years, subject to discharge at any time as herein provided. It shall be the duty of such auditor to audit all accounts, vouchers, payrolls and all other business transactions of the prison system, and to check all property, material and supplies received and disposed of by or within the prison system, and he shall make full report to the Governor on the first day of each month. Such auditor shall be subject to discharge at any time by the appointing board, consisting of the Attorney General, Treasurer and Comptroller, for incompetency, neglect, failure or refusal to discharge the duties of his office, or for any wrongful conduct that in the judgment of such appointing board renders him unfit for such service. During the term of his service, such auditor shall be paid a salary not to exceed Three Hundred ($300.00) Dollars per month, and all actual and necessary traveling expenses, to be paid at the end of each month out of funds appropriated for the maintenance and support of the prison system. Such auditor shall have free access to all books and records of whatsoever nature belonging to the prison system; and he shall give bond in the sum of $10,000.00, to be payable, conditioned, executed and approved in like manner as the bond of the manager herein provided for. It shall be the duty of such auditor to audit all vouchers and accounts for payment out of appropriations made for the support of the prison system. [Acts 1927, 40th Leg., p. 298, ch. 212, § 18.]

Art. 6166r. Transportation of prisoners.—The manager shall make suitable provision and regulations for the safe and speedy transportation of prisoners from counties where sentenced to the State penitentiary by the sheriffs of such respective counties if such sheriffs are willing to perform such services as cheaply as said commission can have it done otherwise. Said transportation shall be on State account and in no instance shall the prisoners be carried direct from the county jails to the State farm, but shall first be carried to the receiving station as designated by the Prison Board where the character of labor which each prisoner may reasonably perform shall be determined. Upon the arrival of each prisoner at such receiving station, the manager shall cause a statement to be made by the prisoner, giving a brief history of his life, and showing where he has resided, the names and post-office addresses of his immediate relatives, and such other facts as will tend to show his past habits and character; and the manager shall, by correspondence, or otherwise verify or disprove such statements, if practicable, and shall preserve the record and information so obtained for future reference. [Acts 1927, 40th Leg., p. 298, ch. 212, § 19.]

Art. 6166s. Manager and members of board to administer oaths.—The manager and each member of the Prison Board, in the discharge of their duties, are authorized to administer oaths, to summon and examine witnesses, and take such other steps as may be necessary to ascertain the truth of any matter about which they may have the right to inquire. [Acts 1927, 40th Leg., p. 298, ch. 212, § 20.]

Art. 6166t. Food for prisoners.—The manager shall see that all State prisoners are fed good and wholesome food, properly prepared under wholesome, sanitary conditions, and in sufficient quantity, and reasonable variety, and he shall hold under officers performing this work strictly to account for any failure to carry out his [1] provision. That the food may be properly prepared, he shall provide for the training of prisoners as cooks. Prisoners shall not be allowed spirituous, vinous nor malt liquors, except from

the prescription of a physician. [Acts 1927, 40th Leg., p. 298, ch. 212, § 21.]

[1] So in enrolled bill. Should probably read "this".

Art. 6166u. Separation of female prisoners.—All female prisoners shall be kept separate and apart from the male prisoners. Where practicable, the manager shall keep the female prisoners upon a separate farm, or at a separate prison from the male prisoners, and shall provide reasonable rules and regulations for the government of same. [Acts 1927, 40th Leg., p. 298, ch. 212, § 22.]

Art. 6166v. Commutation for good conduct.—In order to encourage prison discipline, a distinction may be made in the treatment of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts. The reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may be consistent with proper discipline, commutation of time for good conduct shall be granted by the manager, and the following deduction shall be made from the term or terms of sentences when no charge of misconduct has been sustained against a prisoner, viz.: two days per month off of the first year's sentence; three days per month off of the second year of sentence; four days per month off of the third year of sentence; five days per month off of the fourth year of sentence; six days per month off of the fifth year of sentence; seven days per month off of the sixth year of sentence; eight days per month off of the seventh year of sentence; nine days per month off of the eighth year of sentence; ten days per month off of the ninth year of sentence; fifteen days per month off of the tenth year, and all succeeding years of sentence. A prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in violation of any rule known to the prisoner in any year of the term each commutation allowed for one month of such year may be forfeited, for any sustained charge of escape or attempt to escape, mutinous conduct or other serious misconduct, all the commutation which shall have accrued in favor of the prisoner up to that day shall be forfeited unless in case of escape, the prisoner voluntarily returns without expense to the State, such forfeiture may be set aside by the manager. For extra meritorious conduct on the part of any prisoner, he shall be recommended to the favorable consideration of the Governor for increased commutation or pardon, and in case of any prisoner who shall have escaped and been captured, part or all of his good time thereby forfeited may be restored by the manager, if in his judgment his subsequent conduct entitles him thereto. [Acts 1927, 40th Leg., p. 298, ch. 212, § 23.]

Art. 6166w. Clothing.—Suitable clothing of substantial material, uniform make and reasonable fit, and such footwear as will be substantial and comfortable, shall be furnished the prisoners, and no prisoner shall be allowed to wear other clothing than that furnished by the prison authorities, except in case of extra meritorious conduct only. The manager may allow the prisoners to wear citizens underwear. [Acts 1927, 40th Leg., p. 298, ch. 212, § 24.]

Art. 6166x. Labor of prisoners.—Prisoners shall be kept at work under such rules and regulations as may be adopted by the manager with the Board's approval; provided, that no prisoner shall be required to work more than ten hours per day except on work necessary and essential to efficient organization of convict forces, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour, and in cases of such necessary and essential overtime work, said prisoners shall receive a deduction of time equal to double the hours so worked from the term or terms of sentence. This "necessary and essential work" shall be subject to the recommendation by the general manager to the Prison Board and shall become effective only after approval by said Board. Sunday work on jobs approved by the Prison Board shall be considered as "necessary and essential work." A strict accounting of credit records of all overtime earned shall be kept by the man in charge of the unit on which the work is performed and completed; a report shall be rendered to the general manager each month, who shall approve all such overtime before it is placed to the credit of the inmate. The Prison Board shall have the power to designate certain fixed overtime hours which it considers sufficient for the efficient performance of any particular work, and no inmate shall receive any overtime at all unless same is attested by the officer in charge of said inmate, who must certify from his own knowledge that said overtime was actually earned. For each sustained charge of misconduct in violation of any rule known to the prisoner all commutation earned by such overtime work shall be subject to complete forfeiture. In going to and returning from work prisoners shall not be required to travel faster than a walk. No greater amount of labor shall be required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner upon his admission to the prison, shall be assigned to any labor until first having been examined by the prison physician. Any officer or employee violating any provision of this Section, shall be dismissed from the service. [Acts 1927, 40th Leg., p. 298, ch. 212, § 25; Acts 1929, 41st Leg., p. 485, ch. 229, § 1.]

Section 2 of Act 1929, repeals all conflicting laws and parts of laws.

Art. 6166x—1. Labor of prisoners—overtime allowance.—Prisoners confined in the State Penitentiary shall be kept at work under such rules and regulations as may be prescribed by the general manager, with the consent and approval of the Prison Board, provided that no prisoner shall be required to work more than ten hours per day except on work necessary and essential to efficient organization of convict forces, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour, and in cases of such necessary and essential overtime work, said prisoners shall receive a deduction from their sentence of double the hours so worked; and provided further that ten hours shall constitute a day to be deducted from his sentence. This "necessary and essential work" shall be subject to the recommendations or orders of the general manager. Sunday work on jobs approved by the general manager shall be considered as "necessary and essential work." A strict accounting of credit records of all overtime earned shall be kept by the man in charge of the unit on which the work is performed and completed; a report shall be rendered to the general manager each month, who shall approve all such overtime before it is placed to the credit of the inmate. The general manager shall, with the consent and approval of the Prison Board, have the power to designate certain fixed overtime hours which he considers sufficient for the efficient performance of any particular work, and no inmate shall receive any overtime at all unless same is attested by the officer in charge of said inmate, who must certify from his own knowledge that said overtime was actually earned. For each sustained charge of misconduct in violation of any rule known to the prisoner, all commutation earned by such overtime work shall be subject to complete forfeiture. In going to and returning from work prisoners shall not be required to travel faster than a walk. No greater amount of labor shall be

required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner, upon his admission to the prison, shall be assigned to any labor until first having been examined by the prison physician. Any officer or employee violating any provisions of this Section, shall be dismissed from the service. This Act shall be retroactive and become effective as of June 1, 1938. [Acts 1939, 46th Leg., p. 534, § 1.]

Section 2 of the Act of 1939 declared an emergency.
The title of this Act purported to amend Acts 1927, 40th Leg., p. 298, ch. 212, § 25, as amended by Acts 1929, 41st Leg., p. 485, ch. 229, § 1, incorporated in Rev.Civ.St. art. 6166x, but the body of the Act did not amend such prior Acts.

Art. 6166y. Prisoners' money.—Prisoners when received into the penitentiary shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the manager, and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order, and under such restrictions as may be prescribed by law or the rules. Any officer or employee having charge of the prisoner's money who misappropriates the same, or any part thereof, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a term of not more than five years. [Acts 1927, 40th Leg., p. 298, ch. 212, § 26.]

Art. 6166z. Reports of death.—The manager or other person in charge of prisoners, upon the death of any prisoner under their care and control, shall at once notify the nearest justice of the peace of the county in which said prisoner died, of the death of said prisoner, and it shall be the duty of said justice of the peace, when so notified of the death of such prisoner, to go in person, and make a personal examination of the body of such prisoner, and inquire into the cause of the death of such prisoner, and said justice of the peace shall reduce to writing the evidence taken during such inquest, and shall furnish a copy of the same to the manager, and a copy of the same to the district judge of the county in which said prisoner died, and the copy so furnished to said district judge shall be turned over by the district judge to the succeeding grand jury, and the said judge shall charge the grand jury, if there should be any suspicion of wrongdoing shown by the inquest papers, to thoroughly investigate the cause of such death. Any officer or employee of the prison system having charge of any prisoner at the time of the death of such prisoner, who shall fail to immediately notify a justice of the peace of the death of such prisoner shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and by confinement in the county jail, not less than sixty days, nor more than one year, provided, that the justice of the peace making such examination shall be paid a fee as is now provided by law for holding inquests, said fee to be on sworn account therefor, and approved by the manager. [Acts 1927, 40th Leg., p. 298, ch. 212, § 27.]

Art. 6166z1. Discharge.—When a prisoner is entitled to a discharge from prison, he or she shall be furnished with a written or printed discharge from the manager, with seal affixed, signed by the manager, giving prisoner's name, date of sentence, from what County sentenced, amount of commutation received, if any, the trade he has learned, if any, his proficiency in same, and such description as may be practicable. Such discharged person shall be furnished with a decent outfit of citizen's clothing of good quality and fit, and two suits of underwear; and when a person and/or convict actually serves over one year, he shall receive Fifty Dollars ($50.00) in money in addition to any money held to his or her credit, provided that if a person and/or convict does not actually serve one year flat time, he shall not receive Fifty Dollars ($50.00); but in lieu thereof a person serving less than one year actual time shall receive Twenty-five Dollars ($25.00) in money in addition to any money held to his or her credit and a decent outfit of citizen's clothing of good quality and fit and two suits of underwear, provided that if the actual time served exceeds ten (10) years, the sum of money shall be Seventy-five Dollars ($75.00), and if the actual time served exceeds twenty (20) years, the sum of money shall be One Hundred Dollars ($100.00). As far as may be practicable the Prison Board may authorize a creation of a Bureau for the purpose of placing discharged prisoners in connection with employment, provided such will not be an extra expense to the Prison System. [Acts 1927, 40th Leg., p. 298, ch. 212, § 28; Acts 1933, 43rd Leg., p. 548, ch. 179.]

Art. 6166z2. Visitors admitted.—The Governor, and all other members of the Executive and Judicial Departments of the State and members of the Legislature shall be admitted into the prisons, camps and other places where prisoners are kept or worked, at all proper hours, for the purpose of observing the conduct thereof, and may hold conversation with the convicts apart from all prison officers. Other persons may visit the penitentiary under such rules and regulations as may be established. [Acts 1927, 40th Leg., p. 298, ch. 212, § 29.]

Art. 6166z3. Rewards on escape.—The manager, with the Board's approval, may offer such reward for the apprehension of an escaped prisoner, as may be fixed by the manager and to be paid as directed by the manager. [Acts 1927, 40th Leg., p. 298, ch. 212, § 30.]

Art. 6166z4. Guards and other officers.—Any sergeant, guard or other officer or employee of the prison system of this State, who shall inflict any punishment upon a prisoner not authorized by the rules of the prison system, shall be guilty of an assault, and upon conviction thereof, shall be punished as prescribed by law, and it shall be the duty of the manager to make complaint before the proper officer of any county in which such assault was committed upon such prisoner. Provided, that in all cases where any person is charged by complaint or indictment with an offense against a prisoner, prisoners and ex-prisoners shall be permitted to testify. [Acts 1927, 40th Leg., p. 298, ch. 212, § 31.]

Art. 6166z5. Gambling forbidden.—No gambling shall be permitted at any prison, farm or camp where prisoners are kept or worked. Any officer or employee engaging in or knowingly permitting gambling at any such prison, farm or camp shall be immediately dismissed from the service. [Acts 1927, 40th Leg., p. 298, ch. 212, § 32.]

Art. 6166z6. Seal of board.—The prison Board shall provide a seal whereon shall be engraved in the center a star of five points and the words, "Prison Board of Texas," around the margin, which seal shall be used to attest all official acts. [Acts 1927, 40th Leg., p. 298, ch. 212, § 33.]

Art. 6166z7. Board of prison commissioners abolished.—If any section or provision of this Act [1] shall contravene the terms of the Constitution of this State, or be otherwise held invalid for any reason, the same shall not affect the validity of the remainder of the Act. The Board of Prison Commissioners is abolished and all power, authority, duties and functions of the Board of Prison Commissioners of this State under other laws of this State and not repealed by this Act and not in conflict herewith, shall hereafter vest in and be performed by the Texas Prison Board created by this Act. [Acts 1927, 40th Leg., p. 298, ch. 212, § 34.]

[1] Articles 6166a–6166z7, ante.

Art. 6166z8. Sale of prison made goods.—Sec. 1. No sale of prison made goods in intra state commerce in this State shall ever be valid, and no action shall be brought in this State to enforce the collection or payment of any money or other thing of value pursuant to any such sale, unless at the time of such sale there is attached to the container or package thereof and upon each and every individual garment or article of such goods so sold, a plain and distinct label printed in the English language, containing the printed words "PRISON MADE MERCHANDISE," which printed words shall be printed in type not less than one-fourth of an inch in height and shall be plainly legible.

Sec. 2. The words "PRISON MADE GOODS" as used in this Act mean any goods, wares, merchandise or articles manufactured, produced or made, in whole or in part, in any penitentiary or reformatory or penal institution or by any convicts or prisoners or persons serving sentences in a reformatory or penal institution of any kind. [Acts 1927, 40th Leg., p. 370, ch. 251.]

Art. 6166z9. Salaries of employés of State Penitentiary.—Sec. 1. That hereafter the following employees of the State Penitentiary System, in addition to their board and lodging, and such clothes and provisions as may be provided by appropriations, shall receive such salaries as may be fixed by the Prison Board, not exceeding the following amounts, unless otherwise provided in the Biennial Appropriation, to-wit: Each guard, One Hundred ($100.00) Dollars per month; each steward, One Hundred ($100.00) Dollars per month; each gin manager, One Hundred-ten ($110.-00) Dollars per month; each dog sergeant, One Hundred ($100.00) Dollars per month; each assistant farm manager, One Hundred Twenty-five ($125.00) Dollars per month.

Sec. 2. Provided that all employees to receive such salaries shall be invested, and the employer of each shall be satisfied as to the employee's morals, honesty and other qualities touching his proficiency as such an employee before such salary increase shall be paid.

Sec. 3. All guards and other employees shall have free medical attention from the prison physician, and free hospital privileges in the prison hospital, when such guards and other employees have been injured while in the performance of their duties, in connection with the Prison System. [Acts 1929, 41st Leg., 1st C.S., p. 98, ch. 44; Acts 1935, 44th Leg., p. 413, ch. 163.]

Section 4 of Act 1935, repeals all conflicting laws and parts of laws.

Art. 6166z10. Liability insurance of persons operating motor vehicles used by Prison System.—Sec. 1. That the Texas Prison Board shall have the power to insure the officers and employees of the Texas Prison System from liability to third persons arising from and out of the use and operation of automobiles, motor trucks and other motor vehicles used by the Texas Prison System for the transportation of prisoners, for the transportation of the products of the Prison System or for other purposes legitimately connected with the operation of the Texas Prison System, by procuring policies for that purpose with some reliable insurance company authorized to do business in this State. All insurance taken out by the said Board for and in behalf of the benefits of the State shall be on forms approved by the Insurance Commission as to form and by the Attorney General as to liability.

Sec. 2. All policies of insurance heretofore subscribed by the Texas Prison Board for the purposes hereinabove enumerated are hereby validated, approved and are declared to be in full force and effect. [Acts 1933, 43rd Leg., p. 624, ch. 208.]

Arts. 6167–6180. [Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1.]

2. REGULATIONS AND DISCIPLINE

Arts. 6181–6184. [Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1.]

Art. 6184a. Prison trusties.—Any person serving a prison sentence of one or more years in the Texas State Penitentiary, who has a good prison record may be appointed a trusty after he shall have served three months in the ranks, and not before, except in cases of extreme necessity to fill vacancies in clerical positions in the prison system, in which latter event any person who may be deemed reliable and competent to fill such position may be appointed a trusty by the Prison Commission. [Acts 1925, 39th Leg., ch. 19, p. 46, § 1.]

Art. 6184b. Appointment.—Only the Board of Prison Commissioners shall have authority to appoint trusties, and it shall be unlawful for any warden, farm manager or any other person, or persons save and except the Board of Prison Commissioners alone, having charge of said convicts to use any of said convicts as trusties until they shall have been appointed by said Board of Prison Commissioners, under an order issued by the chairman of said Board of Prison Commissioners and under the seal of said Board of Prison Commissioners. Provided, that in cases of extreme emergency, to be judged of by the farm managers, any farm manager may fill a vacancy in any position theretofore held by a trusty for a length of time not to exceed ten days. [Acts 1925, 39th Leg., ch. 19, p. 46, § 2.]

Art. 6184c. Repeaters not to be.—Persons who are commonly called "repeaters," that is to say, those who are serving as many as three different terms, shall not be used as trusties, except in cases where they have an unblemished prison record and then only while serving the last half of their last sentence. [Acts 1925, 39th Leg., ch. 19, p. 46, § 3.]

Art. 6184d. Convicts charged with other offenses not to be.—Persons serving sentences in the Texas State Penitentiary who are wanted in other States for crime or crimes committed there, or who have other charges of the felony grade pending against them in this or any other State, shall not be appointed trusties. [Acts 1925, 39th Leg., ch. 19, p. 46, § 4.]

Art. 6184e. Trusties to leave prison when.—No person who has been appointed a trusty shall be permitted to leave the prison where such person is located except upon business connected with the prison. [Acts 1925, 39th Leg., ch. 19, p. 46, § 5.]

Art. 6184f. Violations of trust.—Whenever a convict violates his trust or his conduct is such that he makes himself objectionable to the citizens of the community in which he is located, and complaint is made to the Board of Prison Commissioners, or to any officer having charge of said convict by two or more good and reliable citizens, and it is found upon investigation by the Prison Commission that the complaint is well founded, such convict shall not thereafter be eligible to appointment as a trusty for twelve months. It shall be the duty of the Prison Commissioners to see that the warden and farm managers faithfully carry out the provisions of this Act. [Acts 1925, 39th Leg., ch. 19, p. 46, § 6.]

Art. 6184g. Absence of trusties from prison.—No trusty shall be permitted to be at large or off the prison property after 9:00 p. m., except when accompanied by a guard or other officer of the prison system, and it shall be the duty of all officers of the prison system having convicts in charge, whether at the prison proper, or on any of the farms, or elsewhere, to see that all trusties are inside the prison buildings by not later than 9:00 p. m., provided that trusties who may be accompanied by a member of the commission or other officer of the prison system

and who are on journeys away from the penitentiary at Huntsville, or the farms where such prisoners are located, shall be exempted from the provisions of this section of the Act while actually away from headquarters. [Acts 1925, 39th Leg., ch. 19, p. 47, § 7.]

Art. 6184h. Prisoner attempting escape with firearm not to be trusty.—No prisoner who attempts to escape by the use of firearms or any other deadly weapon, or who in attempting to escape wounds a guard, citizen or any other person shall be made a trusty. [Acts 1925, 39th Leg., ch. 19, p. 47, § 8.]

Art. 6184i. Not to apply to honor farms.—Provided nothing in this Act shall apply to any farm which has or may be hereafter established by the Prison Commission as an honor farm. [Acts 1925, 39th Leg., ch. 19, p. 47, § 9.]

Art. 6184j. Exemptions.—It is provided in this Act that trusties who run the pumps and other necessary machinery at night upon the prison farm, shall be exempt from the provisions of Section Seven (7) of this bill. [Acts 1925, 39th Leg., ch. 19, p. 47, § 10.]

Art. 6184k. Failure to enforce.—Any member of the Board of Prison Commissioners, or any warden or farm manager, or any other employee of the Board of Prison Commissioners, whose duty it is to enforce the provisions of this Act who shall fail or refuse to enforce the same shall be subject to removal from office. [Acts 1925, 39th Leg., ch. 19, p. 47, § 11.]

Art. 6184*l*. Commutation for good conduct.—In order to encourage prison discipline, a distinction may be made in the treatment of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts. The reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may be consistent with proper discipline. Commutation of time for good conduct, industry and obedience shall be granted by the General Manager and twenty (20) days per month deduction shall be made from the term or terms of sentences of all prisoners in Class I and ten (10) days per month deduction shall be made from the term or terms of sentences of all prisoners in Class II as hereinafter provided, when no charge of misconduct has been sustained against a prisoner. A prisoner under two (2) or more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in violation of any rule known to the prisoner (including escape or attempt to escape), any part or all of the commutation which shall have accrued in favor of the prisoner to the date of said misconduct may be forfeited and taken away by the General Manager upon the recommendation of the Classification Committee and/or the Disciplinary Committee unless, in case of escape, the prisoner voluntarily returns without expense to the state, such forfeiture shall be set aside by the General Manager. No overtime allowance or credits, in addition to the commutation of time herein provided for good conduct, may be deducted from the term or terms of sentences with the exception that for extra meritorious conduct on the part of any prisoner, he may be recommended to the Board of Pardons and Paroles and to the Governor for increased commutation or for a pardon or parole.

This Act shall not take effect in the cases of those prisoners who at the time this Act takes effect are being credited with more than twenty (20) days per month by virtue of overtime job assignments except upon removal from such assignment because of misconduct, escape, or return to prison because of violation or clemency; provided, however, should any prisoner be removed from any such assignment because of misconduct, an appeal shall lie to the Disciplinary Committee, and in the event of an adverse decision by said Disciplinary Committee, the prisoner so removed by reason of misconduct shall have the right of appeal to the Texas Prison Board, whose decision shall be final.

When present overtime job assignments carrying more than twenty (20) days per month credit are vacated by the present incumbent for any reason, said job assignment shall not be renewed for a credit of more than twenty (20) days per calendar month.

The Classification Committee, as soon as practicable, shall classify all prisoners according to their industry, conduct and obedience in three (3) classifications: Class I, Class II, Class III; which Classification Committee at any time and from time to time as in their opinion the circumstances may require. The General Manager shall keep or cause to be kept a conduct record in card or ledger form and a calendar card on each inmate showing all classifications, changes of classifications and forfeitures of commutation of time and reasons therefor. As soon as practicable, the General Manager shall change the conduct records of prisoners now in the penitentiary to conform with said conduct record and calendar card. The Classification Committee referred to in this Act shall be appointed and created by the Prison Board and shall consist of: the Warden, General Manager, Classification Director, Chaplain, Assistant Warden, and a doctor. The Disciplinary Committee referred to in this Act shall be created by act of the Prison Board, and shall be composed of: the Warden, Chaplain, a psychologist, and/or a representative of the Classification Committee. [Acts 1943, 48th Leg., p. 635, ch. 361; Acts 1945, 49th Leg., p. 245, ch. 180, § 1.]

Section 2 of each of the Acts of 1943 and 1945 repealed conflicting laws.

Arts. 6185–6195. [Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1.]

Art. 6196. [6227] Discharge of convicts.—Not more than ten days nor less than four days before any convict is discharged from the penitentiary there shall be prepared and sent to the district clerk of the county where the convict was convicted and sentenced, or to such other county as hereinafter provided, a written or printed discharge from the Board, signed by the Chairman with the seal of the Board affixed, giving his name, date of sentence, from what county sentenced, the amount of commutation received, the trade he has learned, his proficiency in same and such description as may be practicable. Which report shall not be less than four days prior to said discharge sent by registered mail to said district clerk, and said report shall have a place for the convict to sign proper receipt of said discharge upon his presenting himself to said district clerk, and he shall report forthwith upon his arrival to such clerk, and he shall not be considered as finally discharged until he presents himself to said clerk and signs said receipt. He shall be furnished with a suit of clothes, of good quality and fit, two suits of underwear, one pair of shoes and a hat, one shirt and five dollars in money in addition to any money which he may have to his credit with the Board, and in addition the sum of three dollars as further traveling expense money. Each convict shall be discharged in the County in which he was convicted for the offense for which he served the sentence in the penitentiary, in the manner as herein set forth except as hereinafter set forth. He shall be given a non-transferable and non-cashable ticket for transportation to the county in which he was convicted, or to any other point in the State in which he selects, provided an official selected for the purpose of the penitentiary commission approves the request of the convict that a ticket be given to him to the point in the State other than the county in which he was convicted, but if it shall be determined that he go to another point in the State other than the county in which he was convicted, then it must be a point where a coun-

ty seat is located and the discharge papers as herein provided for must be sent to the district clerk of that county to be signed by the convict in the manner and form as herein provided had he gone to the county where he was convicted. Provided further that said convict shall be given a temporary certificate by the Board good for ten days, protecting said convict from molestation while traveling to the place of his discharge. [As amended Acts 1929, 41st Leg., 1st C.S., p. 9, ch. 5, § 1.]

Section 1 of Act 1929, amends Rev.St.1925, Art. 6196 without reference to its repeal by Acts 1927, 40th Leg., p. 298, c. 212, § 1.

Arts. 6197–6202. [Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1.]

Art. 6203. [Repealed by Acts 1947, 50th Leg., p. 1049, ch. 452, § 34.]

Art. 6203a. Lease of oil and gas in prison lands

Board created

Sec. 1. A Board is hereby created to consist of the Commissioner of the General Land Office, the Attorney General, and the Chairman of the State Prison Board, who shall perform the duties hereinafter indicated; the Board shall be known as the "Board for Lease of Texas Prison Lands." The term "Board" wherever it appears hereafter in this Act shall mean the "Board for Lease of Texas Prison Lands." This Board shall keep a complete record of all its proceedings.

Lands subject to lease

Sec. 2. All lands or any parcel of same now owned, or that may be owned and held by the State as State prison lands may be leased by the Board to any person, or persons, firms, or corporation, subject to and as provided for in this Act for the purpose of prospecting, or exploring for and mining, producing, storing, caring for, transporting, preserving, and disposing of the oil and/or gas therein belonging to the State.

Subdivision of lands; abstracts of title

Sec. 3. The Board is hereby authorized to cause the State Prison Lands to be surveyed and sub-divided into such lots or blocks as will be conducive or convenient to facilitate the advantageous sale of oil and/or gas leases thereon, and identify such lots and blocks by permanent markings on the ground, and to make such maps and plats as may be thought necessary to carry out the purposes of this Act. The Board shall forthwith obtain authentic abstracts of Title to all prison lands, and cause same to be examined by the Attorney General, who shall file written opinions thereon, and said Board shall take such steps as may be necessary to perfect a merchantable title to such lands in the State of Texas. Such Abstracts of Title and the Attorney General's opinion thereon shall be held on file in the General Land Office as public documents for the inspection of any prospective purchaser of oil and gas leases on said lands.

Advertisements for bids

Sec. 4. Wherever, in the opinion of the Board there shall be such a demand for the purchase of oil and/or gas leases on any lot or tract of land as will reasonably insure an advantageous sale, the Board shall place such oil and gas in said land on the market in such blocks or lots as the Board may designate. It shall cause to be advertised a brief description of the land from which the oil and gas is proposed to be sold and that sealed bids for the purchase of said oil and/or gas by lease will be opened at a designated day, at ten o'clock, A. M., that day and that sealed bids received up to that time will be considered. Said advertisements shall be made:

(a) By mailing a copy thereof to the County Judge of every County in this State, two daily newspapers published in Texas.

(b) In addition the Board may in its discretion, cause said advertisement to be placed in oil and gas journals in and out of the State to be mailed generally to such persons as they think might be interested.

Opening and acceptance of bids

Sec. 5. All bids shall be directed to the said Board in care of the General Land Office of the State of Texas, and shall be retained by the Commissioner of the General Land Office until the day designated for the opening of bids and upon that day the said Board, or a majority of its members shall open said bids and shall list and file and register all bids and money received. A separate bid shall be made for each whole survey or subdivision thereof. No bid shall be accepted which offers a royalty of less than one-eighth of the gross production of oil and/or gas in the land bid upon, and this minimum royalty may be increased at the discretion of the Board, all members concurring, before the promulgation of the advertisement of the land. Every bid shall carry the obligation to pay an amount not less than One Dollar per acre for delay in drilling, such amount to be fixed by the Board in advance of the advertisement, and which shall be paid every year for five years, unless in the meantime production in paying quantities is had upon the land.

Payments accompanying bids

Sec. 6. Every bid shall be accompanied by a payment equal to the minimum price fixed on the land per acre for delay in the drilling if the bid is accepted. The bid shall further indicate the royalty the bidder is willing to pay, which royalty shall not be less than one-eighth of the gross production. The bid shall further name such amount as the bidder may be willing to pay in addition to the royalty and the annual payment herein provided for, and shall be accompanied by cash or checks collectable in Austin to cover said amounts.

Lease to bidder; rejection of bids

Sec. 7. If any one of the bidders shall have offered a reasonable and proper price therefor, not less than the price fixed by the Board, the lands advertised, or any whole survey or subdivision thereof, may be leased for oil and/or gas purposes under the terms of this Act and such regulations as the Board may prescribe, not inconsistent with the provisions of this Act. If after any bidding by sealed bids the Board should reject all bids, as it is hereby authorized to do, it may thereafter offer for sale and sell the oil and/or gas in said lands, in separate whole surveys only or subdivisions thereof, by open public auction at a price less than the price offered by the sealed bids. All bids may be rejected. In the event of no sale at public auction, any subsequent procedure for the sale of said oil and gas leases shall be in the manner above provided.

Bid filed in General Land Office

Sec. 8. If the Board shall determine that a satisfactory bid has been received from said oil and gas, it shall be filed in the General Land Office. Whenever the royalty shall amount to as much as the yearly payment as fixed by the Board, the yearly payment may be discontinued. If before the expiration of five years oil and/or gas shall not have been produced in paying quantities, the lease shall terminate. [As amended, Acts 1939, 46th Leg., p. 479, § 1.]

Section 2 of the amendatory act of 1939 read as follows: "Any lease providing for a five year primary term and heretofore entered into by the Board created by Senate Bill No. 29, Chapter 13, Acts Fourth Called Session Forty-first Legislature [Art. 6203a], shall not be considered terminated by failure to produce oil or gas within three years from the date of such lease, and any such lease is hereby confirmed and validated in so far and only in so far as failure to produce oil or gas within three years from date thereof is concerned; and any such lease shall be in force and effect for five years from its date if otherwise in good standing and all other terms and conditions of such lease

and the law applicable thereto have been heretofore and are hereafter met and carried out."

No rentals payable pending drilling operations; lease continued during productive period

Sec. 9. If during the term of any lease issued under the provisions of this Act the lessee shall be engaged in actual drilling operations for the discovery of oil and/or gas on land covered by any such lease, no rentals shall be payable as to the tract on which such operations are being conducted so long as such operations are proceeding in good faith; and in the event oil or gas is discovered in paying quantities on any tract of land covered by any such lease, then the lease as to such tract shall remain in force so long as oil or gas is produced in paying quantities from such tract. In the event of the discovery of oil and/or gas on any tract covered by a lease issued hereunder or on any land adjoining same, the lessee shall conduct such operations as may be necessary to prevent drainage from the tract covered by such lease and to properly develop the same. Failure to comply with the obligations provided by this section shall subject the holder of the lease to the penalties provided in Sections 12 and 13 of this Act.

Assignment of rights

Sec. 10. Title to all rights purchased may be held by the owners so long as the area produces oil and gas in paying quantities. All rights purchased may be assigned in quantities of not less than forty acres, unless there be less than forty acres remaining in any survey, in which case such lesser area may be so assigned. All assignments shall be filed in the General Land Office within one hundred days after the date of the first acknowledgment thereof, accompanied by ten cents per acre for each acre assigned, and if not so filed and payment made, the assignment shall be ineffective. All rights to any whole survey and to any assigned portion thereof may be relinquished to the State at any time by having an instrument of relinquishment recorded in the county or counties, in which area may be situated and filed in the Land Office accompanied with one dollar for each area assigned, but such assignment shall not relieve the owner of any past due obligations theretofore accrued thereon. The Board shall authorize the laying of pipe line, telephone lines, and the opening of such roads over the Prison lands as may be deemed reasonably necessary for and incident to the purpose of this Act.

Royalties paid to General Land Office; sworn statements as to production

Sec. 11. Royalty as stipulated in the sale shall be paid to the General Land Office at Austin, Texas, for benefit of the General Revenue Fund on or before the 20th day of each succeeding months for the preceding month during the life of the rights purchased and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipe line receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipe lines, tanks or pools and gas lines or gas storage. The books and accounts and all bids, receipts and discharges of all wells, tank pools, meters, pipe lines, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and/or gas shall at all times be on file in the General Land Office and be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor or any member of the State Prison Board.

Protection of contiguous or adjacent lands

Sec. 12. In every case where the area in which oil and/or gas sold shall be contiguous or adjacent to land not Prison land, the acceptance of the bid and the sale made thereof to adequately protect the land leased from drainage from adjacent lands. In cases where the area in which the oil and/or gas is sold, as a lesser royalty, the owner shall likewise protect the State from drainage from the land so leased or sold for lesser royalty. Upon failure to protect the land from drainage as herein provided the sale and all rights thereunder may be forfeited by the Board in the manner elsewhere provided herein for forfeitures.

Forfeitures; grounds

Sec. 13. If the owner of the rights acquired under this Act shall fail or refuse to make the payment of any sum due thereon, either as rental or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should make any false return or false report concerning production, royalty or drilling, or if such owner shall fail or refuse to drill any offset well or wells in good faith, as required by his lease, or if such owner or his agent should refuse the proper authority to access to the records and other data pertaining to the operations under this Act, or if such owner, or his authorized agent, should fail or refuse to give correct information to the proper authorities, or fail or refuse to furnish the log of any well within thirty days after production is found in paying quantities, or if any of the material terms of the lease should be violated, such lease shall be subject to forfeiture by the Board by an order entered upon the minutes of the Board reciting the facts constituting the default, and declaring the forfeiture. The Board may, if it so desires, have suit instituted for forfeiture through the Attorney General of the State. Upon proper showing by the forfeiting owner, within thirty days after the declaration of forfeitures, the lease may, at the discretion of the Board and upon such terms as it may prescribe, be reinstated. In case of violation by the owner of the lease contract, the remedy of the State by forfeiture shall not be the exclusive remedy, but suit for damages or specific performance, or both, may be instituted. The State shall have a first lien upon all oil and/or gas produced upon the leased area and upon all rigs, tanks, pipe line, telephone line, and machinery and appliances used in the production and handling of oil and gas produced thereon, to secure any amount due from the owner of said lease.

Records filed in General Land Office

Sec. 14. All surveys, files, records, copies of sale and lease contracts, and all other records pertaining to the sales and leases hereby authorized shall be filed in the General Land Office and constitute archives thereof. Payment hereunder shall be made to the Commissioner of the General Land Office at Austin, Texas, who shall transmit to the State Treasurer all royalty for deposit to the credit of the General Revenue Fund and all rentals for delay in drilling and all other payments including all filing assignments and relinquishment fees hereunder to the credit of the General Revenue Fund.

Expenses paid by Comptroller's warrant

Sec. 15. The expenses of executing the provisions of this Act shall be paid monthly by warrants drawn by the Comptroller on the State Treasurer, and for that purpose the sum of Two Thousand ($2,000.00) Dollars or as much thereof as may be necessary is hereby appropriated out of any money in the Treasury not otherwise appropriated until September 1, 1930.

Partial invalidity

Sec. 16. If any provision hereof should be held unconstitutional, the balance of the Act shall not be affected thereby.

Forms and regulations adopted by Board

Sec. 17. The Board shall adopt proper forms and regulations, rules and contract as will in its best judgment protect the income from lands leased hereunder. A majority of the Board shall have power to act in all cases, except where otherwise herein provided. The Board may reject any and all bids, and shall have the further right to withdraw any lands advertised for lease prior to receiving and opening bids. Any and all or parts of laws in conflict with this Act are hereby repealed. [Acts 1930, 41st Leg., 4th C.S., p. 16, ch. 13.]

House Concurrent Resolution No. 33 passed by the 42nd Leg., 2nd C.S., 1931, p. 79, omitting the preamble reads as follows:

"Resolved by the House of Representatives, the Senate concurring, That the Board of Leasing of Texas Prison Lands be called upon to lease said prison lands by the first day of January, 1932, and if said board is unable to lease said prison lands by the first day of January, 1932, then in that event the Texas Prison Board is hereby directed to use and utilize the machinery and men to explore and drill for oil on the prison farms."

Art. 6203aa. Permits for geological surveys.—The Board for Lease of Texas Prison Lands heretofore created, composed of the Commissioner of the General Land Office, the Attorney General and the Chairman of the State Prison Board, is hereby authorized to grant permits for geological surveys or investigations on Prison Lands, which said Board has heretofore been authorized to lease for oil and gas, for such consideration and under such terms and conditions as said Board may deem to the best interest of the State of Texas, and which will encourage the development of said lands for oil and gas, which surveys shall be made in such way as to not unreasonably interfere with the operation of said Prison System. [Added Acts 1943, 48th Leg., p. 412, ch. 279, § 1.]

Art. 6203b. Schooling for state convicts.—Sec. 1. The Texas Prison Board shall immediately arrange for the teaching of reading, writing, spelling and arithmetic to all inmates of the penitentiary of the State of Texas. All illiterates shall receive instruction the equal of five hours per week and all other prisoners may at their option receive such instruction. The hours fixed for such instruction shall be other than those hours now fixed by law for labor. Nothing herein contained shall prevent the literate prisoners from organizing for themselves special instruction or classified instruction of a higher class than that enumerated herein above.

Sec. 2. Each prisoner attending such instruction in good faith, or who shall act as an instructor of such prisoners, shall be allowed as a credit on the term of his sentence one-half hour additional than that now allowed by law for good behavior for each hour in attendance either as receiver or giver of instructions.

Sec. 3. It shall be the duty of the Chaplains of the prison system to organize under the direction of the Texas Prison Board such instruction, and to supervise the same after organization. Prisoners with the aid of the Chaplains shall be the teachers and instructors.

Sec. 4. The Texas Prison Board is hereby authorized to and shall prescribe and promulgate such rules and regulations as may be necessary to make the provisions of this Act effective, but said Texas Prison Board shall not be required to build any additional buildings for said purpose. The Texas Prison Board shall arrange with the State Superintendent of Public Instruction for a sufficient number of second-hand text books for said purpose.

Sec. 5. There shall be read and explained for at least one hour of each school week portions of the Constitutions of the United States and the State of Texas. [Acts 1930, 41st Leg., 4th C.S., p. 54, ch. 31.]

Art. 6203b—1. Schools in penitentiaries and penitentiary farms; compulsory attendance.

Section 1. The Texas Prison Board shall cause all illiterates to receive instruction the equal of not less than five (5) nor more than eight (8) hours per week and all other prisoners may, at their option, receive academic or vocational instruction at such hours. The hours fixed for such instruction shall be other than those now fixed by law for labor. Nothing herein contained shall prevent the literate prisoners from enrolling in academic instruction or special occupational or vocational instruction as now provided for by the Texas Prison Board.

Sec. 2. Each prisoner attending such instruction in good faith shall be allowed as a credit on the term of his sentence one hour additional for each hour in attendance of school classes.

Sec. 3. It shall be the duty of the Educational Director of the Prison System to organize and direct a standard program of academic and vocational education, under the direction of the Texas Prison Board, and supervise the same after organization. Prisoners, with the aid of the Educational Director, shall be the teachers and instructors.

Sec. 4. The Texas Prison Board is hereby authorized to, and shall, prescribe and promulgate such rules and regulations as may be necessary to make the provisions of this Act effective; but said Texas Prison Board shall not be required to build any additional buildings for this purpose. Upon the request of the Texas Prison Board, it shall be the duty of the State Superintendent of Public Instruction to supply without cost, a sufficient number of current State adopted text books for said instruction.

Sec. 5. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional. [Acts 1941, 47th Leg., p. 1357, ch. 619.]

Section 6 of the Act of 1941 repealed all conflicting laws and parts of laws.

Art. 6203c. Improvement of prison system.

Purpose

Sec. 1. The purpose of this Act is to renovate, improve and rehabilitate the Central Unit of the Texas Prison System at Huntsville and to construct and modernize the prison farm units of said system to the end that the prison population of Texas may be adequately housed, and securely confined, and gainfully employed in such enterprises as will, in the opinion of the Prison Board, prove most remunerative to the State and beneficial to the prisoners, it being the Legislative intent to first relieve the emergency now existing in the walls at Huntsville by providing for reasonable sanitation and hospitalization within this unit and by supplying needed and practicable industrial equipment therein, and then to relieve prison congestion by erecting permanent housing facilities on and for designated farm units.

Powers of Prison Board

Sec. 2. To accomplish the purposes enumerated herein the Texas Prison Board is authorized and directed as follows:

A. To equip the present property within the walls with reasonable sanitary devices including the installation of a sewer system for all cell blocks and at other points therein if needed.

B. To provide adequate hospitalization within the walls, including equipment for the scientific diagnosis

and treatment of diseases and the installation of an adequate medical supply depot.

C. To acquire and install emergency mechanical devices, equipment, and machinery for shops and industries now operated or that may be operated profitably in said Central Unit.

D. To erect and equip such prison farm units, as in the opinion of the Prison Board, are necessary to relieve the present prison congestion. The Board is hereby authorized to erect and equip one modern, sanitary fire-proof farm unit on either the Imperial, the Darrington or the Harlem Farm. Or, in the alternative, if the said Board so elects, it is hereby authorized to erect two such units and locate same on any two of said farms, or if the Board deems expedient, it is hereby authorized to erect three such plants and place one on each of said farms. If one unit is erected it shall be sufficiently commodious to accommodate the number of persons reasonably required for agricultural enterprises on all accessible farms when used in conjunction with the present tenantable and usable facilities now on said farms. If two or three units are erected they shall be so constructed as to accommodate enough prisoners to care for and tend all land accessible thereto. Such unit or units shall be equipped with modern, sanitary devices and supplied with such facilities as are necessary to insure comfortable and humane living conditions for prison inmates. Each unit shall be equipped with a hospital ward adequate for all anticipated needs.

E. The Prison Board is further directed to renovate, remodel and repair the present improvements on the Goree Farm, and to make such additions thereto as may be necessary to provide adequate housing facilities for all female inmates of the prison system, and to supply industrial employment for such of the female inmates as may be used profitably in such employment. Adequate hospital facilities shall be provided on this farm for all female prisoners. White and Colored prisoners shall be segregated in separate living quarters, work shops, and hospitals.

F. The Prison Board is further directed to take such steps, other and additional, as are incident or necessary to effectuate any and all of the several undertakings herein specially delineated.

Sec. 3.

This act as shown by the enrolled bill contains no section 3.

Use of prison labor

Sec. 4. In the erection of the improvements authorized by this Act, it shall be the duty of the Prison Board to use prison labor where practicable, but if such labor is found impracticable, then the Board may contract for such free labor as is necessary. For these enterprises the Board is also directed to use the services of any experts, engineers, architects, or specialists now employed by the State in any Department or Institution, and if not inconsistent with pre-existing duties, it shall be incumbent upon any and all such experts, engineers, architects, and specialists to render such aid as may be requested by such Board.

Roads connecting prison farms

Sec. 5. The Prison Board and the State Highway Commission are hereby directed to construct such adequate hard surfaced roads as may be necessary to connect the three prison farms specially mentioned in this Act, to-wit: the Imperial, Darrington, and Harlem Farms with existing improved or hard surfaced State or County highways, it being the intention of the Legislature to make these farm units accessible to vehicular traffic at all times. The Highway Department will lay out the necessary roads, make all plans and specifications, necessary therefor, and furnish all such material and equipment as may be necessary for their construction, and also furnish all such supervising, engineering service as may be necessary for such road building projects. The Prison Board is hereby authorized to provide portable housing facilities and road camps for the purpose of utilizing prison labor on these road building projects. The Prison Board is directed to furnish all labor for these road building enterprises and to cooperate with the Highway Department in their construction, to the end that these projects may be built out of prison labor as nearly as practicable. The expense incurred by the State Highway Department in the construction of these roads shall be borne by said Department and paid out of any funds in its hands available for building or for aiding the construction of public highways in this State.

Improvements on Wynne farm

Sec. 6. The Prison Board is here directed to remodel, repair and renovate the present improvements on the Wynne farm and to make such additions to the present housing and hospital equipment thereon as may, in the opinion of the Board, be necessary to convert same into a modern and sanitary prison unit for all tubercular inmates of the prison system, it being the intention of the Legislature to authorize the Prison Board to so equip this unit as to make the same available for the proper housing, treatment and employment of prisoners afflicted with tuberculosis.

Sale of Shaw farm authorized

Sec. 7. The Prison Board may in its discretion, sell the Shaw Farm located in Bowie County, (same being all the prison owned land in said County,) at any time after having given public notice in as many as four daily newspapers published in the State, stating the time, place, and terms of sale, and terms being for not less than one-fifteenth cash, with remainder divided into fifteen equal annual payments, maturing in one to fifteen years, with interest payable annually at the rate of 5% per annum, said deferred payments to be secured by vendor's lien. The proposals for purchase shall be in the form of sealed bids accompanied by Cashier's Check, payable to the State Treasurer, for the initial cash payment. All conveyances of such land shall be signed and acknowledged by the Governor of Texas and by the Chairman of the Prison Board. All oil, gas and mineral rights in and to said land shall be reserved to the State of Texas, with the provision that as and when such oil, gas or other minerals are sold, either by lease or otherwise, an equal one-eighth portion of the net proceeds of such sale or sales, shall be paid to the State's vendee of the surface, or the heirs or assigns of said vendee. The State shall reserve the usual rights of ingress and egress, and such other rights as are incident and necessary for the proper exploration of said lands for mineral deposits and for the development and sale of such deposits. The mineral rights reserved to the State shall be under jurisdiction of the Prison Land Leasing Board, and all sales of minerals in and under said Shaw Farm shall be made by said Land Leasing Board as provided in Senate Bill No. 29, passed at the Fourth Called Session of the 41st Legislature. All money derived from the sale of the surface or mineral rights in said prison land shall be paid into the General Revenue Fund.

Drainage of overflow lands

Sec. 8. The Prison Board is directed to provide for the levying, drainage and reclaiming of any overflow lands owned by the prison system, and for clearing any uncleared tillable land and for this purpose prison labor shall be used, and the portable road camps and equipment shall be utilized where practicable.

Contracts for sale of products to Board of Control

Sec. 9. Authority is hereby given to the Prison Board and to the Board of Control to enter into con-

tracts whereby the Prison Board may sell to the Board of Control any products produced by the prison system, whether such products be agricultural or manufactured products, and it is hereby made the duty of the Board of Control to purchase all needed prison products when such purchase is economical. When goods, wares, merchandise, or supplies are procured, bought, or manufactured and then furnished any department, State Institution, or unit of the prison system, the charge against such department, State Institution, or unit for such goods, wares, merchandise, or supplies shall be the identical cost price of such article whether bought or manufactured and with no cost for labor or overhead charge included. When farm products are transferred from one department or State Institution or unit of the prison system to another the charge to such receiving unit or department or State Institution shall be at the market price of such product on the day delivered at the place delivered. [Acts 1930, 41st Leg., 5th C.S., p. 215, ch. 67; Acts 1943, 48th Leg., p. 104, ch. 75, § 1.]

Section 2 of Acts 1943, 48th Leg., p. 104, ch. 75, read as follows: "Senate Joint Resolution 26, Acts of the Forty-first Legislature, Regular Session, covering agreements authorizing the prison system to produce and sell farm products to State Institutions, is hereby expressly repealed."

Section 10 of Acts 1930 makes an appropriation of $450,000 for the purposes of the act and sections 11, 12 and 13 distribute the expenditures.

Art. 6203d. Rights of way for irrigation canals, laterals, flumes, electric lines and pipe lines over lands of penitentiary system.—Section 1. The Texas Prison Board, by and with the consent of the Governor and the Attorney General of the State of Texas, is hereby authorized and empowered to grant permanent and temporary right-of-way easements for irrigation canals, laterals, flumes, and ditches, and for electric lines and pipelines consisting of wires, pipes, poles and other necessary equipment for the transmission or conveyance of, and/or distribution of, water, electricity, gas, oil and/or other similar substances or commodities, such easements to be not in excess of one hundred and fifty (150) feet in width, along, across and over any and all lands now owned by the State of Texas as a part of the Penitentiary System, and/or to lease such rights of way to districts, companies, firms and individuals carrying on, or formed for the purpose of carrying on, or engaged in, the business of transmitting or conveying and/or distributing any such substance or commodity.

Sec. 2. Such grants and leases shall be executed only upon a fair and adequate consideration, and shall contain full reservation of all minerals in and under said lands, sufficient guarantees as to the use by the State Prison Board of the waters, electricity, gas, oil and/or other substances or commodities conveyed along, across, or over such right-of-way easements for irrigation, heat, light, power and other purposes, and such other covenants, conditions, and provisions, as to the Texas Prison Board, together with the approval of the Governor and the Attorney General, shall appear to be fair, wise, and reasonable; provided, however, that all of such grants or leases shall require that the person, firm or corporation securing a right of way or easement shall pay all costs of any improvements at any time made necessary in crossing any right of way or easement, granted or leased to him or it under the provisions of this Act. [Acts 1931, 42nd Leg., p. 285, ch. 166; Acts 1943, 48th Leg., p. 281, ch. 177, §§ 1, 2.]

Art. 6203e. State Prison Psychopathic Hospital established and maintenance provided.—Sec. 1. That there shall be built, established and maintained, as a part of the Prison System of Texas, an Institution for the examination, observation, treatment and incarceration of all persons who have been convicted of felony, and who have been duly adjudged insane by any competent Court at Law in the State of Texas; and, who have been acquitted by a Court of Competent Jurisdiction upon the grounds of insanity; said institution to be known as the State Prison Psychopathic Hospital.

Sec. 2. The construction, support and maintenance of said institution shall be made by appropriation to the Prison System of Texas for that purpose. Said Institution shall be located on any land adjacent to, or within the walls of the prison system at Huntsville, Walker County, Texas.

Sec. 3. The Texas State Prison Manager or other person in charge of the management of said prison shall, upon the advice of any prison physician send any prisoner to said Hospital for observation, care and treatment for thirty (30) days, and upon final examination he shall either be returned to confinement or an affidavit of insanity shall be filed against him as is provided by law.

Sec. 4. When any person shall be confined in any jail, asylum or other institution of confinement, who is charged by indictment and has been convicted of felony in this State and who has been duly adjudged insane by a Court of Competent Jurisdiction, upon the grounds of insanity shall be confined in said Institution and all persons who are now confined in the State Hospital for the insane who are classified by the superintendents of said different Hospitals for the insane as criminally insane shall upon proper certificate from the superintendent be transferred from said Hospital for the Insane to the State Prison Psychopathic Hospital.

Sec. 5. No patient in the State Prison Psychopathic Hospital shall be discriminated against by virtue of any fact but they shall all be treated alike, given equal facilities, equal attention and equal treatment, and no patient in said Hospital or Institution shall be permitted to give any officer, servant, agent or employee in such Hospital or Institution any tip, gift, pay or reward of any kind or character whatsoever, and if it is so discovered, the person accepting the tip, gift, pay or reward shall be discharged for accepting the same.

Sec. 6. The State Prison Board shall appoint with the advice of the General Manager of the State Prison System a Superintendent for said Hospital or Institution, a regularly licensed physician, well qualified in the science of psychiatry who shall receive a fixed salary to be fixed by the Legislature not to exceed the sum of Three Thousand Three Hundred ($3,300.00) Dollars per year, with provisions for himself and family not to exceed Five Hundred ($500.00) Dollars per year with water, lights, fuel, laundry and housing. The General Manager of the State Prison shall appoint such assistant physicians, well qualified in psychiatry as he may deem best, and said assistant physicians shall receive a salary to be fixed by the Legislature not to exceed Two Thousand Seven Hundred ($2,700.00) Dollars per year with provisions for board and laundry for himself and family. The manager of the Prison System shall supply the necessary guards.

Sec. 7. That if in any Court proceedings in any portion of this Act shall be unconstitutional, it shall not affect the other portions of this Act. [Acts 1931, 42nd Leg., p. 420, ch. 253.]

Art. 6203f. Encouraging cotton farmers to purchase planting seed from Prison System.—Resolved by the House of Representatives, the Senate concurring, That as a means toward the development of better quality cotton in Texas, the Prison System of our State, in disposing of its surplus cotton seed, give first consideration to the needs for better planting seed and that the cotton farmers be encouraged to purchase planting seed from the Prison System through their farm agents, Chambers of Commerce and other responsible mediums, and at a price above oil mill quotations sufficient to reimburse the Prison System for the added expense of handling. [Acts 1931, 42nd Leg., p. 925, H.C.R. #25.]

Art. 6203g. Agreement Authorized for Penitentiary System to produce and sell farm products to State Institutions.—Therefore, be it resolved by the Senate of Texas, and the House of Representatives concurring, that the Board of Control of the State of Texas and the Board of Commissioners of the State of Texas are hereby authorized, empowered and instructed to enter into an agreement whereby the Penitentiary System will grow, produce and sell farm products to the various State Institutions at a price not to exceed the lowest bid which the Board of Control may receive from competitive bidders for the various products grown and offered for sale by the Penitentiary System of Texas. [Acts 1929, 41st Leg., p. 732, S.J.R. #26.]

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1. STATE AND COUNTY PENSIONS

Art. 6204. [6267] Tax.—There shall be levied and collected in the same manner and at the same time that other ad valorem taxes are levied and collected for the year of 1925, and annually thereafter, an ad valorem tax of Two (2¢) Cents on the One Hundred ($100.00) Dollars valuation thereof on all property owned in the state on the first day of January of 1943, and of every year thereafter, and on all property sent out of the state prior to the first day of January of any of said years for the purpose of evading the payment of taxes thereon, and afterwards returned to the state, except so much thereof as may be exempted by the Constitution and laws of this state or of the United States; which valuation shall be made in the manner prescribed by law for the assessment, levy, and collection of other state and county taxes, which said tax so levied and collected shall be paid into the Treasury of the State of Texas, in the same manner as other state taxes, and shall constitute a special fund for the payment of pensions, as may be provided by law, to Confederate soldiers and their widows, and to other Texas soldiers and militiamen who served during the War between the States entitled to pensions under the laws of Texas, and their widows, and shall constitute a special fund for the payment of such pension in the manner and under the rules and regulations as are and may be prescribed by law. Said fund is hereby expressly appropriated by the Legislature of the State of Texas for the purpose herein stated, and this Act

shall not affect or release liability of any person for taxes, penalties, interest or costs accruing under prior laws, or the right to collect or enforce collection thereof by suit or otherwise. [Acts 1925, 39th Leg., p. 222, ch. 69, § 1; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 4; Acts 1931, 42nd Leg., p. 434, ch. 262, § 1; Acts 1943, 48th Leg., p. 187, ch. 108, § 1.]

Section 4 of the Act of 1943 authorized the transfer of $1,500,000 from the Confederate Pension Fund to the General Revenue Fund to be applied as a credit to advancements previously made.

Section 5 provided that partial invalidity should not affect the remaining portions.

Art. 6205. [6267a] To whom granted.—Out of the Pension Fund created and maintained under the provisions of Article 6204 as amended, there shall be paid on the first day of each calendar month a pension in the amounts provided for in Article 6221 to every Confederate soldier or sailor whose application has heretofore been approved, and also those who came to Texas prior to January 1, 1928, and whose application shall hereafter be approved, and to their widows whose applications have heretofore been approved and also those who have been bona fide residents of this State since January 1, 1928, and whose application shall hereafter be approved and who were married to such soldiers or sailors prior to January 1, 1921, and who lived with such soldier or sailor continuously for at least nine (9) years immediately prior to the death of such sailor or soldier and to soldiers who, under the Special Laws of the State of Texas during the War between the States, served in organizations for the protection of the frontier against Indian raiders or Mexican marauders, and to soldiers of the militia of the State of Texas who were in active service during the War between the States, and to soldiers of the militia of any other Confederate State who were in active service during the War and who came to Texas at least ten (10) years prior to the approval hereafter of his application for a pension, and to soldiers appointed to official or other service in the State of Texas, requiring the carrying of arms during the War between the States, and all soldiers and sailors and widows of all soldiers and sailors eligible to be placed upon the pension rolls and participate in the distribution of the Pension Fund of this State under any existing law or laws hereafter enacted; provided that no widow born since January 1, 1873, shall be entitled to a widow's pension; provided, that the widow of a Confederate Veteran born after January 1, 1873, but prior to January 1, 1875, who has lived continuously with her husband, who was a Confederate soldier or sailor, for a period of forty (40) years prior to his death shall be entitled to a pension under the terms of this Act; a widow entitled to a pension under this Act, but who remarries a man other than a Confederate soldier or sailor shall not be entitled to a pension, but shall not be barred from receiving a pension in the event she should be left a widow after such remarriage, so long as she remains a widow. Soldiers or widows who are over eighty-eight (88) years of age, who have been bona fide citizens of Texas since prior to January 1, 1930, shall be entitled to pensions under this Act, if otherwise pensionable. [Acts 1925, 39th Leg., p. 222, ch. 69; Acts 1929, 41st Leg., p. 330, ch. 153, § 1; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 1; Acts 1931, 42nd Leg., p. 434, ch. 262, § 2; Acts 1937, 45th Leg., p. 1318, ch. 485, § 1; Acts 1943, 48th Leg., p. 617, ch. 357, § 1.]

Arts. 6206, 6207. [Omitted.]

R.S.1925 set out no text under these articles, but merely stated that the text was embraced in previous articles.

Art. 6208. [6268] Application requirements.—Person entitled to a pension under this Title shall make application for same in writing and under oath to the County Judge of his or her county. Such application shall state the name, age, residence of the applicant, and occupation, if any, and every fact necessary to entitle the applicant to the pension. If the applicant is such a soldier or sailor as is prescribed herein, he shall state in his application the Company and Regiment in which he was enlisted; if he served in an organization for the protection of the frontier against Indian raiders or Mexican marauders, he shall name and identify such organizations; if he were an officer commissioned by the President of the Confederate States or by the Governor or other proper authority of this State, in the Army, Navy, Militia or frontier organization, he shall state the date of his commission and his rank therein; and if detailed directly under the provisions of the Conscript Law for duty in the armories or shops of the Confederate Government or for any other labor necessary for the maintenance of the army in the field, or if he served in the Confederate Navy, he shall state the time of service in each case. Each applicant shall furnish the testimony of at least one credible witness who personally knows that he enlisted in the service and performed the duties as claimed by him. If he cannot secure the testimony of such witness, he may furnish documents or other evidence of his service. Provided, that where the applicant was born prior to 1851, he may make his proof by submitting to the County Judge an affidavit stating his name, age, residence and occupation, if any, together with every fact necessary to entitled him to a pension. Such affidavit, when executed, shall be accompanied by a sworn statement of at least two (2) credible witnesses who have known the applicant for a period of not less than ten (10) years, and who are in no way related to or interested in the financial welfare of such applicant, and that he is a credible person, and that they believe the statements entitling him to a pension are correct and true. [Acts 1909, p. 231; Acts 1913, p. 282; Acts 1917, p. 413; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 4; Acts 1931, 42nd Leg., p. 434, ch. 262, § 5.]

Art. 6209. [6268] Proof, how made.—Proof shall be made under oath and in writing before the county judge of the county where the applicant resides. Should the applicant or witnesses, because of circumstances beyond the control of the applicant, be unable to appear before the county judge, then such proof may be made before any officer authorized to administer oaths. When the proof is made before any other officer, the county judge shall certify that the applicant and witnesses are of trustworthy character and entitled to credit and that the officer before whom the proof is made is duly qualified and authorized by law to administer oaths and take affidavits; he shall also certify to the citizenship of the applicant, and that the applicant has been a bona fide resident of the county for a period of six months next before the date of said application. The officer taking the proof shall administer the oath to each applicant and witness before they sign the affidavit. [Acts 1909, p. 231.]

Art. 6210. [6268] Out of county.—If it is necessary for the applicant to go outside of the county and State for proof to establish his application, such proof may be submitted in the form of affidavits and accompanied by certificates from the county judge of the county where made, that the witnesses are of trustworthy character and entitled to credit. [Id.]

Art. 6211. [6268–69] Widow's application.—No widow shall be entitled to a pension should her husband, if living, be for any reason debarred. If the applicant is the widow of a soldier or sailor, who, if living would be entitled to a pension, she shall make oath that she is in fact the widow of such soldier or sailor and, as near as possible, state the facts showing her to be entitled to receive a pension under the provisions of this title in the same manner as required of a soldier or sailor. In case such widow cannot make

such proof, she may comply with the provisions of the succeeding article. [Id.]

Art. 6212. [6270] Proof by affidavit.—The widow of a Confederate soldier or sailor, entitled to a pension may make affidavit to the county judge:

1. That she is in fact the widow of a Confederate soldier or sailor.

2. That her said husband rendered valuable service to the Confederacy, as such, that he did not desert, and was either killed or died, or was honorably discharged from the army.

3. That she has made diligent search for information as to the number of regiment and company in which her deceased husband served, and has been unable to secure the same.

The affidavit shall be filed with the county clerk, and the county judge may take such other evidence as he may deem necessary; and, if in his judgment he finds that she is the widow of a Confederate soldier or sailor, that all witnesses to the said fact are dead, or their whereabouts unknown to said widow and are unascertainable, he may upon his own motion, recommend to the Comptroller the grant of a pension to such widow; and, if he is satisfied that she is entitled to a pension under the provisions of this title he may grant it. [Id.]

Art. 6213. [6271] Soldier must have served honorably.—Every Confederate soldier applying for a pension under this title shall have served honorably from the date of his enlistment until the close of the war, or until he was discharged or paroled in some military organization regularly mustered into the army or navy of the Confederate States until the surrender. The county judge shall reduce the evidence of witnesses examined by him to writing at the expense of the applicant at the rate of five cents per hundred words. The applicant may have such evidence written by his attorney, or such person as may be employed to secure the pension; and the county judge shall certify to the written statement of the evidence when taken before him. The application, affidavit and certified statement of the evidence shall be forwarded to the Comptroller. [Id.]

Art. 6214. [6272] What constitutes indigency.—To constitute indigency within the meaning of this Title, neither the applicant nor his wife, if married, nor both together, nor the widow, if the applicant be a widow, shall own property, real or personal, exceeding in value One Thousand ($1,000.00) Dollars, exclusive of homestead, and if its assessed value is not in excess of Two Thousand ($2,000.00) Dollars and exclusive of household goods and wearing apparel; and such applicant shall not have an income, annuity, or emoluments of office or wages for services in excess of Three Hundred ($300.00) Dollars per year, nor the aid of a pension fund from another state of the United States. Only the indigent, under the foregoing definition, shall be entitled to a pension under this title. [As amended Acts 1929, 41st Leg., p. 330, ch. 153, § 2.]

This article as amended by Acts 1927, 40th Leg., p. 146, ch. 95, § 1, was repealed by Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 5, without reference to the amendatory Act of 1929, cited to the text. It being open to question whether the 1929 amendment was, in effect, repealed, the provisions thereof are set out in the text.

Art. 6215. [6273] Payments; affidavit; warrant.—The payment of such pension shall be made on the first day of each calendar month to all pensioners whose application for pensions shall have been duly approved as provided by law by warrant drawn by the Comptroller on the State Treasurer, to be paid out of the money appropriated for that purpose as provided by law.

Such warrant shall be transmitted by mail to the payee thereof at his or her last known address. It shall be unlawful for any postmaster, delivery clerk, letter carrier or other postal employee to deliver any such mail to any person whomsoever if the addressee is known to have died or removed or, in the case of a widow, if known to have remarried; and it shall be unlawful for any person or persons to open any such mail addressed to any such addressee who has died or removed, or to any such widow who has remarried, or to convert such warrant into cash; but in every such case such mail shall forthwith be returned to the Comptroller at Austin, Texas, with a statement of the reasons for so doing and if, because of death or remarriage, the date thereof, if known, and all such warrants so returned to the Comptroller shall be cancelled. In the event a veteran is receiving the pension allowed under this Act to a married veteran, and his wife dies, it shall be his duty to immediately report such death to the Comptroller and he shall not thereafter present any pension warrant for payment when the amount of the same is intended for a married veteran, but shall immediately return the same to the Comptroller.

Any person who shall knowingly violate the provisions of this Article shall be guilty of a felony and, on conviction, shall be punished by fine of not less than One Hundred Dollars ($100.00) or by imprisonment in the county jail for not less than three months, or by imprisonment in the penitentiary for not less than one (1) year. [Acts 1909, p. 231; Acts 1915, p. 158; Acts 1929, 41st Leg., p. 686, ch. 307, § 1; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 3; Acts 1931, 42nd Leg., p. 434, ch. 262, § 4.]

Art. 6216. [Repealed by Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 5.]

Art. 6217. [6274] Pensions denied to whom.—No application shall be allowed, nor shall any aid be given or pension paid, to any soldier or sailor, or the widow of any soldier or sailor under the provisions of this title, where any such soldier or sailor deserted his command or voluntarily abandoned his post of duty, or the said service during the said war, nor shall any application be allowed, nor any aid given, nor any pension paid, to any widow of a soldier or sailor who has been divorced from such soldier or sailor, nor to any widow who voluntarily without cause abandoned such soldier or sailor, being her husband, and continued to live separately from him up to the time of his death, nor to a soldier or sailor who served as a substitute for another, nor to the widow of a substitute. [Acts 1909, p. 231.]

Art. 6218. [6276] Fees limited.—No person shall receive a greater fee than five dollars to secure a pension for another, and any contract for a larger sum shall be unlawful. [Id.]

Art. 6219. [6277] Fees of county judge.—A county judge shall be allowed a fee of two dollars for hearing an application and taking proof therein, said fee to be paid by the applicant, and before hearing of application is had thereon; and all fees received by such county judge shall be reported as other fees of office and be otherwise controlled by the law regulating the fee of county judges. Said fee of two dollars shall be the only fee allowed to the county judge for all the work performed by him in securing a pension. [Id.]

Art. 6220. [6278] Persons not entitled to.—No person shall, while confined in any asylum of this State, at the expense of the State, or while confined in the State penitentiary, receive a pension, and any person having been granted a pension who shall afterwards be confined in an asylum of this State, at the expense of the State, or who shall be confined in the State penitentiary shall, while an inmate of such asylum or penitentiary, forfeit his pension, and no pensioner who leaves this State for a period of over six months shall draw a pension while so absent; provided, that any person who has been granted a pension under this law, and who is thereafter admitted as an

inmate of the Confederate Home or is thereafter admitted as an inmate of the Confederate Womans' Home of this State, shall thereafter be entitled to receive pension payments of the amount of one-half of the pension that such person would be entitled to receive if not an inmate of such Home. [Acts 1921, p. 144.]

Art. 6221. [6279] Appropriation, how allotted.—On the first day of each calendar month the Comptroller shall pay to each married Confederate veteran who is living with his wife, a pension of One Hundred and Fifty Dollars ($150) per month for as long as they both may live, and after the death of either party, then the said veteran, or his widow still living, shall only draw an amount equal to other veterans or their widows. To each veteran now unmarried, or a widower, who is drawing a pension, or whose application may hereafter be approved, shall be paid the sum of One Hundred Dollars ($100) per month for each year. To each widow who is now drawing a pension, or whose application may hereafter be approved, shall be paid the sum of Fifty Dollars ($50) per month for each year; provided that any person who has been granted a pension, and who is thereafter admitted as an inmate of the Confederate Home of this State, shall thereafter be entitled to receive pension payment of the amount of one-half (½) of the pension that such person would be entitled to receive if not an inmate of such Home. (All pensions shall begin on the first day of the calendar month following the approval of the application.) [Acts 1909, p. 231; Acts 1913, p. 282; Acts 1917, pp. 387–411; Acts 1929, 41st Leg., p. 330, ch. 153, § 3; Acts 1929, 41st Leg., 2nd C.S., p. 5, ch. 5, § 1; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 2; Acts 1931, 42nd Leg., p. 434, ch. 262, § 3; Acts 1943, 48th Leg., p. 187, ch. 108, § 2; Acts 1945, 49th Leg., p. 452, ch. 283, § 1.]

Art. 6222. [6280] Perpetuation of evidence.—Any Confederate veteran, soldier, or sailor, who may be entitled to a pension under the pension laws of Texas, who may be desirous of establishing such right by the evidence of any person who may be cognizant of such facts as would prove and establish such right, may cause such person to go before the county judge, or any notary public of the county of his residence of such person, and make affidavit to such fact. [Acts 1909, p. 215.]

Art. 6222a. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 5, ch. 5, § 2.]

This Article was Acts 1929, 41st Leg., p. 330, ch. 153, § 4.

Art. 6223. [6281] Statement filed.—Such affidavit shall be filed with the Secretary of State, and by him recorded in a book to be kept for such purpose, a properly certified copy of which shall be admitted and used in evidence at any future time, to prove and establish the right of the soldier or sailor in whose behalf, or at whose instance, the same may have been made to such pensioner as may be provided by law. [Acts 1909, p. 215.]

Art. 6224. [6282] Widow may establish identity.—The widow of any soldier or sailor who may be entitled to a pension as such, under the laws of this State, shall be entitled to establish her identity and right to such pension in the same way and manner as herein provided for soldiers and sailors. [Id.]

Art. 6225. [6283] Examination of record.—The Comptroller shall examine and pass on all pension claims, keep a correct record of all approved claims, with the name, disability, service, residence and amount paid, and furnish the county judge with suitable blanks for use of claimants. He shall make a written report to the Governor on the first day of September of each year, showing the number of pensioners, the number of claims allowed for the past year, and the amounts paid, together with such other information as the Governor may ask. All records, books, claims or other matters pertaining to pensions shall be kept open to inspection and under the charge and direction of the Governor, and all rulings made by the Comptroller shall be subject to revision and change by the Governor. [Acts 1909, p. 231.]

Art. 6226. [6284] Shall strike from roll.—When it comes to the knowledge of the Comptroller that any person has been granted a pension through fraud or perjury, he shall strike the name of such person from the pension roll. [Acts 1909, p. 231; Acts 1930, 41st Leg., 5th C.S., p. 251, ch. 82, § 4.]

Section 5 of Act 1930, repeals article 6216, ante, and article 6214 as amended by Acts 1927, 40th Leg., p. 146, ch. 95, § 1. See note under article 6214, ante.

Section 6 provides that if any part of the Act is held invalid, such holding shall not affect the remainder.

Art. 6227. Mortuary warrant.—Whenever any pensioner who has been regularly placed upon the pension rolls under the provisions of law relating thereto shall die, and proof thereof shall be made to the Comptroller within forty (40) days from the date of such death by the affidavit of the doctor who attended the pensioner during the last illness, or the undertaker who conducted the funeral, or made arrangements therefor, the Comptroller shall issue a mortuary warrant for an amount not exceeding Two Hundred Dollars ($200), payable out of the Pension Fund, in favor of the heirs or legal representatives of the deceased pensioner, or in favor of the person or persons owning the accounts. (Proof of the existence and justice of such accounts to be made to said Comptroller under oath and in such form as he may require for the purpose of paying the funeral expenses of the deceased pensioners. In such cases where a warrant for the pension for the month during which the pensioner died has been issued, the same shall be returned to the Comptroller who shall mark the same "Cancelled" and file it; or if the warrant has been cashed, then the Confederate Pension Fund shall be reimbursed with the amount for which the warrant was drawn before the mortuary warrant herein provided for shall issue. Where such warrant for the pension has not been issued, the same shall not be issued, but the mortuary warrant herein provided for shall take place thereof.) [Acts 1923, p. 26; Acts 1929, 41st Leg., p. 330, ch. 153, § 5; Acts 1943, 48th Leg., p. 187, ch. 108, § 3; Acts 1947, 50th Leg., p. 456, ch. 258, § 1.]

Art. 6228. Mothers' Aid.—Any widow who is the mother of a child or children under sixteen years of age, and who is unable to support them and maintain her home, may present to the Commissioners' Court of the county wherein she has resided for the preceding two years a sworn petition for aid showing:

First:—Her name, time and place of her marriage, date of the death of her husband, or date of his confinement in the penitentiary or in an insane asylum, or date of his abandonment of her; names, sex, and the dates and places of their birth.

Second:—Her length of residence in the State, her present residence, and her residence during each of the previous five years.

Third:—All the property belonging to her and to each of her children, including any future or contingent interest she or any of them may have.

Fourth:—The efforts made by her to support her children.

Fifth:—The name, relationship, and address of each of her husband's relatives that may be known.

By "widow", as used herein, means a mother who is widowed by death or divorce, or whose husband has abandoned her for more than the two preceding years, or whose husband is confined in the penitentiary or in a State Hospital for the insane.

A copy of said petition and a notice of the time and place it will be presented to said Court shall be served on or mailed to the County Judge of said county at

least five days before the time the court shall be requested in said petition to hear the same. When service is complete said Court shall examine under oath those who desire to be heard, and may subpœna witnesses; or the Court may refer said matter to a Commissioner to be appointed by it to hear said witnesses. Such Commissioner shall make a report to the Court stating the facts as proven before him. If the Court concludes that unless relief is granted the widow will be unable to properly support and educate her children, and that they may become a public charge, it may make an order directing a monthly payment to her, out of the County Funds, for the support of such children, not more than Fifteen ($15.00) Dollars for one child, and Six ($6.00) Dollars additional for each other child. Such allowance shall be discontinued as to any such child who reaches the age of sixteen. The Court shall have the right to refuse any such petition, and its action in so doing shall be final. The Court shall see that any widow receiving such aid is properly caring for her children. When it is found that she is not properly caring for her children, or that she is an improper guardian for them, or when the Court finds that she no longer needs such aid, it shall thereupon revoke at any time with or without notice any order made pursuant to this Article. [Acts 1917, p. 313; Acts 1931, 42nd Leg., p. 425, ch. 256, § 1.]

Art. 6228a. Retirement system for State employees.

Definitions

Section 1. The following words and phrases as used in this Act, unless a different meaning is plainly required by the context, shall have the following meanings:

A. "Retirement System" shall mean the Employees Retirement System of Texas as defined in Section 2 of this Act.

B. "Department" shall mean any department, commission, institution, or agency of the State Government.

C. "Employee" shall mean any regularly appointed officer or employee in a department of the State who is employed on a basis or in a position normally requiring not less than nine hundred (900) hours per year, but shall not include members of the State Legislature or any incumbent of an office normally filled by vote of the people; nor persons on piecework basis; nor operators of equipment or drivers of teams whose wages are included in rental rate paid the owners of said equipment or team; nor any person who is covered by the Teacher Retirement System of the State of Texas or any retirement system supported with State funds other than the Texas Employees Retirement System.

D. "Employer" shall mean the State of Texas.

E. "Member" shall mean any employee included in the membership of the System as provided in Section 3 of this Act.

F. "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance, or other benefits as provided by this Act.

G. "Service" shall mean service as an employee, as described in Subsection C of this Section.

H. "State Board of Trustees" shall mean the Board, provided for in Section 6 of this Act, to administer the Retirement System.

I. "Prior Service" shall mean service rendered prior to the date of establishment of the Retirement System, for which credit is allowable under Section 4 of this Act.

J. "Membership Service" shall mean service as an officer or employee rendered while a member of the Retirement System.

K. "Creditable Service" shall mean "Prior Service" plus "Membership Service" for which credit is allowable, as provided in Section 4 of this Act.

L. "Regular Interest" shall mean interest at the rate of three and one-half per cent (3½%) per annum, compounded annually.

M. "Current Interest" shall mean interest at a rate per centum per annum ascertained each year by dividing (1) the amount in the Interest Fund on August thirty-first of such year before the transfer of interest to other funds, less an amount equal to three and one-half per cent (3½%) of the sum of the mean amount in the Membership Annuity Reserve Fund during such year, and the mean amount in the Prior Service Annuity Reserve Fund during such year, and less an amount as may be set annually by the Board of Trustees to cover additional cost, if any of administering the System by (2) an amount equal to the amount in the State Membership Accumulation Fund at the beginning of such year plus the amount in the Permanent Retirement Fund at the beginning of such year and plus the sum of the accumulated contributions in the Employees Saving Fund at the beginning of such year to the credit of all members included in the membership of the System on August thirty-first of such year, before any transfers for Service Retirement effective August thirty-first of such year are made, it being provided that the above division shall be carried to only three (3) decimal places and shall never be taken as greater than three and one-half per cent (3½%).

N. "Accumulated Contributions" shall mean the sum of all the amounts deducted from the compensation of a member, and credited to his individual account in the Employees Saving Fund, together with all current interest credits thereto, as provided in Section 8 of this Act.

O. "Earnable Compensation" shall mean the full rate of the compensation that would be payable to an employee if he worked the full normal working time. In cases where compensation includes maintenance, the State Board of Trustees shall fix the value of that part of the compensation not paid in money.

P. "Average Prior Service Compensation" shall mean the average annual compensation of an employee during the ten (10) years immediately preceding the enactment of this Law, or if he had less than ten (10) years of such service, then his average compensation shall be computed for his total years of such prior service, but in computing the average, no salary for any one year shall be more than Three Thousand, Six Hundred Dollars ($3,600).

Q. "Membership Annuity" shall mean payments for life actuarially determined and derived from reserve funds contributed by a member and an equal amount of reserve funds contributed by the State. All membership annuities shall be payable in equal monthly installments.

R. "Prior Service Annuity" shall mean payment each year for life of one and one-quarter per cent (1¼%) of a member's average prior service compensation, as defined in this Act, multiplied by the number of years of Texas service in his prior service certificate; provided that the maximum number of years of prior service to be allowed shall be thirty-six (36) years, and in computing his average prior service compensation, the maximum prior service salary in any one year shall be Three Thousand, Six Hundred Dollars ($3,600). All prior service annuities shall be payable in equal monthly installments.

S. "Service Retirement Allowance" shall mean a membership annuity and a prior service annuity, or any optional benefits payable in lieu thereof.

T. "Disability Retirement Allowance" shall mean a membership annuity and a prior service annuity.

U. "Retirement" shall mean withdrawal from service with a retirement allowance granted under the provisions of this Act.

V. "Service Retirement" shall mean the retirement of a member from service with a service retire-

ment allowance at any time after ten (10) years of creditable service in Texas and after attaining sixty (60) years of age, or after thirty (30) years service in Texas regardless of age.

W. "Disability Retirement" shall mean withdrawal from service on a disability allowance any time after ten (10) years of creditable service in Texas and before attaining sixty (60) years of age.

X. "Membership Annuity Reserve" shall mean the present value computed upon the basis of such annuity or mortality tables as shall be adopted by the State Board of Trustees with regular interest, of all payments to be made on account of membership annuity or benefit in lieu thereof, granted to a member under the provisions of this Act.

Y. "Actuarial Equivalent" shall mean a benefit of equal value when computed upon a basis of such mortality tables as shall be adopted by the State Board of Trustees and regular interest.

Z. "Fiscal Year" shall mean the year beginning September first and ending August thirty-first.

Name and Date of establishment

Sec. 2. A Retirement System is hereby established and placed under the management of the State Board of Trustees as hereinafter created for the purpose of providing retirement allowances and other benefits under the provisions of this Act for appointed officers and employees as defined in this Act. The Retirement System, so created, shall be established as of September 1, 1947.

It shall have the power and privileges of a corporation and shall be known as the "Employees Retirement System of Texas," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held.

Membership

Sec. 3. The membership of said Retirement System shall be composed as follows:

A. All persons who are employees on the date as of which the Retirement System is established shall become members as of that date as a condition of their employment unless within a period of ninety (90) days after September 1, 1947, any such employee shall file with the State Board of Trustees on a form prescribed by such Board, a notice of his election not to be covered in the membership of the System and a duly executed waiver of all present and prospective benefits which would otherwise inure to him on account of his participation in the Retirement System. The following persons shall, however, not be eligible for participation in the Retirement System:

1. Members of the State Legislature or any incumbent of an office normally filled by a vote of the people, nor any person who is covered by the Teachers Retirement System or any retirement system supported with State funds other than the Texas Employees Retirement System.

2. Persons employed on a piecework basis or operators of equipment or drivers of teams whose wages are included in the rental rate paid the owners of said equipment or team.

3. Employees who are employed less than nine hundred (900) hours per year.

B. Any person who becomes an employee on or after the date of establishment of the System shall, upon the completion of nine (9) months of continuous service uninterrupted by a break of more than one month, become a member of the System as a condition of employment, provided said person is less than sixty (60) years of age at the time of completion of said nine (9) months of service. Contribution by such employee under this Act shall begin with the first pay roll period after said nine (9) months service shall have been completed and creditable service shall then begin to accrue. Any such employee on becoming a member of the System, after service of said nine (9) months, may elect to personally make a lump sum contribution directly to the System for the said nine (9) months of service rendered prior to membership, under rules and regulations established by the Board of Trustees, and membership service shall then be granted for the said period, provided said contribution shall be made within a period of three (3) months from date said employee became a member of the System.

C. Should any member in any period of six (6) consecutive years after becoming a member be absent from service more than sixty (60) consecutive months he would automatically terminate membership if he had less than twenty (20) years creditable service, or should he withdraw his accumulated contributions, or should he become a beneficiary, or upon death, he shall thereupon cease to be a member. However, during the time the United States is in a state of war and for a period of twelve (12) months thereafter, time spent by a member of the Employees Retirement System (1) in the Armed Forces of the United States of America and their auxiliaries and/or in the Armed Forces Reserve of the United States of America and their auxiliaries and/or in the service of the American Red Cross as a result of having volunteered or having been drafted and/or conscripted thereinto, or (2) in war work as a direct result of having been drafted and/or conscripted into said war work, shall not be construed as absent from service in so far as the provisions of this Act are concerned, but shall count towards membership service.

D. Any employee who elects not to become a member of the Retirement System as herein provided as of September 1, 1947, and the ninety (90) days next following, may make application thereafter and be entitled to membership but without claim for prior service credit.

E. Anyone who has been employed in the State of Texas in accordance with the terms of this Act, but who is not in service at the time in which the Act becomes effective, shall, if he becomes an employee within two (2) years of the date on which this Act becomes effective, and if he continues as such for a period of five (5) consecutive years, be entitled to receive credit and resulting benefits for prior service as provided for in this Act.

F. Any member may withdraw from the service prior to the attainment of sixty (60) years who shall have completed at least twenty (20) years of service and shall be eligible for service retirement allowance upon attainment of the age of sixty (60) years or later at his option.

G. Any employee who has attained the age of sixty (60) years and has had ten (10) or more years of service when this Act becomes effective, and who elects to become a member of the System, may remain in the State's service past the age of sixty-five (65) years as long as he is capable of serving the State efficiently in any position in which he is employed, but upon attaining the age of seventy (70) years such employee shall cease to be a participating member of the Retirement System and shall become ineligible to receive any benefits from the System except such benefits to which he would have been lawfully entitled if he had retired at the age of seventy (70) years, provided, however, no person shall ever become eligible for a service retirement allowance until he has actually retired from the State's service.

Creditable Service

Sec. 4. A. Under such rules and regulations as the State Board of Trustees shall adopt each person who was employed, as defined in this Act, at any time prior to the establishment of the System, and who becomes a member within two (2) years after establishment of the Retirement System and continues as such for a period of five (5) consecutive years, or who was a member at the beginning of the System, shall

file a detailed statement of all Texas service, as an employee, rendered by him prior to the date of establishment of the Retirement System for which he claims credit.

B. The State Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one (1) year of service, but in no case shall more than one (1) year of service be creditable for all service in one (1) year.

C. Subject to the above restrictions and to such other rules and regulations as the State Board of Trustees may adopt, the State Board of Trustees shall verify and adjust, as soon as practicable after the filing of such statements of service, the service therein claimed.

D. Upon adjustment and verification of the statements of service, the State Board of Trustees shall issue prior service certificates certifying to each member the length of Texas service rendered prior to the date of the establishment of the Retirement System, with which he is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service, provided, however, that any member may, within one (1) year from the date of issuance or modification of such certificate, request the State Board of Trustees to modify or correct his prior service certificate. When membership ceases, such prior service certificate shall become void. Should the employee again become a member, such person shall enter the System as a member not entitled to prior service credit except as provided in Section 5, Subsection E, Part 2, of this Act.

E. Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also, if he has a prior service certificate which is in full force and effect, the amount of the service credited on his prior service certificate. No member shall be entitled to a retirement allowance until he has accumulated ten (10) or more years of creditable service in Texas.

Benefits

Sec. 5. A. Service Retirement Benefits.

Any member may retire upon written application to the State Board of Trustees, setting forth at what time, not less than thirty (30) days or more than ninety (90) days subsequent to the execution of and filing thereof, he desires to be retired, provided that retirement will be effective only as of the last day of a calendar month, and provided that the said member at the time so specified for his retirement shall have attained the age of sixty (60) years and shall have completed ten (10) or more years of creditable service. Any member in service who has attained the age of sixty-five (65) years shall be retired forthwith, provided that with the approval of his employer he may remain in service until seventy (70) years of age, at which date he shall be retired regardless of position with the State.

Any member may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least twenty (20) years of creditable service and shall become entitled to a service retirement allowance upon his attainment of the age of sixty (60) years, or at his option, at any date subsequent to his attainment of said age provided that such member was then living and had not withdrawn his contributions.

Any member may withdraw from service prior to the attainment of the age of sixty (60) years who shall have completed at least thirty (30) years of creditable service and shall become entitled to a service retirement allowance immediately regardless of attained age.

B. Allowance for Service Retirement.

Upon retirement from service a member shall receive a service retirement allowance consisting of a membership annuity, which shall be the actuarial equivalent of his membership annuity reserve, and a prior service annuity to which his creditable service and membership in the Retirement System entitles him under the provisions of this Act.

1. His membership annuity reserve shall be derived from:

a. His accumulated contributions credited to his account in the Employees Saving Fund at the time of retirement; and

b. An additional sum from the State Membership Accumulation Fund equal to the accumulated contributions provided by the member in Paragraph a, Part 1, of this Subsection.

2. If he has a prior service certificate in full force and effect, the prior service annuity shall be one and one-quarter per cent (1¼%) of his average prior service compensation, as defined in this Act, multiplied by the number of years of Texas service certified in his prior service certificate; provided that the maximum number of years of prior service to be allowed shall be thirty-six (36) years and that in computing his average prior service compensation, the maximum prior service salary for any one (1) year shall be Three Thousand, Six Hundred Dollars ($3,600). In computing the average prior service compensation for employees who served in the Armed Forces on leaves of absence from the State and subsequently became members of the System, that time spent in the Armed Forces shall be counted as part of the ten (10) years immediately preceding the enactment of the Law and the basis for compensation shall be the same that was earned at commencement of his leave of absence from the State.

C. Disability Retirement Benefits.

Upon the application of a member or his employer or his legal representative acting in his behalf, any member who has had ten (10) or more years of creditable service may be retired by the State Board of Trustees, not less than thirty (30) and not more than ninety (90) days next following the date of filing such application, on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

D. Allowance on Disability Retirement.

Upon retirement for disability a member shall receive a service retirement allowance if he has attained the age of sixty (60) years; otherwise, he shall receive a disability retirement allowance consisting of a membership annuity which shall be the actuarial equivalent of his membership annuity reserve, and a prior service annuity to which his creditable service and membership in the Retirement System entitles him under the provisions of this Act.

1. His membership annuity reserve shall be derived from:

a. His accumulated contributions credited to his account in the Employees Saving Fund at the time of retirement; and

b. An additional sum from the State Membership Accumulation Fund equal to the accumulated contributions provided by the member in Paragraph a, Part 1, of this Subsection.

2. If he has a prior service certificate in full force and effect, he shall receive a prior service annuity equal to the prior service annuity provided in Part 2, Subsection B, Section 5, of this Act.

E. Beneficiaries Retired on Account of Disability.

Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the State Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty (60) years

to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or any other place mutually agreed upon, by a physician or physicians designated by the State Board of Trustees. Should any disability beneficiary who has not yet attained the age of sixty (60) years refuse to submit to at least one medical examination in any such periods by a physician or physicians designated by the State Board of Trustees, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his allowance shall be revoked by the State Board of Trustees.

1. Should the Medical Board report and certify to the State Board of Trustees that such disability beneficiary is no longer physically or mentally incapacitated for the performance of duty, or that such disability beneficiary is engaged in or is able to engage in gainful occupation, and should the State Board of Trustees by a majority vote concur in such report, then the amount of his allowance shall be discontinued or reduced to an amount by which the amount of the last year's salary of the beneficiary, as an employee, exceeds his present earning capacity. Should his earning capacity be later changed, the amount of his allowance may be further modified; provided that the revised allowance shall not exceed the amount of the allowance originally granted, nor shall it exceed an amount which, when added to the amount earnable by the beneficiary, equals the amount of his compensation for the last year prior to retirement.

2. Should a disability beneficiary under the age of sixty (60) years be restored to active service, his retirement allowance shall cease, he shall again become a member of the Retirement System, and any reserve on his membership annuity at that time in the Membership Annuity Reserve Fund shall be transferred to the Employee Saving Fund and to the State Membership Accumulation Fund, respectively, in proportion to the original sum transferred to the Membership Annuity Reserve Fund at retirement. Upon restoration to membership, any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his membership service. No member eligible to retire for service at sixty (60) years of age shall be allowed to retire on a disability allowance. Should a disability beneficiary die or be removed from the disability list for any cause other than restoration to active service, an amount equal to the amount by which such beneficiary's accumulated contributions at the time of disability retirement exceed the membership service annuity payments received by such beneficiary under his disability allowance, if any such excess exists, shall be paid from the Membership Annuity Reserve Fund to such beneficiary if living; otherwise, such amount shall be paid as provided by the laws of descent and distribution of Texas unless the beneficiary has directed such amount to be paid otherwise.

F. Return of Accumulated Contributions.

Should a member with less than twenty (20) years creditable service cease to be an employee except by death or retirement under the provisions of this Act, he shall be paid in full the amount of the accumulated contributions standing to the credit of his individual account in the Employees Saving Fund. Should a member die before retirement, the amount of his accumulated contributions standing to the credit of his individual account shall be paid as provided by the laws of descent and distribution of Texas unless he has directed the account to be paid otherwise. Seven (7) years after such cessation of service, if no previous demand has been made, any accumulated contributions of a contributor shall be returned to him or to his heirs. If the contributor or his heirs cannot then be found, his accumulated contributions shall be forfeited to the Retirement System and credited to the Permanent Retirement Fund.

G. Optional Allowances for Service Retirement.

With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of death, until the first payment on account of any service benefit becomes normally due, any member may elect to receive his membership annuity in an annuity payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his membership annuity in a reduced membership annuity payable throughout life with the provision that:

Option (1) Upon his death, his reduced membership annuity shall be continued throughout the life of, and paid to, such person as he shall nominate by written designation duly acknowledged and filed with the State Board of Trustees at the time of his retirement; or

Option (2) Upon his death, one-half of his reduced membership annuity shall be continued through the life of, and paid to, such person as he shall nominate by written designation duly acknowledged and filed with the State Board of Trustees at the time of his retirement; or

Option (3) Some other benefit or benefits shall be paid either to the member, or to such person or persons as he shall nominate, provided such other benefit or benefits, together with the reduced membership annuity, shall be certified by the actuary to be of equivalent actuarial value to his membership annuity, and approved by the State Board of Trustees.

With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement and that such a beneficiary shall be considered as an active member at the time of death, until the first payment on account of any service benefit becomes normally due, any member may elect to receive his prior service annuity in an annuity payable throughout life or he may elect to receive the actuarial equivalent at that time, of his prior service annuity in a reduced prior service annuity payable as provided in option (1), (2), or (3) above, provided that all payments under all prior service annuities are subject to adjustment by the State Board of Trustees as provided in Section 5, Subsection B, Part 2, of this Act; provided further, that the same option must be selected by a member for the payment of his prior service annuity as is selected by the member for the payment of his membership service annuity.

H. Credit for Military Service.

During the period of time the United States is in a state of war and for a period of twelve (12) months thereafter, time spent by a member of the Employees Retirement System (1) in the Armed Forces of the United States and their auxiliaries or in the Armed Forces Reserve and their auxiliaries or in the American Red Cross, or (2) in war work as a direct result of having been drafted or conscripted into said war work, shall count towards membership service. In addition, a member of the Employees Retirement System shall be permitted to contribute each year to the Retirement System a sum not to exceed the amount contributed by him to said Retirement System during the last year that he was employed as a member under the provisions of the Retirement Act. The funds so contributed shall be deposited to the credit of the member's individual account and shall be treated in the same manner as funds contributed by the member while he was employed by the State. Any employee of the State who entered military service prior to the establishment of the Retirement System, either by induction or enlistment, will be entitled to prior service credit for the time prior to establishment of System and membership service for the time subsequent to the establishment of the System. Any employee so

absent shall have the right to contribute to said System either during his service with Armed Forces or upon return an amount equal to the contributions which would have been made by him based on his compensation earnable at commencement of his absence, provided such employee re-enters the service of the State within sixty (60) days after the termination of his military service and elects to become a member of the System within sixty (60) days after such reemployment.

In computing the average prior service compensation for employees who served in the Armed Forces on leaves of absence from the State and subsequently became members of the System, that time spent in the Armed Forces shall be counted as part of the ten (10) years immediately preceding the enactment of the law and the basis for compensation shall be the same that was earned at commencement of his leave of absence from the State.

Administration

Sec. 6. A. State Board of Trustees.

1. The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of the Act are hereby vested in a State Board of Trustees which shall be organized immediately after a majority of the Trustees provided for in this Section shall have qualified and taken the oath of office.

2. The Board shall consist of seven (7) Trustees, as follows:

a. The State Life Insurance Commissioner, ex officio.

b. The Chairman of the State Board of Control of Texas, ex officio.

c. The Chairman of the Texas Highway Commission, ex officio.

d. Attorney General, ex officio.

e. Three (3) of the Trustees shall be members of the Retirement System and shall be nominated by the members of the Retirement System for a term of six (6) years each, according to such rules and regulations as the State Board of Trustees shall adopt to govern such nominations, provided that the first three (3) employees to serve as members of the State Board of Trustees shall be appointed by the Governor and confirmed by the Senate from a list of seven (7) employees nominated by the ex-officio members of the Board of Trustees. The terms of office of the first three (3) employee-Trustees shall begin immediately after they have qualified and taken the Oath of Office. They shall draw for terms of two (2), four (4), and six (6) years. Thereafter, the State Board of Trustees shall provide for the nomination of three (3) employee-members biennially by popular election of the members of the Retirement System, from which the Governor shall appoint one member to the State Board of Trustees; said member shall be subject to confirmation by two-thirds vote of the State Senate. The members so appointed shall serve for terms of six (6) years, or until their successors are qualified.

3. If a vacancy occurs in the office of a Trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

4. The Trustees shall serve without compensation, but they shall be reimbursed from the Expense Fund for all necessary expenses that they may incur through service on the Board.

5. Each Trustee shall, within ten (10) days after his appointment, in addition to the Constitutional Oath, subscribe to the following Oath of Office: "I do solemnly swear that I will, to the best of my ability, discharge the duties of a Trustee of the Employees Retirement System and will diligently and honestly administer the affairs of the Board of Trustees of said Retirement System and that I will not knowingly violate or willingly permit to be violated any of the provisions of Law applicable to said Retirement System." This Oath shall be subscribed to by members making it before any officer qualified to administer Oaths in Texas, and duly filed in the office of the Secretary of State.

6. Each Trustee shall be entitled to one vote in the Board. A majority of the State Board of Trustees shall constitute a quorum and a majority vote of those present shall be necessary for a decision by the Trustees at any meeting of said Board.

7. Subject to the limitations of this Act, the State Board of Trustees shall, from time to time, establish rules and regulations for eligibility of membership and for the administration of the funds created by this Act and for the transaction of its business.

8. The State Board of Trustees shall elect from its membership a Chairman and shall by a majority vote of all its members appoint an Executive Secretary who shall not be one of its members. The Executive Secretary appointed shall have been a citizen of Texas three (3) years immediately preceding his appointment, shall have executive ability and experience to carry out the duties of this office and shall hold his position until removed by the Board. He shall recommend and nominate to the State Board of Trustees such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the State Board of Trustees, and all other expenses of the Board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the State Board of Trustees shall approve, provided that in no case shall they be greater than that paid for like or similar service of the State of Texas.

9. The State Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System and for checking the expenses of the System.

10. The State Board of Trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System.

B. Legal Adviser.

The Attorney General of the State of Texas shall be the legal adviser of the State Board of Trustees, and shall represent it in all litigations.

C. Medical Board.

The State Board of Trustees shall designate a Medical Board to be composed of three (3) physicians not eligible to participate in the Retirement System. The physicians so appointed by the State Board of Trustees shall be legally qualified to practice medicine in Texas and shall be physicians of good standing in the medical profession. If required, other physicians may be employed to report on special cases. The Medical Board shall pass upon all medical examinations required under the provisions of this Act, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the State Board of Trustees its conclusions and recommendation upon all the matters referred to it.

D. Duties of Actuary.

1. The State Board of Trustees shall designate an Actuary who shall be thoroughly qualified to act as the technical adviser of the State Board of Trustees on matters regarding the operation of the funds created by the provisions of this Act, and shall perform such other duties as are required in connection therewith.

2. Immediately after the establishment of the Retirement System, the Actuary shall make such investigation of the mortality, service, and compensation experience of the members of the System as he shall

recommend and the State Board of Trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the State Board of Trustees such tables and such rates as are required. The State Board of Trustees shall adopt tables and certify rates, and as soon as practicable thereafter, the Actuary shall make a valuation based on such tables and rates, of the assets and liabilities of the funds created by this Act.

3. At least once in each five-year period following the establishment of the System, the Actuary shall make, under the direction of the Board, an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the State Board of Trustees shall adopt for the Retirement System such mortality, service, and other tables as shall be deemed necessary.

4. On the basis of such tables as the State Board of Trustees shall adopt, the Actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this Act.

Management of Funds

Sec. 7. A. The State Board of Trustees shall be the trustees of the several funds as herein created by this Act, and shall have full power to invest and reinvest such funds subject to the following limitations and restrictions: All retirement funds as are received by the Treasury of the State of Texas from contributions of employees and employer as herein provided, may be invested only in bonds of the United States, the State of Texas, or counties, or cities, or school districts of this State, wherein said counties, or cities, or school districts have not defaulted in principal or interest on bonds within a period of ten (10) years, or in bonds issued by any agency of the United States Government, the payment of the principal and interest on which is guaranteed by the United States; and in interest-bearing notes or bonds of the University of Texas issued under and by virtue of Chapter 40, Acts of the Forty-third Legislature, Second Called Session; provided that a sufficient amount of said funds shall be kept on hand to meet the immediate payment of the amounts that may become due each year as provided in this Act. The State Board of Trustees shall have full power by proper resolution to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds, provided that any money on hand shall be subject to the State Depository Laws of Texas.

B. The State Board of Trustees annually, on August thirty-first, shall in accordance with Section 8, Subsection A, Part 7, Paragraph c, of this Act transfer from the Interest Fund to the Expense Fund an amount as shall be determined by the Board to be necessary for the payment of expenses of the Retirement System in excess of the amount available to be paid from the Expense Fund to cover the expenses as estimated for the succeeding year. The State Board of Trustees annually, on August thirty-first, shall allow regular interest on the mean amount in the Membership Annuity Reserve Fund for the year then ending and shall allow regular interest on the mean amount in the Prior Service Annuity Reserve Fund for the year then ending and shall allow current interest as defined in Section 1, Subsection M, of this Act on the amount in the State Membership Accumulation Fund at the beginning of such year and on the amount in the Permanent Retirement Fund at the beginning of such year and on an amount in the Employees Saving Fund equal to the sum of the accumulated contributions standing to the credit at the beginning of such year of all members included in the membership of the System on August thirty-first of such year, before any transfers for Service Retirement effective August thirty-first of such year are made. The amounts so allowed shall be due and payable to said funds and shall be credited thereto by the State Board of Trustees on August thirty-first of each year from the moneys of the Retirement System held in the Interest Fund, provided that current interest shall not be at a rate greater than three and one-half per cent (3½%) per annum and that any excess earnings over such amount required shall be paid to the Interest Reserve Account of the Permanent Retirement Fund.

C. The Treasurer of the State of Texas shall be the custodian of all bonds, securities, and funds. All payments from said funds shall be made by him on warrants drawn by the State Comptroller of Public Accounts supported only upon vouchers signed by the Secretary of the Retirement System and the Chairman of the State Board of Trustees. A duly attested copy of a resolution of the State Board of Trustees designating such persons shall be filed with said Comptroller as his authority for issuing such warrants.

D. For the purpose of meeting disbursements for annuities and other payments there may be kept available cash, not exceeding ten per cent (10%) of the total amount in the several funds of the Retirement System, on deposit with the State Treasurer.

E. No trustee and no employee of the State Board of Trustees shall have any direct or indirect interest in the gains or profits of any investment made by the State Board of Trustees, nor as such receive any pay or emolument for his services other than his designated salary and authorized expenses, except such interest as such person or persons may have in the retirement funds as a member in the Retirement System.

Method of financing

Sec. 8. A. The amount contributed by each member to the Retirement System shall be five per cent (5%) of the regular annual compensation paid to each member. The amount contributed by the State of Texas to the Retirement System shall not exceed during any one (1) year five per cent (5%) of salaries of all members, disregarding salaries in amounts in excess of Three Thousand, Six Hundred Dollars ($3,600), provided the total amount contributed by the State during any one (1) year shall at least equal the total amount contributed during the same year by all members of the Retirement System; provided further that all contributions made by the State shall be from and charged to the respective funds appropriated, allocated, and provided to pay the salary or compensation of the employee for whose benefit the contribution is made. All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one (1) of seven (7) funds, namely, the Employees Saving Fund, the State Membership Accumulation Fund, the Membership Annuity Reserve Fund, the Prior Service Annuity Reserve Fund, the Interest Fund, the Permanent Retirement Fund, and the Expense Fund.

1. The Employees Saving Fund.

The Employees Saving Fund shall be a fund in which shall be accumulated regular five per cent (5%) contributions from the compensation members, including current interest earnings. Contributions to and payments from the Employees Saving Fund shall be made as follows:

a. Beginning on the date of the establishment of the membership and full operation of the Retirement System herein created, which date should be two (2) to three (3) months subsequent to the enactment of the Retirement Law, each department of the State shall cause to be deducted from the salary of each member on each and every pay roll of such department of the State for each and every pay roll period, five per cent (5%) of his earnable compensation, provided

that the sum of the deductions made for a member shall not exceed One Hundred and Eighty Dollars ($180) during any one (1) year. In determining the amount earnable by a member in a pay roll period, the State Board of Trustees may consider the rate of annual compensation payable to such member on the first day of the pay roll period as continuing throughout such pay roll period, and it may omit deductions from compensation for any period less than a full pay roll period if an employee was not a member on the first day of the pay roll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth (1/10) of one per cent (1%) of the annual compensation upon the basis of which such deduction is to be made.

b. The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation, less said deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Act. The department head of the State shall certify to the State Board of Trustees on each and every pay roll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Employees Saving Fund, and shall be credited, to the individual account of the member from whose compensation said deduction was made.

c. Current Interest on members' contributions shall be credited annually as of August thirty-first and shall be allowed on the amount of the accumulated contributions standing to the credit of the member at the beginning of the year and shall not be allowed for parts of a year. Following the termination of membership in the Retirement System for those members who have been absent from service more than sixty (60) consecutive months in any period of six (6) consecutive years, the Employees Saving Fund account of such members shall be closed and warrants covering the total accumulated contributions sent to them upon the filing of formal application. Until the time of payment of such accumulated contributions, said employees shall receive no interest on the amount due them under this subsection, and the amount shall be held in a non interest-bearing account to be set up for such purpose.

d. Upon the retirement of a member, his accumulated contributions shall be transferred from the Employees Saving Fund to the Membership Annuity Reserve Fund.

2. State Membership Accumulation Fund.

The State Membership Accumulation Fund shall be the fund in which shall be accumulated all contributions made to the Employees Retirement System by the State of Texas for the purpose of providing upon the retirement of each member an amount equal to such member's accumulated contributions; and from which shall be transferred to the Membership Annuity Reserve Fund at the retirement of a member an amount equal to the accumulated contributions of the member. Contributions to and payments from this fund shall be made as follows:

a. The State of Texas shall pay each year in equal monthly installments into the State Membership Accumulation Fund an amount equal to a per centum of the contributions of the members during such year, which shall be calculated by the Actuary and certified to the Comptroller by the State Board of Trustees as being the necessary and required per centum to maintain a reserve in this fund equal to present and prospective liabilities of the fund. "Present and prospective liabilities" as used herein shall mean at any time an amount equal to that amount in the Employees Saving Fund at that time, which will eventually be transferred to the Membership Annuity Reserve Fund, according to calculations made by the Actuary and approved by the State Board of Trustees on the basis of the mortality and other tables adopted by the State Board of Trustees. The State Board of Trustees shall certify annually to the Comptroller of Public Accounts and to the State Treasurer the amount so ascertained, and such an amount shall be paid each year in equal monthly installments in the manner hereinafter provided into the State Membership Accumulation Fund by the Comptroller from the funds appropriated as contributions to the Employees Retirement System by the State of Texas.

b. Upon the retirement of a member, an amount equal to his accumulated contributions in the Employees Saving Fund shall be transferred from the State Membership Accumulation Fund into the Membership Annuity Reserve Fund as a reserve for his Membership Annuity.

3. Membership Annuity Reserve Fund.

The Membership Annuity Reserve Fund shall be the fund in which shall be held all reserves for membership annuities granted and in force and from which shall be paid all membership annuities and all benefits in lieu of membership annuities, payable as provided in this Act. This fund shall be made up of the transfers as follows:

a. At the time of service or disability retirement the accumulated contributions of a retiring employee shall be transferred from the Employees Saving Fund to the Membership Annuity Reserve Fund as reserves for the membership annuity purchased by his contributions.

b. An amount equal to the accumulated contributions of each retiring employee shall be transferred, upon service or disability retirement, from the State Membership Accumulation Fund as reserves for an additional membership annuity equal to the membership annuity purchased by the employee.

c. Transfers and payments from the Membership Annuity Reserve Fund shall be made as provided in Section 5, Subsection E, Part 2, of this Act, upon the death, restoration to active service or removal from the disability list of a beneficiary retired on account of disability.

4. Prior Service Annuity Reserve Fund.

The Prior Service Annuity Reserve Fund shall be the fund in which shall be accumulated all contributions made to the Retirement System by the State of Texas for the purpose of providing the amounts required for payment of prior service annuities; and from which prior service annuities shall be paid to beneficiaries as herein provided. Contributions to and payments from this fund shall be made as follows:

a. All moneys appropriated by the State of Texas as contributions to the Employees Retirement System each year and which will not be paid into the State Membership Accumulation Fund as elsewhere herein provided shall be paid into the Prior Service Annuity Reserve Fund in the manner hereinafter provided.

b. All prior service annuity payments to beneficiaries, as provided in this Act, shall be paid from this fund.

5. Interest Fund.

The Interest Fund is hereby created to facilitate the crediting of interest to the various other funds. All income, interest, and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund. Once each year on August thirty-first, interest shall be allowed and transferred to the other funds, respectively. The State Board of Trustees shall annually transfer to the credit of the interest reserve account of the Permanent Retirement Fund all excess earnings after all interest-

bearing funds have been duly credited with interest for the year in the manner provided in this Act.

6. Permanent Retirement Fund.

The Permanent Retirement Fund shall be a fund in which shall be accumulated all gifts, awards, funds, and assets accruing to the Retirement System not specifically required by other funds created by this Act, and to provide a contingent fund out of which special requirements of other funds may be covered. The principal of this fund is hereby held and dedicated as perpetual endowment of the Retirement System and shall not be diverted or appropriated to any other cause or purpose. All current interest credited to this fund and excess interest earnings transferred to this fund shall be held as an interest reserve account from which the State Board of Trustees shall transfer annually to the Expense Fund such amounts as are required to provide for the administration and maintenance of the Retirement System, provided the funds are available.

7. Expense Fund.

The Expense Fund shall be the fund from which the expenses of administration and maintenance of the Retirement System shall be paid. Transfers to and payments from this fund shall be made as follows:

a. The Executive Secretary shall prepare annually an itemized budget showing the amount required to defray the expenses for the ensuing fiscal year and shall submit the report to the State Board of Trustees for its review and adoption.

b. Each member shall pay with the first payment to the Employees Saving Fund each year and each year thereafter he is a member of the System, and in addition thereto, a sum of Two Dollars ($2), which amount shall be credited to the Expense Fund, said payments for the Expense Fund shall be made to the State Board of Trustees in the same way as payments to the Employees Saving Fund shall be made, as provided for in this Act; provided, however, that if said payment for the Expense Fund of any member is not made with said first payment of said member, the State Board of Trustees may deduct the amount of the payment for the Expense Fund from said first payment of said member.

c. If the amount estimated to be required to meet the expenses of the State Board of Trustees is in excess of Two Dollars ($2) per member contributor for the year and if there is an insufficient amount in the interest reserve account of the Permanent Retirement Fund to pay such excess, the State Board of Trustees as evidenced by a resolution by that Board recorded in its minutes shall transfer to the Expense Fund from the Interest Fund an amount necessary to cover the expenses as estimated for the year.

B. Collection of Contributions.

1. The collection of members' contributions shall be as follows:

a. Each department of the State shall cause to be deducted on each and every pay roll of a member for each and every pay roll period beginning on the date of the establishment of the membership and full operation of the Retirement System the contributions payable by such member, as provided in this Act. Each department head of the State shall certify to the treasurer of said department on each and every pay roll a statement as vouchers for the amount so deducted.

b. The Treasurer or proper disbursing officer of each State department on authority from the department head shall make deductions from salaries of the employees as provided in this Act, and shall transmit monthly, or at such time as the State Board of Trustees shall designate a certified copy of the pay roll and the amount specified to be deducted shall be paid to the Employees Saving Fund of the Employees Retirement System, after which the Executive Secretary of the Board of Trustees shall make a record of all receipts and turn payments over to the Treasurer of the State of Texas and by him be credited to the Employees Saving Fund, and such funds shall be deemed as appropriated for use according to the provisions of this Act.

6. The State Treasurer shall furnish annually to the State Board of Trustees a sworn statement of the amount of the funds in his custody belonging to the Retirement System. The records of the State Board of Trustees shall be open to public inspection and any member of the Retirement System shall be furnished with a statement of the amount to the credit of his individual account upon written request by such member, provided that the State Board of Trustees shall not be required to answer more than one such request of a member in any one year.

2. The collection of the State's contributions shall be made as follows:

a. From and after the date of the establishment of the membership and full operation of the Retirement System created by this Act takes effect, there is hereby allocated and appropriated to the Employees Retirement System of Texas, in accordance with this Act, from the several funds from which the employees benefited by this Act; receive their respective salaries, a sum equal to five per cent (5%) of the total compensation paid to the said respective employees who are members of said Retirement System and whose compensation is paid from funds directly controlled by the State. The State Board of Trustees shall certify to the State Comptroller of Public Accounts and the State Treasurer at the end of each month the total amount of compensation paid such members of the Retirement System, and the State Comptroller shall thereupon transfer five per cent (5%) of this amount from the said respective funds from which said employees are paid to the State Employees Retirement Fund; and which money in said fund is hereby appropriated for the purposes provided by this Act for the balance of the fiscal year 1947 and the fiscal year 1948. Appropriations for the ensuing biennium shall be made according to Section 8, Subsection B, Part 2, Paragraph a, b, and c of this Act.

b. Thereafter, on or before the first day of November next preceding each regular Session of the Legislature, the State Board of Trustees shall certify to the State Board of Control for its review and adoption the amount necessary to pay the contributions of the State of Texas to the Employees Retirement System for the ensuing biennial. This amount shall equal five per cent (5%) of the total compensation paid members of the Retirement System and shall be included in the budget of the State which the Governor submits to the Legislature. The State Board of Trustees shall certify on or before August thirty-first of each year to the State Comptroller of Public Accounts and the State Treasurer the estimated amount of contributions to be received from members during the ensuing year.

c. All moneys hereby allocated and appropriated by the State to the Employees Retirement System shall be paid to the Employees Retirement System in equal monthly installments based upon the annual estimate by the State Board of Trustees of the Employees Retirement System of the contributions to be received from the members of said System during said year, provided further in the event said estimate of the contributions of the members of the System shall vary from the actual amount of the employees' contributions during the year, then such adjustment shall be made at the close of each fiscal year as may be required. Each of said monthly installments shall be paid into the State Membership Accumulation Fund and the Prior Service Annuity Reserve Fund in the proportionate amount certified by the State Board of Trustees.

d. For the purpose of computing the total amount of the compensation of members under the provisions of the State Membership Accumulation Fund, Section 8 of this Act, the compensation of every member who

receives in excess of Three Hundred Dollars ($300) a month shall be computed as Three Hundred Dollars ($300) per month.

Exemption from execution

Sec. 9. The right of a person to an annuity or a retirement allowance, to the return of contributions, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this Act, and the moneys in the various funds created by this Act, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassigned except as in this Act specifically provided.

Protection against conversion of funds and fraud

Sec. 10. Any person who shall confiscate, misappropriate, or convert moneys representing deductions from employees' salaries before such moneys are received by the Retirement System or after such moneys are received by the Retirement System shall be guilty of a felony and upon conviction be punished by confinement in the State Penitentiary for any term of years not less than one (1) nor more than five (5). Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a felony and upon conviction be punished by confinement in the State Penitentiary for any term of years not less than one (1) or more than five (5). Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the State Board of Trustees shall correct such error, and so far as practicable shall adjust the payment in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

Violation of Provisions.

Any person, including department heads, and any member of the employer and/or its treasurer or proper disbursing officer, who violates any provision of this Act other than those which the first paragraph of this Section applies shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars ($100) or more than One Thousand Dollars ($1,000). Any member of the System who knowingly receives money as salary, which money should have been deducted from his salary under the provisions of this Act, shall be guilty of a misdemeanor and shall be fined not less than One Hundred Dollars ($100) and not more than Five Thousand Dollars ($5,000).

Surety bonds

Sec. 11. The Treasurer of the State of Texas shall, upon becoming custodian of the Employees Retirement Fund, give a bond in the sum of Fifty Thousand Dollars ($50,000); the Executive Secretary shall give bond in the sum of Twenty-five Thousand Dollars ($25,000), and the State Board of Trustees shall require any other employees and members of the State Board of Trustees to give bond in such amounts as the Board may deem necessary, conditioned that said bonded persons will faithfully execute the duties of the respective offices. All bonds shall be made with a good and solvent surety company, authorized to do business in the State of Texas, said bonds shall be made payable to the State Board of Trustees and shall be approved by it and the Attorney General of Texas. All expense necessary and incident to the execution of such bonds, including premiums thereon, shall be paid by the State Board of Trustees from the Expense Fund.

Limitation of membership

Sec. 12. No other provision of law in any other Statute which provides wholly or partly at the expense of the State of Texas for pensions or retirement benefits for employees of the said State, their widows, or other dependents, shall apply to members or beneficiaries of the Retirement System established by this Act.

Reservation of right to amend

Sec. 13. The Legislature hereby reserves the right to amend any section, paragraph or any and all provisions of this Act as it may from time to time deem necessary.

Partial invalidity; repeal

Sec. 14. If any section or part of any section of this Act is declared to be unconstitutional, the remainder of the Act shall not thereby be invalidated. All provisions of the law inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency. [Acts 1947, 50th Leg., p. 697, ch. 352.]

Section 15 of the Act of 1947 appropriated $25,000 or so much thereof as necessary for the purpose of organizing the Retirement System and establishing an office.

2. CITY PENSIONS

Art. 6229. Board of trustees.—In all incorporated cities and towns having a population of two hundred eighty thousand or more according to the preceding Federal census the mayor, two aldermen or commissioners, and two citizens of said city or town to be designated by the mayor and his successors, shall constitute a Board of Trustees of the Municipal Employees' Pension Fund to provide for the disbursement of the same and to designate the beneficiaries thereof. The board shall be known as the Board of Municipal Employees' Pension Fund, Trustees of ———, Texas. The board shall hold its office until the next general election in such city for municipal officers. Said board shall organize by choosing one member as chairman and by appointing a secretary. Such board shall have charge of and administer such fund and shall order payments therefrom in pursuance of the provision of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of the beneficiaries of said fund and the amounts paid them. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6230. Membership in.—Each fully paid municipal employee in the employment of such city or town, who desires himself or his beneficiaries to participate in said fund, shall file a written statement with the city clerk of his desire to participate in said fund, and authorize said city or town to deduct one per cent. of his wages each month to form a part of the fund known as the Municipal Employees' Pension Fund. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6231. Payments to fund.—There shall be adopted[1] for such fund from the wages of each municipal employee one per cent of the wages earned by such employees when they have filed application therefor. Any donations made to such fund and rewards received by any municipal employee, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

[1] So in enrolled bill. R.S.1925 read "deducted".

Art. 6232. Conduct of meetings.—The board shall hold regular monthly meetings and other meetings upon call of its chairman. It shall issue orders signed by the president or chairman and secretary to the persons entitled thereto, of the amount of money ordered paid to such persons from such fund by said board which order shall state for what purpose such payment is to be made; it shall keep a record of its proceedings, which record shall be a public record; it shall at each monthly meeting send to the city treasurer a written list of persons entitled to payment from

the fund, stating the amount of such payment, and for what granted, which list shall be certified to and signed by the president or chairman and secretary of such board, attested under oath. The treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the Municipal Employees' Pension Fund Board of ———, Texas, and the said board shall direct payment of the amounts named therein to the persons entitled thereto out of said fund. No money of said fund shall be disbursed for any purpose without a vote of a majority of the board, which shall be a no and yes vote entered upon the proceedings of the board. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6233. Custody of funds.—The Treasurer of said city or town shall be Ex-officio Treasurer of such fund. All money for said fund shall be paid over to and received by the Treasurer for the use of said fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town Treasurer, but he shall receive no compensation therefor. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6234. Who may share in fund.—Any person who at the establishment of said fund, or thereafter shall have been duly appointed and enrolled as a municipal employee of any such city or town, to which application is made for participation in said fund by such person and who has filed his written application within thirty days after the organization of such board, or who shall file his application within thirty days after becoming a municipal employee and who shall have allowed said deductions from his salary, as well as the beneficiaries hereinafter named, shall be entitled to participate in said fund. [Acts 1919, p. 10; Acts 1931, 42nd Leg., p. 18, ch. 18; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6235. Retirement pensions.—Whenever any municipal employee who shall have contributed a portion of his salary, as provided herein, shall have served twenty years or more as a municipal employee, he may be entitled to be retired from said service upon application, and shall, if the board approves, be entitled to be paid from such funds a monthly pension of one-half of the salary received by him at the time of his retirement. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6235a—1. Retirement pensions in cities of 53,000 to 77,600.

Municipal Retirement Board; appropriations

Section 1. (a) The governing body of any incorporated city in this State having a population not less than 53,000 and not more than 57,000, according to the last preceding Federal Census, such cities being located in counties having a population not less than 77,600 and not more than 77,850, according to the last preceding Federal Census, in addition to other powers by it possessed, may by ordinance create a Municipal Retirement Board, as defined in this Act, to administer and supervise the receipts and disbursements of the employees' retirement fund authorized by this Act, and by such ordinance adopt a plan to pay retirement allowances to retire employees of such city as hereinafter specified.

(b) If any such ordinance shall provide for contributions to such retirement system by appropriation from the general funds of such city, and if such contributions shall constitute a debt incurred in any fiscal year to be paid after the end of such fiscal year, then in such events the question as to whether the governing body of said city should be empowered to appropriate from the public revenues each year for the purpose of augmenting the retirement fund shall be submitted to a vote of the qualified voters who are taxpayers in such city.

Title of act

Sec. 2. This Act may be referred to as the Municipal Retirement Law.

Definitions

Sec. 3. The following words and phrases as used in this Act, unless a different meaning is required by the context, shall have the following meanings:

(1) "Retirement system" shall mean the employees' retirement system of the city in which such system provided for herein is established.

(2) "Board" shall mean the "Municipal Retirement Board" provided for in this Act to administer the retirement system.

(3) (a) "City" shall mean the city in which the retirement system as herein provided is established.

(b) "City Agency" shall mean any board, commission, division, department, office or agency of the city government, by which an employee of the city is paid.

(4) "Employee" shall mean any person employed by the city or city agency as hereinbefore defined in regular service at a wage or salary payable at stated intervals, but shall not include any person in the city service elected by the vote of the people. In the event of a question arising as to the right of any person in the service of the city to be classified as an employee under this Act, the decision of the Board shall be final.

(5) "Member" shall mean any person included in the membership of the retirement system as provided in this Act.

(6) "Annuity" shall mean the annual payments for life derived from contributions made by a member. All annuities shall be paid in equal monthly instalments.

(7) "Pension" shall mean the annual payments for life derived from contributions made by the city. All pensions shall be paid in equal monthly instalments.

(8) "Retirement allowance" shall mean the annuity plus the pension, or any optional benefit payable in lieu thereof.

(9) "Earnable compensation" shall mean the full rate of compensation that would be payable to a member if he worked the full normal working time for his position. In cases where compensation includes maintenance, the Board may in its discretion fix the value of that part of the compensation not payable in money, and in the event that such Board does not exercise its discretion "earnable compensation" shall mean the full rate of compensation payable in money.

(10) "Final average salary" shall mean the average annual earnable compensation of a member during his last five years of creditable service immediately preceding his date of retirement, or if he should have less than five years of creditable service, then his average annual earnable compensation during his creditable service.

(11) "Service" shall mean service as an employee and paid for by the city or city agency.

(12) "Prior service" shall mean the service of a member as an employee rendered prior to the date of the establishment of the retirement system, either in the service of the city or city agency, certified on a prior service certificate and allowable as provided in this Act.

(13) "Membership service" shall mean service as an employee since last becoming a member of the retirement system and on account of which contributions are made by the city.

(14) "Creditable service" shall mean prior service plus membership service for which credit is allowable under Section 4 of this Act.

(15) "Accumulated contributions" shall mean the sum of the contributions, together with regular interest, of a member deducted from his salary and held for his credit in the annuity savings fund provided in this Act.

(16) "Regular interest" shall mean interest at such rate as may be set from time to time by the Board in accordance with this Act.

(17) "Medical council" shall mean the council of physicians provided for in this Act.

(18) "Actuarial equivalent" shall mean a benefit of equivalent value when computed with regular interest on the basis of the mortality tables adopted by the Board.

(19) "Beneficiary" shall mean any person in receipt of a retirement allowance, or other benefit, as provided by this Act.

(20) The masculine shall include the feminine.

Members, qualifications, rights and duties

Sec. 4. (a) Any person who is an employee of such city on the date this Act becomes effective shall be, except as hereinafter provided, eligible for membership and shall become a member as of the date the governing body finally passes the ordinance herein authorized, unless, within a period of thirty days after the passage of such ordinance, said employee files with the Board written election not to become a member, which shall constitute a waiver of all present and prospective benefits which would otherwise inure to him by participation in the system.

(b) Any person who becomes an employee of such city, after the date of establishment of the retirement system by the final passage of said ordinance, shall become a member as a condition of his employment.

(c) Any employee of said city, whose membership in the retirement system is contingent on his own election and who elects not to participate, may later become a member provided he passes such medical examination as the Board may require. If such employee becomes a member within six months after the effective date of establishment of the retirement system in such city, said employee shall be eligible for prior service credit, but if he does not become a member within such period he shall not be eligible for prior service credit.

(d) Employees of such city who may not become members under this Act shall include (1) the Mayor and members of the governing body of said city, (2) all quasi-legislative, quasi-judicial, and advisory boards and commissions, (3) the Judge or Recorder of the Corporation Court, the Clerk of said Court, and any Deputy Clerk of said Court, (4) all parttime employees, (5) all seasonal and temporary employees and (6) all employees whose compensation is only partly paid by said city.

(e) Should any member in a period of ten consecutive years after last becoming a member be absent from service of said city more than five years, or should he withdraw more than fifty (50%) per cent of his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member.

(f) When an employee leaves the service of the city for any reason, he shall be refunded, upon application in writing to the Board on a form provided by the Board, all his accumulated contributions plus interest on same from time of each payment at a rate not to exceed two (2%) per cent per annum.

Contributions to system; actuarial basis

Sec. 5. Contributions to the retirement system authorized by this Act shall be made by the members and by the city establishing the system approximately on a 50–50 basis. Such retirement system when established shall be founded and operated on an actuarial basis; that is, on the basis of tables prepared by actuaries of the mortality and withdrawals from the service of such city and the cost of benefits. Individual accounts shall be maintained with each member of the retirement system showing the amount of the member's contributions and the regular interest accumulations thereon, and annually a statement shall be given each member showing the total accumulation to his credit. Said city, upon establishing a retirement system, shall pay annually to the Board, on account of each member, a certain percentage of the employee's compensation, and the rates percent of such contributions shall be fixed on the basis of the liabilities of the retirement system as determined by actuarial valuations. The amounts required to meet these contributions by the city shall be paid to the Retirement Board annually by appropriation from the General Fund of said city. All of the expenses involved in the administration and operation of the retirement system shall be paid from appropriation from the General Fund of said city.

Retirement Board

Sec. 6. (a) The Municipal Retirement Board shall be composed of seven members consisting of the Mayor, one City Councilman, the City Manager, the City Treasurer, or their successors, and three legally qualified voters of the city, residents thereof for the preceding five years, to be chosen by the employees of the city who are contributors to the retirement fund authorized by this Act to be created. Said employees are hereby authorized to form an association for that purpose and the first member so chosen shall be elected for a term of one year. The second person so chosen shall be elected for a term of two years and the third person so chosen shall be elected for a term of three years, after the expiration of which times the respective successors in office shall be elected to serve for a term of three years, and each shall continue to serve until his successor is duly elected. Vacancies occurring by death, resignation or removal of such representatives shall be filled by members chosen by the employees.

(b) The Board shall have charge of and administer the retirement fund and shall order payments therefrom in pursuance of the provisions of this law and of the ordinance adopted by said governing body of said city. The Board shall report annually to the governing body of such city the condition of said fund and the receipts and disbursements on account of same, with a complete list of the beneficiaries of said fund and the amounts paid them.

(c) Each member of the Board shall, within ten days after his appointment and election, take an oath of office that, so far is it devolves upon him, he will diligently and honestly administer the affairs of the Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of the law applicable to the retirement system.

(d) Subject to the limitations of this Act, the Board shall from time to time establish rules and regulations for the administration of the fund authorized to be created by this Act and for the transaction of the Board's business. The Board shall elect from its membership a chairman and shall by a majority vote of all its members appoint a secretary who may be, but need not be, one of its members. The Board shall engage such actuarial and other service as may be required to transact the business of the retirement system.

(e) The compensation of all persons engaged by the Board and all other expenses of the Board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the Board shall approve, subject to any limitations fixed in the ordinance passed by the governing body of the city creating the Board and establishing the fund herein authorized.

(f) The Board shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the system.

(g) The Board shall keep a record of all its proceedings which shall be open to public inspection.

Said Board shall publish annually a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of said system, and the last balance sheet showing the financial condition of said system as disclosed by an actuarial valuation of the assets and liabilities of the retirement system.

(h) The Board shall designate a medical council to be composed of three physicians. Other physicians may be employed to report on special cases if required. The medical council shall arrange for and pass on medical examinations required by the retirement system, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the Board its conclusions and recommendations upon all matters referred to it.

(i) The City Attorney shall be the legal advisor of the Board.

(j) The Board shall designate an actuary who shall be the technical advisor of the Board on matters regarding the operation of the funds authorized by the provisions of this Act and shall perform such other duties as are required in connection therewith. As of the date of the establishment of the retirement system, the actuary shall make such investigation of the mortality, service and compensation expenses of the members of the system, and the Board shall authorize, and, on the basis of such investigation, the actuary shall recommend for adoption by the Board, such tables and such rates as are hereinafter required.

(k) The Board shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the fund authorized by this Act to be created.

(l) At least once within three years after the retirement system authorized by this Act shall become effective in any such city, and at least once during each five year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of said retirement system, and shall make a valuation of the assets and liabilities of the funds of the system. Taking into account the results of such investigation and valuation, the Board shall (1) adopt for the retirement system such mortality, service and other tables as shall be deemed necessary; (2) certify the rates of contribution payable by members under the provisions of this Act, and (3) certify the rates of contribution payable by the city on account of new entrants.

On the basis of such tables as the Board shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement system.

(m) The City Treasurer shall be the custodian of the funds of the retirement system and shall give such bonds for the proper performance of his duties as may be required by the governing body in its ordinance adopted pursuant to this Act. All payments from said funds shall be made by the Treasurer only upon vouchers signed by two persons designated by the Board. A duly attested copy of a resolution of the Board designating such persons and bearing on its face specimen signatures of such persons, shall be filed with the Treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the Board.

(n) Except as herein provided, no member of the Board and no employee of the Board shall have any interest directly or indirectly in the gains or profits of any investment made by the Board, nor as a member of the Board directly or indirectly receive any pay or emolument for his services. No member of the Board or employee thereof shall directly or indirectly for himself or as an agent in any manner use the funds or deposits of the retirement system except to make such current and necessary payments as are authorized by the Board; nor shall any member or employee of the Board become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the Board.

(o) The Board shall be the trustee of the funds of the retirement system and shall have full power in its sole discretion to invest and reinvest, alter and change these funds, and the Board shall not be held liable for the exercise of more than ordinary care and prudence in the selection of such investments, but all funds of the system shall be invested subject to all of the conditions, limitations and restrictions imposed by law upon life insurance companies in the State of Texas in the making and disposing of these investments.

(p) None of the funds or moneys mentioned in this Act shall be assignable either in law or equity or be subject to issue, levy, attachment, garnishment or other legal process.

Benefits

Sec. 7. (a) Any member in active service who has attained the age of sixty-five (65) shall be retired upon filing with the Board a request for retirement, on a form provided by the Board for that purpose, stating a date not less than thirty (30) nor more than ninety (90) days subsequent to the filing thereof when the retirement is to be effective. Any member in active service who has attained the age of seventy (70) on the date of establishment of the retirement system or who thereafter attains the age of seventy (70) shall be retired forthwith, unless he shall be permitted to continue in service upon approval of the City Manager and the medical council, and in case of such continuation after age seventy (70) the City Manager or the medical council may require the employee to retire at any time thereafter.

(b) The service retirement allowance shall consist of (1) an annuity which is the actuarial equivalent of the member's accumulated contributions; provided (2) employees in service at the time the retirement system becomes effective who are fifty-one (51) years of age or older and have been in the service not less than twenty (20) years shall be retired on one-half salary, on proper application at age sixty-five (65), as provided above, or if such employee has served less than twenty (20) years, then retirement allowance shall be such percentage of twenty (20) years served times one-half the salary of such employee; provided, the maximum allowance shall in no event exceed One Hundred ($100.00) Dollars per month; and (3) employees in service at the time the retirement system becomes effective who are less than fifty-one (51) years of age shall be retired at age sixty-five (65) on proper application, as provided hereinabove, on an allowance based on the reserve accumulated by said employee and by the city's contributions to said fund; and provided (4) no employee, even though continued in service after age sixty-five (65), shall pay contributions if such employee has contributed for twenty (20) years, but if said employee has not contributed for twenty (20) years and does not elect to be retired, such employee may continue contributions to increase his accumulated reserve, not to exceed the equivalent of twenty (20) years, until such time as compulsory retirement shall become effective, as hereinabove provided.

(c) Upon the receipt of proper proofs of the death of a member in active service, his accumulated contributions, with accrued interest, shall be paid to such person, if any, as he has nominated in written designation duly executed and filed with the Board; otherwise, such payment shall be to his executors or administrators.

Financing the retirement system

Sec. 8. The employees' retirement fund authorized by this Act shall be a fund in which shall be accumulated contributions from the compensation of members and from contributions of the city, to provide for retirement allowances of employees. Upon the basis of such tables as the Board shall adopt, and regular interest, the actuary of the retirement system shall determine for each member the proportion of earnable compensation, which, when deducted from each payment of his prospective earnable compensation prior to his attainment of age sixty-five (65) and accumulated at regular interest until his attainment of such age, shall be computed at that time an annuity equal to the retirement allowance to which he will be entitled at that age on account of his service as a member.

Provided, that all employees of such city in service at the time the retirement system becomes effective shall be divided, for purposes of finances and retirement allowances, into two groups, to wit: (1) all employees who have attained the age of fifty-one (51) years who shall be retired under the system at the proper time by direct appropriation from the General Fund of said city on one-half salary if said employee has been in service twenty (20) years or more, or on such percentage of twenty (20) years served times one-half his salary if he has served less than twenty (20) years, and in no event shall such retirement allowances exceed One Hundred ($100.00) Dollars per month, and (2) all employees who have not attained the age of fifty-one (51) years, who shall be retired strictly on an actuarial reserve plan as authorized under this Act. Provided, that said Board may provide for the benefits herein provided for by contracting for and taking out from time to time an insurance policy, or policies, and, if necessary, renewals or substitutions of the same should said Board deem it advisable.

Liquidation of system, provision for

Sec. 9. Every such ordinance passed by the governing body of the city shall provide a method by which said retirement system may be liquidated in the event said system shall become insolvent.

Act cumulative

Sec. 10. This Act shall not expunge, abrogate, rescind or invalidate any ordinance, law or act of the people of any such city heretofore passed, but all such ordinances, laws and acts of the people shall be cumulative and, after the passage of this Act, shall be in full force and effect. [Acts 1939, 46th Leg., p. 114.]

Section 11 of the act provided that if any provision, section or subsection of the Act should be declared unconstitutional or invalid by a court of competent jurisdiction, such decision should not invalidate the remaining sections and subsections of the Act. Section 12 of the act of 1939 declared an emergency and provided that the act should take effect from and after its passage.

Art. 6236. Disability pensions.—Whenever any municipal employee of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly wages received by him as a municipal employee at the time he became so disabled, to be paid in regular monthly installments. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6237. Death benefits, widow, etc.—In case of the death before or after retirement of any municipal employee of any city or town, resulting from disease contracted, or injury received while in the line of duty, or from any other cause through no fault of his own, and who at the time of his death or retirement was a contributor to said fund, leaving a widow or child or children under sixteen years of age, the widow shall be entitled to receive from said fund an amount not exceeding one-fourth of the monthly wages received by such member immediately preceding his death, and the children of said deceased under sixteen years of age shall receive in the aggregate one-fourth of such monthly wages to be equally divided between them. When any child shall reach sixteen years of age, then such child shall no longer participate in the division of such wages of said deceased, but the same shall be paid to his remaining children, if any, under sixteen years of age, in equal parts, until they respectively become sixteen years of age. In no case shall the amount paid to any one family exceed the amount of one-half of the wages earned by the deceased immediately prior to the time of his death. Upon the re-marriage of any widow or the marriage of any child granted such pension, such pension shall cease. No widow or child of any such member resulting from any marriage contract subsequent to the date of retirement of said member shall be entitled to a pension under this law. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6238. Death benefits, father, etc.—If any municipal employee dies from injuries received or disease contracted while in line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother or sister, wholly dependent upon said person for support, such dependent father, mother, brother and sister shall be entitled to receive in the aggregate one-half of the wages earned by said deceased immediately prior to his death, to be equally divided between those who are wholly dependent on said deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them, and as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to said matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6239. Investigations.—The board shall consider all cases for the retirement and pension of municipal employees rendered necessary or expedient under the provisions of this law, and all applications for pensions by widows and children and of dependent relatives, and the said trustees shall give written notice to [1] persons asking a pension to appear before said board and offer such sworn evidence as he or they may desire. Any person who is a municipal employee and who is a contributor to said fund may appear either in person or by attorney and contest the application for participation in said fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The president or chairman of said board shall have authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this law. Such process for witness shall be served by any municipal employee and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as

in any judicial proceeding. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

[1] So in enrolled bill. Session Laws read "of".

Art. 6240. Medical examination.—Said board may cause any person receiving any pension under this law, who has served less than twenty years, to appear and undergo a medical examination, as a result of which the board shall determine whether the relief in said case shall be continued, increased, decreased or discontinued. If any person receiving relief under the provisions of this law, after due notice, fails to appear and undergo such examination, the board may reduce or entirely discontinue such relief. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6241. Who are members.—All municipal employees and superintendents in the employ of any such city or town, who have filed their application for participation in said fund, and have contributed a portion of their salary, are hereby declared municipal employees of such city or town, and they and their beneficiaries shall have the same rights and privileges as are herein granted to other members. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6242. Use of public funds.—No funds shall be paid out of the public treasury of such incorporated city or town, in carrying out any of the provisions of this law, except on a majority vote of the voters of such city or town. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6243. Awards exempt.—No amount awarded to any person under the provisions of this law shall be liable for the debts of any person; shall not be assignable and shall be exempt from garnishment or other legal process. [Acts 1919, p. 10; Acts 1933, 43rd Leg., p. 206, ch. 94.]

Art. 6243a. Pensions for firemen and policemen in cities of 293,000 to 375,000.

Board of trustees

Sec. 1. In all incorporated cities and towns containing more than two hundred ninety-three thousand (293,000) inhabitants and less than three hundred seventy-five thousand (375,000) inhabitants according to the last preceding, or any future, Federal Census, having a fully or partially paid Fire and Police Department, there shall be and there is hereby created a Board to consist of seven (7) members, as follows: The Mayor, two (2) Aldermen, Councilmen or Commissioners, each to serve on this Board for the term of office to which they were elected, and two (2) active firemen who shall be selected by the majority vote of the members of the Fire Department, which two (2) members shall be appointed by the governing body of the said city; one (1) for a term of two (2) years and the other for a term of four (4) years; and two (2) active Policemen to be selected by the majority vote of the members of the Police Department, which two (2) members are also to be appointed by the governing body of the said city; one (1) for a term of two (2) years and the other for a term of four (4) years; all said members from the Fire and Police Department shall be elected by the contributors to the Fund, as herein provided, and shall serve until their successors are elected and qualified; and their successors shall be appointed to serve for a term of four (4) years. The said appointees and their successors shall constitute the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators' Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof. The Board shall be known as the Board of Firemen, Policemen and Fire Alarm Operators' Pension Fund Trustees of ———— Texas. A Board, as herein provided, shall be selected upon the enactment of this Act and shall hold its office until the next general election in such city for municipal officers, at which time a Permanent Board shall be selected, as herein provided. The said Board shall organize by choosing one (1) member as Chairman, and by appointing a Secretary, which Board shall have charge of and administer said Fund, and shall order payments therefrom in pursuance of the provisions of this Act. It shall report annually to the governing body of such town or city, the condition of the said Fund and the receipts and disbursements on account of same, with a complete list of the beneficiaries of said Fund, and the amounts paid them. The Board shall have the power and authority, by a majority vote, to reduce the percentages stipulated in any Section or Subsection of this Act which deals with disabilities or with awards granted to beneficiaries. The reduction shall be based upon the degrees of disability and circumstances surrounding the case. The Board shall have the complete authority and power to administer all of the provisions of this Act and any implied powers under this Act.

Membership in

Sec. 2. Each fully paid Fireman, Policeman and Fire Alarm Operator, in the employ of such city or town, who desires himself or his beneficiaries to participate in said Fund, shall file a written statement with the City Clerk, or Secretary, of his desire to participate in said Fund, and authorize said city or town to deduct not less than one (1%) per cent nor more than three (3%) per cent of his wages each month to form a part of the Fund known as The Firemen, Policemen and Fire Alarm Operators' Fund.

Payments of funds

Sec. 3. There shall be deducted for such Fund, from the wages of each Fireman, Policeman and Fire Alarm Operator in the employment of the said city or town, upon a vote of the majority of the members of the said Board of Trustees described in Section 1 of this Act, not less than one (1%) per cent nor more than three (3%) per cent of the wages earned by such employee when he has filed application therefor. Every contributor to said Fund shall be required to pay into the Fund on the base pay of a private and no more. Any donations made to said Fund and rewards received by any members of either of the Departments and all funds received from any source for such Fund, shall be deposited in like manner to such Fund.

Conduct of meetings

Sec. 4. The Board shall hold regular monthly meetings and other meetings upon call of its Chairman. It shall issue orders, signed by the Chairman and Secretary, to the persons entitled thereto of the amounts of money ordered paid to such persons from such Fund by said Board which order shall state for what purposes such payment is to be made. It shall keep a record of the proceedings, which record shall be of public record; it shall at each monthly meeting send to the City Treasury a written list of persons entitled to the payment from the Fund, stating the amount of such payment and for what granted, which list shall be certified and signed by the Chairman and Secretary of such Board attested under oath. The Treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as The Record Firemen, Policemen and Fire Alarm Operators' Pension Fund Board, of ————, Texas, and the said Board shall direct payment of the amounts herein to the persons entitled thereto out of said Fund. No money of said Fund shall be disbursed for any purpose without a majority vote of the Board, which shall be a "no" and "yes" vote entered upon the proceedings of the Board.

Custody of fund

Sec. 5. The Treasurer of said city or town shall be Ex-officio Treasurer of said Fund. All money for

said Fund shall be paid over to and received by the Treasurer for the use of said Fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town Treasurer, but he shall receive no compensation therefor.

Who may share in fund; war veterans, back payments by

Sec. 6. Any person who, at the establishment of said fund, or thereafter, shall have been duly appointed and enrolled in the Fire Department, Police Department, or Fire Alarm Operators' Department of any such city or town, and who has signed an application for participation in said fund, and has allowed deductions from his salary under any former law and still in good standing, and who has filed written application within thirty (30) days after the organization of such Board, or who shall file his application within sixty (60) days after becoming an active member of such Departments, and after he shall have served the usual probationary period, if any, and who shall have allowed such deductions from his salary; and in addition to the membership provided herein, any person heretofore duly appointed or enrolled in the Fire Department, Police Department, or Fire Alarm Operators' Department of any such city or town who is not now a member of the pension fund, may file his application with the Board within sixty (60) days after this Act becomes effective and apply for participation therein; provided, however, that such applicant shall pass a physical examination of the same character that is required for original admission into the respective Department in which he serves, and provided, that he shall pay into such fund a sum of money equal to the amount of salary deductions he would have paid had he joined immediately upon becoming eligible to participate in the benefits of said fund; as well as the beneficiaries hereinafter named shall be entitled to participate in said fund.

When any incorporated city containing the number of inhabitants stated in Section 1 of Chapter 33, Acts of the Regular Session of the 47th Legislature,[1] is consolidated under one government with any other municipality which has maintained a fully paid Fire and Police Department, all permanent policemen and firemen duly appointed or enrolled in the Fire Department or Police Department of the city or town surrendering its corporate existence and who are thereafter duly and lawfully appointed, enrolled or transferred to the respective departments of the city retaining its corporate existence, shall be entitled to membership in the fund, and the benefits thereof, upon compliance with the requirements of this Act which provides the exclusive procedure for obtaining and maturing any rights and benefits under Chapter 33, Acts of 1941. Written application for participation must be filed with the Board within sixty (60) days after becoming a member of either of such Departments of said city, and in addition shall pass a physical examination of the same character that is required for original admission into the respective departments in which he subsequently serves, and provided he shall pay into such fund within a year a sum of money equal to the salary deductions he would have paid had he been eligible to membership upon becoming a policeman or fireman in any other city or town, and shall also allow the deductions from his current salary as therein provided. The benefits of this fund accruing to such policemen or firemen shall be all of the benefits accruing to other policemen or firemen generally under the provisions of the original Act of which this is an amendment, and accruing to his years of service, the time he was legally and regularly employed as a policeman or fireman in such other city or town. No policeman or fireman coming under the applicable provisions of this section shall be entitled to the full benefits of this Act until all of the money herein required to be paid has been in fact paid to the custodian of the fund. The custodian of the fund shall certify to the governing body of the city the fact of compliance with this section, and the said governing body shall appropriate to said pension fund from any available funds a sum of money equal to the contributions it would have made had such policeman or fireman been originally employed by the consolidated city retaining its corporate existence. The provisions of this Act shall never be construed as permitting a policeman or fireman to be a member of more than one pension fund or to again become a contributing member of the pension fund where he is now, either for himself or his heirs receiving any payments from said fund by reason of any service with the City of Dallas in its Police and Fire Departments.

Any person who at the time of the declaration of an emergency by the President of the United States on November 20, 1940, to the official termination of hostilities by the Proclamation of the President of the United States on December 31, 1946, was a member of the armed service of the United States in any of its branches, including the Merchant Marine; and who, at the time of entering the said armed service, was a member of the Fire Department, Police Department, or Fire Alarm Operators' Department of a city or town included within the provisions of this Act; and who was at the time of entering the service, was entitled to the benefits provided by the Policemen and Firemen's Pension Fund; and who, since being released or discharged from said armed service of the United States, has returned to his duty and has become and is now a member of the Fire Department, Police Department, or Fire Alarm Operators' Department of such a city or town; may make the payments into said pension fund that he would have paid or been required to pay had he remained in the said Fire Department, Police Department or Fire Alarm Operators' Department, without interest, within a period of one (1) year from the effective date of this Act; he shall be entitled to each and every benefit of the said Firemen and Policemen and Fire Alarm Operators' Pension Fund, and his service shall be computed as continuous for the purpose of his benefits of longevity and retirement; and for all other purposes provided in the Policemen and Firemen's Pension Fund Act for those members of said Police, Fire and Fire Alarm Operators who remained continuously in that service. [As amended Acts 1945, 49th Leg., p. 62, ch. 43, § 1; Acts 1947, 50th Leg., p. 211, ch. 120, § 1.]

[1] Section 1 of this article.

Section 2 of the Act of 1947 provided that:

It was the purpose of the Act to give such servicemen the same benefits upon the payment of the sums required under the Act that he would have had, had he remained uninterruptedly and continuously in the said Fire Department, Police Department or Fire Alarm Operators' Department of such city or town.

Section 3 of the Act of 1947 provided that partial invalidity should not affect the remaining parts.

Retirement pension

Sec. 7. Where any member of said departments shall have contributed a portion of his salary as provided herein, and shall have served twenty (20) years in either of said departments, he shall be issued a certificate of retirement, which said certificate shall thereafter be incontestable. The issuance of such certificate shall be mandatory upon the Board; provided, however, that when said member reaches the age of fifty (50) years he may, after making application, be retired. No person to whom such certificate shall have been issued who has not reached the age of fifty (50) years shall be entitled to receive any retirement benefits until he reaches the age of fifty (50) years, and then upon his application. If any such member shall voluntarily or involuntarily leave the service of the City after he has received such certificate and

before he reaches the age of fifty (50) years, he shall not be entitled to participate in the benefits of this Act until he is fifty (50) years of age; provided, however, that if any such member voluntarily or involuntarily leaves the service of the City and thereafter becomes physically disabled through no fault of his own before he reaches the age of fifty (50) years, he shall be entitled to apply for, and the Board may grant to him, a disability pension in accordance with this Act, which said pension shall become a retirement pension subject to the provisions of this Act upon his reaching the age of fifty (50) years. In the event such member so retiring, voluntarily or involuntarily, after he has such certificate and before he reaches the age of fifty (50) years, shall die, then his widow, or children, or other dependents named in this Act, if any, shall be entitled to share in the benefits of this Act. A member retiring under the provisions of this Act shall receive one-half (½) of the salary received by him at the time of his retirement; provided, however, that in no instance shall the monthly pension allowance awarded him be in excess of one-half (½) of the base pay of a private per month, plus one-half (½) of the service money granted to the member under any provision of any City Charter; which pension allowance shall be computed on the basis of the current payroll. This pension allowance, set out above based on the current payroll, shall be granted to the man going on the Pension Fund as well as the man already on the pension. Any member reaching the age of sixty-five (65) years and having served twenty (20) years in either of the Departments, and who has not then retired from such Departments, may be summoned before the Board for the purpose of determining whether or not he should be retired under the provisions of this Act.

Certificate of retirement

Sec. 8. When any member of the Fire Department, Police Department or Fire Alarm Operators' Department has been issued a Certificate of Retirement under the provisions of Section 7 of this Act, he shall be entitled, after having received said Certificate, to one-half (½) of the base pay of a private per month, plus one-half (½) of the service money granted to the member under any provision of any City Charter, which pension allowance shall be computed on the basis of the current pay roll. The pension allowance set out above, based on the current pay roll, shall be granted to the man going on the pension as well as the man already on the pension. The said Certificate shall further state that in case of death, or in case where he becomes permanently disabled, he shall be and his beneficiaries shall be entitled to the same awards and rights to participate in the provisions of this Act and any other Act heretofore or hereafter made, as well as any of the provisions of the City Charter heretofore or hereafter made, as he would have had before the said Board issued his Certificate of Retirement. The said Certificate shall be signed by the Mayor, or Mayor Pro Tem, or City Manager, if such City has a City Manager, and by the Chairman of the Pension Board of Firemen, Policemen and Fire Alarm Operators, and attested under the seal of the City by the City Secretary.

Disability pension in line of duty

Sec. 9. When any member of the Fire Department, Police Department, and Fire Alarm Operators' Department of the city or town, and who is contributing to said Fund, as herein provided, shall become so permanently disabled through injury or disease contracted in the line of duty as to incapacitate him from the performance of his duties, and shall make written application subject to medical examination for such injuries or disease, he shall be retired from the service and be entitled to receive from the said Fund one-half (½) of the base pay of a private per month, plus one-half (½) of the service money granted to the member under the provisions of any City Charter; which base pay of a private shall be computed on the basis of the current payroll. The pension allowance shall be granted to the man going on pension as well as to the man already on the pension at the time he became disabled or diseased, the same to be paid in monthly installments, which monthly installments shall in no instance exceed one-half (½) of the base pay of a private per month, plus one-half (½) of the service money granted to the member under the provisions of any City Charter. In no case shall a disability claim be acknowledged or award made hereunder until disability has been proven to be continuous and wholly incapacitated for a period of not less than ninety (90) days.

Death benefits of widow, etc.

Sec. 10. In case of the death before or after retirement of any member of the Fire, Police and Fire Alarm Operators' Departments of any city or town, from disease contracted or injury received while in line of duty, and who at the time of his death or retirement was a contributor to the said Fund, leaving a widow, child or children under seventeen (17) years of age, the widow and such child or children shall be entitled to receive from the said Fund an amount not to exceed one-half (½) of the base pay of a private per month, plus one-half (½) of the service money granted to members under the provision of any City Charter; one-half (½) of the widow's amount in the aggregate shall go to the children under seventeen (17) years of age, and balance one-half (½) for the widow. No child or any such member resulting from any marriage contract subsequent to the date of the retirement of said member, shall be entitled to a pension under this Act. In case there are no children, the widow shall receive one-fourth (¼) of the base pay of a private per month, plus one-fourth (¼) of the service money granted to members under the provisions of any City Charter. The one-fourth (¼) awarded to the children shall be paid by the Board to the widow, who shall equally and uniformly distribute the amount among the children. In no instance shall the amount received by the widow, child or children, exceed a pension allowance of one-half (½) of the base pay of a private per month, plus one-half (½) of the service money granted to members under any City Charter. Wherein the Board, after a thorough examination and by a majority vote in favor thereof, determines that the child or children are unable to and lack the proper discretion to handle said amount provided herein for them, shall designate and appoint said child's or children's natural guardian as custodian of said Fund. Where there is no parent and natural guardian living, the Board shall have the power and authority to designate a suitable person to receive and administer the said Fund; which said party shall receive, for such child or children under the age of seventeen (17) years, one-fourth (¼) of the base pay of a private, and one-half (½) of the service money granted to members under any City Charter, per month. The said party designated by the Board shall receive his authority and power according to established legal practice. When any child or children, who are beneficiaries under this Act, shall reach the age of seventeen (17) years, then such child or children shall no longer participate in the division of said wages of said deceased, but the same shall be paid to the remaining child or children, if any, under seventeen (17) years of age. In no case shall the amount paid to any one family exceed the amount of one-half (½) of the base pay of a private per month, plus one-half (½) of the service money granted to members under the provisions of any City Charter. Upon the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease. No widow, or

any such member, resulting from any marriage contract subsequent to the date of the retirement of said member, shall be entitled to a pension under this Act.

Death benefits to father and mother in line of duty

Sec. 11. If any member of the Fire, Police and Fire Alarm Operators' Department dies from injury received, or disease contracted, in line of duty, who was a contributor to said Fund and entitled to participation in said Fund himself, leaves no widow or child but leaves surviving him a dependent father and mother wholly dependent upon said person for support, such dependent father and mother shall be entitled to receive one-half (½) of the base pay of a private per month, plus one-half (½) of the service money granted to members under the provisions of any City Charter, to be equally divided between said father and mother, so long as they are wholly dependent. Where there is one dependent, either father or mother, the Board shall grant the surviving dependent one-fourth (¼) of the base pay of a private per month, plus one-half (½) of the service money granted to members under any provisions of any City Charter. The Board shall have authority to make a thorough investigation and from investigation determine the facts as to the dependency of the said parties and each of them, as to how long the same exists; and may, at any time, upon the request of any contributor to such Fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper; and the finding of said Board in regard to any matters, as well as to all pensions granted under this Act, shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustee shall have been set aside or revoked by a Court of competent jurisdiction.

Investigation

Sec. 12. The Board shall consider all cases for retirement and pension of the members of the Fire, Police and Fire Alarm Operators' Departments rendered necessary or expedient under the provisions of this Act; and all applications for pensions by widow, the children, and dependent relatives; and the said Trustees shall give notice to persons asking a pension to appear before said Board and offer such sworn evidence as he, or they, may desire. Any person who is a member of said Departments and who is a contributor to said Fund may appear either in person, or by attorney, and contest the application for participation in said Fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The Chairman of said Board shall have the authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this Act. Such process for witnesses shall be served by any member of the Police, Fire or Fire Alarm Operators' Department, and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as in any judicial proceeding.

There shall be appropriated out of the Pension Fund on the majority vote of the members of said Board, Three Hundred ($300.00) Dollars annually, which money shall be used at the instigation and approval of the Board for the defraying of traveling expenses of investigators used by the Board beyond the boundaries of any incorporated city which operates under this Act.

Medical examination

Sec. 13. Said Board may cause any person receiving any pension under the provisions of this Act, who has served less than twenty (20) years, to appear and undergo medical examination by either the Health Director or some reputable physician selected by the Board; as a result of which the Board shall determine whether the relief in said case shall be continued, increased, decreased, or discontinued. In making the findings the Board may change any percentages stipulated in any section or subsection of this bill, by reducing the same to one-twentieth (1/20) for each year served not to exceed one-half (½) the base pay of a private plus one-half (½) of the service money granted to the member under the provisions of any City Charter; if any person receiving relief under the provisions of this bill, after due notice, fails to appear and undergo such examination, the Board may reduce or entirely discontinue such relief.

Use of public funds

Sec. 14. No funds shall be paid out of the public Treasury of any such incorporated city or town in carrying out any of the provisions of this Act, except by a majority vote of the voters of said city or town.

Retirement reserve fund

Sec. 15. At the end of the fiscal year all money paid into the Fund, as herein provided, that remains as a surplus over and above the orders for payments as issued by the Board, shall be paid into the Reserve Retirement Fund to accumulate at interest for the benefit of the Reserve Fund needs. All such funds as may accumulate in this special Retirement Reserve shall be invested at regular intervals, or at such times as the accumulations justify, in accordance with Article 5006 of the Revised Civil Statutes of Texas regarding the investment of funds of insurance companies. The Board shall have the power to make these investments for the sole benefit of this Retirement Reserve Fund. The investment shall remain in the custody of the Treasurer in the same manner as provided for the custody of the funds. The Board shall have the power and authority, by a majority vote of its members, to disburse the monies accumulated as the Retirement needs arise.

Awards exempt

Sec. 16. No amount awarded to any person under the provisions of this Act shall be liable for the debts of any such person; shall not be assignable, and shall be exempt from garnishment or other legal process. [Acts 1933, 43rd Leg., 1st C.S., p. 4, § 1; Acts 1935, 44th Leg., 1st C.S., p. 1565, ch. 387, § 1; Acts 1936, 44th Leg., 3rd C.S., p. 2109, ch. 510, §§ 1–6; Acts 1941, 47th Leg., p. 45, ch. 33, § 1.]

Saving clause

Sec. 17. This Act shall not expunge, abrogate, rescind or invalidate any ordinance, law or act of the people of any such city heretofore passed by [1] all such ordinances, laws and acts of the people shall be cumulative and after the passage of this bill shall be in full force and effect.

If any provision, section or subsection of this Act is declared unconstitutional by a Court of competent jurisdiction it shall not invalidate the remaining sections and subsections of this Act. [Acts 1933, 43rd Leg., 1st C.S., p. 4, ch. 4; Acts 1935, 44th Leg., 1st C.S., p. 1565, ch. 387, § 1.]

[1] So in enrolled bill. Should probably read "but".

The title of Act 1935 recites Article 6243a for amendment as amended by Act 1933, whereas the act of 1933 was the original act.

Section 2 of the Act of 1945 provided that partial invalidity should not affect the remaining parts.

Section 2 of the amendatory Act of 1941 repealed all conflicting laws or parts of laws.

Section 3 of the Act of 1941 provided that partial invalidity should not affect the remaining parts of the Act.

Art. 6243b. Firemen and policemen pension fund in cities of over 100,000.

Board of trustees

Sec. 1. In all incorporated cities and towns containing more than one hundred thousand (100,000) inhabit-

ants and less than one hundred eighty-five thousand (185,000) inhabitants, according to the last preceding Federal Census, having a fully or partially paid fire department or police department, the mayor, two (2) aldermen or commissioners, two (2) citizens of said city or town to be designated by the mayor, the chief of police, the chief of the fire department and their successors, shall constitute a board of trustees of the Firemen, Policemen and Fire Alarm Operators' Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. The board shall be known as the Board of Firemen, Policemen, and Fire Alarm Operators' Pension Fund, Trustees of ———, Texas. The board shall hold its office until the next General Election in such city for municipal officers. Said board shall organize by choosing one member as Chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of the beneficiaries of said fund and the amounts paid them.

Membership in

Sec. 2. Each fully paid fireman, policeman and fire alarm operator, and other persons herein designated as members of either of said departments, in the employment of such city or town, who desires himself or his beneficiaries, to participate in said Fund, shall file a written statement with the City Clerk of his desire to participate in said Fund, and authorize said city or town to deduct a sum of not less than one per cent nor in excess of three (3) per cent of his wages each month to form a part of the Fund known as the fireman, policeman and fire alarm operators' Pension Fund. The amount to be deducted from his wages to be determined by the Board of Trustees provided for in Section 1, of Chapter 101, of the General and Special Laws of the Forty-third Legislature, First Called Session, within the minimum and maximum deductions herein provided. [As amended Acts 1935, 44th Leg., p. 811, ch. 346, § 1.]

Payments to fund

Sec. 3. There shall be deducted for such Fund from the wages of each fireman, policeman and fire alarm operator, and other persons herein designated as members of either of said departments, a sum of not less than one per cent nor in excess of three (3) per cent of the wages earned by such employees, when they have filed application therefor; the amount of wages so deducted to be determined as provided in Section 2, of Chapter 101, of the General and Special Laws of the Forty-third Legislature, First Called Session, as amended by this Act. Any donations made to such Fund and rewards received by any member of either of said departments, and all Funds received from any source for such Fund shall be deposited in like manner to the credit of such Fund. [As amended Acts 1935, 44th Leg., p. 811, ch. 346, § 2.]

Conduct of meetings

Sec. 4. The board shall hold regular monthly meetings and other meetings upon call of its chairman. It shall issue orders signed by the president or chairman and secretary to the persons entitled thereto, of the amount of money ordered paid to such persons from such fund by said board which order shall state for what purpose such payment is to be made; it shall keep a record of its proceedings, which record shall be a public record; it shall at each monthly meeting send to the city treasurer a written list of persons entitled to payment from the fund, stating the amount of such payment, and for what granted, which list shall be certified to and signed by the president or chairman and secretary of such board, attested under oath. The treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the "Record Firemen, Policemen and Fire Alarm Operators' Pension Fund Board," of ———, Texas, and the said board shall direct payments of the amounts named therein to the persons entitled thereto out of said fund. No money of said fund shall be disbursed for any purpose without a vote of a majority of the board, which shall be a no and yes vote entered upon the proceedings of the board.

Custody of fund

Sec. 5. The Treasurer of said city or town shall be ex-officio treasurer of said fund. All money for said fund shall be paid over to and received by the treasurer for the use of said fund, and the duties thus imposed upon such treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town treasurer, but he shall receive no compensation therefor.

Who may share in fund

Sec. 6. Any person who at the establishment of said fund, or thereafter shall have been duly appointed and enrolled in the fire department, police department or fire alarm operators' department of any such city or town, to which application is made for participation in said fund by such person and who has filed his written application within thirty (30) days after the organization of such board, or who shall file his application within thirty (30) days after becoming a member of either of such departments and who shall have allowed said deductions from his salary, as well as the beneficiaries hereinafter named, shall be entitled to participate in said fund.

Retirement pensions

Sec. 7. Whenever any member of said departments who shall have contributed a portion of his salary, as provided herein, shall have served twenty-five (25) years or more in either of said departments and shall have attained the age of fifty (50) years, he may be entitled to be retired from said service upon application, and shall, if the Board approves, be entitled to be paid from said Fund a monthly pension of one-half (½) of the salary received by him at the time of his retirement. [As amended Acts 1935, 44th Leg., p. 811, ch. 346, § 3.]

Disability pensions

Sec. 8. Whenever any member of the fire department, police department or fire alarm operators' department of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly wages received by him as a member of either of said departments, at the time he became so disabled, to be paid in regular monthly installments.

Death benefits, widows, etc.

Sec. 9. In the case of the death before or after retirement of any member of the fire department, police department, or fire alarm operators' department of any city or town resulting from disease contracted or injury received while in the line of duty or from any other cause through no fault of his own and who at the time of his death or retirement was a contributor to said Fund, leaving a widow and no children, the widow shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly wage received by such member immediately

preceding his retirement, and, if not retired before death, one-third of such monthly wages received by such member immediately preceding his death; and, if at the time of the death of such contributor, under the circumstances and conditions hereinabove set forth, such contributor leaves a child or children under sixteen (16) years of age and the wife of such contributor is dead or divorced from such contributor, the child or children under sixteen (16) years of age shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly wage received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly wage received by such member immediately preceding his death, said sum so paid to be equally divided among said children under sixteen (16) years of age, if more than one; and if at the time of the death of such contributor, under the conditions hereinabove set forth, such contributor leaves a widow and a child or children under sixteen (16) years of age, the widow shall be entitled to receive monthly from said Fund (for the joint benefit of herself and such child or children) an amount not exceeding one-half of the monthly wage received by such member immediately preceding his retirement, and if not retired before death, one-half of such monthly wage received by such member immediately preceding his death, said payments to be made until such child or all of said children, if more than one, as the case may be, shall reach sixteen (16) years of age, and after said child or all of said children, as the case may be, have reached the age of sixteen (16) years, then the widow shall be entitled to receive monthly from said Fund (for her benefit) an amount not exceeding one-third of the monthly wage received by such member immediately preceding his retirement, and if not retired before death, one-third of such monthly wage received by such member immediately preceding his death. In no case shall the amount paid to any one family exceed monthly the amount of one-half of the monthly wage earned by the deceased immediately prior to the time of his retirement, or, if not retired, prior to the time of his death. On the remarriage of any widow, such pension paid to her for her benefit shall cease and in the event that there are child or children under sixteen (16) years of age at the time of said remarriage, one-third of the monthly wage received by such member immediately preceding his retirement, and if not retired before death, immediately preceding his death, shall be paid monthly to the widow for the sole benefit of the child or children under the age of sixteen (16) years; provided, however, that the Pension Board, if it finds that said payments to the widow are not being used for the benefit of said child or children, may order said monthly benefits paid to said child or children instead of to said widow who has remarried. Where there is more than one child of such contributor, the benefits herein provided for shall be equally divided among the children, and upon the marriage or death of any child receiving such pension, or upon any child receiving such pension reaching sixteen (16) years of age, such pension payment for the benefit of said child shall cease, and if there remains a child or children under sixteen (16) years of age, the share of said child so married or dead or reaching sixteen (16) years of age, shall be paid for the benefit of the remaining child or children under sixteen (16) years of age. In the event that a contributor leaves a widow and child or children under sixteen (16) years of age who are not the children of said widow, the Pension Board may, in its discretion, either pay monthly to the widow for the benefit of herself and said child or children, an amount not exceeding one-half of the monthly wage received by such member immediately preceding his retirement, or immediately preceding his death, if not retired before death, as hereinabove provided, or said Board may order one-fourth of said monthly wage received by such member paid to the widow and one-fourth of said monthly wage paid to said child or children. No widow or child of any such member resulting from any marriage contracted subsequent to the date of retirement of said member shall be entitled to a pension under this law; provided, however, that the provisions of this Section shall not be construed so as to change any pension now being paid any pensioner under the provisions of Chapter 101, of the General and Special Laws of the Forty-third Legislature, First Called Session, and as amended by Chapter 346 of the General and Special Laws of the Regular Session of the Forty-fourth Legislature. [As amended Acts 1935, 44th Leg., p. 881, ch. 346, § 4; Acts 1937, 45th Leg., p. 616, ch. 308, § 1.]

Death benefits, father, etc.

Sec. 10. If any member of the fire department, police department, or fire alarm operators' department dies from injuries received or disease contracted while in the line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother, or sister, wholly dependent upon said person for support, such dependent father, mother, sister and brother shall be entitled to receive in the aggregate one-half of the wages earned by said deceased immediately prior to his death, to be equally divided between those who are wholly dependent on said deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them, as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to such matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked.

Investigations

Sec. 11. The board shall consider all cases for the retirement and pension of the members of the fire, police and fire alarm operators' department rendered necessary or expedient under the provisions of this law, and all applications for pensions by widows and the children and of dependent relatives, and the said trustees shall give written notice to persons asking a pension to appear before said board and offer such sworn evidence as he or they may desire. Any person who is a member of either of said departments and who is a contributor to said fund may appear either in person or by attorney and contest the application for participation in said fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The president or chairman of said board shall have authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this law. Such process for witness shall be served by any member of the police, fire and fire alarm operators' department and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as in any judicial proceeding.

Medical examination

Sec. 12. Said board may cause any person receiving any pension under the provisions of this law, who has served less than twenty (20) years, to appear and undergo a medical examination, as a result of which the board shall determine whether the relief in said case shall be continued, increased, decreased or discontinued. If any person receiving relief under the pro-

visions of this law, after due notice, fails to appear and undergo such examination, the board may reduce or entirely discontinue such relief.

Who are members

Sec. 13. All fire, police and fire alarm operators and superintendents in the employ of any such city or town, who have filed their application for participation in said fund, and have contributed a portion of their salary, as provided for other members of such departments, are hereby declared to be members of the fire, police and fire alarm operators' department of such city or town, and they and their beneficiaries shall have the same rights and privileges as are herein granted to other members of such departments of such cities.

Use of public funds

Sec. 14. No funds shall be paid out of the public treasury of any such incorporated city or town, in carrying out any of the provisions of this law, except on a majority vote of the voters of such city or town.

Awards exempt

Sec. 15. No amount awarded to any person under the provisions of this law shall be liable for the debts of any such person; shall not be assignable and shall be exempt from garnishment or other legal process. [Acts 1933, 43rd Leg., 1st C.S., p. 279, ch. 101.]

Separation of Firemen's, Policemen's, and Fire Alarm Operator's Pension Funds in cities of 100,000 to 185,000 population

Sec. 16. In any such city or town having a population of more than one hundred thousand (100,000) inhabitants and less than one hundred and eighty-five thousand (185,000) inhabitants, according to the last preceding Federal Census, subject to and operating under the Pension Law, applicable to such cities or towns in which the Fire Alarm Operators form a part of and are under the direction of the Fire Department, the governing Body and Board of Trustees may, if it is deemed advisable and a majority of the members of said Fire Department or Police Department vote therefor, authorize and provide for the maintenance and administration of Pension Funds for each Department, said Funds to be the Policemen's Division of the Firemen, Policemen and Fire Alarm Operators' Pension Fund, and the Firemen's Division of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, and to be kept independent of and apart from each other, and said Funds of each Department to consist of contributions by members of said Department, donations thereto and funds received from any source by said Department, as provided in Section 3 and Section 14 of Chapter 101, Page 279, of the General and Special Laws of the First Called Session of the Forty-third Legislature, being House Bill No. 31, as amended by Chapter 346, Page 811, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature, being House Bill No. 991, and, as amended by House Bill No. 772 of the General and Special Laws of the Regular Session of the Forty-fifth Legislature, and the provisions contained in Sections 1, through 15, of Chapter 101, Page 279, of the General and Special Laws of the First Called Session of the Forty-third Legislature, being House Bill No. 31, as amended by Chapter 346, Page 811, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature, being House Bill No. 991, and, as amended by House Bill No. 772 of the General and Special Laws of the Regular Session of the Forty-fifth Legislature, shall apply to the management, control, and disposition of each of said Funds, the purpose and effect of said division of said Firemen, Policemen, and Fire Alarm Operators' Pension Fund into a Firemen's Division of said Pension Fund, and a Policemen's Division of said Pension Fund being to maintain the membership of and the payments into each Department separate, and to limit the rights of the members of each Department and their beneficiaries to the Pension Fund of their Department, and after the creation and establishment of a Firemen's Division of said Pension Fund and a Policemen's Division of said Pension Fund, the rights of Firemen, including Fire Alarm Operators and their beneficiaries, shall be limited to the Firemen's Division of said Pension Fund, and the rights of Policemen and their beneficiaries shall be limited to the Policemen's Division of said Pension Fund. After a separation has been voted and approved, as above provided, the Board of Trustees shall apportion the existing Firemen, Policemen, and Fire Alarm Operators' Pension Fund between the two (2) Funds on the basis of contributions made by the members of the respective Departments and donations or payments to said Departments, and thereafter all payments to members or their beneficiaries of benefits, now accrued or hereafter accruing, shall be made from the Fund of their Department. Where a separation of funds is had, as hereinabove provided, the governing body of any city or town whose voters have authorized the payment of funds from the public treasury into the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, is hereby authorized to pay to the Board of Trustees of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, for the use of the Pension Fund of each division above provided for, sums not to exceed in total the amount voted by the people to be paid into the single fund. [Added Acts 1937, 45th Leg., p. 1335, ch. 495, § 1.]

Validation of proceedings for separation of pension funds

Sec. 17. All Acts and proceedings had and done by the governing body and Board of Trustees of the Pension Fund of any such city or town, subject to the above provisions, in creating, establishing, maintaining, and administering separate Pension Funds for Firemen, including Fire Alarm Operators and Policemen, are hereby legalized, approved, and validated, as well as the division by said governing body and Board of Trustees of any public funds voted by the voters of said city or town for the Firemen, Policemen, and Fire Alarm Operators' Pension Fund between said two (2) Funds, and said governing body and Board of Trustees shall continue the separate maintenance and administration of said Funds in the manner hereinabove provided. [Added Acts 1937, 45th Leg., p. 1335, ch. 495, § 2.]

Art. 6243c. Validating elections for pensions in cities of over 10,000.

Election and proceedings validated

Sec. 1. That where a majority of the resident taxpayers being qualified electors of any city or town in this State having a population in excess of ten thousand (10,000) inhabitants, having voted at an election held in such city or town in favor of the expending of public funds by such city or town in carrying out the provisions of Chapter 10, General Laws of the 36th Legislature, Regular Session,[1] such election and all acts and proceedings had and done in connection therewith by the governing body of such city or town are hereby legalized, approved and validated and it is hereby declared that no further election shall be necessary for the expenditure of public funds to carry out the provisions of H. B. No. 30 [2] and H. B. 31,[3] of the First Called Session of the 43rd Legislature, but any election held under the provisions of Chapter 10, General Acts of the 36th Legislature, Regular Session, shall be and is hereby deemed to be sufficient to carry out the provisions of House Bill 30 and House Bill 31, of the First Called Session of the 43rd Legislature.

[1] Articles 6229–6243, ante.
[2] Article 6243a, ante.
[3] Article 6243b, ante.

Validation of elections under other acts

Sec. 2. Any other elections held in conformity with the provisions of Chapter 10, General Laws of the 36th Legislature, Regular Session,[1] and adopting the provisions of said chapter are hereby legalized, approved and validated. Any funds now on hand and belonging to the Firemen and Policemen Fund shall remain a part of said fund and all warrants and vouchers heretofore issued are hereby legalized, approved and validated.

[1] Articles 6229–6243, ante.

Validation of pensions paid

Sec. 3. All pensions heretofore paid by any city under the terms of Chapter 10, General Laws of the Thirty-sixth Legislature, Regular Session,[1] including all pensions paid subsequent to the enactment of Senate Bill 139, Chapter 94, Acts of the 43rd Legislature, Regular Session,[1] making said Act applicable only to certain cities and up to November 1, 1933, are hereby in all things expressly validated and legalized, and all persons to whom such pensions have been paid shall hereafter be deemed to be proper pensioners under the terms of H. B. No. 30 [2] and H. B. 31,[3] Acts of the First Called Session of the 43rd Legislature.

[1] Articles 6229–6243, ante.
[2] So in enrolled bill. Session Laws omit figure "30". Article 6243a, ante.
[3] Article 6243b, ante.

Pension rolls validated

Sec. 4. All pensioners added to the pension rolls as pensioners under the terms of Chapter 10, General Laws of the Thirty-sixth Legislature, Regular Session,[1] but subsequent to the enactment of Senate Bill No. 139, Chapter 94, Acts of the 43rd Legislature, Regular Session,[1] making said Act applicable only to certain cities, shall hereafter be deemed proper and legal pensioners on the rolls of all cities wherein a pension system has been established under the terms of H. B. No. 30 [2] and H. B. 31,[3] Acts of the First Called Session of the 43rd Legislature.

[1] Articles 6229–6243, ante.
[2] Article 6243a, ante.
[3] Article 6243b, ante.

Election in certain cities unnecessary

Sec. 5. All cities included in the population brackets of H. B. No. 30 [1] and H. B. 31,[2] Acts of the First Called Session of the 43rd Legislature, shall hereafter from the effective date of this Act be deemed to have a pension system without the necessity of any election or any action on the part of the City Council, and such City Council or Governing Board shall immediately provide adequate funds for the payment of pensions under the terms of H. B. No. 30 and H. B. 31 and the terms of this Act. [Acts 1933, 43rd Leg., 1st C.S., p. 89, ch. 30.]

[1] Article 6243a, ante.
[2] Article 6243b, ante.

Art. 6243d. Pensions in cities of 290,000 or over.—Sec. 1. In all incorporated cities and towns having a population of two hundred and ninety thousand (290,000) or more, according to the preceding Federal Census, the governing body of such city or town is hereby authorized to formulate and devise a pension plan for the benefit of all employees in the employment of such city or town. Before said pension plan as devised and formulated by the governing body of such city or town shall become effective, said entire pension plan shall be submitted in ordinance form by said governing body to the qualified electors of such city or town and be approved by said qualified electors at an election duly held. Said ordinance containing said pension plan when submitted to the qualified electors for approval, shall be so worded as to authorize the governing body of such city or town to either appropriate yearly out of the general revenue of such city or town a sufficient sum to carry out said pension plan, or to levy yearly a general ad valorem tax sufficient to provide for said pension plan, said sum to be appropriated yearly or to be raised by taxation, to be in addition to whatever sum, if any, to be contributed by the employees of such city or town to the pension fund of said pension plan.

Sec. 2. Any pension plan devised or formulated by any such city or town which provides that all employees participating therein shall contribute a portion of their weekly, monthly or yearly salary, shall not be compulsory for the employees of such city or town, but shall apply only to those employees of such city or town who signify their willingness in writing to participate therein, and to have deducted from their weekly, monthly or yearly salaries, the sum as specified in said pension plan.

Sec. 3. This Act shall not repeal Articles 6229 to 6243, both numbers inclusive, of the Revised Civil Statutes of Texas, 1925, as amended by Acts of 1933, Forty-third Legislature, page 206, Chapter 94, but the provisions of said Articles 6229 to 6243, as amended, shall not apply whenever a city or town as provided in this Act shall formulate, devise and adopt a pension plan according to the terms and provisions of this Act. [Acts 1935, 44th Leg., p. 728, ch. 317.]

Art. 6243d—1. Policemen's relief and retirement fund.

Creation of fund; definitions

Section 1. There is hereby created in all incorporated cities in this State having a population of two hundred and ninety thousand (290,000), or more, according to the preceding Federal Census, a fund to be known as the policemen's relief and retirement fund. Said fund shall be administered in each such city by a board to be known as the policemen's relief and retirement board.

The expression "pension fund," as used herein, shall mean the policemen's relief and retirement fund. The expression "pension board," as used in this Act, means the policemen's relief and retirement board of each such city. All members of the police department of any such city shall participate in said pension fund, and shall be subject to all of the provisions of this Act, save and except special officers, part-time officers, janitors, car washers, and cooks. With the exceptions just named, it is the intention hereof to include everyone who is designated by any such city as a member of said police department, regardless of the particular duty or duties performed by such person. The expressions "member" and "members," as used in this Act, mean members of any such police department who are entitled to participate in said pension fund as above set forth, that is, the entire personnel of any such police department, save and except special officers, part-time officers, janitors, car washers, and cooks, in each city.

Pension board

Sec. 2. Said pension board in each such city shall consist of one person to be appointed by the mayor and confirmed by the city council or governing body of such city, the city controller, or, if there be no city controller, then the person discharging the duties of the city controller in such city, and three (3) persons to be elected from the police department by the members. As soon as practicable after the effective date of this Act, said members of each such police department shall elect said three (3) members of said pension board, one to be elected until the next succeeding January 1st thereafter, and two (2) to be elected until the second January 1st following such election, and thereafter, as the terms expire, new members to said pension board shall be similarly elected to hold office until the second January 1st following their respective elections. In case of vacancies, new members shall be elected to serve the unexpired term. All persons elected to said pension board shall hold office until their successors are elected and quali-

fied. Any member shall be eligible to election to said pension board.

Said pension board shall annually elect a chairman, vice-chairman, and a secretary, from the members of said pension board. Each one so elected, shall serve until his successor is elected.

A meeting of said pension board may be called at any time by the chairman, secretary, or by any two (2) members of such pension board. Three (3) members of said pension board shall constitute a quorum for the transaction of business.

Each member of said pension board shall take an oath that he will well and faithfully perform the duties of a member of such pension board.

No moneys shall be paid out of the pension fund except upon an order by said pension board, duly entered in the minutes.

Treasurer of pension fund

Sec. 3. The city treasurer of any such city, or the person discharging the duties of the city treasurer, is hereby designated as the treasurer of the said pension fund for said city, and his official bond to said city shall operate to cover his position of treasurer of said pension fund. All moneys of every kind and character collected or to be collected for said fund, shall be paid over to said treasurer, and shall be administered and paid out only in accordance with the provisions of this Act.

Per capita contributions

Sec. 4. Commencing with the next calendar month, immediately following the effective date of this Act, per capita contributions of all such members of each such police department as participate in such fund, as aforesaid, shall be made to said fund. Said monthly per capita contribution shall be made as follows: The salary and future salary of each member participating in such fund is hereby reduced Three Dollars ($3) per month, but said Three Dollars ($3) per month shall be paid by such city into the said pension fund. No other money paid into said pension fund, however, shall be counted as a part of salary, under any law or ordinance fixing or pertaining to salaries of members, of any such police department.

Accumulated funds

Sec. 5. In all such cities where a general pension fund for city employees has been accumulated but has not been put into operation at the effective date of this Act, the governing body of each such city shall segregate from said fund, the proportion which the total number of members of the police department (eligible to said pension fund) bears to the entire number of all city employees, for whose benefit said fund was accumulated, and shall set aside such sum into the policemen's relief and retirement fund.

Assignments of salary to fund

Sec. 6. Any members who have or may have any back or past due salary due them, from any such city, may assign all or any portion of such back salary to said pension fund, and such assignments as have or may hereafter be executed by any such members, are hereby validated and shall be recognized by the governing body of any such city, and such sums, if any, shall be paid into the said pension fund.

Appropriations to fund out of general funds of city

Sec. 7. Any such city may make additional appropriations from time to time out of its general fund, or otherwise, into the said pension fund, and hereafter when any such city shall make any appropriations for pensions of city employees or place any money into any such account, the proportionate amount thereof shall be placed in the policemen's relief and retirement fund. Said pension fund may also be augmented as follows: By the giving of entertainments and benefit performances; by gifts or donations from any person, firm, or corporation; all rewards hereafter paid to or due individual members for, or on account of service rendered by them as members of the police department, shall be paid into such fund; and said pension fund shall also participate in funds otherwise provided or that shall hereafter be provided by law pertaining to police pensions of cities of the class herein provided for.

Investment of surplus funds

Sec. 8. Whenever, in the opinion of the said pension board, there is on hand in said pension fund, a surplus over and above a reasonably safe amount to take care of current demands upon such funds, such surplus, or so much thereof as in the judgment of the said pension board is deemed proper, may be invested in securities of the United States, the State of Texas, or of counties, school districts, or municipal corporations. No investment shall be made, however, which does not meet with the approval of the city controller, if any, of such city.

Benefits to begin not prior to January 1, 1942

Sec. 9. No benefits of any kind shall be paid out of said fund prior to January 1, 1942.

Pension rates

Sec. 10. From and after January 1, 1942, any member who shall have been a member of such police department for the period of twenty-five (25) years, and who shall have reached the age of fifty (50) years, shall be entitled to a retirement pension of Seventy-five Dollars ($75) per month for the rest of his life upon his retirement from said police department. Upon the completion of the said twenty-five (25) years of service, such pension board shall issue to him a certificate showing that he is entitled to said retirement pension, and thereafter, when such member retires from the police department, whether such retirement be voluntary or involuntary, such monthly payments shall forthwith begin, and continue for the remainder of said member's life. Provided, however, that payments shall not commence until such member is fifty (50) years of age, and further provided that members who are eligible for a pension but who continue in the department shall make their per capita contributions until they retire from the department.

In computing the twenty-five (25) years service required for retirement pension, interruption of less than one year out of service, shall be construed as continuous service and such period out of service shall not be deducted from the twenty-five (25) years, but if out for more than one year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years, no previous service prior to said time shall be counted.

Service with any such city in some other department, prior to January 1, 1939, shall be included in the twenty-five (25) years above provided for, but service after January 1, 1939, must be in the police department. The pension board may, within its discretion, provide for the payment of such retirement pension to a former member or members of the police department who have heretofore served for the twenty-five-year period and who have reached the age of fifty (50) years, and it is the intention hereof to include in the group of former members those who have heretofore been retired by any such city and who are drawing partial pay or compensation from such city.

Disability resulting from performance of duty

Sec. 11. If any member shall become totally or permanently disabled as a direct and proximate result of the performance of duties in the police department, said member shall be retired on a pension of Seventy-five Dollars ($75) per month.

By total and permanent disability is meant such disability as permanently incapacitates a member from performing the usual and customary duties of a police officer.

Before any retirement on disability pension is made, the pension board shall require such medical examination and such other evidence as it may see fit to establish such total and permanent disability, as above provided.

When any member has been retired for total and permanent disability, he shall be subject at all times to re-examination by the pension board and shall submit himself to such further examination as the pension board may require. If any member shall refuse to submit himself to any such examination, the pension board may within its discretion, order said payment stopped. If a member who has been retired under the provision of this Section, should thereafter recover so that in the opinion of the pension board, he is able to perform the usual and customary duties of a police officer, and such member is reinstated or tendered reinstatement in the police department, then the pension board shall order such payments stopped.

Said pension board may, at its discretion, retire on said permanent and total disability pension, those members of said police department who have heretofore become totally and permanently disabled, as that term is above defined.

Death resulting from performance of duty

Sec. 12. Should any such member die, as a direct and proximate result of injuries received or sickness incurred in line of duty in said police department, the pension board shall order paid to the beneficiaries hereinafter designated, the sum of Seventy-five Dollars ($75) per month for a period of ten (10) years. Such beneficiaries shall be as follows: The surviving wife, surviving children under the age of sixteen (16) years, and the dependent parent or parents, if any. If there be neither surviving wife, children under the age of sixteen (16) years, nor dependent parents, then no payments shall be made on account of the death of any such member. If there be a surviving wife, but no children under the age of sixteen (16) years, then the entire payment of Seventy-five Dollars ($75) per month shall be made to such surviving wife. If there be a surviving wife and children under the age of sixteen (16) years, then the payments shall be Thirty-seven Dollars and Fifty Cents ($37.50) per month to the wife and Thirty-seven Dollars and Fifty Cents ($37.50) per month payable to the legal guardian of such children, to be administered in accordance with the orders of the Probate Court. As each child becomes sixteen (16) years of age, the children's part of Thirty-seven Dollars and Fifty Cents ($37.50) per month shall thereafter be for the use and benefit of the children who then remain under the age of sixteen (16) years. When there are no longer any children under the age of sixteen (16) years, the entire amount of Seventy-five Dollars ($75) per month shall be paid the surviving wife. When there is no surviving wife, but there are surviving children under the age of sixteen (16) years, the entire Seventy-five Dollars ($75) per month shall be paid to the legal guardian of such children under the age of sixteen (16) years, but such payment shall not be made for or on account of any child after said child reaches the age of sixteen (16) years. Should such surviving wife thereafter die, then the entire Seventy-five Dollars ($75) shall likewise be paid for the benefit of such children as remain under the age of sixteen (16) years. If there be neither a surviving wife nor surviving children under the age of sixteen (16), then such payments shall be made to the dependent parent, or parents, if any, of such deceased member. If there be two (2) dependent parents, then the Seventy-five Dollars ($75) per month shall be divided equally between them, but if there be only one dependent parent, the Seventy-five Dollars ($75) per month shall be paid to said parent.

The term "dependent parent" means a parent who is principally dependent upon said member for a livelihood.

By the term "surviving wife" is meant the woman, if any, who is the lawful wife of said member at the time of his death.

No death benefits whatever shall be paid after the expiration of ten (10) years from the death of any said member, and no beneficiary shall ever receive more than Seventy-five Dollars ($75) per month.

In the event of women members of the department, their surviving husbands shall be entitled to the same rights and benefits as have the wives of the male members.

Pension to dependents, when

Sec. 13. When any member who has been retired upon pension, whether retirement pension or disability pension, or when any member who has a pension certificate shall thereafter die from any cause, his pension of Seventy-five Dollars ($75) per month shall be payable to his dependents, if any, as is provided in the next preceding Section hereof, but only for the unexpired portion of ten (10) years. In computing said ten (10) years, such length of time as a pension may have been paid to said member during his lifetime shall be deducted from such ten-year period, and such dependents shall receive said payment only for the unexpired term of ten (10) years.

Refunds on leaving service

Sec. 14. If any such member shall leave such police department either voluntarily or involuntarily before he is entitled to a pension, he shall have refunded to him the deductions from his salary, which have been paid into said pension fund. Said payments may be made to him, either in a lump sum or on a monthly basis, as may be determined by the pension board.

Provided, however, that this Section shall be subject to Section 10 and upon a re-entry into the department all such refunds shall be paid back into the pension fund or prior service of such member shall not be counted toward his retirement pension.

Reduction of benefits authorized in case fund is depleted

Sec. 15. In the event said pension fund becomes seriously depleted, in the opinion of the pension board, said pension board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reductions shall thereafter be paid to such pensioners or beneficiaries as and when said fund is, in the opinion of the pension board, sufficiently re-established to do so.

Legal counsel for board

Sec. 16. The city attorney of any such city shall render such legal service, and without additional compensation, as such pension board may request him to do. The pension board may, if it deems necessary, employ additional legal assistance and pay reasonable compensation therefor, out of said police pension fund. Said pension board, may at its discretion, from time to time, employ the services of an actuary, and pay him reasonable compensation out of said police pension fund.

Pensions not subject to execution, etc.

Sec. 17. No portion of any such pension fund, either before or after its order of disbursement by said pension board, and no amounts due or to become due any beneficiary or pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, or any process or proceeding whatsoever, shall issue out of or by any Court of this State for the

payment or satisfaction in whole or in part out of said pension fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such police pension fund or any part thereof, or any claim thereto be directly or indirectly assigned or transferred and any attempt to transfer or assign the same or any part thereof, or any claim thereto, shall be void. Said fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act, and for no other purposes whatsoever.

Severability clause

Sec. 18. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof and all other provisions shall remain valid and unaffected by any invalid portion, if any.

Act to be cumulative to other laws

Sec. 19. The provisions hereof shall be cumulative of and in addition to all other laws relating to pensions, which laws are hereby preserved and continued in force and effect, provided, however, that in the event of any conflict, the provisions of this law shall control, and police departmental pensions in the cities covered by this Act shall be administered in accordance with this law. [Acts 1939, 46th Leg., p. 105.]

Art. 6243e. Firemen's Relief Pension Fund.

"Firemen's Relief and Retirement Fund" created

Sec. 1. For the purpose of this Act, there is hereby created in this State a special fund to be known and designated as the "Firemen's Relief and Retirement Fund" and it shall be the duty of the State Treasurer and he is hereby directed to pay over, transfer, and convert any and all moneys received by him from collection of the tax herein levied to such Fund, which Fund shall, at all times, be kept under his official bond and oath of office, separate and distinct from any other Fund of this State, with a public record thereof showing all receipts and disbursements.

Tax on gross premiums of insurance companies

Sec. 2. For the purpose of providing permanent funds and revenue for the Firemen's Relief and Retirement Fund hereby created, there is hereby levied and assessed against each and every insurance company, whether a firm, partnership, corporation, mutual or reciprocal company, transacting in this State the business of fire insurance, an additional occupation or license tax of two (2) per centum of all gross premium receipts received or collected from persons or property within this State during the preceding year ending December 31st, provided, the said two (2) per cent shall not be passed on to the purchaser of insurance and the Insurance Department shall not allow such two (2) per cent as additional charge in making rates of fire insurance in the State of Texas. The gross premium receipts herein referred to shall be reported by said insurance companies to the Commissioner of Insurance subject to the same credits and deductions for capital investment, re-insurance and return premium paid policyholders; the amount of the tax thereon shall be paid in addition to, at the same time and in the same manner as is now provided by Article 7064 of the Revised Civil Statutes of Texas, 1925, and Acts amendatory thereof, and which said tax when so paid and received by the State Treasurer, less the proportion thereof for public school purposes, shall be set aside, deposited into and transferred to and for the use, benefit, and purposes of said Firemen's Relief and Retirement Fund and/or disbursed therefrom as herein provided and directed.

Composition of Board of Trustees and powers

Sec. 3. All incorporated cities and towns in this State having a regularly organized active fire department, whether wholly paid, part paid or volunteer, with fire fighting apparatus and equipment of the value of One Thousand Dollars ($1000) or more, the Mayor of such city or town, the city or town treasurer, or if no treasurer, then the city secretary, city clerk, or such other person or officer as by law, charter provision, or ordinance, performs the duty of city treasurer, and three (3) members of such regularly organized active fire department, to be selected by vote of the members of such fire department in the manner hereinafter directed shall be and are hereby constituted the "Board of Firemen's Relief and Retirement Fund Trustees" to receive, handle and control, manage, and disburse such Fund for the respective city or town and as such Board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate therein or therefrom as hereinafter directed and which said Board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of ———, Texas." The Mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of said Board of Trustees respectively. Within thirty (30) days after this Act takes effect, the fire department of any such city or town as comes within the provisions of this law shall elect by ballot three (3) of its members, one to serve for one year, one to serve for two (2) years, and one to serve for three (3) years, or until their successors may be elected as herein provided, as members of said Board of Trustees and shall immediately certify such election to the governing body of such city or town. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, said fire department shall elect by ballot and certify, one member of such Board of Trustees for a three (3) year term. Said Board of Trustees shall elect annually from among their number a vice-chairman, who shall act as chairman in the absence or disability of the mayor-chairman. Such Board of Trustees shall hold regular monthly meetings at such time and place as they may by resolution designate and may hold such special meetings upon call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city or town funds all moneys for the use and benefit of said Firemen's Relief and Retirement Fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by said city or town for the purpose; shall make disbursements from said Fund only upon regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of said Board of Trustees. The city or town treasurer, as the treasurer of said Board of Trustees, shall be the custodian of the Firemen's Relief and Retirement Fund for such city and town under penalty of his official bond and oath of office. No member of said Board of Trustees shall receive compensation as such. Said Board of Firemen's Relief and Retirement Fund Trustees of each such city or town in this State shall annually and not later than the 31st day of January of each year after this Act takes effect, make and file with the Firemen's Pension Commissioner, herein provided for, a detailed and itemized report of all receipts and disbursements with respect to such Fund, together with a statement of their administration thereof and shall make and file such other reports and statements, or furnish such further information as, from time to time, may be required or requested by said Firemen's Pension Commissioner.

Said Board of Trustees shall have the power and authority to compel witnesses to attend and testify

before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before Notaries Public and its chairman shall have the power and authority to administer oaths to such witnesses. A majority of all members shall constitute a quorum to transact business and any order of said Board of Trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occur in the membership of said Board of Trustees by reason of the death, resignation, removal, or disability of any incumbent such vacancy shall be filled in the manner herein provided for the selection of such member to be so succeeded.

Pro rata disposition of moneys by State Treasurer

Sec. 4. The State Treasurer shall, not later than the first day of May of each year after this Act takes effect, apportion and pay over to the various Boards of Trustees, upon a pro rata ratio basis of the insurance written upon property within the corporate limits of such city or town, all moneys coming into his hands annually from the gross premium receipts tax herein provided; save and except, the sum of Fifty Thousand Dollars ($50,000) less expenses of administration as herein provided, the balance of which shall be kept and retained by the State Treasurer in the said Firemen's Relief and Retirement Fund as an emergency reserve fund for the purpose herein provided.

Contributions accepted from any source

Sec. 5. In addition to the apportionment from the State Treasurer from the tax collected from insurance companies, and in addition to the amounts deducted from salaries or paid by members of the fire department as is in this Act provided, the Board of Firemen's Relief and Retirement Fund Trustees of that city or town coming within the provisions of this Act shall have the power and authority to accept and receive for the use and benefit of said Firemen's Relief and Retirement Fund of that city or town, contributions of money from any source; rewards, fees, gifts, or emoluments in money that may be paid or given for, or on account of, any service of the fire department or any member thereof except when allowed to be retained by said member by resolution of the Board of Trustees, or when given to endow a medal or other permanent competitive or merit reward, and the earnings upon the deposit, loan, or investment of said Fund or any part thereof, all of which are hereby directed paid into said Fund to be used for the purposes for which said Fund is created.

Retirement age and pension

Sec. 6. On and after the 1st day of April, A. D. 1939, any person who has been duly appointed and enrolled, and who has attained the age of fifty-five (55) years and who has served actively for a period of twenty (20) years in some regularly organized fire department in any city or town in this state now within or that may come within the provisions of this Act, in any rank, whether as wholly paid, part paid or volunteer firemen, shall be entitled to be retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension equal to one-half of his average monthly salary not to exceed a maximum of One Hundred Dollars ($100.00) per month; such average monthly salary to be based on the monthly average of his salary for the five (5) year period preceding the date of such retirement; provided further, that if his average monthly salary is Fifty Dollars ($50.00) or less per month or if a volunteer fireman with no salary, he shall be entitled to a monthly pension or retirement allowance of Twenty-five Dollars ($25.00). Notwithstanding any other provision of this Act, it is hereby specially provided that any eligible and qualified fireman who shall have completed twenty (20) years of service before reaching the age of fifty-five (55) years may apply to the Board of Trustees for, and it shall be the Board's duty to issue, a certificate showing the completion of such service and showing and certifying that such fireman, when reaching the age of fifty-five (55) years, will be entitled to the retirement and other applicable benefits of the Act; provided further, that when any fireman shall have been issued such certificate he shall, when reaching retirement age, be entitled to all the applicable benefits of the Act, even though he shall not have been engaged in active service as a fireman after the issuance of such certificate. Provided further, that in order to participate in the benefits authorized under this Act all persons shall continue to pay into the Firemen's Relief and Retirement Fund the amounts provided for all participants thereunder up to the time of their retirement. [As amended Acts 1945, 49th Leg., p. 58, c. 40, § 1.]

Retirement on disability

Sec. 7. Whenever a person serving as an active fireman duly enrolled in any regularly active fire department in any city or town in the State, now within, or that may hereafter come within the provisions of this Act, shall become physically or mentally disabled while in and/or in consequence of, the performance of his duty, said Board of Trustees may, upon his request, or without such request if it shall deem proper and for the good of the department, retire such person from active service either upon total or partial disability as the case may warrant and shall order that he be paid from such Fund, (a) if for total disability, an amount equal to one-half the average monthly salary of such fireman, not to exceed the sum of One Hundred Dollars ($100) per month; provided that if such average monthly salary be Fifty Dollars ($50) or less per month, or if he be a volunteer fireman with no salary, the amount so ordered paid shall not be less than Twenty-five Dollars ($25) per month; such average monthly salary to be based on the monthly average of his salary for the five (5) year period, or so much thereof as he may have served, preceding the date of such retirement; or, (b) if the disability be less than total, then such sum as in the judgment of the Board of Trustees may be proper and commensurate with the degree of disability; provided further, that if and when such disability shall cease, such retirement or disability allowance shall be discontinued and such person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability.

Compensation on temporary disability

Sec. 8. Whenever any duly enrolled member of any regularly organized active fire department of any city or town now coming within or that may hereafter come within the provisions of this Act as herein limited, on account of accident or other temporary disability caused or sustained while in, and/or in consequence of the performance of his duties, be confined to any hospital or to his bed and/or shall require the professional services of a physician, surgeon or nurse, said Board of Trustees shall upon presentation of properly itemized and verified bills therefor, order paid from the Firemen's Relief and Retirement Fund of that city or town, all necessary hospital, physician's, surgeon's, nurse's and/or medicine bills or expenses and not less than Five Dollars ($5) nor more than Fifteen Dollars ($15) per week to such fireman during such temporary disability; provided however, that in no case shall the amount or amounts so paid for such bills and expenses exceed the aggregate sum of One Hundred Dollars ($100) in any one month; and provided further, that the benefits provided by this Section shall not apply to any city or town having a fully paid fire department.

Certificates of disability

Sec. 9. No person shall be retired either for total or temporary disability, except as herein provided, nor receive any allowance from said Fund, unless and until there shall have been filed with the Board of Trustees, certificates of his disability or eligibility signed and sworn to by said person and/or by the city or town physician, if there be one, or if none, then by any physician selected by the Board of Trustees. Said Board of Trustees, in its discretion, may require other or additional evidence of disability before ordering such retirement or payment aforesaid.

Contributions by participants deducted from salaries

Sec. 10. Within sixty (60) days after this Act takes effect each fully paid fireman and each part paid fireman whose salary or compensation is Fifty Dollars ($50) or more per month and each part paid fireman whose salary or compensation is less than Fifty Dollars ($50) per month and each active volunteer fireman in the employ of any such city or town or enrolled in the fire department of any such city or town, who desires himself or his beneficiaries, as hereinafter named, to participate in such Fund or the benefits therefrom as by this Act provided, shall file with the Secretary-Treasurer of the Board of Firemen's Relief and Retirement Fund Trustees of that city or town a statement in writing under oath that he desires to participate in the benefits from such Fund, giving the name and relationship of his then actual dependents and shall therein authorize said city or town or the governing body thereof to deduct not less than one per centum nor more than three (3) per centum, the exact amount thereof to be determined by the vote of the fire department of which such person is a member, from his salary or compensation if a wholly paid or part paid fireman whose salary or compensation is more than Fifty Dollars ($50) per month, but if a part paid fireman whose salary is less than Fifty Dollars ($50) per month, or if a volunteer fireman, the statement shall include a promise and an obligation to pay to said Board of Trustees not less than Three Dollars ($3) nor more than Five Dollars ($5) per annum to be paid semi-annually, the exact amount thereof to be likewise determined by vote of the fire department of which such person is a member. Such money so deducted from salaries or compensation or agreed to be paid to become and form a part of the Fund herein designated and established as Firemen's Relief and Retirement Fund of that city or town. Failure or refusal to make and file the statement herein provided, or failure or refusal to allow deduction from salary or to pay the amount herein specified as herein provided on the part of any member shall forfeit his right to participate in any of the benefits from said Firemen's Relief and Retirement Fund. If any such member shall elect not to participate in such Fund, he shall not be liable for any salary deduction nor to pay as herein provided.

Contributions by cities

Sec. 10a. All cities having fully paid firemen where Firemen's Relief and Retirement Funds have been created under the provisions of this Act, shall annually contribute and appropriate to such fund an amount equal to the annual contributions made by such fully paid firemen under the provisions of this Act, which such contributions shall not exceed the sum of three (3%) per centum of the Fire Department's annual payroll, and such cities shall deposit the same to the credit of the Firemen's Relief and Retirement Fund to be used with other moneys in said fund for the benefits provided for under the provisions of this Act. [Added Acts 1947, 50th Leg., p. 353, ch. 201, § 1.]

Determination of amount of contribution by members

Sec. 11. Within thirty (30) days after this Act takes effect, the fire department of any city or town entitled by the provisions of this Act to participate in said Firemen's Relief and Retirement Fund shall determine by vote of the members thereof, the amount, within the limitations of this Act, of salary to be deducted in case of paid firemen, or the amount to be paid by each member thereof per annum in case of volunteer or part paid firemen whose salary is less than Fifty Dollars ($50) per month, and the fire chief or other proper officer of such fire department shall so certify the result of said vote and determination to the Board of Firemen's Relief and Retirement Fund Trustees for that city or town, which said certificate shall be authority for the governing body of such city or town to make such deductions from salaries and apply such deductions or payments to such Fund.

Allowances to beneficiaries of deceased members

Sec. 12. If any member of any department, as herein defined, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever; or if while in service, any member shall die from any cause growing out of and/or in consequence of the performance of his duty; or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate and shall leave surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent, said Board of Trustees shall order paid a monthly allowance as follows: (a) to the widow, so long as she remain a widow and provided she shall have married such member prior to his retirement, a sum equal to one-third of the average monthly salary of the deceased at the time of his retirement on allowance or death; (b) to the guardian of each child the sum of Six Dollars ($6) per month until such child reaches the age of eighteen (18) years; (c) to the dependent parent only in case no widow is entitled to allowance, the amount the widow would have received to be paid to but one parent and such parent to be determined by the Board of Trustees, and (d) in the event the widow dies after being entitled to her allowance as herein provided, or in the event there be no widow or dependent parent to receive such allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be increased to the sum of Twelve Dollars ($12) per month for each such dependent minor child; provided however, that the total allowance to be paid all beneficiaries or dependents as herein provided shall not exceed the monthly allowance to be paid the pensioner had he continued to live or be retired on allowance at the date of his death; and further provided, that if such amount be insufficient to pay the full schedule of benefits as herein provided such benefits shall be prorated. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

Exemption of benefits from judicial process

Sec. 13. No portion of said Firemen's Relief and Retirement Fund shall, either before or after its order of disbursement by said Board of Trustees to such retired or disabled fireman or the widow, the guardian of any minor child or children, or the dependent parent of any such deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process, or proceedings whatsoever issued out of, or by, any Court of this State for the payment or satisfaction in whole or in part, of any debt, damage, claim, demand, or judgment against such fireman or his widow, the guardian of his minor child or children, his dependent father

or mother, nor shall said Fund nor any claim thereto be directly or indirectly assigned or transferred and any attempt to transfer or assign the same shall be void. Said Fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatever.

Certificate to firemen eligible to retirement or disability allowance; continuance in service

Sec. 14. Any fireman possessing the qualifications and being eligible for voluntary retirement, but who shall elect to continue in the service of such fire department, may apply to the Board of Trustees for a certificate, and if found to possess such qualifications and be eligible for retirement as herein provided, the Board of Trustees shall issue to such fireman a certificate showing him to be entitled to retirement or disability allowance and upon his death such certificate shall be prima facie proof that his widow and/or dependents shall be entitled to their respective allowances without further proof except as to her or their relationship.

Medical examination of persons retired for disability

Sec. 15. The Board of Trustees, in its discretion, at any time, may cause any person retired for disability, under the provisions of this Act to appear and undergo a medical examination by the city physician or any other physician appointed or selected by the Board of Trustees for the purpose, and the result of such examination and report thereof by said physician shall be considered by said Board of Trustees in determining whether the relief in said case shall be continued, increased (if less than the maximum provided herein), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from said Board of Trustees, to appear and be re-examined, unless excused by said Board, fail to appear or refuse to submit to re-examination, said Board of Trustees is authorized in its discretion, to reduce or entirely discontinue such relief.

Recall for duty in emergency

Sec. 16. Any retired fireman may be recalled to duty in case of great conflagration and shall perform such duty as the chief of the fire department may direct, but shall have no claim against such city or town for payment for such duty so performed.

Payments to dependents on conviction of members

Sec. 17. Whenever any person who shall have been granted an allowance hereunder shall have been convicted of a felony, then the Board of Trustees shall order the allowance so granted or allowed such person discontinued, and in lieu thereof, order paid to his wife, and/or dependent child, children or dependent parent, the amount herein provided to be paid such dependent or dependents in case of the death of the person so originally granted or entitled to allowance.

Appeals by persons aggrieved by decision or order of Board of Trustees

Sec. 18. Any person possessing the qualifications herein required for retirement for length of service or disability or having a claim for temporary disability who deems himself aggrieved by the decision or order of any Board of Trustees, whether because of rejection or the amount allowed, may appeal from the decision or order of such Board of Trustees to the Firemen's Pension Commissioner by giving written notice of intention to appeal, which said notice shall contain a statement of his intention to appeal, together with a brief statement of the grounds and reasons why he feels aggrieved and which said notice aforesaid shall be served personally upon the chairman or secretary-treasurer of said Board of Trustees within twenty (20) days after the date of such order or decision. After service of such notice, the party appealing shall file with the Firemen's Pension Commissioner a copy of such notice of intention to appeal, together with the affidavit of the party making service thereof showing how, when, and upon whom said notice was served. Within thirty (30) days after service of such notice of intention to appeal upon said Board of Trustees the secretary-treasurer thereof shall make up and file with the Firemen's Pension Commissioner a transcript of all papers and proceedings in such case before said Board and when the copy of the notice of intention to appeal aforesaid and said transcript shall have been filed with said Firemen's Pension Commissioner, said appeal shall be deemed perfected and said Firemen's Pension Commissioner shall docket said appeal, assign same a number, fix a date for hearing said appeal, and notify both appellant and the Board of Trustees of the date so fixed for hearing, at which hearing either may appear before said Commissioner if they so desire. The Firemen's Pension Commissioner may, at any time before rendering his decision upon such appeal, require or request further or additional proof or information, either documentary or under oath. After consideration of said appeal, said Commissioner shall announce his decision in writing, giving to each party to such appeal a copy and shall direct said Board of Trustees as to the disposition of the case. A final decision or order by such Firemen's Pension Commissioner may be appealed and an appeal therefrom may be taken to the proper Court of Travis County, Texas, having jurisdiction of the subject matter, upon the serving within twenty (20) days after date of such decision or order of a notice in writing of such intention to so appeal upon the adverse party.

Firemen's Pension Commissioner

Sec. 19. For the purposes of co-ordinating the reports of the various Boards of Firemen's Relief and Retirement Fund Trustees; to provide examination from time to time of the accounts of such Boards; to determine and certify to the State Treasurer such Boards as shall, under provisions of this Act, qualify for and be entitled to consecutive apportionment from said Firemen's Relief and Retirement Fund and to hear, determine, and review appeals from the decision or order of any of such Boards of Trustees, there is hereby created the office of Firemen's Pension Commissioner, whose office shall be located in the City of Austin, Texas, to be appointed biennially by the Governor from a list of not less than three (3) nor more than ten (10) nominees submitted by the State Firemen's and Fire Marshal's Association of Texas. Such Commissioner shall be appointed for a term of two (2) years beginning July 1, 1937, and shall receive an annual salary of Three Thousand, Six Hundred Dollars ($3,600) payable in monthly installments of Three Hundred Dollars ($300) per month, together with the necessary office expenses, postage, stationery, office fixtures, and supplies, not to exceed the sum of Fifteen Hundred Dollars ($1500) annually, together with his actual traveling expenses when necessary, to be paid by voucher of the State Treasurer from said Firemen's Relief and Retirement Fund. Such Commissioner shall have authority to examine the accounts and records of the various Boards of Trustees; shall make rules and regulations not otherwise provided herein, and prepare forms for use by the various Boards of Trustees in order to assist in the work and duties thereof; shall classify and coordinate the reports of the various Boards of Trustees and shall issue his certificate to the State Treasurer, not later than April 1st of each year, certifying such Boards of Trustees as shall, in his opinion, have complied with the provisions of the Act thereby becoming entitled to apportionment from said Funds for the coming current year, shall examine and approve or disapprove any and all applications of the Boards of Trustees for additional apportionment from the emergency reserve of said Fund as herein provided; shall

hear, determine, and/or review all appeals herein provided and shall do any and all things within his power and as he may deem necessary to facilitate and assist in the purpose for which such Firemen's Relief and Retirement Fund is created.

Application by Board of Trustees for additional temporary apportionment

Sec. 20. Whenever any Board of Trustees shall find the fund as herein provided and within their control insufficient to meet the demands against such funds, such Board of Trustees may make written application to the Firemen's Pension Commissioner for additional temporary apportionment from the emergency reserve of such Fund, such application by the sworn statement of at least three (3) members of such Board of Trustees showing that the department applying for such temporary apportionment has assessed its members the maximum assessment provided hereunder and showing further the necessity and reasons for such additional temporary apportionment and if approved by the Firemen's Pension Commissioner, he shall certify his approval to the State Treasurer and shall order the amount to be allowed on such application within the following limits, to wit: to Boards in cities or towns having a population of ten thousand (10,000) or less, not to exceed the sum of One Thousand Dollars ($1,000) annually; to Boards in cities or towns having a population of more than ten thousand (10,000) but less than twenty-five thousand (25,000), not to exceed the sum of One Thousand, Five Hundred Dollars ($1,500) annually; to Boards in cities or towns having a population of twenty-five thousand (25,000) or more, but less than fifty thousand (50,000), not to exceed the sum of Two Thousand Dollars ($2,000) annually; to Boards in cities or towns having a population of fifty thousand (50,000) or more, but less than one hundred thousand (100,000), not to exceed the sum of Two Thousand, Five Hundred Dollars ($2,500) annually; to Boards in cities or towns having a population of one hundred thousand (100,000) or more, but less than one hundred and fifty thousand (150,000), not to exceed the sum of Three Thousand, Two Hundred and Fifty Dollars ($3,250) annually; to Boards in cities or towns having a population of one hundred and fifty thousand (150,000) or more, but less than two hundred thousand (200,000), not to exceed the sum of Four Thousand Dollars ($4,000) annually; and to Boards in cities or towns having a population of two hundred thousand (200,000) or more, not to exceed the sum of Five Thousand Dollars ($5,000) annually. Upon such certificate of approval of such application by the Firemen's Pension Commissioner, the State Treasurer shall pay to such applicant Board the sum stated in such certificate from the emergency reserve of said Firemen's Relief and Retirement Fund and in addition to the amount to be paid such Board under the regular apportionment as herein provided due such Board.

Computation of length of service

Sec. 21. In computing the time or period for retirement for length of service as herein provided, less than one year out of service or any time served in the armed forces of the Nation during war or National emergency shall be construed as continuous service, but if out more than one year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years no previous service shall be counted, provided however, that if a fireman be out of service over five (5) years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him in so far as his retirement time is concerned. Any fireman joining any regularly organized fire department coming within the provisions of this Act after the effective date hereof shall not be entitled to benefits hereunder until he shall have served one year continuously.

City attorney to represent Board of Trustees in appeals

Sec. 22. It shall be and is hereby made the duty of the City Attorney, without additional compensation, to appear for and represent the Board of Trustees of that city or town in all cases of appeal to the Firemen's Pension Commissioner by any claimant from the order or decision of such Board of Trustees.

Investment of surplus

Sec. 23. Whenever, in the opinion and judgment of said Board of Trustees, there is on hand in the said Firemen's Relief and Retirement Fund for that city or town, a surplus over and above a reasonably safe amount to take care of the current demands upon such Fund, such surplus or so much thereof as in the judgment of said Board is deemed proper, may be invested in Federal, State, County, or Municipal Bonds, and the interest therefrom and thereon shall be deposited into said Fund as a part thereof.

Action for recovery of benefits wrongfully obtained

Sec. 24. The Board of Trustees of any city or town as herein created and constituted shall have the power and authority to recover by civil action from any offending party or from his bondsmen, if any, any moneys paid out or obtained from said Fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain such action in the name of said Board of Trustees for the use and benefit of such Fund.

Pro rata reduction of benefits on deficiency

Sec. 25. If, for any reason the Fund or Funds hereby made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits then all granted allowances, or disability benefits shall be proratably reduced for such time as such deficiency exists.

Definitions

Sec. 26. Whenever used herein, the term "Board" or "Board of Trustees" shall be deemed to mean and refer to the Board of Firemen's Relief and Retirement Fund Trustees.

Whenever used herein, the term "firemen" or "fireman" shall be deemed to mean and include all active members of any regularly organized fire department of any incorporated city or town of this State, having fire fighting equipment or apparatus of the minimum value of One Thousand Dollars ($1,000) or more whether wholly paid, partly paid and partly volunteer, or wholly volunteer. All other members shall be deemed honorary or inactive members and as such shall not be entitled to any of the benefits provided by this Act.

Whenever used herein, the term "active firemen," "active fireman," or "active members" shall be deemed to mean and include all paid firemen who receive regular salaries as firemen and such partly paid or volunteer firemen as in each calendar year answer at least twenty-five (25) per cent of all fire alarms and at least forty (40) per cent of all drill or practice calls.

Partial invalidity

Sec. 27. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof and all other provisions shall remain valid and unaffected by any invalid portion, if any.

Provisions cumulative of other acts

Sec. 28. The provisions hereof shall be cumulative of and in addition to all other laws and particularly Articles 6229 to 6243 inclusive and all Acts amendatory thereof, which are hereby preserved and con-

tinued in force and effect. [Acts 1937, 45th Leg., p. 229, ch. 125.]

Section 2 of this article impinges on powers and duties of Board of Insurance Commissioners in promulgating rates which are reasonable alike to insured and insurer and violates due process and equal protection provisions of State and Federal Constitutions. American Alliance Ins. Co. v. Board of Ins. Com'rs., Civ.App., 126 S.W.2d 741.

Art. 6243e—1. Firemen's relief and retirement fund in cities of 380,000 or more.

Creation and administration of fund

Section 1. There is hereby created in all incorporated cities in this State having a population of three hundred and eighty thousand (380,000) or more, according to the preceding or any future Federal Census, a fund to be known as the Firemen's Relief and Retirement Fund. Said fund shall be administered in each such city by a board to be known as the Firemen's Relief and Retirement Board.

Board of Trustees; composition; powers; meetings; quorum; vacancies

Sec. 2. All such incorporated cities in this State having a regularly organized active fire department whether wholly paid or part paid, the Mayor of such city, the city treasurer, or if no treasurer, then the city secretary, or such other person or officer as by law, charter provision or ordinance, performs the duty of city treasurer and three (3) members of such regularly organized active fire department, to be selected by vote of the members of such fire department in the manner hereinafter directed shall be and are hereby constituted the "Board of Firemen's Relief and Retirement Fund Trustees" to receive, handle and control, manage, and disburse such Fund for the respective city and as such Board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total and to designate the beneficiaries or persons entitled to participate therein or therefrom as hereinafter directed and which said Board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of .... Texas." The Mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of said Board of Trustees respectively. Within thirty (30) days after this Act takes effect, the fire department of any such city as comes within the provisions of this law shall elect by ballot three (3) of its members, one to serve for one year, one to serve for two (2) years, and one to serve for three (3) years, or until their successors may be elected as herein provided, as members of said Board of Trustees and shall immediately certify such election to the governing body of such city. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, said fire department shall elect by ballot and certify, one member of such Board of Trustees for a three (3) year term. Said Board of Trustees shall elect annually from among their number a vice-chairman who shall act as chairman in the absence or disability of the mayor-chairman. Such Board of Trustees shall hold regular monthly meetings at such time and place as they may by resolution designate and may hold such special meetings upon call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city funds all moneys for the use and benefit of said Firemen's Relief and Retirement Fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by said city for the purpose; shall make disbursements from said Fund only upon regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of said Board of Trustees. The city treasurer, as the treasurer of said Board of Trustees, shall be the custodian of the Firemen's Relief and Retirement Fund for such city under penalty of his official bond and oath of office. No member of said Board of Trustees shall receive compensation as such. It shall report annually to the governing body of such city, the condition of the said Fund and the receipts and disbursements on account of same, with a complete list of the beneficiaries of said Fund, and the amounts paid them. The Board shall have the power and authority, by a majority vote, to reduce the percentages stipulated in any Section or Subsection of this Act which deals with disabilities or with awards granted to beneficiaries. The reduction shall be based upon the degrees of disability and circumstances surrounding the case. The Board shall have the complete authority and power to administer all of the provisions of this Act.

Said Board of Trustees shall have the power and authority to compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before Notaries Public and its chairman shall have the power and authority to administer oaths to such witnesses. A majority of all members shall constitute a quorum to transact business and any order of said Board of Trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occurs in the membership of said Board of Trustees by reason of the death, resignation, removal or disability of any incumbent such vacancy shall be filled in the manner herein provided for the selection of such member to be so succeeded.

Accumulated funds

Sec. 3. In all such cities where a general pension fund for city employees has been accumulated but has not been put into operation at the effective date of this Act, the governing body of each such city shall segregate from said fund, the proportion which the total number of members of the Fire Department (eligible to said Pension Fund) bears to the entire number of all city employees, for whose benefit said fund was accumulated, and shall set aside such sum into the Firemen's Relief and Retirement Fund. Any such city shall appropriate not less than three (3) per centum of the annual Fire Department Pay Roll annually, and deposit same to the credit of the Firemen's Relief and Retirement Fund.

Contributions accepted from any source

Sec. 4. In addition to the apportionment from the City Treasurer, and in addition to the amounts deducted from salaries or paid by members of the fire department as is in this Act provided, the Board of Firemen's Relief and Retirement Fund Trustees of that city coming within the provisions of this Act shall have the power and authority to accept and receive for the use and benefit of said Firemen's Relief and Retirement Fund of that city, contributions of money from any source; rewards, fees, gifts, or emoluments in money that may be paid or given for, or on account of, any service of the fire department or any member thereof except when allowed to be retained by said member by resolution of the Board of Trustees, or when given to endow a medal or other permanent competitive or merit reward, and the earnings upon the deposit, loan, or investment of said Fund or any part thereof, all of which are hereby directed paid into said Fund to be used for the purposes for which said Fund is created.

Persons entitled to retirement and pension; amount

Sec. 5. On and after the 1st day of January, A. D. 1942, any person who has been duly appointed and enrolled, and who has served actively for a period of thirty (30) years in some regularly organized fire department in any city in this State now within or that may come within the provisions of this Act, in any rank, whether as wholly paid or part paid firemen shall be entitled to be retired from such service or

department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city, a monthly pension equal to one-half of his average monthly salary not to exceed a maximum of One Hundred Dollars ($100) per month. Such average monthly salary to be based on the monthly average of his salary for the five-year period preceding the date of such retirement. Any member who has heretofore been issued a certificate of retirement, shall be eligible to participate under the provisions of this Act.

Retirement on disability

Sec. 6. Whenever a person serving as an active fireman duly enrolled in any regularly active fire department in any city in the State, now within, or that may hereafter come within the provisions of this Act, shall become physically or mentally disabled while in and/or in consequence of the performance of his duty, said Board of Trustees may, upon his request, or without such request if it shall deem proper and for the good of the department, retire such person from active service either upon total or partial disability as the case may warrant and shall order that he be paid from such Fund (a) if for total disability, an amount equal to one-half the average monthly salary of such fireman, not to exceed the sum of One Hundred Dollars ($100) per month; such average monthly salary to be based on the monthly average of his salary for the five (5) year period, or so much thereof as he may have served, preceding the date of such retirement; or, (b) if the disability be less than total, then such sum as in the judgment of the Board of Trustees may be proper and commensurate with the degree of disability; provided further, that if and when such disability shall cease, such retirement or disability allowance shall be discontinued and such person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability.

Certificates of disability or eligibility

Sec. 7. No person shall be retired either for total or temporary disability, except as herein provided, nor receive any allowance from said Fund, unless and until there shall have been filed with the Board of Trustees, certificates of his disability or eligibility signed and sworn to by said person and/or by the city physician, if there be one, or if none, then by any physician selected by the Board of Trustees. Said Board of Trustees, in its discretion, may require other or additional evidence of disability before ordering such retirement or payment aforesaid.

Statement of desire to participate in fund to be filed; deductions from salaries

Sec. 8. Within sixty (60) days after this Act takes effect each fully paid fireman in the employ of any such city enrolled in the fire department of any such city, who desires himself or his beneficiaries, as hereinafter named, to participate in such Fund or the benefits therefrom as by this Act provided, shall file with the secretary-treasurer or the Board of Firemen's Relief and Retirement Fund Trustees of that city a statement in writing under oath that he desires to participate in the benefits from such Fund, giving the name and relationship of his then actual dependents and shall therein authorize said city or the governing body thereof to deduct not less than one per centum nor more than three (3) per centum, the exact amount thereof to be determined by the vote of the fire department of which such person is a member, from his salary or compensation. Such money so deducted from salaries or compensation or agreed to be paid to become and form a part of the Fund herein designated and established as Firemen's Relief and Retirement Fund of that city. Failure or refusal to make and file the statement herein provided, or failure or refusal to allow deduction from salary or to pay the amount herein specified as herein provided on the part of any member shall forfeit his right to participate in any of the benefits from said Firemen's Relief and Retirement Fund. If any such member shall elect not to participate in such fund, he shall not be liable for any salary deduction nor to pay as herein provided.

Determination of amount of contributions by members

Sec. 9. Within thirty (30) days after this Act takes effect, the fire department of any city entitled by the provisions of this Act to participate in said Firemen's Relief and Retirement Fund shall determine by vote of the members thereof, the amount, within the limitations of this Act, of salary to be deducted, and the fire chief or other proper officer of such fire department shall so certify the result of said vote and determination to the Board of Firemen's Relief and Retirement Fund Trustees for that city, which said certificate shall be authority for the governing body of such city to make such deductions from salaries and apply such deductions or payments to such Fund.

Death benefits to beneficiaries of deceased member

Sec. 10. If any member of any department, as herein defined, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever; or if while in service any member shall die from any cause growing out of and/or in consequence of the performance of his duty; or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate and shall leave surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent, said Board of Trustees shall order paid a monthly allowance as follows: (a) to the widow, so long as she remains a widow and provided she shall have married such member prior to his retirement, a sum equal to one-third of the average monthly salary of the deceased at the time of his retirement on allowance or death; (b) to the guardian of each child the sum of Six Dollars ($6) per month until such child reaches the age of eighteen (18) years; (c) to the dependent parent only in case no widow is entitled to allowance, the amount the widow would have received to be paid to but one parent and such parent to be determined by the Board of Trustees, and (d) in the event the widow dies after being entitled to allowance as herein provided, or in the event there be no widow or dependent parent to receive such allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be increased to the sum of Twelve Dollars ($12) per month for each such dependent minor child; provided however, that the total allowance to be paid all beneficiaries or dependents as herein provided shall not exceed the monthly allowance to be paid the pensioner had he continued to live or be retired on allowance at the date of his death; and further provided, that if such amount be insufficient to pay full schedule of benefits as herein provided such benefits shall be prorated. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

Exemption of benefits from judicial process

Sec. 11. No portion of said Firemen's Relief and Retirement Fund shall, either before or after its order of disbursement by said Board of Trustees to such retired or disabled fireman or the widow, the guardian of any minor child or children, or the dependent parent of any such deceased, retired or disabled fireman be ever held, seized, taken, subjected to or detained or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process, or proceedings whatsoever issued out of, or by, any Court of this State for the payment or satisfaction in whole or in

part, of any debt, damage, claim, demand, or judgment against such fireman or his widow, the guardian of his minor child, or children, his dependent father or mother, nor shall said Fund nor any claim thereto be directly or indirectly assigned or transferred and any attempt to transfer or assign the same shall be void. Said Fund shall be sacredly held, kept and disbursed for the purposes provided by this Act and for no other purpose whatever.

Certificate to fireman eligible to retirement or disability allowance; continuance in service

Sec. 12. Any fireman possessing the qualifications and being eligible for voluntary retirement, but who shall elect to continue in the service of such fire department, may apply to the Board of Trustees for a certificate and if found to possess such qualifications and be eligible for retirement as herein provided, the Board of Trustees shall issue to such fireman a certificate showing him to be entitled to retirement or disability allowance and upon his death such certificate shall be prima facie proof that his widow and/or dependents shall be entitled to their respective allowances without further proof except as to her or their relationship.

Medical examination of persons retired for disability

Sec. 13. The Board of Trustees, in its discretion, at any time, may cause any person retired for disability, under the provisions of this Act to appear and undergo a medical examination by the city physician or any other physician appointed or selected by the Board of Trustees for the purpose, and the result of such examination and report thereof by said physician shall be considered by said Board of Trustees in determining whether the relief in said case shall be continued, increased (if less than the maximum provided herein), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from said Board of Trustees to appear and be re-examined, unless excused by said Board, fail to appear or refuse to submit to re-examination, said Board of Trustees is authorized in its discretion, to reduce or entirely discontinue such relief.

Recall for duty in emergency

Sec. 14. Any retired fireman may be recalled to duty in case of great conflagration and shall perform such duty as the chief of the fire department may direct, but shall have no claim against such city for payment for such duty so performed.

Payments to dependents on conviction of member

Sec. 15. Whenever any person who shall have been granted an allowance hereunder shall have been convicted of a felony, then the Board of Trustees shall order the allowance so granted or allowed such person discontinued, and in lieu thereof, order paid to his wife, and/or dependent child, children or dependent parent, the amount herein provided to be paid such dependent or dependents in case of the death of the person so orginally granted or entitled to allowance.

Computation of length of service

Sec. 16. In computing the time or period for retirement for length of service as herein provided, less than one year out of service or any time served in the armed forces of the Nation during war or National emergency shall be construed as continuous service, but if out more than one year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years no previous service shall be counted, provided however, that if a fireman be out of service over five (5) years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him in so far as his retirement time is concerned. Any fireman joining any regularly organized fire department coming within the provisions of this Act after the effective date hereof shall not be entitled to benefits hereunder until he shall have served one year continuously.

Persons included

Sec. 17. All persons in cities of the class specified herein, who are being paid under the terms of any similar statute or ordinance, shall be included in this Act and shall continue to be paid in accord with the schedule stipulated herein.

Accounts

Sec. 18. The accounts of all firemen shall be kept separately, and if included in any Statute of the State of Texas creating a pension system, then the Board created herein shall stand in the place of any similar Board created by such Statute and shall receive the apportionment due them and shall pay the money allocated under the terms of this Act to the Board of Firemen's Relief and Retirement Trustees as herein provided.

City attorney to represent board of trustees in appeals

Sec. 19. It shall be and is hereby made the duty of the City Attorney, without additional compensation, to appear for and represent the Board of Trustees of that city in all cases of appeal by any claimant from the order or decision of such Board of Trustees.

Investment of surplus

Sec. 20. Whenever, in the opinion and judgment of said Board of Trustees, there is on hand in the said Firemen's Relief and Retirement Fund for that city, a surplus over and above a reasonably safe amount to take care of the current demands upon such Fund, such surplus or so much thereof as in the judgment of said Board is deemed proper, may be invested in Federal, State, County, or Municipal Bonds, and the interest therefrom and thereon shall be deposited into said Fund as a part thereof.

Action to recover benefits wrongfully obtained

Sec. 21. The Board of Trustees of any city as herein created and constituted shall have the power and authority to recover by civil action from any offending party or from his bondsmen, if any, any moneys paid out or obtained from said Fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain such action in the name of said Board of Trustees for the use and benefit of such Fund.

Pro rata reduction of benefits on deficiency

Sec. 22. If, for any reason the Fund or Funds hereby made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits then all granted allowances, or disability benefits shall be proportionately reduced for such time as such deficiency exists.

Definitions

Sec. 23. Whenever used herein, the term "Board" or "Board of Trustees" shall be deemed to mean and refer to the Board of Firemen's Relief and Retirement Fund Trustees.

Whenever used herein, the term "firemen" or "fireman" shall be deemed to mean and include all active members of any regularly organized fire department of any such incorporated city.

The expression "Pension Fund," as used herein, shall mean the Firemen's Relief and Retirement Fund.

The expression "Pension Board," as used in this Act, means the Firemen's Relief and Retirement Board of each such city.

All members of the Fire Department of any such city shall participate in said Pension Fund, and shall be subject to all of the provisions of this Act. It is

the intention hereof to include everyone who is designated by any such city as a member of said Fire Department, regardless of the particular duty or duties performed by such person.

The expression "member" and "members," as used in this Act, mean members of any such Fire Department who are entitled to participate in said Pension Fund as above set forth, that is, the entire personnel of any such Fire Department.

Whenever used herein, the term "active firemen," or "active members" shall be deemed to mean and include all paid firemen who receive regular salaries as firemen.

Partial invalidity

Sec. 24. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof and all other provisions shall remain valid and unaffected by an invalid portion, if any.

Effective date of act

Sec. 25. The provisions of this Act shall take effect on and be in full force and effect from and after January 1, 1942. [Acts 1941, 47th Leg., p. 832, ch. 514.]

Art. 6243f. Pensions for policemen, firemen and fire alarm operators in cities having population of 200,000 to 293,000.

Board of trustees

Section 1. In all incorporated cities containing more than two hundred thousand (200,000) inhabitants and less than two hundred and ninety-three thousand (293,000) inhabitants according to the last preceding Federal Census, and all future Federal Census, having a fully paid Fire and Police Department, there is created hereby a Board to consist of seven (7) members, as follows: The Mayor, two (2) Aldermen, Councilmen or Commissioners, each to serve on this Board for the term of office to which they were elected, two (2) active Firemen, below the grade of Captain, to be selected by the majority vote of the members of the Fire Department by secret ballot, which two (2) members shall be appointed by the governing body of the said City, one (1) for a term of two (2) years and the other for a term of four (4) years, and two (2) active Policemen, below the grade of Captain, to be selected by the majority vote of the members of the Police Department, by secret ballot, which two (2) members shall be appointed by the governing body of the said City, one for a term of two (2) years and the other for a term of four (4) years. All members from the Fire Department and Police Department shall be elected by the contributors to the Fund, and shall serve until their successors are elected and qualified, and their successors shall each be elected and appointed to serve for a term of four (4) years. The appointees and their successors shall constitute the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators' Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof. The Board shall be known as the Board of Firemen, Policemen, and Fire Alarm Operators' Pension Fund Trustees of ———, Texas.

Powers and duties of board

Sec. 2. The Board shall organize by choosing one (1) member as Chairman, and one (1) member as Secretary, which Board shall control and administer the Fund and shall order payments therefrom in pursuance of the provisions of this Act. It shall report annually to the governing body of such City, the condition of the Fund and the receipts and disbursements on account of same, with a complete list of the beneficiaries of the Fund, and the amounts paid them. The Board shall have the power and authority, by a majority vote, to reduce the percentages stipulated in this Act which deals with the disabilities or with awards granted to beneficiaries. The reduction shall be based on the degrees of disability and circumstances surrounding the case. The Board shall have the complete authority and power to administer all of the provisions of this Act and any implied powers under this Act.

Membership

Sec. 3. Each fully paid Fireman, Policeman, and Fire Alarm Operator, in the employ of such City, who desires himself or his beneficiaries to participate in said Fund, shall file a written statement with the Board of his desires to participate in said Fund, and authorize said City to deduct not less than five percent (5%) nor more than ten percent (10%) of his wages each month to form a part of the Fund known as The Firemen, Policemen, and Fire Alarm Operators' Fund.

Contributions to fund; deductions from wages

Sec. 4. There shall be deducted for such Fund from the wages of each Fireman, Policeman, and Fire Alarm Operator in the employment of such City, upon a vote of the majority of the members of the said Board of Trustees, not less than five percent (5%) nor more than ten per cent (10%) of the wages earned by such employees when he has filed application therefor. Every contributor to said Fund shall be required to pay into the Fund on the base pay of a private and no more. Any donations made to said Fund and rewards received by any members of either of the departments and all funds received from any source for such Fund, shall be deposited in like manner to such Fund.

Meetings; disbursements; records

Sec. 5. The Board shall hold regular monthly meetings and other meetings upon call of its Chairman, or written demand of a majority of the members. It shall issue orders signed by the Chairman and Secretary, to the persons entitled thereto of the amounts of money ordered paid to such persons from such Fund by said Board, which order shall state for what purposes such payment is to be made. It shall keep a record of the proceedings which record shall be of public record; it shall at each monthly meeting send to the City Treasurer a written list of persons entitled to the payment from the Fund, stating the amount of such payment and for what granted, which list shall be certified and signed by the Chairman and Secretary of such Board attested under oath. The Treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as The Record of the Firemen, Policemen and Fire Alarm Operators' Pension Fund, and the said Board shall direct payment of the amounts herein to the persons entitled thereto out of said Fund. No money of said Fund shall be disbursed for any purpose without a majority vote of the Board, which shall be a "no" and "yes" vote entered upon the proceedings of the Board.

Custody of fund

Sec. 6. The Treasurer of said City shall be Treasurer of said Fund. All money for said Fund shall be paid over to and received by the Treasurer for the use of said Fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under his oath and bond as such City Treasurer, but he shall receive no compensation therefor.

Who may share in fund

Sec. 7. Any person who, at the establishment of said Fund or thereafter, shall have been duly appointed and enrolled in the Fire Department, Police Department, or Fire Alarm Operators' Department of any such City and who shall have signed an application for participation in said Fund and has allowed deductions from his salary under any former law and is in good standing; and those who have filed written

application within forty-five (45) days after the organization of such Board, or who shall file his application within forty-five (45) days after becoming a member of such departments, having served the probationary period, if any, and who shall have allowed such deductions from his salary; and any person heretofore duly appointed or enrolled in the Fire Department, Police Department, or Fire Alarm Operators' Department of any such City, who is not now a member of the Pension Fund, may file his application with the Board within forty-five (45) days after this Act becomes effective and apply for participation therein; but such applicant shall pass a physical examination of the same character that is required for original admission into the respective department in which he serves, and shall pay into such Fund a sum of money equal to the amount of salary deductions he would have paid had he joined immediately upon becoming eligible to participate in the benefits of said Fund; as well as the beneficiaries hereinafter named shall be entitled to participate in said Fund.

Retirement pension

Sec. 8. Whenever any member of said Departments shall have contributed a portion of his salary and shall have served twenty (20) years, in either of said Departments he may be issued a Certificate of Retirement, which Certificate shall entitle holder to full benefits hereunder provided when presented as application for retirement. No member shall ever receive any award from this Fund for retirement until he has at least served twenty (20) years in either or all of the Departments. A member retiring under the provision of this Act shall receive one-half (½) of the salary received by him at the time of retirement; provided, however, that in no instance shall the monthly pension allowance awarded him be in excess of one-half (½) of the current base pay of a private per month. A member under the age of fifty-five (55) years shall not be entitled to a Certificate of Retirement as a matter of right for service of twenty (20) years, but the Board shall have a hearing on the application and if it appears that the applicant is reasonably able to perform his duties, the Certificate shall not be granted. Any member reaching the age of sixty-five (65) years and having served twenty (20) years in either or all of the Departments, and who has not been retired from such Department, shall be summoned before the Board for the purpose of determining whether or not he should be retired under the provisions of this Act.

Certificate of retirement

Sec. 9. When any member of the Fire Department, Police Department or Fire Alarm Operators' Department has been issued a Certificate of Retirement under the provisions of this Act he shall be entitled, after having received said Certificate, to one-half (½) of the base pay of a private per month. The said Certificate shall further state that in case of death, or in case he becomes permanently disabled, he shall be and his beneficiaries shall be entitled to the same awards and rights to participate in the provisions of this Act and of any other Act heretofore or hereafter made, as well as any of the provisions of the City Charter heretofore or hereafter made as he would have had before the said Board issued his Certificate of Retirement. The said Certificate shall be attested under seal and signature of the Chairman of the Pension Board of Firemen, Policemen, and Fire Alarm Operators and attested by the Secretary.

Retirement when disabled

Sec. 10. When any member of the Fire Department, Police Department, and Fire Alarm Operators' Department of the City and who is contributing to said Fund, as herein provided, shall become so permanently disabled through injury or disease contracted directly in the line of duty, as to incapacitate him from the performance of his duties, and shall make written application subject to medical examination for such injuries or disease, he shall be retired from the service and be entitled to receive from the said Fund one-half (½) of the base pay of a private per month, which base pay of a private shall be computed on the basis of the current payroll. In no case shall a disability claim be acknowledged or award made hereunder until disability has been proved to be continuous and wholly incapacitating for a period of not less than ninety (90) days.

Death benefits to widow and children

Sec. 11. In case of the death before or after retirement of any member of the Fire, Police and Fire Alarm Operators' Departments of any City from disease contracted or injury received directly while in line of duty, and who at the time of his death, or retirement was a contributor to the said Fund, leaving a widow, child or children under seventeen (17) years of age, the widow and such child or children shall be entitled to receive from the said Fund an amount not to exceed one-half (½) of the current base pay of a private per month; one-half (½) of the widow's amount in the aggregate shall go to the children under seventeen (17) years of age and one-half (½) for the widow. No child resulting from any marriage subsequent to the date of the retirement of said member, shall be entitled to a pension under this Act. In case there are no children, the widow shall receive one-third (⅓) of the current base pay of a private per month. The one-fourth (¼) award to the children shall be paid by the Board to the legal guardian of the children. In no instance shall the amount received by the widow, child or children, exceed a pension allowance of one-half (½) of the current base pay of a private per month.

Death benefits to children under 17; remarriage of widow; marriage after retirement

Sec. 12. In case of the death before or after the retirement of any member of the Fire, Police or Fire Alarm Operators' Departments of any City operating under this Act, from disease contracted or injury directly received while in line of duty and who at the time of death was a contributor to the said Fund, leaving the widow and more than one child under the age of seventeen (17) years, such children shall receive jointly from the Fund, one-half (½) of the current base pay of a private per month; but if only one child is left, such child shall receive from the Fund one-fourth (¼) of the current base pay of a private per month. No child shall be paid more than one-fourth (¼) of the current base pay of a private per month. When any child who is a beneficiary under this Act, shall reach the age of seventeen (17) years, then such child shall no longer participate in the division of said wages of said deceased, but the benefits shall be paid to the remaining child or children, if any, under seventeen (17) years of age. Upon the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease. No widow resulting from any marriage subsequent to the date of the retirement of said member, shall be entitled to a pension under this Act.

Death benefits to dependent father and mother; investigations

Sec. 13. If any member of the Fire, Police and Fire Alarm Operators' Departments dies before or after retirement, from injury received, or disease contracted directly in line of duty, who was a contributor to said Fund and entitled to participate in said Fund himself, leaves no widow or child, but leaves surviving him a father and mother wholly dependent upon said pension for support, such dependent father and mother shall be entitled to receive one-third (⅓) of the base

pay of a private per month, to be equally divided between said father and mother, so long as they are wholly dependent. Where there is one (1) dependent, either father or mother, the Board shall grant the surviving dependent one-fourth (¼) of the current base pay of a private per month. The Board shall have authority to make a thorough investigation, determine the facts as to the dependency of the said parties and each of them, as to how long the same exists and may, at any time, upon the request of any beneficiary or any contributor to such Fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper and the finding of any Board in regard to any matters, as well as to all pensions granted under this Act, shall be final upon all parties seeking a pension until such award of the Trustees shall have been set aside or revoked by a Court of competent jurisdiction.

Applications; hearings

Sec. 14. The Board shall consider all cases for retirement and pension of the members of the Fire, Police and Fire Alarm Operators' Departments rendered necessary or expedient under the provisions of this Act, and all applications of pensions by widow, the children and dependent relatives, and the said Trustees shall give notice to persons asking for a pension to appear before said Board and offer such sworn evidence as he, or they, may desire. Any person who is a member of said Departments and who is a contributor to the said Fund may appear either in person, or by attorney, and contest the application for participation in said Fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The Chairman of said Board shall have the authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this Act. Such process for witnesses shall be served by any member of the Police, Fire or Fire Alarm Operators' Departments and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify as in any judicial proceeding; according to practice in a Justice Court.

Medical examination

Sec. 15. Said Board may cause any person receiving any pension under the provisions of this Act, who has served less than twenty (20) years to appear and undergo medical examination by either the City Physician or some reputable physician selected by the Board; as a result of which the Board shall determine whether the relief in said case shall be continued, increased, decreased or discontinued. In making the findings the Board may change any percentage stipulated in this Act, by reducing the same to one-twentieth (1/20) for each year served not to exceed one-half (½) of the current base pay of a private; if any person receiving benefits under the provisions of this Act, after due notice, fails to appear and undergo such examination, the Board may reduce or entirely discontinue such benefits.

Public funds; parking meter funds

Sec. 16. Funds are hereby authorized to be paid out of the General Fund or the Special Fund of any such incorporated City; and, money collected by such Cities from the use of parking meters on the streets shall be used for the purpose of carrying out the provisions of this Act. Nothing herein is to be construed as denying any City any right which it may have at this time to raise or procure money for the benefit of said pension fund, which might be in addition to the method or methods herein provided.

Reserve retirement fund

Sec. 17. At the end of the fiscal year all money paid into the Fund that remains as a surplus over and above the orders for payments as issued by the Board, shall be paid into the Reserve Retirement Fund to accumulate at interest for the benefit of the Reserve Fund needs. All such funds as may accumulate in this Special Retirement Reserve shall be invested at regular intervals or at such times as the accumulations justify, in accordance with the City Charter for investment of the Sinking Funds of any such City. The Board shall have the power to make these investments for the sole benefit of this Retirement Reserve Fund. The investment shall remain in the custody of the Treasurer in the same manner as provided for the custody of the funds. The Board shall have the power and authority, by a majority vote of its members, to disburse the moneys accumulated as the retirement needs arise.

Awards exempt

Sec. 18. No amount awarded to any person under the provisions of this Act shall be liable for the debts of any such person; shall not be assignable; and shall be exempt from garnishment or other legal process.

Act as of essence of employment contract

Sec. 19. This Act shall be of the essence of the contract of the employment and appointment of the Firemen, Policemen and Fire Alarm Operators by Cities of this class; and, the deferred payment is a part of the compensation for services rendered to the City.

Vested rights

Sec. 20. The right is vested in the persons specified in this Act to participate in such Fund and to receive the payments in strict accord herewith; and the means of its enforcement shall never be impaired nor be denied.

Deficiency, payment by city

Sec. 21. The Cities included in this class shall pay the deficiency, if any, between the money procured under the terms of this Act and the amount of the deferred payments prescribed herein.

Persons included

Sec. 22. All persons in Cities of the class specified herein, who are being paid under the terms of any similar statute or ordinance, shall be included in this Act and shall continue to be paid in accord with the schedule stipulated herein.

Accounts

Sec. 23. The accounts of the Firemen, Policemen and Fire Alarm Operators shall be kept separately, and if any of these classes of employees are included in any statute of the State of Texas creating a pension system, then the Board created herein shall stand in the place and of any similar Board created by such statute and shall receive the apportionment due the class of employees mentioned, and shall pay the money allocated, under the terms of this Act to such class, but the other classes specified herein shall not participate in any such funds.

Partial invalidity

Sec. 25. If any part or parts of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act and the Legislature hereby declared that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional. [Acts 1941, 47th Leg., p. 134, ch. 105.]

Section 24 of the Act of 1941 repealed all conflicting laws and parts of laws.

Art. 6243g. Pension system in cities over 384,000.

Creation of system

Section 1. There is hereby created a Municipal Pension System in all cities in this State having a

population of three hundred and eighty-four thousand (384,000) or more according to any preceding or future Federal Census.

Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

(a) "Pension System" means the retirement, disability and pension system for employees of cities coming within the provisions of this Act.

(b) "Member" means any and all city employees included in the Pension System provided for and becoming members thereof.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under this Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by a person employed by such city.

(e) "Pension" means payments for life to the city employees out of the Pension Fund provided for herein to members of the Pension System upon becoming disabled or reaching retirement as provided herein and becoming eligible for such payments.

(f) "Separation from Service" means cessation of work for the city, whether caused by death, discharge or resignation.

(g) "Separation Allowance" means the accumulation of payments made by the employee to the Pension Fund and returned to him upon his separation of service with the city.

(h) The use of the masculine gender includes the feminine gender.

(i) The term "employee" shall mean and include any person whose name appears on a regular full-time pay roll of any such city and who is paid a regular salary for his services. Persons who are so paid shall be considered employees, notwithstanding the fact that they are performing services for a department, agency, or other establishment which the city operates jointly with another governmental subdivision.

Departmental physicians and surgeons, as provided in Section 3, paragraph (e) hereof, shall also be considered employees.

Persons eligible in cities having established systems

Sec. 3. The following provisions shall govern eligibility for membership in such system:

(a) Any person who is now a member of any such System under the terms of the original Act.

(b) Any person who has become an employee of any such city but has not, at the effective date of this amendatory Act, completed one year's service and who shall hereafter complete one year's service, shall automatically become a member of the Pension System as a condition of his employment, it being the intention as to such persons to keep in force the one-year service provision of the original Act.

(c) Any person who shall become an employee of any such city after the effective date of this amendatory Act shall automatically, after six (6) months of service, become a member of the Pension System as a condition of his employment.

(d) Any person who was an employee of any such city and who was eligible for membership in any such System upon its original establishment on May 24, 1943, and who declined to become a member of such System and has not thereafter become a member, may hereafter become a member by paying to such System an amount equal to the total of all of his monthly contributions back to May 24, 1943, and such employee shall thereupon become entitled to credit for all of his service rendered such city as an employee prior to becoming a member in said Pension System. The payment of such back contributions may be in lump sum or in installments or periodical pay roll deductions, and the Pension Board is empowered to make regulations concerning the manner of such payments. Any employee who became a member after six (6) months after the effective date of the original Act and thereby lost his prior-service credit, shall become entitled to credit for all of his service rendered such city as an employee prior to becoming a member, by paying to such System all of his back monthly contributions which would have accrued between the effective date of the original Act and the date he became a member of such System and such payment may be made as above prescribed. Provided that the provisions of this paragraph shall expire on January 1, 1948, and thereafter any employee who has still not become a member shall only become a member upon taking and passing a physical examination, as prescribed by the Pension Board, and such employee who becomes a member after January 1, 1948, shall not receive any credit for services rendered any such city prior to becoming a member of such System.

(e) Any licensed physician who has served for a period of ten (10) years as departmental physician, surgeon or medical officer, for the fire department or police department or both departments of any such city, on a contract or fee basis and who has heretofore been ineligible for membership in such System, may elect to become a member by paying his back monthly contributions as provided in paragraph (d) above, and shall thereupon receive all prior-service credit to the date he was originally retained as departmental physician, surgeon or medical officer. Such election must be made by such physician within ninety (90) days from the effective date of this amendatory Act and if not made within such time, such physician shall thereafter be ineligible for membership. Any such physician who shall hereafter complete ten (10) years service as aforesaid may also become a member by paying his back monthly contributions and shall thereupon be entitled to prior-service credit as aforesaid, provided such physician elects to become a member within ninety (90) days after completion of ten (10) years service, and if not made within such time, such physician shall thereafter be ineligible for membership.

(f) Employees of such city who may not become members of the Pension System shall include (1) all elected officers of the city except as hereinafter provided; (2) all quasi-legislative, quasi-judicial, and advisory boards and commissions; (3) all part-time employees; (4) all seasonal and temporary employees, and all employees of the fire department; provided, that where any member of such fire department is a member of a Fire Department Pension System of such city and thereafter transfers to a department covered by this Act, he shall be entitled as a member of this System to receive credit for his prior service in the fire department; and provided further, that if a separate Pension System has heretofore been created or shall hereafter be created for a police department of any such city, members of such police department shall be excluded from the terms of this Act; but if such Police Department System has been or is hereafter created, and a member of such Police Department System thereafter transfers to a department covered by this Act, he shall be entitled as a member of this System to receive credit for his prior service in the police department.

If any elected officer of any such city, upon the effective date of this amendatory Act, shall be a former employee of such city and a former member of the Pension System of such city, he may elect to be reinstated as a member of such System, subject to the terms and provisions of the fifth paragraph of Section 16 hereof, relating to physical examination, time of re-entry, and repayment of separation allowance with interest, and provided he makes such election within ninety (90) days from the effective date of this amendatory Act. Any former employee and former member of the Pension System who shall hereafter be elected to an office of said city shall, in like manner, be entitled to reinstatement provided he elects

to do so within ninety (90) days from the date he takes office. Any officer coming under the terms hereof who, thereafter, fails of election to said office or another elective office, shall be considered as separated from the service and, unless he is again employed by such city within three (3) months from the expiration of his term of office, and if he is again employed after such three (3) months period, the provisions of the fifth paragraph of Section 16 hereof relating to reinstatements shall apply.

Persons eligible in cities hereafter coming under this act

Sec. 3A. (a) Any person who is an employee of any city not now affected by this Act but which city shall hereafter, by population increase, come under the provisions hereof (including departmental physicians, surgeons and medical officers with ten (10) years service as provided in paragraph (e) of Section 3 hereof), shall be eligible for membership in the Pension System, except as hereinafter provided, and shall automatically become a member upon the expiration of ninety (90) days from the date such city comes under this Act, unless the employee has filed with the Pension Board written election not to become a member, which shall constitute a waiver of all present and prospective benefits which would otherwise inure to him by participation in the System. But any employee of such city whose membership in the Pension System is contingent on his own election and who elects not to participate, may later become a member provided he passes such medical examination as the Pension Board may require. If such employee becomes a member within six (6) months after the date such city comes under this Act, the employee shall be eligible for prior-service credit, but if he does not become a member within such period, he shall not be eligible for prior-service credit; by prior-service credit is meant credit for service rendered such city as an employee prior to becoming a member in said Pension System. Written notice by registered letter shall be given each and every employee eligible for membership in the Pension System by such city within sixty (60) days from the date such city comes under this Act, informing him of the terms and provisions of this paragraph.

(b) Any person who hereafter becomes an employee of such city shall automatically, after six (6) months of service, become a member of the Pension System as a condition of his employment.

(c) Employees of such city who may not become members of the Pension System shall include: (1) all elected officers of the city unless such elected officer shall, prior to his election, have been an employee of such city and member of its Pension System, in which case the applicable provisions of the second paragraph of subsection (f) of paragraph 3 hereof shall govern; (2) all quasi-legislative, quasi-judicial, and advisory boards and commissions; (3) all part-time employees; (4) all seasonal and temporary employees, and all employees of the fire department.

Pension board

Sec. 4. (a) There is hereby created a Pension Board of the Pension System, in which Board there is hereby vested the general administration, management and responsibility for the proper and effective operation of the Pension System. The Board shall be organized immediately after its members have qualified and taken the oath of office and shall serve without compensation.

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The mayor of the city, or city manager if there be one, or other chief administrative officer of the city.

(2) The treasurer of the city or person performing the duties of treasurer.

(3) Two (2) employees of the city having membership in the Pension System and elected by the members of such System. No city department shall have more than one representative. The persons now serving as employee members of the Board shall continue in office until the expiration of their terms, in cities having established Systems under the original Act.

The term of office of succeeding members so elected shall likewise be two (2) years and each such member shall continue to serve until his successor is duly elected and qualified. Vacancies occurring by death, resignation or removal of such representative shall be filled by members elected by the members of the Pension System. The first election of employee members in cities hereafter coming under this Act shall be held in such city at such time and place as shall be fixed by the governing body of the city, and to be not more than seventy-five (75) days from the date such city comes under the terms of this Act.

(4) Three (3) legally qualified taxpaying voters of such city, residents thereof for the preceding three (3) years, to be chosen by the governing body of the city, being neither employees nor officers of such city. The three (3) members so chosen by the governing body of the city shall serve for two (2) years and until their successors are duly elected and qualified. Vacancies occurring by death, resignation or removal of such representative shall be filled by the governing body of the city. Citizen members now on the boards of cities having established Systems shall continue in office until the expiration of their terms.

(c) Each member of the Pension Board within ten (10) days after his appointment and election shall take an oath of office that so far as it devolves upon him he will diligently and honestly administer the affairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this Law.

(d) The Board shall elect from its membership annually a Chairman, Vice-chairman and Secretary. Pursuant to the powers granted under the charter of such city, the chief administrative officer of the city shall appoint one or more employees whose positions and salaries shall be fixed by the governing body of the city and who, acting under direction of the chief administrative officer of the city and city treasurer, shall keep all of the records of and perform all of the clerical services for the Pension System. The salaries of such employees shall be paid by the city.

(e) Each member of the Board shall be entitled to one vote in the Board. Four (4) concurring votes shall be necessary for a decision by the members at any meeting of the Board, and four (4) members shall constitute a quorum.

(f) A meeting of said Pension Board may be called at any time by the Chairman, Secretary, or by any four (4) members of such Pension Board.

(g) Notice shall be given to all members of such Pension Board unless waived in writing as to any proposed meeting by depositing of a written notice in the United States mail at least forty-eight (48) hours before such meeting, properly addressed to each such member. If a meeting is had, however, at which all of the members of the Board attend, no notice shall be necessary.

(h) No money shall be paid out of the Pension Fund except by warrant, check or draft signed by the Treasurer and counter-signed by either the President or Secretary, upon an order by said Pension Board duly entered in the minutes.

(i) The Pension Board shall determine the prior service to be credited to each present employee who becomes a member of the Pension System. The Board shall rely upon the personnel records of such city in determining such prior-service credit or upon affidavits if the personnel records are incomplete. After obtaining the necessary information such Board shall furnish to each member of the Pension System a

certificate showing all prior-service credits authorized and credited to such member. Such member may, within one year from the date of issuance or modification of such certificate request the Board to modify or change his prior-service certificate, otherwise such certificate shall become final and conclusive for retirement purposes as to such service.

Treasurer of pension fund

Sec. 5. The city treasurer of any such city, or the person discharging the duties of the city treasurer, is hereby designated as the Treasurer of said Pension Fund for said city and his official bond to said city shall operate to cover his position of Treasurer of said Pension Fund and his sureties shall be liable in connection with the Treasurer's actions pertaining to such Fund as fully as they are liable under the terms of said bond for the other actions and conduct of said Treasurer. All moneys of every kind and character collected or to be collected for said Fund shall be paid over to said Treasurer and shall be administered and paid out only in accordance with the provisions of this Act.

Contributions by members

Sec. 6. Commencing with the first day of the month after the expiration of ninety (90) days from the date any city comes under the provisions hereof, each member of the Pension Fund shall pay into such Fund the sum of Four Dollars ($4) per month, which payments shall be deducted by the city from the salary of each and every member monthly and paid to the Treasurer of said Pension Fund. In cities having established Pension Systems under the terms of the original Act, each member shall continue his monthly payments, each such payment likewise to be Four Dollars ($4) per month, and which payments shall be deducted as above provided.

Contributions by city

Sec. 7. In addition to the payments provided for in the next preceding Section, such city shall pay monthly into such Pension Fund, from the general or other appropriate Fund, of any such city, an amount equal to the total sum paid into such Fund by salary deductions of members as set out in the next preceding Section.

Increase in contributions

Sec. 8. The monthly payments and/or contributions to be paid into the Pension Fund by the members thereof and such city may, at any time, be increased by ordinance of any such city to an amount not to exceed Eight Dollars ($8) per month, payable by each member, and Eight Dollars ($8) per month, payable for each member by the city, which payments shall be made in the same manner as provided in Sections 6 and 7, respectively, of this Act; it being the intention hereof that such city shall contribute to such Pension Fund an amount equal to the amounts paid by each member thereto, but no more.

Contributions of employees earning under eighty-five dollars ($85)

Sec. 9. Notwithstanding anything herein to the contrary, all members whose regular monthly salary amounts to less than Eighty-five Dollars ($85) per month, shall pay only one-half (½) as much into the Pension Fund and receive only one-half (½) as much retirement or disability Pension as do the other members of such Pension System and, furthermore, the city's payment into the Fund shall not exceed the amount paid into such fund by said member; that should such member be required to pay the full rate part of the time due to his salary being raised to more than Eighty-five Dollars ($85) per month then the retirement or disability pension, as the case may be, payable to him hereunder, shall be determined based upon the period of time during which he paid a reduced amount into the Pension Fund as compared to the period of time that he paid the full amount into said Fund. For example, if half of the time he paid the reduced amount and the other half the full amount, then the Pension payable to him hereunder would amount to only three-fourths (¾) as much as it would have been had he paid the full amount for the entire period of time.

Surplus; investment

Sec. 10. Whenever, in the opinion of the said Pension Board there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon such Funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in bonds or other interest-bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas.

Segregation of pension funds

Sec. 11. In all such cities where a General Pension Fund for city employees has been accumulated, the governing body of each such city shall segregate from such Fund the amount thereof set aside for all city employees, except the employees in the fire department, and shall transfer such sum into the Pension Fund of the Municipal Employees Pension System as provided for in this Act.

Retirement on pension

Sec. 12. Any member of such Pension System who has been in the service of the city for the period of twenty-eight (28) years and has attained fifty-five (55) years of age shall be entitled to a retirement Pension of Eighty-five Dollars ($85) per month for the rest of his life, upon his retirement from the service of said city. Upon the completion of said twenty-eight (28) years of service and attaining fifty-five (55) years of age, such Pension Board shall issue to said member a certificate showing that he is entitled to said retirement Pension and thereafter when such member retires, whether such retirement be voluntary or involuntary, such monthly payment shall begin forthwith and continue for the remainder of said member's life. Upon the date of any member's retirement, if he shall have served in excess of twenty-eight (28) years, he shall, in addition to the said sum of Eighty-five Dollars ($85), receive an additional sum of Two Dollars and Fifty Cents ($2.50) per month for each additional year served in excess of twenty-eight (28) years, provided that the total Pension payable in any case shall never exceed One Hundred Dollars ($100), and provided such member shall continue his monthly payments into the Fund during such additional period of service. If any member of such System is retired for any reason prior to completing twenty-eight (28) years service, and such member has completed at least ten (10) years service, he shall receive a monthly pension of less than Eighty-five Dollars ($85) calculated on the prorata basis that his total service bears to the full term of twenty-eight (28) years. Provided, that where any member of any such System has completed ten (10) years service with such city and shall thereafter attain sixty (60) years of age, he may, at his option, be retired and upon retirement shall receive a monthly Pension which shall be calculated on the prorata basis that his term of service upon reaching sixty (60) years of age bears to the full term of twenty-eight (28) years. It shall be compulsory for any member to retire from service upon attaining sixty-five (65) years of age, unless his service is extended by the governing body of the city upon the recommendation of the chief administrative officer of such city, which in no event shall be beyond the employee's reaching seventy (70) years of age. No member shall be required to make any payments into the Pension Fund after he has been issued the afore-

said certificate entitling him to retirement Pension; however, if he continues to work for the city he may continue his monthly payment into the Pension Fund in order to receive the Two Dollars and Fifty Cents ($2.50) monthly additional bonus for each year's additional service as above provided.

Disability pensions

Sec. 13. If any member has completed ten (10) years but less than twenty-eight (28) years service with the city and shall thereafter become totally and permanently disabled for any reason whatsoever, he shall be retired on a monthly Pension which shall be calculated on the prorata basis that his term of service bears to the full term of twenty-eight (28) years. If any member has completed twenty-eight (28) years service with the city and thereafter becomes totally and permanently disabled for any reason whatsoever, he shall be retired on the full Eighty-five Dollars ($85) per month Pension, plus any bonus accrued for additional service as provided in Section 12, hereof.

If any member has completed less than ten (10) years service and becomes totally and permanently disabled as a result of the performance of his duties or as a consequence of such performance, he shall be retired on a monthly Pension of Thirty Dollars and Thirty-five Cents ($30.35) per month.

If such a member becomes disabled from a chronic disease or infirmity of the body such as (but not limited to) tuberculosis, heart disease, arthritis, varicose veins, high blood pressure, and the like, and such member has completed not less than three (3) years continuous service, the Board shall be entitled to presume that the disease or infirmity arose as a consequence of such member's performance of duty, in the absence of convincing evidence to the contrary. In the case of less than three (3) years service, the burden shall be on the employee to show that the disabling chronic disease or infirmity arose as a consequence of his performance of duty.

By total and permanent disability is meant such disability as permanently incapacitates a member from performing the usual and customary duties which he has been performing for such city.

Before any disability Pension is allowed, the Pension Board shall require such medical examination and such other evidence as it may see fit to establish such total and permanent disability, as above provided.

When any member has been retired for total and permanent disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payments stopped. If a member who has been retired under the provisions of this Section should thereafter recover so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for said city, and such member is reinstated or tendered reinstatement to the position he held at the time of his retirement, then the Pension Board shall order such Pension payments stopped.

Refund of contributions

Sec. 14. If any member's employment by the city is terminated for other than total and permanent disability arising as a result of or as a consequence of the performance of his duties prior to his having completed ten (10) years of service with the city, he shall not be paid any Pension whatsoever, but shall receive the amount paid by him into the Pension Fund by way of salary deduction without interest.

Computing period of service

Sec. 15. In computing the twenty-eight (28) years of service required for retirement Pension, interruption of less than three (3) months out of service shall be construed as continuous service without any deduction therefor, but if out of service for more than three (3) months and less than ten (10) years, credit shall be given for prior service, but deduction shall be made for the length of time out of service. If out of service more than ten (10) years, no service prior to said time shall be counted.

Termination of employment; death; reemployment

Sec. 16. When any member of such Pension System shall leave the employment of such city, either voluntarily or involuntarily, before becoming eligible for a retirement or disability Pension, he shall thereupon cease to be a member of such Pension System, but shall have refunded to him all of the payments made by him into said Pension Fund by way of salary deductions without interest, except that if such member has completed twenty-eight (28) years, or more, of service with the city prior to becoming fifty-five (55) years of age, and is let out of employment by the city, he may allow his prior payments to remain in the Pension Fund and such member, but not the city, shall continue such monthly payments into the Pension Fund until he becomes fifty-five (55) years of age, whereupon he will be entitled to a retirement Pension for life for such amount as he would have received had he continued working for such city.

When any member of the Pension Fund dies prior to being retired on a Pension, any and all amounts paid by him into the Pension Fund shall be paid to his lawful heirs without interest.

When any member of the Pension Fund who has been retired on either a retirement or disability Pension dies from any cause, prior to having received retirement Pension payments aggregating the total amount paid by such member into the Pension Fund, then in that case, the difference between the amount received by such member from the Pension Fund and the amount paid by him into the Pension Fund shall be paid out of the Pension Fund to his lawful heirs.

It is contemplated that said sum shall be paid such departing member, or his lawful heirs, as the case may be, in a lump sum, but if in the opinion of the Pension Board, the funds on hand are too low to justify such lump sum payment, said payment shall be refunded on a monthly basis in such amounts as may be determined by the Pension Board.

When a member has left the service of the city as aforesaid and has therefore ceased to be a member of such Pension System, if such person shall thereafter be reemployed by the city, he shall thereupon be reinstated as a member of such Pension System provided he is in good physical and mental condition as evidenced by a written certificate executed under oath by a duly licensed and practicing physician residing in said city, satisfactory to the Pension Board. Prior service of such member with such city shall not be counted toward his retirement Pension unless such member returns to the service within ten (10) years from his separation therefrom and also shall, within six (6) months after his reemployment by the city, repay to such Pension Fund all moneys withdrawn by him upon his separation from the service, plus interest thereon at the rate of three per cent (3%) per annum from date of such withdrawal.

Reduction of benefits; dissolution of system

Sec. 17. In the event said Pension Fund becomes seriously depleted, in the opinion of the Pension Board, said Pension Board may proportionately and temporarily reduce the benefits of all Pensioners and Beneficiaries, but such reductions shall thereafter be paid to such Pensioners and Beneficiaries, as and when said Fund is, in the opinion of the Pension Board, sufficiently re-established to do so. Should the reserve and/or surplus in the Pension Fund become exhausted and at such time the outgo of the Pension

Fund exceed the income thereto, then in such event, the governing body of the city shall have the right, by ordinance duly passed, to dissolve the Pension System and require liquidation thereof without any liability to the city whatsoever.

Legal services

Sec. 18. The city attorney of such city shall handle all legal matters for the Pension System which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board may, however, if it deems necessary, employ outside legal advice to the exclusion of, or to assist, the city attorney, and pay reasonable compensation therefor out of said Pension Fund.

Actuary

Sec. 19. Such Pension Board may, at its discretion, from time to time, employ an actuary and pay his compensation therefor out of the Pension Fund. The governing body of the city may require that an actuarial study, survey and report be made of such Pension System not more than once every five (5) years.

Exemption from execution, attachment or other writ

Sec. 20. No portion of any such Pension Fund, either before or after its order of disbursement by said Pension Board, and no amounts due or to become due any Beneficiary or Pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, or any process or proceeding whatsoever, shall issue out of or by any Court of this State for the payment or satisfaction in whole or in part out of said Pension Fund, of any debt, damage, claim, demand, or judgment against any such members, Pensioners, dependents, or any person whomsoever, nor shall such Pension Fund or any part thereof, or any claim thereto, be directly or indirectly assigned or transferred and any attempt to transfer or assign the same or any part thereof, or any claim thereto, shall be void. Said Fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act, and for no other purposes whatsoever.

Members in military service

Sec. 21. Members of the Pension System engaged in active military service shall not be required to make the monthly payments into the Pension Fund, provided for in this Act, nor shall they lose any previous years of service with the city caused by such military service. Furthermore, the city shall not be required to make any monthly payments into the Pension Fund on such member while he is engaged in the military service. Any member who engages in active military service shall be entitled to receive credit for his time in such service upon paying into the Fund an amount equal to all monthly contributions for the total of the number of months he spent in such service. Any employee of any such city who entered active military service prior to May 24, 1943, and who returned to the service of the city upon termination of his military service, shall be entitled to become a member of such system upon paying all back monthly contributions to May 24, 1943, which may be in installments as provided by the Pension Board, and he shall thereupon be entitled to all prior-service credit, including his time in military service.

Provisions cumulative; conflicting provisions

Sec. 22. The provisions hereof shall be cumulative of and in addition to all other laws relating to Pensions, which laws are hereby preserved and continued in force and effect, provided, however, that in the event of any conflict, the provisions of this Law shall control, and Municipal Pension Systems (exclusive of Firemen's Pensions) in the cities covered by this Act shall be administered in accordance with this law.

Partial invalidity

Sec. 23. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof and all other provisions shall remain valid and unaffected by any invalid portion, if any.

Employees on retirement when act enacted

Sec. 24. Any former employee of any such city now on retirement at part pay by the city shall hereafter be paid a monthly Pension out of the Pension Fund provided for herein in the amount specified by the original Act and under the same conditions as are provided herein for present and future employees of any such city becoming members of said Pension System. For example, if a former employee now on retirement worked twenty-eight (28) or more years for the city and is over fifty-five (55) years of age, the monthly Pension hereafter payable to such employee out of the Pension Fund shall be Sixty-five Dollars ($65) per month during the remainder of his life, whereas if such employee was retired by the city before completing ten (10) years of service he shall not receive any payment from said Pension Fund. Any such city shall have the right and option to pay such former employees any amounts over and above those hereinabove provided for, but such additional payments, if any, shall be borne by such city and not the Pension Fund. [Acts 1943, 48th Leg., p. 619, ch. 358; Acts 1947, 50th Leg., p. 335, ch. 193, § 1.]

Art. 6243g—1. Police Officers' Pension System in cities of 384,000 or more.

Creation of fund

Section 1. For the purposes of this Act, there is hereby created in this State a special fund to be known and designated as the Police Officers' Pension System in all cities in this State having a population of three hundred and eighty-four thousand (384,000) inhabitants or more according to the last preceding or any future Federal Census.

Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

"(a) 'Pension System' means the retirement, allowance, disability and pension system for employees of any Police Department coming within the provisions of this Act.

"(b) 'Member' means any and all employees in the Police Department provided for and becoming members thereof.

"(c) 'Pension Board' or 'Board' means the Pension Board of the Pension System created under the Act for the purpose of administering the Pension System.

"(d) 'Service' means the services and work performed by a person employed in the Police Department.

"(e) 'Pension' means payments for life to the Police Department member out of the Pension Fund provided for herein upon becoming disabled or reaching retirement as provided herein and becoming eligible for such payments.

"(f) 'Separation from service' means cessation of work for the city in the Police Department, whether caused by death, discharge or resignation, or transfer to any other department of the city.

"(g) The use of the masculine gender includes the feminine gender."

Membership

Sec. 3. (a) Any person who is an employee of such city in the Police Department on the effective date hereof shall be eligible for membership in the Pension

System, except as hereinafter provided, and shall automatically become a member upon the expiration of ninety (90) days from the effective date hereof, unless the employee has filed with the Pension Board written election not to become a member, which shall constitute a waiver of all present and prospective benefits which otherwise would inure to him by participation in the System. But any member of the Police Department of such city, whose membership in the Pension System is contingent upon his own election and who elects not to participate, may later become a member provided he passes such medical examination as the Pension Board may require. If such employee becomes a member within six (6) months after the effective date of this Act, the employee shall be eligible for prior-service credit, but if he does not become a member within such period, he shall not be eligible for prior-service credit. By prior-service credit is meant credit for service rendered such city as an employee in the Police Department prior to becoming a member in said Pension System. Written notice shall be given each and every member of the Police Department eligible for membership in the Pension System by the Secretary of the Pension Board within sixty (60) days from the passage of this Act informing him of the terms and provisions of this paragraph.

(b) Any person who hereafter becomes an employee of such city in the Police Department shall automatically become a member of the Pension System as a condition of his employment, and he will be required to sign a letter making application for the Pension Fund.

(c) Employees of such Police Department who may not become members of the Pension System shall include part-time, seasonal, or other temporary employees.

Pension Board

Sec. 4. (a) There is hereby created a Pension Board of the Pension System, in which Board there is hereby vested the general administration, management, and responsibility for the proper and effective operation of the Pension System. The Board shall be organized immediately after its members have qualified and taken the oath of office and shall serve without compensation.

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The administrative head of the city, or his authorized representative.

(2) Three (3) employees of the Police Department having membership in the Pension System and elected by the members of such Police Department and System.

(3) Two (2) legally qualified taxpaying voters of such city, residents thereof for the preceding three (3) years, to be chosen by the elected Pension Board, being neither employees nor officers of such city.

(4) The city treasurer of any such city, or the person discharging the duties of the city treasurer.

The terms of office of the members of the Pension Board shall be two (2) years and each member shall continue to serve until his successor is duly elected and qualified. Vacancies occurring by death, resignation, or removal of such representative representing said Police Department shall be filled by the election of one from the Police Department who is a member of the Pension System. Vacancies occurring by death, resignation, or removal of such representative elected by the Pension Board shall be filled by said elective Board. Such member who shall be elected to fill a vacancy shall be elected for the unexpired term of such member who vacated his position. The first election of members of the Pension Board shall be held in such city at such time and place as shall be fixed by the members of said Police Department and to be not more than seventy-five (75) days from the passage of this Act.

(c) Each member of the Pension Board within ten (10) days after his appointment and election shall take an oath of office that he will diligently and honestly administer the affairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this law.

(d) The Board shall elect from its membership, annually, a Chairman, Vice-Chairman and Secretary. Pursuant to the powers granted under the charter of such city, the mayor or administrative head of the city shall appoint one or more employees whose positions and salaries shall be fixed by City Council and who, acting under direction of the mayor or administrative head of the city and treasurer or director of treasury, shall keep all of the records of and perform all of the clerical services for the Pension System. The salaries of such employees shall be paid by the city.

(e) Each member of the Board shall be entitled to one vote in the Board. Four (4) concurring votes shall be necessary for a decision by the members at any meeting of the Board and four (4) members shall constitute a quorum.

(f) A meeting of said Pension Board may be called at any time by the Chairman, Secretary, or by any four (4) members of such Pension Board.

(g) Notice shall be given to all members of such Pension Board, unless waived in writing, as to any proposed meeting, by the depositing of a written notice in the United States mail at least forty-eight (48) hours before such meeting, properly addressed to each member. If a meeting is had, however, at which all of the members of the Board attend, no notice shall be necessary.

(h) No moneys shall be paid out of the Pension Fund except by warrant, check, or draft signed by the Treasurer and countersigned by either the Chairman or Secretary, upon an order by said Pension Board duly entered in the minutes.

(i) The Pension Board shall determine the prior-service to be credited to each present employee of the Police Department who becomes a member of the Pension System. The Board shall rely upon the personnel records of such city in determining such prior-service credit. After obtaining the necessary information such Board shall furnish each member of the Pension System a certificate showing all prior-service credits authorized and credited to such member. Such member may, within one year from the date of issuance or modification of such certificate, request the Board to modify or change his prior-service certificate, otherwise such certificate shall be final and conclusive for retirement purposes as to such service.

Treasurer

Sec. 5. The city treasurer or director of treasury is hereby designated as the Treasurer of said Pension Fund for said city Police Officers' Pension System, and his official bond to said city shall operate to cover his position as Treasurer of such Pension Fund and his sureties shall be liable in connection with the Treasurer's actions pertaining to such Fund as fully as they are liable under the term of said bond for the other actions and conduct of said Treasurer. All moneys of every kind and character collected or to be collected for said Fund shall be paid over to the said Treasurer and shall be administered and paid out only in accordance with the provisions of this Act.

Contributions by members

Sec. 6. Commencing with the first day of the month after the expiration of ninety (90) days from the passage of this Act, each member of the Pension Fund shall pay into such Fund the sum of Five Dollars ($5) per month, which payments shall be deducted by the city from the salary of each and every member monthly and paid to the Treasurer of said Pension Fund. Should an emergency arise and the

Pension Board deem it necessary, for the welfare of the Pension System, the Board may raise or lower the monthly payments of each member of the Pension Fund to an amount not less than Four Dollars ($4) and not more than Seven Dollars ($7) per month, but not to exceed Seven Dollars ($7) per month.

Monthly payments by city

Sec. 7. In addition to the payments in the next preceding Section such city shall pay monthly into such Pension Fund, from the general or other appropriate fund of any such city, an amount equal to the total sum paid into such Fund by salary deductions of members as set out in the next preceding Section.

Reduction of benefits

Sec. 8. In the event said Pension Fund becomes seriously depleted, in the opinion of the Pension Board, said Pension Board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reductions shall thereafter be paid to such pensioners and beneficiaries as and when said Fund is, in the opinion of the Pension Board, sufficiently reestablished to do so.

Investment of surplus

Sec. 9. Whenever in the opinion of the said Pension Board there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon such funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in bonds or other interest-bearing obligations and securities of the United States, the State of Texas or city or county.

Retirement; amount of pension

Sec. 11. From and after the passage of this Act, any member of such Pension System who has been in the service of the City Police Department for the period of twenty-five (25) years and has attained fifty-five (55) years of age shall be entitled to a retirement pension of Seventy-five Dollars ($75) per month for the rest of his life upon his retirement from the services of said City Police Department. Upon the completion of said twenty-five (25) years of service and attaining fifty-five (55) years of age, such Pension Board shall issue to said member a certificate showing that he is entitled to said retirement pension and thereafter when such member retires, whether such retirement be voluntary or involuntary, such monthly payment shall begin forthwith and continue for the remainder of said member's life. However, when such member has served twenty-five (25) years in the Police Department and shall have attained the age of fifty-five (55) years, if he desires and if the physicians of the Pension Board agree that said member is physically fit to continue his active duties in the Police Department, they may so certify, and the said member may continue in the service of the City Police Department until such member shall attain the age of sixty-five (65) years, and when he retires he will receive a service bonus of Two Dollars ($2) per month for each year of service over and above the minimum required service to be paid in addition to the Seventy-five Dollars ($75) per month payable if he had retired with twenty-five (25) years service. For example, if he remains in service ten (10) additional years his pension will be Ninety-five Dollars ($95) per month instead of Seventy-five Dollars ($75) per month. It shall be compulsory for any member to retire from service upon attaining sixty-five (65) years of age; failure of any member of this Pension System to comply with this provision shall deprive the member and/or his dependents of any of the benefits provided for herein. If at the time of retirement such member has completed less than twenty-five (25) years of service, but more than ten (10) years of service, his retirement pension shall be prorated. For example, if the employee has completed only fourteen (14) years of service, his monthly pension would be fourteen twenty-fifths ($14/25$) of Seventy-five Dollars ($75) or Forty-two Dollars ($42). No member shall be required to make any payments into the Pension Fund after he has been issued the aforesaid certificate entitling him to retirement pension and he has retired from active service in the Police Department. However, if he continues to work for the City Police Department he shall continue his monthly payments into the Pension Fund.

Survivors, rights of

Sec. 12. If any member of the Police Department, who has been retired on allowance because of length of service or disability, shall thereafter die from any cause whatsoever, or shall die from any cause whatsoever after he has become entitled to an allowance or pension certificate, or if while in service any member shall die from any cause growing out of or in consequence of the performance of his duty, and shall leave surviving a widow, a child or children under the age of eighteen (18) years or a dependent parent, said Board shall order paid a monthly allowance as follows: (a) To the widow so long as she remains a widow the sum of Seventy-five Dollars ($75) per month, provided she shall have married such member prior to his retirement; (b) to the guardian of each child the sum of Six Dollars ($6) per month until such child reaches the age of eighteen (18) years or marries; (c) to the dependent parent, only in case no widow is entitled to allowance, the sum the widow would have received to be paid to but one parent and such parent to be determined by the Pension Board; and (d) in the event the widow dies after being entitled to her allowance as herein provided, or in the event there be no widow or dependent parent to receive such allowance, then the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be increased to the sum of Twelve Dollars ($12) per month for each said dependent minor child; and provided that such minor child under eighteen (18) years of age is unmarried. Allowance or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries.

Disability benefits

Sec. 13. Any member of the Police Department who becomes incapacitated for performance of his duty by reason of any bodily injury received in, or illness caused by, the performance of his duty shall be retired upon presentation to the Pension Board of proof of permanent disability, and shall receive a retirement allowance equal to the percentage of his disability; for example, if he is fifty per cent (50%) incapacitated, he shall receive fifty per cent (50%) of Seventy-five Dollars ($75) or Thirty-seven Dollars and Fifty Cents ($37.50) per month during the remainder of his life or so long as he remains incapacitated. Provided, however, that if, at that time, he is qualified as to age and service for retirement, he shall receive Seventy-five Dollars ($75) per month, or in the event he is past fifty-five (55) years of age and has more service than the minimum of twenty-five (25) years, and becomes incapacitated he shall receive Seventy-five Dollars ($75) per month plus Two Dollars ($2) for each additional year as his service bonus. When any member has been retired for permanent, total or partial disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payments stopped. If a member who has been retired under the provisions of this Section should thereafter recover, so that in the opinion of the Pension Board he is able to perform the usual and customary

duties formerly handled by him for said city in the Police Department, and such member is reinstated or tendered reinstatement to the position he held at the time of his retirement, then the Pension Board shall order such pension payment stopped. No person shall be retired either for total or partial disability unless he shall file with the Pension Board an application for allowance, at which time the Pension Board shall have him examined by no fewer than three (3) physicians, to be chosen by the Pension Board and to make their report to the Pension Board.

Computation of period required

Sec. 14. In computing the twenty-five (25) years of service required for retirement pension, twenty-five (25) years of continuous service shall be required; provided, however, that in case of interruption of less than two (2) years, credit shall be given for previous service. If out of service more than two (2) years, no service prior to said interruption shall be counted, other than provided in Section 22.

Termination of employment; reemployment

Sec. 15. When any member of such Pension System shall leave the employment of such Police Department other than as provided for in Sections 12 or 22, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall cease to be a member of such Pension System. No member shall be refunded any money which he paid into the Pension Fund on leaving the Police Department other than regular service or disability pension allowances. When a member has left the service of the City Police Department as aforesaid and has therefore ceased to be a member of such Pension System, if such person shall thereafter be re-employed by the City Police Department, he shall thereupon be reinstated as a member of such Pension System provided he is in good physical and mental condition as evidenced by a written certificate executed under oath by a duly licensed and practicing physician or physicians in the city, satisfactory to the Pension Board. Prior service of such member with such City Police Department shall not be counted toward his retirement pension unless such member returns to the service within two (2) years from his separation therefrom, and also shall, within six (6) months after his re-employment by the city in the Police Department, make a written application to the Pension Board for reinstatement in the Pension System.

Transfer from another department

Sec. 16. No prior credit shall be allowed for service to any person who may transfer from some other department in the city to the Police Department. For example, if one is transferred from some other department of the city to the City Police Department, such person's service will be computed from the day he enters the City Police Department.

Donations

Sec. 17. The Police Officers' Pension System may accept gifts and donations and such gifts or donations shall be added to the Pension Fund for the use of such System.

Conviction of felony

Sec. 18. Whenever any person who shall have been granted an allowance hereunder shall have been convicted of a felony, then the Board shall order the allowance so granted or allowed such person discontinued, and in lieu thereof order same paid to his wife or dependent child, children, or dependent parent, the amount herein provided to be paid such dependent or dependents in case of the death of the person so originally granted or entitled to allowance.

Legal advice

Sec. 19. The City Attorney of such city shall handle all legal matters for the Pension System which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board may, however, if it deems necessary, employ outside advice to the exclusion of, or to assist, the City Attorney, and pay reasonable compensation therefor out of said Pension Fund.

Actuary

Sec. 20. Such Pension Board may employ an actuary and pay his compensation therefor out of the Pension Fund no more than once every ten (10) years.

Exemption of benefits from execution, etc.; assignment

Sec. 21. No portion of any such Pension Fund, either before or after its order of disbursement by said Pension Board, and no amounts due or to become due any beneficiary or pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, and no process or proceedings whatsoever, shall issue out of or by any Court of this State for the payment or satisfaction, in whole or in part, out of said Pension Fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such Pension Fund or any part thereof, or any claim thereto, be directly or indirectly assigned or transferred. Any attempt to transfer or assign the same or any part thereof or any claim thereto shall be void. Said Funds shall be sacredly held, kept, and disbursed for the purposes provided by this Act, and for no other purpose whatsoever.

Members in military service

Sec. 22. Members of the Pension System engaged in active military service shall not be required to make the monthly payments into the Pension Fund provided for in this Act, nor shall they lose any previous years of service with the city caused by such military service. Such military service shall count as continuous service in the Police Department, provided that when the member is so discharged from the military service he shall return to the City Police Department under provisions of the City Charter, and his military service shall not exceed the national emergency for that period of military service. The city, however, shall be required to make its regular monthly payments into the Pension Fund on each member while he is engaged in the military service. In the event of death of a member of this Pension System, either directly or indirectly caused from such military service, his widow or dependent parent or other dependents shall not be entitled to receive benefits from this Fund.

Actions for funds misapplied etc.

Sec. 23. The Pension Board of any city as herein created and constituted shall have the power and authority to recover by civil action from any offending party, or from his bondsmen, if any, any moneys paid out or obtained from said Pension Fund through fraud, misrepresentation, theft, embezzlement, or misapplication, and may institute, conduct and maintain such action in the name of said Board for the use and benefit of such Fund.

Partial invalidity

Sec. 24. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any.

Former employees on retirement when act enacted

Sec. 25. The former employees of any such Police Department now on retirement at part pay by the city shall hereafter be paid a monthly pension out of the Pension Fund provided for herein in the same amount and under the same conditions as are provided herein for present and future employees of the Police Department becoming members of said Pension System. For example, if a former employee now on retirement worked twenty-five (25) or more years for the Police Department and is over sixty-five (65) years of age, the monthly pension hereafter payable to such employee out of the Pension Fund shall be Seventy-five Dollars ($75) per month during the remainder of his life, whereas if such employee was retired by the city before completing ten (10) years of service he shall receive no payment from said Pension Fund. Any such city shall have the right and option to pay such former employees any amount over and above those hereinabove provided for, but such additional payments, if any, shall be borne by such city and not the Pension Fund. [Acts 1947, 50th Leg., p. 124, ch. 76.]

Section 10 of the Act of 1947 provided that "Immediately upon the passage of this Act the City Pension Officer will transfer the pro rata share of any existing pension fund to the Police Officers' Pension System."

Section 26 of the Act of 1947 repealed conflicting laws.

Art. 6243g—2. Validation of pension systems. —All Municipal Pension Systems established and operating under an Act of the Forty-eighth Legislature, 1943, page 619, Chapter 358,[1] and all proceedings and actions done and undertaken in connection with such systems are hereby validated, confirmed and legalized. [Acts 1947, 50th Leg., p. 334, ch. 192, § 1.]

1 Article 6243g.

Art. 6243h. Texas Municipal Retirement System.

Creation of Fund

Section 1. A retirement and disability pension system is hereby created, to be operated under the management of a Board of Trustees of the Texas Municipal Retirement System, to be maintained and administered in accordance with the provisions of this Act, to provide for the payment of annuities and other benefits to employees and to beneficiaries of employees of participating municipalities in this State pursuant to Section 51-f, Article III of the Constitution of the State of Texas.

The pension system so created shall have all the power and privileges of a corporation and shall be known as the "Texas Municipal Retirement System," and by such name all of its business shall be transacted, all of its funds invested and all of its cash and securities and other property held.

Definitions

Sec. 2. The following words and phrases as used herein, unless different meanings are plainly indicated by their context, shall have the following meanings respectively:

1. "Accumulated Contributions" means the sums of all contributions received from a participant then credited to the account of such participant, together with interest thereon at the effective rate for the respective years.

2. "Actuarial tables" means such tables as are adopted by the Board.

3. "Annuitant" means a person receiving an annuity from this system.

4. "Annuity" means a series of equal monthly payments payable at the end of each calendar month during the life of the Annuitant. The first payment shall be due at the end of the first calendar month following the date of approval of the application for retirement by the Board. No payment shall be made for any fraction of a month elapsing at the time of death.

5. "Beneficiary" means the person or persons designated by the participant or annuitant in the last written designation on file with the Board, or if no person so designated survives, or if no designation is on file, the estate of the participant or annuitant.

6. "Board" means the Board of Trustees of the Texas Municipal Retirement System created by this Act.

7. "Contributions" means the amounts required to be paid to this system by each participating employee as herein provided.

8. "Current annuity" means the portion of a retirement annuity arising out of a municipality's contributions for service after the effective date of participation of the employing department.

9. "Current service" means the period beginning on the day an employee first becomes a participant and ending on the day of the last separation from the service of all participating municipalities, excluding all intervening periods during which such employee shall not receive, nor have a right to receive, compensation from a participating department.

10. "Department" means any recognized division comprising one of the functions of operation of a municipality, e.g., utility, public health, police, fire, office, public works, etc.

11. "Director" means the Executive Secretary appointed by the Board to manage and administer this system under the supervision and direction of the Board.

12. "Earnings" means an amount equal to the sum of the payments made to an employee for performance of personal services as certified on a written pay roll of the employing Department plus the money value as determined by the Board of any meals, lodging, fuel or other allowances provided for such employee in lieu of money; provided that no earnings in excess of Three Thousand, Six Hundred Dollars ($3,600) in any one year will be included within the meaning of the word.

13. "Rate of earnings" means the actual rate upon which the earnings of an employee are calculated at the time, as certified by the employing municipality, converted into earnings for any period on the assumption that, unless specifically provided otherwise, the following are equivalents: two thousand, four hundred (2,400) hours, three hundred (300) days, fifty-two (52) weeks, twelve (12) months, one (1) year.

14. "Employee" means any person who receives compensation from and is certified by a municipality as being a regular fulltime employee or as a regular part-time employee employed in a position normally requiring actual performance of duty during not less than one thousand (1,000) hours a year; provided, however, that:

The definition of employee shall not include persons:

(a) Who are eligible to be included within the Teachers' Retirement Act, pursuant to Acts, 1937, Forty-fifth Legislature, Page 1178, Chapter 470, as amended.[1]

(b) Who are or may be included within any pension fund or system now or hereafter operating in this State until and unless such pension fund has consolidated with this fund as hereafter provided;

(c) Who are elected to office by vote of the people.

15. "Final rate of earnings" means the average rate of earnings during the last five (5) consecutive, complete calendar years prior to retirement, provided that the rate of earnings for all periods of prior service of any employee shall be considered as being the average rate of earnings for the employee for the three (3) calendar years immediately preceding the effective date of participation of the employing department.

16. "Municipality" means any incorporated city or town now existing or hereafter created within the State; and, for the purpose of including its employees within the provisions of the fund, the Texas Mu-

nicipal Retirement System and the League of Texas Municipalities.

17. "Municipal System" means the Texas Municipal Retirement System hereby created.

18. "Participating Department" means any department included within the provisions of this system in accordance with this Act.

19. "Participating Municipality" means any municipality included within the provisions of this system in accordance with this Act.

20. "Participant" means any municipal employee included within the provisions of this system as provided in this Act.

21. "Prescribed rate of interest" means two and one-half per centum (2½%) per annum compounded annually, or such other rate based on expected long term investment returns determined from the actual experience of the system over a period of not less than three (3) years, as shall subsequently be prescribed by the Board.

22. "Prior service" means the period beginning on the first day upon which any participating employee first became an employee of the municipality by which such employee was employed on the effective date of participation of such municipality and ending on such effective date, excluding all intervening periods during which such employee was separated from the service of such municipality following a resignation, dismissal, lay-off, or expiration of any term of appointment as certified by the governing body of such municipality.

23. "Prior-service annuity" means the portion of a retirement annuity arising out of the municipal contributions for service prior to the effective date of participation of the employing department in this system.

24. "Effective rate of interest" means the rate, determined from the experience of the calendar year, which will distribute, on the basis of average balances (assuming no interest credits on employee contributions received during the current year), the income from interest and investments for the year remaining after meeting all interest requirements of the system based on the prescribed rate for the year. The prescribed rate shall, however, apply to all periods during which no effective rate has been certified.

[1] Article 2922—1.

Participation

Sec. 3. (a) Each municipality electing to have the employees of one or more of its departments participate in this system shall be included within and subject to the provisions of this system beginning upon the first day of the second calendar month immediately following the date of such election. Election to have any department or departments participate shall be by vote of the governing body of the municipality in accordance with the usual procedure prescribed for other official actions of the municipality. The governing body of any municipality so electing shall notify the Board of such action within ten (10) days thereafter designating the names of the department or departments to be included. Participation of any department shall begin as of the first day of the second month immediately following receipt of notice of election to participate.

(b) Each person, who is an employee of a participating department on the effective date of the participation of such department, shall be included within and be subject to the provisions of this system beginning upon such effective date. Each person who becomes an employee of any participating department on or after the effective date of participation of such department shall be included within and subject to the provisions of this system beginning upon the date such person becomes an employee. Participation shall continue until retirement, death or acceptance of a separation benefit from the system.

(c) The Board is hereby authorized to make and enforce rules with reference to the time of beginning operations and of participation and to notice, information and reports required of municipalities electing to participate in this system.

(d) A municipality which once elects to participate in the system may refuse to add new departments or new employees but shall never discontinue as to any participants.

(e) Upon petition of qualified electors thereof equal to ten per centum (10%) of the total number of votes cast at the last regular municipal election, the governing body of any municipality shall order an election to be held not more than sixty (60) days after the filing of such petition to determine whether such municipality shall participate and the governing body shall immediately arrange for the participation of such municipality if a majority of the votes cast at such election be in favor of such participation.

Revenue

Sec. 4. (a) Each participant shall make normal contributions to the system of the following percentages of each payment of earnings made to such employee by any participating municipality:

Four per centum (4%) until the beginning of the year following any year in which the Board certifies that other rates shall be charged. Thereafter the rate shall be the rate designated in the last certification of the Board. The Board is hereby authorized to fix such rate at an amount which is reasonably required to provide the benefits contemplated by Section 6 of this Act. All contributions of participants shall be deducted from each corresponding payment of earnings made to each participant by the employing municipality and shall immediately be remitted to the Board.

(b) Each participating municipality shall make contributions to this system of a percentage of each payment of earnings made to each participant by such municipality. Separate percentages, not to exceed a total of seven and one-half per centum (7½%), shall be determined by the Board prior to the beginning of each calendar year for each municipality from the most recent data available at the time of such determination. Each such percentage shall be the rate computed as necessary to provide the total of the following:

1. The uniform annual amount required, at two and one-half per centum (2½%) interest per annum to amortize, over the remainder of the period of years preceding the average time for the probable accrual of prior-service benefits to its participating employees following the effective date of participation of the municipality, the amount to be determined as of the beginning of such year, of the remaining obligation for prior-service credits granted by such municipality, from which to pay its participating employees an annuity which with participant's normal and current annuities will provide total annuities equal to two and one-half per centum (2½%) of such participant's final rate of earnings for each year of service rendered a participating municipality, not to exceed a total of sixty per centum (60%) of such final rate of earnings.

2. The amount of the reserve calculated in accordance with the actuarial tables adopted by the Board at the prescribed rate of interest required in excess of its participant's then net contributions to provide the current annuities accruing because of earnings paid to the participating employees of such municipality during the year; adjusted by the uniform annual amount required, at the prescribed rate of interest, to amortize or to refund, as the case may be, over ten (10) years, the amount, as of the beginning of such year, of any then existing obligation for, or surplus applicable to, current annuities previously

accrued because of earnings paid to the participating employees of such municipality.

3. The amount required to provide that portion of the excess, if any, of the total administrative expense for the year above the anticipated revenue of the Expense Fund adjusted for any surplus or deficiency existing as of the end of the previous year, which the number of participating employees of such municipality, as of the beginning of the year, is of the total number of participating employees of all municipalities.

All contributions by municipalities shall be paid out of the fund from which earnings are paid to the participants, or out of the general fund of the municipality. The total annual contributions of such participating municipality shall not be less than the contributions during the same year of the participants employed by such municipality nor more than seven and one-half per centum (7½%) of the earnings of its participating employees; provided that when a participating municipality has completed the amortization of its prior-service annuity liability and when the Municipal Accumulation Fund, as provided for in Section 5-2, shall become sufficient to meet the present and prospective liability of the Fund, the participating municipalities shall thereafter pay each year only the amount required under Section 5-2(b).

4. The Legislature shall never make an appropriation to pay any of the cost of this system.

Method of Financing

Sec. 5. All of the assets of the System shall be credited according to the purpose for which they are held to one (1) of eight (8) funds, namely, the Employees Saving Fund, the Municipal Accumulation Fund, the Annuity Reserve Fund, the Prior Service Reserve Fund, the Interest Fund, the Endowment Fund, the Expense Fund and the Disability Fund.

1. The Employees Saving Fund:

The Employees Saving Fund shall be a Fund in which shall be accumulated the contributions from the compensation of participants less the amounts determined by the Board to be required for the payment of the disability benefits provided by Section 6 hereof and One Dollar ($1) per year for expenses plus current interest earnings on such net contributions. Contributions to and payments from the Employees Saving Fund shall be made as follows:

(a) Each participating municipality shall cause to be deducted from the salary of each participant, on each and every pay roll of such employer for each and every pay-roll period, a sum of money exactly equal to four per centum (4%), or such other rate as is hereafter fixed by the Board, of the participant's earnings. In determining the amount earnable by a participant in a pay-roll period, the Board may consider the rate of annual compensation payable to such participant on the first day of the pay-roll period as continuing throughout such pay-roll period, and it may omit deductions from earnings for any period less than a full pay-roll period if employee was not a participant on the first day of the pay-roll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth (1/10) of one per centum (1%) of the annual compensation upon the basis of which such deduction is to be made.

(b) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any participant shall be reduced thereby. Every participant shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation and payment of salary or compensation, less said deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Act. The employer shall certify to the Board on each and every pay roll, or in such other manner as said Board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Employees Saving Fund, and shall be credited to the individual account of the participant from whose compensation said deduction was made.

(c) During the time that the United States is in a state of war and for twelve (12) months thereafter, a participant of the municipal system (1) in the Armed Forces of the United States or their auxiliaries and/or in Armed Forces Reserve of the United States and their auxiliaries and/or in the service of the American Red Cross, as a result of having volunteered or having been drafted and/or conscripted thereinto, or (2) in war work as a direct result of having been drafted and/or conscripted into said war work, shall be permitted to contribute each year to the municipal system a sum not to exceed the amount contributed by him to said retirement system during the last year that he was employed as an employee under the provisions of this Act. The sum so contributed by such participant and received by the municipal system shall be deposited by said system in the Employees Saving Fund to the credit of the participant's individual account and shall be treated in the same manner as funds contributed by the participant while he was employed as under the provisions of this Act.

(d) Current interest on participant's contributions shall be credited annually as of the thirty-first day of December and shall be allowed on the amount of the accumulated contributions standing to the credit of the participant at the beginning of the year and shall not be allowed for parts of a year. Upon termination of participation in the municipal system, the Employee Saving Fund account of such participant shall be closed and vouchers covering the total accumulated contributions sent to such participants upon the filing of formal application. Until the time of payment of such accumulated contributions, said participant shall receive no interest on the amount due him under this subsection, and the amount shall be held in a non-interest bearing account to be set up for such purpose.

(e) Upon the retirement of a participant, his accumulated contributions shall be transferred from the Employees Saving Fund to the Annuity Reserve Fund.

(f) The Disability Reserve Fund and Expense Fund portion of the contributions included in the Employees Saving Fund shall be transferred as the Board shall direct.

2. Municipal Accumulation Fund:

The Municipal Accumulation Fund shall be the fund in which shall be accumulated all contributions made to the Texas Municipal Retirement System by the participating municipalities for the purpose of providing upon the retirement of each participant an amount equal to such participant's accumulated contributions; and from which shall be transferred to the Annuity Reserve Fund, at the retirement of a participant, an amount equal to the accumulated contributions of the participant.

Contributions to and payments from this Fund shall be made as follows:

(a) On the basis of such mortality and other tables as the Board shall adopt, the Board's Actuary shall determine the annual amount required to be paid into the Municipal Accumulation Fund in order to accumulate by or before maturity a sufficient sum to meet all present and prospective liabilities of this Fund at the termination of said period, and to provide the amount required according to this Act to be transferred from this Fund into the Annuity Reserve Fund during such period. Present and prospective liabilities as used herein shall mean at any time an amount equal to that amount in the Employees Saving Fund at that time

which will eventually be transferred to the Disability Reserve Fund and the Annuity Reserve Fund, according to the calculations made by the Actuary and approved by the Board on the basis of mortality, morbidity and other tables adopted by the Board. The Board shall certify annually to the City Clerk or City Secretary of each participating municipality the amount so ascertained by the Actuary, and such amount shall be paid each year in equal monthly installments in the manner hereinafter provided into the Municipal Accumulation Fund by the Treasurer of each such participating municipality.

(b) When the amount in the Municipal Accumulation Fund shall become sufficient to meet the present and prospective liabilities of this Fund, the participating municipalities shall thereafter pay each year in equal monthly installments into the Municipal Accumulation Fund an amount equal to a per centum of the contributions of the participants during such year which shall be calculated by the Actuary and certified to the Clerk or Secretary of each such participating municipalities by the Board as being the necessary and required per centum to maintain a reserve in this Fund equal to present and prospective liabilities of the Fund. The rate per centum so certified shall continue in force until modified by the Board.

(c) Upon the retirement of a member, an amount equal to his accumulated contributions in the Employees Saving Fund shall be transferred from the Municipal Accumulation Fund into the Annuity Reserve Fund as a reserve for Retired Participants Annuities.

3. Annuity Reserve Fund:

The Annuity Reserve Fund shall be the Fund in which shall be held all reserves for membership annuities granted and in force and from which shall be paid all membership annuities and all benefits in lieu of membership annuities, payable as provided in this Act. This Fund shall be made up of transfers as follows:

(a) At the time of his retirement the accumulated contributions of a retiring participant shall be transferred from the Employees Saving Fund to the Annuity Reserve Fund as reserves for the membership annuity purchased by his contributions.

(b) An amount equal to the accumulated contributions of each retiring employee shall be transferred, upon such participant's retirement, from the Municipal Accumulation Fund as reserves for an additional annuity equal to the annuity purchased by the participant.

(c) Upon the death of any retired participant any sums due by the Texas Municipal Retirement System shall be paid to his beneficiary.

4. Prior Service Reserve Fund:

The Prior Service Reserve Fund shall be the Fund in which shall be accumulated all contributions made to the retirement system by the participating municipalities for the purpose of providing the amounts required for payment of prior-service annuities; and from which prior-service annuities shall be paid to beneficiaries as herein provided.

Contributions to and payments from this Fund shall be made as follows:

(a) All moneys appropriated by the participating municipalities as contributions to the municipal system each year and which are not required to be paid into the Municipal Accumulation Fund or Expense Fund as elsewhere herein provided, shall be paid into the Prior Service Reserve Fund in the manner hereinafter provided.

(b) All prior-service annuity payments to annuitants, as provided in this Act, shall be paid from this Fund. The Board shall have the power to reduce proportionately all payments for prior-service annuities at any time and for such period of time as is necessary so that the payments to beneficiaries for prior-service annuities in any year shall not exceed the available assets for payment of prior-service annuities in such year.

5. Interest Fund:

The Interest Fund is hereby created to facilitate the crediting of interest to the various other Funds. All income, interest and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund. Once each year on the thirty-first day of December, interest shall be allowed and transferred to the other Funds, respectively. The Board shall annually transfer to the credit of the interest reserve account of the Endowment Fund all excess earnings after interest-bearing Funds and the Expense Fund have been duly credited with interest for the year in the manner provided in this Act.

6. Endowment Fund:

The Endowment Fund shall be a Fund in which shall be accumulated gifts, awards, funds, and assets accruing to the municipal system not specifically required by other Funds created by this Act, and to provide a contingent fund out of which special requirements of other Funds may be covered. The principal of this Fund is hereby held and dedicated as a perpetual endowment of the municipal system. All current interest credited to this Fund and excess interest earnings transferred to this Fund shall be held as an interest reserve account from which the Board shall transfer annually to the Expense Fund such amount as is required to provide for the administration and maintenance of the municipal system, provided the funds are available.

7. Expense Fund:

The Expense Fund shall be the fund from which the expenses of administration and maintenance of the municipal system shall be paid. Transfers to and payments from this fund shall be made as follows:

(a) The Director shall prepare annually an itemized budget showing the amount required to defray the expenses for the ensuing fiscal year and shall submit the report to the Board for its review, amendment, and adoption.

(b) Participant shall pay with the first payment to the Employees Saving Fund each year, and in addition thereto, a sum of One Dollar ($1), which amount shall be credited to the Expense Fund, said payments for the Expense Fund shall be made to the Board in the same way as payments to the Employees Saving Fund shall be made, as provided for in this Act; provided, however, that if said payment for the Expense Fund of any participant is not made with said first payment of said participant, the Board may deduct the amount of the payment for the Expense Fund from said first payment of said participant.

(c) If the amount estimated to be required to meet the expenses of the municipal system is in excess of One Dollar ($1) per participant for the year, the amount of such excess shall be paid from the interest reserve account of the Endowment Fund to the extent available. If, in the judgment of the Board, as evidenced by a resolution of the Board recorded in its minutes, the amount in the interest reserve account of the Endowment Fund exceeds the amount necessary to cover the ordinary requirements of that Fund for a period of five (5) years in the future, the Board may transfer to the Expense Fund such excess amount not exceeding the entire amount required to cover the expenses as estimated for the year.

(d) If the amount estimated to be required to meet the expenses of the Board is in excess of One Dollar ($1) per participant for the year and if there is an insufficient amount in the interest reserve account of the Endowment Fund to pay such excess, the Board, as evidenced by a resolution of that Board recorded in its minutes, shall either transfer to the Expense Fund, from the Interest Fund an amount necessary

to cover the expenses as estimated for the year, or assess the estimated additional amount against the participating municipalities in proportion to the number of participants. To the extent of the surplus of the Expense Fund and funds otherwise available permit, the Board may reduce the One Dollar ($1) per year otherwise payable by participants.

8. Disability Reserve Fund.

The Disability Reserve Fund shall be a fund in which shall be accumulated by equal transfers from the Employees Saving Fund and Municipal Accumulation Fund of such sums as the Board with the advice of its Actuarial Counsel shall deem proper to provide the disability benefits contemplated by Section 6 of this Act.

All such disability benefits shall be paid from this Fund and no other Fund.

9. Collection of Contributions:

(1) The collection of participants' contributions shall be as follows:

(a) Each participating municipality shall cause to be deducted on each and every pay roll of a participant for each and every pay-roll period subsequent to the effective date of becoming a participating municipality or participating department the contributions payable by such participant, as provided in this Act.

(b) The treasurer or proper disbursing officer of each participating municipality shall make deductions from salaries of employees as provided in this Act, and shall transmit monthly, or at such time as the Board shall designate, a certified copy of the pay roll, and the amount specified to be deducted shall be paid to the Board at its home office in cash and, after making a record of all receipts, the said Board shall deposit such receipts to the credit of the Employees Saving Fund, and such Funds shall be deemed as appropriated for use according to the provisions of this Act.

(c) For the purpose of enabling the collection of participants' contributions to be made as simple as possible, the City Clerk or City Secretary of each participating municipality shall within thirty (30) days after the beginning of each year, make up a list of all employees in its employ, who are participants, set out their salaries by the month and by the year, make a certificate to the correctness of this statement, and file the same with the Director. If addition to or deduction from this list should be made during the year, such additions or deductions shall likewise be certified.

(d) The Records of the Board shall be open to public inspection and any participant shall be furnished with a statement of the amount to the credit of his individual account upon written request by such participant, provided that the Board shall not be required to answer more than one such request of a participant in any one year.

(2) The collection of the employer's contributions shall be made as follows:

On or before the fifteenth day of each month each participating municipality shall remit or cause to be paid to the Texas Municipal Retirement System at its office in cash one-twelfth (1/12) of the annual contribution required of it pursuant to Section 4 (b) of this Act, adjusted by subtraction for the discontinuance of participants and additions for participants added during the year.

Benefits

Sec. 6. (A) Annuities:

Any participant whose employment by all participating municipalities is terminated on or after the attainment of age sixty-five (65), regardless of cause, or because of permanent and total disability, regardless of age, shall be entitled to a retirement annuity beginning on the date specified by such participant in a written application therefor, provided:

(1) The date upon which the annuity begins is not prior to: the date of final termination of employment of such participant, a date sixty (60) days preceding the receipt of such application by the Board, or a date within one year after the effective date of participation of the employee.

(2) The participant has either attained an age of at least sixty (60) years, or has become at least fifty-five (55) years of age, has completed at least twenty (20) years of total active service for participating departments, has terminated employment with the consent of the employing municipality, and is neither receiving nor entitled to receive any regular compensation for personal services currently performed under any continuous employment elsewhere.

(3) Each participant who has attained the age of seventy (70) prior to the earliest retirement date possible for such participant shall be retired from employment by all municipalities on such date, and any participant attaining the age of seventy (70) thereafter shall be retired no later than the first day of January immediately following the attainment of such age, provided, however, that in exceptional cases and for substantial cause such retirement may be deferred for a period of not to exceed one year at any time by mutual agreement of the participant and the municipality.

(B) The amount of the retirement annuity to which any participant is entitled shall be the sum of the following, all determined from credits applicable to such participant in accordance with the actuarial tables and the prescribed rate of interest in effect at the time:

(1) A normal annuity equal to the annuity which can be provided from the participant's contributions on the date the annuity begins; and

(2) A current annuity equal to the normal annuity; provided such current annuity shall not exceed the current annuity which would have been provided on the date the participant attained age sixty-five (65); and provided that such current annuity shall not exceed an amount which would make the total of the normal and current annuities exceed sixty per centum (60%) of the final rate of earnings of the participant; and

(3) A prior-service annuity equal to the annuity which can be provided from the accumulated prior-service credits of such participant on the date the annuity begins; provided that in no event shall such prior-service annuity exceed an amount which would make the total of the normal, current and prior-service annuities exceed (1) sixty per centum (60%) of the final rate of earnings of the participant, or (2) the annuity which would have been available on the date such participant attained the age of sixty-five (65), or the effective date of participation, whichever is later, assuming that the employee were then exactly aged sixty-five (65) and the prior-service credits were one and two-thirds (1⅔) times the accumulated prior-service credits otherwise available; provided, however, that if a participant has rendered twenty-five (25) years' service to participating municipalities, his minimum total annuities shall be Fifty Dollars ($50) per month.

All annuities shall be paid for life unless the amount thereof is less than Twenty Dollars ($20) per month, in which event such benefits, of equivalent actuarial value at the time, as the annuitant and the Board shall mutually agree, shall be paid. Notwithstanding the fact that retirement annuities are payable for life, if any person receiving a retirement annuity should, during any period prior to attainment of age sixty-five (65), receive or become entitled to receive any compensation for personal services currently performed under continuous employment at regular compensation, or if any person receiving a retirement annuity granted prior to the age of sixty-five (65) because of disability should cease to be considered per-

manently and totally disabled for any reason by the Board, then the retirement annuity shall cease during the period for which such compensation is payable. Such annuity shall, however, be resumed at the same rate when such compensation thereafter ceases to be payable or the annuitant becomes sixty-five (65) years of age.

(4) Upon retirement, any participant may elect to receive his retirement annuity in an annuity payable throughout life or he may elect to receive the actuarial equivalent at that time of his retirement annuity in a reduced retirement annuity payable under the conditions that the Board shall determine, and such credits shall not be reinstated upon subsequent participation of such participant in this system or for any other cause.

(C) Disability Retirement Benefits:

Any participant shall be entitled, under such rules as the Board may prescribe, to a disability benefit upon becoming totally and permanently disabled (1) from injuries sustained by participant by external and violent means as a direct and proximate result of the performance of his duties more than one year after becoming a participant or (2) occurring from any cause more than ten (10) years after becoming a participant.

The said retirement benefit shall be a normal annuity, a current annuity and a prior-service annuity as defined in Section 6(B).

(D) Certificate of Disability:

No person shall be retired either for total or temporary disability, except as herein provided, nor receive any allowance from said Fund, unless and until there shall have been filed with the Board, certificates of his disability or eligibility signed and sworn to by said person and/or by the city or town physician, if there be one, or if none, then by any physician selected by the Board. Said Board, in its discretion, may require all and such other or additional evidence of disability as it may deem proper before ordering such retirement or payment aforesaid.

Administration

Sec. 7. (A) This system shall be construed to be a trust and shall be administered by a Board of Trustees consisting of five (5) persons, each of whom shall be designated as a trustee. Such Board shall consist of three (3) trustees, each of whom shall be a chief executive officer, chief finance officer, or other officer, executive or department head of a municipality, and each such trustee shall be designated as an executive trustee; and two (2) trustees each of whom shall be an employee of a municipality and shall be designated as an employee trustee.

On or before September 15, 1947, the Governor shall, with the advice and the consent of the Senate, appoint five (5) persons, who qualify as trustees, as the first Board; one (1) for a period to expire December 31, 1948, one (1) for a period to expire December 31, 1949, one (1) for a period to expire December 31, 1950, one (1) for a period to expire December 31, 1951, and one (1) for a period to expire December 31, 1952. Prior to the fifteenth day of November of each year thereafter the Governor shall, with the advice and consent of the Senate, appoint a successor to the trustee whose term expires at the end of such year. Each such successor trustee shall be appointed from a participating municipality and, to the extent possible, such trustees shall be from different municipalities. A person appointed as a trustee shall qualify as a trustee upon the presentation to the Board of a certified copy of an oath of office taken before the clerk of the municipality by which such person is employed. After the first Board, the term of office of each trustee shall begin upon the first day of January of the year following the year in which such trustee is appointed and shall continue for a period of five (5) years and until a successor has been appointed and qualified or until prior resignation, death, incapacity or disqualification. Any trustee after the original trustees shall be disqualified immediately upon termination of employment with all participating municipalities or upon any change in status which removes any such trustee from employment within the group which he represents. Any vacancy on the Board, regardless of cause, shall be filled for the unexpired term by the Governor. All trustees shall serve without compensation, but shall be reimbursed for any reasonable traveling expenses incurred in attending meetings of the Board and for the amount of any earning withheld by any employing municipality because of attendance of any board meeting. Each trustees shall be entitled to one (1) vote on any and all actions before the Board for consideration at any Board meeting, and at least three (3) concurring votes shall be necessary for every decision or action by the Board at any of its meetings. No decision or action shall become effective unless presented and so approved at a regular or duly called special meeting of the Board.

(B) The Board shall have, in addition to all other powers and duties arising out of this Act not otherwise specifically reserved or delegated to others, the following specific powers and duties and is hereby authorized and directed to:

(1) Hold regular meetings in March, June, September and December of each year, and such special meetings at such other times as may be called by the director upon written notice of at least three (3) trustees. At least five (5) days notice of each meeting shall be given to each trustee. All meetings of the Board shall be open to the public and shall be held in the offices of the Board or in any other place specifically designated in the notice of any meeting.

(2) Consider and pass on all applications for annuities and benefits, authorize the granting of all annuities and benefits and suspend any payment or payments, all in accordance with the provisions of this Act.

(3) Certify all employee contribution rates, all municipality contribution rates and the prescribed rate of interest as approved in writing by the actuary and notify all participating municipalities thereof.

(4) Obtain such information from any participating employee or from any participating municipality as shall be necessary for the proper operation of the system.

(5) Establish an office in either the Capital City or in one of the participating municipalities. All books and records of the system shall be kept in such office.

(6) Appoint a director for the purpose of managing this municipal system, investing the Funds and carrying out the administrative duties of the system, appoint an actuary for the purpose of carrying out all the necessary actuarial requirements of the system and employ such additional actuarial, clerical, legal, medical and other assistants as shall be required for the efficient administration of the system; and determine and fix the compensation to be paid.

(7) Have the accounts of the system audited at least annually by a Certified Public Accountant.

(8) Submit an annual statement to the governing body of each municipality and to any participant, upon request, as soon after the end of each calendar year as possible. Such statement shall include at least the following:

(a) A balance sheet showing the financial and actuarial condition of the system as of the end of the calendar year.

(b) A statement of receipts and disbursements during each year.

(c) A statement showing changes in the asset, liability, reserve and surplus accounts during the year.

(d) A detailed statement showing, as of the end of such year, the title of each security, purchase price, coupon rate, effective interest rate, amortized book

value, maturity date, and amount of due and accrued interest.

(e) Such additional statistics as are deemed necessary for a proper interpretation of the condition of the system.

(9) Submit an individual statement to any participating employee upon reasonable request of such employee. Such statement shall indicate the amount of accumulations of each type to the credit of such employee, as of the latest date practicable.

(10) Accept any gift, grant or bequest of any money or securities for the purposes designated by the grantor, if such purposes are specified as providing an endowment or retirement benefits to some or all of the participating employees or annuitants of this system, or if no such purposes are designated, for the purpose of distribution to all the participating employees at the end of the year in the same proportion as the interest at the effective rate is allocated for the year.

(11) Determine the limitations on the amounts of cash to be invested in order to maintain such cash balances as may be deemed advisable to meet payments of benefits and expenses, and invest the remaining available cash in securities in accordance with subsection (c) hereof.

(12) Keep in convenient form such data as shall be necessary for all required calculations and valuations as required by the actuary and keep a permanent record of all the proceedings of the Board.

(13) Establish such rules and regulations not inconsistent with the other provisions of this Act and generally carry on such other reasonable activities as are deemed necessary or desirable for the efficient administration of the system.

(C) The Director shall be in charge of the technical administration of the system and shall have such additional powers and duties as are properly delegated by the Board. The actuary shall be the technical advisor of the Board and in addition to general advice shall specifically be responsible for, and it shall be his duty to:

(1) Make a general investigation, as soon after the first effective date of participation of any municipality as is practicable and at least once every five (5) years thereafter, of the experience of the system as to mortality, disability, retirement, separation, interest and employee earnings rates and to certify as a result of any such investigation:

(a) The tables to be used for computing annuities and benefits and for determining the premiums for disability and death purposes.

(b) The rates of normal contributions, and

(c) The prescribed rate of interest.

(2) Recommend the rates of municipality contributions.

(3) Make an annual valuation of the liabilities and reserves required to pay annuities and benefits.

(4) Certify the amounts of each annuity and benefit granted by the Board, and

(5) Advise the Board on any matters of an actuarial nature affecting the soundness of the system.

(D) The assets of the system, in excess of the amount of cash required for current operations as determined by the Board, shall be invested and reinvested in the following types of securities:

(1) Interest bearing bonds or notes which are general obligations of the United States, or of the State of Texas, or of any municipality in the State of Texas.

(2) Interest bearing bonds or notes which are general obligations of any state in the United States other than Texas or of any city or county therein, provided such city or county had a population as shown by the last Federal Census next preceding such investment, of not less than Thirty Thousand (30,000) inhabitants, and provided that such state, city or county has not defaulted for a period longer than thirty (30) days in the payments or interest or principal on any of its general obligations indebtedness during the ten (10) calendar years immediately preceding such investment.

(E) All money received by the Board shall immediately be deposited with a Depository for the account of the system. All disbursements shall be made only upon vouchers signed by the person or persons designated for such purpose by resolution of the Board, and the Depository is hereby authorized to pay the vouchers or checks so signed. The Depository shall accept all warrants so signed and shall be released from liability for all payments made thereon. Checks or warrants shall be drawn only upon proper authorization by the Board, properly recorded in the official minute books of the meetings of the Board. All securities of the system when received shall be deposited in Trust with a Depository designated by the Board and the Depository shall provide adequate safe deposit facilities for their preservation. The assets of the system shall be invested as one Fund, and no particular person or municipality shall have any right in any specific security or in any item of cash other than an undivided interest in the whole, as set forth in the provisions of this Act.

(F) For the purpose of determining the municipality contribution rates and the amounts of the obligations of municipalities, each participating municipality shall be charged with the following amounts, as of the dates specified:

(1) For prior service, a prior-service obligation of an amount equal to the present value, on the effective date of participation of the department of all prior-service credits granted to the employees of such department as of such effective date.

(2) For current service, a current-service obligation of an amount equal to the present value at the end of the year of all amounts required to provide the present value of the current-annuity benefits accruing during such year to the employees of such department as of the end of each year.

As each municipality's contribution becomes due, it shall be prorated in the same proportion that the amount for each purpose is of the total of all amounts required for all purposes for such year. The portions applicable to the prior-service obligation and the current-service obligation shall be credited to the corresponding account of the participating municipality from which it is receivable. The surplus or deficiency arising during the year in the prior-service reserve and in the reserve for current annuities not yet granted because of mortality, turnover and other variations and limitations upon the granting of annuities and benefits shall be credited or charged, as the case may be, at the end of the year, to the prior-service obligation or current-service obligation account, respectively, of the municipality previously charged for the amounts from which any such reserves were accumulated. At the end of the year in which the prior-service obligation of any municipality is completely amortized, any balance remaining in such account shall be transferred to the current-service account of such municipality and thereafter all surpluses and deficiencies arising because of the granting of annuities or benefits, or because of variations in mortality in the reserve requirements for prior-service credits, shall be credited or charged, as the case may be, to the current-service obligation account of such municipality.

Depositories

Sec. 8. In handling the funds of the System created by this Act, the Board shall have and is hereby given all the power, authority and duties granted the State Depository Board and shall designate depositories to qualify and serve such system in accordance with the provisions of Chapter I, Title 47, Revised Civil Statutes of Texas of 1925,[1] together with all amendments thereto.

[1] Article 2525 et seq.

Merger with other Systems

Sec. 9. The merger of other Pension Systems for municipal employees is hereby authorized upon terms to be fixed by the Board of Trustees of this system and the members and trustees of such other system.

Consolidation with Firemen's Relief Pension Fund

Sec. 10. (a) When the members of the Fire Department of a municipality by their election and with the consent of their employer become participants of this municipal system upon the voluntary application of the employing municipality the Funds, if any, of the "Firemen's Relief and Retirement Fund" of such municipality and all future payments to such Fund may be transferred to the Board and credited to its Prior Service Reserve Fund.

All distributions and payments which could be made annually to a "Firemen's Relief and Retirement Fund" for the firemen of any participating municipality, if the firemen of such municipality were not covered by this or some other Pension or Retirement System or if such participating municipality has or had taken the proper steps to secure such Funds, shall be paid over to the Board and credited for the benefits of such firemen as the Board shall direct.

Miscellaneous

Sec. 11. (A) Each participant shall, by virtue of the payment of the normal contributions required to be paid to this system, receive a vested interest in the normal annuities, death benefits and separation benefits.

(B) The provisions of this Act, however, shall not apply to any person who on the effective date hereof has a contract of employment with a municipality which would be violated by the requirement of participation as herein specified, unless such person elects to participate. Each such person who shall have had contributions deducted under this system, or who shall have been notified of the creation of this system, shall be deemed to have elected to participate, unless such person files with the Board prior to the effective date of participation a written notice of election not to participate. Any person so electing not to participate shall forever thereafter be precluded from participating in this system.

(C) The assets of the system shall be invested as one (1) Fund, and no particular person, group of persons or entity has any right in any specific security or property or in any item of cash other than an undivided interest in the whole as specified in the provisions of this Act as it now exists or is subsequently amended.

(D) All annuities and other benefits payable under the provisions of this Act and all accumulated credits of employees in this system shall be unassignable and shall not be subject to execution, garnishment or attachment.

(E) Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this system, in any attempt to defraud the system, shall be guilty of a misdemeanor and shall be punished therefor under the laws of the State of Texas.

(F) The Board shall require and secure at the expense of the municipal system such Fidelity Bond as it may deem proper for the faithful performance of the duties of the Director.

Repealing Clause

Sec. 12. All laws in conflict with this Act are to the extent of such conflict repealed.

Saving Clause

Sec. 13. If any section, paragraph, sentence or clause of this Act is, regardless of cause, held to be invalid or unconstitutional, the remaining sections, paragraphs, sentences and clauses shall continue in full force and effect and shall be construed thereafter as being the entire provisions of this Act. [Acts 1947, 50th Leg., p. 108, ch. 75.]

3. OLD AGE ASSISTANCE

Art. 6243—1. [Repealed by Acts 1941, 47th Leg., p. 914, ch. 562, § 45.]

The repealed article was Acts 1935, 44th Leg., 2nd C.S., p. 1854, ch. 472.

Art. 6243—2. Purpose.—It is hereby declared to be the intention and purpose of the Legislature by and through the enactment of this Act to provide, in part, for the payment of old age assistance benefits, by raising revenues for such purpose and by delimiting the class of persons who shall be eligible for old age assistance benefits. It is recognized by the Legislature that it is impracticable to pay benefits to persons over sixty-five (65) years of age, except those who are in necessitous circumstances; in order that the needy aged may be cared for, it is necessary that the State have funds on hand to meet the accruing obligations therefor. In order to accomplish this purpose, the Legislature declares that it is necessary to accomplish two incidental objectives, namely: (1) the number of persons receiving old age assistance benefits must be decreased, and (2) in addition, more revenues must be provided for the purposes of paying such benefits. The accomplishment of this object is the purpose of this Act. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 1, § 1.]

Arts. 6243—3 to 6243—21. [Repealed by Acts 1941, 47th Leg., p. 914, ch. 562, § 44.]

Prior to repeal, articles 6243—5 and 6243—6 were amended by Acts 1939, 46th Leg., p. 541. Such amendment was repealed by Acts 1941, 47th Leg., p. 914, ch. 562, § 46.

Art. 6243—22. Permanent Old Age Pension Fund; liquidation.

Liquidation of certain United States obligations; redeposit

Sec. 1. The Treasurer of the State of Texas is empowered and directed to immediately sell and liquidate any and all bonds or interest bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States that have been deposited in the Permanent Old Age Pension Fund and the gross proceeds from such sale and liquidation shall be immediately redeposited in the Permanent Old Age Pension Fund.

Transfer to Texas Old Age Assistance Fund

Sec. 2. It is further provided that there is hereby appropriated and transferred all monies, choses in action, funds and things of value now a part of and accumulated in the Permanent Old Age Pension Fund into the Texas Old Age Assistance Fund to be used by the Old Age Assistance Commission for the sole purpose of paying Old Age Assistance Grants to applicants whose applications have been and may be approved and allowed; and be it further provided that no portion of said money shall be expended for administrative purposes; and be it further provided that the State Treasurer and all other accounting officers in the State are hereby authorized and directed to take such action as may be necessary to effectuate this appropriation and transfer. [Acts 1936, 44th Leg., 3rd C.S., p. 1989, ch. 479.]

Art. 6243—23. Warrants against Texas Old Age Assistance Fund; interest.—Section 1. The Texas Old Age Assistance Commission is hereby authorized to pay interest, so long as said warrants are unpaid, on warrants issued against the Texas Old Age Assistance Fund for the payment of old age assistance benefits when the cash balance of the moneys deposited to the credit of said fund by the State of Texas is insufficient to pay in cash the State's part of the pension requirements, and there is hereby ap-

propriated out of any moneys appropriated to the Texas Old Age Assistance Fund a sufficient amount to pay interest charges accruing under this Act, but in the event that interest is paid on or on account of such warrants as authorized in this Act, no such warrant, issued for a single month, including both principal and interest paid thereon or therefor, shall ever exceed Fifteen Dollars ($15) of State money.

Sec. 2. The form and method of issuing such warrants and of paying the interest thereon as herein authorized shall be prescribed by the Texas Old Age Assistance Commission. The Comptroller and the Treasurer are authorized and directed to perform such duties as are required of them under authority of this Act to accomplish its purpose.

Sec. 3. Before the issuance of any such warrants, the State Banking Board shall, upon application by the Old Age Assistance Commission, determine the rate of interest which shall be paid on account of such warrants as authorized herein, such interest rate never to exceed two and one-half (2½) per centum per annum.

Sec. 4. The authority conferred by this Act to pay said interest shall not be limited by the provisions of Section 6 of Chapter 472, Acts of the Second Called Session of the Forty-fourth Legislature.[1]

Sec. 5. For the purposes of this Act and until the appropriation made in House Bill No. 8, now pending in this, the Third Called Session of the Forty-fourth Legislature,[2] becomes available, the unexpended balance of the appropriation made in Chapter 472 of the Acts of the Second Called Session of the Forty-fourth Legislature for the purpose of paying Old Age Assistance and defraying the expense of the administration of the Old Age Assistance Act is hereby reappropriated. The unexpended balance of the appropriation made in said House Bill No. 8 remaining on hand on August 31, 1937, is hereby reappropriated for the purposes of this Act for the fiscal year ending August 31, 1938, to assure the payment of any warrants issued under the provisions of this Act. Provided, however, that the power conferred in this Act does not authorize the issuance of more than Three Million Dollars ($3,000,000) of warrants upon which or on acccount of which interest may be paid, and provided further that no such warrants shall be issued after March 1, 1937.

Sec. 6. This law shall be cumulative of all other laws on the subject, but in event any provision of this Act shall be in conflict with the provisions of any other law, the provisions of this Act shall have precedence and shall be fully effective. [Acts 1936, 44th Leg., 3rd C.S., p. 2084, ch. 496.]

[1] Article 6243—1, § 6.
[2] Articles 6243—2 et seq.

Art. 6243—24. Warrants against Texas Old Age Assistance Fund; Interest; Calling warrants.

Authority to pay interest

Section 1. The Texas Old Age Assistance Commission is hereby authorized to pay interest, so long as said warrants are unpaid, on warrants issued against the Texas Old Age Assistance Fund for the payment of old age assistance benefits when the cash balance of the moneys deposited to the credit of said Fund by the State of Texas is insufficient to pay in cash the State's part of the pension requirements, and there is hereby appropriated out of any moneys appropriated to the Texas Old Age Assistance Fund a sufficient amount to pay interest charges accruing under this Act, but in the event that interest is paid on or on account of such warrants as authorized in this Act, no such warrant, issued for a single month, including both principal and interest paid thereon or therefor, shall ever exceed Fifteen Dollars ($15) of State money.

Form and methods

Sec. 2. The form and method of issuing such warrants and of paying the interest thereon as herein authorized shall be prescribed by the Texas Old Age Assistance Commission. The Comptroller and the Treasurer are authorized and directed to perform such duties as are required of them under the authority of this Act to accomplish its purpose.

Determination of interest rate

Sec. 3. Before the issuance of any such warrants, the State Banking Board shall, upon application by the Old Age Assistance Commission, determine the rate of interest which shall be paid on account of such warrants as authorized herein, such interest rate never to exceed two and one-half (2½) per centum per annum.

Authority not limited by Article 6243—1

Sec. 4. The authority conferred by this Act to pay said interest shall not be limited by the provisions of Section 6 of Chapter 472, Acts of the Second Called Session of the Forty-fourth Legislature.[1]

Limitation

Sec. 5. Provided that the power conferred in this Act does not authorize the issuance of more than Nine Hundred Thousand Dollars ($900,000) of warrants upon which or on account of which interest may be paid, and provided further that no such warrants shall be issued after September 1, 1939.

Outstanding warrants to be paid

Sec. 6. a. It is provided that the Treasurer of the State of Texas shall call all warrants now outstanding that have heretofore been issued under the authority and provisions of Chapter 496, Page 2084, Acts 1936, Forty-fourth Legislature, Third Called Session,[2] and he is directed and authorized to pay said warrants, together with interest thereon, out of the Texas Old Age Assistance Fund, according to the following schedule:

On October 10, 1939, warrants in the amount of One Hundred Thirty Thousand, Nine Hundred and Eighty-seven Dollars ($130,987) shall be called and paid by the Treasurer, together with interest thereon, and on the 10th day of each month thereafter, the Treasurer is directed and authorized to call and pay the remaining outstanding warrants in the amount of Two Hundred Thousand Dollars ($200,000) per month, together with interest thereon, until such time as all outstanding warrants hereinabove referred to shall be called and paid in full, and there is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

b. The Treasurer of the State of Texas is directed and authorized to call and pay all warrants that might hereafter be issued under and by virtue of the provisions of this Act in approximate equal monthly installments on the 10th day of the months May, 1940, to September, 1940, both inclusive, together with interest thereon, out of the Texas Old Age Assistance Fund, and there is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

Exchange of original warrants for obligations of State

Sec. 7. (1) The Old Age Assistance Commission be and is hereby authorized and directed to offer to and deliver to the holder, or holders, of the warrants which may be issued under the provisions of this Act and of the warrants heretofore issued for Old Age Assistance under authority of Chapter 496, Page 2084, Acts 1936, Forty-fourth Legislature, Third Called Session,[2] and

now outstanding, the State's obligation in the same principal amount, or amounts, in such forms and denominations as shall be determined by such Commission, approved by the Attorney General, and acceptable to such holder, or holders, bearing interest at not to exceed one and six-tenths (1.6) per cent per annum or not to exceed the rate of interest which shall be paid on or on account of the warrants which may be issued under the terms of this Act, whichever rate is the lower. Said obligations shall bear dates to be fixed by the Commission and shall mature exactly according to the schedules set out in Section 6 hereof.

(2) Upon exchange of the original warrants for the obligations authorized hereunder the State Treasurer shall retain in his possession in escrow as trustee said original warrants until the obligations herein authorized are paid in full. And the holder, or holders, of such obligations, in addition to all other rights, shall be subrogated to the rights of the holders of such original warrants. Upon payment of such obligations said original warrants shall be cancelled by the State Treasurer. There is hereby appropriated out of funds allocated in present and/or future laws to the Old Age Assistance Fund a sum sufficient to pay said obligations and the interest thereon.

(3) Interest on such original warrants shall be paid in accordance with the contract or contracts under which they were issued up to the date of the exchange for the obligations authorized herein.

(4) Such obligations to be substituted therefor shall be eligible to secure deposits of all funds of the State of Texas, and of counties, cities, districts, and political subdivisions of and in the State of Texas on the basis of one dollar principal amount of such obligations for each dollar of deposited funds.

(5) The Governor, State Treasurer, Attorney General, Texas Old Age Assistance Commission, Comptroller of Public Accounts, and the Secretary of State are hereby directed to do any and all things necessary to accomplish the purposes of this Section.

(6) When such obligations shall have been issued in accordance with a resolution adopted by the Texas Old Age Assistance Commission and shall have been approved by the Attorney General, they shall be incontestable and the full faith and credit of the State shall be pledged to their payment.

Act cumulative; conflicting laws

Sec. 8. This Act shall be cumulative of all other laws on the subject, but in event any provision of this Act shall be in conflict with the provisions of any other laws, the provisions of this Act shall have precedence and shall be fully effective. [Acts 1939, 46th Leg., p. 536.]

1 Art. 6243—1, § 6.
2 Art. 6243—23.

Art. 6243—25 to 6243—100. [Reserved for future legislation.]

TITLE 109A—PLUMBING

Art.
6243—101. Plumbing License Law of 1947.

Sec.
1. Name.
2. Definitions.
3. Acts permitted without a license.
4. State Board of Plumbing Examiners.
5. Powers and duties of the Board.
6. Compensation of Board.
7. Expenses of Board.
8. Issuance of licenses.
9. Revocation of licenses; hearing.
10. Existent plumbers and plumbing inspectors licensed without examination.
11. Apprentice.
12. Licenses.
13. Fees.
14. Prohibition against practicing without license.
15. Municipal rules and regulations.
17. Partial unconstitutionality.

Art. 6243—101. Plumbing License Law of 1947.

Name

Section 1. This Act shall be known and may be cited as "The Plumbing License Law of 1947."

Definitions

Sec. 2. (a) The word or term "plumbing" as used in this Act means and shall include: (1) All piping, fixtures, appurtenances and appliances for a supply of water or gas, or both, for all personal or domestic purposes in and about buildings where a person or persons live, work or assemble; all piping, fixtures, appurtenances and appliances outside a building connecting the building with the source of water or gas supply, or both, on the premises, or the main in the street, alley or at the curb; all piping, fixtures, appurtenances, appliances, drain or waste pipes carrying waste water or sewage from or within a building to the sewer service lateral at the curb or in the street or alley or other disposal terminal holding private or domestic sewage; (2) the installation, repair and maintenance of all piping, fixtures, appurtenances and appliances in and about buildings where a person or persons live, work or assemble, for a supply of gas, water, or both, or disposal of waste water or sewage.

(b) A "Master Plumber" within the meaning of this Act is a plumber having a regular place of business, who, by himself, or through a person or persons in his employ, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(c) A "Journeyman Plumber" within the meaning of this Act is any person other than a master plumber who engages in or works at the actual installation, alteration, repair and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(d) A "Plumber's Apprentice" within the meaning of this Act is any person other than a master plumber or journeyman plumber who, as his principal occupation, is engaged in learning and assisting in the installation of plumbing.

(e) A "Plumbing Inspector" within the meaning of this Act is any person employed by a city, town or village for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, and who has successfully fulfilled the examinations and requirements of the Board.

(f) The word or term "Board" as used in this Act means the Texas State Board of Plumbing Examiners.

Acts permitted without a license

Sec. 3. The following acts, work and conduct shall be expressly permitted without license:

(a) Plumbing work done by a property owner in a building owned or occupied by him as his home;

(b) Plumbing work done outside the municipal limits of any organized city, town or village in this state, or within any such city, town or village of less than five thousand (5,000) inhabitants, unless required by ordinance in such city, town or village of less than five thousand (5,000) inhabitants;

(c) Plumbing work done by anyone who is regularly employed as or acting as a maintenance man or maintenance engineer, incidental to and in connection with the business in which he is employed or engaged, and

who does not engage in the occupation of a plumber for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of a plumber for the general public; and plumbing work done by persons engaged by any public service company in the laying, maintenance and operation of its service mains or lines and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances; appliance installation and service work done by anyone who is an appliance dealer or is employed by an appliance dealer, and acting as an appliance installation man or appliance service man in connecting appliances to existing piping installations. Provided, however, that all work and service herein named or referred to shall be subject to inspection and approval in accordance with the terms of all local valid city or municipal ordinances.

State Board of Plumbing Examiners

Sec. 4. The Texas State Board of Plumbing Examiners shall consist of six members, each of whom shall be a citizen of the United States and a resident of this state. Members of the Board and their successors shall be appointed by the Governor and confirmed by the Senate, and shall hold office for terms of six years, or until their successors are appointed and have qualified; except, the members of the Board first appointed shall hold office, two for two years, two for four years, and two for six years as determined by the Governor in making said appointments. One member of the Board shall have had at least ten years practical experience as a master plumber, one member shall have had at least five years practical experience as a journeyman plumber, one member shall be a licensed architect, one member shall be a licensed sanitary engineer and two members shall be building contractors with five years contracting experience, one of whom shall be principally engaged in home building and one of whom shall be principally engaged in commercial building.

Powers and duties of the Board

Sec. 5. The Board shall administer the provisions of this Act. The Board shall formally elect a chairman and a secretary-treasurer from its members and may adopt such rules as it deems necessary for the orderly conduct of its affairs. The Board is hereby authorized and empowered to employ, promote and discharge such assistants and employees as it may deem necessary to properly carry out the intent and purpose of this Act, and to fix and pay their compensation and salaries and to provide for their duties and the terms of their employment. A majority of the Board shall constitute a quorum for the transaction of business. The Board shall have a seal which shall be judicially noticed. The Board shall keep records of all proceedings and actions by and before the Board. The Board is hereby authorized, empowered and directed to prescribe, amend and enforce rules and regulations consistent with this Act for the examination and licensing of master and journeymen plumbers and plumbing inspectors, and said Board shall for this purpose appoint an employee or employees thereof, with the power of removal, as a plumbing examiner or examiners, whose duties shall be to examine, as to their fitness and qualifications, all persons applying to the Board for licenses to engage in the business, trade or calling of a master plumber or a journeyman plumber or to serve as a plumbing inspector, and to promptly certify the result thereof to said State Board of Plumbing Examiners.

Compensation of Board

Sec. 6. Members of the Board shall not receive any fixed salary for their services, but each member shall be allowed for each and every day in attending the meetings of the Board, the sum of Twenty ($20.00) Dollars, including time spent in travel to and from such meetings, and said members shall be allowed traveling and other necessary expenses while in the performance of official duty, to be evidenced by vouchers approved by the Chairman or Secretary of the Board; providing no member shall receive more than Five Hundred ($500.00) Dollars annually, exclusive of expenses. The members of the Board shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such.

Expenses of Board

Sec. 7. All expenses incurred under this Act shall be paid from the fees collected by the Board under this Act. No expense incurred under this Act shall ever be a charge against the funds of the State of Texas. The Board shall, as of December 31, 1947, and annually thereafter, report to the Governor of the State of Texas the receipts and disbursements under this Act for each calendar year. If the funds remaining in the hands of the Board at the end of any calendar year are in excess of the expenses of the Board, the Board shall reduce the license and other fees provided hereunder; but no fees collected hereunder shall ever be paid into the General Fund of this state.

Issuance of licenses

Sec. 8. The Board shall issue licenses to such persons of good moral character as have by a uniform, reasonable examination shown themselves fit, competent and qualified to engage in the business, trade or calling of a master plumber or journeyman plumber, or plumbing inspector, as the case may be.

Revocation of licenses; hearing

Sec. 9. The Board shall have power to revoke any license issued hereunder if the same was obtained through error or fraud, or if the recipient thereof is shown to be incompetent or shall have wilfully, negligently or arbitrarily violated municipal rules or ordinances regulating sanitation, drainage and plumbing; provided, that before any license shall be revoked, the holder thereof shall have written notice enumerating the charges against him, and shall be given a hearing by said Board, and have an opportunity to produce testimony in his behalf, at a time and place specified in said notice, which time shall be not less than twenty days after the service thereof. The Board shall have power to appoint, by an order in writing, any competent person to take testimony in such hearing, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses, and the decision of the Board shall be based upon its examination of the testimony taken and the records produced. Any person whose license has been revoked may, after the expiration of one year from the date of such revocation, but not before, apply for a new license.

Existent plumbers and plumbing inspectors licensed without examination

Sec. 10. All journeyman plumbers and master plumbers holding a license as such from any city examining and supervising Board of Plumbers in this state, and all presently acting plumbing inspectors at the time this Act takes effect may, within one-hundred twenty days thereafter, procure a license as a journeyman plumber or master plumber or plumbing inspector, as the case may be, without examination, upon payment of the license fee herein required. Every person applying after the expiration of said one-

hundred twenty days shall be required to take the examination herein provided for, and satisfy said Board as to his or her qualifications and competency.

Apprentice

Sec. 11. Any person who has worked as a plumber's apprentice at the business, trade or calling of plumbing for such a length of time as the Board may prescribe in its rules and regulations, and who desires to take an examination to entitle him to a license as a journeyman plumber, may file his application and take the examination provided by the Board.

Licenses

Sec. 12. Licenses issued by the Board shall be valid throughout the state, but shall not be assignable or transferable. The Board shall forward to the local Board of Health, if there be one, of each town, or to the other authority having control of the enforcement of regulations relative to plumbing in each town, the names and addresses of all persons in such town to whom such licenses have been granted. Licenses shall be issued for one year and may be renewed annually on or before February 1st upon payment of the required fee. In case of failure to renew a license as aforesaid on or before February 1st in any year, the person named therein may, upon payment of the said fee and a deferred renewal fee of Ten ($10.00) Dollars, increased by such additional fees as would have been payable had such license been continuously renewed, receive a deferred renewal thereof, which shall expire on the ensuing 1st day of February; provided that such renewed license shall not constitute its holder a license for any period preceding its issue.

Fees

Sec. 13. The following shall be the maximum fees charged under this Act by the Board, to wit:

Master plumber's license	$50.00
Renewal of master plumber's license	50.00
Journeyman plumber's license	5.00
Renewal of journeyman plumber's license	5.00
Plumbing inspector's license	5.00
Renewal of plumbing inspector's license	5.00
Revival license fee for master plumber	50.00
Revival license fee for journeyman plumber	5.00
Revival license for plumbing inspector	5.00
Examination fee for master plumber	50.00
Examination fee for journeyman plumber	5.00
Examination fee for plumbing inspector	5.00

Prohibition against practicing without license

Sec. 14. After the expiration of one hundred twenty days from the effective date of this Act, no person, whether as a master plumber, employing plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act; and after the expiration of one hundred twenty days from the effective date of this Act it shall be unlawful for any person to engage in, work at, or conduct the business of plumbing in this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license issued under the provisions of this Act and provided for hereby; and it shall be unlawful for any person, firm, or corporation to engage in or work at the business of installing plumbing and doing plumbing work except as specifically herein provided unless such installation of plumbing or plumbing work be under the supervision and control of a plumber licensed under this Act. And it is expressly provided that the provisions of Article 122 of the Penal Code of Texas shall apply to violations of this Act, and said Article 122 of the Penal Code and the penalties therein provided are hereby expressly referred to.

Municipal rules and regulations

Sec. 15. Every city in this state of more than five thousand (5,000) inhabitants shall, and any city or town of this state may, by ordinance or by-law, prescribe rules and regulations for the materials, construction, alteration and inspection of all pipes, faucets, tanks, valves and other fixtures by and through which a supply of water, gas or sewage is used or carried; and provided that they shall not be placed in any building therein except in accordance with such rules and regulations; and shall further provide that no plumbing shall be done except in case of repairing of leaks, without a permit being first issued therefor upon such terms and conditions as such city or town shall prescribe; provided that no such ordinance, by-law, rule or regulation prescribed by any such city or town shall be inconsistent with this Act, or any rule or regulation adopted or prescribed by the State Board of Plumbing Examiners.

Partial unconstitutionality

Sec. 17. If any section or any part of this Act shall be held to be invalid, such invalidity shall not affect the remaining portions thereof; it being the express intention of the Legislature to enact such Act without respect to such section or part so held to be invalid. [Acts 1947, 50th Leg., p. 192, ch. 115.]

Section 16 of the Act of 1947 repealed arts. 1078–1081 and all conflicting laws and parts of laws.

TITLE 110—PRINCIPAL AND SURETY

Art.
6244. May require suit brought.
6245. Discharged by failure to sue.
6246. [Repealed.]
6247. Levy first on property of principal.
6248. Rights of surety.
6249. Execution against a co-surety.
6250. Officer has same rights as surety.
6251. [Repealed.]
6252. Who is surety.

Article 6244. [6329] [3811] May require suit brought.—Any person bound as surety upon any contract for the payment of money or the performance of any act, when the right of action has accrued, may require by written notice, the creditor or obligee forthwith to institute suit upon such contract. [Acts 1858, p. 112; P. D. 4783; G. L. vol. 4, p. 984.]

Art. 6245. [6330] [3812] Discharged by failure to sue.—If the creditor or obligee, not being under legal disability, shall fail to bring his suit to the first term of the court thereafter, or to the second term showing good cause for the delay and prosecute the same to judgment and execution, the surety giving such notice shall be discharged from all liability thereon. [Id.]

Art. 6246. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 32.

Art. 6247. [6332] [3814] Levy first on property of principal.—If the finding of such issue be in favor of the surety, the court shall make an order directing the sheriff before he levies on the property of the surety to first levy the execution upon the property of the principal situate in the county in which the judgment was rendered, if so much property of the principal can be found as will in the opinion of the sheriff be sufficient to make the amount of the execution; otherwise the levy shall be made on so much property of the principal as may be found, if any, and upon so much of the property of the surety as may be necessary to make the amount of the execution; and the clerk shall make a memorandum of such order on the execution. [Acts 1858, p. 112; P. D. 4783; G. L. vol. 4, p. 984.]

Art. 6248. [6333] [3815] Rights of surety.—When any person, being surety in any undertaking whatever, shall be compelled to pay any judgment, or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, the said judgment shall not be discharged by such payment, but shall remain in force for the use of such surety, and shall be considered as assigned to such surety, together with all the rights of the creditor thereunder to the extent of such payment with the interest thereon; and such surety shall be entitled to have execution thereon in the name of the creditor for the use of such surety against the principal debtor for the full amount of such payment, interest and costs, which execution shall be issued upon the application of such surety to the clerk, or court, as the case may be, and shall be levied, collected and returned as in other cases. [Id.]

Art. 6249. [6334] [3816] Execution against a co-surety.—If there be more than one surety and one or more of them has failed to pay his proportionate part of the judgment, execution may issue, as provided in the preceding article, against the principal for the use of the surety who has paid more than his proportionate part for the whole amount paid by him and interest thereon, and also against his co-sureties, for their proportionate part of the excess so paid by him and interest thereon. [Id.]

Art. 6250. [6335] [3817] Officer has same rights as surety.—If an officer shall be compelled to pay any judgment, or any part thereof, by reason of any default of such officer, except for failing to pay over any money collected, or for wasting property levied on, such officer shall be entitled to have execution therefor against the principal defendant in such judgment as provided in the case of a surety. [Id.]

Art. 6251. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, Rule 31.

Art. 6252. [6337] [3819] Who is surety.—The remedy provided for sureties by this title extends to endorsers, guarantors, drawers of bills which have been accepted, and every other suretyship, whether created by express contract, or by operation of law. [Acts 1858, p. 112; P. D. 4783; G. L. vol. 4, p. 984.]

TITLE 110A—PUBLIC OFFICES

Art.
6252—1. Conduct of business by assistants or deputies when physical vacancy occurs in public office.

Art. 6252—1. Conduct of business by assistants or deputies when physical vacancy occurs in public office.—When there shall occur a physical vacancy in a public office in this State, by reason of death or otherwise, the duties and powers of such office shall immediately devolve upon the first assistant or chief deputy if there be one, who shall conduct the affairs of the office until the vacancy in the term thereof shall be filled by the appointment or election and qualification of a successor to the principal officer; should any such vacancy occur while the Legislature is in Session (where the appointee must be confirmed by the Senate) such first assistant or chief deputy (as such) shall not discharge the duties of the office for a longer period than three (3) weeks and in no event after such Session of the Legislature has adjourned. The provisions hereof shall not apply to vacancies in the membership of boards or commissions. [Acts 1943, 48th Leg., p. 14, ch. 13, § 1.]

TITLE 111—QUO WARRANTO

Art.
6253. Quo Warranto, when.
6254–6256. [Repealed.]
6257. Judgment of court.
6258. [Repealed.]

Article 6253. [6398] [4343] Quo Warranto, when.—If any person shall usurp, intrude into or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes, any office or franchise, or any office in any corporation created by the authority of this State, or any public officer shall have done or suffered any act which by law works a forfeiture of his office, or any association of persons shall act within this State as a corporation without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as such, or exercises power not conferred by law; or if any railroad company doing business in this State shall charge an extortionate rate for the transportation of any freight or passengers, or refuse to draw or carry the cars of any other railroad company over its lines as required by the laws of this State, the Attorney General, or district or county attorney of the proper county or district, either of his own accord or at the instance of any individual relator, may present a petition to the district court of the proper county, or any judge thereof in vacation, for leave to file an information in the nature of a quo warranto in the name of the State of Texas. If such court or judge is satisfied that there is probable ground for the proceeding, he shall grant such leave and order the information to be filed and process to issue. [Acts 1879, S. S. p. 43; G. L. vol. 9, p. 75.]

Arts. 6254–6256. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, Rules 779–781.

Art. 6257. [6402] [4347] Judgment of court.—If any person or corporation against whom any such proceeding is filed shall be adjudged guilty as charged, the court shall give judgment of ouster against such person or corporation from the office or franchise, and may fine such person or corporation for usurping, intruding into or unlawfully holding and executing such office or franchise and shall give judgment in favor of the relator for costs of the prosecution. [Acts 1879, S. S. p. 43; G. L. vol. 9, p. 75.]

Art. 6258. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, Rule 782.

TITLE 112—RAILROADS

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CHAPTER 1.—CHARTER AND AMENDMENTS

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Article 6259. [6405] [4350] [4099] Incorporation.—Any number of persons, not less than ten, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, maintaining and operating such railroad by complying with the requirements of this chapter. [Acts 1876, p. 141; G. L. vol. 8, p. 977.]

Art. 6260. [6406] Who may build.—No corporation, except one chartered under the laws of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railways within State. [Acts 1903, p. 90.]

Art. 6261. [6407] [4351] [4100] Stock, subscription and payment.—No railroad corporation shall be formed until stock to the amount of one thousand dollars for every mile of the road intended to be built shall be in good faith subscribed, and five per cent of the amount subscribed paid to the directors of such proposed company. [Acts 1876, p. 141; G. L. vol. 8, p. 977.]

Art. 6262. [6408] [4352] [4101] Articles of incorporation.—The persons proposing to form a railroad corporation shall adopt and sign articles of incorporation, which shall contain:

1. The name of the proposed corporation.

2. The places from and to which it is intended to construct the proposed railroad, and the intermediate counties through which it is proposed to construct the same. Local suburban railways may be constructed for any distance less than ten miles from the corporate limits of any city or town, in addition to such mileage as they may have within the same; and in such case the general direction shall be given from the beginning point.

3. The place at which shall be established and maintained the principal business office of the proposed corporation.

4. The time of the commencement and the period of the continuation of the proposed corporation.

5. The amount of the capital stock of the corporation.

6. The names and places of residence of the several persons forming the association for incorporation.

7. The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.

8. The number and amount of shares in the capital stock of the proposed corporation. [Acts 1889, p. 17; G. L. vol. 9, p. 1045.]

Art. 6263. [6409] [4353] [4102] Shall be submitted to Attorney General.—The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, and, if he finds them to be in accordance with the provisions of this chapter and not in conflict with the laws of the United States, or of this State, he shall attach thereto a certificate to that effect. [Acts 1876, p. 141; G. L. vol. 8, p. 977.]

Art. 6264. [6410] [4354] [4103] Shall be filed.—When said articles have been so examined and certified, the same shall be filed in the office of the Secretary of State, accompanied by an affidavit signed and sworn to by at least three of the directors named in such articles, which affidavit shall state that the amount of one thousand dollars for every mile of such proposed road has been in good faith subscribed, and that five per cent of the amount subscribed has been actually paid to the directors named in such articles; and the Secretary of State shall cause such articles, together with said affidavit, to be recorded in his office, and shall attach a certificate of the fact of such record to said articles and return the same to such corporation. [Id.]

Art. 6265. [6411] [4355] [4104] Beginning of existence.—The existence of such corporation shall date from the filing of the articles of incorporation in the office of the Secretary of State and the certificate of the Secretary of State under the seal of the State, shall be evidence of such filing. [Id.]

Art. 6266. [6412] [4356] [4105] May proceed to act.—When the articles of incorporation have been so filed and recorded, the persons named as corporators therein shall thereupon become a body corporate, and authorized to carry into effect the objects of such articles, in accordance with the provisions of this title. [Id.]

Art. 6267. [6413] [4357] [4106] Period of existence.—No railroad corporation shall be formed to continue more than fifty years, but such corporation may be renewed from time to time for periods not longer than fifty years. [Id.]

Art. 6268. [6414] [4358] [4107] Manner of renewing.—The manner of renewing a railroad corporation which has expired by lapse of time shall be as follows:

1. By a resolution in writing adopted by a majority of three-fourths of the stockholders of the company at a regular meeting of the stockholders, specifying the period of time for which the corporation is renewed.

2. Those desiring a renewal of the corporation shall purchase the stock of those opposed thereto at its current value.

3. The resolution, when adopted, shall be certified to by the president of the company; and he shall state in his certificate thereto that it was adopted by a majority vote of three-fourths of all the stockholders of said company at a regular meeting of such stockholders, and that the stockholders desiring such renewal have purchased the stock of those who oppose such renewal, and such certificate shall be attested by the secretary of the company under the seal of the company.

4. Said resolution and certificate shall be filed and recorded in the office of the Secretary of State, and the renewal of said corporation shall date from said filing. [Id.]

Art. 6269. [6415] [4359] Sale or conveyance under special law.—Whenever a line of railway or any railway properties within this State are by special law authorized to be sold and conveyed, the persons contemplating the purchase thereof may be formed into a corporation for the purpose of acquiring, owning, maintaining and operating such railway by complying, as far as applicable with the requirements of this chapter. In the formation of such corporation, the requirements of Article 6261 and so much of Article 6264 as relates to the affidavit may be dispensed with, and words applicable to the case of a purchaser may be used and substituted when necessary or proper, in the articles of incorporation or elsewhere, in lieu of words applicable to the building or construction of a railway. When such corporation has been formed it shall have the power to purchase, acquire, own, maintain and operate such railway and the properties pertaining thereto, and all other rights, powers and privileges given by the laws of this State to railway companies. Any proposed extension or branch lines may be provided for and included in the original articles of incorporation, or the same may, by amendment thereto at any time

thereafter, be projected and provided for by such company. [Acts 1891, p. 128; G. L. vol. 10, p. 130.]

Art. 6270. [6416] [4360] Shall take subject to lien.—Any company organized under the preceding article shall take the property so purchased subject to all incumbrances, judgments, claims, suits, claims for damages and for right of way against the old company and subject to all debts and claims for damages accruing against any receiver who may have been appointed for the old company to the same extent that such property would have been liable in the hands of the railroad company from which it was purchased; and such new company may be made a party to every suit pending against the company from which it is purchased, or which may be pending against any receiver of such company, to enforce any right against such new company; and the new company may be sued to enforce any such rights, without joining the old company, or the receiver; and, in case any judgment has been rendered against the old company, or against a receiver for such company, and for which the property is liable, execution may be issued on such judgment against such property in the possession of the new company without any suit therefor. When a corporation is formed under the provisions of the preceding article, service of process may be had upon any agent of such corporation in any county where suit may be pending. Such service shall bind each railroad operated or owned under such charter, in the same manner as if it were one railroad. [Id.]

Art. 6271. [6417–18–19] [4108] May amend articles, etc.—Any railroad corporation may amend or change its articles or act of incorporation in the manner following:

1. Such amendment or change shall be in writing and signed by the president and board of directors of the corporation and attested by the secretary under the seal of the corporation.

2. It shall be submitted to the Attorney General as in the case of original articles of incorporation and examined and certified by him in the same manner.

3. It shall then be filed and recorded in the office of the Secretary of State.

4. In the case of a corporation created by a special act of the legislature, the said amendment or change, together with the original charter and such amendments and changes as have been made by special act of the legislature, shall be filed and recorded in the office of the Secretary of State.

5. Such amendment or change shall be in force from the date of the filing of the same in the office of the Secretary of State in accordance with the provisions of this chapter. [Acts 1876, p. 142; G. L. vol. 8, p. 978.]

Art. 6272. [6420] [4364] [4111] When shall not amend.—Where, by the special act or articles of incorporating any railroad company, any privileges, rights or benefits are conferred upon said corporation, such as it could not claim, exercise or receive under this title or the general laws, then the said corporation shall not be permitted so to amend or change its charter or articles of incorporation as to relieve it from any of the requirements of such special act or acts conferring said privileges, rights or benefits. [Id.]

Art. 6273. [6421] [4365] May project, etc., by amendment.—Any railroad company may, by its original articles of incorporation or by its amendments to its charter, project and provide for the location, construction, owning and operating of branch lines from any point on its main line, or from points on its branch line, constructed or projected to other points making an angle of at least twenty-five degrees in the general course from the main line, if the branch commence from the same, or from the branch line, if it commences at a point on the same; provided, that the same may commence at the terminus of a branch line and continue in its general course; and, may by amendment to its charter, provide for the continuation in its general course of the main line. [Id. Acts 1901, p. 258.]

Art. 6274. [6422] [4366] [4114] Branch line requirements.—Any such corporation making such amendment to its charter shall complete and put in good running order at least ten miles of its said branch line in said amendment proposed within one year from the filing of such amendment, and an additional extent of at least twenty miles each succeeding year until the entire extent of the projected branch line is completed. [Id.]

CHAPTER 2.—PUBLIC OFFICES AND BOOKS

Art.
6275. To keep offices in Texas.
6276. Where no contract.
6277. Shops, etc.
6278. Officers to keep offices in Texas.
6279. Forfeiture.
6280. To do repair work in Texas.
6281. Books.
6282. President shall report.
6283. Books open to inspection.
6284. Penalty for failure.
6285. Duties of Attorney General.
6286. Change of general offices, etc., prohibited.
6287. Domicile of the corporation.

Article 6275. [6423] [4367] To keep offices in Texas.—Every railroad company chartered by this State, or owning or operating any line of railway within this State, shall keep and maintain permanently its general offices within this State at the place named in its charter for the location of its general offices. If no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this State where it contracts or agrees to locate its general office for a valuable consideration. [Acts 1889, p. 130; G. L. vol. 9, p. 1158.]

Art. 6276. [6423] [4367] Where no contract.—If said railroad company has not contracted or agreed for a valuable consideration to maintain its general offices at any certain place within this State, then such general offices shall be located and maintained at such place on its line in this State as said railroad company may designate to be on its line of railway. [Id.]

Art. 6277. [6423] [4367] Shops, etc.—Such railroads shall keep and maintain their machine shops and roundhouses, or either, at such place or places as they may have contracted to keep them for a valuable consideration received; and if said general offices and shops and roundhouses, or either are located on the line of railroad in a county which has aided such railroad by an issue of bonds in consideration of such location being made, then said location shall not be changed; and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization. [Id.]

Art. 6278. [6424] [4368] Officers to keep offices in Texas.—Railroad companies shall keep and maintain at the place within this State where its general offices are located the office of its president, or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim

agent; and each one of its general offices shall be so kept and maintained by whatever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained; and the persons holding said general offices shall reside at the place and keep and maintain their offices at the place where said general offices are required by law to be kept and maintained. If the duties of any of the above named offices are performed by any person, but his position is called by a different name, said railroad company shall maintain said offices at the place where its general Texas offices are kept and maintained, as required by this chapter. The name of the general offices shall not be understood to allow the railroad company to have any of the offices usually known as general offices at any other place than the one at which it is required to keep its general offices; and each railroad is hereby required to have and maintain its general offices at the place named herein. Where the principal shops of a company are situated on its line in the State, at a place other than where its general offices are located, the superintendent of motive power and machinery, master mechanic, either or both, may have his office and residence at such place where such principal shops are located; provided, that the Railroad Commission of Texas, where it is made to appear that any officer, other than the general officers of any company, can more conveniently perform his duties by residing at some place on the line in Texas other than the place where the general offices are situated, may by an order entered on its record, authorize any such officer to so reside and keep his office at such place. [Id. Acts 1899, p. 177.]

Art. 6279. [6425] [4369] Forfeiture.—Each railroad company chartered by this State, or owning, operating, or controlling any line of railroad within this State, which shall violate any provision of this chapter shall forfeit the charter by which it operates its railroad in Texas to the State of Texas. The Attorney General shall, upon the application of an interested party, or on his own motion, proceed at once against every offending railroad company owning, operating or controlling any line of railway within this State and violating any provision of this law, by quo warranto to forfeit the charter of such railroad company. In addition to forfeiting the charter to that part of the railroad situated within this State, such offending railroad company shall be subject to a penalty of five thousand dollars for each day it violates any provision of this chapter; such penalty to be recovered by suit in the name of the State of Texas to be filed by the Attorney General. Any money recovered from any railroad company under the provisions of this law shall be paid into the State Treasury and become a part of the available public free school fund. A judgment of the court forfeiting the charter of a railroad company shall allow six months from the date of the judgment within which to comply with this law, and if it shall comply within said time no forfeiture shall occur; but if it fails to so comply, then the judgment shall be final.

Art. 6280. [6426 to 6428] To do repair work in Texas.—All railroad corporations operating in, and having their repair shops within this State, are required to repair, renovate or rebuild in this State all defective or broken cars, coaches, locomotives, or other equipment owned or leased by said corporation in this State, when such rolling stock is within this State, and shall be prohibited from sending or removing any such rolling stock out of this State to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within this State, when such railway shall have, or be under obligation to have proper facilities in this State to do such work. This article does not apply to companies having less than sixty continuous miles of railroad in operation in this State, nor in case of strike, fire or other unforeseen casualties and emergencies; and is not to be construed to require a violation of the Federal safety appliance law; and no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within this State than would be necessary to reach their repair shops in another State. [Acts 1909, p. 73.]

Art. 6281. [6429] [4370] Books.—The principal business of said corporation shall be conducted, and stock transferred and claims for damages settled and adjusted at the public or general offices of said railroad companies in Texas, established as provided for in this chapter, by duly authorized officers and agents of said corporations. At said offices there shall be kept for the inspection of stockholders of such corporation, books in which shall be recorded:

1. The amount of capital stock subscribed.
2. The names of the owners of the stock and the amounts owned by them respectively.
3. The amount of stock paid and by whom.
4. The transfer of stock with the date of the transfer.
5. The amount of its assets and liabilities.
6. The names and places of residence of each of its officers. [Acts 1885, p. 67; G. L. vol. 9, p. 687.]

Art. 6282. [6430] [4371] President shall report.—The president or superintendent of every railroad company doing business in this State shall report annually under oath to the Comptroller or Governor the true status of said railroad and such other matters and things as may be inquired about by said Comptroller or Governor. [Id. Const. art. 10, sec. 3.]

Art. 6283. [6431–2] Books open to inspection.—The books of such corporation kept at its public office shall at all reasonable business hours be open to the inspection of each stockholder, and to any officer or agent of the State whose duty it may be to inspect such books. The legislature may by committee or otherwise, examine the books of any railroad corporation at such times and as often as may by said legislature be deemed necessary. [Id.]

Art. 6284. [6433] [4374] Penalty for failure.—If said railroad or other corporation shall fail or refuse to comply with any provision of the three preceding articles, it shall be liable to pay to the State of Texas, the sum of one thousand dollars for each month that said railroad or other corporation shall fail or refuse to comply therewith, said sum to be recovered by the State. An honest mistake in the entries in its books shall not subject a railroad company to such penalties. [Acts 1885, p. 67; G. L. vol. 9, p. 687.]

Art. 6285. [6434] [4375] Duties of Attorney General.—The Attorney General shall bring suit against said corporation, and prosecute it to judgment for any violation of any provision of this chapter. [Id.]

Art. 6286. [6435] [4376] Change of general offices, etc., prohibited.—After the passage of this act, no railroad company shall change the location of its general offices, machine shops, round houses, or home terminals, save with the consent and approval of the Railroad Commission of Texas, and this shall apply also to receivers, and to purchasers of the franchises and properties of railroad companies, and to new corporations, formed by such purchasers or their assigns. The Commission shall not consent to, or approve of, any removal or change of location in conflict with the restrictions of the first article of this chapter. No consent or approval of the Commission shall be required before the return of general offices.

machine shops, roundhouses, or Home Terminals to previous locations, when ordered or required under judgments in suits now pending in trial or appellate courts. [Acts 1915, p. 35; Acts 1929, 41st Leg., p. 337, ch. 156, § 1.]

Art. 6287. [6437] [4378] [4120] Domicile of the corporation.—The public office of a railroad corporation shall be considered the domicile of such corporation. [Acts 1876, p. 150; G. L. vol. 8, p. 986.]

CHAPTER 3.—OFFICERS AND BY-LAWS

Art.
6288. Board of directors.
6289. Election of directors.
6290. Other officers elected.
6291. False dividend.
6292. False representation.
6293. By-laws.

Art. 6288 [6338—39—45] Board of directors.—All the corporate powers of every railroad corporation shall be vested in and be exercised by the legally constituted board of directors. Every such corporation shall have a board of directors of not less than seven (7) nor more than fifteen (15) persons, except in case of railroad corporations conducting common carrier operations on railroad lines comprising a total of two hundred (200) miles, or less, of main track, the number of directors shall be not less than five (5) nor more than nine (9), each of whom shall be a stockholder in said corporation. A majority of said directors shall be resident citizens of this State, and shall so remain resident citizens during their continuance as such directors. [Acts 1876, p. 144; G.L., Vol. 8, p. 980; Acts 1947, 50th Leg., p. 64, ch. 48, § 1.]

Art. 6289. [6440—41—42—43—44] Election of directors.—These rules shall govern the election of the board of directors:

1. It shall require a majority in value of the stock of such corporation to elect any member of such board.

2. Such board shall be elected by the stockholders of the corporation at their regular annual meeting in each year, in the manner prescribed by this title and the by-laws of such corporation, and shall hold their office until their successors are elected.

3. In all such elections, each stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number to be elected multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he may see fit. Such directors shall not be elected in any other manner.

4. The by-laws of the corporation shall prescribe the manner and time of electing directors, and the mode of filling a vacancy in such office. Such provisions in such by-laws shall not be changed except at a regular annual meeting of the stockholders, and by a majority in value of the stockholders of such corporation.

5. If an election of directors shall not be made on the day designated by said by-laws for such purpose, the stockholders shall meet and hold an election for directors in such manner as said by-laws shall provide. [Acts 1876, p. 144; G. L. vol. 8, p. 980.]

Art. 6290. [6446—47] Other officers elected.—There shall be a president of the corporation who shall be chosen from and by the board of directors, and such other officers as said by-laws may designate, who may be appointed or elected, and who shall perform such duties and be required to give such security for the faithful performance thereof as required by said by-laws. It shall require a majority of the directors to appoint or elect any officer of the corporation. [Id.]

Art. 6291. [6448] [4389] [4133] False dividend.—If the directors of any railroad company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall jointly and severally be liable for all debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office. If any of the directors shall be absent at the time of making such dividend, or shall object thereto, and shall within thirty days thereafter, or after their return if absent, file a certificate of their absence or objection in writing with the clerk of the company and with the clerk of the county in which the principal office of said company is located, they shall be exempt from said liability. [Acts 1853, p. 55; G. L. vol. 3, p. 1339; P. D. 4886.]

Art. 6292. [6449] [4390] [4134] False representation.—If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this title, shall be false in any material representation, all officers who signed the same shall be jointly and severally liable for all the debts of the company contracted while they are officers or stockholders thereof. [Id.]

Art. 6293. [6450—52] By-laws.—Every railroad corporation shall have the power to make such by-laws as it may think proper for the government of such company, the same not being inconsistent with the charter of such company or the laws. In the enactment of a by-law, the stockholders of the corporation shall be entitled to one vote for each share of stock held by them, and a stockholder may vote in person or by written proxy. No by-laws shall be enacted, altered, amended, added to, repealed or suspended, except at a regular annual meeting of the stockholders and by a majority vote of two-thirds in value of all the stock of the corporation. [Acts 1857, p. 25; G. L. vol. 4, p. 897; P. D. 4911.]

CHAPTER 4.—STOCK AND STOCKHOLDERS

Art.
6294. Railroad stock is personal estate.
6295. Directors may require payment.
6296. Sale of unpaid stock.
6297. Books accessible.
6298. Use of corporate funds.
6299. Liability of stockholders.
6300. Who are not liable.
6301. Increasing capital stock.
6302. Decrease of capital stock.
6303. Statement to stockholders.
6304. Loans and interest.
6305. Removal of officers.
6306. Issuance of stock.
6307. Fictitious dividends void.
6308. Penalty.

Article 6294. [6453] [4394] [4138] Railroad stock is personal estate.—The stock of a railroad corporation shall be deemed personal estate, and transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of the company; nor shall any share be transferable until all previous calls thereon have been paid. [Acts 1876, p. 145; G. L. vol. 8, p. 981.]

Art. 6295. [6454] [4395] [4139] Directors may require payment.—The directors of such corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as the directors may deem proper. [Id.]

Art. 6296. [6455] [4396] [4140] Sale of unpaid stock.—If any stockholder shall neglect to pay any installment as required by a resolution or order of the board of directors, the said board shall be authorized to advertise said stock for sale by publica

tion once a week for thirty days in some newspaper published on the line of said road, if there be one, and, if not, in some newspaper published in the State having a general circulation in the State; which notice shall name the stock to be sold and the time and place of such sale; and all stocks so sold shall be sold at the public office or place of business of such company, and between the hours of ten o'clock a. m. and four o'clock p. m. and to the highest bidder for cash, the proceeds of such sale to be credited to the delinquent stockholder. [Id.]

Art. 6297. [6456] [4397] [4141] Books accessible.—All stockholders shall at all reasonable hours have access to and may examine all books, records and papers of such corporation. [Id.]

Art. 6298. [6457] [4398] [4142] Use of corporate funds.—It shall be unlawful for any railroad corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them or any of them, to use the same for other than the legitimate purposes of the corporation. [Id.]

Art. 6299. [6458] [4399] [4143] Liability of stockholders.—Each stockholder of a railroad corporation shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for all debts and liabilities of such corporation until the whole amount of the capital stock of such corporation so held by him shall have been paid. [Id.]

Art. 6300. [6459] [4400] [4144] Who are not liable.—No person holding stock in any railroad corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the estate or person owning such stock, shall be considered as holding the same and liable as a stockholder accordingly. [Id.]

Art. 6301. [6460 to 6464] Increasing capital stock.—If the capital stock of a railroad corporation shall be found insufficient for constructing and operating its road, such corporation may increase its capital stock from time to time, subject to the following conditions:

1. Such increase shall be sanctioned by a vote in person or by written proxy of two-thirds in amount of all the stock of such corporation at a meeting of such stockholders called by the directors of the corporation for such purpose.

2. Written notice of such meeting shall be given to each stockholder, served personally or by depositing same in a post office directed to his post-office address, postage prepaid; and also by advertising the same in some newspaper published in each county through or into which the said road shall run, or be intended to run, if any is published therein. Such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock, and shall be served or published at least sixty days prior to the day appointed for such meeting.

3. The stock may be increased to any amount required for the purposes mentioned in this article, not exceeding the amount mentioned in the notice so given.

4. Every order or resolution increasing such stock shall be recorded in the office of the Secretary of State, and such increase shall not take effect until such order or resolution has been so recorded. [Id.]

Art. 6302. Decrease of capital stock.—A railroad corporation may, in the same manner prescribed in this chapter for an increase of capital stock, decrease its capital stock in any amount which shall not reduce the same to less than one thousand dollars for every mile of its road as planned and described in its charter. But no such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company or any stockholder or director thereof. If such decrease relates to or affects any part of the stock that has actually been subscribed or issued, then such decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such corporation, giving therein all its assets and liabilities, with names and post-office addresses of all creditors and amount due each, and where the proposed decrease affects any part of the subscribed or issued stock as aforesaid the Secretary of State may require as a condition precedent to the filing of such certificate of decrease that the debts of the corporation be paid or reduced. [Acts 1915, p. 262.]

Art. 6303. [6465–6] Statement to stockholders.—At the regular annual meeting of the stockholders, the president and directors shall exhibit a full, distinct and accurate statement of the affairs of the corporation to the stockholders. Such president and directors shall furnish similar statements at any special meeting of stockholders when they may require the same. [Acts 1876, p. 145; G. L. vol. 8, p. 981.]

Art. 6304. [6467] [4408] [4152] Loans and interest.—At any regular annual meeting of stockholders, or at a special meeting called for the purpose, the stockholders may, by a majority in value of all the stock of such corporation, determine the amount of loans which may be negotiated by such company for the construction of its railway and its equipment, and fix the rate of interest which may be paid, and provide for the security of such loans. [Id.]

Art. 6305. [6468] [4409] [4153] Removal of officers.—The stockholders may, by a two-thirds vote in value of all the stock, at any regular or special meeting of the stockholders, remove the president or any director or other officer of such corporation, and elect others instead in accordance with the by-laws of such corporation and this title. [Id.]

Art. 6306. [6469] [4410] [4154] Issuance of stock.—No railroad corporation shall issue any stock except for money, labor or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company except at its par value and to actual subscribers who pay or become liable to pay the par value thereof. [Id. P. D. 4921.]

Art. 6307. [6470] [4411] [4155] Fictitious dividends void.—All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. [Id.]

Art. 6308. [6471] [4412] [4156] Penalty.—Every officer or director of a railroad company, who shall violate or consent to the violation of either of the two preceding articles, shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock, or indebtedness. [P. D. 4921.]

CHAPTER 5.—MEETING OF DIRECTORS AND STOCKHOLDERS

Art.
6309. Annual meeting of directors.
6310. Annual meeting of stockholders.
6311. Joint meetings.
6312. Quorum.
6313. Special meetings.
6314. Proxy dated.
6315. What stock shall not vote.

Article 6309. [6472] [4413] [4157] Annual meeting of directors.—The directors of every railroad company shall hold one meeting annually at their

office in this State, public notice of which shall be given at least thirty days before said meeting, said notice to be published in some daily newspaper published in this State. [Const. art. 10, sec. 3; Acts 1885, p. 67; G. L. vol. 9, p. 687.]

Art. 6310. [6473] [4414] [4158] Annual meeting of stockholders.—The stockholders of every railroad corporation shall hold at least one meeting annually at the public office or place of business of such corporation in this State; and the board of directors shall cause public notice to be given of the time and place of such meeting for thirty days previously thereto as provided in the preceding article. [Acts 1876, p. 144; G. L. vol. 8, p. 980.]

Art. 6311. [6474] [4415] [4159] Joint meetings.—Said annual meeting of the board of directors and of the stockholders may be called to meet and may be held at the same time and place, in which case one notice shall answer the purpose of both meetings; provided, it be so stated in such notice. [Id.]

Art. 6312. [6475] [4416] [4160] Quorum.—A majority of the directors of any railroad corporation shall constitute a quorum to transact business, and a majority in value of two-thirds of all the stock owned by such corporation shall constitute a quorum of the stockholders to transact business. [Id.]

Art. 6313. [6476–7–8] Special meetings.—A special meeting of the stockholders may be called at any time during the interval between the regular annual meetings of such stockholders by the directors, or by the stockholders owning not less than one-fourth of all the stock of such company. Notice of the time and place of such meetings shall be given for at least thirty days prior to the time fixed for such meeting, in the same manner as is required in the case of a regular annual meeting; and such notice shall specify the purpose or purposes for which the said special meeting is called; and no other business shall be transacted at such special meeting, except that specified in such notice. If at any such special meeting so called a majority, in value, of the stockholders, equal to two-thirds of the stock of such corporation shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days without transaction of any business; and if within said three days two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned and another meeting called, and notice thereof given as heretofore provided. [Id.]

Art. 6314. [6479] [4420] [4164] Proxy dated.—Every proxy from a stockholder shall be dated within six months previous to the meeting of the stockholders at which it is proposed to vote by virtue thereof, and if not dated within such time, shall not be voted. [P. D. 4908.]

Art. 6315. [6480] [4421] [4165] What stock shall not vote.—Stock issued within thirty days before any stockholders meeting shall not entitle the holder to vote thereat except at the first stockholders meeting under their articles or act of incorporation for organization; nor shall any stock be voted upon except in proportion to the amount paid thereon, or secured to be paid by good security in addition to the subscription and stock.

CHAPTER 6.—RIGHT OF WAY

Art.
6316. Right to construct.
6316a. Right to construct spur tracks.
6317. Right of way over public lands.
6318. Lineal survey.
6319. Width of road.
6320. Streams of water.
6321. Crossings.
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6323. Thirty days for completion.
6324. Distance from place.
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6327. Crossings of public roads.
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6330. Streets, etc.
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6332. May cross other railways.
6333. Intersections.
6334. May take material.
6335. Value and damages to be paid.
6336. When corporation and owner disagree.
6337. Entry only for survey.
6338. Practice in case specified.
6339. Right of way construed.
6340. Right of way reserved.

Article 6316. [6481] [4422] [4166] Right to construct.—Any railroad corporation shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. [Const. art. 10, sec. 1.]

Art. 6316a. Right to construct spur tracks.—Every railroad company owning, leasing or operating a line of railroad in this State shall have authority and power to construct and operate spur or industrial tracks designed to reach or serve industries or industrial enterprises, such as mills, mines, rock quarries, rock deposits, gravel pits, gravel deposits, smelters, warehouses and other manufacturing or industrial enterprises, over which regular scheduled passenger or freight service will not be performed and for transportation over which only a switching charge, if any, will be made, together with all necessary side tracks and subsidiary or accessory spur tracks, and shall have power and authority under the General Laws of this State relating to railroads to condemn property for rights of way for any and all such tracks hereby authorized. [Acts 1925, 39th Leg., ch. 73, p. 230, § 1.]

Art. 6317. [6482] [4423] [4167] Right of way over public lands.—Every such corporation shall have the right of way for its line of road through and over any lands belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

Art. 6318. [6483] [4424] [4168] Lineal survey.—Every railroad corporation shall have the right to cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damages that may be occasioned thereby. [Acts 1876, p. 147; G. L. vol. 8, p. 983.]

Art. 6319. [6484] [4425] [4169] Width of road.—Such corporation shall have the right to lay out its road not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its railway, and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation as provided by law. [Id.]

Art. 6320. [6485] [4426] [4170] Streams of water.—Such corporation shall have the right to construct its road across, along, or upon any stream of water, water course, street, highway, plank, road, turnpike, or canal when the route of said railway shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike, or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily

impair its usefulness, and shall keep such crossing in repair.

Art. 6321. [6486–87] Crossings.—All railway corporations in this State, which have or may fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every one and one-half miles thereof. If such fence shall divide any inclosure, at least one opening shall be made in said fence within such inclosure. Such crossings shall not be less than thirty feet in width, and shall be made and kept in such condition as to admit of the free and easy passage of vehicles and domesticated animals. [Acts 1887, p. 39; G. L. vol. 9, p. 837.]

Art. 6322. [6488–89] Where made.—Such crossings shall be made at such times and places as may be demanded by any two or more citizens of the State who either live or own land within five miles of the place where such crossings may be demanded. Such demand shall be made in writing, of the nearest local agent of such railway company to the place where such crossing or crossings are demanded, and shall state when and where such crossing is desired. [Id.]

Art. 6323. [6490] [4431] Thirty days for completion.—No railway company shall be required to complete such crossing as may be demanded under this chapter in a shorter time than thirty days from the day on which such demand is first made, nor shall they be required to make any crossings where they have already left such crossings, in each one and one-half miles of their road, except inside of inclosures, as provided in Article 6321. [Id.]

Art. 6324. [6491] [4432] Distance from place.—Any railway company, upon such demand, shall be deemed to have complied therewith upon making such crossings within four hundred yards of the place where they are demanded, within the time herein allowed. [Id.]

Art. 6325. [6492] [4433] Failure, etc.—Whenever any railroad company shall fail or refuse to comply with the requirements of this chapter, after demand is made in accordance therewith, such railway company shall pay to each person who made such demand the sum of five hundred dollars for each month they shall so fail or refuse to comply with such demand, the same to be recovered by suit. [Id.]

Art. 6326. [6493] [4434] Intersections.—Nothing in this chapter shall be construed to affect the law requiring railroad companies to provide proper crossings at intersection of all roads and streets. [Id.]

Art. 6327. [367–6494] Crossings of public roads.—Every railroad company in this State shall place and keep that portion of its roadbed and right of way, over or across which any public county road may run, in proper condition for the use of the traveling public, and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed by the overseer of such public road, it shall be liable to a penalty of ten dollars for each week such railroad company may fail or neglect to comply with the requirements of this article. Such penalty shall go to the road and bridge fund of the county in which the suit is brought; and the county attorney, upon the making of an affidavit of the facts by any person, shall at once institute against the company violating any provision of this article suit in the proper court to recover such penalty or penalties, and his wilful failure or refusal to do so shall be sufficient cause for his removal from office, unless it is evident that such suit could not have been maintained. The proceedings under this article shall be conducted in the same manner as civil suits. The county attorney attending to such suits shall be entitled to a fee in each case of ten dollars, to be taxed as costs; provided, that when two or more penalties are sought to be recovered in the same suit, but one such fee shall be allowed. Such suits shall be conducted in the name of the county, and if the county be cast in the suit no costs shall be charged against it. [Acts 1885, p. 45; G. L. vol. 9, p. 665.]

Art. 6328. [6495] [4436] [4171] Culverts or sluices.—In no case shall any railroad company construct a roadbed without first constructing the necessary culverts or sluices as the natural lay of the land requires, for the necessary draining thereof. [Acts 1876, p. 147; G. L. vol. 8, p. 983.]

Art. 6329. [6496] [4437] [4172] Navigable waters.—This chapter shall not be construed to authorize the erection of any bridge or any other obstruction across or over any stream or water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed so as to prevent the navigation of such stream or water. [Id.]

Art. 6330. [6497] [4438] [4173] Streets, etc.—This chapter shall not be construed to authorize the construction of any railroad upon or across any street, alley, square or highway of any incorporated city or town without assent of the governing body of said city or town. [Id.]

Art. 6331. [6498] [4439] [4174] Other cases.—In case of the construction of any railway along the highways, plank roads, turnpikes, or canals, such railroad corporation shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same or condemn the same under the provisions of law. [Id.]

Art. 6332. [6499] [4440] [4175] May cross other railways.—Such corporation shall have the right to cross, intersect, join and unite its railway with any other railway before constructed at any point on its route and upon the grounds of such other railway corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connection. [Id.]

Art. 6333. [6500–1] Intersections.—Every corporation whose railway is or shall be intersected by any new railway shall unite with the corporation owning such railway in forming intersections and connections and grant to such new railway facilities therefor. If the corporations cannot agree upon the amount of compensation for any such crossings, intersection or connection, or the points and manner of the same, their differences shall be adjusted in the manner provided by law. [Id.]

Art. 6334. [6502] [4443] [4178] May take material.—Any railroad corporation may enter upon and take from any land adjacent to its road, earth, gravel, stone or other materials, except fuel and wood, necessary for the construction of its railway, paying, if the owner of such land and the corporation can agree thereto, the value of such material taken and the amount of damages occasioned to any such land or appurtenances, and, if such owner and corporation cannot agree, then the value of such material and the damages occasioned to such real estate may be ascertained, determined and paid in the manner provided by law. [Id.]

Art. 6335. [6503] [4444] [4179] Value and damages to be paid.—The value of such material and the damages to such real estate shall in all cases be ascertained, determined and paid before such corporation can enter upon and take such material. [Id.]

Art. 6336. [6504] [4445] [4180] When corporation and owner disagree.—If any railroad corporation shall at any time be unable to agree with the owner for the purchase of any real estate, or material thereon, required for the purpose of its incorpo-

ration or the transaction of its business, for its depots, station buildings, machine and repair shops, for the construction of reservoirs for the water supply, or for the right of way, or for a new or additional right of way, for change, or relocation or road bed, to shorten the line, or any part thereof, or to reduce its grades, or any of them, or for double tracking its railroad or constructing and operating its tracks, which is hereby authorized and permitted, or for any other lawful purpose connected with or necessary to the building, operating or running its road, such corporation may acquire such property by condemnation thereof. The limitation in width prescribed by Article 6319 shall not apply to real estate or any interest therein, required for the purposes herein mentioned, other than right of way, and shall not apply to right of way when necessary for double tracking or constructing or adding additional railroad tracks, and real estate, or any interest therein, to be acquired for such other purposes, or any of them, need not adjoin or abut on the right way,[1] and no change of the line through any city or town, or which shall result in the abandonment of any station or depot, shall be made, except upon written order of the Railroad Commission of Texas, authorizing such change. No railroad corporation shall have the right under this law to condemn any land for the purposes mentioned in this article situated more than two miles from the right of way of such railroad corporation. [Id. Acts 1901, p. 46; Acts 1919, p. 280.]

[1] So in enrolled bill. Should probably read "right of way".

Art. 6337. [6505] [4446] [4181] Entry only for survey.—No railroad company shall enter upon, except for a lineal survey, any real estate whatever, the same being private property, for the purpose of taking and condemning the same, or any material thereon, for any purpose whatever, until the said company shall agree with and pay the owner thereof all damages that may be caused to the lands and property of said owner by the condemnation of said real estate and property, and by the construction of such road. [P. D. 4922.]

Art. 6338. [6531] [4472] Practice in case specified.—When any railroad company is sued for any property occupied by it for railroad purposes, or for damages thereto, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of the property, upon petition or cross bill, asking such remedy by defendant, but the plea for condemnation shall be an admission of the plaintiff's title to such property. [Acts 1889, p. 18; G. L. vol. 9, p. 1046.]

Art. 6339. [6532] [4473] [4206] Right of way construed.—The right of way secured by condemnation to any railway company in this State shall not be construed to include the fee simple estate in lands, either public or private, nor shall the same be lost by forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation. [Acts 1861, p. 12; G. L. vol. 5, p. 348.]

Art. 6340. [6533] [4474] [4207] Right of way reserved.—The right of way is hereby reserved to any railroad company incorporated by the laws of this State, to the extent of one hundred feet on each side of said road, or roads that cross over or extend through any lands granted, or that may be granted to any railroad company by the Legislature, with the right to take from the lands so granted such stone, timber and earth as such road may need in the construction of its line of road.

CHAPTER 7.—OTHER RIGHTS OF RAILROAD CORPORATIONS

Art.
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6342. Shall alienate lands, etc.
6343. Apply to all companies.
6344. Right to erect buildings, etc.
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6346. Mortgage by resolution.
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6348. Terminus on coast destroyed.
6349. Abandonment, change, or relocation of line.
6350. Change in city.
6351. Eminent domain.
6352. Certain changes validated.
6353. Hearing of application.

Article 6341. [6535–6–7–8–41–43] Some rights.—Railroad corporations shall have the following other rights:

1. To have succession, and in their corporate name may sue and be sued, plead and be impleaded.
2. To have and use a seal, which it may alter at pleasure.
3. To receive and convey persons and property on its railway by the power and force of steam, or by any mechanical power.
4. To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject to the provisions of law.
5. Of eminent domain for the purposes prescribed in this title.
6. To purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway, stations and other accommodations necessary to accomplish the objects of its incorporation, and to convey the same when no longer required for the use of such railway.
7. To take, hold and use such voluntary grants of real estate and other property as shall be made to it in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, in any manner not incompatible with the terms of the original grant. [Acts 1876, p. 142; G. L. vol. 8, p. 978.]

Art. 6342. [6539] [4480] Shall alienate lands, etc.—All lands acquired by railroad companies under the provisions of this chapter, or any general laws, shall be alienated by said companies, one-half in six years and one-half in twelve years, from the issuance of patents to the same, and all lands so acquired by railroad companies, and not alienated as herein required, shall be forfeited to the State and become a part of the public domain and liable to location and survey as other unappropriated lands. All lands purchased by or donated to a railroad corporation, except such as are used for depot purposes, reservation for the establishment of machine shops, turnouts and switches, shall be alienated and disposed of by said company in the same manner and time as is required when lands have been received from the State. [Id.]

Art. 6343. [6540] [4481] [4214] Apply to all companies.—The two preceding articles shall apply to such corporations as are prohibited by their acts of incorporation from purchasing or receiving donations of land, as well as those corporations that are not so prohibited. [Id.]

Art. 6344. [6542] [4483] [4216] Right to erect buildings, etc.—Such corporation shall have the right to erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for the accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of its railway; but no

railway company shall have the power, either by its own employés or other persons, to construct any buildings along the line of their railroad to be occupied by their employés or others except at their respective depot stations and section houses, and at such places shall construct only such buildings as may be necessary for the transaction of their legitimate business operations, and for shelter of their employés, nor shall they use, occupy or cultivate any part of the right of way over which their respective roads may pass, with the exception aforesaid, for any other purpose than the construction and keeping in repair their respective railways. [Id.]

Art. 6345. [6544] [4486] [4219] Right to borrow money, issue bonds, etc.—Such corporation shall have the right, from time to time, to borrow such sums of money as may be necessary for constructing, completing, improving or operating its railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes aforesaid, subject, however, to other provisions of law. [Id.]

Art. 6346. [6645–6] Mortgage by resolution.—No mortgage by such corporation shall be valid, unless authorized by a resolution adopted by a vote of two-thirds of all the stock of such company, after notice in the manner provided in this title for increasing the capital stock of such corporation. When any such resolution has been so adopted it shall be recorded in the office of the Secretary of State, and no such resolution shall take effect until so recorded. [Id.]

Art. 6347. [6547] [4489] [4222] May pay bonds with stock.—The directors shall be empowered, in pursuance of any such resolution, to confer on any holder of any bond for money so borrowed as aforesaid, the right to convert the principal of such bond into the stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulations as the by-laws of such corporation may provide. [Id.]

Art. 6348. [6548] [4490] Terminus on coast destroyed.—Any railway company in this State having a terminus on the coast, the said terminus being a county site, and the same having been destroyed by storms and cyclones, and when said county site has been removed back from the coast near the line of said railway, it shall be lawful for said railway to remove and take up its track from its original terminus on the coast to a point opposite or near said new county site; provided, said railway company make its terminus at and build its road to said new county site. [Acts 1887, p. 6; G. L. vol. 9, p. 804.]

Art. 6349. Abandonment, change, or relocation of line.—When any railroad in this State whether incorporated under State or Federal charter desires to abandon, change or relocate any portion of its line of railroad within this State adjacent to but not within an incorporated city of fifty thousand or more inhabitants according to the preceding Federal census, it shall present a petition therefor to the Railroad Commission of Texas showing that portion of its line sought to be changed, relocated or abandoned and the situation of the new relocated line, with the reasons justifying the same; thereupon said Commission shall set down said application for hearing and give public notice thereof of not less than ten days in the locality where such change is desired by publishing notice in a newspaper of general circulation published nearest thereto, setting out substantially what such contemplated change may be; and if after such hearing said Commission shall be of the opinion that it is to the public interest to permit such change, relocation or abandonment of said line, it shall enter its order approving same and thereupon said railroad corporation or receivers of any railroad shall be empowered to make such change, relocation or abandonment; provided that nothing contained herein shall be construed to authorize said Commission to permit any railroad corporation or receivers of any railroad to abandon such substantial part of its line as shall amount to impairment of its charter contract or deprive any city or town of railroad facilities. Provided, said Commission shall not exercise the power herein granted unless and until said railroad corporation or receivers of any railroad shall have obtained the permission of the commissioners court of the county for such change, relocation or abandonment, which permission shall be evidenced by the duly authenticated order of such court which shall accompany the petition of such railroad corporation or receivers of any railroad to said Commission. [Acts 4th C. S. 1918, p. 45.]

Art. 6350. Change in city.—When any railroad corporation or receiver of any railroad in the State desires to change, relocate or abandon any part of its line within any city containing fifty thousand or more inhabitants, according to the preceding Federal census, it shall present its petition therefor to the governing body of such city, said petition to be also supported by the names of not less than five hundred resident citizens who shall be property owners in said city, showing the reasons therefor, the part of the line sought to be changed, relocated or abandoned, and the new location or arrangements proposed for operation; whereupon such governing body if of the opinion that the same is for the public interest, shall enter its order permitting such change, relocation or abandonment of said line. Thereupon the said railroad corporation or receivers of any railroad shall present its petition to the Railroad Commission of Texas praying for authority to make such change, relocation or abandonment, with a description of that portion of its lines; providing that no change shall be made that will seriously affect the charter obligations of any railroad company sought to be changed, relocated or abandoned, together with a description of the changed or relocated line, or arrangement for the new operation, which petition shall be accompanied by the order of the governing legislative authority of the city as aforesaid approving same; whereupon said Commission shall set down such application for public hearing upon not less than ten days' notice, and if upon such hearing said Commission shall be of the opinion that the public interest will be conserved by the granting of such petition, it shall enter its order to that effect and thereupon such railroad corporation or receivers of any railroad shall have full power to make such change, relocation or abandonment of its line. No application to alter, change or relocate railway tracks, as contemplated by this article, shall be acted upon by the governing body of such city until thirty days after the petition of citizens provided for herein shall have been filed with said body and publication thereof has been made for two consecutive weeks in a newspaper of general circulation within the limits of said city, prior to action had thereon. [Id.]

Art. 6351. Eminent domain.—When any railroad corporation or receivers of any railroad shall have been empowered under the provisions of this law to change, relocate or abandon its line of railroad in this State, it shall have full power to acquire by condemnation or otherwise all lands for right of way, depot grounds, shops, roundhouses, water supply sites, sidings, switches, spurs or any other lawful purposes connected with or necessary to the building, operating or running of its road as changed, relocated or abandoned; provided, however, that all property so acquired is hereby declared to be for and is charged with public use so far as the same may be necessary. [Id.]

Art. 6352. Certain changes validated.—All changes, relocations and abandonments of parts of their lines by railroad corporations or receivers of any railroad in or adjacent to any city having a popula-

tion according to the preceding Federal census of fifty thousand inhabitants or over, heretofore made with the permission of the Railroad Commission of Texas or authorized by its written order, are hereby validated and made legal as fully as if made hereunder, and such permission or written order of the said Commission, given prior hereto, shall be full power and authority to a railroad corporation or receivers of any railroad to make such change, relocation or abandonment of parts of its line; providing that this law shall not affect any right or rights for damages that any person, firm or corporation may have, or may have had or shall have for damages caused by any such removal, change or abandonment. [Id.]

Art. 6353. Hearing of application.—Whenever the governing body of any city containing fifty thousand inhabitants or more shall present to the Railroad Commission of this State its application for any change or relocation of any tracks of any railroad corporation or receivers of any railroad in such way as to better serve the public interest, said Commission shall set down such application for a hearing after giving ten days notice to such railroad corporation or receivers of any railroad, whose tracks are sought to be changed or relocated and after such a hearing may make its order directing such change or relocation if in the opinion of said Commission such change or relocation would be to the best interest of all parties concerned. No application to alter, change or relocate railway tracks, as contemplated by this article shall be determined upon by said governing body until thirty days after publication of the proposed change or relocation of said railway tracks shall have been made in the official newspaper of said city. [Id.]

CHAPTER 8.—RESTRICTIONS, DUTIES AND LIABILITIES

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Article 6354. [6549] [4491] [4223] Road to pass through county seat.—No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes. [Const. art. 10, sec. 9.]

Art. 6355. [6550] [4492] [4224] Shall survey twenty-five miles.—Every railroad company organized under this title shall make an actual survey of its route or line for a distance of twenty-five miles on its projected route, and shall designate the depot grounds along said first twenty-five miles before the roadbed is begun. No railroad company shall change its route or depot grounds after the same have been so designated. [Acts 1876, p. 142; G. L. vol. 8, p. 978.]

Art. 6356. [6551] [4493] [4225] Subsequent mileage.—Every such corporation shall, on completion of the first twenty-five miles of its roadbed, make a survey of the next twenty-five miles, and of each subsequent twenty-five miles as the preceding twenty-five miles shall be completed. and every subsequent twenty-five miles shall be controlled by the provisions applicable to the first twenty-five miles of the road. [Id.]

Art. 6357. [6552] [4494] [4226] Train regulations.—Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property, as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and at junctions of other roads and at sidings and stopping places established for or receiving and discharging way passengers and freight and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the tolls, freight or fare legally authorized therefor.

Failure on the part of railroad companies to comply with the requirements of this article shall be deemed an abuse of their rights and privileges and such abuse shall at once be corrected and regulated by the Railroad Commission. No railroad corporation nor any manager or receiver of any railroad shall ever abandon operation of its trains over said railroad or any part thereof, and if any railroad corporation, manager or receiver has or may hereafter abandon operation of its trains over its said railroad, or part thereof, the Railroad Commission of Texas shall at once issue its order directing said railroad corporation, manager or receiver to at once resume operation of its trains over said road or part thereof, in accordance with the orders, rules and regulations of the said Commission. [P.D. 4893; Acts 1st C.S. 1903, p. 21; Acts 4th C.S. 1918, p. 189.]

Art. 6358. [6552] [4494] [4226] Action on abandonment.—If any railroad corporation, manager or receiver shall attempt to abandon any railroad, or part thereof, by failing to operate its trains or to resume operation of its trains over its said road, or part thereof, if the operation of trains has been abandoned, the Railroad Commission shall report the same to the Attorney General who shall at once file a suit in behalf of the State against said railroad corporation, manager or receiver in any district court of Travis County, or of any county through which said railroad may pass, for the purpose of determining whether or not said railroad corporation, manager or receiver has failed or refused to carry out the purpose of this law, and if the court shall determine that said corporation, manager or receiver has so failed or refused, said court shall appoint a receiver for the purpose of operating said railroad and carrying out the purposes of this law. The said receiver shall have no connection directly or indirectly with said railroad corporation, manager or receiver prior to the time of his appointment, but shall be a good business man well qualified to perform the duties of said receiver.

Said receiver shall collect freight and passenger rates as prescribed by said Commission and shall do and perform any and all things necessary in the operation of said trains over said road and shall report to the said court at such times as the decree of the court may prescribe, all his acts as such receiver. [Id.]

Art. 6359. Effect of preceding articles.—This law shall be considered cumulative of all laws of this State now in force on this subject when not in conflict herewith, but when in conflict herewith, this law shall control; but the provisions hereof shall not apply to railroads to which the right of eminent domain is not granted under the laws of this State. [Id.]

Art. 6360. [6554] [4496] [4227] Refusal to transport.—In case of the refusal by such corporation or their agents so to take and transport any passengers or property, or to deliver the same, or either of them, at the regularly appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit; and in case of the transportation of property shall in addition pay to such party special damages at the rate of five per cent per month upon the value of the same at the time of shipment, for the negligent detention thereof beyond the time reasonably necessary for its transportation. In suits against such corporation under this law, the burden of proof shall be on such corporation to show that the delay was not negligent. [Acts 1887, p. 116; G. L. vol. 9, p. 914.]

Art. 6361. [6555] Double-decked cars for animals.—All railroad companies operating any railroad, or any part thereof, within this State, are required to provide cars with double decks for the shipment of sheep, goats, hogs and calves; the said cars must be in every way as large as those now in use upon the respective roads of this State; the distance between the floor and the second deck shall be the same as the distance between the second deck and the roof; the floor of the second deck shall be so constructed as to protect the animals beneath; and said cars must be furnished by the railroad company to any person who shall offer to ship at one time, hogs, sheep, goats or calves, in carload lots. [Acts 1887, p. 57; Sen. Jour. 1895, p. 483; G. L. vol. 9, p. 855.]

Art. 6362. [6556] Rates of freight; penalty.—It shall be unlawful for any railroad company to charge more for shipping a double-decked carload of sheep, goats, hogs or calves than is charged for shipping a carload of other cattle or horses the same distance, and in the same direction; and any railroad company that shall fail or refuse to furnish double-decked cars of the dimensions prescribed in the preceding article to any person who may wish to ship as much as a double-decked carload of sheep, hogs, goats, or calves, or shall charge more for shipping a double-decked carload of sheep, hogs, goats or calves, than for shipping a carload of other cattle or horses for the same distance and in the same direction, shall be liable to pay to the owner or shipper of said sheep, hogs, goats, or calves, the sum of five hundred dollars as liquidated damages; provided, that if any railroad companies shall transport sheep, hogs, goats, and calves, on single-decked cars at one-half the price per carload charged for shipping horses, or other cattle, then the penalties prescribed in this article for failure to provide double-decked cars shall be inoperative. [Id.]

Art. 6363. [6557] Overcharge.—It shall be unlawful for any railroad company, in this State, its officers, agents or employés, to charge and collect or to endeavor to charge and collect from the owner, agent or consignee of any freight, goods, wares and merchandise, of any kind or character whatsoever, a greater sum for transporting said freight, goods, wares and merchandise than is specified in the bill of lading. [Acts 1899, p. 70.]

Art. 6364. [6558] Delivery on payment of charges.—Any railroad company, its officers, agents or employés, having possession of any goods, wares and merchandise, of any kind or character whatsoever, shall deliver the same to the owner, his agent or consignee, upon payment of the freight charges, as shown by the bill of lading. [Id.]

Art. 6365. [6559] Refusal to deliver freight.—If any railroad company, its officers, agents or employés shall refuse to deliver to the owner, agent or consignee, any freight, goods, wares and merchandise, of any kind or character whatsoever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares and merchandise, to an amount equal to the amount of freight charges, for every day said freight, goods, wares and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading. [Id.]

Art. 6366. Confiscating or converting freight.—No railroad company or receiver thereof, in this State shall confiscate, or otherwise convert to its own use, any carload shipment or substantial portion of any such carload shipment of any article or commodity of freight traffic received by it, or them, for transportation and delivery, without the express consent of the owner or consignee thereof, and the acts of the agents, officers and employés of such carrier or receiver within the apparent scope of their duties or authority with respect to such conversion or confiscation shall be deemed to be the acts of such railway company, receiver or other carrier. The provisions of this article shall not apply to conversion of freight where the same has been damaged or intermingled with other freight in wrecks, nor to refused or unclaimed freight, the

delivery of which the railroad is unable to effect. [Acts 1917, p. 386.]

Art. 6367. Penalty.—In addition to all other remedies or penalties that may be provided by law therefor, the violation of any provision of the preceding article shall subject the railway company, or receiver or other common carrier so offending to a penalty of not less than one hundred and twenty-five nor more than five hundred dollars in favor of the State of Texas, and a further penalty of twice the amount of the purchase price of the converted shipment in favor of the owner or consignee thereof. [Id.]

Art. 6368. [6560–1] Badge.—Every conductor, baggage master, engineer, brakeman or other servant of such railroad corporation employed in a passenger train, or at its stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters or the style of the corporation by which he is employed. No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll ticket, or exercise any power of his office, and no other of the said officers or servants, without such badge, shall have any authority to meddle or interfere with the passengers, their baggage or property.

Art. 6369. [6562] [4505] [4230] Baggage.—A check shall be affixed to every package or parcel of baggage when taken for transportation by the agent or servant of such corporation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and, if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in an action of debt; and further, no fare or toll shall be collected or received from such passenger; and, if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train.

Art. 6370. [6563] [4506] [4231] Signs at cross-roads.—Such corporation shall erect at all points where its road shall cross any first or second class public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such signs shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal. [P. D. 4890.]

Art. 6371. [6564] [4507] [4232] Bell; steam or air whistle or siren; sounding or blowing.—A bell of at least thirty (30) pounds weight and a steam whistle, air whistle or air siren shall be placed on such locomotive engine, and the steam whistle, the air whistle or air siren shall be sounded and the bell rung at a distance of at least eighty (80) rods from the place where the railroad shall cross any public road or street, and such bell shall be kept ringing until it shall have crossed such public road, or stopped; and each locomotive engine approaching a place where two lines of railway cross each other shall, before reaching such railway crossing be brought to a full stop; and the corporation operating such railways shall be liable for all damages which shall be sustained by any person by reason of any such neglect; the full stop at such crossing may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus or shall have a flagman in attendance at such crossing. [Acts 1883, p. 28; G.L., Vol. 9, p. 334; Acts 1893, p. 87; G.L., Vol. 10, p. 517; Acts 1931, 42nd Leg., p. 184, ch. 107, § 1; Acts 1941, 47th Leg., p. 184, ch. 107, § 1; Acts 1941, 47th Leg., p. 349, ch. 189, § 1.]

Section 2 of Act 1931 being a penal provision is published as Penal Code, Article 1672. Section 3 repeals all conflicting laws and parts of laws.

Art. 6372. [6565–6] Headlights.—Every railroad corporation or receiver or lessee thereof, operating any line of railroad in this State, shall equip all locomotive engines used in the transportation of trains over said railroad with electric or other headlights of not less than fifteen hundred candle power, measured without the aid of a reflector. This article shall not apply to locomotive engines regularly used in the switching of cars or trains. Any railroad company or the receiver or lessee thereof doing business in the State of Texas, which shall violate any provision of this article, shall be liable to the State of Texas for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such suit may be brought in the name of the State in Travis County or in any county in or through which such line of railroad may run, by the Attorney General, or by the county or district attorney in any county in or through which such line of railroad may be operated; and such suit shall be subject to the provisions of Article 6477. [Acts 1907, p. 54.]

Art. 6373. [6567] Switch lights.—Every railway corporation operating any line of railway in this State shall place and maintain good and sufficient switch lights on all their main line switches connected with the main line, and keep the same lighted from sunset until sunrise. This article shall not apply to railways which have all their locomotives equipped with electric headlights, nor on railroad lines or divisions on which no trains are regularly run or operated at night. [Acts 1905, p. 77.]

Art. 6374. [6568] Derailing switches on sidings.—Every railroad corporation operating any line of railway in Texas shall place and maintain good and safe derailing switches on all of their sidings connecting with the main line of such railway and upon which siding cars are left standing. No derailing switches shall be required where the siding connects with the main line on an upgrade in the direction of the main line of one half of one per cent or over, nor on inside tracks at terminal points where regular switching crews are employed. [Id.]

Art. 6375. [6569] Penalty.—Any railway corporation which shall wilfully violate any provision of the two preceding articles shall be liable to the State of Texas for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suits therefor be brought by the Attorney General, or under his direction, in the name of the State of Texas, in Travis County, or in any county through which such railway may run or be operated, and such suits shall be subject to the provisions of Article 6477. [Acts 1905, p. 77.]

Art. 6376. Using tracks to make or repair cars.—No firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this State, shall use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use. Nothing herein shall be construed to prohibit temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. Any firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars in this State, who shall violate this law shall forfeit and pay a penalty to the State of Texas of not less than fifty nor more than two hundred dollars. Each day such violation shall exist shall be a separate offense. [Acts 1913, p. 334.]

Art. 6377. [6570] [4508] [4233] Forming passenger trains.—In forming a passenger train, baggage or freight, or merchandise, or lumber cars shall not be placed in rear of passenger cars; and

if they or any of them shall be so placed and any accident happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement and the conductor and engineer of the train shall each be held guilty of intentionally causing the injury, and be punished accordingly. Provided, however, that this Article shall not apply where railroad trains are carrying only personnel and equipment in connection with military or naval movements. [P. D. 4896; Acts 1941, 47th Leg., p. 1405, ch. 638, § 1.]

Section 2 of the Act of 1941 repealed conflicting laws.

Art. 6378. [6571] [4517] [4234] Brakes and brakemen.—Every such company shall have a good and sufficient brake upon the hindmost car on all trains transporting passengers and merchandise, and also keep stationed there at all times a trusty and faithful brakeman, under a penalty of not exceeding one hundred dollars for each offense, to be recovered by suit in the name of the State. [P. D. 4907.]

Art. 6379. Air brake inspection.—The air brakes and air brake attachment on each train in this State must be inspected by a competent inspector before such train leaves its division terminal. This article shall not apply to tram roads engaged in hauling logs to saw mills, nor to railroads under forty miles in length. Any corporation or receiver who operates or causes to be operated any such train without such inspection shall forfeit and pay to the State of Texas a penalty of not less than fifty nor more than one hundred dollars, to be recovered by suit. Each operation of any such train without such inspection first having been so made shall be a separate offense. [Acts 1911, p. 106.]

Art. 6380. [6572 to 76] Full crew.—No railroad company or receiver of any railroad company doing business in this State shall run over its road, or part of its road, outside of the yard limits:

1. Any passenger train with less than a full passenger crew consisting of four persons: one engineer, one fireman, one conductor and one brakeman.

2. Any freight train, gravel train or construction train with less than a full crew consisting of five persons: one engineer, one fireman, one conductor and two brakemen.

3. Any light engine without a full train crew consisting of three persons: one engineer, one fireman and one conductor.

4. The provisions of this article shall not apply to nor include any railroad company or receiver thereof, of any line of railroad in this State, less than twenty miles in length; and nothing in subdivisions one and two hereof shall apply in case of disability of one or more of any train crew while out on the road between division terminals, or to switching crews in charge of yard engines, or which may be required to push trains out of the yard limits.

Any such company or receiver which shall violate any provision of this article shall be liable to this State for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Suit for such penalty shall be brought in Travis County or in any county in or through which such line of railroad may run, by the Attorney General, or under his direction, or by the county or district attorney in any county in or through which such railroad may be operated. Such suits shall be subject to the provisions of Article 6477. [Acts 1909, p. 179.]

Art. 6381. [6577 to 6580] Ash pans.—No common carrier engaged in moving commerce in this State by railroad shall use in moving such commerce in this State any locomotive not equipped with an ash pan which can be dumped or emptied and cleaned without the necessity of any employé going under such locomotive. This article shall not apply to any locomotive upon which an ash pan is not necessary by reason of the use of oil, electricity or other such agency in such locomotive. Any such common carrier which shall violate the provisions of this article shall be liable to this State for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suit brought in the name of this State in Travis County or in any county into or through which such carrier may be operating a line of railroad. Such suit may be brought by the Attorney General or under his direction, or by the county or district attorney in any such county. The same compensation shall be allowed the attorney bringing such suit as provided in Article 6477. "Common carrier" as used in this article shall include the receiver or other person or corporation charged with the duty of managing and operating the business of a common carrier. [Acts 1909, p. 67.]

Art. 6382. [6709] Brakes.—No railroad engaged in intrastate commerce within this State shall use on its lines in moving intrastate traffic within said State any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system, or run any train in such traffic that has not sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose, nor run any train in such traffic that has not all of the power or train brakes in it used and operated by such engineer, nor run any train in such traffic that has not at least seventy-five per centum of the cars in it equipped with power or train brakes; and for the purpose of fully carrying into effect the objects of this and the five succeeding articles, the Commission may from time to time, after full hearing by public order, increase the minimum percentage of cars in any train which shall be equipped with power or train brakes; and after such minimum percentage has been so increased, it shall be unlawful for any common carrier to run any train in such traffic which does not comply with such increased minimum percentage. [Acts 1909, p. 64.]

Art. 6383. [6710] Improved couplers.—No common carrier engaged in commerce as aforesaid shall haul or permit to be hauled or used on its line of railroad within this State, any locomotive, tender, car or similar vehicle employed in moving intrastate traffic within this State which is not equipped with couplers, coupling automatically by impact and which can be coupled and uncoupled without the necessity of men going between the ends of locomotives, tenders, cars and similar vehicles. [Id.]

Art. 6384. [6711] Drawbar of engine.—No common carrier engaged in commerce as aforesaid shall use in moving intrastate traffic within this State any locomotive, tender, car or similar vehicle, any drawbar of which, when measured perpendicularly from the level of the tops of the track rails upon which such locomotive, tender, car or similar vehicle is standing to the center of such draw bar more than thirty-four and one-half inches in height. [Id.]

Art. 6385. [6712] May refuse rolling stock.—When any person, firm, company, corporation or receiver engaged in commerce as aforesaid shall have equipped a sufficient number of its locomotives, tenders, cars and similar vehicles so as to comply with the provisions of this title, it may lawfully refuse to receive from connecting lines of road or shippers, any locomotives, tenders, cars, or similar vehicles not equipped with such power or train brakes as will work and readily interchange with the brakes in use on its own locomotives, tenders, cars and similar vehicles as required by law.

Art. 6386. [6713] Rolling stock.—No common carrier, engaged in commerce as aforesaid, shall

use in moving intrastate traffic within this State any locomotive, tender, cars, or similar vehicle which is not provided with sufficient and secure grab irons, hand holds and foot stirrups. [Id.]

Art. 6387. [6714] Penalty.—Every such common carrier, whether a co-partnership, a corporation, a receiver or an individual or association of individuals, violating any of the provisions of the five preceding articles shall be liable to the State of Texas for a penalty of not less than two hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suit brought in the name of the State of Texas, in Travis County, or in any county into or through which such line of railroad may run, by the Attorney General or under his direction, or by the County or district attorney in the county in which the suit is brought, and the attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected, to be paid by the State, and the fees and compensation so allowed shall not be accounted for under the general fee law.

Art. 6388. [6646] No risk assumed.—Any employé of any common carrier engaged in any intrastate commerce, as provided in the six preceding articles who may be injured or killed shall not be held to have assumed the risk of his employment, or to have been guilty of contributory negligence, if the violation by such common carrier of any provision of said articles contributed to the injury or death of such employé. [Id.]

Art. 6389. [6581–2–3] Provision for employés.—Every person, corporation, or receiver, engaged in constructing or repairing railroad cars, trucks or other railroad equipment, shall erect and maintain a building or shed at every station or other point where as many a [1] five men are regularly employed on such repair work, the building or shed to cover a sufficient portion of its track so as to provide that all men regularly employed in the construction and repair of cars, trucks, or other railroad equipment shall be sheltered and protected from inclement weather. The provisions of this article shall not apply at points where less than five men are regularly employed in the repair service, nor at division terminals, nor other points where it is necessary to make light repairs only on cars, nor to cars loaded with time or perishable freight, nor to cars when trains are being held for the movement of said cars. Any person, corporation or receiver who shall violate any provisions of this article shall pay to the State a penalty of not less than fifty nor more than one hundred dollars. Each ten days of such failure or refusal to so comply shall be considered a separate infraction authorizing the recovery of a separate penalty. Suit for recovery of penalty hereunder shall be brought by the Attorney General or by the county or district attorney of the county in which suit is brought, and the county or district attorney, as the case may be, shall receive a fee of ten per cent upon each penalty recovered and collected by him, and said fee shall be over and above the fees allowed under the general fee bill. [Acts 4th C. S. 1910, p. 123.]

[1] So in enrolled bill. Should probably read "as".

Art. 6390. [6584] Sixteen hours.—It shall be unlawful for any railroad company, or receiver of any railroad company, operating any line of railroad in whole or in part in this State, or any officer or agent of such railroad company or receiver to require or permit any conductor, engineer, fireman or brakeman to be or remain on duty for a longer period than sixteen consecutive hours; and whenever any such conductor, engineer, fireman or brakeman shall have been continuously on duty for sixteen hours, he shall be relieved and shall not be required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such conductor, engineer, fireman or brakeman who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty. [Acts 1909, p. 180.]

Art. 6391. [6585] Penalties.—Any railroad company, or receiver of any railroad, operating a line of railroad in whole or in part in this State, or any officer or agent of such railroad or receiver who shall violate any provision of the preceding article shall be liable to a penalty to the State of not to exceed five hundred dollars for each violation. Suit for such penalty shall be brought in the name of the State in Travis County, or in any county into or through which such railroad may run, and may be brought either by the Attorney General, or under his direction, or by the county attorney or district attorney of any county or judicial district into or through which such railroad may pass, and such attorney bringing any such suit shall be entitled to one-third of any penalty recovered therein. In all prosecutions under this and the preceding article against any railroad company, or receiver of any railroad company, such company or receiver shall be deemed to have had knowledge of all acts of all of its officers and agents. The provisions of this and the preceding article shall not apply in any case of casualty or unavoidable accident, or the Act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of any conductor, engineer, fireman or brakeman at the time such conductor, engineer, fireman or brakeman left a terminal, and which act could not have been foreseen; nor to crews of wrecking or relief trains. [Id.]

Art. 6392. [6588] [4518] [4235] Carrying mail.—Every such corporation shall, when applied to by the Postmaster General, convey the mail of the United States on its road or roads; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of conveying the same, the Governor shall appoint three commissioners, who, or a majority of them, after fifteen days written notice to the corporation of the time and place of meeting, shall determine and fix the prices, terms and conditions aforesaid; but such price shall not be less for conveying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains and fair compensation for the post-office car; and if the Postmaster General shall require the mail to be carried at other hours, or at a higher speed than the passenger train be run at, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof and for the service, to be fixed as aforesaid. [P. D. 4903.]

Art. 6393. [6589] [4519] [4236] Freight depots.—Railroad companies shall erect at each depot, station, or place established by such company for the reception and delivery of freight, suitable buildings or inclosures to protect produce, goods, wares, and merchandise and freight of every description from damage by exposure to weather, stock or otherwise; in default of which such railroad company shall be liable to the owner of such produce, goods, wares or merchandise for the amount of damages or loss sustained by reason of such improper exposure, together with all costs and expenses of recovering the same, including necessary attorneys' fees. [P. D. 4923.]

Art. 6394. [6590] [4520] [4237] Storage.—Railroad companies shall in no case be allowed to charge storage upon freight received by them for delivery, unless the owner or consignee thereof neglect to remove it from the depot of the company within three days after notice of i. reception; which notice

may be given by posting the same on the depot door; and, after the expiration of such time, the company may remove and store said freight at the expense of the owner or consignee, and said freight shall be held liable for the freight and charges due thereon. [P. D. 4923.]

Art. 6395. [6591] [4521] [4238] Passenger depots.—Every railroad company doing business in this State shall keep its depots or passenger houses in this State lighted and warmed, and opened to the ingress and egress of all passengers who are entitled to go therein, for a time not less than one hour before the arrival and after the departure of all trains carrying passengers on such railroad; and every such railroad company, for each failure or refusal to comply with any provision of this article shall forfeit and pay to the State of Texas, the sum of fifty dollars, and shall be liable to the party injured for all damages by reason of such failure. [Acts 1891, p. 29, Sen. Jour. 1895, p. 483, No. 89; G. L. vol. 10, p. 31.]

Art. 6396. [6592] Water closets.—All railroad and railway corporations operating a line of railway in this State for the transportation of passengers thereon are required to construct and maintain, and keep in a reasonably clean and sanitary condition, suitable and separate water closets or privies for both male and female persons at each passenger station on its line of railway, either within its passenger depot or in connection therewith, or within a reasonable and convenient distance therefrom, at such station for the accommodation of its passengers who are received and discharged from its cars thereat, and of its patrons and employés who have business with such railroads and corporations at such stations. [Acts 1905, p. 324; Acts 1909, p. 175.]

Art. 6397. [6593] Separate closets.—They shall keep said water closets and depot grounds adjacent thereto well lighted at such hours in the night time as its passengers and patrons at such stations may have occasion to be at the same, either for the purpose of taking passage on its trains, or waiting for the arrival thereof, or after leaving the same for at least thirty minutes before the schedule time for the arrival of its train and after the arrival thereof at said station. [Id.]

Art. 6398. [6594] Penalties.—Any railroad or railway corporation which fails, neglects or refuses to comply with the provisions of the two preceding articles shall forfeit and pay to the State of Texas the sum of fifty dollars for each week it so fails and neglects. The county attorney of the county in which such station is located, and in case there is no such county attorney, then the attorney of the district including said county, shall, upon credible information furnished him, institute suits in the name of the State of Texas against such defaulting railroad or railway corporation for the recovery of said penalties; and, in case of said recovery, the said attorney shall be entitled to one-fourth the amount thereof as commission for his said services, and the remainder thereof shall be paid into the road and bridge fund of said county. The State shall in no event be liable for any costs in such suit. [Id.]

Art. 6399. [6595] [4522] [4239] Switch cars.—When a company constructs a switch on its road for the accommodation of freighters, they shall be bound to furnish a sufficient number of cars for the transportation of freight therefrom when requested to do so, and in default shall be subject to the same penalties as in other cases of neglect of the like character.

Art. 6400. [6596 to 6600] Cattle-guards.—Every railroad company whose railroad passes through a field or inclosure, shall place a good and sufficient cattle-guard or stop at the points of entering such field or inclosure, and keep them in good repair. If such field or inclosure shall be enlarged or extended, or the owner of any land over which a railway runs shall clear and open a field so as to embrace the track of a railway, such railroad company shall place good and sufficient cattle-guards or stops at the margins of such extended inclosures or fields or such new fields and keep the same in repair. Such cattle-guards or stops shall be so constructed and kept in repair as to protect such fields and inclosures from the depredations of stock of every description. If such company fails to construct and keep in repair such cattle-guards and stops, the owner of such inclosure or field may have such cattle-guards and stops placed at the proper places and kept in repair, and may recover the costs thereof from such railroad company, unless it be shown that said enlargement or extension was made capriciously and with intent to annoy and molest such company. If any company neglects to construct the proper cattle-guards and stops and keep the same in repair as required in this article, such company shall be liable to the party injured by such neglect for all damages that may result from such neglect, to be recovered by suit. [Acts 1860, p. 64; G. L. vol. 4, p. 1426; P. D. 4925.]

Art. 6401. [6601–2] Johnson grass and thistle.—If any railroad or railway company or corporation doing business in this State shall permit any Johnson grass or Russian thistle to mature or go to seed upon any right of way owned, leased or controlled by it, any person owning, leasing or controlling land contiguous to said right of way shall recover twenty-five dollars by suit from such company or corporation, and any additional sum as he may have been damaged by reason of said grass or said thistle being permitted to so mature or go to seed; provided that any person owning or controlling land contiguous to said right of way who permits any said grass or thistle to mature or go to seed upon said land shall have no right to such recovery. [Acts 1901, p. 283.]

So much of this statute as authorizes a recovery of damages must be declared void. Gulf, C. & S. F. Ry. Co. v. Stokes, Civ.App., 91 S.W. 329; St. L., S. W. Ry. Co. v. Gentry, 43 C.A. 299, 95 S.W. 74.

Art. 6402. [6603] [4528] [4245] Killing stock.—Each railroad company shall be liable to the owner for the value of all stock killed or injured by the locomotives and cars of such railroad company in running over their respective railways. Such liability shall also exist in counties and subdivisions of counties which adopt the stock law prohibiting the running at large of horses, mules, jacks, jennets and cattle. If said company fence its road it shall only be liable for injury resulting from a want of ordinary care. [Acts 1905, p. 226; P. D. 4926.]

Art. 6403. Report of animals killed.—Whenever an animal is killed or found dead upon the railroad or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall make a description of such animal, stating its kind, the marks and brands, color and apparent age, and any other description that may serve to identify said animal, which description must be made before said animal is buried or otherwise disposed of, and shall send same to the county clerk of the county in which said animal is found or killed within ten days from the date of finding or killing, which description shall be by said county clerk filed and kept of record in his office without exacting any fees from said section foreman for filing same. A certified copy of said report so filed may be introduced in evidence in any case wherein the killing, death or value of said animal is in question. [Acts 1915, p. 126.]

Art. 6404. [6604–5–6] Consolidation of railroad corporations.—"Railroad corporation," or "other corporation," as used in this article shall mean any corporation, company, person or association of per-

sons, who own or control, manage or operate any line of railroad in this State. No railroad corporation or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. No railroad company organized under the laws of this State shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other State, or of the United States. [Acts 1887, p. 137; G. L. vol. 9, p. 935; Const. art. 10, sec. 6.]

Art. 6405. [6607] [4532] [4248] Map and profile of road.—Every such corporation shall, within a reasonable time after their road shall be located, cause to be made:

1. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the Railroad Commission. Every such map shall be drawn on a scale and on paper to be designated by the Railroad Commission and certified and signed by the president of the corporation.

2. A certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves, certified and signed and filed as aforesaid.

3. Any railroad company failing or refusing to comply with any provision of this article shall forfeit to the State of Texas any sum not less than five hundred nor more than one thousand dollars; and each day such railroad company fails or refuses to comply with the provisions of this law shall be a separate offense. [Acts 1893, p. 169; G. L. vol. 10, p. 599.]

Art. 6406. [6675] [4579] Contract of connecting lines.—Any two connecting railroads may enter into a contract whereby any part or all the passengers, freight or cars, empty or loaded, hauled or transported by one and destined to points on or beyond the line of the other, shall be delivered to, received and transported by the other, which contract, however, shall be submitted to the Commission for examination and approval, and when so approved shall be binding, but if said contract be not approved by the Commission, the same shall be void. Any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof in the county where the freight is delivered for any damage that may be done to such freight in its transportation. [Acts 1891, p. 55; G. L. vol. 10, p. 57.]

Art. 6407. [6608] [4535] [4251] Freight and passengers from connecting lines.—All railway companies doing business in this State shall be and they are hereby required to receive from all railway companies with which they may connect at the State line of this State, or at any place within this State, or at any or all places where they may cross the line of any other railway doing business, or operating a line of railway in this State, all freights and passengers coming to it from such connecting line, and destined to points on its line, or to points beyond its line or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the next connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against the line from which such freight or passengers are received, and upon the same terms and conditions with those made by such line for like or similar service against any other railway in or out of this State with which it does business; provided, however, that the words "without delay or discrimination," as used herein, are hereby declared to mean that the freight received for transportation as herein required shall be shipped in the order in which it is received, giving preference in all cases to live stock and other perishable freight in the order received; and the charges for the business required by this article to be interchanged shall be no greater pro rata per cent per mile for freight, and no greater rate per mile for passengers and baggage, than is charged to any other line for transporting like freight and passengers and baggage, or than it accepts for itself when transported wholly on its own line, no matter on what part the line or in what direction the transporting is done. [Acts 1887, p. 110; G. L. vol. 9, p. 908.]

Art. 6408. [6609] [4536] [4252] What are connecting lines.—Whenever any two or more railroads doing business in this State shall connect with each other by crossing each other's tracks or otherwise so as to form a continuous or connected line from one point in the State to another point in this State, such lines so crossing are hereby declared to be connecting lines; and when such connecting lines receive from any other railway or transportation line passengers or freight for transportation over the combined line at a rate or division agreed upon between themselves and such other railway or transportation line from which the business is received as aforesaid, then, in every such case, it shall be the duty of such connecting railways forming such through line, and of either or both of them, to receive from every other railway or transportation line with which they or either of them may connect by crossing of track or otherwise, all passengers or freight that may be destined to points on either of the lines making up such combined line, and transport the same to the point of destination, if on such combined lines, or either of them, or to the next connection or crossing in the direction of the destination of such freight or passengers, without delay or discrimination, and at no greater rate than is paid, and on the same conditions as is or shall be required by such combined line for like or similar services from any other railway or transportation line with which they or either of them shall interchange business. [Id.]

Art. 6409. [6610] [4537] [4253] Terms, etc.—Every railroad, or person, or corporation, operating a railway for the carriage of freight and passengers in this State shall receive freight, passengers and baggage for transportation to or into this State, or through any part thereof, from every other connecting railway, upon the same terms and conditions as to the division of charges for carrying or transporting the same upon a mileage, or any other basis, and upon terms and conditions as to bills of lading, way bills, tickets, coupon tickets and baggage checks, that any such person or corporation, or transportation line may receive or contract to receive from any other person or corporation engaged in like business in this State; and, where railroads within this State receive goods for transportation into their warehouses or depots they shall forward them in the order in which they are received, the first received to be the first forwarded, without giving the preference to one over another; and in case of failure to do so they shall be liable for all loss occurring while the goods remain, and for all damage occasioned or in anywise resulting from delay; provided that the trip or voyage shall be considered as having commenced from the time of the signing of bill of lading, and as having ended upon the arrival of freight at point of destination, and written notices served upon the consignee that it is ready for delivery upon payment of freight and charges. If the consignee of the goods fails to receive them promptly after such notice is served, the liability of the railroads thereafter shall be the

same as that of warehousemen. [Acts 1885, p. 67; G. L. vol. 9, p. 687.]

Art. 6410. [6611] Water craft freight.—Each railway company doing business in this State shall be required to receive from all steamships, steamboats and other water craft and vessels, at their usual places for receiving such freights at the several ports on the coast of Texas, and on the inland waterways in this State, all freights and passengers coming to it from such steamships, steamboats and other water craft and vessels, and destined to points on its line or to points beyond its line, or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against such steamship line, steamboat owner or company, or the owner of any other water craft or other vessels from whom such freight or passengers are received, and upon the same terms and conditions with those made by such railway company for like or similar service with any other person, steamboat company, steamship company or owners, or any other water craft or vessel, with which it does business at such points or stations as aforesaid. [Acts 1899, p. 101.]

Art. 6411. [6612–13] Penalty.—If any railroad company doing business in this State shall fail or refuse to interchange business with any steamship line or company or with any steamboat line or company, or any other watercraft or vessel on the same terms and conditions, or for the same compensation or pro rata that it interchanges business with any other steamship line or company, steamboat line or company, or any other water craft or vessel, it shall be deemed guilty of discrimination within the meaning of this chapter; and shall, for every such offense, forfeit and pay to the State of Texas a penalty of not less than five hundred nor more than five thousand dollars, to be collected in the manner and in the courts as prescribed for the collection of other penalties in Article 6477, and in addition thereto shall forfeit and pay to the corporation, person or persons aggrieved thereby, the sum of one thousand dollars as penal damages for each act of discrimination or violation of this law which may be recovered in the name of the corporation, person or persons so suing. Nothing in this article shall be so construed as to prevent the recovery of any damages by an aggrieved person, firm, or corporation accruing by reason of the violation of this article. This and the preceding article shall not have the effect to relieve or waive any right of action by the State, or any other person, firm or corporation for any right, penalty or forfeiture which has arisen, or may arise, under any law of this State. All penalties accruing under said articles shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty. [Id.]

Art. 6412. [6414] [4538] [4254] Trustee for connecting lines.—Every railway which may interchange business with any other connecting railway under the provisions of this chapter, or otherwise, is hereby declared to be a trustee for such connecting railway to the extent of all sums of money received by it for the joint business interchanged between them, and which may properly belong to such other railway. Such sums of money shall be due and payable from one connecting line to the other once every ninety days; and each connecting railway shall have a lien upon the property and franchises of the connecting railways to the extent of the balance due each quarter, which lien shall be superior to all other liens upon said property and franchises, save and except laborers liens as already provided by law, and may be enforced in any court of this State having jurisdiction by law of the subject matter and the parties. [Acts 1887, p. 110; G. L. vol. 9, p. 908.]

Art. 6413. [6615] [4539] [4255] Refusal to interchange.—If any railway company doing business in this State shall fail or refuse to interchange business with any other railway company, or shall fail or refuse to interchange business on the same terms or for the same pro rata that it interchanges business with any other railway company in this State, or shall fail or refuse to honor or receive the tickets, coupon tickets, way bills or baggage checks of any connecting railway upon the same terms and conditions that it receives or honors the tickets, coupon tickets, way bills, or baggage checks of any other railway company, or shall violate in any manner any other provision of this and the three preceding articles, such railway company shall be deemed guilty of discrimination within the meaning of this title, and shall forfeit and pay to the person or corporation aggrieved thereby the sum of one thousand dollars as penal damages for each act of discrimination or violation of this law, which may be recovered in the name of the person or corporation so suing. Nothing in this article shall be so construed as to prevent the recovery of any other damages by any aggrieved person, firm or corporation, occurring by reason of the violation of this or the three preceding articles. [Acts 1887, p. 112; G. L. vol. 9, p. 910.]

Art. 6414. [6616–17] Service for express business.—Every railroad company operating a railroad within this State shall furnish reasonable and equal facilities and accommodations, and upon reasonable and equal rates, to all corporations and persons engaged in the express business, for the transportation of themselves, agents, servants, merchandise and other property, and for the use of their cars, depots, buildings and grounds and for exchanges at points of junction with other roads. Any railroad company which shall fail to comply with the provisions hereof shall be liable to the aggrieved party, in an action for damages; and such railway company, in addition to liability to said action for damages, shall be subject to a writ of mandamus, to be issued by any court of competent jurisdiction, to compel compliance with the provisions of this article. The said writ of mandamus shall issue at the instance of any party or corporation aggrieved by a violation hereof, and any violation of said writ shall be punishable as a contempt. [Id.]

Art. 6415. [6637–38] Ticket agent.—Each railroad company doing business in this State, or the receiver of any such railroad company, through their duly authorized officers, shall provide each agent who may be authorized to sell tickets, or other evidences, entitling the holder to travel upon any such railroad, with a certificate setting forth the authority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of such railroad company, or the signature of the receiver, if any there be, of such railroad company, or by the signature of the officer whose name is signed upon the tickets or coupons which such agent may be authorized to sell. Each such ticket agent shall keep said certificate posted in a conspicuous place in his office, and upon demand shall exhibit it to any person desiring to purchase a ticket, or to any officer of the law. [Acts 1893, p. 97; Acts 1903, p. 162; G. L. vol. 10, p. 527.]

Art. 6416. [6618] [4542] Passenger fare.—The passenger fare upon all railroads in this State shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that, where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no

tickets are sold, and that the minimum charges in no case shall be less than twenty-five cents; and provided, further that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile. Railroads shall be required to keep their ticket offices open for half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile. [Acts 1883, p. 70; G. L. vol. 9, p. 376.]

Art. 6417. [6746 to 6753] Separate coaches.—1. Every railway company, street car company, and interurban railway company, lessee, manager, or receiver thereof, doing business in this State as a common carrier of passengers for hire, shall provide separate coaches or compartments, as hereinafter provided, for the accommodation of white and negro passengers, which separate coaches or compartments shall be equal in all points of comfort and convenience.

2. "Negro" defined.—The term "negro" as used herein, includes every person of African descent as defined by the statutes of this State.

3. "Separate coach" defined.—Each compartment of a railroad coach divided by good and substantial wooden partitions with a door therein shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart; and each compartment of a street car or interurban car divided by a board or marker placed in a conspicuous place, bearing appropriate words in plain letters indicating the race for which it is set apart, shall be sufficient as a separate compartment within the meaning of this law.

4. Penalty.—Any railway company, street car company, or interurban railroad company, lessee, manager or receiver thereof, which shall fail to provide its cars bearing passengers with separate coaches or compartments, as above provided for, shall be liable for each failure to a penalty of not less than one hundred nor more than one thousand dollars, to be recovered by suit in the name of the State; and each trip run with such train or street car or interurban car without such separate coach or compartment shall be deemed a separate offense.

5. Exceptions.—This article shall not apply to any excursion train or street car or interurban car as such for the benefit of either race, nor to such freight trains as carry passengers in cabooses, nor be so construed as to prevent railroad companies from hauling sleeping cars, dining or cafe cars or chair cars attached to their trains to be used exclusively by either race, separately but not jointly, or to prevent nurses from traveling in any coach or compartment with their employer, or employés upon the train or cars in the discharge of their duty.

6. Law to be posted.—Every railroad company carrying passengers in this State shall keep this law posted in a conspicuous place in each passenger depot and each passenger coach provided in this law.

7. Duty of conductor.—Conductors of passenger trains, street cars, or interurban lines provided with separate coaches shall have the authority to refuse any passenger admittance to any coach or compartment in which they are not entitled to ride under the provisions of this law, and the conductor in charge of the train or street car or interurban car shall have authority, and it shall be his duty, to remove from a coach or street car, or interurban car, any passenger not entitled to ride therein under the provisions of this law. [Acts 1891, p. 44; Acts 1907, p. 58; G. L. vol. 10, p. 46.]

Art. 6418. [6633–4] Failure to build and equip.—If any railroad corporation organized under this title shall not within two years after its articles of association shall be filed and recorded as provided in this title, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and, if any such railroad corporation, after the first two years, shall fail to construct, equip and put into good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall, in either of such cases, forfeit its corporate existence, and its powers shall cease as far as relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation. The provisions of this article shall not apply to or in any manner affect railway companies incorporated for the construction and operation of urban, suburban and belt railroads for a distance of less than ten miles, as provided in Chapter 1 of this title; provided, that all such companies shall, within twelve months from the date of their charter, complete a portion of their road and commence and continue the running of the cars thereon. This article shall apply as well to branch lines as to main lines of railroads. [Acts 1876, pp. 143, 149, G. L. vol. 8, pp. 979, 985; Acts 1879, S. S. p. 47; G. L. vol. 9, p. 79; Acts 1889, p. 17; G. L. vol. 9, p. 1045.]

Art. 6418a. Relief to railway corporations failing to construct roads.—Sec. 1. That the time in which any railway corporation chartered under the laws of the State of Texas since the first day of January, 1892, or the charter of which has been amended since that date, is required to begin construction of its road and construct, equip and put the same in good running order as required by Article 6418 of the Revised Statutes of the State of Texas of 1925, be and the same hereby is, as to any unfinished portion of such road, extended two years from the taking effect of this Act; and any railroad company having been chartered since January first, 1892, or the charter to which has been amended since said date, which shall have forfeited its corporate existence, or any of its rights and powers, or is about to do so, by reason of the failure to comply with said Article 6418, or any part of said Article, shall have restored and preserved to it, its corporate existence and it shall have and enjoy all the corporate franchises, property rights and powers held or acquired by it previous to any cause of forfeiture as aforesaid; provided that no railway company which shall be revived or the time extended by virtue of this Act, shall claim or exercise any franchise not allowed, granted or permitted to other railway corporations under the law as now in force in this State.

Sec. 2. Any railway corporation chartered since the first day of January, A. D., 1892, and which by its original charter or by amendment thereto, filed since said first day of January, A. D., 1892, has further provided for the locating, constructing, maintaining, owning and operating of any extension or branch line or lines of railway and which has failed or is about to fail to complete the same, or any part thereof, within the time required by law, shall, upon payment of all its franchise tax, be and is hereby restored to and granted all and singular the rights, privileges and franchises acquired by its original charter, or by such amendment to its articles of incorporation, as if the same was filed and recorded in the office of the Secretary of State on the day of and taking effect of this Act, and such corporation shall, upon payment of its franchise tax, be and is hereby authorized to project, complete, construct, own and operate any such extension and branch line or lines of railway under and as provided for in its charter or in any amendment to its articles of incorporation; provided, that such extension and branch line of railway shall be by such corporation completed and put in good running order at the rate of at least ten miles

in two years from the taking effect of this Act, and twenty additional miles for each and every year thereafter, until all the branch line or lines of extension as provided for are completed; provided that the provisions of this Act shall not apply to any railroad company which has been chartered by the State of Texas for a period of ten years or more, and which has twenty miles or less of railroad to build in order to comply with its original charter, or any amendment thereto. [Acts 1927, 40th Leg., p. 357, ch. 240.]

Art. 6418b. Extension of time for construction of railroads.—Sec. 1. That the time in which any railway corporation chartered under the Laws of the State of Texas since the first day of January, 1892, or the charter of which has been amended since that date, is required to begin construction of its road, and construct, equip, and put the same in good running order as required by Article 6418 of the Revised Statutes of the State of Texas of 1925, be and the same hereby is, as to any unfinished portion of such road, extended two years from the taking effect of this Act; and any railroad company having been chartered since January 1, 1892, or the charter to which has been amended since said date, which shall have forfeited its corporate existence or any of its rights and powers, or is about to do so, by reason of the failure to comply with said Article 6418, or any part of said Article, shall have restored and preserved to it, its corporate existence, and it shall have and enjoy all the corporate franchises, property rights and powers held or acquired by it previous to any cause of forfeiture as aforesaid; provided that no railway company which shall be revived or the time extended by virtue of this act, shall claim or exercise any franchise not allowed, granted or permitted to other railway corporations under the Law as now in force in this State.

Sec. 2. Any railway corporation chartered since the first day of January, A. D. 1892, and which by its original charter or by amendment thereto, filed since said first day of January, A. D. 1892, has further provided for the locating, constructing, maintaining, owning and operating of any extension or branch line or lines of railway, and which has failed or is about to fail to complete the same, or any part thereof, within the time required by Law, shall, upon payment of all its franchise tax, be and is hereby restored to and granted all and singular the rights, privileges and franchises acquired by its original charter, or by such amendment to its Articles of Incorporation, as if the same was filed and recorded in the office of the Secretary of State on the day of the taking effect of this Act, and such corporation shall, upon payment of its franchise tax, be and is hereby authorized to project, complete, construct, own and operate any such extension and branch line or lines of railway under and as provided for in its charter or in any amendment to its Articles of Incorporation; provided, that such extension and branch line of railway shall be by such corporation completed and put in good running order at the rate of at least ten miles in two years from the taking effect of this Act, and twenty additional miles for each and every year thereafter, until all the branch line or lines of extension as provided for are completed; provided that the provisions of this Act shall not apply to any railroad company which has been chartered by the State of Texas for a period of ten years or more, and which has twenty miles or less of railroad to build in order to comply with its original charter, or any amendment thereto. [Acts 1929, 41st Leg., p. 663, ch. 296.]

Art. 6419. [6636] [4560] [4280] Neglect to make annual report.—Any railroad corporation which shall neglect to make the annual report required by this title to the Comptroller or Governor and which has been notified by the Comptroller or Governor of such failure and shall still neglect to make such report within three months after such notice shall forfeit its charter.

CHAPTER 9.—COLLECTION OF DEBTS AND RIGHTS OF EMPLOYÉS

Art.
6420. Subject to execution.
6421. Road sold for debts.
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Article 6420. [6619] [4543] [4259] Subject to execution.—The rolling stock and all other movable property belonging to any railroad company or corporation shall be considered personal property. Its real and personal property or any part thereof shall be liable to execution and sale in the same manner as the property of individuals, and no such property shall be exempt from execution and sale. [Const. art. 10, sec. 4.]

Art. 6421. [6624] [4549] [4260] Roads sold for debts.—In case of the sale of the property and franchises of a railroad company, whether by virtue of an execution, order of sale, deed of trust, or any other power, or by a receiver acting under judgment heretofore or to be hereafter rendered by any court of competent jurisdiction, the purchaser or purchasers at such sale, and associates, if any, shall acquire full title to such property and franchises, with full power to maintain and operate the railroad and other property incident to it, under the restrictions imposed by law; provided, that said purchaser or purchasers, and associates, if any, shall not be deemed to be the owners of the charter of the railroad company and corporations under the same, nor vested with the powers, rights, privileges and benefits of such charter ownership as if they were the original corporators of said company, unless the purchaser or purchasers, and associates, if any, shall agree to take and hold said property and franchises charged with and subject to the payment of all subsisting liabilities and claims for death and for personal injuries sustained in the operation of the railroad by the company, and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the company and by any receiver thereof, and for the current expenses of such operation, including labor, supplies and repairs; provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of said property and franchises or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed or when the sale was made, in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within the two years; such agreement to be evidenced by a written instrument signed and acknowledged by said purchaser or purchasers and associates, if any, and filed in the office of the Secretary of State. Such charter, together with the powers, rights and privileges and benefits thereof, shall pass to said purchaser or purchasers and associates, if any, subject to the provisions and limitations imposed and to be imposed by law. The amount of stock and bonds which may be held against

said property and franchises, after the sale thereof, as well as the manner of issuance of such stock and bonds shall be fixed, determined and regulated by the Railroad Commission of Texas at its discretion save that the total incumbrance secured by the lien on said property and franchises shall not exceed the amount allowed by Article 6521. [Acts 1910, 4th C. S. p. 120.]

Art. 6422. [6625] [4550] New corporation, how formed.—In case of a sale of the property and franchises of a railroad company within this State the purchaser or purchasers thereof and associates, if any, may form a corporation under the first chapter of this title, for the purpose of acquiring, owning, maintaining and operating the road so purchased, as if such road were the road intended to be constructed by the corporation; and, when such charter has been filed, the new corporation shall have the powers and privileges then conferred by the laws of this State upon chartered railroads, including the power to construct and extend. The property and franchises so purchased shall be charged with and subject to the payment of all subsisting liabilities and claims for death and personal injuries sustained in the operation of the railroad by the sold out company and by any receiver thereof and for loss of and damage to the property sustained in the operation of the railroad by the sold out company and by any receiver thereof and for the current expenses of such operation including labor, supplies and repairs, provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of such property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed, or when the sale was made; in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within two years; and provided, that by such purchase and organization no right shall be acquired in conflict with the present Constitution and laws, in any respect, nor shall the main track of any railroad once constructed and operated be abandoned or moved. The amount of stock and bonds which may be issued by said new corporation, as well as the manner of their issuance, shall be fixed, determined and regulated by the Railroad Commission of Texas at its discretion, save that the total encumbrance secured by lien on said property and franchises shall not exceed the amount allowed by Article 6521 of the Revised Statutes of Texas. This and the preceding article shall not be construed to in anywise repeal or impair the provisions of Chapter 12 of this Title except in so far as the same may be changed thereby. [Acts 1889, p. 19; Acts 4th C. S. 1910, p. 120; G. L. vol. 9, p. 1047.]

Art. 6423. [6626] [4551] Jurisdiction.—No railway company availing itself of any of the privileges herein provided shall claim to be under the jurisdiction of the Federal courts by reason thereof; and any railway company which may avail itself of the said privileges which shall claim to be subject to the jurisdiction of the Federal courts in pursuance of this article shall ipso facto forfeit its reorganization and be remanded to the same condition as it was prior to said reorganization. [Id.]

Art. 6424. [6627] [4552] [4261] Sale under deed of trust.—Whenever a sale of the roadbed, track, franchise and chartered rights and privileges of any railroad company is made by virtue of any deed of trust or power, the same shall be made at the time and place mentioned in the deed of trust or power and in accordance with the provisions of the same as to notice, and in other respects; and if the same be not specified, such sale shall be made as hereinafter provided for sales under execution or order of sale. [P. D. 4913; Acts 1927, 40th Leg., p. 73, ch. 48, § 1.]

Art. 6425. [6628] [4553] [4262] Judgment, execution, etc.—Whenever judgment is rendered against any railroad company, execution shall issue thereon and be levied and collected as in other civil causes, except that when the roadbed, track, franchise and chartered powers and privileges of said railroad company is levied upon, the levy and sale must take place in the county where the principal office of such company is situated, and the entire roadbed, track, franchise and chartered powers and privileges of such company shall be levied upon and sold. The provisions of this article shall be observed so far as they are applicable in all cases where, by any decree of a competent court, a sale of the roadbed, track, franchise and chartered powers and privileges of any railroad company is directed to be made. [P. D. 4914.]

Art. 6426. [6629] [4554] [4263] Unpaid stock subscriptions.—The sale of the roadbed, track, franchise and chartered rights, as herein provided, shall not be held to pass or convey to the purchaser any right or claim to recover from the former stockholders of said company any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the sold out company, as hereinafter provided. [P. D. 4915.]

Art. 6427. [6630] [4555] [4264] Old directors to be trustees.—Whenever a sale of the roadbed, track, franchise and chartered powers and privileges is made as hereinbefore provided (unless other persons shall be appointed by the Legislature or by some court of competent authority), the directors or managers of the sold out company at the time of the sale, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of the sold out company, and shall have full power to settle the affairs of the sold out company, collect and pay outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and other necessary expenses; and the persons so constituted trustees shall have authority to sue by the name of the trustees of such sold out company, and may be sued as such, and shall be jointly and severally responsible to all creditors and stockholders of such company, to the extent of its property and effects that shall come to their hands. [P. D. 4916.]

Art. 6428. [6631] [4556] [4265] Suits not to abate.—No suit pending for or against any railroad company at the time that the sale may be made of its roadbed,, track, franchise and chartered privileges shall abate, but the same shall be continued in the name of the trustees of the sold out company. [Id.]

Art. 6429. [6632] [4557] [4266] Law not to apply to State loans, etc.—The provisions of this law shall not apply to any debt, execution or deed of trust held by the State against any railroad company because of any loan made by the State to any company under the provisions of the Act to provide for the investment of the special school fund, or any other law which authorizes the loan of money to railroad companies, nor shall any creditor of any railroad company be allowed to make the State a party to any suit brought for the enforcement of any debt, mortgage or deed of trust or lien on any railroad, or permitted to require the State to foreclose any lien which it may have had upon any road, but the lien of the State and its right to enforce the same shall continue as if this law had never been passed, and

as if no sale had been made under the provisions of the same. [P. D. 4917.]

Art. 6430. [6620–1–2] Reducing wages.—All persons in the employment of such railway company shall receive thirty full days notice from said company immediately prior to the day upon which a reduction is to take effect before their wages shall be reduced. In all cases of reduction the employé shall be entitled to receive from such company wages at his contract price for the full term of thirty days after such notice is given. Said notice may be given by posting written or printed handbills, specifying the parties whose wages are to be reduced and the amount of such reduction, in at least three conspicuous places in or about each shop, section house, station, depot, train or other place where said employés are at work; provided, such employé shall, within fifteen days from the date of such notice, inform such railway company, by posting like notices as given by such railway company, whether or not he will accept such reduction; and, if no such information is given such company by such employé, then such employé shall forfeit his right to such notice and such reduction shall take effect from the date of such notice, instead of at the expiration of thirty days. Any railway company violating or evading any provision of this article shall pay to each employé affected thereby one month's extra wages. [Acts 1887, p. 20; G. L. vol. 9, p. 818.]

Art. 6431. [6623] [4547] Discharged employé.—When a railroad company shall discharge an employé, or when the time of service of such employé shall expire, or when a railroad company shall be due and owing an employé, such railroad company, upon discharge, or upon the termination of the term of such service, or upon maturity of said indebtedness, shall, within fifteen days after the demand therefor upon the nearest station agent of said railroad company, pay to such employé the full amount due and owing him. If said railroad company fails or refuses to pay such employé, then it shall be liable to pay to such employé twenty per cent on the amount due him, as damages, in addition to the amount so due, in no case the damages to be less than five nor more than one hundred dollars. [Acts 1887, p. 72; G. L. vol. 9, p. 870.]

CHAPTER 10.—LIABILITY FOR INJURIES TO EMPLOYÉS

Art.
6432. Injury to fellow servant.
6433. Who are vice-principals.
6434. "Fellow-servants."
6435. Contract limiting liability void.
6436. Contributory negligence.
6437. Assumed risk.
6438. Double header trains.
6439. Liable for injury or death of employé.
6440. Contributory negligence.
6441. Assumed risk.
6442. Contract changing liability void.
6443. Articles of this chapter construed.

Article 6432. [6640] Injury to fellow servant.—Every person, receiver, or corporation operating a railroad or street railway, the line of which shall be situated in whole or in part in this State, shall be liable for all damages sustained by any servant or employé thereof while engaged in the work of operating the cars, locomotives or trains of such person, receiver, or corporation, by reason of the negligence of any other servant or employé of such person, receiver or corporation, and the fact that such servants or employés were fellow-servants with each other shall not impair or destroy such liability. [Acts 1st C. S. 1897, p. 14; G. L. vol. 10, p. 1454.]

Art. 6433. [6641] Who are vice-principals.—All persons engaged in the service of any person, receiver, or corporation controlling or operating a railroad or street railway, the line of which shall be situated in whole or in part in this State, who are intrusted by such person, receiver, or corporation with the authority of superintendence, control or command of the other servants or employés of such person, receiver, or corporation, with the authority to direct any other employé in the performance of any duty of such employé, are vice-principals of such person, receiver, or corporation, and are not fellow-servants with their co-employés. [Id.]

Art. 6434. [6642] "Fellow-servants."—All persons who are engaged in the common service of such person, receiver, or corporation controlling or operating a railroad or street railway, and who while so employed are in the same grade of employment and are doing the same character of work or service, and are working together at the same time and place, and at the same piece of work and to a common purpose, are fellow-servants with each other. Employés who do not come within the provisions of this article shall not be considered fellow-servants. [Id.]

Art. 6435. [6643] Contract limiting liability void.—No contract made between the employer and employé based upon the contingency of death or injury of the employé and limiting the liability of the employer under the preceding articles of this chapter, or fixing damages to be recovered, shall be valid or binding. [Id.]

Art. 6436. [6644] Contributory negligence.—Nothing in the preceding articles of this chapter shall be held to impair or diminish the defense of contributory negligence when the injury of the servant or employé is caused proximately by his own contributory negligence, except as otherwise provided in this chapter.

Art. 6437. [6645] Assumed risk.—The plea of assumed risk shall not be available as a bar to recovery of damages in any suit brought in any court of this State against any corporation, receiver or other person, operating any railroad, interurban railway or street railway in this State for the recovery of damages for the death or personal injury of any employé or servant caused by the wrong or negligence of such person, corporation or receiver; it being contemplated that while the employé does assume the ordinary risk incident to his employment he does not assume the risk resulting from any negligence on the part of his employer, though known to him.

Where, however, in any such suit, it is alleged and proven that such deceased or injured employé was chargeable with negligence in continuing in the service of any such corporation, receiver or person above named in view of the risk, dangers and hazards of which he knew or must necessarily have known, in the ordinary performance of his duties, such fact shall not operate to defeat recovery, but the same shall be treated and considered as constituting contributory negligence, and if proximately causing or contributing to cause the death or injury in question, it shall have the effect of diminishing the amount of damages recoverable by such employé, or his heirs or representatives in case of the employé's death, only in proportion to the amount of negligence so attributable to such employé. [Acts 1905, p. 386; Acts 1921, p. 195.]

Art. 6438. [6647] Double header trains.—Employés of railway companies employed by said companies in the operation of trains within this State, propelled by two or more engines, shall not be held to assume the risk, if any there be, incident to their employment; provided, they be injured while engaged in the operation of such trains and that such injury was occasioned by reason of the operation of two or more engines on such train instead of one. [Acts 1900, S. S. p. 15.]

Art. 6439. [6648] Liable for injury or death of employé.—Every corporation, receiver, or other person, operating any railroad in this State, shall be liable in damages to any person suffering injury while he is employed by such carrier operating such railroad, or in case of death of such employé, to his or her personal representative for the benefit of the surviving widow and children, or husband and children, and mother and father of the deceased, and, if none, then of the next kin dependent upon such employé for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employés of such carrier; or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment. The amount recovered shall not be liable for debts of deceased and shall be divided among the persons entitled to the benefit of the action or such of them as shall be alive, in such shares as the jury, or court trying the case without a jury, shall deem proper. In case of the death of such employé, the action may be brought without administration by all the parties entitled thereto, or by any one or more of them, for the benefit of all, and, if all parties be not before the court, the action may proceed for the benefit of such of said parties as are before the court. [Acts 1st C. S. 1909, p. 279.]

Art. 6440. [6649] Contributory negligence.—In all actions brought against any such common carrier or railroad under or by virtue of any provision of the foregoing article and the three succeeding articles to recover damages for personal injuries to an employé, or where such injuries have resulted in his death, the fact that the employé may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employé; provided, that no such employé who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violations by such common carrier of any statute enacted for the safety of employés contributed to the injury or death of such employé. [Id.]

Art. 6441. [6650] Assumed risk.—In any action brought against any common carrier under or by virtue of any provision of the two preceding articles to recover damages for injuries to or the death of any of its employés, such employé shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employés contributed to the injury or death of such employé. [Id.]

Art. 6442. [6651] Contract changing liability void.—Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by the three preceding articles shall to that extent be void; provided, that, in any action brought against any such common carrier by virtue of said articles, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit or indemnity that may have been paid to the injured employé, or the person entitled thereto, on account of the injury or death for which said action was brought. [Id.]

Art. 6443. [6652] Articles of this chapter construed.—Nothing in the provisions of the four preceding articles shall be held to limit the duty or liability of common carriers, or to impair the rights of employés, under other articles of these Statutes, but, in case of conflict, these articles shall prevail; and nothing in said articles shall affect the right of action under any law of this State. [Id.]

CHAPTER 11.—RAILROAD COMMISSION OF TEXAS

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Article 6444. Terms defined.—The term "Commission" as used in this title means the Railroad Commission of Texas, and the term "Commissioners" means the members of the Railroad Commission of Texas.

Art. 6445. Power and authority.—Power and authority are hereby conferred upon the Railroad Commission of Texas over all railroads, and suburban, belt and terminal railroads, and over all public wharves, docks, piers, elevators, warehouses, sheds, tracks and other property used in connection therewith in this State, and over all persons, associations and corporations, private or municipal, owning or operating such railroad, wharf, dock, pier, elevator, warehouse, shed, track or other property to fix, and it is hereby made the duty of the said Commission to adopt all necessary rates, charges and regulations, to govern and regulate such railroads, persons, associations and corporations, and to correct abuses and prevent unjust discrimination in the rates, charges and tolls of such railroads, persons, associations and corporations, and to fix division of rates, charges and regulations between railroads and other utilities and common carriers where a division is proper and correct, and to prevent any and all other abuses in the conduct of their business and to do and perform such other duties and details in connection therewith as may be provided by law. [Acts 1891, p. 55; Acts 1911, p. 157; G. L. vol. 10, p. 57.]

Art. 6446. Power to enforce rules, etc.—The Railroad Commission of Texas is hereby vested with full power and authority to do and perform each act and duty authorized, directed or imposed upon it by the provisions of this title, and all railroads, persons, corporations, and associations subject to the control of the Commission shall be subject to the penalties prescribed by law for failure to comply with the rules, orders, directions or requirements of said Commission as severally provided in this title. [Id.]

Art. 6447. [6653] [4561] The Commission.—Election.—The Railroad Commission of Texas shall be composed of three members, one of whom shall be elected biennially at each general election for a term of six years.

Qualifications.—The members shall be resident citizens of this State, and qualified voters under the Constitution and laws, and not less than twenty-five years of age. No member shall be directly or indirectly interested in any railroad, or in any stock, bond, mortgage, security or earnings of any railroad, and should a member voluntarily become so interested his office shall become vacant; or should he become so interested otherwise than voluntarily, he shall within a reasonable time divest himself of such interest; failing to do this, his office shall become vacant.

Shall hold no other office, etc.—No railroad commissioner shall hold any other office of any character, while such commissioner, nor engage in any occupation or business inconsistent with his duties as such commissioner.

Oath, etc.—Before entering upon the duties of his office, each commissioner shall take and subscribe to the official oath and shall in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts or earnings of any railroad, and that he will to the best of his ability faithfully and justly execute and enforce the provisions of this title, and all laws of this State concerning railroads, which oath shall be filed with the Secretary of State.

Organization.—The commissioners shall elect one of their number chairman. They may make all rules necessary for their government and proceedings. They may appoint a secretary at a salary not exceeding $2,000.00 per annum, and not more than two clerks at salaries not exceeding $1,500.00 per annum each, and such other experts as may be necessary. They shall be known collectively as the "Railroad Commission of Texas," and shall have a seal, a star of five points with the words "Railroad Commission of Texas" engraved thereon. They shall be furnished with an office at the Capitol, and with necessary furniture, stationery, supplies and all necessary expenses, to be paid for on the order of the Governor.

Secretary's duties.—The secretary shall keep full and correct minutes of all the transactions and proceedings of the Commission, and perform such duties as the Commission may require of him.

Expenses.—The Commissioners and their employés shall receive from the State their actual necessary traveling expenses while traveling on the business of the Commission, which shall include the cost only of transportation while traveling on business for the Commission, upon an itemized statement thereof, sworn to by the party who incurred the expense, and approved by the Commission.

Sessions.—The Commission may hold its sessions at any place in this State when deemed necessary. [Acts 1891, p. 55; G. L. vol. 10, p. 57.]

Art. 6447a. Salary of secretary.—That the salary of the Secretary of the Railroad Commission of Texas shall be such sum as may be appropriated therefor by the Legislature from time to time. [Acts 1927, 40th Leg., p. 209, ch. 140, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 209, ch. 140, repeals all conflicting laws and parts of laws.

Art. 6448. [6654] [4562] Duties.—The Commission shall:

1. Adopt all necessary rates, charges and regulations, to govern and regulate freight and passenger traffic, to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger traffic on the different railroads in this State.

2. Fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this State into such general and special classes or subdivisions as may be found necessary and expedient.

3. Fix to each class or subdivision of freight a reasonable rate for each railroad subject to this title for the transportation of each of said classes and subdivisions. Such classifications shall apply to and be the same for all railroads subject to the provisions of this chapter. It may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates

for express companies different from the rates fixed by railroads.

4. Fix and establish for all or any connecting lines of railroads of this State reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more such lines of such railroads.

5. When two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over their lines, fix the pro rata part of the charges to be received by each connecting line.

6. From time to time, alter, change, amend or abolish any classification or rate established by it when deemed necessary. Such amended, altered or new classification or rates shall be put into effect in the same manner as the originals.

7. Adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear and determine complaints against the classifications or the rates, the rules, regulations and the determinations of the Commission.

8. Make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road and may establish for each railroad or for all railroads alike, reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays and legal holidays.

9. Make and establish reasonable rates for the transportation of passengers over each railroad subject hereto, which rates shall not exceed the rates fixed by law. The Commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject hereto.

10. Require each railway subject to this title to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations for the accommodation of passengers; and to keep them well-lighted and warmed for the comfort and accommodation of the traveling public; and keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freight handled by such roads and such railway, and to obey the requirements of the Commission in respect thereto.

11. See that all laws of this State concerning railroads are enforced and that violations thereof are promptly prosecuted and penalties due the State therefor are recovered and collected; and report all such violations with the facts in its possession to the Attorney General or other officer charged with the enforcement of the law. It shall investigate all complaints against all railroad companies. Suits between the State and a railroad shall have precedence in the courts. [Acts 1891, p. 55.]

Art. 6449. [6655] [4563] Notice.—Before any rates shall be established, the Commission shall give each railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place; and it shall have process to enforce the attendance of its witnesses, which shall be served as in civil cases.

Art. 6450. [6655] [4563] Rules for hearing, etc.—The Commission may adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under this law; and no person shall be denied admission at such investigation.

Art. 6451. May administer oaths, etc.—Each Commissioner, for the purposes mentioned in this chapter, shall have power to administer oaths, certify to all official acts, and to compel the attendance of witnesses, and the production of papers, waybills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the district court.

Art. 6452. [6656] [4564] Rates conclusive.—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by the Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair, and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for the purpose in the manner prescribed by the two succeeding articles. [Id.]

Art. 6453. [6657] Appeal.—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause; and said appeal shall be at once returnable to said Appellate Court at either of its terms; and said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending; provided, that, if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. Provided further that no preliminary injunction shall be issued without notice to the opposite party and that no temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be enforced with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. [Acts 1925, p. 668.] [39th Leg., ch. 201, § 1.]

Art. 6454. [6658] [4566] Burden of proof.—The burden of proof shall rest upon the plaintiff to show the rates, regulations, orders, classifications,

acts or charges complained of are unreasonable and unjust to it or them. [Id.]

Art. 6455. [6659] [4567] Schedule of rates.—The Commission shall, when the classifications and schedule of rates herein provided are prepared and adopted, furnish each railroad affected thereby which is subject to the provisions of this title with a complete schedule in suitable form, showing the classification of freight made by it and the rates fixed to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in Texas, or to any agent of said company in this State; which schedule, rules, and regulations shall take effect at the date fixed by the Commission, not less than twenty days after the date of service. [Id.]

Art. 6456. [6659] [4567] Schedule to be printed and posted.—Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public. [Id.]

Art. 6457. [6659] [4567] May abolish or alter regulations.—The Commission may at any time abolish, alter, or in any manner amend any such regulations; and in that event certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road affected as herein specified. In all cases where the rates shall not have been fixed by the Commission, no changes shall be made, except after ten days' notice to and with the consent of the Commission. [Id.]

Art. 6458. [6660–1–2] Emergency freight rates.—The Commission may prevent interstate rate wars and injury to the business or interests of the people or railroads of the State, or in case of any other emergency, to be judged of by the Commission, it shall temporarily alter, amend or suspend any existing freight rates, tariffs, schedules, orders and circulars on any railroad or part of railroad in this State, and fix freight rates where none exist. Said rates so made, shall take effect at such time and remain in force for such length of time as the Commission may prescribe. [Acts 1899, p. 311; Acts 1897, p. 51; G. L. vol. 10, p. 1105.]

Art. 6459. [6663] Temporary tariffs.—The Commission shall have power to make temporary freight and passenger tariffs, to take effect at such times as said Commission shall fix whenever an emergency arises, the sufficiency of which shall be judged of by said Commission. In order that justice may be done or injury prevented any person, place or locality, said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariffs, rules and regulations for temporary use, to have immediate effect where none exists. [Acts 1907, p. 220.]

Art. 6460. [6664] [4568] Complainants.—Any person, firm, corporation, or association, body politic, or municipal organization, complaining of anything done or omitted to be done by any railroad subject hereto, in violation of any law of this State, or any provision of this title, for which penalty is provided, may apply to the Commission under such rules as the Commission may prescribe. [Acts 1891, p. 55; G. L. vol. 10, p. 57.]

Art. 6461. [6664] [4568] Procedure.—If there shall appear to the Commission any reasonable grounds for investigating such complaint; (1) it shall give at least five days' notice to such railroad of such charge and complaint, and call upon such road to answer the same at a time and place to be specified by the Commission. (2) It shall investigate and determine such complaint under such rules and modes of procedure as it may adopt. (3) If the Commission finds that there has been a violation, it shall determine if the same was wilful. (4) If it finds that such violation was not wilful, it may call upon said road to satisfy the damage done to the complainant thereby, stating the amount of such damage, and to pay the cost of such investigation; and if the said railroad shall do so within the time specified by the Commission there shall be no prosecution by the State. (5) If said railroad shall not pay said damage and cost within the time specified by said Commission or if the Commission finds such violation was wilful, it shall institute proceedings to recover the penalty for such violation and the cost of the investigation. [Id.]

Art. 6462. [6664] [4568] Complaints, how framed.—All such complaints shall be made in the name of the State of Texas upon the relation of such complainant. All evidence taken before said Commission in the investigation of any such complaint, when reduced to writing and signed and sworn to by the witnesses, may be used by either party, the State, complainant, or by the railroad company, in any proceeding against such railroad involving the same subject matter. [Id.]

Art. 6463. [6664] [4568] Testimony taken.—The Commissioners may require the testimony taken before them to be reduced to writing when they deem necessary, or when requested to do so by either party to such proceedings; and a certified copy, under the hand and seal of said Commission, shall be admissible in evidence upon the trial of any cause or proceeding growing out of the same transaction against such railroad, involving the same subject matter and between the same parties. No provisions of this and the three preceding articles shall abridge nor affect the rights of any person to sue for any penalty that may be due him under the provisions of this title, or any other law of the State. [Id.]

Art. 6464. [6665] [4569] May inspect books, etc.—The Commissioners or either of them, or such persons as they may authorize in writing under the hand and seal of the Commission, shall have the right at any time to inspect the books and papers of any railroad company and to examine under oath any officer, agent or employé of such railroad in relation to the business and affairs of the same. [Id.]

Art. 6465. [6665] [4569] Penalty.—If any railroad shall refuse to permit such examination of its books and papers, such railroad company shall, for each offense, pay to the State of Texas not less than one hundred and twenty-five nor more than five hundred dollars for each day it shall so fail or refuse. [Id.]

Art. 6466. [6666] [4570] Shall ascertain cost of railway, etc.—The Commission shall ascertain as nearly as practicable:

1. The amount of money expended in construction and equipment per mile of every railway in Texas;

2. The amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the roadbed, track, depots, and equipment, and to replace all the physical properties belonging to the railroad.

3. The outstanding bonds, debentures and indebtedness, and the amount respectively thereof; when issued, and the rate of interest; when due, for what purpose issued, how used, to whom issued, to whom sold, and the price in cash, property or labor, if any, received therefor.

4. Disposition of the proceeds, by whom the indebtedness is held, and the amount purporting to be due thereon.

5. The floating indebtedness of the company, to whom due and his address, and the credits due on it.

6. The property on hand belonging to the railroad company.

7. The judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid and in what manner paid therefor.

8. The amounts paid for salaries to the officers of the railroad and the wages paid its employés.

For the purposes in this article named, the Commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the information required by this article is obtained, it shall communicate the same to the Attorney General by report, and file a duplicate thereof with the Comptroller for public use. Said information shall be printed from time to time in the annual report of the Commission. [Id.]

Art. 6467. [6667] [4571] Blanks for information.—The Commission shall as often as necessary furnish each railroad company suitable blanks with questions formed so as to elicit all information concerning such railroads. Any railroad company receiving such blanks shall cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and if they are unable to answer any question therein propounded, they shall give satisfactory reason for their failure; and the answers duly sworn to by the proper officer of the company, shall be returned to the Commission within thirty days from the receipt thereof. [Id.]

Art. 6468. [6667] [4571] Refusal to answer.—If any officer or employé of a railroad shall fail or refuse to fill out and return any blanks as above required, or fail or refuse to answer any questions therein propounded, or shall give a false answer to any such questions where the fact inquired of is within his knowledge, or shall evade the answer to any such questions, a penalty of five hundred dollars shall be recovered from the company by the State when it appears that such persons acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said Commission shall have the power to prescribe a system of book-keeping to be observed by each railroad subject hereto, under the penalties prescribed in this article. [Id.]

Art. 6469. [6667] [4571] Annual reports.—The Commission shall make and submit to the Governor annual reports containing a full and complete account of the transactions of their office, together with the information gathered by such Commission as herein required, and such other facts, suggestions and recommendations as it may deem necessary, which report shall be published as the reports of heads of departments.

Art. 6470. [6667] [4571] Through freights.—The Commission shall investigate all through freight rates on railroads in Texas; and when same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads shall be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed and the proper corrections are not made according to the request of the Commission, it shall notify the Interstate Commerce Commission and apply to it for relief. [Id.]

Art. 6471. [6668] [4572] Witnesses.—In any examination or investigation provided in this chapter, the Commission is authorized and empowered to compel the attendance of witnesses, and may issue subpœnas for witnesses by such rules as they may prescribe, and such process shall be served by the officer to whom it may be directed. Each witness who shall appear before the Commission by order of the Commission, at a place outside the county of his residence, shall receive for his attendance one dollar per day and three cents per mile traveled by the nearest practical route, in going to and returning from the place of meeting of the Commission, which shall be paid by the Comptroller upon the presentation of proper vouchers, sworn to by the witness, and approved by the Commission. No witness shall be entitled to fees or mileage who is directly or indirectly interested in a railroad, or who is in anywise interested in any stock, bond, mortgage, security or earnings of such road, or was an officer, agent or employé of such road when summoned at the instance of such railroad. No witness furnished with free transportation shall receive pay for the distance he may travel on such free transportation. The Commission may issue an attachment as in civil cases, for a witness who fails or refuses to obey a subpœna, and compel him to attend before the Commission and give his testimony upon such matter as shall be lawfully required by them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him, and which he would be required to answer if in court, the Commission may fine and imprison such witness for contempt, in the same manner that a judge of the district court might do under similar circumstances. The claim that any such testimony might tend to criminate the person giving it shall not excuse a witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. [Id.]

Art. 6472. [6668] Depositions.—The Commission may in its discretion issue proper process and take written or oral depositions instead of compelling personal attendance of witnesses. The fees of an officer executing any process issued under the provisions of this title shall be such as the Commission may allow, not to exceed fees as prescribed by law for similar services. [Id.]

Art. 6472a. Depositions in matters pending before commission.—In all matters pending for hearing before the Railroad Commission of Texas, or any division thereof, the Commission or any interested party shall have the right to produce the testimony of witnesses by depositions instead of compelling the personal attendance of witnesses. For this purpose the Commission is hereby empowered and authorized to issue commissions and all other process necessary for the purpose of taking such depositions. Any depositions taken, under the provisions of this Act, shall be taken in accordance with the provisions of the Revised Statutes, regulating the taking of depositions in civil cases in so far as the same are applicable. [Acts 1930, 41st Leg., 5th C.S., p. 183, ch. 43, § 1.]

Section 2 of this Act makes the act cumulative of all laws relating to depositions and provides that it is not to be construed as repealing any other law.

Art. 6472b. Depositions in matters pending before Transportation Division of Commission.

Right to use deposition; process

Section 1. In all matters pending for hearing before the Motor Transportation Division of the Railroad Commission of Texas, the applicant or any party at interest (as hereinafter defined) shall have the right to produce the testimony of witnesses by written deposition instead of compelling personal attendance by such witnesses. For this purpose, the Secretary of the Railroad Commission is hereby empowered and authorized to issue commission and other process necessary for the purpose of taking such deposition; provided, however, the failure to secure the personal attendance of a witness shall not be deemed a want of diligence.

Notice; cross interrogatories; issuance of commission

Sec. 2. The party desiring to take the written depositions pertaining to any cause pending before the Motor Transportation Division of the Railroad Commission shall file with the Secretary of the Commission a notice of his intention to apply for a

commission to take such depositions, and a copy of such written interrogatories shall be attached to such notice. The notice shall state the name and residence of the witness, or the place where he is to be found, and the application and the docket number in which the interrogatories are to be used, and a copy of such notice and the attached interrogatory shall be served upon each party at interest, or his attorney of record, or attorney in fact, at least five (5) days before the issuance of a commission. Any party at interest desiring to file cross interrogatories shall cause the same to be filed with the Secretary of the Commission on or before the date for the issuance of such commission. Such service may be had by leaving, during office hours, a copy of the notice and the attached interrogatories at the principal office in this State of each party at interest, as the records of the Commission reflect the location and address of such principal offices. Five (5) days after the service of the notice of filing the interrogatories has been completed, the Secretary of the Commission shall issue a commission to take the depositions of the witness or witnesses named in the notice. More than one witness residing in the same county may be included in the same commission.

Commission, style and form of

Sec. 3. The style of the commission shall be "The State of Texas". It shall be dated and attested as other processes, and addressed to such officer authorized under Article 3647, Revised Civil Statutes of Texas, 1925, to execute such commission, and shall authorize or require them or either of them to summon the witnesses before him forthwith to take his answers under oath to the written direct and cross interrogatories propounded to him in writing by the respective parties, or their attorneys of record in said cause. Such Commission shall authorize the officers before whom the depositions are being taken, to require such witness or witnesses to remain in attendance from day to day until such written depositions have been completed.

Provisions cumulative; exception

Sec. 4. The provisions of this Act are not intended to repeal but to be cumulative of the Articles of the Revised Civil Statutes of Texas, 1925, relating to the procedure for taking depositions of witnesses by written direct and cross interrogatories, except as may be otherwise provided herein; provided, however, that the provisions of Articles 6472 and 6472a, Revised Civil Statutes, of Texas, 1925, shall not be applicable to proceedings before the Motor Transportation Division of the Railroad Commission of Texas.

"Party at interest," defined

Sec. 5. The term "party at interest" means any railroad or other common carrier lawfully operating under the jurisdiction of the Railroad Commission of Texas and/or the Interstate Commerce Commission directly through or into any incorporated city or town situated on the route covered by the application in which such written interrogatories are to be taken.

Carrier to designate attorney in fact for service in taking depositions; effect of failure to designate; request for names and addresses of parties at interest

Sec. 6. It shall be the duty of all common carriers for hire operating within this State to file with the Motor Transportation Division of the Railroad Commission the name and address of an attorney in fact upon whom service may be had in taking depositions. Failure of such carrier to file such designation with the Railroad Commission within a reasonable time after the effective date of this Act shall make it unnecessary to give such party notice of intention to take such deposition. Any person desiring to take depositions as herein provided shall file a written request with the Railroad Commission for the names and addresses of all "parties at interest" affected by the application in question, and the name and address of the attorney in fact of the respective parties at interest upon whom service may be had, and the party taking such deposition shall have the right to rely upon the accuracy of such list of parties at interest. [Acts 1937, 45th Leg., p. 503, ch. 254.]

Section 7 of the Act of 1937 repealed conflicting laws.

Art. 6473. [6669] [4573] Extortion.—If any railroad company, subject to the provisions of this title, or its agent or officer, shall charge, collect, demand, or receive a greater rate, charge or compensation than that fixed and established by the Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred nor more than five thousand dollars. [Acts 1891, p. 55; G.L. vol. 10, p. 57.]

Art. 6474. [6670] [4574] "Unjust discrimination."—Unjust discrimination is hereby prohibited and the following acts or either of them shall constitute unjust discrimination.

1. If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback or other device, shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or shall give any undue or unreasonable preference or advantage to any particular person, firm or corporation, or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever.

2. If any railroad company shall fail or refuse, under regulations prescribed by the Commission to receive and transport without delay or discrimination the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as the Commission may prescribe, fail or refuse to transport and deliver without delay or discrimination any passengers, tonnage or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad; provided perishable freights of all kinds and live stock shall have precedence of shipment.

3. If any railroad company shall charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for the shorter line than for a longer distance over the same line; provided, that upon application to the Commission any railroad may in special cases, to prevent manifest injury, be authorized by the Commission to charge less for longer than for shorter distances for transporting persons and property, and the Commission shall, from time to time, prescribe the extent to which such designated railroad may be relieved from the operation of this provision. No injustice shall be imposed upon any citizen at intermediate points. Nothing herein shall be so construed as to prevent the commission from making what are known as "group rates" on any line or lines of railroad in this State.

4. Penalty.—Any railroad company guilty of unjust discrimination as hereinbefore defined shall for each offense pay to the State of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars.

5. Exceptions.—Nothing herein shall prevent the carriage, storage or handling of freight free or at reduced rates, or to prevent railroads from giving free transportation or reduced transportation under such circumstances and to such persons as the law of this State may permit or allow. [Id.]

Art. 6475. [6671] [4575] Damages; penalty.—If any railroad subject to this title shall do, cause or permit to be done any matter, act or thing prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then in addition to such damages such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five nor more than five hundred dollars. Such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact. A recovery as herein provided shall in no manner affect a recovery by the State of a penalty provided for such violations. [Id.]

Art. 6476. [6672] [4576] Penalty not otherwise provided.—If any railway company doing business in this State shall violate any provision of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided by law or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the Commission, for every such act of violation it shall pay to the State of Texas a penalty of not more than five thousand dollars. [Id.; Acts 1901, p. 265.]

Art. 6477. [6673] [4577] Suits for penalty.—All of the penalties herein provided, except as provided in Article 6475, recoverable by the State shall be recovered and suits thereon shall be brought by the Attorney General or under his direction in the name of the State of Texas, in Travis County, or in any county into or through which such railroad may run; and the attorney bringing such suit shall receive a fee to be paid by the State of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this chapter shall be paid into the State Treasury; provided suits brought under Title 66 for recovery of penalties, may be brought in any county:

1. Where an act violative of any provision thereof is committed.

2. Where such company or receiver has an agent or representative.

3. Where the principal office of such company is situated, or such receiver or receivers, or either, reside. One-half of all moneys collected under the provisions of said title, less the commission and expenses allowed by law, shall be paid into the State Treasury; the remainder thereof shall be paid into the treasury of the county where such suit or suits may be maintained and constitute a part of the jury fund of such county. [Acts 1891, p. 55, G. L. vol. 10, p. 57.]

Art. 6478. [6674] [4578] Evidence.—Upon application of any person, the Commission shall furnish certified copies of any classification, rates, rules, regulations, or orders, and such certified copies, or printed copies published by authority of the Commission shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order, or classification therein contained and which may be an issue in the trial, is the official act of the Commission. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the classifications, rates, charges, rules, regulations, requirements and orders made and established by the Commission, and none of them shall be declared inoperative for any omission of a technical matter in the performance of such act. [Id.]

Art. 6479. [6676] Power of Commission to relax requirement as to number of passenger trains; hearing; stopping at county seats; electric and motor cars.—The terms "road," "railroad," "railroad companies," and "railroad corporations," as used herein, shall be taken to mean and embrace all corporations, companies, individuals and associations of individuals, their lessees or receivers, appointed by any court whatsoever, that may now or hereafter own, operate, manage or control any railroad, or part of a railroad, in this State, and all such corporations, companies and associations of individuals, their lessees or receivers, as shall do the business of common carriers on any railroad in this State.

1. The provisions of this chapter shall be construed to apply to and affect only the transportation of passengers, freight and cars between points within this State; and this chapter shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns, but shall apply to the transportation of passengers and freight by electric or gasoline motor cars over steam railroads subject to this Act.

2. It shall be the duty of the Commission to see that upon each railroad in this State carrying passengers for hire there shall be run at least one train each day, Sundays excepted, upon which passengers shall be hauled; provided, however, the Commission may, in its discretion, upon application filed and after notice and hearing, relax such requirement as to any railroad, or part, portion or branch thereof, when, in its opinion, public convenience permits of such relaxation, and shall relax such requirement when it appears upon such hearing that the running of one train each day, Sundays excepted, is not necessary in the rendition of adequate service to the public, or that on any railroad, or part, or portion or branch thereof, passenger service as frequent as one train each day, Sundays excepted, with the passenger traffic offered and reasonably to be expected, does not and will not pay the cost of such service plus a reasonable return upon the property employed in the rendition of such service; and Commission shall further regulate passenger train service so as to require the stoppage of such trains, for a time sufficient to receive and let off passengers, at such stations as may be designated by the Commission; and it may further prescribe the number of trains so operated each day which shall be required to stop at County seat stations; and if such railroad, or branch of same shall operate a gasoline or electric motor car over its line, carrying passengers for hire in this State, such motor car shall be deemed a train within the meaning of this Article and shall be subject to and included within the provisions hereof. [Acts 1925, 39th Leg., p. 365, ch. 154, § 1; Acts 1927, 40th Leg., p. 283, ch. 198; Acts 1933, 43rd Leg., p. 281, ch. 111.]

Art. 6479a. Frequency of freight train service; powers of Commission; hearing; certificate; furnishing cars.—Every railroad company, receiver, trustee, lessee, agent or other person, company or association operating any line of railroad in this State shall be and hereby is required to furnish freight train service at intervals sufficiently frequent to meet the reasonable necessities of the freight traffic offered for transportation over such line of railroad. If the Railroad Commission of Texas, on application and after notice and hearing shall find

that on any line of railroad in this State, or part, portion or branch thereof, the convenience of the public does not require the furnishing of freight train service at more frequent intervals than a specified number of trains each week, it shall certify such finding to said applicant, and until such certificate, after notice and hearing, shall have been modified or revoked, it shall be conclusively presumed that freight train service of the frequency specified in such certificate over the railroad, or part, portion or branch thereof, described in such certificate is fully adequate to discharge the public duty of the person, firm or corporation operating such railroad, and such person, firm or corporation shall not be subject to any penalties or liabilities whatsoever for failing to operate or furnish freight train service in excess of that specified in that certificate. The time within which cars may be required to be furnished for loading under any of the laws of this State shall, on the railroad, or part, or portion or branch thereof, specified in any such certificate, be extended and enlarged, in case any such certificate, be made, by multiplying the maximum number of days otherwise allowed by a fraction whose numerator shall be seven and whose denominator shall be the number of trains in any one direction which may be specified in such certificate as the maximum required in any one week. [Acts 1933, 43rd Leg., p. 280, ch. 110.]

Section 2 of this Act makes the act cumulative of and in addition to all other laws of the State.

Art. 6480. [6677] [4581] Law cumulative.—Any provision of this title which may be inconsistent or in conflict with Title 66 shall be void and inoperative, but to that extent only. The provisions of any foregoing article of this title shall not have the effect to release or waive any right of action by the State, or any person, for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this State; and all penalties accruing under this title shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty. [Acts 1891, p. 55; G. L. vol. 10, p. 57.]

Art. 6481. [6678–79] Railroad to furnish cars.—When any person, firm or corporation, desiring to ship any freight of any kind shall make written application to any superintendent, agent, or other person in charge of transportation, to any railway company, receiver or trustee operating a line of railway at the point the cars are desired upon which to ship any freight, it shall be the duty of such railroad company, receiver, trustee, or other person in charge thereof, to supply the number of cars so required, at the point indicated in the application, within a reasonable time thereafter, not to exceed six days from the receipt of such application, and shall supply such cars to the persons so applying therefor, in the order in which such applications are made, without giving preference to any person. If the application be for twelve cars or less the same shall be furnished in three days; and provided further, that, if the application be for fifty cars or more, the railway company may have ten full days in which to supply the cars. Said application for cars shall state the number of cars desired, the place at which they are desired, and the time they are desired. The place designated shall be at some station or switch on the railroad. [Acts 1887, p. 133; Acts 1899, p. 67; Acts 1st C. S. 1913, p. 23.]

Art. 6482. [6680] [4499] Penalty.—A railway company failing to furnish cars applied for under the provisions of this chapter shall forfeit to the party or parties so applying for them the sum of twenty-five dollars per day for each car failed to be furnished, and all actual damages that such applicant may sustain. [Id.]

Art. 6483. [6681] [4500] Deposit.—Such applicant shall deposit with such agent, superintendent or other person one-fourth of the amount of freight charges for the use of such cars, and shall load said cars within forty-eight hours after they have been duly delivered; and upon failure to do so, he shall forfeit and pay to the company the sum of twenty-five dollars for each car not used. Where applications are made on several days, all of which are filed upon the same day, the applicant shall have forty-eight hours to load the car or cars furnished on the first application, and the next forty-eight hours to load the car or cars furnished on the next application, and so on; Sundays shall not be included in computing the time. The penalty prescribed shall not accrue to any car or lot of cars applied for any one day, until the period within which they may be loaded has expired. If the said applicant shall not use such cars so ordered by him, and shall notify said company or its agent, he shall forfeit and pay to the said railroad company, in addition to the penalty herein prescribed, the actual damages that such company may sustain by the failure to use said cars. [Id.]

Art. 6484. [6682] [4501] To deliver loaded cars.—When cars have been supplied and loaded, the railway company shall deliver them to the consignee within a reasonable time; and the consignee shall unload the same within forty-eight hours after delivery and notice, Sundays excepted, or forfeit and pay to the company the sum of twenty-five dollars per day for each car not so unloaded. [Acts 1887, p. 133; Acts 1st C. S. 1913, p. 23; G. L. vol. 9, p. 931.]

Art. 6485. [6683] [4502] Proof necessary.—Parties bringing suit against a railroad company under the provisions of this law shall show that such cars if furnished, would have been loaded within the time specified by this law. The provisions of this law shall not apply in cases of strikes or public calamity. [Id.]

Art. 6486. Not to affect demurrage regulations.—The provisions of this law shall not forfeit or annul the demurrage regulations provided by the Commission, and all penalties accruing to the carrier hereunder shall be cumulative of and additional to all demurrage charges prescribed by said Commission. [Acts 1st C. S. 1913, p. 24.]

Art. 6487. [6684] Duty to furnish cars.—Each railroad company incorporated under the laws of this State and doing business in this State, under the limitations and regulations prescribed by the Commission, shall equip and provide sufficient motive power and rolling stock to handle all passenger and freight traffic expeditiously and without delay. [Acts 1907, p. 297.]

Art. 6488. [6685] Commission to require mortgage.—The Commission shall require each railroad corporation chartered under the laws of this State, holding itself out as a common carrier, to provide and equip itself with sufficient motive power and rolling stock, or other equipment necessary, to handle all passenger and freight traffic, expeditiously and without delay, and it is vested with full power to require of such common carriers the purchase of such rolling stock and motive power as will properly equip such common carrier, and facilitate the movement of all traffic, passenger and freight, and that will supply transportation accommodations which it offers to perform as an inducement to the public to travel or ship via the lines of such railroad company, or common carrier. The Commission is authorized and empowered to approve liens or mortgages that may be given by such railroad companies and common carriers to secure the purchase or lease price of any equipment or motive power which may be deemed by the Commission necessary for the proper discharge of its duty as a common carrier. If in the judgment of the

Commission any railroad company in this State which now has an excessive issue of bonds and stocks outstanding, has not sufficient passenger and freight equipment and motive power to handle the passenger and freight business of such common carrier and railroad company, the Commission after not less than five days' notice and hearing shall issue an order requiring the purchase of such rolling stock as in the judgment and discretion of the Commission may be deemed necessary for the prompt, expeditious and comfortable transportation of freight and passengers over the line of such railroad company and common carrier; and in such case, the Commission is authorized to approve contracts or liens for the purpose of securing the purchase or lease price of such rolling stock, motive power and equipment. [Id.]

Art. 6489. [6686] Penalty.—Any railroad company or common carrier failing to comply with any provision of the two preceding articles, or to obey the orders of the Railroad Commission, made in pursuance of any provision thereof, shall be deemed guilty of an abuse of their rights and privileges, and, shall be subject to a penalty of one hundred dollars payable to the State of Texas. Each day that such railroad company or common carrier neglects, fails or refuses to comply with such orders shall constitute a separate offense. [Id.]

Art. 6490. [6687] Facilities, interchange cars, etc.—Every railroad company operating a line of railroad within this State shall provide sufficient tracks, switches, sidings, yards, depots, motive power, cars and all other needful facilities and appliances, for receiving and delivering freight, to enable it with reasonable dispatch to perform all of its duties as to all traffic which with ordinary foresight and diligence could be anticipated, as a common carrier; and furnish all necessary and suitable cars and vehicles of transportation for all freight offered or tendered to it for shipment within a reasonable time after demand therefor made by a shipper; and supply within a reasonable time, at its station or stations, spurs, sidings, switches, or other places, at which it receives freight for transportation, and from which such shipper gives notice to such railway company that he desires to ship such freight at the time designated by the shipper, where it is within reasonable time, sufficient suitable cars within which to load the same; and as to all services to be performed within the limits of the State, as to such freight and cars shall transport same within a reasonable time to destination, when destined to a point upon the line of such railway receiving such freight, and, if destined to a point beyond the line of such railroad, then transport and deliver within a reasonable time such freight in such loaded car or cars to the connecting carrier forming any part of the route over which such shipment is made, for the purpose of transportation by such connecting carrier on to the destination of such freight, or for delivery by it to the connecting line or lines forming any part of the route over which same is to be transported to its ultimate destination; and each connecting line of railroad engaged in such transportation, as to all such service to be performed, as to all such freight and cars in which the same is carried within this State, shall receive and transport within a reasonable time such loaded car or cars tendered to it, if in suitable condition for movement, and deliver the same at destination thereof, if destined to a point upon its line of railroad, and, if destined to a point beyond its line of railroad, then to its connecting carrier forming any part of the route over which such car or cars are to be transported, subject to the same duties and obligations as if such freight had originated upon such line of railroad. Where such freight forms less than a carload, or where it may be necessary to unload the same because of any accident or injury thereto, or to the car in which the same is being transported, or where such freight is unloaded at the request of the shipper en route, or where by reason of any accident or unavoidable cause, or in order to comply with any law or regulation provided by law, such freight is unloaded, or it is reasonably necessary to do so, or where it is for any other reason necessary to unload such freight in order to forward, or before it can be forwarded, in any such cases, where suitable cars may be supplied, and when the freight is carried wholly within this State, the Commission shall make all needful rules and regulations for unloading cars at junction points, or otherwise forwarding cars, furnishing cars for forwarding or reloading and the exchange of cars and forwarding of such freight in the same or other cars. Whenever by reason of any accidental or unavoidable cause which cannot be provided against by the use of reasonable foresight or diligence, such railroad company fails to so furnish cars and shall use reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not, on account of such failure, be liable to the penalties of attorney's fees or as otherwise herein prescribed. But nothing in this article shall in anyway affect the right or remedy of any shipper or other person as same may exist at common law or under any statute to recover on account of the failure, delay, or refusal to furnish cars for transportation of any freight, or other failure to perform any other legal duty, nor to in any wise exempt any such railroad company from any provision of the statutes of this State, or other duties imposed by law. [Acts 1907, p. 343.]

Art. 6491. [6688] To interchange cars at junction points.—To facilitate the movement, preservation and exchange of freight, every railroad company in this State, whose line of railroad connects with the line of any other railroad company in this State, shall exchange at such connecting or junction points, the loaded and empty cars used in or for transportation of freight carried upon such lines of railroad forming any part of the route over which said freight is carried or to be carried; and a railroad company forming any part of the through or joint route over which any freight is carried or to be carried, or having or participating in the joint rates on which such freight is carried or to be carried, on demand of any such connecting line delivering to it any such loaded car or cars of freight at junction points within this State shall furnish to such delivery line within a reasonable time after such loaded cars are so received, at such junction point in this State, as many cars suitable for the carriage or transportation of similar freight as may be so delivered to it loaded, by such connecting line; and upon the demand of the owner thereof, or the railroad company entitled thereto, or to the use thereof, every such railroad company so receiving the cars of another shall return the same at the place where they were received, or at such place as may be by said railroads agreed upon, within a reasonable time after demand thereof; and as to cars exchanged in transporting freight wholly within this State within the time and according to the rules and regulations prescribed by the Commission. [Id.]

Art. 6492. [6689] Commission to make rules.—As to all freight carried wholly within this State and the cars used therefor, the Commission shall make and establish all needful rules and regulations, general and special, which may be different according to the circumstances and conditions to different railroads and localities and for different kinds and classes of freight and cars, providing for the time, place and manner of demanding cars for or giving notice of shipment of such freight and the time, place, manner and order in which the same shall be furnished to shippers for the purpose of shipping freight between points

in this State; and prescribe rules and regulations for the furnishing, exchanging and interchanging of cars, loaded and empty, by railroad companies as between each other; the time, place, terms and conditions upon which such cars shall be furnished and such interchange shall be made, and in the absence of an agreement of such railroad companies, the reasonable compensation to be paid by each railroad company for the use, loss, injury or destruction of the cars of another railroad company in the transportation of such freight; the time within which, and the manner by which railroad companies shall give notice or make demand upon each other for cars to be furnished by one railroad company in exchange for loaded cars, or to have its cars returned, the reasonable free time to be allowed the shippers for the loading of such car or cars without incurring liability for demurrage; the free time which shall be allowed to the shipper or consignee in which to unload such freight without incurring any liability for demurrage; a schedule of reasonable demurrage charges, reciprocal or otherwise, for the use of cars, irrespective of damages or penalties herein provided, which may be different for different railroads and different traffic and localities, to be paid by shippers for the detention or use of cars either in loading or unloading, or by the railroads for failing in a reasonable time to furnish cars, or to make delivery of loaded cars, subject to the penalties and damages herein provided, and the rules and regulations with respect thereto. Said Commission, whenever it may deem same necessary in order to secure the prompt transportation of freight and preservation of the property, shall be authorized to prescribe the minimum speed at which freight shall be moved when being transported between points within this State, including the time for transfer and delivery as between connecting railroads. Every such railway company shall conform to each rule, regulation and order of the Commission made in accordance with the two preceding and three succeeding articles; and failure to observe the rules and regulations of the Commission, or to comply with the provisions of this law, as to freight carried wholly within this State, shall be deemed an abuse subject to correction by the Commission, and shall subject such railroad company to the penalties hereinafter provided. [Id.]

Art. 6493. [6690] Liable for damages, when.—Every railroad company which shall fail to furnish cars as provided herein for the shipment of freight within a reasonable time, or in case of the shipment of freight between points within this State, within the time prescribed by the Commission, or shall fail to receive and forward any loaded car or cars or to exchange cars as provided herein, shall be liable to the shipper or other person injured or damaged thereby for all such injury or damages as may result to such shipper, and all special damages of which such railroad company had notice at the time of the shipment, or which shall occur after written notice thereof, and shall be liable in addition thereto for an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of such damage. If any railroad company in this State shall fail or refuse to furnish within a reasonable time after demand therefor, any car or cars for the shipment of live stock, green fruit, vegetables or other perishable freight, such railroad company shall be liable to the shipper for the damage caused thereby, and a reasonable attorney's fee in case of suit to recover the same. Any railroad company which shall fail to furnish or exchange cars as required by the provisions of this law, or by the rules and regulations of the Commission as provided for herein, shall be liable to the railroad company injured thereby for all such damages as may result to it, and in addition thereto an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of any damage. Every railroad company using cars of another railroad company, or which have been delivered to it by such railroad company, shall be liable to pay to the party entitled thereto the value of the reasonable use and hire thereof, and for injury or damage thereto, or destruction thereof, while in its possession or under its control, for the amount of such injury; and, in case of cars in the shipment of freight between points wholly within this State, the amount for the use or hire thereof may be prescribed by the Commission, unless the owners of such cars and such railroad companies agree upon such compensation. Where any such railroad company, or owner of any such car or cars, shall be dissatisfied with the amount fixed by the Commission for such use, hire, loss or destruction, or damage to such car, or where the railroad company liable therefor shall fail to pay for the same, the Commission or person entitled thereto, or which is liable for the use, hire, loss, injury or destruction of such cars, shall be entitled to establish the reasonable value thereof by suit. [Id.]

Art. 6494. [6690] Not to furnish cars, when.—No railroad company shall be compelled to furnish its own cars to any other railroad company which is involved, except upon reasonable security furnished to it to protect it from loss of or damages to or destruction of such cars and compensation for the use thereof, and in no event shall any railroad company be required to furnish any cars to any connecting line, except to exchange for other cars reasonably suitable for the transportation of freight. [Id.]

Art. 6495. [6691] Other penalty.—A railroad company which shall willfully, by its gross negligence, or by the gross negligence of its agents having charge and management of the matter of furnishing cars, fail or refuse to furnish or exchange cars as herein provided for, or to transport or deliver the same within the time prescribed by the Commission, as to freight carried between points wholly within this State, or if not so prescribed, then within a reasonable time, shall in addition to the other liabilities herein provided for, forfeit to the State of Texas, for each of such violations, not less than one nor more than one hundred dollars for each offense; and each day of such failure or neglect as to each car which it, by such willful or gross negligence, shall fail or refuse to furnish or exchange shall be a separate offense. [Id.]

Art. 6496. "Shipper."—By the term "shipper" as herein used, is meant any person, firm or corporation tendering freight for shipment, and any consignor or consignee of any bill of lading, or other person, firm or corporation having the right of consignor or consignee. [Id.]

Art. 6497. [6692] "Reasonable time."—It shall be deemed prima facie a reasonable time within which to order cars that any shipper shall give written notice thereof to the station agent at the place of shipment, or in his absence, to the nearest station agent of the railroad company to which such application is made, three days before such shipment of five cars or less, and five days for less than ten or more than five cars, and eight days for ten cars or more. The railroad companies shall furnish their station agents with printed blanks upon which shippers make application for their cars. Nothing in this and the five preceding articles shall be construed to exempt any railroad company from the obligation to furnish cars for shipment without such written notice, but it shall only be subject to the penalties of this law for failure to furnish cars to shippers where notice thereof shall be given in writing, or in case of shipment of freight wholly between points in this State, then in accordance with the rules and regulations of the Commission. [Id.]

Art. 6498. [6693] Suitable depots.—Each railroad company in this State shall provide and maintain adequate, comfortable and clean depots and depot buildings at their several stations for the accommodation of passengers, and keep said depot buildings well lighted and warmed for the comfort and accommodation of the traveling public. They shall keep and maintain separate apartments in such depot buildings for the use of white passengers, and keep and maintain adequate and suitable freight depots and buildings for receiving, handling, storing and delivering of all freight handled by such roads, and the Commission shall require railroad companies to comply fully with the provisions of this law under such regulations as said Commission may deem reasonable. [Acts 1909, 2nd C. S., p. 401.]

Art. 6499. [6695] Union depots.—Where two or more railroad companies reach the same city or town in this State, if the Commission shall deem it practicable for such railroad companies to use a joint or union passenger depot or to join in the construction and use of a passenger depot, then it shall give notice to such railroad companies and after investigation and public hearing, may require the construction and maintenance of such union passenger depot by such railroad companies, if it appears to the Commission that the construction and maintenance of such union passenger depot are just and reasonable to the railroad companies involved, and demanded by the public interest. The Commission may specify the requirements of such union depot as to kind and character and may apportion the cost of construction and maintaining the same to each railroad company where the companies cannot agree. [Acts 2nd C. S. 1909, p. 399.]

Art. 6500. [6696] Penalty for failure.—Failure upon the part of any railroad company to observe and obey the orders of the Railroad Commission, issued in compliance with the two preceding articles shall subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, order, judgments and decrees made by the Commission. [Id.]

Art. 6501. [6697 to 6700] Right to lease another road.—A railroad whose total mileage in this State does not exceed thirty miles in length, which connects at or near the State line with any other railroad, may be leased by the company owning such other railroad, subject to the following provisions:

1. Such lease shall be made on such terms and for such time, not exceeding ten years, as may be approved by the Commission. At any time before or after its expiration the lease may be renewed or another executed subject to the provisions and limitations of this title.

2. During the term of such lease the lessor company shall remain subject to the jurisdiction of the Commission, and shall be liable for any and all things occurring on or in connection with such road. The lease shall not operate to exempt or release either the lessor or lessee company from any liability that would otherwise exist against it.

3. The lessee company shall be exempted from the laws of this State requiring general offices to be maintained and general officers to reside in this State, except as required by provisions of the Constitution of this State and by the orders of the Commission.

4. In a suit against the lessor company the officers and agents of the lessee company shall be the officers and agents of the lessor company for the purpose of serving process.

The provisions of this article shall not apply to any railroad whose total mileage in this State may exceed thirty miles in length, although the part of its line connecting at or near the State line does not exceed thirty miles in length. [Acts 1899, p. 73.]

Art. 6502. [6701 to 6705] Railroad crossings.—Any company, corporation or receiver or person operating any railroad in this State shall forfeit and pay to the State of Texas a penal sum of five hundred dollars per week for each week of refusal or neglect to comply with any order made by the Commission in pursuance of the following provisions of this article:

1. When necessary for the track of one railroad company to cross the track of another, the Commission shall ascertain and define by its decree the mode of such crossings which will occasion the least probable injury upon the rights of the company owning the road to be crossed; and, if the Commission decides that it is reasonably practicable to avoid a grade crossing, said Commission shall by its order prevent the same.

2. Where the tracks of two or more railways cross each other at a common grade in this State, such railroad companies shall protect such crossing by interlocking or other safety devices and regulations to be designated by the Commission, to prevent trains colliding at such crossings.

3. When a railway company seeks to cross, at grades with its track or tracks, the track or tracks of another railroad, the one seeking to cross at grade shall be compelled to interlock, or protect such crossings by safety devices to be designated by the Commission, and to pay all cost of appliances together with the expense of putting them in. This law shall not apply to crossings of side tracks.

4. When interlocking or other safety devices are constructed and maintained in good order to the satisfaction of the Commission, the engines and trains of such railroads may pass over such crossings, without stopping. [Acts 1901, p. 255.]

Art. 6503. [6706] Double-header trains.—Where an unreasonable degree of hazards results to its employés, it is hereby declared to be an abuse of its franchise and privileges for any railroad company, or receiver, operating a line of railroad in this State to run or operate more than one working locomotive at the same time in propelling or moving any one train of cars, except in moving trains up steep grades, or where a locomotive propelling the train becomes temporarily disabled after leaving the terminal; the Railroad Commission shall investigate such abuses and see that the same are corrected, regulated or prohibited as hereinafter provided. [Acts S. S. 1900, p. 15.]

Art. 6504. [6707] Use regulated by Commission.—Should the Commission decide to regulate or forbid the practice of using more than one working locomotive at the same time in the operation of any train on any railroad, or part of railroad, within this State, then it shall make and record an order fully setting forth its decision and clearly designating the railroad, or part of railroad, on which such practice is forbidden or regulated and how regulated. Notice of such order shall be served upon said railroad affected by it. Said notice shall contain in full a copy of said order, and shall be directed to the sheriff or any constable of the county where the general offices of such railroad are located; and a copy of the same shall be delivered by the officer executing the same to any general officer of said railroad in this State residing in said county. Said officer executing said writ shall make his return on the original, and deliver the same with his return forthwith to the Commission. [Id.]

Art. 6505. [6708] Penalty.—Any railroad corporation which shall at any time after ten days after service of such notice violate the order of the Commission, shall be liable to the State for a penalty of not less than five hundred nor more than five thousand dollars for each offense. [Id.]

Art. 6506. Maintenance; powers of Commission.—The Commission shall see that each railroad corporation owning or operating a line of railroad in this State shall maintain its roadbed and track in such

condition as to enable it to perform all of its duties as a common carrier with reasonable safety to persons and property carried by it and its employés and with reasonable dispatch. The Commission is vested with full power to require any railroad company to purchase or secure for installation in its roadbed or track all ties, rails, ballast and other material and equipment as may, in the judgment of the Commission, be necessary for the proper maintenance of the whole or any designated portion of such track and roadbed so as to put the same in safe condition and enable such railroad to adequately perform its duties to the public and to transport freight and passengers with safety and dispatch. [Acts 1915, p. 201.]

Art. 6507. Penalty for failure to comply.—When the Commission has made such order as authorized by the preceding article, each railroad company subject thereto shall promptly comply with the terms thereof, and for failure or refusal to do so, such company or its receiver shall become liable to the State of Texas, for a penalty of not less than five hundred nor more than five thousand dollars for each offense. In addition to such penalties, any court of competent jurisdiction upon application of the Attorney General shall issue writs of mandamus and mandatory injunctions and other proper writs to compel the compliance with such orders. [Id.]

Art. 6508. Improvement bonds.—When the Commission shall make an order as authorized by the provisions hereof for the improvement of any line of railway, it may in its discretion at the same time make an order permitting said railroad corporation to issue bond sufficient to raise the money necessary to make such improvements; and authorize such railroad corporation to secure the same by proper mortgage upon its property, and designate such bonds and mortgages as "Improvement Bonds and Mortgages;" provided, the entire amount of bonds of said railroad company shall not exceed the assets of the said company. The Commission shall also see that the funds arising from the sale of such bonds are applied to the making of the improvements ordered by it to be made, and shall regulate the same in the proper manner and any sale of such "Improvement Bonds and Mortgages" at less than par value thereof, must in order to be valid, be approved by the Commission. [Id.]

Art. 6509. [6715] Sidings, etc.—All railroads in Texas shall build sidings and spur tracks sufficient to handle the business tendered such railroads, when so ordered by the Commission. [Acts 1903, p. 93.]

Art. 6510. [6716] To enforce compliance.—Power is conferred on the Railroad Commission to require compliance by railroad companies with the provisions of the preceding article, under such regulations as said Commission may deem reasonable; and all railroad companies shall be subject to the penalties prescribed by law for failure to comply with the requirements of the Commission as provided herein. [Id.]

Art. 6511. Switch connections.—Any railroad company or receiver upon application of a shipper tendering traffic for transportation sufficient to justify it, shall construct, maintain and operate upon reasonable terms, a switch connection with any private sidetrack or spur track constructed by such shipper, to connect with its railroad where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability and without discrimination in favor of or against such shipper. [Acts 1915, p. 66.]

Art. 6512. Application.—If any railroad company or its receiver shall fail to install and operate any such switch connection, on application therefor by any shipper, such shipper may make application to the Commission, and it shall enter such orders as may be necessary governing the construction, maintenance and operation of said switch connection, if reasonably practicable and safe and will furnish sufficient business to justify the construction and maintenance of the same. [Id.]

Art. 6513. To fix rates, prevent discrimination, etc.—The Commission shall fix just and reasonable rates to be charged by railroad companies or their receivers for traffic moved and handled over private sidetracks or spur tracks extending to private industries and it shall adopt such rates, rules, and regulations as will prevent any discrimination in the operation of such tracks or the handling of such traffic. Whenever any railway company or receiver thereof shall operate any private sidetrack or spur track without charge, the Commission shall have authority to compel the operation without charge of any private sidetrack or spurtrack similarly situated. [Id.]

Art. 6514. To regulate private sidetracks, etc.—The Commission shall prescribe reasonable rates, rules and regulations for the operation of all private sidetracks or spur tracks constructed either by the railroad companies themselves or by individuals or corporate interests, or jointly by such railroads and individuals or corporations, when such private sidetracks or spur tracks are operated by railroad companies or the receivers thereof; and shall have power and authority to order and compel the operation of said private sidetracks or spur tracks whenever the railway company or receiver thereof is operating other private side tracks or spur tracks similarly situated, to prevent discrimination therein. [Id.]

Art. 6515. No discrimination.—Whenever any railroad company shall construct or maintain or contribute to the construction or maintenance of any private sidetrack or spur track to any private industry, the Commission shall order such railway company or receiver to construct or maintain or contribute to the construction or maintenance of a sidetrack or spur track to any private industry similarly situated on the same terms and conditions. [Id.]

Art. 6516. Failure to comply.—Should any railroad company or receiver thereof fail to obey the orders of the Commission issued in compliance with the five preceding articles, such failure shall subject such railroad company to a penalty of not less than five hundred nor more than five thousand dollars for each offense. [Id.]

Art. 6517. Action for damages.—Any person injured by a violation of the terms of the six preceding articles shall have the right to bring suit for his actual damages and for the enforcement of his rights thereunder. [Id.]

Art. 6518. Re-arrangement.—The Commission shall investigate proposed or existing arrangement of railroad tracks, switches and depot buildings at railroad stations to determine whether or not proposed or existing arrangements of such tracks, switches and depot buildings are or may be dangerous to the public and to determine whether or not the public interest demands a re-arrangement or relocation of such tracks, switches and depot buildings to be made, and to determine whether or not such re-arrangement or relocation can be made upon terms and conditions reasonable and just to the person, firm, corporation or receiver owning or operating such tracks, switches and depot buildings, and the Commission may if the question can, under the facts, be resolved affirmatively, thereupon give notice to such persons, firm, corporation or receiver, and after public hearing and investigation, may require the person, firm, corporation or receiver, owning or operating such tracks, switches and depot buildings at such points to arrange, or re-arrange, or re-locate the same in accordance with the specifications made by the Commission. No such arrangement, re-arrange-

ment, or relocation, shall be authorized or required within the limits of any incorporated city or town without the express consent of the governing body of such city or town. [Acts 4th C. S. 1918, p. 196.]

Art. 6519. Suits for penalties.—All penalties and forfeitures provided for by this chapter for a violation of any provision hereof by railway companies recoverable by and payable to the State or any municipal subdivision thereof shall be determined by a direct suit in a proper court instituted by or under the direction of the Attorney General in Travis County or in any county into or through which the line of the offending railway company may run. The attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected to be paid by the State; and the fees so allowed shall be over and above the fees allowed such attorney under the provisions of law. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this chapter shall be paid into the State Treasury.

Art. 6519a. Member of Commission or designated employé authorized to hold hearings, powers, etc.—Any member of the Railroad Commission of Texas (or any authorized employee thereof) designated by the Commission for that purpose, shall have power in all cases coming before the Commission to hold hearings and conduct investigations and to make a record thereof for the use and benefit of the Commission, the same as if the entire Commission were present, and such commissioner or designated employee is hereby given the authority to administer oaths, certify to all official acts, and compel the attendance of witnesses and the production of papers, waybills, books, accounts and all other pertinent documents and testimony, and said record when so made and properly certified to by such commissioner or employee, shall have the same force and effect as if made before the Commission, and cases in which such records are made shall be determined by the Commission as if the record had been made before the Commission itself.

Any person who shall in any way, refuse to comply with any provision of this Act or any person who shall in any way undertake to obstruct or interfere with any proceeding under this Act, shall be subject to punishment for contempt by the Commission.

This Act shall be cumulative of all other laws conferring jurisdiction and authority upon the Railroad Commission. [Acts 1929, 41st Leg., p. 539, ch. 262, § 1.]

CHAPTER 12.—ISSUANCE OF STOCKS AND BONDS

Art.
6520. Regulating stocks, bonds, etc.
6521. Incumbrance above value of road.
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Article 6520. [6717] Regulating stocks, bonds, etc.—Among other things, the power and authority of issuing or executing bonds, or other evidences of debt, and all kinds of stocks and shares thereof, and the executions of liens and mortgages by railroad corporations in this State are special privileges and franchises, the right of supervision, regulation, restriction and control of which has always been, is now, and shall continue to be vested in the State government, to be exercised according to the provisions of this and other laws. [Acts 1893, p. 56; G. L. vol. 10, p. 486.]

Art. 6521. [6718] Incumbrance above value of road.—No bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever, and secured by any lien or mortgage on any railroad or part of railroad, or the franchises or property appurtenant or belonging thereto, over the reasonable value of said railroad property; provided, that in case of emergency, on conclusive proof shown by the company to the Commission that public interests or the preservation of the property demand it, the Commission may permit said bonds, together with the stock in the aggregate, to be executed to an amount not more than fifty per cent over the value of said property. [Id.]

Art. 6522. [6719] To ascertain values, etc.—The Commission shall ascertain, and in writing report to the Secretary of State, the value of each railroad in this State, including all its franchises, appurtenances and property. After it shall have prepared said report the Commission shall give the company interested ten days notice in writing by registered letter to the president, treasurer or receiver of said railroad, to the effect that said report is ready to be made, and that if it has any objections thereto it must file them in writing within forty days after said service, or the same will be so deposited with the Secretary of State as correct. If the company files with said Commission any objections to said report, the Commission shall duly investigate and pass on same, and if it concludes that its report of value is too low or too high, then it shall make the necessary correction before filing it. If no objections are filed within the time permitted, or being filed and on examination found without merit, the Commission shall forthwith file its said report in the office of the Secretary of State, where it shall remain as a public record, as a limitation for the issuance of indebtedness under the limitations prescribed in this title. To promote public interests and protect private rights, the Commission, after due notice under the rule herein prescribed, may correct its report of the value of any railroad at any time it may deem proper. [Id.]

Art. 6523. [6720] Effect of sale of road.—Every judicial or other sale of any railroad in this State which shall have the effect to discharge the property so sold from liability in the hands of purchasers for claims for damages, unsecured debts, or junior mortgages against such railroad company so sold, shall have the effect to annul and cancel all claims of every stockholder therein to any share in the stock of such railroad; and it shall not be lawful for said purchasers, or for any railroad company to operate said railroad, to issue any stock in lieu of the old stock or to allow any compensation therefor in any manner whatever, nor shall all or any part of the debt to satisfy which such sale is made be continued or held as a claim or lien on said property. [Id.]

Art. 6524. [6721] Purchasers may issue bonds, etc.—The purchaser of said property who procures it clear of incumbrance, or any company organized by his consent to operate said railroad under and in pursuance of the laws of this State, may issue stock and bonds in the proportion that he may deem advisable, subject to the rules and limitations prescribed by law. [Id.]

Art. 6525. [6722] Authority to issue bonds.—Should any company or corporation authorized to construct, own or operate a railroad in this State desire to issue bonds or other indebtedness, to be secured by lien or other mortgage on its franchises and property

in advance of the completion of the said railroad, it shall make application to and first procure the consent of the Commission thereto. In said application, it shall exhibit to the Commission its contract with the construction company, if it have any, the profile of its completed road or part of road, the evidence of its right of way, depot grounds, terminal facilities, the extent and value of work done or in the process of completion, the amount of property received, the amount of stock subscribed and the amount paid in, and all other necessary facts showing the value of the franchise and property proposed as security for said contemplated debts. If on investigation, the Commission is satisfied that the company is acting in good faith, and that its contract with the construction company is reasonable and fair to the public, then it shall authorize the execution of said indebtedness and a lien to the extent necessary for the demands of the work, at no time to be fifty per cent over the value of the whole property and franchises. In executing said bonds, the company shall comply with Article 6526, and have them registered as required in Article 6527. [Id.]

Art. 6526. [6723] Certificates of stock.—Each railroad company now existing, or which shall hereafter be organized, or which shall be re-organized under the laws of this State, or which shall increase its stock under the laws of this State, shall issue certificates to the subscribers to its said stock under the following regulations: A majority of the board of directors shall meet in person in this State, at the principal office of such company, and shall cause to be made a list of the subscribers to such stock, showing the number of shares subscribed by each, the amount of stock represented by each share and the amount actually paid, labor done or property received on each share of stock, and shall cause to be affixed to each name on said list a number, beginning with number one, or the next highest number of any certificate previously issued. The president of the board, or presiding officer of the meeting at which the issuing of such certificates of stock is authorized, shall make a certificate signed by him in person to said statement to the effect that the same is correct, and that the amount of money paid, labor done and property received as stated is correct. Such statement shall thereupon be entered at large upon the minutes, and, after having the seal of the company affixed thereto, shall be attested by the secretary of the company, and deposited with the Commission, and by it filed and preserved in its office. The secretary of the company shall then be authorized to make out and deliver to each stockholder in said list a certificate corresponding with said statement in number, name, number of shares, amount of stock represented by each share, and the amount of money or its equivalent paid upon each share; which certificate shall be signed by the president of the said railroad company, attested by the secretary, with the seal of said company affixed. No railroad company shall increase its stock unless all existing shares of stock shall have been paid in full, or all unpaid shares of such stock have been sold out as forfeited under the law. When the certificates to be issued are for increase of stock, the statement herein required to be made by the board of directors shall state that all existing shares of stock have been paid in full, or that all shares not paid in full have been sold out or forfeited under the law. In no event shall the stock exceed the value of the railway property, and the correct aggregate amount of stock so issued by each railway company shall be certified to and registered in the office of the Secretary of State by or at the instance of the Commission. [Id.]

Art. 6527. [6724] Prerequisites.—When any railroad company in this State desires to make, issue, and sell any bonds or evidences of debt, which are to become a lien on its property, it shall comply with the laws of this State regulating the same, and in addition thereto shall have said bonds prepared, signed by the president of the company, and attested by the secretary, with the seal of the company attached thereto. Each bond shall be numbered, beginning with number one, or the next highest number of any preceding bond issued by it, and continue consecutively until all are numbered. The bonds shall be dated, made payable at a time not exceeding thirty years from date and shall bear interest not exceeding six per cent per annum. Said bonds, when thus prepared, shall be presented to the Commission, with a written statement, signed and sworn to by the president of said company, showing the amount of the stock of said company and the amount of outstanding bonds, if any, of said company. If said bonds are such as are permitted under this law, and the Commission shall be so satisfied, it shall approve said bonds, and shall issue to the Secretary of State a direction to register said bonds, specifying the numbers, dates, and amounts thereof. Said Commission shall keep in its office a correct record of the bonds so approved by it, giving the name of the company, the numbers, dates of execution and maturity of the bonds, the amount and rate of interest of each, and the date of approval. This provision shall not apply to receiver's certificates where the amount does not exceed one hundred thousand dollars. [Id.]

Art. 6528. [6725] Registering bonds.—When such bonds shall be presented to the Secretary of State with said direction to register, he shall register said bonds by entering a description thereof in a book to be kept for that purpose, which shall show the date, number, amount, when due, the rate of interest on each bond, and also the date when the same is registered. The Secretary of State shall indorse on each bond, under the seal of his office and his official signature, together with the date thereof, as follows: "This bond is registered under the direction of the Railroad Commission of Texas." No bond or other evidence of debt, hereafter issued by or under the authority of any person, firm, corporation, court, or railroad company, whereby a lien is created on its franchise or property situated in this State, shall be valid or have any force until the same has been registered as required herein. [Id.]

Art. 6529. [6726] Forfeiture of charter.—If any railroad company owning or operating a railroad in this State shall issue or consent or cause to be issued any bonds or other evidences of debt to be or become a lien on its railroad property so owned or operated, or shall issue any stock not in accordance with the provisions of this chapter, such action shall work a forfeiture of its charter. [Id.]

Art. 6530. [6727] Certificates, bonds, etc., void.—Every certificate of stock in any railroad company, and every bond and other evidence of debt operating as a lien upon the property of such railroad company, which shall be made, issued or sold without first complying with the provisions of this chapter shall be void. [Id.]

Art. 6531. [6728] False statement.—Each railroad director, president, secretary or other official, who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt as aforesaid, or who shall by false statement knowingly made procure of the Commission direction to the Secretary of State to register the same, and which shall be by the Secretary of State registered, or shall with the knowledge of such fraud negotiate, or cause to be negotiated, any such bond or other security issued in violation of this chapter, shall be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct. [Id.]

Art. 6532. [6729] State not liable.—Nothing in this law, and no act done or performed under or in connection with it shall be construed to make the State

of Texas liable to pay or guarantee, in any manner whatsoever, any obligation, debt or claim executed or assumed under or by virtue of its provisions. [Id.]

Art. 6533. [6730] Construction of branch lines.—Any corporation incorporated for the purpose of constructing, owning, maintaining and operating a railroad under the laws of this State, which has outstanding stocks and also outstanding bonds secured by a mortgage lien upon its property, or by any other character of lien, may amend its charter in the manner provided in this title, and in accordance with the Constitution and laws of this State, and may provide by such amendment for the making of any extension or extensions, or branch line or lines that it may desire to construct, and may issue stocks and bonds, or bonds, in an amount equal to the reasonable value of such extension or extensions, or such branch line or lines, and such terminal properties as it may acquire, the same to be issued in accordance with the provisions of this chapter. The Commission is hereby empowered to authorize the execution and issuance of such stocks and bonds, or bonds, and in determining the right to issue such stock and bonds, said Commission shall not consider the amount of outstanding stock or indebtedness, or bonds previously issued and secured by a lien upon the property of such corporation theretofore constructed; provided, that any existing mortgages or liens upon the property of such corporation constructed or owned prior to the time of making such amendment of its charter and to the construction of such extension or extensions, or branch line or lines, or to the acquiring of such terminal properties, shall not attach to or become a lien upon the extension or extensions, branch line or lines, or terminal properties constructed or acquired under such amended charter. This article shall not be so construed as to in any wise repeal or impair any other provision of this chapter or of the existing laws of this State except in so far as the same may be changed by the provisions of this article. [Acts 1901, p. 257.]

Art. 6534. [6732] May issue for double tracks.—Any railroad company chartered under the laws of this State, whenever the Commission shall find it advisable to authorize it to do so, may construct, own and operate an additional line of road upon its right of way, together with all necessary sidings, switches and turnouts, and may issue stock and bonds, or bonds, in an amount equal to the reasonable cost of such improvements, the same to be issued in accordance with the provisions of this chapter; and the Commission may authorize the execution and issuance of such stock and bonds, or bonds. In determining the right to issue such stock and bonds, or bonds, the Commission shall not consider the amount of outstanding stock, indebtedness or bonds previously issued and secured by lien upon the property of such corporation theretofore constructed. [Acts 1903, p. 131.]

CHAPTER 13.—MISCELLANEOUS RAILROADS

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Article 6535. [6733] Eminent domain.—All corporations chartered for the purpose of constructing, acquiring, maintaining and operating lines of electric railway between any cities and towns in this State for the transportation of freight or passengers, or both, shall have the right of eminent domain with all the rights and powers as fully as are conferred by law upon steam railroad corporations, and shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation whomsoever for the purpose of acquiring rights of way upon which to construct and operate their lines of railways and sites for depots and power plants. [Acts 1907, p. 23.]

Art. 6536. [6734] Right of way.—Such corporation shall have the right and power to lay out rights of way for their railways not to exceed two hundred feet in width, and to construct their railways and appurtenances thereon, and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of their said railways, and to cut down any standing trees or remove any other structure that may be in danger of falling upon or obstructing such railway, compensation being made therefor in accordance with law. Such corporation may have such examination and survey of their proposed railways made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation subject to responsibility for all damages that may be occasioned thereby. [Id.]

Art. 6537. [6735] Streams, streets, etc.—They may construct their railways along, across and over any stream of water, water course, bay, navigable water, arm of the sea, street, highway, steam railway, plank road, turnpike or canal which the route of such railway shall touch, and erect and operate bridges, trams, trestles, or causeways over, along or across any such stream, water course, navigable water, bay, arm of the sea, street, highway, plank road, turnpike, or canal. Such bridge or other structure shall be so erected as to not unnecessarily or unreasonably prevent the navigation of such stream, water course, bay, arm of the sea or navigable water and nothing herein shall authorize the construction of any such railway upon or across any street, alley, square or property of any incorporated city or town without the assent of said corporation of said city or town, and before constructing an electric railway along and upon highways, plank roads, turnpikes or canals, such interurban electric railway company shall first obtain the consent of the lawful authorities having the jurisdiction of the same. [Id.]

Art. 6538. [6737] Rights over other electric railway tracks, etc.—The right of condemnation herein given to interurban electric railway companies shall include the power and authority to condemn for

their use and benefit, easements and rights of way to operate interurban cars along and upon the track or tracks of any electric street railway company owning, controlling or operating such track or tracks upon any public street or alley in any town or city of this State for the purpose hereinafter mentioned, subject to the consent, authority and control of the governing body of such town or city. [Id.]

Art. 6539. [6738] Proceedings to condemn.—Any interurban electric railway company, seeking to avail itself of the benefits of this chapter shall have the right to condemn an easement along and upon the track or tracks of any electric street railway company for the purpose only of securing an entrance into and an outlet from a town or city upon a route to be designated by the governing body of the city or town. In any proceeding to condemn an easement or right of way for the purposes above mentioned, the court, or the jury trying the case shall define and fix the terms and conditions upon which such easement or right of way shall be used. The court rendering such judgment shall be authorized upon a subsequent application or applications by either of the parties to the original proceedings, or any one claiming through or under them, to review and reform the terms and conditions of such grant and the provisions of such judgment, and the hearing upon such application shall be in the nature of a retrial of said cause with respect to the terms and conditions upon which said easement shall be used; but the court shall not have power upon any such rehearing to declare such easement forfeited or to impair the exercise thereof, and no application for a rehearing shall be made until two years after the final judgment on the last preceding application. [Id.]

Art. 6540. [6739] "Interurban railway company."—An interurban electric railway company, within the meaning of this chapter, is a corporation chartered under the laws of this State for the purpose of conducting and operating an electric railway between two cities or between two incorporated towns or between one city and one incorporated town in this State; and the rights secured under this chapter by any interurban company shall be inoperative and void if the road to be constructed under the charter of said company is not fully constructed from a city or incorporated town to some other city or incorporated town within twelve months from the date of the final judgment awarding to said company said easements and right of way. Any interurban company availing itself of the privileges conferred in this chapter is hereby prohibited from receiving for transportation at any point on that portion of the track or tracks so condemned, without the consent of the company over whose track or tracks the easement is condemned, any freight or passengers destined to a point or points between the termini of the track or tracks so condemned; and a wilful violation by the company of the provisions of this article shall operate to forfeit such easements or rights of way. [Id.]

Art. 6541. [6740] To sell light and power.—Interurban electric railway companies shall also have the right to produce, supply and sell electric light and power to the public and to municipalities. [Id.]

Art. 6541a. Extension of lines to supply light and power.—Any corporation now or hereafter organized under the laws of this state authorized to construct, acquire and operate electric or other lines of railway within and between any cities or towns in Texas and to acquire, hold and operate other public utilities in and adjacent to the cities or towns within or through which such company operates, may extend its electric light, power and gas lines, or either of them, for the purpose of supplying light, power and gas, or either of them, to the public residing beyond the territory adjacent to the cities or towns within or through which it operates, and for the purpose of so extending any such electric light, power and gas lines, any such corporation shall have all the rights and powers of extension now or hereafter possessed and enjoyed by public service corporations engaged in supplying and selling electric light, power and gas, or either of them as provided by law; and the powers herein granted shall not repeal either expressly or impliedly any of the anti-trust laws of the State of Texas. [Acts 1927, 40th Leg., p. 152, ch. 101, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 152, ch. 101, repeals all conflicting laws and parts of laws.

Art. 6541b. Street and interurban railways abandoned permitted to continue distribution of gas and electricity.—All private corporations which have heretofore been incorporated and are now authorized by their charters and the Statutes of this State to operate street and interurban railways with power to distribute and sell gas and/or electricity to the public and which have heretofore abandoned or discontinued or may hereafter abandon or discontinue the operation of street and interurban railways and motor buses substituted therefor are hereby authorized to continue to distribute and sell electricity and/or gas in accordance with their charters and the Statutes during the unexpired period of their corporate charters just as though they continued the operation of said street and interurban railways or motor buses, or both. [Acts 1937, 45th Leg., p. 414, ch. 209, § 1.]

Art. 6542. [6741] Provisions cumulative.—No provision in this chapter shall be construed to have the effect to confer the power of eminent domain, or any power herein conferred, except that conferred in the preceding article, upon any interurban railroad or interurban railroad company, or upon any person, firm, association, or corporation or to add to the powers already possessed by any such railroad or railroad company, person, firm, association or corporation so as to enable or authorize it to condemn any land or ground occupied by any portion of its line or track, already constructed March 5, 1907, or to condemn any land or ground for the purpose of changing the location of any track or line already constructed at said date. Nothing in this article shall be construed to take from any interurban railroad company, person, firm, association or corporation, any power of eminent domain already possessed by it. [Acts 1907, p. 23.]

Art. 6543. Merger.—Any corporation organized under the laws of this State authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, may acquire, lease or purchase the physical properties, rights and franchise of any other railway corporation having and possessing like power, or may lease or purchase physical properties, rights and franchises of any suburban or street railway corporation, the lines of whose railway are to be operated in connection with the lines of the interurban railway, and may sell or dispose of the physical properties, rights and franchise by such corporation or person owning the same, to such corporation, acquiring, leasing or purchasing same hereunder. Such acquisition or purchase may be made upon such terms as may be agreed upon by the respective boards of directors and authorized or approved by a majority of the stockholders of such corporations, respectively. Corporations owning and operating said street car railways before making sale of its properties hereunder, shall obtain the consent of the governing body of the city where such street car line may be located; and, in cities and towns operating under any charter which provides for the right of qualified voters to vote on the granting or amending of franchise to street railways or interurban railways, this right shall still exist. Any corporation authorized to construct, acquire and operate electric or other interurban lines of rail-

way in this State, commonly known as interurban railways, shall also have the power to make and enter into trackage or lease contract with any corporation owning and operating street railways, so as to procure continuous passage into or through such city or town; provided, the governing body of the city or town shall consent thereto; in such case, the owner of such street railways is also authorized to enter into such trackage or lease contract. No corporation named in this article shall ever be permitted to acquire, own, control or operate any parallel or competing interurban line. No such corporation shall be permitted to purchase, lease, acquire, own or control, directly or indirectly, the shares or certificates of stock or bonds, franchise or other rights or the physical properties or any part thereof, of any other corporation, if the same will violate any provision of the law commonly known as the anti-trust law. [Acts 1st C. S. 1915, p. 31.]

Art. 6544. [6742–45] Street railway fares.—All persons or corporations owning or operating street railways in or upon the public streets of any town or city of not less than forty thousand inhabitants are required:

1. To carry children of the age of twelve years or less for one-half the fare regularly collected for the transportation of adults. This law shall not apply to street cars carrying children or students to and from schools, colleges or other institutions of learning situated at a distance of one mile or more beyond the limits of the incorporated city or town from which said cars run.

2. To sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, for one-half of the regular fare collected for the transportation of adults, to students not more than seventeen years of age in actual attendance upon any academic, public or private school of grades not higher than the grades of the public high schools situated within or adjacent to the town or city in which such railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase them of the written certificate of the principal of the school which he attends showing that he is not more than seventeen years old, is in regular attendance upon such school and is within the grades herein provided. Such tickets are not required to be sold to such students and shall not be used except during the months when such school is in actual session and such students shall be transported at half fare only when they present such tickets.

3. To transport free of charge children of the age of five years or less when attended by a passenger of above said age.

4. To accord to all passengers referred to in this article the same rights as to the use of transfers issued by their own or other lines as are or may be accorded to passengers paying full fare. [Acts 1903, p. 132.]

Art. 6545. Street and suburban railways.—All street and suburban railways engaged in the transportation of freight within and near cities and towns, shall be subject to the control of the Railroad Commission. No street railway company shall be exempt from payment of assessments that may be legally levied or charged against it for street improvements. Any corporation heretofore or hereafter organized under the general laws of this State, and which owns or operates with electric power any street or suburban railway or belt line of railways within and near cities and towns for the transportation of freight and passengers within Texas shall be authorized to supply and sell electric light and power to the public or municipalities, and to acquire or otherwise provide the necessary appliances therefore,[1] and may, by proceeding in the manner provided by law, amend its articles of incorporation so as to expressly include such authority. When the Railroad Commission shall decide that any corporation created under chapter one of this title for the purpose of operating a local suburban railway not exceeding ten miles from the corporate limits of any city or town in addition to such mileage as it may have within the same, is not for any reason subject to the control of said Commission in reference to the issuance of stocks and bonds or either under the provisions of Chapter 50, Acts 1893, after such decision of the Commission, said corporation shall have the right to issue its stocks and bonds or either and also to increase its stocks and bonds or either without the control of the Commission and without complying with the Act aforesaid in reference thereto, and when so issued said stocks and bonds shall in all respects be valid and binding. [Acts 1897, p. 189; Acts 1903, pp. 29, 62; G. L. vol. 10, p. 1243.]

[1] So in enrolled bill. Should probably read "therefor".

Art. 6546. Freight interurbans.—All electric, gas or gasoline, denatured alcohol or naphtha interurban or motor railways incorporated as such, which shall engage in transporting freight, shall be subject to the control of the Railroad Commission. No such corporation shall ever be exempt from the payment of assessments that may be legally levied or assessed against it for street improvements. Such interurban railways shall have the same right of eminent domain as are now given by law to steam railroads, and may exercise such right for the purpose of acquiring right of way upon which to construct their railway lines, and sites for depots and power plants, and shall have the same rights, powers and privileges as are now granted by law to interurban electric railways companies. Any such interurban company shall have the right and authority to acquire, hold and operate other public utilities in and adjacent to the cities or towns within or through which said company operates. No property upon which is located a cemetery shall ever be condemned by any such interurban railway, unless it shall affirmatively be shown, and so found by the court trying such condemnation suit, that it is necessary to take such property, and no other route is possible or practicable. [Id. Acts 1903, p. 204; Acts 1897, p. 188; Acts 1909, 2nd C. S., p. 396; G. L. vol. 10, p. 1242; Acts 1917, p. 390.]

Art. 6547. Plants and buildings.—Any corporation heretofore organized under any law of this State, and which now or may hereafter operate a line of electric, gas or gasoline, denatured alcohol, or naphtha motor railway, within and between any cities or towns in Texas, is authorized to own and operate union depots and office buildings, and to acquire, hold and operate electric light and power plants in and adjacent to cities or towns within or through which said company operates. Such existing corporation, or one heretofore organized under subdivision 68 of Article 1302, may, by proceeding in the manner provided by law, amend its charter so as to expressly include any or all powers herein authorized. [Id.]

Art. 6548. Jitney lines.—Any corporation authorized to operate a street or suburban railway or interurban railway and to carry passengers for hire, is hereby authorized subject in every case to the approval and consent of the governing body of the city or town where said street, suburban, or interurban railway company is operated to substitute for such railway automobile motor bus lines, in whole or in part, and to maintain and operate motor buses for the purpose of carrying passengers for hire on the public roads, streets, plazas, alleys, and highways within the corporate limits of any incorporated cities or towns, under such regulations as may be prescribed by any such cities or towns, and on the public roads and highways within five (5) miles of the corporate limits of any such incorporated cities or towns, under such regulations, in territory outside of city limits,

as the Commissioners Court of the county may prescribe; and such substitution of motor buses for street cars and street or interurban railways and the discontinuance of such street or interurban railway shall not in any way impair any of the corporate powers of corporations heretofore incorporated as street or interurban railways with respect to the operation of other public utilities authorized by their charters and by statutes now in force.

Provided, however, companies taking advantage of this Act shall amend their charters and pay the fees provided by law for the filing of such amendments; and, provided that this Act shall not affect any case now pending in the courts; and, provided further that nothing herein contained shall be so construed as to impair the rights of any city under any franchise it may heretofore have granted to the corporation in question, or its predecessor. [Acts 1923, 2nd C.S., p. 97; Acts 1933, 43rd Leg., p. 48, ch. 22.]

Art. 6548a. Certain street and interurban railway corporations authorized to amend charters to include operation as motor carriers.

Amendment authorized; construction of limitation

Section 1. Private corporations heretofore incorporated for the purpose of operating street or interurban railways, which said private corporations have totally abandoned such operations prior to January 1, 1934, may amend their charters so as to include as a separate purpose of the corporation the acquiring, owning and operating of motor vehicles and motor buses for transportation of passengers for hire upon the public streets and public ways of cities and towns and upon the public ways of the adjacent unincorporated territory within five (5) miles from the limits of such cities and towns, provided however, this limit shall not be construed to prohibit any corporation conforming with this Act from contracting for chartered passenger service beyond said five (5) mile limit, under such reasonable regulations as may be legally imposed from time to time by such cities and towns within the limits thereof and the Commissioners' Courts of counties as now prescribed by Article 6548.

Contiguous cities or towns

Sec. 2. If the boundary of one city or town is contiguous with the boundary or boundaries of another city or town, or other cities or towns, the authority granted under Section 1, hereof to operate within five (5) miles thereof, shall be construed to include any territory within five (5) miles of the limits of any such contiguous city or town.

Regulatory authority of Railroad Commission not affected

Sec. 3. Nothing in this Act shall be construed to deprive the Railroad Commission of Texas, of its exclusive authority to continue the regulation of buses and motor vehicles operating under its jurisdiction; nor shall this Act relieve such operators of the requirement to secure certificates or permits from the Railroad Commission authorizing such operations.

Itemized statement of money and property and value of property to be filed

Sec. 4. Provided before any such amendment may be filed with the Secretary of State the Officers and Directors of any corporation shall file an affidavit with the Secretary of State giving a detailed itemized statement of what money and property is held or owned by it and the actual cash market value of each such item of property. [Acts 1937, 45th Leg., p. 675, ch. 337.]

Art. 6549. Terminal railways.—Terminal railways shall have all the rights and powers conferred by law upon railroads by Chapters 6 and 7 of this title, and when such railway is adjacent to any inland navigable stream or water body, it shall have the right and power to construct, erect, operate and maintain all necessary and convenient facilities to accommodate and expeditiously handle the exchange of freight and passenger traffic with all steamship and other vessels and water craft using such waterways; and shall have the right to issue bonds in excess of its authorized capital stock under the direction of the Railroad Commission of Texas, in accordance with the stock and bond law regulating the issuance of stocks and bonds by railroads. Said commission shall fix the values of the property, rights and franchises of such railway company; and its stocks and bonds shall not exceed the amount authorized by said Commission in which jurisdiction over the issuance of the bonds herein authorized is hereby vested. No such terminal company shall have the right to charge any railroad company, steamship, vessel or water craft for terminal facilities a greater amount than may be from time to time designated and established by said Commission, which shall have authority to establish and prescribe such rates and rules for the operation of all such terminal companies as will prevent discrimination by them against any common carrier with respect to either charge or service. The provisions of Articles 6452, 6453 and 6454, shall apply to any and all orders, rulings, judgments and decrees of said Commission made, entered or held under the provisions of this law in respect to such terminal railway companies. [Acts 1897, p. 188; G. L. vol. 10, p. 1242; Acts 1905, p. 211; Acts 1907, p. 300; Acts 1917, p. 134.]

Art. 6550. Road to mines, etc.—Corporations created to build, maintain and operate a line of railroads to mines, gins, quarries, manufacturing plants, and mills, shall have the right to condemn land necessary for the right of way for such road from and between such mines, gin, quarry, manufacturing plant or mill and the nearest line of railroad, provided, that no such corporation shall have said right of eminent domain until it shall declare itself a public highway and common carrier, thus placing said road under the control of the Railroad Commission. [Acts 1897, p. 192; G. L. vol. 10, p. 1246.]

Art. 6550a. Title to steel rails of Texas State Railroad.—That title to all steel rail now upon the road bed of the Texas State Railroad, and allotted to the State of Texas by the United States under an Act of Congress from the surplus materials in the possession of the United States at the conclusion of the late war with the German Imperial Government, be and title to said rails is hereby vested in the State of Texas exclusively for the benefit of said Texas State Railroad, subject, however, to all the provisions of the aforesaid Act of Congress. [Acts 1925, 39th Leg., ch. 169, p. 384, § 1.]

Art. 6550a1. Aerial or tramways to mines.—Every person, firm, corporation, limited partnership, joint stock association or other association of any kind whatsoever, owning, constructing, operating or managing any aerial or other kind of tramway within this State between a mine, smelter or railway or either, may hold and acquire by purchase or condemnation rights-of-way, but in the exercise of such right shall be deemed to be a common carrier, and shall be subject to the jurisdiction and control of the Railroad Commission, and shall have the right and power of eminent domain in the exercise of which he, it or they may enter upon and condemn land, rights-of-way, easement and property of any person or corporation necessary for the construction, maintenance or operation of his, its, or their aerial or other kind of tramway; such right of eminent domain for acquiring rights-of-way provided for herein, shall be exercised in the manner prescribed by law for condemning the land and acquiring of rights-of-way by railroad companies. [Acts 1927, 40th Leg., p. 379, ch. 256, § 1.]

Art. 6559b. Same—purchaser of.—If hereafter the said Texas State Railroad shall be sold or otherwise disposed of under authority of law any conveyance or assignment lawfully executed pursuant to said sale shall vest title to said rail absolutely in the purchaser or grantee thereunder to the exclusion of each and every agency of the Government of the State of Texas and the United States. [Acts 1925, 39th Leg., ch. 169, p. 384, § 2.]

CHAPTER 14.—UNION DEPOT CORPORATIONS

Art.
6551. Union depots.
6552. Finances.
6553. Interest in railways.
6554. Condemnation.

Article 6551. [1243–4] Union depots.—Corporations formed for the purpose of acquiring, owning, maintaining and operating union passenger depots in any city or town in which any two or more railroad companies own or operate a railroad, shall have power and authority to acquire, own or lease, maintain and operate railroad tracks in any city or town for the purpose of enabling railroad companies to run their trains to and from the union depot; such tracks not to extend to a greater distance than three miles from such union depot. Such corporations may also add additional stories to their depot buildings and rent the same for offices or other purposes; and may also provide on their property buildings for express purposes, and rent the same to express companies. The Railroad Commission of Texas shall have the same supervision and control over said railroads and tariff rates and depots that it has over any other lines of railroad and depot buildings in Texas. [Acts 1895, p. 187; Acts 1897, p. 42; G. L. vol. 10, pp. 917, 1096.]

Art. 6552. [1245] Finances.—The provisions of Chapter 12 of this title shall govern and control the issuance of stock and bonds of such corporations as far as the same are applicable. [Id.]

Art. 6553. [1246] Interest in railways.—Railway companies existing under the laws of Texas, whether under general or special law, and railway companies incorporated under any general or special law of the United States, are authorized and empowered to subscribe to the stock, and purchase and own stock and bonds of any depot company formed under the authority of this law. [Id.]

Art. 6554. [1247–8] Condemnation.—Corporations created for the purposes contemplated herein may secure by condemnation such land or real estate as may be necessary for the business and purposes of such corporation, including all lands necessary for depot buildings, passenger sheds, yards or tracks requisite to the convenient use of the depot. Such corporations, by such condemnation, may acquire the fee simple title. After the award by the commissioners, and pending further litigation, the corporation may enter upon and take possession of the land sought to be condemned, by complying with the terms and conditions of any general laws of this State authorizing any corporation having the right to condemn to so enter upon and take possession of such land or real estate. [Acts 1899, p. 49.]

CHAPTER 15.—VIADUCTS

Art.
6555. Certain cities may contract.
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6559. May enforce contracts.
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6559b. Structures near tracks.
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Article 6555. Certain cities may contract.—All cities acting under special charters granted by the legislature are hereby granted all necessary rights and powers to carry out and comply with existing contracts or to hereafter make contracts with railway companies owning or operating tracks in such cities, to erect and complete by such railway companies, all necessary viaducts, the construction and completion of which shall be at the expense of such railway companies, according to plans and specifications agreed upon between such companies and such cities. [Acts 1911, p. 235.]

Art. 6556. May close streets.—All such cities are hereby given authority to abolish and close such portions of any highway, street or alley crossed by railroad tracks, as such cities have or may agree to close and abolish, in consideration of procuring the erection and completion of any viaduct by any railway company or companies. [Id.]

Art. 6557. May issue bonds.—Such cities are hereby given full power and authority to issue improvement bonds to be designated "viaduct bonds" to an amount not exceeding ten thousand dollars for the purpose of raising sufficient funds to pay for the right of way for a viaduct, over such property or [1] may not be owned by such cities or by any of the railway companies affected, and to pay such damages, if any, which may be sustained by abutting property owners. The question of issuance of said bonds shall be submitted to a vote of the property tax paying voters, and shall be carried by a majority vote of said voters, such election being called as is provided for on other questions in the charters of cities desiring an election on said bonds. In addition, such cities are hereby given authority to give railroad companies the use of any portion of its streets, highways and alleys as may be necessary for a right of way for viaducts. [Id.]

[1] So in enrolled bill. Should probably read "as".

Art. 6558. Condemnation.—All such cities are hereby given the right of eminent domain and the power and authority to condemn all land necessary for right of way purposes for viaducts and approaches to same forming a necessary part of such viaduct. [Id.]

Art. 6559. May enforce contracts.—All such cities are hereby given the right and power to compel the construction and completion of such viaducts as railway companies have by contract agreed with any such city, to construct and complete or which any railway company or companies may hereafter agree to construct and complete, by mandamus proceedings in the district court of the county where such viaduct or viaducts are to be completed or through any other lawful means. [Id.]

Art. 6559a. Height of bridges or viaducts.—All bridges, viaducts, overheadways, foot bridges, wires or other structures hereafter built over the tracks of a railway, or over the tracks of railroads, by the State, or by a county, municipality, a railroad company or other corporation, firm, partnership, or natural person, shall be placed not less than twenty-two (22) feet in the clear from the top of the rails of such track or tracks to such structure or wire, or to the bottom of the lowest sill, girder or crossbeam, the lowest downward projection on the bridge, viaduct, overheadway, or foot bridge or other structure. [Acts 1925, 39th Leg., ch. 11, p. 32, § 1.]

Art. 6559b. Structures near tracks.—All loading platforms and all houses and structures, and all fences, and all lumber, wood and other materials hereafter built, placed or stored along the railroads of

this State, either on or near the right of way of the main lines or on or near any spur, switch or siding of any such railroad, shall be so built, constructed, or placed that there shall be not less than eight and one-half (8½) feet space from the center of such main line, spur, switch or siding to the nearest edge of the platform, or to the wall of the building, or to the lumber, wood, or other material. [Acts 1925, 39th Leg., ch. 11, p. 32, § 2.]

Art. 6559c. Roof projections over tracks.—All roof projections hereafter constructed from any loading platform along any railroad main track, or spur, switch, or siding track shall be not less than twenty-two (22) feet above the rails of such track, and the other edge of said roof projection shall be not less than eight and one-half (8½) feet horizontally from the center of said track. [Acts 1825, 39th Leg., ch. 11, p. 32, § 3.]

Art. 6559d. Not applicable when.—The provisions of this Act shall not apply to nor prevent the building, placing, constructing or completing of structures or other things enumerated in Sections One, Two and Three, when same are being built, placed, or are in the courses of construction at the time this Act takes effect, or if material has been purchased for such placing, building, or construction at the time this Act takes effect, pursuant to prior contracts or plans. [Acts 1925, 39th Leg., ch. 11, p. 33, § 3a.]

Art. 6559e. Penalty recoverable by Attorney General.—If any railway company or other corporation, firm, partnership, or person shall hereafter erect any structure or wire in violation of any provision of this Act, or shall hereafter in any manner violate any provision of this Act, it shall be the duty of the Attorney General immediately to file a suit in court of competent jurisdiction, to collect a penalty, which is hereby prescribed of not less than one hundred ($100.00) dollars nor more than one thousand ($1,000.00) dollars for each violation of this Act; and the Attorney General may, in his discretion, sue in one proceeding for all violations of this Act by any one railway company or other corporation, firm, partnership or person. Provided further, that the said penalty shall accrue for each day such structure, wire, lumber, wood or other material is permitted to remain in violation of this Act, and each day same is permitted to remain, constitutes a separate violation of this Act. [Acts 1925, 39th Leg., ch. 11, p. 33, § 4.]

Art. 6559f. Regulation by Commission.—It is hereby made the duty of the Railroad Commission to promulgate rules and regulations in accordance with this Act. It is further provided that upon application regularly made and filed, and after notice to the Attorney General, the Railroad Commission may, for good cause shown, permit any railway company or other corporation, firm, partnership, or person, or any county or municipality to deviate from the terms of this Act in accordance with an order of the Commission made and entered; and in such event the corporation, firm, partnership, or person acting in accordance with the order of the Railroad Commission so made shall not be deemed to have violated this Act. [Acts 1925, 39th Leg., ch. 11, p. 33, § 5.]

TITLE 113—RANGERS—STATE

Art.
6560. Organization.
6561. Companies.
6562. Compensation.
6563. Quartermaster.
6564. Governor in command.
6565. Term of service.
6566. Purchase of supplies.
6567. Equipment.
6568. Arms and equipment.
6569. Subsistence and quarters.
6570. Powers of peace officers.
6571. Arrests.
6572. Regulations.
6573. Qualifications of members.

Article 6560. [6754] Organization.—The ranger force authorized to be organized by the Governor is for the purpose of protecting the frontier against marauding or thieving parties, and for the suppression of lawlessness and crime throughout the State, and to aid in the enforcement of the laws of the State. [Acts 1901, p. 41; Acts 1919, p. 263.]

See Department of Public Safety, Articles 4413(1) et seq., ante.

Art. 6561. [6755] Companies.—The Ranger force shall consist of not to exceed one headquarters company and four companies of mounted men, except in cases of emergency, when the Governor shall have authority to increase the force to meet extraordinary conditions.

The headquarters company shall consist of one captain, who shall be designated the senior captain of the force, one sergeant, and not to exceed four privates.

Each separate mounted company shall consist of not to exceed one captain, one sergeant and fifteen privates. The captains and the quartermaster shall be appointed by the Governor and shall be removed at his pleasure; unless so removed by the Governor they shall serve for two years and until their successors are appointed and qualified.

The enlisted men and non-commissioned officers of each company shall be appointed by the Governor, acting by and through the Adjutant General who shall pass upon the qualifications of such men, and so far as practicable shall make such appointment upon the recommendation of the captain, under whom such men are to serve. The enlisted men and non-commissioned officers shall serve for two years, unless sooner removed by the Governor or the Adjutant General for cause. [Id.]

Art. 6562. [6756] Compensation.—The pay of officers and men shall be; Captains $225.00 each per month; sergeants $175.00 each per month; and priprivates $150.00 each per month, except as herein otherwise provided. The payment shall be made monthly at such times and in such manner as the Adjutant General may prescribe. The officers and enlisted men on the Ranger Force shall receive in addition to their regular salary an increase of five per cent after the first two years of continuous service and five per cent for each additional year not to exceed in all twenty per cent of their salary as above provided. For the violation or breach of such rules and regulations for the governing of the Ranger Force as may be prescribed by the Adjutant General and approved by the Governor, officers and enlisted men shall forfeit their right to participate in the increase or longevity pay, or in any portion thereof as provided for herein. [Acts 1901, p. 41; Acts 1917, 1st C.S. p. 57; Acts 1919, p. 263; Acts 1929, 41st Leg., p. 512, ch. 247, § 1.]

Section 3 repeals all conflicting laws and parts of laws.

Art. 6563. [6757] Quartermaster.—The Governor shall appoint a quartermaster for the ranger force who shall discharge the duties of a quartermaster, commissary and paymaster, and shall have the rank and pay of a captain. [Acts 1901, p. 41; Acts 1917, 1st C.S. p. 57; Acts 1919, p. 263.]

Art. 6564. [6758] Governor in command.—This force shall always be under the command of the Governor; to be operated under his direction in such manner, in such detachments, and in such localities as the Governor may direct, acting by and through the Adjutant General. [Id.]

Art. 6565. [6759] Term of service.—The Governor is authorized to keep this force, or so much thereof as he may deem necessary in the field as long as in his judgment there may be necessity for such a force; and men who may be enlisted in such service shall do so for such term not to exceed two years subject to disbandment in whole or in part at any time and reassemblage or reorganization of the whole force, or such portion thereof as may be deemed necessary by order of the Governor. [Id.]

Art. 6566. [6760] Purchase of supplies.—The quartermaster, when directed by the Adjutant General shall purchase all supplies for the ranger force, and shall make a certificate on the voucher of the party or parties from whom the supplies are purchased to the fact that the account is correct and just, and the articles purchased were at the lowest market prices. [Id.]

Art. 6567. [6761] Equipment.—Each officer, non-commissioned officer and private of said force shall furnish himself with a suitable horse, horse equipment, clothing, etc. If his horse is killed in action it shall be paid for by the State at a fair market value at the time when killed. [Id.]

Art. 6568. [6762] Arms and equipment.—The State shall furnish each member of said force with one improved carbine and pistol at cost, the price of which shall be deducted from the first money due such officer or man, and shall furnish said force with rations of subsistence, camp equipage and ammunition for the officers and men, and also forage for horses. [Id.]

Art. 6569. [6763] Subsistence and quarters.—In addition to the pay allowed to each officer and man of this force, they shall be allowed not to exceed $30.00 per month for subsistence when at their station, and when on duty outside of his district each member of said force shall be allowed his actual necessary expenses for subsistence and quarters, to be paid on a sworn account showing the actual amount expended, not to exceed $3.00 per day. In addition thereto, each member shall be allowed his actual railroad expenses when traveling under orders. When any company of said force furnishes motor transportation without expense to the State, they shall be allowed $50.00 per month per company for repairs and upkeep for said motor vehicle. [Id.]

Art. 6570. [6764] Powers of peace officers.—The officers, non-commissioned officers and privates of this force shall be clothed with all the powers of peace officers, and shall aid the regular civil authorities in the execution of the laws. They shall have authority to make arrests, and to execute process in criminal cases, and in such cases shall be governed by the laws regulating and defining the powers and duties of sheriffs when in discharge of similar duties; except that they shall have the power and shall be authorized to make arrests and to execute all process in criminal cases in any county in the State. They shall, before entering on the discharge of these duties, take an oath that each of them will faithfully perform his duties in accordance with law. To arrest and bring to justice men who have banded together to prevent the execution of the laws or to commit robbery or other felonies, the officers, non-commissioned officers and privates of said force may accept the services of such citizens as shall volunteer to aid them; but while so engaged such citizens shall not receive pay from the State for such services. [Id.]

Art. 6571. [6765] Arrests.—When said force, or any member or members thereof, shall arrest any person charged with a criminal offense, they shall forthwith convey said person to the county where he or they so stand charged, and shall deliver him or them to the proper officer, taking his receipt therefor. All necessary expenses thus incurred shall be paid by the State. [Id.]

Art. 6572. [6766] Regulations.—The Governor and Adjutant General shall cause to be made such regulations for the government and control of the organization herein provided for, for the enlistment and employment of non-commissioned officers and privates as they may deem necessary so that the force so provided for shall be as effective as possible. When any complaint is made to the Adjutant General charging any ranger with misconduct or violation of the law, the Adjutant General will have the right to institute proceedings before any magistrate in the county where the offense is alleged to have been committed. Upon application of the Adjutant General said magistrate shall issue process for witnesses to appear and testify under oath, which testimony shall be reduced to writing by a stenographer and transmitted by the court to the Adjutant General, who shall take such action as the facts warrant. The cost of such proceedings including fee of $3.00 of the magistrate and fifteen cents for each one hundred words of testimony so taken and transcribed shall be paid by the Comptroller upon approval by the Adjutant General out of funds appropriated for enforcement of law. Any citizen who knows of any such misconduct or violation of the law on the part of any member of the ranger force shall at once notify the Adjutant General in writing of misconduct, and the Adjutant General shall at once conduct such examination and take such action thereon as the facts make necessary and without delay submit all of such evidence and his actions thereon to the Governor for his approval or disapproval. [Id.]

Art. 6573. Qualifications of members.—No person shall be appointed to the ranger force who is not a citizen of the United States and of Texas, and preference shall always be given to discharged soldiers holding certificates of honorable discharge from the United States Army. All officers and men selected shall be sober men of good moral character and sound judgment, shall furnish satisfactory evidence thereof, and shall conform to such qualifications as the Governor shall prescribe for appointment. All applications for appointment to the ranger force shall be made to the Governor, who shall pass upon the qualifications of each applicant. [Acts 1919, p. 263.]

TITLE 113A—REAL ESTATE DEALERS

Art.
6573a. Real estate dealers licenses.

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2. Definitions.
3. Persons not covered by act.
4. "Real estate dealer;" "real estate salesman".
5. Administration of act.
6. Application for license.
7. Eligibility for license.
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19. Copies of papers and documents as evidence.
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22. Written agreement required; no action otherwise.

Art. 6573a. Real estate dealers licenses.

Short title of act

Section 1. This Act shall be known and may be cited as "The Real Estate Dealers License Act."

Definitions

Sec. 2. The following terms shall, unless the context otherwise indicates, have the following meanings:

(a). (1). The term "Real Estate Dealer" shall include every person or company, other than a salesman, and licensed and registered attorneys, who for another or others for compensation or other valuable consideration, or who with the intention or in the expectation or upon the promise of receiving or collecting compensation or other valuable consideration, lists for sale, sells, exchanges, buys, or rents, or offers, or attempts, or agrees to negotiate a sale, exchange, purchase, or rental of an estate or interest in real estate, or collects, or offers, or attempts, or agrees to collect rent for the use of real estate, or negotiates, or offers, or attempts, or agrees to negotiate a loan, secured or to be secured by mortgage or other incumbrance upon or transfer of real estate; or auctions, or offers, or attempts, or agrees to auction any real estate; or appraises, or offers, or attempts, or agrees to appraise any real estate; or who advertises, or holds itself, himself, or themselves out as engaged in the business of selling, exchanging, buying, renting, or leasing real estate, or assists or directs in the procuring of prospects, or the negotiation or closing of any transaction which does or is calculated to result in the sale, exchange, leasing, or renting of any real estate, or who buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate or in the improvements thereon.

(2). The term "Real Estate Dealer" shall also include any person or company employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission basis, or otherwise, to sell such real estate in any parts thereof, in lots or other parcels, and who shall sell or exchange, or offers, or attempts, or agrees to negotiate the sale or exchange of any such lot or parcel of real estate; provided, however, if the owner of lots or other parcels is engaged in the business of buying, selling, exchanging, leasing, renting of property and holding himself out as a full or part-time dealer in real estate, then such person employed by said owner may be licensed as a salesman of said owner if said owner has been licensed as a dealer in real estate.

(3). The term "Real Estate Dealer" shall also include any person or company engaged in the business of buying, selling, exchanging, leasing, renting of property on his or its own account and holding himself or itself out as a full or part-time dealer in real estate.

(b). The term "Real Estate Salesman" shall mean and include any person or company employed or engaged by or in behalf of a licensed real estate dealer to do or deal in any act, acts, or transactions set out and comprehended by the definition of a "Real Estate Dealer" in Section 2, Subsection (a) of this Act.

(c). If the sense requires it, words in the present tense include the future tense; in the masculine gender, include the feminine or neuter gender; in the singular number, include the plural number; in plural number, include the singular number; "and" may be read "or"; and "or" may be read "and."

Persons not covered by act

Sec. 3. The provisions of this Act shall not apply to, and the terms "Real Estate Dealer" and "Real Estate Salesmen," as above defined, shall not include:

(a). Any person or company who, as owner or lessor, shall perform any of the acts set out in Section 2, Subdivision (a) with reference to property owned or leased by them, or to the regular employees thereof with reference to the property owned or leased by such person or company where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein, unless such person or company is engaged in the business of buying, selling, exchanging, leasing, or renting of property and holding himself or itself out as a full or part-time dealer in real estate.

(b). Persons acting as an attorney in fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, leasing, or exchange of real estate; services rendered by an attorney at law, receiver, trustee in bankruptcy, administrator, or executor, or any person doing any of the acts specified in Section 2, Subdivision (a) of this Act under order of any court; a trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees thereof.

(c). Any person, partnership, or corporation who has secured a license under Texas Securities' Act, House Bill No. 521, Regular Session, Forty-fourth Legislature.[1]

[1] Article 600a and Pen.Code, art. 1083a.

"Real estate dealer;" "real estate salesman"

Sec. 4. Any one act set out in Section 2, Subdivision (a) of this Act when performed for another or others for compensation or valuable consideration or who with the intention or in the expectation or upon the promise of receiving or collecting compensation shall constitute a person or company performing, offering or attempting to perform such act or acts, a real estate dealer or a real estate salesman within the meaning of this Act.

Administration of act

Sec. 5. (a). The administration of the provisions of this Act shall be vested in the Securities Division of the office of the Secretary of State.

(b). The Secretary of State is hereby empowered to employ an Executive Secretary; the salary of such Executive Secretary shall not exceed the sum of Two Hundred Dollars ($200) per month.

(c). The Administrator of the Securities Division is hereby empowered to examine witnesses and administer oaths, and it shall be his duty to investigate persons doing business in real estate in this State to ascertain whether they are violating any of the provisions of this Act and to keep such records and minutes as shall be necessary to an orderly dispatch of business.

Application for license

Sec. 6. (a). Any applicant desiring to act as a real estate dealer in this State shall file with the Administrator of the Securities Division of the office of the Secretary of State an application for a license therefor. The application shall be in such form as the Administrator of the Securities Division of the office of the Secretary of State may prescribe, and shall set forth:

(1). The name and address of the applicant, if the applicant shall be a partnership or association, the name of each member thereof; if it is a corporation, the name of each director thereof.

(2). The name under which the business shall be conducted.

(3). The place or places, including the street and number, town, village, or city and county where the business is to be conducted.

(4). The business or occupation engaged in by the applicant for a period of three (3) years immediately preceding the date of application. If an applicant be a partnership or association, by each member thereof; if a corporation by each officer thereof.

(5). The time and place and experience of the applicant in the real estate business as a dealer or salesman. If an applicant be a partnership or association, by each member thereof; or if a corporation, by each officer thereof.

(6). Whether the applicant has ever been convicted or is under indictment for embezzlement, obtaining money under false pretense, larceny, extortion, conspiracy to defraud, or other like offense or offenses. If an applicant be a partnership or association, whether any member thereof has been convicted or indicted; if the applicant be a corporation, whether any officer or director has been convicted or indicted.

(7). Whether the applicant has been refused a real estate dealer's or salesman's license, or any other occupational or professional license in any other State; or whether his license as a dealer or salesman or any other occupational or professional license has been suspended or revoked in any other State. If the applicant be a partnership or association, whether any member has had his license as a dealer or salesman suspended or revoked or refused in any other State. If the applicant be a corporation, whether any officer or director thereof has had his license as a dealer or salesman, or any other occupational or professional license, suspended, or revoked or refused in any other State.

(8). If the applicant is a partnership, association, or corporation, the name of the designated member or officer thereof who is to receive his license by virtue of the issuing of a license to the partnership, association, or corporation as is provided for in Section 5, Subdivision (d) of this Act.

(9). If the applicant is a member of a partnership, association, or corporation, or an officer of a corporation, the name and office address of the partnership, or association or corporation of which said applicant is a member or officer.

(10). Such application for a dealer's license shall be made by applicant. If such application is made by a partnership or association, it shall be filed by two (2) members thereof. If made by a corporation, it shall be filed by the president and secretary thereof.

(b). Such application shall be accompanied by the recommendations of at least three (3) citizens, not related to the applicant, who have owned real estate for a period of three (3) years or more in the county in which the applicant resides or intends to reside or establish his place of business, and who have known applicant for a period of three (3) years or more, which recommendation shall be under oath, and shall certify that the applicant has a reputation for honesty, truthfulness, fair dealing, and competency, and recommending that license be granted to the applicant.

(c). If the applicant cannot procure such recommendations for the reason that he has not resided in the county for three (3) years he may furnish three (3) recommendations from any person where the applicant may have resided for three (3) years prior to the filing of his application.

(d). Every partnership and association in its application shall designate and appoint one of its members, and every corporation in its application shall designate and appoint one of its officers to submit an application for a dealer's license. The application of the said partnership, association, or corporation and the application of said member or officer so designated shall be filed with the Administrator of the Securities Division of the office of the Secretary of State together. Upon compliance with all requirements of law by the partnership, association, or corporation, as well as by said designated member or officer, the Administrator of the Securities Division of the office of the Secretary of State shall issue a dealer's license to said partnership, association, or corporation, which shall bear the name of such member or officer, and thereupon the member or officer so designated shall, without payment of any further fee, be entitled to perform all the acts of a real estate dealer contemplated by the provisions of this Act; provided, however, said license shall entitle such member or officer so designated to act as a real estate dealer only as officer or agent of said partnership, association, or corporation and not in his own behalf; and provided further that if in any case the person so designated shall be refused a license by the Administrator of the Securities Division of the office of the Secretary of State, or in case such person ceases to be connected with such partnership, association, or corporation, said partnership, association, or corporation shall be entitled to designate another person to qualify and act as in the first instance.

(e). Each and every member or officer of a partnership, association, or corporation who will perform or engage in any of the acts specifically set out in Section 2, Subdivision (a) of this Act, other than the designated member or officer of the partnership, association, or corporation, in the manner above provided, shall be required to make application for and take out a separate dealer's license in his or her own name individually; provided, however, that the license issued to such member or officer of a partnership, association, or corporation shall entitle such member or officer to act as a real estate dealer only as officer or agent of said partnership, association, or corporation and not on his own behalf.

(f). Every application for a salesman's license shall be made in writing upon a form prescribed by the Administrator of the Securities Division of the office of the Secretary of State and shall contain such information as is required in a dealer's application, and shall also set forth the period of time, if any, such applicant has been in such business, stating the name and address of his last employer, the name and place of business of the person or company then employing him, and in what capacity he is employed or into whose service he is about to enter. The application shall be accompanied by a verified written statement by the dealer into whose service he is about to enter, certifying that in his opinion the applicant is honest, truthful, and of good reputation and recommending that the applicant be granted a license. Every application for a salesman's license shall be verified by the applicant.

(g). Every application for a real estate dealer's license or a real estate salesman's license shall be accompanied by a fee prescribed in Section 16 of this Act.

Eligibility for license

Sec. 7. (a). No applicant shall be eligible to be licensed under the terms of this Act unless such applicant is at the time of the filing of such application an actual bona fide resident of this State and shall have been an actual bona fide resident of this State for at least sixty (60) days immediately preceding the filing of such application. Provided, however, this provision shall not apply to nonresident applicants who may apply for license under the terms of Subdivision (b) hereinafter set forth.

(b). A nonresident of this State may be licensed as a real estate dealer or salesman provided such nonresident is at the time licensed under the laws of the State where he resides and which said State has legal requirements which have for their purpose the standards proposed in this Act; provided, however, that such nonresident must procure from the Administrator of the Securities Division of the office of the Secretary of State a certificate recognizing and approving

the reliability and standing of such nonresident in such other State.

(c). A nonresident who applies for a license under the privilege accorded under Section 6 of this Act and to whom a license is issued under compliance with all other requirements of law and provisions of this Act, shall not be required to maintain a definite place of business within this State; provided, such nonresident, if a dealer, shall maintain an active place of business within the State of his domicile; and provided further that the privilege of so submitting the license of the place of his domicile of a nonresident applicant in lieu of the recommendations and requirements of this Act shall only apply to real estate dealers and real estate salesmen of the States under the laws of which similar recognition and courtesies are extended to licensed real estate dealers and real estate salesmen of this State.

(d). Every nonresident applicant, before the issuance of a license, shall file an irrevocable consent that suits and actions may be commended against such applicant of the proper court of any county in this State in which the cause may arise or in which the plaintiff may reside by service of process on the Administrator of the Securities Division of the office of the Secretary of State or his agent, and stipulating and agreeing that said service of process shall be taken and held by all courts to be as valid and binding as if due service had been made upon said applicant personally within this State. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, and by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by a certified copy of the resolution of the proper officers to execute the same. In case any process for service upon the Administrator of the Securities Division of the office of the Secretary of State, it shall be by duplicate copies, one of which shall be filed in the office of the Administrator of the Securities Division of the office of the Secretary of State, and the other immediately forwarded by registered mail to the main office of the applicant against whom said process is directed.

(e). Any person, firm, partnership, association, or corporation holding a real estate dealer's license, or a real estate saleman's license, or both, who are nonresidents of the State and are licensed by the State of their residence to deal in real estate are entitled to have a license issued to them to operate in this State, subject to the provisions of this Act, upon the payment of a fee of One Dollar ($1) and the presentation of an affidavit to the Securities Division of the Secretary of State from the agency of the State of his residence showing that he is licensed to do business in that State.

Additional information required of applicant

Sec. 8. Application for a real estate dealer's or real estate salesman's license shall contain such other information as to the applicant, in addition to the above described, as the Administrator of the Securities Division of the office of the Secretary of State shall require. The Administrator of the Securities Division of the office of the Secretary of State may require such other proof through the application or otherwise as its officers shall deem desirable with due regard to the paramount interest of the public as to the honesty, truthfulness, integrity, and competency of the applicant.

Issuance of license; display of licenses; change of employment by salesmen

Sec. 9. (a). If the Administrator of the Securities Division of the office of the Secretary of State is satisfied that the applicant for real estate dealer's or real estate salesman's license is of good business repute and that the business will be conducted in an honest, fair, just, and equitable manner, and upon complying with all other provisions of law and conditions of this Act, a license shall thereupon be granted by the Administrator of the Securities Division of the office of the Secretary of State to the successful applicant therefor as a real estate dealer or real estate salesman, and the applicant, upon receiving possession of license, is authorized to conduct the business of a real estate dealer or real estate salesman in this State.

(b). The Administrator of the Securities Division of the office of the Secretary of State may, within the first thirty (30) days after the effective date of this Act, issue to any applicant a temporary permit to operate as a real estate dealer or real estate salesman for a period not to exceed sixty (60) days after the last day of said thirty-day period, which permit shall be in such form as the Administrator of the Securities Division of the office of the Secretary of State shall prescribe, but after the expiration of the said sixty (60) days, the Administrator of the Securities Division of the office of the Secretary of State shall not have the authority to issue any temporary permits.

(c). The Administrator of the Securities Division of the office of the Secretary of State shall issue to each licensee a license in such form and size as shall be prescribed by the Administrator of the Securities Division of the office of the Secretary of State. This license shall show the name and address of the licensee, and in case of a real estate salesman's license shall show the name of the real estate dealer by whom he is employed. Each license shall have imprinted thereon the Seal of the State of Texas, and in addition to the foregoing shall contain such matter as shall be prescribed by the Administrator of the Securities Division of the Office of the Secretary of State. The license of each real estate salesman shall be delivered or mailed to the real estate dealer by whom such real estate salesman may be employed and shall be kept under the custody and control of such dealer.

(d). The Administrator of the Securities Division of the office of the Secretary of State shall prepare and deliver to each licensee a pocket card, which card, among other things, shall contain an imprint of the Seal of the State of Texas and shall certify that the person whose name appears thereon is a licensed real estate dealer or real estate salesman, as the case may be, and if it is a real estate salesman's card, it shall also contain the name and address of his employer; the matter to be printed on such pocket card, except as above set forth, shall be prescribed by the Administrator of the Securities Division of the office of the Secretary of State.

(e). Every real estate dealer licensed under this Act shall have and maintain a definite place of business in this State, and such place of business may be in a portion of licensee's home set aside for said purpose. The license of the real estate dealer shall at all times be prominently displayed in licensee's place of business, and a duplicate of said license shall likewise be prominently displayed in all branch offices of the licensee. The said place of business shall be specified in the application for license and designated in the license.

(f). All real estate dealers shall also prominently display in their place or places of business the license of all real estate salesmen employed by them therein or in connection therewith. All licenses issued to real estate salesmen shall designate the employer of said salesmen by name.

(g). Prompt notice in writing within ten (10) days shall be given to the Administrator of the Securities Division of the office of the Secretary of State by any real estate salesman of his change of employer and of the name of the new employer into whose service such salesman is about to enter or has entered, and a new license shall thereupon be issued by the Administrator of the Securities Division of the office of the Secretary

of State to such salesman for the unexpired term of the original license; provided, that such new employer shall be a duly licensed real estate dealer. The change of employer or employment by any licensed real estate salesman without notice to the Administrator of the Securities Division of the office of the Secretary of State as aforesaid shall automatically cancel the license to him theretofore issued, and it shall be the duty of the employer named in such license to deliver or mail by registered mail to the Administrator of the Securities Division of the office of the Secretary of State within five (5) days such real estate salesman's license. The real estate dealer shall at the time of mailing such real estate salesman's license to the Administrator of the Securities Division of the office of the Secretary of State, notify the salesman thereof at the address of such real estate salesman that his license has been delivered or mailed to the Administrator of the Securities Division of the office of the Secretary of State. A copy of such communication to the real estate salesman shall accompany the license when mailed or delivered to the Administrator of the Securities Division of the office of the Secretary of State. It shall be unlawful for any real estate salesman to perform any of the acts contemplated by this Act, either directly or indirectly under authority of said license from and after the date of receipt of said license from said dealer by the Administrator of the Securities Division of the office of the Secretary of State; provided, that another license shall not be issued to such real estate salesman until he shall return his former pocket card to the Administrator of the Securities Division of the office of the Secretary of State or shall satisfactorily account to the Administrator of the Securities Division of the office of the Secretary of State for the same; provided, further, that not more than one license shall be issued to any real estate salesman for the same period of time. The Administrator of the Securities Division of the office of the Secretary of State shall issue a new license to said salesman upon the filing of an application for a transfer and the payment of a transfer fee of One Dollar ($1).

Hearing in case of refusal to license

Sec. 10. If the Administrator of the Securities Division of the office of the Secretary of State declines or fails to license an applicant, he shall immediately give notice of the fact to the applicant and upon request from such applicant filed within ten (10) days after the receipt of such notice, shall fix a time and place for hearing, of which ten (10) days notice shall be given to such applicant and to other persons interested or protesting to offer evidence relating to the real estate dealer's application. In each such case the Administrator of the Securities Division of the office of the Secretary of State shall fix the time of such hearing on a date within thirty (30) days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time on consent of the applicant. If satisfied as aforesaid as a result of such hearing, the Administrator of the Securities Division of the office of the Secretary of State shall thereupon license the real estate dealer.

Grounds for suspending, revoking or refusing to renew license

Sec. 11. The Administrator of the Securities Division of the office of the Secretary of State may upon his own motion and shall upon the verified complaint in writing of any person, investigate the actions of any real estate salesman or real estate dealer or any person who shall assume to act in either such capacity within this State, and may suspend or revoke or refuse to renew any license at any time where the real estate salesman or real estate dealer in performing or attempting to perform any act as a real estate dealer or real estate salesman, or in any transaction involving the leasing or sale of an interest in real estate, is guilty of:

(1). Knowingly making any substantial misrepresentation, or

(2). Making any false promises with intent to influence, persuade, or induce, or

(3). Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents or salesmen, or advertising or otherwise, or

(4). Acting for more than one party in a transaction without the knowledge or consent of all parties thereto, or

(5). Failure within a reasonable time to account for or to remit any moneys coming into his possession which belong to others, or

(6). Any other conduct, whether of the same or a different character than hereinabove specified, which constitutes dishonest dealings.

The Administrator of the Securities Division of the office of the Secretary of State may also suspend or revoke or refuse to renew the license of any licensee who at any time has:

(1). Procured a license under this Act for himself or any salesman by fraud, misrepresentation, or deceit, or

(2). Has been convicted of a felony, knowledge of which the Administrator of the Securities Division of the office of the Secretary of State did not have at the time of last issuing a license to such licensee, or

(3). Wilfully disregarded or violated any of the provisions of the law, or

(4). Demanded from an owner a commission to which he is not justly entitled, or

(5). Paid commissions or fees to, or divided commissions or fees with anyone not licensed as a real estate dealer or salesman, or

(6). Used any trade name or insignia of membership in any real estate organization of which he is not a member, or

(7). Accepted, given, or charged any undisclosed commission, rebate, or direct profit on expenditures made for a principal, or

(8). Solicited, sold, or offered for sale real property by offering "free lots" or conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property, or

(9). Acted in the dual capacity of broker and undisclosed principal in any transaction, or

(10). Guaranteed, authorized, or permitted any person to guarantee future profits which may result from the resale of real property, or

(11). Placed a sign on any property offering it for sale or for rent without the written consent of the owner or his authorized agent, or

(12). Induced any party to a contract of sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with another principal, or

(13). Negotiated the sale, exchange or lease of any real property directly with an owner or lessor knowing that such owner or lessor had a written outstanding contract granting exclusive agency in connection with such property with another real estate broker, or

(14). Offered real property for sale or for lease without the knowledge and consent of the owner or his authorized agent, or any terms other than those authorized by the owner or his authorized agent, or

(15). Published advertising whether printed, radio, display, or any of any other nature which was misleading, or inaccurate in any material particular, or in any way has misrepresented any properties, terms, values, policies, or services of the business conducted, or

(16). Knowingly withheld from or inserted in any statement of account or invoice any statement that made it inaccurate in any material particular, or

(17). Published or circulated unjustified or unwarranted threats of legal proceedings which tended to or had the effect of harassing competitors or intimidating their customers.

This Section of this Act shall not be construed to relieve any person or company from civil liability or from criminal prosecution under this Act or under the laws of this State.

Notice and hearing

Sec. 12. The Administrator of the Securities Division of the office of the Secretary of State shall before suspending or revoking any license, notify in writing the licensee of any charges made in order to afford such licensee an opportunity to be heard, which notification shall be given at least ten (10) days prior to the date set for the hearing. The Administrator of the Securities Division of the office of the Secretary of State shall prescribe the time and place of the hearing. The Administrator of the Securities Division shall have no authority to promulgate rules or regulations which are not definitely set forth in this Act. Such written notice may be served by mailing same by registered mail to the last known business address of such licensee. If such licensee be a salesman, the Administrator of the Securities Division of the office of the Secretary of State shall also notify the real estate dealer employing him, specifying the charges made against such real estate salesman by sending a notice thereof by registered mail to the real estate dealer's last known address. At such hearing, or at any other provided for in this Act, the counsel, any and all persons complaining against him, and as well as any other witness whose testimony is relied upon to substantiate the charges made. He shall also be entitled to present evidence, oral and written, as he may see fit, and as may be pertinent to the inquiry. The said hearing may be held by the Administrator of the Securities Division of the office of the Secretary of State or any person duly authorized by the Administrator of the Securities Division of the office of the Secretary of State, which authorization shall be in writing and authenticated by the Seal of the State, and the said hearing shall be held, if the applicant or licensee so desires, within the county where the applicant or licensee has his principal place of business. In such hearing all witnesses shall be duly sworn by the person herein authorized to preside, and stenographic notes of the proceedings shall be taken and filed as part of the records in the case. Any party to the proceedings desiring it shall be furnished with a copy of the stenographic notes upon the payment to the Administrator of the Securities Division of the office of the Secretary of State of a fee not to exceed Twenty-five Cents (25¢) per page.

Allegation and proof of license in suit for compensation

Sec. 13. No person or company engaged in the business of acting in the capacity of a real estate dealer or real estate salesman within this State shall bring or maintain any action in the courts of this State for the collection of compensation for the performance of any of the acts mentioned in Section 2, Subdivision (a) hereof, without alleging and proving that such person or company was a duly licensed real estate dealer or salesman at the time the alleged cause of action arose.

Evidence

Sec. 14. (a). The Administrator of the Securities Division of the office of the Secretary of State, or any person duly authorized by the Administrator of the Securities Division of the office of the Secretary of State, which authorization shall be in writing and authenticated by the Seal of the State, may require by subpoena or summons issued by the Administrator of the Securities Division of the office of the Secretary of State or any person duly authorized to act for the Administrator of the Securities Division of the office of the Secretary of State, addressed to the sheriff or any constable, the attendance and testimony of witnesses and the production of any books, accounts, records, papers, and correspondence (except such books of account as are necessary to the continued conduct of the business, which books the Administrator of the Securities Division of the office of the Secretary of State shall have the right to examine or cause to be examined at the office of the concern and to require copies of such portion thereof as may be deemed necessary) touching such matter in question, which copies shall be verified by affidavit of an officer of such concern and shall be admissible in evidence as provided in Section 18 hereof, relating to any matter which the Administrator of the Securities Division of the office of the Secretary of State has authority by this Act to consider or investigate, and for this purpose the Administrator of the Securities Division of the office of the Secretary of State, or any person duly authorized by the Administrator of the Securities Division of the office of the Secretary of State, may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence. In case of disobedience of any subpoena or of the contumacy of any witness appearing before the Administrator of the Securities Division of the office of the Secretary of State, the Administrator of the Securities Division of the office of the Secretary of State or the person duly authorized to act for him may invoke the aid of the District Court within whose jurisdiction any witness may be found and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b). The Administrator of the Securities Division of the office of the Secretary of State, or any person duly authorized by the Administrator of the Securities Division of the office of the Secretary of State, may in any investigation cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed for depositions in civil actions under the laws of Texas. Each witness required to attend any hearing provided for in this Act shall receive for each day's attendance the sum of Two Dollars ($2) and shall receive in addition the sum of Five Cents (5¢) for each mile travelled by such witness by the usual route going to and returning from the place where his presence is required. All disbursements made in the payments of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses incident to the administration and enforcement of this Act, as hereinbefore provided for. The fee for serving the subpoena shall be the same as that paid the sheriff for similar services. The fees, expenses, and costs incurred at or in connection with any hearing may be imposed by the Administrator of the Securities Division of the office of the Secretary of State upon any party to the record or may be divided between any and all parties to the record in such proportions as the Administrator of the Securities Division of the office of the Secretary of State may determine.

Remedy of persons aggrieved by decision of Secretary of State

Sec. 15. (a). Any real estate dealer, real estate salesman, owner, or subdivider aggrieved by any decision of the Secretary of State may file within thirty (30) days thereafter in the District Court of the coun-

ty in which he resides, or in the District Court in the county where his principal place of business is situated, a petition against the Secretary of State officially as defendant, alleging therein in brief detail the action and decision complained of and for an order directing the Secretary of State to license the applicant or grant an owner or subdivider a permit, as the case may be. Upon service of the summons upon the Secretary of State, returnable within ten (10) days from its date, the Secretary of State shall on or before the return day file an answer. The case shall be tried in the District Court de novo, upon its merits.

(b). The District Court may, upon application of either party and upon due notice given, advance the case on the docket. From the decision of the District Court, an appeal may be taken to the Court of Civil Appeals by either party, as in other cases, and no bond shall be required by the Secretary of State. A judgment in favor of the plaintiff shall not bar after one year a new application by the plaintiff for a license, nor shall a judgment in favor of the plaintiff prevent the Secretary of State from thereafter revoking or refusing to license such person for any proper cause which may thereafter accrue or be discovered. The court shall have full power to dispose of all costs.

Fees

Sec. 16. The Administrator of the Securities Division of the office of the Secretary of State shall charge and collect the following fees and shall duly pay all fees received into the State Treasury.

(a). A fee of Three Dollars ($3) for the filing of any original or renewal application of a real estate dealer, which fee shall include the cost of the issuance of a license if any should be issued.

(b). A fee of Three dollars ($3) for the filing of any original or renewal application of a real estate dealer, which fee shall include the cost of the license, who is a member of a partnership, or association or an officer of a corporation licensed under the provisions of this Act, other than the member of the partnership, or association or the officer of the corporation named in the license issued to such partnership, association, or corporation.

(c). A fee of Three Dollars ($3) for the filing of any original or renewal application of a real estate salesman, which fee shall include the cost of the issuance of the license if any should be issued.

(d). A fee of One Dollar ($1) for each duplicate license where the original license is lost or destroyed and an affidavit made thereof, and where a duplicate is required for a branch office in this State.

(e). A fee of One Dollar ($1) for each duplicate or transfer of salesman's license.

Period of license; renewal

Sec. 17. All licenses issued under the provisions of this Act shall expire on December 31st of each year at midnight, and application for the renewal thereof shall be made in such form as the Administrator of the Securities Division of the office of the Secretary of State shall prescribe. Applications for renewal of said licenses may be made between the 15th day of November and the 31st day of December.

Payment of moneys into State Treasury

Sec. 18. Upon and after the effective date of this Act, all moneys derived from fees, assessments, or charges under this Act, shall be paid by the Administrator of the Securities Division of the office of the Secretary of State into the State Treasury for safekeeping, and shall by the State Treasurer be placed in a separate fund to be available for the use of the Administrator of the Securities Division of the office of the Secretary of State in the administration of this Act upon requisition of the Administrator of the Securities Division of the office of the Secretary of State. All such moneys so paid into the State Treasury are hereby specifically appropriated to the Administrator of the Securities Division of the office of the Secretary of State for the purposes of paying the salaries and expenses of all persons employed or appointed as provided herein for the administration of this Act, and all other expenses necessary and proper for the administration of this Act, including equipment and maintenance of any supplies for such offices or quarters as the Administrator of the Securities Division of the office of the Secretary of State may occupy, and necessary traveling expenses for the Administrator of the Securities Division of the office of the Secretary of State or persons authorized to act for him when performing duties hereunder at the request of the Administrator of the Securities Division of the office of the Secretary of State. At the end of the calendar year, any unused portion of said funds in said special account shall be set over and paid into the general revenue fund. The Comptroller shall upon requisition of the Administrator of the Securities Division of the office of the Secretary of State from time to time draw warrants upon the State Treasurer for the amount specified in such requisition, not exceeding however, the amount in such fund at the time of making any requisition, provided however that all moneys expended in the administration of this Act shall be specified and determined by itemized appropriation in the general departmental appropriation bill for the office of Secretary of State and not otherwise.

Copies of papers and documents as evidence

Sec. 19. Copies of all papers, instruments, or documents filed in the office of the Administrator of the Securities Division of the office of the Secretary of State certified under the Seal of the State of Texas, shall be admitted to be read in evidence in all courts of law and elsewhere in this State in all cases where the original would be admitted in evidence, provided that in any proceeding in the court having jurisdiction, the court may on cause shown require the production of the originals. In any prosecution, action, suit or proceeding before any of the several courts of this State, based upon or arising out of or under the provisions of this Act, a certificate under the Seal of the State duly signed by the Administrator of the Securities Division of the office of the Secretary of State showing compliance or noncompliance with the provisions of this Act respecting compliance or noncompliance with the provisions of this Act by any real estate dealer or salesman, shall constitute prima facie evidence of such compliance or noncompliance with the provisions of this Act, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce the provisions of this Act.

Dividing commissions with others

Sec. 20. It shall be unlawful for any real estate dealer or real estate salesman to offer, promise, allow, give, or pay directly or indirectly any part or share of his commission or compensation arising or accruing from any real estate transaction to any person who is not a licensed dealer or salesman in consideration of service performed or to be performed by such unlicensed person, and no real estate salesman shall be employed by or accept compensation from any person other than the dealer under whom he is at the time licensed, and it shall be unlawful for any licensed real estate salesman to pay a commission to any person except through the dealer under whom he is at the time licensed.

Violations of act

Sec. 21. (a). Any person, or agent, officer, or employee of any company, acting as a real estate dealer or real estate salesman within the meaning of this Act, without first having been licensed by the Admin-

istrator of the Securities Division of the office of the Secretary of State, and every officer, agent, or employee of any company, and every other person who knowingly authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any false statement or representation concerning any land or subdivision offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus, or letter concerning any land or subdivision contains any written statement that is false or fraudulent issues, circulates, publishes, or distributes the same, or shall cause the same to be issued, circulated, published, or distributed, or who, in any other respect, wilfully violates or fails to comply with any provisions of this Act, or who in any other respect wilfully violates or fails, omits or neglects to obey, observe or comply with any order, permit, decision, demand, or requirement of the Administrator of the Securities Division of the office of the Secretary of State under this Act as herein provided, shall upon conviction therefor be sentenced to pay a fine of not more than Five Hundred Dollars ($500) or imprisonment in the county jail for not more than one year or both such fine and imprisonment.

(b). This Act shall not apply to the sale of any property when such sale is made by the owner, or one of the owners, or the attorney for said owner or owners.

Written agreement required; no action otherwise

Sec. 22. No action shall be brought in any court in this State for the recovery of any commission for the sale or purchase of real estate unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereto lawfully authorized. This provision shall not apply to any action for commissions pending in any court in this State at the effective date of this Act. [Acts 1939, 46th Leg., p. 560.]

Section 23 of the Act of 1939, provided that partial invalidity should not affect the remaining portions.

Section 22 of this article is unconstitutional in so far as it operates upon contracts made prior to its effective date. Hutchings v. Slemons, 141 T. 448, 174 S.W.2d 487, 148 A.L.R. 1320.

TITLE 114—RECORDS

1. RECORDS

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1. RECORDS

Article 6574. [6767–8] [4585] [4281] Old records transcribed.—When any of the records or indexes of a county become defaced, worn or in a condition endangering their preservation in a safe and legible form, the commissioners court of such county shall procure necessary, well bound books and require the officer having the custody thereof, to transcribe such records into such new books so as to perfectly conform to the original record as indexed. The designation of such new records, whether by letter or number, shall not be changed from the original. Such transcribed records shall be carefully compared with the originals by the officer who transcribes them, assisted by a sworn deputy. [Acts 1876, p. 84; G. L. vol. 8, p. 920.]

Art. 6574a. Old probate records.—The commissioners' court of any county in this State may require the county clerk to record in a well bound book any old probate records or papers that are unrecorded when in the opinion of the commissioners' court such recording is necessary. The commissioners' court shall fix the compensation of the county clerk before the work is done at any amount not to exceed fifteen (15c) cents per one hundred words for recording such records or papers, to be paid out of the General fund of the county. [Acts 1925, 39th Leg., ch. 162, p. 373, § 1.]

Art. 6574b. Photographic duplication of public records; disposition of original records.

Photographic duplication when necessary

Section 1. The Commissioners Court of any county in Texas, or the governing body of any political subdivision of Texas, may, at its discretion, order, authorize and provide for the duplication of all public records by photostatic, photographic, miniature photographic, film microfilm or micro-photographic process which correctly and legibly copies and reproduces, or which forms a medium of copying or reproducing, such public records, when, in the judgment of a Commissioners Court, or of the governing body of any political subdivision of Texas, a necessity exists for the photographic duplication of said public records for the purpose of recording, preserving and protecting same, or for the purpose of reducing space required for filing, storing and safekeeping of same, or for any similar purpose.

Quality of materials

Sec. 2. All materials used in the photographic duplication of public records, as herein authorized, and all processes of development, fixation and washing of said photographic duplicates, shall be of quality approved for permanent photographic records by the United States Bureau of Standards.

Control and direction; approval

Sec. 3. The duplication of all public records, if ordered, authorized and provided for, as hereinabove provided, shall be under the control and direction of the officer who is responsible for the safekeeping and preservation of such public records, and all duplication of such public records shall be checked, approved and certified by such officer as to being correct and legible copies of the original records in his office.

Filing of duplicates; destruction of original records

Sec. 4. Said photographic duplicates of all public records shall be placed in conveniently accessible files and provisions shall be made for preserving, safekeeping, using, examining, exhibiting, projecting and enlarging the same whenever requested during regular office hours. Whenever photographic duplicates of public records are so made, certified and placed, the original public records may be, by order of the Commissioners Court of the county, or of the governing body of any political subdivision of Texas, destroyed or otherwise disposed of, provided, however, that no original record shall be destroyed or otherwise disposed of unless or until the time for filing legal proceedings based on any such record shall have elapsed, and, in no event, shall any original public record be destroyed or otherwise disposed of until said public record is at least five (5) years old; and provided further, that notice of such proposed destruction or disposition of original public records shall first be given to the State Librarian, and if such records are, in his opinion, needed for the Texas State Library, they shall be transferred thereto in the manner provided in Article 5439, Revised Civil Statutes, 1925.

Destruction of certain records not authorized

Sec. 5. Nothing in this Act shall authorize the destruction or disposition of any deed record, deed of trust record, mechanic's lien record or any minute book of any Court or any minute book of any political subdivision of Texas.

Compensation to officer checking correctness

Sec. 6. The Commissioners Court of any county in Texas, or the governing body of any political subdivision of Texas, may pay a reasonable compensation to the officer whose duty it is to check, approve and certify to the correctness of the photographic duplication of the public records of his office when said duplication is completed or as same is being done; provided, however, that such compensation shall be reported as fees of office and accounted for as provided by law.

Duplicates deemed original records; transcript

Sec. 7. Said photographic duplicates of public records shall be deemed to be an original record for all purposes, including introduction in all Courts or administrative agencies. A transcript, exemplification, or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original.

Repeal of conflicting laws

Sec. 8. All laws or parts of laws in conflict herewith are hereby repealed.

Partial invalidity

Sec. 9. If any part, section, clause, phrase or word of this Act shall be held to be unconstitutional or invalid, it is declared to be the legislative intent that such invalidity shall not invalidate, impair or affect the remaining portions of this Act, and that the remaining portions of this Act be and the same are enacted regardless of the invalidity of any part of this Act. [Added Acts 1947, 50th Leg., p. 84, ch. 58, § 1.]

Art. 6575. [6769] [4587] [4283] Correctness certified to.—When such records have been correctly transcribed, the officer with his deputies who transcribed and verified them, shall officially certify at the conclusion of the record to the correctness of the same with the impress of the seal of said court affixed on the same page, stating the number of pages contained in the book from one to the highest number. [Id.]

Art. 6576. [6771] [4589] [4285] Records of county surveyor.—Where the records of the county surveyor's office have been so transcribed, the surveyor shall certify the correctness of such transcribed records and make affidavit thereto before the county clerk of his county who shall impress thereon the seal of the county court. [Id.]

Art. 6577. [6770] [4588] [4284] Original books preserved.—The original books transcribed according to the provisions of this title shall be carefully kept and preserved by such clerk, as other archives of his office. [Id.]

Art. 6578. [6772–3–4] Records of new county transcribed.—The commissioners court of a county which has been created, either in whole or in part from the territory of another county or counties, or to which may have been added since its creation, the territory of another county or counties, shall require the county clerk to transcribe from the record of said other county or counties in substantial well bound record books to be furnished him by the commissioners court, each deed mortgage, conveyance, incumbrance and muniment of title affecting or in anywise relating to all lands and real property embraced in the territory so acquired from such other county or counties, which deeds, mortgages, conveyances, incumbrances and muniments of title appear of record in the county or counties from which said territory may have been taken. When the territory acquired was from more than one county, then the clerk shall use a separate book for each county, and such records shall be indexed and arranged as is provided by law. Said records shall be legibly transcribed, and when so transcribed shall be carefully compared with the original record by the said clerk or his deputies who transcribed them. When said record or records have been correctly transcribed, the county clerk and his deputies who transcribed and verified them, shall certify the correctness of such records under their official oath of office at the conclusion thereof with the impress of the seal of said court affixed on the same page. [Acts 1879, p. 105; G. L. vol. 8, p. 1405.]

Art. 6579. [6775] [4593] Pay for making transcript.—The county clerk or person making such transcript shall receive not exceeding fifteen cents per hundred words for transcribing, comparing and verifying said records, the amount to be fixed by the commissioners court in the order directing the transcribing of such records; said compensation to be paid out of the county treasury upon warrant issued under the order of the commissioners court of the newly created county. [Acts 1917, p. 88.]

Art. 6580. [6776] [4593] Translation.—Any commissioners court may require the county clerk of its county to have translated into English all or any part of the archives and records of their offices which are in Spanish and which relate to titles to land, and copy said translations in a well bound book or books, but they shall not contract to pay more than fifteen cents per hundred words for both the translation and recording. [Acts 1893, p. 168; G. L. vol. 10, p. 598.]

Art. 6581. [6777] [4593] Effect of such translations.—When such Spanish archives and records are translated and recorded, said records in English shall have the same force and effect as if the archives and instruments were originally made and recorded in the English language, and certified copies may be used as evidence and otherwise, for like purposes and with like effect as the originals are and certified copies of records of the originals can now be used; and said record books hereinbefore provided for shall be permanent archives and records of the county clerk's office of the counties when so translated and recorded. [Id.]

2. LOST RECORDS, ETC.

Art. 6582. [6778] [4594] [4286] Lost records supplied by proof.—All deeds, bonds, bills of sale, mortgages, deeds of trust, powers of attorney and

conveyances which are required or permitted by law to be acknowledged or recorded, and which have been so acknowledged or recorded, which have been lost or destroyed, and all judgments of courts of record in this State, where the record of the court containing such judgment has been lost, destroyed or carried away, may be supplied by parol proof of the contents thereof; which proof shall be taken in the manner hereinafter provided. [Acts 1876, p. 45; G. L. vol. 8, p. 881.]

Art. 6583. [6779] [4595] [4287] Proceedings to establish lost records.—Any person having any interest in any such deed, instrument in writing, or any judgment, or order or decree in the district court, the record or entry of which has been lost, destroyed, or carried away, may, in addition to any mode provided by law for establishing the existence and contents of such record, file with the district clerk of the county where such loss or destruction took place, his written application setting forth the facts entitling him to the relief sought; whereupon such clerk shall issue a citation to the grantor in such deed, or to the party or parties interested in such instrument, or to the party or parties who were or may be interested adversely to the applicant at the time of the rendition of any such judgment, or the heirs and legal representatives of such parties to appear at a term of the district court to be designated in said citation, and contest the right of the applicant to have such deed, writing, or judgment substituted and recorded. Service shall be as provided for process in other cases. [Id.]

Art. 6584. [6780] [4596] [4288] Judgment.—On hearing said application, if the court shall be satisfied from the evidence of the previous existence of such deed, instrument, order or decree, and of the loss, destruction or carrying away of the same, as alleged by the applicant, and the contents thereof, an order shall be entered on the minutes of the district court to that effect, which order shall contain a description of the lost deed, instrument in writing, judgment or record, and the contents thereof, and a certified copy of such order may be recorded in the records of the proper county. [Id.]

Art. 6585. [6781] [4597] [4289] Proceedings in the county court.—Whenever any judgment, order or decree duly entered in the county court of any county has been or may be lost, destroyed or carried away, any person interested therein may file his written application with the clerk of the county court to which the original record belonged, setting forth the facts entitling him to the relief sought, when the same proceedings shall be had and the court shall enter a like judgment as provided in the two preceding articles. [Id.]

Art. 6586. [6782] [4598] [4290] Effect of judgment.—Whenever such judgment, order or decree rendered in the district or county court shall be duly entered, it shall stand in the place of and have the same force and effect as the original of said lost deed, instrument in writing, judgment or record; and when duly recorded may be used as evidence in any court of this State with like effect as the original thereof. [Id.]

Art. 6587. [6783] [4599] [4291] Certified copies may be recorded.—All certified copies from the records of such county, where the records have been lost, destroyed or carried away, and all certified copies from the records of the county or counties from which said county was created, may be recorded in such county; provided, the loss of the original shall first be established. [Acts 1876, p. 45; G. L. vol. 8, p. 881.]

Art. 6588. [6784] [4600] [4292] Originals recorded again.—When any original paper mentioned in the first article of this subdivision may have been saved or preserved from loss, the record of said originals having been lost, destroyed or carried away, the same may be recorded again, and this last registration shall have force and effect from the filing for original registration; provided, said originals are recorded within four years next after such loss, destruction or removal of the records. [Id.; Acts 1879, p. 35; G. L. vol. 8, p. 1335.]

Art. 6589. [6785] [4601] [4293] Force of substituted judgment.—Judgments, orders and decrees, when substituted as hereinbefore provided, shall carry all the rights thereunder in every respect as the originals, especially preserving the liens from the date of the originals, and giving the parties the right to issue executions under the substituted judgments as under the originals. [Id.]

Art. 6590. Copies of records.—All transcribed records and all translations of Spanish archives, and all judgments supplying lost records or other instruments in writing, and all re-recorded deeds or other instruments in writing required by law to be recorded, when made and recorded in accordance with the provisions of this title and certified copies of such instruments shall have the same force and effect as the original record thereof.

TITLE 115—REGISTRATION

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CHAPTER 1.—RECORDERS AND THEIR DUTIES

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Article 6591. [6786] [4602] [4294] Recorders.—County clerks shall be the recorders for their respective counties; they shall provide and keep in their offices well bound books in which they shall record all instruments of writing authorized or required to be recorded in the county clerk's office in the manner hereinafter provided. [Acts 1846, p. 236; P. D. 5001; G. L. vol. 2, p. 1542.]

Art. 6592. [6787] [4603] [4295] Seal.—The seal of the county court shall be the seal of the recorder, and shall be used to authenticate all his official acts. [Id.]

Art. 6593. [6788] [4604] [4296] Record books.—Each county clerk shall provide suitable books for his office, and keep regular and faithful accounts of the expenses thereof. Such accounts shall be audited by the commissioners court and paid out of the county treasury. [Id.]

Art. 6594. [6789] [4605] [4297] Memorandum and receipt.—When any instrument of writing authorized by law to be recorded shall be deposited in the county clerk's office for record, if the same is acknowledged or proved in the manner prescribed by law for record, the clerk shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties and date and nature thereof, and the time of delivery for record; and shall give to

the person depositing the same, if required, a receipt specifying the particulars thereof. [Id.]

Art. 6595. [6790] [4606] [4298] Shall record without delay.—Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the acknowledgments, proofs, affidavits and certificates thereto attached, in the order deposited for record by entering them word for word and letter for letter, and noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record. [Id.]

Art. 6596. [6791] [4607] [4299] Considered recorded when deposited.—Every such instrument shall be considered as recorded from the time it was deposited for record; and the clerk shall certify under his hand and seal of office to every such instrument of writing so recorded, the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded deliver the same to the party entitled thereto. [Id.]

Art. 6597. [6792] [4608] [4300] Alphabetical indexes.—Each county clerk shall keep in alphabetical order a well bound index to all books of records wherein deeds, powers of attorney, mortgages or other instruments of writing concerning lands and tenements are recorded, distinguishing the books and pages in which every such deed or writing is recorded. [Id.]

Art. 6598. [6793] [4609] [4301] What they shall contain.—It shall be a cross-index and shall contain the names of the several grantors and grantees in alphabetical order; and, in case a deed is made by a sheriff, the name of the sheriff and defendant in execution; and, if by executors, administrators or guardians, their names and the names of their testators, intestates or wards; and, if by attorney, the name of such attorney and his constituents; and, if by a commissioner or trustee, the name of such commissioner or trustee and the person whose estate is conveyed. [Id.]

Art. 6599. [6794] [4610] [4302] Index of other records.—Each shall, in like manner, make and keep in his office a full and perfect alphabetical index to all books of record in his office, wherein all instruments of writing relating to goods and chattels, or movable property of any description, marriage contracts, and all other instruments of writing authorized or required to be recorded in his office are recorded; and in a like index of all the books of record wherein official bonds are recorded, the names of the officers appointed, and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded. [Id.]

Art. 6600. [6795] [4611] [4303] Shall give attested copies.—The county clerk shall give attested copies whenever demanded of all papers recorded in his office; and he shall receive for all such copies, such fees as may be provided by law. [Acts 1836, p. 155; P. D. 4979; G. L. vol. 1, p. 1215.]

Art. 6601. [6796] [4612] [4303] Mortgages, etc.—All deeds of trust, mortgages or judgments which are required to be recorded in order to create a judgment lien, or other instruments of writing intended to create a lien, shall be recorded in a book or books separate from those in which deeds or other conveyances are recorded.

CHAPTER 2.—ACKNOWLEDGMENTS AND PROOF FOR RECORD

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Art. 6602. [6797–8–9] [4613–14–15] [4305–6–7] Persons before whom acknowledgments or proof made; members of armed forces; presumption; absence of seal.—1. The acknowledgment or proof of an instrument of writing for record may be made within this state before:

a. A Clerk of the District Court.

b. A Judge or Clerk of the County Court.

c. A Notary Public.

2. The acknowledgment or proof of such instrument may be made without this state, but within the physical limits of the United States of America or its territories before:

a. A Clerk of some court of record having a seal.

b. A Commissioner of Deeds duly appointed under the laws of this state.

c. A Notary Public.

3. The acknowledgment or proof of such instrument may be made without the physical limits of the United States and its territories before:

a. A Minister, a Commissioner or Charge D'affairs of the United States, resident and accredited in the country where the proof or acknowledgment is made.

b. A Consul-General, Consul, Vice-Consul, Commercial Agent, Vice-Commercial Agent, Deputy Consul or Consular Agent of the United States, resident in the country where proof of acknowledgment is made.

c. A Notary Public.

4. In addition to the methods above provided, the acknowledgment or proof of an instrument of writing for record may be made by a member of the Armed Forces of the United States or any Auxiliary thereto before any Commissioned Officer in the Armed Forces of the United States of America or in the Auxiliaries thereto.

In the absence of pleading and proof to the contrary, it shall be presumed when any such acknowledgment is offered in evidence that the person signing such as a commissioned officer was such on the date signed, and that the person whose acknowledgment he took was one of those with respect to whom such action is hereby authorized.

No certificate of acknowledgment or proof of instrument taken in accordance with the provisions of this sub-section 4 of this Act shall be held invalid by reason of the failure of the officer certifying to such acknowledgment or proof of instrument to attach an official seal thereto. [Acts 1871, p. 77; P.D. 7418; G.L., Vol. 6, p. 979; Acts 1943, 48th Leg., p. 49, ch. 45, § 1; Acts 1945, 49th Leg., p. 542, ch. 328, § 1.]

Art. 6603. [6800] [4616] [4308] Acknowledgment, how made.—The acknowledgment of an instrument of writing for the purpose of being recorded shall be by the grantor or person who executed the same appearing before some officer authorized to take

such acknowledgment, and stating that he had executed the same for the consideration and purposes therein stated; and the officer taking such acknowledgment shall make a certificate thereof, sign and seal the same with his seal of office. [Acts 1846, p. 236; P. D. 5007; G. L. vol. 2, p. 1542.]

Art. 6604. [6801] [4617] [4309] Party must be known or proven.—No acknowledgment of any instrument of writing shall be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument. [Id.]

Art. 6605. [6802] [4618] [4310] Acknowledgment of married woman.—No acknowledgment of a married woman to any conveyance or other instrument purporting to be executed by her shall be taken, unless she has had the same shown to her, and then and there fully explained by the officer taking the acknowledgment on an examination privily and apart from her husband; nor shall he certify to the same, unless she thereupon acknowledges to such officer that the same is her act and deed, that she has willingly signed the same, and that she wishes not to retract it. [Acts 1846, p. 156; P. D. 1003; G. L. vol. 2, p. 1462.]

Art. 6606. [6803] [4619] [4311] Certificate of officer.—An officer taking the acknowledgment of a deed, or other instrument of writing, must place thereon his official certificate, signed by him and given under his seal of office, substantially in form as hereinafter prescribed.

Art. 6607. [6804] [4620] [4312] Form of certificate.—The form of an ordinary certificate of acknowledgment must be substantially as follows:

"The State of ———,

"County of ———,

"Before me ——— (here insert the name and character of the officer) on this day personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal) "Given under my hand and seal of office this ——— day of ———, A. D., ———."

Art. 6608. [6805] [4621] [4313] Form by a married woman.—The certificate of acknowledgment of a married woman must be substantially in the following form:

"The State of ———,

"County of ———.

"Before me, ——— (here insert the name and character of officer) on this day personally appeared ———, wife of ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said ———, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

(Seal) "Given under my hand and seal of office this ——— day of ———, A. D., ———. ———."

Art. 6609. [6806] [4622] [4314] Proof by witness.—The proof of any instrument of writing for the purpose of being recorded shall be by one or more of the subscribing witnesses personally appearing before some officer authorized to take such proof, and stating on oath that he or they saw the grantor or person who executed such instrument of writing subscribe the same or that the grantor or person who executed such instrument of writing acknowledged in his or their presence that he had executed the same for the purposes and consideration therein stated; and that he or they had signed the same as witnesses at the request of the grantor or person who executed such instrument; and the officer taking such proof shall make a certificate thereof, sign and seal the same with his official seal. [Acts 1846, p. 236; P. D. 5008; G. L. vol. 2, p. 1542.]

Art. 6610. [6807] [4623] [4315] Witness must be personally known.—The proof by a subscribing witness must be by some one personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness, which fact shall be noted in the certificate. [Id.]

Art. 6611. [6808] [4624] [4316] Form of certificate.—The certificate of the officer, where the execution of the instrument is proved by a witness, must be substantially in the following form:

"The State of ———,

"County of ———.

"Before me, ——— (here insert the name and character of the officer), on this day personally appeared ———, known to me (or proved to me on the oath of ———), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw ———, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

(Seal) "Given under my hand and seal of office this ——— day of ———, A. D., ———."

Art. 6612. [6809] [4625] [4317] Handwriting may be proved, when.—The execution of an instrument may be established for record by proof of the handwriting of the grantor and of at least one of the subscribing witnesses in the following cases:

1. When the grantor and all the subscribing witnesses are dead.

2. When the grantor and all the subscribing witnesses are non-residents of this State.

3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained.

4. When the subscribing witnesses have been convicted of felony, or have become of unsound mind, or have otherwise become incompetent to testify.

5. When all the subscribing witnesses to an instrument are dead or are non-residents of this State, or when their residence is unknown, or when they are incompetent to testify, and the grantor in such instrument refuses to acknowledge the execution of the same for record.

Art. 6613. [6810] [4626] [4218] Evidence must prove what.—The evidence taken under the preceding article must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,

2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and.

3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

4. The place of residence of the witness testifying.

Bracketed reference to Revised Civil Statutes 1879, should be to art. 4318, instead of art. 4218.

Art. 6614. [6811] [4319] [4319] When grantor made his mark.—When the grantor or person who executed the instrument signed the same by making his mark, and when also any one or more of the conditions mentioned in Article 6612 exists, the execution of any such instrument may be established by proof of the handwriting of two subscribing witnesses and of the place of residence of such witnesses testifying. [Acts 1863, p. 26; G. L. vol. 5, p. 614; P. D. 5009.]

Art. 6615. [6812] [4628] [4320] Proofs how made and certified.—The proof mentioned in the three preceding articles must be made by the deposition or affidavit of two or more disinterested persons in writing; and the officer taking such proof shall make a certificate thereof, and sign and seal the same with his official seal; which proofs and certificates shall be attached to such instrument. [Id.]

Art. 6616. [6813] [4629] [4321] Officers' authority.—Officers authorized to take the proof of instruments of writing under the provisions of this chapter are also authorized in such proceedings:

1. To administer oaths or affirmations.
2. To employ and swear interpreters.
3. To issue subpœnas.
4. To punish for contempt as hereinafter provided.

Art. 6617. [6814] [4630] [4322] Subpœna to witness.—Upon the sworn application of any person interested in the proof of any instrument required or permitted by law to be recorded, stating that any witness to the instrument refuses to appear and testify touching the execution thereof, and that such instrument cannot be proved without his evidence, any officer authorized to take the proof of said instrument shall issue a subpœna requiring such witness to appear and testify before such officer touching the execution of such instrument. [Acts 1860, p. 75; P. D. 5020; G. L. vol. 4, p. 1437.]

Art. 6618. [6815] [4631] [4323] May compel attendance of witness.—When a witness shall fail to obey a subpœna, said officer shall have the same power to enforce his attendance and to compel his answers as a judge of the district court has to compel the attendance and answers of witnesses; but no attachment shall issue unless the same compensation is made or tendered to each witness as is allowed to witnesses in other cases; and no witness shall be required to go beyond the limits of the county of his residence, unless he shall, for the time being, be found in the county where the execution of such instrument is sought to be proved for registration.

Art. 6619. [6816] [4632] [4324] Record of acknowledgment.—All officers authorized or permitted by law to take the acknowledgment or proof of any deed, bond, mortgage, bill of sale or any other written instrument required or permitted by law to be placed on record shall procure a well bound book, in which they shall enter and record a short statement of each acknowledgment or proof taken by them, which statement shall be by them signed officially. [Acts 1874, p. 155; P. D. 7418b; G. L. vol. 8, p. 157.]

Art. 6620. [6817] [4633] [4325] Contents of statement.—Such statement shall recite the true date on which such acknowledgment or proof was taken, the name of the grantor and grantee of such instrument, its date, if proved by a subscribing witness, the name of the witness, the known or alleged residence of the witness and whether personally known or unknown to the officer; if personally unknown, this fact shall be stated, and by whom such person was introduced to such officer, if by any one, and the known or alleged residence of such person. [Id.]

Art. 6621. [6818] [4634] [4326] Shall further recite.—Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown, by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated. [Id.]

Art. 6622. [6819] [4635] [4327] The book a public record.—The book herein required to be procured and kept, and the statements herein required to be recorded in the same shall be an original public record, and shall be delivered to his successor, and the same shall be open to the inspection and examination of any citizen at all reasonable times. [Id.]

Art. 6623. [6820] [4636] [4328] Action for damages.—Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any provision of this chapter shall have a right of action against such officer so failing, refusing or neglecting, before any court of competent jurisdiction, for the recovery of all damages resulting from such neglect, failure or refusal. [Id.]

CHAPTER 3.—EFFECT OF RECORDING

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Article 6624. [6821] [4637] [4329] Patents and grants.—Letters patent from the State of Texas, or any grant from the government, executed and authenticated pursuant to existing law, may be recorded, without further acknowledgment or proof.

Art. 6625. [6822] [4638] [4330] Copies of archives.—Copies of all deeds, transfers, or any other written evidence of title to land, which have been filed in the general land office, in accordance with law, or copies when the originals remain in the public archives, and were executed in conformity with the laws existing at their dates, duly certified by the officers having lawful custody thereof, shall be admitted to record in the county where such land lies. [Acts 1839, p. 52; G. L. vol. 2, p. 52.]

Art. 6625a. Recording foreign deeds, etc.—Copies of all deeds, transfers, or any other written evidence of title to land which have been filed without the State of Texas or without the county in which such lands are located, and which were executed and recorded in conformity with the laws governing such recording, when duly certified by the officials having lawful custody thereof, shall be admitted to record in the county where such land lies. [Added Acts 1939, 46th Leg., p. 578, § 1.]

Art. 6626. [6823] [4639] [4331] What may be recorded.—The following instruments of writing which shall have been acknowledged or proved according to law, are authorized to be recorded, viz.: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or movable property of any description; provided, however, that in cases of subdivision or re-subdivision of real property no map or plat of any such subdivision or re-subdivision shall be filed or recorded unless and until the same has been authorized by the Commissioners' Court of the county in which the real estate is situated by order duly entered in the minutes of said Court, except in cases of partition or other subdivision through a Court of record; provided, that within incorporated cities and towns the governing body thereof in lieu of the Commissioners' Court shall perform the duties hereinabove imposed upon the Commissioners' Court. [Acts 1846, p. 236; P.D. 5004; G.L. vol. 2, p. 1542; Acts 1931, 42nd Leg., p. 371, ch. 217, § 1.]

Art. 6627. [6824] [4640] [4332] When sales, etc., to be void unless registered.—All bargains, sales and other conveyances whatever, of any land, tenements and hereditaments, whether they may be made for passing any estate of freehold of inheritance or for a term of years; and deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall be valid and binding. [Acts 1840, p. 154; P. D. 4988; G. L. vol. 2, p. 328.]

Art. 6628. [6825] [2322] [2265] Located lands have priority.—Titles to land which may have been deposited in the general land office subsequently to the time when the land embraced by such titles had been located or surveyed, by virtue of valid land warrants or certificates, shall not be received as evidence of superior title to the land against any such location or survey, unless such elder title had been duly recorded in the office of the county clerk where the land may have been situated prior to the location and survey, or unless the party having such location or survey made had actual notice of the existence of such elder title before he made such location or survey. [Acts 1866, p. 32; P. D. 5825; G. L. vol. 5, p. 950.]

Art. 6629. [6826] English language used.—No deed, conveyance or other instrument, whether relating to real or personal property, if in any other than the English language, shall be admitted to record; provided, that all such instruments executed prior to the twenty-second day of August, 1897, may be filed and recorded if accompanied by a correct translation thereof, the accuracy of which is sworn to before some officer authorized to administer oaths. Such translations shall be recorded with the original, and if correct shall operate as constructive notice from and after the date of its filing, if the original be authenticated in the manner required by law. [Acts 1897, p. 11; G. L. vol. 10, p. 1065.]

Art. 6630. [6827] [4641] [4333] Deeds, etc., recorded.—All deeds, conveyances, deeds of trust, or other written contracts relating to real estate, which are authorized to be recorded, shall be recorded in the county where such real estate, or a part thereof, is situated; provided, that all such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes, in a well bound book, or books, to be kept for that purpose, separately from the records of the county to which it is attached and from other unorganized counties; and the clerk or other officer having the custody of such books, when such unorganized county shall be organized, or has been detached therefrom and attached to another county for judicial purposes, shall deliver such book or books, without charge, to the proper officer of such newly organized county, or of the county to which it is attached for judicial purposes when demanded by him; and, where such records have been heretofore kept in separate books, they shall also be delivered in like manner as above, and in each case the same shall become archives of the county to which it is so delivered. Where such records have not heretofore been kept separately, upon the organization or attachment of such unorganized county to another organized county, a certified transcript from the records of such instruments so recorded shall be obtained by such new clerk or officer; and when so made the same shall in like manner become archives of such newly organized county, or county to which such unorganized county may be attached, as the case may be. [Acts 1887, p. 94; G. L. vol. 9, p. 892.]

Art. 6631. [6828] [4642] [4334] Deed, etc., valid against subsequent creditors.—Every conveyance, covenant, agreement, deed, deed of trust or mortgage or certified copies of any such original conveyance, covenant, agreement, deed, deed of trust or mortgage copied from the deed or mortgage records of any county in the State where the same has been regularly recorded, although the land may not have been situated in the county where such instrument was recorded, and which shall have been acknowledged, proved or certified according to law, may be recorded in the county where the land lies; and when delivered to the clerk of the proper court to be recorded shall take effect and be valid as to all subsequent purchasers for a valuable consideration without notice, and as to all creditors from the time when such instrument shall have been so acknowledged, proved or certified and delivered to such clerk to be recorded, and from that time only. All certified copies filed and recorded under the provisions of this article shall take effect and be in force from the time such certified copy was filed for record. Nothing herein shall be construed to validate an invalid instrument. [Acts 1895, p. 157; P. D. 4994; G. L. vol. 10, p. 887.]

Art. 6632. [6829] [4643] [4335] Marriage contract.—No covenant or agreement made in consideration of marriage shall be valid against a purchaser for a valuable consideration, or any creditor not having notice thereof, unless such covenant or agreement shall be duly acknowledged or proved and recorded in manner and form as provided by law for deeds and other conveyances. [Acts 1887, p. 94; P. D. 4987; G. L. vol. 9, p. 892.]

Art. 6633. [6830] [4644] [4336] Recorder shall record, etc.—Each county clerk shall record in books to be provided for that purpose all marriage contracts and powers of attorney, and all official bonds required to be recorded in his office, and all other instruments of writing authorized or required to be recorded in his office, which shall be proved and acknowledged according to law and delivered to him for record. [Acts 1846, p. 236; P. D. 5005; G. L. vol. 2, p. 1542.]

Art. 6634. [6831] [4645] [4337] Copies from land office.—County clerks shall record all copies of titles recorded in the general land office presented for record; provided, such copies are attested with the seal of the general land office. [Id.]

Art. 6635. [6832] [4646] [4338] Judgments recorded.—County clerks shall record all judgments and abstracts of judgments rendered by any court of this State presented to him for record when attested under the hand and seal of the clerk of the court where such judgment was obtained. [Id.]

Art. 6636. [6833] [4647] Transfers of judgment.—The sale of a judgment, or any part thereof, of any court of record, or the sale of any cause of action, or interest therein, after suit has been filed thereon, shall be evidenced by a written transfer; which, when acknowledged in the manner and form required by law for the acknowledgment of deeds, may be filed with the papers of such suit, and when thus filed the clerk shall make a minute of said transfer on the margin of the minute book of the court where such judgment of said court is recorded; or if judgment be not rendered when transfer is filed, the clerk shall make a minute of such transfer on the court trial docket where the suit is entered, giving briefly the substance thereof; for which service he shall be entitled to a fee of twenty-five cents, to be paid by the party applying therefor; and this article shall apply to any and all judgments, suits, claims and causes of action, whether assignable in law and equity or not. When said transfer is duly acknowledged, filed and noted as aforesaid, the same shall be full notice and valid and binding upon all persons subsequently dealing with reference to said cause of action or judgment, whether they have actual knowledge of such transfer or not. [Acts 1889, p. 103; G. L. vol. 9, p. 1131.]

Art. 6637. [6834] [4648] Judgment in justice courts.—Whenever land is sold under execution or order of sale issuing out of a justice court, upon the application of any party interested in said land, it shall be the duty of the justice of the peace having the custody of the execution and judgment upon which said execution issued to make from said records a complete transcript of said judgment and the execution issued thereon and levied on land, together with the levy and return of the officer executing the same thereon indorsed, and to certify to the correctness thereof officially; then said transcript shall be admitted to record in the county where the land is situated in the same manner in which deeds are recorded and with like effect; said transcript or certified copy thereof, under the hand and seal of the county clerk of the county where said transcript has been recorded, shall be admitted in evidence in like manner and with like effect that the original judgment and execution with indorsements thereon would have if offered. [Acts 1889, p. 133; G. L. vol. 9, p. 1161.]

Art. 6638. [6835] [4649] Partition to be recorded.—Every partition of land made under an order or decree of a court, and every judgment or decree by which the title to land is recovered shall be duly recorded in the office of the county clerk in which such land may lie; and until so recorded, such partition, judgment or decree shall not be received in evidence in support of any right claimed by virtue thereof. [Acts 1860, p. 75; P. D. 5023; G. L. vol. 4, p. 1437.]

Art. 6639. [6836] [4650] [4340] Decree may be abbreviated.—It shall not be necessary to record the proceedings or the decree rendered in such cases in full; but a brief statement by the clerk of the court in which the same is made, under his hand and seal, setting forth the case in which the partition or decree was made, and the date thereof, and the names of the parties in the suit for partition, and the particular land or lot lying in the county in which the record is made and the name of the party to whom the same is decreed, shall be a sufficient record of such partition, judgment or decree. [Id.]

Art. 6640. [6837] Suit for land; notice to be filed.—During the pendency of any suit or action, involving the title to real estate, or seeking to establish any interest or right therein, or to enforce any lien, charge or encumbrance against the same, any party seeking affirmative relief therein, may file a notice of the pendency of such suit with the county clerk of each county where such real estate, or any part thereof, is situated. Such notice shall be signed by the party filing the same, his agent or attorney, setting forth the number and style of the cause, the court in which pending, the names of the party thereto, the kind of suit and description of the land affected. [Acts 1905, p. 316.]

Art. 6641. [6838] Record of, how made.—The county clerk shall record such notice in a well-bound book, to be styled, "Lis Pendens Record," and at the same time index the same, both direct and reverse, under the names of each and all parties to the suit. For which the clerk shall be allowed a fee of fifteen cents per hundred words recorded, not to be less than fifty cents. [Id.]

Art. 6642. [6839] Transfers without notice, valid.—The pendency of such suit or action shall not prevent effective transfers or encumbrances of such real estate to a third party for a valuable consideration and without other notice, actual or constructive, by a party to the suit as against a subsequent decree for the adverse party unless such notice shall have been properly filed under the name of the party attempting to transfer or encumber in the county or counties in which said land is situated. [Id.]

Art. 6643. [6840] Effect of notice.—All such notices of pendency shall be notice to all the world of their contents and that the suit or suits mentioned therein are pending, and such notices shall operate as soon as filed with the county clerk for record, as provided in this Chapter whether service has been had on the parties to said suit or not. [Id.; Acts 1927, 40th Leg., p. 83, ch. 59, § 1.]

Art. 6643a. In lieu of lis pendens.—In any suit or action of which a notice of pendency thereof has been filed, and in which it shall appear to the court, upon motion made by any party to the suit or other person having an interest in the property affected by the action or in the result of such suit or action, that adequate relief can be secured to the party plaintiff or defendant seeking such affirmative relief therein, by the deposit of money, or in the discretion of the court, by the giving of an undertaking, the court may, at any stage of the proceeding, upon notice to all of the parties to the suit or action to be affected thereby, direct, by order made either in term time or in vacation, that the notice of the pendency thereof be cancelled upon the payment into court of the amount of the judgment sought to be recovered in such action, and such sum in addition thereto as the court may deem sufficient to cover interest likely to accrue during the pendency of the action, and costs.

In lieu thereof, the court may, in its discretion, order that an undertaking be given in a sum double the amount of the judgments sought to be recovered, with two sufficient sureties to be approved by the court, conditioned that the party or person applying therefor will pay the judgment or judgments sought to be enforced against said property, with interest and costs, in the event that a final judgment shall be entered in favor of the party to such suit filing such notice to the effect that such real estate was, at the time of the filing of such notice of pendency of action, legally and equitably therewith charged. A copy of such undertaking with notice of the filing of same shall be served upon the attorney for the party filing such notice of pendency of suit not less than two days prior to the submission of the same to the court for its approval. Upon the approval of such undertaking by the court, the court may direct that the notice of pendency of action or suit be cancelled of record in the manner above provided. [Acts 1925, p. 353.] [39th Leg. ch. 145, § 1.]

Art. 6644. Federal Lien Record.—The county clerk of each county is authorized to, and shall either file, or file and record, as is or may be provided by the laws of the United States, every notice, abstract or statement of any lien or claim, or release or discharge thereof, in favor of the United States or of any de-

partment or bureau thereof, when any such notice, abstract or statement prepared in conformity to the laws of the United States, is presented to him for filing or filing and recording. The county clerk shall number such notices, abstracts or statements, in the order in which they are filed, and if they are required to be recorded, he shall record them in a well bound book to be styled, "Federal Lien Record," and in either case he shall index them alphabetically under the names of the persons named therein or affected thereby, such index to be kept in a well bound book styled, "Index to Federal Liens," and for the performance of these services he shall not charge a fee, but shall be compensated by the county, as provided for in Article 3931. His failure to file, record or index properly any such notice, abstract or statement as herein required, or to be compensated therefor, shall not affect the validity or legality of any such lien or claim, or release or discharge thereof. [Acts 1923, p. 18.]

Art. 6645. [6841] [4651] [4341] Title to chattels, where recorded; railroad equipment, inapplicable to.—Every deed, mortgage, or other writing, respecting the title of personal property hereafter executed, which by law ought to be recorded, shall be recorded in the Clerk's office of the County Court of that county in which the property shall remain; and if afterwards the person claiming title under such deed, mortgage, or other writing, shall permit any other person in whose possession such property may be to remove with the same, or any part thereof, out of the county in which the same shall be recorded, and shall not, within four (4) months after such removal, cause the same to be recorded in the county to which such property shall be removed, such deed, mortgage, or other writing for so long as it shall not be recorded in such last-mentioned county, and for so much of the property aforesaid as shall have been removed, shall be void as to all creditors and purchasers thereof for valuable consideration without notice; provided, that this Article 6645 shall not apply to written contracts for the conditional sale, lease or hire of railroad equipment and rolling stock, nor to chattel mortgages, deeds of trust and other written instruments intended to operate as a mortgage or lien upon railroad equipment and rolling stock, which are authorized to be recorded in the office of the Secretary of State by Article 5490, Chapter 6, Title 90, of the Revised Civil Statutes of the State of Texas, 1925. [Acts 1897, p. 209; Acts 1840, p. 156; P.D. 4993; G.L. Vol. 10, p. 1263; G.L. Vol. 2, p. 330; Acts 1947, 50th Leg., p. 459, ch. 261, § 1.]

Art. 6646. [6842] [4652] [4342] Record of a grant, etc.—The record of any grant, deed or instrument of writing authorized or required to be recorded, which shall have been duly proven or acknowledged for record and duly recorded in the proper county, shall be taken and held as notice to all persons of the existence of such grant, deed or instrument.

CHAPTER 4.—SEPARATE PROPERTY OF MARRIED WOMEN

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Article 6647. [6844] [4654] [4344] Property of married women.—All property, real and personal, which may be owned or claimed at the time of marriage by any woman, or which she may acquire after marriage by gift, devise or descent, shall be registered as herein directed. [Acts 1846, p. 153; P. D. 4995; G. L. vol. 2, p. 1459.]

Art. 6648. [6845] [4655] May present and prove schedule.—A married woman may prepare a schedule of all the real and personal property which she owned at the time of her marriage and make her statement under oath before an officer authorized to take acknowledgments that the property described in the schedule is her separate property; and upon such statement being made, such officer shall annex a certificate of the fact under his hand and seal of office; which certificate shall be sufficient evidence for the recorder of any county to record the same. [Id.]

Art. 6649. [6846] [4656] [4346] Acquisition after marriage.—A married woman upon coming into possession of any property, real or personal, to which she had claim at the time of her marriage, or which she may afterward acquire by gift, devise or descent, may have a schedule of the same recorded in the same manner as prescribed in the foregoing article. [Id.]

Art. 6650. [6847] [4657] Where registration made.—The registration of the wife's separate property herein provided for, if real estate, shall be made in the county or counties in which the same, or a part thereof, is situated; if personal property, in the county or counties where the same remains; and in case such personal property be removed out of the county, the registration must also be made in the county in which the property is removed within four months after such removal. [Id.]

Art. 6651. [6848] [4659] [4349] Subsequent creditors, etc.—The registration of a schedule of a wife's separate property, made in accordance with the provisions of this chapter, shall be conclusive as against all subsequent creditors of and purchasers from her husband. [Id.]

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Article 6652. [6849] [4660] [4350] Penalty for failing to record.—If any county clerk to whom any instrument of writing authorized to be recorded by him, and proved or acknowledged according to law, has been delivered for record, shall neglect or refuse to make an entry thereof, or give receipt therefor, as required by law, or shall neglect or refuse to record such instrument of writing within a reasonable time after receiving the same, or shall record any instrument of writing affecting the same property, or any part thereof, before another first deposited in his office and entitled to be recorded, or shall record any such instrument incorrectly, or shall neglect or refuse to provide and keep in his office such indexes as required by law, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered on motion in the district court, one-half to the use of the county, and the other half to the use of the person who shall sue for the same, such clerk having three days' notice of such motion, and shall also be liable to the party for all damages he may have sustained thereby, to be recovered by suit on his official bond against such clerk and his sureties. [Acts 1846, p. 236; G. L. vol. 2, p. 1542.]

Art. 6653. [6850] [4661] [4351] Conveyances governed by then existing law.—The legality of the execution, acknowledgment, proof, form or rec-

ord of any conveyance or other instrument heretofore made, executed, acknowledged, proved or recorded, shall not be affected by anything contained in this title, but shall depend for its validity and legality upon the laws in force when the act was performed.

Art. 6654. [6851] [4664] [4352] Prior records; evidence.—All conveyances of real property heretofore made and acknowledged or proved, according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and may be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this title.

Art. 6655. [6852] [4663] [4353] May correct imperfect certificate.—When the acknowledgment or proof of the execution of any instrument in writing may be properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

Art. 6656. [6853] [4664] [4354] Judgment of proof of instrument.—Any person interested under any instrument in writing entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

Art. 6657. [6854] [4665] [4355] Effect of judgment.—A certified copy of the judgment in a proceeding instituted under either of the two preceding articles, showing the proof of the instrument, and attached thereto, shall entitle such instrument to record with like effect as if acknowledged.

Art. 6658. [3702] Land in Archer County.—Certified copies of deeds, mortgages, trust deeds, and all other instruments in any manner affecting titles to lands in Archer County which were recorded in Jack County from August 10, 1866 to August 10, 1870, made under the hand and seal of the County Clerk of Shackelford County, shall be admitted in evidence in all suits where secondary evidence is admissible. [Acts 1897, p. 143.]

Art. 6659. [6855] [4666] [4356] Record of certain titles confirmed.—Any grant, deed, or other instrument of writing, for the conveyance of real estate or personal property, or both, or for the settlement thereof in marriage, or separate property, or conveyance of the same in mortgage, or trust to uses, or on conditions, as well as any and every other deed or instrument required or permitted by law to be registered, and which shall have been prior to the ninth day of February, 1860, registered or recorded, shall be held to have been lawfully registered, with the full effect and consequences of existing laws; provided, the same shall have been acknowledged by the grantor or grantors before any chief justice, or associate justice, or clerk of the county court, or notary public in any county within the late Republic or the now State of Texas, or judge of the department of Brazos, or any primary judge, or judge of the first instance in 1835 or 1836, or proven before any such officer by one or more of the subscribing witnesses thereto, and certified by such officer, whether such acknowledgment or proof shall have been made before any such officer of the county where such instrument should have been recorded or not. [Acts 1860, p. 75; G. L. vol. 4, p. 1437; P. D. 5021.]

Art. 6660. [6856] [4667] [4357] Shall be evidence, when.—All such instruments which shall have been acknowledged or proven before any officer named in the preceding article, and which shall have been afterward recorded in the proper county, or certified copies thereof, shall be evidence in the courts, as full and sufficient as if such acknowledgment had been taken or proof made in accordance with existing laws; but this article and the article preceding shall not be construed so as to affect or bind, in any manner, any person or party with constructive notice of the existence of any deed or other instrument, except after the ninth day of February, 1860, and in the future. [Id.]

Art. 6661. [6857] [4668] [4358] Old registration operative.—Where an instrument in writing has been duly registered in the proper county, and any property conveyed or incumbered by such instrument shall fall within another county subsequently created, the prior registration shall not be deemed to be thereby invalidated or in any manner affected, but shall still continue to be equivalent to an actual notice of its contents to all persons whomsoever; and it shall be the duty of the county court of the new county (and at the expense thereof) to cause a transcript of the record of all such instruments to be made and duly certified and deposited in the recorder's office of said new county, for public inspection, and indexes of the same to be made. [Id.]

Art. 6662. [6858] [4669] Attachments recorded.—Whenever an attachment is levied upon real estate, the officer levying the writ shall immediately file with the county clerk of the county or counties in which the real estate so levied upon is situated, a copy of the writ, together with a copy of so much of his return as relates to the land in said county. Said clerk shall enter in a book, to be kept for that purpose, the names of the plaintiffs and defendants in attachment, the amount of the debt and the return of the officer in full. Should the writ of attachment be quashed or otherwise vacated, the court in which the attachment suit is pending shall cause a certified copy of said order to be sent to the county clerk of the county or counties in which the real estate levied upon is situated. The clerk shall, upon the receipt of the same, enter in the book aforesaid the names of the plaintiffs and defendants and record the order of the court in full. If the real estate levied upon is situated in any county other than the one in which the suit is pending, then, in case of failure to make the record aforesaid, the attachment lien shall not be valid against subsequent purchasers for value and without notice and subsequent lienholders in good faith. Each county clerk shall keep a well bound book for the record of the matters aforesaid, and shall keep a direct and reverse index thereto in which shall be entered the names of all the plaintiffs and defendants in the various attachments recorded by him; and the order of the court aforesaid shall be indexed in the same manner. [Acts 1889, p. 80, G. L. vol. 9, p. 1108.]

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1. STATE HIGHWAY DEPARTMENT

Article 6663. Department.—The administrative control of the State Highway Department, hereinafter called the Department, shall be vested in the State Highway Commission, hereinafter called the Commission, and the State Highway Engineer. Said Department shall have its office at Austin where all its records shall be kept. [Acts 1917, p. 416.]

Art. 6663a. Photographic or microphotographic records; authority of Highway Department and Public Safety Department to make; destruction of original records.—Section 1. The State Highway Department is hereby authorized to photograph, microphotograph, or film motor vehicle registration records, certificate of title records, highway planning survey records, accounting records including copies of labor and material payrolls, material shipping orders and supporting detail of quotations; and the Texas Department of Public Safety is hereby authorized to photograph, microphotograph, or film all records in connection with the issuance of operators' licenses, chauffeurs' licenses, and commercial operators' licenses and all records of the various divisions of the Texas Department of Public Safety, with the exception that no original fingerprint card or any evidence submitted in connection with a criminal case or any confession or statement made by the defendant in a criminal case shall be photographed or filmed for the purpose of disposing of the original records, and that whenever the State Highway Department or the Texas Department of Public Safety shall have photographed, microphotographed or filmed such records and whenever such photographs or microphotographs or films shall be placed in conveniently accessible files and provisions made for preserving, examining and using the same, the State Highway Department or the Texas Department of Public Safetey may cause the original records from which the photographs, microphotographs or films have been made to be disposed of or destroyed.

Sec. 2. Photographs or microphotographs or films of any record photographed, microphotographed or filmed, as herein provided, shall have the same force and effect as the originals thereof would have had, and shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. Duly certified or authenticated copies of such photographs or microphotographs or films shall be admitted in evidence equally with the original photographs or microphotographs or films.

Sec. 2a. The State Highway Engineer, for the State Highway Department, and the Director of the Texas Department of Public Safety, for the Texas Department of Public Safety, are hereby authorized to certify to the authenticity of any photograph or microphotograph herein authorized and shall make such charges therefor as may be authorized by law. Such certified records shall be furnished to any person who is entitled to receive the same under the law.

Sec. 3. If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional. [Acts 1945, 49th Leg., p. 57, c. 39.]

Section 4 of this Act repealed all conflicting laws.

Art. 6664. Commission.—The Commission shall consist of three citizens of the State. With the advice and consent of the Senate, the Governor shall biennially appoint one member to serve for a term of six years, the classification to continue as constituted by law. The Governor shall designate one such member as chairman. Each member shall execute a bond payable to the State in the sum of five thousand dollars, to be approved by the Governor, and conditioned upon the faithful performance of his duties. The premium on such bonds shall be paid out of the State Highway Fund. [Id.; Acts 1923, p. 325.]

Art. 6665. Organization.—The Commission shall hold regular meetings once each month. They shall attend the same and such special or called meetings as they may provide by rule or the chairman may call. They shall formulate plans and policies for the location, construction and maintenance of a comprehensive system of State highways and public roads. They shall biennially submit a report of their work to the Governor and the legislature, with their recommendations and those of the State Highway Engineer. A quarterly statement containing an itemized list of all moneys received and from what source and of all money paid out and for what purpose shall be prepared and filed in the records of the Department and a copy sent to the Governor. These records shall be open to public inspection. [Id.]

Art. 6666. Rules.—The Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the Department as may be deemed necessary, not inconsistent with the provisions of law. They shall maintain a record of all proceedings and official orders and keep on file copies of all road plans, specifications and estimates prepared by the Department or under its direction. [Acts 1917, p. 416.]

Art. 6667. To aid road officials.—The Department shall collect information and compile statistics relative to the mileage, character and condition of the public roads in the different counties, and the cost of construction of the different classes of roads in the various counties. It shall investigate and determine the methods of road construction best adapted to the different sections of the State, and shall establish standards for the construction and maintenance of highways, bridges and ferries, giving due regard to all natural conditions and to the character and adaptability of road building material in the different counties. The Department may, at all reasonable times, be consulted by county and city officials for any information or assistance it can render with reference to the highways within such counties or cities, and it shall supply such information when called for by city or county officials; and it may in turn call upon all such officials for any information necessary for the performance of its duties hereunder. Upon request of the commissioners court of any county, the Department shall consider and advise concerning general plans and specifications for all road construction to be undertaken from the proceeds of the sale of bonds or other legal obligations issued by a county, or by any subdivision or defined district of a county; and such information and advice shall be so obtained before any of the proceeds from such bond issues are expended by or under the direction of the commissioners court. [Id.]

Art. 6668. Qualifications of engineers.—The Department shall adopt such rules as are found necessary to determine the fitness of engineers making application for highway construction work. Upon the formal application of any county or organized road district thereof, or of any municipality, the Commission may recommend for appointment a competent civil engineer, and graduate of some first class school of civil engineering, skilled in the knowledge of highway construction and maintenance. [Id.]

Art. 6669. Engineer.—The Commission shall elect a State Highway Engineer who shall be a competent civil engineer and graduate of some first class school of civil engineering, experienced and skilled in

highway construction and maintenance, who shall hold his position until removed by the Commission. He shall first execute a bond payable to the State in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. He shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction and statement of expenditures. He shall be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission. [Id.]

Art. 6669a. [Expired.]

This article, Acts 1927, 40th Leg., p. 214, ch. 143, § 1, read as follows:

"The Highway Commission is hereby authorized and empowered to employ a Chief Auditor of Accounts and Expenditures, three Engineer Accountants or Inspectors, and two Equipment Inspectors, fix their compensation and pay the same out of the State Highway Fund."

Section 2 of Acts 1927, 40th Leg., p. 214, ch. 143, provides that the authority granted and employments thereunder shall expire on the taking effect of the appropriation for the Highway Department for the fiscal years 1928 and 1929.

Art. 6669b. Exchange of engineering employees with Mexico.—Section 1. The Texas Highway Commission is hereby authorized to employ not to exceed five (5) citizens of the Republic of Mexico who are either student or graduate engineers, for a period of not more than six (6) months, and to pay such employees for their services out of the State Highway Fund, provided the Republic of Mexico will employ an equal number of the engineers of the Texas Highway Department in similar work in the Republic of Mexico and pay them for their services for similar periods of time.

Sec. 2. The Texas Highway Commission is further authorized to grant leaves of absence to not to exceed five (5) of its engineering employees for the purpose of accepting employment with the Republic of Mexico as provided in Section 1.

Sec. 3. The provisions of this Law shall be cumulative of all laws on the subject not in actual conflict herewith and all laws or parts of laws in conflict herewith are repealed only in so far as such laws are in actual conflict with the provisions of this Act, and in case of such conflict the provisions of this Act shall control and be effective. [Acts 1943, 48th Leg., p. 560, ch. 331.]

Art. 6670. State road map.—The Highway Engineer shall cause to be made and kept in form convenient for examination in the office of the Department, a complete road map of the State as represented in the road construction of the various counties, and such map shall be regularly revised as construction proceeds in the different counties. He shall also prepare, under the direction and with the approval of the Commission, a comprehensive plan providing a system of State highways. [Acts 1917, p. 416.]

Art. 6671. Laboratories.—The laboratories maintained at the Agricultural and Mechanical College of Texas and at the University of Texas shall be at the disposal and direction of the Highway Engineer for the purpose of testing and analyzing road and bridge material, and those in charge of said laboratories shall co-operate with and assist said Engineer to that end. [Id.]

Art. 6672. Federal aid.—Any funds for public road construction in this State appropriated by the Federal Government shall be expended by and under the supervision of the Department only upon a part of the system of State Highways. [Id.]

Art. 6673. Control of highways.—The Commission is authorized to take over and maintain the various State Highways in Texas, and the counties through which said highways pass shall be free from any cost, expense or supervision of such highways. The Commission shall use the automobile registration fees in the State Highway Fund for the maintenance of such highways, and shall divert the same to no other use unless the Commission shall be without sufficient funds from other sources to meet Federal aid to roads in Texas, and in such case the Commission is authorized by resolution to transfer a sufficient amount from such fund to match said Federal aid. [Acts 1923, p. 161; Acts 2nd C. S. 1923, p. 71.]

Acts 1933, 43rd Leg., p. 975, H.C.R. # 21 relates to equipment of the State Highway Patrol.

Art. 6673a. Sale of abandoned highway route; fee simple owner of land dedicated for highway relieved from tax thereon.—Sec. 1. Wherever the State Highway Commission has acquired or shall hereafter acquire any land by purchase, condemnation, or otherwise to be used as a right of way for any State Highway and thereafter the route of such Highway was or shall be changed or abandoned, and any such right of way be no longer needed for such Highway, or needed for use of citizens as a road, the State Highway Commission may recommend to the Governor that such land be sold and that he execute a deed conveying all the State's right, title, and interest in such land so acquired. Upon the recommendation of the Commission, the Governor may execute a proper deed conveying and/or exchanging such land for different land belonging to the same person or persons. It shall be the duty of the Commission to fix the fair and reasonable value of all such land and advise the Governor thereof. Provided that where such land is given to the State, the Governor may return the same by proper deed to the person or persons from whom the same is received. All money derived from the sale of such land shall be deposited with the funds from which it was originally taken. The Attorney General shall approve all transfers under this Act.

Sec. 1a. In the event any public road or State Highway is located on land in which the fee simple title is not vested in the State or the County wherein such road is located, such land so dedicated and used for such road purpose shall not be assessed for ad valorem taxation, or the fee simple owner required to pay ad valorum taxes thereon for any purpose so long as same is used for such road purpose. It shall be the duty of the Tax Assessor whenever his attention is called thereto by the fee simple owner of lands so used for public road or State Highway purposes to note on the Assessment Sheet the amount of land so used. [Acts 1931, 42nd Leg., p. 170, ch. 99.]

Art. 6673—b. Contracts with cities, etc., concerning State highways.—The State Highway Commission is hereby authorized and empowered, in its discretion, to enter into contracts or agreements with the governing bodies of incorporated cities, towns, and villages, whether incorporated under the home rule provisions of the Constitution, Special Charter, or under the General Laws, providing for the location, relocation, construction, reconstruction, maintenance, control, supervision, and regulation of designated State highways within or through the corporate limits of such incorporated cities, towns, and villages, and determining and fixing the respective liabilities or responsibilities of the parties resulting therefrom; and such incorporated cities, towns, and villages are hereby authorized and empowered, through the governing bodies of such cities, towns, and villages to enter into such contracts or agreements with the State Highway Commission. [Added Acts 1939, 46th Leg., p. 581, § 1.]

Section 2 of the Act of 1939 provided that the provisions of the act were cumulative and that the provisions thereof should govern in case of conflict.

Art. 6673—c. Farm-to-market roads; designation of county roads as.—Section 1. The State Highway Commission is authorized to designate any county road in the state as a farm-to-market road

for purposes of construction, reconstruction, and maintenance only, provided that the Commissioners Court of the county in which any such county road is located shall pass and enter in its minutes an order waiving any rights such county may have for participation by the state in any indebtedness incurred by the county in the construction of such county road; and provided further that the State Highway Commission and the Commissioners Court of the county in which any such road is located may enter into a contract that shall set forth the duties of the state in the construction, reconstruction, and maintenance of the county road in consideration of the county and/or road district relinquishing any and all claims for state participation in any county, road district, or defined road district bonds, warrants, or other evidences or indebtedness oufstanding against such road for the construction or improvement of the road before being designated by the State Highway Commission.

Sec. 2. It is hereby declared to be the policy of the state that the assumption by the state of the obligation to construct and maintain such roads designated by the State Highway Commission as farm-to-market roads under the provisions of this Act constitutes full and complete compensation for any and all funds that might have been expended by any county, road district, or defined road district in the construction and maintenance of said road prior to its designation by the State Highway Commission as a farm-to-market road.

Sec. 3. This Act shall be cumulative of all other laws on this subject, but in the event of a conflict between the provisions of this Act and any other Act on this subject, the provisions of this Act shall prevail. [Acts 1943, 48th Leg., p. 365, ch. 244.]

Art. 6673—d. Flight strips and roads to military reservations; agreements with United States Public Roads Administration.—Section 1. In order to facilitate the war effort, the Texas State Highway Department, upon request of the Commissioner of Public Roads of the United States, is hereby authorized to enter into agreements with the Public Roads Administration in the making of surveys, plans, specifications, and estimates for, and in the construction and maintenance of, flight strips and of roads and bridges necessary to provide access to military and naval reservations, to defense industries and defense industry sites, and to sources of raw materials, and for replacing existing highways and highway connections shut off from general public use at military and naval reservations and defense industry sites, and in the manner authorized by the highway laws of Texas, may enter into contracts for the construction of any such flight strips or roads, or may perform such construction and maintenance work by a force account when such construction and maintenance work, including the costs of surveys, plans, specifications, and estimates, is paid for in whole by Federal funds.

Sec. 2. The authority conferred upon the Texas State Highway Department by this Act shall remain in effect during the continuance of the emergency declared by the President May 27, 1941, and for a period of six (6) months thereafter.

Sec. 3. If any section, sub-section, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed the Act and each section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, sub-sections, sentences, clauses or phrases be declared unconstitutional. [Acts 1943, 48th Leg., p. 363, ch. 241.]

Proclamation of the President of the United States, No. 2487, May 27, 1941, declared the existence of an unlimited national emergency. For the termination of the unlimited national emergency as to certain war and emergency legislation, see Act of Congress of July 25, 1947, c. 327 and the Congressional Comment with reference thereto, 1947 U.S.Code Congressional Service, p. 453.

Art. 6674. Operating expenses.—The legislature shall make appropriations for the maintenance and running expenses of the Department, fix the compensation of the Highway Engineer and all other employés of the Department, and determine the number of such employés; and shall fix the compensation of the members of the Commission at not exceeding twenty-five hundred dollars per annum. The Board of Control shall make contracts for equipment and supplies (including seals and number plates) required by law in the administration of the registration of licensed vehicles, and in the operation of said Department. All money herein authorized to be appropriated for the operation of the Department and the purchase of equipment shall be paid from the State Highway Fund, and the remainder of said fund shall be expended by the Commission for the furtherance of public road construction and the establishment of a system of State highways as herein provided. [Acts 1921, p. 102; Acts 1923, p. 325.]

1A. CONSTRUCTION AND MAINTENANCE

Art. 6674a. Definition of terms.—The term "highway" as used in this Act [1] shall include any public road or thoroughfare or section thereof and any bridge, culvert or other necessary structure appertaining thereto. The term "improvement" shall include construction, reconstruction or maintenance, or partial construction, reconstruction or maintenance and the making of all necessary plans and surveys preliminary thereto. The term "Commission" refers to the State Highway Commission and the term "Department" refers to the State Highway Department. [Acts 1925, 39th Leg., ch. 186, p. 456, § 1.]

1 Articles 6674a–6674n.

Art. 6674b. Highway system.—All highways in this State included in the plan providing a system of State Highways as prepared by the State Highway Engineer in accordance with Section 11 of Chapter 190 of the General Laws of the Regular Session of the Thirty-fifth Legislature are hereby designated as the "State Highway System." [Acts 1925, 39th Leg., ch. 186, p. 456, § 2.]

Art. 6674c. [Repealed by Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 3.]

The repealed Article was Acts 1925, 39th Leg., p. 456, ch. 186, § 3.

Art. 6674c—1. Contributions from counties or political subdivisions for roads therein.—Any county or political sub-division of any county in this state, acting through its governing agency, may make, and the State Highway Commission, in its discretion, may accept, voluntary contributions of available funds from such county or political sub-division, for expenditure by the State Highway Commission in the development of the public roads of such county, or political sub-division. [Acts 1947, 50th Leg., p. 25, ch. 18, § 1.]

Section 2 of the Act of 1947 repealed all conflicting laws.

Art. 6674d. Federal aid.—All further improvement of said State Highway System with Federal aid shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. The further improvement of said system without Federal aid may be made by the State Highway Department either with or without county aid. Surveys, plans, specifications and estimates for all further improvement of said system with Federal aid or with Federal and State aid shall be made and prepared by the State Highway Department. No further improvement of said system shall be made under the

direct control of the commissioners' court of any county unless and until the plans and specifications for said improvement have been approved by the State Highway Engineer.

Nothing in this section or this Act [1] shall be construed as prohibiting the granting of State aid under the provisions of Chapter 190, General Laws of the Regular Session of the Thirty-fifth Legislature and subsequent amendments thereto, nor shall anything in this Act prevent the completion of any highway improvement project already begun or the carrying out of any contract for such improvement. [Acts 1925, 39th Leg., ch. 186, p. 456, § 4.]

1 Articles 6674a-6674n.

Art. 6674d—1. Federal aid on non-State Highway System roads.—From and after the effective date of this Act, all moneys appropriated by the Congress of the United States and allocated by the Secretary of Agriculture of the United States to the State Highway Department for expenditure on roads not on the system of State Highways, may be expended, by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads and said Federal Funds may be matched, or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work. State funds shall not be used exclusively for the construction of roads not on the System of State Highways, the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs on which the application of Federal funds is prohibited or impractical. [Acts 1939, 46th Leg., p. 579, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

Art. 6674e. Appropriations from Highway Fund.—All moneys now or hereafter deposited in the State Treasury to credit of the "State Highway Fund", including all Federal aid moneys deposited to the credit of said fund under the terms of the Federal Highway Act [1] and all county aid moneys deposited to the credit of said fund under the terms of this Act shall be subject to appropriation for the specific purpose of the improvement of said system of State Highways by the State Highway Department. [Acts 1925, 39th Leg., ch. 186, p. 457, § 5.]

1 23 U.S.C.A. §§ 1-25.
Acts 1933, 43rd Leg., p. 800, ch. 234, §§ 1, 2 makes appropriation for intracoastal bridges.

Arts. 6674f, 6674g. [Repealed by Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 3.]

The articles repealed were Acts 1925, 39th Leg., p. 457, ch. 186, §§ 6, 7.

Art. 6674h. Competitive bids.—All contracts proposed to be made by the State Highway Department for the improvement of any highway constituting a part of the State Highway System or for materials to be used in the construction or maintenance thereof shall be submitted to competitive bids. Notice of the time when and place where such contracts will be let and bids opened shall be published in some newspaper published in the county where the improvement is to be done once a week for at least two weeks prior to the time set for the letting said contract and in two other newspapers that the department may designate. Provided, however, that on contracts involving less than Twenty-five Thousand ($25,000.00) Dollars such advertising may be limited to two successive issues of any newspaper published in the county in which the work is to be done, and if there is no newspaper in the county in which the work is to be done then said advertising shall be for publication in some newspaper in some county nearest the county seat of the county in which the work is to be done. Provided further, that any person, firm or corporation may make application to have the name of said applicant placed upon a mailing list to receive notices of lettings of any contracts provided for herein; and notices of said lettings shall be mailed by the Highway Commission of the State of Texas to all persons, firms or corporations on said mailing list. The Highway Commission shall have the right to require all applicants to deposit with the commission a sum of not exceeding Fifteen ($15.00) Dollars per year to cover costs of mailing notices. [Acts 1925, 39th Leg., p. 457, ch. 186, § 8; Acts 1933, 43rd Leg., 1st C.S., p. 286, ch. 103, § 1.]

Art. 6674i. Opening and rejecting bids.—The State Highway Department shall have the right to reject any and all such bids. All such bids shall be sealed, and filed with the State Highway Engineer, at Austin, Texas, and shall be opened at a public hearing of the State Highway Commission. All bidders may attend and all bids to be opened in their presence. Copies of all such bids shall be filed with the county in which the work is to be performed. Provided however, on contracts involving less than Twenty-five Thousand ($25,000.00) Dollars bids may in the discretion of the Highway Commission be received at a public hearing by the Division Engineer at the Division Headquarters. All bids so received by the Division Engineer shall be tabulated and forwarded to the State Highway Commission, shall have the right to accept or reject same, and if accepted, award the contract to the lowest bidder. It shall be the duty of the Highway Commission to prescribe rules and regulations on all bidders on bids received by Division Engineers, but the rules and regulations required by the State Highway Commission for bids received at Austin by said Commission shall not apply to bidders submitting bids to Division Engineers. [Acts 1925, 39th Leg., p. 458, ch. 186, § 9; Acts 1933, 43rd Leg., 1st C.S., p. 286, ch. 103, § 2.]

Art. 6674j. Contractor's bond.—The successful bidder or bidders shall enter into written contracts with said department, and shall give bond in such amounts as is now provided by law, conditioned for the faithful compliance with his bid and performance of the contract and payable to the State Highway Department for the use and benefit of the State Highway Fund. [Acts 1925, 39th Leg., ch. 186, p. 458, § 10.]

Art. 6674k. Form of contract.—The State Highway Commission shall prescribe the form of such contracts and may include therein such matters as they may deem advantageous to the State. Such forms shall be uniform, as near as may be. [Acts 1925, 39th Leg., ch. 186, p. 458, § 11.]

Art. 6674l. Signing contracts.—Every such contract for highway improvement under the provisions of this Act [1] shall be made in the name of the State of Texas, signed by the State Highway Engineer, approved by at least two members of the State Highway Commission and signed by the contracting party, and no such contract shall be entered into which will create a liability on the part of the State in excess of funds available for expenditure under the terms of this Act. [Acts 1925, 39th Leg., ch. 186, p. 458, § 12.]

1 Articles 6674a-6674n.

Art. 6674m. Partial payments.—Said contracts may provide for partial payments to an amount not exceeding (90%) of the value of the work done. Ten per centum of the contract price shall be retained until the entire work has been completed and accepted, and final payment shall not be made until it is shown that all sums of money due for any labor, materials, or equipment furnished for the purpose of such improvements made under any such contract have been paid. [Acts 1925, 39th Leg., ch. 186, p. 458, § 13.]

Art. 6674n. Condemnation of right of way and materials by Commissioners' Court.—Whenever, in the judgment of the State Highway Commission, the use or acquisition of any land for road, right

of way purposes, timber, earth, stone, gravel or other material, necessary or convenient to any road to be constructed, reconstructed, maintained, widened, straightened or lengthened, or land not exceeding one hundred (100) feet in width for stream bed diversion in connection with the locating, relocating or construction of a designated State Highway by the State Highway Commission, the same may be acquired by purchase or condemnation by the County Commissioners Court. Provided that the County in which the State Highway is located may pay for same out of the County Road and Bridge Fund, or any available county funds.

Any Commissioners Court is hereby authorized to secure by purchase or by condemnation on behalf of the State of Texas, any new or wider right of way or land not exceeding one hundred (100) feet in width for stream bed diversion in connection with the locating, relocating or construction of a designated State Highway, or land or lands for material or borrow pits, to be used in the construction, reconstruction, or maintenance of State Highways and to pay for the same out of the County Road and Bridge Fund, or out of any special road funds or any available county funds. The State Highway Commission shall be charged with the duty of furnishing to the County Commissioners Court the plats or field notes of such right of way or land and the description of such materials as may be required, after which the Commissioners Court may, and is hereby authorized to purchase or condemn the same, with title to the State of Texas, in accordance with such field notes. Provided that in the event of condemnation by the County the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, of 1925. Provided that if the County Commissioners Court of any County in which such right of way is, in the judgment of the State Highway Commission, necessary for the construction of a part of a designated State Highway shall fail or refuse to secure by purchase or by condemnation for or on behalf of the State of Texas, such right of way or part thereof, immediately and as speedily as possible, under said Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, of 1925, after being served with a copy of an order of the State Highway Commission identifying by field notes, the part of the Highway necessary for the construction of such designated State Highway and requesting such County Commissioners Court to secure same, then and in such event and within ten (10) days after the service of such notice, said State Highway Commission shall direct the Attorney General of Texas, to institute condemnation proceedings in the name of the State of Texas, for the purpose of securing such right of way. The right of eminent domain to condemn any part of a right of way for a State designated highway, under the conditions herein set out is hereby conferred on the State Highway Commission and the jurisdiction for the exercise of such right is hereby conferred on the County Court of Travis County. Such condemnation proceedings shall be instituted by the Attorney General by filing a statement for condemnation with the County Judge of Travis County, Texas, and the venue of such proceeding shall be in Travis County, Texas, and jurisdiction and authority to appoint three (3) disinterested freeholders of Travis County, Texas, as Commissioners is hereby conferred upon the County Judge of Travis County, Texas, and otherwise such condemnation shall be according to the provision of said Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, of 1925. [Acts 1925, 39th Leg., p. 458, ch. 186, § 14; Acts 1929, 41st Leg., 3rd C.S., p. 243, ch. 10; Acts 1930, 41st Leg., 5th C.S., p. 243, ch. 79; Acts 1933, 43rd Leg., p. 622, ch. 207; Acts 1935, 44th Leg., p. 485, ch. 199, § 1.]

Section 2 of Act 1935, repeals all conflicting laws and parts of laws and section 3 provides that if any part of the act is held invalid, such decision shall not affect the validity of the remainder of the Act.

Art. 6674o. Maintenance of detour roads.—Sec. 1. From and after the taking effect of this Act, it shall be the duty of the State Highway Department, wherever construction on any part of the State System of Highways is being carried on and it becomes necessary to close such roads under construction to traffic, to provide for the convenience of the public by the selection and improvement and maintenance of an all-weather detour road, to be used and controlled during the period of such State use under like conditions and authority as exercised over parts of the designated system of State Highways; and the Highway Commission shall provide for the equipment of such detour roads in a manner adequate to the convenience and safety of the normal traffic diverted thereupon; counties are hereby required to render the State Highway Commission such cooperation as may be necessary for adequate provision for the traffic requirements of the public in the selection and maintenance of all such detour roads in or through the county.

Sec. 2. That from and after the taking effect of this Act, it shall be the duty of any County Commissioners' Court in this State wherever construction upon any part of the County System of Public Roads, not parts of the designated State System of Highways, is being carried on and it becomes necessary to close such roads under construction to traffic, to provide for the convenience of the public by the selection and use of a detour road, to be controlled and maintained during the period of such county use under like conditions of authority as exercised over an established public road.

Sec. 3. In all such provisions for detour roads by State Highway Commission, and in all provisions for detour roads by County Commissioners' Courts it shall be the duty of the State Highway Commission, or Commissioners' Court, as the case may be, to post all necessary signboards for the convenience and guidance of the public at each end of such detour road, and provide with reasonable adequacy for the maintenance of the detour roads in a manner to respond to normal traffic requirements passing over such State highways or such county roads. [Acts 1929, 41st Leg., p. 59, ch. 25.]

Art. 6674p. Minimum wage for highway labor; citizens' preference in employment.—Sec. 1. Hereafter the State Highway Commission in letting contracts for the construction, maintenance or improvement of any designated State Highway, shall be authorized to require that all contracts for any such work, contain a provision that no person will be employed, by the contractor, to perform manual labor in the course of the construction, maintenance or improvement of any such highway at a wage of less than thirty cents per hour, and that any violation of any such provision of the contract by the contractor, sub-contractor, or other person subject to such provision of the contract, shall authorize the Commission to withhold from any money due the contractor a sufficient sum to pay any person such minimum wage for any labor performed, or the Commission may, for the benefit of any such person, recover such sum on the bond of the contractor, if it does not have in its possession money owing the contractor, applicable for such purposes. That citizens of the United States and of the county wherein the work is being proposed shall always be given preference in such employment; provided also that all other departments, bureaus, commissions and institutions of the State of Texas in all construction work of every character requiring employment of day labor shall likewise be authorized and empowered to

exercise the same authority herein conferred on the State Highway Commission.

Sec. 2. Hereafter, in advertising for bids for the construction, maintenance or improvement of any designated State Highway, the Commission, in the event it desires to exercise the authority herein conferred to require a provision for such minimum wage, shall so state in the advertisement, so that all bidders may be aware of such requirement in submitting bids for such work. [Acts 1931, 42nd Leg., p. 69, ch. 46.]

Art. 6674q. Exchange of lands by State Highway Commission.—The State Highway Commission is hereby authorized and empowered at its discretion to exchange any lands or interests therein heretofore donated to the State of Texas, either for right of way purposes, or for the use of the people of Texas for camping accommodations and for park purposes, under and pursuant to the provisions of Chapter 37 of the General and Special Laws of the First Called Session of the Fortieth Legislature, page 110, for other lands or interests therein, located adjacent to or accessible from the state highway provided for in said Act and deemed by the Commission, in its discretion, to be more desirable for said purposes than said lands or interests heretofore donated; the State Highway Commission is authorized to execute the necessary deeds or conveyances for the purposes stated to be signed by the chairman pursuant to the order of the Commission. [Acts 1933, 43rd Leg., p. 761, ch. 224, § 1.]

Art. 6674q—1. Declaration of policy of state with reference to building, maintaining and financing state designated roads.—It is expressly recognized and declared that all highways now or heretofore constituting a part of the system of State Highways and that all roads not constituting a part of such system, which have been constructed in whole or in part from the proceeds of bonds, warrants, or other evidence of indebtedness issued by counties of the State of Texas, or by defined road districts of the State of Texas, under the laws authorizing the same, have been and are and will continue to be beneficial to the State of Texas at large, and have contributed to the general welfare, settlement, and development of the entire state, and that, by reason of the foregoing, a heavy and undue burden was placed, and still rests, upon the counties and defined road districts and their inhabitants, and both a legal and moral obligation rests upon the state to compensate and reimburse such counties and defined road districts which, as aforesaid, have performed functions resting upon the state, and have paid expenses which were and are properly state expenses; all for the use and benefit of the state, and to the extent provided herein that the state provide funds for the further construction of roads not designated as a part of the State Highway System.

Having heretofore, by an Act of the Legislature (Chapter 13, Acts of the Third Called Session of the 42nd Legislature in 1932), taken over, acquired, and purchased the interest and equities of the various counties and defined road districts in and to the highways constituting a part of the system of then designated State Highways, it is further declared to be the policy of the state to take over, acquire, purchase, and retain the interest and equities of the various counties and defined road districts in and to the highways, not previously taken over, acquired, and purchased and constituting on January 2, 1939, a part of the system of designated State Highways, and to acquire and purchase the interest and equities of the various counties and defined road districts in and to the roads not constituting a part of the system of designated State Highways as of January 2, 1939, and under the provisions of this Act [1] to acquire such interest and equities in such roads hereafter to be constructed with money furnished by the state, and to reimburse said counties and districts therefor, and to provide for the acquisition, establishment, construction, extension and development of the system of designated State Highways of Texas, from some source of income other than the revenues derived from ad valorem taxes, it being expressly provided herein that the state is not assuming, and has not assumed, any obligation for the construction, extension, and development of any of the highways thus acquired and purchased which do not constitute a part of the system of designated State Highways. And it is hereby determined that the further provisions of this Act constitute fair, just, and equitable compensation, repayment, and reimbursement to said counties and defined districts and for their aid and assistance to the state in the construction of State Highways and for the construction of said roads which are ancillary to, but do not constitute a part of said System of State Highways, and fully discharges the legally implied obligations of the state to compensate, repay, and reimburse the agencies of the state for expenses incurred at the instance and solicitation of the state, as well as for expenses incurred for the benefit of the state, and fully discharges the state's legally implied obligation to such counties and defined road districts to provide additional funds for the further construction of roads not designated as a part of the State Highway System. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 1; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

[1] Articles 6674q—1 to 6674q—11.

Section 12 of Acts of 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, added by Acts 1939, 46th Leg., p. 582, § 1 was amended by Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1, so as to make an appropriation out of the County and Road District Highway Fund, not otherwise appropriated for the fiscal year ending Aug. 31, 1942, for additional employees and expenses.

Section 2 of the Acts of 1941 and 1943 provided that such Acts should be cumulative but in the event of a conflict the provisions thereof should prevail. Section 12 of the Act of 1932 made an appropriation for additional employees and expenses to the Board of County and District Road Indebtedness.

Art. 6674q—2. Definitions.—By the expression "defined road districts" or "road districts" or "districts" used in this Act [1], is meant any defined road district of the state or any Justice or Commissioners Precinct acting as a road district or any road district located in one or more than one county.

By the expression "roads" or "road" as used in this Act, is meant roads, road beds, bridges, and culverts.

By the expression "highways," "State Highways" and "State Designated Highways" are meant roads which prior to January 2, 1939, had become a part of the System of designated State Highways, including roads still constituting a part of such system on said date and those which theretofore constituted a part of such system, but whose status had been lost through change, relocation or abandonment and including roads concerning which the State Highway Commission had prior to January 2, 1939, indicated its intention to designate, evidencing such intention in the official records or files.

All roads which prior to January 2, 1941, had not become a part of the system of State Designated Highways, for convenience in this Act, are called "lateral roads."

The term "Board" as used in this Act, when the contrary is not clearly indicated, shall mean the "Board of County and District Road Indebtedness."

The term "fund" as used in this Act, when the contrary is not clearly indicated, shall mean the "County and Road District Highway Fund."

The expression "eligible obligations" as used in this Act shall mean obligations, the proceeds of which were actually expended on State Designated Highways. (Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 2; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st

C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

1 Articles 6674q—1 to 6674q—11.

Art. 6674q—3. [Omitted by Acts 1939, 46th Leg., p. 582, § 1.]

The article was Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 3.

Art. 6674q—4. Improvements under control of State Highway Department.—All further improvement of said State Highway System shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. Surveys, plans and specifications and estimates for all further construction and improvement of said system shall be made, prepared and paid for by the State Highway Department. No further improvement of said system shall be made with the aid of or with any moneys furnished by the counties except the acquisition of right-of-ways which may be furnished by the counties, their subdivisions or defined road districts. But this shall in nowise affect the carrying out of any binding contracts now existing between the State Highway Department and the Commissioners Court of any county, for such county, or for any defined road district. In the development of the System of State Highways and the maintenance thereof, the State Highway Commission shall from funds available to the State Highway Department, provide:

(a) For the efficient maintenance of all highways comprising the State System.

(b) For the construction, in co-operation with the Federal Government to the extent of Federal Aid to the state, of highways of durable type of the greatest public necessity.

(c) For the construction of highways, perfecting and extending a correlated system of State Highways, independently from state funds. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 3 (formerly § 4), renumbered and amended Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

Art. 6674q—5. Appropriations from State Highway Fund.—All moneys now or hereafter deposited in the State Treasury to the credit of the "State Highway Fund" including all Federal Aid money deposited to the credit of said fund under the term of the Federal Aid Highway Act [1], shall be subject to appropriation by the Legislature for the specific purpose of the improvement of said System of State Highways by the State Highway Department. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 4 (formerly § 5) renumbered and amended Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

1 23 U.S.C.A. §§ 1–25.

Art. 6674q—6. Allocation of funds from gasoline tax.—Each month the Comptroller of Public Accounts after computing and ascertaining the maximum amount of refunds that may be due by the state on the business of selling gasoline, as provided in Section 17, Chapter 88, General Laws, Acts of the Second Called Session of the 41st Legislature, as amended by Chapter 104, General Laws, Acts of the Regular Session of the 42nd Legislature,[1] shall deduct same from the total occupation or excise tax paid on the business of selling gasoline, as imposed by Section 17, Chapter 98, General Laws, Acts of the Regular Session of the 42nd Legislature, as amended,[2] and beginning with said taxes collected on or after October 1, 1932, shall, after deducting the said maximum amount of refunds, allocate and place the remainder of said occupation or excise tax on the business of selling gasoline, in the State Treasury as provided by law, in the proportion as follows: one-fourth (¼) of such occupation or excise tax shall go to, and be placed to the credit of, the Available Free School Fund; one-fourth (¼) of the same shall go to, and be placed to the credit of a fund to be known as the 'County and Road District Highway Fund', subject to the provisions and limitations of Section 3 of this Act;[3] the remainder of such occupation or excise tax shall go to, and be placed to the credit of the State Highways Fund, for the construction and maintenance of the public roads of the state, constituting and comprising the System of State Highways of Texas, as designated by the State Highway Commission of Texas. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 5 (formerly § 6) renumbered and amended Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

1 Article 7065n, subds. 3, 5.
2 Articles 7065a, 7065e, 7065f, 7065h, 7065j; Pen.Code, art. 141c.
3 Article 6674q—4.

Art. 6674q—7. County and Road District Highway Fund; distribution; Board of County and District Road Indebtedness continued; powers and duties; Lateral Road Account.—(a) All bonds, warrants or other evidences of indebtedness heretofore issued by counties or defined road districts of this state, which mature on or after January 1, 1933, insofar as amounts of same were issued for and proceeds have been actually expended in the construction of roads that constituted and comprised a part of the system of designated State Highways on September 17, 1932, or which subsequent to such date and prior to January 2, 1939, have been designated a part of the System of State Highways or any road that heretofore had constituted a part of said System and which has been or may be changed, relocated or abandoned, whether said indebtedness is now evidenced by the obligation originally issued or by refunding obligations or both, shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund, subject to the provisions of this Act; provided, that such indebtedness, the proceeds of which have been expended in the construction of roads which have been designated as a part of the State Highway System after September 17, 1932, and prior to January 2, 1939, shall participate in said County and Road District Highway Fund as of the date of the designation of said road as a part of the State System; provided further that any participation in said fund by any county or defined road district shall be less the amount of money which it was required to accumulate in the sinking fund under the provisions of the Statutes and order of the Commissioners Court authorizing the issue of said eligible obligations, and the tax levy authorized at the time of issuance thereof for the time such obligations have run or may have run, regardless of whether the full amount of said fund is, or may be, actually on hand and to the credit of the sinking funds of such county or defined road district. It is provided expressly in this connection that the term "sinking funds" shall include only those funds required under the law for the retirement of principal and interest, and shall not include any excess or surplus which may have been accumulated by any county or defined road district above the legal requirements. The amount of such eligible indebtedness shall be determined as hereinafter provided. Provided further, that no state funds created or provided for by the terms of this Act shall be expended in the payment of any interest maturing on the amount of sinking funds required by the terms of this Act to be accumulated by the county or defined road district at the date of eligibility of its obligations.

In the event that State Highway Commission has, on a date prior to January 2, 1939, recorded a conditional designation, and all conditions precedent to the official designation thereof have been met or performed in a manner satisfactory and acceptable to the

Highway Commission, and the Highway Commission officially enters of record its acceptance and designation of such road as a part of the State Highway System for maintenance, then the provisions of this Act shall apply as if the said roads had been actually designated prior to January 2, 1939.

All bonds, warrants or other legal evidences of indebtedness outstanding as of the date of the designation hereinafter referred to, and issued by a county or defined road district prior to January 2, 1939, insofar as amounts of same were issued and the proceeds actually expended in the construction of roads that have been officially designated as a part of the State Highway System subsequent to January 2, 1939, shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund as of the date of designation of said road as a part of the State Highway System. The amount of such bonds, warrants, or other legal evidences of indebtedness outstanding as of the date of designation of such road as a part of the State Highway System, shall be eligible for participation in the same manner as provided for other bonds under this Act.

In addition to and regardless of the other provisions of this Act, all bonds, warrants or other legal evidences of indebtedness voted, or issued without being voted by a county, road district or defined road district prior to January 2, 1939, insofar as amounts of same were or may be issued and the proceeds actually expended in the construction of roads which are now a part of the designated System of State Highways or which have since, or which may hereafter become a part of the designated System of State Highways, shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund the same as provided for other bonds under this Act, and as of the date of the designation of said road as a part of the State Highway System; and where such bonds or warrants were voted prior to January 2, 1939, and prior to the designation of the road as a State Highway and which have not yet been issued or expended, the county or defined road district may issue such bonds or warrants or other legal evidence of indebtedness and place the proceeds in escrow with the State Highway Commission for the construction of such road under plans, contracts, specifications and supervision of the State Highway Department, and when so expended the bonds, warrants, or other evidences of indebtedness shall be eligible to participate in the County and Road District Highway Fund the same as if the bonds had been issued and expended prior to January 2, 1939. Provided, further, that all such bonds or warrants to be hereafter sold pursuant to this paragraph by a county or defined road district which will be eligible for participation in the County and Road District Highway Fund under the provisions of this Section, shall be sold subject to the approval of the Board of County and District Road Indebtedness, as to amounts, maturities and interest rates.

(b) The Board of County and District Road Indebtedness, created by Chapter 13, Acts of the Third Called Session of the 42nd Legislature,[1] consisting of the State Highway Engineer, State Comptroller of Public Accounts, and State Treasurer, is hereby continued and charged with the duties of administering this Act. The State Comptroller of Public Accounts shall be the Secretary of said Board and said Board shall elect its own chairman from its membership. The Board shall adopt its own rules consistent with this Act for the proceedings held hereunder, and shall have authority to call to its assistance, in arriving at the amount of bonds, warrants, or other evidences of indebtedness eligible to participate in the County and Road District Highway Fund, any official or employee of this state, and shall avail itself of all data and information assembled in the administration of Chapter 13, Acts of the Third Called Session of the 42nd Legislature,[1] and said Board is hereby authorized to call on any County Judge or any county or state official or employee, and shall have full access to all the records, books, and public documents for the purpose of obtaining any information which it may deem necessary and pertinent to its inquiry in arriving at the amount of bonds, warrants, or other evidences of indebtedness eligible to participate in the County and Road District Highway Fund.

(c) It shall be the duty of the Board of County and District Road Indebtedness, from the data and information furnished by the County Judges of the state, and by the Chairman of the State Highway Commission and by the State Comptroller of Public Accounts, and from such further investigation as said Board may deem necessary to ascertain and determine the amount of indebtedness eligible under the provisions of this Section of this Act to participate in the moneys coming into said County and Road District Highway Fund. Whenever, in the case of any particular issue of obligations, the proceeds thereof shall have been expended partly on designated State Highways, or highways heretofore constituting designated State Highways, and partly on roads which never have been designated State Highways, said Board shall ascertain and determine the amount of said obligations, the proceeds of which were actually expended on State Highways or on roads heretofore constituting State Highways, and said obligations to said amount and extent shall be eligible for participation in the moneys coming into the County and Road District Highway Fund; and said ascertainment and determination shall be certified to the County Judge by said Board and all of the unmatured outstanding obligations of said issue shall ratably have the benefit of said participation in said moneys. The ascertainment and determination by the Board of County and District Road Indebtedness, after reasonable notice and hearing, of the amount of any county or defined road district obligations eligible under the provisions of this Act to participate in any moneys coming into the County and Road District Highway Fund, or as to the amount of any obligations the proceeds of which were actually expended on State Highways, or on roads heretofore constituting State Highways, shall be final and conclusive and shall not be subject to review in any other tribunal. But said Board of County and District Road Indebtedness shall have the right at any time to correct any errors or mistakes it may have made.

(d) The Board shall make and keep a record of all county and defined road district eligible obligations, issue by issue, and a book shall be prepared and kept in which shall be recorded all eligible issues, maturity dates of principal and interest, rates of interest, and places of payment for each county and each defined road district. Each issue and the date pertaining to same shall be listed separately. The Board shall keep a record of all vouchers issued.

(e) The State Treasurer shall keep a separate account for each county and defined road district of any moneys received for the credit of said county or defined road district pursuant to the provisions hereof.

(f) A list shall be compiled by the Board of County and District Road Indebtedness showing the amount ascertained and determined by it to be eligible indebtedness of each county and defined road district, and a copy thereof shall be furnished to each County Judge in this state.

(g) From year to year, and not later than July 15th of each year, said Board shall ascertain and determine the sum necessary to pay the interest, principal and sinking fund requirements on all eligible obligations for the next succeeding calendar year, and shall estimate the sum which shall be applicable to the same, and shall not later than August 1st of each year, give notice to the County Judge of each

county of the estimated amount available for application to said interest, principal, and sinking fund requirements. In the event the amount so estimated to be applied to the payment of eligible obligations for any county or defined road district is sufficient to meet all maturing interest, principal, and sinking fund requirements, the Commissioners Court may dispense with the collection of advalorem levies for such calendar and/or fiscal year for such interest, principal, or sinking fund requirements. In the event the amount of payments so estimated to be applied is not sufficient to meet the maturing interest, principal, and sinking fund requirements, the County Commissioners Court shall collect from taxes on the property in said respective counties and defined road districts, an amount of money equal to the difference between the amount of such requirements and the amount available for application. In this connection it is declared to be the intent of the Legislature that all contractual duties and obligations which may exist between any county and/or defined road district and the owner or holder of the present outstanding indebtedness of any county and/or defined road district, shall not be in any manner disturbed or impaired and shall remain inviolate. Any tax heretofore provided to be levied in support of any present outstanding indebtedness affected by the provisions of this Act shall continue to be assessed, levied, and collected as originally provided; however, the collection of said tax may, by order of the Commissioners Court, be lessened and reduced by the payments made, and to be made, thereon and in behalf of such indebtedness out of the County and Road District Highway Fund, as herein provided, and as succeeding Legislatures shall, by appropriation, make provisions therefor. The entire proceeds of all taxes collected on any eligible issue of bonds shall be remitted by the County Treasurer of each county collecting the same, together with a statement of the amount collected, to the State Treasurer, and shall be held by the State Treasurer as ex-officio Treasurer of said county or defined road district for the benefit of the county or defined road district remitting the same, and be disbursed to meet the interest, principal, and sinking fund requirements on the eligible obligations of said county or defined road district.

In the event the amount of funds available to be applied to meet the maturing interest, principal, and sinking fund requirements in any calendar or fiscal year is not sufficient to satisfy such requirements, the moneys available in the County and Road District Highway Fund, as estimated and determined by the Board, shall be, for that calendar or fiscal year first applied to the payment and satisfaction of interest maturing on all eligible obligations during the particular calendar and/or fiscal year, and this payment is to be made ratably upon the interest on eligible obligations of the various counties or defined road districts; and if there is more of said moneys available than necessary to pay all of said interest, then such balance over the required interest payment for such year shall be distributed ratably to each issue of eligible obligations on the basis of the principal of eligible obligations and sinking fund requirements thereon maturing each year.

(h) On September first of each year after the Board has paid off and discharged all eligible obligations maturing during the preceding fiscal year, together with the interest on such obligations and the sinking fund requirements accruing thereon out of the County and Road District Highway Fund, any surplus remaining in said Fund over and above Two Million Dollars ($2,000,000) shall be set aside and credited by the State Treasurer to the respective funds hereinafter named as follows: One-half (½) of said surplus shall be credited to an account in the State Highway Fund to be known as the "Farm Highway Account," and one-half (½) shall be credited to an account to be known as the "Lateral Road Account," said funds to be distributed and expended as hereinafter provided.

All moneys deposited in the Farm Highway Account shall be used by the State Highway Commission to match any available funds, other than Federal funds, and all of said moneys shall be used for the sole purpose of constructing or improving farm-to-market roads, which said construction or improvements shall be done or made by the State Highway Commission and not by contract.

As soon as practicable after the passage of this Act and before the Lateral Road Account is allocated to the counties, the Board shall determine the amount each county and each defined road district has paid since January 1, 1933, under the provisions of Chapter 13, Acts of the Third Called Session of the Forty-second Legislature, as amended,[1] toward its debt service upon bonds which at the time of payment were eligible to participate in the County and Road District Highway Fund, and shall deduct from the amount paid by such county or defined road district any and all advancements made by the Board to such county or defined road district in adjusting, refunding, or prepaying the eligible obligations of such county or defined road district, and after making such deductions the Board shall credit the Lateral Road Account of each county or defined road district with the net balance contributed by such county or road district toward the retirement of said eligible obligations and said funds so credited to any county or defined road district may be used or expended by the counties and defined road districts for the purposes authorized in this Section.

Not later than September fifteenth of each year the said Board shall ascertain the exact amount of money which has been allocated to the said Lateral Road Account for such fiscal year and which at that time is available. The Board shall allocate to each county its proportionate part of the moneys in said Lateral Road Account, which allocation shall be determined in the following manner:

(1) Two-tenths (2/10) of the moneys in said Account shall be allocated upon the basis of area, determined by the ratio of the area of the county to the total area of the State.

(2) Four-tenths (4/10) of the moneys in said Account shall be allocated on the basis of rural population according to the last preceding Federal Census, determined by the ratio of the rural population of the county to the total rural population of the State.

(3) Four-tenths (4/10) of the moneys in said Account shall be allocated to the counties on the basis of lateral road mileage, determined by the ratio of the mileage of the lateral roads in the county to the total mileage of the lateral roads in the State as of January 1, 1939, as shown by the records of the State-Federal Highway Planning Survey and the State Highway Department.

If the records of the Highway Department and the State-Federal Highway Planning Survey are such that, in the opinion of the Highway Commission or of any county, there is a reasonable doubt as to their accuracy, the Highway Commission may authorize an independent survey to be made of that county's lateral road mileage upon its own motion or on the application of said county. The expense of such survey shall be borne by the county.

The moneys allocated to each county from the Lateral Road Account shall be used by said county first for paying the principal, interest, and sinking fund requirements maturing during the fiscal year for which such money was allocated to such county on bonds, warrants, and other legal obligations issued prior to January 2, 1939, the proceeds of which were actually expended in acquiring right of ways for State designated highways, it being the intention of the Legislature to designate and set apart sufficient

money to pay off and discharge said outstanding obligations incurred for right of way acquisition. The Board shall require from each county a sworn statement of the outstanding right of way indebtedness incurred on State designated highways, and in the event a false statement is furnished the Board by any county, or where any county fails or refuses to file a report, then such county shall be denied any benefits under this Section; it being the duty of the Board before distributing any funds to any county under this Section where such county submits a report that it has no right of way indebtedness, or where said report is vague or indefinite, to audit and determine the correctness of such report. Funds remaining in the Lateral Road Fund of any county, after the payment of said right of way obligations, shall be used by the county for paying the maturing principal, interest, and sinking fund requirements, due by the county in that fiscal year on bonds, warrants, or other evidences of indebtedness which were legally issued by such county or road districts prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvement of lateral county roads. Payment to be made ratably upon the principal and interest on the maturing road bond obligations of said county for such fiscal years. Any funds remaining in the Lateral Road Fund of any county after the payment of said principal, interest, and sinking fund requirements due or maturing in that fiscal year on bonds or warrants which were legally issued by such county or road district prior to January 2, 1939, the proceeds of which were actually expended in the construction or improvement of lateral county roads, may be used by the county under direction of the Commissioners Court for any one or all of the following purposes: (a) for the acquisition of right of ways for county lateral roads and for the payment of legal obligations incurred therefor prior to January 2, 1939; (b) for the construction or improvement of county lateral roads; (c) for the purpose of supplementing funds appropriated by the United States Government for Works Progress Administration highway construction, Public Works Administration highway construction, and such other grants of Federal funds as may be made available to the counties of this State for county lateral road construction; and (d) for the purposes of cooperating with the State Highway Department and the Federal Government in the construction of farm-to-market roads. Provided that when such funds are used for the construction or improvement of county lateral roads, such construction or improvement shall be made under the supervision of a competent engineer.

After such allocation has been made to the several counties in the State the Board shall in writing notify the Chairman of the Commissioners Court of each county of the amount which has been credited to that county. After receiving said notice, the Commissioners Court shall, within sixty (60) days, notify the Board of the manner in which it has exercised its option as to the one or more specified uses of said money permitted under this Act.

Such money shall be applied pro rata to the payments of the debt service requirements of all issues of lateral road indebtedness of the county and all included defined road districts, in the proportion that the debt service requirements of each issue bears to the aggregate debt service requirements of all issues for that year. When any issue of obligations which will receive aid under this Section is already listed with the Board of County and District Road Indebtedness, the Board shall credit the amount applicable to said issue to the account of said issue in the State Treasury. As to all other issues of obligations, which will receive aid under this Subsection (h), the Commissioners Court of the specific counties affected shall have the right, if so desired, to utilize the facilities of the State Board of County and District Road Indebtedness in paying the amounts of principal and interest on said issues substantially in the manner that payments are affected as to such eligible obligations.

In the event that the funds so received by the county from the Lateral Road Account are in excess of the amount required to meet the principal and interest of its maturing road bond obligations for the next fiscal year, the Commissioners Court, in that event, may elect to use such excess money allocated to it from the Lateral Road Account, and in such event, it shall notify, in writing, the said Board of its election to make use of said money. Whereupon, said Board shall remit said balance to be utilized for such purpose to the County Treasurer of such county, said money to be deposited by the County Treasurer in accordance with law, and the same shall be utilized by the county, acting through the Commissioners Court, for the construction of lateral roads. Each county may call upon the State Highway Commission to furnish adequate technical and engineering supervision in making surveys, preparing plans and specifications, preparing project proposals and supervising actual construction. The actual cost of such aid in supervision shall be paid by the county as a charge against its project.

In order that maximum benefits may be obtained in the expenditures of the State fund made available to the counties under this Act for the construction of county lateral roads, and so that the counties may have the benefit of widespread competition among contractors in bidding on such projects, such counties may, in their discretion, authorize the State Highway Commission, to receive bids in Austin on all such construction in the same manner as is now provided by law for the award of contracts on State highways.

When any road which shall have been constructed by any county wholly from the County Lateral Road Account shall be designated by the State Highway Commission as a part of the System of Designated State Highways, the designation of such road by the State Highway Commission shall constitute a full and complete discharge of any and all obligations of the State, moral, legal, or implied, for the payment of such highway.

In the event the Commissioners Court elects to cooperate with the Highway Department in the building of, or in the construction of, farm-to-market roads, it shall by proper resolution entered upon its minutes, authorize the State Treasurer to pay such funds to be so used, over to the State Highway Department for use on certain designated projects. Regardless of how the funds allocated to the counties from the Lateral Road Account are used, the County Judge of each county shall file with the Board on or before October first of each year, a verified report showing the manner in which the said funds have been expended, the nature and location of the roads constructed, and such other information as the Board may from time to time require. [As amended Acts 1947, 50th Leg., p. 539, ch. 319, § 1.]

1 Article 6674q—1 et seq.
Section 2 of the amendatory Act of 1947 repealed all conflicting laws and parts of laws to the extent of such conflict.
Section 3 read as follows: "If any portion of this Act shall, for any reason, be held invalid, such invalidity shall not affect any other provisions or parts of this Act."

(i) The County Commissioners Court of any county may exercise the authority now conferred by law to issue refunding obligations for the purpose of refunding any eligible debt of the county or of any defined road district; and such refunding obligations, when validly issued, shall be eligible obligations within the meaning of this Act, if said Board of County and District Road Indebtedness shall approve the maturities of said refunding obligations and the rate of interest borne by them. In any instance where in the opinion of said Board the existing maturities of any

issue of eligible obligations or any part thereof are such as to give the county or defined road district which issued them an inequitable or disproportionate participation in the moneys coming into the County and Road District Highway Fund in any particular period, said Board, in its discretion, may require said issue or any part thereof to be refunded into refunding obligations bearing such rate of interest and having such maturities as may be satisfactory to the Board, but in no event at a greater rate of interest than that provided in the original issue. And if said county or defined road district shall fail or refuse to effectuate such refunding within a reasonable time to be fixed by said Board, said obligations so required to be refunded, and all other obligations of said county or defined road district shall cease to be eligible for participation in said County and Road District Highway Fund until the requirements of said Board, with respect to refunding, shall be complied with.

The Board of County and District Road Indebtedness is hereby made the refunding agent of each county, and as such agent is directed to co-operate with the Commissioners Court of each county in effecting the necessary refunding of each issue of bonds; the Board shall prepare the necessary refunding orders for the Commissioners Court, prepare the proceedings and act in an advisory and supervisory capacity to the end that the expense of refunding any issue of bonds may be reduced to the minimum. Provided that no commission, bonus, or premium shall be paid by any county or defined road district for the refunding of such obligations, and no County Treasurer shall receive any commission for handling of the funds derived from the refunding of such obligations. All actual expense incurred in the refunding of its eligible indebtedness, including cost of proceedings, printing, legal approval and interest adjustment, shall be chargeable against the money theretofore or thereafter collected from ad valorem taxes, or at the option of the Commissioners Court conducting such refunding, may be paid from any other money under its control and available for the purpose, provided no obligations for such expense items shall be incurred or paid without affirmative approval by said Board.

(j) All moneys to be deposited to the credit of the County and Road District Highway Fund, from September 1, 1945, to August 31, 1947, both inclusive, are hereby appropriated to said respective counties and defined road districts and shall be received, held, used and applied by the State Treasurer, as ex-officio Treasurer of said respective counties and defined road districts, for the purposes and uses more specifically set forth in this Act, including the payment of principal, interest and sinking fund requirements on all eligible obligations maturing up to and including August 31, 1947. And each year thereafter until all of such eligible obligations are fully paid, all moneys coming into the credit of the County and Road District Highway Fund with the State Treasurer, and all moneys remaining therein from any previous year shall be received and held by him as ex-officio Treasurer of such counties and defined road districts, and shall first be subject to the appropriation for the payment of interest, principal and sinking funds maturing from time to time on said eligible obligations, and then for the other uses specified and permitted in this Act.

In the event any county, road district, or defined road district has since September 1, 1941, made any payment on eligible bonds, warrants, or other evidence of eligible indebtedness as defined under the terms of this Act, then such county, road district, or defined road district shall be reimbursed by the Board of County and District Road Indebtedness in the amount of the payment so made on such eligible obligations. [As amended Acts 1945, 49th Leg., p. 389, ch. 251, § 1.]

(k) As payment of principal and/or interest becomes due upon such eligible obligations, the State Comptroller of Public Accounts shall issue his warrant to the State Treasurer for the payment thereof, and the State Treasurer shall pay the same at his office in Austin, Texas, or by remitting to the bank or trust company or other place of payment designated in the particular obligation. Such warrants or voucher claims shall show on their face that the proceeds of the same are to be applied by the paying agent to the payment of certain specified obligations or interest therein described, by giving the name of the county or defined road district by which they were issued, numbers, amounts, and dates of maturities of the obligations and interest to be paid, with instructions to the State Treasurer, paying agent, bank, or trust company to return to the State Comptroller of Public Accounts such obligations and interest coupons when same are paid; and the State Comptroller of Public Accounts shall, upon receipt of said obligations and coupons, credit same on his records and send them, duly cancelled, to the Commissioners Court of the appropriate county, which shall cause to be duly entered a record of such cancellation. In instances wherein counties or defined road districts therein shall have arranged with the Board to pay principal or interest thereon, of outstanding lateral road indebtedness, the Board, and the State Comptroller of Public Accounts, and the State Treasurer shall follow, insofar as practicable, the procedure prescribed in this sub-section (k) for the payment of the principal and interest of eligible obligations.

(l) Expenses necessary to be incurred in determination of the indebtedness of the counties and defined road districts of the state, and in the discharge of the duties required for the payment of such obligations, shall be paid from the County and Road District Highway Fund by warrant approved by the Chief Accountant, and one other member of said Board, and the State Comptroller of Public Accounts. The compensation of all employees of said Board shall be fixed by the Legislature. All employees of said Board of County and District Road Indebtedness shall be bonded, the amount of such bond being set by the Board.

(m) All of the securities now on hand in which sinking funds collected for the benefit of outstanding eligible issues are invested, and all funds and securities hereafter acquired for the benefit of the entire outstanding balance of all eligible bond issues, shall be forwarded within thirty (30) days from the effective date of this Act, and thereafter within thirty (30) days of the acquisition of such fund or securities, to the State Treasurer as ex officio County Treasurer of the various counties and defined road districts. Provided that the cash now on hand in the sinking fund created for the benefit of outstanding eligible obligations may also be remitted as above set forth, at the option of such county or defined road district. Any county, the Commissioners Court of which fails or refuses to comply with the provisions of this Act in all things, including the levy, assessment, and collection of a tax, and at a rate sufficient to pay all sums due or to become due, which the state is unable to pay, or to provide each year the proportionate amount of sinking fund required to redeem its outstanding bonds at their maturity, shall not participate in any of the benefits of this Act so long as such county fails or refuses to comply with provisions thereof. The Board of County and District Road Indebtedness shall have and possess full authority to invest all such sinking funds, including all future sinking funds acquired in any manner whatsoever, in any eligible obligations of the various political subdivisions of this state which mature within the current biennium in which such securities are purchased; and where there is on hand a sufficient amount of

moneys or securities to the credit of any one political subdivision to retire some of its outstanding obligations, whether then due or not, the Board of County and District Road Indebtedness may, if it deems it advisable, purchase and cancel said obligations of such particular political subdivision, irrespective of maturity dates. Provided further, that any county which has selected a depository according to law and in which county such depository has qualified by giving surety bonds or by the deposit of adequate securities of the kind provided by law, which in the opinion of the Board of County and District Road Indebtedness is ample to cover the county deposits, and which county has not defaulted in the payment of any installment of principal and/or interest on any county bonds for a period of five (5) years next preceding the date of the filing of its application for exemption, and in which county all sinking funds of all bond issues are in excess of the standard required by law, and which county has levied for the current tax year adequate rates in support of outstanding bond issues and warrant as required by the Constitution and Statutes of said state, shall be exempt from the provisions of this sub-section (m) of this Act, and which exemption shall be obtained by such county in the manner and under conditions prescribed by the said Board of County and District Road Indebtedness. Said Board shall have the right to inspect the records of such county at any subsequent date to ascertain whether or not the facts warrant the continuation of the exemption. If at any time, in the opinion of the Board, counties that have been granted exemption under the provisions of this Act shall cease to comply with all the conditions under which the exemption has been granted, the Board shall notify the county to return all securities in which the sinking funds of eligible road bond issues are invested, and the residue in said sinking funds, and to begin immediately forwarding taxes levied and collected for the payment of interest and principal on all eligible road bond issues. Said counties whose exemption has been cancelled by said Board shall be given a period of thirty (30) days in which to comply with the demands of the Board. Provided further, that such counties so exempt shall furnish the Board an annual statement of the condition of the sinking funds of the several eligible road bond issues, together with a financial statement of the county depository. The Board shall have the right to withhold the payment of any maturity on any eligible road bond indebtedness where such county has failed or refused to comply with all the provisions of this Act.

(n) The Board shall keep adequate minutes of its proceedings and semiannually, on or before June 30th and December 31st of each year, shall make itemized reports to each county with respect to the receipt, disbursement, and investment of the funds credited to such county. The Commissioners Court of any county, and/or its accredited representatives shall have the right to inspect the records of said Board and of the State Treasurer, at any reasonable time, for the purpose of making any investigation or audit of the accounts affecting its county. [As amended Acts 1945, 49th Leg., p. 389, ch. 251, § 2.]

(o) The Board shall, within ninety (90) days after the close of each fiscal year, make a complete accounting for the preceding year to the Governor of this state, showing in such report its act, investments, changes in investments and sinking fund status of each county and each defined road district, and shall file copies of such report with the President of the Senate and with the Speaker of the House of Representatives.

(p) In the event this Act is repealed, or shall be or become inoperative as to any county or defined road district, then it shall be the duty of the Board to ascertain immediately the amount of moneys and securities remaining on hand with it or with the State Treasurer belonging to the several counties or defined road districts affected, and forthwith to return the same to the County Treasurer of the County entitled thereto, accompanied by an itemized statement of the account of the county or defined road district.

(q) All funds on hand belonging to, and hereafter credited to, the several counties and defined road districts of the state, shall be considered State Funds, and as such shall be deposited at intervals in the depositories provided for by the state laws and all interest earned on such funds and on the securities in which the sinking funds are invested shall belong to said counties or defined road districts, and shall be credited to them by the State Treasurer as earned and collected.

(r) Upon notice from the Board of the amount that such county or defined road district shall be required to pay toward any installment of interest, or maturing principal, the County Treasurer of such county shall, not later than twenty (20) days prior to the maturity date of such interest, principal, or sinking fund requirements, forward to the State Treasurer the amount fixed by the Board as being necessary to supplement the amounts previously placed to the credit of any such county or defined road district by said Board under the provisions of this Act. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 6 (formerly § 7 as amended Acts 1933, 43rd Leg., p. 347, ch. 136, § 1; Acts 1935, 44th Leg., p. 751, ch. 326, § 1; Acts 1937, 45th Leg., p. 761, ch. 370, § 1; Acts 1937, 45th Leg., p. 1344, ch. 500, § 1), renumbered and amended Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

1 Article 6674q—1 et seq.

The title of the Act of 1937, cited to the text, refers to this section as having been amended by chapter 117, Acts of First Called Session of the Forty-third Legislature. However, such ch. 117 amended ch. 13 of the Act of 1932, cited to the text, by adding section 7a (art. 6674q—7A) but did not amend this section alone.

Section 2 of the Act of 1937 provided that partial invalidity should not affect the remaining provisions.

Section 3 reads as follows: "Chapter 117, Acts, First Called Session of the Forty-third Legislature is hereby specifically repealed [art. 6674q—7A] except as to portions of same which are re-enacted by this Act."

Subdivision (n) as added by acts 1933, cited to the text, repealed acts 1933, 43rd Leg., p. 34, ch. 14, which amended subdivision (j) of this article.

Amendments to subdivisions (j) and (n) became effective 90 days after June 5, 1945, date of adjournment.

Section 1 of the Act of 1945 purported to amend subsections (j) and (n) of section 7 of the Act of 1932, as amended by section 6 of the Act of 1943, but it was apparently intended as an amendment of subsections (j) and (n) of this article.

Art. 6674q—7a. [Repealed by Acts 1937, 45th Leg., p. 761, ch. 370, § 3.]

The article was Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 7a as added Acts 1933, 43rd Leg., 1st C.S., p. 322, ch. 117, § 1.

Art. 6674q—8. Restrictions as to extending State credit.—No provision of this Act [1] shall be construed to authorize the giving or lending of the credit of the state to any county or district or to pledge the credit of the state in any manner whatever for the payment of any of the outstanding road indebtedness, herein referred to, of the counties or districts of the state. It is hereby declared that all eligible indebtedness, as herein defined, shall remain indebtedness of the respective counties or defined road districts which issued it, and said counties or defined road districts shall remain liable on said indebtedness according to its terms and tenor; and it is not the purpose or intention of this Act, or any part hereof, to obligate the State of Texas, directly or indirectly or contingently, for the payment of any such obligations, or that the State of Texas should assume the payment of said obligations; and this Act is not to be construed as obligating the State of Texas to the holders of any of said obligations to make any payment of

the same, or any part thereof, nor shall such holders have any rights to enforce the appropriation of any of the moneys hereinabove provided for, nor shall any provision hereof constitute a contract on the part of the state to make money available to any county for the construction of additional lateral roads. The provisions hereof are intended solely to compensate, repay, and reimburse said counties and districts for the aid and assistance they have given to the state in furnishing, advancing and contributing money for building and constructing State Highways. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 8; Acts 1933, 43rd Leg., p. 347, ch. 136, § 1; Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

1 Articles 6674q—1 to 6674q—11.

Art. 6674q—8a. Bonds of navigation districts; preference over other bonds by Board of County and Road District Bond Indebtedness unauthorized.—All bonds heretofore issued by navigation districts of this state, which mature on or after January 1, 1933, and insofar as amounts of same were issued for and the proceeds thereof actually expended in the construction of bridges across any stream or streams or any other waterways upon any highway that constituted and comprised a part of the system of Designated State Highways on September 17, 1932, shall hereafter be included within and eligible under the provisions of Chapter 13 of the Acts of the 42nd Legislature of Texas,[1] passed at its Third Called Session, as amended by the Acts of the 43rd Legislature of Texas, Regular Session, to the extent that the proceeds of the sale of said bonds shall have been actually expended in the construction of such bridges and in such cases the outstanding bonds of said navigation districts in an amount equal to the amount so expended by such navigation districts shall be redeemed under the same conditions as are provided by said Chapter 13, Acts of the 42nd Legislature of Texas, Third Called Session, as amended by the Acts of the 43rd Legislature of Texas, Regular Session,[1] for the redemption of county and road district bonds.

"It is expressly provided that the Board of County and District Road Indebtedness shall not be authorized to give the bonds herein referred to preference over other similar bonds eligible under said Bond Act; and it is further expressly provided that said Board in determining the amount of bonds eligible for assumption shall take into consideration the amount of the bond money expended for the construction of said bridge, and the balance due on said amount of bonds used in the construction of said bridge, at the effective date of this Act; and in no event shall said Board be authorized to assume in excess of the balance due on the bonds for the said bridge construction at the effective date of this Act. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 7 (formerly § 8a added Acts 1937, 45th Leg., p. 277, ch. 146, § 1), renumbered and amended Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

1 Article 6674q—1 et seq.

Art. 6674q—8b. [Combined with Art. 6674q—8a.]

The article was Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 8b, as added by Acts 1937, 45th Leg., p. 277, ch. 146, § 1. Acts 1939, 46th Leg., p. 582, § 1, generally amending the Act of 1932, incorporated the provisions of this article as part of section 7 of the 1932 Act. See art. 6674q—8a.

Art. 6674q—8c. Lateral Road Account; punishment for unauthorized use.—It shall be unlawful for any County Judge or any County Commissioner, while acting in his official capacity or otherwise, to use any money out of the Lateral Road Account for any purpose except the purposes enumerated in this Act. If any County Judge or any County Commissioner shall knowingly expend or use, or vote for the use of, or agree to expend or use any sum of money accruing to any county in this state from the Lateral Road Account, for any purpose not authorized by this Act, or shall knowingly make any false statement concerning the expenditure of any such money, he shall be deemed guilty of a felony, and upon conviction shall be punished by confinement in the State Penitentiary for not less than two (2) years nor more than five (5) years. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 9, added Acts 1939, 46th Leg., p. 582, § 1, as amended Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

Art. 6674q—9. Legislative policy; State title to roads.—If succeeding Legislatures shall continue to carry out the policy herein defined by authorizing a similar appropriation of funds from time to time, (a) then whenever the eligible obligation shall have been fully paid as herein provided, as to or for any county or defined road district according to the provisions of this Act[1], then, and in that event, the title and possession of all roads, road beds, bridges, and culverts in such county or defined road district, which are included in the system of Designated State Highways, shall automatically vest in fee simple in the State of Texas; in the event of any subsequent physical change therein, such title and possession shall extend to any such change so made; and (b) whenever the interest and principal necessary to retire the outstanding indebtedness owed for lateral roads shall have been fully paid as herein provided, as to, or for any county or defined road district, according to the provisions of this Act, then, and in that event, the title of all roads, road beds, bridges, and culverts in such county or defined road district, pertaining to the lateral roads constructed with the proceeds of such indebtedness, shall automatically vest in the State of Texas; but the possession thereof shall remain in such county or defined road district, and in the event of any subsequent physical change therein, such title and possession shall extend to any such change so made; provided that when the right-of-way, or any part thereof, pertaining either to a State Highway or a lateral road, has been abandoned because of the abandonment of such road for all public purposes, and such right-of-way, or any part thereof, was donated by the owner of the land for right-of-way purposes, then, and in that event, the title to the said right-of-way shall vest in said owner, his heirs or assigns; provided, however, that nothing in this Act shall prevent the State Highway Commission from changing or abandoning any State Highway, and if the Commission shall change or abandon any State Highway in any county, the Commissioners Court of such county shall have the right to assume jurisdiction over such portion of such highway so abandoned by the State Highway Commission. Likewise, the title to additional lateral roads, when constructed, shall vest in the State of Texas. Provided, however, that this Act neither imposes the obligation on, nor confers the right in, the State of Texas, to maintain and lay out any roads except those constituting a part of the designated State Highway System as hereinabove in this Act defined. The obligation to maintain or lay out all other roads, including lateral roads and additional lateral roads as defined in this Act, shall remain undisturbed in the several Commissioners Courts as agents of the state. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 10 (formerly § 9) renumbered and amended Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

1 Articles 6674q—1 to 6674q—11.

Art. 6674q—10. Partial invalidity.—If any Section, sub-section, paragraph, sentence, clause, or provision of this Act[1] shall, for any reason, be held

invalid, such invalidity shall not affect any other portion of this Act or the application of such Section, sub-section, paragraph, sentence, clause, or provision to any other person or situation but this Act shall be construed and enforced as if such invalid provisions had not been contained therein. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 11 (formerly § 10) renumbered and amended Acts 1939, 46th Leg., p. 582, § 1; Acts 1941, 47th Leg., 1st C.S., p. 2, ch. 2, § 1; Acts 1943, 48th Leg., p. 494, ch. 324, § 1.]

1 Articles 6674q—1 to 6674—11.

Art. 6674q—11. [Omitted by Acts 1939, 46th Leg., p. 582, § 1.]

The article was Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 11, which repealed conflicting laws. Acts 1939, 46th Leg., p. 582, § 1, generally amending Acts 1932, included a new section 11. See art. 6674q—10.

Art. 6674q—11a. Effect of act.—This Act shall be cumulative of all other valid laws on the subject, but in the event of a conflict between any provision of this Act and any other Act, the provisions of this Act shall prevail. [Acts 1932, 42nd Leg., 3rd C.S., p. 15, ch. 13, § 13, added Acts 1939, 46th Leg., p. 582, § 1.]

Art. 6674q—12. State Treasurer as ex officio county treasurer in payment of interest and sinking funds.—Resolved by the Senate of Texas, the House of Representatives concurring, that it was the intention of the Legislature of the State of Texas in enacting said above named Acts to authorize and impower the Treasurer of the State of Texas to act as ex officio treasurer of such respective county and road districts in the payment of the interest and sinking funds due by the several counties of the State upon such county road bonds which are not eligible to participate in the County and Road District Highway Fund, and to receive from the respective counties the sums of money due by such respective counties for the payment of such interest and sinking funds, and to pay same upon warrants issued by the Comptroller of the State of Texas in the same manner as is provided for the payment of the interest and sinking funds upon the county road bonds which are eligible to participate in the County and Road District Highway Fund in the Acts aforesaid. Nothing herein shall be construed as increasing the liability of the State of Texas for the payment of any interest or sinking funds on any county road bonds not heretofore eligible under the provisions of the Acts aforesaid; the State Treasurer, merely for convenience of such counties, to act as ex officio treasurer in the receiving and payment of the interest and sinking funds on said county road bonds which are not eligible to participate in the County and Road District Highway Fund. [Acts 1936, 44th Leg., 3rd C.S., p. 2115, S.C.R. #4.]

Art. 6674q—13. Expenditure of Federal funds on roads not part of state highway system.—From and after July 1, 1937, all moneys appropriated under the Hayden-Cartwright Act, passed by the 74th Congress, June 16, 1936, (H.R. 11687),[1] for expenditure on roads not on the System of the State Highways, may be expended, by and through the State Highway Department in conjunction with the Bureau of Public Roads, for the improvement of such roads and said Federal funds may be matched or supplemented by such amounts of State funds as may be necessary for proper construction and prosecution of the work. State funds shall not be used exclusively for the construction of roads not on the System of State Highways; the expenditure of State funds on said roads being limited to cost of construction and engineering, overhead and other costs, on which the application of Federal funds is prohibited or impractical. [Acts 1937, 45th Leg., p. 432, ch. 221, § 1.]

1 Act of June 16, 1936, c. 582, 49 Stat. 1519.
Section 2 of the Act of 1937 repealed conflicting laws.

Art. 6674r. Bonds of road districts in certain counties entitled to participate in State Highway Fund.—All bonds which have been heretofore issued and sold by road districts in counties with a population of not less than nineteen thousand (19,000) and not more than nineteen thousand five hundred (19,500), according to the next preceding Federal Census, where the proceeds of the sale of the bonds have been expended in whole or in part upon a highway which was then a part of the designated system of State Highways in Texas, and a part of the proceeds of which has been expended, in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been designated as a part of the State Highway System of Texas, and where such designated parts of the State Highway System bear different highway numbers, or where one designation is numbered and the other un-numbered, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and any amendments thereto,[1] including the re-enactment and extension thereof under and by virtue of the terms and provisions of House Bill No. 463, enacted by the Legislature of Texas, Forty-fifth Regular Session, 1937.

The Board of County and Road District Indebtedness is directed to audit all expenditures of the aforementioned district, and the assumption herein provided for shall extend only to such bonds, the proceeds of which were expended in the construction of the road which has subsequently been designated a State Highway. [Acts 1937, 45th Leg., p. 901, ch. 437, § 1.]

1 Articles 6674q—7, 6674q—8.

Art. 6674q—14. Road district bonds in counties of 19,000 to 19,500; participation in State Highway Fund under certain conditions.—All bonds which have been heretofore issued and sold by all road districts in counties with a population of not less than twenty-five thousand three hundred forty-four (25,344) and not more than twenty-five thousand four hundred forty-four (25,444) people, according to the last preceding Federal Census, where the proceeds of the sale of the bonds has been expended, in whole or in part, upon a highway which has, since the issuance and sale of said bonds, been temporarily or permanently designated as a part of the State Highway System, shall be entitled to participate in the State Highway Fund, under the provisions and restrictions of Chapter 136, Acts of the Forty-third Legislature of Texas, 1933, and any amendments thereto.[1] [Acts 1937, 45th Leg., p. 829, ch. 406, § 1.]

1 Articles 6674q—7, 6674q—8.

Art. 6674s. Workmen's Compensation Insurance for Highway Department Employees.

Provision made for insurance

Section 1. By virtue of the provisions of Section 59 of Article III of the Constitution of the State of Texas granting the Legislature power to pass such laws as may be necessary to provide for Workmen's Compensation Insurance for State employees, as in its judgment is necessary or required, and to provide for the payment of all costs, charges, and premiums on such insurance, provision is made as hereinafter set forth.

Definitions

Sec. 2. The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Department" whenever used in this law shall be held to mean the State Highway Department of Texas.

2. "Employee" shall mean every person in the service of the State Highway Department under any ap-

pointment or expressed contract of hire, oral or written, whose name appears upon the pay roll of the State Highway Department, except officials appointed by the Governor with the advice and consent of the Senate, except clerical and office employees not required by their duties to travel or work away from their office, and except all positions for which itemized appropriations are made by the Legislature. No person in the service of the State Highway Department who is paid on a piecework basis, or on any basis other than by the hour, day, week, month, or year, shall be considered an employee and entitled to compensation under the terms and provisions of this Act. Provided further, that no person shall be classified as an "employee" nor be eligible to any compensation benefits under the terms and provisions of this Act until he shall have submitted himself first to a physical examination by a regularly licensed physician or surgeon designated by the State Highway Department to make such examination and thereafter been certified by the State Highway Department to be placed on the pay roll of the State Highway Department.

3. "Insurance" shall mean Workmen's Compensation Insurance.

4. "Board" shall mean the Industrial Accident Board of the State of Texas.

5. "Legal beneficiaries" shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this law.

6. "Average weekly wages" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

7. Repealed Acts 1947, 50th Leg., p. 722, ch. 358, § 1.

8. Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

General provisions

Sec. 3. After the effective date of this law any employee, as defined in this law, who sustains an injury in the course of his employment shall be paid compensation as hereinafter provided.

The Department is hereby authorized to be self-insuring and is charged with the administration of this law. The Department shall notify the Board of the effective date of such insurance, stating in such notice the nature of the work performed by the employees of the Department, the approximate number of employees, and the estimated amount of pay roll.

The Department shall give notice to all employees that, effective at the time stated in such notice, the Department has provided for payment of insurance.

Employees of the Department shall be conclusively deemed to have accepted the provisions hereof in lieu of common law or statutory causes of action, if any, for injuries resulting in the course of their employment.

Injury in course of employment

Sec. 4. If an employee of the Department sustains an injury in the course of his employment, he shall be paid compensation by the Department, as hereinafter provided.

Willful intention and intoxication of employee as defenses

Sec. 5. If an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injuries so sustained, the Department may defend in such action on the ground that the injury was caused by the willful intention of the employee to bring about the injury, or was so caused while the employee was in a state of intoxication.

No right of action against agents or employees of Highway Department; compensation exempt from garnishment or attachment; assignments void

Sec. 6. Employees of the Department and parents of minor employees shall have no right of action against the agents, servants, or employees of the Department for damages for personal injuries nor shall representatives and beneficiaries of deceased employees have a right of action against the agents, servants, or employees of the Department for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the Department as is provided in this law. All compensation allowed herein shall be exempt from garnishment, attachment, judgment, and all other suits or claims, and no such right of action and no such compensation and no part thereof nor of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void.

Workmen's Compensation Act and other acts, application of

Sec. 7. Unless otherwise provided herein Section 6, as amended by Acts 1927, 40th Legislature, page 84, Chapter 60, Section 1[1]; 7; 7b; 7c; 8, as amended by House Bill No. 10, Acts 1947, 50th Legislature; 8a; 8b; 9, as amended by Acts 1931, 42nd Legislature, page 303, Chapter 178;[2] 10, as amended by House Bill No. 10, Acts 1947, 50th Legislature; 11, as amended by House Bill No. 10, Acts 1947, 50th Legislature; 11a, Acts 1927, 40th Legislature, page 41, Chapter 28, Section 1;[3] 12, as amended by House Bill No. 10, Acts 1947, 50th Legislature; 12a; 12b; 12c; 12d, as amended by Acts 1931, 42nd Legislature, page 260, Chapter 155, Section 1;[4] 12e; 12f; 12i, as amended by Acts 1931, 42nd Legislature, page 259, Chapter 154, Section 1;[5] 13; 14; 15; 15a; 16; 17; 19, as amended by Acts 1927, 40th Legislature, page 383, Chapter 259, Section 1, as amended by Acts 1931, 42nd Legislature, page 133, Chapter 90, Section 1;[6] 20; 21; 22; 23; 24; 25; 26; 27, as added by Senate Bill No. 40, Acts 1947, 50th Legislature;[7] Acts 1931, 42nd Legislature, page 415, Chapter 248, Section 1,[8] all being sections of Article 8306 of the Revised Civil Statutes of Texas, 1925, as amended; Section 4a, as amended by Senate Bill No. 40, Acts 1947, 50th Legislature; 6a; 11; and 12 of Article 8307 of the Revised Civil Statutes of Texas, 1925; and 13 and 14 of Article 8307, as added by Senate Bill No. 40, Acts 1947, 50th Legislature; and Sections 4 and 5 of Article 8309 of the Revised Civil Statutes of Texas, 1925, and Senate Bill No. 64, Acts Regular Session, 45th Legislature, are hereby adopted and shall govern insofar as applicable under the provisions of this law.[9] Provided that whenever in the above adopted Sections of Articles 8306, 8307 and 8309 of the Revised Civil Statutes of Texas, 1925, the words "association", "subscriber", or "employer", or their equivalents appear in such Articles, they shall be construed to and shall mean "the Department". [As amended Acts 1947, 50th Leg., p. 722, ch. 358, § 2.]

1 Article 8306(6).
2 Article 8306, § 9.
3 Article 8306, § (11a).
4 Article 8306, § 12d.
5 Article 8306, § 12i.
6 Article 8306, § 19.
7 Article 8306, §§ 20–27.
8 Article 8306a.
9 Article 8306, § 7.

Section 3 of the act of 1947 provided that partial invalidity should not affect the remaining portions.

Attorney's fees

Sec. 8. For representing the interest of any claimant in any manner carried from the Board into the Courts, it shall be lawful for the attorney representing

such interest to contract with any beneficiary under this law for an attorney's fee for such representation, such fee to be determined as herein provided and, when the amount recovered exceeds the amount of the award appealed from, to include not more than one-third of the amount by which the judgment exceeds the award, such fee for services so rendered to be determined and allowed by the trial Court in which such cause may be heard and determined.

Weekly payments of compensation

Sec. 9. It is the purpose of this law that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein.

Physical examination; effect of refusal to submit to; insanitary and injurious practices; procedure

Sec. 10. The Board may require any employee claiming to have sustained injury to submit himself for examination before such Board or some one acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians authorized to practice under the laws of this State. If the employee or the Department requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the employee to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the Department to reduce or suspend the compensation of any such injured employee. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the employee and an opportunity to be heard.

The Department shall have the privilege of having any injured employee examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employee and convenient and accessible to him. The Department shall pay for such examination and the reasonable expense incident to the injured employee in submitting thereto. The injured employee shall have the privilege to have a physician of his own selection present to participate in such examination. Provided, when such examination is directed by the Board or the Department, the Department shall pay the fee of the physician selected by the employee, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this law. The Board or any member thereof shall have power to subpœna witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this law.

Industrial Accident Board, authority of; procedure

Sec. 11. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law and the suit of the injured employee or person suing on account of the death of such employee shall be against the Department. If the final order of the Board is against the Department, then the Department shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the Court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in Court upon request free of charge, with a certified copy of the notice of the Department becoming an insurer filed with the Board and the same when properly certified to shall be admissible in evidence in any Court in this State upon trial of such claim therein pending and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to any such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the Department, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling, or decision, as provided in the preceding Section and against the Department, and the Department shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said Section may bring suit in a Court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve (12) per cent as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the Department requiring the payment to an injured employee or his beneficiaries of any weekly or monthly payments, under the terms of this law, and the Department should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employee or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve (12) per cent penalties and attorney's fees as herein provided for. Suit may be brought under provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

Employees of subcontractors

Sec. 12. If the Department sublets the whole or any part of the work to be performed or done to any subcontractor, then in the event any employee of such subcontractor, whose name does not appear on the

pay roll of the Department, sustains an injury in the course of his employment, he shall be deemed and taken for all purposes of this law not to be an employee as defined in this law.

Records and reports of injuries

Sec. 13. The Department shall hereafter keep a record of all injuries fatal or otherwise, sustained by its employees in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one day, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured employee, or if such incapacity extends beyond a period of sixty (60) days, the Department shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name, age, sex, and occupation of the injured employee and the character of work in which he was engaged at the time of the injury, and shall state the place, date, and hour of receiving such injury and the nature and cause of the injury, and such other information as the Board may require. The Department shall be responsible for the submission of the reports in the time specified in this Section.

Rules and regulations; examining physicians; reports as evidence

Sec. 14. The State Highway Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the State Highway Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the State Highway Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the State Highway Department to determine who may be physically fit to be classified as "employee" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the State Highway Department a complete transcript of said examination in writing and sworn to upon a form to be furnished by the State Highway Department. It shall be the duty of the State Highway Department to preserve as a part of the permanent records of the State Highway Department all reports of such examinations so filed with him. Such reports shall be admissible in evidence before the Industrial Accident Board, and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Industrial Accident Board in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such reports so admitted shall be prima facie as to the facts set out therein.

Physical examination prerequisite to certification as employee

Sec. 14a. No person shall be certified as an employee of the State Highway Department under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 14 herein and has been certified by the examining physician or surgeon to be physically fit to perform the duties and services to which he is to be assigned, provided that absence of a physical examination shall not be a bar to recovery.

Award as evidence; certified copies of orders, awards, decisions, or documents

Sec. 15. Any order, award, or proceeding of said Board when duly attested by any member of the Board or its secretary shall be admissible as evidence of the act of said Board in any Court of this State.

Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision, or paper on file in the office of said Board and the fees so received for such copies shall be paid into the State Treasury and credited to the General Revenue Fund; provided that the Department shall be furnished such certified copies without charge. No fee or salary shall be paid to any person in said Board for making such copies in excess of the fees charged for such copies.

Suit to set aside decision of Board; notice

Sec. 16. Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Board shall, in the manner and within the time provided by Section 11 of this law, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the Court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merit, transfer the case to the proper Court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the Court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said Court.

Time of hearing

Sec. 17. When an injured employee has sustained an injury in the course of employment and filed claim for compensation and given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured employee is being paid compensation as provided in this law, and the Department is furnishing either hospitalization or medical treatment to such employee, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

Percentage of payroll set aside in account for payments under act

Sec. 18. The Department is hereby authorized to set aside from available appropriations other than itemized appropriations an amount not to exceed three and one-half (3½) per cent of the annual labor pay roll of the Department for the payment of all costs, administrative expense, charges, benefits, and awards authorized by this law.

The amounts so set aside shall be set up in a separate account in the records of the Department, which account shall show the disbursements authorized by this law; provided the amounts so set aside in this account shall not exceed three and one-half (3½) per cent of the annual labor pay roll at any one time. A statement of the amounts set aside for and disbursements from said account shall be included in reports made to the Governor and the Legislature as required by the Statutes.

Penal provisions

Section 19 is published as Penal Code art. 427c—1.

Partial invalidity

Sec. 20. If any section, paragraph, or provision of this law be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this law, but the same shall remain in full

force and effect. [Acts 1937, 45th Leg., p. 1352, ch. 502.]

Section 21 of the Act of 1937 repealed conflicting laws.

2. REGULATION OF VEHICLES

Art. 6675. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16.]

Art. 6675a—1. Definitions of terms.—The following words and terms, as used herein, have the meaning respectively ascribed to them in this Section, as follows:

(a) "Vehicle" means every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle" means every vehicle, as herein defined, that is self-propelled.

(c) "Motor Cycle" means every motor vehicle designed to propel itself on not more than three wheels in contact with the ground.

(d) "Truck-tractor" means every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(e) "Farm-tractor" means every motor vehicle designed and used primarily as a farm implement for drawing other implements of husbandry.

(f) "Road-tractor" means every motor vehicle designed or used for drawing other vehicles or loads, and not so constructed as to carry a load independently or any part of the weight of the drawn load or vehicle.

(g) "Trailer" means every vehicle designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

(h) "Semi-trailer" means vehicles of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.

(i) "Commercial Motor Vehicles" means any motor vehicle (other than a motorcycle or passenger car) designed or used primarily for the transportation of property, including any passenger car which has been reconstructed so as to be used, and which is being used, primarily for delivery purposes, with the exception of passenger cars used in the delivery of the United States mails. As amended Acts 1941, 47th Leg., p. 144, ch. 110, § 1.

(j) "Passenger Car" means any motor vehicle other than a motor cycle or a bus, as defined in this Act, designed or used primarily for the transportation of persons.

(k) "Department" means the State Highway Department or its duly authorized officers or agents.

(l) "Owner" means any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of said vehicle.

(m) "Public Highway" shall include any road, street, way, thoroughfare or bridge in this State not privately owned or controlled for the use of vehicles over which the State has legislative jurisdiction under its police power.

(n) "Motor Bus" shall include every vehicle, except those operated by muscular power or exclusively on stationary rails or tracks, which is used in transporting persons upon the public highways of this State for compensation (or hire) whether operated over fixed routes or otherwise; except such of said vehicles as are operated exclusively within the limits of incorporated cities and/or towns or suburban additions to such cities and/or towns. As amended Acts 1947, 50th Leg., p. 1013, ch. 431, § 1.

(o) "Farm-trailer" means every "trailer" as defined in Subsection (g) herein, designed and used primarily as a farm vehicle.

(p) "Farm-semi-trailer" means every semi-trailer as defined in Subsection (h) herein, designed and used primarily as a farm vehicle.

(q) By "operated or moved temporarily upon the highways" is meant the operation or conveying between different farms, and the operation or conveyance from the owner's farm to the place where his farm produce is prepared for market or where same is actually marketed and return.

(r) "Implements of husbandry" shall mean farm implements, machinery and tools as used in tilling the soil, but shall not include any passenger car or truck. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 1; Acts 1930, 41st Leg., 5th C.S., p. 151, ch. 23, § 1; Acts 1941, 47th Leg., p. 144, ch. 110, § 2.]

(s) "Street or suburban bus" shall include every vehicle, except a motor bus or passenger car as defined in this Act, which is used in transporting persons for compensation (or hire) exclusively within the limits of cities and towns or suburban additions to such cities or towns. [Added Acts 1947, 50th Leg., p. 1007, ch. 425, § 1.]

Section 16 of Act 1929 repeals all conflicting laws and parts of laws and specially repeals Civ.St. Arts. 6675–6683, 6688–6693; 6697, and Pen.Code, Arts. 807, 810, 818–820, and 825, and provides that the act shall not require payment of registration fees, or the registration of tractors or graders, or other machinery owned by cities or counties or the Federal Government and used on streets, alleys or roads.

Sections 14a to 14f being penal provisions were published as Pen.Code, Art. 807a.

Section 2 of chapter 431 of Acts 1947 provided that partial invalidity should not affect the validity of the remaining portions.

Section 3 repealed conflicting laws.

Section 3 of chapter 425 of Acts 1947 provided that partial invalidity should not affect the validity of the remaining portions of the Act.

Saved From Repeal. The Uniform Act Regulating Traffic on Highways, Acts 1947, 50th Leg., p. 967, ch. 421, incorporated in Art. 6701d, provides, in section 156, that such act is not intended to repeal this article.

Art. 6675a—2. Registration.—Every owner of a motor vehicle, trailer or semi-trailer used or to be used upon the public highways of this State shall apply each year to the State Highway Department through the County Tax Collector of the county in which he resides for the registration of each such vehicle owned or controlled by him for the ensuing or current calendar year or unexpired portion thereof; provided that where a public highway separates lands under the dominion or control of the owner, the operation of a motor vehicle by such owner, his agents or employees, across such highway shall not constitute a use of such motor vehicle upon a public highway of this State. Owners of farm tractors, farm trailers, farm semi-trailers, and implements of husbandry, operated or moved temporarily upon the highways shall not be required to register such farm tractors, farm trailers, farm semi-trailers, or implements of husbandry; provided, however, that such farm trailers and farm semi-trailers are operated in conformity with all provisions of the law save and except the requirements as to registration and license; and providing further, that the exemptions in this section shall not apply to any farm trailer or farm semi-trailer when the gross weight exceeds four thousand (4,000) pounds; provided, that no farm trailer or farm semi-trailer with metal tires shall be permitted to operate at a speed in excess of fifteen (15) miles per hour; and further provided, that the exemptions in this section shall not apply to any farm trailer or farm semi-trailer with steel tires of a width less than three (3) inches operating in excess of fifteen (15) miles per hour; and providing further, that the exemption in this section shall not apply to any farm trailer or farm semi-trailer when the same is used for hire; provided, however, it shall be unlawful to operate any trailer or semi-trailer at night without a rear red light or red reflectors. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 2; Acts 1930, 41st

Leg., 5th C.S., p. 151, ch. 23, § 2; Acts 1941, 47th Leg., p. 144, ch. 110, § 3.]

Section 13 of the Act of 1941 authorized each county collector to adjust registration fees collected for 1941 registration year after approval by State Highway Department, but provided that the provisions should not extend beyond the end of the 1941 registration year.

Art. 6675a—2a. [Repealed by Acts 1947, 50th Leg., p. 347, ch. 195, § 1.]

The article was Acts 1930, 41st Leg., 5th C.S., p. 151, ch. 23, § 2a.

Art. 6675a—3. Application for registration.—Application for the registration of a vehicle required to be registered hereunder shall be made on a form furnished by the department, each such application shall be signed by the owner of the vehicle, and shall give his name and address in full, and shall contain a brief description of the vehicle to be registered. Said description, in case of a new motor vehicle, shall include: The trade name of the vehicle; the year model; the style, type of body and the weight;[1] if a passenger car, or the net carrying capacity and gross weight if a commercial motor vehicle; the motor number; the date of sale by manufacturer or dealer to the applicant. The application shall contain such other information as may be required by the department. It is expressly provided that the owner of a vehicle previously registered in any State for the preceding or current year may, in lieu of filing an application as hereinbefore directed, present the license receipt and transfer receipts, if any, issued for the registration or transfer of the vehicle for the preceding calendar year, and said receipt or receipts shall be accepted by the County Tax Collector as an application for the renewal of the registration of the vehicle, provided said receipts show that the applicant is the rightful owner thereof. Provided, however, that should an owner or a claimed owner of a motor vehicle or automobile offer to register same, but has lost or misplaced the registration receipt or transfer, then upon his furnishing satisfactory evidence to the Tax Collector by affidavit or otherwise that he is the real owner of same, then shall it become the duty of the Tax Collector to issue him license therefor. It shall be the duty of the Tax Collector to date each registration receipt issued for the vehicle the same date that application is made for registration of such vehicle. Owners of motor vehicles, trailers and semi-trailers, which are the property of, and used exclusively in the service of the United States Government, the State of Texas, or any County, City or School District thereof, shall apply annually to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are the property of and used exclusively in the service of the United States Government, the State of Texas, or County or City or School District thereof, as the case may be. Application shall be made for the registration of a new vehicle for the unexpired portion of the year in which it is acquired before it is operated on the public highways; except that a new vehicle may be operated temporarily by a dealer under the dealer's license number or by its purchaser under a special dealer card-board number, as provided in Chapter 211,[2] General and Special Laws of the Regular Session of the 40th Legislature. The year for the purpose of registration of motor vehicles shall be April 1st to March 31st (both inclusive) of the next succeeding calendar year, and may be referred to as the "Motor Vehicle Registration Year," and current year where used in the Statutes relating to payment of registration fees shall mean that Motor Vehicle Registration Year. Application for the renewal of registration of a vehicle and for each chauffeur's license for any Motor Vehicle Registration Year shall be made not later than April 1st of such year. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3; Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 1; Acts 1935, 44th Leg., p. 129, ch. 51, § 1.]

[1] This semi-colon should probably be a comma, as prior to the amendment of 1935.

[2] Articles 6686, 6688 note, post.

Section 2 of Act 1935, repealed all laws and parts of laws in conflict with the Act.

Art. 6675a—3a. Delinquency.—The payment of the license fee prescribed herein for any vehicle shall become delinquent immediately upon the use of said vehicle on any public highway without said fee having been paid in accordance with this Act.[1] In the event the payment of any such fee has become delinquent on any such vehicle, no license or license number plates shall be issued therefor by any County Tax Collector unless the owner of said vehicle pay an additional charge equal to twenty (20%) per cent of the total amount of said prescribed fee. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3a.]

[1] Articles 6675a—1 to 6675a—14 and Pen.Code, Art. 807a.

Art. 6675a—3aa. State Highway Department to approve license plates for government vehicles.—Before the delivery of license plates to anyone engaged exclusively in the service of and operating vehicles which are property of the United States Government, or the State of Texas, or any county, city, or school district thereof, such application shall have the approval of the State Highway Department before said plates are issued to any such applicant, and if it appears that said vehicle was transferred to any such agency for the sole purpose of evading the payment of registration fees, or that the same was not made in good faith, such plates shall not be issued. If after the issuance of such, said vehicles cease to be owned or operated by such agencies, then such license may be revoked. Said plates may be recalled, and taken into possession by the State Highway Department. Said Department may provide for the issuance of specially designated plates to those exempt by law, and such plates are not to be issued annually but after having been issued are to remain on said vehicles until they cease to be owned or operated by the United States Government, the State of Texas or any county, city, or school district thereof, or until said plates become mutilated, lost, or stolen. When said vehicles cease to be owned or operated by the United States Government, the State of Texas, or any county, city, or school district thereof, said plates and registration receipts are to be forwarded to the State Highway Department for cancellation. It is further provided that the State Highway Department may provide rules and regulations for the issuance thereof, and for the enforcement thereof, and it shall be unlawful for any person to operate a vehicle if the license has been revoked, and any such person shall be liable for the penalties prescribed for the failure to register a vehicle which is being driven upon public highways. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3aa, added Acts 1931, 42nd Leg., p. 14, ch. 14, § 1; as amended Acts 1947, 50th Leg., p. 249, ch. 145, § 1.]

Section 2 of the Act of 1947 provided: "If any section, subsection, sentence, clause or phrase of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the validity of the remaining portion of this Act. The Legislature hereby declares that it would have passed the Act and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases be declared unconstitutional."

Section 3 repealed all conflicting laws or parts of laws.

Art. 6675a—3b. [Repealed by Acts 1937, 45th Leg., p. 1324, ch. 489, § 1.]

This article, Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 3b, added by Acts 1931, 42nd Leg., p. 215, ch. 127, § 1.

Art. 6675a—3c. [Expired.]

This article, being Acts 1933, 43rd Leg., p. 7, ch. 5, relating to extension of time for payment of motor vehicle registration fees, is omitted as having accomplished its purpose and expired.

Art. 6675a—3d. [Expired.]

This article, being Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 3, extending use of 1934 motor vehicle registration or license plates to March 31, 1935, is omitted as having accomplished its purpose and expired.

Art. 6675a—4. Registration dates.—Each application filed hereunder for registration or for chauffeur's license during April shall be accompanied by the full amount of the annual fee if the vehicle was operated on the public highways or streets during any part of April of that year, each application for re-registration filed during May or any subsequent month of that motor vehicle registration year, shall be accompanied by affidavit that such vehicle has not been previously operated upon the highways of this State during any portion of the current year and shall be accompanied by eleven-twelfths, ten-twelfths, nine-twelfths, eight-twelfths, seven-twelfths, six-twelfths, five-twelfths, four-twelfths, three-twelfths, two-twelfths, or one-twelfth respectively of the annual fee. This section shall be in force beginning with the Motor Registration year 1934 and all succeeding years. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 4; Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 2.]

Art. 6675a—5. Fees; motor cycles and passenger vehicles.—The annual license fee for the registration of a motorcycle shall be Five Dollars ($5) and for each sidecar Three Dollars ($3). The annual license fee for the registration of a passenger car and a street or suburban bus shall be based upon the weight of a vehicle as follows:

Weight in Pounds	Fee per One Hundred (100) Pounds or Fraction thereof
1–2,000	$ .28
2,001–3,500	.36
3,501–4,500	.48
4,501–and up	.50

The weight of any passenger car or of any street or suburban bus, for purpose of registration, shall be the weight generally accepted as its correct shipping weight plus one hundred (100) pounds. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 5; Acts 1947, 50th Leg., p. 1007, ch. 425, § 2.]

Art. 6675a—6. Fees; commercial motor vehicles or truck-tractors.—The annual license fee for the registration of a commercial motor vehicle or truck tractor shall be based upon the gross weight and tire equipment of the vehicle as follows:

Gross Weight in Pounds	Fee per 100 Pounds or Fraction Thereof Equipped With Pneumatic Tires	Equipped With Solid Tires
1– 6,000	$ .40	$ .50
6,001– 8,000	.45	.60
8,001–10,000	.55	.70
10,001–17,000	.65	.80
17,001–24,000	.70	.90
24,001–31,000	.80	1.00
31,001–and up	.90	1.20

The term "gross weight" as used in this section shall mean the actual weight of the vehicle fully equipped with body, and other equipment, as certified by any Official Public Weigher or any License and Weight Inspector of the State Highway Department, plus its net carrying capacity. "Net carrying capacity" of any vehicle except a bus, as used in this section, shall be the weight of the heaviest net load to be carried on the vehicle being registered; provided said net carrying capacity shall in no case be less than the manufacturer's rated carrying capacity. The "net carrying capacity" of a bus as defined in this Act shall be computed by multiplying its seating capacity by 150 pounds. The seating capacity of any such vehicle shall be the manufacturer's rated seating capacity exclusive of the driver's or operator's seat. The seating capacity of any such vehicle not rated by the manufacturer shall be determined by allowing one passenger for each sixteen (16) inches that such vehicle will seat, exclusive of the driver's or operator's seat. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 6; Acts 1941, 47th Leg., p. 144, ch. 110, § 5.]

Art. 6675a—6a. Reduction of registration fee on trucks used by farmers.—When a commercial motor vehicle sought to be registered and used by the owner thereof only in the transportation of his own poultry, dairy, livestock, livestock products, timber in its natural state, and farm products to market, or to other points for sale or processing, or the transportation by the owner thereof of laborers from their place of residence, and materials, tools, equipment and supplies, without charge, from the place of purchase or storage, to his own farm or ranch, exclusively for his own use, or use on such farm or ranch, the registration license fee, for the weight classifications hereinafter mentioned, shall be fifty (50%) per cent of the registration fee prescribed for weight classifications in Section 6 of the Act[1] hereby amended, as amended in this Act; provided further, that it shall be the duty of the Highway Commission to provide license plates distinguishable from license plates used for other commercial motor vehicles using the highways; provided further, if the owner of any commercial motor vehicle, coming within the provisions of this Act, shall use or permit to be used any such vehicle for any other purpose than those provided for in this Act, he shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than Twenty-five ($25.00) Dollars nor more than Two Hundred ($200.00) Dollars, and each use of such vehicle and each permission for such use of such vehicle shall constitute a separate offense; provided, however, that all commercial motor vehicles, truck tractors, road tractors, trailers and semi-trailers as defined in Section 1 of Chapter 23 of the General Laws of the Fifth Called Session of the 41st Legislature,[2] not coming within the provisions of this Act shall be required to pay all registration and license fees prescribed by the other provisions of Chapter 88, General Laws of the 41st Legislature, Second Called Session as amended by this Act.[3] [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 6a, added Acts 1933, 43rd Leg., 1st C.S., p. 82, ch. 27, § 1, as amended Acts 1934, 43rd Leg., 3rd C.S., p. 75, ch. 36, § 1; Acts 1941, 47th Leg., p. 144, ch. 110, § 4.]

1 Article 6675a—6.
2 Article 6675a—1.
3 Article 6675a—1 et seq. and Pen.Code, art. 807a.

Art. 6675a—7. Fees; road tractors.—The annual license fee for the registration of a road tractor shall be based upon the weight of the tractors, as certified by any Official Public Weigher or any License and Weight Inspector of the State Highway Department, as follows:

Gross Weight in Pounds	Fee per 100 Pounds or Fraction Thereof
1– 4,000	$ .25
4,001– 6,000	.50
6,001– 8,000	.60
8,001–10,000	.75
10,001–and up	1.00

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 7; Acts 1941, 47th Leg., p. 144, ch. 110, § 6.]

Art. 6675a—8. Fees; trailers or semi-trailers.—The annual license fee for the registration of trailer or semi-trailer shall be based upon the gross weight and tire equipage of the trailer or semi-trailer as follows:

Gross Weight in Pounds	Fee per 100 Pounds or Fraction Thereof Equipped With Pneumatic Tires	Equipped With Solid Tires
1– 6,000	$ .30	$ .40
6,001– 8,000	.40	.50
8,001–10,000	.50	.60
10,001–17,000	.60	.80
17,001–and up	.65	.90

The term "gross weight" as used in this section means the actual weight of the trailer or semi-trailer, as officially certified by any Public Weigher or any License and Weight Inspector of the State Highway Department, plus its net carrying capacity. "Net carrying capacity" as used in this section shall be the weight of the heaviest net load to be carried on the vehicle being registered; provided said net carrying capacity shall in no case be less than the manufacturer's rated carrying capacity. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 8; Acts 1941, 47th Leg., p. 144, ch. 110, § 7.]

Art. 6675a—8a. Fees; motor busses.—Annual license fees for the registration of motor buses shall be based upon the "gross weight" of the vehicle as follows:

Gross Weight in Pounds	Fee per 100 Pounds or Fraction Thereof Equipped With Pneumatic Tires	Equipped With Solid Tires
1– 4,000	$1.25	$1.50
4,001– 6,000	1.35	1.75
6,001– 8,000	1.40	1.85
8,001–16,000	1.50	2.00
16,001–24,000	2.00	2.25
24,001–28,000	2.50	2.75
28,001–and up	4.00	6.00

[Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 8a; Acts 1941, 47th Leg., p. 144, ch. 110, § 8.]

Art. 6675a—8b. Width of motor vehicles and farm tractors.—No motor vehicle shall be registered and licensed which has a total outside width, including any load thereon, of more than ninety-six (96) inches, except that the width of a farm tractor shall not exceed nine (9) feet, and excepting further, that the limitations as to size of vehicle shall not apply to implements of husbandry, and highway building and maintenance machinery temporarily propelled or moved upon the public highway. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 8b; Acts 1941, 47th Leg., p. 144, ch. 110, § 9.]

Art. 6675a—8c. Diesel motors, vehicles propelled by; fee; license receipts to show type of motor.—It is expressly provided that the license fees for all vehicles using or being propelled by Diesel motors or engines shall be the fees provided above, plus an additional ten (10%) per cent. It is further provided that the County Tax Collector, in issuing the license receipts for motor vehicles provided for in this Act [1], shall clearly indicate on the license receipt the type of motor by which the vehicle is propelled when such motor is powered by Diesel fuel, butane gas, or any distillate other than gasoline. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 8c, added Acts 1941, 47th Leg., p. 144, ch. 110, § 10.]

[1] Articles 6675a—1 to 6675a—14 and Pen.Code, art. 807a.

Art. 6675a—9. Schedule of fees furnished tax collectors.—The Department shall compile and furnish to the County Tax Collectors a complete and detailed schedule of license fees to be collected on the various makes, models and types of vehicles required to be registered hereunder; and the weight, net weight, or gross weight of any vehicle required to be registered, as determined by the Department, shall be accepted as correct for registration purposes to the exclusion of any and all other purported weights of said vehicle. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 9.]

Art. 6675a—10. Apportionment of funds.—On Monday of each week each County Tax Collector shall deposit in the County Depository of his county to the credit of the County Road and Bridge Fund an amount equal to one hundred (100%) per cent of net collections made hereunder during the preceding week until the amount so deposited for the current calendar year shall have reached a total sum of Fifty Thousand ($50,000.00) Dollars.

Thereafter, and until the amount so deposited for the year shall have reached a total of One Hundred Seventy-five Thousand ($175,000.00) Dollars he shall deposit to the credit of said Fund on Monday of each week an amount equal to fifty (50%) per cent of collections made hereunder during the preceding week.

Thereafter, he shall make no further deposits to the credit of said Fund during that calendar year. All collections made during any week under the provisions of this Act [1] in excess of the amounts required to be deposited to the credit of the Road and Bridge Fund of his county shall be remitted by each County Tax Collector on each Monday of the succeeding week to the State Highway Department together with carbon copies of each license receipt issued hereunder during the preceding week. He shall also on Monday of each week remit to the Department as now provided by Law, all transfer fees and chauffeurs' license fees collected by him during the preceding week, together with carbon copies of all receipts issued for said fees during the week.

He shall also accompany all remittances to the Highway Department with a complete report of such collections made and disposition made thereof, the form and contents of said report to be prescribed by the State Highway Department. None of the monies so placed to the credit of the Road and Bridge Fund of a county shall be used to pay the salary or compensation of any County Judge or County Commissioner, but all said monies shall be used for the construction and maintenance of lateral roads in such county under the supervision of the County Engineer, if there be one, and if there is no such engineer, then the County Commissioners' Court shall have authority to command the services of the Division Engineer of the State Highway Department for the purpose of supervising the construction and surveying of lateral roads in their respective counties. All funds allocated to the counties by the provisions of this Act may be used by the counties in the payment of obligations, if any, issued and incurred in the construction or the improvement of all roads, including State Highways of such counties and districts therein; or the improvement of the roads comprising the County Road system. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 10.]

[1] Articles 6675a—1 to 6675a—14 and Pen.Code, Art. 807a.

Art. 6675a—10a. Remittance of funds, interest.—All funds required by this Act to be remitted to the State Highway Department, which are not so remitted within sixty days after being collected, shall thereafter bear interest for the benefit of the State Highway Fund at the rate of ten (10%) per cent per annum, which interest shall be charged to each County Tax Collector failing or refusing to remit said funds within said period of sixty days. The exact amount of said interest charge shall be determined by the State Highway Department by a careful audit of the license fees received and disbursed by said Tax Collector pursuant to the laws relating to the registration and transfer of vehicles; and the State of Texas shall have a valid claim against the County Tax Collector and his official bondsmen [1] for the amount of such interest as determined by said audit, provided, however, that no person shall be authorized or permitted to collect any license fees under

the provisions of this Act except the Tax Collector or a duly authorized and appointed deputy. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 10a; Acts 1930, 41st Leg., 5th C.S., p. 167, ch. 33, § 1.]

[1] So in enrolled bill. Session Laws read "bondmen". The Act of 1929 contained a provision omitted by the amendment prohibiting any county tax collector from maintaining more than one office at which vehicles may be registered, but permitting the maintenance of one or more branch offices in any city having a population of ten thousand or more in his county.

Art. 6675a—11. Fees of tax collector.—As compensation for his services under the provisions of this and other laws relating to the registration of vehicles and chauffeurs and the transfer of vehicles, each County Tax Collector shall receive a uniform fee of fifty cents for each of the first one thousand receipts issued by him each year pursuant to said laws; he shall receive a uniform fee of forty cents for each of the next nine thousand receipts so issued, a uniform fee of thirty cents for each of the next fifteen thousand receipts so issued and a uniform fee of twenty cents for each of the balance of said receipts so issued during the year. Said compensation shall be deducted weekly by each County Tax Collector from the gross collections made pursuant to this Act [1] and other laws relating to the registration of vehicles and chauffeurs and the transfer of vehicles. Out of the compensation so allowed County Tax Collectors, it is hereby expressly provided and required that they shall pay the entire expense of issuing all license receipts and number plates and chauffeurs badges issued pursuant hereto, including the cost of labor performed in issuing said receipts, number plates and badges and the cost of postage used in mailing same to applicants. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 11.]

[1] Articles 6675a—1 to 6675a—14 and Pen.Code, Art. 807a.

Art. 6675a—12. License receipt.—The Department shall issue, or cause to be issued, to the owner of each vehicle registered under the provisions of this Act [1] a license receipt which shall indicate the date of its issuance, the license number assigned the registered vehicle, the name and address of the owner and such other information or statement of facts as may be determined by the Department. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 12.]

[1] Articles 6675a—1 to 6675a—14 and Pen.Code, Art. 807a.

Art. 6675a—12a. Duplicate license receipt.—The owner of a vehicle, the license receipt for which has been lost or destroyed, may obtain a duplicate thereof, by filing with the State Highway Department or the County Collector who issued the original receipt and [1] affidavit that it has been lost or destroyed and by paying a fee of twenty-five cents for said duplicate. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 12a.]

[1] So in enrolled bill. Should probably read "an".

Art. 6675a—12b. Rebuilt vehicles.—It shall be the duty of each Tax Collector before registering a rebuilt vehicle to require from the owner or applicant an affidavit stating that such vehicle is rebuilt and giving the names of the persons or firms from whom the parts used in assembling the vehicle were obtained. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 12b.]

Art. 6675a—13. License plates for years 1949 and 1950.—The State Highway Department is hereby authorized to issue for the 1949 and 1950 motor vehicle registration years a single plate or plates of metal or other material, symbols, tabs, or other devices which when attached to a vehicle having been duly registered for the preceding registration years shall for the purpose of this Act [1] be deemed to be the legal registration insignia for the registration year for which issued. [Acts 1929, 41st Leg., 2nd C.S. p. 172, ch. 88, § 13; Acts 1933, 43rd Leg., p. 547, ch. 178, § 1; Acts 1943, 48th Leg., p. 56, ch. 51, § 1; Acts 1945, 49th Leg., p. 31, c. 22, § 1; Acts 1947, 50th Leg., p. 346, ch. 194, § 1.]

[1] Articles 6675a—1 to 6675a—14 and Pen.Code, art. 807a. This article as amended by Acts 1945, 49th Leg., p. 31, c. 22, read as follows:

"The State Highway Department is hereby authorized to issue for the 1946, 1947 and 1948 motor vehicle registration years a single plate or plates of metal or other material, symbols, tabs, or other devices which when attached to a motor vehicle having been duly registered for the preceding registration years shall for the purpose of this Act be deemed to be the legal registration insignia for the registration year for which issued."

Sections 2, 3, 5 and 6 of the amendatory act of 1947 read as follows:

"Sec. 2. Upon payment of the prescribed registration fee by applicants for motor vehicle registration, the State Highway Department is authorized to issue a single plate or plates of metal or other material, symbols, tabs, or other devices to be attached to a vehicle having duly authorized license plate, plates, or other insignia for the preceding registration year. Vehicles not previously registered may be issued a regular metal license plate or plates if such be available or may be issued symbols, tabs, or other devices which shall be deemed to be the legal registration insignia for the registration year in which the vehicle is registered.

"Sec. 3. The owner of each vehicle reregistered for each of the 1949 and 1950 registration years is hereby directed to attach to the vehicle the legal registration insignia issued by the State Highway Department in place or places prescribed by the State Highway Department in such manner as to be clearly visible. Section 5 of the Act of 1945 provided that partial invalidity should not affect the validity of the remaining portion. Section 6 of the Act of 1945 repealed conflicting laws.

Art. 6675a—13½. Designs and specifications of license plates, symbols, etc.; requisition and purchase.—The State Highway Department shall prepare the designs and specifications for the single plate or plates of metal or other material, symbols, tabs, or other devices selected by the State Highway Commission to be used as the legal registration insignia and requisition and purchase of the same shall be submitted to the State Board of Control for approval. [Acts 1933, 43rd Leg., p. 547, ch. 178, § 2; Acts 1943, 48th Leg., p. 56, ch. 51, § 4; Acts 1945, 49th Leg., p. 31, ch. 22, § 4; Acts 1947, 50th Leg., p. 346, ch. 194, § 4.]

Art. 6675a—13a. Replacement number plates.—The owner of a registered motor vehicle may obtain from the Department through the County Tax Collector replacement number plates for such vehicle by filing with said collector an affidavit showing that said number plate or plates have been lost, stolen or mutilated, and by paying a fee of one dollar for each set of plates issued. In case one or more plates are left in possession of such owner same shall be returned to the Tax Collector when making this affidavit. Said affidavit shall state that such plate or plates have been lost, stolen or mutilated and will not be used on any vehicle owned or operated by the person making this affidavit. No Tax Collector shall issue replacement plates without requiring compliance with the provisions of this Section. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 13a.]

Art. 6675a—13b. Registration for branch office.—In all counties having a population of not less than twenty-four thousand, five hundred (24,500) and not more than twenty-four thousand, seven hundred (24,700) inhabitants, according to the last preceding Federal Census, the County Tax Collector may establish a suboffice or branch office at one or more places in the county other than at his office in the county courthouse for the purpose of making sales of motor vehicle license plates, and the County Tax Collector shall have authority to appoint a Deputy to make such sales in the same manner and with the same authority as though they were made in the office of the County Tax Collector, and the report of all of such sales shall be made through the office of the County Tax Collector just as though such sales were actually made in his office. [Acts 1929, 41st Leg., 2nd C.S., p.

172, ch. 88, § 13b, added Acts 1941, 47th Leg., p. 545, ch. 340, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 6675a—14. Distribution of funds between state and counties.—Provided, further, that if the method of distributing between the State and the counties the funds collected under this Act [1] shall be declared invalid because of inequality of collection or distribution of motor vehicle license fees, then said funds shall be distributed sixty (60%) per cent to the counties making the collections and forty (40%) per cent be remitted to the State in the same manner as herein provided. [Acts 1929, 41st Leg., 2nd C. S., p. 172, ch. 88, § 15.]

[1] Articles 6675a—1 to 6675a—14 and Pen.Code, Art. 807a.

Art. 6675a—15. Payment of registration fee by check without funds; seizure by sheriff or other officer.—Whenever the tax collector or assessor or collector of taxes shall receive from any person a check and/or draft drawn upon any bank or trust company in payment of the registration license fee or fees and license number plates for the current year on any motor vehicle, truck, tractor, trailer, motorcycle or motorcycle side car and such check and/or draft shall be returned unpaid to such tax collector or assessor and collector of taxes on account of insufficient funds, or no funds, in such bank or trust company to the credit of the drawer thereof, it shall be the duty of such tax collector or assessor and collector of taxes to immediately certify under his official seal, accompanied by said check, the sheriff or any constable or highway patrolman in his county of such fact, giving such officer the name and address of such person who gave him such check and/or draft and the number and make of such motor vehicle, truck, tractor, trailer, motorcycle or motorcycle side car. Such officer, upon receiving any such complaint from the tax collector or assessor and collector of taxes shall be authorized, and it shall immediately become his duty, to find such person, if in his county, and demand of such person the immediate redemption of such check and/or draft. Should any person fail and/or refuse to so redeem any such check and/or draft, theretofore given a tax collector or assessor and collector of taxes in payment of any license fee and license number plates mentioned in this Act and returned unpaid to such tax collector, then any sheriff, or any officer mentioned herein, shall be authorized, and it shall be his duty, to forthwith seize and remove from the motor vehicle, truck, tractor, trailer, motorcycle or motorcycle side car, wherever found, the license number plates theretofore issued to the owner thereof, and such officer shall forthwith return such license number plates so seized to the office of the tax collector or assessor and collector of taxes issuing same. [Acts 1935, 44th Leg., p. 683, ch. 290, § 1.]

Art. 6675a—16. Agreements with other states regarding exemption from registration fees; punishment for violation.—(a) In addition to and regardless of the provisions of this Act [1], or any other Act relating to the operation of motor vehicles over the public highways of this State by non-residents, the State Highway Department acting by and through the State Highway Engineer is hereby authorized to enter into agreements with duly authorized officials of other States exempting the residents of such other States using the public highways of this State from the payment of registration fees for such periods or extensions of time as may be granted residents of Texas using the public highways of such other State.

(b) This section shall be cumulative of all other laws on this subject, but in the event of a conflict between the provisions of this section and any other Act on this subject, the provisions of this section shall prevail.

(c) Any person owning or operating a vehicle not registered in this State, in violation of the terms of any agreement made under this section, or in the absence of any agreement, in violation of the applicable registration laws of this State, shall be guilty of a misdemeanor and upon conviction shall be fined any sum not exceeding Two Hundred ($200.00) Dollars. [Acts 1941, 47th Leg., p. 144, ch. 110, § 14.]

[1] Articles 6675a—1, 6675a—2, 6675a—6 to 6675a—8c, 6695 and Pen.Code, art. 827a, § 5a.

Saved From Repeal. Acts 1947, 50th Leg., p. 749, ch. 370, which amends Penal Code, art. 827b, relating to registration of motor vehicles of non-residents, provides, in section 3 thereof, that nothing in such Act shall be construed to repeal or conflict with this article.

Art. 6675a—17. Transfer of surplus funds from registration fees.—In all counties of this State having surplus funds from revenues derived from motor vehicle registration fees which each said county is authorized to retain under the laws of the State of Texas, and where any such county or counties are not levying a tax for the building and maintenance of roads and bridges for such county or counties, the Commissioners Court of said county or counties is hereby authorized to transfer such surplus funds to any other county fund or funds which such Court may from time to time designate, and to expend such surplus funds, for any other use or purpose. [Acts 1945, 49th Leg., p. 273, ch. 202, § 1.]

Arts. 6676—6683. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16.]

Article 6677, now repealed, was amended by Acts 1929, 41st Leg., 1st C.S., p. 233, ch. 94, § 1.

Art. 6684. Disputed classifications.—The Department shall have authority in disputed cases to determine the classification in which any vehicle belongs and the amount of fee which shall be paid therefor. [Acts 1923, 38th Leg., ch. 75, p. 155, § 13.]

Art. 6685. Transfer fees.—When any person, other than a dealer, sells a vehicle subject to registration hereunder, he shall indorse upon his certificate of registration a written transfer of the same. The purchaser of such motor vehicle shall pay to the county tax collector of the county of his residence a transfer fee of one dollar, with his full name and address, and he shall then be regarded as the owner thereof and amenable to the provisions of this law. [Acts 1917, p. 423.]

Art. 6686. Dealer's license; notice of sale or transfer; temporary license plates.—(a) Any manufacturer of or dealer in motor vehicles in this State may, instead of registering each vehicle he may wish to show or demonstrate on the public highways, apply for registration and secure a general distinguishing number which may be attached to any motor vehicle or motorcycle which he sends temporarily upon the road. The annual fee for such dealer's registration of a general distinguishing number shall be Fifteen ($15.00) Dollars, and additional number plates bearing said number desired by any dealer shall be assigned and registered for a fee of Five ($5.00) Dollars each. A dealer within the meaning of this Article means any person, firm or corporation engaged in the business of selling automobiles who runs them upon the public highways or streets for demonstration for the purpose of sale; and this Act shall not be construed as permitting the use of a dealer's license or number plate on any vehicle owned or used by such a dealer for any other purpose than demonstration for the purpose of sale. Every dealer in making application for a dealer's license shall apply for same in writing on a form prescribed and provided by the State Highway Commission. The application shall state that the applicant is a dealer within the meaning of this Act, and if he holds a contract with an automobile manufacturer or distributor for the distribution or sale of motor vehicles or motorcycles he shall so

state in the application, giving make of vehicle he handles and name of such manufacturer or distributor. The facts stated in such application shall be sworn to before an officer authorized to administer oaths. No dealer's license or number plates shall be issued until this Article is complied with.

(b) Each dealer holding a dealer's license may issue temporary cardboard numbers using such dealer's number thereon which may be used by any person, dealer, or manufacturer purchasing a motor vehicle, trailer, or semi-trailer. Such person purchasing a motor vehicle, trailer, or semi-trailer from a manufacturer or dealer may use such cardboard number for a reasonable length of time but in no case to exceed ten (10) days after such purchase is made. Any dealer or manufacturer may use such cardboard license plate for the purpose of operating or conveying a motor vehicle, trailer, or semi-trailer from his place of business in one part of the State to his place of business in another part of the State, and for the purpose of operating or conveying a motor vehicle, trailer, or semi-trailer from the point where it is unloaded to his place of business, and may also use such cardboard number in transporting a motor vehicle, trailer, or semi-trailer from the State line to his place of business. The form of such cardboard number shall be prescribed by the Department of Public Safety.

Any person, firm or corporation engaged in this State in the business of transporting and delivering by means of the full mount method, the saddle mount method, the tow bar method, or any other combination thereof, and under their own power, new vehicles from the manufacturer or any other point of origin to any point of destination within the State of Texas, shall make application to the State Highway Commission for a drive-a-way in-transit license. This application for annual license shall be accompanied by a registration fee of Fifty Dollars ($50) and shall contain such information as the State Highway Commission may require. Upon the filing of the application and the payment of the fee, the State Highway Commission shall issue to each drive-a-way operator a general distinguishing number, which number must be carried and displayed by each motor vehicle in like manner as is now provided by law for vehicles while being operated upon public highways and such number shall remain on the vehicle or vehicles from the manufacturer, or any point of origin, to any point of destination within the State of Texas. Additional number plates bearing the same distinguishing number desired by any drive-a-way operator may be secured from the State Highway Commission upon the payment of a fee of Three Dollars ($3) for each set of additional license plates. Any person, firm or corporation engaging in the business as a drive-a-way operator of transporting and delivering by means of full mount method, the saddle mount method, the tow bar method, or any combination thereof, and under their own power, new motor vehicles, who fails or refuses to file or cause to be filed an application, as is required by law, and to pay the fees therefor as the law requires, shall be found guilty of violating the provisions of this Act and upon conviction be fined not less than Fifty Dollars ($50) and not more than Two Hundred Dollars ($200) and all the costs of Court. Each day so operating without securing the license and plates as required herein shall constitute a separate offense within the meaning of this Act. The funds collected herein shall be paid into the General Revenue Fund of this State subject only to appropriation by the Legislature. [Added Acts 1939, 46th Leg., p. 613, § 1.]

(c) Every motor vehicle that has been driven under its own power, or towed by another vehicle from the point where manufactured outside this State for the purpose of sale within this State, shall have affixed to the windshield or front thereof in plain view a sticker not less than three inches in diameter stating that such vehicle has been driven or towed from point where manufactured. Such notice shall remain on such vehicle until the sale thereof by the dealer.

(d) Manufacturer to give notice of sale of [1] transfer. Every manufacturer or dealer, upon transferring a motor vehicle, trailer, or semi-trailer, whether by sale, lease or otherwise, to any person other than a manufacturer or dealer, shall immediately give written notice of such transfer to the Registration Division of the State Highway Department upon the official form provided by the State Highway Department. Every such notice shall contain the date of such transfer, names and addresses of the transferrer and transferee and such description of the vehicle as may be called for in such official form.

(d)-1. The Department is authorized to issue or cause to be issued temporary license plates made of cardboard or other similar material to any person, firm, or corporation, other than manufacturers, dealers, or dealers' representatives, of motor vehicles, trailers, and semitrailers, authorizing them to drive or operate any new vehicle, provided same is not used to transport property, upon the public highways of this State from the manufacturer's place of business in another State or Country after having purchased said vehicle from a dealer in this State, and to drive or operate any new vehicle from another State or Country after having purchased said vehicle from a dealer in the other State or Country. It is further provided that the said temporary license plate shall not be valid for a period longer than thirty (30) days from date of issuance and that the Department shall place or cause to be placed on said license plates the date of expiration, and the type of vehicle for which each said temporary license plate is issued at the time it is issued. And provided, a fee of Three Dollars ($3) shall be paid for each plate and that only one (1) plate shall be issued for each vehicle. [Added Acts 1947, 50th Leg., p. 300, ch. 182, § 1.]

(e) All registration fees shall be paid in the county in which the owner lives at the time of registration of said motor vehicle.

(f) Any person found guilty of violating any of the provisions of this Act shall, upon conviction, be fined not less than Fifty ($50.00) Dollars and not more than One Hundred Fifty ($150.00) Dollars, and all costs of court. [Acts 1917, p. 423; Acts 1927, 40th Leg., p. 296, ch. 211, § 1; Acts 1937, 45th Leg., p. 302, ch. 158, § 1.]

[1] So in Session Laws. Probably should read "or."

Sections 2 and 3 of the Act of 1947 provided that a holding of partial invalidity should not affect the remaining portion of the Act.

Art. 6687. [Repealed by Acts 1935, 44th Leg., 2nd C.S., p. 1785, ch. 466, § 22.]

Acts 1935, 44th Leg., 2nd C.S., p. 1785, ch. 466, § 22, repealing article 6687, was repealed by Acts 1941, 47th Leg., p. 245, ch. 173, § 45.

Art. 6687a. [Repealed by Acts 1941, 47th Leg., p. 245, ch. 173, § 45.]

The article repealed was Acts 1935, 44th Leg., 2nd C.S., p. 1785, ch. 466, as amended by Acts 1937, 45th Leg., p. 752, ch. 369, §§ 1–8.

Art. 6687b. Drivers', chauffeurs', and commercial operators' licenses; accident reports.

ARTICLE I—WORDS AND PHRASES DEFINED

Section 1. **Definition of words and phrases.** The following words and phrases when used in this Act shall, for the purpose of this Act, have the meanings respectively ascribed to them in this title.

(a) "Vehicle." Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle." Every vehicle which is self-propelled and every vehicle which is propelled by elec-

tric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Motorcycle." Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor and machinery for maintaining or cleaning streets.

(d) "School Bus." Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(e) "Motor Bus." Every vehicle, except those operated by muscular power or exclusively on stationary rails or tracks, which is used in transporting persons between or through two or more incorporated cities and towns for compensation (or hire), whether operated over fixed routes or otherwise; except such of said vehicles as are operated exclusively within the limits of incorporated cities and towns and suburban additions thereto.

(f) "Farm Tractor." Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(g) "Implements of Husbandry." Farm implements, machinery, and tools as used in tilling the soil, namely: cultivators, farm tractors, reapers, binders, combines, or mowing machinery, but shall not include any automobile or truck.

(h) "Director." The Director of the Department of Public Safety of the State of Texas.

(i) "Department." The Department of Public Safety of the State of Texas, acting directly or through its authorized officers and agents, except in such sections of this Act in which some other State Department is specifically named.

(j) "Persons." Every natural person, firm, copartnership, association, or corporation.

(k) "Pedestrian." Any person afoot.

(l) "Driver." Every person who drives or is in actual physical control of a vehicle.

(m) "Operator." Every person, other than a chauffeur or commercial operator, who is in actual physical control of a motor vehicle upon a highway.

(n) "Commercial Operator." Every person who is the driver of a motor vehicle designed or used for the transportation of property, including all vehicles used for delivery purposes, while said vehicle is being used for commercial or delivery purposes.

(o) "Chauffeur." Every person who is the driver for wages, compensation, or hire, or for fare, of a motor vehicle transporting passengers.

(p) "Nonresident." Every person who is not a resident of this State.

(q) "Highway." The entire width between property lines of any road, street, way, thoroughfare, or bridge in this State not privately owned or controlled, when any part thereof is open to the public for vehicular traffic and over which the State has legislative jurisdiction under its police power.

ARTICLE II—ISSUANCE OF LICENSES, EXPIRATION, AND RENEWAL

Sec. 2. **Drivers must have license.**

(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this State unless such person has a valid license as an operator, a commercial operator, or a chauffeur under the provisions of this Act.

(b) Any person holding a valid chauffeur's or commercial operator's license hereunder need not procure an operator's license.

(c) No person holding an operator's, commercial operator's, or chauffeur's license duly issued under the provisions of this Act shall be required to obtain any license for the operation of a motor vehicle from any other State authority or department. Subsection (c) of Section 4 of Article 911A and Subsection (b) of Section 4 of Article 911B, Revised Civil Statutes, is hereby repealed.

Sec. 3. **What persons are exempt from license.**

The following persons are exempt from license hereunder:

1. Every person in the service of the United States when operating an official motor vehicle in such service;

2. Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway, and while driving or operating any commercial motor vehicle temporarily on the highway in an emergency;

3. A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid operator's license issued to him in his home State may operate a motor vehicle in this State only as an operator;

4. Any nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid operator's license, chauffeur's license, commercial operator's license or similar license issued to him by his home State (as well as non-residents whose home State does not require the licensing of operators) shall not be required to secure such license under this Act, provided the State or Country of his residence likewise recognizes such licenses issued by the State of Texas and exempts the holders thereof from securing such licenses from such foreign State or Country. The purpose of this Section is to extend full reciprocity to citizens of other States and foreign Countries which extend like privileges to citizens of the State of Texas.

It shall not be necessary for an employee of any incorporated city, town or village of this State or county of this State when holding an operator's permit to obtain a chauffeur's license in order to operate an official motor vehicle in the service of such incorporated city, town, village or county. As amended Acts 1947, 50th Leg., p. 171, ch. 108, § 1.

5. Any nonresident who is at least eighteen (18) years of age, whose home State does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than ninety (90) days in any calendar year, if the motor vehicle so operated is duly registered in the home State of such nonresident.

6. Any person in the Armed Forces of the United States who is on leave or furlough or who may be temporarily absent from his or her post of duty, or who has been honorably discharged from the Armed Forces of the United States of America for not more than six (6) months; provided, however, that this exemption shall extend only until the cessation of hostilities in the present war and for one year thereafter. [Added Acts 1945, 49th Leg., p. 59, c. 41, § 3.]

Sec. 4. **Who may not be licensed.**

The Department shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen (16) years, except that the County Judge of the county wherein such person resides may, after investigation, and public hearing, authorize the Department, in writing, to issue a license to any such person, when, in his opinion, the person so applying is qualified and conditions exist which make it necessary for such person to be licensed as an operator; provided, however, that any student who has completed and passed the State Department of Education approved standard driver training course which course must also be approved by the Department of Public Safety, may make application and be given the regular driver's license examination. This application shall include a certification by the Superintendent of the school that said standard driver training course is part of the regular curriculum, and further, that the

student applying for a license has passed this course. If, after having properly filed an application, a student can pass the regular driver's license examination, the Department may, in its discretion, issue an operator's license; provided, however, that in no event shall an operator's license of any class be issued to any person less than fourteen (14) years of age. [As amended Acts 1945, 49th Leg., p. 59, c. 41, § 1.]

2. To any person, as a commercial operator, who is under sixteen (16) years of age;

3. To any person, as a chauffeur, who is under sixteen (16) years of age;

4. To any person, as an operator, a commercial operator, or a chauffeur, whose license has been suspended, during such suspension or revocation;

5. To any person, as an operator, commercial operator, or chauffeur, who is shown to be an habitual drunkard or addicted to the use of narcotic drugs;

6. To any person, as an operator, commercial operator, or chauffeur, who has previously, by a court of competent jurisdiction, been adjudged insane or an idiot, imbecile, or feeble-minded, and who has not, at the time of such application, been restored to competency by judicial decree or released from a hospital for the insane or feeble-minded upon a certificate of the superintendent that such person is competent;

7. To any person, as an operator, commercial operator, or chauffeur, who is required by this Act to take an examination, unless such person shall have successfully passed such examination;

8. Neither an operator's, commercial operator's, nor chauffeur's license shall be issued to any person when in the opinion of the Department such person is afflicted with or suffering from such physical or mental disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be issued to any person who is unable to understand highway warnings or direction signs in the English language; provided, however, no person shall be refused a license because of any physical defect unless it be shown by common experience that such defect incapacitates him from safely operating a motor vehicle;

9. To any person when the Department has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare.

Sec. 5. **Special restrictions on drivers of school buses and public or common carrier motor vehicles.**

No person who is under the age of twenty-one (21) years shall drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school, nor any motor vehicle while in use as a public or common carrier of persons nor in either event until he has been licensed as a chauffeur.

Sec. 6. **Application for license.**

(a) Every application for an original or renewal of an operator's, commercial operator's, or chauffeur's license shall be made upon a form furnished by the Department, and every original application shall be verified by the applicant before a person authorized to administer oaths, and officers and employees of the Department are hereby authorized to administer such oaths without charge. No officer or employee of the State shall be permitted to make any charge to administer such oaths. Every said application shall be accompanied by the required fee.

(b) Every said application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator or chauffeur, and, if so, when and by what State or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal.

Sec. 7. **Application of minors.**

The Department shall not grant the application of any minor under the age of eighteen (18) years for an operator's, commercial operator's, or chauffeur's license unless such application is signed by the father of the applicant, if the father is living and has the custody of the applicant, otherwise by the mother or guardian having the custody of such minor, or in the event a minor under the age of eighteen (18) years has no father, mother, or guardian, the license shall not be issued to the minor unless his application therefor is signed by his employer or by the county judge of his residence.

Sec. 8. **Release from liability.**

Any person who has signed the application of a minor for a license may thereafter file with the Department a request that the license of said minor so granted be cancelled, which request shall be in writing and acknowledged before some officer authorized to administer oaths. Thereupon the Department shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from any liability by reason of having signed such application on account of any subsequent negligence or wilful misconduct of such minor in operating a motor vehicle.

Sec. 9. **Revocation of license upon death of person signing minor's application.**

The Department upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license may cancel such license and may not issue a new license until such time as a new application, duly signed and verified, is made as required by this Act. This provision shall not apply in the event the minor has attained the age of eighteen (18) years.

Sec. 10. **Examination of applicants.**

The Department shall examine every applicant for an operator's, commercial operator's, or chauffeur's license, except as otherwise provided in this Section. Such examination shall be held in the county where the applicant resides or makes application within not more than ten (10) days from the date application is made. It shall include a test of the applicant's vision, his ability to understand highway signs in the English language regulating, warning, and directing traffic, his knowledge of the traffic laws of this State, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle and such further physical and mental examination as the Department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways, and provided further that the Director shall have the authority to cause to be re-examined licensee in any case which in his judgment the licensee is incapable of operating a motor vehicle, said examination shall be held in the county of the licensee's residence unless otherwise agreed to by both parties to be held elsewhere.

Sec. 11. **Licenses issued to operators, commercial operators, and chauffeurs.**

The Department shall, upon payment of the required fee, issue to every applicant qualifying therefor an operator's, commercial operator's, or chauffeur's license as applied for, which license shall bear thereon a distinguishing number assigned to the licensee, the full name, age, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his usual signature with pen and ink immediately upon receipt of the license. No li-

cense shall be valid until it has been so signed by the licensee.

Sec. 12. **Restricted licenses.**

(a) The Department, upon issuing an operator's, commercial operator's, and/or chauffeur's license, shall have authority, whenever good cause appears, to impose restrictions suitable to the licensee's driving ability with respect to the type of, or special mechanical control devices required on a motor vehicle which the licensee may operate, or mechanical attachments (glasses, artificial limbs, etc.) required on the person of the licensee. The Department furthermore shall have the authority to impose restrictions suitable to the licensee's driving ability with respect to areas, locations, roads and highways within this state, or with respect to the time of day or night that the licensee shall be permitted to drive a motor vehicle or such other restrictions applicable to the licensee as the Department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee. [As amended Acts 1945, 49th Leg., p. 59, c. 41, § 2.]

(b) The Department may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(c) The Department may, upon receiving satisfactory evidence of any violation of the restrictions of such license, suspend or revoke the same, but the licensee shall be entitled to a hearing as upon a suspension or revocation under this Act.

(d) It is a misdemeanor, for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him.

Sec. 13. **License to be carried and exhibited on demand.**

Every licensee shall have his operator's, commercial operator's, or chauffeur's license in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a magistrate or any officer of a court of competent jurisdiction or any peace officer. It shall be a defense to any charge under this Section that the person so charged produce in court an operator's, commercial operator's, or chauffeur's license theretofore issued to such person and valid at the time of his arrest.

Sec. 14. **Duplicate licenses.**

In the event that an instruction permit or operator's, commercial operator's, or chauffeur's license issued under the provisions of this Act is lost or destroyed, the person to whom the same was issued may obtain a duplicate or substitute thereof upon furnishing proof satisfactory to the Department that such permit or license was lost or destroyed, and upon the payment of a fee of twenty-five cents (25¢).

ARTICLE III—FEES

Sec. 15. **Disposition of fees.**

All fees and charges required by this Act and collected by any officer or agent of the Department shall be remitted without deduction on Monday of each week to the Department at Austin, Texas, and all such fees so collected shall be deposited in the State Treasury in a fund to be known as the "Operator's and Chauffeur's License Fund".

On September 1, 1943, and on September 1st of each and every year thereafter, all over Seventy-five Thousand ($75,000.00) Dollars of the remaining balance in such Operator's and Chauffeur's License Fund shall be transferred to and become a part of the General Revenue Fund of the State of Texas. As amended Acts 1943, 48th Leg., p. 469, ch. 313, § 1.

Sec. 16. **Method of disbursements.**

All disbursements hereunder shall be by warrant issued by the Comptroller upon vouchers drawn by the Chairman of the Department of Public Safety Commission and approved by one other member of the Commission or the Director, and such vouchers shall be accompanied by itemized sworn statements of the expenditures for which they are issued.

Sec. 17. **Report of receipts and expenses.**

At the end of every fiscal year, the Department shall submit a comprehensive and complete report of the receipts and expenses of this Act to the Governor of the State of Texas.

Sec. 18. **Expiration of licenses.**

(a) Every operator's license issued under Senate Bill No. 15, Chapter 466, Page 1785, General Laws, Second Called Session, Forty-fourth Legislature, as amended by House Bill No. 16, Chapter 369, Page 752, Regular Session, Forty-fifth Legislature,[1] shall expire as hereinafter set forth and shall be renewable without examination upon application and payment of required fee unless the Department has reason to believe that the licensee is no longer qualified to receive a license.

For the purpose of expediting the renewal of outstanding licenses, they shall expire and be subject to renewal as follows:

Licenses listed numerically from number 1 to 450,000 expire December 31, 1941, and are renewable on and after October 1, 1941;

Those listed numerically 450,001 to 900,000 expire March 31, 1942, and are renewable on and after January 1, 1942;

Those listed numerically 900,001 to 1,350,000 expire June 30, 1942, and are renewable on and after April 1, 1942;

Those listed 1,350,001 and following and issued on or before September 30, 1941, shall expire November 1, 1942, and be renewable on and after July 1, 1942.

(b) Any licensee failing to make application for renewal of license as above set forth may be required to take examination as required in this Act for applicant's original license.

(c) All licenses issued under this Act shall expire two (2) years from date of issuance.

(d) Every commercial operator's and chauffeur's license shall expire one (1) year from date of its issuance and shall be renewable on or before its expiration date upon application and payment of the required fee. The Department may in its discretion waive examination for the renewal of a commercial operator's or chauffeur's license.

[1] Article 6687a.

Sec. 19. **Fees for licenses.**

The fees as provided for in this Act shall be, as follows:

For a chauffeur's license, Three Dollars ($3); for a commercial operator's license, One Dollar ($1); for an operator's license, fifty cents (50¢).

Sec. 20. **Notice of change of address or name.**

Whenever any person after applying for or receiving an operator's, commercial operator's, or chauffeur's license shall move from the address named in such application or in the license issued to him or when the name of the licensee is changed by marriage or otherwise such person shall within ten (10) days thereafter notify the Department in writing of his old and new addresses or of such former and new names and of the number of any license then held by him.

Sec. 21. **Records to be kept by the Department.**

(a) The Department shall file every application for a license received by it and shall maintain suitable indices containing, in alphabetical or numerical order:

1. All applications denied and on each thereof note the reason for such denial;

2. All applications granted;

3. The name of every licensee whose license has been suspended or revoked by the Department and after each such name note the reasons for such action.

(b) The Department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of the State and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the Department upon any application for renewal of license and at other suitable times.

ARTICLE IV—CANCELLATION, SUSPENSION, AND REVOCATION OF LICENSES

Sec. 22. **Authority of Department to suspend or revoke a license.**

(a) When under Section 10 of this Act the Director believes the licensee to be incapable of safely operating a motor vehicle, the Director may notify said licensee of such fact and summons him to appear for hearing as provided hereinafter. Such hearing shall be had not less than ten (10) days after notification to the licensee or operator under any of the provisions of this Section, and upon charges in writing a copy of which shall be given to said operator or licensee not less than ten (10) days before said hearing. For the purpose of hearing such cases jurisdiction is vested in the mayor of the city, or judge of the police court, or a justice of the peace in the county or subdivision thereof where the operator or licensee resides. Such court may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Department. Upon such hearing, in the event of an affirmative finding by the court, the officer who presides at such hearing shall report the same to the Department which shall have authority to suspend said license for a period not greater than one (1) year, provided, however, that in the event of such affirmative finding the licensee may appeal to the county court of the county wherein the hearing was held, said appeal to be tried de novo. Notice by registered mail to address shown on the license of licensee shall constitute service for the purpose of this Section.

(b) The authority to suspend the license of any operator, commercial operator, or chauffeur as authorized in this Section is granted the Department upon determining after proper hearing as hereinbefore set out that the licensee:

1. Has committed an offense for which automatic suspension of license is made upon conviction;
2. Has been responsible as a driver for any accident resulting in the death or personal injury of another or serious property damage;
3. Is an habitually reckless or negligent driver of a motor vehicle;
4. Is an habitual violator of the traffic law;
5. Is incapable to drive a motor vehicle;
6. Has permitted an unlawful or fraudulent use of such license;
7. Has committed an offense in another State, which if committed in this State would be grounds for suspension or revocation;
8. Has failed or refused to submit a report of any accident in which he was involved as provided in Section 39 of this Act.

Sec. 23. **Period of suspension.**

The Department shall not suspend a license for a period of more than one (1) year.

Sec. 24. **Automatic suspension of license.**

(a) The license of any person shall be automatically suspended upon final conviction of any of the following offenses:

1. Negligent homicide resulting from the operation of a motor vehicle;
2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;
3. Any offense punishable as a felony under the motor vehicle laws of this State;
4. A conviction of a driver of a motor vehicle involved in an accident or collision, upon a charge of failure to stop, render aid, and disclose his identity at the scene of said accident or collision;
5. A conviction upon a charge of aggravated assault upon the person by means of motor vehicle, as provided by law.

(b) The suspension above provided shall in the first instance be for a period of six (6) months. In event any license shall be suspended under the provision of this Section for a second time, said second suspension shall be for a period of one (1) year.

(c) The suspension of any license shall be automatically extended upon licensee being convicted of operating a motor vehicle while the license of such person is suspended; such extended period of suspension to be for a like period as the original suspension, and is in addition to any other penalty assessed, as provided in this Act.

Sec. 25. **When court to report convictions.**

(a) Whenever any person is convicted of any offense for which this Act makes automatic the suspension of the operator's, commercial operator's, or chauffeur's license of such person, the court in which such conviction is had shall require the surrender to it of all operators', commercial operators', and chauffeurs' licenses then held by the person so convicted and the clerk of said court shall thereupon forward the same together with a record of such conviction to the Department, within ten (10) days from the date of conviction.

(b) Every court having jurisdiction over offenses committed under this Act, or any other Acts of this State regulating the operation of motor vehicles on highways, shall forward to the Department a record of the conviction of any person in said court for a violation of any said laws, and may recommend the suspension of the operator's, commercial operator's, or chauffeur's license of the person so convicted, as provided in Section 22 of this Act.

(c) For the purpose of this Act, the term "conviction" shall mean a final conviction. Also, for the purpose of this Act, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

Provided, however, that in case of conviction for any of the offenses enumerated in paragraph (a) of Section 24 of this Act, and the sentence of the court having been suspended as provided in the Statutes, such suspended sentence shall not mitigate against the suspension of the operator's, commercial operator's, or chauffeur's license of the person convicted.

Sec. 26. **Surrender and return of license.**

The Department, upon suspending or revoking a license, shall require that such license shall be surrendered to and be retained by the Department except that at the end of the period of suspension of such license, the license so surrendered shall be returned to the licensee.

Sec. 27. **No operation under foreign license during suspension or revocation in this State.**

No person, resident or nonresident, whose operator's, commercial operator's, or chauffeur's license or privilege to operate a motor vehicle in this State has been suspended or revoked as provided in this Act shall operate a motor vehicle in this State under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such sus-

pension or after such revocation until a new license is obtained when and as permitted under this Act.

Sec. 28. **Suspending resident's license upon conviction in another State.**

The Department is authorized to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another State of an offense therein which, if committed in this State, would be grounds for suspension or revocation of the license of an operator, commercial operator, or chauffeur.

Sec. 29. **Suspending privileges of nonresidents and reporting convictions.**

(a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation by the Department in like manner and for like cause as an operator's, commercial operator's, or chauffeur's license issued hereunder may be suspended or revoked.

(b) The Department is further authorized, upon receiving a record of the conviction in this State of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the State wherein the person so convicted is a resident.

Sec. 30. **Cancellation of license because of mental incompetence.**

It shall be unlawful for any person to act as an operator, commercial operator, or chauffeur who is an habitual drunkard or is addicted to the use of narcotic drugs, or who is an epileptic, or who has been adjudged insane or an idiot, imbecile, or feeble-minded, and who has not been restored to competency by judicial decree or released from a hospital for the insane or feeble-minded upon a certificate of the superintendent that such person is competent, and any finding by any court of competent jurisdiction that any person holding an operator's license, commercial operator's license, or chauffeur's license who is either insane, feeble-minded, an habitual drunkard, an epileptic, an imbecile, an idiot, or addicted to the use of narcotics, shall carry with it a revocation of such operator's, commercial operator's, or chauffeur's license, and it shall be the duty of the clerk of any court in which such findings are made, to certify same to the Department within ten (10) days.

Sec. 31. **Right of appeal to courts.**

Any person denied a license or whose license has been cancelled or revoked by the Department except where such cancellation or revocation is automatic under the provisions of this Act shall have the right to file a petition within thirty (30) days thereafter for a hearing in the matter in the County Court at Law in the county wherein such person shall reside, or if there be no County Court at Law therein, then in the county court of said county, and such court is hereby vested with jurisdiction, and it shall be its duty to set the matter for hearing upon ten (10) days written notice to the Department, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Act.

Provided the trial on appeal as herein provided for shall be a trial de novo and the licensee shall have the right of trial by jury and his license shall not be suspended pending the appeal.

Provided further in cases herein provided for suspension of license, the filing of the petition of appeal shall abate said suspension until the trial herein provided for shall have been consummated and final judgment thereon is had.

Sec. 32. **Violation of license provision.**

It shall be unlawful for any person to commit any of the following acts:

1. To display or cause or permit to be displayed or to have in possession any operator's, commercial operator's, or chauffeur's license knowing the same to be fictitious or to have been cancelled, revoked, suspended, or altered;

2. To lend or knowingly permit the use of, by one not entitled thereto, any operator's, commercial operator's, or chauffeur's license issued to the person so lending or permitting the use thereof;

3. To display or to represent as one's own, any operator's, commercial operator's, or chauffeur's license not issued to the person so displaying same;

4. To fail or refuse to surrender to the Department on demand any operator's, commercial operator's, or chauffeur's license which has been suspended, cancelled, or revoked as provided by law;

5. To apply for or have in one's possession more than one operator's, commercial operator's, or chauffeur's license that is currently valid;

6. To use a false or fictitious name or give a false or fictitious address in any application for an operator's, commercial operator's, or chauffeur's license, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to cancel [1] a material fact or otherwise commit a fraud in any such application.

[1] So in enrolled bill. Probably should read "conceal."

Sec. 33. **Making false affidavit false swearing.**

Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this Act to be sworn to or affirmed, is guilty of false swearing and upon conviction shall be punishable by fine or imprisonment as other persons committing false swearing are punishable.

Sec. 34. **Driving while license suspended or revoked.**

Any person whose operator's, commercial operator's, or chauffeur's license or driving privilege as a nonresident has been cancelled, suspended, or revoked as provided in this Act, and who drives any motor vehicle upon the highways of this State while such license or privilege is cancelled, suspended, or revoked is guilty of a misdemeanor, and, upon conviction, shall be punished by fine of not less than Twenty-five Dollars ($25), and not more than Five Hundred Dollars ($500), and, in addition thereto, there may be imposed a sentence of imprisonment not to exceed six (6) months.

Sec. 35. **Permitting unauthorized minor to drive.**

No person shall cause or knowingly permit his child or ward under the age of eighteen (18) years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this Act.

Sec. 36. **Permitting unauthorized person to drive.**

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this Act.

Sec. 37. **Employing unlicensed chauffeur or commercial operator.**

No person shall employ as a chauffeur or commercial operator of a motor vehicle any person not then licensed as provided in this Act.

Sec. 38. **Renting motor vehicle to another.**

(a) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a nonresident,

then duly licensed under the laws of the State of his residence except a nonresident whose home State does not require that an operator be licensed.

(b) No person shall rent a motor vehicle to another until he has inspected the operator's, commercial operator's, or chauffeur's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence.

(c) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer or officer or employee of the Department.

ARTICLE V—ACCIDENT REPORTS

Sec. 39. **Accidents to be reported by persons involved.**

Every person involved in an accident resulting in death, injury, or apparent property damage of Fifty Dollars ($50) or more where one or more motor vehicles are involved and who is the holder of an operator's, commercial operator's, or chauffeur's license, under the provisions of this Act, shall make a report of such accident to the Department of Public Safety within forty-eight (48) hours. Refusal to make such report shall render the holder of such license liable to suspension or revocation of such license. Reports required by this Section shall be deemed privileged communications.

Sec. 40. **Accident statistics and reports.**

The Department shall prepare and shall supply to police and sheriffs' offices and other suitable agencies, forms for accident reports, and such reports shall be made within a reasonable time from the date of such accident by such officers or agencies to the Department at Austin, Texas, sufficiently detailing all the facts with reference to any highway accident, and the persons and vehicles involved.

Sec. 41. **Report of deaths resulting from accidents.**

Every coroner, justice of the peace, or other official performing like functions shall on or before the tenth (10th) day of each month report in writing to the Department the death of any person within his jurisdiction during the preceding calendar month as the result of any accident in which a motor vehicle was involved and the circumstances of such accident.

Sec. 42. **Accident reports confidential.**

All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the Department except that the Department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. No such report shall be used as evidence in any trial, civil or criminal, arising out of such accident, except that the Department shall furnish upon request of any person who has, or claims to have, made such a report or upon demand of any court, a certificate showing that a specified report has or has not been received by the Department, solely to prove a compliance or failure to comply with the requirement that such report be made to the Department.

Sec. 43. **Department to tabulate accident reports.**

The Department shall receive accident reports required to be made by law and shall tabulate and analyze such reports and publish annually or at more frequent intervals, statistical information based thereon as to the number, cause, and location of highway accidents; and the Department shall biennially report to the Governor and the Legislature the abstract of such reports for the preceding biennium, with its conclusions and findings and recommendations for decreasing highway accidents and increasing safety upon the highways of Texas.

ARTICLE VI

Sec. 44. **Penalty for violation of Act.**

(a) It shall be a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other laws of this State declared to be a felony.

(b) In addition to any other penalties hereinbefore provided, and unless another penalty is in this Act or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this Act shall be punished by fine of not more than Two Hundred Dollars ($200).

Sec. 45. **Repeal of conflicting laws.**

All laws or parts of laws in conflict herewith are hereby expressly repealed, and more particularly Senate Bill No. 15, Chapter 466, Page 1785, General Laws, Second Called Session, Forty-fourth Legislature, as amended by House Bill No. 16, Chapter 369, Page 752, Regular Session, Forty-fifth Legislature.[1]

1 Article 6687a.

Sec. 46. **Constitutionality.**

If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act and the Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional. [Acts 1941, 47th Leg., p. 245, ch. 173; Acts 1943, 48th Leg., p. 469, ch. 313, § 1.]

Section 3 of the amendatory Act of 1943 read as follows: "If the foregoing provisions shall be invalid as they may apply to any special fund, the Legislature hereby declares that it would nevertheless have provided for the transfers from the other special funds named herein."

Art. 6687b—1. School and common carrier motor vehicles, persons 17 or over may drive during war.—Until the conclusion of the present war with Germany, Italy and Japan, persons seventeen (17) years of age and over who have been licensed as chauffeurs by the Department of Public Safety shall be authorized to drive any motor vehicle while in use as a school bus for the transportation of pupils to and from school, or any motor vehicle in use as a public or common carrier of persons; providing that any person under twenty-one (21) years of age who drives said school buses must be recommended by the County Superintendent and local school principal, and all statutes now prohibiting the operation of such motor vehicles by persons under the age of twenty-one (21) years are suspended until the conclusion of hostilities. Provided, however, that this Act will not apply to drivers of vehicles operated under permit or certificate issued by the Railroad Commission of Texas. [Acts 1943, 48th Leg., p. 41, ch. 38, § 1.]

Arts. 6688–6693. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16.]

Acts 1927, 40th Leg., p. 235, ch. 162 amended Article 6691 and Acts 1927, 40th Leg., p. 296, ch. 211, amended Article 6688.

Art. 6694. State Highway Fund.—All funds coming into the hands of the Commission derived from the registration fees or other sources provided for in this subdivision, as collected, shall be deposited with the State Treasurer to the credit of a special fund designated as "The State Highway Fund," and shall be paid only on warrants issued by the Comptroller upon vouchers drawn by the chairman of the Commission and approved by one other member thereof, such vouchers to be accompanied by itemized sworn statements of the expenditures. [Acts 1917, p. 424.]

Art. 6694a. Premiums on bonds securing funds advanced by Federal Government payable out of State Highway Fund.—The State Highway Commission is hereby authorized and empowered to pay out of any available funds to the credit of the State Highway Fund the premium or premiums on surety or assurance bonds that the Federal Government may require to be given by the State Treasurer to secure a fund or funds advanced by the Federal Government to the State of Texas under the recent National Industrial Recovery Act for expenditure by the State Highway Department in the construction and improvement of state highways. [Acts 1933, 43rd Leg., 1st C.S., p. 74, ch. 21, § 1.]

Art. 6695. Misrepresenting weight; punishment; venue for prosecutions.—If any person shall operate, or permit to be operated, any motor vehicle, licensed under this law, of a greater weight than stated in his declaration or application for license, he shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not exceeding Two Hundred ($200.00) Dollars, and each use of such vehicle shall constitute a separate offense; and venue for prosecutions hereunder shall lie in any county in which any motor vehicle is operated with a greater gross weight than that stated in the declaration or application for a license for such motor vehicle. [Acts 1923, p. 156; Acts 1941, 47th Leg., p. 144, ch. 110, § 11.]

Art. 6696. Unsafe vehicle.—If the Department shall determine at any time that a motor vehicle is unsafe or improperly equipped, or otherwise unfit to be operated upon the public highways, it may refuse to register such vehicle, and may for a like reason revoke any registration already issued. [Acts 1917, p. 475.]

Art. 6697. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16.]

Art. 6698. Municipal regulation.—The certificate of registration and numbering for purposes of identification, and the fees herein provided for shall be in lieu of all other similar registrations heretofore required by any county, municipality or other political subdivision of this state, and no such registration fees or other like burdens shall be required of any owner of any motor vehicle or motorcycle by any county, municipality or other subdivision of the state. This provision shall not affect the right of incorporated cities and towns to license and regulate the use of motor vehicles for hire in such corporation. Nothing herein shall in anywise authorize or empower any county or incorporated city or town in this state to levy and collect any occupation tax or license fees on motorcycles, motor vehicles or motor trucks; provided that such cities or towns are hereby authorized and empowered to levy and collect a city permit fee, not to exceed two (2%) per cent of the gross receipts per annum, for the operation of each motor vehicle transporting passengers for hire or a street rental charge based upon gross receipts, not to exceed two (2%) per cent per annum, for the operation of motor vehicles transporting passengers for hire, other than motor vehicles operating under a permit or certificate of the Railroad Commission of the State of Texas or the Interstate Commerce Commission; and provided further that nothing in this Article shall be construed as impairing or altering in any way the provisions relating to payments in any contracts, agreements, or franchises now in existence, or hereafter made between an incorporated city or town and the owners or operators of motor vehicles transporting passengers for hire. [Acts 1917, p. 475; Acts 1947, 50th Leg., p. 512, ch. 302, § 1.]

Art. 6699. County traffic officers.—The Commissioners Court of each county, acting in conjunction with the Sheriff, may employ not more than two (2) regular deputies, nor more than two (2) additional deputies for special emergency to aid said regular deputies, to be known as county traffic officers to enforce the highway laws of this State regulating the use of the public highways by motor vehicles. Said deputies shall be, whenever practicable, motorcycle riders, and shall be assigned to work under the direction of the Sheriff. They shall give bond and take oath of office as other deputies. They may be dismissed from service on request of the Sheriff whenever approved by the Commissioners Court, or by said Court on its own initiative, whenever their services are no longer needed or have not been satisfactory. The Commissioners Court shall fix their compensation prior to their selection, and may provide at the expense of the county, necessary equipment for said officers. The pay of said deputies shall not be included in the settlements of the Sheriff in accounting for the fees of office. For the purpose of this law, the Commissioners Courts of counties whose funds from the motor registration fees provided herein amount to Thirty Thousand Dollars ($30,000) or over, may use not exceeding five (5) per cent of said funds; and not to exceed seven and one-half (7½) per cent of such funds in counties receiving a lesser amount from such registration. Said deputies shall at all times cooperate with the police department of each city or town within the county, in the enforcement of said traffic laws therein and in all other parts of the county, and shall have the same right and duty to arrest violators of all laws as other Deputy Sheriffs have. [Acts 1919, p. 228; Acts 1937, 45th Leg., p. 438, ch. 225, § 1.]

See Department of Public Safety, Articles 4413(1) et seq.

Art. 6699a. Salaries of deputies.—Deputies shall be paid a salary out of the general county fund not to exceed one hundred and fifty ($150) dollars per month, the salary to be fixed by the commissioners' court, and in addition thereto the commissioners' court is hereby authorized to provide at the expense of the county such necessary uniforms, caps and badges, such badges to be not less than two inches by three inches in dimensions, and other necessary equipment, to include a motorcycle and its maintenance, as is necessary for them to discharge their duties. The salaries paid to said deputies acting as such highway officer shall be paid direct to said deputies by the commissioners' court, and such salaries shall be independent of any salary or fee paid to the sheriff and all of his deputies not so acting as highway officers, and the sheriff shall not be required to account for the salaries provided for herein as fees of office or as salary to the sheriff or his other deputies. Such deputies as are provided for herein shall be appointed by the commissioners' court and be deputized by either the sheriff or any constable of the county in which they are appointed, and no other officers shall make arrests in this State for violation of laws relating to highways now in effect in this State. Such deputies as provided for herein shall at all times when in the performance of their duties wear a full uniform with a cap and badge, the badge to be displayed on the outside of the uniform in a conspicuous place. Such officers shall remain in and upon the highway, and at all times patrol the same while in the performance of their duties, only leaving the highway to pursue any offender whom such officers were unable to apprehend upon the highway itself. No arrest by any such officer shall be binding or valid upon the person apprehended if the officer making such arrest was in hiding or if he set a trap to apprehend persons traveling upon the highway. No fees or charges whatever shall be made for the service of such officers provided for herein, nor shall any fee for the arrests made by such officers be charged and taxed as costs or paid to such officers in any case in which such officers shall make an arrest. Such officers shall perform all their duties and make arrests for violation of any law of this State appertaining to the control and regu-

lation of vehicles operating in and upon any highway, street, or alley of this State. The district engineer in whose district the county in which such officers operate shall advise with such officers as to the enforcement of the various State laws pertaining to control and regulation of traffic upon the highways, and in case such officers shall not perform their duties in enforcing such laws, the district engineer may complain to the commissioners' court, and upon the filing of such complaint in writing duly signed by the district engineer, the commissioners' court shall summons before them for a hearing the officer or officers so complained of, and if such hearing develops that such officer or officers are not performing their duties as required of them, then such officer or officers shall immediately be discharged from all of their duties and powers as herein provided for, and other officers shall forthwith be appointed. Should any portion or section of this article be held invalid or unconstitutional, such holding shall not affect the validity or constitutionality of any other portion of this article, and all other portions not held invalid or unconstitutional shall remain in full force and effect. [Acts 1925, p. 202.] [39th Leg., ch. 58, § 1.]

Art. 6699b. [Unconstitutional.]

This article was Acts 1935, 44th Leg., p. 711, ch. 306, relating to employment and salaries of county traffic officers was void as a local or special law in violation of Const. art. 3, § 56, because, by the terms thereof, although it applied to counties of 125,000 or over, it did not apply to counties of not less than 195,000 and not more than 205,000, such classification being an arbitrary one. See Anderson v. Wood, 137 T. 201, 152 S.W.2d 1084.

Art. 6700. Disposition of fines.—Fines collected for violations of any highway law as set forth in Chapter 1 of Title 13 of the Penal Code, shall be used by the municipality or the counties in which the same are assessed and to which the same are payable, in the construction and maintenance of roads, bridges and culverts therein, and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles, and to help defray the expense of county traffic officers. [Acts 1917, p. 484; Acts 1919, pp. 228, 310.]

Art. 6701. Width of wheels.—No person, firm, association or corporation shall sell or offer for sale in this State any wagon or other road vehicle with an intended carrying capacity of more than two thousand pounds and not exceeding four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than three inches in width; or any such wagon or other road vehicle with an intended carrying capacity of more than four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than four inches in width. This article shall apply to all persons, firms, associations or corporations engaged in the sale of road vehicles, either at wholesale or retail, but shall not apply to individuals selling or offering for sale road vehicles purchased for their individual use. Any firm, association or corporation violating the terms of this article shall be subject to a penalty of not less than one hundred nor more than one thousand dollars for each offense, to be collected for the benefit of the county in which such violation may occur. [Acts 1917, p. 139; Acts 1919, p. 284; Acts 3rd C. S. 1920, p. 61.]

Additional legislation, see article 6701c, post, and note thereunder.

Art. 6701a. Permits for heavy trucks on highways.—Sec. 1. When any person, firm or corporation shall desire to operate over a state highway superheavy or over-size equipment for the transportation of such commodities as cannot be reasonably dismantled, where the gross weight or size exceeds the limits allowed by law to be transported over a state highway the State Highway Department may, upon application, issue a permit for the operation of said equipment with said commodities, when said State Highway Department is of the opinion that the same may be operated without material damage to the highway. Provided, however, that nothing in this Act shall prevent the full control of such movements or operations on the streets of cities and towns by the ordinances of such municipalities.

Sec. 1-a. In order to facilitate the issuance of such special permits, the Highway Department shall designate in each county a special agent or agents who shall at all times be available for the purpose of issuing such permits in compliance with this law.

Sec. 2. The application for a permit as provided for in this Act, shall be in writing and contain the following:

(a) The kind of equipment to be operated, with complete description of the same, and the weight of same.

(b) The kind of commodity to be transported, and the weight of same.

(c) The highway and the distance over which the same is to be operated.

(d) The same shall be dated and signed by the applicant.

Sec. 3. Before a permit is issued the applicant for the same shall file with the State Highway Department a bond in an amount to be set and approved by the Department, payable to the State Highway Department of Texas, and conditioned that the applicant will pay to the State Highway Department any damage that might be sustained to the highway by virtue of the operation of the equipment, for which a permit is issued to operate, and venue of any suit for recovery upon said bond may be any court of competent jurisdiction of Travis county. There shall also accompany the bond a fee of $5.00 payable to the State Highway Department which fee shall be, by the State Highway Department, deposited in the treasury of the State of Texas, to the credit of the Highway Maintenance Fund.

Sec. 4. Any permit provided for in this Act issued by the State Highway Department, shall be substantially in the following form:

(a) It shall contain the name of the applicant and shall be dated and signed by the State Highway Engineer or a Division Engineer.

(b) It shall state the kind of equipment to be transported over the highway, together with the weight and dimensions of same and the kind and weight of the commodity to be transported.

(c) It shall state the highway and distance over which the same is to be transported.

(d) It shall state any condition upon which the permit is issued. [Acts 1929, 41st Leg., 2nd C.S., p. 71, ch. 41.]

Acts 1941, 47th Leg., p. 86, ch. 71, incorporated in article 911b, § 6cc and Pen.Code, art. 827a, relating to weight of loads for commercial motor vehicles, provides in section 9 that nothing in such Act shall in any way alter, amend, repeal or modify this article.

Art. 6701a—1. Weight of lumber.—That in determining the amount of poundage being carried by any truck engaged in the transportation of lumber over any highway in this State, and for the purpose of determining such weight, the weights set out in the schedule of "average weights of Southern Pine Association" issued in 1933 shall govern as to the weight of such lumber. [Acts 1935, 44th Leg., p. 832, ch. 349, § 1.]

Acts 1941, 47th Leg., p. 86, ch. 51, incorporated in article 911b, § 6cc and Pen.Code, art. 827a, relating to weight of loads for commercial motor vehicles, provides in section 8 that the enactment of such Act should not repeal or affect the provisions of this article.

Art. 6701b. Liability for injuries to gratuitous guest in motor vehicle limited; public carrier and motor vehicle demonstrators excepted.—Sec. 1. No person transported over the public highways of this State by the owner or operator of a motor vehicle as his guest without payment for such transportation, shall have a cause of action for damages against such owner or operator for injuries, death

or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator, or caused by his heedlessness or his reckless disregard of the rights of others.

Sec. 2. This Act shall not relieve a public carrier or any owner or operator of a motor vehicle while the same is being demonstrated to a prospective purchaser, of responsibility for any injuries sustained by a passenger being transported by such public carrier, or by such owner or operator. [Acts 1931, 42nd Leg., p. 379, ch. 225.]

Art. 6701c. Regulation of lights and lighting.

Definitions

Sec. 1. Wherever used in this Act the following terms shall have the meaning ascribed to each as follows:

(a) "Motor Vehicle" shall include all vehicles propelled otherwise than by muscular power, except motorcycles and vehicles that run exclusively upon tracks or rails.

(b) "Tractor" shall include any motor vehicle used as a traveling power plant or for drawing other vehicles, but having no provisions for carrying loads independently, other than the operator of such tractor.

(c) "Trailer" shall include any vehicle without motive power constructed for carrying passengers or property wholly on its own structure and for being drawn by a self-propelled vehicle, except those running exclusively on tracks or rails.

(d) "Semi-trailer" shall include a vehicle designed and constructed for use in conjunction with a self-propelled vehicle so that some of the weight of its load rests upon and is carried by the towing vehicle, but not including those running exclusively upon tracks or rails.

(e) "Motorcycle" shall include any motor vehicle constructed to travel on not more than three wheels in contact with the ground or public highway, but not those that run exclusively on rails or tracks.

(f) "Bicycle" shall include any vehicle propelled by human power while the person or persons furnishing the power ride such vehicle, except those running exclusively upon tracks or rails.

(g) "Public Highway" shall include any road, street, way, thoroughfare or bridge in this State not privately owned or controlled, for the use of vehicles, over which the State has legislative jurisdiction under its police power.

(h) "Night-time" shall mean the time between one-half hour after sunset and one-half hour before sunrise.

(i) "Person" shall include, wherever applicable, a person, firm, partnership, corporation, association or other concern by whatever name known or howsoever organized or created.

(j) "Headlighting Device" or "Device," when used in the provisions relative to lights on motor vehicles, tractors, or motorcycles, shall include the integral and complete headlamp or a device intended to modify in any manner the beam of the ordinary type of headlighting equipment.

(k) "Ordinary Type of Headlighting Equipment" shall mean a headlamp composed of a lamp housing, plain parabolic reflector, plain glass front or bare reflector, and a clear-glass incandescent lamp or bulb.

(l) "Lens" shall include any headlight lens, cover-glass or front-glass other than a plain glass front.

(m) "Reflector" shall include any reflector other than a plain parabolic reflector.

(n) "Headlight Control Device" shall have the same meaning as that assigned to "Headlighting Device" and "Device."

(o) "Spotlight" shall mean any light or lamp, the direction of the beam from which is controllable from the front seat of a motor vehicle or from the seat or side-car of a motorcycle.

Lights required

Sec. 2. It shall be unlawful for any person to operate any motor vehicle, motorcycle, tractor, trailer, semi-trailer or bicycle upon any public highway in this State during the night-time if such motor vehicle, motorcycle, tractor, trailer, semi-trailer or bicycle be not equipped with lights complying with the following requirements applicable to any such vehicle.

(a) Every motor vehicle and tractor shall, during the night-time, have two lighted headlamps of approximately equal candle-power attached to the front end thereof, one of said headlamps shall be located to the right of the car axis and the other to the left of said axis. Every motorcycle shall, during the night-time, have one lighted headlamp attached to the front thereof. Each of said headlights of motor vehicles, tractors, and motorcycles shall be visible from the front of the vehicle.

(b) Every motor vehicle, motorcycle, tractor, trailer, or semi-trailer shall, during the night-time, have attached one lighted lamp displaying a red or yellow light visible from the rear of such vehicle; provided, that when more than one of such vehicles are operated while fastened together, one behind the other, only the last of such vehicles toward the rear shall be required to carry such a tail light. Such rear tail light on all such vehicles mentioned in this subdivision shall be so arranged and constructed as to illuminate during the night-time the number plate showing the registration number of the vehicle so that the number plate shall be visible from the rear of such vehicle. Where the construction or use of a motor truck makes it necessary to separate the tail light and the number plate for the purpose of protecting either or both, it shall not be necessary for the tail light to be so placed as to illuminate the number plate.

(c) Every bicycle shall, during the night-time, have attached to it in front a lighted lamp which shall be visible from the front of such bicycle, or a reflex mirror, and attached to it in the rear a reflex mirror or a lighted lamp exhibiting a red or yellow light which shall be visible from the rear of such bicycle.

Lens, reflector or headlight control device

Sec. 3. No headlight shall be used upon any motor vehicle, tractor or motorcycle operated upon the public highways of this State unless such headlight is equipped with a lens, reflector or headlight control device which has been approved by the State Highway Commission in accordance with the provision of this Act, and which is adjusted as prescribed in the certificate of approval. Before any lens, reflector, or headlight control device intended to enable a headlight to comply with the provisions of this Act shall be used upon any motor vehicle, tractor or motorcycle, such lens, reflector, or headlight control device shall be submitted by the State Highway Commission to be tested by a testing agency as hereinafter specified, and a certificate of approval issued by the State Highway Commission to the manufacturer of such lens, reflector or headlight control device or his agent within this State.

Official testing agency

Sec. 4. The University of Texas is hereby designated as the official testing agency for the State of Texas, said tests to be carried on under the supervision of the Experiment Station of said institution. In the event that said institution is unable to carry on the tests herein prescribed, the State Highway Commission shall have the authority to designate a new testing agency. Said testing agency, in either case, shall carry on the tests in laboratories equipped to carry on photometric tests according to the best practice, recognized as such by the National Bureau of Standards and other states requiring tests similar to those required herein.

Application for test; expenses

Sec. 5. Any person, firm or corporation may submit to the State Highway Commission a lens, reflector or headlight control device intended to make a headlight comply with the provisions of this Act, and make application that the same be tested as to conformity with the requirements of this Act. Upon such application being made, the State Highway Commission shall, upon notice to the applicant, submit such lens, reflector or headlight control device to the testing agency as herein designated with the request that such device be tested as to conformity with the requirements of this Act. Each such applicant shall, upon the filing of his application, pay to the State Highway Commission a fee of fifty dollars. All such fees shall be paid by the State Highway Commission into the State Treasury, and they shall be deposited in a fund to be known as the Highway Light Test Fund, and the State Treasurer shall keep such fund separate. The moneys in such fund, or so much of them as may be necessary, shall be used to meet the expense of the tests as herein provided, and for such use they are hereby appropriated, and the balance thereof, if any, shall be paid into the State Highway Fund. Moneys in the Highway Light Test Fund shall be spent under the direction of the State Highway Commission, and may be spent only to defray the expenses of testing by the testing agency herein provided for.

Tests of devices

Sec. 6. The testing agency shall conduct an exact scientific test of every device submitted to it as herein provided, and shall report thereon to the State Highway Commission its findings and instructions as to the candlepower lamp or bulb and any particular adjustment to be used with such device.

The sample submitted to the testing agency shall be representative of the device as manufactured and as marketed. They shall be accompanied by printed instructions for their use as issued by the manufacturer of the device. The samples submitted shall include as much of the accessory equipment peculiar to the device (except batteries) as is necessary to operate the device in its normal manner.

In the case of devices to be used in connection with standard parabolic reflectors, the reflectors used in making the laboratory tests shall be of standard high grade manufacture of 1.25 inch focal length, with clean and highly polished surfaces and as nearly truly paraboloidal in form as possible, and as approved for this purpose by the National Bureau of Standards.

The incandescent lamps used in connection with the laboratory tests shall be of standard manufacture and as approved for this purpose by the National Bureau of Standards. In case of devices involving the use of special incandescent lamps, such lamps, together with any necessary accessories, shall be submitted.

Each device submitted must bear a distinctive designation prominently and permanently indicating the name and type of the device. Special incandescent lamps submitted in connection with devices shall bear the manufacturer's normal clear-bulb rating.

The testing agency shall adjust the device in accordance with the printed instructions issued by the manufacturer, which instructions must be adequate for practical purposes. An exact description of the adjustments made for test shall be given in the report.

Designations of focal adjustments

Sec. 7. The following designations of the focal adjustments of the incandescent lamp in the parabolic reflector are hereby adopted:

Principal Focus. The beam, with bare reflector, or plain front glass, is nearly parallel and of the smallest possible diameter.

Rear Focus. The beam, with bare reflector or plain front glass, diverges as much as possible without having a dark center.

Front Focus. The beam, with bare reflector or plain front glass, converges and crosses near the lamp, and then diverges as much as possible without having a dark center.

Special Focus. A special focal adjustment shall be allowed only when it can be clearly defined and described.

Photometric tests

Sec. 8. (a) The testing agency shall make the following photometric tests:

Tests of devices used in pairs. A pair of testing reflectors, mounted similarly to the headlamps on a motor vehicle, shall be set up in a dark room at a distance of not less than sixty feet nor more than one hundred feet from a vertical white screen. If a testing distance of one hundred feet is taken, the reflectors shall be set twenty-eight inches apart from center to center, and if a shorter testing distance is taken, the distance between reflectors shall be proportionately reduced. The axis of the lamps shall be parallel and horizontal, or tilted in a vertical plane in accordance with manufacturer's adjustment. The intensity of the combined light shall then be measured with each pair of samples in turn, with the reflectors fitted with a pair of incandescent lamps of the gas-filled type, six to eight volts, 21 spherical candlepower rating. The lamps shall be such as will give their rated candlepower when operated at their rated efficiency. They shall be operated at their rated candlepower.

Measurements shall be made at the following points at the surface of the screen:

A. In the median vertical plane parallel to the lamp axis, on a level with the lamps.

B. In the median plane one degree of arc below the level of the lamps.

C. In the median plane of one degree of arc above the level of the lamps.

D. Four degrees of arc to the left of the median plane and one degree of arc above the level of the lamps.

PL and PR. One and one-half degree of arc below the level of the lamps and three degrees of arc to the left and to the right, respectively, of the median plane.

QL and QR. Three degrees of arc below the level of the lamps and six degrees of arc to the left and to the right, respectively, of the median plane.

(b) All pairs of samples tested under the conditions prescribed above shall conform to the following specifications for observed apparent candlepower:

Point A. Not less than 1,800 candlepower nor more than 6,000 candlepower.

Point B. Not less than 7,200 candlepower, and there shall not be less than 7,200 candlepower at any point on the horizontal line through B, one degree to the left and to the right of B.

Point C. Not over 2,400 candlepower, and not less than 800 candlepower.

Point D. Not over 800 candlepower.

Points PL and PR. At each of these points and at every point on the line between them, not less than 5,000 candlepower.

Points QL and QR. At each of these points and at every point on the line between them, but less than 2,000 candlepower.

Test of devices used singly

Sec. 9. Test of devices used singly. Where a device is to be used singly, only one reflector shall be used, and the specifications for the observed candlepower for the test stations in 8 (a) shall be as follows:

Point A. Not less than 1,800 candlepower.

Point B. Not less than 3,600 candlepower, and there shall not be less than 3,600 candlepower at any ponit

[point] on the horizontal line through B, one degree to the left and to the right of B.

Point C. Not more than 2,400 candlepower.

Point D. Not more than 800 candlepower.

Points PL and PR. At each of these points and at every point on the line between them, not less than 2,500 candlepower.

Points QL and QR. At each of these points and at every point on the line between them, not less than 1,000 candlepower.

Defects preventing approval

Sec. 10. The testing agency shall recommend to the State Highway Commission that any device submitted be not given a certificate of approval, even though it passes the photometric tests herein prescribed, if such device has one of the following defects:

Unnecessary loss of light due to absorption or diffusion.

Abnormal or unduly complicated adjustment.

Unstable or bad mechanical construction.

Unduly bright or dark areas or excessive contrast in the illuminated field.

Irregular or badly defined cut-off line.

Alteration in design of device

Sec. 11. In the case that the design or construction of any device is changed in any way which alters the characteristics by which it is ordinarily identified, a new name or type designation must be given, and the device may then be submitted for approval on the same basis as a new device.

Any alteration in the design of any approved device which does not affect its distinctive appearance, but which is made for the purpose of improving its performance or to correct for alterations made in the standard of construction of incandescent lamps or reflectors, may be allowed under the original approval of such device, provided that due notice of such alteration is given to the State Highway Commission and verification tests made to the satisfaction of the commission that the device as altered complies with the specifications herein given.

State Highway Commission may submit samples

Sec. 12. As a safeguard against deviations in the design and construction of an approved device from that on which approval was originally based, the State Highway Commission shall have the right to submit from time to time samples of the approved devices to the testing agency for a verification of their performance or to require the submission at suitable intervals of certified copies of reports of such verification tests, satisfactory to the testing agency, made by a person or an organization fulfilling the requirements of a testing authority. In case copies of verification tests are not submitted as required, or in case the verification test shows failure of any device to conform to the specification herein prescribed, the State Highway Commission may suspend or withdraw approval of such device.

Certificate of approval

Sec. 13. Whenever the State Highway Commission shall receive from the testing agency a report that a particular device has been tested and found to comply with the provisions of this Act, together with instructions as to the candlepower lamp or bulb and any particular adjustments to be used in connection with such device, the commission shall issue to the applicant a certificate of approval, together with a copy of the instructions of the testing agency relative to the use of such device. The State Highway Commission may refuse approval to any device which in its opinion will be, in actual use, unsafe or impractical due to any one or more of the defects detailed in Section 10 of this Act, but upon any such refusal must furnish the applicant a detailed statement setting forth the reason for such refusal.

Upon receipt of said certificate of approval, the applicant may stamp on or attach to, or cause to be stamped on or attached to, all devices identical in design and construction with the device for which the certificate of approval was issued, the following words: "Approved by the Texas State Highway Commission." Should any person stamp upon or attach to or cause to be stamped upon or attached to any such device or equipment the words: "Approved by the Texas State Highway Commission," or any words meaning that such device has been approved by the Texas State Highway Commission when such device or equipment has not been approved by the State Highway Commission, or should any person knowingly sell or offer for sale in this State any device or equipment so marked which has not been approved by the State Highway Commission, such person shall be guilty of a misdemeanor and upon conviction be confined to the county jail for not less than one year, and not more than two years, or by a fine of not less than $100.00 and not more than $1,000.00, or by both such fine and imprisonment; or should any corporation cause or knowingly permit such offense to be committed, the offending corporation shall forfeit to the State of Texas as a penalty the sum of one thousand dollars, and the Attorney General shall sue or cause such corporation to be sued in the district court of Travis County for such penalty.

Repealed

Secs. 14–20.

Sections 14–20 of this Act were repealed by Acts 1933, 43rd Leg., p. 50, ch. 23, § 1.

Sale of device not approved unlawful

Sec. 21. It shall be unlawful for any person or persons, firm, corporation or association to sell or offer for sale any lens, reflector, or headlight control device which has not been approved by the State Highway Commission as herein provided.

Spotlight

Sec. 22. It shall be unlawful for any operator of a motor vehicle or motorcycle to use a spotlight when a motor vehicle or motorcycle, approaching from the front, is in sight. Upon sight of a motor vehicle or motorcycle approaching from the front, it shall be the duty of the operator of a motor vehicle or motorcycle upon which a spotlight is being used to immediately extinguish said spotlight, and it shall not be turned on until the approaching motor vehicle or motorcycle has passed. In case the headlights of a motor vehicle or headlight of a motorcycle should fail to function, and the operator of said motor vehicle or motorcycle is without sufficient driving light, the use of a spotlight shall be permissible at all times, but when so used the beam from said spotlight shall be so directed that it strikes the road not more than fifty feet ahead of the motor vehicle or motorcycle upon which it is being used. The provisions of this section prohibiting the use of spotlights under certain conditions shall not apply to police or fire department vehicles.

Acetylene headlamps

Sec. 23. Any motor vehicle, tractor, or motorcycle equipped with acetylene headlamps shall be deemed to have complied with the provisions of this Act, concerning headlights, anything to the contrary notwithstanding, if such vehicle has two acetylene headlamps attached to the front portion thereof, of approximately equal candlepower, which shall be lighted during the time specified in Section 2 of this Act, and are fitted with plain glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths foot burners.

Repealed

Secs. 24, 25.

Sections 24 and 25 of this Act were repealed by Acts 1933, 43rd Leg., p. 50, ch. 23, § 1.

Partial invalidity

Sec. 26. If any section, provision or part of this Act should be held invalid for any reason, it is the legislative intent that the remainder of the Act shall remain in full force and effect.

Violations

Sec. 27. If any person violates any provision of this Act, except any provision setting forth a specific penalty, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for the first offense, and not less than twenty-five nor more than two hundred dollars for the second or any subsequent offense after the first.

Repeal of conflicting laws

Sec. 28. All laws and parts of laws in conflict herewith are hereby repealed. [Acts 1925, 39th Leg., p. 135, ch. 26.]

In R.S.1925, this Act of 1925 was set out, following article 6701, as "additional legislation" without having been assigned an article number. For purpose of clarity it is now set out as this article.

CHAPTER IA.—TRAFFIC REGULATIONS

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Art. 6701d. Uniform Act Regulating Traffic on Highways.

ARTICLE I—WORDS AND PHRASES DEFINED

Definition of words and phrases

Section 1. The following words and phrases when used in this Act shall, for the purpose of this Act, have the meanings respectively ascribed to them in this Article.

SUBDIVISION I—VEHICLES AND EQUIPMENT DEFINED

Vehicles

Sec. 2. (a) Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(b) Motor Vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) Motorcycle. Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground but excluding a tractor.

(d) Authorized Emergency Vehicle. Vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the police commissioner or the chief of police of an incorporated city.

(e) School Bus. Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

Tractors

Sec. 3. (a) Truck Tractor. Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(b) Farm Tractor. Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(c) Road Tractor. Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

Truck and bus

Sec. 4. (a) Truck. Every motor vehicle designed, used, or maintained primarily for the transportation of property.

(b) Bus. Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons; and every motor vehicle, other than taxicab, designed and used for the transportation of persons for compensation.

Trailers

Sec. 5. (a) Trailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(b) Semi-Trailer. Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(c) Pole Trailer. Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(d) House Trailer. Every vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle.

Tires

Sec. 6. (a) Pneumatic Tire. Every tire in which compressed air is designed to support the load.

(b) Solid Tire. Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(c) Metal Tire. Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard non-resilient material.

Railroads and street cars

Sec. 7. (a) Railroad. A carrier of persons or property upon cars, other than street cars, operated upon stationary rails.

(b) Railroad Train. A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except street cars.

(c) Street Car. A car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

Explosives

Sec. 8. (a) Explosives. Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(b) Flammable Fluid. Any liquid which has a flash point of 70°F., or less, as determined by a tabliabue or equivalent closed-cup test device.

SUBDIVISION II—GOVERNMENTAL AGENCIES, PERSONS, OWNERS, ETC., DEFINED

Director, department

Sec. 9. (a) Director. The Director of the Department of Public Safety of this state.

(b) Department. The Department of Public Safety of this state acting directly or through its duly authorized officers and agents.

Person, pedestrian, driver

Sec. 10. (a) Person. Every natural person, firm, copartnership, association, or corporation.

(b) Pedestrian. Any person afoot.

(c) Driver. Every person who drives or is in actual physical control of a vehicle.

(d) Owner. A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Act.

(e) Personal Injury. A wound or injury to any part of the human body which necessitates treatment.

Police officer

Sec. 11. Every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

Local authorities

Sec. 12. Every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

SUBDIVISION III—HIGHWAYS, RESTRICTED DISTRICTS, ZONES, ETC., DEFINED

Roads and sidewalks

Sec. 13. (a) Street or Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(b) Private Road or Driveway. Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

(c) Roadway. That portion of a highway improved, designed, or ordinarily used for vehicular travel. In the event a highway includes two (2) or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(d) Sidewalk. That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

(e) Laned Roadway. A roadway which is divided into two or more clearly marked lanes for vehicular traffic.

(f) Through Highway. Every highway or portion thereof at the entrances to which vehicular traffic

from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this Act.

(g) Limited-Access or Controlled Access Highway. Every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

Intersection

Sec. 14. (a) The area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two (2) roadways thirty (30) feet or more apart, then every crossing of two (2) roadways of such highways shall be regarded as a separate intersection.

Crosswalk

Sec. 15. (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs from the edges of the traversable roadway;

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surfaces.

Safety zones

Sec. 16. The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

Business and residence districts

Sec. 17. (a) Business District. The territory contiguous to and including a roadway when within any six hundred (600) feet along such roadway there are buildings in use for business or industrial purposes which occupy three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the roadway.

(b) Residence District. The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred (300) feet or more is in the main improved with residences or residences and buildings in use for business.

Signals and devices

Sec. 18. (a) Official Traffic-Control Devices. All signs, signals, markings, and devices not inconsistent with this Act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

(b) Traffic-Control Signal. Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(c) Railroad Sign or Signal. Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train

Trade

Sec. 19. Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highway for purposes of travel.

Right-of-way

Sec. 20. The privilege of the immediate use of the highway.

ARTICLE II—OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

Provisions of Act refer to vehicles upon the highways; exceptions

Sec. 21. The provisions of this Act relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.
2. The provisions of Articles IV and V shall apply upon highways.

Required obedience to traffic laws

Sec. 22. It is unlawful and unless otherwise declared in this Act with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this Act.

Obedience to police officers

Sec. 23. No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control, or regulate traffic.

Public officers and employees to obey act; exceptions

Sec. 24. (a) The provisions of this Act applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, town, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this Act with reference to authorized emergency vehicles.

(b) The driver of any authorized emergency vehicle when responding to an emergency call upon approaching a red or stop signal or any stop signs shall slow down as necessary for safety but may proceed cautiously past such red or stop sign or signal. At other times drivers of authorized emergency vehicles shall stop in obedience to a stop sign or signal.

(c) No driver of any authorized emergency vehicle shall assume any special privilege under this Act except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law.

(d) The provisions of this Act shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

Traffic laws apply to persons riding animals or driving animal-drawn vehicles

Sec. 25. Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Act, except those provisions of this Act which by their very nature can have no application.

Provisions of Act uniform throughout state

Sec. 26. The provisions of this Act shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this Act unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Act.

Powers of local authorities

Sec. 27. (a) The provisions of this Act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles;
2. Regulating traffic by means of police officers or traffic-control signals;
3. Regulating or prohibiting processions or assemblages on the highways;
4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;
5. Regulating the speed of vehicles in public parks;
6. Designating any highways as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersection;
7. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;
8. Regulating or prohibiting the turning of vehicles at intersections;
9. (a) Adopting such other traffic regulations as are specifically authorized by this Act, or adopting traffic regulations not inconsistent with this Act;

(b) No local authority shall erect or maintain any stop sign or traffic-control signal at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless such signs are erected and maintained by virtue of an agreement entered into between such local authority and the State Highway Department under the provisions of Senate Bill No. 415, Acts, 46th Legislature, Regular Session.[1]

(c) No ordinance or regulation enacted under subdivisions (4), (5), or (6) of this Section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

[1] Article 6673b.

This act not to interfere with rights of owners of real estate property with reference thereto

Sec. 28. Nothing in this Act shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this Act, or otherwise regulating such use as may seem best to such owner.

ARTICLE III—TRAFFIC SIGNS, SIGNALS, AND MARKINGS

State Highway Commission to adopt sign manual

Sec. 29. The State Highway Commission shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this Act for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American Association of State Highway Officials.

State Highway Department to sign state highways

Sec. 30. (a) The State Highway Department may place and maintain, or under the authority of Senate Bill No. 415, Acts, 46th Legislature, Regular Session,[1] provide for such placing and maintaining such traffic-control devices, conforming to its manual and specifications, upon all state highways as it may deem necessary, to indicate and carry out the provisions of this Act or to regulate, warn, or guide traffic.

(b) No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the State Highway Department except by the latter's permission.

[1] Article 6673b.

Local traffic-control devices

Sec. 31. (a) Local authorities, in their respective jurisdiction, may place and maintain any traffic-control devices upon any highway under their jurisdiction as they may deem necessary to indicate and carry out the provisions of this Act, or local traffic ordinances, or regulate, warn or guide traffic. All such traffic-control devices hereafter erected shall conform to the State Highway Department's manual and specifications.

Obedience to official traffic-control devices

Sec. 32. No driver of a vehicle or motorman of a street car shall disobey the instructions of any official traffic-control device placed in accordance with the provisions of this Act, unless at the time otherwise directed by a police officer.

Traffic-control signal legend

Sec. 33. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green alone or "Go."

1. Vehicular traffic facing the signal, except when prohibited under Section 83, may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.
2. Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(b) Yellow alone or "Caution" when shown following the green or "Go" signal.

1. Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.
2. Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(c) Red alone or "Stop."

1. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone.
2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(d) Red with green arrow.

1. Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.
2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(e) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this Section shall be applicable except as to those provisions which by their

nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(f) The motorman of any street car shall obey the above signals as applicable to vehicles.

Pedestrian walk and wait signals

Sec. 34. Whenever special pedestrian-control signals exhibiting the words "Walk" or "Wait" are in place such signals shall indicate as follows:

(a) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(b) Wait. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

Flashing signals

Sec. 35. Whenever flashing red or yellow signals are used they shall require obedience by vehicular traffic as follows:

1. Flashing red (stop signal). When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

2. Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

Display of unauthorized signs, signals, or markings

Sec. 36. (a) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(b) Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

Interference with official traffic-control devices or railroad signs or signals

Sec. 37. No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

ARTICLE IV—ACCIDENTS

Accidents involving death or personal injuries

Sec. 38. (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of Section 40. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment in the penitentiary not to exceed five (5) years or in jail not exceeding one (1) year or by fine not exceeding Five Thousand ($5,000.00) Dollars, or by both such fine and imprisonment.

Accident involving damage to vehicle

Sec. 39. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 40. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or to comply with said requirements under such circumstances shall be guilty of a misdemeanor.

Duty to give information and render aid

Sec. 40. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's, commercial operator's, or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

Duty upon striking unattended vehicle

Sec. 41. The driver of any vehicle which collides with and damages any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in, or securely attached to and plainly visible, the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

Duty upon striking fixtures upon a highway

Sec. 42. The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's, commercial operator's, or chauffeur's license, and shall make report of such accident when and as required in Section 44 hereof.

Immediate reports of accidents

Sec. 43. The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the Texas Highway Patrol.

Written report of accidents

Sec. 44. (a) The driver of a vehicle involved in an accident resulting in injury to or death of any person

or total property damage to an apparent extent of Twenty-five ($25.00) Dollars or more shall, within twenty-four (24) hours after such accident, forward a written report of such accident to the department.

(b) The department may require any driver of a vehicle involved in an accident of which report must be made as provided in this Section to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports to the department.

(c) Every law enforcement officer, who, in the regular course of duty, investigates a motor-vehicle accident of which report must be made as required in this Section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four (24) hours after completing such investigation, forward a written report of such accident to the department.

Accident report forms

Sec. 45. (a) The department shall prepare and upon request supply to police departments, coroners, sheriffs, garages, and other suitable agencies or individuals, forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by person involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicle involved.

(b) Every accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all of the information required therein unless not available.

Coroners to report

Sec. 46. Every coroner or other official performing like functions shall on or before the tenth (10th) day of each month report in writing to the department the death of any person within his jurisdiction during the preceding calendar month as the result of a traffic accident giving the time and place of the accident and the circumstances relating thereto.

Accident report confidential

Sec. 47. All accident reports made by persons involved in accidents, by garages, or peace officers shall be without prejudice to the individual so reporting and shall be for the confidential use of the department or other State agencies having use for the records for accident prevention purposes, except that the department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident.

Department to tabulate and analyze accident reports

Sec. 48. The Department shall tabulate and may analyze all accident reports and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic accidents.

Any incorporated city may require accident reports

Sec. 49. (a) Any incorporated city, town, village, or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident or a copy of any report herein required to be filed with the department. All such reports shall be for the confidential use of the city department and subject to the provisions of Section 47 of this Act.

(b) Any incorporated city, town, village, or other municipality may by ordinance require the person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident of which report must be made as provided in Section 44, or struck by any bullet, to report to the department within 24 hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.

ARTICLE V—DRIVING WHILE UNDER THE INFLUENCE OF DRUGS AND RECKLESS DRIVING

Persons under the influence of drugs

Sec. 50. (a) It is unlawful for any person who is under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle to drive a vehicle within this state. The fact that any person charged with a violation of this Section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this Section.

(b) Every person who is convicted of a violation of this Section shall be guilty of a misdemeanor and shall be punished by confinement in the county jail for not less than ten (10) days nor more than two (2) years, or by fine of not less than Fifty ($50.00) Dollars nor more than Five Hundred ($500.00) Dollars or by both such fine and imprisonment.

Reckless driving

Sec. 51. Every person who drives any vehicle in wilfull or wanton disregard of the rights or safety of others or without due caution or circumspection, and at a speed or in a manner so as to endanger or be likely to endanger a person or property shall be guilty of reckless driving.

ARTICLE VI—DRIVING ON RIGHT SIDE OF ROADWAY; OVERTAKING AND PASSING, ETC.

Drive on right side of roadway; exceptions

Sec. 52. Upon all roadways the driver of a vehicle shall drive upon the right half of the roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
2. When the right half of a roadway is closed to traffic while under construction or repair;
3. Upon a roadway divided into three (3) marked lanes for traffic under the rules applicable thereon; or
4. Upon a roadway designated and signposted for one-way traffic.

Passing vehicles proceeding in opposite directions

Sec. 53. Drivers of vehicles proceeding in opposite direction shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half (½) of the main-traveled portion of the roadway as nearly as possible.

Overtaking a vehicle on the left

Sec. 54. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the

speed of his vehicle until completely passed by the overtaking vehicle.

When overtaking on the right is permitted

Sec. 55. (a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn;

2. Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two (2) or more lines of moving vehicles in each direction;

3. Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, whether the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

Limitations on overtaking on the left

Sec. 56. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible, and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred (100) feet of any vehicle approaching from the opposite direction.

Further limitations on driving to left of center of roadway

Sec. 57. (a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

1. Where sight restriction is such that the section of highway being traversed lies within a no passing zone as determined and marked in accordance with Section 58.

2. When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing;

3. When approaching within one hundred (100) feet of any bridge, viaduct, or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway.

No-passing zones

Sec. 58. The State Highway Commission is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

One-way roadways and rotary traffic islands

Sec. 59. (a) The State Highway Commission may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

(b) Upon a roadway designated and signposted for one-way traffic the driver of a vehicle shall drive only in the direction designated.

(c) The driver of a vehicle passing around a rotary traffic island shall drive only to the right of such island.

Driving on roadways laned for traffic

Sec. 60. Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) The driver of a vehicle shall drive as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three (3) lanes the driver of a vehicle shall not drive in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

(c) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the direction of every such sign.

Following too closely

Sec. 61. (a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the conditions of the highway.

(b) The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residential district and which is following another motor truck or motor vehicle drawing another vehicle shall whenever conditions permit leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(c) The drivers of motor vehicles driven upon any roadway outside of a business or residential district in a caravan or motorcade whether or not towing other vehicles shall drive so as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicles to enter and occupy such space without danger. This provision shall not apply to funeral processions.

Driving on divided highways

Sec. 62. Whenever any highway has been divided into two (2) roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

Restricted access

Sec. 63. No person shall drive a vehicle onto or from any limited-access or controlled access roadway except at such entrances and exits as are established by public authority.

Restrictions on use of limited access or controlled access roadway

Sec. 64. The State Highway Commission may by resolution or order entered in its minutes and local authorities may by ordinance with respect to any limited-access or controlled access roadway under their respective jurisdictions prohibit the use of any

such roadway by pedestrians, bicycles, or other non-motorized traffic.

The State Highway Commission or the local authority adopting any such prohibitory regulation shall erect and maintain official signs on the limited-access or controlled access roadway on which such regulations are applicable and when so erected no person shall disobey the restrictions stated on such signs.

ARTICLE VII—TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

Required position and method of turning at intersections

Sec. 65. The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) Both the approach for a right turn and a right turn shall be made as close as practical to the right-hand curb or edge of the roadway.

(b) Approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered.

(c) Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection. A left turn from a one-way street into a two-way street shall be made by passing to the right of the center line of the street being entered upon leaving the intersection.

(d) Where both streets or roadways are one way, both the approach for a left turn and a left turn shall be made as close as practicable to the left hand curb or edge of the roadway.

(e) The State Highway Department and local authorities in their respective jurisdiction may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this Section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

Turning to proceed in opposite direction

Sec. 66. No driver of a vehicle shall turn so as to proceed in the opposite direction where sight restriction is such that the section of highway being traversed lies within a no-passing zone as determined and marked in accordance with the provisions of Section 58.

Starting parked vehicle

Sec. 67. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with safety.

Turning movements and required signals

Sec. 68. (a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Section 65, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

Signals by hand and arm or signal device

Sec. 69. Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device of a type approved by the department, but when a vehicle is so constructed or loaded that a hand-and-arm signal would not be visible both to the front and rear of such vehicle then said signals must be given by such a lamp or lamps or signal device.

Method of giving hand-and-arm signals

Sec. 70. All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

1. Left turn. Hand and arm extended horizontally.
2. Right turn. Hand and arm extended upward.
3. Stop or decrease speed. Hand and arm extended downward.

The signals herein required shall be given either by means of the hand-and-arm, or by a signal lamp or signal device approved by the department.

ARTICLE VIII—RIGHT-OF-WAY

Vehicles approaching or entering intersection

Sec. 71. (a) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.

(b) When two (2) vehicles enter an intersection from different highways at approximately the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(c) The right-of-way rules declared in subdivision (a) and (b) are modified at through highways and otherwise as hereinafter stated in this Article.

Vehicle turning left at intersection

Sec. 72. The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this Act, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn.

Vehicle entering through highway or stop intersection

Sec. 73. (a) The driver of a vehicle shall stop as required by this Act at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard, but said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on said through highway shall yield the right-of-way to the vehicle so proceeding into or across the through highway.

(b) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

Vehicle entering highway from private road or driveway

Sec. 74. The driver of a vehicle about to enter or cross a highway from a private road or driveway

shall yield the right-of-way to all vehicles approaching on said highway.

Operation of vehicles and street cars on approach of authorized emergency vehicles

Sec. 75. (a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of such vehicle and/or when the driver is giving audible signal by siren, exhaust, whistle, or bell:

1. The driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

2. Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every street car shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

ARTICLE IX—PEDESTRIANS' RIGHTS AND DUTIES

Pedestrians subject to traffic regulations

Sec. 76. (a) Pedestrians shall be subject to traffic-control signals at intersections as provided in Section 33 of this Act, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this Article.

(b) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

Pedestrians' right-of-way in crosswalks

Sec. 77. (a) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in Section 78(b).

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

Crossing at other than crosswalks

Sec. 78. (a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the highway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

Drivers to exercise due care

Sec. 79. Notwithstanding the foregoing provisions of this Article every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

Pedestrians to use a right half of crosswalks

Sec. 80. Pedestrians shall move, whenever possible upon the right half of crosswalks.

Pedestrians on roadways

Sec. 81. (a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall when possible walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(c) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle.

ARTICLE X—STREET CARS AND SAFETY ZONES

Passing street car on left

Sec. 82. (a) The driver of a vehicle shall not overtake and pass upon the left nor drive upon the left side of any street car proceeding in the same direction, whether such street car is actually in motion or temporarily at rest, except:

1. When so directed by a police officer;
2. When upon a one-way street; or
3. When upon a street where the tracks are so located as to prevent compliance with this section.

(b) The driver of any vehicle when permitted to overtake and pass upon the left of a street car which has stopped for the purpose of receiving or discharging any passenger shall reduce speed and may proceed only upon exercising due caution for pedestrians, and shall accord pedestrians the right-of-way when required by other sections of this Act.

Passing street car on right

Sec. 83. The driver of a vehicle overtaking upon the right any street car stopped or about to stop for the purpose of receiving or discharging any passenger shall stop such vehicle at least five (5) feet to the rear of the nearest running board or door of such street car and thereupon remain standing until all passengers have boarded such car or upon alighting have reached a place of safety, except that where a safety zone has been established a vehicle need not be brought to a stop before passing any such street car but may proceed past such car at a speed not greater than is reasonable and proper and with due caution for the safety of pedestrians.

Driving on street-car tracks

Sec. 84. (a) The driver of any vehicle proceeding upon any street car track in front of a street car upon a street shall remove such vehicle from the track as soon as possible after signal from the operator of said street car.

(b) When a street car has started to cross an intersection, no driver of a vehicle shall drive upon or cross the car tracks within the intersection in front of the street car.

(c) The driver of a vehicle upon overtaking and passing a street car shall not turn in front of such street car so as to interfere with or impede its movement.

Driving through safety zone prohibited

Sec. 85. No driver of a vehicle shall at any time drive through or within a safety zone.

ARTICLE XI—SPECIAL STOPS AND RESTRICTED SPEEDS REQUIRED

Obedience to signal indicating approach of train

Sec. 86. Whenever any person driving a vehicle approaches a railroad grade crossing, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall not proceed until he can do so safely when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a train;

(b) A crossing gate is lowered, or when a human flagman gives or continues to give a signal of the approach or passage of a train;

(c) A railroad engine approaching within approximately fifteen hundred (1500) feet of the highway crossing emits a signal audible from such distance and such engine by reason of its speed or nearness to such crossing is an immediate hazard;

(d) An approaching train is plainly visible and is in hazardous proximity to such crossing.

All vehicles must stop at certain railroad grade crossings

Sec. 87. With respect to highways under their respective jurisdiction, the State Highway Department and local authorities are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected, the driver of any vehicle shall stop within (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

Certain vehicles must stop at all railroad grade crossings

Sec. 88. (a) The driver of any motor bus carrying passengers for hire, or of any school bus carrying any school child, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

(c) This section shall not apply at street-railway grade crossings within a business or residence district.

Certain vehicles must reduce speed at all railroad grade crossings

Sec. 89. (a) The driver of any vehicle carrying explosive substances or flammable liquids as its principal cargo before crossing at grade any track or tracks of a railroad, shall if travelling in excess of twenty (20) miles per hour, reduce the speed of such vehicle to twenty (20) miles per hour before approaching within two hundred (200) feet from the nearest rail of such railroad and shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of the train, except as hereinafter provided, and shall not cross such track until he can do so safely. After reducing speed as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such and the driver shall not shift gears while crossing the track or tracks.

(b) This section shall not apply at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

(c) This section shall not apply at street-railway grade crossings within a business or residence district.

(d) Nothing in this section shall be deemed to exempt the driver of any vehicle from compliance with the requirements contained in Sections 86 and 87 of this Act.

Moving heavy equipment at railroad grade crossing

Sec. 90. (a) No person shall operate or move any caterpillar tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of six (6) or less miles per hour or a vertical body or load clearance of less than nine (9) inches above the level surface of a roadway upon or across any tracks at a railway grade crossing without first complying with this section.

(b) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen (15) or more than fifty (50) feet from the nearest rail of such railway and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(c) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car.

Vehicles must stop at through highways

Sec. 91. (a) The State Highway Commission with reference to State (and county) highways, and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection.

(b) Every said sign shall conform to the manual and specifications for uniform traffic-control devices as adopted by the State Highway Commission. Every stop sign shall be located as near as practicable at the nearest line of the crosswalk thereat, or, if none, at the nearest line of the roadway.

(c) Every driver of a vehicle and every motorman of a street car shall stop at such sign or at a clearly marked stop line before entering an intersection except when directed to proceed by a police officer or traffic-control signal.

Stop before emerging from alley or private driveway

Sec. 92. The driver of a vehicle within a business or residence district emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or into the sidewalk area extending across any alley-way or private driveway.

ARTICLE XII—STOPPING, STANDING, AND PARKING

Stopping, standing, or parking outside of business or residence districts

Sec. 93. (a) Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is possible to stop, park, or so leave vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred (200) feet in each direction upon such highway.

(b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

Officers authorized to remove illegally stopped vehicles

Sec. 94. (a) Whenever any police officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this article such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.

(b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

(c) Any commissioned member of the Department of Public Safety is hereby authorized to remove a vehicle from a highway to the nearest garage or other place of safety, or to a garage designated or maintained by the governmental agency of which the officer is a member, under the circumstances hereinafter enumerated:

1. When any vehicle is left unattended upon any bridge, viaduct or causeway, or in any tube or tunnel where such vehicle constitutes an obstruction to traffic;
2. When any vehicle is illegally parked so as to block the entrance to any private driveway and it is impracticable to move such vehicle from in front of the driveway to another point on the highway;
3. When any vehicle is found upon a highway and report has previously been made that such vehicle has been stolen or complaint has been filed and a warrant thereon issued charging that such vehicle has been embezzled;
4. When any such officer has reasonable grounds to believe that any vehicle has been abandoned;
5. When a vehicle upon a highway is so disabled that its normal operation is impossible or impractical and the person or persons in charge of the vehicle are incapacitated by reason of physical injury or other reason to such an extent as to be unable to provide for its removal or custody, or are not in the immediate vicinity of the disabled vehicle;
6. When an officer arrests any person driving or in control of a vehicle for an alleged offense and such officer is by this code or other law required to take the person arrested immediately before a magistrate.

(d) Any commissioned member of the Department of Public Safety is hereby authorized to remove any vehicle parked or standing in or on any portion of a highway when, in the opinion of the said member of the Department of Public Safety, the said vehicle constitutes a hazard, or interferes with a normal function of a governmental agency, or by reason of any catastrophe, emergency or unusual circumstance the safety of said vehicle is imperiled.

Stopping, standing, or parking prohibited in specified places

Sec. 95. (a) No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk;
2. In front of a public or private driveway;
3. Within an intersection;
4. Within fifteen (15) feet of a fire hydrant;
5. On a crosswalk;
6. Within twenty (20) feet of a crosswalk at an intersection;
7. Within thirty (30) feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of the roadway;
8. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the traffic authority indicates a different length by signs or markings;
9. Within fifty (50) feet of the nearest rail of a railroad crossing;
10. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance (when properly signposted);
11. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
13. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
14. At any place where official signs prohibit stopping.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

Additional parking regulations

Sec. 96. (a) Except as otherwise provided in this section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen (18) inches of the right-hand curb.

(b) Local authorities may by ordinance permit parking of vehicles with the left-hand wheels adjacent to and within eighteen (18) inches of the left-hand curb of a one-way roadway.

(c) Local authorities may, by ordinance, permit angle parking on any roadway, except that angle parking shall not be permitted on any Federal aid or state highway unless the State Highway Engineer has determined that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The State Highway Department, with respect to highways under its jurisdiction, may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on any highway where in the opinion of the State Highway Engineer, such stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs.

ARTICLE XIII—MISCELLANEOUS RULES

Unattended motor vehicle

Sec. 97. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, and effectively setting the brake thereon, and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

Driving on mountain highways

Sec. 98. The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as possible and upon approaching any curve where the view is obstructed within a distance of two hundred (200) feet along the highway, shall give audible warning with the horn of such motor vehicle.

Coasting prohibited

Sec. 99. (a) The driver of any motor vehicle when traveling upon a hazardous down grade so designated by the State Highway Commission and properly marked or signed shall not coast with the gears of such vehicle in neutral.

(b) The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

Following fire apparatus prohibited

Sec. 100. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or drive into or park such vehicle within the block where the fire apparatus has stopped to answer a fire alarm.

Crossing fire hose

Sec. 101. No driver of a street car or vehicle shall drive over an unprotected hose of a fire department when laid down on any street, private driveway, or street car track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

Putting glass, etc. on highway prohibited

Sec. 102. No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such highway.

Removing materials from highway

Sec. 103. (a) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(b) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

Overtaking and passing school bus

Sec. 104. (a) The driver of a vehicle upon a highway outside of a business or residence district upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle immediately before passing the school bus but may then proceed past such school bus at a speed which is prudent, not exceeding ten (10) miles per hour, and with due caution for the safety of such children.

(b) All vehicles used for the transportation of pupils to and/or from any school or college, shall have a sign on the front and rear and on each side of said vehicle, showing the words "School Bus" and said words shall be plainly readable in letters not less than eight (8) inches in height and the words "School Bus" shall be removed or covered when the vehicle is not in use as a school bus.

Regulations relative to school buses

Sec. 105. The State Department of Education by and with the advice of the Director of the Department of Public Safety shall adopt and enforce regulations not inconsistent with this Act to govern the design, color, and operation of all school busses used for the transportation of school children when owned and operated by any school district or privately owned and operated under contract with any school district in this State and such regulations shall by reference be made a part of any such contract with a school district. Every school district, its officers and employees, and every person employed under contract by a school district shall be subject to said regulations.

Limitations as to trailers

Sec. 106. (a) No driver of a motor vehicle shall drive upon any highway outside of the limits of an incorporated city or town drawing or having attached thereto more than one vehicle; such vehicle may be a trailer, semi-trailer, pole trailer, or another motor vehicle.

(b) When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and said drawbar or other connection shall not exceed fifteen (15) feet from one vehicle to the other except the connection between any two (2) vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered.

(c) When one vehicle is towing another and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve (12) inches square.

Fire extinguishers

Sec. 107. Every school bus and every motor vehicle engaged in the transportation of passengers for hire or lease shall be equipped with at least one quart of chemical type fire extinguisher in good condition and conveniently located for immediate use.

ARTICLE XIV—EQUIPMENT

Scope and effect of regulations

Sec. 108. (a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this Article, or which is equipped in any manner in violation of this Article, or for any person to do any act forbidden or fail to perform any act required under this Article.

(b) Nothing contained in this Article shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this Article.

(c) The provisions of this Article with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

When lighted lamps are required

Sec. 109. (a) Every vehicle upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred (500) feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated.

(b) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the time stated in subdivision (a) of this section upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(c) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands.

Head lamps on motor vehicles

Sec. 110. (a) Every motor vehicle other than a motorcycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply

with the requirements and limitations set forth in this Article.

(b) Every motorcycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this Article.

Tail lamps

Sec. 111. (a) Every motor vehicle, trailer, semitrailer, and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles shall be equipped with at least one tail lamp mounted on the rear, which when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear, provided that in the case of a train of vehicles only the tail lamp on the rear-most vehicle need actually be seen from the distance specified.

(b) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty (50) feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

New motor vehicles to be equipped with reflectors

Sec. 112. (a) Every new motor vehicle hereafter sold and operated upon a highway other than a truck tractor, shall carry on the rear, either as a part of the tail lamps or separately, two red reflectors meeting the requirements of this section, except that vehicles of the type mentioned in Section 114 shall be equipped with reflectors as required in those sections applicable thereto.

(b) Every such reflector shall be mounted on the motor vehicle at a height not less than twenty-four (24) inches nor more than sixty (60) inches above the ground on which the vehicle stands and shall be of such size and characteristics and so maintained as to be visible at night from all distances within three hundred (300) feet to fifty (50) feet from such vehicle except that visibility from a greater distance is hereinafter required of reflectors on certain types of vehicles.

Application of succeeding sections

Sec. 113. The sections of this Act immediately following relating to clearance and marker lamps, reflectors, and stop lights shall apply as stated in said sections to vehicles of the type herein enumerated, namely passenger busses, trucks, truck tractors, and certain trailers, semi-trailers, and pole trailers, respectively, when operated upon any highway, and said vehicles shall be equipped as required and all lamp equipment required shall be lighted at the times mentioned in Section 109, except that clearance and side marker lamps need not be lighted on any said vehicle when operated within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred (500) feet.

Additional equipment required on certain vehicles

Sec. 114. In addition to other equipment required in this Act the following vehicles shall be equipped as herein stated under the conditions stated in Section 113.

(a) On every bus or truck, whatever its size, there shall be the following:

On the rear, two reflectors, one at each side, and one stop light.

(b) On every bus or truck eighty (80) inches or more in over-all width, in addition to the requirements in subparagraph (a):

On the front, two clearance lamps, one at each side.

On the rear, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

(c) On every truck tractor:

On the front, two clearance lamps, one at each side.

On the rear, one stop light, when such truck tractor is operated as a single unit.

(d) On every trailer or semitrailer having a registered or actual gross weight in excess of 3,000 pounds:

On the front, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front end and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stop light.

(e) On every pole trailer in excess of 3,000 pounds registered or actual gross weight:

On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.

On the rear of the pole trailer, or load, two reflectors, one at each side.

(f) On every trailer, semitrailer or pole trailer:

On the rear, two reflectors, one on each side. If any trailer or semi-trailer is so loaded or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one stop light.

Color of clearance lamps, side marker lamps, and reflectors

Sec. 115. (a) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(b) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(c) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber, or yellow, and except that the light illuminating the license plate or the light emitted by a back-up lamp shall be white.

Mounting of reflectors, clearance lamps, and side marker lamps

Sec. 116. (a) Reflectors shall be mounted at a height of not less than twenty-four (24) inches and not higher than sixty (60) inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than twenty-four (24) inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this Act.

(b) Clearance lamps shall be mounted on the permanent structure of the vehicle in such manner as to indicate its extreme width and as near the top thereof as possible. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

Visibility of reflectors, clearance lamps, and marker lamps

Sec. 117. (a) Every reflector upon any vehicle referred to in Section 114 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within five hundred (500) feet to fifty (50) feet from the vehicle when directly in front of lawful upper beams of head lamps.

Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the side and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the front and rear, respectively, of the vehicle.

(c) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred (500) feet from the side of the vehicle on which mounted.

Stop lamps required on new motor vehicles

Sec. 118. From and after January 1, 1948 it shall be unlawful for any person to sell any new motor vehicle in this state or for any person to drive any such motor vehicle on the highways unless it is equipped with a stop lamp meeting with the requirements of Section 124.

Obstructed lights not required

Sec. 119. Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

Lamp or flag on projecting load

Sec. 120. Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in Section 109 hereof, a red light or lantern plainly visible from a distance of at least five hundred (500) feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

Lamps on parked vehicles

Sec. 121. Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended during the times mentioned in Section 109, such vehicle shall be equipped with one or more lamps which shall exhibit a white light on the roadway side visible from a distance of five hundred (500) feet to the front of such vehicle and a red light visible from a distance of five hundred (500) feet to the rear, except that local authorities may provide by ordinance or resolution that no lights be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person within a distance of five hundred (500) feet upon such highway. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

Lamps on other vehicles and equipment

Sec. 122. All vehicles, including animal-drawn vehicles and including those referred to in Section 108(c) not hereinbefore specifically required to be equipped with lamps, shall at the times specified in Section 109 hereof be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred (500) feet to the front of such vehicle and with a lamp or lantern exhibiting a red light visible from a distance of five hundred (500) feet to the rear.

Spot lamps and auxiliary driving lamps

Sec. 123. (a) "Spotlight" shall mean any light or lamp, the direction of the beam from which is controllable from the front or rear seat of a motor vehicle or from the seat or side-car of a motorcycle.

(b) It shall be unlawful for any operator of a motor vehicle or motorcycle to use a spotlight when a motor vehicle or motorcycle, approaching from the front, is in sight. Upon sight of a motor vehicle or motorcycle approaching from the front, it shall be the duty of the operator of a motor vehicle or motorcycle upon which a spotlight is being used to immediately extinguish said spotlight and it shall not be turned on until the approaching motor vehicle or motorcycle has passed. In case the headlights of a motor vehicle or headlight of a motorcycle should fail to function, and the operator of said motor vehicle or motorcycle is without sufficient driving light, the use of a spotlight shall be permissible at all times, but when so used, the beam from said spotlight shall be so directed that it strikes the road not more than fifty (50) feet ahead of the motor vehicle or motorcycle upon which it is being used. The provisions of this section prohibiting the use of spotlights under certain conditions shall not apply to police or fire department vehicles.

(c) Any motor vehicle may be equipped with not to exceed three (3) auxiliary driving lamps mounted on the front at a height not less than twelve (12) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands, and every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in this Article.

Signal lamps and signal devices

Sec. 124. (a) Any motor vehicle may be equipped and when required under this Act shall be equipped with the following signal lamps or devices:

1. A stop lamp on the rear which shall emit a red or yellow light and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a tail lamp.

2. A lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.

(b) A stop lamp shall be plainly visible and understandable from a distance of one hundred (100) feet to the rear both during normal sunlight and at nighttime and a signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of one hundred (100) feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

(c) All mechanical signal devices shall be self illuminated when in use at the times mentioned in Section 109.

Additional lighting equipment

Sec. 125. (a) Any motor vehicle may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than one (1) running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Any motor vehicle may be equipped with a back-up lamp either separately or in combination with another lamp; but such back-up lamp shall not be lighted when the motor vehicle is in forward motion.

Multiple beam road lighting equipment

Sec. 126. Except as hereinafter provided, the head lamps, or the auxiliary driving lamps, or combina-

tions thereof, on motor vehicles shall be so arranged that the driver may select at will between distributions of light projected to different elevations, subject to the following requirements and limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred and fifty (350) feet ahead for all conditions of loading. The maximum intensity of this uppermost distribution of light or composite beam one degree (1°) of arc or more above the horizontal level of the lamps when the vehicle is not loaded shall not exceed eight thousand (8,000) apparent candlepower, and at no other point of the distribution of light or composite beam shall there be an intensity of more than seventy-five thousand (75,000) apparent candlepower.

(b) There shall be a lowermost distribution of light, or composite beam, so aimed that:

1. When the vehicle is not loaded, none of the high intensity portion of the light which is directed to the left of the prolongation of the extreme left side of the vehicle shall at a distance of twenty-five (25) feet ahead, project higher than a level of eight (8) inches below the level of the center of the lamp from which it comes.

2. When the vehicle is not loaded, none of the high intensity portion of the light which is directed to the right of the prolongation of the extreme left side of the vehicle shall, at a distance of twenty-five (25) feet ahead, project higher than a level of three (3) inches below the level of the center of the lamp from which it comes.

3. In no event shall any of the high intensity of such lowermost distribution of light or composite beam project higher than a level of forty-two (42) inches above the level on which the vehicle stands at a distance of seventy-five (75) feet ahead.

(c) Where one intermediate beam is provided, the beam on the left side of the road shall be in conformity with Subsection (b) paragraph (1) of this section except when arranged in accordance with the practice specified in Subsection (e).

(d) All road lighting beams shall be so aimed and of sufficient intensity to reveal a person or vehicle at a distance of at least one hundred (100) feet ahead.

(e) Every new motor vehicle registered in this State after January 1, 1948, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

Use of multiple beam road lighting equipment

Sec. 127. (a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 109, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(b) Whenever the driver of a vehicle approaches an oncoming vehicle within five hundred (500) feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver, and in no case shall the high intensity portion which is projected to the left of the prolongation of the extreme left side of the vehicle be aimed higher than the center of the lamp from which it comes at a distance of twenty-five (25) feet ahead, and in no case higher than a level of forty-two (42) inches above the level upon which the vehicle stands at a distance of seventy-five (75) feet ahead.

The lowermost distribution of light specified in Section 126, paragraph (b), Subparagraph 1, shall be dimmed to avoid glare at all times, regardless of road contour and loading.

Single beam road lighting equipment

Sec. 128. Head lamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted on motor vehicles manufactured and sold prior to one (1) year after the effective date of this Act in lieu of multiple beam road lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

1. The head lamps shall be so aimed that when the vehicle is not loaded none of the high intensity portion of the light shall at a distance of twenty-five (25) feet ahead project higher than a level of five (5) inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two (42) inches above the level on which the vehicle stands at a distance of seventy-five (75) feet ahead.

2. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred (200) feet.

Alternate road lighting equipment

Sec. 129. Any motor vehicle may be operated under the conditions specified in Section 109 when equipped with two (2) lighted lamps upon the front thereof capable of revealing persons and objects seventy-five (75) feet ahead in lieu of lamps required in Section 126 or Section 128 provided, however, that at no time shall it be operated at a speed in excess of thirty-five (35) miles per hour.

Number of driving lamps required or permitted

Sec. 130. (a) At all times specified in Section 109, at least two (2) lighted lamps shall be displayed, one on each side at the front of every motor vehicle except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than three hundred (300) candlepower, not more than a total of four (4) of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

Special restrictions on lamps

Sec. 131. (a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing front direction signals which project a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75) feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This Section shall not apply to authorized emergency vehicles.

(c) Flashing lights are prohibited on motor vehicles, except an authorized emergency vehicle or on any vehicle as a means for indicating a right or left turn.

Brakes

Sec. 132. (a) Brake equipment required.

1. Every motor vehicle, other than motorcycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two (2) separate means of applying the brakes, each of which means shall be effective to apply the brakes to at

least two (2) wheels. If these two (2) separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two (2) wheels.

2. Every motorcycle, and bicycle with motor attached, when operated upon a highway shall be equipped with at least one brake, which may be operated by hand or foot.

3. Every trailer or semi-trailer of a registered or actual gross weight of three thousand (3,000) pounds or more when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and said brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied.

4. In any combination of motor-drawn vehicles, means shall be provided for applying the rearmost trailer brakes, of any trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes; or both of the above means capable of being used alternatively may be employed.

5. One of the means of brake operation shall consist of a mechanical connection from the operating lever to the brake shoes or bands and this brake shall be capable of holding the vehicle, or combination of vehicles, stationary under any condition of loading at any point on the street or highway on which it is operated.

6. (a) The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

(b) Performance ability of brakes. Every motor vehicle or combination of motor drawn vehicles shall be capable at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake, within the distance specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

	Feet to stop from 20 miles per hour	Deceleration in feet per second per second
Vehicles or combination of vehicles having brakes on all wheels	30	14
Vehicles or combination of vehicles not having brakes on all wheels	40	10.7

(c) Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as possible with respect to the wheels on opposite side of the vehicle.

Horns and warning devices

Sec. 133. (a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(c) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(d) Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet and of a type approved by the department, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter event the driver of such vehicle shall sound said siren when necessary to warn pedestrians and other drivers of the approach thereof.

Mufflers, prevention of noise

Sec. 134. (a) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke and no person shall use a muffler cut-out, bypass, or similar device upon a motor vehicle on a highway.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

Restrictions as to tire equipment

Sec. 135. (a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface extending above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway, provided however this section shall not apply to farm wagons and/or farm trailers having a gross weight less than five thousand (5,000) pounds where owners are in the act of transporting farm products to market or for processing or from farm to farm.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

(d) The State Highway Commission and local authorities in their respective jurisdictions may in their discretion issue a special permit authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this Act.

Safety glass in motor vehicles

Sec. 136. (a) It shall be unlawful after the first day of January, 1948, for any person to sell any new motor vehicle nor shall the same be registered in this state, unless the doors, windows and windshields of such vehicle be equipped with safety glass wherever glass is used in doors, windows and windshields.

(b) It shall be unlawful after the first day of January, 1948, for any person to replace, or cause to be replaced, any glass in doors, windows, or windshields in any motor vehicle manufactured or assembled after said date, unless such replacement be made with safety glass as defined in this Act.

(c) The term "safety glass" as used in this Act shall mean any product composed of glass so manufactured, fabricated or treated as to substantially prevent shattering and flying of the glass when struck or broken.

Certain vehicles to carry flares or other warning devices

Sec. 137. (a) No person shall operate any motor truck, passenger bus, or truck tractor upon any highway outside of the corporate limits of municipalities at any time from a half hour after sunset to a half hour before sunrise unless there shall be carried in such vehicle the following equipment except as provided in subsection (b):

1. At least three flares or three red electric lanterns each of which shall be capable of being seen and distinguished at a distance of five hundred (500) feet under normal atmospheric conditions at nighttime.

Each flare (liquid-burning pot torch) shall be capable of burning for not less than twelve (12) hours in five (5) miles per hour wind velocity and capable of burning in any air velocity from zero to forty (40) miles per hour. Every such flare shall be substantially constructed so as to withstand shocks without leaking. Every such flare shall be carried in the vehicle in a metal rack or box. Every such red electric lantern shall be capable of operating continuously for not less than twelve (12) hours and shall be substantially constructed so as to withstand shock without breakage.

2. At least three red-burning fuses unless red electric lanterns are carried.

Every fusee shall be made in accordance with specification of the Bureau of Explosives, New York, and so marked and shall be capable of burning at least fifteen (15) minutes.

3. At least two red cloth flags, not less than twelve (12) inches square, with standards to support same.

(b) No person shall operate at the time and under the conditions stated in subsection (a) any motor vehicle used in the transportation of inflammable liquids in bulk, or transporting compressed inflammable gases unless there shall be carried in such vehicle three red electric lanterns meeting the requirements above stated and there shall not be carried in any said vehicle any flares, fusees or signal produced by a flame.

(c) In the alternative it shall be deemed a compliance with this section in the event the person operating any motor vehicle described in this section shall carry in such vehicle three portable reflector units on standards of a type approved by the department. No portable reflector unit shall be approved unless it is so designed and constructed that it will reflect red light clearly visible for a distance of at least three hundred (300) feet under normal atmospheric conditions at nighttime when directly in front of lawful upper beams of head lamps.

Display of warning devices when vehicle disabled

Sec. 138. (a) Whenever any motor truck, passenger bus, truck tractor, trailer, semi-trailer, or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway except as provided in subsection (b).

1. A lighted fusee shall be immediately placed on the roadway at traffic side of the motor vehicle unless electric lanterns are displayed.

2. Within the burning period of the fusee and as promptly as possible three lighted flares (pot torches) or three electric lanterns shall be placed on the roadway as follows:

One at a distance of approximately one hundred (100) feet in advance of the vehicle, one at a distance of approximately one hundred (100) feet to the rear of the vehicle each in the center of the lane of traffic occupied by the disabled vehicle, and one at the traffic side of the vehicle approximately ten (10) feet rearward or forward thereof.

(b) Whenever any vehicle used in the transportation of inflammable liquid in bulk, or transporting compressed inflammable gases is disabled upon a highway at any time or place mentioned in subsection (a) of this section, the driver of such vehicle shall display upon the roadway the following lighted warning devices:

1. One red electric lantern shall be immediately placed on the roadway at the traffic side of the vehicle and the two other red electric lanterns shall be placed to the front and rear of the vehicle in the same manner prescribed in subsection (a) above for flares.

When a vehicle of a type specified in this subsection is disabled the use of flares, fusees, or any signal produced by flame as warning signals is prohibited.

(c) Whenever any vehicle of a type referred to in this Section is disabled upon the traveled portion of a highway or the shoulder thereof, outside of any municipality at any time when the display of fusees, flares, or electric lanterns is not required, the driver of such vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of approximately one hundred (100) feet in advance of the vehicle, and one at a distance of approximately one hundred (100) feet to the rear of the vehicle.

(d) In the alternative it shall be deemed a compliance with this Section in the event three (3) portable reflector units on standards of a type approved by the department are displayed at the times and under the conditions specified in this Section either during the daytime or at nighttime and such portable reflector units shall be placed on the roadway in the locations as described with reference to the placing of electric lanterns and lighted flares.

(e) The flares, fusees, lanterns, and flags to be displayed as required in this Section shall conform with the requirements of Section 137 applicable thereto.

(f) It shall be unlawful for any person except any peace officer while acting in his official capacity, or the owner of the vehicle or his duly authorized agent or employee, to remove, damage, destroy, misplace, or extinguish any lamp, flare, fusee, or other signaling device required under this Section and Section 137 of this Act, while the same are being displayed or being used as required by this Act.

Vehicle transporting explosives

Sec. 139. Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this Section.

(a) Said vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight (8) inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four (24) inches square marked with the word "Danger" in white letters six (6) inches high.

(b) Every said vehicle shall be equipped with not less than two (2) fire extinguishers of at least one quart capacity each, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(c) The Director is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highways as he shall deem advisable for the protection of the public; provided however that such additional regulations as may be promulgated under this authority shall not apply to persons engaged in transporting explosives when such operations are regulated by the Railroad

Commission of Texas or the Interstate Commerce Commission.

ARTICLE XV—INSPECTION OF VEHICLES

Vehicles without required equipment or in unsafe condition

Sec. 140. No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, or pole trailer, or any combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this Act and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

Inspection by officers of the Department

Sec. 141. The Director, members of the Texas Highway Patrol, and such other officers and employees of the department as the director may designate, may at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

Owners and drivers to comply with inspection laws

Sec. 142. No person driving a vehicle shall refuse to submit such vehicle to an inspection and test when required to do so by the director or an authorized officer or employee of the department.

ARTICLE XVI—PENALTIES AND DISPOSITION OF FINES AND FORFEITURES

Penalties for misdemeanors

Sec. 143. (a) It is a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other law of this State declared to be a felony.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this Act for which another penalty is not provided shall be punished by a fine of not less than One ($1.00) Dollar nor more than Two Hundred ($200.00) Dollars.

Disposition of fines and forfeitures

Sec. 144. Fines collected for violation of any highway law as set forth in this Act shall be used by the municipality or the counties in which the same are assessed and to which the same are payable in the construction and maintenance of roads, bridges, and culverts therein, and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles and to help defray the expense of county traffic officers.

ARTICLE XVII—PARTIES, PROCEDURE UPON ARREST, AND REPORTS IN CRIMINAL CASES

Parties to a crime

Sec. 145. Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of, any act declared herein to be a crime, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly, or wilfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this Act is likewise guilty of such offense.

Offense by persons owning or controlling vehicles

Sec. 146. It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

When a person arrested must be taken immediately before a magistrate

Sec. 147. Whenever any person is arrested for any violation of this Act punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense and is nearest or most accessible with reference to the place where said arrest is made, in any of the following cases:

1. When a person arrested demands an immediate appearance before a magistrate;
2. When the person is arrested upon a charge of negligent homicide;
3. When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs;
4. When the person is arrested upon a charge of failure to stop in the event of an accident, causing death, personal injuries, or damage to property;
5. In any other event when the person arrested refuses to give his written promise to appear in court as hereinafter provided.

When person arrested to be given five (5) days' notice to appear in court

Sec. 148. (a) Whenever a person is arrested for any violation of this Act punishable as a misdemeanor, and such person is not immediately taken before a magistrate as hereinbefore required, the arresting officer shall prepare in duplicate written notice to appear in court containing the name and address or such person, the license number of his vehicle, if any, the offense charged, and the time and place when and where such person shall appear in court. Provided, however, that the offense of speeding shall be the only offense making mandatory the issuance of a written notice to appear in court, and only then if the arrested person gives his written promise to appear in court, by signing in duplicate the written notice prepared by the arresting officer.

(b) The time specified in said notice to appear must be at least five (5) days after such arrest unless the person arrested shall demand an earlier hearing.

(c) The place specified in said notice to appear must be before a magistrate within the city or county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

(d) The arrested person in order to secure release as provided in this Section, must give his written promise so to appear in court by signing in duplicate the written notice prepared by the arresting officer. The original of said notice shall be retained by said officer and the copy thereof delivered to the person arrested. Thereupon, said officer shall forthwith release the person arrested from custody.

(e) Any officer violating any of the provisions of this Section shall be guilty of misconduct in office and shall be subject to removal from office.

Violation of promise to appear

Sec. 149. (a) Any person wilfully violating his written promise to appear in court, given as provided in this Article, is guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.

(b) A written promise to appear in court may be complied with by an appearance by counsel.

Procedure prescribed herein not exclusive

Sec. 150. The foregoing provisions of this Article shall govern all police officers in making arrests without a warrant for violations of this Act, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for

the arrest and prosecution of a person for an offense of like grade.

Conviction for traffic violation not to affect credibility of witness

Sec. 151. The conviction of a person upon a charge of violating any provision of this Act or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

Convictions to be reported to Department

Sec. 152. (a) Every magistrate or judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this Act or of any other law regulating the operation of vehicles on highways.

(b) Within ten (10) days after conviction of forfeiture of bail of a person upon a charge of violating any provision of this Act or other law regulating the operation of vehicles on highways, every said magistrate of the court or clerk of the court of record in which such conviction was had or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of said court covering the case in which said person was so convicted or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.

(c) Said abstract must be made upon a form furnished by the Department and shall include the name and address of the party charged, the number, if any, of his operator's, commercial operator's, or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail forfeited and the amount of the fine or forfeiture as the case may be.

(d) Every court of record shall also forward a like report to the department upon the conviction of any person of negligent homicide or any felony in the commission of which a vehicle was used.

(e) The failure, refusal, or neglect of any such judicial officer to comply with any of the requirements of this Section shall constitute misconduct in office and shall be grounds for removal therefrom.

(f) The department shall keep all abstracts received hereunder at its main office.

Arrest without warrant

Sec. 153. Any peace officer is authorized to arrest without warrant any person found committing a violation of any provision of this Act.

ARTICLE XVIII—EFFECT OF AND SHORT TITLE OF ACT

Short Title

Sec. 154. This Act may be cited as the Uniform Act Regulating Traffic on Highways.

Constitutionality

Sec. 155. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts thereof would be declared unconstitutional.

Repeal of inconsistent laws

Sec. 156. All laws or parts of laws inconsistent or conflicting with the provision of this Act are hereby repealed, provided, however, that nothing in this Act is intended to repeal provisions of Section 1 of Chapter 88, of the Acts of the Forty-first Legislature, Second Called Session, 1929, as amended by Chapter 23, Acts of the Forty-first Legislature, Fifth Called Session, 1930, and Chapter 110, Acts of the Forty-seventh Legislature, Regular Session, 1941,[1] or House Bill No. 407, Page 602, Volume 1, Acts of the Forty-sixth Legislature, Regular Session, 1939, as amended by Chapter 187, Acts of the Forty-seventh Legislature, Regular Session, 1941.[2]

If there be a conflict between any of the provisions of this Act and the orders, rules, regulations, and requirements of the Interstate Commerce Commission or the Railroad Commission of Texas, relating to the equipping, and other safety requirements of vehicles, motor vehicles, truck tractors, trucks, busses, trailers, semi-trailers, or pole-trailers, compliance by the owner or operator of such vehicles with such orders, rules, and regulations of the Interstate Commerce Commission or the Railroad Commission of Texas shall be deemed a compliance with this Act; except that any requirements of this Act in addition to, but not in conflict with, the requirements of the Interstate Commerce Commission or the Railroad Commission shall be complied with. [Acts 1947, 50th Leg., p. 967, ch. 421.]

[1] Article 6675a—1.
[2] Pen.Code, art. 1436—1.

Uniform Act Regulating Traffic on Highways

This act was declared obsolete by the National Conference of Commissioners on Uniform State Laws and the question whether the conference should interest itself further in this subject was referred to the Committee on Scope and Program, in August 1943. See Handbook of the National Conference, 1943, p. 69.

CHAPTER 2.—ESTABLISHMENT OF COUNTY ROADS

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Article 6702. [6859] [4670] "Public roads."—All public roads and highways not discontinued that have heretofore been laid out and established agreeably to law are hereby declared to be public roads. [Acts 1876, p. 64; G. L. vol. 8, p. 905.]

Art. 6703. [6860—1—2—76—6902] Commissioners courts: powers.—The commissioners court shall order the laying out and opening of public roads when necessary, and discontinue or alter any road whenever it shall be deemed expedient. No public roads shall be altered or changed except to shorten the distance from end to end, unless the court upon a full investigation of the proposed change finds that the public interest will be better served by making the change; and said change shall be by unanimous consent of all the commissioners elected. No part of a public road shall be discontinued until a new road is first built connecting the parts not discontinued; and no entire first or second class road shall be discontinued except upon vacation or non-use for a period of three years. Said court shall assume and have control of the streets and alleys in all cities and incorporated towns in Texas which have no defacto [de facto] municipal government in the active discharge of their official duties. [Acts 1st C. S. 1884, p. 24; G. L., vol. 9, p. 556; Acts 1885, p. 25; G. L., vol. 9, p. 645; Acts 1889, p. 21; G. L., vol. 9, p. 1049.]

Art. 6704. [6871—2—3—4] Classes of roads; cattle guards across roads authorized in counties of 5,690 to 5,750 population; penalty.—The Commissioners Court shall classify all public roads in their counties as follows:

1. First class roads shall be clear of all obstructions, and not less than forty (40) feet nor more than one hundred (100) feet wide; all stumps over six (6) inches in diameter shall be cut down to six (6) inches of the surface and rounded off, and all stumps six (6) inches in diameter and under, cut smooth with the ground, and all causeways made at least sixteen (16) feet wide, no first or second class road shall be reduced to a lower class.

2. Second class roads shall conform to the requirements of first class roads except that they shall be not less than forty (40) feet wide.

3. Third class roads shall not be less than twenty (20) feet wide and the causeway not less than twelve (12) feet wide; otherwise they shall conform to the requirements of first class roads.

4. Any county in this State containing a population of not less than five thousand, six hundred and ninety (5,690) nor more than five thousand, seven hundred and fifty (5,750), according to the last preceding Federal Census, may by a majority vote of the Commissioners Court thereof authorize the construction of cattle guards across any or all of the first class, second class, or third class roads in said county, and such cattle guards shall not be classed or considered as obstructions on said roads.

The Commissioners Court of any county coming under the provisions of this Act shall within sixty (60) days after this Act takes effect, provide proper plans and specifications of a standard cattle guard to be used on the roads of said county, said plans and specifications to be plainly written, supplemented by such drawings as may be necessary and shall be available to the inspection of the citizenship of such county. After said Commissioners Court provides said proper plans and specifications of a standard cattle guard to be used on the roads of said county any person constructing any cattle guard that is not in accordance with said approved plans and specifications prepared by said Commissioners Court shall be deemed guilty of obstructing said roads of said county, and the person responsible for such improper construction of said cattle guards shall be deemed guilty of a misdemeanor, and shall be fined not less than Five Dollars ($5) nor more than One Hundred Dollars ($100).

The Commissioners Court of any county coming under the provisions of this Act is hereby authorized and empowered to construct cattle guards on the first class, second class, and third class roads of said county and pay for same out of the Road and Bridge Funds of said county when in their judgment they believe the construction of such cattle guards to be to the best interest of the citizens of said county. [Acts 1st C.S. 1884, p. 20; G.L. vol. 9, p. 553; Acts 1927, 40th Leg., p. 256, ch. 178, § 1; Acts 1929, 41st Leg., p. 429, ch. 197, § 1; Acts 1929, 41st Leg., p. 429, ch. 197, § 1; Acts 1939, 46th Leg., Spec.L. p. 940, § 1.]

Art. 6705. [6875—6—85] Petition.—The commissioners court shall in no instance grant an order on an application for any new road, or to discontinue an original one, or to alter or change the course of a public road, unless the applicants have given at least twenty days notice by written advertisement of their intended application, posted up at the court house door of the county and at two other public places in the vicinity of the route of such road. All such applications shall be by petition to the commissioners court, signed by at least eight freeholders in the precinct in which such road is desired to be made or discontinued, specifying in such petition the beginning and termination of such road, provided an application to alter or change a road need not be signed by more than one freeholder of the precinct. [Acts 1st C.S., 1884, p. 28; G.L. vol. 9, p. 553.]

Art. 6706. [6877—9] Preliminary survey.—All roads ordered to be made shall be laid out by a jury of freeholders in the county, to be appointed by the commissioners court. Said jury shall consist of five persons, a majority of whom may proceed, with or without the county surveyor, as ordered by the commissioners court, to lay out, survey and describe such road to the greatest advantage to the public, and so that the same can be traced with certainty. They shall make written report of their proceedings to the next term of said court, and the field notes of such survey or description of the road shall be included therein, and, if adopted, shall be recorded in the minutes of said court. [Id.]

Art. 6707. [6886—7—8] Notice of appointment.—When juries of view are appointed, the clerk of the court shall make out and deliver to the sheriff duplicate copies of the order appointing them within ten days after such appointment was made, indorsing on such copies the date of such order. The sheriff shall serve the same upon each juror in person, or by leaving one of said copies at his usual place of abode. The sheriff shall make such service within twenty days after he receives said copies, and shall make his return to the clerk on the duplicate copies, stating the date and manner of service, or the cause of his failure to make the same. Any juror of view, summoned as such, who fails or refuses to perform the service required of him by law as such juror, shall forfeit and pay for every such failure the sum of ten dollars, to be recovered by judgment on motion of the district or county attorney, in the name of the county. [Id.]

Art. 6708. [6878] [4689] Oath of jury.—Said jurors shall first take the following oath: "I, ———, do solemnly swear that I will lay out the road now directed to be laid out by the order to us

directed from the commissioners court, according to law, without favor or affection, malice or hatred, to the best of my skill and knowledge. So help me God." [Id.]

Art. 6709. [6880] [4691] Notice to owner. —Said jury shall issue a written notice of the time when they will proceed to lay out such road, or when they will assess the damages incidental to the opening of the same. Such notice shall be served upon each land owner, his agent or attorney, through whose land said road may run, at least five days before the day named therein. If such owner is a non-resident of the county the notice may be given by publication in a newspaper published in the county, once a week for four consecutive weeks, and the road may be established after four weeks publication, the cost of publishing to be paid as directed by the judgment of the court. [Id.]

Art. 6710. [6881–2–3–4] Damages to land. —Any such owner may, at the time stated in such notice, or previously thereto, but not in any event thereafter, present to the jury a written statement of the damages claimed by him, incidental to the opening of such road, and thereupon the jury shall proceed to assess the damages, returning their assessment and the claimant's statement with their report. If the commissioners court approves the report and orders such road to be opened, they shall consider the assessment and damages by the jury and the claimant's statement thereof, and allow to such owner just damages and adequate compensation for the land taken. When same are paid or secured by special deposit with the county treasurer to the credit of such owner and after notice of such payment or deposit to the owner, and if no objection is made to the jury's report, said court may proceed to have such road opened if deemed of sufficient importance. Said owner may appeal from such assessment as in cases of appeal from judgment of justice courts, but such appeal shall not prevent the road from being opened, but shall be only to fix the amount of damages. [Id.]

Art. 6711. [6889–6900] Neighborhood roads.—Any lines between different persons or owners of lands, any section line, or any practicable route, that the Commissioners' Court may agree upon, in order to avoid hills, mountains or streams through any and all inclosures, may be declared public highways upon the following conditions:

1. Ten freeholders, or one or more persons living within an inclosure, who desires a nearer, better or more practicable road to their church, county seat, mill, timber, or water, may make sworn application to the Commissioners' Court for an order establishing such road, designating the lines sought to be opened and the names and residences of the persons or owners to be affected by such proposed road, and stating the facts which show a necessity for such road.

2. Upon the filing of such application the clerk shall issue a notice reciting the substance thereof directed to the sheriff or any constable of the county, commanding him to summon such land owners, naming them, to appear at the next regular term of the commissioners' court and show cause why said lines should not be declared public highways. Said notice shall be served in the manner and for the length of time provided for the service of citations in civil actions in justice courts, and shall be returned in like manner as such citation.

3. At a regular term of the court, after due service of such notice, if the commissioners' court deems said road of sufficient public importance, it may issue an order declaring the lines designated in the application, or the lines fixed by the commissioners' court, to be public highways, and direct the same to be opened by the owners thereof and left open for a space of fifteen feet on each side of said line, but the marked trees and other objects used to designate said lines, and the corners of surveys, shall not be removed nor defaced. Notice of such order shall be immediately served upon such owners, and return made thereon, as before provided.

4. The damages to such land owners shall be assessed by a jury of freeholders, as for other public roads, and all costs attending the proceedings in opening neighborhood roads, if the application is granted shall be paid by the county.

5. The commissioners' court shall not be required to keep any such road worked by the road hands as in the case of other public roads. [Acts 1884, 1st C.S., p. 20; G.L. vol. 9, p. 553; Acts 1930, 41st Leg., 5th C.S., p. 207, ch. 62, § 1.]

Art. 6711a. Roads to public streams and lakes.

What may be declared public highways

Sec. 1. Any lines between different persons or owners of land, any section line, any survey line, any survey subdivision line or any direct practicable route through an enclosure containing not less than five Hundred (500) acres of land that the Commissioners Court or a majority thereof may agree to open in order to furnish access to public streams, lakes and bays in the Counties of Leon or Madison, may be declared public highways upon the following conditions:

Application for road

Sec. 2. Ten (10) citizens of the county in which such application is filed, or one or more persons living within such an enclosure, who desire a means of access to public streams, lakes or bays in the Counties of Leon or Madison where there is a distance of at least five (5) miles along the banks of said river or stream, or a distance of five (5) miles on the shore of said lake or bay not now served by a public road or highway, may make sworn application to the Commissioners Court for an order establishing such road, designating the lines sought to be opened and the names and residence of the persons or owners to be affected by such proposed roads, and stating the facts which show the necessity for such road.

Notice to land owners

Sec. 3. Upon the filing of such application the clerk shall issue a notice reciting the substance thereof directed to sheriff or any constable of the county, commanding him to summons such land owners, naming them, to appear at the next regular term of the Commissioners Court and show cause why said line should not be declared public highways. Said notice shall be served in the manner and for the length of time provided for the service of citations in civil actions in Justice Courts, and shall be returned in like manner as such citation.

Directing opening of road

Sec. 4. At a regular term of Court, after due service of such notice, if the Commissioners Court deems that the proposed road comes within the provisions of this Act and is of public importance it shall issue an order declaring the lines designated in the application, or lines fixed by the Commissioners Court, to be public highways, and direct the same to be opened by the owners thereof and left open for a space of fifteen (15) feet on each side of said line, but the marked trees and other objects used to designate said lines, and the corners of surveys shall not be removed or defaced. Notice of such order shall be immediately served upon such owners, and return made thereon, as before provided.

Working road

Sec. 5. The Commissioners Court shall not be required to keep any such roads worked by the road hands as in the case of other public roads.

Damages assessed

Sec. 6. The damages to such land owners shall be assessed by a jury of freeholders, as for other public

roads, and all cost attending the proceeding in opening neighborhood roads, if the application is granted, shall be paid by the county.

Navigable streams

Sec. 7. The lack of adequate roads for the purpose of public access to navigable streams or public lakes, or to shores of lakes or bays within tide water limits is hereby declared to create a public necessity for additional roads in the Counties of Leon or Madison, which will furnish a means of such access for the general public. "Navigable streams," as that term is used herein, are defined to be statutory navigable streams of an average width of thirty (30) feet, and public lakes are defined to be those lakes in which the State owns the beds, or reserves the right of access for its citizens for fishing, boating, hunting or other recreation.

Public necessity for road

Sec. 8. A public necessity for roads of the character herein defined is declared to exist where any existing public roads which furnish access to public rivers, lakes or bays are more than five (5) miles apart, and/or where there is an area of at least five (5) miles on any such river, stream, lake or bay without a road to furnish public access to such stream, lake or bay.

Order opening road

Sec. 9. On application being filed in accordance with Sections 1, 2, 3, 4, 5 and 6 of this Act, the Commissioners Courts of Leon and Madison Counties may issue an order opening a public road sixty (60) feet in width running parallel with and adjacent to the bank of any statutory navigable stream of this State for such distance as the Court may deem necessary, said right of way to be used for access to said public streams, and for camping purposes. The opening of highways along and adjacent to the banks of said navigable streams shall be in accordance with the terms of this Act and compensation shall be made to the owners of said lands as provided for in Section 6 of this Act.

Purpose of act

Sec. 10. It is the purpose of this Act to make accessible public streams, bays, lakes and other bodies of public waters which are now fenced in and not accessible to the general public, by establishing roads and highways. Any bank of a stream and shore of a lake or bay which extends more than five (5) miles without a public highway furnishing access to the public, to said bank or shore of said stream, lake or bay is declared to be inaccessible and subject to be opened to public access under the terms of this Act.

Application to Leon and Madison Counties

Sec. 10-a. No provision of this Act shall be applicable to any other county in this State except to the Counties of Leon and Madison. [Acts 1935, 44th Leg., Sp.L., p. 1196, ch. 33, § 1.]

Art. 6712. [6899] [4710] Gates.—The owners of land across which a third class or neighborhood road may be run, when the right of way therefor has been acquired without cost to the county, may erect gates across said road when necessary, said gates to be not less than ten feet wide and free of obstructions at the top. [Acts 1st C. S. 1884, p. 23; G. L., vol. 9, p. 555.]

Art. 6713. [6901] [4712] Road supervisors.—Except when road commissioners are employed, the county commissioners shall be supervisors of public roads in their respective counties, and each commissioner shall supervise the public roads within his commissioners precinct once each month. He shall also make a sworn report to each regular term of the commissioners court held in his county during the year, showing:

1. The condition of all roads and parts of roads in his precinct.
2. The condition of all culverts and bridges.
3. The amount of money remaining in the hands of overseers subject to be expended upon the roads within his precinct.
4. The number of mile posts and finger boards defaced and torn down.
5. What, if any, new roads of any kind should be opened in his precinct, and what, if any, bridges, culverts, or other improvements are necessary to place the roads in his precinct in good condition and the probable cost of such improvements; also the name of every overseer who has failed to work on the road, or in any way neglected to perform his duty.

Said report shall be spread upon the minutes of the court, to be considered in improving public roads and determining the amount of taxes levied therefor. [Id.; Acts 1913, p. 255.]

Art. 6714. [6903] [4714] Reports.—Said supervisor's report shall be submitted together with all contracts made by said court since its last report for any work on any road, to the grand jury, at the first term of the district court thereafter. [Id.]

Art. 6715. [6904] [4715] Across public lands.—No public road shall be opened across lands owned and used or for actual use by the State, educational, eleemosynary, or other public State institutions for public purposes and not subject to sale under the general laws of the State, without the consent of the trustees of said institution and the approval of the Governor. The roads heretofore opened across such lands may be closed by the authorities in charge of any such lands whenever they deem it necessary to protect the interests of the State, upon repayment to the county where the land is situated with eight per cent interest, the amount actually paid out by said county for the condemnation of said lands as shown by the records of the commissioners court.

Art. 6716. Damage to roads.—The county commissioner of any precinct, or county road superintendent of any county, or road supervisor, whose road is affected, may forbid the use of highways or parts thereof when from wet weather or recent construction or repairs they cannot be safely used without probable serious damages to same, or when the bridge or culverts on same are unsafe, under the following rules:

1. Such officer shall post notices on such highways, stating the maximum load permitted and the time such use is prohibited, and same shall be posted upon the highway in such places as will enable the drivers to make detours to avoid the restricted highways or portions thereof.

2. If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the county judge of such county, setting forth the nature of his grievance. When such complaint is filed, the judge shall set the same down for a day certain not more than three days later, and shall give written notice to such official of the day and purpose of such hearing. The judge shall hear testimony offered by the parties thereto, and upon conclusion thereof, shall render judgment sustaining, revoking or modifying such order or notice, and such judgment shall be final as to the issues raised.

3. The owners, operators, drivers or movers of any vehicle, object or contrivance over a public highway or bridge shall be jointly and severally responsible for all damages which said highway or bridge may sustain as the result of negligent driving, operating or moving of such vehicle, or as a result of operating same at a time forbidden by said road officials. The amount of such damages may be recovered in any action at law by the county judge for the use of the county, and such recovery shall go to the benefit of the damaged road. The county attorney shall repre-

sent the county in such suit. [Acts 1st C. S. 1921, p. 133; Acts 1923, p. 160.]

Acts 1935, 44th Leg., p. 41, ch. 16, enacted as a general law is in fact a special law and relates to only one county.

Art. 6716—1. The Optional County Road Law of 1947.

Short title

Section 1. The short title of this Act shall be "The Optional County Road Law of 1947."

Adoption of Act

Sec. 2. By a majority vote of its qualified voters, any county in this state, at an election held for that purpose, may adopt the provisions of this Act for the construction and maintenance of county roads and bridges and for the expenditure of the County Road and Bridge Fund. Such question shall be submitted to the qualified voters of such county at a general or special election by the Commissioners Court of such county, upon petition of a number of qualified voters of such county equal to ten (10) per cent of the number voting for Governor at the last preceding general election in such county, not less than thirty (30) days nor more than sixty (60) days after the petition is filed with the Commissioners Court. The ballot for such election shall read:

"For the Optional County Road Law of 1947"; or

"Against the Optional County Road Law of 1947."

If there be a favoring vote at such election, the provisions of this Act shall become effective with the official proclamation of the results of such election. In like manner, a county having voted to come under the provisions of this Act may vote to abandon the provisions of this Act, but no election on the questions of adopting or abandoning the provisions of this Act shall be held oftener than every two (2) years.

County road department

Sec. 3. The construction and maintenance of county roads is vested in the county road department which shall include the Commissioners Court as the policy-determining body, the County Road Engineer as the chief executive officer, other administrative personnel, and road employes.

On basis of county as whole

Sec. 4. The construction and maintenance of county roads, the ownership and use of all county road department equipment, materials and supplies, and the administration of the county road department shall be on the basis of the county as a whole without regard to commissioners precincts.

County Road Engineer

Sec. 5. The County Road Engineer shall be appointed by the Commissioners Court. He shall be a licensed professional engineer, experienced in road construction and maintenance, who shall meet the qualifications required by the State Highway Department for its county engineers.

Salary of Engineer

Sec. 6. The County Road Engineer shall receive an annual salary not to exceed Seven Thousand Two Hundred ($7,200.00) Dollars, the exact amount thereof to be determined by the Commissioners Court, and said salary shall be paid in twelve (12) equal monthly installments out of the Road and Bridge Fund of the county.

Term of Engineer; removal

Sec. 7. The County Road Engineer shall hold his position for an indefinite term and may be removed by a majority vote of the Commissioners Court. Removal shall not become effective until thirty (30) days after he shall have been notified in writing of the intention of the Commissioners Court to remove him, and until after a public hearing on the question of his removal shall have been held, if such hearing is requested of the Commissioners Court in writing by the County Road Engineer.

Administrative officer

Sec. 8. In the absence or inability of the County Road Engineer to perform his duties, the Commissioners Court may designate a qualified administrative officer to perform the duties of County Road Engineer during such absence or inability.

Powers of County Road Engineer

Sec. 9. The County Road Engineer shall be responsible to the Commissioners Court for the efficient and economical construction and maintenance of the county roads. He shall have the power to appoint for an indefinite term and to remove all county road department personnel, subject to the approval of the Commissioners Court. He may authorize certain administrative personnel to employ and remove subordinates or employes under their respective direction.

Commissioners Court

Sec. 10. Except for the purpose of inquiry the Commissioners Court shall deal with the county road department's administrative personnel and employes through the County Road Engineer.

Duties of Engineer

Sec. 11. The County Road Engineer shall attend all meetings of the Commissioners Court when it sits to consider county road matters, with the right to participate in the discussions and to make recommendations. He shall see that the policies of the Commissioners Court relating to county roads are faithfully executed, supervise the administration of the county road department, and prepare detailed annual budget estimates for the construction and maintenance of the county roads and the operation of the county road department. The County Road Engineer shall prepare estimates and specifications for all equipment, materials, supplies, and labor necessary for the construction and maintenance of the county roads and the operation of the county road department, serve as custodian for all equipment, materials, and supplies belonging to the county road department, prepare plans and specifications for all county road construction and maintenance, maintain cost accounting records on county road department expenditures, keep a perpetual inventory of all county road department equipment, material and supplies, and perform such other duties as the Commissioners Court may require which are consistent with this Act.

Bond; oath

Sec. 12. The County Road Engineer and such other administrative personnel of the county road department as the Commissioners Court may require to do so, shall give bond in such amount and surety as may be approved by the Commissioners Court. The premiums on such bonds shall be paid by the county. The County Road Engineer shall take the official oath of office.

Expenditures

Sec. 13. All expenditures for the construction and maintenance of the county roads and the operation of the county road department shall be paid out of the Road and Bridge Fund strictly in accordance with annual budgeted appropriations, except that upon application of the County Road Engineer the Commissioners Court may transfer any part of any unencumbered appropriation balance for some item within the Road and Bridge Fund budget to some other item.

Engineer as representative of county

Sec. 14. On projects of county road construction and maintenance let to private contractors, the County Road Engineer shall be the representative of the

county in inspecting the progress of the work. Before any claims by reason of county road construction or maintenance done by private contractors shall be ordered paid by the Commissioners Court, the County Road Engineer shall certify in writing to the correctness of the claims and shall certify that the work done conforms to the plans and specifications called for in the respective contracts.

Purchase of equipment and supplies

Sec. 15. All equipment, materials, supplies, and services other than those of administrative personnel and employes for the construction and maintenance of county roads and for the county road department shall be purchased by the Commissioners Court on competitive bids in conformity with estimates and specifications prepared by the County Road Engineer. Before any claims covering the purchase of such equipment, materials, supplies, and services shall be ordered paid by the Commissioners Court the County Road Engineer shall certify in writing to the correctness of the claims and shall certify that the respective equipment, materials, supplies, and services covered by the claims conforms to specifications approved by him, and that the same respective equipment, materials, and supplies were delivered in good condition, or the services satisfactorily performed.

Partial invalidity

Sec. 16. If any provision of this Act shall be held to be void, such invalidity shall not affect the Act beyond the provision or section so held to be invalid, it being the legislative intention to pass the same irrespective of such provision or section so invalidated. [Acts 1947, 50th Leg., p. 288, ch. 178.]

CHAPTER 3.—MAINTENANCE OF ROADS

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1. OVERSEERS AND HANDS

Article 6717. [6905] [4716] Road precincts.—The commissioners courts of the several counties shall lay off their respective counties into convenient road precincts and shall number each precinct; and in the order establishing the same shall specify as definitely as practicable the boundaries thereof. [Acts 1876, p. 63; G. L. vol. 8, p. 899.]

Acts 1933, 43rd Leg., p. 17, ch. 12, a special law applicable to Tarrant county, was repealed by Acts 1935, 44th Leg., p. 41, ch. 16, § 36.

Art. 6718. [6906–7] Road force.—At the first regular term of said court in each year, or, if not done then, at any subsequent regular or called term, said court shall appoint an overseer for each road precinct, and designate all the hands liable to work on public roads and apportion them to the several overseers. Hands shall as nearly as practicable be apportioned to work on the road precincts nearest to their place of abode. The supervisor of public roads shall at any time apportion any hands in his precinct who from any cause may not have been apportioned as otherwise provided in this subdivision. [Acts 1st C. S. 1884, p. 24; G. L. vol. 9, p. 556.]

Art. 6719. [6909–10–11–17] Appointment of overseer.—All orders appointing overseers shall embrace the designation of hands liable to work under such overseer, as far as known, and shall specify the boundaries of such overseer's road precinct as laid off by the court. The clerk of said court shall make out duplicate copies of all orders appointing overseers, inserting thereon the duties required of overseers in regard to their non-acceptance of such appointment, and deliver the same to the sheriff of the county within ten days after any such order is made, indorsing on such copies the date of the orders of appointment. The sheriff shall, within twenty days after receipt of such copies, deliver to or leave at the usual place of abode of such overseer, one of such copies, and return duplicate of such copy to the clerk of the county court, indorsing thereon the date and manner of service, or the cause of his failure to serve the same. [Id.]

Art. 6720. [6908–12] Term of service.—The term of service of a road overseer shall be from the time of the service of the order of appointment until the first regular term of the commissioners court in the succeeding year, and during such time he shall be exempt from jury service. If any road overseer dies, removes or is unable to act, the county judge, immediately upon information of the fact, shall appoint an overseer to fill such vacancy, and notify him of his appointment. [Id.]

Art. 6721. [6913–14–15–16] Persons exempt from serving.—No person shall be compelled to serve as an overseer who is lawfully exempt from road duty, nor shall any one be compelled to serve as overseer more than one year in every three successive years. Such person shall notify the clerk of his non-acceptance within ten days after notice of his appointment, and the clerk shall forthwith report the same to the county judge, who shall immediately appoint another overseer for said road precinct. If such exempt person fails to so notify the clerk, it shall be considered an acceptance of the appointment, and he shall not be permitted thereafter to plead his exemption from road duty as a defense against any neglect or failure to perform any of the duties of such overseer. [Id.]

Art. 6722. [6918] [4729] List of overseers.—Each county clerk shall post up in the court house on the first day of each term of the district court held in his county, a list of the names and road precincts of all overseers in the county. [Id.]

Art. 6723. [6919–26] Road duty.—All male persons between the ages of twenty-one and forty-five years shall be liable to work on, repair and clean out the public roads under the provisions of this title, subject to the following conditions:

1. Ministers in the active discharge of their duties, invalids, members of volunteer fire companies in the active discharge of their duties, and persons who have not been residing in the county in which they are summoned to work for fifteen days immediately preceding such summons, shall be exempt.

2. Any person so liable who has been summoned to do such duty may furnish an able bodied substitute to work in his place. The overseer shall not accept such substitute if he is incapable of performing a reasonable amount of work.

3. Any person so liable, by paying to his road overseer before the day appointed to work, one dollar for each day he is summoned to work, shall be exempt for each day paid for.

4. Each person summoned to work on a road shall take with him an axe, hoe, pick, spade or such tool as the overseer directs, or if he has no such tool then such other suitable tool as he may have.

5. Each road hand shall perform his duties as such in accordance with the directions of his overseer. No person shall be compelled to do such work more than five days of eight hours efficient service each in each year. [Acts 1876, p. 63; G. L. vol. 8, p. 899; Acts 1883, p. 22; G. L. vol. 9, p. 329; Acts 1895, p. 160; G. L. vol. 10, p. 890.]

Art. 6724. [6927–8–9] Call for hands.—Each overseer shall cause the roads through his precinct to be worked twice in each year; and he may call out all or some of the hands at any time he deems it necessary, or when ordered by the commissioners court or other competent authority. If any hand has not been apportioned by the commissioners court, the overseer nearest such person's residence shall summon such hand. [Acts 1876, p. 66; G. L. vol. 8, p. 902; Acts 1889, p. 21; G. L. vol. 9, p. 1049.]

Art. 6725. [6930–31–32] Summons.—Each overseer shall give three days previous notice, by summons in person or in writing, to each person within his road precinct liable to road duty, of the time and place such person is required to appear to work on the road, and the number of days such person shall be required to work. A written summons may be served by leaving the same at the usual place of abode of the person summoned, with some person residing at such place who is not less than ten years of age, or by posting it on the door of such abode. The overseer may appoint some one to summon the hands and such person shall be exempt from road duty as many days as he was actually so engaged. [Acts 1889, p. 21.]

Art. 6726. [6933–45] Complaints against hands.—Within ten days after he has had his road worked, the overseer shall file with the county attorney or the justice of the peace a sworn complaint against each person so summoned who has failed to work and who is not entitled to exemption from road duty. Overseers shall dismiss from the road any hand who fails to do efficient work, or who hinders other hands from doing their work properly, or dismiss any hand who may be intoxicated, or who shall refuse to obey any reasonable order of the overseers; and the overseer shall also file complaints against such hands. [Id. Acts 1st C. S. 1884, p. 24; G. L. vol. 9, p. 556.]

Art. 6727. [7013] [4791] Bridges.—Overseers of roads shall cause bridges to be erected across all such water courses and other places as may appear to them to be necessary and expedient; and should there be a water course or other place that requires a bridge, dividing any two road precincts, the overseer of each of such precincts, together with their hands, shall meet at the same time and place to construct such bridge, and the overseer chosen by a majority of the hands present shall superintend the building of such bridge until finished. [Acts 1876, p. 67; G. L. vol. 8, p. 903.]

Art. 6728. [6934] [4744] Road material.—If an overseer deems it expedient to make causeways and build bridges, or to gravel any public road, the timber, gravel, earth, stone or other necessary material most convenient therefor may be used. In such case the owner of such material shall be paid out of the county treasury a fair compensation for the same, to be determined by the commissioners court upon the application of such owner. [Acts 1876, p. 66; G. L. vol. 8, p. 902; Acts 1897, p. 84; G. L. vol. 10, p. 1138.]

Art. 6729. Condemnation of road material.—The commissioners court may use either timber, earth, stone, gravel, or other necessary material most convenient therefor to build, repair, or maintain any public road or any part of any public road in the county without regard to the location or extent thereof or the funds from which such repair or maintenance is paid. In such case the owner of any such material shall be paid a fair and just compensation therefor as may be agreed upon by the owner or his agent and the commissioners court. Should the owner and the commissioners court fail to agree upon the compensation to be paid for the material required, then the county, upon the order of said court, shall proceed to condemn the

same. If such material is needed for the general system of county highways, then payment shall be made from the road and bridge fund of the county, or from the proceeds of any county issue of bonds. If such material is to be used for the benefit of any defined district or political subdivision of the county, then the cost of such material shall be paid from funds of such defined district or subdivision arising through sale of bonds or the collection of special taxes. The commissioners appointed to condemn the property shall receive two dollars for each day they may be necessarily engaged in the performance of their duties, to be paid out of the same fund from which payment is made for materials on the order of the commissioners court. Compensation awarded by said commissioners for material shall be paid to the owner or deposited with the county treasurer to the credit of such owner, and when so paid or deposited the county shall have the right to enter upon and use said material. If the owner or the county is not satisfied with the compensation awarded, he or said county may appeal therefrom as in condemnation cases; provided, the commissioners appointed to condemn such road material shall, after due hearing, fix a fair and reasonable value for such material; and if it has a market value, then such market value shall be determined and the market value fixed thereon as compensation to the owners, or if the material has no market value, then its value shall be fixed at such sum as the evidence shows the material to be reasonably worth for the purpose for which it was used. The value may be fixed either as a whole or in quantities, by the yard for earth, for sand, or broken stone, or by the perch for stone, and per tree, or per post, or per foot where trees are suitable for lumber or for timbers in such quantities as may be needed upon estimates secured by the commissioners court. [Acts 1901, p. 277; Acts 3rd C. S. 1920, p. 44; Acts 2nd C. S. 1923, p. 46.]

Art. 6730. [6935] [4745] Drains.—The earth necessary to construct a causeway shall be taken from both sides, so as to make a drain on each side thereof. Whenever it is necessary to drain the water from any public road, the overseer shall cut a ditch for that purpose, having due regard for the natural water flow, and with as little injury as possible to the adjacent land owners. In such cases the commissioners court shall cause the damages to such premises to be assessed and paid out of the general revenues of the county, and in case of disagreement the same may be settled by suit as in other cases. [Id.]

Art. 6731. [6936] [4746] Wagons and scrapers.—When it may be necessary to use a wagon for any purpose in working a road, or a plow or a scraper, the overseer may exchange the labor of any hand for the use of wagons, plows or scrapers, and the necessary teams to operate the same, at reasonable rates, to be employed as aforesaid. [Acts 1876, p. 67; G. L. vol. 8, p. 903.]

Art. 6732. [6937–40] Mile posts and signs.—Each overseer shall measure such parts of such roads in his precinct as are in continuation, and set up posts of stone or good lasting timber at the end of each mile leading from the courthouse or some other noted place, and mark on said posts in legible and enduring figures the distance in miles to said courthouse or other noted place. He shall place conspicuously and permanently at the intersection of all first and second class public roads in his precincts, index or sign boards, with directions plainly marked thereon, stating the most noted place to which each of said roads leads. The commissioners court may enter into contracts with persons, firms or corporations to mark or designate road intersections as herein provided for, by the use of advertising schemes and devices, and the correct marking of road intersections by such devices shall be deemed a compliance with this law, provided such sign boards are properly maintained. When a mile post on index board is removed or defaced by any means whatever, the overseer shall cause the same to be replaced immediately by another marked as the original one. The overseer may exchange the labor of any hand for the marking of index boards or mile posts. [Id. Acts 2nd C. S. 1919, p. 57; Acts 1923, p. 59.]

Art. 6733. [6941] [4751] Expenditures.—Each overseer shall impartially apply all money coming into his hands as such to the improvement of roads, by repairing or building bridges, hiring hands or teams to work on the road, or in such other manner as he may deem best. He shall pay to the commissioners court any such funds remaining in his hands, when he makes his report thereto. [Act 1876, p. 68.]

Art. 6734. [6942] [4752] Report to commissioners court.—Each overseer shall make written sworn report to the commissioners court at the first regular term thereof in each year, giving the number of hands and their names in his precinct liable to work on the roads; the number of days he has caused his road to be worked; the condition of such road; the amount of funds received by him for his road, from whom received, and for what purpose, and to whom and for what purpose said funds have been paid out, and the amount of such funds in his hands. [Id.]

Art. 6735. [6943] [4753] Pay of overseers.—Overseers shall retain out of money that may come into their hands as such ten per cent thereof as compensation for their services.

Art. 6736. [6944] [4754] Road and bridge funds.—All moneys appropriated by law, or by order of the commissioners court, for working public roads or building bridges, shall be expended under the order of the commissioners court, except when otherwise herein provided, and said court shall from time to time make the necessary orders for utilizing such money and for utilizing convict labor for such purposes. [Const. art. 16, sec. 24.]

2. ROAD COMMISSIONERS

Art. 6737. [6946] [4756] Employment.—Each commissioners court may employ not exceeding four road commissioners, who shall be resident citizens of the district for which they are employed, and when more than one is employed, the district that each road commissioner is to control shall be defined and fixed by the court. Such road commissioners shall receive such compensation as may be agreed upon by the court, not to exceed two dollars per day for the time actually engaged. Each road commissioner shall first execute a bond, payable to the county judge of the county and his successors in office, in the sum of one thousand dollars, with one or more good and sufficient sureties, to be approved by the county judge, and conditioned for the faithful performance of his duties. [Acts 1889, p. 134; G. L. vol. 9, p. 1162.]

Art. 6738. [6947] [4757] Powers and duties.—A road commissioner shall have control over all overseers, hands, tools, machinery and teams to be used upon the roads in his district; and may require overseers to order out hands in any number he may designate for the purpose of opening, working or repairing roads or building or repairing bridges or culverts in his district. He shall see that all roads and bridges in his district are kept in good repair, and he shall, under the direction and control of the commissioners court, inaugurate a system of grading and draining public roads in his district, and see that such system is carried out by the overseers and hands under his control, and shall obey all orders of the commissioners court; and he shall be responsible for the safe-keeping and liable for the loss or destruction of all machinery, tools or teams placed under his control, unless such loss is without his fault, and when he

shall be discharged he shall deliver them to the person designated by the court. [Id.]

Art. 6739. [6948] [4758] Expenditures.—He shall expend such money as may be placed in his hands by the commissioners court under its direction in the most economical and advantageous manner on the public roads, bridges and culverts of his district; and all his acts shall be subject to the control, supervision, orders and approval of the commissioners court. He shall work the convicts and such other labor as may be furnished him by the commissioners court. When he has funds in his hands to expend for labor on the roads, and when it shall be necessary for any overseer in his district to work more than five days during any one year upon the public roads, he may employ such overseer to continue his duties as such for such length of time as may be necessary, and pay him for such services not more than one dollar and fifty cents per day for the time actually employed after the five days; provided, that the hands shall not be required to work when there shall be on hand, after building and repairing bridges, a sufficient road fund to provide for the necessary work on the roads. Said road commissioner shall report to the commissioners court at each regular term under oath showing an itemized account of all money he has received to be expended on roads and bridges and what disposition he has made of the money, and showing the condition of all roads, bridges and culverts in his district, and such other facts as the court may desire information upon, and shall make such other reports and at such time as the court may desire. [Id.]

Art. 6740. [6949] [4759] Expenditure of road fund.—The commissioners court shall see that the road and bridge fund of their county is judiciously and equitably expended on the roads and bridges of their county, and, as nearly as the condition and necessity of the roads will permit, it shall be expended in each county commissioners precinct in proportion to the amount collected in such precinct. Money used in building permanent roads shall first be used only on first or second-class roads, and on those which shall have the right of way furnished free of cost to make as straight a road as is practicable and having the greatest bonus offered by the citizens of money, labor or other property. [Id.]

Art. 6741. [6950] [4760] Powers of court.—The commissioners court may make and enforce all reasonable and necessary rules and orders for the working and repairing of public roads, and to utilize the labor to be used and money expended thereon, not in conflict with the laws of this State. Said court may purchase or hire all necessary road machinery, tools or teams, and hire such labor as may be needed in addition to the labor required of citizens to build or repair the roads. [Id.]

Art. 6742. [6951] [4761] Donations.—Commissioners court or road commissioners may accept donations of money, lands, labor of men, teams or tools, or any other kind of property or material to aid in building roads in their counties, and may authorize any person to make a drain along any public road for the purpose of draining his land, and require the person draining his land to do such work under the direction of the road commissioner. [Id.]

3. ROAD SUPERINTENDENTS

Art. 6743. [6953–4–6] Appointment.—The commissioners court of any county subject to this law may appoint a competent person as road superintendent for such county, or one such superintendent in each commissioners precinct, as it shall determine by an order made at a regular term thereof. Such order shall be entered on the minutes of such court, and shall not be void for want of form, but a substantial compliance with the provisions of this subdivision shall be sufficient. Every road superintendent shall be a qualified voter in the county or precinct for which he is appointed, and shall hold his office for two years or until removed by the commissioners court for good cause. No county shall be under the operation of this law whose commissioners court does not appoint a road superintendent or superintendents. [Acts 1891, p. 149; G. L. vol. 10, p. 151.]

Art. 6744. [6955] [4765] Oath and bond.—Each road superintendent shall within twenty days after his appointment take and subscribe the oath required by the Constitution, and give bond payable to and to be approved by the county judge in such sum as the commissioners court may fix, conditioned that he will faithfully perform all the duties required of him by law or the commissioners court, and that he will pay out and disburse the funds subject to his control as the law provides or said court may direct. [Id.]

Art. 6745. [6957] [4767] Salary.—Each road superintendent shall receive such salary as the commissioners court may fix, to be paid on the order of said court at stated intervals. In counties of less than fifteen thousand inhabitants the county superintendent's salary shall never exceed one thousand dollars per annum, and in counties of more than fifteen thousand inhabitants it shall not exceed twelve hundred dollars per annum. The salary of precinct superintendents in counties of less than fifteen thousand inhabitants shall not exceed three hundred dollars per annum, and in counties of over fifteen thousand inhabitants, it shall never exceed four hundred dollars per annum. Said court may suspend the salary of any superintendent whose continued services are not needed. [Id.]

Art. 6746. [6958] [4768] Powers.—Subject to the orders of said court, each superintendent shall have general supervision over all public roads of his county or precinct, and shall superintend the laying out of new roads, the making, changing, working and repairing of roads, and the building of bridges except where otherwise contracted and over all county convicts worked on such roads, but this shall not prevent the commissioners court from employing a person to watch and manage such convicts and direct the work to be done by them. Said road superintendent shall take charge of and be responsible for the safe-keeping of all tools, machinery, implements and teams placed under his control by the commissioners court and execute his receipt therefor, which shall be filed with the county clerk. He shall be liable for the loss, injury or destruction of any such tools, teams, implements or machinery unless such loss occurred without his fault, and for the wrongful or improper expenditure of any road funds coming into his hands. On leaving office, he shall deliver all such money and property to such person as the commissioners court may direct. [Id.]

Art. 6747. [6959] [4769] Duties.—Each superintendent shall see that all roads and bridges in his county or precinct are kept in good repair, and he shall, under the direction of the commissioners court, inaugurate and carry out a system of working, grading and draining the public roads in his county or precinct. He shall act as supervisor of the roads in his county or precinct, and perform all the duties of supervisor devolving on the county commissioners in counties not adopting this law, and he shall do and perform such other service as said court may require. [Id.]

Art. 6748. [6960] [4770] Road districts.—When said court so directs, each superintendent shall divide his county or precinct into road districts of convenient size, to be approved by said court, and define the boundaries thereof and designate the same by number. Such boundaries shall be recorded in the

road minutes of the commissioners court. He shall ascertain the names of all persons subject to road duty in each district and keep a record thereof and report the same to the commissioners court. [Id.]

Art. 6749. [6961] [4771] Road hands.—Each superintendent shall call out all persons liable to work on the public roads at any time and in such numbers as he deems necessary, under the provisions of subdivision 1 of this chapter. No person shall be compelled to work outside of his road district. He may contract with any such person to discharge his road duty by the use of a double team, but he shall not allow more than two dollars a day for any team, nor more than three dollars for any hand and double team. [Id.]

Art. 6750. [6962–71] Accounts and reports.—Each superintendent shall make a sworn report to said court at each regular term thereof showing an itemized account of all money belonging to the road fund he has received, from whom received, and what disposition he has made of the same, the condition of all roads and bridges in the county or precinct, and such other matters as the court may desire information upon, and shall make such other reports at such times as such court may require. Within ten days after collection of any money on account of the road or bridge fund he shall pay the same over to the county treasurer, taking his receipt therefor, and shall keep an accurate account thereof. [Id.]

Art. 6751. [6963] [4773] Powers of court.—The commissioners court of any such county is authorized to purchase or hire all necessary road machinery, tools, implements, teams and labor required to grade, drain, or repair the roads of such county, and said court is authorized and empowered to make all reasonable and necessary rules, orders and regulations not in conflict with law for laying out, working and otherwise improving the public roads, and to utilize the labor and money expended thereon, and to enforce the same. [Id.]

Art. 6752. [6964–5] Extra road force.—Each road superintendent shall employ a sufficient force to enable him to do the necessary work in his county or precinct, as the case may be, having due regard for the condition of the county road and bridge fund and the quality and durability of the work to be done, and shall buy or hire such tools, teams, implements and machinery as the commissioners court may direct, and he shall work such roads in such manner as the commissioners court may direct, and such work shall at all times be subject to the general supervision of the commissioners court. He shall make the best contract possible for such labor or machinery, and in payment therefor he shall issue to the person entitled thereto his certificate showing the amount due, the purpose for which it was given, and upon approval by the commissioners court, a warrant shall issue therefor to the holder thereof on the county treasurer, to be paid by him out of the proper fund as other warrants. All such certificates shall be dated, numbered and signed by the road superintendent, and he and his sureties on his official bond shall be liable for all loss or damages caused by the wrongful issue of any such certificate or any extravagance in the amount thereof. [Id.]

Art. 6753. [6966] [4776] Contracts for road work.—The commissioners court may, when deemed best, construct, grade, gravel or otherwise improve any road or bridge by contract, and advertise for bids, and may reject any bid. The contract shall be awarded to the lowest responsible bidder, who shall enter into bond with good and sufficient sureties payable to and to be approved by the county judge, in such sum as said court may determine, conditioned for the faithful compliance with such contract. At the time of making such contract said court shall direct the county treasurer to pass the amount of money stipulated in such contract to a particular fund and to keep a separate account thereof, and the same shall be used for no other purpose and can only be paid out on the order of said court. [Id.]

Art. 6754. [6968] [4778] Donations.—The commissioners court may accept donations of money, land, teams, tools, or labor, or any other kind of property or material to aid in building or keeping up roads in the county, and said court or any road superintendent, with the concurrence of the commissioners, may authorize any person to make a drain along any public road, the same to be done under the direction of the road superintendent or such other person as said court may direct. [Id.]

Art. 6755. [6969] [4779] Overseers.—The commissioners court may retain the system of working hands under road overseers as provided by general laws, and place such overseers under control of a superintendent, under such lawful regulations as said court may prescribe, or may work with the overseers without any superintendent, as may be deemed best. [Id.]

Art. 6756. [6970] [4780] Road duty: exemptions.—The commissioners court of any county in which a special tax for the maintenance of the public roads is levied and collected, as provided in Section 9 of Article 8 of the Constitution, shall not be compelled to require persons subject to road duty to work on the roads, but in such counties the roads shall be worked wholly by taxation, or by taxation in connection with road service, as such court may deem best. [Id.]

Art. 6757. [6972] [4782] Injuring property.—Any person who shall knowingly or wilfully destroy, injure or misplace any bridge, culvert, drain, sewer, ditch, signboard or mile post or anything of like character, placed upon any road for the benefit of the same, shall be liable to the county and any person injured for all damages caused thereby. [Id.]

Art. 6758. [6973] [4783] Delinquent poll tax payers.—The superintendent shall obtain from the tax collector as soon after the first day of January of each year as practicable and before the first day of May thereafter, a full list of the delinquent poll tax payers of such county for the previous year, and those appearing on said list who are such delinquent poll tax payers shall be subject to road duty for three days during such year in addition to the five days required by law. All the provisions of law governing persons liable to road duty shall apply to persons subject to such duty hereunder. Any such person summoned to road work may satisfy such summons and be relieved from such duty by paying to the road superintendent three dollars, one-third of which shall go to the free school fund, and the balance to the road and bridge fund. [Id.]

Art. 6759. [6974] [4784] Definitions.—As used in this subdivision, "road" includes roadbed, ditches, drains, bridges, culverts, and every part of such road, and "work" and "working" includes the opening and laying out of new roads, widening, constructing, draining, repairing, and everything else that may be done in and about any road. [Id.]

Art. 6760. [6975] [4785] Law cumulative.—This law shall be cumulative of all other general laws on the subject of roads and bridges not in conflict herewith, and where not otherwise provided herein such general laws shall apply; but in case of conflict with other general laws the provisions of this chapter shall govern. [Id.]

Art. 6761. [6976] Counties exempt.—The counties of Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta,

DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, Panola, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, and Wood are exempted from the provisions of this subdivision; provided that the commissioners court of Dallas and Collin counties may accept and adopt the provisions of this law in lieu of the special acts for Dallas, Collin, Grayson and other counties, if in their judgment, its provisions are better suited to Dallas and Collin counties than the said special laws. [Acts 1911, p. 234.]

4. OPTIONAL ROAD LAW

Art. 6762. [6977] Ex-officio commissioners.—In all counties of this State, as shown by the preceding Federal census to contain as many as forty thousand inhabitants, the members of the commissioners court shall be ex-officio road commissioners of their respective precincts; and under the direction of the commissioners court shall have charge of the teams, tools and machinery belonging to the county and placed in their hands by said court. They shall superintend the laying out of new roads, the making or changing of roads and the building of bridges under rules adopted by said court. Each commissioner shall first execute a bond of one thousand dollars payable to and to be approved by the county judge for the use and benefit of the road and bridge fund, conditioned that he will perform all the duties required of him by law, or by the commissioners court, and that he will account for all money or other property belonging to the county that may come into his possession. [Acts 1901, p. 277.]

Art. 6763. [6978] Powers.—The commissioners court shall adopt such system for working, laying out, draining and repairing the public roads as they deem best, and from time to time said court may change their plan or system of working. Said court may purchase such teams, tools and machinery as may be necessary for the working of public roads; and construct, grade, or otherwise improve any road or bridge by contract in the manner provided in the preceding subdivision of this chapter. Said court may employ any hands and teams on the public roads under such regulations and for such prices as they may deem best. [Id.]

Art. 6764. [6979] County convicts.—The commissioners court may provide the necessary houses, prisons, clothing, bedding, food, medicine, medical attention and superintendents and guards for the safe and humane keeping of county convicts. Said court may provide such reasonable regulations and punishment as may be necessary to require such convicts to perform good work, and may provide a reward not to exceed ten dollars, to be paid out of the road and bridge fund, for the recapture and delivery of any escaped convict to be paid to any person other than the guard or person in charge of such convict at the time of his escape. [Id.]

Art. 6765. [6980] Overseers.—Each commissioner shall have control of all road overseers in his precinct, and shall deliver to each of them such teams, tools and machinery necessary in working the roads therein as have been supplied to him by the commissioners court, taking a receipt therefor, specifying each item and giving its value, which receipt shall be a full answer for the liability of the road commissioner, and shall fix the liability of the road overseer. The commissioner or overseer who shall have been intrusted with any teams, tools or machinery belonging to the county, shall be liable for all damages that may occur to the same while in his possession caused by his negligence or want of due care of same. When the overseer has finished work on his road, he shall return to said road commissioner all teams, tools and machinery received from him and take up the receipt given therefor. [Id.]

Art. 6766. [6981] To direct work.—Each county commissioner, when acting as road commissioner, shall inform himself of the condition of the public roads in his precinct, and shall determine what character of work shall be done on said roads, and shall direct the manner of grading, draining or otherwise improving the same, which directions shall be followed and obeyed by all road overseers of his precinct. [Id.]

Art. 6767. [6982] Road hands.—The road commissioner may require each road overseer in his precinct to call out the hands in such numbers as may be sufficient to perform the work. All road hands in a particular road precinct shall as far as practicable be worked a uniform time. Each road overseer shall have full control of all road hands in his precinct. The overseer may, when he deems it expedient or when directed to do so by the road commissioner, and at the time of notifying any hand to work upon the road, also summon such hand as may be the owner of a team suitable for road work, to bring such team with him to be used in working upon the public roads during such time as the hand may be notified to work upon the public roads. Any hand for so doing shall be credited with and allowed two and one-half days upon his time for which he is liable for road duty for each day he may work in connection with and while furnishing such team, and one and one-half days for his team without such hand. [Id.]

Art. 6768. [6983] Road duty: exemptions.—A person liable for road duty who shall, on or before the first day of February of any year, pay the county treasurer the sum of three dollars, shall be exempt from road duty for such year beginning on the first day of February. The county treasurer shall receive and receipt for all money so paid him and place the same to the credit of the road and bridge fund, and he shall keep a separate account for each precinct from which it was received. The county treasurer shall, on the third day of February, or as soon thereafter as practicable, furnish to each road commissioner a list of all persons in their respective precincts that have paid said sums. [Id.]

Art. 6769. [6988] Law cumulative.—The provisions of this subdivision shall be cumulative of all general laws on the subject of roads, when not in conflict therewith, but in case of such conflict this law shall control. This law shall not be in operation in any county unless the commissioners court thereof in their judgment may deem it advisable, and then only by an order of said court when all the members are present, made at some regular term thereof, accepting the provisions hereof. Such order shall be entered on the minutes of said court, and shall not be void for want of form, but a substantial compliance of the provisions hereof shall be sufficient. [Id.]

Art. 6770. [6989] Certain counties excepted.—The provisions of this subdivision shall not apply to the counties of Fannin, Lamar, Grayson, Collin, Dallas, and Bell. [Acts 1901, 27th Leg., p. 277, ch. 114, § 13; Acts 1927, 40th Leg., p. 222, ch. 150, § 1.]

Art. 6770a. Road duty; payment exempting.—Sec. 1. In all counties in Texas having more than thirty-one thousand inhabitants and less than thirty-two thousand inhabitants as shown by the 1920 census, every able-bodied male person between the ages of twenty-one and forty-five years shall be liable for road duty, and every such person shall, on or before the first day of February of each year pay to the Tax Collector of said counties, the sum of Three Dollars ($3.00) and every person making such payment shall be

exempt from road duty for one year next succeeding such first day of February. The County Tax Collector shall receive and receipt for all monies so paid him and shall pay same over to the County Treasurer by deposit warrant, retaining one of said warrants as his receipt therefor; the same to be placed to the credit of the Road and Bridge Fund in such county and a separate account shall be kept for each precinct from which said money is received by the Tax Collector.

Sec. 2. The Tax Assessor of such counties shall procure a list of all persons liable for road duty and residing in said counties on or before the first day of January of each year, but shall not include residents of incorporated cities which said list shall be examined and approved by the Commissioners' Court and turned over to the Tax Assessor who shall place same on a separate roll and turn same over to the Tax Collector and other rolls; and the Tax Collector is required to furnish a monthly statement of such taxes collected, and after February 1, of each year, shall furnish to the Commissioners' Court a statement of all persons failing to pay such road tax, specifying the precincts in which they are assessed. Provided that the Commissioners' Court of said county, or the Tax Collector, when their attention is called to the matter, may add any other names to said list as prepared and submitted by the members of the Commissioners' Court, or Tax Collector, where such names of the parties were omitted from the said list through inadvertence or otherwise, or where such parties have moved into said precinct within the last fifteen days.

Sec. 3. The residence in any such county of any able-bodied male person between the ages of twenty-one and forty-five for a period of fifteen days shall subject him to the above mentioned road tax, except such persons as have already worked, or paid said tax for said year, and the Tax Collector of each such county is authorized and empowered to collect from such party, or parties, said Three Dollar tax, whether or not their names are upon the list furnished by the Commissioners' Court of said county, or Tax Assessor of said county. [Acts 1929, 41st Leg., 3rd C.S., p. 234, ch. 4.]

Section 5 of this Act repeals all conflicting laws and parts of laws. Section 4 being a penal provision is published as Pen.Code, Article 835a.

Art. 6770a—1. [Repealed by Acts 1941, 47th Leg., p. 741, ch. 462, § 2; Acts 1943, 48th Leg., p. 329, ch. 210, § 2.]

The article was Acts 1941, 47th Leg., p. 244, ch. 172.

Art. 6770a—2. Road duty in counties of 29,240 to 29,250; payment exempting.—Section 1. Road Duty. All counties having a population of not less than twenty-nine thousand, two hundred and forty (29,240) and not more than twenty-nine thousand, two hundred and fifty (29,250), according to the last preceding or any future United States Federal Census, shall require all male persons between the ages of twenty-one (21) and forty-five (45) years who do not reside in an incorporated city, town, or village to be liable to work, repair, and clean out the public roads under the provisions of this title subject to the following conditions:

1. Ministers in the active discharge of their duties, invalids, members of volunteer fire companies in the active discharge of their duties, and persons who have not been residing in the county in which they are summoned to work for fifteen (15) days immediately preceding such summons shall be exempt.

2. Any person so liable who has been summoned to do such duty may furnish an able-bodied substitute to work in his place. The overseer shall not accept such substitute if he is incapable of performing a reasonable amount of work.

3. Any person so liable may pay the Tax Assessor-Collector of said counties on or before the first day of May of each year the sum of Three Dollars ($3), and he shall be exempt from said public road work.

4. Each person summoned to work on a road shall take with him an ax, hoe, pick, spade, or such tools as the overseer directs, or if he has no such tools, then such other substitute tools as he may have.

5. Each road hand shall perform his duties under the direction of his overseer. No person shall be compelled to do such work more than five (5) days of eight (8) hours efficient service in each year.

6. Summons. Each overseer shall summon in writing the persons he desires for road duty, giving the time and place such persons are required to appear to work on the road, and the number of days such persons shall be required to work. A written summons may be served by leaving the same at the usual place of abode of the person summoned with some person residing at such place who is not less than ten (10) years of age, or by posting it on the door of such abode. The overseer may appoint someone to summon the hands and such person shall be exempt from road duty as many days as he was actually so engaged. When such persons are summoned, the day they are summoned, they shall be given notice one full day before they are to report for road duty, no previous notice being necessary; provided that said summons shall not be served on any person who is not within the age bracket between the ages of twenty-one (21) and forty-five (45) years.

Sec. 2. All laws or parts of laws in conflict herewith be and the same are hereby repealed, and House Bill No. 709 of the Forty-seventh Legislature[1] is hereby expressly repealed. [Acts 1941, 47th Leg., p. 741, ch. 462.]

[1] Article 6770a—1.

Art. 6770a—3. [Repealed by Acts 1945, 49th Leg., p. 272, ch. 201, § 1.]

The article was Acts 1943, 48th Leg., p. 329, ch. 210, § 1.

Art. 6770a—4. Fayette County; road duty.—No male person of Fayette County, Texas, shall be required to do any kind of road duty or work, or be required to pay any head tax in lieu of such road work or duty. [Acts 1945, 49th Leg., p. 272, ch. 201, § 2.]

Section 2 of the Act of 1945 repealed conflicting laws.

5. DRAINAGE

Art. 6771. [6990] Powers.—For the purpose of this subdivision all public roads and highways that have been or may be laid out and established agreeably to law, and all roads and highways that have been opened to and used by the public for a period of ten years prior to March 25, 1897, and which have not been discontinued or closed to the use of the public agreeably to law, are hereby declared to be public roads.

The commissioners court at any regular session thereof may cause to be constructed and maintained, as hereinafter provided, ditches, drains and water courses, hereinafter called ditches on and within the exterior lines of all public roads situated within the county sufficient in capacity to carry off and into the natural waterways of the county, all surface water reasonably adjacent and liable to collect in said ditch from natural causes, or by means of the construction of private lateral ditches as hereinafter provided for, and shall also have power to construct, in connection with such ditch any side, lateral, spur or branch ditch or water course necessary to the accomplishment of the purposes of this law. No ditch shall be constructed along any public road unless at the same time an outlet is constructed to a natural waterway, sufficient in capacity to carry off all water that may collect therein. [Acts 1897, p. 66; G. L. vol. 10, p. 1120.]

Art. 6772. [6991] Culverts.—No road overseer, or any court, shall, on petition or otherwise,

have the power to change the natural course of any branch, creek or stream, but such volume of water shall always enter and cross said road at its natural crossing; and overseers shall always, in draining their roads, provide a culvert sufficiently broad and tall to permit said stream to flow at high tide, from its intersection with said road, across its natural outflow at the opposite natural channel. [Id.]

Art. 6773. [6992] Petition.—A petition shall first be filed with the county clerk, signed by at least one hundred tax payers and voters of said county, setting forth the necessity and availability for such drainage system, and the number of miles of public roads within such county, as accurately as the same may be known, and as near as practicable the width and depth required for the ditches to be constructed along the first class roads of the county. Said petition shall also separately state the name and location of each natural waterway of such county crossed by each of the first class public roads of said county, and the distance of said natural waterways one from the other along said road. Said petition shall also state the names and residences, if known, of the owners of the lands adjacent to each of said first class public roads, and within one mile thereof, and, if unknown, shall so state. [Id.]

Art. 6774. [6993] Notice of hearing.—Upon the filing of said petition, the clerk shall issue five notices in writing, containing a brief statement of the contents of said petition, commanding all persons interested to appear at the next regular term of the commissioners court and contest the same. One of said notices shall be posted at the courthouse door of such county, and one each at four other public places in such county, no two of which shall be in the same town or city, for twenty days prior to the first day of the next regular term of the commissioners court after the issuance thereof. Said notices shall be posted by the sheriff of the county, who shall make due returns to the clerk of said court of such notices, on or before the said first day of the term; and for such services the sheriff shall receive three dollars, and the clerk one dollar and fifty cents. [Id.]

Art. 6775. [6994–7000] Hearing.—At the time specified, said court shall hear and determine the petition in connection with all protests, remonstrances or objections thereto; and, if they find that the adoption of the drainage system provided for herein is necessary, advisable or for the public benefit, or for the best interest of the county, the court shall so order, and the order shall be entered at length upon the minutes of the court and become a part of the record thereof, and the same shall recite the time, character and manner of service of notice. If it appears therefrom that notice has been given as provided for herein, the said order shall be final. If said court refuses to adopt said drainage system, no other application therefor shall be heard for one year thereafter. [Id.]

Art. 6776. [6995] Survey.—At the same or any succeeding term of said court after the entry of such order, said court shall employ a competent surveyor, who shall be an engineer, to run a line of levels along the public roads of the county, and to measure the same from the beginning to the terminus of said road, and to measure the distance of each waterway crossed by said roads from the beginning point. Said survey and the drainage system shall be first applied to the first class roads of such county, and thereafter to roads of the second and third class. Nothing herein shall be construed to prohibit said court from constructing one or more ditches at the same time, as the financial condition of the county will permit. [Id.]

Art. 6777. [6996] Survey: report.—The surveyor shall, as soon as practicable after his employment, proceed to make such survey and system of levels, and shall cause stakes or monuments to be placed along said line at intervals of one hundred feet, with such intermediate stakes as may be necessary, numbered progressively, and shall establish permanent bench marks along said lines at intervals of one mile or less, as may be necessary, and shall establish by stake or monument of a different character and appearance from all other stakes or monuments, the highest point upon said road between each of the natural waterways crossed by the road; and said surveyor shall also measure and establish by suitable marks, the frontage of each tract of land abutting on said road; and if there be a natural waterway adjacent to the line of said road and ditch and the same is necessary to be utilized as an outlet for the water at any point on said ditch, the surveyor shall measure the distance to same, and run the line of levels thereto, at the nearest practicable point on said road and ditch. He shall prepare a map showing the location of said ditch or ditches, together with the position of stakes or monuments with numbers corresponding with those on the ground, and the position of bench marks, with their elevations referred to an assumed or previously determined datum. Said map shall also show the lines and boundaries of adjacent land, and the courses and distances of any adjacent watercourse, together with a profile of the line of the ditch which shall show the assumed datum and the grade line of the bottom of the same, and the elevation of each stake, monument, or other important feature along the line, such as top of banks, and bottom of all ditches or watercourses, and surface of water, top of rail and bottom of tie, foot of embankment, and bottom of borrow pits of all railroads. Said map, or the explanation accompanying same, shall in tabular form give the depth of cut, width at bottom and width at top, at the source, outlet, and at each one hundred feet stake or monument to said ditch; and shall show the total number of cubic yards of earth to be excavated and removed from said ditch between each natural waterway into which the water is to be conveyed, and an estimate of the cost of each portion of the said ditch or ditches lying between natural waterways crossed by said road, together with an estimate of total cost of the whole work. He shall also prepare detailed specifications for the execution of such project. Whenever in his opinion it may be advantageous to run said ditch underground through drainage tiles, he shall so state in said report, map and specifications, together with the statement of the locality of said underground ditch, and length thereof, and the dimensions or character of tiling or other material required therefor. As soon as completed, he shall file said survey, report, map, explanation and estimate with the county clerk. [Id.]

Art. 6778. [6997] Jury of view.—At any regular or called session of the commissioners court after the filing of said report, map, explanation, specifications and estimate, the court shall appoint a jury of five freeholders of the county who shall meet at a time and place to be specified by the said court in the order appointing them. The county clerk shall thereupon issue to said viewers a certified copy of the petition and order of the court, together with the original report, map, explanation, specifications and estimate of the surveyor; and, if said jury of viewers shall fail or refuse from any cause to perform the duties required under such appointment, or if their report, from any cause, should not be adopted, the court may at any succeeding term appoint another jury of viewers, whose appointment and duties shall be the same as required in the first instance. Said jury shall proceed at the time and place so specified, after giving notice to each abutting land owner, and owner of land within one mile of said ditch, as hereinafter provided, and after viewing the line of the proposed ditch and after hearing all protests, claims and re-

monstrances offered, they shall take the several partial estimates, and the surveyor's estimate of the total cost of the work as a basis, and shall have lines run parallel to the lines of said ditch at a distance of one mile on either side thereof, and shall set apart and apportion to each parcel of land abutting on said road and ditch, or within said parallel lines, and to each person, firm or corporation owning the same, its proportionate share of the one-half of the total cost of said ditch, taking into consideration the relative amount of benefit derived by said land from the construction thereof. They shall assess the amount of damages or compensation due to each land owner through whose land any spur, branch or lateral ditch, is or may be constructed under the order of appointment. Before such ditch is opened said sum shall be paid on the order of the commissioners court out of the county treasury from the fund set aside for the construction of said ditch. Said jury shall make a sworn report to the commissioners court as soon as practicable after their meeting, signed by at least three of said jury, and shall return with their report an accurate and full description of each tract of land assessed by them, with the number of acres and the name of the owners thereof, and the amount assessed against each tract and the owner thereof. The jury shall also return with their report the map, profile, explanation and estimates of the surveyor, together with a copy of the specifications; and the same shall be filed with the clerk, and shall become a public record and be preserved as such. The court shall act upon said report at the next regular or called term, and approve or reject the same; provided that the court may appoint separate juries of view for each road and ditch to be constructed, if deemed desirable or advantageous to the public. [Id.]

Art. 6779. [6998] Oath of viewers.—Said jury shall first take the following oath: "I do solemnly swear that I am not directly interested in the construction of the proposed ditch, either as the owner or otherwise, of adjacent land lying within one mile thereof, and that I am not of kin to any person who is so interested. I further swear that I have no bias or prejudice toward any person directly interested in said ditch, and that I will assess the amount of expense due on and by all adjacent lands lying within one mile of said ditch, according to law, without fear, favor, hatred or hope of reward, to the best of my knowledge and ability. So help me God." [Id.]

Art. 6780. [6999] Notice of assessments.—The said jury shall issue a written notice to the land owner of each abutting tract along said ditch, and to each land owner, any part of whose land lies within one mile of the line of said ditch, or to his agent or attorney, of the time and place when they will assess the one-half of the expense incidental to the construction of the ditch or ditches specified in the order of appointment; which notice shall be served at least five days before the day named therein, by any person competent to testify; and a duplicate of said notice, together with the returns of said service, shall be returned and filed with the report of the jury of viewers. If such owner is a non-resident of the county, and has no resident, agent or attorney therein, the notice shall be given by publication in a newspaper published in the county, as notices are required to be given to non-resident defendants in actions in the district court; and said notices shall be complete after four weeks publication thereof prior to the date named for the meeting of the jury of view, and at any time thereafter the jury of viewers may proceed to assess the proportionate part of such expense against said non-resident land owner, and the land owned by him subject thereto. The cost of such publication shall be paid by the county, on an order of the commissioners court. [Id.]

Art. 6781. [7001] Claims.—Any person whose land may be affected by such ditch may appear before said viewers and freely express his opinion on all matters pertaining to the assessment of expense against him. The owner of any such lands may at the time stated in such notice, or previously thereto, present to the jury a written statement of any objections to, or dissatisfaction therewith, and any claim for damages which he may have sustained by reason of making said ditch or drain; and a failure to so make such objection or claim for damages or compensation shall be deemed a waiver of all claim or right thereto. All such claims or objections shall be returned to the commissioners court in connection with the report of the viewers. Any adjacent land owner may appear before and be heard by the commissioners court on his protest or remonstrance or claim against the action of said jury. [Id.]

Art. 6782. [7002] Appeals.—Any person, firm or corporation, aggrieved by any such assessments, may appeal from the final order of the commissioners court approving the report of said jury to any proper court within the county by giving notice of appeal in open court and having the same entered as a part of the judgment of the court, and by filing within ten days thereafter, a transcript of the proceeding had in the commissioners court, with the justice or clerk of the court to which appeal is taken, together with an appeal bond, with at least two good sureties, to be approved by such clerk or justice, in double the amount of the probable costs to accrue, conditioned that the appellant will prosecute his appeal to effect, and pay all costs that may be adjudged against him in said court. Appeals from an assessment of expense shall be heard upon this issue: whether the assessments made against the appellant for the construction of such ditch are in proportion to the benefits to be derived therefrom. Appeals from an assessment of compensation shall be heard upon this issue: whether the assessment of compensation made by the jury is adequate to the injury occasioned and to the value of the land. [Id.]

Art. 6783. [7003] Trial on appeal.—In the trial of all such appealed cases the burden of proof shall rest upon the appellant; and the court or jury trying the cause shall state the correct amount of expense chargeable to appellant, or the correct amount of compensation due to appellant as found by them, and the same shall be entered as the judgment of the court thereon, and from such judgment no further appeal shall be allowed to either party. If the verdict of the jury shall find the appellant chargeable with a less amount of expense, or that the appellant is entitled to a greater amount of compensation as damages, than was found by the jury of viewers, the costs shall be adjudged against the county; otherwise the same shall be adjudged against the appellant. Within five days after the entry of such judgment, the clerk or justice shall issue and return to the commissioners court a certified copy of such judgment, to be filed with the papers pertaining to such ditch, and the same shall be entered by the commissioners court as the judgment of said court, and thereafter the appellant shall be held for, or claim, the amount specified in said judgment. [Id.]

Art. 6784. [7004] Appropriation: construction.—The commissioners court of such county may, at the next term thereof, after the filing of the report of the jury of viewers and the entry of the order approving the same, if the report be approved, make an order setting aside such portion of the road and bridge fund, and such portion of the special road and bridge fund as may be necessary for the construction of the ditch described in the report of the jury of viewers, and shall also enter an order to the overseers of the road adjoining said ditch or to the

supervisors of the road, or to the road commissioner, commanding him to construct such ditch in accordance with the specifications of the surveyor, which shall be turned over to him for his information, and that the earth taken therefrom shall be used in making a raised road adjoining said ditch. The court shall further order that all the road hands apportioned to said road, and that any teams, tools or materials, belonging to the county, and necessary to the execution of such work, be apportioned to said overseer, supervisor or commissioner, for the completion thereof; and shall authorize such overseer, supervisor or commissioner to employ such additional labor and teams, and to purchase tools and implements as may be necessary, to be paid for out of the road and bridge fund set aside therefor, on the order of the commissioners court, and said order shall also show the amount of compensation to be allowed to said overseer, supervisor, or road commissioner for his services. [Id.]

Art. 6785. [7005] Special overseer.—The commissioners court may employ some suitable and competent person, other than the overseer, road commissioner or supervisor, if to the best interest of the county, and such person shall have the same powers, duties and responsibilities as provided for overseers, road commissioners, and supervisors in the preceding article, and the court shall enter an order showing the amount of compensation to be paid him for his services. [Id.]

Art. 6786. [7006] List of assessments.—At the same or at any succeeding term after the entry of such order for the construction of the ditches and roadway, the commissioners court shall make and enter upon the minutes of the court a list showing the names of the owners, amounts due, the tract of land, original grantees, number of acres covered by each assessment of expense, as made and reported by the jury of viewers and approved by the court; and the county clerk shall issue a certificate against each person on said list showing the amount of each assessment and for what ditch or road the same was issued, and the tract of land on which said amount was assessed. Such certificate shall be signed by the county judge in open court, and attested under the hand and seal of the county clerk, which fact shall be noted upon the minutes of said court. [Id.]

Art. 6787. [7007–8–9] Assessments: collection.—All assessments, sums, and charges by said viewers, or order of court, assessed against any land and the owner thereof, shall be a lien thereon, unless prohibited by the Constitution of this State. The county judge shall deliver the certificate to the county treasurer, taking his receipt therefor, which shall be filed with the papers and archives concerning such ditch; and the county treasurer shall collect the sums due on such certificates, and deposit the amount so collected to the credit of the road and bridge fund. If any person against whom any such certificate may be issued fails or refuses to pay the same to the county treasurer on demand therefor, such treasurer shall turn same over to the county attorney, who shall at once file suit thereon, and have the lien on said land foreclosed, or for a personal judgment as may be lawful. [Id.]

Art. 6788. [7010] Compensation.—The jury of viewers shall each receive three dollars per day for their services for each day so actually engaged; and said surveyor shall receive such sum as the commissioners court may allow. [Id.]

Art. 6789. [7011] Private ditch.—Any owner of lands or tracts of land abutting on said road or ditch, or the owner of any tract of land lying wholly or partially within one mile of such road or ditch, may construct at his own cost lateral drainage ditches and connect the same with such main ditch or ditches as shall be constructed under the provisions of this subdivision. [Id.]

Art. 6789a. Acquiring right of way for diversion of streams and drainage channels in locating, relocating, or maintaining roads.—Any Commissioners' Court is hereby authorized and empowered to acquire by purchase or by condemnation any new or wider right-of-way or land not exceeding one hundred (100) feet in width for stream bed diversion and drainage channels only in connection with the locating, relocating, construction, reconstruction or maintenance of any public road, and to pay for the same out of the County Road and Bridge Fund or out of any available county funds. [Acts 1939, 46th Leg., p. 484, § 1.]

Section 2 of the Act of 1939 repealed all conflicting laws.

CHAPTER 4.—SPECIAL ROAD TAX

Art.
6790. Election.
6791. Election, conduct of.
6792. Result of election.
6793. No bonds to issue.

Article 6790. [7042] Election.—The commissioners court shall order an election upon presentation to it at any regular session of a petition signed by two hundred qualified voters and property tax payers of the county, or a petition of fifty persons so qualified in any political subdivision or defined district of the county, requesting said court to order an election to determine whether said court shall levy upon the property within said territory a road tax not to exceed fifteen cents on the one hundred dollars worth of property, under the provisions of the amendment of 1889 to the Constitution of the State of Texas, adopted in 1890. Said court may act on such petition without notice, and may make an order for such election, fixing the amount to be levied, not to exceed fifteen cents on the one hundred dollars, the election to take place at any time thereafter, not less than twenty nor more than ninety days from the date of making the order therefor. Upon a petition signed by a majority of the qualified tax paying voters of any portion of any county or of any political subdivision of any county, to said court requesting that such portion of said county or political subdivision shall be created as a defined district, the said court shall declare such territory a defined district and spread the order for same upon the minutes of said court; provided the petition aforesaid shall define by metes and bounds the territory desired to be so incorporated in such defined district. [Acts 1891, p. 51; G. L. vol. 10, p. 53; Acts 1913, p. 30.]

Art. 6791. [7043–4] Election, conduct of.—No formal notice need be given of such election, but the county judge shall issue his election proclamation; and the fact that such election is to be held shall be published in the newspapers of the county or political subdivision or defined district as fully as practicable. Tickets for the election shall be printed by the county and sent to each voting precinct by the county judge before the election opens, and as long before such time as practicable. The tickets printed and to be voted shall have written or printed on them the words: "For the Tax" and "Against the Tax," and those who favor the tax shall vote the ticket "For the Tax," and those who oppose the tax shall vote the ticket "Against the Tax." The expenses of the election shall be paid for by the county. An election ordered within ninety days of a general election shall be held on the day of the general election, and as elections on other questions are held, but otherwise the commissioners court shall order a special election which shall be conducted as other elections. The officers to conduct the same shall be appointed as in other cases. Only qualified voters who pay a prop-

erty tax in the county or political subdivision or defined district shall be permitted to vote at such election.

Art. 6792. [7045] Result of election.—If at any such election a majority of the qualified voters voting thereat shall vote for such tax, it shall not be necessary to make further proclamation of that fact than to count the votes, as in other cases, and officially announce the result, and the commissioners court shall thereby be authorized and required to levy a road tax in the same manner that other taxes are levied in the amount specified in said order for such election, never to exceed fifteen cents on the one hundred dollars worth of property. Such levy shall be made at the same time other county taxes are levied, if such election is held in time therefor, but otherwise it may be made at any time before the rolls are made out. If at the election, the proposition for said tax shall carry, no petition for its repeal shall be granted in less than two years. But if it fail to carry, another petition may be granted in one year, but not sooner; and the order granting the second or any subsequent petition may fix a greater or less rate of levy, not to exceed fifteen cents on the one hundred dollars worth of property, and if no greater rate is levied for any one year the commissioners court may lower the rate for the next year without a petition therefor. An election to repeal the levy may be ordered and held as in other cases, but there must be satisfactory proof presented to said commissioners court that there is great dissatisfaction with such tax and that it is probable that a majority of the citizens of the county or political subdivision or defined district who are authorized to vote for said tax would vote for the repeal of the law, and unless such proof be made the petition to repeal shall be denied. [Id.]

Art. 6793. [7046] No bonds to issue.—No bonds shall ever be issued under the provisions of this chapter. [Id.]

CHAPTER 5.—BRIDGES AND FERRIES

1. BRIDGES

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1. BRIDGES

Article 6794. [7014] [4792] Commissioners court: powers.—The commissioners court shall have full power and authority to cause all necessary bridges to be built and kept in repair in their respective counties, and to make necessary appropriations of money of the counties therefor. [Acts 1876, p. 51; G. L. vol. 8, p. 888.]

Art. 6795. [7015–16] Toll bridges.—When it is inexpedient for the road force to build bridges over large creeks or water courses, the commissioners court may contract with a proper person to build a toll bridge, for which the court shall lay the toll to be levied on all persons, cattle, horses, vehicles, etc., passing over the same, to be granted to the contractor for such a number of years as said court may think proper, not to exceed ten years; and the builder and his successors shall keep the bridge in constant repair during the term of the contract, and in default thereof shall forfeit all right and claim to the toll of such bridges. Before granting a license to any person to build a toll bridge, the commissioners' court shall take bond in the sum of one thousand dollars, with good and sufficient sureties, conditioned that

the contractor shall build and keep in constant repair the bridges so contemplated for the term of years agreed upon. If any person shall sustain damages in consequence of the owner or keeper of any toll bridge not having complied with the conditions of his bond, the person so damaged may bring an action of debt against the owner or keeper of such toll bridge on his or their bond, in the county in which such license was granted, and recover judgment for the damages so sustained. [Acts 1836, p. 162; G. L. vol. 1, p. 1222.]

The title to act 1935, 44th Leg., 1st C.S., p. 1573, ch. 388 cites Article 6795 for amendment, but the act makes no change except the addition of Article 6795a.

Art. 6795a. Tunnel or underpass authorized in counties of 350,000.

Franchise, authority to grant

Sec. 1: The Commissioners' Court situated within any County having not less than three hundred and fifty thousand (350,000) population, according to the last preceding Federal Census shall have full power and authority to grant to a person, firm or private corporation, a franchise for the construction, maintenance and operation of a toll underpass or tunnel under any stream, channel or body of water in the State of Texas and necessary approaches thereto and to enter into a contract with such person, firm and/or corporation to finance, build, construct, own, maintain, and operate such toll underpass or tunnel and approaches, with a reasonable toll charge to be agreed upon, to be levied upon or charged all railroads, persons, vehicles, cattle, motor cars and motor busses and/or other vehicles of transportation passing through said tunnel or underpass; said franchise to be granted to said person, firm or corporation for such number of years as the Court may think proper not to exceed fifty (50) years and such contract and franchise to provide that such persons, firm or corporation shall keep said tunnel and/or underpass and approaches in continuous repair during the term of said contract or franchise; the granting of said franchise shall be conditioned that the contractor shall build and keep in continuous repair the tunnel or underpass and approaches so contemplated for the term of years agreed upon, in accordance with the plans and specifications therefor set out in said contract and franchise.

Option of county to purchase

Sec. 2: The Commissioners' Court may provide in said contract and franchise that the county shall have the right to purchase said tunnel and/or underpass at a time and for a price to be agreed upon in said contract or franchise.

Regulations as to crossing under navigable stream

Sec. 3: Said tunnel or underpass when crossing a navigable stream shall be located, built and constructed at an adequate depth below the fixed navigable depth of such navigable stream, river or channel, as may be provided by law or by the rules and regulations of the State authorities and/or Department of the United States Government having control or charge of said river, stream or channel and said franchise from the Commissioners' Court of the County wherein such tunnel or underpass is to be built, constructed, operated and maintained, shall so provide.

Eminent domain

Sec. 4: The right of eminent domain is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land right of way or easement in land, where said land right of way or easement is necessary for the purposes of the construction of said tunnels or underpasses and approaches thereto.

Tolls authorized; loan of public funds

Sec. 5: Such county, through the Commissioners' Court, is hereby authorized and empowered as a part of its road and bridge system, to construct, build, acquire, own and operate an underpass or tunnel with necessary approaches and to charge tolls therefor and/or operate same upon free service or upon free and toll service, as may be provided by the Commissioners' Court, and is hereby authorized to enter into such contract or agreement relative to grants or loans of public funds by the United States Government as may be necessary to carry out the purposes of this Act.

Partial invalidity

Sec. 6: The provisions of this Act shall be severable and if any of its provisions shall be held to be unconstitutional the decision so holding shall not be construed to affect the validity of any of the remaining provisions of this Act. It is hereby declared as the legislative intent that this Act would have been adopted had such unconstitutional provision not been included therein.

Repeals

Sec. 7: That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed. [Acts 1935, 44th Leg., 1st C.S., p. 1644, ch. 419, § 1.]

Art. 6795b. Causeways, bridges, and tunnels authorized in Gulf Coast counties of 50,000 or more.

Construction and operation authorized; cost and expenses

Section 1. Any county in the State of Texas which borders on the Gulf of Mexico and which has a population of fifty thousand (50,000) or more, according to the last Federal Census, preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate, and maintain a causeway, bridge, tunnel, or any combination of such facilities, including all necessary approaches, fixtures, accessories, and equipment (all of which are hereinafter referred to as "the project") from one point in said county to another, in, over, through, or under the waters of the Gulf of Mexico or any bay or inlet opening thereinto, and to issue its revenue bonds payable solely from the revenues to be derived from the operation thereof, to pay the cost of such construction, acquisition, or improvement. The cost of the project shall be considered to include the cost of construction, the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project; shall include the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; shall include the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the revenue bonds; and shall include the payment of interest on the bonds prior to and during the period occupied by the construction of the project and for one year thereafter. If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the

proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed; provided, however, that nothing in this Act shall authorize the construction of a bridge over and across any ship channel or waterway with a maintained depth of twenty (20) feet or more. [As amended Acts 1947, 50th Leg., p. 106, ch. 73, § 1.]

Bonds; charge only on revenues of project; approval and registration

Sec. 2. No bonds authorized hereunder shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the power of the county to issue any bonds for any purpose authorized by law. Each such bond shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Bonds issued hereunder may be presented to the Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds.

Acceptance of Federal aid; contracts; acquisition of property

Sec. 3. Any county proceeding hereunder may accept any loan, gift, or grant from the United States of America or the State of Texas, or any agency or instrumentality thereof, and may enter into any agreement or agreements not prohibited by the constitution which may be necessary to obtain such loan, grant, or gift. Construction contracts may be awarded with or without advertised notice for bids in such manner as may be deemed advisable by the Commissioners Court. Such county may enter on any lands, waters, and premises for the purpose of making surveys, soundings, and examinations, and if considered advisable may exercise the right of eminent domain and may institute condemnation proceedings under the provisions of any pertinent general law of Texas for the purpose of acquiring any property to be used or useful in connection with the project. The county shall be under no obligation to accept and pay for any property condemned and shall in no event pay for same except from the proceeds derived from the sale of the revenue bonds, and in any condemnation suit the Court having jurisdiction may make such orders as may be just to the county and to the owners of the property to be condemned. Upon the institution of any such condemnation proceedings and upon tender of a bond or other security in sufficient sum to secure the owner or owners for damages and upon approval of such bond or other security by the Court, the county shall have the right to immediate possession of the property which is the subject matter of the condemnation proceedings and may enter thereon. The State of Texas hereby expressly grants to any such county full easements and rights of way through, across, under, and over any lands or property owned by the State which may be necessary or convenient to the construction, acquisition or efficient operation of the project.

Bonds; tolls; trust indenture

Sec. 4. Bonds issued hereunder may be authorized by resolution at one time or from time to time. Such bonds shall be payable solely from the revenues to be derived from the operation of the project and it shall be the mandatory duty of the county to impose such tolls and charges for use of the project as will be fully sufficient to operate and maintain the project, pay principal of and interest on the bonds when due and establish such reserve therefor as may be provided, and establish an adequate fund for depreciation and replacement. The Commissioners Court shall have full discretion in fixing the details of the bonds and in determining the manner of sale thereof, provided that the bonds shall not run more than forty (40) years from their date, and that the interest rate and sale price shall be such that the interest cost of the bonds shall not exceed six (6) per cent per annum, computed on average maturities according to standard tables of bond values. The bonds may be made redeemable prior to maturity in such manner and at such prices as may be determined by the Commissioners Court prior to the issuance of the bonds. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instruments Law of Texas.[1] Provision may be made for registration of such bonds as to principal or interest or both. The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the bond resolution or trust indenture hereinafter mentioned, and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of the holders of the bonds or any trustee provided for in respect of such bonds. Unless otherwise provided in such resolution or indenture, if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring bonds. Prior to the issuance of definitive bonds, temporary or interim bonds, with or without coupons, exchangeable for definitive bonds may be issued. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance.

If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. Either the resolution providing for the issuance of the bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county in relation to the acquisition of properties and the construction, maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. Such bond resolution or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. In addition to the foregoing, such bond resolution or trust indenture may contain such other provisions as the Commissioners Court may deem reasonable and proper for the security of the bondholders including, but without limitation, cove-

nants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared to be due before maturity and as to the rights, liabilities, powers, and duties arising upon the breach by the county of any of its duties or obligations.

1 Articles 5932-5948.

Rights of bondholders or trustee for bondholders; receiver

Sec. 5. Any holder or holders of bonds issued hereunder, including a trustee or trustees for such holders, shall have the right in addition to all other rights by mandamus or other proceeding in any court of competent jurisdiction to enforce his or their rights against the county and its employees and against any board which may be created to operate the project and against the agents and employees thereof, including, but not limited to, the right to require the county and such board to impose and collect sufficient tolls and charges to carry out the agreements contained in the bond resolution or trust indenture and to perform all agreements and covenants therein contained and duties arising therefrom, and to apply for and obtain the appointment of a receiver for the project. If such receiver be appointed, he may enter, and take possession of the project and maintain the project and collect and receive all revenues and tolls arising therefrom in the same manner as the county itself might do and shall dispose of such moneys and apply same in accordance with the obligations of the county under the bond resolution or trust indenture and as the Court may direct.

Board of trustees to manage project

Sec. 6. The management and control of the project during such time as any of the bonds remain outstanding may by the terms of the bond resolution or trust indenture be placed in the hands of a Board of Trustees to be named therein, consisting of not more than five (5) members, to be appointed in such manner and to have such powers and duties as may be therein provided.

Bonds free from taxation

Sec. 7. The accomplishment of the purposes stated in this Act being for the benefit of the people of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function and shall not be required to pay any tax or assessment on the project or any part thereof, and the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State.

Powers of counties and of State Highway Commission

Sec. 8. The powers herein granted may be carried out by such counties and the projects may be acquired and operated and tolls and charges fixed and maintained without the consent, approval, supervision, or regulation of any commission, department, bureau, agency, or officer of the State of Texas, provided however, that nothing in this Section shall be construed to prevent the State Highway Commission from operating and maintaining the project or contributing to the cost of such maintenance under such provisions not inconsistent with the rights of bondholders as may be agreed to by the county. The State Highway Commission shall have authority without further legislative enactment to make such provision for and contributions toward maintenance of the project as it may see fit, and to lease the project under such terms not inconsistent with the provisions of the bond resolution or trust indenture as may be agreed upon with the county, and to declare the project or any part thereof to be a part of the State Highway System and to operate the project or such part thereof as a part of the State Highway System, provided, however, that such declaration may be made and such operation undertaken only to the extent that property and contract rights in the project and in the bonds are not unfavorably affected thereby. When all of the bonds and interest thereon shall have been paid, or a sufficient amount for the payment of all bonds and the interest thereon to maturity shall have been set aside in a trust fund for the benefit of the bondholders and shall continue to be held for that purpose, the project shall become a part of the State Highway System and shall be maintained by the State Highway Commission, free of tolls.

Refunding bonds

Sec. 9. Subject to any restrictions which may appear in the aforesaid trust indenture or bond resolution, the Commissioners Court may by resolution provide for the issuance of bonds for the purpose of refunding any bonds issued under this Act and at the time outstanding. The issuance of such refunding bonds, the maturities and other terms thereof, the rights of the holders thereof, and the duties of the county in respect to the same, shall be governed by the foregoing provisions of this Act in so far as the same may be applicable, but no such refunding bonds shall be delivered unless delivered in exchange for the bonds authorized to be refunded thereby or unless sold and delivered to provide funds for the payment of matured or redeemable bonds maturing or redeemable within three (3) months.

Repeal

Sec. 10. House Bill No. 9, Chapter 32, Acts, Fourth Called Session, Forty-third Legislature,[1] is hereby repealed.

1 Article 795 note.

Partial invalidity

Sec. 11. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any Court of competent jurisdiction to be invalid or ineffective, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered. [Acts 1941, 47th Leg., p. 822, ch. 509.]

Art. 6795b—1. Causeways, bridges, and tunnels authorized in gulf coast counties of 50,000 or more.

Construction and operation authorized; cost and expenses

Section 1. Any county in the State of Texas which borders on the Gulf of Mexico and which has a population of fifty thousand (50,000) or more, according to the last Federal Census preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate, and maintain a causeway, bridge, tunnel, or any combination of such facilities, including all necessary approaches, fixtures, accessories, and equipment (all of which are hereinafter referred to as "the project") from one point in said county to another, in, over, through, or under the waters of the Gulf of Mexico or any bay or inlet opening thereinto, and to issue its revenue bonds payable solely from the revenues to be derived from the operation thereof, to pay the cost of such construction, acquisition, or improvement. The cost of the project shall be considered to include the cost of construction, the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project, shall include the payment of the cost of

condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees, shall include the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the revenue bonds, and shall include the payment of interest on the bonds prior to and during the period occupied by the construction of the project and for one (1) year thereafter. If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed; provided, however, that nothing in this Act shall authorize the construction of a bridge over and across any ship channel or waterway with a maintained depth of twenty (20) feet or more.

Bonds; charge only on revenues; approval and registration

Sec. 2. No bonds authorized hereunder shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the power of the county to issue any bonds for any purpose authorized by law. Each such bond shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Bonds issued hereunder may be presented to the Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds.

Federal or state aid; contracts; acquisition of property

Sec. 3. Any county proceeding hereunder may accept any loan, gift, or grant from the United States of America or the State of Texas, or any agency or instrumentality thereof, and may enter into any agreement or agreements not prohibited by the Constitution which may be necessary to obtain such loan, grant, or gift. Construction contracts may be awarded with or without advertised notice for bids in such manner as may be deemed advisable by the Commissioners Court. Such county may enter on any lands, waters, and premises for the purpose of making surveys, soundings, and examinations, and if considered advisable may exercise the right of eminent domain and may institute condemnation proceedings under the provisions of any pertinent General Law of Texas for the purpose of acquiring any property to be used or useful in connection with the project. In any condemnation suit the Court having jurisdiction may make such orders as may be just to the county and to the owners of the property to be condemned. Upon the institution of any such condemnation proceedings and upon tender of a bond or other security in sufficient sum to secure the owner or owners for damages and upon approval of such bond or other security by the Court, the county shall have the right to immediate possession of the property which is the subject matter of the condemnation proceedings and may enter thereon. The State of Texas hereby expressly grants to any such county full easements and rights of ways through, across, under, and over any lands or property owned by the State which may be necessary or convenient to the construction, acquisition or efficient operation of the project.

Bonds; tolls; trust indenture

Sec. 4. The bonds issued hereunder may be authorized by resolution at one time or from time to time. Such bonds shall be payable solely from the revenues to be derived from the operation of the project and it shall be the mandatory duty of the county to impose such tolls and charges for use of the project as will be fully sufficient to operate and maintain the project, pay principal of and interest on the bonds when due and establish such reserve therefor as may be provided, and establish an adequate fund for depreciation and replacement. The Commissioners Court shall have full discretion in fixing the details of the bonds and in determining the manner of sale thereof, provided that the bonds shall not run more than forty (40) years from their date, and that the interest rate and sale price shall be such that the interest cost of the bonds shall not exceed six per cent (6%) per annum, computed on average maturities according to standard tables of bond values. The bonds may be redeemable prior to maturity in such manner and at such prices as may be determined by the Commissioners Court prior to the issuance of the bonds. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instruments Law of Texas.[1] Provision may be made for registration of such bonds as to principal or interest or both. The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the bond resolution or trust indenture hereinafter mentioned, and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of the holders of the bonds or any trustee provided for in respect of such bonds. Unless otherwise provided in such resolution or indenture, if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring bonds. Prior to the issuance of definitive bonds, temporary or interim bonds, with or without coupons, exchangeable for definitive bonds may be issued. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance.

If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. Either the resolution providing for the issuance of the bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county in relation to the

acquisition of properties and the construction, maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. Such bond resolution or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. In addition to the foregoing, such bond resolution or trust indenture may contain such other provisions as the Commissioners Court may deem reasonable and proper for the security of the bondholders including, but without limitation, covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared to be due before maturity and as to the rights, liabilities, powers and duties arising upon the breach by the county of any of its duties or obligations.

1 Articles 5932-5948.

Rights of bondholders or trustee for bondholders; receiver

Sec. 5. Any holder or holders of bonds issued hereunder, including a trustee or trustees for such holders, shall have the right in addition to all other rights by mandamus or other proceeding in any Court of competent jurisdiction to enforce his or their rights against the county and its employees and against any board which may be created to operate the project and against the agents and employees thereof, including, but not limited to, the right to require the county and such board to impose and collect sufficient tolls and charges to carry out the agreements contained in the bond resolution or trust indenture and to perform all agreements and covenants therein contained and duties arising therefrom, and to apply for and obtain the appointment of a receiver for the project. If such receiver be appointed, he may enter and take possession of the project and maintain the project and collect and receive all revenues and tolls arising therefrom in the same manner as the county itself might do and shall dispose of such moneys and apply same in accordance with the obligations of the county under the bond resolution or trust indenture and as the Court may direct.

Bonds free from taxation

Sec. 6. The accomplishment of the purposes stated in this Act being for the benefit of the people of this State and for the improvement of their commerce and property, the county in carrying out the purposes of this Act will be performing an essential governmental function and shall not be required to pay any tax or assessment on the project or any part thereof, and the bonds issued hereunder and their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State.

Powers of counties and of State Highway Commission

Sec. 7. The powers herein granted may be carried out by such counties and the projects may be acquired and operated and tolls and charges fixed and maintained without the consent, approval, supervision or regulation of any commission, department, bureau, agency, or officer of the State of Texas, provided however, that nothing in this Section shall be construed to prevent the State Highway Commission from operating and maintaining the project or contributing to the cost of such operation and maintenance under such provisions not inconsistent with the rights of bondholders as may be agreed to by the county. The State Highway Commission shall have authority without further legislative enactment to make such provision for and contributions toward operation and maintenance of the project as it may see fit, and to lease the project under such terms not inconsistent with the provisions of the bond resolution or trust indenture as may be agreed upon with the county, and to declare the project or any part thereof to be a part of the State Highway System and to operate the project or such part thereof as a part of the State Highway System, provided, however, that such declaration may be made and such operation undertaken only to the extent that property and contract rights in the project and in the bonds are not unfavorably affected thereby. When all of the bonds and interest thereon shall have been paid, or a sufficient amount for the payment of all bonds and the interest thereon to maturity shall have been set aside in a trust fund for the benefit of the bondholders and shall continue to be held for that purpose, the project shall become a part of the State Highway System and shall be maintained by the State Highway Commission, free of tolls.

Refunding bonds

Sec. 8. Subject to any restrictions which may appear in the aforesaid trust indenture or bond resolution, the Commissioners Court may by resolution provide for the issuance of bonds for the purpose of refunding any bonds issued under this Act and at the time outstanding. The issuance of such refunding bonds, the maturities and other terms thereof, the rights of the holders thereof, and the duties of the county in respect to the same, shall be governed by the foregoing provisions of this Act in so far as the same may be applicable, but no such refunding bonds shall be delivered unless delivered in exchange for the bonds authorized to be refunded thereby or unless sold and delivered to provide funds for the payment of matured or redeemable bonds maturing or redeemable within three (3) months.

Partial invalidity

Sec. 9. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any Court of competent jurisdiction to be invalid or ineffective, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered. [Acts 1947, 50th Leg., p. 514, ch. 304.]

Section 10 of the Act of 1947 repealed all conflicting laws.

Art. 6796. [7017] [4795] Boundary bridge.—Whenever any stream constitutes either in whole or in part the boundary line between two or more counties, or when two or more counties are jointly interested in the construction of a bridge, whether over a stream or elsewhere, it shall be lawful for the counties so divided or interested to jointly erect bridges over such stream or over any other stream, upon such equitable terms as the commissioners court of each county interested may agree upon. [Acts 1871, p. 42; G. L. vol. 7, p. 44; P. D. 5883; Acts 1923, p. 273.]

Art. 6797. [7018] [4796] Tolls assessed to pay bonds.—Whenever any county bonds are issued to build bridges, the commissioners court may assess and collect tolls on said bridges sufficient to pay the interest on bonds so issued; and, if thought proper, sufficient to pay the interest and create a sinking fund with which to pay the principal at maturity, all of which shall be done under such rules as said court may prescribe. [Acts 1871, p. 42; P. D. 5884; G. L. vol. 7, p. 44.]

Art. 6797a. Interstate bridges.

Allotment of aid authorized

Sec. 1. The State Highway Department of the State of Texas is hereby authorized and empowered

to make an allotment of aid from any moneys available and to expend funds of said department to acquire, construct and maintain any bridge across or spanning any stream or portion of any stream constituting a boundary between the State of Texas and any other State in an amount not to exceed one half of the amount necessary to acquire, construct or maintain any such bridge, subject to the provisions hereof.

Application

Sec. 2. That the provisions of this Act shall not apply in any instance wherein any such State adjoining the State of Texas has not enacted a statute making provisions for the acquirement, construction and maintenance of such bridge as between such State and the State of Texas and for the use of such bridge by the public without charge, nor where such bridge does not connect designated highways of the respective State and the State of Texas.

Agreements with National Government and other states

Sec. 3. That the State Highway Department of this State is authorized and empowered by the authority of the Governor to enter into negotiations with, and consummate contracts and agreements with such departments of adjoining States, and with the departments of our National Government, to carry out the purpose of this Act, and in all instances to look to the purpose of furnishing to the traveling public substantial bridges across our State boundaries for its use, without charge.

Purpose and intent of Act

Sec. 4. That it is the purpose and intent of this Act to furnish to the traveling public, bridges across our State Boundary for its use without charge, and to elicit the co-operation of each State adjoining the State of Texas, in enacting a similar statute to this Act and to assent to the provisions of an Act of the Sixty-Fourth Congress of the United States, approved July 11, 1916, and being "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes"; and to ask an Act of the Congress of the United States whereby bridges spanning streams which are boundaries between the States and connecting designated highways of such States, may be condemned for public use and travel without charge and to provide the manner of such condemnation and to provide for and make appropriations for acquiring, constructing and the maintenance of such bridges. [Acts 1927, 40th Leg., p. 252, ch. 175.]

[1] Act of July 11, 1916, c. 241, 39 Stat. 355.

Acquisition of bridges across Red River and franchises

Sec. 4-a. In the event the Highway Commissions of the States adjoining the State of Texas are unwilling, or are unable by the provisions of their laws, to join with Texas in acquiring bridges and franchises across Red River: Then in such event the Highway Commission of Texas is authorized to acquire such bridges and franchises as may cross the northern boundary of Texas over Red River, without the joinder of such neighboring States or their Highway Commissions. Provided, however, that in such purchase the replacement value of the physical properties only shall constitute the purchase price, and in no event shall more than Fifty Thousand Dollars ($50,000) be expended; and provided, further, that the Highway Commission of Texas is hereby authorized only to purchase such bridges as may have owned a right of operation existing for forty (40) years or more prior to the date of this Act. [As added Acts 1935, 44th Leg., p. 641, ch. 256, § 1.]

Art. 6797b. Acceptance of Federal aid for construction of toll bridges.—Sec. 1. That the provisions and benefits of the Act of Congress authorizing the extension of Federal Aid for construction of toll bridges on highways forming a part of the Federal system, under certain conditions and limitations, 44 United States Statutes 1398, approved March 3, 1927,[1] be and the same is hereby accepted; and the State Highway Department of this State is authorized and empowered to cooperate with the Federal Bureau of Roads in the construction of such toll bridges under the provisions of said Act of Congress, including inter-state bridges over streams constituting the boundary line between the State of Texas and an adjoining State; to appropriate and use State Highway Funds for such purpose; to fix, levy and collect such tolls as provided by the said Act of Congress, to the end that such bridges may become free, as contemplated or provided by the said Act of Congress; and to do all such acts and things as may be necessary or proper to give effect to the intent and purpose of this Act.

Sec. 2. This Act shall include inter-state bridges over streams forming the boundary line of the State of Texas and another state and when such bridge or bridges are constructed jointly by the State of Texas and an adjoining State the Highway Commission shall have authority to cooperate and join with the appropriate authorities of such adjoining state in fixing, levying and collecting such tolls to carry out the provisions of this Act and the Act of Congress. [Acts 1929, 41st Leg., p. 382, ch. 173.]

[1] 23 U.S.C.A. § 9a.
Section 3 of this Act provides that the act is cumulative of and not intended to repeal other laws on the subject, but to enable the Highway Commission to accept the benefits of the act of Congress.

Art. 6797c. Removal of bridges obstructing intracoastal waterways.—The State Highway Commission of Texas, at the request of the United States Government, or any of its authorized agents, is hereby authorized, out of any funds available for such purpose, to remove Highway Bridges obstructing the construction of the Intracoastal Waterway of Louisiana and Texas now being dredged by the United States Government, and to replace and maintain such of said Bridges as the State Highway Commission of Texas deems necessary, to be paid for out of any funds available for such purpose. [Acts 1935, 44th Leg., p. 392, ch. 150, § 1.]

2. FERRIES

Art. 6798. [7021] [4797] Right to maintain.—Every person owning the land fronting upon any water course, navigable stream, lake or bay, shall be entitled to the privilege of keeping a public ferry over or across the same. If he owns the lands on both sides or banks he shall be entitled to the sole and exclusive right of ferriage at such place; if he owns the lands on one side only, he shall have the privilege of a public ferry from his own shore, with the privilege of landing his boat and passengers on the opposite shore, with the consent of the owner of the land on said shore. If such consent cannot be obtained, he may apply to the commissioners court for the establishment of a public road from said opposite shore; and said court shall act on such applications as in other cases. [Acts 1850, p. 67; G. L. vol. 3, p. 505; P. D. 3841.]

Art. 6799. [7022–24–29–39] License.—No person shall keep any such ferry for hire without first procuring a license from the commissioners court of the county in which such ferry is situated. If the applicant for such license shows that he is the lawful owner of such land as the ferry is sought to be established on, and satisfies the court that the public convenience will be promoted thereby, such court shall grant such license for one year from the date thereof, when the applicant makes bond and produces his receipt from the county treasurer for the payment of the annual license tax, which said court is authorized to assess and collect from each such

ferryman, not to exceed one hundred dollars per annum. Such license shall be renewed annually. [Id.]

Art. 6800. [7028–37] Bond.—The owner of each ferry shall annually enter into bond payable to and to be approved by the county judge, in such sum as the commissioners court shall direct, not less than one thousand dollars, conditioned that such owner will at all times keep good and sufficient boats for the use of such ferry, and will also keep the banks on each side of the ferry in good repair and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank, and that said ferry shall be well attended at all times, and that he will comply with the laws relating to or governing ferries. Any person injured by breach of such bond may sue thereon in his own name. Such bond may be sued on until the whole penalty is recovered. [Acts 1850, p. 67; G. L. vol. 3, p. 506; P. D. 3846, 3847.]

Art. 6801. [7025–6–30] Rates of ferriage.—When a commissioners court shall establish a ferry, they shall state in their record the rate of toll or ferriage which may be demanded for ferrying such property as is usually transported by ferries; and may, at their first term in each year, and shall at any other term, upon the petition of twenty respectable citizens of the county, revise, and, if deemed expedient, change the rates of toll or ferriage at all ferries in their county. The county clerk shall record all rates of ferriage and changes therein and deliver copies thereof, under his hand and official seal, to the owners of ferries affected. No change of rate shall take effect until the expiration of thirty days from the day on which said change may be made. [Acts 1854, p. 5, G. L. vol. 3, p. 1449.]

Art. 6802. [7041] [4817] Swimming cattle.—The commissioners court shall not authorize a charge of more than one cent per head on cattle or horses swimming rivers at licensed ferries, including the use of pens and boats necessary for the control of such stock. [Acts 1862, p. 31; G. L. vol. 5, p. 475.]

Art. 6803. [7031] [4807] To post rates.—Every owner of a ferry license shall keep a list of the rates of toll or ferriage established for his ferry posted up at either the ferry or ferry house, for the inspection of all persons. If any such owner shall fail or neglect to do so, he shall forfeit and pay the sum of four dollars for every such neglect, which may be recovered before any justice of the peace of the county on the complaint of any person, one-half of said amount to go to the county and the other half to the prosecutor. Every week that he shall so fail or neglect shall be deemed a separate offense for which he shall be liable as aforesaid. [Id.]

Art. 6804. [7034] [4810] Excessive rates.—If any licensed ferryman shall charge and receive from any person a higher rate of toll or ferriage than has been established for his ferry by the commissioners court, he shall forfeit and pay to such person five dollars for every such offense, to be recovered by action before any justice of the peace of the county in which the ferry is established, with costs of suit. [Id.]

Art. 6805. [7033] [4809] Duties of ferryman.—Every licensed ferryman shall at all times keep good and sufficient boats for the use of such ferry, and shall keep the banks on each side of the ferry in good repair, and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank; and shall give ready and due attendance on all passengers, horses, wagons, and other property. [Id.]

Art. 6806. [7032] [4808] Delays.—If any person licensed to keep a ferry shall, on being tendered his lawful fees, refuse or neglect without a reasonable cause, to cross any person or property usually transported by such ferry, he shall, for every delay of thirty minutes, forfeit and pay to the person injured the sum of two dollars, to be recovered by action before any justice of the peace of the county in which the ferry is situated, with costs of suit. [Id.]

Art. 6807. [7027] [4803] Refusal to operate.—Where any owner of a ferry shall refuse to keep up the same at the rates allowed by the commissioners court, said court may issue a license to any one who will do so. In such case the party receiving such license shall be bound to take the ferry boat in use at said ferry, if desired by the owner, at such valuation as two respectable citizens of the vicinity, one to be chosen by each party, shall place upon it. [Id.]

Art. 6808. [7036] [4812] Recovery from sureties.—In all cases where a recovery shall be had against the ferryman for violation of this law, if after judgment, execution shall be returned that no estate of such ferryman can be found whereon to levy and make the money demanded in such execution, the justice to whom such execution is so returned shall cite the sureties of such ferryman to appear and show cause why judgment should not be rendered against them for the amount of the execution that is not satisfied, and unless such cause is shown, judgment shall be entered and execution issue therefor. [Id.]

Art. 6809. [7038] [4814] Temporary license.—One wishing to establish a public ferry between the regular terms of the commissioners court may obtain a temporary license for such ferry from the county judge, which shall authorize him to keep such ferry until the next regular term of the commissioners court for the county, and to charge and receive for such time such rates of toll or ferriage as are charged at other ferries on the same water course, stream, lake or bay. [Id.]

Art. 6810. [7040] [4816] County boundary stream.—If the banks of any water course, navigable stream, lake or bay lie in different counties, the application for a license to operate a ferry between such banks shall be made to the commissioners court of the county wherein the applicant resides or has his ferry house, and upon the granting of such license by the said court, the person so licensed shall have the right to own and operate a ferry upon the same terms and conditions and with the same rights and privileges as are provided by this subdivision for the owners or keepers of ferries operated exclusively in one county, and no county tax shall be assessed and collected upon a ferry by any other commissioners court than the one granting the license therefor. [Id.]

Art. 6811. [7023] [4799] State boundary stream.—When a water course, navigable stream, lake or bay forms a part of the boundary line of this State, if any tax or charge shall be assessed or collected by any such adjoining State for the privilege of a ferry landing on the shore or bank of such State from this State, then the same tax or charge may be assessed and collected by the commissioners court for the like privilege of landing on the bank or shore of this State. [Id.]

Art. 6812. [7035] [4811] Unlicensed ferry.—If any person shall keep any ferry over any water course, navigable stream, lake or bay, for which he shall charge any person any money or other valuable thing, without complying with the provisions of this subdivision in relation to paying the tax, obtaining license and entering into bond, he shall forfeit and pay to every other person having a licensed ferry on the same water course, stream, lake or bay in the same county five dollars for every person so ferried, and the same sum for every wagon or other article

so transported which may be subject to a separate charge, to be sued for and recovered before any justice of the peace of the county, with costs of suit; and shall forfeit and pay a like sum in like manner to the county, which may be sued for and recovered in like manner by the county treasurer. [Id.]

Art. 6812a. Ferries connecting state highways, acquisition by State Highway Department.—Sec. 1. That the State Highway Department is hereby authorized to acquire by purchase, and/or to construct, maintain, operate and control ferries, out of the Highway Fund of the State of Texas, over and across any bay, arm, channel or salt water lake emptying into the Gulf of Mexico, or any inlet of the Gulf of Mexico, any river or other navigable waters of this State where such ferries connect designated State highways, and which may be made self-liquidating or partially self-liquidating by the charging of tolls for the use thereof.

Sec. 2. That the provisions of this Act shall not apply in any instance where any State adjoining the State of Texas has not enacted a Statute making provisions for the acquirement, construction and maintenance of ferries as between such state and the State of Texas, and for the use of such ferries by the public with or without charge as both States may agree, but such ferries must connect designated highways of the adjoining State and the State of Texas. [Acts 1933, 43rd Leg., 1st C.S., p. 228, ch. 87.]

TITLE 117—SALARIES

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Article 6813. Enumeration.—The following named officers, deputies, clerks and assistants in the employ of the State Government shall receive for their services the annual salaries set opposite their respective names:

Adjutant General	$3600
Assistant Adjutant General	2000
Quartermaster	2000
Assistant Quartermaster General	2000
Agriculture—Commissioner of	3600
Chief Clerk Department of Agriculture	2000
Plant Pathologist Department of Agriculture	2100
Nursery Inspector Department of Agriculture	2000
Attorney General	2000
Banking Commissioner	6000
Deputy Banking Commissioner	5000
Comptroller	2500
Control—Each Member of Board of	5000
Governor	4000
Health Officer—State	4500
Assistant State Health Officer	2400
Chemist in Health Department	2100
Industrial Accident Board—Chairman	4500
Other Members of Industrial Accident Board	4000
Insurance—Commissioner of	4000
Each Other Member of State Insurance Commission	3600
Land Commissioner	2500
Librarian—State	2000
Live Stock Sanitary Commission—Chairman of	2500
Other Members of Live Stock Sanitary Commission	1250
Markets and Warehouses—Commissioner of	3600
Chief Clerk Markets and Warehouse Department	2000
Mining Inspector—State	2000
Pardons—Each Member of Board of	3000
Prosecuting Attorney—State	3600
Assistant State Prosecuting Attorney	3000
Public Instruction—State Superintendent of	4000
Railroad Commission—Each Member of	4000
Reclamation Engineer—State [1]	3600
State—Secretary of	2000
Tax Commissioner—State	2500
Treasurer—State	2500
Vital Statistics—Registrar of	2400
Deputy Registrar of Vital Statistics	1500
Water Engineers—Each Member of Board of	3600
Game Commissioner—Acts 1925, p. 401	3600

[1] Office abolished. See article 5421h—1.

The reference in this article to "Acts 1925, p. 401" is to Acts 1925, 39th Leg., p. 387, ch. 172, § 38, fixing the salary of the Game, Fish and Oyster Commissioner at $3600 per annum.

Governor's annual salary fixed at $12,000, effective third Tuesday in January, 1937, by Const. art. 4, § 5.

Salaries of Secretary of State, Attorney General, Comptroller of Public Accounts, State Treasurer and Commissioner of the General Land Office, see Const. art. 4, §§ 21–23.

Art. 6813a. Members of Railroad Commission.—That from and after the passage of this Act the salary of the members of the Railroad Commission of Texas, in addition to the salary at present fixed by law, shall be two thousand ($2000.00) Dollars each per annum, one thousand ($1000.00) Dollars each per annum payable out of the fund created under Article 6032 of the Revised Civil Statutes of the State of Texas, and one thousand ($1000.00) Dollars each per annum payable out of the fund created under Article 6060 of the Revised Civil Statutes of the State of Texas. This sum shall be paid in monthly installments, as other state salaries are paid, and shall be appropriated by the Legislature, as provided by law. The sum of Three Thousand Six Hundred ($3600.00) Dollars is hereby appropriated proportionately out of the two respective funds to cover the increase in salary for the remainder of the fiscal year ending August 31, 1927. [Acts 1927, 40th Leg., p. 416, ch. 277, § 1.]

Art. 6813b. Salaries of State officers for biennium, exceptions.—Sec. 1. The salaries of all State Officers and all State Employees, except Judges of the District and Appellate Courts, Judges of the Supreme Court Commission of Appeals, Judges of the Commission in aid of the Court of Criminal Appeals, Attorney General and those Constitutional State Officers whose salaries are specifically fixed by the Constitution, shall be, for the period beginning September 1, 1935, and ending August 31, 1937, such sums or amounts as may be provided for by the Legislature in the General appropriation bills. It is specifically declared to be one of the intents hereof that the Legislature shall also fix the amount of supplemental salaries hereafter out of court fees and receipts to be paid the clerks and other employees of the Courts of Civil Appeals, the Supreme Court and the Court of Criminal Appeals.

Sec. 2. All laws and parts of laws fixing the salaries of all State Officers and Employees, except Judges of the District and all Appellate Courts, Judges of the Supreme Court Commission of Appeals, Judges of the Commission in aid of the Court of Criminal Appeals, Attorney General and those Constitutional State Officers whose salaries are specifically fixed by the Constitution, are hereby specifically repealed in so far as they are in conflict with this Act. It is specifically declared to be one of the intents hereof that any and all laws authorizing payment of supplemental salaries from court receipts and fees to clerks and other employees of the Courts of Civil Appeals, the Supreme Court and the Court of Criminal Appeals, are repealed in so far as they are in conflict with this Act. [Acts 1935, 44th Leg., p. 124, ch. 48.]

Art. 6814. [5243] Bureau of Labor Statistics.—The Commissioner of Labor Statistics shall receive a salary of $3,000.00 per annum; and he shall be allowed a secretary at a salary of $1,800.00 per annum; an assistant secretary and stenographer at a salary of $1,500.00 per annum; a chief deputy at a salary of $2,000.00 per annum; six deputies at a salary of $1,800.00 each per annum; a chief of the Woman's Division at a salary of $2,000.00 per annum; and two women inspectors at a salary of $1,800.00 each per annum. [Acts 1919, p. 164.]

Art. 6815. [Repealed by Acts 1929, 41st Leg., p. 513, ch. 248, § 1.]

Art. 6816. Perquisites.—The Governor shall have the use and occupation of the Governor's Mansion, fixtures and furniture. The Attorney General shall receive such fees as may be prescribed by law, not to exceed $2,000.00 annually. The Commissioner of Insurance shall receive an annual salary of $500.00 for his services to the State Insurance Commission. Said Commissioner shall receive $50.00 per annum for services as a member of the State Insurance Commission for services as to workmens' compensation insurance, and each of the other members of said Commission shall receive $100.00 per annum for such services.

Art. 6817. [7055] Lieutenant Governor.—The Lieutenant Governor shall, while he acts as president of the Senate, receive for his services the same compensation and mileage allowed to members of the Senate, and no more; and when acting as Governor, the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. [Const. art. 4, sec. 17; Acts 1907, p. 10.]

Art. 6818. [Repealed by Acts 1931, 42nd Leg., p. 8, ch. 6, § 1.]

Art. 6819. Courts.—The Judges of the Supreme Court, Commission of Appeals, and the Court of Criminal Appeals shall each be paid an annual salary of $6,500.00. The judges of the several Courts of Civil Appeals shall each be paid an annual salary of $5,000.00 The Judges of the District Courts shall each be paid an annual salary of $4,000.00. The clerks of the Courts of Civil Appeals shall each receive an annual salary of $3,000.00, and may employ a deputy at an annual salary of $1,500.00. Each stenographer to each Court of Civil Appeals shall receive $1,500.00 per annum. The reporter of the Supreme Court and the reporter and the clerk of the Court of Criminal Appeals shall each receive an annual salary of $3,000.00.

Art. 6819—1. Reporter's salary.—That on and after the passage of this Act, the Reporter of the Court of Criminal Appeals of Texas shall receive as compensation for his services the sum of Four Thousand Dollars per annum. [Acts 1927, 40th Leg., p. 207, ch. 138, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 207, ch. 138, makes an appropriation for such increase in compensation to the end of the present fiscal year.

Art. 6819a. [Repealed by Acts 1947, 50th Leg., p. 54, ch. 42, § 2.]

The article repealed was Acts 1927, 40th Leg., p. 411, ch. 273; Acts 1933, 43rd Leg., p. 377, ch. 148, § 1; Acts 1935, 44th Leg., p. 908, ch. 355, § 1; Acts 1937, 45th Leg., p. 458, ch. 232, § 1.

Acts 1947, 50th Leg., p. 54, ch. 42, § 2, purports to repeal Acts 1937, 45th Leg., p. 458, ch. 232, § 1 from which the provisions incorporated in this article were derived. It being questionable whether it was the legislative intention to repeal section 1 of the original act of 1927 only, as amended in 1937, sections 1-a and 1-b as added in 1937, incorporated in articles 6819a—1, 6819a—2, are retained.

That portion of section 1 of Acts 1935, 44th Leg., p. 908, ch. 355, amending this article, which fixed the salaries of the judges of the various district courts and of the criminal district courts, was repealed by Acts 1937, 45th Leg., p. 11, ch. 10, § 2.

Art. 6819a—1. Salary of State's Attorney before Court of Criminal Appeals.—The State's Attorney before and in Aid of the Court of Criminal Appeals shall be paid an annual salary of Six Thousand ($6,000.00) Dollars, payable in equal monthly installments. [Acts 1927, 40th Leg., p. 411, ch. 273, § 1-a, added by Acts 1937, 45th Leg., p. 458, ch. 232, § 1.]

Art. 6819a—2. Salaries District Judges in counties of 325 000 to 350,000.—The District Judges of counties having a population of 325,000 and not over 350,000 according to the last preceding Federal Census shall receive the salary of Seven Thousand Five Hundred ($7,500.00) Dollars per year including the salary as Juvenile officers; providing that only Five Thousand ($5,000.00) Dollars be paid out of State Funds and Two Thousand Five Hundred ($2,500.00) Dollars out of County Funds. [Acts 1927, 40th Leg., p. 411, ch. 273, § 1-b, added by Acts 1937, 45th Leg., p. 458, ch. 232, § 1.]

See notes under art. 6819a.

Art. 6819a—3. Additional compensation of judges of district courts in counties of 338,000 to 500,000.—Section 1. In all Counties in this State having a population of not less than three hundred and thirty-eight thousand (338,000) nor more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, the Judges of the several District Courts and Criminal District Courts shall each receive annually, payable in monthly installments, the sum of Two Thousand and Five Hundred Dollars ($2,500) to be paid by said Counties, out of the General Fund thereof, as compensation for all judicial and administrative services now rendered by them and any additional judicial and administrative services hereafter to be assigned to them, in addition to all salary paid or hereafter to be paid to them by the State of Texas out of State revenues.

Sec. 2. It is expressly declared that nothing in this Act shall be construed to repeal all or any part of Article 5139, Revised Civil Statutes of Texas of 1925, or Article 5142-A, Section 1-a, (the same being Sec-

tion 1–a of the Acts of 1935, Forty-fourth Legislature, Regular Session, Chapter 156, Page 401), in so far as same now apply to Counties having a population of not less than three hundred and thirty-eight thousand (338,000) nor more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, providing, however, that the several Judges of the District Courts and Criminal District Courts in said County shall not receive any salary as provided in Article 5139, Revised Civil Statutes of Texas of 1925, or under Article 5142–A, Section 1–a, (same being Section 1–a of the Acts of 1935, Forty-fourth Legislature, Regular Session, Chapter 156, Page 401), for any month wherein they shall have received the salary herein provided to be paid out of the General Fund of said Counties. [Acts 1945, 49th Leg., p. 271, ch. 200.]

Art. 6819a—4. Salaries of justices of Supreme Court and Courts of Civil Appeals and of District Court Judges.—From and after August 31, 1947;

(a) The Justices of the Supreme Court of the State of Texas and the Judges of the Court of Criminal Appeals and Commissioners of the State of Texas shall each be paid an annual salary of Ten Thousand ($10,000.00) Dollars;

(b) The Justices of the several Courts of Civil Appeals of the State of Texas shall each be paid an annual salary of Eight Thousand ($8,000.00) Dollars;

(c) The Judges of the several District Courts of the State of Texas and of the Criminal District Courts of this state shall each be paid an annual salary of Six Thousand ($6,000.00) Dollars;

(d) The salaries of all the Justices and Judges in this section shall be paid in equal monthly installments. [Acts 1947, 50th Leg., p. 54, ch. 42, § 1.]

Section 3 of the Act of 1947 read as follows: "If any section, subsection, or paragraph of this Act be held invalid or unconstitutional, such invalidity shall not be held to affect the validity or constitutionality of any other section, subsection, or paragraph of this Act."

Art. 6819b. Salaries of court officers.—The salaries of the District Attorneys of the State of Texas, the State's Attorney before the Court of Criminal Appeals, the clerks of the Supreme Court, Court of Criminal Appeals and Court of Civil Appeals and the salaries of the other officers and employes of the Supreme Court of the State of Texas, the Court of Criminal Appeals and the Court of Civil Appeals, shall be as fixed hereinafter in this Act and as shall be determined by the Legislature in its various appropriation Acts for the support of the Judiciary of this State. [Acts 1935, 44th Leg., p. 908, ch. 355, § 2.]

Art. 6819c. Expenditures for law books for Courts of Civil Appeals.—All amounts appropriated in this Act for law books, or expended therefor under authority of this Act, shall be paid out of the special accounts in the General Revenue Fund provided for in Section 6 [1] hereof. Annual expenditures for law books shall not however, exceed the respective itemized amounts appropriated for each of said courts. [Acts 1935, 44th Leg., p. 908, ch. 355, § 4.]

[1] Article 6819d, post.

Art. 6819d. Fees deposited in General Revenue Fund.—All fees paid to any court for which appropriations are made herein or to any of the clerks, officers or employes of any such court, whether such fees are for official or unofficial copies of opinions, or for other services or documents, shall be deposited at the close of each month in the General Revenue Fund of the State Treasury and shall be carried as a special account in said Fund for the court depositing same, and none of such fees shall be retained by or paid to said clerks, officers or employes. Each court employe whose salary is provided for herein, except porters, shall file with the Comptroller at the end of each month an affidavit showing that he has not retained any compensation out of any court fees or other fees received by him or the court during that month and showing that all such fees have been deposited in the State Treasury. The Comptroller shall not issue a warrant in payment of the salary of any such employe for any month unless and until the affidavit required herein has been filed for that month. [Acts 1935, 44th Leg., p. 908, ch. 355, § 6.]

Art. 6819e. [Repealed by Acts 1947, 50th Leg., p. 54, ch. 42, § 2.]

The article repealed was Acts 1937, 45th Leg., p. 11, ch. 10, § 1. Section 2 of the Act of 1937 repealed that portion of section 1 of Acts 1935, 44th Leg., p. 908, ch. 355, amending Article 6819a, which fixed the salaries of the judges of the district courts and of the criminal district courts of the state.

Art. 6820. Judicial district expenses.—All district judges and district attorneys when engaged in the discharge of their official duties in any county in this State other than the county of their residence, shall be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed four dollars per day for hotel bills, and not to exceed four cents a mile when traveling by railroad, and not to exceed twenty cents a mile when traveling by private conveyance, in going to and returning from the place where such duties are discharged, traveling by the nearest practical route. Such officers shall also receive the actual and necessary postage, telegraph and telephone expenses incurred by them in the actual discharge of their duties. Such expenses shall be paid by the State upon the sworn and itemized account of each district judge or attorney entitled thereto, showing such expenses. In districts containing more than one county, such expenses shall never exceed in any one year $100.00 for each county in the district; provided that no district judge or attorney shall receive more than $600.00 in any one year under the provisions of this article. The account for said services shall be recorded in the official minutes of the district court of the county in which such judge or attorney resides, respectively. [Acts 1923, p. 50.]

Art. 6821. [7061–65] Special judges.—The salaries of special judges commissioned by the Governor in obedience to Section 11, Article 5, of the Constitution, or elected by the practicing lawyers or agreed upon by the parties as provided by law, shall be determined and paid as follows:

1. Each special judge shall receive the same pay as district judges for every day that he may be occupied in performing the duties of judge, and those commissioned by the Governor shall also receive the same pay as district judges for every day they may be necessarily occupied in going to and returning from the place where they may be required to hold court.

2. The amount of such salary shall be ascertained by dividing the salary allowed a district judge by three hundred and sixty-five, and then multiplying the quotient by the number of days actually served by the special judge.

3. A judge so commissioned shall, in order to obtain his salary, present his sworn account to the Comptroller, showing the number of days necessarily occupied in going to and returning from such place, accompanied by evidence that he was duly commissioned. Such account shall be certified to be correct by the judge of the district, or by the clerk of the court in which the services were performed.

4. A judge so elected or agreed upon shall be paid for his services on presentation to the Comptroller of the certificate of the clerk of the court in which such services were performed, showing the record of such election or appointment and services, and accompanied by the sworn account of such judge showing the number of days actually served by him as such special judge. [Acts 1876, p. 140.]

Art. 6822. Salaries of employés.—Any deputy, assistant clerk or any employé authorized by the laws of this State to be appointed by the head of any department of the State Government, shall, when his salary is not fixed or provided for by law, receive such salary as the Legislature shall from time to time appropriate.

Art. 6823. Traveling expenses.—The traveling and other necessary expenses incurred by the various officers, assistants, deputies, clerks and other employees in the various departments, institutions, boards, commissions or other subdivisions of the State Government, in the active discharge of their duties shall be such as are specifically fixed and appropriated by the Legislature in the general appropriation bills providing for the expenses of the State Government from year to year. When appropriations for traveling expenses are made any allowances or payments to officials or employees for the use of privately owned automobiles shall be on a basis of actual mileage traveled for each trip or all trips covered by the expense accounts submitted for payment or allowance from such appropriations, and such payment or allowance shall be made at a rate not to exceed five (5¢) cents for each mile actually traveled, and no additional expense incident to the operation of such automobile shall be allowed. [Acts 1917, 1st C. S., p. 241; Acts 1931, 42nd Leg., p. 372, ch. 218, § 1.]

Art. 6824. [7086] [4853] Change in salary.—The salaries of officers shall not be increased nor diminished during the term of office of the officers entitled thereto, provided, however, that the members of the Legislature by majority vote may at any time set their salaries at any amount within the Constitutional limit. [As amended Acts 1931, 42nd Leg., p. 9, ch. 7, § 1.]

Acts 1933, 43rd Leg., p. 59, ch. 30; Acts 1939, 46th Leg., p. 619; Acts 1941, 47th Leg., p. 813, ch. 503; Acts 1943, 48th Leg., p. 415, ch. 282 and Acts 1945, 49th Leg., p. 652, ch. 362 provided that the salaries of all State Officers and all state employees, except those constitutional State officers whose salaries are fixed by Constitution and salaries of certain judges should for the periods specified therein be as provided in the general appropriation bills. Such acts also authorized Legislature to fix supplemental salaries out of court fees and receipts to be paid to clerks and other employees of the Courts of Civil Appeals, the Supreme Court and the Court of Criminal Appeals.

Acts 1947, 50th Leg., p. 1028, ch. 441, read as follows:

"Section 1. The salaries of all State Officers and all State employees, except those Constitutional State Officers whose salaries are specifically fixed by the Constitution, and except the salaries of the District Judges and other compensation of District Judges shall be, for the period beginning September 1, 1947, and ending August 31, 1949, in such sums or amounts as may be provided for by the Legislature in the general appropriation bills. It is specifically declared to be one of the intents hereof that the Legislature shall also fix the amount of supplemental salaries hereafter, out of Court fees and receipts, to be paid to the clerks and other employees of the Courts of Civil Appeals, the Supreme Court, and the Court of Criminal Appeals.

"Sec. 2. All laws and parts of laws fixing the salaries of all State Officers and employees, except those Constitutional State Officers whose salaries are specifically fixed by the Constitution and except the salaries of the District Judges and other compensation of District Judges are hereby specifically suspended in so far as they are in conflict with this Act. It is specifically declared to be one of the intents hereof that any and all laws authorizing payment of supplemental salaries from Court receipts and fees to clerks and other employees of the Courts of Civil Appeals, the Supreme Court, and the Court of Criminal Appeals are suspended in so far as they are in conflict with this Act."

Art. 6825. Salary of women.—All women performing public service for this State shall be paid the same compensation for their service as is paid to men performing the same kind, grade and quantity of service, and there shall be no distinction in compensation on account of sex. [Acts 1919, p. 145.]

Art. 6826. [7087] [4854] How paid.—Annual salaries provided for in this title shall be paid monthly on warrants drawn by the Comptroller on the Treasurer.

Art. 6826a. Federal victory tax law; state and local officers and employees to comply.—For the duration of the present war, all officers and employees of this State and its agencies, instrumentalities, political subdivisions and municipalities, having control over the payment of any salaries or wages to public officers or employees, are hereby authorized and required to comply with the provisions of the Federal Internal Revenue Act of 1942, requiring the withholding of the five per cent (5%) Federal Victory Income Tax[1] from wages paid public officers and employees. Any expenses involved in complying with the provisions of this law may be paid from existing or future appropriations. The provisions of this Act shall be in force and effect only so long as the United States of America is at war with Germany, Japan or Italy. [Acts 1943, 48th Leg., p. 3, ch. 3, § 1.]

[1] 26 U.S.C.A. Int.Rev.Code, § 450 et seq. Repealed by Act of Congress, May 29, 1944, ch. 210, 58 U.S.Stat. 234.

Art. 6827. [7088] [4858] Evidence of qualification.—Upon demand of any citizen of this State, the Comptroller, Treasurer, commissioners courts, county treasurers and all other officers of this State or of any municipal division thereof, who are authorized or required by law to audit, pay or order to be paid, claims due from the State, or any county or municipal division thereof, to any person as salary, fees, compensation, perquisites or emoluments for official services rendered by such person as an officer thereof, before auditing, paying or ordering payment of such claim, shall require such claimant to produce the certificate of his election or appointment to such office directed by the laws of this State to be issued to such officer, or if his claim be founded upon the judgment or decree of a court of this State authorized by law to hear and determine the claims of persons to office, then a copy of the record of such judgment or decree certified under the hand and seal of the legal custodian of such record to be a true copy thereof. [Acts 1881, p. 7; G. L. vol. 9, p. 99.]

Art. 6828. [7089–90] Unauthorized officers.—It shall be unlawful for any officer or court of this State, or of any municipal division thereof, to allow, audit, pay or order to be paid, the claim of any person for salary, compensation, fees, perquisites, emoluments or services, as an officer of the State or of any municipal division thereof, except to such person as has been duly elected such officer by the qualified voters of this State, and whose election has been ascertained and certified or declared in the manner required by law, or who has been appointed such officer by the lawful appointing power under the Constitution and laws of this State, or who has been adjudged entitled thereto by a State court of competent jurisdiction, and has qualified as such officer in accordance with law. Any person not so elected, appointed and qualified shall not be entitled to receive pay for services as such officer, or to exercise the powers or jurisdiction of such officer. The official acts of any person claiming a right to exercise such power or jurisdiction contrary to the provisions of this law shall be void. [Id.]

Art. 6829. [7091] Other salaries.—The enumeration of various officers and their salaries in this title shall not operate to repeal or affect provisions of law found elsewhere in the statutes, or in any appropriation bill permitting or authorizing the existence, or prescribing the compensation of other officers.

Art. 6829a. Waiver of pay by State or District Officers while on military duty.—Section 1. Any person holding a State or District office in the State of Texas, whether as a member of the executive, legislative or judicial departments, when called into the military service of either the State or National Governments, is hereby authorized to file with the Comptroller of Public Accounts of the State, a statement or certificate in writing, to the effect that he waives the payment of his salary or pay or the emolu-

ments of his said office during the period of his military service and authorizing the payment of such salary, pay or emoluments of his office to any other person, who, under the provisions of any law of this State is appointed or elected to temporarily fill such civil office during the absence of such officer, such waiver or assignment to terminate immediately upon the release or discharge of said officer from such military service.

Sec. 2. Such waiver or assignment shall be sufficient authority for the Comptroller of Public Accounts of the State of Texas to issue State warrants and to pay such person so holding such officer's position during his absence in military service out of appropriations made by the Legislature for such office.

Sec. 3. The filing with the Comptroller of Public Accounts of the State of Texas of such waiver or assignment provided for in this Act shall never be construed by any Court of this State to be a resignation from his office by the person entering the military service of the State or National Governments or that his office is vacant by reason thereof. [Acts 1943, 48th Leg., p. 693, ch. 384.]

TITLE 118—SEAWALLS

Art.
6830. Commissioners' court may construct levees.
6831. May use streets and alleys.
6832. Eminent domain.
6833. Bonds: election.
6834. Election: commissioners' court to secure list of voters.
6835. Result of election.
6836. Sinking fund.
6837. Cession of State lands.
6838. Custodians of funds.
6839. General laws to govern.
6839a. Grant of sea wall right of way.
6839b. Validating sea wall bonds.
6839c. Validating bond authorization for sea wall construction.
6839d. Validation of county or municipal sea wall bonds.

Article 6830. [5585] Commissioners' court may construct levees.—The county commissioners' court of all counties, and the municipal authorities of all cities, bordering on the coast of the Gulf of Mexico, shall have the power and are authorized from time to time to establish, locate, erect, construct, extend, protect, strengthen, maintain, and keep in repair and otherwise improve any sea wall or breakwater, levees, dikes, floodways and drainways, and to improve, maintain and beautify any boulevard erected in connection with such sea wall or breakwater, levees, dikes, floodways and drainways, and to incur indebtedness therefor, the payment of which may be provided for either with or without the issuance of bonds. And said commissioners' courts and municipal authorities shall also have power and are hereby authorized to levy taxes not to exceed in any one year fifty cents on the one hundred dollars of taxable values of said county or city for the payment of said indebtedness, provided that when the taxes are levied as herein provided for, will not pay off said indebtedness within five years, then the payment of said indebtedness shall be provided for by the issuance of bonds as hereinafter provided.

Sea Walls

Laws relating to the construction and maintenance of sea walls, breakwaters and shore protection and making donations of taxes have been enacted as follows:

Aransas Pass, City of. Acts 1920, 36th Leg., 3rd C.S., p. 32, ch. 22, as amended by Acts 1939, 46th Leg., Spec. L., p. 989.

Corpus Christi Sea Wall. Acts 1939, 46th Leg., Spec. L., p. 981, as amended Acts 1921, 37th Leg., p. 270, ch. 138. Acts 1947, 50th Leg., p. 1071, ch. 457, § 1.

Freeport, Town of. Acts 1945, 49th Leg., p. 612, ch. 352. Acts 1947, 50th Leg., p. 1071, ch. 457, § 1.

Matagorda County. Acts 1934, 43rd Leg., 4th C.S., p. 11, ch. 4.

Port Arthur, City of. Acts 1929, 41st Leg., p. 656, ch. 292, as amended by Acts 1941, 47th Leg., p. 1308, ch. 584, and Acts 1945, 49th Leg., p. 615, ch. 353.

Rockport, City of. Acts 1920, 36th Leg., 3rd C.S., p. 34, ch. 23, as amended by Acts 1939, 46th Leg., Spec.L., p. 973.

For complete text of the above enumerated laws, see notes to Article 6830 of Vernon's Annotated Texas Statutes.

Art. 6831. [5586] May use streets and alleys.—Said county commissioners' court, and municipal authorities, shall have the power to impose such additional uses and burdens upon all streets, alleys, public highways and other public grounds as they may deem necessary for the location, erection, construction and maintenance of seawalls, breakwaters, levees, dikes, floodways and drainways, and to license, regulate or grant such additional uses of said seawalls, breakwaters, levees, dikes, floodways or drainways as will not impair their efficiency.

Art. 6832. [5587] Eminent domain.—Said counties and cities shall have the power to take and appropriate such land and other property as may be deemed necessary for the establishment, location, construction and maintenance of said seawalls, breakwaters, levees, dikes, floodways and drainways, and to define the area of land needed, and to acquire, take, hold and enjoy the same for the purposes aforesaid, and to that end shall have the right to exercise the right of eminent domain and to condemn lands for the uses and purposes aforesaid, in the manner and under the conditions provided by law in case of railroad corporations; provided, nevertheless, that said county commissioners' court, or said municipal authorities, shall be empowered to take the fee simple estate to the land condemned or acquired hereunder, whenever deemed necessary for the purposes of this Act; and, provided, further, that before exercising the power of eminent domain hereunder said county commissioners' court, or said municipal authorities, shall, by order, ordinance, or resolution duly entered on the minutes of the county commissioners' court, of the city council, define and describe lands needed, and determine whether an easement or fee simple estate in said land shall be taken. [Acts 1925, p. 270; 39th Leg., ch. 96, § 1.]

Art. 6833. [5588] Bonds: election.—Before issuing said bonds the commissioners court or governing body shall prescribe the amount to be issued, the rate of interest thereon, and provide for an election to vote for or against the proposed taxation. [Acts 1881, p. 7; G. L. vol. 9, p. 99; Acts 1st C. S. 1913, p. 3.]

Art. 6834. [5589] Election: Commissioners' court to secure list of voters.—For the purpose of ascertaining whether two-thirds majority of the qualified voters voting thereon who are resident property taxpayers in said county or city have voted in favor of said proposed taxation, the Commissioners Court or governing body shall secure from the Tax Collector of the county a list of all the qualified voters in said county or city, as the case may be, and in addition to any other notice required by law, the Commissioners Court or governing body shall mail to each qualified voter therein a copy of such proposition as submitted at least ten (10) days before the date of such election. Before any bonds shall be issued hereunder, the proposition to levy a tax to pay the interest and sinking fund on such bonds shall be submitted to the qualified voters who are property taxpayers of such county or city; said election to be held and said bonds issued and sold as provided in Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925. The ballots in said election shall contain the words in substance: "In Favor of the Proposed Tax," or "Against the Proposed Tax." [Acts 1901, 1st C.S., p. 23; Acts

1930, 41st Leg., 4th C.S., p. 73, ch. 35; Acts 1930, 41st Leg., 5th C.S., p. 160, ch. 28; Acts 1933, 43rd Leg., p. 375, ch. 146.]

Art. 6835. [5590] Result of election.—The Commissioners Court or governing body, as soon as practicable after said election, shall meet and canvass the returns thereof and ascertain and record in the Minutes the result as shown by said returns. If said Commissioners Court or governing body shall find that due notice of said election and submission of said question has been made to all of the qualified voters who are taxpayers in said county or city as herein provided and that in said election two-thirds majority of the qualified voters who are resident property taxpayers voting thereon in said election voted in favor of the said tax, such Commissioners Court or governing body shall find that two-thirds majority of the qualified voters who are resident property taxpayers of said county or city voting thereon in said election, voted in favor of the tax and thereupon said Commissioners Court or governing body shall be authorized to issue the bonds and levy the tax for the purposes provided in this Title. [Acts 1901, 1st C.S., p. 23; Acts 1930, 41st Leg., 4th C.S., p. 73, ch. 35; Acts 1933, 43rd Leg., p. 375, ch. 146.]

Art. 6836. [5591] Sinking fund.—Whenever bonds are issued under this title, the commissioners court, or governing body, shall annually levy, assess and collect, in the mode prescribed by law for other county or municipal taxes, a tax on the real estate and personal or mixed property in said county or city, sufficient to pay the interest and provide a sinking fund of not less than two per cent of the principal of all of said bonds. All taxes collected by virtue hereof shall be held in trust by said county, or city, as a special and inviolable fund for the payment of interest and principal of said bonds; provided, that any surplus above the amount required to meet the annual interest may be invested for the benefit of the sinking fund in the bonds issued hereunder, or in the bonds of the State of Texas, or of the United States. [Acts 1901, 1st C.S., p. 23.]

Art. 6837. [5592] Cession of State lands.—The right to the use and control for the purposes prescribed by this title, of so much of the land and sea bottom below high tide as may be deemed necessary by said commissioners court or governing body, is hereby ceded by the State of Texas to counties and cities availing themselves of the provisions herein. [Id.]

Art. 6838. [5593] Custodians of funds.—All funds, revenues and moneys derived from the sale of the bonds herein authorized shall be deposited with the County or City Treasurer, as the case may be, and shall be held in trust exclusively for the purposes named in this Title. All moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of principal and interest of bonds to be issued under this Title. [Acts 1901, 1st C.S., p. 23; Acts 1930, 41st Leg., 4th C.S., p. 73, ch. 35, § 3.]

Art. 6839. [5594] General laws to govern.—All bonds issued hereunder shall be issued under and subject to the provisions of the laws regulating bonds issued by cities and counties, in so far as said laws do not conflict with the provisions of this title. The provisions of this title shall apply to all cities bordering on the coast of the Gulf of Mexico, whether incorporated by general or special laws. [Acts 1901, 1st C.S., p. 23.]

Art. 6839a. Grant of sea wall right of way.—Any county may donate and grant to the State of Texas or to any eleemosynary institution incorporated under the laws of the State of Texas and operated without profit, but for the benefit of the public, such portions of any seawall right of way as may have been heretofore acquired by such county, and by the Commissioners' Court of such county deemed proper to be so granted, and upon any such Commissioner's Court so determining, the county judge of such county may convey such property in accordance with the order of said Commissioners' Court. [Acts 1929, 41st Leg., p. 308, ch. 144, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 6839b. Validating sea wall bonds.—Sec. 1. That wherever the Commissioners' Court of any County, or the Governing Body of any City, District or political subdivision of this State has ordered an election for the issuance of Seawall Bonds, pursuant to Section 7 of Article 11 of the State Constitution, and a two-thirds majority of the qualified property tax paying voters of such County, City, District, or Political Subdivision, voting at such election, authorize the issuance of said bonds and the levy of the tax in payment thereof, and the Commissioners Court of such County, or the Governing Body of such City, District or Political Subdivision, has canvassed the returns of the election held for such purpose, and by order, ordinance or resolution, duly passed and entered of record, has found and declared that such bonds were authorized by a two-thirds majority of the qualified property tax paying voters, voting at such election, and, thereupon, by proper order, ordinance or resolution, has authorized the issuance of bonds for the construction of such Seawalls and levied an ad valorem tax to pay the principal and interest thereof at maturity, and has prescribed the date, maturity, rate of interest such bonds are to bear, the place of payment of principal and interest, each such election and all acts and proceedings had and taken in connection therewith by such Commissioners' Court, or the Governing Body of any City, District or Political Subdivision in this State, the levy of taxes and the provision made for the payment of the interest and the sinking fund for the payment of the principal of such bonds, are hereby legalized, approved and validated; and such bonds so authorized are hereby validated and constituted the legal obligations of such County, City, District or Political Subdivision, and all acts of such bodies in respect to the issuance of such bonds are hereby legalized and validated, and the Commissioners' Court, or the Governing Body of any such City, District or Political Subdivision, is hereby expressly authorized and directed to provide for the payment of the interest and principal of any such bonds by the levy of taxes and appropriations of revenues in the time and manner prescribed by statute.

Sec. 2. The Legislature hereby specifically exercises the power vested in it by Section 7 of Article 11 of the State Constitution to provide for the authorization upon a two-thirds vote of the taxpayers in Counties and Cities bordering on the Coast of the Gulf of Mexico, and hereby finds that the manner in which any such County, City, District, or Political Subdivision has ascertained that a two-thirds vote of such taxpayers was had, is legal and valid. The Legislature specifically finds that where two-thirds of the taxpayers voting at such election voted for the levy and collection of such taxes and the issuance of bonds, said taxes and bonds have been validly and legally authorized. [Acts 1930, 41st Leg., 5th C.S., p. 119, ch. 6.]

Art. 6839c. Validating bond authorization for sea wall construction.—Sec. 1. That wherever the Commissioners' Court of any county, or the governing body of any city, district, or political subdivision of this State has ordered an election for the issuance of Seawall Bonds, pursuant to Section 7 of Article 11 of the State Constitution, and a two-thirds majority of the qualified property tax paying voters of such county, city, district, or political subdivision, voting at such election, authorize the issuance of said bonds and the levy of the tax in payment thereof, and the Commissioners' Court of such county, or the governing body of

such city, district, or political subdivision, has canvassed the returns of the election held for such purpose, and by order, ordinance, or resolution, duly passed and entered of record, has found and declared that such bonds were authorized by a two-thirds majority of the qualified property tax paying voters, voting at such election, and thereupon, by proper order, ordinance, or resolution, has authorized the issuance of bonds for the construction of such seawalls and levied an ad valorem tax to pay the principal and interest thereof at maturity, and has prescribed the date, maturity, rate of interest such bonds are to bear, the place of payment of principal and interest, each such election and all acts and proceedings had and taken in connection therewith by such Commissioners' Court, or the governing body of any city, district, or political subdivision in this State, the levy of taxes and the provision made for the payment of the interest and the sinking fund for the payment of the principal of such bonds, are hereby legalized, approved and validated and such bonds so authorized are hereby validated and constituted the legal obligations of such county, city, district, or political subdivision, and all acts of such bodies in respect to the issuance of such bonds are hereby legalized and validated, and the Commissioners' Court, or the governing body of any such city, district, or political subdivision, is hereby expressly authorized and directed to provide for the payment of the interest and principal of any such bonds by the levy of taxes and appropriations of revenue in the time and manner prescribed by Statute.

Sec. 2. The Legislature hereby specifically exercises the power vested in it by Section 7 of Article 11 of the State Constitution to provide for the authorization upon a two-thirds vote of the taxpayers in counties and cities bordering on the Coast of the Gulf of Mexico, and hereby finds that the manner in which any such county, city, district, or political subdivision has ascertained that a two-thirds vote of such taxpayers was had, is legal and valid. The Legislature specifically finds that where two-thirds of the taxpayers voting at such election voted for the levy and collection of such taxes and the issuance of bonds, said taxes and bonds have been validly and legally authorized. [Acts 1931, 42nd Leg., 1st C.S., p. 82, ch. 38.]

Art. 6839d. Validation of county or municipal sea wall bonds.—Sec. 1. That wherever the Commissioners Court of any county, or the governing body of any city, district or political subdivision of this State has ordered an election for the issuance of sea wall bonds, pursuant to Section 7 of Article 11 of the State Constitution, and a two-thirds majority of the qualified property taxpaying voters of such county, city, district, or political subdivision, voting at such election, authorize the issuance of said bonds and the levy of the tax in payment thereof, and the Commissioners Court of such county, or the governing body of such city, district or political subdivision, has canvassed the returns of the election held for such purpose, and by order, ordinance or resolution, duly passed and entered of record, has found and declared that such bonds were authorized by a two-thirds majority of the property taxpaying voters, voting at such election, and, thereupon, by proper order, ordinance or resolution, has authorized the issuance of bonds for the construction of such sea walls and levied an ad valorem tax to pay the principal and interest thereof at maturity, and has prescribed the date, maturity, rate of interest such bonds are to bear, the place of payment of principal and interest, each such election and all Acts and proceedings had and taken in connection therewith by such Commissioners Court or the governing body of any city, district, or political subdivision in this State, the levy of taxes and the provision made for the payment of the interest, and the sinking fund for the payment of the principal of such bonds, are hereby legalized, approved and validated; and such bonds so authorized are hereby validated and constituted the legal obligations of such county, city, district or political subdivision, and all acts of such bodies in respect to the issuance of such bonds are hereby legalized and validated, and the Commissioners Court, or the governing body of any such city, district or political subdivision, is hereby expressly authorized and directed to provide for the payment of the interest and principal of any such bonds by the levy of taxes and appropriations of revenues in the time and manner prescribed by Statute.

Sec. 2. The Legislature hereby specifically exercises the power vested in it by Section 7 of Article 11 of the State Constitution to provide for the authorization upon a two-thirds vote of the taxpayers in counties and cities bordering on the coast of the Gulf of Mexico, and hereby finds that the manner in which any such county, city, district or political subdivision has ascertained that a two-thirds vote of such taxpayers was had, is legal and valid. The Legislature specifically finds that where two-thirds of the taxpayers voting at such election voted for the levy and collection of such taxes and the issuance of bonds, said taxes and bonds have been validly and legally authorized. [Acts 1933, 43rd Leg., p. 173, ch. 80.]

TITLE 119—SEQUESTRATION

Art.
6840. When to be issued.
6841–6843. [Repealed.]
6844. On claim not due.
6845. [Repealed.]
6846. Duty of officer.
6847. Compensation of officer.
6848. Officer expending money.
6849–6857. [Repealed.]
6858. Defendant need not account for hire, etc.
6859–6864. [Repealed.]

Article 6840. [7094] [4864] [4489] When to be issued.—Judges and clerks of the district and county courts, and justices of the peace shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts. in the following cases:

1. When a married woman sues for divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits or revenues produced by either, or that he will sell or otherwise dispose of the same so as to defraud her of her just rights, or remove the same out of the limits of the county during the pendency of the suit.

2. When a person sues for the title or possession of any personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

3. When a person sues for the foreclosure of a mortgage or the enforcement of a lien upon personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy, or remove the same out of the county during the pendency of the suit.

4. When any person sues for the title or possession of real property, and makes oath that he fears the defendant or person in possession thereof will make use of his possession to injure such property, or waste or convert to his own use the fruits or revenue produced by the same.

5. When any person sues for the title or possession of any property from which he has been ejected by force or violence, and makes oath of such fact.

6. When any person sues for the foreclosure of a mortgage or the enforcement of a lien on real estate, and makes oath that he fears the defendant or person in possession thereof will make use of such possession to injure such property, or waste or convert to his

own use the timber, rents, fruits or revenue thereof.

7. When any person sues to try the title to any real property, or to remove cloud upon the title to such real property, or to foreclose a lien upon any such real property, or for a partition of real property and makes oath that the defendant or either of them in the event there be more than one defendant, is a nonresident of this State. [Acts 1866, p. 120; Acts 1887, p. 30; G. L. vol. 5, p. 1038; vol. 9, p. 828.]

Arts. 6841–6843. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, Rules 696–698.

Art. 6844. [7098] [4868] [4493] On claim not due.—When any person has a mortgage or lien upon personal property of any description, and makes affidavit and gives bond as required by law, the writ of sequestration may issue, although the right of action upon such mortgage or lien has not accrued. The same proceeding shall be had thereon as in other cases of sequestration, except that no final judgment shall be rendered against the defendant until such right shall have accrued. [Acts 1848, p. 89; G. L. vol. 3, p. 89.]

Art. 6845. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, Rule 699.

Art. 6846. [7100] [4870] [4495] Duty of officer.—The officer executing a writ of sequestration, while he retains custody of the property sequestered, shall take care of and manage the same in a prudent manner, and if he confides the same to the custody of other persons he shall be responsible for their acts in regard thereto, and shall be responsible to the party injured for any neglect or mismanagement by himself, or by those to whom he has confided the custody or management of the property. [Act Nov. 9, 1866, p. 121; G. L. vol. 5, p. 1039.]

Art. 6847. [7101] [4871] [4496] Compensation of officer.—The officer retaining custody of property by virtue of a writ of sequestration shall be entitled to receive a just compensation and all reasonable charges therefor, to be determined by the judge or justice from whose court the writ issued, to be taxed in the bill of costs against the party cast in the suit, and collected in the same manner as the other costs in the case. [Id.]

Art. 6848. [7102] [4872] [4497] Officer expending money.—If the officer be compelled to expend any sum in the security, management or care of the property, he may retain possession of said property until said money be refunded by the party offering to replevy said property, his agent or attorney. [Id.]

Arts. 6849–6857. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, Rules 701–709.

Art. 6858. [7112] [4882] [4507] Defendant need not account for hire, etc.—In suits for the enforcement of a mortgage or lien upon property, the defendant, should he replevy the property, shall not be required to account for the fruits, hire, revenue or rent of the same, but this exemption shall not apply to the plaintiff in case he shall replevy the property.

Arts. 6859–6864. [Repealed.]
Corresponding provisions, see Rules of Civil Procedure, Rules 710–716.

TITLE 120—SHERIFFS AND CONSTABLES

1. SHERIFFS

Art.
6865. Election and term.
6866. Oath and bond.
6867. Neglect to qualify.
6868. Failure to give new bond.
6869. May appoint deputies, etc.
6869a. Appointment and number of deputies in certain counties.
6869a. May appoint additional deputies.
6869b. Appointment of deputies in counties of less than 20,000 population and property valuation of over $100,000,000.
6869c. Number of deputies in counties of 197,000 or over.
6869d. County police force in counties of 210,000 or more.
6869e—1. Counties of 500,000 or more; "Night Chief Deputy," appointment and salary of.
6869f. Deputies, including bailiffs and jailors, in certain counties of 27,000–30,000 and 36,000–37,500.
6870. Responsible for their acts.
6871. May employ guards.
6871a. Violation of Act; penalty.
6872. Control of court house.
6873. Shall execute process.
6874. Legislative process.
6875. [Repealed.]
6876. May summon posse comitatus.
6877. Unfinished business.
6877—1. Transportation of sheriffs and deputies; allowance for expenses.

2. CONSTABLES

6878. Election.
6879. Appointment of deputies.
6879a. Deputy constables in Justice Precincts having city or town of certain population; appointment.
6879b. Responsible for Deputies' Acts.
6880. Unorganized counties.
6881. Bond and oath.
6882. De facto constable.
6883. Neglect to qualify.
6884. Failure to give new bond.
6885. Duties in general.
6886. May summon posse.
6887. Failure to execute or return process.
6888. Failure to pay.
6889. Jurisdiction.
6889a. Automobile expense; allowance to constables in certain precincts in counties over 500,000.

1. SHERIFFS

Article 6865. [7119] [4890] Election and term.—The qualified voters of each county at each general election shall elect one sheriff for a term of two years. [Const. art. 5, sec. 23; Acts 1846, p. 265; P. D. 5108; G. L. vol. 2, p. 1571.]

Art. 6866. [7121–2] Oath and bond.—Every person elected to the office of sheriff shall, before entering upon the duties of his office, give a bond with two or more good and sufficient sureties, to be approved by the Commissioners' Court of his county, for such sum as may be directed by such Court, not less than Five Thousand ($5,000.00) Dollars nor more than Thirty Thousand ($30,000.00) Dollars payable to the Governor and his successors in office, conditioned that he will account for and pay over to the persons authorized by Law to receive the same, all fines, forfeitures and penalties that he may collect for the use of the State or any county, and that he will well and truly execute and make due return of all process and precepts to him lawfully directed, and pay over all sums of money collected by him by virtue of any such process or precepts, to the persons to whom the same are due, or their lawful attorney, and that he will faithfully perform all such duties as may be required of him by Law, and further conditioned that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and said sheriff shall al-

so take and subscribe the official oath, which shall be indorsed on said bond, together with the certificate of the officer administering the same. When any person elected or appointed sheriff, in accordance with this Article, shall have given bond and taken the official oath, he may enter at once upon the discharge of his duties, and his acts shall be as valid in Law before receiving his commission as afterwards; said bond shall not be void on the first recovery, but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered; provided, however, that no sheriff or his duly and legally appointed deputies shall be responsible on their official bond or personally by reason of having received from or confined any prisoner delivered or surrendered to them by any State Ranger. [Acts 1846, p. 265; G.L. vol. 2, p. 1571; Acts 1923, p. 23; Acts 1931, 42nd Leg., p. 430, ch. 260, § 1.]

Art. 6867. [7123] [4894] Neglect to qualify.—When any person elected sheriff shall neglect, refuse or fail from any cause whatever to give bond and take the official oath within twenty days after notice of his election, the office shall be deemed vacant. [Acts 1885, p. 89; G. L. vol. 9, p. 709.]

Art. 6868. [7124] [4895] Failure to give new bond.—Whenever any of the sureties of a sheriff shall die, remove permanently from the State, become insolvent, or be released from liability in accordance with law, or whenever the commissioners court shall deem the sheriff's bond insufficient, said court shall cite said sheriff to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation and give a new bond with good and sufficient security; and, if such sheriff shall neglect or refuse to appear and give such bond on or before the designated time he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers. [Acts 1836, p. 178; P. D. 5110; G. L. vol. 1, p. 1239.]

Art. 6869. [7125] [4896] May appoint deputies, etc.—Sheriffs shall have the power, by writing, to appoint one or more deputies for their respective counties, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties of their principals; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to the official oath, which shall be indorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the County Clerk and deposited in said office. The number of deputies appointed by the sheriff of any one county shall be limited to not exceeding three in the Justice precinct in which is located the county site of such county, and one in each Justice precinct, and a list of these appointments shall be posted up in a conspicuous place in the Clerk's office. An indictment for a felony of any deputy sheriff appointed shall operate a revocation of his appointment as such deputy sheriff. Provided further, that if in the opinion of the Commissioners' Court fees of the sheriff's office are not sufficient to justify the payment of salaries of such deputies, the Commissioners' Court shall have the power to pay the same out of the General Fund of said county. [Acts 1889, p. 23; G.L. vol. 9, p. 1051; Acts 1929, 41st Leg., 1st C.S., p. 283, ch. 113, § 1.]

Counties of 31,500 to 32,000

Acts 1941, 47th Leg., p. 359, ch. 197, § 1, read as follows: "In counties having a population of not less than thirty-one thousand, five hundred (31,500) and not more than thirty-two thousand (32,000), according to the last preceding Federal Census, the provisions of Article 6869, Revised Civil Statutes of Texas, of 1925, as amended, in so far as such limits the number of deputies allowable to sheriffs shall not apply, but the sheriff in any such county shall have the number of deputies allowed him by the Commissioners Court of such county."

Art. 6869a. Appointment and number of deputies in certain counties.—Provided that in any county having a population of more than one hundred and thirty thousand (130,000) and less than one hundred and fifty thousand (150,000) inhabitants, as shown by the latest United States Census, and containing two cities of fifty thousand (50,000) population, or more, each, as shown by the said Census, said county composing two or more Judicial Districts, the sheriff shall have power, by writing, to appoint sixteen (16) deputies for his said county, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties of their principal; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to the official oath which shall be endorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the county clerk and deposited in said office. A list of these appointments shall be posted up in a conspicuous place in the county clerk's office. An indictment for a felony of any deputy sheriff appointed shall operate a revocation of his appointment as such deputy sheriff. The salaries of the deputies herein provided for shall be paid monthly by the sheriff out of the Fees of Office as provided in Article 3891 and Article 3902, Revised Civil Statutes, Texas, 1925. [Acts 1931, 42nd Leg., p. 809, ch. 332, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

The Legislature amended article 6869, ante, twice in 1931 by adding provisions designated as article 6869a. Both articles 6869a are set out. See article 6869a, post.

Art. 6869a. May appoint additional deputies.—The sheriff in any county in this State may employ not to exceed three (3) additional deputies in excess of those now authorized by law, for the purpose of enforcing the law in counties with a population of three hundred forty thousand (340,000) or over, according to the last Federal Census; the compensation of such deputies shall be fixed by the Commissioners' Court of said County, and the same shall be paid out of the general fund of said county. Provided that said deputies when so appointed shall each before entering upon his duty execute a good and sufficient bond with two or more sureties, to be approved by the Commissioners' Court of said County in the sum of $2,500.00 each, payable to the County Judge of the County and his successors in office, conditioned that he will well, truly and faithfully execute and due return make of all process and precepts to him lawfully directed, and pay over all sums of money collected by him by virtue of such process or precept to the persons to whom the same are due, or to their lawful attorney, that he will fairly and faithfully perform all such duties as may be required of him by Law, which bond when so executed shall be recorded in the office of the Clerk of the County Court and deposited in said office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. [Acts 1931, 42nd Leg., p. 818, ch. 337, § 1.]

See article 6869a, ante, and note thereunder.

Art. 6869b. Appointment of deputies in counties of less than 20,000 population and property valuation of over $100,000,000.—Provided that in counties having a population of less than twenty thousand (20,000), according to the last preceding Federal Census, and having a property valuation in excess of One Hundred Million Dollars ($100,000,000), according to the approved State and County tax rolls for the preceding year, the sheriff, in the manner now prescribed by law, shall have the authority to appoint not to exceed fourteen (14) deputies, said number to include Court bailiffs and jailers, and said deputies to receive the compensation now allowed by law. [Added Acts 1939, 46th Leg., Spec.L., p. 944, § 1.]

Art. 6869c. Number of deputies in counties of 197,000 or over.—In counties having a population in excess of one hundred ninety seven thousand five hundred (197,500) according to the last preceding Federal Census, the provisions of Article 6869, Revised Civil Statutes of Texas, of 1925, as amended, insofar as such limits the number of deputies allowable to sheriffs shall not apply, but the sheriff in any such county shall have the number of deputies allowed him by the Commissioners' Court of such county. [Acts 1934, 43rd Leg., 2nd C.S., p. 121, ch. 56, § 1.]

Art. 6869d. County police force in counties of 210,000 or more.—Section 1. In every county of this state having a population of two hundred, ten thousand (210,000), or more, according to the last preceding United States census, there is hereby created a county police force, to be composed of such number of patrolmen not less than six, as may be fixed by the Commissioner's Court. All of said patrolmen shall be appointed by the sheriff, subject to approval by the Commissioners' Court, and one of their number shall be so appointed chief of the county police.

Sec. 2. Each of said patrolmen shall be deputized by the sheriff and shall have the power and authority of a Deputy Sheriff, and all laws of this state applicable to deputy sheriffs shall apply to such patrolmen, except where they may be in conflict with this Act. They shall hold their position until removed by the sheriff, with the approval of the Commissioner's Court.

Sec. 3. The salary of the patrolmen and of the chief of county police shall be fixed by the Commissioner's Court and paid out of the General Fund of the county. It shall be the duty of such patrolmen to carefully patrol, either in a motor car or in a motorcycle all the highways of the county located outside of the corporate limits of the county seat thereof, and they shall each be required to furnish a motorcycle or motorcar, and their salary shall include their compensation for furnishing such car and the cost of maintaining and operating the same. Such patrolmen shall perform their duties under rules and regulations prescribed and promulgated by the Commissioners' Court. Such patrolmen shall devote their entire time when on duty to patroling that part of the county outside of the corporate limits of the county seat and to matters pertaining to that service.

Sec. 4. All fees earned by such patrolmen or accruing to the sheriff by reason of their services shall be paid to the county for the use of the general county fund. [Acts 1929, 41st Leg., ch. 150, p. 326.]

Art. 6869e—1. Counties of 500,000 or more; "Night Chief Deputy," appointment and salary of.—In all counties having a population of five hundred thousand (500,000) or more, according to the last preceding Federal Census, in addition to all other deputies, assistants and employees which he is authorized to appoint, the Sheriff shall be entitled to apply for the appointment of a second first assistant, or Chief Deputy, who shall be known as "Night Chief Deputy." Such additional first assistant or Chief Deputy shall be appointed in the method, manner and under the conditions now provided by law for other deputies, and the same rules and regulations fixed by law with respect to the authority and duties of other deputies of this class shall apply to them. This deputy shall receive a salary within the limits now fixed by law for chief deputy, subject to the laws and regulations governing the appointment, employment and payment of other chief deputies. Provided no person shall be appointed Night Chief Deputy who shall not have served as a deputy sheriff for at least two (2) years prior to the date of such appointment. [Acts 1943, 48th Leg., p. 77, ch. 61, § 1.]

Art. 6869f. Deputies, including bailiffs and jailors, in certain counties of 27,000–30,000 and 36,000–37,500.—Provided that in all counties having a population of not less than twenty-seven thousand (27,000) nor more than thirty thousand (30,000), according to the last preceding Federal Census, and having a property valuation in excess of Ninety Million ($90,000,000.00) Dollars, according to the approved state and county tax rolls for the preceding year; and in all counties having a population of not less than thirty-six thousand (36,000) nor more than thirty-seven thousand five hundred (37,500) according to the last preceding Federal Census, and having a property valuation in excess of Fifty Million ($50,000,000.00) Dollars, according to the approved state and county tax rolls for the preceding year, the sheriff of said counties, in the manner now prescribed by law, shall have the authority to appoint not to exceed thirty (30) deputies, said number to include court bailiffs and jailors, and said deputies shall receive such compensation as may be fixed and allowed by the Commissioners Court of any such county. [Added Acts 1947, 50th Leg., p. 535, ch. 315, § 1.]

Art. 6870. [7126] [4897] Responsible for their acts.—Sheriffs shall be responsible for the official acts of their deputies, and they shall have power to require from their deputies bond and security; and they shall have the same remedies against their deputies and sureties as any person can have against a sheriff and his sureties. [Acts 1846, p. 265; P. D. 5113, G. L. vol. 2, p. 1571.]

Art. 6871. [7127] [4898] May employ guards.—Whenever in any county it becomes necessary to employ guards for the safekeeping of prisoners and the security of jails, the Sheriff may, with the approval of the Commissioners Court, or in case of emergency, with the approval of the County Judge, employ such number of guards as may be necessary; and his account therefor, duly itemized and sworn to, shall be allowed by said Court, and paid out of the County Treasury. Provided further, that in all counties in this State, having a population of more than one hundred and forty thousand (140,000) inhabitants and less than two hundred and ninety thousand (290,000) inhabitants, according to the last preceding Federal Census, no guard, matron, jailer, or turnkey shall work more than eight (8) hours in one day. In all counties coming under the provisions of this Act, at least one man shall be on guard on each floor of said jail where male prisoners are kept, and at least one matron shall be on guard on each floor where female prisoners are kept; and that not less than two (2) employees shall be on guard in the main office of said jail at any one time. In case of emergency, those coming under the provisions of the Act shall be subject to the call of the Sheriff. [Acts 1846, p. 625; P.D. 5113; G.L. Vol. 2, p. 1571; Acts 1939, 46th Leg., Spec.L., p. 943, § 1.]

Section 3 of the Act of 1939 repealed all conflicting laws.

Art. 6871a. Violation of Act; penalty.—Anyone charged with the responsibility of enforcing this Act [1] shall be guilty of a misdemeanor if convicted of violating any of the provisions of this Act, and upon conviction thereof shall be fined not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200). [Acts 1939, 46th Leg., Spec.L., p. 943, § 2.]

[1] Article 6871.

Art. 6872. [6393] [3835] Control of courthouse.—Sheriffs shall have charge and control of the courthouses of their respective counties, subject to such regulations as the commissioners court may prescribe; and the official bonds shall extend to and include the faithful performance of their duties under this article.

Art. 6873. [7130] [4901] Shall execute process.—Each sheriff shall execute all process and precepts directed to him by legal authority, and make return thereof to the proper court, on or before the day to which the same is returnable; and any sheriff

who shall fail so to do, or who shall make a false return on any process or precept shall, for every such offense, be liable to be fined by the court to which such process is returnable, as for a contempt, not exceeding one hundred dollars at the discretion of the court, which fine shall go to the county treasury; and such sheriff shall also be liable to the party injured for all damages he may sustain. [Acts 1846, p. 265; P. D. 5115.]

Art. 6874. [7131] [4902] Legislative process.—Sheriffs are required also to execute all subpœnas and other process issued by the Speaker of the House of Representatives, or the President of the Senate, or chairman of a committee of either house of the Legislature, to them directed, under like pains and penalties as are incurred by failure to execute process issued by a court; and for such services they shall receive the fees prescribed by law for similar services in the courts, to be paid on the certificate of the authority issuing such process. [Acts 1873, p. 19; P. D. 7102a et seq. G. L. vol. 7, p. 471.]

Art. 6875. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 16.

Art. 6876. [7135] [4906] May summon posse comitatus.—Whenever a sheriff or any of his deputies shall meet with resistance in the execution of any legal process, they shall call to their aid the power of the county; and any person who shall neglect or refuse to aid and assist any sheriff or deputy in the execution of any legal process when summoned so to do shall be deemed guilty of a contempt of court, and shall be fined not exceeding ten dollars, to be recovered on motion of such sheriff or his deputy and proof of such neglect or refusal before the court from which such process issued, three days' notice of such motion being given to the party accused, and in addition thereto may be punished criminally as prescribed in the Penal Code. [Acts 1846, p. 265, sec. 10; P. D. 5117.]

Art. 6877. [7136] [4907] Unfinished business.—When any sheriff or any constable shall from any cause vacate his office, all unfinished business whatsoever in his hands shall be transferred to his successor, and be completed by him in the same manner as if commenced by himself. [Acts 1846, p. 265; P. D. 5122; G. L. vol. 2, p. 1571.]

Art. 6877—1. Transportation of sheriffs and deputies; allowance for expenses.—The County Commissioners Courts of this State are directed to supply and pay for transportation of sheriffs of their respective counties and their deputies to and from points within this State, under one of the four (4) following sections:

(a) Such sheriffs and their deputies shall be furnished adequate motor transportation including all expense incidental to the upkeep and operation of such motor vehicles.

(b) Motor vehicles shall be furnished to such sheriffs and their deputies who may furnish gas and oil, wash and grease, incidental to the operation of such vehicles; for which gas and oil, wash and grease, such sheriffs and deputies shall be compensated at a rate not to exceed four cents (4¢) per mile for each mile such vehicle is operated in the performance of the duties of his office.

(c) Alternatively such County Commissioners Courts may allow sheriffs and their deputies in their respective counties to use and operate cars on official business which cars are personally owned by them for which such officers shall be paid not less than six cents (6¢) per mile nor more than ten cents (10¢) per mile for each mile traveled in the performance of official duties of their office.

(d) All compensation paid under the provisions of this Act shall be upon a sworn statement of such sheriff. [Acts 1947, 50th Leg., p. 357, ch. 204, § 1.]

2. CONSTABLES

Art. 6878. [7137] [4908] Election.—The qualified voters of each justice precinct at each general election shall elect a constable for such precinct for a term of two years. [Acts 1885, p. 17; G. L. vol. 9, p. 637; Acts 1897, p. 194; G. L. vol. 10, p. 1248.]

Art. 6879. [7138] Appointment of deputies.—When in any such justice precinct there may be a city of eight thousand or more inhabitants, such constable may appoint no more than two deputies who shall qualify as required of deputy sheriffs; and provided, that, when in any such justice precinct there may be a city of forty thousand or more inhabitants, such constable may appoint five deputies and no more, who shall qualify as required of deputies; provided, such constable shall first make written application to the commissioners court of his county, showing the necessity therefor, giving the name of each proposed appointee, for the approval and confirmation of said court. In justice precincts which do not contain a city of eight thousand or more inhabitants, said constable may appoint no more than one deputy who shall qualify in such manner as is required by law. [Id. Acts 1921, p. 131; Acts 1923, p. 348.]

Art. 6879a. Deputy constables in Justice Precincts having city or town of certain population; appointment.—Sec. 1. The duly elected Constable in each Justice Precinct having a city or town of less than eight thousand (8,000) population according to the preceding Federal Census may appoint one (1) Deputy and no more; and each Justice Precinct having a city or town of eight thousand (8,000) and less than forty thousand (40,000) population according to the preceding Federal Census may appoint two (2) Deputies and no more; and in each Justice Precinct having a town or city of forty thousand (40,000) population or more according to the preceding Federal Census may appoint five (5) Deputies and no more, and each and every instance said Deputy Constables shall qualify as required of Deputy Sheriffs.

Sec. 2. When the Constable in each and every instance named and described in the preceding section of this Act shall desire to make appointment of a Deputy or Deputies, as the case may be, said Constable shall first make written application to the Commissioners' Court of his County showing that it is necessary for such Constable to have the Deputy or Deputies requested in order to properly handle the business of his office originating in the Precinct in which such Constable has been elected, giving the name of each proposed appointee; and if the Commissioners' Court shall find that the Constable is in need of the Deputy or Deputies requested to handle the business originating in his Precinct, then and in that event, and in that event only, the Commissioners' Court shall approve and confirm the appointment of the Deputy or Deputies provided by this Act.

Sec. 3. Any person who serves as a Deputy Constable without the provisions hereof having been complied with relative to his appointment or any Constable who issues a Deputyship without the consent and approval of the Commissioners' Court shall be fined not less than Fifty Dollars ($50.00) nor more than One Thousand Dollars ($1,000.00). [Acts 1931, 42nd Leg., p. 503, ch. 280.]

Section 3a of this Act being a penal provision, is published as Penal Code, Art. 803b.

Art. 6879b. Responsible for Deputies' Acts.—Constables shall be responsible for the official acts of their deputies, and they shall have power to require from their deputies bond and security; and they shall have the same remedies against their deputies and the sureties of said deputies as any person can have against a constable and his sureties. [Acts 1935, 44th Leg., p. 544, ch. 231, § 1.]

Art. 6880. [7139] [4909] Unorganized counties.—The commissioners courts of the several counties to which unorganized counties are attached for judicial purposes shall have power to appoint a constable for each unorganized county attached to said counties for judicial purposes, in accordance with the laws governing such appointments in organized counties. [Acts 1879, p. 89; G. L. vol. 8, p. 1389.]

Art. 6881. [7141] [4911] Bond and oath.—Each person who may be elected to the office of Constable shall, before entering upon the duties of the office, give a bond with two or more good and sufficient sureties, to be approved by the Commissioners Court of his county, for such sum as may be directed by said Court, not less than Five Hundred Dollars ($500.00) nor more than Fifteen Hundred Dollars ($1,500.00), payable to the Governor and his successors in office, conditioned for the faithful performance of all the duties required of him by law; and shall also take and subscribe the oath of office prescribed by the Constitution, which shall be indorsed on said bond, together with the certificate of the officer administering the same; which bond and oath shall be recorded in the office of the Clerk of the County Court, and deposited in said office; said bond shall not be void on the first recovery, but may be sued on from time to time in the name of the party injured until the whole amount thereof is recovered. [Acts 1846, p. 261; G. L. vol. 2, p. 1567; Acts 1933, 43rd Leg., p. 287, ch. 115.]

Art. 6882. [7142] [4912] De facto constable.—Whenever any person is elected or appointed to the office of constable and has given bond and taken said oath, he may enter at once upon the duties of the office, and his acts shall be as valid in law as if he had been duly commissioned.

Art. 6883. [7143] [4913] Neglect to qualify.—Whenever any person elected constable shall neglect or refuse to give bond and take the official oath within twenty days after notice of his election, the office shall be deemed vacant. [Acts 1846, p. 261; G.L. vol. 2, p. 1567.]

Art. 6884. [7144] [4914] Failure to give new bond.—Whenever any of the sureties of a constable shall die, remove permanently from the State or become insolvent, or are released from liability in accordance with law, or whenever the commissioners court shall deem the bond of any constable to be insufficient, said court shall cite said constable to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation, and give a new bond, with good and sufficient security. If such constable shall neglect or refuse to appear and give such bond at the designated time, he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers. [Id. sec. 3; P. D. 982.]

Art. 6885. [7145] [4915] Duties in general.—Each constable shall execute and return according to law all process, warrants and precepts to him directed and delivered by any lawful officer, attend upon all justice courts held in his precinct and perform all such other duties as may be required of him by law. [Id. P. D. 987.]

Art. 6886. [7146] [4916] May summon posse.—When any constable shall meet with resistance in the execution of any lawful process, or in the arrest of offenders, he may call to his aid any citizen of the county who may be convenient; and any person who shall fail or refuse to obey such call may be fined as for a contempt by any justice of the peace, in a sum not exceeding ten dollars, on motion of such constable, three days' notice thereof having been given to the party accused. [Id. P. D. 986.]

Art. 6887. [7147] [4917] Failure to execute or return process.—If any constable shall fail or refuse to execute and return, according to law, any process, warrant, or precept to him lawfully directed and delivered, he shall be fined for a contempt, on motion of the party injured, before the court from which such process, warrant or precept issued, not less than ten nor more than one hundred dollars, with costs; which fine shall be for the benefit of the party injured. Said constable shall have ten days' notice of such motion. [Id. P. D. 990.]

Art. 6888. [7148] [4918] Failure to pay.—If any constable shall receive from any person any bonds, bills, notes or accounts for collection, and shall give his receipt therefor, in his official capacity, and shall fail to pay to such person, on demand, any amount he may have collected on the same, such constable and his sureties shall be responsible on his official bond for all such amounts as he may have collected on such bonds, bills, notes or accounts not paid over. [Id. P. D. 991.]

Art. 6889. [7149] [4919] Jurisdiction.—Every constable may execute any process, civil or criminal, throughout his county and elsewhere, as may be provided for in the Code of Criminal Procedure, or other law. [Id. sec. 14; P. D. 993.]

Art. 6889a. Automobile expense; allowance to constables in certain precincts in counties over 500,000.—The constable of each precinct having a population of sixty-five thousand (65,000) or more situated in counties having a population of more than five hundred thousand (500,000), both according to the last preceding or any future Federal Census, may be allowed not exceeding Fifty Dollars ($50) per month out of the General Fund as automobile expense, to be determined by the Commissioners Court. Such allowance shall be paid and be subject to all of the laws, rules and regulations in such counties governing the accounting for expenses, budgets, approval, depositories and countersignature of warrants, it being the intention of this Act merely to authorize such an allowance. This Law shall be cumulative of other laws relating to the constable in such counties, except where such Statutes conflict with this enactment, and in such cases this Law shall control. [Acts 1947, 50th Leg., p. 391, ch. 219, § 1.]

TITLE 120A—STATE AND NATIONAL DEFENSE

Art.
6889—1. [Expired.]
6889—2. Military zones adjacent to military establishments; regulations; enforcement.

Art. 6889—1. [Expired April 16, 1945.]
This article was Acts 1943, 48th Leg., p. 223, ch. 142.

Art. 6889—2. Military zones adjacent to military establishments; regulations; enforcement.

Section 1. For the purpose of this Act, any navy or coast guard base, camp, station, yard or section base shall be known as a military establishment.

Sec. 2. The County Commissioners Courts having within the limits of said county any military establishments are hereby authorized to set up and create restricted military zones adjacent to such military establishment.

Sec. 3. The limits of said military zones shall be set forth in the minutes of said courts; that appropriate signs shall be placed by all roads or passageways leading into said zones showing that such zones are restricted areas. That such zones shall not extend more than one mile from the boundary lines of any military establishment.

Sec. 4. The Commissioners Court shall be authorized to establish special regulations for such

zones as to speed of motor vehicles, parking of vehicles, and taking of pictures.

Sec. 5. In order to properly police said zones the Commissioners Court shall be authorized to empower the civilian or military guards at such military establishments to enforce the regulations established for such military zones.

Sec. 6. Any person, association of persons, firm or corporation who shall violate any of the regulations prescribed for military zones, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred ($100.00) Dollars or by imprisonment in the county jail for not less than ten (10) days, or more than two (2) years. [Acts 1943, 48th Leg., p. 458, ch. 308.]

TITLE 121—STOCK LAWS

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CHAPTER 1.—MARKS AND BRANDS

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Article 6890. [7151] [4921] Owner's mark and brand.—Every person who has cattle, hogs, sheep or goats shall have an ear mark and brand differing from the ear mark and brand of his neighbors, which ear mark and brand shall be recorded by the county clerk of the county where such animals shall be. No person shall use more than one brand, but may record his brand in as many counties as he deems necessary. [Acts 1848, p. 156; P. D. 4655; G. L. vol. 3, p. 156.]

Art. 6891. [7152] [4922] County brands.—Each county shall have a brand for horses and cattle, said brand to be known and designated as the "county brand." The county brand of each county shall be as follows:

County.	Brand.	County.	Brand.
Anderson	A.A.	Edwards	E.D.
Andrews	A.N.	Ellis	E.L.
Angelina	A.L.	El Paso	E.P.
Aransas	A.R.	Erath	E.R.
Archer	A.H.	Falls	F.A.
Armstrong	A.M.	Fannin	F.N.
Atascosa	A.T.	Fayette	F.E.
Austin	A.U.	Fisher	F.I.
Bandera	B.A.	Floyd	F.L.
Bastrop	B.S.	Fort Bend	F.B.
Bailey	B.I.	Franklin	F.K.
Baylor	B.R.	Freestone	F.R.
Bee	B.E.	Frio	F.O.
Bell	B.L.	Galveston	G.A.
Bexar	B.X.	Gaines	G.I.
Blanco	B.N.	Garza	G.R.
Borden	B.D.	Gillespie	G.L.
Bosque	B.	Goliad	G.D.
Bowie	B.O.	Gonzales	G.O.
Brazoria	B.D.	Gray	G.Y.
Brazos	B.Z.	Grayson	G.N.
Briscoe	B.H.	Greer	G.
Brown	B.W.	Gregg	G.G.
Burleson	B.U.	Grimes	G.M.
Burnet	B.T.	Guadalupe	G.E.
Caldwell	C.A.	Hale	H.
Calhoun	C.H.	Hall	H.A.
Callahan	C.L.	Hamilton	H.I.
Cameron	C.M.	Hansford	H.F.
Camp	C.P.	Hardeman	H.N.
Carson	C.R.	Hardin	H.D.
Cass	C.S.	Harris	H.S.
Castro	C.T.	Harrison	H.X.
Chambers	C.B.	Hartley	H.T.
Cherokee	C.K.	Haskell	H.6.
Childress	C.D.	Hays	H.Y.
Clay	C.Y.	Hemphill	H.M.
Cochran	C.C.	Henderson	H.E.
Coleman	C.E.	Hidalgo	H.G.
Collin	C.I.	Hill	H.L.
Collingsworth	C.W.	Hockley	H.K.
Colorado	C.N.	Hood	H.O.
Comal	C.O.	Hopkins	H.P.
Comanche	C.J.	Howard	H.R.
Concho	C.V.	Houston	H.4.
Cooke	C.U.	Hunt	H.U.
Coryell	C.X.	Hutchinson	H.H.
Cottle	C.2.	Jack	J.
Crockett	C.3.	Jackson	J.A.
Crosby	C.4.	Jasper	J.P.
Dallam	D.L.	Jefferson	J.E.
Dallas	D.A.	Johnson	J.H.
Dawson	D.N.	Jones	J.O.
Deaf Smith	D.S.	Karnes	K.
Delta	D.T.	Kaufman	K.A.
Denton	D.O.	Kendall	K.E.
DeWitt	D.E.	Kent	K.T.
Dickens	D.I.	Kerr	K.R.
Dimmit	D.M.	Kimble	K.I.
Donley	D.N.	King	K.N.
Duval	D.D.	Kinney	K.O.
Eastland	E.A.	Knox	K.X.

County.	Brand.
Lamar	L.A.
Lamb	L.M.
Lampasas	L.P.
La Salle	L.S.
Lavaca	L.C.
Lee	L.E.
Leon	L.4.
Liberty	L.I.
Limestone	L.T.
Lipscomb	L.B.
Live Oak	L.O.
Llano	L.
Lubbock	L.K.
Lynn	L.N.
Madison	M.1.
Marion	M.2.
Martin	M.4.
Mason	M.N.
Matagorda	M.R.
Maverick	M.K.
McCulloch	M.C.
McLennan	M.L.
McMullen	M.
Medina	M.A.
Menard	M.D.
Milam	M.I.
Mitchell	M.H.
Montague	M.E.
Montgomery	M.M.
Moore	M.O.
Morris	M.S.
Motley	M.T.
Nacogdoches	N.S.
Navarro	N.A.
Newton	N.
Nolan	N.O.
Nueces	N.E.
Ochiltree	O.H.
Oldham	O.O.
Orange	O.
Palo Pinto	P.P.
Panola	P.A.
Parmer	P.R.
Parker	P.K.
Pecos	P.
Polk	P.K.
Potter	P.O.
Presidio	P.R.
Rains	R.
Randall	R.A.
Red River	R.R.
Refugio	R.E.
Roberts	R.S.
Robertson	R.O.
Rockwall	R.L.
Runnels	R.N.
Rusk	R.K.
Sabine	S.B.
San Augustine	S.A.
San Jacinto	S.J.
San Patricio	S.P.
San Saba	S.S.
Scurry	S.
Shackleford	S.D.
Shelby	S.H.
Sherman	S.N.
Smith	S.T.
Somervell	S.O.
Starr	S.R.
Stephens	S.E.
Stonewall	S.L.
Swisher	S.I.
Tarrant	T.A.
Taylor	T.E.
Terry	T.
Throckmorton	T.H.
Titus	T.I.
Tom Green	T.G.
Travis	T.S.
Trinity	T.R.
Tyler	T.L.
Upshur	U.P.
Uvalde	U.
Van Zandt	V.
Victoria	V.I.
Walker	W.K.
Waller	W.
Washington	W.N.
Webb	W.E.
Wharton	W.T.
Wheeler	W.H.
Wichita	W.A.
Wilbarger	W.R.
Williamson	W.I.
Wilson	W.L.
Wise	W.S.
Wood	W.O.
Yoakum	Y.
Young	Y.O.
Zapata	X.
Zavalla	X.X.

[Acts 1883, p. 76; G. L. vol. 9, p. 382.]

Art. 6892. [7153] [4923] Owner may use county brand.—The owners of all horses and cattle, in addition to their private brand, may place said county brand upon the neck of all horses and cattle owned by them. [Id.]

Art. 6893. [7154] [4924] Stock removed from county.—Whenever any horses or cattle branded with the county brand are removed to another county, the owners of such stock may counterbrand with said county brand, and a bar under said county brand shall be used and known as the "County brand," and when so counterbranded the brand of the county in which said stock may be newly located may be placed on said stock. [Id.]

Art. 6894. [7155] [4925] To furnish lists.—The Secretary of State shall furnish a printed list of the county brands to the county clerks of this State, who shall securely post the same in their office. [Id.]

Art. 6895. [7156] [4926] Brands of minors.—Minors owning cattle or hogs, separate from that of the father or guardian, may have a brand and mark, which shall be recorded. The father or guardian shall be responsible for the proper use of such mark and brand of any such minor. [Acts 1848, p. 156; P. D. 4660; G. L. vol. 3, p. 156.]

Art. 6896. [7157] [4927] When branded.—Cattle shall be marked with the ear mark or branded with the brand of the owner on or before they are twelve months old; hogs, sheep, and goats shall be marked with the ear mark of the owner on or before they are six months old. [Id. P. D. 4656.]

Art. 6897. [7158] [4928] Disputes settled.—If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the county clerk, and the ear mark and brand of the oldest date shall have the preference. [Id. P. D. 4657.]

Art. 6898. [7159] [4929] Marks and brands recorded.—The clerks of the county courts in their respective counties shall keep a well bound book, in which they shall record the marks and brands of each individual who may apply to them for that purpose, noting in every instance the date on which the brand or mark is recorded. [Id. P. D. 4658.]

Art. 6899. Records of marks and brands, except county brands, void after October 1, 1943.

Recording and rerecording; inapplicable to certain counties

Sec. 1. All records of marks and brands heretofore made as provided in this Chapter, except all county brands, shall become void and of no force and effect on the 1st day of October, 1943, and every person who has cattle, hogs, sheep, or goats shall have his mark and brand recorded or re-recorded in accordance with Article 6890 and Article 6898.

The legal owner of a brand and/or mark shall have a preferential right to record such brand and/or mark for a period of two (2) years from the 1st day of October, 1943, but if such preferential right is not exercised within such two (2) years the same shall be forfeited and such brand and/or mark shall be subject to registration by any person, and the first person to record the same shall be the owner of the same.

Any brand recorded in accordance with the requirements of this Act shall be considered as the property of the person causing such record to be made and shall be subject to sale, assignment, transfer, devise and descent the same as other personal property.

Any person may record such brand and/or mark as he may desire to use provided no other person has recorded such brand and/or mark, without regard to whether or not such person has previously recorded a brand and/or mark.

This Act shall not apply to any county which shall have re-recorded all brands and marks within the past five (5) years. [Added Acts 1943, 48th Leg., p. 471, ch. 315.]

Ownership of more than one brand or mark

Sec. 1a. At any place in the above and foregoing section of Article 6899 where the words "brand and/or mark" are used singularly, such words or language shall be construed as having a plural meaning and interpretation, so that hereafter any legal owner may have and own and record one or more brands and/or marks by otherwise complying with all the other provisions of this Article. [Added Acts 1945, 49th Leg., p. 321, ch. 235, § 1.]

Section 2 of the Act of 1943 repealed conflicting laws. Section 2 of the Act of 1945 provided that except as is amended in "Section 1a", above, all the other provisions, words, and language of Article 6899 are hereby re-enacted. Section 3 of the Act of 1945 repealed all conflicting laws and parts of laws.

Art. 6899 of Rev.Civ.St.1925, as derived from Acts 1848, p. 156, P.D. 4659; G.L. vol. 3, p. 156, Acts 1913, p. 129, relating to unrecorded brands as evidence, was repealed by Acts 1929, 41st Leg., p. 55, ch. 22, § 1.

Art. 6899a. Marks and brands of live stock in Matagorda and Wharton Counties.—This Act shall apply to Matagorda and Wharton Counties only. In

said Counties each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of 1925, shall within six months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of the County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded the same in the County, or in event it can not [1] be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of the County shall have this Act published in some newspaper of general circulation in the County for a period of thirty days, which publication shall be paid for by the County out of the General County Fund. [Acts 1929, 41st Leg., p. 561, ch. 273, § 1; Acts 1931, 42nd Leg., p. 791, ch. 318, § 1.]

[1] So in enrolled bill. Session Laws omit word "not".

Art. 6899b. Marks and brands of live stock in Fort Bend County.—This Act shall apply to Fort Bend County only. In said County each owner of any live stock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of the County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded the same in the County, or in event it can not be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of the County shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund. [Acts 1935, 44th Leg., Sp.L., p. 1175, ch. 11, § 1.]

Art. 6899c. Marks and brands of livestock in Jasper and Newton Counties.—This Act shall apply to Jasper and Newton Counties only. In said Counties each owner of any livestock mentioned in Chapter 1, of Title 121, of the Revised Civil Statutes of Texas, of 1925,[1] shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of the Counties; and providing that such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said Counties first recorded the same in the Counties, or in event it can not be ascertained from the records who first recorded same in the Counties, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said Counties shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said Counties. Immediately upon the taking effect of this Act the County Clerk of the Counties shall have this Act published in some newspaper of general circulation in the Counties for a period of thirty (30) days, which publication shall be paid for by the Counties out of the General County Fund. [Added Acts 1937, 45th Leg., p. 652, ch. 322, § 1.]

[1] Articles 6890-6899b.

Art. 6899d. Brands in Brazoria County.—This Act shall apply to Brazoria County only. In said County each owner of any livestock mentioned in Chapter 1 of Title 121, of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of said County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded the same in the County, or in event it can not be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of said County shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund. [Acts 1939, 46th Leg., Spec.L., p. 516, § 1.]

Art. 6899e. Marks and brands of livestock in Chambers County.—This Act shall apply to Chambers County only. In said County each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of said County; without any cost to owner and providing that such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded the same in the County, or in event it cannot be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of the County shall have this Act published in some newspaper of general circulation in the County for a period

of thirty (30) days, which publication shall be paid for by the County out of the General County Fund. [Acts 1939, 46th Leg., Spec.L., p. 517.]

Art. 6899f. Marks and brands of livestock in Gonzales County.—This Act shall apply to Gonzales County only. In said County each owner of any livestock mentioned in Chapter 1 of Title 121, of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of said County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of said County first recorded same in the County, or in event it cannot be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk of said County shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund. [Added Acts 1941, 47th Leg., p. 82, ch. 67, § 1.]

Art. 6899g. Marks and brands of livestock in Austin and Colorado Counties.—This Act shall apply to Austin and Colorado Counties only. In said Counties each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, of 1925,[1] shall within six (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk of his home County. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of his home County first recorded the same in the County, or in event it can not be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said Counties shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said Counties. Immediately upon the taking effect of this Act the County Clerk of each of said Counties shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund. [Acts 1941, 47th Leg., p. 358, ch. 196, § 1.]

[1] Article 6890 et seq.

Art. 6899h. Fayette County, marks and brands of livestock in.—Section 1. This Act shall apply to Fayette County. In said County each owner of any livestock mentioned in Chapter 1 of Title 121 of the Revised Civil Statutes of Texas, of 1925,[1] shall within (6) months after this Act takes effect have his mark and brand for such stock recorded in the office of the County Clerk. Such owners shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his name who according to the present records of Fayette County first recorded the same in the County, or in event it cannot be ascertained from the records who first recorded same in the County, then the person who has been using such mark and brand the longest shall have the right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act all records of marks and brands now in existence in said County shall no longer have any force or effect and after the expiration of six (6) months only the records made after this Act takes effect shall be examined or considered in recording marks and brands in said County. Immediately upon the taking effect of this Act the County Clerk shall have this Act published in some newspaper of general circulation in the County for a period of thirty (30) days, which publication shall be paid for by the County out of the General County Fund.

Sec. 2. The owner or owners of any brand or marks who have recorded such marks or brands shall re-record such brands or marks at the end of each ten-year period from the effective date of this Act. [Acts 1943, 48th Leg., p. 250, ch. 151.]

[1] Articles 6890–6899h.

Art. 6899i. Ochiltree County, marks and brands of livestock in.—This Act shall apply to Ochiltree County only. In said county, each owner of any livestock mentioned in Chapter 1, of Title 121, of the Revised Civil Statutes of Texas, of 1925, shall, within six (6) months after this Act takes effect, have his mark and brand for such stock recorded in the office of the County Clerk of said county. Such owner shall so record such marks and brands whether the same have been heretofore recorded or not. The owner shall have the right to have his mark and brand recorded in his own name, who, according to the present records of said county, first recorded the same in the county, or in the event it cannot be ascertained from the records who first recorded same in the county, then the person who has been using such mark and brand the longest shall have right to have the same recorded in his name. After the expiration of six (6) months from the taking effect of this Act, all records of marks and brands now in existence in said county shall no longer have any force or effect, and after the expiration of six (6) months, only the records made after this Act takes effect shall be examined and considered in recording marks and brands in said county. Immediately upon the taking effect of this Act, the County Clerk of said county shall have this Act published in some newspaper of general circulation in the county for a period of thirty (30) days, which publication shall be paid for by the county, out of the General County Fund. [Acts 1943, 48th Leg., p. 561, ch. 332, § 1.]

Section 1a of the Act of 1943 provided for an election on the adoption of the Act and provided that if a majority did not vote for adoption the Act should become void.

Art. 6899—1. Tattoo marks for hogs, dogs, sheep or goats; registration; fees; assignment; filing in county; punishment for certain offenses.

Registration

Any person, firm, corporation, or association owning hogs, dogs, sheep, or goats in this State, shall have the right to register for exclusive use a distinctive tattoo mark, not theretofore recorded, and to retain the exclusive use thereof, in accordance with the procedures and conditions hereinafter set forth in this Act. Nothing in this Act shall operate to invalidate or interfere with the use by the owner thereof of any tattoo mark or marks already recorded in the various county records of marks and brands on March 1, 1943. [As amended Acts 1947, 50th Leg., p. 244, ch. 140, § 1.]

Administration

Sec. 2. The Act shall be administered by the Department of Public Safety, and the Director of said

Department is hereby charged with such administration in all particulars.

Application for registration

Sec. 3. Application for such registration as hereinabove described shall be made to the Director of the Department of Public Safety, shall be signed by the applicant or his agent, and shall show the applicant's place of residence, his citizenship, the location of the livestock which he owns, the kind or kinds of such livestock, and shall name the place or part of the animal upon which the tattoo mark is to be placed.

To each application for a registration there shall be attached a drawing of the tattoo mark for which registration is sought, over the signature of the applicant or of his agent; provided that such drawing shall comply with the requirements of the Department of Public Safety, and that as many copies thereof shall be furnished as the Director may require.

Issuance of certificate

Sec. 4. It shall be the duty of the Director to examine or cause to be examined each application for the registration of any tattoo mark, and upon satisfactory evidence that such registration should be made, to issue forthwith a certificate of registration.

Protest; hearings

Sec. 5. Any person, firm, corporation, or association which believes himself or itself about to be damaged by the granting of a certificate of registration for the exclusive use of a tattoo mark, applied for under the provisions of this Act, may within twenty (20) days of the filing of such application file a written notice of protest, stating the grounds therefor, which notice shall be sworn to and filed with the Department of Public Safety. It shall then be the duty of the Director of the Department of Public Safety to take such steps and hold such hearings as he may deem necessary to determine whether the application in question shall be granted or denied, and the decision of the Director shall be final, provided that he shall give his reasons therefor, and that in case of the abuse of this discretion by the Director, the contestant may have recourse to the District Courts of the County where the contestant resides.

Fees

Sec. 6. The following fees shall prevail in the administration of this Act:

Each original application filed shall be accompanied by a fee of Five ($5.00) Dollars.

Each notice of assignment shall be accompanied by a fee of One ($1.00) Dollar.

Each notice of opposition to registration filed shall be accompanied by a fee of Ten ($10.00) Dollars.

Collection of fees

Sec. 7. The fees provided hereinabove shall be collected by the Director of the Department of Public Safety and remitted by him to the Comptroller, who shall cause such funds to be deposited by the State Treasurer in a special fund to be known as the Livestock Tattoo Fund; provided that said fund shall be used exclusively in the administration of this Act; provided that upon certification of the Director of the Department of Public Safety the Comptroller shall draw his warrant upon the State Treasurer in the General Revenue Fund.

Certificate of registration

Sec. 8. The certificate of registration for the exclusive registration and use of any tattoo mark shall be assignable in connection with the good will of the ranch, farm, or other business in which the same is used, provided that such assignment shall not be valid unless and until notice of same has been filed in writing, sworn to by the assignor, with the Department of Public Safety; but such certificate of registration shall not be otherwise transferable.

Filing in county of residence

Sec. 9. It shall be the duty of the Director to forward to the County Clerk of the applicant's residence a certified copy of said registration to be filed in the County Clerk's office of said County in a regular book for that purpose, the filing fees to be paid by the person so registering said tattoo mark and said filing fee shall not exceed the sum of Twenty-five (25¢) Cents.

Effect of registration; offenses

Sec. 10. The registration of a tattoo mark under the provisions of this Act shall create an exclusive right to use the same in this State, shall be prima facie evidence of ownership of the livestock so tattooed, in any criminal or civil actions in the Courts of this State; provided that any person who shall, without the consent of the owner, reproduce, counterfeit, copy, add to, take from, imitate, destroy or remove any such tattoo mark affixed to any livestock as heretofore enumerated herein, or who shall buy, sell, or barter for himself, or for any other person, or transport over the highways of this State, any livestock upon which any registered tattoo mark has been placed or fixed, without the consent of the owner of such livestock, or who shall aid the commission of any of the above described acts, shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the State Penitentiary for a period of not less than two (2) nor more than twelve (12) years. [Acts 1943, 48th Leg., p. 52, ch. 48.]

CHAPTER 2.—PROTECTION OF LIVESTOCK

Arts. 6900–6902. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 114, ch. 52, § 29.]

Sections 1–28 of Acts 1929, 41st Leg., 1st C.S., p. 114, ch. 52, containing numerous penal provisions are published as Pen.Code, Article 1525b.

CHAPTER 3.—SLAUGHTER AND SHIPMENT

Art.
6903. Bill of sale.
6904. Butchers to report.
6905. Recorded before driving.
6906. Sworn descriptive lists.
6907. Register of cattle.
6908. Bond of butcher.
6909. Inspector's record.
6910. Counties exempt.

Article 6903. [7170–1–2] Bill of sale.—Upon the sale or transfer of any horse, mare, mule, gelding, colt, jack, jennet, cow, calf, ox, or beef steer by any person in this State, the actual delivery of such animals shall be accompanied by a written transfer to the purchaser from the vendor, or party selling, giving the number, marks and brands of each animal sold and delivered. Upon the trial of the right of property in any such animal, the possession of such animal without said written transfer shall be prima facie illegal. Persons may dispose of stock animals of any said kind as they run in the range, by the sale and delivery of the brands and marks; and in every such sale the purchaser, in order to acquire title thereto, shall have his conveyance or bill of sale of such stock, recorded in the county clerk's office, in a book to be kept by him for that purpose; and such sale or transfer shall be noted on the record of original marks and brands in the name of the vendee or purchaser. [Acts 1866, p. 223; G. L. vol. 5, p. 1141.]

Art. 6904. [7173] [4943] Butchers to report.—Each person in this State engaged in the slaughter and sale of animals for market shall make a regular sworn report to each regular meeting of the commissioners court of the county, giving the number, color, age, marks and brands of every animal slaughtered by him since the last term of said court, to be filed with and kept on file by the county clerk. Each said report shall be accompanied by the bill of

sale or written conveyance to the butcher for every animal that he has purchased for slaughter. If any of the animals slaughtered have been raised by himself it shall be so stated in the report. Said report so made to said court may in the discretion of said clerk be destroyed after a period of five years. [Acts 1907, p. 239.]

Art. 6905. [7175] [4944] Recorded before driving.—Any person who shall purchase animals of any class named in Article 6903, for the purpose of driving to market out of the county where purchased, or out of the State, shall, before moving the animals out of the county where purchased, deposit with the county clerk for record, a bill of sale and correct list of the number, marks, brands and kind of animals, signed and acknowledged by each vendor, which, together with the address of the vendee, shall be recorded in the book kept by the clerk for that purpose, and with his certificate of record under seal shall be returned to the purchaser upon payment of the recording fees. [Acts 1866, p. 223; G. L. vol. 5, p. 1141.]

Art. 6906. [7176] [4945] Sworn descriptive lists.—Persons intending to drive their own stock raised by themselves to market out of the county where raised, or out of the State, shall, before so driving, deposit with the county clerk for record a correct list of such animals, with a particular description of their marks and brands, verified by their own affidavit; which list said clerk shall record and certify and return to the owner. [Id.]

Art. 6907. [7177–8] Register of cattle.—The commanders or agents of all vessels and the agents of all railroads on which cattle are exported from the State, and the proprietors or agents of all establishments for the slaughter of cattle within the State, shall keep a register of all cattle shipped or slaughtered, with the marks, brands and general description of such animals, and the names of the persons shipping or selling the same, the dates of their shipments or purchase, and the county from which they were driven. Such register on the first day of each month shall be deposited with the county clerk of the county where the cattle were shipped or slaughtered. Said clerk shall at once copy the same in a well bound book to be kept for that purpose, and return the original to the party depositing it. [Acts 1850, p. 27; G. L. vol. 3, p. 809; P. D. 460.]

Art. 6908. [7179] [4948] Bond of butcher.—Every person, before he shall set up and carry on the trade or occupation of a butcher or slaughterer of cattle in this State, shall file a bond to be approved by the county judge of the county in which he desires to carry on the business, in a sum not less than two hundred nor more than one thousand dollars, payable to the State of Texas, conditioned that he shall keep a true and faithful record in a book kept for that purpose of all cattle purchased or slaughtered by him, with a description of the animal including marks, brands, age, color, weight, and from whom purchased and the date thereof; that he will have the hide and ear of such animal inspected by the inspector, or some magistrate of the county, within twenty days after it is slaughtered, and that he will not purchase any cattle that has been slaughtered by another unless the hide and ears of such slaughtered animal accompany said animal offered for sale, and that he will not purchase any animal that has been slaughtered by another when the ear marks, or brands on the hide accompanying such animal, when offered for sale, have been changed, mutilated or destroyed. Any butcher or slaughterer of cattle who shall violate any condition of said bond may be sued upon his bond at the instance of the county or district attorney of the county where such bond is given. All sums recovered by suits upon said bonds shall be paid into the county treasury and become a part of the available school fund of such county. [Acts 1893, p. 38; G. L. vol. 10, p. 468.]

Art. 6909. [7183] [4952] Inspector's record.—The inspector or magistrate shall keep a record of the marks, brands, color and general description of such hides, and for whom inspected, with the date of inspection, and return a copy of the same to the county clerk of the county in which it was inspected within thirty days after said inspection. Said inspector or magistrate shall be entitled to receive ten cents for each hide so inspected, to be paid by the party having the hide inspected. [Id.]

Art. 6910. [7184] [4953] Counties exempt.—The provisions of the two preceding articles shall not apply to the following counties: Anderson, Angelina, Austin, Bandera, Bastrop, Bell, Bexar, Blanco, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Chambers, Cherokee, Clay, Collin, Colorado, Comal, Comanche, Dallas, Delta, Denton, DeWitt, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Galveston, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill, Hopkins, Houston, Hunt, Jasper, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimball, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Marion, Mason, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Palo Pinto, Panola, Polk, Rains, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Sutton, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Walker, Waller, Washington, Williamson, Wood. [Acts 1917, p. 358.]

CHAPTER 4.—ESTRAYS

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Article 6911. [7185–90] Who may take up.—When any stray horse, mare, gelding, filly, colt, mule, jack, jennet, or work ox shall be found on the land of any citizen or his lessee for one year or more, such citizen or his lessee may forthwith advertise the same, describing the animal's color and specifying the marks and brands, if any, also giving the age and flesh marks of every kind, at three public places in the county in which he resides, one of which notices shall be at the courthouse door, for at least twenty days, and shall also deliver to the county clerk a copy of said notice which shall be by him securely posted up in his office; after the expiration of which time, if no owner apply, the taker-up of said animal or animals shall appear before some justice of the peace in said county and estray the same. No animal so taken up shall be used for any purpose until the party shall have given bond as required by the succeeding article. [Acts 1866, p. 54; G. L. vol. 5, p. 972.]

Art. 6912. [7186–92–93] Appraisement and bond.—Any citizen so entitled to estray any animal shall make affidavit before said justice of the peace that the animal which he proposes to estray was taken upon his plantation, or on his lands adjoining the

same; that the marks and brands thereof have not been altered or disfigured since the same was taken up; that notice has been given as the law requires, and that no owner has been found; whereupon the said justice shall file said affidavit and shall cause to appear before him, by summons or otherwise, two disinterested householders of his county, who are in no way related to the person estraying, commanding them, after being sworn, to value and appraise the same and certify under oath attested by said justice the valuation, together with a particular description of the animal, including height, marks, brands, color and age. Said justice shall thereupon require of the taker-up a bond with two or more good and sufficient sureties, in double the value of such animal or animals, payable to the county judge of the county, conditioned that the taker-up shall comply with the provisions of this chapter, which bond, affidavit and appraisement shall be sent by such justice to the county clerk within twenty days thereafter, for which said justice shall receive the same fees that are allowed for similar services by law. Said clerk shall record said papers so sent to him in a separate book to be kept for that purpose, for which he shall be entitled to collect the same fees allowed by law for similar services to be paid in all cases by the taker-up. When two or more animals are taken up at the same time by the same person, they shall be included in the same entry, and said justice and said clerk shall receive no more fees including posting and advertising, than for one such animal. [Id.]

Art. 6913. [7187–8] Proof of ownership.—At any time within twelve months, and before the sale of any estrays, it shall be lawful for the owner of any such estray to prove his property by the affidavit of any respectable witness, which shall specify a particular description of the animal claimed, including the kind, marks, brands, height, color and age of the same. This affidavit shall be delivered to the taker-up and by him filed in the office of the county clerk of such county, and on the delivery of such affidavit and the payment of all costs incurred in posting such estray to the taker-up, such owner shall be entitled to demand and receive the animal. When the respectability of said witness is not known to the officer administering the oath, the party claiming the estray shall produce satisfactory evidence of the respectability of such witness, certified to by a notary public, county clerk or county judge of the county in which such witness resides. [Id. P. D. 6812.]

Art. 6914. [7189] [4958] No pay for taker-up.—If the owner of any animal which has been so duly estrayed, be a resident citizen of the county in which it has been estrayed, and shall have had his mark and brand recorded in said county, and the animal so estrayed shall be in the mark and brand of the owner at the time it was taken up, then and in that case the taker-up shall not be entitled to receive any compensation for expense incurred in estraying said animal. [Id.]

Art. 6915. [7191] [4960] Commissioner to return.—If any estrays of any kind shall be found running at large and not estrayed, and the owner of the same be unknown, any county commissioner shall return the same, with a full description thereof, to the county clerk of his county, who shall advertise the same as specified in this chapter. If such animal shall not be proven away by the owner within the time allowed by law the commissioner returning the same, or his successor in office, shall proceed to sell such animals and report the sale thereof to said county clerk, and after paying the clerk's fee and retaining twenty per cent of the proceeds of such sale, he shall pay the remaining sum into the county treasury. [Id. P. D. 6813.]

Art. 6916. [7194] [4963] Advertisement.—The county clerk shall cause a statement of the appraisement and a description of the animals so estrayed to be advertised at least three times in some newspaper published in the county where such animal was estrayed, if there be one; and if none, then the clerk shall cause the same to be advertised in the newspaper nearest to the county, and also by posting up notices at three public places in the county, one of which shall be at the courthouse door thereof. The printer of such notice shall furnish the said clerk with a copy of the paper containing said notice. For such publication the printer shall be entitled to receive two dollars from the party estraying the same. Said clerk shall file and preserve said copy in his office. [Id.]

Art. 6917. [7195–6] Property in estrays.—The property of every stray horse, mare, gelding, filly, colt, mule, jack, jennet or work ox taken up as aforesaid and not proven away within twelve months after such appraisement shall be deemed vested in the county wherein such estray or estrays may have been posted, and the taker-up shall immediately thereafter proceed to sell the same for cash to the highest bidder at the courthouse door of the county, after giving notice of the same as required in the case of sheriff's sale. Within ten days after such sale, he shall, after deducting the expenses incurred in estraying said animals, pay into the county treasury seventy-five per cent of the proceeds of the same, and retain the other twenty-five per cent for his own use. Whenever a sale of an estray shall be made according to the provisions of this article, the taker-up shall make a return of such sale, duly sworn to by him, to the county clerk of the county in which the sale was made, who shall file the same in his office. [Id.]

Art. 6918. [7197] [4966] Sale day.—All sales of estrays, horses, mares, fillies, geldings, colts, mules, jacks, jennets, or work oxen shall be made on the first Monday in the month, and between the hours of one and three o'clock p. m. of said day. [Id.]

Art. 6919. [7198–9] Other estrays.—Any citizen taking up any stray hogs, sheep, goats or cattle, other than work oxen, shall proceed in the same manner as is required in the case of horses, etc., except advertising in a newspaper; and any person estraying the same, at the expiration of six months from the day of appraisement, shall proceed to give notice as in the case of sheriff's or constable's sales, and sell such estrays where they were taken up; provided, there be not less than three adult bidders in attendance at said sale, beside the family of the taker-up. No animal enumerated in this article except work oxen, shall be subject to be estrayed, unless the same shall have been known to the taker-up as being an estray for at least four months previous to the time of estraying the same. [Id. Acts 1899, p. 234.]

Art. 6920. [7200] [4969] Returns of sales.—In making the returns of sales under this chapter, when the sale has been made at the residence of the taker-up or other place than at the courthouse door of the county, the taker-up shall, in all cases, give the names of at least three of the bidders who were present at said sale, who were not members of his family. [Acts 1866, p. 54; P. D. 6817; G. L. vol. 5, p. 972.]

Art. 6921. [7201] [4970] Taker-up liable.—If any person estraying an animal enumerated in this chapter shall send or take away the same out of the county in which the same was taken up and estrayed, or sell or otherwise dispose of the same, he and his sureties shall be liable upon their bond in an action for damages in favor of the party injured. [Id. P. D. 6818.]

Art. 6922. [7202] [4971] Taker-up may use.—The taker-up of an estray may use the same in moderation, after having executed bond as provided in this chapter, but should he abuse or injure the

same, he and his sureties shall be liable upon his bond in damages for such abuse or injury, and may be sued therefor by the owner for his own use, or by the county judge for the use of the county.

Art. 6923. [7203] [4972] If estray dies.—Whenever an estray animal shall be found dead, or shall escape, the taker-up shall without delay, make a written sworn report thereof to the county clerk; which report shall be recorded by said clerk in a book to be kept by him for that purpose. Any person who shall make a false report shall be liable on his bond, together with his sureties, for the value of the animal or animals estrayed. [Id. P. D. 6819.]

Art. 6924. [7204] [4973] Proceeds of sale.—All moneys arising from the sales of estrays, under the provisions of this chapter, shall be paid to the county treasurer, and shall be by him applied exclusively to the jury fund of the county. [Id. P. D. 6820.]

Art. 6925. [7205] [4974] If taker-up refuse to deliver.—If any person having in charge an estray shall refuse to deliver the same to the owner thereof, on his complying with the provisions of this chapter, such owner shall be entitled to action therefor with damages. [Id. P. D. 6821.]

Art. 6926. [7206] [4975] Owner may reclaim money.—At any time within twelve months after the sale of any estray made under the provisions of this chapter, the owner of such estray may apply to the county treasurer of the county in which such estray has been sold, and upon proof of such ownership shall be entitled to receive from said treasurer the amount deposited on account of such sale, after paying such costs as may be necessary to establish his right thereto. [Id. P. D. 6822.]

Art. 6927. [7207–8] Notice of estray.—Whenever any person shall estray any animal on which any county brand may be found, the county clerk of the county in which said estray may be shall immediately send a notice containing a full description of said animal, together with the marks and brands, to the county clerk of the county to which the county brand may belong; and the county clerk of said county brand shall record said notice in a book kept for that purpose, and post the same on the courthouse door; and shall ascertain from his record of brands to whom said animal may belong, and notify said owner by letter or otherwise. For such services he shall be entitled to a fee of one dollar from said owner; and the county clerk furnishing the notice shall be entitled to a fee of one dollar from said owner. Any county clerk who shall fail to send a notice as required by this article, shall become liable to the original owner of said estray in an amount equal to the value of said estray. [Acts 1883, p. 78; G. L. vol. 9, p. 384.]

CHAPTER 5.—STOCK LAW AND LIMITED RANGE

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1. GENERAL PROVISIONS

Article 6928. General provisions.—The following rules shall govern any election held under any provision of this chapter for either of the purposes named in this chapter:

1. If the election be for a subdivision of the county, the county judge, at the time he issues the order for such election, shall appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks.

2. Said election shall be held at the usual voting places in the several election precincts if the election is ordered for the whole county; but if the election is ordered for any particular subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened.

3. Only persons who are freeholders and qualified voters under the Constitution and laws shall vote at said election.

4. On or before the tenth day after any said election, the persons holding such election shall make due returns to the county judge of all votes cast at their respective voting places for and against the proposition or propositions submitted at said election. [Acts 1876, p. 150; G. L. vol. 8, p. 986; Acts 1919, p. 149.]

Art. 6929. Combined elections.—When an election is called for any county or subdivision thereof for the purpose of voting upon the question of the adoption of the stock law or any part thereof, under the provisions of this chapter, if such county or subdivision has not already in operation the stock law or any part thereof under the provisions of this chapter, it shall be lawful to submit at the same time and at the same election the question of the limited period of free range for hogs, as provided for in this chapter, but said proposition must be submitted and voted upon as a separate proposition, and the votes cast therein, and the returns thereof, and the judge's proclamation thereon, must be separate and distinct from that of the stock law proposition voted on at such election. [Acts 1919, p. 149.]

2. STOCK LAW ELECTIONS

Art. 6930. [7209] [4978] To order election.—Upon the written petition of fifty freeholders of any county, or upon the petition of twenty freeholders of any subdivision of a county, the commissioners court of such county shall order an election to be held in said county or subdivision, on some day named in the order, for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs, sheep or goats shall be permitted to run at large in such county or subdivision. [Const. art. 16, sec. 23; Acts 1876, p. 150; G. L. vol. 8, p. 986; Acts 1909, p. 164.]

Art. 6931. [7210–7234] Territory between subdivisions.—Whenever there is territory between two (2) subdivisions of a county which have adopted a stock law, or when there is territory adjoining a subdivision which has adopted a stock law, in a county, or in an adjoining county, and in such territory there are less than fifty (50) freeholders, an

election shall be ordered on a petition of a majority of the freeholders residing in such territory by the Commissioners Court of the County in which the territory lies, and the election shall be held as provided by law in other cases relating to the adoption of the stock law. If there be less than twenty (20) freeholders in such intervening or adjoining territory, then on petition of a majority of the owners of the land to said Commissioners Court, the said Commissioners Court shall issue an order extending the stock law to said territory and the same shall be included in the territory of such adjoining subdivision; in cases where there are no freeholders on such intervening or adjoining territory, then on the petition of the owner or owners of the land to said Commissioners Court, the said Court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision; and any person or persons who own lands adjoining any other lands which have been added to territory in which a stock law prevails, shall have the same right, and on petition of the owner or owners of such lands to the said Court, the said Court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision. [Acts 1899, p. 80; Acts 1907, p. 150; Acts 1915, p. 206; Acts 1945, 49th Leg., p. 530, ch. 318, § 1.]

Art. 6932. [7211] [4980] Requisites of petition.—Such petition shall set forth clearly the class or classes of animals enumerated in the preceding articles which the petitioners desire shall not run at large in such county or subdivision. If the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated. [Acts 1876, p. 150; G. L. vol. 8, p. 986.]

Art. 6933. [7212] [4981] Election ordered.—Upon the filing of such petition, the commissioners court, at its next regular term thereafter, shall order an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order. [Id.]

Art. 6934. [7213–14] Order and notice.—Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notice thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county; but if no newspaper be published in the county, then by posting copies of such order at the courthouse door, and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. The order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened. [Id.]

Art. 6935. [7218] [4987] Manner of voting.—All votes at any such election shall be by ballot; and voters desiring to prevent the animals designated in the order from running at large shall place upon their ballots the words, "For the stock law," and those in favor of allowing such animals to run at large shall place upon their ballots the words, "Against the stock law."

Art. 6936. [7220] [4989] Returns of election.—The returns shall be opened, tabulated and counted by the commissioners court of the county in the same manner as provided for all general elections in this State. [Acts 2nd C. S. 1919, p. 150.]

Art. 6937. [7221] [4990] Proclamation of result.—If a majority of the votes cast at such election shall be "For the stock law," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of thirty days from its issuance it shall be unlawful to permit to run at large within the limits designated any animal of the class mentioned in said proclamation. [Acts 1876, p. 150; G. L. vol. 8, p. 986].

Art. 6938. [7222–23] Stock impounded.—If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or cultivated land of any person, other than the owner of such stock, without his consent, in any county or subdivision in which the provisions of this subdivision have become operative in the manner provided in the preceding articles, the owner, lessee or person in lawful possession of such lands may impound said stock and detain the same until his fees and all damages occasioned by said stock are paid to him. No animals shall be impounded unless they have entered upon the inclosed lands or shall be found roaming about the residence, lots, or cultivated land of another; and whenever any stock is impounded notice thereof shall at once be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages. [Acts 1887, p. 56; G. L. vol. 9, p. 854.]

Art. 6939. [7224–5] Fees and damages.—Any owner, lessee, or person in lawful possession of inclosed lands shall be entitled to the following fees for impounding stock, to-wit: Ten cents per day per head for hogs, ten cents per day per head for goats, and five cents per day per head for sheep. The damages done by such stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall upon the application of the taker-up of the stock be appointed by the justice of the peace of the precinct in which such subdivision is situated. Where said justice shall fail or refuse to make such appointment, or where the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this law has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due to the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees, in writing, and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders, to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with said justice, which shall be final; provided, that the owner of the stock, if known, shall have five days' notice of the time and place of the meeting of said freeholders, and if the owner is unknown then a written notice thereof shall be posted in two public places in said subdivision, and one at the door of the courthouse of the county; and provided, further, that nothing in this law shall be construed to deprive the taker-up of the stock to enforce by suit in a court of competent jurisdiction any claim he may have for such fees and damages, and to subject the stock so taken for the payment of the same under the provisions of this law. After the filing of the assessment, as provided for in this article, the

constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale as in constable's sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like services in civil cases. [Acts 1895, p. 84; G. L. vol. 10, p. 814.]

Art. 6940. [7226] [4995] Stock sold.—If no owner can be found of stock so impounded, the taker-up may make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to affiant, which affidavit shall be forthwith delivered to the county clerk by such justice, to be kept in his office for inspection. After the filing of such assessment, the constable of the precinct shall sell such stock as in case where the owner is known; and, if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the county clerk, and pay the same over to the county treasurer, to be received and disbursed by him, as in case of sales of estrays; or the taker-up may at his option, after the expiration of five days, estray such stock, according to the laws regulating estrays in this State. [Id.]

Art. 6941. [7228] [4997] Subsequent elections.—Whenever an election is held under the provisions of this law for any county or subdivision, and the proposition for a stock and fence law, as herein provided, is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter. But the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county; nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county. [Acts 1876, p. 150; G. L. vol. 8, p. 986.]

Art. 6942. [7227–29–31] Lawful fence.—Should any stock not permitted to run at large enter any inclosure of any owner or lessee of land, entitled to the benefit of this law, without his consent, it shall be lawful for the owner or lessee of said inclosure to impound said stock; and it shall be the duty of the owner or lessee of said land to give notice immediately to the owner of said stock of their impounding and detention; and the owner of said stock shall be entitled to the possession of his stock on payment of expenses incurred in impounding and keeping said stock; provided, that in such county or subdivision said owners or lessees shall not be required to fence against the stock not permitted to run at large; and any fence in said county or subdivision which is sufficient to keep out ordinary stock permitted to run at large under this chapter shall be deemed a lawful fence. Three barbed wires with posts not more than thirty feet apart, and one or more stays between them or pickets four feet high and not more than six inches apart, shall constitute a lawful fence. If boards or rails are used, then three boards to be not less than five inches wide and one thick, or four rails shall constitute a lawful fence; provided, that all fencing built under the provision of this chapter shall be four feet high. Nothing in this subdivision shall prevent the freeholders of any county or subdivision of a county where the stock law prevails from deciding by a majority vote whether or not three barbed wires without a board shall constitute a lawful fence in such county or subdivision thereof; the election for such purpose to be conducted in the same manner and under the same rules as elections provided for in this chapter governing the passage of the stock law. [Id. Acts 1879, p. 66; G. L. vol. 8, p. 1366; Acts 1901, p. 290.]

Art. 6943. [7230] [4999] Stock not to be injured.—If any person whose fence is insufficient under this law shall, with guns, dogs or otherwise maim, wound or kill any cattle, or any horse, mule, jack or jennet, or procure the same to be done, such person or persons so offending shall give full satisfaction to the party injured for all damages by such person or persons sustained, to be recovered as in other suits for damages; provided, that this article shall not be so construed as to authorize any person in any event to maim, kill or wound any horse, mule, jack, jennet or cattle belonging to another. When a trespass has been committed by any cattle or horses on the cleared or cultivated land of any person who has complied with the provisions of this chapter, in the erection of a lawful fence, such person may complain thereof to the justice of the peace of the precinct in which such trespass shall have been committed; and such justice is hereby authorized and required to cause two disinterested and impartial freeholders to be summoned, who shall on oath view and examine whether such complaint be sufficient or not, and what damages have been sustained by said trespass, and certify the same in writing; and, if it shall so appear that said fence be sufficient, then the owner of such cattle or horses shall make just satisfaction for the trespass to the party injured, to be recovered before any tribunal having proper jurisdiction. In case of a second trespass by the same cattle or horses, the owner or lessee of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises or growing crops thereon, cause said stock to be penned and turned over to the sheriff or constable, and held responsible to the person damaged for all damages caused by said stock and all costs thereof. It shall be lawful for the owner or lessee of such inclosures as are contemplated in this law to charge twenty-five cents per day per head for impounding such stock as referred to in this law. [Id.]

Art. 6944. [7232] No election within two years.—After the adoption of the stock law in any county or subdivision, no election under the preceding articles shall be held within the same prescribed limits in less than two years after an election under this law has been held therein; but at the expiration of that time the commissioners court of each county in the State, whenever petitioned to do so by a majority of the freeholders, who are qualified voters under the constitution and laws of a county which has formerly adopted the stock law, or by a majority of the freeholders who are qualified voters under the constitution and laws of the subdivision of a county which has formerly adopted the stock law, shall order another election to be held by the freeholders who are qualified voters under the constitution and laws of such county, or subdivision, to determine whether hogs, sheep and goats shall be permitted to run at large in said county or subdivision, which election shall be ordered, held, notice thereof given, the votes returned and counted in all respects as provided by this law for a first election. [Acts 1899, p. 81.]

Art. 6945. [7233] Proclamation issued.—If, in a county or subdivision which has formerly adopted the stock law, a majority of the legal votes cast at such election shall be "Against the stock law," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of one hundred and eighty days from its issuance it shall be lawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation; if a majority of the legal votes cast at such election shall be "For the stock law," he shall so

state in his proclamation, and the operation of the law shall be in no way affected by such election. [Id.]

Art. 6946. Elections validated.—All elections held in any county in this State for the purpose of determining whether or not hogs, sheep, or goats shall be permitted to run at large in such county or subdivision as provided in this chapter, wherein the petition was filed, orders of the election made by the commissioners court, notice thereof given, such election held and a majority of the freeholders voting at such election, voted in favor of the same, and such election may have been invalidated by the failure of some ministerial officer to perform the duties required of him, the same is hereby in all things validated, and shall be by each court of this State held to be valid elections just the same as if the officers charged with the duty of opening, tabulating and counting the votes, had complied with the law, as provided in this chapter. [Acts 2d C. S. 1919, p. 150.]

3. FREE RANGE ELECTIONS

Art. 6947. Limited free range.—Upon the written petition of fifty freeholders of any county, or upon the petition of twenty freeholders of any subdivision of any county, which county or subdivision has heretofore adopted, or may hereafter adopt, the hog law under the provisions of this chapter the commissioners court of such county shall order an election to be held in said county or subdivision on some day named in the order for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs shall have a free range in said county or subdivision from the fifteenth day of November to the fifteenth day of February, of each year. Whenever there is territory between two subdivisions of a county which have adopted the hog law, and in such intervening territory there is less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory, and the election shall be held for the purpose named herein. If the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated in the same manner as when originally established. [Acts 1919, p. 149.]

Art. 6948. Order by Court.—Upon the filing of such petition, the commissioners court, at a regular or special meeting thereof, shall order an election to be held throughout the county or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns made in accordance with the laws regulating general elections, in so far as the same are applicable. [Id.]

Art. 6949. Order by judge.—Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one; if no newspaper be published in the county then by posting copies of such order at the courthouse door, and at some public place in each justice's precinct, if such election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. The order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall have the limited period of free range.
3. The time in which said animals are to have the limited period of free range.
4. The territorial limits to be affected.
5. The day of election.
6. The places at which polls are to be opened. [Id.]

Art. 6950. Ballots.—All votes at an election held under the provisions of this Act, shall be by ballot; and voters desiring to permit hogs to have a limited period of free range in hog law counties or districts as designated in the order, shall place upon their ballots the words, "For the limited period of free range for hogs," and those against the limited period of free range for hogs shall place upon their ballots the words, "Against the limited period of free range for hogs." [Id.]

Art. 6951. Returns.—The returns shall be opened, tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or two respectable freeholders of the county. [Id.]

Art. 6952. Declaration of result.—If a majority of the votes cast at such election shall be "For the limited period of free range for hogs," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of ten days from its issuance, it shall be lawful to permit hogs to run at large within the limits designated for the period of time between the fifteenth day of November of each year and the fifteenth day of the following February of each year, both days inclusive. [Id.]

Art. 6953. Second election.—Whenever an election is held under the provisions of this law for any county or subdivision, no other election for such purpose shall be held within such county or subdivision for the space of two (2) years, but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county, and, provided that, if the proposition has been defeated for any subdivision of any such county, no other election shall be held thereafter covering or including said territory except an election held in the same locality or subdivision after the lapse of twelve (12) months from the date of said defeat for said subdivision or locality. If, in a county or subdivision which has formerly adopted the limited period of free range for hogs, as provided for under the terms of this law, a majority of the legal votes cast at such election shall be "Against the limited period of free range for hogs," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of ten (10) days from its issuance, it shall be unlawful to permit hogs to run at large within the limits designated; if a majority of the legal votes cast at such election shall be "For the limited period of free range for hogs," he shall so state in his proclamation, and the operation of the law shall in no way be affected by such election. [Acts 1919, p. 149; Acts 1945, 49th Leg., p. 269, ch. 197, § 1.]

CHAPTER 6.—STOCK RUNNING AT LARGE

Art.
6954. Petition.
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6955. Exceptions.
6956. Intervening territory.
6957. Requisites of petition.
6958. Order of court.
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6966. May impound.
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6968. Sale of impounded stock.
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Art.
6970. Unknown owners.
6971. Lawful fence.

Art. 6954. [7235] Petition.—Upon the written petition of one hundred (100) freeholders of any of the following Counties: Anderson, Angelina, Aransas, Armstrong, Atascosa, Austin, Archer, Bastrop, Baylor, Bandera, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazoria, Brazos, Brewster, Briscoe, Brown, Brooks, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Castro, Chambers, Cass, Clay, Cherokee, Childress, Collingsworth, Coleman, Collin, Colorado, Cooke, Comanche, Concho, Crockett, Coryell, Cottle, Crosby, Cochran, Crane, Dallas, Dawson, Deaf Smith, Delta, Dallam, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, Erath, El Paso, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Fisher, Freestone, Frio, Gaines, Galveston, Goliad, Gray, Gregg, Guadalupe, Garza, Glasscock, Gillespie, Gonzales, Grimes, Grayson, Hale, Hamilton, Hansford, Harris, Harrison, Hays, Haskell, Hall, Hardeman, Hartley, Henderson, Hidalgo, Hill, Hood, Hopkins, Howard, Hockley, Hudspeth, Hunt, Hutchinson, Irion, Jeff Davis, Jim Hogg, Jim Wells, Jack, Jackson, Jones, Jefferson, Johnson, Karnes, Kaufman, Kent, Kimble, Knox, Kerr, Kendall, Kleberg, Lamar, Lampasas, Lavaca, Lamb, Lee, Leon, Limestone, Lynn, Lipscomb, Llano, Live Oak, Liberty, Lubbock, Madison, Mason, McLennan, Matagorda, McCulloch, Menard, Moore, Marion, Martin, Maverick, Medina, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Navarro, Nacogdoches, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Panola, Polk, Rains, Randall, Red River, Reagan, Reeves, Real, Refugio, Robertson, Rockwall, Runnels, Rusk, San Patricio, San Saba, San Jacinto, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Stephens, Sterling, Starr, Stonewall, Sutton, Swisher, Tarrant, Tom Green, Taylor, Terrell, Throckmorton, Titus, Travis, Upshur, Uvalde, Victoria, Val Verde, Van Zandt, Washington, Walker, Waller, Webb, Williamson, Wilson, Wise, Ward, Wharton, Wood, Wheeler, Winkler, Wichita, Wilbarger, Young, Zapata, and Zavala, or upon the petition of fifty (50) freeholders of any such subdivision of a County as may be described in the petition, and defined by the Commissioners Court of any of the above-named Counties, Commissioners Court of said County shall order an election to be held in such County or such subdivision of a County as may be described in the petition and defined by the Commissioners Court on the day named in the order for the purpose of enabling the freeholders of such County or subdivision of a County as may be described in the petition and defined by the Commissioners Court to determine whether horses, mules, jacks, jennets, and cattle shall be permitted to run at large in such County or such subdivision of a County as may be described in the petition and defined by the Commissioners Court. [Acts 1925, 39th Leg., p. 197, ch. 56, § 1; p. 274, ch. 99, § 1; p. 277, ch. 101, § 1; Acts 1926, 39th Leg., 1st C.S., p. 17, ch. 11, § 1; Acts 1927, 40th Leg., p. 363, ch. 245, § 1; Acts 1929, 41st Leg., p. 9, ch. 5, § 1; Acts 1929, 41st Leg., 1st C.S., p. 185, ch. 71, § 1; Acts 1929, 41st Leg., 3rd C.S., p. 240, ch. 8, § 1; Acts 1930, 41st Leg., 4th C.S., p. 25, ch. 15; Acts 1931, 42nd Leg., p. 781, ch. 313; Acts 1932, 42nd Leg., 3rd C.S., p. 10, ch. 9, § 1; Acts 1933, 43rd Leg., Sp.L., p. 57, ch. 48, § 1; Acts 1935, 44th Leg., Sp.L., p. 1199, ch. 34, § 1; Acts 1937, 45th Leg., p. 382, ch. 189, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1916, ch. 35, § 1; Acts 1939, 46th Leg., Spec.L., p. 947, § 1; Acts 1943, 48th Leg., p. 115, ch. 85, § 1; Acts 1947, 50th Leg., p. 1024, ch. 439, § 1.]

Acts 1929, 41st Leg., p. 423, ch. 194, §§ 1–18, provides a similar mode by which horses, mules, jacks, jennets, cattle, hogs, sheep and goats may be prevented from running at large in Limestone County.

Art. 6954a. Election as to domestic turkeys running at large.—Upon written petition of twenty-five (25) freeholders of any political subdivision of Blanco, DeWitt, Gonzales, Gillespie, Guadalupe, Parker, Wise, Clay, Collin and Bastrop Counties, the Commissioners Courts of such counties shall order an election to be held in such subdivisions, which subdivision shall be described in the petition and defined by the Commissioners Court, on the day named in the order for the purpose of enabling the freeholders of such subdivisions to determine whether domestic turkeys shall be permitted to run at large in such subdivisions of such Counties. The requisites of the petition, the order of the Court, the order of the County Judge, the election and all proceedings thereunder shall be the same as prescribed in Articles 6957 to 6971, inclusive, of the Revised Civil Statutes of Texas, 1925, Title 121, Chapter 6, and all provisions and revisions thereof, relative to stock running at large, the impounding thereof, and the penalty therefor shall be applicable to domestic turkeys running at large in the event any such subdivision of said counties shall by election prohibit the running at large of domestic turkeys by a vote as in such Statutes provided; provided that the fees for impounding domestic turkeys shall be ten cents (10¢) per day for each domestic turkey so impounded. [Acts 1935, 44th Leg., Spec.L., p. 1174, ch. 10, § 1; Acts 1939, 46th Leg., Spec.L., p. 946, § 1; Acts 1941, 47th Leg., p. 243, ch. 171, § 1; Acts 1945, 49th Leg., p. 153, ch. 104, § 1.]

Art. 6955. Exceptions.—The provisions of the preceding article shall not apply as a whole to Wharton County but shall apply only to such subdivision thereof as may be designated in the manner herein provided; provided, however, that the provisions of this Act shall not apply to Jefferson County as a whole, but shall apply only to such subdivision thereof as may be designated in the manner herein provided; provided, however, that the provisions of this Act shall not apply to Hudspeth County as a whole, but shall apply only to such subdivisions thereof as may be designated in the manner herein provided; provided, however, that the provisions of the preceding article shall not apply to Culberson County as a whole, but shall apply only to such subdivisions thereof as may be designated in the manner herein provided. [Acts 1925, 39th Leg., p. 277, ch. 101, § 1; Acts 1930, 41st Leg., 4th C.S., p. 28, ch. 17, § 1.]

Art. 6956. [7237] Intervening territory.—Whenever there is territory between two subdivisions of a county which have adopted the stock law, and in such intervening territory there are less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory; and the election shall be held as provided by law in other cases relating to the adoption of the stock law. [Acts 1899, p. 220.]

Art. 6957. [7238] Requisites of petition.—Such petition shall set forth clearly the class or classes of animals enumerated in the first article of this chapter, which the petitioners desire shall not run at large in such county, or subdivision, as the case may be; and, if the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated. [Id.]

Art. 6958. [7239] Order of court.—Upon the filing of such petition, the commissioners court at the next regular term thereafter shall pass an order directing an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns thereof made in accordance with the laws regulating

general elections, in so far as the same are applicable. [Id.]

Art. 6959. [7240–1] Order by judge.—Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one, if no newspaper be published in the county, then by posting copies of such order at the courthouse door and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. Said order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened. [Id.]

Art. 6960. [7242 to 7246] Election.—The following rules shall govern any election held under any provision of this chapter:

1. If the election be for a subdivision of the county the county judge, at the time he issues the order for such election shall appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks.
2. Said election shall be held at the usual voting places in the several election precincts if the election is ordered for the whole county; but if the election is ordered for any particular subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened.
3. Only persons who are freeholders and qualified voters under the Constitution and laws shall vote at said election.
4. All votes at any election, in pursuance of this chapter, shall be by ballot, and voters desiring to prevent the animals designated in the order from running at large shall place upon their ballots the words "For the stock law," and those in favor of allowing animals to run at large shall place upon their ballots the words, "Against the stock law."
5. On or before the tenth day after any such election, the persons holding such election shall make due returns to the county judge of all votes cast at their respective voting places for and against said proposition submitted at said election. [Acts 1899, p. 220.]

Art. 6961. [7247] Effect of election.—The returns shall be opened tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or of two respectable freeholders of the county, and an order showing the result shall be duly recorded in the minutes of the commissioners court in the said county. The order showing the result of said election this [1] determined, certified and recorded, shall be held to be prima facie evidence that all the provisions of law have been complied with in presenting the petition, the action of the court thereon ordering the election, the giving of notice and holding said election, and in counting and returning the votes and declaring the result thereof, and, if said election be then declared to be in favor of the stock law, then after thirty days from said date, it shall be prima facie evidence that the proclamation required by law has been made and published as required by law. [Acts 1907, p. 124.]

[1] So in enrolled bill. Should probably read "thus".

Art. 6962. [7248] Proclamation.—If a majority of the votes cast at such election shall be "For the stock law," the county judge shall immediately issue his proclamation declaring the result, which proclamation shall be posted at the courthouse door, and, after the expiration of thirty days from its issuance, it shall be unlawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation. [Acts 1899, p. 220.]

Art. 6963. [7236] Election to repeal law.—Upon the written petition of two hundred freeholders of any of the above named counties, or upon the written petition of fifty freeholders of any subdivision of the above named counties, if the law be in force in that subdivision only, the commissioners court shall be authorized and required to order an election on the date therein named to determine whether or not said law be repealed; provided, such petition be signed by at least twenty-four freeholders from each justice precinct in such county. But if this law becomes operative over any of the above named counties, as prescribed, it can in no case be repealed by any subdivision, except by a two-thirds majority of the votes cast by the freeholders of such counties, at an election held in accordance with the provisions of this chapter. [Acts 1909, p. 121.]

Art. 6964. [7255] Second election.—Whenever an election is held under the provisions of this Chapter for any county or subdivision, and the proposition of a stock law as herein provided is defeated, no other election for such purpose shall be held within that locality for the space of twelve (12) months thereafter; but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county, and provided that, if the proposition has been defeated for any subdivision of any such county, no other election shall be held thereafter covering or including said territory except an election held in the same locality or subdivision after the lapse of twelve (12) months from the date of said defeat for said subdivision or locality. [Acts 1899, p. 220; Acts 1945, 49th Leg., p. 270, ch. 198, § 1.]

Art. 6965. Duty of officers.—It shall be the duty of any sheriff or constable of any county, or subdivision thereof, within this State, where the provisions of this chapter are or may hereafter become operative, to seize any stock which may become known to him to be running at large on any outside premises where the provisions of the stock law are in force, and impound the same in some place provided for that purpose, and immediately notify the owner thereof, if such owner is known to such officer, who may redeem the same on the payment of an impounding fee of one dollar per head, and an additional fee of twenty-five cents per day per head for each day such stock is so kept. [Acts 1915, p. 146.]

Art. 6966. [7249] May impound.—If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or cultivated lands of any person other than the owner of such stock without his consent, in any county or subdivision in which the provisions of this chapter have become operative in the manner provided in this chapter, the owner, lessee, or person in lawful possession of such lands may impound such stock and detain the same until his fees and all damages occasioned by said stock are paid to him; provided that no animals shall be impounded except as provided in the preceding article, unless they have entered upon the inclosed lands or be found roaming about the residence, lots or cultivated land of another, and, whenever any stock is impounded, notice thereof shall be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages. [Acts 1899, p. 220; Acts 1915, p. 146.]

Art. 6967. [7251] Fees for impounding.—Any owner, lessee or person in lawful possession of inclosed lands shall be entitled to the following fees for impounding stock, to-wit: twenty-five cents per day per head for horses and mules, fifteen cents per day per

head for cattle, and ten cents per day per head for jacks and jennets. The damages done by such stock, if any, and the fees due to the taker-up of such stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall, upon the application of the taker-up of the stock, be appointed by the justice of the peace of the precinct in which such subdivision is situated. When such justice shall fail or refuse to make appointments, or when the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this chapter has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees in writing and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with the justice of the peace, which shall be final; provided, that the owner of the stock, if known, shall have five days notice of the time and place of the meeting of said freeholders, and if the owner is unknown, then a written notice thereof shall be posted in two public places in said subdivision and one at the courthouse door of the county. Nothing in this chapter shall be construed to deprive the taker-up of the stock to enforce, by suit, any claim he may have for such fees and damages, and to subject the stock so taken up for the payment of the same under the provisions of this chapter. [Acts 1899, p. 220, sec. 16.]

Art. 6968. [7252] Sale of impounded stock.—After the filing of the assessment, as provided for in the preceding article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like service in civil cases. [Acts 1899, p. 220, sec. 17.]

Art. 6969. Sale if not redeemed.—When any stock shall have been impounded as provided in the third preceding article, and after five days' notice has been given to the owner of such stock, such officer shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like service in civil cases. [Acts 1915, p. 146.]

Art. 6970. [7253] Unknown owners.—If no owner can be found of stock so impounded, such officer or other person taking up any such stock shall make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to the affiant; which affidavit shall be forthwith delivered to the county clerk by such justice to be kept in his office for inspection. After the filing of such affidavit, the constable of the precinct shall sell such stock as in case when the owner is known; and if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the clerk of the county court and pay the same over to the county treasurer to be received by him and placed to the credit of the road and bridge fund of the county. [Acts 1899, p. 220; Acts 1915, p. 146.]

Art. 6971. [7254] Lawful fence.—After the adoption of the stock law in any county, or subdivision, any fence within such county or subdivision shall be deemed a lawful fence if it be sufficient to keep out the classes of stock not affected by the provisions of this chapter. [Acts 1899, p. 220, sec. 19.]

CHAPTER 7.—PROTECTION OF STOCK RAISERS

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7007. Result.
7008. Fees for inspectors; Act inapplicable to certain counties.

Article 6972. [7256 to 7259] Inspector.—Each organized county, not expressly excepted herein, shall constitute an inspection district for the inspection of hides and animals; and at each general election an officer to be styled, "Inspector of hides and animals" shall be elected by the qualified voters of such county, and in each unorganized county the Governor shall appoint such inspector. The word, "inspector," as used in this title, shall mean the inspector of hides and animals. Such inspectors shall hold their office for the term of two years. Until any vacancy in such office is filled by appointment, the sheriff of the county shall discharge the duties of the office. [Acts 1876, pp. 217-295; Acts 1879, p. 89; G. L. vol. 8, pp. 1053-1131-1389.]

Art. 6973. [7260] [5006] Bond.—Each person elected to the office of inspector, before entering on the duties of his office, shall enter into a bond, with two or more good and sufficient sureties, to be approved by the commissioners court of the county constituting his district, payable to the county judge, in a sum to be fixed by said court, not less than one thousand nor more than ten thousand dollars, conditioned that he shall well and truly perform the duties of his office. A sheriff acting temporarily as inspector, pending a vacancy in such office, shall not be required to give additional bond but his official bond as sheriff shall extend to and include the faithful and proper perform-

ance of his duties as inspector ad interim. [Acts 1876, p. 295; G. L. vol. 8, p. 1131.]

Art. 6974. [7262] [5008] Seal of office.—Each commissioners court shall furnish to the inspector for such county a seal of office, having upon it the words, "Inspector of hides and animals, ——— county, Texas" (the blank to be filled with the name of the county), and each inspector and his deputy shall certify their official acts with the impress of such seal. The inspector upon retiring from office shall deliver such seal, together with the books, papers and records of his office to his successor. [Id.]

Art. 6975. [7263–4] Deputies.—Every inspector shall have power to appoint in writing and under his seal as many deputies as shall be necessary to perform the duties imposed on them by this chapter. The inspector shall require bond and security of their deputies for the faithful performance of their duties; and the said deputies shall take and subscribe the official oath. The inspectors shall be responsible to any person injured thereby for the official acts of each of their deputies and they shall have the same remedies against their deputies and their sureties as any person can have against the inspectors and their sureties. [Id.]

Art. 6976. [7265] [5011] Definitions.—As used in this chapter, the words "deputy inspector" shall mean the "deputy inspector of hides and animals," and the words "county," "district," or "inspection district," shall include each organized county in this State not herein excepted, together with any unorganized county that may be attached for judicial purposes to any such county. [Id.]

Art. 6977. [7266] [5012] Take acknowledgments.—Every inspector shall have authority to authenticate bills of sale of animals, and give certificates of acknowledgment of the same under his hand and seal, and shall be allowed to collect fifty cents for every acknowledgment so taken. [Id. p. 302.]

Art. 6978. [7267–8] Inspections and record.—The inspector, in person or by deputy, shall faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries; and shall keep a record, in a well bound book, in which he shall record a correct statement of the number, ages, marks and brands of all animals inspected by him, and the number, mark and brand of all hides inspected by him, and whether the same are dry or green, and the name or names of the vendor and of the purchaser thereof. He shall return a certified copy of all entries made in such record during each month to the county clerk on the last day of each month, which report shall be filed among the records of the county court. [Id.]

Art. 6979. [7629] [5015] Exemption from inspection.—The provisions of this chapter shall not be so construed as to include sheep, goats, swine, or hides of either, nor to involve the re-inspection of salted hides in packeries or other slaughter houses taken from animals previously inspected and returned as provided in the preceding articles. [Id.]

Art. 6980. [7270] [5016] Shall not certify.—No inspector shall grant any certificate of inspection of any unbranded hides or animals, or of hides or animals upon which the marks and brands cannot be ascertained, and he shall prevent the same from being taken or shipped out of the county unless they are identified by proof or by a duly acknowledged bill of sale signed by the owner of such hides or animals. [Id.]

Art. 6981. [7271–2] Seizure.—Every inspector may seize and sequestrate all unmarked or unbranded calves or yearlings, and all calves or yearlings freshly marked or branded, and on which the fresh marks or brands are unhealed, which are about to be slaughtered, or driven or shipped out of the county, unless such animals are accompanied by the mother thereof, or are identified by the presentation of a bill of sale from the person proven to be the owner thereof, signed by him or his legally authorized agent, and acknowledged before some officer authorized to authenticate instruments for record in this State. Every inspector may seize and sequestrate all unbranded animals or hides, and animals and hides upon which the mark or brand cannot be ascertained, which are about to be taken or shipped out of the county, or which animals are to be slaughtered, unless such animals or hides are identified as provided in this article. [Id.]

Art. 6982. [7273] [5019] Procedure as to seizure.—When an inspector has seized any hides or animals as provided for in the preceding article, he shall report the fact to some judge of the district or county court, or justice of the peace, according as the value of the property seized may come within the jurisdiction of either of said courts; and said judge or justice shall issue or cause to be issued a citation addressed, "To all whom it may concern," setting forth a seizure of said property with a description of the same, commanding them to appear at a day named in said citation to show cause why said property should not be forfeited to the county wherein the same was seized, and sold for the benefit of said county. Said citation shall be directed to the sheriff or to any constable of said county, who shall cause certified copies of the same to be posted in three public places in said county for a period of ten days before the day mentioned in said citation. Upon the proof of the posting of said citation, said judge or justice issuing said citation shall proceed to condemn the property mentioned in said citation, unless satisfactory proof shall be made of the ownership of said property, or other sufficient cause be shown why the same should not be condemned. In case of condemnation he shall order the same to be sold by the inspector at public auction to the highest bidder. The inspector shall be entitled to retain one-fourth of the net proceeds of such sale, after deducting therefrom all expenses connected therewith, and he shall immediately pay the remaining three-fourths thereof into the county treasury; and all sums so paid in shall be placed to the credit of the general fund of such county. [Id.]

Art. 6983. [7274] [5020] Bill of sale taken.—Each person who shall buy or drive any animal or animals for sale or shipment out of any county, or who shall buy or drive the same for slaughter, shall, at the time of purchasing and before driving the same, procure a written bill of sale from the owner or owners thereof, or from his or their legally authorized agent. Said bill of sale shall be properly signed and acknowledged. Such bill of sale shall distinctly enumerate the number, kind and age of animals sold, together with all marks and brands discernible thereon; and said animals before leaving the county in which they have been gathered shall be inspected by the inspector of such county or his deputy. [Id.]

Art. 6984. [7275] [5021] In sale of hides.—The purchaser of any hides of cattle at the time of purchasing same shall obtain from the owner thereof, or from his legally authorized agent, a written bill of sale duly acknowledged, which shall recite in full the marks and brands of each hide, the weight thereof, and whether the same is dry or green. [Id.]

Art. 6985. [7276–7] Certificate of inspection.—Whenever an inspector shall have inspected any animal or animals, as herein provided, he shall, on the presentation of a written bill of sale or power of attorney from the owner or owners of such animal or animals, or his or their agent duly authorized in writing, duly signed and acknowledged, and on payment to said inspector of his legal fees, deliver to the purchaser of

the animals mentioned in such bill of sale or power of attorney, or his agent, a certificate setting forth that he has carefully examined and inspected such animal or animals, and that said purchaser has in all respects complied with the law, which certificate shall not be complete until the same and the bill of sale herein provided for shall be recorded in the office of the county clerk of the county, and be certified to by said clerk under his hand and seal. Such certificate shall be then delivered to the purchaser and shall protect him from the payment of inspection fees in any other district for the animals therein described, except from the county from which the same may be exported; provided that any person driving cattle in his own mark and brand shall be entitled to the certificate of inspection provided for herein, on payment of fees to the inspector, and on presentation to the inspector of the certificate of the county clerk of the county where such mark and brand is recorded, to the effect that the mark and brand named therein is duly recorded in his office as the mark and brand of the person so driving such cattle. [Id. Sen. Jour. 1895, p. 484.]

Art. 6986. [7278] Road brand.—Any person who shall drive any cattle to market beyond the limits of this State shall, before removing such cattle from the county where same are gathered, place upon each animal so to be driven a large and plain road brand, composed of any device he may choose, which shall be branded on the left side of the back behind the shoulder; and each person using or causing to be used any road brand shall place the same on record as in the case of other brands, in the county from which the animals are to be driven, and before their removal from such county. [Id.]

Art. 6987. [7279] Export to Mexico.—Any person may drive or ship any animals to Mexico from any point on the coast of Texas, or may drive or ship them across the Rio Grande River at any point where a custom house of the United States is located, but not from any other point; and he shall cause all such animals to be inspected by the inspector of the district in which the point of shipment or place at which they are to be driven across said river is situated before shipment from the State or passage across said river of said animals. [Id.]

Art. 6988. [7280–1] Herds in transit.—Whenever a drove of cattle may be passing through any county, the inspector, if called upon to do so by any person, shall stop and inspect said drove without any unnecessary detention of the same; and he shall exercise the same powers and perform the same duties in the inspection of such cattle as are prescribed above. If any cattle be found in said drove not included in the certificate of the inspector of the county in which the drove may have been gathered, the fees of the inspector shall be paid out of the proceeds of the sale of said cattle; but if no cattle shall be found in said drove except those covered by the inspector's certificate, then the inspector's fee shall be paid by the person at whose instance said drove was inspected. [Id.]

Art. 6989. [7282] Hides from Mexico.—The hides of all cattle imported into this State from Mexico shall be inspected by the inspector of any county or district into which the same may be imported. If the importer of said hides fails or refuses to place such hides in a position where the same may be inspected by said inspector, or if said hides are found by said inspector to be folded or booked in such a manner as that the same may not be inspected without injury to said hides, said inspector shall take possession of such hides and have the same treated in such manner as will enable him to unfold the same without injury thereto. Such inspector shall not be held liable for any damage which may accrue to such hides by reason of the treatment thereof for the purpose of enabling him to inspect the same, and such treatment as may be necessary to enable the inspector to unfold and inspect such hides shall be wholly at the risk of the importer or person in whose possession such hides may be found. In addition to the inspection fees allowed such inspector for the inspection of said hides, there shall be paid by the importer or the person in whose possession said hides may be found after importation, all expenses incurred by said inspector in the treatment of said hides, for the purpose of enabling him to inspect the same as herein provided, such expenses to include drayage and freight charges and all expenses for handling and treatment of said hides. If the importer or the person in whose possession said hides may be found after importation, fails or refuses to pay said expenses for retreatment, or if he fails or refuses to pay the inspection fees as required by law, the inspector may retain possession of said hides and sell a sufficient number thereof, after three days public notice, to the highest and best bidder, to pay said inspection fees and all necessary expenses in connection therewith. [Acts 1876, p. 295; G. L. vol. 8, p. 1131; Acts 1917, p. 325.]

Art. 6990. [7283] Animals imported.—Horses, mules and cattle imported from Mexico into this State shall be inspected in accordance with the provisions of Article 6978, and with like authority to retain and sell as provided in the preceding article for a failure to pay the inspection fees. [Id.]

Art. 6991. [7284–5] Notify if stolen.—If an inspector finds among hides or animals imported from Mexico any hides or animals which from the brand or from other evidence, he has reason to believe have been stolen from the lawful owner, he shall separate said hides or animals from others undergoing inspection and take possession of the same and notify any person he believes to be interested therein to come forward and institute suit for the recovery of the same. If no person appears to claim said hides or animals, the inspector shall within twenty-four hours, make oath before the district judge, the county judge, or any justice of the peace of the county, according to the value of the property involved, that he has reason to believe that said hides or animals have been stolen; whereupon said judge or justice shall issue a citation directing the importer or party claiming the same to appear before him at his office within a time specified, not to exceed twenty-four hours, to show cause why said property should not be condemned. [Id.]

Art. 6992. [7286] [5024] Importer to recover.—If said importer or claimant makes proof that he is the lawful owner of said hides or animals by showing a bill of sale from the owner of same, or his legally authorized agent, and by showing complete chain of transfer of title from the original owner of the brand to himself, or his firm, such judge or justice shall direct the same to be delivered to said importer or claimant upon his paying the inspection fees. [Id.]

Art. 6993. [7287–8] [5025] Hides or animals sold.—If the importer or claimant of said hides or animals fail to establish his claim as the lawful owner of the same, or to any number of hides or animals so seized, the district judge, county judge or justice shall direct that said property be sold at public auction by the inspector, after a notice of ten days, published in a newspaper, should there be one published in said county, or if no newspaper be published in the county, then by written notice, posted at the courthouse door and two or more other places in said county, and the said hides shall be sold to the highest and best bidder. The inspector shall retain twenty-five per cent of the purchase money, after having deducted and paid all necessary expenses incurred by reason of said sale, and he shall deposit the remainder of said purchase money with the county treasurer, and take his receipt therefor. Said treasurer shall place one-half of said sum of money to the credit of the school fund and the other half to the credit of the jury fund of said county. [Id.]

Art. 6994. [7289] [5027] Property delivered to owner.—If any person appears and claims any hides or animals imported from Mexico at any time before the same shall have been sold as above directed, and should said claim be established before such judge or justice of the peace of said county, such property shall be delivered to the claimant, and all costs accruing therein shall be paid by the importer; provided that at any time before proceedings shall have been commenced as above directed the importer may be permitted to pay the lawful owner, his agent or attorney, for any hides or animals imported by him from Mexico and presented in any county of this State for inspection, and upon such payment and the fees for inspection such hides or animals shall be released. [Id. Acts 1917, p. 325.]

Art. 6995. [7291] [5029] Brand recorded once.—In all cases where application for registration of any mark or brand shall be made, the county clerk shall receive and record the same, unless an examination of the recorded list of marks and brands shows that a similar mark and brand is already upon record in such county, in which event he shall refuse to register or give any certificate for the same; provided, that if such applicant shall have previously had such mark and brand recorded in some other county, and shall have a certificate from the clerk thereof, stating that such brand and mark had been recorded in said county at some time anterior to the time of the registration of the similar mark and brand in the county in which the applicant may desire to have his brand recorded, then said brand and mark shall be recorded; and the clerk shall make a minute on the record setting forth said facts. [Id.]

Art. 6996. [7292] [5030] In county of range.—All marks and brands of cattle shall be recorded in the county or counties in which they usually range. When cattle are gathered near the county line, the bills of sale of the same shall be recorded in both counties. When any stock or cattle is sold, the fact shall be noted on the record opposite or near the record of its mark or brand, giving the name of the vendor and vendee and date of sale, and this shall be done as often as there is a sale. The inspector shall procure certified copies of the marks and brands of this county for himself and his deputies, and monthly have added thereto the marks and brands that may be recorded. [Id.]

Art. 6997. [7293] [5031] Only one to be used.—No person owning and claiming stock shall, in originally marking and branding animals, make use of more than one mark and brand. Any person may own and possess animals in many marks and brands, the same having been acquired by him by purchase; and written bills of sale, properly acknowledged from the previous owner or owners shall be sufficient evidence of such purchase, but the increase of such animals, or of any animal counterbranded by such person from other stocks of cattle owned by him, shall be branded or counterbranded by one and the same brand; and when marked by such person shall be marked in one and the same mark. [Id.]

Art. 6998. [7294] [5032] Counterbranding.—In all cases where the counterbranding of any cattle shall be deemed necessary or expedient, the person so counterbranding shall counterbrand the existing brand of the animal by which the owner thereof is then known, or by which it is then claimed and owned, by branding below the said brand its facsimile, that is, similar letters, characters or numbers, as the case may be; and he shall also place on said animals the brand of the then owner thereof; but no person shall change or alter the ear marks of any animal, but in counterbranding shall leave the ears bearing the same mark or marks as before counterbranding. [Id.]

Art. 6999. [7295] [5033] Authority to gather, etc.—Any person having marks and brands recorded in the office of the county clerk may file with the inspector a list of his recorded marks and brands, certified by the clerk under his seal, to which certified lists shall be attached the names of any person or persons whom the owner of said stock may wish to authorize to gather, drive or otherwise handle his stock. The filing of said list with the inspector shall be deemed sufficient authority to the person or persons named in such list to gather, drive or otherwise handle any animals of the marks and brands therein described. [Id.]

Art. 7000. [7296–7] Inspections personal.—In making inspections, the inspector shall not trust to the statement or representations of any persons, but he shall in person carefully inspect and examine each animal or hide separately so as to identify the marks and brands, and in case of animals, the ages and sexes. He shall also carefully examine the bills of sale and lists of brands and marks for the cattle inspected by him; and, if satisfied that the person claiming the cattle inspected has correct bills of sale or chain of transfer in writing from the record owner, or is the owner himself in whole or part of the mark and brand of each animal in his drove or herd which should be inspected, and that he has none other in said herd or under his control to be carried with it, he will then, and not until then, make out a certificate, which he shall first enter in his record, under his hand and seal containing the number of cattle in each mark and brand, with their respective ages and sexes, thus inspected, and that they appear to be the property of the person for whom they were inspected, naming him, as appears by bills of sale from recorded owner of the marks and brands on the cattle inspected by him, or the owner of the brand and mark himself, and that he has none other in his herd or under his control that should be inspected; and that he intends to drive or ship them, naming the place in the State for sale or slaughter; or if out of the State, he shall then name the place on the border of the State through which it is proposed to drive or ship such stock. [Id.]

Art. 7001. [7298] [5036] Inspection before export.—Whenever any person shall be about to drive or ship any stock out of the State, if the inspector shall believe or is informed by any credible person that said person has other stock in his herd than those covered by his original certificate of inspection, or by subsequent purchase duly attested by proper bill of sale, the inspector at said point of shipment or border county where said person leaves the State, shall be authorized to inspect said stock in the same manner as in the original inspection; and, if any stock is found in said herd other than those covered by his original certificate of inspection, or by subsequent purchase duly and properly authenticated by bill of sale, the fees of said inspection shall be paid as provided in Article 6988, provided that said inspector shall in no case be authorized to receive or demand more than three cents per head for each head of cattle inspected; but if not, then said fees shall be paid by the person at whose instance said inspection was made; and if said inspection is made by the inspector at his own instance, and no stock is found in said herd, except those properly accounted for under the provisions of this article, then said inspector shall receive no fees for said inspection. [Acts 1879, S. S. p. 19; G. L. vol. 9, p. 51.]

Art. 7002. [7300] [5038] Seizure of other cattle.—If the inspector at the point of destination shall find upon inspection that the owner of the herd or person in charge has in his herd other cattle besides those inspected originally in the county from which said herd was driven, he shall seize said cattle and take them into possession, and thereupon the same proceedings shall be had as are prescribed in Article

6981. If the person in charge of any such cattle refuses to deliver the same into the possession of the inspector, such inspector may obtain a writ of sequestration from any justice of the peace, county judge or district judge, according as the value of such cattle may come within the jurisdiction of either. Such writ may be obtained upon the affidavit of the inspector, stating that he believes such cattle have been unlawfully acquired, shall issue without bond, and be forthwith executed by the sheriff or any constable of the county; and thereupon said proceedings shall be had before the officer issuing the writ, either in term time or in vacation. [Acts 1876, p. 302; G. L. vol. 8, p. 1138.]

Art. 7003. [7302–3] Proceeds into treasury.—The net proceeds of the sale of cattle condemned under the preceding article, save one-fourth of such proceeds retained by the inspector for his compensation, shall be paid into the county treasury, subject to the claim of the true owner of such cattle. If no claim be set up and established thereto within one year from the date of its deposit, such proceeds shall pass into the general fund of the county, and all claims thereto shall thereafter be barred. At the time such proceeds are originally deposited in the county treasury the inspector shall accompany such deposit with a certified statement, under his hand and seal, of the number of cattle sold, the mark and brand of each animal, with the amount for which sold. [Id.]

Art. 7004. [7304] [5042] Change of destination.—If the owner of the inspected herd desires to sell, slaughter or ship the cattle, or any of them, at any place other than the destination named in the original certificate of inspection, he may do so by first having his herd inspected at the point of destination therein named and a new certificate of inspection issued to him at that point, naming the new point of destination or shipment; and upon his arrival at such new point of destination, like proceedings shall be had in the way of inspection, comparison and return of the certificate of inspection, as are prescribed for the original point of destination. [Id.]

Art. 7005. [7305] [5043] Counties exempt.—The counties of Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Bee, Bell, Bexar, Borden, Bowie, Bosque, Brooks, Brazoria, Brazos, Brewster, Brown, Burleson, Burnet, Caldwell, Callahan, Calhoun, Cameron, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Coryell, Cottle, Crockett, Crosby, Culberson, Dallam, Dallas, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Eastland Ellis, El Paso, Erath, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Garza, Gillespie, Goliad, Gonzales Gray, Grayson, Gregg, Grimes, Guadalupe, Hall, Hamilton, Hansford, Hardeman, Harris, Harrison, Hartley, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jackson, Jack, Jasper, Jeff Davis, Jim Hogg, Johnson, Karnes, Kaufman, Kendall, Kenedy, Kleberg, Knox, Kinney, Lamar, Lamb, Lampasas, Lavaca, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Mason, Matagorda, Maverick, Medina, McLennan, Midland, Milam, Mills, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nueces, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Rains, Randall, Reagan, Red River, Refugio, Robertson, Rockwall, Rusk, Reeves, Sabine, San Augustine, San Patricio, Schleicher, Shelby, Smith, Shackelford, Somervell, Starr, Scurry, Stephens, Sterling, Tarrant, Terrell, Terry, Throckmorton, Titus, Tom Green, Trinity, Tyler, Uvalde, Upshur, Upton, Val Verde, Van Zandt, Victoria, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Williamson, Wilson, Wise, Winkler, Young, Zapata, and Zavala are hereby exempted from the provisions of this Chapter, and from all laws regulating the inspection of hides and animals. [Acts 1921, pp. 43–83; Acts 1925, 39th Leg., p. 266, ch. 92, § 1; Acts 1927, 40th Leg., p. 156, ch. 105; Acts 1931, 42nd Leg., p. 755, ch. 299; Acts 1931, 42nd Leg., p. 852, ch. 360; Acts 1933, 43rd Leg., p. 14, ch. 10; Acts 1933, 43rd Leg., Spec.L., p. 59, ch. 49; Acts 1933, 43rd Leg., p. 636, ch. 213; Acts 1937, 45th Leg., p. 413, ch. 208, § 1; Acts 1943, 48th Leg., p. 84, ch. 66, § 1; Acts 1943, 48th Leg., p. 115, ch. 84, § 1; Acts 1945, 49th Leg., p. 550, ch. 335, § 1.]

Acts 1943, 48th Leg., p. 364, ch. 243, § 1, read as follows: "Potter County is exempted hereby from the provisions of Chapter 7, Title 121, Revised Civil Statutes of Texas (1925) as well as all amendments thereto, and is further exempted from all laws regulating the inspection of hides and animals, and particularly Articles 1471 to 1487, both inclusive, of the Penal Code of Texas (1925)."

Section 3 of the Act of 1943 repealed all conflicting laws.

Art. 7006. [7306] Local option election.—Whenever twenty-five of the qualified voters of each justice precinct in any county, or a majority thereof, shall petition the commissioners court for an election to determine whether such county shall have a hide and animal inspector, said court shall, either at a general or special term, order such election to be held after thirty days notice having been given by posting such notice in each of such justice precincts and by publishing same in some newspaper published in said county, if there be one so published. The clerk of said court shall prepare said notices and the sheriff shall post same and make and file with said clerk return of such posting showing time and place thereof. [Acts 1909, p. 127.]

Art. 7007. [7307 to 7311] Result.—At the time of ordering said election said court shall appoint two judges, designating one of such as presiding judge, and two clerks, who shall hold said election in the same manner as general elections are held. All qualified voters shall be entitled to vote. The ballots shall have written or printed on same "For inspector," or "Against inspector." The presiding judge shall deliver or cause to be delivered one copy of the result of said election, to the county clerk within five days after said election, and retain one copy himself. Within five days after such delivery of such returns to said clerk, the commissioners court shall count the votes and declare the results and enter the same on the election record. The county shall pay the expenses of holding such election. No election shall be held oftener than every two years under this law. If at such election a majority of the votes cast be "For inspector," then the persons holding such offices shall retain same to the next general election until his successor is elected and qualifies. In counties having no inspector, the commissioners court shall appoint one to serve until the next general election. [Id.]

Art. 7008. Fees of inspectors; Act inapplicable to certain counties.—Each inspector of hides and animals, or deputy inspector, provided for in this Chapter shall be entitled to receive Ten (10) Cents for each hide or animal personally inspected by him, but if more than fifty (50) hides or animals are inspected in the same lot, then Ten (10) Cents each for the first fifty (50), and Three (3) Cents each for all above that number, provided that the Commissioners Court of any County not exempted from the provisions of this Chapter may, upon hearing showing the necessity therefor after due notice of the time and place of such hearing having been published once each week for three (3) consecutive weeks in a newspaper of general circulation in such County, by order entered upon the Minutes of such Commissioners Court, authorize said inspector, or deputy inspectors, of said County to charge not to exceed Twenty-five (25) Cents for each hide or animal inspected except in cases where more than fifty (50) hides or animals are inspected in the same lot, in which event no more

than Twenty-five (25) Cents each for the first fifty (50) hides or animals inspected and not to exceed Ten (10) Cents each for all hides or animals above that number shall be authorized. [Acts 1909, p. 127; Acts 1931, 42nd Leg., 1st C.S., p. 73, ch. 33; Acts 1943, 48th Leg., p. 84, ch. 66, § 2.]

Sec. 2. Provided this Act does not apply to the following Counties in Texas: Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bastrop, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazos, Brewster, Briscoe, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Colorado, Collin, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson,[1] Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Freestone, Gaines, Galveston, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Marion, Martin, Mason, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mills, Montgomery, Moore, Morris, Motley, McCulloch, McLennan, Nacogdoches, Navarro, Newton, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Schackelford, Shelby, Sherman, Smith, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Wharton, Wheeler, Wichita, Wilbarger, Wilson, Williamson, Winkler, Wise, Wood, Yoakum, Young, and Zavala. [Acts 1931, 42nd Leg., 1st C.S., p. 73, ch. 33; Acts 1937, 45th Leg., p. 807, ch. 398, § 1; Acts 1943, 48th Leg., p. 84, ch. 66, § 2; Acts 1943, 48th Leg., p. 115, ch. 84, § 1.]

[1] "Deaf Smith" county omitted on the authority of Acts 1943, 48th Leg., p. 115, ch. 84, § 1, effective March 29, 1943, which read as follows: "Article 7005 and Section 2 of Article 7008, under Chapter 7, Title 121, of the Revised Civil Statutes of the State of Texas of the year 1925 Codification, as amended, are each and both hereby amended by striking from each of said Articles the words 'Deaf Smith'". On question of validity of amendment in this form, see Const. art. 3, § 36, and the annotations thereunder.

Section 3 of the Act of 1943, ch. 66, repealed conflicting laws.

CHAPTER 8.—LIVE STOCK SANITARY COMMISSION

Art.
7009. Commission.
7010–7014. [Repealed.]
7014a. Owner vaccinating own hogs.
7015–7040. [Repealed.]

Art. 7009. [7312–13] Commission.—The Governor shall within thirty (30) days after this Act becomes effective by, and with the advice and consent of the Senate appoint three (3) citizens of the State, as a Live Stock Sanitary Commission of the State of Texas. The Governor shall designate one such member as a Chairman. Each Commissioner shall give a bond payable to the State of Texas in the sum of Ten Thousand Dollars ($10,000) to be approved by the Comptroller. Each Commissioner shall be a bona fide resident of and a practical live stock raiser in the community from which he may be appointed, and shall have been actively engaged in said business for at least five (5) years next preceding the date of his appointment. One of said Commissioners shall be appointed from the West, one from the South, and one from the Eastern portion of Texas. The word "Commission" as used in this Chapter shall mean the Live Stock Sanitary Commission of the State of Texas. That beginning with the appointment of said Commissioners, the term of office of the members of the Commission shall be for a period of six (6) years, except that those first appointed shall be appointed for two (2), four (4), and six (6) years, and that they shall serve until their successors have been appointed and have duly qualified. All vacancies which shall occur in the Commission for any reason shall be filled in the same manner as hereinbefore provided and shall be for the unexpired term. [Acts 1893, p. 70; Acts 1937, 45th Leg., p. 253, ch. 131, § 1.]

Arts. 7010–7014. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53, § 38.]

Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53, §§ 1–37, containing numerous penal provisions is published as Pen. Code, Article 1525c.

Art. 7014a. Owner vaccinating own hogs.—No law of this State shall prevent any person from vaccinating, inoculating, or treating his own hogs or for any person employed as County Demonstration Agent from vaccinating, inoculating or treating any hogs in the county where he is employed with hog cholera virus or serum or other remedy; or dogs with any serum or virus that will prevent rabies, and any law in conflict with this Act is hereby repealed. [Acts 1927, 40th Leg., p. 217, ch. 146, § 1.]

Arts. 7015–7040. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53, § 38.]

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CHAPTER 1.—LEVY OF TAXES AND OCCUPATION TAXES

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Article 7041. [7349] Board constituted.—The Governor, Comptroller and State Treasurer are constituted a board to calculate the ad valorem tax to be levied and collected each year for State and public free school purposes. [Acts 1907, p. 464.]

Art. 7042. [7350] Certificate to Comptroller.—Each tax assessor shall make a statement to the Comptroller on or before July 15th of each year showing as nearly as can be ascertained from his inventories or assessments the total amount of property in each county subject to taxation; provided, that the tax for State and public free school purposes shall not be calculated and carried out upon said rolls. [Acts 1st C. S. 1909, p. 371.]

Art. 7043. [7351] Ascertaining tax rate; formula.—Within five (5) days after the Comptroller has received such certified statements from every Assessor within this State, said Board shall meet for the purpose of calculating the ad valorem rate of taxes to be collected for the State and public free school purposes. In calculating said rates the Board shall calculate the same by the following rules and upon the following basis: they shall find, by adding together all the property subject to taxation in all counties as shown by the certified statements returned by the Assessors, the total valuation of all property within this State subject to ad valorem taxes. They shall find, by adding together the sums appropriated by the Legislature, which will or which may become due by the State, during the following fiscal year, the amount fixed by the Board of Education for public free school purposes, as the State apportionment, the

total sum of which will or which may become due by the State, during the following fiscal year. They shall find, by adding all sums paid into the State Treasury as delinquent ad valorem taxes and interest and penalties thereon during the first half of the current calendar year and latter half of the preceding calendar year and all sums which may be expected to be paid as taxes for State purposes from all sources other than ad valorem taxes, the total sum expected to be collected from all said sources. They shall find, by subtracting from the total sum which will or which may become due by the State during the succeeding fiscal year, the total sum which may be expected to be paid as taxes for State purposes from all sources other than current ad valorem taxes, the total sum for State purposes which must be collected by current ad valorem taxes. They shall add to such remainder twenty (20) per cent of said remainder. They shall add the total sum for State purposes which must be collected by ad valorem taxes added to twenty (20) per cent of such total sum by the quotient of the total valuation of all property within this State divided by one hundred (100). The quotient shall be the number of cents on the one hundred dollars valuation to be collected for the current year for State purposes; provided that said quotient shall not be run to more than three (3) decimals. The rate for State purposes shall never exceed the rate fixed by law on the one hundred dollars valuation of property. In calculating the rate to be collected for public free school purposes, said Board shall take into consideration the number of children in the State within the scholastic age, to be determined from the most recent official school census; in arriving at the rate that shall be fixed for public free school purposes, said Board shall set the rate so that it will yield the amount per student that has been previously fixed by the Board of Education, provided the rate so fixed for any year shall not exceed the rate fixed by law. [Acts 1907, 1st C.S., p. 461; Acts 1929, 41st Leg., 3rd C.S., p. 527, ch. 33, § 1; Acts 1931, 42nd Leg., 2nd C.S., p. 53, ch. 32, § 1; Acts 1939, 46th Leg., p. 625, § 1; Acts 1943, 48th Leg., p. 260, ch. 160, § 1; Acts 1945, 49th Leg., p. 75, ch. 53, § 1.]

Art. 7044. [7352] Certify rate to tax assessor.—The Comptroller shall certify to the tax assessor of each county through registered letter, the rate of taxes for State purposes and for public free school purposes for the current year, and shall also publish immediately such rate for thirty days in some newspaper published in the State and having a general circulation therein; and as soon as such tax assessor has received notice of such rate he shall calculate the taxes due the State for State purposes, and also the taxes due for public free school purposes, on all taxable property within his county as set out in the preceding article, and shall carry the same out upon the copies of the tax rolls of the county to be delivered to the tax collector and to the county clerk, and to be returned to the Comptroller. After he has so completed the said copies of the tax rolls, he shall return to the Comptroller a copy of the same. [Acts 1st C.S. 1907, p. 464.]

Art. 7045. [7353] County rate.—The Commissioners courts of the several counties, all the members thereof being present, at either a regular or special session, may at any time after the tax assessors of their respective counties have forwarded to the Comptroller the said certificate and prior to the time when the tax collector of such county shall have begun to make out his receipts, calculate the rate and adjust the taxes levied in their respective counties for general purposes to the taxable values shown by the assessment rolls. [Id.]

Art. 7045a. [Expired May 1, 1945.]

The article was Laws 1943, 48th Leg., p. 381, ch. 256, § 3, contained provisions identical with those of article 7045 and additional provisions relating to levy of taxes when any member of Commissioners Court or the county Judge was in military service. It provided that it should be effective until the date set out in section 1 of the act which suspended the provisions of article 7045 until May 1, 1945.

Art. 7046. [7354] [5048] Poll tax.—There shall be levied and collected from every person between the ages of twenty-one and sixty years, resident within this State on the first day of January of each year (Indians not taxed, and persons insane, blind, deaf or dumb, or those who have lost one hand or foot, or are permanently disabled, excepted), an annual poll tax of one dollar and fifty cents, one dollar for the benefit of the free schools, and fifty cents for general revenue purposes. Said tax shall be collected and accounted for by the tax collector each year and appropriated as herein required. No county shall levy more than twenty-five cents poll tax for county purposes. The poll tax due from citizens of unorganized counties shall be paid in the county to which the unorganized county is attached for judicial purposes. [Acts 4th C. S. 1920, p. 11.]

Art. 7047. [7355] [5049] Occupation taxes.—There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this article, an annual occupation tax, which shall be paid annually in advance except where herein otherwise provided, on every such occupation or separate establishment, as follows: [Acts 1st C. S. 1897, p. 49.]

1. Itinerant merchants.—From every merchant who may remove from place to place and offer for sale "bankrupt stocks" of goods, or advertising "fire sales" or "water and fire damaged stocks for sale," for a limited period of time, there shall be collected one hundred dollars per month for the first month, or less than a month, for each place where such business is located; and for each additional month that such sales are continued at any given place, said merchant shall pay an additional sum of twenty dollars. Where they remain for six months or more in any place, in addition to the one hundred dollars charged for the first month, they shall pay an additional sum of ten dollars per month. [Id.]

2. Traveling vendors of patent medicines.—From every traveling person selling patent or other medicines, fifty dollars, and no traveling person shall so sell until said tax is so paid. This tax shall not apply to commercial travelers, drummers, or salesmen making sales or soliciting trade for merchants engaged in the sale of drugs or medicines by wholesale. [Acts 1st C. S. 1897, p. 49: Acts 1917, p. 335.]

3. Itinerant physicians, etc.—From every itinerant physician, surgeon, oculist or medical or other specialist of any kind, traveling from place to place in the practice of his profession, except dentists practicing from place to place in the county of their residence, an annual tax of fifty dollars. [Acts 1907, p. 57.]

4. [Repealed by Acts 1931, 42nd Leg., 2nd C.S., p. 61, ch. 37, § 1.]

5. Clock peddlers.—From every person or firm who peddles out clocks, agricultural implements, cooking stoves or ranges, wagons, buggies, carriages, surreys, and other similar vehicles, washing machines and churns, an annual tax of two hundred and fifty dollars, to be paid in each county in which said occupation is pursued; provided, that a merchant shall not be required to pay this special tax for selling the articles named in this subdivision when sold in his place of business. [Acts 1st C.S. 1897, p. 49.]

6. Auctioneers. From every auctioneer, there shall be collected an annual tax of Ten Dollars ($10). [Acts 1st C.S., 1897, p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1; Acts 1939, 46th Leg., p. 627, § 1; Acts 1943, 48th Leg., p. 654, ch. 372, § 1.]

7. Brokers and Factors. From every person, acting for himself or on behalf of another, engaged in

the business or occupation of a Broker or Factor, whether he is principally engaged in such business or not, there shall be collected Ten Dollars ($10) per year. A "broker" or "factor," for the purpose of this subsection, is every person who, for another and for a fee, commission or other valuable consideration, rents, buys, sells, or transfers, for actual spot or future delivery, or negotiates purchases or sales or transfers of stocks, bonds, bills of exchange, negotiable paper, promissory notes, bank notes, exchange, bullion, coin, money, real estate, lumber, coal, cotton, grain, horses, cattle, hogs, sheep, produce and merchandise of any kind; whether or not he receives and delivers possession thereof; provided that this subsection shall not apply to a salesman who is employed on a salary or commission basis by not more than one retailer, wholesaler, jobber, or manufacturer, nor shall this subsection apply to or be construed to include persons selling property only as receivers, trustees in bankruptcy, executors, administrators, or persons selling under the order of any Court, or any person who is included within the definition of any other occupation and is paying or subject to the payment of a tax under any other subsection of this Act; however, this exemption shall not apply to any individual engaged in more than one occupation as defined by the other subsection of this Act. [Acts 1897, 1st C.S., p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1; Acts 1943, 48th Leg., p. 654, ch. 372, § 2.]

8. Repealed by Acts 1943, 48th Leg., p. 654, ch. 372, § 3.

The repealed subd. was amended by Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.

9. Ship Brokers.—Every person, firm, association of persons or corporation engaged in the management of business matters occurring between the owners of vessels and the shippers, or consignors of the freight which they carry, shall be deemed a ship broker for the purpose of this Act. Every ship broker shall pay an annual tax of Twenty-five Dollars ($25.00). [Acts 1st C.S. 1897, p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.]

10 (a) Insurance Adjusters. From every person engaged in the occupation of adjusting insurance losses in this State, there shall be collected an annual tax of Ten Dollars ($10).

For the purpose of this subsection, a person shall be deemed to be engaged in the occupation of adjusting insurance losses when he investigates, or ascertains the liability or amount of damage, or negotiates the adjustment of insurance claims or losses, or reports thereon; whether employed by an insurance company, or companies, or the insured, or is a member of a firm, association of persons, or an employee, or representative, or officer of such firm, association, or of a corporation, when such firm, association, or corporation is engaged in adjusting insurance losses. Provided that this tax shall not apply to any local, recording, soliciting or special agents of any insurance company, nor to any person regularly employed on a salary by any insurance company, who may adjust insurance losses only for a company represented by him, such person not charging or being paid for his services as an insurance adjuster on a fee basis.

(b) General Agents. From every person acting as a general agent of any insurance company that may transact any insurance business in this State, there shall be collected an annual tax of Twenty-five Dollars ($25).

For the purpose of this subsection, a "general agent" shall be a person, firm, association or corporation, who may exercise a general supervision or control over the business of one or more insurance companies in this State and who maintains a supervisory office or offices, with the authority to appoint local agents or special agents; and who, in the case of fire, marine and casualty insurance companies, receives, records, inspects, underwrites and files the daily reports from local agents of the business done by such local agents. Separate taxes shall not be charged for individual members of such firms, associations or corporations, but a separate tax shall be levied for each separate establishment maintained by such general agents. Provided that this tax shall not apply to any local or special agents of fire, marine or casualty insurance companies, or any local or soliciting agents, or district, division, or branch managers, of life, accident, health, or industrial insurance companies. [Acts 1897, 1st C.S., p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1; Acts 1943, 48th Leg., p. 654, ch. 372, § 3.]

11. Repealed by Acts 1943, 48th Leg., p. 654, ch. 372, § 5.

12. Repealed by Acts 1943, 48th Leg., p. 654, ch. 372, § 6.

Subd. 12 was amended by Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.

13. Pawnbrokers.—From every pawnbroker, an annual tax of one hundred and fifty dollars. [Acts 1st C.S. 1897, p. 49.]

14. Loan brokers.—From loan brokers, as that term is defined by the laws of this State, an annual tax of one hundred and fifty dollars for each place of business. [Acts 1915, p. 50.]

15. Money Lenders.—Money lenders as hereafter defined, an annual tax of One Hundred and Fifty Dollars ($150.00) for each place of business. A money lender, for the purpose of this section, is a person, firm or corporation, or agent or agents for, or anyone representing a person, or persons, firm or corporation, who regularly pursues the business of lending money with or without security, and charges or receives therefor a fee, brokerage or other charge of any kind whatsoever, provided, this tax shall not apply to persons, firms, associations or corporations who lend money on or incident to real estate nor shall this tax apply to banks or banking institutions and life insurance companies regularly organized as such. [Acts 1st C.S. 1897, p. 49; Acts 1931, 42nd Leg., 2nd C.S., p. 68, ch. 41, § 1.]

16. From each person, party, partnership or corporation engaged in the business of inquiring into and reporting upon the credit or standing of persons engaged in business in this State, or acting as agent or business manager in this State for any such person, party, partnership, joint stock association, or corporation, three hundred dollars. The payment of this tax, evidenced by the receipt of the Comptroller of Public Accounts, shall exempt the party paying the same from the payment of this tax in any other county, or to any city or town; and payment of such tax shall not be required of any sub-agent or correspondent of the party or company carrying on such business in this State.

17–19. [Repealed by Acts 1930, 41st Leg., 5th C.S., p. 168, ch. 34, § 2.]

20. Repealed by Acts 1943, 48th Leg., p. 654, ch. 372, § 7.

21. Street car companies.—From every street car company in this State, two dollars per mile on each mile of track owned by said company or corporation. [Acts 1st C. S.1897, p. 49.]

22. [Repealed by Acts 1930, 41st Leg., 5th C.S., p. 169, ch. 35, § 3.]

22a. Theaters.—There shall be collected from the owner, proprietor or operator of every opera house, theatre, tent, airdome or other structure whose theatrical or dramatic presentations, musical comedy shows, moving pictures or other entertainments or exhibitions are given for profit in cities, towns and villages under 1,000 inhabitants, an annual tax of $5.00; in towns and cities of 1,000 inhabitants and under 2,500 inhabitants, an annual tax of $15.00; in towns and cities of 2,500 inhabitants and under 5,000 inhabitants, an annual tax of $20.00; in towns and cities of 5,000 inhabitants and under 10,000 inhabitants, an annual tax of $30.00; in towns and cities of 10,000 inhabitants and under 15,000 inhabitants, an annual tax of $30.00; in

towns and cities of 15,000 and under 20,000, an annual tax of $40.00; in towns and cities of 20,000 inhabitants and under 30,000 inhabitants, an annual tax of $50.00; in towns and cities of 30,000 inhabitants and under 40,000 inhabitants, an annual tax of $60.00; in towns and cities of 40,000 or more, an annual tax of $75.00. In each case the population shall be determined by the last preceding Federal Census.

Sec. 2. Said annual tax shall be collected from the owner, proprietor of every opera house, theatre, tent, airdome or other structure where theatrical or dramatic presentations, musical comedy shows, moving pictures or other amusements, entertainments or exhibitions are given for private profit in such cities, towns or villages of the sizes aforesaid; provided, further, if any opera house, theatre, tent, airdome or other such structure is transported from place to place, and is used in the manner and for the purposes herein set out in more than one city, town or village, only one annual occupation tax shall be collected from the owner, proprietor or operator of said opera house, theatre, tent, airdome or other structure, as set out in Section 1 hereof; provided, that in addition to the State Occupation Tax herein imposed, counties, incorporated cities, towns and villages shall each have the power and authority to collect one-half (½) of the amount of such State Occupation Tax. [Acts 1930, 41st Leg., 5th C.S., p. 169, ch. 35.]

Section 3 of Acts 1930, 41st Leg., 5th C.S., p. 169, ch. 35, repeals subdivision 22, and all conflicting laws and parts of laws.

23. Coin Operated Vending Machines.—From every owner, manager, or exhibitor of every coin operated phonograph, electrical piano, electrical batter, graphophone, weighing machine, target pistol, miniature golf machine, miniature football machine, miniature baseball machine, miniature race track stereoscopic machine, gum machine, candy machine, cigarette machine, handkerchief machine, sandwich machine, or any other class or kind of machine, whether enumerated or not, where a fee is charged, which is used for the purpose of amusement, entertainment or for vending commodities, merchandise, confections, or service of any kind and which is operated by coins or metal slugs or tokens similar to coins, where such fee is in excess of five (5) cents, an annual tax of Ten Dollars ($10.00), on each machine; where such fee is five (5) cents, an annual tax of Five Dollars ($5.00), on each machine; and where such fee is one (1) cent, an annual occupation tax of One Dollar ($1.00) for each machine; provided that from every owner, manager, or exhibitor of every coin operated marble machine, marble table machine, marble shooting table, or marble machine of any description, whether enumerated or not, where a fee is charged, whether used for the purpose of amusement, entertainment, or for vending commodities, merchandise, confections, or services of any kind, and which is operated by coin or metal slugs or tokens similar to coins or metal slugs where such fee is one (1) cent or more, an annual occupation tax of Ten Dollars ($10.00) for each machine; provided that the provisions of this subdivision shall not apply to pay telephones and gas meters which are operated with coins. It shall be unlawful to operate, show or exhibit any of the machines or instruments covered by this subdivision without having annexed or attached thereto where same is plainly visible, the tax receipt covering such machine or instrument for the current year for which same is operated, shown or exhibited; provided that all funds derived from the occupation tax on such marble machines shall be placed to the credit of the State Available School Fund. [Acts 1st C.S. 1897, p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212; Acts 1933, 43rd Leg., p. 409, ch. 162, § 11a.]

24. Circus and Shows.—From every person, firm, association of persons or corporation exhibiting performances such as a circus, menagerie, wild west show, dog and/or pony show or show wherein broncho busting, rough riding, equestrian or acrobatic feats are performed, or any other show, exhibition or performance similar thereto, or any combination feats are performed, or any combination of any of the foregoing, for which admission fee is demanded or received for each day or part thereof on which performances or exhibitions are given, the following amount, respectively:

(a) Where such shows and/or exhibitions travel on railroads and require transportation of:

	Each Day
Not more than two (2) cars	$ 25.00
Three (3) to five (5) cars, inclusive	40.00
Six (6) to ten (10) cars, inclusive	55.00
Eleven (11) to twenty (20) cars, inclusive	75.00
Twenty-one [1] to thirty (30) cars, inclusive	100.00
Thirty-one (31) cars and over	225.00

(b) Where such shows and/or exhibitions travel by automobile trucks, or other conveyances, and require transportation of:

	Each Day
Not over two (2) loads	$10.00
Three (3) to five (5) loads, inclusive	15.00
Six (6) to ten (10) loads, inclusive	20.00
Eleven (11) to twenty (20) loads, inclusive	25.00
Twenty-one (21) to thirty-five (35) loads, inclusive	35.00
Thirty-six (36) to fifty (50) loads, inclusive	50.00
Over fifty (50) loads, per load in excess thereof	2.00

Every show or exhibition which advertises itself as being any of those described in this Section shall be held to be such for the purpose of levying and collecting the occupation tax herein provided. [Acts 1911, p. 142; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.]

[1] So in enrolled bill. Should probably read "Twenty-one (21)".

25. (a) Menageries, Museums. From every menagerie, waxworks, side show, or exhibition connected with or exhibiting or showing in connection with a circus where a separate fee for admission is demanded or received Ten Dollars ($10) for every day in which fees for admission are received; provided, that from any museum, menagerie, or zoological exhibition or combination thereof operated and maintained in any city or town and open for admission all day continuously, in which a charge for admission is demanded or received, an annual tax of Fifty Dollars ($50).

(b) Carnivals. From every carnival showing or exhibiting in this State, there shall be collected in advance a quarterly tax of Fifty Dollars ($50); provided that from every carnival showing or exhibiting in only one county in this State in any calendar year there shall be collected in advance the quarterly tax of Fifty Dollars ($50) until One Hundred Dollars ($100) has been paid, whereupon no additional tax shall be collected during the same calendar year so long as such carnival has shown in only one county during such calendar year; it being the purpose hereof to require carnivals showing in only one county in any calendar year to pay not more than One Hundred Dollars ($100) per year. [Acts 1915, p. 209; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1; amended Acts 1943, 48th Leg., p. 654, ch. 372, § 8.]

26. Waxworks, etc.—From every menagerie waxworks, exhibition exhibit or display of any kind where a separate fee for admission is demanded or received, not connected with a theatre or circus, Two Dollars ($2.00) for every day on which fees for such admission are received. [Acts 1st C.S. 1897, p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.]

27. Wrestling Matches and Acrobatic Performances.—From every exhibition of a wrestling match or matches and every exhibition where other acrobatic feats are performed and an admission fee is charged or received, not connected with a circus or theatre, Ten Dollars ($10.00) for each performance. [Acts 1st C.S. 1897, p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.]

28. Slight of hand performances.—From every slight of hand performance or exhibition of legerdemain, not connected with the theater or circus, twenty-five dollars. [Acts 1st C.S. 1897, p. 49.]

29. Medicine shows, etc.—From each owner, manager or keeper of every show or company of persons giving exhibitions of music, songs, recitations, slight of hand, gymnastic, dancing or other kinds of performances in a tent, house or elsewhere, which said exhibitions are used for profit by sale of medicines, electric belts or other articles of value, whether charge is made only for seats or not, an annual occupation tax of fifty dollars and a county occupation tax of two dollars and fifty cents for every such performance or exhibition; provided, this tax shall not be assessed when these performances are given inside the grounds of any State or county fair during the time that said State or county fair is giving its annual exhibition. [Id.]

30. Concerts, etc.—For every concert where a fee for admission is demanded or received, two dollars; provided, that entertainments when given by the citizens for charitable purposes, or for the support or aid of literary or cemetery associations are exempt. [Id.]

31. Rodeos. From every rodeo exhibition wherein bronco busting, rough riding, equestrian, acrobatic feats, and roping contests are performed or exhibited in which performers receive wages, salaries, or other remuneration other than prizes awarded to winning contestants, there shall be collected by the Comptroller a tax of Ten Dollars ($10) a day or part thereof on which such rodeo is held or exhibited. [Acts 1923, 2nd C.S., p. 44; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1; Acts 1943, 48th Leg., p. 654, ch. 372, § 9.]

32. Baseball Parks.—From every owner or lessee of a baseball park where admission fees are charged in cities or towns of less than ten thousand (10,000) inhabitants, or within five (5) miles thereof, an annual tax of Ten ($10.00) Dollars; in cities or towns of ten thousand (10,000) and less than twenty-five thousand (25,000) inhabitants, or within five (5) miles thereof, an annual tax of Twenty-five Dollars ($25.00); in cities or towns of twenty-five thousand (25,000) inhabitants and less than fifty thousand (50,000), or within five (5) miles thereof, an annual tax of Fifty Dollars ($50.00); in cities or towns of fifty thousand (50,000) inhabitants, or more, or within five (5) miles of any such city or town, an annual tax of One Hundred Dollars ($100.00); provided, that this schedule shall not apply to baseball parks owned or maintained in good faith by educational institutions located in this State. [Acts 1st C.S. 1897, p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.]

33. Race tracks.—From every owner or manager of every race track, one mile or more in length, used for profit, one hundred dollars; from each owner or manager of every race track, one-half mile or less in length, fifty dollars per annum; provided, this shall not apply to race tracks owned by private individuals and used only for training purposes, or in connection with agricultural fairs and expositions. [Acts 1st C. S. 1897, p. 49.]

34. Skating rinks.—From each and every owner or keeper of any skating rink used for profit, twenty-five dollars. [Id.]

35. Shooting Gallery. From every person, firm, association of persons, or corporation, owning or operating a shooting gallery at which a fee is paid or demanded, there shall be collected an annual tax of Fifteen Dollars ($15). [Acts 1897, 1st C.S., p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1; Acts 1943, 48th Leg., p. 654, ch. 372, § 10.]

36. Nine and Ten Pin Alleys. From every person, firm, association of persons, or corporation, owning or operating for profit every nine or ten pin or other alley, by whatever name called, constructed or operated upon the principle of a bowling alley, upon which pins, pegs, balls, rings, hoops or other devices are used, there shall be collected an annual tax of Ten Dollars ($10) for each track or alley, provided, however, that said tax shall not exceed One Hundred Dollars ($100) in any such year. [Acts 1917, p. 385; Acts 1943, 48th Leg., p. 654, ch. 372, § 11.]

37. Hobby Horses, etc.—From all persons keeping or using for profit any hobby horse, flying jenny, or other device of that character, with or without name, an annual tax of Twenty-five Dollars ($25.00). [Acts 1st C.S. 1897, p. 49; Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.]

38. Tax on dealers in cannon crackers, etc.—From every person, firm or corporation engaged in the occupation of selling cannon crackers, or toy pistols used for shooting or exploding cartridges, within this State, an annual tax of five hundred dollars, and counties and incorporated cities or towns in which such business is located shall have the power to levy a tax of one-half the above amount as now provided by law in addition to the above tax, and such person, firm or corporation so selling such cannon crackers shall be required to pay an additional tax in the above amount and take out an additional license for each separate establishment or place in which such cannon crackers shall be sold. By the term "cannon cracker" is meant any fire cracker or other combustible package more than two inches in length, and more than one inch in circumference commonly sold and exploded for purposes of amusement. Nothing herein shall be so constructed [1] as to prohibit the sale of, or to place a tax on, the sale of cartridges, combustible packages or explosives commonly used for firearms or artillery, mining, excavating earth or stone, scientific purposes or for any public or private work. [Acts 1909, p. 174.]

[1] So in enrolled bill. Should probably read "construed".

39. [Repealed by Acts 1931, 42nd Leg., p. 111, ch. 73, § 12; Acts 1933, 43rd Leg., p. 383, ch. 153, § 23; Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 23.]

40. [Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22.]

40A. [Repealed by Acts 1941, 47th Leg., p. 269, ch. 184, Art. III, § 1.]

Acts 1941, 47th Leg., p. 269, ch. 184, Art. III, § 1, purported to repeal Acts 1931, 42nd Leg., p. 355, ch. 212, § 1, which amended enumerated subdivisions of Article 7047 and added other subdivisions, including subdivision 40A. Since section 1 of article III of the Act of 1941, incorporated in subd. 40b of this article merely revised the occupation tax on sulphur producers, it was apparently the legislative intent to repeal only subdivision 40A relating to the occupation tax on sulphur producers.

40b. Occupation tax on sulphur producers.—Section 1. Sulphur Producers: Each person, firm, association, or corporation who owns, controls, manages, leases, or operates any sulphur mine, or mines, wells, or shafts, or who produces sulphur by any method, system, or manner within this State shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller in this State, or if such person be other than individual, sworn to by its president, secretary, or other duly authorized officer, on such forms as the Comptroller shall prescribe, showing the total amount of sulphur produced within this State by said person during the quarter next preceding, and at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter ending on said date an amount equal to One Dollar and Twenty-seven and Two Tenths Cents ($1.272) per long ton, or fraction thereof, of all sulphur produced by said person within the State of Texas during said quarter.

Each person subject to the payment of this tax shall cause to be made, kept, and preserved a full and complete record of all sulphur produced in this State by it, all of which record shall be open at all times to official inspection and examination by the Comptroller or the Attorney General, or any employee of

or representative of the Comptroller or the Attorney General. Said records may be destroyed after three years from the last entry appearing in any such record. Any person failing to keep such record, or records, as herein required, shall forfeit to the State of Texas as a penalty any sum not less than Five Hundred Dollars ($500) nor more than Five Thousand Dollars ($5,000), payable to the State of Texas, and each ten (10) days of failure to keep such records shall constitute a separate offense and subject the offender to additional penalties for each such period of failure to keep such records. Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this Article within thirty (30) days after same is due and payable shall pay to the State as a penalty an additional amount equal to ten (10) per cent of the taxes due, and such tax and penalty shall draw interest at the rate of six (6) per cent per annum from the due date until paid. The Attorney General or any district or county attorney at the direction of the Attorney General shall bring suit in behalf of the State to recover the amount of taxes, penalties, and interest past due and payable by any person affected by this law. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, or other concern by whatever name or howsoever organized, formed, or created.

The Comptroller may require such other information and such additional reports as he may deem advisable.

Said tax shall be in lieu of the tax imposed by Chapter 74, Acts, Fifth Called Session, Forty-first Legislature and House Bill No. 251, Chapter 212,[1] Section 1, Acts of the Regular Session of the Forty-second Legislature,[2] and by Acts, Forty-fourth Legislature, Third Called Session, Chapter 495, Article 4, Section 6,[2] and each and all of such Acts are hereby repealed, except as to the sulphur produced prior to the date this Act shall take effect, and the tax shall be paid on such sulphur so produced at the rate provided in such Act, and the taxes collected shall be allocated as therein provided, and all reports provided for in such Act shall be made to the Comptroller. No offense against, and no liability or penalty, either civil or criminal, incurred on account of a violation heretofore of any or all of the provisions of such Acts or any amendments thereof, shall be discharged or affected by this Act, but prosecutions and suits shall be instituted and proceeded with in all respects as if such Acts had not been repealed herein; and the procedure prescribed in such Acts or in any other applicable existing laws shall be followed in all prosecutions and suits, now pending or hereafter instituted on account of such offenses, or liabilities.

Sec. 2. The tax levied in this Article shall be allocated as hereinafter provided in this Act. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. III.]

[1] Article 7066a.
[2] Article 7047, subd. 40a.

41. Textbook publishers.—Each individual, company, corporation or association, whether incorporated under the laws of this State, or of any other State or Nation, engaged in publishing, printing and selling such text-books as are used, or will be used, in the schools of this State, or owning, controlling or managing any such business within the State or out of it, and having State agencies within this State for the purpose of selling any such books, to be used in any of the Schools of this State, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president or treasurer or superintendent of such company, corporation or association, or of the person owning, controlling or managing such business, showing the gross amount received from such business done within this State from any and all sources during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the State Treasurer an occupation tax for the quarter beginning on said date equal to one percent of said gross receipts as shown by said report. The provisions of this Article shall not apply to any corporation organized by the students and faculty of any State supported institution of learning and which has no capital stock and pays no dividends and is organized for the purpose of supplying books and other school supplies to the student of such institution and whose assets on the dissolutions of the corporation pass to the governing board of the institution as a trust fund to be used for the benefit of the institution. [Acts 1930, 41st Leg., 5th C.S., p. 175, ch. 37, § 1.]

41a. Cement Distributors. (a) There is hereby imposed a tax of two and one half (2½) cents on the one hundred (100) pounds, or fractional part thereof, of cement on every person in this State manufacturing or producing in and/or importing cement into this State, and who thereafter distributes, sells or uses; provided, however, no tax shall be paid except on one sale, distribution or use. The person liable for said tax is hereby defined as a "distributor," to be allocated as hereinafter provided. [As amended Acts 1941, 47th Leg., p. 269, ch. 184, Art. XII, § 1.]

(b) Such tax shall be due and payable at the Office of the Comptroller, at Austin, on the 25th day of each succeeding month based on the business done the preceding calendar month, and on or before said date such distributor shall also make and deliver to the Comptroller a report, sworn to, showing all cement distributed, used and sold, upon which a tax accrues as well as all produced within this State and imported into or exported out of this State, and such other information as the Comptroller may require.

(c) A complete record of the business done, together with any other information the Comptroller may require, shall be kept by each distributor; which said records shall be open to the Comptroller, Attorney General, Auditor, and their representatives. The Comptroller shall adopt rules and regulations for the enforcement hereof.

(d) No person shall act as distributor in this State who shall be delinquent in the payment of said taxes, and the Attorney General may enjoin his acting as such and may enforce the provisions hereof by suit instituted in Travis County, or other county having venue.

(e) If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars ($25.00), and not more than One Thousand Dollars ($1,000.00) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax promptly, he shall forfeit two per cent (2%) thereof as a penalty, and, after the first twenty (20) days, he shall forfeit an additional eight per cent (8%). Delinquent taxes shall draw interest at the rate of eight per cent (8%) from due date. The State shall have a prior lien for all delinquent taxes, penalties and interest on all of the property used by the distributor in his business of distributing, selling and/or using cement.

(f) One-fourth (1/4) of the taxes imposed herein, unless otherwise provided, shall be placed to the credit of the Available School Fund. No tax shall be imposed upon any interstate [1] sale or transaction, nor upon any sale, distribution or use exempt under either the State or Federal Constitutions, and no other like occupation tax shall be imposed by any municipal corporation on cement. [Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.]

42. Receipts.—All receipts issued to cover payment of occupation taxes herein provided, where issued to cover a place of business, shall be kept posted

by the person to whom issued in a conspicuous place in said place of business so as to be subject to inspection at all times by State and County authorities. Those receipts issued to cover coin-operated vending machines or instruments shall be kept on, annexed or attached to such machines or instruments. All taxes shall be paid for the calendar year or remaining part thereof, due on January 1st, unless otherwise provided. [Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.]

43. Penalty.—Whoever shall pursue or follow any occupation, calling or profession or do any act taxed by law, or exhibit any machine or instrument, for which a tax is required to be paid, without exhibiting and displaying the tax receipt issued to him in the manner provided in this Act shall be guilty of a misdemeanor and upon conviction, fined in any sum not exceeding Fifty Dollars ($50.00). [Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.]

44. Forfeiture.—If any person licensed under this Act shall purchase from any farmer or other producer of any of the commodities or other country produce described in Subdivision 4, Section 1, hereof, and give in payment thereof a check or draft or other written order intended to be in payment of any such commodities, which said check, draft, or written order intended to be in payment of any of such commodities is not promptly paid on presentation thereof in due course, the giver thereof shall forfeit the license as provided for herein and shall not be entitled to receive another license for one year after the giving of such check, draft, or other written order intended to be in payment of such commodities. [Acts 1931, 42nd Leg., p. 355, ch. 212, § 1.]

[1] So in enrolled bill. Session Laws read "intrastate".

45. [Repealed by Acts 1941, 47th Leg., p. 269, ch. 184, Art. XI, § 1.]

Subd. 45 was Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 7.

46. Occupation tax on production of lamp black.—Section 1. (a) There is hereby levied an occupation tax on every person, agent, receiver, trustee, firm, association, or copartnership manufacturing or producing carbon black in this State, such tax to be as follows:

1. On "Class A" carbon black said tax to be one hundred twenty-two twelve hundredths (122/1200) of one (1) cent per pound on all such carbon black produced or manufactured where the market value is four (4) cents per pound or less, and shall be four and one tenth (4.1) per cent of the value of all such carbon black produced or manufactured where the market value is in excess of four (4) cents per pound.

2. On "Class B" carbon black said tax to be thirty-one two hundred fortieths (31/240) of one (1) cent per pound on all such carbon black produced or manufactured where the market value is four (4) cents per pound or less, and shall be five and two tenths (5.2) per cent of the value of all such carbon black produced or manufactured where the market value is in excess of four (4) cents per pound.

"Class A" carbon black as used in this Article means carbon black manufactured or produced by the use of less than two hundred (200) cubic feet of gas per pound of carbon black.

"Class B" carbon black as used in this Article means carbon black manufactured or produced by the use of more than two hundred (200) cubic feet of gas per pound of carbon black.

Should one (1) or more of the classifications herein be declared for any reason to be discriminatory or unconstitutional or for any reason invalid, then there is hereby levied on all carbon black manufactured or produced in this State a tax of one hundred twenty-two twelve hundredths (122/1200) of one (1) cent per pound on all carbon black produced or manufactured where the market value is four (4) cents per pound or less, and a tax of four and one tenth (4.1) per cent of the value of all carbon black produced or manufactured where the market value is in excess of four (4) cents per pound.

The market value of a particular type or grade of carbon black shall be the average sales price of that type or grade of all bona fide sales made during the month on which the tax is being paid less the cost of packing, freight, and cartage. If no carbon black of the particular type or grade has been sold during the month for which the tax is being paid then the actual market value of the same shall be the average sales price of that type or grade of all bona fide sales during the last preceding month in which a bona fide sale of that particular type or grade of carbon black was made, less packing, freight, and cartage.

(b) The tax herein imposed shall be due and payable at the office of the Comptroller at Austin on the 25th day of each succeeding month. On or before such date each person, agent, receiver, trustee, firm, corporation, association, or copartnership manufacturing or producing carbon black in this State shall file with the Comptroller of Public Accounts a report on a form prescribed by the Comptroller which report shall show the amount of carbon black manufactured or produced during the preceding month by said person, agent, receiver, trustee, firm, corporation, association, or copartnership. Such information shall be segregated according to grades and types of carbon black and the report shall show how much of each grade or type manufactured or produced by the person, agent, receiver, trustee, firm, corporation, association, or copartnership was actually manufactured or produced during the month on which the tax is being paid. The tax shall be computed on each grade or type reported separately by taking the rate of tax as imposed by Section (a) hereof after determining the actual market value as that term is defined therein of said grade or type and multiplying such rate against the amount of the particular type or grade of carbon black actually manufactured or produced during the month on which the tax is being paid. The tax is to be paid on all carbon black manufactured or produced during the month whether the same has been sold or not. The reports provided for herein shall contain such other information as the Comptroller of Public Accounts shall require.

(c) A complete record of the business done, together with any other information the Comptroller may require, shall be kept by such distributor; which said record shall be open to the Comptroller, Attorney General, Auditor and their representatives; the Comptroller shall adopt rules and regulations for the enforcement hereof.

(d) In the event any person engaged in the business of producing or manufacturing carbon black in this State shall become delinquent in the payment of taxes herein imposed, the Attorney General may enjoin such person from producing or manufacturing carbon black until the delinquent tax is paid, and the venue of any such suit for injunction is hereby fixed in Travis County.

(e) If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars ($25) nor more than One Thousand Dollars ($1,000) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax promptly, he shall forfeit two (2) per cent thereof as penalty, and after the first twenty (20) days he shall forfeit an additional eight (8) per cent. Delinquent taxes shall draw interest at the rate of eight (8) per cent from due date. The State shall have a prior lien for all delinquent taxes, penalties, and interest, on all property used by the producer or manufacturer in his business of manufacturing and producing carbon black.

(f) The term "carbon black" as herein used includes all black pigment produced in whole or in part

from natural gas, casing-head gas or residue gas by the impinging of a flame upon a channel disk or plate, and the tax herein imposed shall reach all products produced in such manner.

(g) This tax is in lieu of the tax imposed by Section 7 of Article 4 of House Bill No. 8, Chapter 495, Acts, Third Called Session, Forty-fourth Legislature,[1] and such Section is hereby repealed, save and except as to all carbon black manufactured or produced prior to the effective date of this Act; and as to all taxes, penalties, reports, and liabilities due, effective or accruing prior to the effective date of this Act or by virtue of carbon black manufactured or produced prior to the effective date of this Act; and as to all of such carbon black so manufactured or produced and as to all such taxes, penalties, interest, reports, fines, forfeitures, liabilities, or duties and procedure in connection therewith such Section shall remain in full force and effect, and all taxes, fines, interest, penalties, obligations, reports, and duties owing or due to the State of Texas on the effective date of this Act or by virtue of carbon black manufactured or produced prior to the effective date of this Act and due by virtue of Section 7 of Article 4, Chapter 495, Acts, Third Called Session, Forty-fourth Legislature, shall remain and be valid and binding obligations to the State of Texas. Nothing in this Article or this Act shall prejudice the rights of the State of Texas in any lawsuit now pending or that may be brought hereafter, either by or against the State for or on account of the collection of any tax, fine, interest, or penalty that has accrued or may accrue by virtue of Section 7, Article 4, Chapter 495, Acts, Third Called Session, Forty-fourth Legislature.

Sec. 2. The tax levied in this Article shall be allocated as hereinafter provided in this Act.[2] [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XI.]

1 Article 7047, subd. 45.

2 See Article 7083a.

Section 13 of the Act of 1943, provided that all occupation taxes, penalties, and interest accruing to the State of Texas by virtue of any repealed or amended Act, section or subsection as set out in this Act, before the effective date hereof, shall remain valid and binding obligations to this State.

Section 14 provided that the passage of this Act shall not affect offenses committed, or prosecutions begun, under any pre-existing law.

Section 15 provided that any provision in this Act, or any portion of this Act, to the contrary notwithstanding shall not be construed as levying any tax on any new occupation be construed as levying any increased and/or additional tax of any kind or character whatsoever provided that existing taxes might be reenacted at not more than the existing rate of taxation immediately prior to the effective date of this Act.

Section 16 provided that partial invalidity should not affect remainder of Act.

Section 17 declared an emergency.

Section 2 of Acts 1931, repeals all conflicting laws and parts of laws. Section 3 provides that if any section or part is declared invalid such decision shall not affect the remainder.

Acts 1931, p. 68, ch. 41, § 1, purporting to amend subdivision 14 of this article violated Const. Art. 3, § 35 because containing legislation not expressed in the title. Katz v. State, 12 Cr.R. 231, 54 S.W.2d 130.

Subdivision 23 of this article taxing operators of cigarette vending machines held void as containing matter not germane to amended statute nor expressed in caption. Ex parte Turner, 122 Cr.R. 357, 55 S.W.2d 833.

Section 2 of Acts 1929, 41st Leg., 2nd C.S., p. 16, ch. 11 repealed Acts 1929, 41st Leg., 1st C.S. p. 253, ch. 104, Pen. Code, art. 1137e.

Art. 7047a. Occupation tax on stock exchanges.—There shall be levied on and collected from every person, firm, corporation, or association of persons owning, operating, managing, controlling, or pursuing the business or occupation of any cotton exchange quotation service in this State, or furnishing quotations on the stock market on grain, cotton, or other commodities, or stocks and bonds, and who maintain an office or place of business, or branch office, and have a bulletin board or other means of furnishing quotations on the stock market, an annual State occupation tax of Two Hundred and Fifty ($250.00) Dollars, which shall be paid annually in advance, or as otherwise provided by law for the payment of occupation taxes, on each and every separate establishment, office, branch office, or place of business; provided, the tax herein levied shall be only One Hundred ($100.00) Dollars for each person, firm or corporation which is a member of only one commodity exchange; provided, this Article shall not apply to any person, firm or corporation, or association of persons who furnish gratuitously market quotations to any person desiring the same and who are not engaged in the business of furnishing market quotations and without intent to solicit or accept orders for contracts, or contracts for future deliveries or sales of any commodity, stock or bonds; provided, further, any person, firm or corporation liable for a tax under this Article shall not be required to pay the tax under Sections 8 and 12 of Article 7047, but shall pay the tax provided by this Article; provided, further, each county or city in which same is operated may levy one-half the occupation tax herein provided for in the manner now provided by Article 7048. [Acts 1930, 41st Leg., 5th C.S., p. 116, ch. 4, § 1.]

Art. 7047a—1. [Repealed by Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4.]

The article repealed was Acts 1933, 43rd Leg., 1st C.S., p. 320, ch. 116; Acts 1935, 44th Leg., p. 905, ch. 354.

Art. 7047a—2. Tax on coin operated machines; definitions.—The following words, terms and phrases as used in this Act[1] are hereby defined as follows:

(a) The term "owner" as used herein shall mean and include any person, individual, firm, company, association or corporation owning or having the care, control, management or possession of any "coin-operated machine" in this State.

(b) The term "operator" as used herein shall mean and include any person, firm, company, association or corporation who exhibits, displays or permits to be exhibited or displayed, in his or its place of business or upon premises under his or its control, any "coin-operated machine" in this State.

(c) The term "coin-operated machine" as used herein shall mean and include every machine or device of any kind or character which is operated by or with coins, or metal slugs, tokens or checks, "merchandise or music coin-operated machines" and "skill or pleasure coin-operated machines" as those terms are hereinafter defined, shall be included in such terms.

(d) The term "merchandise or music coin-operated machine" as used herein shall mean and include every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending merchandise, commodities, confections or music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: candy machines, gum machines, sandwich machines, handkerchief machines, sanitary drinking cups, phonographs, pianos, graphophones, radios, and all other coin-operated machines which dispense or vend merchandise, commodities, confections or music.

(e) The term "skill or pleasure coin-operated machines" as used herein shall mean and include every coin-operated machine of any kind or character whatsoever, when such machine or machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined herein. The following are expressly included within said term: marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature football machines, miniature golf

machines, miniature bowling machines, and all other coin-operated machines which dispense or afford skill or pleasure. Provided that every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to such games or dispensing of skill or pleasure shall be considered as skill or pleasure machines and taxed at the higher rate fixed for such machines.

(f) The term "service coin-operated machines" shall mean and include pay toilets, pay telephones and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4(a–f).]

[1] Articles 7047—2 to 7047—18.

Art. 7047a—3. Amount of tax.—Every "owner" as that term is hereinabove defined, who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machines" as that term is defined herein, shall pay and there is hereby levied on every coin-operated machine as defined in this Act,[1] except such as are exempted herein, an annual occupation tax determined by the following schedule:

Series "1." (a) For each "merchandise or music coin-operated machine" as that term is hereinabove defined, a fee of Twenty Dollars ($20), where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of five cents (5¢), or represents a value in excess of five cents (5¢).

And (b) a fee of Two Dollars and Fifty Cents ($2.50) where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of one cent (1¢) and not exceeding five cents (5¢) or represents a value in excess of one cent (1¢) and not exceeding five cents (5¢).

Series "2." (a) For each "skill or pleasure coin-operated machine" as that term is hereinabove defined, a fee of Sixty Dollars ($60) where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of five cents (5¢), or represents a value in excess of five cents (5¢).

And (b) a fee of Thirty Dollars ($30) where the coin, fee or token used, or which may be used, in the operation thereof, is one of the value in excess of one cent (1¢) and not exceeding five cents (5¢) or represents a value in excess of one cent (1¢) and not exceeding five cents (5¢).

Provided that nothing herein shall prevent the "operator" of such machines from paying the tax levied in this Act for the account of the "owner" but the payment of such tax by such operator or other person shall not relieve the owner from the responsibility of complying with all provisions of this Act including the keeping of the records required herein. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 1.]

[1] Articles 7047—2 to 7047—18.

Art. 7047a—4. Exemptions from tax.—Gas meters, pay telephones, pay toilets, and cigarette vending machines which are now subject to an occupation or gross receipts tax and "service coin-operated machines" as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Section.[1] [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 2.]

[1] Articles 7047—2 to 7047—18.

Art. 7047a—5. Public nuisance.—Every coin-operated machine subject to the payment of the tax levied herein, and upon which the said tax has not been paid as provided herein, is hereby declared to be a public nuisance, and may be seized and destroyed by the Comptroller of Public Accounts, his agents, or any law enforcing agency of this State as in such cases made and provided by law for the seizure and destruction of common nuisances. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 3.]

Art. 7047a—6. Injunction; venue; payment of tax as condition precedent; records.—(a) Any person who shall invoke the power and remedies of injunction against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin him from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a Court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(b) Before any restraining order or injunction shall be granted against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin the collection of the taxes levied herein the applicant therefor shall pay into the suspense account of the State Treasury all taxes, fees, and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent, or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the Comptroller of Public Accounts of this State or their authorized representatives, a well bound book record, showing all coin-operated vending machines possessed and in operation during the pendency of such restraining order or injunction. Such book record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the Comptroller of Public Accounts daily, excluding Sundays and legal holidays, a report on a form to be prescribed by said Comptroller, showing the ownership, make and kind, and the serial number of every such machine operated by said applicant within this State. Said report shall also show the county, city, and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is changed such information shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case shall have been finally disposed of by the Court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The Comptroller of Public Accounts of this State, or his authorized representatives, may file in the Court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Act or has violated the same. Upon the filing of said affidavit, the Clerk of said Court shall issue notice to the said applicant to appear before such Court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the Court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the Sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed all taxes, fees and assessments, paid into the suspense account of the Treasurer under the provisions of this Act shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of such taxes the funds so deposited shall be refunded by the Treasurer to said applicant.

No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the Comptroller of Public Accounts, to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the Comptroller of Public Accounts all taxes, fees, and assessments due by him under the provisions of this Act and said restraining order or injunction shall, in no way, interfere with or impair the power of the Comptroller of Public Accounts of this State to collect and enforce the payment of the taxes, fees, and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as herein before provided. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 4.]

Art. 7047a—7. Serial number; stamping on machine; penalty.—(a) For the purpose of enabling the Comptroller to determine the tax liability of the owners or operators of coin-operated vending machines in this State, or whether a tax liability has incurred, every individual, company, corporation, and/or association who owns, operates or displays any coin-operated machine in this State shall have a separate and different serial number stamped by indenture into the stationary wood or metal of each machine in a manner that such serial number cannot be removed or transferred to another machine, and such serial number shall be shown on the application for a license or permit and on the license or permit issued. If any person shall indent the same serial number on more than one machine or shall exhibit, display or have in his possession within this State any coin-operated machine with the license or permit of the Comptroller attached thereto and bearing the wrong serial number or a license or permit bearing a different serial number from the serial number stamped by indenture on said machines, he shall be guilty of a misdemeanor and punished as set out in Subsection 11 of this Section. The possession, exhibition or display of more than one machine bearing the same serial number operated under the same management or ownership, shall be prima facie evidence that the owner of such machines indented the same serial number on each machine for the purpose of evading payment of the tax levied herein.

(b) Provided further, the license or permit issued by the Comptroller to evidence the payment of the tax levied herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 5.]

Art. 7047a—8. Rules and regulations; forfeitures of licenses or permits.—(a) The Comptroller of Public Accounts shall have the authority to make and publish rules and regulations, not inconsistent with this Act [1] or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Act and the collection of the revenues hereunder.

(b) If any individual, company, corporation or association who owns, operates, exhibits or displays any coin-operated machine in this State, shall violate any provision of this Act or any rule and regulation promulgated hereunder, the Comptroller of Public Accounts shall have the power and authority to forfeit all licenses or permits issued to any of the foregoing persons by giving written notice, stating the reason justifying such forfeiture and the same shall be forfeited five (5) days from date of such notice. No new licenses or permits shall be issued within a period of one (1) year to any one whose licenses or permits have been forfeited, except at the discretion of the Comptroller of Public Accounts. If the licenses or permits of any individual, company, corporation, or association owning, operating or displaying coin-operated machines in this State is forfeited, such individual, company, corporation, or association shall not operate, display or permit to be operated or displayed such machines until the licenses or permits are reinstated or until new licenses or permits are granted. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 6.]

1 Articles 7047a—2 to 7047a—18.

Art. 7047a—9. Licenses or permits; collection of tax; payment of expenses.—The Comptroller of Public Accounts of this State is hereby authorized, ordered and directed to collect, and issue licenses or permits for the payment of the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Act.[1] Provided, however, that where the tax, as now levied under the provisions of Chapter 116, Acts of the First Called Session of the Forty-third Legislature as amended by Chapter 354, Acts of the Regular Session of the Forty-fourth Legislature,[2] upon coin-operated vending machines, has been paid at the time of the taking effect of this Act, then, and in that event, the said Comptroller of Public Accounts is authorized and empowered to make proper adjustment thereof, by crediting pro rata, upon the annual basis, any unearned tax, to the payment of the tax hereby levied. Provided further, that Ten Thousand Dollars ($10,000) of the funds derived under the provisions of this Act shall be set aside annually in a special fund subject to the use of the Comptroller and so much of said fund as may be necessary shall be expended for the printing of applications, licenses and permits and for the administration and enforcement of the provisions of this Act and so much of the proceeds of said fund shall be and the same is hereby appropriated for said purposes, same to be paid as needed; any unexpended portion of said fund so specified shall at the end of the biennium be paid in the proper proportion to the funds to which the tax levied herein is apportioned. Provided, however, that any salaries so here authorized to be paid shall not exceed in any particular the amount specified in the general appropriation bill passed at the Forty-fourth Legislature, Regular Session, for the same, similar or like services. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 7.]

1 Articles 7047a—2 to 7047a—18.
2 Article 7047a—1.

Art. 7047a—10. Existing laws; violations not authorized.—Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or coin-operated machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any Article of the Penal Code of this State or the Constitution of this State. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 8.]

Art. 7047a—11. Records; forfeiture of licenses.—Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and Comptroller of Public Accounts of this State, or their authorized representatives, a complete book record in a well bound book of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for per-

mit and shall include the following information: The make, kind and serial number of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine by serial number, including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address of each and every operator together with the serial numbers of the machines operated by such operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine. The Comptroller of Public Accounts shall be authorized and it shall be his duty to forfeit all licenses, permits of every owner failing to keep such records or failing to present such records for inspection at any time upon demand by said Comptroller of Public Accounts or his authorized representatives. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 9.]

Art. 7047a—12. Violations of act; penalty; suit to recover penalty.—If any "owner" of a coin-operated machine within this State shall (a) deliver to or permit to be delivered to any "operator" a coin-operated machine without a valid license or permit issued by the Comptroller of Public Accounts of this State being attached thereto, or (b) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said license or permit being attached thereto, or (c) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a license or permit issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or (d) shall exhibit, display or have in his possession in this State any coin-operated machine without a serial number stamped by indenture into the wood or metal of said coin-operated machine, or (e) if any person shall exhibit, display or possess any coin-operated machine in this State with a license or permit attached thereto and bearing a different serial number from the serial number stamped by indenture on the machine to which said permit is attached, or (f) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (g) shall fail to keep such records, or (h) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or (i) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Act,[1] or (j) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Act, or (k) if any person in this State shall fail to comply with the provisions of this Act, or violate the same, or (*l*) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General of this State in a Court of competent jurisdiction in Travis County, Texas, or any Court having jurisdiction. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 10.]

[1] Articles 7047a—2 to 7047a—18.

Art. 7047a—13. Offenses; penalty.—(a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a valid license or permit issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or (b) shall exhibit, display or have in his possession in this State any coin-operated machine without a serial number stamped by indenture into the wood or metal of said coin-operated machine, or (c) if any person shall exhibit, display or possess any coin-operated machine in this State with a license or permit attached thereto bearing a different serial number from the serial number stamped by indenture on the machine to which said permit is attached, or (d) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (e) shall fail to keep such records, or (f) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or (g) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Act,[1] or (h) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Act, or (i) if any person in this State shall fail to comply with the provisions of this Act, or violate the same, or (j) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200). [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 11.]

[1] Articles 7047a—2 to 7047a—18.

Art. 7047a—14. Sealing machine to prevent operations; penalty for breaking seal.—Provided that the Comptroller of Public Accounts, or his authorized representatives, in lieu of seizing any coin-operated machine upon which the tax has not been paid as provided in Subsection (3) herein, may seal such machine in a manner that will prevent further operation. Whoever shall break the seal affixed by said Comptroller or his authorized representatives, or whoever shall exhibit or display any such coin-operated machine after said seal has been broken, or shall permit to be exhibited or displayed in his place of business any coin-operated machine after said seal has been broken shall be guilty of a misdemeanor and upon conviction shall be punished as set out in Subsection 11 of this Section.[1] [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 12.]

[1] Article 7047a—13.

Art. 7047a—15. Apportionment of tax; tax levy by counties and cities.—Except as herein provided in this Act,[1] one-fourth (¼) of the net revenue derived from this Section shall be credited to the Available School Fund of the State of Texas and three-fourths (¾) of the net revenue derived from this Section shall be credited to the Old Age Assistance Fund of this State. Provided that all counties and cities within this State may levy an occupation tax on coin-operated machines in this State in an amount not to exceed one-half (½) of the State tax levied herein. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 13.]

[1] Articles 7047a—2 to 7047a—18.

Art. 7047a—16. Taxes, penalties and interest under re-enacted or repealed statutes.—All occupation taxes, penalties and interest accruing to the State of Texas by virtue of any of the reenacted or repealed provisions as set out in this Act [1] before the effective date of this Act shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or preexisting laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Act shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 14.]

1 Articles 7047a—2 to 7047a—18.

Art. 7047a—17. Partial invalidity.—If any section, subdivision, paragraph, sentence, clause or word of this Act [1] be held invalid or unconstitutional, the remaining portions of same shall, nevertheless, be valid; and it is declared that such remaining portions would have been enacted, notwithstanding such unconstitutional portion thereof. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 15.]

1 Articles 7047a—2 to 7047a—18.
Subsection 16 of section 4 of article 3 of Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, repealed Acts 1933, 43rd Leg., 1st C.S., p. 320, ch. 116, as amended by Acts 1935, 44th Leg. p. 905, ch. 354, and further repealed "all laws and parts of laws that conflict herewith."

Art. 7047a—18. Apportionment of tax.—The revenues derived under and by virtue of the tax levied in this Section [1] shall be credited one-fourth (¼) to the Available School Fund and three-fourths (¾) to the Texas Old Age Assistance Fund, credited by the Treasurer. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 4, subsec. 17.]

1 Articles 7047a—2 to 7047a—18.

Art. 7047a—19. Admission taxes; reports; apportionment.—Every person, firm, association of persons, or corporation owning or operating any place of amusement which charges a price or fee for admission, including exhibitions in theaters, motion picture theaters, opera halls, and including horse racing, dog racing, motorcycle racing, automobile racing, and like contests and exhibitions, and including dance halls, night clubs, skating rinks, and any and all other places of amusements not prohibited by law, shall file with the State Comptroller a quarterly report on the twenty-fifth day of January, April, July, and October for the quarter ending on the last day of the preceding month; said report shall show the gross amount received and the price or fee for admission; provided, however, no tax shall be levied under this Act on any admission collected for dances, moving pictures, operas, plays, and musical entertainments, all the proceeds of which inure exclusively to the benefit of State, religious, educational, or charitable institutions, societies, or organizations, if no part of the net earnings thereof inures to the benefit of any private stockholder or individual or for any type of exhibition or amusement conducted by and for which all of the net proceeds inure to the benefit of a nonprofit corporation organized and chartered under the Laws of the State of Texas, for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock; and provided further, that theaters, motion picture theaters, operas, plays and other like amusements where the admission charge is less than fifty-one cents (51¢) per person, and where no tax is due hereunder, shall be relieved from the filing of a report and the payment of a tax levied under the provisions of this Section. Said person, firm, association of persons, or corporations, at the time of making such report shall pay to the Treasurer of this State a tax in rates and amounts as follows:

1. A tax of one cent (1¢) on each ten cents (10¢) or each fractional part thereof paid as admission to theaters, motion picture theaters, operas, plays, and like amusements where the admission charged is in excess of fifty-one cents (51¢) per person.

2. A tax of one cent (1¢) on each ten cents (10¢) or each fractional part thereof paid as admission to horse racing, dog racing, motorcycle racing, automobile racing, and like mechanical or animal contests and exhibitions.

3. A tax of one cent (1¢) on each ten cents (10¢) or a fractional part thereof paid as admission to dance halls, night clubs, skating rinks, and any and all other like places of amusements, contests, and exhibitions where the admission charge is in excess of fifty-one cents (51¢).

4. On the amounts paid for admission by season ticket, subscription, or lease for admission to any place of amusement, a tax equivalent to ten per centum (10%) of the amount paid therefor, provided a single admission to the place of amusement would be subject to taxation under the foregoing provisions.

5. On all passes or complimentary tickets to any place of amusement where a tax on admission is levied under this Section of this Act a tax equivalent to one cent (1¢) on each ten cents (10¢) or each fractional part thereof charged as admission where the admission charge to such place of amusement is in excess of fifty-one cents (51¢) per person.

6. All the revenues derived under and by virtue of this Section shall be credited by the Treasurer, one-fourth (¼) to the Available School Fund, and three-fourths (¾) to the Texas Old Age Assistance Fund. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 6; Acts 1937, 45th Leg., p. 311, ch. 161, § 1; Acts 1947, 50th Leg., p. 687, ch. 347, § 1.]

Art. 7047a—20. Comptroller of Public Accounts to collect occupation taxes.

Authority to collect

Section 1. The Comptroller of Public Accounts of the State of Texas is, from January 1, 1942, the effective date of this Act, authorized and required to collect, and all persons, firms, corporations, or associations shall pay to the Comptroller of Public Accounts, all State occupation taxes levied upon any occupation or business by Article 7047, Revised Civil Statutes of Texas of 1925, and House Bill No. 514, Acts of 1931, Forty-second Legislature, page 447, Chapter 267,[1] and House Bill No. 20, Acts of 1927, Fortieth Legislature, page 324, Chapter 220,[2] any law or parts of laws to the contrary notwithstanding.

Rules and regulations

Sec. 2. The Comptroller of Public Accounts shall have the power and authority to make and publish rules and regulations, not inconsistent with any existing laws or with the Constitution of this State or of the United States, for the enforcement of the provisions of this Act and the collection of revenues hereunder.

Forfeiture for violation of rules and regulations

Sec. 3. If any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts or violate the same, he shall forfeit to the State the sum of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any other court having jurisdiction.

Certified claim as evidence

Sec. 4. If any person, firm, corporation, or association of persons engaging in or pursuing any occupation on which, under the laws of this State, an occupation tax is imposed, who fails or refuses to pay such tax, and it becomes necessary to intervene in any manner for the establishment of collection of said tax claims or penalties provided for under the laws of this State, in any judicial proceedings, a claim showing the amount of tax due the State, certified to by the Comptroller of Public Accounts or his chief clerk, shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof;

provided however, that the incorrectness of said claim may be shown.

Venue in civil suits

Sec. 5. Venue of any civil suit or other civil proceedings filed under the provisions of this Act shall be in a court of competent jurisdiction in Travis County, Texas, or in the county where the defendant in such proceedings has his domicile.

Venue in prosecutions

Sec. 6. Venue of a prosecution for violation of any provision of this Act shall be in Travis County, Texas, or in the county where the offense occurred.

Repeals; saving clause

Sec. 7. All laws and parts of laws in conflict herewith and requiring the Assessors-Collectors of the various counties of the State to collect State occupation taxes levied by Article 7047, Revised Civil Statutes of Texas of 1925, and House Bill No. 514, Acts of 1931, Forty-second Legislature, page 447, Chapter 267,[1] and House Bill No. 20, Acts of 1927, Fortieth Legislature, page 324, Chapter 220,[2] are hereby expressly repealed. Provided, however, that all occupation taxes, penalties, and interest accruing to the State of Texas by virtue of any of the re-enacted or repealed provisions as set out in this Act before the effective date of this Act shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or pre-existing laws, and all such taxes, penalties, and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Act shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

1 Article 7047d and Pen.Code, art. 489a.
2 Article 7429a and Pen.Code, art. 1137a.

Partial invalidity

Sec. 8. If any article, section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases should be declared unconstitutional. [Acts 1941, 47th Leg., p. 1393, ch. 631.]

Art. 7047b. Tax on producers of natural gas.

Calculation of tax; market value; payment

Section 1. (1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to five and two-tenths (5.2) per cent of the market value thereof as and when produced; provided that the amount of such tax on sweet and sour natural gas shall never be less than eleven-one hundred fiftieths ($^{11}/_{150}$) of one (1) per cent per one thousand (1,000) cubic feet.

In calculating the tax herein levied, there shall be excluded: (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; and, (c) gas used for lifting oil, unless sold for such purpose.

(2) The market value of gas produced in this State shall be the value thereof at the mouth of the well; however, in case gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. In all cases where the whole or a part of the consideration for the sale of gas is a portion of the products extracted from the producer's gas or a portion of the residue gas, or both, the tax shall be computed on the gross value of all things of value received by the producer, including any bonus or premium; provided that notwithstanding any other provision herein to the contrary, where gas is processed for its liquid hydrocarbon content and the residue gas is returned by cycling methods, as distinguished from repressuring or pressure maintenance methods, to some gas producing formation, the taxable value of such gas shall be three-fifths (3/5) of the gross value of all liquids extracted, separated and saved from such gas, such value to be determined upon separation and extraction and prior to absorption, refining or processing of such hydrocarbons and the quantity of the products shall be measured by the total yield of the processing plant from such gas.

(3) All liquid hydrocarbons that are recovered from gas by means of a separator or by other non-mechanical methods, incidental to the production of said gas, shall be taxed at the same rate as oil as levied by Acts of 1941, Forty-seventh Legislature, Chapter 184, Article I, Section 1.[1]

(4) The tax hereby levied shall be a liability of the producer of gas and it shall be the duty of each such producer to keep accurate records in Texas of all gas produced, making monthly reports under oath as hereinafter provided.

(5) The purchaser of gas shall pay the tax on all gas purchased and deduct the tax so paid from the payment due the producer or other interest holders, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer; such moneys so deducted from payments due producers for the payment of this tax shall be held by the purchaser in trust for the use and benefit of the State of Texas and shall not be commingled with any other funds held by said purchaser, and shall be remitted to the State Treasurer in accordance with the terms and provisions of this Act; and it shall be the duty of each such purchaser to keep accurate records in Texas of all such gas purchased.

(6) The tax herein levied shall be due and payable at the office of the Comptroller at Austin on the last day of the calendar month, based on the amount of gas produced and saved during the preceding calendar month, and on or before said date each such producer shall make and deliver to the Comptroller a verified report on forms prescribed by the Comptroller showing the gross amount of gas produced, less the exclusions and at the pressure base set out herein, upon which the tax herein levied accrues, together with details as to amounts of gas, from what leases said gas was produced, the correct name and address of the first purchaser of said gas, and such other information as the Comptroller may desire; such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied. In no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in the event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make such payment and shall be entitled to reasonable attorney's fees and court costs incurred by legal action.

(7) Provided, that unless such payment of tax on all gas produced during any month or fractional part

thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until date paid.

(8) The tax herein levied shall be borne ratably by all interested parties, including royalty interests; and producers and/or purchasers of gas are hereby authorized and required to withhold from any payment due interested parties, the proportionate tax due and remit the same to the Comptroller. [As amended Acts 1945, 49th Leg., p. 423, ch. 269, § 1.]

1 Article 7057a, § 2.

Definitions

Sec. 2. (1) For the purpose of this Act "producer" shall mean any person owning, controlling, managing, or leasing any gas well and/or any person who produces in any manner any gas by taking it from the earth or waters in this State, and shall include any person owning any royalty or other interest in any gas or its value whether produced by him, or by some other person on his behalf, either by lease, contract, or otherwise.

(2) "First purchaser" shall mean any person purchasing gas from the producer.

(3) "Subsequent purchaser" shall mean any person who purchases gas for any purpose whatsoever, when said gas is purchased from any person other than the producer.

(4) "Carrier" shall mean the owner, operator, or manager of any means of transporting gas or any instrumentality that may now be used or come into use for such purpose.

(5) "Gas" shall mean natural and casing-head gas or other gas taken from the earth or waters, regardless of whether produced from a gas well or from a well also productive of oil, distillate and/or condensate, or other product.

(6) The term "sweet gas" shall mean all natural gas except sour gas and casing-head gas.

(7) The term "sour gas" shall mean any natural gas containing more than one and one half (1½) grains of hydrogen sulphide per hundred (100) cubic feet, or more than thirty (30) grains of total sulphur per one hundred (100) cubic feet.

(8) The term "casing-head gas" shall mean any gas and/or vapor indigenous to an oil stratum and produced from such stratum with oil.

(9) "Report" shall mean any report required to be furnished in this Act or that may be required by the Comptroller in the administration of this Article.

(10) "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(11) "Production" or "total gas produced" shall mean the total gross amount of gas produced including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this Article shall be measured or determined by meter readings showing one hundred (100) per cent of the full volume expressed in cubic feet.

(12) For the purpose of this Article, by the term "cubic foot of gas" is meant volume of gas expressed in cubic feet and computed at a base pressure of four (4) ounces per square inch above the average barometric pressure of fourteen and four tenths (14.4) pounds per square inch, a standard base and flowing temperature of sixty (60) degrees Fahrenheit; correction to be made for pressure according to Boyle's Law, and for specific gravity according to test made by the balance method.

(13) "Royalty owners" shall mean and include all persons owning any mineral rights under any producing leasehold within this State, other than the working interest, which working interest is that of the person having the management and operation of the well.

(14) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

Liability for tax; payment

Sec. 2a. (1) The tax herein imposed on the producing of gas shall be the primary liability of the producer as hereinbefore defined, and every person purchasing gas from producer thereof and taking delivery thereof at or near the premises where produced shall collect said tax imposed by this Article from the producer. Every purchaser including the first purchaser and the subsequent purchaser, required to collect any tax under this Article, shall make such collection by deducting and withholding the amount of such tax from any payments made by such purchaser to the producer, and remit same as herein provided. This Section shall not affect any pending lawsuit in the State of Texas or any lease agreement or contract now or that hereafter may be in effect between the State of Texas or any political subdivision thereof and/or the University of Texas and any gas producer.

(2) When it shall appear that a taxpayer to whom the provisions of this Article shall apply has erroneously paid more taxes than were due during any taxpaying period either on account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(3) The tax hereby levied shall be a liability upon the producer, the first purchaser, and/or subsequent purchaser or purchasers as herein provided.

(4) The tax hereby levied shall be paid by the first purchaser purchasing the same from the producer, who shall deduct the same from the amount paid producer, as aforesaid, provided, however, that the failure of first purchaser to pay said tax shall not relieve the producer from the payment of same, nor shall it relieve any subsequent purchaser from the payment of same, where the first purchaser does not account for and pay said tax, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself or itself that the tax on said gas has been or will be paid by the persons primarily liable therefor.

Verifying reports; investigations; rules and regulations; expenses of enforcement to be paid from ½ of 1% of tax collected

Sec. 3. The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers and/or purchasers to determine whether the tax is being properly reported and paid. He shall have the power to enter upon the premises of any taxpayer liable for a tax under this Article, and any other premises necessary in determining the correct tax liability, and to examine, or cause to be examined, any books, or records of any person, subject to a tax under this Article, and to secure any other information directly or indirectly concerned in the enforcement of this Article, and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this Article, which shall have the full force and effect of law. Before any division or allotment of the occupation tax collected under the provisions of this Article is made, one half (½) of one (1) per cent of the gross amount of said tax shall be set aside in the Treasury for the use of the Comptroller in the administration and enforcement of the provisions of this Article; and so much of the said proceeds of one half (½) of one (1) per cent of the occupation tax paid monthly as may be needed in such administration and enforcement is hereby appropri-

ated for such purpose, subject however to appropriation by the Legislature. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 8.]

Determination of market value by Comptroller; appeals

Sec. 3-a. If the Comptroller is satisfied that the values used in computing the tax do not represent the market value of such gas at the mouth of the well, he shall forthwith so notify the producer, and it shall be the duty of the Comptroller to set a date for a hearing thereon, giving the producer not less than ten (10) days written notice thereof, and to call before him by proper process such persons as in his judgment may know the market value of such gas at the mouth of the well, who shall testify under oath as to the market value thereof; and the producer shall have the right to be heard and present evidence. The Comptroller after hearing the evidence shall fix the market value of such gas at the mouth of the well, by written findings in accordance with the evidence so introduced; and his findings in such case or cases shall be final unless the producer shall pay the tax herein levied upon the market value so fixed by the Comptroller under protest as provided under Article 7057b, Revised Civil Statutes of Texas, 1925, as amended, within sixty (60) days after the producer has been notified in writing of said findings. In the event the producer does not pay the tax based on the values so determined by the Comptroller within sixty (60) days after having been notified of such findings, the findings of the Comptroller shall be final unless the producer shall within said sixty (60) days appeal to a Court of competent jurisdiction in Travis County. Upon such appeal, the trial shall be de novo and the findings of the Comptroller shall be taken as prima facie evidence of the market value of such gas at the mouth of the well and the burden of proof shall rest upon the plaintiff to establish a lower market value. [Added Acts 1945, 49th Leg., p. 423, ch. 269, § 5.]

Delinquent taxes; injunction against producing gas

Sec. 4. In the event any person engaged in the business of producing any gas in this State shall become delinquent in the payment of the proper taxes herein imposed, or fails to file required reports with the Comptroller, the Attorney General by a suit in the name of the State of Texas shall have the right to enjoin such person from producing gas until the delinquent tax is paid or said reports filed, and the venue of any such suit for injunction is hereby fixed in Travis County. [As amended Acts 1945, 49th Leg., p. 423, ch. 269, § 2.]

Penalty for violation; lien; suits

Sec. 5. Any person, firm, association or corporation shall be subject to a penalty of not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1000) for failure or omission to keep the records required herein, or for the violation of any of the other provisions hereof, and each day's violation shall constitute a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interests on all property and equipment used by the producer of gas in his business of producing gas, and if any producer of gas shall fail to remit the proper taxes, penalties, and interest due, or any of them, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and the producer of gas shall be liable, as additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller, incurred in such investigation and audit; provided, that all funds collected for audits and examinations shall be placed in the Natural and Casinghead Gas Audit Fund in the State Treasury and shall constitute a revolving fund which may be used from time to time by the Comptroller in making such audits in addition to the general appropriation made for such purposes, and all of said funds to be placed in said Natural and Casinghead Gas Audit Fund are hereby appropriated for such purpose. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due, and for the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in Travis County. [As amended Acts 1939, 46th Leg., p. 628, § 1; Acts 1939, 46th Leg., p. 629, § 1; Acts 1945, 49th Leg., p. 423, ch. 269, § 3.]

Suit to collect tax; report or audit as evidence; report of transfer of lease; removing gas from lease

Sec. 6. (a) If any producer or purchaser of natural and/or casinghead gas fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Article and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of gas produced on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser when filed and sworn to by such representative as being made from the records of said producer or purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided further, that such report or audit may be admitted in evidence only against the party by or from whom it was made.

(b) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid; that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

(c) On notice from the State Comptroller, it shall be unlawful for any person to produce or remove any natural and/or casing-head gas from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Article.

(d) Whenever any lease producing natural and/or casing-head gas changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Article. It further shall be the duty of the new owner or operator of said lease to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, or receiver formerly owning and/or operating said lease.

Penal provisions

Section 7 of Acts 1931, 42nd Leg., p. 111, ch. 73, as amended by Acts 1941, 47th Leg., p. 269, ch. 184, Art. II, § 1, being a penal provision, is published as Pen.Code, art. 131a.

Gas imported into state

Sec. 8. Repealed by Acts 1945, 49th Leg., p. 423, ch. 269, § 4.

Allocation of tax

Sec. 9. The tax herein levied shall be allocated as hereinafter provided in this Act.[1] [Acts 1931, 42nd Leg., p. 111, ch. 73; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 8; Acts 1939, 46th Leg., p. 628, § 1; Acts 1939, 46th Leg., p. 629, § 1; Acts 1941, 47th Leg., p. 269, ch. 184, Art. II, § 1.]

1 See Article 7083a.

Section 10 of the Act of 1931 repealed in part article 6060, ante.

Section 11 is published as article 7047c, post.

Sections 12 and 13 were repealed by Acts 1933, 43rd Leg., p. 383, ch. 153, § 22, as re-enacted by Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 1.

Sections 14 and 15 were published as Pen.Code, Art. 131b.

Section 16 makes the provisions separable and provides if any provision is held invalid, such decision shall not affect the remainder.

Section 6 of the Act of 1945 provided that partial invalidity should not affect the remaining parts of the Act.

Sec. 7 repealed conflicting laws and provided that all taxes, penalties, and interest accruing to the State of Texas by virtue of repealed Acts before the effective date of the Act should remain valid obligations due the State for all taxes accruing under the provisions of prior or existing tax laws.

It also provided that no offense committed and no fine, forfeiture, or penalty incurred under such repealed Acts should be affected by the repeal of any such laws, but the punishment of such offense and the recovery of such fines and forfeitures should take place as if the law repealed had remained in force.

Sec. 8. Nothing in this Act shall be construed to deprive any producer or taxpayer of the right to avail himself of the rights afforded by Article 7057b, Revised Civil Statutes of Texas, 1925, as amended.

Art. 7047c. Cigarette tax.—Sec. 11. In order to supplement the State's Available School Fund, and to reduce the burdens of ad valorem taxation on the farms and homes and other property of the people, there is hereby levied a tax on all sales in intrastate commerce, in this State of cigarettes, made of tobacco, or any substitute therefor, and weighing not more than three pounds per thousand of One Dollar and fifty cents ($1.50) per thousand, and on those weighing more than three pounds per thousand of Three Dollars and sixty cents ($3.60) per thousand. Such tax shall be paid only once, on account of any cigarettes so sold, by the person, firm or corporation making the first sale thereof in intrastate commerce in this State, and payment shall be evidenced by stamps purchased from the State Treasurer and properly cancelled and securely affixed to the package or parcel containing the same, covering the amount of the tax thereon as levied by this Act, provided that such stamps may be purchased and cancelled and affixed to such package or parcel by a manufacturer or distributor outside this State, in which case no further payment of tax shall be required. [Acts 1931, 42nd Leg., p. 111, ch. 73.]

Secs. 12, 13.

Repealed, see note under article 7047b, §§ 10-16, ante.

Art. 7047c—1. Cigarette Tax.

Definitions

Section 1. The following words, terms and phrases, as used in this Act are hereby defined as follows:

(a) "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. Provided the definition herein shall not be construed to include cigars.

(b) "Individual Package of Cigarettes" shall mean and include the smallest package of cigarettes ordinarily sold at retail and shall include any and every package of cigarettes upon which a Federal stamp or token is required, evidencing the payment of Federal tax.

(c) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, co-partnership, corporation, trustee, agency or receiver.

(d) "Place of Business" is construed to mean and include any place where cigarettes are sold or where cigarettes are stored or kept for the purpose of sale or consumption; or if sold from any vehicle, train, or cigarette vending machine, the vehicle, train, or cigarette vending machine on which or from which such cigarettes are sold shall constitute a place of business.

(e) "Stamp" shall mean the stamp or stamps printed, manufactured or made by authority of the Board as hereinafter defined, and issued, sold or circulated by the Treasurer and by the use of which the tax levied hereunder is paid.

(f) "Counterfeit Stamp" shall mean any stamp, label, print, tag or token which evidences, or purports to evidence, the payment of any tax levied by this Act, and which stamp, label, print, tag or token has not been printed, manufactured or made by authority of the Board as hereinafter defined and/or issued, sold or circulated by the Treasurer.

(g) "Previously Used Stamp" shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

(h) "First Sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this State.

(i) "Drop-shipment" shall mean and include any delivery of cigarettes received by any person within this State when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

(j) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas or his duly authorized assistants and employees.

(k) "Treasurer" shall mean the State Treasurer of Texas or his duly authorized assistants and employees.

(l) "Attorney General" shall mean the Attorney General of the State of Texas or his duly authorized assistants and employees.

(m) "Distributor" shall mean and include every person in this State who manufactures or produces cigarettes or who ships, transports, or imports into this State or in any manner acquires or possesses cigarettes and makes a "first sale" of the same in this State; the said term shall also include every person in this State who in any manner acquires or possesses unstamped cigarettes for the purpose of making a "first sale" of the same within this State.

(n) "Wholesale Dealer" shall mean and include every "person" other than a distributor or a salesman in the employ of a manufacturer and handling only the products of his employer who engages in the business of selling or distributing cigarettes in this State for the purpose of resale.

(o) "Retail Dealer" shall mean and include every person other than a distributor or wholesale dealer who shall sell, distribute, or offer for sale or distribution or possess for the purpose of sale or distribution, cigarettes irrespective of quantity or amount or the number of sales or distributions; and it shall also mean and include every person other than a distributor or wholesale dealer who distributes or disposes of cigarettes in unbroken individual packages or in quan-

tities of ten (10) or more as gifts or prizes or in any other manner of distribution or disposal where no sale is involved.

(p) "Distributing Agent" shall mean and include every person in this State who acts as an agent of any person outside the State by receiving cigarettes in interstate commerce and storing such cigarettes subject to distribution or delivery upon order from said person outside the State to distributors, wholesale dealers and retail dealers. [As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 2.]

Amount of tax; stamps

Sec. 2. A tax of One Dollar and Fifty Cents ($1.50) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Three Dollars and Sixty Cents ($3.60) per thousand on those weighing more than three (3) pounds per thousand is hereby imposed on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever. The said tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a first sale in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale. Payment of such tax shall be evidenced by stamps purchased from the Treasurer and securely affixed to each individual package of cigarettes covering the tax thereon as imposed by this Act; provided that such stamps may be purchased and affixed to such individual packages of cigarettes by a manufacturer of cigarettes outside this State, in which case no further payment of tax shall be required.

Provided, that the tax imposed shall be in lieu of any other occupation or excise tax imposed by the State or any political subdivision thereof, on cigarettes.

Cigarette stamps shall be sold by the Treasurer in unbroken sheets of one hundred (100) stamps only and shall be purchased from and sold only by said Treasurer, except as hereinafter provided. When the Comptroller deems it proper to accept the compromise provided for in Section 22, and the offender does not possess sufficient unused stamps to cover his unstamped stock of cigarettes, then and in that event the offender may purchase the required stamps from any distributor through a requisition from the Comptroller in order that his unstamped stock of cigarettes may be stamped immediately and under the direction of the Comptroller and the Comptroller shall have the authority to issue such requisition which shall be made in triplicate on a form prescribed by the Comptroller with the printed words "Original," "Duplicate," and "Triplicate," on the respective sheets thereof. The original requisition shall be kept by the Comptroller and the duplicate and triplicate shall be delivered to the purchaser and seller of said stamps, respectively, who shall hold such copies of requisition at all times open to the inspection of the Comptroller and the Attorney General for a period of two (2) years. The Comptroller shall have the power and authority in the enforcement of this Act to recall any stamps which have been sold by said Treasurer and which have not been used and it shall be the duty of said Treasurer upon receipt of such recalled stamps to issue stamps of other serial numbers therefor. The purchaser of any stamps shall be required to surrender any unused stamps for exchange upon demand of said Comptroller.

Cigarette stamp tax board; sale of stamps

Sec. 3. A "Cigarette Tax Stamp Board" composed of the Board of Control of this State, designated hereafter as the "Board", is hereby created and the said Board shall be and is hereby required to design and have printed or manufactured new cigarette tax stamps of such size and denominations and in such quantities as may be determined by the said Board. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes; provided that a different and separate serial number or combination letter and number may be assigned to and printed on the margin of each sheet of stamps, or other methods of identification be adopted as the Board may decide. The printing or manufacturing of the stamps shall be awarded by competitive bid and the contract shall be awarded to the person submitting the lowest and best bid that will afford the greatest and best protection to the State in the enforcement of the provisions of this Act.

The Board, acting through the Treasurer, shall, upon receipt of the stamps hereinabove authorized to be printed or manufactured, designate the date of issue of the new design of stamps by issuing a proclamation as hereinafter provided. Provided that the stamps shall be affixed by the distributor on each individual package of cigarettes that will be handled, sold, distributed, or used; that said stamps shall be supplied by said Treasurer to all distributors holding a permit in the State at a discount of four per cent (4%) from the face value; provided that if any distributor fails or refuses to comply with any provision of the cigarette tax law or violates the same such distributor shall be required to pay the full face value for stamps purchased during the period of such offense and the Treasurer shall, upon receipt of an affidavit from the Comptroller, setting forth such violation, refuse to supply stamps at the discount provided until such offending distributor has paid any unauthorized discounts received by him and has otherwise purged himself of all such violations; provided further, that every distributor shall cause to be affixed to every individual package of cigarettes on which a tax is due, stamps of an amount equalling the tax due thereon, before any such distributor sells, offers for sale, or consumes, or otherwise distributes or transports the same.

From the effective date of this Act, one-third of the net revenue derived from the Act levying the Cigarette Tax shall be credited to the Available School Fund of the State of Texas, and two-thirds shall be credited to the Texas Old Age Assistance Fund.

The Board is hereby authorized to change the design of the stamps as often as it may deem such change necessary to the best enforcement of the provisions of this Act, and the Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued, prior to such change in the design, which are in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps of the new design. Provided that whenever a change is made in the design of the stamps every person holding stamps of the old design shall be required to send them to the Treasurer for exchange at face value for stamps of the new design. Such exchange shall be made within sixty (60) days after the date of issue of the new design of stamps and it shall be unlawful for any person to have in his possession any stamps of an old design after sixty (60) days from the date of issue of any new design; provided, it shall be unlawful for any person to sell, offer for sale, or possess for the purpose of sale, cigarettes to which stamps of the old design are affixed after sixty (60) days from the date of issue of a new design; provided, further, that after sixty (60) days from the date of issue of any new design of stamps the old design shall be void and cigarettes with stamps of the old design affixed to the individual package shall, for the

purpose of the enforcement of the provisions of this Act, be considered as cigarettes without stamps affixed thereto. It shall be the duty of the Treasurer upon receipt of any new design of stamps authorized to be printed by the Board to designate the date of issue of such new design by the issuance of a proclamation and the date of such proclamation shall be the date of issue of the new design of stamps.

Any person who shall have in his possession any cigarette tax stamps of an old design after sixty (60) days from the date of issue of a new design of stamps shall be guilty of a felony and shall be punished as set out in Section 26 [1] of this Act.

Provided that any cigarette tax stamps may be exchanged only when proof satisfactory to said Treasurer is furnished that any stamps offered to said Treasurer in exchange were properly purchased and paid for by the person offering to exchange such stamps; provided, further, that stamps which are effaced or mutilated in any manner may be refused for acceptance in exchange by said Treasurer.

The Treasurer shall keep a record of all stamps sold by him or under his direction, of all stamps exchanged by him and of all refunds made on stamps purchased.

Orders for cigarette tax stamps shall be sent direct to the Treasurer and it shall be the duty of the Treasurer to invoice the stamps ordered to the purchaser upon a form invoice to be prescribed by the Treasurer, which invoice shall be issued in triplicate and numbered consecutively. The invoice shall show the date of sale, the name and address of purchaser, the number of stamps and their serial numbers, the denomination and value of stamps so purchased. The invoice shall be signed by the Treasurer and the original sent with stamps to the purchaser; the duplicate of the invoice shall be sent to the Comptroller and the triplicate kept by the Treasurer; provided, further, that the purchaser of said stamps shall hold the said invoice for a period of two (2) years for inspection at all times by the Comptroller and the Attorney General. No stamp affixed to a package of cigarettes shall be cancelled by any letter, numeral or any other mark of identification or otherwise mutilated in any manner that will prevent or hinder the Comptroller in making an examination as to the genuineness of said stamp.

Stamps in unbroken sheets of one hundred (100) stamps may be exchanged, with the Treasurer only, for stamps of a different denomination. Provided, further, that the Treasurer shall be authorized to make refunds on unused stamps in unbroken sheets of not less than one hundred (100) stamps each to the person who purchased said stamps only when proof satisfactory to said Treasurer is furnished that any stamps upon which a refund is requested were properly purchased from said Treasurer and paid for by the person requesting such refund. Such refund shall be made from revenue derived from this Act before such revenue is allocated as herein provided. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 1; Acts 1937, 45th Leg., p. 621, ch. 310, § 3.]

[1] Penal Code, art. 131c—1, § 26.

Custody and destruction of stamps

Sec. 3-A. The "Cigarette Tax Stamp Board" shall have full power and authority over the cigarette stamps now on hand and the responsibility for burning said stamps is placed upon said Board.

Order by distributor for stamps shipped with draft attached

Sec. 3B. A distributor may order stamps shipped with draft attached to the bank with which said distributor regularly transacts business. The Treasurer is hereby authorized to ship stamps in compliance with such orders to any such bank authorized to do business in Texas under the laws of this State and the United States. Such stamps, together with the invoice required under Section 3 of the Cigarette Tax Law, shall be attached to a form draft to be prescribed by the State Auditor, which draft shall show the date of shipment, the name and address of the bank, the name of the distributor and the amount of said draft. If said draft is not paid within twenty (20) days of the date thereon, it shall be returned together with the stamps attached to the Treasurer. Any distributor failing to take up such draft and stamps as ordered by him shall be notified at the end of such twenty (20) day period by the Treasurer to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps with draft attached as herein provided. [Added Acts 1937, 45th Leg., p. 621, ch. 310, § 4.]

Permits to distributors

Sec. 4. Every distributor, wholesale dealer and retail dealer in this State now engaged or who desires to become engaged, in the sale or use of cigarettes upon which a tax is required to be paid, shall, within thirty (30) days from the date this law becomes effective, file with the Comptroller an application for a cigarette permit as a distributor, wholesale dealer or retail dealer, as the case may be, said application to be accompanied by a fee of Twenty-five ($25.00) Dollars if for a distributor's permit, or a fee of Fifteen ($15.00) Dollars if for a wholesale dealer's permit, or a fee of Five ($5.00) Dollars if for a retail dealer's permit. Said applications shall be on forms prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said forms shall set forth: (a) the manner under which such distributor, wholesale dealer or retail dealer transacts or intends to transact such business as distributor, wholesale dealer or retail dealer; (b) the principal office, residence and place of business in Texas for which the permit is to apply; (c) and if other than an individual, the principal officers or members thereof not to exceed three (3), and their addresses. The Comptroller may require any other information as he may desire in said application. No distributor, wholesale dealer or retail dealer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained. Said permits shall expire twelve (12) months from the date the distributor, wholesale dealer or retail dealer first sells cigarettes or engages in the business of selling cigarettes or from the expiration date of the permit previously issued to said distributor, wholesale dealer or retail dealer, but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired. An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesale dealer or retail dealer. Provided, however, that any distributor manufacturing, importing, or acquiring in any other manner, cigarettes for his own personal use or consumption and not to be disposed of by sale, gift, or otherwise shall not be required to obtain a distributor's permit but shall be required to make the report required herein of a distributor and to comply with all other provisions of this Act affecting a distributor; provided, further, that the Treasurer shall be authorized to sell stamps to such distributors acquiring cigarettes for their own personal use or consumption and not for sale or other disposal, in lesser quantities than unbroken sheets of one hundred (100) stamps.

Upon receipt of the application and fee herein provided for, the Comptroller shall issue to every distributor, wholesale dealer or retail dealer for the place of

business designated, a non-assignable consecutively numbered permit, designating the kind of permit and authorizing the sale of cigarettes in this State. Said permit shall provide that the same is revocable and shall be forfeited or suspended upon any violation of any provision of this Act or any reasonable rule or regulation adopted by the Comptroller. If such permit is revoked or suspended said distributor, wholesale dealer or retail dealer shall not sell any cigarettes from such place of business until a new permit is granted or the suspension of the old permit removed. Provided, that the Treasurer may refuse to sell stamps to any person who has not obtained a permit to engage in business as a distributor or to any distributor whose permit has been revoked or suspended until such permit has been re-instated or a new permit issued.

The permit shall at all times be publicly displayed by the distributor, wholesale dealer or retail dealer at his place of business so as to be easily seen by the public and the persons authorized to inspect the same. Provided, that any distributor, wholesale dealer, or retail dealer who is the legal owner and holder and is operating under any unexpired permit which has been issued by the Comptroller as provided by Chapter 241, Acts of the Regular Session of the Forty-fourth Legislature, shall not be required to make application for and obtain from the Comptroller a permit as required herein prior to the expiration of the twelve (12) months for which such permit was issued. Provided, further, that any person who operates both as a distributor and wholesale dealer in the same place of business shall only be required to obtain a distributor's permit for the particular place of business where such operation of said business is conducted, but if any distributor or wholesale dealer sells cigarettes at both wholesale and retail, an additional permit as a retail dealer shall be required. Any unexpired permit may be returned to the Comptroller for credit on the unexpired portion thereof only upon the purchase of a permit of a higher classification.

If the application is for a permit to sell cigarettes from or by means of a cigarette vending machine, train, automobile or other vehicle, the serial number of said vending machine, the make, motor number and State highway license number of said automobile or other vehicle and the name of the railway company and number of said train shall be shown on the applications. [As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 5.]

Time for affixing stamps; possession of unstamped cigarettes prima facie evidence of violation of Act

Sec. 5. Every person, other than a distributing agent, bonded distributor or common carrier shall before receiving or accepting delivery of any cigarettes without stamps affixed to evidence the payment of the tax, obtain from the Treasurer the requisite amount or number of stamps necessary to stamp such cigarettes and the possession of any unstamped cigarettes without the possession of the requisite amount or number of stamps shall be prima facie evidence that said cigarettes are possessed for the purpose of making a "first sale" thereof without stamps and without payment of the tax levied herein.

Every distributor in this State shall cause all cigarettes received by him to have the requisite denominations and amount of stamps affixed to represent the tax as levied herein; provided, however, that any distributor who has obtained from the Treasurer and has in his possession the requisite amount and number of stamps necessary to stamp all cigarettes received by him may hold such cigarettes for a period of not longer than forty-eight (48) hours, excluding Sundays and legal holidays, before affixing the stamps as required herein. [As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 6.]

Bond of interstate dealers

Sec. 6. Any distributor or other person engaged in interstate business who shall, within thirty (30) days from the date this law becomes effective, execute and file with the Comptroller a good and sufficient surety bond signed by the distributor or other person and a good and sufficient surety company or companies authorized to do business in this State shall be permitted to set aside such part of his stock of cigarettes as may be necessary for the conduct of such interstate business without affixing the stamps required by this Act. Provided, that such bond shall be approved by and acceptable to the Comptroller in an amount of not less than Two Hundred Fifty ($250.00) Dollars and not more than double an amount necessary to stamp the largest quantity of cigarettes set aside at any time for the conduct of such business, and any quantity so set aside which is larger than that permitted in said bond shall be subject to the same requirements as cigarettes purchased or possessed for intrastate sale. Said interstate stock shall be kept in an entirely separate part of the building, separate and apart from stamped stock. The amount of the bond required for such distributor or other person shall be fixed by the Comptroller, and subject to the minimum limitation herein provided; additional bond or a new bond shall be required by the Comptroller at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond or new bond shall be supplied within ten (10) days after demand. Provided, that said bond or bonds shall be payable to the State of Texas in Austin, Travis County, Texas, and conditioned for the full, complete and faithful performance of all the conditions and requirements of this Act affecting said distributor or other person on a form to be prescribed by the Comptroller, with the approval of the Attorney General. Should the distributor or other person fail or refuse to supply a new bond or additional bond within ten (10) days after demand, the Comptroller shall have the power and authority to cancel forthwith any existing bond made and executed by and for said distributor or other person. In the event said bond is cancelled, said distributor or other person shall within forty-eight (48) hours after said cancellation, excluding Sundays and legal holidays, cause any and all cigarettes received prior to said cancellation to have the requisite denomination and amount of stamps affixed to represent the tax as herein provided. Cigarettes set aside for interstate business which are not kept entirely separate and apart from intrastate stock shall be considered as intrastate stock and subject to the same requirements as cigarettes possessed for the purpose of a "first sale".

The Comptroller is hereby authorized to prescribe and promulgate rules and regulations not inconsistent with this Act or Chapter 241, Acts of the Regular Session of the Forty-fourth Legislature, for the purpose of regulating the sale of cigarettes for movement into States adjoining Texas when said cigarettes have the cigarette tax stamp of such adjoining State affixed thereto. [As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 6.]

Record and report of purchases and sales

Sec. 7. (a) Every distributor, wholesale dealer and retail dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all cigarettes purchased or received by said distributor, wholesale dealer or retail dealer, including all invoices, bills of lading, way bills, freight bills, express receipts or copies thereof and all other shipping records furnished by the carrier and the seller or shipper of said cigarettes, and in addition thereto a book record in a well bound book which will provide complete information of all cigarettes purchased or

received by said distributor, wholesale dealer or retail dealer at each place of business. Such book record shall show the date said cigarettes were received, with the designation of whether drop-shipment or otherwise, the name and address of the person from whom purchased and from whom received, the point from which shipped or delivered, the point at which received, the name of the carrier, if shipped by common carrier, the name of the boat or barge if shipped by water, whether registered mail, insured parcel post or open mail if received by mail, the number and kind of cigarettes received with stamps affixed thereto, and, if a distributor, the number and kind of cigarettes received without the stamps affixed, and an inventory or inventories on the first of each month, showing the number and kind of cigarettes on hand with stamps affixed thereto, and, if a distributor, the number and kind without stamps affixed.

(b) Every distributor shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General the invoice of stamps purchased or received from the Treasurer and in addition thereto a book record in a well bound book which will provide complete information of all stamps purchased from the Treasurer and the disposition thereof. Such record shall show the date of receipt of stamps purchased, the number or quantity of stamps, the denomination, and amount paid for stamps so purchased. Such record shall also show the number or quantity, the denomination and face value of stamps sold by requisition from the Comptroller with the name of purchaser of said requisitioned stamps, the number or quantity, the denomination and face value of stamps sent to or received from the Treasurer as an exchange and the inventory or inventories of all stamps on hand on the first day of each month, said inventory to show the number or quantity, denomination and face value of said stamps.

(c) Every distributor and wholesale dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of each and every sale, distribution or use of cigarettes, regardless of whether or not the tax is due upon said cigarettes under the provisions of this Act, upon an invoice to be furnished by said distributor or wholesale dealer which invoice shall be issued in duplicate except when the sale or distribution is made by drop-shipment in which event the invoice shall be issued in triplicate, said invoice shall show the date of sale, distribution or use, the purchaser and his address, the means of delivery, the name of the carrier if delivered by common carrier, whether registered mail, insured parcel post or open mail if delivered through the mail, the designation of drop-shipment if the sale is a drop-shipment made by a distributor, the number and kind of cigarettes sold, and if the sale is by a distributor the number and kind of cigarettes with the stamps affixed to each individual package, and the number and kind of cigarettes without the stamps affixed thereto, and in addition thereto the said invoices shall be supported by the receipts and other records furnished by the carrier of such cigarettes. The original of said invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer as the case may be; provided, however, that when the cigarettes are distributed or exchanged in any manner where no sale is involved that an explanation of such transaction shall be stated on said invoice. Provided further, that where a distributor or wholesale dealer sells cigarettes at retail it will be sufficient for said distributor or wholesale dealer and he shall be required to issue an invoice to his retail department for cigarettes to be sold at retail and such stock of cigarettes invoiced for retail sales shall be kept separate and apart from the other stock of said distributor or wholesale dealer; provided, further, that every distributor and wholesale dealer shall keep at each place of business in Texas for a period of two (2) years for the inspection at all times by the authorized authorities a book record in a well bound book or books of all cigarettes sold, distributed or used by said distributor or wholesale dealer. Such book record shall include all information required to be kept on the invoice aforesaid.

(d) Provided, that every person engaged in the business of selling cigarettes in interstate commerce only shall be required to keep such records and make such reports to the Comptroller as are required of a distributor.

(e) Salesmen in the employ of a manufacturer, and handling only the products of his employer, who engage in the business of selling or distributing cigarettes with stamps affixed in this State for the purpose of resale, shall be required to keep the same records, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, as are required of a wholesale dealer. Such salesmen shall also be required to deliver the original of the invoice required to be made to the purchaser or recipient of said cigarettes.

(f) "Solicitors" engaged in the business of soliciting orders for cigarettes for shipment to points within this State shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all orders solicited and all orders taken for cigarettes for such shipments which record shall include the quantity and kind of cigarettes ordered or shipped, from whom ordered or by whom shipped, the full name and correct address of the purchaser, the date said cigarettes were ordered, and if available the date said cigarettes were shipped. Such record shall be kept for all cigarettes shipped to points within this State by the vendor whom the solicitor represents whether the order was taken by said solicitor or otherwise if said solicitor is given credit for or furnished records of such orders or such shipments. [As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 6.]

Taxes and penalty as preferred lien

Sec. 8. All taxes, penalties, and cost of auditing, as hereinafter provided, due, or that might become due by any distributor to the State shall be and become a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include manufacturing plants, storage plants, warehouses, office buildings and equipment, trucks, cars or other motor vehicles or any other equipment devoted to such use, and each tract of land on which such manufacturing plant, storage plant, warehouse, office building or other property is located, and other tangible property which is used in carrying on such business and in addition thereto any and all cigarettes and stamps of said distributor. If any distributor shall fail to pay any taxes and penalties due the State in the proper manner provided for such payment the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly paid the distributor shall pay the reasonable expenses incurred in such investigation and audit as additional penalty. Provided however, that all funds paid to the auditors of the Comptroller as expenses incurred in making audits, shall be placed in a special fund in the State Treasury, which shall be used until exhausted, for making other audits, and said sums are hereby appropriated for that purpose. Provided that nothing herein shall prevent the Comp-

troller, when said fund is exhausted, from using other funds available for that purpose.

Cigarette solicitors; permit; penalty

Sec. 8a. No individual shall offer for sale or solicit any order in this State for the sale of any cigarettes for shipment to points within this State, for his own account or for the account of any person, firm, association or corporation, unless and until such person or individual shall have first filed an application for and obtained from the State Comptroller a solicitor's permit. Such permit shall authorize the permittee to solicit orders for the sale of cigarettes and shall set forth the name and address of the vendor and/or employers whom the solicitor represents, and such solicitor shall not represent any vendor and/or employers whose name does not appear upon such permit. The fee for such permit shall be One Dollar ($1) per year or part thereof, and the permit shall be issued for the calendar year, beginning January 1, 1937, at which time this Section of this Act shall become effective. Such permittee shall, on the fifth day of each month, file with the Comptroller, on proper forms to be supplied him by said official, copies of all orders solicited by him in the State during the preceding calendar month for cigarettes, said copies to show the quantity and kind of cigarettes ordered, by whom ordered, from what person, firm or corporation ordered, the full name and correct address of purchaser, the date said cigarettes were ordered and any other information which may be required by the Comptroller; and the failure of such permittee to comply with the provisions hereof shall subject him to the forfeiture of his permit, after five (5) days notice and opportunity to be heard by the Comptroller of Public Accounts. No new permit shall be issued for a period of one (1) year to anyone whose permit has been forfeited, except in the discretion of the Comptroller.

If any person shall offer for sale or solicit any order in this State for the sale of cigarettes for shipment to a point within the State, without then and there having a valid solicitor's permit, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200). [Acts 1935, 44th Leg., p. 575, ch. 241, § 8a, added by Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 1a.]

Report by distributors to Comptroller

Sec. 9. (a) Every distributor shall make and deliver to the Comptroller in Austin, Travis County, Texas, on the 10th day of each month a report for the preceding calendar month, which report shall be properly sworn to and executed by the distributor, or his representative in charge, and which shall show the date said report was executed, the name and address of said distributor, the month which the report covers, the number of unstamped and the number of stamped cigarettes on hand at the beginning of the month, the number of unstamped and the number of stamped cigarettes purchased and received during the month, the number of unstamped and the number of stamped cigarettes returned from customers or received from any other source, the number of unstamped and the number of stamped cigarettes sold, used, lost, stolen, returned to the factory or disposed of in any other manner, and the number of unstamped and the number of stamped cigarettes on hand at the end of the month. Said report shall show separately the number of cigarettes sold or distributed in intrastate commerce and the number sold or distributed in interstate commerce. Said report shall also show the number, denomination and face value of unused stamps on hand at the beginning of the month covered in the report, the number, denomination and face value of stamps purchased and received, the number, denomination and face value of stamps sold, used, lost, stolen, exchanged, returned to the Treasurer, or disposed of in any other manner and the number, denomination and face value of stamps on hand at the end of the month covered in the report. Provided, that said report shall also show separately all drop-shipments handled by or through said distributor during the period reported, which information shall include the date of shipment, the invoice number, the name and address of the consignee, the number and brand of such cigarettes and the means of delivery and a copy or copies of all invoices of such drop-shipments shall be attached to and sent with said report. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up in said report but the failure of any distributor to obtain such form from the Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein.

(b) If any distributor or other person fails or refuses to pay any tax, penalties and cost of audit herein provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said tax claims, in any judicial proceedings, any report filed in the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the number of cigarettes sold by such distributor or his representatives, upon which such tax, penalty and cost of audit has not been paid, or any audit made by the Comptroller or his representative from the books or records of said distributor, or other person when signed and sworn to by such representative as being made from the records of said distributor or persons from whom such distributor has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

(c) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing section, and attach or file as an exhibit any report or audit of said distributor, and an affidavit made by the Comptroller or his representatives that the taxes shown to be due by said report or audit are unpaid, that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas, 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder. [As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 7.]

Venue of suits

Sec. 10. Venue of any civil suit, writ of injunction or other civil proceedings filed under the provisions of this Act shall be in a Court of competent jurisdiction in Travis County, Texas, or in the county where the defendant in such proceedings has his domicile.

Designation in application for permit of place for keeping records

Sec. 11. Provided that if the place of business of any distributor, wholesale dealer or retail dealer is a vending machine, train, automobile or other vehicle, such distributor, wholesale dealer or retail dealer, as the case may be, shall be required to designate in the application a permanent place where the records required to be kept for such place of business will be available to the Comptroller after the stocks are delivered from said vending machine, train, automobile or other vehicle and after such deliveries are made the records shall be kept at the permanent place so designated.

Occupation tax not required for vending machines

Sec. 12. It is expressly provided that no occupation tax shall be collected from any person vending cigarettes by means of a vending machine for the privilege of selling cigarettes only by means of such machines other than the permit fee herein imposed for each machine.

Forfeiture of permit

Sec. 13. If any distributor, wholesale dealer or retail dealer has violated any provision of this Act, or any rule and regulation promulgated hereunder, the Comptroller shall have the power and authority to forfeit or suspend the permit or permits of said distributor, wholesale dealer or retail dealer by giving written notice stating the reason justifying such forfeiture or suspension and the same shall be forfeited or suspended five (5) days from date of said notice. Any notice required to be given by the Comptroller may be mailed to the distributor, wholesale dealer or the retail dealer, as the case may be, at any place designated as the place of business on the application for permit required herein. No new permit shall be issued within a period of one (1) year to any one whose permit or permits have been forfeited, except at the discretion of the Comptroller. If any permit is forfeited or suspended no cigarettes shall be sold from the place of business for which said permit applied until a new permit is granted or the suspension of the old permit removed.

Funds delivered to State Treasurer

Sec. 14. The funds derived from the issuance and sale of the permits to distributors, wholesale and retail dealers as herein provided shall be delivered to the Treasurer, and allocated in the same manner and in the same proportion as the funds derived from sales of stamps.

Distributing agent's permits; records and reports

Sec. 15. (a) Every distributing agent in this State now engaged, or who desires to become engaged in the business of storing unstamped cigarettes previously sold in interstate commerce and received in interstate commerce for distribution or delivery only upon order received from without the State, shall within thirty (30) days from the date this law becomes effective, file with the Comptroller, an application for a distributing agent's permit, on a form prescribed by the Comptroller to be furnished upon written request, the failure to furnish which [1] shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Texas for which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses, The Comptroller may require any other information he may desire in said application. No distributing agent shall engage in such business until such application has been filed and the fee of One Hundred Dollars ($100) paid for the permit and until the permit has been obtained. Said permit shall expire twelve (12) months from the date on which the distributing agent engages in the business or from the expiration date of a permit previously issued to said distributing agent. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

(b) Upon receipt of the application and permit fee herein provided for, the Comptroller shall issue to every distributing agent, for the place of business designated, a non-assignable, consecutively numbered permit, authorizing the storing and distribution of unstamped cigarettes within this State when such distribution is made upon interstate orders only.

(c) Every distributing agent shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, a complete record of all cigarettes received by him, including all orders, invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records which are furnished to said distributing agent by the carrier and the shipper of said cigarettes, or copies thereof, and in addition thereto, a complete record of each and every distribution or delivery made by said distributing agent, such records of a distribution or delivery shall include all orders, invoices or copies thereof, and all other shipping records furnished by the carrier and the person ordering distribution or delivery of said cigarettes.

(d) Every distributing agent in Texas shall report to the Comptroller, on a form to be prescribed by the Comptroller and furnished by the distributing agent, each day excepting Sundays and holidays, all deliveries of cigarettes made by him on the preceding day or days. The report shall show the name of the person ordering the delivery, the date of delivery, the name and address of the person to whom delivered, the invoice number, the bill of lading or way bill number, the number and kind of cigarettes delivered, the means of delivery and/or the transportation agent and the designation of drop-shipment if a drop-shipment; provided however, if the invoice furnished said distributing agent by the manufacturer or other person ordering such delivery, or the bill of lading prepared by said distributing agent to cover the shipment under said invoice, contains all the information required to be reported, it will be sufficient to send a copy of said invoice or invoices, or a copy of said bill of lading, or bills of lading, to the Comptroller daily.

[1] So in enrolled bill. Session Laws omit the word "which".

Penalty for violations of act; collection by suit

Sec. 16. If any distributor, wholesale dealer, retail dealer or distributing agent shall (a) fail to keep any of the records required to be kept by the provisions of this Act, or (b) if any distributor, wholesale dealer or retail dealer shall sell any cigarettes upon which a tax is required to be paid by this Act without at the time having a valid permit, or (c) if any distributor, wholesale dealer or distributing agent shall fail to make any reports to the Comptroller required herein to be made, or (d) make a false or incomplete report to said Comptroller, or (e) if any distributing agent shall store any unstamped cigarettes in the State or distribute or deliver any unstamped cigarettes within this State without at the time of said storage or delivery having a valid permit, or (f) if any person affected by this Act shall fail or refuse to abide by the provisions hereof or the rules and regulations promulgated hereunder, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a Court of competent jurisdiction in Travis County, Texas, or any other Court having jurisdiction.

Penal provision

Section 16-a being a penal provision is classified as Pen. Code, Art. 131c—1.

Failure to produce records for inspection

Sec. 17. For the purpose of enabling the Comptroller to determine the tax liability of a distributor, wholesale dealer, retail dealer, distributing agent or any other person dealing in cigarettes, or to determine whether a tax liability has been incurred, he shall have the right to inspect any premises where cigarettes are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange and to examine all of the records required herein to be kept or

any other records that may be kept incident to the conduct of the cigarette business of said distributor, wholesale dealer, retail dealer, distributing agent, or other person dealing in cigarettes. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stock of cigarettes and cigarette stamps, and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred, and it shall be unlawful for any of the foregoing persons to fail to produce upon demand by the Comptroller any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

Carriers to permit access to records

Sec. 18. Every common and contract carrier transporting cigarettes in this State, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all cigarettes so transported or handled which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery, and the number or quantity of cigarettes transported or handled. Such records together with all other books or records which may be in the custody of said carriers showing the shipment of cigarettes shall be open to the inspection at all times of the Comptroller, Attorney General, and their authorized representatives and said common and contract carriers shall give and permit such authorities free access to all such books and records and all cigarettes in the custody of such carriers. [As amended Acts 1937, 45th Leg., p. 621, ch. 310, § 8.]

Penal provision

Section 19 being a penal provision is published as Pen. Code, Art. 131c—1.

Seizure and forfeiture; procedure

Sec. 20. All cigarettes on which taxes are imposed by this Act, which shall be found in the possession, or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the Cigarette Tax Law, and all cigarettes which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, boat, conveyance or other vehicle whatsoever, used in the removal or transportation of such cigarettes for such purposes, and all equipment, paraphernalia or other tangible personal property incident to and used for such purpose, found in the place, building or vehicle where such cigarettes are found, may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a Court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such cigarettes, vehicles and property so seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisement thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

The Attorney General, or the district or county attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and Court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said Court shall issue notice to the owner or person in possession of such property to appear before such Court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service of citation upon nonresidents or unknown defendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of such process or the first publication of such notice. And in such cases, the Court shall appoint an attorney to represent such defendant, who shall have the rights, duties and compensation as provided by existing Statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the Court shall order and decree the sale thereof to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and Court costs, shall be paid into the State Treasury and shall be allocated as the Cigarette Tax is herein allocated. In the event the district or county attorneys file and prosecute such cases, a fee of Fifteen Dollars ($15) shall be paid to such officers in addition to all other fees allowed by law under the Maximum Fee Bill, which fee shall be collected as Court costs out of the proceeds of such sale.

In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the cigarettes and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars ($500), or less, by the following summary proceedings:

(1) The Comptroller shall publish a notice in some newspaper of the County where the seizure was made, describing the property seized and stating the time, place and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(2) Any person claiming such property so seized, or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars ($250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the article so seized, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the Comptroller, he shall transmit the same with a certified copy of the report or receipt of the property seized,

filed in his office, to the Attorney General or the County or District Attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the Court of competent jurisdiction as provided by law.

(3) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and, after deducting expense of seizure, appraisement, custody and sale, he shall deposit the proceeds thereof in the State Treasury, which shall be allocated to the funds to which the Cigarette Tax levied hereunder is apportioned.

In the event the cigarettes seized hereunder and sought to be sold upon forfeiture, summary sale, or other process provided by law shall be unstamped, the officers selling the same shall, upon sale thereof, affix or cause to be affixed, the stamps so required and deduct the expense thereof from the proceeds of such sale.

Seizure not to affect criminal prosecution

Sec. 21. The seizure, forfeiture and sale of cigarettes and other property under the terms and conditions hereinabove set out, and whether with or without Court action, shall not be or constitute any defense or exemption to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this law or from liability to pay penalties provided by this law, with or without suit therefor.

Waiver of forfeiture

Sec. 22. Jurisdiction is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Act, or any part thereof, provided that the offender shall first affix to each of the individual packages of cigarettes seized the amount and value of the stamps necessary to represent the tax, and in addition to the stamps required, pay into the State Treasury through the Comptroller a sum equal to the value of the stamps required to be affixed to such cigarettes. The said Comptroller may make a compromise with any claimant, before or after the claim is filed in Court. A record of all such compromises and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection.

If upon examination of invoices or other investigation the Comptroller finds that cigarettes have been sold without stamps affixed as required in this Act, he shall have the power to require of such person, to pay into the State Treasury through him a sum equal to twice the amount of the stamp tax due. If upon examination of invoices or other investigation, such person is unable to furnish evidence to the Comptroller of sufficient stamp purchases to cover unstamped cigarettes purchased by him, the prima facie presumption shall arise that such cigarettes were sold without the proper stamps affixed thereto.

Collections by Comptroller paid to State Treasurer

Sec. 23. All moneys collected by the Comptroller under the provisions of Section 22 of this Act, after payment of all costs and commissions, shall be paid to the Treasurer and credited as the taxes imposed hereunder are credited.

Comptroller to collect tax and penalties; rules and regulations

Sec. 24. (a) It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes and penalties that may be due under the provisions of this Act, and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Act. Said Comptroller also shall have the power and authority to make and publish rules and regulations, not inconsistent with this Act or the other laws or the Constitution of this State, or of the United States, for the enforcement of the provisions of this Act and the collection of revenues hereunder.

(b) The Treasurer may promulgate rules and regulations hereunder providing for the refund on stamps which by reason of damage become unfit for sale or use.

(c) The Treasurer shall promulgate rules and regulations providing for the exchange, or replacement without cost, of new stamps for any stamps affixed to any package of cigarettes, which cigarettes have become unfit for use or consumption, or unsalable, and which cigarettes have been destroyed or returned to the manufacturer, upon proof satisfactory to the Treasurer that such cigarettes have become unfit for use or consumption, or unsalable, and have been destroyed or returned to the manufacturer. [As amended Acts 1941, 47th Leg., p. 129, ch. 101, § 1]

Penal provisions

Sections 25–29 being penal provisions are published as Pen.Code, Art. 131c—1.

Administration fund

Sec. 30. That two and one-half per cent (2½%) of the gross amount of taxes, permit and license fees and other funds derived under the provisions of this Act shall be set aside in a special fund subject to the use of the Comptroller and so much of said fund as may be necessary shall be expended in the administration and enforcement of the provisions of this Act and so much of the proceeds of two and one-half per cent (2½%) of said tax and funds shall be and the same is hereby appropriated for said purposes, same to be paid monthly as needed; provided that payment for the manufacturing or printing of the cigarette tax stamps and for any expenses incurred by the Board incident thereto shall be made from the revenue derived from the cigarette tax before such fund is allocated under the provisions of this Act and so much of said fund as may be necessary is hereby appropriated for such purpose; any unexpended portion of said funds so specified shall at the end of each biennium be paid in the proper proportion to the funds to which the cigarette tax fund shall be apportioned.

The Director of the Cigarette Tax Division shall, in addition to the duties of supervising and directing the administration and enforcement of the provisions of this Act, personally supervise the printing or manufacturing of all cigarette tax stamps under the contract as awarded by the Board of Control and he shall have possession and custody of, and be responsible for, all specification plans, photographs, impressions, drawings, electroplates, printing stones and any and all other property or equipment that may provide a means of reproducing, manufacturing or printing of cigarette tax stamps in the design selected by the Cigarette Tax Stamp Board. The said Director shall also be charged with the responsibility of inspecting the stamps after such stamps have been manufactured or printed and all sheets of stamps that do not meet the specifications required in the contract shall be rejected and destroyed by or under the direct personal supervision of said Director; and the Director shall have control of said stamps and be responsible therefor until delivery is made to the Treasurer.

Provided that the salaries of the assistant director, auditors, accountants, investigators, tax supervisors and other employees hereunder shall not be in excess of the salaries fixed in House Bill No. 780, an Act of the Regular Session of the Forty-fourth Legislature, 1935,[1] making appropriations for the support and maintenance of the executive and administrative departments of the State, for employees in the same or

other departments of the State government rendering the same or similar service.

[1] Acts 1935, 44th Leg., p. 1049, ch. 364.

Repeals

Sec. 31. That House Bill No. 578, Chapter 153, Acts of the Regular Session of the Forty-third Legislature [1] as amended and re-enacted by House Bill No. 20, Chapter 90, Acts of the First Called Session of the Forty-third Legislature, as further amended by House Bill No. 31, Chapter 6, Acts of the Second Called Session of the Forty-third Legislature,[2] and House Bill No. 67, Chapter 52, Acts of the Second Called Session of the Forty-third Legislature,[3] and all other laws or parts of laws that conflict herewith are hereby in all things repealed.

[1] Article 7047cc and Pen.Code, Art. 131c.
[2] Article 7047cc—1 and Pen.Code, Art. 131cc.
[3] Article 7047cc—2.

Reservation as to taxes and penalties under repealed provisions

Sec. 32. That all sales, occupation or excise taxes, penalties and interest accruing to the State of Texas by virtue of any of the repealed provisions as set out in this Act before the effective date of this Act shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties and interest accruing under the provisions of prior or existing cigarette tax laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State.

Prosecutions under repealed law

Sec. 33. The passage of this Act shall not affect offenses committed, or prosecutions begun, under any preexisting law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

Partial invalidity

Sec. 34. If any article, section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases should be declared unconstitutional. [Acts 1935, 44th Leg., p. 575, ch. 241.]

This act, imposing tax on first use or consumption of cigarettes within state held unconstitutional burden on interstate commerce by interference with ownership of cigarettes bought in interstate commerce. Sheppard v. Musser, Civ.App., 89 S.W.2d 222, modified 127 T. 193, 92 S.W.2d 217, appeal dismissed 57 S.Ct. 121, 299 U.S. 513, 81 L.Ed. 379.

Art. 7047c—2. Supervisor of printing and manufacturing of cigarette tax stamps; designation by Director of Cigarette Tax Division; expenditures for designing and manufacturing of stamps, etchings, dies, etc.—The Director of the Cigarette Tax Division of the State Comptroller's Department be authorized to designate to the Cigarette Tax Stamp Board a competent person who is experienced in printing, to personally represent him (the Director of the Cigarette Tax Division) in the printing and manufacturing of the cigarette tax stamp as the law provides in the second paragraph of Section 30 of the Cigarette Tax Law enacted at the Regular Session of the Forty-fourth Legislature; [1] the Cigarette Tax Stamp Board shall employ at once such competent person as has been designated by the Director of the Cigarette Tax Division of the State Comptroller's Department and shall continue such person in the employment of the Tax Stamp Board until such times as the Director of the Cigarette Tax Division shall designate some other person as his personal representative; and that the Tax Stamp Board shall issue a monthly voucher, not to exceed One Hundred and Seventy-five Dollars ($175) per month, to be paid said designated representative out of the fund appropriated by the General Departmental Appropriation Bill at the Regular Session of the Forty-fifth Legislature to the State Treasurer to be expended by the Tax Stamp Board for the designing and manufacturing of cigarette tax stamps, etchings, dies, etc. [Acts 1937, 45th Leg., 2nd C.S., p. 1995, ch. 67, § 1.]

[1] Article 7047c—1, § 30.

Art. 7047c—3. Cigarette tax inapplicable to sales to or by United States military or naval posts, camps or exchanges; civilians, purchases by; limitation on sales without tax.

Posts etc. recognized for tax purposes as agencies of government

Section 1. Post, Camp, or Unit Exchanges established and operated within the State of Texas, by the United States Military, Naval or Marine forces and not otherwise, on Military, Naval or Marine Posts, Camps, or Reservations, including any locality within this state where a cantonment camp is located and erected, where officers, soldiers, sailors, nurses, or marines of the United States Army, Navy or Marine Corps are being trained, are hereby declared to be, and are recognized only for such tax purposes as are hereinafter set out, instrumentalities and agencies of the United States Government.

Application

Sec. 2. It is further provided that the provisions of this law shall extend to and apply to any authorized branch of a Post, Camp or Unit Exchange which may be established for the exclusive benefit of the officers, soldiers, sailors, nurses or marines in the Army, Navy or Marine Corps of the United States at any time that said officers, soldiers, sailors, nurses or marines shall be on authorized military maneuvers. It being the express intent of the Legislature by this Act to allow soldiers, sailors, nurses and marines in the Army, Navy and Marine Corps of the United States, and no others, to purchase cigarettes for their exclusive use and not otherwise, from said Camp, Unit, or Post Exchange, and to consume or smoke the same without paying the tax imposed upon cigarettes used or otherwise disposed of in this state by Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature. It is also expressly provided that this law shall not be construed as authorizing any civilian employee of the United States Government or any person or persons whomsoever, other than officers, soldiers, sailors, nurses and marines of the Army, Navy or Marine Corps to purchase cigarettes free of the State Tax from a Camp, Unit, or Post Exchange, or on authorized military maneuvers or to use, consume or smoke said cigarettes without paying the State Tax as provided by the said law cited hereinabove.

All persons, except officers, soldiers, sailors, nurses and marines shall be subject to the tax imposed upon the use of cigarettes by the said Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, and no officer, soldier, sailor, nurse or marine or person shall sell or furnish cigarettes upon which the State Tax has not been paid to any civilian employee of the United States Government or to any person or persons other than officers, soldiers, sailors, nurses and marines serving as such in the Army, Navy or Marine Corps of the United States. Provided further, that no civilian employee of the United States Government or other person whomsoever, except such officers, soldiers, sailors, nurses and marines shall purchase or receive cigarettes without the State Tax Stamp being affixed to the package to evidence the payment of the tax levied by law from any such Post, Camp or Unit Exchange, or shall use or consume cig-

arettes upon which said tax has not been paid to the state and the possession by any said civilian employee of the United States Government or person other than said officers, soldiers, sailors, nurses and marines of cigarettes without the State Tax Stamp affixed to the package at any place in the State of Texas shall be a violation of this Act and shall be prima facie evidence that such cigarettes are possessed for the purpose of sale or use without payment of the tax levied by law.

Removal of cigarettes from post without Stamp Tax affixed forbidden

Sec. 3. It is further provided that no officers, soldiers, sailors, nurses or marines, in the Army, Navy, or Marine Corps of the United States shall remove from the confines of any military or naval post or reservation in this state, cigarettes without the State Tax Stamp affixed to the package in quantities of more than forty (40) cigarettes or shall resell, distribute or furnish cigarettes without the State Tax Stamp affixed to the package to any person, persons, firm or corporation not authorized to use or consume the same without the State Tax having been paid thereon. Any person, firm, or corporation who knowingly removes from such reservations any cigarettes or sells, furnishes, purchases or receives any cigarettes in violation of this provision shall be subject to the penalties provided in this law. The possession of more than forty (40) cigarettes by any said officers, soldiers, sailors, nurses or marines without the State Tax Stamp affixed to the package at any place in Texas other than a military or naval post or reservation shall be a violation of this Act and shall be prima facie evidence that such cigarettes are possessed for the purpose of a sale in Texas without the State Tax Stamps affixed.

Law relating to "first sale" inapplicable

Sec. 4. It is further recognized, declared and provided that the provision of Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, as amended by Senate Bill No. 247, Chapter 310, Acts of the Regular Session of the 45th Legislature, relating to "first sale" of cigarettes does not apply to sales by such Post, Camp or Unit Exchanges to officers, soldiers, sailors, nurses and marines of the Army, Navy and Marine Corps under the conditions specified in the preceding sections of this law or to sales in accordance with such specified conditions and for such resale purposes to such Post, Camp or Unit Exchanges by a licensed cigarette distributor in Texas.

Violations

Sec. 5. Any person, firm, or corporation violating any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not less than Twenty-five ($25.00) Dollars nor more than Two Hundred ($200.00) Dollars. Each violation of any of the provisions of this Act shall be considered a separate offense.

Partial invalidity

Sec. 6. If any part or portion of this Act shall be declared to be unconstitutional, the remainder thereof shall nevertheless remain in full force and effect. [Acts 1941, 47th Leg., p. 25, ch. 14; Acts 1943, 48th Leg., p. 407, ch. 275, § 1.]

Art. 7047cc. [Repealed and re-enacted by Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 1.]

Article repealed was Acts 1933, 43rd Leg., p. 383, ch. 153, §§ 1-10.

Re-enacted article was published as article 7047cc—1, post.

Art. 7047cc—1. [Repealed by Acts 1935, 44th Leg., p. 575, ch. 241, § 31.]

Article repealed was Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 1, which re-enacted sections 1-10 of Acts 1933, 43rd Leg., p. 383, ch. 153, as amended by Acts 1933, 43rd Leg., 2nd C.S., p. 16, ch. 6.

Art. 7047cc—2. [Repealed by Acts 1935, 44th Leg., p. 575, ch. 241, § 31.]

Article repealed was Acts 1933, 43rd Leg., 2nd C.S., p. 113, ch. 52.

Art. 7047d. Tax on dealers in pistols.

Sec. 1. That hereafter there shall be collected from every person, firm or corporation engaging in the business of bartering, leasing, selling, exchanging, or otherwise dealing in pistols for profit, whether by wholesale or retail, an annual occupation tax of Ten Dollars ($10.00), to be paid on or before January 1st of each year, and to be paid before continuing said business, within thirty (30) days from the effective date hereof. Before so engaging in said business, each such dealer shall obtain a license therefor, to be issued by the County Tax Collector of each county in which the applicant has a place of business, and for each separate place of business. The Comptroller of Public Accounts shall furnish said forms to the Tax Collectors.

Sec. 2. The Commissioners' Court of the several counties, as well as municipalities, shall also have the power to levy and collect such a tax, equal to one-half of the amount herein levied.

Sec. 3. Each such dealer shall keep a permanent record of all such pistols, bartered, leased, or otherwise disposed of, as above. Such record shall show the number of the pistol, name of the manufacturer, date of the transaction, salesman, purchaser, and their addresses, which said record shall at all times be accessible to the Comptroller, Prosecuting Attorney, Grand Jury, and Attorney General, and a copy of this record shall be mailed to and filed for record with the State Adjutant General's Department. This filing to be made each three (3) months.

"Pistol," as used herein, shall include every kind of pistol, revolver, automatic, semi-automatic, magazine pistol, and every other such short firearm intended or designed to be aimed or fired from one hand.

Sec. 6. Provided, however, that no such person shall be required to have a license or pay the tax where such person is engaged exclusively in selling pistols to the Militia of the United States or other agencies of the Federal Government authorized by law to purchase the same. [Acts 1931, 42nd Leg., p. 447, ch. 267.]

Section 4 of Acts 1931, cited to the text, being a penal provision, is published as Pen.Code, Art. 489a.

Section 5 repeals Article 7068, post.

Art. 7047e. [Repealed by Acts 1941, 47th Leg., p. 723, ch. 449, § 1.]

The article repealed was Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 9 as amended Acts 1939, 46th Leg., p. 630, § 1.

Acts 1941, 47th Leg., p. 723, ch. 449, repeals section 9 of article 4 of the Act of 1936 as amended in 1939 from which article 7047e was derived, and "all subsequent amendments thereto." It being questionable whether the repeal includes the amendment of 1941, the text of this article as amended in 1941 is set out following:

"(a) Except as herein otherwise provided, there is hereby levied and assessed a tax of ten (10¢) cents on each One Hundred ($100.00) Dollars or fraction thereof, over the first Two Hundred ($200.00) Dollars, on all notes and obligations secured by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional sales contract and all instruments of a similar nature which are filed or recorded in the office of the County Clerk under the Registration Laws of this State; provided that no tax shall be levied on instruments securing an amount of Two Hundred ($200.00) Dollars, or less. After the effective date of this Act, except as hereinafter provided, no such instrument shall be filed or recorded by any County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this section; providing further that should the instrument filed in the office of the County Clerk be security of an obligation that has property pledged as security in a State or States other than Texas, the tax shall be based upon the reasonable cash value of all property pledged in Texas in the proportion that said property in Texas bears to the total value of the property securing the obligation; and providing further, that except as to renewals or extensions of accrued interest, the provisions of this section shall not apply to instruments given in renewal or extensions of instruments therefore stamped under the provisions of this Act or the one amended hereby, and shall not apply to instruments given in the refunding of existing

bonds or obligations where the preceding instrument of security was stamped in accordance with this Act, or the one amended hereby; provided further that the tax levied in this Act shall apply to only one instrument, the one of the greatest denomination, where several instruments are contemporaneously executed to secure one obligation; and provided further that when once stamped as provided herein, an instrument may be recorded in any number of Counties in this State without again being so stamped. This section shall not apply to instruments, notes, or other obligations taken by or on behalf of the United States or of the State of Texas, or any corporate agency or instrumentality of the United States, or of the State of Texas, in carrying out a governmental purpose as expressed in any Act of the Congress of the United States or of the Legislature of the State of Texas, nor shall this section apply to instruments, notes or other obligations taken by or on behalf of National Banking Associations organized under the laws of the United States, nor instruments, notes or other obligations taken by or on behalf of State Banking Corporations of the State of Texas created under Title 16 of the Revised Civil Statutes of Texas, nor shall the provisions of this section apply to obligations or instruments secured by liens on crops and farm or agricultural products, or to livestock or farm implements, or on abstract of judgment.

"If the amount secured by an instrument is not expressed therein, or if any part of the security described in any such instrument appears to be located without the State of Texas, the County Clerk shall require proof by written affidavits of such facts as may be necessary to determine the amount of the tax due.

"(b) Payment of the tax as hereby levied shall be evidenced by affixing the stamps herein provided for, to all instruments included within the provisions of the Act; and it shall be the duty of the State Treasurer at all times to keep a supply of such stamps on hand for sale to any person upon demand and payment therefor, and the State Treasurer shall at the request of any County Clerk of the State of Texas consign said stamps to the different County Clerks. The stamps shall be of such design and denomination as to the State Treasurer shall seem proper, and shall show the amount of the tax the payment of which is evidenced thereby, and shall contain the words "Note Stamps". The County Clerks of Texas shall keep a supply of such stamps on hand in their office for sale to any person, upon demand and payment therefor, and shall remit all moneys received from the sale of such stamps, except as hereinafter provided, to the State Treasurer at any time when requesting additional stamps from the State Treasurer; provided that if the County Clerk does not order additional stamps and remit said moneys on or before the 25th day of each month, he shall make remittance of any moneys on hand, except as hereinafter provided, from the sale of such stamps, not later than the 25th day of each month, irrespective of whether or not such clerk orders additional stamps; providing further, that each County Clerk shall be entitled to retain as fees of office for handling said stamps, five (5%) per cent of the amount of money received from the sale of such stamps, provided such fee for any one calendar month shall not exceed One Hundred ($100.00) Dollars; said five (5%) per cent to be retained by the County Clerk when remitting to the State Treasurer as above provided; providing further that the County Clerks shall be liable under their official bonds for the faithful performance of their duties and the remittance of moneys to the State Treasurer, from the sale of stamps as herein provided. The State Treasurer shall be responsible for the custody of said stamps and shall demand such receipt as he deems necessary from the County Clerks upon consignment of stamps to the County Clerks as herein provided; and said State Treasurer shall be liable for the proceeds received by him under his official bond. The State Treasurer shall from time to time deduct enough money from the proceeds received from the sale of stamps to pay for the printing of said stamps, and the mailing of said stamps to the County Clerks, said money to be deducted by the State Treasurer before allocating the funds received from the sale of said stamps. The State Treasurer shall assist the County Clerks of the State in determining what instruments are subject to the tax as provided in this Act."

Section 2 of the amendatory Act of 1941 read as follows: "Should any portion, section, word or phrase of this Act be declared unconstitutional or invalid, such decision shall affect that section, word or phrase only, and shall not render invalid any of the remaining portions of this Act."

Art. 7047f. Tax on prizes offered by amusement or business enterprises.—(a) Every person, firm, or corporation conducting a theatre, place of amusement, or any business enterprise in connection with the operation of which a prize in the form of money or something of value is offered or given to one or more patrons of such theatre, place of amusement, or business enterprise, and not given to all patrons thereof paying the same charge for any certain service, commodity, or entertainment, shall make a verified monthly report on the twenty-fifth day of each month to the Comptroller of Public Accounts of the State of Texas, showing the amount of money so given in prizes, and the value of all prizes or awards so given in connection with such business during the next preceding month.

(b) There is hereby levied a tax equal to twenty per cent (20%) of the value of all such money, prizes, and awards given in connection with the operation of each and all of the foregoing business enterprises, and at the time of making the report to the Comptroller of Public Accounts, the owner or operator of any such business shall pay to the State Treasurer such tax upon the total amount of money, prizes, and awards so given during the next preceding month. The tax herein levied shall be a joint liability of the owner and operator of such business, and, in the event any person engaged in any business operated in the manner hereinabove mentioned shall fail or refuse to pay said tax on or before the twenty-fifth day of each month, he shall forfeit to the State of Texas not less than Twenty-five Dollars ($25) nor more than One Hundred Dollars ($100) for each violation, and each day's delinquency shall constitute a separate offense. The State of Texas shall have a prior lien for all delinquent taxes and penalties on all property used by the owner or operator of any such business, and the Attorney General of the State of Texas may file suit for the collection of such tax and penalties in any District Court of Travis County, Texas, and for the foreclosure of such lien, and may enjoin the operation of any such business until such tax is paid.

(c) Any person managing or controlling any business enterprise required to file a report under paragraph one hereof, who shall fail or refuse to file such report on or before the twenty-fifth day of each month, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by fine of not less than Twenty-five Dollars ($25) nor more than One Hundred Dollars ($100), and such punishment shall be in addition to the civil penalties herein provided for.

(d) The provisions of this Section shall not apply to enterprises operating under Chapter 10 of the Acts of the Forty-third Legislature, First Called Session,[1] and all amendments thereto, and nothing in this Section contained shall be construed to legalize or authorize the operation of any contest, practice or device now prohibited by law. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 10.]

1 Penal Code, art. 655a.

Art. 7047g. [Repealed by Acts 1943, 48th Leg., p. 309, ch. 200, § 1.]

The article repealed was Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 11.

Art. 7047h. Allocation of revenues.—All revenues derived and collected under the provisions of this Act, except where otherwise specifically allocated, shall be deposited one-fourth (¼) to the credit of the Available School Fund, and the remainder to the credit of the General Revenue Fund of the State. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 12.]

Art. 7047i. Partial invalidity.—If any provision or section of this Act is held unconstitutional or invalid, the same shall not operate to defeat the whole Act, but all other parts shall stand and remain in full force and effect. [Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 5, § 1.]

Art. 7047j. Injunctions against collection of excise, occupation, and certain other taxes, fees, and penalties.

Prerequisites to injunction suit; book records; report; dismissal

Section 1. Before any restraining order or injunction shall be granted in this State to restrain or enjoin the collection of any excise tax, occupation tax, sales tax, severance tax, gross receipts tax, license or permit tax, and registration or filing fee or any statutory penalties assessed for failure to pay any of such

taxes and before any restraining order or injunction shall be granted against any State official or his authorized representatives in this State to restrain or enjoin the collection of any of the foregoing taxes, fees and penalties, the applicant therefor shall pay into the suspense account of the State Treasurer all taxes, fees and penalties then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent or attorney. Provided, however, that unless otherwise provided by statute, said applicant may, in lieu of paying such taxes, fees and penalties into the suspense account of the State Treasurer, file with said Treasurer a good and sufficient bond to guarantee the payment of such taxes, fees and penalties in an amount equal to twice the amount of all taxes, fees and penalties then due and which may reasonably be expected to become due during the pendency of said injunction. The amount of such bond and the sureties thereon shall be approved by and acceptable to the judge of the court granting said injunction and the Attorney General of this State and the application for said restraining order or injunction shall reflect under oath of the applicant, his agent or attorney, that said bond has been approved and filed as aforesaid. Whenever it appears to the Attorney General that any such bond has become insufficient to cover double the amount of the taxes, fees and penalties accruing subsequent to the granting of said injunction, the said Attorney General shall demand of said applicant that additional bond be filed. Provided, further, that said applicant shall keep during the pendency of the injunction and for a period of one (1) year thereafter open to the inspection at all times of the Attorney General of this State and all other State officials authorized to enforce the collection of such taxes, fees and penalties, a well bound book record of all taxes accruing during the pendency of such restraining order or injunction. Such book record shall include a record of purchases, receipts and sales or other disposition of all commodities, products, materials or articles upon which such taxes are levied or by which the amount of such taxes are measured. Provided further, that said applicant shall make and file with the State official authorized to enforce the collection of the tax involved, on Monday of each week, a report on a form or forms to be prescribed by said State official showing the weekly accruals of the tax involved together with total purchases, receipts, sales and other disposition of all commodities, products, materials and articles on which the tax involved in such injunction is levied or by which such tax is measured. Such report shall also show the name and address of all persons from whom such commodities, products, materials and articles were purchased or received and the name and complete address of all persons to whom such commodities, products, materials and articles were sold or distributed. If payment of the tax involved is evidenced or measured by the sale or use of stamps or tickets, a complete record of all such stamps and tickets used, sold or handled shall be kept and shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing, if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort, to keep the records or make and file the reports required herein or to comply with the Attorney General's demand to file any additional bond necessary to cover double the amount of taxes, fees and penalties accruing subsequent to the granting of said injunction or in the absence of a bond, to pay, on Monday of each week, into the suspense account of the Treasurer of Texas all taxes, fees and penalties involved in said litigation and thereafter becoming due, and such payments shall be made before said taxes, fees and/or penalties become delinquent. Any proceedings to enjoin the collection of any of the foregoing taxes shall be in a court of competent jurisdiction in Travis County, Texas.

The Attorney General or any State official authorized to enforce the collection of the tax involved may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Act or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which the applicant resides or any other peace officer in this State.

In the event the injunction is finally dissolved or dismissed the Treasurer shall make demand upon the applicant and his sureties on any bond filed in lieu of the payment of any taxes, fees and penalties, for immediate payment of said taxes, fees and penalties which if not paid shall be recovered in a suit to be filed by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction. Provided further, that if said injunction is dissolved or dismissed all taxes, fees and penalties or other funds paid into the suspense account of the Treasurer under the provisions of this Act shall be paid to the funds to which said taxes, fees and penalties are allocated. If the final judgment maintains the right of the applicant to a permanent injunction to prevent the collection of such taxes, the funds so deposited shall be refunded by the Treasurer to said applicant together with any depository interest the Treasurer may have collected for the deposit of such funds.

Secs. 2–8.

Sections 2–8 are amendments of Article 7047c—1, §§ 1, 3, 3b, 4–7, 9, 18, respectively.

Taxes due under repealed laws as binding obligations

Sec. 9. All taxes, penalties and interest accruing to the State of Texas by virtue of any of the repealed or amended provisions as set out in this Act before the effective date of this Act shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties and interest accruing under the provisions of prior or pre-existing cigarette tax laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State.

Offenses under pre-existing laws

Sec. 10. The passage of this Act shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense. Providing, that all other laws or parts of laws that conflict herewith are hereby in all things repealed.

Partial invalidity

Sec. 11. If any article, section, subsection, sentence, clause, phrase, or word of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, phrase, and word thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, phrases, or words should be declared unconstitutional. [Acts 1937, 45th Leg., p. 621, ch. 310.]

Art. 7047k. Motor vehicle retail sales tax.

Tax on retail sales; Federal tax

Section 1. (a) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to one (1) per cent of the total consideration paid or to be paid to the seller by the buyer, which consideration shall include the amount paid or to be paid for said motor vehicle and all accessories attached thereto at the time of the sale, whether such consideration be in the nature of cash, credit, or exchange of other property, or a combination of these. In the event the consideration received by the seller includes any tax imposed by the Federal Government, then such Federal tax shall be deducted from such consideration for the purpose of computing the amount of tax levied by this Article upon such retail sale.

(b) In all cases of retail sales involving the exchange of motor vehicles, the party transferring the title to the motor vehicle having the greater value shall be considered the seller, and no tax is imposed upon the transfer of a motor vehicle traded in upon the purchase price of some other motor vehicle.

Use tax on vehicles brought into State

Sec. 2. There is hereby levied a use tax upon every motor vehicle purchased at retail sale outside of this State and brought into this State for use upon the public highways thereof by a resident of this State or by firms or corporations domiciled or doing business in this State. Such tax shall be equal to one (1) per cent of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person, firm, or corporation operating said motor vehicle upon the public highways of this State.

Definitions

Sec. 3. (a) The term "sale" or "sales" as herein used shall include installment and credit sales, and the exchange of property, as well as the sale thereof for money, every closed transaction constituting a sale. The transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(b) The term "retail sale" or "retail sales" as herein used shall include all sales of motor vehicles except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use.

(c) The term "motor vehicle" as herein used shall mean every self-propelled vehicle in, or by which, any person or property is or may be transported upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks; but this definition shall not include tractors used exclusively to pull farm machinery or road-building machinery.

Fees and taxes are additional

Sec. 4. The license fees and taxes imposed by or under this Article shall be in addition to any and all license fees and taxes imposed by or under any other law of this State.

Collection of taxes

Sec. 5. The taxes levied in this Article shall be collected by the Assessor and Collector of Taxes of the county in which any such motor vehicle is first registered or first transferred after such a sale; the Tax Collector shall refuse to accept for registration or for transfer any motor vehicle until the tax thereon is paid.

When a tax becomes due on a motor vehicle purchased outside of this State and brought into this State for use upon the highways, the person, firm, or corporation operating said motor vehicle upon the public highways of this State shall pay the tax imposed by Section 2 to the Tax Collector of the county in which such motor vehicle is to be registered. The tax shall be paid at the time application is made for registration of said motor vehicle, and the Tax Collector shall refuse to issue the registration license until the tax is paid.

Affidavit as to value

Sec. 5a. At the time the tax herein levied is paid to said Tax Collector the purchaser shall file with said Tax Collector the affidavit of such purchaser (or if a corporation the affidavit of the President, Vice President, Secretary, or Manager) setting forth the then value in dollars of the total consideration received or to be received by such seller or his nominee, whether in money or other thing of value.

Receipt

Sec. 6. The Tax Collector shall issue a receipt to the person paying taxes prescribed hereunder, making two duplicate copies of said receipt, the form of said receipt to be prescribed by the Comptroller of Public Accounts. Between the 1st and 15th of April, July, October and January, the Tax Collector shall forward ninety-eight (98) per cent of the money collected hereunder during the preceding three (3) months to the Comptroller of Public Accounts, together with one duplicate copy of each of the receipts issued by him to persons paying the tax to the Collector. He shall retain the other duplicate receipt as a permanent record in his office together with two (2) per cent of the money collected as fees of office, or paid into the officers salary fund of the county as provided by general law.

Operation without payment of tax

Sec. 7. If any person shall knowingly operate any motor vehicle, such as defined in this Article, upon the highways of this State without the tax thereon having been paid as herein levied and provided, he shall be deemed guilty of a misdemeanor and punished by a fine of not less than Ten Dollars ($10) nor more than Five Hundred Dollars ($500), or confined in the county jail for not less than one (1) day nor more than thirty (30) days or by both such fine and imprisonment.

Allocation of taxes

Sec. 8. The taxes levied in this Article shall be allocated as hereinafter provided in this Act.[1] [Acts 1941, 47th Leg., p. 269, ch. 184, Art. VI.]

1 See Article 7083a.

Art. 7047l. Radios, cosmetics, cards; luxury excise tax; penalty for making false report or failure to report.

Quarterly reports; definitions

Section 1. Each person, partnership, association, or corporation selling at retail new radios or new cosmetics, shall make quarterly on the first days of January, April, July, and October of each year, a report to the Comptroller, under oath of the owner, manager, or if a corporation, an officer thereof, showing the aggregate gross receipts from the sale of any of the above-named items for the quarter next preceding; and shall at the same time pay to the Comptroller a luxury excise tax equal to two (2) per cent of said gross receipts as shown by said report.

Every person, partnership, association, or corporation, selling at retail, playing cards shall make quarterly report as provided above showing the total number of packs or decks of such cards sold during the preceding quarter, and shall at the same time pay to the Comptroller a luxury excise tax of five (5) cents per pack or deck of such playing cards so sold.

Nothing herein shall be construed so as to require payment of the tax on gross receipts herein levied

more than once on the proceeds of the sale of the same article of merchandise. A retail sale as used herein, means a sale to one who buys for use or consumption, and not for resale. Gross receipts of a sale means the sum which the purchaser pays, or agrees to pay for an article or commodity bought at retail sale.

Definitions

Section 1a. 1. The term "new" as used in this Article in connection with the terms "radios" and "cosmetics" shall mean those cosmetics or radios not theretofore sold at retail to the consumer.

2. The term "cosmetics" as used in this Article means: rouge (liquid, semi-solid or solid), lipstick (liquid, semi-solid or solid), face powder, face creams (including cleansing, foundation, vanishing, massage or any other similar cream to be used on the skin), lotions (hand, face, and skin, including astringents), nail polish (all kinds) and manicuring preparations, eyelash preparations, eyebrow pencils, eye shadowing preparations, hair oil, hair tonic and other hair preparations; but such shall not include soap (liquid, semi-solid or solid) nor any prescription prescribed for a particular individual by a physician regularly licensed and practicing in the State of Texas when such prescription is filed with and filled by a pharmacist.

3. The term "playing cards" is defined to be a deck or pack containing at least fifty-two (52) cards of four (4) suits, commonly known as spades, hearts, diamonds, and clubs, and each such suit containing an ace, king, queen, jack, ten, nine, eight, seven, six, five, four, three, and deuce, such deck sometimes including a fifty-third or extra card, commonly known as the joker. [Added Acts 1941, 47th Leg., p. 652, ch. 394, § 1.]

Rules and regulations

Sec. 2. The Comptroller shall make such rules and regulations and require such reports as will enable him to efficiently collect the tax hereby levied, and shall, upon reasonable notice have access to any books, records, and accounts the examination of which he deems necessary to enable him to determine the amount of taxes due hereunder, and the correctness of any report filed with him pursuant to the requirements of the preceding section.

Failure to pay tax or make reports

Sec. 3. If any person, partnership, association, or corporation shall fail to pay any tax due under this Article, or shall fail to make the reports herein required, such default shall be reported to the Attorney General of Texas, and he shall institute appropriate legal action to enforce the payment of such taxes, and may enjoin the defendant from the sale of any of the articles of merchandise mentioned in Section 1 of this Article until the tax determined to be due has been paid, such remedy to be in addition to other remedies available to the State for the collection of any debt due it.

False reports

Sec. 4. If any person, either for himself or on behalf of a partnership, association, or corporation shall knowingly make a false report to the Comptroller with reference to gross receipts from the sale of any of the articles of merchandise mentioned in Section 1 of this Article, he shall be deemed guilty of perjury, and upon conviction shall be punished by imprisonment in the penitentiary for a term not less than one (1) nor more than three (3) years.

Failure to make report

Sec. 5. If any person, partnership, association, or corporation shall, after a written notice from the Comptroller, refuse and fail to make the report required in Section 1 hereof within thirty (30) days from the receipt of such notice, such person, partnership, association, or corporation shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than Fifty Dollars ($50) nor more than One Thousand Dollars ($1,000).

Special enforcement fund

Sec. 6. The Comptroller is hereby authorized to set aside a special fund of two (2) per cent of the amount collected under the provision of this Article so much thereof as may be necessary to be used by him in the enforcement of this law, provided, however, that should the Legislature make detailed appropriations from such fund for enforcement purposes such appropriation shall control.

Allocation of taxes

Sec. 7. The taxes levied in this Article shall be allocated as hereinafter provided in this Act.[1] [Acts 1941, 47th Leg., p. 269, ch. 184, Art. X.]

[1] See Article 7083a.

Art. 7047m. Stock transfer and sales tax.

Tax imposed; affixing stamps; memorandum of sale

Section 1. There is hereby imposed and levied a tax as hereinafter provided on all sales, agreements to sell, or memoranda of sales, and all deliveries or transfers of shares, or certificates of stock, or certificates for rights to stock, or certificates of deposit representing an interest in or representing certificates made taxable under this Section in any domestic or foreign association, company, or corporation, or certificates of interest in any business conducted by trustee or trustees made after the effective date hereof, whether made upon or shown by the books of the association, company, corporation, or trustee, or by any assignment in blank or by any delivery of any papers or agreement or memorandum or other evidence of sale or transfer or order for or agreement to buy, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to such stock or other certificate taxable hereunder, or with the possession or use thereof for any purpose, or to secure the future payment of money or the future transfer of any such stock, or certificate, on each hundred dollars of face value or fraction thereof, three (3) cents, except in cases where the shares or certificates are issued without designated monetary value, in which case the tax shall be at the rate of three (3) cents for each and every share. It shall be the duty of the person or persons making or effectuating the sale or transfer to procure, affix, and cancel the stamps and pay the tax provided by this Article. It is not intended by this Article to impose a tax upon an agreement evidencing the deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon such certificates so deposited, nor upon transfers of such certificates to the lender or to a nominee of the lender or from one nominee of the lender to another, provided the same continue to be held by such lender or nominee or nominees as collateral security as aforesaid, nor upon the retransfer of such certificates to the borrower, nor upon transfers of certificates from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, provided the same continue to be held by such nominee or nominees for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary, nor upon mere loans of stock or certificates, or the return thereof, nor upon deliveries or transfers to a broker for sale, nor upon deliveries or transfer by a broker to a customer for whom and upon whose order he has purchased the same, but transfers to the lender, or to a nominee or nominees as aforesaid, or retransfers to the borrower or fiduciary, and deliveries or transfers to a broker for sale, or by a broker to a customer for whom and upon whose order he has purchased the same shall be accompanied by a certificate setting forth the

facts, nor in respect to shares or certificates of stock, or certificates of rights to stocks, or certificates of deposit representing certificates of the character taxed by this Article, in any domestic association, company, or corporation, if neither the sale, nor the order for, nor agreement to buy, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this State and when no act necessary to effect the sale or transfer is done in this State. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In the case of a sale or transfer, where the evidence of the transaction is shown only by the books of the association, company, corporation, or trustee, the stamp shall be placed upon such books, and it shall be the duty of the person making or effectuating such sale or transfer to procure and furnish to the association, company, corporation, or trustee the requisite stamps, and of such association, company, corporation, or trustee to affix and cancel the same. Where the transaction is effected by the delivery or transfer of a certificate the stamp shall be placed upon the surrendered certificate and canceled; and in cases of an agreement to sell, or where the sale is effected by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer, a bill or memorandum of such sale, to which the stamp provided for by this Article shall be affixed and canceled, provided, however, that such bill or memorandum may be made in duplicate and the stamp provided for by this Article may be affixed to a duplicate of such bill or memorandum and canceled, and such duplicate of such bill or memorandum may be kept by the party making such sale in his possession, provided that he shall enter upon the original of such bill or memorandum a date and number showing that such bill or memorandum was made in duplicate and that the stamp was affixed to the duplicate thereof retained by the seller. Every such bill or memorandum of sale or agreement to sell shall show the date of the transaction which it evidences, the name of the seller, the stock, or other certificate, to which it relates, and the number of shares thereof. All such bills or memoranda of sale shall bear a number upon the face thereof and no more than one such bill or memorandum of sale made by the seller on any given day shall bear the same number. The aforesaid identification number of the bill or memorandum of sale shall in all cases be entered and recorded in a book of account.

Stamps, preparing; sale

Sec. 2. Adhesive stamps for the purpose of paying the State tax provided for by this Article shall be prepared by the Comptroller in such form, in such denomination and in such quantities as he may from time to time prescribe. He shall make provision for the sale of such stamps. The County Clerk of each county of the State of Texas is hereby made the agent for the Comptroller of Texas for the purpose of making sale of such stamps under such regulations as may be prescribed by the Comptroller.

Penalty for violations

Sec. 3. Any person or persons liable to pay the tax by this Article imposed, and anyone who acts in the matter as agent or broker for such person or persons, who shall make any sale, transfer, or delivery of shares or certificates taxable under this Article without paying the tax by this Article imposed, and any person who shall in pursuance of any sale, transfer, or agreement, deliver any certificate or evidence of the sale or transfer of or agreement to sell any such certificate, or bill, or memorandum thereof, or who shall transfer or cause the same to be transferred upon the books or records of the association, company, corporation, or business conducted by a trustee or trustees, whose stock or other certificates taxable hereunder is sold or transferred, which shall transfer or cause the same to be transferred upon its books, without having the stamps provided for in this Article affixed thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than Five Hundred Dollars ($500) nor more than One Thousand Dollars ($1000), or be imprisoned for not more than six (6) months or by both such fine and imprisonment.

Initialing and perforating stamps; violations

Sec. 4. In every case where an adhesive stamp shall be used to denote the payment of the tax provided by this Article, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, and shall cut or perforate the stamp in a substantial manner, so that such stamp cannot be again used; and if any person makes use of an adhesive stamp to denote the payment of the tax imposed by this Article, without so effectually canceling the same, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than Two Hundred Dollars ($200) nor more than Five Hundred Dollars ($500), or be imprisoned for not less than six (6) months, or both.

Removing or altering the canceling marks of stamps

Sec. 5. Any person who shall wilfully remove or alter or knowingly permit to be removed or altered the canceling or defacing marks of any stamp provided for by this Article with intent to use such stamp, or who shall knowingly or wilfully buy, prepare for use, use, have in his possession or suffer to be used any washed, restored or counterfeit stamp, and any person who shall intentionally remove or cause to be removed or knowingly permit to be removed any stamp, affixed pursuant to the requirements of this Article, shall be guilty of a misdemeanor and on conviction thereof shall be liable to a fine of not less than Five Hundred Dollars ($500) nor more than One Thousand Dollars ($1000), or be imprisoned for not more than one (1) year, or by both such fine and imprisonment.

Book of account; stock certificate book; evidence of payment of tax; examination of books; penalty for violation

Sec. 6. Every person, firm, company, association, corporation, or business conducted by a trustee or trustees, engaged in whole or in part in the making or negotiating of sales, agreements to sell, deliveries or transfers of shares or certificates taxable under this Article, or conducting or transacting a brokerage business, shall keep or cause to be kept at some accessible place within the State of Texas, a just and true book of account, in such form as may be prescribed by the Comptroller, wherein shall be plainly and legibly recorded in separate columns, the date of making every sale, agreement to sell, delivery or transfer of such shares or certificates, the name and the number of shares thereof, the face value, the name of the seller or transferrer, the name of the purchaser or transferee, the face value of the adhesive stamps affixed and the identifying number of the bill or memorandum of sale used as provided for herein. This book shall also have recorded therein each separate purchase of stock transfer stamps, showing the date, the amount and from whom purchased.

Every association, company, or corporation, or business conducted by a trustee or trustees shall keep or cause to be kept at some accessible place within the State of Texas a stock certificate book and a just and true book of account, transfer ledger or register, in such form as may be prescribed by the Comptroller, wherein shall be plainly and legibly recorded in separate columns the date of making every transfer of stock, or other certificates included within this Arti-

cle, the name and the number of shares thereof, the serial number of each surrendered certificate, the name of the parties surrendering such certificate, the serial number of the certificate issued in exchange therefor, the number of shares covered by said certificate, the name of the party to whom said certificate was issued and the face value of the stamps attached in payment of the tax on the transfer of the certificate. Evidence of the payment of the tax provided for herein shall be provided in one of the following manners and not otherwise, to wit:

(a) By attaching to the certificate surrendered for transfer, the stamps required for such transfer, or

(b) If the stamps are not attached to the certificate, but are attached to the bill or memorandum of sale affecting or evidencing the transfer of such certificate, by attaching to said certificate the said bill or memorandum of sale with stamps attached, or

(c) If the stamps covering the transfer are attached to a bill or memorandum effecting a transfer of one or more certificates or to one or more certificates included in said transfer, a notation must be made upon such certificates, bill or memorandum, as the case may be, clearly specifying and identifying the certificate or certificates to the sale or transfer of which the said stamps apply, or

(d) If the bill or memorandum bearing such stamps is not attached to the surrendered certificate or certificates to which it applies, a notation must be made upon such bill or memorandum stating the serial number or numbers of the certificates to which said bill or memorandum applies, as provided herein. It shall also retain and keep all surrendered or canceled shares or certificates and all memoranda relating to the sale or transfer of any thereof. All such books of account, transfer ledgers, registers, and certificate books, shall be retained and kept as aforesaid for a period of at least two (2) years subsequent to the date of the last entry made therein as herein required; and all such surrendered or canceled shares or certificates and memoranda relating to the sale or transfer of certificates taxable under this Article, shall be retained and kept for a period of at least two (2) years from the date of the delivery therof. For the purpose of ascertaining whether the tax imposed by this Article has been paid, all such books of account, transfer ledgers, registers, certificate books, surrendered or canceled shares or certificates and memoranda relating to the sale or transfer thereof, shall at all times between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, except Saturdays, Sundays, and legal holidays, be open to examination by the Comptroller or his duly authorized representative.

The Comptroller may enforce his right to examine such books of account and bills or memoranda of sale or transfer; and such transfer ledger, register and certificate books and surrendered or canceled shares or certificates by mandamus. If the Comptroller ascertains that the tax provided for in this Article has not been paid, the Attorney General at the instance of the Comptroller shall bring an action in the name of the State of Texas, in any court of competent jurisdiction for the recovery of such tax and for any penalty incurred by any person under the provisions of this Article.

Every person, firm, company, association, or corporation, or business conducted by a trustee or trustees that shall fail to keep such book of account or bills or memoranda of sale or transfer, or transfer ledger, register or certificate book or surrendered or canceled shares or certificates as herein required, or who alters, cancels, obliterates, or destroys any part of said records, or makes any false entry therein, or who shall refuse to permit the Comptroller or any of his authorized representatives freely to examine any of said books, records, or papers at any of the times herein provided, or who shall in any other respect violate any of the provisions of this Section shall be deemed guilty of a misdemeanor and on conviction thereof shall for each and every such offense pay a fine of not less than Five Hundred Dollars ($500) nor more than Five Thousand Dollars ($5,000), or be imprisoned not less than three (3) months nor more than one (1) year, or by both such fine and imprisonment.

Failure to pay tax, effect

Sec. 7. No transfer of certificates taxable under this Article made after June 1, 1941, on which a tax is imposed by this Article, and which tax is not paid at the time of such transfer shall be made the basis of any action or legal proceedings, nor shall proof thereof be offered or received in evidence in any court of this State.

Violations

Sec. 8. Any person, firm, company, association, corporation, or business conducted by a trustee or trustees that shall (a) fail to keep any of the records required to be kept under the provisions of this Article, or (b) shall make any sale, transfer or delivery of shares or certificates taxable under this Article without paying the tax by this Article imposed and (c) any person who shall in pursuance of any sale, transfer or agreement deliver any certificate in evidence of sale or transfer of or agreement to sell any such certificate, or bill or memorandum thereof, or who shall transfer or cause the same to be transferred upon the books or records of the association, company, corporation, or business conducted by a trustee or trustees whose stock or other certificates taxable hereunder is sold or transferred, which shall transfer or cause the same to be transferred upon its books without having the stamps provided for in this Article affixed thereto, or (d) shall make use of the adhesive stamp to denote the payment of the tax imposed by this Article without actually canceling such stamp as provided in Section 4 hereof, or (e) who shall wilfully remove or alter or knowingly permit to be removed or altered the canceling or defacing marks of any stamp provided for by this Article with intent to use such stamp, or shall wilfully or knowingly buy, prepare for use, use, have in his possession or suffer to be used any washed, restored or counterfeit stamp, or who shall intentionally remove or cause to be removed or knowingly permit to be removed any such stamp, shall, in addition to any other penalties herein provided, forfeit to the State as a penalty a sum of not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500) for each and every violation hereof. The Attorney General of the State of Texas at the instance of the Comptroller shall bring suit for the recovery thereof in any court of competent jurisdiction in Travis County, Texas, and all monies collected hereunder shall be paid into the State Treasury.

Stamps erroneously affixed; claims; suits

Sec. 9. If any stamp or stamps shall have been erroneously affixed to any book, certificate, or bill or memorandum of sale, the Comptroller may, upon presentation of a claim for the amount of such stamp or stamps and upon the production of evidence satisfactory to him that such stamp or stamps was or were so erroneously affixed so as to cause loss to the person or persons making such claim, pay such amount or such part thereof as he may allow, to such claimant out of any monies collected under this Article. Such claim shall be presented to the Comptroller in writing, duly verified, and shall state the full name and address of the claimant, the date of such erroneous affixing, the face value of such stamp or stamps and shall describe the instrument to which the stamp or stamps were affixed and contain such evidence as may be available upon which the demand for such

refund is based. Such claim shall be presented within ninety (90) days after such erroneous affixing. The Comptroller is hereby authorized to prescribe the form of proof of such claim and if he finds that such claim is just and that such stamps have been erroneously affixed, he shall within sixty (60) days issue a warrant or warrants for the amount claimed and allowed by him. If the Comptroller rejects such claim or any part thereof the claimant is hereby authorized to file suit in a court of appropriate jurisdiction in the County of Travis against the Comptroller as defendant for the purpose of determining the amount of such claim. Such suit shall be filed within ninety (90) days from the date on which such claim shall have been rejected by the Comptroller. After final adjudication of the amount of such claim the Comptroller is hereby authorized to draw a warrant or warrants in payment of same. All such warrants for refunds under the provisions hereof shall be written and signed by the Comptroller, counter-signed by the State Treasurer, and shall be paid only out of the funds collected hereunder.

Building and loan associations and credit unions, article inapplicable to

Sec. 10. The tax imposed by this Article shall not be construed as being applicable to shares, share accounts, certificates or pass books issued by any building and loan association chartered under the laws of this State, nor to credit unions defined in Article 2461, Revised Civil Statutes, 1925. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XV.]

Art. 7048. [7357] [5050] County ad valorem, etc.—Each commissioners court shall have power to levy, for county revenue purposes, a tax of one-fourth of one per cent, and, for roads and bridges, fifteen cents on the one hundred dollars valuation of all property subject to a State tax by the provisions of this title; and, for the payment of debts incurred prior to September 1883, and for the erection of public buildings and other permanent improvements they shall have power to levy a tax not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and for the improvement of public roads, under the restrictions provided by law for the levy of a road tax, a tax not to exceed fifteen cents on the one hundred dollars valuation, and shall have power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of school buildings therein in counties not exempt from the district school system; provided, that two-thirds of the qualified property tax paying voters of the district, voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, and shall have the right to levy one-half of the occupation tax levied by the State upon all occupations not herein otherwise specially exempted; provided any one wishing to pursue any of the vocations named in this chapter, upon which any county occupation tax may be levied, may do so by paying the same quarterly. The receipt of the proper officer under seal shall be prima facie evidence of the payment of such taxes as are herein named. The provisions of this law shall not be deemed to affect the provisions of any law specially authorizing any commissioners court to levy a different rate of tax. No person shall be allowed license for keeping any nine or ten pin alley, or anything of the kind used for profit, for a period of less than twelve months. The governing body of any incorporated town or city shall in no case levy a greater tax on any occupation than that authorized by this chapter to be levied by the commissioners court. In all cases where any dealer in merchandise, wares or goods of any kind, subject to ad valorem or occupation taxes, or both, under the provisions of this law, who shall after the rendition of said merchandise, wares or goods for taxation, or after becoming liable for any occupation tax, become bankrupt or make assignment of said merchandise, wares or goods, then the tax collector shall at once demand of the receiver or assignee of said dealer payment of the amount due for said taxes by said dealer; and in case of failure of said receiver or assignee to at once pay the amount of said taxes, the said collector shall levy upon, seize and sell from the said merchandise, wares or goods, enough to satisfy the amount of said taxes, and said taxes, until paid, shall constitute a prior lien on said merchandise, goods and wares in default of said taxes. [Acts 1885, p. 105; G. L. vol. 9, p. 725; Acts 1891, p. 51.]

Art. 7049. [7358] [5051] Taxes payable in what.—The taxes levied by this chapter are payable in currency or coin of the United States; provided, that persons holding scrip issued to them for services rendered the county may pay their county ad valorem taxes in such scrip[t]. [Acts 1st C. S. 1897, p. 38.]

Art. 7050. [7359] [5052] Books of collector.—The tax collector shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to-wit: January 1st, April 1st, July 1st, and October 1st, or within ten days thereafter, in which to require the returns to be made under the provisions of this chapter, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax upon occupations under this chapter; and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the Comptroller a transcript or duplicate of the return and the amount as shown by his record, this transcript and record from which it is taken to show the amount of such quarterly returns and the tax due thereon from every person, firm or association of persons liable to such tax. Nothing contained in this article is intended to affect the liability which, in the absence of this statute, would be incurred under any special enactment of this State. [Acts 1879, p. 143; G. L. vol. 8, p. 1443.]

Art. 7051. [7360] Collector furnished books, etc.—The Comptroller shall furnish tax collectors the necessary books and blanks required to be used by such collectors under the provisions of this chapter. [Id.]

Art. 7052. [7361] [5054] Pay in advance.—The payment of the specific tax herein provided for shall be required by the tax collector to be made before any person, firm or association of persons shall be allowed to engage in any occupation requiring a license under any provision of this law, this payment to be made for a period not less than three months. All arrearages of taxes that may be due by reason of any such business having been carried on shall be a lien upon all the stock and fixtures owned or used in making a part of any business or vocation liable to such tax under the provisions of this chapter, and which lien shall authorize the collector to sell, after due notice, so much of the stock or other personal property of any person, firm or association of persons owing taxes under the provisions of this chapter, as will satisfy such claim, together with the cost of such proceeding. [Id.]

Art. 7053. [7362] [5055] Tax receipts furnished.—The Comptroller shall cause occupation tax receipts for each occupation to be printed with his signature, for all occupations, payable to the collectors, annual receipts for those that are paid annually, and quarterly receipts for all that can be paid quarterly; such receipts shall state the name of the occupation and the amount of the tax, and have blanks for the year, month and name of licensee, and also have a blank space for the signature of the collector; these

receipts shall each have a stub attached, stating briefly the substance of the attached receipt, and shall be bound in books; and he shall forward to each collector a proper number of said receipts, and charge him with the amount represented therein, and cause him to account therefor. The collector whenever collecting any occupation tax, shall fill the blanks in the receipt and stub by writing thereon the time for which he collects and the name of the licensee, and shall sign the receipt and stub officially. No person shall pursue any occupation, unless he has a receipt signed as herein provided by the Comptroller and collector; and every person, firm or corporation keeping an office or having a local place of business shall keep posted up in a conspicuous place his or their said license. [Id.]

Art. 7054. [7363] Account of occupation tax receipts.—When the Comptroller furnishes collectors with blank occupation tax receipts, he shall furnish the commissioners courts with the numbers and value of the receipts furnished to their respective collectors; and such courts shall charge their respective collectors with the number and such proportion of the value of the receipts so furnished as shall apply to the county tax, when such collectors shall make their settlements with the Comptroller. The Comptroller shall furnish the commissioners court with the numbers and value of the receipts returned, and with the amount of the occupation taxes collected by their respective collectors. [Acts 1st C.S. 1897, p. 49.]

Art. 7055. [7364] [5056] Transfer of license.—Any person, firm, corporation, or association of persons, who shall be the legal owners or holders of any unexpired occupation license issued in accordance with the laws of this State, may transfer the same on the books of the officer by whom the same was issued. [Acts 1885, p. 27; G. L. vol. 9, p. 647.]

Art. 7056. [7365] [5057] Purchaser of unexpired license.—The assignee or purchaser of such unexpired occupation license shall be authorized to pursue such occupation under such unexpired license for and during the unexpired term thereof, provided that such assignee or purchaser shall, before following such occupation, comply in all other respects with the requirements of the law provided for in the original applications for such licenses. Nothing in this law shall be so construed as to authorize two or more persons, firms, corporations or associations of persons to follow the same occupation under one license at the same time. Whenever any person, firm, corporation or association of persons following an occupation shall be closed out by legal process, the occupation license shall be deemed an asset of said person, firm, corporation or association of persons, and sold as other property belonging to said person, firm, corporation, or association; and the purchaser thereof shall have the right to pursue the occupation named in said license, or transfer it to any other person; provided, such occupation license shall under no circumstances be transferred more than one time. [Id.]

Art. 7057. [7366–67–68] Revenue duties.—The Governor may, whenever in his judgment the public service demands it, direct the Comptroller to investigate books and accounts of the assessing and collecting officers of this State, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenues as the Governor may direct. Whenever any such investigation is ordered by the Governor, the Comptroller shall report to him in writing the results thereof, and point out the particulars, if any, wherein the revenue laws have been violated or their enforcement neglected, together with the names of those delinquent therein. Whereupon the Governor shall institute civil and criminal proceedings through the Attorney General in the name of the State against such delinquent parties who are reported by the Comptroller to be delinquent. The Comptroller shall have power at any time to examine and check up all and any expenditures of money appropriated for any of the State institutions or for any other purpose or for improvements made by the State on State property or money received and disbursed by any board authorized by law to receive and disburse any State money. The Comptroller shall also have power and authority, and it is hereby made his duty, to fully investigate any State institution when so directed by the Governor or required by information coming to his own knowledge. He shall investigate the manner of conducting the same and the policy pursued by those in charge thereof, and the conduct or efficiency of any person employed therein by the State. He shall examine into and report upon the character and manner as well as the amount of expenditures thereof, and investigate and ascertain all sums of money due the State from any source whatever, the ascertainment and collection of which does not devolve upon other officers of this State under existing law; and he shall report all such facts to the Governor. When the Comptroller, acting under the direction of the Governor, calls on any person connected with the public service to inspect his accounts, records or books, said person so called upon shall submit to said agent all books, records and accounts so called for without delay.

The Comptroller shall receive his actual traveling expenses, which shall be paid on the approval of the same by the Governor; provided he shall not be allowed traveling expenses for any service connected with the examination and investigation of the accounts of any institution in Travis County. [Acts 1891, p. 87; Acts 1899, p. 26; Acts 4th C. S. 1918, p. 197.]

Art. 7057a. Occupation tax on oil produced.

Definitions

Sec. 1. (1). For the purpose of this Act "producer" shall mean any person owning, controlling, managing or leasing any oil well and/or any person who produces in any manner any oil by taking it from the earth or waters in this State, and shall include any person owning any royalty or other interest in any oil or its value whether produced by him, or by some other person on his behalf, either by lease, contract or otherwise.

(2). "First purchaser" shall mean any person purchasing crude oil from the producer.

(3). "Subsequent purchaser" shall mean any person operating any reclamation plant, topping plant, treating plant, refinery, and/or any kind or character of processing plant, or anyone who purchases oil for any purpose whatsoever, when said oil is purchased from any person other than the producer.

(4). "Carrier" shall mean the owner, operator, or manager of any means of transporting oil or any instrumentality that may now be used or come into use.

(5). "Oil" shall mean crude oil, or other oil taken from the earth, regardless of gravity of the oil.

(6). "Report" shall mean any report required to be furnished in this Act or that may be required by the Comptroller in the administration of this Act.

(7). "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(8). "Production" or "total oil produced" shall mean the total gross amount of oil produced including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this Article shall be measured or determined by tank tables compiled to show one hundred (100) per cent of the full capacity of tanks without deductions for overage or losses in handling. Allowance for any reasonable and bona fide deduction for basic sediment and water, and for correction of temperature to sixty (60) degrees Fahren-

heit will be allowed. If the amount of oil produced has been measured or determined by tank tables compiled to show less than one hundred (100) per cent of the full capacity of tanks, then such amount shall be raised to a basis of one hundred (100) per cent for the purpose of the tax imposed by this Article.

(9). "Royalty owners" shall mean and include all persons owning any mineral rights under any producing leasehold within this State, other than the working interest, which working interest is that of the person having the management and operation of the well.

(10). "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

(11). "Commission" shall mean the Railroad Commission of Texas.

(12). The Tax herein imposed on the producing of crude petroleum shall be the primary liability of the producer as hereinbefore defined, and every person purchasing crude petroleum from the producer thereof and taking delivery thereof at the premises where produced shall collect said tax imposed by this Act from the producer. Every purchaser including the first purchaser and the subsequent purchaser, required to collect any tax under this Act, shall make such collection by deducting and withholding the amount of such tax from any payments made by such purchaser to the producer, and remit same as herein provided. This Section shall not affect any pending law suit in the State of Texas, or any lease agreement or contract now or that hereafter may be in effect between the State of Texas or any political subdivision thereof and/or The University of Texas and any oil producer.

(13). When it shall appear that a taxpayer to whom the provisions of this Act shall apply has erroneously paid more taxes than were due during any taxpaying period either on the account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(14). The tax hereby levied shall be a liability upon the producer, the first purchaser, and/or subsequent purchaser or purchasers as herein provided.

(15). The tax hereby levied shall be paid by the first purchaser purchasing the same from the producer, who shall deduct the same from the amount paid producer, as aforesaid, provided, however, that the failure of first purchaser to pay said tax shall not relieve the producer from the payment of same, nor shall it relieve any subsequent purchaser from the payment of same, where the first purchaser does not account for and pay said tax, and the State shall have a lien on all of the oil produced in Texas in the hands of the producer, the first purchaser and any subsequent purchaser to secure the payment of the tax due, and it shall be the duty of every person purchasing oil produced in Texas to satisfy himself or itself that the tax on said oil has been or will be paid by the persons primarily liable therefor.

(16). If the oil produced by said producer is not sold during the month in which it is produced, then said producer shall pay the tax at the same rate and in the same manner as if said oil were sold during said month. In such case, however, the working interest operator may pay such tax and deduct it from the interest of the other interest holders. [As amended Acts 1935, 44th Leg., p. 898, ch. 353, § 1.]

Amount and computation of tax; records and reports; time of payment; penalty; mode of payment and persons liable

Sec. 2. (1) There is hereby levied an occupation tax on oil produced within this State of four and one hundred twenty-five thousandths (4.125) cents per barrel of forty-two (42) standard gallons. Said tax shall be computed upon the total barrels of oil produced or salvaged from the earth or waters of this State without any deductions and shall be based upon tank tables showing one hundred (100) per cent of production and exact measurements of contents. Provided, however, that the occupation tax herein levied on oil shall be four and one hundred twenty-five thousandths (4.125) per cent of the market value of said oil whenever the market value thereof is in excess of One Dollar ($1) per barrel of forty-two (42) standard gallons. The market value of oil, as that term is used herein, shall be the actual market value thereof, plus any bonus or premiums or other things of value paid therefor or which such oil will reasonably bring if produced in accordance with the laws, rules, and regulations of the State of Texas.

(2) The tax hereby levied shall be a liability of the producer of oil and it shall be the duty of such producer to keep accurate records of all oil produced, making monthly reports under oath as hereinafter provided.

(3) The purchaser of oil shall pay the tax on all oil purchased and deduct tax so paid from payment due producer or other interest holder, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Provided, that if oil produced is not sold during the month in which produced, then said producer shall pay the tax at the same rate and in the manner as if said oil were sold.

(4) The tax levied herein shall be paid monthly on the twenty-fifth day of each month on all oil produced during the month next preceding by the purchaser or the producer as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make payments and shall be entitled to reasonable attorney fees and court costs incurred by such legal action.

(5) Provided, that unless such payment of tax on all oil produced during any month or fractional part thereof shall be made on or before the twenty-fifth of the month immediately following, such payment shall become delinquent and a penalty of ten (10) per cent of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six (6) per cent per annum from date due until date paid.

(6) The tax herein levied shall be borne ratably by all interested parties, including royalty interests, and producers and/or purchasers of oil are hereby authorized and required to withhold from any payment due interested parties the proportionate tax due. [As amended Acts 1933, 43rd Leg., 1st C.S., p. 43, ch. 12, § 1; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 4; Acts 1941, 47th Leg., p. 269, ch. 184, Art. I, § 1.]

Records and reports

Sec. 3. (1). A complete record shall be kept by every producer of oil within this State, said records to show the county or counties in which said producer operates, the correct name or names of the lease or leases from which oil is produced, the total number of barrels of oil produced from each lease, the correct name and address of the first purchaser, the total number of barrels of oil sold or delivered to each first purchaser and the price received therefor. And in addition shall keep a record of all oil used on the lease from which said oil is produced or which may be refined or processed in any manner by the producer upon the lease from which said oil is produced; and if said oil is not sold, the location of storage and the total number of barrels in storage, if owned by such operator, or if stored with a

pipe line or a refinery, the correct name and address of such pipe line or refinery.

(2). Every producer shall file monthly on the 25th day of each month with the Comptroller under oath of the producer or his duly authorized agent a report showing the total number of barrels of oil produced by said producer during the month preceding the date of the report, the county in which the oil is produced, the correct name of the lease from which the oil is produced, the correct name and address of the first purchaser of said oil and the price received therefor, and such other information as Comptroller may require; said records and reports shall be open to the inspection of the Comptroller or the Attorney General or the duly authorized agents of the Comptroller or Attorney General.

(3). Every first purchaser shall keep in Texas records showing the correct name and address of the producer from whom said first purchaser buys oil, the county in which said oil is produced, the true and correct name of the lease from which said oil is produced, the total number of barrels bought, and the price paid therefor; and in addition shall keep a record showing the total number of barrels of said oil so purchased and used, refined, or processed in any manner by said first purchaser and the total number of barrels of oil sold by him, the price received therefor, and the true and correct name and address of the subsequent purchaser of said oil. On the 25th day of each month each and every first purchaser of oil shall file with the Comptroller, under oath of the first purchaser or his duly authorized agent, a report showing the total number of barrels of oil purchased during the preceding month, the price paid therefor, the correct name and address of the producer or producers from whom said oil was purchased, the county in which the oil was produced, and the correct name of the lease from which said oil was produced, and such other information as Comptroller may require; said records and reports shall be open to the inspection of the Comptroller and/or Attorney General or their duly authorized agents.

(4). Each and every subsequent purchaser, shall keep in Texas a record showing the correct name and address of each first purchaser or subsequent purchaser from whom any oil is bought, the total number of barrels purchased and the price paid therefor, the date of purchase, the disposition of said oil, the total number of barrels used, refined, or processed in any manner by said subsequent purchaser, and if sold shall show the correct name and address of the subsequent purchaser to whom said oil is sold or delivered and the date of said sale and/or delivery, and the price received therefor.

(5). Each and every subsequent purchaser shall file with the Comptroller on the 25th day of each month a report under oath of the subsequent purchaser or a duly authorized agent showing the correct name and address of the person from whom said subsequent purchaser has bought oil during the preceding month, the total number of barrels purchased, the price paid therefor, and the disposition of said oil; said reports to show the total number of barrels of oil used, refined, or processed in any manner by said subsequent purchaser, and the correct name and address of any subsequent purchaser to whom said oil was sold and the number of barrels sold, and the price received therefor; said records and reports shall be open to the inspection or the Comptroller or the Attorney General or the duly authorized agents of the Comptroller or Attorney General.

(6). Royalty owners shall only keep a record of all moneys received as royalty from any producing leasehold within this State. They shall also keep a copy of all settlement sheets furnished them by the purchaser or operator or any other statement showing the number of barrels of oil from which royalty was received and the amount of tax deducted; said records shall be open to the inspection of the Comptroller or the Attorney General of [1] their duly authorized agents.

(7). Every carrier, including all railroads, barges, trucks, or pipe lines, carrying or transporting oil for hire, for themselves or their owners, shall keep in Texas a complete and accurate record of all oil so handled by months, showing date received, number of barrels, of whom received, point of delivery, to whom delivered and manner of transportation, and such records shall be open to the inspection of the duly authorized agents of the Comptroller or the Attorney General at all times, and, if requested by the Comptroller, shall furnish information and reports of movements as often as required by the Comptroller; provided however, that nothing in this bill imposing a tax on those enjoying the privilege herein taxed shall be construed as impairing any contract whereby any interest holder or other person has agreed to pay any part of the tax in the past or in the future, but said tax is imposed on all of said interest holders as their interests appear and shall be paid as herein provided, and this Act is not intended to relieve any person of any contractual liability whatsoever. [As amended Acts 1933, 43rd Leg., 1st C.S., p. 43, ch. 12, § 2; Acts 1935, 44th Leg., p. 898, ch. 353, § 2.]

[1] So in enrolled bill. Should probably read "or".

Purchasers to deduct amount of tax

Sec. 4. Purchasers buying oil from properties in litigation or in receivership, bankruptcy, or any other legal proceedings, or covered by assignments, are required to deduct the amount of the taxes levied by this Act, before payment is made to the producers, trustees, assignees or to any person who claims ownership of said funds, or before the proceeds of said purchase of oil is impounded or escrowed by said purchaser pending such litigation or tenure of assignments, and shall remit said tax deducted in the same manner as if said oil had been purchased from any other source, and providing that said purchaser shall not be liable to any claimant of said funds on account of payment of said tax.

Reports to Comptroller; payment of tax

Section 5. (1) At the time of filing the reports herein required, the first purchaser shall pay to the Comptroller by legal tender or cashier's check, payable to the State Treasurer, the tax herein required to be paid. Failure to pay said tax on the twenty-fifth day of the month immediately following, shall cause said tax to become delinquent and a penalty of ten (10) per cent of the amount of said tax shall be added, such tax and penalty to bear interest at the rate of six (6) per cent per annum from the date due until the date paid. [As amended Acts 1933, 43rd Leg., 1st C.S., p. 43, ch. 12, § 3; Acts 1935, 44th Leg., p. 898, ch. 353, § 3.]

Prior lien of state for taxes, penalties and interest

Sec. 6. (1) For the tax, penalties and interest herein provided for, the State shall have a prior and preferred lien on every leasehold interest, ownership of the oil rights, or the value of oil rights or other interest, including oil produced and oil runs owned by the person owing any tax herein, and in addition thereto such lien shall include equipment, tools, tanks, and all other implements used on said lease from which oil is produced. Said lien shall extend to and be enforceable against any property, either real or personal, or both, owned by any person or persons made liable for the tax herein levied, which property is not exempt from forced sale by reason of existing laws or the Constitution of this State. It is further provided that when any oil is discovered upon which the tax herein provided for has not been paid as and when provided for herein, any sheriff, ranger or other peace officer is authorized to levy on said oil by notice to the owner or other person in charge, that said oil is levied on for

taxes due on it and after ten (10) days notice posted at the site of the oil, said officer shall proceed to sell said oil to the highest bidder for cash. Any money received for said oil in excess of the taxes and ten (10) per cent commission to the officer selling the property, shall be paid by said officer to the owner of said oil. The officer selling same shall transmit the amount of the tax to the Comptroller or his duly authorized representative. Should the oil sold fail to sell for enough to pay said taxes, the officer selling same shall deduct ten (10) per cent of the amount received and forward the balance to the Comptroller. Provided however, that no ranger shall receive any commission for services performed in the enforcement of this provision. [As amended Acts 1935, 44th Leg., p. 898, ch. 353, § 4.]

Collection of delinquent taxes; venue

Sec. 7. It shall be the duty of the Attorney General to bring legal action for the collection of delinquent taxes herein levied, and a suit instituted shall attach to oil in storage, in transit, or being produced by such operator, and venue for such suits herein provided shall be in the District Court of Travis County, Texas.

Suit to collect delinquent tax, penalty, or interest; audit or report as evidence

Sec. 7a. If any producer or purchaser of crude oil, or subsequent purchaser, fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Act and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of crude oil produced or purchased on which such tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser when filed and sworn to by such representative as being made from the records of said producer or purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided further that such report or audit may be admitted in evidence only against the party by or for whom it was made.

In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid; and all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder. [Added Acts 1939, 46th Leg., p. 633, § 1.]

Penal provisions

Sec. 8.

Section 8, being a penal provision, is published as part of Pen.Code, Art. 1111a.

Removal of oil from lease unlawful where owner or operator has not filed reports

Sec. 8a. On notice from the State Comptroller, it shall be unlawful for any person to remove any oil from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Act. [Added Acts 1939, 46th Leg., p. 634, § 1.]

Transfer of lease noted on last report; acquirement of lease shown on first reports; requisites

Sec. 8b. Whenever any lease producing oil changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, co-partnership, corporation, agency, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Act. It further shall be the duty of the new owner or operator of said leases to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, co-partnership, corporation, agency, or receiver formerly owning and/or operating said lease. [Added Acts 1939, 46th Leg., p. 634, § 1.]

Duties of Comptroller, appropriation for expenses

Sec. 9. (1). It shall be the duty of the Comptroller to promulgate rules and regulations governing the detail administration of the terms and requirements of this Act not specifically mentioned herein; to employ auditors and supervisors for the purpose of verifying reports and investigating the affairs of producers and/or purchasers to determine whether the tax is being properly reported and paid. Before any division or allotment of the occupation tax on oil collected under the provisions of this Act, is made one-half of one per cent of the gross amount of said tax shall be set aside in the Treasury subject to the use of the Comptroller in the administration and enforcement of the provisions of this Act, and so much of the said proceeds of one-half of one per cent of the occupation tax on oil paid monthly as may be needed in such administration and enforcement shall be expended in the amounts and for the purposes fixed by the Legislature in the General Appropriation Bill. Any unexpended portion of said fund so specified shall at the end of the fiscal year revert to the respective funds or accounts in proper proportions to which the occupation tax on oil is proportioned at the end of the fiscal year; and provided that the Comptroller may appoint only six (6) additional supervisors or auditors. No salary to exceed those set out in the Departmental Appropriation Bill, for places of the same type of service.

(2). Provided that said appropriation herein provided for shall include as a part of said one-half of one per cent of the said tax herein appropriated the appropriation made by the Regular Session of the Forty-third Legislature for said Comptroller's Department for the purpose herein mentioned. [As amended Acts 1933, 43rd Leg., 1st C.S., p. 43, ch. 12, § 4; Acts 1935, 44th Leg., p. 898, ch. 353, § 6.]

Secs. 9a, 9b, 10, 11, 11a, 12.

Sections 9a and 9b, being penal provisions, are published as part of Pen.Code, Art. 1111a.
Section 10 repealed article 7071, post.
Sections 11, 11a and 12 amended articles 6032, 7047(23), ante, 7105, post.

Partial unconstitutionality

Sec. 13. It is hereby provided that in event that any provision, section or subdivision of this Act is declared unconstitutional that it shall not affect the remaining provisions of this Act and they shall be in full force and effect. [Acts 1933, 43rd Leg., p. 409, ch. 162.]

Section 7 of Acts 1935, provides that if any provision of the act is held unconstitutional, it shall not affect the remainder.
Section 2 of Article I of the amendatory Act of 1941, cited to the text, provided that the tax levied in section 2 of article 7057a shall be allocated as provided in such act. See article 7083a.

Art. 7057b. Payment of license or privilege taxes under protest.

Protest

Sec. 1. Any person, firm or corporation who may be required to pay to the head of any department of the State Government any occupation, gross receipt, franchise, license or other privilege tax or fee, and who believes or contends that the same is unlawful and that such public official is not lawfully entitled to demand or collect the same shall, nevertheless, be required to pay such amount as such public official charged with the collection thereof may deem to be due the State, and shall be entitled to accompany such payment with a written protest, setting out fully and in detail each and every ground or reason why it is contended that such demand is unlawful or unauthorized.

Suits for recovery of taxes or fees

Sec. 2. Upon the payment of such taxes or fees, accompanied by such written protest, the tax-payer shall have ninety (90) days from said date within which to file suit for the recovery thereof in any court of competent jurisdiction in Travis County, Texas, and none other. Such suit shall be brought against the public official charged with the duty of collecting such tax or fees, the State Treasurer and the Attorney General. The issues to be determined in such suit shall be only those arising out of the grounds or reasons set forth in such written protest as originally filed. The right of appeal shall exist as in other cases provided by law. Provided, however, where a class action is brought by any tax-payer all other tax-payers belonging to the class and represented in such class action who have properly protested as herein provided shall not be required to file separate suits but shall be entitled to and governed by the decision rendered in such class action. A class action shall include any suit filed by any two or more persons, firms, corporations or association of persons who have paid under protest such taxes or fees referred to in Section 1 hereof. [As amended Acts 1939, 46th Leg., p. 643, § 1.]

Payment of additional taxes under protest after filing suit; amendment of petition; jurisdictional amount

Sec. 2a. After such suit is filed in a Court of competent jurisdiction in Travis County, and before such suit is tried by said Court, said tax-payer pays additional taxes under protest, the grounds of protest being the same as in the original petition filed in said Court, and the total of said taxes exceeds the jurisdiction of said Court, then the tax-payer will be authorized to file suit within ninety (90) days after the payment of such additional taxes in a Court in Travis County which has jurisdiction of the total amount of said taxes paid under protest, and when such suit is filed it shall be deemed to have been filed in conformity with the provisions of this Act; provided further, that a tax-payer may amend his original petition setting up such additional taxes paid under protest, and such amendment, if filed within ninety (90) days after the date of payment of such additional taxes under protest, shall not be considered a new cause of action. Provided further, that if an appeal is taken from the final judgment rendered in such suit, the tax-payer will not be relieved of the duty of continuing paying said taxes under protest pending the appeal of said case; however, it will not be necessary for such taxpayer to file suit within ninety (90) days after the payment of such taxes, but the disposition of such taxes shall be governed by the outcome of the original suit. [Added Acts 1939, 46th Leg., p. 643, § 2.]

Application of amendatory Act

Sec. 2b. The provisions of this Act shall apply to all taxes paid under protest, and which taxes have not been finally determined to belong to the State. [Added Acts 1939, 46th Leg., p. 643, § 3.]

Lists remitted to State Treasurer

Sec. 3. It shall be the duty of such public official to transmit daily to the State Treasurer all money so received, with a detailed list of all those remitting same, and he shall inform the State Treasurer in writing that such money was paid under protest as hereinabove provided. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each department; and the cashier of the Treasury Department shall keep a cash book to be called "Suspense Cash Book," in which to enter such deposit receipts. Upon the receipt of such money by the State Treasurer it shall be his duty and he is hereby required to immediately and forthwith place the same in State depositories bearing interest in the same manner as any other funds of the State required to be placed in such depositories at interest, and the State Treasurer shall further be required to allocate whatever interest is earned on such funds and to credit the amount thereof to such suspense account until the status of such money is finally determined as herein provided.

Refunds and warrants

Sec. 4. If suit is not brought within the time and within the manner herein provided, or in the event it finally be determined in such suit that the sums of money so paid or any portion thereof, together with the pro rata interest earned thereon, belong to the State, then and in that event it shall be the duty of the State Treasurer to transfer such money from the suspense account to the proper fund of the State by placing the portion thereof belonging to the State in such fund by the issuance of a deposit warrant. When such deposit warrant or warrants are issued, they shall be entered in the cash book, and the proper fund to which such money is so transferred shall be properly credited therewith. In the event, however, that suit is brought by such taxpayer within the time and within the manner hereinabove provided, and it be finally determined that such money so paid by such taxpayer, or any part thereof, was unlawfully demanded by such public official and that the same belongs to such taxpayer, then and in that event it shall be the duty of the State Treasurer to refund such amount, together with the pro rata interest earned thereon, to such taxpayer by the issuance of a refund warrant, the same to be issued in separate series and to be used for making such refunds, to be styled and designated "Tax Refund Warrants" and such warrants shall be written and signed by the Comptroller and countersigned by the State Treasurer and charged against the suspense account, as hereinabove provided, and shall then be returned to the Comptroller and delivered by him to the persons entitled to receive the same.

Extension to prior taxpayers

Sec. 5. Any taxpayer who has heretofore paid any taxes or fees of the character embraced herein to such public official, accompanied by some form of protest, and which moneys are now being held in the suspense account, and who has not brought suit under the suspense account law for the recovery of same, and who is not embraced within or protected by any action which may now be pending for the recovery of same, shall have ninety (90) days from the effective date of this Act within which to bring suit in the manner hereinabove provided. It is further provided and so directed that the head of department having heretofore received any such sums of money under protest which have not been disposed of, shall immediately, upon this law become [1] effective, notify said corporation having paid the same of the provisions of this law by mailing a copy of the same to such corporation or corporations.

[1] So in enrolled bill. Should probably read "becoming".

Application to moneys in suspense account

Sec. 6. The provisions of this law directing the State Treasurer to place in the State depositories any taxes or fees paid under the provisions hereof and authorizing the State Treasurer to refund the principal, together with pro rata interest earned thereon, to any taxpayer who may be successful in recovering any sum of money in a suit as hereinabove provided, shall apply to such sums of money as have heretofore been paid by such taxpayer to the State Treasurer and which are now being held in the suspense account, where such taxpayer has brought suit or may bring suit as provided in Section 5 hereof or is embraced within and protected by any suit or cause of action which may now be pending for the recovery thereof, and in the event any such taxpayer should be successful in any such litigation, then and in that event the State Treasurer shall be required to return to such taxpayer the principal amount so recovered, together with the pro rata interest earned thereon from the effective date of this law; and provided further that such taxpayer who is successful in such suit and who has heretofore paid any such taxes or fees which are now held in the suspense account shall be entitled to the principal sum of the amount awarded to him by the court, together with the pro rata interest earned thereon, from the date of the deposit of such principal sum of money to the effective date of this law, and there is hereby appropriated out of any interest earned from the General State Depository Funds a sum of money which shall be sufficient to pay the pro rata amount of interest earned on the taxes or fees so recovered and it shall be the duty of the State Treasurer to allocate to and pay from the interest earned upon the General State Depository Funds such amount of interest as shall have been earned thereon.

Sec. 6a.

Section 6a was repealed by Acts 1934, 43rd Leg., 2nd C.S., p. 163, ch. 68, § 1.

Law as cumulative

Sec. 7. The provisions of this law shall be cumulative of all laws relating to the payments of taxes or fees of undetermined status and for the holding thereof in the suspense account fund of the State Treasurer.

Partial invalidity

Sec. 8. The provisions of this law are severable and if any part thereof should be declared unconstitutional it shall not affect the remaining part or parts thereof, which shall remain in full force and effect, notwithstanding such invalid part or parts. [Acts 1933, 43rd Leg., p. 637, ch. 214.]

Art. 7057c. Oleomargarine tax.

Definitions

Sec. 1. That where used in this Act:

(a) The word "person" shall mean person, firm, partnership, association, and/or other form of joint enterprise, and/or every person as defined by law.

(b) "Wholesaler" as used in this Act, shall mean every person who in this State, in intrastate commerce, makes the first sale or distribution of any oleomargarine.

(c) "Wholesale" or "sale at wholesale" or "sell at wholesale" as used herein, shall mean the first sale or distribution made by any such wholesaler and shall include the first sale or distribution of any oleomargarine imported into this State from another State or country.

(d) "Distribution" shall mean the first dispensation or shipment, whether by sale or otherwise, by any wholesaler from any place in this State, whether to another place owned by a wholesaler or otherwise.

(e) The word "oleomargarine" shall mean all substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, neutral, margarine and nut-margarine; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, neutral, margarine and nut-margarine; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil, fish fat, cocoanut oil, palm oil and/or vegetable oils of any and all kinds, annatto, and other coloring matter, intestinal fat and offal fat, if (1) made in imitation or semblance of butter or (2) calculated or intended to be sold as butter or for butter, or (3) churned, emulsified or mixed in cream, milk, water, or other liquids, and containing moisture in excess of one (1) per centum of common salt. This section shall not apply to puff pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred and eighteen (118) degrees Fahrenheit or more, nor to any of the following containing condiments and spices; salad dressings, or mayonnaise or mayonnaise dressings or mayonnaise products; nor to pharmaceutical preparations, oilmeals, liquid preservatives, illuminating oils, cleansing compounds, or flavoring compounds.

Wholesalers' statement to Comptroller

Sec. 2. That in addition to the taxes now provided for by law, each and every wholesaler, as defined in this Act, who is now engaged or may be hereafter engaged in his own name, or in the name of others, or in the name of representatives or agents in this State, in the sale of oleomargarine as herein defined, containing any fat and/or oil ingredient other than oleo oil from cattle, oleo stock from cattle, oleo stearine from cattle, neutral lard from hogs, cottonseed oil, peanut oil, corn oil, soya bean oil and/or milk fat, shall not later than the fifteenth day of each calendar month render sworn statements to the State Comptroller of all such oleomargarine sold by such wholesaler in the State of Texas during the preceding calendar month, and pay an excise tax of Ten (10) cents per pound on all such oleomargarine so sold as shown by such statement in the manner and within the time hereinafter provided.

Certificates to be filed

Sec. 3. All wholesalers of such taxable oleomargarine in the State of Texas shall file a duly acknowledged certificate with the State Comptroller on forms prescribed, prepared and furnished by him, which shall contain the name under which such wholesaler is transacting business within the State of Texas; such certificate shall state the place or places of business and location of distributing stations of such wholesaler in the State of Texas, the name and address of the manufacturing agent, the names and addresses of the several persons constituting the firm or partnership, and if a corporation, the corporate name under which it is authorized to transact business, and the names and addresses of its principal officers, resident general manager and attorney-in-fact. If such wholesaler is an association of persons, firm, partnership or corporation organized under the laws of another State, territory or nation, if it has not already done so, it must first comply with the laws of the State of Texas relating to the transaction of its appropriate business therein. No wholesaler, as herein defined, shall after the law goes into effect, sell any taxable oleomargarine until such certificate is furnished, as required by this Act.

Statement as to number of pounds sold

Sec. 4. Every wholesaler of such oleomargarine taxed by this Act shall render to the State Comptroller, on or before the fifteenth day of each month, on form prescribed, prepared and furnished by said Comptroller, a sworn statement of the number of pounds of taxable oleomargarine sold during the preceding calendar month, which statement shall be sworn to by one of the principal officers in case of a domestic corporation or by the resident general manager or attorney-in-fact in

case of a foreign corporation, or by the managing agent or owner in case of a firm or association, and shall contain a statement of the quantities in pounds of taxable oleomargarine sold. Bills shall be rendered to dealers in taxable oleomargarine as herein defined. Said bills shall contain a statement printed thereon in a conspicuous place that the wholesaler of such oleomargarine has assumed the liability to the State for the tax therein imposed and that said wholesaler will pay said tax on or before the fifteenth day of the following month.

Date of payment of tax

Sec. 5. Said excise tax shall be paid on or before the fifteenth day of each month to the State Comptroller, who shall receipt the wholesaler therefor and place the same in the State Treasury to the credit of the General Fund of the State of Texas.

Records

Sec. 6. Every wholesaler of such taxable oleomargarine shall keep a record in such forms as may be prescribed by the State Comptroller of all purchases, receipts, sales and distributions of such oleomargarine and such record shall at all times during the business hours of the day be subject to inspection and examination by the State Comptroller or his deputies, or such other officers as may be provided by law.

Sticker tags on containers, packages, etc.

Sec. 7. All such taxable oleomargarine sold in containers, packages, or cases shall bear a sticker tag showing the date of invoice upon which the same was delivered, the name of the wholesaler of such oleomargarine, and shall contain a statement that the liability for the tax thereon has been assumed by such wholesaler.

Unlawful sale

Sec. 8. It shall be unlawful for any person, firm or corporation dealing in taxable oleomargarine to receive or accept any delivery or shipment of such oleomargarine from any wholesaler or to pay for the same, or to sell or offer the same for sale, unless the statement provided for in Section 7 appears upon the container and upon all invoices for such oleomargarine. If any shipment of such taxable oleomargarine is received by any person, firm or corporation from any wholesaler, or is sold or offered for sale by him or them, upon which the requirements of Sections 4 and 7 of this Act are not complied with, such person, firm, or corporation shall be deemed guilty of a misdemeanor, and punishable as hereinafter provided.

Comptroller to enforce rules and regulations

Sec. 9. The State Comptroller shall have the power and it shall be his duty from time to time, to adopt, publish and enforce rules and regulations not inconsistent herewith for the purpose of carrying out the provisions of this Act.

Exemption on export sales

Sec. 10. Said excise tax shall not be imposed on oleomargarine when sold for exportation from the State of Texas to any other State, territory or nation; provided, however, the wholesaler or exporting agent shall make a statement each month to the State Comptroller showing the amount of taxable oleomargarine exported.

Persons considered as wholesalers

Sec. 11. If any person shall receive such taxable oleomargarine in such form and under such circumstances as shall preclude the collection of this tax from the wholesaler by reason of the provisions of the Constitution and laws of the United States, and shall thereafter sell such oleomargarine in such manner and under such circumstances as may subject such sale to the taxing power of the State, such person shall be considered a wholesaler and shall make the same reports, pay the same taxes and be subject to all the provisions of this Act relating to wholesalers of taxable oleomargarine.

Packages marked "Oleomargarine"

Sec. 12. On and after January 1, 1935, no person shall sell, expose or offer for sale or exchange, or have in his possession with the intent to sell or exchange, any oleomargarine unless each and every vessel, package, roll, carton or parcel of such substance has distinctly and durably printed, stamped or stenciled thereon, the name "oleomargarine" in plain Gothic letters of not less than eighteen (18) point type so displayed as to be directly visible at all times to the purchaser, and unless such person shall have printed on the container or inside wrapper in plain Gothic letters of not less than ten (10) point type the name of each ingredient contained in the package, roll, carton or parcel of oleomargarine.

Penalties

Sec. 13. Every person who shall sell, or expose for sale, or have in possession with intent to sell, oleomargarine taxable under this Act upon which the tax has not been paid; or shall fail to keep any record required to be kept by this Act; or who shall in any other respect violate any of the provisions of this Act, or any of the rules and regulations adopted by the State Comptroller, shall for every offense forfeit and pay the sum of One Hundred Dollars ($100.00) which shall be recoverable with the costs, including the expense of analysis, by any person in the name of the State in any Court of competent jurisdiction within the State. All penalties and costs imposed and recovered upon the conviction for a violation of any provisions of this Act shall be paid to the State Comptroller, and by him immediately paid into the General Revenue Fund of the State.

Provided, that in case of an appeal from a conviction secured under this Act, the State Comptroller, or any other person suing in the name of the State by setting forth the facts, may ask the Court to command and restrain the person prosecuted from further violation of this Act until final determination is made of the pending case, and that in bringing such action for a restraining order, no bond or other security shall be required of such State Comptroller, his agent, or attorney, the Attorney General, or the County or District Attorney, but bond shall be required of all other persons the same as in other injunction cases.

Additional penalties

Sec. 14. In addition to the above forfeiture, every person, firm, or corporation, and every officer, agent, servant, or employee of such person, firm or corporation, who violates any of the provisions of this Act or any of the rules and regulations adopted by the State Comptroller, shall also be guilty of a misdemeanor; and upon conviction thereof, shall be punishable by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than three months, or both.

Partial invalidity

Sec. 15. If any section, subdivision, sentence or clause of this Act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of the Act. [Acts 1934, 43rd Leg., 3rd C.S., p. 8, ch. 6.]

Art. 7057d. [Transferred to Article 7255b].

Provisions of this article, Acts 1939, 46th Leg., p. 654, § 1, relating to discounts on ad valorem taxes paid in advance, are set out as Article 7255b.

CHAPTER 2.—TAXES BASED UPON GROSS RECEIPTS

Art.
7058. Express companies.
7059. Telegraph companies.
7060. Gas, electric light, power or waterworks.
7060a. Occupation tax on certain services in connection with oil wells.
7061. Collecting or commercial agency.
7062. Car companies.
7063. Sleeping, palace or dining car companies.
7064a. [Repealed.]
7065–7065q. [Repealed.]
7065a—1 to 7065a—18. [Repealed.]
7065b—1. Definitions; motor fuel taxes.
7065b—2. Motor fuel; occupational or excise tax of 4 cents per gallon; collection; interstate commerce; in lieu of other motor fuel taxes.
7065b—3. Monthly payments by distributors; reports.
7065b—4. Taxes to be paid to state; penalty for failure to comply or for fraudulent misapplication.
7065b—5. Sales to distributors without payment of tax for further refining, exporting and certain other purposes.
7065b—6. Application for motor fuel distributor's permit; issuance of permit.
7065b—7. Bond or cash deposit; deposit of securities; default in payment of tax; suits.
7065b—8. Lien.
7065b—9. Records to be kept by distributors; manifest to be carried during transportation; exemption.
7065b—10. Dealers to keep manifests and book records [New].
7065b—11. Carriers, records to be kept by; reports.
7065b—12. Pipe line operators; disposition of "drip gasoline"; requirements when "drip gasoline" is sold.
7065b—13. "Refund dealer" defined; refunds; applications; records; license; invoice of exemption; affidavit; fire or other accident; sales to United States government; Highway Motor Fuel Tax Fund.
7065b—14. Liquefied gas and other liquid fuels; tax on; permit to use; bond; application; payment of tax; release of sureties; connection of carburetor with cargo tank forbidden; records; enforcement.
7065b—15. Inspection of premises, books and records.
7065b—16. Cancellation, refusal of issuance, extension or reinstatement of license; grounds; notice; hearing; appeal.
7065b—17. Failure or refusal to collect or remit; suits; reports as evidence; certificate under seal of order, rule, bond or other instrument.
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Article 7058. [7369] Express companies.—Each individual, company, association or corporation doing an express business by steam railroad or by water in this State shall make, quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, association or corporation, showing the gross amount received from intrastate business done within this State in the payment of charges from express and freights, or from other sources of revenues received from intrastate business

during the quarter next preceding. Said individuals, companies, associations or corporations, at the time of making said report, shall pay the State Treasurer an occupation tax for the quarter beginning on said date equal to Two and One-half (2½%) Per Cent of said gross receipts, as shown by said report; provided, that those individuals, companies, associations or corporations now doing an express business in this State for which an annual gross receipts tax is now authorized by Article 7058 shall continue to pay the said annual tax for the year 1931, and shall make their first quarterly report on the first day of April, 1932, showing the gross receipts from the preceding months of January, February and March, and pay a tax equal to Two and One-half (2½%) Per Cent of such gross receipts, and said individuals, companies, associations and corporations thereafter shall make the quarterly report and pay the quarterly tax in the form and manner herein authorized; provided, however, no penalties shall accrue for the failure to make said reports or to pay said taxes if said reports are made and said taxes are paid within thirty (30) days after the first day of January, April, July and October of each year, as herein provided. [Acts 1907, 1st C.S., p. 479; Acts 1931, 42nd Leg., p. 376, ch. 222, § 1.]

Art. 7059. [7370] Telegraph companies.—(a) Each individual, company, corporation, or association owning, operating, managing or controlling any telegraph lines in this State, or owning, operating, controlling or managing what is known as wireless telegraph stations, for the transmission of messages or ærograms, and charging for the transmission of such messages or ærograms, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual, or of the president, treasurer or superintendent of such company, corporation, or association, showing the gross amount received from all business within this State during the preceding quarter, in the payment of telegraph or ærogram charges, including the amount received on full rate messages and ærograms, and half rate messages and ærograms, and from the lease or use of any wires or equipment within the State during said quarter, excepting all business transacted for and on behalf of the agencies of the United States Government, for which rates are prescribed by the Postmaster General. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there is hereby levied upon said individuals, companies, corporations, and associations, an occupation tax for the quarter beginning on said date, equal to one and one-half (1½) per cent of the gross receipts, as shown by said report, received from doing business outside of incorporated cities and towns and within corporated cities and towns of less than two thousand five hundred (2,500) inhabitants according to the last preceding Federal census; an occupation tax for the quarter beginning on said date, equal to one and three-fourths (1¾) per cent of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than two thousand five hundred (2,500) inhabitants and not more than ten thousand (10,000) inhabitants according to the last preceding Federal census; an occupation tax for the quarter beginning on said date, equal to two and two hundred seventy-five thousandths (2.275) per cent of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than ten thousand (10,000) inhabitants according to the last preceding Federal census.

(b) No city or other political subdivision of this State, by virtue of its taxing power, police power or otherwise shall impose an occupation tax or charge of any sort for the privilege of doing business upon any person, corporation or association required to pay an occupation tax under this Article, provided that nothing in this Article shall be construed to prohibit the collection of any tax now imposed by a franchise, and provided further that this Article shall not affect any contracts now in existence or hereafter made between a city and the holder of a franchise. [Acts 1907, 1st C.S., p. 479; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 2; Acts 1937, 45th Leg., 2nd C.S., p. 1918, ch. 36, § 1; Acts 1945, 49th Leg., p. 471, ch. 299, § 1.]

Art. 7060. [7371] Gas, electric light, power or waterworks.—Each individual, company, corporation, or association owning, operating, managing, or controlling any gas, electric light, electric power, or water works, or water and light plant, located within any incorporated town or city in this State, and used for local sale and distribution in said town or city, and charging for such gas, electric lights, electric power, or water, shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller under oath of the individual, or of the president, treasurer, or superintendent of such company, or corporation, or association, showing the gross amount received from such business done in each such incorporated city or town within this State in the payment of charges for such gas, electric lights, electric power, or water for the quarter next preceding. Said individual, company, corporation, or association at the time of making said report for any such incorporated town or city of more than one thousand (1,000) inhabitants and less than two thousand, five hundred (2,500) inhabitants, according to the last Federal Census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to forty-four hundredths (.44) of one (1) per cent of said gross receipts, as shown by said report; and for any incorporated town or city of more than two thousand, five hundred (2,500) inhabitants and less than ten thousand (10,000) inhabitants, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association at the time of makng said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to eighty-one hundredths (.81) of one (1) per cent of said gross receipts, as shown by said report; and for any incorporated town or city of ten thousand (10,000) inhabitants or more, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to one and five thousand one hundred twenty-five ten-thousandths (1.5125) per cent of said gross receipts, as shown by said report. Nothing herein shall apply to any such gas, electric light, power, or water works, or water and light plant, within this State, owned and operated by any city or town, nor to any county or water improvement or conservation district.

Nothing herein shall be construed to require payment of the tax on gross receipts herein levied more than once on the same commodity, and where the commodity is produced by one individual, company, corporation, or association, and distributed by another, the tax shall be paid by the distributor alone.

No city or other political subdivision of this State, by virtue of its taxing power, proprietary power, police power or otherwise, shall impose an occupation tax or charge of any sort upon any person, corporation, or association required to pay an occupation tax under this Article. Nothing in this Article shall be construed as affecting in any way the collection of ad valorem taxes authorized by law; nor impairing or altering in any way the provisions of any contracts,

agreements, or franchises now in existence, or hereafter made between a city and a public utility, relating to payments of any sort to a city. Nothing in this Article shall be construed as prohibiting an incorporated city or town from making a reasonable charge, otherwise lawful, for the use of its streets, alleys, and public ways by a public utility in the conduct of its business, and each such city shall have such right and power; but any such charges, whether designated as rentals or otherwise, and whether measured by gross receipts, units of installation, or in any manner, shall not in the aggregate exceed the equivalent of two (2) per cent of the gross receipts of such utility within such municipality derived from the sale of gas, electric energy, or water. Any special taxes, rentals, contributions, or charges accruing after the effective date of this Act, under the terms of any pre-existing contract or franchise, against any utility paying an occupation tax under this Article, when paid to any such city, shall be credited on the amount owed by such public utility on any charge or rental imposed for the use of streets, alleys, and public ways, levied by ordinance, and accruing after the effective date of this Act; provided that where valid ordinances have been enacted heretofore by cities imposing a charge or rental in excess of two (2) per cent of the gross receipts of such utilities, nothing herein shall be construed so as to prohibit the collection of such sums as may be due said cities thereunder from the date of said ordinances up to the time this Article shall become effective.

And provided further that utilities paying an occupation tax under this Article shall not hereafter be required to pay the license fee imposed in Article 5a, House Bill No. 18, Chapter 400, Acts of Forty-fourth Legislature,[1] for the privilege of selling gas and electric appliances and parts for the repairs thereof, in towns of three thousand (3,000) or less in population according to the next preceding Federal Census. Acts 1907, 1st C.S., p. 479; Acts 1930, 41st Leg., 5th C.S., p. 168, ch. 34, § 1; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 3; Acts 1941, 47th Leg., p. 269, ch. 184, Art. V, § 1.]

1 Pen.Code, art. 1111d, § 5a.

Section 2 of Article V of the amendatory Act of 1941, provided that the tax levied in Article 7060 shall be allocated as provided in such Act. See Article 7083a.

Section 2 of the Act of 1930 repealed sections 17, 18 and 19 of article 7047.

Art. 7060a. Occupation tax on certain services in connection with oil wells.—Section 1. (a) The term "person" shall for the purpose of this Article mean and include individuals, partnerships, firms, joint stock companies, associations, and corporations.

(b) Every person in this State engaged in the business of furnishing any service or performing any duty for others for a consideration or compensation, with the use of any devices, tools, instruments or equipment, electrical, mechanical, or otherwise, or by means of any chemical, electrical, or mechanical process when such service is performed in connection with the cementing of the casing seat of any oil or gas well or the shooting or acidizing the formations of such wells or the surveying or testing of the sands or other formations of the earth in any such oil or gas wells, shall report on the 20th of each month and pay to the Comptroller, at his office in Austin, Texas, an occupation tax equal to two and two-tenths (2.2) per cent of the gross amount received from said service furnished or duty performed, during the calendar month next preceding. The said report shall be executed under oath on a form prescribed and furnished by the Comptroller.

Sec. 2. A complete record of the business transacted, together with any other information the Comptroller may require shall be kept by each person furnishing any service or performing any duty subject to said tax, which said records shall be kept for a period of two (2) years, open to the inspection of the Comptroller of Public Accounts or the Attorney General of this State, or their authorized representatives. The Comptroller shall have the authority to adopt rules and regulations for the enforcement of this Article and the collection of the tax levied herein.

Sec. 3. If any person shall violate any provision of this Article, he shall forfeit to the State of Texas, as a penalty, the sum of not less than Twenty-five Dollars ($25), and not more than Five Hundred Dollars ($500) for each violation, and each day's violation shall constitute a separate offense, and in addition thereto delinquent taxes shall draw a penalty equal to one (1) per cent per month from due date. The State shall be secured for all taxes, penalties, interests and costs due by any person under the provisions of this Article by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property used by said person in his business.

Sec. 4. If any section, subsection, sentence, clause, or phrase of this Article, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Article. The Legislature hereby declares that it would have passed this Article and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVI.]

Art. 7061. [7372] Collecting or commercial agency.—Each individual, company, corporation or association, owning, operating, managing or controlling any collecting agency, commercial agency or commercial reporting credit agency within this State, and charging for collections made, or business done, or reports made, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing from business done within this State the gross amount received in the payment of charges for collections made and business done and reports made during the quarter next preceding. Such individuals, companies, corporations or associations at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to one-half of one per cent of said gross receipts as shown by said report. [Acts 1st C.S. 1907, p. 479.]

Art. 7062. [7373] Car companies.—Each individual, company, corporation or association, residing without this State, or incorporated under the laws of any other State or territory, or nation, and owning stock cars, refrigerator and fruit cars of any kind, tank cars of any kind, coal cars of any kind, furniture cars or common box cars and flat cars, and leasing, renting or charging mileage for the use of such cars within the State of Texas, shall make quarterly, on the first days of January, April, July and October of each year, and report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from such rentals, or mileage, or from other sources of revenue received from business done within this State, during the quarter next preceding. Said individuals, companies and corporations, and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to three per cent of said gross receipts as shown by said report. [Id.]

Art. 7063. [7375] Sleeping, palace or dining car companies.—Every sleeping car company, palace car company, or dining car company doing business in this State, and each individual, company, corporation

or association leasing or renting, owning, controlling or managing any palace cars, dining cars, or sleeping cars within this State for the use of the public, for which any fare is charged, shall, on the first days of January, April, July and October of each year, report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation, or association, showing the amount of gross receipts earned from any and all sources whatever within this State, except from receipts derived from buffet service, during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to five per cent of said gross receipts as shown by said report. The tax herein provided for shall be in lieu of all other taxes now levied upon sleeping car, palace car or dining car companies, except the tax of twenty-five cents on the one hundred dollars of capital stock of such car companies as provided by law. [Id.]

Art. 7064. [7376] Insurance companies other than life, other than fraternal benefit associations, and other than non-profit group hospital service plans; tax on gross premiums.— Every insurance corporation, Lloyd's or reciprocals, and any other organization or concern transacting the business of fire, marine, marine inland, accident, credit, title, livestock, fidelity, guaranty, surety, casualty, workmen's compensation, employers liability, or any other kind or character of insurance business, other than the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, written by a life insurance company, life and accident insurance company or health and accident insurance company, or for mutual benefit or protection in this State and other than fraternal benefit associations or societies in this State, and other than non-profit group hospital service plans, at the time of filing its annual statement, shall report to the Board of Insurance Commissioners the gross amount of premiums received upon property located in this State or on risks located in this State during the preceding year, and each of such insurance carriers shall pay an annual tax upon such gross premium receipts of three and five-tenths per cent (3.5%), provided that any such insurance carriers doing two (2) or more kinds of insurance business herein referred to shall pay the tax herein levied upon its gross premiums received from each of said kinds of business; and the gross premium receipts where referred to in this law shall be the total gross amount of premiums received on each and every kind of insurance or risk written, except premiums received from other licensed companies for reinsurance, less return premiums and dividends paid policyholders, but there shall be no deduction for premiums paid for reinsurance. The gross premium receipts, as above defined, shall be reported and shown as the premium receipts in the report to the Board of Insurance Commissioners by the insurance carriers, upon the sworn statements of two (2) principal officers of such carriers. Upon receipt by the Board of Insurance Commissioners of the sworn statements, showing the gross premium receipts by such insurance carriers, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by each insurance carrier which tax shall be paid to the State Treasurer on or before the first day of March following, and the Treasurer shall issue his receipt to such carrier, which shall be evidence of the payment of such taxes. No such insurance carrier shall receive a permit to do business in this State until all such taxes are paid.

Each such insurance organization shall also report to the Board of Insurance Commissioners on or before the first day of March of each year, the amount that it had invested on the 31st of December, preceding, in Texas securities as defined herein and the amount that it had invested on said date in similar securities in the state in which it had its highest percentage of admitted assets invested, and in computing the amount of such investments in such other state, it shall include as a part thereof that percentage of its investments in bonds of the United States of America purchased between December 8, 1941, and the termination of the war in which the United States is now engaged that its reserves for unearned premiums and loss reserves, as required in such other state, are of its total reserves. If the report of such insurance organization as of December 31st preceding, shows that such organization had invested in Texas securities, as herein defined, an amount which is not less than seventy-five per cent (75%) nor more than eighty per cent (80%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be two and seventy-five one-hundredths per cent (2.75%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty per cent (80%) and not more than eighty-five per cent (85%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be two and one-half per cent (2½%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-five per cent (85%) and not more than eighty-eight per cent (88%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be two per cent (2%) of its gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-eight per cent (88%) and not more than ninety per cent (90%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be one and one-half per cent (1½%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of ninety per cent (90%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be one per cent (1%) of such gross premium receipts.

For the purposes of this Act, Texas securities are defined as real estate in this State; bonds of the State of Texas; bonds or interest bearing warrants of any county, city, town, school district or any municipality or subdivision thereof which is now or may hereafter be constituted or organized and authorized to issue bonds or warrants under the Constitution and laws of this State; notes or bonds secured by mortgage or trust deed on property in this State insured by the Federal Housing Administrator; the cash deposits in regularly established national or state banks or trust companies in this State on the basis of average monthly balances throughout the calendar year; that percentage of such insurance company's investments in the bonds of the United States of America, that its Texas reserves for unearned premiums and loss reserves as may be required by the Board of Insurance Commissioners, are of its total reserves; but this provision shall apply only to United States Government bonds purchased between December 8, 1941, and the termination of the war in which the United States is now engaged; in any other property in this State in which by law such insurance carriers may invest their funds.

No occupation tax shall be levied on insurance companies herein subjected to the gross premium receipt

tax by any county, city or town. All mutual fraternal benevolent associations now or hereafter doing business in this State under the lodge system and representative form of government, whether organized under the laws of this State or a foreign state or country, are exempt from the provisions of this Article. The taxes aforesaid shall constitute all taxes collectible under the laws of this State against any such insurance carriers except maintenance taxes specially levied under the laws of this State and assessed by the Board of Insurance Commissioners to support the various activities of the divisions of the Board of Insurance Commissioners, and except if any such carrier is writing personal accident or health and accident insurance other than workmen's compensation, it shall be taxed as otherwise provided by law on account of such business; and except unemployment compensation taxes levied under Senate Bill No. 5, passed by Third Called Session of the Forty-fourth Legislature and amendments thereto.[1] No other tax shall be levied or collected from any insurance carrier by the state, county, city or any town, but this law shall not be construed to prohibit the levy and collection of state, county and municipal taxes upon the real and personal property of such carrier. Purely cooperative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property, and not for profit, shall be exempt from the provisions of this law. This Act shall be cumulative of all other laws and shall repeal Article 4758, Revised Civil Statutes of 1925, as amended, and all other laws only in so far as they levy any tax on any of the organizations affected by this Act or otherwise conflict with this Act, except as provided above. [Acts 1907, 1st C.S., p. 479; Acts 1911, p. 216; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 5; Acts 1937, 45th Leg., p. 525, ch. 258, § 1; Acts 1939, 46th Leg., p. 638, § 1; Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVIII, § 1; Acts 1945, 49th Leg., p. 574, ch. 341, § 1.

[1] Article 5221b—1 et seq.

Section 2 of the Act of 1945 read as follows:

Sec. 2. If any section, paragraph or sentence of this Act shall be held invalid, unconstitutional, or inoperative, it shall not affect the validity of the remaining sections of this Act, but the remainder of the Act shall be given effect as if such invalid, unconstitutional, or inoperative portion had not been included.

Section 4 of Article XVIII of Acts 1941, 47th Leg., p. 269, ch. 184, was amended by Acts 1941, 47th Leg., p. 774, ch. 481, § 1, effective June 16, 1941, to read as follows: "All revenue derived from, and collected under the provisions of this article shall be allocated as hereinafter provided in Article XX of this Act. Provided, however, that all revenue collected prior to the effective date of this Act and now held in suspense by the Insurance Commission preparatory to being distributed and allocated to certain funds, is hereby appropriated, allocated, and transferred as follows: one-fourth (¼) to the Available School Fund of the State of Texas and three-fourths (¾) to the Old-Age Assistance Fund as created by Article XX, Section 2, Sub-section (4) of this Act. All laws, and parts of laws in conflict with this section are repealed to the extent of such conflict only." See article 7083a.

Art. 7064a. [Repealed by Acts 1945, 49th Leg., p. 442, ch. 279, § 4.]

The article repealed was Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, art. 4, § 5b; Acts 1937, 45th Leg., p. 525, ch. 258, § 1b; Acts 1939, 46th Leg., p. 640, § 1, and Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVIII, § 2.

Art. 7065. [Repealed by Acts 1931, 42nd Leg., p. 163, ch. 98, § 1; Acts 1933, 43rd Leg., p. 75, ch. 44, § 17.]

Arts. 7065a to 7065q. [Repealed by Acts 1933, 43rd Leg., p. 75, ch. 44, § 17.]

These Articles were Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, §§ 17–19; Acts 1931, 42nd Leg., p. 163, ch. 98, §§ 2–5, 7 and Acts 1931, 42nd Leg., p. 177, ch. 104, §§ 1, 2.

Arts. 7065a—1 to 7065a—18. [Repealed by Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 28.]

The articles repealed were Acts 1933, 43rd Leg., p. 75, ch. 44, §§ 1–18; Acts 1935, 44th Leg., p. 558, ch. 240, §§ 1–15.

Art. 7065b—1. Definitions; motor fuel taxes. —The following words, terms and phrases shall, for all purposes of this Article, be defined as follows:

(a) "Motor fuel" shall mean and include any volatile or inflammable liquid, by whatever name such liquid may be known or sold, with a flash point of one hundred and twelve (112) degrees Fahrenheit or below, according to the United States official closed testing cup method of the United States Bureau of Mines, which is used or is capable of being used, either alone or when blended, mixed, or compounded, for the purpose of generating power for the propulsion of any internal combustion engines or any motor vehicles. The term "motor fuel," however, shall not include the products defined herein as "liquefied gases" and "other liquid fuels," upon which products a tax is levied by Section 14 of this Article.[1]

(b) "Liquefied gases" shall mean and include all combustible gases which liquefy at certain temperatures and pressures, but which exist in the gaseous state at sixty (60) degrees Fahrenheit, and at a pressure of fourteen and seven tenths (14.7) pounds per square inch absolute.

(c) "Other liquid fuels" shall mean any liquid petroleum products, or substitute therefor, having a flash point above one hundred and twelve (112) degrees Fahrenheit, according to the United States Official closed testing cup method of the United States Bureau of Mines, including diesel fuel, kerosene, distillate, condensate, or similar products that may be used as fuel to generate power for the propulsion of motor vehicles upon the highways of this State.

(d) "Motor vehicle" shall mean and include any automobile, truck, tractor, bus, vehicle, engine, machine, mechanical contrivance, or other conveyance which is propelled by an internal combustion engine or motor.

(e) "Vehicle tanks" shall mean an assembly used for the transportation, hauling, or delivery of liquids, comprising a tank, which may be one compartment or may be subdivided into two (2) or more compartments, mounted upon a wagon, automobile, truck, or trailer, together with its accessory piping, valves, meter, etc. The term "compartment" shall be construed to mean the entire tank whenever this is not subdivided; otherwise, it shall mean any one of those subdivided portions of the tank which is designed to hold liquid.

(f) "Distributor" shall mean and include every person in this State who refines, distills, manufactures, produces, blends, or compounds motor fuel or blending materials, or in any other manner acquires or possesses motor fuel or blending materials for the purpose of making a first sale, use, or distribution of the same in this State; and it shall also include every person in this State who ships, transports, or imports any motor fuel or blending materials into this State and makes the first sale, use, or distribution of same in this State; the said term shall also include every person in this State who produces or collects the liquid residuent of natural gas, commonly known as drip gasoline, or who is responsible for the production or formation of said drip gasoline, intentionally or otherwise, unless said product is totally destroyed or rendered neutral as motor fuel or as a product capable of use as motor fuel in this State.

(g) The term "user" shall be construed to mean any person who uses or consumes "liquefied gases" and "other liquid fuels" within this State in internal combustion engines for the generation of power to propel motor vehicles upon the public highways of this State.

(h) "Distribution" shall mean and include any transaction, other than a sale, in which ownership or title to motor fuel, or any derivative of crude oil or natural gas, passes from one person to another.

(i) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation (public, private, or municipal), trustee, agency, or receiver.

(j) "Dealer" shall mean and include every person other than a distributor who engages in the business in this State of distributing or selling motor fuel within this State.

(k) "Public highway" shall mean and include every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, and notwithstanding that the same may be temporarily closed for the purpose of construction, maintenance, or repair.

(l) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

(m) "First sale" shall mean the first sale or distribution in this State of motor fuel refined, blended, imported into, or in any other manner, produced in, acquired, or brought into this State. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 1.]

1 Article 7065b—14.

Art. 7065b—2. Motor fuel; occupational or excise tax of 4 cents per gallon; collection; interstate commerce; in lieu of other motor fuel taxes.—(a) There shall be and is hereby levied and imposed (except as hereinafter provided) upon the first sale, distribution, or use of motor fuel in this State an occupational or excise tax of Four (4) cents per gallon or fractional part thereof so sold, distributed, or used in this State. Every distributor who makes a first sale or distribution of motor fuel in this State for any purpose whatsoever shall, at the time of such sale or distribution, collect the said tax from the purchaser or recipient of said motor fuel, in addition to his selling price, and shall report and pay to the state of Texas the tax so collected at the time and in the manner as hereinafter provided. Every such distributor shall also be liable to the State of Texas for the said tax of Four (4) cents per gallon on each gallon of motor fuel or fractional part thereof used or consumed by him and shall report and pay said tax as hereinafter provided. In each subsequent sale or distribution of motor fuel upon which the tax of Four (4) cents per gallon has been collected, the said tax shall be added to the selling price, so that such tax is paid ultimately by the person using or consuming said motor fuel for the purpose of generating power for the propulsion of any motor vehicle upon the public highways of this State.

It is the intent and purpose of this Article to collect the tax levied herein at the source of said motor fuel in Texas or as soon thereafter as the same may be subject to being taxed. No person, however, shall be required to pay a tax on motor fuel brought into this State in a quantity of thirty (30) gallons or less in a fuel tank, with a capacity of not more than thirty (30) gallons, when said fuel tank is connected with and feeds the carburetor of said motor vehicle and the motor fuel contained therein is used in the operation of said motor vehicle and not otherwise.

(b) Provided further, that the tax on one (1) per cent of the taxable gallonage shall be deducted by the distributor to cover loses [1] and the expense of collecting the tax levied herein and complying with the other provisions of this Article.

(c) The tax herein imposed shall be posted separately from the price of the motor fuel, wherever sold in this State.

(d) No tax shall be imposed upon the sale, use, or distribution of any motor fuel, the imposing of which would constitute an unlawful burden on interstate commerce and which is not subject to be taxed under the Constitution of the State of Texas and the United States. In the event this Article is in conflict with the Constitution or any law of the United States with respect to the tax levied upon the first sale, distribution, or use of motor fuel in this State, then it is hereby declared to be the intention of this Article to impose the tax levied herein upon the first subsequent sale, distribution, or use of said motor fuel which may be subject to being taxed.

(e) Provided, that the tax imposed herein shall be in lieu of any other excise or occupational tax imposed by the State or any political subdivision thereof on the sale, use, or distribution of motor fuel. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 2.]

1 So in enrolled bill. Probably should read "losses."

Art. 7065b—3. Monthly payments by distributors; reports.—(a) Every distributor who shall be required to collect the tax levied by this Article upon the first sale or distribution of motor fuel in this State, or who shall be required to pay the tax levied herein upon motor fuel used by said distributor, shall upon the 20th day of each calendar month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, the amount of such tax required to be collected during the calendar month next preceding and the amount of such tax required to be paid upon motor fuel used by said distributor during said preceding calendar month, and at the same time, such distributor shall make and deliver to the Comptroller at his office in Austin, Travis County, Texas, a report properly sworn to and executed by such distributor, or his representative in charge, which shall show the date said report was executed, the name and address of said distributor, and the month which the report covers, and which report shall show separately by gallons the motor fuel on hand at the beginning and at the end of the month, and complete information of all motor fuel handled during the month, including motor fuel purchased or received in interstate commerce, motor fuel purchased or received in intrastate commerce, reflecting separately the quantity received with the tax paid and the quantity received without the tax having been paid, motor fuel refined, motor fuel acquired by blending, motor fuel sold in interstate commerce, motor fuel sold in intrastate commerce, motor fuel sold and exported, motor fuel sold to the United States Government, motor fuel sold to a distributor for further refining, processing, blending, or for exportation upon which no tax was collected, motor fuel lost by fire or other accident, motor fuel lost by refinery shrinkage, evaporation, or other losses, and motor fuel used and consumed by the distributor and his representatives. The said report shall also show complete information by gallons of all blending materials purchased, acquired, sold, used, and lost by fire or otherwise, during the month the report covers, and the beginning and ending inventories of such blending materials. Said report shall also show a complete record of the number of barrels of crude oil refined and the number of cubic feet of gas processed. Provided that where a qualified distributor has not sold, used, or distributed any motor fuel during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any distributor to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every distributor, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in the amount of tax for the period covered by the report.

(b) Provided further, that every person selling motor fuel in export or interstate commerce only, and every person selling motor fuel upon which no tax is required to be paid under the provisions of this Article, shall nevertheless be required to keep the same records and make the same reports to the Comptroller, accounting for the motor fuel so sold, that the provisions of this Article require a distributor to keep and make.

(c) If any distributor shall fail to remit proper taxes collected upon the first sale or distribution of motor fuel, or taxes due upon the use of motor fuel in Texas, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the distributor shall pay as additional penalty any reasonable expenses included by the Comptroller in such audit. Provided, however, that all funds paid to the auditors of the Comptroller as expenses incurred in making audits shall be placed in a special fund in the State Treasury, which shall be used until exhausted for making other audits, and said sums are hereby appropriated for that purpose. Provided that nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

(d) When it shall appear that a distributor or user to whom the provisions of this Article shall apply has erroneously reported and remitted or paid more taxes than were due the said State of Texas upon any motor fuel, liquefied gases, or other liquid fuels during any taxpaying period, either on account of a mistake of fact or law, it shall be the duty of the Comptroller to credit the total amount of taxes due by such distributor or user for the current period with the total amount of taxes so erroneously paid. Such credit shall be allowed before any penalties and interest shall be applicable. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 3.]

Art. 7065b—4. Taxes to be paid to state; penalty for failure to comply or for fraudulent misapplication.—(A) All taxes collected hereunder by any distributor, or by any director, officer, agent, employee, trustee, receiver of such distributor, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Article.

(b) If any such distributor or any director, officer, agent, employee, trustee, receiver of such distributor, or any person, shall wilfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Article, on or before the date such payment is due as provided by this Article, such distributor or such director, officer, agent, employee, trustee, receiver of such distributor, or such person, shall be guilty of a felony and shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars ($500) nor more than Ten Thousand Dollars ($10,000), or by both such fine and jail imprisonment.

(c) If any director, officer, agent, employee, trustee, receiver of any distributor, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Article by such distributor, or any director, officer; agent, employee, trustee, receiver of such distributor, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such distributor, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Article, such director, officer, agent, employee, trustee, receiver, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars ($500), nor more than Ten Thousand Dollars ($10,000), or by both such fine and jail imprisonment. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 4.]

Art. 7065b—5. Sales to distributors without payment of tax for further refining, exporting and certain other purposes.—(a) The Comptroller may authorize and permit any person producing natural gasoline, casing-head gasoline, drip gasoline, or any derivative or condensate of crude oil or natural gas, in their natural and unrefined state, or any person operating a pipe line as a common carrier, or any licensed distributor of motor fuel in this State to make a sale, resale, or distribution of such products or of motor fuel, without collecting the tax levied herein, to any distributor holding a valid permit under the terms of this Article, when such distributor purchasing the same has, in the opinion of the Comptroller, a satisfactory and sufficient bond, and when the product is sold and purchased for the purpose of exportation, further refining, further processing, further treating, blending or compounding with other products to produce motor fuel, or for resale for some one or more of such purposes, and not otherwise. If the distributor purchasing said products without paying said tax shall thereafter sell, or distribute said products, either alone or when compounded with other products, in this State, for any purpose other than that hereinabove provided, he shall be required to collect and pay over to the State of Texas at the time and in the manner herein provided, the tax at the rate of four (4) cents per gallon upon each gallon or fractional part thereof sold or distributed. Said distributor shall also be liable for and shall be required to pay to the State of Texas said tax at the aforesaid rate upon each gallon of such motor fuel used by said distributor. Failure or refusal to collect and pay over to the State of Texas the tax on motor fuel so sold or distributed by said distributor, or to pay the tax on motor fuel used by said distributor, shall subject him to all the liabilities, penalties, forfeitures, interest and costs provided in this Article.

(b) Provided further, that any person whether producer, pipe-line operator or licensed distributor, who shall make any sale or distribution as provided herein, shall be required to make and keep all the records and manifests involving such sales or distributions as is required of a distributor in Section 9(b) of this Article. Said person shall also be required to make and file with the Comptroller the return or report required by Section 3 of this Article, showing all the information contained therein. The manifest required to be issued upon such sale or distribution shall bear the notation that said product is being sold or distributed for further refining, further processing, treating, blending, compounding, or for exportation, whichever the case may be. Provided further, that every producer and every pipe-line operator shall qualify as a distributor and obtain a distributor's permit before selling the commodities named herein to any person other than a licensed and qualified distributor. All such sales and distributions shall be made in accordance with rules and regulations promulgated by the Comptroller. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 5; Acts 1943, 48th Leg., p. 441, ch. 298, § 1.]

Section 5 of the Act of 1943 repealed conflicting laws and provided that all taxes, penalties and interest accruing to the State of Texas before the effective date of the Act by virtue of the amended or re-enacted provisions of Article XVII, Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature, and all taxes accruing under the provisions of prior or existing gasoline or motor fuel tax laws, should remain valid and binding obligations due the State of Texas. It also provided, that no offense committed and no fine, forfeiture, or penalty incurred under such above amended and re-enacted Act before the effective date of this Act, should be affected by the amendment herein of any such laws.

"Sec. 6. If any section, paragraph, sentence, clause, phrase, or word of this Act is declared to be invalid, it shall not affect any of the remaining provisions of said Act, and the Legislature hereby declares it would have passed said remaining provisions without the invalid provisions."

Art. 7065b—6. Application for motor fuel distributor's permit; issuance of permit.—(a) From and after the effective date of this Article, all distributors of motor fuel in this State now engaged, or who desire to become engaged, in the sale, use, or distribution of motor fuel upon which the tax levied herein is required to be paid, shall file a duly acknowledged application for motor fuel distributor's permit with the Comptroller on a form prescribed by him, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributor transacts or intends to transact such business as distributor, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association, and their office, street, or post-office addresses. The Comptroller may require in said application such other information as he may desire. No distributor shall make a first sale, use, or distribution of motor fuel until such application has been filed and a permit has been obtained.

(b) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every distributor a nonassignable, consecutively numbered permit authorizing the first sale, use, or distribution of motor fuel, or its substitute, in this State from the date of the issuance of said permit, until and including the following December 31st. On or before January 1st of each year, and before any distributor shall make a first sale, use, or distribution of motor fuel, or engage in selling motor fuel in this State after December 31st, an application shall be filed and a permit obtained for the calendar year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Article, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said distributor shall not sell, use, or distribute motor fuel upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any motor fuel tax, penalty, or interest under the provisions of this Article. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 6.]

Art. 7065b—7. Bond or cash deposit; deposit of securities; default in payment of tax; suits.—(a) Before any permit shall be issued and before engaging in the first sale, use, or distribution of motor fuel, upon which a tax is required to be paid, in Texas, every distributor shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a distributor to be obtained. The said bond shall be signed by said distributor and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and, except as hereinafter provided, in an amount not less than One Thousand Dollars ($1,000) nor more than Twenty-five Thousand Dollars ($25,000), payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the distributor of all the conditions and requirements imposed upon him by this Article, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller with the approval of the Attorney General, expressly providing for the performance of said obligations, and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, and all other taxes due and accruing upon the use of motor fuel by said distributor, and all costs, penalties, and interest provided in this Article, provided, however that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any calendar year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit, and provided further, that the said renewal certificates, as, if and when issued, shall have all the force and effect of an original bond for the calendar year for which said renewal certificate is issued. The amount of any bond required of any distributor shall be fixed by the Comptroller, and subject to the limitations herein provided, additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the distributor may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than three (3) times the highest tax said distributor has collected and paid to the State for any month during the preceding six (6) months, but which shall never be less than the minimum nor more than the maximum aforesaid.

Provided, that when a distributor or other person produces, manufactures, refines, or acquires in any other manner any product of petroleum or natural gas for his own use and consumption as motor fuel and not to be sold or distributed, the Comptroller may accept a minimum bond in an amount of not less than One Hundred Dollars ($100); said bond to be in the form and substance and conditioned as hereinabove provided.

(b) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries on any bond or execution of any new bond or renewal of a permit shall invalidate any bond. A new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Provided further, that the Comptroller shall have the authority to require any distributor to make reports and remit to the State for taxes collected by him, or taxes accruing on motor fuel used by him, at shorter intervals than one (1) month at any time any maximum bond shall, in the opinion of said Comptroller, become insufficient. Should any distributor fail or refuse to supply a new or additional bond within ten (10) days after demand, or shall fail or refuse to file reports and remit or pay the said tax at the intervals fixed by the Comptroller, said distributor's permit shall be cancelled by the Comptroller as herein provided.

(c) Any surety on any bond furnished by any distributor as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided however, that such request shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on receipt of notice of such request notify the distributor who furnished such bond, and unless such distributor shall within fifteen (15) days from the date of said notice, file with the Comptroller

a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Article provided, the Comptroller shall proceed to cancel the permit of said distributor in the manner herein provided. If such new bond shall be furnished by said distributor as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(d) That in lieu of giving a bond, any distributor may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until securities are substituted for the same, or a bond executed in lieu thereof, or until the Comptroller has made a complete and thorough investigation and authorized the same to be released; and provided, in lieu of cash or the bond required by this Article, such distributor may deposit securities with the Comptroller, that shall be acceptable to him. Said securities shall be placed in the Treasury as other securities, but in all events, shall be of the same class as the funds of the University of Texas may be legally invested in. Provided, however, that if, in the opinion of the Comptroller, the cash or securities so deposited shall become insufficient for the purpose for which they were deposited, he shall demand additional cash or securities, and upon the failure or refusal of distributor to supply the additional cash or securities within ten (10) days after demand, the Comptroller shall cancel the distributor's permit as herein provided. When default of payment of taxes collected upon the sale or distribution of motor fuel and accruing upon the use of motor fuel by said distributor, is made by any distributor who has money and/or securities deposited with the State Treasurer in lieu of a bond as herein provided, suit shall be instituted by the State, and after the State has established its debt for delinquent taxes by final judgment of court, money on deposit in suspense account shall be withdrawn therefrom and shall be used to pay off and satisfy such judgment; and provided further, if securities are on deposit with the State Treasurer, such securities shall be sold by the Comptroller, and the proceeds of sale shall be used in paying off and satisfying said judgment and accrued court costs and interest. Provided however, the defaulting distributor may acknowledge in writing the correctness of the State's claim for taxes, costs, and penalties, and may authorize the withdrawal of said money or securities to pay on said claim without having suit filed. Provided further, that the cash or securities, or any unpaid portion thereof, deposited by said distributor in lieu of surety bond, shall not be returned or refunded to any person except the distributor, unless the person claiming any right, title, and interest in and to said funds or securities, shall have declared said right, title, and interest in writing, executed jointly by said distributor and said claimant, under oath, and filed with the Comptroller at the time such deposit was made. Provided further, that suit may be filed against any surety or sureties on any bond furnished by a distributor, without first resorting to or exhausting the assets of said distributor or without making said distributor, as principal obligor in said bond, a party to said suit. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 7.]

Art. 7065b—8. Lien.—All taxes, penalties, interest and costs due by any distributor under the provisions of this Article and all taxes collected and required to be paid by said distributor to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include refinery, blending plants, storage tanks, warehouses, office buildings and equipment, tank trucks or other motor vehicles, stocks on hand of every kind and character whatsoever used or usable in such business, including crude oil or other materials for the manufacture, refining, blending, or compounding of motor fuels and the refined products therefrom, and the proceeds from the sale of such materials and refined products, including cash on hand and in bank, accounts and notes receivable, and any and all other property of every kind and character whatsoever and wherever situated devoted to such use, and each tract of land on which such refinery, blending plant, tanks, or other property is located, or which is used in carrying on such business. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 8.]

Art. 7065b—9. Records to be kept by distributors; manifest to be carried during transportation; exemption.—(a) Every distributor shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete and well-bound book record of all crude oil and other oil or products from which such distributor may refine or blend any motor fuel or other derivatives of crude petroleum that is sold or used by him, and his record shall show the date of receipt, the name and address of the person from whom purchased, the means of delivery, and the quantity in barrels, of all such crude oil and other oil or products; also it shall show all sales of the same as and when made from stocks on hand, the quantity refined or blended, and inventories on the first of each month. Provided further, a complete record in barrels or gallons shall be kept of all liquid by-products derived or obtained from any refining, absorption, or recycling operation. Said record shall also show separately the number of barrels or gallons of such products on hand at the first of each month and the number of barrels or gallons sold, used, or otherwise disposed of.

Every distributor shall also keep in Texas for a period of two (2) years, open to said inspection, a complete and well-bound book record of all motor fuel, casing-head gasoline, natural or drip gasoline and other derivatives or condensates of crude petroleum or natural gas, or their products, purchased or received by said distributor. Such records shall show the date received, from whom purchased or received, the quantity received, the commodity or kind of product received, and such other information as will provide a complete record of the disposition of said products. Said distributor shall also keep for a period of two (2) years a complete record of inventories on the first of each month of all motor fuel, casing-head gasoline, natural gasoline or drip gasoline, or other derivatives or condensates of crude petroleum, or natural gas, or their products.

(b) Every distributor shall keep also in Texas for a period of two (2) years, open to said inspection a complete record of each and every sale, distribution or use of motor fuel, crude oil, kerosene, naphtha, distillate, casing-head gasoline, drip gasoline, absorption and natural gasoline, and other derivatives or condensates of crude oil or natural gas, including fuel oil and other liquid residues, regardless of whether or not a tax is due upon said products under the provisions of this Article; and providing that the record of each such sale, distribution, or use of such commodities shall include the date of any such transaction, the name and address of each purchaser or user, and the amount of any such commodity so sold or used. And it is especially provided that any such sale, distribution, or use of any of the foregoing commodities shall be recorded upon a form of manifest to be prescribed or approved by the Comptroller and furnished by the distributor. Said manifest shall be issued in

not less than duplicate counterparts and numbered consecutively. Said manifest shall be printed and the counterparts shall be printed on paper of different color, and shall have printed thereon the name of the distributor, his address, the serial number of said manifest, and spaces shall be provided thereon wherein shall be shown the date of such sale, distribution or use, the purchaser or other recipient and his address, the quantity sold, the means of delivery, including the license number of and description if delivered into or by a motor vehicle, trailer, the number and initial if delivered by tank car, the name or description if delivered by boat or barge, and the opening and closing record of meter readings or tank gauges if delivered by pipe line, and the time of delivery into the tank wagon, trailer or other conveyance; provided, however, that rail shipments of motor fuel and other derivatives or condensates of crude products or natural gas shall be supported by regular bills of lading. Provided further, that the manifest shall reflect separately the tax involved in the sale of motor fuel apart from the cost thereof, less the tax. The manifest shall be properly made out and signed by both the distributor and the purchaser or recipient of said commodity. Every person receiving from a distributor any motor fuel and reselling or redelivering the same, shall likewise record each such sale or delivery upon similar manifest. Provided, however, that manifests shall not be required upon retail sales in quantities of thirty (30) gallons or less.

(c) It is the intent and object of this Section to require that every person, except as herein expressly provided to the contrary, who shall transport any commodity required to be recorded upon a manifest shall carry with said commodity at all times a manifest covering said cargo, and said person shall issue a manifest to the purchaser or receiver of all or any part of the commodity so being transported, and to require that such purchaser or receiver shall receipt on said manifest for the quantity so delivered and received, and that one counterpart of the manifest shall be delivered to the purchaser, to be retained by him for the time and in the manner required herein, for inspection by the Comptroller and Attorney General, and that another counterpart shall be retained by the distributor or other seller for like purposes and periods. If no sale is involved in such transaction a notation showing such fact or information shall be recorded on said manifest. Provided further, that carriers-for-hire operating under valid permits or certificates of convenience and necessity issued by the Railroad Commission of the State of Texas, and not engaged in transporting motor fuel for sale or distribution for sale, and persons operating motor buses under franchises or licenses issued by municipalities shall not be required to carry or issue a manifest for motor fuel in quantities of one hundred (100) gallons or less, when said motor fuel is contained and transported in the fuel tank connected to and feeding the carburetor of any motor vehicle owned or operated by said carrier or person, and is used exclusively for the propulsion of such motor vehicle and is not transported for sale, distribution, or delivery to any other person. This exemption shall not apply to the fuel tank of any motor vehicle used to transport motor fuel in any quantity for sale or distribution for sale.

Provided however, that where a distributor markets his products through his own service stations, that as to said service stations, it will be sufficient to keep the records at said service stations, hereinafter required by this Article to be kept by dealers. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 9.]

Art. 7065b—10. Dealers to keep manifests and book records.—Every dealer shall keep, at each place of business in Texas, for a period of two (2) years, for the inspection at all times of the Comptroller and the Attorney General, or their authorized representatives, the manifest furnished by the seller, as required herein, and in addition thereto a well-bound book record which will provide complete information of all motor fuels, naphtha, kerosene, distillate, gas oil, fuel oil and/or casing-head gasoline, natural gasoline, drip gasoline or absorption gasoline, and all other derivatives or condensates of crude oil or natural gas, purchased or received by him at each place of business, and inventories on the first of each month of all such products. Such record shall show the date received, the name and address of the person from whom purchased or received, the number of gallons, the designation by name of the particular kind of motor fuel or other products purchased or received, the point from which shipped or delivered, the point at which received, the number and initials of car if shipped by rail, the name of the boat or barge, if shipped by water, and the license number and description, if received by motor vehicle or trailer, and in addition, the total daily sales, designating the particular kind of motor fuel, kerosene, naphtha, distillate, gas oil, fuel oil, casing-head gasoline and/or natural gasoline, drip gasoline, absorption gasoline, or other derivatives or condensates of crude oil or natural gas, sold or delivered, whether the same be taxable or not under the provisions of this Article. Upon each sale or delivery of any of the commodities named herein at wholesale for the purpose of resale, and upon each retail sale, distribution or use of said commodities in quantities of more than thirty (30) gallons, every dealer shall be required to issue and keep for a period of two (2) years, a manifest made up as required by Section 9(b) of this Article, giving full details of such sales, deliveries, distributions, or use, as said form manifest provides shall be given. The duplicate of said manifest shall be delivered to the purchaser or carrier and the original kept by said dealer. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 10.]

Art. 7065b—11. Carriers, records to be kept by; reports.—(a) All common and contract carriers in this State shall keep for a period of two (2) years, open to inspection by the Comptroller or his authorized representatives, a complete record of each transportation of motor fuel, showing the date of transportation, the consignor and consignee, the means of transportation and the quantity and kind of motor fuel transported. Said record shall show such intrastate records separately from interstate records.

(b) All persons operating trucks, pipe lines, and other conveyances as common or contract carriers in the transportation of motor fuel into and from this State, exclusive of railroads, shall render a sworn report to the Comptroller not later than the 20th of each month, on a form prescribed by said Comptroller, showing a description of the truck or other conveyances in which the same was transported, the date said motor fuel was transported, the consignor and consignee, and the quantity and kind of said motor fuel which was transported by such persons during the preceding month. There shall also be included in said report full data concerning the diversion of shipments en route as amount to a change from interstate to intrastate and intrastate to interstate commerce. Such report shall show the points of origin and destination, the number of gallons shipped or transported, the date, the consignee and the consignor, and the kind of motor fuel. All persons operating railroads as common carriers in the transportation of motor fuel into and from this State shall, as and when requested by the Comptroller, and in such form as may be prescribed, render, not later than the 20th of the following month, a sworn report for the preceding month, or for such other period or periods as may be requested, showing a description of the tank car or other conveyance in which the same was transported, and shall render such other information concerning the diversion of or change of shipments en route from interstate to intrastate commerce or intrastate to interstate commerce, as may be required

by the Comptroller. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 11.]

Art. 7065b—12. Pipe line operators; disposition of "drip gasoline"; requirements when "drip gasoline" is sold.—Every person operating a pipe line for the purpose of conveying or moving natural gas through such pipe line shall either collect and conserve for the purpose of sale, distribution, or use the liquid residuent commonly known as "drip gasoline" which is formed and extracted from such pipe lines, or if the said product has no practical value to said person, he shall neutralize, burn, or otherwise destroy said product in a manner that will prevent its use as motor fuel in this State. If such drip gasoline is sold, distributed, or used as motor fuel, said person shall obtain the permit, make the reports, and keep the records of such sales, distributions, or use in compliance with the provisions of this Article. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 12.]

Art. 7065b—13. "Refund dealer" defined; refunds; applications; records; license; invoice of exemption; affidavit; fire or other accident; sales to United States government; Highway Motor Fuel Tax Fund.—The term "refund dealer" wherever used in this Article shall mean any dealer, distributor, or other person who engages in the selling of motor fuel or who appropriates for his own use and consumption motor fuel on which a refund of the tax paid on such motor fuel is authorized by this Article.

(a) Any person who purchases motor fuel in the State of Texas, and any distributor who appropriates motor fuel for use when such motor fuel purchased by such person or used by such distributor for operating or propelling any stationary gas engine or tractor used for agricultural purposes, motor boats, aircraft, or for any purpose other than use in a motor vehicle operated or intended to be operated in whole or in part upon any of the public highways, roads, or streets of the State of Texas, on which motor fuel tax has been paid, either directly or indirectly, shall be refunded the amount of such taxes so paid by the distributor, exclusive of the one (1) per cent deduction allowed distributors upon the first sale, distribution or use of said motor fuel, for collecting and remitting the tax and for evaporation and other losses in the manner and subject to the limitations and conditions described herein. Provided, however, that no greater amount shall be refunded than has been paid into the Treasury on any motor fuel. The tax actually paid by any distributor or person shall be refunded as provided herein on motor fuel not subject to the tax.

(b) Any person or distributor desiring to appropriate or sell motor fuel on which a refund of the tax is authorized by this Article, shall, before making such appropriation or sale, make application to the Comptroller of Public Accounts, upon forms to be prescribed by the Comptroller, and containing such information as the Comptroller may require, for a refund dealer's license to sell such motor fuel; and it shall be unlawful for any person to sell or appropriate any motor fuel upon which a refund of the tax will be made, or is intended to be made, without first having obtained from the Comptroller of the State of Texas such license to sell or appropriate such motor fuel.

A separate application shall be made to the Comptroller by such person or distributor for each place of business from which refund motor fuel is to be sold or distributed by such person or distributor, and the Comptroller shall issue a separate license for each such place of business. The Comptroller shall examine each application for license received by him, and, if found in due form, and if within the discretion of the Comptroller, the applicant is entitled to such license, the same shall be issued. When such application is made to the Comptroller, the applicant for license shall be required to file oath with the Comptroller that he will faithfully perform and comply with the Statute making provision for the sale, distribution, and use of motor fuel subject to a refund of the motor fuel taxes. Each license issued hereunder shall remain in full force and effect until the first day of March following its date of issue, and annually on the first day of March each refund dealer, or other person, desiring to sell or appropriate motor fuel upon which a refund of the tax is authorized must obtain from the Comptroller a license, or a renewal of his existing license, to sell such motor fuel as herein provided. Any refund dealer's license issued hereunder is not transferable unless such transfer is authorized by the Comptroller. Any person who sells motor fuel upon which a refund of the tax may be authorized, or is claimed, under the provisions of this Article, without having obtained a refund dealer's license, as provided for under this Article, shall be guilty of a misdemeanor, and upon conviction, shall be liable in any sum not to exceed One Thousand Dollars ($1,000), or by a jail sentence not to exceed six (6) months in jail, or by both such fine and jail sentence.

Every refund dealer shall be required to maintain the records required of a dealer in Section 10 of this Article. Said refund dealer shall also be required to affix his license number to every invoice of exemption he may issue under the provisions of this Article.

The Comptroller shall prescribe the form of license to be used under this Article and shall have authority, and it shall be his duty, to revoke and cancel any license issued hereunder when the refund dealer violates any Section of this Article. And, in the event the Comptroller does revoke a license, then the said license or renewal certificate and all books containing invoices of exemption held by such refund dealer shall be accounted for and surrendered to the Comptroller.

No refund of the tax shall be granted on any motor fuel to any person, claimant, firm, corporation, or otherwise, unless such motor fuel has been purchased from or used by a licensed refund dealer as provided for in this Article; and the Comptroller is hereby prohibited from issuing a warrant in payment of any refund of the tax on any motor fuel not purchased from a licensed refund dealer except refund on motor fuel exported, lost by accident or purchased by the United States Government.

(c) An invoice of exemption shall be demanded by the purchaser or recipient of motor fuel used for refund purposes, and upon each delivery by a refund dealer, or upon each appropriation for use of motor fuel upon which a refund of the tax may be claimed, an invoice of exemption shall be issued showing the date of such delivery, or of such appropriation for use, which invoice of exemption shall state: the current number of the license of the refund dealer; the number of gallons of motor fuel thus delivered or appropriated; the purpose for which such motor fuel will be used, or is intended to be used; the date of purchase, and the date and place of delivery, or appropriation; the name of the purchaser or user; the name of the agent or employee actually making the purchase, or appropriation, if any; the seller and place of business of seller; the manner of delivery. And the said invoice of exemption shall show thereon such other information as the Comptroller may require; and no refund shall be allowed unless the refund dealer executes such an invoice of exemption containing said information, except as herein provided. If it be shown to the Comptroller by evidence sufficient and satisfactory to the Comptroller that the motor fuel was in good faith used by claimant for exempt purposes and the invoice of exemption did not issue upon the delivery of the motor fuel, through no fault of the claimant, the rights of the claimant shall not be prejudiced because of the invoice of exemption not having been issued upon the delivery of

the motor fuel, and the Comptroller shall issue warrant in payment of the claim.

And provided further, that the person selling such motor fuel, or the refund dealer, in issuing invoices of exemption to the user of such motor fuel shall make such invoices in duplicate, the duplicate of which shall be delivered to the user of such motor fuel, and the original shall be retained by the refund dealer for a period of two (2) years, at the place of business designated in the refund dealer's license, in the same manner and subject to the same examination as required of other records of motor fuel to be kept.

Each invoice of exemption shall also be signed by the user of such motor fuel, or by his duly authorized agent. But, if the user of such motor fuel is not present at the time of delivery, and cannot sign the invoice of exemption at the time of delivery, then he shall be required to sign such invoice at his first opportunity thereafter. The refund dealer or employee of said refund dealer shall not sign for the purchaser when issuing the invoice of exemption.

(d) When a claimant purchases or acquires for use motor fuel upon which a refund of the tax may be due, he shall within six (6) months from the date of delivery of the motor fuel upon which a refund is claimed, and not thereafter, file with the Comptroller an affidavit, on such form as may be prescribed by the Comptroller. Said affidavit shall include a statement as to the source or place of purchase or acquisition of such motor fuel used for purposes other than in propelling motor vehicles over the highways of this State; that the information stated in the attached duplicate copy of the invoice of exemption is true and correct, and the manner in which said motor fuel was used, and that no part of said motor fuel was used in propelling motor vehicles over the highways of this State. Said affidavit shall be accompanied by the duplicate copy of the invoice of exemption above referred to, and the Comptroller may require other affidavits in such form and time as he may deem advisable, and if he finds that such claims are just, and that the taxes claimed have actually been paid by claimant, then he shall issue warrant or warrants for the amounts due claimant, but no warrant shall be paid by the State Treasurer unless presented for payment within two (2) years from the close of the fiscal year in which said warrant was issued, but claims for the payment of such warrant may be presented to the Legislature for appropriation to be made from which said warrants may be paid.

No refund shall be made where motor fuel is used later than six (6) months from date of delivery or appropriation, and no refund shall ever be made where it appears from the invoice, or from the affidavits, or other evidence submitted, that the sale or delivery was made more than six (6) months prior to the date of filing of the application for refund. The date of filing shall be the day such claim is actually received in the Comptroller's office. In addition to other penalties prescribed in this Article, it is herein provided that a felony conviction for a violation of any provision of this Section of said Article shall automatically forfeit the right of said convicted person to sell motor fuel for refund purposes, and shall forfeit the right of said convicted person to file a claim and obtain a refund for a period of one (1) year from the date of said conviction.

No refund of the tax shall be allowed on motor fuel used in any registered or licensed motor vehicle or in any motor vehicle operated or intended to be operated in whole or in part upon any of the highways, roads, and streets of this State.

If any person shall export or lose by fire or other accident any motor fuel in quantities of one hundred (100) gallons or more, so that the same may never be made use of within this State, after the tax has been paid on such motor fuel, or shall sell motor fuel upon which the tax has been paid, in any quantities, to the United States Government, for the exclusive use of said Government, claim for refund of the tax so paid may be made in the manner herein provided, or as the Comptroller may direct. Provided, however, that showing must be made that said tax was paid or accounted for by a licensed and bonded distributor, and the Comptroller shall deduct from such refund the one (1) per cent allowed to distributors making the first sale, distribution or use of motor fuel in Texas. Provided, further, that a bonded and licensed distributor may, in lieu of filing claim for refund of the tax paid on motor fuel thereafter exported or sold to the United States Government for the exclusive use of said Government, take credit on any monthly report and tax payment made to the Comptroller within six (6) months of the date of said sale or exportation, for the amount of tax so paid.

Any motor fuel dealer in this State may, by agreement with any distributor from whom he purchases motor fuel, sell motor fuel for the account of said distributor free of the tax levied herein to the United States Government, for the exclusive use of said Government, by obtaining in lieu of said tax payment, and as proof of said sale, the United States Government Standard Tax Exemption Certificate properly executed and signed by an officer of the Government authorized to sign the same, or any other certificate of proof of sale acceptable to the Comptroller, which said certificate shall show the quantity of motor fuel involved in each such sale. Provided that if the motor fuel tax levied herein has, prior to such sales to the United States Government, been paid to the distributor by said dealer and in turn paid by said distributor to the State of Texas, the said distributor may, at any time within six (6) months of said sale, take credit on his monthly reports and tax payments to the Comptroller for the amount of tax paid by him on such sales. Provided, however, that the said certificate issued by said Government to cover such sales shall be collected from such dealer or dealers by said distributor and conserved as a record for a period of two (2) years as evidence of such sales and no credit shall be taken on said monthly tax reports and payments until said certificates have been received by said distributor.

(e) When the Comptroller has issued a refund dealer's license to any person desiring to sell or distribute motor fuel upon which a refund of the tax is authorized, or upon which a claim is to be filed for a refund of the tax, the Comptroller shall issue to such refund dealer a book, or books, of blank invoices of exemption, which invoices shall be serially numbered, and an original and a duplicate of each invoice shall be made. The Comptroller shall keep accurate records of the number of books of invoices of exemption issued and furnished to each refund dealer, and the refund dealer shall, at all times, account for all such books of invoices of exemption so received by him. Any invoices of exemption mutilated or unusable must be returned to the Comptroller by the refund dealer for credit to his account, and any unissued invoice of exemption lost or destroyed must be reported to the Comptroller by such refund dealer. The Comptroller shall not issue any additional books of invoices of exemption to any refund dealer until he has made proper accounting for each invoice of exemption theretofore issued him. The books of invoices of exemption issued are not transferable or assignable by such refund dealer unless such transfer or assignment is authorized by the Comptroller, and failure by such refund dealer to make proper accounting for all invoices of exemption issued to him by the Comptroller shall be cause for the cancellation of his license as a refund dealer as herein provided.

If the duplicate invoice of exemption retained by purchaser is lost, or destroyed, by purchaser, such

purchaser may make application to the Comptroller for forms to be issued in lieu of lost duplicate.

The invoice of exemption required by this Article shall be furnished, free of cost, by the Comptroller to the refund dealer. And, no forms of invoices of exemption shall be used by the dealer or person using refund motor fuel other than those issued and furnished by the Comptroller.

(f) All filing fees shall be paid into the State Treasury and be paid out on vouchers and warrants in such manner as may be prescribed by law.

(g) All the moneys paid into the Treasury under the provisions of this Article, except the filing fees provided herein, shall be set aside in a special fund to be known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until a report is made by the Comptroller to the Treasurer, showing the total maximum amount of refunds that may be required to be paid by the State out of said funds. The Comptroller shall on the 20th day of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on sale of motor fuel during the preceding month, upon which a refund may be due, and shall certify to the Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to pay refunds, and shall not distribute that part of said fund until the expiration of the time in which a refund can be made out of said fund, but as soon as said report has been made by the Comptroller and the maximum amount of refunds determined, he shall deduct said maximum amount from the total taxes paid for such month, and apply the remainder of such as provided by law. If the claimant has lost or loses, or for any reason failed or fails to receive warrant after warrant was or has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue claimant duplicate warrant as provided for in Article 4365, Revised Civil Statutes of Texas of 1925.

(h) So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds provided for herein, and if a specific amount be necessary then there is hereby appropriated and set aside for said purpose the sum of Two Hundred Thousand Dollars ($200,000), or so much thereof as may be necessary. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the one (1) per cent deducted originally by the distributor upon the first sale or distribution shall be deducted in computing the refund. The Comptroller shall deduct fifty (50) cents from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund, which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement of this Article, as well as for the payment of expenses in furnishing the form of invoice of exemption and other forms provided for herein, and the same is hereby appropriated for such purpose. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 13; Acts 1943, 48th Leg., p. 441, ch. 298, § 2.]

Art. 7065b—14. Liquefied gas and other liquid fuels; tax on; permit to use; bond; application; payment of tax; release of sureties; connection of carburetor with cargo tank forbidden; records; enforcement.—(a) From and after the effective date of this Article, there shall be and is hereby levied and imposed an excise tax of four (4) cents per gallon, or fractional part thereof, on all users of liquefied gases, and six (6) cents per gallon, or fractional part thereof, on all users of other liquid fuels, upon the use of such liquefied gases and other liquid fuels by any person within this State only when such liquefied gases and other liquid fuels are used in an internal combustion engine for the generation of power to propel motor vehicles upon the public highways of this State. Said tax shall be computed and paid to the State of Texas through the Comptroller at the time and in the manner hereinafter provided.

The term "use" wherever used in this Section shall mean and include the consumption of "liquefied gases" and "other liquid fuels," as those terms are defined in Section 1 of this Article, by any person in a motor vehicle for the propulsion thereof upon the public highways of this State.

Each "user" shall be prima facie presumed to have used or consumed for taxable purposes all liquefied gases and other liquid fuels shown by a duly verified audit of the Comptroller to have been purchased or received by him, and not accounted for.

From and after the effective date of this Article, any person using, or who may thereafter desire to use liquefied gases or other liquid fuels defined herein, for the purpose of the propulsion of motor vehicles upon the public highways of this State, shall file with the Comptroller of Public Accounts, an application for a permit to use said products, as herein provided, in such form as the Comptroller may prescribe, giving the correct name and address of the person making application, the make, horse power, motor number, highway license number, and fuel tank capacity of each vehicle intended to be used, including all auxiliary tanks, and a new application shall be filed on or before December 31st of each year for a permit for the subsequent calendar year. The application shall carry an agreement to file information with the Comptroller of any additional equipment acquired, or any changes in equipment being used, during the period for which permit is issued, and such other information as the Comptroller may require. Said permit may be revoked for violation of any provision hereof. [As amended Acts 1943, 48th Leg., p. 441, ch. 298, § 3.]

(b) Concurrently with the filing of said application, every user shall file with the Comptroller a bond in the amount of One Hundred Dollars ($100) for each vehicle to be used, which bond shall be executed by a surety company or surety companies, acceptable to the Comptroller, who is authorized to write surety bonds within this State or the equivalent in cash, or securities, to be approved by the Comptroller. Said bond shall be posted to guarantee payment of taxes levied herein, together with penalties and interest, and shall be conditioned upon the compliance with all other provisions of this Article affecting said user, and shall be upon a form prepared by the Attorney General of Texas. Cash or securities pledged in lieu of bond shall be held in suspense by the Comptroller until all requirements of this Article applicable to the user have been complied with. Provided, the Comptroller may permit an exchange of bonds, or require new bonds as his discretion may direct.

Surety bonds posted under the requirements of this Section shall expire on December 31st of each year, and may be continued in force for the succeeding twelve (12) months by renewal certificate issued by the surety thereon. Bonds may be increased or reduced by certificate of the surety thereon, effective to December 31st succeeding, if additional vehicles shall be acquired by the user, or if the number of vehicles is reduced during the period covered by the license and bond.

(c) The application in proper form and bond, cash, or securities having been filed with and accepted by the Comptroller, a nontransferable permit, or certificate of said permit, shall be issued to the person, which shall expire on December 31st subsequent to the issuance thereof, and which shall be serially numbered and signed by the Comptroller, for each vehicle enumerated within the application, and shall have written thereon the highway license number and factory motor number of the vehicle. Said certificate shall be appropriately worded to identify the person or his agent as licensee under the provisions of this Ar-

ticle, entitled to use liquefied gases or other liquid fuels described herein, assuming the tax liability incurred by the use thereof, and a certificate of such permit to be furnished by the Comptroller shall be framed and affixed in the cab of said vehicle to accompany said vehicle whenever used in this State.

(d) Every "user" of liquefied gases or other liquid fuels in this State shall upon the 20th day of each calendar month pay to the State of Texas, at the office of the Comptroller, at Austin, Travis County, Texas, the amount of tax levied herein and due upon all the liquefied gases and other liquid fuels used by him during the calendar month next preceding, and at the same time such user shall make and deliver to the Comptroller, at his office in said City, County, and State, a report properly sworn to, showing the date said report was executed, the name and address of said user and the month which the report covers, and which report shall show separately the number of gallons of liquefied gases and other liquid fuels on hand at the beginning and end of each month, the number of gallons purchased, received, or acquired in any manner in Texas, the number of gallons imported into Texas in the fuel tank of a motor vehicle, or otherwise, and the number of gallons used in each motor vehicle separately, showing the make, horsepower, and license number of each said motor vehicle, and the number of gallons sold or otherwise disposed of. Said report shall also show complete information concerning each person from whom said products were purchased, including the name and address of such person, the date of each purchase, the number of gallons purchased from each person, and the kind of product purchased, showing liquefied gases separately from other liquid fuels purchased.

(e) It is expressly provided that any carrier-for-hire operating under a certificate of convenience and necessity issued by the Railroad Commission of this State, and who is not engaged in the business of selling or distributing motor fuel or other taxable petroleum products, or in transporting such products for the purpose of sale or distribution for sale, and any person operating motor buses under franchises or licenses issued by municipalities, who purchase from bonded distributors holding permits under the terms of this Article, all the liquefied gases and other liquid fuels used by said carriers and said persons in propelling motor vehicles upon the public highways of this State, in quantities of not less than five hundred (500) gallons at a single purchase and delivery, shall, if the tax is paid by said carrier or person to said distributor at the rate of four (4) cents upon each gallon of said liquefied gases or other liquid fuels except diesel fuel, in which case the rate of eight (8) cents upon each gallon, so purchased or received, be exempt from the provisions of this Section requiring a user's permit to purchase, possess and use such products, and the other provisions incident to such user's permit. Provided, however, that said carriers and said persons shall be required to file information with the Comptroller showing the make, horsepower, motor number, highway license number, and the fuel tank capacity, including auxiliary fuel tanks, of each and every motor vehicle using said products, and information showing any additional motor vehicles acquired and using said products, and any changes in such motor vehicles being used. The said persons and carriers shall be required to secure upon each purchase or receipt of liquefied gases and other liquid fuels and keep for a period of two (2) years for the inspection of the Comptroller, or his authorized representatives, a manifest, containing all of the information required to be recorded thereon by Section 9 (b) of this Article. Provided further, that any distributor who shall collect the said tax upon the sale or distribution of liquefied gases or other liquid fuels as hereinabove provided, shall be required to include the said tax so collected in the report and remittance required to be delivered to the Comptroller by Section 3 of this Article. Failure to report and pay over to the State of Texas any taxes collected by a distributor upon the sale or distribution of said products shall subject said distributor to all the liabilities, penalties, forfeitures, interest and costs provided in this Article for the failure to report and pay to the State of Texas motor fuel taxes collected.

(f) Any surety on any bond furnished by any user as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty (30) day period. The Comptroller shall promptly on receipt of notice of such request notify the user who furnished such bond, and unless such user shall on or before the expiration of such thirty (30) day period file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Section provided, the Comptroller shall forthwith cancel the permit of said user. If such new bond shall be furnished by said user as above provided, the Comptroller shall cancel the bond for which such new bond was substituted. Provided further, that suit may be filed against any surety or sureties on any bond furnished by a user, without first resorting to or exhausting the assets of said user or without making said user, as principal obligor in said bond, a party to said suit.

(g) All taxes, penalties, interest, and costs due by any user to the State shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, regardless of the time such liens originated, upon the motor vehicles or other equipment in which said taxable liquefied gases or other liquid fuels were used.

(h) After this Article becomes effective as a law, it shall be unlawful for any distributor or dealer to make sales and deliveries of liquefied gases or other liquid fuels as defined herein into the fuel tank of any motor vehicle for the propulsion of motor vehicles, to any person who does not at the time hold and exhibit a valid use tax permit or certificate thereof issued by the Comptroller authorizing such purchases.

(i) From and after the effective date of this Article, no vehicle shall operate upon the highways of this State with connection from cargo to carburetor for the purpose of withdrawing gas, liquefied gas, or other liquid fuel from said cargo tank; and fuel tanks, including auxiliary fuel tanks, shall be separate and apart from cargo tank, with no connection by pipe, tube, valve, or otherwise. It shall be a violation of this Article to sell and deliver liquefied gas, or other liquid fuel, from any fuel tank or auxiliary fuel tank.

(j) Users as defined herein shall maintain for the inspection of the Comptroller, or his authorized representatives, complete records of purchases or other receipts of such liquefied gases and other liquid fuels for a period of two (2) years, and shall keep a complete record of the quantity of liquefied gases and other liquid fuels consumed separately in each motor vehicle in operation in this State. Such record shall include all the information to be contained in the report required herein to be filed with the Comptroller. Provided further, that all persons selling liquefied gases and other liquid fuels in this State shall keep for two (2) years a complete record of each sale of said products made to a user.

Nonresident users shall be required to exhibit records in this State upon request of the Comptroller or his authorized agents.

In event the records and reports of a user have not been maintained and filed with the Comptroller, as provided herein, the said Comptroller is hereby authorized to fix or establish the amount of tax, penalties, and interest due as shown by a verified audit of any records available to him or upon a basis of miles traveled by the motor vehicles of such user, and if the tax claim as developed by such procedure is not paid, the said claim shall be admissible in evidence in any suit or judicial proceedings filed by the Attorney General, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said claim may be overcome, upon the trial, by evidence adduced by said user.

(k) In order to enforce the provisions of this Article, the Comptroller, or his authorized agents, any highway patrolman, officer of the Department of Public Safety, Sheriff, Constable, or their deputies, and all other peace officers, are empowered to stop any motor vehicle which might appear to be using liquefied gas or other products described herein for the propulsion of said vehicle, for investigation. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 14; Acts 1943, 48th Leg., p. 441, ch. 298, § 3.]

Art. 7065b—15. Inspection of premises, books and records.—For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State and the amount of said tax accruing and due for motor fuel used by a distributor, refinery, dealer, user, or other person, dealing in or possessing motor fuel, crude oil, or other derivatives or condensates of crude petroleum or natural gas, or their products or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where motor fuel, crude petroleum, natural gas, or any other derivatives or condensates of crude petroleum, natural gas, or their products are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept, and any and all books and records that may be kept incident to the conduct of the business of said distributor, refinery, or other person, dealing in or possessing motor fuel, crude oil, or other derivatives or condensates of crude petroleum, natural gas or their products. The said authorized officers shall also have the right, as an incident to determining said tax liability or whether a tax liability has been incurred, to examine and gauge or measure the contents of all storage tanks, containers, and other property or equipment, and to take samples of any and all products stored therein. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 15.]

Art. 7065b—16. Cancellation, refusal of issuance, extension or reinstatement of license; grounds; notice; hearing; appeal.—The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any motor fuel distributor's permit, any user's permit, or any refund dealer's license, as provided under the terms of this Article, to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller, or any of the provisions of this Article, including any of the following offenses, which may be applicable to such permittee or licensee: (a) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller, from any report filed with said Comptroller or from any books or records required to be kept or any books or records authorized to be audited by the provisions of this Article; (b) failure to file any return or report required under the provisions of this Article; (c) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Article; (d) failure to keep any books and records for the period and in the manner required herein to be kept; (e) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (f) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (g) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, examine, measure, gauge, and take samples from any truck, tank, pump, or container said persons are authorized to inspect, examine, measure, gauge, and take samples from, under the provisions of this Article; (h) the forging or falsifying of any invoice of exemption herein provided, or the making of any false statement in any claim for refund filed with the Comptroller under the provisions of this Article; (i) the engaging in any business requiring a permit or license under the provisions of this Article, without obtaining and possessing a valid permit or license.

Before any permit or license may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or license, or applicant therefor, not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller, to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules of procedure and evidence for such hearings.

If, after said hearing or opportunity to be heard, the permit or license is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State, except by the provisions of this Section, shall become due and payable concurrently with the cancellation of such permit or license, and the permittee or licensee shall forthwith make a report covering the period of time not covered by preceding reports filed by said permittee or licensee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued from the sale, use, or distribution of motor fuel or the use of liquefied gases or other liquid fuels in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit or license.

An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit or license may be taken to the District Court of Travis County, Texas, by the aggrieved permittee, licensee, or applicant. The trial shall be de novo

under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) all such cases shall be tried within ten (10) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the court pending a trial on the merits. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 16.]

Art. 7065b—17. Failure or refusal to collect or remit; suits; reports as evidence; certificate under seal of order, rule, bond or other instrument.—(a) If any distributor fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Article, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the amount of motor fuel sold by such distributor or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State, or any audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said distributor, when signed and sworn to by such representative as being made from said books and records of said distributor or from any books or records of any person from whom such distributor has bought, received, delivered, or sold motor fuel, crude oil, or the derivatives of crude oil, or natural gas, or from the books and records of any transportation agency, who has transported any of said products, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said report or audit may be overcome, upon the trial, by evidence adduced by said distributor.

(b) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond, or other instrument, referred to in this Article, and that the same had been adopted, promulgated, and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption, or publication, and without further proof of its contents, and the same provision shall apply to any bond or other instrument referred to herein. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 17.]

Art. 7065b—18. Violations of act; penalties; venue of suits; injunction against collection of taxes; bond in lieu of payment into suspense account.—If any person affected by this Article (a) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Article, or (b) shall fail to keep for the period of time provided herein any books or records required, or (c) shall make false entry or fail to make entry in the books and records required to be kept, or (d) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (e) shall refuse to permit the Comptroller, the Attorney General, or their authorized representatives to inspect and examine any books or records required to be kept, or any other pertinent books or records, incident to the conduct of his business that may be kept, or (f) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or (g) shall refuse to permit the Comptroller, or his authorized representatives, to inspect any premises where motor fuel, crude petroleum, natural gas, or any derivative or condensate thereof are produced, made, prepared, stored, transported, sold, or offered for sale or exchange, or (h) shall refuse permission to said persons to examine, gauge, or measure the contents of any storage tanks, vehicle tanks, pumps, or other containers, or to take samples therefrom, or (i) shall refuse permission to said persons to examine and audit any books, records, and gauge reports kept in connection with or incidental to said equipment, or (j) shall refuse to stop and permit the inspection and examination of any motor vehicle transporting motor fuel or using liquefied gas or liquid fuel, upon demand of any person authorized to inspect the same, or (k) shall fail to make and deliver to the Comptroller such return or report as required to be made and filed, or (*l*) shall forge or falsify any invoice of exemption herein provided, or (m) shall make any false statement in any claim for refund of motor fuel taxes as to any material fact required to be given, or if any said person (n) shall fail or refuse to comply with any provision of this Article or shall violate the same, or (*o*) shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars ($25), nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid, shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided, however, that in addition to the penalties shown, if any distributor or user does not make remittance for any taxes collected, or pay any taxes due the State by said distributor or user, within the time prescribed by law, said distributor or user shall forfeit two (2) per cent of the amount due; and if not remitted or paid within twenty (20) days from the due date, he shall forfeit an additional eight (8) per cent penalty. All past due taxes and penalties shall draw interest at the rate of ten (10) per cent per annum.

The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Article, shall be in a court of competent jurisdiction in Travis County, Texas, or in any other court having venue under existing venue Statutes.

Provided further, that before any restraining order or injunction shall be granted against the Comptroller, or his authorized representatives, to restrain or enjoin the collection of any taxes, penalties, and interest imposed by this Article, the applicant therefor shall pay into the suspense account of the State Treasurer all such taxes, penalties, and interest showing to be due and owing to the State by any audit made by the Comptroller, or his duly authorized representative, when said audit has been certified to by the Comptroller or his Chief Clerk, and has been signed under oath by said authorized representative as having been made from the books and records of said applicant, whether or not required to be kept under the provisions of this Article, or from the books and records of any person from whom such applicant has purchased, received, delivered, or sold motor fuel, liquefied gases, or other liquid fuels, or from the books and records of any transportation agency, which has

transported such products to or from said applicant. Provided, however, that said applicant may, in lieu of paying said taxes, penalties, and interest into the suspense account of the State Treasurer, file with said Treasurer a good and sufficient surety bond in the amount and form and under the conditions provided in Section 1, Chapter 310, Acts of the Regular Session of the Forty-fifth Legislature,[1] and the provisions of said Section 1, Chapter 310, are hereby made applicable to any suit filed to restrain or enjoin the collection of any such taxes, penalties, and interest imposed by this Article. Any proceedings to enjoin the collection of such taxes, penalties, and interest, or the enforcement of any provision of this Article shall be in a court of competent jurisdiction in Travis County, Texas. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 18.]

1 Article 7047j, § 1.

Art. 7065b—19. Comptroller authorized to measure containers; rules and regulations; design of vehicle tanks; testing and measuring of tanks; violations.—(a) For the purpose of enforcing the collection of the tax levied by this Article, and to enable the Comptroller to ascertain whether or not the tax has been paid or accounted for on all motor fuel and other products which can be used as motor fuel, which may be transported in this State, the said Comptroller and his authorized representatives are hereby vested with the power and authority to measure, calibrate and determine the capacity in gallons of any vehicle tank or other container in which motor fuel, blending materials, liquefied gases and liquid fuels are transported. The Comptroller is hereby given the power and authority to promulgate and enforce any rules and regulations, which he may deem necessary to the best enforcement of the provisions of this Section.

All vehicle tanks, and all devices designed to be attached thereto and used in connection therewith, and all other containers in which any of the foregoing products are transported, shall be of such design and construction that they do not facilitate the perpetration of fraud. Each compartment of said vehicle tank or other container shall be conspicuously marked on, or immediately under, the dome thereof with a designating figure, or letter and the capacity of said compartment and each delivery faucet shall be marked with the capacity and a corresponding figure or letter to indicate the compartment of which it is the outlet. In addition, the total capacity of all compartments of each vehicle tank shall be conspicuously marked in letters of not less than two (2) inches in height on the rear of each such vehicle tank. The Comptroller's test or certificate number shall also be printed on the rear of each vehicle tank. When a motor vehicle carrying a vehicle tank is equipped with side tanks or other auxiliary tanks or compartments, such additional tanks and compartments shall comply with all of the specifications applicable to vehicle tanks. No vehicle shall transport motor fuel upon the public highways of this State with connection from any cargo tank or container to the carburetor for the purpose of withdrawing motor fuel from said cargo tank or container, and fuel tanks, including auxiliary fuel tanks shall be separate and apart from the cargo tank, with no connection by pipe, tube, valve or otherwise. It shall be a violation of this Article to sell or distribute motor fuel from any fuel tank or auxiliary fuel tank connected with the carburetor of any motor vehicle or to withdraw said motor fuel from any such fuel tank or auxiliary fuel tank for the purpose of sale. The measurement certificate shall be carried with the vehicle tank for which it is issued and the Comptroller or his authorized representatives shall have the authority to impound and hold any truck, for a period not to exceed seventy-two (72) hours, until said certificate is produced. The owner of any vehicle tank or other container tested and measured may be required to pay a reasonable fee to any city or any person for the water used in the measurement of such tank or container.

If any vehicle tank or other container shall, after having been tested, become damaged, repaired or modified in any way which might affect the accuracy of measurement of its receipts and deliveries, it shall not again be used for the sale or transportation of motor fuel, blending materials, liquefied gases and liquid fuels until officially reinspected, and, if deemed necessary, retested and remeasured.

(b) From and after the effective date of this Article, and before using any vehicle tank or other containers in the transportation of motor fuel, blending materials, liquefied gases and liquid fuels, except in quantities of thirty (30) gallons or less in the fuel tank feeding the carburetor of the motor vehicle, every person shall have every such vehicle tank or other containers, subject to the provisions of this Section, tested, measured and calibrated by a representative of the Comptroller and shall obtain a measurement certificate from said Comptroller, showing the capacity of each such vehicle tank and other container. Provided, however, that the Comptroller may, at his discretion, accept any weights and measures certificate issued by the Division of Weights and Measures of the Department of Agriculture, State of Texas, without retesting or remeasuring said vehicle tank or containers.

It is further provided that carriers-for-hire operating under valid permits or certificates of convenience and necessity issued by the Railroad Commission of the State of Texas, and not engaged in transporting motor fuel or other taxable petroleum products for the purpose of sale or distribution for sale, and persons operating motor buses under franchises or licenses issued by municipalities, shall not be required to produce for inspection or measurement or to have tested, measured and calibrated, any fuel tank with a capacity not exceeding one hundred (100) gallons, connected to and feeding the carburetor of any motor vehicle owned or operated by said carriers or said persons, when such fuel tank is used exclusively for furnishing fuel to propel the motor or engine of said motor vehicle, and none of the contents thereof is sold or transported for sale, distribution or delivery to any other person. Provided, however, that this exemption shall not apply to the fuel tank of any motor vehicle used to transport motor fuel or other taxable petroleum products for sale or distribution for sale.

All authorized representatives of the Comptroller shall have the power and authority to inspect, test, measure, or remeasure vehicle tanks and other containers used to transport motor fuel, blending materials, liquefied gases and other liquid fuels, or containers from which said products are sold, or to correct, condemn or mark "out of order" any such vehicle tanks or containers which may be so constructed as to prevent accurate measurement or which are not constructed in conformity with the provisions of this Act or the rules and regulations promulgated hereunder.

(c) Whoever shall remove, obliterate, or change any measurement certificate, tag, marking, or device made by any authorized representative of the Comptroller, or placed upon any vehicle tank or other container, or shall refuse or neglect to produce for inspection and measurement, at the time and place fixed by the Comptroller, not to exceed one hundred (100) miles from the point which is the customary base of operation of such truck, any vehicle tank or other container in his possession or under his control, or shall transport such products in any vehicle tank or other container which has been condemned or tagged "out of order" by any authorized representative of the Comptroller, or whoever shall fail to comply with any provision of this Section or any reasonable rule and reg-

ulation promulgated under the provisions of said Section, or shall violate the same, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200). [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 19.]

Art. 7065b—20. Enforcement of act; stopping vehicles; seizure; forfeiture; proceeding; hearing; decree; sale; summary proceedings.— (a) In order to enforce the provisions of this Article, the Comptroller, his authorized representative, or any Highway Patrolman, Sheriff, Constable, and their deputies, and all other peace officers are empowered to stop any motor vehicle which might appear to be transporting motor fuel or other derivatives of crude petroleum or natural gas, or their products, as cargo, for the purpose of examining the manifest required to be carried, for examination of the commodity in transit, to take samples of the cargo, and for such other investigations as could reasonably be made to determine whether the cargo was motor fuel or other derivatives of crude petroleum, natural gas, or their products, and whether the manifest indicates that the State tax was a part of the consideration involved in the sale or distribution of any motor fuel carried. If, upon said examination, it is found that the driver of any such motor vehicle transporting motor fuel does not possess or refuses to exhibit a manifest required herein, or if said manifest carried is false or incomplete, said authorized officers shall impound and take possession of the said motor vehicle and its contents, and unless proof is produced within seventy-two (72) hours from the beginning of such impoundment that the motor fuel has been sold with the State tax as a part of the consideration therefor, said motor vehicle and its contents shall be delivered to the Comptroller or his authorized representatives for forfeiture and sale as hereinafter provided.

(b) All motor fuel on which taxes are imposed by this Article, which shall be found in the possession, or custody, or within the control of any person for the purpose of being sold, transported, removed, or used by him in fraud of the Motor Fuel Tax Law, and all motor fuel which is removed or is deposited, stored, or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, tank truck, boat, conveyance, or other vehicle whatsoever used in the removal or transportation of such motor fuel for such purposes, and all equipment, paraphernalia, storage tanks, or other tangible personal property incident to and used for such purpose found in the place, building, or vehicle where such motor fuel is found may be seized by the Comptroller, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such motor fuel, vehicles, and property seized as aforesaid, remaining in the possession or custody of the Comptroller, Sheriff, or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable for a period of thirty (30) days, after which time, if no suit has been filed or summary proceedings begun for forfeiture as hereinafter provided, such property shall be subject to replevy.

The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place or person where and from whom such property was seized, and an inventory of same, and appraisement thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

The Attorney General, or the District or County Attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and against the owner or person in possession as defendant, if known, and if unknown, then against said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the Sheriff of said county. In the event the defendant in said proceeding is a nonresident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service of citation upon nonresidents or unknown defendants, or defendants whose residence is unknown; provided, however, such proceeding may be heard at any time after ten (10) days from completion of the service of such process or the first publication of such notice. And in such cases, the court shall appoint an attorney to represent such defendant, who shall have the rights, duties, and compensation as provided by existing Statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale thereof to the highest bidder by the Sheriff at public auction in the county of seizure, after ten (10) days' notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and court costs, shall be paid into the State Treasury, and, after crediting the motor fuel tax fund with the tax, penalties and interest due, the balance of said proceeds, if any, shall be allocated as the Motor Fuel Tax is herein allocated. In the event the District or County Attorneys file and prosecute such cases, a fee of Fifteen Dollars ($15) shall be paid to such officers in addition to all other fees allowed by law, which fee shall be collected as court costs out of the proceeds of such sale.

(c) In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the motor fuel and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars ($500), or less, by the following summary proceedings:

(1) The Comptroller or his authorized representatives shall notify the person from whom such property was seized either in person or by registered mail if said person's address is known and if unknown the Comptroller shall publish a notice in some newspaper of the county where the seizure was made, describing the property seized and stating the time, place, and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(2) Any person claiming such property so seized, or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars ($250),

with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, by final judgment in a court of competent jurisdiction as hereinabove provided, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the Comptroller, he shall transmit the same with a certified copy of the report of receipt of the property seized, filed in his office, to the Attorney General, or the County or District Attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the court of competent jurisdiction as provided by law.

(3) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two (2) times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and after deducting expenses of seizure, appraisement, custody, and sale, he shall, after crediting the Motor Fuel Tax Fund with the tax, penalties, and interest due, deposit the balance of such proceeds, if any, in the State Treasury, which shall be allocated to the funds to which the motor fuel tax levied hereunder is apportioned. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 20.]

Art. 7065b—21. Seizure, forfeiture and sale as affecting criminal prosecution.—The seizure, forfeiture, and sale of motor fuel and any other property named hereinabove under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or justification to the person owning or having control or possession of such property from criminal prosecution for any act or omission made an offense hereunder, or operate to exempt or relieve said person from liability to the State to pay penalties provided by this law, with or without suit therefor. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 21.]

Art. 7065b—22. Waiver of forfeiture proceedings on paying double amount of tax.—Authority is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Article, or any part thereof, provided that the offender shall pay into the State Treasury through the Comptroller a penalty equal to twice the amount of the tax due on the motor fuel plus all other costs in connection with such seizure. A record of all such settlements and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection.

If, upon examination of records or other investigation, the Comptroller finds that motor fuel has been sold without the tax levied herein having been paid to the State, or accounted for by a bonded distributor, he shall have the power to require such person to pay into the State Treasury through the Comptroller the taxes due and a penalty equal to the amount of such taxes due. If the person who has made such sale is unable to furnish sufficient evidence to the Comptroller that said tax has been paid, or accounted for by a bonded distributor, the prima facie presumption shall arise that such motor fuel was sold without said tax having been paid. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 22.]

Art. 7065b—23. Collection of taxes, penalties, costs and interests; rules and regulations; violation.—It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes, penalties, costs, and interest due or that may become due under the provisions of this Article, and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Article. Said Comptroller shall also have the power and authority to promulgate rules and regulations, not inconsistent with this Article or the Constitutions of this State or the United States, for the enforcement of the provisions of this Article and the collection of the revenues levied hereunder.

No rule or regulation for which a penalty is prescribed by the Comptroller shall be adopted by the Comptroller except after notice and hearing. Notice of such hearing shall be given by publication one time in three (3) newspapers of general circulation in this State. Such notice shall specify the date and place of hearing and the subject matter of the proposed rule or regulation and shall constitute sufficient notice to all parties. The date of hearing shall be not less than ten (10) days from the date of publication of notice. At such hearing any person, either by himself or by an attorney, may present relevant facts either in support or opposition thereto. The Comptroller shall, upon a finding of facts, have the authority and power to adopt, modify, nullify, or alter such rules and regulations.

Upon the final adoption of any rule or regulation, the Comptroller shall cause the same to be published one time in a newspaper of general circulation in this State and the same shall have the force and effect of law as of the date of publication, unless a subsequent date is specified therein. The publication thereof shall be sufficient notice to all parties. Any person who violates any valid rule and regulation or any provision thereof shall be subject to the penalty as prescribed in Section 26 of this Article.[1] [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 23.]

1 Article 7065b—26.

Art. 7065b—24. Comptroller may issue subpoenas, compel attendance of witnesses, administer oaths, take depositions; other powers; failure of witness to obey.—The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall, for the purpose contemplated by this Article, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, and documents.

If any witness refuses to obey such subpoena or refuses to produce any pertinent books, accounts, records, or documents, named in such subpoena and in the possession or control of said witness, or if any witness in attendance before the Comptroller or one of his authorized representatives refuses without reasonable cause to be examined or to answer any legal or pertinent question, or to produce any book, record, paper, or document when ordered to do so by the Comptroller or his authorized representative, said Comptroller or representative shall certify the facts and the names of the witnesses so failing and refusing to appear and testify, or refusing access to the books, records, papers, and documents, to the district court having jurisdiction of the witness; said court shall thereupon issue proper summons to said witness to appear before the said Comptroller, or his authorized representatives, at a place designated within the jurisdiction of said court, on a day to be fixed, to be continued as occasion may require, and give such evidence and open for inspection such books, records, papers, and documents as may be required for the purpose of enforcing the provisions of this Article. Upon failure to obey such summons the judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, paper, or document, which he was ordered to bring or produce, he

shall forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Comptroller, or his authorized representatives, shall be paid their fees and mileage by the Comptroller out of funds appropriated for court costs to said Comptroller.

The Comptroller may, if necessary to enforce the provisions of this Section, require such number of his representatives as he deems necessary to enforce the provisions hereof to subscribe to the constitutional oath of office, a record of which shall be filed in the office of the Comptroller. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 24.]

Art. 7065b—25. Special fund for administration and enforcement; disposition of taxes collected.—Before any diversion or allocation of the motor fuel tax collected under the provisions of this Article is made, one (1) per cent of the gross amount of said tax shall be set aside in the State Treasury in a special fund, subject to the use of the Comptroller in the administration and enforcement of the provisions of this Article, and so much of the said proceeds of one (1) per cent of the motor fuel tax paid monthly as may be needed in such administration and enforcement be and is hereby appropriated for said purpose. Any unexpended portion of said fund so specified shall at the end of each biennium revert to the respective funds or accounts in proper proportions to which the Motor Fuel Tax Fund is allocated at the end of each biennium.

The Treasurer shall, after making the deductions for refund purposes, as provided in Section 13 of this Article,[1] and for the enforcement of the provisions of this Article, allocate and deposit the remainder of the taxes collected under the provisions of this Article, in the proportions as follows: One fourth of such tax shall go to, and be placed to the credit of, the Available Free School Fund; one fourth of same shall go to, and be placed to the credit of, the fund known as the County and Road District Highway Fund, and the remaining one half of such tax shall go to, and be placed to the credit of, the State Highway Fund, for the construction and maintenance of public roads of this State, constituting and comprising the system of the State highways of Texas as designated by the State Highway Commission of Texas. The said allocation provision shall be effective and remain in force subject to further allocation or appropriation by the general or any special appropriation bill. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 25.]

[1] Article 7065b—13.

Art. 7065b—26. Penalties for certain violations.—If any dealer (a) shall fail to keep for a period of two (2) years in Texas any books and records required to be kept by a dealer, or (b) if any dealer or agent, employee, or representative of a dealer shall destroy, mutilate, or secrete any books and records required to be kept, or (c) shall refuse to permit the Comptroller, the Attorney General, or their authorized representatives, to inspect, examine, and audit any books and records required to be kept, or any other books or records incident to the conduct of the business of said dealer that may be kept, or (d) shall refuse to present such books and records for inspection, examination, and audit upon demand of the Comptroller, Attorney General, or their authorized representatives, or (e) shall knowingly make any false entry or fail to make entries in the books and records required to be kept by a dealer, or (f) shall fail to issue and deliver to the purchaser or recipient a manifest containing all the information required thereon, upon each sale, distribution, or delivery of motor fuel, or other derivatives of crude oil or natural gas, in quantities of thirty (30) gallons or more, or (g) if any refund dealer shall refuse to surrender his refund dealer's license to the Comptroller upon suspension or cancellation of said license, or (h) shall refuse to surrender all invoice of exemption forms upon the suspension or cancellation of said license, or (i) shall knowingly fail to notify the Comptroller within three (3) days after any invoice of exemption form has been lost or destroyed, or if any dealer or other person (j) shall refuse to permit the Comptroller, Attorney General, or their authorized representatives to inspect, examine, and take samples from pumps, containers, or other equipment in which motor fuel or other derivatives of crude petroleum or natural gas are stored, or from which said products are sold, distributed, or used, or (k) shall refuse to permit the inspection of any equipment or any premises in or upon which said products are stored, sold, or distributed, or (*l*) shall conceal any derivatives or condensates of crude petroleum or natural gas for the purpose of violating any provision of this Act, or (m) shall transport motor fuel, liquefied gas, or other liquid fuels in a motor vehicle with pipe or tube connection from the cargo tank or container to the carburetor of said motor vehicle, or (n) shall sell or distribute motor fuel from a fuel tank or auxiliary fuel tank with a direct or indirect connection to the carburetor of a motor vehicle, or (*o*) shall sell and deliver liquefied gases or other liquid fuels into the fuel tank of any motor vehicle to any person who refuses or fails to exhibit a user's permit certificate authorizing the use of such products to propel a motor vehicle upon the public highways, or (p) shall use liquefied gases or other fuel for the propulsion of a motor vehicle upon the public highway without a valid user's permit certificate being posted in the cab of said motor vehicle, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200). [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 26.]

Art. 7065b—27. Penalties for certain other violations; effect of conviction; venue of prosecution.—(a) Whoever shall knowingly transport in any manner any motor fuel, casing-head gasoline, drip gasoline, natural gasoline, or absorption gasoline under a false manifest, or (b) whoever shall knowingly transport any of the foregoing named commodities in any quantity, required by law to be recorded upon a manifest, without then and there possessing or exhibiting upon demand by an authorized officer, a manifest, containing all the information required to be shown thereon, or (c) while transporting any of the foregoing named commodities, shall wilfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized hereunder to stop said motor vehicle, or (d) shall refuse to permit the examination of his records and cargo by said authorized person, or (e) shall refuse to surrender his motor vehicle and cargo for impoundment when ordered to do so by a person authorized hereunder to impound said motor vehicle and cargo, or (f) shall refuse to permit said authorized person to inspect any plant or premises where motor fuel is refined, processed, made, or produced, or (g) shall refuse to permit said authorized person to inspect any plant or premises from which a first sale or distribution of motor fuel is made, or (h) shall refuse to permit said authorized persons to examine and gauge or measure the contents of all storage tanks and containers on said premises or to take samples therefrom, or (i) shall refuse to permit said authorized persons to inspect all equipment on said premises, or (j) whoever shall knowingly purchase or receive from a distributor motor fuel upon which a tax is required to be paid, without said tax being a part of the consideration involved in such transaction, or (k) whoever shall wilfully forge or falsify any invoice of exemp-

tion prescribed herein, or (l) whoever shall wilfully and knowingly make any false statement in any claim for refund delivered to or filed with the Comptroller, or (m) whoever as distributor shall make a first sale, distribution, or use of any motor fuel upon which a tax is required to be paid, without having at the time of said sale, distribution, or use, a valid permit as required, or (n) whoever as agent, employee, or representative of a distributor, shall make a first sale, distribution, or use of motor fuel knowing that such distributor does not have a valid permit, or (o) whoever as distributor, or as the agent, employee, or representative of a distributor, shall knowingly make, deliver to, and file with the Comptroller a false return or report or an incomplete return or report, or (p) whoever, as distributor, shall fail to make and deliver to the Comptroller a return or report as required to be made and delivered to said Comptroller, or (q) shall fail to keep for a period of two (2) years in Texas any books and records required to be kept by a distributor, or (r) whoever as distributor, or the agent, employee, or representative of a distributor, shall destroy, mutilate, secrete, or remove from the State any of the books and records required to be kept, or (s) shall refuse to permit the Comptroller, the Attorney General or their authorized representatives, to inspect, examine, and audit any books and records required to be kept, or any other pertinent books or records incident to the conduct of the business that may be kept, or (t) shall knowingly make any false entry or fail to make entries in the books and records required to be kept by a distributor, or (u) shall wilfully and knowingly fail or refuse to deliver a manifest upon the first sale or distribution of motor fuel to the purchaser or recipient of said motor fuel, or (v) whoever as user of liquefied gases or other liquid fuels, shall fail to make and deliver to the Comptroller a report as required to be made and delivered to said Comptroller, or (w) whoever as user or as agent, employee, or representative of a user of liquefied gases or other liquid fuel shall knowingly make and deliver to the Comptroller a false report or an incomplete report, shall be guilty of a felony, and upon conviction, shall be punished by confinement in the State penitentiary for not more than five (5) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Thousand Dollars ($5,000), or by both such fine and imprisonment.

In addition to the foregoing penalties, it is herein provided that a felony conviction for any of the above named offenses shall automatically forfeit the right of said convicted person to obtain a permit as distributor of motor fuel, or user of liquefied gases or other liquid fuels, for a period of two (2) years.

Provided that if any penalties prescribed in Section 26 [1] overlap as to offenses which are also punishable under Section 27 of this Article,[2] then the penalties prescribed in the said Section 27 shall apply and control over all such penalties. Venue of prosecution under Section 27 shall be in Travis County, Texas, or in the county in which the offense occurred. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 27; Acts 1943, 48th Leg., p. 441, ch. 298, § 4.]

1 Article 7065b—26.
2 This article.

Art. 7065b—28. Repeal; effect.—Chapter 44, Acts of the Regular Session of the Forty-third Legislature,[1] Chapter 240, Acts of the Regular Session of the Forty-fourth Legislature,[1] Chapter 3, Acts of the Regular Session of the Forty-sixth Legislature,[2] Chapter 8, Acts of the Regular Session of the Forty-sixth Legislature,[3] are hereby repealed, and this Article shall prevail over all other laws or parts of laws that conflict herewith. Provided, however, that all taxes, penalties, and interest accruing to the State of Texas, by virtue of the repealed Acts before the effective date of this Article, shall be and remain valid and binding obligations due the State for all taxes accruing under the provisions of prior or existing gasoline or motor fuel tax laws, and all such taxes now or hereafter becoming delinquent to the State of Texas before the effective date of this Article are hereby expressly preserved and declared to be legal and valid obligations to the State and the liens and other obligations created and bonds executed to secure their payment are hereby declared to be and shall remain in full force and effect. And further provided, that no offense committed and no fine, forfeiture, or penalty incurred under such above repealed Acts before the effective date of this Article, shall be affected by the repeal herein of any such laws, but the punishment of such offense and the recovery of such fines and forfeitures shall take place as if the law repealed had remained in force. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 28.]

1 Articles 7065a—1 to 7065a—18 and Pen.Code, arts. 141a—1, 141a—2.
2 Articles 7065a—7, 7065a—12, 7065a—13, 7065a—13 note.
3 Article 7065a—6.

Art. 7065b—29. Partial invalidity.—If any Section, subsection, sentence, clause, or phrase of this Article, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Article. The Legislature hereby declares that it would have passed this Article and each Section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more of the Sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 29.]

Art. 7066. [Repealed. Acts 1930, 41st Leg., 5th C. S., p. 233, ch. 74, § 4.]

Art. 7066a. [Repealed by Acts 1941, 47th Leg., p. 269, ch. 184, Art. III, § 1.]

The article repealed was Acts 1930, 41st Leg., 5th C.S., p. 233, ch. 74.

Art. 7066b. Motor bus companies; motor carriers; contract carriers; occupation tax.—(a) Each individual, partnership, company, association, or corporation doing business as a "motor bus company" as defined in Chapter 270, Acts Regular Session of the Fortieth Legislature, as amended by the Acts of 1929, First Called Session of the Forty-first Legislature, Chapter 78,[1] or as "motor carrier" or "contract carrier" as defined in Chapter 277, Acts Regular Session of the Forty-second Legislature,[2] over and by use of the public highways of this State, shall make quarterly on the first day of January, April, July, and October of each year, a report to the Comptroller, under oath, of the individual, partnership, company, association, or corporation by its president, treasurer, or secretary, showing the gross amount received from intrastate business done within this State in the payment of charges for transporting persons for compensation and any freight or commodity for hire, or from other sources of revenue received from intrastate business within this State during the quarter next preceding. Said individual, partnership, company, association, or corporation at the time of making said report, shall pay to the State Treasurer an occupation tax for the quarter beginning on said date equal to two and two tenths (2.2) per cent of said gross receipts, as shown by said report. Provided, however, carriers of persons or property who are required to pay an intangible assets tax under the laws of this State, are hereby exempted from the provisions of this Article of this Act.

(b) It is further provided that individuals, partnerships, companies, associations, or corporations engaged exclusively in the business of transporting logs or timber in its natural state, are hereby exempted

from the provisions of this Article of this Act levying an occupational tax upon the gross receipts; provided that if this Act or any section, subsection, sentence, clause, or phrase thereof is held unconstitutional or invalid by reason of the inclusion of this subsection, the Legislature hereby declares that it would have passed this Act and any such section, subsection, sentence, clause, or phrase thereof without this subsection.

(c) The tax herein levied is in addition to any other fees and ad valorem taxes otherwise assessed.

(d) The taxes herein levied when paid shall be and hereby are allocated as provided hereafter in this Act. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XIV, § 1.]

1 Article 911a and Pen.Code, art. 1690a.
2 Article 911b, §§ 1–13b, 15a, 17–19, 22b, 22c and Pen. Code, art. 1690b.

Art. 7066b—1. "Intrastate business" defined.—The term "intrastate business" as used in Article XIV, Section 1 (a) of House Bill No. 8, Acts of the Regular Session of the Forty-seventh Legislature shall mean and apply only to that portion of revenues derived from transportation subject to the regulation of the Railroad Commission of Texas. [Acts 1941, 47th Leg., p. 645, ch. 389, § 1.]

Art. 7067. [Repealed by Acts 1927, 40th Leg., p. 431, ch. 286, § 1.]

Art. 7067a. Franchise tax of interurban and electric railway companies.—In lieu of the tax imposed upon such individual, company, corporation, or association as provided in Article 7067 of the Revised Civil Statutes of 1925, the said individual, company, corporation, or association shall be required to pay the franchise tax now imposed in Chapter 3, of Title 122, of the Revised Civil Statutes of 1925, or which may hereafter be imposed by law. [Acts 1927, 40th Leg., p. 431, ch. 286, § 2.]

Section 1 of Acts 1927 repeals Article 7067, ante.

Art. 7068. [Repealed by Acts 1931, 42nd Leg., p. 447, ch. 267, § 5.]

Art. 7069. [Expired Sept. 1, 1929.]

For Acts 1930, 41st Leg., 5th C.S., p. 175, ch. 37, containing similar provisions imposing occupation tax on textbook publishers, printers and sellers, see article 7047, § 41.

Art. 7070. [7382] Telephone companies.—(1) Each individual, company, corporation, or association owning, operating, managing, or controlling any telephone line or lines, or any telephones within this State and charging for the use of same, shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller, under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or association, showing the gross amount received from all business within this State during the preceding quarter in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this State during said quarter. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there is hereby levied upon said individuals, companies, corporations, and associations, an occupation tax for the quarter beginning on said date, equal to one and one half (1½) per cent of the gross receipts, as shown by said report, received from doing business outside of incorporated cities and towns and within incorporated cities and towns of less than two thousand, five hundred (2,500) inhabitants, according to the last preceding Federal Census; an occupation tax for the quarter beginning on said date, equal to one and three-fourths (1¾) per cent of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than two thousand, five hundred (2,500) inhabitants, and not more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census; an occupation tax for the quarter beginning on said date, equal to two and two hundred seventy-five thousandths (2.275) per cent of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census.

(2) No city or other political subdivision of this State, by virtue of its taxing power, police power, or otherwise, shall impose an occupation tax or charge of any sort, for the privilege of doing business, upon any person, corporation, or association required to pay an occupation tax under this Article; provided, that nothing in this Article shall be construed to prohibit the collection of ad valorem taxes as provided or not prohibited by law, or any tax now imposed by franchise, and provided further that this Article shall not affect any contract now in existence or hereafter made between a city and the holder of a franchise. [Acts 1907, 1st C.S., p. 479; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 4, § 1; Acts 1941, 47th Leg., p. 269, ch. 184, Art. IV, § 1.]

Section 2 of Article IV of the amendatory Act of 1941, cited to the text, provided that the tax levied in Article 7070 shall be allocated as provided in such Act. See Article 7083a.

Art. 7071. [Repealed by Acts 1933, 43rd Leg., p. 409, ch. 162, § 10.]

The repealing section repealed this article and all laws in conflict therewith, and provided further "that all occupation taxes accruing to the State of Texas by virtue of the above repealed Article shall be and remain valid and binding obligations due the State for all taxes accruing under the provisions of prior or existing occupation tax laws, and all such taxes now or hereafter becoming delinquent to the State of Texas before the effective date of this Act are hereby expressly preserved and declared to be legal and valid obligations to the State, and the liens created to secure their payment are hereby declared to be and shall remain in full force and effect."

Art. 7072. [7384] Terminal companies.—Each and every individual, company, corporation or association, whether incorporated under the laws of this or any other State or territory, or of the United States, or any foreign country, which owns, controls, manages or leases any terminal companies, or any railroad doing a terminal business within this State, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing the total amount of its gross receipts from all sources whatever within this State, during the quarter next preceding, and the average market value thereof during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to one per cent of the total amount of its gross receipts from all sources whatever as shown by said report. [Acts 1st C. S. 1907, p. 479.]

Art. 7073. [7385] Tax paid when business is begun after beginning of quarter.—If any individual, company, corporation, firm, or association, in this chapter mentioned, shall begin and engage in any business for which there is an occupation tax herein imposed, on or after the beginning day of the quarter for which said tax is imposed, then, and in all such cases, the amount of such tax for said beginning quarter shall be and is hereby fixed at the sum of fifty dollars, payable to the State Treasurer in advance; but for the next succeeding quarter, and all other succeeding quarters, the tax shall be determined by reports to the Comptroller of the business for the preceding quarter, or part thereof, as herein otherwise in this chapter provided; and

reports and payments of such tax shall be made subject to all other provisions of this chapter. [Id.]

Payment under protest, see Article 7057a, ante.

Art. 7074. [7386] Penalty for failure to report.—Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty days from the date when said report is required by this chapter to be made, shall forfeit and pay to the State of Texas a penalty of not exceeding one thousand dollars. [Id.]

Art. 7075. [7387] Penalty for failure to pay tax.—Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty days from the date when said tax is required by this chapter to be paid, shall forfeit and pay to the State of Texas a penalty of ten per cent upon the amount of such tax. [Id.]

Art. 7076. [7388] Penalties recovered by suit.—The penalties provided for by this Chapter shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas; and it is further provided that should any taxes or penalties provided for by this Chapter be found at any time to be delinquent, the State Tax Board, consisting of the Comptroller of Public Accounts, the Secretary of State, and the State Tax Commissioner, shall be authorized to bring suit for the recovery of same in the name of the State of Texas. The State Tax Commissioner is hereby authorized to appoint and employ investigators, attorneys, auditors, and/or other assistants as may be necessary to carry out the provisions of this Act as said State Tax Commissioner may deem advisable; providing further, that in no event shall said State Tax Board or the State Tax Commissioner make any contract of employment for the collection of delinquent taxes on a contingent fee basis. The State Tax Commissioner is further authorized to request and receive the assistance of the Attorney General and the heads and employees of all other Departments of the State Government to aid in the speedy recovery of such money or penalties due the State under the terms of this Chapter; and it shall be the duty of the Comptroller of Public Accounts, the Secretary of State, and other officials and heads of all State Departments and Agencies of the State Government, which are now, or may be charged with the administration and collection of State taxes and license fees, to certify to the State Tax Commissioner, within thirty (30) days after any State taxes or license fees become delinquent, the fact of such delinquency; and the State Tax Commissioner or his authorized representative shall have full and complete authority to investigate, inquire into, and examine the records of the various departments of the State Government charged with the collection of State taxes or license fees, for the purpose of ascertaining whether delinquencies in the payment of State taxes and license fees exist. The venue and jurisdiction of all suits arising hereunder is hereby conferred upon the courts of Travis County. It is further provided that for the purpose of carrying out the terms of this Act said State Tax Commissioner and said State Tax Board shall have the authority to examine at the principal or any other office in the United States of any person, firm, agent or corporation permitted to do business in this State, all books, records and papers and also any officers or employees thereof, under oath and failure or refusal of any person, firm, agent or corporation to permit such examination shall, upon certification of such refusal by the State Tax Commissioner to the Secretary of State, immediately forfeit the charter or permit to do business in this State until such examination as is required to be made is completed. The State Tax Board or any authorized agent thereof shall not make public or use said information derived in the course of said examination of said books, records and papers and/or officers or employees except for the purpose of some judicial proceeding for the collection of delinquent taxes in which the State of Texas is a party. [Acts 1st C.S., 1907, p. 479; Acts 1933, 43rd Leg., p. 581, ch. 192, § 1.]

Art. 7076a. Delinquent franchise and other taxes than ad valorem taxes on property.—It is further specifically provided that all of the provisions of this Act shall apply and be applicable to all delinquent State taxes due and owing to the State of Texas, of every kind and character whatsoever, including all franchise, occupation, gross receipts, gross production, gross premiums tax on insurance companies, inheritance, gasoline, excise and all other State taxes which become delinquent other than State ad valorem taxes on property. It is hereby declared to be one of the purposes hereof to impose upon the State Tax Board the additional duty of collecting and aiding in the collection of all delinquent taxes enumerated and referred to herein, and all laws now applicable to the collection of such delinquent taxes, and all powers and authority now possessed by existing officers and agencies of the State Government are hereby, in addition, conferred upon said State Tax Board, as far as the same may be applicable, but this provision shall not in any manner lessen, transfer, interfere with or impair the rights or duties of existing agencies of government to collect such delinquent taxes; provided further, that said State Tax Commissioner shall, after the passage hereof, be the chief administrative officer of this Act, and said State Tax Commissioner shall have full and exclusive power and authority to employ such clerical personnel as may be necessary for the proper and efficient prosecution of delinquent tax suits, and all actions which may arise hereunder, which shall be in addition to such assistance as may be required by the State Tax Board or the State Tax Commissioner from the Attorney General of Texas, and the State Board of Control shall provide said State Tax Board with proper and sufficient office space and quarters. [Acts 1933, 43rd Leg., p. 581, ch. 192, § 2.]

Art. 7077. [7389] Permit not granted until tax paid.—No individual, company, corporation or association, failing to pay all taxes imposed by this chapter, shall receive a permit to do business in this State, or continue to do business in the State; until the tax hereby imposed is paid. The receipt of the State Treasurer shall be evidence of the payment of such tax. [Acts 1st C.S., 1907, p. 479.]

Art. 7078. [7390] Tax in addition to all other taxes.—Except as herein stated, all taxes levied by this chapter shall be in addition to all other taxes now levied by law; provided, that nothing herein shall be construed as authorizing any county or city to levy an occupation tax on the occupation and business taxed by this chapter. [Id.]

Art. 7079. [7391] Additional reports.—If for any reason the Comptroller is not satisfied with any report from any such person, company, corporation, co-partnership or association, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due by any such person, firm or corporation. Every statement or report required by this chapter shall have affixed thereto the affidavit of the president, vice-president, secretary or treasurer of the person, corporation, co-partnership or association, or one of the persons or members of the partnership making the same, to the effect that the statement is true. The Comptroller shall prepare blanks to be used in making the reports required by this chapter. [Id.]

Art. 7080. Permit.—Every person, company, firm, partnership, corporation, or unincorporated company or association, engaged in any business within this State, upon which the laws of this State require the payment of a tax on gross receipts, shall be required to have a permit to transact such business, to be issued by the Secretary of State, which permit shall be and remain posted, subject to the view of the public at the principal office of such person to whom the same is issued. The permit shall be issued in such form as the Attorney General may prescribe, shall show the name of the person or concern to whom issued, the business to be transacted, and that the holder thereof has complied with this law. [Acts 4th C. S. 1918, p. 177.]

Art. 7081. Issuance of permit.—Permits to transact business shall be issued by the Secretary of State upon applications made upon form prescribed by the Secretary of State, which application shall show, to the satisfaction of the Secretary of State, the facts required to be shown in the permit; and shall show that the applicant has paid the gross receipts taxes prescribed by law, or that if the applicant is the vendee of a going business that his vendor has paid all his gross receipts taxes due, or to become due; such taxes are to be shown to be paid for the current quarter, or such other period of time as said taxes may be paid. The Secretary of State shall make such investigation as necessary to determine that such taxes have been paid and shall then issue a permit to transact business, authorizing the party to whom issued to transact business until the 31st day of December of the current year, after which date new permits for each year must be obtained, as in the first instance. When a permit has been issued as herein provided, the Secretary of State shall immediately certify such fact to the Comptroller. [Id.]

Art. 7082. Suspension of permit.—Within thirty days after gross receipts taxes may become due by any one transacting or authorized to transact business hereunder, if such tax remains unpaid, the Comptroller shall certify such fact to the Secretary of State, whose duty it shall be to notify the delinquent tax payer that his name has been certified to the Secretary of State as a delinquent and that unless the tax is paid to the Comptroller within ten days from the date of such notice the permit to transact business of the delinquent will be suspended by the Secretary of State. The notice herein provided for shall be given by the Secretary of State, mailing to the delinquent at his last known address a printed or written notice, and the mailing of such notice shall be a sufficient compliance of this law. If the tax, with accrued penalties, is not paid within fifteen days after the mailing of the notice, the Secretary of State shall note on his records that the permit to transact business of the delinquent has been suspended, giving the date upon which such action was taken by the Secretary of State. The Secretary of State shall then immediately certify such suspension to the Comptroller and to the Attorney General. After the permit to transact business has been suspended it shall be unlawful for the delinquent to continue to transact business, and it shall be the duty of the Secretary of State to cause to be published in some daily or weekly paper, published in the county of the delinquent's place of business, or if there is no newspaper published in such county, then in some daily newspaper of State-wide circulation, notice that the delinquent's permit to transact business has been suspended. [Id.]

Art. 7083. Penalties.—Any person, company, firm, partnership, corporation, unincorporated company or association, transacting business in this State upon which a gross receipts tax is required by law to be paid, without having first obtained a permit to do so, or transacting such business after its permit so to do has been suspended, as provided by this law, shall be liable to a penalty of not less than $50.00 nor more than $500.00 daily for each day's business which is transacted in violation of this law. The Attorney General shall bring suits for all penalties authorized by this law, and the courts of Travis County shall have concurrent jurisdiction over all violations of this law. [Id.]

Art. 7083a. Allocation of revenue derived from certain occupation and gross receipts taxes; appropriations and allocations for certain funds.—Section 1. All revenue, other than that part allocated for enforcement purposes, derived and collected from the taxes levied by Chapter 241, Acts of the Regular Session, Forty-fourth Legislature,[1] and any amendments thereof or thereto, shall be hereafter and is hereby allocated as follows: one fourth (1/4) to the Available School Fund of the State of Texas and three fourths (3/4) into the Clearance Fund provided by this Act. All laws and parts of laws in conflict with this section are repealed to the extent of such conflict only.

Sec. 2. All revenue derived from and collected under Article VIII of this Act [1] shall be paid into the General Revenue Fund of the State of Texas. All revenue derived from and collected under Article XIII of this Act [2] shall be and is allocated as now provided by law. All revenue derived from and collected under Article XVII of this Act [3] shall be allocated as provided in Section 25 of said Article.[4]

From all revenue derived and collected under the provisions of Articles I, II, III, IV, V, VI, VII,[5] (subdivision a), IX, X, XI, XII, XIV, XV, XVI, and XVIII of this Act after deduction of that portion provided for enforcement purposes, there shall be allocated to the Available School Fund one-fourth (1/4) of the total sum collected thereunder and same shall be deposited and credited to the Available School Fund in the State Treasury.

After deduction of the allocation provided in the next preceding paragraph to be apportioned to the Available School Fund, the balance of the funds collected under Articles I, II, III, IV, V, VI, VII (subdivision a), IX, X, XI, XII, XIV, XV, XVI, and XVII of this Act [5] shall be deposited in a Clearance Fund in the Treasury, and from such fund the revenues so derived and collected shall be transferred and allocated by the State Treasurer as follows:

(1) There shall be appropriated and allocated, transferred and credited to the special fund in the Treasury known as the "Blind Assistance Fund" for the purpose of providing and administering assistance to the blind in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, 46th Legislature, 1939,[6] and any amendments thereto, such part of One Million ($1,000,000.00) Dollars as the effective period of this Act for the fiscal year ending August 31, 1947 bears to the entire fiscal year. The funds now on hand in, or hereafter deposited to the credit of the "Blind Assistance Fund" are hereby appropriated for the uses and purposes prescribed by law; subject, however, to the provisions of this Act. This appropriation is for the remainder of the fiscal year ending August 31, 1947. There shall be transferred and credited to such fund for the purpose of providing assistance to the blind in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, 46th Legislature, 1939, and any amendments thereto, the sum of One Million ($1,000,000.00) Dollars for each fiscal year thereafter, said amount to be provided on a basis of equal monthly payments payable on the first day of each calendar month. [As amended Acts 1947, 50th Leg., p. 21, ch. 14, § 1.]

(2) There shall be appropriated and allocated, transferred and credited to the special fund in the Treasury known as the "Children's Assistance Fund" for the purpose of providing and administering assistance to

dependent and destitute children in the manner as authorized by Senate Bill No. 36, Acts of the 46th Legislature, 1939,[6] and any amendments thereto, such part of Three Million ($3,000,000.00) Dollars as the effective period of this Act for the fiscal year ending August 31, 1947 bears to the entire fiscal year. The funds now on hand in, or hereafter deposited to the credit of the "Children's Assistance Fund" are hereby appropriated for the uses and purposes prescribed by law; subject, however, to the provisions of this Act. This appropriation is for the remainder of the fiscal year ending August 31, 1947. There shall be transferred and credited to such fund for the purpose of providing assistance on behalf of dependent children as defined and in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, 46th Legislature, 1939, and any amendments thereto, the sum of Three Million ($3,000,000.00) Dollars for each fiscal year thereafter, said amount to be provided on the basis of equal monthly payments payable on the first day of each calendar month. [As amended Acts 1947, 50th Leg., p. 21, ch. 14, § 2.]

(3) Beginning with the fiscal year starting on September 1, 1941, and annually thereafter, there is hereby allocated and appropriated to the Teacher Retirement System of Texas in accordance with the provisions of Senate Bill No. 47, Acts of the Regular Session, 47th Legislature, 1937,[7] and any amendments thereto, a sum each year equivalent to the contributions of the members of the Teacher Retirement System during said year. Said amounts are hereby allocated and appropriated and shall be paid to the Teacher Retirement System in equal monthly installments beginning September 1, 1941, and monthly thereafter based upon the annual estimate by the State Board of Trustees of the Teacher Retirement System of the Contributions to be received from the members of said System during said year; provided further, in the event said estimate of the contributions of the members of the System shall vary from the actual amount of the teachers' contributions during the year, then such adjustments shall be made at the close of each fiscal year as may be required.

There is likewise hereby allocated and appropriated to the Teacher Retirement System of Texas beginning on the first day of the first month after the effective date of this Act, and monthly thereafter, the sum of Fifty Thousand ($50,000.00) Dollars, which shall be paid by the State Treasurer to the Teacher Retirement System until such time as the total additional amounts so deposited by the State of Texas shall be equivalent to the total amount contributed by the members of the Retirement System from September 1, 1937, to September 1, 1941, as certified by the State Board of Trustees of the Teacher Retirement System.

(4) After the above allocations and payments have been made from such "Clearance Fund", there shall be appropriated and allocated, transferred and credited to the special fund in the Treasury known as the "Old Age Assistance Fund" for the purpose of providing and administering assistance to the needy aged in the manner as authorized by Senate Bill No. 36, Acts of the 46th Legislature, Regular Session,[6] and any amendments thereto, such sum as is required, when taken together with any other funds received from any other sources by reason of other State laws still in effect, which will total Thirty-one Million ($31,000,000.00) Dollars for the fiscal year; provided, however, that this allocation and appropriation shall be effective from the effective date of this Act, and such part of this allocation and appropriation, as the effective period of this Act for the fiscal year bears to the entire fiscal year, shall be allocated and appropriated for the remainder of the fiscal year ending August 31, 1947; said allocation and appropriation to be provided in monthly installments, one installment being payable on the first day of each calendar month. Provided further that there shall be transferred and credited to such fund for the purpose of paying assistance to the needy aged such sum as is required, when taken together with any other funds received from any other sources by reason of other state laws still in effect, which will total Thirty-one Million ($31,000,000.00) Dollars for each fiscal year thereafter; said allocation to be provided in monthly installments, one installment being payable on the first day of each calendar month.

Provided further, that none of the money herein appropriated for old age assistance payments, aid to the blind payments, or aid on behalf of needy children shall be used for the purpose of paying assistance to any person who disposes of property, either personal or real, for the purpose of qualifying or increasing need for assistance, provided that the property, if still available, would affect either eligibility or the amount of the assistance payment. [As amended Acts 1947, 50th Leg., p. 21, ch. 14, § 3.]

(4-a) After the above allocations and payments have been made from such Clearance Fund, beginning with the fiscal year September 1, 1947, and annually thereafter, there is hereby appropriated, allocated, transferred, and credited to the Available State School Fund such a sum which when taken together with the total of all other statutory and constitutional amounts to accrue to the Available School Fund will equal to such a total as may be needed to pay a Fifty-five Dollar ($55) per capita apportionment for each and every scholastic on the State-approved school census for each year; and the Comptroller is hereby authorized to determine the amount to be transferred from the Clearance Fund to the Available School Fund under the provision of this Act by taking into account his estimate of such other constitutional and statutory amounts to accrue to the Available School Fund as made at the beginning of each fiscal year. Thereafter the Comptroller shall allocate, transfer, and credit monthly in equal monthly installments from the Clearance Fund to the Available State School Fund such amount as so determined. The Comptroller is hereby authorized to modify from time to time during the fiscal year his estimates of the revenue to accrue to the State Available School Fund in any one year, and shall in the light of the revised estimate or estimates increase, diminish, or suspend any remaining monthly payment or payments from the Clearance Fund to the Available School Fund, provided by the close of each fiscal year there shall have been paid from the Clearance Fund to the Available School Fund such an amount as may be needed to enable the Available State School Fund to pay said Fifty-five Dollar ($55) per capita apportionment annually in full. [Added Acts 1947, 50th Leg., p. 173, ch. 110, § 1.]

(5) All other revenue or money of any kind or character remaining in such Clearance Fund shall be paid into the General Revenue Fund of the State of Texas. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XX; Acts 1941, 47th Leg., p. 774, ch. 481, § 2; Acts 1943, 48th Leg., p. 637, ch. 363, § 1.]

1 Article 7084.
2 Article 7105.
3 Articles 7065b—1 to 7065b—29.
4 Article 7065b—25.
5 Articles 7047, 7047b, 7047k, 7047*l*, 7047m, 7057a, 7060, 7060a, 7066b, 7070 and Pen.Code, arts. 131a, 666—20a, 666—21.
6 Article 695c.
7 Article 2922—1.

Section 5 of the Act of 1947, ch. 14, provided: "If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or application thereof to any person or circumstance, is held invalid, such holding shall not affect the validity of the remaining portion of this Act; and the Legislature hereby declares it would have passed such remaining portion despite such invalidity."

Section 6 of the Act of 1947 repealed all conflicting laws or parts of laws.

Section 2 of the Act of 1947, ch. 110, provided that "Any law or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict. If any clause, sentence, paragraph, or section of this Act is declared invalid or unconstitutional by any Court of compe-

tent jurisdiction, the remainder of this Act shall nevertheless remain in full force and effect."

Section 3 of Article XX of the Act of 1941, p. 269, ch. 184, cited to the text, appropriated $25,000, or so much thereof as necessary, for the use of the Comptroller of Public Accounts for the enforcement and administration of the Act and provided that the unexpended balance of such appropriation should revert to the General Fund after August 31, 1941.

Art. 7083a.1 Deposit of revenues collected in certain funds when amount transferred from "Clearance Fund" insufficient.—If, on the first day of any calendar month, the amount on that day transferred from the "Clearance Fund" to the "Blind Assistance Fund", the "Children's Assistance Fund", and the "Old Age Assistance Fund" is not sufficient to provide the allocation from state funds as herein provided for that month, then in that event, there shall be deposited to the credit of the "Blind Assistance Fund", the "Children's Assistance Fund", or the "Old Age Assistance Fund" from the first revenues collected after the first day of the month, which would otherwise go into the General Revenue Fund, such sum, as with the balance on hand in the fund plus the payment from the "Clearance Fund", will make available in the various funds the total amount of state funds for that month as is herein provided.

The allocations shall be and are in lieu of all other state allocations for aid to the blind, aid to dependent children, and old age assistance, and such allocations and appropriations shall not include any funds received from the Federal Government. Provided further, that the administrative expenses of all kinds out of state funds for the remainder of the biennium ending August 31, 1947 shall be in accordance with the provisions contained in the Departmental Appropriation Bill, being Senate Bill No. 317, Chapter 378, Acts of the Regular Session of the 49th Legislature.[1] [Acts 1947, 50th Leg., p. 22, ch. 14, § 4.]

[1] Acts 1945, p. 810, ch. 378.

Art. 7083b. Lien; liability for tax; taxes due and offenses under prior laws; partial invalidity; allocations as subject to appropriations.

Lien

Section 1. All taxes, fines, penalties, and interest due by any individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, trustee, or receiver to the State of Texas, by virtue of this Act, shall be a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the property of any individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, trustee, or receiver. This lien shall be cumulative, and in addition to the liens for taxes, fines, penalties, and interest now provided by law, and shall attach as of the date such tax or taxes are due and payable.

Failure to withhold taxes

Sec. 2. Any person, firm, corporation, or association of persons purchasing any natural resources upon which a tax is levied by this Act who fails to deduct and withhold the proper amount of taxes which are due and unpaid under any provision of this Act, shall be liable to the State for the full amount of such taxes plus any accrued penalties and interest thereon.

Taxes accruing under repealed laws; section cumulative

Sec. 3. All sales, occupation, excise, or other taxes, penalties, and interest accruing to the State of Texas by virtue of any of the repealed or amended provisions as set out in this Act before the effective date of this Act, shall be and remain valid and binding obligations to the State of Texas, and all taxes, fines, penalties, and interest accruing under the provisions of prior or existing occupation, excise, or other tax laws, and all such taxes, penalties, and interest now or hereafter becoming delinquent to the State of Texas are hereby expressly preserved and declared to be legal and valid obligations to the State of Texas. This Section is cumulative of other similar provisions of this Act.

Offenses committed under prior laws

Sec. 4. The passage of this Act shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense. This Section is cumulative of other provisions of this Act.

Partial invalidity

Sec. 5. If any Article, section, subsection, sentence, clause, or phrase of this Act is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Act.

The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases should be declared unconstitutional.

Allocation subject to appropriation

Sec. 6. Wherever in any Article in this Act any part of the tax is allocated or appropriated to the collection agency of the State collecting such tax, such allocation is made subject to appropriation by the Legislature; and in case the Legislature should appropriate such funds or any part thereof such appropriation shall be in lieu of the percentage allocated to the Department and the Department shall have no right or authority to expend the remainder of such funds. This provision shall take precedence over any other provision of this Act in conflict herewith.

Penalties, fines, etc. cumulative

Sec. 8. All penalties, fines, forfeitures or penal offenses provided in this Act, as to the same offense, shall be cumulative of one another and of any other fines, penalties, forfeitures or penal offenses provided by any other law of this State applicable to such offense.

Should any such fines, penalties, forfeitures, or penal offenses be in conflict so that such could not be cumulative as above provided, then that law or part of the law containing the provision for the highest penalty in dollars shall be effective and apply as to each such offense, and that law or part of the law containing the provision for the highest fine in dollars (where a fine alone is provided for) shall be effective and apply to each such offense, and in case of forfeiture that law or part of the law containing a provision for the most onerous forfeiture shall be effective and apply to each such offense, and in case of penal offenses containing a provision providing for imprisonment, that law or part of the law containing the provision for the longest maximum imprisonment shall be effective and apply to each such offense; and in each such instance, the lesser fine, penalty, forfeiture, penal offense or punishment shall be suspended. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. XXI.]

Section 7 of Article XXI of the amendatory Act of 1941 repealed all conflicting laws or parts of laws to the extent of such conflict only.

CHAPTER 3.—FRANCHISE TAX

Art.
7084. Amount of tax.
7084a. Closed state bank.
7085. Paid by foreign corporation.
7086. Only part of tax to be paid.
7087. Affidavits required.

Art.
7088. [Repealed.]
7089. Report of corporation.
7089a. Forms prescribed.
7089b. Validity as against mortgagees, etc.
7089c. Secretary of State authorized to record.
7089d. Recording and effect thereof.
7089e. Enforcement as against property divested out of such corporation prior to the passage of the Act.
7089f. Limitations as to actions to enforce liens.
7089g. Releases.
7089h. Collection of taxes, penalties and interest against the corporation owing some.
7090. [Repealed.]
7091. Failure to pay tax.
7092. Notice of forfeiture.
7093. Foreign corporations may withdraw.
7094. Corporations exempt.
7095. Attorney General to bring suit.
7096. Forfeiture of charter.
7097. Corporations in process of liquidation.

Art. 7084. Amount of tax.—(a) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas, or doing business in Texas, shall, on or before May 1st of each year, pay in advance to the Secretary of State a franchise tax for the year following, based upon that proportion of the outstanding capital stock, surplus and undivided profits, plus the amount of outstanding bonds, notes and debentures, (outstanding bonds, notes, and debentures shall include all written evidences of indebtedness which bear a maturity date of one (1) year or more from date of issue, and all such instruments which bear a maturity date of less than one (1) year from date of issue but which represent indebtedness which has remained outstanding for a period of one (1) year or more from date of inception, but which have been renewed or extended, or refinanced by the issuance of other evidences of the indebtedness, whether to the same or other parties and it is further provided that this term shall not include instruments which have previously been classified as surplus) as the gross receipts from its business done in Texas bears to the total gross receipts of the corporation from its entire business, which tax shall be computed on the basis of One Dollar ($1) per One Thousand Dollars ($1,000) or fractional part thereof; provided, that such tax shall not be less than Twenty Dollars ($20) in the case of any corporation, including those without capital stock, and provided further that the tax shall in no case be computed on a sum less than the assessed value, for State ad valorem tax purposes, of the property owned by the corporation in this State. Where a foreign corporation applying for a permit has theretofore done no business in Texas, such tax shall not be payable until the end of one (1) year from the date of such permit, at which time the tax shall be computed according to first year's business; and, at the same time, such corporation shall also pay its tax in advance, based upon the first year's business, for the period from the end of the first year to and including May 1st following. In all other cases, the tax shall be computed from the data contained in the reports required by Articles 7087 and 7089. Capital stock as applied to corporations without capital stock shall mean the net assets.

(b) Corporations other than those enjoying the use of public highways by virtue of a certificate of public convenience and necessity granted by the Railroad Commission of Texas, which are required by law to pay annually a tax upon intangible assets, and corporations owning or operating street railways or passenger bus systems in any city or town and suburbs thereof, and corporations organized to and maintaining or owning or operating electric interurban railways, shall be required to hereafter pay a franchise tax equal to one fifth (1/5) of the franchise tax herein imposed against all other corporations under Section (a) herein.

(c) Provided, however, that this Article shall not apply to corporations organized as terminal companies not organized for profit, and having no income from the business done by them and provided further that nothing in this Article shall repeal any total exemption from franchise taxes now provided by law.

(d) Except as provided in preceding Clauses (b) and (c), all public utility corporations, which shall include every such corporation engaged solely in the business of a public utility whose rates or services are regulated, or subject to regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article except the same shall be based on that proportion of the issued and outstanding capital stock, surplus, and undivided profits, which the gross receipts of the business of said corporation done in this State bears to its total gross receipts, instead of the gross assets; and in lieu of the rate hereinbefore prescribed said tax shall be computed on the basis of One Dollar ($1) per One Thousand Dollars ($1,000) or fractional part thereof.

For the purpose of computing the tax of corporations issuing no par stock, such stock shall be taken and considered as being of the value actually received at the time of the issuance thereof; and foreign corporations issuing such stock shall furnish the Secretary of State with the same information now required of domestic corporations issuing such stock.

The tax levied in this subdivision (d) shall in no case be computed on a sum less than the assessed value, for State ad valorem tax purposes, of the property owned by the Corporation in this State.

(e) Corporations engaged partly in the business of a public utility as defined in Clause (d) and partly in businesses embraced in Clause (a) shall pay the franchise tax in the following manner; as to those businesses which come under Clause (a) the tax shall be computed as provided in Clause (a) on that proportion of the entire taxable capital under said Clause (a) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation; and to those businesses which come under Clause (d) the tax shall be computed as provided in Clause (d) on that proportion of the entire taxable capital under said Clause (d) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation. The period for which such gross receipts are taken shall be for the same period used in computing the proportion of Texas taxable capital under Clauses (a) and (d).

(f) Corporations which are now required to pay a separate franchise tax for each purpose or business authorized by their charters, shall hereafter pay only the tax provided hereunder for one purpose, and one fourth (1/4) of such amount for each additional purpose named in their charters. Provided however, this Article shall not apply to corporations organized under the Electric Cooperative Corporation Act. Provided however, that this Article does not amend, alter or change in anywise any provision of Chapter 86, page 161, Forty-fifth Legislature, Acts, 1937.[1] [Acts 1907, 1st C.S., p. 503; Acts 1919, p. 100; Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68, § 2; Acts 1931, 42nd Leg., p. 441, ch. 265, § 1; Acts 1941, 47th Leg., p. 269, ch. 184, Art. VIII, § 1.]

[1] Article 1528b.

Section 1a of Article VIII of the Act of 1941, required the mailing of supplemental forms for the purpose of computing franchise taxes for periods from the effective date of the Act to May 1, 1942.

Section 2 of Article VIII of the amendatory Act of 1941, cited to the text, provided that the tax levied in Article 7084 shall be allocated as provided in such act. See Article 7083a.

Art. 7084a. Closed state bank.—Hereafter no franchise tax shall be assessed against a State Bank after it has closed its doors and has gone into the hands of the Banking Commissioner for liquidation according to law, nor shall any such corporation be liable for any franchise tax while in the hands of the Commissioner for liquidation. The failure of the Commissioner to pay franchise taxes for any bank in his hands for liquidation shall not operate to revoke or forfeit the charter of such corporation.

Provided, that after such liquidation should there be any funds left that would go to the stockholders, then all past due franchise taxes shall be paid before distributing such funds, if any, to outstanding stockholders.

Provided further, that the Banking Commissioner of Texas shall not be required to file with the Secretary of State any reports for the purpose of assessing franchise taxes, as provided in Article 7088, Revised Civil Statutes, 1925. [Acts 1927, 40th Leg., p. 294, ch. 208, § 1.]

Section 2 of Acts 1927, repeals all conflicting laws and parts of laws.

Art. 7085. [7394] Paid by foreign corporations.

Section 2 of Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68, amended and combined this Article with Article 7084, ante.

Art. 7086. [7395] Only part of tax to be paid.—Whenever a private domestic corporation is chartered in this State, and whenever a foreign corporation is authorized to do business in this State, such corporation shall be required to pay in advance to the Secretary of State, as its franchise tax from that time down to and including the thirtieth day of April next following, only such proportionate part of its annual franchise tax, as hereinabove prescribed, as the period of time between the date of filing of its articles of incorporation or the issuance of its permit to do business, as the case may be, and on the first day of May following, bears to a calendar year. [Acts 1st C. S. 1907, p. 503.]

Art. 7087. [7396] Affidavits required.—To determine the amount of the first franchise tax payment required by this chapter of any domestic corporation which may be hereafter chartered, or of any foreign corporation which may hereafter apply for a permit to do business within this State, and also to determine the correctness of any report which is provided for in this chapter, the Secretary of State may, whenever he deems it necessary or proper to protect the interests of the State, require any one or more of the officers of such corporations to make and file in the office of the Secretary of State an affidavit setting forth fully the facts concerning the amount of the surplus and undivided profits, respectively, if any, of such domestic or foreign corporation; and until the Secretary of State shall be fully satisfied as to the amount of such surplus and undivided profits, respectively, if any, he shall not file the articles of incorporation of such proposed domestic corporation, or issue such permit, or accept such franchise tax. [Id.]

Art. 7088. [Repealed by Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68, § 1.]

Art. 7089. Report of corporation.—Except as herein provided, all corporations now required to pay an annual franchise tax shall, between January 1st and March 15th of each year, make a sworn report to the Secretary of State, on blanks furnished by that officer, showing the condition of such corporation on the last day of its preceding fiscal year. The Secretary of State may for good cause shown by any corporation extend such time to any date up to May 1st. Said report shall give the cash value of all gross assets of the corporation, the amount of its authorized capital stock, the capital stock actually subscribed, and the amount paid in, the surplus and undivided profits or deficit, if any, the amount of mortgage, bonded and current indebtedness, the amount and date of payment of the last annual, semi-annual, quarterly, or monthly dividend, the amount of all taxes paid, or due and payable separately to the State of Texas, or to any county, city or town, school district, road district, or other taxing subdivision of Texas, for the preceding tax year, the total gross receipts of such corporation from all sources and the gross receipts from its business done in Texas for the fiscal year preceding, with a detailed balance sheet and income and profit and loss statement in such form as the Secretary of State may prescribe. Where a foreign corporation has not heretofore done business in this State and is granted a permit to do business in Texas, it shall file its first report as of the end of one year from the day such permit was granted, within ninety (90) days of such date. Any corporation which shall fail or refuse to make its report shall be assessed a penalty of ten per cent (10%) of the amount of franchise tax due by such corporation, payable to the Secretary of State, together with its franchise tax. Said report shall be deemed to be privileged and not for the inspection of the general public, but a bona fide stockholder owning one per cent (1%) or more of the outstanding stock of any corporation, may examine such returns upon presentation of evidence of such ownership to the Secretary of State. No other examination, disclosures, or use, shall be permitted of said reports except in the course of some judicial proceedings in which the State is a party or in a suit by the State to cancel the permit or forfeit the charter of such corporation or to collect penalties for a violation of the laws of this State, or for information of any officer, of this State charged with the enforcement of its laws, including the Comptroller of Public Accounts, State Auditor and the State Tax Commissioner. Each report shall be sworn to by either the president, vice president, secretary, treasurer or general manager, and shall give the name and address of each officer and director. In order to provide a means for service of process to collect any franchise tax or penalties, and in all other cases, each foreign corporation shall, for such purposes, designate some person residing in this State whose name and address shall be given in each report. The State shall have a prior lien on all corporate property for all franchise taxes, penalties and interest. [Acts 1913, p. 327; Acts 1919, p. 82; Acts 1921, p. 173; Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68, § 3; Acts 1931, 42nd Leg., p. 441, ch. 265, § 2.]

Art. 7089a. Forms prescribed.—Sec. 4. The forms prescribed shall contain other information as the Secretary of State may deem advisable and he may adopt rules and regulations providing for the enforcement of the provisions hereof and may require corporations to cause such records as may be necessary in determining the amount of taxes that may be due hereunder. No tax shall be paid which may not be collected under the State and Federal Constitution. [Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68.]

Sec. 5. [Repealed by Acts 1931, 42nd Leg., p. 441, ch. 265, § 4.]

Section 1 repealed articles 1538i, 7088, ante, and 7090, post.

Sections 2 and 3 amended articles 7084, 7089, ante.

Section 6 provides that "for the tax year ending April 30, 1931, in order to give sufficient time to meet the requirements of this Act, no penalties or forfeitures or reports shall accrue or be made under the provisions of Articles 7091 and 7092, Revised Civil Statutes of 1925, until August 1, 1930. If any corporation shall have paid its franchise tax for the year ending April 30, 1931, before this Act takes effect, and under the provisions hereof an additional sum for such year shall be due, such corporation shall be required to pay such additional sum on or before August 1, 1930, or, if the amount already paid is in excess of the tax that would be due for such year, then the excess payments shall be credited on next year's tax."

Section 7 makes the act severable and if any provision is held invalid, such invalidity shall not affect the remainder.

Section 8 provides that the act shall not affect or abridge any law now existing which exempts any corporation from the payment of franchise tax.

Section 4 of Acts 1931, 42nd Leg., p. 441, ch. 265, also repeals all conflicting laws and parts of laws.

Art. 7089b. Validity as against mortgagees, etc.—No lien granted the State of Texas by this Chapter shall be valid as against any mortgagee, pledgee, purchaser, party in possession or creditor acquiring rights, ownership or liens in such property unless and until notice of such State lien has been filed by the Secretary of State as hereinafter provided prior to the date on which such mortgagee, pledgee, purchaser, creditor or person in possession acquired such rights, liens or ownership. [Added Acts 1943, 48th Leg., p. 476, ch. 318, § 1.]

Art. 7089c. Secretary of State authorized to record.—The Secretary of State shall file and record with the Clerk of any County in which he has reason to believe any corporation owing franchise taxes, penalties and interest, has real or personal property a notice of the taxes, penalties and interest accruing under this Chapter and the liens securing the same on a form prepared or approved by the Attorney General of the State of Texas showing the name of the corporation owing such taxes, penalties and interest, the franchise taxes then due and owing and calling attention to the possible additional taxes, penalties and interest which might accrue in the future under the terms of this Chapter. [Added Acts 1943, 48th Leg., p. 476, ch. 318, § 1.]

Art. 7089d. Recording and effect thereof.—The County Clerk of each county is hereby authorized to and shall file, record and index the notice provided for by the preceding paragraph, both as a Chattel Mortgage and as a mortgage on real estate in accordance with the statutes in such cases made and provided and when so filed, recorded and indexed, the same shall be and constitute notice to all parties dealing with the real and personal property of such corporation in said county of the taxes, penalties and interest then accrued and to accrue in the future and of the liens herein granted the State of Texas. [Added Acts 1943, 48th Leg., p. 476, ch. 318, § 1.]

Art. 7089e. Enforcement as against property divested out of such corporation prior to the passage of this Act.—The lien provided for by Article 7089 as amended by House Bill No. 381, Regular Session, Forty-second Legislature, was never intended to extend to property or any interest therein, purchased by or mortgaged to or pledged to or attached by innocent persons, firms or corporations dealing with corporations owing taxes, penalties and interest under the terms of this Chapter, who acted in good faith in acquiring such property or an interest therein or a lien thereon, and the State of Texas recognizes that the rights, titles and interest of such parties are superior to the lien provided by such Article as amended, and any such lien for taxes, penalties and interest due and owing under the provisions of this Chapter prior to the date of the passage of this Act[1] shall in no event extend to or be enforcible against any property, the title to which has been legally divested out of the corporation owing such taxes, penalties and interest prior to the date of the passage of this Act. [Added Acts 1943, 48th Leg., p. 476, ch. 318, § 1.]

[1] Articles 7089b—7089h.

Art. 7089f. Limitations as to actions to enforce liens.—No suit shall in any event be brought or instituted for the enforcement of the liens granted the State of Texas by this Chapter unless the same shall be instituted within two (2) years from and after the time the corporation owing such taxes, penalties and interest shall forfeit its right to do business in this State under the provisions of this Chapter. [Added Acts 1943, 48th Leg., p. 476, ch. 318, § 1.]

Art. 7089g. Releases.—The Secretary of State is hereby authorized to execute and deliver (1) complete releases of the liens herein provided for upon payment in full of the taxes, penalties and interest and (2) partial releases releasing particular property upon payment of such sum as the Secretary of State may deem adequate and proper under all circumstances. Such releases shall be on a form prepared or approved by the Attorney General of the State of Texas. [Added Acts 1943, 48th Leg., p. 476, ch. 318, § 1.]

Art. 7089h. Collection of taxes, penalties and interest against the corporation owing same.—Nothing in this Act[1] contained shall prevent the State of Texas from collecting or enforcing by suit or attachment at any time such franchise taxes, penalties and interest from the corporation owing the same. [Added Acts 1943, 48th Leg., p. 476, ch. 318, § 1.]

[1] Articles 7089b—7089h.

Art. 7090. [Repealed by Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68, § 1.]

Art. 7091. [7399] Failure to pay tax.—Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this chapter when the same shall become due and payable under the provisions of this chapter, shall thereupon become liable to a penalty of twenty-five per cent of the amount of such franchise tax due by such corporation. If the amount of such tax and penalty be not paid in full on or before the first day of July thereafter, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation, the words, "right to do business forfeited," and the date of such forfeiture. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this State shall be revived as provided in this chapter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners. [Acts 1st C.S. 1907, p. 503.]

Art. 7092. [7400] Notice of forfeiture.—The Secretary of State, shall during the month of May of each year, notify each domestic and foreign corporation which may be or become subject to a franchise tax under any law of this State, which has failed to pay such franchise tax on or before the first day of May, that unless such overdue tax together with said penalty thereon shall be paid on or before the first day of July next following, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the Secretary of State, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other

known place of business of such corporation. A record of the date of mailing such notice shall be kept by the Secretary of State. Such notice and record thereof shall constitute legal and sufficient notice thereof for all the purposes of this chapter. Any corporation whose right to do business may have been forfeited, as provided in this chapter, shall be relieved from such forfeiture by paying to the Secretary of State any time within six months after such forfeiture the full amount of the franchise tax and penalty due by it, together with an additional amount of five per cent of such tax for each month. or fractional part of a month, which shall elapse after such forfeiture; provided, that such amount shall in no case be less than five dollars. When such tax and all penalties shall be fully paid to the Secretary of State, he shall revive the right of the corporation to do business within this State by cancelling the words, "right to do business forfeited," upon his record and endorsing thereon the word, "revived," and the date of such revival. If any domestic corporation whose right to do business within this State shall hereafter be forfeited under the provisions of this chapter shall fail to pay the Secretary of State, on or before the first day of January next following the revival, the amounts necessary to entitle it to have its right to do business revived under the provisions of this chapter, such failure shall constitute sufficient ground for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation. [Id.]

Art. 7093. [7401] Foreign corporations may withdraw.—Should any foreign corporation which has or may obtain a permit to do business within this State desire at any time to withdraw from doing business in this State, it may surrender such permit to the Secretary of State, who shall mark or stamp such permit "surrendered," dating and signing same officially, and shall endorse upon the record of such permit in his office the word, "surrendered," and the date thereof; and thereafter such corporation may, by complying with the provisions of this chapter, secure a new permit to do business in this State without having made any further payment of the franchise tax under such old permit. [Acts 1st C. S. 1907, p. 503.]

Art. 7094. [7403] Corporations exempt.—The franchise tax imposed by this chapter shall not apply to any insurance company, surety, guaranty or fidelity company, or any transportation company, or any sleeping, palace car and dining car company which is now required to pay an annual tax measured by their gross receipts, or to corporations having no capital stock and organized for the exclusive purpose of promoting the public interest of any city or town, or to corporations organized for the purpose of religious worship, or for providing places of burial not for private profit, or corporations organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, or for purely public charity. [Id.]

Art. 7095. [7404] Attorney General to bring suit.—The Attorney General shall bring suit therefor against any such corporation which may be or become subject to or liable for any franchise tax or penalty under this law; and, in case there may now be or shall hereafter exist valid grounds for the forfeiture of the charter of any domestic private corporation, or failure to pay any franchise tax or franchise taxes or penalty or penalties to which it may have become or shall hereafter be or become subject or liable under this or former law, he shall bring suit for a forfeiture of such charter; and, for the purpose of enforcing the provisions of this chapter by civil suits, venue is hereby conferred upon the courts of Travis county, concurrently with the courts of the county in which the principal office of such corporation may be located as shown by its articles or amended articles of incorporation. Such courts shall also have authority to restrain and enjoin a violation of any provision of this chapter. In any case in which any court having jurisdiction thereof shall make and enter judgment forfeiting the charter of any such corporation, the court may appoint a receiver thereof and may administer such receivership under the laws regulating receiverships. [Id.]

Art. 7096. [7405] Forfeiture of charter.—Upon the rendition by the district court of any judgment of forfeiture under the provisions of this chapter, the clerk of that court shall forthwith mail to the Secretary of State a certified copy of such judgment; and, upon receipt thereof, he shall endorse upon the record of such charter in his office the words, "Judgment of forfeiture," and the date of such judgment. In the event of an appeal from such judgment by writ of error or otherwise, the clerk of the court from which such appeal is taken shall forthwith certify to the Secretary of State the fact that such appeal has been perfected, and he shall endorse upon the record of such charter in his office the word, "appealed," and the date upon which such appeal was perfected. When final disposition of such appeal shall be made, the clerk of the court making such disposition thereof shall forthwith certify such disposition and the date thereof to the Secretary of State, who shall briefly note same upon the record of such charter in his office and the date of such final disposition.

Art. 7097. [7606] Corporations in process of liquidations.—If a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation. [Id.]

CHAPTER 4.—INTANGIBLE TAX BOARD

Art.
7098. State Tax Board.
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Article 7098. [7407] State Tax Board.—The State Tax Board shall be composed of the Comptroller, the Secretary of State and of the Attorney General. A record of the proceedings of said Board shall be kept at the State Capitol, and shall be open to the inspection of the public. [Acts 1905, p. 35 [351]; Acts 1907, 1st C.S., p. 469; Acts 1939, 46th Leg., p. 645, § 1.]

Section 4 of the amendatory act of 1939 repeals all conflicting laws and parts of laws.

Art. 7098a. Comptroller ex officio Tax Commissioner.—The Comptroller of the State of Texas shall be ex officio Tax Commissioner of the State of Texas. He shall discharge all duties placed upon the Tax Commissioner by any laws now or hereafter in force in this State. [Acts 1939, 46th Leg., p. 645, § 2.]

Section 3 of the Act of 1939 read as follows: "Any unexpended funds remaining in the appropriation for the current biennium for the office of Tax Commissioner of the State of Texas and its personnel, salaries, rents, and any and all maintenance and miscellaneous expense thereof, shall revert to the General Revenue Fund upon the passage of this Act."

Art. 7099. [7408] Bond of Commissioner.—Before he enters upon his official duties, the tax commissioner shall execute a bond payable to the State of Texas at Austin, in Travis County, in the sum of ten thousand dollars, with two or more good and sufficient sureties, to be approved by the Governor, conditioned for the faithful discharge of his official duties as such tax commissioner, and shall take and subscribe the official oath. [Acts 1905, p. 35 [351]; Acts 1907, 1st C. S., p. 469.]

Art. 7100. [7409] Secretary.—Said board may employ for not more than four months in each year a secretary, who shall be an expert stenographer, and who shall receive one hundred dollars a month for his services as secretary and stenographer. [Id.]

Art. 7101. [7410] Duties of Board.—It shall be the duty of said tax board:

1. To make such rules and regulations as said board shall deem proper with respect to its own meetings and procedure, and to effectually carry out the purposes for which said board is constituted.

2. To examine all books, papers and accounts and to interrogate under oath, or otherwise, any and all persons whom said board, or any member thereof, may desire to examine for the purpose of obtaining or acquiring any information that may in any way aid in securing a compliance with any tax law or revenue law of this State by any and all persons, companies, corporations or associations liable to taxation or to pay any license fee under any law of this State, which is now in force, or which may hereafter be enacted.

3. To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same are made known by published reports, or statistics, or can be ascertained by correspondence with officers thereof; and, with the aid of information thus or otherwise obtained together with experience and observation of the operation of the laws of this State, to recommend to the legislature at each regular session thereof, such amendments, changes or modifications of the laws of this State, and such additional laws as may to said board, or any member thereof, seem necessary or proper to remedy injustice or irregularity in taxation, and to facilitate the assessment of taxes and collection of public revenues.

4. To report to the legislature, at each regular session thereof, the whole amount of State revenues collected in this State for all purposes, and the sources thereof, the amount of such revenues which may be lost to the State through failure to make collection and the cause of such losses, a summary of the proceedings of said board since the date of its last report, and such other matters concerning the public revenues as said board, or any member thereof may deem to be of public interest. [Id.]

Art. 7102. [7411] Visits.—Said Tax Board, or any member thereof, or the Comptroller under the direction of said board, or of the Governor, shall, at least once in each year, visit such counties of the State as said board or the Governor may direct, for the purpose of investigating into and aiding in the enforcement of all revenue laws of this State, and especially those concerning the rendition, assessment and collection of taxes. [Id.]

Art. 7103. [7412] Powers of board.—Each member of said board shall have power to administer oaths and to subpœna and examine witnesses, and to issue subpœnas duces tecum, and shall have access to and power to order the production before such board, or any member thereof, of any and all books, documents and papers which may be in the possession or under the control of any person, company, corporation or receiver, assignee, trustee in bankruptcy, or bailee, whenever such board, or any member thereof, may consider same necessary or proper in the prosecution of any inquiry under or in the execution of any provision of this chapter and all such process shall be served under the provisions of law governing the service of process in civil cases, in so far as applicable. [Id.]

Art. 7104. [7413] Failure to obey subpœna.—Any person who shall disobey any such subpœna, or subpœna duces tecum, issued by any member of said board, or any such order of said board, or who shall fail or refuse to attend as by such subpœna directed, or to testify when so required to do so by any member of said board, under the provisions of this chapter, shall be deemed guilty of contempt, and may be punished therefor by said board under the provisions of laws applicable to the district courts in such cases. [Id.]

Art. 7105. [7414] Tax on intangible assets.—Each incorporated railroad company, ferry company, bridge company, turnpike, or toll company, oil pipe line company, and all common carrier pipe line companies of every character whatsoever, engaged in the transportation of oil, and in addition each "motor bus company," as defined in Chapter 270, Acts, Regular Session of the Fortieth Legislature, as amended by the Acts of 1929, First Called Session of the Forty-first Legislature, Chapter 78,[1] and each "common carrier motor carrier" operating under certificates of convenience and necessity issued by the Railroad Commission of Texas, doing business wholly or in part within this State, whether incorporated under the laws of this State, or of any other State, territory, or foreign country, and every other individual, company, corporation, or association doing business of the same character in this State, in addition to the ad valorem taxes on tangible properties which are or may be imposed upon them respectively, by law, shall pay an annual tax to the State, beginning with the first day of January of each year, on their intangible assets and property, and local taxes thereon to the counties in which its business is carried on; which additional tax shall be assessed and levied upon such intangible assets and property in the manner provided in Chapter 4, Title 122 of the Revised Civil Statutes of Texas, 1925.[2] The county or counties in which such taxes are to be paid, and the manner of apportionment of the same, shall be determined in accordance with the provisions of Chapter 4, Title 122 of the Revised Civil Statutes of Texas, 1925. The intangible taxable values of said motor bus companies and said common carrier motor carriers shall be apportioned to the counties in or through which they operate in proportion to the distance in miles of the highways traversed by said carriers in each respective county. Provided, however, that Electric Interurban Railway Corporations are exempt from the provisions of this Article. [Acts 1905, p. 35 [351]; Acts 1907, 1st C.S., p. 469; Acts 1933, 43rd Leg., p. 409, ch. 162, § 12; Acts 1941, 47th Leg., p. 269, ch. 184, Art. XIII, § 1.]

1 Article 911a and Pen.Code, art. 1690a.

2 Articles 7098—7116.

Section 12 of Acts 1933, cited to the text, expresses the intention to place all common carrier oil pipe line companies under all of the provisions of the Intangible Asset Tax Laws of this State and the administration and enforcement of the Act by the present State Tax Board.

Section 13 provides that if any provision or subdivision of the Act is declared unconstitutional that it shall not affect the remaining provisions of the Act.

Art. 7106. [7415] Statement required.—Between the second day of January and the first day of March of each year, every individual, company, corporation and association embraced within the provisions of the next preceding article of this chapter, or coming within its scope and intent, shall make out and deliver into the possession of said tax commissioner a statement containing the information required of it by this chapter, which statement shall be duly verified by the affidavit of the individual, or one of the officers of the company, corporation or association in whose behalf it is made, or by the receiver, assignee, or trustee in bankruptcy thereof. [Acts 1905, p. 35 [351]; Acts 1st C. S. 1907, p. 469.]

Art. 7107. [7416] Contents of statement.—Each such statement shall show the following items and particulars as the same stood on the first day of January next preceding, to-wit:

1. The name of the individual, company, corporation, or association making such statement, and the character of its business.

2. If incorporated, the authority by which it was incorporated and the purposes of its incorporation as expressed in its original or amended articles of incorporation or articles of association.

3. The locality of its principal office and the amount and kind of business done by it in this State and the total gross receipts derived from its business within this State, including a due proportion of its interstate business, if it has done any business of that character.

4. Its total authorized capital stock and the number of shares thereof, which have been issued and are outstanding, and the par face value of each such share, and the amount of the capital actually employed in the aforesaid business within the State.

5. The market value of said shares of stock, or, if they have no market value, the actual value thereof.

6. The assessed value and also the true value of all the tangible property owned by such individual, company, corporation or association in each county in this State and the total assessed value and also the true value thereof.

7. The assessed value and also the true value of the tangible property of such individual, company, corporation or association, outside of this State, and not specifically used in the business of such individual, company, corporation or association, same to be given by states, and the total assessed value and also the true value of the same.

8. A statement of each and every existing lien, mortgage or other charge upon the whole, or any part, of the property of such individual, company, corporation or association, and of the property thereby charged or encumbered, and of the amount of unpaid debt secured by each such mortgage, lien or charge and of the interest charged thereon, and to what extent such interest has been paid, and of the true and fair market value of every such debt.

9. A statement of the gross receipts and net income and earnings for the next preceding twelve months, including therein all interest on investments, and all rents, fruits, revenues and receipts from every source whatsoever, and a statement of the income used for repairs, and of the amounts used for betterments, and the amount used for extensions within that period of time.

10. Every such railroad company shall also show in each statement made by it:

11. The total length of all lines of said company, whether within or without this State.

12. The total length of such lines as are within the State.

13. The length of its lines in each of the counties in this State into which its lines extend. [Id.]

Art. 7108. [7417] Additional statements.—The tax commissioner shall receive all tax statements rendered to him under the provisions of this chapter, and shall indorse upon each the date of receipt thereof, signing such indorsement officially. Said board shall examine all such statements as soon as may be practicable; and, if said board shall deem any of them insufficient, or shall believe other or further information necessary or proper, said board shall at once demand of such individual, company or corporation, or association, such additional statements and such further information as it may think proper. [Id.]

Art. 7109. [7418] Statements placed before board.—On the first Monday after the first day of March of each year, or as soon thereafter as may be practicable, said tax commissioner shall place before said board all such statements, facts and information as may have come into its possession or knowledge under the provisions of this chapter. [Id.]

Art. 7110. [7419] Passing upon statement.—Said board shall thereupon carefully examine and consider the said statements, facts and information; and, if they deem it advisable to do so, shall hear evidence, and shall require such individual, company, corporation or association to make such additional reports, if any, as such board may deem proper, and shall otherwise secure further additional information so far as may be in its power, to show the true value of the properties aforesaid, and the true value of that portion of every such property which is situated within the State and within the respective counties thereof, sufficient to enable said board to make the preliminary estimate herein provided for; and, for that purpose as well as for the purpose of carrying into effect any provision of this chapter, said board, and each member thereof, may require and compel, any and all such individuals, companies, corporations and associations, and the officers and agents thereof, and such receivers, trustees in bankruptcy, assignees and bailees, to appear before such board at a time or times to be designated by said board, with any and all such books, papers, documents and information as said board may require, and to submit themselves to examination by said board. Upon consideration of such statements and information and such additional evidence, books, papers, documents and information, if any, said board shall make in accordance with the provisions of this chapter, a preliminary estimate, valuation and apportionment of the true value of the intangible property within this State, of each of said individuals, companies, corporations, or associations, and shall, on or before the thirty-first day of May of each year, by registered mail, notify each and every such individual, company, corporation or association, receiver or assignee, trustee in bankruptcy, or other person holding such property for the benefit of creditors, of such preliminary estimate, valuation and apportionment, and the amounts thereof; and all such individuals, companies, corporations, associations, receivers, assignees, trustees and other persons shall have fifteen days from the time of mailing such notice by registered mail to appear before such board, at Austin, on a date to be fixed by such notice, and request of such board a change or changes in such valuation and apportionment, or cancellation of such valuation and apportionment; and said individuals, companies, corporations, associations, receivers, assignees, trustees, and other persons may appear before such board, in person or by attorney, or in person and by attorney, and introduce evidence. Said board may, upon its own motion, or upon the written request of any interested party, and each member of said board, may summon, swear and examine witnesses under the same rules which govern the summoning, swearing and examination of witnesses in the district courts of this State; and, such board shall have the same juris-

diction, authority and power, under the same penalties, to require the production and to secure the examination of any and all books, documents and papers of such individuals, companies, corporations and associations, receivers, assignees, trustees and other persons as is now or may hereafter be conferred by the laws of this State upon the Railroad Commission of Texas. Upon or after such hearing, said board may change such valuation and apportionment, or either, or cancel such valuation and apportionment, as said board may deem just and proper in the premises. [Id.]

Art. 7111. [7420] Other duties regarding statement.—In so far as the other evidence and information adduced before said board does not make it appear to the members of said board to be improper or unjust to do so, said board shall, in fixing the true value of the entire property of such individual, company, corporation or association embraced within the provisions of this chapter, take as a basis therefor the aggregate market or true value of all its shares of stock, adding thereto the aggregate market or true value of all indebtedness secured by any mortgage, lien or other charge upon its property or assets, and the sum so produced shall be deemed and treated as the true value of said entire property. And where the individual, company, corporation or association does business and has property, both within this State and outside of it, in ascertaining the true value of its property within this State, said board shall next ascertain from said statements, reports and evidence, if any, or otherwise, the true value, in the locality where the same is situated, of each such several pieces of real estate situated outside of this State, and of its other properties, if any, outside thereof, and not specifically used in the business of said individual, company, corporation or association, and the aggregate of said value shall be deducted from the gross value of the property as above ascertained; and the result of the said deduction and the sum or value thereby obtained shall be deemed and treated as the true value of all property of such individual, company, corporation or association in actual use in its business. Said board shall then fix the true value of the property of such individual, company, corporation or association within this State, using as a basis and being guided so far as it shall not believe it unjust to do so, by the proportion which it finds to exist between the total lines or total receipts within this State and outside of it, and lines controlled or operated, or the receipts obtained, entirely within this State, so that there shall be apportioned to this State, as the true value of the property within its borders of each individual, company, corporation and association doing business within and outside of its limits, such proportion of the true value of all the property of such individual, company, corporation or association which is specifically used in its business, as is borne by its total lines or total receipts within this State when compared with the total lines or total receipts both inside and outside of the State of Texas. From the entire value of the property within this State, when ascertained as directed by this chapter, said board shall deduct the true value of all the tangible property of such individual, company, corporation or association within this State, as so ascertained by said board, and the residue and remainder of value shall be by said board fixed, determined and declared as the true value of the intangible properties owned and held by such individual, company, corporation or association within this State. Said board shall apportion the sum of the said total taxable values within this State to the counties in which such individual, company, corporation or association does business, in proportion to the amount of business done in and the receipts derived from each such company, except that, in case of a railroad company, the apportionment to each county shall be in proportion to the line or lines of such individual, company, corporation or association therein. In apportioning the value of the aforesaid properties, said board shall consider all evidence which may be put before it and all material facts at its command; and, if it shall believe that some method of calculation other than that specifically prescribed in this chapter is necessary in order to produce just and lawful results, said board shall follow that method of calculation which it believes best calculated, under all circumstances, to bring about a just, fair, equitable and lawful valuation and apportionment of such property. [Id.]

Art. 7112. [7421] Capital, how ascertained.—Whenever any person, or association of persons, not being a corporation, nor having a capital stock, shall engage in this State in any character of business embraced within the provisions of the eighth article of this chapter, then the capital and property, or the certificate or other evidences of the rights or interests of such person or association of persons engaged in such business, shall be deemed and treated as the capital stock of such person, or association of persons, for the purpose of taxation, and for all other purposes, under this chapter, and shall be estimated and valued; and the intangible property of such person or association of persons, when ascertained, shall be apportioned, distributed, assessed and taxed under the provisions of this chapter, in like manner as if such person or association of persons were a corporation; and each such person and association of persons, shall, annually, within the time and in the manner provided in this chapter, make the statements and reports and furnish and supply the information required by this law of the aforesaid companies, corporations and associations, and shall be subject in like manner as the aforesaid companies, corporations and associations to all the terms and provisions of this chapter, including penalties. [Id.]

Art. 7113. [7422] Board to certify to assessor.—Thereafter, and not later than the twentieth day of June of each year, said board shall make, in accordance with the provisions and requirements of this chapter, a final valuation and apportionment of the intangible assets aforesaid, of each and every such individual, company, corporation and association, and shall, as soon after such twentieth day of June as practicable, certify to the tax assessor of each county to which any portion of such intangible assets of any such individual, company, corporation or association is found by said board to be apportionable for taxation and so apportioned, the amount thereof as fixed, determined and declared by said board, and thereunto apportioned by said board, together with the name and place of residence or place of business of the owner or owners of the property embraced in such valuation and apportionment; provided, that such final valuation and apportionment of such intangible assets, properly apportionable and apportioned by such board to any unorganized county shall be by said board so certified to the tax assessor of the county to which such unorganized county is attached for judicial purposes. The tax assessor of such county, upon receiving such certificate or certificates of said board, shall place, set down and list, upon forms prescribed by the Comptroller for such purpose, upon the tax rolls of his county, and of each unorganized county which is attached to his county for judicial purposes, as the case may be, any and all such intangible assets, at the value so fixed, determined, declared and certified by said board. Such county tax assessor shall extend and prorate upon said rolls the State and county taxes upon all such intangible assets in the same manner as taxes upon other property are extended and prorated. Said assessment, valuation and apportionment of such intangible assets so fixed, determined,

declared and certified by such board shall not be subject to review, modification or change by the tax assessor of such county, nor by the board of equalization of such county; and the State and county taxes thereon shall be collected by the tax collector of such county and accounted for by him in the same manner and under the same penalties as taxes upon other property. All State and county ad valorem taxes upon all intangible property in this State belonging to any individual, company, corporation or association embraced by this chapter, shall be assessed under its provisions and not otherwise; but ad valorem taxes upon all other property of any and all such individuals, companies, corporations and associations shall be assessed as is or as may be provided by law. [Id.]

Art. 7114. [7424] Failure to make statement.—Any individual, company, corporation or association, embraced within the provisions of this chapter, which shall fail to make any return, statement and report provided for by this chapter, within fifteen days after the day on which it is required by this chapter to be made, or to make any additional report or statement, or to furnish any additional information which may be required by said board, or any member thereof, under the provisions of this chapter, within fifteen days after the mailing of a registered notice or demand therefor in writing, signed by any member of said board and addressed to such individual, company or corporation or association, at its proper post-office address or principal place of business, shall forfeit and pay to the State of Texas not more than five thousand dollars, which amount may be recovered by suit which may be brought therefor in behalf of the State by the Attorney General; and venue of such suits is hereby fixed within the county of Travis. [Id.]

Art. 7115. [7425] Receivers and trustees in bankruptcy to report.—If the property of any such individual, company, corporation or association shall be in the hands of any receiver, assignee, trustee in bankruptcy, or other person holding under any court, or for the benefit of any creditor or creditors, then the statements, reports, information, books, and papers aforesaid shall be furnished by such receiver, assignee, trustee or other person, by some officer or agent acting under him, in the same manner and to the same extent as is hereinbefore provided in cases where an individual, company or association is in possession; and as to such receiver, assignee, trustee in bankruptcy or other person, officer, or agent, all of the provisions of this chapter, in so far as they are applicable, shall apply and govern. [Id.]

Art. 7116. [7426] Relieved of other taxes.—Whenever any individual, company, corporation or association, embraced within the eighth article of this chapter, shall pay in full, and within the year for which same may be assessed, all its State and county taxes for that year upon all its intangible properties as determined, fixed and assessed under the provisions of this chapter, such individual, company, corporation or association shall thereby be relieved from liability for and from payment of any and all occupation taxes measured by gross receipts for or accruing during that year under any law of this State; but no such individual, company, corporation or association shall be entitled to any such exemption, except for the year for which it shall, before same shall become delinquent, pay all its aforesaid intangible State and county taxes for that year. [Id.]

CHAPTER 5.—INHERITANCE TAX

Art.
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Art. 7117. Property, including insurance, subject to tax; reciprocal provisions; transfers in contemplation of death.—All property within the jurisdiction of this State, real or personal, corporate or incorporate, and any interest therein, including property passing under a general power of appointment exercised by the decedent by will, including the proceeds of life insurance to the extent of the amount receivable by the executor or administrator as insurance under policies taken out by the decedent upon his own life, and to the extent of the excess over Forty Thousand Dollars ($40,000) of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life, whether belonging to inhabitants of this State or to persons who are not inhabitants, regardless of whether such property is located within or without this State, which shall pass absolutely or in trust by will or by the laws of descent or distribution of this or any other State, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall, upon passing to or for the use of any person, corporation, or association, be subject to a tax for the benefit of the State's General Revenue Fund, in accordance with the following classification; provided, however, that the tax imposed by this Article in respect to personal property of non-residents (other than tangible property having an actual situs in this State) shall not be payable: (1) if the grantor or donor at the time of his death was a resident of a State or territory of the United States which, at the time of his death, did not impose a transfer or inheritance tax of any character in respect of personal property of residents of this State (other than tangible personal property having an actual situs in said State); or, (2) if the laws of the State or territory of the residence of the grantor or donor at the time of his death, contained a reciprocal provision under which non-residents were exempted from transfer or inheritance taxes of every character in respect to personal property (other than tangible personal property having an actual situs therein) provided the State or territory of residence of such non-residents allowed a similar exemption to residents of the State or territory of residence of such a grantor or donor. For the purpose of this Article the District of Columbia and possessions of the United States

shall be considered territories of the United States. Provided further that the provisions of this Act shall not apply to residents of those states which have no inheritance tax law. Any transfer made by a grantor, vendor, or donor, whether by deed, grant, sale, or gift, shall, unless shown to the contrary, be deemed to have been made in contemplation of death and subject to the same tax as herein provided, if such transfer is made within two (2) years prior to the death of the grantor, vendor, or donor, of a material part of his estate, or if the transfer made within such period is in the nature of a final distribution of property and without adequate valuable consideration. [Acts 1923, 2nd C.S., p. 63; Acts 1929, 41st Leg., 1st C.S., p. 109, ch. 50, § 1; Acts 1939, 46th Leg., p. 646, § 1; Acts 1945, 49th Leg., p. 148, ch. 98, § 1.]

Section 7 of the Act of 1939 related to partial invalidity. Section 8 provided that the Act should not be construed as releasing from claim for inheritance taxes the estate of any person when his death occurred prior to the effective date of the Act. Section 9 repealed all conflicting laws.

Art. 7118. Class A. Husband or wife or their descendants or ascendants.—If passing to or for the use of husband or wife, or any direct lineal descendant of husband or wife, or any direct lineal descendant or ascendant of the decedent, or to legally adopted child or children, or any direct lineal descendant of adopted child or children of the decedent, or to the husband of a daughter, or the wife of a son, the tax shall be one (1) per cent on any value in excess of Twenty-five Thousand Dollars ($25,000), and not exceeding Fifty Thousand Dollars ($50,000); two (2) per cent on any value in excess of Fifty Thousand Dollars ($50,000), and not exceeding One Hundred Thousand Dollars ($100,000); three (3) per cent on any value in excess of One Hundred Thousand Dollars ($100,000), and not exceeding Two Hundred Thousand Dollars ($200,000); four (4) per cent on any value in excess of Two Hundred Thousand Dollars ($200,000), and not exceeding Five Hundred Thousand Dollars ($500,000); five (5) per cent on any value in excess of Five Hundred Thousand Dollars ($500,000), and not exceeding One Million Dollars ($1,000,000); and six (6) per cent on any value in excess of One Million Dollars ($1,000,000). [Acts 2nd C.S. 1923, p. 63; Acts 1935, 44th Leg., p. 922, ch. 356, § 1.]

Art. 7118—a. To whom applicable.—The exemptions created by Article 7118, and the tax thereby assessed, shall apply to and be collected as to the property passing to any such person out of the estates of all persons dying from and after the passage of this Act, and also as to the property passing to any person out of the estates of all persons now deceased whose estates have not been appraised for inheritance tax purposes at the time of the passage of this Act, but this Amendment shall not apply to the property passing to any person out of the estate of any person now deceased which has been appraised for inheritance tax purposes, and the liability of any and all such estates and the beneficiaries thereof, shall continue as the same existed under the law prior to the passage of this Act. [Acts 1935, 44th Leg., p. 922, ch. 356, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 7119. Class B—Domestic bequest.—If passing to or for the use of the United States, to be used in this State, the tax shall be one per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; two per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; three per cent on any value in excess of one hundred thousand dollars and not exceeding two hundred thousand dollars; four per cent on any value in excess of two hundred thousand dollars, and not exceeding five hundred thousand dollars; five per cent on any value in excess of five hundred thousand dollars and not exceeding one million dollars; and six per cent on any value in excess of one million dollars. [Acts 2nd C.S. 1923, p. 63; Acts 1927, 40th Leg., p. 87, ch. 62, § 1.]

Art. 7120. Class C—Brother or sister.—If passing to or for for [1] the use of a brother or sister or a direct lineal descendant of a brother or sister, of the decedent, the tax shall be three per cent on any value in excess of ten thousand dollars and not exceeding twenty-five thousand dollars; four per cent on any value in excess of twenty-five thousand dollars and not exceeding fifty thousand dollars; five per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; six per cent on any value in excess of one hundred thousand dollars and not exceeding two hundred and fifty thousand dollars; seven per cent on any value in excess of two hundred and fifty thousand dollars and not exceeding five hundred thousand dollars; eight per cent on any value in excess of five hundred thousand dollars and not exceeding seven hundred and fifty thousand dollars; nine per cent on any value in excess of seven hundred and fifty thousand dollars and not exceeding one million dollars; and ten per cent on any value in excess of one million dollars. [Acts 2nd C.S., 1923, p. 63.]

[1] So in enrolled bill. The second "for" should probably be omitted.

Art. 7121. Class D—Uncle or aunt.—If passing to or for the use of an uncle or aunt, or a direct lineal descendant of an uncle or aunt of the decedent, the tax shall be four per cent on any value in excess of one thousand dollars and not exceeding ten thousand dollars; five per cent on any value in excess of ten thousand dollars and not exceeding twenty-five thousand dollars; six per cent on any value in excess of twenty-five thousand dollars and not exceeding fifty thousand dollars; seven per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars; twelve per cent on any value in excess of five hundred thousand dollars and not exceeding one million dollars; and fifteen per cent on any value in excess of one million dollars. [Id.]

Art. 7122. Class E—Foreign bequest.—If passing to or for the use of the United States, to or for the use of any other person or religious, educational or charitable organization or institution, or to any other person, corporation or association not included in any of the classes mentioned in the preceding portions of the original Act known as Chapter 29 of the General Laws of the Second Called Session of the Thirty-eighth Legislature, the tax shall be:

5%	on any value in excess of	$	500	and not exceeding	$	10,000
6%	"	"	"	"	"	10,000	"	"	"	25,000
8%	"	"	"	"	"	25,000	"	"	"	50,000
10%	"	"	"	"	"	50,000	"	"	"	100,000
12%	"	"	"	"	"	100,000	"	"	"	500,000
15%	"	"	"	"	"	500,000	"	"	"	1,000,000
20%	"	"	"	"	"	1,000,000				

Provided, however, that this Article shall not apply on property passing to or for the use of the United States or any religious, educational or charitable organization when such bequest, devise or gift is to be used within this State. [Acts 2nd C.S. 1923, p. 63; Acts 1927, 40th Leg., p. 87, ch. 62; Acts 1931, 42nd Leg., p. 109, ch. 72; Acts 1933, 43rd Leg., p. 581, ch. 192, § 2b (§ 20).]

Section 21, of Acts 1933, repeals all conflicting laws and parts of laws and provides that if any part of the act is held invalid, such holding shall not affect any other part or provision.

Art. 7123. Divided estate.—If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately, according to the value of the

same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities, shall be determined by the "Actuaries Combined Experience Tables," at four per cent compound interest. [Acts 2nd C.S. 1923, p. 63.]

Art. 7124. Bequest to trustee.—If a testator bequeaths or devises to his executor or trustee property in lieu of commission, the value of such property in excess of reasonable compensation, as determined by the county judge and the Comptroller, shall be subject to taxation under this chapter. [Id.]

Art. 7125. Deductions.—The only deductions permissible under this Law are the debts due by the estate, funeral expenses, expenses incident to the last illness of the deceased, which shall be due and unpaid at the time of death, all Federal, State, County, and Municipal taxes due at the time of the death of the decedent, attorney's fees and Court costs accruing in connection with the assessing and collecting of the taxes provided for under this Chapter, and an amount equal to the value of any property forming a part of the gross estate situated in the United States received from any person who dies within five (5) years prior to the death of the decedent, this reduction, however, to be only in the amount of the value of the property upon which an inheritance tax was actually paid and and shall not include any legal exemptions claimed by and allowed the heirs or legatees of the estate of the prior decedent. A full statement of facts authorizing deductions must be made in duplicate under oath by the executor, administrator, or trustee, and one copy filed with the County Clerk and the other with the Comptroller, before any deductions will be allowed. [Acts 1923, 2nd C.S., p. 63, Acts 1929, 41st Leg., p. 60, ch. 26, § 1; Acts 1939, 46th Leg., p. 646, § 2.]

Art. 7126. Preliminary report.—Every executor, administrator or trustee of the estate of a decedent leaving property subject to taxation under this chapter, and every other person coming into possession of any portion of such estate where there is no administration of such estate, shall file a preliminary report within one month after coming into possession of any such property, giving the date of the death of such decedent, the approximate value and character of his estate and the persons entitled to receive same. Such report shall be in duplicate, one of which shall be filed with the Comptroller, and the other with the county clerk of the county wherein such decedent resided at the time of his death or wherein the principal part of his estate is located. The county clerk shall immediately notify the county judge of the filing of such report. [Acts 2nd C.S. 1923, p. 63.]

Art. 7127. Inventory.—Within six months after the executor, administrator or trustee or other person comes into full possession of such estate, he shall make report in duplicate and shall file the same in the manner provided in the preceding article. Said report must be made under oath and recorded as a permanent record in the Probate Court of the county wherein filed, and must give the following information:

(1) A list of all real estate located in Texas, including improvements thereon, and the true and full value of such real estate and all improvements thereon at the date of the death of decedent;

(2) A complete list of all live stock showing the location, kind and value thereof;

(3) All moneys on hand or in the bank, regardless of location, whether in this State or outside of Texas;

(4) All notes, bonds, certificates, mortgages, stocks and other securities or evidences of indebtedness due the estate, showing the name and residence of those owing the estate, and the kind of bonds owned, the kind of notes, mortgages and stocks and other securities, and the name of the corporation, association or company in which stock or any interest is owned;

(5) The name and address of all persons entitled to such property and the value of such property to each beneficiary. [Id.]

Art. 7128. If administration unnecessary.—If for any reason the administration of the estate of a decedent leaving property subject to taxation under this chapter, shall not be necessary in this State except to carry out the provisions of this law, it shall be in the discretion of the county judge and Comptroller to dispense with the appointment of an administrator, upon filing with each of them a satisfactory inventory of the taxable property by the trustee or owner. Upon the filing of such inventory, the appraisement and other proceedings required by this chapter shall be had as in other cases. [Id.]

Art. 7129. Securities of non-resident.—In case of the death of a non-resident of Texas, owning no property in this State except stocks or bonds in a domestic corporation or association, and such fact is shown to the satisfaction of the Comptroller, such officer shall value said property. The administrator, executor or trustee may pay said tax when notified of the amount by the Comptroller, direct to such officer at Austin. The Comptroller shall then issue and deliver proper receipt therefor to the State Treasurer who shall keep a record of such payment and forward receipts to the trustee. [Id.]

Art. 7130. Appraisal.—The Judge of the County Court having jurisdiction of the estate of the decedent shall appoint two (2) competent, disinterested persons, to be approved by the Comptroller, as appraisers to fix the value of the property of such decedent subject to taxation hereunder; or upon agreement of the parties interested to dispense with the appointment of appraisers, the County Judge and Comptroller shall appraise the property and make and file a report of such appraisement. The appraisers, being first sworn, shall forthwith give notice to all persons known to have any claim or interest in the property to be appraised, including the Comptroller of Public Accounts, the executor, administrator, or trustee, of the time and place when they will appraise the same. At such time and place, said appraisers shall appraise such property at its actual market value if it has a market value, and in case it has none, then its real value at the time of the death of the decedent, and shall thereupon make a report thereof in writing to said County Judge and Comptroller, who shall file and keep such report. If the same decedent shall leave property taxable hereunder to more than one person, said appraisement and report shall be made for the property of each of such persons. Each appraiser shall be paid, on the certificate of the County Judge, Five Dollars ($5) for each day employed in such appraisal, together with his actual necessary expenses incurred therein. Where appraisers have been appointed under the provisions of this Act to appraise the assets of an estate for inheritance tax purposes and have made their return in accordance with the provisions of this Act to the County Judge, should there be any part of the estate valued too high or too low, as the case may be, or any other cause in the opinion of the Comptroller or the interested party or parties of said estate that the same has not been appraised in accordance with the Law governing the appraisal of same, the party or parties may within ten (10) days after the filing of the return of such appraisement, file with the County Judge a motion in writing setting forth the cause or causes wherein they complain as to the report of the appraisers, and the County Judge shall immediately give notice in writing to the Comptroller of Public Accounts and other interested parties of such complaint and set such motion down for a hearing not

later than ten (10) days from the date the same was filed, and upon hearing thereof, if good and sufficient cause be shown, he may set aside such report of appraisement, and the same shall be held null and void, and proceed to appoint another set of appraisers as the Law provides, and in the event he overrules said motion to set aside such report of appraisement, then in that event, said party shall have the right to appeal the same to the District Court of the county wherein the administration of the estate is being held, or if there be no administration, or if it be a nonresident estate, then in the county wherein the principal part of the estate is located, within twenty (20) days by giving notice of appeal, and the District Court shall hear and try the same de novo, and enter its judgment on the matter in controversy accordingly. [Acts 1923, 2nd C.S., p. 63; Acts 1939, 46th Leg., p. 646, § 3.]

Art. 7131. Fixing tax; suspension pending appeal.—a. Immediately after the filing of the appraisal report, or as soon thereafter as practical, the County Judge shall calculate and determine the tax due on such property, according to the value thereof as shown in such appraisement, and shall furnish a statement of the same to the Comptroller for verification. If the Comptroller finds the tax to be correct, he shall so advise the County Judge, whereupon it shall immediately become the duty of the County Judge to certify such amount to the executor, administrator, or trustee, and to the person to whom, or for whose use, the property passes, and said tax shall be a lien upon such property from the death of the decedent until paid.

b. Provided in any case where an appeal has been taken from the report of appraisement, as provided in Article 7130, the assessment of the inheritance tax by the County Judge, as provided in Paragraph a, above, shall be suspended until such time as the matters in controversy shall have been finally adjudicated, and the County Judge shall re-assess the tax in accordance with the new appraisement. [Acts 1923, 2nd C.S., p. 63; Acts 1939, 46th Leg., p. 646, § 4; Acts 1945, 49th Leg., p. 546, ch. 332, § 1.]

Art. 7132. Payment of tax.—All taxes received and/or due under this law by any executor, administrator, or trustee, shall make such payment to the Treasurer of the State of Texas through the Comptroller of Public Accounts. Upon receipt of such payment, the Comptroller shall issue proper receipt therefor, and shall deliver one to the party making payment or to his attorney of record. [Acts 1923, 2nd C.S., p. 63; Acts 1945, 49th Leg., p. 546, ch. 332, § 2.]

Art. 7133. Lien.—A lien shall exist on all property subject to taxation under this law to secure the payment of all taxes, penalties and costs provided for in this chapter. All persons acquiring any portion of said property shall be charged with notice of the existence of all such unpaid taxes, penalties and costs, and of the lien securing their payment, which may be enforced in any suit brought for the collection of said taxes, penalties and costs. [Acts 1923, 2nd C. S., p. 63.]

Art. 7134. Foreclosure.—If the amount of tax due hereunder, as shown by such assessment furnished by the county judge and Comptroller, is not paid within three months from the date of said assessment, same shall draw two percent interest per month until paid, beginning with the date of notice of such assessment, and shall be added to said tax and collected as a penalty. If said tax and penalty are not paid within nine months from the date of such assessment, the Comptroller shall so advise the county attorney, or if there is no county attorney then the district attorney, who must immediately file suit in the district court to foreclose the tax lien, as other tax liens are foreclosed. [Id.]

Art. 7135. Final accounts.—No final account of any executor, administrator, or trustee shall be allowed by the County Judge unless such account shows and said Judge finds that all taxes imposed under this Law on any property or interest passing through his hands as such have been paid. Neither shall the County Judge close any estate, or permit the delivery of any property to the legatee or heir without first ascertaining whether or not a tax is due under this Chapter, and if no tax is due, such fact must be shown by an instrument in writing, approved by the State Comptroller of Public Accounts, filed with the final papers closing said estate. Provided, however, the Comptroller shall have the authority to grant an extension of six (6) months before any estate shall be charged any penalty or interest. [Acts 1923, 2nd C.S., p. 63; Acts 1939, 46th Leg., p. 646, § 6.]

Art. 7136. Delivery of securities.—No notes, bonds, certificates, mortgages, stocks, securities or other evidences of indebtedness due the estate of deceased persons and subject to taxation hereunder, shall be transferred or delivered to any legatee or heir until the Comptroller issues a notice to the executor, administrator or trustee of such estate, or to their bondsmen, stating that all the inheritance taxes due this State have been paid. Such notice shall be authority for any administrator, executor or trustee to deliver such property to the proper legatees or heirs. [Acts 1923, 2nd C. S., p. 63.]

Art. 7137. Delivery before payment.—Should any domestic corporation or association transfer to any legatee or heir, or should an administrator, executor or trustee deliver to any legatee or heir, the stocks or bonds of any domestic corporation or association, or deliver any other property, before the inheritance tax thereon due this State is paid, the corporation or association, or the administrator, executor, trustee and their bondsmen, shall be liable for said tax and penalty and all cost of collection. [Id.]

Art. 7138. Offsets after distribution.—Whenever any debts shall be proved against the estate of the decedent after the distribution of the property on which the tax has been paid and a refund is made by the distributee, due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee if still in his hands, or by the Comptroller upon warrant on the State Treasurer, if said tax has been paid. [Id.]

Art. 7139. False report.—If any person charged with the duty of filing a report hereunder shall knowingly make a false report, he shall be liable for a penalty of not exceeding one thousand dollars, which shall be collected by the county attorney, or district attorney where there is no county attorney, in the name of this State by suit in the county in which the administration is pending. Twenty per cent of such penalty shall be retained by the attorney prosecuting such suit as attorney's fees, and the remainder shall be distributed as the taxes collected under this law are distributed. [Id.]

Art. 7140. [Repealed by Acts 1933, 43rd Leg., p. 581, ch. 192, § 2b (§ 18).]

Art. 7141. Attorney's fees.—For the services performed under the provisions of this Chapter, the County Judge shall be allowed a fee equal to two (2%) per cent of the taxes collected, not to exceed Thirty ($30.00) Dollars in any one estate, which fee shall be in addition to the taxes levied and collected hereunder, and shall be taxed and collected as costs in probate cases. If suit be brought, the county or district attorney prosecuting same shall receive as compensation therefor, five (5%) per cent on the amount of taxes payable hereunder, not to exceed in any one case the sum of Two Hundred ($200.00) Dol-

lars, which fee shall be added to and collected from said estate in addition to the taxes and penalties herein provided for, and such compensation shall be in addition to all other fees and compensation provided by this law. The aggregate of fees received under this law shall not exceed in any one year Two Thousand ($2,000.00) Dollars, and any fees earned in addition to said sum shall be considered a portion of the tax and penalties collected, and be distributed in the same manner. [Acts 1923, 2nd C.S., p. 63; Acts 1933, 43rd Leg., p. 581, ch. 192, § 2b (§ 19); Acts 1945, 49th Leg., p. 546, ch. 332, § 3.]

Art. 7142. [Repealed by Acts 1945, 49th Leg., p. 546, ch. 332, § 4.]

Art. 7143. Disposition of tax.—All moneys received by the State Treasurer under this chapter shall be deposited in the State Treasury to the credit of the general revenue fund. [Acts 2nd C.S. 1923, p. 63.]

Art. 7144. Comptroller to furnish forms.—The Comptroller shall prescribe and furnish all forms necessary in making the reports and collecting the tax provided for by this law. [Id.]

CHAPTER 5A.—ADDITIONAL INHERITANCE TAXES

Art.
7144a. Imposition of additional inheritance tax.
Sec.
1. Tax levied.
2. Additional tax as lien on entire estate.
3. When additional tax not imposed.
4. Imposition of tax sufficient to equal eighty per cent of Federal tax.
5. Computation of eighty per cent of Federal tax.
6. Notice to county judge of assessment of additional tax.
7. Law governing assessment and collection.
8. Construction of Act.
9. Penal provision.
10. Federal estate taxes; reference in report.
11. Revaluation; notice.
12. Refund of overpayment.
13. Penal provision.
14. Proportion of inheritance tax on beneficiary's share of estate of nonresident.
15. Estates partly within and partly without state.
16. Regulating delivery by safe deposit or trust companies of securities to executors or legal representatives of decedent.

Art. 7144a. Imposition of additional inheritance tax.

Tax levied

Sec. 1. In addition to the inheritance tax already levied by this State under existing laws, an inheritance and transfer tax is hereby levied upon the net estate of every decedent dying after this Act shall take effect, and whose estate, or any portion thereof, is, or hereafter shall be, made taxable under the inheritance tax laws of this State, or that may be subject to such taxes under any law of this State that may be hereafter enacted. Said tax shall be, and is, levied upon the entire net value of the taxable estate of the decedent situated and taxable in the State of Texas, and the tax on each such estate shall be equal to the difference between the sum of such taxes due this State as inheritance or transfer taxes and eighty (80) per cent of the total sum of the estate and transfer taxes imposed on such estate by the United States Government under the Revenue Act of 1926, by reason of the property of such estate which is situated in this State and taxable under the laws of this State.

Additional tax as lien on entire estate

Sec. 2. The additional tax aforesaid shall be a lien upon the entire estate of the deceased and collectable out of said entire estate, or any part thereof, regardless of exemptions and deductions: and, in event two (2) or more persons succeed to or become the owners of taxable interests in such estate, and in event inheritance or transfer taxes are assessed under the law against portions thereof or interests therein severally, then said additional tax levied and collected under this Act shall be apportioned between or among such part owners in proportion to the amount of the tax assessed against each share or interest in said estate.

When additional tax not imposed

Sec. 3. In the event the amount of inheritance and transfer taxes assessed against any certain estate under the inheritance tax laws of this State shall equal or exceed eighty (80) per cent of the estate or transfer taxes assessed and computed by the United States under the Revenue Act of 1926, against said estate or property belonging thereto and situated within the State of Texas, then no additional taxes shall be collected hereunder, it being the purpose and intention of this Act to collect only a sufficient additional tax, when necessary, for the State to get the full benefit of the eighty (80) per cent credit to the States provided for by Section 301, Chapter 27 of the Federal Revenue Act of 1926.[1]

[1] 26 U.S.C.A. §§ 410, 413, 460.

Imposition of tax sufficient to equal eighty per cent of Federal tax

Sec. 4. Where no inheritance tax is imposed on an estate, which is situated in this State, under the laws of this State, by reason of its value not exceeding in value the amount of exemptions, and an estate tax is imposed on such estate by the Federal Government, then there shall be, and is hereby, levied, and shall be collected from such estate, as inheritance or transfer tax sufficient in amount to equal eighty (80%) per cent of said tax imposed by the Federal Government under the Revenue Act of 1926, on that portion of said estate which is situated in the State of Texas. In computing and determining the rate of the tax in such cases named in this Section, the State Comptroller, or other officers, whose duty it is to calculate and determine the amount of inheritance taxes, shall compute the same upon the net valuations of said estate as determined and used by the United States in computing the amount of the Federal Government tax due upon said estate, and said tax shall be paid from the whole of such estate before partition and distribution among the joint or several owners of same, and the said tax shall be due and payable, and shall be subject to the same interest and penalties for non-payment, as are other inheritance taxes under the provisions of the inheritance tax laws of the State.

Computation of eighty per cent of Federal tax

Sec. 5. In determining what is eighty (80%) per cent of the United States tax mentioned in the preceding sections, the same shall be computed as eighty (80%) per cent of such taxes actually assessed and determined by the Federal Government under the Revenue Act of 1926, against every estate situated wholly in this State, or in case an estate is situated partly in this State and partly outside of this State, then such eighty (80%) per cent shall be computed as eighty (80%) per cent of the total amount of Federal taxes finally determined and assessed by the Federal Government under the Revenue Act of 1926, on and against that part of the estate situated in the State of Texas, and said amount of Federal Tax shall be determined by multiplying the total Federal estate tax on

the entire estate by a percentage which shall be the same percentage as the percentage of the net estate located in Texas is to the total net estate of the decedent, wherever located, before deducting specific exemptions. In every case, it shall be the duty of the executor, administrator, or other officer, whose duty it is under the law to file reports of property with the County Court for inheritance tax purposes, to file with the County Court which has jurisdiction of such estate, and with the Comptroller of Public Accounts at Austin, a report showing the values placed on such estate and the amount of the estate tax assessed against the same by the Federal Government; and in case the Federal Government adds to or increases the net or taxable value of any estate and levies an additional tax in accordance therewith, after having already determined and assessed a tax against said estate, then such officer shall report, as aforesaid, the amount of said increased value and the amount of the added tax levied by reason thereof, this requirement applying only to an estate, or to the portion of an estate, which is situated in the State of Texas; and upon such report the additional taxes due this State shall be calculated and determined.

Notice to county judge of assessment of additional tax

Sec. 6. In every case in which additional taxes have been assessed against an estate under the provisions of this Act, notice of the assessment of such additional tax shall be given by the County Judge, at once, to the owners or coparceners of said property against which said additional taxes have been assessed, and said tax shall become due in thirty (30) days after such notice, or within thirty (30) days after such owner or coparcener shall have had actual notice of the assessment of such additional taxes, and said tax shall bear interest at the rate of six (6%) per cent per annum from the date of such notice, formal or actual, and if said tax is not paid within three (3) months from the date of such notice, a penalty of two (2%) per cent per month shall accrue on said taxes from the date same were due, which said penalty shall be in lieu of interest after said penalty begins to accrue. Nothing in this Act shall prevent any part owner or coparcener of property, against which such additional taxes have been assessed, from paying his prorata of such taxes and thus relieving his property from interest or penalties after such payment.

Law governing assessment and collection

Sec. 7. The notice, the date for maturing, payment, interest and penalties provided for in this Act shall govern in every case of additional taxes assessed by virtue hereof, but the methods and means of collection and enforcement, by suit or otherwise, shall be governed by the provisions of the inheritance tax laws of this State.

Construction of Act

Sec. 8. Sections 1 to 7, inclusive, of this Chapter [1] shall always be construed so as not to increase the total amount of taxes payable to the State and the Federal Government combined upon the estates of decedents, the only purpose of said additional tax being to take full advantage of the eighty (80%) per cent allowed by the Federal Revenue Act of 1926, to those who have paid any estate, inheritance, legacy, or succession tax to any State or territory or to the District of Columbia, in respect to any property included in the decedent's gross estate.

[1] Sections 1 to 7 of this Article.

Penal provision

Sec. 9.

This section is a penal provision and published as Pen. Code, Art. 107a.

Federal estate taxes; reference in report

Sec. 10. If the value of any estate taxes under Chapter 5 of Title 122 or the Revised Civil Statutes of 1925, with amendments,[1] shall have been assessed and fixed by the Federal Government for the purpose of determining the Federal estate taxes due thereon, prior to the time the report which is required under the inheritance tax laws of this State is made to the State Comptroller, the value of the estate so fixed by the Federal Government shall be stated in such report. If the assessment of the estate by the Federal Government is made after the filing of such report to the State Comptroller, the officer or person whose duty it is to file the report which is required under the inheritance tax laws of this State, shall, within thirty (30) days after receiving notice or information of the final assessment and determination of the value of the estate as assessed and determined by the Federal Government for the purpose of fixing Federal estate taxes thereon, make to the State Comptroller a report of the value of said estate as so fixed and determined, said report to be made under oath.

[1] Article 7117 et seq., ante.

Revaluation; notice

Sec. 11. Upon receipt of any report provided to be made to the State Comptroller under the preceding section and upon consideration thereof, if that official deems it advisable, he may take into consideration said report in determining the value of any estate for inheritance tax purposes, and may value or revalue such estate for such purpose after giving each beneficiary, or person at interest in said estate, thirty (30) days written notice of such Federal valuation and of his said purpose to value or revalue said estate, and shall give such beneficiary, or person at interest, an opportunity to be heard and to present evidence touching the value of such estate, and, after such notice and hearing, if any is had, the State Comptroller may finally fix the value of any such estate for inheritance tax purposes, and, if he deems the same just and true, he may accept the valuation as fixed by the Federal Government in any case in calculating and determining the amount of State inheritance taxes due; and if any additional taxes are assessed under this or the next two preceding sections, written notice thereof shall be given to the executor, administrator or other legal representatives, and to every person who owns a taxable part or share in such estate, which notice may be given by letter directed to the last known address of such owner; and said taxes shall become due and payable within three (3) months from the date of such notice, and all such taxes shall bear interest at the rate of six (6%) per cent per annum from the date of such notice, and on all such taxes not paid within three (3) months after the date of such notice, there shall be collected as a penalty for non-payment, interest at the rate of two (2%) per cent per month from the expiration of said three (3) month period until paid, which said penalty shall be in lieu of interest after said penalty begins to accrue; and if said taxes, penalty and interest are not paid in full within nine (9) months from the date said taxes were so determined and assessed, suit shall be brought to collect the same in accordance with the provisions of Article 7134, Chapter 5, Title 122, of the Revised Civil Statutes of 1925.

Refund of overpayment

Sec. 12. In the event the valuation of any estate is decreased under the next preceding sections, and the amount of the taxes is determined by the State Comptroller to be less than same had previously been calculated and determined, and if the overpayment of such taxes had been made, then the State Comptroller shall refund said taxes to the extent of the overpayment, out of any subsequent inheritance tax collections made by him before same is deposited to the general revenue fund of the State.

Penal provision

Sec. 13.

This section is a penal provision and published as Pen. Code, Art. 107b.

Proportion of inheritance tax on beneficiary's share of estate of non resident

Sec. 14. The inheritance tax that is hereby imposed upon every beneficiary's share of the estate of a non-resident decedent shall be a tax which, in amount, bears the same ratio to the entire tax for which the beneficiary's interest would be liable if the entire estate were situated in Texas, as the total value of the beneficiary's share of the decedent's estate which is situated in Texas, before allowable beneficiary deductions are made, bears to the total value of the beneficiary's entire share in the estate of the non-resident decedent wherever situated, before allowable beneficiary deductions are made.

Estates partly within and partly without state

Sec. 15. In the event a resident of this State dies, leaving any estate subject to an inheritance tax, situated partly within and partly without this State, the inheritance tax imposed upon the share of any beneficiary of said estate situated in Texas shall be a tax which shall bear the same ratio to the amount such tax would be if his entire share and interest were situated in Texas, before allowable beneficiary deductions, bears to the total value of such beneficiary's share in such decedent's estate, wherever situated, before allowable beneficiary deductions are made.

Regulating delivery by safe deposit or trust companies of securities to executors or legal representatives of decedent

Sec. 16. (a) No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or under control securities, deposits, or other assets belonging to a decedent who was a resident or non-resident, or belonging to such a decedent and one or more persons, shall deliver the same to the executors, administrators, heirs or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more other persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the Comptroller at least ten days prior to said delivery or transfer, and delivery to be made only in the presence of the Comptroller or his duly authorized agent, who may be the County Judge of the county in which said transfer transpires, unless the Comptroller in writing consents to the transfer without his presence. And it shall be lawful for the said Comptroller or his representative to examine all of said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax or interest due or thereafter to become due upon said securities, deposits or other assets delivered or transferred, and in addition thereto, a penalty of not less than one thousand or more than five thousand dollars; and the payment of such tax and interest thereon, or the penalty above prescribed, or both, may be enforced in an action brought by the Comptroller in any court of competent jurisdiction.

(b) When it is made to appear to a County Judge in this State that a safe deposit company, trust company, bank, person or corporation has in its possession, or under its control papers of a decedent or [1] whose estate such court has jurisdiction, or that the decedent has leased from such a corporation a safe deposit box, and that such papers or such safe deposit box may contain a will of the decedent, or a deed to a burial plot in which the decedent is to be interred, or a policy of insurance issued in the name of the decedent and payable to a named beneficiary, he may make an order directing such deposit company, trust company, bank, person, or corporation to permit a person named in the order to examine such papers or safe deposit box in the presence of himself, or his duly authorized representative, or a representative of the Comptroller, and an officer of such safe deposit company, trust company, bank or corporation, or agent of such person, and if such documents are found among such papers, or in such box, to deliver said will to the Clerk of the Probate Court of such county or said deed to such persons as may be designated in such order, or said policy of insurance to the beneficiary named therein. The Clerk of said court shall furnish a receipt upon the delivery of the will to him. [Acts 1933, 43rd Leg., p. 581, ch. 192, § 2b.]

[1] So in enrolled bill. Should probably read "of".

Sections 17, 19 and 20 amend Articles 7122, 7141 and 7142, ante. Section 18 repeals Article 7140, ante.

Section 21 repealed all conflicting laws and related to effect of partial invalidity.

CHAPTER 6.—PROPERTY SUBJECT TO TAXATION AND RENDITION

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Article 7145. [7503] [5061] All property taxed.—All property, real, personal or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, and the same shall be rendered and listed as herein prescribed. [Acts 1876, p. 275; G. L. vol. 8, p. 1111.]

Art. 7146. [7504] [5062] "Real property."—Real property for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same. [Id.]

Art. 7147. [7505] [5063] "Personal property."—Personal property, for the purposes of taxation, shall be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of this State, whether the same be in or out of the State; all ships, boats and vessels belonging to inhabitants of this State, if registered in this State, whether at home or abroad, and all capital invested therein; all moneys at interest, either within or without the State, due the person, to be taxed over and above what he pays interest for, and all other debts due such person over and above his indebtedness; all public stock and securities; all stock in turn-pikes, railroads, canals and other corporations (except national banks) out of the State, owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State, and the income of any annuity, unless the capital of such annuity be taxed within this State; all shares in any bank organized or that may be organized under the laws of the United States; all improvements made by persons upon lands held by them, the title to which is still vested in the State of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property. [Acts 1879, p. 39; G. L. vol. 8, p. 1339.]

Art. 7148. Assessment of merchandise.—Any person, co-partnership, association, or corporation, doing business in this State, and carrying and possessing any stock of goods of whatsoever nature, shall upon demand by the tax assessor of the county in which such stock of goods is located, furnish said tax assessor with a verified copy of the last inventory of said stock of goods, together with the inventory value thereof.

The affidavit to the inventory shall state that said inventory includes every article in the stock carried by such person, co-partnership, association, or corporation and that no part of such stock is owned, operated or controlled by any person, co-partnership, association, or corporation other than the person furnishing such inventory.

Any persons, co-partnerships, associations or corporations who have space leased in which merchandise or any character of business is or was operated on January 1st so making such inventory, shall further state, if such is the case, what persons, associations, co-partnerships or corporations own or control any part of the stock of goods offered for sale and their residence in conjunction with the stock of goods owned by the person, co-partnership, association, or corporation rendering such inventory and not contained in such inventory.

Any person or agent or representative of such co-partnership, association, or corporation who shall fail to furnish such inventory and information as set forth above upon demand by the tax assessor of the county in which such property is located, shall be subject to all the penalties now existing against any person for making a false rendition of property for the purpose of taxation. [Acts 3rd C. S. 1923, p. 172.]

Art. 7149. [7506] [5064] Definition of terms.—The term, "money," or "moneys," wherever used in this title shall, besides money or moneys, include every deposit which any person owning the same or holding in trust and residing in this State, is entitled to withdraw in money on demand.

"Credits."—The term, "credits," wherever used in this title, shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

"Tract or lot."—The term, "tract or lot," and "piece or parcel," of real property, and "piece and parcel" of land, wherever used in this title, shall each be held to mean any quantity of land in possession of, owned by or recorded as the property of the same claimant, person, company or corporation.

"Town or district."—The words, "town or district," wherever used shall be held to mean village, city, ward or precinct, as the case may be.

"Value."—The term, "true and full value," wherever used shall be held to mean the fair market value, in cash, at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale.

"Person."—The term, "person," shall be construed to include firm, company or corporation. [Acts 1876, p. 275; G. L. vol. 8, p. 1111.]

Art. 7150. [7507] [5065] Exemption from taxation.—The following property shall be exempt from taxation, to-wit:

1. Schools and Churches.—Public school houses and actual places of religious worship, also any property owned by a church or by a strictly religious society, for the exclusive use as a dwelling place for the ministers of such church or religious society, the books and furniture therein and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and which yields no revenue whatever to such church or religious society; provided that such exemption as to the dwelling place for the ministers shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land. All public colleges, public academies, and all endowment funds of institutions of learning and religion not used with a view to profit, and when the same are invested in bonds or mortgages, and all such buildings used exclusively and owned by persons or associations of persons for school purposes; provided that when the land or other property has been, or shall hereafter be, bought in by such institutions under foreclosure sales made to satisfy or protect bonds or mortgages in which said endowment funds are invested, that such exemption of such land and property shall continue for two years after the purchase of the same at such sale by such institutions and no longer. This provision shall not ex-

tend to leasehold estate of real property held under authority of any college or university of learning.

Provided, however, that said schools and churches desiring the right of exemption of the properties hereinabove mentioned, shall first prepare and file with the Tax Assessor of the County in which such property is situated, a complete itemized statement of all of said property, any and every kind whatsoever, which is claimed to be exempt from taxation under the provisions of this particular law, and all property not so listed shall be assessed and it shall be the duty of the Tax Assessor to make levy on the same, and for the Tax Collector to collect the said taxes.

Said itemized list of exemptions when made by the said schools or churches shall be sworn to by some officer of the said schools or church familiar with the facts, and when the same has been filed with the Tax Assessor same shall be by him filed [1] in his office, subject to inspection at any time by any person desiring to see the same. [Acts 1907, p. 302; Acts 1931, 42nd Leg., p. 211, ch. 124, § 1.]

1 So in enrolled bill. Session Laws omit the word "filed".

2. Christian Associations.—Young Mens' Christian Association Buildings, and Young Womens' Christian Association Buildings, used exclusively for the purpose of furthering religious work, and acting under the approval and co-operation of the State and International Young Mens' Christian Association committees and the Young Womens' Christian Association committees, the books and furniture contained in such buildings, and the grounds attached thereto necessary for the proper occupancy of such buildings, use and enjoyment of the same, and not leased or otherwise used with a view to profit other than for the purpose of maintaining the buildings and Association, and all endowment funds of the above mentioned religious institutions not used with a view to profit, but for the purpose of maintaining the Association and buildings in doing religious work. [Acts 1913, p. 153.]

2a. Religious, educational and physical development associations.—That all property owned or used exclusively and reasonably necessary, in conducting any association engaged in the joint and threefold religious, educational and physical development of boys and girls, young men and young women, operating under a State or National Organization of like character, and not leased or otherwise used with a view to profit other than for the purpose of maintaining the buildings and Association, and all endowment funds of the above mentioned religious institutions, not used with a view to profit but for the purpose of maintaining the Association and buildings in doing religious work and for the educational or physical development of boys and girls, young men and young women, shall be exempt from taxation; provided that land property received by said institutions in payment and satisfaction of endowment fund loans or investments shall be exempt for two years only after foreclosure purchase of said land, and no longer. [Acts 1937, 45th Leg., p. 401, ch. 201, § 1.]

3. Cemeteries.—All lands used exclusively for graveyards or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculating in the sale thereof. [Acts 1907, p. 302.]

4. All property, whether real or personal, belonging exclusively to this State, or any political subdivision thereof, or the United States, except that in each county in this State, where the State of Texas has or may acquire and own land for the purpose of establishing thereon State farms and employing thereon convict labor on State account, the penitentiary board or board of penitentiary commissioners, or other officers of the penitentiary having the management of the same, shall render said land for taxes to the tax assessor of said county and to the tax assessor of each independent school district in which said property, or any part thereof, is located; and the taxes on same shall be assessed and collected in the manner required by law for the assessment and collection of other taxes; provided, that said taxes shall be assessed and collected for county and independent school district purposes only; and said county and independent school district taxes, including all current taxes and all delinquent taxes, shall be paid annually out of the General Revenue Fund of the State. In arriving at the amount to be paid in taxes to the counties the value of the land only shall be considered and not the value of the buildings and other improvements owned by the State and situated on said land. [Acts 1907, p. 302; Acts 1910, S.S., p. 122; Acts 1943, 48th Leg., p. 472, ch. 316, § 1; Acts 1945, 49th Leg., p. 470, ch. 298, § 1.]

4a. Districts and Authorities, property of; payments in lieu of taxes.—All property real or personal belonging exclusively to Districts and Authorities created directly by Acts of the Legislature pursuant to Article XVI, Section 59, of the Constitution as agencies of the State of Texas, and all property real or personal belonging exclusively to Districts and Authorities created or incorporated under laws enacted pursuant to Section 59, Article XVI of the Constitution; provided that if any such District or Authority has heretofore acquired or does hereafter acquire property which at the time of such acquisition is or was then subject to taxation, and is at the time of its acquisition being used for generating, transmitting, and distributing electric energy or power, such District or Authority shall at the times prescribed by law for the payment of ad valorem taxes make a payment in lieu of taxes to the State of Texas and to the county, city, and such taxing districts within which such property is situated; such payment in lieu of taxes to be in the amount which would be realized by levying an ad valorem tax at the current rate for the then current tax year based on the assessed value of such property for the last current tax year before being acquired by such District or Authority; provided further that no payment shall be made with respect to any property no longer owned by such District or Authority for generating, transmitting, or distributing electric energy or power. Such payment in lieu of taxes shall be made out of the revenues received by such District or Authority from the generation, transmission, or distribution of electric power and energy and the liability for same shall constitute a lien or encumbrance only on the Revenues of such District or Authority, and shall be considered as a part of the operating expenses. Specifically, no payments shall be made in lieu of taxes with respect to dams, dam sites, reservoir areas, and water distributing or irrigation systems. It is the expressed legislative intent of this Act that such Districts or Authorities make payments in lieu of taxes only with respect to properties which at the time of their acquisition were on the ad valorem tax rolls of the State of Texas or of any county, city, or any other taxing District of the State of Texas and which at the time of the acquisition were being used for generating, transmitting, or distributing electric power and energy; provided further that it is the expressed legislative intent that no payments shall be made in lieu of taxes with respect to dams, dam sites, reservoir areas, and water distributing or irrigation systems, belonging to any such Authority or District.

Also where any city or town acquires real and personal property located outside of its corporate limits and outside of the county in which such city or town is situated, except rural electrification lines owned and operated by it, and which is or may be used in the generation, manufacturing, selling or distributing of electricity, such city or town shall make payment in lieu of taxes on same to the State of Texas, the County, City, School districts and such other local taxing districts within which such prop-

erty is located in like manner as hereinabove provided for such Districts or Authorities; provided that this Subsection 4a shall not be applicable to such property acquired by a city or town situated on a county line.

And provided further, that any city or town may make such payments in lieu of taxes to the county in which said city or town is located, provided the city or town elects to make such payment by ordinance or resolution passed by the governing body of said city or town. [Added Acts 1943, 48th Leg., p. 472, ch. 316, § 1.]

5. County buildings.—All buildings belonging to counties for holding courts, for jails, or for county officers, with the land belonging to and on which such buildings are erected. [Acts 1907, p. 302.]

6. Poor-houses.—All lands, houses and other buildings belonging to any county, precinct or town, used exclusively for the support or accommodation of the poor. [Id.]

7. Public charities.—All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons. [Id.]

8. Public libraries.—All public libraries and personal property belonging to the same. [Id.]

9. Market houses, etc.—All market houses, public squares, or other public grounds, town or precinct houses or halls used exclusively for public purposes, and all works, machinery or fixtures belonging to any town used for conveying water to such town. [Id.]

10. Fire engines.—All fire engines and other implements owned by towns and cities used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof. [Id.]

11. Furniture.—All household and kitchen furniture not exceeding at their true and full value two hundred and fifty dollars to each family, in which may be included one sewing machine. [Id.]

12. Pensions.—All annual pensions granted by the State or the United States. [Id.]

13. Buffalo and catalo.—All buffalo and all catalo now in captivity in this State, by whomsoever owned, where such animals are kept and used for experimental purposes in crossing same with cattle for the purpose of producing a better strain of beef animals, or where such animals are kept in parks to preserve the species, and not for profit. [Acts 1917, p. 384.]

14. Art Galleries, etc.—All property belonging to Art Leagues and Societies of Fine Arts, whether incorporated or not, which are devoted wholly and without charge to the promotion of education and learning, including Art Galleries and exhibits therein contained, the land upon which the same are situated, which is devoted exclusively to such purposes, and also all land, money, pictures and other works of art and all other personal property which may be necessary and in actual use for the purpose of carrying out said educational feature. [Acts 1921, p. 97.]

15. Property of Boy Scouts.—Hereafter the property of the organization known as the Boy Scouts of America or any local organization affiliated with such organization, shall be exempt from taxation in this State. [Acts 1925, p. 255.] [39th Leg., ch. 85, § 1.]

[16] Sec. 1-a. All of the lands, buildings, personal property and the endowment funds used exclusively by any persons or association of persons for the maintenance and operation of demonstration farms for the purpose of teaching and demonstrating modern and scientific methods of farming to farmers and others, without charge, and not operated or used with a view to profit, and when any of the income, over and above an amount sufficient to maintain and operate the same, is used and bound for the use of other institutions of public charity. [Acts 1926, 39th Leg., 1st C.S., p. 19, ch. 12, § 1.]

[17] Sec. 2-a. Provided that any territory that has been acquired or may hereafter be acquired, by the State of Texas, as a part of any State Prison Farm or property, shall not hereafter be exempt from the payment of its pro rata part of any bond tax of a public school district of which the said territory was a part at the time bonds of the said district which are now outstanding were issued, or which is a part of said district at the time of the issuance of bonds which may hereafter be voted; and the pro rata part of said tax that shall be paid by said territory shall be the proportionate part that the assessed valuation of such territory for county purposes is of the total assessed valuation of the school district for the year in which such taxes are assessed. Provided, also, that the said bond tax shall be paid by the governing board of management of the State Prison System out of any funds appropriated therefor by the Legislature. It is hereby specifically provided that the said bond tax shall be paid for each year that has elapsed since any such territory of a school district was acquired by the State for and as a part of said prison system, if any bonds were then outstanding. [Acts 1927, 40th Leg., 1st C.S., p. 224, ch. 81, § 1; Acts 1930, 41st Leg., 5th C.S., p. 191, ch. 49, § 1.]

[18] Sec. 3-a. Provided that any territory that has been acquired or may hereafter be acquired, by the State of Texas, as a part of any State Prison Farm or property, shall not hereafter be exempt from the payment of its pro rata part of any maintenance tax of a public school district of which the said territory was a part at the time said maintenance tax of the said district which are now outstanding was voted, or which is a part of said district at the time any maintenance tax may hereafter be voted by said district; and the pro rata part of said tax that shall be paid by said territory shall be the proportionate part that the assessed valuation of such territory for county purposes is of the total assessed valuation of the school district for the year in which such taxes are assessed. Provided, also, that the said maintenance tax shall be paid by the governing Board or Management of the State Prison System out of any funds appropriated thereby by the Legislature. It is hereby specifically provided that the said maintenance tax shall be paid for each year that has elapsed since any such territory of a school district was acquired by the State for and as a part of said prison system. [Acts 1930, 41st Leg., 5th C.S., p. 190, ch. 47, § 1.]

[19] Hereafter the property of the organization known as the Texas Federation of Women's Clubs of Texas shall be exempt from taxation in this State. [Acts 1935, 44th Leg., p. 679, ch. 288, § 1.]

Section 2 of the Acts of 1937, p. 401, ch. 201, section 1 of which enacted the provisions incorporated in section 2a, reads as follows:

"Sec. 2. Whereas, by Chapter 81, page 153, Acts of the Regular Session of the Thirty-third Legislature, 1913, which said Act was incorporated in the Revised Civil Statutes of 1925 as Article 7150, Section 2, the Legislature undertook to exempt the property of the above mentioned institutions from ad valorem taxes, which said Act and Statute was held unconstitutional in violation of Article VIII,

Section 2, of the Constitution (City of San Antonio vs. Y. M. C. A., 285 S.W. 844); and

"Whereas, on November 6, 1928, by general election, Article VIII, Section 2 of the Constitution was amended so as to permit and authorize the Legislature to pass such exemption Statute, and it is necessary to re-enact the said Act of the Legislature of 1913 in order to make it effective and to carry out the purpose and intent and mandate of the people in amending the Constitution," and section 3 of such 1937 act declared an emergency.

Section 2 of the amendatory Act of 1943 repealed all conflicting laws and parts of laws.

Section 3 read as follows: "If any part, section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity."

The provision of the 1931 amendment of subd. 1 requiring institutions of learning and religion to file with tax collectors itemized lists of such institutions' property claimed to be exempt from taxation under original statute is ineffective because of absence of any mention of purpose to add such provision in caption of amendatory statute. City of Fort Worth v. Harris, Civ.App., 177 S.W. 2d 308, reversed on other grounds, 142 T. 600, 180 S.W. 2d 131.

The Act of 1913, cited to subd. 2, violates constitutional provision prohibiting local or special laws exempting property from taxation and the provision exempting only actual places of religious worship. City of San Antonio v. Young Men's Christian Ass'n, Civ.App., 285 S.W. 844.

The provision of subd. 4a of this article requiring power districts to pay tax equivalent to taxing units is unconstitutional as undertaking to tax property devoted exclusively to use and benefit of the public. Lower Colorado River Authority v. Chemical Bank & Trust Co., Civ.App., 185 S.W.2d 461, affirmed 144 T. 326, 190 S.W.2d 48.

If subd. 7 of this article, which seeks to put into effect the permission granted by Const. art. 8, § 2 to exempt from taxation an institution of purely public charity, goes beyond the authority granted or broadens the exemption so as to embrace institutions or property not contemplated by the framers of the Constitution, the statute is, to that extent void. City of San Antonio v. San Rosa Infirmary, Civ.App., 249 S.W. 498.

Provision of this article that all property, whether real or personal, belonging exclusively to the state, or any political subdivision thereof shall be exempt from taxation is inoperative in so far as it purports to exempt public property regardless of its use in violation of the Constitution, but is valid in so far as it exempts public property used for public purposes. City of Abilene v. State, Civ. App., 113 S.W.2d 631.

Art. 7150a. County school land not exempt.—Any county in this State owning any land mentioned and referred to in Section 6a of Article VII of the Constitution of Texas adopted by the people as an amendment to the Constitution under S. J. R. No. 10 of the Regular Session of the 39th Legislature, is hereby authorized to pay taxes duly and lawfully levied on the same out of the County's revenue derived from such land. In the event any County has no such revenue, such taxes shall be paid out of the general fund of the County, and if any County has sufficient of such revenue to pay only a portion of such taxes the remainder shall be paid out of the general fund of the County. [Acts 1927, 40th Leg., 1st C. S., p. 20, ch. 10, § 1.]

Art. 7150b. Exemption of property owned by church for minister's residence.—There is hereby exempted from taxation any property owned exclusively and in fee by a church for the exclusive use as a dwelling place for the ministry of such church and which property yields no revenue whatever to such church; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event to more than one acre of land. [Acts 1931, 42nd Leg., p. 67, ch. 44, § 1.]

Art. 7150c. University lands subject to tax for county purposes; valuation.

Lands declared subject to tax

Sec. 1. All the lands set apart for the endowment of the University of Texas by Section 15 of Article 7 of the Constitution of 1876, and by Chapter 72 of the Acts of the Regular Session of the 18th Legislature, which are now unsold, are hereby declared to be subject to taxation for county purposes in the counties in which they are located, to the same extent as lands privately owned in said counties.

Data submitted to State Tax Board by Comptroller

Sec. 2. It shall be the duty of the Comptroller of Public Accounts, from records in his office, to submit to the State Tax Board data as to value fixed upon privately owned lands contiguous to the University of Texas lands in the several counties.

Maps furnished State Tax Board by Commissioner of General Land Office

Sec. 3. It shall be the duty of the Commissioner of the General Land Office to furnish the State Tax Board with maps showing the location of said University of Texas lands, herein declared to be subject to taxation.

Valuations by State Tax Board

Sec. 4. It shall be the duty of the State Tax Board to place the valuation upon which said land shall be assessed and rendered for taxation. It shall further determine the taxable value of lands in each county separately. In arriving at its amount to be paid in taxes the value of the land only shall be considered, and not the value of any buildings or other improvements, owned by the State, and situated upon said land.

Statements to Comptroller by Tax Collector

Sec. 5. The Tax Collector of each county which contains any of the land enumerated in Section 1, hereof, shall render to the Comptroller of Public Accounts by October 1 of each year a certified statement showing the values fixed by the State Tax Board upon said lands, the county rate of taxation, and the amount due said county as taxes upon said land.

Comptroller's warrants to pay tax

Sec. 6. It shall be the duty of the Comptroller of Public Accounts to issue warrants upon the General Fund to pay taxes due each county, beginning with taxes assessed for the year 1931, and annually thereafter; said warrants to be issued and mailed to the several counties within the time as now provided by law for the payment of county taxes on privately owned lands. [Acts 1931, 42nd Leg., p. 136, ch. 93.]

Art. 7150d. Exemption of headquarters buildings of Texas Congress of Parents and Teachers.—Section 1. All headquarters buildings designated as State office buildings of the Texas Congress of Parents and Teachers, from and after the passage of this Act, shall be exempt from all State and County taxes, including all ad valorem taxes.

Sec. 2. All headquarters buildings designated as State office buildings of the Texas Congress of Parents and Teachers, from and after the passage of this Act, shall be exempt from all occupation taxes.

Sec. 3. If any part or parts of this Act shall be held unconstitutional, such decision shall not affect the validity of the remaining portions hereof, and such is hereby declared to be the intention of the Legislature. [Acts 1939, 46th Leg., Spec.L., p. 965.]

Art. 7150e. Girl Scouts of America; property exempt.—Hereafter the property of the organization known as the Girl Scouts of America or of any local organization affiliated with such organization shall be exempt from taxation in this State. [Acts 1947, 50th Leg., p. 795, ch. 395, § 1.]

Art. 7151. [7508] [5066] When to be rendered; condemning authorities considered owners when.—All property shall be listed for taxation between January 1 and April 30 of each year, when required by the assessor, with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. Any property purchased or acquired on the first day of January shall be listed by or for the person purchasing or acquiring it. If any property has, by reason of any special law, contract, or fact,

been exempt or has been claimed to be exempted from taxation for any period or limit of time, and such period of exemption shall expire between January 1 and December 31 of any year, said property shall be assessed and listed for taxes as other property; but the taxes assessed against said property shall be for only the pro rata of taxes for the portion of such year remaining.

Provided further, that if the United States Government or any of its agencies having the power of condemnation shall take over the possession of property under authority of any law authorizing it to condemn said property, or under an option to buy said property from the owner, or under an agreement by the owner to sell said property, or shall comply with the laws relating to condemnation to such an extent as to entitle it to the possession of said property, or to constitute a taking thereof from the owner or person in whose name title rests, then such condemning authority shall be considered the owner of said property for all the purposes of state and county taxation from the date of taking possession thereof, or from the date of its complying with the condemnation laws to the extent that it is entitled to possession of said property, or from the date it has complied with the condemnation laws to the extent that there has been a taking of said property from the owner, whichever occurs first. [Acts 1909, p. 373; Acts 1943, 48th Leg., p. 190, ch. 109, § 1.]

Art. 7152. [7509] [5067] How rendered.—All property shall be listed or rendered in the manner following:

(1) By the owner. Every person of full age and sound mind, being a resident of this State, shall list all of his real estate, moneys, credits, bonds or stock of joint stock or other companies (when the property of such company is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties, and all other property.

(2) As agent. He shall also list all lands or other real estate, moneys and other personal property invested, loaned or otherwise controlled by him as agent or attorney, or on account of any other person, company, or corporation, whatsoever, and all moneys deposited subject to his order, check, or drafts and credits due from or owing by any person, body corporate or politic.

(3) Minor. The property of a minor child shall be listed by his guardian, or by the person having such property in charge.

(4) Wife. The property of a wife, by her husband, if of sound mind; if not, by herself.

(5) Idiot. The property of any idiot or lunatic, by the person having charge of such property.

(6) Cestui que trust. The property of a person for whose benefit it is held in trust by the trustee of the estate; of a deceased person, by the executor or administrator.

(7) Receivers. The property of corporations whose assets are in the hands of receivers, by such receivers.

(8) Corporations. The property of a body politic or corporate, by the president or proper agent or officer thereof.

(9) Co-partnership. The property of a firm or company, by a partner or agent thereof.

(10) Manufactories. The property of manufacturers and others in the hands of an agent, by such agent, in the name of his principal, as real, personal and merchandise. [Acts 1909, p. 373; Acts 1937, 45th Leg., p. 1132, ch. 455, § 1.]

The title to Acts 1937, 45th Leg., p. 1132, ch. 455, purported to repeal section 11 of this article as it appeared prior to amendment of 1937, but the body of the Act did not contain a repealing clause. However, the body of the Act amended this article so as to omit subdivision 11.

Art. 7153. [7510] [5068] Where rendered.—All property, real and personal, except such as is required to be listed and assessed otherwise, shall be listed and assessed in the county where it is situated; and all personal property, subject to taxation and temporarily removed from the State or county, shall be listed and assessed in the county of the residence of the owner thereof, or in the county where the principal office of such owner is situated. [Acts 1897, p. 203; G. L. vol. 10, p. 1257.]

Art. 7154. [7511] [5069] Rendered in but one county.—Lands lying on county boundaries, which have not been accurately and legally surveyed, determined or fixed, shall not be assessed or taxed in more than one county. [Acts 1879, p. 153; G. L. vol. 8, p. 1453.]

Art. 7155. [7512] [5070] Livestock.—All persons, companies and corporations owning pastures in this State which lie on county boundaries shall be required to list for assessment, all livestock of every kind owned by them in said pastures in the several counties in which such pastures are situated, listing in each county such portion of said stock as the land in such county is of the whole pasture. All persons, companies and corporations owning any kind of livestock in pasture not their own shall list said livestock in the several counties in which such pastures are situated in the same manner; and in both cases the tax upon such livestock shall be paid to the tax collector of the several counties in which such livestock is listed and assessed. [Acts 1889, p. 29; G. L. vol. 9, p. 1057.]

Art. 7155a. Local option elections in certain counties respecting annual tax for Domestic Livestock Protective Fund.

Additional assistance to law enforcement officers

Section 1. In all counties in this State having ten thousand (10,000) or more cattle, sheep, and goats rendered for taxation, the qualified voters of such county may, as hereinafter provided, employ additional assistance to the law enforcement officers of such county as hereinafter provided.

Upon the petition of ten (10) per cent of the qualified voters of such county, presented to the Commissioners Court in open Regular Session, requesting such Court to order an election to be held in such county to determine whether or not said Court, when acting as a Board of Equalization in such county, shall levy, and cause to be assessed and collected an annual tax not to exceed one (1) cent per head on all sheep and goats and not to exceed five (5) cents per head on all cattle, within such county; said Court shall order such election to be held within such county, in accordance with the petition therefor; and said Court shall forthwith order such election to be held in the voting places within such county, upon a day not less than ten (10), nor more than twenty (20) days, from the date of said order and the order thus made, shall express the object of such election and shall be held to be prima facie evidence that all the provisions necessary to give it validity have been duly complied with; and provided further that such Court shall appoint such officers to hold such election as is now required to hold general elections. The expenses of such election shall be borne by the county wherein such election is ordered and held. In such election so held, the ballot shall read as follows:

"For the levy, assessment, and collection of an annual tax on cattle, sheep, and goats."

"Against the levy, assessment, and collection of an annual tax on cattle, sheep, and goats."

Returns of such election shall be made by the presiding officer of the precincts of such county where such election is held, to the County Judge of said county, who shall forthwith call the Commissioners Court together for the purpose of canvassing the returns; and if it shall be found by the Commissioners Court, upon a canvass of such returns, that a majority of the qualified voters of the county wherein

such election is held, is in favor of the levy, assessment, and collection of the annual tax on sheep and goats of not more than one (1) cent per head and on cattle not more than five (5) cents per head, then said Court shall forthwith declare the results of said election and give public notice thereof by proclamation of said Court to be issued and posted at three (3) public places of the county in which such election is held; and shall thereafter, at the next succeeding meeting of said Court acting as the Board of Equalization for such county, levy and cause to be assessed and collected by the Assessor and Collector of Taxes for such county, not more than one (1) cent per head on all sheep and goats and not more than five (5) cents per head on all cattle within such county, on the 1st day of January preceding the date of such meeting.

Tax moneys to be deposited in Domestic Livestock Protective Fund

Sec. 2. All moneys assessed and collected by the Assessor and Collector of Taxes for each county of this State as provided for in Section 1 hereof, shall be paid by said Collector unto the County Treasurer of such County, and said Treasurer shall deposit said moneys to a fund to be known as "The Domestic Livestock Protective Fund," and such moneys shall never be expended for any other purpose than is herein provided.

Employment of enforcement officers by Commissioners Court; compensation; duties; reports

Sec. 3. To aid in the enforcement of all the Penal Laws of this State and in ferreting out and detecting any violation thereof, it shall be the duty of the Commissioners Court of such county adopting the provisions hereof, and they are hereby authorized and required to employ for such service, in addition to the officers now provided for by law, as many other competent and discreet persons as, in the judgment of said Court, is deemed necessary for said purposes, and shall fix their compensation; provided however, no such person, or persons, shall be paid in excess of Five Dollars ($5) per day, while in actual service; and provided further that at no time, shall the moneys expended in the payment of such person, or persons, for such services, exceed the amount of money collected therefor. Such Court shall designate the duties to be performed by all such persons and shall require them to make monthly reports in writing to said Court as to the manner in which they have performed such duties. [Acts 1937, 45th Leg., p. 831, ch. 408.]

Art. 7156. [7513] [5071] Taxes not to be paid twice.—Any lands which may have been assessed in any county according to the abstract of land titles, and the taxes paid thereon according to law, shall not be afterwards subject to the payment of taxes for the same period in a different county, although a subsequent survey and determination of the county boundaries may show said lands to be in a different county from that in which they were originally assessed; and any sales of such lands for alleged delinquency shall be illegal and void. [Acts 1879, p. 153; G. L. vol. 8, p. 1453.]

Art. 7157. [7514] [5072] Vessels.—All persons, companies and corporations in this State owning steamboats, sailing vessels, wharf boats and other water craft shall be required to list the same for assessment and taxation in the county in which the same may be enrolled, registered or licensed, or kept when not enrolled, registered or licensed. [Acts 1876, p. 277; G. L. vol. 8, p. 1113.]

Art. 7158. Deposits with State.—All securities of every kind and character, and all moneys, required or permitted by law to be deposited by any person, firm residing in this State, or corporation organized under the laws of Texas, with the State Treasurer, or other State officer or department, shall be taxed in the county in which the person owning same resides, or where such firm has its place of business, or at the domicile of such corporation, and at no other place. [Acts 4th C. S. 1918, p. 69.]

Art. 7159. [7515] [5073] Railroads, telegraphs, etc.—All railroad, telegraph, plank road and turnpike companies shall list all of their real and personal property, giving the number of miles of roadbed and line in the county where such roadbed and line is situated at the full and true value, except when such company may own personal property or real estate in an unorganized county or district, then they shall list such property to the Comptroller. [Acts 1876, p. 277; G. L. vol. 8, p. 1113.]

Art. 7160. [7516] [5074] Listing for others.—Persons required to list property on behalf of others shall list it in the same manner in which they are required to list their own, but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs. [Id.]

Art. 7161. [7517] [5075] Sworn list.—Each person required by law to list property shall make and sign a statement, verified by his oath, as required by law, of all property, both real and personal, in his possession, or under his control, and which he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. [Id.]

Art. 7162. [7518] [5076] Requisites.—Such statement shall truly and distinctly set forth:

1. The name of the owner, and a description sufficient for the identification of any real estate belonging to such owner.
2. The number of acres.
3. The value of the land.
4. The number of the lot or lots.
5. The number of the block.
6. The value of town lots.
7. The name of the city or town.
8. The number of miles of railroad in the county.
9. The value of railroads and appurtenances.
10. Number of miles of telegraph in the county.
11. Value of telegraph and appurtenances in the county.
12. Number and amount of land certificates and value thereof.
13. Number of horses and mules and the value thereof.
14. Number of cattle and the value thereof.
15. Number of jacks and jennets and value thereof.
16. Number of sheep and value thereof.
17. Number of goats and value thereof.
18. Number of hogs and dogs and value thereof.
19. Number of carriages, buggies, wagons, automobiles, bicycles, motorcycles, or other vehicles of whatsoever kind and the value of each one thereof.
20. Number of sewing machines and knitting machines and value thereof.
21. Number of clocks and watches and value thereof.
22. Number of organs, melodeons, piano fortes, and all other musical instruments of whatsoever kind and value thereof.
23. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
24. Office furniture and the value thereof.
25. The value of gold and silver plate.
26. The value of diamonds and jewelry.
27. Every annuity or royalty, the description and value thereof.
28. Number of steamboats, sailing vessels, wharf boats, barges or other water craft, and the value thereof.
29. The value of goods, wares and merchandise of every description which such person is required to list

as a merchant (in hand on the first day of January of each year.)

30. Value of materials and manufactured articles which such person is required to list as a manufacturer.

31. Value of manufacturers' tools, implements and machinery other than boilers and engines, which shall be listed as such.

32. Number of steam engines, including boilers, and the value thereof.

33. Amount of moneys of bank, banker, broker or stock jobber.

34. Amount of credits of bank, banker, broker or stock jobber.

35. Money on hand or on deposit, in or out of the State, with banks, trust companies, corporations, firms or individuals, and subject to order, check or draft, including certificates of deposit.

36. Amount of credits other than of bank, banker, broker or stock jobber.

37. Amount and value of bonds and stocks other than United States Bonds.

38. Amount and value of shares of capital stock companies and associations not incorporated by the laws of this State.

39. Value of all property of companies and corporations other than property hereinbefore enumerated.

40. Value of stock and furniture of hotels and eating houses.

41. Value of every billiard, pigeon hole, bagatelle or other similar tables, together with the number thereof.

42. Every franchise, the description and value thereof.

43. Value of all other property not enumerated above. [Acts 1876, p. 278; Acts 1905, p. 357; G. L. vol. 8, p. 1114.]

Art. 7163. [7519] [5077] Certain credits and stocks not to be listed.—No person shall be required to list or render a greater portion of his credits than he believes will be received or can be collected, or to include in his statement as a part of his personal property which is required to be listed any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation. [Id.]

Art. 7164. [7520] [5078] Rendition of real estate.—Persons listing or rendering real estate shall make a statement, duly signed and under oath, which shall truly and distinctly set forth:

1. The name of the owner, abstract number, number of survey, the number of the certificate, the name of the original grantee, the number of acres, and the true and full value thereof.

2. The number of the lot and block and the true and full value thereof, together with the name of the town or city.

3. When the name of the original grantee, or abstract number, or number of certificate, or number of survey is unknown, say "unknown," and give such description so that land or lot can be identified and the true and full value thereof can be determined. [Id.]

Art. 7164a. Address of owner required to be given on rendering real or other property for taxation.—Hereafter in all counties in the State of Texas containing a population of not less than ten thousand, nine hundred and seventy (10,970), nor more than ten thousand, nine hundred and ninety (10,990), according to the last preceding Federal Census, anyone owning real estate or other taxable property situated in said county on rendering the same for taxation to the County Tax Assessor and Collector for assessment for State and County ad valorem taxes shall render the same in the name of the owner thereof giving his correct post-office address at the time of such rendition, and if any representative or agent on and in behalf of said owner or owners shall render the same for taxation, said agent or representative shall likewise render the same in the name of the true owner of the said property giving the owner's or owners' correct post-office address at the time of said rendition. [Acts 1937, 45th Leg., p. 792, ch. 387, § 1.]

Section 2 of this Act is Penal Code, art. 141f.

Art. 7165. [7521] [5079] Assessment of personal property of bank, etc.—Every bank, whether of issue or deposit, banker, broker, dealer in exchange, or stock jobber, shall at the time fixed by this chapter for listing personal property, make out and furnish the assessor of taxes a sworn statement showing:

1. If a national bank, the president or some other officer of such bank shall furnish to the assessor of the county in which such bank is located a list of the names of all the shareholders of the stock, together with the number and amount of the shares of each stockholder of stock in said bank; and the shareholders of the stock in national banks shall render to the tax assessor of the county in which said bank is located the number of their shares and the true and full value thereof. All shares of stocks in national banks not rendered to the assessor of taxes in the county where such bank is located within the time prescribed by law for listing property for taxes shall be assessed by the assessor against the owner or owners thereof as unrendered property is assessed; but the tax roll shall show the name of the owner or owners thereof as per statement furnished by the president or other officers of said bank.

2. National banks shall render all other bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stock or stocks of other companies or corporations held as an investment or in any way representing assets, together with all other personal property belonging or pertaining to said bank, except such personal property as is specially exempted from taxation by the laws of the United States.

3. National banks shall be required to render all of their real estate as other real estate is rendered; and all the personal property of said national banks herein taxed shall be valued as other personal property is valued.

4. All other banks, bankers, brokers, or dealers in exchange, or stock jobbers shall render their list in the following manner:

(1) The amount of money on hand or in transit or in the hands of other banks, bankers, brokers or others subject to draft, whether the same be in or out of the State.

(2) The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

(3) From the aggregate amount of the items named in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

(4) The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

(5) All other property belonging or appertaining to said bank or business, including both personal property and real estate, shall be listed as other personal property and real estate. [Acts 1895, p. 37; G. L. vol. 10, p. 767.]

Art. 7166. [7522] [5080] Assessment of real estate by banks.—Every banking corporation, State or national, doing business in this State shall, in the city or town in which it is located, render its real estate to the tax assessor at the time and in the manner required of individuals. At the time of making such rendition the president or some other officer of said bank shall file with said assessor a sworn statement showing the number and amount of the shares of said bank, the name and residence of each sharehold-

er, and the number and amount of shares owned by him. Every shareholder of said bank shall, in the city or town where said bank is located, render at their actual value to the tax assessor all shares owned by him in such bank; and in case of his failure so to do, the assessor shall assess such unrendered shares as other unrendered property. Each share in such bank shall be taxed only for the difference between its actual cash value and the proportionate amount per share at which its real estate is assessed. The taxes due upon the shares of banking corporations shall be a lien thereon, and no banking corporation shall pay any dividend to any shareholder who is in default in the payment of taxes due on his shares; nor shall any banking corporation permit the transfer upon its books of any share, the owner of which is in default in the payment of his taxes upon the same. Nothing herein shall be so construed as to tax national or State banks, or the shareholders thereof, at a greater rate than is assessed against other moneyed capital in the hands of individuals. [Acts 1885, p. 106; G. L. vol. 9, p. 726.]

Art. 7167. [7523] [5081] Deductions.—No person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation of any kind given to any mutual insurance company. nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor or[1] account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated. [Acts 1876, p. 280; G. L. vol. 8, p. 1116.]

[1] So in enrolled bill. Should probably read "on".

Art. 7168. [7524] [5082] Assessment by railroads.—Every railroad corporation in this State shall deliver a sworn statement, on or before the thirtieth day of April of each year, to the assessor of each county and incorporated city or town, into or through which any part of their road may run or in which they own or are in possession of real estate, a classified list of all real estate owned by or in possession of said company in said county, town or city, specifying:

1. The whole number of acres of land, lot or lots, exclusive of their right of way and depot grounds, owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of the railroad and the value thereof per mile, which valuation shall include right of way, roadbed, superstructure, depots and grounds upon which said depots are situated, and all shops and fixtures of every kind used in operating said road.

3. All personal property of whatsoever kind or character, except the rolling stock belonging to the company or in their possession in each respective county, listing and describing the said personal property in the same manner as is now required of citizens of this State. [Acts 1909, p. 373.]

Art. 7169. [7525] [5083] Railroads to return sworn statements.—Every railroad corporation in this State shall deliver a sworn statement on or before the first day of April of each year, to the assessor of the county in which its principal office is situated, setting forth the true and full value of the rolling stock of said railroad, together with the names of all the counties through which it runs, and the number of miles of roadbed in each of said counties; and said statement shall be submitted to the board of equalization of the county in which its principal office is situated for review, on the first Monday in June in each year, or as soon thereafter as practicable; and such board shall certify such final valuation when made without delay to the Comptroller, who shall proceed at once to apportion the amount of such valuation among the said counties in proportion to the distance such roads shall run through any such county, and shall certify such apportionment to the assessors of such counties, and the same shall constitute part of the tax assets of such counties; and the assessor of each of said counties shall list and enter the same upon the rolls for taxation as other personal property situated in said county. And said railroad corporation shall also report in a separate sworn statement all rolling stock operated by it, under rental, hire, lease or other form of contract, which it does not render for taxation, giving the true and full value of such rolling stock and the amount paid or promised to be paid for rental, hire, lease or use under other form of contract, together with the name of person, firm, corporation or association owning such rolling stock, and together with the post-office address of such person or firm, or if it be a corporation or association, then the city, county and State of its principal office; and if from said statement it appears that said rolling stock belongs to any person residing in this State, or to any firm doing business in this State, or to any corporation or association organized under the laws of this State, then said statement shall be certified by the tax assessor to whom it is made to the tax assessor of the county in which such person lives, or such firm does business, or such corporation or association has its principal office; and said statement shall be, by the tax assessor to whom it is certified, submitted to the board of equalization of the county for review, and the same shall be equalized by the board of equalization of such county, and certified to the Comptroller, and apportioned by the Comptroller in the same manner as other rolling stock is certified and apportioned under the preceding provisions of this article; and, if it appears from said statement that the person, firm, corporation or association owning such rolling stock is a non-resident of this State, then said statement shall be submitted to the board of equalization of the county in which the principal office of the railroad company using the same under rental, hire, lease or other form of contract is situated, which statement shall be reviewed by said board of equalization, and said property assessed against the owner, and certified to the Comptroller, and the valuation apportioned against said owner by the Comptroller, in the same manner as rolling stock belonging to the railroad corporation furnishing the list. [Acts 1885, p. 30; Acts 1907, p. 192; G. L. vol. 9, p. 650.]

Art. 7169a. Tax on petroleum tank cars.—All petroleum tank cars used in this State shall be liable for taxation in the county where such tank cars are maintained, assembled and /or used for storing or shipping petroleum products, or where the owner or lessee of such tank cars maintains an office or loading rack; Provided, that where any railroad company owns tank cars the same shall be subject to taxation in the same manner as other rolling stock owned by such railroad company; such tank cars shall be liable for taxation in the same manner as is now provided by law for the taxation of personal property, and to secure the tax due on any such property the State shall have a first lien on such tank cars liable for any taxes due and unpaid. [Acts 1930, 41st Leg., 5th C.S., p. 181, ch. 41, § 1.]

Art. 7170. [7526] [5084] Corporate property.—All property of private corporations, except in cases where some other provision is made by law, shall be assessed in the name of the corporation; and in collecting the taxes on the same all the personal property of such corporation shall be liable to be seized whenever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes. All statements and lists made by corporations that are required to be sworn to shall be verified by the affidavit and signature of the secretary of said corporation, and, if they have no secretary, the officer who discharges the duties of secretary of said corporation. [Acts 1876, p. 280; G. L. vol. 8, p. 1116.]

Art. 7171. [7527] [5085] Assessments in owner's name.—All real property subject to taxation shall be assessed to the owners thereof in the manner

herein provided; but no assessment of real property shall be considered illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof. [Id.]

Art. 7172. [7528] [5086] Lien for taxes.—All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years, the lien shall be good for every year that he should fail to assess for; and he may, in listing property for taxes any year thereafter, assess all the back taxes due thereon, according to the provisions of this title. [Id.]

Art. 7173. [7529] [5087] Leasehold interests in public lands.—Property held under a lease for a term of three years or more, or held under a contract for the purchase thereof, belonging to this State, or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all the purposes of taxation, as the property of the person so holding the same, except as otherwise specially provided by law. Timber held by persons or corporations, heretofore or hereafter purchased from the State under the various laws for that purpose, shall likewise be subject to assessment for taxes, and the value thereof for taxation shall be ascertained as the value of other property is ascertained. And should the owner of such timber fail or refuse to pay the taxes assessed against it, the same shall be sold for the taxes thereon, as provided in this title for the sale of personal property for taxes, provided that the same can be found by the collector; but, if the timber can not be found, then the collector shall collect the taxes due as the taxes on other personal property are collected; provided, further, that the Land Commissioner shall furnish by the first of January each year to the various commissioners courts and the tax assessors of this State a full and complete list of all timber sold by the State belonging to the school funds, giving the number of acres, price and to whom sold, in the respective counties where the timber so sold is situated. In case of the sale of such timber for taxes as herein provided, the purchaser shall take and hold the same under the same terms and conditions as the original purchaser thereof from the State. [Acts 1905, p. 72.]

Art. 7173a. Mineral rights in public school lands sold subject to tax while under lease by owner.—Sec. 1. Where public school lands sold with a mineral reservation have been heretofore leased by the surface owner as agent of the State and production has been secured thereon, the one-sixteenth of the oil and gas therein, which he receives from the lessee or purchaser of the mineral estate as compensation for damages to the soil, and all reserved royalty interest of the owner arising under leases hereafter executed, when production is secured, is and shall be subject to taxation as real property, so long as the lease is in full force and effect, and the same shall be listed or rendered, and assessed, and the taxes paid by the owner thereof in the county where the lands are situated in accordance with the provisions of law applicable to assessments, and collection of taxes on real estate.

Sec. 2. In the event the assessor has failed to assess the one-sixteenth of the oil and gas in said lands or the reserved royalty interest mentioned for any one or more years, and the same remains unrendered and the taxes have not been paid, he shall list the property and assess it for taxes, for the years unrendered, any year thereafter in making his annual assessments, and the assessment shall be deemed as valid as the one for that year, and the owner shall pay the taxes for those years when paying the taxes for the year in which the back assessments were made. [Acts 1931, 42nd Leg., p. 176, ch. 103.]

Art. 7174. [7530] [5088] Valuation of property for taxation.—Each separate parcel of real property shall be valued at its true and full value in money, excluding the value of crops growing or ungathered thereon.

In determining the true and full value of real and personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or a forced sale or in the aggregate with all the property in his county; but he shall value each tract or lot by itself, and at such sum and price as he believes the same to be fairly worth in money at the time such assessment is made.

In valuing any real property on which there is a coal or other mine or stone or other quarry, or springs possessing medicinal properties, the same shall be valued at such price as such property, including a mine, or quarry or spring, would probably sell at a fair voluntary sale for cash.

Taxable leasehold estates shall be valued at such a price as they would bring at a fair voluntary sale for cash.

Personal property of every description shall be valued at its true and full value in money.

Money, whether in possession or on deposit, or in the hands of any member of the family, or any other person whatsoever, shall be entered in the statement at the full amount thereof.

Every credit for a sum certain, payable either in money or property of any kind, shall be valued at the full value of the same so payable. If for a specified article or for a specified number or quantity of property of any kind, it shall be valued at the current price of such property at the place where payable. Annuities or moneys payable at stated periods shall be valued at the price that the person listing the same believes them to be worth in money. [Acts 1905, p. 72.]

Art. 7175. [7531] Currency and coin.—Circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, and gold, silver and other coin, shall be hereafter subject to taxation as money on hand or on deposit, under the laws of this State. [Acts 1895, p. 49; G. L. vol. 10, p. 49.]

Art. 7176. [7532] Assessed as money on hand.—The assessor of taxes shall assess the same in the same manner as money on hand or on deposit or other personal property, as provided for in the general assessment laws of this State. [Id.]

CHAPTER 7.—ASSESSMENT AND ASSESSORS

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Articles 7177–7180. [Repealed by Acts 1933, 43rd Leg., p. 598, ch. 197, § 6.]

Art. 7181. [Repealed by Acts 1935, 44th Leg., p. 648, ch. 262, § 2.]

Art. 7181a. Construction of "assessor" and "collector."—Hereafter, whenever the words "Assessor," "Assessor of Taxes," "Collector," "Collector of Taxes," or "Tax Collector" are used, either in Articles 7181 to 7359, inclusive, of Title 122 of the 1925 Revised Civil Statutes of Texas, including all amendments thereto, as well as the Revised Code of 1925, including all amendments being known as the 1925 Revised Civil Statutes of Texas, same shall be applicable to and mean the one office or officer of Assessor and Collector of Taxes, and shall be so construed as to accomplish the object and intent and carry out the purpose of Sections 14 and 16 of Article 8, of the Texas Constitution, as the same was amended on November 8, 1932. [Acts 1933, 43rd Leg., p. 598, ch. 197, § 5.]

Art. 7182. [Repealed by Acts 1935, 44th Leg., p. 648, ch. 262, § 2.]

Art. 7183. [7541–7567] May administer oaths.—Assessors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full, complete and correct assessment of all taxable property situated in their respective counties. [Acts 1876, p. 265; G.L. vol. 8, p. 1101; Acts 1895, p. 103; G.L. vol. 10, p. 33.]

Art. 7184. [7542] [5098] The oath.—The assessor of taxes shall also require each person rendering a list of taxable property to him for taxation, under the assessment laws, to subscribe to the following oath or affirmation, which shall be written or printed at the bottom of each inventory, to-wit: "I, ——— (filling the blank with the name of the person subscribing) do solemnly swear or affirm that the above inventory rendered by me contains a full, true and complete list of all taxable property owned or held by me in my own name (or for others, as the case may be, naming the person or firm for whom he rendered the list) in this county, subject to taxation in this county and personal property not in this county subject to taxation in this county by the laws of this State, on the first day of January, A. D. 19—— (filling the blank with the year), and that I have true answers made to all questions propounded to me touching the same. So help me God." [Id. Acts 1897, p. 204.]

This article appears as amended by Acts 1925, 39th Leg., p. 48, ch. 20, § 1 and Acts 1925, 39th Leg., p. 381, ch. 167, § 1, and as incorporated in R.S.1925.

Art. 7185. [7543] [5099] Where oath may be made.—The owner or agent who is required under the laws of this State to render any property for taxation may render the same in the county where the same is situated by listing the same and making oath thereto, as required in this title, before any officer authorized to administer oaths in this State, or any officer out of this State that is authorized by law to take acknowledgments of instruments for record in this State, and may forward the same to the assessor of the county by mail or otherwise, and the assessor shall enter the said property on his tax rolls. If the assessor is satisfied with the valuation as rendered in said list, he shall so enter the same; if he is not satisfied with the valuation, he shall refer the same to the board of equalization of the county for their action, and shall immediately notify the person from whom he received said list that he has referred said valuation to the board of equalization. [Acts 1876, p. 267; G. L., vol. 8, p. 1102.]

Art. 7186. [7544] [5100] Failure to administer or attest oath, etc.—The assessor of taxes, for every failure or neglect to administer the oath or affirmation prescribed in the second preceding article to each person rendering a list of taxable property to him, unless the person refuses to qualify, shall forfeit fifty dollars, to be deducted out of his commissions upon satisfactory information furnished the county judge; and for each failure or neglect to attest the oath subscribed to as provided in said article, shall forfeit the sum of fifty dollars upon satisfactory information furnished the county judge. The forfeitures imposed by this article shall be deducted from the assessor's commissions on the assessment for county taxes. [Id.]

Art. 7187. [7545] [5101] Fraud upon public revenue.—Any evasions by means of artifice or temporary or fictitious sale, exchange or pretended transfer upon any bank books, of gold and silver coin, bank notes or other notes or bonds subject to taxation under the laws of this State for United States nontaxable treasury notes or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this State. [Acts 1891, p. 39; G. L., vol. 10, p. 41.]

Art. 7188. [7546] [5102] Taxpayer to make oath.—Each assessor of taxes shall require all taxpayers when assessed by them to make oath as to any such sale, exchange or transfer made by them on

the first day of January or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them; and, if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation, then and in that event the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this State. [Id.]

Art. 7189. [7547] [5103] When assessments made.—Assessors of taxes shall, between the first day of January and the thirtieth day of April of each year, proceed to take a list of taxable property, real and personal, in his county and assess the value thereof in the manner following, to-wit: By calling upon the person, or by calling at the office, place of business or the residence of the person, and listing the property required by law in his name, and requiring such person to make a statement under said oath of such property in the form hereinafter prescribed. [Acts 1876, p. 265; Acts 1909, p. 373; G. L., vol. 8, p. 1103.]

Art. 7190. [7548] [5104] Irregular assessments valid.—Should any property be listed or assessed for taxation after April 30th of any year, or should the assessor of taxes of his deputy fail to administer the requisite oath or attest the same in the mode prescribed by law, or should the party rendering property for taxation fail to subscribe to the list, yet the assessments shall, nevertheless, be as valid and binding to all intents and purposes as if made in strict pursuance of law. [Id.]

Art. 7191. [7549] [5105] If taxpayer is absent.—If any person who is required by this title to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office or usual place of residence or business of such person, a written or printed notice requiring such person to meet him and render a list of his property at such time and place as the assessor of taxes may designate in said notice. The tax assessor shall carefully note in a book the date of leaving such notice. [Id.]

Art. 7192. [7550] [5106] Or refuses to list.—In every case where any person whose duty it is to list any property for taxation has refused or neglected to list the same when called on for that purpose by the assessor of taxes, or has refused to subscribe to the oath in regard to the truth of his statement of property, or any part thereof, when required by the tax assessor, the assessor shall note in a book the name of such person who refused to list or to swear; and in every case where any person required to list property for taxation has been absent or unable from sickness to list the same, the tax assessor shall note in a book such fact, together with the name of such person. [Id.]

Art. 7193. [7551] [5107] Duty in such cases.—In all cases of failure to obtain a statement of real and personal property from any cause, the assessor of taxes shall ascertain the amount and value of such property and assess the same as he believes to be the true and full value thereof; and such assessment shall be as valid and binding as if such property had been rendered by the proper owner thereof. [Id.]

Art. 7194. [7552] [5108] Land office to furnish abstracts.—The Land Commissioner shall furnish to each assessor of taxes a correct abstract of all the surveys of land and number of acres therein in their respective counties; and on the first day of January of each year said commissioner shall furnish said assessors an additional list of all new valid surveys in his county during the year. If the records of the land office do not show the number of acres in a survey, the county surveyor shall furnish said assessor a certified statement of the number of acres therein. [Acts 1879, p. 24; G. L., vol. 8, p. 1324.]

Art. 7195. [7553] [5109] Books furnished assessors.—Each commissioners court shall procure and furnish the assessor three well bound books of not less than six hundred and forty pages each, and an index book for same, and such other stationery as may be necessary; said books to be of the best material and make, and shall have printed headings as per following form: [Id.]

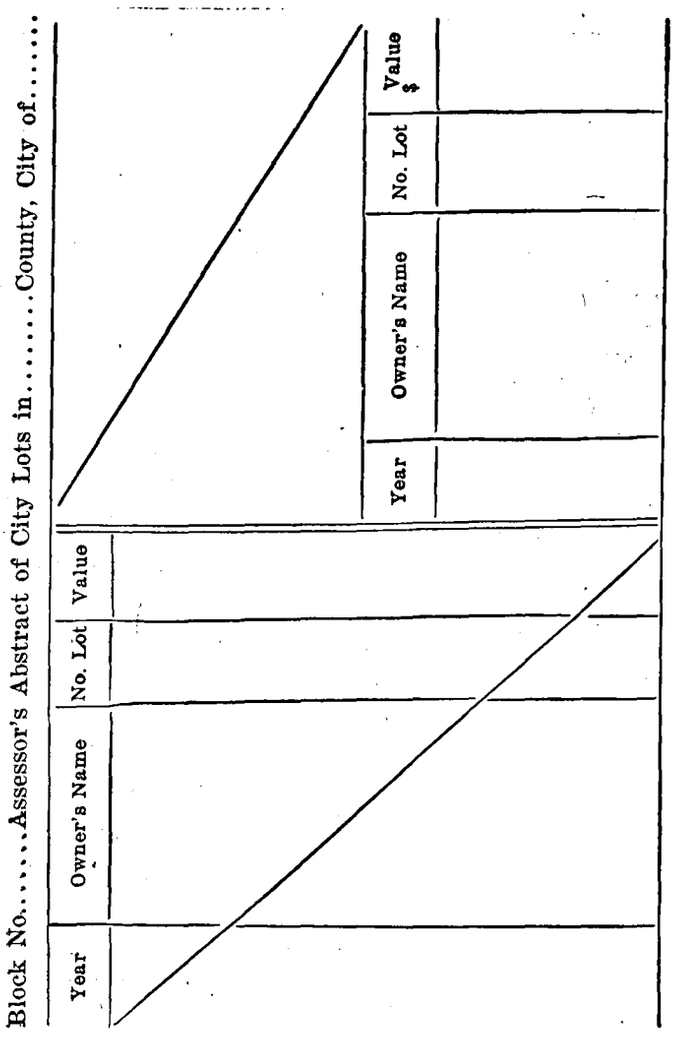
Abstract No.....Assessor's Abstract for.....Co.....

PATENT							CERTIFICATE				RENDERED FOR TAXATION					
No.	Vol.	To Whom Issued	Date			Acres	No.	Class	Character	To Whom Issued	Year	By Whom Rendered	Acres	Value	By Whom Rendered	Value
			Month	Day	Year											

Art. 7196. [7554] [5110] How filled by assessor.—The blanks to be filled by the assessor with the abstract number, name of party to whom the certificate was issued, the number, class and character of the certificate, the name of the party to whom the patent issued, number of volume of patent, the month, day and year it was issued, and the number of acres each survey contains; which whole survey shall stand as a debit against the assessor. [Id.]

Art. 7197. [7555] [5111] Blocks and lots in cities.—Each assessor shall be required to make an abstract of all the blocks or subdivisions of each of the cities or towns or villages of his county, in a book or books of at least four hundred and eighty pages each, to be furnished him by the commissioners court of his county for that purpose, with an index book to the same, which said book or books shall have a blank space for a diagram or plot of each block or subdivi-

sion, giving the number of the lots as per form following:



And the said assessor shall draw a plot of each block in the blank space left for that purpose, giving the number of each lot. And the whole of said block or subdivision shall be a debit against the assessor. [Id.]

Art. 7198. [7556] [5112] Assessing.—Each assessor, when he shall have made the assessment of his county for each year, shall, on the first day of June of each year, or as soon thereafter as practicable, carry from each person's assessment the number of acres and its value on each survey of lands, lots or blocks to that particular survey, lot or block found on the abstract books provided in Articles 7196, 7197 and 7205; and all the parts of each survey or block placed on said abstract books shall be a credit to the assessor on that particular survey. Said assessor shall deduct the total number of acres rendered on each survey or block from the total number of acres of the whole survey or block as is shown by said abstract; and, if any part is left unrendered, then he shall assess the same to the owner or owners thereof, if known, and, if unknown, then to "unknown owners," and the value thereof shall be affixed by him, sanctioned by the board of equalization; provided, that the owner or owners of any survey and grant of land may show that the survey and grant in which they are interested does not contain the full complement of acres, showing how many acres are in fact embraced within the calls of the particular survey and grant. [Id.]

Art. 7199. [7557] [5113] To be kept in office.—The assessor's abstracts shall be kept in his office at the county seat of his county, as records of his office, and shall be at all times subject to the inspection of the public. The index book shall show the original grantee, the number of acres, the abstract number, and the volume and page in which each survey is placed. [Id.]

Art. 7200. [7558] [5114] Lands not on abstract.—Should there be any survey of lands, lots or blocks not on the abstract book or books which are by law subject to taxation, the assessor shall enter such lands, lots or blocks on the assessment list as though the same appeared on said abstract books. [Id.]

Art. 7201. [7559] [5115] Certificate from board.—Each assessor of taxes shall procure from the board of equalization of his county a certificate that all the surveys and parts of surveys of lands in his county, and all the lots and blocks of the cities and towns of his county, are rendered for taxation; which certificate shall be forwarded to the Comptroller before he shall issue to said assessor a draft on the tax collector of his county. The same rule shall apply to the commissioners court before they issue drafts on the county treasurer for his pay for assessing the county taxes. [Id.]

Art. 7202. [7560] [5116] Substitute employed.—The board of equalization or the commissioners court shall, if the assessor fails to perform the duties required by this chapter within a reasonable time, employ some other competent person to have the requirements of this law carried out, and the compensation therefor shall be deducted from the assessor's pay for that year. [Id.]

Art. 7203. [7561] [5117] Unorganized counties.—The Comptroller shall be required to have this law carried out in the unorganized counties of this State, where lands are located. [Id.]

Art. 7204. [7562] [5118] Manner and form of assessing.—The manner and form for assessing property for taxation shall be substantially as follows, to-wit:

1. The name of the owner.
2. Abstract number.
3. From whom and how acquired.
4. The name of the original grantee.
5. The number of acres.
6. The value of the land.
7. The number of the lot or lots.
8. The number of the block.
9. The value of town lots.
10. The name of the city or town.
11. Number of miles of railroad in the county.
12. The value of railroads and appurtenances, including the proportionate amount of rolling stock to the county after the assessment of such rolling stock and its apportionment among the several counties by the Comptroller as hereinafter provided.
13. Number of miles of telegraph in the county.
14. Value of telegraph and appurtenances in the county.
15. Number of horses and mules and value thereof.
16. Number of cattle and value thereof.
17. Number of jacks and jennets, and value thereof.
18. Number of sheep and value thereof.
19. Number of goats and value thereof.
20. Number of hogs and value thereof.
21. Number of carriages, bicycles or tricycles, buggies or wagons of whatsoever kind and value thereof.
22. Number of sewing machines and knitting machines and the value thereof.
23. Number of clocks and watches and the value thereof.
24. Number of organs, melodeons, pianos, and all other musical instruments of whatsoever kind and value thereof.
25. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.

26. Office furniture and the value thereof.
27. The value of gold and silver plate.
28. The value of diamonds and jewelry.
29. Every annuity or royalty, the description and value thereof.
30. Number of steamboats, sailing vessels, wharves, boats, barges, or other water craft, and the value thereof.
31. The value of goods and merchandise of every description which such person is required to list as a merchant in hand on the first day of January of each year.
32. The value of material and manufactured articles which such person is required to list as a manufacturer.
33. The value of manufactures, tools, implements and machinery other than boilers and engines, which shall be listed as such.
34. Number of steam engines and boilers and value thereof.
35. The amount of moneys of bank, banker, broker, stock jobber or any other person.
36. The amount of solvent credits of bank, banker, broker, stock jobber or any other person.
37. The amount and value of bonds and stocks other than United States bonds.
38. The amount and value of shares of capital stock companies and associations not incorporated by the laws of this State.
39. The value of property of companies and corporations other than property hereinbefore enumerated.
40. The value of stock and furniture of hotels and eating houses.
41. Every franchise, the description and value thereof.
42. The value of all other property not enumerated as above. [Acts 1876, p. 268; Acts 1895, p. 38; G. L. vol. 8, p. 1104.]

Art. 7205. [7563] [5119] Assessment of property not rendered.—If the assessor of taxes discovers any real property in his county subject to taxation which has not been listed to him, he shall list and assess such property in the manner following, to-wit:
1. The name of the owner; if unknown, say "unknown."
2. Abstract number and number of certificate.
3. Number of the survey.
4. Name of the original grantee.
5. Number of acres.
6. The true and full value thereof.
7. The number of lot or lots.
8. The number of the block.
9. The true and full value thereof.
10. The name of the city or town, and give such other description of the lot or lots or parcels of land as may be necessary to better describe the same; and such assessment shall be as valid as if rendered by the owner thereof. [Acts 1876, p. 269; G. L. vol. 8, p. 1105.]

Art. 7206. [7564] [5120] Boards of equalization.—Each commissioners court shall convene and sit as a board of equalization on the second Monday in May of each year, or as soon thereafter as practicable before the first day of June, to receive all the assessment lists or books of the assessors of their counties for inspection, correction or equalization and approval.
1. They shall cause the assessor to bring before them at such meeting all said assessment lists, books, etc., for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same.
2. They shall have power to correct errors in assessments.
3. They shall equalize improved lands in three classes, first-class to embrace the better quality of land and improvements, the second-class to embrace the second quality of lands and improvements, and the third-class to embrace lands of but small value or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible.
4. After they have inspected and equalized as nearly as possible, they shall approve said lists or books and return same to the assessors for making up the general rolls, when said board shall meet again and approve the same if same be found correct.
5. Whenever said board shall find it their duty to raise the assessment of any person's property, they shall order the county clerk to give the person who rendered the same written notice that they desire to raise the value of same. They shall cause the county clerk to give ten days written notice before their meeting by publication in some newspaper, but, if none is published in the county, then by posting a written or printed notice in each justice's precinct, one of which must be at the court house door.
6. The assessors of taxes shall furnish said board on the first Monday in May of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refuse to swear or to qualify or to have signed the oath required by law, together with the assessment of said person's property made by him through other information; and said board shall examine, equalize and correct assessments so made by the assessor, and when so revised, equalized and corrected, the same shall be approved. [Acts 1879, p. 44; Acts 1909, p. 373; G. L. vol. 8, p. 1344.]

Art. 7207. [7565] Assessment of real property for previous years.—If the assessor of taxes shall discover in his county any real property which has not been assessed or rendered for taxation for any year since 1870, he shall list and assess the same for each year for which it has not been assessed, in the manner prescribed in the preceding article; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof; but no such real property shall be assessed by the assessor unless he has ascertained by the certificate of the Comptroller the fact that the records of his office do not show that the property has been rendered or assessed for the year in which he assesses it. [Acts 1888, p. 4; G. L. vol. 9, p. 1002.]

Art. 7208. [7566] [5121] Back taxes on personal property.—If the assessor of taxes shall discover in his county any property, or outside of his county but belonging to a resident of the county, any personal property which has not been assessed or rendered for taxation every year for two years past, he shall list and assess the same for each year thus omitted which it has belonged to said resident, in the manner prescribed for assessing other property; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof. [Acts 1887, p. 127; G. L. vol. 9, p. 925.]

Art. 7209. [7567] Supplemental roll.—Collectors of taxes of counties, cities and towns, when any taxpayer applies to them to ascertain the amount of his taxes, and the collector finds that his name or his property does not appear on the tax roll, shall assess said taxpayer then and there, collect the taxes and enter the same upon a supplemental tax roll to be made by him. He shall make out, on forms to be furnished by the Comptroller, three copies of such supplemental roll, one copy to be delivered to the Comptroller, one to be delivered to the county clerk, and one to be filed in the collector's office. Said supplemental tax roll shall be made out and delivered to the commissioners court with all other papers pertaining to the final settlement of said tax collector, and the same shall be examined and approved by the

commissioners court, in like manner as upon the tax roll of the tax assessor. The oath shall be the same as is administered by tax assessors under existing law. The tax collector shall receive the following compensation for his services on all assessments made by him under this Act, to-wit: For assessing the State and county taxes, four cents for each one hundred dollars of property so assessed, and for assessing the poll tax, five cents for each poll; which fee shall be paid in the same way as the tax assessor's fee in Article 3937. [Acts 1895, p. 103; G. L. vol. 10, p. 833.]

Art. 7210. [7568] [5122] Assessor to follow instructions.—Tax assessors in the execution of their duties shall use the forms and follow the instructions which the Comptroller shall from time to time prescribe, and furnished to them by the county judge in pursuance of law. [Acts 1876, p. 265; G. L. vol. 8, p. 1101.]

Art. 7211. [7569] [5123] Equalization of assessments.—Hereafter when any person, firm or corporation renders his, their or its property in this State for taxation to any tax assessor, and makes oath as to the kind, character, quality and quantity of such property, and the said officer accepting said rendition from such person, firm or corporation of such property is satisfied that it is correctly and properly valued according to the reasonable cash market value of such property on the market at the time of its rendition, he shall list the same accordingly; but, if the assessor is satisfied that the value is below the reasonable cash market value of such property, he shall at once place on said rendition opposite each piece of property so rendered an amount equal to the reasonable cash market value of such property at the time of its rendition, and if such property shall be found to have no market value by such officer, then at such sum as said officer shall deem the real or intrinsic value of the property; and if the person listing such property or the owner thereof is not satisfied with the value placed on the property by the assessor, he shall so notify the assessor, and if desiring so to do make oath before the assessor that the valuation so fixed by said officer on said property is excessive; such officer to furnish such rendition, together with his valuation thereon and the oath of such person, firm or officer of any corporation, if any such oath has been made, to the commissioners' court of the county in which said rendition was made, which court shall hear evidence and determine the true value of such property on January First, 19—— (here give year for which assessment is made) as is herein provided; such officer or court shall take into consideration what said property could have been sold for any time within six months next before the first day of January of the year for which the property is rendered. [Acts 1925, pp. 48 and 382.] [39th Leg., ch. 20, § 2, and ch. 167, § 2.]

Art. 7212. [7570] [5124] Boards may equalize.—The Boards of Equalization shall have power, and it is made their official duty, to supervise the assessment of their respective counties, and, if satisfied that the valuation of any property is not in accordance with the laws of the State, to increase or diminish the same and to affix the proper valuation thereto, as provided for in the preceding Article, and when any Assessor in this State shall have furnished said Court with the rendition as provided for in the preceding Article, it shall be the duty of such Court to call before it such persons as in its judgment may know the market value or true value of such property, as the case may be, by proper process, who shall testify under oath the character, quality, and quantity of such property, as well as the value thereof. Said Court, after hearing the evidence, shall fix the value of such property in accordance with the evidence so introduced and as provided for in the preceding Article, and their action in such case or cases shall be final; provided however, that if the Commissioners Court of any county with a population of not less than twenty thousand, six hundred and twenty (20,620), and not more than twenty thousand, six hundred and seventy-five (20,675) who contracts with or employs any individual, firm, or corporation to compile taxation data, the compensation of such individual, firm, or corporation may be paid on a pro rata basis from each county fund receiving any taxes derived from such valuation. [Acts 1876, p. 270; Acts 1941, 47th Leg., p. 726, ch. 453, § 1.]

Art. 7213. [7571] Neglect of duty by assessor.—If any tax assessor in this State shall fail, refuse or neglect to place upon any rendition as provided in Article 7211 of this chapter, the true value or market value in accordance with the method of fixing such value as provided for herein, or shall fail, refuse or neglect to return to the commissioners court such rendition, together with the oath of the owner or person listing such property for taxes when such oath has been made, as provided for in this chapter, or if the assessor accepts the rendition from any person rendering property for taxation without reading to such person the oath and having it signed and sworn to as provided by law, such failure, refusal or neglect shall be deemed malfeasance on the part of such officer, and shall be cause for his removal from office. [Acts 1907, p. 459.]

Art. 7214. [7572] Oath of assessor.—Every tax assessor and deputy tax assessor in this State, in addition to the oath prescribed by the Constitution of this State, shall, before entering upon the duties of his office, take and subscribe to the following oath: "I, ————, tax assessor (or deputy tax assessor, as the case may be) in and for ———— County, Texas, do solemnly swear that I will personally view and inspect all the real estate and improvements thereon subject to taxation, lying in said county, that may be rendered to me for taxation by any corporation or individual, or by their agent or representative, as fully as may be practicable, and that I will, as fully as is practicable, view and inspect all other taxable property in said county rendered to me as aforesaid; that I will to the best of my ability make a true estimate of the cash value, the market value of such property, if such property has a market value, and if it has no market value, then the real value of all such property, both real and personal, on the first day of January next preceding; and that I will make up and attach to each assessment sheet made up and sworn to by the said property owners, their agents or representatives, a true assessment and valuation of said property, together with a memoranda of all facts which I may learn bearing upon the value of said taxable property, and that I will make all possible inquiry relative to the true value of such property; and that I will attach said memoranda and statement of facts that I may ascertain as aforesaid to the said assessment sheets of the respective property owners. That I have read and understand the several provisions of the Constitution and laws of this State relative to the valuation of taxable property, and that I will faithfully do and perform every duty required of me as tax assessor (or deputy tax assessor), by the Constitution and laws of this State. So help me God." This oath shall be administered by the county clerk and shall be in duplicate; the original shall be by the clerk filed and recorded in the records of the county, and the duplicate shall be retained by the assessor, or the deputy, as the case may be. [Id.]

Art. 7215. [7573] Oath of board.—When a commissioners court convenes as a board of equalization, before considering the subject of equalization of property values for the purposes of taxation, each member of the court, including the county judge, shall take and subscribe to the following oath: "I, ————, a member of the board of equalization of

———— County, for the year A. D. ———, hereby solemnly swear that, in the performance of my duties as a member of such board for said year, I will not vote to allow any taxable property to stand assessed on the tax rolls of said county for said year at any sum which I believe to be less than its true market value, or, if it has no market value, then its real value; that I will faithfully endeavor and as a member of said board will move to have each item of taxable property which I believe to be assessed for said year at less than its true market value, or real value, raised on the tax rolls to what I believe to be its true cash market value, if it has a market value, and if not, then to its real value; and that I will faithfully endeavor to have the assessed valuation of all property subject to taxation within said county stand upon the tax rolls of said county for said year at its true cash market value, or, if it has no market value, then its real value. I further solemnly swear that I have read and understand the provisions contained in the Constitution and laws of this State relative to the valuation of taxable property, and that I will faithfully perform all the duties required of me under the Constitution and laws of this State. So help me God." Said oath shall be filed and recorded in the commissioners court record as a part of the proceedings of that term of court. [Id.]

Art. 7216. [7574] Neglect of duty cause for removal.—If, in passing upon the value of any property by a commissioners court sitting as a board of equalization in this State, the court shall fix a value upon any property for the purpose of taxation and a minority of said court do not concur in the judgment of the court, the clerk shall record in the minutes of the court the names of the members, including the county judge, who do not concur in fixing such values (if the county judge shall cast the deciding vote in such matter); and, if any tax assessor or member of any commissioners court shall knowingly fail or refuse to fix the value of property rendered for taxes in compliance with this chapter, and all other laws of this State, such failure, neglect or refusal shall constitute malfeasance in office on the part of such assessor or member or members of said court, and such failure, neglect or refusal shall be cause for his or their removal from office. Whenever the fact is brought to the knowledge of the Attorney General that any tax assessor, deputy tax assessor, county judge, or member of the commissioners court, has failed, refused or neglected to comply with the provisions of this chapter, he shall at once file suit for the removal from office of such officer thus offending. Such proceedings for the removal of such officer or officers herein provided for shall be brought in the district court of the county of such officer's residence; and such suit shall be brought by or under the direction of the Attorney General. [Id.]

Art. 7217. [7575] [5125] To furnish list of delinquents.—The assessor of taxes shall furnish the board of equalization on the first Monday in June of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refused to swear or qualify or to sign the oath as prescribed in this title; also a list of the names of those persons who refused to render a list of taxable property as required by this title. Should any person so failing or refusing to take the oath prescribed, or to render a list of their property, or to subscribe to the oath, as required by the provisions of this title, fail to give satisfactory reasons for such failure or refusal to the board of equalization within one month from the date of the filing of said list by the assessor, as required by this article, the board of equalization shall return a list of all persons who have failed to give satisfactory reasons for such failure or refusal to render, qualify or subscribe to the oath to the assessor of taxes, who shall present the said list to the next grand jury of his county. [Acts 1876, p. 270; G. L. vol. 8, p. 1106.]

Art. 7218. [7576] [5126] To submit lists to board.—The assessor of taxes shall submit all the lists of property rendered to him prior to the first Monday in June to the board of equalization of his county on the first Monday in June or as soon thereafter as practicable, for their inspection, approval, correction or equalization. After said board shall have returned the corrected and approved lists of taxable property, the assessor of taxes shall proceed to assess all the unrendered property of his county as provided for in this title, and shall proceed to make out and prepare his roles [1] or books of all the real and personal property listed to him, in the form and manner prescribed by the Comptroller. [Id.]

[1] So in enrolled bill. Should probably read "rolls".

Art. 7219. [7577] [5127] Shall make out rolls in triplicate.—As soon as the board of equalization shall have examined, corrected and approved the assessor's list, the assessor of taxes shall prepare and make out a roll or book, as may be required by the Comptroller, from the list so corrected and approved, and three exact copies of the same, the original to be furnished to the collector of taxes, the second to the Comptroller, and the third to be filed in the county clerk's office for the inspection of the public. He shall also prepare a roll or book, and two exact copies thereof, to be distributed, the first to the collector of taxes, the second to the Comptroller, the third to be filed in the county clerk's office, of all the real and personal property which has not been listed to him. [Id.]

Lands condemned by United States to be omitted from tax rolls for 1943

Acts 1943, 48th Leg., p. 110, ch. 82, approved and effective March 25, 1943, directed officials charged with the duty of the assessment and collection of taxes in all counties in this State where the United States of America, prior to January 1, 1943, took possession of certain lands in said counties under condemnation proceedings, and acquired the beneficial title thereto, even though final payment was not made for the lands so taken prior to January 1, 1943, to omit said lands from the tax rolls for the year 1943 and not levy, assess, and collect any taxes upon said lands for 1943, since the United States of America had the equitable and beneficial title to said land on January 1, 1943.

Art. 7220. [7578] [5128] Also rolls of unrendered property.—The assessor of taxes shall, after his list of unrendered real and personal property shall have been examined, corrected and approved by the board of equalization as provided by law, prepare and make out his rolls or books of all unrendered real and personal property listed by him in the manner and form prescribed by the Comptroller. [Id.]

Art. 7221. [7579] [5129] And add up columns.—The assessor of taxes shall add up and note the aggregate of each column on his roll or book, and he shall also make in each book or roll, under proper headings, a tabular statement showing the footings of the several columns upon each page, and he shall add up and set down under the respective headings the total of the several columns. [Id.]

Art. 7222. [7580] [5130] Return and oath.—The assessor of taxes shall, on or before the first day of August of each year for which the assessment is made, return his rolls or assessment books of the taxable property rendered to him or listed by him for that year, after they have been made in accordance with the provisions of this title, to the county board of equalization, verified by his affidavit, substantially on the following form:

The State of Texas,

——— County.

I, ———, assessor of ——— county, do solemnly swear that the rolls (or books) to which this is attached contain a correct and full list of the real and personal property subject to taxation in ——— county, so far as I have been able to ascertain the same; that

I have sworn every person listing property to me in the county, or caused the same to be done in manner and form as provided by law, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is the true and correct valuation thereof as ascertained by law, and the footings of the several columns in said books and the tabular statement returned is correct, as I verily believe. [Id. Acts 1897, p. 204; G. L. vol. 10, p. 1258.]

Art. 7223. [7581] [5131] Lists, etc., filed.—The assessor of taxes shall at the same time deliver to the board of equalization all the lists, statements of all property which shall have been made out or received by him, and arranged in alphabetical order, together with the roll withdrawn to aid him in the past assessment. The lists and statements shall be filed in the county clerk's office, and remain there for the inspection of the public. [Acts 1876, p. 271; G. L., vol. 8, p. 1107.]

Art. 7224. [7582] [5132] Rolls, how distributed.—After the board of equalization shall have examined the rolls or assessment books and made all corrections, if any be necessary, the assessor shall send one copy of each to the Comptroller, one copy of each to the collector of his county, and he shall file the other copies in the county clerk's office until the next assessment, when the assessor shall have the right to withdraw them and use as provided in this title. [Id.]

Art. 7225. [7586] [5136] Penalties for neglect of duty.—Should any assessor of taxes fail or neglect to make out and return his rolls or books to the commissioners court in the time and manner provided for in this chapter, it shall be competent for the commissioners court to deduct from his compensation such amount as they may deem proper and right for such neglect or failure; and, should his rolls or books, when presented for approval to the commissioners court, prove to be imperfect or erroneous, the court shall have the same corrected or perfected, either by the assessor or some other person than the assessor of taxes. Such person so employed by the commissioners shall be entitled to such part of the commissions to which such assessor is entitled as the court may allow; and said court shall so certify to the Comptroller, who shall pay such person in the same manner as the assessor of taxes is paid; and the amount so paid shall be deducted by the Comptroller from the commissions of the assessor of taxes, whose duty it was to have performed such work. [Id. Acts 1879, p. 44; G. L. vol. 8, p. 1344.]

Art. 7226. [7587] [5137] Lands of non-residents in unorganized counties, etc.—Lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be assessed by the Comptroller in accordance with such regulations as he may adopt and establish for that purpose. [Const. art. 8, sec. 12.]

Art. 7227. Canceling subdivisions.—Any person, firm, association or corporation owning lands in this State, which lands have been subdivided into lots and blocks or small subdivisions, may make application to the commissioners court of the county wherein any such lands are located, for permission to cancel all or any portion of such subdivision or subdivisions, so as to throw the said lands back into acreage tracts as it existed before such subdivisions were made. When such application is made by the owner or owners of such land, and it is shown that a cancellation of such subdivisions, or portion thereof, will not interfere with the established rights of any purchaser owning any portion of such subdivisions, or if it be shown that said person or persons agreed to such cancellation, said commissioners court shall enter an order, which order canceling said subdivision shall be spread upon the minutes of such court, authorizing such owner or owners of such lands to cancel the same by written instrument describing such subdivisions, or portions thereof, so cancelled as designated by said court. When such cancellation is filed and recorded in the deed records of such county, the tax assessor of such county shall assess such property as though it had never been subdivided. When such application is so filed, said court shall cause notice to be given of such application by publishing such application in some newspaper, published in the English language, in such county for at least three weeks prior to action thereon by said court, and action shall be taken on such petition or petitions at a regular term of said court. Such notice, in addition to said publication, shall command any person interested in such lands to appear at the time specified in such notice to protest if desired against such action. If such lands are delinquent for taxes for any preceding year, or years, and such application is granted as hereinbefore provided, the owner or owners of said land shall be permitted to pay such delinquent taxes upon an acreage basis, the same as if said lands had not been subdivided, and for the purpose of assessing lands for such preceding years the county assessor of taxes shall back assess such lands upon an acreage basis. This law shall not apply to any lands or lots included in an incorporated city or town. [Acts 1919, p. 160.]

Art. 7228. [7588] [5138] Lands in unorganized counties.—All lands and other property situated in the unorganized counties of this State, owned by residents of such unorganized counties, shall be assessed by the assessor of the organized county to which such unorganized county is attached for judicial purposes, and the taxes collected by the collector of such organized county; and the same remedies for the enforcement of the assessment and collection of such taxes shall apply as the law directs for the assessment and collection of the taxes on property situated in organized counties of this State. [Acts 1879, p. 141; G. L. vol. 8, p. 1441.]

Art. 7229. [7589–90] Duties of Comptroller.—The Comptroller is authorized, empowered and required to assess and collect the State and county taxes on all lands which are situated in unorganized counties and owned by non-residents thereof, in the manner hereinafter provided. The Comptroller may at any time prior to the return of the assessment rolls to his office of the organized county to which such unorganized county or counties are attached for judicial purposes, receive the assessment of and collect the taxes on any lands situated in such unorganized county or counties which are owned by non-residents thereof. [Id. Acts 1987, p. 43; G. L. vol. 10, p. 1097.]

Art. 7230. [7591–2] List of unrendered lands.—As soon as the tax rolls of the organized county to which unorganized counties are attached for judicial purposes shall have been received by the Comptroller, he shall, by comparing the lands rendered to the assessor of the organized county by the residents of such unorganized county or counties with those previously rendered to him by non-residents, make out a list of all unrendered lands situated in such unorganized county, and place such value upon the lands thus found to be unrendered as he may deem just and fair. Nothing in this law shall be so construed as to prevent the Comptroller from receiving the assessment and taxes due at any time prior to the completion of the unrendered list of such unorganized county. After the completion of the unrendered list provided for in this chapter, the owner or owners must pay according to the value and assessment made thereon by the Comptroller. [Id.]

Art. 7231. [7593] [5143] May appeal from assessment.—Assessment of lands rendered to the Comptroller under the provisions of this chapter shall be made by the party rendering the same under oath as to their value; but if the Comptroller thinks the valuation too low he shall object; and if the Comptroller and the party rendering the land cannot agree, then the Comptroller shall assess the same at such value as he may think it is worth; and, if the party rendering feels that the assessment is too high, he may appeal to the board of equalization, which for such purposes shall consist of the Governor, Attorney General and the Secretary of State, and their decision shall be final. [Id.]

Art. 7232. [7594] [5144] May levy upon and sell, when.—Three months after the completion of the unrendered list of each unorganized county, respectively, the Comptroller shall proceed to levy upon and advertise all lands in such counties upon which the taxes are due and unpaid, giving notice of the amount due upon each separate tract of land, and giving such description of the land upon which taxes are due and unpaid as he may be in possession of; such notice to be given by publication in some weekly newspaper published in the State for four consecutive weeks; said notice to state that on a certain day therein named the Comptroller will proceed to sell the land therein described, or so much thereof as may be necessary to pay the State and county taxes due, and the cost of advertising the same. [Id.]

Art. 7233. [7595] [5145] Sale.—The sale shall commence on the day named in said notice, and may continue from day to day (Sundays and legal holidays excepted) until completed; such sale shall be had in front of the Comptroller's office, in the city of Austin, between the hours of eight o'clock A. M. and four o'clock P. M. of each day. [Id.]

Art. 7234. [7596] [5146] May be bought by State.—Should there be no purchaser of said lands, then the Comptroller shall bid in the same for the State for the taxes due thereon and the costs of sale, and make a deed to the State to the same, including in one deed all lands bid in. [Id.]

Art. 7235. [7597] [5147] Redemption.—Should the lands bid in by the Comptroller for the State not be redeemed by the owner thereof or his agent within two years, by the party redeeming the same paying double the amount for which the said land was sold, then the said lands thus sold and unredeemed shall become vacant and revert to and become a part of the public free school fund. [Id.]

Art. 7236. [7598] [5148] Tax deed.—The Comptroller shall give to the purchaser of any lands, the sale of which is provided for in this chapter, a deed to the same, giving in such deed such description of the land as may be necessary to identify the same, or such description as he may be in possession of. [Id.]

Art. 7237. [7600] [5150] Deed shall vest title.—The deed given to the purchaser or purchasers by the Comptroller under the provisions of this chapter shall vest a good and sufficient fee simple title in the purchaser or purchasers, subject to be impeached only for actual fraud; provided, the former owner or owners thereof do not redeem the same within two years from the date of the deed, either by paying to the purchaser or purchasers double the amount for which said land was sold, or by making a tender of the same to him or his agent, or by depositing with the Comptroller before the expiration of the two years double the amount for which such land was sold, to be paid by the Comptroller, when called upon, to the purchaser or purchasers thereof. [Id.]

Art. 7238. [7601] [5151] County taxes paid, where.—All county taxes collected under the provisions of Article 7235 shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. [Id.]

Art. 7239. [7602] [5152] Comptroller to keep taxes.—All county taxes, other than taxes to pay pro rata of indebtedness to parent county, due unorganized counties, collected by the Comptroller, shall be kept by him to the credit of such unorganized county until the total sum to the credit of the county shall reach the sum of five thousand dollars. Then he shall upon the demand of the treasurer of the former unorganized county, when the same shall have organized, paid said sum, or whatever amount is held to the credit of said county, over to said treasurer. And all county taxes collected by the Comptroller after the amount to the credit of such unorganized county shall reach the amount of five thousand dollars shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. [Id. Acts 1897, p. 43; G. L., vol. 10, p. 1097.]

Art. 7240. [7603] [5152a] Payment by Comptroller.—Where the amount to the credit of any unorganized county now exceeds five thousand dollars, the Comptroller shall keep said sum to be paid to the treasurer of such unorganized county when the same shall organize; and all county taxes, other than taxes collected to pay pro rata of indebtedness to parent county, hereafter collected by the Comptroller in such counties, shall be paid into the county treasury of the organized county to which such county is attached for judicial purposes. [Acts 1897, p. 43; G. L., vol. 10, p. 1097.]

Art. 7241. [7604] [5153] Special deposit made by Comptroller.—All moneys received by the Comptroller on deposit for the redemption of land sold and bought by individuals shall be by him deposited in the State Treasury as a special deposit, subject to the order of the party to whom the conditional deed to such land was given. So also shall all county taxes collected by the Comptroller under the provisions of this law be deposited in the State Treasury as a special fund, subject to the order of the Comptroller, to be paid to the county treasurers as provided in this chapter. [Id.]

Art. 7242. [7722–26] In new counties.—When any county is created or organized, those in charge of the assessor's roll embracing the new county shall allow the person appointed by the commissioners court for such purpose access to the rolls to make the transcripts herein provided for. Such appointee shall make from such rolls two transcripts of the unpaid assessments, both on person and property, in that portion of the new county formerly embraced within the unorganized county or the territory from which the new county was created, and shall receive such pay for his services as he may agree on with said court. The proper collector shall examine and verify said transcripts and attest their correctness over his official signature, and shall receive therefor twenty dollars from the new county, to be paid on the order of its commissioners court. Said collector shall also have the commissioners court of his county approve said transcripts, and shall deliver one of them to the collector of the new county, and forward the other to the Comptroller. On receipt of same the Comptroller shall be authorized to give proper credit to the collector of the old county and to charge the same to the collector of the new county. The collector of the new county shall receive the same compensation, and shall have the same authority to collect and enforce the collection of the taxes found to be due by such transcripts as is enjoyed by the collectors of other counties. [Acts 1885, p. 107; G. L., vol. 9, p. 727.]

Art. 7243. Assessment of property stored.—Any person, co-partnership, association or corporation

doing business in this State as a warehouseman or operating or controlling a warehouse or place of storage, shall, upon demand of the tax assessor of the county in which said business is operated or in which property is so stored, on January 1st of each year, furnish to the said tax assessor, a list of the property so stored in such warehouse or place of storage, together with a list of the owners of such property and their residence. The term "place of storage" as used herein shall also include all cold storage or refrigeration plants wherein goods of any nature are stored. Any person or agent or representative of such copartnership, association, or corporation who shall fail to furnish such list and information as set forth above upon demand by the tax assessor of the county in which such property is located, shall be subject to all the penalties now existing against any person for making a false rendition of property for the purpose of taxation. [Acts 3rd C. S. 1923, p. 165.]

Art. 7244. [4825] Mutual life insurance companies.—For the purpose of State, county and city taxation, the amount of the reserve and contingency reserve of all mutual life insurance companies shall be treated as debts due by them to their policyholders, and the total value of their property for such purposes shall be ascertained by deducting from the total amount of their gross assets the amount of such reserves and contingency reserves. [Acts 1st C. S. 1909, p. 292; Acts 1921, p. 153.]

CHAPTER 8.—COLLECTION AND COLLECTOR

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7298. Limitation not available.

Article 7245. [7605] [5154] [4729] Election and term.—In each county having ten thousand (10,000) or more inhabitants, to be determined by the preceding Federal Census, there shall be elected at the regular biennial election an Assessor and Collector of Taxes, who shall hold his office for two (2) years. [Const. art. 8, § 16; Acts 1876, p. 259; G.L. vol. 8, p. 259; Acts 1933, 43rd Leg., p. 598, ch. 197, § 1.]

Section 7 of Acts 1933, makes the Act effective Jan. 1, 1935, and section 6 repeals Articles 7177–7180, ante, and 7249, post, as existing prior to amendment by Acts 1934, cited to the text, of that article.

Art. 7246. [7607] [5156] [4731] Sheriff a collector.—In each county having less than ten thousand (10,000) inhabitants, the sheriff of such county shall be the Assessor and Collector of Taxes, and shall have and exercise all the rights, powers and privileges, be subject to all the requirements and restrictions, and perform all the duties imposed by law upon assessors and collectors; and he shall also give the same bonds required of an assessor and collector of taxes elected. [Const. art. 8, § 16; Acts 1876, p. 259; G.L. vol. 8, p. 259; Acts 1933, 43rd Leg., p. 598, ch. 197, § 2.]

Art. 7246a. Officers authorized to administer oath; counties of 500,000 or more, administering oaths or affidavits in; fees; receipts or certificates, fees for; "tract" defined.—Section 1. The Assessor and Collector of Taxes, Sheriff or Sheriff and Assessor and Collector of Taxes, are hereby authorized and empowered to administer all oaths necessary for the discharge of the duties of their respective offices and to administer all oaths required for the transaction of the business of their respective

offices, provided that in counties containing a population of five hundred thousand (500,000) or more inhabitants according to the last preceding or any future Federal Census, such Assessors and Collectors of Taxes and their Deputies are expressly authorized to administer oaths or affidavits as to the facts concerning the use of any real property which may be claimed to be exempt in whole or in part from State taxation, as constituting a homestead under the Constitution of the State of Texas, and any oath or affidavit covering any bill of sale and application for transfer of a motor vehicle or trailer, or application for a certificate of title concerning any motor vehicle, or affidavit and application to register a rebuilt motor vehicle, or notice of the installation of a new or different motor in any motor vehicle, or affidavit concerning the weight of any motor vehicle, or affidavit with reference to the application for the registration of any light delivery truck, motor bus, semitrailer, or trailer, or application for the replacement of number plates, or affidavit as to the weight and application for the registration of a commercial farm truck, or affidavit and application for the reregistration of a motor vehicle that has not been used for the current registration year, when any such rendition, inventory, application, or instrument above mentioned is required to be filed in the office of such Assessor and Collector of Taxes, and any other instrument that may be filed in said office, or that may relate to the business or duties of said office whenever the same is or may be required by law to be sworn to, provided that such Assessor and Collector of Taxes shall charge and collect as a fee of office, in addition to any other fees that he may now be authorized by law to charge, in connection with such instruments, the sum of Twenty-five (25) Cents for each such oath or affidavit as he, or his Deputies, may administer, which shall be and constitute a fee of office, and for which he shall account as he is now or may hereafter be required by law to account for any other fee of office, such Assessors and Collectors of Taxes, and their Deputies, being hereby given the same right to administer all such oaths or affidavits as are notaries public under the laws of the State of Texas; provided no fee shall be charged for any oath or affidavit connected with the rendition of any property for taxation.

Sec. 2. Whenever any Assessor and Collector of Taxes in any county, containing a population of five hundred thousand (500,000) or more according to the last preceding or any future Federal Census, shall issue a receipt or certificate conformably to the terms of Article 7324 of the Revised Civil Statutes of the State of Texas, 1925, as amended by Chapter 117 of the Acts of the Regular Session of the Forty-second Legislature, which shall show that all taxes, interest, penalties, and costs have been paid on any tract of land, he shall charge and receive for each such certificate issued the sum of Fifty (50) Cents if the tract described therein be a part of an addition or subdivision covered by a plat recorded in the office of the County Clerk of his county, and One Dollar ($1) for each such certificate so issued if the tract covered or affected by such receipt or certificate be not a part of an addition or subdivision covered by such recorded plat, all of which fees so received shall be treated and considered as fees of office and accounted for by such Assessor and Collector of Taxes in such a manner as may now or hereafter be required by law and paid into the proper fund of his county, provided that the word "tract" as used herein shall include any parcel or number of parcels of land owned by any one owner in any one addition, subdivision, or survey, whether originally conveyed to such owner as one lot or more than one lot, or as one tract of land or more than one tract of land if the land covered by any such receipt or certificate as actually located on the ground constitutes one single tract of land capable of enclosure under a single fence running along all of its outer boundaries without crossing any street, alley, road, public thoroughfare, or the land of another owner. [Acts 1935, 44th Leg., p. 416, ch. 166, § 1; Acts 1941, 47th Leg., p. 532, ch. 328, § 1.]

Art. 7246a—1. Officers' salary fund laws not affected; fees paid into fund.—Nothing in this Act shall in any manner repeal or alter laws of this State relative to the officers' salary fund and any such fees collected under this Act shall be paid into such officers' salary fund. [Acts 1941, 47th Leg., p. 532, ch. 328, § 1a.]

Art. 7247. [7608] [5157] [4732] Bond for State taxes.—Each assessor and collector of taxes, within twenty (20) days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall give bond based upon unincumbered real estate of the sureties, subject to execution, payable to the Governor and his successors in office, in a sum which shall be equal to ten per cent (10%) of the whole amount of the State Tax of the County as shown by the last preceding assessment, provided said bond shall not exceed Fifty Thousand Dollars ($50,000.00), with at least three (3) good and sufficient sureties, to be approved by the Commissioners Court of his county, which shall be further subject to the approval of the Comptroller, and his official oath together with said bonds shall be recorded in the office of the County Clerk of said County, and be forwarded by the County Judge of the county to the Comptroller, to be deposited in his office. Said bond shall be conditioned for the faithful performance of the duties of his office as assessor and collector of taxes for and during the full term for which he was elected or appointed. In the event the bonds required in this Article are executed by a satisfactory surety company or companies or by any private parties, as surety or sureties thereon in counties with a total taxable valuation of Thirty Million Dollars ($30,000,000.00) or more, the county of which the principal in said bond or bonds is assessor and collector of taxes shall pay a reasonable amount as premium on said bond or bonds, which amount shall be paid out of the General Revenue of the county upon presentation of the bill therefor to the Commissioners Court of the county properly authenticated as required by law in other claims against the county. If there be any controversy as to the reasonableness of the amount claimed, as such premium, such controversy may be determined by any Court of competent jurisdiction.

Whenever the assessor and collector of taxes of any county is required to give a separate bond to cover district taxes collected by him, such bond shall be approved by the governing board, or commission, of such districts, and the premium on same shall be paid out of first collections for such districts. [Acts 1876, p. 259; Acts 1915, p. 190; Acts 1917, p. 353; G.L. vol. 8, p. 1095; Acts 1932, 42nd Leg., 3rd C.S., p. 30, ch. 16; Acts 1933, 43rd Leg., p. 598, ch. 197, § 3.]

Art. 7248. [7609] [5158] [4733] New bond.—The assessor and collector of taxes may be required to furnish a new bond or additional security whenever, in the opinion of the Commissioners Court or the Comptroller, it may be advisable. Should any assessor and collector of taxes fail to give a new bond and additional security when required, he shall be suspended from office by the Commissioners Court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [Acts 1876, p. 259; G.L. vol. 8, p. 1095; Acts 1933, 43rd Leg., p. 598, ch. 197, § 4.]

Art. 7249. Bond of assessor and collector.—The assessor and collector of taxes shall give a bond similar to that required of him by the State with like

conditions to the County Judge of their respective counties and their successors in office in a sum not less than ten per cent (10%) of the whole amount of the county tax, as shown by the last preceding assessment, provided said bond shall not exceed Fifty Thousand Dollars ($50,000.00), with at least three (3) good and sufficient sureties, to be approved by the Commissioners' Court of his county. A new bond and additional security may be required, and for failure to give such new bond or additional security, the Assessor and collector of taxes may be removed from office in the manner prescribed by law. In the event the bonds required in this Article are executed by a satisfactory surety company or companies or by any private party or parties as surety or sureties thereon in counties with a total taxable valuation of Thirty Million Dollars ($30,000,000.00) or more the county of which the principal in said bond or bonds is Assessor and Collector of taxes shall pay a reasonable amount as premium on said bond or bonds, which amount shall be paid out of the General Revenue of the county upon presentation of the bill therefor to the Commissioners' Court of the county properly authenticated as required by law in other claims against the county. If there be any controversy as to the reasonableness of the amount claimed, as such premium, such controversy may be determined by any Court of competent jurisdiction. [Acts 1934, 43rd Leg., 3rd C.S., p. 86, ch. 42, § 1.]

The Legislature in the Act of 1934, cited to the text, designated this Article 7249. The old Article 7249 was repealed. See note to Article 7245, ante.

Art. 7249a. Weekly payments by tax collector to county and state treasurers.—On Monday of each week each County Tax Collector shall pay over to the County Treasurer ninety per cent (90%) of all taxes collected for the County during the preceding week, and pay over to the State Treasurer ninety per cent (90%) of all taxes collected for the State during the preceding week.

The Commissioners' Court of any County, or the Comptroller of Public Accounts, may at any time in their discretion call upon the Tax Collector for a sworn statement as to the amount of his collections made during the current month, and for a report as to the amount of taxes in the County Depository belonging to the County or State, and direct that ninety per cent (90%) of those funds be transferred to the County or State Treasury. The Commissioners' Court or the Comptroller may at any time require a sworn report from the Depository as to the amount of funds in their hands under the control of the Tax Collector. Failure or refusal of a Tax Collector to make the remittances as provided in this Act within three (3) days from the date due, or to render the statements required herein, within three (3) days after receiving notice to do so, shall constitute a misdemeanor and shall be punished by a fine not to exceed Two Hundred Dollars ($200.00). [Acts 1932, 42nd Leg., 3rd C.S., p. 30, ch. 16, § 3.]

Art. 7250. Depository shall pay treasurer.—Except as to compensation due such tax collector as shown by his approved reports, tax money deposited in county depositories shall be paid by such depositories only to treasurers entitled to receive the same, on checks drawn by such tax collector in favor of such treasurer. [Acts 1876, p. 260; Acts 1915, p. 190; Acts 1917, p. 354; G.L. vol. 8, p. 1096.]

Art. 7251. [7611] [5160] [4735] All bonds to be first approved.—No collector shall enter upon the discharge of the duties of the office until all of the bonds required of him by law for the collection of any taxes, State, county or special, shall have been given and approved.

Art. 7252. [7612] [5161] [4736] Deputies.—Each Assessor and Collector of Taxes may appoint one or more deputies to assist him in the assessment and collection of taxes, and may require such bond from the person so appointed, as he deems necessary for his indemnity; and the Assessor and Collector of Taxes shall in all cases be liable and accountable for the proceedings and misconduct in office of his deputies; and the deputies appointed in accordance with the provisions of this Article shall do and perform all the duties imposed and required by law of Assessors and Collectors of Taxes; and all acts of such deputies done in conformity with law shall be as binding and valid as if done by the Assessor and Collector of Taxes in person, provided, that in counties having a population of three hundred and fifty-five thousand (355,000) or more according to the last preceding Federal Census, the Assessor and Collector of Taxes may in addition contract with special deputies having special technical training, skill, and experience for the purpose of assisting him in obtaining information upon which to base proper valuations of oil and mineral bearing lands and properties and interests therein, industrial and manufacturing plants, and other properties where special technical skill and training is required. In addition thereto, such special assistants, clerical, accounting, or stenographic, as may be necessary to conduct the organization herein provided for and to carry out the purposes of this Act may be applied for and appointed in like manner provided they shall be appointed only for purposes consistent with this Act. In addition thereto, the Assessor and Collector of Taxes shall be authorized to apply for the appointment of a special head of the automobile division of his office at a salary not to exceed Two Thousand, Seven Hundred Dollars ($2,700) per annum. The compensation to be paid such special deputies and special automobile department head shall be subject to the approval of the Commissioners Court and the County Auditor, and limitations upon the amount of such compensation elsewhere provided shall not apply. The contract of employment shall be for a definite term, not extending beyond the term of office of the Assessor and Collector, and shall be made upon sworn application to the Commissioners Court showing the necessity therefor, and shall be subject to approval both as to substance and as to form by the Commissioners Court and by the County Auditor. [Acts 1876, p. 260; G.L. Vol. 8, p. 1096; Acts 1935, 44th Leg., p. 648, ch. 262, § 1; Acts 1939, 46th Leg., Spec.L., p. 971, § 1.]

Art. 7253. [7613] [5162] [4737] Rolls to be a warrant.—When any tax collector shall have received the assessment rolls or books of the county, he shall receipt to the commissioners court for the same; and said rolls or books shall be full and sufficient authority for said collector to receive and collect the taxes therein levied. [Acts 1876, p. 260; G. L. vol. 8, p. 1096]

Art. 7254. [7614] [5163] [4738] Collector for all taxes.—The tax collector shall be the receiver and collector of all taxes assessed upon the tax list in his county, whether assessed for the State or county, school, poor house or other purposes; and he shall proceed to collect the same according to law, and place the same when collected to the proper fund, and pay the same over to the proper authorities, as hereinafter provided. [Id.]

Art. 7255. [7615] [5164] [4739] Collections, when to begin.—Each Tax Collector shall begin the collection of taxes annually on the first day of October, or so soon thereafter as he may be able to obtain the proper assessment rolls, books, or data upon which to proceed with the business; and, when so ordered by the Commissioners Court of his county, he may post up notices—not less than three (3)—at public places in each voting or justice precinct in his county, at least twenty (20) days previous to the day said taxpayers are required to meet him for the purpose of paying their taxes, stating in said

notice the times and places the same are required to be paid; and said Collector or his Deputy shall attend at such times and places for the purposes aforesaid, and shall remain at each place at least two (2) days. If the Collector from any cause shall fail to meet the taxpayers at the time and place specified in the first notice he shall in like manner give second notice. [Acts 1876, p. 260; G.L. Vol. 8, p. 1096; Acts 1939, 46th Leg., p. 651, § 1.]

Art. 7255a. [Repealed by Acts 1939, 46th Leg., p. 654, § 2.]

The repealed article was Acts 1934, 43rd Leg., 4th C.S., p. 36, ch. 10, §§ 1, 2a, 3, 4.
Section 2 amended art. 7336.

Art. 7255b. Discounts on ad valorem taxes paid in advance.—All taxpayers shall be allowed discounts for the payment of taxes due to the State and all governmental and political subdivisions and taxing districts of the State, said discounts to be allowed under the following conditions: (a) three (3%) per cent discount on ad valorem taxes due the State or due any government or political subdivision or taxing district of the State, if such taxes are paid ninety (90) days before the date when they would otherwise become delinquent; (b) two (2%) per cent discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State if such taxes are paid sixty (60) days before the date when they would otherwise become delinquent; (c) one (1%) per cent discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State, if such taxes are paid thirty (30) days before the date when they would otherwise become delinquent. Provided, however, that the provisions of this section shall not apply to water improvement districts, irrigation districts, levee districts, water control districts, and other governmental subdivisions, cities, towns and independent school districts unless and until the governing body of such water improvement districts, irrigation districts, levee districts, water control districts, and other governmental subdivisions, cities, towns, or independent school districts by ordinance, resolution or order, shall adopt the provisions hereof; and in the event any such water improvement district, irrigation district, levee district, water control district, and other governmental subdivisions, city, town or independent school district elects to allow such discounts, then the governing body of each water improvement district, irrigation district, levee district, water control district, and other governmental subdivisions, city, town or independent school district, shall have power, by the ordinance, resolution or order levying the annual taxes, to designate the months in which such discounts of three (3%) per cent, two (2%) per cent, and one (1%) per cent respectively shall be allowed, but in no event shall the same apply to split payment of taxes. [Acts 1939, 46th Leg., p. 654, § 1.]

Section 2 of the act repeals art. 7255a; section 3 amends art. 7336; section 4 repeals all conflicting laws and parts of laws.
Section 5 provided that partial invalidity should not affect the remainder of the Act.

Art. 7256. Office at County Seat; (deputy Assessors and Collectors of Taxes in certain towns and cities; bond; compensation).—Each Assessor and Collector of Taxes shall keep his office at the county seat of his county; and it shall be the duty of every person who failed to attend and to pay his taxes at the times and places in his precinct named by the Assessor and Collector of Taxes, as provided in the preceding Article, to call at the office of the Assessor and Collector of Taxes and pay the same before the last day of December of the same year for which the assessment is made; provided, however, that in all counties containing a city or town, other than the county seat, which has in excess of seven thousand (7,000) inhabitants according to the last Federal Census, said Assessor and Collector of Taxes, with the consent and approval of the Commissioners Court, may appoint a Deputy Assessor and Collector of Taxes in such town or city, who shall have the right to collect taxes from all persons who desire to pay their taxes to him, and to issue a valid receipt therefor. Such Deputy shall enter into such bond, payable to the County Judge of the county as the Assessor and Collector of Taxes and Commissioners Court of the county may require. The salaries of such deputies shall be fixed, determined, and paid, under the general laws of the State, in the same manner and from the same funds as are the salaries of deputy Assessors and Collectors of Taxes whose duties are performed at the county seat. The Assessor and Collector of Taxes shall remain liable on his bonds for all taxes collected by such Deputy and nothing herein shall be construed as a limitation on the liability of the bonds of either the Assessor and Collector of Taxes or such Deputy. Provided further that in all counties having a population of more than seventy thousand (70,000) inhabitants, according to the last preceding Federal Census, and containing one or more cities or towns, other than the county seat, each of which has in excess of one thousand (1,000) inhabitants, according to the last Federal Census, said Assessor and Collector of Taxes with the consent and approval of the Commissioners Court may appoint a Deputy Assessor and Collector of Taxes in each such city or town, who shall have the right to collect taxes from all persons who desire to pay taxes to him and to issue a valid receipt therefor; each such Deputy shall enter into such bond, payable to the County Judge of the county as the Assessor and Collector of Taxes and Commissioners Court of the county may require. The salary of each such Deputy Assessor and Collector of Taxes shall be fixed by the Commissioners Court, and each such Deputy Assessor and Collector of Taxes shall be subject to all the terms and provisions of the law relating to Deputy Assessors and Collectors of Taxes, providing that the salaries fixed by the Commissioners Court for such deputies provided for herein, in such counties, shall not exceed Two Hundred Dollars ($200) annually for each one thousand (1,000) population, according to the last preceding Federal Census, in each of such cities or towns, and further provided that the salary of either of such Deputy Assessor and Collector of Taxes shall not exceed One Thousand, Two Hundred Dollars ($1,200) per year. The Assessor and Collector of Taxes shall remain liable on his bonds for all taxes collected by such Deputy, and nothing herein shall be construed as a limitation on the liability of the bonds of either the Assessor and Collector of Taxes or such Deputy. [Acts 1887, p. 127; G.L. vol. 9, p. 925; Acts 1933, 43rd Leg., 1st C.S., p. 50, ch. 16, § 1; Acts 1937, 45th Leg., p. 149, ch. 80, § 1; Acts 1945, 49th Leg., p. 586, ch. 345, § 1.]

The act of 1945 contained a preamble which read as follows:
"Whereas, The present law provides that the salaries of deputy Assessors and Collectors of Taxes in cities in excess of seven thousand (7,000) inhabitants, other than the county seat, shall be paid from a special fund created by a special fee of Twenty-five (25) Cents collected by such deputies in connection with each tax receipt issued by them; and
"Whereas, Such special salary provision for such deputies creates an undue hardship on said taxpayers living within said cities or towns having populations in excess of seven thousand (7,000) inhabitants, other than county seats, and tends to create confusion in the accounts of the Assessor and Collector of Taxes; now therefore,"

Art. 7257. [7617] [5166] [4741] Tax receipt.—The Tax Assessor and Collector or his deputy, whenever any tax is paid, shall give to the person paying the same a receipt therefor, specifying the amount of State, county and district taxes, and the year or years for which such tax was assessed; said receipt shall also show the number of acres of land in each

separate tract, number, abstract and name of original grantee and any city or town lot and name of city or town, and total value of all property assessed. Said receipt shall have a duplicate to be retained by the Assessor and Collector. The Assessor and Collector shall provide himself with a seal, on which shall be inscribed a star with five points, surrounded by the words "Assessor and Collector of Taxes, ——— County" (the blank to be filled with the name of the county), and shall impress said seal on each receipt and duplicate given by him for taxes collected on real estate; and said receipt having the seal attached shall be admissible to record in the county in which the property is situated in the same manner as deeds duly authenticated, and when so recorded shall be full and complete notice to all persons of the payment of said tax. The Assessor and Collector, when any taxes are paid, shall credit same on the rolls in the manner and form prescribed by the Comptroller of the State of Texas; and such entry shall be notice to all the world of the payment of such tax, and such entries may be used in evidence on issues involving the payment of same. [Acts 1876, p. 261; G.L. vol. 8, p. 1097; Acts 1921, p. 136; Acts 1935, 44th Leg., p. 671, ch. 284, § 1.]

Art. 7258. Recording tax receipts.—Every receipt for the payment of taxes on property, real, personal or mixed, hereafter paid, as well as those heretofore paid, collected by State, county or municipal officers, may be recorded in the office of the county clerk of the county where the property is situated. On presentation of a tax receipt to the county clerk he shall immediately file the same in the same manner of filing a deed to land, and enter and record such receipt in full in a record book kept by him for the purpose of recording tax receipts, to be called "Tax Receipt Record," and shall have the name and number written thereon, and such record shall be notice to all the world of the payment of such tax, and certified copies thereof may be used in evidence on issues involving the same under like rules admitting certified copies of deeds in evidence. [Acts 1915, p. 137.]

Art. 7258a. Tax receipt as evidence of payment.—Sec. 1. On and after October 1st, 1929, the Tax Collector or his deputy of any county in this State containing 210,000 population or more according to the last preceding federal census, or any city or political subdivision or tax assessing district within any such county shall, upon request, issue a certificate showing the amount of taxes, interest, penalty and costs due, if any, on the property described in said certificate. When any certificate so issued shows all taxes, interest, penalty and costs on the property therein described to be paid in full to and including the year therein stated, the said certificate shall be conclusive evidence of the full payment of all taxes, interest, penalty and costs due on the property described in said certificate for all years to and including the year stated therein. Said certificate showing all taxes paid shall be admissible in evidence on the trial of any case involving taxes for any year or years covered by such certificate, and the introduction of the same shall be conclusive proof of the payment in full of all taxes, interest, penalty and costs covered by the same.

Sec. 2. If any such certificate is issued or secured through fraud or collusion, the same shall be void and of no force and effect, and any such Tax Collector or his deputy shall be liable upon his official bond for any loss resulting to any such County or city or political subdivision or tax assessing district or the State of Texas, through the fraudulent or collusive or negligent issuance of any such certificate. [Acts 1929, 41st Leg., 2nd C.S., p. 153, ch. 77.]

Section 3 of Acts 1929, repeals all conflicting laws and parts of laws.

Art. 7259. Record books furnished.—Each commissioners court shall furnish the county clerk tax receipt record books which may be made in form as books for recording deeds or in form with printed blanks conforming to the form of the tax receipts as provided by law for tax collectors, or in any form suitable to the purposes of this law, in the discretion of said court, with the name "Tax Receipt Record" indorsed on the same, with successive numbers on each separate volume, and said clerk shall properly index said record alphabetically in the name of the holder of the tax receipt. [Acts 1915, p. 137.]

Art. 7260. [7618] [5167] [4742] Monthly reports.—1. At the end of each month the Tax Collector shall, on forms to be furnished by the Comptroller, make an itemized report under oath to the Comptroller, showing each and every item of ad valorem, poll and occupation taxes collected by him during said month, accompanied by a summarized statement showing full disposition of all State taxes collected, provided that said itemized reports for the months of December and January of each year may not be made for twenty-five (25) days after the end of such months if same cannot be completed by the end of such respective months.

2. He shall present such report, together with the tax receipt stubs to the County Clerk, who shall within two (2) days compare said report with said stubs, and if same agree in every particular as regards names, dates and amounts, he shall certify to its correctness, for which examination and certificate said Clerk shall be paid by the Commissioners Court twenty-five (25) cents for each certificate and twenty-five (25) cents for each two hundred (200) taxpayers on said report; provided that in counties having a County Auditor the work mentioned in this paragraph shall be done by the County Auditor rather than the County Clerk.

3. The Tax Collector shall then immediately forward his reports so certified to the Comptroller, and shall pay over to the State Treasurer all moneys collected by him for the State during said month, excepting such amounts as he is allowed by law to pay in his county, reserving only his commissions on the total amount collected, and to enable him to do so, he may, at his own risk, send the same to the State Treasurer at the least cost to the State, on which he shall be allowed credit by the Comptroller upon filing receipt showing actual amount of exchange paid. The Tax Collector may, in making remittance of funds to the State Treasurer or any other State officer, board, commission or employe of the State, make the same by sending cash or a check on the county depository, if the funds are in the county depository, or if the same, in due course, are required to be in such depository. No State or County funds shall be used to pay exchange on, or expense of transmitting or collecting money by, any check or exchange or draft which may be used to make any such remittances. If such funds are sent in cash, by registered letter, by Post Office Money Order, express money order or by bank draft or bank check or depository check, in such event the liability of the persons sending the same shall not cease until the same money is actually received by the State Treasurer or the duly authorized State depository or other authorized officer in due course of business. The State Treasurer, whenever he may receive a remittance from a Tax Collector, shall promptly pay the money so remitted to the State Treasury, on the deposit warrant of the Comptroller, and the money when so deposited shall be a credit to the said Tax Collector.

4. The Tax Collector shall pay over to the State Treasurer all balances in his hands belonging to the State, and finally adjust and settle his account with the Comptroller on or before the first day of May of each year, and to enable him to do so, the Commissioners Court shall convene on or before the third Mon-

day in April for the purpose of examining and approving his final settlement papers.

5. The allowance to a Tax Collector of credit for the unpaid taxes shown on his delinquent and insolvent lists prepared under Articles 7263 and 7336 shall not absolve any taxpayer or property appearing upon either of said lists from liability for and payment of such taxes, nor absolve the Tax Collector from the duty of collecting same, and the provisions of Articles 7264, 7266, 7267, 7268, 7269, 7270, 7272, 7273, 7274 and 7336 pertaining to the levy upon and seizure and sale by the Tax Collector of personal property to enforce the payment of taxes shall be applicable to the enforced collection of such taxes. As such taxes are collected, the Tax Collector shall issue special tax receipts therefor to be furnished by the Comptroller, which blank receipts shall be numbered and charged to the Tax Collector, who shall account for same at his next annual settlement in the same manner as occupation tax receipts. The Tax Collector shall make in triplicate itemized monthly reports of all such collections, using blanks for that purpose furnished by the Comptroller. One of said triplicates shall be retained by the Tax Collector as a record of his office, one shall be filed with and preserved by the County Clerk as a record of his office, and one shall be sent to the Comptroller and preserved as a record of his office. There shall be entered upon or attached to each copy of said reports the affidavit of the Tax Collector that he has fully complied with and exhausted all resources authorized and provided by law for the seizure and sale of personal property for the collection of all unpaid taxes shown upon the delinquent and insolvent lists of his county, and that he does not know of any personal property belonging to any person or persons against whom such taxes remain unpaid that he is authorized by law to seize, levy upon and sell for the purpose of enforcing the payment of such taxes or any part thereof.

6. The Comptroller shall prescribe and furnish the forms to be used by the Collector of Taxes, and the mode and manner of keeping and stating their accounts, and shall adopt such regulations as he may deem necessary in regard thereto. He shall enforce a strict observance of each provision of these articles.

7. The Comptroller shall notify the District Attorney of the district or the County Attorney of the county in which the collector resides, and the sureties on the bond of the collector, of any failure to comply with any provisions of this article. [Acts 1893, p. 90; G.L. vol. 10, p. 520; Acts 1915, p. 190; Acts 3rd C.S. 1923, pp. 157, 188; Acts 1935, 44th Leg., p. 673, ch. 285, § 1.]

Art. 7261. [7619] [5168] [4743] Duties of clerk and collector.—1. The Tax Collector shall at the end of each month make like reports to the Commissioners Court of all the collections made for the county, conforming as far as applicable and in like manner to the requirements as to the collection and report of taxes collected for the State. The County Clerk shall likewise, within two (2) days after the presentation of said report by the Collector, examine said report and stubs and certify to their correctness as regards names, dates, and amounts; for which examination and certificate he shall be paid by the Collector Fifty (50) Cents each month, which amount shall be allowed to the Collector by the Commissioners Court; provided that in counties having a County Auditor the work mentioned in this paragraph shall be done by the County Auditor rather than the County Clerk.

2. The Clerk shall file said report intended for the Commissioners Court, together with the tax receipt stubs, in his office for the next regular meeting of the Commissioners Court.

3. The Tax Collector shall immediately pay over to the County Treasurer all taxes collected for the county during said month, after reserving his commissions for collecting the same, and take receipts therefor, and file with the County Clerk.

4. At the next regular meeting of the Commissioners Court, the Tax Collector shall appear before said Court and make a summarized statement, showing the disposition of all moneys, both of the State and county, collected by him during the previous three (3) months. Said statement must show that all taxes due the State have been promptly remitted to the State Treasury at the end of each month, and all taxes due the county have been paid over promptly to the County Treasurer and shall file proper vouchers and receipts showing same.

5. The Commissioners Court shall examine such statement and vouchers, together with an itemized report and tax receipt stubs filed each month, and shall compare the same with the tax rolls and tax receipt stubs. If found correct in every particular, and if the Tax Collector has properly accounted for all taxes collected, as provided above, the Commissioners Court shall enter an order approving said report, and the order approving same shall be recorded in the minutes.

6. The Tax Collector shall finally adjust and settle his account with the Commissioners Court for the county taxes collected, at the same time and in the same manner as is provided in the foregoing Article in his settlement with the State. [Acts 1893, p. 90; G.L. vol. 10, p. 520; Acts 1937, 45th Leg., p. 1326, ch. 491, § 1.]

Art. 7262. [7620] [5169] Report not approved, unless—If any tax collector shall have failed at the end of each month, or within three days thereof, to promptly remit to the State Treasurer the amount due by him to the State, or pay over to the county treasurer the amount due by him to the county, the commissioners court, at the next regular meeting, shall ascertain the facts; and if the tax collector fails or refuses to pay or remit the same and file proper vouchers therefor, as provided in the foregoing article, the commissioners court shall not approve his reports and accounts, but shall ascertain the amounts due by him, both to the State and county, and enter an order requiring him to pay the same to the proper treasurers, as is provided in Articles 7294 and 7295, and notify such collector, as is provided for in Article 7296 under penalty for failure to do so. Whenever the tax collector shall fail or refuse to remit to the State Treasurer the amounts due the State, when requested, the Comptroller shall notify him. [Acts 1893, p. 90; G. L. vol. 10, p. 520.]

Art. 7263. [7621] [5170] [4744] List of delinquents and insolvents.—The tax collector shall make out on forms to be furnished for that purpose by the Comptroller, between April first and the fifteenth of each year, list of delinquent or insolvent taxpayers, the caption of which shall be, the "list of delinquent or insolvent taxpayers." In this list he shall give the name of the person, firm, company, or corporation from whom the taxes are due, in separate columns; and he shall post one copy of these delinquent or insolvent lists at the courthouse door of the county, and one list at the courthouse door, or where court is usually held, in each justice precinct in his county; and the tax collector, upon the certificate of the commissioners court that the persons appearing on the insolvent or delinquent lists have no property out of which to make the taxes assessed against them, or that they have moved out of the county, and that no property can be found in the county belonging to such persons, out of which to make the taxes due, shall be entitled to a credit on final settlement of his accounts for the amounts due

by the persons, firms, companies, or corporations certified to by the commissioners court, as above provided for. [Id.]

Art. 7264. [7622] [5171] [4745] To collect delinquent list.—The allowance of an insolvent list to the collector in accordance with the provisions of the preceding article shall not absolve any taxpayer or property thereon from the payment of taxes; but the collector shall use all necessary diligence to collect the amounts due on the insolvent list after it is allowed, and report and pay over to the proper officers all amounts collected on the same. [Id.]

Art. 7264a. Adjustment of delinquent taxes and collection thereof.—Sec. 1. It is hereby declared the Policy of the State to adjust delinquent taxes, correct errors, to eliminate conflicts in surveys of land, and to collect the delinquent, occupation, franchise and Ad Valorem Taxes, in order to clear this State of such taxes, errors and conflicts at the earliest date possible, and to provide a system for assessors, in order to eliminate the numerous errors that now appear on the tax rolls each recurring year.

Sec. 2. Cost of collecting delinquent taxes shall not exceed the amount of the penalty and interest, or an amount equal to such penalty and interest of all delinquent taxes collected. Any county desiring to install a tax or plat system and clear the county of errors, conflicts and unknown owners, may do so by paying not to exceed 15% of the delinquent taxes collected, which payment shall cover the cost of records and installing same.

Sec. 3. In order to speedily carry out the provisions of this Act, the State Comptroller and the Commissioners' Court of each of the several counties may employ competent persons to do the work and to furnish the Comptroller and the Commissioners' Courts all cases where adjustment is necessary; and in all such cases the Commissioners' Court shall make proper settlement or adjustment.

Sec. 4. This Act is not intended to change any law now in effect regarding the collection of delinquent taxes, but to be an aid to the officials in the discharge of their duties, and when the delinquent taxes in a county are adjusted, corrected and collected, the Comptroller shall take necessary steps to see that all delinquent taxes are collected within a reasonable time after they become delinquent, in order to avoid the necessity of again employing additional help. [Acts 1931, 42nd Leg., p. 383, ch. 229.]

Art. 7264b. County auditors or clerks to compile tax statistics for counties and municipalities.

Information to be compiled

Sec. 1. The County Auditor in each county, if there be a County Auditor, and if not, then the County Clerk of each county shall secure and compile during the month of September the following information from the county, cities and towns, school districts and all other local units of government within the county authorized to levy and collect taxes, or to issue bonds:

(a) The amount of taxes collected for all purposes during the previous fiscal year.

(b) The amount of taxes delinquent at the end of the previous fiscal year.

(c) The amount to the credit of sinking funds to retire bonded indebtedness at the end of the previous fiscal year.

(d) The amount of outstanding bonded indebtedness and outstanding warrants at the end of the previous fiscal year.

Request of officials for information

Sec. 2. The County Auditor, or in counties not having any County Auditor, the County Clerk is hereby authorized, empowered, and directed to require from various officials of the county, cities and towns, school districts and all other local units of government within the county authorized to levy and collect taxes, or to issue bonds, such reports as are necessary to enable him to compile the information set forth in Section 1 of this Act; and it shall be the duty of the County Auditor, if there be a County Auditor, and if not, then of the County Clerk, to send a request to the proper officials for such information between the 1st and 15th days of September of each year, and officials to whom such requests are sent, are required to furnish the information requested on or before September 30th of each year.

Reports to State Auditor

Sec. 3. When this information is received, it shall be the duty of the County Auditor, if there be a County Auditor, and if not, then of the County Clerk, to maintain a file in his office to be open to the inspection of any taxpayer, of all reports submitted to him in compliance with the provisions of this Act. And it shall also be the duty of the County Auditor, if there be one, if not, the County Clerk, to make a compiled report covering the county at large showing the total outstanding bonded indebtedness and outstanding warrants within the county, the total moneys then on deposit to the credit of sinking funds within the county to retire outstanding bonded indebtedness, the total amount of taxes collected for all purposes within the county, and the total amount of taxes delinquent at the end of the fiscal year within the county assessed for all purposes. This report shall be compiled by the County Auditor, if there be a County Auditor, if not, then by the County Clerk, and such County Auditor or County Clerk, as the case may be, shall forward such report to the State Auditor at Austin not later than October 15th of each year.

State Auditor to furnish report to counties

Sec. 4. The State Auditor shall upon receipt of the information called for in this Act from the various County Auditors, or County Clerks throughout the State prepare a compiled report for the State at large—which report shall furnish the following information for each county in the State:

(a) The amount of taxes collected for all purposes during the previous fiscal year by the county and all governmental divisions thereof.

(b) The total amount of taxes levied for all purposes due the county as well as the amounts due all governmental subdivisions within the county, delinquent at the close of the previous fiscal year.

(c) The total amount accumulated at the end of the previous fiscal year to the credit of sinking funds set aside to retire bonds heretofore issued by the county and by any and all governmental subdivisions within the county.

(d) The total amount of all outstanding bonded indebtedness and outstanding warrants of the county and all governmental subdivisions thereof, at the end of the previous fiscal year.

(e) The grand total of each of the above items for the State at large.

Penal provision

Sec. 5.

This section, being a penal provision, is published as Pen. Code, Art. 101a.

Notice to County Attorney of County Auditor or County Clerk's failure to furnish information

Sec. 6. In case of the failure of any official of any unit of government in the State to furnish the above referred to reports to the County Auditor, or to the County Clerk, as the case may be, within the time specified by this Act, it shall be the duty of the County Auditor, or the County Clerk, to give official notice to the County Attorney of the proper county, of the failure of such official to comply with the provisions of this Act, and it shall be the duty of the County

Attorney to immediately instigate proceedings for the punishment of such official.

No additional compensation

Sec. 7. Reports called for herein are in addition to reports already required by law, and no additional compensation shall be paid to any official of the county or State for the compilation of such reports. [Acts 1931, 42nd Leg., p. 500, ch. 279.]

Art. 7265. [7623] [5172] Non-residents.—Non-residents of counties, owing State or county taxes, are hereby authorized to pay the same to the Comptroller; provided, that all taxes due by said non-residents shall be paid at the Comptroller's office on or before the first day of January next after the assessment of such taxes. The tax collectors shall be entitled to the commissions on all moneys paid by non-residents to the Comptroller, due their counties respectively. [Acts 1879, p. 41; G. L. vol. 8, p. 1341.]

Art. 7266. [7624] [5173] [4746] Forced collections to begin.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by law, until the first day of January next succeeding the return of the assessment roll of the county to the Comptroller, the tax collector shall, by virtue of his tax roll, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with all costs accruing thereon; provided, there shall be no levy on property when the owner thereof has the right to pay at the Comptroller's office, until a list of the persons who have paid their taxes at said office has been furnished the tax collector by the Comptroller. The Comptroller shall forward said list of paid taxes on or before the first day of February of each year; and the tax collector shall, immediately on receipt of said list from the Comptroller, levy on and sell the property of such non-residents as have not paid their taxes, in accordance with the law regulating the sale of property for taxes. [Acts 1887, p. 127; G. L. vol. 9, p. 128.]

Art. 7267. [7625] [5174] [4747] Personal property pointed out.—If any person shall point out to the tax collector sufficient personal property belonging to him to pay all taxes assessed against him before the first day of January of any year, the collector shall immediately levy upon and sell such property so pointed out, in accordance with the laws regulating tax sales of a similar class of property. [Id.]

Art. 7268. [7626] [5175] [4748] Property about to be removed.—If it comes to the knowledge of the tax collector that any personal property assessed for taxes on the rolls is about to be removed from the county, and the owner of such property has not other property in the county sufficient to satisfy all assessments against him, the collector shall immediately levy upon a sufficiency of such property to satisfy such taxes and all costs, and the same sell in accordance with the law regulating sales of personal property for taxes unless the owner of such property shall give bond, with sufficient security payable to and to be approved by the collector, and conditioned for the payment of the taxes due on such property, on or before the first day of January next succeeding. [Id.]

Art. 7269. [7627] Tax lien superior.—In all cases where a taxpayer makes an assignment of his property for the payment of his debts, or where his property is levied upon by creditors, by writs of attachments or otherwise, or where the estate of a decedent is or becomes insolvent, and the taxes assessed against such person or property, or against any of his estate remain unpaid in part or in whole, the amount of such unpaid taxes shall be a first lien upon all such property; provided, that when taxes are due by an estate of a deceased person, the lien herein provided for shall be subject to the allowances to widows and minors, funeral expenses, and expenses of last sickness. Such unpaid taxes shall be paid by the assignee, when said property has been seized by the sheriff, out of the proceeds of sale in case such property has been seized under attachment or other writ, and by the administrator or other legal representative of decedents; and, if said taxes shall not be paid, all said property may be levied on by the tax collector and sold for such taxes in whomsoever's hands it may be found.

Art. 7270. [7628] Execution in other counties.—Whenever it shall appear to any tax collector that any person who is delinquent in the payment of his or her taxes has no property in his county out of which said amount of taxes can be collected, such collector shall make out from the assessment list a true and complete list or schedule of the taxes due by said delinquent, which shall be certified to under the official seal and signature of said collector, and forward the same to the tax collector of any county or counties where he shall have reason to believe said delinquent has property of any description, and if said property is in any of the unorganized counties of this State, then to the collector of the county to which said unorganized county is attached for judicial purposes; and, when received by said collector, he shall at once proceed to the collection of said tax by seizure and sale in the same manner as if said taxes were originally assessed and due in his said county, and shall report to the collector from whom said list was received the taxes so collected by him. [Acts 1905, p. 317.]

Art. 7271. [7629] Credit for delinquent taxes.—The provisions of this chapter pertaining to the duty of tax collectors in the matter of the collection of delinquent and insolvent taxes shall apply as well to taxes owing by persons who own real property as to those who do not own real property, and no tax collector in this State shall be entitled to or be allowed either by the county or by the Comptroller credit as approved by Article 7263 for any taxes reported or returned as either delinquent or insolvent under Article 7263 or 7336 until he makes affidavit entered upon or attached to both his lists of insolvent tax payers prepared under said Article 7263 and his lists of delinquent lands prepared under Article 7336, that said lists are true and correct and that he has fully complied with and exhausted all resources to collect such taxes as authorized and required by Articles 7264, 7266, 7267, 7268, 7269, 7270, 7272, 7273, 7274, and 7336, and does not know of, and has made diligent inquiry and has been unable to learn of, any personal property belonging to any person or persons against whom such taxes are shown on said lists to be unpaid that he was authorized by law to seize, levy upon and sell for the purpose of enforcing the payment of such taxes or any part thereof, nor until the commissioners court of his county, after full consideration and investigation, has entered upon or attached to both the insolvent lists and lists of delinquent lands the certificate required by said Article 7263, and no compensation that at the time, or at any time thereafter, may be due or owing to the tax collector, either by the State or county, shall be retained by or paid to the tax collector until he has made the affidavits as provided by this article. Nothing in this article is intended or shall be construed as requiring any tax collector to levy upon and sell real property for the purpose of enforcing the payment of such taxes. [Id. Acts 3rd C. S. 1923, p. 168.]

Art. 7272. [7630] [5176] All property liable for taxes.—All real and personal property held or owned by any person in this State shall be liable for all State and County Taxes due by the owner

thereof, including tax on real estate, personal property and poll tax; and the Tax Collector shall levy on any personal or real property to be found in his county to satisfy all delinquent taxes, any law to the contrary notwithstanding; provided, however, that any person, including a lienholder, having an interest in property against which there are taxes which has been included in an assessment with other property may pay the proportionate part of the taxes against his property without being required to pay any other taxes included in the assessment. If the parties at interest cannot agree with the Tax Collector upon the amount of taxes to be apportioned to each piece of property then the Commissioners' Court shall make a fair apportionment of the taxes, and the payment of the taxes on a part of the property according to such apportionment will relieve it from liability for the payment of any of the other taxes included in the assessment; and further providing, however, that the provision herein, whereby the taxes against a piece of property may be apportioned, shall apply to taxes due any district, municipality or other subdivision of the State, and in the event the parties at interest cannot agree to an apportionment of the taxes then the Board of Commissioners having authority over the assessment and equalization of such taxes, shall make the apportionment in the manner herein provided. [Acts 1879, p. 46; G.L. vol. 8, p. 138; Acts 1931, 42nd Leg., p. 237, ch. 141, § 1.]

Section 2 of Acts 1931, repeals all conflicting laws and parts of laws.

Art. 7273. [7631] [5177] [4749] Sales of personal property.—In making sales of personal property for taxes, the collector shall give notice of the time and place of sale, together with a brief description of the property levied on and to be sold, for at least ten days previous to the day of sale, by advertisements in writing to be posted at the courthouse door, and at two other public places in the county; and such sale shall take place at the courthouse door of the county in which the assessment is made, by public auction. [Acts 1876, p. 259; G. L. vol. 8, p. 1095.]

Art. 7274. [7632] [5178] [4750] If property is insufficient.—If personal property levied upon prove insufficient to satisfy the taxes and penalties due and costs accrued thereon, the collector shall levy upon and sell so much other personal taxable property belonging to the person as will be sufficient to satisfy such taxes, penalties and costs in the same manner as an original levy and sale, and, in all cases of sales for taxes, if there be an excess remaining in the hands of the collector, after satisfying all taxes, penalties and costs, the same shall be paid over to the original owner by the collector, or deposited in the hands of the county treasurer subject to the order of such owner. [Id.]

Art. 7275. [7633] [5179] [4751] Sales of real property.—If the delinquent is not possessed of a sufficiency of personal property in the county subject to seizure and sale to satisfy all taxes due by him, the tax collector shall seize so much of the real estate of such delinquent, situated in the county, as will be sufficient to satisfy such taxes and all costs, and sell the same in accordance with the provisions of the succeeding article. [Id.]

Art. 7276. [7634] [5180] [4752] Advertisement of real property for sale.—In making sales of real property for taxes, the Collector shall advertise the same for sale in some newspaper published in the county where the land is to be sold, for three successive weeks, if there be one; and the publisher of such newspaper shall receive as compensation the legal rate of Two (2) Cents per word for the first insertion of such publication and One Cent per word for each subsequent insertion or such newspaper shall be entitled to charge for such publication at a rate equal to but not in excess of the lowest published word or line rate of that newspaper for classified advertising, and such fee shall be taxed as other costs of sale against such land, and the Comptroller shall allow the Collector such fee to be paid by the Collector to the newspaper publisher in each case where the land is bid in and sold to the State. If there be no newspaper published in the county, or, there being a newspaper published in the county and the publisher thereof refuses to publish the advertisement at the price herein fixed, then the advertisement shall be made by posting the same for thirty (30) days previous to the day of sale, at the courthouse door and three other public places in the county where the land or lots are situated, giving in said advertisement such description as is given to the same on the tax rolls in his hands, stating the name of the owner if known, and if unknown say "unknown," together with the time, place, and terms of sale; said sale to be for cash, to the highest bidder, at public outcry at the courthouse door, and between legal hours, on the first Tuesday of the month. [Acts 1881, p. 12; G.L. vol. 9, p. 252; Acts 1941, 47th Leg., p. 480, ch. 303, § 4.]

Partial invalidity of the amendatory Act of 1941, cited to the text, effect of, see section 6 of such act, set out under article 28a.

Art. 7277. [7635] [5181] List posted.—Prior to the sale of any real property for taxes in any county in this State, the tax collector shall advertise the same by posting a list of the names of the delinquents for thirty days as follows: one copy at the courthouse door of the county, and a copy at two other public places in the county where the lands or lots are situated. [Acts 1879, S. S., p. 46; G. L. vol. 8, p. 1346.]

Art. 7278. [7636] [5182] [4753] Sale continued.—As far as may be practicable, all the lands and town lots levied upon for taxes shall be advertised in one notice and be sold on the same day; and such sales may be continued from day to day until concluded; but at the close of each day's sale the tax collector shall make proclamation of such continuance on the following day. No sale shall be considered complete until the payment of the purchase money; and, if the same is not made before the completion of the tax sales, the collector shall re-sell the property, and continue such sale until the same is complete. [Acts 1876, p. 262; G. L. vol. 8, p. 1098.]

Art. 7279. [7637] [5183] [4754] Homesteads liable.—No real estate set apart, used or designated as a homestead shall be sold for taxes other than the taxes due on such homestead. [Id.]

Art. 7280. [7638] [5184] [4755] Sales of land.—The tax collector, in making sales for taxes due upon real estate, shall sell at auction, at the time and place appointed, so much of said real estate as may be necessary to pay the taxes and penalties due and all costs accruing thereon, and shall offer said real estate to the bidder, who will pay the taxes and penalties due, and costs of sale and execution of deed, for the least amount of said real estate, who shall be deemed the highest bidder. Should a less amount of said real estate than the whole tract or parcel of said real estate levied upon be sold for the taxes and penalties due and all costs of sale and execution and deed, the collector shall, in making his deed to the purchaser begin at some corner of said tract or parcel of land or town lot and designate the same in a square as near as practicable. [Id.]

Art. 7281. [7639] [5185] [4756] Tax deed.—The tax collector shall execute and deliver to the purchaser, upon the payment of the amount for which the estate was sold, and the cost and penalties, a deed for the real estate sold, which deed shall vest a

good and perfect title to said land in the purchaser, if not redeemed in two years, as provided by law, which deed shall state the cause of sale, the amount sold, the price for which the real estate was sold, the name of the person, firm, company or corporation on whom the demand for taxes was made, provided the name is known, and if unknown say "unknown," the same description of the land as is given in the tax rolls, and such other description as may be practicable for better identification; and when real estate has been sold, he shall convey, subject to the right of redemption provided for in Article 7283, all the right and interest which the former owner had therein at the time when the assessment was made. [Const., art. 8, sec. 13; Id.]

Art. 7282. [7640] [5186] [4757] Sales reported.—When the collector shall have made sale of any real estate under this chapter, he shall make immediate return of said sale to the commissioners court, stating in said return the land sold, the name of the owner, if known, and if unknown, state the fact, the time of sale, the amount for which said sale was made, together with the name of the purchaser, which return shall be entered of record on the minute books of said court. [Id.]

Art. 7283. [7641] [5187] [4758] Redemption.—The owner of the real estate sold for the payment of taxes, or his heirs or assigns or legal representatives, may, within two (2) years after the date of filing for record of the purchasers deed, have the right to redeem the land on the following basis:

(1) Within the first year of the redemption period upon the payment of the amount of money paid for the land, including One Dollar ($1.00) tax deed recording fee and all taxes, penalties, interest and costs thereafter paid thereon plus ten per cent (10%) of the aggregate total.

(2) Within the last year of the redemption period upon the payment of the amount of money paid for the land, including One Dollar ($1.00) tax deed recording fee and all taxes, penalties, interest and costs thereafter paid thereon plus twenty per cent (20%) of the aggregate total.

Provided, that, subject to the owner's right to redeem as aforesaid, any lien holder or party interested may within the time above specified redeem said property under the same provisions.

Sec. 2. This Act is intended to apply to and govern the amount necessary to be paid for redemption from all State, County, municipal and/or district tax sales of real estate heretofore or hereafter made regardless of the legal method used in making such sales.

Sec. 3. In addition to redeeming direct from the purchaser, redemption may also be made as provided in Articles 7284 and 7285 of the Revised Civil Statutes of Texas of 1925. [Acts 1876, p. 262; G.L. vol. 8, p. 1098; Acts 1933, 43rd Leg., 1st C.S., p. 91, ch. 31, § 1.]

Section 4 of Acts 1933, provides that if any section, subsection, sentence, clause or word of the act shall be held to be unconstitutional, the remaining part thereof shall remain in full force.

Art. 7284. [7643] [5188] Redemption from private purchasers.—Any person having the right to redeem any land sold at a tax sale may do so by payment, within the time prescribed by law, to the tax collector of the county in which the said land was sold, of the amount which the law requires to be paid; provided, that the owner of said land, or his agent, shall first have made affidavit that he has made diligent search in the county where said land is situated for the purchaser thereof at the tax sale, and has failed to find him, or that the purchaser at such tax sale is not a resident of the county in which the land is situated, or that he and the purchaser cannot agree on the amount of redemption money. In such cases only shall the owner or agent be authorized to redeem the same by the payment to the collector of taxes. [Acts 1879, S. S., p. 29; G. L. vol. 9, p. 61.]

Art. 7284a. Redemption from district tax sales.—Whenever land is sold under a decree and judgment of Court for taxes levied by or for any district organized under the laws of the State of Texas with authority to levy and collect taxes, the owner of such property, or any one having an interest therein, shall have the right to redeem the same at any time within two years from the date of such sale upon payment of double the amount paid by the purchaser at such sale; provided, that the purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of such sale. [Acts 1927, 40th Leg., p. 25, ch. 20, § 1; Acts 1927, 40th Leg., 1st C. S., p. 195, ch. 69, § 1.]

Art. 7284b. Redemption from state or county tax sales.—Whenever land is sold under a decree and judgment of court for taxes levied by or for the State, or by or for any County within the State, the owner of such property, or any one having an interest therein, shall have the right to redeem the same at any time within two years from the date of such sale upon payment of double the amount paid by the purchaser at such sale; provided that the purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of such sale. [Acts 1927, 40th Leg., 1st C. S., p. 195, ch. 70, § 1.]

Art. 7285. [7644] [5189] Receipt of collector, notice when.—Each tax collector to whom payment is made under the provisions of this chapter shall give a receipt therefor, signed by him officially in the presence of two witnesses; which receipt when duly recorded, shall be notice to all persons that the land therein described has been redeemed; and said collector shall on demand pay over to the purchaser at said tax sale the money thus received by him. [Acts 1879, S. S., p. 29; G. L. vol. 9, p. 61.]

Art. 7286. [7645–46] Relief, when.—Any person whose land has been rendered for taxation, whether the same was rendered in the name of the original grantee or not, and has also been placed upon the unrendered rolls for the same year, shall be entitled to relief upon complying with the requirements herein indicated. If any such lands shall have been sold for the taxes charged upon the unrendered rolls, and bought by the State, the owner thereof, his agent or attorney, shall present to the tax collector of the county in which the land is situated an affidavit to the effect that the same land has been rendered for taxation, and placed upon the regular assessment rolls for the year mentioned. Said affidavit shall contain an accurate description of the land and be accompanied with the certificate of the assessor that the same is true and correct; and the tax collector shall thereupon present such person with a written statement, officially signed, that the said tax has been cancelled, and make a note of the same upon the unrendered rolls; provided, the provisions of this article shall apply to all such lands at any time after the collector shall receive the rolls until the same shall have gone into the hands of a private purchaser; and if the owner shall have paid the taxes charged upon the unrendered rolls at any time previous, he shall be entitled to the warrant of the Comptroller for the amount so paid in the same manner as is provided in Article 7287 of this chapter, in cases of redemption from individual purchasers. The tax collector shall make no charge whatever for the duties herein mentioned. [Acts 1881, p. 107; G. L. vol. 9, p. 199.]

Art. 7287. [7647] [5192] Certificate of redemption.—When the owner of such lands shall have redeemed the same from a private purchaser, the tax collector shall furnish him a certificate to that effect; and upon presentment of said certificate to the Comptroller, the Comptroller shall issue to him a warrant upon the State Treasury for the amount of such tax.

This warrant shall be receivable for all taxes to the State. For issuing the certificate provided for in this article, the tax collector shall be allowed the sum of fifty cents to be paid by the applicant. [Id.]

Art. 7288. [7648] [5193] [4759] Lands to be bid in for State.—Should the tax collector fail to make sale of any real estate for want of a purchaser, he shall bid the same off for the State for the taxes and penalties due, and all costs accruing thereon, and execute a deed to the State; and one deed shall include all tracts of land bid off to the State at such tax sale, and make due return thereof, under such forms and directions as the Comptroller may furnish and direct. After sale and purchase by the State of any real estate, it shall not be lawful for said collector to levy upon or advertise or sell the same for any remaining or accrued taxes due thereon until the same shall have been redeemed by the owner or is sold by the State. Said collector shall, on final settlement of his accounts with the commissioners court and the Comptroller, be entitled to a credit for the amount of taxes due the State and county, respectively, for which the lands and lots were bid off to the State. [Acts 1879, S. S., p. 36; G. L. vol. 9, p. 68.]

Art. 7289. [7649] [5194] May redeem.—The owner of any lands that may have been conveyed to the State under the provisions of the foregoing article, or his agent, desiring to redeem the same, may do so by depositing with the collector of the county in which the lands were sold double the amount of the purchase money and all accrued taxes thereon, within two years from the date of the deed to the State; and such collector shall execute a receipt to such owner, or agents, giving therein the amount of money received, and a description of the land so as to identify the same, and sign and seal the same officially; and, upon presentation of such receipt to the Comptroller, he shall execute to the owner a relinquishment under his signature and seal of office, which may be admitted to record in like manner with other conveyances of land. [Id.]

Art. 7290. [7650] [5195] If not redeemed.—In case said land shall not have been redeemed as provided in Article 7289, then the same may be sold as provided in Article 7288. [Id.]

Art. 7291. [7651] [5196] May redeem by paying costs.—The owner of real estate which has been bought in by the State for taxes, or his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the amount designated by the Comptroller as due thereon with costs of advertisement; and if it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall upon the payment of the amount that may be due thereon, cancel such sale; and deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been cancelled; which certificate shall release the interest of the State and the same may be recorded in the proper county as other conveyances of real estate are recorded. [Id.]

Art. 7292. [7652] [5197] Board of inquiry.—Each commissioners court shall, at the regular terms of said courts sit as a court of inquiry in cases where land has been erroneously rendered for taxes; and any land owner whose land has been or may be sold to the State for taxes may appear before said court in person or by proxy and show to the satisfaction of a majority of said court that the taxes for which his lands have been sold have been paid, although the same was rendered in an incorrect abstract number or survey or original grantee; thereupon said court shall issue to said land owner a certificate setting forth fully said facts, which certificate shall be signed officially by the county judge of said county; and, upon presentation of said certificate to the Comptroller, he shall execute and deliver to said land owner a valid deed relinquishing all the right, title and interest the State may have acquired in and to said land by reason of such tax sale. [Acts 1889, p. 31; G. L. vol. 9, p. 1058.]

Art. 7293. [7657] [5209] [4769] Lands of non-residents in unorganized counties.—The taxes upon lands lying in and owned by non-residents of unorganized counties, and upon lands situated in the territory not laid off into counties, shall be paid and collected at the office of the Comptroller, under such regulations as he may adopt for that purpose. [Const., art. 8, sec. 12.]

Art. 7294. [7658] [5210] Payment of State moneys.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to the State, and pay the same over to the State Treasurer whenever and as often as they may be directed so to do by the Comptroller; provided that tax collectors shall have thirty days from the date of such direction within which to comply with the same. [Acts 1879, S. S., p. 5; G. L. vol. 9, p. 37.]

Art. 7294a. [Unconstitutional.]

This article, Acts 1939, 46th Leg., p. 668, attempting to donate for period of five years to various counties of the state one-half of state ad valorem taxes collected for general revenue purposes upon property and from persons in such county, is invalid under Const., art. 8, § 6, prohibiting Legislature from making an appropriation for a longer term than two years. See Dallas County v. McCombs, 135 T. 272, 140 S.W.2d 1109.

Purchase of land for park authorized

Acts 1939, 46th Leg., Spec.L., p. 856, § 1 reads as follows: "From and after the passage of this Act out of taxes remitted by the State of Texas by virtue of Senate Bill No. 224 of the Regular Session of the Forty-sixth Legislature to counties having a population of not less than forty-eight thousand, five hundred and thirty (48,530) and not more than forty-eight thousand, eight hundred (48,800), the Commissioners Courts of said counties may expend the sum of not more than Eight Thousand Dollars ($8,000) for the purpose of purchasing and improving land to be designated as a State Park."

Art. 7294b. [Unconstitutional.]

This article, Acts 1939, 46th Leg., Spec.L., p. 987, donating to enumerated counties the state ad valorem taxes necessary to reimburse such counties for tax losses sustained because of purchase of lands therein by federal government, are invalid under Const. art. 8, § 6, as attempting to make appropriations of state moneys for a longer period than two years, and as making appropriations which are not specific. See State v. Angelina County, Com.App., 150 S.W.2d 379, 136 T. 247.

Art. 7295. [7659] [5211] Payment of other money.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to their respective counties, cities or towns, and pay the same over to the respective county treasurers or city treasurers whenever and as often as they may be directed to do so by the respective county judges, or county commissioners courts or mayor or board of aldermen; provided that tax collectors shall have ten days from the date of such direction within which to comply with the same. [Id.]

Art. 7296. [7660] [5212] Notification to pay.—The notification and direction provided for in the two preceding articles may be verbal, written or by telegram; and if written or by telegram, proof of the deposit in the post office or telegraph office of such notification and direction, with postage or charges duly prepaid and correctly addressed, shall be prima facie evidence of the fact of such notification and direction having been given, and of the time when the same was given. [Id.]

Art. 7297. [7661] [5212a] Duty to sue.—The district or county attorney of the respective counties

of this State, by order of the commissioners court, shall institute suit in the name of the State for recovery of all money due the State and county as taxes due and unpaid on unrendered personal property; and in all suits where judgments are obtained under this law, the person owning the property on which there are taxes due the State and county shall be liable for all costs. The State and county shall be exempt from liability for any costs growing out of such action. All suits brought under this article for the recovery of taxes due on personal property shall be brought against the person or persons who owned the property at the time such property should have been listed or assessed for taxation. No suit shall be brought until after demand is made by the collector for taxes due, and no suit shall be brought for an amount less than twenty-five dollars. Such suits may be brought for all taxes so due and unpaid for which such delinquent tax payer may be in arrears for and since the year 1886.

Art. 7298. [7662] Limitation not available.—That no delinquent taxpayer shall have the right to plead in any Court or in any manner rely upon any Statute of Limitation by way of defense against the payment of taxes due from him or her to the State, or any county, city, town, Navigation District, Drainage District, Road District, Levee District, Reclamation District, Irrigation District, Improvement District, School District and all other Districts; provided, that no suit shall be brought for the collection of delinquent taxes of a School District or Road District unless instituted within ten years from the time the same shall become delinquent. [Acts 1st C.S. 1895, p. 6; G.L. vol. 10, p. 1052; Acts 1929, 41st Leg., 2nd C.S., p. 161, ch. 81, § 1; Acts 1931, 42nd Leg., p. 419, ch. 252, § 1.]

Where constitution prohibited legislature from authorizing a plea of the statute of limitations in a suit by a political subdivision of the state until the 1932 amendment, 1931 amendment to this article allowing ten-year limitation to be pleaded against a tax suit by a school district was void, and it was not validated by the 1932 amendment of Const. art. 3, § 55. Sam Bassett Lumber Co. v. City of Houston, Civ.App., 194 S.W.2d 114, reversed on other grounds 198 S.W.2d 879.

CHAPTER 9.—BACK TAXES ON UNRENDERED LANDS

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Article 7299. [7663] [5213] Back taxes on unrendered lands.—In all cases where lands or real estate have not been assessed for taxation for any year since the year one thousand eight hundred and seventy, the same shall be assessed and the taxes thereon collected in the mode prescribed in this chapter. [Acts 1876, p. 214; G. L. vol. 8, p. 1050.]

Art. 7300. [7664] [5214] Annual list.—On the first day of July of each year, the Comptroller shall cause to be prepared a list of all unrendered lands in each county subject to taxation and not assessed, in which shall be specified the name of the original grantee, the abstract number, the number of acres, the year for which such lands were unrendered, and the rate of State and county taxes for such year. [Id.]

Art. 7301. [7665] [5215] List forwarded.—Upon completion of such lists, the Comptroller shall forward the same to the board of equalization of the respective counties, with the verification that the said list is a true and correct statement of all the unrendered land and real estate in ——— county for the year ———, as shown by the records of his office. [Id.]

Art. 7302. [7666] [5216] Board to value such lands.—Upon receipt of such list or lists by the board of equalization of such county, they shall value each tract of land or parcel of real estate so mentioned and described in the said lists at their true and full value, as near as can be ascertained, for the year it was omitted to have been rendered. [Id.]

Art. 7303. [7667] [5217] Making of rolls.—When the board of equalization completes the valuation, they shall cause to be made out three separate rolls, in such manner as the Comptroller may prescribe; they shall place one in the hands of the tax collector, forward one to the Comptroller, and file one in the office of the county clerk for the inspection of the public. [Id.]

Art. 7304. [7668] [5218] Collector to give notice.—Upon receipt of the rolls by the tax collector, he shall advertise in some weekly newspaper published in his county, and, if no paper is published in his county, by posting printed circulars in not less than eight public places in his county, for four consecutive weeks, that the rolls for the collection of taxes on unrendered land and real estate have been placed in his hands, and that unless the taxes are paid within sixty days after the date of said notice he will proceed to collect the same as provided by law for the collection of delinquent taxes. [Id.]

Art. 7305. [7669] [5219] Collections enforced.—After the expiration of said sixty days, if the taxes on any such lands are not paid, the tax collector shall proceed to enforce the collection of said taxes in the mode provided in this title for the enforced collection of delinquent taxes; and he shall be entitled to the same fees and penalties as are allowed him for the collection of other delinquent taxes. [Id.]

Art. 7306. [7670] [5220] List of lands sold to State.—The Comptroller on or before the first day of each year, shall make out and forward to the tax collector of each county a full and complete list of all real estate situated in said county that has been previously, at tax sales, bid off to the State for taxes assessed in the county where the land is situated, since the thirty-first day of December, 1876, the owners of which have failed to redeem the same within two years from the date of said sale by payment or tender of payment to the proper officer of double the amount of taxes and costs for which said real estate was bid off to the State, together with all subsequent taxes that have become due on the same from the date of sale to the last date on which the same could have been redeemed. [Acts 1879, p. 79; G. L. vol. 8, p. 1379.]

Art. 7307. [7671] [5221] Sale.—Each tax collector, within ninety days after receipt of said list, shall call to his aid the county surveyor of his county, and, as near as may be, ascertain if any lands contained in said list do not in fact exist in said county, or are embraced in other surveys conflicting therewith, and upon which the taxes have been paid; and, after deducting the same from said list, he shall proceed to sell each tract of land therein described, whether belonging to residents or nonresidents, for the payment of such sums of money as may be designated on said list as due thereon, together with all costs that may

accrue in advertising and selling the same as herein provided. [Id.]

Art. 7308. [7672] [5222] Advertisement and redemption.—The tax collector shall, prior to the sale of any real estate that has been previously bid off to the State at tax sales, the owners of which have failed to redeem the same, advertise the real estate to be sold in some newspaper published in the county for six successive weeks, if there be such newspaper published therein, otherwise he shall post advertisements of said sale at the courthouse door and at one public place in each justice's precinct of his county for at least six weeks, giving in said advertisement, whether published or posted, such description of the lands to be sold as shall be given on the Comptroller's list, and stating the time, place and terms of sale, which shall be between legal hours on the first Tuesday of some specified month at the court house door at public outcry, to the highest bidder for cash; provided, that no real estate shall in any case be sold for less than the amount designated by the Comptroller as due thereon, together with all costs of advertisements and sale. The former owner of any such real estate, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the amount designated by the Comptroller as due thereon, with costs of advertisement. If it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale; and in all cases he shall deliver to the owner of the land, or his agent, a certificate under the seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been canceled, which certificate shall release the interest of the State, and the same may be recorded in the proper county as other conveyances of real estate are recorded. [Acts 1884, S. S. p. 31; Id. G. L. vol. 9, p. 563.]

Art. 7309. [7673] [5223] Land sold, how.—At the time and place appointed for said sale, the tax collector shall offer for sale each separate parcel of the real estate advertised, and shall sell the same to the bidder who will offer the largest amount of money therefor. [Acts 1879, p. 79; G. L. vol. 8, p. 1379.]

Art. 7310. [7674] [5224] Sale may be continued.—If the sale of the real estate advertised as provided herein shall not be completed on the day it is commenced, said sale may be continued for ten consecutive days, from day to day, by announcement of the tax collector to that effect; and the said collector may, if there be on any day a less number than three bidders present, adjourn said sale to the first Tuesday in the following month. [Id.]

Art. 7311. [7675] [5225] Deed executed.—When a sale has been made of any real estate as herein provided, the tax collector, upon payment of the amount bid for the same, shall make, execute and deliver to the purchaser a deed for such real estate, specifying in said deed the cause and date of sale, the number of acres sold if the same can be ascertained, the name of the person, firm, corporation or company in whose name the land was assessed, and all such descriptive information as may be necessary to identify the property conveyed; provided, that the purchaser may, after payment, as described in this article, ask a delay of sixty days within which to have said real estate surveyed by the county surveyor, said survey to be made at the expense of the purchaser, and, upon a certificate from the collector directed to the surveyor, that the person named in the certificate has purchased and paid for the same, not to exceed one dollar for each survey, to be paid for out of the sale of such survey. [Id.]

Art. 7312. [7676] [5226] Execution of deed.—When a survey has been made, as provided in the preceding article, and a copy of the field notes, certified to as true and correct by the county surveyor, filed with the tax collector, the said collector shall thereupon make, execute and deliver to the purchaser a deed to said real estate, which deed shall, in addition to the requisite hereinabove named, contain the field notes certified by the county surveyor. [Id.]

Art. 7313. [7677] [5227] Effect of deed.—Deeds made, executed and delivered by tax collectors under the authority of this chapter shall be held to vest a good and perfect title to the real estate therein described in the purchaser, and may be impeached only for fraud; provided, that the former owner shall have two years from the date of said deed to redeem the same by paying to the purchaser double the amount paid for said land by the purchaser at such sale, together with all subsequent taxes paid by the purchaser, with eight per cent interest on the amount of such subsequent taxes. [Id.]

Art. 7314. [7678] [5228] Report of sales.—Within thirty days after sales made under the provisions of this chapter, the tax collector shall make a report to the commissioners court of his county, and also to the Comptroller, giving in said reports such description of the real estate sold as is given in the Comptroller's list, and stating the amounts due the State, county and collector respectively, and the amount for which said land was sold, and the name of the party to whom each tract was sold. [Id.]

Art. 7315. [7679] [5229] Proceeds of sale.—Tax collectors shall, within sixty days after payments for real estate sold under the provisions of this chapter, after deducting from the proceeds of sale all costs due to them or their predecessors in said office, pay into the county treasury of the county in which said real estate is situated the amount of taxes shown by the Comptroller's list to be due to said county, and the balance of said proceeds shall be paid by him into the State Treasury within the said sixty days, in such manner as may be directed by the Comptroller. [Id.]

Art. 7316. [7680] [5230] Collections applied.—Taxes collected by the State or county, by sales made under the provisions of this chapter, shall be placed to the credit of the different funds for which originally assessed under the direction respectively of the Comptroller and the commissioners court of the county in which the sale is made; the balance of the proceeds, after satisfying all taxes, penalties and costs accrued, shall, under the direction of the Comptroller, be placed in the State Treasury, subject to be reclaimed by the owner of the land on proof as required in case of escheated estates. [Acts 1884, S. S. p. 31; G. L. vol. 9, p. 563.]

Art. 7317. [7681] [5231] Costs deducted.—The tax collector shall be entitled to deduct and retain out of the proceeds of sale of each separate parcel of real estate sold, as hereinbefore provided:

1. Such amount as may be designated in the Comptroller's list as costs due thereon to the collector.

2. If the advertisement of sale is published in a newspaper, such a proportion of the actual amount paid for advertising as the number of acres in such separate parcel sold bears to the whole number of acres advertised; or, if the advertisements are posted, the sum of one dollar.

3. Two dollars for every deed made, executed, and delivered under the provisions of this chapter. [Acts 1879, p. 79; G. L. vol. 8, p. 1379.]

Art. 7318. [7682] [5232] Unsold land reported.—If, after the expiration of ninety days after the receipt by the tax collector of the Comptroller's list, any real estate described in said list shall remain unsold, the said collector shall make separate reports of such fact to the commissioners court of his county and

the Comptroller respectively; and the said parcels of real estate shall be embraced in the next list furnished by the Comptroller to the tax collector. [Id.]

CHAPTER 10.—DELINQUENT TAXES

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Article 7319. [7683] "Real property."—For the purpose of taxation, real property shall include all lands within this State, and all buildings and fixtures thereon and appertaining thereto, except such as are expressly exempted by law. [Acts 1895, p. 50; Acts 1897, p. 132; G. L. vol. 10, pp. 780–1186.]

Art. 7320. [7684] A lien on land.—All lands or lots which have been returned delinquent or reported sold to the State, or to any city or town, for

taxes due thereon since the first day of January, 1885, or which may hereafter be returned delinquent or reported sold to the State, or to any city or town, shall be subject to the provisions of this chapter, and said taxes shall remain a lien upon the said land, although the owner be unknown, or though it be listed in the name of a person not the actual owner; and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to be due by such assessment for any preceding year. [Acts 1897, p. 132.]

Art. 7321. [7685] Listed by tax collector.—The commissioners court of each county shall cause to be prepared by the tax collector, at the expense of the county (the compensation for making out the delinquent tax record to be fixed by the commissioners court) a list of all lands, lots or parts of lots sold to the State for taxes since the first day of January, 1885, and which have not been redeemed in their respective counties and unorganized counties attached thereto, and have such lists recorded in books to be called the "Delinquent Tax Record," showing when the lands or lots were reported delinquent or sold to the State for taxes, also the name of the owner at the time of such sale or delinquency, if known, the number of acres, the amount of taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year as shown by the records of the tax collector's office; and, in making up the list or lists contemplated by this chapter, corrections and omissions in the description of any real estate embraced in such list or lists shall be made, so that when the corrections are made and the omissions supplied, the description will be such as is given in the abstracts of all the titled and patented lands in the State of Texas, or such as may be furnished by the Land Commissioner, and it shall be required, in bulk assessments, to apportion to each tract or lot of land separately, its pro rata share of the entire tax, penalty and cost. The list for each county, when certified to by the county judge, and the assessment rolls and books on file in the tax collector's office, shall be prima facie evidence that all the requirements of the law have been complied with by the officers charged with any duty thereunder, as to the regularity of listing, assessing, levying of all taxes therein mentioned, and reporting as delinquent or sold to the State any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in case the description of the property in said list or assessment rolls or books is not sufficient to properly identify the same, and of which property there is sufficient description in the inventories in the assessor's office, then said inventories shall be admissible as evidence of the description of said property. This delinquent tax record for each county shall be delivered to and preserved by the county clerk in his office; and the commissioners court shall cause a duplicate of same to be sent to the Comptroller; provided, where the records are incomplete in any county, the Comptroller shall furnish such county with a certified copy of the delinquent list for any year or years. [Id.]

Art. 7322. [7686] Delinquent tax record.—On receipt of such delinquent tax record the county clerk of each of the counties of this State, respectively, shall certify the same to the commissioners court for examination and correction, and he shall thereafter cause the same to be recorded in a book labeled the "Delinquent Tax Record of ——— County." The delinquent tax record shall be arranged numerically as to abstract numbers, and shall be accompanied by an index showing the names of delinquents in alphabetical order. [Id.]

Art. 7323. [7687] Delinquent tax list published.—Upon the completion of said delinquent tax record by any county in this State the commissioners court may, in their discretion, cause the same to be published in some newspaper published in the county once each week for three consecutive weeks, but if no newspaper is published in the county, such list may be published in a newspaper outside the county to be designated by the commissioners court, by contract duly entered into, and a publisher's fee of twenty-five cents shall be taxed against each such tract or parcel of land so advertised, which fee, when collected, shall be paid into the county treasury; and the commissioners court of said county shall not allow for said publication a greater amount than twenty-five cents for each tract of land so advertised and such publication and any other publication in a newspaper provided for in this chapter may be proved by affidavit of the printer of the newspaper in which the publication was made, his foreman or principal clerk, annexed to a copy of the publication, specifying the times when and the paper in which publication was made. All corrections made in said record under this article shall be noted in the minutes of the commissioners court, and shall be certified by the county clerk to the Comptroller, who shall note the same upon his delinquent tax record. If such delinquent tax record be not published correctly, in accordance with the copy furnished such newspaper, then no compensation shall be allowed for such publication, but failure to so publish such list shall be no defense to a suit for taxes due. [Id. Acts 2nd. C. S. 1923, p. 33.]

Art. 7324. Notice to owners of delinquency.—During the month of July each year, or as soon thereafter as practicable, the collector of taxes in each county of this State shall mail to the tax roll address of each owner of any lands or lots situated in the county a notice showing the amount of taxes delinquent or past due and unpaid against all such lands and lots as shown by the delinquent tax record of the county on file in the office of the tax collector, a duplicate of which shall also have been filed in the office of the Comptroller of the State and approved by such office, but failure to send or receive such notice shall be no defense to a suit brought for taxes. Such notice shall also contain a brief description of the lands and lots appearing delinquent and the various sums or amounts due against such lands and lots for each year as they appear to be delinquent, according to such records, and it shall also recite that unless the owner of such lots or land described therein shall pay to the tax collector the amount of taxes, interest, penalties and costs set forth in such notice within thirty days from the date of notice, that the county or district attorney will institute suits for the collection of such moneys and for the foreclosure of the constitutional lien against such lands and lots. Each tax collector, as soon after mailing such notice as practicable, shall furnish to the County or District Attorney duplicates of all such notices mailed to the taxpayers in accordance with the provisions of this law, and also, lists of lands and lots located in the county appearing on the delinquent tax records in the name of "unknown" or "unknown owners," or in the name of persons whose correct address or place of residence in or out of the county said collector is unable by the use of diligence to discover or ascertain, against which taxes are delinquent, past due, and unpaid, and such lists or statements shall show the amount of State and County taxes delinquent, past due, and unpaid against each such tract or lot of land for each year they appear to be delinquent according to the delinquent tax records of the county, and shall likewise contain a brief description of all such lands and lots. The tax collector shall furnish on demand of any person, firm or corporation like statements with reference to any particular lot or tract of land for whatever purpose desired, which shall be in all instances certified by him with the seal

of his office attached. Whenever any person, or persons, firm or corporation shall pay to the tax collector all the taxes, interest, penalties and costs shown by the delinquent tax records of the county to be due and unpaid against any tract, lot or parcel of land for all the years for which taxes may be shown to be due and unpaid, prior to the institution of suit for the collection thereof, the tax collector shall issue to such person or persons, firm or corporation, a receipt covering such payment as is now required by law.

Provided that if the House Bill No. 331,[1] pending in the Senate, becomes a law, then the provisions of this Article 7324, so far as they may conflict with said law, shall be controlled by the provisions of said law. [Acts 1915, p. 250; Acts 2nd C.S. 1919, p. 184; Acts 2nd C.S. 1923, p. 32; Acts 1931, 42nd Leg., p. 196, ch. 117, § 1.]

[1] No record of House Bill No. 331 becoming a law.
Section 4 of Acts 1931, provides that no taxes delinquent at the time of its passage shall be affected thereby but they shall remain due and delinquent until paid with penalty and interest as if this act had not been enacted.
Section 5 repeals all conflicting laws and parts of laws.

Art. 7325. Notice, how made up.—In making up the notices or statements provided for in the preceding article, each tax collector shall rely upon the delinquent tax records compiled as required by law, approved by the commissioners court, and a duplicate of which has been filed in the office of the Comptroller, and which has or may be approved by the Comptroller. The tax collector, whenever there shall be one year or more of back taxes that have not been included in such delinquent tax records, shall prepare or cause to be prepared a supplement to such records which shall be prepared in duplicate, one copy to be filed in the office of the county clerk and one copy thereof to be furnished to the Comptroller subject to his approval; and whenever said supplement shall have been approved by the commissioners court and by the Comptroller, the tax collector shall rely thereon for the data covering delinquent taxes for said years in making out the notices or statements provided for in the preceding article. Said tax collector, in making up said delinquent tax record and supplement, shall examine the records of the district court and county clerk's office of his county, and no tract of land shall be shown delinquent on any delinquent tax record for any year where the records of the district court or the county clerk's office show that the taxes for said year have been paid. It shall be the duty of each tax assessor to enter the post-office address of each and every tax-payer after his name on the tax rolls, and the Comptroller shall provide a column for the entry of such addresses on the sheets furnished the assessors for making up the tax rolls. [Acts 1915, p. 250; Acts 2nd. C. S. 1923, p. 33.]

Art. 7326. [7688] Suits to foreclose tax lien.—Whenever any taxes on real estate have become delinquent it shall be the duty of the county attorney upon the expiration of the thirty days notice provided for in the two preceding articles or as soon thereafter as practicable, to file suit in the name of the State of Texas in the district court of the county where such real estate is situated, for the total amount of taxes, interest, penalty and costs that have remained unpaid for all years since the thirty-first day of December, 1908, with interest computed thereon to the time fixed for the trial thereof at the rate of six per cent per annum, and shall pray for judgment for the payment of the several amounts so specified therein and shown to be due and unpaid by the delinquent tax records of said county; and also that such land be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief as the State may be entitled to under the law and facts. All suits to enforce the collection of taxes as provided in this law shall include all lands in the county where the suit is brought, owned by the same person on which delinquent taxes are due, and shall take precedence over all other suits pending in said district court. If through mistake, oversight or otherwise any tax due on any land owned by the defendant is omitted from such suit, such omission shall not be any defense against the collection of the tax due and sued for. All delinquent tax records of said county in any county where such suit is brought shall be prima facie evidence of the true and correct amount of taxes and costs due by the defendant or defendants in such suit, and the same or certified copies thereof shall be admissible in the trial of such suit as evidence thereof. Such suit shall be brought as an ordinary foreclosure for debt, with averments as to the existence of a lien upon such land for such taxes, with interest at the rate of six per cent per annum, and shall pray for judgment for the foreclosure of the said lien and sale of said lands as under ordinary execution. The county attorney, or the attorney employed by the commissioners court, shall sign such petition as attorney for plaintiff. The county tax collector and county tax assessor shall furnish all affidavits, certified copies of the records of their respective offices and such other evidence as may be in their possession by virtue of such office as may be applied for by the proper attorney prosecuting such suit, and shall be allowed a fee of fifty cents for each certified copy furnished upon such application. If the amount of taxes delinquent is not more than five dollars the commissioners court may have such suit for five dollars or less instituted or not as said court may deem to be for the best interests of the county. [Acts 1895, p. 50; Acts 1897, p. 132; Acts 2nd C. S. 1923, p. 34; Acts 3rd C. S. 1923, p. 184.]

Art. 7327. Unknown owner.—In respect to lands and lots appearing on lists furnished by the tax collector to the county or district attorney in accordance with the provisions of this law, as lands and lots located in the county which appear on the delinquent tax record in the name of "unknown" or "unknown owner," or in the name of persons whose correct address or place of residence in or out of the county said collector has been unable, by due diligence to discover or ascertain, the county attorney or in the counties having no county attorney, the district attorney, immediately after the lists of such lands have been furnished him by the collector shall proceed to collect all taxes, penalty, interest and costs then due against the same in the manner prescribed in this chapter. [Acts 2nd C. S. 1919, p. 166.]

Acts 1919, 2d C.S. c. 64, § 2 held invalid as not stating in caption the purpose of taking away increase in collector's compensation by prior statute adding delinquent tax fees and commissions. Bitter v. Bexar County, Com.App., 11 S.W.2d 163.

Art. 7328. [7689] Proceedings in tax suits.*—The proper persons, including all record lien holders, shall be made parties defendant in such suit, and shall be served with process and other proceedings had therein as provided by law in ordinary foreclosure suits in the district courts of this state; and in case of foreclosure an order of sale shall issue and the land sold thereunder as in other cases of foreclosure; but if the defendant or his attorney shall, at any time before the sale, file with the officer in whose hands any such order of sale shall be placed, a written request that the property described therein shall be divided and sold in smaller tracts than the whole, together with the description of such smaller tracts, then such officer shall sell the lands in such subdivisions as defendant may request, and in such case shall sell only as many subdivisions, as near as may be, as are necessary to satisfy the judgment, interest, penalty and costs and after the payment of the taxes, interest, penalty and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of the court out of which said execution or other final process issued to be retained

by him subject to the order of the court for a period of two years, unless otherwise ordered by the court, after which time the court may order the same to be paid to the owner against whom said taxes were assessed; provided, any one claiming the same shall make proof of his claim to the satisfaction of the State Treasurer within three years after the sale of said land or lots, after which the same shall be governed by the law regulating escheat. If there shall be no bidder for such land the county attorney, sheriff or other officer selling the same, shall bid said property off to the State for the amount of all taxes, penalty, interest and costs adjudged against such property, and the district clerk shall immediately make report of such sale in duplicate, one to the Comptroller and one to the Commissioners' Court, on blanks to be prescribed and furnished by the Comptroller. Where the property is bid off to the State, the sheriff shall make and execute a deed to the State, using forms to be prescribed and furnished by the Comptroller, showing in each case, the amount of taxes, interest, penalty and costs for which sold, and the clerk's fees for recording deeds. He shall cause such deeds to be recorded in the record of deeds by the county clerk in his county, and when so recorded, shall forward the same to the Comptroller. The county clerk shall be entitled to a fee of one dollar for recording each such deed to the State, to be taxed as other costs. When land thus sold to the State shall be redeemed the tax collector shall make the proper distribution of the moneys received by him in such redemption, paying to each officer the amount of costs found to be due, and to the State and county the taxes, interest and penalty found to be due each respectively. If any of the land thus sold to the State is not redeemed within the time prescribed by this law, the sheriff shall sell the same at public outcry to the highest bidder for cash at the principal entrance to the court house in the county wherein the land lies, after giving notice of sale in the manner now prescribed for sale of real estate under execution, provided when notice is given by posting notices, one of the said notices shall be posted in a conspicuous place upon the land to be sold. Said notice shall contain a legal description of the land to be sold; the date of its purchase by the State, the price for which the land was sold to the State; that it will be sold at public outcry to the highest bidder for cash, date and place of sale. All sales contemplated herein shall be made in the manner prescribed for the sale of real estate under execution, and the sheriff is hereby authorized, and it is hereby made his duty to reject any and all bids for said land when in his judgment the amount bid is insufficient or inadequate, and in event said bid or bids are rejected the land shall be re-advertised and offered for sale as provided for herein, but the acceptance by the sheriff of the bid shall be conclusive and binding on the question of the sufficiency of the bid, and no action shall be sustained in any court of this State to set aside said sale on grounds of the insufficiency of the amount bid and accepted. Nothing herein shall be construed as prohibiting the State, acting through the county attorney of the county wherein the land lies, or its Attorney General, from instituting an action to set aside the said sale on the grounds of fraud or collusion between the officer making the sale and the purchaser. The sheriff shall send the amount received from such sale to the State Treasurer after deducting the amount of the county taxes, interest and penalty of the county tax which he shall pay to the county treasurer. The sheriff, in behalf of the State, shall execute a deed conveying title to said property when sold and paid for. [Acts 1895, p. 50; Acts 1897, p. 132; Acts 2nd C. S. 1923, p. 35; Acts 3rd C. S., [1923] p. 181; Acts 1927, 40th Leg., 1st C. S., p. 260, ch. 99, § 1.]

**Repealed in part, Rules of Civil Procedure, Rule 117a.*

Art. 7328.1 Proceedings in delinquent tax suits.*

Petition

Section 1. Hereafter in suits brought to collect delinquent taxes on real property, the petition shall contain substantially the following allegations:

"(a) The State of Texas, hereinafter called plaintiff, brings this suit in behalf of itself, ——— County, and for the use and benefit of all political subdivisions whose taxes are collected by the Assessor and Collector of Taxes for said county.

"(b) The defendants are ———, ——— and ———, who reside in ——— County, ———, and who own or claim some interest in the hereinafter described real property, which is situated in said ——— County.

"(c) That as to each tract separately assessed: That there are delinquent taxes justly due, owing and unpaid against the property described as follows, to-wit: for the following years and in the amounts, to-wit:

YEARS DELINQUENT	TO WHOM ASSESSED (IF UNKNOWN SO STATE)	AMOUNTS

together with penalties, interest and costs provided by law or legally accruing thereon in the total amount of $———.

"(d) That all said taxes were authorized by law and each political subdivision in whose behalf this suit is brought was legally constituted and authorized to levy, assess and collect the same and all of said taxes were duly and legally levied and assessed against said real property and the owners thereof (if known) and plaintiff now has and asserts a lien on each tract of real property described and mentioned above to secure the payment of all taxes, penalties, interest and costs due thereon; and all things required by law to be done have been duly and legally performed by the proper officials.

"(e) That all of said above described real estate was, at the time said taxes were assessed, located within the boundaries of the county and each political subdivision in whose behalf this suit is brought.

"(f) The attorney whose name is signed hereto is legally authorized and empowered to institute and prosecute this action on behalf of plaintiff."

Personal property taxes

Sec. 2. Such form of petition, insofar as applicable, may be used in suits for the collection of delinquent taxes on personal property, and in any such suit, it shall be sufficient to describe such personal property in such general terms as money, notes, bonds, stocks, credits, stocks of goods, wares, merchandise, fixtures, tools, machinery, equipment, automobiles, household and kitchen furniture and fixtures, beds, dressers, rugs, stoves, heaters, refrigerators, tables, pianos, radios, pictures, trunks, linens, kitchen utensils, dishes, silverware, jewelry, or any other appropriate general description, and no other or more particular description or designation shall be required as a prerequisite to a suit to obtain a personal judgment for taxes due upon personal property so described.

Prayer

Sec. 3. The prayer to any such petition having for its purpose the collection of taxes on both real and personal property shall be sufficient if it contains the following, and if for the collection of either real or personal property taxes without the other, it may be changed so as to make it applicable to the class of property involved, viz.:

"Wherefore plaintiff prays judgment against defendant for the total amount of said taxes, together with all penalties, interest, costs and other charges or expenses that may be or become legally due and owing, together with foreclosure of the tax lien

against the above described real estate securing the amount against each tract of real estate above described and for personal judgment against said defendants owning said personal property at the time same was assessed for taxation for the amount shown to be due on it."

Verification not required

Sec. 4. It shall not be necessary that such petition be verified.

Citation

Sec. 5. Hereafter in all suits for delinquent taxes, it shall be sufficient if the citation be substantially in the following form with proper changes to make it applicable to both real and personal property or to real or personal only according to the character of taxes sued for, to-wit:

"THE STATE OF TEXAS:

TO THE SHERIFF OR ANY CONSTABLE OF ——— COUNTY, GREETING:

"You are hereby commanded to summon ——— (by making publication, or by personal service in the manner provided by law): to appear at the next regular term of the ——— District Court of ——— County, Texas, to be held at the court house thereof in the city of ——— on the ——— Monday after the ——— Monday in ———, A. D. 19—, then and there to answer a petition in a delinquent tax suit filed by the State of Texas suing in its own behalf and also in behalf of ——— County, and all political subdivisions of said county whose taxes are assessed and collected by the Assessor and Collector of Taxes of said county, in said Court on the ——— day of ——— 19—, in a suit numbered ——— on the docket of said Court, wherein the State of Texas is plaintiff and ———, ——— and ——— are defendants. Said suit is a suit to collect taxes on the following described real estate (and/or personal property), to-wit: ——— for the years and in the amounts as follows:

YEARS DELINQUENT	TO WHOM ASSESSED (IF UNKNOWN SO STATE)	AMOUNTS

together with penalties, interest, costs and expenses which have accrued, or which may legally accrue, thereon.

(In the event any other taxing unit has intervened at the time such citation is issued, said citation shall also give notice thereof and it will be sufficient, if it contains the following information, to-wit:

'——— District filed its petition in intervention in said cause on the ——— day of ———, 19—, to enforce payment of delinquent taxes on the real estate above described for the years and in the amounts as follows:

YEARS DELINQUENT	TO WHOM ASSESSED (IF UNKNOWN SO STATE)	AMOUNTS

together with penalties, interest, charges and expenses which have accrued or which may legally accrue thereon').

Plaintiff and/or intervenors also seek the establishment and foreclosure of the lien securing payment of such taxes as provided by law.

Herein fail not, but have you before said Court, on the first day of the next term thereof, this writ, with your return thereon showing you have executed the same.

Witness my hand and official seal at my office in ———, Texas, this ——— day of ———, A. D. 19—.

Clerk, District Court
——— County, Texas."

Municipal corporations and political subdivisions

Sec. 6. All of the provisions of this Act simplifying the collection of delinquent State and County taxes, are hereby made available for, and when invoked shall be applied to, the collection of delinquent taxes of all municipal corporations and political subdivisions of this State or any county thereof, authorized to levy and collect taxes. [Acts 1939, 46th Leg., p. 664.]

Sec. 7 of the Act provides that the provisions of the Act should be cumulative but that the provisions of this Act should govern in case of conflict.

* *Repealed in part, Rules of Civil Procedure, Rule 117a.*

Art. 7328a. Tax sales of real estate.—That all sales of real estate made for the collection of delinquent taxes due thereon shall be made only after the foreclosure of tax lien securing same has been had in a court of competent jurisdiction in accordance with existing laws governing the foreclosure of tax liens in delinquent tax suits. [Acts 1929, 41st Leg., p. 103, ch. 48, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 7329. Defense to tax suits.—There shall be no defense to a suit for collection of delinquent taxes, as provided for in this chapter except:

1. That the defendant was not the owner of the land at the time the suit was filed.
2. That the taxes sued for have been paid, or
3. That the taxes sued for are in excess of the limit allowed by law, but this defense shall apply only to such excess. [Acts 2nd C. S. 1923, p. 36.]

Art. 7330. Sheriff to execute deeds.—In all cases in which lands have been sold, or may be sold, for default in the payment of taxes, the sheriff selling the same, or any of his successors in office, shall make a deed or deeds to the purchaser or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this State to vest good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud. [Acts 1895, p. 50; G. L., vol. 10, p. 780; Acts 1897, p. 132; G. L., vol. 10, p. 1186.]

Art. 7331. [7691] Fees of tax collector.—For calculating and preparing redemption certificates and receipts, reporting and crediting redemptions, posting Comptroller's redemption numbers on the delinquent tax record or annual delinquent list, mailing certificates of redemption to taxpayers after approval by the Comptroller, and for issuing receipts or certificates of redemption for property shown on the annual delinquent list, the tax collector shall be entitled to a fee of one dollar ($1.00) for each correct assessment of land to be sold, said fee to be taxed as costs against the delinquent. Correct assessment as herein used means the inventory of all properties owned by an individual for any one year. Provided, that in no case shall the State or county be liable for said fee. For checking up and taking off delinquency, separating and assorting various tracts or each assessment, prorating the taxes thereon, arranging the items by abstract numbers or lot and block numbers, and compiling the delinquent tax record herein required to be compiled whenever there shall be as many as two years of back taxes that have not been included in the delinquent record, the tax collector shall be paid out of the general fund of the county, five cents for each written line of the original of such delinquent record, not to exceed twenty-five cents for any one tract or abstract rendered, returned delinquent and owned by one taxpayer; such fee to be taxed as costs, and to be paid back into the general fund of the county when collected. For the collection of delinquent taxes on real estate and for performing all duties relating to such taxes for which no compensation is otherwise provided, the tax collector shall receive five per cent of all delinquent taxes collected by him. [Acts 3rd C.S. 1923, p. 182; Acts 1930, 41st Leg., 4th C.S., p. 30, ch. 20, § 8.]

Art. 7331a. [Repealed by Acts 1930, 41st Leg., 4th C.S., p. 3, ch. 3, §§ 1, 2.]

Article repealed was Acts 1929, 41st Leg., 1st C.S., p. 234, ch. 95, §§ 1-4.

Art. 7332. [7691] Other fees.—The County or District Attorney shall represent the State and County in all suits against delinquent tax-payers, and all sums collected shall be paid over immediately to the County Collector.

Before filing suits for the recovery of delinquent taxes for any year, notice shall be given to the owner or owners of said property as is provided for in Article 7324 of the Revised Civil Statutes of Texas, 1925, as amended by Chapter 117, Page 196, Acts of the Forty-Second Legislature, Regular Session. The fees herein provided for shall not accrue to nor shall the various officers herein named be entitled thereto in any suit unless it be proved that notice has been given to the owner for the time and in the manner provided by law.

In all cases, the compensation of said Attorney shall be Two ($2.00) Dollars for the first tract and One ($1.00) Dollar for each additional tract up to four (4), but said fee in no case to exceed Five ($5.00) Dollars. And provided, that in any suit brought against any individual or corporate owner, all past due taxes for all previous years on such tract or tracts shall be included; and provided, further that where there are several lots in the same addition or subdivision delinquent, belonging to the same owner, all said delinquent lots shall be made the subject of a single suit.

All fees provided for the officers herein shall be treated as fees of office and accounted for as such, and said officers shall not receive nor retain said fees in excess of the maximum compensation allowed said officers under the laws of this State; and provided further that the County Attorney, Criminal District Attorney or District Attorney shall not be entitled to the fees herein provided for in instances where such delinquent taxes are collected under contracts between the Commissioners' Court and others for the collection of such taxes, and in such instances the fees herein provided for such officers shall not be assessed nor collected.

The Sheriff or Constable of the County in which the suit is pending shall receive a fee of Two ($2.00) Dollars in each case which will cover the service of all process, and the selling of the property and executing deeds for same. If, in any such suit, process is issued to be served in Counties other than the one in which the suit is pending, the Sheriff or Constable serving the same shall receive a fee of One ($1.00) Dollar in each suit for his services.

The District Clerk shall receive a fee of Two ($2.00) Dollars in full for his services in each case.

The County Clerk shall receive One ($1.00) Dollar in full for his services in each case.

Provided, that the fees herein provided for in connection with delinquent tax suits shall constitute the only fees that shall be charged by said officers for preparing, filing, instituting, and prosecuting suits on delinquent taxes and securing collection thereof, and all laws in conflict herewith are hereby repealed.

In case the delinquent tax-payer shall pay to the collector the amount of delinquent taxes for which he is liable, together with accrued interest after the filing of suit before judgment is taken against him in the case, then, only one-half of the fees taxable in such a case, as provided for herein, shall be charged against him.

Sec. 2. In suits by Counties against any of the officers herein named to recover moneys or fees collected by any such officers, limitation of action shall not apply, and no such suit shall be barred by the Statute of limitation. [Acts 3rd C.S. 1923, p. 182; Acts 1929, 41st Leg., p. 307, ch. 143, § 1; Acts 1930, 41st Leg., 4th C.S. p. 30, ch. 20, § 9; Acts 1931, 42nd Leg., p. 428, ch. 258, § 1; Acts 1931, 42nd Leg., 2nd C.S., p. 31, ch. 16.]

Art. 7333. [7691] Fees taxed as costs.—In each case such fees shall be taxed as costs against the land to be sold under judgment for taxes, and paid out of the proceeds of sale of same after the taxes, penalty and interest due thereon are paid, and in no case shall the State or county be liable therefor. [Acts 3rd C.S. 1923, p. 182.]

Art. 7334. [7691] "Tract."—The term "tract" shall mean all lands or lots in any survey, addition or subdivision or part thereof owned by the party being sued for delinquent taxes. [Id.]

Art. 7335. [7691] Contract with attorney.—Whenever the commissioners court of any county after thirty days written notice to the county attorney or district attorney to file delinquent tax suits and his failure to do so, shall deem it necessary or expedient, said court may contract with any competent attorney to enforce or assist in the enforcement of the collection of any delinquent State and county taxes for a per cent on the taxes, penalty and interest actually collected, and said court is further authorized to pay for an abstract of property assessed or unknown and unrendered from the taxes, interest and penalty to be collected on such lands, but all such payment and expenses shall be contingent upon the collection of such taxes, penalty and interest. It shall be the duty of the county attorney, or of the district attorney, where there is no county attorney, to actively assist any person with whom such contract is made, by filing and pushing to a speedy conclusion all suits for collection of delinquent taxes, under any contract made as herein above specified; provided that where any district or county attorney shall fail or refuse to file and prosecute such suits in good faith, he shall not be entitled to any fees therefrom, but such fees shall nevertheless be collected as a part of the costs of suit and applied on the payment of the compensation allowed the attorney prosecuting the suit, and the attorney with whom such contract has been made is hereby fully empowered and authorized to proceed in such suits without the joinder and assistance of said county or district attorneys. [Acts 2nd C. S. 1923, p. 37; Acts 3rd C. S. 1923, p. 182.]

Art. 7335a. Delinquent tax contracts.—Sec. 1. No contract shall be made or entered into by the Commissioners' Court in connection with the collection of delinquent taxes where the compensation under such contract is more than fifteen per cent of the amount collected. Said contract must be approved by both the Comptroller and the Attorney General of the State of Texas, both as to substance and form. Provided however, the County or District Attorney shall not receive any compensation for any services he may render in connection with the performance of the contract or the taxes collected thereunder.

Sec. 2. Any contract made in violation of this Act shall be void. [Acts 1930, 41st Leg., 4th C.S., p. 9, ch. 8.]

Art. 7336. [7692] Penalty.—(a) If any person shall pay, on or before November thirtieth of the year for which their assessment is made, one-half (½) of the taxes imposed by law on him or his property, then he shall have until and including the thirtieth day of the succeeding June, within which to pay the other one-half (½) of his said taxes without penalty or interest thereon.

If said taxpayer, after paying said one-half (½) of his taxes on or before November thirtieth, as hereinbefore provided, shall fail or refuse to pay, on or before June thirtieth next succeeding said November, the other one-half (½) of his said taxes, a penalty of eight (8%) per cent of the amount of said unpaid taxes shall accrue thereon.

If any person fails to pay one-half (½) of the taxes, imposed by law upon him or his property, on or before the thirtieth day of November of the year for which the assessment is made, then unless he pays all of the taxes (imposed by law on him or his property), on or before the thirty-first day of the succeeding January, the following penalty shall be payable thereon, to-wit: During the month of February, one (1%) per cent; during the month of March, two (2%) per cent; during the month of April, three (3%) per cent; during the month of May, four (4%) per cent; during the month of June, five (5%) per cent; and on and after the first day of July, eight (8%) per cent.

(b) All poll taxes and all ad valorem taxes, unless one-half (½) thereof have been paid on or before November thirtieth as hereinabove provided, shall become delinquent if not paid prior to February first of the year next succeeding the year for which the return of the assessment rolls of the county are made to the Comptroller of Public Accounts. If one-half (½) of said ad valorem taxes have been paid on or before the thirtieth day of November as herein provided, the remaining one-half (½) of such taxes shall be delinquent if not paid before the first day of July of the year next succeeding the year for which the return of the assessment rolls of the county are made to the Comptroller of Public Accounts.

(c) If one-half (½) of such ad valorem taxes have been paid on or before November thirtieth of the year in which the same are assessed, the discounts herein provided for shall be effective and shall apply to the last half of the ad valorem taxes if paid ninety (90), sixty (60), and thirty (30) days, respectively, prior to the first day of July, when the same become delinquent as herein provided; but such discount shall not apply to the first half of such taxes if the same have been paid on or before November thirtieth of the year in which such assessment is made.

(d) All delinquent taxes shall bear interest at the rate of six (6%) per cent per annum from the date of their delinquency. All penalties and interest provided for in this Act shall, when collected, be paid to the State, counties, and districts, if any, in proportion to the taxes upon which the penalty and interest are collected. All discounts provided for in this Act shall, when allowed, be charged to the State, counties, and districts, if any, in proportion to the taxes upon which such discounts are allowed.

(e) The Assessor and Collector of Taxes shall, as of the first day of July of each year for which any State, county and district taxes for the preceding year remain unpaid, make up a list of the lands and lots and/or property on which any taxes for such preceding year are delinquent, charging against the same all unpaid taxes assessed against the owner thereof on the rolls of said year.

Penalties, interest and costs accrued against any land, lots and/or property need not be entered by the Assessor and Collector of Taxes on said list, but in each and every instance all such penalties, interest and costs shall be and remain a statutory charge with the same force and effect as if entered on said list, and the Assessor and Collector of Taxes shall calculate and charge all such penalties, interest and costs on all delinquent tax statements or delinquent tax receipts issued by him.

Said list shall be made in triplicate and presented to the Commissioners' Court for examination and correction, and after being so examined and corrected said list in triplicate shall be approved by said Court. One copy thereof shall be filed with the County Clerk or Auditor, one copy retained and filed by the Assessor and Collector of Taxes, and one copy forwarded to the Comptroller with the annual settlement report of the Assessor and Collector of Taxes. Said list, as compiled by the Assessor and Collector of Taxes, and corrected by the Commissioners' Court, or the rolls or books on file in the office of the Assessor and Collector of Taxes, shall be prima facie evidence that all the requirements of the law have been complied with by the officers of courts charged with any duty thereunder, as to regularity of listing, assessing, and levying all taxes therein set out, and that the amount assessed against said real estate is a true and correct charge. If the description of the real estate in said list or assessment rolls or books is not sufficient to identify the same, but there is a sufficient description of the inventories in the office of the Assessor and Collector of Taxes, then said inventories shall be admissible as evidence of the description of said property.

The Comptroller of Public Accounts shall prescribe suitable forms to be used by the Assessor and Collector of Taxes for noting thereon the payment of taxes in semi-annual installments. He shall also prescribe suitable forms for receipts, reports and for any other purpose necessary in carrying out the provisions of this Act.

This provision is cumulative of all other provisions of the Statutes of the State prescribing the duties of the Comptroller of Public Accounts. [Acts 1895, p. 50; G.L. vol. 10, p. 780; Acts 1897, p. 132; G.L. vol. 10, p. 1186; Acts 1923, 2nd C.S., p. 39; Acts 1931, 42nd Leg., p. 196, ch. 117; Acts 1934, 43rd Leg., 4th C.S., p. 36, ch. 10, § 2; Acts 1939, 46th Leg., p. 654, § 3.]

For notes to sections 4 to 6 of the act of 1939 cited see notes under art. 7057d.

Section 1 of Acts 1934, is published as Article 7255a, ante.

Acts 1931, 42nd Leg., 2nd C.S., p. 34, ch. 18, § 1, released all interest and penalties on other than incorporated cities and towns, delinquent up to and including October 20, 1931, provided said taxes are paid on or before January 31, 1932.

Art. 7336a. Releasing interest and penalties on ad valorem and poll taxes delinquent December 31, 1932.

This article, derived from Acts 1932, 42nd Leg., 3rd C.S., p. 114, ch. 46, provided that all interest and penalties that had accrued on all ad valorem and poll taxes that were delinquent on or before December 31, 1932 were released provided such taxes were paid on or before December 31, 1932.

Art. 7336b. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 211, ch. 79, § 6.]

Article repealed was Acts 1933, 43rd Leg., p. 521, ch. 169.

Art. 7336c. Release of interest and penalties on ad valorem and poll taxes delinquent July 1, 1933.

This article, derived from Acts 1933, 43rd Leg., 1st C.S., p. 211, ch. 79, provided that all interest and penalties that had accrued on all ad valorem and poll taxes that were delinquent on or before July 1, 1933 were released, provided such taxes were paid on or before December 31, 1933.

Art. 7336d. Release of interest and penalties on ad valorem and poll taxes on payment on or before March 15, 1935.

This article, derived from Acts 1934, 43rd Leg., 4th C.S., p. 16, ch. 5, provided that all interest and penalties that had accrued on all ad valorem and poll taxes that were delinquent on or before August 1, 1934 were released, provided such taxes were paid on or before March 15, 1935.

Art. 7336e. Priority in payment of school taxes.—Sec. 1. In cases where common school district taxes and/or independent school district taxes are collectable from the same roll with any other tax, any taxpayer of any common school district or independent school district is authorized to pay one-half or all of said school taxes prior to the payment of any other tax; and upon such payment or tender of payment of one-half or all of such common school district tax and/or any independent school district tax, together with penalty, interest, and costs thereon, if any, such Collector is authorized and directed to receive the same and execute in duplicate a memorandum receipt therefor and deliver one copy to the taxpayer and keep the other as part of the records of his office, and the Tax

Collector shall enter the date and amount paid in same memorandum form on the tax roll; and thereafter on full payment of all of the remaining taxes together with interest, penalty and costs, if any, as may be shown to be due on such roll, he shall issue his official tax receipt or certificate of redemption, as the case may be, in the manner provided by law and include therein the amount or amounts formerly paid.

Sec. 2. The Tax Collector may in his discretion prepare a separate roll showing the school taxes only, of any common school district or any independent school district as shown on the official tax roll delivered to him by the Assessor and in such event, issue his receipts therefrom of such school tax payments. In the event the Commissioners Court of the County and/or Board of Trustees of the independent school district authorizes in writing prior thereto, the making of such special roll, then they are hereby empowered to contract for necessary expenses therefor not to exceed the actual cost of the stationery and extra additional labor occasioned thereby.

Provided nothing herein contained shall repeal, modify or amend House Bill No. 6 [1] or House Bill No. 7, passed at the Fourth Called Session of the Forty-third Legislature of the State of Texas,[2] relative to penalties, interest and costs on tax obligations.

Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed. [Acts 1935, 44th Leg., p. 66, ch. 24.]

[1] Article 7255a, ante.
[2] Article 7336d, ante.

Art. 7336f. Remission of delinquent taxes, compilation of record of delinquent taxes not barred.—Sec. 1. The collection of all delinquent, ad valorem taxes due the State, County, Municipality or other defined Subdivision that were delinquent prior to December 31st, 1919, is forever barred.

Sec. 2. Any County having as many as two years' taxes delinquent which have not been included in the delinquent tax record, the Collector of taxes shall within two years from the effective date of this Act, cause to be compiled a delinquent tax record of all delinquent taxes not barred by this Act; the delinquent record shall be examined by the Commissioners' Court and the Comptroller or governing body, corrections may be ordered made, and when found correct and approved by them, payment for the compilation thereof shall be authorized at actual cost to the Tax Collector, proportionately from each the State and County taxes, or municipal taxes, first collected from such record, such cost in no case to exceed a sum equal to five (5¢) cents per item or written line of the original copy of such record and in no event shall any compiling cost be charged to the taxpayer. The delinquent tax record when approved, shall be prima facie evidence of the delinquency shown thereon, and when there shall be as many as two years of delinquency accumulated which are not shown on the record, a recompilation, or a two year supplement thereto shall then be made as herein provided. Tax Collectors shall cause to be compiled like records of taxes delinquent due any district for which they collect from tax rolls other than the State and county rolls, and when approved by the governing body of the particular district, the cost of same shall be allowed in the manner herein provided. [Acts 1935, 44th Leg., p. 355, ch. 128.]

Art. 7336g. Releasing penalties and interest on ad valorem city and independent school district taxes delinquent July 1, 1938.

This article, derived from Acts 1939, 46th Leg., Spec.L., p. 969, § 1, as amended by Acts 1939, 46th Leg., Spec.L., p. 970, § 1 provided that all interest and penalties that had accrued on all ad valorem city and independent school district taxes that were delinquent on July 1, 1938 in all cities of 200,000 to 250,000 were released, provided they were paid on or before July 1, 1939.

Art. 7336h. Releasing penalty and interest on taxes in cities of 100,000 to 120,000 on payment by August 15, 1939.

This article, derived from Acts 1939, 46th Leg., Spec.L., p. 968, provided that all interest and penalties on all ad valorem city and independent school district taxes that were delinquent on July 1, 1938 in all cities of 100,000 to 120,000, in which such city should, by proper resolution so determine were released provided they were paid on or before August 15, 1939.

Art. 7336i. Release of interest and penalties on taxes delinquent July 1, 1940, if paid by November 1, 1941.

This article, derived from Acts 1941, 47th Leg., p. 565, ch. 358, effective May 26, 1941, provided that all interest and penalties that had accrued on all ad valorem and poll taxes that were delinquent on or before July 1, 1940 were released provided such taxes were paid by November 1, 1941.

Effective May 26, 1941, pursuant to House Concurrent Resolution # 152, Acts 1941, 47th Leg., p. 567, ch. 359, adopted by the House on May 15, 1941, and by the Senate on May 21, 1941, which resolved that such resolution and Acts 1941, 47th Leg., p. 565, ch. 358, should be considered emergency measures and should take effect from and after the passage thereof.

Art. 7336j. Release of interest and penalties on taxes due by members of armed forces and auxiliaries during war.—Section 1. There is hereby released to all members of the Armed Forces of the United States of America and their auxiliaries, and all members of the Armed Forces Reserve of the United States of America and their auxiliaries, all interest and penalties accruing subsequent to their entry into such service, on State and county ad valorem taxes on property listed on the tax rolls of any county in the name of any of such members of the Armed Forces or their auxiliaries or the Armed Forces Reserve or their auxiliaries prior to the time they joined such Armed Forces or such auxiliaries; providing that the release of such interest and penalties shall extend for the duration of World War II, and providing that the respective members of such Armed Forces and such auxiliaries and such Armed Forces Reserve and their auxiliaries shall be allowed a period of not to exceed six (6) months after the cessation of hostilities in which to pay without penalty and interest their taxes which have accrued and which shall accrue during the duration of the war.

Sec. 2. All laws and parts of laws in conflict herewith are hereby expressly suspended during the term of this Act so far as they may affect this Act. [Acts 1943, 48th Leg., p. 221, ch. 140.]

Proclamation No. 2714 by the President of the United States, Dec. 31, 1946 declared "the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946."

Art. 7337. [7693] Cities may avail.*—Any incorporated city or town or school district shall have the right to enforce the collection of delinquent taxes due it under the provisions of this chapter. [Acts 1897, p. 132; G. L. vol. 10, p. 1186.]

**Repealed in part, Rules of Civil Procedure, Rule 117a.*

Art. 7338. [7694] Exemptions from this chapter.—Real estate which may have been rendered for taxes and paid under erroneous description given in assessment rolls, or lands that may have been duly assessed and taxes paid on one assessment, or lands which may have been assessed and taxes paid thereon in a county other than the one in which they are located, or lands which may have been sold to the State and upon which taxes have been paid and through error not credited in the assessment rolls, shall not be deemed subject to the provisions of this chapter. When called upon, the Land Commissioner shall furnish the county judge of any county compiling its own delinquent tax record with such information as may enable him to determine the validity or locality of such surveys and grants as have not been shown by the printed abstracts of the Land Office. [Id.]

Art. 7339. [7695] May redeem before sale.—Any delinquent taxpayer whose lands have been returned delinquent or reported sold to the State for taxes due thereon, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this chapter, by paying to the collector the taxes due thereon since January first, 1885, with interest at the rate of six per cent per annum and all costs and the penalty of ten per cent. [Id.]

Art. 7340. [7696–97] May redeem from State.—Where lands or lots shall hereafter be sold to the State or to any city or town for taxes under decree of court in any suit or suits brought for the collection of taxes thereon or by a collector of taxes, or otherwise, the owner or any one having an interest in such lands or lots shall have the right at any time within two years from the date of sale to redeem the same upon payment of the amount of taxes for which sale was made, together with all costs and penalties required by law, and also payment of all taxes, interest, penalties and costs on or against said land or lots at the time of the redemption. [Acts 1897, p. 132, sec. 14; Acts 1905, p. 323; Acts 1907, p. 282; Acts 2nd C. S. 1909, p. 400; Acts 1st C. S. 1913, p. 25; Acts 1st C. S. 1915, p. 58; Acts 4th C. S. 1918, p. 155; Acts 3rd C. S. 1920, p. 103.]

Art. 7341. [7701] Evidence of title to redeem land.—In all cases where lands in this State have been or may be sold for taxes, and the owner of the land, at the time of such sale, shall desire to redeem the same, under the provisions of the Constitution, or of laws enacted on that subject, it shall be sufficient to entitle such owner to redeem from the purchaser or purchasers thereof for him to have had a paper title to such land, or to have been in possession of such land in person or by tenant, at the time of the institution of the suit under which sale was made, or when such sale was made; and the existence of such facts and conditions shall be sufficient prima facie evidence of ownership to entitle the party so claiming ownership to the right to redeem such land; and he shall not be required to deraign title from the sovereignty, or shall any hiatus or defect in his chain of title defeat the offered redemption. Nothing herein shall be held to limit the right of one offering to redeem to prove ownership otherwise than herein provided, nor prevent any one having the superior title from redeeming such land within two years from the date of the tax sale by paying to the person who has previously redeemed such lands the amounts provided by law. [Acts 1905, p. 118.]

Art. 7342. [7698] Unknown or nonresident.*—Whenever the owner or owners of any lands or lots that have been or may be returned delinquent or reported sold to the State for the taxes due thereon, for any year or number of years, are nonresidents of the State, or the name of the owner or owners of said lands or lots be unknown, then, upon affidavit of the attorney for the State setting out that the owner or owners are nonresidents, or that the owner or owners are unknown to the attorney for the State, and after inquiry cannot be ascertained, said parties shall be cited and made parties defendant by notice in the name of the State and county, directed to "all persons owning or having or claiming any interest in the following described land delinquent to the State of Texas and county of ———, for taxes, to wit: (here set out description of the land as contained on the assessment roll and such further description obtainable in the petition)," and further stating "which said land is delinquent for taxes for the following amounts, $— for State taxes, and $— for county taxes, and you are hereby notified that suit has been brought by the State for collection of said taxes, and you are commanded to appear and defend such suit at the ——— term of the District Court of ——— County, and State of Texas, and show cause why judgment shall not be rendered condemning said land (or lot) and ordering sale and foreclosure thereof for said taxes and costs of suit," which notice shall be signed by the clerk and shall be published in some newspaper published in said county one time a week for three consecutive weeks. If there is no newspaper published in the county, then notice may be given by publication in a paper in an adjoining county. A maximum fee of Two (2) Cents per word for the first insertion of such publication and One Cent per word for each subsequent insertion, or not more than the lowest published word or line rate of such newspaper shall be taxed as costs in such cases and shall be paid to the newspaper publishing said citation. If the State bids the land in at such sale, the Comptroller shall allow the Collector the amount of such publisher's fee to be paid by the Collector to the publisher. If the publication of such citation cannot be had for such fee, then publication of the citation herein provided may be made by posting a copy at three different places in the county, one of which shall be at the courthouse door. It shall be lawful in all cases to set forth in the petition the names of all parties interested as far as ascertained, and make them parties, and also to join and make defendants all persons having or claiming any legal or equitable interest in the land described in the petition. Such suit, after such publication, shall be proceeded with as in other cases; and whether any party or parties make defense or not on the trial of said case, the State and county shall be entitled to prove the amount of taxes due, and shall have a decree for the sale of said land or lot as in those cases where defendant owners have been personally served and defend suit. A sale of said land or lot shall be had and be as binding as where defendants are personally served with process. In all suits for taxes due, the defendant shall be entitled to credits he can show due him for any year or number of years for which he may be able to produce receipts or other positive proof showing the payment of such taxes. [Acts 1897, p. 138; G.L. vol. 10, p. 1192; Acts 1941, 47th Leg., p. 480, ch. 303, § 5.]

Partial invalidity of the amendatory Act of 1941, cited to the text, effect of, see section 6 of such act, set out under article 28a.

**Repealed in part, Rules of Civil Procedure, Rule 117a.*

Art. 7343. [7699] Similar proceedings by cities and independent school districts.*—In any incorporated city or town in which any tracts, lots, outlots or blocks of land, situated within the corporate limits of said city or town have been returned delinquent, or reported sold to said city or town for the taxes due thereon, the governing body may prepare or cause to be prepared lists of delinquents in the same manner as provided in this chapter, and such lists shall be certified to as correct by the mayor of said city or town, if any, and if said city or town has no mayor, by the presiding officer of the governing body. After said lists have been properly certified to, the governing body of the city may cause lists of delinquents to be published in a newspaper as provided for State and county delinquent taxes in this law. When twenty days from the date of last publication of said list or lists of delinquents has elapsed, the governing body of the city or town may direct the city attorney to file suits for collection of said taxes, or said governing body may employ some other attorney of the county to file suits and the city attorney or other attorney filing said suits shall be entitled to the same fees as allowed the county attorney or district attorney in suits for collection of State and county taxes, to be taxed as costs in the suit. Independent school districts may collect their delinquent taxes as above provided for cities and towns, the school board performing the duties above described for the govern-

ing body of cities, and the president of the school board performing the duties above prescribed for the mayor or other presiding officer. The school board may, when the delinquent tax lists and records are properly prepared and ready for suits to be filed, instruct the county attorney to file said suits. If the school board instructs the county attorney to file said suits and he fails or refuses to do so within sixty days the school board may employ some other attorney of the county to file suit. The county attorney, or other attorney, filing tax suits for independent school districts, shall be entitled to the same fees as provided by law in suits for State and county taxes. No other county officer shall receive any fees unless services are actually performed, and in that event he shall only receive such fees as are now allowed him by law for similar services in civil suits. The employment of an attorney to file suit for taxes for cities, towns or independent school districts shall authorize said attorney to file said suits, swear to the petitions and perform such other acts as are necessary in the collection of said taxes.

All laws of this State for the purpose of collecting delinquent State and county taxes are by this law made available for, and when invoked shall be applied to, the collection of delinquent taxes of cities and towns and independent school districts in so far as such laws are applicable. [Acts 1897, p. 138; G. L. vol. 10, p. 1192; Acts 3rd C. S. 1920, p. 48; Acts 2nd C. S. 1923, p. 39.]

**Repealed in part, Rules of Civil Procedure, Rule 117a.*

Art. 7344. [7700] Land platted and numbered.—In counties in which the subdivisions of surveys are not regularly numbered, and in cities or towns in which the blocks or subdivisions are not numbered, or are so irregularly numbered as to make it difficult or impossible for the assessor to list the same, the commissioners court of such counties may have all the blocks and subdivisions of surveys platted and numbered so as to identify each lot or tract, and furnish the assessor with maps showing such numbering; and an assessment of any property by such numbering on said maps shall be sufficient description thereof for all purposes. Such maps or a certified copy of same or any part thereof, shall be admissible as evidence in all courts. The cost of making said survey and plats shall be defrayed by the county in which said property is situated, and of which said commissioners court ordered the said surveys and plat made and the cost of any map of a town or city shall be paid by such city or town when ordered by the town or city. [Acts 1897, p. 139; G. L. vol. 10, p. 1193.]

Art. 7345. Separate payments.—When two or more lots or blocks or tracts of land are rendered in the same rendition with separate valuations, and the taxes due thereon become delinquent the tax collectors shall, when tendered, accept payment of the taxes due on each lot or block or tract of land having such separate valuation. [Acts 3rd C. S. 1923, p. 185.]

Art. 7345a. Transfer of tax lien.

Authority to transfer lien

Sec. 1. The duly qualified and acting officer authorized to collect ad valorem taxes for the State of Texas, any county thereof, any special school district, school district, road district, levee improvement district, water improvement district, water control and improvement district, irrigation district, incorporated city or town, and any other defined subdivision of the State, is hereby authorized and empowered and it shall be his duty to transfer and convey to any person or company that pays to the State, county or any subdivision thereof mentioned hereinbefore, any taxes due upon real property at the request of the owner of said property, the tax lien held by such State, county, or subdivision to secure the payment of such taxes, under the conditions hereinafter provided and not otherwise.

Tax receipt to person paying tax

Sec. 2. If any person or company or corporation owning real estate in the State of Texas upon which taxes due to the State, county of [1] any subdivision thereof, as named in Section 1 of this Act, are due and unpaid, shall deliver to the tax collector, whose duty under the laws of the State of Texas is to receive or collect said taxes, a duly executed written instrument authorizing another person, company or corporation to pay such taxes and to receive from such tax collector the tax receipt showing the payment of such taxes by such other person or company and describing therein the property upon which such taxes are due, and requesting therein that such tax collector, upon the payment of such taxes, issue to such person or company so paying the same a tax receipt; and further authorizing such tax collector to transfer the tax lien held by the State, county or other subdivision to the person, company or corporation so paying such taxes, said tax collector shall, upon the payment of such taxes, as in such instrument requested and authorized, issue to such person, firm or corporation so paying said taxes, tax receipt in due form showing said payment by said person, firm or corporation, and shall endorse upon said written instrument so presented to him substantially the following:

"I, Tax Collector of ——— do hereby certify that ——— has paid the taxes in this instrument specified to be paid, and that I have, under the authority vested in me, and do by this certificate transfer and convey to ——— the tax lien that the ——— holds upon said property by virtue of the assessment and levy of said taxes against said property.

"Given under my hand and seal of office this ——— day of ———, 19—.

———"

That such tax collector shall attach to said certificate his seal of office.

[1] So in enrolled bill. Session Laws read "or".

Tax lien of person paying tax

Sec. 3. After the payment of such taxes under such written authority and the endorsement upon such written instrument of the tax collector's certificate as hereinbefore shown, the person, company or corporation paying said taxes shall thereafter become vested with and hold such tax lien against such property as fully and to all intents and purposes as such state, county or subdivision theretofore held the same.

Records

Sec. 4. Such written request and certificate thereon shall, upon presentation to the County Clerk for the recording thereof, and payment of recording fee, be filed and recorded in the Deed Records of the county, or counties, in which said real estate is situated, and thereafter shall be a public record the same as if said instrument were a deed.

Interest rate to person paying tax

Sec. 5. It shall be unlawful for any person or company paying such taxes and taking such lien to charge a greater amount of interest upon the taxes, or taxes, penalty and interest and costs paid, than eight (8%) per cent per annum, and the collecting of any greater rate of interest shall be deemed usury, for which the person paying the same shall have all the rights and remedies provided in the Statutes in the case of usury.

Limitation of foreclosure

Sec. 6. No foreclosure by the person or company taking said lien shall be had thereon within any period less than twelve months from the date of the payment of such taxes.

Protection of lien holders

Sec. 7. That in the event some other person, firm or corporation pay the taxes and takes the tax lien

upon such property, then the owner and holder of any prior lien shall have the right at any time after six months from date of the payment of the taxes and before the foreclosure of such tax lien to pay to the holder of such lien the amount that he has paid for the same, together with the interest accrued thereon, according to his contract with the owner, at whose instance he paid such taxes, plus the expenses of recording the tax lien and thereby become subrogated to all rights as to such tax lien. [As amended Acts 1935, 44th Leg., p. 415, ch. 165, § 1.]

Foreclosure after 12 months

Sec. 8. At any time after twelve months from the date of filing the transfer of the lien with the County Clerk showing the payment of the taxes to the State, county or other subdivision as hereinbefore provided, and in accordance with the contract or agreement made between the owner of such property and the person or company making the payment of the taxes (penalty, interest and cost) as to the time when such tax lien may be sued upon and foreclosed, the holder of said tax lien may sue upon his debt and for foreclosure of his tax lien and sale of the property thereunder; that upon a sale thereof the proceeds of such sale shall be applied first to the payment of court costs, and then upon the judgment including accrued interest, and attorney's fees not exceeding ten (10%) per cent as may be fixed in the judgment, and if there be a balance thereafter left, the same shall be paid first to the lien holders in the order of their priority, and any balance remaining to the owner of said property.

Redemption period

Sec. 9. The owner of such property or any person, firm or corporation holding a first lien against said property may within a year after the foreclosure and sale of such property, under such tax lien, redeem the same from the purchaser at such sale by paying to such purchaser all that he has paid for such property at such sale provided that the amount so paid to redeem said property shall not exceed the amount of the judgment of foreclosure, costs and interest accrued upon said judgment to the date of redemption therefor plus ten (10%) per cent additional upon the amount of said judgment; and upon such redemption shall receive from the person to whom the payment is made a deed to such property; provided, if the owner of the property redeem the same under this section of this Act, then all liens existing at the time of the foreclosure sale under this Act shall be of the same force and effect as if no such foreclosure sale and redemption therefrom had been had.

Taxpayer's contractual rights unaffected

Sec. 10. This Act shall not abridge the rights of any taxpayer to enter into any contract he may desire with a lienholder for the payment of taxes; and shall not be construed to affect any such existing contract. [Acts 1933, 43rd Leg., 1st C.S., p. 271, ch. 98.]

Acts 1935, 44th Leg., p. 415, ch. 165, § 1, amended section 7 of this Article.

Section 11 of Acts 1933, provides that the declaration of the invalidity of any provision, section, part, subsection, sentence, clause, phrase or paragraph of the Act shall not affect any other provision thereof.

The enacting clause of Acts 1935, 44th Leg., p. 415, ch. 165, cites section 7 of "Article 98" for amendment instead of "Chapter 98."

Art. 7345b. Suits for delinquent taxes by taxing units.*

"Taxing units" defined

Section 1. For all purposes of this Act, the term "taxing units," shall include the State of Texas or any town, city or county in said State, or any corporation or district organized under the laws of the State with authority to levy and collect taxes.

Impleading other taxing units having tax claims; service on State and other taxing units; waiver of service; notice of suit

Sec. 2. In any suit hereafter brought by or in behalf of any taxing unit as above defined, for delinquent ad valorem taxes levied against property by any such taxing unit, the plaintiff may implead as parties defendant any or all other taxing units having delinquent ad valorem tax claims against such property, or any part thereof, and it shall be the duty of each defendant taxing unit, upon being served with citation as provided by law to appear in said cause and file its claim for delinquent ad valorem taxes against such property, or any part thereof. It shall be sufficient service upon the State of Texas in any county in such suit to serve citation upon the County Tax Collector charged with the duty of collecting such delinquent taxes due the State and county against such property and it shall be sufficient service upon any other taxing unit to serve citation upon the officer charged with the duty of collecting the taxes of such taxing unit or upon the Mayor, President, or Chairman or the governing body of such taxing unit, or upon the Secretary of such taxing unit. Any taxing unit having any claim for delinquent ad valorem taxes against such property may waive the issuance and service of citation upon it.

It shall be mandatory upon any such taxing unit so filing such suit or suits, in all cases where all other taxing units are not impleaded to notify all such taxing units not so impleaded of the filing of such suit or suits, such notice to be given by depositing in the United States mail a registered letter addressed to such taxing unit or units giving the name or names of the plaintiff and defendants, the Court where filed, and a short description of the property involved in said suit so that such taxing units not impleaded may have the opportunity to intervene as herein provided. [As amended Acts 1941, 47th Leg., p. 858, ch. 534, § 1.]

Parties; issuance and service of process

Sec. 3. The laws governing ordinary foreclosure suits in the District Courts of this State shall control the question of parties, issuance, and service of process and other proceedings in tax suits, save and except as herein otherwise provided. The following special provisions shall apply to and govern the question of parties and issuance and service of process in tax suits:

(a) When the names of the owner or owners of the property against which foreclosure of the tax lien is sought are unknown to the attorney filing the suit for the plaintiff taxing unit, such unknown owner or owners may be made parties and given notice under the designation "unknown owner or owners of the hereinafter described land"; provided, however, that record owners of the property or any interest therein, including record lien holders, shall not be included in the designation of "unknown owners"; and persons within a period of five (5) years next preceding the filing of the suit, shall not be included in the designation of "unknown owners." When the owner of the property is deceased, and the names of the heirs of such former owner are unknown to the attorney filing the suit for the plaintiff taxing unit, such unknown heirs may be made parties and given notice under the designation of "unknown heirs" of such deceased person, subject to the same provisions and restrictions as above set out with reference to making parties under the designation of "unknown owner or owners."

(b) Where any defendant in such suit is a resident of the State of Texas and his residence is known to the attorney filing said suit, process shall issue for service on such defendant and be served and returned as directed by Articles 2021 to 2034, inclusive, of the 1925 Revised Civil Statutes of the State of Texas.

Provided, however, that a statement of the nature of the cause of action conforming to the requirement for notices by publication as hereinafter set forth in paragraph (d) below shall be sufficient in such citation, when required.

(c) Where any defendant in such suit is absent from the State or is a nonresident of the State, it shall be sufficient to serve said defendant with notice accompanied by a certified copy of plaintiff's petition as provided in Article 2037 of the 1925 Revised Civil Statutes of the State of Texas, and it shall be sufficient to serve such notice in the manner provided in Article 2038 of the 1925 Revised Civil Statutes of the State of Texas, or in the alternative, service may be had on such defendant by publication as provided in Section 3(d) hereof.

(d) Where any defendant in such suit is a nonresident of the State, where the names of the owner or owners of said property are unknown to the attorney filing the suit for the plaintiff taxing unit, where the residence of any defendant is unknown to such attorney, and where the names of the defendant heirs of any deceased person are unknown to such attorney, and such facts are recited in the petition, service of notice by publication is hereby authorized in each and all of such cases, and all defendants of classes enumerated just above may be joined in one notice; and where service is had by publication, such notice shall be directed to the defendants by name, or by designation as hereinabove provided, and shall be issued and signed by the clerk. Such notices for publication shall be sufficient if they contain the number and style of the case, the names of all parties plaintiff, intervenors and defendants, the Court in which the suit is pending and when to appear and defend the suit, which shall be the first day of the next term of the Court in which the suit is filed; and, as a statement of the nature of the suit, such notices shall show the amount of the taxes alleged to be due each plaintiff and intervenor, exclusive of interest, penalties, and costs, and shall recite that all interest, penalties, and costs allowed by law are included in the suit, a brief general description of the property, and shall also contain, in substance, a recitation that each party to such suit shall take notice of, and plead and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties therein. Such notices shall be published in some newspaper published in the county in which the property is located one time a week for two (2) consecutive weeks, the first publication to be not less than fourteen (14) days prior to the first day of the term of Court to which returnable; and the affidavit of the editor or publisher of the newspaper giving the dates of publication, together with a printed copy of the notice as published, attached to such notice, shall constitute sufficient proof of due publication when returned and filed in Court. If there is no newspaper published in the county, then said publication may be made in a newspaper in an adjoining county. A maximum fee of Two and One-half (2½) Cents per line (6 words to count for a line) for each insertion may be taxed for publishing said notice. If the publication of such notice cannot be had for such fee, then service of the notice herein provided may be made by posting a copy at the Courthouse door of the county in which the suit is pending, such notice to be posted at least fourteen (14) days prior to the first day of the term of Court to which it is returnable. When notice is given as herein provided it shall be sufficient, and no other form of citation or notice shall be necessary on such defendants.

(e) Any process authorized by this Act may issue jointly in behalf of all taxing units who are plaintiffs and/or intervenors in any suit. After citation and/or notice has been given on behalf of any plaintiff and/or intervenor taxing units, the Court shall have jurisdiction to hear and determine the tax claims of all taxing units who are parties plaintiff, intervenor or defendant at the time such process is issued; and any taxing unit that has been made a party defendant to such suit may by answer or intervention set up and have determined its tax claims without the necessity of further citation or notice to any parties to such suit. [As amended Acts 1939, 46th Leg., p. 661, § 1.]

Pleading and answering to claims filed

Sec. 4. Each party to such suit shall take notice of, and plead and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties therein, and the citation upon each defendant shall so recite.

Proof and finding of reasonable and fair value; "adjudged value," defined; burden of proof

Sec. 5. Upon the trial of said cause the Court shall hear evidence upon the reasonable fair value of the property, and shall incorporate in its judgment a finding of the reasonable fair value thereof, in bulk or in parcels, either or both, as the Court may deem proper, which reasonable fair value so found by the Court is hereafter sometimes styled "adjudged value," which "adjudged value" shall be the value as of the date of the trial and shall not necessarily be the value at the time the assessment of the taxes was made; provided, that the burden of proof shall be on the owner or owners of such property in establishing the "fair value" or adjudged value as provided in this section. [As amended Acts 1941, 47th Leg., p. 858, ch. 534, § 1.]

Costs and expenses; approval by court

Sec. 6. All court costs, including costs of serving process, in any suit hereafter brought by or in behalf of any taxing units for delinquent taxes in which suits all other taxing units having a delinquent tax claim against such property of any part thereof, have been impleaded, together with all expenses of foreclosure sale and such reasonable attorney's fees as may be incurred by the interpleaded or intervening taxing units, not exceeding ten per cent (10%) of the amount sued for, such attorney's fees to be subject to the approval of the court together with such reasonable expenses as the taxing units may incur in procuring data and information as to the name, identity and location of necessary parties and in procuring necessary legal descriptions of the property, shall be chargeable as court costs.

Order of sale on foreclosure; sale

Sec. 7. In the case of foreclosure, an order of sale shall issue, and, except as herein otherwise provided, the land shall be sold thereunder as in other cases of foreclosure of tax liens.

Sale for less than adjudged value or aggregate of judgments in suit to party other than taxing unit prohibited; distribution of proceeds

Sec. 8. No property sold for taxes under decree in such suit shall be sold to the owner of said property, directly or indirectly, or to anyone having an interest therein, or to any party other than a taxing unit which is a party to the suit, for less than the amount of the adjudged value aforesaid of said property or the aggregate amount of the judgments against the property in said suit, whichever is lower, and the net proceeds of any sale of such property made under decree of court in said suit to any party other than any such taxing unit shall belong and be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against such property, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment, but any excess in the proceeds of sale over and above the amount necessary to defray the costs of suit and sale and other expenses hereinabove made chargeable against such proceeds, and to fully discharge the judgments against said

property, shall be paid to the parties legally entitled to such excess.

Purchasing taxing unit to hold property for itself and other taxing units adjudged to have liens; sale by purchasing taxing unit; proceeds; failure to sell within six months after redemption period expires

Sec. 9. If the property be sold to any taxing unit which is a party to the judgment under decree of Court in said suit, the title to said property shall be bid in and held by the taxing unit purchasing same for the use and benefit of itself and all other taxing units which are parties to the suit and which have been adjudged in said suit to have tax liens against such property, pro rata and in proportion to the amount of the tax liens in favor of said respective taxing units as established by the judgment in said suit, and costs and expenses shall not be payable until sale by such taxing unit so purchasing same. The taxing unit may sell and convey said property so purchased by it, or which has heretofore been purchased in the name of any officer thereof, at any time in any manner determined to be most advantageous to said taxing unit or units either at public or private sale, subject to any then existing right of redemption; and the purchaser of the property at any such sale shall receive all of the right, title and interest in said property as was acquired and is then held by said taxing unit under such tax foreclosure sale to it; but such property shall not be sold by the taxing unit purchasing the same, at private sale, for less than the adjudged value thereof, if any, as established in the tax judgment, or the total amount for which such judgment was rendered against the property in said suit, whichever is lower, without the written consent of all taxing units which in said judgment shall have been found to have tax liens against said property. All such consents shall be evidenced by the joinder in the conveyance by the consenting taxing units, acting by the officers herein authorized to give such consents. Consent to such sales in behalf of the State of Texas may be given by the County Tax Collector of the county in which the property is located; and consents on behalf of other taxing units may be given by the presiding officers of their governing bodies. Deeds executed hereunder by taxing units shall be executed in their behalf by the presiding officer of their governing body and whose authority to so act in any given case shall be prima facie presumed. When such property is so sold at public or private sale, the proceeds thereof shall be received by or paid over to the taxing unit which purchased said property at the tax foreclosure sale, for the account of itself and all other taxing units adjudged to have a tax lien against such property, and all taxing units so receiving said proceeds shall first pay out of the same all costs and expenses of Court and of sale, and distribute the remainder among all taxing units for which purchasing taxing unit purchased and held said property, pro rata and in proportion to the amounts of their tax liens against said property as established in said judgment. Public sales hereinabove provided for may either be made by the Sheriff, at the request of the taxing unit purchasing the property at the tax foreclosure sale, or by any Commissioner appointed by such taxing unit by resolution of its governing body. If the State of Texas is the taxing unit which purchased said property at the tax foreclosure sale, the Commissioners Court of the county in which the property is located shall have authority to act for the State of Texas in making private sales and conveyances of said property, as herein provided, or in requesting the Sheriff, or in appointing a Commissioner, to make public sale thereof, and in receiving and distributing the proceeds of such sales; and all sales and conveyances made in behalf of the State of Texas by the Commissioners Court, or made by the Sheriff or any Commissioner appointed by the Commissioners Court, under the provisions hereof, shall operate to transfer to the purchaser at such sale all right, title and interest acquired or held by the State of Texas as purchaser at the tax foreclosure sale. Any taxing unit, Sheriff, or Commissioner appointed by a taxing unit, making any sale under provisions hereof shall execute and deliver to the purchaser at such sale a deed of conveyance, conveying all right, title and interest of all the taxing units interested in the tax foreclosure judgment in and to the property so sold; provided, if the period for the redemption of said property from said tax foreclosure sale has not expired at the time of said sale, said conveyance shall be made expressly subject to the right of redemption provided in Section 12 of said Act.

Provided, however, that the methods of sale above set out shall not be exclusive and that if sale has not been made by, or at the instance of, the purchasing taxing unit within six (6) months after the redemption period has expired, any taxing unit which has obtained judgment in said suit may force the sale of said property by the Sheriff by written request to the Sheriff, and in the event such written request is so made to the Sheriff it shall be his duty to sell said property at public sale as hereinafter provided. All public sales provided for in this Section shall be made in the manner prescribed for the sale of real estate under execution. The notice of the sale shall contain a legal description of the property to be sold, the number and style of the suit under which same was sold at tax foreclosure sale and the date of said tax foreclosure sale; and the Sheriff or other officer making such sale is hereby authorized, and it is hereby made his duty, to reject any and all bids for said land when in his judgment the amount bid is insufficient or inadequate, and in the event said bid or bids are rejected, the land shall be readvertised and offered for sale as herein provided, but the acceptance by the Sheriff or other officer authorized to make such sale of a bid for said land shall be conclusive and binding on the question of the sufficiency of the bid, and no action shall be sustained in any Court of this State to set aside said sale on the grounds of the inadequacy of the amount bid and accepted. Nothing herein shall be construed as prohibiting any taxing unit participating in said judgment from instituting action to set aside the said sale on the grounds of fraud or collusion between the officer making the sale and the purchaser, provided that such action be brought within two (2) years after such sale is made, and not afterward. The Sheriff or other officer making any such sale shall receive and pay over the proceeds thereof as hereinabove provided, and the same shall be distributed as herein provided.

All sales and conveyances heretofore made by taxing units, or officers thereof, of property purchased by them, or in the name of any officer thereof, at tax foreclosure sales, for the benefit of themselves and all other taxing units interested in the tax judgment, and all sales heretofore made by the Commissioners Courts, or the Attorney General joined by the County Tax Collector, of property purchased by the State of Texas at tax foreclosure sales for the benefit of itself and other taxing units, are hereby in all things confirmed and validated; provided that this validating provision shall in no way apply to or validate any such sale the validity of which is challenged in any now pending litigation; nor shall the same apply to or validate any such sale, in cases where the Sheriff upon written request of any taxing unit, has thereafter made sale of the same property at public outcry and all such so made by the Sheriff as provided in Section 9 of said Act prior to the taking effect of this Amendment, and all such sales so made by the Sheriff are hereby in all things confirmed and validated.

No action attacking the validity of any resale of property purchased by a taxing unit at a tax fore-

closure sale, or any of said sale hereafter made in accordance with, or purporting to be made in accordance with, this Section shall be commenced after the expiration of one (1) year from the date of such sale. [As amended Acts 1947, 50th Leg., p. 1061, ch. 454, § 1.]

Title of purchaser

Sec. 10. The purchaser of property sold for taxes in such foreclosure suit shall take title free and clear of all liens and claims for ad valorem taxes against such property delinquent at the time of judgment in said suit to any taxing unit which was a party to said suit, or which had been served with citation in said suit as required by this Act. Provided, the term "all liens and claims for ad valorem taxes" shall never be construed to include assessments for maintenance and operation purposes on a pro rata per acre basis against irrigable lands authorized by law to be made by water improvement districts, or water control and improvement districts, and no judgment foreclosing such liens and claims for ad valorem taxes shall ever prejudice the collection of said assessments or the liens securing same. [As amended Acts 1941, 47th Leg., p. 858, ch. 534, § 1.]

Suits entitled to precedence

Sec. 11. Suits for delinquent taxes shall have precedence and priority in the District Courts of this State, and in the Appellate Courts thereof.

Judgment; redemption, right to

Sec. 12. In all suits heretofore or hereafter filed to collect delinquent taxes against property, judgment in said suit shall provide for the issuance of writ of possession within twenty (20) days after the period of redemption shall have expired to the purchaser at foreclosure sale or its or his assigns; but whenever land is sold under judgment in such suit for taxes, the owner of such property, or anyone having an interest therein, or their heirs, assigns or legal representatives, may, within two (2) years from the date of the filing for record of the purchaser's deed and not thereafter, have the right to redeem said property from such purchaser on the following basis, to wit:

(1) Within the first year of the redemption period, upon the payment of the amount of the bid for the property by the purchaser at such sale, including a One Dollar ($1) tax deed recording fee and all taxes, penalties, interest and costs thereafter paid thereon, plus twenty-five per cent (25%) of the aggregate total.

(2) Within the last year of the redemption period, upon the payment of the amount bid for the property at such sale, including a One Dollar ($1) tax deed recording fee and all taxes, penalties, interest and costs thereafter paid thereon, plus fifty per cent (50%) of the aggregate total; and no further or additional amount than herein specified shall be required to be paid to effect any such redemption.

In addition to redeeming direct from the purchaser, as aforesaid, redemption may also be made upon the basis hereinabove defined as provided in Articles 7284 and 7285, of the Revised Civil Statutes of Texas of 1925. The term "purchaser" as used in this Section shall include any taxing unit purchasing property at tax foreclosure sale. [As amended Acts 1947, 50th Leg., p. 1061, ch. 454, § 2.]

Distribution of redemption money

Sec. 12-a. In all cases in which property has been redeemed from a taxing unit, as provided in Section 12 of this Act, while said property is still held by such taxing unit, the taking unit to whom the redemption money is paid shall distribute and apply said money in the same manner as provided in Section 9 of this Act for the application and distribution of the proceeds of the resale of land; but if the land so redeemed from a taxing unit has been resold during the period of redemption, the redemption money shall be distributed pro tanto by the taxing unit receiving the same, as follows:

(a) If the redemption occurs within one (1) year after the date of the resale of said land, the purchaser at such resale shall receive, out of the redemption money, the amount paid by him for the property at such resale, plus twenty-five per cent (25%) of such amount; or

(b) If said redemption occurs more than one (1) year after the resale of such land, the purchaser at such resale shall receive, out of the redemption money, the amount paid by him for the property at such resale, plus fifty per cent (50%) of such amount; and

(c) The remainder of such redemption money, if any, after payment to the purchaser at the resale as herein provided shall be distributed, pro rata, to the taxing units adjudged in the tax foreclosure judgment to have a tax lien against the property, in the proportions of the amounts for which such liens were established. [Acts 1947, 50th Leg., p. 1061, ch. 454, § 2.]

Provisions of Act cumulative; effect of conflict with other acts

Sec. 13. The provisions of this Act shall be cumulative of and in addition to all other rights and remedies to which any taxing unit may be entitled, but as to any proceeding brought under this Act, if any part or portion of this Act be in conflict with any part or portion of any law of the State, the terms and provisions of this Act shall govern as to such proceeding. The provisions of Chapter 10, Title 122 of the Revised Civil Statutes of 1925 shall govern suits brought under this Act except as herein provided. [Acts 1937, 45th Leg., p. 1494-a, ch. 506.]

Partition of lands involved in tax suits

Sec. 15. Where suits are filed for delinquent taxes under the provisions of this Act, and the land is owned undivided by two (2) or more persons, any one or more persons owning an undivided interest in such land, may have the same partitioned as now provided by law for the partition of real estate by the district Courts of this State. When said land has been partitioned and set aside in severalty to the respective owners thereof, the taxes, penalties, interest, and costs shall be apportioned and taxed against the respective owners thereof in proportion to their respective interests in the whole, and upon the payment of taxes, penalties, interest, and costs so apportioned and taxed against such owner, and the land so set aside and partitioned to such owner in severalty, the same shall constitute full and final payment of all taxes, penalties, interest, and costs owing by such owner involved in such suit, and the land so partitioned shall thereafter be free from any further claim or lien for the taxes involved in said suit against said owner.

Provided, however, any owner or owners of a portion thereof so set aside and apportioned to him in such partition proceeding as herein provided shall fail or refuse to pay the taxes, penalties, interest, and costs taxed and apportioned against him and his interest, such suit shall proceed to a conclusion in accordance with all other provisions of this Act as to such owner and land, and the Court shall render judgment accordingly, omitting from said judgment such owner or owners and the land apportioned to such owner or owners in said partition proceeding as the taxes, penalties, interest, and costs have been paid as herein provided.

In addition to the fees now allowed by law to the county, district, or other attorney authorized by law to represent the State and county in suits provided by this Act for delinquent taxes, the judge of the district Court trying the case shall allow such attorney an additional fee for services occasioned by a partition of said land, where a partition is sought, a sum not to exceeed Five Dollars ($5) per acre for each

separate tract so partitioned, the same to be taxed as part of the costs against the respective owners in proportion to their interest in the whole, the same to constitute a lien against said land until paid, and when paid shall be paid over by the tax collector to the county, district, or other attorney entitled under the law to receive the same.

"Owner" as herein used shall mean any person, male or female, firm or corporation owning an interest in said land. [Added Acts 1945, 49th Leg., p. 302, ch. 219, § 1.]

Repealed in part, Rules of Civil Procedure, Rule 117a.

Art. 7345b—1. Venue of suits to collect delinquent ad valorem taxes.—All actions or suits for the collection of delinquent ad valorem taxes on either real or personal property due the State of Texas or any political subdivisions thereof, shall be brought in a court of competent jurisdiction in the County in which such taxes were levied. [Acts 1943, 48th Leg., p. 191, ch. 110, § 1.]

Art. 7345c. Partial payments of delinquent taxes.

Partial payments permitted

Section 1. On and after July 1, 1937, taxpayers owing delinquent State and county taxes, covering both real estate and personal property, shall be permitted to pay such delinquent taxes in partial payments under a system which shall be hereinafter provided for.

Partial payment or installment account system to be created

Sec 2. The Assessor and Collector of Taxes of each county of this State shall create and establish a partial payment or installment account system whereby all delinquent taxpayers desiring to pay their taxes under the provisions of this Act may do so.

Number of installments; time of payment

Sec. 3. All payments received by the Assessor and Collector of Taxes under the provisions of this Act shall be due and payable within twenty (20) months from the date of July 1, 1937, such payments being due and payable in ten (10) equal installments, provided that the first payment of such partial payments shall be made on or before September 1, 1937.

Default in paying installments; suit for collection

Sec. 4. If after paying one or more installments, the delinquent taxpayer pays no further installment or installments for a period of four (4) months, all of the remaining installments of said delinquent taxes shall become due and payable, and it will thereupon become the duty of the County Attorney or District Attorney or Criminal District Attorney in counties where there is no County Attorney to institute suit for the collection thereof.

Minimum payments and accounts

Sec. 5. The Assessor and Collector of Taxes shall accept partial payments made by a taxpayer in any sum, provided, however, that no payment shall be less than One Dollar ($1), and that no partial payment account will be opened for delinquent taxes which total less than Ten Dollars ($10).

Application of payments; redemption receipts

Sec. 6. When any delinquent taxpayer shall have paid into such installment account a sum of money sufficient to pay the taxes owed by him for the earliest unpaid year upon one of the lots or tracts of land owned by him, together with the amount of penalty and interest then provided by law, the Assessor and Collector of Taxes shall withdraw from the special fund hereinafter provided for such sum and shall apply the same upon payment of said delinquent taxes, penalty, and interest, if any, and issue to such taxpayer a redemption receipt therefor. Thereafter such taxpayer may continue to make equal monthly installments into such trust fund until all of the delinquent taxes owed by him shall have been paid.

Title to payments

Sec. 7. All of such installments paid by such delinquent taxpayers shall immediately become the property of the State of Texas and the respective county wherein the assessed property is situated or located, in such proportion as is necessary to satisfy the taxes, penalty, and interest delinquent and due to each, and the taxpayer shall in no event be entitled to a refund thereof, or to any portion of the same.

Sale of property

Sec. 8. In the event the taxpayer for whom the installment or partial payment account was originally opened sells the particular property upon which said installments are to be applied, the Assessor and Collector of Taxes may, in his discretion, immediately apply upon the taxes, penalty, and interest delinquent upon such property, the amount of installments already received.

Payments to be in escrow

Sec. 9. All funds or moneys covering delinquent State and County taxes, received by the Assessor and Collector of Taxes under the provisions of this Act shall immediately be placed in a special account with the County Treasurer of the respective county involved, and shall be held in escrow in such account until such time as the Assessor and Collector of Taxes shall notify said County Treasurer that at least one year's taxes have been paid on an individual account, thereby permitting said County Treasurer to remit to the Assessor and Collector of Taxes the amount or amounts so specified, said funds then to be distributed to the State and county proportionately in the same manner as all other collections.

Books, records, and accounts subject to examination

Sec. 10. The books, records, and accounts maintained by the Assessor and Collector of Taxes for the purpose of carrying out the provisions of this Act shall at all reasonable times be subject to examination by the State Comptroller of Public Accounts and the respective County Auditors in their official capacity, in the same manner as all other collection systems now provided for by law.

Act inapplicable to certain taxes

Sec. 11. The provisions of this bill shall not apply to ad valorem or personal property taxes of any city, town, or independent school district, or any political subdivision of the State, unless and until the governing body thereof shall pass an ordinance or resolution providing that the provisions of this bill shall apply to ad valorem taxes of such city, town, or independent school district, or any political subdivision of the State.

Comptroller of Public Accounts to prescribe forms

Sec. 12. The Comptroller of Public Accounts shall prescribe suitable forms to be used by the Assessor and Collector of Taxes for noting thereon the payment of taxes in installments. He shall also prescribe suitable forms for passbooks, receipts, reports, and for any other purpose necessary in carrying out the provisions of this Act.

Pending suits unaffected

Sec. 12-a. The provisions of this Act shall not affect any delinquent tax suits filed in courts of competent jurisdiction before the effective date of this Act in the counties or other political subdivisions availing themselves of the provisions of this Act.

Repeal of conflicting laws

Sec. 13. All laws and parts of laws in conflict with the provisions of this Act are hereby expressly re-

pealed in so far as the same are in conflict with the provisions hereof.

Partial invalidity

Sec. 14. It is further provided that in case any section, clause, sentence, paragraph, or part of this Act shall for any purpose or reason be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the section, clause, sentence, paragraph, or part thereof directly involved in the controversy in which said judgment shall have been rendered. [Acts 1937, 45th Leg., p. 923, ch. 442.]

Art. 7345d. Inequitable or confiscatory assessments.—In all cases where property appearing on the tax rolls, whether rendered or unrendered, current or delinquent, appears to have been assessed at a valuation greater than that placed upon other property in such locality of similar value, or out of proportion to the taxable value of such property; or where by reason of the depreciation in the value of such property an adjustment of assessed value would be equitable and expedient; or where by reason of long delinquency, the accumulated delinquent taxes, with penalties, interest, and cost aggregate such amount as to make their collection inequitable or confiscatory, the Commissioners Court of the county in which such property is situated, upon the application of the owner thereof or his duly authorized agent, shall have the power to reopen and reconsider the original assessments. In all such cases, the Commissioners Court shall hear testimony from competent and disinterested witnesses, and may make such personal and independent investigation as may seem necessary and expedient. If, after such investigation it shall appear to the Commissioners Court that such assessments were discriminatory, or out of proportion to the taxable value of the property, or that by reason of the depreciation of value of same, or that the enforced collection of the accumulated delinquent taxes, penalties, interest, and costs would be inequitable or confiscatory, the Commissioners Court may, under its power as a Board of Equalization, make such adjustments as to assessed values of such property as it may determine to be equitable and just. And any previous fixing of values of such property for the years involved shall not be "res adjudicata" as to the particular case.

Provided, that the State Comptroller shall be furnished with a certified copy of any order passed in pursuance hereof, as shall likewise the County Assessor-Collector of Taxes, who shall make the necessary correction of his rolls. Provided further, that nothing herein shall be construed as authorizing the Commissioners Court to remit any penalty, interest, or costs that have accrued, but all such penalty, interest, and costs shall be collected on the adjusted assessment as may be authorized by existing law. [Added Acts 1939, 46th Leg., p. 659, § 1.]

Section 2 of this Act is published as art. 7345d—1; section 3 provides that: "Where not in conflict with existing law, this Act shall be cumulative; but all laws and parts of laws in conflict herewith are hereby repealed."

Art. 7345d—1. Application of act to particular taxing bodies.—Incorporated cities and towns, independent school districts having their own Assessor-Collector and Boards of Equalization, irrigation and water improvement districts, and all other governmental agencies having the power to levy and collect taxes, shall have the right by ordinance, order or resolution properly enacted, passed, and entered to avail themselves of this law. Provided, that in such cases, the governing body of such taxing unit, or its duly constituted Board of Equalization, shall perform the functions hereinabove conferred on the Commissioners Court. [Acts 1939, 46th Leg., p. 659, § 2.]

For notes to sections 3, 4 of the act of 1939 cited, see notes under art. 7345d.

CHAPTER 11.—IN CERTAIN CASES

Art.
7346. Property omitted from rolls.
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7359. City may use county officers.

Article 7346. [7702] Property omitted from rolls.—Whenever any commissioners court shall discover through notice from the tax collector or otherwise that any real property has been omitted from the tax rolls for any year or years since 1884, or shall find that any previous assessments on any real property for the years mentioned are invalid, or have been declared invalid for any reason by any district court in a suit to enforce the collection of taxes on said properties, they may, at any meeting of the court, order a list of such properties to be made in triplicate and fix a compensation therefor; the said list to show a complete description of such properties and for what years such properties were omitted from the tax rolls, or for what years the assessments are found to be invalid and should be canceled and re-assessed, or to have been declared invalid and thereby canceled by any district court in a suit to enforce the collection of taxes. No re-assessment of any property shall be held against any innocent purchaser of the same if the tax records of any county fail to show any assessment (for any year so re-assessed) by which said property can be identified and that the taxes are unpaid. The above exception, with the same limitation, shall also apply as to all past judgments of district courts canceling invalid assessments. [Acts 1905, p. 318.]

Art. 7347. [7703] Property listed assessed.—When said list has been so made up the commissioners court may, at any meeting, order a cancellation of such properties in said list that are shown to have been previously assessed, but which assessments are found to be invalid and have not been canceled by any former order of the commissioners court, or by decree of any district court; and shall then refer such list of properties to be assessed or re-assessed to the tax assessor who shall proceed at once to make an assessment of all said properties, from the data given by said list (the certificate of the Comptroller as to assessments or re-assessments made by the tax assessor shall not be necessary a required under Article 7207, but he shall furnish all blank forms needed, that uniformity may be had in all counties), and when completed shall submit the same to the commissioners court, who shall pass upon the valuations fixed by him; and, when approved as to the values, shall cause the taxes to be computed and extended at the tax rate in effect for each separate year mentioned in said list; and, in addition thereto, shall cause to be added a penalty equal in amount to what would be six per cent interest to the date of making said list from the date such properties would have been delinquent had same been properly rendered by the owner thereof at the time and for the years stated in said list; provided, that the certificate of any tax collector given during his term of office that all taxes have been paid to the date of such certificate on any certain piece of property, which is fully described in such certificate, or if the tax rolls of any county fail to show any assessments against such property sufficient to identify

it, and that the same was unpaid at the dates such rolls may have been examined to ascertain the condition of any property as to taxes unpaid, this shall be a bar to any re-assessment of such property under this law for any years prior to the date of such certificate, or such examinations; provided, that the property referred to, when re-assessed, shall be held by an innocent purchaser, who has relied upon the correctness of such certificate, or the tax rolls heretofore referred to. [Id.]

Art. 7348. [7704] List to operate a lien.—The said list, when complete in all respects, and filed with the tax collector, shall constitute a valid lien against all the properties mentioned in said list for the full amount of taxes, penalties, officers costs, advertising and six per cent interest from the date of said list to the date of the payment of the full sum due on each separate piece of property. A copy of said list and all cancellation orders shall be furnished to the Comptroller, and a copy filed with the county clerk. [Id.]

Art. 7349. [7705] To be advertised.—The commissioners court shall proceed to have such list of properties advertised in the manner provided in Article 7323 after which, suit may be filed in the same manner as provided by law for the enforced collection of delinquent taxes. [Id.]

Art. 7350. [7706] Assessments reduced.—In all cases of delinquent taxes of unrendered and unknown property, where there appears to be an assessment of the same at a valuation excessive and unreasonable, the commissioners court shall be authorized to correct or reduce such values on the request of the tax collector with a full statement of the facts in each case; which statement and the action had thereon and the name of each commissioner voting for or against the reduction in valuation asked for shall be entered upon the minutes of the court; and a certified copy of the action had thereon shall be furnished to the Comptroller, and, when the values are so corrected or reduced, payment of taxes shall be accepted in accordance with such reduction, to which shall be added interest, penalty, advertising and costs as provided by law. [Id.]

Art. 7351. [7708] Bulk assessments validated.—In all suits to enforce the collection of delinquent taxes, where the assessment of any property for any year is invalidated by reason of the failure of the assessor to comply with the provisions of law for the description of any lot, block or tract of land, or to give a separate value on each lot, block or tract of land, known as "bulk assessments" or to enter upon the lists (similar to that used for the listing of rendered property, to be signed by the owner) all items of property assessed to unknown owners, all such assessments are hereby validated and given the same force and effect as if the descriptions, the separate valuations and the listing were in all respects strictly in compliance with law; provided, as to description, that the descriptions given are sufficient to identify the property, as to separate values, that the valuations and the taxes shown upon the tax rolls (in what are called "bulk assessments") can be fairly prorated to each separate lot, block or tract of land; and, as to listing, that the valuation given on the tax rolls upon properties assessed as unknown are found to have been entered upon the assessor's block book as the original assessment, instead of listing as in rendered assessments, and then entering upon the tax rolls. [Id.]

Art. 7352. [7709] Delinquent tax record published.—The various counties which have not heretofore made and published a delinquent tax record, under provisions of chapter 103, acts of the regular session of the twenty-fifth legislature, are hereby authorized and it shall be their duty to make and publish the same to date hereof, and, when so done, it shall have the same force and effect as if made and published under that Act; and any county which has heretofore made a delinquent tax record for any number of years is hereby authorized and empowered to re-compile the same to date hereof, and may compile each year thereafter under the provisions of said act. [Id.]

Art. 7353. [7710] Property listed by Comptroller.—Whenever it shall appear to the Comptroller from an inspection of the tax rolls of any county or otherwise, that any lands in such county subject to taxation have not been assessed for taxation for any year since and including the year 1900, he shall make a list of such lands and send the same to the tax assessor of such county by registered letter, accompanying such list with instructions to such tax assessor to assess such lands for taxes for the years for which they have not been assessed as shown by said list. [Acts 1905, p. 321.]

Art. 7354. [7711] List to be posted.—Upon receipt of such list, the tax assessor shall immediately post a copy of such notice and list at the court house door of his county, noting upon such copy the date of such posting; and the owners of the lands embraced in such list shall have the right, at any time within twenty days of such posting, to render the same to the tax assessor for the taxes for the years for which they have not been assessed for taxes, or for any of such years as shown by such notice, in the same manner as is provided for the rendition of other property for taxes under the provisions of the general laws for that purpose. [Id.]

Art. 7355. [7712] Unrendered lands assessed.—Should any of the said lands remain unrendered by the owners or owner thereof, under the provisions of the preceding article for any of the years for which the same have not been assessed according to said notice and lists, for twenty days after the date of the posting of such notice, it shall be the duty of the tax assessor, immediately upon expiration of such time, to assess for taxes at their true value such lands so remaining unrendered and unassessed for each of the years since and including the year 1900, and including the year such lists are made up by the Comptroller, listing the same in the name of unknown owners, and charging up to said lands the taxes, State and county, for which they are liable for each of such years, valuing such lands at their true and full value as provided in Article 7174. If any of said lands are lands purchased from the State as belonging to the school fund, the University, or any of the asylums of the State, and held under such contract of purchase upon which a part of the purchase money is still due, such lands being unpatented, no deduction shall be made in the value of said lands for, or on account of, such unpaid purchase money, but they shall be valued at their full and true value as though paid out and patented. [Id.]

Art. 7356. [7713] Duty of commissioners court.—The tax assessor shall make up lists showing such assessments, and deliver the same to the county judge, who shall at once, unless a regular session is held within ten days thereafter, call a meeting of the commissioners court in special session, as a board of equalization for the purpose of passing upon said assessment lists in the manner provided in case of regular assessments in so far as the provisions of the statute with regard thereto are applicable. The commissioners court without delay shall act upon said supplemented assessment lists, as to the value of the property embraced, and, when said values have been equalized as required by law, approve the same, and approve the rolls made up by the tax assessor in accordance therewith; provided, that the commissioners court shall have no authority to alter said assessment lists, or in any way interfere with such assessments, except as to the values of prop-

erty embraced therein, in equalizing the same as provided by law, and to strike therefrom any lands that have been already assessed for taxes at their true market value for the years for which they are assessed on said supplemental rolls and such taxes paid. [Id.]

Art. 7357. [7714] Supplemental tax rolls.—After such supplemental assessment lists have been passed upon by the board of equalization as herein provided, supplemental tax rolls shall be prepared by the tax assessor and approved by the commissioners court as is required by law in case of the regular assessment for taxes; and thereafter the taxes due according to such supplemental rolls shall be collected as in case of other taxes, and, if not paid, such proceedings shall be had for their collection as in case of other taxes. [Id.]

Art. 7358. [7715] Fees of assessor.—For making the supplemental assessments provided herein, the tax assessor shall be entitled to the same fees to be paid in the same manner as is provided by law in case of regular assessments. [Id.]

Art. 7359. City may use county officers.—Any incorporated city, town or village in this State is hereby authorized by ordinance to authorize the county tax assessor and county tax collector of the county in which said city, town or village is situated, to act as tax assessor and tax collector respectively for said city, town or village. The property in said city, town or village utilizing such county assessor and collector shall be assessed at the same value as it is assessed for county and State purposes. When an ordinance is so passed making available their services, said assessor shall assess the taxes for said city, town or village and perform the duties of tax assessor for said city, town or village according to the ordinances of said city, town or village and according to law; and said collector shall collect the taxes and assessments for said city, town or village and turn over as soon as collected to the city depository of said city or other authority authorized to receive such taxes or assessments, all taxes or money so collected, and shall perform the duties of tax collector of said city, town or village according to the ordinances thereof and according to law, deducting from the taxes so collected his fees provided for herein; and they shall respectively receive for such services one per cent of the taxes so collected. [Acts 1921, p. 128.]

TITLE 123—TIMBER

Art.
7360. Log brands.
7361. To be recorded.
7362. Written report to be filed.
7363. Evidence of ownership.
7363a. Bill of sale required in buying logs or pulp wood—verified statement respecting staves or cross ties—penalty for violation.

Article 7360. [7727] [5244] Log brands.—Whoever engages in floating or rafting timber upon the waters of any river or creek of this State shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded. [Acts 1879, p. 81, sec. 1; G. L. vol. 8, p. 1381.]

Art. 7361. [7728] [5245] To be recorded.—He shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk, in a book to be kept by said clerk for that purpose, for which said clerk shall receive a fee the same as is by law allowed for recording stock brands. [Id. sec. 2.]

Art. 7362. [7729] [5246] Written report to be filed.—Any person who floats any logs or timber in this State shall, on the first day of April, first day of July, first day of September, and on the first day of January of each year, or within fifteen days of said dates, make a written report under oath showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut; and such clerk shall record the same in a book kept for that purpose, and index it, and receive therefor the sum of fifty cents from the party presenting the same. This law shall not apply to pickets, posts, rails or firewood. [Id. sec. 3.]

Art. 7363. [7730] [5247] Evidence of ownership.—A certificate under the hand of the county clerk, containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it signed and acknowledged by such owner, or proved as other instruments for record, shall be prima facie evidence that the person to whom transfer is made owns the logs described thereon. [Id. sec. 4.]

Art. 7363a. Bill of sale required in buying logs or pulp wood—verified statement respecting staves or cross ties—penalty for violation.—Section 1. Every person, firm, partnership or corporation shall require, before purchasing any trees or timber in the form of logs or pulp wood, a bill of sale therefor to be executed and acknowledged by the seller, in the manner required by law for registration thereof, and such bill of sale shall contain the name and address of such seller and purchaser, a description of the survey or tract of land from which such logs or pulp wood were cut, the number of logs or pulp wood, and the markings, if any, thereon; provided further, that any notarial, filing fees, or other expenses in connection with such bill of sale, shall be assumed and paid by the purchaser; provided, however, that a purchaser of staves or cross ties not securing a bill of sale or deed to same shall on or before the tenth day of each succeeding month from date of purchase file with the County Clerk of the county in which the land from which said staves or cross ties were cut, is situated, a verified statement containing among other things the name and address of the seller and purchaser, a description of the survey or tract of land from which such staves or cross ties, or any of them, were cut, the number of staves or cross ties and the markings, if any, thereon contained, which verified statement shall be kept by the County Clerk as a record for public inspection for a period of not less than two (2) years, and for which a filing fee not exceeding Ten (10¢) Cents shall be charged. The provisions of this Act shall not apply to the sale of finished lumber or cedar staves, nor shall the same apply to wood or posts.

Sec. 2. Every seller and purchaser who fails to see that such bill of sale as above provided for is given in any such sale, or any purchaser not securing a bill of sale who fails to file the statement as provided for hereinabove, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not to exceed One Hundred ($100.00) Dollars, or imprisonment of not more than thirty (30) days in jail in the county jail, or both. [Acts 1939, 46th Leg., p. 243.]

TITLE 124—TRESPASS TO TRY TITLE

1. THE PLEADINGS AND PRACTICE

Art.
7364. Method of trying titles.
7365–7374. [Repealed.]

Art.
7375. What is sufficient title.
7376–7388. [Repealed.]
7389. Damages.*
7390. [Repealed.]
7391. Final judgment conclusive.
7392. Former laws shall govern, when.

2. CLAIM FOR IMPROVEMENTS

7393. Claim of improvements.
7394. Issue as to.
7395. Rents and profits as offset.
7396. Judgment for excess.
7397. Writ of possession.
7398. Failure of plaintiff to pay.
7399. Defendant failing to pay.
7400. [Repealed.]
7401. Duty of the clerk.

1. THE PLEADINGS AND PRACTICE

Article 7364. [7731] [5248] [4784] Method of trying titles.—All fictitious proceedings in the action of ejectment are abolished. The method of trying titles to lands, tenements or other real property shall be by action of trespass to try title. [Act Feb. 5, 1840; G. L. vol. 2, p. 310.]

Arts. 7365–7374. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 795, 783, 786, 787, 784, 785, 788–790.

Art. 7375. [7742] [5259] What is sufficient title.—All certificates for head-right, land scrip, bounty warrant, or any other evidence of right to land recognized by the laws of this State, which have been located and surveyed, shall be deemed and held as sufficient title to authorize the maintenance of the action of trespass to try title.

Arts. 7376–7388. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 791–794, 796–804.

Art. 7389. [7756] [5273] Damages.*—Where it is alleged and proved that one of the parties is in possession of the premises, the court or jury, if they find for the adverse party, shall assess the damages for the use and occupation of the premises. If special injury to the property be alleged and proved, the damages for such injury shall also be assessed, and the proper judgment shall be entered therefor, on which execution may issue; but damages shall not be assessed under this article for use and occupation or for injuries done over two years prior to the commencement of the suit. [Acts 1871, S. S., p. 3; G. L. vol. 7, p. 5.]

**Repealed in part, Rules of Civil Procedure, Rule 805.*

Art. 7390. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 806.

Art. 7391. [7758] [5275] Final judgment conclusive.—Any final judgment rendered in any action for the recovery of real estate shall be conclusive as to the title or right of possession established in such action upon the party against whom it is recovered, and upon all persons claiming from, through or under such party, by title arising after the commencement of such action.

Art. 7392. [7759] [5276] Former laws shall govern, when.—Nothing in this title shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law, but the same shall be decided by the principles of the law under which the same accrued, or by which the same were regulated or in any manner affected. [Acts 1871, S. S. p. 3; G. L. vol. 7, p. 5.]

2. CLAIM FOR IMPROVEMENTS

Art. 7393. [7760] [5277] Claim of improvements.—The defendant in any action of trespass to try title may allege in his pleadings that he and those under whom he claims have had adverse possession in good faith of the premises in controversy for at least one year next before the commencement of such suit, and that he and those under whom he claims have made permanent and valuable improvements on the lands sued for during the time they have had such possession, stating the improvements and their value respectively, and stating also the grounds of such claim. [Act Feb. 5, 1840; G. L. vol. 2, p. 310.]

Art. 7394. [7761] [5278] Issue as to.—Where the defendant has filed his claim for an allowance for improvements in accordance with the preceding article, if the court or jury find that he is not the rightful owner of the premises sued for, but that he and those under whom he claims have made permanent and valuable improvements thereon, being possessors thereof in good faith, the court or jury shall at the same time estimate from the testimony:

1. The value at the time of trial of such improvements as were so made before the filing of the suit not exceeding the amount to which the value of the premises is actually increased thereby.

2. The value of the use and occupation of the premises during the time the defendant was in possession thereof (exclusive of the improvements thereon made by himself or those under whom he claims), and also, if authorized by the pleadings, the damages for waste or other injury to the premises committed by him, not computing such annual value for a longer time than two years before suit, nor damages for waste or injury done before said two years.

3. The value of the premises recovered without the improvements made as aforesaid. [Id.]

Art. 7395. [7762] [5279] Rents and profits as offset.—If the sum estimated for the improvements exceeds the damages estimated against the defendant and the value of the use and occupation as aforesaid, there shall then be estimated against him, if authorized by the testimony, the value of the use and occupation and the damages for injury done by him or those under whom he claims, for any time before the said two years, so far as may be necessary to balance the claim for improvements, but no further; and he shall not be liable for the excess, if any, beyond the value of the improvements.

Art. 7396. [7763] [5280] Judgment for excess.—If it shall appear from the finding of the court or jury under the two preceding articles that the estimated value of the use and occupation and damages exceed the estimated value of the improvements, judgment shall be entered for the plaintiff for the excess and costs in addition to a judgment for the premises; but should the estimated value of the improvements exceed the estimated value of the use and occupation and damages, judgment shall be entered for the defendant for the excess.

Art. 7397. [7764] [5281] Writ of possession.—In any action of trespass to try title, when the lands or tenements have been adjudged to the plaintiff, and the estimated value of the improvements in excess of the value of the use and occupation and damages has been adjudged to the defendant, no writ of possession shall be issued for the term of one year after the date of the judgment, unless the plaintiff shall pay to the clerk of the court for the defendant the amount of such judgment in favor of the defendant, with the interest thereon. [Act Feb. 5, 1840; P. D. 5301; G. L. vol. 2, p. 310.]

Art. 7398. [7765] [5282] Failure of plaintiff to pay.—If the plaintiff shall neglect for the term of one year to pay the amount of said judgment in favor of the defendant, with the interest thereon as directed in the preceding article, and the defendant shall within six months after the expiration of said year, pay to the clerk of the court for the plaintiff the value of the lands or tenements, without regard to the improvements as estimated by the court or jury, then the plaintiff shall be forever barred of his writ of possession, and from ever having or maintaining any action whatever against the defendant, his heirs or assigns, for the lands or tenements recovered by such suit.

Art. 7399. [7766] [5283] Defendant failing to pay.—If the defendant or his legal representatives shall not, within six months aforesaid, pay to the clerk for the plaintiff the estimated value of the lands or tenements, as directed in the preceding article, then the plaintiff may sue out his writ of possession as in ordinary cases.

Art. 7400. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rule 807.

Art. 7401. [7768] [5285] Duty of the clerk.—If payment is made to the clerk of the court by the plaintiff or defendant, as provided in the preceding articles, such clerk shall enter a memorandum of such payment, with the date thereof, on the page of the record on which the judgment was entered; and he shall, on demand, pay the money to the party entitled, taking his receipt therefor, dated and signed on the page of the record aforesaid.

TITLE 125—TRIAL OF RIGHT OF PROPERTY

Art.
7402–7408. [Repealed.]
7409. Jurisdiction.
7410–7416. [Repealed.]
7417. Damages.
7418. If value of property exceeds judgment.
7419–7425. [Repealed.]

Arts. 7402–7408. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 717–723.

Art. 7409. [7778] [5295] [4831] Jurisdiction.—Cases arising under this chapter shall be tried in courts having jurisdiction of the amount involved. [Const. art. 5, secs. 8, 16, 19.]

Arts. 7410–7416. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure Rules 725–730.

Art. 7417. [7787] [5304] [4840] Damages.—In all trials of the right of property under the provisions of this title, if the claimant shall fail to establish his right to the property, the court or justice trying the same shall give judgment against all the obligors in the claimant's bond for ten per cent damages on the value of the property. [P. D. 5314.]

Art. 7418. [7788] [5305] [4841] If value of property exceeds judgment.—When such value is greater than the amount claimed under the writ, by virtue of which such property was levied upon, the damages shall be on the amount claimed under said writ. [Id.]

Arts. 7419–7425. [Repealed.]

Corresponding provisions, see Rules of Civil Procedure, Rules 731–736.

TITLE 125A—TRUSTS AND TRUSTEES

IN GENERAL

Art.
7425a. Conveyance by trustees.
7425b. Payment of money to trustees.

TEXAS TRUST ACT

7425b—1. Short title.
7425b—2. Definition of trust.
7425b—3. Purposes and capacities.
7425b—4. General definitions.
7425b—5. Person entitled to possession, rents and profits has legal estate.
7425b—6. Active trust valid.
7425b—7. Requisites of a trust.
7425b—8. Conveyance by trustees.
7425b—9. Payment of money to trustees.
7425b—10. Loan of trust funds.
7425b—11. Corporate trustee depositing trust funds with self.
7425b—12. Trustee buying from or selling to self.
7425b—13. Trustee selling from one trust to another trust.
7425b—14. Corporate trustee buying its own stock.
7425b—15. Voting stock.
7425b—16. Holding stock in name of nominee.
7425b—17. Powers attached to office.
7425b—18. Powers excisable by majority: survivor may execute trust.
7425b—19. Contracts of trustee.
7425b—20. Exoneration or reimbursement for torts.
7425b—21. Tort liability of trust estate.
7425b—22. Power of trustor.
7425b—23. Power of beneficiary.
7425b—24. Power of the court.
7425b—25. Powers, duties, and responsibilities of trustees.
7425b—26. Right of trustee to determine principal and income.
7425b—27. Income and principal—disposition.
7425b—28. Apportionment of income.
7425b—29. Dividends and share rights.
7425b—30. Premium and discount bonds.
7425b—31. Principal used in business.
7425b—32. Principal comprising animals.
7425b—33. Disposition of natural resources.
7425b—34. Principal subject to depletion.
7425b—35. Unproductive estate.
7425b—36. Expenses—trust estate.
7425b—37. Death of trustee; duty of court.
7425b—38. Resignation of trustee.
7425b—39. Removal of trustee.
7425b—40. Power and duties of successor trustees.
7425b—41. Revocable unless expressly made irrevocable.
7425b—42. Grantor may direct disposition on failure of trust.
7425b—43. Legal estate in grantee subject to trust.
7425b—44. Status of estate not disposed of.
7425b—45. Re-instating common law.

UNIFORM COMMON TRUST FUND ACT

7425b—46. Investment powers of trustee.
7425b—47. Constitutionally.
7425b—48. Uniform Common Trust Fund Act.

IN GENERAL

Article 7425a. Conveyance by trustees.—Where a trust is created, but is not contained or declared in the conveyance to the trustee, or when a conveyance or transfer is made to a trustee without disclosing the names of the beneficiary, or beneficiaries, the trustee shall be held to have the power to convey or transfer or encumber the title and whenever he shall execute and deliver a conveyance or transfer or encumbrance of such property, as trustee, such conveyance or transfer or encumbrance shall not thereafter be questioned by

any one claiming as a beneficiary under such trust or by any one claiming by, through, or under an undisclosed beneficiary, provided that none of the trust property in the hands of said trustee shall be liable for personal obligations of said trustee. [Acts 1925, 39th Leg., ch. 120, p. 305, § 1.]

The provisions of this article were reenacted verbatim in the Texas Trust Act of 1943. See article 7425b—8.

Art. 7425b. Payment of money to trustees.—Whenever one shall actually and in good faith pay a sum of money to a trustee, which the trustee is authorized to receive, he shall not be responsible for the proper application of the money, according to the trust; and any right or title derived from the trustee in consideration of such payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money so paid. [Acts 1925, 39th Leg., ch. 120, p. 305, § 2.]

The provisions of this article were reenacted verbatim in the Texas Trust Act of 1943. See article 7425b—9.

TEXAS TRUST ACT

Art. 7425b—1. Short title.—This Act [1] may be cited as the Texas Trust Act. [Acts 1943, 48th Leg., p. 232, ch. 148, § 1.]

1 Articles 7425b—1 to 7425b—47.

Art. 7425b—2. Definition of trust.—"Trust" for the purpose of this Act [1] means an express trust only, and does not include (1) resulting or constructive trusts, (2) so-called "Massachusetts Trusts" or similar business trusts, (3) security instruments such as deeds of trust, mortgages and conditional sales contracts, (4) instruments wherein one or more persons are mere nominees for one or more persons without any disclosed beneficiaries and without any active trust duties. [Acts 1943, 48th Leg., p. 232, ch. 148, § 2; Acts 1945, 49th Leg., p. 109, ch. 77, § 1.]

1 Articles 7425b—1 to 7425b—47.

Art. 7425b—3. Purposes and capacities.—A trust in relation to, or consisting of, real, personal or mixed property may be created or established for any use or purpose which is not illegal. A person has the same capacity to create a trust by declaration, transfer inter vivos, devise, bequest or appointment that he has to transfer, devise, bequeath or appoint free of trust. A person has capacity to create a trust by making a promise to another person whose rights against the promisor are to be held in trust for a third person, to the same extent that he has capacity to make a contract. [Acts 1943, 48th Leg., p. 232, ch. 148, § 3; Acts 1945, 49th Leg., p. 109, ch. 77, § 2.]

Art. 7425b—4. General definitions.—As used in this Act [1] unless the context or subject-matter otherwise requires:

A. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or two or more persons having a joint or common interest.

B. "Trustor" means the maker, creator, donor, settlor, grantor, of a trust and the testator or testatrix of a will containing trust provisions.

C. "Trustee", as constituted in Section 7 hereof,[2] includes trustees, a corporate as well as a natural person and a successor or substitute trustee.

D. "Relative" means a spouse or, whether by blood or adoption, an ancestor, descendant, brother, or sister.

E. "Affiliate" means any person directly or indirectly controlling or controlled by another person, or any person under direct or indirect common control with another person. It includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly, except a broker or stock exchange.

F. "Principal" means any real or personal property which has been so set aside or limited by the owner thereof, or a person thereto, legally empowered that it and any substitutions for it are eventually to be conveyed, delivered, or paid to a person, while the return therefrom or use thereof, or any part of such return or use is in the meantime to be taken or received by or held for accumulation for the same or another person.

G. "Income" means the return derived from principal.

H. "Tenant" means the person to whom income is presently or currently payable, or for whom it is accumulated or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution.

I. "Remainderman" means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established or determined by operation of law.

J. "Beneficiary" means any person entitled to receive from a trust any benefit of whatsoever kind or character.

K. "Trustee's compensation," as used in this Act, means the normal, recurring fee of the trustee for services in the management and administration of the trust estate, irrespective of the manner of computation of such fee. "Trustee's commission," as used in this Act, means the fee of the trustee for services rendered, other than in the normal management and administration of the trust estate, and includes extraordinary and unusual services, remuneration of the trustee for acceptance of the trust, distribution of the trust properties, termination of the trust estate, and all other fees of similar nature, as distinguished from regularly recurring compensation for the usual and ordinary management and supervision of the trust estate by the trustee. [Acts 1943, 48th Leg., p. 232, ch. 148, § 4.]

1 Articles 7425b—1 to 7425b—47.
2 Article 7425b—7.

Art. 7425b—5. Person entitled to possession, rents and profits has legal estate.—Every person who, by virtue of any transfer or devise, is entitled to the actual possession of real property, and the receipts of the rents and profits thereof, is deemed to have a legal estate therein, of the same quality, extent, and duration, and subject to the same conditions as his beneficial interest therein. [Acts 1943, 48th Leg., p. 232, ch. 148, § 5.]

Art. 7425b—6. Active trust valid.—The last preceding section [1] does not divest the estate of any trustee in a trust heretofore existing, where the title of such trustee is not merely nominal, but is connected with or subject to some power of actual disposition or management in relation to the real property, which is the subject of the trust. [Acts 1943, 48th Leg., p. 232, ch. 148, § 6.]

1 Article 7425b—5.

Art. 7425b—7. Requisites of a trust.—An express trust may be created by one of the following means or methods:

A. A declaration in writing by the owner of the property that he holds it as trustee for another person, or persons, or for himself and another person or persons; or

B. A written transfer inter vivos by the owner of property to another person as trustee for the transferor or for a third person or persons; or

C. A transfer by will by the owner of property to another person or persons as trustee for a third person or persons; provided that a natural person as trustee may be a beneficiary of any such trust.

D. An appointment by a person having a power of appointment to another person as trustee for the donee of the power or for a third person; or

E. A promise by a person to another person whose rights thereunder are to be held in trust for a third person; or

F. A beneficiary may be a co-trustee and the legal and equitable title to the trust estate shall not merge by reason thereof. [Acts 1943, 48th Leg., p. 232, ch. 148, § 7; Acts 1945, 49th Leg., p. 109, ch. 77, § 3.]

Art. 7425b—8. Conveyance by trustees.—Where a trust is created, but is not contained or declared in the conveyance to the trustee, or when a conveyance or transfer is made to a trustee without disclosing the names of the beneficiary, or beneficiaries, the trustee shall be held to have the power to convey or transfer or encumber the title and whenever he shall execute and deliver a conveyance or transfer or encumbrance of such property, as trustee, such conveyance or transfer or encumbrance shall not thereafter be questioned by any one claiming as a beneficiary under such trust or by any one claiming by, through, or under an undisclosed beneficiary, provided that none of the trust property in the hands of said trustee shall be liable for personal obligations of said trustee. (Article 7425a, R.C.S. of Texas.) [Acts 1943, 48th Leg., p. 232, ch. 148, § 8.]

Art. 7425b—9. Payment of money to trustees.—Whenever one shall actually and in good faith pay a sum of money to a trustee, which the trustee is authorized to receive, he shall not be responsible for the proper application of the money, according to the trust; and any right or title derived from the trustee in consideration of such payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money so paid. (Article 7425b, R.C.S. of Texas.) [Acts 1943, 48th Leg., p. 232, ch. 148, § 9.]

Art. 7425b—10. Loan of trust funds.—Except as provided in Section 11 of this Act,[1] a corporate trustee shall not lend trust funds to itself or an affiliate (as defined herein), or to any director, officer, or employee of itself or of an affiliate; nor shall any noncorporate trustee lend trust funds to himself, or to his relative, employer, employee, partner, or other business associate. [Acts 1943, 48th Leg., p. 232, ch. 148, § 10.]

1 Article 7425b—11.

Art. 7425b—11. Corporate trustee depositing trust funds with self.—A corporate trustee may deposit with itself trust funds which are being held pending investment, distribution, or to pay debts, provided it maintains under control of its trust department (if it has a trust department separate from its banking department) as security for such deposit a separate fund consisting of securities legal for trust investments which have at all times during the deposit a total market value equal to the amount of the deposit. No such security shall be required to the extent said deposit is insured or otherwise secured by or under state or federal law. The separate fund of securities shall be marked as such. Withdrawals from or additions to it may be made from time to time, as long as the required value is maintained. The income of such securities shall belong to the corporate trustee. [Acts 1943, 48th Leg., p. 232, ch. 148, § 11.]

Art. 7425b—12. Trustee buying from or selling to self.—A trustee shall not buy nor sell, either directly or indirectly, any property owned by or belonging to the trust estate, from or to itself or an affiliate; or from or to a director, officer, or employee of such trustee, or of an affiliate; or from or to himself, a relative, employer, partner or other business associate; provided a national banking association, or a state chartered bank and trust company, or a state chartered trust company, or a state chartered bank having trust powers, or any other state chartered corporation having the right to exercise trust powers, when acting or serving as executor, administrator, guardian, trustee, or receiver, may sell shares of the capital stock of itself so owned or held by itself, for any estate, to one or more of its officers, stockholders or directors, upon a court of competent jurisdiction finding that any such sale will be to the best interest of the estate owning such shares; fixing or approving the price to be paid therefor, and the terms of sale, and upon entering an order, decree or judgment, authorizing, approving and directing such sale to be made; and provided further that a corporate trustee, executor, administrator, or guardian, when authorized by will, trust agreement, other trust instrument, or judicial order, to retain its own capital stock in trust, may exercise rights to purchase its own stock when increases in its capital stock are offered pro rata to stockholders; provided, moreover, that such exercise of rights, in the circumstances then prevailing, shall be consistent with the judgment and care which men of ordinary prudence exercise in the management of their own affairs. [Acts 1943, 48th Leg., p. 232, ch. 148, § 12; Acts 1945, 49th Leg., p. 109, ch. 77, § 4.]

Art. 7425b—13. Trustee selling from one trust to another trust.—A trustee shall not as trustee of one trust sell property to another trust estate of which it is trustee, except bonds, notes, bills and other obligations issued, or fully guaranteed as to both principal and interest, by the United States of America, which may be so sold and transferred by the trustee, from one trust estate to another, at the current market price. [Acts 1943, 48th Leg., p. 232, ch. 148, § 13.]

Art. 7425b—14. Corporate trustee buying its own stock.—A corporate trustee shall not purchase for a trust, shares of its own stock, or its bonds, obligations, or other securities, or the stock, bonds, obligations, or other securities of an affiliate (as defined herein.) A noncorporate trustee shall not purchase for a trust the stock, bonds, obligations, or other securities of a corporation with which such trustee is connected as director, owner, manager, or in an executive or official capacity.

This section shall not prohibit the retention of shares of stock already owned by the trust estate if such retention satisfies the provisions of Section 46 hereof,[1] nor the exercise of stock rights as permitted by Section 12 hereof,[2] as amended from time to time. [Acts 1943, 48th Leg., p. 232, ch. 148, § 14; Acts 1945, 49th Leg., p. 109, ch. 77, § 5.]

1 Article 7425b—46.
2 Article 7425b—12.

Art. 7425b—15. Voting stock.—A trustee owning corporate stock may vote it by proxy, without power of substitution, in favor of one or more persons, or the survivors of them, and the trustee, in the absence of bad faith or gross negligence in selecting the person or persons to whom any proxy, either limited or unlimited, is given, shall not be liable for any financial loss resulting to the trust estate or the beneficiaries thereof in deciding how to vote the stock and in the voting of it. [Acts 1943, 48th Leg., p. 232, ch. 148, § 15.]

Art. 7425b—16. Holding stock in name of nominee.—A trustee owning stock or property may hold same in the name of a nominee, without mention of the trust in the stock certificate or stock registration book, or other evidence of the title to such property; provided that:

A. The trust records and all reports or accounts rendered by the trustee clearly show the ownership of

the stock or property by the trustee, and the facts regarding its holdings; and

B. The nominee deposits with the trustee a signed statement showing the trust ownership, endorses the stock certificate in blank, or executes an appropriate stock-power in blank and attaches thereto, or executes a conveyance or assignment of the title to said property, and does not have possession of the stock certificate or property or access thereto except under the immediate supervision of the trustee.

No such registration or holding shall relieve the trustee of liability for any loss to the trust resulting from any improper act of such nominee in connection with securities or properties so held. [Acts 1943, 48th Leg., p. 232, ch. 148, § 16.]

Art. 7425b—17. Powers attached to office.—Unless otherwise expressly provided in this Act[1] or by the trust instrument, or an amendment thereof, or by court order, the exercise of all powers and discretions of a trustee shall be inherent in the office and shall not be personal. [Acts 1943, 48th Leg., p. 232, ch. 148, § 17.]

1 Articles 7425b—1 to 7425b—47.

Art. 7425b—18. Powers exercisable by majority: survivor may execute trust.—Unless it is otherwise provided by the trust instrument, or an amendment thereof, or by court order:

A. Any power vested in three or more trustees may be exercised by a majority of such trustees; but a trustee who has not joined in exercising a power shall not be liable to the beneficiaries or to others for the consequences of such exercise, nor shall a dissenting trustee be liable for the consequences of an act in which he joins at the direction of the majority trustees, if he expressed his dissent in writing to any of his co-trustees at or before the time of such joinder.

B. Where two or more trustees are appointed by will or a voluntary trust to execute a trust and one or more of them die, the surviving trustee or trustees may execute the trust and may exercise the discretionary powers given to the trustees jointly, unless the terms of the will or agreement expressly provide to the contrary.

C. Nothing in this section shall excuse a co-trustee from liability for failure to discharge his duties as trustee. [Acts 1943, 48th Leg., p. 232, ch. 148, § 18.]

Art. 7425b—19. Contracts of trustee.—Whenever a trustee shall make a contract which is within his powers as trustee, or a predecessor trustee shall have made such a contract, and a cause of action arises thereon:

A. The party in whose favor the cause of action has accrued may sue the trustee in his representative capacity, and any judgment rendered in such action in favor of the plaintiff shall be collectible by execution out of the trust property. In such an action the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

B. No judgment shall be rendered in favor of the plaintiff in such action unless he proves that within thirty (30) days after the beginning of such action, or within such other time as the court may fix, and more than thirty (30) days prior to obtaining the judgment, he notified each of the beneficiaries known to the trustee who then had a present or contingent interest, or in the case of a charitable trust the Attorney General of Texas and any corporation which is a beneficiary or agency in the performance of such charitable trust, of the existence and nature of the action. Such notice shall be given by mailing copies thereof by registered mail addressed to the parties to be notified at their last known addresses. The trustee shall furnish the plaintiff a list of the beneficiaries or persons having an interest in the trust estate, and their addresses, if their whereabouts are known to the trustee, within ten (10) days after written demand therefor, and notification of the persons on such list shall constitute compliance with the duty placed on the plaintiff by this section.

Any beneficiary, or in the case of charitable trusts the Attorney General of Texas, and any corporation which is a beneficiary or agency in the performance of such charitable trust, may intervene in such action and contest the right of the plaintiff to recover. If any beneficiary is a minor or has been adjudged incompetent, the court shall appoint a guardian ad litem, whose duty it shall be to defend such action.

C. The plaintiff may also hold the trustee who made the contract personally liable on such contract, if the contract does not exclude such personal liability. The addition of the word "trustee" or the words "as trustee" after the signature of a trustee to a contract shall be deemed prima facie evidence of an intent to exclude the trustee from personal liability. [Acts 1943, 48th Leg., p. 232, ch. 148, § 19.]

Art. 7425b—20. Exoneration or reimbursement for torts.—A trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to exoneration therefor from the trust property:

A. If he has not discharged the claim, or to be reimbursed therefor out of trust funds if he has paid the claim; if

1. The tort was a common incident of the kind of business activity in which the trustee was properly engaged for the trust; or

2. Although the tort was not a common incident of such activity, if neither the trustee nor any officer or employee of the trustee was guilty of actionable negligence in incurring the liability.

B. If a trustee commits a tort which increases the value of the trust property, he shall be entitled to exoneration or reimbursement with respect thereto to the extent of such increase in value, even though he would not otherwise be entitled to exoneration or reimbursement. [Acts 1943, 48th Leg., p. 232, ch. 148, § 20.]

Art. 7425b—21. Tort liability of trust estate.—Where a trustee or his predecessor has incurred personal liability for a tort committed in the course of his administration:

A. The trustee in his representative capacity may be sued and collection had from the trust property, if the court shall determine in such action:

1. That the tort was a common incident of the kind of business activity in which the trustee or his predecessor was properly engaged for the trust; or

2. That although the tort was not a common incident of such activity neither the trustee nor his predecessor, nor any officer or employee of the trustee or his predecessor, was guilty of actionable negligence in incurring the liability; or

3. That although the tort did not fall within classes 1 or 2 above, it increased the value of the trust property.

If the tort is within classes 1 or 2 above, collection may be had of the full amount of damage proved; and if the tort is within class 3 above, collection may be had only to the extent of the permanent increases in the value of the trust property.

B. In an action against the trustee in his representative capacity under this section the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

C. No judgment shall be rendered in favor of the plaintiff in such action unless he proves that within thirty (30) days after the beginning of the action, or within such other period as the court may fix and more than thirty (30) days prior to obtaining the judgment, he notified each of the beneficiaries known to the trustee, who then had a present or contingent in-

terest of the existence and nature of the action. Such notice shall be given by registered mail addressed to such beneficiaries at their last known addresses. The trustee shall furnish the plaintiff a list of such beneficiaries and their addresses, within ten (10) days after written demand therefor, and notification of the persons on such list shall constitute compliance with the duty placed on the plaintiff by this section. Any beneficiary may intervene in such action and contest the right of the plaintiff to recover. If any beneficiary is a minor or has been adjudged incompetent, the court shall appoint a guardian ad litem, whose duty it shall be to defend such action.

D. The trustee may also be held personally liable for any tort committed by him, or his agents or employees in the course of their employments, subject to the rights of exoneration or reimbursement provided in Section 20 of this Act.[1] [Acts 1943, 48th Leg., p. 232, ch. 148, § 21.]

1 Article 7425b—20.

Art. 7425b—22. Power of trustor.—The trustor of any trust affected by this Act [1] may, by provisions in the instrument creating the trust, or by an amendment of the trust if the trustor reserved the power to amend the trust, relieve his trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed upon him by this Act; or alter or deny to his trustee any or all of the privileges and powers conferred upon the trustee by this Act; or add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this Act; but no act of the trustor shall relieve a corporate trustee from the duties, restrictions, and liabilities imposed upon it by Sections 10, 11, and 12 of this Act.[2] [Acts 1943, 48th Leg., p. 232, ch. 148, § 22.]

1 Articles 7425b—1 to 7425b—47.
2 Articles 7425b—10 to 7425b—12.

Art. 7425b—23. Power of beneficiary.—Any beneficiary of a trust affected by this Act [1] may, if of full legal capacity and acting upon full information, by written instrument delivered to the trustee, relieve the trustee as to such beneficiary from any or all of the duties, restrictions, responsibilities and liabilities which would otherwise be imposed on the trustee by this Act, including the release of the trustee from any or all liability to such beneficiary for past violations of any of the provisions of the Act, except as to the duties, restrictions, and liabilities imposed on corporate trustees by Sections 10, 11, and 12 herein.[2] [Acts 1943, 48th Leg., p. 232, ch. 148, § 23.]

1 Articles 7425b—10 to 7425b—12.
2 Articles 7425b—10 to 7425b—12.

Art. 7425b—24. Power of the court.—A. The district court shall have original jurisdiction to construe the provisions of any trust instrument; to determine the law applicable thereto; the powers, responsibilities, duties, and liability of trustee; the existence or non-existence of facts affecting the administration of the trust estate; to require accounting by trustee; and to surcharge trustee.

B. In cases where there be a single trustee, the venue of such actions shall be in the county of the residence of such trustee; or if a corporation, in the county of its principal place of business. Where there are two or more trustees, then the venue shall be in the county where the principal office of the trust is maintained.

C. Actions hereunder may be brought by a trustee, beneficiary, or any person affected by or having an active interest in the administration of the trust estate. If the action is predicated upon any act or obligation of any beneficiary, such beneficiary shall be a necessary party to the proceedings. The only necessary parties to such actions shall be those persons designated by name in the instrument creating the trust, and any persons who may be actually receiving distributions from the trust estate at the time the action is filed; contingent beneficiaries designated as a class shall not be necessary parties.

D. Except as otherwise provided herein, the provisions of the statutes and rules of court governing civil procedure, commencement of action, process, process by publication, appointment of guardians ad litem, supersedeas and appeal, shall govern all actions and proceedings instituted under the provisions of this Act.[1]

E. A court of competent jurisdiction may, for cause shown and upon notice to the beneficiaries, relieve a trustee from any or all of the duties, limitations, and restrictions which would otherwise be placed upon him by this Act, or wholly or partly release and excuse a trustee, who has acted honestly and reasonably, from liability for violations of the provisions of this Act. [Acts 1943, 48th Leg., p. 232, ch. 148, § 24.]

1 Articles 7425b—1 to 7425b—47.

Art. 7425b—25. Powers, duties, and responsibilities of trustees.—In the absence of contrary or limiting provisions in the instrument creating the trust, or a subsequent order or decree of a court of competent jurisdiction, the trustee of an express trust is authorized:

A. To exchange, re-exchange, sub-divide, develop, improve, dedicate to public use, make or vacate public plats, adjust boundaries, and/or partition real property, and to adjust differences in valuation by giving or receiving money or money's worth. Easements may be dedicated to public use without consideration if deemed by the trustee to be for the best interest of the trust.

B. To grant options and to sell real or personal property at public auction or at private sale for cash, or upon credit secured by lien upon the property sold or upon such property or a part thereof and/or other property.

C. To grant or take leases of real property for any term of years, and of all rights and privileges above or below the surface of real property for any term or terms, including exploration for and removal of oil, gas, and other minerals, with or without options of purchase, and with or without covenants as to erection of buildings, or as to renewals thereof, through the term of the lease or renewals thereof, or of such options extending beyond the term of the trust.

D. To raze existing walls or buildings and/or erect new party walls or buildings alone or jointly with the owners of any adjacent property. To make ordinary repairs and in addition thereto such extraordinary alterations, changes, and additions in buildings or other structures which are necessary to make the property productive or more productive. To effect and keep in force, fire, rent, title, liability, casualty, or other insurance of any nature, in any form and in any amount.

E. To compromise, contest, arbitrate, or settle any and all claims of or against the trust estate or the trustee as such. To abandon property deemed by the trustee burdensome or valueless.

F. To pay calls, assessments, and any other sums chargeable or accruing against, or on account of shares of stock or other securities in the hands of the trustee where such payment may be legally enforceable against the trustee or any property of the trust, or where the trustee deems payment expedient and for the best interests of the trust. To sell or exercise stock subscription or conversion rights, participate in the foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts; to assent to corporate sales, leases, and encumbrances, and in general, except as limited by the particular will, indenture, trust agreement, or other trust instrument, have and exercise all powers of an absolute owner in respect of such securities. In the exercise of the foregoing powers the trustee shall be

authorized, where he deems such course expedient, to deposit stocks, bonds, or other securities with any protective or other committee formed by or at the instance of persons holding similar securities, under such terms and conditions respecting the deposit thereof as the trustee may approve. Any stock or other securities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights shall be free, unless the trust instrument provides otherwise, from any restrictions on sale or otherwise contained in the trust instrument relative to the securities originally held.

G. Generally to execute and deliver any deed or other instrument and to do all things in relation to such trust necessary, desirable, or advisable for carrying out any of the above powers or those considered incident to the purposes of such trust. In addition to the other rights, powers, and authority granted to and conferred upon the trustee of an express trust by this, The Texas Trust Act, the trustee may sell, exchange, transfer, assign, convey, mortgage, or otherwise encumber, lease, contract for the joint exploration and development of the trust property, with other properties, and otherwise contract with reference to oil, gas, or other minerals or natural resources, and mineral rights and mineral royalties, which may be or become a part of the trust estate, upon such terms and conditions, and for such royalties, rents, benefits, and consideration as the trustee may deem to be to the best interest of the trust estate. [As amended Acts 1945, 49th Leg., p. 109, ch. 77, § 6.]

H. Employ attorneys, accountants, agents, and brokers reasonably necessary in the administration of the trust estate; permit real estate held in trust to be occupied by a surviving spouse or minor child of the trustor and, where reasonably necessary for the maintenance of the surviving wife or minor child, to invest trust funds in real property to be used for a home by any such beneficiary, and, in the trustee's discretion, to pay funeral expenses of any beneficiary actually receiving benefits from the trust estate at the time of his or her death. [As amended Acts 1945, 49th Leg., p. 109, ch. 77, § 7.]

I. The following rules of administration shall be applicable to all express trusts but such rules shall not be exclusive of those otherwise imposed by law, unless the latter be contrary to these rules:

1. Where a trustee is authorized to sell or dispose of land, such authority shall include the right to sell or dispose of a part thereof, whether the division is horizontal, verticle, or made in any other way, or of undivided interests therein.

2. Where a trustee is authorized by the trust instrument creating the trust or by law to pay, expend, or otherwise apply capital money subject to the trust for any purpose or in any manner, he shall have and shall be deemed always to have had the power to raise the money so required by selling, converting, calling in, or mortgaging or otherwise encumbering all or any part of the trust property for the time being in possession.

3. A trustee shall have a lien, and may reimburse himself with interest, for, or pay or discharge out of the trust property, either principal or income or both, all advances made for the convenience, benefit or protection of the trust or its property, and all expenses, losses, and liabilities, not resulting from the negligence of the trustee, incurred in or about the execution or protection of the trust or because of his holding or ownership of any property subject thereto.

4. When the happening of any event, including marriage, divorce, attainment of a certain age, performance of educational requirements, death, or any other event, determines or affects the distribution of income or principal of trust estates, the trustees shall not be liable for mistakes of fact made prior to the actual knowledge or written notice of such fact.

J. The powers, duties, and responsibilities stated in this Act [1] shall not be deemed to exclude other implied powers, duties, or responsibilities not inconsistent herewith.

K. Pay all taxes and assessments levied or assessed against the trust estate or the trustee by governmental taxing or assessing agencies.

[1] Article 7425b—24.

L. Unless the instrument creating the trust provides to the contrary, the trustee of any trust created after the effective date of this amendment shall be required to give bond payable to all persons interested in the trust as their interest may appear, conditioned for the faithful performance of the duties as trustee, to be in such amount and with such surety or sureties as the District Court shall, by order entered in a proceeding brought for such purpose, direct and approve. If the proceeding be brought by the person named as trustee, citation in respect thereof shall not be necessary, but the proceeding may be upon ex parte verified petition showing the nature and probable value of the trust estate, and the District Court may, in term time or vacation, hear the application and enter such order in respect thereof as the court shall deem proper. If the proceeding be brought by some other person interested in the estate, citation shall issue, as required by law, to the trustee, unless such citation be expressly waived in writing. Any bond made pursuant to the provisions of this Subsection L shall be subject to increase, decrease, or the substitution or addition of another surety or other sureties upon order of the District Court in an action brought by any person interested in the trust estate, as in Section 24 [1] hereof provided. Any bond made pursuant to the terms of this Subsection shall be deposited with the Clerk of the District Court in which the order shall have been entered, and suit may be maintained on a certified copy thereof, provided that any recovery thereon shall, upon appropriate proof by the surety or sureties, reduce their liability on such bond pro tanto. Failure to comply with the provisions of this paragraph shall not render void or voidable, or otherwise affect, any act or transaction of the trustee with any third person.

Provided, however, that this Subsection shall not apply to corporate trustees who comply with the law concerning the deposit of securities with the State Treasurer or any one of his authorized deputies. [Acts 1943, 48th Leg., p. 232, ch. 148, § 25; Acts 1945, 49th Leg., p. 109, ch. 77, § 8.]

[1] Articles 7425b—1 to 7425b—47.

Art. 7425b—26. Right of trustee to determine principal and income.—This Act [1] shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and remaindermen in all cases where an express trust has been created; except that in the establishment of the principal, provision may be made touching all matters covered by this Act, and the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person to do so, and such provision and direction, where not otherwise contrary to law, shall control notwithstanding this Act. [Acts 1943, 48th Leg., p. 232, ch. 148, § 26; Acts 1945, 49th Leg., p. 109, ch. 77, § 9.]

[1] Articles 7425b—1 to 7425b—47.

Art. 7425b—27. Income and principal—disposition.—Unless otherwise expressly provided in this Act: [1]

A. All receipts of money or other property paid or delivered as rent of realty or hire of personalty or dividends payable other than in shares of the corporation, company, or association itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously dam-

aged, or otherwise in return for the use of principal, shall be deemed income.

B. All receipts of money or other property paid or delivered as the consideration for the sale or other transfer, or for the granting of an option for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remaindermen are not made, or as proceeds of insurance upon property forming a part of the principal except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal shall be deemed principal unless otherwise expressly provided in this Act. Any profit or loss resulting upon any change in form of principal shall enure to or fall upon principal.

C. All income after deduction of expenses properly chargeable to it, including reasonable reserves, shall be paid and delivered to the tenant or retained by him if already in his possession or held for accumulation where legally so directed by the terms of the transaction by which the principal was established; while the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established or by law. [Acts 1943, 48th Leg., p. 232, ch. 148, § 27.]

1 Articles 7425b—1 to 7425b—47.

Art. 7425b—28. Apportionment of income.—Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans, and annuities, but shall not include dividends, and such rights shall cease and determine by death or in any other manner at a time other than the date when such periodic payments should be paid, he or his personal representative shall be entitled to that portion of any such net income next payable which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right is of the total period during which such income would normally accrue. The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income or any portion thereof until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto. The provisions of this section shall apply whether an ultimate remainderman is specifically named or not. Likewise, when the right of the first tenant accrues at a time other than the payment dates of such periodic payments, he shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he has been so entitled is of the total period during which such income would normally accrue; the balance shall be a part of the principal. [Acts 1943, 48th Leg., p. 232, ch. 148, § 28.]

Art. 7425b—29. Dividends and share rights.—Dividends and share rights shall be allocated as follows:

A. All dividends on shares of a corporation, company or association (herein called corporation), forming a part of the principal which are payable in its own shares shall be deemed principal.

Subject to the provisions of this section, all dividends payable otherwise than in the shares of the corporation, company or association, itself, including ordinary and extraordinary cash dividends and dividends payable in shares or other securities or obligations of corporations other than the declaring corporation, unless the declaring corporation designates the source thereof as capital assets of the declaring corporation shall be deemed income. Where the trustee shall have the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee.

B. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights, shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of any sale of such rights, shall be deemed income.

C. Where the assets of a corporation are liquidated, amounts paid upon corporate shares as cash dividends declared before such liquidation began or as arrears of preferred or guaranteed dividends shall be deemed income; all other amounts paid upon corporate shares on disbursement of the corporate assets to the stockholders shall be deemed principal. All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property shall be deemed principal.

D. Where a corporation succeeds another by merger, consolidation, or reorganization or otherwise acquires its assets, and the corporate shares of the succeeding corporation are issued to the shareholders of the original corporation in like proportion to, or in substitution for, their shares of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section. But two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

E. In applying this section the person who is entitled to a dividend shall be the tenant at the time specified by the corporation as the date on which the stockholders entitled thereto are determined, or if no such time is specified then the tenant at the date of declaration of the dividend, shall be entitled thereto. [Acts 1943, 48th Leg., p. 232, ch. 148, § 29.]

Art. 7425b—30. Premium and discount bonds.—Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established; or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale any loss or gain realized thereon shall fall upon or enure to principal; except securities purchased on a discount basis and not bearing interest, in which cases the discount when received or recovered shall be income. [Acts 1943, 48th Leg., p. 232, ch. 148, § 30.]

Art. 7425b—31. Principal used in business.—When principal is used in business, the net profits and any increase or decrease in the principal shall be allocated as follows:

A. Whenever a trustee or a tenant is authorized by the terms of the transaction by which the principal was established, or by law, to use any part of the principal in the continuance of a business which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

B. Where such business consists of buying and selling property—including the buying and selling of goods, wares and merchandise in operating and conducting a retail or wholesale business—the net profits for any period shall be ascertained by deducting from the gross returns during and the inventory value of

the property at the end of such period, the expenses and purchases during the period and the inventory value of the property at the beginning of such period.

C. Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

D. Any increase in the value of the principal used in such business shall be deemed principal, and all losses in any one calendar year, or fiscal year if it differs from calendar year, after the income from such business for that year has been exhausted, shall fall upon principal. [Acts 1943, 48th Leg., p. 232, ch. 148, § 31.]

Art. 7425b—32. Principal comprising animals.—Where any part of the principal consists of animals employed in business, the provision of Section 31 of this Act [1] shall apply, and in other cases where the animals are held as a part of the principal partly or wholly because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals and the remainder shall be deemed income; and in all other cases such offspring or increase shall be deemed income. [Acts 1943, 48th Leg., p. 232, ch. 148, § 32.]

[1] Article 7425b—31.

Art. 7425b—33. Disposition of natural resources.—Where any part of the principal consists of any interest in lands, including royalties, overriding royalties, and working interest, from which may be taken timber, minerals, oil, gas or other natural resources, and the trustee or tenant is authorized by law or by the terms of the transaction by which the principal or trust was established to sell, lease, or otherwise develop such natural resources, and no provision is made for the disposition of the proceeds thereof, such proceeds, if received as delay rentals on a lease shall be deemed income, but if received as consideration, whether as bonus or consideration for the execution of the lease or as royalties, overriding or limited royalties, oil payments or other similar payments, received in connection with the physical severance of such natural resources, shall be apportioned to principal and income as follows: 27½% of the gross proceeds (but not to exceed 50% of the net, after deducting the expense and carrying charges on such property) shall be treated as principal and invested or held for the use and benefit of the remainderman, and the balance shall be treated as income subject to be disbursed to the tenant or person entitled thereto. Such disposition of proceeds shall app'y whether the property is producing or nonproducing at the time the trust becomes effective. [Acts 1943, 48th Leg., p. 232, ch. 148, § 33; Acts 1945, 49th Leg., p. 109, ch. 77, § 10.]

Art. 7425b—34. Principal subject to depletion.—Where any part of the principal in the possession or under the custody and control of the trustee consists of property other than natural resources, subject to depletion, such as leaseholds, patents, copyrights, and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties, or return from the property shall be income to the tenant; but where the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of five (5%) per cent per annum of its fair inventory value or in default thereof its market value at the time the principal was established, or at its cost where purchased later, shall be deemed income and the remainder principal. [Acts 1943, 48th Leg., p. 232, ch. 148, § 34.]

Art. 7425b—35. Unproductive estate.—Upon conversion of any unproductive property, allocation between principal and income shall be as follows:

A. Where any part of a principal in the possession of a trustee consists of realty or personalty, whether tangible or intangible property, which for more than a year and until disposed of as hereinafter stated has not produced an average net income, not considering depreciation or obsolescence, of at least one (1%) per cent per annum of its fair inventory value or in default thereof its market value at the time the principal was established or of its cost where purchased later, and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value and such change is delayed, but is made before the principal is finally distributed, then the tenant, or in case of his death, his personal representative, shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated. The basis under this Section for establishing value of property acquired through foreclosure of a mortgage held by the trust, shall be the net investment in the property up to the date of re-sale by the trust and not the price bid at the foreclosure sale. Net investment shall consist of all moneys invested and advanced.

B. Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of four (4%) per cent per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the fair inventory value of the property, or in default thereof, its market value at the time the principal was established or its costs where purchased later. The net proceeds shall consist of the gross proceeds received from the property less any expenses incurred in disposing of it and less all carrying charges which are chargeable to principal during the period while it has been unproductive. No allocation to income shall be made when the net proceeds from any sale are less than the value of the property as determined by subsection A of this section. [As amended Acts 1945, 49th Leg., p. 109, ch. 77, § 11.]

C. The change shall be taken to have been delayed from the time when the duty to make it first arose, which shall be presumed, in the absence of evidence to the contrary, to be one year after the trustee first received the property if then unproductive, otherwise one year after it became unproductive.

D. If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been delayed, his share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

E. In case of successive tenants the delayed income shall be divided among them or their representatives according to the length of the period for which each was entitled to income.

F. Where a trustee is required to change the form of investment under the provisions of the instrument by which the trust is created or under the existing law, he shall use reasonable care in determining the necessity for such change and the time and manner of changing said form of investment. Provided, that the provisions in this Section shall not be construed to require a trustee to change the form of an investment. [Acts 1943, 48th Leg., p. 232, ch. 148, § 35.]

Art. 7425b—36. Expenses—trust estate.—Expenses of trust estates shall be chargeable to principal or income as follows:

A. All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation except commissions computed on distributions of principal, compensation of assistants, and court costs and attorney's and other fees on regular accountings, shall be chargeable against income. But such expenses where incurred in disposing of, or as carrying charges on, unproductive estate as defined in Section 35 of this Act,[1] shall be chargeable against principal, subject to the provisions of sub-section B of section 35 of this Act.

B. All other expenses, including trustees' commissions computed upon distributions of principal, cost of investing or re-investing principal, attorney's fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state, or foreign, upon profit or gain defined as principal under the terms of sub-section B of Section 27 of this Act,[2] shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

C. Expenses paid out of income according to subsection A of this Section which represent regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of the income are of unusual amount the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expense shall be apportioned between tenant and remainderman on the basis of such distribution.

D. Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in subsection B, the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement. [Acts 1943, 48th Leg., p. 232, ch. 148, § 36.]

1 Article 7425b—35.
2 Article 7425b—27.

Art. 7425b—37. Death of trustee; duty of court.—Upon the death of a sole or surviving trustee of an express trust and in the absence of the trust instrument providing for the appointment of a successor trustee, the power to appoint a trustee shall vest in the court having jurisdiction thereof, and on petition of any person interested in the trust estate such court shall appoint a successor in whom the trust shall vest. [Acts 1943, 48th Leg., p. 232, ch. 148, § 37.]

Art. 7425b—38. Resignation of trustee.—Upon petition of any trustee of an express trust, a court having jurisdiction may accept his resignation, and discharge him from the trust upon such terms and conditions as the rights of the person interested in the trust may require. [Acts 1943, 48th Leg., p. 232, ch. 148, § 38.]

Art. 7425b—39. Removal of trustee.—Trustees having materially violated (or attempted to violate) any express trust resulting in an actual financial loss to the trust, or becoming incompetent or insolvent, or of whose solvency or that of the sureties there is reasonable doubt, or for other cause, in the discretion of the court having jurisdiction, may, on petition of any person actually interested, after hearing, be removed by such court and denied compensation in whole or in part; and any beneficiary, co-trustee, or successor may treat the violation as a breach of trust; and all vacancies in express trusteeships may be filled by such court. [Acts 1943, 48th Leg., p. 232, ch. 148, § 39.]

Art. 7425b—40. Power and duties of successor trustees.—Trustees appointed by the District Courts of Texas shall be vested with all the rights, powers, and other authority, trusts, privileges, discretion and title to properties conferred upon the trustee by the trust instrument, and by statute, unless otherwise provided by the court in the order of appointment; and shall be charged with all the duties, responsibilities and liabilities imposed by the trust instrument and by statute. [Acts 1943, 48th Leg., p. 232, ch. 148, § 40.]

Art. 7425b—41. Revocable unless expressly made irrevocable.—Every trust shall be revocable by the trustor during his lifetime, unless expressly made irrevocable by the terms of the instrument creating the same or by a supplement or amendment thereto. [Acts 1943, 48th Leg., p. 232, ch. 148, § 41.]

Art. 7425b—42. Grantor may direct disposition on failure of trust.—Notwithstanding anything contained in Section 41 of this Act,[1] the trustor of a trust may, in its creation, prescribe to whom the real or personal property to which the trust relates shall belong, in the event of the failure, termination, revocation or cancellation of the trust, and may transfer or devise such property, subject to the execution of the trust. [Acts 1943, 48th Leg., p. 232, ch. 148, § 42; Acts 1945, 49th Leg., p. 109, ch. 77, § 12.]

1 Article 7425b—41.

Art. 7425b—43. Legal estate in grantee subject to trust.—The grantee or devisee of real or personal property that is subject to a trust acquires a legal estate in the property, against all persons except the trustees and those lawfully claiming under them. [Acts 1943, 48th Leg., p. 232, ch. 148, § 43.]

Art. 7425b—44. Status of estate not disposed of.—Where an express trust is created in relation to real or personal property, every estate not embraced in the trust, and not otherwise disposed of, is left in the trustor of the trust or his legal successors in title. [Acts 1943, 48th Leg., p. 232, ch. 148, § 44.]

Art. 7425b—45. Re-instating common law.—The repeal of any section of the statutory law of this state by this Act,[1] which repealed section abrogated or re-stated the common-law rule, shall operate to reinstate and re-establish the common-law rule applicable thereto, except as the subject matter thereof may be changed by the provisions of this Act. [Acts 1943, 48th Leg., p. 232, ch. 148, § 45.]

1 Articles 7425b—1 to 7425b—47.

UNIFORM COMMON TRUST FUND ACT

Art. 7425b—46. Investment powers of trustee.—A. In acquiring, investing, reinvesting, exchanging, retaining, selling, supervising and managing property for the benefit of another, the trustee shall exercise the judgment and care under the circumstances then prevailing, which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. Within the limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, specifically including but not by

way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of ordinary prudence, discretion, and intelligence acquire or retain for their own account; and within the limitations of the foregoing standard, a fiduciary may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase.

B. Nothing contained in this Section of this Act shall be construed as authorizing any departure from, or variation of, the express terms, provisions or limitations set forth in any will, agreement, court order or other instrument creating or defining the trustee's duties, authority and powers, but the terms "legal investment" or "authorized investment", or words of similar import, as used in any such trust instrument, shall be taken to mean any investment which is permitted by the terms of paragraph A hereof.

C. Nothing contained in this Section of this Act shall be construed as restricting the power of a court of competent jurisdiction to permit and authorize the trustee to deviate and vary from the terms of any will, agreement, or other trust instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, supervision or management of trust property.

D. The provisions of this Section of this Act shall govern the trustee acting under wills, agreements, court orders and other trust instruments now existing or hereafter made.

E. The provisions of this Section of this Act shall be cumulative of all other provisions of the Civil Statutes of the State of Texas affecting the investment of funds or monies by a trustee. [Acts 1943, 48th Leg., p. 232, ch. 148, § 46; Acts 1945, 49th Leg., p. 109, ch. 77, § 13.]

Art. 7425b—47. Constitutionality.—It is hereby declared to be the legislative intent to enact a separate provision of this Act [1] independent of all other provisions, and the fact that any phrases, sentences, clauses or sections of this Act shall be declared unconstitutional shall in no event affect the validity of any of the other provisions hereof. [Acts 1943, 48th Leg., p. 232, ch. 148, § 47.]

1 Articles 7425b—1 to 7425b—47.

Art. 7425b—48. Uniform Common Trust Fund Act.—Section 1. Establishment of common trust funds. Any bank or trust company qualified to act as fiduciary in this State may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment.

Sec. 2. Court accountings. Unless ordered by a Court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a Court accounting with regard to such funds; but it may, by application to the District Court, secure approval of such an accounting on such conditions as the Court may establish.

Sec. 3. Uniformity of interpretation. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

Sec. 4. Short title. This Act may be cited as the "Uniform Common Trust Fund Act."

Sec. 5. Severability. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 6. Repeal. All laws or parts of laws which are inconsistent with the provisions of this Act are hereby repealed. [Acts 1947, 50th Leg., p. 371, ch. 209.]

TITLE 126—TRUSTS—CONSPIRACIES AGAINST TRADE

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1. DEFINITIONS, FORFEITURES AND OTHER PROVISIONS

Article 7426. [7796] "Trusts."—A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any or all of the following purposes:

1. To create, or which may tend to create, or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by laws of this State.

2. To fix, maintain, increase or reduce the price of merchandise, produce or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance, or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or business of transportation or insurance, or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity, or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business, or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof. [Acts 1903, p. 119.]

Art. 7427. [7797] "Monopoly" defined.—A monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first article of this chapter.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise. [Id.]

Art. 7428. [7798] Conspiracies against trade.—Either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations or associations of persons, who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or undertaking to refuse to buy from or sell to any other person, firm, corporation or association of persons, any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons, shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons.

3. Where any two or more persons, firms, corporations or associations of persons shall agree to boycott, or enter into any agreement or understanding to refuse to transport, deliver, receive, accept, erect, assemble, operate, use or work with any goods, wares, merchandise, articles or products of any other person, firm, corporation or association of persons; provided, however, that this subdivision of this Article shall not be construed to apply to an agreement between employees to terminate their employment, or to refuse to transport, deliver, receive, accept, erect, assemble, operate, use or work with the goods, wares, merchandise, articles or products of their immediate employer unless such refusal is intended or calculated to induce, or shall have the effect of inducing, such employer to refrain from purchasing or from otherwise acquiring goods, wares, merchandise, articles or products from any person, firm, corporation or association of persons. [Acts 1903, p. 119; Acts 1947, 50th Leg., p. 530, ch. 310, § 1.]

Art. 7428a. Preventing or hindering competition by public utility companies.

Prevention of competition declared unlawful

Sec. 1. Monopolies are contrary to the public policy of the State of Texas; and it shall hereafter be unlawful for any person, company, partnership or corporation, domestic or foreign, doing business in the transportation and/or sale of natural gas, electric current and power, telephone services, telegraph services, and/or similar public utilities to wilfully and intentionally do any act whatever to prevent or hinder any legitimate competition in such business.

Discrimination in rates or services prohibited

Sec. 2. It shall hereafter be unlawful for any person, partnership, company, or corporation, domestic or foreign, engaged in any such a public utility business in more than one municipality or county in this State, to discriminate in rates, prices, or kind of services in favor of any person, partnership, company, corporation or municipality for the purpose of preventing or hindering competition in such business or injuring a competitor.

Cost considered in determining discrimination

Sec. 3. For the purpose of determining whether or not there has been any discrimination as provided in Section 2, the cost of production and transportation shall be considered.

Application of act to subsidiaries, holding or controlling companies

Sec. 4. That the provisions of this Act are applicable to subsidiary companies of any holding company, or controlling company, or receiver, or any person, company, partnership or corporation, domestic or foreign, and for the purposes of this Act, the acts of any one of a group or combination of subsidiary companies and their holding company, or controlling company, or any associated company shall be deemed to be the acts of each and all of such associated companies.

When failure to comply with ordinance for reduction of rates held prima facie evidence of preventing competition

Sec. 5. That hereafter when any person, partnership, company or corporation engaged in any public utility business in this State, such as are mentioned in Section 1 of this Act, shall fail and/or refuse to lower the rates or prices for any such utility, such as the

transportation and sale of natural gas, electric current and power, telephone services, telegraph services, and/or similar public utilities, when required to do so by the terms of an ordinance of any municipality affected by such rates, or when requested to do so by petition of the governing body of any municipality, or a majority of the people of any municipality or community so served, stating in their petition the rate or price which said municipality or people think fair and reasonable for such services; and if, within twelve (12) months after such failure and/or refusal, any other person, partnership, company or corporation shall engage in or attempt to engage in, any such utility business in such city, municipality or community, and then the first mentioned person, partnership, company or corporation shall reduce the price of such natural gas, electric current and power, telephone services, telegraph services, and/or similar public utilities, below the price prescribed, or rates requested in such ordinance or petition, the act of so reducing said rates or price shall be held to be prima facie evidence that such reduction was made for the purpose of preventing competition, and injuring competitors. Provided, that the first named person, partnership, company or corporation so petitioned to reduce its rates shall always be permitted to reduce its rates to the level of those charged by said municipality or any other person, partnership, company or corporation doing a like utility business in said municipality.

Forfeiture of charter

Sec. 6. Any person, partnership, company, or corporation violating the provisions of this Act shall thereby forfeit its charter and right to do business in this State; and when such violation shall be brought to the attention of the Attorney General of this State, it shall be his duty to institute suit, or quo warranto proceedings in any county in this State where such violation might occur, in the District Court of such county, for the forfeiture of the charter of such offending corporation, and the dissolution of its corporate existence; and for such purposes venue is hereby given to each District Court in this State.

Repeals

Sec. 7. All laws and parts of laws in conflict herewith are hereby expressly repealed.

Partial invalidity

Sec. 8. If any section, subsection, clause, sentence or phrase of this Act is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional. [Acts 1935, 44th Leg., p. 118, ch. 44.]

Art. 7429. [7799] Acts illegal.—Any and all trusts, monopolies and conspiracies in restraint of trade, as herein defined, are prohibited and declared to be illegal. [Acts 1903, p. 119.]

Art. 7429a. [Repealed by Acts 1943, 48th Leg., p. 654, ch. 372, § 12.]

The article repealed was Acts 1927, 40th Leg., p. 324, ch. 220.

Art. 7430. [7800] Charters forfeited.—The charter of any corporation chartered under the laws of this State, adjudged guilty of violating any provision of this subdivision may be forfeited at the request of the Attorney General, if in the judgment of the court before whom the litigation is pending, the public interest requires it, provided, the forfeiture of the charter shall be in addition to all other penalties prescribed by law. [Acts 1903, p. 119; Acts 1923, p. 12.]

Art. 7431. [7801] Quo warranto proceedings.—For a violation of any provision of this subdivision or any anti-trust laws of this State, by any corporation, it shall be the duty of the Attorney General, when in his judgment the public interest requires it, upon his motion and without leave or order of any judge or court, to institute suit, or quo-warranto proceedings in Travis County, or at the county seat of any county in the State which the Attorney General may select, for the forfeiture of its charter rights and privileges, and the dissolution of its corporate existence, and for such purpose venue is hereby given to each district court in the State of Texas. [Acts 1903, p. 119; Acts 1909, p. 281; Acts 1923, p. 12.]

Art. 7432. [7802] Successors are prohibited from doing business.—When a corporation organized under the laws of this State shall have been convicted of a violation of any provision of this subdivision and its charter and franchise has been forfeited, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas. [Acts 1903, p. 119.]

Art. 7433. [7803] Foreign corporations.—When any foreign corporation is adjudged guilty of violating any provision of this subdivision or any anti-trust law of this State, the Attorney General may bring suit in the district court of Travis County for the purpose of enjoining and forever prohibiting such corporation from doing business in this State, and if in the judgment of the court the public interest requires it, the injunction shall be granted, provided the denial of the right to do business in this State to any foreign corporation adjudged guilty of violating the anti-trust laws shall be in addition to all other penalties prescribed by law. [Acts 1903, p. 119; Acts 1923, p. 12.]

Art. 7434. [7804] Quo-warranto proceedings.—The laws governing quo-warranto, shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this title. [Id.]

Art. 7435. [7805] Rights of convicted foreign corporations.—When any foreign corporation has been convicted of a violation of any of the provisions of this subdivision and its right to do business in this State has been forfeited, as provided in the second preceding article, then, before such corporation or any other corporation to which such corporation may have transferred its properties and business or which has assumed its obligations, shall be permitted to incorporate or do business in Texas, it shall be required to go into the court where the original judgment of forfeiture was entered and show that it has fully obeyed the decree of court forfeiting its charter and has satisfied in full all fines and penalties assessed against it. It shall further show that it has so organized or reorganized its affairs and business that if permitted to do business in Texas, it can and will do so without violating any law of this State; and particularly that it has no connection with any person, firm, or corporation engaged in violating the laws against trusts and monopolies, and is not itself so engaged. No such action shall be instituted within five years from the date of such original conviction. Any corporation which shall be convicted a second time of a violation of any provision of this title shall be forever barred from instituting any such action hereunder. Whereupon and after a hearing had, after the notice to the Attorney General herein provided, the court may modify or reform such judgment so as to permit such corporation to incorporate, or secure a permit and do business in Texas, and such modified or reformed judgment shall be by the clerk of said court certified to the Secretary of State for action by him in conformity therewith. Nothing in this article shall in any manner affect any judgment hereafter rendered by any court against any corporation, its agent, or employés or successors.

Notice of filing of such proceeding and the taking of evidence shall be served upon the Attorney General whose duty it shall be to represent the State in such proceeding. The court may require the production of all books and records and may appoint a commission to take testimony, either within or without the State. The expense of the entire proceeding, including reasonable attorney's fees, the amount of which to be determined by the judge trying the case, and the same to be paid to the attorney representing the State, and same to be delivered by such attorney to the State Treasurer and by him deposited to the account of the general revenue fund of the State. The court, after modifying or reforming the judgment, as provided herein, shall retain jurisdiction of the case and at any time thereafter shall, upon showing that said corporation is violating the laws against trusts or monopolies, or has connection with any person, firm, or corporation engaged in violation of the laws against trusts or monopolies, set aside any order or judgment entered, in which event all proceedings based thereon, including all transfers of any and all properties shall be nullified, and it shall be the duty of the Attorney General, for good cause, to enter proceedings to set aside and nullify the modified judgment of the court and its proceedings, as herein provided. If the Court shall, after the hearing provided for, refuse to modify or reform such judgment, no permit shall be issued by the Secretary of State to such corporation or to any other corporation to which its properties or business have been transferred or which has assumed the payment of its obligations. [Acts 1903, p. 119; Acts 1917, p. 63; Acts 1919, p. 48.]

Art. 7436. [7806] Penalties; venue; fees.—Each firm, person, corporation or association of persons, who shall in any manner violate any provision of this subdivision shall, for each day that such violation shall be committed or continued, forfeit and pay a sum of not less than fifty nor more than fifteen hundred dollars, which may be recovered in the name of the State of Texas in the district court of any county in the State of Texas, and venue is hereby given to such district courts. When any such suit shall have been filed in any county and jurisdiction thereof acquired, it shall not be transferred to any other county, except upon change of venue allowed by the court. It shall be the duty of the Attorney General or the district or county attorney under the direction of the Attorney General, to prosecute for the recovery of the same. The fees of the district or county attorney for representing the State in all anti-trust proceedings, or for the collection of penalties for the violation of the anti-trust laws of this State, shall be ten per cent of the amount collected up to and including the sum of fifty thousand dollars, and five per cent of all sums in excess of the first fifty thousand dollars, to be retained by him when collected, and all such fees which he may collect shall be over and above the fees allowed under the general fee bill. The provisions of this subdivision as to fees allowed the prosecuting attorney shall not apply to any case in which judgment has heretofore been rendered in any court nor to any monies to be hereafter collected upon such judgment heretofore rendered in any court, whether such judgment or judgments are pending upon appeal or otherwise. The district or county attorney who joins in the institution or prosecution of any suit for the recovery of penalties for a violation of any of the anti-trust laws of this State, who shall, previous to the collection of such penalties, cease to hold office, shall be entitled to an equal division with his successor of the fee collected in said cause. In case of the employment of special counsel by any such district or county attorney, the contract so made shall be binding upon such prosecuting officer making such contract and thereafter retiring from office. In case any suit is compromised before any final judgment in the trial court is had, then the fees herein provided for shall be reduced one-half. [Acts 1903, p. 119; Acts 1909, p. 281.]

Art. 7437. [7807] All agreements in violation of, void.—Any contract or agreement in violation of any provision of this subdivision shall be absolutely void and not enforcible either in law or equity. [Acts 1903, p. 119.]

Art. 7438. [7808] Actions to have precedence.—All actions authorized and brought under this subdivision on motion of the attorney for the State, shall have precedence of all other business, civil or criminal, except criminal cases where the defendants are in jail. [Id.]

Art. 7438a. [Expired June 16, 1935.]
Article was Acts 1933, 43rd Leg., 1st C.S., p. 153, ch. 53.

2. EVIDENCE IN TRUST CASES

Art. 7439. [7810] Evidence preliminary to prosecutions.—Upon the application of the Attorney General, or of any of his assistants, or of any district or county attorney, acting under the direction of the Attorney General made to any county judge or any justice of the peace in this State, stating that he has reason to believe that a witness who is to be found in the county in which such county judge or justice of the peace is an officer, knows of a violation of any provision of the preceding subdivision, it shall be the duty of such county judge or justice to have summoned as in criminal cases and to have examined such witness in relation to violations of any provision of said subdivision. The said witness shall be duly sworn; and the county judge, or justice of the peace, shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such sworn statement shall be delivered to the attorney upon whose application the witness was summoned. Should the witness summoned as aforesaid fail to appear or to make sworn statements of the facts within his knowledge or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. [Acts 1907, p. 221.]

Art. 7439a. Requiring attendance of out of county witnesses in certain suits.—Sec. 1. For the purpose of enabling all parties to procure the personal attendance of witnesses in any suit which shall be instituted or is pending in any Court of competent jurisdiction in this State which involves a violation of laws enacted to conserve the natural resources of the State, or a violation of laws prohibiting trusts, monopolies, or combinations in restraint of trade, the clerk of said Court where such suit is pending, on the application of the Attorney General or any of his Assistants, or on the application of any county or district attorney acting under his direction, or on the application of any other party to said suit shall issue a subpœna for any witness or witnesses who may be represented to reside within any county in the State of Texas, or be found therein at the time of the trial. Provided the clerk shall not issue subpœnas in excess of five (5) to compel the attendance of State witnesses or a like number to compel the attendance of defense witnesses without first obtaining a written order from the trial judge. Should any witness summoned as aforesaid fail to appear and testify in said case, he shall be guilty of contempt of Court and may be fined not exceeding One Hundred Dollars ($100.00), and may be attached and imprisoned in jail until he shall attend said Court in person and testify as to all the facts within his knowledge with reference to the matter inquired about; provided, however, that any witness who resides out of the county where said suit is pend-

ing shall not be required to attend said Court and testify in person until the party or parties requesting his testimony shall have tendered to him if requested by said witness, sufficient money to defray his actual traveling expenses, not exceeding four cents (4¢) per mile going to and returning from the Court by the nearest practical conveyance, and Two Dollars ($2.00) per day for each day he may necessarily be absent from home as a witness in such cause. In case the State is the party requesting the personal attendance of such witnesses, such expenses shall be paid in the same manner as costs in felony cases. [Acts 1931, 42nd Leg., 1st C. S., p. 90, ch. 44, § 1.]

Art. 7440. [7811] Testimony; books and papers.—Whenever any suit shall be instituted, or is pending in any court of competent jurisdiction in this State by the Attorney General, or by any district or county attorney acting under his direction against any corporation, individual, association of individuals, joint stock association or co-partnership, under any law of this State, against trusts, monopolies or conspiracies in restraint of trade, or under any laws of this State regulating or controlling corporations, domestic or foreign, the Attorney General, district or county attorney, as the case may be, may, in addition to the means provided by law, examine and procure the testimony or evidence of witnesses and have books, papers and documents produced as evidence in the manner herein provided. [Acts 1907, p. 16.]

Art. 7441. [7812] Evidence, how taken.—Whenever any action is commenced or is pending as contemplated in the preceding article, by the Attorney General, or by any district or county attorney acting under his direction, and said officer representing the State, either upon the trial of the case, or in preparation for the trial thereof, desires to take the testimony of any officer, director, agent or employé of any foreign or domestic corporation or joint stock association proceeded against, or in case of any co-partnership, any member thereof, or in case of any individual or individuals, either of them, and the person or persons whose testimony is desired resides either within or without said State, the said officer shall file in said court where the action is brought, either in term time or in vacation, or with any special commissioner who may be appointed by the court to take testimony, as provided for in this law, a written statement setting forth the name and residence of each person whose testimony he desires to take, and in a general way shall designate any books, papers or documents he desires produced, and the time when and the place where either within or without this State, he desires such person to appear, and testify or to produce books, papers and documents, if any are desired. Thereupon the judge of said court, or the commissioner, before whom said testimony is being or shall be taken, shall immediately issue written notice, directed to the attorney or attorneys of record in said cause, or the agent, officer, or employé of any corporation or joint stock association, or directed to the attorney or attorneys of record of any co-partnership, individual or individuals, or to any member of such co-partnership or to any individual or individuals who are defendant or defendants in said action, notifying said attorney or attorneys of record, or officer, agent or employé, aforesaid, or member or members of any co-partnership, or individual, that the testimony of each person named in said notice is desired, and requiring said attorney or attorneys of record, or such officer, agent or employé aforesaid, or member of such co-partnership, or any individual to whom said notice is delivered, or upon whom the same is served, to notify and have said witness or witnesses, whose testimony or evidence it is desired to take, at the time and place named in said notice, before the court or special commissioner named, then and there to testify, and then and there to have and produce such books, papers and documents as are called for, and for any of the purposes herein provided. The court or the commissioner may continue the taking of such evidence from day to day, or adjourn from day to day at the same place until the same has been concluded. [Id.]

Art. 7442. [7813] Judgment on failure to produce books, papers, etc.—Whenever any officer, director, agent or employé of any foreign or domestic corporation, or joint stock association, authorized to do business in this State, or any member of any co-partnership or any individual, against whom suit has been filed, or is pending, as provided for in this title, or the attorney or attorneys of record of any such corporation, joint stock association, co-partnership, or individual shall be notified in accordance with the provisions of this title that any of the books, papers or documents belonging to such corporation, joint stock association, co-partnership or individual, are wanted before the court, or special commissioner as provided in this title, it shall be the duty of such defendant corporation, joint stock association, co-partnership, or individual, as the case may be, to produce and present, or cause to be produced and presented as required in said notice, all such books, papers and documents belonging to any such defendant, or under such defendant's control, as may be specified in said notice, in court or before said special commissioner, at the time and place so specified. In the event of the failure or refusal of any such corporation, joint stock association, co-partnership or individual, to comply with any of the provisions of this article, it shall be the duty of the court, upon motion of the officer representing the State, to strike out all the pleadings, answers, motions, reply or demurrer theretofore or thereafter filed in such case by such defendant corporation, joint stock association, co-partnership or individual and render judgment by default against any such defendant. [Id.]

Art. 7443. [7814] Notice to attorneys on failure to produce.—Whenever any attorney or attorneys of record, or any agent, officer or employé of any corporation or joint stock association, proceeded against as herein provided, shall be notified that any officer, director, agent or employé of any such corporation or joint stock association is wanted before said court, or any special commissioner, as provided herein, to give his testimony or to produce any such books, papers or documents of said corporation or joint stock association, as the case may be, or if any attorney or attorneys of record of any co-partnership or individual shall be notified that any member or members of said co-partnership or any individual who are defendants in any such action are desired as witnesses, or to produce books, papers or documents before any court, or before any special commissioner appointed to take testimony in said proceeding, it shall be the duty of such attorney or attorneys of record, or any such officer, director, agent or employé to immediately notify any such person of the time and place where he shall attend and give his testimony, or produce any such books, papers or documents, if any are desired. If any person whose testimony is desired, as herein provided, shall fail to appear, or appearing shall refuse to testify, or shall fail to produce whatever books, papers, or documents he or they may be ordered to produce, as before provided, then it shall be the duty of the court, upon motion of the Attorney General, district or county attorney, on proof of such refusal, failure or dereliction, to strike out the answer, motion, reply, demurrer or other pleading theretofore or thereafter filed in such action, by said delinquent defendant, who has himself, or being a corporation or joint stock association, whose officer, agent, director, or employé, as herein provided, has refused or failed to attend and testify, or to produce all books, papers

or documents demanded, which were in the custody or subject to the control of such witness or witnesses, or corporation or joint stock association. Said court shall, in the event of any such refusal or failure, proceed to render judgment by default against any such defendant; provided, that if any such defendant shall file a written sworn denial, in said court, setting forth that such failure or refusal did not arise by reason of any fault or procurement of defendant, the court shall hear evidence upon that issue; and if the defendant shows to the satisfaction of the court that any witness who failed to attend did not do so at the instance or procurement of said defendant, or that the books, papers or documents demanded were not in its possession or control and could not be produced, and that such defendant had complied with all the provisions of this title within such defendant's power to perform, then in that event the answer, motion, reply, demurrer or other pleadings shall not be stricken out or judgment by default taken because of the failure of the witness to attend, who could not be so procured, or because of the failure to produce the books, papers or documents not in the possession or under the control of such defendant; but the court shall have the power to enter such further orders in respect to the matter in controversy as it may deem necessary for the proper administration of justice. In any proceeding had before a special commissioner, as herein provided, the certificate of the special commissioner showing the failure or refusal of any such witness or witnesses to appear and testify, or to produce any books, papers or documents desired, shall be sufficient prima facie evidence of such failure, refusal or dereliction on the part of any such defendant, when same is filed in court. Any witness attending any proceeding herein provided for in compliance with any notice or subpœna issued by authority of this law shall receive as compensation one dollar per day for each day of his attendance and four cents per mile traveled, computed upon the shortest practical route. Any claim for fees and mileage shall be filed with the court, or special commissioner, and sworn to by said witness and shall be taxed up as costs, and collected as other costs in civil cases. [Id.]

Art. 7444. [7815] Special commission to take testimony.—The court or presiding judge thereof, in which any proceeding as herein provided is pending, in term time or in vacation, upon application therefor made by the Attorney General, or district or county attorney acting under his direction, shall appoint some well qualified disinterested person as special commissioners to take testimony in any such case, at any point either within or without the State, as designated in such application; or where requested by either party to said cause of action, upon the issues joined in said cause. Such special commissioner shall have full power and authority to issue notices provided for in the third preceding article and to issue subpœnas for witnesses, compelling the attendance of such witnesses, the production of books, papers or documents, to issue attachments, to punish for contempt to the same extent as provided by law for said court, to administer oaths to witnesses, to have all witnesses examined orally, which testimony shall be reduced to writing, and may be taken down by a competent stenographer and transcribed, and shall be signed and sworn to by said witness. The person appointed as special commissioner in any case shall qualify by taking the Constitutional oath of office, and shall, with all convenient speed, certify and return the testimony taken by him to the court appointing him. Said commissioner shall note all objections to the testimony and shall not exclude any testimony. All questions as to the materiality or admissibility of same shall be reserved for the court trying the case. Such testimony so taken may be read in evidence upon the trial of the suit in which same was taken, subject to any legal objections which might be made to same. The compensation of such commissioner shall be his actual expenses in traveling and such fees as are allowed a notary public in taking depositions, to be taxed up as costs and collected as in civil cases. [Id.]

Art. 7445. [7816] Notice to witnesses.—When any notice is issued and served, as provided for in this subdivision, ten full days exclusive of the day of service shall elapse before any witness so requested shall be compelled to appear and testify, or produce any books, papers or documents called for. If the taking of testimony shall not be concluded on the date named in said notice, each witness shall remain in attendance from day to day until same is completed or said witness is finally discharged by the court, or commissioner, as the case may be. Service of said notice and the return thereon may be made by any sheriff or constable of this State, or by any disinterested person competent to make oath of the fact, and shall be made by delivery to each person or attorney to be served a true copy of such notice. Return of such service shall be indorsed on or attached to the original notice; it shall state when the same was served and the manner of service and upon whom served, and shall be signed. If served by a person other than an officer, it shall be sworn to by the party making the service before some officer authorized by law to take affidavits. [Id.]

Art. 7446. [7810–17] Witnesses exempt from prosecution.—Any person who shall testify before any county judge or justice of the peace as provided for in this title, or any witness for the State who shall testify or produce any books, papers or documents in any proceeding or examination under the provisions of this title, shall not be subject to indictment or prosecution for any transaction, matter or thing, concerning which he truthfully testifies or produces evidence, documentary or otherwise. [Acts 1907, pp. 16, 221.]

Art. 7447. [7818] Provisions cumulative.—The provisions of this subdivision shall be cumulative of all laws of this State, and shall not be construed as repealing any other law relating to the taking of testimony or evidence; but shall be construed as providing an additional means of securing evidence for the enforcement of the laws, as herein provided. [Acts 1907, p. 16.]

TITLE 127—VETERINARY MEDICINE AND SURGERY

Art.
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Article 7448. Board of examiners.—There shall be a board known as the "State Board of Veterinary Medical Examiners," to consist of seven qualified veterinarians who shall have resided and practiced veterinary medicine and surgery in this State under a diploma from a legal reputable college of veteri-

nary medicine for more than five years prior to their appointment. The Governor shall biennially appoint said board within ninety days after his inauguration from a list of eligible practitioners of veterinary medicine furnished by the secretary of the State Veterinary Medical Association. A stockholder or a member of the faculty or board of trustees of any veterinary college shall not be eligible for appointment. The term of office of its members shall be two years. The board may prescribe rules, regulations and by-laws in harmony with the provisions of this title, for its own government and proceedings for the examination of applicants for the practice of veterinary medicine and veterinary surgery. [Acts 2nd C. S. 1919, p. 143.]

Art. 7449. Meetings.—At the first meeting of said Board after each biennial appointment the Board shall elect a president, vice-president and secretary-treasurer. Regular meetings shall be held at least twice each year at such time and places as shall be deemed most convenient for applicants for examination. Special meetings may be held upon a call of four members. Due notice of such meetings shall be given by publication in such papers as may be selected by the Board. [Id.]

Art. 7450. Record of proceedings.—The board shall preserve a record of its proceedings in a book kept for that purpose, showing the name, age and place and duration of residence of each applicant, the time spent in study in medical school, and the year and school from which degrees were granted; or where the applicant qualifies as having been engaged in the practice of veterinary medicine in Texas prior to 1911, the same shall show the age, name and place and duration and residence, and the number of years engaged in the practice of veterinary medicine in Texas. Said record shall show whether applicants were rejected on examination or licensed, and shall be prima facie evidence of all matters contained therein. The secretary of the board shall transmit an official copy of said register to the Secretary of State for permanent record, certified copies from which with hand and seal of the secretary of said board or the Secretary of State shall be admitted in evidence in all courts. [Id.]

Art. 7451. Practicing without registering.—No person shall practice veterinary medicine or veterinary surgery in any of its branches, including veterinary dentistry, within the limits of this State, unless and until such person shall have complied with the provisions of this title, and it shall further be unlawful for any person to so practice who has not registered in the district clerk's office of the county in which he resided, his authority for so practicing, as herein prescribed, together with his age, post-office address, place of birth and name of school of veterinary medicine from which he graduated. [Id.]

Art. 7452. Exceptions.—Nothing in this title shall prohibit any person, who has heretofore registered as a veterinary surgeon in the county of his residence according to the provisions of Chapter 76 of the Acts of the Regular Session of the Thirty-second Legislature who had previous to the year 1911 practiced veterinary medicine or veterinary surgery as his principal occupation for five years in the State of Texas prior to the year 1911, from practicing in the county of his residence only by securing a license from the State Board of Veterinary Medical Examiners by filing satisfactory evidence of his former compliance with the requirements of said Act of the Thirty-second Legislature, together with an affidavit that he has practiced veterinary medicine or veterinary surgery continuously for five years prior to 1911, in which affidavit he shall state the place where he has so practiced veterinary medicine or veterinary surgery together with his place of residence during said period. Upon the face of such license shall be printed the words "non-graduate." It shall be unlawful for any person to register under the five year practicing clause of this article, but the object of this provision is to permit persons who have heretofore lawfully registered to continue practicing under the five year clause. The fact of such oath shall be endorsed upon the certificate or license as the case may be, but if such person shall remove from such county of residence, he shall comply with all the requirements of this law before he shall be allowed to practice. Nothing in this title shall be so construed as to apply to commission or contract veterinarians in the employ of the United States or the Bureau of Animal Industry of the United States Department of Agriculture in the performance of their duties as such, but shall not engage in private practice, nor to legally qualified veterinarians of other States called in consultation but who do not open offices in this State nor to prohibit the sale by licensed druggists of remedies which they recommend for the cure of diseases of animals. [Id.]

Art. 7453. Register.—Each district clerk shall keep a book of suitable size to be known as the "Veterinary Medical Register" and record therein the name and record of each veterinary practitioner who presents a certificate from the State Board of Veterinary Examiners. The clerk shall receive the sum of one dollar from each person so registered, which shall be his full compensation for all duties required under this title. When any person registered in said book shall die, remove from the county or have his license revoked, it shall be the duty of said clerk to make note of the facts thereof at the bottom of the page containing the record of such person as closing the record. On the first day of January of each year said clerk shall on request of the board, certify to the office of said board a correct list of the veterinarians then registered in the county, together with such other information as said board may require. A copy from said register pertaining to any person, certified by said clerk under the seal of said court, on a certificate issued by said officer certifying that any person named therein has or has not registered in said office as required by this title shall be admitted as evidence in all trial courts. [Id.]

Art. 7454. Reciprocity.—The board may at its discretion arrange for reciprocity in license with the authorities of other States and territories having requirements equal to those established by this law. License may be granted applicants for license under such reciprocity upon payment of twenty dollars.

Art. 7455. Applications for examination.—Each applicant to practice veterinary medicine in this State, not otherwise licensed under the provisions of this title, must successfully pass an examination before the board of veterinary medical examiners. Applicants to be eligible for examination must present satisfactory evidence to the board that they are over twenty-one years of age, of good moral character, and graduates of bona fide reputable veterinary medical schools. A bona fide veterinary medical school shall be one whose requirements for a degree and whose equipment is such as is at present required for recognition by the Bureau of Animal Industry of the United States Department of Agriculture, or the American Veterinary Medical Association. Application for examination must be made in writing under affidavit to the secretary of the board, accompanied by the sum of fifteen dollars. Such applicants shall be given due notice of the date and place of examination. In case any applicant because of failure to pass examination be refused a license, such person may be permitted to take a second examination without additional fee. [Id.]

Art. 7456. Compensation.—The fund realized from the aforesaid fees shall be applied first to the payment of the necessary expenses of the board; any

remaining funds shall be applied by order of the board to compensating members of the board at ten dollars per day. It shall be unlawful for the board or any member thereof in any manner or for any purpose to charge or obligate the State for the payment of any money and the members of said board shall look alone to the revenue derived from the operation of this title for compensation and for the expenses of conducting said board. [Id.]

Art. 7457. Examinations.—All examinations shall be conducted in writing in such manner as shall be entirely fair and impartial. The applicants to be known by numbers without names or other methods of identification on examination papers by which members of the board may be able to identify such papers until after the applicants have been granted licenses or rejected. Examinations shall be conducted on the scientific branches of veterinary medicine only, and shall include veterinary anatomy, veterinary pathology, chemistry, veterinary obstetrics, veterinary materia medica, veterinary sanitary science, veterinary practice, and veterinary jurisprudence, and veterinary physiology and bacteriology. Upon satisfactory examination under the rules of the board, applicants shall be granted license to practice veterinary medicine. All questions and answers with grades attached shall be preserved for one year and any person rejected shall be entitled to examine his said answers and the grades attached thereto. All applicants examined at the same time shall be given identical questions in each of the above branches. All certificates shall be signed by a majority of said board and attested by its seal. [Id.]

Art. 7458. Revocation of license.—The right to practice veterinary medicine in this State may be revoked by any court of competent jurisdiction upon proof of the violation of the law in any regard thereto or for any cause for which the State Board of Veterinary Medical Examiners is authorized by law to refuse to admit to its examinations as hereinafter provided. The several district and county attorneys of this State shall file and prosecute appropriate proceedings in the name of the State for violations thereof on request of any member of said Board. [Id.]

Art. 7459. Qualifications.—The State Board of Veterinary Medical Examiners may refuse to admit to its examinations or to issue the certificate provided for by this law for any of the following causes: The presentation to the Board of any license, certificate or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination; conviction of crime of the grade of felony, or one which involves moral turpitude; other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public; or for habits of intemperance or drug addiction calculated to endanger the lives of patients. Any applicant who may be refused admittance to examination before said board shall have his right of action to have such issue tried in the district court in the county in which some member of the board resides. [Id.]

Art. 7460. Who are veterinarians.—Any person shall be deemed as practicing veterinary medicine or veterinary surgery or dentistry who professes publically to be a veterinary physician, surgeon, or dentist, or who appends to his name any initials or title implying qualifications to practice veterinary medicine or who shall treat, operate or prescribe for any physical ailment or deformity of any domestic animal for which he shall receive compensation, either direct or indirect, or any county demonstration or farm demonstration agent while in the employment of any county, State or Federal government on a salary for treating or attempting to treat any animal for any disease, ailment or deformity. Nothing in this law shall apply to persons not so employed gratuitously treating animals. The operation known as "Dehorning," "Castrating," or spaying shall not be construed as the practice of veterinary medicine or surgery nor the vaccination of cattle for blackleg as the practice of veterinary medicine. [Id.]

Art. 7461. Certificates and licenses.—On or before March 1st each year, each practicing veterinary physician in the State shall file with the secretary of the board of veterinary examiners his application for renewal of his license to practice. Said application shall be made on forms to be furnished by the board on which shall appear the name, age, and residence of the applicant, and whether practicing under a license issued by the board after examination or whether under the provisions of Chapter 76, Acts 1911, as to the practice of veterinary medicine for five years prior to 1911. All such applications shall be accompanied by a fee of one dollar. If any person practicing veterinary medicine or veterinary surgery shall fail for a period of sixty days after the expiration of his license to make application to the board for its renewal, his name shall be erased from the register of licensed veterinarians, and before he may again practice veterinary medicine he shall be required to take the examination before the board, unless he has been prevented from applying for renewal for good cause, of which the board shall be the judge of the sufficiency thereof. Each license issued under this title shall expire on the 1st day of March of each year, and may be renewed by complying with the provisions of this title. [Id.]

Art. 7462. Definitions.—The terms veterinarians, veterinary medicine, veterinary surgery, veterinary physician and veterinary dentist as used in this title shall be construed as synonymous. [Id.]

Art. 7463. Permanent license.—Nothing in this title shall be construed as requiring veterinarians or veterinary surgeons who have successfully passed examination and who have been granted certificate of permanent license by said board, to again submit themselves to examination. Such certificate of permanent license is valid to all intents and purposes, subject to each provision of this title. [Id.]

Art. 7464. License to be recorded.—Any person receiving a certificate of license from the Board of Veterinary Medical Examiners shall forthwith have it recorded in the office of the District Clerk of the county in which he makes his residence, and shall display it in his regular place of business. The date of recording shall be recorded thereon, and until the license is recorded the holder shall not exercise any of its rights or privileges therein conferred. Such license shall become invalid if it is not recorded within ninety days from its date of issuance. The district clerk shall be paid his fee for recording such certificate by the holder thereof. [Id.]

Art. 7465. To record license on removal.—Any veterinarian or veterinary surgeon who has successfully passed examination and who has been granted license by said board to practice veterinary medicine, veterinary surgery or veterinary dentistry in this State, and has recorded his license as provided for in this title, may go from one county to another county in this State on professional business and may practice veterinary medicine, veterinary surgery or veterinary dentistry in any county in this State to which he may go, without recording or registering said license in any county to which he may go or in which he may practice. Any veterinarian or veterinary surgeon who has successfully passed the said examination and duly recorded his license, and who removes his residence from the county in which his license is recorded, shall again record his license in the county to which he removes his residence, in the

same manner as the same was recorded in the county from which he removed his residence. Such veterinarian or veterinary surgeon shall have no authority to practice in any county to which he removes his residence until he has so recorded said license. [Id.]

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I. IRRIGATION AND WATER RIGHTS

CHAPTER 1.—USE OF STATE WATER

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1. PUBLIC RIGHTS

Article 7466. [4991] [3115] Public rights.—The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams for irrigation, power and all other useful purposes; the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation; the reclamation and drainage of its overflowed lands, and other lands needing drainage; the conservation and development of its forest, water and hydro-electric power; the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties. [Acts 1895, p. 21; G. L. vol. 10, p. 751; Acts 1913, p. 358; Acts 1917, p. 211; Acts 1921, p. 233.]

Art. 7466a. Rio Grande Agreement.—The Governor of this State shall, with the advice and consent of the Senate appoint some qualified person a commissioner to represent the State of Texas in conference with commissioners duly appointed to represent the states of New Mexico and Colorado, and a representative of the Government of the United States, to negotiate an agreement respecting the use, control and disposition of the waters of the Rio Grande and its tributaries above Fort Quitman, Texas. [Acts 1925, 39th Leg., ch. 117, p. 301, § 1.]

Art. 7466b. Authority of Commissioner.—The commissioner appointed to represent the State of Texas shall have authority to meet and confer with the other members of the commission, at such points within the State of Texas or elsewhere as they may see fit, and the compensation and expenses of such commissioner shall be paid out of the appropriation herein made. Such commissioner is authorized to make the necessary investigation and procure the necessary data for the proper performance, of his duties, and may, with the approval of the Governor, employ such clerical, legal, engineering and other assistance as may be necessary in the performance of his duties. [Acts 1925, 39th Leg., ch. 117, p. 301, § 2.]

Art. 7466c. Necessity of ratification.—Any agreement which may be entered into between the commissioner on behalf of the State of Texas and the commissioners on behalf of the other states and the representative of the United States, shall be reduced to writing and submitted to the Governor of this State, but such agreement shall have no binding effect upon the State of Texas or any of its legal representatives until the same shall have been ratified by the Legislature of this State and approved by the Governor, nor unless ratified by the Legislatures of New Mexico and Colorado and consented to by the Congress of the United States. [Acts 1925, 39th Leg., ch. 117, p. 301, § 3.]

Art. 7466d. Appropriation and expenditures.—There is hereby appropriated, out of any moneys in the State Treasury not otherwise appropriated, the sum of fifteen thousand ($15,000.00) dollars, for the purpose of carrying out the provisions of this Act. The compensation of the commissioner hereby authorized to be appointed shall be fixed by the Governor to be paid out of the appropriation herein made. All other expenditures authorized herein shall be made on sworn accounts, approved by said commissioner, and all payments authorized hereunder shall be paid out of the State Treasury on warrants drawn by the Comp-

troller, as under general laws. [Acts 1925, 39th Leg., ch. 117, p. 302, § 4.]

Art. 7466e. Confirmation of Rio Grande Compact.—That the Rio Grande Compact, entered into and signed at Santa Fe, New Mexico, on the 12th day of February, A. D. 1929, between Delph E. Carpenter, Commissioner for the State of Colorado, Francis C. Wilson, Commissioner for the State of New Mexico, and T. H. McGregor, Commissioner for the State of Texas, an original copy of which has been deposited in the office of the Secretary of State of Texas, be and the same is in all things ratified and confirmed.

The Governor shall, with the advice and consent of the Senate, appoint a Commissioner who shall constitute the Texas member of the Committee provided for in said Compact, charged with the administration thereof. Such Commissioner shall hold office for two years, and until his successor is appointed and qualified. He shall take the oath of office prescribed by the Constitution, and in addition thereto shall take oath to faithfully discharge the duties incumbent upon him as such Commissioner. He shall receive, from time to time, such compensation as may be allowed him by the Legislature, and until otherwise provided by law, shall receive a salary of Two Hundred and Fifty ($250.00) Dollars per month. He shall be allowed his actual expenses when traveling in the discharge of his duties, on his sworn account, showing such expenses in detail. In conjunction with the other members of such Committee, he may employ such engineering and clerical aid as may be authorized by the Legislature of Texas, but he shall incur no financial obligation on behalf of the State of Texas until the Legislature shall have provided and appropriated the money therefor. [Acts 1929, 41st Leg., 1st C.S., p. 29, ch. 9, §§ 1, 2.]

Section 3 of this Act makes an appropriation for necessary expenses in compliance with such legislation.

Acts 1934, 43rd Leg., 3rd C.S., p. 29, ch. 15, being in fact a local or special law, cedes right, title, and interest of State in and to bed and banks of Rio Grande in El Paso and in Hudspeth Counties to United States.

Acts 1935, 44th Leg., p. 209, ch. 87, recites the Rio Grande Compact and extends it to June 1, 1937.

Acts 1937, 45th Leg., p. 440, ch. 226, extended the Rio Grande Compacts to Oct. 1, 1937.

Art. 7466e—1. Rio Grande Compact.—Section 1. The Rio Grande Compact entered into and signed at Santa Fe, New Mexico, on March 18, 1938, by M. C. Hinderlider, Commissioner for the State of Colorado, Thos. M. McClure, Commissioner for the State of New Mexico, and Frank B. Clayton, Commissioner for the State of Texas, and approved by S. O. Harper, Commissioner representing the United States of America, an original copy of which has been deposited in the office of the Secretary of State for the State of Texas, is hereby, in all respects, ratified and confirmed; said Compact being as follows:

RIO GRANDE COMPACT

The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a Compact for the attainment of these purposes, and to that end, through their respective Governors, have named as their respective Commissioners:

For the State of Colorado—M. C. Hinderlider
For the State of New Mexico—Thomas M. McClure
For the State of Texas—Frank B. Clayton

who, after negotiations participated in by S. O. Harper, appointed by the President as the representative of the United States of America, have agreed upon the following Articles, to wit:

Article I.

(a) The State of Colorado, the State of New Mexico, the State of Texas, and the United States of America, are hereinafter designated "Colorado," "New Mexico," "Texas," and the "United States," respectively.

(b) "The Commission" means the agency created by this Compact for the administration thereof.

(c) The term "Rio Grande Basin" means all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Closed Basin in Colorado.

(d) The "Closed Basin" means that part of the Rio Grande Basin in Colorado where the streams drain into the San Luis Lakes and adjacent territory, and do not normally contribute to the flow of the Rio Grande.

(e) The term "tributary" means any stream which naturally contributes to the flow of the Rio Grande.

(f) "Transmountain Diversion" is water imported into the drainage basin of the Rio Grande from any stream system outside of the Rio Grande Basin, exclusive of the Closed Basin.

(g) "Annual Debits" are the amounts by which actual deliveries in any calendar year fall below scheduled deliveries.

(h) "Annual Credits" are the amounts by which actual deliveries in any calendar year exceed scheduled deliveries.

(i) "Accrued Debits" are the amounts by which the sum of all annual debits exceeds the sum of all annual credits over any common period of time.

(j) "Accrued Credits" are the amounts by which the sum of all annual credits exceeds the sum of all annual debits over any common period of time.

(k) "Project Storage" is the combined capacity of Elephant Butte Reservoir and all other reservoirs actually available for the storage of usable water below Elephant Butte and above the first diversion to lands of the Rio Grande Project, but not more than a total of two million, six hundred and thirty-eight thousand, eight hundred and sixty (2,638,860) acre-feet.

(l) "Usable Water" is all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico.

(m) "Credit Water" is that amount of water in project storage which is equal to the accrued credit of Colorado or New Mexico or both.

(n) "Unfilled Capacity" is the difference between the total physical capacity of project storage and the amount of usable water then in storage.

(o) "Actual Release" is the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.

(p) "Actual Spill" is all water which is actually spilled from Elephant Butte Reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.

(q) "Hypothetical Spill" is the time in any year at which usable water would have spilled from project storage if seven hundred and ninety thousand (790,000) acre-feet had been released therefrom at rates proportional to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs; in computing hypothetical spill the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following the effective date of this Compact, and thereafter the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following each actual spill.

Article II.

The Commission shall cause to be maintained and operated a stream gaging station equipped with an automatic water stage recorder at each of the following points, to wit:

(a) On the Rio Grande near Del Norte above the principal points of diversion to the San Luis Valley;

(b) On the Conejos River near Mogote;

(c) On the Los Pinos River near Ortiz;

(d) On the San Antonio River at Ortiz;

(e) On the Conejos River at its mouths near Los Sauces;

(f) On the Rio Grande near Lobatos;

(g) On the Rio Chama below El Vado Reservoir;

(h) On the Rio Grande at Otowi Bridge near San Ildefonso;

(i) On the Rio Grande near San Acacia;

(j) On the Rio Grande at San Marcial;

(k) On the Rio Grande below Elephant Butte Reservoir;

(l) On the Rio Grande below Caballo Reservoir.

Similar gaging stations shall be maintained and operated below any other reservoir constructed after 1929, and at such other points as may be necessary for the securing of records required for the carrying out of the Compact; and automatic water stage recorders shall be maintained and operated on each of the reservoirs mentioned, and on all others constructed after 1929.

Such gaging stations shall be equipped, maintained, and operated by the Commission directly or in cooperation with an appropriate Federal or State agency, and the equipment, method and frequency of measurement at such stations shall be such as to produce reliable records at all times.

Article III.

The obligation of Colorado to deliver water in the Rio Grande at the Colorado-New Mexico State Line, measured at or near Lobatos, in each calendar year, shall be ten thousand (10,000) acre-feet less than the sum of those quantities set forth in the two (2) following tabulations of relationship, which correspond to the quantities at the upper index stations:

Discharge of Conejos River

Quantities in thousands of acre-feet

Conejos Index Supply (1)	Conejos River at Mouths (2)
100	0
150	20
200	45
250	75
300	109
350	147
400	188
450	232
500	278
550	326
600	376
650	426
700	476

Intermediate quantities shall be computed by proportional parts.

(1) Conejos Index Supply is the natural flow of Conejos River at the U. S. G. S. gaging station near Mogote during the calendar year, plus the natural flow of Los Pinos River at the U. S. G. S. gaging station near Ortiz and the natural flow of San Antonio River at the U. S. G. S. gaging station at Ortiz, both during the months of April to October, inclusive.

(2) Conejos River at mouths is the combined discharge of branches of this River at the U. S. G. S. gaging stations near Los Sauces during the calendar year.

Discharge of Rio Grande exclusive of Conejos River

Quantities in thousands of acre-feet

Rio Grande at Del Norte (3)	Rio Grande at Lobatos less Conejos at Mouths (4)
200	60
250	65
300	75
350	86
400	98
450	112
500	127
550	144
600	162
650	182
700	204
750	229
800	257
850	292
900	335
950	380
1,000	430
1,100	540
1,200	640
1,300	740
1,400	840

Intermediate quantities shall be computed by proportional parts.

(3) Rio Grande at Del Norte is the recorded flow of the Rio Grande at the U. S. G. S. gaging station near Del Norte during the calendar year (measured above all principal points of diversion to San Luis Valley) corrected for the operation of reservoirs constructed after 1937.

(4) Rio Grande at Lobatos less Conejos at mouths is the total flow of the Rio Grande at the U. S. G. S. gaging station near Lobatos, less the discharge of Conejos River at its mouths, during the calendar year.

The application of these schedules shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging station; (b) any new or increased depletion of the runoff above inflow index gaging stations; and (c) any transmountain diversions into the drainage basin of the Rio Grande above Lobatos.

In event any works are constructed after 1937 for the purpose of delivering water into the Rio Grande from the Closed Basin, Colorado shall not be credited with the amount of such water delivered, unless the proportion of sodium ions shall be less than forty-five (45) per cent of the total positive ions in that water when the total dissolved solids in such water exceeds three hundred and fifty (350) parts per million.

Article IV.

The obligation of New Mexico to deliver water in the Rio Grande at San Marcial, during each calendar year, exclusive of the months of July, August, and September, shall be that quantity set forth in the following tabulation of relationship, which corresponds to the quantity at the upper index station:

Discharge of Rio Grande at Otowi Bridge and at San Marcial exclusive of July, August, and September

Quantities in thousands of acre-feet

Otowi Index Supply (5)	San Marcial Index Supply (6)
100	0
200	65
300	141
400	219
500	300
600	383
700	469
800	557
900	648
1000	742
1100	839

Otowi Index Supply (5)	San Marcial Index Supply (6)
1200	939
1300	1042
1400	1148
1500	1257
1600	1370
1700	1489
1800	1608
1900	1730
2000	1856
2100	1985
2200	2117
2300	2253

Intermediate quantities shall be computed by proportional parts.

(5) The Otowi Index Supply is the recorded flow of the Rio Grande at the U. S. G. S. gaging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, exclusive of the flow during the months of July, August, and September, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

(6) San Marcial Index Supply is the recorded flow of the Rio Grande at the gaging station at San Marcial during the calendar year exclusive of the flow during the months of July, August, and September.

The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico at any time of the year of the natural runoff at Otowi Bridge; (c) depletion of the runoff during July, August, and September of tributaries between Otowi Bridge and San Marcial, by works constructed after 1937; and (d) any transmountain diversions into the Rio Grande between Lobatos and San Marcial.

Concurrent records shall be kept of the flow of the Rio Grande at San Marcial, near San Acacia, and of the release from Elephant Butte Reservoir, to the end that the records at these three (3) stations may be correlated.

Article V.

If at any time it should be the unanimous finding and determination of the Commission that because of changed physical conditions, or for any other reason, reliable records are not obtainable, or cannot be obtained, at any of the stream gaging stations herein referred to, such stations may, with the unanimous approval of the Commission, be abandoned, and with such approval another station, or other stations, shall be established and new measurements shall be substituted which, in the unanimous opinion of the Commission, will result in substantially the same results, so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made.

Article VI.

Commencing with the year following the effective date of this Compact, all credits and debits of Colorado and New Mexico shall be computed for each calendar year; provided, that in a year of actual spill no annual credits nor annual debits shall be computed for that year.

In the case of Colorado, no annual debit nor accrued debit shall exceed one hundred thousand (100,000) acre-feet, except as either or both may be caused by holdover storage water in reservoirs constructed after 1937 in the drainage basin of the Rio Grande above Lobatos. Within the physical limitations of storage capacity in such reservoirs, Colorado shall retain water in storage at all times to the extent of its accrued debit.

In the case of New Mexico, the accrued debit shall not exceed two hundred thousand (200,000) acre-feet at any time, except as such debit may be caused by holdover storage of water in reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and San Marcial. Within the physical limitations of storage capacity in such reservoirs, New Mexico shall retain water in storage at all times to the extent of its accrued debit. In computing the magnitude of accrued credits or debits, New Mexico shall not be charged with any greater debit in any one year than the sum of one hundred and fifty thousand (150,000) acre-feet and all gains in the quantity of water in storage in such year.

The Commission by unanimous action may authorize the release from storage of any amount of water which is then being held in storage by reason of accrued debits of Colorado or New Mexico; provided, that such water shall be replaced at the first opportunity thereafter.

In computing the amount of accrued credits and accrued debits of Colorado or New Mexico, any annual credits in excess of one hundred and fifty thousand (150,000) acre-feet shall be taken as equal to that amount.

In any year in which actual spill occurs, the accrued credits of Colorado or New Mexico, or both, at the beginning of the year shall be reduced in proportion to their respective credits by the amount of such actual spill; provided, that the amount of actual spill shall be deemed to be increased by the aggregate gain in the amount of water in storage, prior to the time of spill, in reservoirs above San Marcial constructed after 1929; provided, further, that if the Commissioners for the States having accrued credits authorize the release of part, or all, of such credits in advance of spill, the amount so released shall be deemed to constitute actual spill.

In any year in which there is actual spill of usable water, or at the time of hypothetical spill thereof, all accrued debits of Colorado or New Mexico, or both, at the beginning of the year shall be cancelled.

In any year in which the aggregate of accrued debits of Colorado and New Mexico exceeds the minimum unfilled capacity of project storage, such debits shall be reduced proportionally to an aggregate amount equal to such minimum unfilled capacity.

To the extent that accrued credits are impounded in reservoirs between San Marcial and Courchesne, and to the extent that accrued debits are impounded in reservoirs above San Marcial, such credits and debits shall be reduced annually to compensate for evaporation losses in the proportion that such credits or debits bore to the total amount of water in such reservoirs during the year.

Article VII.

Neither Colorado nor New Mexico shall increase the amount of water in storage in reservoirs constructed after 1929 whenever there is less than four hundred thousand (400,000) acre-feet of usable water in project storage; provided, that if the actual releases of usable water from the beginning of the calendar year following the effective date of this Compact, or from the beginning of the calendar year following actual spill, have aggregated more than an average of seven hundred and ninety thousand (790,000) acre-feet per annum, the time at which such minimum stage is reached shall be adjusted to compensate for the difference between the total actual release and releases at such average rate; provided, further, that Colorado or New Mexico, or both, may relinquish accrued credits at any time, and Texas may accept such relinquished water, and in such event the State or States so relinquishing shall be entitled to store water in the amount of the water so relinquished.

Article VIII.

During the month of January of any year the Commissioner for Texas may demand of Colorado and New Mexico, and the Commissioner for New Mexico may demand of Colorado, the release of water from storage reservoirs constructed after 1929 to the amount of the accrued debits of Colorado and New Mexico, respectively, and such releases shall be made by each at the greatest rate practicable under the conditions then prevailing, and in proportion to the total debit of each, and in amounts, limited by their accrued debits, sufficient to bring the quantity of usable water in project storage to six hundred thousand (600,000) acre-feet by March 1st and to maintain this quantity in storage until April 30th, to the end that a normal release of seven hundred and ninety thousand (790,000) acre-feet may be made from project storage in that year.

Article IX.

Colorado agrees with New Mexico that in event the United States or the State of New Mexico decides to construct the necessary works for diverting the waters of the San Juan River, or any of its tributaries, into the Rio Grande, Colorado hereby consents to the construction of said works and the diversion of waters from the San Juan River, or the tributaries thereof, into the Rio Grande in New Mexico, provided the present and prospective uses of water in Colorado by other diversions from the San Juan River, or its tributaries, are protected.

Article X.

In the event water from another drainage basin shall be imported into the Rio Grande Basin by the United States or Colorado or New Mexico, or any of them jointly, the State having the right to the use of such water shall be given proper credit therefor in the application of the schedules.

Article XI.

New Mexico and Texas agree that upon the effective date of this Compact all controversies between said States relative to the quantity or quality of the water of the Rio Grande are composed and settled; however, nothing herein shall be interpreted to prevent recourse by a signatory State to the Supreme Court of the United States for redress should the character or quality of the water, at the point of delivery, be changed hereafter by one signatory State to the injury of another. Nothing herein shall be construed as an admission by any signatory State that the use of water for irrigation causes increase of salinity for which the user is responsible in law.

Article XII.

To administer the provisions of this Compact there shall be constituted a Commission composed of one representative from each State, to be known as the Rio Grande Compact Commission. The State Engineer of Colorado shall be ex-officio the Rio Grande Compact Commissioner for Colorado. The State Engineer of New Mexico shall be ex-officio the Rio Grande Compact Commissioner for New Mexico. The Rio Grande Compact Commissioner for Texas shall be appointed by the Governor of Texas. The President of the United States shall be requested to designate a representative of the United States to sit with such Commission, and such Representative of the United States, if so designated by the President, shall act as Chairman of the Commission without vote.

The salaries and personal expenses of the Rio Grande Compact Commissioners for the three (3) States shall be paid by their respective States, and all other expenses incident to the administration of this Compact, not borne by the United States, shall be borne equally by the three (3) States.

In addition to the powers and duties hereinbefore specifically conferred upon such Commission and the Members thereof, the jurisdiction of such Commission shall extend only to the collection, correlation, and presentation of factual data and the maintenance of records having a bearing upon the administration of this Compact, and, by unanimous action, to the making of recommendations to the respective States upon matters connected with the administration of this Compact. In connection therewith, the Commission may employ such engineering and clerical aid as may be reasonably necessary within the limit of funds provided for that purpose by the respective States. Annual reports compiled for each calendar year shall be made by the Commission and transmitted to the Governors of the signatory States on or before March 1st following the year covered by the report. The Commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this Compact to govern their proceedings.

The findings of the Commission shall not be conclusive in any Court or tribunal which may be called upon to interpret or enforce this Compact.

Article XIII.

At the expiration of every five-year period after the effective date of this Compact, the Commission may, by unanimous consent, review any provisions hereof which are not substantive in character and which do not affect the basic principles upon which the Compact is founded, and shall meet for the consideration of such questions on the request of any member of the Commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the Compact by unanimous action of the Commissioners, and until any changes in this Compact are ratified by the Legislatures of the respective States and consented to by the Congress, in the same manner as this Compact is required to be ratified to become effective.

Article XIV.

The schedules herein contained and the quantities of water herein allocated shall never be increased nor diminished by reason of any increase or diminution in the delivery or loss of water to Mexico.

Article XV.

The physical and other conditions characteristic of the Rio Grande and peculiar to the territory drained and served thereby, and to the development thereof, have actuated this Compact and none of the signatory States admits that any provisions herein contained establishes any general principle or precedent applicable to other interstate streams.

Article XVI.

Nothing in this Compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties, or to the Indian Tribes, or as impairing the Rights of the Indian Tribes.

Article XVII.

This Compact shall become effective when ratified by the Legislatures of each of the signatory States and consented to by the Congress of the United States. Notice of ratification shall be given by the Governor of each State to the Governors of the other States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of each of the signatory States of the consent of the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this Compact in quadruplicate original,

one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Sante Fe, in the State of New Mexico, on the 18th day of March, in the year of our Lord, One Thousand Nine Hundred and Thirty-eight.

(Signed) M. C. Hinderlider
(Signed) Thomas M. McClure
(Signed) Frank B. Clayton

Approved:

(Signed) S. O. Harper

Sec. 2. The Governor shall, with the advice and consent of the Senate, appoint a Commissioner, who shall represent the State of Texas on the Commission provided for by Article XII of the Rio Grande Compact and who shall be charged with the administration of the provisions of said Compact, and who shall have the powers and discharge the duties prescribed by the terms of said Compact. Such Commissioner shall hold office for two (2) years and until his successor is appointed and qualified. He shall take oath of office as prescribed by the Constitution and, in addition thereto, he shall take oath to faithfully perform the duties incumbent upon him as such Commissioner. He shall receive from time to time such compensation as may be allowed by the Legislature, and, until otherwise provided by law, he shall receive a salary of Two Hundred and Fifty Dollars ($250) a month. He shall be allowed his actual expenses when traveling in the discharge of his duties, on his sworn account showing such expenses in detail. In conjunction with the other members of said Commission, he may appoint such engineering and clerical aid as may be authorized by the Legislature of Texas and he may incur necessary office expenses and other expenses incident to the proper performance of his duties and the proper administration of the provisions of the Rio Grande Compact. But such Commissioner shall incur no financial obligation on behalf of the State of Texas until the Legislature shall have provided and appropriated money therefor.

Sec. 3. It shall be the duty of the Governor of Texas to notify the Governor of Colorado and the governor of New Mexico and the President of the United States of the ratification by the State of Texas of the Rio Grande Compact, and, on request of the Governor, the Secretary of State shall furnish to the Governor of each of said States and to the President of the United States a certified copy of this Act. [Acts 1939, 46th Leg., Spec.L., p. 531.]

The consent and approval of Congress to the Rio Grande Compact was given by Public No. 96, May 31, 1939, ch. 155, 53 Stat. 785.

The Rio Grande Compact was ratified and approved by New Mexico, Laws 1939, ch. 33, p. 59, and by Colorado, Laws 1939, ch. 146.

Art. 7466f. Pecos River Compact.—Whereas, by authority of Chapter 133 of the General Laws of the State of Texas, passed by the Thirty-eighth Legislature at the Regular Session thereof, the Honorable R. E. Thomason was appointed by the Governor of the State of Texas to represent the State of Texas in a conference with representatives of the United States, and of the State of New Mexico, with a view to negotiating an agreement concerning the storage, division and use of the waters of the Pecos River in New Mexico and Texas; and

Whereas, the said commissioner in conference with the Honorable C. T. Pease representing the United States, and the Honorable Richard H. Hanna, representing the State of New Mexico, agreed upon and signed a compact with reference thereto and transmitted the same to the Governor of Texas; and

Whereas, the Governor of Texas has submitted said compact to the Legislature for appropriate action, which compact is in words and figures substantially as follows, to-wit:

PECOS RIVER COMPACT

The State of Texas and the State of New Mexico having resolved to enter into a compact, under the Acts of their respective Legislatures, have, through their Governors, appointed as their commissioner: R. E. Thomason for the State of Texas and Richard H. Hanna for the State of New Mexico, who, after negotiations participated in by C. T. Pease, appointed by Secretary of the Interior of the United States, as a representative of the Bureau of Reclamation, have agreed upon the following article:

Article I.

Present rights to the beneficial use of the water of the Pecos River and its tributaries are unimpaired by this compact, the major purposes of which are to provide for the equitable division and apportionment of the unappropriated and flood waters of the Pecos River system; to promote interstate comity; to remove causes of present and future controversies and to secure the expeditious agriculture development of the Pecos River Basin by the conservation and economical distribution of the waters therein.

Article II.

In this compact

a. The State of New Mexico and the State of Texas are designated respectively as "New Mexico" and "Texas" and these terms include the citizens and corporations of each State.

b. The term "Pecos River System" means the Pecos River and all of its tributaries, including springs and swamps, from its sources in New Mexico to the Kansas City, Mexico and Oriental Railroad as now constructed between the towns of Alpine and Sherwood in Texas.

c. The term "Pecos River Basin" means all the drainage area of the Pecos River System.

d. The term "Upper Basin" means that part of the Pecos River basin above and north from a due east and west line crossing the Pecos River on the boundary between townships six (6) and seven (7) north, range twenty-two (22) east of the New Mexico principal meridian.

e. The term "Middle Basin" means that part of the Pecos River Basin below and south from a prolongation of the boundary line between townships six (6) and seven (7) north, range twenty-two (22) east of the New Mexico principal meridian to the Texas-New Mexico State Line.

f. The term "Lower Basin" means that part of the Pecos River Basin within the State of Texas lying above and northwest of the Kansas City, Mexico and Orient Railroad.

g. The term "domestic use" shall include the use of water for household, stock, municipal, milling, industrial railroad and other like purposes.

h. The term "Carlsbad Project" means certain tracts of land in townships twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), and twenty-six (26), south, ranges twenty-six (26), twenty-seven (27), twenty-eight (28) and twenty-nine (29) east of the New Mexico principal meridian, and all reservoirs, dams, canals, drains and other works, constructed or that may hereafter be constructed by the United States for the reclamation, use and benefit thereof.

Article III.

The right to appropriate and use for irrigation and domestic purposes the natural flow of the Pecos River system in the Upper Basin shall not be limited or abridged by this compact, but no permit or permits for the construction of any additional storage reservoir or reservoirs, or for the enlargement of any existing reservoir, within the Upper Basin, having an aggregate capacity or capacities of more than ten

thousand (10,000) acre feet, shall be granted by the State of New Mexico prior to the first day of January, 1940.

Article IV.

Within the Middle Basin New Mexico shall have in perpetuity indefeasible rights in the waters of the Pecos River system to divert and use from either or both natural flow or storage reservoirs, constructed or to be constructed, sufficient water, whenever available, for all domestic purposes and the irrigation of seventy-six thousand (76,000) acres of land.

Article V.

Texas shall at all times, subject to the provisions of Articles III, IV, and IX of this compact, have the right:

1. To divert all of the natural flow of the Pecos River system in the Lower Basin for domestic and agricultural purposes.

2. To build, maintain and operate a storage reservoir or reservoirs at or below what is commonly known as the Red Bluff Reservoir site, in Eddy County, New Mexico, for the use and benefit of forty thousand (40,000) acres of land in Loving, Reeves, Ward, Crane and Pecos Counties, Texas, and to store any surplus waters to which Texas may be entitled, and to acquire by purchase, prescription or the exercise of eminent domain, such rights of way, easements, or lands as may be necessary for the construction, maintenance and operation of said reservoir: Provided, that said reservoir shall be constructed and in operation on or before the first day of January, 1940, and provided further, that the construction, maintenance and operation of said reservoir shall not vest in Texas any prior, preferred or superior servitude upon or claim or right to the waters of the Pecos River in New Mexico.

Article VI.

All surplus water flowing in the Pecos River within the Middle or Lower Basins, over and above that required for domestic use, the adequate and proper irrigation of seventy-six thousand (76,000) acres of land in the Middle Basin and forty thousand (40,000) acres of land in the Lower Basin, shall be divided equally between the signatory States. All permits issued by either New Mexico or Texas, prior to January 1, 1940, for the use of the surplus waters shall specifically state that the rights granted by said permits are and shall be subservient to prior rights for seventy-six thousand (76,000) acres of land in the Middle Basin and forty thousand (40,000) acres of land in the Lower Basin.

Article VII.

1. Texas and New Mexico, at their joint expense, shall maintain a stream gaging station upon the Pecos River at or near Malaga, Eddy County, New Mexico, for the purpose of ascertaining the amount of surplus water flowing in said river. The location of said gaging station may, by mutual consent, be changed from year to year as conditions of the river may require.

2. The State engineer of New Mexico and the Board of Water Engineers for Texas, shall make provisions for the co-operative gaging of and the details of operating said station and for the exchange and publication of records and data relative to the discharge of the river at said station.

Article VIII.

The use of any impounded water of the Pecos River system for the generation of electrical power shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent the use for such dominant purposes.

Article IX.

Notwithstanding any limitations or restrictions, either expressed or implied, in this compact upon the area to be irrigated in the Middle Basin, New Mexico, shall have the right on and after January 1, 1940, to extend and increase the irrigated area within the Middle Basin, over and above seventy-six thousand (76,000) acres, one-fifth ($\frac{1}{5}$) of an acre;

1. For each and every acre foot that the aggregate effective storage capacity of all reservoirs, now or hereafter constructed for the use of the Lower Basin shall be less than two hundred and fifty thousand (250,000) acre feet;

2. For each and every acre foot of the original capacity or capacities, of any and all, reservoirs, constructed for the use and benefit of the Lower Basin that have been or may be abandoned or unused for a period of five (5) years, or longer.

Article X.

Nothing in this compact shall be construed as affecting the rights of the United States of America in the waters of the Pecos River system or in the Carlsbad project.

Article XI.

It shall be the duty of the State engineer of New Mexico and the Board of Water Engineers for Texas, to supervise the carrying out of the provisions of this compact, within their respective States, and they may, from time to time, formulate rules and regulations for that purpose, which, when promulgated by them, shall be binding until amended or until terminated.

Article XII.

Whenever any official of either State is designated to perform any duty under this compact, such designation shall include the State official or officials upon whom the duties now performed by such designated official or officials may hereafter devolve.

Article XIII.

Should any claim or controversy arise between the signatory States:

a. with respect to the waters of the Pecos River system not covered by the terms of this contract;

b. over the meaning or performance of any of the terms of this compact;

c. as to the allocation of the burdens incident to the performance of any article of this compact; or

d. as to the construction, maintenance or operation of storage works within New Mexico for the use and benefit of Texas; the Governors of the signatory States, upon the request of either one of them, shall forthwith appoint commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislature of New Mexico and Texas.

Article XIV.

Nothing in this compact shall be construed to affect the right either State or the United States from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

Article XV.

Nothing in this compact shall be construed to affect the right to appropriate, under the laws and regulations of New Mexico and Texas, any waters that if unappropriated and unused would not contribute to the flow of the Pecos River.

Article XVI.

This compact may be modified or terminated at any time by mutual consent of the signatory States. In the event of such termination, the rights established under it shall continue unimpaired.

Article XVII.

This compact shall become binding and operative when approved by the Legislatures of each of the signatory States and consented to by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each State to the Governor of the other State and to the President of the United States, and the President of the United States is requested to give notice to the signatory States of consent by the Congress of the United States.

In witness whereof, the commissioners have signed this compact in triplicate originals, one of which shall be deposited with the Department of the Interior of the United States and one with the Governor of each of the signatory States. [Acts 1925, 39th Leg., p. 693, S. J. R. No. 20.]

For text of Acts 1941, 47th Leg., p. 1395, ch. 632, directing the Attorney General to make such investigations and take such legal action as he deems proper to protect the State's interest in the Pecos River, see note to article 7466f in Vernon's Annotated Texas Civil Statutes.

Acts 1945, 49th Leg., p. 206, ch. 159, effective May 3, 1945, authorized the Governor with the advice and consent of the Senate, to appoint some qualified person a Commissioner to represent the State in conference with a Commissioner duly appointed to represent the State of New Mexico, and a representative of the Government of the United States, to negotiate an agreement respecting the use, control and disposition of the waters of the Pecos River and its tributaries and repealed Acts 1941, 47th Leg., ch. 632 relating to Pecos River Waters.

Art. 7466f—1. [Repealed by Acts 1941, 47th Leg., p. 637, ch. 385.]

The article, repealed was Acts 1939, 46th Leg., Spec.L., p. 524, § 1.

2. BOARD OF WATER ENGINEERS

Art. 7467. Property of the State.—The waters of the ordinary flow and underflow and tides of every flowing river or natural stream, of all lakes, bays or arms of the Gulf of Mexico, and the storm, flood or rain waters of every river or natural stream, canyon, ravine, depression or watershed, within the State of Texas, are hereby declared to be the property of the State, and the right to the use thereof may be acquired by appropriation in the manner and for the uses and purposes hereinafter provided, and may be taken or diverted from its natural channel for any of the purposes expressed in this chapter. When an application is made for appropriation of such water for mining purposes, the owner of the land through which the water flows and which is to be appropriated shall have the prior right to appropriate same, and shall be permitted to exercise such right, although such owner may not have made application prior to such application by another, and such owner shall have only ten days after notice of application to appropriate such water in which to exercise his prior right to appropriate, which he shall do by written application filed with the Board of Water Engineers within such time. [Acts 1921, p. 233, sec. 2.]

Art. 7467a. River beds and channels in cities and towns.—The State of Texas hereby relinquishes, quit claims and grants unto all incorporated cities and towns that have a population of forty thousand inhabitants, or more, according to the 1920 census, all of the beds and channels, and also all of the abandoned beds and channels, of all rivers, streams and other channels that are now or that may hereafter be within the present or future corporate limits of such cities or towns, in so far as the beds and channels, and such abandoned channels, of such rivers, streams and other channels may be owned or claimed as the property of said State. [Acts 1925, 39th Leg., ch. 155, p. 366, § 1.]

Art. 7468. How stored and purpose of.—The waters described in the preceding article may be held or stored by dams, in lakes or reservoirs, or diverted by means of canals, ditches, intakes, pumping plants, or other works, constructed by any person, corporation, association of persons, or irrigation district created under the statutes, for the purpose of irrigation, mining, milling, manufacturing, the development of power, the construction and operation of waterworks for cities, and towns, or for stock raising, the waters of any arm or inlet of the Gulf of Mexico, or of any salt water bay, may be changed from salt to sweet or fresh water, and held or stored by dams, dikes, or other structure, and taken or diverted for any of the purposes expressed in this chapter. [Acts 1921, p. 234, sec. 3.]

Art. 7469. Vested private rights.—Nothing in this chapter shall prejudice vested private rights. [Id., p. 234, sec. 3.]

Art. 7470. Appropriation of water.—The appropriation of water must be for irrigation, mining, milling, manufacturing, the development of power, the construction and operation of waterworks for cities and towns, or for stock raising.

Art. 7470a. Appropriation for Public Parks, etc.—The waters of the State may be appropriated as provided by law in addition to the purposes and uses now provided by law, for the following purposes: Public parks, game preserves, recreation and pleasure resorts, power and water supply for industrial purposes and plants and for domestic use. [Acts 1925, 39th Leg., ch. 136, p. 341, § 1.]

Art. 7471. Priority in appropriation of water.—In the conservation and utilization of water declared the property of the State, the public welfare requires not only the recognition of uses beneficial to the public well being, but requires as a constructive public policy, a declaration of priorities in the allotment and appropriation thereof; and it is hereby declared to be the public policy of the State and essential to the public welfare and for the benefit of the people that in the allotment and appropriation of the waters defined in Article 7467, of the Revised Civil Statutes of Texas of 1925, preference and priority be given to the following uses in the order named, to-wit:

1. Domestic and Municipal uses, including water for sustaining human life and the life of domestic animals.
2. Water to be used in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, and to include water necessary for the development of electric power by means other than hydro-electric.
3. Irrigation.
4. Mining and recovery of minerals.
5. Hydro-electric power.
6. Navigation.
7. Recreation and pleasure. [Acts 1917, p. 212, § 4; Acts 1931, 42nd Leg., p. 217, ch. 128, § 1.]

Section 7 of Acts 1931, 42nd Leg., p. 217, ch. 128, repeals all conflicting laws and parts of laws. Section 8 provides that, if any part of the act is held invalid, such decision shall not affect the remainder.

Art. 7472. Between appropriators.—As between appropriators, the first in time is the first in right, provided, however, that all appropriations or allotments of water hereafter made for hydro-electric power, irrigation, manufacturing, mining, navigation, or any other purposes than domestic or municipal purposes, shall be granted subject to the right of any city, town or municipality of this State to make further appropriations of said water thereafter without the necessity of condemnation or paying therefor, for domestic and municipal purposes as herein defined in paragraph numbered "1" of Art. 7471 as herein amended any law to the contrary notwithstanding. [Acts 1917, p. 212, § 5; Acts 1931, 42nd Leg., p. 217, ch. 128, § 2.]

Art. 7472a. Inapplicable to streams constituting boundary of Mexico.—The provisions of Section 2[1] of this Act shall not apply to any stream which constitutes or defines the International border or boundary between the United States of America and the Republic of Mexico. [Acts 1931, 42nd Leg., p. 217, ch. 128, § 6.]

[1] Article 7472, ante.

Art. 7472b. Eminent domain for acquisition of waters for domestic, municipal and irrigation purposes.—The right to take waters necessary for domestic and municipal supply purposes is primary and fundamental, and the right to recover from other uses, waters essential to such purposes shall be paramount and unquestioned in the policy of the State, and in the manner Constitutional and Statutory authority provide. All political sub-divisions of the State, and Constitutional Governmental Agencies exercising delegated Legislative powers, are recognized to have the Right of Eminent Domain, to be exercised as permitted by Law for uses domestic and municipal and manufacturing, for authorized purposes, including the irrigation of lands for all requirements of agricultural employment. [Acts 1931, 42nd Leg., p. 217, ch. 128, § 3.]

Art. 7472c. Conservation of water resources for public welfare.—In the administration of laws provided for the maximum judicious employment of the State waters in the public interest, it shall be the duty of the State Board of Water Engineers, or other administrative agency designated for the service by the State, to conserve this natural resource in the greatest practicable measure for the public welfare; and recognizing the Statutory precedent established for granting the privilege to take and utilize the waters of the State for uses recognized and authorized, it shall be the duty of the State Board of Water Engineers or other agency of the State designated for the purpose to observe the rule that as between applicants for rights to use the waters of the State, preference be given not only in the order of preferential uses declared, but that preference also be given those applications the purposes for which contemplate and will effectuate the maximum utilization of waters and are designated and calculated to prevent the escape of waters without contribution to a beneficial public service. [Acts 1931, 42nd Leg., p. 217, ch. 128, § 4.]

Art. 7472d. Surveys to disclose measure and potential availability of water resources.—It shall be the purpose and policy of the State and of the enactments in accord therewith, in effecting the greatest beneficial utilization of waters of the State, to cause to be made all surveys essential to disclose the measure and potential availability of the water resources of the State to uses recognized; and to ascertain from necessary investigation the character of the principal requirements of the distinct regional division of the watershed areas of the State for the uses herein authorized, to the end that distribution of the right to take and use the waters of the State may be the more equitably administered in the public interest, and privileges granted for the uses recognized may be economically co-ordinated, achieving the maximum of public value from this resource; and recognizing alike the distinct regional necessities for water control and conservation, and for control of harmful floods. [Acts 1931, 42nd Leg., p. 217, ch. 128, § 5.]

Art. 7473. Appropriators defined.—For the purpose of this chapter, an appropriator is any person, association of persons, corporation or irrigation district, who has heretofore made beneficial use of any water, in a lawful manner, under the provisions of any Act of the Legislature of the State of Texas, prior to the passage of Chapter 171 of the General Laws of the Thirty-third Legislature of Texas, and who has filed with the State Board of Water Engineers a record of his appropriation, as required by said Act of the Thirty-third Legislature of Texas, or who has heretofore or may hereafter make beneficial use of any water within the limitations of a permit lawfully issued by the Board of Water Engineers, and no appropriation of any water shall be considered as having been perfected, unless such water has been beneficially used for one or more of the purposes named in this chapter, and for the purpose or purposes stated in the original declaration of intention to appropriate such water, or stated in the permit issued by the Board of Water Engineers. [Acts 1917, p. 212, § 6.]

This article and arts. 7474, 7519 and 7544, construed as giving state board of water engineers power and making it their imperative duty to forfeit and cancel water appropriations when from evidence board thinks it their duty to do so held violative of Const. art. 1, § 1 as vesting in board judicial powers. Fairbanks v. Hidalgo County Water Improvement Dist. No. 2, Civ.App., 261 S.W. 542.

Art. 7474. Forfeiture of rights.—Neither the foregoing article, nor any other provision of this chapter, shall be construed as intended to impair or to work or authorize the forfeiture of, or shall impair or work or authorize the forfeiture of, any rights heretofore or hereafter acquired by any declaration of appropriation or by permit when the appropriator has begun, or begins, the work and development contemplated by his declaration of appropriation, within the time provided in the law under which the same was or is made and has prosecuted and continues to prosecute the same with all reasonable diligence toward completion; but if any appropriator under this chapter, or other law of this State, has failed or fails to begin the work and development contemplated by his declaration of appropriation within the time provided in the law under which the same was or is made, or has failed or fails, to prosecute the same with all reasonable diligence toward completion, his right to so much water as has not been applied, or is not applied to beneficial use, as defined in this chapter, shall be considered as, and shall be, forfeited, and such water shall be subject to new appropriation under this chapter; provided, that no such rights shall be declared forfeited until the person or persons who are the owners of the land and whose rights are claimed to have been forfeited, shall first be given due notice and hearing, as required in Article 7519 of this chapter; and, provided further, that if a permit for the use of such water has been issued, or is issued, under this Act, or under the Act approved April the 9th, 1913, such water shall not be subject to new appropriation until the permit is cancelled by the Board in whole, or in part, in accordance with the provisions of Article 7519 of this chapter. [Id. sec. 7.]

Art. 7475. Water divisions.—The State shall be, and is hereby, divided into three water divisions, as follows:

All that portion of the State of Texas lying north of the thirtieth parallel, north latitude, and west of the one hundredth meridian, west longitude, shall constitute water division No. 1.

All that portion of the State of Texas lying east of the ninety-seventh meridian, west longitude, and south of the thirtieth parallel north latitude, together with all that portion lying north of the thirtieth parallel north latitude and east of the one hundredth meridian west longitude, shall constitute water division No. 2.

All that portion of the State of Texas not embraced in water division No. 1 or water division No. 2, as heretofore defined, shall constitute water division No. 3. [Id. p. 213, sec. 8.]

Art. 7476. Beneficial use defined.—For the purpose of this chapter, beneficial use shall be held to mean the use of such a quantity of water, when reasonable intelligence and reasonable diligence are ex-

ercised in its application for a lawful purpose, as is economically necessary for that purpose. [Id. sec. 9.]

Art. 7477. Board continued in office.—The Board of Water Engineers, created and constituted by the Act of the Thirty-third Legislature, Chapter 171, General Laws, approved April 9, 1913, is hereby continued, and the members constituting such board shall continue in office for the respective terms for which they were appointed and until their successors are appointed and qualified, unless sooner removed in the manner provided by law. [Id. sec. 10.]

Art. 7478. Board appointment of.—Said board shall be composed of three members, one of whom shall be appointed from each of the respective water divisions described in Article 7475. The members of such board shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall each hold office for a term of six years, and until his successor is appointed and qualified. [Id.]

Art. 7479. Qualification.—No person shall be appointed a member of the Board who has not such technical knowledge and such practical experience and skill as shall fit him for the duties of the office. [Id.]

Art. 7480. Bond.—Each member of such Board shall enter into bond, to be approved by the Governor, in the penal sum of ten thousand dollars, with not less than two personal sureties, or with one surety or guaranty company authorized to do business in this State, conditioned for the faithful discharge of the duties of his office, and for the delivery to his successor, or other officer appointed by the Governor to receive same, all moneys, books, and other property belonging to the State then in his hands, or under his control, or with which he may be legally chargeable as a member of said board. [Id.]

Art. 7481. Governor may remove.—The Governor shall have power to remove, at any time, for cause, any member of the State Board of Water Engineers, after such member shall have been given a full, free and public hearing by the Governor. The Governor shall fill all vacancies by appointment, with the advice and consent of the Senate. [Id.]

Art. 7482. Salary.—Each member of such Board shall receive a salary of thirty-six hundred dollars per annum, payable in monthly installments, upon the presentation of salary vouchers, approved by the Board. [Id. p. 214, sec. 11.]

Art. 7483. Meet at Austin.—The members appointed shall meet at Austin and organize and elect one of their number chairman of said Board. [Id. sec. 12.]

Art. 7484. Majority constitute quorum.—A majority of said Board shall constitute a quorum to transact business. [Id.]

Art. 7485. Board appoint secretary.—Said Board shall appoint a secretary, who shall be thoroughly conversant with irrigation law, at a salary of not more than two thousand dollars per annum, and who shall execute a bond in the sum of twenty-five hundred dollars, to be approved by the Board, payable to the Board of Water Engineers. [Id.]

Art. 7486. Board appoint employees.—The Board may appoint such experts and employees as may be necessary to perform any duty that may be required of them by this chapter, and fix their compensation. [Id.]

Art. 7487. Duty of secretary.—The secretary shall keep full and accurate minutes of all transactions and proceedings of said Board, and perform such duties as may be required by the Board. [Id.]

Art. 7488. Power of Board.—The Board shall have power to make all needful rules for its government and proceedings; and shall have a seal, the form of which it shall prescribe. [Id.]

Art. 7489. Office furnished.—The Board shall be furnished with an office at Austin, with necessary furniture, stationery, supplies, etc., at the expense of the State, to be paid for on the order of the board. [Id.]

Art. 7490. Traveling expenses.—The members, secretary, experts and employees of the Board shall be entitled to receive from the State their necessary traveling expenses while traveling on the business of the board, upon an itemized statement, sworn to by the party who incurred the expense and approved by the Board. [Id. sec. 13.]

Art. 7491. Board hold sessions, where.—The Board may hold sessions at any place in this State, when deemed necessary to facilitate the discharge of its duties. [Id. sec. 14.]

Art. 7492. Application in writing.—Every person, association of persons, corporation, water improvement or irrigation district, who shall, after this Act shall take effect, desire to acquire the right to appropriate, for the purposes stated in this chapter, unappropriated water of the State, shall, before commencing the construction, enlargement or extension of any dam, lake, reservoir or other storage work, or any ditch, canal, intake, headgate, pumping plant or [1] other distributing work, or performing any work in connection with the storage, taking or diversion of water, make an application in writing to the Board for a permit to make such appropriation, storage or diversion. [Id., part sec. 15.]

[1] R.S.1925 reads "of".

Art. 7493. Description of.—Such application shall be in writing and sworn to; shall set forth the name and post-office address of the applicant; the source of water supply; the nature and purposes of the proposed use; the location and description of the proposed dam, lake, reservoir, headgate, intake, pumping plant, ditch, canal or other work; the time within which it is proposed to begin construction, and the time required for the application of the water to the proposed use; and, if such proposed use is for irrigation, a description of the lands proposed to be irrigated, and, as near as may be, the total acreage thereof. [Id., part sec. 15.]

Art. 7494. Map to be furnished.—Such application shall be accompanied by a map or plat drawn on tracing linen, on a scale not less than one inch equals two thousand feet, showing substantially the location and extent of the proposed work; the location of the headgate, intake, pumping plant or point of diversion by course and distance from permanent natural objects or land marks; the location of the main ditch or canal and of the laterals or branches thereof; the course of the river, stream or other source of water supply; the position and area of all lakes, reservoirs or basins intended to be used or created, and the water line thereof, the intersection with all other ditches, canals, laterals, lakes or reservoirs the proposed work will touch or intersect, or with which connection will be made; and shall represent in ink of different color from that used to represent the proposed works, the location of all ditches, canals, laterals, reservoirs, lakes, dams, or other work of like character then existing on the ground, with a designation of the name of the owner thereof. Such map or plat shall contain the name of the proposed work or enterprise; the name or names of the applicants, and a certificate of the surveyor, giving the date of his survey, his name and post-office address, and also the date of the application which it accompanies. [Id., part sec. 15.]

Art. 7495. Permit for alteration, etc.—Nothing in this Act shall be held or construed to require

the filing of an application or procuring of any permit for the alteration, enlargement, extension or addition to any canal, ditch or other work that does not contemplate, or will not result in, an increased appropriation, or the use of a larger volume of water, but before making any such alteration, enlargement, extension or addition, the person, association of persons, corporation or irrigation district desiring to make same, shall file with the Board of Water Engineers a detailed statement and plan, for the information of the board, of the work proposed to be done. [Id., part sec. 15.]

Art. 7496. Presentation.—Any person who desires to investigate the feasibility of any water appropriation or use of water in quantities greater than twenty thousand-acre feet storage or fifty second feet diversion, or for generation of two thousand hydroelectric horsepower and who has an organized engineering force adequate to expeditiously proceed with such investigation, shall, upon the filing of an application therefor presenting such facts duly verified to the board, have priority date from the time of filing such application should a permit thereafter be granted thereon. Such application, in addition to the requirements above stated, shall describe the contemplated project, its location and purpose, the quantity of water to be applied for by measure if known, and if not by statement as near as possible of the quantity of water necessary to the contemplated use.

Before such presentation is filed same shall be presented to said board for examination.

Such presentation shall not be filed unless first approved by the board as to extent and purpose, and the board may require, in addition to the requirements above specified, additional information to be submitted under oath in order to determine if same is filed in good faith for the purposes stated.

A presentation is confined to a stated purpose and area and one reservoir or diversion site, and cannot be so filed as to cover more than a reasonable area.

The presentation when approved and filed by the board and to the extent approved by the board shall be in effect for a period of six months from the date it is so filed by the board.

If the person filing a presentation shall, during such period, have begun work and shall have prosecuted same with reasonable diligence, but requires more time than the six months period to complete same, then application may be made before the expiration of said period to the board for an extension of time thereon. Such application for the extension of time shall contain a statement of the work done and the reasons why more time is required therefor. The board shall consider same together with any opposition thereto filed, and may grant one or more extensions of time, provided the total time granted under a presentation shall not exceed a term of three years from the date same is first filed. [Acts 1917, 35th Leg., p. 215, ch. 88, § 16; Acts 1925, 39th Leg., p. 341, ch. 136, § 2.]

Art. 7496a. [Transferred.]

This article was Acts 1925, 39th Leg., p. 341, ch. 136, § 2, which amended Acts 1917, 35th Leg., p. 215, ch. 88, § 16, incorporated as Article 7496, ante, where text is now set out.

Art. 7497. Fee.—Upon the filing of such presentation, a fee of two hundred and fifty dollars shall be paid to the Board for the use of the State, as provided for other fees collected under this Act; no part of which shall be returned, except as hereinafter provided. The fee shall be held by the Board for a period of twelve months from the date of its receipt, unless disposed of as hereinafter provided. [Acts 1917, p. 215, sec. 17.]

Art. 7498. File application for.—Any person or association of persons, corporation, water improvement, or irrigation district, who has complied with the provisions of Articles 7496 and 7497, and who shall, within twelve months from the date of such presentation, file an application for a permit to store and use any of the flood waters of this State, in volumes of five thousand acre-feet, or more, for the objects and purposes, and at the locality set out in the presentation described in Articles 7496 and 7497, shall when paying the fees described in Article 7532, be credited with the two hundred and fifty dollars paid in accordance with the provisions of Article 7497. [Id., p. 216, sec. 18.]

Art. 7499. May return fee.—If within twelve months after the filing of the presentation of facts described in Article 7496, such relator shall elect not to apply for a permit, and shall file the results of his or its investigation in intelligible form, with the Board, the Board may, at its option, return, all or any part of said two hundred and fifty dollars, if in its judgment such information will be of equivalent value to the State. [Id., sec. 19.]

Art. 7499a. Presentation extended.—In the event a presentation is extended by order of the board so that same expires more than one year after the date upon which same is filed, the fee of $250.00 deposited with the State Board of Water Engineers shall be held by the board and disposed of as provided by law upon the expiration of the period to which same may be extended. All rights pertaining to a presentation shall cease and be of no further effect at the end of the term thereof, unless a permit is granted in pursuance thereof as provided by law. [Acts 1925, 39th Leg., ch. 136, p. 342, § 3.]

Art. 7500. Board requirements.—If the proposed taking or diversion of water for irrigation is of greater volume than nine cubic feet per second of time, the Board may require the following, in addition:

A continuous longitudinal profile; cross sections of the proposed channel; and the detail plans and specifications of any structural work of whatever character entering into the proposed project, on such scales and with such definition as the board may deem necessary or expedient.

The Board may also require the filing of a copy of the engineer's field notes of any survey of such lake or reservoir, and all plans and specifications, where the project calls for a dam over six feet in height, either for the purpose of diversion or storage; and no work on such project shall proceed until approval of such plans is obtained.

The Board may, in case the applicant is an incorporated company, require the filing of a certified copy of the applicant's articles of incorporation, together with a statement of the names and addresses of its directors and officers; and the amount of its authorized and of its paid up capital stock.

If the applicant be other than an incorporated company, the board may require the filing of a sworn statement, showing the names and addresses of the person or persons interested in same and the extent of such interest and of the financial condition of each such person. [Acts 1917, p. 216, sec. 20.]

Art. 7500a. Permit.—Anyone may construct on his own property a dam and reservoir to impound or contain not to exceed fifty (50) acre-feet of water for domestic and livestock purposes without the necessity of securing a permit therefor. [Acts 1925, 39th Leg., p. 344, ch. 136, § 5; Acts 1941, 47th Leg., p. 53, ch. 37, § 1.]

Art. 7501. Fees paid.—Every such application shall be accompanied by the fees hereinafter provided, and shall not be filed or considered until such fees are paid. [Acts 1917, p. 216, sec. 20.]

Art. 7502. Drainage.—Whenever, in the opinion of the Board, the successful efficient operation of any

existing or proposed irrigation system will, or may, be adversely affected by lack of adequate facilities incident to the work proposed to be done by the applicant or applicants for a permit to appropriate public waters, the said applicant or applicants shall submit drainage plans adequate, in the opinion of the board, to guard against any present or future injury which the proposed works may entail. [Id., sec. 21.]

Art. 7503. May reject application.—Upon the filing of such application, accompanied by the data and fees hereinbefore provided, it shall be the duty of the Board to make a preliminary examination thereof and, if it appear that there is no unappropriated water in the source of supply, or that, for other reasons, the proposed appropriation shall not be allowed, the Board may thereupon reject such application; in which case, if the applicant shall elect not to proceed further, the Board may return to such applicant any part of the fees accompanying such application. [Id., p. 217, sec. 22.]

Art. 7504. Decision of Board.—The Board shall determine whether the application, maps, plats, contours, plans, profiles and statements accompanying same are in compliance with the provisions of this chapter, and with the regulations of the Board, and may require the amendment thereof. [Id. sec. 22.]

Art. 7505. Where recorded.—All applications filed with the Board shall be recorded in a well bound book kept for that purpose in the office of said Board, and shall be indexed alphabetically in the name of the applicant, of the stream or source from which such appropriation is sought to be made, and the county in which appropriation is sought to be made. [Id. sec. 23.]

Art. 7506. Board to reject applications.—It shall be the duty of the Board to reject all applications and refuse to issue the permit asked for if there is no unappropriated water in the source of supply; or if the proposed use will impair existing water rights, or is detrimental to the public welfare. [Acts 1917, p. 216; Acts 1943, 48th Leg., p. 455, ch. 303, § 1.]

Art. 7507. Board to approve applications.—It shall be the duty of the Board to approve all applications and issue the permit asked for if such application is made in proper form in compliance with the provisions of this chapter and the regulations of said Board; and is accompanied by the fees required in this chapter; and if the proposed appropriation contemplates the application of water to any of the uses and purposes provided for in this chapter, and does not impair existing water rights, or vested riparian rights and is not detrimental to the public welfare. [Acts 1917, p. 216.]

Art. 7508. Conditions of application.—Before the Board shall approve any such application and issue any such permit, notice of such application shall be given substantially in the following manner:

Such notice shall be in writing; shall state the name of the applicant and his residence; the date of the filing of the application in the office of the Board; the purpose and extent of the proposed appropriation of water; the source of supply; the place at which the water is to be stored, or to be taken or diverted from the source of supply; together with such additional information as the board may deem necessary. If the proposed use is for irrigation, such notice shall contain a general description of the location and the area of the land to be irrigated. Such notice shall also state the time and place when and where such application will be heard by the Board. [Id. sec. 25.]

Art. 7509. Publication of.—Such notice shall be published once in each week for four consecutive weeks prior to the date stated in such notice for the hearing of such application in some newspaper having a general circulation in that section of the State in which the source of water is located. In addition to such publication, a copy of such notice shall be transmitted by the secretary of the Board, by registered mail, addressed to each claimant or appropriator of water from such source of water supply, the record of whose claim or appropriation has been filed in the office of the Board. Such notice shall be mailed not less than twenty days before the date set for the hearing.

Art. 7510. Hearing of application.—At the time and place stated in the notice, the Board shall sit to hear such application. Any person, association of persons, corporation, or irrigation district may appear, in person or by attorney, and enter appearance in writing in said matter and present objection to the issuance of permit. The Board may receive evidence, orally or by affidavit, in support of or in opposition to the issuance of such permit; and may also hear arguments. It shall have power to adjourn such hearing from time to time and from place to place, and after full hearing to render decision in writing approving or rejecting such application. Such application may be approved or rejected in whole or in part. Nothing herein contained shall prevent the Board from rejecting any application in whole without the issuance of the notice herein required. [Id. p. 218, sec. 27.]

Art. 7511. Cost of publication.—The cost of publication of the notice herein required and the postage for mailing thereof shall, in each case be paid by the applicant. [Id. sec. 28.]

Art. 7512. Attorney General shall represent board.—In all litigation to which the Board may be a party, the Attorney General shall represent the Board. [Id. sec. 29.]

Art. 7513. Duty of clerk.—When any court of record in this State shall render any judgment, order or decree, affecting in any manner the title to any water right, claim, appropriation or irrigation works, or any matter over which the Board of Water Engineers is given supervision under the provisions of this chapter, it shall be the duty of the clerk of such court to forthwith transmit to the office of the Board a certified copy of such judgment, order or decree. [Id. sec. 30.]

Art. 7514. Authority to inspect.—The Board, or any one employed by the Board for that purpose, shall have at all times authority to inspect any impounding, diversion or distribution works during construction, to determine whether or not they are being constructed in a safe and approved manner, and in accordance with the order of the Board theretofore issued. [Id. sec. 31.]

Art. 7515. Contents of permit.—Every permit issued by the Board, under the provisions of this chapter, shall be in writing, attested by the seal of said Board and shall contain substantially the following: The name of the applicant to whom issued; the date of the issuance thereof; the date of the filing of the original application therefor in the office of the Board; the use or purpose for which the appropriation of water is to be made; the amount or volume of water authorized to be appropriated; a general description of the source of supply from which the appropriation is proposed to be made; and, if such appropriation is for irrigation, a description and statement of the approximate area of the lands to be irrigated; together with such other data and information as the Board may prescribe. [Id. sec. 32.]

Art. 7516. Transmitted to county clerk.—Upon the issuance of such permit, same shall be transmitted by the secretary of the Board, by registered mail, to the county clerk of the county in which the appropriation is to be made. [Id.]

Art. 7517. Recording fee.—Upon receipt of a recording fee of one dollar, to be paid by the appli-

cant, such clerk shall file and record the same in a well bound book provided and kept for that purpose only, and to index the same alphabetically under the name of the applicant and of the stream or source of water supply, and, thereupon, to deliver such permit, upon demand, to the applicant. [Id.]

Art. 7518. Constructive notice.—Such permit, when thus filed in the office of the county clerk, shall be constructive notice of the filing of the application with the Board; of the issuance of the permit; and of all the rights arising thereunder. [Id.]

Art. 7519. Time required.—Within ninety days after the date of issuance of the permit provided for in this chapter, the applicant seeking to appropriate water thereunder shall begin actual construction of the proposed ditch, canal, dam, lake, reservoir, or other work, and shall prosecute the work thereon diligently and continuously to completion; provided, that the Board may, by an order entered of record, extend the time for beginning the actual construction of such work for a period not to exceed twelve months from the date of issuance of such permit; and, further provided, that if any applicant shall fail to comply with the requirements of this article, he, they or it, shall thereby forfeit all rights under such permit. If any applicant to whom a permit is issued, or one owning prior appropriation, shall, after beginning the actual construction work, as provided in this article, fail to thereafter prosecute the same diligently and continuously to completion the Board may, after thirty days notice to the applicant or owner of such appropriation, and giving him an opportunity to be heard, by an order entered of record, revoke and cancel such permit or appropriation in whole or in part. Any party affected by such order shall have the right of appeal to the district court, as in this chapter provided. A certified copy of such order shall be forthwith transmitted by the secretary of the Board, by registered mail, to the clerk of the county in which such permit is recorded and which order shall be recorded by said county clerk. [Id. p. 219, sec. 33.]

This article and arts. 7472–7474, construed as giving board of water engineers power and making it their imperative duty to forfeit and cancel water appropriations when, from evidence, board thinks it their duty to do so, held violative of Const. art. 1, § 1 as vesting in the board judicial powers. Fairbanks v. Hidalgo County Water Improvement Dist. No. 2, Civ.App., 261 S.W. 542.

Art. 7520. Conviction.—Any person, association of persons, corporation, water improvement or irrigation district, or any agent, officer, employee or representative of any person, association of persons, corporation or irrigation district, who shall wilfully take, divert or appropriate any of the water of this State, or the use of such water, for any purpose, without first complying with all the provisions of this chapter, shall be deemed guilty of a misdemeanor; and, on conviction thereof, shall be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment; and each day that such taking, diversion or appropriation of water shall continue shall constitute a separate offense, and the possession of such water, except when the right to its use is acquired in accordance with the provisions of law, shall be prima facie proof of the guilt of the person, association of persons, corporation, irrigation district, or the agent, officer, employees or representatives of any person, association of persons, corporation or irrigation district. [Id. sec. 34.]

Art. 7521. Liable.—In addition to the punishment prescribed in the last preceding article, any person, association of persons, corporation, water improvement or irrigation district, or any agent, officer, employee or representative of any such persons, association of persons, corporation, water improvement or irrigation district, who shall wilfully take, divert or appropriate water of the State, or the use of such water, without first complying with the provisions of this chapter, shall be liable to a penalty of one hundred dollars per day for each and every day that such taking, diversion, appropriation, or use may be made. [Id. sec. 35.]

Art. 7522. Suit.—The State may recover such penalties by suit brought for that purpose in any court of competent jurisdiction. [Id.]

Art. 7523. Date.—When any permit is issued under the provisions of this chapter, the priority of the appropriation of water, or the claimant's right to the use of such water, shall date from the date of the filing of the original application in the office of the Board. [Id. p. 220, sec. 36.]

Art. 7524. Measurements and calculations.—It shall be the duty of the Board to make or cause to be made measurements and calculations of the flow of streams from which water may be appropriated, as provided in this chapter, commencing such work in those streams most used for irrigation or other beneficial uses; to collect data and make surveys; to determine the most suitable location for constructing works to utilize the waters of the State; to ascertain the location and area of the lands best suited for irrigation; to examine and survey reservoir sites; and wherever practicable, to make estimates of the cost of proposed irrigation works, and the improvements of reservoir sites. [Id. sec. 37.]

Art. 7525. Board conversant.—It shall be the duty of the board to make itself conversant with the water courses of the State and of the needs of the State concerning irrigation matters, and the storage and conservation of the waters of the State for other purposes. [Id.]

Art. 7526. Biennial reports of board.—The Board shall make biennial reports in writing to the Governor, in which shall be included the data and information collected by the Board, and in which shall be included such suggestions as to the amendment of existing laws and the enactment of new laws as the information and experience of the Board may suggest. [Id.]

Art. 7527. Proper records.—The board shall keep in its office full and proper records of its work, observations and calculations, all of which shall be the property of the State. [Id.]

Art. 7528. Quantity of water.—It shall be the duty of the Board to ascertain the quantity of water, and to determine the proper quantities required for irrigation and other lawful uses in the several sections of the State, in order to secure the highest beneficial use of such water, such work to be first conducted in those sections where, in the judgment of the Board, the greatest necessity exists. [Id. sec. 38.]

Art. 7529. Board to condemn.—Full authority is lodged with the Board, on its own initiative, to condemn existing works, the existence or operation of which may, in the judgment of the Board, become a public menace or dangerous to life and property; provided that, in all cases of proposed condemnation, the party or parties at interest shall be notified of such contemplated action, and may appear at a time stated and be heard. [Id. sec. 39.]

Art. 7530. Right of appeal.—In such cases the party or parties whose works may be condemned, shall have the right of appeal from the decision of the Board, as provided herein in all other cases of appeal. [Id.]

Art. 7531. Board to enforce rules, etc.—The Board may adopt, promulgate and enforce such rules, regulations and modes of procedure as it may deem

proper for the discharge of the duties incumbent upon it under the provisions of this chapter. [Id. sec. 40.]

Art. 7532. Board to charge and collect fees.—The board shall charge and collect for the benefit of the State the fees hereinafter provided, and it shall be the duty of the secretary to make a record thereof at the time same become due, and to render an account thereof to the party charged therewith, said fees being as follows:

For filing each presentation a fee of $25.00.

For filing each application for a permit a fee of $25.00 and cost of publishing notice and mailing notices.

For filing each petition for formation of a district a fee of $25.00.

For filing each application for approval of a bond issue a fee of $25.00.

For filing each application for adjusting or fixing rates a fee of $25.00.

For filing each application for extension of time under any provision of the law a fee of $10.00.

Fees hereinabove provided cover the filing of each and all papers and records filed at one time as part of such transaction.

For filing each paper or instrument, exhibit or map, affidavit or anything else authorized or provided by law to be filed, or which is filed, a filing fee of $1.00.

For recording each and every instrument or anything authorized or required to be recorded, or which is recorded in the office of the Board a fee of $1.00, and in addition thereto a fee at the rate of fifteen cents per folio of one hundred words.

For making and certifying each and every copy of an instrument or paper under the hand of the secretary, or the seal of the Board a fee of $1.00, and in addition thereto a fee at the rate of fifteen cents per hundred words including the certificate.

For making and certifying copies of any map, blue print, tracing, drawing, picture, profile or other record which is not in the class of a written instrument a fee of $1.00, and in addition thereto a fee at the rate of seventy-five cents for each hour necessarily employed by the draftsman in making such copy, or in the event such copy is made by blue print or other similar process by a State agency without special charge therefor, a fee of $1.00 for each print.

In addition to the fees herein otherwise provided there shall be paid to the Board for the benefit of the State the following fees upon each application for a permit to acquire a water right:

For the use of water for irrigation, ten cents per acre for each acre to be irrigated.

For the use of water for hydraulic power twenty-five cents for each theoretical horsepower.

For use of water for steam or gas power plant, cooling, condensing or steam purposes twenty-five cents for each indicated horsepower.

For other uses not specifically named herein twenty-five cents per acre foot based on estimated annual consumption.

For the use of water for parks, pleasure resorts, game preserves, twenty cents per acre foot of storage, based on the holding capacity of reservoir.

The maximum fees for any use of water under a permit shall not exceed one thousand five hundred dollars and for each additional use under the same permit for which such maximum fee is paid the fee shall not exceed two hundred dollars in addition to said sum of one thousand five hundred dollars.

The fees paid upon application for a permit other than the filing fees herein provided shall be held by the Board until said application is passed upon, and if same is not granted such fees shall be returned to the applicant therefor, provided if such application is thereafter granted by judgment of a court then said fee shall be paid before such permit shall be effective. [Acts 1917, 35th Leg., p. 221, ch. 88, § 41; Acts 1925, 39th Leg., p. 342, ch. 136, § 4.]

Art. 7532a. [Transferred.]

This article was Acts 1925, 39th Leg., p. 342, ch. 136, § 4, which amended Acts 1917, 35th Leg., p. 221, ch. 88, § 41, incorporated as Article 7532, ante, where text is now set out.

Art. 7533. Fees and charges deposited.—The fees and charges collected in accordance with the provisions of this chapter shall be immediately deposited in the State Treasury to the credit of the general revenue and full and detailed verified monthly and annual reports of all such receipts, as well as of the expenditures of the said Board, shall be filed with the Comptroller of Public Accounts. [Acts 1917, p. 221, sec. 41.]

Art. 7534. Fee limit.—That the fees to be paid for filing in the office of the State Board of Water Engineers of applications for permits for the storage, diversion and use of water shall not exceed the sum of fifteen hundred dollars for any one such application, permit or project. In case of all such applications and permits heretofore filed and granted, on which partial payment of fees have been made, as provided by law, the balance to be paid thereon shall be the difference between the amount paid and the said maximum sum of fifteen hundred dollars. [Acts 1923, p. 281, sec. 1.]

Art. 7535. Excess fees paid, how.—The fees provided by law to be paid to the State Board of Water Engineers upon applications for permits for the storage, diversion and use of water for any and all statutory purposes when such fees exceed one thousand dollars shall be paid as follows:

One-tenth shall be paid when the application is filed.

One-tenth shall be paid within thirty days after notice is mailed the applicant that the permit is granted. The balance shall be paid before the use of water is commenced under the permit; and a failure to so pay same shall annul such permit. [Acts 3rd C. S., 1920, p. 87, sec. 2.]

Art. 7536. State board to fix time.—Whenever the State Board of Water Engineers shall grant a permit for the use of water, which use contemplates the construction of a storage reservoir, they shall fix the time actual construction work shall be commenced thereon, not to exceed two years from the granting of such permit. [Id. sec. 3.]

Art. 7537. Time limit.—Such time limit may be extended by order of said board upon payment of such fees as the Board may fix, not to exceed the sum of one thousand dollars. [Id.]

Art. 7537a. Survey of underground water supply.—That the State Board of Water Engineers of Texas are hereby authorized and empowered to have made a scientific and sanitary study and investigation and report of the sources, amount and quality of the underground water supply, together with a study, investigation and report upon the feasible conservation, maintenance and supplementing of said supply. Such work shall be first undertaken by said Board in the territories where, in their judgment, the greatest need therefor exists, and in determining said need, said Board shall look to the interest and welfare of domestic and municipal uses, irrigation uses, and all other uses, which in their judgment, are essential to the welfare of the business interests of the State, and in the health of its citizens. In the prosecution of which investigation it shall be the duty of the State Department of Health to lend all such co-operation as the interests of the public Health require, provided none of the funds so appropriated shall be used in the drilling of any well for the discovery of water. [Acts

1929, 41st Leg., 2nd C.S., p. 63, ch. 37, § 1.]

Section 2 of this Act makes an appropriation for the expenses of such survey which the Governor vetoed.

3. REGULATION OF USE

Art. 7538. Measurement of flowing water.—A cubic foot of water per second of time shall be the standard unit for the measurement of flowing water for the purpose of distributing water for beneficial uses. [Acts 1917, p. 222, sec. 42.]

Art. 7539. Standard unit.—The Standard unit for volume of static water shall be the acre-foot. [Id.]

Art. 7540. Quantity of water.—A cubic foot per second of time is the quantity of water that will pass through an area of one square foot in one second, when flowing at an average velocity of one foot per second. [Id. sec. 43.]

Art 7541. Acre foot defined.—An acre foot is the quantity of water required to cover one acre one foot deep. [Id.]

Art. 7542. Water right defined.—A water right is the right to use the water of the State when such use has been acquired by the application for water under the statutes of this State and for the purposes stated in this chapter. Such use shall be the basis, the measure and the limit to the right to use water of the State at all times, not to exceed in any case the limit of volume to which the user is entitled and the volume which is necessarily required and can be beneficially used for irrigation or other authorized uses. [Id. sec. 44.]

Art. 7543. Use of water limited.—Rights to the use of water acquired under the provisions of this chapter shall be limited and restricted to so much thereof as may be necessarily required when beneficially used for the purposes stated in this chapter, irrespective of the capacity of the ditch or other works, and all the water not so applied shall not be considered as appropriated. [Id. sec. 45.]

Art. 7544. Appropriation forfeited.—Any appropriation or use of water heretofore made under any statute of this State, or hereafter made under the provisions of this chapter, which shall be wilfully abandoned during any three successive years, shall be forfeited and the water formerly so used or appropriated shall be again subject to appropriation for the purposes stated in this Act. [Id. sec. 46.]

This article and arts. 7452–7474 and 7519, construed as giving board of water engineers power and making it their imperative duty to forfeit and cancel water appropriations when, from the evidence, the board thinks it their duty to do so, held violative of Const. art. 1, § 1 as vesting in board judicial powers. Fairbanks v. Hidalgo County Water Improvement Dist. No. 2, Civ.App., 261 S.W. 542.

Art. 7545. Right to appropriate, when.—Any person, association of persons, corporation, water improvement or irrigation district, who may have heretofore constructed, or who may hereafter construct, any dam or dams across any river, or other stream, for the purpose of storing water for any of the purposes set forth in Article 7468 of this chapter, shall have the right to appropriate the ordinary flow, underflow, or the storm flood or rain waters of such stream, in amounts and quantities equal to the holding capacity of such dam or dams, by making application as provided in Articles 7493 and 7494 of this chapter, and such application shall have priority over all other applications; and, provided, that any such person, association of persons, corporations or irrigation district thus impounding water in any river, channel, lake or reservoir and appropriating the same shall have the right to collect from any riparian owner who shall divert such impounded water from said reservoir by pumping or otherwise a reasonable sum for the water so diverted, such sum to be determined by the Board of Water Engineers, based upon the benefits accruing to such riparian owner by reason of the construction of such dam, lake, or reservoir and the impounding of such waters therein, provided the owner of such dam, lake or reservoir and the owner of riparian rights using such water cannot agree upon the price to be paid therefor. [Id. sec. 47.]

Art. 7546. Authority of corporations.—All such corporations, whether chartered under the provisions of Chapter 2, Title 73, Revised Civil Statutes of Texas, 1911, or under the general corporation laws of the State of Texas, shall have full power and authority to make contracts for the sale of permanent water rights, to any person, corporation, association of persons, or irrigation district, and to have the same secured by a lien on the lands, or otherwise, and to lease, rent or otherwise dispose of the water controlled by such corporation, for such price as may be agreed upon, and in addition to the lien on the crops hereinafter provided for, such lease or rental contract may be secured by lien on land or otherwise; provided, that such water may be sold, leased, rented or otherwise disposed of to any such person, corporation, association of persons or irrigation district, or to the water tenants thereof, who have heretofore appropriated and complied with the provisions of Chapter 2, Title 73, Revised Civil Statutes of Texas, 1911, regardless of whether or not the water is furnished to lands adjacent or contiguous to the canals of such corporation, association of persons or irrigation district so furnishing water; provided further that any person, corporation, association of persons or irrigation district, shall be under no obligation during the period that water is so taken and utilized, to operate its or their pumping plant, headgate, or intake and failure to so operate its pumping plant, headgate, or intake during such period, shall not be deemed an abandonment or waiver, of his, their or its rights in such pumping plant, headgate, intake and source of supply.

Provided that nothing herein contained shall affect or alter the existing relative rights of priority of the various appropriators whose supply is derived from the same source. [Id. p. 223, sec. 48.]

Art. 7547. Who may enter into contract.—Any person, association of persons, corporation, water improvement or irrigation district having in possession and control storm, flood or rain waters conserved or stored, under the provisions of this chapter, may enter into contract to supply same to any person, association of persons, corporation, water improvement or irrigation district, having the right to acquire such use; provided that the price and terms of such contract shall be just and reasonable and without discrimination and subject to the same revision and control as hereinafter provided for other water rates and charges. If any person shall use such stored or conserved water without first entering into contract with the party having stored or conserved the same, such user shall pay for the use thereof such charge or rental as the Board shall find to be just and reasonable, and subject to revision by the court, as herein provided for other water rates and charges. [Id. sec. 49.]

Art. 7548. When lawful to use banks and beds.—For the purpose of conveying and delivering storm, flood or rain water from the place of storage to the place of use as provided in the preceding Article, or of conveying and delivering the same to the diversion plant of the appropriator thereof, it shall be lawful for any person, association of persons, corporation, water improvement or irrigation district, to use the banks and beds of any flowing natural stream within this State, under and in accordance with such rules and regulations as may be prescribed by the Board of Water Engineers and such Board shall prescribe rules and regulations for such purpose. No person, association of persons, corporation, water improvement or irrigation district who has not acquired the right to the use of such conserved or stored waters,

as provided in the last preceding Article or the right to appropriate the same shall take, use or divert same. [Acts 1917, p. 224, § 50; Acts 1945, 49th Leg., p. 313, ch. 228, § 1.]

Art. 7549. Wilful interference with the passage of.—Any person, association of persons, corporation, water improvement or irrigation district, or the agent, officer, employee or representative of any such person, association of persons, corporation, water improvement or irrigation district, who shall wilfully interfere with the passage of, or take, divert or appropriate such conserved or stored water during the passage and delivery thereof, as provided in the last two preceding articles, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment, and each and every day that such taking, diversion or appropriation may be made shall constitute a separate offense. [Acts 1917, p. 224, sec. 52.]

Art. 7550. Duty of district court.—It shall be the duty of the district court, or the judge thereof, of any judicial district in or through which the conserved or stored waters described in the last three preceding articles may pass, at the suit of any party having an interest therein upon it being made to appear that any person, association of persons, corporation, water improvement or irrigation district, or any agent, officer, employee, or representative thereof, is interfering with, or threatening or about to interfere with the passage, or is taking, diverting, appropriating, or threatening, or about to take, divert, or appropriate, any conserved or stored waters, in violation of the provisions of the last three preceding articles, to issue such writ or writs of injunction, mandamus, or other process, as may be proper or necessary to prevent such wrongful acts. [Id. sec. 52.]

Art. 7551. To construct gates.—Persons, associations of persons, corporations or districts, operating under the statutes of Texas relating to irrigation, are hereby authorized (subject to the conditions and regulations which may be required or prescribed by the authorities of the United States Government in respect to navigation), to construct such gates or breakwaters, dams or dikes, with gates, as may be required in any waters wholly in the State of Texas where gulf tides ebb and flow, to prevent the pollution of the fresh water of any stream, river or bayou, through ebb and flow of salt tides from the Gulf of Mexico and to conserve such fresh water in a condition fit for irrigation; provided that such work shall, in every case, be done so as not to obstruct navigation by any vessels operated on such waterway, and provided that, in every case where gates are required, to avoid obstruction of navigation, such persons, association, corporation or district responsible for the construction, shall at all times keep a competent person at such gates to operate same when required for purposes of navigation; provided further that such dam, dike or breakwater hereby authorized shall not be placed at any point in such waters, except where the gulf tides ebb and flow, and not so as to obstruct the flow of fresh water to any appropriator or riparian owner below, on the same stream. [Acts 4th C. S., 1918, p. 64, sec. 1.]

Art. 7552. Purpose of corporations.—Corporations may be formed and chartered, under the provisions of this chapter, and of the general corporation laws of the State of Texas, for the purpose of constructing, maintaining and operating canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells. and of conserving, storing, conducting and transferring water to all persons entitled to the use of the same for irrigation, mining, milling, manufacturing, the development of power, to cities and towns for waterworks, and for stock raising. [Acts 1917, p. 224, sec. 53.]

Art. 7553. Authority of corporations.—All such corporations shall have full power and authority to make contracts for the sale of permanent water rights, and to have the same secured by liens on the land, or otherwise, and to lease, rent, or otherwise dispose of the water controlled by such corporation, for such time as may be agreed upon and, in addition to the lien on the crops hereinafter provided for, the lease or rental contract may be secured by a lien on the land, or otherwise.

Provided, any contract for the sale of water rights shall be voidable, unless the seller thereof has complied with the provisions of the statute relating to certified filings, or shall have obtained a permit from the Board of Water Engineers for the purposes and uses proposed to be made by the buyer of such water rights it is proposed to deliver. [Id. part sec. 54.]

Art. 7554. Deemed guilty, when.—Any person, association of persons or corporation who sells or offers for sale any permanent water right, without having complied with the provisions of the statute relating to certified filings, or without having obtained a permit from the Board of Water Engineers for the uses and purposes purporting to be conveyed by such permanent water right, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, or be confined in the county jail for any period of time not to exceed one year, or both such fine and imprisonment. [Id. part sec. 54.]

Art. 7555. Possessory right.—All persons who own or hold a possessory right or title to land adjoining or contiguous to any dam, reservoir, canal, ditch, flume or lateral, constructed and maintained under the provisions of this chapter, and who shall have secured a right to the use of water in said canal, ditch, flume, lateral, reservoir, dam or lake, shall be entitled to be supplied from such canal, ditch, flume, lateral, dam, reservoir or lake with water for irrigation of such land, and for mining, milling, manufacturing, development of power, and stockraising, in accordance with the terms of his or their contract. [Id. sec. 55.]

Art. 7556. Failure to agree upon price.—If the person, association of persons, or corporation owning or controlling such water, and the person who owns or holds a possessory right or title to land adjoining or contiguous to any canal, ditch, flume or lateral, lake or reservoir, constructed or maintained under the provisions of this chapter, fail to agree upon a price for a permanent water right, or for the use or rental of the necessary water to irrigate the land of such person, or for mining, milling, manufacturing, the development of power, or stock raising, such person, association of persons, or corporation shall, nevertheless, if he, they or it, have or control any water not contracted to others, furnish the necessary water to such person to irrigate his lands or for mining, milling, manufacturing, the development of power or stock raising, at such prices as shall be reasonable and just, and without discrimination. [Id. sec. 56.]

Art. 7557. Division in case of shortage.—In case of shortage of water from drouth, accident or other cause, all waters to be distributed shall be divided among all customers pro rata, according to the amount he or they may be entitled to, to the end that all shall suffer alike, and preference be given none. [Id. sec. 57.]

Art. 7558. Prior vested right.—Nothing in the preceding article contained shall be held to preclude any such person, association of persons, or corporation owning or controlling such water from supply-

ing the same to any person having a prior vested right thereto under the laws of this State. [Id. sec. 57.]

Art. 7559. Permanent water right defined.—The permanent water right shall be an easement to the land and pass with the title thereto; the owner thereof shall be entitled to the use of the water upon the terms provided in his or their contract, with such person, association of persons or corporation, or, in case no contract is entered into, then at just and reasonable prices and without discrimination. Any instrument of writing conveying a permanent water right shall be admitted to record in the same manner as other instruments relating to the conveyance of land. [Id. p. 226, sec. 58.]

Art. 7560. Board to make preliminary investigation.—If any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir or lake, or from any conserved or stored supply, shall present to the board his petition in writing, showing that the person, association of persons, corporation, water improvement or irrigation district, owning or controlling such water, has a supply of water not contracted to others and available for his use, and fails or refuses to supply such water to him, or that the price or rental demanded therefor is not reasonable and just, or is discriminatory; or that the complainant is entitled to receive or use such water, and is willing and able to pay a just and reasonable price therefor, and shall accompany such petition with a deposit of twenty-five dollars, it shall be the duty of the Board to make a preliminary investigation of such complaint and determine whether there is probable ground therefor. If said Board shall determine that no probable ground exists for such complaint, same shall be dismissed, and the deposit may, at the discretion of the Board, be returned to the complainant or paid into the State Treasury. [Id. sec. 59.]

Art. 7561. Board to set date.—If the Board shall determine that probable grounds exist for such complaint, it shall enter an order setting said matter for hearing at a time and place to be named therein. The Board may, in its discretion, require the complainant to make an additional deposit, or to enter into bond in an amount fixed by the Board, conditioned for the payment of all costs of such proceeding, and which bond shall be approved by the Board. Thereupon, it shall be the duty of the secretary of the Board to transmit a certified copy of the petition of complainant and of the order setting same for hearing, by registered mail, addressed to the party or parties against whom such complaint is made, and which notice shall be deposited in the mails at least twenty days before the date set for such hearing. [Id. sec. 60.]

Art. 7562. Board to hear evidence.—At the time and place stated in such order the Board shall sit to hear such complaint. It may hear evidence orally or by affidavit in support of or against such complaint, and may hear arguments, and shall have power to adjourn such hearing from time to time and from place to place, and, upon completion thereof, shall render decision in writing. [Id. sec. 61.]

Art. 7563. Board to fix rates.—The said Board shall have power and authority, and it shall be its duty to fix reasonable rates for the furnishing of water for the purposes or any purpose mentioned in this chapter. [Acts 4th C. S., 1918, p. 129, sec. 61–A.]

Art. 7564. Appeal from decision.—Appeal from such decision of the Board may be taken within the time and in the manner as herein provided for other appeals from the decision of such Board. The decision may be suspended by filing of a supersedeas bond, in the same manner as now provided in other civil cases; provided, that the Board shall fix the amount of the bond necessary to stay the execution of any such order. [Acts 1917, p. 226, sec. 62.]

Art. 7565. Witnesses expenses paid.—In any examination, investigation or proceeding authorized before the Board of Water Engineers, such board shall have power to issue subpœnas for the attendance of witnesses, under such rules as the board may prescribe. Each witness who shall appear before the board by order of the board, at a place outside of the county of his residence, shall receive for his attendance, one dollar per day and three cents per mile traveled by nearest practicable route, in going to and returning from the place of meeting of said board which shall be ordered paid by the Comptroller of Public Accounts upon the presentation of proper vouchers, sworn to by such witness and approved by the chairman of the board; provided, that no witness shall be entitled to any witness fees or mileage who is directly interested in such proceeding. [Id. p. 227, sec. 63.]

Art. 7566. Board to adjourn hearing.—In any examination or hearing held before the Board of Water Engineers, the board shall have authority to adjourn such hearing from time to time and from place to place. Each member of such board and the secretary thereof shall be authorized to administer oaths. [Id. sec. 64.]

Art. 7567. May appeal to appellate court, when.—If any person, firm, association of persons, or corporations engaged in furnishing water, or other persons at interest be dissatisfied with the decision of any rate, charge, order or act of regulation adopted by the board, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rule, rate, charge or order, or to either or all of them, in a district court of Travis County, against said board as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Any party to said action may appeal to the Appellate Court having jurisdiction of said cause; and said appeal shall be at once returnable to said Appellate Court at any term thereof; said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending; provided that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. [Acts 4th C. S., 1918, p. 129, sec. 64–a.]

Art. 7568. Proof rests upon plaintiff.—In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, acts, orders, or charges complained of are unreasonable and unjust to it or them. [Id., sec. 64–B.]

Art. 7569. Board to furnish certified copies, when.—Upon application of any person, the board shall furnish certified copies of any order or decision of record of such board, or of any paper, map or other document filed in the office of such board, and such certified copies, under the hand of the secretary and seal of the board, shall be admissible in evidence in any court, in the same manner and with like effect that the original would be entitled to. [Acts 1917, p. 227, sec. 65.]

Art. 7570. Rules and regulations made and published.—Every person, association of persons, corporation, or irrigation district, conserving or supplying water for any of the purposes authorized by this chapter; shall make and publish reasonable rules and regulations relating to the method and manner of supply, use and distribution of water, and prescribing the time and manner of making application

for the use of water and payment therefor. [Id. sec. 66.]

Art. 7571. Conveyance recorded.—Every conveyance of a ditch, canal, or reservoir, or other irrigation work, or any interest therein, shall hereafter be executed and acknowledged in the same manner as the conveyance of real estate, and recorded in the deed records of the county or counties in which such ditch, canal, or reservoir is situated, and any such conveyance which shall not be made in conformity with the provisions of this chapter, shall be null and void, as against subsequent purchasers thereof in good faith and for valuable consideration. [Id. sec. 67.]

Art. 7572. Corporations to store salt water, when.—That in the mode provided in Chapter 2 of Title 25 of the Revised Statutes of Texas of 1911 corporations may be created for the purpose of gathering, storing and impounding water containing salt or other substances produced in the drilling and operation of oil and other wells, and to prevent the flow thereof into streams at times when the latter may be used for irrigation. [Acts 4th C. S., 1918, p. 122, sec. 1.]

Art. 7573. Rights of corporations.—Such corporations, in addition to the general powers conferred by such title upon private corporations, may acquire, own, and operate ditches, canals, pipe lines, levees, reservoirs, and their appliances appropriate for the gathering, impounding or storage of such water, and for the protection of such reservoirs from inflow or damage by surface waters; with further power to condemn lands and rights necessary therefor under like procedure as is provided in condemnation by railroads; and also to cross with their ditches, canals and pipe lines under any highways, canals, pipe lines, railroads, and tram or logging roads; conditioned that the use thereof be not impaired longer than essential to the making of such crossings; provided that, no right is conferred to pass though any cemetery or under any residence, schoolhouse or other public building nor to cross any street or alley of any incorporated city or town without the consent of the authorities thereof. [Id. sec. 2.]

Art. 7574. Corporations to serve producers.—In the localities in which they operate and to the extent of the facilities provided, such corporations shall serve all producers of such waters in the gathering, impounding, and storage of such waters in proportion to the needs of such producers, at fair and reasonable charges, and without discrimination between such producers under like conditions. Corporations interested in the proper disposition of such waters may subscribe for, own, and vote stock in the corporations which may be created hereunder. [Id. sec. 3.]

Art. 7575. Use of water not entitled to.—Any person who shall wilfully open, close, change or interfere with any headgate or water box without lawful authority or who shall wilfully use water or conduct water in and through his ditch or upon his land, to which water he is not entitled, shall be fined not less than ten nor more than one thousand dollars, or be imprisoned in jail not exceeding six months; provided, that the possession or use of water to which the person using or possessing same shall not be lawfully entitled shall be prima facie proof of the guilt of the person so using or in possession of same. [Acts 1917, p. 227, sec. 68.]

Art. 7576. Destruction of and punishment for.—Any person who shall wilfully cut, dig, break down, destroy, or injure, or open any gate, bank, embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder or pump or machinery, building, structure, or other work, which is the property of another, or in which another owns an interest, or which is in the lawful possession or use of another or others, and which is used for the purpose of irrigation or milling or mining, or manufacturing, or for the development of power, or for domestic purposes, or for stockraising, with intent maliciously to injure any person, association, corporation, water improvement or irrigation district, or for the gain of any person, association, water improvement or corporation, so cutting, digging, breaking, injuring or opening any such work hereinbefore in this article named or with the intent of taking or stealing or causing to run out or waste out of any such ditch, canal, or reservoir, feeder or flume, any water for his own profit, benefit or advantage, or to the injury of any person, association or corporation lawfully entitled to the use of such water or the use or management of such ditch, canal, tunnel, reservoir, feeder, flume, machine structure or other irrigation work, shall be fined not less than ten nor more than one thousand dollars, and may be punished by imprisonment in jail not exceeding two years, or by both such fine and imprisonment. [Id. p. 288, sec. 69.]

Art. 7577. Punishment for pollution.—Any person who shall deposit in any canal, lateral, reservoir or lake, used for any purpose enumerated in this Act, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, baling or barbed wire, earth, offal or refuse of any character, or any other article or articles which might pollute the water or obstruct the flow in any such canal or other similar structure, shall be fined not less than ten nor more than one hundred dollars, or be imprisoned in jail for a term not exceeding six months, or be both so fined and imprisoned. [Id. sec. 70.]

Art. 7578. Failure to pay for proportionate share of work.—In all cases where irrigation ditches are owned or used by two or more persons, or by mutual or co-operative companies or corporations, and one or more of such persons, or shareholders, shall fail or neglect to do or to pay for his proportionate share of the work necessary for the proper maintenance and operation of such ditch, the owners or shareholders, desiring the performance of such work as is reasonably necessary to maintain and operate the ditch, may, after having given ten days' written notice to such joint owner, or owners, or shareholders who have failed to pay for or refused to perform their proportionate share of work necessary for the operation and maintenance of said ditch, proceed themselves to do such work, or cause same to be done, and may recover therefor from such person so failing to perform or pay for his share of such work, in any court having jurisdiction over the amount, the reasonable expense or value of such work or labor so performed. [Id. sec. 71.]

Art. 7579. Surplus water.—All surplus water taken or diverted from any running stream and not used by the appropriator or disposed of to consumers for the purposes stated in this chapter shall be conducted back to the stream from which taken or diverted, wherever such water may be returned by gravity flow, whenever reasonably practicable. [Id. p. 229, sec. 72.]

Art. 7580. Examination and survey.—Every person, association of persons, corporation, water improvement or irrigation district shall have power to cause an examination and survey for its proposed work to be made as may be necessary to the selection of the most advantageous reservoir sites and rights of way for any of the purposes authorized by this chapter, and for such purposes shall have the right to enter upon the lands or waters of any person. [Id. part sec. 73.]

Art. 7581. Employee of board may enter upon lands of any person, when.—Any member or employee of the board shall have authority to enter up-

on the lands of any person and any or all waterways, either natural or artificial, for the purpose of making any investigation that would, in the judgment of the board assist in the discharge of its duties. [Id. part sec. 73.]

Art. 7582. Right of way granted to whom.—Every person, association of persons, corporation, water improvement or irrigation district formed for any of the purposes authorized by this chapter are hereby granted the right of way, not to exceed one hundred feet in width, and the necessary area for any dam and reservoir site over all public free school, university and asylum lands of this State, with the use of the rock, gravel and timber on such reservoir site and right of way for construction purposes, after paying such compensation as the board of engineers may determine, and may acquire such reservoir site and rights of way over private lands by contract. [Id. sec. 75.]

Art. 7583. Additional right of way obtained.—Any person, association of persons, corporation, irrigation or water improvement district, or any city or town, may also obtain the right of way over private lands and also the lands for pumping plants, intakes, headgates and storage reservoirs, by condemnation, by causing the damages for any private property appropriated by any such person, association of persons, corporation, water improvement or irrigation district or city or town, to be assessed and paid for as provided by the Statutes of this State, and as provided in Title 52 of this Act relating to "Eminent Domain," provided, however, that when the power granted by this section is sought to be exercised by any person or association of persons, but not including irrigation corporations, districts, cities or towns, he or they shall first make application to the Board of Water Engineers for such condemnation and said Board shall make due investigation and if it deems advisable shall give notice to the party owning the land sought to be condemned, and after hearing, may institute such condemnation proceedings in the name of the State of Texas for the use and benefit of said person or persons and all others similarly situated, the costs of said suit and condemnation to be paid by the person or persons at whose instance the same is instituted in proportion to the benefits received by each as fixed by said board and to be paid before use is made of such condemned rights of property; and thereafter all persons seeking to take the benefits of such condemnation proceedings shall make application therefor to the Board of Water Engineers and if such application is granted shall pay fees and charges as may be fixed by the Board. [Acts 1917, p. 229, § 75; Acts 1935, 44th Leg., p. 125, ch. 49, § 1.]

Art. 7584. Who shall not have the right or power to acquire.—No corporation, person, association of persons, city, town, municipality, or other public corporation, shall have the right or power to acquire by right of eminent domain or condemnation, any riparian right, or rights, water rights or right, dam or dams, or water supply, or any land or lands on, under or adjacent to any stream or streams in the State of Texas, when held, owned or claimed by any corporation, person, or association of persons for the purpose of constructing or erecting any dam, lock, reservoir, power plant, canal, tail-race or channel for the purpose of using the waters of said stream or any part thereof, for developing, using or furnishing power, on any streams, or stream, the waters of which are actually being used, in whole or in part, for such uses or purposes; provided that this Act shall not apply to cities or towns having a population of 25,000 or over according to the last United States census. All parts of any law or laws in conflict herewith are hereby repealed. [Acts 1923, p. 324, sec. 1.]

Art. 7585. Roads and highways.—All persons, associations of persons, corporations, and water improvement or irrigation districts shall have the right to run along or across all roads and highways necessary in the construction of their work, and shall at all such crossings construct and maintain necessary bridges, culverts, or siphons, and shall not impair the uses of such road or highways; provided, that if any public road or highway or public bridge shall be upon the ground necessary for the dam site, reservoir, or lake, it shall be the duty of the commissioners' court to change said road and to remove such bridge that the same may not interfere with the construction of the proposed dam, reservoir, or lake; provided, further, that the expense of making such change shall be paid by the person, association of persons, corporation, water improvement or irrigation district desiring to construct such dam, lake or reservoir. [Acts 1917, p. 230, sec. 76.]

Art. 7586. Who has power to construct ditch.—Such person, association of persons, corporation, or irrigation district shall have power to construct its ditch or canal across, along or upon, any stream of water. [Id. sec. 77.]

Art. 7587. When necessary to irrigate or reclaim lands.—When, in the examination of any such irrigation or reclamation project, under the provisions of the Act of Congress, known as the Reclamation Act, approved June 17, 1902, it shall be found advisable or necessary to irrigate or reclaim lands within the limits of the State, the Secretary of the Department of the Interior is authorized to make all necessary examinations and surveys for, and to locate and construct irrigation or reclamation works within this State, and to perform any and all acts necessary to carry into effect the provisions, limitations, charges, terms and conditions of said Reclamation Act. [Id. sec. 78.]

Art. 7588. Provisions and amendments.—The provisions of this chapter shall in all things apply to the construction, maintenance and operation of any irrigation works in this State, constructed under what is known as the Federal Reclamation Act, approved June 17, 1902, and the amendments thereto, in so far as the provisions of this chapter are not inconsistent with said Act of Congress, or the amendments thereto, or the regulations prescribed by the Secretary of the Department of the Interior in conformity to such Reclamation Act and the amendments thereto. [Id. sec. 79.]

Art. 7589. Unlawful to divert water.—It shall be unlawful for any person, association of persons, corporation, water improvement or irrigation district to take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, water course, or watershed, in this State into any other natural stream, water course or watershed, to the prejudice of any person or property situated within the watershed from which such water is proposed to be taken or diverted. [Id. sec. 80.]

Art. 7589a. Diversion or impounding of surface waters.—That it shall hereafter be unlawful for any person, firm or private corporation to divert the natural flow of the surface waters in this State or to permit a diversion thereof caused by him to continue after the passage of this Act or to impound such waters, or to permit the impounding thereof caused by him to continue after the passage of this Act in such manner as to damage the property of another, by the overflow of such water so diverted or impounded, and that in all such cases the injured party shall have remedies, both at law and in equity, including damages occasioned thereby, provided that the passage of this Act shall in no way affect the construction and maintenance of levees and other improvements for the purpose of controlling floods, overflows and freshets in rivers, creeks and streams, nor the construction of canals for conveying water for irrigation or other

purposes; and provided that nothing in this Act shall be so construed as to authorize or give authority to persons or private corporations owning or constructing canals for irrigation or other purposes, to construct or maintain any canal, lateral canal or ditch in such manner as to obstruct any river, creek, bayou, gully, slough, ditch or other well defined natural drainage; and provided further where gullies or sloughs have cut away or intersect the banks of rivers or creeks so as to permit the escape of flood waters from such rivers or creeks, through such gullies or sloughs on to land adjacent to such streams, the owner of such land may fill the mouth of such gullies or sloughs to the height of the adjoining banks of such rivers or creeks without liability in damages to other property owners. [Acts 1927, 40th Leg., p. 80, ch. 56, § 1; Acts 1935, 44th Leg., p. 766, ch. 334, § 1.]

Art. 7590. Application for permit.—Before any person, association of persons, corporation, water improvement or irrigation district shall take any water from any natural stream, water course, or water shed in this State into any other water-shed, such person, association of persons, corporation, water improvement or irrigation district shall make application to the Board of Water Engineers for a permit so to take or divert such waters, and no such permit shall be issued by the Board until after full hearing before said Board as to the rights to be affected thereby, and such hearing shall be held and notice thereof given at such time and such place, in such mode and manner as the Board may prescribe; and from any decision of the Board an appeal may be taken to the district court of the county in which such diversion is proposed to be made, in the mode and manner prescribed in this chapter for other appeals from the decision of the Board. [Acts 1917, p. 230, sec. 81.]

Art. 7591. Penalty to divert waters from natural streams, etc.—If any person, association of persons, corporation, water improvement or irrigation district, or the agent, attorney, employee, or representative of any such person, association of persons, corporation or irrigation district, shall take or divert any waters from the natural streams, water courses or watershed into any other watershed, contrary to the provision of the last two preceding articles he, it, or they shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail, for any term not exceeding six months, and each day that such taking or diversion shall continue shall constitute a separate offense. [Id. p. 231, sec. 82.]

Art. 7592. Acquired title.—Whenever any appropriator of water from any stream or other source of water supply located in whole or in part within this State, shall have obtained from the Board of Water Engineers a permit for the use of water, and shall have made use of the water under the terms of such permit; or whenever any such appropriator of water shall have filed an appropriation in accordance with the laws of this State in force at the time of such filing, and shall have filed with the Board of Water Engineers a certified record of such appropriation, as required by Chapter 171 of the Acts of the Regular Session of the Thirty-third Legislature, and shall have made use of the water, under the terms of such filing or permit for a period of three years after this Act shall take effect, he shall be deemed to have acquired a title to such appropriation by limitation, as against any and all other claimants of water from the same stream, or other source of water supply, and as against any and all riparian owners upon said stream or other source of water supply. [Id. sec. 83.]

Art. 7593. Failure to fence.—Unless the person, association of persons, corporation, water improvement or irrigation district owning or controlling any ditch, canal, reservoir, dam or lake, shall keep the same securely fenced, no cause of action shall accrue in their favor against owners of live stock for any trespass thereon. [Id. sec. 84.]

Art. 7594. Power to acquire lands by voluntary donation.—Any corporation organized under the provision of the General Laws of this State, or the provisions of this chapter for any of the purposes stated in this chapter, shall have the power to acquire lands by voluntary donation or purchase in payment of stock or bonds or water rights; and to hold, improve, subdivide and dispose of all such lands and other property; and to borrow money for the construction, maintenance and operation of its canals, ditches, flumes, feeders, reservoirs, dams, lakes, wells and other property and franchises, to the extent of the value thereof, to secure the payment of any debts contracted for same; provided, no corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increases in stock or indebtedness shall be void; provided further, all lands acquired by such corporation, except such as are used for the construction, maintenance or operation of such canals, ditches, laterals, feeders, reservoirs, dams, lakes, wells, and other necessary works, shall be alienated within fifteen years from the date of acquiring said land or be subject to judicial forfeiture. [Id. sec. 85.]

Art. 7595. Corporation may elect directors.—Any corporation under the provisions of the General Laws of this State, or the provisions of this chapter, for any of the purposes stated in this chapter, may elect directors or trustees to hold office for a period of three years, and may provide for the election of one-third in number thereof each year. [Id. p. 232, sec. 86.]

Art. 7596. Preference lien.—Every person, association of persons, corporation, water improvement or irrigation district who has heretofore constructed, or may hereafter construct any ditch, canal, dam, lake or reservoir for the purpose of irrigation, and who shall lease, rent, furnish or supply water to any person, association of persons, water improvement district or corporation, for the purpose of irrigation, shall, irrespective of contract, have a preference lien superior to every other lien upon the crop or crops raised upon the land thus irrigated;

Provided, however, that when any such irrigation, conservation or reclamation district shall obtain a water supply under contract with the United States, the Board of Directors of such district may, by resolution duly entered upon the minutes of the board, and with the consent of the Secretary of the Interior, waive such preference lien, in whole or in part. [Acts 1917, p. 232, § 87; Acts 1927, 40th Leg., p. 141, ch. 91, § 1.]

Art. 7597. Enforcement of lien.—For the enforcement of the lien provided for in the preceding article, every such person, association of persons, corporation, water improvement or irrigation district shall be entitled to all the rights and remedies prescribed by Title 84, Articles 5222 to 5239, inclusive, of this Act for the enforcement of the lien as between landlord and tenant. [Acts 1917, p. 232, § 89.]

This article is from section 88 of Acts 1917, 35th Leg., ch. 88, p. 232, instead of section 89 as shown above.

Art. 7598. Johnson grass or Russian thistle.—It shall be unlawful for any person, association of persons, corporation, water improvement or irrigation district owning, leasing or operating any ditch or canal or reservoir, or cultivating any lands abutting upon any reservoir, ditch, flume, canal, wasteway or lateral to permit Johnson grass or Russian thistle to go to seed upon such reservoir, ditch, flume, canal, waste-way or lateral within ten feet of the high water line of any such reservoir, ditch, flume, canal, waste-way, or lateral, where the same crosses or lies

upon land in the ownership or control of any such person, association of persons, corporation, water improvement or irrigation district, and anyone violating the provisions of this article shall be fined not less than twenty-five nor more than five hundred dollars or be imprisoned in jail not less than thirty days nor more than six months, or both so fined and imprisoned. [Id. sec. 89.]

Art. 7599. Counties exempt.—The preceding article shall not apply to Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde and San Saba counties. [Id. sec. 89.]

Art. 7600. Artesian well defined.—An artesian well is defined, for the purposes of this chapter to be an artificial well in which, if properly cased, the waters will rise by natural pressure above the first impervious stratum below the surface of the ground. [Id. sec. 90.]

Art. 7601. When artesian well declared a public nuisance.—Any artesian well which is not tightly cased, capped and furnished with such mechanical appliances as will readily and effectively arrest and prevent the flow from such well, either over the surface of the ground about the well, or wasting from the well through the strata through which it passes, is hereby declared a public nuisance and subject to be abated as such, upon the order of the board. [Id. sec. 91.]

Art. 7602. Waste defined.—Waste is defined for the purposes of this Act, in relation to artesian wells to be the causing, suffering or permitting the waters of an artesian well to run into any river, creek or other natural water course or drain, superficial or underground channel, bayou, or into any sewer, street, road, highway, or upon the land of any other person than that of the owner of such well, or upon the public lands or to run or percolate through the strata above that in which the water is found, unless it be used for the purposes and in the manner in which it may be lawfully used on the premises of the owner of such well. [Id. p. 233, sec. 92.]

Art. 7603. Proper irrigation of trees, etc.—Nothing in the preceding article shall be construed to prevent the use of such water, if suitable, for proper irrigation of trees standing along or upon any street, road or highway, or for ornamental ponds or fountains, or the propagation of fish, or for the purposes authorized by this chapter. [Id. p. 233, sec. 92.]

Art. 7604. Well properly cased.—Whenever any person desires to drill a well upon his own land for domestic purposes or use for stock raising purposes or use that comes within the definition of artesian well, as defined in this chapter he shall have the right to do so without subjecting himself to the provisions of this chapter, provided that said well shall be properly and securely cased, and whenever water is reached containing mineral or other substances injurious to vegetation or agriculture it shall be the duty of the owner of said well to securely cap same or to control its flow so as not to injure the land of any other person, or to fill it up so as to prevent the water of said well to rise above the first impervious stratum below the surface of the ground. [Id. sec. 93.]

Art. 7605. Accurate record kept.—Any person boring or causing to be bored any artesian well shall keep a complete and accurate record of the depth and thickness and character of the different strata penetrated, and when such well is completed shall transmit by registered mail to the Board of Water Engineers a copy of such record. [Id. sec. 94.]

Art. 7606. Excessive or wasteful use of water wilfully permitted.—Any person, association of persons or the agent of any corporation owning or acquiring any possessory right to lands contiguous to any canal or irrigation system and who acquires the right to the use of water from such canal or irrigation system, by contract as in this chapter provided, who wilfully permits the excessive or wasteful use of water by any of the agents, servants or employees of said parties, or who wilfully permits water to be wasted and not applied to a beneficial purpose, shall be deemed guilty of a misdemeanor and shall be punished as provided in Article 7613 and such use or waste of water shall be declared a public nuisance and abated as such by the Board of Water Engineers; said Board of Water Engineers being empowered to direct the canal company or irrigation system to close the water gates of said persons and to keep them closed until such time as such unlawful use of water shall be corrected and the determination of this question shall be controlled entirely by the Board of Water Engineers or its agents, servants, and employees. [Id. sec. 94.]

Art. 7607. Works declared public nuisance.—Any person, association of persons, corporation, water improvement or irrigation district who owns or operates any works which make use of water for any of the purposes named in this chapter, and who permits unreasonable loss of water in the operation of such works, through the faulty design or negligent operation of such works, shall be deemed guilty of waste, and such works or any part thereof may be declared a public nuisance and abated as such by the Board of Water Engineers. [Id. p. 234, sec. 96.]

Art. 7608. Penalty for use of works declared public nuisance.—Any person or the agent of any person, or the agent of any association or corporation who shall operate or attempt to operate any works, or shall use any water under contract, with any canal or irrigation system, that has been previously declared to be a public nuisance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than one thousand dollars or be confined in the county jail for a period of not to exceed one year or both such fine and imprisonment. [Id. sec. 97.]

Art. 7609. Suit instituted, where.—In any and all civil suits instituted by or under the direction of the Board of Water Engineers, suit may be prosecuted and instituted in any court of competent jurisdiction in the county or in any of the counties where the land lies. [Id. sec. 98.]

Art. 7610. Action may be brought before any district court.—Action may be brought before any district court of this State having jurisdiction over the irrigation district in question by any person, association of persons, corporation, water improvement or irrigation district, who may be injured by waste as herein defined for the determination of questions arising under Articles 7607 and 7608. [Id. sec. 99.]

Art. 7611. Detailed record.—Any person, association of persons, corporation, irrigation or water improvement district who owns and operates any system of works used for the irrigation of land, or for any of the purposes named in the law, shall keep such detailed record of daily operations as may be necessary to determine the quantity of water taken or diverted each calendar year. If the use is for irrigation, there shall also be kept a record of the number of acres irrigated, as near as may be, without making actual surveys for the purpose, and the character of crop or crops grown, and the yield per acre. [Id. part sec. 100.]

Art. 7612. Information required.—On or before the first day of March of each year, every person, association of persons, corporation, water improvement or irrigation district who, during any part of the preceding calendar year, owned or operated any of the works described in this chapter, shall furnish, under oath, to the Board of Water Engineers, upon blanks to be furnished by the Board, the informa-

tion required ot [to] be kept for such preceding year, or part thereof, together with such other available information as the Board may require, covering the uses made of water for any of the purposes named in the law. [Id. part sec. 100.]

Art. 7612a. Penalty for failure to file report.—Any one who shall under the provisions of the law be required to file annual reports as provided by Section 100 of Chapter 88 of the Acts of the Regular Session of the Thirty-fifth Legislature, and who shall fail or refuse to so file same as therein provided shall be liable to a penalty of $25.00 and a further penalty of $1.00 per day for each day he so fails to file same after the expiration of the day provided by law upon which same shall be filed, and the State may recover such a penalty by suit therefor, provided, however, the maximum penalty for failure to file any one such annual report shall not exceed the sum of $150.00. [Acts 1925, 39th Leg., ch. 136, p. 344, § 6.]

Art. 7613. Penalty for permitting waste.—Whoever wilfully causes or knowingly permits waste, as defined in this chapter, shall be fined in any sum not exceeding five hundred dollars, or shall be imprisoned in jail not more than ninety days, or by both such fine and imprisonment. [Acts 1917, p. 234, sec. 101.]

Art. 7614. Sworn statement.—Any person, association of persons, corporation, or water improvement or irrigation district, owning or operating any artesian well, as defined for the purposes of this chapter, at the time of its taking effect shall, within one year thereafter, transmit to the Board of Water Engineers a sworn statement showing the result of such test, together with a declaration of the use or uses to which the newly developed supply will be devoted, and the contemplated extent of such use. [Id. p. 235, sec. 102.]

Art. 7615. Detailed statement furnished.—On or before the first day of March of each year, every person, association of persons, corporation, water improvement or irrigation district who, during any part of the preceding calendar year, owned or operated any artesian well for any purpose other than that of domestic use, shall furnish, under oath, to the Board of Water Engineers, upon blanks to be furnished by the Board, a detailed statement showing the quantity of water which has been derived from such well, and the character of use to which same has been applied, together with the change in level of water table of said well, and if used in irrigation, the acreage and yield of each crop, together with such additional data as the Board may require. [Id. sec. 103.]

Art. 7616. Oil wells exempt.—Nothing in the preceding articles, relating to artesian wells, shall be construed to apply to any oil well and the status of such oil wells shall be unaffected by this chapter. [Id. sec. 104.]

Art. 7617. Abandoned oil wells.—Abandoned oil wells shall be safeguarded as required in Article 7601. [Id. sec. 104.]

Art. 7618. Boundaries.—The provisions of this chapter shall apply to all streams or other sources of water supply lying upon or forming a part of the boundaries of this State. [Id. p. 243, sec. 135.]

Art. 7619. Not to recognize any riparian right.—Nothing in this chapter contained shall be construed as a recognition of any riparian right in the owner of any lands the title to which shall have passed out of the State of Texas subsequent to the first day of July, A. D. 1895. [Id. sec. 136.]

Art. 7620. Not to alter any vested right of property.—Nothing in this chapter contained shall be held or construed to alter, affect, impair, increase, destroy, validate or invalidate any existing or vested right of property existing at the date when this Act shall go into effect. [Id. sec. 137.]

Art. 7621. Held unconstitutional.—If any article or provision of this chapter shall be held unconstitutional, it shall not be held to invalidate any other provision of this Act. [Id. sec. 138.]

CHAPTER 2.—WATER IMPROVEMENT DISTRICTS

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Art. 7622. Water improvement districts established.—The County Commissioners' Court of any county in this State at any Regular or Called Session thereof may establish one or more Water Improvement Districts in their respective counties, or parts of such districts therein, in the manner hereinafter provided. Such districts may or may not include within their boundaries, villages, towns, cities, and municipal corporations, or any part thereof, but no land shall be at the same time included within the boundaries of more than one Water Improvement District created under this Chapter. Such districts when so established may make improvements or may purchase improvements already existing, or may purchase improvements and make additions thereto, or may contract with any other Water Improvement District, Water Control and Improvement District or any Conservation and Reclamation District for a water supply and may purchase or make such improvements as may be necessary to receive and distribute such water supply, and may incur indebtedness to fully carry out each and all of the purposes of its organization, and may issue bonds in payment therefor, as herein provided. Such districts being authorized to provide for the irrigation of the land included therein, and when operating under Section 59 of Article 16, of the Constitution, furnish water for domestic, power and commercial purposes. Such districts may be formed for co-operation with the United States under the Federal Reclamation Laws for the purpose of the construction of irrigation works, including drainage works, necessary to maintain the irrigability of the land for the purchase, extension, operation or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. [Acts 2nd C.S. 1919, p. 65, part § 1; Acts 1929, 41st Leg., 2nd C.S., p. 7, ch. 6, § 1.]

Section 3 of Acts 1929, 41st Leg., 2nd C.S., p. 7, ch. 6, repeals all conflicting laws and parts of laws.

Art. 7622a. Including lands within existing district.—Whenever a water improvement district, shall be organized under the provisions of this Chapter, for co-operation with the United States, under the Federal Reclamation Laws, for the purpose of the construction of irrigation works or the obtaining of a water supply therefrom, it shall be lawful to include within such water improvement district lands at the same time included within the boundaries of an existing water improvement district or other district organized for irrigation purposes, as well as lands not embraced within any such district; and when lands are embraced within two districts, as authorized by this Article, such fact shall not change, impair or limit the rights, obligations or liabilities of such lands in or to either district, but the contract with the United States may reserve to the United States a prior lien upon crops grown upon said land with water furnished in whole or in part by the United States.

Provided, further, that the lands embraced within such district need not be contiguous. [Acts 1927, 40th Leg., p. 366, ch. 247, § 1.]

Art. 7622b. Annexation of territory not embraced in district.

Petition; notice

Sec. 1. Defined areas of territory not embraced within a water improvement district may be added to the area of any such district in the manner hereinafter provided. Petitions for annexation of such territory shall describe the territory proposed to be annexed by metes and bounds, and shall be signed by fifty (50) or a majority of the landowners in such territory. Such petition shall be presented to the Board of Directors of the water improvement district to which it is proposed to annex such territory, and thereupon it shall be the duty of said Board to pass an order fixing a time and place at which such petition shall be heard, which date shall be not less than thirty (30) days from date of such order. The Secretary of said Board shall issue notice of such time and place of hearing and which notice shall describe the territory proposed to be annexed, and shall execute said notice by posting copies thereof in three (3) public places in the district, and in two (2) public places within the territory proposed to be annexed; said notices to be posted for at least fifteen (15) days prior to date of said hearing. Publication of a copy of such notice shall be made in a newspaper of general circulation in the county, one time, and at least fifteen (15) days prior to such hearing.

Hearing; resolution

Sec. 2. At the time and place stated in the notice, the Board of Directors shall sit to hear such petition in the manner set out and provided by Article 7626, Revised Civil Statutes of Texas, 1925. If upon the hearing of such petition the Board of Directors shall find and determine that the proposed addition is to the advantage of the district and to the lands proposed to be added, then the Board of Directors by resolution duly entered upon its Minutes may receive such proposed territory as an addition to and to become a part of the district. Such resolution need not include all of the land described in the petition if upon the hearing a modification or change is found necessary or desirable. Provided, however, annexation of the territory shall not become final until ratified at separate elections called for that purpose as hereinafter provided.

Elections; ballots

Sec. 3. The Board of Directors shall order a separate election to be held within the boundaries of the district, and a separate election to be held within the territory to be added thereto, to determine whether such territory shall be added to such district. In the event the district has outstanding debts or taxes then at the same time and at the same election the proposition for assumption of its proportion of such debts or taxes by such territory if added shall also be submitted.

Each of said elections shall be held on the same day, and within thirty (30) days after entry of resolution receiving such proposed territory. Notice of said election shall be given by the Board of Directors, and shall be executed by posting copies thereof at three (3) public places in the district, and at two (2) public places within the territory proposed to be added, for at least twenty (20) days prior to the date of said elections. The Board of Directors shall appoint two judges, one of whom shall be the presiding judge, and two clerks, for each of the polling places in said district, to conduct the election within said district and make returns thereof, and shall designate one or more polling places within the territory proposed to be added, and shall appoint two judges, one of whom shall be the presiding judge, and two clerks, for each of said designated polling places, to conduct the election within such territory and make returns thereof. All expenses of each of said elections shall be paid by the district. The manner of holding each of said elections and the qualifications of the voters therein shall be governed by the provisions of law applicable to the election for the creation of water improvement districts, except as otherwise provided for herein.

The ballot for each of said elections shall have printed thereon "For addition to water improvement district," and "Against addition to water improvement district." If the proposition for assumption of its proportion of the outstanding debts or taxes of the district by such territory, if added, is submitted, then the ballot for each election shall have printed thereon "For addition to water improvement district and assumption of proportionate part of outstanding debts and taxes," and "Against addition to water improvement district and assumption of proportionate part of outstanding debts and taxes."

Majority vote required

Sec. 4. In water improvement districts organized and operating under the provisions of Section 52 of Article 3 of the Constitution, two-thirds majority vote of the qualified voters voting at each of said elections shall be required for ratification of the annexation of the proposed territory.

In water improvement districts organized under the provisions of Section 59 of Article 16 of the Constitution, or in such districts organized under the provisions of Section 52 of Article 3 of the Constitution that have since accepted the provisions of Section 59 of Article 16 of the Constitution in the manner provided by law, a majority vote of the qualified voters voting at each of said elections shall be required for ratification of the annexation of the proposed territory.

Upon a favorable vote in each separate election as above provided, such territory shall be and become an integral part of such district as of the date of such elections, and be from such date subject to all laws governing such district, and shall bear its pro rata part of all indebtedness or taxes that may be owed, contracted, or authorized by said district to which it shall have been added.

Effect of addition

Sec. 5. Such addition to such district shall not in any manner affect the officers, employees, and affairs of such district, but the voters of such added territory shall have a right to participate in all matters of the district considered or voted upon thereafter.

Provisions cumulative

Sec. 6. The provisions of this Act shall be cumulative of and in addition to all other laws that may provide for the annexation or addition of territory to establish water improvement districts. [Acts 1941, 47th Leg., p. 661, ch. 403.]

Art. 7623. Petition signed by majority—notice.—The petition herein provided for to be presented to the county commissioners' court shall be signed by a majority in number of the holders of title to the lands situated within the proposed district and representing a majority in value of the lands therein as indicated by the county tax rolls; provided, however, that such petition shall be sufficient if same is signed by fifty holders of title or evidence of title to the land situated within the proposed district, in the event that the number of such land owners should be greater than fifty in number. Upon presentation to the commissioners' court either at a regular or special session, of a petition as herein provided praying for the establishment of a water improvement district, setting forth the boundaries thereof and designating a name for the district, the commissioners' court shall set the same for hearing at some reg-

ular or special session to be held not less than fifteen days nor more than forty days from the presentation of said petition. The clerk of said court shall issue a notice of the said hearing, giving the date and place of hearing, and a copy of the order of the court setting same for hearing. Said notice shall be directed to the sheriff of the county requiring him to serve the notice in the manner provided by law. Said notice shall be sufficient if it contains the matter herein provided, and all persons interested shall take notice of the boundaries of said district as set out in the petition and may inspect same by examining the same in the office of the clerk of said court. [Acts 2nd C. S., 1919, p. 65, part sec. 1.]

Art. 7624. Posting and publishing notice.—The sheriff shall execute said notice by posting true copies thereof in three public places within said proposed district and one at the courthouse door of the county, or on the bulletin board used for public notices at the county courthouse. Said notices shall be posted for ten full days prior to the date of said hearing. Said notices shall also be published in a newspaper of general circulation in the county, if a newspaper is published therein, one time and at least five days prior to such hearing. The sheriff shall make due return of a true copy of said notice, showing the time when and the places where such notice was posted and published. The said return to be delivered to the clerk of the commissioners' court, and to be recorded in the minutes of said court. [Id. part sec. 1.]

Art. 7625. Duties imposed upon clerk and sheriff.—The duties herein imposed upon the clerk and sheriff may be performed by them acting by themselves or their deputies as provided by law for other similar duties. When conditions may make desirable, the petition herein provided for may be signed and presented to the court in several copies. When such petition is so presented in more than one copy the clerk shall file all such copies and shall make a true copy thereof, including a list of all those who have signed the several copies, and certify thereto and file same. Such certified copy shall be considered the petition in all other proceedings provided for by this chapter.

Water improvement districts to be organized as provided herein are defined districts under the authority granted by Section 52 of Article 3 of the Constitution of the State. [Id. part sec. 1.]

Art. 7625a. Districts in two or more counties; establishment.—When any district proposed to be established embraces lands located in two or more counties, the owners of title, or evidence of title of a majority of the acreage of the proposed district, or fifty property tax paying voters of the territory proposed to be embraced within a district may petition the State Board of Water Engineers for a hearing to determine the advisability of the creation of such district, and for an order of election creating such district, and for the election of five directors of the proposed district. [Acts 1925, 39th Leg., ch. 205, p. 676, § 2.]

Art. 7625b. Notice of hearing.—Upon the filing of such petition, the Board of Water Engineers shall set the same down for a hearing at a date not less than fifteen or more than thirty days from the date of the filing of such petition, and shall cause notice to be given to the commissioners' court of each county in which lands are located proposed to be embraced in the district, and stating the date and place of hearing, and upon receipt of such notice by the commissioners' courts from the State Board of Water Engineers, it shall be the duty of the clerk of the said commissioners' courts to post a notice at the court house door of the date and place of hearing. [Acts 1925, 39th Leg., ch. 205, p. 676, § 2.]

Art. 7625c. Hearing.—At such hearing on said petition to the Board of Water Engineers, any person whose land would be affected by the organization of such district may appear before the Board of Water Engineers and protest against or contend for the creation of the proposed district, and may offer competent testimony to show that the said district would or would not serve a beneficial purpose, and that the organization of such district would or would not be practicable or capable of accomplishing the purpose intended by its organization.

If, upon hearing of such petition, it shall appear to the Board of Water Engineers that the proposed plan of water conservation, irrigation and use presented in the petition praying for the organization of the district, is practicable and would present a public utility, then the said Board of Water Engineers shall so find and enter such finding in the records of the Board, and shall transmit a certified copy of such findings to the commissioners' court in each county in which lands proposed to be embraced within said district are situated, and naming a date on which an election shall be held in the territory to be comprised within the district to determine whether or not the proposed district shall be created in accordance with the provisions of this Act, and for the election of a board of five directors of such district. But should the Board of Water Engineers, upon such hearing, determine that said proposed district is not practicable, and will not serve a beneficial purpose, and that it would not be possible to accomplish through its organization the purposes proposed, then it shall so find and enter its findings of record, and the petition shall be thereupon dismissed. [Acts 1925, 39th Leg., ch. 205, p. 676, § 2.]

Art. 7625d. Notice of election.—Upon the receipt of a certified copy of the findings of the Board of Water Engineers authorizing an election to determine whether or not the proposed district shall be formed, the commissioners' court of each county and part of county which is embraced within the proposed district, shall give notice of an election to be held on the date named in the finding and order of the Board of Water Engineers, which notice shall be posted as provided in this Act for other elections for not less than fifteen, nor more than thirty days before the date fixed for the election. [Acts 1925, 39th Leg., ch. 205, p. 677, § 2.]

Art. 7625e. Election.—At the said election there shall be submitted for the decision of the voters the question whether or not the proposed district shall be created, and for the election of five directors for the district. Persons desiring to vote for the creating of such district and for the election of five directors for such district, shall have written or printed on their ballots the words "For the District" and those desiring to vote against the creation of the district shall have written or printed on their ballots the words "Against the District," and those desiring to vote for the issuance of notes shall have written or printed on their ballots "For the Issuance of Notes" and those desiring to vote against the issuance of notes shall have written or printed on their ballots "Against the Issuance of Notes." At such election the names of the directors may be written or printed upon said ballot, or a separate ballot may be used for such purpose. [Acts 1925, 39th Leg., ch. 205, p. 677, § 2.]

Art. 7626. Creation of district contested.—Upon the day set by said county commissioners' court for the hearing of said petition, any person whose lands are included in and would be affected by the creation of said district may appear before said court and contest the creation of such district, or contend for the creation thereof, and may offer testimony to show that such district is or is not necessary and would or would not be of public utility, and that the

creation of such district would or would not be feasible or practicable. Said county commissioners shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such district and all matters pertaining to the same, except as is hereinafter provided, and may adjourn the hearing on any matter connected therewith from day to day and all judgments rendered by said court in relation thereto shall be final, except as herein otherwise provided. [Acts 1917, p. 174, sec. 2.]

Art. 7627. Petition feasible—recorded.—If, at the hearing of such petition, it shall appear to the satisfaction of the court that the organization of such district and the construction or purchase, or the construction and purchase of the proposed irrigation system, or that co-operation with the United States as in Article 7622 provided, is feasible and practicable, and that it is needed and would be a public benefit and a benefit to the lands included in the district then the court shall so find, and cause its findings to be entered of record; but if the court should find that the irrigation of lands in such district is not feasible and practicable and that it would not be a public benefit or is not needed or would not be a public utility, then the court may enter such findings of record and dismiss the petition at the cost of the petitioners. [Id. sec. 3.]

Art. 7628. Appeal to district court.—If at the hearing provided for in Article 7627 of this Act, the court shall enter an order granting or refusing the petition for the organization of said district at the cost of the petitioners, then in that event the petitioners, or any one or more of them, or any one owning land in such district, may appeal from said order to the district court; provided, however, any such appeal shall only be taken in the event notice thereof is filed with said county commissioners' court at the time of said hearing, and that same is perfected by filing with the clerk of said court an appeal bond in a sum of not less than $2,000.00 or more than $5,000.00 to be fixed by said county commissioners' court, payable to the county judge for the benefit of adverse parties, at the time notice of appeal is given and said bond shall be filed with the clerk of said court within ten days thereafter. In the event of such appeal said cause shall be tried under the rules prescribed for practice in the district court, and to be de novo, and the clerk of the commissioners' court shall transfer to the clerk of the district court within ten days from the date of filing of an appeal bond such judgment and all records filed with the county commissioners' court, and it shall be unnecessary to file any other additional pleadings in said cause. The final judgment on appeal shall be certified to the commissioners' court for their action within ten days after same has become final. [Acts 1921, p. 19, sec. 4.]

Art. 7629. Election held within proposed district, when.—After hearing of the petition as provided for in Articles 7626 and 7627 of this Act, if the commissioners' court shall find in favor of the petitioners for the establishment of a district according to the boundaries as set out in said petition the county commissioners' court shall order an election to be held within said proposed district at which election there shall be submitted the following propositions: "For the Water Improvement District." "Against the Water Improvement District." "For the Issuance of Notes of said District." "Against the Issuance of Notes of Said District.", for the purpose of paying the cost of organizing, surveying, maps and plats, and all other indebtedness prior to the issuance of bonds and the election of five directors as is hereinafter provided. [Acts 2nd C.S., 1923, p. 26, sec. 5.]

Art. 7630. Time—where notices posted.—After ordering of the election as provided in the preceding article, notices of such election shall be given, stating the time and place or places of holding the election, and showing the boundaries of said proposed district, and such notices shall also show the presiding officer or officers appointed for the holding of said election. Such notices shall be posted in four places in such proposed district, and one shall be posted at the courthouse door of the county in which such proposed district is situated, such posting to be for twenty days previous to the date of the election and shall contain the proposition to be voted upon and names of offices to be filled at such election. [Acts 1917, p. 175, sec. 6.]

Art. 7631. Election; manner; voters; election officials; ballots, printing and form.—The manner of conducting elections herein provided for shall be governed by the general election laws of the State except as herein otherwise provided. At such election none but persons residing in the County wherein the District is located who own taxable real property within the District and who are qualified voters of the county under the laws of the State shall be entitled to vote. The County Commissioners' Court shall at the time of ordering said first election, by an order entered of record, create said proposed District, or the part thereof within said County, into one or more election precincts and shall name a polling place in each voting precinct, and shall appoint two judges and two clerks for each polling place, one of the judges to be designated as presiding judge. If any said officer so elected fail to serve, his place shall be filled in the manner provided by the general election laws. The court shall order printed one and one-half times as many ballots for said election as there are estimated to be qualified voters within such district. Said ballots for said election shall have printed thereon substantially the following:

"FOR WATER IMPROVEMENT DISTRICT"

"AGAINST WATER IMPROVEMENT DISTRICT"

"FOR ISSUANCE OF NOTES OF SAID DISTRICT"

"AGAINST ISSUANCE OF NOTES OF SAID DISTRICT"

and said ballot shall contain five blank lines upon which to write names of persons voted for, for the office of director with a heading:

"FOR DIRECTORS, FIVE TO BE ELECTED"

No other matter shall be placed on the ballot except the heading "Official Ballot". [Acts 2nd C.S., 1923, p. 26, § 7; Acts 1943, 48th Leg., p. 32, ch. 30, § 1.]

Art. 7632. Election precincts.—The election precincts herein provided to be created shall be and continue the election precincts of said district until changed by an order of the board of directors. [Acts 1923, 2nd C. S., p. 26, § 7.]

Art. 7633. Duty of tax collector.—It shall be the duty of the tax collector of the county before a water improvement district is formed, and of the tax collector of the district after its organization, to make a certified list of the property taxpayers of said district or part thereof in the county, and to furnish same to the officers of the election of each polling place, and before any person is entitled to vote at any election under this Act his name must appear in said certified list of property taxpayers; provided, however, that a qualified voter who is a property taxpayer in said district or proposed district, and whose name does not appear upon said list, shall be entitled to vote if he shall first take the following oath, to be administered by an election judge and which judges of the election are authorized to administer: "I do solemnly swear (or affirm) that I am a qualified voter under the laws of the State of Texas, and that I am a resident property taxpayer of ——— (inserting the name of the district) and I did not acquire such property prior to this election for the purpose of voting, but I am a bona fide property taxpayer. [Acts 2nd C. S., 1919, p. 67, sec. 8.]

Art. 7634. Court to canvass returns and declare result.—The officers of the election shall make returns for each polling place in the same manner as provided by law for general elections, and the county commissioners' court shall canvass said returns in the manner provided by law. If a majority of said votes be cast in favor of the organization of said district, then the court shall declare the result of said election in favor of the establishment of said district and shall enter same in the minutes of said court. If a majority of said votes be cast in favor of the issuance of notes of said district, then the court shall declare the result of said election in favor of the issuance of said notes, and it shall be the duty of the board of directors, when qualified to issue notes of the said district, in a sum not to exceed four per cent of the proposed cost of improvement to be made in said district, for the purpose of creating a fund to pay the cost of the organization of the district and the cost of all surveys, investigations, engineering, issuance of bonds, making and filing of maps and reports, all legal expenses connected therewith, and all other costs and expenses authorized or made necessary by the provisions of this chapter; and to sell said notes, or to exchange the same in payment of such costs and expenses. Said notes to be secured by the assessment, levy and collection of taxes as hereinafter provided for the assessment, levy and collection of taxes for the payment of the bonds of said district, provided, however, that all notes issued under the provisions of this article shall be paid off, satisfied and discharged out of the proceeds of the bonds when issued and sold. If bonds of said district are not voted at the election held for that purpose, then and in that event, the notes so issued shall continue in force and effect and shall be paid off, satisfied and discharged by the assessment, levy and collection of taxes to pay note issues. The court shall also canvass the votes for directors and declare the election of the five persons receiving the highest number of votes for said office; provided, that should it be found that two or more persons had received the same number of votes so as to make it a tie for the office between them, then the said court shall elect one of said persons to fill such position. In the event said district is composed of territory lying in two or more counties the said returns shall be canvassed and the result declared as hereinafter provided. [Acts 1923, 38th Leg., 2nd C.S., p. 26, ch. 11, § 3; Acts 1925, 39th Leg., ch. 205, p. 675, § 1.]

Art. 7634a. [Transferred.]

This article was Acts 1925, 39th Leg., p. 675, ch. 205, § 1, which amended Article 7634, ante, where text is now set out.

Art. 7635. Result entered in minutes.—If the result of said election be in favor of the establishment of the district, the county commissioners' court shall make and enter in the minutes of said court an order setting forth facts substantially as follows: "In the matter of the petition of ——— and others praying for the establishment of a water improvement district, as in said petition described and named ——— be it known that an election was called for that purpose in said district and held on the —— day of ———, A. D. ———, and a majority of the resident taxpayers voting thereat voted in favor of the creation of said district. Now, therefore, it is declared that said district has been legally established under the name of ———, with the following metes and bounds: (Here copy description of boundaries.)

When a district is created including territory in two or more counties the officer charged with the duty of declaring result of said election shall use substantially the same form. [Acts 2nd C. S., 1919, p. 68, sec. 10.]

Art. 7636. Bear name of county.—All districts lying wholly in one county shall include in its name the name of the county in which it is located as a part of its name, and shall be numbered consecutively as created and established. A district lying partly in two or more counties may include the names of said counties in its name or may adopt any appropriate name. [Id.]

Art. 7637. Numbers of districts.—The numbers of districts created hereafter shall not conflict with the numbers of irrigation or water improvement districts heretofore created, but shall be consecutively continued, and when a district lying in two or more counties has adopted a number as part of its name such number shall not be the same as that of any other district in either of said counties, and the numbers of districts created in either of said counties shall not conflict therewith. [Id.]

Art. 7638. Certified copies recorded.—After the making and entering by the commissioners' court of the order establishing such districts as herein provided, or an order changing the name of a district, the said court shall cause to be made a certified copy of such order, which shall be filed with the county clerk of the county in which such district is situated, and shall cause same to be duly recorded in the deed records of said county and properly indexed in the same manner provided for the recording and indexing of deeds, and such recordation shall have the same effect, in so far as notice is concerned, as is provided for the record of deeds, and all costs in connection with the making and recording of such copies shall be paid by the districts. [Acts 1917, p. 176, sec. 11.]

Art. 7639. Directors shall each make bond.—Within ten days after the making and entry of the order of the commissioners' court declaring the result of the election and the establishment of the district as hereinbefore provided, or as soon thereafter as is practicable, the directors elected at such election shall each make and enter into a good and sufficient bond in the sum of five thousand ($5,000.00) dollars each, payable to such district conditioned upon the faithful performance of their duties, to be approved by the commissioners' court. Provided, however, that after the organization of such district, all bonds required to be given by any director, officer or employee of such district shall be approved by the directors of such district, and said directors shall take the oath of office prescribed by statute for the commissioners' court, except that the name of the district shall be substituted for the name of the county in said oath of office; and the bond and oath herein provided for shall be filed with the county clerk of the county within which said district is situated and be by him recorded in the official bond record for said county, and after its record, said bond shall be delivered by the county clerk to the depository selected by such district under the provisions of this Act, and shall be by it safely kept and preserved as a part of the records of said district. [Id. p. 177, sec. 12.]

Art. 7640. Organization of directors.—The directors of such district shall organize by electing one of their number as president and one as secretary. The directors may elect a president pro tem, and a secretary pro tem, to act in the absence or inability of the president or secretary. Any three directors shall constitute a quorum at any meeting, and a concurrence of three shall be sufficient in all matters pertaining to the business of the district except the letting of construction contracts and drawing of warrants on the depository, which shall require the concurrence of four of such directors; provided, however, warrants to pay the current expenses, salaries, and labor and material accounts, may be drawn by an officer, or employee, designated by standing order of the directors, when such accounts have been contracted and ordered paid by the directors. [Acts 2nd C.S., 1919, p. 68, sec. 13.]

Art. 7641. Who eligible for director.—No person shall be elected a director of any district created under this Act unless he is a resident of the State of Texas and owns land subject to taxation within said district, and, who, at the time of such election, shall be more than twenty-one years of age. [Acts 1917, p. 177, sec. 14.]

Art. 7641—a. Amendments of act, application.—These amendments shall apply only to Water Improvement Districts operating under contract with the Department of the Interior of the United States of America, the major portion of the irrigation works for which district shall have been constructed under authority of the United States. [Added Acts 1939, 46th Leg., Spec.L., p. 1103, § 1.]

Art. 7641—b. Division of districts; election of directors; qualification of directors; change in boundaries.—At any time after this Act shall have become effective, the Board of Directors of such District may make an order dividing said District into divisions as nearly equal in size as practicable, being five (5) in number, which shall be numbered consecutively, and thereafter one Director shall be elected for each division by the qualified electors of the whole irrigation district.

All orders heretofore made by the Board of Directors dividing such District into five (5) divisions are hereby validated and confirmed, and all elections heretofore held for Directors from each of said divisions are also hereby validated and confirmed.

In addition to the qualification prescribed in Article 7641, such Director shall be the owner of land subject to taxation within such division.

The Board may, from time to time, change the boundaries of such division, in accordance with the requirements hereof; provided no such change shall be made within sixty (60) days of any election.

For the purpose of elections in such district, the Board of Directors shall establish a convenient number of election precincts, and define the boundaries thereof, which said precincts may be changed from time to time, at the discretion of the Board. [Added Acts 1939, 46th Leg., Spec.L. p. 1103, § 2, as amended Acts 1941, 47th Leg., p. 862, ch. 536, § 1.]

Art. 7642. Qualifications of tax assessor and collector.—The office of Tax Assessor and Collector is one office to be filled by one person. The Tax Assessor and Collector shall be appointed by the directors or, if the directors so order, may be elected by an election held for that purpose. He shall qualify by making and [1] entering into a good and sufficient bond, signed also by two good and sufficient sureties, to be approved by the Board of Directors, in the sum of Five Thousand ($5,000.00) Dollars conditioned for the faithful performance of his duties as Tax Assessor and Collector and for the paying over to the depository all funds or sums of money or other thing of value, coming into his hands as such Collector. The directors may require additional bonds or bond in larger amount or additional security at any time that same may be advisable in their judgment. [Acts 2nd C.S. 1919, p. 69, § 15; Acts 1931, 42nd Leg., p. 794, ch. 321, § 1.]

[1] So in enrolled bill. Session Laws read "an".

Art. 7643. Salary of tax assessor and collector.—The compensation to be paid the tax assessor and collector, or deputy tax assessor and collector shall be fixed by the board of directors, but shall not exceed $3,000.00 per year. One or more deputies may be appointed by the board of directors to assist the tax assessor and collector for such time not to exceed one year as may be ordered by the board. Such deputies shall perform such duties as the board may order and may be discharged at any time by the board. The amount of bond given by such deputies shall be determined at the time of their appointment or as occasion may require. The board of directors may require the tax assessor and collector to perform other duties than those herein fixed and may fix his additional compensation, if any, therefor. [Acts 2nd C.S. 1919, p. 69, § 15.]

Art. 7644. Additional bond required.—In case any district organized hereunder is appointed fiscal agent of the United States, or by the United States is authorized to make collections of money for and in behalf of the United States in connection with any Federal reclamation project, such assessor and collector and each director, shall execute a further additional bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of the duties of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under such appointment or authorization; such additional bonds to be approved, recorded and filed as herein provided for other official bonds, and any such additional bonds may be sued on by the United States or by any person injured by the failure of such officer or the district, to fully, promptly and completely perform their respective duties. [Id.]

Art. 7645. Survey of boundaries.—It shall be the duty of the directors, immediately after they qualify as such, to cause an actual survey of the boundaries of such district to be made according to the boundaries designated in the petition for the establishment of such district, or to adopt in whole or in part such boundaries where already established, and to have said boundary marked by suitable monuments. [Acts 1917, p. 178, sec. 16.]

Art. 7646. Petition to exclude lands.—The owner or owners of the fee of any land constituting a portion of any district may file with the board of directors of such district a petition praying that certain lands owned by them be excluded from and taken out of said district. The petition shall describe the lands which the petitioners desire to have excluded by metes and bounds and such petition must be acknowledged in the same manner and form as is required by law for the conveyance of real estate. Such petition may be filed at any time prior to the issuance of bonds by such district. [Acts 2nd C. S., 1919, p. 69, sec. 17.]

Art. 7647. Notice of hearing.—Upon the filing of a petition for the exclusion of any lands from said district with the board of directors, they shall immediately set said petition down for hearing for a day certain, not to exceed twenty days, however, from the date of the filing thereof, and shall cause notice of such hearing to be given by the posting of written or printed notices of the time and place of such hearing at three public places within said district. Such notice shall contain a copy of the petition for exclusion, and shall be posted for at least eight days prior to such hearing. [Acts 1917, p. 178, sec. 18.]

Art. 7648. Decision after hearing.—The board of directors, at any time and place designated in such notice, or at such time and place as such hearing may from time to time be adjourned to, shall proceed to hear the petition and all objections thereto, and shall determine whether or not said lands, or any portion thereof, shall remain as a portion of said district or be excluded therefrom; and if upon such hearing the directors shall determine that the land desired to be withdrawn or any portion thereof is not susceptible to irrigation by gravity from the system to be provided, or for other reasons should be allowed to be withdrawn, then such lands shall be excluded by granting such petition in whole or in part, and such excluded lands and the owners thereof thereby waive all right to be served with water from such irrigation system or by said district. [Acts 2nd C. S., 1919, p. 70, sec. 19.]

Art. 7649. Petition filed.—The owner or owners of the fee to lands in the same vicinity of, but not necessarily contiguous to, any District heretofore or here-

after created under this Act, may file with the Board of Directors of said District a petition in writing, praying that such land be included in such District. The petition shall describe the tract or body of land owned by the petitioners by metes and bounds and upon the filing of such petition with the Board of Directors, said Board of Directors shall cause an accurate survey of the said tract of land to be made and the boundaries thereof marked upon the ground, and said tract of land may be admitted as a part of the District; provided it can be irrigated without prejudice to the rights of any of the lands originally contained therein to be first furnished with an adequate supply of water, and when said lands are so admitted they shall immediately become subject to their proportionate share of any taxation or bonded indebtedness that may have been created against said District and subject to such reasonable charge against such lands for the purpose of defraying its part of the expenses of maintenance, operation or other necessary expenses previously made as may be determined by the Board of Directors. [Acts 1917, p. 179, § 20; Acts 1929, 41st Leg., 1st C.S., p. 204, ch. 81, § 1.]

Art. 7650. Application recorded.—If the lands described in said petition are admitted as a part of the district, the application for such admission shall be signed and acknowledged as provided for deeds, and shall be recorded in the deed records of the county in which such district is situated, together with the order of the directors endorsed thereon. [Acts 1917, p. 179, § 20.]

Art. 7651. Consent necessary.—No land shall be added to any irrigation district with which contract with the United States shall have been made without the written consent of the Secretary of the Interior. [Id.]

Art. 7652. Directors to control district.—The board of directors herein provided for shall have control over and management of all the affairs of such district, shall make all contracts pertaining thereto, and shall employ all necessary employees for the proper handling and operating of such districts, and especially may employ a general manager, an assessor and collector, attorneys, a bookkeeper, an engineer, water master and such other assistants and such other laborers as may be required, and they may also buy all necessary work animals, motors, pumps, engines, boilers, machinery and supplies as may be required in the erection, operation and repair of the improvements of the districts; a director may be employed as general manager, and at such compensation as may be fixed by the other four directors and when so employed he shall also perform the duties of a director, but he shall not receive the compensation in this Act provided to be paid to directors. [Id. sec. 21.]

Art. 7652a. Rules and regulations as to recreational and business privileges; penalties.

Rules and regulations; license or franchise

Sub-Sec. 1. The Board of Directors of such Districts shall have and are hereby clothed with the power and authority to adopt and promulgate all such reasonable rules and regulations as are deemed necessary for preserving the sanitary condition of all waters controlled by the District, to prevent waste of water, or the unauthorized use thereof, to regulate residence, boating and camping and all recreational and business privileges upon any body of water, and any body of land owned or controlled by such Districts, including the sole and exclusive right to make contracts with responsible persons, corporations or associations for the construction and operation of toll bridges over such water or for ferry service or other means of transportation of passengers on or over such waters, (to cover periods of time not to exceed twenty (20) years in the case of a bridge, and not to exceed ten (10) years in the case of a ferry or other means of passenger transportation), with authority to fix the compensation to be charged for service of any such facility or means of transportation, to the end that the same may be reasonable, and to require adequate bond or bonds from any such contracting person, corporation or association, payable to the District to be of such amount not to exceed the sum of One Thousand ($1,000.00) Dollars and conditioned as the Board of Directors of said District may reasonably require, and such contracts may provide for forfeiture of the particular franchise or rights granted by any such contracts in case of a failure of the licensee or other contracting parties to render adequate and safe public service; and such Districts are hereby empowered to prescribe the kind and character of boats used on said waters for the carrying of persons for hire, or used for recreational purposes, and may require the owners thereof to submit such boat or boats to inspection at such reasonable times as the Board of Directors of such Districts may prescribe in order to test the serviceability thereof; and such Districts are hereby empowered to prescribe reasonable requirements for the use and the manner of use of such boat or boats in order to safeguard the life and lives of the occupants thereof, and safeguard the life or lives of any person or persons making lawful use of such waters; and it shall be unlawful for any person, corporation or association to keep or operate any such ferry or other means of transportation on or over said water for hire without first procuring a license or franchise for such transportation from the Board of Directors of such District; provided that no fee or tax for the granting of such license or franchise shall exceed the sum of Two Hundred Fifty ($250.00) Dollars per year. The Board of Directors of any such District shall be authorized to fix the rates to be charged for such franchise or license, according to the kind and character of boats employed in such means of passenger transportation. The owner or operator of any such boat or boats, shall keep same at all times in good, sufficient and safe condition for the use of such ferriage and other means of transportation, and shall at all times keep the approaches to the landings of such boat or boats in good and safe condition. No liability shall rest on such District on account of any negligent act or failure of duty of the owner or operator of any such boat. The foregoing powers hereby authorized to be exercised are conferred upon said Districts and their Board of Directors, in order to properly maintain the purity of said waters and to safeguard their proper preservation and use, and, also, to safeguard the lives of persons who may desire to go on, over or across said waters, and to insure the safety of all persons lawfully using said waters.

Violations; publication of rules and regulations

Sub-Sec. 2. Any violation of the provisions of this Act, or such rules and regulations, after due promulgation thereof as hereinafter provided for, shall be unlawful, and shall be punished by a fine not to exceed the sum of One Hundred ($100.00) Dollars, or imprisonment in the county jail of the county where such offense takes place, for a time not to exceed thirty (30) days, or by both such fine and imprisonment. The penalties hereby authorized shall be in addition to, but not exclusive of any other penalties provided by the laws of the State of Texas, and may be enforced by complaints filed in the appropriate Court of jurisdiction in the county in which the District's principal office is located; provided, however, that no rule or regulation which provides a penalty for the violation thereof shall be in effect, as to enforcement of the penalty, until five days after the District may have caused a substantive statement of the particular rule or regulation, and the penalty for the violation thereof to be published, once a week for two consecutive weeks,

in one or more newspapers affording general circulation in the area in which the property of the District is situated; and, the substantive statement so to be published, shall be as condensed as is possible to afford an intelligent direction of the mind to the object sought to be accomplished or the act forbidden by the rule or regulation; one notice may embrace any number of regulations; there must be embraced in the notice advice, that breach of the particular regulation, or regulations, will subject the violator to the infliction of a penalty, and there also shall be included in the notice advice, that the full text of the regulations sought to be enforced is on file in the principal office of the District where the same may be read by any interested person. Five days after the second publication of the notice hereby required, the advertised regulation shall be in effect, and ignorance of any such regulation shall not constitute a defense to a prosecution for the enforcement of a penalty; and, the rules and regulations authorized hereby, after the required publication, shall judicially be known to the courts and shall be considered of a nature like unto that of valid penal ordinances of a city of the State.

Peace officers

Sub-Sec. 3. It further is expressly provided that such Districts shall have the power to employ and constitute their own peace officers, with power to make arrests when necessary to prevent or abate the commission of any offense against such regulations of the Districts, and against the laws of the State of Texas, when any such offense, or threatened offense, occurs upon any land or water owned or controlled by the District; or, to make such arrest at any place, in case of an offense involving injury or detriment to any property owned or controlled by such district.

Injunction

Sub-Sec. 4. In addition to the penalties hereinbefore provided for any such Water Improvement District is, also, authorized and empowered to resort to the remedy of an injunction to be issued out of any court of competent jurisdiction in the county where its waters are located, to enforce the provisions hereof, and any such lawful and reasonable rules and regulations herein provided for.

Partial invalidity

Sub-Sec. 5. If any part or provision of this Act shall be held unconstitutional, it shall not affect the validity of any other provision or part of this Act. [Acts 1917, 35th Leg., p. 179, ch. 87, § 21a, as added Acts 1935, 44th Leg., p. 689, ch. 293.]

The Act of 1935, cited to the text, purported to amend section 21 of Acts 1917, 35th Leg., p. 179, ch. 87, by adding thereto section 21a as now set out in the text. In effect, the amendatory Act of 1935 added section 21a to the Act of 1917.

Art. 7653. Contract with United States.—The board of directors, on behalf of said district, may enter into any obligation or contract with the United States for the construction, operation and maintenance of the necessary work for the delivery and distribution of water therefrom, or for the drainage of district lands or for the assumption of indebtedness to the United States for district lands, or for the temporary rental of water from the United States for district lands or a part thereof, under the provisions of the Federal Reclamation Act, and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any Act of Congress providing for or permitting such contract, and in case contract has been or hereafter may be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety (90) per cent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contracts, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment now provided for by law, an amount sufficient to meet each year all payments accruing under the term of any such contract; and the board may accept on behalf of the district appointment of the district as fiscal agent of the United States in connection with any Federal reclamation project, whereupon the district shall be authorized to so act, and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the Federal statutes now or hereafter enacted in connection therewith and all things required by the rules and regulations now or that may hereafter be established by any department of the Federal Government in regard thereto. [Acts 1917, p. 179, § 21.]

Art. 7653a. Contracts with other water improvement districts.—The Board of Directors, on behalf of said district, may enter into any obligation or contract with any other Water Improvement District, Water Control and Improvement District or any Conservation and Reclamation District for the construction, operation and maintenance of the necessary works for the delivery and distribution of water therefrom, or for the drainage of district lands; and the Board of Directors may contract with such other Water Improvement District, Water Control, and Improvement District or Conservation and Reclamation District for a water supply to be pumped and supplied by such other district, on such terms and conditions as may be agreed on by the Boards of Directors of said contracting districts, and may purchase or make any improvements necessary to receive and distribute such water supply to the lands in said district for the purposes for which such district was organized.

The terms and conditions of such contracts shall not conflict with the provisions of law providing for the organization and conduct of districts but may include provisions for joint construction and operation of the necessary works for the delivery and distribution of said water supply. Such contracts may be amended by mutual agreement of the Boards of directors of the contracting districts.

Such contracts shall be in writing, shall be acknowledged, in the same manner and form as is required by law for the conveyance of real estate and shall be recorded in the real estate records of the county or counties in which such districts are situated. Such districts may issue bonds and expend the proceeds thereof to effectuate the purposes herein set forth and in payment of the obligations of said contracts.

Such bonds may be issued either separately or as part of a general bond issue of the district, in the manner and subject to all the regulations, terms, conditions and provisions of other bonds authorized to be issued under the terms of this Chapter, and of the Acts amendatory thereof and supplementary thereto, except as in this Act otherwise provided. [Acts 1929, 41st Leg., 2nd C.S., p. 7, ch. 6, § 2.]

Section 3 of this Act repeals all conflicting laws and parts of laws.

Art. 7653b. District contracts validated.—Where districts organized under this Chapter have heretofore entered into contracts such as are authorized in this Act, said contracts and all acts and proceedings connected therewith are hereby confirmed, ratified and validated, as of the respective times and dates of such contracts, acts and proceedings, with like effect as though at the time said contracts were entered into and said acts and proceedings were done or

had there existed Statutory authority therefor, and all bonds voted or issued by said districts for the purpose of securing, complying and carrying out the terms of, said contracts are hereby validated and declared to be legal and binding obligations of such several districts, according to their terms, and such bonds may be issued and sold in the form and manner and at the price and under the conditions prescribed by law. [Acts 1929, 41st Leg., 2nd C.S., p. 7, ch. 6, § 2.]

Section 3 of this Act repeals all conflicting laws and parts of laws.

Art. 7654. Directors prohibited—interest.—No director of any such district, engineer or employees thereof shall be, directly or indirectly, interested either for themselves or as agents for any one else in any contract for the purchase or construction of any work by said district, and if any such person shall, directly or indirectly, become interested in any such contract he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine in any sum not to exceed one thousand ($1,000.00) dollars, or by confinement in the county jail not less than six months nor more than one year, or by both such fine and imprisonment. [Acts 1917, p. 180, § 22.]

Art. 7655. Districts sued.—All districts established under the provisions of this Act may sue and be sued in any and all courts of this State in the name of such district, and all courts of this State shall take judicial knowledge and notice of the establishment of such district and the boundaries thereof, and such districts shall contract and be contracted within the name of such districts. [Acts 2nd C. S., 1919, p. 70, sec. 23.]

Art. 7656. Districts empowered.—Districts created under the provisions of this Act are hereby empowered to own and construct reservoirs, dams, wells, canals, etc., and to acquire the necessary rights of way for and buy or construct all reservoirs, dams, wells, canals, laterals, sites for pumping plants and all other improvements required for the irrigation of the lands in such district by gift, grant, purchase or condemnation, and they may acquire the title to any and all lands necessary or incident to the successful operation thereof, in addition to any of the above, in the manner provided, including the authority by purchase or condemnation, to acquire rights of way for the enlargement, extension or improvement of any existing canals, or ditches for the purpose of raising such canals and ditches jointly with the owners thereof. [Id. p. 227, sec. 24.]

Art. 7657. Property conveyed to United States.—Any property acquired may be conveyed to the United States in so far as the same shall be necessary for the construction, operation and maintenance of works by the United States for the benefit of the district under any contract that may be entered into thereunder. [Id.]

Art. 7658. Assessor and collector to make assessment.—Immediately upon the qualification of the assessor and collector, as hereinbefore provided, he shall enter upon the discharge of his duties, and shall at once proceed to make an assessment of all the taxable property, both real, personal and mixed, in his said district; and such assessment shall be made annually thereafter. [Acts 1917, p. 181, sec. 25.]

Art. 7659. Contents of assessment.—Said assessment shall be made upon blanks to be provided by the directors for such district. Said assessment shall consist of a full statement of all property owned by the party rendering same in said district and subject to taxation therein, and shall state the full value thereof. There shall be attached to each such assessment an affidavit made by the owner or his agent rendering said property for taxation to the effect that said assessment or rendition contains a true and complete statement of all property owned by the party for whom said rendition is made in said district and subject to State and county taxation therein; and in addition to all such assessments or renditions made by the owner or agents of such property, the tax assessor shall make out similar lists of all property not rendered for taxation in such districts that is subject to State and county taxation therein. [Id.]

Art. 7660. Rendition of taxable property.—Each and every person, partnership or corporation owning taxable property in such district shall render same for taxation to the assessor when called upon so to do, and if not called upon by the assessor, the owner shall on or before June 1 of each year nevertheless render for taxation all property owned by him in the district subject to taxation. And all laws and penal statutes of this State providing for securing the rendition of property for State and county taxes, and providing penalties for the failure to render such properties shall apply to all persons, partnerships or corporations owning or holding property in any such district. The tax assessors shall have authority to administer oaths to fully carry out the provisions of this section. [Id.]

Art. 7661. Board of Equalization.—The directors for such district created under the provisions of this Act shall, at their first meeting, or as soon thereafter as practicable, and annually thereafter, appoint three commissioners, each being a qualified voter and resident property owner of said district, who shall be styled "The Board of Equalization," and at the same meeting the same board of directors shall fix the time for the meeting of such Board of Equalization for the first year; and said Board of Equalization shall convene at the time fixed by the directors to receive all assessment lists or books of the assessor for said district for examination, correction, equalization, appraisement and approval, and at all meetings of said Board the secretary of the board of directors shall act as secretary thereof and keep a permanent record of all the proceedings of said Board of Equalization. [Id. sec. 26.]

Art. 7662. Oath.—Before entering upon the duties as such Board of Equalization, each of the members thereof shall take and subscribe the following oath: "I ..... do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, equalization and appraisement of all property contained within said district, as shown by the assessment lists or books of the assessor of said district, and add thereto all property not included therein of which I have knowledge," and said oath shall be spread upon the minutes to be kept by the secretary of the Board. [Id. p. 182, sec. 27.]

Art. 7663. Board to examine assessment lists.—The Board of Equalization herein provided for shall cause the assessor to bring before them, at the time fixed for the convening of said Board, all the assessment lists or books of the assessor of said district for their examination, that they may see that each and every person has rendered his property at its full value; and said Board shall have power to send for persons and papers to swear and qualify persons who testify, to ascertain the value of such property, and if they are satisfied it is too high, they shall lower it to its proper value; and if too low they shall raise the value of such property to a proper figure. Said Board shall have power to correct any and all errors that may appear on the assessors lists or books, and shall have further authority to add any and all property to said lists of inventories that may have been omitted therefrom. [Id. sec. 28.]

Art. 7664. May file complaint.—The Board of Equalization shall equalize, as near as possible the value of all property situated within said district,

having reference to the location of said property and the improvements thereon situated. Any person may file with the said Board at any time before the final action of said board, a complaint as to the assessment of his or any other person's property, and said Board shall hear said complaint, and said complainant shall have the right to have witnesses examined to sustain said complaint as to the assessment of said property, or as to a failure to render any property owned by any person, partnership or corporation situated within said district subject to taxation which has not been properly assessed. [Id. sec. 29.]

Art. 7665. Certified list furnished.—The assessor for such district, at the same time that he delivers to said Board his lists and books, shall also furnish to said Board a certified list of the names of all persons who either refuse or swear to or to sign, the oath or affirmation as required by this law, together with the list of the property of such persons situated within said district who have failed or refused to list their property, as made by him through other information, and said Board shall examine the list and appraise the property so listed by the assessor. [Id. sec. 30.]

Art. 7666. Board to adjourn—serve notice.—In all cases where the Board of Equalization shall find it their duty to raise the value of any property appearing on the lists or books of the assessor or to add property omitted therefrom, they shall, after having fully examined such lists or books, and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said Board to give a written notice to the owner of such property, or to the person rendering same, of the time to which said Board may have adjourned, and that such owner or person may at that time appear and show cause why the value of such property should not be raised, which notices may be served by depositing the same, properly addressed and postage paid, in any post office within the county. [Id. p. 183. sec. 31.]

Art. 7667. Board to lower property value.—The Board of Equalization shall meet at the time specified in said order of adjournment and shall hear all persons the value of whose property has been raised; and if said Board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value; and said Board of Equalization, after they have finally examined and equalized the value of all the property on the assessors lists or books or that may have been placed thereon by said Board of Equalization, shall approve said lists or books and return them, together with the lists of unrendered property to the assessor that he may make up therefrom his general rolls as required by this Act; and when said general rolls are so made up the Board shall immediately reconvene to examine said rolls and approve the same if found correct; and the action of the Board at the meeting last provided for in this article shall be final and shall not be subject to revision by said Board or by any other tribunal thereafter. [Id. sec. 32.]

Art. 7668. Compensation.—The members of the Board of Equalization and the secretary while acting as secretary of said Board, shall receive such compensation for their services as may be fixed by the board of directors of the district, not to exceed, however, the sum of six dollars per day for the time actually engaged in the discharge of such duties. [Acts 2nd C. S., 1919, p. 70, sec. 33.]

Art. 7669. Permanent record.—After the return to the assessor and collector of the assessment lists and books duly approved by the Board of Equalization, as hereinbefore provided for, the said assessor and collector shall make up the assessment of all taxable property situated in said district upon duplicate rolls and after the approval of said rolls by the Board of Equalization, he shall retain one of same in his office and shall deliver the other copy to the directors of said district, to be kept by them as a permanent record in their office, and all lists and books of said assessor shall be caused to be substantially bound and by him kept as a permanent record of his office, and be delivered, together with all other records of his office, to his successor, upon his election and qualification, or, in case of a vacancy in such office to the directors for said district. [Acts 1917, p. 183, sec. 34.]

Art. 7670. Assessors report.—The assessor and collector shall collect all taxes due to said district, and shall, at the expiration of each week, pay over to the depository selected by said district all moneys by him collected, and shall report to the directors for such district on the fourth Saturday in every month all moneys so collected by him and paid over to the depository as hereinbefore provided, and shall perform all such other duties, and in such manner and according to such rules and regulations as the board of directors may prescribe and for the convenience of the persons, firms or corporations owning such tax, shall keep and maintain an office with the board of directors for such district, where all such taxes may be paid. [Id. sec. 35.]

Art. 7671. Credit.—The assessor and collector shall be charged by the directors for such district, upon a permanent finance ledger to be kept for said purpose by said district, with the total assessment as shown by the assessment rolls; and proper credit shall be given to the assessor and collector for all sums of money paid over to the depository, as shown by his monthly reports as hereinbefore provided for, and upon the final annual settlement, the said assessor and collector shall make up a full complete report of all taxes that have not been collected, which said report shall be audited by said board of directors, and proper credits given therefor, and such annual settlements shall be made on the first Monday in September of each year. [Id. p. 184, sec. 36.]

Art. 7672. Assessment date.—The assessment provided for in this Act shall be made upon all property subject to taxation in said district on the first day of January of each year, and such assessment shall be completed and the lists and books ready to deliver on or before the first day of June of each year. [Id. sec. 37.]

Art. 7673. Board convene annually.—The Board of Equalization, after the first year, shall convene annually on the first Monday in June of each year to receive all of the assessment lists or books of the assessor of said district for examination, correction, equalization, appraisement and approval, and for the addition thereto of any property found to be unrendered in said district and shall complete and deliver said lists and rolls to the assessor and collector by the third Monday in July of said year, and the said assessment rolls shall be completed by the assessor and approved by the Board of Equalization, and returned to said assessor and collector by the first Monday in October of each year after the first assessment as hereinbefore provided. [Id. sec. 38.]

Art. 7674. Taxes due—payable.—All taxes provided for by this Act shall become due and payable on the 1st day of November of each year, and shall be paid on or before the 31st day of January thereafter; provided that in all Water Improvement Districts lying wholly or in part in any county, having a population as shown by the United States Census of 1930, of not less than 74,000 and not over 75,000, all taxes provided for by this Act for the Calendar year 1930 and for each Calendar year thereafter, shall become due on the first

day of November of each year, and shall be payable as follows: unless one-half of the taxes so levied shall be paid on or before the 31st day of January next thereafter, the entire taxes levied for such Calendar year shall become delinquent on said date. If the first one-half of such taxes levied as aforesaid shall have been paid on or before the 31st day of January aforesaid, the second half of such taxes shall become delinquent on the 31st day of July next thereafter. [Acts 1917, p. 184, § 39; Acts 1931, 42nd Leg., p. 741, ch. 290, § 1; Acts 1931, 42nd Leg., Spec.L., p. 2, ch. 2.]

Art. 7675. Taxes remain lien.—All lands and other property which have been returned delinquent, during the existence of such district, shall be subject to the provisions of this Act, and said taxes shall be and remain a lien upon said land, and upon all other property against which same were assessed, although the owner be unknown or though such land be listed in the name of a person not the actual owner, and though the ownership be changed the land may be sold under the judgment of the court for all taxes, interest, penalty, and costs shown to be due by such assessment for any preceding year or years, provided the record owner of such land or lands at the date of filing such suit be made a party to such suit and be properly cited, and such districts shall have authority to file suits for the collection of taxes due upon land and also personal property or property of any character. No law providing for a period of limitation on debt or actions shall apply to such taxes, accruing after the formation of such district. [Acts 1st C. S., 1921, p. 149, sec. 40.]

Art. 7675a. Assessment lien; not barred by limitation.—All assessments made by the directors of a water improvement district as provided by law for the maintenance and operation thereof, shall be and constitute a lien against the land on which such assessments are made and remain a lien thereon until same are paid and satisfied, and no law providing for a period of limitation against actions for debt shall apply thereto. Same shall not be barred by limitation. [Acts 1925, 39th Leg., ch. 152, p. 362, § 4.]

Art. 7676. District no right to become party.—No district created or existing or to be created under the provisions of this chapter shall have the right to become a party to or purchase, or hold under or assign or seek to enforce or receive the fruits or benefits from any contract between any land owner and private canal company or corporation made prior to the formation of such district, but all rights and privileges owned or possessed by such district are those arising or inherent in such district by virtue of this chapter. The statutes of limitation of two years as well as the provisions hereof may be pleaded in bar of all actions for the recovery of water rents or other assessments accruing on land in such district prior to the formation of such district and cannot acquire or enforce any lien against such land fixed by any contract existing prior to the formation of such district and cannot prosecute or cause to be prosecuted for it any suit or cause of action or claim of any character for its use for the recovery of any such water taxes or assessments accruing prior to the formation of such district and cannot foreclose any lien on such lands by reason of such unpaid water assessments and taxes accruing prior to the formation of such district and cannot avail itself of any rights under any private contracts made with reference to said lands prior to the formation of such districts, and cannot be held liable for the breach of any such contract. [Acts 1st C. S., 1921, p. 150, sec. 40a.]

Art. 7677. Delinquent tax record.—It shall be the duty of the Directors for such District to cause to be prepared by the Tax Collector, or at the expense of such District a list of lands upon which the taxes remain unpaid on the 31st of January of each year, and such list of lands shall be known as a delinquent tax roll, and such delinquent tax roll shall be delivered to the secretary of such District to be by him safely kept as a part of the record of his office. Such delinquent record shall carry a sufficient description to properly identify the land shown to be delinquent therein. Such description may be made by reference to lot or block number. Provided, that in Water Improvement Districts lying wholly or in part within any county having a population according to the United States Census for 1930, of not less than 74,000 and not more than 75,000, it shall be the duty of the Directors of such District to cause to be prepared by the Tax Collector, or at the expense of such District, a list of all lands upon which the taxes remain unpaid on the 31st day of January, and the 31st day of July, respectively, of each year, and such list of said land shall be known as a delinquent tax roll and such delinquent tax roll shall be delivered to the Secretary of such District to be by him safely kept as a part of the records of his office. Such delinquent record shall carry a sufficient description to properly identify the land shown to be delinquent therein. Such description may be made by reference to lot or block number. The delinquent tax roll of July 31st may have combined with it the delinquent tax roll of the 31st day of January of that year. [Acts 1917, p. 184, § 41; Acts 1931, 42nd Leg., p. 741, ch. 290, § 1; Acts 1931, 42nd Leg., Spec.L., p. 2, ch. 2.]

Art. 7678. How recorded.—Upon receipt of such delinquent tax roll by the directors of said district, the said directors shall cause said record to be recorded in a book which shall be labeled "The Delinquent Tax Record of ——— County, Water Improvement District No. ———," and shall be accompanied by an index showing the name of delinquents in alphabetical order.

Art. 7679. Publication of delinquent tax record.—Upon the completion of said delinquent tax record by any such district, it shall be the duty of the directors thereof to cause the same to be published in some newspaper published in the county in which said district is situated for three consecutive weeks, but if no newspaper is published in the county, such lists may be published in a newspaper outside of the county to be designated by such directors by a contract entered into, and a publisher's fee of not to exceed twenty-five ($.25) cents for each tract of land so advertised and said publication, and any other publication, in a newspaper provided for in this Act may be proven by the affidavit of the proprietor of the newspaper in which the publication was made, his foreman or principal clerk, annexed to a copy of the publication specifying the time when and the paper in which the publication was made.

Art. 7680. Attorney to bring suit.—Twenty days after the publication of such notice or as soon thereafter as practicable, the directors for such water improvements or irrigation shall employ an attorney to bring suit in the name of the district in the district court of said county for the purpose of collecting all taxes, interest, penalty, and costs due upon said land. Said petition shall describe all lands upon which taxes and penalties shall remain unpaid and the total amount of taxes and penalties due thereon with interest computed to the time fixed for the sale of said land at the rate of six (6%) per cent per annum, and shall pray for a judgment for said amount, and for the fixing, establishing and foreclosing of the lien existing against such land; that said lands be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief to which such district may be entitled under the law and facts. All suits to enforce the collection of taxes as provided in this Act shall take precedence and have priority over all other suits pending in the district court

Art. 7681. Parties defendants.*—The proper persons shall be made parties defendants in all such suits and shall be served with process and other proceedings due therein as provided by law for suits of like character in the district court of this State, and in case of foreclosure, order of sale shall issue thereunder as in other cases of foreclosure; but if the defendant or his attorney shall, at any time before the sale, file with the sheriff or other officer in whose hands any such order of sale shall be placed a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivision as the defendant may request, provided same are reasonable, and in such case, shall sell only as many subdivisions as may be necessary to satisfy the judgment, interest, penalties and cost, and after the payment of the taxes, interest, penalties and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff or other officer executing said order of sale to the defendant or his attorneys of record. [Acts 1917, p. 185, § 45.]

*Repealed in part, Rules of Civil Procedure, Rule 117a.

Art. 7682. Deed to purchaser.—In all cases in which lands may be sold for default in the payment of taxes under the preceding section, it shall be lawful for the sheriff or other officers selling the same or any of his successors in office, to make a deed or deeds to the purchaser, or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this State to vest a good and perfect title in the purchaser thereof subject to be impeached only for actual fraud. [Id. p. 186, sec. 46.]

Art. 7683. Attorneys compensation.—The attorneys representing such district in all suits against delinquent taxpayers that are provided for in this Act shall receive for such service such compensation to be paid out of delinquent taxes collected, as may be allowed by the directors for such district; provided, however, that in no event shall said fee exceed fifteen (15%) per cent of the amount of taxes so collected. The sheriffs, district clerks and other officers, executing any writ or performing any service in the foreclosure of delinquent taxes on any lands situated in such district shall receive the same fees for such services as is provided by statute as fees for like services performed in connection with the discharge of the duty of their respective offices. [Id. sec. 47.]

Art. 7683a. Attorney's fees added to taxes; publication not necessary.—When a water improvement district shall employ an attorney to collect delinquent taxes, the fees of said attorney as fixed under the provisions of Section 47, Acts of 1917, by the board of directors shall be added to such taxes to the extent of not to exceed 10% of the amount of such delinquent taxes as collection fees and may be recovered in the judgment rendered in any such tax suit. The publication of the delinquent tax rolls shall not be a prerequisite to the filing of tax suits by a district and such suits may be filed without the publication thereof. [Acts 1925, 39th Leg., ch. 152, p. 362, § 2.]

Art. 7684. Interest on delinquent taxes.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by this Act until after the 31st day of January next succeeding the return of the assessment roll for said District, a penalty of ten (10%) per cent on the entire amount of such tax shall accrue which penalty when collected shall be paid over to such District. Such delinquent taxes shall bear interest from August 1st after due at the rate of six per cent per annum. And the Collector of Taxes shall, by virtue of his tax roll seize and levy upon and sell so much personal property as shall be sufficient to make the amount of such taxes together with the penalty above provided, interest thereon at the rate of six (6%) per cent per annum and all costs accruing thereon. If no personal property be found for seizure and sale as above provided, the Collector shall make up and file with the Secretary of the District the delinquent tax list hereinbefore provided for, charging against same all taxes, penalties and interest assessed against same and the owner thereof. Provided, that in Water Improvement Districts lying wholly or in part within any county which has a population according to the United States Census, 1930, of not less than 74,000 and not more than 75,000, any person shall fail or refuse to pay one-half of the taxes imposed upon him under the provisions of this Chapter for the Calendar year 1930, and for each calendar year thereafter, on or before the 31st day of January next thereafter, the entire taxes levied for such Calendar year shall become delinquent on said date, and a penalty of 10 per cent on the entire amount of such taxes shall accrue, which penalty when collected shall be paid over to such District. If the first half of the taxes levied as aforesaid shall have been paid on or before the 31st day of January, as aforesaid, the second half shall become delinquent on the 31st day of July next thereafter, and a penalty of 10 per cent on the entire balance of such taxes so delinquent shall accrue, which penalty when collected shall be paid over to such District. All delinquent taxes shall bear interest from August 1st after due at the rate of 6 per cent per annum. No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation under the law to appear at the Tax Collector's office and pay his taxes and if any person neglects so to pay his taxes until after they have become delinquent, the same shall be collected in the manner provided by law, and the Tax Collector of such District shall, by virtue of his tax rolls, seize and levy upon and sell so much personal property as shall be sufficient to make the amount of such taxes, together with the penalty above provided, interest at the rate of six per cent per annum, and all costs accruing thereon. If no personal property be found for seizure and sale as provided, the Collector shall make up and file with the Secretary of the District the delinquent tax lists hereinbefore provided for, charging against same all taxes, penalties and interest against same and the owner thereof. [Acts 1917, p. 186, § 48; Acts 1931, 42nd Leg., p. 741, ch. 290, § 1; Acts 1931, 42nd Leg., Spec.L., p. 2, ch. 2.]

Section 2 of Acts 1931, 42nd Leg., p. 741, ch. 290, repeals all conflicting laws and parts of laws, but shall not affect Laws 1931, 42nd Leg., p. 3, ch. 3, §§ 1-6, which was a temporary act relating to the postponement of the collection of the taxes for 1930 to Oct. 15, 1931 other than incorporated cities and towns and poll taxes.

Art. 7684a. Remittance of penalties and interest on delinquent taxes.—The board of directors of any water improvement district or any water control and improvement district within this State may, by resolution, remit, in whole or in part, the penalties and interest on all ad valorem taxes heretofore levied by such district and now delinquent, and/or past due and unpaid, and which are paid on or before December 31, 1933. [Acts 1933, 43rd Leg., p. 211, ch. 95.]

Art. 7684—b. Penalties for failure to pay taxes within time prescribed.—If any person fails to pay the taxes imposed by law upon him or his property, under Chapter 2 of Title 128 of the Revised Civil Statutes of Texas of 1925, on or before the 31st day of the succeeding January, the following penalties shall be payable thereon, to wit:

During the month of February, one (1) per cent; during the month of March, two (2) per cent; during the month of April, three (3) per cent; during the month of May, four (4) per cent; during the month of June, five (5) per cent; and on and after the first day of July, ten (10) per cent. [Added Acts 1939, 46th Leg., Spec.L., p. 1103, § 3.]

Art. 7685. Delinquent taxpayer [may] redeem lands, how.—Any delinquent taxpayer whose lands have been returned delinquent or anyone having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this Act by paying to the collector the taxes due thereon with interest at the rate of six (6%) per cent and all costs and the penalty of ten (10%) per cent as provided in this Act. [Acts 1917, p. 186, § 49.]

Art. 7686. Duty of engineer.—After the establishment of any such District, and after the qualification of the Board of Directors, the Board of Directors for such District may appoint an engineer, whose duty it shall be to make a complete survey of the lands contained in said District, and to make a map and profile of the several canals, laterals, reservoirs, dams, and pumping sites in such District and connected therewith, which shall also show any part of said canals, laterals, reservoirs and dams or pumping sites extending beyond the limits of such District, which said map shall show the name and number of each survey and shall also show the area in number of acres contained in such District. Provided, however, that such engineer may adopt any and all surveys heretofore made by any person, firm or corporation who have applied for or appropriated any water for irrigation under the General Laws of this State; and provided, further, that said engineer may adopt all surveys for canals, laterals reservoirs, dams or pumping sites shown on said maps or plats, or may adopt other maps, plats and surveys of the correctness of which he may be satisfied. [Acts 1917, p. 187, § 50; Acts 1929, 41st Leg., 1st C.S., p. 202, ch. 79, § 1.]

Art. 7687. Map.—The maps hereinbefore provided for shall show the relation that each canal and lateral bears to each tract of land through which it passes and the shapes into which it divides each tract, and how much and what part of each tract can be irrigated therefrom, and where the canal or lateral cuts off any less than twenty acres of land from any tract, the map shall show the number of acres in the whole tract, showing the shape of such small tract and its relation to the canal or lateral. And such profile map shall also show in detail the number of cubic yards necessary to be moved or excavated in order to make such reservoir, canal or lateral, and shall show in detail the specification for all other works necessary to the construction of all improvements proposed to be made in such district, and gives the estimated cost of each and when said map, profile, specifications and estimates shall have been completed by the engineer as herein provided, he shall sign the same in his official capacity and file them with the secretary of said board. Provided, however, that where said district contains any pumping plants, canals, dams, ditches or reservoirs heretofore created, and which is contemplated to be purchased or acquired by said district, then such map or plat and estimates as hereinbefore provided for shall show such improvements and the price or probable price at which the same may be acquired, and where additional improvements of canals, ditches, laterals, reservoirs or pumping plants are to be constructed, such report shall contain the detailed information with reference to such additional improvements as is provided for in this article. Provided, further, that none of the maps and data prescribed by this and the preceding article except such as are required for use in the making of assessments and levies for district purposes shall be required where contract is entered into with the United States under Federal laws. [Acts 1917, p. 187, § 51.]

Art. 7688. Election.—After the establishment of any such district and the qualification of the directors thereof, and after the making and filing of such maps, profiles, specifications and estimate as provided for in the preceding article and after the making and return of the assessment roll by the assessor and collector for said district, as provided for in this Act, the board of directors may order an election to be held within such district at the earliest possible legal time at which election there shall be submitted the proposition and none other: "For the issuance of bonds and levy of tax and payment therefor." "Against the issuance of bonds and levy of tax and payment therefor." In the event that contract is proposed to be made with the United States under the Federal reclamation laws, the question which shall be submitted to the voters at such election shall be: "For contract with the United States and levy of taxes and payment therefor," and "Against contract with the United States and levy of taxes and payment therefor." [Id. p. 188, sec. 52.]

Art. 7689. Notices posted, where.—Notice of such election stating the maximum amount of bonds to be issued, which amount shall not exceed the engineer's estimate, together with the amount of incidental expenses, organization expenses, and the cost of additional work which it may become necessary to add to the engineer's estimate by any change or modification made by the directors of the district in the proposed work; also stating the proposed maximum interest rate thereon, and the proposed maximum maturity date of said bonds; also stating the time and place or places of holding the election shall be given by the secretary of the board of directors, as ordered by the directors, by posting notices thereof in four public places in such district and one at the courthouse door of the county or counties in which said district is situated. Such notice shall be posted for at least twenty days prior to the date of the election. Said notice shall also be published in the manner prescribed in Section 43, Chapter 87, Acts Thirty-fifth Legislature, Regular Session. [Acts 2nd C. S., 1919, p. 70, sec. 53.] Art. 1619

Art. 7690. Contents of notice.—The said notice shall contain substantially the proposition to be voted on as herein provided; provided, however, the bonds so voted upon may be issued to mature in serial form at any date not to exceed the maximum date stated in the notice and may be issued at any rate of interest not to exceed the rate of interest stated in such notice. Said notice shall also contain a summary of the engineer's estimate of the cost of construction of the proposed improvements, and estimate of cost of purchase of any existing improvements to be purchased, together with additions thereto as herein provided. If, however, contract with the United States is proposed for election, the notice shall state the maximum amount of money payable for construction purposes, exclusive of penalties and interest. [Id.]

Art. 7691. Polls and Ballots.—The manner of conducting all elections herein provided for shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers who are qualified voters of said district shall be entitled to vote at any election on any question submitted to the voters thereof by the director for such district at such election. The directors for such district shall name a polling place for such election in each voting precinct or part of the voting precinct embraced in said district, and shall also select and appoint two judges, one of whom shall be the presiding judge, and two clerks, for each voting precinct designated in said order; and shall provide one and one-half times as many ballots for said election as there are qualified resident tax-paying voters within such district, as shown by the tax rolls of said county. Said ballot shall have written or printed thereon these words, and no others: "For the issuance of bonds and levy of tax in payment therefor," and "Against the issuance of bonds and levy of tax in payment therefor." If it is proposed that contract be entered into with the United States the

ballot shall contain the following words, and no others: "For contract with the United States and levy of taxes and payment therefor," and "Against contract with the United States and levy of taxes and payment therefor." [Acts 1917, p. 188, sec. 54.]

Art. 7692. Oath.—Every person who offers to vote in any election held under the provisions of this chapter shall first take the following oath before the presiding judge of the polling place where he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of ——— County, Water Improvement District No. ———, and that I am a resident property taxpayer of said district, and that I have not voted before at this election." [Id., p. 189, sec. 55.]

Art. 7693. Returns—result.—Immediately after the election the presiding judge at each polling place shall make return of the result in the same manner as provided by law in general elections, such return to be made to the secretary of such district, who shall keep same in a safe place, and deliver them together with the returns from the several polling places to the directors of such district, who shall at a regular session or a special session called for that purpose, canvass said returns and declare the results thereof. In a district operating under authority of Section 59 of Article 16 of the Constitution a majority vote is required in favor of the issuance of bonds and in other districts a two-thirds majority is required. If said canvass of said returns shows said bond issue to have been adopted or said election to have been in favor of making contract with the United States, as the case may be, and the levy of tax, then said directors shall declare the result of said election—to be in favor of the issuance of the bonds, or in favor of the making of contract with the United States, and the levy of tax and payment therefor, and shall cause the same to be entered in their minutes. [Acts 2nd C. S., 1919, p. 71, sec. 56.]

Art. 7694. Directors enter record.—After the canvass of the vote and declaring the result as provided for in the preceding section, the directors for said district shall make and enter an order directing the issuance of bonds, or authorizing the execution of contract with the United States for such district, as the case may be, sufficient in amount to pay for such proposed improvements, together with all necessary incidental expense connected therewith, not to exceed the amount specified in the order for the election and the notice of election. [Acts 2nd C. S., 1923, p. 27, sec. 57.]

Art. 7695. Bonds to include interest; bonds validated.—The maximum amount of the bonds to be issued by any such District may include a sum sufficient to pay the first one, two or three years' interest to accrue on said bonds, and when this power is exercised, no taxes shall be levied against the property situated in said District for said period, except in an amount sufficient to pay off, satisfy and discharge the notes provided for in Article 7634. The period of time herein mentioned shall run either from the date of the bonds as fixed in the order authorizing their issuance, or from the date or dates of the actual sale, issuance and delivery of said bonds, or any installment thereof, within the discretion of the board of directors; provided, however, that in event there shall be on hand a balance in the interest fund, after the expiration of any such period, nothing herein shall be construed to prohibit the application of such fund to the payment of interest on such bonds after the expiration of such period. Provided, further, that any and all elections held in any water improvement district, and any and all elections held in any water control and improvement district having authorized or issued bonds under this chapter prior to its conversion into such water control and improvement district, and which elections were for the purpose of authorizing the board of directors thereof to use the balance of the proceeds of any interest bonds to the payment of interest after the expiration of such period of time (whether computed from the date of the bonds or from the date of their actual sale and delivery), and for which election, or elections, the board of directors duly passed orders, and notices thereof were issued and given within the period of time prescribed for bond elections under this chapter, and a majority of the qualified electors of any such districts, voting at any such election, authorized the use of the proceeds of such interest bonds, after such period for the purpose for which said bonds were authorized, and the returns of such election, or elections, were made and canvassed, and duly entered of record on the minutes of the board of directors, shall be and such election, or elections, are hereby expressly approved, legalized and validated. [Acts 2nd C.S. 1923, p. 27, § 57; Acts 1931, 42nd Leg., p. 17, ch. 17, § 1.]

Art. 7696. Limitation of indebtedness.—In districts organized under the authority of Article 52 of Section 3 of the Constitution the amount of such bonds, or the amount of contract indebtedness with the United States, shall not exceed in amount one-fourth of the actual assessed value of the real property in such district, as shown by the assessment thereof made for the purpose of determining the value thereof, or at the last annual assessment as provided for in this chapter. This limitation of indebtedness of one-fourth of the assessed value shall not apply to districts, organized under the authority of Section 59 of Article 16 of the Constitution. [Acts 2nd C.S. 1923, p. 27, § 57.] Auth. for additional Bonds - 2150 of F.W.D.

Art. 7697. Modifications.—Provided, however, that if after an election has been held for the issuance of bonds or for contract with the United States, and the tax authorized and levied, and bonds have been authorized to be issued, or have been issued as provided for in this chapter, or contract with the United States authorized or executed, as the case may be, the directors for said district shall consider it necessary to make any modifications in said district, or in any of the improvements thereof, or shall determine to purchase or construct any further or additional improvements therein and issue additional bonds upon the report of the engineers, or shall determine to make supplemental contract with the United States, or upon its own motion may find it necessary to make said additional improvements, or purchase additional property in order to carry out the purpose for which said district was organized, or to best serve the interest of said district, said findings shall be entered of record, and notice of an election for the issuance of said bonds, or for the authorization of contract with the United States shall be given and such election held within such times, and the returns of such election made as hereinbefore provided for in cases of original election, and the result thereof determined in the same manner. [Id.] Art 7688

Art. 7698. Bond issuance—requirements.—If the result of such election be declared to be in favor of the issuance of such bonds or the making of such contract with the United States, said directors may order such bonds to be issued, or may negotiate and execute supplemental contract with the United States as in the manner provided in this chapter. And provided, that if a contract is made with the United States as in Article 7653 hereof provided, and bonds are not to be deposited with the United States in connection with said contract, bonds need not be issued, or if required to raise funds in addition to the amount of such contract, said bonds shall be issued only in the amount needed in addition thereto. [Id.]

Art. 7699. Bonds to repair damage.—Provided, further, that whenever such a district shall have constructed or purchased improvements and same shall be damaged so that it may be necessary to raise funds to

repair such damage, such district may either issue bonds to secure such funds or may issue its notes to run not to exceed twenty years, and to bear interest at not to exceed six per cent per annum. Before such notes are issued, the Board of Directors shall order an election and give notice thereof as required in bond issues, stating the purpose for which they are to be issued, the time they are to run, and the rate of interest they are to bear, and the time and place of said election. The ballots for such election shall have printed thereon, "For Issuance of Notes," and "Against Issuance of Notes." The election shall be held and returns made and canvassed as provided for bond elections. If two-thirds majority of those voting at such election voted in favor of the issuance of such notes, the Board of Directors may issue same and sell same for the benefit of said district. At the time such notes are issued or sold the Board of Directors shall levy a tax for the purpose of paying the interest thereon and creating a sinking fund sufficient to pay such interest and to pay said notes within the time of their maturity. Said notes may be issued in serial form to mature in installments as determined by the directors. [Acts 2nd C.S. 1923, p. 27, § 57; Acts 1933, 43rd Leg., p. 332, ch. 131, § 7.]

Art. 7700. Denomination of bonds.—The bonds issued under the provisions of this Act shall be issued in the name of the district, signed by the president and attested by the secretary, with the seal of said district affixed thereto, and such bonds shall be issued in denominations of not less than one hundred ($100.00) dollars nor more than one thousand ($1,000.00) dollars each, and such bonds shall bear interest at the rate of not to exceed six (6%) per cent per annum, payable annually or semi-annually. Such bonds shall by their terms provide the time, place or places, manner and conditions of their payment, and the interest thereon, as may be determined and ordered by the directors for such district, and none of such bonds shall be made payable more than forty years after the date thereof. [Acts 1917, p. 190, sec. 58.]

Art. 7700a. Refund of bonds due United States.—When a Water Improvement District, which obtains its water supply under contract with the United States Government, shall be in default in the payment of interest and/or principal upon bonds theretofore issued by such District, and in the judgment of the Board of Directors of such District it shall be deemed advisable so to do, the Board of Directors may authorize the issuance of bonds to fund or refund such indebtedness, including bonds, indebtedness and accrued interest thereon and the interest on notes lawfully issued to pay for the construction or acquisition of irrigation and drainage works.

Provided that no bonds shall be issued until the issuance thereof shall have been submitted to the qualified electors of said District, in the manner and form now authorized by law, and the provisions of law now governing the issuance of bonds and the form and contents thereof shall be applicable, except as herein otherwise provided.

Such bonds may be issued either in serial form or in such other form as shall provide for the annual payment of interest and principal in a single amount, represented by coupons, and the Board of Directors of such District shall prescribe the form and contents of such bonds and coupons thereto attached, as the one form or the other of bonds shall be decided upon; and the amortization of both interest and principal on such bonds shall be accomplished within a period of not to exceed forty (40) years from the date of the issuance of such bonds.

All funding and/or refunding bonds issued under this Act shall be negotiable in form and payable in lawful gold coin of the United States of the present standard. If in serial form, the bonds issued shall be numbered consecutively, commencing with Number One and following in numerical order, and shall mature serially in annual amounts, so as to be approximately equal, principal and interest, in not less than five (5) years nor more than forty (40) years after the date of the issuance, as the Board of Directors may determine.

If amortization bonds be issued, providing for the annual payment of interest and principal, in a single amount, represented by coupons, such coupons, for the first five (5) years, may be for such an amount as in the judgment of the Board shall be economically sound and within the power of the District to pay, and during the remainder of the life of said bonds, such coupons shall be in equal annual amounts and in such sum as will liquidate the remainder of said bonds within forty (40) years after the date thereof.

The provisions of Article 7703 shall not be mandatory in the issuance of bonds authorized in this Article, but shall be discretionary with the Board of Directors of such District, and if suit be brought, shall be subject to the provisions and governed by the Statutes now relating to such suits. [Acts 1933, 43rd Leg., p. 171, ch. 78.]

Art. 7700b. Validating refunding bonds.—Sec. 1. All refunding bonds heretofore issued or authorized to be issued and attempted to be issued by any and all water improvement districts which obtain their water supply under contract with the United States Government and which have adopted the equitable or benefit basis of taxation instead of the ad valorem basis, and which refunding bonds were heretofore issued, authorized to be issued, or attempted to be issued, under the authority of Acts 1933, Forty-third Legislature, page 171, chapter 78; [1] all orders of the boards of directors of such districts calling elections for submission of the question of the issuance of such refunding bonds; all notices issued and the posting and publication thereof; all elections held in pursuance of such orders wherein the majority of the votes cast were in favor of the issuance of such bonds; all orders canvassing and declaring the results of such elections; all orders of the board of directors of such districts authorizing the issuance of such refunding bonds or attempting to authorize the same; all bonds issued or authorized to be issued in pursuance thereof; and all orders of such boards of directors directing the levying and assessing of taxes to provide for the payment of interest on and principal of such refunding bonds; are in all respects ratified, confirmed and validated.

Sec. 2. Where any such district has refunded or shall hereafter refund its bonded indebtedness or part thereof under the authority of Acts 1933, Forty-third Legislature, page 171, Chapter 78,[1] and such district has theretofore levied and assessed a tax for any year or years of which tax as levied and assessed for any one year not more than ten per cent (10%) has been paid or collected at the time such bonded indebtedness is refunded, and where, under these circumstances, the board of directors of such district are of the opinion that such tax as levied and assessed, or any portion thereof, is no longer needed by the district to pay interest and principal of bonds which have been refunded or of any other indebtedness of the district for the payment of which the money derived from such tax may be lawfully used, and when, in addition thereto, the board of directors of such district are of the opinion that the best interest of the district so required, such board of directors are authorized and empowered to make a relevy and re-assessment, by resolution, in lieu of the original levy and assessment for any such year or years prior to such refunding operation, reducing or cancelling the tax provided for in such original levy and assessment; provided, however, that any taxpayer who has paid under the original levy and assessment a sum in excess of the amount levied and assessed against him under such re-levy and re-assessment shall be entitled to a credit thereof, with interest at the rate of six per cent (6%) per annum, against any tax then or thereafter owing by him to such district, or, if he be no longer the owner of land within such district, to a refund of such sum with interest as aforesaid; and the

re-levy and re-assessment and lien arising therefrom shall be effective as of the date of the original levy and assessment, and after such re-levy and re-assessment shall have been made, the original levy and assessment, in so far as the same shall have been changed, shall no longer be of any force and effect, and property taxes thereunder shall thereafter be released from any lien existing to secure the payment of the difference between the tax under the original levy and assessment and the tax under the new levy and assessment; provided, further, that no tax suits in which judgment has been rendered prior to the passage of any such resolution shall be affected by this Act or by any such resolution, nor shall the lien on any tract [2] of land on which judgment of foreclosure in any tax suit has been rendered prior to the passage of any such resolution be in any way affected by this Act or by such resolution, nor shall any sale of land under foreclosure of a tax lien thereon be in any way affected by this Act or by such resolution.

Sec. 3. The board of directors of any such district may, by resolution, remit, in whole or in part, penalties and interest on all taxes and assessments heretofore levied by such district and now delinquent and/or past due and unpaid, which are paid on or before December 31, 1934.

Sec. 4. If any provision, part, section, sub-section, sentence, clause, phrase or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by an invalid provision, if any. [Acts 1934, 43rd Leg., 2nd C.S., p. 110, ch. 50.]

[1] Article 7700a, ante.
[2] So in enrolled bill. Session Laws read "track".

Art. 7700c. Refunding bonds for retirement of amortization bonds.

Issuance of bonds; exchange

Section 1. Any water improvement district or conservation and reclamation district operating under authority of Section 59, Article 16 of the Constitution of Texas, which shall at the time this Act becomes effective or thereafter have outstanding and unpaid bonds providing for the annual or semi-annual payment of interest and principal in a single amount represented by coupons issued pursuant to the provisions of Chapter 78, Acts of the 43rd Legislature, 1933,[1] hereinafter called "amortization bonds", is authorized to issue refunding bonds with the principal amount thereof to be evidenced by the bonds, and interest thereon to be represented by coupons in such an amount that the aggregate payments scheduled to be made on account of principal and interest of the refunding bonds shall not exceed the amount of the unpaid amortization coupons of the outstanding amortization bonds, bearing interest not exceeding four per cent (4%) per annum and maturing serially or otherwise not more than forty (40) years from their date. Such refunding bonds may be exchanged for said amortization bonds or within the discretion of the governing body of such district may be sold at not less than par and accrued interest, and the proceeds applied to the purchase and retirement of said amortization bonds.

Election on issuance; notice

Sec. 2. No such refunding bonds shall be issued until the proposition for the issuance thereof shall have received a majority vote of the qualified resident property taxpaying voters of such district voting at an election called and held for said purpose. The question shall be submitted at said election as to whether an ad valorem tax shall be levied and collected sufficient for the payment of the principal of and the interest on the refunding bonds. Within its discretion the governing body of such district may submit an alternative question as to whether said refunding bonds shall be supported by taxes levied, assessed and collected against all land in the district upon an equitable basis in proportion to benefits conferred by operation and maintenance and the works and improvements provided by the district. The date for holding such election shall be not less than twenty-one (21) days from the date of the order calling the election, and a notice stating the maximum amount of bonds to be issued, the maximum interest rate, the maximum maturity date of the bonds, the time and places of holding the election shall be given by the Secretary of the Board of Directors by posting copies thereof in four public places within the district and one at the courthouse door of the county in which the district is situated. Such notice shall also be published once a week for two consecutive weeks in a newspaper of general circulation published in the county in which the district is located, or if none is published in said county then in an adjoining county. The first publication shall be at least fifteen days prior to the date fixed for the election.

Conduct of election; ballots

Sec. 3. The manner of conducting such election shall be governed by the general election laws of the State of Texas except as herein otherwise provided. Only resident qualified property taxpaying voters who have duly rendered property for taxation in said district shall be entitled to vote at such election. The Directors of such district shall name the places of holding said election and shall select the officials to hold said election, one of whom shall be designated as the presiding judge, one as judge, and two as clerks for each voting precinct designated in the resolution calling the election. The ballots shall be provided by the Board of Directors and shall have written or printed thereon these words:

"For the Issuance of Bonds and Levy of a Tax in payment thereof", and

"Against the Issuance of Bonds and Levy of a Tax in payment thereof". A voter shall draw a line through one of said expressions, leaving the other as expressing his choice.

Returns; resolution

Sec. 4. Returns of such election shall be made to the Board of Directors in the manner provided by law in general elections and the Board shall at a regular or special meeting called for such purpose canvass said returns and declare the result thereof. Thereafter the Board shall adopt a resolution authorizing the issuance of such refunding bonds and levying a tax sufficient to pay the principal of and interest on such bonds as such principal and interest matures.

Approval of bonds; registration

Sec. 5. Before said bonds shall be sold or exchanged the bonds and the proceedings authorizing their issuance shall be submitted to and approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts in the manner and with the effect provided in Articles 709 to 715, inclusive, Revised Civil Statutes, 1925, in reference to bonds issued by cities and counties; or in the alternative, the refunding bonds and the taxes or assessments levied to pay the principal thereof and the interest thereon may be adjudicated in the manner and with the effect as provided in Articles 7703 to 7707 inclusive, of the Revised Civil Statutes of 1925. The Comptroller shall not register said refunding bonds until the amortization bonds, in lieu of which they are to be issued, are presented to him for cancellation or until there has been filed with him an authenticated copy of a contract for the purchase by the district of a proportionate amount of amortization bonds. Such refunding bonds may be thus registered and delivered in installments, provided that in the event of the

sale of such refunding bonds the district shall furnish to the Comptroller at the time of each installment delivery a certificate to the effect that a proportionate amount of amortization bonds has been cancelled. Such certificate shall be filed with the Comptroller of Public Accounts and become a part of the permanent records of such office.

Finding as to benefits

Sec. 6. As to each district which has heretofore issued amortization bonds, it is hereby found that the lands situated therein have been benefitted by its operation and maintenance and by the improvements constructed or provided with the proceeds of the original bonds for which said amortization bonds were substituted to an amount not less than the taxes or assessments heretofore levied or assessed and the sufficient amount of taxes or assessments to be levied and collected to provide for the payment of the principal of and interest on the refunding bonds issued pursuant to this Act.

Partial invalidity

Sec. 7. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. [Acts 1945, 49th Leg., p. 607, ch. 350.]

[1] Article 7700a.

Art. 7701. Preferred lien.—Provided, that the lien for the payments due the United States under any contract between the district and the United States accompanying which bonds have not been deposited with the United States, shall be a preferred lien to that of any issue of bonds or any series of any issue subsequent to the date of such contract. [Acts 1917, p. 190, § 58.]

Art. 7702. Suit not permitted, when.—No suit shall be permitted to be brought in any court of this State contesting or enjoining the validity of the formation of any district created under the provisions of this chapter, or any bonds issued hereunder, or contesting the validity of contract with the United States or of the authorization thereof by the district except in the name of the State of Texas, by the Attorney General, upon his own motion, or upon the motion of any party affected thereby upon good cause shown, except as herein provided. [Id. sec. 59.]

Art. 7703. Determine validity.—Any such district in this State desiring to issue bonds in accordance with this chapter shall, before such bonds are offered for sale, bring an action in the district court in any county of the judicial district in which said district, or any part thereof, may be situated or in the district court of Travis County, to determine the validity of any such bonds, or such district contracting with the United States in accordance with this chapter, shall, if requested by the Secretary of the Interior, bring an action in said court to determine the validity of said contract. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of a general notice thereof once each week for at least two consecutive weeks in some paper of general circulation published in the county or counties in which such district is situated, and if no paper is published in the county then same shall be published in a paper in the nearest county thereto where a paper is published. Notice shall also be served upon the Attorney General of the State of Texas of the pendency of said action in the same manner as in civil suits. [Acts 2nd C. S., 1919, p. 72, sec. 60.]

Art. 7704. Attorney General may waive service.—The Attorney General may waive service in such suits when furnished a full transcript of the proceedings had in the formation of such district and in connection with the issuance of said bonds, or in connection with the authorization of said contract with the United States and a copy of the contract. [Id.]

Art. 7705. Attorney General to tender issue.—It shall be the duty of the Attorney General to make a careful examination of all such proceedings and require such further evidence and make such further investigation as may seem to him advisable. He shall then file an answer tendering the issue as to whether such bonds are legal and binding obligations upon such district, or, as the case may be, as to whether such contract with the United States is legal and binding upon the district. The issue thus made shall be tried and determined by the court and judgment entered upon such finding. Upon the trial of such cause the court may permit any person having an interest in the issues to be determined to intervene and participate in the trial of the issues made. All suits brought under the provisions of this chapter shall have preference over all other actions in order that a speedy determination as to the matters involved may be reached. [Acts 1917, p. 191, sec. 61.]

Art. 7706. Judgment rendered.—Upon the trial of the issues made under the preceding article, if the judgment of the court shall be adverse to the district, then such judgment may be by said district accepted, and the error pointed out in such proceedings may be corrected in the manner designated or directed by said court, and when so corrected, the judgment of the district court shall be rendered showing that said corrections had been made, and that the bonds issued thereunder, or the said contract with the United States, are binding obligations upon said district. And thereafter the judgment, when so finally made and entered, shall be received as res adjudicata in all cases arising in connection of said bonds or any interest due thereon, or in connection with the collection of moneys required by contract with the United States, and as to all matters pertaining to the organization and validity of said district, or pertaining to the validity of the bonds or of the said contract with the United States. [Id. sec. 62.]

Art. 7707. Certified copy.—After the making and entry of the judgment of the district court, as hereinbefore provided, the clerk of said court shall make a certified copy of such decree, which shall be a part of the orders and decree connected with such election, and said court decree shall be filed with the Comptroller of Public Accounts, and to be by him recorded in a book kept for that purpose, and said certified copy or a duly certified copy of said record made by the Comptroller shall be received in evidence in all litigation thereafter rising which may affect the validity of such bonds or of such contract with the United States, and shall be conclusive evidence of such validity. [Id. p. 192, sec. 63.]

Art. 7708. Comptroller to register bonds.—Upon the presentation of said bonds, together with a certified copy of the decree of the district court, as provided for in the preceding article, the Comptroller shall register said bonds, together with a certified copy of the judgment, as herein provided for, in a book to be provided for that purpose, and shall attach to each of said bonds a certificate of the fact that the decree of the district court as required by this chapter has been filed with him in his office; such certificate to be signed by him officially, and the seal of his office attached thereto. [Id. sec. 64.]

Art. 7709. Book provided.—The county commissioners court in the county in which such district may be situated, in whole or in part, shall provide a well

bound book in which a list of said bonds shall be kept by the county clerk, showing their numbers, amount, rate of interest, date of issue, when due, where payable, and said book shall be a public record. [Acts 2nd C. S., 1919, p. 73, sec. 65.]

Art. 7710. Salable bonds.—After the issuance of said bonds, and after the registration by the Comptroller of Public Accounts for the State of Texas, as provided by this chapter, the board of directors for such district shall offer for sale, and sell said bonds on the best terms and for the best possible price, but none of said bonds shall be sold for less than ninety per cent of their face value. When said bonds are sold, all money received therefrom shall immediately be paid over by the board of directors to the depository for said district, provided, however, that the board of directors may exchange bonds for property to be acquired by purchase under contract or in the payment of contract price for work to be done for the use and benefit of said district. [Acts 1921, p. 19, sec. 66.]

Art. 7711. Purpose of construction and maintenance fund.—All expenses, debts and obligations necessarily incurred in the creation and establishment and maintenance of any district organized under the provisions of this chapter shall be paid out of the construction and maintenance fund of such district, which fund shall consist of all moneys received by said district from the sale of the bonds of such district, or as hereinafter provided, or if contract is proposed to be made with the United States for the construction of the irrigation system, said expenses, debts and obligations may be paid out of the maintenance and operating fund. [Acts 1917, p. 192, sec. 67.]

Art. 7712. Directors levy tax.—Whenever such bonds shall have been voted, the directors for such district shall levy a tax upon all property within such district sufficient in amount to pay the interest on such bonds together with an additional amount to be placed in the sinking fund, sufficient to discharge and redeem said bonds at their maturity, and said directors for such district shall annually levy or cause to be assessed and collected taxes upon all property within said district sufficient in amount to pay for the expenses for assessing and collecting such taxes. Whenever contract shall be made with the United States, taxes shall similarly be levied sufficient in amount to meet all installments, as they become payable, and interest, if any, and the directors shall cause due levy annually to be made until all such contracts and obligations shall have been discharged. Such bonds may be issued in serial form, or payable in installments, as determined by said directors, and such tax levy shall be sufficient if it provides an amount sufficient to pay the interest on such bonds and to meet the proportional amount of the principal of the next maturing series of said bonds, and the expenses of assessing and collecting such taxes for such year. [Id., p. 193, sec. 68.]

Art. 7713. "Interest and Sinking Fund."—There is hereby created what shall be termed the "Interest and Sinking Fund" for such district, and all taxes collected under the provisions of this chapter for such fund, shall be credited to such fund, and shall never be paid out, except for the purpose of satisfying and discharging the interest on said bonds, or for the payment of such bonds, and to defray the expense of assessing and collecting such tax, and for the payment of principal and interest due or to become due to the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States, as in Article 7653 hereof provided, such fund shall be paid out upon order of the directors of such district upon warrants drawn therefor, as hereinbefore provided, and at the time of such payment the depository for such district shall receive and cancel any interest coupon so paid or any bond so paid, and when any such interest coupon or bond has been paid, it shall be delivered to the directors and be cancelled and destroyed. [Acts 2nd C. S., 1919, p. 73, sec. 69.]

Art. 7714. "Maintenance and Operating Fund."—There shall also be created a fund to be known as "Maintenance and Operating Fund," and such fund shall consist of all moneys collected by assessment or otherwise for the maintenance and operation of the properties owned or acquired by such district, or for temporary rental due to the United States, and, except the expenses of assessing and collecting taxes for interest and sinking fund, which shall be paid as provided in the next preceding article, out of said maintenance and operating fund shall set aside the amortization and emergency fund, hereinafter provided for, and shall be paid all expense of operation of every kind, and any balance due on construction, or for extensions or improvements, not otherwise provided for, such debts to be paid upon warrants executed as otherwise provided herein. [Acts 1923, p. 378, sec. 70.]

Art. 7715. Engineer make inspection and valuation.—As soon after the passage of this Act as practicable and before fixing the next annual assessment for maintenance and operation, the board of directors of each such district shall cause to be made by a competent engineer an inspection and valuation of all the physical properties of such district, subject to decay or obsolescence, or to loss, injury or damage by any sudden, accidental or unusual cause whatsoever, and based upon such inspection and valuation said engineer shall determine, as nearly as may be, such a sum, to be annually set aside, as will be sufficient to pay for replacement of each item of such physical property at the end of its economical life, or for the restoration or replacement of any such physical property upon the happening of such loss, injury or damage thereto. [Id.]

Art. 7716. "Amortization and Emergency Fund."—Out of the maintenance and operation fund, as the same shall be collected, such board of directors shall set aside such portion thereof as shall be necessary to make each year the amount of the annual sum determined as above provided, to be known as the "Amortization and Emergency Fund" and no part of such fund shall be expended except to replace such amortized property or to restore or replace such lost, injured, or damaged property. Any part of the Amortization or Emergency Fund not necessarily expended for the purposes above provided, may be invested in bonds or interest bearing securities of the United States. Provided, that any such board of directors may or may not, in the discretion of such Board, establish such Amortization and Emergency Fund, but after such fund has been established for any such district as above provided, the same shall thereafter be kept up and maintained. [Id.]

Art. 7716a. Emergency loans and bonds.—Any water improvement district may create emergency loans and issue "interim bonds" for the purposes, in the manner and under the restrictions and limitations provided in Section 1, of House Bill Number 159, of the Acts of the Forty-First Legislature, First Called Session,[1] relating to water control and improvement districts; it being the intent hereof to confer upon water improvement districts the same power and authority in respect to emergency loans and issuance of "interim bonds" as now conferred by law upon water control and improvement districts. [Acts 1929, 41st Leg., 2nd C.S., p. 136, ch. 69, § 1.]

[1] Article 7880—84a, post.

Art. 7716b. Borrowing from Amortization and Emergency Fund.—Any water improvement district organized under Chapter 2 of title 128 of the Re-

vised Statutes of Texas or water control and improvement district organized under Chapter 3a of title 128 of the Revised Statutes of Texas which has set aside "An Amortization and Emergency Fund" may at any time within two years after this act shall take effect, borrow such Amortization and Emergency Fund, or such part thereof as the Board of Directors may deem necessary for use in the maintenance and operation of the district and for such purpose it may sell or hypothecate any bonds or other securities in which such funds have been invested. Such funds so borrowed shall be replaced in the Amortization and Emergency Fund within five years after same shall have been borrowed, together with interest from the date such funds are borrowed until paid at the rate of 5% per annum, which funds, principal and interest shall be replaced out of the maintenance and operation fund of the district. [1933, 43rd Leg., p. 151, ch. 74.]

Art. 7717. Term of office.—The terms of office of all officers elected for such district shall be for two years, and until their successors are elected and qualified; provided, however, that all officers elected at the first election held under the provisions of this chapter shall hold office only until the next regular election to be held in said district for the election of such officers. [Acts 1917, p. 194, sec. 71.]

Art. 7718. Directors elected or appointed.—There shall be held a general election in all water improvement districts on the second Tuesday in January, 1926, and every two years thereafter, at which time there shall be elected five directors for each district.

In all such districts hereafter organized, containing not to exceed 12,000 acres of land, in which 60% or more of the lands are owned by persons who do not reside in the district, the petition for organization of such district may provide that the directors of such district shall be appointed by the county commissioners' court of the county in which such district is situated. In all such districts in which the petition so provides the directors shall be appointed by the county commissioners' court and no election for directors shall be held therein. They shall be so appointed at the time fixed for the election of directors in other districts and if, for any reason, said court is not in session at that time, as soon thereafter as possible. The owners of the lands in such district may file with the court petitions expressing their choice of persons to be selected as directors, and if the owners of 60% of such lands agree upon the persons to be appointed the court shall be governed thereby, otherwise said court shall appoint suitable, qualified persons as directors. [Acts 1917, 35th Leg., p. 194, ch. 87, § 72; Acts 1923, 38th Leg., p. 112, ch. 58, § 1; Acts 1925, 39th Leg., ch. 152, p. 362, § 3.]

Art. 7718a. [Transferred.]

This article was Acts 1925, 39th Leg., p. 362, ch. 152, § 3 which amended Article 7718, ante, where text is now set out.

Art. 7718b. Nomination of candidates for director; names on ballot.—That any person eligible to serve as a director of Water Improvement Districts under the provision of Chapter 2, Title 128 of the Revised Civil Statutes of Texas, 1925, may file with the secretary or the board of directors application to have their names printed upon the ballots to be used at an election. Such applications shall be signed by such candidates, or by ten qualified voters of the district, and shall be filed at least twenty days prior to the date of such election. No candidate not so nominated shall have his name placed on the official ballot at such election, provided however that nothing herein contained shall prevent the writing of a name of any candidate on such ballot by any elector voting at such election. [Acts 1931, 42nd Leg., p. 13, ch. 13, § 1.]

Section 2 of this Act repeals conflicting laws.

Art. 7719. Directors receive and canvass election returns.—All elections held in water improvement districts shall be held in accordance with the provisions of the general election laws of this State, except as herein otherwise provided; provided, however, that the board of directors shall appoint all necessary officers to hold such elections, and shall name the polling places in said district, and shall receive and canvass the election returns and do and perform all other duties necessary to the holding of said election and canvassing the returns thereof and declaring the result thereof. [Acts 1917, p. 194, sec. 73.]

Art. 7720. Employment time limited.—All other persons employed or representing said district shall be employed by the board of directors for such time and under such terms and conditions as said board of directors shall deem best for the interest of said district; provided, however, that no contract shall ever be made with any person or employee for a longer period of time, at any one time, than one year, and the salaries of all such employees, or the compensation to be received by them, shall be fixed by the board of directors at the time of the employment. [Id. sec. 74.]

Art. 7721. Vacancies filled, how.—All vacancies in the office of director for such district shall be filled by the board of directors by appointment, and the director so appointed shall hold office until the next regular election, and until his successor has been elected and qualified. Provided, however, that where the number of directors shall have been reduced by death or resignation or from other cause to less than three, then such vacancies shall be filled by a special election to be ordered by the president of said board of directors, or by any two members of said board, said election to be ordered and held after the giving of notice for the election of said officers as provided for the holding of general elections; and further provided, that if said president or two of the directors shall fail or refuse to order such election, then said election may be ordered by the district judge of any judicial district in which said district may be situated upon a petition signed by any five parties interested in the election of said directors, whether said interested parties be taxpayers or bond holders; and when so ordered, notice shall be given of said election, and such election held in the manner provided for the holding of general elections, but under the order of said court, and the directors elected at such election shall hold their office until the next general election, and until their successors shall have been elected and qualified. In the event that less than a quorum exists to approve bonds of such elected directors, then such bonds shall be approved by the county commissioners' court of the county in which such directors reside. [Id., sec. 75.]

Art. 7722. Directors compensation.—The directors provided for by this chapter shall receive as compensation for their services the sum of five dollars per day for each and every day necessarily taken in the discharge of their duties as such directors, and said directors shall file with the secretary for such district a statement verified by their affidavit of the number of days actually taken by them in the service of said district, said statement to be filed on the last Saturday in each month, or as nearly thereafter as practicable, and before a warrant shall issue for the payment of such services. [Id., p. 195, sec. 76.]

Art. 7723. Right of eminent domain.—The right of eminent domain is hereby conferred upon all districts established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through all lands, private

and public, except as hereinafter indicated, necessary for making reservoirs, canals, laterals, and for pumping sites, drainage ditches, levees and all other improvements necessary and proper for such districts, and the authority hereby conferred shall authorize and empower such districts to condemn all lands, private and public, for the purposes herein indicated beyond the boundary of such districts and in any county within the State of Texas; the right of eminent domain shall not extend to land used for cemetery purposes, nor to property owned by any person, association of persons, corporation or water improvement district, and used for the purpose of supplying water under the laws of this State and necessary for the making of reservoirs, canals, laterals, pumping sites, levee and drainage ditches, or other appurtenant work by such owner. All such condemnation proceedings shall be under the direction of the directors and in the name of the irrigation or water improvement district, and the assessing of damages and all procedure with reference to condemnation, appeal and payment shall be in conformity with the statutes of the State and as provided in Title 52 of this Act relating to "Eminent Domain," and all such compensation and damages adjudicated in such condemnation proceedings shall be paid out of the construction and maintenance fund of said district. [Id., sec. 77.]

Art. 7724. Defined districts.—In all cases where districts have been heretofore established or wherein proceedings are now pending to establish same, and a hearing has heretofore been had upon a petition to establish such districts, and action thereon has been taken by the commissioners' court, or where a public hearing is now pending upon such petition, and the notices thereof and therefor have been given as provided for by Chapter 172, of the Acts of the Thirty-third Legislature, such notices are hereby deemed and declared to be and to have been due and regular notices of such publication under the full meaning, intents and purposes of this chapter, and all such districts so established are hereby declared to be duly and regularly established and are hereby declared to be defined districts, or territory within the meaning of the Constitution, and all acts or things done by said districts under the provisions of said Chapter 172 of the Thirty-third Legislature are hereby validated and declared to be the regular and binding act of such district. [Id., sec. 78.]

Art. 7725. District dissolved, when.—In the event that any district established under the provisions of Chapter 172 of the Acts of the Thirty-third Legislature shall not within two years after the taking effect of this Act, or that any district which may hereafter be established under the provisions of this chapter shall not within two years after the conclusion of the organization of such district begin to acquire the necessary canals, ditches, flumes, laterals, reservoirs, sites, dam sites, pumping plants or other things necessary to the successful operation of such a district, or shall not diligently pursue the purposes for which said district was created, then and in that event, such district may be dissolved without the necessity of taking any action in connection therewith, and any party having interest herein, or to whom any debt may be due and owing by said district, may collect such debt in the same manner provided by law for the collection of any debt due by any person, association of persons or corporation, and such debt shall be a lien upon the property of such district when established by any court of competent jurisdiction, and the judgment of said court shall provide for the payment of such debt and judgment in the same manner as judgments for debt against cities or towns that have been dissolved may be enforced; and provided further, that any district heretofore organized, or hereafter organized, under the provisions of this chapter, may voluntarily dissolve by the same vote and in the same manner herein provided for the organization of districts, such election to be held in the manner herein provided for the holding of elections in such districts, but provided further, that no dissolution shall be had until all debts and obligations have been fully paid and discharged. Any such district may also voluntarily abolish its corporate existence in the same manner as provided by law for the dissolution of drainage districts, as set forth in Chapter 28 of the Acts of the Thirty-third Legislature, First Called Session, and each and all of the provisions of said Act shall apply to and control the abolition of said districts and the legal consequence thereof. [Id., p. 195, sec. 79.]

Art. 7725a. Payment of debts on dissolution of water improvement districts.—All water improvement districts now in the process of dissolution, or which have heretofore been dissolved, but have not yet paid their debts in full, or which hereafter may be dissolved, in accordance with the provisions of Article 7725, Revised Civil Statutes of the State of Texas, of 1925, shall have their debts retired in the manner following:

All debts of such districts heretofore established and now in the process of dissolution under the provisions of Chapter 28, of the Acts of the Thirty-third Legislature and Acts amendatory thereof, or which may hereafter be so dissolved, shall be pro rated against the lands lying within such district in accordance with the assessed valuation for the preceding year of the lands owned by each separate landowner, according to the tracts as scheduled and set out on the tax rolls in the office of the Tax Collector of the county in which such tracts lie; same shall be paid within five (5) years from the date of such dissolution, in five (5) equal annual installments; provided that such assessments may be paid at any time within such five (5) year period. Any landowner against whom such assessment has been made shall be credited thereon with any allowed claim owned by him up to the amount of such claim for liquidation of such assessment; and upon the full payment of the assessment against him, any landowner shall be thereby automatically released from such debt, and his lands from all liens existing by reason of such assessment; and the issuance of a receipt for such payment by the proper official, as provided in Chapter 28 of the Acts of the Thirty-third Legislature, First Called Session, and Acts amendatory thereof, shall operate as a release of the owner from such assessments, and his lands from such liens, and such receipts may be recorded in the real estate records of the county or counties in which the lands of such owner may lie. All payments heretofore made by any landowner of any such dissolved district, shall be credited upon the assessment against him and his lands.

Sec. 2. This Act is cumulative of Chapter 28 of the Acts of the Thirty-third Legislature, and Acts amendatory thereof, and of Article 7725 of the Revised Civil Statutes of Texas, of 1925, as to water improvement districts, and shall not apply to any other character of district. [Acts 1935, 44th Leg., p. 923, ch. 357.]

Art. 7726. Advice of State Board of Water Engineers.—When any district proposed to be established embraces lands located in two or more counties the owners of title, or evidence of title of a majority of the acreage of the proposed district, or fifty property tax paying voters of the territory proposed to be embraced within a district may petition the State Board of Water Engineers for a hearing to determine the advisability of the creation of such district, and for an order of election creating such district, and for the election of five directors of the proposed district. Upon the filing of such petition the Board of Water Engineers shall set the same down for a hearing at a date not less than fifteen nor more than thirty days from the date of the filing of such

petition, and shall cause notice to be given to the commissioners' courts of each county in which lands are located proposed to be embraced in the district, and stating the date and place of the hearing, and upon receipt of such notice by the commissioners' courts from the State Board of Water Engineers it shall be the duty of the clerk of the said commissioners' courts to post a notice at the courthouse door of the date and place of hearing. At such hearing on said petition to the Board of Water Engineers any person whose land would be affected by the organization of such district may appear before the Board of Water Engineers and protest against or contend for the creation of the proposed district, and may offer competent testimony to show that the said district would or would not serve a beneficial purpose, and that the organization of such district would or would not be practicable or capable of accomplishing the purposes intended by its organization. [Acts 1921, p. 20, sec. 80.]

Art. 7727. To grant petition.—If upon hearing of such petition it shall appear to the Board of Water Engineers that the proposed plan of water conservation, irrigation and use presented in the petition praying for the organization of the district, is practicable and would present a public utility, then the said Board of Water Engineers shall so find and enter such finding in the records of the Board, and shall transmit a certified copy of such finding to the commissioners' court in each county in which lands proposed to be embraced within said district are situated, and naming a date on which an election shall be held in the territory to be comprised within the district to determine whether or not the proposed district shall be created in accordance with the provisions of this chapter, and for the election of a board of five directors of such district. But should the Board of Water Engineers upon such hearing determine that said proposed district is not practicable, and will not serve a beneficial purpose, and that it would not be possible to accomplish through its organization the purposes proposed, then it shall so find and enter its findings of record, and the petition shall be thereupon dismissed. Provided, that the boundary lines of the proposed district may be so changed in the course of such hearing as to meet objections urged to the practicability and feasibility of the district, in accordance with the findings of the Board of Water Engineers, if such changes will result in bringing the proposed district within the provisions of the statute, and will make such district serve a beneficial purpose. [Id.]

Art. 7728. Commissioners' court give notice.—Upon the receipt of a certified copy of the findings of the Board of Water Engineers authorizing an election to determine whether or not the proposed district shall be formed, the commissioners' court of each county and part of county which is embraced within the proposed district shall give notice of an election to be held on the date named in the finding and order of the Board of Water Engineers, which notice shall be posted as provided in this chapter for other elections for not less than fifteen, nor more than thirty days before the date fixed for the election. [Id.]

Art. 7729. Purpose of election.—At the said election there shall be submitted for the decision of the voters the question whether or not the proposed district shall be created, and for the election of five directors for the district. Persons desiring to vote for the creation of such district and for the election of five directors for such district shall have written or printed on their ballots the words, "For the District," and those desiring to vote against the creation of the district shall have written or printed on their ballots the words, "Against the District." At such election the names of the directors may be written or printed upon said ballot, or a separate ballot may be used for such purpose. [Id.]

Art. 7730. Canvassing returns.—In certifying the result of its findings upon the petition for an election to create a district, and for the election of the board of directors, the Board of Water Engineers shall designate the county judge in one of the counties in the proposed district as a canvassing board to receive and canvass and declare the result of the election for the creation of the proposed district. When the election for the creation of the district has been held the officers named by the commissioners' court of the different counties to hold the elections in the proposed district shall make returns of the election to the commissioners' court of their respective counties and return all ballot boxes to the clerk of the commissioners' court of the county, and it shall be the duty of the commissioners' court of each county in the proposed district upon receiving returns of the election to canvass the same and certify the result of the election in the county to the county judge of that county named by the Board of Water Engineers as the canvassing board in the election for the creation of the district, and for the election of the board of directors. Upon receipt of the returns of the election in the different counties of the district the county judge designated to canvass the vote shall canvass such vote and certify the result to each county in the proposed district. If a majority of the votes cast in the district are in favor of the creation of the district, this finding shall be entered of record in the permanent records of the commissioners' court in each county embraced in whole or in part in the proposed district, and the county judge of the county canvassing the vote of the district shall certify the result to the five persons receiving the highest number of votes for directors, and issue to them a certificate of election, and the said directors shall after having been notified proceed with the organization of the district as provided in this chapter. [Id. p. 21, sec. 81.]

Art. 7731. Districts governmental agencies.—The board of directors, as soon as they shall have qualified, shall proceed to the selection of all administrative officers and necessary employees for the direction of the affairs of the district in the manner provided in this chapter for districts lying wholly in one county, except as may be specifically provided in these Articles 7726 to 7731, inclusive. The board of directors elected for such district shall qualify and meet as hereinabove provided, and shall have charge of the affairs of the district in the same manner as herein provided for districts lying wholly within one county. All such districts shall be governmental agencies, and body politic and corporate, and be governed by and exercise all the rights, privileges and powers provided by law as pertaining to districts lying within one county, and as embodied in the provisions of this chapter. [Id. p. 22, sec. 82.]

Arts. 7732–7737. [Amended. See Article 7737a, post.]

These articles were Acts 1917, 35th Leg., p. 198, ch. 87, § 83. They were amended by Acts 1925, 39th Leg., p. 362, ch. 152, § 5, which is set out as Article 7737a, post.

The amendatory Act of 1925 purported to amend "Section 83, Chapter 87, Acts of 1917, * * * and being Articles 7732, 7733, 7734, 7735 and 7736 of the Revised Civil Statutes of 1925." Article 7737 was not enumerated as amended although taken from section 83 of chapter 87 of Acts 1917. It is probable that the legislature intended to amend Article 7737 as well as Articles 7732–7736.

Art. 7737a. Addition of lands in adjoining county.—Lands lying in an adjoining county may be added to an established water improvement district in another county in the same manner as if said lands were in the same county in which such district is situated. [Acts 1917, 35th Leg., p. 198, ch. 87, § 83; Acts 1925, 39th Leg., ch. 152, p. 362, § 5.]

See note to Articles 7732–7737, ante.

Art. 7737b. Liability of lands added to district.—When land is added to an established water improvement district and such district is organized, or is operating, as such district under the authority of Section 59 of Article 16 of the State Constitution, such land may be added to such district upon the agreement, contained in the order of the board of directors admitting such lands to the district, that same shall be taxed upon the assessment of benefit plan of taxation instead of upon the plan of the general ad valorem tax, and such agreement may provide that such lands shall be so taxed upon a uniform acreage basis or upon the plan of a definite annual payment. In such event the amount of the debts to be paid by such lands and the amount to be paid as an annual tax thereon for the purpose of paying such debts shall be fixed by the order of the board of directors admitting such lands to the district, and same shall become a lien on said lands in the same manner and to the same extent as if said land had been a part of said district at the time such indebtedness was incurred or authorized by an election held for that purpose. Such added land shall be a part of said district and shall be liable for debts thereafter incurred in the same way as other lands in said district. [Acts 1925, 39th Leg., ch. 152, p. 361, § 1.]

Art. 7738. Penalty for prohibiting officers to enter land.—The directors of any district and the engineer and employees thereof are hereby authorized to go upon any lands lying within said district, for the purpose of examining same, locating reservoirs, canals, dams, pumping plants, and all other improvements, to make maps and profiles thereof; and are hereby authorized to go upon the lands beyond the boundaries of such districts in any county for the purposes stated, and for any other purposes necessarily connected therewith, whether herein enumerated or not. And any person who shall wilfully prevent or prohibit any such officers or employees from entering any lands for such purposes shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars for each day he shall so prevent or hinder such officer or employee from entering upon any lands. [Acts 1917, p. 199. sec. 84.]

Art. 7739. Contracts made by directors.—Contracts for making and constructing reservoirs, dams, canals, laterals, pumping plants, check gates, sluice gates, and all improvements whatsoever of said district shall be made by the directors, to the lowest responsible bidder, after giving notice by advertising same in one or more newspapers of general circulation in the State of Texas, and in one newspaper published in the county, if there be one in the county, and one newspaper in such district, if there be one in the irrigation district, which notice shall be published once a week for four consecutive weeks; and also by posting notices for at least twenty days in five public places in the district, and one at the courthouse door of the county or counties in which such district is situated; provided that the provisions of this article shall not apply in case of any contract between the district and the United States. [Id. p. 200, sec. 85.]

Art. 7740. Copy of engineer's report furnished bidder.—Any person, corporation or firm, desiring to bid on the construction of any work advertised as provided for herein, shall upon application to the directors be furnished with a copy of the engineer's report, and profile, showing the work to be done, provided the directors may charge therefor the actual cost of having such report and profile made and furnished. All bids or offers to do any such work shall be in writing, and sealed and delivered to the president or secretary of the board of directors, together with a certified check for at least two per cent of the total amount bid, which said amount shall be forfeited to the district in the event the bidder refused to enter into a proper contract for his bid as accepted. Any or all bids may be rejected in the judgment of the directors. All bids shall be opened at the same time. [Id. sec. 86.]

Art. 7741. Copy of contract recorded.—All contracts made by the districts shall be in conformity with and subject to the provision of this chapter, and the provisions of this chapter shall be a part of all contracts in so far as applicable to either the contractor or the district, and the provisions of this chapter shall govern whenever the contract is in conflict herewith. The contract shall be reduced to writing and signed by the contractors and directors, and a copy of same so executed shall be filed with the county clerk of the county or counties in which said district is situated, which said copy so filed with said county clerk shall be recorded in a book kept for that purpose, and be subject to public inspection. [Id. sec. 87.]

Art. 7742. Give bond.—The person, firm or corporation to whom such contract is let shall give bond payable to the district in such amount as the directors may determine, not to exceed the contract price, conditioned that he, they or it will faithfully perform the obligations, agreements and covenants of such contract, and that in default thereof they will pay to said district all damages sustained by reason thereof. Such bond shall be approved by the directors, and shall be deposited with the depository of the district, a true copy thereof being retained in the office of such directors. [Id. sec. 88.]

Art. 7743. Specifications included.—All such contracts shall contain a full statement of the specifications for all work included in the contract, and all such work shall be done in accordance with the specifications under the supervisions of the directors and the district engineer. [Id. sec. 89.]

Art. 7744. Full and detailed reports given.—As the work progresses the engineer of such district will make full reports to the directors, showing in detail whether the contract is being complied with or not in the construction, and when the work is completed the engineer shall make a detailed report of same to the directors, showing whether or not the contract has been fully complied with according to its terms, and if not in what particular it has not been so complied with. The directors, however, will not be bound by such report, but may in addition thereto fully investigate such work and determine whether or not such contract has been complied with. [Id.]

Art. 7745. Bridges and culverts.—The district is hereby authorized and empowered to make all necessary bridges and culverts across or under any railroad track and roadway of such railway to enable them to construct and maintain any canal, lateral, or ditch necessary to be constructed as a part of the improvements of such district. Such bridges or culverts shall be paid for by the district; provided, however, that notice shall first be given by such district directors by delivering a written notice to any legal agent, division superintendent or roadmaster of such railway, and the railway company shall be allowed thirty days to build such bridges or culverts at their own expense, if they should desire to do so, and according to their own plans; provided such canal, culvert or ditch shall be constructed of sufficient size not to interfere with the free and unobstructed flow of water passing through the canal or ditch, and shall be placed at such points as are designated by the district engineer, or directors. [Id.]

Art. 7746. Bridges and culverts required.—Such districts are hereby authorized and required to build all necessary bridges and culverts across and over all canals, laterals and ditches made and con-

structed by such district, whenever the same crosses a county or public road, and shall pay for the same out of the funds of such district. [Id. p. 201, sec. 90.]

Art. 7747. Disbursement of remaining funds.—After the full and final completion of all the improvements of such district as herein provided for, and after the payment of all the expense incurred under the provisions of this chapter, the directors are authorized to use the remaining funds of the district for the best interest of such district in the preservation, upkeep and repair of the works of such district. [Id. sec. 91.]

Art. 7748. Directors to inspect—draw warrant.—The directors shall have the right, and it is hereby made their duty, at all times during the progress of the work being done under any contract, to inspect the same; and upon the completion of any contract in accordance with its terms, they shall draw a warrant on the depository of the district for the amount of the contract price in favor of the contractor or his assignee; and if the directors shall deem it advisable in order to obtain more favorable contracts, they may advertise a contract to be paid for in partial payments as the work progresses, and such partial payments shall not exceed in the aggregate eighty-five (85) per cent of the amount of work done, the said amount of work completed to be shown by certified report of the engineer of the district. [Id. sec. 92.]

Art. 7749. Semi-annual report.—The directors shall make a semi-annual report on the first days of July and January of each year, showing in detail the kind, character, and amount of work done in the district, the cost of same, the amount of each warrant drawn, and to whom paid, and for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this chapter, and each report shall be verified by them, a copy of which shall be filed in the office of the county clerk of the county or counties in which such district is situated, and shall be open to public inspection. [Id. sec. 93.]

Art. 7750. Supply water for annual rental.—When a district acquires an established irrigation system which has supplied water to lot owners in a city, town or village, and such city, town or village is not included in such district, such district shall continue to supply water to such lot owners for a reasonable annual rental. [Id. p. 202, sec. 94.]

Art. 7751. Statement furnished.—Every person desiring to receive water during the course of the year, or at any time during the year, shall furnish to the secretary of the board of directors a statement in writing of the acreage intended by him to be put under irrigation, and for which water is to be used, and as near as may be, a statement of the several crops to be planted with the acreage of each, and shall at the same time pay such proportion of the water charge or assessment therefor as may be prescribed by the board of directors. If such statement should not be furnished or such payment should not be made before the date for fixing the assessments, there shall be no obligation upon the district to furnish such water to such person for that year. [Acts 1923, p. 379, sec. 95.]

Art. 7752. Expense estimated.—The board of directors, on or as soon as practicable after a date in each year to be fixed by a standing order of the board, shall carefully estimate the expense to be incurred during the course of the next succeeding twelve months for the maintenance and operation of the irrigation system. A proportionate part of the amount so estimated, not less than one-third, nor more than two-thirds, to be determined from year to year, by the board of directors, shall be paid by assessment against all irrigable lands within the district, pro rata per acre; that is to say, against all lands to which the district is in condition to furnish water by its then system of canals and laterals, or through extension thereto of then existing laterals, but without reference as to whether such land is to be actually irrigated or not; and the remainder of the amount so estimated shall be paid by the persons taking water or applying for water as aforesaid. This remaining amount shall be equitably prorated, as nearly as may be, among the applicants for water, and in prorating same, the board of directors may take into consideration the acreage to be planted by each applicant for water, the crop to be grown by him, and the amount of water per acre to be used by him; provided, however, that each water user shall pay the same price per acre for use of water upon the same class of crops. All assessments shall be paid in installments and at times to be fixed by the order of the board of directors, but if the crop for which such water was furnished shall be harvested prior to time fixed for the payment of any installment, the entire unpaid assessment shall at once become due and shall be paid within ten days after the harvesting of such crop and before the removal of same from the county or counties in which grown. The board of directors shall have power and authority from time to time to adopt, alter and rescind rules, regulations, standing orders and temporary orders, not in conflict with this chapter, governing the methods, ways, terms and conditions of water service, applications for water, assessments for maintenance and operation and the payment and the enforcement of payment of such assessments, and the furnishing of water to persons who have not applied for same before the date of assessment, and to persons who desire to take water for irrigation in excess of their original applications, or for use on other lands than those covered by such applications. The board of directors may, at their discretion, require every person desiring water during the course of the year to enter into a contract with the district, which contract shall indicate the acreage to be watered, the crops to be planted, and the amount to become due, and the terms of payment; and it may be further required that the water taker shall execute a negotiable note or notes for such amounts, or for parts thereof. The making of such contracts shall not constitute a waiver of the lien given by this chapter upon the crops of the water taker for the service furnished to him. If the water taker shall water more land than is called for in his contract he shall pay for the additional service rendered as and at the time hereinbefore indicated. To secure money for operating and maintenance expense of the district, the board of directors shall have authority to borrow money with interest not exceeding ten per cent per annum, and may hypothecate any of its notes or contracts with water takers or accounts against them. The district shall have a first lien, superior to all other liens, upon all crops of whatever kind grown upon each tract of land in the district, to secure the payment of the assessments herein provided for, and all such assessments shall bear interest from the time due and payable at the rate of ten per cent per annum. Provided, however, that when such district obtains a water supply under contract with the United States, the board of directors of such district may, by resolution entered upon the minutes of the board and with the consent of the Secretary of the Interior, waive in whole or in part, such lien. And if suit should be filed therefor, or the same should be collected by any legal proceeding, an additional amount of ten per cent on unpaid principal and interest shall be added to the same as collection or attorney's fees, which collection fees, as well as principal and interest of such assessments, shall stand secured by the lien aforesaid. Suits for delinquent water assessments

may be brought either in the county in which the irrigation district is situated or in the county in which the defendant resides. All land owners shall be personally liable for all assessments herein provided for, and if they shall fail or refuse to pay same when due the water supply shall be cut off and no water shall be furnished to the land until all back dues are fully paid. This provision with respect to cutting off water shall bind all parties, persons and corporations owning or thereafter acquiring any interest in said lands. The directors of all districts shall within ten days after any assessment is due, post at a public place in said district a list of all delinquents and shall thereafter keep posted a correct list of all such delinquents; provided, however, that if the parties owing such assessments shall have executed notes and contracts as hereinbefore provided, they shall not be placed upon such delinquent list until after the maturity of such notes and contracts. In the event that contract shall be made with the United States, the remedies in this section hereinbefore provided in favor of the district shall apply with regard to the operation and maintenance and rental charges which may become due to the United States. Provided, however, that the Federal Reclamation Laws, and in particular, The Reclamation Extension Act approved August 13, 1914, and any Acts amendatory thereof, shall be applicable. Moreover, all water, the right to the use of which is acquired by the district under contract with the United States, shall be distributed and apportioned by the district in accordance with the Acts of Congress, and rules and regulations of the Secretary of the Interior, and the provisions of such contract in relation thereto. [Acts 1923, p. 379, § 95; Acts 1927, 40th Leg., p. 138, ch. 90, § 1.]

Art. 7753. Public notice of assessments given.—In the event the assessments made as provided for in the preceding article should be more than sufficient to meet the necessary obligations of the district, the balance shall be carried over to the next season; and in the event the assessments made are not sufficient to meet the necessary expenses of such district the balance unpaid shall be assessed, as pro rata, in accordance with the assessments previously made for the then current year, and shall be paid under the same conditions and penalties within thirty days from the time such assessment is made. Public notice of all such assessments shall be given by posting printed notices thereof in at least three public places in the district, and printed notices shall be mailed to each land owner; provided, however, each land owner shall furnish to the board of directors his correct post-office address. Such notice shall be given by posting and mailing such notice five days before the assessment is due, and in the event of special assessments such notice shall be given within ten days after such assessments are levied. [Acts 1917, p. 204, sec. 96.]

Art. 7754. Plans include, what.—Included in the plans of any such district may be the necessary drainage ditches, or other facilities for drainage, and necessary levees for the protection of land under the system; and every such district may purchase the system or any part of any system belonging to a drainage district. The purchase, however, shall provide for the payment of the debts of the drainage district, or the assumption of such debts, and the amount of such debts paid or assumed is to be considered in determining the bond issuing capacity of the district. [Id. sec. 97.]

Art. 7755. Assessments collected, how.—All assessments for operation and maintenance expenses made under the provisions of this chapter shall be collected under the direction of the directors, by the assessor and collector of taxes, or other person designated by them, which said officer shall give bond in such sum as they may direct conditioned upon the faithful performance of his duties and accounting for all money collected. He shall keep a true account of all money collected, and deposit the same as collected in the district depository, and shall file with the secretary of the directors a true statement of all money collected once each week. The collectors shall use duplicate receipt books, and shall give a true receipt for each collection made, retaining in such book a true copy thereof, which shall be preserved as a record of the district. [Id. sec. 98.]

Art. 7756. True accounts kept where.—The directors of such district shall keep a true account of all their meetings and proceedings, and shall preserve all contracts, records and notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatsoever kind, in a fireproof vault or safe, and the same shall be the property of the district and shall be delivered to their successors in office. [Id. sec. 99.]

Art. 7757. Depository selected.—The directors for such district shall select a depository for such district under the same provisions as are now or may hereafter be provided for the selection of the depository for the counties in this State. The duties of such depositories shall be the same as are now or may hereafter be prescribed by law for county depositories. However, in the selection of depositories the directors of such district shall act in the same capacity and perform the same duties as is incumbent upon the county judge and members of the county commissioners' court in the selection of the county depository; provided, however, that in the event the highest and best bidder for the handling of such funds as the depository of such district should be a bank in which members of such board should be a stockholder or director, that then in that event such bank may be selected as such depository by the other directors being a majority of said board, and the bond given by such depository may be approved by them, but in such event before said order so selecting said such depository or approving such bonds shall be effective, the same shall be filed with and approved by the county judge of the county in which such district is situated, and such approval by such county judge shall make such action final, but in the event the county judge of said county shall, for any reason, fail to approve said selection or to approve said bond, then said bank shall not be selected, but new bids shall be called for, and some other bank be selected. [Acts 1921, p. 22, sec. 100.]

Art. 7758. Monthly report.—The district depository shall make a report of all moneys received, and all of moneys paid out, at the end of each month, and file such reports with such vouchers among the records of said district in its own vault, and shall furnish a true copy thereof to the directors, and shall, when called upon, allow same to be inspected by any taxpayer or resident of such district. Such records shall be preserved as the property of such district and shall be delivered to the successor of such depository. [Acts 1917, p. 205, sec. 101.]

Art. 7759. Regular office maintained.—The directors of each district shall have and maintain a regular office suitable for conducting the affairs of such district, within such district, or within a town situated within the general boundary lines of such district, and not removed therefrom. And such directors shall hold regular meetings at said office on the first Monday in February, May, August and November of each year, at ten o'clock a. m., and shall hold such other regular special meetings as they may see fit. And any such resident taxpayer or interested party may attend any such meeting of such directors, but shall not participate in any such meetings without the consent of the directors and shall

have no authority to vote upon any matter considered by such directors, but may present such matters as they desire to such directors in an orderly manner. [Id. sec. 102.]

Art. 7760. Surety company bond.—All officers and employees of any district who may be required to give bond or security, may furnish bonds of surety companies subject to the approval of the directors; provided, however, whenever such surety company bond is furnished by any officer or employee, the surety company furnishing same shall file for record in the office of the county clerk of the county where such district is situated a duly executed power of attorney, showing the authority of the person signing such bond for said company, to so sign same, and said power of attorney shall be duly executed by the officers of said company, and have attached the company seal; and such power of attorney shall remain on file in said office. All such official bonds shall be preserved by it as the property of said district. [Id. sec. 103.]

Art. 7761. Directors select auditor—report made.—All meetings of the directors shall be held at the regular office of the district. All vouchers issued for the payment of any funds of the district shall be signed by at least four directors, except as provided in Article 7640, and shall refer to the book and page of the minutes allowing such account. All vouchers shall be issued from a regular duplicate book containing a duplicate which shall be preserved. The directors shall have kept a complete book of accounts for such district, and shall on September first of each year select a competent auditor who shall examine the accounts, books and reports of the depository, the assessor and collector and the directors, and make a full report thereon, a copy of which shall be filed with the depository and a copy with the directors and one with the county clerk of the county or counties in which such district is situated. Such report shall be filed by November 1st of each year. [Id. sec. 104.]

Art. 7761a. Adoption of Calendar year as fiscal year; report.—Any water improvement district may by order of the board of directors entered of record, adopt the calendar year as their fiscal year, and in such event the report of the board of directors shall be for the calendar year and be filed within thirty days after the end of each year; also in such event the annual audit shall be for the calendar year and the auditor shall be appointed by January 15th following the end of the year and shall make his report for the preceding calendar year. [Acts 1925, 39th Leg., ch. 152, p. 363, § 6.]

Art. 7762. Unearned portion of taxes.—Where a district organized under prior Acts has issued bonds and levied taxes to provide the interest and sinking fund thereon and said bonds or a portion thereof have not been sold at such time, the directors of such district may return all unearned portion of said taxes, if collected, and may cancel all unearned portion of said taxes not collected and all penalty, interest and costs thereon. At the time of the sale of such bonds, however, a sufficient tax shall be levied to provide all interest and charges thereon. [Acts 1917, p. 206, sec. 105.]

Art. 7763. Joint ownership contract.—Two or more districts may jointly own and construct irrigation works and reservoirs under the terms and conditions to be set out in a written contract. Any such contract shall not be binding until same shall have been ratified by a majority vote of each such district. An election shall be held in each such district upon the same day to determine whether such contract shall be adopted. Such contract shall be printed or in writing, and a true copy shall be filed in the office of each district fifteen days prior to such election and be subject to public inspection, and one true copy of same shall be furnished each voter calling at such office for same at any time within fifteen days prior to such election. When improvements are constructed by two or more districts, bids may be jointly called for and may be opened and considered at the designated office of either of such districts, and such districts shall approve the letting of the contract, and the contractor's bond, and may meet for that purpose at a place outside of their district, or at any office established for such joint project and at which office all business of such joint project may be transacted, all bids, bonds, contracts, etc., of said joint project may be in the names of said joint project districts, such districts being empowered and authorized to do all acts by joint action that one district may do. The action of each district being determined by its board of directors, a general manager may be employed for such joint enterprise whose duties may be set forth in the joint ownership contract.

The terms and conditions of such joint ownership contract shall not conflict with the provisions of the law providing for the organization and conduct of districts, but may include provisions for joint construction and operation of same. Such contracts may be amended in the same manner. [Id. sec. 106.]

Art. 7764. Districts validly created.—The Act of the Twenty-ninth Legislature, being Chapter 50 of the Acts of 1905, and the Act of the Thirty-third Legislature, being Chapter 172 of the Acts of 1913, and Chapter 138 of the Acts of 1915, are hereby repealed. All districts heretofore organized under the terms and in accordance with the provisions of said Acts, are hereby expressly declared to be validly created, organized, described and defined with boundaries as prescribed by the order of the commissioners' court organizing the same, or as the same have since been changed by the board of directors thereof in the manner provided by said Acts. Such districts, however, shall hereafter be governed by the provisions of this chapter; provided, however, that the duly constituted and qualified officers of such districts shall continue to perform the duties of such offices until the next general election held under the provisions of this chapter.

All bonds issued by such district, which have been declared valid by a judgment of the district court, shall be and be held to be valid and binding obligations of such district and not subject to attack, except for actual fraud. Any such district may change its name to the name herein provided for such districts by filing a declaration to that effect with the commissioners' court of the county or counties in which it is situated, and which said declaration shall be in the form of a deed of conveyance and duly acknowledged by the president and secretary of the district, and shall embody and set forth a copy of the minutes of said board of directors, and show the resolution adopted for the change of such name, and when such instrument shall have been so recorded, the name of such district shall hereby be changed.

All districts in the process of organization under existing laws repealed by this Act, are hereby declared to be valid districts and entitled to proceed in accordance with the provisions of said Act so repealed until the date upon which this Act shall take effect after which, said districts shall be governed by the provisions of this chapter, and said districts shall change their name to conform to the provisions of this chapter by filing a declaration as above provided, in the office of the county clerk of the county or counties in which they are situated; and if they have not proceeded to the point of election of directors, they shall change such name by making application to the county commissioners' court having jurisdiction thereof, which said court shall change said

name upon all orders thereafter issued relating to said district. [Id. sec. 107.]

Art. 7765. District necessities authorized.—All districts organized under the provisions of this chapter shall have full authority, acting by and through its board of directors, to construct all works and improvements necessary for the irrigation of lands in said districts, and to supply, deliver and sell water for domestic, power, and commercial purposes when operating under the authority of Section 59 of Article 16 of the Constitution; and to fully carry out the purposes of its organization and the conservation and use of water for the several purposes authorized by the Constitution and the laws of this State, and to acquire the right to the use of water in the manner provided by law, and the directors of such districts, subject only to the provisions hereof, shall have full authority to manage such districts and the business of such districts for the purpose of carrying out the intention and purposes of the organization. [Acts 2nd C. S., 1919, p. 74, sec. 108.]

Art. 7766. Land become part of district—originally included.—Where a district is organized embracing land irrigated by an established irrigation system and lands entitled to be served by an established irrigation system are not included in such district, in the manner provided by law, and when so admitted to or included in such district the said land shall become part of said district as if originally included therein and shall be entitled to water service upon an equal basis with the lands originally included in said district. [Acts 1917, p. 207, sec. 109.]

Art. 7767. Water rights transferred.—Where there is included in a district lands having a water right from a source of supply acquired by such district but which lands it is difficult or impracticable to irrigate, the said district may allow such water rights to be transferred to other lands adjacent to said district and may admit such lands to said district upon an equal basis as to water service with the lands originally included in such district. [Id. sec. 110.]

Art. 7768. Lands relieved of assessment, when.—Whenever any district organized or hereafter organized has failed or neglected to furnish water sufficient to irrigate any land within such district within two years from its organization, then such lands shall be relieved of any and all assessments and charges except taxes until such district shall construct the necessary canals and furnish the necessary water to enable the owner of said land to irrigate all of said land on demand therefor. [Id. p. 208, sec. 111.]

Art. 7769. Conditions of tax levied.—The tax as levied in connection with the original issuance of bonds shall remain in force from year to year as the levy for that purpose, until a new levy shall be made. The board of directors may, from time to time, increase or diminish such tax so as to adjust the same to the taxable values of the property subject to taxation by the district and the amount to be collected, and in such manner as to raise an amount sufficient to pay the annual interest and sinking fund on said bonds then outstanding. [Id. sec. 112.]

Art. 7770. Sinking funds invested.—The board of directors are authorized and empowered, whenever they may deem it advisable, to invest any sinking funds of the district, acquired for the redemption and payment of any of its outstanding bonds, in bonds of the United States, of the State of Texas, of any county of the State of Texas, any irrigation or water improvement bonds or of any incorporated city or town, or of any independent school district, or of any other school district in the State of Texas authorized to issue bonds; provided that no bonds shall be so purchased that according to their terms mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created. [Id. sec. 113.]

Art. 7771. County clerk's fees.—The county clerk shall receive for his services in registering said bonds the sum of ten cents for each bond so registered; for entering a payment of any bond, the sum of ten cents; for recording of instruments of the district required to be recorded, and for which no fees are hereinbefore fixed, he shall receive the same fees as provided by law for recording deeds. [Id. sec. 114.]

Art. 7772. Manager employed.—The board of directors may employ a manager, who shall have general charge and management of the water distribution system of the district, subject to the general rules and regulations made by the board of directors, and who shall have power to appoint and discharge all other employees except the president and the secretary of the board and the assessor and collector, to purchase and contract for all supplies necessary for the water distribution system, after the board has authorized such purchases, to collect all assessments for operation and maintenance, and to execute on behalf of the district all water contracts and other contracts that are not required by the law to be executed by the board or by the president and secretary for the board, and who shall have such other powers and perform such other duties as may be provided by the board of directors. Unless such manager is appointed, all persons employed by or representing the district shall be employed by the board of directors. No contract shall ever be made with any manager or other person or employee, whether employed by the board of directors or by the manager, for a longer period of time than one year, and the salaries of all employees, or the compensation to be received by them, shall be fixed at the time of their employment. [Id. sec. 115.]

Art. 7773. Bonds exchanged.—Where bonds have been issued, or may be hereafter issued, by a district organized under and in accordance with the provisions of this chapter, or where bonds have been issued by any district organized under the Act of the Twenty-ninth Legislature, being Chapter 50 of the Acts of 1905, or the Act of the Thirty-third Legislature, being Chapter 172 of the Acts of 1913, in accordance with the provisions of said Acts respectively, new bonds bearing the same or a lower rate of interest may be issued in lieu thereof. Such new bonds may be exchanged for old bonds, provided the old bonds are taken in exchange at their face value or at a discount, or they may be sold and the net proceeds applied to the purchase of the old bonds redeemed at par or at a discount. The Comptroller of Public Accounts shall not register said new bonds until the old bonds in lieu of which they are issued are presented to him for cancellation or until a valid contract has been entered into and a copy thereof filed with the Comptroller for the purchase of a corresponding amount of such old bonds. After registration of the new bonds, the Comptroller shall keep the same in his possession until the old bonds are surrendered to him and cancelled by him, whereupon he shall deliver the new bonds to the proper party or parties; provided, that the old bonds may be so presented for payment, in installments, and a like amount of the new bonds registered and delivered as herein provided.

If the new bonds are in the same amounts and have the same dates of maturity as the old bonds intended to be replaced thereby, they may be authorized by resolution of the board of directors and issued without submitting the question of their issuance to the vote of the property taxpayers, who are qualified voters in the district, and they shall be registered by the Comptroller in the manner hereinbefore provid-

ed, and upon the filing with him a copy of the resolution of the board of directors providing for the cancellation of said old bonds and the issuance of the new bonds in place thereof; and when said old bonds shall have been cancelled and the new bonds registered by the Comptroller, such new bonds shall be the valid and binding obligations of the district, without further proceedings in regard thereto; and the same are hereby declared to have and are hereby given, the same force, effect and validity as the original issue of bonds that they have replaced.

Any such district is authorized to issue new or refunding bonds in lieu of bonds heretofore or hereafter issued as aforesaid, in such amount, of such denominations, bearing such rates of interest and periods of maturity as may be provided by resolution of the board of directors thereof, within the limits prescribed in this chapter in the case of an original issuance of bonds, whenever the board of directors may deem such action advisable, but if such new or refunding bonds are in greater amount, bear a greater rate of interest or have longer periods of maturity, or in any other respect create a greater burden on the district than the old bonds then outstanding, the issuance of such new or refunding bonds shall be submitted to the vote of the resident property taxpayers who are qualified voters of the district, and all provisions of this chapter governing the election and the issuance, approval, validation, registration, and sale of bonds in the case of an original issue of bonds shall apply to and govern such new or refunding bonds. All such bonds shall be registered and delivered only in the manner provided in this section. [Id. p. 209, sec. 116.]

Art. 7774. Application for water improvement district.—Should any parties in any unorganized county wish to organize a water improvement district, under the provisions of this chapter, such parties shall have the right to do so by applying to the commissioners' court of the county to which said unorganized county is attached for judicial purposes, and such commissioners' court is hereby authorized to perform for said unorganized county all things which in this chapter is required of commissioners' court of organized counties. [Id. p. 210, sec. 117.]

Art. 7775. Vote separately canvassed, when.—Whenever a district proposed to be organized as herein provided contains within its boundaries as proposed and described in the petition for organization, a town, city or municipal corporation, or part thereof, when the county commissioners' court calling the election to determine said question as herein provided shall constitute said territory within said town, city or municipal corporation, a separate election precinct, with one or more polling places, and the vote received for and against the proposition within said town, city or municipal corporation shall be separately canvassed by the court to determine whether or not a majority of those voting at said election within said town, city or municipal corporation voted for or against said proposition. If a majority of those voting at said election within such town, city or municipal corporation vote against the formation of such district the same shall not be formed including such town, city or municipal corporation, but if the majority of the votes therein is in favor of the formation of such district then such vote shall be canvassed with the votes of the balance of said entire district to determine the result of said election. [Acts 2nd C. S., 1919, p. 75, sec. 118a.]

Art. 7775a. Vote separately canvassed, when.—No town, city or municipal corporation shall be included within any district organized hereunder, unless the proposition for the organization thereof shall have been adopted by a majority vote of the voters therein participating in such election. Any such municipal corporation included within a district shall be a separate voting district and the ballots cast therein shall be counted and canvassed to show the result of such election therein. No district hereafter organized embracing a town, city or municipal corporation shall include lands outside of such municipal corporation, unless the election held therein to confirm and ratify the formation of such district shall be adopted thereby independent of the vote in such municipal corporation. No district, the major portion of which is in one county, shall be organized to include lands in another county unless election held therein to confirm and ratify the formation of such district shall be adopted by the vote of those voting in such portion of such county, independent of the vote of the portion thereof in such other county or counties. In the event any portion of a district, under the provisions of this section, shall vote against the formation of a district and the balance of such district shall vote for the formation thereof, such proposition shall be adopted and such district be confirmed and ratified with the exception of the territory so voting against same, which is thereby automatically excluded therefrom and from all debts and obligations thereafter incurred, provided, however, if as many as ten per cent of the voters of such district so organized shall file with the board of directors a petition asking for a new election on such issue, such new election shall be ordered and held for the remaining portion of such district, or such district organization may be dissolved by order of the Board of Directors and a new district formed. All lands and property included in such original district shall be subject to the payment of taxes for the payment of all debts and obligations incurred while it was a part thereof, including organization expenses. The petition asking for a new election herein provided for shall be filed within thirty days after the date upon which the result of such election is canvassed and declared by the directors and not thereafter. [Acts 1925, 39th Leg., ch. 205, p. 677, § 3.]

Art. 7775b. Lands within city or town discontinued as part of district.—Sec. 1. Whenever there exists within the limits of any Water Improvement District, organized and operating under Title 128, Chapter 2, of the Revised Statutes of 1925, any lands lying within or adjoining the territorial limits of an incorporated city or town, which was not included in such district at time of the organization of such district, and which lands have been subdivided into town lots and blocks with streets or other thoroughfares dedicated to the use of the public, and of which a map and such dedication has been duly filed for record with the County Clerk of the County in which said lands are situated, the Board of Directors of such Water Improvement District may by resolution duly passed, discontinue said territory as a part of said District; and when said resolution has been duly passed, it shall be entered by the Secretary of the District in the minutes of the Board of Directors of said District, and from and after said entry, said territory shall cease to be a part of said district, and the said territory so excluded, shall no longer be entitled to be served with water from such irrigation system, or by said District.

Sec. 2. The owner or owners of the fee of any such lands containing not less than ten acres, and constituting a portion of any Water Improvement District, may file with the Board of Directors of said District, a petition praying that such lands owned by them be excluded from said District. The petition shall describe the lands which the petitioners desire to have excluded by metes and bounds. When such petition has been filed with the Secretary of said District, the Board of Directors of said District shall order an election to be held at a convenient place or places within said District within thirty days thereafter; and if a majority of the qualified voters living in said District, and vot-

ing at such election cast their votes in favor of discontinuing said territory as a part of said District, the Board of Directors shall declare such territory no longer a part of said District, and there shall be entered upon the minutes of the Board of Directors, an order to that effect; and from and after such entry said territory shall cease to be a part of said District, and such excluded lands shall no longer be entitled to be served with water from such irrigation system or by said District.

Sec. 3. Whenever any territory shall be excluded from a Water Improvement District as provided herein, either by Section 1 or Section 2 of this Act, and said Water Improvement District shall, at the time of such withdrawal owe any debts by bond or otherwise, such withdrawn territory shall not be released from the payment of its pro rata of such indebtedness; but it shall be the duty of said District to continue to levy taxes each year on the property in such territory at the same rate as is levied upon other property of such District, until the taxes collected from said territory shall equal its pro rata share of the indebtedness of said District at the time of withdrawal. The taxes so collected shall be charged only with the cost of levying and collecting same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the owner of any lands in said territory from paying in full, at any time, his pro rata share of the indebtedness, both principal and interest, of said District. [Acts 1927, 40th Leg., p. 318, ch. 216.]

Art. 7775c. Excluding land from improvement districts.

Definitions

Sec. 1. Whenever in this Act the word incorporated city is used, it shall mean any city incorporated under the general laws or under a special charter granted by the Legislature, or incorporated under what is known as The Home Rule Amendment to the Constitution, and now located in counties having an area of not less than one thousand thirty-four (1034) square miles, and not over one thousand thirty-six (1036) square miles, according to figures in General Land Office.

Whenever in this Act the word district or districts is used, it shall mean any incorporated irrigation district, water improvement district, water control and improvement district or any conservation district, or reclamation district, or conservation and reclamation district, or any drainage district, or any levee district, as now or hereafter incorporated under the general laws applicable to said district, located in counties having an area of not less than one thousand thirty-four (1034) square miles and not over one thousand thirty-six (1036) square miles, according to figures in General Land Office.

Procedure

Sec. 2. Whenever there is included within the limits of any incorporated city any lands forming part of any one or more of the districts as above defined; or where any lands forming part of any one or more of the districts as above defined are subsequently incorporated within or annexed to the city limits of any incorporated city, or where any land or lands forming part of an incorporated city are subsequently included in or taken into any one or more of said districts, the owner or owners of all or any part of said land or lands, shall have the right to have same excluded from, and taken out of any one or more of said districts, of which said land or lands form a part, by filing an application with the governing body of said district or districts requesting said lands to be so excluded for the reason that the same is a part of, an incorporated city or town, and said petition shall be granted upon proof of that fact, as a matter of right by entering upon the minutes of said district or districts an order excluding said land or lands from said district or districts; and thereafter said land or lands shall cease to be a part of said district or districts, and there-after said land or lands shall not be subject to any other taxes, charges, or assessments by said district or districts except for its proportionate part of the bonded indebtedness existing against said district or districts at the time said land or lands were so excluded from said district or districts, provided, however, that the provisions of this Act shall only apply to said Cities and Districts as above defined, located in Counties having an area of not less than one thousand thirty-four (1034) square miles and not over one thousand thirty-six (1036) square miles, according to figures in General Land Office. [Acts 1930, 41st Leg., 5th C.S., p. 200, ch. 57.]

Art. 7775c—1. Exclusion from improvement districts of land which is not agricultural or not practicably subject to irrigation.—After any water improvement district or water control and improvement district has been organized and acquired facilities with which to function as an irrigation district and has voted, issued and sold bonds for any purpose pertaining to the purposes for which said district was organized, and there are any lands within the boundaries of said district subject to taxation thereby and which are not agricultural lands, or are of such a nature as cannot be irrigated in a practicable manner, same may be excluded from the district, only by means and upon conditions as follows:

(a) Upon the application of the owner of such land which is not agricultural land or which is of such a nature as cannot be irrigated in a practicable manner;

(b) on the condition that all taxes levied and assessed by said district upon said lands to be excluded have been fully and completely paid, including all bond tax and flat water rate assessment of whatsoever kind and character;

(c) with the consent of ninety-five per cent (95%) of the holders of all outstanding bonds theretofore voted, issued, sold and delivered by said district;

(d) upon the condition that land of at least an equal acreage and at least of equal value to that being excluded and which can be irrigated in a practicable manner is added to the district simultaneously with the exclusion of said land not agricultural or not capable of being irrigated in a practicable manner, the new land to be added upon application of the owner of said new land, such application setting forth that the owner thereof assumes the payment of all taxes to be levied upon such new land by said district from and after the date the same is added to said district, and further setting forth the agreement on the part of such owner that said land shall be subject to future taxes by said district for bond tax and flat rate and all other assessments levied and assessed by said district, as though same had been originally incorporated into said district, and the same shall be subject to the same liens and provisions as all other lands within the district and covered by the Statutes governing same;

(e) upon the application of any owner of land within the district which is not agricultural or not capable of being irrigated in a practicable manner to have said land excluded from the district, the Board of Directors of such district may require such owner to procure an application of the owner of lands adjoining the boundaries of said district or adjoining the canals of such district, who owns land capable of being irrigated in a practicable manner from the facilities of said water district, for the including in the district of the lands of such owner in an amount and value at least equal to the lands which are to be excluded under the application of the owner thereof. Each of such applications shall set forth the facts concerning the lands to be excluded from and the lands to be added to such district, together with some showing of their reasonable market value; the Board

of Directors upon receiving such applications shall communicate the contents thereof to the holders of bonds payable from taxes levied upon property within the district, then outstanding, and when ninety-five per cent (95%) or more of said bondholders have consented in writing to such plan of excluding certain land, from the district, which is not agricultural or not capable of being irrigated in a practicable manner and the including of other lands which can be irrigated in a practicable manner from facilities of said district, and such consent is filed with the Board of Directors of said district, the Board of Directors may hold a hearing on such applications by giving notice thereof by one publication of the time and place and nature of said hearing, in a newspaper published in the county or a county in which such district or some part thereof is situated, having circulation in the district, and which has been published regularly for more than twelve (12) months next preceding the date of such publication, said publication to be at least ten (10) days before such hearing and not more than twenty (20) days before same.

Upon hearing, the Board of Directors shall hear all evidence in connection with same, and shall hear any and all interested parties, and should the Board of Directors find that all of the conditions herein provided for such exclusion of lands and inclusion of lands in said district exist, the Board of Directors may by resolution adopted and spread upon the minutes exclude said land, which is not agricultural or not capable of being irrigated in a practicable manner, and include the land which may be irrigated from the facilities of the district in a practicable manner, and thereafter the lands excluded shall be free from any lien or liability created on same by reason of its having been included in said district and the lands added by such resolution shall be subject to all laws, liens, and provisions governing such district and the lands within same.

It shall be the duty of the Board of Directors of the district, within thirty (30) days after the inclusion and exclusion of lands under this Act, to furnish the Board of Water Engineers of this State with (1) a detailed description of the lands so excluded, and (2) a detailed description of the lands so included. The district may furnish water service to the included lands as it previously had the right to furnish to the excluded lands; provided, however, that the mere inclusion of a larger total acreage than that excluded shall not of itself be construed as giving such district the right to irrigate a larger total acreage or to appropriate a larger quantity or volume of the public waters for irrigation than such district would have had the right so to irrigate or so to appropriate prior to the exclusion and inclusion of the lands. [Acts 1939, 46th Leg., p. 707, § 1; Acts 1945, 49th Leg., p. 417, ch. 265, § 1.]

Art. 7776. Fixing maintenance charges.—The maintenance charges may be fixed as provided in Article 7752 of this chapter, or same may be determined upon the basis of the quantity of water used, and if based upon the use of water a fixed charge may be made on all lands or water connections entitled to receive and use water, and an additional charge may be made, or a graduated scale adopted, for the use of water in excess of that covered by the minimum charge. The district may install proper measuring devices. [Acts 2nd C. S. 1919, p. 75, sec. 119.]

Art. 7777. Charging cities and towns.—Where a district includes a city or town, or contracts with a city or town to supply it water, the charge for the use and delivery of such water, and the time and manner of payment therefor shall be determined by the board of directors and be specified in a standing order of said board. [Id. sec. 120.]

Art. 7778. Consolidation of districts.—Any two or more irrigation districts, or water improvement districts, governed by the provisions of this chapter and amendments thereof, may be consolidated into one district in the following manner: The terms and conditions upon which such consolidation is to be effected shall be agreed upon by the board of directors of each district, and then the question shall be submitted to a vote in each district after giving notice thereof for at least twenty days in the manner provided by law for other elections. The election shall be held in such districts on the same day. The consolidation to be effected only in the event same is adopted by each and all such districts. When two or more districts are consolidated their obligations shall not be impaired but shall be protected and paid by taxes levied upon the property in the district creating said debt or by assessments in the same manner and extent as if said consolidation had not been effected. After consolidation such taxes shall be assessed and collected by the officers of the consolidated district and in the event they should fail or refuse to so assess and collect same, for such purpose, in due order and time, then same may be assessed and collected, and paid on such obligations, by a receiver appointed by and acting under the orders of a district court, in a proper suit which may be brought by a creditor or by five or more taxpayers of such district. When two or more districts are consolidated into one district, same shall be governed as and be one district, except that the debts of each district, created prior to such consolidation, shall be paid as herein provided; provided, however, such consolidated district may contribute to such payments upon the terms stated in the consolidated agreement. When two or more districts are consolidated the officers of said respective districts shall continued to act jointly as the officers of said district, and to wind up, the affairs of their respective districts as effected by said consolidation, for a period of ninety days after the date of the election, and they may continue to so act until the next general election if so provided by the consolidation agreement, or the consolidation agreement may provide who shall constitute the first board of directors to serve until the next general election if the officers then serving agree to resign. Said new officers shall within the period of ninety days after the election qualify as such officers of the consolidated district and assume such office at the expiration of said period. All bonds of such officers will be approved by the then existing boards of directors. [Id. sec. 121.]

Art. 7779. Benefit plan of taxation.—In the event that any irrigation or water improvement district, other than those operating under contract with the United States, have been or shall be constituted a conservation and reclamation district so as to come within the terms of Section 59 of Article 16 of the Constitution of the State of Texas, and shall adopt or have adopted the assessment of benefit plan of taxation instead of the ad valorem plan of taxation then and in that event the fixing and assessing of property values on which taxes shall be levied and collected shall be made in the manner provided by Articles 7782 to 7787 inclusive, provided any such district may at the same election at which the adoption of said plan of taxation is voted upon, or at any other time before the issuance of bonds, vote upon the proposition of whether said benefits shall be fixed as an equal sum upon each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. In which event the amount of benefit per acre shall be voted upon as applied to all lands in the district that can be irrigated by gravity flow from the irrigation system to be constructed or purchased and also the benefit to lands in the district that can not be so irrigated.

When such questions are desired to be so submitted and an election held to determine same the board of directors of the district shall submit same and order such election in the same manner as provided by law

for other elections in such districts. The ballots for such elections shall have printed thereon the following propositions: "For uniform assessment of benefits of $..... per acre upon all irrigable lands in the district, and the assessment of $..... per acre upon all non-irrigable lands in the district." "Against uniform assessment of benefits." Said blank spaces in said propositions shall be filled in with amounts as determined by said board of directors to be voted upon. Said amount of charge per acre to be found by dividing the number of acres of such lands into the amount of indebtedness to be incurred by the district in providing for the irrigation of same.

In the event the owners of lands classed as non-irrigable object to the amount of charges fixed against them by said order of the board of directors calling such election or as a result of said election they may have their said non-irrigable lands taken out of said district by filing application therefor as provided by law within ten days after such election is held.

If a majority of those voting on such proposition at such election vote in favor thereof same shall be adopted.

In the event the plan of uniform acreage valuation for taxation is adopted as herein provided the said valuation shall be applied to all such lands and it shall not be necessary for the assessor, or the board of equalization to annually fix the value thereof or equalize such values, except as herein provided, nor for the board of directors of the district to appoint a commission to ascertain or fix the value of the improvement to particular lands as in other cases provided. The board of equalization will examine the renditions and tax rolls to ascertain that all property subject to the tax is placed on such tax rolls under its proper classification and add any property thereto that may be left off such tax rolls or that may not have been rendered for taxation, and examine, correct, and certify to said tax rolls. Any property owner may protest the classification of his land as not being proper and the board of equalization shall fully consider any such protest, hear evidence, and enter their findings thereon in their minutes, in the same manner provided for protests in the case of the fixing of valuations upon property as provided by law.

The rate of taxation, the collection of taxes, assessment of property, rendering of property for taxation shall be made as now provided by law with reference to ad valorem taxes, except that any such lands shall be rendered or taxed and in rendering same the value thereof shall not be stated and it shall not be necessary that the party rendering same shall make affidavit to the value thereof nor that the value thereof be stated by the tax assessor, but same shall be rendered as subject to irrigation or not subject to irrigation.

In the event lands classed as non-irrigable are thereafter irrigated by said district the owner thereof prior to receiving water for irrigation shall pay to said district an amount equal to the entire amount that would have been charged to same if same had been originally classed as irrigable. [Acts 1921, p. 17; Acts 1923, p. 279, sec. 122.]

Art. 7780. Locating offices.—Whenever a district is formed in such manner that the towns within or adjoining the territory included in the district are left out of said district, then in that event the directors for said district may establish the office in said district as provided by law, or may establish the office of said district within any town adjoining, or close to said district within the same county or counties, which may be best suited as a location for the transaction of the business of said district, provided, however, such office shall not be removed from the proximity of said district, but shall be so located as to be accessible to the residents of said district. [Id. p. 23, sec. 123.]

Art. 7781. Collecting under benefit plan.—In the event that any irrigation or water improvement district, other than those operating under contract with the United States, have been or shall be constituted a conservation and reclamation district, and shall adopt the assessment for benefit plan of taxation instead of the ad valorem system of taxation, as authorized by the provisions of Chapter 12 of the General Laws of the Second Called Session of the Thirty-sixth Legislature, or under the provisions of this Act, then in that event the levy, assessment, equalization of property values, and collection of taxes shall be made in the manner provided by Sections 125 to 130 inclusive of this Act. [Id. sec. 124.]

Art. 7782. Commissioners of appraisement.—As soon as practicable, after the approval of the report of the engineer, and the adoption of the plan of improvements to be constructed, the board of directors shall appoint three disinterested commissioners, who shall be known as commissioners of appraisement, but who shall be freeholders, but not owners of land within the district for which they are to act. [Id. sec. 125.]

Art. 7783. Time and place of meeting.—The secretary of the board of directors immediately following the appointment of the commissioners of appraisement shall in writing notify each of his appointment, and in the notice designate a time and place for the first meeting of such commissioners. It shall be the duty of the commissioners to meet at the time and place specified or as soon thereafter as possible when they shall each take and subscribe an oath that they will faithfully and impartially discharge their duty as such commissioner, and make true report of the work done by them, and at such meeting the commissioners shall organize by electing one of their number chairman and one vice-chairman, and the secretary of the board of directors, or in his absence such person as the board of directors may appoint, shall be secretary of said commissioners during their continuance in office and shall furnish to them such information and such assistance as may be within his power and necessary to the performance of their duties. [Id. sec. 126.]

Art. 7784. To make report—compensation.—Within thirty days after qualifying and organizing as above directed, the commissioners of appraisement shall begin their duties, and they may at any time call upon the attorney of the district for legal advice and information relative to such duties, and may, if necessary, require the presence of the district engineer, or one of his assistants, at such times and for so long as may be necessary to the proper performance of their duties. Such commissioners shall proceed to view the lands within such district as will be affected by the plan of reclamation for such district as carried out, and all public roads, railroads, rights of way and other property or improvements located within such district, and shall assess the amounts of benefits and all damages, if any, that will accrue to any tract of land or other property within such district or to any public highway, railroad and other rights of way, roadways or other property from carrying out and putting into effect the improvements to be constructed by such district. The board shall prepare a report of their finding which shall show the owner of each piece of property examined, and on or concerning which any assessment is made, together with such description of said property as may identify the same, with the amount of damages and all benefits assessed for and on account of, or against the same, which said report shall be signed by at least a majority of the said commissioners and filed with the secretary of the board of directors of the district, and which report shall also show the number of days each commissioner has been employed and the actual expenses incurred by each during his service as commissioner, and each shall be paid by the district not to exceed $10.00 per day for his services, and all necessary expenses in addition thereto upon the approval of his account for such per diem and expenses by the board of directors. Said commissioners shall in

their said report fix a time and place when and where they will hear objections thereto, and such date shall be not less than twenty days from the filing of such report. [Id. sec. 127.]

Art. 7785. Notice of hearing.—When the report of the commissioners shall have been filed with the secretary of the board of directors, he shall forthwith give notice by publication in a newspaper published in each county wherein any portion of the district is located, for at least once a week for two consecutive weeks prior to the date fixed for such hearing, of the time and place of such hearing, and he shall also mail a written notice to each person whose property will be in any wise affected by the carrying out of the plan of reclamation and improvement if his post office is known, stating the time and place of such meeting, which notice shall state in substance that the report of the commissioners to assess benefits and damages accruing to the land and other property by reason of the plan of reclamation and improvement for the district in question has been filed in his office, and that all persons interested may examine the same and make objections thereto in whole or in part, and that the commissioners will meet on the day and at the place named for the purpose of hearing and acting on objections to such report, and the secretary upon the day of the hearing shall file in his office the original notice with his affidavit thereto, showing the manner of publication and the names of all persons to whom notices have been mailed, and that post offices of those to be affected to whom notices were not mailed were unknown to him, and could not be ascertained by reasonable diligence, and copies of such notice and affidavit shall be filed, one with the commissioners of appraisement and one with the clerk of the county commissioners' court. [Id. p. 24, sec. 128.]

Art. 7786. Issuance of decrees.—At or before the hearing, upon the report of the commissioners of appraisement, any owner of land or other property affected by such report, or the plan of reclamation and improvements may file exceptions to any or all parts of such report, and said commissioners at the time and place specified in the notice shall proceed to hear and base opinion on such objections, and where such objections are sustained, in whole or in part, may make such changes and modifications from time to time as may be necessary to confirm the report of their findings. When the commissioners shall have finally acted they shall make decrees confirming such report in so far as it is confirmed, and approving and confirming the same as modified or changed in so far as it may be modified or changed. The commissioners shall have power to adjudge and apportion costs incurred upon the hearing in such manner as may be deemed equitable. The findings of the commissioners as to benefits and damages to lands, railroads and other property within the district shall be final and conclusive. The final decree and judgment of the commissioners shall be entered of record in the minutes of the board of directors and certified copies thereof shall be filed with the county clerk of each county in which any portion of the lands within such district are located, as a permanent record of such county, and such filings shall be notice to all persons of the contents and purpose of such decree. [Id. sec. 129.]

Art. 7787. Benefit basis of taxation.—After the action of the commissioners of appraisement as aforesaid, their final findings, judgment and decree, until lawfully changed or modified, shall form the basis of taxation within and for the district for which they shall have acted, for all purposes for which taxes may be levied by, for or on behalf of such district and all taxes shall be apportioned and levied on each tract of land, railroad and other real property in the district, in proportion to the net benefits to the property named in such final judgment or decree as shown thereby. In all matters before the commissioners of appraisement, parties interested may not only appear in person or by attorney, but they shall be entitled to process for witnesses to be issued by the chairman of the commissioners of appraisement on demand, and such commissioners shall have the same power as a court of record to enforce the attendance of witnesses. [Id. p. 25, sec. 130.]

Art. 7788. Equitable basis instead of ad valorem.—Any water improvement district organized under authority of Section 59 of Article 16 of the Constitution, and Chapter 25, General Laws, Fourth Called Session, Thirty-fifth Legislature, as well as any water improvement district which may have been created prior to the adoption of such constitutional amendment, and which shall have availed itself or may hereafter avail itself of the benefits of Section 59 of Article 16 of the Constitution, may at the time of its creation, or at any time thereafter before such district shall have issued bonds, submit to the qualified electors of such district the question whether the taxes to be levied therein, or any part thereof, shall be levied, assessed and collected upon an "equitable" basis in proportion to benefits to be conferred by the organization, operation and maintenance of such district and the work and improvements to be created thereby, or whether such taxation or any portion thereof shall be levied upon an ad valorem basis. Such question shall be submitted to the qualified voters of such district at any time and in any manner that the governing body of such water improvement district may select, and the ballots to be used shall have printed thereon in substance the following: "For the levy of taxes upon a benefit basis instead of an ad valorem basis," and "Against the levy of taxes on a benefit basis instead of on an ad valorem basis." And such election shall be governed by the provisions of Chapter 87 of the General Laws of the Thirty-fifth Legislature, Regular Session, and amendments thereof so far as applicable. If a majority of the votes cast at such election shall be in favor of the levy and collection of the taxes, or any part thereof, upon an equitable basis in proportion to benefits instead of upon an ad valorem basis, then taxes shall be so levied and collected. [Id. sec. 131.]

Art. 7789. When contract with United States.—In the event an irrigation or water improvement district shall have heretofore been operated or shall hereafter be operated under contract with the United States and such district shall have adopted or may adopt the plan of the levy and collection of taxes on a benefit basis instead of an ad valorem basis, then the directors of such district shall at some convenient time thereafter, and from time to time as may be necessary, sit as a board to apportion and assess the benefits conferred upon any and all property situated within such water improvement district and shall cause a record to be made, showing the amount and value of the benefits computed to accrue to all of the property situated within such district and subject to taxation, and the amount of taxes upon such basis to be levied against and collected from such property; provided, that no taxes so assessed or adjudged against such property shall be in excess of the benefit accruing and to accrue to such property from the organization, operation and maintenance of such district and the improvements to be acquired or constructed thereby. After such record shall have been made up, the board shall cause notice to be mailed to each property owner whose name appears upon such record, showing the amount of taxes to be levied against such property, and fixing a date and place at which such owner may appear and contest the correctness and equitableness of such tax. And after such hearing such board of directors or other governing body shall determine the inequitableness of the tax and sustain, reduce, or increase the same, as in their judgment shall be just and equitable; and the decision of this board shall be final. All of the provisions of Chapter 87, General Laws, Thirty-fifth Legis-

lature, Regular Session, and amendments thereto, not inconsistent herewith, shall apply to the levy, assessment and collection of the taxes herein provided for. [Id. p. 26, sec. 132.]

Art. 7790. Sale of water power privileges.—Any irrigation or water improvement district may contract for the sale of water power privileges whenever it may be possible for power to be generated by the use of the water flowing from its reservoir, or in its canal system, provided, however, any such contract for the sale of water power privileges shall be subject to the obligation of the district to protect the lands embraced therein in an adequate supply of water for irrigation for which the district was organized, or for supplying water for municipal purposes in those districts supplying water for municipal purposes. [Id. sec. 133.]

Art. 7791. Adopt rate of commissioners' court.—Irrigation and water improvement districts operating under the provisions of laws of this State, and assessing taxes on the ad valorem basis, may, if they find it to their advantage, adopt the assessment and equalization of values of the property authorized therein for taxation as made and equalized by the county officers and the county commissioners' court and base the levy and collection of taxes on such assessment and equalization, and they shall also have authority to secure from the county tax assessor a list of tax renditions as made to him covering the property within said district, and adopt same for the use and benefit of said district by causing the tax assessor and collector of the district to compile same as the tax roll of the district instead of making independent assessment thereof. In the event that the district tax assessor and collector and district directors should for any reason fail or refuse to properly assess, equalize tax values, and prepare a tax roll for said district, as provided by law, then in that event the taxes levied at the time of issuance of bonds or other valid obligations of said district shall be collected by the county tax collector by entering on his rolls the said tax as against all property situated within such district for the year or years which the said district officers may have so failed to perform their said duties. If the tax levy is not sufficient because of decreased valuations same shall be increased by order of the commissioners' court.

The fund so collected by such county tax collector shall be deposited in the county depository as a special fund to be devoted to the payment of interest and sinking fund on such bonds or other obligations, and such fund shall be paid thereon upon order of the county commissioners' court. In the event any such county tax collector should fail or refuse to perform such duties then the holders of such securities, bonds or obligations, or any one or more of them, may compel him to do so by mandamus proceeding in the court of proper jurisdiction. The county tax collector shall be allowed, in addition to all other compensation now provided by law, reasonable fees for the performance of such duty, to be fixed by the county commissioners' court, not to exceed, however, the rate of compensation fixed by law for the performance of like duties in the collection of county funds. Whenever such district officers shall fail to perform and discharge their duty, in the assessment and valuation of the property and collection of taxes, as hereinabove provided, then any bond holder or other person interested in said district and the payment of their obligations may request the county commissioners' court to enter an order authorizing the county tax collector to perform the duties herein provided, and the county commissioners' court shall investigate said matter, and if they find said conditions to exist shall enter an order directing the county tax collector to proceed as herein provided, and no county tax collector shall undertake the collection of such taxes until so ordered by the county commissioners' court. The provisions of this section are not intended to allow anyone to interfere with the duties of the district officers so long as they are in the active discharge of their duties, but such powers shall be exercised in the event such district officers shall not perform their duties or in the event of a vacancy in said offices.

In the event of any dispute arising as to whether or not said officers are so performing their duties, said matter may be determined by an action against said officers in the district court in the nature of a mandamus suit or in injunction proceedings restraining such officers from interfering with the collection of such taxes and the payment of said obligations by said county tax collector, and said county commissioners' court. Any such action of the district court may be appealed to the Court of Civil Appeals and a judgment of the Court of Civil Appeals shall be final. In the event any such district embraces territory in two or more counties, the duties herein provided for the county tax collector and county commissioners' court shall be performed by such officers as to all such property lying within the county. [Id. sec. 134.]

Art. 7792. Selling surplus water.—Any Irrigation or Water Improvement District now existing or hereafter to be created, may sell any surplus water it may have, or have conserved, to lands in the same vicinity, for the purpose of irrigation, domestic or commercial uses; and any such District may contract to pump or deliver, for such purposes, to lands in the same vicinity of such Districts, water which such lands may be entitled to appropriate under permit from the Board of Water Engineers of the State of Texas, upon such terms and conditions, and for such length of time, as may be provided for in such contracts. [Acts 1921, p. 22, § 135; Acts 1929, 41st Leg., 1st C.S., p. 203, ch. 80, § 1.]

Arts. 7793, 7794. [Repealed by Acts 1925, 39th Leg., p. 325, ch. 123, § 4.]

Art. 7794a. Acquisition of plants; sale and lease of electrical energy.—Any water improvement district or conservation and reclamation district operating under contract with the United States, or any department thereof, may provide for the purchase, acquisition, construction, operation, lease or control of plants for the generation, distribution, sale and lease of electrical energy, including the sale to municipalities, corporations, firms or individuals of electrical power, generated within or without said district, or the sale, or lease of power privileges incident to or forming a part of the reservoirs, canals or other works owned, constructed or operated by or for such district, and for the purpose of obtaining funds with which to construct or acquire the power plants, transmission lines and other works necessary or useful for the development, transmission, distribution, sale or lease of such power, may borrow money in the name of such district, and issue bonds therefor or enter into contract with the United States for the repayment thereof. Such bonds may be issued in the manner and subject to all of the regulations, terms, conditions and provisions of other bonds authorized to be issued under the terms of Chapter 87 of the General Laws of the Regular Session of the Thirty-fifth Legislature, and of the acts amendatory thereof and supplementary thereto. The board of directors of any such district shall estimate and determine the amount of money necessary to be raised, or the amount of indebtedness necessary to be assumed for such purpose or purposes, and may include in such amount a sum sufficient to pay the first four years' interest on such indebtedness. [Acts 1925, 39th Leg., ch. 123, p. 324, § 1.]

Art. 7794b. Coöperating with districts of other states.—Whenever any water improvement or conservation and reclamation district in this State, operating under contract with the United States, shall obtain water from the same source from which water is obtained by any such district or similar district or districts, organized for irrigation or drainage purposes,

under the laws of any other State, the water improvement district or conservation and reclamation district organized under the laws of this State shall be, and it is hereby authorized to jointly own, acquire, construct and operate irrigation works, reservoirs and drainage works, in cooperation with such district or districts obtaining water from the same source of supply, which may be located within another State, under the terms and conditions to be set out in a written contract, and the provisions of the preceding section, relating to the development, transmission, distribution, sale and lease of electrical power and energy, in the manner in said section provided, shall be applicable to any such district in this section referred to. Any such contract shall not be binding until the same shall have been ratified by a majority vote of the legally qualified voters of such district, situated within this State. Such contract shall be printed or in writing, and a true copy thereof shall be filed in the office of such district in Texas fifteen (15) days prior to such election, and shall be subject to public inspection.

Whenever works or improvements are to be constructed or acquired, bids may be jointly called for and may be opened and considered at the designated office of either of such districts, and the officers of such district in Texas may execute such contract, and may hold meetings to consider the execution thereof, and the approval of the contractor's bond, and all matters pertaining to or incident to such contract, at any office established for such joint project, and at which office all business of such joint project may be transacted.

The action of each district being determined by its board of directors, a general manager may be employed for such joint enterprise, whose duties may be set forth in the joint ownership contract. The terms and conditions of such joint ownership or construction contracts shall not conflict with the provisions of the law providing for the organization and conduct of districts, except as herein provided, but may include provisions for joint construction and operation, and such contracts may be amended from time to time, in the same manner. [Acts 1925, 39th Leg., ch. 123, p. 325, § 2.]

Art. 7794c. Application.—The provisions of this Act shall apply only to districts operating under contract with the United States, or any department thereof. [Acts 1925, 39th Leg., ch. 123, p. 325, § 3.]

Art. 7795. Limiting power to incur debt.—The board of directors of any water improvement district which has been or shall be constituted a conservation and reclamation district under the provisions of Section 59, of Article 16, of the Constitution, may, for the benefit of the purchasers or holders of bonds to be issued, limit the power of the district to incur debt and issue bonds in the manner and to the extent hereinafter mentioned. Said board may adopt a resolution declaring that during a period not exceeding ten years, the district shall not issue bonds in excess of twenty-five per cent of the assessed value of the taxable real property of the district according to the last assessment for district purposes, and shall give notices of the adoption of such resolution by publication once a week for two successive weeks in a newspaper published in the district, stating that such resolution shall take effect unless a petition signed by ten per cent of the qualified property tax paying electors of the district shall be presented against the proposed limitation within thirty days after the date of the first publication of such notice. If such petition or remonstrance be filed within said period, said limitation shall not take effect unless it be approved at a general or special election held in the district in the same manner as other general or special elections are held. The ballot on the question at such election shall be in substantially the following form: "For limiting during the term of ——— years, the maximum debt of the district to twenty-five per cent of the assessed valuation of the real property," and "Against limiting during the term of ——— years, the maximum debt of the district to twenty-five per cent of the assessed valuation of the real property." If such limitation shall be approved or if during said period no petition or remonstrance shall be filed, the district shall not issue bonds under any statute or constitutional provision during said term in excess of the amount so limited, except to complete works for constructing which bonds may be issued within said limitation, and shall only issue bonds exceeding said limitation for completing such works after the State Board of Water Engineers shall have approved the plans and specifications of the original and uncompleted works, together with the estimates of the cost thereof. If such plans and specifications and estimate be approved by said State Board of Water Engineers, notice of intention to issue said bonds to complete said works shall be given by publication once a week for three weeks, stating the amount of the proposed issue of bonds and the time when a hearing will be had, which shall not be less than thirty days from the date of the first publication. Any property taxpayer, bondholder or other creditor or person interested may appear and shall be heard. If the determination be in favor of the issuance of additional bonds to the amount stated in the notice, the question of issuing such bonds shall be submitted to the property taxpaying voters at an election held in the form and manner prescribed by law. [Acts 1st C. S., 1921, sec. 139.]

Art. 7796. Previous bond validated.—All proceedings heretofore had and taken to organize a water improvement district under the Act to which this is an amendment, or to determine the manner in which taxes or assessments shall be levied and collected, or to bring any district organized hereunder under the provisions of Section 59 of Article 16 of the Constitution of Texas, or to authorize the issuance of bonds of any district organized under the Act to which this is an amendment, whether such district shall or shall not have come under said Section 59 of Article 16 of the Constitution, shall be and are hereby in all respects ratified, validated, approved and confirmed, and such bonds may be issued and sold in the form and manner and at the price and under the conditions prescribed by law. [Id. sec. 139.]

Art. 7797. May sue to protect bonds.—All water improvements districts and irrigation districts heretofore or hereafter organized under the laws of the State being dependent upon their water rights and water supply to perform their public duties and to protect their bonds and other indebtedness created under the provisions of the law and to maintain their taxable values and assessable values, shall have full authority to maintain any action or suit for such purposes. [Id. p. 150, sec. 140.]

Art. 7798. May sue to protect bonds.—The board of directors are hereby empowered to institute and maintain any suit or suits to protect the water supply of said district and to prevent any unlawful or unwarranted interference with or diversion of such water supply. All water improvement districts and irrigation districts shall have full power and right to protect their water supply and all other rights and property and by proper suit to prevent any taking or interference with such water supply, of whatever nature or however acquired, necessary to the uses of such district or for the irrigation of the lands situated therein. [Id. sec. 141.]

Art. 7799. Board of Water Engineers to investigate.—The State Board of Water Engineers shall be and is constituted a commission to investigate and report upon the organization and feasibility of all water improvement districts which shall issue bonds under the provisions of the law of this State. All such districts desiring to issue bonds for any purposes shall submit in writing to said board an application for investigation, together with a copy of the engineer's report, and a copy of all data, profiles, maps, plans and

specifications prepared in connection therewith. Said Board of Water Engineers shall examine same and shall visit the project and carefully inspect the same and may call for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements. They shall file in their office in writing their suggestions for changes and improvements, and furnish a copy thereof to the board of directors of the district. If said board shall finally approve or refuse to approve such project or the issuance of bonds for any improvement, they shall make a full written report thereon, file same in their office, and furnish a copy of same to the board of directors of said district. [Id. sec. 142.]

Art. 7800. Conveying interests.—Any water improvement district organized under the laws of the State of Texas, which shall have filed an application for a permit to construct a reservoir and to appropriate the waters of a stream or watershed for irrigation or other purposes and for which a permit shall have been granted by the State Board of Water Engineers and a permit issued therefor, said district may convey to another water improvement district an interest in said reservoir and water rights evidenced by its application and permit granted by the State Board of Water Engineers. Said conveyance shall convey all such rights covered by its terms; provided, however, same shall be filed for record and be recorded in the office of the county clerk of the county or counties in which said property is situated and shall then be filed for record in the office of the State Board of Water Engineers. Said transfer when so filed shall be and operate as a conveyance of all rights granted to the district to which said permit was issued in so far as it covers same, not to exceed, however, the rights granted by the permit issued therefor by the State Board of Water Engineers. From and after the date said transfer is filed in the office of the State Board of Water Engineers all rights conveyed thereby shall be vested in the district to which same is transferred as fully and to the same extent as if a permit had been issued for same by said State Board of Water Engineers. [Acts 1923, p. 282, sec. 1.]

Art. 7801. Excluding land from district.—All water improvement districts which have been organized and in which it may be thereafter determined that some of the lands included within the boundaries of such district can not be irrigated by gravity flow from the irrigation system as constructed may eliminate and take said land out of said district at any time prior to the issuance of bonds or other fixed obligations by said district in the following manner. The board of directors of such district shall make an order specifying such lands and the owners thereof and declaring same to be so situated that they will not be irrigated by gravity flow from the canals constructed or to be constructed, and enter such order on the minutes of said board. Within ten days after said order is so made and entered notice thereof shall be given by publishing a true copy of same in a newspaper of general circulation in the county in which said lands are situated once a week for two weeks. If no protest is filed to such action with said board of directors within fifteen days after the final publication of said notice, said order shall become final as to all lands included in said order the owners of which have not filed a protest. In the event any owner of said lands or any part thereof shall file a protest with said board of directors contesting said action and asking that said lands be not taken out of said district then as to same order shall be annulled and said lands or parts thereof described in said protest shall remain in said district. In the event any lands are so excluded from a district that it may thereafter be desired to have again included in said district same may be so included upon application of the owner thereof in the manner provided by law for adding lands to an established district. [Acts 1923, ch. 135, p. 278, sec. 1.]

Art. 7802. Districts heretofore organized may take advantage.—Any water improvement district, drainage district, or levee improvement district, heretofore organized or hereafter organized or hereafter to be organized, under the laws of this State, as defined districts, under Section 52 of Article 3 of the Constitution, may avail itself of the benefits of Section 59 of Article 16 of the Constitution, and thereby become a conservation and reclamation district, without change of name. [Acts 1923, p. 282, sec. 2.]

Art. 7803. May incur indebtedness.—Any conservation or reclamation district hereafter organized under this Act, and any water improvement district, drainage district or levee improvement district which may be constituted a conservation and reclamation district under this Act, may incur indebtedness and levy taxes to fully carry out each and all of the purposes of its organization, and for the payment of its obligations and the maintenance and operation of said district. [Id. sec. 3.]

Art. 7804. Limitations removed.—All limitations of indebtedness authorized to be incurred and taxes to be levied, imposed by Section 52 of Article 3 of the Constitution, and any and all laws under which any such district has been or may be organized, are removed as to all districts which may become conservation and reclamation districts under the terms of this Act. [Id. sec. 5.]

Art. 7805. To change districts heretofore organized.—Any water improvement district, or irrigation district heretofore or hereafter organized under the laws of this State, may become and be made a conservation and reclamation district, as herein provided, in the following manner: When a petition signed by twenty per cent of the owners of land in such district, praying therefor, is presented to the directors, they shall order an election to be held to determine such issue, such election to be conducted as provided for general elections in such districts. The ballots shall have printed thereon the following: "For Conservation and Reclamation." The directors shall canvass the returns and declare the result of such election, and have recorded in the deed records of the county or counties in which such district is situated a full copy of the order declaring the result of such election; and when such order is in favor of so making such district a conservation and reclamation district, it shall become such district without change of name or impairment of its obligations, upon the result of such election being declared and recorded as herein provided. [Id. sec. 5.]

Art. 7806. Governed by regulations of water improvement districts.—Any conservation and reclamation district organized for the purpose for which water improvement districts and irrigation districts have heretofore been organized, or any water improvement district or irrigation district becoming a conservation and reclamation district under the terms hereof, shall be governed and controlled by the provisions of law applying to water improvement districts, except as herein otherwise provided. [Acts 2nd C. S., 1919, p. 37, sec. 6.]

Art. 7807. May choose benefit or ad valorem basis.—Any water improvement district organized under authority of Section 59 of Article 16 of the Constitution, and Chapter 25, General Laws, Fourth Called Session, Thirty-fifth Legislature, as well as any water improvement district which may have been created prior to the adoption of such constitutional amendment, and which shall have availed itself, or may hereafter avail itself, of the benefits of Section 59 of Article 16 of the Constitution, may, at the time of its creation, or at any time thereafter before such district shall have

issued bonds, submit to the qualified electors of such district the question whether the taxes to be levied therein, or any part thereof, shall be levied, assessed and collected upon an "equitable" basis in proportion to benefits to be conferred by the organization, operation and maintenance of such district and the work and improvements to be created thereby, or whether such taxation of any portion thereof shall be levied upon an ad valorem basis. Such question shall be submitted to the qualified voters of such district at any time and in any manner that the governing body of such water improvement district may elect, and the ballots to be used shall have printed thereon in substance the following: "For the levy of taxes upon a benefit basis instead of an ad valorem basis," and, "Against the levy of taxes on a benefit basis instead of on an ad valorem basis." And such election shall be governed by the provisions of Chapter 87 of the General Laws of the Thirty-fifth Legislature, Regular Session, so far as applicable. If a majority of the votes cast at such election shall be in favor of the levy and collection of the taxes, or any part thereof, upon an equitable basis in proportion to benefits, instead of upon an ad valorem basis, then the directors of such district shall at some convenient time thereafter, and from time to time as may be necessary, sit as a board to apportion and assess the benefits conferred upon any and all property situated within such water improvement district, and shall cause a record to be made, showing the amount and value of the benefits computed to accrue to all of the property situated within such district and subject to taxation, and the amount of taxes upon such basis to be levied against and collected from such property; provided, that no taxes so assessed or adjudged against such property shall be in excess of the benefit accruing and to accrue to such property from the organization, operation and maintenance of such district and the improvements to be acquired or constructed thereby. After such record shall have been made up, the board shall cause notice to be mailed to each property owner whose name appears upon such record, showing the amount of taxes to be levied against such property, and fixing a date and place at which such owner may appear and contest the correctness and equitableness of such tax. And after such hearing such board of directors of [1] other governing body shall determine the equitableness of the tax and sustain, reduce, or increase the same, as in their judgment shall be just and equitable; and the decision of such board shall be final. All of the provisions of Chapter 87, General Laws, Thirty-fifth Legislature, Regular Session, and amendments thereto, not inconsistent herewith shall apply to the levy, assessments and collection of the taxes herein provided for. [Id. sec. 5a.]

[1] So in enrolled bill. Session Laws read "or".

Art. 7807a. Granting eminent domain to water improvement districts.

Power conferred

Sec. 1. The right of eminent domain is hereby conferred upon Water Improvement Districts established under the provisions of Chapter 2 of Title 128 of the Revised Civil Statutes of Texas, and/or amendments thereof, to enable them to acquire by condemnation lands, easements and other property and the fee simple title, easement or right-of-way in, over and through all lands, private and public, except as hereinafter indicated, necessary for making, constructing, maintaining, operating, policing and protecting dams, reservoirs, canals, laterals, pumping sites, drainage ditches, levees and all other improvements necessary and proper for such districts, including sites for construction and working purposes; and all necessary passways and roadways along or to and from any such dams, reservoirs, canals, laterals, pumping sites, drainage ditches, levees, and other improvements; and the authority hereby conferred shall authorize and empower such Districts to condemn lands, private and public, for the purposes hereinabove indicated within or beyond the boundary of such Districts and within any county in the State of Texas. And such right of eminent domain is also hereby conferred upon such Water Improvement Districts for the purpose of enabling such Districts to enter upon and acquire and take by condemnation from any land within said District and within one mile of such dams, reservoirs, canals, laterals, pumping sites, drainage ditches, levees or other improvements, all necessary earth, gravel, stone, clay or other materials for any one or more of the aforesaid purposes. The right of eminent domain shall not extend to any land used for cemetery purposes, nor to property owned by any person, association of persons, corporation or Water Improvement District and used for the purpose of supplying water under the laws of this State, and necessary for the making of reservoirs, canals, laterals, pumping sites, levee or drainage ditches, or other appurtenant work by such owner. Adequate compensation shall be paid to the owner or owners of any property so taken, damaged or destroyed for such purposes.

Rights acquired

Sec. 2. Whenever the fee simple title, easement or right-of-way in, to or over any land for any of the aforesaid purposes has been so acquired by condemnation, the right so obtained by said District shall include the right to remove and use any timber or any materials of any character within the limits of said land so condemned for any purposes necessary in the making, constructing, maintaining and operation of any of the improvements or structures above named.

Procedure in condemnation proceedings

Sec. 3. All such condemnation proceedings shall be under the direction of the directors and in the name of the Water Improvement District; and except as otherwise provided in this Act, the assessing of damages and all procedure with reference to condemnation, appeal and payment, shall be in conformity with the Statutes as provided in Title 52 of the Revised Civil Statutes of the State of Texas relating to eminent domain; provided, that when the owner of any property or interest therein sought to be condemned, cannot be found after diligent search, or his residence is unknown, or such owner is a minor or other person laboring under disability, it shall be sufficient as a prerequisite to the jurisdiction of the Court to allege that such owner cannot be found after diligent search, or that his residence is unknown, or that he is a minor, or other person laboring under disability, and such allegation shall be deemed a sufficient statement that such District and such owner have been unable to agree upon the value of the land or for damages; and provided, that any number of separate parcels of property situated in the same county, whether owned by the same person or persons, or different persons, may be embraced in one petition or statement for condemnation, and the compensation or damages for such several parcels when owned by the same person or persons, may be assessed separately or together; and when such parcel or parcels are owned by different persons in severalty, such compensation shall be assessed separately, according to such ownership; provided, that when the title to any such property is in dispute between two or more owners, or there are adverse or conflicting claims thereto, it shall be sufficient to have the ward [1] of damages paid into the Court where such condemnation proceedings are pending, to await the determination of such dispute, and then paid to the rightful owner or owners thereof; and said Court shall have jurisdiction to determine all such adverse and conflicting claims to said property and said award of damages; and provided, further, that no delay after such payment in determining the rightful ownership thereof, nor

any appeal from the finding and assessment of damages by the Commissioners appointed for that purpose, shall have the effect of causing the suspension of work by the District in connection with which such property is sought to be condemned or acquired.

[1] Should probably read "award".

Subsequent condemnation as to omitted person

Sec. 4. In any case where property has been condemned or sought to be condemned and any person or persons owning an interest or interests in such property has been omitted from such proceedings, or has failed to receive a notice of such condemnation proceedings as provided by law, such omission or failure shall not invalidate the proceedings or judgment of condemnation as to any person or persons who is a party to such proceedings and who has received proper legal notice thereof, and such property and the interest therein of such person or persons so omitted or so failing to receive such notice may be condemned in any subsequent proceedings therefor.

Court may render complete relief

Sec. 5. When any such District is sued for any property occupied by it or taken by it for any of its purposes, or for damages thereto, the Court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of the property, upon petition or cross-bill asking such remedy by the defendant. [Acts 1930, 41st Leg., 5th C.S., p. 120, ch. 7.]

Section 6 of this Act makes the act cumulative of all other laws on same subject.

Art. 7807b. Power conferred to obtain funds.

Power conferred

Sec. 1. Any water improvement district heretofore organized and now existing under the provisions of Chapter 2, Title 128, of the Revised Civil Statutes of Texas, 1925, and any amendments thereto, created or authorized to operate under Section 59 of Article 16 of the Constitution of Texas, and containing within its territorial limits not exceeding twelve thousand acres of land, and not containing within its limits an incorporated city with a population of thirty thousand (30,000) according to the last preceding United States census; and not containing within its limits an incorporated city with a population of Two Hundred Sixty Thousand Four Hundred Seventy-five (260,475) according to the last preceding United States census, is hereby declared to have the power to obtain funds for accomplishing any of its authorized purposes, under the conditions and in the manner hereinafter set forth.

Sale of securities to amount of unsold bonds

Sec. 2. Whenever any such district, as herein defined, shall have on hand and unsold any bonds heretofore authorized to be issued by it under the provisions of Chapter 2, Title 128, of the Revised Civil Statutes of Texas, 1925, and any amendments thereto, and such bonds cannot, in the opinion of the Board of Directors of such district, then be sold upon terms advantageous to the district, such district may raise money, either by the issuance and sale of its securities or by loan contracts, in an amount not exceeding the amount of its unsold bonds, and use such money for any of the purposes for which such unsold bonds shall have been authorized.

Certificates of indebtedness authorized

Sec. 3. To evidence the indebtedness and provide for the repayment of any such borrowed money, any such district is authorized and empowered to execute and deliver its certificates of indebtedness, notes, or other form of obligation, and may pledge its full faith and credit for the payment thereof. Any such district may sell any of its securities, either irrevocably or upon repurchase agreement, at such price and upon such terms and conditions, and any such repurchase agreement may be for such term or period, as may be agreed upon between such district and the purchaser of such securities; provided, however, that the sale price of such securities shall not be less than the minimum price for which said district is authorized by law to sell its bonds, and the interest rates paid for such borrowed money or to be borne by such securities shall not exceed eight per cent per annum. Any such loan or securities shall be made payable not later than the maturity date of the last maturing bonds so authorized to be issued.

Pledge of income and revenues; creation of Loan Fund Charge

Sec. 4. To secure the payment of any such securities or such borrowed money, any such district is authorized and empowered to create and pledge, out of and from its income and revenues, an amount sufficient to discharge same, principal and interest, in accordance with the maturities of the certificates of indebtedness, notes or other form of obligation evidencing the same, and the amount of income and revenues thus created and pledged shall be known as the "Loan Fund Charge." Such Loan Fund Charge may be created and pledged to be derived from assessments pro-rata per acre against the irrigable lands in such district, or all or any part thereof, out of and from income and revenues derived from water charges for the use of water within said district or from the sale or supplying of water to any cities or towns or other municipal corporations, including any other districts, and to any lands or users of water outside of the boundaries of such district, or the sale of water to any commercial or industrial enterprise, or from the sale of hydro-electric power, or out of and from either, any or all of such respective sources of revenue, as the Board of Directors of such district may fix and determine. The amount necessary for such Loan Fund Charge shall be thus fixed by the directors of such district, and when thus fixed, shall be enforced and collected in the same manner as now provided by law in respect to charges or assessments for maintenance and operation of any such district; and all liens and remedies now or hereafter provided by law to secure and enforce the collection of charges and assessments for maintenance and operation purposes, shall exist and be applicable for securing and enforcing the collection of such Loan Fund Charges. The proceeds of the collection of all such Loan Fund Charges shall be segregated and kept in a separate fund, to be known as the "Loan Fund," and said fund shall be used and disbursed for no other purpose than to pay the principal and interest on the loan or securities herein provided for, so long as any part of said loans or any of said securities shall remain unpaid. Such Loan Fund Charge thus created and pledged shall constitute an additional and distinct charge and source of income for such district, over and above and distinct from its income for maintenance and operation and other purposes provided by law. When and after such Loan Fund Charge is thus created and pledged, and so long as the same is maintained, the action of the Board of Directors of such district in fixing the amount thereof, and in fixing the total annual charges or assessments for maintenance and operation purposes, shall not be reviewable by the State Board of Water Engineers, any existing law to the contrary notwithstanding.

Pledge of future income

Sec. 5. To secure the payment of any such borrowed money, certificates of indebtedness, notes or other form of obligation evidencing the same, any such district may pledge all or any part of any present or future income inuring to such district from any or all of the sources of revenue or income enumerated in this Act, or from any other source.

Pledge of unsold bond as security

Sec. 6. As additional security for any such loan or evidences of indebtedness, such district may pledge its unsold bonds in an amount not exceeding the amount of such loan or of its securities used in obtaining such money, plus an amount equal to ten per cent of such loan or securities, but no such bonds so pledged shall be sold under the pledge agreement for a less price than the minimum price provided by law for the sale of said bonds by such district. If unsold bonds of the district are not so pledged as security, then when said money is borrowed or such securities sold, unsold bonds of the district in an amount equal to such loan or to such securities shall be deposited with, and kept by, the depository of such district, and be progressively released by such depository as corresponding amounts of such loan or securities are paid off by the district; provided, however, that any such bonds so deposited may at any time be sold, and delivered to the purchaser by the district, the proceeds of which sale, or so much thereof as necessary, to be applied to the payment of such loan or securities; but the purchasers of such bonds shall not be required to see to the application of the purchase money by the district.

Exchange of unsold bonds

Sec. 7. Any unsold bonds of any such district may at any time, upon the order of the Board of Directors of such district, be exchanged for any other bonds of said district, of the same issue, then outstanding, upon such basis of exchange as may be set forth in such order, and all bonds so received by such district in such exchange shall again be subject to sale or negotiation to the same extent as if such bonds had never been sold.

Powers conferred as cumulative

Sec. 8. Each and all of the powers herein conferred upon such districts are in addition to, and cumulative of, all other powers possessed by such districts under the Constitution and laws of this State, and nothing herein shall be construed as placing any limitation upon the powers of any such district to borrow money or to issue bonds for purposes or in the manner now or hereafter provided for or authorized by law. All powers herein conferred upon any such district shall be exercised by the Board of Directors thereof by appropriate order or resolution of such board duly adopted by a majority of such directors and spread upon the minutes of such board. The provisions hereof shall be liberally construed in order to carry out and effectuate the purposes hereof.

Partial invalidity

Sec. 9. If any part or provision of this Act be held invalid, such holding shall not affect any other part or provision thereof. [Acts 1933, 43rd Leg., p. 51, ch. 25.]

Art. 7807c. Refunding bonds by water improvement and irrigation districts.

Authority to refund

Sec. 1. Any water improvement district, or water control and improvement district, or conservation and reclamation district, or irrigation district, now or hereafter organized and existing under the constitution and laws of this State, other than Water Improvement Districts now organized and existing under the constitution and/or laws of this State which obtain their water supply under contract with the United States government, is hereby authorized and empowered by order or resolution of the Board of Directors of said district, and without submitting same to an election, to refund any of its outstanding bonds theretofore authorized by an election held for that purpose as provided by law, including matured and unpaid interest coupons and accrued interest, by issuing new bonds, provided said old obligations are taken in exchange at their face value or less, or in the event such new refunding bonds can be sold at a premium and the old obligations retired thereby without loss to the district. Such new refunding bonds may mature serially or otherwise, but not exceeding forty years from their date, as the Board of Directors may determine, and such new refunding bonds may bear such rate or rates of interest, as may be determined by the Board of Directors, but not exceeding the rate or rates of interest borne by said old obligations thereby refunded. Such districts are authorized to levy and collect all such taxes, equitably distributed, as may be necessary for the payment of the interest upon and the creation of a sinking fund for the payment of such new bonds. The Comptroller shall not register said new bonds until the old bonds in lieu of which they are issued are presented to him for cancellation. Said new refunding bonds shall be approved by the Attorney General as provided by law, or, in lieu thereof, may be validated by suit as provided in Articles 7703–7707 inclusive, or Articles 7880–95 to 7880–99, incl., as the case may be, of the 1925 Revised Civil Statutes of the State of Texas.

Cancellation of unsold bonds

Sec. 2. Any such district which has heretofore authorized the issuance of any bonds by submitting same to an election, as provided by law, and which bonds have been submitted to and approved by the Attorney General of the State of Texas, or validated by suit, as provided by law, and registered by the Comptroller as provided by law, and which bonds, or any part thereof, have not been sold by the district, may, without submitting same to an election, and by order or resolution of its Board of Directors, at any time after two (2) years from the date of the election authorizing same, provide for the cancellation of all or any part of such unsold bonds, or for the impounding to prevent sale of all or any part of such unsold bonds, for such length of time, and upon such terms and conditions as the Board of Directors may approve, or may provide for the issuance of new bonds in lieu of all or any part of said unsold bonds, provided said new bonds are not in a larger amount than originally authorized and do not bear a higher rate of interest than originally authorized. In case such order or resolution directs the cancellation of any such old bonds, a certified copy of such order or resolution of the Board of Directors, together with the old bonds ordered to be cancelled, shall be delivered to the Comptroller, who shall thereupon cancel and destroy the old bonds ordered to be cancelled, making a record of such cancellation, and upon the cancellation of same the authority to issue or reissue any bonds in lieu of those ordered to be cancelled shall terminate; and in case such order or resolution directs the impounding of any of such old bonds, said old bonds directed to be impounded shall be delivered to the Comptroller with a certified copy of such order or resolution, and the Comptroller thereupon shall hold and dispose of said bonds subject to the terms and provisions of such impounding set forth in said order or resolution, and in case said order or resolution provides for the issuance of new bonds in lieu of any of said old bonds, said old bonds shall be delivered to the Comptroller with certified copy of said order or resolution, and the Comptroller shall cancel and destroy such old bonds, making a record of such cancellation, upon the issuance of such new bonds in lieu thereof, and register the new bonds.

Powers conferred

Sec. 3. Any water improvement district, or water control and improvement district, or conservation and reclamation district, or irrigation district, now or hereafter organized and existing under the Constitution and laws of this State, is hereby authorized and empowered by order or resolution of its Board of Directors:

(a) To refund any of its notes, warrants or other obligations outstanding on January 15, 1933 (other than bonds) by issuing in lieu thereof new notes, warrants or other obligations (but not bonds, unless authorized by an election as required by law), provided the said old notes, warrants or other obligations are taken in exchange at their face value, or less, or in the event such new notes, warrants, or other obligations can be sold at a premium and the old notes, warrants or obligations thereby retired without loss to the district. Such new notes, warrants or other obligations may mature serially or otherwise, but not exceeding forty years from their date, as the Board of Directors may determine, and may bear such rate or rates as may be prescribed by the Board of Directors, but not exceeding such rate or rates of interest borne by the old notes, warrants or other obligations thereby refunded;

(b) To enter into an agreement to cancel or amend any contract existing between said district and any other such district for contribution to the construction of any improvement by such other district or by said district, or any contract with any other such district for the joint ownership, construction or operation of any irrigation works, reservoirs, levees, drainage systems, or other plants, works or improvements which said districts are authorized to own, construct or operate, provided such amendment or cancellation is likewise authorized by order or resolution of the Board of Directors of such other district, and provided further that before such amendment or cancellation shall become operative, notice of the respective orders and resolutions of the Boards of Directors of said districts shall be published in each of such districts, respectively, at least once a week for three (3) successive weeks in a newspaper or newspapers of general circulation within such districts. Thereafter in either or both of such districts at any time within thirty (30) days from the first publication of said notice in the particular district, not less than twenty-five per cent (25%) of the qualified property taxpaying voters of such district, as shown by the records in the office of its Tax Collector, may file petition with the Board of Directors of said district praying said Board of Directors to order an election for the purpose of submitting to a vote of the qualified property taxpaying voters of said district the proposition to amend or cancel such contract, and upon the filing of such petition, such Board of Directors shall, at the next meeting thereof, order an election to be held in such district to determine whether or not such contract shall be so amended or cancelled, the time and place or places of holding said election to be determined by said Board of Directors, and the manner of holding same shall be governed by the laws of the State regulating elections for the issuance of bonds by said district. If the proposition for the amendment or cancellation of such contract be rejected by a majority of the property taxpaying voters voting at such election in either district, then such contract shall not be so amended or canceled, but in the event no such petition is presented to the Board of Directors of either district, or if, such petition being presented to the Board of Directors of either or both districts, the proposition is sustained by a majority of the property taxpaying voters voting at such election in the district or districts in which such petition is presented, then such amendment or cancellation shall be authorized and shall become and be operative. If in either district no such petition is presented to the Board of Directors within the time herein prescribed, no election in said district on the proposition shall be required.

(c) To make, amend or cancel contracts with other such districts, by agreement with the Board of Directors of such other contracting district, for the sale or purchase of water for such time and consideration, and upon such terms, provisions and conditions as may be approved by the Board of Directors of the contracting districts; and to secure the performance of such contracts, may create and pledge, and contract to create and pledge, income and revenue to be derived, all or any part thereof, from assessments prorata [1] per acre as may be authorized by law against irrigable land, or all or any part thereof, to be derived from water charges for the use of water or from the sale or supply of water to any cities, towns or other municipal corporations, including any other districts, and to any lands or users of water within or without the boundaries of such districts, or the sale of water to any commercial or industrial enterprise, or from all or any of such respective sources of revenue as the Directors of such districts may fix and determine; and to pledge all or any part of such contract, and all or any part of the security securing same, for such purposes as may be appropriate to the organization and operation of such district.

[1] So in enrolled bill. Session Laws read "probate".

Classification of lands for assessments

Sec. 4. Any water improvement district, or water control and improvement district or conservation and reclamation district, or irrigation district, now or hereafter organized and existing under the Constitution and laws of this State, is hereby authorized and empowered, by order or resolution of its Board of Directors in fixing from year to year the assessment prorata per acre against irrigable land within the district provided for in Article 7752 or Article 7880–109, as the case may be, of the 1925 Revised Civil Statutes of the State of Texas, to classify irrigable lands within the district, taking into consideration the character of said land, its suitability for cultivation, and the kind of crops grown or capable of being grown thereon, and to fix a different per acre assessment against each such class of irrigable lands as the Board of Directors may determine to be equitable, provided that the assessment per acre in any given year against all irrigable land of the same class shall be the same. When said Board shall have made such classifications and assessments, they shall fix a date for hearing protests from parties affected thereby, a notice of the time and place of said hearing shall be prepared, and the Secretary of the district shall retain one (1) copy thereof, and shall post one (1) copy at the Courthouse door in each county in which said district, or any part thereof, shall be located, fifteen (15) days prior to the date of hearing, and shall publish one (1) copy in a newspaper of general circulation in each county in which the district, or any part thereof shall be located, once a week for two (2) consecutive weeks, the first publication thereof to be made at least twenty (20) days prior to the date of hearing, and he shall make due return of the service thereof, with copy and affidavit of publication attached on the original, prior to the date of hearing. Upon the day set for hearing, any party affected by said classifications or assessments may appear and contest same, and may offer testimony, and such hearing may be adjourned from day to day, and upon the conclusion of such hearing the Board of Directors shall make its final order with reference to such classifications and assessments, and any party who has appeared and contested the action of the Board of Directors, may file appeal from such part of the final order of said Board of Directors which directly affects him, to the District Court of any county in which said district, or any part thereof, is located by filing with the Secretary of said district notice thereof, and by filing suit in such District Court against said district within fifteen (15) days after making of the final order. Said cause shall be tried as other civil cases in the District Court, and shall be advanced and be tried by the District Court and by all Appellate Courts to which such cause may be appealed as soon as possible.

Provisions cumulative

Sec. 5. The provisions of this Act shall be cumulative of all existing laws, but the provisions of this Act shall be full authority for the exercise of the powers conferred hereby without reference to any other statute, and without the necessity of any proceedings, elections, notice or other action, except as provided herein.

Partial invalidity

Sec. 6. If any section, paragraph, sentence, clause or phrase of this Act shall be declared to be unconstitutional such action on the part of the court shall not be construed and interpreted as affecting any section, paragraph, sentence, clause or phrase not so held unconstitutional, but said unaffected parts of this Act shall remain in full force and effect. [Acts 1933, 43rd Leg., p. 201, ch. 93.]

Art. 7807c—1. Validating proceedings for refunding bonds.—Sec. 1. That in each and every instance where any water improvement district or water control and improvement district, or conservation and reclamation district heretofore organized and existing under the Constitution and laws of this State (other than water improvement districts now organized and existing under the Constitution and/or laws of this State which obtain their water supply under contract with the United States Government) has heretofore, pursuant to any election or elections held in such district and to orders or resolutions of its board of directors conforming to the result in such election or elections, or pursuant to any orders or resolutions of its board of directors without submitting the same to an election, provided for refunding any part or all of its outstanding bonds and indebtedness theretofore authorized by an election held for that purpose as provided by law, including matured and unpaid interest coupons and accrued interest, and also including interim bonds (if any) theretofore issued as provided by law with matured and unpaid interest coupons and accrued interest thereon, and also including other existing and valid indebtedness incurred for or in satisfaction of expenditures or liability of said district for purchase and/or construction and/or improvement and/or extension of the improvements necessary or proper to carry out the purposes of the organization of said district, by issuing new bonds of such district, all such proceedings, orders and resolutions heretofore or hereafter issued pursuant to such proceedings, orders and resolutions shall be and are hereby in all things ratified, confirmed and validated; provided that such new or refunding bonds shall mature serially or otherwise but not exceeding forty (40) years from their date and shall bear interest at a rate not exceeding that authorized for the old bonds, and shall not be issued in amount aggregating more than the total of old bonds and obligations so refunded, and shall have been or shall be registered by the Comptroller who shall not, however, register such new bonds until such old bonds as are hereby refunded are presented to him for cancellation.

Sec. 2. That in each and every instance where any such district, pursuant to any election or elections held in such district and to orders or resolutions of its board of directors conforming to the result in such election or elections or pursuant to orders or resolutions of its board of directors without submitting the same to an election, (1) has heretofore provided for the cancellation of all or any part of any unsold bonds of such district which have been theretofore authorized by an election held for that purpose as provided by law and which have been submitted to and approved by the Attorney General of the State of Texas or validated by suit as provided by law or validated by Act of the Legislature, and have been registered by the Comptroller as provided by law, and which bonds or any part thereof have not been sold by the district; or (2) has heretofore provided for the issuance of new bonds, whether in lieu of all or any part of said unsold bonds or for the payment of the cost of purchase or construction and/or improvement and/or extension of the improvements necessary or proper to carry out the purposes of the organization of said district; all such proceedings, orders and resolutions heretofore had or passed and all such new bonds heretofore or hereafter issued pursuant to such proceedings, orders and resolutions shall be and the same are hereby in all things ratified, confirmed and validated; provided, said new bonds be not in a larger aggregate amount than the total amount of old bonds originally authorized and do not bear a higher rate of interest than originally authorized; and provided further, that certified copies of said proceedings, orders and resolutions shall have been or shall be delivered to the Comptroller who shall thereupon (1) cancel and destroy the old bonds ordered to be cancelled, and which shall be delivered to him for that purpose, making a record of such cancellation and (2) register the new bonds provided to be issued; which new bonds and/or old bonds shall be delivered to him at said time for such action.

Sec. 3. Any such district shall be and is hereby authorized to levy and collect any such taxes, upon either ad valorem or benefit basis as it may determine, as may be necessary for the payment of the interest upon and the creation of a sinking fund for the payment of any new bonds referred to in Section 1 or Section 2 of this Act; and any and all proceedings, orders and/or resolutions whereby such taxes have been heretofore provided for or levied by any such district for such purposes are hereby in all things ratified, confirmed and validated.

Sec. 4. If any provision hereof be held to be invalid in whole or part, this Act shall, nevertheless, except only to the extent of such partial invalidity, remain and be valid and effective. [Acts 1935, 44th Leg., p. 768, ch. 336.]

Art. 7807d. Water Improvement Districts and Water Power Control Districts; organization and powers; provisions to govern.

Districts governed by Act

Sec. 1. All Water Improvement Districts and Water Power Control Districts organized, or hereafter organized, in accordance with the provisions of Chapter 247, Acts of the Fortieth Legislature,[1] and governed by the provisions of Chapter 2, Title 128, Revised Civil Statutes, and amendments thereto, and all Water Improvement Districts and Water Power Control Districts which include within their area or boundaries parts of several organized Water Improvement Districts, and/or Irrigation Districts, and/or irrigation plants or water plants not organized as defined Districts, shall be hereafter governed by the provisions of this Act and amendments that may be adopted hereto.

[1] Article 7622a, ante.

Districts included in act; districts validated

Sec. 2. All Water Improvement Districts and/or Water Power Control Districts which include lands in two or more counties and include lands embraced within two or more Water Improvement Districts and Irrigation Districts, and which Water Improvement Districts and/or Water Power Control Districts so including such districts and lands have been organized subsequent to the enactment of Chapter 247, Acts of the Fortieth Legislature [1] and have been organized as Water Improvement Districts under the provisions of Chapter 2, Title 128, Revised Civil Statutes and amendments thereto are districts included within the terms and provisions of this Act described in Section One hereof, even though they have not in fact cooperated with the United States under the Federal Reclamation Laws and all such Districts are hereby validated and declared to be legally organized Districts.

[1] Article 7622a, ante.

Districts validated

Sec. 3. All Water Improvement Districts and Water Power Control Districts, governed by the provisions of this Act, which Districts have heretofore been ordered to be established by order of the State Board of Water Engineers and/or a County Commissioners' Court, and which Districts have been or are now carrying out the purpose of their organization in planning and undertaking to finance and construct reservoirs and/or acquire water rights to carry out the plans of such Districts are hereby validated and declared to be valid, legal organizations and to have all the powers, functions and rights in this Act provided. The fact that by inadvertence or oversight any act of the officers of the State or any County, or other person, in the creation of any District was not properly done shall in no wise invalidate the organization of such District, and all such Districts are hereby validated in all respects as though they had been duly and legally established in the first instance.

Powers, rights and functions

Sec. 4. Water Power Control Districts, except as herein otherwise specially provided, shall be governed by the provisions of law relating to Water Improvement Districts and are fully vested with all the authority, powers, rights and functions of Water Improvement Districts as defined and provided by the laws of the State of Texas as may now or hereafter be provided by law and by Chapter Two of Title 128 of the Revised Civil Statutes of Texas and amendments thereof.

Name; change of name not to affect prior organization or obligation

Sec. 5. All Water Improvement Districts which include lands in two or more organized districts shall hereafter be known and designated as Water Power Control Districts. The change of name from Water Improvement Districts to Water Power Control Districts shall not affect in any manner the prior organization proceedings, debts, securities, obligations, or records of such District, but shall change the name thereof. The name of all such Districts shall be the same as heretofore organized, except the words "Water Improvement District" included in such name shall be and are hereby changed to "Water Power Control District."

Cooperation with United States

Sec. 6. Water Power Control Districts and Water Improvement Districts and Irrigation Districts included within Water Power Control Districts are fully authorized and empowered to cooperate with the United States under the National Industrial Recovery Act, and/or Federal Reclamation laws, and/or any and all laws of the United States applying to the aid of public works furnishing or securing funds for any and all purposes coming within the powers of such Districts so organized and concerning or pertaining to the conservation and use and control of water for any and all lawful purposes. The provisions hereof that such Districts may so cooperate with the United States is not intended as a limitation upon their power to operate as a Water Improvement District.

Divisions

Sec. 6a. Water Power Control Districts shall be divided into divisions. The number of divisions shall be one for each organized Water Improvement District and/or Irrigation District included within such Water Power Control District. All lands within such Water Power Control District not included within such organized districts shall for all purposes requiring and authorizing elections to be held by and for Water Power Control Districts including election of directors for such districts be for such purposes parts of the nearest such division.

Number and election of directors

Sec. 7. Water Power Control Districts shall be governed by a Board of Directors. The directors of such Districts heretofore elected or appointed and acting in fact as such directors are hereby declared to be Directors of such Districts with full power to act as such Directors until their successors are duly elected and qualified. The number of Directors of such Districts shall be one for each separate division. The Director to be elected by the qualified voters thereof. Such election to be ordered, held, returns made, canvassed and the result thereof declared, by the Directors and officers of the organized Water Improvement District or Irrigation District in such division.

Bond of directors; approval; oath

Sec. 8. Upon the election of any such Director the President and Secretary of said Board shall issue a certificate of election to him which shall be filed with the Secretary of such Water Power Control District. Each such Director shall make and execute an official bond in the sum of Five Thousand ($5,000.00) Dollars payable to such Water Power Control District, conditioned that such Director will faithfully perform all duties required of him by law as such Director. Such bond shall be approved by the County Judge of the county in which such division for which he is elected is located and when so approved shall be recorded by the County Clerk of such county and be preserved in the office of such Clerk. Each Director shall execute an oath of office being the same form as provided for oaths of office for County Commissioners in the State of Texas, to be filed together with such bond in the office of such County Clerk. Upon the approval and filing of such bond and oath of office the County Clerk shall issue a statement thereof to the Board of Directors of such Water Power Control District which shall be recorded in the minutes of such Water Power Control District.

Election of directors

Sec. 9. All elections for Directors of Water Power Control Districts to be held within each such division shall be ordered, notices thereof given, and all proceedings for the holding of such election in accordance with the provisions of law providing for holding of elections within Water Improvement Districts and except as therein otherwise provided in accordance with the provisions of the law of the State of Texas for holding general elections. Any person's name may be placed upon the ballot by a petition filed with the Board of Directors in such division ten (10) days prior to the date of such election by any ten (10) qualified voters in said division.

Term of directors; vacancy in office

Sec. 10. The Directors so first elected or appointed shall serve as such Directors until the first Tuesday in April, 1934, and until their successors are elected or appointed and qualified. There shall be elected a Board of Directors for all such Water Power Control Districts on the First Tuesday in April, 1934, whose term of office shall be for a term of two (2) years and until their successors are elected and qualified, and such Directors shall be selected on such day each two (2) years thereafter, and shall qualify and assume the duties of their office within thirty (30) days after such date. In the event of vacancy in the office of a Director of a Water Power Control District, a successor shall be elected, provided in such special election notice of holding such election shall be given and published for fifteen days prior to the day of such election.

Manner of extending areas or boundaries

Sec. 11. All Water Power Control Districts including areas embraced within several districts and/or water plants but which as organized do not include all the area included within such several Districts may extend their areas or boundaries to include all the area

and/or lands laying [1] within and/or under said several Districts and/or water plants in the following manner:

The Board of Directors of such Water Power Control District at a meeting at which all said Directors are present shall make and record in their minutes an order extending the area included therein and the boundaries thereof so as to include and add to such District any part or all the lands and areas included within such several Districts, plants, and works. Notice, that such order so including such lands within such District has been made, shall be given, signed by the President and Secretary, and shall be published in one newspaper published in each county in which any part of said lands so added lies, once a week for three (3) weeks, which notice shall state a definite time and place when said order will be further considered to be affirmed, modified or repealed. Such hearing shall be held at such time and place and all persons interested therein or affected thereby may appear and contest such order or advocate same. After said question shall have been fully heard and considered the said Board of Directors shall make and enter its final judgment thereon either affirming, modifying, or repealing same. The owner of any land so added to such District who does not desire to have his land included in such District may at the time of, or prior to such hearing, file with the Board of Directors a petition that his lands be not included in such District and all lands so requested to be not included therein shall be excluded therefrom. Any land so excluded upon petition of the owner shall be excluded from all benefits and services of such Water Power Control District.

If the said Board of Directors shall by mistake, inadvertence or error fail to include in such District any lands that in fact are part of such several Districts or areas or lands that are in fact entitled to be watered therein or thereby, and have in fact been watered thereby, or have the right to be watered thereby, the owners of such lands may have same thereafter added to such District by filing their written application therefor with the Board of Directors. Such petitions shall be set down for hearing and the petitioner notified thereof and shall be passed upon and either rejected or granted. If any such petition is rejected by the Board of Directors the applicant may file his suit against such Water Power Control District in the District Court to have determined his right to have his lands included therein and same shall be tried as a civil suit to determine the right to have said land included, based upon any legal right to have said land irrigated from an existing plant included in such Water Power Control District. If such Court shall by final judgment so order, same shall be included therein.

[1] So in enrolled bill. Should probably read "lying".

Powers and functions of districts

Sec. 12. Water Power Control Districts shall have the right and power to buy, own, construct, maintain and operate reservoirs, canals, power plants and any and all necessary properties, facilities and improvements to aid two or more districts and divisions included within such Water Power Control District to conserve and use water for irrigation, water power and all other useful purposes and may construct, buy, own and operate power plants, and buy, sell, trade and generally deal in water, water rights, and electricity and power. Water Power Control Districts may own, buy and construct reservoirs and acquire water rights to secure, impound and conserve a water supply and furnish water to each of several districts, water plants and systems included therein in so far as it may have such available supply in the proportion to which said several divisions and plants therein are entitled to same as herein defined.

Ownership and control of reservoirs, power plants, and other improvements

Sec. 13. Water Power Control Districts shall own and control all reservoirs, power plants and other improvements and properties purchased, constructed, and acquired by it, but each of the several divisions thereof shall have the right to participate in the water owned, controlled and stored and any net revenue therefrom and to enforce its right to same in the pro rata portion that it is entitled to use the water acquired and to be furnished by such Water Power Control Districts.

Validation of water rights acquired

Sec. 14. All right to, and appropriations of, water of the common source of water supply at any time made or acquired by such several Districts and/or water plants and divisions within a Water Power Control District shall be and enure to the benefit of such Water Power Control Districts, and all such rights heretofore acquired or applied for are validated and confirmed for the use of such Water Power Control Districts and all conflicts in such rights as between the several divisions of such Water Power Control Districts are quieted and the rights of each such division therein and thereto shall be fixed and defined as herein provided.

Pro rata of water supply to divisions; compilation of estimates

Sec. 15. The amount of pro rata of the water supply of the Water Power Control District to which each of the divisions thereof is entitled shall be fixed and determined as herein provided prior to the time that said Water Power Control District shall issue bonds or notes to secure funds to construct any improvements, in order to determine same the Directors of the Water Power Control District shall compile an estimate of the water supply which it may reasonably expect to have available annually for distribution and shall compile a statement of the amount or pro rata part thereof that each organized district therein, and each tract of land therein not included in an organized district is entitled.

Hearing objections to estimates

Sec. 16. The Board of Directors of such District shall set a day for hearing any objections to such statement as so compiled and any and all persons interested therein may appear and participate therein by petition or offering evidence as to any matter in dispute in order to have a full and impartial consideration of such questions. Notice of such hearing shall be given by publication of a notice thereof signed by the President and Secretary and published in a newspaper in each county in which any of such lands is situated by publication one time not less than eight days prior to the date of hearing. Such hearing may be continued and adjourned from time to time as may be deemed necessary to secure a full consideration of all questions presented. When the Board of Directors shall have finally determined all questions raised and have arrived at a final conclusion as the proper divisions of such water, to determine the pro rata right in the total expected supply, an order shall be adopted fixing and defining same. Such order shall be entered on the minutes.

The right of each unit or division shall be a pro rata interest.

Contracts with units or divisions

Sec. 17. The rights of each unit or division within a Water Power Control District shall be evidenced by a written contract executed by each and all said units or divisions with the said Water Power Control District. Such contracts to be executed by the Board of Directors of all said Districts and shall be effective from the time so executed. No election shall be required to validate same unless a debt is created by such contract. Such contracts may provide for any and all matters and things necessary to the joint ownership, operation, maintenance and conduct of such property and defining and establishing the rights of each unit or division therein, but same shall not con-

flict with any provision of the laws governing such Districts. Such contracts may be amended by joint agreement made in the same manner.

All such contracts shall provide that the ownership and rights of the several divisions or units in such Water Power Control District, and all properties and rights and revenue thereof, are subordinate to and subject to the rights of the holder of any and all debts created by such Water Power Control District and subject to and subordinate to all pledges, liens, contracts, and obligations of such Water Power Control District executed to guarantee the repayment of any debt contracted by such Water Power Control District.

Districts as conservation and reclamation districts

Sec. 18. All Water Power Control Districts organized as herein provided are and shall be Conservation and Reclamation Districts under the provisions of Section 59, Article 16 of the Constitution with all the power and rights therein provided, and may incur indebtedness evidenced by contract, notes, warrants or bonds and levy taxes, fix and levy charges for the distribution, sale and/or use of water, and/or power to fully pay any debt or obligation incurred and for the payment of the costs of construction of any plants or improvement, and the maintenance and operation thereof.

Voting on bond issues; notice of election

Sec. 19. Prior to the issuance of any bonds or the creation of any debt the proposition shall first be submitted to the qualified tax paying voters of such District and the proposition be adopted by a majority of those voting at such election. Notice of such election shall be given by notice issued twenty days prior to the day of election, publication of notice for two weeks in a newspaper in each county in which any part of said District is situated.

Borrowing money; lien on income

Sec. 20. Water Power Control Districts may borrow money for any authorized purpose and may fix, give and grant a lien and/or a mortgage upon any property owned or to be bought, constructed, or acquired by it and upon its income, revenue, and rights then existing or thereafter to be fixed or acquired or to accrue to it to fully guarantee the payment of such debts and all interest and charges to accrue thereon including the expenses of the holder of such debt incident to the enforcement of such lien and the collection of such debt.

Borrowing money from agencies of Federal Government and others

Sec. 21. Water Power Control Districts may borrow money from any agency created by the Laws enacted by the Congress of the United States and/or from any person and corporation for any purpose incident to its powers and functions and may evidence such debts by contracts, agreements, notes, bonds, or warrants payable at any term of years not to exceed forty years with interest thereon not to exceed six per centum (6%) per annum and may pledge its properties, revenues, income, and source of revenues and income to the payment thereof together with interest thereon and the expense incident to the enforced collection thereof, and its revenue, income, and source of income so pledged shall be used exclusively for the purpose pledged until such debts are fully repaid and after being so pledged shall not be used for any other purpose unless released for such purpose.

Bonds; power to tax

Sec. 21-a. Water Power Control Districts may issue bonds and levy, assess and collect taxes under and in accordance with the provisions of Chapter Two, Title 128, Revised Civil Statutes and amendments thereto relating to Water Improvement Districts.

Lien on income to secure debt

Sec. 21-b. Water Power Control Districts may pay and may contract to pay on any debt created by the issuance and sale of bonds and in addition to all taxes levied and collected therefor other funds, revenue and income and may pledge and fix a lien thereon, and mortgage any property, revenue and income, owned by it or accruing to it to secure the payment of such debt.

Construction of reservoirs; distribution of water

Sec. 21-c. Water Power Control Districts which may construct, own and operate reservoirs for the purpose of controlling and supplying water to two (2) or more organized districts and divisions included therein shall have the power and right to make and enforce reasonable rules for the use and distribution of water and to withhold the delivery of water to any lands, district or division thereof which shall fail to pay the assessments, charges and rentals fixed and provided by such Water Power Control District to secure funds for the payment of its obligations and create reasonable reserve funds and to maintain and operate same.

Rights of Water Improvement Districts and Irrigation Districts determined by contract

Sec. 21-d. Water Improvement Districts, Irrigation Districts and water plants, included within Water Power Control Districts shall be units or divisions thereof and the rights of each such district or division shall be fixed and determined by a contract to be executed by all such units, divisions and such Water Power Control District.

Water Improvement Districts and Irrigation Districts as Conservation and Reclamation Districts

Sec. 22. Water Improvement Districts and Irrigation Districts included within Water Power Control Districts, organized as herein provided, are constituted and shall be Conservation and Reclamation Districts under the provisions of Section 59, Article 16, of the Constitution, with all powers and rights provided and may incur indebtedness evidenced by contracts, notes, warrants or bonds, and levy taxes, fix charges for the distribution, sale, and/or use of water, and/or power to fully pay any debt or obligation incurred and for the payment of cost of construction of any plants or improvements and the maintenance and operation thereof and for the maintenance and operation of such districts and for the purpose of fully carrying out and performing their obligations and contracts with Water Power Control Districts for the construction of any reservoir, power plant, and improvements whatsoever to be acquired by, constructed by, and/or operated by such Water Power Control Districts and for the purpose of paying any and all debts and obligations of such Water Power Control District in its proper proportion as fixed by its contract and may pledge and deliver to, sell and pay to such Water Power Control Districts such bonds or other evidences of debts to be held, contracted, or pledged or sold by such Water Power Control District for the purpose of securing funds for any authorized purpose, expense or debt incurred or to be incurred by such Water Power Control District.

Bond issues by Water Improvement Districts or Irrigation Districts

Sec. 23. Prior to the issuance of any bonds or the creation of any debts by Water Improvement Districts or Irrigation Districts included within a Water Power Control District the proposition shall first be submitted to the qualified property tax paying voters of such district and the proposition be adopted by a majority of those voting at such election.

Water Improvement Districts and Irrigation Districts included may assist to borrow money

Sec. 24. Water Improvement Districts and Irrigation Districts included within Water Power Control Districts may fully aid and assist such Water Power

Control District to borrow money from the United States and any agency of the United States created by an Act of Congress in the manner herein provided and may create debts and obligations for such purpose and may evidence such debt or obligation by contract, agreements, notes, bonds, or warrants payable to such Water Power Control District and/or to the United States and any agency of the United States created by an Act of Congress, and if same are made payable to such Water Power Control District same may be pledged to the United States and to any agency of the United States created by an Act of Congress, or its assigns; and its revenue, income, and sources of income so pledged shall be used in so far as necessary exclusively for the purpose pledged until such debts, as same mature, are fully paid and after being so pledged shall not be used for any other purposes unless released for such purpose by contract executed by said agency of the United States, created by an Act of Congress and its assigns the owner and holder thereof. Provided the provisions hereof shall not in any manner restrict, enlarge or affect the payment of existing prior debts.

Water Improvement Districts and Irrigation Districts may assist in construction of reservoirs

Sec. 25. In the event that any Water Improvement District and/or Irrigation District included within a Water Power Control District shall make and enter into a contract with such Water Power Control District which provides for the construction of a storage reservoir by such Water Power Control District, from which such Water Improvement District and Irrigation District will be served water, such Water Improvement District and Irrigation District may pledge itself to pay to such Water Power Control District the proportion of the cost thereof which it may contract and agree to pay and which may include all expenses and charges incident thereto. Such payment may be evidenced by contracts, and/or notes, bonds, or evidence of indebtedness with interest thereon at not to exceed the rate of six per centum (6%) per annum. And to further guarantee the payment thereof such Water Improvement Districts and Irrigation Districts may provide by such contract that in the event it shall fail to pay the amount so required to be paid either in monthly, quarterly, semi-annual, or annual payments that such Water Power Control District may withhold the the [1] delivery of water to such Water Improvement District or Irrigation District or other division and not deliver water to such Water Improvement District and Irrigation District or other division until such payments have been made. And in the event that such default is made in such payments the delivery of water may be withheld and said Water Power Control District may sell such water to other persons or corporations, and in such event such Water Improvement District and/or Irrigation Districts so in default shall not have any claim or action against such Water Power Control District for a failure to deliver such water to it.

[1] So in enrolled bill. Second "the" is superfluous.

Pledge of obligations, contracts, etc., by Water Improvement Districts and Irrigation Districts included

Sec. 26. Water Improvement Districts and Irrigation Districts included within Water Power Control Districts shall have full authority and power to issue, pledge, and/or sell and deliver any and all obligations, contracts, agreements, notes, bonds, or warrants which it may issue as evidence of any debt, contract, or agreement made by it with such Water Power Control District and/or any person and/or any [1] agency, and/or any corporation lending money to such Water Power Control District and to provide for and assure or guarantee the payment thereof,[2] may make a levy or fix a benefit against each and every acre of land included within such Water Improvement District and Irrigation District to pay such debt and the necessary cost of the assessments and collection hereof [3] and such levy of such charge or tax may be made payable each year in monthly installments, quarterly installments, semi-annual installments, and/or annual installments. All such levies shall be payable at such time and times as may be fixed and determined and all installments, charges, or amounts so fixed that are not paid when due shall be classed as delinquent and when same become delinquent there shall be added thereto a penalty or charge of three per centum (3%) of the amount thereof, and all delinquent charges or taxes shall bear interest from the date that they become delinquent at the rate of six per centum (6%) per annum and if it becomes necessary for such District to place said delinquent charges in the hands of an attorney for collection, or to collect same by suit there shall be added thereto an attorney's fee of five per centum (5%) of the amount of said charge, penalty and interest.

[1] So in enrolled bill. Session Laws omit the word "any".
[2] So in enrolled bill. Session Laws read "therefor".
[3] So in enrolled bill. Should probably read "thereof".

Bond issues by included Water Improvement Districts and Irrigation Districts; tax per acre

Sec. 27. All Water Improvement Districts and Irrigation Districts included within a Water Power Control District may issue bonds for any lawful purpose as provided by law for the issuance of bonds by Water Improvement District and/or may issue bonds upon the basis of taxes equally distributed upon an equitable basis by fixing and determining same an equal charge upon each acre of land therein entitled to a full share in the water supply of the District, and a pro rata equal charge upon each acre of land of the second class which is not entitled to a full share of water based on the quantity of water to which it is entitled, and may levy against each such acre of land its proportionate part of such debt created by the issuance of such bonds and in such event shall fix and determine the amount of tax per acre to be paid each year upon each acre of land of each class therein to pay the interest and charges accruing upon said bonds and the costs of assessing and collecting same and may fix and determine the time or times when said taxes shall be paid either in monthly, quarterly, semi-annual or annual installments. All such charges and taxes so levied shall be a lien upon the land upon which so levied. All such levies shall be payable at such time and times as may be fixed and determined and all installments, charges, or amounts so fixed that are not paid when due shall be classed as delinquent and when same become delinquent there shall be added thereto a penalty or charge of three per centum (3%) of the amount thereof and all delinquent charges or taxes shall bear interest from the date that they become delinquent at the rate of six per centum (6%) per annum and if it becomes necessary for such District to place said delinquent charges in the hands of an attorney for collection or to collect same by suit there shall be added thereto an attorney's fee of five per centum (5%) of the amount of said charge, penalty and interest. The District may withhold the delivery of water on any land upon which such taxes or charges are not paid after same become delinquent and until same are paid.

When taxes are fixed and levied on a fixed acreage basis as herein provided, a tax roll shall be prepared showing each tract of land, its classification, the total assessment and the annual or installment payments fixed thereon.

Bond issue election of included Water Improvement and Irrigation Districts

Sec. 28. Whenever a Water Improvement District and Irrigation District included within a Water Power Control District may have issued bonds payable by a general or ad valorem tax and may issue other bonds and/or obligations payable by a benefit tax on an acreage charge or tax, separate tax rolls shall be prepared for each as provided by law and such District may issue bonds on either basis as determined by the Board

of Directors prior to holding of an election to authorize same. The notice of election shall state the method of taxation that will be used to pay such bonds or obligations.

Manner of organization of Irrigation District included into Water Improvement Districts

Sec. 29. In the event that there is included within a Water Power Control District, as herein defined, lands comprising parts or all of an existing irrigation system, now or prior to this time operated and owned by individuals or a corporation such area or any part thereof included or embraced in said irrigation project or plant may be organized into and constituted a Water Improvement District in the following manner:

A petition praying for the organization of such District may be filed with the County Clerk of the County in which same is situated. Such petition shall be addressed to the County Commissioners' Court of the County, shall state the principal reasons why same should be organized as a Water Improvement District, and shall state the facts showing that same is feasible and the facts showing that same is a public utility and benefit. Such petition shall be signed by a majority of the owners of land therein who reside within such District as defined by said petition. The petition shall define the boundaries thereof.

When such petition is filed with the County Clerk same shall then be presented to the County Judge who shall endorse thereon a date of hearing thereof by the County Commissioners' Court of the county. The County Judge shall endorse on said petition the date fixed for such hearing and the County Clerk shall then issue notice thereof under his hand and seal and deliver such notice together with three copies thereof to the Sheriff of the County who shall execute same by posting one copy thereof at the County Court House door, or at the place provided in the County Court House for the posting of legal notices; and shall publish one copy thereof by causing same to be published in a newspaper published in the county, or if no newspaper is published in the county, then same shall be published in a newspaper published in an adjoining county; and by posting one copy thereof at a public place within the area in the petition. Such notices shall be posted for fifteen (15) days prior to the date of said hearing and such notice to be so published shall be published for once a week for two weeks. The first publication to be made at least twenty (20) days prior to the date of such hearing.

Such notice shall state the date said petition was filed and set out a copy of said petition together with a copy of the endorsement of the County Judge thereon fixing the date of hearing. Such notice shall be addressed to all persons having or owning any interest in property within the area defined in the petition, a description of such area shall be set out in such notice.

Upon the day fixed for the hearing of such petition any person affected by the formation of such District may appear and participate in such hearing and may offer evidence upon any and all matters pertaining thereto and may contest the formation of such District or advocate same by evidence, argument or statement.

If, at the hearing of such petition, it shall appear to the satisfaction of the Court that the organization of such district is feasible and practicable, and that it is needed and would be a public benefit and a benefit to the lands included in the District then the Court shall so find, and cause its findings to be entered of record; but if the Court should find that the irrigation of lands in such District is not feasible and practicable and that the organization of such District would not be a public benefit or is not needed or would not be a public utility, then the Court may place such findings of record and dismiss the petition at the cost of the petitioners.

If the Court shall find that the petition should be granted and that the district should be organized then it shall make its order to that effect substantially as follows: "In the matter of the petition of ——— and others praying for the establishment of a Water Improvement District as in said petition described and named ——— be it known that said District is hereby established. Said District is legally established under the name of ——— with the following metes and bounds: (set out description of boundaries)."

If at the hearing the Court shall enter an order granting or refusing the petition for the organization of said District at the cost of petitioners, then in that event the petitioners, or any one or more of them or any one owning land in such District, may appeal from said order to the District Court; provided, however, any such appeal shall only be taken in the event that notice thereof is filed with the County Clerk at the time of said hearing, or within two days thereafter, and that same is perfected by filing with the Clerk of said Court an appeal bond, approved by the County Judge, in a sum of not less than Two Thousand ($2,000.00) Dollars or more than Five Thousand ($5,000.00) Dollars to be fixed by the County Judge, payable to the County Judge for the benefit of adverse parties, within ten (10) days after notice of appeal is filed. In event of such appeal said cause shall be tried under the rules prescribed for practice in the District Court, and to be de novo, and the Clerk of the Commissioners' Court shall transfer to the Clerk of the District Court within ten (10) days from the date of filing of an appeal bond such judgment and all records filed with the County Commissioners' Court, and it shall not be necessary to file any other additional pleadings in said cause. The final judgment on appeal shall be certified to the Commissioners' Court for their action within twenty (20) days after same has become final.

At the time of so ordering a Water Improvement District to be defined and established the County Commissioners' Court shall appoint five (5) Directors for such District, who shall qualify as such Directors within ten (10) days thereafter by taking the oath of office provided by law and executing a bond in accordance with the provisions of law governing Water Improvement Districts.

After such directors shall have qualified and organized as a Board of Directors notice shall be published by such Directors signed by the President and Secretary of such Board, stating that such District has been organized and that the owner of any land included within such district who does not desire to have his land included therein may file his petition with the Secretary of the Board of Directors of such District to have said land excluded and taken out of said District. Such notice shall include a description of the boundaries of such District and shall set forth the time within which such petition may be so filed.

The owner or owners of any land included within a District so organized who wish to have their lands excluded therefrom may file a petition with the Secretary of the Board of Directors of such District praying that such lands be excluded therefrom at any time within thirty (30) days after the first publication of the notice herein provided for or at any time prior to the date of hearing of such petitions as herein provided. All such petitions for exclusion of land from such District shall describe the land by metes and bounds or other good and sufficient description and shall state the names and addresses of the owners thereof and all persons having or holding any interest therein or liens thereon.

The notice herein provided to be given of the hearing of application for exclusion of lands shall be published once a week for three weeks prior to the date of said hearing, the first publication of which shall

not be less than thirty-five (35) days prior to the date of such hearing. Such notice shall be published in a newspaper published within the county in which such District is located. A copy of such notice shall be posted at the Courthouse of such county in the place provided for the posting of legal notices, and copy of same shall be posted at a public place within such District. Such notice shall be signed by the President and Secretary of the Board of Directors of such District and if such District does not have at that time an established office then such notice shall state the place where such hearing will be held, providing that the Directors may order that such hearing be held at the County Courthouse.

When petitions are so filed for the exclusion of land from such a District the Directors shall at the time and place designated hear same and all matters concerned therewith and if at such hearing the person filing such petition insists upon the exclusion of such land from such District the Board of Directors shall make and enter an order upon the minutes of said Board excluding such lands from such District by granting such petition and shall thereupon cause said petition together with the order of the Board of Directors thereon to be recorded in the Deed Records of the County in which same is located and thereupon said land shall be excluded from said District and shall thereafter be excluded from all benefits thereof to the same effect as if it had not been included within said District when so organized.

If and in the event that the lands so excluded from any District so organized should render the further functioning or operation of the District not practical, then the Board of Directors of such District shall so certify to the County Commissioners' Court by filing a statement of the facts with reference thereto with the County Clerk of the county, who shall thereupon present same to the County Commissioners' Court; and the County Commissioners' Court shall, in such event, consider such statement. If same is approved by such Court the Court may make and enter its order dissolving such District. Any such statement made as a basis of dissolving such District shall be so made and filed by the Directors at such District within five (5) days after the hearing upon petitions to exclude lands from such District.

All such Water Improvement Districts organized as provided herein shall be governed by the provisions of Chapter Two, Title 128, of the Revised Civil Statutes and amendments thereto, except as herein otherwise provided.

Existing priorities in water rights preserved; lands classified

Sec. 30. Any Water Improvement District within a Water Power Control District organized in accordance with the provisions of this Act which shall include therein lands not possessing a water right or a right to be irrigated or watered from the irrigation system included within such Water Improvement District shall be classified as land not having a first class right but as lands having a second class right within such Water Improvement District and such lands having a second class right shall not take from such lands having a first class right any part of the water belonging to such lands having a prior or first class right therein. Such lands so having only a second right shall be entitled to the use and distribution of water thereon by such Water Improvement District in so far as the water supply of such District at any time exceeds the amount of water actually required for the use of first class lands and all valuations for taxation, assessments and charges levied thereon shall be proportioned only to the amount of water to which it may be entitled as distinguished from first class lands. The purpose of this provision of the law is that where an irrigation system has heretofore been established and rights have been acquired thereunder for the irrigation of certain lands and in the organization of a Water Improvement District additional lands may have been included therein not having such water right and not owning any part of such existing irrigation system that such additional lands so included shall not take water from such lands therein having such prior rights but that such additional lands so included therein may be furnished water in so far as possible without taking from such lands having prior rights the prior rights to be first furnished water. [Acts 1933, 43rd Leg., p. 154, ch. 76; Acts 1933, 43rd Leg., 1st C.S., p. 54, ch. 19, § 1.]

Art. 7807dd. Water Power Control Districts; Water Improvement Districts included in, validated.

Sec. 1.

This section amended Article 7807d, ante.

Water Improvement Districts validated

Sec. 2. Water Improvement Districts situated within a Water Power Control District and which have been heretofore declared to have been organized and established by order of a County Commissioners' Court under the terms and provisions of Section 29, of Chapter 76,[1] Acts of the Forty-Third Legislature and the organization of which the County Commissioners' Court found that petitions for the organization thereof had been filed and that notice thereof had been given and that the organization of such districts was feasible and practicable that it was needed, and would be of public benefit and benefit to the lands included in the district and has caused such findings to be entered of record are hereby found and declared to have been legally created and the same are hereby validated and declared to have been validly created Water Improvement Districts. The fact that by inadvertence or oversight any act of the officers of any county or other person in the creation of any District was not properly done shall in nowise validate[2] such District, and all such districts are hereby validated in all respects as though they had been duly and legally established in the first instance.

[1] Article 7807d, ante.
[2] So in enrolled bill. Should probably read "invalidate".

Water Improvement Districts and Irrigation Districts included in, validated

Sec. 3. Water Improvement Districts and Irrigation Districts, part or all of which are included within a Water Power Control District and which Water Improvement Districts and Irrigation Districts have heretofore been organized and have in fact been established and operating for three years or more and which were at the time of their organization established by order of the County Commissioners' Court of the county in which they are situated and are now recognized and operating as such Water Improvement Districts and Irrigation Districts are hereby found and declared to have been legally created and are hereby validated. The fact that by inadvertence or oversight any act of the officers of any county or other person, in the creation of any such district was not properly done shall in nowise invalidate such district and all such districts are hereby validated in all respects as though they had been duly and legally established in the first instance.

Lands and districts which may be included

Sec. 4. Water Power Control Districts may include tracts of land, Water Improvement Districts, and Irrigation Districts, the lands of which do not adjoin or be contiguous to each other but which may be separated.

Borrowing money from Federal Government or agencies thereof; elections

Sec. 5. Water Power Control Districts which have or may borrow or secure funds from the United States and any agency of the United States created by an

act of Congress and/or under the provisions of the National Industrial Recovery Act and/or any other Act of the Congress of the United States may make and enter into contracts to secure such funds in accordance with the rules, practice and laws creating such agency and the rules and regulations properly established for the government of same, and the making of grants and loans by such agency.

Such contracts and agreements shall be made by the Board of Directors of such Water Power Control District and as so made by them shall be binding legal obligations of such District with the requirement however that before the obligations to be issued thereunder are binding as a lien or charge against the properties in such District, the proposition for the issuance thereof shall be submitted in an election for ratification by the qualified voters of such District.

At such election the proposition for the creation of any such debt shall be submitted to be voted upon by stating the amount of the debt or debts to be incurred, the maximum rate of interest that same will bear and the maximum maturity date thereof, but the evidence of such debt, may be made to mature serially or in installments at any rate of interest not to exceed the rate of interest stated in such election notice and to mature at any time or times serially or in partial payments within the maximum time stated in said election notice and in any form or forms which shall constitute same valid binding obligations to secure the loan or funds which they are issued to secure.

Notice of holding of such election shall be ordered to be issued by the Board of Directors of such District. Such notice shall be signed by the President and Secretary of the District and shall state the proposition to be voted upon, the day when said election will be held, the place where said election will be held and shall describe the voting precincts and divisions sufficiently to show where elections will be held and the area or territory included in each voting precinct in such District.

Such notice of election shall be issued twenty days prior to the date of such election and copy thereof shall be posted at the Courthouse door in each county in which any part of such District is situated. Such notice shall be published in a newspaper published in each county in which any part of such District is situated once a week for two weeks prior to the holding of such election, the first publication thereof shall be not less than twenty days prior to the date of such election.

The Board of Directors of the District shall appoint a presiding judge and an associate judge, and two clerks to hold and conduct such election at each polling place, their qualification, oath and conduct of such election shall be in accordance with the laws of the State of Texas provided for holding general elections.

The proposition submitted at such election may contain two or more propositions with reference to the creation of such debts and all such propositions submitted may be upon the same ballot and voted upon at the same election.

Approval of proceedings by Attorney General; contesting issuance of evidences of indebtedness

Sec. 6. The returns of such election shall be prepared and made in accordance with the general election laws of the State of Texas except that such returns shall be made to the President and Secretary of such Water Power Control District and be submitted by them to the Board of Directors of such District and same shall be estimated, canvassed and the result thereof declared by the Board of Directors of such District and a record thereof shall be entered upon the minutes of such District.

After any such debt shall have been so authorized by the election, a full copy of the proceedings of the organization of such District and of such election and of an order of the Board of Directors of such District providing for the evidence, terms and form of such debt, after authorized by an election, shall be submitted to the Attorney General of the State of Texas for his approval as to the validity thereof, and if and when approved by him as legal obligations shall be registered in the office of the Comptroller of Public Accounts in the State of Texas, together with a certificate of approval so given by the Attorney General of the State of Texas.

When and if such Water Power Control District shall issue any such evidence of debt to secure a loan from any agency of the United States or from the United States or under and in accordance with any laws passed by Congress for the purpose of authorizing and having made such laws and an election shall have been held within such District to authorize same and the record thereof shall have been submitted to the Attorney General of the State of Texas for his approval and such approval shall be given, evidenced by certificate thereof filed in the office of the Comptroller of Public Accounts in the State of Texas, and such evidence of debt shall have been registered by the Comptroller of Public Accounts and have been delivered by him to the officers of such District or other persons duly authorized to receive same and shall have been in fact delivered and the amount of such loan or any part thereof shall have been actually paid to such District or other person duly authorized to receive same, then such loan and all such evidence thereof and all proceedings had to authorize the issuance thereof and its approval and registration and the delivery of such evidence of such debt shall be valid binding obligations and incontestable, except for actual fraud, unless any suits, suit or actions to contest same shall have been filed and process therein issued prior to the time of the registration of such securities by the Comptroller of Public Accounts as herein provided.

Any person, corporation, associations, organizations or partnerships, which may contest or may desire to contest or controvert the issuance of such evidences of indebtedness, or oppose same, by any legal or equitable action or proceedings as may be authorized by law, shall file or commence such proceeding prior to the time of the registration of such evidence of indebtedness by the Comptroller of Public Accounts, and the period of time in which any such action may be filed or taken shall end and be terminated at the time of the registration of such evidence of indebtedness by the Comptroller of Public Accounts, and shall not thereafter be heard or considered unless filed within said period of time. The securing of such loans and the doing of such work so contemplated is a matter of great public concern, and such condition creates a special emergency requiring that the validity of such securities be not questioned and, therefore, creates a necessity authorizing this provision of the law and the legislative determination herein contained that when and if the issuance of such securities are authorized by an election held as herein provided, and such funds are actually paid, that the procedure for the issuance thereof and the validity thereof shall not be questioned after the lapse of the period herein provided during which any such contests may be filed or instituted.

Proceedings had and districts organized under amended statute continued in force

Sec. 7. This Act amends an Act passed at the Regular Session of the Forty-third Legislature, known as House Bill No. 413, and being Chapter 76 of the Acts of the Regular Session of the Forty-third Legislature. All things done in accordance with the provisions of said Act are continued in full effect [1] and all districts organized thereunder are continued in full force and effect. All notices issued and published in accordance with the provisions of said Act are continued in full force and effect the same as if same had been

issued, published or given under the terms and provisions of this Act and all such proceedings commenced and not completed under the terms and provisions of this Act. [Acts 1933, 43rd Leg., 1st C.S., p. 54, ch. 19.]

[1] So in enrolled bill. Session Laws duplicated clause "and all districts organized thereunder are continued in full effect."

Art. 7807e. Water improvement districts; incurring indebtedness; acquiring property.

Authority to incur indebtedness

Sec. 1. Water Improvement Districts may incur indebtedness evidenced by contract, notes, warrants or bonds to fully pay any debt or obligation incurred or to be incurred for any lawful purpose provided by law including the purchase, construction, securing or acquiring of any reservoir, rights of way, water rights, and any properties, plants or improvements and the maintenance and operation thereof and including all incidental expenses connected therewith, also for the purpose of constructing repairs, extensions and other improvements upon or to any such properties.

Taxation to pay debts; creating debt without consent of tax paying voters

Sec. 2. At the time of the creation of any debt or obligation as provided in Section one hereof such Water Improvement District shall provide for payment of such debt or obligation. General ad valorem taxes may be fixed, levied, and assessed for the payment thereof, or taxes may be fixed, levied, assessed and collected upon a benefit basis. Any such district which may have heretofore issued bonds or obligations payable by taxation upon either basis may in the creation of additional debt or obligation adopt a different plan of taxation for the payment thereof. Each such debt or obligation shall be paid in the manner provided for its payment at the time such debt or obligation was or is incurred. It is hereby expressly provided that nothing in this Act shall prevent governing boards of Water Improvement Districts from creating, without the consent of the property tax-paying voters of the District, any debt or obligation when such debt or obligation is created to defray ordinary maintenance and operation expenses, or when it is contemplated that such debt or obligation is to be retired from current revenues.

Basis of taxation to pay debts of district

Sec. 3. Water Improvement Districts, the principal function or operation of which is providing and furnishing water for the irrigation of the lands included in such district, may provide for the payment of the principal and interest of any such debts or obligations so created by the levying of taxes upon the land therein upon an equal or uniform basis of an equal charge per acre upon each acre of land to be irrigated. When such basis of taxation is adopted a special tax roll shall be prepared showing each tract of land therein, the number of acres in each such tract, the total assessment of benefits upon each tract, and the amount to be paid each year thereon and such roll shall be prepared or amended each year thereafter. Such tax roll shall be prepared by the tax collector, renditions thereof made by the owner of the property, and said tax roll shall be examined, corrected and approved by the Board of Equalization of such district and such property shall be rendered for taxation, assessed and such tax roll prepared in the manner provided by law for the assessment and collection of taxes and at the time and times provided by law and in all things as provided by law except that the valuation fixed thereon shall be the assessment charge against each acre of land at the time such debt or obligation was or is incurred or issued.

Voting on bond issues

Sec. 4. Prior to the issuance of any bonds or the creation of any debt as herein provided the proposition shall first be submitted to the qualified property tax-paying voters of such district and the proposition be adopted by a majority of those voting at such election. The proposition submitted shall also state the method of taxation to be adopted to provide for the payment of the principal and interest of such bonds, debts, or obligations. Notices of such election shall be given and such election shall be in all things held and conducted as provided by law for the holding of such elections within such districts.

Borrowing money from Reconstruction Finance Corporation

Sec. 5. Water Improvement Districts may borrow money from the Reconstruction Finance Corporation created by the laws enacted by the Congress of the United States for any purpose incident to its powers and functions and any purpose provided by law, and may evidence such debts by contract, agreements, notes, bonds or warrants payable within any term of years not to exceed forty years, and to bear interest at not to exceed the rate of six per centum per annum.

Borrowing money, pledging revenue, and fixing charges for services

Sec. 6. Water Improvement Districts may borrow money for any purpose and in any manner herein provided and may pledge for the payment thereof any part of the income and revenue from the sale and use of water, power, or other sources of income sufficient to fully guarantee the payment of such debts and all interest and charges to accrue thereon, and for the purpose of paying same shall have and are vested with the power to fix charges for the use and sale of water, power and other services to meet the payments so required in addition to all other lawful purposes.

Sec. 7.

This section amended Article 7699, ante.

Pledging unsold bonds to secure loans

Sec. 8. Whenever a Water Improvement District shall have on hand and unsold any bonds issued by it under the provisions of Chapter 2, Title 128, of the Revised Civil Statutes of Texas, 1925, and any amendments thereto, and such bonds cannot, in the opinion of the Board of Directors of such district, then be sold upon terms advantageous to the district, such district may raise money by loan contracts, in an amount not exceeding the amount of its unsold bonds, and use such money for any of the purposes for which such unsold bonds shall have been authorized, and may pledge such bonds as a guarantee or assurance of the payment of such loan. The amount of bonds so pledged shall not exceed the amount of such loan more than fifteen per cent of the amount of such loan.

Loan fund

Sec. 9. Any Water Improvement District may pay and contract to pay on any bonds sold or pledged by it in addition to all taxes levied and collected therefor other funds derived from water charges for the use of water within said district or from the sale or supplying of water to any cities or towns or other municipal corporations, including any other districts, and to any lands or users of water outside of the boundaries of such district, or the sale of water to any commercial or industrial enterprise, or from the sale of hydro-electric power, or out of and from either, any or all of such respective sources of revenue, as the Board of Directors of such district may fix and determine. The amount necessary for such purpose shall be fixed by the directors of such district, and when thus fixed, shall be enforced and collected in the same manner as now provided by law in respect to charges or assessments for maintenance and operation of any such district; and all liens and remedies now or

hereafter provided by law to secure and enforce the collection of charges and assessments for maintenance and operation purposes, shall exist and be applicable for securing and enforcing the collection of such funds. The proceeds of the collection of all such Loan Fund Charges shall be segregated and kept in a separate fund, to be known as the "Loan Fund," and said fund shall be used and disbursed for no other purpose than to pay the principal and interest on the loan or securities herein provided for, so long as any part of said loans or any of said securities shall remain unpaid. Such Loan Fund Charge thus created and pledged shall constitute an additional and distinct charge and source of income for such district, over and above and distinct from its income for maintenance and operation and other purposes provided by law. When and after such Loan Fund Charge is thus created and pledged, and so long as the same is maintained, the action of the Board of Directors of such district in fixing the amount thereof, and in fixing the total annual charges or assessments for maintenance and operation purposes, shall not be reviewable by the State Board of Water Engineers, any existing law to the contrary notwithstanding. [Acts 1933, 43rd Leg., p. 332, ch. 131.]

Art. 7807f. Water supply districts—as governmental agencies.

Purpose and nature

Sec. 1. There may be created within this State districts to be known as water supply districts, for the purpose of conserving, diverting and transporting and distributing water from lakes, pools, reservoirs, wells, springs, creeks, rivers and streams for irrigation, stock raising, domestic and commercial purposes, and the development and sale of hydro electric power. Said districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter hereof as provided herein. Such districts, when so created, shall be free from all forms of taxation.

Petition

Sec. 2. When two or more water improvement districts and/or water control and improvement districts, and/or irrigation districts in this State which have the right to divert water from a common source of supply desire to avail themselves of the provisions of this Act, they shall petition the County Commissioners' Court of the county containing the largest acreage of the lands embraced within the boundaries of the proposed water supply district. Said petition shall be in writing and shall be signed by four-fifths of the directors of each of said petitioning districts and shall set forth the boundaries of such proposed water supply district; the general nature of the work proposed to be done; the necessity therefor and the feasibility thereof, and shall designate a name therefor, which shall include the name of the county or counties in which same is situated, the term "Water Supply District" and the number in the order of its organization.

Notice of intention to petition

Sec. 3. Before such petition shall be presented to the County Commissioners' Court, each district signing same shall give notice of the intention to present said petition by posting copies of said petition, with the words: "Notice of intention to petition for the establishment of a water supply district" written or printed at the top thereof, at the county court house door of the county in which said petition is to be presented and in three public places in each of said petitioning districts, one of which shall be at the door of the main office where taxes and water rentals are paid to such districts and all of which shall be posted for at least twenty days before said petition shall be acted upon by the County Commissioners' Court.

If qualified voters of any such petitioning district in the number of 5% of the voters voting at the last general election for directors of same shall sign and acknowledge a petition in writing to the Board of Directors of any such petitioning district protesting the filing of such petition and shall file one copy with the Board of Directors of such district and one copy with the County Commissioners' Court within twenty days after the posting of such notices, to which said petition is to be presented, then said petition shall not be acted upon by said County Commissioners' Court until each district in which such protesting petition shall be presented shall hold an election. And such election shall be held within thirty days from the presentation of such protesting petition, after notice shall have been given of such election for ten days by posting in three public places in said district, one of which shall be at the office of said district as hereinbefore provided, and at said election only resident qualified property tax-paying voters residing in said district shall have a right to vote and they shall have written or printed upon their ballots "FOR THE WATER SUPPLY DISTRICT" or "AGAINST THE WATER SUPPLY DISTRICT". The Board of Directors of such petitioning district when such election is held, shall, as soon as practicable, meet and canvass the returns of such election and if a majority of the qualified voters voting at said election favor the water supply district, it shall be the duty of the Board of Directors to immediately present such petition to the Commissioners' Court, together with a certificate of the official returns of said election. Such election shall be held in conformity with the general election laws, except as hereinotherwise provided. The Secretary of the Board of Directors in any such district shall prepare and post all notices herein provided for and shall prepare the ballots for such election and his affidavit concerning the same shall be prima facie evidence of the facts therein contained.

Notice of hearing

Sec. 4. Said Commissioners' Court, or the County Judge if said court be not in session, shall forthwith fix a time and place at which the petition shall be heard by the court, not less than fifteen nor more than thirty days thereafter, and shall direct the county clerk as ex-officio clerk of said court, to issue notice of such time and place of hearing. Such notice shall inform all persons of their right to appear and advocate or contest the form and allegations of said petition, the necessity and feasibility of such project, the benefits to accrue and the boundaries of such proposed district; which notice may be delivered to any adult who is willing to execute the same by posting as herein directed.

Posting of notice

Sec. 5. Upon receipt of the notice such person or persons receiving same shall post a copy thereof at the door of the court house of said county and a copy at four different public places within such proposed district. Such posting shall be made for not less than ten days prior to the date fixed for the hearing. The person or persons so posting shall make affidavit, before some officer authorized by law to administer oaths, of their act in respect to such posting and such affidavit shall be prima facie evidence of the facts sworn to.

Hearing

Sec. 6. Upon the date set for the hearing of said petition any person who may be affected thereby may appear before said Commissioners' Court and contest the creation of said district or contend for the creation of said district, may offer testimony in favor of or against the boundaries of said district, the necessity and feasibility of such project, the benefits to

accrue, or as to any other matter pertaining to the proposed district. Said County Commissioners' Court shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such district; and all matters pertaining to the creation and establishment of same, and may adjourn the hearing on any matter connected therewith from day to day; and all judgments rendered by said court in relation thereto shall be final, except as herein otherwise provided.

Findings

Sec. 7. If upon the hearing of such petition it be found by the court that the petition conforms to the requirements of this Act and that the proposed project is feasible and practicable and shall constitute a benefit to such proposed district, the lands therein and the inhabitants thereof, it shall so find and cause its findings establishing such district and defining the boundaries thereof to be entered of record in the minutes of the court, otherwise it shall dismiss the petition at the cost of petitioners; but such adverse finding shall not preclude such petitioners from again petitioning said court for the establishment of such district. Upon the entry of the order of the County Commissioners' Court establishing such district the same shall be constituted a water supply district with all the powers and privileges provided for in this Act.

Annexation of territory

Sec. 8. If such water supply district and any water control and improvement district or water improvement district, or irrigation district having a right to obtain water from the source of supply from which such water supply district obtains water, desire that such additional district or territory be annexed to such water supply district, they shall execute their petition in writing signed by four-fifths of the directors of such water supply district and of the district seeking annexation containing the requirements of the original petition to the County Commissioners' Court set out herein, whereupon the County Commissioners' Court shall set same down for hearing, give notice and conduct a hearing as herein provided for in the original organization of the district and if said County Commissioners' Court shall find the facts herein provided to be found in case of the original establishment of the district, it shall enter its findings of record in the minutes of the court and order the annexation of said territory to the district and re-define the boundaries thereof. From and after the entry of such order of annexation the territory so annexed shall become a part of the water supply district the same as if originally included therein.

Powers of the district

Sec. 9. Water supply districts created under the provisions of this Act shall have the following powers:

(a) To purchase and/or construct all works necessary or convenient for the exercise of the powers granted in Section 1 of this Act.

(b) The right of eminent domain is expressly conferred upon such water supply districts to enable them to acquire the fee simple title, easement or right-of-way over and through any and all lands, water or lands under water, private or public, within and without such districts, necessary or convenient to carry out any of the purposes and powers conferred upon such districts by this Act:—provided, that such districts shall not have the power to condemn land used for parks, cemeteries, drain ditches, canals and other works in actual use for irrigating lands, except that the right to cross such canals and drain ditches in a manner not to unreasonably interfere with them, may be condemned. All such condemnation proceedings shall be under the direction of the directors and in the name of the water supply district, and the assessment of damages and all procedure with reference to condemnation, appeal and payment shall be in conformity with the statutes of this State as provided in the title of the Revised Statutes relating to "Eminent Domain."

(c) Such water supply districts may enter into contracts with member districts, other water improvement districts, water control and improvement districts, irrigation districts, private irrigation corporations, cities, towns, industrial plants and any other persons, real or artificial, who may have a right to obtain water from the source of supply of the water supply district to furnish water from such source of supply to such water user under such terms and conditions as may be agreed upon between the water supply district and such water user, which contracts shall be in writing and copies of which shall be kept on file at the office of the water supply district and recorded in the minutes of the Board of Directors of such water supply district.

(d) Such water supply districts through governing boards shall have the right to employ managers, engineers, attorneys, and all necessary employees to properly construct, operate and maintain said works of districts and carry out the provisions of this Act and to pay reasonable compensation for such services.

(e) Such water supply districts, in addition to the powers hereinabove set out shall have general power to make all contracts necessary or convenient to carry out any of the powers granted in this Act, which contracts may be entered into with any person, real or artificial, any corporation, municipal, public or private, and/or any government or governmental agency, including the United States Government and the State of Texas, but no member district shall ever be held liable on any contract of such Water Supply District not actually entered into by that member district.

(f) Such water supply districts shall have the right to sue and be sued; provided that no member district shall ever become liable for any indebtedness of such water supply district and shall never be held liable for its torts or the negligence of any director or other officer, agent, servant or employee of such water supply district.

(g) Such water supply districts shall have no power to levy any tax or involuntary assessment against any real or personal property.

(h) Before such water supply district shall establish a diversion point, construct the canals, pumping plants and other works herein provided for, it shall present to the Board of Water Engineers of the State of Texas, or such other agency performing the functions now performed by the Board of Engineers, plans and specifications of the same and obtain the approval of such Board.

Governing body

Sec. 10. The governing body of such districts shall consist of a board of directors composed of one member from each member district, who shall hold office for one year beginning on the first day of March of each year and until his successor shall be elected and qualified. Directors shall have the qualifications provided by law for a director of a water improvement district or a water control and improvement district or irrigation district and the manager of any water improvement district or water control and improvement district or irrigation district, if otherwise qualified, may serve as a member of the board of directors of the water supply district.

Election of directors

Sec. 11. The board of directors of each member district shall as soon as convenient after the establishment of the water supply district, and thereafter annually in February of each year, elect a member of the board of directors of said water supply district and such director may be removed at any time by said electing board of directors with or without cause.

Oath and bond

Sec. 12. Each director shall give a good bond in the penal sum of Five Thousand and No/00 ($5,000.00) Dollars, payable to the water supply district and conditioned upon the faithful performance of his duties. Said bond shall be approved by the board of directors of the water supply district. Each director shall take the oath of office prescribed by statute for the members of the County Commissioners' Court, except that the name of the district shall be substituted for the name of the County. Said bond and oath shall be filed with the Clerk of the County wherein lie the largest acreage of the lands of the district and by him recorded in the official bond records of said county. Said bond shall then be delivered by the County Clerk to the district depository and shall be by it safely kept as part of the records of the district.

Organization of board

Sec. 13. At the first meeting after the establishment of the district and thereafter at its first meeting in March of each year, the board of directors shall organize by electing one of their members president and another secretary. The board shall make rules providing for its meetings and the transaction of all business not in conflict with this Act, and shall adopt an official seal. If any board of directors shall consist of an even number of members and a vote on any matter shall result in a tie, the board of directors may submit the matter voted upon to the County Judge of the county containing the largest acreage of the lands embraced within the district, and such County Judge shall cast the deciding vote in such matter.

Compensation of directors

Sec. 14. Each director shall receive Five and No/100 ($5.00) Dollars, per day for the days actually engaged in the service of the district, plus mileage at five (5¢) cents per mile each way for each mile computed from the residence of the director to the place of meeting by the most direct route.

Power to borrow money

Sec. 15. Such water supply district shall have the power, acting through their Board of Directors, to borrow money for any purpose necessary or convenient to carry out the powers granted by this Act and to issue negotiable notes, warrants, bonds, or other evidences of indebtedness for same; provided that such evidences of indebtedness shall be secured only by a lien on the physical properties belonging to such district, and/or by a pledge of the revenues derived by said district from its contracts with water users or users of electricity, and provided that no tax shall ever be levied against the taxable property in said district to pay such evidences of indebtedness or the debt evidenced by the same. Such evidences of indebtedness as shall mature within one year from the date thereof may bear interest not to exceed 8% per annum. All others shall bear interest not to exceed 6% per annum.

The governing body of such water supply districts may issue coupon bonds in the name of such district payable serially over a period not to exceed forty years from the date thereof, bearing interest not to exceed 6% per annum, interest payable annually or semi-annually as provided in the bond order, said bonds to be signed by the President and attested by the Secretary of the Board of Directors of such district, sealed with the official seal, interest coupons to bear the facsimile signatures of the President and Secretary of the Board of Directors, said bonds to be of the denomination, date, maturities and payable at the place specified in the bond order and said bonds shall be payable from and secured by a lien upon all the physical properties of said water supply district and a lien upon the rents and revenues of said district, which liens may be further evidenced by a deed of trust or mortgage, which may be contained in the bond order. In such bond order the Board of Directors shall appropriate and set aside a sufficient amount of the rents and revenues of such district to pay the interest and create a sinking fund sufficient to pay said bonds and the interest coupons thereon as they severally mature, which interest and sinking fund shall be placed in the official depository and applied solely for the purpose for which the same was created; provided, however, that said interest and sinking fund may be invested by the Board of Directors in the manner now provided by law for the sinking funds under the jurisdiction of the Commissioners' Court.

The legality of said bonds shall be evidenced by a transcript, which shall contain a certified copy of the proceedings incorporating such water supply district; the bond order authorizing the issuance of said bonds; certificate of indebtedness; financial statement and non-litigation certificate, which transcript and bonds shall be submitted to the Attorney General of Texas for approval, and when so approved, shall be registered with the Comptroller of the State of Texas. When so approved and registered, said bonds shall be negotiable upon delivery and be binding only upon and payable only from the physical properties and rents and revenues of such district. All evidences of indebtedness of such districts shall provide therein that said indebtedness shall never become an obligation of the member districts.

Depositories

Sec. 16. The depository or depositories of such District shall be selected in the manner now provided by law for the election of county depositories.

Self liquidating

Sec. 17. Such water supply districts are hereby declared to be self liquidating in character and are expressly authorized to borrow money from or sell said bonds or other evidences of indebtedness to the Reconstruction Finance Corporation or other agencies of the United States or the State of Texas or to any other purchasers; provided said bonds shall not be sold for less than 90% of their par value, together with the accrued interest thereon to date of delivery.

Not affect water rights or priorities

Sec. 18. Nothing in this Act shall be construed as affecting any water rights of any member district, or any water user or any lands therein or supplied directly or indirectly thereby or their existing priorities in the rights to water from the source of supply and neither the formation of the water supply district hereunder nor a contract for the purchase of water with such water supply district shall ever be held to be an abandonment or waiver of said rights or an abandonment of the original point of diversion from the source of supply but all such rights existing at the time of the formation of such district shall be preserved to such member district and such water users.

Constitutionality

Sec. 19. If any provision hereof shall be held to be unconstitutional, it shall not affect the validity of the other provisions of this Act. [Acts 1933, 43rd Leg., p. 312, ch. 121.]

Art. 7807g. Validating organization and bonds of water improvement districts converted into water control and improvement districts.— That where pursuant to proceedings purported to have been taken pursuant to the provisions of what is now Chapter 2, Title 128, Revised Civil Statutes, of Texas, a water improvement district has been organized in any county of this State, and where thereafter pursuant to vote of the electors thereof qualified to vote at such election, the board of directors of such district has by order duly recorded in the minutes of said board authorized the issuance of the bonds of said district for the purpose of the acquisition or construction of improvements therein, and where after

the adoption and recording of such order proceedings have been had by said district for the purpose of converting such district into a water control and improvement district, and an order of the board of directors of said district providing that thereafter such district shall be a water control and improvement district operating under the provisions of Article 16, Section 59, of the Constitution of Texas, either with or without change in the name of such district, has been adopted and duly recorded in the minutes of said board, and where after the adoption and recording of said last mentioned order all or part of said bonds voted and authorized prior to such conversion have been issued either through sale and delivery or through delivery in exchange for property or in payment for work done for the use and benefit of such district, the organization of such district, the authorization of its bonds, the conversion of such district into a water control and improvement district, and the subsequent issuance of its bonds, are hereby in all things ratified, validated and confirmed, and such district is hereby declared to be a legal and properly constituted water control and improvement district in accordance with the terms of said order of the board of directors of such district converting such district into a water control and improvement district, and said bonds of such district so delivered are hereby declared to be the subsisting and validly binding obligations of such district payable from taxes to be levied and collected on all taxable property within the boundaries of such district. [Acts 1934, 43rd Leg., 3rd C.S., p. 111, ch. 59, § 1.]

Art. 7807h. Validation of bonds.—That all bonds which have heretofore been issued by Water Improvement Districts and by Water Control and Improvement Districts, and which have been approved by the Attorney General of the State of Texas, are hereby validated and declared to be binding, legal, valid and enforceable obligations of such Water Improvement Districts and of such Water Control and Improvement Districts notwithstanding the fact that such bonds were not validated by a suit in the District Court as required by law, provided, however, that this act shall not affect any bonds the validity of which is being questioned in any litigation pending at the time this act becomes effective. [Acts 1935, 44th Leg., 2nd C.S., p. 1877, ch. 477, § 1.]

Art. 7807i. Districts of not less than 10,000 nor more than 15,000 acres authorized to levy tax for expenses and claims.

Annual tax

Sec. 1. Any Water Improvement District heretofore created and organized under Chapter 2 of Title 128 of the Revised Civil Statutes of the State of Texas having a present combined acreage within the limits of said District of not less than 10,000 acres, and not more than 15,000 acres, when circumstanced as stated in Section 2 of this Act, is hereby authorized and empowered to levy, assess and collect an annual tax on the taxable properties situated within the boundaries of such District, in order to raise funds reasonably sufficient to pay for necessary repairs to its properties, and to maintain and protect same, and to meet any reasonable and necessary contingent or legal expense incurred in behalf of such District, including valid and legal claims against such District for damages to the property of any other person or corporation, provided such tax shall not exceed Ten (10¢) Cents on the One Hundred ($100.00) Dollars valuation of such property for any one year.

Prerequisites to authority to tax; termination of authority

Sec. 2. The authority to levy, assess and collect such taxes conferred by Section 1 of this Act is to be exercised only when any such District has legally authorized the issuance, and has issued its bonds or other lawful evidence of indebtedness, and has sold a portion of its bonds or other evidences of indebtedness, and with the money thus obtained has constructed a dam across some stream and impounded the waters thereof, and has thereby created a reservoir and secured its water supply, but has not constructed any canal, canals or other means for the diversion of water from such reservoir for irrigation purposes, and is unable to sell sufficient of its other bonds at a price permitted by law, to raise money to construct such necessary canal or canals, and has not sufficient available revenues from any other source which it can lawfully apply to the purposes and uses mentioned in Section 1 of this Act; and the authority conferred by this Act to raise funds by taxation to meet such expenses and demands as are mentioned in Section 1 of this Act shall cease whenever sufficient funds legally applicable to such uses and purposes are otherwise reasonably available.

Assessments and taxes validated; exception

Sec. 3. All levies and assessments of taxes made since the year 1931 for any of the purposes mentioned in Section 1 of this Act, by any Water Improvement District as defined in Section 1 of this Act, and circumstanced as set out in Section 2 of this Act, are hereby declared to be, and are hereby made valid and legal for all purposes, the same as if the authority to levy, assess and collect such taxes had been expressly conferred upon such Districts prior to the time when such levies and assessments were made; provided, however, that this Act does not undertake to make valid and lawful, and does not make valid and lawful any such levy or assessment in any instance when such levy and assessment has exceeded the sum of Twenty (20¢) Cents on the One Hundred ($100.00) Dollars valuation of such property in any one year.

Existing taxing power not affected

Sec. 4. Nothing herein contained shall be construed as taking away or limiting any power under any existing law to levy and collect any of the taxes hereinabove referred to, if such power does in fact exist. [Acts 1937, 45th Leg., p. 589, ch. 294.]

Art. 7807j. Validation of organization and bonds of districts in counties of 48,500 to 48,600 population.

Bonds and proceedings validated

Section 1. All bonds heretofore authorized by the necessary vote of the qualified taxpaying voters of any water control and improvement district or any water improvement district of this State, which bonds have not been sold, and which were authorized for the purpose of financing or aiding in the financing of any work, undertaking, or project, or for refinancing its indebtedness by any such district to which any loan or grant has heretofore been made by the United States of America through the Federal Emergency Administrator of Public Works or through any instrumentality or agency of the United States of America for the purpose of financing or aiding in the financing of such work, undertaking, or project, or for refinancing its indebtedness, including all proceedings for the calling and holding of elections and the authorization and issuance of such bonds, and the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, and such bonds shall be, when sold for not less than par and accrued interest, binding, legal, valid, and enforceable obligations of such district in counties of not less than forty-eight thousand, five hundred (48,500) and not more than forty-eight thousand, six hundred (48,600) population, according to the last preceding Federal Census.

Water control and improvement districts and water improvement districts validated

Sec. 1-a. All water control and improvement districts and water improvement districts, whether created or attempted to be created by the Commissioners Court or the State Board of Water Engineers, and heretofore laid out and established or attempted to be established, are hereby ratified, validated, and confirmed in all respects as though they had been duly and legally established in the first instance.

Proceedings for financing work or projects validated

Sec. 2. All proceedings which have been taken prior to the date this Act takes effect, for the purpose of financing or aiding in the financing of any work, undertaking, or project by any such district to which any loan or grant is under contract to be made by the United States of America through the Federal Emergency Administrator of Public Works for the purpose of financing or aiding in the financing of such work, undertaking, or project, including all proceedings for the authorization and issuance of bonds and for the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed.

Act inapplicable to district whose organization or bonds are in litigation

Sec. 3. The provisions of this Act shall not apply to the creation of any such district or any obligations issued thereby, where the validity of such district or its obligations are now in litigation. [Acts 1937, 45th Leg., p. 876, ch. 432.]

Art. 7807k. Validating organization on bonds of water improvement districts in water power districts; suit to validate bonds authorized.—Section 1. Water improvement districts situated within a water power control district and which have been heretofore declared to have been organized and established by order of a County Commissioners' Court under the terms and provisions of Section 29 of Chapter 76,[1] Acts of the Forty-third Legislature and of Chapter 19,[2] page 54, Acts of 1933, First Called Session of the Forty-third Legislature, and the organization of which the County Commissioners' Court found that petitions for the organization thereof had been filed and notice thereof had been given and that the organization of such districts was feasible and practicable and that it was needed, and would be of public benefit and benefit to the lands included in the districts and had caused such findings to be entered of record are hereby found and declared to have been legally created and the same are hereby validated and declared to have been validly created water improvement districts. The fact that by inadvertence or oversight any act of the officers of any county or other person in the creation of any district was not properly done shall in nowise invalidate such district, and all such districts are hereby validated in all respects as though they had been duly and legally established in the first instance.

Sec. 2. All bonds authorized to be issued by such districts, the issuance of which had been authorized by an election held within such districts by an affirmative vote of two-thirds majority of those voting at such election, are hereby found and declared to have been legally authorized to be issued and the same are hereby validated and declared to have been legally authorized to be issued. The fact that by inadvertence or oversight any act of the officers of any districts or other person in the authorization of the issuance of such bonds was not properly done shall in nowise invalidate such bonds, and all such bonds are hereby validated in all respects as though they had been duly and legally authorized to be issued in the first instance.

Sec. 3. Such district may if they so elect validate such bonds by suit as provided by law; provided, however, if such districts herein named so elect it shall not be necessary to validate same by suit but in such event before any bonds are offered for sale, the district shall forward to the Attorney General a certified copy of the records of the organization of such district and the proceedings providing for the issuance of such bonds with such other information relating thereto as the Attorney General may require, and the Attorney General shall examine said records and said bonds, and if he shall find that they have been issued in conformity with the Constitution and laws of the State and that they are valid and binding obligations of said district he shall so officially certify, and such official certificate shall authorize the registration of said bonds by the Comptroller of Public Accounts in the same manner as if same had been validated by suit.

Sec. 4. Provided, however, that nothing contained in this Act shall affect any pending litigation. [Acts 1937, 45th Leg., 1st C.S., p. 1774, ch. 15.]

[1] Article 7807d, § 79.
[2] Articles 7807d, 7807dd.

Art. 7807l. Validating bonds and ad valorem taxes of water improvement districts in counties of 250,000 to 320,000.—Wherever the Board of Directors of any water improvement district in this State, lying wholly or in part in any county having a population as shown by the last preceding Federal Census and all future Federal Census, of not less than two hundred fifty thousand (250,000) nor more than three hundred twenty thousand (320,000) has ordered an election for the issuance of bonds pursuant to Section 52 of Article 3 of the State Constitution, and Title 128, Chapter 2 of the Revised Civil Statutes of Texas of 1925, and all amendments thereto,[1] for the purpose of repairing, improving, or rehabilitating its irrigation system and a two-thirds majority of the qualified property tax-paying voters of such district, whose properties have been rendered for taxation, voting at such election, have authorized the issuance of said bonds and the levy of ad valorem taxes in payment thereof, and the Board of Directors of such water improvement district has canvassed the returns of the election held for such purpose, and by order or resolution duly passed and entered of record, has found and declared that such bonds were authorized by a two-thirds majority of the voters aforesaid, voting at such election, and thereupon, by proper order or resolution, has authorized the issuance of bonds for the repair, improvement, or rehabilitation of its irrigation system, or any part thereof, and has levied an ad valorem tax to pay the principal and interest thereof at maturity, and has prescribed the date, maturity, rate of interest such bonds are to bear, the place of payment of principal and interest, each such election, and all acts and proceedings had and taken in connection therewith, by such Board of Directors of such water improvement district, the levy of taxes and the provision made for the payment of the interest, reserve, and sinking fund for the payment of the principal of such bonds, are hereby legalized and validated; and all such bonds so authorized, are hereby validated and constituted the legal obligations of such water improvement districts, and all bonds, so authorized, when delivered and paid for at a price of not less than ninety per cent (90%) of their face value, shall constitute the valid and binding legal obligations of such water improvement districts, according to their terms, and no further proceedings for validation, by court proceedings or otherwise, shall be required or necessary in connection with such bonds, or any of them, and all acts of such Boards of Directors, in respect to the issuance of such bonds, are hereby legalized and validated, and such Boards of Directors of such water improvement districts, are hereby expressly authorized and directed to provide for the payment of the interest and the princi-

pal of any such bonds by the levy of taxes and appropriations or revenues in the time and manner prescribed by statute; provided, however, this Act shall not affect any bonds, the validity of which is being questioned in any litigation pending at the time this Act becomes effective. [Acts 1939, 46th Leg., Spec.L., p. 1043, § 1.]

1 Article 7622 et seq.

Art. 7807m. Military camps, supplying water to; acquiring facilities; bonds; contracts.

Application of act; district defined

Sec. 1. This Act shall be applicable to water improvement districts deriving their powers from Article XVI, Section 59, of the Constitution of Texas, in which there may be located, in whole or in part, any United States military camp or base. The word "district" as hereinafter used means any district to which this Act is applicable.

Issuance of bonds

Sec. 2. All such districts are hereby authorized to issue negotiable revenue bonds in an amount not to exceed One Hundred Thousand Dollars ($100,000) par value, without the necessity of an election, for the purpose of providing funds for constructing or otherwise acquiring filtration and pumping equipment, pipe lines, and all other facilities for supplying water to military camps or bases. It is further provided, however, that in the event such districts may desire to issue any bonds for the purposes enumerated herein, in an amount in excess of One Hundred Thousand Dollars ($100,000) par value, they shall be authorized to do so only after submitting such proposition to an election under the provisions of the General Law governing same, and having such proposition approved at such election.

Interest; maturity

Sec. 3. Such bonds shall bear not more than four (4) per cent interest, and shall mature in not to exceed five (5) years from the date of issuance.

Security for bonds

Sec. 4. Said revenue bonds may be secured by all or any part of the net revenues to be received from a contract entered into or to be entered into between the districts and the United States Government for sale of water to the United States Government for use at military camps or bases, and all renewals, extensions, and substitutions thereof. Said bonds may be secured additionally by a deed of trust lien upon the equipment and other facilities and properties to be constructed or otherwise acquired with funds derived from the sale of the bonds.

Approval; registration

Sec. 5. After such bonds shall have been authorized and executed, and before issuance thereof, said bonds, the resolution of the board of directors of the district directing their issuance, and other certificates and records pertaining to their issuance, shall be submitted to the Attorney General of Texas for his examination. If such bonds have been issued in accordance with this Act and the Constitution, the Attorney General shall issue his opinion approving them, and they shall be registered in the office of the Comptroller of Public Accounts. Such bonds, having been approved by the Attorney General and registered in the Comptroller's Office, shall be held in every action, suit, or proceeding in which their validity is or may be brought into question, valid and binding obligations. In every action brought to enforce collection of such bonds or any rights incident thereto, the certificate of approval by the Attorney General, or a duly certified copy of said certificate, shall be admitted and received in evidence of its validity. The only defense which can be offered against the validity of such bonds shall be forgery or fraud.

Effect of act

Sec. 6. The authority herein conferred shall be cumulative of that conferred by other laws. In event of conflict between this law and other laws, the provisions of this law shall prevail.

Contracts

Sec. 7. Any contract for the construction or otherwise acquiring of filtration and pumping equipment, pipe lines, or other facilities which supply water to military camps or bases made under authority of this Act, may be made only after advertising for bids for such time as the board of directors of any such district may determine; provided that in any case such advertisement for bids shall be published in some newspaper of general circulation in such district for at least one time not less than ten (10) days before awarding and making any such contract.

Bonds not to be paid from taxes

Sec. 8. The holder of any bonds issued under authority of this Act shall never have the right to have same paid, in whole or in part, out of funds derived from taxation on any of the properties within any such district. [Acts 1941, 47th Leg., p. 827, ch. 510.]

CHAPTER 3.—WATER CONTROL AND PRESERVATION DISTRICTS

Water control and improvement districts see post chapter 3a.

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1. ESTABLISHMENT.

Article 7808. May establish.—One or more water control and preservation districts may be established in the several counties, or a part of any county, or in two or more adjacent counties, or in parts of two or more adjacent counties, or in one county and part of an adjacent county or counties, in the manner provided in this chapter. Said districts may or may not include within their boundaries villages, towns and municipal corporations, or any part thereof, but no land shall be at the same time included within more than one such district. All such districts are defined districts within the meaning of Section 52, Article 3 of the State Constitution. [Acts 4th C. S. 1918, p. 74.]

Art. 7809. Purposes.—Said districts, when established, shall be for the purpose of the control and preservation of the purity of the waters of any rivers, creeks, bayous, lakes, canals, streams or other waters of any kind and character situated or flowing, in whole or in part, through the said district, or any part thereof, by the prevention of the inflow of salt water or other deleterious substances, or by the changing of said waters from salt to fresh water, and the impounding of fresh water for such purposes. [Id.]

Art. 7810. Powers.—Such districts, when established, shall have full power to erect, construct, maintain, repair and reconstruct dams, bulkheads, jetties, locks, gates, or any other character of improvement or construction necessary to the accomplishment of any such purpose, and to make such construction without the boundaries of the district, where same may be deemed necessary to the preservation, or the improvement of the purity and irrigable quality of such waters; and may issue bonds in payment therefor. [Id.]

Art. 7811. Petition.—Upon the presentation to the commissioners court of a petition signed by twenty-five of the resident property taxpayers of any proposed district praying for the establishment thereof within the county, and setting forth the boundaries, and accompanied by a map thereof, the general nature of the improvements proposed, and an estimate of the probable cost thereof, and praying for the issuance of bonds and levy of a tax in payment thereof, and designating a name for such district which shall include the name of the county; and accompanied by the affidavit of the petitioners stating that they are resident property taxpayers of such county; the court shall set the same down for a hearing at a regular or called session, not less than thirty nor more than sixty days thereafter. [Id.]

Art. 7812. Contingent deposit.—The petition shall be accompanied by five hundred dollars in cash which shall be deposited with the clerk of the commissioners court of the county in which the largest portion of the proposed district is situated. If the result of the original election is in favor of the establishment of the district, the clerk shall return said deposit to the petitioners, their agent or attorney; otherwise the clerk shall pay the same out upon the vouchers signed by the county judge of such county, for all expenses and costs pertaining to the proposed district up to and including said election, and shall return the balance to the petitioners, their agent or attorney. [Id.]

Art. 7813. Notice of hearing.—The court shall, when setting a date for the hearing, order the clerk of said court to give notice of the date and place of said hearing by posting, or causing to be posted, not less than twenty days prior to the hearing, a copy of said petition and the order of the court thereon, one at the courthouse door and four others within the limits of the proposed district. Said clerk shall receive one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. [Id.]

Art. 7814. Hearing.—Any person who may be affected thereby may appear before said court and contest the creation of said district, or contend for its creation, and may offer testimony in favor of or against the boundaries of said district to show that the proposed improvements would or would not be of any public utility, and would or would not be feasible or practicable, and the probable cost of such improvements, or as to any other matter pertaining to the proposed district. [Id.]

Art. 7815. Hearing: authority of court.—Unless otherwise provided, the commissioners court shall have exclusive jurisdiction to hear and determine all contests and objections to the creation and establishment of any district, and shall have exclusive jurisdiction in all subsequent proceedings of any organized district, and may adjourn hearing on any matter connected therewith from day to day; and all judgments, decrees or orders rendered or entered by said court in relation thereto shall be final. [Id.]

Art. 7816. Findings.—If at said hearing it appears to the court that the organization of such district and the proposed improvement is feasible and practicable, and that it would be a public benefit or public utility, then it shall so find, and shall also find the amount of money necessary for said improvement and for all expenses incident thereto and the expenses necessarily incurred in connection with the creation and establishment of the district, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear. If the court finds that such organization and improvement is not feasible or practicable, or that it would not be a public benefit or utility, then

it shall dismiss the petition at the cost of the petitioners. In either case, the court shall enter its findings in the records of the court. [Id.]

Art. 7817. May renew petition.—The order dismissing said petition or any appeal therefrom shall not prevent the presentation at any subsequent time of a similar petition with changed boundaries, but the presentation of a similar petition with identical boundaries shall not be permitted until the expiration of six months after such dismissal. [Id.]

Art. 7818. Appeal.—Any petitioner or taxpayer in such district may appeal from the findings of said court to the district court of said county. Such appeal shall be perfected within five days after the rendition of the order appealed from, in the following manner: notice of appeal shall be given and entered of record on the minutes of said court, at the time of the entry of said order by announcement of same before said court, or by giving written notice within two days after the entry of such order by a simple statement that the undersigned gives notice of appeal from the order entered on the date stated, and by filing such written notice with the county clerk; and by filing an appeal bond with two or more good and sufficient sureties for one hundred dollars, payable to the county judge and approved by the county clerk, and conditioned upon the due prosecution of the appeal and payment of all costs incident thereto. Unless appeal is so perfected, such order shall be final and conclusive. [Id.]

Art. 7819. Appeal: proceedings.—Within five days from the filing of the appeal bond, the county clerk shall transfer to the district clerk all records filed with the commissioners court pertaining to the establishment of said district, and it shall not be necessary to file additional pleadings in said court. The court shall set the matter down for hearing de novo, giving it precedence over all other cases, and the matters shall be tried and determined by the court. The judgment of the district court shall be final and conclusive, and shall be certified to the commissioners court for its further action. [Id.]

Art. 7820. Election order.—If the petition is granted, the commissioners court shall order an election to be held in such district at the earliest legal time, to determine whether or not such district shall be created and whether or not a tax shall be levied sufficient to pay the interest and provide a sinking fund to redeem said bonds at maturity. Said order shall specify the amount of bonds to be issued, the length of time said bonds shall run, and the rate of interest they shall bear, as determined by the court. [Id.]

Art. 7821. Notice of election.—Notice of such election stating the time and place of holding the same shall be given by the county clerk by posting or causing to be posted notices thereof in four public places in such district and one at the courthouse door, for thirty days prior to the election. Said notice shall also contain the proposition to be voted on and the purpose for which said bonds are to be issued and the amount of such bonds, and shall contain a copy of the election order. [Id.]

Art. 7822. Ballot.—The commissioners court shall provide twice as many ballots as there are qualified resident property tax paying voters within such district. Said ballots shall have printed thereon the words and none others: "For the Water Control and Preservation District, and issuance of bonds and levy of tax in payment thereof;" "Against the Water Control and Preservation District, and issuance of bonds and levy of tax in payment thereof." [Id.]

Art. 7823. Election: conduct of.—None but resident property taxpayers who are qualified voters of said proposed district shall be entitled to vote at such election. The commissioners court shall create and define, by an order of the court, the voting precincts in the proposed district, and shall name convenient polling places therein, and shall appoint the judges and other necessary election officers. [Id.]

Art. 7824. List of voters.—The tax collector of the county wherein such district is situated, prior to the election, shall make a certified list of the property taxpayers of said district and furnish to the presiding judge of each precinct a list of such voters in such precinct. No person whose name does not appear in said list shall vote at any election under this chapter, except as provided in the two succeeding articles. [Id.]

Art. 7825. Voter's oath.—Any person who acquired property in said district after the first day of January of the preceding year may vote in said election upon taking the following oath before the presiding judge of the polling place where he offers to vote, and such judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of ——— County and that I am a resident property taxpayer of the proposed district, that I was not subject to pay property tax in said district for the preceding year and have not voted before at this election." [Id.]

Art. 7826. Taxpayer's oath.—Any person whose name was erroneously omitted from said list of voters may vote at said election upon taking the oath as prescribed in the preceding article except that in lieu of the clause "that I was not subject to pay property tax in said district for the preceding year," there shall be substituted "that I was subject to and did pay property tax in said district for the preceding year."[?] [Id.]

Art. 7827. Results of election.—Said court shall canvass the vote, and if two-thirds of such votes are in favor of the proposition submitted, then the court shall declare the result of said election to be in favor of said district, and shall enter same in their minutes as provided in the succeeding article. [Id.]

Art. 7828. Declaration of result.—Said order of the court shall be as follows: "Commissioners court of ——— County, Texas, ——— day of ——— A. D. ——— in the matter of petition of ——— and ——— others, praying for the establishment of a Water Control and Preservation District, and issuance of bonds and levy of taxes in said petition fully described and designated by the name of ——— Water Control and Preservation District ———. Be it known that at an election called for that purpose in said district, held on the ——— day of ——— A. D. ———, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said District, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said District be and the same is hereby established by the name of ——— Water Control and Preservation District ———, and that the bonds of said District in an amount not exceeding ——— dollars be issued by the Directors of said District, and that said Board of Directors levy a tax of ——— cents on the hundred dollars of valuation, or so much thereof as may be necessary, upon all property within said district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund sufficient to redeem them at maturity, and that if said tax shall at any time become insufficient for such purpose, same shall be increased by said Directors until same is sufficient. The metes and bounds of said District being as follows, to-wit: (giving the metes and bounds.)" [Id.]

Art. 7829. Board of directors.—At the same meeting when said order is made, or at a called meeting within five days thereafter, the court shall ap-

point a board of directors consisting of three members, all of whom shall be freehold property taxpayers and legal voters of the county embraced in whole or in part within the district, and more than twenty-one years of age. Each shall receive three dollars per day for each day necessarily taken in the discharge of their duties as such; and shall hold office for two years, unless sooner removed by a majority vote of said court. Upon the expiration of their terms of office, the court shall appoint their successors by majority vote. Should any vacancy occur in said board, the same shall be filled in like manner by said court. [Id.]

Art. 7830. Combined district.—Where a proposed district lies partly within two or more counties, the petition for the establishment of said district shall be presented to the commissioners court of each county. Each such court shall give all necessary notice as provided for a single district in one county, but stating that same is a part of such entire district, and shall order an election, appoint all necessary officers, furnish all supplies, canvass the returns and declare the result of such election, all as provided for a single district. The presiding officer of each court shall then certify and report the result of said election to the county judge of the county in which the largest portion of such district is situated. [Id.]

Art. 7831. Combined district: declaration.—Said county judge shall canvass said vote and declare the result thereof, and if two-thirds of such votes favor the creation of said district, he shall declare the result and make the same order as provided herein for a single district. Copies of such order shall be filed with the county clerk of each county and shall be held to be a proclamation of the result of said election. [Id.]

Art. 7832. Combined district: hearing.—The commissioners court of each county shall hear and determine the matters relating to the establishment of said district in their county, in the same manner as provided for a single district, and appeals may be taken therefrom to the district court of any county in which any part of said district is situated, in the manner provided herein for a single district. [Id.]

Art. 7833. Combined district: directors.—A board of five directors shall be elected at the same election held for the establishment of such district, and the ballot therefor may have printed thereon the names of such candidates, or the voter may write upon his ballot the names of the persons voted for as directors; and the five persons receiving the highest number of votes so cast shall be the directors of said district, and shall hold office until the next regular election. In case of vacancy in said board, or if the number of directors is reduced by any cause to less than three, said vacancies shall be filled in the same manner as provided by law in such cases for directors of water improvement districts under Chapter 2 of this title. [Id.]

Art. 7834. Combined district: election.—On the second Tuesday of January after the establishment of such district, and biennially thereafter, an election for such directors shall be held in each such county in accordance with the election laws of this State and the provisions of this chapter for elections for establishing a district. Said directors shall hold office for two years. The directors shall give notice of the election, appoint election officers, receive and canvass the election returns and perform all other duties necessary for holding said elections. [Id.]

Art. 7835. Director's bond and oath.—Within ten days after their appointment or election, or as soon as practicable thereafter, the directors shall each make a good and sufficient bond for five thousand dollars payable to their district, conditioned upon the faithful performance of their duties, to be approved by the commissioners court of the county in which the director resides, and such bond and a copy of the order approving same shall be filed with the county clerk of the county in which the largest part of the district is situated. Such clerk shall record and index the same in the deed records in the manner provided for recording and indexing deeds. Each director shall take the official oath before the county clerk of the county in which the director resides. All bonds and oaths shall be delivered by said clerks to the district depository and be by it safely kept and preserved for the district. [Id.]

Art. 7836. County officers: compensation.—Unless otherwise provided, the duties and powers herein conferred upon the county judges and members of the commissioners court, and other officers are made a part of the regular duties of said officials, which they shall render and perform without additional compensation, and the county clerk shall receive the same compensation for his services hereunder as provided for similar services under Chapter 2 hereof. [Id.]

2. BOARD OF DIRECTORS

Art. 7837. Organization of board.—As soon as possible after their qualification, the directors shall organize by electing one of their number president and one as district secretary. When the board consists of three members, any two directors shall be a quorum; and when it consists of five members, any three directors shall be a quorum. [Id.]

Art. 7838. Meetings.—During the progress of the construction of any improvement under contract, the directors shall maintain a regular office within such district, and may in their discretion when deemed necessary, maintain a regular office in the district during any other time. The directors shall hold an annual meeting on the first day of December at ten o'clock A. M. and may provide for meetings at stated intervals by resolution duly passed, and the president or any two directors may call special meetings at any time that may be deemed proper or necessary. [Id.]

Art. 7839. Powers.—The directors shall have control over the management of all district affairs, shall make all contracts pertaining thereto, and shall employ all necessary employés for the proper conduct and operation of such district, including engineers, bookkeepers and such other assistants and such laborers as may be required, at such compensation as they may determine, and may require bonds of any employés in any amount they may determine. They may employ attorneys to represent such district in the preparation of any contract or the conduct of any proceedings in or out of court, and to be the legal adviser of the directors, on such terms and for such fees as may be agreed upon by them. [Id.]

Art. 7840. Powers: limitation.—Where the district lies wholly in one county, the directors shall not, after the completion of the improvements, employ any attorneys as legal advisers of the district or an engineer for such district, or any other employés, except with the concurrence and consent of the commissioners court of such county; and the compensation paid by any such attorney, engineer, or employé so employed shall be fixed by the directors subject to the approval of the commissioners court. [Id.]

Art. 7841. Further powers.—The directors may employ a general manager to have general charge of the work, paying such compensation as may be agreed upon by the directors. A director may be appointed as general manager at such compensation as may be fixed by the other directors, and when so employed he shall also perform the duties of a director, but shall not receive the compensation to be paid to the directors. The directors may also buy all necessary work animals, machinery and supplies and material of all description as may be required in the construction,

operation or repairing of the improvements of the district, and may do and perform all things necessary and proper in carrying out the purposes of said district. [Id.]

Art. 7842. Official bonds.—All district officers and employés who may be required to give bond or security may furnish bonds of surety companies, subject to the approval of the directors. All such bonds shall be preserved by the directors as the property of said district. After the organization of a district, all bonds required of any district officer or employé shall be approved by the directors. [Id.]

Art. 7843. District records.—The directors, through the secretary, shall keep a true account of all matters and proceedings of the board, and shall preserve all contracts, records and notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatsoever kind, and the same shall be the property of the district and shall be delivered to their successors in office. [Id.]

Art. 7844. Disbursements.—All payments of any district funds shall be by voucher upon the district depository, and all such vouchers shall be signed by the president or any two directors. All vouchers shall be issued from a regular duplicate book containing a duplicate, which shall be preserved. [Id.]

Art. 7845. District depository.—The directors shall select a depository for such district in the same manner as now provided by law for the selection of county depositories, and such depository shall be regulated by the same laws as those governing county depositories. In such selection, the directors shall perform the same duties as are incumbent upon the county judge and members of the commissioners court in the selection of county depositories. Such depository shall make and file reports and preserve the district records as required of depositories under Chapter 2 hereof. [Id.]

Art. 7846. Audit and report.—The directors shall annually require an audit to be made of the district records and accounts, at the time and in the manner provided for audits of Water Improvement Districts under Chapter 2 of this title, and on the first of January of each year they shall make and file a report of the condition of the district affairs and other data required of directors of Water Improvement Districts. [Id.]

3. POWERS OF DISTRICT

Art. 7847. Status of district.—Any district may by and through its directors sue and be sued in the name of such district, and all courts of this State shall take judicial notice of the establishment of such districts; and said districts shall contract and be contracted with in the name of such districts. They shall have a circular seal containing a five pointed star in the center surrounded by the name of the district. [Id.]

Art. 7848. Suits affecting district.—No suit shall be brought in any Court of this State contesting the validity or enjoining the formation of any district, or any bonds issued hereunder, or in anywise affecting the establishment of the district, or issuance of bonds by such district, except in the name of this State by the Attorney General, upon his own motion or upon the motion of any party affected thereby, upon good cause shown. [Id.]

Art. 7849. Property rights.—The directors are hereby empowered to acquire the necessary right of way and property of any kind or character whatsoever for all necessary improvements contemplated by this chapter, by gift, grant, purchase or condemnation proceedings, within or without the boundaries of the district; and any property acquired may be conveyed to the United States in so far as the same shall be necessary for the construction, operation and maintenance of works by the United States under any contract that may be entered into between the district and the United States. [Id.]

Art. 7850. Eminent domain.—The right of eminent domain is hereby conferred upon all districts for the purpose of condemning and acquiring the right of way over and through all lands, private and public, except property used for cemetery purposes, necessary for making and maintaining dams, bulkheads, jetties, locks, gates and all other improvements necessary and proper for such construction. Such right shall extend to any county in this State. All such condemnation proceedings shall be under the direction of the directors and in the name of the district; and all compensation and damages adjudicated in such proceedings shall be paid out of the "Construction and Maintenance Fund." [Id.]

Art. 7851. District engineer.—The directors shall have authority to employ a competent engineer whose term of office shall be at the will of the directors. He shall make all necessary surveys, examinations, investigations, maps, plans, and drawings with reference to the proposed improvements. He shall make an estimate of the cost of such improvements, shall supervise the work thereon, and perform all such duties as may be required of him by the directors. If any proposed improvement or construction work necessary to the accomplishment of the purposes authorized in this chapter requires the permission or consent of the Federal Government or any department or officer thereof, the directors shall have authority to obtain such consent, and in lieu of or in addition to the employment of the district engineer, they shall have power to adopt any survey of any waters theretofore made by the United States, and to arrange for surveys, examination and investigation of the proposed improvements, and supervision of such work by the United States or the proper department or officer thereof. [Id.]

Art. 7852. Federal co-operation.—The directors shall have full power to co-operate and act with the United States or any officer or department thereof, in any matter pertaining or relating to the construction and maintenance of any improvement, whether by survey, work or expenditure of money made or to be made, either by the directors or by Federal authority, or both. Such directors shall have authority to agree and consent to the United States entering upon and taking the management and control of said work of construction, repair or reconstruction and maintenance, in so far as it may be necessary or permissible under the laws of the United States and the regulations and orders of any department thereof. [Id.]

Art. 7853. Construction contracts.—If the district improvements are not carried out by the United States, the contracts for such improvements shall be let by the directors to the lowest and best responsible bidder. If more than one improvement is to be made, the contract may be let separately for each, or one contract for all such improvements. These rules shall govern the letting of such contracts: 1. Bids shall be called for by advertising the same in one or more newspapers of general circulation in Texas, once a week for four consecutive weeks, and by posting notices for at least thirty days at the courthouse door of the counties in the district and four other notices in each county. 2. Any person, firm or corporation desiring to bid on the construction of any work so advertised, upon application to the district secretary, shall be supplied with the surveys and plans for said work. All bids shall be in writing and sealed and delivered to the president or district secretary, together with a certified check for two per cent of the total amount bid. Such deposit shall be forfeited to the district in case the bidder refuses to enter into a proper contract and make the necessary bond, if his bid is accepted or returned to the bidder if his bid is rejected. Any bid may

be rejected at the discretion of the directors. 3. Each contractor shall give bond payable to the district in such amount as may be determined by the directors, not to exceed the contract price, and not less than fifty per cent thereof, conditioned that he will faithfully perform the obligations, agreements and covenants of such contract, and that in default thereof, he will pay to said district all damages sustained by reason thereof; and such other conditions as may be required by law of contractors for public work. Said bond shall be approved by the directors. 4. All contracts shall be in writing and signed by the contractors and president of the directors and attested by the district secretary. A copy of same shall be filed with the clerk of the county in which the largest portion of such district is situated. [Id.]

Art. 7854. Supervision of work.—All work contracted for, unless done under Federal supervision, shall be done under the supervision of the district engineer. When the work is completed according to the contract, he shall make a detailed report of same to the directors, showing whether the contract has been fully complied with according to its terms, and if not, in what particular it has not been so complied with. The directors shall not be bound by such report, but may in addition thereto fully investigate such work and determine whether or not such contract has been complied with; and while such work is in progress, they shall inspect the same. [Id.]

Art. 7855. Contract: payment.—Upon completion of any contract, the directors shall draw a voucher on the district depository for the amount of the contract price in favor of the contractor or his assignee. Said voucher shall be paid out of the Construction and Maintenance Fund. If the directors deem it advisable, they may contract for the work to be paid for in partial payments as the work progresses, but such partial payments shall not exceed in the aggregate eighty per cent of the total amount to be paid under the contract, and the amount of work completed shall be shown by a certificate of the engineer. [Id.]

Art. 7856. Maintenance of district.—After the full and final completion of all improvements of the district, and after payment of all expenses incurred under this chapter, the directors are authorized to use the funds remaining in the Construction and Maintenance Fund for the best interest of such district in the preservation, upkeep, repair and reconstruction of the works of such district. [Id.]

Art. 7857. Joint project.—Two or more districts may by contract join in the construction of any improvement and enter upon any work authorized hereunder, as a joint project, when in the judgment of the directors of each district, such improvement, work or construction will be advantageous to the respective districts. Such contract shall stipulate the pro rata amount to be paid by each district for such project to provide for its maintenance, repair and reconstruction, and shall be executed by the directors. Such project may be undertaken regardless of the location of the proposed work. Such contract may be enforced and specific performance compelled by any court of competent jurisdiction. [Id.]

Art. 7858. Joint action.—When improvements are constructed by two or more districts, bids may be jointly called for and opened and considered at the designated office of either district, and the directors of such districts shall approve the letting of the contract and contractor's bond, and may meet and transact all business for that or any other purpose concerning such project at a place outside the district, or at any office established for such joint project. All bids, bonds, contracts, etc., of said project shall be in the name of said districts, which are empowered to do all acts by joint action that one district may do, the action of each district being determined by its directors. A general manager, who may be a director of either district, may be employed for such project, whose duties may be set forth in the joint ownership contract. [Id.]

4. BONDS

Art. 7859. Issuance of bonds.—Immediately after their organization, the directors shall enter an order directing the issuance of bonds for such district within the limits authorized by the election held therefor, sufficient to cover the cost of the proposed improvements, all of the expenses incident thereto, and the expenses necessarily incurred in connection with the creation and establishment of the district; and they shall levy a tax upon all property subject to taxation in the district, sufficient to pay the interest on such bonds, with an amount to be placed in the sinking fund sufficient to redeem said bonds at maturity, and such levy shall remain as a levy for such purpose until a new levy is made. [Id.]

Art. 7860. Bonds: requisites.—All bonds issued under this chapter shall be governed by the provisions of Chapter 2 of this title governing the issuance, denomination, rate of interest, maturity dates, manner of payment, proceedings to test validity, and registration by the Comptroller, of bonds of water improvement districts. [Id.]

Art. 7861. Bonds: limit of issue.—Said bonds shall not exceed in amount one-fourth of the assessed valuation of the real property of such district as made by the last annual assessment thereof for State and county taxation. [Id.]

Art. 7862. Bonds: record.—The directors shall provide a well bound book in which a record shall be kept by the clerk of the county in which the largest portion of said district is situated, of all bonds issued with their numbers, amounts, rate of interest, date of issue, when due, where payable, the annual rate of tax levy made each year to provide for interest and sinking fund, and of each payment made thereon. The district secretary shall furnish said clerk a certified copy of all orders made in connection with the issuance and levy and assessment of taxes for the payment of interest and creating a sinking fund. Said record shall be at all times open to the inspection of all parties interested in said district, either as taxpayers or bondholders. [Id.]

Art. 7863. Change in plans.—If after an election has been held for the issuance of bonds, the directors shall consider it necessary to make any modification or change in any proposed improvements, they shall, with the concurrence of all the directors, be authorized to make such change. [Id.]

Art. 7864. Additional bonds.—If the directors shall determine to make additional improvements, works or construction in order to carry out the purposes for which said district was organized, or to reconstruct any improvements theretofore made, and the amount derived from the bonds issued or authorized is not sufficient, a resolution to that effect shall be duly entered upon the minutes of the board, and a certified copy thereof presented to each commissioners court in the district. [Id.]

Art. 7865. Resolution.—Said resolution shall set forth the proposed work, the amount of bonds to be issued to pay for same, their rate of interest and maturity dates, and shall embody therein a request to the commissioners court or courts to order an election in such counties to vote on such propositions and whether or not a tax shall be levied to provide for the interest and sinking fund for such bonds at a day specified in the resolution. [Id.]

Art. 7866. Additional bonds: requisites.—The commissioners court must, on receipt of such resolution, order an election on the day specified therein.

Notice of such election shall be given, returns made, result declared, orders entered, tax levied, certified, assessed and collected, and all other matters applicable shall be performed in the same manner as herein provided in case of elections for original bonds. All provisions as to the issuance, approval, validation, registration, recordation and sale of original bonds shall be applicable to such additional bonds. [Id.]

Art. 7867. Additional bonds: ballot.—The ballot for such election shall have printed thereon the words and none other: "For the issuance of additional Water Control and Preservation Bonds and levy of tax in payment thereof;" "Against the issuance of additional Water Control and Preservation Bonds and levy of tax in payment thereof." [Id.]

Art. 7868. Bonds: sale.—After registration of said bonds by the Comptroller, the directors shall sell the same on the best terms and for the best price possible, not less than their face value and the accrued interest thereon; or they may exchange bonds in payment of the contract price for work to be done for the use and benefit of said district. All moneys received from the sale of bonds shall be forthwith paid to the district depository. [Id.]

Art. 7869. Construction and maintenance fund.—There is hereby created a "Construction and Maintenance Fund" of such district, which shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatsoever source, except the tax collections applied to the interest and sinking fund on bonds. All expenses of any kind prior to and after the filing of the original petition necessarily incurred in connection with the creation, establishment and maintenance of any district, and improvements, repairs, cost of maintenance, salaries of all officers and employés, and all expenditures for any purposes of the district shall be paid out of such fund. [Id.]

5. TAXES

Art. 7870. Tax levy.—The directors shall annually levy and cause to be assessed taxes upon all property within said district sufficient to pay the expenses of assessing and collecting same, and a tax sufficient for the expenses incident to the maintenance of the district. The directors may from time to time increase or diminish any tax so as to adjust the same to the taxable value of the property subject to taxation, and shall certify the levy of all such taxes to the commissioners court of each county in the district. [Id.]

Art. 7871. Assessment of taxes.—When the levy of taxes is so certified, each such court shall order the county tax assessor to assess all property in the county subject to such tax, and list the same for taxation in the books or rolls furnished him by said court for such purpose and charged to the district. Said assessor shall return said books when he returns the other books or rolls of the State and county taxes for correction and approval, and if said courts shall find said books or rolls correct, they shall approve same. In all matters pertaining to such assessment, the tax assessor and board of equalization of the county shall be authorized to act and shall be governed by the laws of Texas for assessing and equalizing property for State and county taxes. [Id.]

Art. 7872. County tax assessor.—Each county tax assessor shall receive for said service such compensation, not to exceed the amount allowed by law for like services, as the directors of the district shall determine proper. Should any tax assessor fail or refuse to comply with such orders of the commissioners court, he shall be suspended from the further discharge of his duties by the court, and be removed from office as provided by law for the removal of county officers. Upon failure to so order such assessor, the commissioners court shall be subject to mandamus by any court of competent jurisdiction on a petition in the name of the district, and the order of court upon such hearing may require the assessor to perform the duty without the intervention of an order of the commissioners court. [Id.]

Art. 7873. County tax collector.—The county tax collector in each county wherein any part of the district may be situated shall be charged by the commissioners court of such county with the assessment rolls of the district, or that part of the district situated within the county, and he shall collect said taxes within his said county. In so doing, he shall be authorized to act and shall be governed by the laws of this State for the collection of State and county taxes, and suits may be brought for the collection of said taxes and the enforcement of the tax liens created by this chapter. His compensation shall be determined in the same manner as for the county assessor. [Id.]

Art. 7874. Collector: bond.—The commissioners court shall require the tax collector of their respective counties to give an additional bond or security in such sum as they may deem proper and safe to secure the collection of said taxes, payable to the district and conditioned as provided by law for tax collector's bonds. Should any tax collector fail or refuse to give such bond or security when requested by said court, within the time prescribed by law for such purposes, or fail or refuse to collect the taxes so levied, he shall be suspended from office by the commissioners court and immediately thereafter be removed from office in the mode prescribed by law. [Id.]

Art. 7875. Taxes: payment.—All taxes authorized to be levied by this chapter shall be a lien upon the property upon which said taxes are assessed, and said taxes shall mature and be paid at the time provided by the laws of this State for the payment of State and county taxes, and all penalties provided by law for the non-payment of said taxes shall apply to all taxes authorized to be levied by this chapter. [Id.]

Art. 7876. Delinquent taxes.—Said collector shall make a certified list of all delinquent property upon which said tax has not been paid, and return same to the commissioners court, which shall proceed to have the same collected by the sale of such property; and all the provisions of law with reference to delinquent State and county taxes, the collection thereof by suit or otherwise and the redemption of same from such sale, shall apply. Such suits shall be in the name of said district and brought and prosecuted by the same officers as provided for State and county taxes, who shall receive the same fees for such services as provided for like proceedings for State and county taxes. The directors may purchase such delinquent property for the benefit of the district. [Id.]

Art. 7877. Maintenance tax.—The directors shall have authority as occasion may require, in their discretion, to levy a tax on all property within such district in an amount sufficient to pay for the proper maintenance, operation and repair of any dams, bulkheads, jetties, locks, gates or any other improvement constructed by said district, and all the provisions of the preceding articles for the levy and collection of taxes shall apply. [Id.]

Art. 7878. Tax money: disposition.—The tax collector shall pay all moneys collected by him for said district to the district depository monthly, and as often as directed so to do by the directors, as now prescribed by law for the payment by tax collectors to county and city treasurers. [Id.]

Art. 7879. Interest and sinking fund.—There is hereby created an "Interest and Sinking Fund" for such district, and all taxes collected under this chapter for the payment of bonds and interest thereon shall be credited to such fund and shall never be paid out except for the purpose of satisfying and discharging the interest on said bonds, or for the payment, cancel-

lation and surrender of said bonds. At the time of such payment, the depository shall receive and cancel any interest coupon so paid or any bond so satisfied or discharged, and when such coupon or bond shall be turned over to the directors, the account of such depository shall be credited with the amount thereof, and such coupon or bond shall be cancelled and destroyed. [Id.]

Art. 7880. May invest sinking fund.—The directors are empowered, whenever they deem it advisable, to invest any sinking fund of the district in bonds of the United States, of this State, of any county of Texas, any irrigation or water improvement or navigation bonds, or bonds of any school district in Texas authorized to issue bonds. No bonds shall be so purchased whose terms provide for their maturity at a date subsequent to the time of the maturity of the bonds for the payment of which such sinking fund was created. [Id.]

Art. 7880a. Exclusion of lands from Water Control and Preservation District.—Section 1. Whenever there exists within the limits of any Water Control and Preservation District, organized and operating under Title 128, Chapter 3 of the Revised Civil Statutes of Texas of 1925,[1] any lands lying within or adjoining the territorial limits of an incorporated city or town, which was not included in such district at time of the organization of such district, and which lands have been subdivided into town lots and blocks, with streets or other thoroughfares dedicated to the use of the public, and of which a map and such dedication has been duly filed for record with the County Clerk of the County in which said lands are situated, the Board of Directors of such Water Control and Preservation District may by resolution duly passed, discontinue said territory as a part of said District; and when said resolution has been duly passed, it shall be entered by the Secretary of the District in the minutes of the Board of Directors of said District, and from and after said entry, said territory shall cease to be a part of said District, and the said territory so excluded, shall no longer be entitled to be served with water from such irrigation system, or by said District.

Sec. 2. The owner or owners of the fee of any such lands containing not less than ten (10) acres, and constituting a portion of any Water Control and Preservation District, may file with the Board of Directors of said District, a petition praying that such lands owned by them be excluded from said District. The petition shall describe the lands which the petitioners desire to have excluded by metes and bounds. When such petition has been filed with the Secretary of said District, the Board of Directors of said District shall order an election to be held at a convenient place or places within said District within thirty (30) days thereafter; and if a majority of the qualified voters living in said District and voting at such election cast their votes in favor of discontinuing said territory as a part of said District, the Board of Directors shall declare such territory no longer a part of said District, and there shall be entered upon the minutes of the Board of Directors, an order to that effect; and from and after such entry, said territory shall cease to be a part of said District, and such excluded lands shall no longer be entitled to be served with water from such irrigation system or by said District.

Sec. 3. Whenever any territory shall be excluded from a Water Control and Preservation District as provided herein, either by Section 1 or Section 2 of this Act, and said Water Control and Preservation District shall, at the time of such withdrawal owe any debts by bond or otherwise, such withdrawn territory shall not be released from the payment of its pro rata of such indebtedness; but it shall be the duty of said District to continue to levy taxes each year on the property in such territory at the same rate as is levied upon other property of such District, until the taxes collected from said territory shall equal its pro rata share of the indebtedness of said District at the time of withdrawal on the territory in the District at the time of withdrawal. The taxes so collected shall be charged only with the cost of levying and collecting same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the owner of any lands in said territory from paying in full, at any time, his pro rata share of the indebtedness, both principal and interest, of said District. [Acts 1939, 46th Leg., p. 705.]

[1] This chapter.

CHAPTER 3A.—WATER CONTROL AND IMPROVEMENT DISTRICTS

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Art. 7880—1. May be organized; petition.—Water control and improvement districts may be organized in the State of Texas within the terms and provisions of Section 52 of Article 3 of the State Constitution, and within the terms and provisions of Section 59 of Article 16 of the State Constitution. Petition for organization of such districts shall state the section and article under which same are to be organized, and such districts shall be organized and operated under the conditions, provisions, authority and restrictions therein provided. [Acts 1925, 39th Leg., ch. 25, p. 86, § 1.]

Art. 7880—2. Purposes.—Water control and improvement districts may be organized under the provisions of Section 52 of Article 3 of the Constitution for the purposes therein provided as follows:

(a) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof or of irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purpose of irrigation, drainage, or navigation, or in aid thereof. [Acts 1925, 39th Leg., ch. 25, p. 87, § 2.]

Art. 7880—3. Same.—Water Control and Improvement Districts may be organized under the provisions of Section 59, of Article 16 of the Constitution for any one or more of the purposes therein provided as follows:

"Including the control, storing, preservation and distribution of its waters and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage, the conservation and development of its forests, waters and hydro electric power, the navigation of its coastal and inland waters, and the preservation and conservation of all such natural resources of the State,"; and, such districts when organized shall have power to control, abate and amend any shortage, or harmful excess of waters, and to protect, preserve and, when necessary, restore, the purity and sanitary condition of waters within the State of Texas: These objects may be accomplished by any and all practicable means.

Such districts may be organized for the sole purposes to conduct preliminary surveys wherefrom to determine whether improvements are needed, and further to determine what improvements, if any, are required to promote the public welfare.

(a) Further, districts may be created hereunder to become and be known as Master Districts which may embrace all or any part of the area of one or more districts created and operating under the provisions of said Chapter 25, or under either Chapter 2, 3, 4, 6, 7 or 9 of Title 128 of the Revised Civil Statutes of Texas:

(b) Districts to be created as Master Districts may be created in order to conduct preliminary surveys and to develop a plan for the control and the use of the waters of any given stream, to the end that the improvements upon one part of a water shed will be mechanically and economically related to all other improvements upon such streams or its water shed;

(c) Districts to be created as Master Districts may be created in order to enable districts to pool their resources when necessary economically to make preliminary surveys, to adopt a plan to co-ordinate the plants, improvements and facilities of the several constituent districts, to the improvements and facilities proposed to be constructed and furnished by the Master District, to provide improvements for the common benefit of the several districts, or to enable such districts jointly to make purchases, or to maintain, or to operate works for the common benefit of the several districts;

(d) Such districts when created shall have the power to levy and collect taxes, equitably distributed, which taxes shall be in addition to other taxes that may be lawfully levied by the several districts constituting a part of such Master District;

(e) It is expressly provided, however, that each District composing part of a Master District shall for all purposes of an election constitute a separate voting unit, and no existing district may be included in a Master District unless the proposal so to do is approved by a majority of the voting qualified electors of such constituent district;

(f) Jurisdiction to hear and determine petitions for the creation of a Master District shall be exclusively exercised by the State Board of Water Engineers. Master Districts may have directors to number 5, 7 or any other uneven number up to 21, to be determined at the time of the creation of the district and to be thereafter subject to change by the directors of the district in such manner as to conform to the requirements for equitable representation for the various areas of such Master District. The election and qualification of such directors shall, insofar as applicable, be controlled as provided in said Chapter 25, or any amendments thereof.

(g) Other than as in this section provided, the procedure for the creation of a Master District, the conduct of its affairs, and its powers, shall, insofar as applicable and practicable, be the same as is provided by said Chapter 25 to control districts created thereunder. [Acts 1925, 39th Leg., p. 87, ch. 25, § 3; Acts 1927, 40th Leg., 1st C.S. p. 496, ch. 107, § 1; Acts 1929, 41st Leg., p. 578, ch. 280, § 2.]

Section 1 of Acts 1929 defines the terms and references used in the act.

Art. 7880—3a. Additional powers for disposal of waste and providing facilities and service.—Water control and improvement districts now existing, or hereafter to be created, may include in their purposes and plans all works, facilities, plants, equipment, and appliances in any and all manner incident to, helpful or necessary to the collection, transportation, processing, disposal, and control of all domestic, industrial, or communal wastes, whether of fluids, solids, or composites, and to gather, conduct, divert, and control local storm waters, or other local harmful excesses of water and to purchase, own, and operate fire engines and all necessary fire-fighting equipment and appliances. The foregoing ends may be accomplished by any and all mechanical or chemical means or processes incident, necessary, or helpful to such purposes, to the end that the public health and welfare may be conserved and promoted and the purity and sanitary condition of the State's waters protected, effected, or restored. And (1) to accomplish these purposes such districts shall have all, and fully, the same powers and rights of procedure, financing, construction, maintenance, rehabilitation, operation, and administration as now are or hereafter may be conferred by Section 59 of Article XVI of the Constitution of Texas and by said Chapter 25.[1] And especially (2) such districts shall have full power to adopt, promulgate, and enforce all such reasonable rules, regulations, and specific charges, fees, or rentals to be in addition to tax imposts for providing either facilities or service peculiar to a person, property, or area and to be equitably fixed, in a manner free from arbitrary discrimination as between persons, properties, or areas served. All such adopted orders and regulations shall be promulgated by publication of a copy thereof once a week for two (2) consecutive

weeks in one or more newspapers to give general circulation in the district, and shall be recorded in full in the minutes of the district. Thereupon the full police power of the district, as provided for in Section 3 of Chapter 280, Acts of the Regular Session of the Forty-first Legislature, as amended by Chapter 340, Acts of the Regular Session of the Forty-fourth Legislature,[2] may be exercised to make effective the intent of such orders, and such district may discontinue a facility or service in order to prevent an abuse or to enforce payment of a due and unpaid prescribed charge due to the district. And (3) districts proposing to exercise the powers and to perform the functions in this Section provided may embrace all of or any part of areas already embraced within the boundaries of any political subdivision, a governmental agency or body politic of the State of Texas; provided that such district shall not usurp functions or duplicate a service being already adequately exercised or rendered by such other embraced governmental agency save and except under a valid contract with such other embraced governmental agency. Further (4) the taxes to be imposed by a district exercising the powers in this Section provided, either solely or in connection with other powers granted by said Chapter 25, shall have the power to impose taxes in addition to the taxes which may have been or may be imposed by such other embraced governmental agency. And (5) the provisions of Section 115 of said Chapter 25 [3] shall not apply to an election concerning a proposal to create a district to exercise the powers in this Section provided for, and additional defined areas may be added to such districts in the same manner as is provided by this Section to control the creation of districts to exercise the powers and functions in this Section provided for and as hereinafter specified. And (6) the duty to hear and determine petitions for the creation of a district proposed to exercise the powers and functions in this Section provided shall, exclusively, be vested in the State Board of Water Engineers of the State of Texas, who shall hear and determine the same under the applicable provisions of Section 5 of Chapter 280,[4] Acts of the Regular Session of the Forty-first Legislature. Upon request therefor it shall be the duty of the Reclamation Engineer and the Sanitary Engineer of the Health Department of the State of Texas to render advisory aid concerning all such petitions and the plans of such districts. It is provided, however, that nothing herein contained shall be construed to impair the provisions of Section 19 of said Chapter 25 [5] relating to districts to be located wholly in one county when such districts are not proposed to have or include the powers in this Section provided for. And (7) any districts now or hereafter existing under the provisions of said Chapter 25, which district did not at the time of its creation have conferred upon it the powers in this Section provided for, may receive and assume the additional powers by this Section provided for in the same manner and by the same procedures as are provided for in this Section, save that it shall not be necessary to hold an election to confirm the order to establish the district's increased powers; provided, however, that no money obligations of the district may be issued to finance such increased functions, facilities, and powers until after the electors of the district shall have authorized the same by a Constitutional and Statutory majority vote in the respective manners provided by said Chapter 25 to control in appropriate case the issuance of preliminary bonds, or, in appropriate case, construction bonds as the proposal may require. [Acts 1925, 39th Leg., p. 86, ch. 25, § 3a, added Acts 1929, 41st Leg., p. 578, ch. 280, § 17a; amended Acts 1941, 47th Leg., p. 515, ch. 312, § 1.]

1 Article 7880—1 et seq.
2 Article 7880—7.
3 Article 7880—115.
4 Article 7880—21.
5 Article 7880—19.

Section 2 of the amendatory Act of 1941, read as follows: "Nothing in this Act shall amend, alter, modify, or repeal Senate Bill No. 299, [article 7930—3] or Senate Bill No. 300, [articles 7880—3b, 7880—3b1] Acts, Regular Session, Forty-seventh Legislature."

Art. 7880—3b. Water Control and Improvement Districts in counties over 500,000 may operate fire department and acquire equipment; arson, rewards; contracts.—All Water Control and Improvement Districts now existing, or hereafter to be created, and located wholly within counties having a population in excess of five hundred thousand (500,000) inhabitants according to the last preceding or any future Federal Census, shall be authorized to acquire, purchase, own, improve, repair, maintain and operate fire fighting facilities and equipment for the purpose of protecting the properties belonging to such Districts, and other properties situated within such Districts, and to maintain and operate a fire department, and to employ a fire marshal and such other employees as shall be necessary therefor. Such Districts shall further be authorized to pay rewards for information leading to the arrest and conviction of a person or persons on a charge of arson in connection with the burning or attempted burning of property situated within the District. The District's liability for such reward shall not exceed the sum of One Hundred ($100.00) Dollars for each offense, regardless of the number of persons convicted therefor.

The cost of acquiring, purchasing, improving and repairing fire fighting equipment and facilities may be paid out of the proceeds of the sale of bonds or other obligations issued by such Districts, or out of funds derived from taxes levied for maintenance purposes, or from the operation of the District's improvements, in the discretion of the Board of Directors; the cost of maintaining and operating such equipment and facilities may be paid from maintenance taxes or operating revenues, but shall not be paid out of borrowed money, whether by bonds or otherwise.

Such Water Control and Improvement Districts are hereby authorized to contract with nearby municipal corporations, or other political subdivisions, for fire protection by the use of facilities and equipment of such municipal corporations or political subdivisions, and to pay the consideration therefor from any available funds other than borrowed money. Such contracts shall extend for a period not to exceed ten (10) years, as may be agreed upon by the governing bodies of the contracting parties. [Acts 1925, 39th Leg., p. 86, ch. 25, § 3b, added Acts 1941, 47th Leg., p. 181, ch. 130, § 1.]

For sections 2 and 3 of Acts 1941, 47th Leg., p. 181, ch. 130, see article 7880—3b1.

This act not affected by 1941 amendment of Article 7880—3a, see article 7880—3a, note.

Art. 7880—3b1. Districts in counties over 500,000; contracts; advertisement; partial invalidity of act.—Sec. 2. Said Districts may enter into all necessary contracts for construction and repairs authorized by law. Where the amount exceeds One Thousand ($1,000.00) Dollars, competitive bids on uniform written specifications shall be asked after advertisement one time in a newspaper of general circulation in the county, or in said District, for at least five (5) days prior to opening bids. Contracts shall be awarded to the lowest and best bidder, shall be reduced to writing, and a surety bond shall be required in a sum equal to the amount of the contract to insure the faithful performance of the contract and the payment of labor and materials.

Where the amount is One Thousand ($1,000.00) Dollars or less, and more than One Hundred and Fifty ($150.00) Dollars, proposals without advertisement may be received and contracts awarded in like manner without advertisement or the requirement for bond. Purchases may be made, or contracts entered into on emergency requisitions, where the

amount of such purchase does not exceed One Hundred Fifty ($150.00) Dollars, provided that all of the provisions of Articles 1667 through 1673, Revised Civil Statutes of Texas, 1925, as amended, shall apply to the accounting of such Districts and the record of purchases, except as otherwise provided herein.

Sec. 3. If any provision of this Act, or the application thereof to any person or circumstance, shall be held to be invalid, the remainder of the Act and the application of such provisions to other persons or circumstances, shall not be affected thereby. [Acts 1941, 47th Leg., p. 181, ch. 130.]

Section 1 of Acts 1941, 47th Leg., p. 181, ch. 130, amended article 7880—3b.

Suspension of provisions. Acts 1943, 48th Leg., p. 413, ch. 280, § 1, effective May 8, 1943, suspended the operation of this article until the cessation of hostilities of World War II. By Proclamation No. 2714 the President of the United States proclaimed the cessation of hostilities effective twelve o'clock noon, December 31, 1946.

Art. 7880—3b2. [Expired.]

This article was Acts 1943, 48th Leg., p. 413, ch. 280, § 2. Section 5 of such Act provided that the provisions thereof should remain in force until the cessation of hostilities of World War II. By Proclamation No. 2714, the President of the United States proclaimed the cessation of hostilities, effective twelve o'clock noon, Dec. 31, 1946.

Art. 7880—4. Area included.—Such districts may include the area of any county or counties, or any portion thereof, including towns, villages, or municipal corporations. Such districts may include any county and number of counties, or any political subdivision of the State, and defined district or parts of any or all counties in the State of Texas; and the land composing said districts need not be in one body, but may consist of separate bodies of land separated by land not embraced in the district; provided, however, that each segregated area must cast a majority vote in favor of the creation of the district before such segregated area can be included in the district.

Provided that no district provided for in this Act [1] shall embrace territory situated in more than one county except by a majority vote of the property tax paying voters residing within the territory in each county sought to be embraced within said District. [Acts 1925, 39th Leg., ch. 25, p. 87, § 4; Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 2.]

[1] Articles 7880—1 to 7880—147.

Art. 7880—4a. Preference in use of water.—Districts organized under the provisions of this Act [1] may in the discretion of their directors award use of waters of the district in the following order of preference and superiority, viz.:

1st. Domestic and municipal use;

2nd. Industrial use, other than the development of hydro-electric power;

3rd. Irrigation;

4th. Development of hydro-electric power;

5th. Pleasure and recreation.

Where the welfare of the district may require, the directors of such district may withdraw water from an inferior use and appropriate such water to a superior use, as hereinabove given discretionary preference. Whenever such diversion or withdrawal will affect a vested right, such withdrawal or diversion must be after condemnation proceedings as provided for in Section 126 of this Act.[2] [Acts 1925, 39th Leg., p. 86, ch. 25, § 4a, as added Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 3.]

[1] Articles 7880—1 to 7880—147.
[2] Article 7880—126, post.

Art. 7880—5. Bonds; limitations of indebtedness.—Water control and improvement districts organized under Section 52 of Article 3 of the Constitution may issue bonds or otherwise lend their credit in any amount not to exceed one-fourth of the assessed valuation of the real property value of such district, or territory, except that the total indebtedness of any city or town shall never exceed the limits imposed by the provisions of the Constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof. [Acts 1925, 39th Leg., ch. 25, p. 87, § 5.]

Art. 7880—6. Tax levy and sinking fund.—Water control and improvement districts organized under the provisions of Section 59 of Article 16 of the Constitution may incur all such indebtedness as may be necessary to provide all improvements, and the maintenance thereof, requisite to the achievement of the purposes for which it was authorized to be created, and all such indebtedness may be evidenced by bonds to be issued as prescribed by law, and such districts are authorized to levy and collect all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment thereof, and also for the maintenance of such districts and improvements, and such taxes shall be a lien upon the property assessed for the payment thereof. [Acts 1925, 39th Leg., ch. 25, p. 87, § 6.]

Art. 7880—7. Powers.—All districts operating under the provisions hereof shall have, and may exercise, such functions, powers, authority, rights and duties as may permit the accomplishments of the purposes for which such districts may be created, including the investigation, and in case a plan for improvements is adopted, then, the construction, maintenance, and operation of all necessary improvements, plants, works and facilities, the acquisition of water rights and all other properties, lands, tenements, easements, and all other rights helpful to the purpose of the organization of the district, subject only to the restrictions imposed by the Constitution of the State of Texas or that of the United States:

(a) It further is expressly provided that such districts shall have the power to adopt and promulgate all reasonable regulations to secure and maintain safe, sanitary, and adequate plumbing installations, connections, and the appurtenances thereto, as subsidiary parts of sanitary sewer systems, and, as well for preserving the sanitary condition of all water controlled by the district, to prevent waste of water or the unauthorized use thereof, to regulate residence, hunting, fishing, boating and camping, and all recreational and business privileges, upon any body or stream of water, or, any body of land, or easement owned or controlled by such district; and to include the right to make contracts with responsible persons for the construction and operation of toll bridges over the district's water, or for ferry service on or over the district's water (to cover periods of time not to exceed twenty years in the case of a bridge and not to exceed ten years in the case of a ferry), fixing the compensation to be charged for service by any such facility, to the end that the same be reasonable and requiring adequate bond or bonds from any such contracting person, association or corporation, payable to the district, to be of such amount and conditioned as the judgment of the directors of the district may deem to be required; and, such contracts may provide for forfeiture of the particular franchise in case of a failure of the licensee to render adequate public service.

(b) Such district may prescribe reasonable penalties for the breach of any regulation of the district, which penalties shall not exceed fines of more than Two Hundred Dollars ($200.00), or imprisonment for more than Thirty (30) days, or may provide both such fine and such imprisonment. The penalties hereby authorized shall be in addition to any other penalties provided by the laws of Texas and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office is located; provided, however, that no rule or regulation which provides a penalty for the violation thereof shall be in effect, as to enforcement of the penalty, until five day

next after the district may have caused a substantive statement of the particular rule or regulation and the penalty for the violation thereof to be published, once a week for two consecutive weeks, in one or more newspapers affording general circulation in the area in which the property of the district is situated; and, the substantive statement so to be published shall be as condensed as is possible to afford an intelligent direction of the mind to the object sought to be accomplished or the act forbidden by the rule or regulation; one notice may embrace any number of [1] regulations; there must be embraced in the notice advice that breach of the particular regulation, or regulations, will subject the violator to the infliction of a penalty and there also shall be included in the notice advice that the full text of the regulations sought to be enforced is on file in the principal office of the district, where the same may be read by any interested person. Five days after the second publication of the notice hereby required, the advertised regulation shall be in effect, and ignorance of any such regulation shall not constitute a defense to a prosecution for the enforcement of a penalty; and, the rules and regulations authorized hereby, after the required publication, shall judicially be known to the courts and shall be considered of a nature like unto that of valid penal ordinances of a city of the State.

(c) It further is expressly provided that such districts shall have the power to employ and constitute their own peace officers, with power to make arrests when necessary to prevent or abate the commission of any offense against the regulations of the district, and against the laws of the State of Texas, when any such offense, or threatened offense, occurs upon any land, water, or easement owned or controlled by the district; or, to make such arrest at any place, in case of an offense involving injury or detriment to any property owned or controlled by such district. [Acts 1925, 39th Leg., p. 88, ch. 25, § 7; Acts 1929, 41st Leg., p. 578, ch. 280, § 3; Acts 1935, 44th Leg., p. 792, ch. 340, § 3.]

[1] So in enrolled bill. Session Laws read "or".

Section 4 of Acts 1935 reads as follows: "No future act of a Legislature of Texas shall be deemed to change or alter the effect of this Act, unless such future Act specifically refers to this Act and expressly amends or repeals the same."

Art. 7880—8. Bonds; vote required.—In all districts organized under the provisions of Section 52 of Article 3 of the Constitution, bonds shall be issued only upon a vote of a two-thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district. [Acts 1925, 39th Leg., ch. 25, p. 88, § 8.]

Art. 7880—9. Same.—In all districts organized under the provisions of Section 59 of Article 16 of the Constitution, no bonds shall be issued or any indebtedness incurred unless such proposition shall first be submitted to the qualified property tax paying voters of such district and the proposition be adopted by not less than a majority of such qualified persons voting thereon. [Acts 1925, 39th Leg., ch. 25, p. 88, § 9.]

Art. 7880—10. Petition.—Petition for the organization of a water control and improvement district shall be signed by a majority in number of the holders of title to the lands therein, and the owners of a majority in value of the lands therein, as shown by the county tax rolls, provided, if the number of such land owners therein is more than fifty, such petition shall be sufficient if same is signed by fifty land owners. Such petition may be signed and filed in two or more copies. [Acts 1925, 39th Leg., ch. 25, p. 88, § 10.]

Art. 7880—11. Contents of petition.—The petition shall designate the name of the district, the area and boundaries thereof, the provision of the Constitution under which same is to be organized, the purpose or purposes of same. Said petition shall state the general nature of the work to be done, the necessity thereof, the feasibility thereof, with reasonable detail and definiteness in order that the court or board passing on same may understand therefrom the purpose, utility, feasibility and need or necessity therefor. The petition shall state the estimated cost of the project as then estimated by those filing such petition from such information as they may have at that time. [Acts 1925, 39th Leg., ch. 25, p. 88, § 11.]

Art. 7880—12. Filing of petition.—Said petition shall be filed in the office of the county clerk of the county in which the district is situated. If land in more than one county is included, copies of the petition certified by such clerk shall be filed in the office of the county clerk of each county in which a portion thereof lies. Said petition shall be recorded in a book kept for that purpose in the office of the county clerk. When more than one petition or copy is filed and same are identical except as to the signature thereon, one copy shall be recorded and all signatures of such copies shall be included. [Acts 1925, 39th Leg., ch. 25, p. 88, § 12.]

Art. 7880—13. Formation of district.—When the land to be included in a district lies within one county, the formation thereof shall be considered and ordered by the county commissioners' court, and when the land in such a district is in two or more counties the formation thereof shall be considered and ordered by the State Board of Water Engineers. [Acts 1925, 39th Leg., ch. 25, p. 89, § 13.]

Art. 7880—14. Date of hearing.—When a petition is filed for the organization of a district within one county the county judge shall make an order setting the date of hearing thereof by the county commissioners' court, and shall endorse same on said petition or on a paper attached thereto. The county clerk shall thereupon issue a notice of such hearing. Said petition may be considered at a regular or special session of said court. [Acts 1925, 39th Leg., ch. 25, p. 89, § 14.]

Art. 7880—15. Notice of hearing.—The notice of hearing of a petition for the formation of a district shall contain a statement of the nature and purpose thereof, the date and time and place of hearing. The notice shall be prepared with one original and three copies. The county clerk will retain one copy in his files and deliver the original and two copies to the county sheriff. The sheriff shall post one copy at the court house door fifteen days prior to the date of hearing and shall publish one copy in a newspaper of general circulation in the county once a week for two consecutive weeks, the first publication thereof to be made at least twenty days prior to the date of hearing. He shall make due return of service thereof with copy and affidavit of publication attached on the original prior to date of hearing. [Acts 1925, 39th Leg., ch. 25, p. 89, § 15.]

Art. 7880—16. Designation of districts.—All districts organized under the provisions hereof shall be known and designated as Water Control Improvement Districts. Such districts lying in one county shall be named: ——— County Water Control and Improvement District, Number ———, filling in name of county and proper consecutive number. [Acts 1925, 39th Leg., ch. 25, p. 89, § 16.]

Art. 7880—17. Contest of creation.—Upon the day set for hearing upon a petition for the organization of a district by the county commissioners' court, or by the State Board of Water Engineers, any person whose land is included in or would be affected by the creation of such district may appear and contest the creation thereof and may offer testimony to show that such district is or is not necessary, would or would not be a public utility, and would or would not be feasible

or practicable. Such hearing may be adjourned from day to day. [Acts 1925, 39th Leg., ch. 25, p. 89, § 17.]

Art. 7880—18. Jurisdiction; hearing.—If the Commissioners' Court either grant or refuse the petition, any person who signed the petition, or any person who did actually appear and protest said petition and offer testimony against the creation of the district, may appeal from the order of the court by giving notice of appeal in open court at the time of the entry of the order, which shall be entered on the court's docket, and by filing with the clerk of the court within five days a good and sufficient appeal bond in the sum of $2,500.00, to be approved by the clerk, payable to the County Judge, conditioned for the prosecution of such appeal with effect and the payment of all costs incurred on such appeal in case the final decree of the court shall be against the appellant. Upon completion of an appeal, as herein provided, the clerk of the Commissioners' Court shall within ten days prepare a certified transcript of all orders entered by the Commissioners' Court and transmit the same together with all original documents, processes and returns thereon to the clerk of the district court to which the appeal may be taken. All persons shall be charged with notice of such appeal without notice or service thereof, but no person who failed to appear by petition, or in person or by attorney, in the Commissioners' Court shall be permitted to intervene in the district court trial. The district court, or the judge thereof, either in term time, or in vacation time, shall set said cause down for hearing with all reasonable dispatch, and shall give said cause precedence over all causes not of like character; Formal pleadings shall not be required, but, with the court's permission, may be filed. The trial and decision shall be by the court without the intervention of a jury. The hearing shall be as though the jurisdiction of the district court were original jurisdiction and all matters which were, or might have been, presented in the Commissioners' Court, and as well the validity of the Act under which the district is proposed to be created, and the regularity of all precedent proceedings, may be contested in the district court, and the court shall apply to the determination of such cause its full legal and equitable powers to the end that substantial justice may be done. The judgment of the district court may be appealed from as in other civil causes, and all such causes shall be given precedence on the docket of any higher court over all causes not of like public concern. The final judgment of the district court, or other court to which an appeal may be prosecuted, shall be certified and transmitted to the clerk of the Commissioners' Court together with all original documents and processes which were transmitted from the Commissioners' Court to the district court on appeal; The Commissioners' Court shall thereupon enter their order upon said petition to conform to the decree entered by the court of final jurisdiction, and shall enter such other and further orders as may be by law required to execute the intent of the certified decree. [Acts 1925, 39th Leg., p. 89, ch. 25, § 18; Acts 1929, 41st Leg., p. 578, ch. 280, § 4.]

Art. 7880—19. Granting or refusing petition.—If it shall appear on hearing by the commissioners' court that the organization of a district as prayed for is feasible and practicable, that it would be a benefit to the land to be included therein, and be a public benefit, or utility, the commissioners' court shall so find and grant the petition. If the court should find that such proposed district is not feasible or practicable, would not be a public benefit or utility, or would not be a benefit to the land to be included therein, or is not needed, the court shall refuse to grant the petition. [Acts 1925, 39th Leg., ch. 25, p. 90, § 19; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 4.]

Art. 7880—19a. Municipal districts, bonds, investments.—Certain districts which are now operating under the provisions of said Chapter 25, or which may hereafter operate under the provisions thereof, may, by order of the directors thereof entered in the Minutes of such district, be and become "Municipal Districts," subject however to the following requirements, viz:

(a) When such a district actually embraces the total area of any city the bond obligations of which have been, or may be, declared eligible for purchase by savings banks and trusts, as provided for by Chapter 446 of the Acts of the Legislature of the State of New York, effective on March 21st, 1928, or any amendment thereof; provided, however, that the plans of such district must be designed for furnishing, in whole or in part, a water supply, sanitation facilities, flood protection, or other service, inuring to the general benefit of the inhabitants of such embraced city: or;

(b) Where such district embraces a total population, according to the last decennial Federal Census, of thirty-thousand (30,000), or more, persons; has established assessable values of real estate, subject to the district's taxing power, of fifty million ($50,000,000) dollars, or more: also, and to apply to districts falling under both classifications (a) and (b) foregoing;

(c) When such district has a taxing power unlimited as to rate and amount, and such district has not outstanding, or authorized, bond obligations exceeding twenty (20%) per centum of the established assessable, taxable evaluation of the real estate subject to the district's taxing power; in which computation, however, there shall not be included bond obligations which may be retired by the district out of revenues from sources other than the income from district taxation: Then, and in such case;

(d) Such district may be established as a "Municipal District," and the bonds of such district shall be authorized to be issued to bear the legend "Municipal Bond": Further;

(e) Bonds issued in compliance with this Section shall be eligible for investment of the funds of any and all of the following bodies politic, governmental agencies, governmental institutions, corporations, or persons when acting as trustee, receiver, administrator or guardian, viz:

(1) State banks, trust companies and savings banks: (2) Insurance companies for the purpose of holding such bonds as legal reserves against liability under their contracts for insurance, or for investment of an accumulated surplus: (3) Counties, cities, towns and other bodies politic, for the purpose of investing the accumulated sinking fund monies thereof: (4) The State Board of Education and the Regents of the University of Texas: (5) Trustees, Receivers, Administrators and Guardians, administering funds under orders of a court:

(f) Such bonds when in the lawful possession of any such agency, institution, person, or corporation, whether existing within Texas, under the laws of Texas, or within, and under the laws of, any other sovereignty, shall constitute lawful reserves, where such are required by law, and shall be eligible for deposit with the banking and insurance departments of Texas, in all cases where such deposit, pledge or security is required by law: Further such bonds shall constitute lawful security for any bank designated as an official depository for a body politic under the laws of Texas. [Acts 1925, 39th Leg., p. 86, ch. 25, § 19a as added Acts 1929, 41st Leg., p. 578, ch. 280, § 18.]

Art. 7880—20. Appointment of directors.—When the commissioners' court shall grant a petition for organization of a district it shall appoint five directors who shall serve until their successors are elected or appointed in accordance with law. Such direc-

tors shall within fifteen days thereafter file their official bonds in the office of the county clerk who shall present same to the county judge for approval. The county judge shall pass upon such bonds and approve same if proper and sufficient, or disapprove same and endorse his action thereon and return same to the county clerk. If approved, said bonds shall be recorded in a record kept for that purpose in the office of the county clerk. If such bond is not approved a new bond may be furnished in ten days thereafter. If any director so appointed fails to qualify, the commissioners' court shall appoint other persons in place of those failing to qualify. Each of said directors shall take the oath of office as herein provided. [Acts 1925, 39th Leg., ch. 25, p. 90, § 20.]

Art. 7880—21. State Board of Water Engineers; jurisdiction.—The State Board of Water Engineers are hereby constituted a commission for the purpose of, and to have exclusive jurisdiction and power to hear and determine all petitions for organization of a district which is proposed to include lands or property situated in two or more counties, and their orders thereon shall be final, unless appealed from as hereinafter provided. Upon the filing of such petition the Board shall give notice of hearing in the manner provided in Section 15 of said Chapter 25,[1] save that notice shall be posted at the court house door, on the bulletin board used for posting legal notices, in each county in which the district may be situated, and the publication must be in one or more newspapers to give general circulation in the area of the proposed district. A petition to be filed with said Board must be accompanied by a money deposit of Two Hundred and Fifty ($250.00) Dollars to pay all costs which may be incurred in such proceedings: After the payment of such costs any unexpended balance must be repaid to petitioners, or to their attorney of record, whose receipt therefor shall be sufficient. Said Board shall hear, consider and determine such petition upon the issues, and in the manner, form and time by this Act provided to control hearings and determination of such petitions by a Commissioners' Court under the provisions of Section 19 of Chapter 25, as amended hereby.[2]

When said Board does either grant or refuse such petition any person who comes within the requirements specified in Sections 17 and 18 of Chapter 25 [3] may prosecute an appeal therefrom under the same provisions as are set out in said Section 18 of Chapter 25; provided, however, that such appeal may be taken to any district court sitting in any county in which any part of the proposed district may be, or to a district court in Travis County, Texas and the time within which an appeal bond may be approved and filed shall be fifteen days after the entry of the final order by said Board. Upon the perfection of such appeal the party appellant shall pay the actual cost of the transcript of the record, which shall be assessed as part of the costs incurred on such appeal; provided, however, that whenever practicable the original documents and processes with the returns thereon shall be sent to the district court. [Acts 1925, 39th Leg., p. 90, ch. 25, § 21, Acts 1929, 41st Leg., p. 578, ch. 280, § 5.]

[1] Article 7880—15, ante.
[2] Article 7880—19, ante.
[3] Articles 7880—17, 7880—18, ante.

Art. 7880—22. Directors; bond.—If at the hearing of a petition the State Board of Water Engineers shall grant the petition they shall appoint five directors who shall serve until their successors are elected or appointed. A certified copy of the order granting the petition and naming the directors shall be filed in the office of the county clerk of each county in which a portion of the district lies. The directors therein named shall within fifteen days file their official bonds in the office of the county clerk of the county of their residences and same shall be presented to the county judge for approval. The county judge will act upon same in the manner herein provided for districts in one county. If any such director fails to qualify the commissioners' court of the county in which he lives shall appoint some qualified person in his place. [Acts 1925, 39th Leg., ch. 25. p. 91, § 22.]

Art. 7880—23. Election; ballot.—Whenever a district shall have been organized by the granting of a petition therefor by the commissioners' court or by the State Board of Water Engineers, and the directors shall have qualified by giving bond and taking the oath of office, the directors shall meet, elect a president, vice-president and secretary and enter upon the discharge of their duties.

Before such district shall incur any indebtedness other than for its operation and the holding of an election, and in any event within thirty days after the date of their first meeting they shall make and publish an order calling an election within and for such district for the purpose of confirming the organization of the district by a vote of the qualified resident property taxpaying voters. The ballots for such election shall contain the proposition: "For confirmation of district" and "Against district."

The election shall be held as herein provided for other elections. At the same time and the same election the proposition for issuance of preliminary bonds may be submitted. [Acts 1925, 39th Leg., ch. 25, p. 91, § 23.]

Art. 7880—24. Confirmation of organization.—If the majority of those voting at such election vote in favor of the confirmation of the district the same is thereby finally confirmed and ratified. If a majority of those voting at such election vote against the district, same shall have no further authority except that any debts incurred shall be paid and the organization shall be maintained until all such debts are paid.

Whenever such an election shall be found to be in favor of the confirmation of the district and the result thereof be declared the board of directors shall make and enter in their minutes an order substantially as follows:

An election having been held in ——— district on the ——— day of ——— for the purpose of voting upon the confirmation of the organization resulted in a vote of ——— votes for confirmation and ——— votes against the district, the result being declared in favor of the organization. Said ——— district is therefore declared to have been legally organized with the following boundaries:—(Set out boundaries).

Said order shall be signed by said directors or a majority of them and acknowledged by the president and be filed for record in the office of the county clerk of the county or counties in which same is situated and shall be recorded in the deed records. [Acts 1925, 39th Leg., ch. 25, p. 91, § 24.]

Art. 7880—25. Ballots; director's bond.—As to all districts organized by order of the State Board of Water Engineers there shall also be submitted at said first election the question of the election of five directors of such district. There shall be placed on the ballots the names of the five directors appointed and a blank space shall be left to write in the names of other persons. If the directors appointed are elected the ones so elected shall be confirmed thereby without the necessity of furnishing new bonds, but shall be continued in office. In the event any of the directors first appointed are not elected at such election the person or persons elected in their places shall furnish bond and same shall be approved in the same manner as herein provided for directors first appointed. [Acts 1925, 39th Leg., ch. 25, p. 92, § 25.]

Art. 7880—25a. Attorney General to contest creation of district.—It is the intent hereof that Sections 18 and 19 of this Act, and all amendments thereto now effective,[1] or hereafter to be adopted, shall afford all interested persons adequate and ex-

clusive opportunity to protest the creation of a district, and thereafter, save as hereinafter provided, no suit shall be permitted to be instituted in any court of this State contesting the validity of the formation and boundaries of a district created hereunder, or contesting any bonds or other obligations created hereunder, or contesting the validity of a contract with the United States, or of the authorization thereof by the district; It is expressly provided, however, that all such matters may be judicially inquired into and determined in any suit brought by the State of Texas, through the Attorney General, upon his own motion, or upon the motion of any person affected by the existence or plans of the district, upon good cause shown, except in such cases as are, or may be, provided by other provisions of this Act, or by the Constitution of Texas. [Acts 1925, 39th Leg., p. 86, ch. 25, § 25a, as added Acts 1929, 41st Leg., p. 578, ch. 280, § 6.]

[1] Articles 7880—18, 7880—19, ante.

Art. 7880—26. Conduct of election.—All elections held by a district shall be ordered, held and conducted in accordance with the laws of this State for the holding of general elections for State and county officers, except as herein otherwise provided. [Acts 1925, 39th Leg., ch. 25, p. 92, § 26.]

Art. 7880—27. Polling places; judges; clerks.—The directors shall name the polling places and if more than one is required divide the district into election precincts. Same may be changed from time to time as required. The directors shall provide for the holding of all elections and giving of notice thereof and appoint the officers to hold same. The officers shall consist of one presiding judge, one assistant judge and two clerks. More clerks may be appointed when necessary. Officers shall be appointed for such election when it is ordered. [Acts 1925, 39th Leg., ch. 25, p. 92, § 27.]

Art. 7880—28. Notice of election.—Notice of all elections shall be given by order of the board of directors. The notice shall state the purpose of the election, the propositions and officers to be voted upon, the polling places, the names of the officers of election. The notice shall be signed by the president and secretary and shall be published once a week for three consecutive weeks in a newspaper of general circulation published in the county or counties in which such district is located, or if none is published in said counties in the nearest county thereto. The first publication shall be at least twenty one days prior to the election and not more than thirty-five days prior thereto. [Acts 1925, 39th Leg., ch. 25, p. 92, § 28.]

Art. 7880—29. Declaring result of election.—The officers holding the election shall make and deliver the returns thereof in triplicate, one being retained by the presiding judge, one delivered to the president of the district and one delivered to the secretary. The ballot boxes and other election records and supplies shall be delivered to the secretary at the office of the district and be preserved as provided by law in said office. All boxes containing ballots voted or mutilated shall be preserved for one year subject to the orders of any court in which a contest thereof may be filed. The officers of election at the time of making and sealing such election returns shall give to the newspapers or others calling for same the result of such election in their voting box. The directors shall meet and canvass the returns of an election at any time not less than five full days thereafter nor more than seven days thereafter, provided if same cannot be canvassed within seven days same shall be done as soon thereafter as possible. [Acts 1925, 39th Leg., ch. 25, p. 93, § 29.]

Art. 7880—30. Voter's oath.—When any person appears at the polls to vote who is not known to the election officers to be a qualified voter and a property tax payer, or when his vote is challenged, he shall be required to subscribe and swear to an oath as follows: "I do solemnly swear (or affirm) that I am a qualified voter and a property tax payer in the district. I did not acquire property prior to this election for the purpose of voting, but am a bona fide property tax payer in the district." Such oath shall be required only in elections in which the voter is required to be a property tax payer. [Acts 1925, 39th Leg., ch. 25, p. 93, § 30.]

Art. 7880—31. Preliminary bonds.—The directors of the district shall have full authority to make investigations and plans necessary to the operation of the district and the construction of plans and improvements. They may employ engineers, attorneys, bond experts, and other agents and employees required to aid them in the performance of such duties. The district may issue bonds to be known and designated as preliminary bonds, for the purpose of creating a fund to pay the costs of organization of the district and of making surveys, investigations, attorney fees, engineering work, cost of issuance of bonds, and all other costs and expenses incident to the organization of the district and its operation in investigating and determining upon plans for its plant and improvements and the expense of issuing and selling bonds to provide for such permanent improvements.

The directors shall make an estimate of such expenses and state in the notice of election the amount of same. Said proposition of the issuance of such bonds shall be submitted to an election and shall be adopted. Those voting at such election shall be qualified electors and property tax payers. Such preliminary bonds shall bear interest at a rate not to exceed six per cent per annum and shall be due and payable not to exceed ten years from their date. While said bonds shall be known and designated on the records as preliminary bonds it shall not be necessary to so designate same on the bonds. [Acts 1925, 39th Leg., ch. 25, p. 93, § 31.]

Art. 7880—32. Provision for payment.—Said bond election may be held at the same time as the election held for the conformation of the district, or at such time thereafter as the directors shall provide. When such bonds have been authorized by an election the directors may make an order for the issuance thereof in an amount not to exceed the amount stated in the notice of election. Said bonds may be made payable serially or upon amortization at any time within ten years from their date. At the time such bonds are issued a tax shall be levied sufficient to pay the interest thereon and provide for the payment of the principal thereof as same mature and to pay the cost of assessing and collecting such taxes.

If such tax levied is based upon the assessed value obtained from the county tax rolls, or the tax rolls of such district for the preceding year and new tax rolls be approved before the time for collection of taxes, the board of directors is authorized to change the tax rate so made at the time of the issuance of said bonds, provided that the new tax rate shall be sufficient when applied to the new assessed value to raise the same amount of money as the rate levied at the time when the bonds were issued would have raised upon the valuation taken into consideration in fixing such rate. [Acts 1925, 39th Leg., ch. 25, p. 94, § 32; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 5.]

Art. 7880—32a. Loans by directors, pledge of taxes.—The directors of the district shall have power to declare an existing emergency in the matters of funds not being available to meet lawfully authorized obligations of the district, and to borrow money upon notes of the district to meet such obligations at any rate not to exceed eight per centum per annum: To secure such loans the directors of the district may pledge any tax then levied but not collected by the district, up to eighty-five per cent of the

same, or to pledge as collateral any bonds of the district then authorized, but not sold, provided however:

1st: In case of the pledge of taxes levied, such loan shall not mature later than April 1st next after such loan may be consummated:

2nd: In case of the proposed pledge of either preliminary or construction bonds, authorized but not sold, the maturity of the loan shall not be on a day later than six months next after the date of the emergency loan, and such loan shall not exceed a sum in excess of twenty-five per centum of the bonds then unsold: Further, it is provided that where bonds are pledged as collateral for an emergency loan hereunder that the par value of the bonds so pledged shall not exceed the amount of the loan by more than Ten per centum of the amount of such loan:

3rd: In either case no money procured upon any such loan can be applied to a purpose other than the designated purposes for which any such tax may have been levied, or for which any such bonds may have been authorized. [Acts 1925, 39th Leg., p. 86, ch. 25, § 32a, as added Acts 1929, 41st Leg., p. 578, ch. 280, § 7.]

Art. 7880—33. Levy of taxes.—Instead of proceeding for the assessment, equalization and collection of taxes in the manner elsewhere in this Act provided for, the directors of the district may provide therefor by contracts for such service, with the Commissioners' Court of each county in which property taxable by the district is situated; subject, however, to the further conditions that:

1. The consideration for such service shall be computable as fees of office of the county officers rendering service under such contracts: 2. The service charge to be paid by the district may not exceed the reasonable cost which will be added to the county's cost to assess and collect taxes, were no such contract made, and where such service may be accomplished by an extension of an ad valorem tax levy by the district upon the rolls to be used for the State and county taxes, such cost shall not, in any event, exceed Eighteen Hundred Dollars ($1800.-00) per year for the assessment and equalization of taxes, and not to exceed Fifteen Hundred Dollars ($1500.00) per year for the collection of and accounting for taxes, together with such other acts as are lawful duties incident to delinquent taxes: 3. The tax collecting official shall be deemed to be, as to tax money collected for the district, the Tax Collector of the district and he, as such collector, may be required by the district to give a surety company bond, payable to the district; provided that, if a surety company bond is required, the premium on any such bond shall be paid by the district; however, in the absence of such separate bond, the official bond of the county's tax collector shall ratably inure to the benefit of the district.

Upon the making of any such contract the Tax Assessor and Tax Collector or the Tax Assessor and Collector for the given county shall be required to perform for the contracting district, all and singular, the same duties which they lawfully are required to perform concerning taxes of the State and county, upon condition, however, that the board of directors of the contracting district, before requiring service under the contract, shall levy its ad valorem tax, or fix its specific assessment of benefits, or its tax per acre (to conform to the plan of taxation adopted by the district) for each year during which service is desired under the contract; and, in such time as will not delay preparation of the county's tax rolls, deliver to the county's tax assessing officer a certificate showing the rate (or amount, as the same may require) of the district's tax levy or specific assessment for the current taxing year. The tax collector shall have the duty to pay to the district, or its official depository bank for its account, all money collected by him for the district during any calendar month, and furnish to the district an itemized statement of the collections made in the prior month, on or before the fifteenth of the next succeeding month, unless the contract provides for more frequent accounting, as it may do. Any district contracting as hereby provided, may elect thereby to require that the county's auditor (if there be one) shall annually audit the collections and accountings of the tax collecting officer and furnish the district with a report of his findings, provided that such district shall pay to the county the actual cost of the audit, but in no event to exceed Five Hundred Dollars ($500.00).

A finance ledger shall be kept by the district in which shall be charged against the tax collector the full amount of the completed tax rolls, and credit for the amount of the taxes collected and paid over to the district shall be entered therein. [Acts 1925, 39th Leg., p. 94, ch. 25, § 33; Acts 1935, 44th Leg., p. 792, ch. 340, § 1.]

Art. 7880—34. Record of bonds.—Whenever a district shall issue bonds other than preliminary bonds, before same are sold a record showing all proceedings of the organization of the district and of the issuance of bonds shall be filed in the office of the Attorney General of the State and it shall be the duty of the Attorney General to examine same and give his opinion thereon. Said record may be so presented to the Attorney General before such bonds are printed and executed after the record providing for the issuance of same is completed. When such record is approved said bonds shall be issued or duly executed and shall be submitted to the Attorney General for approval. If he shall find that same have been issued in accordance with the provisions of law and that such bonds are valid, binding obligations upon the district he shall so officially certify and execute a certificate thereof which shall be filed in the office of the State Comptroller and be recorded in a record kept for that purpose. Such bonds after being approved and registered shall be held in any suit or proceeding in which their validity may be questioned to be valid, binding obligations of such district, provided, however, that any party interested therein may file a suit thereon at any time prior to the registration of same by the State Comptroller, but not thereafter. Said bonds shall not be so registered in the office of the State Comptroller until twenty days after the date of the election authorizing the issuance thereof. [Acts 1925, 39th Leg., ch. 25, p. 95, § 34.]

Art. 7880—35. District depository.—Prior to the sale of any bonds the directors of the district shall select and name a depository for the district as herein provided and the proceeds of such bonds shall be paid into the depository and disbursed as herein provided. [Acts 1925, 39th Leg., ch. 25, p. 95, § 35.]

Art. 7880—36. Qualifications and powers of directors.—Each district shall have five directors. Each director shall be twenty-one years or more of age, be a resident citizen of the State and own land subject to taxation in the district. The five directors shall compose the board of directors of the district and be the managing officers in charge of all the business and affairs of the district, make all contracts pertaining thereto. They shall employ all employees necessary for the proper handling of such business and the operation of the district, its plant and improvements. They may employ a general manager, attorneys, bookkeepers, engineers and laborers. They may purchase all necessary work animals, motors, automobiles, machinery, materials and supplies, required in the erection, repair or maintenance of the plant and improvements of the district. A director may be employed as general manager and at such compensation as may be fixed by the four other directors, and when

so employed he shall continue to perform the duties of a director. [Acts 1925, 39th Leg., ch. 25, p. 95, § 36.]

Art. 7880—37. Election of directors.—There shall be held a general election in said water control and improvement district on the second Tuesday in January next after the said district is formed at which time five directors for each district shall be elected. The three directors receiving the highest vote shall serve for two years. The other two directors shall serve for one year. At the second annual election two directors shall be elected to serve two years. At the third annual election three directors shall be elected to serve two years, and thereafter there shall be an annual election of two directors in one year and three directors in the next year in continuing sequence. [Acts 1925, 39th Leg., p. 95, ch. 25, § 37; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 6.]

Art. 7880—38. Vacancies.—All vacancies in the office of director and other officers shall be filled by appointment by the board of directors for the unexpired term. In the event the number of directors shall be reduced to less than three then the remaining director or directors shall call a special election to fill said vacancies, and if they shall fail to do so within fifteen days after such vacancies occur the judge of any district court within the jurisdiction of which any part of such district may be situated, upon petition of any voter or creditor thereof may order the holding of such election, fixing the date thereof, and order the publication of notice thereof by any county sheriff and name the officers to hold such election. In any such election held by order of a district judge the returns of an election shall be made to and filed in the office of the clerk of the court and he shall declare the result thereof. The officers elected shall furnish bond and qualify in the manner provided herein with reference to directors first appointed for a district upon its organization. [Acts 1925, 39th Leg., ch. 25, p. 96, § 38.]

Art. 7880—38a. Election of directors in large districts including two or more counties.

Precinct method

Section 1. In any Water Control and Improvement District, now or hereafter created, containing within its boundaries more than one hundred thousand (100,000) acres of land and whose boundaries embrace lands within two (2) or more counties, the directors thereof may be selected either (a) by elections held throughout such district as provided in Section 37, Chapter 25 of the Acts of the Thirty-ninth Legislature, Regular Session, 1925, as amended by Section 6, of Chapter 107 of the Acts of the First Called Session of the Fortieth Legislature, 1927;[1] or, (b) by elections held in separate precincts for election of one (1) director in each precinct, which method of selecting directors may hereinafter be referred to as "precinct method." Directors of such districts shall be elected in the manner provided in (a) above unless and until the "precinct method" of selecting same is adopted by any such district in the manner hereinafter provided; but after such precinct method is adopted by any such district such method shall be followed in the election of all directors of such district.

[1] Article 7880—37.

Precinct method, how available

Sec. 2. Any such district of the class referred to in Section 1 hereof hereafter created may avail itself of the precinct method of selecting its directors by so providing in the petition for, or order of, its creation; or if such method is not prescribed in the petition for, or order of, its creation, such precinct method may be adopted by order of its directors as hereinafter provided in the case of districts of such classification now existing.

Adoption of precinct method; division of district into precincts; boundaries of precincts

Sec. 3. Any Water Control and Improvement District of the class mentioned in Section 1 of this Act, existing at the time this Act takes effect, may adopt the precinct method of selecting directors in the following manner: the Board of Directors of such district may, by the affirmative votes of not less than four (4) of the members thereof, pass an order providing that thereafter directors of such district shall be selected by the precinct method herein provided, and in the same order said Board of Directors shall divide such district into five (5) director's precincts and define the boundaries of such precincts either by metes and bounds or otherwise in order to clearly identify and delimit the same, and shall number said precincts Nos. 1, 2, 3, 4 and 5, respectively.

Terms of directors under precinct method; time of elections

Sec. 4. The terms of office of all directors of any such district so adopting the precinct method of selecting directors, in office at the time such method is adopted, shall end on the second Tuesday in January next following the date of the passage of such order, or when their successors are elected and qualify as hereinafter provided; and on such second Tuesday in January an election shall be held in each of said precincts so defined in said order for the election of a director therein by the qualified voters of such precinct.

Qualifications of directors

Sec. 5. Each director elected by the precinct method shall be twenty-one (21) years or more of age, be a citizen of the State of Texas and own land subject to taxation in the precinct in which he is elected.

Terms of directors; method of determining at first election

Sec. 6. The respective terms of office of the directors elected at the first elections held in precincts as herein provided shall be determined as follows:

At the first meeting of said Board of Directors so elected five (5) slips of paper of equal size and shape, on three (3) of which shall be written only the words "one year," and on two (2) of which shall be written only the words "two years" shall, out of the presence of all of said directors, be prepared and placed in a receptacle by a disinterested person selected by said directors. Each of said directors shall then, in the numerical order of the precincts in which they were elected, and in the presence of all of the other four (4) directors, and in the presence of at least two (2) witnesses not related to any of said directors, and with said receptacle placed or held above the heads of such directors so that said slips of paper cannot be seen by them or their contents or positions in such receptacle known to them, draw one (1) of such slips of paper therefrom; and the three (3) directors drawing the slips of paper having thereon the words "one year" shall hold their offices one (1) year, or until their respective successors are elected and qualify, and the directors drawing the slips of paper having thereon the words "two years" shall hold their offices two (2) years, or until their respective successors are elected and qualify. After such drawing is held such Board of Directors shall by order or resolution, declare the results thereof and set out the terms of office of the respective directors as determined by such drawings. Thereafter an election shall be held in each precinct for the election of a director on the second Tuesday of January of each year in which the term of office of the previously elected director of such precinct expires; and each precinct director elected at the second and succeed-

ing elections held in said respective precincts shall hold office for two (2) years, or until their respective successors are elected and qualify.

Laws governing

Sec. 7. All laws with reference to the election and qualification of directors of Water Control and Improvement Districts shall govern and control the election and qualification of directors selected by the precinct method, except as herein otherwise provided, whether such precinct elections be regular or special.

Change of boundaries of precincts

Sec. 8. The boundaries of such precincts may be changed by order of the Board of Directors of any district adopting such precinct method, from time to time, but not more frequently than every four (4) years. Whenever such precincts are so changed the order and notices of the next elections thereafter held shall contain descriptions of such precincts as so changed.

Vacancies

Sec. 9. Whenever any vacancy occurs in the office of a director elected by the precinct method, between regular elections, such vacancy shall be filled at a special election in such director's precinct to be called by a majority of the remaining members of the Board of Directors of such district within eight (8) days after such vacancy occurs and held within not more than forty (40) days after such vacancy occurs. [Acts 1939, 46th Leg., Spec.L., p. 1105.]

Art. 7880—39. Directors; bond; oath.—The directors of a district shall each make and furnish a good and sufficient bond in the sum of five thousand dollars, payable to the district, conditioned upon the faithful performance of their duties as such directors. They shall each take and subscribe an oath of office with conditions therein as provided by law for members of the county commissioners' court. After the organization of a district as herein provided and the qualification of the first board of directors all such bonds required to be given by a director or other officer of a district shall be approved by the director of the district. All such bonds shall be filed for record in the office of the county clerk of the county in which the director lives and shall then be recorded in a record kept for that purpose in the office of the district and be filed for safe keeping in the depository of the district. [Acts 1925, 39th Leg., ch. 25, p. 96, § 39.]

Art. 7880—40. Officers and employees; bond.—The directors of a district shall require all officers and employees who shall be charged with the collection or paying or handling of any funds of the district under their orders to furnish good and sufficient bonds payable to the district, conditioned upon the faithful performance of their duties and accounting for all funds and property of the district coming into their hands in a sufficient sum to safeguard the district. [Acts 1925, 39th Leg., ch. 25, p. 96, § 40.]

Art. 7880—41. Directors; quorum; warrants. The directors of a district shall organize by electing one of their members president, one vice president and one secretary. Three directors shall constitute a quorum at any meeting, and a concurrence of three shall be sufficient in all matters pertaining to the business of the district except the letting of construction contracts and the drawing of warrants on the depository paying therefor, which shall require the concurrence and signature of four directors. Warrants to pay current expenses, salaries and accounts may be drawn and signed by an officer or employee, designated by standing order entered on their minutes, when such accounts have been contracted and ordered paid by the directors. [Acts 1925, 39th Leg., ch. 25, p. 96, § 41.]

Art. 7880—42. Organization of directors.—The president shall preside at all meetings of the board and shall be the chief executive officer of the district. The vice president shall act as president in case of the absence or disability of the president. The secretary shall act as secretary of the board of directors and shall be charged with the duty of seeing that all records and books of the district are properly kept. In the case of the absence or inability of the secretary to act, a secretary pro tem shall be selected by the directors. The directors shall hold regular meetings at the office of the district on the first Monday in February, May, August and November of each year at 10 o'clock a. m., and may hold meetings at such other times as the business of the district may require. Any person owning taxable property in the district may attend any meeting of the directors and may present such matters as they desire to such directors in an orderly manner. [Acts 1925, 39th Leg. ch. 25, p. 97, § 42.]

Art. 7880—43. Fees of directors.—The directors shall receive as fees of office the sum of not to exceed Ten Dollars per day for each day of service necessary to discharge of their duties. They shall file with the secretary a verified statement showing the actual number of days of service each month on the last day of the month, or as soon thereafter as possible and before a warrant shall be issued therefor. [Acts 1925, 39th Leg., ch. 25, p. 97, § 43.]

Art. 7880—44. Minutes; office.—The directors shall keep a true and full account of all their meetings and proceedings and preserve their minutes, contracts, records, notices, accounts, receipts, and records of all kinds in a fireproof vault or safe. The same shall be the property of the district and subject to public inspection. A regular office shall be established and maintained for conduct of the district business within the district, provided that when a district is organized in such a manner that the towns within or adjoining the territory included therein are left out of the district, the district office may be located in such adjoining town which is best suited for the transaction of the business. [Acts 1925, 39th Leg., ch. 25, p. 97, § 44.]

Art. 7880—45. Auditor's report.—A complete system of accounts shall be kept by the district and any district so electing, in lieu of having audit of its affairs by one or more County Auditors, may provide for either monthly, quarterly or semi-annual audit of its affairs by an independent public accountant of recognized integrity and ability, and the audits shall conform to January 1st as the end of the fiscal year for the district; and, any district failing to procure audits in January and July of each year shall be subject to audit, and payment of the actual cost of such audit, for the omitted period, by the county auditor of the county in which the district's principal office is situated, the cost of such audit to be determined by the Commissioners' Court of the particular county and paid by the district. Each report of audit shall be in duplicate, one of which shall be filed in the district's office and one filed in the office of the auditor, where they shall constitute public records, open to inspection by any interested person. [Acts 1925, 39th Leg., p. 97, ch. 25, § 45; Acts 1935, 44th Leg., p. 792, ch. 340, § 2.]

Art. 7880—46. General manager.—The directors may employ a general manager for the district and may give him full authority in the management and operation of the district affairs, (subject only to the orders of the board of directors). The term of office and compensation to be paid such manager and all employees shall be by the board of directors and all employees may be removed by the board. [Acts 1925, 39th Leg., ch. 25, p. 98, § 46.]

Art. 7880—47. Officers and employees; bonds. —All bonds required to be given by officers and employees of the district may be signed by individual sureties or by surety companies authorized to do business in the State. [Acts 1925, 39th Leg., ch. 25, p. 98, § 47.]

Art. 7880—48. Powers of district.—All districts shall have full power and authority to construct all plants, works, and improvements necessary to the purpose for which it is organized and incident thereto. Water control and improvement districts may construct all works and improvements necessary for the prevention of floods, the irrigation of land in such districts, for drainage of lands and construction of levees to protect same from overflow, to alter land elevations where correction is needed, and to supply water for municipal uses, domestic uses, power and commercial purposes, and all other beneficial uses or controls. [Acts 1925, 39th Leg., p. 98, ch. 25, § 48; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 7.]

Art. 7880—49. Entry on lands.—The directors, employees and engineers of a district shall have authority to go upon any lands for the purpose of making surveys for reservoirs, canals, rights of way, dams, or other contemplated improvements and to attend to any business of the district, whether such lands are situated in the district or outside of such district. [Acts 1925, 39th Leg., ch. 25, p. 98, § 49.]

Art. 7880—50. Liability on contracts of acquired irrigation system.—When a district acquires an established irrigation system which has contracted to supply water to others and the holders of such contracts or the lands entitled to service of water thereon are not within such district, such contracts and duties shall be carried out by the district in the same manner and to the same extent that any other purchaser of such system would be bound thereby. [Acts 1925, 39th Leg., ch. 25, p. 98, § 50.]

Art. 7880—51. Right to sue or be sued.—All districts can sue and be sued in any and all courts of this State in the name of the district. All courts shall take judicial knowledge and notice of the establishment of a district and the boundaries thereof. Such districts shall contract and be contracted with in the name of the district. [Acts 1925, 39th Leg., ch. 25, p. 98, § 51.]

Art. 7880—52. District engineer.—The directors may employ a competent civil engineer who shall be an officer of the district to be known as "District Engineer". It shall be his duty to make a thorough study and investigation of all plans of the district and to make and file in the office of the district a report upon all plans for construction of plants and improvements. Each district shall provide and keep in its office a book to be known as the "Engineer's Record" in which shall be recorded all reports and recommendations made by the engineer and same shall be open to public inspection. No contract involving the expenditure of more than twenty thousand dollars shall be made by a district unless such district shall have a district engineer who has made a proper study and report thereon. The term of service of such engineer shall be fixed by the board of directors. [Acts 1925, 39th Leg., ch. 25, p. 98, § 52.]

Art. 7880—53. Contract with United States. —Any district authorized under Section 59, Article 16, of the Constitution, with the object, among other things, of irrigating arid land, is hereby empowered through its board of directors to contract with the United States of America for the purpose of providing for the investigation, construction, extension and operation and maintenance of any Federal reclamation project of benefit to the district and authorized under the National Reclamation Act of June 17, 1902 (Thirty-second United States Statutes at Large, page 388), and acts now and hereafter amendatory thereof or supplementary thereto, and all herein styled the National Reclamation Law, and the securing of a district water supply therefrom, and to pay to the United States the agreed cost thereof in the form of construction charges, operation and maintenance charges, and water rental charges, as shown by such contract and in accordance with the terms and conditions of the National Reclamation Law, and the regulations now and hereafter promulgated thereunder. The construction charges may include the cost of drainage and flood control works necessary to control floods or to maintain the irrigability of district land, and the cost of incidental electric power and municipal water service made feasible through the water supply of the reclamation project. Every such contract involving the payment of construction charges to the United States shall be voted upon by the electors of the district as in the case of an issue of district bonds, and the provisions of this Act relating to the election upon, approval and validation of such bonds shall be followed so far as applicable, including the prosecution of an action in court to determine the validity of the contract. The notice of election shall state the maximum amount, exclusive of operation and maintenance charges, water rental charges, interest and penalties, payable by the district to the United States under the contract and the ballot shall contain the following words; and no others: "For contract with the United States of America and levy of taxes and payment therefor," and "Against contract with the United States of America and levy of taxes and payment therefor." Any such district may convey real property to the United States in connection with the construction or operation and maintenance of Federal reclamation works used or to be used for the benefit of the district. Where a contract is made under this section, between a district and the United States, providing for use by the district of Federal Reclamation works, the district need not prepare or file any engineering data respecting the construction of such works. Until all moneys receivable by the United States from any such district under any such contract shall have been fully paid, the boundaries of such district shall not be altered without the consent of the United States. Any such district contracting with the United States under this section shall annually levy taxes sufficient in amount to provide payment of all installments of charges as required by the contract and the district may, under authority of a vote of the district electors as provided in this Act, apportion benefits and levy and collect taxes on a benefit basis instead of on an ad valorem basis, and may when provided by contract make payment of construction charges on the basis of the average gross annual acre income of the lands of the district or designated divisions or subdivisions thereof, as such annual gross acre income is determined by the Secretary of the Interior. The annual levies of assessments shall be sufficient to collect the amount of money required to meet all the district's obligations in full when due notwithstanding any delinquency in payment of assessments by any tract of land. If collections in any year prove insufficient to meet the obligations of the district, the levy shall be increased the following year to a sufficient extent to cover the deficit. The annual levies for payment of construction charges shall continue to be made each year against each tract of land in the district until the full amount apportioned against the same has been paid notwithstanding that such construction charges apportioned against other tracts of land in the district may sooner or later be paid out. The lien against district lands on account of any such contract with the United States shall be superior and dominant to the lien on account of any district bonds approved subsequent to date of such contract. [Acts 1925, 39th

Leg., ch. 25, p. 99, § 53; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 8.]

Art. 7880—54. Tax assessor and collector.—The office of Tax Assessor and Collector is one office to be filled by one person. He shall be appointed by the board of directors, or if the directors so order may be elected. He shall give good and sufficient bond with at least two sufficient sureties or a surety company, to be approved by the directors, in the sum of Five Thousand ($5,000.00) Dollars, conditioned for the faithful performance of his duties as Tax Assessor and Collector and for the paying over to the depository all funds or other things of value coming into his hands as such officer. The directors may require additional bonds or a bond in larger amount or additional security at any time that same may be advisable in their judgment. One or more deputies may be appointed by the directors to assist the Tax Assessor and Collector for such time, not to exceed one year, as may be ordered by the directors, and such assistants may be required to furnish bonds with similar conditions to that required of the Tax Assessor and Collector. The compensation to be paid to the Tax Assessor and Collector and any deputy shall be fixed by the directors. The Board of Directors may require the Tax Assessor and Collector to perform other duties than those herein fixed. In case any district is appointed fiscal agent of the United States, or by the United States is authorized to make collections of money for and on behalf of the United States in connection with any Federal Reclamation project, such Tax Assessor and Collector and each director and officer of the district shall execute a further additional bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under such appointment or authorization. Such additional bonds to be approved, recorded and filed as herein provided for other official bonds. Any such additional bonds may be sued on by the United States or any person injured by the failure of such officer, or the district to fully, promptly and completely perform their respective duties. [Acts 1925, 39th Leg., p. 100, ch. 25, § 54; Acts 1931, 42nd Leg., p. 794, ch. 321, § 2.]

Art. 7880—55. Property subject to taxation.—The tax assessor and collector shall make an assessment of all the taxable property in his district. The property subject to taxation in a district shall be determined by and governed by the laws of this State providing for taxation for State and county purposes, and all such laws of the State shall apply thereto except as herein otherwise provided. [Acts 1925, 39th Leg., ch. 25, p. 101, § 55.]

Art. 7880—56. Rendition of taxable property.—The tax assessor and collector shall compile a record of all tax payers and those subject to payment of taxes in the district, and of all taxable property and the name and postoffice address of the owner thereof. He shall on or before the first day of April each year furnish each tax payer and each owner of taxable property in the district a blank form for the rendition of property for taxation. Same may be delivered or deposited in the mails addressed to such owner. It shall be the duty of the owner of any and all property subject to taxation in the district to file in the office of the tax assessor and collector a full, accurate and complete statement made under oath of all property owned by him, her, it or them, subject to taxation therein. Said statement or rendition shall be filed on or before the last day of March of each year and shall state the true value of all property listed and owned by the party rendering same subject to taxation in the district. In rendering land improvements and all other character of physical, real and personal property such statement shall show both the market value and the real value thereof. [Acts 1925, 39th Leg., ch. 25, p. 101, § 56.]

Art. 7880—57. Taxpayer's oath.—Anyone, any corporation, any organization, partnership, association, joint stock company, or property owner of any description who shall refuse to make or file as herein provided a true, full and complete statement and rendition under oath of all property owned subject to taxation in the district, shall thereby be precluded from making any objection, protest, or contest against the assessment made against him, her, it, or them for taxes by the district. Such statement or rendition shall have thereon, or attached thereto, an oath substantially as follows:

"I, ———, upon my oath state that the foregoing statement and rendition is a true, full and complete statement of all property owned by me or for whom this rendition is made, or by whom this rendition is made, subject to taxation within ——— district. I have correctly stated the description, location and value thereof and of each item thereof."

Same shall be signed and oath made before any officer authorized by the laws of this State to take oaths and acknowledgments. Such officer shall place thereon his official certificate, in substance as follows:

"Subscribed and sworn to by ——— before me this the ——— day of ———, ———" and attach thereto his official seal and signature.

Such statement may be filed by any authorized agent of the owner of any such property, provided such agent shall state therein that he makes and files same as such agent. [Acts 1925, 39th Leg., ch. 25, p. 101, § 57.]

Art. 7880—58. Verification by tax assessor and collector.—The tax assessor and collector shall check, investigate and verify each such rendition of property and note thereon in writing his report thereof. He shall add in such report any property omitted therefrom and make statement of his estimate of the value of all property not rendered at its full value or if same is rendered at more than its full value. He shall make and file a rendition of all property in the district which is not rendered for taxation. Such rendition by such officer to be made and filed on or before the first day of June of each year, or as soon thereafter as possible. The provisions hereof that the tax assessor and collector shall furnish a form for such renditions to be made by property owners shall not excuse anyone failing to receive same from the duty of making and filing same, but any property owner failing to receive same shall call at the office for same. In making rendition of all property not rendered the tax assessor and collector shall include all property of every description which is not rendered by the owner thereof, or by his agent for him, and if the owner thereof is unknown, shall list same as owned by an "unknown owner" and said property shall be taxed and taxes collected thereon even though the owner be unknown or be assessed against one not the owner thereof. [Acts 1925, 39th Leg., ch. 25, p. 102, § 58.]

Art. 7880—59. False oaths.—The tax assessor and collector shall have authority to administer oaths to fully carry out his duties and the assessment of property for taxation. All laws and penal statutes of this State providing the rendition of property for State and county purposes and providing penalties for making false oaths and providing penalties for failing to render such property shall apply to the rendition of property for taxation in a district except as herein otherwise provided. [Acts 1925, 39th Leg., ch. 25, p. 102, § 59.]

Art. 7880—60. Date of rendition.—If upon the organization of a district it shall become necessary to have the property therein rendered for taxation at a

later date in the year than herein provided for the regular assessment thereof, then the directors of such district shall fix and determine the time when such renditions shall be made and the time within which the other necessary things herein provided to be done in connection therewith shall be done. After said first year, however, said assessments shall be made as herein provided. [Acts 1925, 39th Leg., ch. 25, p. 102, § 60.]

Art. 7880—61. Board of equalization.—The directors for such district created under the provisions of this Act, shall at their first meeting, or as soon thereafter as practicable, and annually thereafter, appoint three commissioners, each being a qualified voter and resident property owner of said district, who shall be styled the "Board of Equalization," and at the same meeting the board of directors shall fix the time for the meeting of such board of equalization for the first year; and said board of equalization shall convene at the time fixed by the directors to receive all assessment lists or books of the assessor for such district for examination, correction, equalization, appraisement and approval, and at all meetings of said board the secretary of the board of directors shall act as secretary thereof and keep a permanent record of all the proceedings of the board of equalization. [Acts 1925, 39th Leg., ch. 25, p. 102, § 61.]

Art. 7880—62. Oath of board.—Before entering upon the duties as such board of equalization, each of the members thereof shall take and subscribe the following oath: "I ——— do solemnly swear (or affirm) that I will to the best of my ability, make a full and complete examination, correction, equalization and appraisement of all property contained within said district as shown by the assessment lists or books of the assessor for said district and add thereto all property not included therein of which I have knowledge," and said oath shall be spread upon the minutes to be kept by the secretary of said board. [Acts 1925, 39th Leg., ch. 25, p. 103, § 62.]

Art. 7880—63. Board to convene.—The Board of Equalization, after the first year, shall convene on the first Monday in June of each year and shall complete their work by the first day of September, or as soon thereafter as possible. [Acts 1925, 39th Leg., ch. 25, p. 103, § 63.]

Art. 7880—64. Board to examine assessment lists.—The board of equalization herein provided for shall cause the assessor to bring before them, at the time fixed for the conveying of said board, all the assessment lists or books of the assessor of said district for their examination, that they may see that each and every person has rendered his property at its full value; and said board shall have power to send for persons and papers, to administer oaths to persons who testify before the board, to ascertain the value of all property subject to taxation. They may lower the valuation of all property rendered or raise the valuation thereof. The board shall have power to correct any and all errors of assessments and renditions and to cause all property not rendered to be placed on the tax rolls.

The board of equalization shall equalize as near as possible the value of all property rendered for taxation and fix the value thereof for taxation. [Acts 1925, 39th Leg., ch. 25, p. 103, § 64.]

Art. 7880—65. May file complaint.—Any person may file with the board of equalization a complaint as to the rendition and assessment of his own property, or any other property, and the board shall hear and consider all such complaints. Anyone may file with the board suggestions of property being omitted from the tax rolls and the board shall add to the rolls any property subject to taxation omitted from same. The tax assessor and collector shall file with the board a list of all persons who fail or refuse to render their property. [Acts 1925, 39th Leg., ch. 25, p. 103, § 65.]

Art. 7880—66. Notice of hearing.—When said board shall have passed upon such renditions they shall fix a date for hearing protests from those whose renditions have been raised. The secretary shall give notice in writing to all whose assessments have been raised, of the time and place of such hearing by depositing same with postage paid in the mails addressed to such party if his address is known. Failure to give such notice shall not relieve the owner of any such property of his duty to take notice of the meeting of the board of equalization and to appear at such meeting. Said notice shall be mailed at least ten days prior to such meeting. The board of equalization, at said meeting, shall hear and consider all complaints and protests and reconsider the valuation of all property the valuation of which has theretofore been raised by them and finally fix the valuation of all property. When the tax assessor and collector has made out his tax rolls, the board of equalization shall meet and consider same and make all necessary corrections therein and endorse their approval thereon. The action of the board of equalization at said last meeting approving said rolls shall be final and shall not be subject to revision by said board or in any other tribunal thereafter. The compensation of the members of the board shall be fixed by the directors of the district. [Acts 1925, 39th Leg., ch. 25, p. 103, § 66.]

Art. 7880—67. Duplicate tax rolls.—The tax assessor and collector shall prepare the tax rolls in duplicate, one copy of which he shall retain in his office and one copy shall be filed in the district office. The minutes of the board of equalization, all renditions, protests and other papers filed in connection with the rendition of property and the preparation of the tax rolls shall be preserved as official records in the office of the district. [Acts 1925, 39th Leg., ch. 25, p. 104, § 67.]

Art. 7880—68. Books of account; audit.—The directors of a district shall provide a permanent finance ledger in which the tax assessor and collector shall be charged with the total assessment of property as shown by the tax rolls. Credit shall be entered thereon of all collections paid to the depository. Said finance ledger and the books and accounts of the tax assessor and collector shall be audited by the board of directors semi-annually on January 1st and July 1st of each year and at such other times as the board may order. [Acts 1925, 39th Leg., ch. 25, p. 104, § 68.]

Art. 7880—69. When taxes due—payable.—All taxes shall become due and payable on the first day of October of each year and shall be paid on or before the 31st day of January thereafter. [Acts 1925, 39th Leg., ch. 25, p. 104, § 69.]

Art. 7880—70. Delinquent taxes; collection; sale of property; limitation.—All taxes which have not been paid on the last day of January shall become delinquent on the first day of February each year and same shall be and remain a lien upon the property for which same were assessed although the owner be unknown or same be listed in the name of a person not the actual owner thereof or though the ownership be changed. All such property may be sold under a judgment of a court for all taxes, interest penalty and costs assessed against same at any time after such taxes become delinquent. The district shall have authority to file suits for the collection of taxes against any and all property assessed for taxes and if the owner be unknown such suit may be filed against an unknown owner and the property sold under the judgment of the court. Taxes are not barred by any law of limitation and no law providing for a period of limitation as to debts or actions shall apply to such taxes. [Acts 1925, 39th Leg., ch. 25, p. 104, § 70.]

Art. 7880—71. Penalty; interest.—All taxes becoming delinquent shall have added thereto a penalty

of ten per cent of the amount thereof, which charge shall accrue at the time same became delinquent. All such delinquent taxes shall bear interest at the rate of six per cent per annum from the date upon which they became delinquent. [Acts 1925, 39th Leg., ch. 25, p. 104, § 71.]

Art. 7880—72. Publication of delinquent tax roll.—The tax assessor and collector shall on or before the first of April each year prepare a delinquent tax roll, showing all charges upon the tax rolls which have not been paid and file same with the directors of said district. The directors shall publish said delinquent tax list showing name of owner, description of the property, and total amount due, in a newspaper published in the county where said district or any part thereof is situated. Said notice shall be published once a week for two weeks. If no newspaper is published in the county said notice may be published in a newspaper outside of the county. There shall be paid to the newspaper for publishing such notice a reasonable fee fixed by agreement, not to exceed, however, twenty cents for each rendition or each tract of land, allowing not to exceed three lines single column thereto. The publisher of such notice shall file in the office of the district a copy of each issue of the paper containing said notice with affidavit of publication attached thereto. The notice herein provided for to be made by publication is intended to be for the information of all taxpayers and shall not be, or be held to be, a requisite to the filing of any suit for the collection of taxes and such suits may be filed without publishing such notice. [Acts 1925, 39th Leg., ch. 25, p. 104, § 72.]

Art. 7880—73. Attorney to bring suit.—The directors shall on or before the first day of April each year employ an attorney to file suits for the collection of all delinquent taxes. Said attorney shall be entitled to a fee of ten per cent upon the amount of all delinquent taxes collected or paid after suit is filed and same shall be charged as costs of court and judgment recovered therefor together with said taxes and as part of same. Such suits shall be filed and tried as other civil suits. When the owner of the property against which the taxes are assessed is unknown, the suit may be filed as against an unknown owner and citation be published as provided by law with reference to State and county taxes. All tax suits shall be for the collection of the amount due and foreclosure of the lien on the property against which same are assessed and said property shall be sold under order of sale. All costs of suits shall be taxed therein. In the event more property is covered by such lien as fixed by the judgment than necessary to be sold to secure the amount due, same may be divided and sold in parcels as may be necessary to collect the amount due. The officer executing any such order of sale shall make deeds to the purchaser thereof which shall be held to vest a good and perfect title in the purchaser subject to be impeached only for fraud. [Acts 1925, 39th Leg., ch. 25, p. 105, § 73.]

Art. 7880—74. Redemption of delinquent property.—Any person may redeem any property delinquent for taxes at any time prior to the date of sale of same under a judgment by paying the taxes and all penalties, interest, attorney's fees and court costs accrued thereon. [Acts 1925, 39th Leg., ch. 25, p. 105, § 74.]

Art. 7880—75. Land added to district.—Land may be added to a district and become a part thereof upon petition of the owner thereof in the following manner: The owner of the land shall file with the board of directors a petition praying that the lands described be added to and become a part of the established district. Said petition shall describe the land by metes and bounds and be signed and executed in the same manner provided by law for the conveyance of real estate. Such petition shall be heard and considered by the directors and may be granted and said land added to the district if same is considered to be to the advantage of the district and if the water supply, canals, etc. are sufficient to supply the same without injury to the lands of the district. Any such petition which may be granted adding lands to a district shall be filed for record and be recorded in the office of the county clerk of the county in which such land is situated. [Acts 1925, 39th Leg., ch. 25, p. 105, § 75.]

Art. 7880—75a. Extending boundaries of Municipal District to include total area of city or town.—Whenever a District has been established to be in fact a "Municipal District," did, or does, in fact include the total area of any city or town; does in fact have plans to furnish, or in fact does furnish, in whole or in part, a water supply, sanitation facilities, flood protection, or other service, inuring to the general benefit of the inhabitants of such embraced city or town; then, and in such case, if the boundaries of such included city or town shall be extended to include lands not already included in such District, the boundaries of such District shall automatically be extended to include the lands so added to such included city or town, which lands shall be and constitute a part of such District: It is provided, however, that before any such inclusion becomes final, the Directors of such District shall publish notice of a hearing, hold a hearing and hear evidence to consider the exclusion, or retention in the District, of all or any part of such added lands, which shall be done in conformity to the applicable provisions of Section 8, of Chapter 280, (House Bill No. 489), Acts of the 41st Legislature of Texas, Regular Session.[1] [Acts 1925, 39th Leg., p. 86, ch. 25, as added § 75a, Acts 1929, 41st Leg., 1st C.S., p. 205, ch. 82, § 2.]

[1] Article 7880—76, post.

Art. 7880—75b. Manner of annexing territory not embraced in district.—Defined areas of territory not embraced within a water-controlled and improvement district may be added to the area of any such district in the manner hereinafter provided.

Petition for an annexation of such territory shall be signed by a majority of land owners therein or by fifty land owners if the number of such land owners is more than fifty. Such petition shall be filed with the secretary of the Board of Directors. It shall be the duty of the Board to pass an order fixing a time and place at which such petition shall be heard, which date shall be not less than thirty days from date of such order. The secretary shall issue notice of such time and place of hearing and which notice shall describe the territory proposed to be annexed. The secretary shall execute said notice by posting copies thereof in three public places in the district, and one copy in a public place within the territory proposed to be annexed; said notices to be posted for fifteen days prior to date of said hearing. Publication of copy of such notice shall be made in a newspaper of general circulation in the county, one time, and at least fifteen days prior to such hearing. If upon the hearing of such petition it is found that the proposed addition is to the advantage of the district and if the water supply canals and other improvements would be sufficient to supply the same without injury to other lands of the district, then the Board by resolution duly entered upon its Minutes may receive such proposed territory as an addition to and to become a part of the district. The added territory shall bear its pro rata part of all indebtedness or taxes that may be owed, contracted, or authorized by said district to which it shall have been added. Such resolution need not include all of the land described in the petition if upon the hearing a modification or change is found necessary or desirable; provided, however, annexation of the territory shall not become final until ratified by a majority vote of a separate election held within the boundaries

of the district, and by a majority vote of a separate election held within the territory to be added thereto. The manner of holding such election and the notice for such election, manner, and the time of giving such notice, and qualifications of voters therein shall be in all things governed by provisions of Chapter 25 of the Acts of 1925 relating to elections held for confirmations of districts. In the event the district has outstanding debts or taxes then at the same time and at the same election the proposition for assumption of its proportion of such debts or taxes by such territory if added shall also be submitted. [Acts 1925, 39th Leg., p. 86, ch. 25, § 75b, as added Acts 1929, 41st Leg., 1st C.S., p. 205, ch. 82, § 2.]

Art. 7880—76. Lands excluded from district. —After a district has been organized, preliminary surveys have been completed, the district does adopt plans for the construction of a plant and improvements, and before the district calls an election for the authorization of construction bonds, there must be exclusions of land or other property, if any such exclusions are deemed practicable, just or desirable, from the district by means and upon conditions as follows:

1st: The directors of the district must before the holding of such election give notice of a time and place of a hearing to announce their own conclusions as to exclusions of lands or other property and to receive petitions for exclusion of lands or other property: Such notice shall be published in one or more newspapers which will give general circulation in the district: The notice of such hearing shall be published once a week for three consecutive weeks: The first of such publications shall appear not less than thirty days, nor more than forty days, prior to the date of the hearing: Said notice shall give advice to all interested property owners of their right to present petitions for exclusions and to offer evidence in support thereof, or to contest any proposed exclusion and offer evidence in support thereof, whether to be based on a petition or upon the Board's own conclusions. Petitions for exclusion of lands must accurately describe the metes and bounds of such lands; Petitions for exclusion of other property shall describe the same for identification.

In order to give the district opportunity to investigate the physical conditions of property sought to be excluded, all petitions for exclusions shall be filed with the district not later than ten days prior to the hearing, must clearly set out the particular grounds on which the exclusion is sought and consideration shall be confined to the stated grounds. The grounds upon which exclusions from such districts may be made are as follows, viz:

(a) That to retain certain lands, or other property, within the district's taxing power would be arbitrary, not required to conserve the public welfare, and would in fact impair or destroy the value of the property desired to be excluded, and would in fact constitute the arbitrary imposition of a confiscatory burden.

(b) That to retain any given land, or other property, in the district and to extend to it, either presently or in the future, the benefits, service or protection of the district's works and facilities cannot be done without creating an undue and uneconomic burden on the remainder of the district.

(c) That the lands desired to be excluded cannot be bettered as to conditions of living and health, or served with water, or protected from flood, or drained or rendered free from interruption of traffic caused by any excess of water on the roads, highways, or other means of transportation serving such land, or otherwise benefited by the district's proposed improvements.

The hearing may be adjourned from one day to another and until all persons who desire to be heard are heard. Immediately on the hearing the directors shall specifically describe all property which they, on their own motion, propose to exclude, and shall first hear protests and evidence against such exclusions.

If upon consideration of all engineering data in hand, and the other evidence, the directors determine that the facts disclose the affirmative of the propositions stated in paragraphs (a) or (b), or, in appropriate case, in paragraph (c) of this section, then they shall enter of record their order excluding all lands, or other property, falling within the conditions by said respective paragraphs defined, and shall in said order redefine the boundaries of the district to embrace all lands not excluded: This order shall be final, and there shall be no action maintained thereon in any court, save upon the ground of fraud. Upon the exclusion of any land, or other property, the same shall be subject to be taxed by the district to cover only the unpaid balance of the cost of organization of the district, preliminary surveys, investigations and proceedings for exclusions: Upon full payment thereof, the owners of such excluded property, and their property, shall not be subject to any tax by the district. [Acts 1925, 39th Leg., p. 106, ch. 25, § 76; Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, §§ 9, 10; Acts 1929, 41st Leg., p. 578, ch. 280, § 8.]

See note to Article 7880—76a, post.

Art. 7880—76a. [Consolidated.]

This article was Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 10 which amended section 76 of Acts 1925, 39th Leg., p. 106, ch. 25, by adding subsection 76a.

Section 8 of Acts 1929, 41st Leg., p. 578, ch. 280, consolidated sections 76 and 76a of the Act of 1925 and amended the consolidated section to read as it is now set out in Article 7880—76, ante.

Art. 7880—76b. [Repealed by Acts 1941, 47th Leg., p. 157, ch. 119, § 20.]

The article repealed was Acts 1933, 43rd Leg., 1st C.S., p. 205, ch. 77.

Art. 7880—76c. Excluding unirrigated lands from districts containing more than 100,000 acres.

Unirrigated lands may be excluded

Section 1. Unirrigated lands within boundaries of water control and improvement districts in this State, now existing or hereafter created, containing within their boundaries more than one hundred thousand (100,000) acres of land, may be excluded therefrom and their liability for the bonded indebtedness of such district may be limited and adjusted under the conditions and in the manner hereinafter provided.

Conditions under which lands may be excluded; petition; calling of hearing

Sec. 2. If any such district has an established and operating irrigation system from which only a part of the lands within said district can be irrigated and if more than forty (40) per cent of the lands in such district cannot be irrigated from such established irrigation system, and if such unirrigated lands have been within the boundaries of such district, and subject to taxation thereby, for as long as eight (8) years, and if the major portion of the water supply of such district is required to be impounded, before distribution, in such district's privately owned and controlled storage reservoirs, the Board of Directors of such district may, and on petition signed by the owners of twenty (20) per cent or more in assessed value of such unirrigated lands as shown by the most recent tax rolls in such district, shall, call and hold a hearing for the purpose of determining whether or not all or any part or parts of such unirrigated land shall be excluded from said district and the liability of the lands so proposed to be excluded for the bonded indebtedness of said district limited or adjusted.

Resolution

Sec. 3. Such hearing shall be provided for by resolution adopted by the Board of Directors of such district, wherein the lands so proposed to be excluded shall be described by metes and bounds or otherwise to definitely identify and to delimit the same; and wherein the date and place of such hearing shall be stated.

Notice of hearing

Sec. 4. It shall be the duty of the Board of Directors to cause notice of such hearing, addressed to all owners of land within, and all taxpayers and bondholders of, such district, to be given by posting the same at the courthouse door of the county, and each county, in which such district or any portion thereof is situated, and also to be posted in a conspicuous place in the principal office of said district, for at least three (3) weeks before the date of such hearing. Said notice shall embody the resolution providing for such hearing and shall set forth that any and all landowners, taxpayers, and bondholders of said district shall have a right to appear and be heard at said hearing and to offer evidence for or against the exclusion of said lands, or any part or parts thereof, and on the question as to the amount or portion of the bonded indebtedness of such district which the lands so proposed to be excluded shall be liable for if and after the same are so excluded.

Continuance of hearing; resolution excluding lands

Sec. 5. If, as a result of such hearing, which may be continued from day to day, and from time to time until all persons entitled to be heard and who appear at said hearing have had an opportunity to be so heard and offer evidence, the said Board of Directors shall determine and find (a) that said district does not intend, or through lack of finances or through inability of the district to obtain funds conformable to the law of Texas applicable to such district sufficient therefor, to extend the existing irrigation system of said district to said unirrigated lands or any part or parts thereof, within two (2) years after date of such hearing; or (b) that the owners of a majority in such assessed value of such unirrigated land or part or parts thereof do not desire irrigation for the same; and (c) that it would be to the best interest of said district and of the lands so proposed to be excluded or any part or parts thereof, that said irrigation system be not extended thereto and that they be excluded from said district, the said Board of Directors shall adopt a resolution setting forth such determination and findings and excluding the unirrigated lands, or such part or parts thereof as to which such determination and findings are made.

Fixing liability for indebtedness of excluded lands

Sec. 6. If as a result of said hearing the said Board of Directors shall determine that all or any part or parts of said unirrigated lands should be excluded from the District, they shall also determine and fix the amount or portion of the outstanding and unpaid principal of the bonded indebtedness of the district that the excluded lands shall remain liable for, and embody same in said resolution, showing in what manner or upon what basis said amount or portion of said indebtedness was arrived at.

Consent of bondholders

Sec. 7. Notwithstanding anything herein to the contrary, however, no such lands shall be excluded from the district and no amount or portion of the bonded indebtedness of the district for which such excluded lands shall remain liable, shall be fixed, without the written consent of the holders of at least eighty (80) per cent in principal of the outstanding bonded indebtedness of said district to such exclusion and to such amount or portion of such bonded indebtedness, that such excluded lands shall remain liable for.

District to bring action to determine validity; procedure

Sec. 8. Within thirty (30) days after the adoption of any resolution so excluding lands from said district and fixing the debt liability therefor consented to by said bondholders, said district shall bring an action in the District Court of any county of a judicial district in which said district, or any part thereof, may be situated, to determine the validity and justness of the resolution and acts of said Board of Directors in and by which such land or lands shall have been excluded and the debt liability thereof determined and fixed. Such action shall be in the nature of a proceeding in rem and jurisdiction of all parties interested may be had by publication of a general notice thereof once each week for at least two (2) consecutive weeks in some newspaper or newspapers of general circulation published in the county or counties in which such district or any part thereof is situated, and if no newspaper is published in said county or either of said counties, said notice shall be published in a paper published in an adjoining county to the county or to any county in which said district or any part thereof is situated. Said notice shall be addressed to all owners of land situated in, and taxpayers and bondholders of, said district (naming the same) and shall be signed by the secretary of said district. Upon the filing of the petition of said district in said action the Judge of the Court in which it is filed shall set the same down for hearing, either in term time or vacation, at the earliest time, after making allowance for time for notice herein provided for, that the court can conveniently hear the same, giving preference to said action over all other actions not of a like kind in order that a speedy determination as to the matters involved may be reached, and the time and place of said hearing shall also be stated in said notice. The said hearing may be heard on the date set therefor, or if justice to the parties or the convenience of the Court requires, the same may be postponed to a later date or dates, and when begun, the same may continue from day to day and time to time until completed.

Interested land owners may file answers

Sec. 9. Any owner of lands situated in said district, or any taxpayer or bondholder of said district who has not consented to the exclusion of said land or lands and the fixing of the debt liability thereof, may file in said Court before the date for said hearing set forth in said notice, an answer contesting the plan or basis of excluding said land or lands, or any part thereof, or the amount of debt liability fixed in said resolution against the lands so proposed to be excluded, or any part or parts of such lands. In any such answer there shall be affirmatively and specifically set forth the ground or grounds of such contest, and the particulars and respects in which it is claimed that such exclusion of land or the debt liability thereof so fixed is not valid or just, and should not be approved or validated.

Certified copy of resolution as prima facie proof

Sec. 10. At said hearing a certified copy of the resolution of said Board of Directors excluding said lands and fixing the debt liability thereof, shall be received in evidence and constitute prima facie proof of all facts recited therein, and of the validity and justness of all acts and proceedings evidenced thereby.

Hearing; decree; effect; filing; interlocutory decree dismissing proceedings, when

Sec. 11. At said hearing the Court shall try and determine all issues as in other civil cases, and if the Court be of the opinion and find that the actions of said Board of Directors in excluding said lands and

fixing the debt liability thereof as set forth in said resolution are just and valid he shall render his decree so finding, and in all things approving, confirming and validating said actions of said board, and such decree shall be final and binding on said district and all owners of land therein and all taxpayers and bondholders thereof and all persons interested in said district, and res judicata of all matters determined therein. In case such decree is rendered, a certified copy thereof and a certified copy of said resolution may be filed for record in the deed records of the county, and each of the counties, in which said excluded lands, or any part thereof, are situated.

But if the Court should find or determine that the said actions and resolutions of the said board should not be approved or validated, he shall enter an interlocutory decree dismissing said proceedings, and set forth therein his objections to such actions and resolutions of said board and his reasons for not approving and validating the same. If within sixty (60) days after the entering of such interlocutory decree or such further time as the Court may allow, the said Board of Directors shall, with the written consent of the holders of not less than eighty (80) per cent in principal amount of the outstanding bonds of said district amend said resolution in such manner as to meet and satisfy such objections of the Court, if such objections are legally curable, the Court may, upon filing a certified copy of such amended resolution in said cause, proceed with any further hearing necessary or proper, to set aside said interlocutory decree, and render final judgment approving, confirming and ratifying the actions and proceedings of said Board of Directors as shown by said amended resolution, and such judgment shall have like force and effect as above provided.

If such amended resolution is not filed within said sixty (60) days, or any further time allowed by the Court, said interlocutory decree shall be made final.

Approval of exclusion; effect

Sec. 12. If the action of said Board of Directors in excluding lands and fixing the debt liability thereof is so approved and validated by said Court, the area so excluded shall thereupon cease to be a part of said district or within its boundaries, and shall have the principal debt liability for the bonds of the district, as so determined, approved and validated, and shall also be liable for the interest thereafter accruing on the amount of such liability, at the rate fixed in said bonds or the coupons appertaining thereto, and such liability shall be paid by taxation, or in lump sums, as hereinafter provided.

Excluded area, supplemental interest and sinking fund account for; taxes; discharge from liability

Sec. 13. If lands are so excluded and their debt liability is so determined and fixed, said district shall set up and keep a supplemental interest and sinking fund account for such excluded area, and therein a charge shall be made against such area of the total principal debt liability so fixed against the same, and all interest accruing thereon, as and when accrued. Taxes collected on taxable property in an excluded area that were assessed and unpaid at the time of such exclusion, and all taxes collected on taxable property therein that are levied and assessed after such exclusion, and all lump sum payments made to discharge any particular land or lands in such area under the further provisions hereof, shall be credited to the interest and sinking fund for such excluded area; but all such payments shall actually be placed in the interest and sinking fund account of said district for paying the interest on and principal of the bonded indebtedness of such district existing at the time of such exclusion; but the taxable property in said excluded area shall never be taxed by said district for paying any other or a greater amount of bonded indebtedness of said district than that so fixed and determined, and interest thereon; provided, that said district shall levy, assess and collect on the taxable property in said excluded area such additional amount as may be necessary to pay the costs and expenses of assessing and collecting taxes in said area for the benefit of the interest and sinking fund account for said area. When the entire amount of said indebtedness so fixed against said excluded area, and all interest thereon, shall have been fully paid off and discharged from taxes and/or lump sums, collected on the taxable property in said area, all property therein shall be then and thenceforth free and discharged from any and all tax liability to said district and from liability for any indebtedness of said district.

Liability of district not affected

Sec. 14. No exclusion of land from the boundaries of said district, nor limiting of debt liability thereof, and no proceedings had under this act shall in any manner affect the liability of said district, as bounded after such exclusion, for the entire bonded or other indebtedness of such district as such indebtedness existed before and at the time of such exclusion.

Refinancing

Sec. 15. Should the bonded indebtedness of such district, liability for which is so fixed on excluded lands, be reduced by refinancing, then, in such case, the debt liability of excluded lands shall be correspondingly and proportionately reduced.

Supplemental tax rolls

Sec. 16. Said district shall set up supplemental tax rolls, separate from the regular tax rolls of said district, for the excluded area, and the district shall annually levy, assess, and collect taxes on all taxable property in said excluded area at sufficient rates and in sufficient amount, for the benefit of the bond interest and sinking fund of said district, to provide such excluded area's portion of the bond interest and sinking fund requirements of said district for such year. All provisions of law relating to taxation by such district shall apply to taxation of the lands in said excluded area by such district.

Lump sum payment of pro rata part of debt liability

Sec. 17. Notwithstanding anything herein to the contrary, the owner or owners of any land in such excluded area may at any time completely discharge such land from all tax and debt liability to said district and to the creditors thereof by paying the pro rata part of such tax and debt liability apportionable to said land, in a lump sum. Such pro rata debt liability shall be determined in the following manner; the then unpaid principal of debt liability fixed against said area and all delinquent and current interest thereon computed to the date of such lump sum payment shall be added together. There shall then be, for the purpose of calculating such pro rata liability, deducted from said sum all delinquent taxes owing on all property in the entire excluded area and all current assessed and unpaid taxes thereon, including all delinquent and current, accrued, unpaid taxes on the land so proposed to be discharged, and which must be paid before such landowner can obtain such discharge. The pro rata debt liability of the land so proposed to be excluded shall be that proportion of the sum so arrived at by said additions and deductions that the assessed value of the land so proposed to be discharged bears to the total assessed value of all taxable property in said excluded area, according to the most recent assessment rolls of said district. The amount of said pro rata debt liability of such lands shall be ascertained and determined by the Tax Collector of said district from his tax rolls and the debt accounts of such area, and shall be audited and approved by the Board of Di-

rectors of said district. In the event of any such lump sum payment of debt liability as to any tract or tracts of land in such excluded area, the Board of Directors of the district shall cause a release of such land from all debt and tax liability to such district to be executed and delivered to the owner or owners of the lands as to which said payment is made, which release may be filed and recorded in the office of the County Clerk of the county or counties in which such discharged land, or any part thereof, is situated, as evidence of such discharge.

Directors, exclusion as affecting

Sec. 18. If at the time of any such exclusion such district shall have adopted the "precinct method" of electing its directors, as provided for in Senate Bill No. 247 enacted by the Forty-sixth Legislature, and if, as a result of such exclusion or exclusions any entire directors' precinct shall have been excluded from said district, or if there shall have been excluded from said district all of the land in a precinct owned by the director therefor, whereby such director shall have become disqualified from holding such office, then in either or both such cases the director of the precinct so entirely excluded, and/or the director whose only land owned by him in his precinct shall have been so excluded, shall cease to be such director, and the remainder of the Board of Directors shall fill such vacancy created by the entire exclusion of a precinct by appointing thereto a director at large for said district who shall own land therein and be otherwise qualified for said office, and shall fill the vacancy created by the disqualification of a precinct director on account of the exclusion of his land from his precinct, by appointing another director for such precinct who is qualified to hold such office. The director or directors so appointed to fill such vacancy or vacancies shall hold office until the second Tuesday in January next following, when their successors shall be elected at precinct elections. Previous to said election the Board of Directors of said district, upon the affirmative votes of at least three directors, shall rearrange and redefine the directors' precincts or such of them as may be necessary, to provide five directors' precincts in and for the said district conformable to the new boundaries of the district remaining after such exclusion of lands therefrom. On said second Tuesday in January an election shall be held in any new precinct substituted by number, for any entirely abolished by exclusion, and in any other precinct in which a vacancy in the office of director therefor shall have been occasioned by exclusion of land therefrom. The terms of office of the director or directors of any such new precinct or precincts shall expire at the same time or times, and his or their successors shall be elected at the same time or times as in the case of the old precinct or precincts bearing the same number or numbers.

Any such district, which shall have so adopted the "precinct method" of selecting directors, shall continue such method even if exclusion of land therefrom reduces the acreage therein to one hundred thousand (100,000) acres or less.

Cancellation of unsold bonds

Sec. 19. After such lands shall have been so excluded the District shall cancel any authorized and unsold bonds of the district not deemed by the Board of Directors to be necessary for extending the irrigation system of the district to any unirrigated lands that are not so excluded. [Acts 1941, 47th Leg., p. 157, ch. 119.]

Art. 7880—77. Transfer of water rights to other lands.—When there is included in a district lands having a water right from a source of supply acquired by such district, but which lands it is difficult or impracticable to irrigate, the said district may allow such water rights to be transferred to other lands adjacent to the district and may admit such other lands to the district upon an equal basis as to water service with the lands from which said water was transferred. [Acts 1925, 39th Leg., ch. 25, p. 106, § 77.]

Art. 7880—77a. Adoption of plan of taxation.—All taxes to pay the cost of the organization of a district and pay off bonds for preliminary surveys and investigation; or, to provide funds for conducting such surveys, if no construction bonds are desired to be issued, shall be levied and collected on the ad valorem basis. After the directors of a district shall have adopted plans for the construction of a plant and improvements to carry out the purposes of the district, and after an election is held giving authority to the district to issue construction bonds, and to levy a tax in payment therefor, as provided in Sections 78 to 91, inclusive, of said Chapter 25, as amended by Sections 11, to 16, inclusive of said Chapter 107,[1] they shall hold a public hearing upon the following propositions, viz:

1st: Shall taxes to pay off construction bonds, and for maintenance, operation and administrative costs of the district be assessed, levied and collected upon the ad valorem basis?

2nd: Shall taxes for the stated purposes be assessed, levied and collected on the basis of the assessment of specific benefits, as is provided for in Section 132 of said Chapter 25?[2]

3rd: Shall taxes for the stated purposes be assessed, levied and collected upon the basis of assessment of benefits at an equal sum per acre of land, as is provided in Section 133 of said Chapter 25?[3]

4th: And, if the district be organized under Section 59 of Article 16 of the Constitution, then there may be heard the question, shall taxes for the stated purposes be assessed, levied and collected on the ad valorem basis as to some part of the total tax required, and upon the basis of the assessment of benefits as to some part of the total tax required, or as to some defined part of, or property within, the district, as is provided for by Section 130 and Section 132 of said Chapter 25, as amended by this Act? Notice of the time and place of hearing and of the exact proposition to be determined shall be published in one or more newspapers giving general circulation in the district once a week for two consecutive weeks. The first of said publications shall be not less than ten days prior to the time of hearing set out in said notice. At this hearing any person who is a taxpayer within the district may appear and offer testimony to show what plan of taxation will most conduce to the equitable distribution of the tax to be imposed by the district. Said hearing may be adjourned from day to day until all qualified persons who present themselves have been heard. The Board shall adopt such plan of taxation as will, under the evidence and the district's plans, in their judgment, most conduce to the equitable distribution of the district's tax:

If the plan adopted by the Directors fall under the provisions of said Section 130,[4] then the order to be entered by the Directors shall specify what proportion of the tax falls under each designated classification. The order of the Board adopting a plan of taxation shall be final, and cannot be reviewed or questioned in any court, save on the ground of fraud or palpable and arbitrary abuse of discretion.

If after having adopted a tax plan the Directors find that the best interests of the district, and the necessity to keep the districts' tax adequate and equitably distributed, require a change in the tax plan they may give notice, hold a hearing and decide as in this Section provided. Nothing in this Section provided shall be held to alter the provisions of said Chapter 25 as to districts operating under contract with the United States of America, nor to alter or impair the provisions of Section 130 of said Chapter 25, as amended hereby, relating to taxes levied to provide local improvements

in a defined area in a district, which improvements are peculiar to such defined area and do not affect the district as a whole.

(a) It is specifically provided that nothing contained in this Section or in Section 130 of this Act shall alter, or impair the right of a district to make, establish and collect maintenance and operation charges for the service they render, and to levy and collect taxes to secure funds to maintain, repair and operate all works and facilities, and to give and maintain proper service for the purposes of its organization, as is provided for in Sections 106, 107, 108, 109, 110 and 111 of said Chapter 25.[5]

(b) All taxes, or charges, or assessments, imposed by a district, as provided for by Sections 106, 107, 108 and 109 of said Chapter 25, for the maintenance and operation of works, facilities and services of such district, shall be and constitute a lien against the lands as to which such taxes, or charges, or assessments, have been established; and, no law applying to a limitation against actions for debt shall apply thereto; same shall not be barred by limitation. [Acts 1925, 39th Leg., p. 86, ch. 25, § 77a, added Acts 1929, 41st Leg., p. 578, ch. 280, § 9. Re-enacted Acts 1939, 46th Leg., p. 710, §§ 1, 2.]

[1] Articles 7880—78 to 7880—91, post.
[2] Article 7880—132, post.
[3] Article 7880—133, post.
[4] Article 7880—130, post.
[5] Articles 7880—106 to 7880—111, post.

Section 1 of Acts 1939, 46th Leg., p. 710, provided that the purpose of the reenactment of section (b) of this article was to correct a defect in the caption of House Bill No. 489, Forty-first Legislature.

Art. 7880—77b. Dissolution of districts.—If any district now, or hereafter, operating under the provisions of this Act shall find, at any time prior to the authorization of construction bonds or the final lending of its credit in other form, that the contemplated undertaking, for any reason, is impracticable, or evidently cannot be successfully and beneficially carried out, or if the electors of a district give a majority vote against the proposal to issue construction bonds, then and in either event, the directors of the district may, in the manner hereby provided, give notice of a hearing on a proposal to dissolve the district.

Further if twenty per cent of the qualified voters of the district do petition the directors of the district for such hearing upon a proposal to dissolve the district, and deposit with the directors a sum of money estimated to cover the actual cost of giving notice and holding the desired hearing, which deposit shall be applied to pay the same in case the finding shall be against the petition, the directors of the district shall within ten days, in the manner above provided, publish notice of such hearing, and shall hold the same within forty days after the filing of such petition. Notice of hearings hereunder shall be by posting notice on the bulletin board at the court house door of each county in which the district may be located, and at three or more other public places to be within the boundaries of the district. Such notices must be posted at least ten days prior to a hearing on a proposed dissolution of a district.

At the time and place stated in the notice the directors shall hear all interested persons and shall consider their evidence. If the directors determine from the evidence that the best interests of the persons, lands and properties within the district will be promoted by prosecuting the district's plans, they shall so find and enter their appropriate order of record. If, however, they determine that the district should, in behalf of the best interests of the persons and property within the district, be abolished, then they shall so find and enter their appropriate findings and order of record: In either case their decree shall be final, and cannot be judicially reviewed save on the ground of fraud, palpable error, or gross abuse of discretion. In case the order is for dissolution, then the directors of the district shall appoint one of their own number, or some other competent person, as trustee to close up the affairs of the district as soon as may practicably be done: The term of service and the reasonable compensation of the trustee shall be at the pleasure of, and under such conditions as may be prescribed by, the directors. The trustee shall proceed to reduce to possession, and money, all assets and resources of the district, and apply the same to discharging the outstanding obligations of the district, having regard to specific funds. If required, the directors shall levy, assess and collect additional taxes sufficient to pay all necessary expense and all outstanding obligations of the district. Upon full payment of such obligations the trustee's account shall be verified and upon settlement, he shall be discharged. In such event the directors of the district shall enter of record their final order of dissolution and record the same in the deed records of the county, or counties, in which the district may be located, and thereupon any water rights held from the State shall revert to the State and may not, in anticipation of dissolution, be assigned by the district to be so dissolved. In case any taxes have been collected by the district, in excess of the sum required to liquidate the obligations of the district so dissolved, then such excess shall rateably be paid over to the county treasurer, or treasurers, of the county, or counties, in which the district was located, and such sum shall be by the Commissioners' Courts credited to the interest and sinking fund for any county bonds then outstanding: If there be no such bonds, then the sum may be applied as the Commissioners' Courts may lawfully direct. If the qualified electors of a district give a constitutional, or statutory, majority vote against the proposal to issue construction bonds, then the directors of a district must dissolve the district and liquidate the affairs of a district as hereby provided. All records, vouchers and accounts of the district shall be delivered to the Commissioners' Court of the county in which the district's principal office was located, and shall be preserved as a permanent record. [Acts 1925, 39th Leg., p. 86, ch. 25, § 77b, as added Acts 1929, 41st Leg., p. 578, ch. 280, § 10.]

Art. 7880—77b1. Dissolution of districts not completing plants within 10 years.

Adoption of Act; prerequisites to dissolution

Section 1. Any district now or hereafter organized as a water control and improvement district under the provisions of Chapter 25 of the Acts of the Regular Session of the Thirty-ninth Legislature, as amended,[1] which has not, within ten (10) years from the date of its organization, commenced and completed, in accordance with plans adopted by such district, the construction of a plant and improvements to carry out the purposes of its organization may, by a resolution of its board of directors spread upon the minutes, adopt the provisions of this Act, and upon such adoption, and upon a vote of the property taxpaying voters of the district, and upon the payment of its valid, enforcible indebtedness, may be dissolved as hereinafter provided.

[1] Articles 7880—1 et seq.

Findings; statement of indebtedness; bonds

Sec. 2. The board of directors of any such district, in their order adopting the provisions of this Act, shall find that the plans of the district are impracticable or that the purposes of the district should be abandoned and shall state the reasons for so finding. The directors shall thereafter prepare or cause to be prepared and shall approve a statement of all valid enforcible indebtedness of the district and cause the same to be entered upon the minutes of the district and shall prepare or cause to be prepared an estimate of all expenses incurred or to be incurred in connection with the dissolution of the district and in

connection with the collection of taxes sufficient to pay all valid enforcible indebtedness of the district and shall thereupon enter an order calling an election on the question as to whether or not the district shall be dissolved and bonds issued for the payment of such indebtedness and such expenses. The maximum amount of bonds to be voted upon and issued shall not exceed the total amount of said approved valid enforcible indebtedness and said estimate of expenses (exclusive of the estimated cost of collection of taxes) and the maximum interest rate on said bonds shall not exceed six (6) per cent per annum and said bonds shall mature serially over a period of not to exceed seven (7) years. The maximum amount of bonds (exclusive of interest and expenses of collection) to be issued shall not exceed an amount equal to Two Dollars ($2) times the number of acres in the district for fees and expenses incident to the dissolution of said district.

Notice of election

Sec. 3. Notice of the election, stating the findings of the board of directors with reference to the dissolution of the district and the amount of bonds to be issued, the interest rate thereon, and the time and place of holding the election shall be given under the hand of the president and secretary of the board of directors by publication of such notice once a week for two (2) consecutive weeks in some newspaper having a general circulation in the county or counties in which said district or any part thereof is located, the first of which publications shall be at least fourteen (14) days before the date of such election. Such notice shall contain a statement of the estimates and said expenses incurred and to be incurred in connection with the dissolution of the district and the collection of taxes for the payment of the bonds and shall state that the bonds will be payable by the levy of taxes upon the taxable property within the district in proportion to the values thereof as provided in Section 7 hereof.

Proposition

Sec. 4. The proposition submitted at such election shall be as follows: "for the dissolution of the district and the issuance of dissolution bonds and the levy of taxes for the payment thereof" and "against the dissolution of the district and the issuance of dissolution bonds and the levy of taxes for the payment thereof." The said election shall be held and conducted and returns made and canvassed in accordance with the provisions of law for construction bond elections in such districts.

Issuance and sale of dissolution bonds

Sec. 5. If a majority of the voters at said election shall vote in favor of the dissolution of the district and the issuance of bonds and the levy of taxes for the payment thereof, the board of directors of such district shall proceed with the issuance and sale of said bonds, or any part thereof, (which shall be known as "Dissolution Bonds") at a price not less than ninety (90) per cent of the par value thereof plus accrued interest to the date of delivery, or the board of directors of the district may deliver the same or any part thereof in satisfaction of the valid enforcible indebtedness of the district for which the same are issued, or in payment of expenses incurred or to be incurred in connection with the dissolution of the district, or in payment of services rendered or to be rendered to the district. Said dissolution bonds shall be serially numbered commencing with the first maturities and shall be issued in the name of the district, signed by the president and attested by the secretary, with the seal of the district affixed thereto, and may be issued with such maturities not exceeding seven (7) years from their date and in such denominations and may bear such interest not to exceed six (6) per cent per annum, as may be determined by the board of directors.

Destroying unsold bonds; contracts

Sec. 6. If a majority of the voters at said election shall vote in favor of the dissolution of the district, the board of directors shall proceed to destroy all unsold bonds of the district, and enter an order cancelling all unissued and unsold bonds theretofore authorized by the voters and after such destruction and the entry of such order, said bonds shall thereafter have no further force or effect. The directors, on behalf of the district, may also make such contracts with trustees, engineers, attorneys and others as may in their judgment be necessary or desirable to properly liquidate and wind up the affairs of the district and they may also assume such obligations made by others for the benefit of the district, or from which the district benefited, as in their judgment may be fair and equitable.

Order issuing dissolution bonds; tax

Sec. 7. The order issuing said dissolution bonds shall provide that the principal and interest thereof shall be payable out of the proceeds of a tax to be levied upon the taxable property located in the district in a total amount sufficient for the payment thereof, the amount of such tax to be arrived at as follows: The value of all of the taxable property of the district shall be taken at the assessed value thereof as determined and approved by the board of directors as hereinafter provided, and an amount equal to the total of the principal and all interest to maturity on the bonds voted, plus the estimated cost of collection of taxes, shall be assessed against the taxable property of the district upon an ad valorem basis.

The tax against the taxable property of each owner thereof shall be that portion of the total principal and interest of said bonds and costs of collection which the assessed value of the taxable property of such owner bears to the total of such assessed values in the district.

The amount of such tax on the taxable property of each owner shall be payable in equal annual installments during the period in which the bonds mature on dates to be specified in the order issuing the bonds.

Further provisions of order issuing bonds

Sec. 8. The order issuing the bonds shall further provide that any property owner may secure release of the entire amount of his taxable property as assessed on the rolls hereinafter provided for from the tax levied for said dissolution bonds, by the payment in cash of the full amount thereof computed as follows:

The interest rate upon the bonds shall be applied upon an annual basis to each unpaid installment of taxes for the number of years said installment of taxes must run before being due. The total of the items so computed shall be deducted from the face amount of the unpaid installments of taxes. Likewise, the interest rate upon the bonds shall be applied upon an annual basis to each unpaid past due installment of taxes for the number of years said installment has been past due, and there shall also be added ten (10) per cent of the face amount of each installment that is past due as a penalty, and the total of the items so computed shall be added to the unpaid installments.

The said order issuing said bonds shall further provide that any of said bonds with all unmatured interest thereon and all coupons appurtenant thereto, may be surrendered at any time in payment and satisfaction of all unpaid installments of such taxes on the following basis:

The interest rate upon the bonds shall be applied upon an annual basis to each unpaid installment of

taxes for the number of years said installment must run before being due. The total of the items so computed shall be deducted from the face amount of the unpaid installments of taxes. Likewise the interest rate upon the bonds shall be applied to each unpaid installment of taxes for the number of years said installment has been past due. The total of the items so computed shall be added to the face amount of each unpaid installment of taxes. There shall also be added ten (10) per cent of the face amount of each installment of taxes that is past due, as a penalty. The amount of taxes found to be due by this method may be discharged by the surrender of the proper amount of dissolution bonds, together with all unpaid interest coupons appurtenant thereto, at the face value of said bonds and coupons.

The order issuing said bonds shall also provide that said bonds shall be called and redeemed by the trustee hereinafter provided for, in the inverse order of their maturity and in the inverse order of their serial numbers, out of any funds received in advance payment of taxes, not required for meeting any past due and unpaid principal and interest or the next maturing installment of principal and interest.

Approval and registration of dissolution bonds

Sec. 9. After the dissolution bonds shall have been issued by the district and before same are put in circulation, same shall, at the option of the district, either be submitted to and approved by the Attorney General and registered by the Comptroller as provided in Section 34 of Chapter 25, Acts of the Thirty-ninth Legislature, Regular Session (Vernon's 1936 Texas Statutes, Art. 7889-34), or be validated by suit as provided by Sections 95, 96, 97, 98, 99 and 100 of said Chapter 25 (Vernon's 1936 Texas Statutes, Arts. 7880-95, 7880-96, 7880-97, 7880-98, 7880-99 and 7880-100), the provisions of all of which Sections, so far as not inconsistent with this Act, are hereby made applicable to the dissolution bonds herein provided for.

Tax roll

Sec. 10. Prior to the issuance and delivery of said bonds, the board of directors of the district shall cause to be prepared in duplicate, a tax roll showing the full and true valuation of all property subject to taxation, and the name of the owner thereof, if known, and if not known, the said tax roll shall so state.

After said roll has been so prepared it shall be filed in the office of the district, if any, and if not, in the office of the county clerk of the county, or counties, in which said district is located, where same shall be subject to public inspection.

After said roll has been so filed for at least five (5) days, the directors shall publish or cause to be published a notice in some newspaper having a general circulation in the county or counties in which said district or any part thereof is located, once a week for two (2) consecutive weeks, the first of which publications shall be at least fourteen (14) days prior to the meeting of the board of directors, sitting as a board of equalization as hereinafter provided.

Said notice shall call attention to the filing of said tax roll and the name, the place or places where same is filed and may be inspected, and shall notify all interested persons of the time when and place where the board of directors will meet for the purpose of acting as a board of equalization to examine, correct, equalize, appraise and approve the valuations upon the taxable property of the district and improvements thereon, as set forth in said tax roll.

Examination of tax roll

Sec. 11. At the time and place mentioned in said notice, the board of directors shall meet and proceed to examine said tax roll, and shall have power to send for persons, and papers, to administer oaths to persons who testify before the board, and to ascertain the full true value of all property subject to taxation. The board may lower or raise the valuation of all property listed on said roll, and cause property not appearing thereon to be placed thereon, and shall correct any and all errors of assessment and equalize the value of property appearing on said roll. The board shall equalize as near as possible the value of all property for taxation and fix the value of same for taxation. Any interested person may appear at said meeting and offer evidence for or against any matter being considered by said board. The board at said meeting shall finally fix the valuation of all taxable property in the district, and when the tax roll of the district has been finally prepared, the board of directors shall meet and consider the same and make all necessary corrections therein and endorse their approval thereon. The action of the board of directors in finally approving said tax roll shall be final and shall not be subject to revision by said board or in any other tribunal thereafter.

Filing tax roll

Sec. 12. After the final approval of said tax roll by the board of directors of the district, the board shall file same with the tax collector of the county or counties in which said district is located, who shall collect the taxes shown upon said roll on the land situated in the county for which he is collector at the time when and in the manner specified by the board of directors in their various orders issuing the dissolution bonds and levying said taxes. For his services in so doing, the said tax collector of said county shall be entitled to one per cent of the amount collected.

Trustee of funds collected

Sec. 13. Before the issuance and delivery of said bonds, the directors of said district shall appoint some individual or some bank or trust company within the county, or one of the counties, in which said district is located, trustee of the funds to be collected from said taxes and said bonds shall be payable at the place of business of said trustee. Said trustee shall receive from the tax collector or collectors all proceeds from such assessments less the collector's charges and shall also be the paying agent of the district for said bonds and said trustee and paying agent shall be authorized by the order providing for the issuance of said bonds to institute suits in the name of the district for the use and benefit of the holders of the bonds and to apply all sums of money recovered in such suits to the payment thereof, and the directors may make such provisions with reference to bond to be given by said trustee and the payment of said trustee out of the funds collected from such taxes and may make such other provisions with reference to the powers, rights, duties and liabilities and all other matters relating to said trusteeship and the appointment of successor trustees, as the directors may deem proper to effectuate the purpose of such trusteeship.

Penalties; interest and attorney's fees; foreclosure of lien

Sec. 14. Upon the filing of said tax rolls in the office of the tax collector as provided by Section 12 hereof such taxes, penalties and interest and attorney's fees as herein provided shall become a specific charge upon and shall be secured by a superior lien superior to all other liens except tax liens, upon the personal property, lands and improvements listed therein, whether the ownership of the personal property, lands and improvements are correctly stated in said assessment roll or not, which said lien shall be foreclosed for the full amount due and order of sale issued against such property or so much thereof as may be found in any suit brought for the recovery of said taxes.

The said lien may be foreclosed in a suit or suits brought by the directors on behalf of the district or

by the trustee or his successor as may be provided by the directors in the name of the district and the procedure with respect to such suits shall be as prescribed for ordinary civil foreclosure suits. The provisions of Chapter 506, Acts of the Forty-fifth Legislature, Regular Session (Article 7345D, Vernon's Texas Statutes), as amended, shall not be applicable to such suits.

Default in payment of installments of taxes

Sec. 15. Default in the payment of any installment of any taxes levied for the payment of bonds issued hereunder for sixty (60) days after the same shall have become due and payable as provided by the directors shall at the option of the district or the trustee, immediately mature the remaining installments and cause the entire amount of such taxes to immediately become due and payable and the trustee shall proceed with suit for the collection thereof and for the foreclosure of the lien securing the same, and upon such default there shall immediately accrue a penalty in the amount of ten (10) per cent of the unpaid amount of the taxes and upon the institution of any such suit, there shall immediately be due and payable an attorney's fee in the amount of ten (10) per cent of the unpaid amount of the taxes, which penalty and attorney's fee shall be recovered in said suit and shall constitute an addition to said taxes and be secured by the said tax lien..

Discharge of taxes and lien

Sec. 16. Upon the final payment of the taxes levied for dissolution bonds upon the taxable property of any owner as provided herein, a certificate shall be issued by either the tax collector or the trustee certifying that such taxes have been fully satisfied and that the same are released and upon the execution and acknowledgment of said certificate and placing the same of record in the deed records of the county in which the property is located, the same shall be full and conclusive evidence of the discharge of such taxes and lien.

District deemed dissolved

Sec. 17. Upon the issuance and sale or delivery of said bonds as hereinabove provided and upon the appointment and qualification of said trustee, the secretary of the district shall deposit all available existing records of the district in the office of the county clerk of the county (or one of the counties) in which the district is located and the district shall immediately be deemed dissolved for all purposes except that the taxes so levied against said taxable property may be enforced in the name of the district and for and in behalf of the bondholders by the trustee and his successors as hereinabove provided.

The surviving board of directors until said dissolution bonds are paid off and discharged may meet from time to time and delegate such of their powers and give such instructions to the trustee or his successors as they may see fit and circumstances warrant, and after the payment of all said dissolution bonds, interest and costs of collection, the said district shall stand and be dissolved.

Act cumulative

Sec. 18. This Act shall be cumulative of all other provisions of law providing for the dissolution of water control and improvement districts organized under the provisions of Section 59-a of Article XVI of the Constitution of Texas, and shall be applicable only to such districts as may adopt the provisions hereof as provided in Sections 1 and 2 hereof.

Pending litigation

Sec. 19. No water control and improvement district shall avail itself of the provisions of this law until all litigation pending at the time this law becomes effective has been disposed of by final judgment. [Acts 1943, 48th Leg., p. 555, ch. 328.]

Art. 7880—78. Construction of plant and improvements.—Whenever a district shall have been organized and shall have adopted plans for the construction of a plant and improvements to carry out the purpose of its organization, it may issue bonds for the purpose of constructing same and paying all costs and charges incident thereto, including the cost of property deemed necessary therefor and the retirement of any and all preliminary bonds theretofore issued, if any. Before an election is held to authorize the issuance of bonds, there shall be filed in the office of the district, an engineer's report covering the plan and improvements to be constructed, together with maps, plats, profiles, and data fully showing and explaining same, and same shall be open to inspection by the public. The said engineer's report shall contain a detailed estimate of the cost of such improvements including the cost of purchase of any property to be purchased, and shall also contain an estimate of the time required to complete said improvements, so that service therefrom can be commenced. The directors shall consider and approve such report and may make changes therein and note same of record in their minutes. After such report shall have been filed and approved, with changes, if any, the board of directors may order an election to be held in the district for the purpose of authorizing the issuance of such bonds. [Acts 1925, 39th Leg., p. 106, ch. 25, § 78; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 11.]

Art. 7880—79. Plants and improvements; bonds.—Such bonds may be issued so as to include and cover the cost of organization of the district, incidental expenses, the cost of investigation and making plans, engineer's work and other incidental expenses, including cost of retirement of preliminary bonds of the district, if any, theretofore issued, cost of issuing and selling bonds, estimated discount on the bonds and cost of operation of the district for the period stated in the engineer's report, as estimated to be required for the construction of the plant and improvements to be constructed up to the time same shall be completed and service therefrom commenced, and as part of such costs there may be included in such bond issue a sum sufficient to pay the interest on the bonds during such period so stated in the engineer's report and not to exceed three years from the time such bonds are sold. An estimate shall be made by the board of directors in its order for the election of the total amount required to cover said items and such bonds may also be issued so as to include and cover any additional cost or expense which it may become necessary to add to the engineer's estimate by any change or modification made by the district in the proposed work, and in its order for the election the board of directors shall make an estimate covering any such additional cost or expense on account of any change or modification made by them in the proposed work. The maximum amount of bonds to be issued shall not exceed the amount of said engineer's estimate, together with the amounts of the estimate so made by the board of directors in its order. Such order shall state the proposed maximum interest rate on said bonds and the maximum maturity date of said bonds, and shall state the time and place or places of holding the election and the names of the officers of election. The bonds so voted upon may be issued to mature at the end of a term of years, or to mature in serial form at any date, not to exceed the maximum maturity date stated in the order for the election and may be issued at any rate of interest, not to exceed the rate of interest stated in such order, and in no event to exceed 6 per cent per annum. The proposition to be voted upon shall be that of the issuance of the total amount of bonds covered by the amount of the estimate made in the engineer's report and the estimates which may be made by the Board of Directors, as hereinbefore provided. [Acts 1925, 39th Leg., p. 106, ch. 25, § 79; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 12.]

Art. 7880—80. Notice of bond election.—Notice of election, stating the maximum amount of bonds to be issued and the proposed maximum interest rate thereon and the maximum maturity date of said bonds and the time and place or places of holding the election, shall be given under the hand of the president and secretary of the Board of Directors, by publication of such notice once a week for four consecutive weeks in some newspaper having general circulation in the county or counties in which said district, or any part thereof, is located, the first of which publication shall be at least twenty-eight days before the date of such election. Such notice shall contain substantially the proposition to be voted upon and shall contain a summary of the engineer's estimate of the cost of the proposed improvements, as shown by his report provided for in Section 78,[1] and shall also contain a statement showing any estimate or estimates made by the Board of Directors in its order for the election covering sums to be included in the proposed bond issue. [Acts 1925, 39th Leg., p. 106, ch. 25, § 80; Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 13.]

[1] Article 7880—78, ante.

Art. 7880—81. Propositions submitted.—The propositions submitted at such election shall be as follows: "For the issue of bonds and levy of taxes in payment therefor" and "Against the issuance of bonds and levy of tax in payment therefor." In the event that contract is proposed to be made with the United States under the Federal Reclamation Laws, the question which shall be submitted to the voters at such election shall be "For contract with the United States and levy of tax in payment therefor" and "Against contract with the United States and levy of tax in payment therefor." [Acts 1925, 39th Leg., ch. 25, p. 106, § 81.]

Art. 7880—82. Contract with United States.—If contract with the United States is proposed for election the notice of election shall state the maximum amount of money payable for construction purposes, exclusive of penalties and interest. [Acts 1925, 39th Leg., ch. 25, p. 108, § 82.]

Art. 7880—83. Manner of election; record.—The order of the board of directors ordering such election shall be recorded upon their minutes. A copy of the notice of election together with a copy of said notice as published and the publisher's affidavit of publication attached thereto shall be filed in the office of the district. The said election shall be held and conducted and returns made in accordance with the provisions of law for holding elections in such districts as herein provided. [Acts 1925, 39th Leg., ch. 25, p. 108, § 83.]

Art. 7880—84. Vote required.—In all such districts organized in accordance with the provisions of Section 52 of Article 3 of the Constitution, the vote required upon an election for issuance of bonds shall be a two-thirds majority of those voting at such election. In all other districts herein provided for the vote required for the adoption of the issuance of such bonds shall be a majority of those participating in such election. [Acts 1925, 39th Leg., ch. 25, p. 108, § 84.]

Art. 7880—84a. Emergency loan; interim bonds.—Whenever bonds, other than preliminary bonds or notes, are voted by any water control and improvement district, or any water improvement district, the board of directors thereof shall have power to declare an existing emergency in the matter of funds not being available for engineering work, for the purchase of lands for rights-of-way, and/or reservoir sites, for construction work, for legal and other necessary expenses, and for such purposes may issue securities on the faith and credit of the district in the manner hereinafter stated, to-wit:

(1). The securities evidencing such emergency loan shall be known as "interim bonds". They shall mature not later than ten (10) years from date of issue, and shall be redeemable at any time prior to maturity as is hereinafter provided. The principal amount of such emergency loan shall not exceed twenty-five per cent (25%) of the principal amount of the bonds of the district which have been voted, but not sold; provided, however, that before the issuance of such bonds the board of directors of any district desiring to issue same may by resolution duly passed limit the issue to any amount less than twenty-five per cent (25%), and when such amount is determined and fixed by such resolution, no additional "interim bonds" may be issued and sold until all outstanding "interim bonds" have been paid in full.

(2). When the bonds of any such district, other than preliminary bonds, have been authorized by the necessary favorable vote of the qualified electors, the board of directors thereof may, in its discretion, authorize the issuance of such bonds in whole or in parcels, as the needs of the district may require, and such board shall, and it is hereby made its duty, levy and provide for the annual assessment and collection of taxes sufficient to pay principal and interest of bonds so authorized to be issued and sold. Such bonds may be authorized, and the taxes levied therefor, as aforesaid, and approved by the Attorney General and registered by the Comptroller of Public Accounts, prior to the filing of the report of the State Board of Water Engineers, provided for in Section 139, Chapter 25, Acts of 1925.[1]

(3). As the "interim bonds" herein authorized, are issued and sold, it shall be the duty of the board of directors, by orders duly passed, to deposit in the district depository, bonds of said district that have been validated by the judgment of a court of competent jurisdiction, or, approved by the Attorney General and registered by the Comptroller of Public Accounts, as provided in Sub-Section 2, of this Act, and which said bonds shall be deposited in said depository to the credit of the "interest and sinking fund account" created for the payment of such "interim bonds"; provided, that the principal amount of bonds so deposited shall aggregate at least one hundred and ten per centum (110%) of the principal sum of the series of "interim bonds" to secure payment of which the said bonds are deposited.

(4). The interest rate on the "interim bonds" shall not exceed the interest rate on the bonds deposited to secure their payment. Such "interim bonds" may be sold in the same manner and on the same terms provided by law for the sale of other bonds of any such district; and such "interim bonds" shall be issued in the name of the district, signed by the president and attested by the secretary, with the seal of the district affixed thereto, and may be issued in such denominations as may be determined by the board of directors, and shall be approved by the Attorney General and registered by the Comptroller of Public Accounts in the same manner as hereinabove provided for the approval and registration of improvement bonds of such district; provided, when "interim bonds" are sold at less than par value and accrued interest, the improvement bonds issued by such district must be sold at an increase over the price authorized by law in a sum sufficient to equal the discount allowed on the interim bonds.

(5). To secure the loan evidenced by such "interim bonds" the board of directors shall appropriate the tax levied for the payment of the bonds deposited to the credit of the "interest and sinking fund account" of such "interim bonds", or so much of such tax as may be necessary for that purpose, and the proceeds of such tax, when collected, shall be devoted exclusively to the payment of the principal and interest of such "interim bonds"; provided, however, that nothing in this Act shall be construed as prohibiting the sale of any bonds of the district deposited to the credit of the "interest and sinking fund account" of the "interim bonds", or any other bonds of such district,

but in event of the sale of any such bonds it is hereby made the duty of the district depository to apply the proceeds of any such sale, first, to the payment of the principal and accrued interest of all such "interim bonds", and the remainder to the purpose or purposes for which any such bonds may have been authorized; and, provided, further, that in the event none of the bonds of the district shall have been sold at the time of the maturity of any installment of the principal or interest on the "interim bonds", it shall be the duty of the depository to cancel bonds so deposited, and annexed interest coupons, equal in amount to the principal and interest of any such "interim bonds" so paid off and discharged.

(6). Said "interim bonds" shall be redeemable, at the option of the board of directors of said district, at any time or times prior to maturity, upon payment by the district of principal and interest accrued to date fixed for redemption by said board, and whenever any such "interim bonds" are called in for redemption before maturity, notice thereof in writing shall be given to the bank or banking house named as the place of payment in such bonds, or to its successors or assigns, by the secretary of the board of directors of the district. The secretary shall designate in such notice the bond or bonds so called for redemption and payment, setting forth the number or numbers thereof, and the date fixed for the redemption thereof, which date shall be not more than sixty (60) days after the date notice of call for payment is made. In event any of such "interim bonds" so called for redemption are not presented, the same shall cease to bear interest from and after the date so fixed for redemption.

(7). All interim bonds heretofore issued and sold under authority of Chapter 25, as amended by Chapter 82, Section 84-a, of the General Laws passed by the First Called Session of the Forty-first Legislature,[2] must be refunded or paid in full before additional bonds may be issued and so'd. [Acts 1925, 39th Leg., p. 86, ch. 25, § 84a, as added Acts 1929, 41st Leg., 1st C.S., p. 205, ch. 82, § 1; Acts 1930, 41st Leg., 5th C.S., p. 163, ch. 31.]

[1] Article 7880—139, post.

[2] This article.

Section 4 of Acts 1929, 41st Leg., 1st C.S., p. 205, ch. 82, provided that the act should not repeal any of the provisions of Acts 1925, 39th Leg., p. 86, ch. 25; of Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107; and of Acts 1929, 41st Leg., p. 578, ch. 280 (Articles 7880—1 to 7880—147) relating to Water Control and Improvement Districts, but should be cumulative thereof, nor repeal any law, general or special, but the powers, etc., should exist as alternative powers of all other laws relating to the same subject.

Art. 7880—85. Limitation of indebtedness; form of ballot; additional bonds.—The board of directors of any district which has been or shall be organized under the provisions of Section 59 of Article 16 of the Constitution, may, for the benefit of the purchasers, or holders, of bonds to be issued or sold, limit the power of the district to incur debt or issue bonds in the manner and to the extent hereinafter provided. Said board may adopt a resolution declaring that during a period of not exceeding fifteen years the district shall not issue bonds in excess of twenty-five per cent of the assessed value of the taxable real property of the district according to the last assessment for district purposes, or not in excess of a fixed sum, or only for certain named purposes, and shall give notice of the adoption of such resolution by publication once a week for two consecutive weeks in a newspaper having general circulation in the district, stating that such resolutions shall take effect unless a petition signed by twenty per cent of the qualified tax paying electors of the district shall be presented against the proposed limitation within twenty days after the date of the first publication of such notice. If such petition or remonstrance be filed within said period, such limitation shall not take effect unless it is approved at an election held in the district. The ballot on the question at such election shall be substantially in the following form: "For limiting during the term of ——— years, the maximum debt of the district to ———," and "Against limiting during the term of ——— years, the maximum debt of the district to ———." The blank space therein shall be properly filled in to show the purpose of the election.

If such limitation shall be approved, or if during said period no petition or remonstrance shall be filed the district shall not issue bonds under any statute or constitutional provision during said term in excess of the amount so limited, except for the necessary repair of or to complete works for construction of which bonds may be issued within each limitation, and shall only issue bonds exceeding such limitation for said purpose after the State Board of Water Engineers shall have approved same and the plans and specifications for same, with the estimate of the cost thereof. If such plans and specifications and estimate be approved by said State Board of Water Engineers, notice of intention to issue such bonds, stating the purpose thereof, shall be given by publication once a week for three consecutive weeks in a newspaper having general circulation in the district, stating the amount of the proposed issue of bonds and the time a hearing will be had, which time shall not be less than thirty days from the first publication. Any tax payer, bondholder, or other person interested may appear and shall be heard.

Said hearing to be held by the board of directors of the district. If the determination be in favor of the issuance of such additional bonds for the amount and for the purpose stated in the notice, the question of issuing such bonds shall be submitted to the property tax paying voters at an election held in the form and manner provided by law. Only resident voters who are property tax payers shall vote at such election as provided by the provisions of the Constitution. [Acts 1925, 39th Leg., ch. 25, p. 108, § 85; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 14.]

Art. 7880—86. Issuance of bonds: requirements.—The bonds issued under the provisions of this Act shall be issued in the name of the district, signed by the president and attested by the secretary, with the seal of the district affixed thereto, and said bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars each, and such bonds shall bear interest at the rate of not to exceed six per cent per annum, payable annually or semiannually. Such bonds shall by their terms provide the time, place or places, manner and condition of their payment and the interest thereon, as may be determined and ordered by the directors of said district, and none of such bonds shall be made payable more than forty years after the date thereof, provided that the lien for the payments due the United States under any contract between the district and the United States accompanying which bonds have not been deposited with the United States, shall be preferred lien to that of any issue of bonds or any series of any issue subsequent to the date of such contract. [Acts 1925, 39th Leg., ch. 25, p. 109, § 86; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 15.]

Art. 7880—87. Limitation of indebtedness.—After the canvass of the vote and declaring the result, as provided for, the directors shall make and enter an order directing the issuance of bonds or authorizing the execution of a contract with the United States for such district, as the case may be, sufficient in amount to pay for such improvements, together with all necessary incidental expense connected therewith not to exceed the amount specified in the order for the election and the notice of election. In districts organized under the authority of Article 3, Section 52 of the Constitution the amount of such bonds, or the amount of contract indebtedness with the United States shall not exceed in amount one-fourth of the actual assessed value of the real property of such district as shown by

the assessment thereof made for the purpose of determining the value thereof, or at the last annual assessment as provided for in this Act. This limitation of indebtedness of one-fourth of the assessed value shall not apply to districts organized under the authority of Section 59 of Article 16 of the Constitution. [Acts 1925, 39th Leg., ch. 25, p. 109, § 87.]

Art. 7880—88. Additional bonds; supplemental contract with United States.—If, after an election has been held for the issuance of bonds or for contract with the United States, and the tax authorized and levied, and bonds have been authorized to be issued or have been issued as provided for in this Act, or contract with the United States authorized or executed, as the case may be, the directors of said district shall consider it necessary to make any modifications in said district, or in any of the improvements thereof, or shall determine to purchase or construct any further or additional improvements therein and issue additional bonds upon the report of the engineer, or shall determine to make supplemental contract with the United States, or upon its own motion may find it necessary to make additional improvements, or purchase additional property in order to carry out the purpose for which the district was organized, or to best serve the interests of said district, said finding shall be entered of record and notice of an election for the issuance of said bonds, or for authorization of contract with the United States, shall be given, and such election held within such times, and the returns of such election made as hereinbefore provided for in case of original election, and the result thereof determined in the same manner. If the result of such election be declared to be in favor of the issuance of such bonds or the making of such contract with the United States, said directors may order such bonds to be issued, or may negotiate and execute supplemental contract with the United States as in the manner provided in this Act. And provided that if a contract is made with the United States as herein provided and bonds are not to be deposited with the United States in connection with said contract, bonds need not be issued, or if required to raise funds in addition to the amount of such contract, said bonds shall be issued only in the amount needed in addition thereto. [Acts 1925, 39th Leg., ch. 25, p. 110, § 88.]

Art. 7880—89. Additional funds for improvements; bonds.—If it should come to pass that the works, improvements and facilities set out in any plan adopted by a district, as provided in Sections 78 and 139,[1] are found to be not adequate to accomplish the beneficial results of which the district's location and conditions admit, or may demand; or, if repairs, replacements or additions to the district's works to cost twenty-five thousand ($25,000.00) Dollars, or more, are deemed necessary; or, if additional funds are required to complete the improvements as planned; then, in respect thereto, the Board of Directors of the District shall proceed to provide the additional funds for the required object, or objects, in all respects in accordance with the provisions of this Act regulating the creation of bond obligations by a district, and may so create additional indebtedness, or issue additional bonds, but in all cases subject to every limitation in respect to such original proceedings, and the substantial protection of the substantive rights of the holders of any other obligations of the district then outstanding: Such expenditures up to $25,000.00 may be made and obligations issued therefor, based on adequate tax levies, by order of the district's directors without submitting the issue to the electors of the district. [Acts 1925, 39th Leg., p. 110, ch. 25, § 89; Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 16; Acts 1929, 41st Leg., p. 578, ch. 280, § 11.]

[1] Articles 7880—78, ante, and 7880—139, post.

Art. 7880—90. Bonds; payment; form.—Whenever such bonds have been voted, the directors for such district shall levy a tax upon all property within such district sufficient in amount to pay the interest on such bonds together with an additional amount to be placed in the sinking fund, sufficient to redeem and discharge such bonds at their maturity, and said directors of such district shall annually levy or cause to be assessed and collected taxes upon all property within said district in an amount sufficient to pay for the expense of assessing and collecting said taxes. Whenever contract shall be made with the United States, taxes shall similarly be levied sufficient in amount to meet all installments as they become payable, and interest if any, and the directors shall cause due levy annually to be made until all such contracts and obligations shall have been discharged. Such bonds may be issued in serial form, or payable in installments, as determined by said directors, and such tax levy shall be sufficient if it provides an amount sufficient to pay the interest on such bonds and to meet the proportionate amount of the principal of the next maturing series of such bonds and the expenses of assessing and collecting such taxes for such year. [Acts 1925, 39th Leg., ch. 25, p. 114, § 90.]

Art. 7880—90a. Pledge of revenues to secure bonds.—This section shall apply only to such water control and improvement districts as have adopted (or hereafter may adopt) a plan for improvements designed to furnish a water system, or a sewer system, or a water and sewer system (either by construction, or purchase, or purchase and construction), for service in areas, urban or industrial in nature, but not incorporated under the laws of Texas relating to the creation of cities, and which districts have, or have expectancy for, net revenues from operations (to exclude all income from ad valorem taxes, specific assessments of benefits or taxation upon the basis of dollars per acre, but to embrace all other income or revenues), in lieu of securing its bonds as provided in Section 90 [1] (next foregoing), electively may provide for the payment of the same in any one of the following manners, to-wit: 1—As provided for by Section 90, next foregoing; 2—by entering into contracts for the pledge of the net revenues of the district, as hereinafter defined and provided for; 3—by securing the bonds in both manners 1 and 2; and: The expression "net revenue", as used herein, shall be understood to exclude any money derived from taxation, but to include all income or increment which may grow out of the ownership and operation of the improvements or facilities produced by use of the money for which such bonds are given; less such proportion of the district's revenue income as reasonably may be required to provide for the administration, efficient operation and adequate maintenance of the district's service facilities; and:

In case such obligations are secured under method 3 foregoing, at such time as net revenues, together with the money derived from taxes, in the sinking fund may have accumulated a surplus equal to the sum to be required in the succeeding year to liquidate the interest and principal of the district's obligations maturing in that year, the district's annual tax levies may be lowered to produce not less than twenty-five per centum (25%) of the bond maturities for such succeeding year, until an actual experience of three successive years may demonstrate that the net revenues are wholly adequate to protect the maturities of the district's obligations; and, at such time the district's tax may be wholly abated, until further experience may demonstrate the necessity again to exert the district's taxing power in order to avoid default in the payment of the district's said obligations, as the same may mature; and:

In case it is proposed to issue money obligations to be liquidated under method 2 or method 3, hereinabove authorized, at the election held for the authorization thereof, the proposition to be submitted under

Section 81 of said Chapter 25 (Acts of the 39th Legislature, Regular Session) [2] shall be: "For issuance of bonds and the pledge of net revenues for the payment thereof"—And, the contrary thereof; or "For the issuance of bonds, the pledge of net revenues and the levy of taxes adequate to provide for the payment thereof," —And, the contrary thereof, to be as the proposal may require. [Acts 1925, 39th Leg., p. 86, ch. 25, § 90a, as added Acts 1934, 43rd Leg., 3rd C.S., p. 56, ch. 32, § 1.]

[1] Article 7880—90, ante.
[2] Article 7880—81, ante.

Art. 7880—90b. Revenue bonds for extensions and improvements; validation of districts.—Any water control and improvement district which has adopted a plan for improvements designed to furnish a water and sewer system as authorized by Section 90a, Chapter 25, Acts of the Thirty-ninth Legislature, Regular Session, as added by Chapter 32, Third Called Session, Forty-third Legislature,[1] shall also have the authority to issue its revenue bonds as provided under method 2 of said Section 90a, for the purpose of constructing extensions and improvements to a water and sewer system and to an irrigation system, and may provide for the payment of same by entering into contracts for the pledge of net revenues derived from the sale of water for irrigation purposes and service charges made in connection with the sale and distribution of water for irrigation purposes. Such bonds may be issued in one or more issues, under such terms and conditions as may be deemed most advisable by the Board of Directors of such district. [Acts 1925, 39th Leg., p. 86, ch. 25, § 90b, added Acts 1947, 50th Leg., p. 773, ch. 382, § 1.]

[1] Article 7880—90a.

Art. 7880—90c. Validation of districts.—All water control and improvement districts which have been heretofore created, or attempted to be created, and which have heretofore issued revenue bonds under the provisions of Section 90a, Chapter 25, Acts, Thirty-ninth Legislature, Regular Session, as added by Chapter 32, Acts of the Forty-third Legislature, Third Called Session,[1] are hereby in all respects validated and declared to be legally created; provided, however, that this Section shall not apply to any district where litigation is now pending or may be commenced within thirty (30) days after the effective date of this Act attacking the validity of such district. [Acts 1947, 50th Leg., p. 773, ch. 382, § 2.]

[1] Article 7880—90a.

Art. 7880—91. Tax levy; investment of sinking fund.—The tax levy made in connection with the issuance of any bonds shall remain in force from year to year as the levy for the purpose to be collected, until a new levy shall be made. The board of directors may from time to time increase or diminish such tax, so as to adjust the same for the taxable values of the property subject to taxation by the district and the amount required to be collected, and shall in every such levy raise thereby an amount sufficient to pay the annual interest and sinking fund on all bonds then outstanding.

The board of directors may invest any portion of the sinking fund of the district set aside for the redemption of its outstanding bonds in bonds of the United States, of the State of Texas, or of any county or city within the State, of any irrigation or water improvement district, school district, or other tax bonds issued under the laws of the State of Texas such funds may be so invested when the bonds to be paid thereby do not mature within three years from the time of making such investment and when same is necessary to preserve the best interests of said district. [Acts 1925, 39th Leg., ch. 25, p. 111, § 91.]

Art. 7880—92. Refunding bonds.—Any district governed by this Act which has heretofore been organized under the laws of this State and any district hereafter organized under the provisions hereof, may refund any bonds issued by issuing new bonds for that purpose, provided the said old bonds are taken in exchange at their face value or less, or in event such new bonds can be sold at a premium and the old bonds retired thereby without loss to the district.

The Comptroller shall not register such new bonds until the old bonds in lieu of which they are issued, are presented to him for cancellation, or until a valid contract has been entered into and a copy thereof filed with the Comptroller providing for the purchase of such old bonds or exchange thereof. The Comptroller shall keep said new bonds until the old ones are presented to him for exchange or payment. In case same are presented for payment, the district shall pay same before such new bonds are registered. [Acts 1925, 39th Leg., ch. 25, p. 112, § 92.]

Art. 7880—93. Limitation of indebtedness.—No district shall issue bonds or create indebtedness in an amount more than that authorized by the provision of the Constitution of the State of Texas, authorizing the issuance of such bonds or the creation of such indebtedness. [Acts 1925, 39th Leg., ch. 25, p. 112, § 93.]

Art. 7880—94. Interest and sinking fund.—There is hereby created what shall be termed the "Interest and Sinking Fund" for such district, and all taxes collected under the provisions of this Act, for such fund, shall be credited to such fund, and shall never be paid out except for the purpose of satisfying and discharging the interest on said bonds, the payment of such bonds, and to defray the expenses of assessing and collecting such tax, and for the payment of principal and interest due the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as herein provided; such fund shall be paid out upon the order of the board of directors of such district upon warrants drawn therefor, as herein provided, and at the time of such payment the depository for such district shall receive and cancel any interest coupon as paid or any bond as paid, and when any such interest coupon or bond has been paid it shall be delivered to the directors and be cancelled and destroyed. [Acts 1925, 39th Leg., ch. 25, p. 112, § 94.]

Art. 7880—95. Suit to validate bonds.—Whenever any district shall have issued bonds including preliminary bonds as herein provided and may desire to validate same by suit as hereinafter provided, such suit may be filed for the validation or the organization of such district and of such bonds and after the rendition of a final judgment therein said bonds or contract shall be incontestable and no suit shall be brought in any court of this State contesting or enjoining the validity of the formation of any such district or any bonds issued thereby or contesting or enjoining the validity of any contract with the United States or of authorization thereof by the district, except in the name of the State of Texas, by the Attorney General upon his own motion or upon the motion of any party affected thereby upon good cause shown. No such suit shall be filed or prosecuted by the Attorney General unless based upon allegations of fraud disclosed or found after the rendition of a final judgment in such validation suit. If such validation suit is filed it shall not be necessary to have said bonds approved by the Attorney General as herein otherwise provided. [Acts 1925, 39th Leg., ch. 25, p. 112, § 95; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 17.]

Art. 7880—96. Jurisdiction; notice.—Such validation suit shall be brought by the district in the district court in any county in which said district or any part thereof is located, or in any county of the

judicial district in which such district is located, or in the district court of Travis County. Such suit shall be to determine the validity of the organization of such district and determine the validity of such bonds; or such district contracting with the United States shall, if requested by the Secretary of the Interior, bring such an action to determine the validity of such contract. Such suits shall be in the nature of a proceeding in rem and jurisdiction of all parties thereto and interested therein shall be had by publication of a general notice thereof once each week for at least two consecutive weeks prior to the term of court to which same is returnable. Said notice shall be published in some newspaper of general circulation in the county or counties in which such district is situated, and if no paper is published in such county or counties, then same shall be published in a newspaper of the nearest county thereto where a paper is published. Notice shall also be served upon the Attorney General of the State of Texas of the pendency of such suit in the same manner as civil suits. The Attorney General may waive service in such suits when furnished a full transcript of the proceedings had in the formation of such district; and in connection with the issuance of such bonds; in connection with the authorization of a contract with the United States and a copy of the contract. [Acts 1925, 39th Leg., ch. 25, p. 113, § 96.]

Art. 7880—97. Examination by Attorney General; intervention.—It shall be the duty of the Attorney General to make an examination of all such proceedings and require such further evidence and make such further examination as may seem advisable to him. He shall then file an answer tendering the issue as whether such proceedings are valid and such bonds are legal and binding obligations upon such district, or as the case may be, as to whether such contract with the United States is legal and binding upon the districts. Any person interested therein may intervene in said cause or file answer therein. The issue thus made shall be tried and determined by the court and judgment be entered upon such finding. If such bonds shall have been approved by the Attorney General and have been registered before such suit is filed then the filing of such suit cancels prior registration. All suits brought under the provisions of this Act shall have preference over all other actions in order that a speedy determination thereof may be had. [Acts 1925, 39th Leg., ch. 25, p. 113, § 97.]

Art. 7880—98. Judgment res adjudicata.—Upon the trial with the issues made in accordance with the preceding section of this Act,[1] if the judgment of the court shall be adverse to the district upon any issue, then such judgment may be by said district excepting and the error pointed out in such proceedings may be corrected, the judge in the manner directed by the court and when so corrected, the judgment of the court shall be rendered showing that such corrections have been made, and that the bonds issued thereunder, or the contract with the United States are binding obligations upon such district. And thereafter the judgment so finally made and entered shall be received as res adjudicata in all cases thereafter arising in connection with the collection of said bonds, or any interest due thereon, or of any taxes levied by the district to pay the charges thereon, or in connection with the collection of moneys required by a contract with the United States, and as to all matters pertaining to the organization and validity of said district or pertaining to the validity of such bonds, or of a contract with the United States. [Acts 1925, 39th Leg., ch. 25, p. 113, § 98.]

[1] Article 7880—97, ante.

Art. 7880—99. Certified copy of decree conclusive evidence.—After the making and entry of the judgment of the district court as herein provided the clerk of said court shall make a certified copy of such decree which shall be filed in the office of the State Comptroller and be by him recorded in a book kept for that purpose. Said certified copy, or a certified copy of said record thereof, made and kept by the Comptroller, shall be received in evidence in any suit thereafter arising which may affect the validity of the organization of such district, or the validity of such bonds, or of such contract with the United States, and shall be conclusive evidence of such validity. [Acts 1925, 39th Leg., ch. 25, p. 114, § 99.]

Art. 7880—100. Registration of bonds; certificate.—Upon the presentation of said bonds together with certified copy of the decree of the district court, the Comptroller shall register such bonds in a book kept in his office for that purpose, and shall attach to each of said bonds a certificate of the fact that the decree of the district court as required by this Act has been filed and recorded in his office. Said certificate shall be signed officially and the seal of his office attached thereto. [Acts 1925, 39th Leg., ch. 25, p. 114, § 100.]

Art. 7880—101. Sale of bonds.—After the issuance of such bonds as herein provided the directors of a district shall sell same on the best terms and for the best possible price, but none of said bonds shall be sold for less than ninety per cent of their face value. When said bonds are sold the proceeds thereof shall be paid over by the directors to the depository for said district. The district may exchange bonds for property acquired by purchase, or in payment of the contract price of work done for the use and benefit of said district. [Acts 1925, 39th Leg., ch. 25, p. 114, § 101.]

Art. 7880—102. "Construction Fund."—The proceeds of any such bonds sold and deposited in the depository shall be credited to the special fund designated "Construction Fund." All expenses, debts and obligations necessarily incurred in the creation and establishment and maintenance of any district may be paid out of the construction fund and all cost of purchase of property and construction contracts may be paid from said fund including all purchases for which same were issued. If same are issued in accordance with a contract made or to be made with the United States as herein provided all debts and obligations may be paid therefrom under the terms of such contract, or incident thereto. After the payment of all obligations for which such bonds were issued to pay any balance remaining therein may be transferred to the maintenance fund. [Acts 1925, 39th Leg., ch. 25, p. 114, § 102.]

Art. 7880—103. "Maintenance Fund."—Such district shall have a fund to be known as the "Maintenance Fund" into which shall be paid all funds collected by assessment or otherwise for the maintenance, repair and operation of the properties and plant of the district, or for temporary annual rental due to the United States. Out of said fund shall be paid all expenses of maintenance, repair and operation of the district, except the expenses of assessing and collecting taxes for the interest and sinking fund may be paid out of that fund. Out of said fund may be paid all expenses not herein otherwise provided for. [Acts 1925, 39th Leg., ch. 25, p. 115, § 103.]

Art. 7880—104. "Amortization and Emergency Fund."—All such funds heretofore created and existing under the laws of this State shall be preserved and used as herein provided. The board of directors of each district shall cause to be made by a competent engineer an inspection and valuation of all the physical properties of such district, subject to decay or obsolescence, injury or damage by any sudden, accidental or unusual cause whatsoever, and based upon inspection and valuation said engineer

shall determine, as nearly as may be, a sum to be annually set aside as will be sufficient to pay for replacement of each item of such physical property at the end of its economical life, or for the restoration or replacement of any such physical property upon the happening of such loss, injury or damage thereto. Out of the maintenance and operation fund, as the same shall be collected, such board of directors shall set aside such portion thereof as shall be necessary to make each year the amount of the annual sum determined as above provided to be known as the "Amortization and Emergency Fund", and no part of such fund shall be expended except to replace such amortization property, or to replace or restore such lost, injured or damaged property. Any part of the amortization and emergency fund not necessarily expended for the purposes above provided, may be invested in bonds or interest bearing securities of the United States. Provided, that any such board of directors may or may not in the discretion of such board, establish such amortization and emergency fund, but after each fund has been established for any such district as above provided, the same shall thereafter be kept up and maintained. [Acts 1925, 39th Leg., ch. 25, p. 115, § 104.]

Art. 7880—105. District funds; how handled.—All district funds shall be handled by and under the orders of the board of directors upon warrants drawn therefor. At the time of the payment of interest coupon or of any bonds the directors shall receive and cancel same and make a record thereof which same shall be destroyed. [Acts 1925, 39th Leg., ch. 25, p. 115, § 105.]

Art. 7880—106. Charges for water furnished.—All such districts shall have authority to make, establish and collect maintenance and operation charges for the service they render which may be determined and fixed upon the basis of the quantity of water furnished or appropriate measure of the service rendered, and if based upon a use of water a fixed charge may be made as a minimum charge on all lands, water connections or other service entitled to receive and use same, and an additional charge may be made for the use of water in excess of that covered by the minimum charge. The district may install proper measuring devices or require that same be installed. Where a district includes a city or town or contracts with a city or town to supply it water, the charge for the use and delivery of such water and the time and manner of payment shall be determined by the board of directors or be fixed by contract made by the directors. [Acts 1925, 39th Leg., ch. 25, p. 115, § 106.]

Art. 7880—107. Taxation to maintain proper service.—All such districts shall have authority to levy and collect taxes to secure funds to maintain, repair and operate all plants, properties and improvements of the district and to give and maintain proper service for the purposes of its organization. [Acts 1925, 39th Leg., ch. 25, p. 116, § 107.]

Art. 7880—108. Power to refuse service.—Every such district shall have the power and authority to refuse service of water to anyone therein or entitled thereto who shall refuse to pay the charges and assessments therefor or who shall fail or refuse to pay any taxes levied against his property after six months from date same become delinquent. [Acts 1925, 39th Leg., ch. 25, p. 116, § 108.]

Art. 7880—109. Statement by person desiring service.—Every person desiring to receive water during the course of the year, or at any time during the year, shall furnish to the secretary of the board of directors a statement in writing of the acreage intended by him to be put under irrigation, and for which water is to be used, and as near as may be a statement of the several crops to be planted with the acreage of each, and shall at the same time pay such proportion of the water charge or assessment therefor as may be prescribed by the board of directors. If such statement should not be furnished, or such payment should not be made before the date for fixing the assessments, there shall be no obligation upon the district to furnish such water to such person for that year. The board of directors, on or as soon as practicable after a date in each year to be fixed by a standing order of the board, shall carefully estimate the expense to be incurred during the course of the next twelve months for the maintenance and operation of the irrigation system. A proportionate part of the amount so estimated, not less than one-third, nor more than two-thirds, to be determined from year to year by the board of directors, shall be paid by assessment against all irrigable lands within the district, pro rata per acre; that is to say, against all lands to which the district is in condition to furnish water by its then systems of canals and laterals, or through extensions thereto of then existing laterals, but without reference as to whether such land is to be actually irrigated or not, and the remainder of the amount so estimated shall be paid by the persons taking water or applying for water as aforesaid. This remaining amount shall be equitably prorated among the applicants for water, and in prorating same the board of directors may take into consideration the acreage to be planted by each applicant for water, the crop to be grown by him and the amount of water per acre to be used by him, provided, however, that each water user shall pay the same price per acre for use of water upon the same class of crops. All assessments shall be paid in installments and at times to be fixed by order of the board of directors, but if the crop for which such water was furnished shall be harvested prior to the time fixed for the payment of any installment, the entire unpaid assessment shall at once become due and shall be paid within ten days after the harvesting of such crop and before removal of same from the county or counties in which grown. The board of directors shall have power and authority from time to time to adopt, alter and rescind rules, regulations, standing orders and temporary orders, not in conflict with this Act, governing the methods, ways, terms and conditions of water service, applications for water, assessment for maintenance and operation and payment and enforcement of payment of such assessments, and the furnishing of water to persons who have not applied for same before the date of assessment, and to persons who desire to take water for irrigation in excess of their original applications or for use on lands other than those covered by such applications. The board of directors may, at their discretion, require every person desiring water during the course of the year to enter into a contract with the district, which contract shall indicate the acreage to be watered, the crops to be planted, and the amount to become due and the terms of payment; and it may be further required that the water taker shall execute a negotiable note or notes for such amounts, or for parts thereof. The making of such contracts shall not constitute a waiver of the lien given by this Act upon the crops of the water taker for the service furnished to him. If the water taker shall water more land than is called for in his contract he shall pay for such additional service rendered as and at the times hereinbefore indicated. To secure money for operating and maintenance expense of the district the board of directors shall have authority to borrow money with interest not exceeding ten per cent per annum, and may hypothecate any of the notes or contracts with water takers or accounts against them. The district shall have a first lien, superior to all other liens, upon all crops of whatsoever kind grown upon each tract of land in the district, to secure the payment of the assessment herein provided for, and all such assessments shall bear interest from the time due and payable at the rate of ten per cent per annum.

And if suit should be filed therefor, or the same should be collected by any legal proceeding, an additional amount of ten per cent on unpaid principal and interest shall be added to the same as collection or attorney's fees, as well as principal and interest of such assessments shall stand secured by the lien as aforesaid. Suits for delinquent water assessments may be brought either in the county in which the irrigation district is situated or in the county in which the defendant resides. All land owners shall be personally liable for all assessments herein provided for, and if they shall fail or refuse to pay same when due the water supply shall be cut off and no water shall be furnished to the land until all back dues are fully paid. This provision with respect to cutting off water shall bind all parties, persons and corporations owning or thereafter acquiring any interest in said lands. The directors of all districts shall within ten days after any assessment is due, post at a public place in said district a list of all delinquents and shall thereafter keep posted a correct list of all such delinquents; provided however, that if the parties owing such assessments shall have executed notes and contracts as hereinbefore provided, they shall not be placed upon such delinquent list until after the maturity of such notes and contract. In the event that contract shall be made with the United States, the remedies in this section hereinbefore provided in favor of the district shall apply with regard to the operation and maintenance and rental charges which may become due the United States. Provided, however, that the Federal Reclamation Laws, and in particular, the Reclamation Extension Act approved August 13, 1914, and any acts amendatory thereof shall be applicable. Moreover, all water, the right to the use of which is acquired by the district under contract with the United States, shall be distributed and apportioned by the district in accordance with the Acts of Congress, and rules and regulations of the Secretary of the Interior, and the provisions of such contract in relation thereto, and it is so enacted. [Acts 1925, 39th Leg., ch. 25, p. 116, § 109.]

Art. 7880—110. Surplus or deficiency; notice of assessment.—In the event the assessment made as provided for in the preceding section [1] should be more than sufficient to meet the necessary obligations of the district, the balance shall be carried over to the next season; and in the events the assessments are not sufficient to meet the expenses the balance unpaid shall be assessed pro rata, in accordance with the assessments previously made for the then current year, and shall be paid under the same conditions and penalties within thirty days from the time such assessment is made. Public notice of all such assessments shall be given by posting printed notice thereof in at least three public places in the district, and printed notice shall be mailed to each land owner, provided, however, that each land owner shall furnish to the board of directors his correct postoffice address. Such notice shall be given by posting and mailing such notice five days before the assessment is due, and in the event of special assessments such notice shall be given within ten days after such assessments are levied. [Acts 1925, 39th Leg., ch. 25, p. 118, § 110.]

[1] Article 7880—109, ante.

Art. 7880—111. Collection of assessments.—All assessments for maintenance and operation expenses under the provisions of this Act shall be collected under the direction of the directors by the assessor and collector of taxes, or other person designated by them, which said officer shall give such bond as they may direct conditioned upon the faithful performance of his duties and accounting for all money collected. He shall keep a true account of all money collected and deposit the same as collected in the district depository and shall file with the secretary of the directors a true statement of all money collected once each week. The collector shall use duplicate receipt books and shall give a true receipt for each collection made, retaining in such books true copy thereof, which shall be preserved as a record of the district. [Acts 1925, 39th Leg., ch. 25, p. 118, § 111.]

Art. 7880—111(a). Lease of irrigation system; receiver for leased properties.—Any district operating under the provisions hereof, acting by resolution of its Board of Directors, may lease all or any part of any irrigation system serving such district in whole or in part, including distribution laterals, trunk or transmission canals, pumping plants, intakes, and all usual or necessary appurtenances, for such period of time not exceeding forty (40) years as may be specified in such resolution. All money due the lessor under such lease for rental, or otherwise, shall be payable solely from the revenues derived by the district from the sale of water supplied through the medium of such system. Where any such lease is entered into, the Board of Directors is hereby required to fix and collect such charges for the water supplied through the medium of the leased properties as will produce revenues sufficient at all times, after making due allowance for delinquencies, to pay promptly all rental payments becoming due under the terms of such lease, and may agree to set aside such amounts into a separate fund as a first charge upon the gross revenues received each year from sales of water, which separate fund shall not be used for any other purpose. The Board may in such lease agree to pay all expenses of operating and maintaining the leased properties from the fund provided by it each year for the maintenance and operation expenses of the district so that the gross revenues from sale of water will be available exclusively for payment of rentals until the amount required for such purpose each year shall have been paid into the separate rental fund. Where such agreement is included in the lease it shall be the duty of the Board to provide for the payment of such sums into the maintenance fund from sources other than the remaining portion of the gross revenues from the sale of water not required to pay rentals, which therewith will be sufficient each year to pay all expenses of operating the district and maintaining and operating its properties and facilities, including the leased properties. The property so leased may lie in part outside the boundaries of the district, and the board may sell surplus water to other districts and to other consumers. The sums payable under the terms of any lease entered into hereunder, and the lease itself, shall not constitute an indebtedness or pledge of the general credit of the district within the meaning of any constitutional or statutory limitation of indebtedness, and the lease shall contain a recital to that effect, together with a statement that payments due thereunder are not payable from any funds raised or to be raised by taxation. The lease may contain such covenants and agreements as to the management and operation of the leased properties, the imposition and collection of charges for water, the disposition of the proceeds of such charges, the insurance, protection and maintenance of the leased properties, the creation of other obligations payable from the revenues derived from the operation of the leased properties, the keeping of books and records by the district, and such other pertinent matters and provisions as may be deemed desirable by the Board of Directors to assure the payment of amounts due under the lease, provided such covenants are not inconsistent with the provisions of this Article. If the district defaults in the payments due under any such lease, any court of competent jurisdiction is hereby authorized, pursuant to the application of the lessor, to appoint a receiver for the leased properties, which receiver shall be under the duty of operating the properties and collecting and distributing the revenues thereof pursuant to the requirements of the

lease and as the court may direct, with all rights and powers enjoyed by the Board of Directors of the district in its operation of such properties. Two or more districts, pursuant to resolutions adopted by their respective boards, may enter into a joint lease under the provisions of this Article, in which event all of the provisions hereof shall be applicable to such joint lease, and the respective rights and liabilities of the districts under such joint lease shall be clearly set out therein. [Added Acts 1947, 50th Leg., p. 448, ch. 251, § 1.]

Art. 7880—111(b). Acquisition of irrigation system; mortgages, assumption of; payment; bonds.—Any district operating under the provisions hereof may acquire by gift, grant, or purchase all or any part of an irrigation system serving such district subject to mortgage or encumbrances, which mortgage or encumbrances shall not be assumed by the district and shall not constitute an indebtedness of the district, but shall constitute solely a charge upon the property encumbered and the revenues thereof. The Board of Directors may determine by resolution, which determination shall be conclusive, that such mortgage or encumbrance represents all or a part of the cost of the properties so acquired, and as such constitutes a purchase money lien thereon for the payment of which the board may contract to use and pledge its revenue derived solely from the sale of water and services supplied through said properties so acquired. If the board desires to provide that revenues derived from taxation or from the issuance and sale of bonds may also be used to pay all or part of the amounts due under such encumbrance, such use shall be authorized only if approved by a majority of the qualified electors of the district voting at an election at which the proposition shall be submitted. Such election shall be held in the same manner and the voters' qualifications shall be the same as herein provided for the holding of elections on the issuance of the bonds of the district. No such election shall be needed unless tax or bond revenue are to be so pledged. Two or more districts may jointly acquire a system hereunder in the same manner provided herein for such acquisition by a single district, in which event the boards of the respective districts shall, in the proceedings authorizing such acquisition, clearly define the respective rights and liabilities of the districts in the property acquired and in the mortgage or encumbrance, and shall fix the proportionate interest and liability of the districts therein. [Acts 1947, 50th Leg., p. 448, ch. 251, § 1.]

Art. 7880—112. Unorganized county.—Districts may be organized in an unorganized county by the commissioners' court of the county to which such unorganized county is attached for judicial purposes. [Acts 1925, 39th Leg., ch. 25, p. 119, § 112.]

Art. 7880—113. Depository; bond; report.—The directors of every district shall select a depository for such district in accordance with the provisions of law for the selection of depositories for counties in this State, and the duties of such depository and the bonds and securities to be given thereby shall be the same as provided by law for county depositories, except as herein otherwise expressly provided. In the selection of a depository the directors of such district shall perform all duties provided by such law to be performed by the county officers in the selection of depositories, acceptance and approval of bonds, and all other acts. All depositories so selected shall furnish good and sufficient bond to fully protect the district and guarantee the safe-keeping of such funds and accounting for same as provided by law. Which bonds shall be approved by the directors. All such bonds shall be recorded in a record kept in the district office for that purpose and preserved in a fire-proof vault or safe.

All funds of the district of any and all kinds shall be deposited in the depository and paid out as herein provided. All said funds shall be paid into the proper account and kept separately, same being: interest and sinking fund account, construction account, and maintenance account. No funds shall be paid from the interest, and sinking fund account except to pay interest and principal on bonded indebtedness and the expense of assessing and collecting taxes therefor.

The district depository shall make a report of all moneys received, and of all moneys paid out at the end of each month and file such reports with such vouchers with the records of said district in its own vault, and shall furnish a true copy thereof to be inspected by any tax payer of said district, and shall be delivered to the successor of such depository. [Acts 1925, 39th Leg., ch. 25, p. 119, § 113.]

Art. 7880—114. District director interested in depository.—In the event the highest and best bidder as district depository should be a bank in which any member of the board of directors should be a stockholder or director, such bank may be selected as such depository if such interested director shall not vote upon the selection of same and the bonds given by the depository may be approved by the other directors. In such event, however, before such bank is selected as such depository or such bonds shall become effective the same shall be presented to the county judge of the county in which such district is situated and be approved by him, but in the event the county judge of said county shall for any reason fail to approve the selection of such bank as depository or fail to approve such bond, then new bids shall be called for and some other bank be selected. [Acts 1925, 39th Leg., ch. 25, p. 119, § 114.]

Art. 7880—115. Municipal corporation within district.—No town, city or municipal corporation shall be included within any district organized hereunder unless the proposition for the organization thereof shall have been adopted by a majority vote of the voters therein participating in such election. Any such municipal corporation included within a district shall be a separate voting district and the ballots cast therein shall be counted and canvassed to show the result of such election therein. No district hereafter organized embracing a town, city or municipal corporation shall include lands outside of such municipal corporation unless the election held therein to confirm and ratify the formation of such district shall be adopted thereby independent of the vote in such municipal corporation.

No district, the major portion of which is in one county shall be organized to include lands in another county unless the election held therein to confirm and ratify the formation of such district shall be adopted by the vote of those voting such portion of such county, independent of the vote of the portion thereof in such other county or counties.

In the event any portion of a district, under the provisions of this section shall vote against the formation of a district and the balance of such district shall vote for the formation thereof such proposition shall be adopted and such district be confirmed and ratified with the exception of the territory so voting against same, which is thereby automatically excluded therefrom and from all debts and obligations thereafter incurred, provided, however, if as many as ten per cent of the voters of such district so organized shall file with the board of directors a petition asking for a new election on such issue, such new election shall be ordered and held for the remaining portion of such district, or such district organization may be dissolved by order of the board of directors and a new district be formed. All lands and property included in such original district shall be subject to the payment of taxes for the payment of all debts and obligations incurred while it was a part thereof in-

cluding organization expenses. The petition asking for a new election herein provided for shall be filed within thirty days after the date upon which the result of such election is canvassed and declared by the directors and not thereafter. [Acts 1925, 39th Leg., ch. 25, p. 119, § 115.]

Art. 7880—116. Letting contracts.—The provisions of law providing for the letting of contracts, furnishing of bonds and other procedure for the letting of contracts for construction work shall apply to all such work involving the expenditure of twenty-five thousand ($25,000.00) dollars or more, but shall not be a restriction upon the authority of the directors to operate and maintain said district or let contracts for less than twenty-five thousand ($25,000.00) dollars for repairs and improvements. [Acts 1925, 39th Leg., ch. 25, p. 120, § 116.]

Art. 7880—117. Lowest responsible bidder; notice.—Contracts, involving an expenditure of more than twenty-five thousand ($25,000.00) Dollars, for the purchase of materials, machinery, construction, and all things whatever, to constitute the plant, works, facilities and improvements of the district shall be made by the directors of the district, as hereinafter specified. Such letting of contracts, save as later provided hereby, shall be advertised as to the general conditions, time and place of opening sealed bids, by publishing notice thereof in one or more newspapers giving general circulation in the State of Texas, and further, by making such publication in one or more newspapers published in each county in which a district, in whole or in part, may be located, and to give general circulation in the district; provided, that if there be no such newspaper published in the county, or counties, of the district's location, then the publication first above provided shall be deemed sufficient. Such notice shall be so published once a week for three consecutive weeks prior to the date upon which such bids will be opened, and the first of such publications shall be circulated not less than twenty-one days prior to the opening of sealed bids.

Contracts may be let to cover all of the improvements proposed to be provided by the district; or the various elements of the improvements may be segregated for the purpose of receiving bids and making awards. Such contracts may provide for the payment of a total sum to be the completed cost of such improvement; or, may be based on bids to cover cost of units of the various elements entering into the works, as estimated, and, approximately specified by the district's engineers; or, such contract may be let and awarded in any other form, or composite of forms, and to such responsible person, or persons, as will, in the judgment of district's directors, be most advantageous to the district, and result in the best and most economical completion of the district's proposed plant, improvements, facilities and works.

It is, however, expressly provided that the total sum required to fully complete such proposed plant, works, facilities and improvements, as stipulated by the district's adopted plans, shall not in any event exceed the total sum estimated by the district's engineer in his plans, adopted by the district prior to the election for the authorization of bonds, to be sufficient to pay the completed cost of all elements of the proposed works, other than the cost of lands, easements and other property necessary to be acquired under the provisions of Sections 125 and 126 of said Chapter 25,[1] or any present or future amendments thereof. No contract which violates this provision shall be valid. The provisions of this Section shall not apply to a district operating under a contract with the United States of America.

It is further provided that if the owners of fifty-one per cent, or more, of the land in the district, either in acres or in assessed value; or, if the owners of fifty-one per cent, or more, of the property subject to the district's tax, in value, as assessed; or, if fifty-one per cent, or more, of the qualified electors of the district, do sign a petition to the directors of the district recommending that the contract for the construction of the district's plant, works and improvements, be entered into by the directors by private negotiation, and not upon notice advertisement and sealed bids, then, and in that event, the directors of the district may, in their discretion, and having due regard to the best interest of the district, enter into contract by individual negotiation, without the publication of notice. [Acts 1925, 39th Leg., p. 120, ch. 25, § 117; Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 25; Acts 1929, 41st Leg., p. 578, ch. 280, § 12.]

[1] Articles 7880—125, 7880—126, post.

Art. 7880—118. Bids.—Anyone desiring to bid on the construction of any works advertised as herein provided shall, upon written application to the directors, be furnished with a copy of the engineer's report showing the work to be done and all details thereof, provided a charge may be made therefor to cover the cost of making such copy. All bids to do any such work shall be in writing and sealed and delivered to the board and shall be accompanied by a certified check upon some responsible bank of the State of Texas for at least one per cent of the total amount bid, and the amount of said check shall be forfeited to the district and the bank certifying to same shall be liable therefor to the district in the event such successful bidder shall fail or refuse to enter into a proper contract therefor or shall fail or refuse to furnish bond therefor as required by law. Any or all bids may be rejected by the directors. All bids shall be opened at the same time. [Acts 1925, 39th Leg., ch. 25, p. 121, § 118.]

Art. 7880—119. Form of contracts; engineer's report.—All construction contracts made by the district shall be in conformity with and subject to the provisions of this Act, and the provisions of this Act shall be a part of all such contracts in so far as applicable thereto either to the contractor or to the district, and the provisions of this Act shall govern whenever the contract is in conflict therewith. The contract shall be reduced to writing and signed by the contractor and the directors and a copy of same so executed shall be filed with the county clerk of the county or counties in which such district is situated, which copy shall be recorded in a book kept for that purpose and be subject to public inspection. All such contracts shall contain or have attached thereto the specifications for all work included in the contract and the plans and details thereof and all such work shall be done in accordance with such plans and specifications under the supervision of the directors and the district engineer. As the work progresses the district engineer shall make full written reports to the directors showing in detail whether the contract is being complied with or not and when the work is completed the engineer shall make a detailed report of same to the directors. [Acts 1925, 39th Leg., ch. 25, p. 121, § 119.]

Art. 7880—120. Payment on contract; inspection.—Such construction contract may be paid for in partial payments as the work progresses but such payments shall not exceed 85 per cent of the amount due at the time of such payment as shown by the report of the engineer of the district. The directors shall at all times during the progress of the work inspect the same and cause the same to be inspected by the district engineer and his assistants and upon the completion of any contract in accordance with its terms they shall draw a warrant on the depository of the district to pay any balance due thereon. [Acts 1925, 39th Leg., ch. 25, p. 121, § 120.]

Art. 7880—121. Contractor's bond.—The person, firm, or corporation to whom such contract is

let shall give a good and sufficient bond payable to the district in such amount as the directors may determine, not to exceed the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of such contract and that in default thereof they will pay to said district all damages sustained by reason thereof or complete said contract according to its terms. All sureties signing such bond shall be bound thereto and thereby to the same extent that the principal thereon is so bound regardless of the technical defenses. Such bonds shall be approved by the directors and shall be deposited with the depository of the district, a true record thereof being made in a record book in the office of the district. [Acts 1925, 39th Leg., ch. 25, p. 121, § 121.]

Art. 7880—122. Crossing railroad, interurban or street railway.—Every such district is authorized and empowered to make and construct all necessary bridges and culverts across or under any railroad tracks and roadway of such railroad, interurban or street railway of any description to enable them to construct and maintain any canal, lateral, ditch, or other improvements of such district. Same shall be paid for by the district, provided, however, that notice shall be given by the district in writing to any local agent, superintendent, or roadmaster or owner of such railroad track, and the railway company or the owner thereof shall be allowed sixty days to build such bridge at their own expense if they should desire to do so and according to their own plans, provided such canals, culvert, ditch or structure shall be constructed of sufficient size and proper plan to serve the purpose for which it is intended. [Acts 1925, 39th Leg., ch. 25, p. 122, § 122.]

Art. 7880—123. Crossing county or public road.—Such districts are hereby authorized and required to build all necessary bridges and culverts across and over all canals, laterals and ditches made and constructed by such district, whenever the same crosses a county or public road, and shall pay for the same out of the funds of said district. [Acts 1925, 39th Leg., ch. 25, p. 122, § 123.]

Art. 7880—124. Facilities for drainage; levees.—Included in the plans of any such district may be the necessary drainage ditches, or other facilities for drainage, and necessary levees for the protection of land under the system. [Acts 1925, 39th Leg., ch. 25, p. 122, § 124.]

Art. 7880—125. Property of district; conveyance to United States.—Eminent Domain: Districts operating under the provisions of this Act are hereby empowered to acquire all lands, materials, borrow and waste grounds, easements, rights of way and everything deemed necessary, incident or helpful for the purpose of accomplishing any one or more of the objects authorized for water control and improvement districts, which shall be held to mean the accomplishment of said objects by any practicable mechanical means: They will have the right to acquire all such property by gift, grant, purchase or condemnation: The right to acquire property as herein bestowed shall include property deemed necessary for the extension or enlargement of the plant, works, improvements or service of such districts. Such districts may acquire either the fee simple title to, or an easement upon, all lands, both public and private, either within or beyond the boundaries, and may require the title to, or an easement upon, property other than lands held in fee: Such districts may so acquire such lands, easements or other property by gift, purchase or condemnation, and in case of such condemnation, the district may elect to condemn either the fee simple title, or an easement only, as is elsewhere provided in this Act. Such districts shall have the right to operate all such plants, works and improvements, and to contract for the use of its water, power, or other facilities, or service, by another, either within or beyond the boundaries of the district; provided no such contract shall be made in such manner as to impair the ability of the district to serve lawful demands for service within such district. Any property acquired may be conveyed to the United States of America, in so far as the same may be necessary for the construction, maintenance and operation of works, for the benefit of the district, by the United States under contract.

Any property or land owned by the district which may be found not to be reasonably required to carry out the plans of the district may be sold under orders of the directors of the district either by public or private sale, and in case the district making such sale has then outstanding bonds, the proceeds of such sale shall be applied as follows:

(1) To retiring outstanding emergency warrants, if any, issued to protect ultimate liability of the district in condemnation proceedings as is elsewhere provided in this Act:

(2) The remainder, if any, shall be placed in the interest and sinking fund account provided for the retirement of outstanding bonds of the district:

(3) However, in case any water control and improvement district is the owner of any property or land, which may be found not to be reasonably required to carry out the plans of the district, and, if in any such case the district has not available to it, money from other sources to complete the plans upon which its construction work and its bonds were authorized, then and in such case, to the degree required and notwithstanding the other provisions of this section, any such district, in order to complete the work embraced within its plans for improvements, shall have the right and power to use the proceeds derived from the sale of any of its property or land so found not to be reasonably required to carry out the plans of the district. Any excess of such proceeds shall be applied as provided in subdivisions (1) and (2) of this Section.

(4) Provided further, it shall not be a prerequisite to the sale by the district of any property bid in by it at any sale under foreclosure of its tax lien, or of its lien for charges or assessments imposed by it, or any property acquired by it other than for the purpose of carrying out the plans of such district, to formally determine that said property is not reasonably required to carry out the plans of the district, or to give any notice of the intent of the district to sell such property, or to apply the proceeds of any such sale as provided in subdivisions (1), (2), or (3) of this section. [Added Acts 1947, 50th Leg., p. 501, ch. 295, § 1.]

It is provided, however, that before making sales, either public or private, of any such property, the district must give notice of the intent so to do by publishing advice of the intent in one or more newspapers to give general circulation in the district, and such notice shall be published once a week for two consecutive weeks. [Acts 1925, 39th Leg., p. 122, ch. 25, § 125; Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 18; Acts 1929, 41st Leg., p. 578, ch. 280; Acts 1933, 43rd Leg., p. 564, ch. 184.]

Art. 7880—125a. Sales and conveyances by districts validated.—All sales and conveyances made by any water improvement district, or water control and improvement district, made prior to the going into effect of this Act, of property bid in by it at any sale under foreclosure of its tax lien, or of its lien for charges or assessments imposed by it, or otherwise acquired by it other than for the purpose of carrying out the plans of such district, are hereby in all things confirmed and validated, regardless of whether or not any prerequisite of any such sale or conveyance provided by law was complied with in the making of any such sale or conveyance; provided that the provisions of this section shall not apply to any such sale or conveyance the

validity of which is challenged by litigation pending at the time this Act goes into effect. [Acts 1947, 50th Leg., p. 501, ch. 295, § 2.]

Art. 7880—126. Eminent domain.—For the purpose of condemning property (as herein defined), all Districts now operating or hereafter to be operating, as Water Control and Improvement Districts, shall have the right to proceed as hereinafter provided for, viz:

(a) The Board of Directors of the District shall have the right to elect to proceed for condemnation under the provisions of Title 52, Eminent Domain, of the Revised Civil Statutes of Texas, Code of the year 1925, and as therein provided for condemnation by counties, save as otherwise specifically is provided by this Act; or, if such Board of Directors by their Order for condemnation so elect, the District shall have the right to proceed for condemnation in the manner hereinafter provided, viz:

(b) At any time, or separate times, after a District has adopted a plan for improvements, so that it may definitely be determined what property should be acquired in fee simple, or placed under easement, as being, either instantly or prospectively, needed for, or incident to, or helpful for, accomplishing the objects of the District, and to effect the efficient and economical operation thereof, the Directors of the District may cause to be presented to the Judge of any District Court for a Judicial District in which any part of the District may be located, either in term time or in time of vacation, a petition praying the Court to appoint a Tribunal of three men who collectively shall constitute a Tribunal to exercise Judicial functions within the limits of this Act. This petition shall be docketed as provided for causes and the Order thereon shall be entered in the Minutes of the Court. In said petition the Directors shall nominate for appointment three men of lawful age who shall have qualifications as follows: All shall be qualified electors of this State; one shall be a lawyer deemed to be learned in the Law of Eminent Domain, and the exercise of rights thereunder; two shall be men deemed to have good knowledge of the value and uses of lands, injuries to lands, and benefits to lands to be affected by the proposed condemnation; all shall be disinterested men, of good moral character; no one of them may knowingly be related within the third degree of consanguinity or affinity to any member of the Nominating Board, or the Judge having jurisdiction, or to any person known to be asserting title to, or an interest in, any property proposed to be condemned.

(c) If the District Judge having jurisdiction be disqualified because of interest, or if he from any cause be absent from his District or does not act, the said petition may be presented to a Judge for any Judicial District lying adjacent to the District of the original presentation. Said petition shall be sufficient if it states that necessity for condemnation by the District has arisen and gives the name of the County or Counties in which the property to be condemned is situated. Said petition shall contain the name and address of each person known to have title to or an interest in any property proposed for condemnation. If no address is known, and could not be ascertained by the use of reasonable diligence, the petition shall so state. Notice of the hearing on said petition shall be as follows: The notice shall be written or printed and shall give advice of the time and place and object of the hearing on said petition, and shall state that all interested persons will be heard to make objection to any person by said petition nominated for appointment. The District Judge having jurisdiction shall set said petition down for hearing for a time not less than ten (10) days nor more than fifteen (15) days after the day of the presentation of said petition, and shall cause the Clerk of his Court, not less than five (5) days prior to the day set for the hearing of said petition, to send to each owner whose name and address is given in the petition, by registered mail, a copy of the notice hereinbefore provided for; and, in addition thereto there shall be citation by publication by publishing said notice in one or more newspapers having general circulation in the area to be affected by the condemnation proposed, which publication shall be circulated one time on a day not less than five (5) days prior to the day set for the hearing of said petition, and such publication shall be given the effect of actual service on all interested persons, whether known or unknown, and whether named or not named in said petition. At the time and place fixed by the District Judge for the hearing of the petition, and after hearing protest by all interested persons, the Judge, for good cause shown, may refuse to appoint any or all of those persons nominated in the petition and, in lieu thereof, he may appoint other persons deemed by him actually to be qualified under the provisions of this Act. If good cause for refusal is not established the Judge shall appoint the persons nominated in the petition, whereupon said proceeding shall be terminated, and no appeal from the action of the Court can be maintained. The costs of procedure hereunder shall be paid by the District proposing condemnation. In case any member of the Tribunal so constituted does, from any cause fail or refuse to act, or become disqualified to act, he by petition to the Court of Jurisdiction may be removed and a qualified substitute nominated and appointed to serve in his place after observing the same procedure as hereby is provided for an original appointment, except that citation by publication shall not in such instance be required; the written notice shall be instantly deposited in the mail; and, the hearing may be held on the third day after notice is deposited in the mail, or as soon thereafter as the Court may be able to act on the petition. In case of disqualification of some member of the Tribunal for Condemnation to act as to some parcel of property because of interest or relationship, a substitute may be appointed to serve only in the matter as to which the disqualification exists, provided, however, that in such case notice shall be given only to the person interested in the property to which the disqualification is related.

(d) Within ten (10) days after such appointment, or as soon thereafter as is practicable, each person so appointed shall file with the Secretary of the condemning District a written oath to be substantially as follows: "I swear (or affirm) that I, as a member of the Tribunal to hear and determine matters incident to the condemnation proceedings instituted by (insert name of the District) will fairly, impartially, and without interest, prejudice or favor, discharge my duties as a member of the Tribunal appointed by the Judge of the District Court for the ——— District of Texas." So qualified, they collectively shall be established to be a Judicial Tribunal within the meaning and intent of Section 1 of Article 5 of the Constitution of Texas, and they shall have all such duties and powers for procedure and for effecting the administration of Justice (insofar as is appropriate to accomplish the purpose of this Section 126) as now are, or as hereafter may be, conferred on County Courts and the Judges thereof.

(e) The lawyer member of said Tribunal shall be their advisor as to matters of law. The words "they" or "them" as hereinafter used, unless otherwise stated, will be understood to refer to the "Tribunal for Condemnation." They may organize for the dispatch of business as they deem best, save that two members shall be required for a quorum and no matter may be decided save by the concurrence of at least two members. The proceedings shall be as free from technicality, and as summary in character as will in fact accomplish substantial justice. The Clerk of the District shall furnish them the service of a competent person to serve them as Clerk, and orderly Minutes of their proceedings shall be kept; such Minutes shall be signed by all participating members, and shall be a

public record. The Tribunal shall have a seal bearing the name of the District and the words "Tribunal for Condemnation."

(f) (Prescribing the conditions under which and the manner by which the District may, from time to time, present to the Tribunal petitions for condemnation and fixing the requisites of such petitions.) At any time or times after the adoption and approval of plans for improvements (or for the enlargement, extension or alteration thereof), as required by Subdivision (b) of this Section, the Board of Directors of the District may order the condemnation of any land or other property, and therein may elect to condemn the fee simple title to land, or to condemn an easement only. It further is intended that part of any given tract of land may be condemned in fee simple, and part placed under an easement only. The Order of Condemnation shall be recorded in the Minutes, and it shall be sufficient if it within itself or by reference to exhibits, which may be maps or plats, makes certain that land to be placed under condemnation in fee simple, that land to be placed under an easement, and, in appropriate case to identify any other property which is required to be taken; provided, however, that when by the exercise of reasonable diligence, the name and address of any owner or owners of each separate tract of land, can be given, the same shall be stated and appropriately related to the property as to which the ownership exists. Said Order shall contain a general statement showing the necessity for the taking, but no such Order shall be held invalid because of fault in such statement. It, further, is provided that any such Order may be amended in any and every particular, at any time during the further proceedings herein established, provided only that any person affected by such amendment, or his agent or attorney, must be given actual notice of such amendment before any action is taken thereunder. Said Order for Condemnation and all exhibits thereto shall be prepared in duplicate, and one such shall be delivered to the Clerk of the Tribunal for Condemnation, and by him filed as a record of said Tribunal, where the same shall constitute a petition for condemnation.

(g) The Secretary of the Board of Directors shall serve the Tribunal as a Secretary, or said Secretary, subject to approval by the Tribunal, may appoint another well qualified person to serve as a secretary, and the person so acting shall attest all records and reports as "Secretary." The person appointed so to serve shall take and subscribe an oath that he will keep and preserve a true written record of all material proceedings, findings, appraisements and assessments concerning the duties of said Tribunal. Such Secretary shall furnish to said Tribunal such information and assistance as may be within his power and necessary to the performance of its duties.

(h) Said Tribunal shall have jurisdiction and the power to do and to decree all those matters and things by this Act provided to be done by said Tribunal.

(i) Within thirty (30) days after qualifying and organizing as hereby directed, the Tribunal shall begin the discharge of its duties, and may at all times require the presence and necessary assistance of the District's Engineers and Attorneys, to the end that it may be able intelligently to perform its duties.

(j) Said Tribunal shall proceed to view all the lands, or other property, both public and private, both inside the District and beyond the boundaries of the District, which may have been ordered to be condemned. The findings of the Board of Directors of the District, after advice by the District's Engineers, as to the seeming necessity, or advisability, to acquire any such property or part thereof in fee, or alternately under an easement, for any purpose connected with or incident to, the full completion and practical operation of the improvements contemplated to be, instantly or ultimately, provided under the District's plans for improvements, shall be final and not subject to Judicial Review save for fraud, palpable error or such arbitrary act as would constitute actual fraud; provided, however, that the Directors shall receive, hear and determine protests or recommendations relating thereto, as is provided in Section 42 of said Chapter 25.[1] Such determination shall be made by the Directors before the Tribunal proceeds to viewing property as herein provided, and the specific identifying conclusions of the Directors shall be furnished to the Tribunal. This record shall be accompanied by a designation of all property, or easements, or agreements for liquidated damage, which have been placed under voluntary option to, or adjustment with, the District. The Tribunal shall omit consideration of any matter already so adjusted. Said Tribunal shall appraise and assess the values of all affected lands, easements or property rights within and without the District, and shall specifically appraise and assess the damages justly to compensate and liquidate all injuries to be done to each item of property affected. In assessing the value of property sought to be condemned, damages and compensating benefits, said Tribunal shall be governed by the provisions of Article 3265 of the Revised Civil Statutes of Texas. All provisions of Title 52 of the Revised Civil Statutes of Texas, shall control condemnation proceedings hereunder as to all matters not herein otherwise provided for, but the specific provisions, and intent, hereof shall control in all cases of doubt. It is provided, however, that the Directors of a District may by their Order entered of record elect to waive the provisions of this Section, insofar as the same relate to procedure for condemnations, and in such event the procedure for condemnation may be the same as that prescribed for counties as the same is provided in Title 52 of the Revised Civil Statutes of Texas.

If said Tribunal shall omit to return or assess damages to any specific parcel of property, either within or without the District, it shall be deemed an affirmative finding that no damage will be done to the omitted parcel of property.

The Tribunal shall prepare a specific and detailed proposed report of their findings, which shall show the owner of each parcel of property examined, and on, or concerning which, any appraisements, award, finding, or assessment is made, together with such description of such property as will identify it and relate it to the appropriate appraisement, award, finding or assessment. This record shall separate and distinguish: (1) the value of property to be taken by the District in fee simple: (2) the amount of compensation for an easement to be taken by the District: (3) the amount required to precompensate[2] and justly to liquidate the injury or damage to be done to property not being condemned and taken in fee simple or placed under an easement: (4) such record shall, in an appropriate case, specify the parts of a parcel of property falling within more than one of the classifications herein given and shall allocate to each portion its appropriate classified assessments.

The record herein specified shall be prepared in triplicate and shall be approved and signed by at least two members of the Court hereby constituted:

The proposed report shall show the number of days each member has actually served and the actual expenses necessarily incurred by each in serving the District; each shall be paid by the District reasonable fees and in no event to exceed Twenty-five ($25.00) Dollars per day of service, together with his actual expense as the same be approved. Said Tribunal in its proposed report shall fix times and places when and where they shall hear objections to their findings as reported. In fixing a place, or places, for hearing objections, the Tribunal shall have regard to the prevailing convenience of the property owners.

(k) When the proposed decree shall have been delivered to the Secretary of the Board of Directors of the District, the same shall become a permanent record of the District, and shall be open to examination by all persons interested therein. Upon the filing of such report the Secretary of the District shall forthwith give notice thereof by publication in one or more newspapers giving general circulation in the District and in each of the counties in which there may be located any affected property, once a week for two consecutive weeks prior to the day fixed for a hearing, or hearings. It is provided that each hearing as to land situated in any given County shall be held in the County of the location of the land proposed to be condemned, and in such part of said County as will be most convenient to the majority of the land owners. One notice may specify a hearing day and place for one County only, and there may be notice for different days and places of hearing for other counties; the first publication must appear not less than fourteen (14) days prior to the hearing. The published notice shall be in substantially the following form:

LEGAL NOTICE

To the owners of, and all other persons having an interest in lands or other property lying in ——— County ———, Texas: Take notice that a copy of the adopted plans for improvements by ——— County Water Control and Improvement District Number ———, are now open to inspection by any one interested therein at the District's office at ———, Texas: These plans, contour maps and specifications will make manifest how your property will be affected. The Tribunal heretofore appointed have appraised and assessed property values, and benefits and damages accruing to the affected lands, and other property, both within and without this District, which will be condemned and taken, or subjected to an easement, or damaged, or otherwise affected by carrying out the plans for improvements to be provided by this District. The recorded report of said Tribunal is open to inspection by any interested person at ———, in ———, Texas: Any interested person may make specific written objections thereto in whole or in part, and any person claiming damage to their property, within or without the District, as to which no damages have been assessed in said report are required to file an itemized claim for such damages in the District Office on or before the ——— day of ———, ———, and all persons failing to make such objection or claim for damages will be deemed to have waived the same. Further, take notice that the said Tribunal of Appraisement will meet on the ——— day of ———, ———, at ———, Texas, for the purpose of hearing and acting on objections to their proposed decree, and to hear, consider and determine claims for compensation and damages.

———
Secretary.

The Secretary of the Board of Directors of the District also shall, at least ten (10) days prior to the day for any given hearing, mail a written notice to each person whose land, or other property, is listed in the proposed report of the Tribunal, if the post office address is known, stating the time and place of the meeting which such person is expected to attend, which notice shall state appropriately and in substance that the report of the Tribunal to assess burdens upon, values of, benefits to, and damages to, the lands and other property which will be affected by the District's plans for improvements, has been filed in the District's Office, giving the location thereof, and that the advised person may examine the same together with the District's plans, contour maps, and specifications, and make and file written specific objections to all or any part of such report; further, that the Tribunal will meet on the day and at the place named for the purpose of hearing the notified person and acting on objections to such report. In lieu of mailing notice as herein provided, personal notice may be executed and return made under oath, by any person appointed thereto by the Secretary of the District, in the same manner and upon the same persons, officers or agents as is, or may be, provided for service of citations in suits pending in the District Courts of Texas.

The Secretary of the District upon the first day of the hearing shall file in the District's Office the original notice as published with his affidavit thereto, showing the manner of publication, the days on which, and the newspaper, or newspapers in which such notice was published, and shall also certify the names and addresses of all persons to whom notices have been mailed, or upon whom actual service may have been had; further, he shall affirmatively show that he has caused personal service to be executed, or has mailed to, or served upon, timely notice to each land owner whose address was known or could be known by the exercise of reasonable diligence.

(l) At, or before, the hearing upon the filed report of the Tribunal of Appraisement, any owner of land, or other property, affected by such report, or by the District's plans for improvements, either in person, or by an attorney or other agent, may file exceptions to all or any part of such report, and any person as to whose property no damages have been assessed, and who believes that his land, or other property, will be damaged by carrying out the plans for improvements, may, and shall, also file with the District a claim for such damages:

Said Tribunal, at the time and place named in such notice, shall proceed to hear evidence and determine all such objections and claims for damages, and shall make such changes and modifications from time to time as will cause its proposed decree to conform to the justice of each case under the facts presented; they may grant, in whole or in part, or may overrule, any claim for compensation or damage, or any other exception to their proposed report. Such hearing may be recessed from one day or place to other days and places, to be announced on open meeting, until all persons desiring a hearing have been heard.

When said Tribunal shall have finally determined all presented matters, concerning their proposed report, they shall enter their final decree concerning such proposed report insofar as it is confirmed, and approving and confirming the same as modified or changed, insofar as the same has been modified and changed, and shall in their decree condemn all such land, easements, rights of way, or other property, within or without the District, as shall have been deemed by the Directors of the District to be needed, and designated to make effectual and practicable the construction and operation of all works, improvements and services which may be planned ultimately to be provided by the District, and to accomplish any or all of the purposes designated in this Act. Said Tribunal shall have the power to apportion and adjudge costs incurred upon any hearing in such manner of allocation as may be deemed equitable. Such condemnation shall be either of the fee simple title, or of an easement only, as the Directors of the District may have elected and designated. The Tribunal shall adjudge and award all compensation for property to be taken, or placed under easement, and shall award all damages, if any there be allowable under the law.

A certified copy of the final decree of condemnation concerning the property in each County shall be filed with the County Clerk of such County for record, and such record shall be notice to all persons of the contents of such decree. The original decree shall be a permanent record of the District and shall also constitute notice. The final decrees of said Tribunal concerning any matter shall be subject to Appeal, or Judicial Review, in the manner hereby specified, and not otherwise: Such Appeal, or Review, may be effected in the following specific manner:

The Directors of the District, in the name and behalf of the District, or any person having an interest in the decree of the appraisers, may appeal from the decree assessing or refusing to assess damages, or fixing compensation for the value of property taken or subjected to an easement; the only questions which may be considered on appeal shall be, whether just compensation has been allowed, or whether any damages are lawfully recoverable. Such appeals shall be taken to the District Court having jurisdiction over the area in which the land condemned is situated, either in whole or in part. The Courts of Jurisdiction shall be such number as are required to provide appeals in the jurisdiction within which any given land is situated. All appeals for each given County shall, however, constitute one proceeding on the docket of any such Court, as elsewhere is provided in this Act. Such District Courts shall have jurisdiction regardless of the amount or the number of the separate claims involved. Such appeal may be perfected as follows: Notice of appeal shall be given at any time within two (2) days after the entry of the final decree by the Tribunal of Primary Jurisdiction by filing written notice of an appeal, which shall be a simple statement that the undersigned gives notice of appeal from the decree entered on the date stated, and specifying the exact claims sought to be established by such appeal. This notice shall be filed with the Secretary of the District, and appellant shall within five (5) days after the entry of the decree appealed from file with the Clerk of the Court to which the appeal is being prosecuted an appeal bond with two or more good and sufficient sureties, in an amount to be double the costs, if any, already allocated to appellant, plus double the amount estimated by such Clerk to be incurred on the appeal being taken. Such bond shall be payable to such Clerk of the Court to which the appeal is being prosecuted and shall be subject to his approval as to sufficiency. The condition of such bond shall be that appellant will prosecute his appeal with effect,[3] and pay all such costs as may be awarded against appellant by the Court. Unless an appeal is perfected, as herein provided, within seven (7) days after the day of the rendition of the final decree of said Tribunal, such decree, as to any given matter not so appealed from, shall be instantly final and conclusive, and there shall be no extension of time for the filing of an appeal bond. Within twelve (12) days after the entry of said final decree of condemnation, if appeal shall have been prosecuted therefrom, the Secretary of the District shall file with the Clerk of such Court a certified transcript of the final decree of condemnation, insofar as may be required to show the facts concerning the items of decision appealed from, together with the original notices of appeal, or a certificate showing the names and addresses of all persons who gave notice of appeal, and to include the stated grounds upon which each of such appeals has been predicated,[4] as herein provided, and it shall not be necessary to file any other or additional pleadings in said Court. All appeals hereunder shall constitute one cause in the District Court and shall be so docketed. The docket shall, however, recite the name of each of the parties to the proceeding and shall be indexed accordingly. The Court, upon motion, may grant, or refuse to grant, a severance as to any separate claim arising out of distinction as to ownership. It is provided that an appealing District shall not be required to give a bond for costs. Upon the filing of said appeal the Court shall set the same down for a hearing, either in term time, or in vacation, before the Court without the intervention of a Jury, notice of such hearing shall be given by the Clerk of the Court by mailing to each interested party, whose address is known, by registered mail, a letter giving advice of the date and purpose of the hearing, which shall be deemed sufficient notice. As to persons not actually served, or whose interest, or address is not known, the original publication of notice of the hearing by the District's Tribunal shall be deemed sufficient notice of all proceedings in the County Court. Such hearings shall be held at a time not less than ten (10) days, and not later than twenty (20) days after the day of the mailing of the notices herein directed to be given. An incomplete hearing may be recessed from one day to any other stated day, or may be continued to the next term, or succeeding terms, of the Court. Such hearings shall be by the Court given precedence over all Civil causes upon the docket not of a character involving the public welfare, shall be concluded with all reasonable dispatch, and shall be as summary in character as is consistent with the doing of full and complete justice.

The Court shall proceed to hear evidence proper to be considered under any filed exception. After having heard all evidence and argument offered, the Court in term time shall enter its final decree, either approving the decree of the Tribunal of Original Jurisdiction, modifying the same, or in any manner changing the same, so that the decree will in the Court's Judgment conform to the justice of each specific case. As to all matters not herein specifically, or by logical intent, provided for, the Court's decree shall conform to the provisions of Title 52 of the Revised Civil Statutes of Texas.

Upon such appeals the claimant shall be considered the plaintiff, and the District shall be considered the defendant, save in those cases in which the District has filed exceptions to the report of the District's referees of appraisement. The admission of evidence and the fixing of awards, so far as applicable and not inconsistent herewith, shall be governed by the law and rules of procedure relating to trials and awards in damage suits. Appeals may be taken from the Judgment of the District Court, as in Civil cases, and each appeal shall constitute a separate cause upon the docket of the Court of Civil Appeals.

No appeal from the decree of the Tribunal to condemn shall delay possession of the condemned property or prosecution of the work; provided, however, the District shall set apart in its designated depository, out of its Construction Fund, a total sum of money to be not less than double the amount of the total award made by the Tribunal of Condemnation, plus such additional sum as may be deemed by the Directors of the District sufficient to pay the costs then incurred, and such costs as may be incurred upon appeal and said Fund must be applied to such payment, and shall not be used for any other purpose. Certificate of such reserve shall be made by the depositary bank to the Clerk of the Court in which appeals may be pending. The Judge of said Court, upon motion made by any aggrieved appellant, may, in case of evident abuse of discretion by the Directors of the District, require the Directors of the District to increase this reserve Fund to a sum deemed by the Judge to be adequate to discharge final awards, which must be complied with before the District shall be authorized to take possession of any property condemned, or to cause damage to any property. In case of appeals by the District, they shall not be required to give bond, nor can they be required to give bond for costs. However, upon compliance herewith the title to all lands, easements, rights of way, or other property condemned shall, after payment, or provision for payment, of compensation, vest in the District, and it shall be entitled to immediate possession thereof.

No person owning or having any interest in any property affected by the District's plans for improvements and service, or its condemnation proceedings had after the giving of notice as herein provided, who has failed to file claim, or objection, or who has failed to appeal from any adverse ruling by the Tribunal to condemn on any claim or objections, as herein provided, shall thereafter be heard to claim from the

District, its officers, contractors, agents or employees, any compensation for property or damage to property other than that which may have been already awarded by the Tribunal. It is, however, understood that this provision shall not apply to claims not incidents of lawful condemnation, construction and operation.

(m) It is specifically provided that nothing in this Section contained shall empower a District to condemn any land, property, easement or facility owned, held or used by another person, when such property is necessary to such person for the purpose of accomplishing any one or more of the purposes in this Act, save and except in such cases as the taking is to serve a public need superior to, or greater than, the use to which any such property may have been devoted.

(n) Any County, Levee District, or Navigation District of this State may elect to proceed to condemnation under the provisions of, and in the manner established by, this Act, having regard only to causing such proceedings to conform to the Law of the being of any such governmental agency. [Acts 1925, 39th Leg., p. 123, ch. 25, § 126; Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 19; Acts 1931, 42nd Leg., p. 466, ch. 275, § 3.]

[1] Article 7880—42, ante.
[2] So in enrolled bill. Should probably read "compensate".
[3] So in enrolled bill. Session Laws read "affect".
[4] So in enrolled bill. Session Laws read "predicted".
Sections 1 and 2 of Acts 1931, 42nd Leg., p. 466, ch. 275, define certain terms used in the act and express the reasons for the enactment.

Art. 7880—126a. Appeal bond not required.—In condemnation proceedings being prosecuted by Water Control and Improvement Districts, which have been established or which may be hereafter established to be "Municipal Districts" under the provision of Section 18 of Chapter 280, of the Acts of the 41st Legislature of Texas, Regular Session,[1] such districts shall not be required to give bond for appeal or bond for costs. [Acts 1932, 42nd Leg., 3rd C.S., p. 54, ch. 23, § 1.]

[1] Article 7880—19a, ante.

Art. 7880—126b. Writ of possession pending appeal; conditions.—In case such plaintiff Water Control and Improvement District desires the writ of possession pending appeal in a condemnation proceeding being prosecuted by it, such writ may be issued on these express conditions, viz:

The amount of the award made by the commissioners to appraise damages, or the amount of the judgment rendered by the trial court upon appeal (to be controlled by the time at which the writ of possession may be sought), together with the amount of the costs, if any, which may have been awarded, or adjudged, against the condemnor and to be ascertained as of the day on which the writ of possession may be sought, must actually be available to the condemnor in lawful money of the United States of America. The sum as ascertained and available to the condemnor shall be set apart in a special fund in the lawfully designated and qualified depository of the condemnor, where it must remain to abide the final adjudication of such condemnation, and application to the satisfaction of such final decree; or in case of appeal by the condemnee, to be paid to him should he (they or it) elect to receive such money in satisfaction of his (their or its) demand at any time prior to such final adjudication, and such fund shall not be paid out for any purpose. The record of the deposit and the conditions thereof shall be acknowledged in writing by the depositary, and such certificate of deposit shall be filed with the clerk of the court of original jurisdiction as part of the record in the condemnation proceeding. Thereupon the clerk of said court shall certify his genuine official signature (or those of his qualified deputies) to such depositary, and the depositary may not pay vouchers drawn upon such special fund save upon written approval of the judge and clerk of said court and also the condemnee. Until such special deposit has been made and certified to said clerk, as herein provided, the writ of possession shall not be issued. Whenever the judgment in condemnation becomes final, or in case of appeal by the condemnee should the condemnee prior to final judgment elect to receive the amount of the award in satisfaction of his demand, it instantly shall be the duty of the clerk of the court and the depositary [1] to pay to the condemnee the sum of the deposit (other than that to cover costs), which may be done either with or without the consent of the condemnor. Any officer, or employee of the condemnor and, or, any officer or employee of such depositary of the condemnor, and, or, the clerk of such court (or his deputy), who knowingly permits such special fund to be paid out, in whole or in part, for any purpose, or in any manner, other than as herein provided, shall be deemed to be guilty of a felony, and upon conviction he may be fined in any sum not to exceed Five Thousand ($5,000.00) Dollars, or he may be imprisoned in the penitentiary of Texas for a term not to exceed three years, and such punishment may include both such fine and such imprisonment. In any event the sureties on the bond of such miscreant, and, or, the bond or security of the offending depositary, shall have responsibility to restore the misapplied or diverted deposit, provided the sum so required, together with other lawful charges against the bond, does not exceed the penal sum of the bond, or the security held in lieu of sureties. [Acts 1932, 42nd Leg., 3rd C.S., p. 54, ch. 23, § 2.]

[1] So in enrolled bill. Session Laws read "depository".

Art. 7880—127. Contribution to construction by other district.—Any district organized under the provisions of this Act may, in so far as its best interests are served thereby, contribute to the construction of any improvement by any other similar district, the construction of which shall contribute to the benefit of the district and in proportion to the cost thereof determined by the directors, and may make contract with such other district with reference thereto. [Acts 1925, 39th Leg., ch. 25, p. 123, § 127.]

Art. 7880—128. Joint ownership or construction.—Two or more districts may jointly own and construct irrigation works and reservoirs, levees, flood control retarding system, drainage systems, and all other plants, works and improvements which they are authorized to own or construct, under the terms and conditions to be set out in a written contract. Any such contract shall not be binding until same shall have been ratified by a majority vote of each of such districts. An election shall be held in each of such districts upon the same day to determine whether such contract shall be adopted. Notice of such election shall be the same as that required for the formation of a district under this Act. Such contract shall be printed or in writing, and a true copy thereof shall be filed in the office of each district fifteen days prior to such election, and be subject to public inspection. and one true copy of same shall be furnished to each voter calling for same at such office at any time within fifteen days prior to such election. When improvements are constructed by two or more districts, bids may be jointly called for and opened and considered at the designated office of either of such districts, and such districts shall approve the letting of the contracts and the contractor's bond, and may meet for that purpose at a place outside of their district, or at any office established for such joint project and at which office all business of such joint project may be transacted, all bids, bonds, contracts, etc., of such joint project may be in the names of such joint project districts, such districts being empowered and authorized to do all acts by joint action that one district may do. The action of each district being determined by its board of directors, a general manager may be employed by such joint enterprises whose

duties may be set forth in the joint ownership contract.

The terms and conditions of such joint ownership contract shall not conflict with the provisions of law providing for the organization and conduct of districts, but may include provisions for joint construction and operation of same. Such contracts may be amended in the same manner as made. [Acts 1925, 39th Leg., ch. 25, p. 123, § 128; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 20.]

Art. 7880—129. Consolidation of districts.—Any two or more districts governed by the provisions of this Act and amendments thereof may be consolidated into one district in the following manner: The terms and conditions upon which such consolidation is to be effected shall be agreed upon by the board of directors of each district, and then the question shall be submitted to a vote in each district after giving notice thereof for at least twenty days in the manner provided by law for other elections. The election shall be held in each district on the same day. The consolidation to be effected only in the event same is adopted by each and all such districts. When two or more districts are consolidated their obligations shall not be impaired but shall be protected and paid by taxes levied upon the property in the district creating such debt or by assessments in the same manner and extent as if said consolidation had not been effected. After consolidation such taxes shall be assessed and collected by the officials of the consolidated district. When two or more districts are consolidated into one district same shall be governed as and be one district, except that the debts created by each district prior to the consolidation shall be paid as herein provided; provided, however, such consolidation district may contribute to such payments upon the terms stated in the consolidation agreement. When two or more districts are consolidated the officers of said respective districts shall continue to act jointly as the officers of said district, and to wind up the affairs of their respective districts as affected by said consolidation, for a period of ninety days after the consolidation election, and they may continue to so act until the next general election if so provided by the consolidation agreement, or the consolidation agreement may provide who shall constitute the first board of trustees to serve until the next general election if the officers then serving agree to resign. Said new officers shall within the period of ninety days after the election qualify as such officers of the consolidated district and assume such offices at the expiration of said period. All bonds of such officers will be approved by the then existing board of directors. [Acts 1925, 39th Leg., ch. 25, p. 124, § 129.]

Art. 7880—130. Benefit or ad valorem basis for tax levy.—Any district now, or hereafter to be, operating under the provisions, and powers, of Section 59 of Article XVI of the Constitution of Texas, shall at the time of its creation, or at any time thereafter before appointing commissioners of appraisement, as provided for in Section 132 and Section 77a of Chapter 25,[1] adopt a tax plan under the alternative provisions of this Section. The intent hereof is to give to districts such flexibility of taxing power as will permit, and cause, the tax of any given district to be in fact equitably distributed, and to give the highest practicable degree of service, under the peculiar physical and economic conditions of such district; To this end, this Section shall be liberally, and sympathetically, construed.

The district's taxes for all purposes, other than for the payment of the cost of preliminary surveys, may be levied, assessed and collected on an adopted basis to be chosen from the elective plans here provided. The district's tax plan may be any one of the following plans, or bases, as follows, viz:

(1) Wholly ad valorem: (2) Assessments in proportion to the respective individual benefits, as the same may be specifically appraised: (3) Ad valorem as to some part, or per centum, of the total tax required, or as to some defined part of the district; and on the basis of specific assessment of benefits as to the remainder of the total tax required, or, and, as to some defined part of the district: (4) Any district created under the provisions of Section 59 of Article XVI of the Constitution of Texas, may, either before or after the sale of Construction bonds, adopt a tax plan which, while wholly ad valorem, or wholly on the basis of assessment of specific benefits, insofar as may be required for the retirement of any obligations of the district, may provide that the district may separately assess, levy and collect taxes on the basis ad valorem, or on the basis specific assessment of benefits, on designated property or defined areas within the district, to make available to, or to reimburse, the district for any sums paid out, or to be paid out, on account of improvements and facilities for service peculiar to such defined part of the district and not generally and directly benefiting the district as a whole. Upon adoption of the plan provided in this subdivision (4), the district may, under the limitations of this Section, separately, differentially, equitably and specifically apply its taxing powers, and lien to a defined area, or designated property, to provide the money wherewith to construct, administer, maintain and operate improvements and facilities peculiar to such defined areas or designated property.

Before the appointment of a commission of appraisement, and the sale of construction bonds, save as provided in subdivision (4) foregoing, and hereinafter provided, the directors of a district shall, as provided in Section 77a, adopt a proposed plan of taxation. If the plan proposed be other than wholly ad valorem, or wholly assessment of specific benefits, then the order adopting a proposed plan shall specify what part of the tax is proposed on each basis; they shall also designate the physical and economic reasons, or peculiar diverse local needs, or comparative potential benefits, of different areas, or designated property, within the district, which, in their judgment, make it necessary, or more equitable, to levy part of the tax, or the tax on a defined part of the district, or designated property, on the basis of assessment of specific benefits, or ad valorem, or a composite of such bases, or separately on defined areas, or designated property, if such be the case. Having adopted such a proposed tax plan the directors of the district shall publish notice thereof in one or more newspapers to give general circulation in the county, or counties, in which the district is located, once a week for two consecutive weeks, advising those interested that a proposed tax plan has been adopted; that the same is open for inspection in the district's office; that a hearing thereon will be held by the directors at a specified place and at a certain time, to be not less than fifteen days, nor more than twenty days, after the first publication of notice; that all interested persons may appear and contend for, or protest against, the proposed tax plan, or any part thereof, and offer testimony thereto. After all persons appearing shall have been heard, the directors may approve said tax plan as proposed, or they may change or modify the same, and thereupon approve and adopt such tax plan as will in their judgment, under the evidence before them, most equitably distribute the district's tax burden and conserve the public welfare: Thereupon they shall enter their order establishing the district's tax plan, which shall become the basis for the assessment and collection of taxes by the district, until such time as a different plan may be adopted, which may at any time, when required to preserve equity of distribution, be done in the same manner herein provided. This order shall not be subject to judicial review save

upon the ground of fraud, palpable error, or, arbitrary and confiscatory abuse of discretion. No change of tax plan shall be adopted which will impair the ability of the district promptly to meet all outstanding obligations of the district within the intent of Section 91 of said Chapter 25.[2]

If a district has adopted the tax plan, and assumed the powers, set out in subdivision (4) of this Section, and, acting thereunder, does desire to define an area within the district requiring, or desiring, improvements or facilities peculiar to that area and not generally affecting the district as a whole, then such improvements, service, or facilities, peculiar to such designated area, or property and not affecting the district as a whole; or when such improvements, though local in character, are required to conserve and protect the public welfare, may be provided, paid for, maintained and operated in the following manner, viz.:

(a) The directors of the district shall define the area by metes and bounds, or designate the property, to be served, affected and taxed: (b) They shall adopt a plan for improvements within the area, or to serve the property designated, as is provided in Section 78 of said Chapter 25:[3] (c) They shall adopt a plan of taxation to apply to the defined area, or designated property, which tax may, or may not, be in addition to other taxes imposed by the district on the same area of property. The proportional tax, or income, contributions of a defined area, or designated property, to the district, and the proportional and equitable interest of the district at large, shall be taken into consideration in imposing any tax to be peculiar to the designated area or property: (d) They shall hold a hearing in the same manner, to the same purpose and after the same notice as is before provided in this Section. If at such hearing the directors of the district find for defining and serving the proposed separate tax area, or separate designated property, they shall enter their order of record, and if such proposal involves the issue of bonds by the district, they shall call an election in the district as a whole, and the issues may be submitted on the same ballot to be used in any other election to be held, submitting to the qualified electors of the district the appropriate issues, and such election and issues shall in all things conform to the appropriate provisions of Sections 78 to 83, both inclusive, of said Chapter 25, as now amended,[4] or as may hereafter be provided: In addition to said requirements, the notice of election in this Section provided shall define the area to be designated and the plan of taxation to be applied to the defined area, or designated property. If the improvements proposed to be provided within a defined area are deemed to be peculiarly for the benefit of the area, and not required to conserve the public or general welfare within the district as a whole; and, if in such case the proposed improvements within the defined area will require the imposition of a tax burden peculiar to that area; then, and in case of the concurrence of these conditions; such defined area shall be constituted a separate election precinct wherein there must be held an election to determine if such improvements shall be provided, as proposed by a plan adopted as in this Act provided, and a separate tax levied on the defined area. Such election shall be held in such manner as will in all things conform to the provisions of this Act relating to the issuance of bonds by a district: If a statutory majority vote in the defined area favors the proposal, then the district shall, when necessary provide money, and shall provide the improvements and levy the tax. At an election within such defined area, in addition to the qualified electors who reside within the area, each qualified elector of the district who is the owner of taxable land located within the defined area, may elect to vote therein and not to vote in the precinct of his residence. In case of an election favoring the issuance of bonds and the levy of a tax peculiar to such defined area, the district may issue bonds pledging only the faith and credit based on the property values within the defined area: The district may however pledge the full faith and credit of the district as a whole under the condition of authorization set out in subdivision (i) of this Section. If the proposed improvements are deemed to be required to promote the public welfare; or, if the owners of all of the land within a defined area file a petition, acknowledged as required for deeds, requesting the district to provide improvements and assess the tax to be peculiar to the area; then, and in either event, it shall not be necessary to constitute such area a separate election precinct and have regard to the vote therein. (e) The ballot for an election under the provisions of this Section, in appropriate case, shall have printed thereon substantially the following: "For designation of the area, the issuance of bonds and the levy of a tax to retire bonds", and, in appropriate case, "to administer, maintain and operate works and facilities", and "Against such designation, the issuance of bonds and tax levies": (f) If the majority vote favors the proposal, the directors of the district shall declare the result and by their order establish the area and define the same by metes and bounds, or designate the specific property, and fix the tax basis therefor. A certified copy of this order shall be recorded in the minutes of the district, which shall constitute notice thereof: (g) Thereafter the district may issue its bonds to provide the specific plant, works and facilities embraced in the plans adopted for such defined area, or to serve such designated property, and shall provide the same; they shall in appropriate case, separately levy, assess and collect taxes on the property located in the defined area, or upon the designated property, in conformity to the tax plan adopted: (h) property, or areas, either within or without the boundaries of a district, may by contract, be designated for the purpose of procuring improvements, facilities or service for such designated property, or area. Such designation shall be based upon a written petition, authorized in conformity to the laws governing the making of contracts by the petitioner, or person (as defined in Section 1 of this Act), owning, controlling or governing the property or areas desired to be designated. Such designation may be established by the district's directors under contract for providing, administering, maintaining and operating the desired improvements, facilities or service for such designated property, or area. Such designated property, or area, thereupon shall become subject to being made the basis of bonds to be issued by the district and may be subject to a tax lien by, or for the amount of, the district, to retire the obligations which the district may incur to provide the improvements, facilities or service peculiar to the designated property or area, and as well to cover the expense necessary to administer, maintain and operate such improvements and facilities, in conformity to the contract or designation. It is provided that all such contracts for designation, the issuance of bonds and the imposing and collection of taxes must not violate this law or any other law of the State of Texas, or of the United States; and, such contracts must not result to impair any vested right, nor cause the district to fail fully and permanently to serve water demands within its boundaries in the order of superiority of uses, as the same are declared in Section 3 of said Chapter 107.[5] Said contracts may provide that one body politic may, in conformity to the law of its being and the contract, establish the contractual; and statutory, tax lien, hereby provided, in behalf of the district, and may levy, assess and collect the tax thereunder, for and on behalf of the district: The district shall not issue bonds pledging the full faith and credit of the district under the provisions of subdivision (d) and this subdivision of Section 130, without submitting the same to a vote of the qualified electors of the

whole district under the same provisions, insofar as the same are applicable, as are provided to authorize the issuance of construction bonds by the district: (i) if the majority vote in the district as a whole does favor the proposal, the district may issue its bonds to provide the plant, improvements and facilities peculiar to the area, or areas defined, or peculiar to designated property, or peculiar to a given contract for service, and may pledge the full faith and credit of the district for the payment thereof, in which event the district shall have its lien upon the area defined, or the property designated, or as specified in such contract, and may levy, assess and collect, or procure to be levied, assessed and collected, taxes on the same to protect the district from, or to compensate, any liability it may incur for or on behalf of the defined area or designated property. (j) The directors of such district shall administer all business incident to the creation and operations of a defined area, or service to designated property, unless otherwise provided by contract. [Acts 1925, 39th Leg., p. 124, ch. 25, § 130; Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 21; Acts 1929, 41st Leg., p. 578, ch. 280, § 15.]

[1] Articles 7880—77a, ante, and 7880—132, post.
[2] Article 7880—91, ante.
[3] Article 7880—78, ante.
[4] Articles 7880—78 to 7880—83, ante.
[5] Article 7880—4a, ante.

Art. 7880—131. Directors to apportion and assess benefits.—In the event an irrigation or water improvement district shall have heretofore been operated or shall hereafter be operated under contract with the United States and such district shall have adopted or may adopt the plan of the levy and collection of taxes on a benefit basis, instead of an ad valorem basis, then the directors of said district shall at some convenient time thereafter, and from time to time as may be necessary act as a board to apportion and assess the benefits conferred upon any and all property situated within such district and shall cause a record to be made showing the amount and value of the benefits computed to accrue to all of the property situated within such district and subject to taxation, and the amount of taxes upon such basis to be levied and collected against such property; provided that no taxes so assessed or adjudged against such property shall be in excess of the benefit accruing and to accrue to such property from the organization, operation and maintenance of such district and the improvements to be constructed or purchased thereby. After such record shall have been made up the board shall cause notice to be mailed to each property owner whose name appears upon such record, showing the amount of taxes to be levied against such property and fixing a date and place at which such owner may appear and contest the correctness and equitableness of such tax. And after such hearing, said board or other governing body shall determine the inequitableness of the tax and sustain, reduce, or increase the same as in their judgment shall be just and equitable, and the decision of such board shall be final. All of the provisions hereof not inconsistent therewith shall apply to the levy, assessment and collection of the taxes herein provided for. [Acts 1925, 39th Leg., ch. 25, p. 125, § 131.]

Art. 7880—132. Manner of levying assessment, collection of taxes, etc.—In the event that any district other than those operating under contract with the United States shall adopt the assessment for benefit plan of taxation as provided by law, then in that event, the levy, assessment, equalization of property values and collection of taxes shall be made in the manner herein provided.

A. As soon as practicable after the approval of the report of the engineer, and the adoption of the plan of improvements to be constructed, the board of directors shall appoint three disinterested commissioners, who shall be known as commissioners of appraisement, but who shall be freeholders, but not owners of land within the district for which they are to act.

B. The secretary of the board of directors immediately following the appointment of the commissioners of appraisement shall, in writing, notify each of his appointment and in the notice designate the time and place for the first meeting of such commissioners. It shall be the duty of the commissioners to meet at the time and place specified or as soon thereafter as possible and when they shall each take and subscribe an oath that they will faithfully and impartially perform their duty as such commissioners, and make true report of the work done by them, and at such meeting the commissioners shall organize by electing one of their members chairman and one vice-chairman, and the secretary of the board of directors, or in his absence such person as the board of directors may appoint, shall be the secretary of said commissioners during their continuance in office and shall furnish to them such information and such assistance as may be within his power and necessary to the performance of their duties.

C. Within thirty days after qualifying and organizing as above directed, the commissioners of the appraisement shall begin their duties, and they may at any time call upon the attorney of the district for legal advice and information relative to such duties, and may if necessary require the presence of the district engineer or one of his assistants at such times and for so long as may be necessary for the proper performance of their duties. Such commissioners shall proceed to view the lands in such district as will be affected by the plan of reclamation for such district as carried out, and all public roads, railroads, rights of way and other property or improvements located within such districts and shall assess the amounts of benefits and all damages, if any, that will accrue to any tract of land or other property within such district or to any public highway, railroad and other rights of way, roadways or other property from carrying out and putting into effect the improvements to be constructed by such district. The board shall prepare a report of their findings which shall show the owner of each piece of property examined and on or concerning which any assessment is made, together with such description of said property as may identify the same, with the amount of damages and all benefits assessed for and on account of or against the same, which said report shall be signed by at least a majority of said commissioners and filed with the secretary of the board of directors of the district, and which report shall also show the number of days each commissioner has been employed and the actual expense incurred by each during his service as commissioner, and each shall be paid by the district not to exceed ten dollars per day for his services, and all necessary expenses in addition thereto on approval of the account for such per diem and expenses by the board of directors. Said commissioners shall in their said report fix a time and place when and where they will hear objections thereto, and such date shall not be more than twenty days after filing such report.

D. At or before the hearing upon the report of the commissioners of appraisement, any owner of land or other property affected by such report or the plan of reclamation or improvements may file exceptions to any or all parts of such report and said commissioners at the time and place specified in the notice shall proceed to hear and base opinion on such objections, and where such objections are sustained, in whole or in part, may make such changes and modifications from time to time as may be necessary to conform the report to their findings. When the commissioners shall have finally acted, they shall make a decree confirming such report in so far as it is confirmed, and confirming and approving the same as mod-

ified or changed in so far as it may be modified or changed. The commissioners shall have power to adjudge and apportion costs incurred upon the hearing in such manner as may be deemed equitable. The findings of the commissioners as to damages and benefits to lands, railroads and other property within the district shall be final and conclusive. The final decree and judgment of the commissioners shall be entered of record in the minutes of the board of directors, and certified copies thereof shall be filed with the county clerk of each county in which any portion of the lands within such districts are located, as a permanent record of such county and such findings shall be notice to all persons of the contents and purpose of such decree.

E. When the report of the commissioners shall have been filed with the secretary of the board of directors, he shall forthwith give notice by publication in a newspaper published in each county wherein any portion of the district is located for at least once a week for two consecutive weeks prior to the date fixed for such hearing of the time and place for such hearing, and he shall also mail a written notice to all persons whose property will in any wise be affected by the carrying out of the plan of reclamation and improvement if his post office is known, stating the time and place of such meeting, which notice shall state in substance that the report of the commissioners to assess benefits and damages accruing to land or other property by reason of the plan of reclamation and improvement for the district in question has been filed in his office, and that all persons interested therein may examine same and make objections thereto in whole or in part, and that the commissioners will meet on the day and at the place named for the purpose of hearing and acting on objections to such report, and the secretary upon the day of hearing shall file in his office the original notice with his affidavit thereto, showing the manner of publication and the names of all persons to whom notices have been mailed and that post offices of those to be affected to whom notices were not mailed were unknown to him, and could not be ascertained by reasonable diligence, and copies of such notice and affidavit shall be filed, one with the commissioners of appraisement and one with the clerk of the county commissioners' court.

F. After the action of the commissioners of appraisement as aforesaid, their final findings, judgment and decree, until lawfully changed or modified shall form the basis of taxation within and for the district for which they shall have acted for all purposes for which taxes may be levied by, for and on behalf of such district and all taxes shall be apportioned and levied on each tract of land, railroad and other real property in the district in proportion to the net benefits of the property named in such final judgment or decree as shown thereby. In all matters before the commissioners of appraisement parties interested therein may not only appear in person or by attorney, but they shall be entitled to process for witnesses to be issued by the chairman of the commissioners of appraisement on demand, and such commissioners shall have the same power as a court of record to force the attendance of witnesses. [Acts 1925, 39th Leg., ch. 25, p. 125, § 132.]

This article was amended by Acts 1929, 41st Leg., p. 578, ch. 280, § 14, which was repealed by Acts 1931, 42nd Leg., p. 466, ch. 275, § 2 (b).

Art. 7880—133. Benefit plan of taxation.—In the event that any district organized under the terms of Section 59 of Article 16 of the Constitution shall adopt or have adopted the assessment of benefit plan of taxation instead of the ad valorem plan of taxation, fixing and assessment of property value on which taxes shall be levied and collected shall be made in the manner herein stated provided any such district may at the same election at which the adoption of such plan of taxation is voted upon, or at any other time before the issuance of bonds, vote upon the proposition of whether such benefits shall be fixed as an equal sum upon each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. In which event the amount of benefit per acre shall be voted upon as applied to all lands in the district that can be irrigated by gravity flow from the irrigation system to be constructed, or purchased, and also the benefit of lands in the district that cannot be so irrigated. When such questions are desired to be submitted and an election held to determine same the board of directors of the district shall submit same and order such election in the same manner as provided by law for other elections in such districts. The ballots for such elections shall have printed thereon the following propositions: "For uniform assessment of benefits of $——— per acre upon all irrigable lands in the district, and the assessment of $——— per acre upon all non-irrigable lands in the district." "Against uniform assessment of benefits."

Said blank spaces in said proposition shall be filled in with the amounts as determined by said board of directors to be voted upon. Said amount of charge per acre to be found by dividing the number of acres of land into the amount of indebtedness to be incurred by the district in providing for the irrigation of same. In the event the owners of lands classed as non-irrigable object to the amount of charges fixed against them by said order of the board calling such election or as a result of said election they may have their non-irrigable lands taken out of said district by filing application therefor as provided by law within ten days after such election is held. If a majority of those voting on such proposition at such election vote in favor thereof same shall be adopted.

In the event the plan of uniform valuation of acreage for taxation is adopted as herein provided the said valuation shall be applied to all such lands and it shall not be necessary for the assessor of the board of equalization to annually fix the value thereof or equalize the values, except as herein provided nor for the board of directors of the district to appoint a commission of appraisement to ascertain or fix the value of improvements to particular lands as in other cases provided. The board of equalization will examine the renditions and tax rolls to ascertain that all property subject to the tax is placed on such tax rolls under its proper classification and add any property thereto that may be left off of such tax rolls or that may not have been rendered for taxation, and examine and correct and certify to said tax rolls. Any property owner may protest the classification of his lands as not being proper and the board of equalization shall fully consider any such protest and after their findings thereon in their minutes in the same manner provided for protest in the case of the fixing of valuations upon property as provided by law.

The rate of taxation, the collection of taxes, assessment of property, rendering of property for taxation shall be made as now provided by law with reference to ad valorem taxes, except that only such lands shall be rendered or taxed and in rendering same the valuation thereof shall not be stated and it shall not be necessary that the party rendering same shall make affidavit to the value thereof nor that the value thereof be stated by the tax assessor, but same shall be rendered as subject to irrigation or not subject to irrigation.

In the event lands classed as non-irrigable are thereafter irrigated by said district, the owner thereof prior to receiving water for irrigation shall pay to the district an amount equal to the entire amount that would have been charged to same if same had originally been classed as irrigable. [Acts 1925, 39th Leg., ch. 25, p. 128, § 133.]

Art. 7880—134. Uniform assessment of benefits.—Districts organized for the purpose of construct-

ing levees or works and plants as a protection from overflow, and districts organized for the purpose of constructing drainage systems, may adopt the proposition that the benefits shall be fixed at an equal sum upon each acre of land therein in the manner provided in the preceding section.[1] In such event the proposition to be voted upon shall be stated in the order of election changing the wording thereof to apply to the purpose for which the district was organized or for which bonds are to be issued, substantially as follows:—"For uniform assessment of benefits for ———— purposes," and the negative "Against uniform assessment of benefits." [Acts 1925, 39th Leg., ch. 25, p. 129, § 134.]

[1] Article 7880—133, ante.

Art. 7880—135. Aid by town, city, or municipal corporation.—Any town, city or municipal corporation may have the benefit and powers herein provided under the constitution of this State and may aid any district in the construction and operation of any such improvements to the extent that same may be an advantage to such municipal corporation in the following manner:

A. The area included in any town, city or municipal corporation be organized into and constituted a water control and improvement district with all the powers, authority and privileges provided by Section 59 of Article 16 of the Constitution and be governed by this Act, by an ordinance duly enacted by the board of aldermen, commissioners, or governing body thereof, constituting same a water control and improvement district and appointing five directors therefor. The bonds of such directors shall be filed with and approved by said governing board of such municipality, and upon the qualifications of said directors said district is completely organized without the necessity of holding an election therefor. Said district shall from and after its organization be governed by the provisions of this Act and any amendments hereafter enacted.

B. Whenever a municipal corporation shall be constituted a water control and improvement district as herein provided all taxes levied therein may be assessed and collected in the manner herein provided or in the following manner: The directors of the district shall make an order fixing the rate of taxation and levying a tax as herein provided and enter same upon their minutes and then file a copy thereof duly signed by the president and secretary, with the seal affixed, with the secretary of the municipal corporation; the said secretary shall record same in a book kept in his office for that purpose and make and deliver to the tax assessor a copy thereof. Said tax levy shall be entered on the tax rolls and be assessed and collected in the same manner as other municipal taxes, and the collection thereof shall be governed by the provisions of law governing the collection of taxes in such municipal corporation, and all officers of such municipal corporation are charged with the same duties therein as provided by law for the collection of and accounting for municipal corporation taxes. The tax collector shall make a monthly report on the last day of each month of all such taxes collected to the district depository and deposit same therein, a copy of such report shall be filed in the office of the directors. The directors of the district pay to the city tax assessor, the city tax collector, and all other city officers reasonable compensation for the services performed by them for the district, the amount thereof to be fixed in advance of the performance of such duties.

D. When such taxes are so levied, assessed and collected it shall not be necessary for such district to appoint a tax assessor and collector, and the provisions of this Act with reference to the assessing and collecting of taxes shall not apply to such district.

E. All taxes levied, bonds issued, and indebtedness incurred by such water control and improvement district shall be subject to the provisions of the constitution and of this Act in so far as same require an election to authorize same.

F. Any such water control and improvement district may issue bonds and incur indebtedness for any purpose herein provided, or in aid thereof, in connection with the construction of improvements by any other district organized under the provisions of this Act or heretofore organized and governed by the provisions of this Act. [Acts 1925, 39th Leg., ch. 25, p. 130, § 135.]

Art. 7880—136. Payment of judgment against district.—In the event that any court within the State shall render any judgment of debt against any district such court may order the directors of such district to levy, assess and collect taxes or assessments to provide for the payment thereof. [Acts 1925, 39th Leg., ch. 25, p. 131, § 136.]

Art. 7880—137. Suit to protect water rights.—The Board of directors are hereby empowered to institute and maintain any suit or suits to protect the water supply or other rights of the district and to prevent any unlawful interference with same or a diversion of its water supply by others and to prevent any taken or interference with such water supply or other rights. All districts may sue and be sued in the name of the district by and through its board of directors. [Acts 1925, 39th Leg., ch. 25, p. 131, § 137.]

Art. 7880—138. Sale of surplus water.—Any District may sell any surplus water that it may have to lands in the same vicinity, or to other Districts which include lands in the same vicinity, for the purpose of irrigation, domestic or commercial uses, or such District may contract to pump for or supply such other District with any waters in which such other District may have any right, if in the opinion of the Board of Directors same is advisable and on such terms as they provide. Any District may contract for the sale of water power privileges whenever it may be possible for power to be generated by the use of water flowing from their reservoir or within its canal system, provided, however, any such contract for the sale of water power privileges shall be subject to the duty of the District to protect the lands embraced therein in an adequate supply of water for the purpose for which such District was organized or for supplying water for municipal purposes in such Districts supplying water for such purposes. [Acts 1925, 39th Leg., p. 131, ch. 25, § 138; Acts 1927, 40th Leg., p. 377, ch. 254, § 1.]

Art. 7880—139. Investigation by State Board of Water Engineers.—The State Board of Water Engineers shall be and is constituted a commission to investigate and report upon the organization and feasibility of all districts which shall issue bonds under the provisions hereof. All such districts desiring to issue bonds for any purpose shall submit in writing to said board an application for investigation, together with a copy of the engineers report and a copy of data, profiles, maps, plans, and specifications prepared in connection therewith. Said board shall examine same and shall visit the project and carefully inspect the same and may ask for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements. They shall file in their office in writing their suggestions for changes and improvement and furnish a copy thereof to the board of directors of such district. If said board shall finally approve or refuse to approve such project, or the issuance of bonds for such improvements, they shall make a full written report thereon, file same in their office and furnish a copy of same to the board of directors of said district. [Acts 1925, 39th Leg., ch. 25, p. 131, § 139.]

Art. 7880—140. Effect of act on other districts.—This Act shall not in any manner affect or repeal other laws providing other methods of forming similar districts and shall not repeal or affect laws providing for the organization of water improvement districts, levee districts, improvement districts or levee improvement districts or drainage districts. And this Act shall apply to and affect only districts organized hereunder or specifically adopting the provisions hereof as herein provided. [Acts 1925, 39th Leg., ch. 25, p. 132, § 140.]

Art. 7880—141. Donations and contributions. —Any district organized under the provisions hereof shall have authority to seek and solicit cooperation, donations and contributions from the United States Government, the Government of the State of Texas, or any other State or Nation, any county, municipality, water improvement district, water control district, drainage district, or any other political subdivision of Texas, any person, co-partnership, corporation or association and may incur reasonable expense to procure such cooperation, both with reference to adding to the area of the district or with reference to the contributions to the cost of the improvements undertaken by the district in such manner that the contributions would be either upon a percentage of cost, or a definite annual sum basis. (a) Any water improvement district, water control and improvement district, levee improvement district, county, city, town or other body politic within the State of Texas now organized or which may be hereafter organized shall have the power to enter into contract for contribution to the cost of the construction of drainage, flood control or water supply works, or the changing of the land elevations needing correction, to be constructed beyond the boundaries of the contributing district, municipality, or other political subdivision of the State of Texas, and to so contribute even though such works may be located beyond the boundaries of Texas or of the United States, and by whomsoever such works are to be constructed. Such contribution shall be in proportion to the extent that the proposed works will be a benefit to the contributor. (b) Such contract may provide for the issuance of bonds by the contributor and direct payment to contractors upon the estimates of the engineer for the contributor, out of the proceeds of such bonds. If bonds are to be issued by a body politic the contributor shall submit the contract for contribution to its qualified electors for approval and for authority to issue the bonds, fix a lien to secure the bonds and to levy, assess and collect taxes to retire the bonds. All such procedure by a contributing political subdivision of Texas shall be in conformity to the applicable law under which such contributing body politic has its being and may create bonded indebtedness. The disposition of the proceeds of such bonds shall be in conformity to the approved contract of contribution. (c) Such contract for contribution may provide that in lieu of the issuance of bonds the contributor may provide for the levy, assessment and collection of an annual tax in a specific sum to be a lien on the property within the contributor's taxing power, which tax shall be collected by the contributor at its own expense, and annually paid to the constructor of the works to which the contribution is to be made, and such annual payment shall be held as a trust fund by the constructor of the proposed works and applied annually by such constructor upon the bonds issued by it to provide funds for the construction of the works to which contribution is to be made. (d) Such contract shall be submitted by the contributor to its qualified electors for approval and for authority to levy and assess a tax sufficient to meet the annual payments fixed in the contract of contribution. Such levy or assessment shall be a lien on the property subject to the contributor's taxing power. The election for the approval of the contract and the authorized taxes for the fulfillment of the contract shall be held in conformity to appropriate law under which such contributing body politic has its being and may create bonded indebtedness. Payment of the annual sums of contribution shall be in conformity to the contract of contribution. (e) If the proposed contributor has any fund not otherwise appropriated, or any fund not required for actual use, even though otherwise appropriated, the said fund may be withdrawn from the appropriation not needing the fund and the same or either of the same may be applied in payment of contributions to the cost of the works deemed to be a benefit to the contributor, but to be constructed by another, or jointly by the contributor and another. Contributions from such an unappropriated, or available fund shall be within the powers of the governing officers of the contributing body politic, who are hereby authorized to enter into contract for contribution, and to contribute, without submitting the same to a vote of the qualified electors of the contributor. Such contribution shall not however be made in any case where the contribution would impair the ability of the contributor to meet any outstanding obligation or to well and economically discharge contributor's duty to its electorate or constituency. [Acts 1925, 39th Leg., p. 132, ch. 25, § 141; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 22.]

Art. 7880—142. Topographic maps and data. —It is hereby made the duty of the Reclamation Engineer of the State of Texas to furnish to any district topographic maps and data concerning all elements of the various projects undertaken by the district for the control of floods. It shall be the duty of the State Board of Water Engineers to furnish to a district topographic maps and data concerning all projects for the storage of water or creation of reservoirs undertaken by the district. [Acts 1925, 39th Leg., ch. 25, p. 132, § 142.]

Art. 7880—143. Conversion of districts.—Any water improvement district, levee improvement district, irrigation district, or other conservation and reclamation district heretofore organized, or hereafter to be organized, under the provision of Section 59 Article 16, or Section 52 of Article 3 of the State Constitution, may become and be converted into a water control and improvement district in the following manner: The Board of Directors, supervisor or other governing body of such district shall adopt a resolution declaring that in their judgment it is for the best interest of such district, and will be a benefit to the lands and property included in said district to become a water control and improvement district, and to operate under the provisions of Article 16, Section 59, of the Constitution of Texas. Such resolution shall be entered in their minutes. Notice of the adoption of such resolution shall be given by publication thereof in a newspaper having general circulation in the county or counties in which the district is situated. Such notice shall be published once a week for two consecutive weeks. The first publication must appear not less than fourteen full days prior to the time set down for a hearing. Notice shall state the time and place of the hearing and shall set out the resolution in full. It shall notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution. If, upon a hearing, the board of directors, board of supervisors, or other governing body, find that it would be for the best interest of the district to be converted into a water control and improvement district, and would be a benefit to the lands and property situated in said district, then, and in that event, they shall enter their order so finding, and said district shall thereupon become a water control and improvement district. If they find that it would not be for the best interest of the district and would not be a benefit to the lands and property situated in the district, they shall so find and enter their order against con-

version of the district to a water control and improvement district. The findings of said board of directors, board of supervisors, or other governing body, shall be final and not subject to appeal or review. All water improvement districts, levee improvement districts and other districts referred to in this section which shall become and be constituted a water control and improvement district under the provisions hereof shall be a conservation and reclamation district under the provisions of Section 59 Article 16 of the State Constitution and shall thereafter be governed by this Act, and any amendments hereof hereafter adopted, and shall have and may exercise all the powers, authority, functions and privileges herein provided in the same manner and to the same extent as if same had been organized under the provisions hereof. [Acts 1925, 39th Leg., p. 132, ch. 25, § 143; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 23.]

Art. 7880—143a. Method for converting districts and powers.—Any district now operating, or hereafter to be operating, under the provisions of Chapters Two, Three, Four, Six, Seven and Nine of Title 128 of the Revised Civil Statutes of Texas may be converted into Water Control and Improvement Districts in the manner provided in Section 23 of said Chapter 107.[1] After such conversion such districts may continue to exercise all such necessary specific powers, and under such specific conditions, as may be now provided by the existing Act under which such district may have been operating. It is provided, however, that at the time of making such order of conversion the officers of such districts shall in the order specify the specific statutory provisions in the law under which such district may have been operating which may be desired to be preserved and made applicable to the operations of the district after conversion into a Water Control and Improvement District. It is provided, however, that this reservation of a former power shall apply only in case said Chapter 25 fails to make specific provision concerning some matter necessary to the effectual operation of a district as to which conversion may be desired: In all cases in which said Chapter 25 may make specific provision, said Chapter shall, after conversion, control the operations and procedures of such district. [Acts 1925, 39th Leg., p. 86, ch. 25, § 143a, as added Acts 1929, 41st Leg., p. 578, ch. 280, § 16.]

[1] Article 7880—143, ante.

Art. 7880—144. Proceedings validated.— All the proceedings had and taken to organize any water improvement district or irrigation district and to determine the areas of land included therein and which are benefited thereby, and to determine the manner in which taxes and assessments for taxation should or shall be made, levied and collected, or to bring any such district under the provisions of Section 59 of Article 16 of the Constitution, or to authorize the issuance of notes or bonds, or for the election and qualification of its officers and directors, or for construction of projects jointly by two or more districts, shall be and are hereby in all respects declared to be ratified, validated, approved and confirmed by the conversion thereof into such water control and improvement district as herein provided. Provided, however, nothing herein contained shall in any manner affect or validate any bonds or any taxes or charges for the payment of any bonds, or any proceedings for the organization of a district, the validity of which bonds, taxes or proceedings is now being challenged or litigated in any court of this State. [Acts 1925, 39th Leg., ch. 25, p. 133, § 144.]

Art. 7880—145. Applications by candidates for director.—Candidates for the office of director or other elective offices may file with the secretary of the board of directors application to have their names printed upon the ballots to be used at an election. Such applications shall be signed by such candidates, or by ten qualified voters, and shall be filed at least twenty days prior to the date of such election. [Acts 1925, 39th Leg., ch. 25, p. 133, § 145.]

Art. 7880—146. Directors in districts containing less than 12,000 acres.—In all districts hereafter organized under the provisions of this Act which contain not to exceed twelve thousand acres of land and in which fifty per cent or more of the lands in such district are owned by persons who do not reside in the district, the directors shall be appointed by the county commissioners' court, instead of being elected as herein provided, if the petition for the organization of such district shall so provide. The term of office of such directors shall be two years, and they shall be so appointed at the same time fixed for election of directors in other districts, and if for any reason the county commissioners' court is not in session at that time the said court shall appoint said directors as soon thereafter as possible. The owners of the lands in such district may file with the county commissioners' court, petitions expressing their choice of persons to be selected as directors and if a majority of those filing such petition agree upon the persons to be appointed, the persons so agreed upon, if qualified, shall be appointed, otherwise the said court shall appoint suitable qualified persons as such directors. [Acts 1925, 39th Leg., ch. 25, p. 133, § 146.]

Art. 7880—147. Lands added to district; liability for debts.—When land is added to an established district and such district is organized or is operating under the authority of Section 59 of Article 16 of the State Constitution, such land may be added to such district upon the agreement contained in the order of the board of directors admitting such land to the district that same will be taxed upon the assessment of benefit plan of taxation instead of upon the plan of the general ad valorem tax, and such agreement may provide that such added land shall be so taxed upon a uniform acreage basis or upon the plan of a definite annual charge. In such event the amount of the debts to be paid by such land and the amount to be paid as an annual tax thereon for the purpose of paying such debt shall be fixed by the order of the board of directors admitting such land to the district and the same shall become a lien on said land in the same manner and to the same extent as if said land had been a part of said district at the time said indebtedness was incurred or authorized by an election held for that purpose. Such added land shall be a part of such district and shall be liable for debts thereafter incurred in the same way as other lands in said district. [Acts 1925, 39th Leg., ch. 25, p. 134, § 147.]

Art. 7880—147a. Districts validated.—All water improvement districts which have heretofore complied with the requirements of Chapter 25 of the Acts of the 39th Legislature relating to converting such districts to water control and improvement districts are hereby declared to be valid water control and improvement districts just as though they had been originally organized under the provisions of said Chapter 25 of the Acts of said 39th Legislature, and further all water control and improvement districts as now defined and bounded, the validity of which is not now being contested in any of the courts of this State, are hereby declared to be valid water control and improvement districts and to have the powers and duties defined in and granted by Chapter 25 of the Acts of the 39th Legislature of Texas, and as well to have any powers and duties which may be hereafter defined in or granted by any Act amending said Act. All bonds issued by such districts, which have been declared valid by a judgment of the district court, and not appealed from, or by a judgment of the district court affirmed on appeal, or by the Attorney Gen-

eral of this State, shall be and are held to be valid and binding obligations of such districts and not subject to attack except for fraud. [Acts 1925, 39th Leg., p. 86, ch. 25, § 147a, as added Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 24.]

Art. 7880—147a(1). Validating Act, counties from 250,000 to 310,000.—The organization of all Water Control and Improvement Districts created by authority of Chapter 25, Acts of the Thirty-ninth Legislature of 1925, and amendments thereto,[1] and heretofore laid out and established or attempted to be established by the proper authorities, in any county in the State of Texas of not less than two hundred and fifty thousand (250,000) and not more than three hundred and ten thousand (310,000) population, according to the last preceding Federal Census, are hereby ratified, validated, and confirmed in all respects as though they had been duly and legally established in the first instance. All acts of the Board or Boards of Directors in such Districts in ordering an election or elections, in declaring the results of such elections, and all acts of such Board or Boards of Directors and/or Commissioners Courts and/or County Tax Assessors and Collectors of the Counties of such Districts, in levying and assessing, or attempting or purporting to levy and assess, taxes for and on behalf of such Water Control and Improvement Districts, and all bonds issued and now outstanding and all bonds heretofore voted but not yet issued are hereby in all things ratified, validated, and confirmed. The fact that by inadvertence or oversight any act of the State Board of Water Engineers and/or other officials in the creation of any Water Control and Improvement District in any County coming under the provisions of this Act was omitted or insufficient notice thereof given shall in nowise invalidate such District and the fact that by inadvertence or oversight any act was omitted or insufficient notice thereof given by the County Commissioners Court, County Judges, and/or the Board of Directors of any such District in ordering any hearing, election, or elections, or declaring the result or results thereof, or levying and assessing the taxes of such District, or in issuance of the bonds of any such District shall in nowise invalidate any of such proceedings or any bonds so issued or ordered issued or any bonds heretofore voted but not yet issued by such District. It is expressly provided that all acts of the officials in creating or attempting to create the District, in ordering any hearing, election, or elections, in giving notices thereof, declaring the results thereof, or levying and assessing the taxes for such District, or in issuance of the bonds of any such District, are in all respects ratified, validated, and confirmed. [Acts 1939, 46th Leg., Spec.L., p. 1038, § 1.]

1 Article 7880—1 et seq.

Art. 7880—147b. Record of proceedings.—All proceedings of the directors of a district and all decrees and orders of any court affecting the formation, boundaries or validity of such district must be recorded in the office of the county clerk of each county in which such district is located in a special record book kept for that purpose. This recording is to be in addition to other recording provisions in this Act contained. [Acts 1925, 39th Leg., p. 86, ch. 25, § 147b, as added Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 24.]

Art. 7880—147c. Validating districts and acts of districts.—All Water Improvement Districts or Irrigation Districts which have heretofore complied with the requirements of Section 143 of said Chapter 25, or with Section 23 of said Chapter 107,[1] concerning conversion into a Water Control and Improvement District, and as well all Water Control and Improvement Districts organized under the provisions of said Chapter 25, and the amendments thereto, are hereby declared to be valid and existing governmental agencies and bodies politic, and shall have all of the powers granted by said Chapter 25, and the amendments thereto. All proceedings heretofore had and taken to organize such districts, or to determine the manner in which taxes or assessments shall be levied and collected, or to bring any such district under the provisions of Section 59 of Article 16 of the Constitution of Texas, or to authorize the issuance of bonds by any such district, whether such district shall or shall not have come under the provisions of said Section 59 of Article 16 of the Constitution, or to authorize the issuance of notes or bonds, or for the election and qualification of its officers or directors, or for the construction or operations of projects jointly, or for contribution to the cost of works constructed by some other agency, or for contract with the United States of America, shall be, and hereby are, in all things approved, ratified, validated, constituted, and established as valid. Further, all such districts, which have designated boundaries sufficient to identify the area of the district, are hereby established to have the boundaries now defining such districts, just as though the metes and bounds of each of the same were specifically set out herein, and all such districts shall have the powers now provided by said Chapter 25, as amended, and also shall have such powers as may be granted by any act amending said Act. Further, all bonds now in process of issuance by such a district, and as well all bonds heretofore issued, and sold, by such a district are hereby declared to have been validly authorized and issued, and all such bonds now in the hands of the purchasers thereof, or which may lawfully hereafter come into the hands of purchasers, are hereby established to be valid and binding obligations of such district: All tax levies, assessments and procedures precedent, or incident, to the creation of obligations by such a district are hereby established as valid, and all completed tax levies and procedures necessary, and incident, to the future issuance and sale of bonds by a district validated hereby, shall be valid, provided such levies and procedures were made and done in conformity to the provisions of said Chapter 25, or any existing amendment thereto. It is however provided that no bond or obligation shall be validated hereby unless the same shall have been authorized by a constitutional and statutory majority vote of the qualified electors of a district, and no bond validated hereby may be sold until the same has been approved by the Attorney General of Texas and registered in the office of the Comptroller of Texas. No pending proceedings at law concerning any of the matters hereby validated, and constituted, shall have the effect to impair, or bar, the validation hereby declared, save and except in the following cases, viz:

(a) Where there is now pending in a court a proceeding seeking to establish fraud, under allegations of specific acts constituting fraud, in the issuance of bonds or other obligations by a district; or, to establish that a matter submitted to a vote of the qualified electors of a district did not in fact receive an affirmative vote sufficient to comply with the Constitution or appropriate statute of the State of Texas:

(b) Where there is pending an undetermined appeal from an order creating a district, under the provisions of Section 18 of said Chapter 25: [2]

(c) If the litigation hereby specified as a bar to validation is not prosecuted with due diligence, and in good faith, to a final judgment, sustaining the protest, but which on the other hand does result in a final judgment sustaining the district and its acts, then the more present pendency of such litigation shall not operate to prevent the legislative validation hereby provided.

The provisions of this Section are intended as remedial legislation, and shall be liberally construed to effect the legislative intent to promote and further

the conservation and development of the natural resources of the State of Texas. [Acts 1925, 39th Leg., p. 86, ch. 25, § 147c, added Acts 1927, 40th Leg., 1st C.S., p. 496, ch. 107, § 24, as amended Acts 1929, 41st Leg., p. 578, ch. 280, § 17.]

[1] Article 7880—143, ante.
[2] Article 7880—18, ante.

Art. 7880—147c1. Abolition of districts.—All Water Control and Improvement Districts organized under the provisions of Chapter 25, of the General Laws passed by the 39th Legislature at its Regular Session, situated in counties having a population of not less than 10,000 or more than 10,050, according to the United States Census of 1920, may be abolished by a majority vote of the tax paying qualified voters residing in such district at an election held for the purpose of determining whether or not such district shall be abolished. [Acts 1925, 39th Leg., p. 86, ch. 25, § 149, as added Acts 1929, 41st Leg., p. 204, ch. 87, § 1.]

Section 1 of Acts 1929, cited to the text, added new sections to the Act of 1925, cited to the text, numbered 149, 150, 151, 152, 153, 154, which are now set out as this article and Articles 7880—147c2, 7880—147c3, 7880—147c4, 7880—147c5 and 7880—147c6, post.

Art. 7880—147c2. Petition.—Petition for the abolishment of such districts shall be signed by a majority in number of the holders of title to the lands therein, and the owners of a majority in value of the lands therein as shown by the tax rolls of said district, provided if the number of land owners therein is more than fifty, such petition shall be sufficient if signed by fifty such land owners. Such petition may be signed and filed in two or more copies. [Acts 1925, 39th Leg., p. 86, ch. 25, § 150, as added Acts 1929, 41st Leg., p. 204, ch. 87, § 1.]

See note to Article 7880—147c1, ante.

Art. 7880—147c3. Requisites of petition.—Such petition shall state the name of the district and may refer to the order establishing the same for boundaries, limits and area thereof and shall state the purpose for which such election is asked. Such petition shall be filed with the Board of Directors of said district. [Acts 1925, 39th Leg., p. 86, ch. 25, § 151, as added Acts 1929, 41st Leg., p. 204, ch. 87, § 1.]

See note to Article 7880—147c1, ante.

Art. 7880—147c4. Elections.—All elections to determine whether or not such districts shall be abolished shall be held in accordance with the provisions of Sections 26, 27, 28, 29 and 30 of Chapter 25 of the General Laws passed by the Regular Session of the 39th Legislature.[1] The ballots for such election shall contain the proposition "For the abolishment of district" and "Against the abolishment of district." [Acts 1925, 39th Leg., p. 86, ch. 25, § 152, as added Acts 1929, 41st Leg., p. 204, ch. 87, § 1.]

[1] Articles 7880—26 to 7880—30, ante.
See note to Article 7880—147c1, ante.

Art. 7880—147c5. Order declaring result of election.—If the majority of those voting at such election vote in favor of abolishing such district, the said district shall be abolished and the same after such election shall have no further authority except that any debts incurred shall be paid, and the organization shall be maintained until all such debts are paid.

The result of such election shall be canvassed and the result thereof declared by the Board of Directors of said district and said Board shall make and enter in their Minutes an order declaring the result of such election, which order shall be made and entered in conformity with Section 24, of said Chapter 25, Acts Regular Session of the 39th Legislature,[1] and such order shall be filed in the office of the County Clerk and recorded in the Deed Records of said county as provided in said Section 24. [Acts 1925, 39th Leg., p. 86, ch. 25, § 153, as added Acts 1929, 41st Leg., p. 204, ch. 87, § 1.]

[1] Article 7880—24, ante.
See note to Article 7880—147c1, ante.

Art. 7880—147c6. Election in district including city or town.—In all elections held under the provisions hereof in districts in which are located any town, city or municipal corporation, such municipal corporation shall be a separate voting precinct and the ballots cast therein shall be counted and canvassed to show the result of such election therein, and in the event such municipal corporation shall vote against the abolishment of such district, and the balance of such district shall vote for the abolishment of such district, such district shall thereupon be abolished. [Acts 1925, 39th Leg., p. 86, ch. 25, § 154, as added Acts 1929, 41st Leg., p. 204, ch. 87, § 1.]

See note to Article 7880—147c1, ante.

Art. 7880—147c7. Validating proceedings, bonds and tax levies by districts containing not over 3,500 acres.—Section 1. All proceedings heretofore had by the Board of Directors of any Water Control and Improvement District situated wholly within one county, and containing not exceeding three thousand five hundred (3,500) acres of land, and created for the purpose of the construction of improvements for a water purification and distribution system, together with a sanitary sewer system for said district, under authority of Section 3, of Chapter 25, Acts of the Thirty-ninth Legislature, Regular Session, as amended by Section 1, of Chapter 107, Acts of the Fortieth Legislature, First Called Session, and as further amended by Section 2, Chapter 280, Acts of the Forty-first Legislature, Regular Session,[1] and Section 3a, of Chapter 25, Acts Thirty-ninth Legislature, Regular Session, as added by Section 17a, of Chapter 280, Acts of the Forty-first Legislature, Regular Session,[2] in the issuance and sale of water and sewer construction bonds issued on the faith and credit of such a district under authority of said Chapter 25, Acts of the Thirty-ninth Legislature, Regular Session, as amended,[3] for which a loan has been made or authorized by the United States, through the Reconstruction Finance Corporation, or any other agency or department of the Government of the United States, are hereby in all things fully validated, confirmed, approved and legalized, and any such bonds heretofore sold, or heretofore authorized but not yet delivered, are in all things fully validated, confirmed, approved and legalized, and such bonds are hereby declared to be the valid and binding obligations of such district. All tax levies made or authorized by such Board of Directors for the purpose of paying the principal of and interest on such bonds are hereby in all things validated, confirmed, approved and legalized. All orders and resolutions authorizing the issuance of any such bonds and levying taxes to pay the principal of and interest on such bonds are hereby in all things validated, confirmed, approved and legalized, and the fact that any such district, in the issuance and sale of any such bonds, failed or neglected or lacked the power to do all things necessary to make said bonds legal, shall in no wise impair such bonds nor the levy of taxes to pay the same, but such bonds and taxes are, in all things validated, confirmed, approved and legalized.

[1] Article 7880—3.
[2] Article 7880—3a.
[3] Article 7880—1 et seq.

Sec. 2. The provisions of this Act shall not apply to any such proceedings, or any bonds issued thereunder, the validity of which has been contested or attacked in any pending suit or litigation. [Acts 1939, 46th Leg., Spec.L., p. 1041.]

Arts. 7880—147d to 7880—147o. [Repealed by Act 1934, 43rd Leg., 3d C.S., p. 19, ch. 12, § 13.]

Articles repealed were Acts 1932, 42nd Leg., 3rd C.S., p. 49, ch. 22, §§ 1–11a.

Art. 7880—147p. Powers enabling procuring of loans.—Water Control and improvement districts which heretofore have been, or which hereafter may be, established as "Municipal Districts" under the provisions of Section 18 of Chapter 280 of the Acts of the 41st Legislature of Texas, Regular Session,[1] hereby are declared heretofore to have had, and subject to the limitations hereinafter specified, they hereby are established in the future to have, those certain powers which hereinafter will be defined: However, such powers may be exercised in manner, and only by such districts as are conditioned conformably to the specifications, hereinafter set forth, viz:

(a) Such district must have been created to have some one or more of the powers authorized by Section 59 of Article XVI of the Constitution of Texas.

(b) If a loan from the Reconstruction Finance Corporation be sought, such district must have authorized improvements, which by reasonable expectancy will be self liquidating, within the period of time contemplated by the authorization for such improvements and within the meaning and intent of subdivision (1) of subsection (a) of Section 201 of the Act of Congress which is known as the "Emergency Relief and Construction Act of 1932." [2] If loans contemplated hereby be procured from sources other than the Reconstruction Finance Corporation, it shall not be required that the borrowing district's improvements be self liquidating, either in whole or in part, and the further provisions of this Section shall not apply thereto. In case of a loan being sought from the Reconstruction Finance Corporation there are certain qualifying conditions, viz: The improvements must have been authorized prior to December 1, 1931: There must exist an urgent public need that the authorized facilities be brought to completion, so that service therefrom may be had: The loan must be in such amount as may be reimbursed to said Corporation, or to the district, by means of commercial income produced by the borrower's prior existing, or proposed, facilities (excluding revenues derived from taxation), at a time within the period contemplated by the authorization for such facilities. [Acts 1932, 42nd Leg., 3rd C.S., p. 56, ch. 24, § 1.]

[1] Article 7880—19a, ante.
[2] 15 U.S.C.A. § 605b.

Art. 7880—147q. Time for exercise of powers.—Save as hereinafter provided, the powers by this Act established may be exercised only at a time prior to January 23, 1934, upon which day expires the power of the Reconstruction Finance Corporation (a corporate body of the United States of America) to make loans such as are contemplated hereby: However, such loans may be effected by such districts from sources other than said Corporation. It further is provided that the powers hereby established may be exercised as many times, either prior to or after said January 23, 1934, as may be required to effect renewals, extensions or refundings of such loans, either in whole or in part. [Acts 1932, 42nd Leg., 3rd C.S., p. 56, ch. 24, § 2.]

Art. 7880—147r. Conditions of loans.—Such districts hereby are established to have powers, and upon conditions as follows:

(a) If the desired loan is to be effected by sale of the District's bonds (as distinguished from a loan not to be effected by an irrevocable sale of such bonds), then such districts shall have the power to enter into binding obligation (to be conditioned conformably to the usages of investment banking) to repurchase such bonds "on or before" a day within five years after the date of the loan, at a price which will not cause the interest burden to exceed six per centum per annum on the amount of money originally paid for such bonds.

(b) In case it is desired to effect a loan by means other than the sale of bonds, authorized for a given purpose; then, and in that event, such loans may be conditioned as follows, viz:

1—The amount of the loan may be equal to, but shall not exceed, the estimated and authorized maximum cost of the improvement sought to be provided and made ready for service. The proceeds of the loan must be applied to the purpose for which authorization was made, but the lender shall have no responsibility for the intergrity of the application of the money procured. The loans contemplated hereby may be effected either to pay indebtedness already incurred, to procure money to begin work or to provide money to continue construction begun at a prior time.

2—The rate of interest shall not exceed six (6%) per centum per annum, upon the amount of such loans.

3—The maturity of such loans shall be at such time, or times, as may be agreed upon, but not to exceed five years after the date of the loan.

4—When such loans are made and the district has unsold bonds which were authorized for providing the improvements sought to be paid for by such loans as are contemplated by this subdivision (b), the district shall impound in its officially designated and qualified depository, said unsold bonds in a par sum, as nearly as may be done, equal to the amount of the loan. If there be not such unsold bonds fully equal to the amount of the loan, the district shall impound all such unsold bonds as may be available therefor. Such bonds when so impounded (and not given into pledge, as may be done under the provisions of subdivision 6 hereafter), shall so remain, subject only to being withdrawn by the borrower in proportion to the progressive reductions of its indebtedness; or, to place the same under pledge in the manner provided in said subdivision 6; or, to effect a sale thereof, in which case the proceeds shall be applied to the payment of the indebtedness contemplated hereby.

5—If it be required, the district may pledge its commercial income (meaning income other than revenues derived from taxation), whether such income be then existing or in expectancy, to secure such loan, to the full extent that will not, as a matter of reality, obviously and substantively impair the ability of the borrower to pay its obligations which may be held by others, as and when the same mature. Such income, when so pledged, shall not be used for any purpose, whatever, other than to apply the same to the payment of the debt secured thereby, and the same shall be applied to the reduction of the secured debt as rapidly as may be practicable to be done.

6—In case of a loan to a district having an expectancy of commercial income, but at the time not having such demonstrated income in an amount adequate to discharge the loan as the same may mature, such district may pledge the commercial income then in expectancy, as provided in subdivision 5 (next foregoing), and, in addition thereto, or as an alternative therefor, if so required, it may give into pledge, with power of sale conforming to the usages of business, its unsold bonds in a par sum not to exceed the amount of the loan plus ten per centum thereof, in which event the rate of interest upon the loan shall not exceed six (6%) per centum per annum. In case of such pledge of bonds it shall not be required that the district impound bonds.

7—To evidence loans not to be effected by sale of bonds of such districts, as may be done under the provisions of subdivision (a) of this Section, the borrowing district may execute and deliver to the lender its certificates of indebtedness, notes or obligations, for the payment whereof the district may pledge its full faith and credit, to the same effect as the same may be pledged by bonds of such districts.

8—It is the intent hereof that this Act be liberally and sympathetically construed to the end that districts within the provisions hereof, save as to matters specifically limited herein, shall have the most full and

flexible powers to comply with all such conditions precedent to the loans contemplated hereby as may be required of the borrower by the lender. [Acts 1932, 42nd Leg., 3rd C.S., p. 56, ch. 24, § 3.]

Art. 7880—147s. Cancellation of pledged bonds repaid.—In case bonds be impounded, and, or, pledged to secure any loan made to a district, and in case, and to the extent, that such loan is repaid, and as repaid, from commercial income of the District, a comparable proportion of the bonds so impounded, or so pledged, shall be withdrawn, cancelled and retired. [Acts 1932, 42nd Leg., 3rd C.S., p. 56, ch. 24, § 4.]

Art. 7880—147t. Other powers not impaired or diminished.—Nothing in this Act contained shall be held to suspend, impair or diminish the powers given to all Water Control and Improvement Districts by the provisions of Section 7, of Chapter 280 of the Acts of the 41st Legislature of Texas, Regular Session;[1] nor, to impair any implied, necessary or incident powers which such districts lawfully may enjoy, save to the extent such powers specifically are limited by this Act. No prior or subsequent act of the Legislature shall be held to alter, diminish or impair any provision of this Act, save upon condition that there be specific repeal of one or more of the provisions of this Act. [Acts 1932, 42nd Leg., 3rd C.S., p. 56, ch. 24, § 5.]

[1] Article 7880—32a, ante.

Art. 7880—147u. Borrowing from Federal Agencies; bonds and taxes authorized.

Authority to borrow and receive aid

Section 1. Any water control and improvement district in this State is hereby expressly authorized and empowered to borrow money and to receive grants and other aid from the Government of the United States, from the Federal Emergency Administration of Public Works, the Reconstruction Finance Corporation, the Federal Reserve Banks, and any and all other agencies of the Government of the United States, which now are or hereafter may be authorized to make such loans or grants, and which loans or grants may be made on such terms and in such amounts as may be agreed upon between the Board of Directors of such districts and the Government, or any such lending agency. [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2092, ch. 501, § 1.]

Levy of taxes

Sec. 2. The board of directors of any such water control and improvement district, when bonds of such district have been issued and sold to the Government of the United States, or any lending agency thereof, or when such bonds are pledged as collateral to secure payment of any loan made by said Government or agency thereof to any such district, shall levy taxes in the time, method and manner now prescribed by statute on all taxable property within the territorial limits of the water control and improvement district, sufficient to pay the principal of and the interest on such bonds as the same shall become due, and which taxes, when collected, shall be paid into the interest and sinking fund account created for the sole purpose of paying the principal of and the interest on such bonds, as provided in Section 113 of Chapter 25 of the General Laws passed by the Thirty-Ninth Legislature of the State of Texas at its regular session in 1925;[1] provided, however, that such proceeds shall be paid into the maintenance fund of the said district under the conditions and to the extent specified in Section 3 of this Act.

Maintenance and operation, charges and taxes for; pledges

Sec. 3. In addition to the bond tax specified in the preceding section of this Act, the board of directors of any such water control and improvement district may assess and collect charges at the maximum amount permitted by law for the maintenance and operation of the irrigation works and facilities of any such district, as provided in Sections 106 and 109, of Chapter 25 of the General Laws passed by the Thirty-Ninth Legislature at its regular session in 1925,[2] or as may be provided in any similar or equivalent statutory authorization; and the board of directors of any such district may provide also for the levy and collection of a tax in the maximum amount permitted by law, for the maintenance and operation of such district as provided in Section 107 of Chapter 25 of the General Laws passed by the Thirty-Ninth Legislature at its regular session in 1925,[3] or as may be provided in any similar or equivalent statutory authorization. All the proceeds of such charges, assessments or levies, made pursuant to said Sections 106, 109 and 107 of Chapter 25 of the General Laws passed by the Thirty-Ninth Legislature at its regular session in 1925, or under any similar or equivalent statutory authorization, shall be paid into the maintenance fund as required by Section 103 of Chapter 25 of the General Laws passed by the Thirty-Ninth Legislature at its regular session in 1925.[4] All or part of said maintenance fund may be irrevocably pledged as additional security for the payment of the principal of any interest on all bonds of any such district so issued and sold to the Government of the United States, or to any lending agency mentioned in Section 1 of this Act, or on all bonds of such district pledged as collateral to secure payment of any loan made by said Government or agency thereof to any such district, as such bonds become due and payable, and moneys of said maintenance fund so pledged shall accordingly be used for maintenance and operation when and only when the principal of and interest on the bonds due on all preceding semi-annual interest payment dates shall have been paid in full and when the collection of taxes for the interest and sinking fund account, reasonably and prudently to be anticipated by the board of directors of any such district, will be sufficient to pay principal of and interest on the bonds becoming due on the semi-annual interest payment date next succeeding. Provided, nevertheless, that when moneys of the maintenance fund are so used to prevent or to cure defaults in the payment of the principal of or interest on the bonds, the amount so used shall be repaid into said maintenance fund from the first available proceeds of the taxes levied pursuant to Section 2 of this Act.

Agreement with Federal Government to retire or subordinate bonded indebtedness

Sec. 4. If the government of the United States or a lending agency thereof, as a condition precedent to lending money to or purchasing bonds of any district under the provisions hereof, shall require such district to retire its existing bonded indebtedness or to subordinate its existing bonded indebtedness in such manner that the loan made or the bonds purchased by the Government or such lending agency shall have a claim on the proceeds of all taxes collected by said district prior and superior to the claims of all or part of such existing bonded indebtedness, said district is hereby empowered to enter into such agreement or agreements with the government or lending agency thereof and with the holder or holders of such existing indebtedness as may be necessary or appropriate to accomplish such purpose. Such agreement may provide for the deposit or escrow of the bonds so subordinated with a trustee, or may provide for stamping on such subordinated bonds and coupons an appropriate legend, or may provide for the replacement of such subordinated bonds with refunding bonds containing recitals appropriate to such subordination, and if refunding bonds are so issued such bonds may be issued without an election, and need not correspond as to interest rate, maturity and other details with the bonds refunded.

If the holder or holders of part of such existing bonded indebtedness of said district are unwilling to enter into an agreement of the nature hereinabove outlined, but are willing to enter into an agreement with said district under the terms of which all or part of the uncollected taxes theretofore levied by said district for the payment of all or part of the outstanding bonded indebtedness of said district shall, when collected, be paid into a special interest and sinking fund created for the sole purpose of paying interest on and principal of the bonds held by such holder or holders, said district is hereby empowered to enter into such agreement. If such agreement is made no moratorium or tax payment extension law and no statute of limitations now or hereafter applicable to the payment of taxes shall ever apply to the collection of the taxes so provided to be paid into such special interest and sinking fund.

Laws applicable

Sec. 5. Except as herein otherwise provided, the General Laws relative to bonds of water control and improvement districts shall apply to the issuance, approval and certification, the registration, the sale and payment of all bonds of any such district issued and sold to the Government of the United States, or any lending agency thereof, or to bonds pledged as collateral to secure payment of any loan made by said Government or agency thereof to any such district; provided, however, that any district borrowing money or receiving aid from the Government of the United States or any lending agency thereof as herein provided may enter into such agreements with respect to the deposit and safe keeping of the proceeds of such loan or of the proceeds of taxes, assessments, and other revenues levied or pledged for the repayment of such loan or for the payment of bonds issued in evidence of such loan, as may be required by the Government of the United States or by such lending agency, notwithstanding any provisions of the General Laws relating to the selection of district depositories and the deposit of district funds.

Partial invalidity

Sec. 6. If any section, sentence, clause or phrase of this Act is held to be unconstitutional or invalid for any reason, such invalidity shall not affect the validity of the remaining portions of this Act. [Acts 1934, 43rd Leg., 2nd C.S., p. 10, ch. 4.]

[1] Article 7880—113, ante.
[2] Articles 7880—106, 7880—109, ante.
[3] Article 7880—107, ante.
[4] Article 7880—103, ante.

Art. 7880—147v. Counties may co-operate with United States in flood control works.—Sec. 1. Any county one or more of the boundaries of which is coincident with any part of the international boundary between the United States and Mexico, or any county contiguous to any county of such described class, by resolution of the County Commissioners' Court of such county, in consideration of benefits of flood control work to be performed in any county of said class by the United States of America, may agree (1) to indemnify and save harmless the United States of America, its officers, agents and employees, on account of damage or claims to damage by whomsoever asserted, arising out of or connected with entry upon, occupancy, construction upon or exercise of rights in and to lands or rights in lands situated in one or more of said class of counties by the United States, its officers, agents and employees, in connection with construction, reconstruction, alteration, extension, improvement, maintenance and operation of flood control works, or works in connection therewith or incidental thereto, by the United States; (2) to procure such release and waivers of claims and to make such showing as to title being vested in such county to lands and rights in lands situated in any county of said class, needed for such flood control works, or works in connection therewith or incidental thereto, as may be required by the United States; and (3) to acquire and, without monetary consideration therefor, convey to the United States upon request therefor the title to any such lands of rights therein, situated in any county of said class, necessary for such flood control works.

Sec. 2. Any such county wherein any such agreement as authorized in Section 1 hereof has heretofore or may hereafter be entered into, the County Commissioners' Court, County Attorney and County Engineer thereof, shall do any and all things useful and necessary to carry out and comply with the provisions of any such agreement so made as provided in Section 1 hereof and in case of any such conveyance so agreed to be made to the United States, the County Judge of such county as may hold title thereto may, on behalf of such county, convey, by sufficient warranty deed or deeds, such lands or rights therein in accordance with any such agreement.

Sec. 3. Any such agreement as authorized in Section 1 of this Act which may have heretofore been made by any county within the class specified in Section 1 of this Act is hereby ratified and validated and shall be and remain a valid and subsisting agreement and obligation of such county.

Sec. 4. If any section, word, phrase or clause in this Act be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby. [Acts 1934, 43rd Leg., 4th C.S., p. 71, ch. 29.]

Art. 7880—147v(1). Grant of easement in lands to facilitate operation of Lower Rio Grande Flood Control Project by United States.—Section 1. In order to facilitate the acquisition, operation and maintenance of the Lower Rio Grande Flood Control Project by the United States, pursuant to provisions of the Act of Congress approved August 19, 1935, (49 Stat. 660) and Acts amendatory thereof and supplementary thereto, and Acts 1934, Forty-third Legislature of Texas, Fourth Called Session, Page 71, Chapter 29,[1] there is hereby granted and conveyed to the United States of America: (1) the perpetual right and easement to enter and reenter in and upon the beds and banks of the Rio Grande in Cameron County and Hidalgo County for the purpose of constructing, operating and maintaining suitable revetment and jetty works, retaining walls, levees, dikes, and embankments along and adjacent to the banks of the Rio Grande, and the right to construct, operate and maintain such anchors, cables and any other structures of whatsoever kind, in connection with the construction, operation and maintenance of the Lower Rio Grande Flood Control Project as may from time to time be deemed necessary by the engineers in charge of such Project, and (2) the perpetual right and easement to enter and reenter in and upon the beds and banks of the Arroyo Colorado in Cameron County, Willacy County and Hidalgo County for handling, flowing, carrying, diverting, confining, and controlling flood and drainage water or waters, together with the right to clear and grub said land, and maintain the same free of trees and brush and the right to construct, operate and maintain therein or thereon suitable channels, drainage ditches and structures, flood control and irrigation structures, or any other type or kind of structure, or excavation of any nature whatsoever, as may from time to time be deemed necessary by the engineers in charge of said work for the proper and efficient maintenance and operation of the Lower Rio Grande Flood Control Project.

Provided, however, that this grant and cession is made upon the express condition that the State of Texas shall retain concurrent jurisdiction with the United States of America over every portion of said lands so affected by this grant and cession so far that all process, civil and criminal, issuing under the authority of this State or any of the courts of judicial

officers thereof may be executed by the proper officers of the State upon any person amenable to the same within the limits of the lands hereby affected, in like manner and with like effect as if this grant and cession had not taken place. Nothing in this Act shall be construed to be a cession or relinquishment of any rights which the State of Texas or citizens or owners of property therein may hold or possess in the waters of the Rio Grande or the Arroyo Colorado and in the use thereof and in the access thereto.

Sec. 2. If any section, clause or provision of this Act shall be held unconstitutional or otherwise invalid or unenforceable, such holding shall not have the effect of nullifying or in anywise affecting the remainder of this Act, and the parts of this Act not so held to be unconstitutional or invalid shall remain in full force and effect. [Acts 1937, 45th Leg., p. 402, ch. 202.]

[1] Article 7880—147v.

Art. 7880—147w. Validating districts, bond issues, and proceedings.—That all Water Control and Improvement Districts created by authority of Chapter 25, Acts of the Thirty-ninth Legislature of 1925, and amendments thereto, and heretofore laid out and established or attempted to be established by the proper authorities are hereby ratified, validated, and confirmed in all respects as though they had been duly and legally established in the first instance. All acts of the Board or Board of Directors in such Districts ordering an election or elections declaring the results of such elections levying, attempting, or purporting to levy taxes for and on behalf of such Water Control and Improvement Districts, all bonds issued and now outstanding and all bonds heretofore voted but not yet issued are hereby in all things ratified, validated, and confirmed. The fact that by inadvertence or oversight, any act of the State Board of Water Engineers and/or other officials in the creation of any Water Control and Improvement District was omitted shall in nowise invalidate such District and the fact that by inadvertence or oversight any act was omitted by the County Commissioners and/or the Board of Directors of any such District in ordering an election or elections or declaring the result or results thereof or levying the taxes of such District or in issuance of the bonds of any such District shall in nowise invalidate any of such proceedings or any bonds so issued or ordered issued, by such District. It is expressly provided that all acts of the officials in creating or attempting to create the District, in ordering an election or elections, in declaring the results thereof or levying the taxes for such District or in issuance of the bonds of any such District, are in all respects ratified, validated, and confirmed. [Acts 1935, 44th Leg., 1st C.S., p. 1543, ch. 372, § 1.]

Art. 7880—147w(1). Validating districts in counties of 3,750 to 3,800 population, and bond issues and proceedings.—The organization of all Water Control and Improvement Districts created by authority of Chapter 25, Acts of the Thirty-ninth Legislature of 1925, and amendments thereto,[1] and heretofore laid out and established or attempted to be established by the proper authorities, in any county in the State of Texas of not less than three thousand, seven hundred and fifty (3,750) and not more than three thousand, eight hundred (3,800) population, according to the last preceding Federal Census, are hereby ratified, validated, and confirmed in all respects as though they had been duly and legally established in the first instance. All acts of the Board or Boards of Directors in such Districts ordering an election or elections declaring the results of such elections, levying, attempting, or purporting to levy taxes for and on behalf of such Water Control and Improvement Districts, all bonds issued and now outstanding and all bonds heretofore voted but not yet issued are hereby in all things ratified, validated, and confirmed. The fact that by inadvertence or oversight any act of the State Board of Water Engineers and/or other officials in the creation of any Water Control and Improvement District in any county coming under the provisions of this Act was omitted or insufficient notice thereof given shall in nowise invalidate such District and the fact that by inadvertence or oversight any act was omitted or insufficient notice thereof given by the County Commissioners, County Judges, and/or the Board of Directors of any such District in ordering any hearing, election, or elections, or declaring the result or results thereof, or levying the taxes of such District, or in issuance of the bonds of any such District shall in nowise invalidate any of such proceedings or any bonds so issued or ordered issued or any bonds heretofore voted but not yet issued by such District. It is expressly provided that all acts of the officials in creating or attempting to create the District, in ordering any hearing, election, or elections, in giving notices thereof, declaring the results thereof, or levying the taxes for such District, or in issuance of the bonds of any such District, are in all respects ratified, validated, and confirmed. [Acts 1939, 46th Leg., Spec.L., p. 1039, § 1.]

[1] Art. 7880—1 et seq.

Art. 7880—147x. Refunding bonds; procedure.—Any Water Improvement District or Water Control and Improvement District containing within its boundaries a city, or the greater part of a city, having, according to the last preceding United States census, a population of not less than Forty Thousand (40,000) people, not more than One Hundred Thousand (100,000) population, now or hereafter organized and existing under the Constitution and laws of this State it is hereby authorized and empowered, without submitting same to an election, to fund or refund any of its outstanding bonded indebtedness, including matured and unpaid interest coupons and accrued interest, by order or resolution of its Board of Directors, describing the bonds or coupons and interest to be refunded, setting out the basis of the exchange, and giving the date and maturities of the refunding bonds, the rates of interest to be borne by them, the place or places of payment, and providing for the levy, assessment, and collection of a sufficient tax to pay the interest thereon, and to create the necessary fund to pay the bonds as they mature. The order or resolution shall provide for the amount of the refunding bonds, which shall not be more than the total principal amount of the bonds refunded, plus the amount of the matured and unpaid interest coupons and accrued interest included for refunding. Such refunding bonds shall mature serially, or otherwise, over a period of not exceeding forty years from their date, shall bear interest at a rate or rates not exceeding the rate of interest borne by the bonds to be refunded, and in no event exceeding six per cent, per annum, and shall be in denominations of not more than One Thousand ($1,000.00) Dollars each. Such refunding bonds, together with a certified transcript of the proceedings had in the authorization of such refunding bonds, together with such other and further data as may be required by the Attorney General of Texas, shall be submitted to the Attorney General for approval. If said refunding bonds are approved by the Attorney General, he shall issue his certificate of approval, which certificate shall be preserved of record, and the Comptroller shall not register the refunding bonds until the original bonds are presented to him for cancellation. After registration of the refunding bonds, the Comptroller shall cancel the old bonds, and deliver the new bonds to the proper party or parties. The old bonds may be presented for cancellation in installments, and a like amount of new bonds, or a proportionate amount of new bonds on the basis of exchange provided in the order of their issuance, shall be registered and delivered as herein provided. Such refunding bonds, after receiving the certificate of the Attorney General and

having been registered in the Comptroller's office, shall be held, in every action, suit, or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligations, and in every action brought to enforce collection of such refunding bonds, or any interest coupons appertaining thereto, the said certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of their validity, and the only defense which can be offered against the validity of such refunding bonds or coupons shall be forgery or fraud. [Acts 1932, 42nd Leg., 4th C.S., p. 10, ch. 3, § 1.]

Art. 7880—147y. Provision for cancellation of unsold bonds.—Any such district which has heretofore authorized the issuance of any bonds by submitting same to an election as provided by law, and which bonds have been submitted to and approved by the Attorney General of the State of Texas, and registered by the Comptroller, as provided by law, and which bonds have not been sold by the district, may, without submitting same to an election, and by order of resolution of its Board of Directors, provide for the cancellation of all or any part of such unsold bonds, and also provide for the issuance of new bonds in lieu thereof, in like manner as provided by law for the issuance of original bonds, including the approval thereof by the Attorney General and the registration thereof by the Comptroller. Such order of the Board of Directors shall describe the bonds to be cancelled, and shall also describe the new bonds to be issued in lieu thereof. A certified copy of such order or resolution of the Board of Directors providing for the cancellation of such old bonds, together with such old bonds, shall be delivered to the Comptroller, who shall thereupon cancel and destroy such old bonds, making a record of such cancellation. [Acts 1932, 42nd Leg., 4th C.S., p. 10, ch. 3, § 2.]

Art. 7880—147z. Water Control and Improvement Districts wholly in one county; assignment of water contracts; bond issues, etc.

Application

Section 1. Any water control and improvement district in the State of Texas operating under the provisions of Chapter 25, Acts of the Regular Session of the 39th Legislature,[1] as now or hereafter amended, located wholly within one county, such county having a population of not less than five thousand (5,000) nor more than thirteen thousand (13,000) according to the last preceding Federal Census, and having the qualifications prescribed in Section 2 or Section 3 of said Acts 1934, 43rd Legislature, Chapter 12,[2] shall hereafter have the powers and authority thereinafter in said Act provided. Provided, however, this Act shall not be construed to lessen in any manner the application of Article 7880—147z, prior to or without the enactment of this Act, to any water control or improvement district operating under the provisions of said Chapter 25 and which heretofore shall have exercised any of the powers granted by said Article 7880—147z, nor shall any implication as to the applicability of Article 7880—147z prior to or without the enactment of this Act be drawn from this Act. [As amended Acts 1947, 50th Leg., p. 132, ch. 77, § 1.]

1 Article 7880—1 et seq.
2 Sections 2 or 3 of this article.

Assignments

Sec. 2. That any such district which has heretofore entered or which may hereafter enter into any contract for the sale of water for the generation of electric power is hereby authorized to assign such contract for a period of forty years or less, or to assign for forty years or less the revenues to be derived by said district from such contract, and to accept a present lump sum as consideration and in payment for such assignment for the entire period. Such payment may either be made in cash or may be made in bonds of said district theretofore issued and then outstanding. Any bonds so received in payment shall be immediately cancelled.

Sale of water

Sec. 3. That any such district which has available water to be sold for the generation of electric power, whether or not such district has previously entered into a contract for such purpose, may sell water for such purpose to any corporation, association or individual and may enter into a contract for such sale of water and may make all agreements necessary or useful to such end. Any such contract may provide for the delivery of water by the district for a period of forty years or less and may provide for the payment for such water either in installments or in one lump sum and for payment either in cash or in the bonds of said district theretofore issued and outstanding. Any bonds so received in payment shall be immediately cancelled.

Refunding bonds authorized

Sec. 4. That any such district which has heretofore entered into a contract as described in Section 2 hereof or any such district which has available water to be sold for the generation of electric power under Section 3 hereof, either or both, is authorized to issue its negotiable refunding bonds for the purpose of refunding any indebtedness of said district outstanding at the date of the passage of this Act, which refunding bonds may be made to mature serially or otherwise within a period not exceeding forty years from their date, may bear interest at any rate not to exceed 6% per annum or may be issued as non-interest bearing bonds and shall be approved by the Attorney General and registered by the State Comptroller with like effect and in the manner now provided by Articles 709 to 715 inclusive, Texas Civil Statutes. Such refunding bonds may either be exchanged for not less than a like par amount of such outstanding indebtedness of said district or may be sold and the proceeds of the sale applied to the redemption of not less than a like par amount of such indebtedness.

Agreements for placing bonds in escrow

Sec. 5. That any such district which has heretofore entered into a contract as described in Section 2 hereof or any such district which has available water to be sold for the generation of electric power under Section 3 hereof, either or both, and which district has now or shall hereafter have outstanding improvement bonds or refunding bonds is hereby authorized to enter into such agreement or agreements as it deems advisable pursuant to the terms of which such improvement bonds or refunding bonds may be placed in escrow and presented for the payment of interest or principal only in the event that the revenues derived from such assignment or such sale of water fall below fixed amounts to be specified in such escrow agreement, or in the event of the happening of other contingencies to be described in such escrow agreement.

Emergency fund for repairs

Sec. 6. That any such district which has heretofore entered into a contract as described in Section 2 hereof or any such district which has available water to be sold for the generation of electric power under Section 3 hereof, either or both, is hereby authorized to provide or to agree to provide an emergency fund the money in which is to be used for repairs to the district's canal and irrigation system or any specified part thereof of a nature to be described in such agreement, which fund may be established from the proceeds of ad valorem taxes or other revenues of the district levied or imposed for such purposes and which fund may be replenished from the same sources from time to time as the money in the fund is used for the

purpose for which it was created. Such agreement may provide that a fixed part of the money in such fund is to be contributed by the assignee of any contract assigned or the revenues thereof assigned under Section 2 hereof or by the purchaser of water sold under Section 3 hereof and may make such provision as is deemed necessary for the manner of establishing and using such fund and for the deposit and safekeeping of such fund.

Agreements for maintenance and operation

Sec. 7. That any such district which has heretofore entered into a contract as described in Section 2 hereof or any such district which has available water to be sold for the generation of electric power under Section 3 hereof, either or both, is hereby authorized to enter into a contract with a corporation, association or individual under the terms of which such corporation, association or individual shall be charged with the duty of maintaining or operating, or maintaining and operating such part of the district's canal or irrigation system as is used in carrying water to the plant used for the generation of electricity. Such agreement may contain such provisions as are deemed necessary or advisable with respect to the manner of such maintenance and operation, shall provide for the payment of such fees for such maintenance and operation as may be agreed upon and may be made to cover any period of years not exceeding the period of years covered by such assignment or contract for the sale of water.

Statute of limitations

Sec. 8. That the Statute of Limitations shall not run against any refunding bonds hereafter issued by any water control and improvement district which has assigned a power contract or the revenues thereof or has entered into a contract for the sale of water for power purposes under the provisions of this Act and such refunding bonds shall remain fully enforceable and collectible through appropriate action brought against such district despite any delay which may intervene between the maturity of the principal of or interest on such refunding bonds and the bringing of suit for the collection of such principal or interest.

Issuance of improvement bonds; taxes; special account; resolution; payment; lien

Sec. 9. That any such district which has heretofore entered into a contract as described in Section 2 hereof or any such district which has available water to be sold for the generation of electric power under Section 3 hereof, either or both, is hereby authorized to vote, authorize, sell and issue its improvement bonds in the manner now or hereafter provided by law for the voting, authorization, sale and issuance of improvement bonds by water control and improvement districts. Whenever such improvement bonds shall be issued, provision shall be made prior to issuance thereof for the levy of ad valorem taxes on all taxable property in such district fully sufficient to pay principal thereof and interest thereon. All such ad valorem taxes provided for the payment of the principal of an interest on said bonds shall be deposited in a special account known as the "Bond and Interest Redemption Fund", and used for no other purpose and for the purpose of supplementing and augmenting such special account and to the end of providing additional income with which to liquidate and pay off the bonds of said district as they mature and pay the interest thereon as it accrues, such districts shall be authorized to hereafter annually levy, assess and collect against all lands within the district which have been and/or will be enhanced in value and improved by reason of the improvements made and to be made and which will be benefited thereby by being made irrigable by gravity, without reference as to whether such land is to be actually irrigated or not, a special assessment of not more than five ($5.00) dollars per acre, in the following manner: The Board of Directors of such district, upon being presented with a petition in writing signed by a majority in number of all of the land owners within such district whose lands are to be affected thereby, shall adopt a resolution declaring that in their judgment it is advisable and for the best interest of such district, and will be a benefit to the lands and property included in said district and affected thereby, to levy and collect annually the special assessment hereinabove referred to. Such resolution shall be entered in the minutes, and notice of its adoption shall be given by publication in a newspaper having general circulation in the county in which such district is situated. Such notice shall be published once a week for two consecutive weeks; the first publication must appear not less than ten (10) full days prior to the time set down for the hearing. Such notice shall state the time and place of hearing and shall set out the resolution in full. It shall notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution. If, upon such hearing, the Board of Directors find that it would be advisable and for the best interest of the district, and would be a benefit to the lands and property situated in said district and affected thereby then, and in that event, such Board shall enter its order so finding, and said district shall thereupon be authorized to levy and assess and collect annually thereafter a special assessment against all of the lands within such districts as are or to be made irrigable by gravity, without reference as to whether such land is to be actually irrigated or not. If the Board finds that it is not for the best interest of the district and it would not be a benefit to the lands and property situated therein and affected thereby, said Board shall so find and enter its order against the levy and collection of such special assessment. The findings of said Board of Directors shall be final and not subject to appeal or review.

In complying with the Special Assessment provisions of this Act, the Board of Directors of any such district which has adopted and entered the order referred to herein, providing for such assessments, shall thereupon cause to be set up and established by its depositors a fund to be known as the "Self-liquidating Special Assessment Fund", and from and after the adoption of such order all moneys received from such special assessments shall be credited to such fund and shall be used primarily for the payment of all bonds maturing in such year for which the assessment is levied together with all bond interest accruing in such year, and the balance, if any, may be disbursed as hereinafter provided.

Such special assessment, when so made and adopted by the order of the Board hereinbefore mentioned, shall remain in force, effect and operation until such time as the bonds of the district and all interest thereon have been fully paid off and discharged, or until such time as, in the opinion and judgment of the Board of Directors of such district, such assessment is not necessary as an adjunct of "Bond and Interest Redemption Fund" in supplementing and augmenting such fund, for the purpose of liquidating such bonds as they mature and paying the interest thereon as it accrues. The amount of such assessment shall, however, be determined and fixed annually by said Board of Directors in such a sum, within the limits prescribed herein, as such Board, shall in its judgment find to be necessary to supply a fund which, together with the "Bond and Interest Redemption Fund", will be sufficient to pay all bond and interest requirements accruing in such year, taking into consideration a proper allowance for delinquencies.

All special assessments hereunder shall be applicable and referable to the calendar year and shall be fixed and assessed in January of each year, or as soon

thereafter as possible, except the first assessment hereunder, which shall be determined and fixed at the time of the hearing at which the original assessment order is made and entered, which first assessment, or amount thereof then fixed, shall be referable and applicable to the following succeeding calendar year.

In making payments of bond indebtedness requirements under the provisions of this Act the "Bond and Interest Redemption Fund" shall first be resorted to and exhausted before resort to the "Self-liquidating Assessment Fund" for payments authorized to be made thereunder. In the event that at the end of any year the said "Self-liquidating Special Assessment Fund" should, after there first having been applied all payments authorized to be made from said "Bond and Interest Redemption Fund", to be more than sufficient to meet the payment of all bonds maturing in such current year and all bond interest accruing in such year, the balance of such "Self-liquidating Special Assessment Fund" remaining on hand or on deposit at the close of any such current calendar year may, in the discretion of the Board of Directors of such District, be used for the payment of expense incurred, if any, in collecting such assessments, for paying the cost of additional necessary construction, or for any other lawful purpose. And in the event the assessments are not sufficient to pay the balance maturing in such year together with all interest due thereon accruing in such year, the balance required shall be assessed pro-rata, in accordance with the assessments previously made for the then current year, and shall be paid under the same conditions and penalties within thirty (30) days from the time such assessment is made. Public notice of all such assessments shall be given by posting printed notices thereof in at least three public places in the district and printed or written notices shall be mailed to each landowner affected thereby; providing that such landowner shall furnish to the Secretary of the District his correct post-office address. Such notices shall be given by posting and mailing such notices at least ten (10) days before the assessment is due, and in the event of supplemental assessments such notices shall be given within ten (10) days after such assessments are levied.

All special assessments levied under the provisions of this Act shall be collected under the direction of the Board of Directors by the Assessor and Collector of the District, or other person designated by the Board, which said officer shall give bond in such sum as the Board may direct, conditioned upon the faithful performance of his duties and a true accounting of all moneys collected. He shall give a true account of all money collected and deposit the same as collected in the District depository and shall file with the Secretary of the Board of Directors a true statement of all money collected once each week. The Collector shall use duplicate receipt books and shall give a true receipt for each collection made, retaining in such books a true copy thereof, which shall be preserved as a record of the District.

The District shall have a lien upon all lands assessed under the provisions of this Act to secure payment of all special assessments levied hereunder. The district shall also have a lien upon all crops of whatsoever kind grown upon each tract of land assessed hereunder, to secure payment of the assessments herein provided for, and all such assessments shall bear interest from the time due and payable at the rate of six per cent per annum and if such assessments should be collected by suit, an additional amount of six per cent on the unpaid principal and interest shall be added to the same as attorney's fees. Suits for delinquent special assessments shall be brought either in the county in which the district is situated or in the county where the defendant resides. All landowners affected hereby shall be personally liable for all the assessments herein provided for and if they shall fail or refuse to pay same when due, the water supply shall be cut off, and no water shall be furnished to the land until all assessments due and interest thereon, if any, are fully paid. This provision with reference to cutting off water shall bind all parties, persons and corporations owning or thereafter acquiring any interest in said lands. The directors of such districts shall within ten (10) days after any assessment is due, post at a public place in said district a list of all delinquents, and shall thereafter keep posted a correct list of all such delinquents. All assessments shall be paid in installments at such times to be fixed by order of the Board.

Refunding bonds

Sec. 10. That any bonds and/or matured interest coupons issued under the provisions of Section 9 of this Act may be refunded upon such terms and conditions as may be agreed upon by and between the district and the bondholders. Such refunding bonds shall run for a period of not to exceed forty years from their date. All refunding bonds issued under the provisions of this Section, together with all interest due thereon shall be paid in full before any bonds issued in accordance with Sections 4 and 5 hereof may be paid, from taxes or the assessments provided for in Section 9 hereof. Such refunding bonds shall be examined by the Attorney General or validated by suit and registered by the Comptroller as is now provided for construction bonds issued by water control and improvement districts.

Cancellation of bonds

Sec. 11. Any bonds of any district which has heretofore entered into a contract as described in Section 2 hereof or any such district which has available water to be sold for the generation of electric power under Section 3 hereof, either or both, authorized by an election but not yet issued, and/or sold at the time of the adoption of this Act, may be cancelled when authorized by a majority of the qualified voters of the district who have actually rendered their property for taxation, voting at an election held for that purpose, and the authority to thereafter issue such bonds shall exist, provided that the question may be submitted at any election hereafter called on the question of the issuance of any bonds of such district.

Outstanding interest coupons; use to pay taxes

Sec. 12. Any past due interest coupons of any bonds of any district which has heretofore entered into a contract as described in Section 2 hereof or any such district which has available water to be sold for the generation of electric power under Section 3 hereof, either or both, outstanding at the time of the adoption of this Act shall be received at par in payment of taxes due such district, which such taxes became due and payable on or before January 31, 1934. [Acts 1934, 43rd Leg., 3rd C. S., p. 19, ch. 12.]

Secs. 13–16.

Section 13 repealed Articles 7880—147d to 7880—147o, ante.
Section 14 declared the intention and purpose of the Act.
Section 15 related to partial invalidity.
Section 16 made the act cumulative of all existing statutes relating to water control and improvement districts.

CHAPTER 3B. CAMERON AND WILLACY COUNTIES, OVERFLOWS

Art.
7880—148. Sinking fund.
7880—149. Bond issue for levees, etc.
7880—150. Collection of tax.
7880—151. Payment of interest on bonds.
7880—152. Grant to take effect when.
7880—153. Grant to terminate on retirement of bonds.

Article 7880—148. Sinking fund.—For the purpose of aiding in the protection of the property and lives of the citizens of Cameron and Willacy Counties from further disastrous and calamitous overflows, and to conserve and increase the revenues derived by the State from said counties, that part of the State ad valorem taxes, which is in excess of ten cents on the hundred dollars valuation of property subject to taxation, collected upon property and from persons in the county of Cameron, including the rolling stock belonging to railroad companies which shall be ascertained and apportioned as provided by law, is hereby donated and granted by the State of Texas to the county of Cameron, for a period of twenty-five years, beginning January 1, 1926, to be used by said county in part payment of interest and in creation of a sinking fund to pay the bonds of said county which shall be voted and issued as herein provided to obtain funds for the construction of the necessary breakwaters, levees, dikes, floodways and drainways to protect the counties of Cameron and Willacy from such disastrous and calamitous overflows. [Acts 1925, 39th Leg., ch. 35, p. 161, § 1.]

Allocation of Taxes Extended

Acts 1947, 50th Leg., p. 1071, ch. 457, § 1 provides that the term during which the allocation of taxes for certain public agencies mentioned in the preamble, including Cameron County, "is effective under existing law, including its original allocation Act and all extensions thereof, whether or not specifically named in the Preamble to this Act, is extended for two (2) additional years; but for the second year of such extension each such Public Agency shall be and is allocated only one-fourth (¼) as much of the taxes as is allocated to it for the first year of such extension. The additional years during which such tax shall be allocated shall as to each such Public Agency be known as its 'Extension Years.' * * * Each of such Public Agencies are hereby authorized to borrow against the revenues accruing to it from such extension years, or to issue refunding bonds for any maturities of principal and interest, or both, and to pay the expense actually and necessarily spent therefor."

Art. 7880—149. Bond issue for levees, etc.—It is an express condition of this grant that the resident property taxpayers who are qualified voters in Cameron County shall, on or before October 1, 1926, authorize the issuance of the bonds of said county in an amount not less than one million two hundred and fifty thousand dollars, nor more than one million five hundred thousand dollars, voted, issued and sold as is, or may be prescribed by law; the proceeds whereof shall be applied to the construction of the breakwaters, levees, dikes, floodways and drainways necessary to protect the counties of Cameron and Willacy from such overflows. [Acts 1925, 39th Leg., ch. 35, p. 162, § 2.]

Art. 7880—150. Collection of tax.—During the term of this grant the tax collector of Cameron County shall collect and pay into the State Treasury, as prescribed by law, ten cents on each one hundred dollars valuation of taxable property in Cameron County, as State ad valorem taxes; while the portion of said State ad valorem tax which is hereby donated and granted to Cameron County shall be levied and collected by Cameron County as is herein provided. [Acts 1925, 39th Leg., ch. 35, p. 162, § 3.]

Art. 7880—151. Payment of interest on bonds.—This donation and grant is further made with the express condition that Cameron County shall levy and collect, in the manner prescribed by law, an ad valorem tax on all property subject to taxation in said county, sufficient to pay the interest on said bonds as it accrues and create a sinking fund in an amount sufficient to pay the principal thereof at maturity, and in addition thereto an annual ad valorem tax of five cents on the $100 valuation to maintain said breakwaters, dikes, levees, floodways and drainways during the term of this grant, and said county of Cameron shall bond itself for the full constitutional limit for said purposes herein and assess and collect taxes on the county to pay said bonds and the excess after payment of the bonds shall be paid to the State of Texas; and when said county shall have made such levy, the State taxes hereby donated to said county shall not be separately levied and collected, but for convenience in administering this Act, shall be collected and applied by said county as part of said ad valorem tax, levied and collected to pay interest on and to create a sinking fund to retire said bonds. [Acts 1925, 39th Leg., ch. 35, p. 162, § 4.]

Art. 7880—152. Grant to take effect when.—The grant and donation hereby made shall take effect whenever the duly constituted authorities of Cameron County shall have filed with the Comptroller of Public Accounts of the State of Texas, a properly authenticated certified copy of the order canvassing the returns and declaring the result of an election at which the property tax payers who are qualified voters of Cameron County shall have authorized the issuance of bonds as herein provided; and such certified copy of said order shall likewise have the effect of authorizing and directing the Comptroller of Public Accounts to settle with the tax collector of Cameron County in conformity with the provisions of this Act. [Acts 1925, 39th Leg., ch. 35, p. 162, § 5.]

Art. 7880—153. Grant to terminate on retirement of bonds.—The grant and donation hereby made shall terminate in less than twenty-five years whenever the sinking fund provided by the terms of this Act shall become sufficient to retire the bonds issued under its provisions. [Acts 1925, 39th Leg., ch. 35, p. 163, § 6.]

CHAPTER 4.—FRESH WATER SUPPLY DISTRICTS

Water Control and Improvement Districts, see ante, chapter 3A.

1. ESTABLISHMENT

Art.
7881. Purposes.
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7883. Deposit.
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7885. Posting of notice.
7886. Hearing.
7887. Findings.
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2. Petition for meeting of Supervisors; notice.
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1. ESTABLISHMENT

Article 7881. Purposes.—There may be created within this State conservation districts to be known as Fresh Water Supply Districts for the purpose of conserving, transporting and distributing fresh water from lakes, pools, reservoirs, wells, springs, creeks, and rivers for domestic and commercial purposes, as contemplated by Section 59, Article 16 of the State Constitution. Said districts shall have and may exercise all the rights, privileges and powers given by this chapter and in accordance with its directions, limitations and provisions. Such districts may or may not include cities and towns. [Acts 2nd C. S. 1919, p. 107.]

This article as originally enacted held violative of due process clauses for failure to provide for hearing of property owners on questions of boundaries and benefits. State v. Ball, 116 T. 527, 296 S.W. 1085.

Art. 7882. Petition.—When it is proposed to create a district, a petition shall be presented to the commissioners court of the county embracing the lands in the proposed district, or to the county judge of the county if said court is not in session. Said petition shall be signed by fifty or a majority of the

qualified voters of such district who own land therein, and shall set forth the boundaries thereof, the general nature of the work proposed to be done, the necessity therefor, and the feasibility thereof, and designating a name therefor which shall include the name of the county in which it is situated. [Id.]

Art. 7883. Deposit.—The petition shall be accompanied by a deposit of one hundred dollars, which shall be paid to the county clerk who shall pay same out upon vouchers approved by the county judge, for all expenses incident to the hearing and the election for the creation of the district, returning any excess to the petitioners or their attorney. [Id.]

Art. 7884. Notice of hearing.—The Commissioners' Court or County Judge, as the case may be, shall forthwith fix a time and place at which the petition shall be heard by the court not less than fifteen nor more than thirty days thereafter, and shall direct the county clerk, as ex-officio clerk of said court, to issue notice of such time and place of hearing. Such notice shall inform all persons of their right to appear and contest the form, and allegations of such petition, and the necessity and feasibility of such project, and the benefits to accrue, which notice may be delivered to any adult who is willing to execute the same by posting as herein directed. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 165, ch. 58, § 1.]

Art. 7885. Posting of notice.—Upon receipt of the notice, such person or persons receiving same shall post a copy thereof at the door of the courthouse of said county, and a copy at four different places within such proposed district. Such posting shall be for not less than ten days prior to the date fixed for the hearing. The persons so posting shall make affidavit before some officer authorized by law to administer oaths, of their action in respect to such posting, and such affidavit shall be conclusive of the facts sworn to. [Acts 2nd C.S., 1919, p. 107.]

Art. 7886. Hearing.—The court shall examine the petition to ascertain the sufficiency thereof, and any person interested may appear before the court in person or by attorney and offer testimony touching the sufficiency of such petition. Such court shall have jurisdiction to determine all issues raised touching the sufficiency of such petition. Such hearing may be adjourned from day to day as the facts may require. The court shall have power to make all incidental orders necessary in respect to the matters before it. [Id.]

Art. 7887. Findings.—If, upon the hearing of such petition, it be found that the same sets forth and conforms to the requirements of Article 7882, and that such project is feasible and practical, is necessary and would be of benefit to the lands therein, such court shall so find by its order, and shall order an election within the boundaries of such proposed district as set forth in the petition, which shall be held not less than twenty nor more than thirty days from the date of such order whereat the property tax paying voters within such boundaries may determine if such proposed district shall be established for the purposes and with the powers set out in this chapter, and for the election of five supervisors and a person to be assessor and collector of taxes. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 165, ch. 58, § 2.]

Art. 7887a. Districts validated.—In all Fresh Water Supply Districts heretofore formed, or now being formed, wherein the petition for such conforms to the requirements of Article 7882, setting out the necessity and feasibility of such project, and a notice of the time and place of hearing was given by the clerk, as directed in Article 7884, Revised Civil Statutes of 1925, and same was duly posted, and upon the hearing it was found by the Commissioners' Court that such petition was signed by the requisite number of proper parties, and was necessary and feasible, which shall be construed as a finding that same is a benefit to the lands therein, and ordered an election as provided, and for the purposes set forth, in Article 7887, Revised Civil Statutes of 1925, and at which election a majority of such voters voted in favor of the District, are hereby declared to have been legally created within the meaning, intent and purposes of this Chapter, and the same are hereby validated as of the respective times and dates of such proceedings, and are recognized and established and with the boundaries set forth in such several Districts, and all bonds voted or issued thereunder are validated and declared to be legal and binding obligations of such several districts, according to their terms. [Acts 1927, 40th Leg., 1st C. S., p. 165, ch. 58, § 3.]

Art. 7888. Notice of election.—Notice of such election shall be given stating the time and places of holding the election, and showing the boundaries of said district, the proposition to be voted upon, the officers to be voted for, and the presiding officers appointed for holding said election. Such notice shall be posted at the courthouse door for twenty days prior to the day of the election. [Acts 2nd C. S. 1919, p. 107.]

Art. 7889. Conduct of election.—At all elections hereunder, none but resident property tax payers who are qualified voters of such proposed district shall be entitled to vote. The commissioners court shall name polling places for such election. Each district is hereby constituted an election precinct for the purposes of the election above specified, and all other elections which may be ordered or held under this chapter. Said court shall appoint two judges, one of whom shall be presiding judge, and two clerks at each polling place. [Id.]

Art. 7890. Ballot.—The commissioners court shall provide the necessary ballots for such election, which shall have printed thereon the following: "For the Fresh Water Supply District," "Against the Fresh Water Supply District," and the names of the persons recommended for supervisors and officers in the petition. Said ballot shall also have five blank places after the names of those printed, on which each voter may write the names of other persons, supervisors, and assessor and collector, and there shall be no other matter placed on said ballot. [Id.]

Art. 7891. Voter's oath.—Every person who offers to vote in any election held under the provisions of this chapter shall take the following oath before the presiding judge of the polling place where he offers to vote, and such judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of ——— County and that I am a resident property taxpayer of the proposed Fresh Water Supply District voted on at this election, and have not voted before in this election." [Id.]

Art. 7892. Results of election.—Immediately after the election, the presiding judges shall make returns of the result in the same manner as provided for in general elections for State and county officers. Said commissioners court shall forthwith, at a regular or called session, canvass such vote, and if it is found that a majority of such votes favor the creation of such district, then said court shall so declare and enter the result on their minutes; and shall issue certificates of election to the persons receiving the highest number of votes, respectively, for supervisors and assessor and collector. If two or more persons receive the same number of votes for the position of fifth supervisor, said court shall select one of said persons to fill said position. [Id.]

Art. 7893. Declaration of result.—If said court shall declare said election to be in favor of the establishment of the district, then it shall cause to be

made and entered in the minutes of said court an order setting forth substantially as follows: "In the matter of the petition of ——— and ——— others praying for the establishment of a Fresh Water Supply District as in said petition described and designated as ——— County Fresh Water Supply District No. ———; be it known that an election was called for that purpose in said district and held on the — —— day of ——— A. D. 19— and a majority of the resident taxpayers voting thereat voted in favor of the creation of said District. Now, therefore, it is ordered by the Court that a Fresh Water Supply District be and the same is hereby established under the name of ——— County Fresh Water Supply District No. ——— with the following metes and bounds." Such field notes shall be copied in the record. The first district created hereunder in any county shall assume the Number "One," the second district shall assume the number "Two," and so on consecutively. [Id.]

Art. 7894. Registration of order.—After entering said order, the court shall cause to be made a certified copy thereof which shall be filed with the county clerk and duly recorded in the deed records of said county. Such recordation shall have the same effect in so far as notice is concerned, as is provided for the record of deeds. All costs in connection with the making and recording of such copy shall be paid by the district. [Id.]

Art. 7895. District tax assessor.—The office of assessor and collector for the district shall be filled by the same person. He shall qualify as such by making good and sufficient bond for five thousand dollars, payable to the district and approved by the commissioners court, conditioned upon the faithful performance of his duties and upon paying over to the district depository of all money coming into his hands as such collector. He shall be required to give additional security if, in the judgment of the supervisors, the same may become necessary. He shall be a resident of the district and a qualified voter in the district. He shall receive not to exceed twenty-four hundred dollars per annum, as may be provided by the supervisors. The first assessor shall hold office until the next general election for officers. The person elected to such office at the next general election shall hold office for two years. All vacancies in such office shall be filled by the supervisors for the unexpired term. [Id.]

Art. 7896. Supervisor's bond and oath.—Within ten days or as soon after the making and entry of said order as practicable, each supervisor shall give a good bond for five thousand dollars payable to the district and conditioned upon the faithful performance of his duties, to be approved by the commissioners court. Each supervisor shall take the oath of office prescribed by the statute for commissioners court, except that the name of the district shall be substituted for the county. Said bond and oath shall be filed with the clerk of the county wherein the order was entered creating said district, and by him recorded in the official bond records of said county. Said bond shall then be delivered by the county clerk to the district depository, and shall be by it safely kept as part of the records of said district. [Id.]

Art. 7897. General election.—A general election for the election of five supervisors and one assessor and collector for such district shall be held therein biennially on the first Tuesday in January. [Id.]

Art. 7898. Fees.—For all services performed by any officer or individual under this law, the compensation for which is not expressly provided for, such officer or individual shall receive the same compensation as he would for like service if rendered as an officer for the county. Clerks recording orders hereunder shall receive the same compensation as a county clerk for recording deeds, and persons posting notices hereunder shall receive the same compensation as a sheriff for officially rendering such service. [Id.]

Art. 7899. Organization expenses.—The supervisors are authorized to pay all necessary costs and expenses necessarily incurred in the creation and organization of any district, and to reimburse any person, corporation or association for money advanced for such purposes. Such payment shall be made from money obtained from the sale of bonds. [Id.]

2. BOARD OF SUPERVISORS

Art. 7900. Qualifications.—No person shall be elected as supervisor for any district unless he is a resident thereof and owns land subject to taxation therein, and unless at the time of such election he shall be more than twenty-one years of age. [Id.]

Art. 7901. Term of office.—The supervisors shall hold office for the same period as that provided for the district assessor. In case of vacancy in the board, their successors shall be chosen as provided by law for the filling of vacancies in the board of directors of water improvement districts. [Id.]

Art. 7902. Salary.—The supervisors shall each receive not exceeding ten dollars for each day necessarily taken in the discharge of their duties as such, and they shall make a statement of such services similar to that required by law of directors of water improvement districts. [Id.]

Art. 7903. Organization of board.—The supervisors shall organize by electing one of their number as president. Any three supervisors shall constitute a quorum, and a concurrence of three shall be sufficient in all matters pertaining to the business of the district. They shall have power to appoint a secretary who shall receive such compensation as the Board of Supervisors may fix, not to exceed one hundred and fifty dollars per month. [Id.]

Art. 7904. Meetings.—The supervisors shall maintain a regular office in the district suitable for conducting the affairs of such district; and shall hold regular meetings thereat at ten o'clock in the morning on the first Mondays in February, May, August and November of each year. They shall hold such regular and special meetings at such office as they may see fit, and any taxpayer or resident or interested party may attend such meeting, but shall not participate in same without the consent of the supervisors, and may present in an orderly manner to said supervisors such matters as they desire. [Id.]

Art. 7905. District records.—The supervisors shall keep a true account of all their meetings and proceedings, and shall preserve all contracts, records of notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatever kind, in a fireproof vault or safe, and same shall be the property of the district, and shall be delivered to their successors in office. [Id.]

Art. 7906. Vouchers.—All vouchers issued for the payment of any funds of the district shall be signed by at least three supervisors and shall refer to the book and page of the minutes allowing such act. All vouchers shall be issued from a regular duplicate book, retaining a duplicate which shall be preserved. [Id.]

Art. 7907. District depository.—The supervisors shall select a depository for such district as provided by law for the selection of county depositories; and the duties of such depositories shall be the same as provided by law for county depositories. In such selection, the supervisors shall act in the same ca-

pacity and perform the same duties as are incumbent upon the county judge and members of the commissioners court in the selection of county depositories. The depository shall perform the services of district treasurer, and shall execute a bond as such as may be required by the supervisors. Such depository shall make and file reports and preserve the district records as required of depositories under Chapter 2 hereof. [Id.]

Art. 7908. Audit.—The supervisors shall have kept a complete book of accounts for such district, and shall on June first of each year select a competent auditor who shall examine the accounts, books and reports of the depository, the assessor and collector and supervisors, and make full report thereon, a copy of which shall be filed with the depository, and a copy with the supervisors, and one with the county clerk. Such reports shall be filed by September first of each year, and shall show in detail for what purposes the money from each fund has been expended. [Id.]

Art. 7909. Powers of board.—The supervisors shall have control over and management of all the affairs of such district, shall make all contracts pertaining thereto, and shall have control of the construction of all improvements and works within and without the boundaries of such district, and the transportation and distribution of the water of such district. [Id.]

Art. 7910. Powers: use of water.—The board shall prescribe the manner and terms upon which water shall be furnished, and shall be authorized to fix the rate to be charged users of waters from such district, and shall promulgate rules and regulations governing the distribution and use of water; and shall apply the revenue from the sale of such water to operating expenses and the upkeep of the system of improvements installed in said district, and any surplus that may be left after paying such expenses shall be from year to year applied to the paying of interest on the bonds or other indebtedness that may be incurred by the district, and if there be more than enough to pay operating and upkeep expenses and the interest on the indebtedness of the district, then such surplus shall be passed to the sinking fund. [Id.]

Art. 7911. Powers: employés.—The board shall employ all necessary employés for the proper handling and operation of such district, and especially may employ a general manager, attorneys, a bookkeeper and an engineer and such assistants and laborers as may be required. [Id.]

Art. 7912. District engineer.—After the establishment of any district, and after the qualification of the supervisors, the board may appoint an engineer who shall make maps and profiles of the several canals, reservoirs, aqueducts, conduits, pipe lines, pumping plants and all other works in such district and connected therewith and shall also show any part of said works extending beyond the limits of such district; and shall do such other and further work connected with such district as may be directed by the supervisors. He shall receive not exceeding thirty-six hundred dollars per year, as may be fixed by the board. Such engineer may adopt other maps, plats and surveys of the correctness of which he may be satisfied. [Id.]

Art. 7913. Official bonds.—All bonds required to be given by the officers and employés of such district shall be governed by the provisions of Chapter 2 of this title governing the approval and furnishing of bonds by surety companies for officers and employés of water improvement districts. [Id.]

Art. 7914. Powers: equipment.—The board may buy all necessary implements, machinery, work animals, equipment and supplies, as may be required for the construction, operation and maintenance of the system of works and improvement of such district. [Id.]

3. POWERS OF DISTRICT

Art. 7915. Status of district.—All districts shall be governmental agencies and bodies politic and corporate; and such districts are hereby declared to be defined districts within the meaning of Section 59, Article 16 of the State Constitution, and may, through their supervisors, sue and be sued in any and all courts of this State in the name of such districts, and all courts of this State shall take judicial notice of the establishment of such districts, and said districts shall contract and be contracted with in the name of such districts. [Id.]

Art. 7916. District seal.—Each district shall have a common seal which shall be circular in form with the name of the district surrounding a five pointed star. [Id.]

Art. 7917. Powers of district.—All such districts shall have such powers of government, and with authority to exercise such rights, privileges and functions concerning the purposes for which they are created, as may be conferred by this chapter, or any other law in this State, to the benefit of which they may become entitled. All such districts shall have full authority and right to acquire water rights and privileges in any way that any individual or corporation may acquire same, and to hold the same either by gift, purchase, devise, appropriation or otherwise. No enumeration of specific powers herein shall be held a limitation upon the general powers conferred by this chapter, unless distinctly so expressed. [Id.]

Art. 7918. Powers: construction.—All districts shall have full power and authority to build, construct, complete, carry out, maintain, and in case of necessity add to and rebuild, all works and improvements within and without such districts necessary to accomplish any plan of conservation, transportation and distribution of fresh water adopted for or on behalf of such districts, and may make all necessary and proper contracts, and employ all persons and means necessary to that end; and such districts are authorized, if the governing bodies thereof shall deem it necessary, to take over in whole or in part by purchase or otherwise, any water plants or systems within such districts. [Id.]

Art. 7919. Construction contracts.—Contracts for the making and construction of all improvements contemplated in this chapter, and all necessary work in connection therewith, when the cost price exceeds ten thousand dollars shall be let to the lowest responsible bidder, furnishing satisfactory evidence of possessing equipment and facilities essential to the proper performance of such contract; after giving notice by advertising the same in one or more newspapers of general circulation in this State, once a week for ten days, and by posting a notice for at least ten days at the courthouse door. Such contract shall be in writing and signed by the contractors and supervisors, and a copy so executed filed with the depository subject to inspection of all interested parties. [Id.]

Art. 7920. Contractor's bond.—The person, firm, corporation or association to which such contract is let shall give bond to the district in such amount as the supervisors may determine, not to exceed the contract price, conditioned upon the faithful performance of the obligations, agreements and covenants of such contract, and for the payment to the district of all damages sustained in default thereof. Such bond shall be approved by the supervisors and shall be deposited with the depository, a true copy thereof being retained in the office of the district secretary. [Id.]

Art. 7921. Contract: performance.—All contracts shall be fulfilled in accordance with the specifications and under the supervision of the supervisors and district engineer. Such engineer shall inspect such work and make reports thereon, and such contract shall be paid as provided by law for similar contracts executed by water control and preservation districts. [Id.]

Art. 7922. Powers: indebtedness.—In the accomplishment of the purposes enumerated in the fourth preceding article, such districts may or may not issue bonds, and may or may not incur indebtedness. No bonds by or on behalf of such districts shall be issued nor shall any indebtedness against the same be incurred, unless the proposition to issue such bonds or to incur such indebtedness, shall be first submitted to the qualified property taxpaying voters of such districts, and the proposition adopted by a majority vote at an election held to determine such question. [Id.]

Art. 7923. May enter lands.—The supervisors, engineers and employés of any district are hereby authorized to go upon any lands lying within or without said district for the purpose of examining the same with reference to the location of canals, conduits, pipe lines, pumping plants and all other kinds of improvements to be constructed for such district, and for any other lawful purpose connected with their plan of conservation, transportation and distribution of water. [Id.]

Art. 7924. Eminent domain.—The right of eminent domain is hereby expressly conferred on all districts to enable them to acquire the fee simple title, easement, or right of way over and through any and all lands, water, or lands under water, private or public (except lands and property used for parks, cemeteries, manufacturing industries and established and developed water powers existing at the time of the creation of such district), within and without such districts, necessary for making, constructing and maintaining all canals, conduits, aqueducts, pipe lines, pumping plants and other improvements necessary for the conservation, transportation and distribution of fresh water for the purposes herein named; and also to enable them, upon the payment of fair and just compensation, to secure the right to connect with and use jointly with the owners, pipe lines belonging to other such districts provided such use will not impair the supply or service of such districts. Such proceedings shall be instituted under the direction of the supervisors and in the name of the district. [Acts 2nd C.S.1919, p. 107; Acts 1935, 44th Leg., p. 1162, ch. 365, § 1.]

Art. 7925. Payment of damages.—All such compensation and damages adjudicated in such condemnation proceedings and all damage which may be done to the property of any person or corporation in the construction and maintenance of canals, conduits, pipe lines, pumping plants and other improvements under the provisions of this chapter, shall be paid out of any funds or properties of said district, except taxes necessarily applied to the sinking fund and interest on the district bonds. [Acts 2nd C.S.1919, p. 107.]

Art. 7926. Right of way; acquisition.—The supervisors are hereby empowered to acquire the necessary right of way for canals, conduits, pipe lines, pumping plants and other necessary improvements contemplated by this chapter, by gift, grant, purchase or condemnation proceedings; and such necessary improvements may be constructed and maintained within and without such proposed district upon lands acquired as herein authorized. [Id.]

Art. 7927. Right of way: roads.—All districts are hereby given the right of way across all public or county roads, but they shall restore such roads where crossed to their previous condition for use, as near as may be. [Id.]

Art. 7928. Use of road ways.—Said districts are authorized and empowered to make all necessary levees, bridges, and other improvements across or under any railroad embankments, tracks, or rights of way, or public or private roads or the rights of way thereof, or rivers or other public improvements of other districts, or other such improvements and the rights of way thereof, for the purpose of securing the fresh water supply necessary for said districts. [Id.]

Art. 7929. Railroad ways.—When such improvements are to be constructed across or under any railroad properties, notice shall first be given by said district to the proper railroad authorities or other persons relative to the additions or changes to result from the improvements contemplated; and said authorities or persons shall be given thirty days in which to agree to said work to be done in the manner proposed by said district, or to refuse to agree thereto; and in case of refusal, they shall at their own expense construct the said improvements in their own manner, provided such design or manner of construction shall be satisfactory to said district. [Id.]

Art. 7930. Joint projects.—All districts shall have authority to act jointly with each other, with political subdivisions of the State, with other States, with cities and towns, and with the Federal Government, in the performance of any of the things permitted by this chapter, upon such terms as may be agreed upon by the supervisors. [Id.]

Art. 7930—1. Exclusion of lands in certain districts.

Authority to exclude lands

Sec. 1. The Board of Supervisors of any fresh water supply district in this State, situated in a county having a population of not more than twenty thousand (20,000) and not less than three thousand (3,000) according to the last preceding Federal Census and embracing not less than fifty thousand (50,000) acres, and which district has no outstanding bonded indebtedness, by their resolution duly adopted by referring to this law and adopting the same, are authorized to exclude lands from the boundaries of any such district in accordance with the provisions of this Act and the method herein and hereby prescribed; provided, however, that the provisions of this Act shall not apply to and govern any such fresh water supply district unless and until this law is adopted by a two-thirds majority vote of the Board of Supervisors of such district, had at a regular or called meeting thereof and entered upon the minutes of their proceedings; and a copy of the same, signed by the president and attested by the secretary, is filed and recorded in the office of the county clerk of the county in which the district is situated.

Petition for meeting of Supervisors; notice

Sec. 2. The Board of Supervisors of such district may, by three-fifths vote, and shall, upon petition of five per cent (5%) of the qualified tax-paying voters of such district as shown by the rolls of the tax collector and assessor of such district, call a meeting of said board for the purpose of determining whether any lands included within the boundaries of such district shall be excluded therefrom, and such petition and the notice of such meeting shall describe, by metes and bounds or by survey numbers, or by other reasonable identification, the proposed new boundaries of the district and shall state that it is proposed that all the land within the boundaries of the district not included within the proposed new boundaries as set forth shall be excluded from such district. The notice of meeting shall also state the time and place thereof, and that any landowner within or without the proposed new boundaries may appear at such meeting and be

heard in support of or in opposition to the establishment of such new boundaries and the exclusion of the land proposed to be excluded, and such notice shall be addressed or directed to "all landowners and taxpayers of ——— County Fresh Water Supply District No. ——— (inserting the name and number of the district) and all other persons concerned." A certified copy of such notice shall be posted in three (3) public places within the district, and one (1) copy shall be published once, not less than three (3) days prior to the date of the meeting, in a newspaper having general circulation in the district.

Such meeting may be adjourned from day to day or from time to time as the Board of Supervisors may deem necessary or advisable.

Resolution excluding lands; filing with County Clerk

Sec. 3. If, by the time set for such meeting, no written protest of the exclusion of lands from such district shall have been filed with the Board of Supervisors by the owner or owners of any land or lands proposed to be excluded from such district, or if any such protest or protests represent less than five per cent (5%) of the land proposed to be excluded, the Board of Supervisors may thereupon, at their discretion, by resolution duly adopted and entered upon the minutes of their proceedings, declare such land or lands so proposed to be excluded from the boundaries of the district no longer a part of the district, and shall set forth the boundaries of the district as so altered and fixed, and a copy of such resolution, signed by a majority of the Board of Supervisors, duly attested by the Secretary, shall be filed in the office of the county clerk and recorded in the deed records of the county in which such district is situated, and the land or lands thus excluded shall be no longer a part of such district from and after the recording of such resolution as aforesaid; provided, however, that the withdrawn or excluded land or lands shall not be released from the payment of its/their pro rata part or share of any indebtedness existing at the date of such withdrawal; and it shall be the duty of the Board of Supervisors to continue to levy a tax each year on such excluded land or lands, of the same rate as levied upon lands within the district, for the purpose of paying the then existing indebtedness until the taxes collected from such excluded land shall equal its pro rata share of the original indebtedness at the time of withdrawal.

Election on protest of exclusion

Sec. 4. In the event written protest or protests are filed with the Board of Supervisors prior to the meeting provided for under Section 2 hereof, or in the event any protest or protests are made at such meeting by the owner or owners of any land or lands proposed to be excluded from such district, it shall thereupon be the duty of the Board of Supervisors to pass upon such protest or protests and to hear the evidence thereon, and, if the owner or owners of as much as five per cent (5%) of the land proposed to be excluded shall protest against such exclusion, the Board of Supervisors shall thereupon call an election to pass upon the proposition whether the boundaries of such district shall be so altered as to exclude such land or lands, and such election shall be called and conducted in the same manner as provided for by Articles 7888 to 7894, inclusive, in so far as the same are applicable except where otherwise provided herein, except that the Board of Supervisors shall perform all the functions imposed on the Commissioners Court by said Articles.

Notice of election

Sec. 5. Notice of such election shall be given, stating the time and places for holding the same, the proposed new boundaries of the district as set out in Section 2 hereof, the proposition to be voted upon, and the names of the presiding officers appointed for holding the election. Such notice shall be posted at the courthouse door for ten (10) days prior to the day of election.

Ballots

Sec. 6. The Board of Supervisors shall provide the necessary ballots for such election, which shall have printed thereon: "For the establishment of the new boundaries of the fresh water supply district"; and "Against the establishment of the new boundaries of the fresh water district."

Oath of voter

Sec. 7. Every person offering to vote at any election held under the provisions of this Act shall take the following oath before the presiding judge at the polling place where he offers to vote, and such judge is authorized to administer the same: "I do solemnly swear that I am a qualified voter of the ——— County Fresh Water Supply District No. ——— (inserting the name and number of the district) and have not voted before in this election."

Declaring result of election

Sec. 8. If, at such election, a majority of the votes cast, both within and without the proposed new boundaries, shall be in favor of the establishment of such new boundaries, the board of supervisors shall thereupon enter an order declaring said election to be in favor of the establishment of such new boundaries, and such order shall be entered in the minutes of the proceedings of such board declaring such land or lands so excluded to be no longer a part of such district and declaring and describing the new boundaries by metes and bounds or by survey numbers, or by other reasonable identification, and a copy of such order, signed by a majority of the members of the board of supervisors and duly attested by the secretary, shall be filed in the office of the county clerk and recorded in the deed records of the county in which such district is situated, and such land or lands shall no longer be a part of the district from and after the recording of such order; provided, however, that such excluded land or lands shall not be released from the payment of its/their pro rata part or share of any indebtedness existing at the date of such withdrawal; and it shall be the duty of the board of supervisors to continue to levy a tax each year on such excluded land or lands as provided in Section 3 hereof.

Board of supervisors' findings as prima facie evidence of facts

Sec. 9. All findings of fact by the board of supervisors of any such district in connection with the proceedings herein authorized, when entered upon the minutes of such proceedings, shall constitute prima facie evidence of the existence of such facts and shall be conclusive thereof unless attacked in a direct proceeding instituted in a court of competent jurisdiction within the time and in the manner provided by the statutes of this state for election contests.

Cancellation of unsold bonds on withdrawal of lands

Sec. 10. Whenever any fresh water supply district adopting the provisions of this Act has authorized the issuance of any bonds and the same or any portion thereof have not been sold or put into circulation, the withdrawal of lands from such district in conformity with the provisions of this Act shall operate as a cancellation of such unsold bonds and annexed interest coupons.

Redefining boundaries after exclusion of lands

Sec. 11. It shall be the duty of the board of supervisors of any such district, within a reasonable time after the withdrawal of lands from such district as herein provided, to adopt a resolution redefining the boundaries and limits of such district to show the exclusion of such lands, and when such resolution

shall have been passed the secretary of the board shall enter the same in the minutes and records of the district, and a certified copy of such resolution shall be filed in the office of the county clerk of such county and recorded in the deed records thereof.

Validation of districts

Sec. 12. All fresh water supply districts embraced within the provisions of this Act and which have heretofore been organized or attempted to be organized under the provisions of Articles 7881 to 7959, inclusive, Revised Civil Statutes of Texas, 1925, as amended, are hereby validated and are hereby declared to be valid, legal organizations and to have all the powers, functions and rights provided by Articles 7881 to 7959, inclusive, and this Act. The fact that by inadvertence or [1] oversight or otherwise any act of the officers of the State or any county or of any person in the creation of any such district was not properly done shall, in nowise, invalidate the organization of such district, and all such districts are hereby validated in all respects as though they had been duly and legally established in the first instance. [Acts 1935, 44th Leg., 2nd C.S., p. 1871, ch. 475.]

[1] So in enrolled bill. Session Laws read "of".

Art. 7930—2. Exclusion and annexation of lands in certain districts.

Exclusion of lands

Section 1. Whenever there exists within the boundaries of any Fresh Water Supply District in this State territory to the extent of at least ten (10) acres contiguous and adjoining the lines of such District, the Board of Supervisors of such District may, before the issuance and sale of any bonds on the faith and credit of said District, and, before the levy of any taxes for said District, by Resolution duly passed and adopted, discontinue such territory as a part of said District, in accordance with the provisions of this Act and the method herein and hereby prescribed:

(a) The Board of Supervisors of any such District shall have the power to adopt a Resolution excluding such territory, and which Resolution shall describe the territory proposed to be excluded by metes and bounds; provided, however, that such Resolution shall not become effective until after the issuance and publication of the notice of intention to adopt the same, as hereinafter prescribed, or the confirmation of such Resolution, at an election held in such District, if such election be ordered and held, as herein authorized;

(b) Notice of intention to adopt such Resolution, and which notice shall contain a full copy of the proposed Resolution, shall be published once a week for two consecutive weeks in a newspaper of general circulation within the County in which the District is situated, the date of the first publication to be at least fourteen (14) days prior to the date of the meeting of the Supervisors, and at which meeting it is proposed to adopt the Resolution excluding such territory from the District. At any time before the date fixed for the adoption of the proposed Resolution, excluding such territory, ten (10), or a majority, of the qualified voters of such District, who own land therein, may file a petition with the President or Secretary of the Board of Supervisors of the District, praying the Board of Supervisors to order an election for the purpose of submitting the proposition to exclude such territory from the District to a vote of the qualified voters of such District, who own land therein. Upon the filing of such petition, it shall be the duty of the Board of Supervisors of such District to order an election to be held in such District, to determine whether or not such territory shall be excluded. In the event no such petition is filed or presented to the President or Secretary of the Board of Supervisors within the time hereinabove prescribed, no election on the proposition shall be required, and such Board of Supervisors shall then have the power to finally pass and adopt the proposed Resolution to exclude such territory from the District; and a copy of such Resolution, signed by a majority of the members of the Board of Supervisors of such District, and duly attested by the Secretary of such Board, shall be filed and recorded in the Deed Records of the County in which the District is situated, and such territory shall be no longer a part of the District from and after the recording of the copy of such Resolution;

(c) Whenever any Fresh Water Supply District has authorized the issuance of any bonds, and the same have not been sold or put into circulation, and no tax levy has been made to pay the principal of and interest on such bonds, the exclusion of any territory from any such District, in conformity with the provisions of this Act, shall result in a cancellation of such authorized bonded indebtedness;

(d) It shall be the duty of the Board of Supervisors of any such District, within a reasonable time after the exclusion of such territory from such District, to adopt a Resolution re-defining the bounds and limits of such District, so that they shall show the exclusion of such territory; and when such Resolution has been duly passed, the Secretary of such District shall enter and record such Resolution in the minutes or records of such Board of Supervisors, and a certified copy of such Resolution shall be promptly filed in the office of the County Clerk of the County in which the District is situated, and such certified copy shall also be recorded in the Deed Records of such County.

Annexation of lands

Sec. 2. Defined areas of territory not embraced within a Fresh Water Supply District may be added to the area of any such District in the manner hereinafter provided, to-wit:

Petition for the annexation of such territory shall be signed by a majority of landowners therein, or by fifty (50) landowners, if the number of such landowners is more than fifty (50). Such petition shall be filed with the Secretary of the Board of Supervisors. It shall be the duty of the Board to pass an order fixing a time and place at which such petition shall be heard, which date shall be not less than thirty (30) days from the date of such order. The Secretary shall issue notice of such time and place of hearing, and which notice shall describe the territory proposed to be annexed. The Secretary shall execute said notice by posting copies thereof in three public places in the District, and one copy in a public place within the territory proposed to be annexed; said notices to be posted for fifteen (15) days prior to the date of said hearing. Publication of copy of such notice shall be made in a newspaper of general circulation in the County in which such District is situated, one time, and at least fifteen (15) days prior to such hearing. If, upon the hearing of such petition it is found that the proposed addition of such territory to the District is feasible and practicable, and would be of benefit both to such territory and to the District, then the Board, by Resolution duly entered upon its minutes, may receive such proposed territory as an addition to, and to become a part of, the District. Such Resolution need not include all of the land described in the petition, if upon the hearing a modification or change is found necessary or desirable; and a copy of such Resolution, signed by a majority of the members of the Board of Supervisors of such District, and duly attested by the Secretary of such Board, shall be filed and recorded in the Deed Records of the County in which the District is situated, and such territory shall be a component part of the District from and after the recording of the copy of such Resolution. The added territory shall bear its pro rata part of all indebtedness or taxes that may be owed, contracted or authorized by said District to which it shall have been added; provided, however, that before the added territory shall be subject to any part of such indebted-

ness or taxes, the Board of Supervisors shall order that an election be held in said District, as enlarged or extended by reason of the annexation of such territory, on the question of the assumption of such indebtedness or taxes by said District, as so enlarged or extended.

Elections; notice

Sec. 3. Whenever an election is ordered to be held either for the purpose of confirming or approving the exclusion of any territory, or for the purpose of the assumption of indebtedness for taxes by reason of the annexation of any territory, as herein provided, then in either case such election shall be held and notice thereof given, as is provided in the case of the issuance of bonds by such Fresh Water Supply Districts.

Partial invalidity

Sec. 4. If any section, sentence, clause or phrase of this Act is held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act. [Acts 1937, 45th Leg., p. 787, ch. 385.]

Art. 7930—3. Exclusion of lands annexed to cities or towns of over 4,000 in certain districts.

Authority to exclude; area

Section 1. The Board of Supervisors of any Fresh Water Supply District situated entirely in any one county of this State and which Fresh Water Supply District, when created did not include within its boundaries any land which was within the corporate limits of any city or town, and which District has within its boundaries lands, which since the creation of such Fresh Water Supply District have been annexed to and become a part of a city or town rendering to such lands and the residents thereof the services the said District is authorized by law to render, and the population of such city or town exceeds four thousand (4,000) according to the Federal Census last preceding such exclusion and such city or town has not adopted a home rule charter under the provisions of Chapter 13, Title 28, of the Revised Civil Statutes of Texas of 1925,[1] are authorized to exclude such lands or parts thereof from the boundaries of any such districts in accordance with the provisions of this Act and the method herein and hereby prescribed; provided, however, that such area as may be excluded shall have a part of its boundary or boundaries identical with a part of the boundary or boundaries of the District as constituted at the time of the exclusion; and provided further, that the total area of such lands which may be excluded, whether by a single or by different acts of exclusion, shall not in the aggregate exceed in area one-tenth of the total area of such District as originally constituted in the order creating the District.

1 Articles 1165–1182.

Petition for meeting of Supervisors; notice

Sec. 2. The Board of Supervisors of such District may by three-fifths vote, and shall upon petition of five (5) per cent of the qualified taxpaying voters of such District, as shown by the rolls of the Tax Collector and Assessor of such District, call a meeting of said Board for the purpose of determining whether any of such lands included within the boundaries of such District shall be excluded therefrom, and such petition and the notice of such meeting shall describe by metes and bounds, or by survey numbers, or by other reasonable identification, the proposed new boundaries of the District, and shall state that it is proposed that all of the land within the boundaries of the District not included within the proposed new boundaries as set forth shall be excluded from such District. The notice of meeting shall also state the time and place thereof and that any land owner within the District within or without the proposed new boundaries, may appear at such meeting and be heard in support of or in opposition to the establishment of such new boundaries and the exclusion of the land proposed to be excluded, and such notice shall be addressed or directed to:

"All landowners and taxpayers of ———— County, Fresh Water Supply District No. ———— (Inserting the name and number of the District) and all other persons concerned." A certified copy of such notice shall be posted in three public places within the District, and one copy shall be published once not less than ten (10) days prior to the date of the meeting in a newspaper having a general circulation in the District, or if there is no newspaper having general circulation in the District, then in a newspaper having general circulation in the county wherein the District is situated.

Such meeting may be adjourned from day to day or from time to time as the Board of Supervisors may deem necessary or advisable.

Supervisors may call election or pass resolution excluding lands; filing resolution; effect of exclusion

Sec. 3. If by the time set for such meeting no written protest of the exclusion of lands from such District shall have been filed with the Board of Supervisors by the owner or owners of any land or lands within the District, and if no protest or protests are made at such meeting by the owner or owners of any land or lands in the District, or if such protest or protests represent less than three (3) per cent of the total superficial area of the District, the Board of Supervisors shall thereupon at their discretion either call an election as hereinafter provided upon the proposition whether the boundaries of such District shall be so altered as to exclude such land or lands or by resolution duly adopted and entered upon the minutes of their proceedings, declare such land or lands so proposed to be excluded from the boundaries of the District no longer a part of the District, and shall set forth the boundaries of the District as so altered and fixed, and a copy of such resolution signed by a majority of the Board of Supervisors, duly attested by the secretary, shall be filed in the office of the County Clerk and recorded in the Deed Records of the County in which such District is situated, and the land or lands thus excluded shall be no longer a part of such District from and after the recording of such resolution as aforesaid; provided, however, that the withdrawn or excluded land or lands shall not be released from the payment of its/their pro rata part or share of any indebtedness existing at the date of such withdrawal, which pro rata part or share shall be as herein provided; nor shall such land or lands be released from the payment of taxes which may be delinquent at the time of such exclusion or which may thereafter become delinquent; and it shall be the duty of the Board of Supervisors to continue to levy a tax each year on such excluded land or lands as herein provided for the purpose of paying the then existing indebtedness until the taxes collected from such excluded land shall equal its pro rata share of the indebtedness at the time of withdrawal.

Protests; election; manner

Sec. 4. In the event written protest or protests are filed with the Board of Supervisors prior to the meeting provided for under Section 3 hereof, or in the event any protest or protests are made at such meeting by the owner or owners of any land or lands within the District, it shall thereupon be the duty of the Board of Supervisors to pass upon such protest or protests and to hear the evidence thereon, and if the owner or owners of as much as three (3) per centum of the land within the boundaries of the District shall protest against such exclusion, the Board of Supervisors shall thereupon call an election to pass upon the proposition whether the boundaries of such District shall be so altered as to exclude such land or lands, and such election shall be called and conducted in the

same manner as provided by Articles 7888 to 7894, Revised Civil Statutes of Texas, 1925, inclusive, so far as same are applicable, except where otherwise provided herein, except that the Board of Supervisors shall perform all the functions imposed on the Commissioners Court by said Articles.

Notice of election

Sec. 5. Notice of such election, stating the time and place for holding the same, the proposed new boundaries of the District as set out in Section 3 hereof, the proposition to be voted upon and the names of the presiding officers appointed for holding the election, shall be given by the Board by posting a copy thereof in four (4) public places in the District, and one at the courthouse door for twenty (20) days prior to the date of election.

Ballots

Sec. 6. The Board of Supervisors shall provide the necessary ballot for such election, which shall have printed thereon:

"For the establishment of the new boundaries of the ———— Fresh Water Supply District No. ————." (inserting the name of the District).

and

"Against the establishment of the new boundaries of the ———— Fresh Water Supply District No. ————." (inserting the name of the District).

Oath of voter

Sec. 7. Every person who offers to vote at any election held under the provisions of this Act shall take the following oath before the presiding Judge at the voting place where he offers to vote, and such Judge is authorized to administer the same:

"I do solemnly swear that I am a qualified voter of ———— County, and that I am a resident property taxpayer of ———— County, Fresh Water Supply District No. ———— (inserting the number and name of the District) and have not voted before in this election."

Declaring result of election

Sec. 8. If at such election a majority of the votes cast shall be in favor of the establishment of such new boundaries, the Board of Supervisors shall thereupon enter an order declaring such election to be in favor of the establishment of such new boundaries, and such order shall be entered in the minutes of the proceedings of such Board, declaring such land or lands so excluded to be no longer a part of such District and declaring and describing the new boundaries by metes and bounds, or by survey numbers, or by other reasonable identification, and a copy of such order signed by a majority of the members of the Board of Supervisors and duly attested by the secretary shall be filed in the office of the County Clerk and recorded in the Deed Records of the county in which such District is situated, and such land or lands shall no longer be a part of the District from and after the recording of such order; provided, however, that such excluded land or lands shall not be released from the payment of its/their pro rata part or share of any indebtedness existing at the date of such withdrawal, such pro rata part or share of such indebtedness to be determined as herein provided; nor shall such land or lands be released from the payment of taxes which may be delinquent at the time of such exclusion or which may thereafter become delinquent; and it shall be the duty of the Board of Supervisors to continue to levy a tax each year upon such excluded land or lands as herein provided until the taxes collected from such excluded land shall equal its pro rata share of the indebtedness at the time of withdrawal.

Defeat of proposition; new petition not to be filed within year

Sec. 9. If the proposition to exclude such territory be defeated by a majority of the votes cast at any such election, no petition for the exclusion of all or any part of such territory shall be filed with or acted upon by the Board of Supervisors of such District within one year of such election and the Board of Supervisors of such District shall not be required to exclude any part of such territory or call another election to pass upon a proposition to so alter the boundaries of such District as to exclude any part of the territory within the area sought to be excluded at the last election at which such proposition was defeated until after the expiration of one year from the date of such election.

Bonds, warrants or certificates of indebtedness; payment of indebtedness; lien of taxes

Sec. 10. The rights of the holders of any outstanding and unpaid bonds, warrants, or other certificates of indebtedness of such Fresh Water Supply District shall be in nowise or manner diminished or impaired by any proceeding hereunder; but, as between the owners of the property within the territory excluded, as herein provided, and the owners of the property remaining within such Fresh Water Supply District, the pro rata part or share of any indebtedness existing at the date of such exclusion shall be ascertained and payment thereof made as follows:

(a) The property within the excluded area shall be charged with, and the owners of such property shall pay as their pro rata part of the indebtedness of the District, that percentage of a sum of money to be determined by deducting from whichever is greater of either the face value (par plus accrued interest) or market value of the then outstanding indebtedness of each series of such bonds or warrants the sinking funds, reserves and deposits then held for the payment thereof which the total assessed value of all the property assessed within the excluded area bore to the total assessed value before such exclusion of all the assessed property of the entire District from which said territory is taken for the tax year within which the respective series of such indebtedness were issued and sold, the values as shown by the tax roll of the District to be used as the basis of the computation. At the time of the adoption of the resolution of exclusion as provided either in Section 4 or Section 9 hereof, the Board of Supervisors shall ascertain such pro rata share of indebtedness of the District chargeable to the excluded area as provided in this Section and shall duly adopt in its records a resolution establishing and fixing such pro rata share, and when thus ascertained, fixed and established such amount shall be binding upon all persons and property in both the excluded and the remaining areas of such District.

(b) The property remaining within the new boundaries of such Fresh Water Supply District, as such boundaries are redefined after the exclusion of territory as herein provided, shall be charged with, and the owners thereof shall pay in due course by annual taxes, the remainder of all the indebtedness of such Fresh Water Supply District.

(c) The taxes levied against all of the property within the excluded territory for the current taxable year in which the exclusion is made as herein provided shall be paid and remain, until paid, as a lien against such property excluded from such Fresh Water Supply District as though no territory had been excluded, but the amount thereof collected shall be credited against and deducted from the total sum for which the property within the excluded area and the owners thereof are liable under the above Section 10 (a), and no additional taxes or other charges shall be levied, assessed, or charged against such land for the current year in which such exclusion is made.

(d) All taxes against any land or lands within the excluded area which may be delinquent at the time

for the exclusion and all taxes against any of such land or lands which may thereafter become delinquent shall have the same status they would have had if such land or lands had not been excluded, and such Fresh Water Supply District shall continue to have, exercise, and enjoy all of the liens, right and remedies it would have had against the persons and property against whom and which such taxes were assessed if the territory had not been excluded.

The principal of all taxes assessed against the excluded territory after such exclusion and collected after becoming delinquent, but before the final payment of all sums chargeable against the property so excluded, shall be credited against the amount so chargeable, as though such taxes had been collected when due. All taxes remaining delinquent after the collection of all charges herein provided for shall remain the property of such Fresh Water Supply District and be enforceable against the property on which it was assessed and the owner thereof.

(e) Any municipality authorized to do so and any person, firm, or corporation desiring to do so may pay any sum of money it desires to pay at any time toward the payment and discharge of the sum chargeable against the property within the excluded area and the owners thereof, and all such voluntary payments shall be received and receipted for by such Fresh Water Supply District as a credit on and reduction of the amount herein apportioned and charged against the excluded area.

(f) After the current year in which the exclusion is made as herein provided, the remainder of the sum chargeable against the excluded area shall be paid by the owners of the property so excluded and be collected as taxes assessed and levied annually against the property within the excluded area and the owners thereof, just as though the exclusion had not been made, on the same basis as taxes are assessed annually against the property remaining within such District, until the amount so collected from the excluded territory and the owners of property therein equals the total net sum chargeable against and recoverable of and from such excluded area as herein provided, except that the taxes and charges assessed against the property within the excluded area for the last year during which such levies and assessments are made may be lower than the rate applicable to the area not excluded in order to produce a sum of money required to discharge the balance of the sum chargeable against the excluded area, provided, however, that in any event the District shall continue to levy taxes against the lands within such excluded area each year until the pro rata share of the indebtedness chargeable to such excluded area shall have been collected by the District.

All taxes and charges of every kind herein provided for shall be subject to the same penalties and interest as other taxes levied by such Fresh Water Supply District, and such District shall have all the rights and remedies with reference thereto which it has with reference to other taxes.

Property within excluded territory; discharge of obligations; resolution

Sec. 11. Upon the payment of all of the sums herein provided for and chargeable against the property within the territory so excluded, save and except such taxes and charges as are levied but delinquent against specific pieces of property within the excluded territory, all of the property within the excluded territory, save and except that against which such delinquent taxes and charges remain unpaid, and the owners thereof, shall be fully discharged and released of each and every obligation and duty it and they have to such Fresh Water Supply District, and the Board of Supervisors of such Fresh Water Supply District shall thereupon adopt and cause to be recorded in the minutes of such District and in the Deed Records of the county in which such Fresh Water Supply District is situated a resolution setting out the fact that the property within the excluded area and the owners thereof, save and except the property against which taxes are then delinquent and the owners thereof, have fully discharged every obligation imposed by this Act and are fully released of all obligations to such Fresh Water Supply District, and such resolution shall contain a list of the property against which taxes are then unpaid, giving a brief description thereof, stating the name of the person against whom such taxes were assessed and the amount of the principal sum owing for each year for which there is a delinquency. Upon the payment of the delinquent taxes against any property listed in such resolution, the property against which such taxes were assessed shall likewise be discharged of every obligation to such District and the release thereof may be established by a certificate of the Tax Assessor and Collector of such Fresh Water Supply District certifying that all delinquent taxes against such property have been paid.

Board of Supervisors' findings as prima facie evidence of facts

Sec. 12. All findings of fact by the Board of Supervisors of any such District in connection with the proceedings herein authorized, when entered upon the minutes of such proceedings, shall constitute prima facie evidence of the existence of such facts and shall be conclusive thereof unless attached in a direct proceeding instituted in a Court of competent jurisdiction within the time and in the manner provided by the Statutes of this State for election contests.

Liability of owners and property within excluded territory after exclusion

Sec. 13. Neither the property within the excluded territory nor the owners thereof, shall ever be liable for the payment of any bonds, warrants, or other indebtedness issued or incurred by such Fresh Water Supply District after the segregation and exclusion as herein provided.

Property of District upon completion of exclusion

Sec. 14. Upon the completion of any exclusion as herein provided all of the property of such Fresh Water Supply District shall continue to be the property of such District and the owners of the property, within the excluded territory shall have no right, title, or interest thereto or therein. [Added Acts 1941, 47th Leg., p. 448, ch. 284, § 1.]

This act not affected by 1941 amendment of article 7880—3a, see article 7880—3a, note.

Art. 7930—4. Districts within counties of over 500,000 population, additional powers of.

Sanitary sewer systems

Section 1. Fresh Water Supply Districts heretofore or hereafter created under the provisions of Chapter 4 of Title 128, Revised Civil Statutes of Texas, 1925, as amended,[1] and located wholly within a county having a population in excess of five hundred thousand (500,000) inhabitants according to the last preceding or any future Federal Census, in addition to the powers heretofore granted, are hereby authorized to purchase, construct, acquire, own, operate, repair, improve and extend sanitary sewer systems for the collection, transportation, processing, disposal and control of all domestic, industrial and communal wastes.

1 Article 7881 et seq.

Fire fighting facilities and equipment

Sec. 2. Such Districts shall be authorized to purchase, own, improve, repair, maintain and operate fire fighting facilities and equipment for the purpose of protecting the property belonging to such Districts and other properties situated within such Districts, and to

maintain and operate a fire department and to employ a fire marshal and such other employees as shall be necessary therefor. Such Districts shall further be authorized to pay rewards for information leading to the arrest and conviction of a person or persons on a charge of arson in connection with the burning of property situated within the District. The District's liability for such rewards shall not exceed the sum of One Hundred ($100.00) Dollars for each offense, regardless of the number of persons convicted therefor.

Cost, payment of

Sec. 3. The cost of constructing, purchasing, acquiring improving and repairing such sanitary sewer systems and fire fighting equipment and facilities may be paid out of the proceeds of sale of bonds or other obligations issued by such Districts, or out of funds derived from taxes levied for maintenance purposes, or from the operation of the District's improvements, in the discretion of the Board of Supervisors. The cost of maintaining and operating such system and facilities may be paid out of the funds derived from taxes levied for maintenance purposes, or from operating revenues, but shall not be paid out of borrowed money, whether by bonds or otherwise.

Contracts with nearby municipal corporations

Sec. 4. Such Districts are hereby authorized to contract with nearby municipal corporations or other political subdivisions for fire protection by the use of facilities and equipment of such municipal corporations or political subdivisions, and to pay the consideration therefor from any available funds other than borrowed money, whether by bonds or otherwise. Such contracts shall extend for a period not to exceed ten (10) years, as may be agreed upon by the governing bodies of the contracting parties.

Rules and regulations; peace officers

Sec. 5. Such Districts shall further have the power to adopt and enforce reasonable rules and regulations relating to the installation, maintenance and operation of plumbing fixtures and facilities within such Districts, in order to maintain safe and sanitary conditions with such Districts and to protect the lives, health and welfare of the inhabitants thereof. The Boards of Supervisors of such Districts may prescribe reasonable penalties for the breach of any rule or regulation so adopted, which penalties shall not exceed fines of more than Two Hundred ($200.00) Dollars or imprisonment in jail for more than thirty days, or both such fines and imprisonment, which penalties shall be in addition to other penalties provided by law and may be enforced in any Court of proper jurisdiction in the County in which the District's principal office is located; provided, however, that no rule or regulation which provides a penalty for the violation thereof shall be in effect, as to the enforcement of the penalty, until a brief, substantial statement of such rule or regulation and the penalty for the violation thereof is published once a week for two consecutive weeks in a newspaper of general circulation in the area in which such District is situated. Seven (7) days after the second publication, the penalty or penalties provided shall be effective, and such rules and regulations shall be judicially known to the Courts.

Such Districts shall be authorized to employ and constitute their own peace officers, who shall be endowed with power to make arrests for the commission of any offense against the rules and regulations of the District or against the laws of the State of Texas when any such offense or threatened offense occurs within the boundaries of said Districts.

Bonds payable from revenue or from revenue and taxes authorized; taxes

Sec. 6. For the purpose of constructing, purchasing, repairing, improving and extending the improvements which such Districts are authorized by law to make, and in addition to the tax bonds which such Districts are now authorized to issue, such Districts may also issue bonds payable solely from the gross revenues received from the operation of the District's water works and sanitary sewer systems or either of them, after deduction of the reasonable cost of maintaining, operating, repairing, improving or extending such system or systems, and the net revenues of one of such systems may be pledged to the payment of bonds issued for the construction, purchase, repair, improvement or extension of another system belonging to such Districts.

Such Districts shall also be authorized to issue bonds payable both from ad valorem taxes and the net revenues of their water works systems or sanitary sewer systems, either or both, for the purposes set out in this Section. In such case, such Districts shall levy, assess and collect ad valorem taxes until the net revenues from the operation of such system or systems, together with the money derived from taxes, may have accumulated a surplus in the sinking fund equal to the total principal and interest requirements of the Districts' combination tax and revenue bonds maturing during the current year, in which event the Districts' tax levies may be lowered to produce not less than twenty-five (25%) per centum of the principal and interest requirements for the next succeeding year, until an actual experience of three (3) successive years may demonstrate that the net revenues are wholly adequate to retire the principal and interest on such obligations as they mature; and at such time the District's tax may be wholly abated, until further experience may demonstrate the necessity again to assert the District's taxing power to avoid default in payment of said obligations as they mature.

The Boards of Supervisors of such Districts shall submit the proposition of issuing the bonds herein authorized, to a vote in the manner provided by Chapter 4, Title 128, Revised Civil Statutes of Texas, 1925,[1] relating to the issuance of tax bonds. The proposition submitted, in the case of revenue bonds shall be: "For the issuance of bonds and the pledge of net revenues for the payment thereof", and the contrary of such proposition; and the proposition for the issuance of combination tax and revenue bonds shall be: "For the issuance of bonds, the pledge of net revenues and the levy of taxes adequate to provide for the payment thereof", and the contrary of such proposition.

1 Article 7881 et seq.

Conversion of Water Control and Improvement Districts into Fresh Water Supply Districts

Sec. 7. Such Water Control and Improvement Districts, heretofore or hereafter created in such counties, may be converted into Fresh Water Supply Districts in the following manner: The Boards of Supervisors of such Districts shall adopt resolutions declaring that in their judgment it will be to the best interest of such Districts, and will be a benefit to the lands and property therein, to become a Fresh Water Supply District under the provisions of Section 59 of Article XVI of the Constitution of Texas, which said resolution shall provide for a public hearing on such proposition at a date to be fixed by such Boards not less than fifteen (15) nor more than thirty (30) days from the date of such resolution. Notice of such hearing shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the area in which such District is located, the first publication to be not less than fourteen (14) days prior to the time set down for hearing. Such notice shall contain a copy of such resolution or a substantial statement of the matters therein contained. At such hearing all interested persons may appear and offer testimony and other evidence. If upon such bearing said Board finds that the conversion of such Water

Control and Improvement District into a Fresh Water Supply District would be to the best interests of the District, and would be a benefit to the lands and property situated therein, they shall enter their order declaring said District to be a Fresh Water Supply District and the same shall thereafter operate under the provisions of Chapter 4, Title 128, of the Revised Civil Statutes of Texas, with all amendments and additions thereto, including this Act; provided that nothing herein shall be construed to authorize the impairment of any existing contract. If such Board finds that such conversion would not be for the best interests of the District, and would not be a benefit to the lands and properties therein situated, it shall enter its order to that effect and such District shall continue to operate as a Water Control and Improvement District. The findings of said Board of Supervisors shall be final, and not subject to review or appeal.

Premiums on surety bonds

Sec. 8. The premiums on surety bonds required of officials and employees of Fresh Water Supply Districts may be paid out of any available funds of such Districts, upon order of the Board of Supervisors.

Provisions cumulative; partial invalidity

Sec. 9. The provisions of this Act shall be cumulative of all other existing laws. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Contracts

Sec. 10. Said Districts may enter into all necessary contracts for construction and repairs authorized by law. Where the amount exceeds One Thousand ($1,000.00) Dollars, competitive bids on uniform written specifications shall be asked, after advertisement one time in a newspaper of general circulation in the county or in said District for at least five (5) days prior to opening bids. Contracts shall be awarded to the lowest and best bidder, shall be reduced to writing, and a surety bond shall be required in a sum equal to the amount of the contract, to insure the faithful performance of the contract and the payment of labor and materials.

Where the amount is One Thousand ($1,000.00) Dollars or less, and more than One Hundred and Fifty ($150.00) Dollars, proposals without advertisement may be received, and contracts awarded in like manner, without advertisement or the requirement for bond. Purchases may be made or contracts entered into on emergency requisitions, where the amount of such purchase does not exceed One Hundred and Fifty ($150.00) Dollars, provided that all of the provisions of Articles 1667 through 1673, Revised Civil Statutes of Texas, 1925, as amended, shall apply to the accounting of such Districts and the record of purchases, except as otherwise provided herein. [Acts 1941, 47th Leg., p. 177, ch. 129.]

Provisions of section 10 suspended. Acts 1943, 48th Leg., p. 413, ch. 280, § 3, suspends the provisions of section 10 of this article until the cessation of hostilities of World War II. By Proclamation No. 2714, the President of the United States proclaimed the end of hostilities effective twelve o'clock noon, Dec. 31, 1946.

Art. 7930—4a. [Expired.]

This article was Acts 1943, 48th Leg., p. 413, ch. 280, § 4. Section 5 of such Act provided that the provisions thereof should remain in force until the cessation of hostilities of World War II. By proclamation No. 2714, the President of the United States proclaimed the cessation of hostilities effective twelve o'clock noon, December 31, 1946.

4. BONDS

Art. 7931. Election for bonds.—After the establishment of any district, and the qualification of the supervisors thereof, the board may order an election to be held within such district at a time not less than twenty nor more than thirty days from the date of said order, at which there shall be submitted the proposition and none other: "For the issuance of bonds and levy of taxes in payment thereof;" "Against the issuance of bonds and levy of taxes in payment thereof." [Acts 2nd C. S. 1919, p. 107.]

Art. 7932. Notice of election.—Notice of such election, stating the amount of bonds as determined by the board to be necessary to be issued, shall be given by the board by posting a copy thereof in four public places in the district, one at the courthouse door, for twenty days prior to the election. Such notice shall contain the proposition to be voted upon, with an estimate of the probable cost of construction of the proposed improvement, and incidental expenses connected therewith, and an estimate of the cost of the purchase of the improvements already existing, if the same is contemplated, or the purchase of said necessary improvements, and the construction of additions thereto. [Id.]

Art. 7933. Conduct of election.—The board shall name polling places in the district and shall appoint two judges, one of whom shall be presiding judge, and two clerks for each voting place designated by them. The supervisors shall provide the necessary ballots for said election, which shall have written or printed thereon the proposition to be submitted as provided in the second preceding article. [Id.]

Art. 7934. Elections: expenses.—All expenses incident to calling and holding all elections except the first authorized by this chapter, shall be paid out of any district funds, except interest and sinking fund for bonds. [Id.]

Art. 7935. Results of election.—Immediately after the election, the presiding judges shall make return of the result in the same manner as provided for in general elections for State and county officers. Such return shall be made to the supervisors who shall at a regular or special session canvass said vote, and if a majority of said votes favor the issuance of bonds and levy of taxes, then the supervisors shall so declare and enter the result in their minutes. [Id.]

Art. 7936. Issuance of bonds.—After declaring the result of said election, the supervisors shall make and enter an order in their minutes directing the issuance of bonds for such district sufficient in amount to pay for such proposed improvements with all necessary actual and incidental expenses connected therewith, not to exceed the amount specified in said order and notice of election. The provisions of Chapter 2 of this title providing for the issuance, denominations, rate of interest, manner and conditions of payment and maturity dates of water improvement district bonds shall apply. [Id.]

Art. 7937. Bonds: approval.—Before such bonds are offered for sale, there shall be forwarded to the Attorney General a certified copy of all proceedings had in the organization of the district, and with reference to the issuance of such bonds in connection with the bonds themselves, and such other information respecting same as he may require. The Attorney General shall carefully examine said bonds in connection with the record and Constitution and laws of this State governing the issuance of such bonds; and if such examination shows that such bonds are issued in conformity thereto, and that they are valid and binding obligations upon said district, he shall so officially certify. [Id.]

Art. 7938. Registration of bonds.—When such bonds are so approved, they shall be registered by the Comptroller in a book kept for that purpose and the certificate of the Attorney General as to their validity shall be preserved of record; whereupon, such bonds shall be held prima facie valid in every action, suit or proceeding in which their validity may be

brought into question. In every suit to enforce collection of such bonds and interest thereon, the only available defense against the validity of such bonds shall be forgery or fraud. [Id.]

Art. 7939. Sale of bonds.—After such bonds have been so registered, the supervisors shall sell same on the best terms and for the best price possible, not less than their face value and accrued interest; and shall promptly pay over to the district depository the proceeds of such sale to be placed to the credit of such district. [Id.]

Art. 7940. Bonds: payment.—At the time of the payment of interest or for redemption of district bonds, the depository shall receive and cancel any interest coupons so paid or any bonds so discharged, and when such interest coupon or bond shall be turned over to the supervisors, the account of such depository shall be credited with the amount thereof, and such bond or coupon shall be cancelled and destroyed. [Id.]

Art. 7941. Bonds: record book.—When bonds have been so issued, the supervisors shall procure and deliver to the county treasurer a well bound book in which a list shall be kept of all such bonds with their manner of payment, amount, rate of interest, date of issuance, when due, where payable, amount received for same, and the tax levy to pay interest on and redeem such bonds; and such books shall at all times be open to the inspection of the parties interested, either as taxpayers or bond holders. Upon the payment of any bond, said treasurer shall make an entry thereof in said book; and he shall receive for such services the same fees allowed by law to the county clerk for recording deeds. [Id.]

Art. 7941a. Refunding bonds, approval by Attorney General.—Any fresh water supply district, which has heretofore been organized under the laws of the State, and has issued bonds, may, by consent of the holders thereof, refund any bonds heretofore issued by issuing new coupon bonds for that purpose. Such refunding bonds shall not bear a greater rate of interest than the bonds in lieu of which they are issued. Interest shall be evidenced by coupons attached to such bonds, and may be payable annually or semi-annually, within the discretion of its Board of Supervisors; and such refunding bonds shall be payable serially, or otherwise, not exceeding forty years from the date thereof, and shall be issued in denomination of One Hundred Dollars, or some multiple thereof; and a sufficient tax levy to meet the payment of the principal and interest of said refunding bonds shall be made before the delivery thereof, providing the refunding of any bonds shall not affect any taxes already due.

The refunding bonds hereby authorized shall be issued in the manner provided for the execution of fresh water supply district bonds. Any sum to the credit of any sinking fund account on hand shall first be deducted in ascertaining the amount of refunding bonds to be issued, and such money shall in every case be applied to the payment of the outstanding bonds. No refunding bonds shall be issued and delivered until approved by the Attorney General, and registered by the State Comptroller; provided, however, that the Comptroller shall not register such refunding bonds until the old bonds in lieu of which such refunding bonds are issued are presented to him for cancellation; and after the registration of the new bonds the Comptroller shall cancel the old bonds and interest coupons and deliver such new bonds to the proper party or parties; provided, further, that the old bonds may be so presented for cancellation, in installments, and a like amount of the new bonds registered and delivered as is herein provided. [Acts 1935, 44th Leg., p. 121, ch. 46, § 1.]

5. TAXES

Art. 7942. Duties of assessor.—The district assessor shall return to the Board of Equalization a list of all persons who refuse to sign the oath for tax assessments, shall make up and return the assessment rolls and keep bound records thereof, collect all taxes and deposit the same weekly and make monthly reports of such collections, maintain an office, and be subject to the rules and regulations of the supervisors, in the same manner as provided by law for district tax assessors of water improvement districts. [Acts 2nd C.S. 1919, p. 107.]

Art. 7943. Collection of taxes.—All taxes provided for herein shall be collected under the direction of the district collector. He shall keep a true account of all moneys collected, and deposit same as collected in the district depository, and shall file with the district secretary a true statement of all money collected once a week. He shall use a duplicate receipt book and shall give a true receipt for each collection made, retaining in such book a true copy thereof which shall be preserved as a record of the district. [Id.]

Art. 7944. Assessor's accounts.—The assessor shall be charged by the supervisors upon a permanent finance ledger kept for the purpose by the district, with the total assessment as shown by the assessment rolls; and proper credit shall be given to him for all sums paid over to the depository as shown by his monthly reports; and upon final annual settlement, he shall make a complete report of all taxes that have not been collected, which report shall be audited by the supervisors and proper credits given therefor. Such annual settlements shall be made on the first Monday in May. [Id.]

Art. 7945. Tax assessments.—Immediately after the voting of such bonds, the district tax assessor shall at once proceed to make an assessment of all the taxable property, both real, personal and mixed in his district; and such assessment shall be made annually thereafter. Said assessment shall be made upon blanks to be provided by the district supervisors; and shall consist of a full statement under oath by the party rendering same of all property owned by him in said district and subject to State and county taxation, and shall state the full value thereof. Said assessor shall make out similar lists of all property not rendered for taxation in such district that is subject to State and county taxation. He shall have authority to administer oaths to fully carry out the provisions of this article. [Id.]

Art. 7946. Assessment dates.—The assessment of taxes for such district shall be made on the first day of January of each year, and shall be completed and the lists and books ready to deliver on or before the first day of June. [Id.]

Art. 7947. Shall render property.—Each person, partnership or corporation owning taxable property in such district shall render same for taxation to the district assessor when called upon to do so, and if not so called upon, shall on or before June first of each year render for taxation all property owned by him in the district subject to taxation. [Id.]

Art. 7948. Board of Equalization.—At their first regular meeting, or as soon thereafter as practicable, and annually thereafter, the supervisors shall appoint three commissioners, each being a qualified voter and resident property owner of the district, who shall be styled the "Board of Equalization," and at the same meeting shall fix the time for the meeting of such Board for the first year. At such time said Board shall convene to receive all assessments, lists or books of the district assessor for examination, correction, equalization, appraisement and approval.

At all meetings of such board a secretary shall keep a permanent record of all proceedings thereof. Each such commissioner and the secretary shall receive not exceeding five dollars per day for such services for the time actually engaged in the discharge of their duties. [Id.]

Art. 7949. Oath of members.—Before entering upon the duties as such board, each member shall take and subscribe to the following oath: "I, ————, do solemnly swear that I will to the best of my ability make a full and complete examination, correction, equalization and appraisement of all property contained within said district, as shown by the assessment list or books of the assessor for said district." Said oath shall be spread upon the minutes of said board. [Id.]

Art. 7950. Duties of board.—The Board of Equalization shall have the same powers and exercise the same duties with respect to such district, as is provided by law for equalization boards of water improvement districts. [Id.]

Art. 7951. Appraisal dates.—The Board of Equalization after the first year shall convene annually on the first Monday in June to receive all assessment lists or books of the assessor, and shall complete their examination and equalization of said lists by the second Monday in June, and deliver said rolls to the assessor by the second Monday in July, and said rolls shall be completed by the assessor and approved by the board and returned to said assessor by the first Monday in September. [Id.]

Art. 7952. Tax levy.—When bonds have been issued, the supervisors shall levy and cause to be assessed and collected taxes upon all property, real, personal and mixed, in such district, based upon the full value of each piece of property, sufficient to pay the interest on such bonds and to create a sinking fund sufficient to redeem and discharge such bonds at maturity; and such taxes shall thereafter be levied annually so long as such bonds are outstanding, sufficient to accomplish such purposes. [Id.]

Art. 7953. Interest and Sinking Fund.—There is hereby created an "Interest and Sinking Fund" for such district, and all taxes collected under this law for the payment of interest or redemption of district bonds shall be credited to such fund, and shall only be paid out to satisfy and discharge the interest on district bonds or for the cancellation and surrender of such bonds, and to defray the expenses of assessing and collecting such taxes. [Id.]

Art. 7954. May invest sinking fund.—Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in bonds of the series to which such funds apply if offered for redemption before maturity upon terms deemed advantageous to the district by the supervisors. [Id.]

Art. 7955. Maintenance tax: election.—If at any time it should be deemed necessary for the supervisors to vote a maintenance tax, they shall call an election in such district to submit the question "For a maintenance tax;" "Against a maintenance tax;" and shall state the amount thereof. Such sum may be specific, or may be a maximum not to be exceeded. Such election shall be held and the votes canvassed in the same manner as provided for the issuance of bonds. [Id.]

Art. 7956. Maintenance tax levy.—When such tax is voted, the supervisors shall thereafter levy and cause the same to be assessed and collected as other taxes, to an amount not exceeding the specific sum voted. The proceeds of such taxes shall be used for the maintenance, upkeep, repairs and additions to the improvements, or other lawful expense incurred by and on behalf of such district and for no other purposes. The right to levy such taxes shall remain in force until abrogated in whole or in part by another such election. Elections upon the question of repeal or reduction of such taxes shall not be held oftener than every five years. The supervisors may or may not levy such taxes if they are not necessary. [Id.]

Art. 7957. Maintenance fund.—There is hereby created a "Maintenance and Operating Fund," which shall consist of all money collected by assessment or otherwise for the maintenance and operation of the properties purchased or constructed or otherwise acquired by such district. All salaries of officers and employés, other than the assessor and collector and all expenses of operation of every kind shall be paid out of such fund. [Id.]

Art. 7958. Collection dates.—All taxes shall become due and payable on the first day of October of each year and shall be paid on or before the thirty-first day of January thereafter. [Id.]

Art. 7959. Delinquent taxes.—All of the provisions of Chapter 2 of this title [1] relating to the lien, penalties, interest and costs, preparation and publication of the delinquent tax roll, suit for collection and foreclosure proceedings, attorney's fees and fees of officers in such proceedings for the collection of delinquent taxes, and redemption of lands before sale, shall apply to the collection of such taxes in districts operating hereunder. [Id.]

[1] The provisions of Chapter 2 referred to are Articles 7677 to 7685, ante.

Art. 7959a. Remedy of bondholders.—When any bonds shall have been issued by any Fresh Water Supply District created or hereafter created, pursuant to the provisions of this (Chapter 4), Title 128, Revised Civil Statutes of Texas, (1925), or created pursuant to any special Act of the Legislature of this State, in which such Fresh Water Supply District is located, there shall not be a number of qualified voters who are residents and property owners in such District, sufficient to constitute the governing body and all officeholders of said District as provided by Chapter 4 of said Title 128, then and in such event any lawful owner or owners of any such bonds may file a petition in the office of the County Clerk of any county in which such Fresh Water Supply District is situated, which petition shall be addressed to the County Commissioner's Court of such County, setting forth the facts in said petition as to such insufficiency of the number of said qualified voters and resident property owners of said District, and petitioning the said County Commissioner's Court to appoint a Board of Supervisors and a Secretary for such Board for such Fresh Water Supply District. Upon the filing of such petition, the County Judge shall endorse thereon a date for a hearing upon the merits of said petition by the County Commissioner's Court of such County; such hearing shall be held at any time after the expiration of thirty (30) days from and after the filing thereof, but not more than sixty (60) days after the filing thereof, provided that notice of said hearing shall be given, setting forth the time of such hearing and the place thereof, and which notice shall contain a brief description of the purpose thereof. Such notice shall be posted in four places in such District and one shall be posted at the courthouse door of the county in which said hearing is to be held and such posting shall be made for a period of at least twenty (20) days previous to the date of said hearing. The place of the hearing upon such petition shall be the court room of the County Commissioner's Court of the county in which such Fresh Water Supply District is located.

The County Commissioner's Court of the county in which any such Fresh Water Supply District is located shall have exclusive original jurisdiction to hear and determine the matters and facts involved and

its findings and judgment thereon shall be subject to review by the District Court of jurisdiction.

If there be no existing, duly elected, qualified and acting governing body or Board of Supervisors of any such Fresh Water Supply District, such fact shall constitute prima facie proof that there are an insufficient number of qualified voters, who are residents and property owners in such District sufficient to constitute the governing body and other officers of said District, and such petitioning bond owners shall ipso facto be entitled to the relief herein provided for.

Provided further, that if upon a hearing of said petition the County Commissioner's Court shall find that the facts contained in said petition are true and that there are not such a number of qualified voters who are residents and property owners in such Fresh Water Supply District sufficient to constitute its governing body and officeholders of said District as provided by law, then and in such event it shall be the duty of the said County Commissioner's Court of the county of jurisdiction to enter its judgment and decree accordingly upon the Minutes of said Court, and said County Commissioner's Court shall further enter its order, judgment and decree appointing three (3) disinterested commissioners, which commissioners shall be known as and shall constitute the Board of Supervisors of such Fresh Water Supply District and shall further constitute the Board of Equalization of such Fresh Water Supply Board as now provided by law. Further providing that such commissioners shall be freeholders of the county in which any such Fresh Water Supply District is located, but who may or may not be owners of land within the District for which they are to act, provided, however, that no one of such Commissioners so appointed shall be related within the fourth degree of affinity or consanguinity to any of the members of such County Commissioner's Court, so appointing them.

Said Board of Supervisors or Board of Equalization, when so appointed, shall constitute the Board of Equalization, for such Fresh Water Supply District, and shall exercise all the powers and perform all the duties now imposed by law upon Boards of Equalization for such Fresh Water Supply Districts. Said County Commissioner's Court shall further appoint a secretary for said Board of Supervisors or Board of Equalization, who shall be competent to perform the duties thereof. Said Board of Supervisors or Board of Equalization so appointed by said County Commissioner's Court shall be over the age of twenty-one (21) years, and the powers and duties of such Board of Equalization and the secretary shall be the same as the Board of Equalization and the secretary thereof, now provided for in Chapter 4, Title 128, of the Revised Civil Statutes of Texas, (1925). Said Board of Equalization and its secretary shall receive same compensation as now provided by Article 7948, Revised Civil Statutes, (1925).

Provided further that in the event that the said County Commissioner's Court shall enter its order, judgment and decree finding the truth of the facts set forth in the petition of said bondholders and granting said relief, then and in such event the County Tax Assessor and the County Tax Collector (and/or County Tax Assessor-Collector) in which such Fresh Water Supply District is located, shall ipso facto become ex officio, the Tax Assessor and the Tax Collector respectively, for such Fresh Water Supply District.

Provided that if such Fresh Water Supply District be located in any county where the officers [1] of the County Tax Collector and the County Tax Assessor have been consolidated, then such Assessor-Collector shall become ipso facto and ex officio, Tax Assessor and Tax Collector for such Fresh Water Supply District.

Provided further that such County Tax Assessor and County Tax Collector and/or County Tax Assessor-Collector shall perform all of the duties now imposed by law and by the provision of said Chapter 4, of Title 128, of the Revised Civil Statutes of Texas, (1925) upon the Tax Collector and Assessor for such Fresh Water Supply District, and shall receive the same compensation for his or their services as provided for in said Chapter 4 of Title 128 of said Revised Civil Statutes of Texas, (1925).

Provided further that the County Commissioner's Court of Jurisdiction, (where the relief herein provided for is granted) shall levy and the Tax Assessor and Tax Collector herein provided for shall cause to be assessed and collected, taxes upon all taxable property within such Fresh Water Supply District in an amount sufficient to pay the principal as it matures and the interest as it accrues upon the bonded indebtedness of such Fresh Water Supply District, and the Tax Collector and Assessor herein provided for shall proceed to assess and collect such taxes as now provided in said Chapter 4 of Title 128, of said Revised Civil Statutes of Texas, (1925). [Acts 1935, 44th Leg., 2nd C.S., p. 1867, ch. 474, § 1.]

[1] So in enrolled bill. Should probably read "offices".

Sections 2 and 3 of this Act contained the following provisions:

"Sec. 2. Provided further that nothing in this Act shall be construed as repealing or in any manner affecting any laws providing for the creation, operation and control of Fresh Water Supply Districts, except as herein provided, but the same shall be cumulative thereof.

"Sec. 3. If any phrase, clause, sentence, section or requirement of this Act shall be, for any reason, declared invalid by a court of competent jurisdiction, the same shall not invalidate any other part or parts of this Act."

II. LEVEES

CHAPTER 5.—STATE RECLAMATION ENGINEER

Art.
7960. Appointment.
7961. Powers.
7962. Reclamation of overflowed lands.
7963. Surveys authorized.
7964. Surveys: natural conditions.
7965. Surveys: results.
7966. Details of work.
7967. Co-operative agreements.
7968. Co-operative conferences.
7969. Shall advise districts.
7970. District data.
7971. Record of expenditures.

Article 7960. Appointment.—The Governor shall biennially appoint a State Reclamation Engineer, with the advice and consent of the Senate. Said engineer shall be a thoroughly experienced and skilled topographer and hydrographer, draftsman and reclamation engineer of not less than five years actual experience in organizing and supervising geodetic and topographic surveying and mapping of large areas, and in the general direction of field and office engineering corps. He shall be thoroughly experienced in making and passing upon reclamation plans and estimates, and in the preparation and writing of technical reports and publications, and in the reproduction of maps. Said engineer shall have his office in the State Capitol. [Acts 1913, p. 292.]

Art. 7961. Powers.—Said engineer shall have general supervision of all work authorized by this law, and he shall perform, conduct or supervise the same. He shall have power to employ such assistants, to make or authorize to be made such purchases, to incur or authorize to be incurred such other expenses, and to formulate and enforce such reasonable and proper rules and regulations governing his official work, and the work of his assistants, both in the office and in the field, as may be necessary to perform with correct dispatch and economy the work herein authorized to be done. [Id.]

Art. 7962. Reclamation of overflowed lands.—The chief purpose of this law shall be to plan and

mark out upon the ground all the improvements necessary to reclaim or cause to become suitable for agricultural uses, the overflowed and swamp lands, and overflowed areas in the coastal plain, and other lands in this State, which, by reason of the temporary or permanent excessive accumulation of water thereon, or contiguous thereto, are not suitable for such uses. [Id.]

Art. 7963. Surveys authorized.—To accomplish such purpose, it is hereby authorized and ordered that the necessary investigations, estimates, surveys, maps, reports and publications shall be made, and any other necessary work incident thereto shall be done, which may be required in the process of planning or marking out upon the ground the most practical, permanent, economical and equitable improvements or systems of improvements such as levees, dikes, dams, canals, drains, water-ways, reservoirs or any or all of them, and other improvements incidental thereto. [Id.]

Art. 7964. Surveys: natural conditions.—As far as possible, said improvements shall be designed with primary consideration to the topographic and hydrographic conditions, and in such manner that each division thereof shall be a complete united project, forming a co-ordinate part of an ultimately finished series of projects, so constituted that the successful operation of the improvements in each united project shall co-operate to the successful operation of the improvements in the other united projects existing within the same hydraulic influence. [Id.]

Art. 7965. Surveys: results.—The said improvements shall be discussed in reports, shown on maps, drawings or diagrams, or otherwise recorded or published. All such final results which are of value to this State shall be filed for public reference in the office of said engineer. [Id.]

Art. 7966. Details of work.—The engineer shall have power to determine at what points within the territory herein designated the said work shall be done; and he shall determine the manner and the season that the results of said work shall be made public. [Id.]

Art. 7967. Co-operative agreements.—The engineer shall have power, if in his judgment it will accomplish the objects herein provided for, to make and approve agreements or contracts for co-operation with any branch of the Federal, State, county or city governments for the doing of all or any part of the work herein authorized; and said engineer shall have power to cancel any said agreement or contract upon ten days written notice to such branch concerned. The engineer shall accomplish such objects independently of such co-operation, if he deems said co-operation not to be to the best interests of the State. [Id.]

Art. 7968. Co-operative conferences.—The engineer is empowered to confer with any branch of the Federal, State, county or city governments with a view to obtaining authority, assistance or advice in connection with his official work, whenever necessary or desirable, and he shall solicit the co-operation of such governments when the same may be to the best interests of the State. [Id.]

Art. 7969. Shall advise districts.—The engineer shall confer in a technical capacity with districts in this State that have requested his technical advice with a view to the adequate execution of proposed levee and drainage improvements contemplated in such districts. He shall receive no extra compensation for such advice. [Id.]

Art. 7970. District data.—Immediately prior to the approval of its bonds by the Attorney General, each drainage or levee district shall file with the engineer on forms furnished by him, a complete record showing each step in the organization of such district, and showing the boundaries, area, amount of bonds to be issued, together with plans, maps and profiles of improvements, and the district engineer's estimates and report thereon. [Id.]

Art. 7971. Record of expenditures.—The engineer shall keep an accurate record of all money spent by the State in the execution of the work authorized by this law. [Id.]

CHAPTER 6.—LEVEE IMPROVEMENT DISTRICTS

1. ESTABLISHMENT

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1. ESTABLISHMENT

Article 7972. Levee improvement districts.—There may be created within this State conservation and reclamation districts to be known as Levee Improvement Districts, for the purpose of constructing and maintaining levees and other improvements on, along and contiguous to rivers, creeks, and streams, for the purpose of reclaiming lands from overflow from such streams, for the purpose of the control and distribution of the waters of rivers and streams by straightening and otherwise improving the same, and for the proper drainage and other improvement of such lands, all as contemplated by Section 59, Article 16, of the Constitution of this State, for the conservation and development of the natural resources of this State, which said districts shall have and may exercise all the rights, powers and privileges given by this Act and in accordance with its limitations and provisions.

This Article and Articles 7973 to 8007, 8008 to 8029 and 8030 to 8042, post, are from Acts 1925, 39th Leg., ch. 21, p. 50, §§ 1–70, unchanged.

Art. 7973. Petition to reclamation engineer.—Whenever any engineer shall make application in writing to the State Reclamation Engineer for authority to obtain information by proper surveys in respect to the feasibility of reclaiming any lands which may be later incorporated in a levee improvement district, it shall be the duty of the State Reclamation Engineer, if satisfied that the applicant is competent and acting in good faith, to issue to such applicant express written authority to make such survey in order to obtain the desired information; and such engineer, acting under such written authority from the State Reclamation Engineer, is hereby authorized and empowered to go upon any lands proposed to be incorporated in any levee improvement district for the purpose of examining same with reference to the location of boundary lines, and for such other information which may be used in the formation of a levee improvement district.

Art. 7974. Petition for proposal to create levee.—When it is proposed to create a levee district wholly within one county, there shall be presented to the commissioners' court of the county in which the lands to be included in such district are located, or to the county judge of the county if the commissioners' court is not in session, a petition signed by the owners of a majority of the acreage of such proposed district, setting forth the proposed boundaries thereof, the general nature of the work proposed to be done, the necessity therefor and the feasibility thereof, stating whether the taxes proposed to be levied therein shall be on the ad valorem plan or based on assessed benefits, and designating a name therefor, which shall include the name of the county in which it is situated; and when it is proposed to create such a district to be composed of lands in two or more counties, then a petition of the nature above indicated, signed by the owners of a majority of the acreage of such proposed district, designating the county of jurisdiction in respect to all matters concerning the said district, which county may be any county in which any part of district is located, shall be presented to the commissioners' court of such county, or, if the court is not in session, to the county judge thereof; and upon presentation of either such petition, it shall be the duty of the court to which it is presented, or the county judge of such county if the court be not in session, to fix a time and place at which such petition shall be heard before the commissioners' court of the county wherein it is filed, which date shall not be less than fifteen nor more than thirty days from the date of the order, and to order and direct the county clerk of such county, as ex officio clerk of the commissioners' court thereof, to issue a notice of such time and place of hearing, which notice shall inform all persons concerned of the time and place of hearing, and of their right to appear at such hearing and contend for or contest the formation of such district, as their interests may dictate, and to deliver notice to any adult person who is willing to execute the same by posting, as hereinafter directed. The order shall further direct the clerk forthwith to issue a notice of the filing of such petition and of its general purpose, stating the time and place of hearing, which shall be mailed forthwith to the State Reclamation Engineer at his office in Austin, Texas.

Art. 7975. Upon receipt of notice.—Upon receipt of the notice above provided for by any adult person willing to receive and execute the same, it shall be the duty of such person, or persons, if more than one shall act, if the district is wholly within a county, to post a copy of such notice at the door of the courthouse of said county, and copies at four different places within such proposed districts; if such district is located in more than one county such notice shall be posted at the door of the courthouse of each county in which any portion of the proposed district is situated, and four copies at four separate places within the boundaries of those portions of such district situated in each county. Such posting shall be for not less than ten days prior to the date fixed for the hearing, and the person, or persons so posting, shall make affidavit before some officer authorized by law to administer oaths of his, or their action in respect to such postings, and such affidavit when so made shall be conclusive of the facts sworn to.

Art. 7976. Deposit.—A petition for the formation of such a district, if the district is wholly within one county, shall be accompanied by a deposit of fifty dollars, and if the district is proposed to be located in more than one county it shall be accompanied by a deposit of seventy-five dollars, which deposit shall be paid to the clerk of the court of jurisdiction, who shall therefrom, upon vouchers approved by the county judge, pay all expenses incident to the hearing herein provided for, returning any excess to the petitioners or their attorney.

Art. 7977. Duty of engineer.—The State Reclamation Engineer, upon receipt of the notice to him herein provided for, shall forthwith, by himself or deputy, examine said proposed district, and do, or cause to be done, such work in respect thereto as may be necessary to enable him to determine the necessity, feasibility and probable costs of reclaiming the land of such district from overflow, and the proper drainage thereof, together with the costs of organizing such district, and maintenance thereof, for a period of two years, and he shall, by himself or deputy, attend the hearing and file his written report in respect to the matters concerning which he has investigated and give to the court such further additional information as may be then required.

Art. 7978. Court to hear petition.—At the time and place set for the hearing of the petition, or such subsequent date as may then be fixed, the court shall proceed to hear such petition and all issues in respect to the creation of such proposed district, and any person interested may appear before the court in person or by attorney and contend for or contest the creation of such district, and offer testimony pertinent to any issue presented. Such court shall have exclusive jurisdiction to determine all issues in respect to the creation, or not, of such district, and of all subsequent proceedings in respect to said district if the same should be created. Such hearing may be adjourned from day to day and from time to time, as the facts may require. The court shall have power to make all incidental orders deemed proper in respect to the matters before it.

Art. 7979. Judgment and findings.—If upon the hearing of such petition, it be found that the same is signed by the owners of a majority of the acreage of the proposed district, and that due notice has been given, and that the proposed improvements are desirable, feasible, and practicable, and would be a public utility and a public benefit, and would be conducive to public health, then such court shall so find and render judgment reciting such findings and creating and establishing such district, which judgment and findings shall be embodied in an order which shall be entered of record in the minutes of said court, which order shall define the boundaries of such district, which need not include all of the lands described in the petition, if, upon the hearing a modification or change is found necessary or desirable. A levee improvement district created as herein specified shall be a governmental agency and a body politic and corporate, with such powers of government and with the authority to exercise such rights, privileges and functions concerning the purposes for which it is created as may be conferred by this chapter, or any other law of this State to the benefits of which it may become entitled. If at the hearing of such petition, as herein provided for, the commissioners' court shall enter an order dismissing the petition for the creation of said district, then, and in the event the petitioners, or any one of them or any taxpayer in such district, may appeal from said order to the district court of said county which appeal shall be perfected in the following manner, to-wit: notice of appeal shall be given at the time of the entry of said order by announcement of same before said court, which notice of appeal shall be entered on the minutes of said court, or by giving written notice within two days after the entry of such order; said notice to be a simple statement in writing to the effect that the undersigned gives notice of appeal from the order entered on the date stated, which notice shall be filed with the clerk of the county court, and the appellant shall, within five days from the date of the entry of said order, file an appeal bond with two or more good and sufficient sureties payable to the county judge of the county, to be approved by the county clerk; conditioned upon the due prosecution of the appeal and payment of all costs incident thereto, and unless the appeal be thus perfected within five days after the rendition of the order, such order shall be final and conclusive, and there shall be no extension of time granted for the filing of the appeal bond; the county clerk, shall within five days after the filing of said appeal bond, transfer to the clerk of such district court all records filed with the county commissioners' court, pertaining to the establishment of said district, together with a transcript of the orders of the commissioners' court, and it shall be unnecessary to file any other or additional pleadings in said court. The court shall set the matter down for hearing, giving it precedence over all other cases, and the matters shall be tried and determined by the court, the hearing to be de novo. The judgment of the district court shall be final and conclusive, and the same shall be certified to the commissioners' court for its further action.

Art. 7980. Levee improvement districts entitled to benefits.—Levee improvement districts created under this Act or entitled to the benefits of its provisions, subject to the supervision and direction of the State Reclamation Engineer, or other superior authority created by law, and subject to the limitations in this Act contained, shall have full power and authority to build, construct, complete, carry out, maintain, protect, and in case of necessity, add to and rebuild all works and improvements within their district necessary or proper to fully accomplish any plan of reclamation lawfully adopted for or on behalf of such district, and may make all necessary and proper contracts, and employ all persons and means necessary or proper to that end; and in the accomplishment of such purposes they may or may not issue bonds, and may or may not incur indebtedness; provided, that no bonds by or on behalf of such district shall be issued nor shall any indebtedness against the same be incurred unless the proposition to issue such bonds or to incur such indebtedness shall be first submitted to the qualified property taxpaying voters of such district, and the proposition adopted by a majority vote of the taxpaying voters of the district voting at an election held to determine such questions; and no enumeration of specific powers in this Act shall be held to be a limitation upon the general powers hereby conferred except as may be distinctly expressed.

Art. 7981. Eminent domain.—The right of eminent domain is hereby expressly conferred upon all districts to enable them to acquire the fee simple title, easement or right of way to, over, and through any and all lands, water, or lands under water, private or public (except land and property used for cemetery purposes), within, bordering upon, adjacent or opposite to such districts, necessary for making, constructing and maintaining all levees and other improvements for the improvement of a river or rivers, creek or creeks, or streams within or bordering upon such districts to prevent overflows thereof.

Adequate compensation shall be made to the owners of any property so taken, damaged or destroyed for such purposes. The levee district shall have the power to acquire any such property for any such purposes, which for any reason has not been condemned by the board of appraisers in the manner hereinafter provided, and may by condemnation proceedings acquire any property not acquired by the appraisers which condemnation proceedings shall be brought in the name of the levee district.

Art. 7982. District supervisors.—The district supervisors of any district are hereby empowered to acquire the necessary right of way for all levees and other necessary improvements contemplated by this Act, by gift, or condemnation proceedings; and they may by the same methods acquire any levee or other improvements already constructed.

Art. 7983. Authorized to go on lands.—The supervisors of any district and the engineer and employés thereof are hereby authorized to go upon any lands lying within or adjacent to said district for the purpose of examining same with reference to the location of levees, drainage ditches and all other kinds of improvements to be constructed for or within such district, and for any other lawful purpose connected with their plan of reclamation, whether herein enumerated or not.

Art. 7984. Empowered to make levees.—The said levee improvement districts are hereby authorized and empowered to make all the necessary levees, bridges and other improvements across or under any railroad embankments, tracks, or rights of way, or public or private roads or the rights of way thereof, or levees or other public improvements of other districts, or other such improvements and the rights of way thereof, or to join such improvement thereto, for the purpose of enabling the said levee improvements necessary for the said district; provided, howeve', that notice shall first be given by said levee improv ement district to the proper railroad authorities or other authorities or persons, relative to the additions or changes to result from the improvements contemplated by the said levee improvement district; and the said railroad authorities, or persons, shall be given thirty days in which to agree to the said work, or to refuse to agree thereto, or in which they, if they so desire, may at their own expense construct the said improvements in their own manner; provided, such design or manner of construction shall be satisfactory to the said levee improvement district and approved by the State Reclamation Engineer or his deputy.

Art. 7985. Right of way.—Levee improvement districts are hereby given the right of way across all public or county roads, but they shall restore such roads where crossed to their previous condition for use, as near as may be.

Art. 7986. Authority to act.—Levee improvement districts shall have authority to act jointly with each other, with cities and towns and other political subdivisions of the State, with other states, and with the Government of the United States in the performance of any of the things permitted by this Act; such joint acts to be done upon such terms as may be agreed upon by their supervisors, subject to the approval of the State Reclamation Engineer.

Art. 7987. Supervisors appointed.—When a levee improvement district has been created under this Act, the court creating the same shall forthwith appoint by a majority vote three supervisors for such district, who shall be known as "district supervisors," and whose duties shall be as hereinafter provided. Said supervisors shall each receive for his services not more than five dollars per day for the time actually engaged in work for said district, and all expenses while so engaged, to be paid upon rendition of sworn accounts, approved by the county judge of the county having jurisdiction; and they shall hold their offices for two years, and until their successors are appointed and qualified; unless sooner removed by a majority vote of the court of jurisdiction; and any vacancy in office shall be filled by a majority vote of the court having jurisdiction which court shall continue from time to time to appoint supervisors in order that the board may always be full.

Art. 7988. Bond.—Before entering upon their duties the district supervisors shall each take and subscribe before some officer authorized to administer oaths, an oath to faithfully and impartially discharge his duties as supervisor and render true accounts of his services and expenses, and each shall enter into bond with good and sufficient security, payable to the levee improvement district, in the sum of one thousand dollars, unless the court of jurisdiction shall fix a larger amount, which it may do when in its judgment the interests of the district may so require, which bond shall be conditioned for the faithful performance of the duties of such supervisor and that he will render true accounts of his services and expenses, which bond shall be approved by the county judge of the county the commissioners' court of which has jurisdiction, and shall be filed with the clerk of the court having jurisdiction and by him entered of record in his office, and the original bond shall be retained on file.

Art. 7989. Name engineer.—District supervisors, after their qualification, shall organize by electing one of their number chairman and one vice chairman, and shall elect a secretary, who need not be a member of the board; and an engineer and such other employés or assistants as may from time to time be found necessary to the successful carrying on and completion of the work and business of the district; they shall certify their organization and the name of their engineer, who shall be known as "district engineer," to the commissioners' court of the county having jurisdiction.

Art. 7990. District engineer have control.—The district engineer, subject to the authority of the State Reclamation Engineer, shall have control of the engineering work of the district, and shall, with such assistants as may be necessary in the judgment of the board of supervisors, as soon as practicable after his appointment, make a survey of the lands within the boundaries of the district and of all lands adjacent thereto that will be improved or reclaimed, in whole or in part by any system of levees and drainage that may be adopted; and shall make report in writing to the board of supervisors of his work in this regard, with maps and profiles of his surveys, which report shall contain a full and complete plan for draining, constructing levees and reclaiming the lands of the district from overflow or damage by waters from the streams in or adjacent to such district, and whose waters may in anywise affect the same, which plan may include, and where necessary shall include costs of straightening streams from which injury to the lands of said districts may result; and shall also in such report indicate the physical characteristics of the lands within the district, the location of any public roads, railroads, or the rights of way or roadways and other property or improvements located on said lands; a duplicate of which report shall be filed with the State Reclamation Engineer, for his approval. Such report before adoption may be modified by the State Reclamation Engineer, or by the board of supervisors, with his approval, and when approved by the State Reclamation Engineer and adopted by the board of supervisors, the same shall be known as, and shall be designated as "The Plan of Reclamation"; provided that no plan of reclamation, after such approval, shall be modified or changed in any manner, the cost of which shall exceed one thousand dollars ($1,000.00), except upon petition to the State Reclamation Engineer, signed by the owners of a majority of the acreage of lands in such district, and approved by the State Reclamation Engineer. When the plan of reclamation has been adopted as herein provided a copy of same shall be filed with the county clerk in each county where any lands lie, that will be affected in anywise by the plan of reclamation, and such filing shall be notice of its contents to all persons owning or having any interest in any lands in the county in which same is filed; and any amendments to said plan of reclamation shall be filed in like manner.

Art. 7991. Commissioners of appraisement.—When the petition for the creation of a levee improvement district stipulates that taxes are to be levied

upon a benefit basis, then as soon after the approval and adoption of the plan of reclamation as practicable, the commissioners' court of the county of jurisdiction shall appoint three disinterested commissioners, who shall be known as "commissioners of appraisement," and who shall be freeholders but not owners of land within the district for which they are to act, and neither shall be related within the fourth degree of affinity or consanguinity to any of the members of the commissioners' court or the board of supervisors or any land owners in the district; and such commissioners of appraisement shall proceed as follows:

Art. 7992. Duties of commissioners.—The secretary of the board of supervisors, immediately following the appointment of the commissioners above mentioned shall in writing notify each of his appointment, and in the notice designate a time and place for the first meeting of such commissioners. In the event any such commissioner shall resign, his place shall be filled in the same manner as vacancies on the board of supervisors. It shall be the duty of the commissioners to meet at the time and place specified, or as soon thereafter as may be found practicable at some time and place to be agreed upon by them, when they shall each take and subscribe an oath that they will faithfully and impartially discharge their duties as such commissioners, and make true report of the work done by them, and at such meeting the commissioners shall organize by electing one of their number chairman and one vice chairman, and the secretary of the board of supervisors, or, in his absence, such person as the board of supervisors may appoint, shall be secretary of said board of commissioners during their continuance in office, and shall furnish to them such information and such assistance as may be within his power and necessary to the performance of their duties.

Art. 7993. Duty of secretary.—Within thirty days after qualifying and organizing as above directed, the commissioners shall begin their duties, and they may at any time call upon the attorney of the district for legal advice and information relative to such duties, and may, if necessary require the presence of the district engineer, or one of his assistants, at such time and for so long as may be necessary to the proper performance of their duties. Said commissioners shall proceed to view the lands within such district, and all other lands which will be affected by the plan of reclamation for such district if carried out, and all public roads, railroads, rights of ways and other property or improvements located upon such lands, and all such lands within or without the district as may be acquired under the provision of this Act for any purpose connected with or incident to the fully carrying out of the plan of reclamation; they shall assess the amounts of benefits and all damages, if any, that will accrue to any tract of land within such district or which may be affected by the plan of reclamation, or to any public highway, railroad, and other rights of way, roadways or other property, from carrying out and putting into effect the plan of reclamation for such district; and they shall assess the value of all lands within or without the district to be acquired for right of way or other purposes; and the failure of said commissioners of appraisement to return damages to any tract of land within or without the district shall be deemed a finding that no damage will be done to that tract. The board shall prepare a report of their findings, which shall show the owner of each piece of property examined and on or concerning which any assessment is made, together with such description of said property as may identify the same, as well as the value of all property to be taken or acquired for rights of way or any other purposes connected with the carrying out of the plan of reclamation as finally approved by the State Reclamation Engineer; which report shall be signed by at least a majority of the commissioners and filed with the secretary of the board of supervisors of the district, which report shall show the number of days each commissioner has been employed and the actual expenses incurred by each during his service as commissioner; and each shall be paid by the district five dollars per day for his services, and all necessary expenses in addition thereto, upon the approval of his accounts for such per diem and expenses by the board of supervisors.

Said commissioners shall in their report fix a time and place, when and where they will hear objections thereto, and such date shall be not less than twenty days from the filing of such report.

Art. 7994. Notice of publication.—When the report of the commissioners shall have been filed with the secretary of the board of supervisors he shall forthwith give notice by publication in a newspaper published in each county wherein any portion of the district is located, and wherein any lands lie that will be in any way affected by the carrying out of the proposed plan of reclamation, for at least once a week for two consecutive weeks prior to the date fixed for such hearing, of the time and place of such hearing, which notice shall be in substantially the following form:

To the owners and all other persons having any interest in any lands lying in ——— County, take notice, that a copy of the plan of reclamation of the ——— levee improvement district has heretofore been filed with the county clerk of this county and that commissioners have been appointed to assess benefits and damages accruing to the land or other property within or without the said levee district which will be benefited, taken, or otherwise affected or damaged by the carrying out of said plan of reclamation. The report of said commissioners has been filed in my office at ——— and all persons interested may examine the same and make objection thereto in whole or in part and all persons claiming damage to their lands within or without the district to which no damages have been assessed in said report are required to file claim for such damage in my office on or before the ——— day of ———, 19—, and all persons failing to make such objection or claim for damages will be deemed to have waived the same. Further take notice that the said commissioners of appraisement will meet on said day of ——— for the purpose of hearing and acting on objections to their report and claims for damages.

———
Secretary, Board of Supervisors.
——— Levee District.

The secretary of the board of supervisors shall also mail a written notice to each person whose property is listed in the report of the commissioners, if his post office address is known, stating the time and place of such meeting, which notice shall state in substance that the report of the commissioners to assess benefits and damages accruing to the land and other property by reason of the plan of reclamation for the district in question has been filed in his office, and that all persons interested may examine the same and make objections thereto in whole or in part, and that the commissioners will meet on the day and at the place named for the purpose of hearing and acting on objections to such report; and the secretary upon the day of the hearing shall file in his office the original notice, with his affidavit thereto, showing the manner of publication and the names of all persons to whom notices have been mailed, and that the post office of those to be affected to whom notices were not mailed were unknown to him and could not be ascertained by reasonable diligence; and copies of such notice and affidavit shall be filed, one with the commissioners of appraisement and one with the clerk of the commissioners' court having jurisdiction.

Art. 7995. Filing exceptions and damage claims.—At or before the hearing upon the report of the commissioners of appraisement, any owner of land or other property affected by such report, or the plan of reclamation, may file exception to any or all parts of such report, and any person to whose land no damages has been assessed and who believes that his land will be damaged by the carrying out of the plan of reclamation, may also file with the secretary of the board of supervisors a claim for such damages; and the said commissioners, at the time and place named in such notice, shall proceed to hear and pass upon all such objections and claims for damages, and may make such changes and modifications from time to time as may be necessary to conform the report to their findings; and may grant, in whole or in part, or may over rule, such claim for damages. Such hearing may be adjourned from day to day. When commissioners shall have finally acted they shall make a decree concerning such report insofar as it is confirmed, and approving and confirming the same as modified or changed insofar as it may be modified or changed, and shall condemn such land within or without the district as shall be needed for right of way or other purposes, and shall adjudge all damages, if any. The commissioners shall have power to adjudge and apportion costs incurred upon the hearing in such manner as may be deemed equitable. The findings of the commissioners as to benefits shall be final and conclusive and shall be entered of record in the minutes of the board of supervisors and certified copies thereof shall be filed with the county clerk of each county in which any portion of the lands within such district are located, as a permanent record of such county, and such filing shall be notice to all persons of the contents of such decree. Any person, or the board of supervisors of such levee district, may appeal from the decree of the appraisers assessing or refusing to assess damages or fixing the value of right of way; the only questions to be considered on such appeal shall be whether just compensation has been allowed for property taken or whether property damages have been allowed for property injured or whether any damages are recoverable at all. Such appeal shall be taken to the district court of the county of jurisdiction in the manner, under the conditions, and within the time provided by Article 7980,[1] for appeals from judgments of the commissioners' court refusing to create the levee district, and the district court shall have jurisdiction thereof, regardless of the amount. The secretary of the board of supervisors in case any appeal or appeals are filed, within five days after filing of the appeal, shall send to the district clerk the plan of reclamation or certified copy thereof, together with a transcript of that part of the commissioners' report affecting the lands concerned in the appeal or appeals, and a transcript of the claim or claims for damages, as the case may be, and the action of the commissioners of appraisement thereon, and such appeals may be consolidated in the district court. The trial in the district court shall be de novo and proceedings shall be in accordance with the laws of this State in suits for damages, and the claimant shall be considered as plaintiff and the district as defendant, excepting that no further pleadings shall be required. Appeals may be taken from the judgment of the district court as in other civil cases. No appeal shall delay the prosecution of the work, but upon payment by the district supervisors to the district clerk the amount of damages awarded by the commissioners of appraisement, and upon the district making bond to pay to the owner of any further amount that may be awarded him upon such appeal, title to such property so condemned shall thereupon vest in the district and it shall be entitled to immediate possession thereof. No person owning or having any interest in any land in any county in which copy of the plan of reclamation has been filed and notice published of the hearing before the commissioners of appraisement, who has failed to file claim for damages as above provided, or who has failed to file objection to the damages assessed by the commissioners against his land, or who having filed such claim or objection, has failed to appeal from an adverse ruling upon such claim or objection, shall thereafter be heard to claim any damages from the levee district or its supervisors, officers or agents by reason of the carrying out of the plan of reclamation.

[1] Article 7980 referred to above should be article 7979, ante.

Art. 7996. Basis of taxation.—After the action of the commissioners of appraisement, as aforesaid, their final findings, judgment and decree assessing benefits, until lawfully changed or modified, shall form the basis of taxation within and for the levee improvement district for which they shall have acted, for all purposes for which taxes may be levied by, for or on behalf of such district, and all taxes shall be apportioned and levied on each tract of land, railroad and other real property in the district in proportion to the benefits to the property named in such final judgment or decree, as shown thereby. In all matters before the commissioners of appraisement, parties interested may not only appear in person or by attorney, or both in person and by attorney, but they shall be entitled to process for witnesses, to be issued by the chairman of the commissioners of appraisement on demand, and such commissioners shall have the same power as a court of record to enforce the attendance of witnesses.

Art. 7997. Limitation on commissioners.—In a district in which taxes are levied on the ad valorem basis, commissioners of appraisement shall be appointed and shall proceed in like manner as provided by Article 7991 to 7995, inclusive, of this Act, excepting that they shall not assess any benefits.

And, thereupon, all proceedings shall be had, notices given and hearings held in like manner; and all provisions of this statute relating to assessment of damages in districts levying taxes on a benefit basis shall apply to the assessment thereof in districts taxing on the ad valorem basis.

Art. 7998. Rate of taxation.—In all levee improvement districts providing for the levy of taxes upon an ad valorem basis, the taxable property shall be assessed at the same value as assessed for State and county purposes. In the assessment of taxes in such districts, and in all matters pertaining thereto or connected therewith, the county tax assessor shall have the same powers and shall be governed by the same rules, regulations and proceedings as are provided by the laws of this State for the assessment and collection of county and State taxes. And the county commissioners' court shall constitute the board of equalization for such levee improvement district or districts, and all laws governing boards of equalization for county and State taxing purposes shall govern such board or boards for such levee improvement districts. It shall be the duty of the county tax assessor of the county to assess all property within such levee improvement district and list the same for taxation in the books or rolls furnished him by the commissioners' court for that purpose, and return said books and rolls at the same time when he returns the other books and rolls of the State and county taxes for correction and approval. If the commissioners' court shall find said books or rolls correct, they shall approve the same and order the county clerk to issue a warrant against the county treasurer in favor of said tax assessor to be paid from the funds of said levee improvement district. The tax assessor shall receive for his said services such compensation as the commissioners' court shall deem proper to compensate him for the amount of work done; provided, that the

said tax assessor shall in no event be allowed more than he is now allowed by law for like services. Should the tax assessor fail or refuse to comply with the orders of the commissioners' court requiring him to assess and list for taxation all property in such improvement district as herein provided, he shall be suspended from the further discharge of his duty by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers.

And levee improvement districts providing for the levy of taxes upon an ad valorem basis, and embracing lands located in more than one county, shall have all the rights, powers and privileges of such levee improvement districts that include lands in one county. The tax assessor of each county having lands included within such levee improvement district shall assess the taxes levied by the commissioners' court of his county against the territory included in such levee improvement district for each and every year that such tax is levied. It shall be the duty of the tax assessor to make up a separate tax roll covering the levee improvement taxes on territory in his county included in such levee improvement district, and deliver such separate tax roll together with the general tax rolls of his county. The said separate tax roll shall guide the tax collector in collecting the levee improvement taxes for such district. It shall be the duty of the tax collector to collect such levee improvement tax for such levee district in his county for every year that such rate account covering the territory of his county in- tax has been levied in such district and keep a sepa- cluded in such levee improvement district for the purpose of determining how much tax has been collected and how much tax shall be paid by his county to such levee improvement district.

Art. 7999. Non-bond issuing districts.—Levee improvement districts created under this Act, desiring to effect and carry out their plans of reclamation without the issuance of bonds, shall, subject to the limitations hereinabove stated, be authorized and empowered through their boards of supervisors to make such arrangements by contributions from land owners, or otherwise, as may be necessary to provide the funds requisite to the completion of their improvements; and may, by vote of the resident property taxpayers of such districts, create such indebtedness, to be evidenced otherwise than by bonds, as may be deemed requisite. Provided such indebtedness shall never exceed the cost of construction of improvements to be made according to the adopted plan of reclamation approved by the State Reclamation Engineer, and the cost of maintenance of such improvements for two years as estimated by him, plus ten per cent additional to meet emergencies, modifications and changes lawfully made, and plus all damages awarded against the district.

Art. 8000. Petition for bond election.—Where any levee improvement district desires to issue bonds to raise funds for its works of improvements, there shall be presented to the commissioners' court having jurisdiction, or to the judge thereof, in vacation, a petition signed by the owners of a majority of the acreage of lands included within such district, praying for the issuance of bonds to an amount stated, which amount shall not exceed the costs of construction of improvements to be made according to the adopted plan of reclamation approved by the State Reclamation Engineer, and the cost of maintenance of such improvement for two years as estimated by him, plus ten per cent additional to meet emergencies, modifications and charges lawfully made, plus all damages awarded against the district. The petition shall state the rate of interest to be borne by such bonds, and pray that an election to be ordered within and for such district to determine whether or not bonds shall be issued by and on behalf of said district for the purposes above indicated, and to the amount stated, and whether taxes shall be levied within and for said district in payment thereof; provided, that said bonds shall bear a rate of interest not exceeding six per cent per annum.

Art. 8001. Manner of election.—Upon presentation of said petition such commissioners' court, if in session, or the judge thereof, if the court be not in session, shall make and cause to be entered of record upon the minutes of said court an order directing that an election be held within and for such levee improvement district at a date to be fixed in the order, to be not less than fifteen nor more than thirty days after the date of such order, for the purpose of determining the questions mentioned in such petition. At such election those desiring to vote in favor of the issuance of bonds and levy of taxes in payment thereof, shall have written or printed on their ballots; "For the issuance of bonds and levy of taxes in payment thereof," and those desiring to vote against the proposition submitted shall have printed or written on their ballots; "Against the issuance of bonds and levy of taxes in payment thereof." Each and every levee improvement district is hereby constituted an election precinct for the purpose of the election above specified and all other elections which may be ordered or held under any provisions of this Act. When elections are ordered the judge or court ordering the same shall fix the polling place or places for the holding of such election, and name a judge and two clerks at each polling place, and more judges or clerks if deemed necessary; and there shall be at least one polling place in each county in which any portion of the district is located.

Art. 8002. Expense of election.—When a petition for a bond election is presented it shall be accompanied by a deposit of two hundred dollars, from which shall be paid all expenses of such election, and such other expenses as may be properly incurred up to the sale and issuance of bonds, and any excess shall be returned to the petitioners or their attorney; and when bonds are issued the amount of such expense shall be refunded to the petitioners or their attorneys from the proceeds of the bonds.

Art. 8003. Posting notice of election.—When an order for an election has been made, the clerk of the commissioners' court of the county having jurisdiction shall forthwith issue and place in the hands of the sheriff of the county, if the district is wholly within one county a notice stating in substance the contents of such election order, and the time and place or places of such election, and it shall be the duty of such sheriff, by himself or deputy, forthwith to post a copy of such notice at the door of the courthouse of his county, and four other copies at four different places within the boundaries of such district, which posting shall be done not less than ten days prior to the date fixed for said election; if such district is located in more counties than one, then such notice may be delivered to any adult person, who shall post copies of the same, one at the door of the courthouse of each county in which any portion of such district is situated, and four copies at four separate places within the boundaries of those portions of the district situated in each county, which posting shall be for not less than ten days prior to the date of said election; such sheriff or person posting shall make due return to the clerk of the court having jurisdiction of his action in the premises; the return of the individual other than the sheriff to be under oath before some person authorized by law to administer oaths, and the return of the sheriff and such oath shall be conclusive evidence of the facts stated.

Art. 8004. Who may vote.—All elections held under any provisions of this Act shall be governed as near as may be by the general election laws of this State, except as modified hereby, and shall be held and conducted by the judges and clerks appointed by the court of jurisdiction, or in their absence or refusal to act, by others chosen by the voters, and the super-

visors of the district shall furnish all necessary ballots and other election supplies requisite to such elections. None but qualified property taxpaying voters of such district shall vote at any election to authorize the issuance of bonds by or on behalf of the district or for the creation of any indebtedness against any district, or for or against any maintenance tax.

Art. 8005. Making returns.—Immediately after any election under this Act the officers holding the same shall make return of the result thereof to the commissioners' court having jurisdiction, and return the ballot boxes to the clerk of said court, who shall safely keep the same and deliver them, together with the returns of the election, to the commissioners' court of jurisdiction at its next regular or special session, and said court shall at such session canvass the vote and returns, and if it be found that the proposition submitted has been adopted by a majority of the qualified property taxpaying voters of such district voting at said election, then the court shall declare the result, and, if the election be for the issuance of bonds, shall declare that it resulted in favor of the issuance of bonds and the levy of taxes in payment thereof; and, if the result be against the issuance of bonds, then it shall declare that the result was against the issuance of bonds and the levy of taxes in payment thereof; and, if the question be for a maintenance tax, or other tax, then it shall declare the result to be for or against such tax, as the case may be; or, if the question be any other proposition which may be properly submitted at an election, the order shall declare the result to be for or against the proposition submitted, as the case may be, and an order, or orders declaring such result shall be entered upon the minutes of such court.

Art. 8006. Petition for and notice of election.—If, at the time for a bond election, or at any other time, the supervisors of any district created under this Act, or entitled to its benefits, shall desire to be submitted to the voters of the district the question of a maintenance tax, or other proposition proper to be submitted to them, they shall petition the commissioners' court of jurisdiction for an election upon the question so desired to be submitted, and it shall be the duty of the court to order an election, and that notice be given substantially as in case of a bond election, and notice shall be given substantially as in case of such elections, and all other proceedings shall be in respect to the question so submitted substantially in accordance with the provisions hereof in respect to a bond election.

Art. 8007. Issuance of bonds.—If a bond election in any district created under this Act, or entitled to its benefits, shall have resulted in favor of the issuance of bonds and levy of taxes in payment thereof, after such result has been duly declared, the commissioners' court of jurisdiction shall make an order directing the issuance of bonds of such district, to be known as "Levee Improvement Bonds," to the amount voted, unless a less amount was requested by the district supervisors, which bonds shall state upon their face the purposes for which they are issued. Said bonds shall be issued in the name of the levee improvement district by and on behalf of which they are voted, shall be signed by the county judge of the county whose commissioners' court has jurisdiction, and shall be attested by the county clerk of said county, and the seal of the commissioners' court of such county shall be affixed to each; they shall be issued in such denominations, and payable at such time or times, not exceeding thirty years from their date, as may be deemed most expedient by the issuing authority, and shall bear interest not to exceed six per cent per annum.

Art. 8007a. Validating levee improvement bonds.—Sec. 1. That where, under authority of Section 59, of Article 16, of the Constitution of the State of Texas, a majority of the resident property tax payers, being qualified electors of any levee improvement district heretofore created in conformity with the provisions and requirements of Chapter 25 and/or Chapter 44, of the General Laws passed at the Fourth Called Session of the Thirty-fifth Legislature, in 1918, or Chapter 21, of the General Laws passed at the Regular Session of the Thirty-ninth Legislature, in 1925, voting on the proposition, having voted at an election held in such levee improvement district in favor of the issuance of bonds of such district and the levy of taxes upon the taxable property therein, for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof, for the construction and maintenance of levees and other improvements within such district, the canvass of said vote, revealing such majority, having been recorded in the minutes of said county commissioners' court, and where thereafter, the county commissioners' court of the county in which such levee improvement district is situated, or the county commissioners' court of each county having lands embraced within a levee improvement district in any case where such district embraces lands in more than one county, by orders adopted and recorded in their minutes, authorize the issuance of such bonds of such levee improvement district, prescribed the date and maturity thereof, and rate of interest the bonds were to bear, the place of payment of principal and interest, and providing for the levy of taxes upon taxable property in each such levee improvement district sufficient to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity and such bonds were approved by the Attorney General and registered by the Comptroller of the State of Texas, and thereafter issued and delivered, each such election, and all acts and proceedings had and done in connection therewith by the County Commissioners' Court of the county or counties of jurisdiction in respect of such bonds and the levy of taxes, are hereby legalized, approved and validated; and such bonds, so sold and delivered, are hereby validated and constituted the legal obligations of such levee improvement district.

Sec. 2. That whenever any levee improvement district, operating under the assessed benefit plan of taxation, has heretofore voted and issued additional bonds for the purpose of constructing levees and other improvements, pursuant to amended or supplemental plans of reclamation duly approved by the State Reclamation Engineer, and the Commissioners' Court of the County of jurisdiction has passed and adopted orders setting down for hearing the petition or petitions of the owners of a majority of the acreage of lands included within such district, and/or supervisors of any such district praying for the issuance of additional bonds, and notices of such hearing in respect of the issuance of such additional bonds were issued and given to [1] the manner and for the period of time prescribed by Statute, and a hearing or hearings were held by the Commissioners' Court of the county of jurisdiction, pursuant to such notices, for the purpose of determining whether or not any such district shall incur additional debt by the issuance of bonds, and the said court having found, by reason of such hearing that such additional improvements were necessary, and that there was a necessity for the district to issue the additional series of bonds described in the petitions, and in the order and notices of such hearing, for the purpose of the construction of such additional improvements; and, further, where the amount of the additional bonds, and the outstanding bonded indebtedness of any such district did not exceed the amount of assessed benefits theretofore found and fixed in the final judgment and decree of the commissioners of appraisement of any such district, and, further, where said bonds have heretofore been issued and sold, and the proceeds thereof used in the construction and maintenance of levees and other improvements, and for other lawful purposes, in the carrying out of the amended or supplemental plan of reclamation, the amount of bonds fixed in the or-

der of said court calling said election, pursuant to such hearing, for the purposes set forth in the petition, or petitions, order and notice of hearing, and in the order and notice of election, is hereby found to be proper and necessary for said purposes, and is hereby ratified, confirmed, approved and validated; and said bonds are hereby declared to be the legal, valid and binding obligations of such levee improvement district, and the Commissioners' Court of the county in which such levee improvement district is situated, or the commissioners' courts in each county in which any part of such levee improvement district is situated (in event any such district includes lands in more than one county) are hereby fully authorized and empowered to levy upon and against all of the taxable property in any such district, and to collect, in the manner and at the times now or hereafter provided by statute, sufficient taxes to pay the interest on said bonds and provide a sinking fund for the payment of said bonds at maturity. The net benefits which it shall have been found by the Commissioners of Appraisement, by appraisement now, or that may hereafter be made, will accrue to each piece of taxable property within such district from the completion of the supplemental plan of reclamation and additional improvements for which such additional bonds are issued. [Acts 1930, 41st Leg., 5th C.S., p. 201, ch. 58.]

[1] So in enrolled bill. Should probably read "in".

Art. 8008. Record of bonds.—When bonds shall have been issued by and on behalf of any levee improvement district, the supervisors of such district shall procure and deliver to the treasurer of the county whose commissioners' court has jurisdiction, a well bound book in which a record shall be kept of all such bonds, with their number, amount, rate of interest, date of issuance, when due, where payable, amount received for same, and the tax levy to pay interest on and to provide sinking funds for their payment, which book shall at all times be open to the inspection of the parties interested, either as taxpayers or bondholders; and upon the payment of any bond an entry thereof shall be made on such book. The county treasurer shall receive for his services in recording all these matters the same fees as may be allowed by law to the county clerk for recording deeds. [Acts 1925, 39th Leg., p. 50, ch. 21.].

Art. 8009. Attorney General to examine.—Before any bonds issued by or on behalf of any levee improvement district are offered for sale, there shall be forwarded to the Attorney General a certified copy of all proceedings had in the organization of the district, and with reference to the issuance of such bonds in connection with the bonds, themselves, and such other information with respect thereto as may be required by the Attorney General, shall be furnished; and it shall be the duty of the Attorney General to carefully examine said bonds, in connection with the record and the Constitution and laws of this State governing the issuance of such bonds, and, if, as a result of his examination, the Attorney General shall find that such bonds are issued in conformity with the Constitution and laws of this State and that they are valid and binding obligations upon the district by or on behalf of which they are issued, he shall so officially certify, and, until he shall so officially certify, and until registered by the Comptroller, as hereinafter required, said bonds shall be without validity.

Art. 8010. Recorded by Comptroller.—When the bonds of any levee improvement district have been examined and approved by the Attorney General and his certificate thereto has been issued, they shall be registered by the State Comptroller in a book kept for that purpose, and the certificate of the Attorney General as to the validity of such bonds shall be preserved of record. Such bonds after receiving the certificate of the Attorney General, and after having been registered in the Comptroller's office, as herein provided, shall be held, in every action, suit or proceeding in which their validity may be brought into question, prima facie valid; and in every action brought to enforce collection of such bonds and interest thereon, the only available defense against the validity of such bonds shall be forgery or fraud.

Art. 8011. Sale of bonds.—When bonds shall have been issued, approved and registered as provided in this Act, the court of jurisdiction may appoint the county judge of the county of jurisdiction, or other suitable person, to sell said bonds on the best terms and for the best price possible and approved by the district supervisors, and no sale shall be complete until approved by such supervisors. The judge or person selling such bonds shall be allowed, as full compensation for all services performed in respect thereto, one-fourth of one per cent of the amount received, and, except such commission, shall promptly pay over to the proper treasurer or depository the proceeds of said bonds, to be placed to the credit of such levee improvement district; but, before proceeding to make any sale, such judge, or any person appointed, shall execute a good and sufficient bond, payable to the levee improvement district, and approved by the commissioners' court having jurisdiction, for an amount not less than the par value of the bonds to be sold, conditioned for the faithful discharge of his duty under his appointment.

Art. 8012. Levying taxes.—When bonds have been issued by any levee improvement district, providing for the levy of taxes upon a benefit basis, the commissioners' court of the county, if the district is wholly within one county, or if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon and proportioned, as to each piece of property, to the net benefits which it shall have been found will accrue to such property from the completion of the plan of reclamation or other duly authorized work, which taxes shall be sufficient in amount to pay the interest on such bonds, as it shall fall due, and to raise an additional sum which will create a sinking fund sufficient to discharge and redeem such bonds at maturity; such levy may be made for or at the time of issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of such years until modified. Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in the bonds of the series to which such funds apply, if offered for redemption before maturity upon terms deemed advantageous to the district by its supervisors or the court of jurisdiction.

When bonds shall have been issued by any levee improvement district, providing for the levy of taxes upon ad valorem basis, the commissioners' court of the county, if the district is wholly within one county, or, if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon the value of each piece of property as made for State and county purposes, which taxes shall be sufficient in amount to pay the interest on such bonds as it shall fall due, and to raise an additional fund which shall create a sinking fund sufficient to redeem and discharge such bonds at maturity; such levy may be made for or at the time of issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of such years until modified. Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in the bonds of the series to which such funds apply, if offered for re-

demption before maturity upon terms deemed advantageous to the district by its supervisors or the court of jurisdiction.

Art. 8013. For what uses may be applied.—When a maintenance tax shall have been voted in any district entitled to the benefits of this Act, the commissioners' court of the county, if the district is wholly within one county, or, if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall thereafter levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon the net benefits thereto contemplated to be accomplished through the plan of reclamation, if such district has provided for the levy of taxes upon a benefit basis; or such court shall thereafter levy and cause to be assessed and collected taxes upon all taxable property, within such district, based upon the value of each piece of property as made for State and county purposes, if the district has provided for the levy of taxes upon ad valorem basis; provided, however, that the tax rate shall not exceed the specific rate voted, and the vote in such cases may be for a specific rate, or not to exceed a specific rate. The proceeds of such taxes shall be used for the maintenance, upkeep, repairs and additions to the levees and other improvements in the district, and for no other purposes, except as may be herein otherwise provided. The right to levy such taxes shall remain in force until abrogated, in whole or in part, by another election; but elections upon the question of the repeal or reduction of maintenance taxes shall not be held oftener than every five years; and any levee improvement district heretofore organized may avail itself of the provisions and benefits of this section.

Art. 8014. Secretary ex officio tax assessor.—The secretary of the board of supervisors of levee improvement districts providing for the levy of taxes upon a benefit basis shall be ex officio tax assessor for such districts, and it shall be his duty when any tax is levied, at the expense of the district, to prepare a tax roll in form substantially as the assessment roll made by county tax assessors, except that instead of ad valorem valuation it shall state net benefits assessed against property, and he shall compute against each piece of property the amount of taxes assessed against it, and enter on such roll the amount of such taxes. A certified copy of such roll, insofar as it appertains to each county in which any portion of the district is located, shall be filed with the tax collector of such county.

Art. 8015. Tax collectors under bond.—Tax collectors of the several counties shall be charged with the assessment rolls of levee improvement districts, and are required to make collections of all taxes levied and assessed against property within such district, and promptly pay over the same to the treasurer of the district; and the bonds of such collectors shall stand as security for the proper performance of their duties as tax collectors of such levee improvement district, or if in the judgment of the supervisors of such district it be necessary, additional bonds, payable to such districts, may be required, and any collector failing to act hereunder or failing to give the additional bond required, shall be deemed guilty of malfeasance in office and shall be suspended from office by the commissioners' court of his county, and may be removed from office in the mode prescribed by law; and in case of suspension the boards of supervisors may appoint special collectors for their respective districts and require such security of them as may be deemed proper, and the persons so chosen shall have and exercise within and for the district all the rights and powers which tax collectors have or may have by law in their respective counties.

Art. 8016. Recovering delinquent taxes.—Tax collectors of levee improvement districts shall perform all duties and exercise all powers in respect to delinquent taxes due levee improvement districts as may be provided by law for the collection of delinquent State and county taxes, and the collection of such delinquent levee improvement district taxes and sales of property therefor shall be governed by the laws applying to the collection of delinquent State and county taxes and foreclosure decree therefor shall include writ of possession. The supervisors are also given the power and authority to collect such delinquent taxes, and to institute and prosecute suits in the name of the district for their collection; and such districts are also authorized to do and perform all other things that may be necessary for the collection of such taxes. Taxes levied under this law shall be a first and prior lien upon all property against which they are assessed, and shall be payable and shall mature and become delinquent as provided by law for State and county taxes.

Art. 8017. Same; method to be pursued.—The board of supervisors may also proceed to collect delinquent levee taxes in the following manner:

Suit shall be brought in the name of the district for the collection of the taxes and the foreclosure of the lien thereof in the following manner:

(a) Such suits shall be brought in the district court of the county in which the land or the major part thereof is situated, and such courts shall give judgment against each tract of land for the amount of such taxes, together with penalties, interest, attorneys fees and costs; such judgment shall provide for the sale of each tract of land by the sheriff or any constable of the county in which it is situated in the same manner as other judicial sales of land; and it shall be immaterial that the ownership of said land be incorrectly alleged in said proceedings.

(b) Such action shall be in the nature of a proceeding in rem, and jurisdiction of land owners and other parties interested may be had by publication for a general notice thereof, once each week for at least four consecutive weeks in some paper of general circulation published in the county or counties in which such district is situated, and if no paper is published in the county, then the same shall be published in a paper in the nearest county thereto where a paper is published, and also by written notice mailed to the last known address of the land owner, and which notice shall be substantially in the following form:

——— County Levee Improvement District No. ——— vs. delinquent lands in ——— County and said district. In the district court of ——— County, Texas, ——— Judicial District ——— Term, 19—.

Notice is hereby given to all parties having or claiming any interest of any kind in any of the following described lands that on the ——— day of ———, 19—, suit was filed in the district of ——— County, Texas, at ———, Texas, to enforce the collection of certain levee district taxes on said lands.

The name of each supposed owner has been set opposite his, her or its land, together with the amount due from each tract, to-wit:

(Give list of supposed owners, with a description list of said delinquent land, and the amount due thereon respectively).

All persons or corporations having or claiming any interest whatsoever in said lands, are hereby notified to appear at the next regular term of said district court of ——— County, Texas, to be held at the court house thereof in ———, on the ——— Monday in ———, 19—, the same being the ——— day of ——— 19—, then and there to answer a petition filed in said court in the above numbered and entitled cause, or final judgment will be entered directing the sale of said lands for the purpose of collecting said

taxes, together with payment of interest penalties, attorneys fees and other costs allowed by law.

Given under my hand and the seal of said court in the City of ———, Texas, this ——— day of ———, A. D. 19—.

Clerk of the District Court
of ——— County, Texas.

Issued this ——— day of ——— A. D. 19—.

Clerk of the District Court
of ——— County, Texas.

(c) Such publication of notice of the pendency of such suit and the written notice addressed to the last known address of the land owner, shall be taken as and for service of process against any owner, vender, mortgagee, heir or other person claiming any interest in the lands whatsoever, and the judgment in such case shall be binding upon each tract of land and the owner of every interest therein. Provided, it shall not be necessary to publish any delinquent list or give any other delinquent notice before proceeding under this Act.

(d) When the notice, petition and answer have been filed with the clerk, he shall docket the same in other causes, and the said suit have precedence over all other cases.

(e) In such suits it shall be sufficient to allege generally and briefly the organization of the district and the non-payment of the taxes, setting forth a reasonable description of the lands proceeded against and the amount chargeable to each tract, with prayer for foreclosure; provided that no irregularity in the assessment of the land, or mistake in the name of the owner or in the number of acres therein, shall be a defense to such action; provided, further, that no mistake as to the amount of the taxes, interest and penalty as alleged in the pleadings or in the notice of the pendency of the suit shall be a defense, but the correct amount of taxes, interest and penalty due may be proved and the judgment rendered thereon.

(f) Such suits shall be conducted in the name of the levee improvement district and in accordance with the practice and proceedings of the district courts in this State, except as herein otherwise provided. Continuances shall be granted only for good cause shown, which may be granted as to part of the lands, and in such case the court shall proceed as to all tracts as to which no continuance is granted.

(g) When notice has been properly given as aforesaid, and where no answer has been filed, or if filed and the cause has been decided for the plaintiff, the court shall enter judgment granting the relief as prayed for in the petition, and shall foreclose the lien on such taxes and order the sale of the land therefor in the same manner as other judicial sales of real estate, and foreclosure decree therefor shall include writ of possession, and if all the land and other real property be not sold on the date advertised, such sales shall continue from day to day until completed, and the sheriff or constable shall by proper deed convey to the purchaser the land so sold, and the title of said land shall thereupon become vested in such purchaser against all others whatsoever; provided, that the former owner shall within two years of the date of the purchaser's deed have the right to redeem the land upon payment of double the amount of money paid for the land.

(h) The board of supervisors shall have the power to employ attorneys for the purpose of collecting such delinquent taxes, paying such attorneys for their services such fees or commissions as to the supervisors may seem proper.

(i). [Repealed by Acts 1937, 45th Leg., 1st C.S., p. 1818, ch. 38, § 1.]

(j) The method of procedure provided in this section shall be cumulative, and shall not repeal or supersede any other procedure provided herein for the collection of such taxes.

Art. 8018. Refunding bonds.—Any levee improvement district which has heretofore been organized under the laws of the State and has issued bonds, and any levee improvement district hereafter organized, and which may issue bonds, may by consent of the holders thereof refund any bonds issued by issuing new coupon bonds for that purpose. Such refunding bonds shall not bear a greater rate of interest than the bonds in lieu of which they are issued. Interest shall be evidenced by coupons attached to such bonds, and may be payable annually or semi-annually, within the discretion of the commissioners' court of the county of jurisdiction; and such refunding bonds shall be payable serially or otherwise, not exceeding forty years from the date thereof, and shall be issued in denomination one hundred dollars or some multiple thereof; and a sufficient tax levy to meet the payment of the principal and interest of said refunding bonds shall be made before the delivery thereof, provided the refunding of any bonds shall not affect any taxes already due.

The refunding bonds hereby authorized shall be executed in the same manner provided for the execution of levee improvement district bonds. Any sum to the credit of any sinking fund account on hand shall first be deducted in ascertaining the amount of refunding bonds to be issued, and such money shall in every case be applied to the payment of the outstanding bonds. No refunding bonds shall be issued and delivered until approved by the Attorney General and registered by the State Comptroller; provided, however, that the Comptroller shall not register such refunding bonds until the old bonds in lieu of which such refunding bonds are issued are presented to him for cancellation; and after the registration of the new bonds, the Comptroller shall cancel the old bonds and interest coupons, and deliver such new bonds to the proper party or parties; provided, further, that the old bonds may be so presented for cancellation, in installments, and a like amount of the new bonds registered and delivered as is herein provided.

Art. 8018a. Counties over 390,000, refunding bonds in.—Any levee improvement district, operating under the assessed benefit plan of taxation, and situated in a county having a population of more than three hundred and ninety thousand (390,000) inhabitants, according to the preceding Federal Census, shall have the right to issue refunding bonds payable, serially or otherwise, not exceeding seventy-five (75) years from the date thereof, within the discretion of the Commissioners Court of such county, for the purpose of refunding any outstanding bonds legally issued by such district and outstanding matured interest coupons pertinent to any legally issued outstanding bonds of such district, and such refunding bonds shall be issued in conformity with the provisions of Article 8018, Revised Civil Statutes of Texas, 1925, relating to the issuance of refunding bonds by other levee improvement districts. [Added Acts 1945, 49th Leg., p. 224, ch. 167, § 1.]

Art. 8019. Treasurer under bond; compensation.—The county treasurer of the county, the commissioners' court of which has jurisdiction, shall be treasurer of all levee improvement districts of which such court has jurisdiction, and as such shall execute a good and sufficient bond, payable to the levee improvement district, in a sum equal to one and one-fourth of the taxes contemplated to be paid over in any one year, or such other or further amount as the board of supervisors of the district may require, which bond shall be conditioned for the faithful performance of the duties of the principal as treasurer of the levee improvement district, and shall be ap-

proved by the board of supervisors of such district. Such bond may be made by any guaranty or surety company approved by the board of district supervisors, and premiums therefor may be paid out of the maintenance fund of the district. The treasurer, as compensation for his services, shall be allowed not exceeding one-fourth of one per cent upon sums received by him by and on behalf of such levee improvement district.

Art. 8020. Treasurer to report to commissioners' court.—It shall be the duty of the county treasurer whose commissioners' court has jurisdiction, as treasurer of the levee improvement district, to open an account with each such district and to keep an accurate account of all moneys received by him belonging to such district, and all moneys paid out by him. He shall pay out no money except upon a voucher signed by two of the district supervisors and countersigned by the county judge, and he shall carefully preserve all orders for the payment of money; and as often as required by the said district supervisors or the commissioners' court he shall render a correct account to them on all matters pertaining to the financial condition of such district.

Art. 8021. Supervisors select depository.—The board of supervisors shall select a depository or depositories for funds of the district and the county treasurer shall deposit such funds of the districts in such depository or depositories as the supervisors may direct; provided, before any such depository shall receive any funds of the district they shall give bond to the district with a corporate surety company as surety, which is authorized to do business in the State of Texas, in an amount equal to the funds so deposited, conditioned upon the safe keeping of said funds and paying of the same.

Art. 8022. Compensation of officers.—For all services performed by any officer or individual under this Act, the compensation for which is not herein expressly provided for, such officer or individual shall receive the same compensation as he would for like services if rendered as an officer of a county. Clerks recording orders hereunder shall receive the same compensation as would a county clerk for recording deeds, and persons posting notices hereunder shall receive the same compensation as would a sheriff for posting notices required by law to be posted by him officially.

Art. 8023. Awarding contracts.—All the improvements contemplated by the plan of reclamation, as approved by the State Reclamation Engineer, shall be constructed. Contracts for making and constructing levees and other improvements and all the necessary work in connection with any levee improvement district, shall be let by the district supervisors to the lowest and best bidder, after giving notice by advertising same in one or more newspapers of general circulation in the State of Texas once a week for three consecutive weeks; which contracts shall be made in writing and signed by the contractor, in duplicate; provided, that such work may be let without advertisement upon contracts approved jointly by the district supervisors and the owners of a majority of the acreage of land in such district; provided, further that such contract shall include all works of improvement contemplated and authorized by the approved plan of reclamation, it being the intent hereof to require the contractor to complete the construction of such works of improvement for the amount of money, or bonds available for the purpose; provided, that such work may be let in sections but no contract for a part of the work shall be valid unless and until all sections of the work shall have been let under the above conditions so that the total cost of the work shall be within the amount of funds or bonds provided for the purposes; provided further, that it shall be the duty of the district supervisors immediately to notify the county treasurer that the contract has been executed and it shall thereupon be the duty of the county treasurer to set aside an amount of money in the construction and maintenance fund of said district to be known as "Special Fund Under Contract, dated ——— (inserting date of contract)," and which special fund, so set aside, shall be for the full amount of the contract price, and it shall be unlawful for the county treasurer to pay any warrants against such special fund, except upon accounts sworn to by the contractor and duly audited and approved by the district supervisors; and the use or payment of such special fund, or any part thereof, for any other purpose shall be a diversion thereof, and punishable as provided by Article 104, of the Penal Code of this State, Revision of 1911;[1] and, provided further, that the district supervisors may deliver to the contractor upon the written consent of the county judge, the bonds of such district in full payment of the works of improvement constructed in conformity with the contract, and such bonds may be delivered in installments upon estimates of the engineer as the work progresses. In the event there are not sufficient funds available for the purpose of completing the works of improvement contemplated and authorized by the approval plan of reclamation, then no contract shall be awarded for any part of such work until sufficient funds have been provided for; and if such contract is made it shall be void, and shall not be enforceable in any court in this State, and the performance of same or any payment of any money thereunder may be enjoined by any taxpayer in such district; provided, however, that this requirement shall not apply to urgent necessity or present calamity where it becomes necessary to act at once to repair any levee so as to preserve the property in the district; and, provided further, that subsequent to the approval and registration of bonds by the proper State officials as herein provided, contracts may be let conditioned upon the sale of such bonds in an amount equal to the contract price. "The contractor shall be required to give a corporate surety bond for the full amount of the contract price, which shall guarantee the completion of the contract as above provided, which bond shall be subject to the approval of the county judge."

[1] Article 104 of the Pen.Code of 1911 referred to in this Article is Article 94 of Rev.Pen.Code 1925.

Art. 8024. Work to be supervised.—All work included in the contract shall be done in accordance with the specifications under the supervision of the supervisors and the district engineer. As the work progresses the engineer of such district shall make report to the supervisors, showing in detail whether the contract is being complied with, and when the work is completed he shall make a detailed report of same to the supervisors, showing whether or not the contract has been fully complied with according to its terms, and if not in what particular it has not been so complied with. It shall be the duty of the State Reclamation Engineer either in person or by deputy to inspect the construction of a levee and other works of improvement once every sixty days after such construction work has commenced; and if he finds that such levee or other duly authorized work has been constructed in strict accordance with the approved plan of reclamation he shall so officially certify and his certificate shall give a full description of the work that has been done up to the date of such inspection; and in the event he finds that such work has not been constructed in strict accordance with the approved plan of reclamation, he shall so officially certify, and in such certificate designate wherein the contractor has failed to comply with the approved plan of reclamation. It shall thereupon be the duty of the district supervisors to forthwith demand that the contractor shall comply with the requirements of the approved plan of reclamation, at his own cost and expense, and no further accounts, claims or vouchers submitted by

such contractor shall be approved or paid until he has complied with the requirements of the State Reclamation Engineer in constructing such work in accordance with the approved plan of reclamation.

Art. 8025. Paying for work done.—The supervisors shall, during the progress of the work under contract, inspect the same; and upon the completion of any work in accordance with the contract, they shall draw a warrant on the treasurer of the district for the unpaid amount of the contract price in favor of the contractor. Payments pending the work shall not exceed in the aggregate eighty-five per cent of the contract price of the work done, the said amount of work completed to be shown by estimates of the engineer of the district.

Art. 8026. To have seal.—Levee improvement districts created under this Act, or entitled to its benefits, shall each have a common seal which shall be circular in form, with the name of the district within the center, with a star of five points in the center; and such districts may sue and be sued in the courts of this State in and by their corporate names, and all courts of this State shall take judicial notice of their existence.

Art. 8027. Plans to be approved by Reclamation Engineer.—It shall be unlawful for any levee improvement district, whether it proposes to construct its levees or other improvements with or without the issuance of bonds, to construct, to undertake to construct, or maintain any levee or other improvement, without first obtaining the approval by the State Reclamation Engineer, as provided in this Act, of the plans for such levees or other improvements; and in the event any such levee improvement district undertakes to construct, or constructs or maintains any levee or other improvement without first obtaining the approval of the State Reclamation Engineer of the plans for the same, as provided in this Act, it shall be the duty of the Attorney General, on the request of the State Reclamation Engineer, to file suit in one of the district courts of Travis County, Texas, in which the venue of such suits is hereby fixed, to enjoin the construction or maintenance of such levee or other improvement.

Art. 8028. Same; along streams, lakes, etc.—From and after the taking effect of this Act it shall be unlawful for any person, corporation or levee improvement district, without first obtaining the approval of plans for the same by the State Reclamation Engineer, to construct, attempt to construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this State which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change, the flood waters of such stream; and any person, corporation or district violating this section of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding one hundred dollars. And in the event any such structure is about to be constructed, is constructed, or maintained by any person or corporation without approval of the plans by the State Reclamation Engineer, it shall be the duty of the Attorney General, on the request of the State Reclamation Engineer, to file suit in one of the district courts of Travis County, in which the venue of such suits is hereby fixed, to enjoin the construction or maintenance of such structure. Provided, that the provisions of this section shall not apply to dams, canals or other improvements made or to be made by irrigation, water improvements or irrigation improvements made by individuals or corporations.

Art. 8029. Dissolution of district.—If any levee improvement district heretofore created or that hereafter may be created shall find, at any time prior to the sale of its bonds or final lending of its credit in other form, that the proposed undertaking for any reason is impracticable or apparently cannot be successfully carried out, the commissioners' court is hereby authorized to abolish such district upon petition signed by the owners of a majority of the acreage in the district, praying for the dissolution of such district, setting forth the reasons therefor, and accompanied by a deposit of fifty dollars. Such petition shall be set for hearing, notice of such hearing shall be given, the hearing thereon shall be held, and the expense thereof paid out of said deposit all in conformity with the procedure prescribed in this Act in connection with the petition for the establishment of the district; and the commissioners' court shall have the same powers with respect to the abolition of such districts that it has with respect to their creation. If upon the hearing it shall appear to the court that such district should be abolished, the court shall so find and shall render judgment reciting such findings, and by its orders entered of record declare and decree such district abolished, and appoint the chairman of the supervisors or some other suitable person as trustee to close up its affairs without delay; the term and compensation of such trustees to be at the pleasure of the said court. If the court should not so find, it shall dismiss the petition at the cost of the petitioners, and enter such findings of record. Where any taxes have been levied and collected in the name of the district in anticipation of an issue of bonds, such taxes, so far as unexpended, shall in the event of dissolution of the district as herein provided, and on order of the commissioners' court duly entered, be returned to the taxpayers ratably, after deducting the compensation of the assessor, collector and treasurer in connection therewith, and any other claim properly chargeable against such taxes; proper receipt for all sums so refunded to be taken and filed by the treasurer.

Art. 8029a. Election for dissolution.—Any levee improvement district heretofore created or that hereafter may be created, may voluntarily abolish its corporate existence in the manner hereinafter provided. If the proposition to abolish such district fails to carry at the election held therefor, no other election for the same purpose shall be held within one year after the result of such election has been declared. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029b. Order for election.—Upon the presentment to the Commissioners' Court at a regular session thereof, of a petition praying for the abolition of such levee improvement district, the court shall order an election to be held within such district at the earliest possible legal time to determine whether or not such district shall be abolished. Such petition shall be signed by the owners of a majority of the acreage of the lands in such district. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029c. Notice and qualified voters.—Notice of such election shall be posted and such election shall be ordered, held and conducted in the same form and manner as elections at which levee district bonds are now authorized. All persons who are legally qualified voters of the State and county in which such an election is ordered, and are resident property taxpayers in the levee district where such election is to be held, as shown by the records in the county tax collector's office, shall be entitled to vote at such election. A two-thirds vote shall be necessary to carry the proposition submitted at such election. The ballot for such election shall have written or printed thereon the words and no others, "For the abolition of the levee improvement district" and "Against the abolition of the levee improvement district." [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029d. Returns and declaration of result.—Returns of such elections shall be made and the votes canvassed as before provided in this Chapter,

and if said proposition carries, the court shall so declare and enter the same in their minutes substantially as follows:

In the matter of the petition of ——— and ——— others, praying for the abolition of the levee improvement district in said petition described and designated as ——— County Improvement District No. ——— be it known that an election called for that purpose in said district held on the ——— day of ——— A. D. 19—, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the abolition of said levee improvement district. Now, therefore, it is considered and ordered by the court that said district be, and the same is hereby abolished. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029e. Settlement of debts and taxes.—When the district is so abolished, the court shall provide for the settlement of the debts due by said district, including the costs and expenses of holding said election, for and such purpose shall have the power to levy and cause to be assessed and collected in the manner provided in this Chapter,[1] a tax against the real and personal property in said district, in such amount only as will be necessary for the payment of all valid debts and obligations of every character existing against said district, except bonds issued and held by purchaser. Such bonds shall be paid in accordance with the terms thereof by levy and collection of an annual tax as before provided, unless a retirement of such bonds is effected as provided in the succeeding article. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

[1] This Article, Articles 8029a–8029d, ante, and 8029f–8029q, post.

Art. 8029f. Bonds and retirement.—If there are any district bonds outstanding at the time of such dissolution, the court shall immediately enter into negotiations with the holders of such bonds, and if, according to the terms thereof, or by agreement between said court and the holders. said bonds can be retired at an earlier date than stipulated on their face, and such retirement is considered by said court as feasible and practicable, then said court shall have the power to levy and cause to be assessed and collected in the manner provided in this Chapter,[1] such a tax either annually or at once as will pay off as speedily as possible, all indebtedness, both bonded and otherwise of said district. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

[1] This Article, Articles 8029a–8029e, ante, and 8029g–8029q, post.

Art. 8029g. Sale of property, trustees' bonds.—Upon the dissolution of a district, the court shall provide for the disposition and sale of all district property and turn the same over to three trustees to be appointed by the Commissioners' Court from land owners of said district immediately upon the filing and approval of the bond, whereupon they shall become trustees for such defunct organization. Said trustees shall execute a good and sufficient bond jointly, in a sum not less than the amount of its outstanding bonds and other debts payable to and approved by the county judge and his successor in office, conditioned for the faithful performance of their duty as trustees of such district, and for paying over and delivering all money and other property coming into their hands as such trustees, to the parties entitled thereto. Said bond shall be recorded in the minutes of the court, and when approved, shall supersede the bond theretofore given by the treasurer of said district. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029h. Trustees' suits.—The said trustees of said defunct district, after giving the required bond, shall take charge of all the property of said district, including the money now in hands of treasurer, of the county, said money to be held by them as trustees of such district, and all books, notes, accounts and choses in action of every kind. As such trustees they may bring suit against any person in possession of such property or indebted to such district, the same as such district could if still organized, and may employ counsel in all suits thereunder, or in the care and management of the business of such defunct district. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029i. Claims, allowance and filing.—Any person, firm or corporation having any claim against such district, or any judgment against such district, shall, within six months after the approval of the bond of the trustees present to them such claim, duly verified. If the trustees find the same correct, they shall allow such claim and thereupon the claimant shall file the same with the clerk of the county court not less than twenty days, before the beginning of the next regular session of the Commissioners' Court, and the said clerk shall immediately issue a notice of such filing to all persons interested in said district. Such notice shall be posted in three public places in the district, and at the court house door, not less than twenty days before the next regular session of said Commissioners' Court. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029j. Approval by Commissioners' Court.—The Commissioners' Court in regular session shall pass upon said claim, and if it be found correct, they shall approve the same, and the order of approval shall be entered upon their minutes, whereupon said claim shall become a valid and subsisting claim against said district. Said claim shall then be filed with the trustees and shall be paid by them in the order of its filing out of the money in their hands as treasurer of said district, or collected as liquidation taxes hereunder. All bonds and approved claims outstanding against said district before its dissolution, shall not be required to be allowed and approved as herein provided, but shall be considered as valid and subsisting claims against said district without further approval, but subject to be contested in accordance with the provisions of this subdivision. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029k. Refusal of claims and suits.—If the trustees find any claim presented to them unjust. in whole or in part, they shall endorse thereon their refusal to allow same, and if it be refused in whole, the owner thereof may institute suit against trustees for said claim in any court of competent jurisdiction in the county, and if established by judgment as in other cases, said judgment shall be filed with said trustees and shall be paid in its order as other claims. If said claim be refused by the trustees in part and allowed in part, and the owner thereof waives his claim to the part so refused, he shall file said claim in the court for approval. But if he does not waive his right to the portion of said claim so refused, he shall withdraw said claim from the trustees and may bring suit thereon as herein provided. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029l. Judgment and appeals.—If the owner of any claim acted upon by the court is not satisfied with the judgment thereon, he may appeal therefrom as in cases of appeal from judgment of a justice court. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029m. Taxpayers' protest of claims.—If any district taxpayer files with the trustees a protest against any claim which was allowed by the former commissioners of said district before the dissolution of the district, and which was unpaid at the time of dissolution, together with a bond in double the amount of such claim, with sufficient sureties to be approved by the trustees and made payable to them, conditioned that such contestant will pay all costs of suit, in case such claimant establishes his claim in full in any state

court in which he may sue thereon, then the trustees shall refuse to pay said claim and the owner thereof may bring suit therefor against the trustees, as in other suits of a civil nature. In such suits the contestant and his bondsmen shall be made parties thereto, and trustees shall make all defenses urged against said claim by the contestant. In case of recovery by the claimant, judgment shall be rendered against said contestant and his bondsmen for all costs incurred in said suit; and the owner of said claim shall file the judgment with the trustees to be paid as other claims thereunder. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029n. Expenses approved.—All reasonable expenses incurred by the trustees in the care, control and conduct of the business of the district and employment of counsel therefor, or in conducting or defending suits in their capacity as such trustees, and any counsel fees or court costs incurred by the former commissioners of such district, which have not been paid at the time of the dissolution of such district, shall be charged by them against said trust estate, and shall be presented to the Commissioners' Court at a regular term thereof and upon due notice posted as required in case of other claims against the district. Upon approval by said court, the same shall become a valid and subsisting claim against said district and shall be preferred claims, and may be retained by said trustees out of the funds in their hands as district treasurer. If said claim is rejected in whole or in part, and the trustees are dissatisfied with said ruling, they may appeal therefrom as other claimants. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029o. Trustees' compensation.—The trustees shall receive only one compensation for their services as trustees and ex-officio treasurer hereunder. They shall be allowed one-half of one per cent upon all money received by them as the entire compensation for all three trustees for the account of such district, and one-half of one per cent upon all money paid out as provided herein; but they shall not be entitled to such commission on money in their hands as treasurer of said district at the time of the dissolution thereof, as of money coming into their hands, nor to money turned over by them at the expiration of their trusteeship. The county assessor and collector shall receive the same compensation for the assessing and collecting of taxes as before provided in this Chapter,[1] and their compensation for such service shall be provided for in the order of the court assessing taxes thereunder. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

[1] This Article, Articles 8029a–8029n, ante, and 8029q, post.

Art. 8029p. Trustees' final settlement.—When all claims established against the district have been paid and all costs and expenses incurred in the control and management thereof have been satisfied, the trustees shall file their account for final settlement with the court. Said account shall contain a full and complete account of all money received and paid out, all property of every kind that has come into their hands as trustees and the disposition thereof, and all other matters pertaining to the management of the affairs of the district. Upon the approval of said account, the court shall direct the trustees to turn over any property or money remaining in their hands to the person or persons entitled thereto as found by the court, and on their compliance with said order, they shall so report to the court, and thereupon the court shall enter an order discharging said trustees and their bondsmen and closing said trust estate. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029q. Trustees' successors.—In case of death or resignation of any of said trustees, the Commissioners' Court shall appoint a successor or successors to fill such vacancy or vacancies. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8030. Providing additional funds.—If it should develop that the works and improvements set out in any plan of reclamation adopted by or on behalf of a levee improvement district are found insufficient to reclaim in whole or in part any or all of the lands and other property within the district, or if extensive repairs or additions to such works are deemed necessary, or if additional funds are needed to complete improvements, then in respect thereto, the board of supervisors of the district, may proceed in all respects to provide additional funds for such additional works, in accordance with the provisions of this Act, in respect to the original plan of reclamation, and may, under like limitations, create additional indebtedness or issue additional bonds, but always subject to every limitation in respect to such original proceedings, as well as the approval of the new or amended plan of reclamation by the State Reclamation Engineer.

2. ALTERNATE METHOD

Art. 8031. Readjusting assessments.—At any time after one year from the date of any final judgment and decree of the commissioners of appraisement in districts levying taxes on the benefit basis, the owners of a majority of the acreage of the lands within the district may file a petition with the commissioners' court alleging that the previous assessment of benefits in such judgment and decree are insufficient or inequitable, and praying for an increase or readjustment of the assessment of benefits for the purpose of making an adequate or more equitable basis for the levy of taxes; and if the plan of reclamation is changed or modified, or if extensive repairs or additions thereto are desired to be made, the board of supervisors shall file a petition with such court setting out therein such changes, modifications, repairs or additions; upon the filing of any such petition the court shall set a day for the hearing of each petition, and issue notice informing all persons concerned of the time and place of hearing, and their rights to appear and contend for or contest an increase or readjustment of assessments of benefits, such notice to be posted at the places, for the length of time, and in all respects the same as the notice of hearing for establishing the districts.

Art. 8032. Same; hearing petition.—At the time and place set for the hearing the commissioners' court shall proceed to hear such petition and proof for or against the same, and if it finds that the aggregate amount of assessed benefits as shown by such previous final judgment and decree is insufficient to carry out the original plan of reclamation, or any change in or modification of, or repairs, or additions to the same, or that there has been a material change in the relative value of the benefits conferred on the property in the district, or that for other reasons such assessment of benefits is inadequate or inequitable, it shall order that there be made a reassessment of benefits for the purpose of providing a sufficient, more adequate or equitable basis of taxation for all purposes within such district; and thereupon it shall proceed to appoint commissioners of appraisement in the manner and with the powers, rights, privileges and duties both to the commissioners and persons interested, as provided in the first instance.

Art. 8033. Assess and collect on reassessment.—Such commissioners shall finally make their findings and enter their judgment and decree in the matter, which, thereafter, until again changed or modified, shall be the basis of the assessment of taxes within and for the district. Provided, that there shall be no reassessment of benefits that will in any way render insecure any outstanding bonds or other indebtedness of any district, nor shall the sum of benefits as reassessed ever be less in amount than the sum total

of all outstanding bonds and other indebtedness of such district. The commissioners' court of each county in which such district is located shall levy and cause to be assessed and collected taxes based upon such reassessment, at rate sufficient to provide funds requisite to pay interest upon all outstanding bonds and other indebtedness of such district and to pay off such bonds or other indebtedness at maturity, and also to pay the interest on and provide necessary sinking funds to pay all bonds or other indebtedness that may be issued. The provisions of this section shall also apply to districts levying taxes upon the ad valorem plan, only if the plan of reclamation is changed or modified, or if extensive repairs or additions thereto are made, and such commissioners, if appointed, shall assess only the damages which will accrue to the property within or without the district because of the carrying out of the changes in the plan.

Art. 8034. Protesting decision of Reclamation Engineer.—If the supervisors of any levee improvement district, or any person or corporation whose interests are affected thereby, be dissatisfied with the action of the State Reclamation Engineer in finally approving or disapproving any plan of reclamation for such district, the district or person or corporation dissatisfied may within fifteen days after such final action, file suit in the district court of the county whose commissioners' court has jurisdiction of the district in question, against the State Reclamation Engineer, and to which suit the district shall be made a party defendant, if the suit be on behalf of any other complaining person or corporation. The petition shall set forth the cause or causes of objection and show wherein the interests of the petitioners are injuriously affected by the action of the State Reclamation Engineer complained of. Process shall issue as in other cases and the case shall have preference of trial in the court wherein it is filed, and upon final hearing the court shall render its judgment and decree approving or disapproving of the plan of reclamation, in whole or in part, as it may find to be equitable and just; and such judgment shall stand for the action of the State Reclamation Engineer in such matters. There may be an appeal, as in ordinary cases, from the judgment of the trial court, which appeal shall have preference of hearing in the Court of Civil Appeals, the judgment of which in the matter shall be final, and shall stand for the action of the State Reclamation Engineer in respect to the matters at issue in such suit.

Art. 8035. Injuring levees.—Any person or persons who shall wrongfully or purposely cut, injure, destroy, or in any manner impair the usefulness of any levee or other reclamation improvement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding one year; or by both such fine and imprisonment.

Art. 8036. Interfering with work.—Any person or persons who shall wilfully destroy or deface any corner, line, mark, bench mark or other object fixed or established in connection with the work herein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than thirty days, or by both such fine and imprisonment.

Art. 8037. Districts not organized.—Districts organized under any laws of this State having for their objects the reclamation of lands through a system of levees and drainage, and not governed by the provisions of laws of this State, may become entitled to and may hereafter exercise all the rights, powers and privileges conferred by this Act upon districts created under it, and to all of the enlarged powers which may be conferred under Section 59, Article 16, of the Constitution of this State by proceedings as follows:

1. Whenever the owner of a majority of the acreage of any such district shall present to the commissioners' court of the county in which such district is located their petition praying that a hearing be ordered to determine whether such district may avail itself of the provisions of this Act, it shall be the duty of the court to fix a time and place for such hearing, and cause notice thereof to be given, substantially in all respects as notice of the hearing upon the matters of the formation of a district under this Act.

2. At the time and place of such hearing the court shall proceed to hear and determine the issue presented by the petition, and evidence for and against the same, and if it finds that the interests of the district in question would be promoted by granting the prayer of the petition, it shall so decree and enter its judgment of record, declaring it to be to the interest of such district that it avail itself of all rights, powers and privileges conferred by this Act upon districts created under it, and that the district on behalf of which the petition is filed shall thereafter be entitled to and may exercise all rights, powers and privileges conferred by this Act upon districts created by it, and thereafter such district shall have and may exercise all such rights, powers and privileges as if created under this Act, and thereafter it shall proceed in all things as it would if created hereunder, but such decree shall not in any respect injuriously affect any financial liability of such district.

Art. 8038. Repealing provision.—All laws and parts of laws in conflict with the provisions of this Act shall be, and the same are hereby repealed, and Chapter 146, of the General Laws of the Regular Session of the Thirty-fourth Legislature, and Chapter 44, of the General Laws of the Fourth Called Session of the Thirty-fifth Legislature, and all amendments thereto, and Chapter 6, of Title 128, embracing Articles 7972, to 8096, inclusive, of the Revised Civil Statutes, 1925 Revision,[1] are hereby particularly repealed. [Acts 1925, 39th Leg., ch. 21, p. 80, § 66.]

[1] The Articles 7972 to 8096 repealed by the above mentioned Acts of 1925 are not the articles as printed in R.S. 1925, but the articles as printed in the proposed bill for which Articles 7972 to 8042 of the revision were substituted.

Art. 8039. Organized under former laws not invalidated.—Any proceedings begun under the provisions of any Act hereby repealed may be proceeded with and completed under the provisions of this Act; and nothing in this Act shall be construed to apply to the issuance of any bonds where provisions for their issuance have been made in whole or in part before the passage of this Act. And no suit or action now pending in any court in this State by or against any levee improvement district organized under the provisions of laws hereby repealed shall be affected by the provisions hereof.

Art. 8040. All districts organized heretofore are under provision of this Act.—This Act is intended to take place of all such Statutes repealed hereby. All levee improvement districts that have been organized heretofore, or that have availed themselves of the provisions of such law, shall be governed by the provisions of this Act, and the plan of taxation therein provided for shall not be affected or changed by this Act. Any such districts which have not completed any improvements begun under the provisions of any former law shall be governed in the issuance of bonds and the completion of such improvements by the provisions of the Act or Acts under which they were created; and provided, further, that the repeal of Chapter 146, Acts of the Regular Session of the Thirty-fourth Legislature, shall not affect any

districts heretofore created under the provisions of that Act, nor districts created under any former laws having for their objects the reclamation and protection of lands through a system of levees and drainage, and which have not heretofore become conservation and reclamation districts, but all rights, powers and privileges granted such districts by the Acts under which they were organized, and amendments thereto, are hereby directly preserved to such districts.

Art. 8041. Does not repeal laws of 1925 Statutes.—This Act shall not be construed to repeal any of the provisions of Chapter 7, Title 128, embracing Articles 8097 to 8193, entitled "Drainage Districts," in the Revised Civil Statutes, 1925 Revision, nor any of the irrigation laws of this State, nor any law upon the subject of drainage districts, water improvement districts or irrigation districts passed at the Regular Session of the Thirty-ninth Legislature.

Art. 8042. Continuation of former Acts.—This Act shall be construed to be a continuation of, and re-enactment of the Acts hereby repealed, excepting such provisions hereof as are now or are in conflict with said Acts. This Act is remedial in character and shall be liberally construed to give full effect to all of its purposes.

R.S.1925, following this article, set out a note reading as follows: "Articles from 8043 to 8096, inclusive, not provided for in the Act of 1925, and are therefor omitted from this Revised Statute in order to maintain subsequent number."

III. DRAINAGE

CHAPTER 7.—DRAINAGE DISTRICTS

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1. ESTABLISHMENT

Article 8097. [2567] May establish.—The commissioners courts may establish one or more drainage districts in their respective counties in the manner provided in this chapter. Such districts may or may not include villages, towns and municipal corporations, or any portion thereof, but no land shall at the same time be included in more than one drainage district created hereunder. Such districts, when so established, may make drainage improvements therein and issue bonds in payment therefor as provided in this chapter. The commissioners court shall hereafter be designated as the "Court." [Acts 1907, p. 78; Acts 1911, p. 245.]

See note under Article 8042, ante.

Art. 8098. [2568] Petition.—A petition shall first be presented to the Court signed by twenty-five of the freehold resident taxpayers in the proposed district, or if there are less than seventy-five such citizens then by one-third thereof, whose lands may be affected thereby, praying for the establishment of a drainage district, and setting forth the necessity, public utility and feasibility and proposed boundaries thereof, and designating a name for such district, which shall include the name of the county. [Id.]

Art. 8099. [2602] Deposit.—Said petition shall be accompanied by two hundred dollars in cash, which shall be deposited with the clerk of said Court, and by him held until after the result of the election for the creation of the district and issuance of bonds is officially made known. If said election is in favor of the establishment of said district, then the clerk shall return said deposit to the petitioners, their agent or attorney. If said election is against the establishment of such district, then the clerk shall pay out of said deposit upon vouchers approved and signed by the county judge, all costs and expenses pertaining to said proposed district up to and including said election, and the balance shall be returned to the petitioners, their agent or attorney. [Id.; Acts 1915, p. 61.]

Art. 8100. [2568] Notice of hearing.—At the same session when said petition is presented, the Court shall set said petition down for hearing at some regular or special session called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition, and shall order the clerk to give notice of the date and place of said hearing by posting a copy of said petition and the order of the court thereon for twenty days prior to the election in five public places in said county, one at the court house door, and four within the limits of the district. Said clerk shall be paid one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. [Acts 1907, p. 78; Acts 1909, p. 24; Acts 1911, p. 245.]

Art. 8101. [2569] Hearing.—On the day set for the hearing, any person whose land would be affected by the creation of said district may appear before said Court and contest the creation of such district or contend for its creation, and may offer testimony to show that the district is or is not necessary, and would or would not be of public utility, either sanitary, agricultural or otherwise, and that the creation of such district would or would not be feasible or practicable. [Id.]

Art. 8102. [2569] Hearing: powers of court.—Except as herein provided, said Court shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such district, and all matters pertaining to the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, and may adjourn hearing on any matter connected therewith from day to day, and all judgments rendered by said Court in relation thereto shall be final. [Id.]

Art. 8103. [2570] Hearing: findings.—If at the hearing it appears to the Court that the drainage of such district is feasible and practicable, and that it is needed, that the drainage would be conducive to the public health or would be a public benefit or a public utility, then the Court shall so find. But if said Court finds any of said issues in the negative, it shall dismiss the petition at the cost of the petitioners. The findings shall be entered of record. [Id.]

Art. 8104. [2571] Engineer.—If said findings favor the establishment of the district, the Court shall appoint a competent civil engineer who shall be entitled to such assistants as may be necessary. Said engineer and his assistants shall be paid for doing the work required of them hereunder, such compensation and allowances for transportation, supplies, etc., as may be agreed on between the engineer and the Court. [Id.; Acts 3rd C. S. 1920, p. 59.]

Art. 8105. [2572] Engineer's bond.—Said engineer shall give bond for five hundred dollars payable to the county judge for the use and benefit of the district, with two or more sureties to be approved by the Court, conditioned on the faithful discharge of his official duties hereunder. [Acts 1907, p. 78; Acts 1911, p. 247.]

Art. 8106. [2573] Preliminary plans.—The engineer shall, within such time as may be prescribed by the Court, go upon the land proposed to be drained and protected by levees, and make a careful survey thereof, and from such survey make preliminary plans,

locating approximately the necessary canals, drains, ditches, laterals and levees, and shall designate the streams and bayous necessary to be cleaned, deepened and straightened, and estimate the costs thereof in detail as to each improvement contemplated, and shall also estimate the probable cost of maintaining same per year, and shall at once make a detailed report of his work to the Court. [Id.; Acts 1st C. S. 1913, p. 89.]

Art. 8107. [2574] Plans: outlets.—The engineer is authorized and empowered to go upon lands and premises located outside of such district, and into another and different county, if necessary, for all purposes of the survey, and to ascertain and procure proper and necessary outlets for the proposed canals, drains, and ditches necessary to the drainage of the district. He shall obtain all possible information regarding the lands within the proposed district, and the outlets therefrom from the office of the State Reclamation Engineer and from other sources, and co-operate with said Engineer in the discharge of his duties. [Id.]

Art. 8108. [2575] Map.—The engineer's report shall be accompanied by a map showing the beginning point, as well as the outlets, of all canals, drains, ditches and laterals, and shall show the length, width, depth and slopes of the banks of the cut or excavation, and the estimated number of cubic yards of earth to be removed from each, and shall show the location and size of all levees and the estimated number of cubic yards of earth necessary to construct the same. A copy of the official Land Office map of the county, with the boundaries of the district, and the beginning points and outlets of all canals, drains, ditches and laterals, and other data required by this article shown thereon shall be deemed a sufficient compliance herewith. [Acts 1907, p. 78; Acts 1911, p. 247.]

Art. 8109. [2576] Hearing on report.—When such report of the engineer is filed with the clerk, the Court shall at its next regular or special session set such report down for hearing at a subsequent regular or special session, not less than twenty nor more than thirty days from such sitting. The clerk shall post notice thereof as before provided. At such hearing, any freehold resident or non-resident taxpayer of the district whose lands may be affected by said improvements, may appear and object to any and all of said canals, drains, ditches and levees, for the reason that they are not located at the proper places, or that they are not sufficient in number or capacity to properly drain said territory. [Id.]

Art. 8110. [2577] Report: findings.—If there are no objections to said report, or if the Court finds that any objections thereto are not well taken, the report shall be approved and the fact of its approval entered in the minutes. The Court may change the location of any improvements as shown in the report, or may add to or reduce the number of same, and may order the engineer to locate any additional canals, drains, ditches or levees which may be constructed for the purpose of conducting waters from the lands of said district, or to prevent the overflow of waters from streams or otherwise onto the lands of said district proposed to be drained, or otherwise in aid of said purpose. The Court may, if it deem necessary, refer the entire report back to the engineer for a compliance with the orders of the Court and require a further report. If any changes or alterations are so made in said report, notice shall be given and hearing had as in the first instance. [Acts 1909, p. 24; Acts 1911, p. 248.]

Art. 8111. [2578] Election.—After the approval of the engineer's report, as presented or as modified, the Court shall order an election to be held within such district at the earliest possible legal time, at which election there shall be submitted the following propositions, and none other: "For the drainage district and the issuance of bonds and levy of tax in payment therefor;" "Against the drainage district and the issuance of bonds and levy of tax in payment therefor." [Acts 1907, p. 81; Id.]

Art. 8112. [2579] Notice of election.—Notice of such election shall recite; the establishment of the district, the amount of bonds, which shall not exceed the engineer's estimate and the cost of any additional work which may become necessary by any change or modification in his report, the time and places of holding the election, the proposition to be voted on, and the purposes for which said bonds are to be issued. Such notice shall be posted by the clerk as before provided. [Id.]

Art. 8113. [2580] Requisites of election.—A two-thirds vote shall be necessary to carry the proposition to be submitted at such election. Only resident property taxpayers who are qualified voters of the district may vote at any election held under this chapter. All such elections shall be conducted in the manner provided by the general election laws, unless otherwise provided. The Court shall name a polling place at each voting precinct or part thereof in the district, each of which shall be in the district, and shall appoint the judges and other necessary election officers. It shall provide twice as many ballots as there are qualified voters in the district, as shown by the county tax rolls; and said ballots shall have printed thereon the proposition to be submitted as stated in the second preceding article.[1] [Id.]

[1] Article 8111, ante.

Art. 8114. [2581] Oath of voter.—Every person who offers to vote in any election held hereunder shall first take the following oath before the presiding judge of the polling place wherein he offers to vote, and said judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of ——— County, and that I am a resident property taxpayer of the proposed district voted on at this election, and that I have not voted before at this election." [Id.]

Art. 8115. [2582] Election returns.—Immediately after the election each presiding judge shall make return of the result in the same manner as provided for in general elections for State and county officers, and return the ballot boxes to the county clerk, who shall keep same in a safe place and deliver them together with all returns to the Court at its next regular or special session called to canvass the vote. If the Court finds that said proposition has carried, it shall so declare the result and enter the same in the minutes as provided in the succeeding article. [Id.]

Art. 8116. [2582] Declaration of result.—Said order shall be substantially as follows: "In the matter of the petition of —— and —— others praying for the establishment of a drainage district in said petition described and designated as ——— County Drainage District No. ——, be it known that at an election called for that purpose in said district, held on the ——— day of ———, A. D. 19——, a two-thirds majority of the resident property taxpayers voting thereat, voted in favor of the creation of said district, and the issuance of bonds and the levy of tax. Now, therefore, it is considered and ordered by the Court that said drainage district be, and the same is hereby established by the name of ——— County Drainage District No. ——, within the following metes and bounds," (which field notes shall be copied into the record). [Id.]

Art. 8117. [2582] District classification.—All districts shall bear the name of the county in which they may be located, as a part of their names, and shall be numbered consecutively as created and established by order of the Court. [Id.]

Art. 8118. [2585] Appointment of commissioners.—When a district is so established, and unless said commissioners are elected as provided in the succeeding article, the Court shall appoint three drainage commissioners who shall be residents of the county or an adjoining county, who shall be freehold taxpayers of the district and legal voters of the county of their residence. Such commissioners shall hold office

for two years and until their successors have qualified, unless sooner removed by a majority vote of the Court for malfeasance in office. Upon the expiration of their term of office, or in case of resignation, the Court shall appoint their successors by a majority vote. [Id., Acts 4th C. S. 1918, p. 127.]

Art. 8119. [2585] Election of commissioners.—After a district is so established, upon the petition of a majority of the real property taxpayers of the district, praying for the election of three drainage commissioners, the Court shall immediately order an election for said purpose at the earliest legal time, to be held as other elections hereunder, and shall declare the three persons receiving the highest number of votes to be elected. If the third highest vote be tied, the Court shall elect the third commissioner from those tying for the place. Such commissioners so elected, when duly qualified hereunder, shall be the legal and rightful drainage commissioners for such district within the full meaning and purpose of this law. Such commissioners shall hold office until the next regular election for State and county officers, and shall then and thereafter be elected every two years at such general election. [Id.]

Art. 8120. [2585] Commissioners; salary; additional compensation in counties of 200,000 or over.—The Commissioners of Drainage Districts shall receive for their services not more than Two and 50/100 Dollars ($2.50) per day for the time actually engaged in the work of their district, which compensation shall be fixed by an order of the Commissioners' Court. Before the accounts of such Commissioners shall be approved by the Commissioners' Court such Commissioners shall first submit a detailed report in writing, under oath, to the Commissioners' Court of their County showing the time actually consumed in the work for said District, and describing the work done, and such reports shall be audited and allowed by the Commissioners' Court in such amount as it may determine; provided that in all counties having a population of more than two hundred thousand (200,000) inhabitants according to the last preceding or any future Federal Census and having one or more Drainage Districts therein, the Commissioners' Courts of such counties, upon application therefor in writing by the Commissioners of Drainage Districts located in such counties showing the necessity therefor, may allow Commissioners of such Drainage Districts for work thereafter to be done and services thereafter to be performed an additional sum not to exceed Two and 50/100 Dollars ($2.50) per day, and such Courts may upon written application therefor permit an automobile or automobiles to be used by such Commissioners in the discharge of their duties and allow not to exceed Two and 50/100 Dollars ($2.50) per day for their use, expense, oil, gas, repairs and upkeep of each automobile so permitted to be used; provided that such Courts, after having heard such petitions, may deny or grant the same in whole or in part and shall enter their written orders in the premises fixing the amount of such allowance or allowances within the limits aforesaid, stating the reasons and necessity therefor and fixing the number of days in which allowances are to be in effect. [Acts 1907, p. 78; Acts 1909, p. 26; Acts 1911, p. 245, § 17; Acts 1918, 4th C.S. p. 127; Acts 1935, 44th Leg., p. 314, ch. 118, § 1.]

Section 2 of Acts 1935, provides that nothing herein contained shall in any manner repeal or modify the provisions of Articles 1667, 1670, 1671, and 1673, ante.

Art. 8121. [2586] Commissioners' oath.—Before entering upon his duties, each commissioner shall take and subscribe before the county judge an oath to faithfully discharge the duties of his office without favor or partiality, and to render a true account of his doings to the Court whenever requested to do so. Such oath shall be filed by the clerk of the Court and preserved as a part of the district records. [Acts 1907, p. 82; Acts 1911, p. 251.]

Art. 8122. [2587] Commissioners' bond.—Before entering upon his duties, each commissioner shall give a good and sufficient bond for one thousand dollars, payable to the county judge, for the use and benefit of the district, conditioned upon the faithful performance of his duties. [Id.]

Art. 8123. [2588] Organization of commissioners.—The commissioners shall organize by electing one of their number chairman and one secretary. Two commissioners shall constitute a quorum, which shall be sufficient in all matters pertaining to the business of said district, except the letting of contracts and the drawing of warrants on the treasury, which shall require the concurrence of all the commissioners. [Id.]

Art. 8124. [2592] District engineer.—The commissioners shall appoint a competent civil engineer, who shall be entitled to such assistants as may be necessary. For doing the work required of him hereunder, said engineer and his assistants shall receive such pay and allowances for transportation, supplies, etc., as may be agreed on between him and the commissioners with the approval of the Court. [Id. Acts 3rd C. S. 1920, p. 59.]

Art. 8125. [2592] Duty of engineer.—Said engineer shall make a map of such district showing the boundary lines thereof, with the original surveys therein, and if such lines cross an original survey the map shall show how many acres of such original survey are included in the district. He shall also make maps and profiles of the several canals, drains, ditches and levees in the district and outlets thereof extending beyond the limits of the district. A copy of the Land Office map of the county, as it applies to such district, showing the name and number of each survey, and the area or number of acres contained in the district, shall be a sufficient compliance herewith in so far as making a map of the district is required; and any recognized map of any city or town in the district shall be sufficient as to such city or town. [Id.]

Art. 8126. [2593] Maps and estimates.—The map and profiles of each drain, ditch and levee required by this law shall show the relation that each canal, drain, ditch or levee bears to each tract of land through which it passes, and the shape into which it divides each tract, and where the canal, drain, ditch, or levee cuts off any tract containing less than twenty acres of land the map shall show the number of acres so divided therefrom, and the number of acres in the whole tract, showing the shape of such small tract and its relation to the canal, ditch, drain or levee. Such profile may also show the number of cubic yards necessary to be excavated in order to make each canal, drain or ditch, and to build any levee located in such district, and give the estimated cost of each. When said map, profile and estimates have been completed by the engineer, he shall sign the same in his official capacity and file them with the clerk of the court. [Acts 1907, p. 83; Acts 1911, p. 252.]

Art. 8127. [2595] Issuance of bonds.—When such maps, profiles and estimates are so filed, the Court shall make an order directing the issuance of drainage bonds for such district, sufficient in amount to pay for such proposed improvements, together with all necessary actual and incidental expenses connected therewith. Such bonds shall not exceed in amount one-fourth of the assessed valuation of the real property in such district, as shown by the last annual assessment thereof made for said district, nor exceeding the amounts specified in said order and notice of election. [Id. Acts 1st C. S., 1913, p. 90.]

Art. 8128. [2595] Change in plans without bonds.—After the issuance of bonds is authorized, the commissioners may make changes in said district or in any improvements therein which will be of ad-

vantage to the district, but which will not increase the cost of such proposed work beyond the amount of bonds authorized. Such changes may be made by the commissioners by entering on their minutes a notation of such changes, with the district maps and profiles showing such changes. Notice of such change shall be given by publication of such notation with the book and page number of the minutes, for two successive weeks in some newspaper of general circulation, published in the English language, within the county in which such district is situated. [Id.]

Art. 8129. [2595] Change in plans with bonds.—When it appears to the commissioners that changes or additions may be made in the preliminary survey of the engineer, which shall be of advantage to the district but which shall make necessary the issuance of more bonds of the district, they shall so certify to the Court, accompanying such certificate by maps and profiles prepared by the district engineer, showing such changes and the estimated cost thereof. At its first regular session after the filing of such data, the Court shall give notice of an election to determine whether or not such changes and improvements shall be made, and shall order such election to be held within such time and the returns made as provided for an original election. If two-thirds of the property taxpaying voters of the district vote in favor of such proposition, the court shall enter the same of record and order such bonds to be issued as in the first instance. [Id.]

Art. 8130. [2599] Bonds: record book.—Before issuing any bonds hereunder, the Court shall provide a well bound book, in which a record shall be kept by the county clerk of all bonds issued, with their numbers, amount, rate of interest and date of issue, when due, where payable and amount received for the same, and the annual rate of assessment made each year to pay the interest on said bonds and provide a sinking fund for their payment, and upon the payment of any bond an entry thereof shall be made in said book. Said book shall at all times be open to inspection of all parties interested in said district either as taxpayers or bond holders. The county clerk shall receive for his services in recording all bonds and other instruments of the district, the same fees as provided by law for other like records. [Id.]

Art. 8131. [2596] Bonds: requisites.—All bonds issued hereunder shall be issued in the name of the district, signed by the county judge and attested by the county clerk, with the seal of the Court affixed thereto. Such bonds shall be issued in denominations of not less than one hundred nor more than one thousand dollars each, and shall bear interest at not exceeding six per cent per annum, payable annually or semi-annually. Such bonds shall by their terms provide the time, places, manner and conditions of their payment, and the rate of interest thereon, as may be determined and ordered by the court. No bonds shall be made payable more than forty years after the date thereof. [Acts 1907, p. 84; Acts 1911, p. 253; Acts 1915, p. 60.]

Art. 8132. [2597] Bonds: approval.—Before any bonds are offered for sale, the district shall forward to the Attorney General a copy of the bonds to be issued, a certified copy of the order of the Court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such district as such, including the series of bonds proposed, and the assessed value of property for the purpose of taxation as shown by the last official assessment of the county, with such other information as the Attorney General may require. Such officer shall carefully examine said bonds, and if he shall find that they are issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon such district, he shall so officially certify. [Acts 1907, p. 84; Acts 1911, p. 253.]

Art. 8133. [2598] Bonds: registration.—When said bonds have been so approved, they shall be registered by the Comptroller in a book to be kept for that purpose, and the certificate of their approval shall be preserved of record for use in the event of litigation. Thereafter, said bonds shall be held prima facie valid and binding obligations in every action, suit or proceeding in which their validity is brought in question. In every suit to enforce the collection of said bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence as prima facie proof of the validity of such bonds, together with the coupons attached thereto. The only defense that can be offered against the validity of such bonds shall be forgery or fraud. [Id.]

Art. 8134. [2600] Bonds: sale.—When the bonds have been registered, the county judge shall, under the direction of the Court, advertise and sell said bonds on the best terms and for the best price possible, not less than their par value and accrued interest. All money received from such sale shall be turned over as received by the county judge to the county treasurer, and shall be by him placed to the credit of the district in the construction and maintenance fund thereof. The county judge shall be allowed one-half of one per cent of the amount received on the sale of any bonds sold by him in full payment of his services in that behalf. [Id. Acts 1915, p. 61; Acts 1921, p. 164.]

Art. 8135. [2601] Bond of county judge.—After the drainage bonds have been registered, the county judge shall at once execute a good and sufficient bond, payable to the commissioners and approved by them, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties. If said bond is executed by a satisfactory surety company, the district may pay a reasonable amount as premium on said bond, which shall be paid out of the construction and maintenance fund upon presentation of the bill therefor to the commissioners. If there is any controversy as to the reasonableness of the amount claimed as such premium, such controversy may be determined by any court of competent jurisdiction. Said premium may be deducted by the commissioners from the commissions allowed the county judge on the sale of bonds by him. [Id.]

Art. 8136. [2603] Tax levy for bonds.—When bonds have been voted, the Court shall annually levy and cause to be assessed and collected taxes upon all property within the district, whether real, personal or otherwise, and sufficient in amount to pay the interest on such bonds as it falls due, and to redeem such bonds at maturity. Such taxes when so collected shall be placed in the interest and sinking fund. [Acts 1907, p. 85; Acts 1911, p. 255; Acts 1915, p. 61.]

Art. 8136a. Refunding bonds, approval by Attorney General.—Any drainage district, which has heretofore been organized under the laws of the State, and has issued bonds, may, by consent of the holders thereof, refund any bonds heretofore issued by issuing new coupon bonds for that purpose. Such refunding bonds shall not bear a greater rate of interest than the bonds in lieu of which they are issued. Interest shall be evidenced by coupons attached to such bonds, and may be payable annually or semiannually within the discretion of the Commissioners' Court of the county of jurisdiction; and such refunding bonds shall be payable serially, or otherwise, not exceeding forty years from the date thereof, and shall be issued in denomination of One Hundred Dollars, or some multiple thereof; and a sufficient tax levy to meet the payment of the principal and interest of said refunding bonds shall be made before the delivery thereof, provided the refunding of any bonds shall not affect any taxes already due.

The refunding bonds hereby authorized shall be executed in the same manner provided for the execu-

tion of drainage district bonds. Any sum to the credit of any sinking fund account on hand shall first be deducted in ascertaining the amount of refunding bonds to be issued, and such money shall in every case be applied to the payment of the outstanding bonds. No refunding bonds shall be issued and delivered until approved by the Attorney General and registered by the State Comptroller; provided, however, that the Comptroller shall not register such refunding bonds until the old bonds in lieu of which such refunding bonds are issued are presented to him for cancellation; and after the registration of the new bonds, the Comptroller shall cancel the old bonds and interest coupons, and deliver such new bonds to the proper party or parties; provided, further, that the old bonds may be so presented for cancellation, in installments, and a like amount of the new bonds registered and delivered as is herein provided. [Acts 1935, 44th Leg., p. 123, ch. 47, § 1.]

Art. 8137. [2603] Maintenance: estimate.—The commissioners shall annually, on or before the first day of July, prepare and file with the Court a full detailed report of the condition of the improvements theretofore made in the district, with an estimate of the probable cost of maintenance and needed repairs during the ensuing year, together with an inventory of all funds, effects, property and accounts belonging to such district, and a list of all lawful demands, debts and obligations against the district. Such report shall be verified by the commissioners and carefully investigated and considered by the Court before any levy of taxes is made under the succeeding article. [Acts 1907, p. 85; Acts 1911, p. 255; Acts 1915, p. 61.]

Art. 8138. [2603] Maintenance: taxes.—At the same time that taxes are levied to meet the bonded indebtedness, the Court shall cause to be assessed and collected taxes upon all property in the district, whether real, personal or otherwise, sufficient to maintain, keep in repair, and to preserve the improvements in the district, and to pay all legal, just and lawful debts, demands and obligations against such district. Such levy shall never, in any one year, exceed one-half of one per cent of the total assessed valuation of such district for such year. Such taxes when so collected shall be placed in the construction and maintenance fund. [Id.]

Art. 8139. [2603] Maintenance: unsold bonds.—If any bonds remain which are not required for the completion of the improvements made or to be made, then with the consent of the Court duly made of public record, such bonds or a part thereof may be sold and the proceeds from the sale thereof shall be placed in the maintenance and construction fund and used for the purposes stated in the preceding article. [Id.]

Art. 8140. Taxes: assessment.—In the assessment and collection of the taxes authorized hereunder, and in all matters pertaining thereto or connected therewith, the county tax assessor and collector shall have the same powers and shall be governed by the same rules, regulations and proceedings as provided for the assessment and collection of State and county taxes, unless otherwise herein provided. The Court shall constitute a board of equalization for such district, and all laws governing boards of equalization for State and county taxing purposes shall govern such district board. [Acts 1915, p. 63.]

Art. 8141. Taxes: collection.—The taxes authorized hereunder shall be a lien upon all property assessed therefor. The Court shall, and it is empowered to, fix the time and determine the date when such taxes shall become due and payable, otherwise they shall become due and payable at the same time as State and county taxes. Upon the failure to pay such taxes when due, the penalty provided by law for failure to pay State and county taxes at maturity shall in every respect apply to taxes hereunder. [Id.]

Art. 8142. [2604] Tax rolls.—The Court shall provide all necessary additional books for the use of the assessor and collector and the county clerk of such district, and charge the cost of same to the district. When ordered by the Court, the assessor shall assess all property within the district and list the same for taxation in the books or rolls furnished him by said Court for said purpose, and return said books or rolls when he returns the State and county rolls for correction and approval. If said Court finds them correct, it shall approve the same and direct the county clerk to issue a warrant against the county treasurer in favor of the assessor to be paid from the district funds. The assessor shall receive for said services such pay as the Court deems proper. If the assessor fails or refuses to comply with such order, he shall be suspended from the further discharge of his duties by the Court, and removed from office in the mode prescribed by law for the removal of county officers. [Acts 1907, p. 85; Acts 1911, p. 256.]

Art. 8143. [2605] Duty of collector.—The county tax collector shall be charged by the Court with the assessment rolls of the district, and shall be allowed such compensation for the collection of said taxes as is allowed for the collection of other taxes. The Court shall require said officer to give an additional bond or security in such sum as they deem proper and safe to secure the collection of said taxes. If such officer fails or refuses to give such additional security when requested by the Court, within the time provided by law for such purposes, he shall be suspended from office by the Court and immediately thereafter be removed from office in the mode prescribed by law. [Id.]

Art. 8144. [2606] Delinquent taxes.—The collector shall make a certified list of all delinquent property upon which the drainage tax has not been paid, and return same to the Court, which shall proceed to have the same collected by the sale of such property in the same manner provided by law for the sale of property for the collection of State and county taxes. The commissioners may purchase any property so sold, for the benefit of the district. [Id.]

Art. 8145. Separate tax officers.—After the establishment of a district, and upon the petition of twenty-five resident freeholders thereof, the Court may order an election to determine whether or not such district shall have a separate tax assessor, separate tax collector, and separate board of equalization for the assessment and collection of district taxes. Notice of such election shall be given as in the original election, and if said proposition carries by a two-thirds vote, the Court shall appoint a suitable person as assessor and other such person as collector, and they shall give bond and exercise the same powers and perform the same duties as provided herein for the county assessor and collector; and the commissioners shall exercise all of the powers herein conferred upon said Court with relation to the equalization of taxes. The general laws relating to the assessment, collection and equalization of taxes, in so far as applicable, shall apply to the assessment, collection and equalization of district taxes. [Acts 1st C. S. 1913, p. 91.]

Art. 8146. [2607] Duty of treasurer.—The county treasurer shall open an account with the district and keep an accurate account of all money received by him belonging to such district, and of all amounts paid out by him. He shall pay out no money except upon a voucher signed by the commissioners and countersigned by the county judge. He shall carefully preserve on file all orders for the payment of money, and as often as required by the commission-

ers or the Court, he shall render a correct account to them of all matters pertaining to the financial condition of the district. [Acts 1907, p. 85; Acts 1911, p. 256.]

Art. 8147. [2608] Bond of treasurer.—The county treasurer shall be the treasurer of such district, and shall execute a good and sufficient bond, payable to and approved by the commissioners in a sum equal to the amount of bonds issued, conditioned for the faithful performance of his duty as treasurer. If a district depository is selected, then he shall give bond for the faithful discharge of the duties of his office in accordance with the provisions of law relating to such county treasurers in counties where county depositories have been provided for county funds. [Id. Acts 1st C. S. 1913, p. 91.]

Art. 8148. [2608] Salary of treasurer.—The treasurer shall be allowed as pay for his services as such, one-fourth of one per cent upon all money received by him for the account of such district, and one-eighth of one per cent upon all money by him paid out upon the order of the district. He shall not be entitled to any commissions on any district money received by him from his predecessor in office. [Id.]

Art. 8149. [2608] District depository.—The commissioners, in their discretion, may provide for a district depository for the funds of such district, by complying in all respects with the laws governing the designation of county depositories. Such depository shall give a good and sufficient bond, approved by the commissioners, as provided by law for depositories of county funds. All powers vested in the Court as to the designation of county depositories are hereby vested in the commissioners as to the funds of the district. [Id.]

Art. 8150. [2602] District funds.—After the establishment of a district, all legal and just expenses, debts and obligations other than bonds and interest thereon arising and created after the filing of the original petition and necessarily incurred in the creation, establishing, operation and maintenance of such district, shall be paid out of the "Construction and Maintenance Fund," of such district which shall consist of all money, effects, property and proceeds received by such district from all sources, except that portion of the tax collections which shall be necessary to pay the interest on the bonded indebtedness as it falls due and the payment of the bonds at maturity. Said tax collections shall be placed in and paid out of the "Interest and Sinking Fund" of such district for such purposes, and such fund may be invested for the benefit of the district in such bonds and securities as the Attorney General may approve. Such funds shall be held for the respective purposes for which they were created, and if money is improperly paid out of either, the Court may cause the county treasurer to make the necessary transfer of such amount in the district accounts, to restore the fund so improperly used. [Acts 1907, p. 85; Acts 1911, p. 255; Acts 1915, p. 61.]

Art. 8151. [2590] Eminent domain.—All districts shall have the right of eminent domain to condemn and acquire the right of way over and through all public and private lands, except property used for cemetery purposes, necessary for making the canals, drains, levees and improvements in the district, and for making the necessary outlets thereto in any county in this State. No right of way shall be condemned through any part of an incorporated city or town without the consent of the lawful authorities thereof. Such proceedings shall be in the name of the district and under the direction of the commissioners. No appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall suspend the work of the drainage commissioners in prosecuting the work of drainage in all of its details. All expenses arising from such proceedings shall be paid out of the construction and maintenance fund. [Acts 1907, p. 87; Acts 1911, p. 257.]

Art. 8152. [2591] Right of way.—The commissioners are empowered to acquire the necessary right of way for all canals, drains, ditches and levees and other necessary improvements contemplated by this law, by gift, grant, purchase or condemnation proceedings, and if acquired by purchase shall be subject to approval by the Court. [Id.]

Art. 8153. [2619] Private drains.—All canals, drains, ditches and levees made and water courses cleaned or constructed by any district shall be the public property of such district, and every person owning land within said district shall have the right to drain into one or more of such public drains, and at his own expense to make drains according to the natural slope of the land through such other lands as intervene between his land and the nearest public drain or water-course, or along a public highway. Such owner shall first notify the commissioners of his desire to make such drain through another's property or along a public highway, and such commissioners shall go upon the premises and act as a jury of view and determine the place where such drain may be made. [Id.]

Art. 8154. [2623] Control of system.—The drainage commissioners shall keep the canals, drains, ditches and levees and other improvements made hereunder in repair, and shall have general authority to supervise and control the construction and maintenance of same. [Id.]

Art. 8155. [2610] Construction contracts.—Contracts for construction and other necessary work in the district shall be let by the commissioners to the lowest bidder after advertising the same in one or more newspapers of general circulation in this State, once a week for four consecutive weeks, and by posting notices thereof for at least twenty-five days, in five public places in the county, one at the courthouse door, and at least two within the district. Contracts may be let separately or all together. All improvements included in the report of the drainage engineer and adopted by the Court shall be constructed. [Id.]

Art. 8156. [2611] Bids.—Any person, firm or corporation desiring to bid on the construction of any work advertised for hereunder shall, upon application to the commissioners, be furnished with a copy of the engineer's report showing the location, profiles and estimates of such work. All bids shall be in writing and sealed and delivered to the chairman of the commissioners, with a certified check for at least five per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract if his bid is accepted. Any bid may be rejected if deemed too high. [Id.]

Art. 8157. [2613] Contractor's bond.—The contractor shall give bond in the amount of the contract price, payable to the commissioners, conditioned that he will faithfully perform the obligations, agreements, and covenants of the contract, and that in default thereof he will pay to said district all damages sustained by reason thereof. Said bond shall be approved by the commissioners and the county judge. [Id.]

Art. 8158. [2612] Requisites of contract.—All contracts shall be in writing and signed by the contractors and commissioners and approved by the county judge, and a copy of same filed with the county clerk. [Id.]

Art. 8159. [2614] Duty of engineer.—The drainage engineer shall furnish the contractor with a sectionized profile of the work contracted for, showing the depth, width and slope of all canals, drains, ditches and levees, and the number of cubic yards

to be removed and other work to be done by the contractor, and such work shall be done by the contractor under the supervision of the drainage engineer, who shall indicate to said contractor the points at which the laterals shall intersect the main canal. No earth shall be deposited by the contractor so as to interfere with the construction of such laterals or other contemplated work in the district, or the building of bridges or other work on the public roads. When the work is completed according to contract, the engineer shall make a detailed report of the same to the commissioners showing whether the contract has been fully complied with according to its terms, and if not, in what particular it has not been complied with. [Id.]

Art. 8160. [2617] Railway culverts.—The commissioners are authorized at the expense of the district, to make all necessary bridges and culverts across or under any track or right of way of any railway to enable them to construct and maintain any canal, drain, or ditch necessary to be construed by such district. Notice shall first be given by such commissioners to the railway authorities authorized to build or construct bridges and culverts, and the railroad shall be allowed thirty days to build such bridges or culverts at their own expense, if it should so desire, according to its own plans. Such bridge or culvert shall be constructed so as not to interfere with the free and unobstructed flow of the water passing through the canal or drain, and shall be placed at such points as are designated by the drainage engineer. [Id.]

Art. 8161. [2618] Road culverts.—The commissioners are authorized and required to build all necessary bridges and culverts across and over all canals, drains, ditches, laterals and levees constructed hereunder whenever the same cross a county or public road, and shall pay for same out of the drainage fund. [Id.]

Art. 8161a. Construction of bridges and culverts by drainage districts in counties of over 350,000.—Sec. 1. The Commissioners of Drainage Districts are authorized and required to build all necessary bridges and culverts across and over all canals, drains, ditches, laterals, and levees constructed hereunder whenever the same cross a county or public road, and such commissioners shall pay for the same out of the funds of their districts. Whenever such bridges and culverts are necessary across a State Highway, Drainage Districts are hereby authorized and empowered, within the discretion of their governing bodies, to construct same or assist in the construction thereof. Provided, that after the construction of such bridges and culverts the commissioners of such districts may meet and defray the expenses of making any necessary and needed repairs thereto, or may join any county or other governmental agency or subdivision in meeting or defraying the expense incurred in making any necessary and needed repairs to any such bridges or culverts, and the expense incurred in such respect shall be paid out of the drainage funds of such districts.

Sec. 2. The Commissioners of such Drainage Districts are authorized, without the taking of bids in cases of emergency, to make purchases or contracts not to exceed the sum of Fifty Dollars ($50.00) upon requisition signed by at least two of the Commissioners of such Drainage District. A requisition shall be issued therefor, executed in triplicate, one copy to be delivered to the person, firm or corporation from whom such purchase is made or with whom such contract is made, one to be delivered to the County Auditor and one to remain on file with the Commissioners of such Drainage District before any such purchase or contract shall be made.

Sec. 3. Where the amount to be expended is Five Hundred Dollars ($500.00) or less, and more than Fifty Dollars ($50.00), it shall not be necessary to advertise for sealed bids, but sealed proposals shall be asked from as many as three persons, firms or corporations and as many more as offer to bid, based upon written specifications filed with the County Auditor at least forty-eight (48) hours before the time of opening said bids. The contract shall be awarded by Commissioners of said Drainage District to the lowest and best bidder. A requisition shall be issued by at least two of such drainage commissioners to the contractor, and a copy thereof filed with the County Auditor before the contract is executed or the supplies furnished.

Sec. 4. Where the amount to be expended exceeds Five Hundred Dollars ($500.00), specifications covering the material or supplies to be purchased or the work to be performed shall be prepared and filed with the County Auditor, who shall advertise for bids once each week for two consecutive weeks in a newspaper published in the county in which such Drainage District is located, stating the time and place of opening bids and where specifications may be obtained. Bids shall be accompanied by certified checks on a Texas bank for five per cent (5%) of the amount of the bid, conditioned that the successful bidder will enter into a bond and contract, said bond to be for a sum equal to the amount of the contract and to be executed by a Surety Company authorized to do business in Texas. Contracts shall be awarded to the lowest and best bidders at an open meeting of the Commissioners of said Drainage District and shall be reduced to writing, and together with the bond and original bids shall be filed in the office of the County Auditor as part of the records of his office. Before any supplies are furnished or delivered or any work performed, at least two of said Drainage Commissioners shall issue and file with the County Auditor a requisition covering the contract or purchase before the same shall become effective or binding.

Sec. 5. In addition to the other requirements of this Act, no requisition shall be issued or contract approved under the provisions hereof unless and until the County Auditor has endorsed thereon his certificate to the effect that the contract has been entered into or requisition authorized conformably to the law and that funds are available or will be available to meet the payment thereof when due.

Sec. 6. The provisions of this Act shall apply only to counties having a population in excess of 350,000 inhabitants, according to the last preceding or any future Federal Census. Any laws conflicting with the provisions of this Act, to the extent and only to the extent of such conflict are hereby repealed. This Act shall be known as "Article 8161a." [Acts 1935, 44th Leg., p. 312, ch. 117.]

Art. 8161b. Drainage district Commissioners in counties of 150,000 to 350,000; powers; compensation.

Joinder in construction of improvements

Section 1. The Commissioners of drainage districts are authorized and empowered, within the discretion of their governing body, to join with any governmental agency, county or political subdivision, any city or town, any railroad company, or other person, corporation or association, in constructing any improvements for the district and in the maintenance of the same, and the portion of the expense incurred in such construction or maintenance by the drainage districts shall be paid out of the drainage funds of such district.

Supplies and equipment

Sec. 2. Commissioners of such districts are authorized to purchase necessary supplies and equipment and operate same for the maintenance, enlargement, extension, or improvement of the drainage system, provided where the cost of supplies and equipment

does not exceed One Hundred and Fifty Dollars ($150), it shall not be necessary to take bids; provided a requisition shall be issued for any such expenditure executed in triplicate signed by the drainage Commissioners, one (1) copy to be delivered to the person, firm, or corporation from whom such purchase is made, one (1) copy to be approved by the County Judge and delivered to the County Auditor, and one (1) copy to remain on file with the Commissioners of such drainage district before any such purchases or payment shall be made.

Advertisement for bids; bids; contract

Sec. 3. When the Commissioners of drainage districts advertise for bids for any supplies, equipment, improvements, or work to be performed for such districts, specifications covering the material or supplies to be purchased or the work to be performed shall be prepared and filed with the County Auditor who shall advertise for bids once each week for two (2) consecutive weeks in a newspaper published in the county in which such drainage district is located, stating the time and place of opening bids and where specifications may be obtained. Bids shall be accompanied by a certified check on a Texas bank for five per cent (5%) of the amount of the bid, conditioned that the successful bidder will enter into a bond and contract, said bond to be for a sum equal to the amount of the contract and to be executed by a surety company authorized to do business in Texas. The contract shall be awarded to the lowest and best bidder at an open meeting of the Commissioners of said drainage district and shall be reduced to writing, and together with the bond and the original bid shall be filed in the office of the County Auditor as a part of the records of his office before any supplies are furnished or delivered or any work performed.

Changes, additions and improvements

Sec. 4. Commissioners of drainage districts are authorized and empowered to make changes in, additions to and improvements to the drainage systems in their respective districts when in their judgment the necessity therefor exists, to be paid for from funds provided by law to be assessed and collected in such districts to maintain, keep in repair and to preserve the improvements in the districts and to pay all legal, just and lawful debts, demands, and obligations against such districts; provided that nothing in this Act shall be construed as authorizing the levy of any tax in excess of the amount authorized by law for such purpose.

Improvements across roads or streets

Sec. 5. The Commissioners of drainage districts are authorized to construct and maintain drainage improvements along or across any of the public roads or streets of this State in such manner as not to inconvenience the public in the use of the same, with the consent of the Commissioners Court of any county as to public roads under its jurisdiction, the State Highway Commission as to highways under its jurisdiction, and with the consent of the governing body of any municipality as to public roads under its jurisdiction, and under such regulations as the Commissioners Court or such governing body may prescribe.

Endorsement by County Auditor on requisitions and contracts

Sec. 6. In addition to the other requirements of this Act, no requisition shall be issued or contract approved under the provisions hereof unless and until the County Auditor has endorsed thereon his certificate to the effect that the contract has been entered into or requisition authorized in conformity with the law and that funds are available or will be available to meet the payment thereof when due.

Compensation of Commissioners

Sec. 7. The Commissioners of drainage districts shall receive for their services compensation for the time actually engaged in the work of their district not to exceed One Hundred and Fifty Dollars ($150) in any one (1) month, which compensation shall be fixed by an order of the Commissioners Court. The amount of such compensation shall be determined upon the application therefor in writing by the Commissioners of drainage districts located in such counties, showing the necessity therefor, provided that such Commissioners Court, after having heard such petitions, may deny or grant the same in whole or in part and shall enter their written order in the premises fixing the amount of such compensation within the limits aforesaid.

Application of Act

Sec. 8. The provisions of this Act shall apply only to counties having a population in excess of one hundred and fifty thousand (150,000) inhabitants and less than three hundred and fifty thousand (350,000) inhabitants according to the latest preceding or any future Federal Census.

Repeal

Sec. 9. Any laws conflicting with the provisions of this Act to the extent and only to the extent of such conflict are hereby repealed.

Article number

Sec. 10. This Act shall be known as Article 8161b.

Partial invalidity

Sec. 11. If any word, phrase, clause, sentence, paragraph, section or part of this Act shall be held by any Court of competent jurisdiction to be invalid as unconstitutional, or for any other reason, it shall not affect any other word, phrase, clause, sentence, paragraph, section or part of this Act, it being the declared intention of the Legislature to pass any valid portions of this Act irrespective of the invalidity of any other portions thereof. [Acts 1947, 50th Leg., p. 1021, ch. 437.]

Art. 8161c. Changes in, additions to and improvements to drainage systems.—Section 1. Commissioners of drainage districts incorporated under Chapter 7, Title 128, of the Revised Civil Statutes of Texas, and amendments thereto, are authorized and empowered to make changes in, additions to, and improvements to the drainage systems in their respective districts when in their judgment the necessity therefor exists, and to pay for same from funds provided by law to be assessed and collected in such districts to maintain, keep in repair, and to preserve the improvements in the districts, and to pay all legal, just, and lawful debts, demands and obligations against such districts, it being now provided that such levy shall never in any one year exceed one-half of one per cent of the total assessed valuation of such districts.

Sec. 2. The provisions of this Act shall be cumulative of all other provisions for making changes in, additions to, and improvements of the systems of drainage in drainage districts. [Acts 1947, 50th Leg., p. 272, ch. 165.]

Art. 8162. Additional improvements.—If there remains a surplus of money or bonds to the credit of the district, after the final completion of all improvements contracted for, including bridges and culverts, and after the payment of all expenses incurred hereunder, the commissioners may cause the district engineer to make a detailed report of any additional or supplemental drains, ditches or levees or other character of surface drainage improvements, including tile drainage, that may be needed in such district. Such report shall be made and acted upon in the manner

prescribed for the initial report of the engineer before the issuance of bonds. The estimated cost of such additional improvements shall in no case exceed the amount of surplus money or bonds to the credit of the district. [Acts 1907, p. 87; Acts 1911, p. 257.]

Art. 8163. Additions: election.—After the approval of the engineer's report or as modified by the Court, the Court shall order an election to be held within the district at the earliest possible legal time. The only proposition presented at such election shall be "For the additional improvements and payment therefor out of the moneys on hand;" and "Against the additional improvements and payment therefor out of the moneys on hand." A majority vote shall be necessary to carry such proposition. Notice of such election briefly reciting the character and scope of such proposed improvements, stating the estimated cost of same, and stating the time and places of holding such election shall be given, election officers appointed, returns made and canvassed, and the result declared, in like manner as provided for the original election. [Id.]

Art. 8164. Additions: contracts.—The provisions of this law relative to the letting of contracts and the construction of improvements thereunder and the authority of the drainage commissioners and the Court in connection therewith, shall apply to the construction of such additional improvements and payment therefor in so far as applicable. [Id.]

Art. 8165. [2615] Inspection of work.—The commissioners are empowered and they shall at all times during the progress of the work done under any contract, inspect the same. [Id.]

Art. 8166. [2615–16] Contracts: payment.—If the commissioners deem it advisable in order to obtain more favorable contracts, they may advertise and contract for work to be paid for in partial payments as the work progresses, but such partial payments shall not exceed in the aggregate seventy-five per cent of the total amount to be paid under the contract. The amount of work completed under any contract shall be shown by a certified report of the engineer, and no payment shall be made for work not completed. On the completion of any contract not let on the partial payment plan, the commissioners shall draw a warrant on the treasurer for the amount of the contract price in favor of the contractor or his assignee. [Id.]

Art. 8167. [2620] Application for connecting drains.—No individual, company, corporation or adjoining district shall have the right to artificially drain adjacent lands, located outside of an established district, into the canals, drains or ditches of such established district, without first making written application to and obtaining the permission of the district commissioners to make such connections. Such application shall show the width, depth and length of such connecting drains or ditches. [Id.]

Art. 8168. [2620] Connections: engineer's report.—When such application has been filed with the commissioners, the district engineer shall make an estimate of the quantity of water which such connecting drains or ditches would probably empty into such established canals or drains, and whether such canals or drains have sufficient capacity to carry such excess of water without risk or damage thereto or the adjacent territory. The engineer shall report the result of his examination and estimate to the commissioners. [Id.]

Art. 8169. [2620] Connections: requisites.—If the commissioners deem it advisable, they may authorize such connection, on condition that such applicant shall first pay into the county treasury for the benefit of the construction and maintenance fund a sum which bears the same ratio to the cost of the original canal or drain from the point of connection to its outlet, that the water to be emptied therein by the connecting drains bears to the water then tributary to and being carried by the original canal or drain as estimated by the district engineer, unless the commissioners otherwise agree with the applicants. [Id.]

Art. 8170. [2621] Connections: enlargement.—When it appears from the engineer's report that the canals, drains or outlets of such established district are not of sufficient capacity to carry the excess of water that would be discharged therein by reason of such connection, or that such additional discharge of water would endanger the initial canals and drains or the lands and property adjacent thereto, then the county court in which the initial district is situated shall nevertheless authorize such applicant to make such connection and secure the desired outlet only on condition that it shall first at its own expense and cost make the necessary enlargement of the canals and drains of the initial district, and such increased capacity shall be amply sufficient to carry any increase of water that may be caused by such connections without danger to said canals and drains or to lands adjacent thereto. [Id.]

Art. 8171. [2622] Enlargements: supervision.—Such enlargements shall be done under the supervision and direction of the district engineer, whose salary shall by order of the county court be paid by the applicant. When such work is completed to the satisfaction of the engineer, he shall report to said court under his official certificate showing the kind of work done, the extent thereof, and that the new capacity is sufficient to carry any excess from such connection. Said report shall also show the number of days he was actually employed in supervising said work, and the amount due for such services. On approval of such report, the county court shall make an order authorizing the connections desired with such canals and drains, on payment of the amount shown to be due the engineer by said report. [Id.]

Art. 8172. [2624] Report of commissioners.—The commissioners shall make semi-annual reports of their acts as such, including a financial statement showing with accuracy of date, amount and detail, the receipts and disbursements of all funds subject to their orders as such commissioners, and shall file same with the county clerk on or before the first days of January and July. Such report shall show in detail the kind, character and amount of work done by the district, the cost of same and the amounts paid out in orders and for what purposes, and to whom paid, and other data necessary to show the condition of the improvements made hereunder. Such commissioners shall have a true copy of such report published in some newspaper in the county, once each week for two successive weeks immediately following the first day of January and July of each year. [Id. Acts 1st C. S. 1913, p. 92.]

Art. 8173. [2589] Drainage attorney.—The commissioners are authorized to employ counsel to represent such district in the preparation of any contract or the conducting of any proceedings in or out of court, and to be the legal adviser of such commissioners, upon such terms and for such fees as may be agreed upon by them and approved by the county judge, and such commissioners shall draw warrants in payment for such legal services. [Acts 1907, p. 91; Acts 1911, p. 263.]

Art. 8174. Status of districts.—All districts may, by and through their commissioners, sue and be sued in all courts of this State, in the name of such districts, and all courts of this State shall take judicial notice of the establishment of all such districts. [Id.]

Art. 8175. Suits affecting district.—No suit shall be permitted to be brought in any court of this State enjoining the formation or contesting the validity of any district or its bonds, except in the name of

this State by the Attorney General upon his own motion, or upon the motion of any party affected thereby upon good cause shown. [Acts 1911, p. 253.]

Art. 8176. May become conservation district. —Any district established hereunder may become a conservation and reclamation district under Chapter 8 of this title by making the deposit and presenting the petition to the Court, after notice and hearing had as provided herein for establishing a district, by order of said court entered of record declaring such district to be a conservation and reclamation district. [Acts 4th C. S. 1918, p. 40.]

Art. 8176a. Conversion of drainage district into conservation and reclamation district.

Orders of commissioners courts validated

Section 1. Wherever the Commissioners Court of any county has heretofore entered any order or orders converting or purporting to convert any drainage district wholly situated within such county from a drainage district, organized under the provisions of Section 52 of Article III of the Constitution of this State, into a conservation and reclamation district organized under Section 59 of Article XVI of said Constitution, such action and orders by such Commissioners Court are hereby in all respects validated, ratified, and confirmed. Any and all such drainage districts which have been the subject matter of any such order or orders, are hereby created and declared to be duly and legally created, organized, and functioning conservation and reclamation districts under the provisions of Section 59 of Article XVI of the Constitution of Texas, with all the rights, powers, and duties now or which may be hereafter conferred upon them by law.

Borrowing money from Reconstruction Corporation for specified purposes, authorized—taxation—sinking fund

Sec. 2. Any drainage district which is operating under the provisions of Section 59 of Article XVI of the Constitution of this State, subject to the provisions of Section 3 hereof, acting by and through the Commissioners Court of the county in which such district is situated, may borrow money from the Reconstruction Finance Corporation for the purpose of taking up and refunding any outstanding bonds and for the purpose of paying or securing funds to pay judgments heretofore or hereafter rendered against such District, and for the purpose of paying or to secure funds to pay warrants issued to pay judgments or to settle or compromise litigation, and for the purpose of paying any and all expenses reasonably necessary or incident to such refunding operations and to evidence its indebtedness to such Reconstruction Finance Corporation, any such drainage district, acting through such Commissioners Court, may issue refunding bonds in such amount and denomination, bearing such rates of interest (not exceeding six (6) per cent per annum, payable annually or semiannually), and having such maturities (not exceeding forty (40) years from their date) as may be fixed in the order authorizing said refunding bonds. The Commissioners Court of such county shall levy a tax upon all property subject to taxation within such district sufficient in amount to pay the interest upon any such refunding bonds so issued, and to create a sinking fund sufficient to retire such bonds at maturity, as well as to pay the costs of collecting such tax.

Election on issuance of refunding bonds

Sec. 3. In instances wherein the indebtedness refunded includes obligations other than voted bonds, a majority of the resident property taxpaying voters of such district who vote at an election called for that purpose must vote in favor of the issuance of such refunding bonds and the levy of such tax in payment thereof before any such refunding bonds shall be issued. Such election shall be called by such Commissioners Court, and notice of the time and places of holding such election shall be given by the Clerk of said Court. The notice shall state the purpose of the election, the proposition to be voted upon, define the election precincts and prescribe the polling places (each of which shall be in the district), state the names of the officers of the election and shall be signed by such Clerk. The notice shall be published once each week for three (3) consecutive weeks in a newspaper of general circulation published in the county in which such drainage district is located, or if none is published therein, in the nearest county thereto. The first publication shall be at least twenty (20) days prior to the election. Said election shall be held in accordance with the provisions of the Constitution and General Election Laws, so far as applicable thereto, and only qualified electors who own taxable property in the district and who have duly rendered the same for taxation shall be qualified to vote, and all electors shall vote in the election precinct of their residence, as fixed for the purpose of said election.

Execution, registration, approval, and delivery of refunding bonds—cancellation of outstanding bonds

Sec. 4. If such election shall result in favor of the issuance of such refunding bonds and the levy of such tax in payment thereof, the Commissioners Court shall so declare and such bonds may thereafter be executed in the name of the district, signed by the County Judge, and attested by the County Clerk with the seal of the Commissioners Court affixed thereto, and shall be registered by the County Treasurer. Such refunding bonds together with the record pertaining thereto shall be submitted to the Attorney General and when approved by the Attorney General shall be delivered to the Comptroller of Public Accounts, and shall be registered by the Comptroller of Public Accounts and delivered by the Comptroller in exchange for or upon release of the obligations refunded thereby, the evidences of which obligations if evidenced by outstanding securities shall be canceled by the Comptroller of Public Accounts concurrently with the registration and delivery of the refunding bonds. The cancellation or release of outstanding obligations and the delivery of refunding bonds therefor shall be at the times and in the manner and amounts which may be prescribed by the order or orders of the Commissioners Court.

All such refunding bonds when approved by the Attorney General and registered and delivered by the Comptroller of Public Accounts as aforesaid, shall be valid and binding obligations of such district and shall be incontestable for any cause from and after the time of such registration and delivery.

Adoption of provisions of statute by resolution of commissioners

Sec. 5. By resolution duly passed at a meeting of the Commissioners Court of any county in which is wholly located any drainage district or districts, and by resolution duly passed at a meeting of the commissioners of any such drainage district or districts, such county and drainage district or districts may adopt the provisions of this Section and from and after the adoption hereof by said Commissioners Court and by such drainage district or districts, any and all functions, powers, rights, and duties exercised by or pertaining to the commissioners of such drainage district or districts shall be transferred to, vest in, and be thereafter exercised by the Commissioners Court of the county within which said drainage district or districts are wholly situated. The Commissioners Court of said county shall thereafter be the sole governing body of such drainage district or districts with the powers, functions, rights, and duties aforesaid and

the members of said Commissioners Court shall not be entitled to any compensation by reason thereof.

Partial invalidity

Sec. 6. If any of the provisions of this Act or the application thereof to any person or circumstance shall be held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby. [Acts 1937, 45th Leg., 2nd C.S., p. 1905, ch. 28.]

2. DISSOLUTION

Art. 8177. Power to dissolve.—Any drainage district may voluntarily abolish its corporate existence in the manner hereinafter provided. If the proposition to abolish such district fails to carry at the election held therefor, no other election for the same purpose shall be held within two years after the result of such election has been declared. [Acts 1st C. S. 1913, p. 41; Acts 1915, p. 127.]

Art. 8178. Petition.—Upon the presentation to the Court at a regular session thereof, of a petition praying for the abolition of such drainage district, the Court shall order an election to be held within such district at the earliest possible legal time to determine whether or not such district shall be abolished. Such petition shall be signed by fifty of the freehold resident citizen taxpayers of the district, or if there are less than one hundred such citizens, then by one-third thereof. [Acts 1st C. S. 1913, p. 41.]

Art. 8179. Deposit.—Such petition shall be accompanied by two hundred dollars in cash which shall be deposited with the county clerk, and by him held until after the result of the election for the abolition of the district has been declared and entered of record by the Court. If such election favors the abolition of the district, the clerk shall return said deposit to the petitioners, their agent or attorney, and the costs and expenses of holding said election shall be a charge against said district, to be collected as other debts in the manner hereinafter provided. If the result of such election is against the abolition of the district, then the clerk shall pay out said sum upon vouchers signed by the county judge for all costs and expenses of said election, and return the balance to the petitioners, their agent or attorney. [Id.]

Art. 8180. Election.—Notice of such election shall be posted, and such election shall be held in like manner as provided for an election to establish a district hereunder. A two-thirds vote shall be necessary to carry the proposition submitted at such election. The ballot for such election shall have printed thereon the words and no others: "For the abolition of the drainage district," and "Against the abolition of the drainage district." [Id.]

Art. 8181. Result of election.—Returns of such election shall be made and the votes canvassed as before provided in this chapter, and if said proposition carries, the Court shall so declare and enter the same in their minutes, substantially as follows: "In the matter of the petition of ——— and ——— others, praying for the abolition of the drainage district in said petition described and designated as ——— County Drainage District No. ———, be it known that at an election called for that purpose in said district, held on the ——— day of ———, A. D. 19—, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the abolition of said drainage district. Now, therefore, it is considered and ordered by the Court that said district be, and the same is hereby abolished." [Id.]

Art. 8182. Settlement of debts.—When the district is so abolished, the Court shall provide for the settlement of the debts due by said district, including the costs and expenses of holding said election, and for such purpose shall have the power to levy and cause to be assessed and collected in the manner provided in this chapter, a tax against the real and personal property in said district, in such amount only as will be necessary for the payments of all valid debts and obligations of every character existing against said district, except bonds issued and held by purchasers. Such bonds shall be paid in accordance with the terms thereof by levy and collection of an annual tax as before provided, unless a retirement of such bonds is effected as provided in the succeeding article. [Id.]

Art. 8183. Retirement of bonds.—If there are any district bonds outstanding at the time of such dissolution, whether heretofore or hereafter dissolved, the Commissioners' Court shall immediately enter into negotiations with the holders of such bonds, and if, according to the terms thereof, or by agreement between said Court and the holders of said bonds, or any part thereof, can be retired at an earlier date than stipulated on their face, and such retirement is considered by said Court as feasible and practicable, the said Court shall enter into such agreement and shall provide for the payment and retirement of said bonds as provided in the succeeding sections.

Sec 2. The Commissioners' Court shall ascertain the full amount of debt due by said district, whether represented by bonds or otherwise, and shall apportion the same among the taxpayers owning property situated in said district and subject to taxation as shown by the last approved assessment rolls, together with such lands as may have been omitted therefrom, made by the directors of said district before its dissolution, after the correction of all errors, and shall levy and collect a tax upon said property for its proper proportion of said indebtedness, payable annually or all at once, as the tax-payer may elect and the amount of indebtedness thus shown as apportioned to each tract of land shall be a lien on the property assessed for the payment thereof.

Sec. 3. The holders and owners of such indebtedness owned by the district shall have the right to surrender their bonds and coupons or approved accounts to the Tax Collector for said district in payment in whole or pro tanto of any and all indebtedness, due by said holder or owner to said district for taxes levied against said holder or owner on properties owned by it or them in said district, and when so surrendered said bonds or evidences of debt shall be marked paid, and a proper receipt issued therefor; provided, that if taxes are levied so that the owner of property in such district can pay it or their proportionate share of such indebtedness of such district, and elect so to do, then and in that event the payment of such taxes may be made either in money or by the surrender of bonds of said district, or other evidences of indebtedness which may have been approved against said district; provided, further however, in the payment of such taxes by the surrender of bonds of said district or by surrender of interest coupons thereon, the holder of such bonds or coupons shall only be permitted to surrender coupons that are matured at the time of their surrender in payment of taxes, and shall not be permitted to pay and discharge taxes owing by them to such district by the surrender of unmatured coupons. Provided further that unmatured bonds shall only be eligible for the payment in advance of unmatured tax liability determined according to the provisions of this Act and only for the years in which such bonds mature. The payment of such taxes made in the manner herein set out shall be and become a release and discharge from any and all other or further liability on the part of the owner of such property, and when such taxes assessed against such property shall have been paid in full in accordance with the terms of this Article, such property shall be released and discharged from all further liability on account of such indebtedness,

and/or any, and all indebtedness of such district, evidenced by bonds, coupons or approved accounts or claims; and a release and a receipt therefor shall be issued by the collector and may be filed with the clerk of the county court where the property is situated in the manner provided for the filing of all documents relating to real estate under the laws of the State of Texas. [Acts 1st C.S. 1913, p. 41; Acts 1933, 43rd Leg., p. 403, ch. 159.]

Art. 8184. Custody of property.—Upon the dissolution of a district, the court shall provide for the disposition and sale of all district property and turn the same over to the County Treasurer immediately upon the filing and approval of his bond, whereupon he shall become trustee for such defunct organization. Said treasurer shall execute a good and sufficient bond in a sum to be determined and fixed by the County Commissioners' Court, payable to and approved by the County Judge and his successors in office, conditioned for the faithful performance of his duties as treasurer and trustee of such district, and for paying over all money and other property coming into his hands as such treasurer and trustee to the parties entitled thereto. Said bonds shall be recorded in the minutes of the Court, and when approved, shall supersede the bond theretofore given by said treasurer as treasurer of said district. [Acts 1st C.S. 1913, p. 41; Acts 1933, 43rd Leg., p. 403, ch. 159, § 4.]

Art. 8185. Powers of trustee.—The said treasurer, as ex-officio trustee of said defunct district, after giving the required bond, shall take charge of all the property of said district, including the money in his hands as treasurer, said money to be held by him as treasurer of such district, and all books, notes, accounts and choses of action of every kind. As such trustee he may bring suit against any persons in possession of such property, or indebted to such district, the same as such district could if still organized, and may employ counsel in all suits hereunder, or in the care and management of the business of such defunct district. [Acts 1st C.S. 1913, p. 41.]

Art. 8186. Presentation of claims.—Any person, firm or corporation having any claim against such district, shall within six months after the approval of the bond of the trustee, present to him such claim, duly verified. If the trustee finds the same correct, he shall allow such claim and thereupon the claimant shall file the same with the clerk of the Court not less than twenty days before the beginning of the next regular session of said court, and the clerk shall immediately issue a notice of such filing to all persons interested in said district. Such notice shall be posted in three public places in the district, and at the courthouse door, not less than twenty days before the next regular session of said court. [Id.]

Art. 8187. Approval of claims.—The Court in regular session shall pass upon said claim, and if it be found correct they shall approve the same, and the order of approval shall be entered upon their minutes, whereupon said claim shall become a valid and subsisting claim against said district. Said claim shall then be filed with the trustee and shall be paid by him in the order of its filing out of the money in his hands as treasurer of said district or collected as liquidation taxes hereunder. All bonds and approved claims outstanding against said district before its dissolution shall not be required to be allowed and approved as herein provided, but shall be considered as valid and subsisting claims against said district without further approval, but subject to be contested in accordance with the provisions of this subdivision. [Id.]

Art. 8188. Rejection of claims.—If the trustee finds any claim presented to him unjust in whole or in part, he shall indorse thereon his refusal to allow same, and if it be refused in whole the owner thereof may institute suit against said trustee for said claim in any court of competent jurisdiction in the county, and if established by judgment as in other cases, said judgment shall be filed with the said treasurer and shall be paid in its order as other claims. If said claim be refused by the trustee in part and allowed in part, and the owner thereof waives his claim to the part so refused, he shall file said claim in the Court for approval. But if he does not waive his right to the portion of said claim so refused, he shall withdraw said claim from the trustee and may bring suit thereon as herein provided. [Id.]

Art. 8189. Claimant may appeal.—If the owner of any claim acted upon by the Court is not satisfied with the judgment thereon, he may appeal therefrom as in cases of appeal from judgment of a justice court. [Id.]

Art. 8190. Contesting claim.—If any district taxpayer files with the trustee a protest against any claim which was allowed by the former drainage commissioners before the dissolution of the district and which was unpaid at the time of dissolution, together with a bond in double the amount of such claim, with sufficient sureties to be approved by the trustee and made payable to him, conditioned that such contestant will pay all costs of suit in case said claimant establishes his claim in full in any State court in which he may sue thereon, then the treasurer shall refuse to pay said claim and the owner thereof may bring suit therefor against the trustee, as in other suits of a civil nature. In such suits, the contestant and his bondsmen shall be made parties thereto, and the trustee shall make all defenses urged against said claim by the contestant. In case of recovery by the claimant, judgment shall be rendered against said contestant and his bondsmen for all costs incurred in said suit; and the owner of said claim shall file the judgment with the trustee, to be paid as other claims hereunder. [Id.]

Art. 8191. Trustee's expenses.—All reasonable expenses incurred by the trustee in the care, control and conduct of the business of the district and employment of counsel therefor, or in conducting or defending suits in his capacity as such trustee, shall be charged by him against said trust estate, and shall be presented to the Court annually at a regular term thereof, and upon due notice posted as required in case of other claims against the district. Upon approval by said court, the same shall become a valid and subsisting claim against said district and shall be a preferred claim, and may be retained by said trustee out of the funds in his hands as district treasurer. If said claim is rejected in whole or in part, and the trustee is dissatisfied with said ruling, he may appeal therefrom as other claimants. [Id.]

Art. 8192. Fees of officers.—The trustee shall receive only one compensation for his services as trustee and ex-officio treasurer hereunder. He shall be allowed one per cent upon all money received by him for the account of such district, and one per cent upon all money paid out as provided herein; but he shall not be entitled to such commission on money in his hands as treasurer of said district at the time of the dissolution thereof, as of money coming into his hands, nor on money turned over by him at the expiration of his trusteeship. The county assessor and collector shall receive the same compensation for the assessing and collecting of taxes as before provided in this chapter, and their compensation for such service shall be provided for in the order of the Court assessing taxes hereunder. [Id.]

Art. 8193. Final report of trustee.—When all claims established against the district have been paid and all costs and expenses incurred in the control and management thereof have been satisfied, the trustee

shall file his account for final settlement with the Court. Said account shall contain a full and complete account of all money received and paid out, all property of every kind that has come into his hands as trustee, and the disposition thereof, and all other matters pertaining to the management of the affairs of the district. Upon the approval of said account, the Court shall direct the trustee to turn over any property or money remaining in his hands to the person or persons entitled thereto as found by said Court, and on his compliance with said order he shall so report to the Court and thereupon the Court shall enter an order discharging said treasurer and trustee and his bondsmen and closing said trust estate. [Id.]

3. ABOLITION

Art. 8193—1. Abolition of drainage districts in counties having flood control or conservation or reclamation district.

Abolishment

Section 1. In all counties in Texas, where there shall have been created, or shall hereafter be created, by the Legislature of the State of Texas, or under authority of an Act of the Legislature, pursuant to the provisions and under authority of Section 59 of Article XVI of the Constitution of Texas, a flood control district, or conservation and reclamation district, composed of all or a portion of the territory of such county, and one or more drainage districts had theretofore been organized under the authority of and pursuant to the provisions of Chapter 7, Title 128, Revised Civil Statutes, 1925, Articles 8097, et seq., which lie wholly within the boundaries of such flood control district, or conservation and reclamation district, such drainage districts may be abolished in the manner provided by this Act; and when so abolished, no such drainage district shall thereafter be organized which shall include within its boundaries any portion of any territory theretofore incorporated within the boundaries of such flood control district or conservation and reclamation district.

Election; petition; notice

Sec. 2. The Commissioners Court of the above mentioned counties upon its own motion, may, or upon presentation to it of a petition as hereinafter provided, shall, order an election. Upon presentation to the Court of a petition signed by twenty-five (25) or more of the resident qualified property taxpaying voters residing in each of such drainage districts which have an outstanding bonded indebtedness, or if there be fewer than twenty-five (25) resident qualified taxpaying voters in any of said districts, then upon a petition of a majority of the voters of any such districts, praying that an election be ordered for the purpose of determining whether or not such drainage districts having outstanding bonded indebtedness shall be abolished, the Commissioners Court shall order an election to be held within the flood control district or conservation and reclamation district for the purpose of determining whether or not such drainage district or districts shall be abolished and the outstanding bonded and other indebtedness shall be assumed by such flood control district or conservation and reclamation district within the boundaries of which such drainage districts lie. Notice of such election shall be given by posting notices thereof at three (3) public places in each of such districts, and by posting one copy at the Courthouse door at the county seat; or by publishing such notice once each week for two (2) consecutive weeks in a newspaper of general circulation in the county in which such districts are situated; or by both such publication and posting.

Manner of abolishing districts without outstanding bonded indebtedness

Sec. 3. If there shall be any drainage district lying wholly within the boundaries of any flood control district, or conservation and reclamation district, composed of all or a portion of the territory of any of the counties within the above class, which such drainage district shall not have any outstanding bonded indebtedness, then, the Commissioners Court may abolish such drainage district or districts having no such outstanding bonded indebtedness in the manner herein provided. Said Court shall, by an order duly entered in its minutes, give notice of its intention to abolish such drainage district or districts, and such order shall be published in full in one or more newspapers of general circulation within such district or districts, (or if there be none in the district or districts, then in the county) once each week for two (2) consecutive weeks; and such order shall provide for a date, time and place for a hearing upon the question of the abolition of such district. At the time and place appointed, any person or persons interested in the abolition of such district or districts shall have the right to be present and to be heard upon the question of whether or not such district shall be abolished. Such person or persons shall have the right to present such evidence to the Court as may bear upon the question. He or they shall have the right to be represented by counsel, and the Court shall conduct a full hearing thereon. If there be no opposition to the abolition of such district, or if the Court shall determine, under the evidence, that it is to the public interest to abolish such drainage district, or districts, having no outstanding bonded debt, then the court shall enter its order declaring such drainage district, or districts, to be abolished, and the territory theretofore included therein shall be and become a part of the territory of such flood control district or conservation and reclamation district, and shall be subject to all of the laws governing such flood control district or conservation and reclamation district. All of the contracts, property and funds of such drainage district, including its current and delinquent taxes, sinking funds and all drains theretofore constructed by it, shall pass into the control of and be subject to the jurisdiction of the officers of the flood control district, or conservation and reclamation district, and the laws governing them, to the same extent and in the same manner as if such drainage district had never theretofore existed. Current obligations unpaid at the time of abolition shall be paid by the flood control or conservation and reclamation district out of funds of the abolished district.

Elections

Sec. 4. Elections provided for in Section 2 shall be held by the officers regularly holding elections at the usual voting boxes in the flood control district or reclamation and conservation district, and shall be held on the next general election day succeeding the making of the order; or, if, in the judgment of the Commissioners Court, it shall be necessary, to hold a special election and to name special officers to hold such election, such court may do so in the order calling the election, and shall also designate the place or places of holding such election. The election shall be held as near as may be at the usual places where general elections are held, and shall be subject to the laws governing general elections except as otherwise herein expressly provided. Only qualified electors who own taxable property in the flood control district, or conservation and reclamation district, and who have duly rendered it for taxation, shall be qualified to vote in such election, and all electors shall vote in the election precinct of their residence.

Returns of election

Sec. 5. The returns of such election shall be made to the Commissioners Court within five (5) days after it is held, and it shall enter an order in its minutes declaring the result. If a majority of the votes cast at such election shall be in favor of the proposition

submitted, then the Commissioners Court shall have the authority thereafter to levy a special additional tax on all of the taxable property, tangible and intangible, and all rolling stock and other property to the same extent as property is taxable by the county, within the boundaries of the flood control district or conservation and reclamation district, sufficient to pay all of the outstanding bonded and other indebtedness of the drainage districts, in accordance with the terms of such obligations then outstanding. The drainage district taxes shall not thereafter be further levied.

Taxes; sinking funds

Sec. 6. All taxes due and owing to any drainage district at the time of its abolition as hereinabove provided shall be and become an obligation due and owing to the flood control district or conservation and reclamation district; and the flood control district or conservation and reclamation district may, in its own name, or in the name of the drainage district, enforce the payment of such taxes, and foreclose the lien securing the payment thereof. All of such taxes when collected shall be applied to the retirement of the outstanding bonded or other indebtedness of such district; and if, or when, such outstanding or other indebtedness be paid in full, such funds may be used for such purposes as may be authorized by law for the general funds of such flood control, or conservation and reclamation district. All sinking funds on hand at the time of the abolition of such drainage district shall be applied to the retirement of the outstanding bonded or other indebtedness; and when such outstanding bonded or other indebtedness is fully paid, such funds may be expended for any purpose for which other funds of the flood control or conservation and reclamation district are authorized by law to be expended.

Declaring result of election; effect of abolition

Sec. 7. In declaring the result of the election provided for in Section 2, the Commissioners Court shall have the power to fix the date that the abolition of the drainage districts shall become effective. Upon the date fixed by the Commissioners Court in declaring such result, the territory theretofore included within such drainage district or districts shall be and become a part of the territory of the flood control district or conservation and reclamation district, and shall be subject to all of the laws governing such flood control district or conservation and reclamation district. No tax shall be levied, assessed or collected in the flood control district or conservation and reclamation district until the abolition of the drainage districts shall have become effective as provided in the order of the Commissioners Court declaring the result of the election. All of the property and funds of such drainage districts shall, upon such effective date, pass into the control of and be subject to the jurisdiction of the officers of the flood control district, or conservation and reclamation district, to the same extent and in the same manner as if such drainage districts had never theretofore existed.

New drainage districts not to be created

Sec. 8. After the abolition of such drainage districts, as hereinabove provided, no other drainage districts shall be created within the boundaries of the flood control district or conservation and reclamation district. The provisions of this law shall control in the counties to which it applied over the provisions of any other laws authorizing or regulating drainage districts. [Acts 1945, 49th Leg., p. 186, ch. 143.]

IV. CONSERVATION AND RECLAMATION

CHAPTER 8.—CONVERSION OF DISTRICTS

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Article 8194. Creation.—Conservation and reclamation districts may be created and organized in any manner that water improvement, drainage, or levee improvement districts are authorized by the laws of this State to be created, and for the several

purposes therein provided. [Acts 4th C. S. 1918, p. 40.]

Art. 8195. Conversion of districts.—Any water improvement, drainage, or levee improvement district organized under the laws of this State as a defined district under Section 52 of Article 3 of the Constitution, may avail itself of the benefits of Section 59 of Article 16 of the Constitution, and thereby become a conservation and reclamation district without change of name, or impairment of its obligations, in the manner provided by law. [Id.]

Art. 8196. Powers.—Any such district, or any district organized hereunder, may incur indebtedness and levy taxes to fully carry out each purpose of its organization, and for the payment of its obligations and the maintenance and operation of said district; and any such district shall be governed and controlled by the provisions of law under which it organized. [Id.]

Art. 8197. Indebtedness.—All limitations of indebtedness authorized to be incurred and taxes to be levied, imposed by Section 52 of Article 3 of the Constitution and all laws under which any such district is organized, are removed as to all conservation and reclamation districts. [Id.]

Art. 8197a. Conservation and reclamation districts validated.

Districts validated

Sec. 1. That all conservation and reclamation districts organized under the provisions of Chapter 8, Title 128, Revised Civil Statutes of Texas, and/or Chapter 2, Title 128, Revised Civil Statutes of Texas, under the name of Water Improvement Districts, and in the organization of which petitions were signed by more than fifty (50) persons, and such petitions were filed in the month of September, 1926, and on which petitions hearings were held by the County Commissioners' Court in the month of October, 1926, and in pursuance of which said Court entered its order or judgment finding in favor of the petitioners for the establishment of such Districts, and elections were held for the purpose of voting upon the organization of such Districts, and the issuance of notes by such Districts, such elections being held in the month of November, 1926, and at which elections the organization of the Districts and the issuance of notes received a two-thirds majority of the votes cast and at which elections directors were elected for such Districts, all said proceedings and the organization of such Districts and the orders of the County Commissioners' Court organizing such Districts and the authorization for the issuance of notes by such Districts are hereby ratified, validated, approved and confirmed, and all such Districts are hereby expressly declared to be properly defined and described and to be validly created and organized, and the notes issued by the Board of Directors of such Districts are hereby declared to be legally and validly issued and are valid and declared to be the legal, binding obligations of such Districts, and such Districts shall levy, access and collect taxes on all property situated in such Districts in amount sufficient to pay the interest on such notes and the principal thereof as same matures, and the cost of assessing and collecting such taxes, and it shall not be necessary to validate such notes by a suit in Court or any other proceeding.

Districts declared conservation and reclamation districts

Sec. 2. All such Districts described in Section 1 of this act are hereby expressly declared to be conservation and reclamation Districts under the provisions of Chapter 8, Title 128, Revised Civil Statutes of Texas, and under the provisions of Chapter 2, of Title 128, Revised Civil Statutes of Texas, and under the provisions of Section 59, of Article 16, of the Constitution of the State of Texas, and all such Districts are authorized, if they shall so elect as provided by law, to be converted into Water control and Improvement Districts under the provisions of the laws of the State of Texas.

Boundaries declared correct descriptions

Sec. 3. That the boundaries of all said Districts as described in Section 1 of this Act, as established and defined by the orders and judgment of the County Commissioners' Court, and as modified, established and defined by the orders of the Board of Directors of such Districts after lands originally included in said Districts had [1] been removed therefrom by orders of the Board of Directors of such Districts, are proper and correct descriptions of the territory included within such Districts, and that the boundaries of such Districts and the orders defining same properly define the area included therein and are and constitute proper legal descriptions of the said boundaries of the said Districts, and of the territory included therein, and are hereby valid and declared to be proper and legal descriptions of said boundaries, and that the orders made by the Board of Directors of such Districts, excluding therefrom certain lands originally included therein, are valid and proper and in due and proper form, and that all notices issued prior to the making of said orders, were properly issued, posted and published, in accordance with the provisions of law, and are hereby laid and declared to be valid and binding and to properly define the boundaries of said Districts and the territory included therein.

Power to incur indebtedness

Sec. 4. That all such Districts described in Section 1 of this Act may incur indebtedness to fully carry out each and all of the purposes of its organization, when such indebtedness has been authorized or may hereafter be authorized by a majority of the votes cast at an election for that purpose, and may levy taxes for the payment of its said debts and obligations and the maintenance and operation of such Districts.

Orders, levies, notices and elections declared proper

Sec. 5. That in all such Districts described in Section 1 of this Act, the orders of the Board of Directors providing that elections be held in such Districts to authorize the issuance of bonds and the levy of taxes in payment thereof, and the notices of election posted and published in pursuance thereof, and the elections held for said purpose, and the returns made thereon, and the order of the Board of Directors in declaring the result thereof, are hereby declared to be proper, legal proceedings in accordance with the provisions of the laws of the State of Texas for the issuance of such bonds, and are hereby validated and confirmed, and in all such Districts in which said elections have been held, and a majority of those voting at such elections voted in favor of the issuance of such bonds and the levy of such taxes, that said elections and the issuance of such bonds are hereby validated and confirmed, and the Board of Directors of such Districts are authorized to make all proper and necessary orders for the issuance of such bonds and the sale of such bonds, and the levy, assessment and collection of taxes sufficient to pay the interest thereon, and the principal therein as same matures, and the expenses of assessing and collecting such taxes, and for the maintenance and operation of such districts. [Acts 1929, 41st Leg., p. 300, ch. 139.]

[1] So in enrolled bill. Should probably read "have".

Art. 8197b. Refunding bonds.—Any Drainage or Levee Improvement District organized under the laws of this State as a defined District under Sec-

tion 52 of Article 3 of the Constitution that may have availed itself of the provisions of this Chapter and become a Conservation and Reclamation District, or that may hereafter avail itself of the provisions of this Chapter and become a Conservation and Reclamation District, and which may have issued bonds, may issue its refunding bonds for the purpose of retiring such outstanding bonds, without submitting same to an election, by issuing new coupon bonds for that purpose, and the Commissioners' Court of the county of jurisdiction shall make an order directing the issuance of such bonds. Such refunding bonds shall not bear a greater rate of interest than the bonds in lieu of which they are issued. Interest shall be evidenced by coupons attached to such bonds, and may be payable annually or semi-annually, within the discretion of the Commissioners' Court of the county of jurisdiction; and such refunding bonds shall be payable serially or otherwise, and shall be issued in denomination of One Hundred ($100.00) Dollars, or some multiple thereof, and a sufficient tax levy to meet the payment of the principal and interest of said refunding bonds shall be made before the delivery thereof.

Such refunding bonds when authorized may be exchanged for the outstanding bonds of said District if the holders of such outstanding bonds will agree to such exchange; provided, however, that if such holders of said outstanding bonds will not agree to such exchange, then said refunding bonds may be sold and the proceeds applied in the purchase of such outstanding bonds at the time when any of them may become due under any option of prepayment contained in said bonds or at the time such holders will accept payment thereof.

The refunding bonds hereby authorized shall be executed in the same manner provided for the execution of other bonds of said District. Any sum to the credit of any sinking fund account on hand shall first be deducted in ascertaining the amount of refunding bonds to be issued, and such money shall in every case be applied to the payment of the outstanding bonds. No refunding bonds shall be issued and delivered until approved by the Attorney General and registered by the State Comptroller; provided, however, that the Comptroller shall not register such refunding bonds until the old bonds in lieu of which such refunding bonds are issued are presented to him for cancellation; and after the registration of the new bonds, the Comptroller shall cancel the old bonds and interest coupons, and deliver such new bonds to the proper party or parties; provided, further, that the old bonds may be so presented for cancellation, in installments, and a like amount of the new bonds registered and delivered as herein provided. [Acts 1930, 41st Leg., 4th C.S., p. 71, ch. 34; Acts 1935, 44th Leg., p. 694, ch. 295, § 1.]

Section 2 of Acts 1935, repeals all conflicting laws and parts of laws.

The Legislature designated this Article as Article 8197(a), but inasmuch as that number has been used to designate a previous Article, it is inserted as Article 8197b.

Art. 8197c. Regulating levying taxes in drainage districts.

Districts authorized to levy taxes

Section 1. That any drainage district heretofore created or which may hereafter be created under the provisions of Chapter 7, Title 128, Revised Civil Statutes 1925, and which at the time of its creation has become a conservation and reclamation district under the provisions of Chapter 8, Title 128 aforesaid, or any such drainage district which may after its creation pursuant to law now or hereafter in force in this State, become such conservation and reclamation district, shall be authorized in the manner hereinafter provided, to levy all taxes of such district, to pay the interest and create the sinking fund on bonds of such district, and for all other purposes for which it may lawfully levy such taxes, on a benefit basis, that is to say on an equal or uniform basis or rate upon each acre of land within such district, instead of upon an ad valorem basis as now provided by law.

Determination of method of tax in creation of district

Sec. 2. The petition provided by Article 8098, Revised Civil Statutes 1925, for the creation of such district may pray that all taxes of such district be levied on the benefit basis as provided in Section 1 hereof, instead of upon an ad valorem basis, and in such case, the notice provided in Article 8100, Revised Civil Statutes 1925, shall so state, in addition to the other things provided therein, and the Commissioners' Court at the hearing provided by Chapter 7, Title 128 of such Statutes pursuant to such notice, shall in addition to all other matters therein required to be determined consider the question of whether or not it will be fair and equitable to all the landowners in such district, to levy all such taxes on a benefit instead of an ad valorem basis, and at such hearing any person whose land would be affected by the creation of such district may appear before said Court and contest, not only the creation of such district, but the method of levying the taxes thereon upon the benefit instead of an ad valorem basis, or in addition to contending for its creation as now provided by law, may contend for the levy of such taxes on a benefit basis instead of an ad valorem basis, and such Commissioners' Court shall, if it shall determine that such district and the drainage thereof is feasible and practicable, and the like, as provided in Article 8103, Revised Civil Statutes 1925, furthermore determine whether or not the levy of such taxes upon the benefit basis will be fair and equitable to the landowners in such district, and if the Court should determine that it will not be fair and equitable to such landowners to levy such taxes on the benefit basis, such order shall so provide, and if such district shall thereafter be created as provided by law, all such taxes shall be levied upon an ad valorem basis, as now provided by law. Should the Court determine in favor of the creation of such district, and that it will be fair and equitable to the landowners in such district to levy such taxes on the benefit basis, it shall so provide in its order, and an election shall be called for the creation of such district, and the levy of taxes upon such benefit basis, under the provisions of Chapter 7, Title 128 of such Statutes, with the further proviso, however, that in such last named event only freehold resident taxpayers who are qualified voters of the proposed district shall be entitled to vote at such election; said election to be held in all other respects as provided by said last named Chapter and Title.

The findings of such Court on the manner in which such taxes shall be levied shall be final and conclusive on all parties.

If the Court shall determine that the taxes are to be levied on an ad valorem basis, the election and all proceedings in connection with the creation of such district shall be in conformity with said Chapter and Title.

Procedure for change of levy to benefit instead of ad valorem basis

Sec. 3. That any drainage district heretofore created under the provisions of Chapters 7 and 8, Title 128, Revised Civil Statutes 1925, may in the manner following provide that all taxes of such district of every nature may be levied upon a benefit instead of an ad valorem basis, to-wit:

A petition shall first be presented to the Commissioners' Court of such county signed by seventy-five of the freehold resident taxpayers in the proposed district, or if there be less than seventy-five such

citizens then by one-third thereof, whose lands may be affected thereby, praying that all taxes of such district shall be levied upon a benefit instead of an ad valorem basis, and other facts showing that the levy of such taxes on such benefit basis will be fair and equitable to all of the landowners in such district. At the same session when said petition is presented, the Court shall set said petition down for hearing at some regular or special session called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition, and shall order the clerk to give notice of the date and place of said hearing by posting a copy of said petition and the order of the Court thereon for twenty days prior to the date of such hearing in five public places in said county, one at the courthouse door, and four within the limits of the district; said clerk shall be paid One ($1.00) Dollar for each such notice, and five cents per mile for each mile necessarily traveled in posting such notices, and all of which expenses shall be paid by the drainage district.

On the day set for the hearing, any person whose lands would be affected thereby, may appear before said Court, and contest the levy of such tax on a benefit basis, or contend for the levy to be made upon that basis, and may offer testimony to show that the levy of such taxes on the benefit basis will or will not be fair and equitable to all landowners within such district.

Said Court shall have exclusive jurisdiction to hear and determine the above issue, and all matters pertaining to the same and shall have exclusive jurisdiction in all subsequent proceedings in connection therewith, and may adjourn the hearing on any matter connected therewith from day to day, and all judgments rendered by said Court in relation thereto shall be final.

If, after a full hearing the Court shall determine that it will not be fair and equitable to all of the landowners in such district to levy all taxes on a benefit basis instead of an ad valorem basis, it shall so find, and accordingly enter its order dismissing said petition and thereafter all such taxes of such district shall be continued to be levied upon an ad valorem basis.

If upon such hearing the Court shall determine that it will be fair and equitable to all of the landowners within such district to levy all such taxes upon a benefit instead of an ad valorem basis, it shall so find, and order an election to be held within such district, not less than thirty nor more than sixty days from the date of such order, and after notice of such election has been given in the same manner as provided hereinabove with reference to the hearing before said Court, and at which elections there shall be submitted the following propositions, and none other: "For the levy of all taxes of the district upon a benefit basis"; "Against the levy of all taxes of the district upon a benefit basis." A two-thirds vote shall be necessary to carry the proposition to be submitted at such election, and only freehold resident taxpayers who are qualified voters of the district may vote at such election. All such elections shall be conducted in the manner provided by the general election laws and the aforesaid Title and Chapter. The Court shall name a polling place or places in the district, each of which shall be in the district, and shall appoint the judges and other necessary election officers. It shall provide twice as many ballots as there are qualified voters in the district as shown by the county tax rolls; and which ballots shall have printed thereon the propositions to be submitted, as stated above.

If said proposition shall be carried by the requisite two-thirds vote, as aforesaid, all taxes of such district of every nature shall thereafter be levied on a benefit basis and the order of the Court canvassing the result of such election shall so provide, but unless such election is carried by the requisite two-thirds vote, as aforesaid, such order shall so provide and thereafter the taxes of such district shall be continued to be levied upon an ad valorem basis.

Method of levy of taxes on benefit basis

Sec. 4. Any drainage district which may in the manner hereinabove provided, determine to levy its taxes upon a benefit instead of an ad valorem basis, shall in all other respects, and so far as applicable, be governed by Chapters 7 and 8, Title 128, Revised Civil Statutes of 1925, but it shall not be necessary to have a Board of Equalization to annually equalize such taxes, but the Commissioners' Court of such county shall appoint three resident freehold taxpaying voters within such county who shall qualify by taking an oath to fairly and impartially hear and determine such acreage and who shall be authorized to determine the number of acres of each landowner within such district, and shall give at least ten days notice of the time and place of hearing thereon, and at which hearing such landowners may be heard with respect to the number of acres of land owned by them within such district, and such board shall have final jurisdiction to determine the exact acreage of each owner therein, and thereafter all such land shall be placed upon the tax rolls of such district in accordance with the acreage so determined and annually thereafter, without any rendition of such taxes. [Acts 1931, 42nd Leg., p. 776, ch. 311.]

Section 5 of this Act provides that if any provision is invalid, such decision shall not affect the remainder. Section 6 repeals all conflicting laws and parts of laws.

Art. 8197d. Validating organization, assessments and bond issues of districts.—Sec. 1. That all the proceedings had and taken to organize any conservation and reclamation districts as authorized by Chapter 8, Title 128, Revised Statutes of 1925, and Chapter 6, Title 128, Revised Statutes of 1925, under Section 59, Article 16, of the Constitution of Texas, and to determine the areas of land included therein and which are benefited thereby, and to determine the manner in which taxes and assessments for taxation should or shall be made, levied and collected or to authorize the issuance of bonds or for the appointment and qualification of the officers and supervisors thereof, shall be, and are hereby in all respects declared to be ratified, validated, approved and confirmed and held to be valid from the date of their organization.

Sec. 2. That conservation and reclamation districts which have been or may hereafter be organized under Section 59, Article 16, of the Constitution, and the particular statutes referred to in Section 1 hereof, may issue bonds when authorized by the necessary vote of qualified property taxpayers for the purpose of constructing improvements, and maintenance thereof for two (2) years as set out in the plan of reclamation approved by the State Reclamation Engineer and adopted by the supervisors of such districts, plus ten per cent (10%) additional to meet emergencies, modifications and changes lawfully made, and plus all damages awarded against the district as shown by the final report and decree of the Commissioners of Appraisement, and plus the sum necessary to retire and refund bonds now outstanding for any of the above purposes, and that all of said purposes may be submitted to the voters as a single proposition, provided that the bonds to be retired and refunded may have been issued by a navigation district embracing the same territory.

Sec. 3. That all bonds of conservation and reclamation districts organized under the provisions of the Constitution and statutes mentioned in Section 1 hereof, which have heretofore been voted as a single proposition for the purposes enumerated in Section 2 hereof, and which have been authorized by the necessary vote of the legally qualified property taxpayers

of such districts, and which bonds have been examined and approved by the Attorney General of the State of Texas, are hereby in all things expressly ratified, validated, approved and confirmed. [Acts 1932, 42nd Leg., 3rd C.S., p. 44, ch. 19.]

Art. 8197e. Texas Planning Board created, powers and duties.

Enactment in response to constitutional provisions

Section 1. This enactment is in response to the commands of Section 59a, b, and c, of Article XVI of the Constitution of Texas, to the Legislature to pass all such laws as may be appropriate to proper conservation and development of all of the natural resources of this State, including the control, storage, preservation and distribution of storm and flood waters, water of its rivers and streams for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid, and other lands needing irrigation, the prevention of soil erosion, the reclamation of its overflowed lands needing drainage, the conservation and development of its forests, water, and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State, and further for the purpose of advising and suggesting ways and means whereby any funds allocated by the Government of the United States of America, or its duly constituted agencies, to the State of Texas, or to its political subdivisions, may be judiciously and wisely expended for any of the foregoing purposes, and for the further purpose of improving the social and economic condition of the citizens of this State. In order to effect these expressed intents, provision is made as hereinafter set forth.

Board created; membership; eligibility

Sec. 2. A Board is hereby created and established which shall be known as "The Texas Planning Board," and which shall expire four (4) years from the effective date of this Act. Said Board shall consist of nine (9) members, three (3) of whom shall be the State Highway Engineer, the Chairman of the Board of Water Engineers, and the Secretary of State, respectively, of the State of Texas, and their successors in office who shall serve until the expiration of said Board, and who shall be ex officio members thereof, with the same powers, privileges and duties of other members thereof. The Governor of the State of Texas, by and with the advice and consent of the Senate, shall appoint the other members of said Board, three (3) of whom shall serve for a term of two (2) years, and three (3) for a term of four (4) years, from the effective date of this Act. The Governor shall designate one (1) member of the Board Chairman thereof, and shall also fill any vacancies that may occur, as they occur. Each member of said Board, except ex officio members who are already under constitutional oath, shall qualify for the duties of his office by taking the oath as is required by the Constitution of the State of Texas.

There shall be at least one member appointed by the Governer who is experienced in agriculture, one to represent labor, and one familiar with reforestation problems of this State.

Any State officer or employee is eligible for membership on said Board; and any State officer or employee so appointed shall serve ex officio and as to such officer or employee this Act shall not be construed as creating a separate office.

Vice chairman; secretary and his duties

Sec. 3. The Board, at its first meeting, shall select a vice chairman who shall serve for a term of two (2) years and all successors shall be selected in like manner and serve for like terms; the Secretary of State of the State of Texas shall be ex officio Secretary of the Board. The Secretary shall make and keep an accurate record of the proceedings of said Board, which record shall be kept in the office of the Secretary of State and be open for public inspection at all times. When said Board shall expire by operation of law, all papers, documents, and records pertaining to its official actions shall be placed in a file for that purpose to be kept in the office of the Secretary of State as a part of the permanent official records of the State of Texas.

Office; meetings; rules and regulations; employees; funds

Sec. 4. The Board shall have its office and principal place of business in Austin, Texas, where its meetings shall be held, unless it directs otherwise for specific occasions, and it shall meet then when called by order of the Chairman, Vice Chairman, or by a majority of its members; provided, however, that the Board shall fix, by order entered in the minutes of its proceedings, specified times for its regular meetings, and a quorum to transact business at any meeting shall consist of not less than five (5) members actually present. The Board shall adopt such rules, regulations and by-laws as it may deem necessary for the orderly transaction of its business and shall keep a record of its proceedings in book form, and all hearings of said Board shall be open to the public.

The Board may employ such clerical and technical services of other persons as it may deem necessary, and may incur and pay such additional expenses as are necessary in the discharge of its duties, within the appropriations which the Legislature from time to time may make for its use.

The Board is hereby authorized and empowered to accept and expend any funds which may be made available to it from Federal or other sources, the expenditure of any such fund or funds being only for research, investigation and/or administrative purposes of said Board. Provided that neither said Board nor any member thereof shall have any pecuniary interest in any projects now in course of construction or that have heretofore been approved, and shall not have any authority to make recommendations concerning the same; provided further that in the event any member of said Board shall have any pecuniary interest in any project hereafter to be approved, said member shall not vote upon said project; and provided further that no member of said Board or employee thereof shall be interested, directly or indirectly, in any contract of construction or in any other manner in any project pending before the Board.

Compensation and expenses

Sec. 5. No member of the Board shall receive compensation for his services, but each shall be entitled to his actual and necessary expenses incident to the discharge of the duties of his office, and every expense account shall be approved by the Board before same is paid. Payment of expense accounts shall be upon itemized statement sworn to by the member incurring same; payment of expenses of the Board shall be upon an itemized account of its Secretary certified to under oath as being true and correct; payment of salaries and expenses of employees shall be upon sworn account of the person to whom same is payable; and the Secretary shall prepare and file with the Governor, the Speaker of the House of Representatives and the President of the Senate, within fifteen (15) days after the convening of any Regular Session of the Legislature a report of expenditures itemized, including expenditures of the several members of the Board, as well as of the Board itself.

An itemized statement of the expenditures of the Board shall be made up monthly by its Secretary, filed

in his office, and be open for public inspection at all times.

Allocation and expenditure of funds; certain powers and duties of Board

Sec. 6. The Texas Planning Board shall be charged with the duty of ascertaining from time to time and as early as practicable the amount of funds allocated, or to be allocated, by the various agencies of the Federal Government to the State of Texas, the purpose or purposes for which same is to be expended, and shall formulate a comprehensive State program for the constructive expenditure thereof, for the alleviation of suffering and want of the citizens as a result of unemployment conditions, and for the rehabilitation of worthy indigent families, of this State, taking into immediate consideration, in this connection, the amount of Federal, State and/or private funds available, or to become available, for such purposes; it shall also take into consideration the various resources of this State, natural or otherwise, and how these may best be utilized and conserved for the benefit of present and future generations, and from such consideration formulate such program as a basis upon which may be predicated a permanent and continuing State policy with reference to sound conservation of all resources of this State, as well as for the betterment of the social and economic conditions of the citizens thereof. When requested by either therefor, it shall advise the Governor, the Legislature of the State of Texas, and/or the United States Government of America or its duly constituted agencies, concerning such program, and it shall be without power to effectuate its said program, or any part of same, or to direct the expenditure of any public fund or funds for such purpose, the functions and duties of said Board being hereby expressly restricted solely to the giving or making of the aforesaid advisory reports and/or recommendations.

In connection with the foregoing powers and duties of said Board it shall, when deemed necessary, have the services of any and all other officers, departments, and agencies of the State Government, including employees of institutions of higher learning, and it shall be the duty of such officers, departments, agencies and institutions to render such service when so requested; provided further that all expenses incident to such service, other than salaries of such officers, or of employees of such departments, agencies and institutions shall be paid out of appropriations which the Legislature shall from time to time make to defray the expenses of the Board.

The Board shall have no power to interfere with the constitutional or statutory authority and/or operation of any municipality or political subdivision of this State. It shall not interfere with loans and/or grants to any department or agency of the State Government, or to any municipal, defined district, or other political subdivision of this State. Before the aforesaid Board may make any unfavorable advisory report or recommendation as hereinbefore contemplated which shall affect any officer, department or agency of the State Government, or municipal, defined district, or other political subdivision of the State, it shall give notice thereof to such officer, or to the head of such department or agency of the State Government or municipal, defined district, or other political subdivision. Said notice shall state the nature of the project or plan proposed, the time (not less than ten (10) days from the date of the notice) and place where a public hearing will be held upon the matter and such hearing shall be openly had with an opportunity afforded to every affected person who desires such to be heard with reference thereto.

The Board is authorized to publish and distribute to the public information concerning its recommendations, made or to be made; provided, however, it shall not accept contributions from any person, firm or corporation, public or private, nor expend public funds, to carry on any publicity or educational campaign. It may confer with public or private agencies with reference to matters pertaining to its duties.

No member, officer, employee, or agent of said Board, in the performance of his duties as such, shall enter upon, make examination or survey of, or place and maintain any monument or mark upon any private property, without the consent of the owner thereof.

Advisory reports; sworn statement as to compensation of promoters and others

Sec. 7. In connection with the consideration of an advisory report, or recommendation, upon any particular project, improvement, or activity, the Board shall require a sworn statement of such applicant, its agent or attorney, setting forth in detail the amount of promotional, legal and/or technical fee or other compensation paid, or agreed to be paid, by such applicant to any promoting agent, attorney, engineer, architect or other person for the making or giving of any legal, technical, or other opinion, map or maps, plat, plan or [1] specifications, in connection with the making of the application for or with the completion of, said project. Any advisory report or recommendation given by said Board shall set forth the amount of the foregoing fee or compensation and shall contain a recommendation by said Board as to whether the same is just, fair, and reasonable compensation for such promotional, legal, or other technical services, when paid or to be paid out of any public fund.

Appropriation

Sec. 8. There is hereby appropriated out of the General Fund of the State of Texas, not otherwise appropriated, the sum of Twelve Thousand Dollars ($12,000), or so much thereof as shall be necessary to be expended for the fiscal year ending August 31, 1935, to be used in defraying the necessary expenses of the Texas Planning Board in carrying out the provisions of this Act. No employee of said Board shall be paid a salary or other compensation for services under authority of said Board in excess of the salary or compensation paid to employees of other departments of the State Government, rendering the same or similar services. No expense of a member or employee shall be chargeable to or paid by said Board unless same shall have been approved by formal action of the Board.

Partial invalidity

Sec. 9. If any clause, provision, section or part of this Act shall be adjudged by any court of competent jurisdiction to be invalid such judgment shall not invalidate any other term or provision hereof and the Legislature hereby declares its intention to enact each and every clause, requirement, provision and part hereof independently of any such part so invalidated. [Acts 1935, 44th Leg., p. 94, ch. 33.]

[1] So in enrolled bill. Session Laws read "of".

Art. 8197e—1. State agencies created to carry out purposes of Conservation Amendment regulated; electric facilities.

"Agency" defined

Section 1. The term "agency" as used herein means an agency of the State heretofore or hereafter created by an Act of the Legislature to carry out the purposes of the Conservation Amendment to the Constitution of Texas (Section 59, Article XVI), authorized by the Act creating such agency to generate and sell electric power or energy; and said term shall not include a corporation organized under the "Electric Cooperative Corporation Act" (Acts 1937, Forty-fifth Legislature, Chapter 86[1]); neither shall it include or

apply to any agency or political subdivision heretofore or hereafter engaged in the business of impounding, distributing or selling water for domestic, commercial and other beneficial purposes, and at least fifty (50) per cent of whose revenues is derived from the sale of water for domestic, commercial and other beneficial purposes.

1 Article 1528b.

Commissions in connection with acquisition or sale of property for electric power purposes

Sec. 2. Except as provided in Section 5 of this Act, no agency shall pay or contract to pay, directly or indirectly, any commission or fee to any person whomsoever in connection with the purchase, lease, sale or acquisition in any manner whatsoever of any property, real, personal or mixed, then existing and being used for the purpose of generating, transmitting and distributing electric power or energy; provided, however, nothing in this Section shall be construed to prohibit such agency from paying any fee or commission, legal under present law, for services rendered prior to the effective date of this Act; and provided further that nothing herein shall be construed to prohibit the payment by the agency to its officers, attorneys and employees employed to carry on the business affairs of such agency the compensation determined by the Board of Directors in accordance with the Act creating such agency.

Electric facilities acquired within cities; payments in lieu of taxes

Sec. 3. (a) After the effective date of this Act, no agency shall acquire by purchase, lease or in any other manner whatsoever the electric facilities within any incorporated city except on condition that so long as it shall own said facilities it shall annually on or before the 31st day of January make a payment in lieu of taxes to the State of Texas and to the county, city and such taxing districts within which such property is situated; such payment in lieu of taxes to be in the amount which would be realized by levying a tax at the rate effective at the time of the acquisition of such property and based on the average of the assessed value of such property for the then current tax year and the four (4) preceding tax years.

(b) Any city or town in which the electric facilities serving such city or town are acquired by an agency after the effective date of this Act shall for a period of twelve (12) months after the acquisition by the agency of such electric facilities have the right to acquire from such agency the electric facilities within and serving such city or town by paying to the agency the cost to the agency of the property to be acquired by the city or town, less depreciation and plus the cost to the agency of all additions, extensions, and betterments made to such facilities by the agency; provided that this Section shall not be construed to repeal any law under which cities and towns may acquire such electric facilities.

(c) It shall be unlawful for any agency to fix, by contract or otherwise, the resale price of any commodity or service sold by such agency to any municipality or electric cooperative corporation or association organized under the Acts, 1937, Forty-Fifth Legislature, Chapter 186.[1]

1 Probably should read "Chapter 86."

Loans

Sec. 4. No agency shall make any loan of money to another agency as herein defined for any purpose whatsoever.

Employment of attorney

Sec. 5. After the effective date of this Act no agency shall employ an attorney to perform any legal service in acquiring for the agency existing facilities for generating, transmitting or distributing electric power or energy except for a sum of money to be agreed upon at the time of such employment.

Audits

Sec. 6. (a) Each agency shall cause to be made and completed within ninety (90) days after the end of its fiscal year an audit of the books of account and financial records of the agency for such year, such audit to be made by an independent Certified Public Accountant or firm of Certified Public Accountants chosen by the Board of the agency and approved by the State Auditor. The fiscal year for each agency shall be fixed by the Board of Directors of said agency. Copies of a written report of such audit, certified to by said accountant or accountants, shall be placed and kept on file with the Board of Water Engineers, the State Auditor, the Treasurer of the State of Texas, and at the principal office of the agency, and shall be open to public inspection at all reasonable times. The requirement in this subsection for such independent audit shall not apply to any agency whose annual gross income from operations is less than Five Thousand Dollars ($5,000), nor to any agency which under laws applicable to it is subject to an annual audit by the State Auditor.

(b) It shall be the duty of every agency, employee, attorney, director or officer of any such agency, to make available to the State Auditor and those working under his direction, all the minutes, books, records, accounts, documents, and contracts pertaining to the business of such agency at reasonable times and for such inspection as the State Auditor may desire to make.

Flood Control and Conservation Fund

Sec. 7. At the next regular meeting of the Board of Directors, after the filing of the annual audit as provided above, the Board of Directors of each agency shall set aside a sum equivalent to ten (10) per cent of the balance remaining from the revenues for the preceding fiscal year after deducting from such revenues sufficient moneys to meet the following:

(1) Pay all fixed charges;

(2) Pay all operating expenses;

(3) A reasonable sum to be fixed by its board of directors, not less than the amount prescribed in the Indenture or Indentures securing the agency's indebtedness, to be placed in a replacement and maintenance fund to be used by the agency for replacements and maintenance of the property of the agency;

(4) A reasonable sum to be fixed by its board of directors to cover depreciation on the property of the agency;

(5) Such other sums as are required by the Indenture or Indentures securing its indebtedness.

Which sum so set aside shall be placed in a special fund hereby created for each such agency to be known as the "Flood Control and Conservation Fund," and disbursements therefrom shall be made by the agency under the direction of the board of directors of each such agency and shall be used only for the building or operation of levees or other facilities for flood control, or for the purpose of reclaiming and conserving the soil and forests, or storage of water for domestic, municipal and agricultural purposes, or for any two (2) or more of said purposes.

Operation of electric facilities by or in conjunction with private or public corporation

Sec. 8. No agency shall make any contract or agreement under the terms of which its electric facilities may be operated by or in conjunction with either a private corporation (whose principal business is the generation, transmission, distribution or sale of electric power or energy), unless such private corporation is doing business in Texas in such a manner as to be subject to the jurisdiction of the Courts of Texas, or a public corporation or public agency (whose principal business is the generation, transmission, distribution or sale of electric power or energy) unless such public corporation or public agency is created under the

laws of the State of Texas; provided, however, nothing in this Section shall prevent the enforcement of the rights of any bondholder or trustee under the terms of any Indenture or Indentures of the agency given to secure the payment of any bonds heretofore issued or hereafter issued by the agency; and provided further that this Section shall apply only to properties and facilities of any agency, as defined in this Act, as shall have been completed by the date this Act becomes effective, and to the power and energy generated by such properties and facilities.

Violations; quo warranto proceedings

Sec. 9. Whenever it shall appear that any Section, Subsection or provision of any Section or Subsection of this Act has been violated by any agent, employee, director, trustee, receiver or officer of any such agency, it shall be the duty of the Attorney General of the State of Texas, as soon as such violation has reached his attention, to notify in writing each member of the Board of Directors of such agency, and unless the Board of Directors shall within thirty (30) days thereafter have taken such steps within its power as are reasonably necessary to correct such violation, then it shall be the duty of the Attorney General to bring quo warranto proceedings to enforce the removal of such offending officer or employee; and the District Court in the county where the principal office of such agency is located, or in Travis County, Texas, shall have jurisdiction and venue in any such quo warranto proceedings.

Enforcement of act

Sec. 10. The Attorney General is authorized and it shall be his duty to enforce each and every provision of this Act, and for that purpose he is authorized and directed to bring appropriate suits to enforce the provisions of this Act.

Partial invalidity

Sec. 11. If any section, subsection, provision, paragraph or sentence of this Act shall be declared to be invalid for any cause, the remaining sections, subsections, provisions, paragraphs and sentences shall not be affected thereby; and it is declared that it is the intention of this Legislature to pass each and every section, subsection, provision, paragraph and sentence, irrespective of the validity or invalidity of the remaining sections, subsections, provisions, paragraphs and sentences.

Act cumulative

Sec. 12. This Act shall be cumulative of all other laws on the subject matter.

Repeal

Sec. 13. To the extent and only to the extent that they are in conflict herewith, all laws and parts of laws are hereby repealed. [Acts 1943, 48th Leg., p. 641, ch. 366.]

Art. 8197f. Condemnation of cemeteries by conservation and reclamation districts and similar districts.

Eminent domain

Section 1. The use of lands for the construction of dams and the creation of lakes and reservoirs created by such dams constructed on the rivers and streams of the State of Texas by conservation and reclamation districts, and other public districts and bodies politic created for the purpose of the conservation and development of the natural resources of this State, including the controlling, storing, preservation, and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power, and all other useful purposes, under Section 59 of Article XVI of the Constitution of the State of Texas, is hereby declared to be superior to all other uses; and for such other purposes all such districts and bodies politic shall have the power and right of eminent domain for the purpose of acquiring by condemnation any and all land, real estate, improvements, and other property owned and held for cemeteries or burial places, necessary for the construction of any dam or lying within the area to be covered by any lake or reservoir to be created by the construction of any such dam, or within three hundred (300) feet of the high water line of any such lake or reservoir.

Procedure

Sec. 2. The procedure in any such condemnation proceeding shall be as provided by Title 52 of the Revised Civil Statutes of Texas, 1925, as amended; provided that the notice stipulated in Article 3264 shall be served on the owner of the title to the land on which such cemetery is situated, and in addition thereto, general notice to all persons having relatives interred in said cemetery shall be given by publication of such notice for two consecutive weeks in some newspaper published in the English language in the county in which such cemetery is situated, and if there be no such newspaper published in such county, then in a newspaper in the nearest county in which such newspaper is published; and provided further that in assessing damages the measure of damages for the land shall be assessed as in other cases, and there shall be assessed an additional amount of damages sufficient to provide for the expense of removal and reinterment of any body or bodies interred in any such cemetery or burial place, and the expense of removing and resetting any monuments or markers erected at such graves, which additional sum shall be deposited in the registry of the court and shall be disbursed only for the purpose of removing and reinterring such body or bodies in such other cemetery within the State of Texas as may be agreed upon by the directors of such district and the relatives of the deceased person or persons, or in the event such agreement cannot within thirty days be made or no relatives appear to designate such cemetery, then in such cemetery as may be directed by the county judge of the county in which such proceedings are filed; or, in lieu of depositing such additional amount for the removal and reinterment of such body or bodies, the applicant for condemnation may give a bond in such amount as may be fixed by said county judge to cover such costs of removal and reinterment, said bond to be payable to and approved by the county judge, and conditioned that such body or bodies will be removed and reinterred as provided in this Article. [Acts 1937, 45th Leg., p. 921, ch. 441.]

The following laws, though passed as general laws, are in fact special acts relating to particular conservation and reclamation districts or authorities:

Bexar County Metropolitan Water District, Acts 1945, 49th Leg., p. 491, ch. 306.

Brazos River Conservation and Reclamation District, Acts 1929, 41st Leg., 2nd C.S., Spec.L., p. 22, ch. 13; Acts 1931, 42nd Leg., 1st C.S., p. 8, ch. 5, § 1; Acts 1934, 43rd Leg., 4th C.S., p. 3, ch. 3; Acts 1935, 44th Leg., p. 56, ch. 19; Acts 1935, 44th Leg., 1st C.S. p. 1527, ch. 368.

Central Colorado River Authority, Acts 1935, 44th Leg., p. 777, ch. 338; Acts 1937, 45th Leg., p. 680, ch. 341, § 1; Acts 1939, 46th Leg., Spec.L., p. 1045, §§ 1-5; Acts 1941, 47th Leg., p. 83, ch. 69; Acts 1947, 50th Leg., p. 1071, ch. 457, § 1.

Colorado County Flood Control District, Acts 1941, 47th Leg., p. 568, ch. 361, Art. IV; Acts 1947, 50th Leg., p. 308, ch. 184.

Comal County Water Recreational District No. 1, Acts 1933, 43rd Leg., 1st C.S., p. 198, ch. 75; Acts 1937, 45th Leg., p. 96, ch. 57.

Dallas County Flood Control District, Acts 1945, 49th Leg., p. 619, ch. 355; Acts 1947, 50th Leg., p. 1071, ch. 457, § 1.

Dallas County Park Cities Water Control and Improvement District No. 2, Acts 1947, 50th Leg., p. 1066, ch. 456.

Fayette County Flood Control District, Acts 1941, 47th Leg., p. 568, ch. 361, Art. III; Acts 1947, 50th Leg., p. 314, ch. 185.

Guadalupe-Blanco River Authority, Acts 1933, 43rd Leg., 1st C.S., p. 198, ch. 75; Acts 1935, 44th Leg., 1st C.S., p. 1615, ch. 410.

Gulf Water Supply District, Acts 1935, 44th Leg., p. 1027, ch. 361.

Harris County Flood Control District, Acts 1937, 45th Leg., p. 714, ch. 360.
Harris County Flood Control District—Donation of Taxes, Acts 1939, 46th Leg., Spec.L., p. 976; Acts 1947, 50th Leg., p. 1071, ch. 457, § 1.
Harris County Flood Control District—Election on Bonds and Maintenance Tax—Refunding Bonds, Acts 1947, 50th Leg., p. 953, ch. 407.
Harris County Flood Control District—Eminent Domain Proceedings—No Security for Costs, Acts 1947, 50th Leg., p. 952, ch. 406, § 1.
Jackson County, Fayette County and Colorado County Flood Control Districts—Donation of Taxes, Acts 1945, 49th Leg., p. 654, ch. 364; Acts 1947, 50th Leg., p. 1071, ch. 457, § 1.
Jackson County Flood Control District, Acts 1941, 47th Leg., p. 568, ch. 361, Art. II; Acts 1947, 50th Leg., p. 321, ch. 186.
Lavaca County Flood Control District, Acts 1941, 47th Leg., p. 568, ch. 361, Art. I; Acts 1947, 50th Leg., p. 301, ch. 183.
Leon River Flood Control District, Acts 1935, 44th Leg., 1st C.S., p. 1630, ch. 414.
Lower Colorado River Authority Created, Acts 1934, 43rd Leg., 4th C.S., p. 19, ch. 17; Acts 1935, 44th Leg., p. 282, ch. 102; Acts 1935, 44th Leg., 1st C.S., p. 1604, ch. 405; Acts 1937, 45th Leg., p. 694, ch. 350; Acts 1939, 46th Leg., Spec.L., p. 1048, §§ 1, 2; Acts 1941, 47th Leg., p. 657, ch. 398.
Lower Concho River Water and Soil Conservation Authority, Acts 1939, 46th Leg., Spec.L., p. 1053, §§ 1–18.
Lower Neches Valley Authority, Acts 1933, 43rd Leg., 1st C.S., p. 169, ch. 63; Acts 1934, 43rd Leg., 4th C.S., p. 47, ch. 17; Acts 1941, 47th Leg., p. 1112, ch. 570, §§ 1–4.
Lower Rio Grande Flood Control District, Acts 1935, 44th Leg., p. 731, ch. 319.
Nueces River Conservation and Reclamation District, Acts 1935, 44th Leg., 1st C.S., p. 1660, ch. 427; Acts 1937, 45th Leg., 2nd C.S., p. 1891, ch. 20, §§ 1–4, Acts 1939, 46th Leg., Spec.L., p. 1074, § 1; Acts 1943, 48th Leg., p. 701, ch. 390, §§ 1, 2; Acts 1945, 49th Leg., p. 489, ch. 305, §§ 1–2.
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Sulphur River Conservation and Reclamation District, Acts 1935, 44th Leg., 2nd C.S., p. 1714, ch. 445.
Upper Colorado River Authority, Acts 1935, 44th Leg., p. 336, ch. 126; Acts 1936, 44th Leg., 3rd C.S., p. 2099, ch. 505, Acts 1939, 46th Leg., Spec.L., p. 1060, § 1; Acts 1941, 47th Leg., p. 258, ch. 174, § 1; Acts 1943, 48th Leg., p. 270, ch. 169, §§ 1, 2; Acts 1947, 50th Leg., p. 208, ch. 119, §§ 1–4; Acts 1947, 50th Leg., p. 1071, ch. 457, § 1.
Upper Guadalupe River Authority, Acts 1939, 46th Leg., Spec.L., p. 1062, §§ 1–20.
Upper Red River Flood Control and Irrigation District, Acts 1937, 45th Leg., p. 1128, ch. 454.
Valley Conservation and Reclamation District, Acts 1933, 43rd Leg., 1st C.S., p. 186, ch. 68.
Webb County Conservation and Reclamation District, Acts 1939, 46th Leg., Spec.L., p. 1074, §§ 2–9.

V. NAVIGATION

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1. ORGANIZATION

Article 8198. [5955] Scope of district.— Navigation districts may be created so as to include therein the territory of not more than two counties or parts thereof; and such districts may or may not include villages, towns, and municipal corporations, or any part thereof. Such districts may improve rivers, bays, creeks, streams and canals within or adjacent to such districts, and construct and maintain canals

and waterways to permit of navigation or in aid thereof, and may issue bonds in payment therefor as hereinafter provided. [Acts 1909, p. 32; Acts 1921, 1st C. S., p. 113.]

Art. 8199. [5956] May include road districts.—No navigation district including within its boundaries all or parts of two counties shall include any part of any defined or special road district which has voted bonds for the construction of public roads, except upon petition signed by a majority of the property taxpayers residing in such defined or special road district or part thereof so included, unless the whole county containing such road district be included in said navigation district, when this article shall not apply. [Id.]

Art. 8200. [5956] Petition for district.—When it is proposed to create a district wholly within one county, a petition shall be presented to the commissioners court of said county, signed by twenty-five of the resident property taxpayers, or if there are less than seventy-five resident property taxpayers in the proposed district, then by one-third of such taxpayers, praying for the establishment of a navigation district, and setting forth the boundaries of the proposed district, accompanied by a map thereof, the general nature of the improvements proposed, and an estimate of the probable cost thereof, and praying for the issue of bonds and levy of tax in payment thereof, and designating a name for such navigation district, which name shall include the name of the county. Said petitioners shall make affidavit to accompany said petition of their said qualifications. When a proposed district lies in two counties, the petition shall be signed by the said number of resident property taxpayers of each county, and shall be presented to the commissioners court of the county containing the greater part of such district, which shall be the county of jurisdiction in respect to all matters concerning said district, and the name of such county shall be included in the name of such district. [Id.]

Art. 8201. [5981] Deposit.—Said petition shall be accompanied by five hundred dollars in cash, which shall be deposited with the clerk of said court, and by him held until after the result of the election for the creation of said district has been declared and entered of record by the commissioners court. If the result of said election be in favor of the establishment of said district, then said deposit shall be by said clerk returned to the petitioners, their agent or attorney; but, if the result of said election be against the establishment of said district, then said clerk shall pay out of the said five hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed district up to and including the said election, and shall return the balance, if any, to the petitioners, their agent or attorney. [Acts 1909, p. 32.]

Art. 8202. [5956] Notice of hearing.—Upon presentation of such petition, said court shall set the same down for hearing at some regular or special term, not less than thirty nor more than sixty days from such presentation; and shall order the clerk of said court to give notice of the date and the place of said hearing by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be at the court house door, and four of which shall be within the limits of said proposed navigation district; and if the district be composed of more than one county, then said notices shall be so posted in each county. Said notices shall be posted not less than twenty days prior to the time set for the hearing. The clerk shall receive one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting same. [Acts 1909, p. 32; Acts 1921, 1st C. S., p. 113.]

Art. 8203. [5957–8–9] Navigation boards in cities.—If the district includes a city or cities, or a part or parts thereof, acting under special charter granted by the Legislature, the hearing of said petition shall be had at the regular meeting place of the commissioners court before the county judge and members of said court, and the mayor and aldermen or commissioners of said city or cities; and said persons shall constitute a board to be known and designated as the Navigation Board, to pass upon the petition aforesaid. Each individual member of said board shall be entitled to a vote. A majority in number of the individuals composing said board shall constitute a quorum, and the action of a quorum shall control. The date for the hearing shall be set within the time before provided, but without reference to any term of the commissioners court, and notice thereof shall be given as before provided. The county clerk shall enter and record the proceedings of the Navigation Board in a record book kept for this purpose, which record shall be a public archive. [Acts 1909, p. 32.]

Art. 8204. [5961] Hearing on petition.—Upon the day set for the hearing of said petition, any person who may be affected thereby may appear before the said court, or navigation board, and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of the said district, to show that the proposed improvements would or would not be a public utility and would or would not be feasible or practicable, and the probable cost of such improvements, or as to any other matter pertaining to the proposed district. Said court or board shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such districts, and all matters pertaining to the creation and establishment of the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, and may adjourn hearing on any matter connected therewith from day to day; and all judgments or decisions rendered by it in relation thereto shall be final, except as herein provided. [Id.]

Art. 8205. [5962] Hearing: findings.—If it appears on said hearing that the proposed improvement is feasible and practicable and that it would be a public benefit and a public utility, said court or board shall so find, and may approve the boundaries as set out in said petition or make changes therein; otherwise it shall dismiss said petition at the cost of the petitioners, but such dismissal shall not prevent the presentation of a similar petition at a later date. No changes shall be made in said boundaries until notice thereof has been given and hearing had, as provided for the hearing on petition. If said court or board approves the boundaries as set out in the petition, or as so changed, and also decides to grant the petition, it shall then find the amount of money necessary for said improvement and all expenses incident thereto, and shall determine whether to issue bonds for said full amount, or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time they shall run, and their rate of interest, and enter all findings in its records. [Id.]

Art. 8206. [5963] Order for election.—If said findings are in favor of the establishment of the district and issuance of bonds and levy of tax therefor, the commissioners court shall order an election to vote on said proposition. Said order shall specify the amount of bonds to be issued, their maturity dates, and rate of interest, as determined under the preceding article. [Id. 1st C. S., 1921, p. 115.]

Art. 8207. [5965] Ballot.—The ballots for said election shall have printed thereon the words and none others: "For the navigation district and issuance of bonds and levy of tax in payment thereof;"

"Against the navigation district, and issuance of bonds and levy of tax in payment thereof." [Acts 1909, p. 32.]

Art. 8208. [5967] Election: declaration of result.—If the proposition carries at such election, the court shall enter the same in their minutes as follows: "Commissioners Court of ——— County, Texas, ——— term, A. D. ———: in the matter of the petition of ——— and ——— others praying for the establishment of a navigation district and issuance of bonds and levy of taxes in said petition described and designated by the name of ——— Navigation District. Be it known that at an election called for that purpose in said district, held on the ——— day of ——— A. D. ——— a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district be and the same is hereby established by the name of ——— Navigation District, and that the bonds of said district in the amount of ——— dollars be issued, and a tax of ——— cents on the one hundred dollars valuation or so much thereof as may be necessary be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund to redeem them at maturity, and that if said tax shall at any time become insufficient for such purposes same shall be increased until the same is sufficient, the metes and bounds of said district being as follows: (Giving metes and bounds.)" [Id. Acts 1st C. S., 1921, p. 116.]

Art. 8209. [5968] Navigation commissioners.—After the establishment of the district, the commissioners court or Navigation Board, by a majority vote, shall biennially appoint three navigation and canal commissioners, all of whom shall be residents of the district, and freehold property taxpayers and legal voters of the county. They shall receive for their services such compensation as may be fixed by the commissioners court and made of record. Said commissioners shall hold office for two years and until their successors have qualified, unless sooner removed by a majority vote of the commissioners court or Navigation Board for malfeasance or nonfeasance in office. All vacancies in the office of such commissioners shall be filled for the unexpired term in the same manner as original appointments to such office. [Acts 1909, p. 32.]

Art. 8210. [5969] Oath of commissioners.—Each commissioner shall first take and subscribe before the county judge of the county having jurisdiction an oath faithfully to discharge the duties of his office without favor or partiality, and to render a true account of his doings to the court or board by which he was appointed, whenever required to do so. Such oath shall be filed by the clerk of said court and preserved as a part of the records of said district. [Acts 1921, 1st C. S., p. 116; Id.]

Art. 8211. [5970] Bond of commissioners.—Each commissioner shall first give a good bond for one thousand dollars payable to the county judge for the use and benefit of said district, and conditioned upon the faithful performance of his duties. [Id.]

Art. 8212. [5971] Organization: quorum.—Said commissioners shall organize by electing one of their number district chairman and one secretary, and two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district. [Acts 1909, p. 32.]

Art. 8213. [5973] Issuance of bonds.—When said commissioners shall have determined the cost of the proposed improvements, all of the expenses incident thereto and cost of maintenance thereof, they shall certify to the commissioners court the amount of bonds necessary to be issued, and thereupon the said court, at a regular or special meeting, shall make an order directing the issuance of navigation bonds for such district in the amount so certified, not to exceed the amount authorized by said election. [Id. Acts 1st C. S. 1921, p. 116.]

Art. 8214. [5973] Additional bond issue.—If the proceeds of the original bonds should be insufficient to complete the proposed improvement or construction, or if the commissioners determine to make further construction or improvements, or shall require additional funds with which to maintain the improvements made, they shall certify to said court the necessity for an additional bond issue, stating the amount required, the purpose of the same, the rate of interest of said bonds, and the time for which they are to run. Said court shall thereupon issue such bonds, unless the amount previously authorized has been exhausted, in which case said court shall first order an election on the issuance of said bonds to be held within such district at the earliest possible legal time. The ballots for such election shall have printed thereon the words and no others: "For the issuance of bonds and levy of tax in payment thereof;" "Against the issuance of bonds and levy of tax in payment thereof." [Id.]

Art. 8215. [5974] Bonds: limit of issue.—The outstanding bonds and the additional bonds so ordered shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the last annual assessment thereof made for State and county taxation. [Acts 1909, p. 32.]

Art. 8216. [5975] Bonds: requisites.—All bonds issued under the provisions of this chapter shall be issued in the name of the district, signed by the county judge, and attested by the county clerk under the seal of the commissioners court; they shall be issued in such denominations and payable at such time or times, not exceeding forty years from their date, as may be deemed most expedient by said court, and shall bear interest not exceeding six per cent per annum. All the provisions of Subdivision 1, Chapter 6 of this title governing the approval, registration and validity of bonds of Levee Improvement Districts shall apply to all bonds issued under this chapter; and the Navigation Board or commissioners court shall require a record to be kept of such bonds by the county treasurer as for bonds of said Levee Districts. [Id. Acts 1st C. S. 1921, p. 117.]

Art. 8217. [5979] Bonds: sale.—When such bonds have been so registered, the district chairman shall offer for sale and sell said bonds on the best terms and for the best price possible for not less than the face par value thereof and accrued interest thereon. All moneys received therefor shall immediately be paid to the county treasurer, and by him placed to the credit of such district. [Acts 1909, p. 32.]

Art. 8218. [5980] Chairman to give bond.—Before said chairman shall be authorized to sell said bonds, he shall execute a good bond, payable to the county judge and his successors in office, to be approved by the county judge, for an amount to be fixed by the district commissioners, conditioned upon the faithful discharge of his duties. [Id. Acts 1923, 2nd C. S., p. 72.]

Art. 8219. [5981] Maintenance fund.—After the establishment of the district, all expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of the district shall be paid out of the "Construction and Maintenance Fund" of such district. Said fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever

source, except the tax collections applied to the sinking fund and payment of interest on the navigation bonds. [Acts 1909, p. 32.]

Art. 8220. [5987] District treasurer.—The county treasurer of the county the commissioners court of which has jurisdiction shall be treasurer of said district, and he shall open an account of all moneys received by him belonging to such district and all amounts paid out by him. He shall pay out no money except upon a voucher signed by the chairman or any two commissioners, or the commissioners court, and he shall carefully preserve on file all orders for the payment of money; and as often as required by the said commissioners or said court, he shall render a correct account to them of all matters pertaining to the financial condition of such district. [Id. Acts 1921, 1st C. S. p. 119.]

Art. 8221. [5988] Bond of county treasurer; compensation and payment of premium on bond in certain counties.—The County Treasurer upon the sale of any navigation district bonds, the proceeds of which may come in his possession or under his direction or control, shall, before receiving such proceeds, and before receiving any other funds from whatever source belonging to said district, execute a good and sufficient bond payable to the navigation and canal commissioners of such district and to their successors in office, for the benefit of said district, in an amount to be fixed by the navigation and canal commissioners of said district and to be approved by said navigation and canal commissioners conditioned that such treasurer shall faithfully execute the duties of his office and pay over, according to law, all moneys that shall come into his hands as such treasurer and shall render a just and true account thereof to the Commissioners Court of the county where said district is located and the navigation and canal commissioners of said district whenever required by law or by such Commissioners Court or navigation and canal commissioners so to do. As soon as this Act shall become effective the treasurer of said district shall give the bond required by the provisions of this Act in lieu of any other bond as such treasurer which he may have given under the law as it heretofore existed and the bond herein provided for shall remain in full force and effect so long as any funds belonging to said district are in his possession or under his control or direction. The County Treasurer shall receive such compensation for his services as shall be determined by said navigation and canal commissioners. The navigation and canal commissioners of any district already created and having no district depository may, as soon as this Act becomes effective, provide for district depository for the funds of such district by complying with the laws for the designation of county depositories where applicable; and in case such depository shall be designated by the navigation and canal commissioners and shall give a good and sufficient bond approved by the said commissioners as now provided by law for depository of county funds, then, the County Treasurer, as treasurer of such district, shall be required to deposit the funds of said district in said depository which said depository so selected shall be the depository of said district until the date of the election of the navigation and canal commissioners of said district and until its successor is selected and qualified. Within thirty (30) days after the election of navigation and canal commissioners of any district created under this Act the said navigation and canal commissioners elected shall select a depository for said district in the manner provided by law for the selection of a county depository and such depository so selected shall be the depository of said district for a period of two (2) years thereafter and until its successor is selected and qualified.

Provided further that in any county with not less than one hundred and thirty-five thousand (135,000) population and not more than one hundred and ninety thousand (190,000) population, according to the last Federal Census, the County Treasurer shall receive, as compensation for his services as treasurer of a navigation district, a salary of Fifty Dollars ($50) per month from the district, and the premium on the official bond of the County Treasurer in such county shall be paid by the said navigation and canal commissioners. [Acts 1925, 39th Leg., p. 280, ch. 103, § 1: Acts 1941, 47th Leg., p. 752, ch. 471, § 1.]

Art. 8222. [5982] Tax levy.—When bonds have been voted the Commissioners' Court shall levy and cause to be assessed and collected [1] improvement taxes annually, sufficient to pay the interest on such bonds and to provide a sinking fund to redeem said bonds at maturity. Said Commissioners' Court shall also at the time of the levy of taxes for county purposes, levy and cause to be assessed and collected for the maintenance, operation and upkeep of such district and its improvements an annual tax not to exceed ten cents on the One Hundred ($100.00) Dollar valuation and shall levy such a rate within such limit of ten cents as has been determined by the Commissioners of said district to be necessary for the maintenance, operation and upkeep of such district and its improvements and certified to said Commissioners' Court by the Commissioners of said district. All such taxes shall be levied upon all property within such district whether real, personal, mixed or otherwise. [Acts 1917, p. 66; Acts 1931, 42nd Leg., p. 212, ch. 125, § 1.]

[1] So in enrolled bill. Session Laws transposed the words "of the levy of taxes for county purposes, levy and cause to be" at this point.

Section 2 of Acts 1931 repeals all conflicting laws and parts of laws.

Art. 8223. [5983] Sinking fund investments.—The commissioners court may invest the sinking fund in such county, municipal, district or other bonds as the Attorney General shall approve. [Acts 1909, p. 32.]

Art. 8224. Chapter 3 applicable.—The provisions of Chapter 3 of this title governing Water Control and Preservation Districts shall, in the manner and to the extent herein specified, apply to all districts hereunder, and the acts therein authorized or required to be done by the district directors shall apply to the navigation commissioners:

1. Taxes.—When ordered by the commissioners court having jurisdiction of the navigation district, the tax assessors and collectors of each county in the district shall assess and collect the district taxes and pay the same to the district treasurer, in like manner as provided in such cases in said Chapter 3; [1] and the provisions of said chapter relating to taxation, except the levy of maintenance taxes, creation and investment of sinking fund, and the liability of the commissioners court for failure to order such assessment, shall apply.

2. Construction contracts.—All the provisions of said chapter governing the advertising for, letting and performance of contracts for the construction of improvements and work authorized by law shall apply, except that the bidder's deposit shall be for five per cent of the amount bid, the contractor's bond shall be for not less than twenty-five per cent of the contract price; the contract shall be signed by any two commissioners, and the partial payments made thereon shall not exceed ninety per cent of the contract price.

3. Construction work.—All the provisions of said chapter governing the right of eminent domain, employment and duties of the district engineer, co-operation with the Federal Government, and the directors' annual report, shall apply.

[1] The provisions of chapter 3 referred to are Articles 7850, 7853, 7871, and 7873, ante.

Art. 8225. [5990] May acquire property; purchase from state.—The Commissioners are empowered to acquire the necessary right-of-way and property of any kind for all necessary improvements contemplated by this title by gift, grant, purchase or condemnation proceedings. Any Navigation District heretofore or hereafter organized under this title or any General Law under which said subdivisions may be created shall have the right to purchase from the State of Texas any lands and flats belonging to said State, covered or partly covered by the waters of any of the bays or other arms of the sea to be used by said District for the purposes authorized by law with the right to dredge out or to fill in and reclaim said lands or otherwise improve the same; and the Commissioner of the General Land Office is hereby authorized and directed to sell the same upon application, as hereinafter provided, at the price of One ($1.00) Dollar per acre. The Commissioners of said District shall file an application with the Commissioner of the General Land Office, which application shall particularly describe by field notes the land sought to be purchased. At the time of filing such application, applicant shall pay or cause to be paid in cash the sum of One ($1.00) Dollar per acre to the Commissioner of the General Land Office, for all the land included in such application. If the Commissioner of the General Land Office is satisfied that the applicant is a Navigation District created as hereinbefore provided, a patent shall then be issued to said Navigation District, conveying to said District the right, title and interest of the State in the lands described in said application, and the funds derived from such sales shall be paid over by the Commissioner of the General Land Office to the proper funds of the State. Such sales shall be subject to any oil, gas or mineral leases theretofore given by the State on said lands, and all mines and minerals and mineral rights, including oil and gas in and under said land, together with the right to enter thereon for the purpose of development, are hereby reserved to the State of Texas. Provided, nevertheless, that so long as any such land shall be used by any Navigation District or by the United States Government for the purpose of navigation, same shall not be leased or entered upon or taken into possession by the State of Texas or by anyone claiming under the State of Texas for the purpose of exploring for oil, gas or other minerals. [Acts 1909, p. 32; Acts 1930, 41st Leg., 4th C.S., p. 47, ch. 27; Acts 1931, 42nd Leg., 2nd C.S., p. 38, ch. 21; Acts 1932, 42nd Leg., 3rd C.S., p. 61, ch. 26, § 1.]

Art. 8226. [5991] May enter lands.—The commissioners and the engineers from the time of their appointment are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass. [Acts 1909, p. 32.]

Art. 8227. [5999] Employés and counsel.—The commissioners are authorized to employ such assistant engineers and other employés as may be necessary, paying such compensation as they may determine, and the said commissioners are authorized to employ counsel to represent such district in the preparation of any contract, or the conducting of any proceedings in or out of court, and to be the legal adviser of the commissioners, on such terms and for such fees as may be agreed upon by them. [Id.]

Art. 8228. [6001] May sue and be sued.—All districts, by and through their commissioners, may sue and be sued in all courts of this State in the name of such navigation district; and all courts of this State shall take judicial notice of the establishment of such districts. [Id.]

2. SPECIAL POWERS

A. Port Facilities

Art. 8229. Powers of certain districts.—Navigation districts provided for in this chapter created for the development of deep water navigation, having a city containing one hundred thousand population or more according to the preceding Federal census, are hereby granted, in addition to the powers conferred by this chapter, the right, power and authority to acquire, purchase, take over, construct, maintain, operate, develop and regulate wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, lighterage, lands, towing facilities, and all other facilities or aids incident to or necessary to the operation or development of ports or waterways, within the district and extending to the Gulf of Mexico, as provided in this subdivision, in addition to the power to issue bonds for the purposes above enumerated, and for the purpose either of acquiring necessary or proper lands, right-of-ways or dumping grounds, extension or improvement of belt railway lines, or construction or improvements or wharves, docks or other facilities, or aids to navigation, and to secure such obligations by liens upon the property so acquired, constructed or improved, and pledge available revenues as additional security, and such districts shall have the right to borrow funds for current expenses, and to evidence the same by warrants payable not later than the close of any calendar year for which loans are made. Such warrants shall never exceed the anticipated revenue and may bear not to exceed 6% interest. [Acts 1st C. S. 1921, p. 53; Acts 1927, 40th Leg., 1st C. S., p. 149, ch. 52, § 1.]

Art. 8230. Petition for improvements.—When the Navigation Board of such district deems it advisable for said district to avail itself of the rights, powers and authority provided herein, said board shall so certify to the commissioners court of the county wherein said district is situated, petitioning the holding of an election therefor, whereupon said court shall set a day not less than thirty nor more than sixty days thereafter, for public hearing on said petition, at such place as may be designated by the said court. [Acts 1st C. S. 1921, p. 53.]

Art. 8231. Hearing: testimony.—Upon the day set for said hearing, any person who may be affected thereby may appear before said Navigation Board and contest the necessity, advisability or practicability of said election, and may offer testimony in favor of or against said election. [Id.]

Art. 8232. Election order.—After said hearing, if the Navigation Board is still of the opinion said election should be held, the commissioners court shall order an election to determine whether or not the said district should avail itself of the rights, powers and authority provided for herein. Said order shall state the day upon which said election shall be held. [Id.]

Art. 8233. Ballots.—The ballots for said election shall have printed thereon the words and none others: "For the development of the port by the Navigation District;" "Against the development of the port by the Navigation District." The expense of said election shall be borne by the district. [Id.]

Art. 8234. Declaration of result.—If said election results in favor of the development of the port by said navigation district, then such court shall so declare the result and enter the same in the minutes of the court as follows:

"Commissioners Court ——— County, Texas, ——— term A. D. ———, in the matter of the petition of the Navigation Board of the ——— County ——— Navigation District, praying that the right, power and authority be granted said Navigation District to develop the port of ——— (here enter the name of

said municipality.) Be it known, That at an election called for that purpose in said district, held on the ——— day of ———, A. D. ———, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the development of said port by said Navigation District.

"Now therefore, it is considered and ordered by the Court that said Navigation District be and is hereby authorized to proceed with the development of said port as authorized by law." [Id.]

Art. 8235. Governing board.—The district shall thereafter be managed, governed and controlled by five commissioners, who shall be appointed as follows: Two shall be selected for a term of one and two years respectively by a majority of the city council of the municipality having a population of one hundred thousand or more situated in said district. At the expiration of the term of office of said commissioners, the city council shall select their successors annually to serve for two years. The other three shall each serve for two years. Two commissioners and their successors shall be selected by the commissioners court in like manner, and the other, who shall be chairman, shall be selected by a majority vote of said city council and by the commissioners court in joint session called by the county judge of said county. Each commissioner shall be a freehold property taxpayer and legal voter in said navigation district and shall give the bond and take the oath required by this chapter and shall serve until their successors are qualified. Their duties shall be as prescribed in this chapter, and they shall receive such compensation as the Navigation Board may fix. A majority of said commissioners shall have power to act. Said commissioners shall serve their full term of appointment unless sooner removed by the authority by which they were appointed for malfeasance, nonfeasance in office, inefficiency or other cause deemed sufficient. If any vacancy occurs through the death, resignation or otherwise of any commissioner, the same shall be filled as in the first instance by appointment for the unexpired term. All acts of the commissioners shall be subject to the supervision and control of the Navigation Board. [Id.]

Art. 8235a. Districts having city over 100,000; governing body's powers and duties.

General manager

Section 1. The governing board (hereinafter called "Board") of all Navigation Districts in this state having a city containing 100,000 population or more according to the preceding Federal Census, may appoint a General Manager of such District, who shall hold his office for a term not exceeding two (2) years, prescribe his duties, and fix his compensation. Such General Manager shall, before entering into the discharge of his duties, execute a written contract and a bond, payable to the District, in the amount of not less than Ten Thousand Dollars ($10,000.00), conditioned that he shall well and faithfully perform the duties required of him in such contract and bond, and containing such other conditions as the governing board may require. Such General Manager shall perform all duties which may be required of him in his contract of employment. He shall supervise all of the work and activities of the District, and have general direction of the affairs of the District, within such limitations as may be prescribed by the governing board.

Board; quorum; secretary

Sec. 2. The Commissioners shall constitute a Board and any three (3) members shall constitute a quorum for the transaction of any business. The Chairman or, in his absence, a Chairman pro tem, shall preside and the General Manager or any member of the Board may be appointed as Secretary.

The Board shall require the Secretary to keep suitable records of all proceedings of each meeting of the Board. Such record shall be read and signed after each meeting by the Chairman or the member presiding and attested by the Secretary. Copies of all minutes shall be furnished immediately to the County Auditor. Said Commissioners shall have a seal on which shall be engraved the name of the District, and said seal shall be kept by the Secretary and used in authentication of all acts of the Board.

Contracts; purchases

Sec. 3. No contract may be made by the Board which encumbers future revenues of the District, unless the Commissioners Court shall have levied a special tax therefor, or unless the revenues of a particular facility or facilities are encumbered to discharge the obligation.

The Board shall be authorized to make, or to authorize the General Manager to make, routine purchases or contracts not to exceed the sum of One Hundred Dollars ($100.00) upon requisitions signed by at least two (2) Commissioners, or the General Manager, which requisitions shall be executed at least in triplicate, one (1) copy to be delivered to the person, firm or corporation from whom the purchase is made, one (1) copy to be delivered to the County Auditor, and one (1) copy to remain on file with the Board, before any purchase shall be made. Such purchases and requisitions shall be subject to ratification and approval at the next succeeding meeting of the Board.

In cases in which the materials, supplies, machinery, equipment, or other items sought to be purchased or the contract sought to be made shall exceed One Hundred Dollars ($100.00) but not exceed One Thousand Dollars ($1,000.00), it shall not be necessary to advertise for bids but sealed proposals shall be asked from at least three (3) persons, firms, or corporations, or from as many more as in the opinion of the Board may appear advisable, or as offer to bid based upon written specifications. The substance of the bids shall be tabulated by the Secretary in the minutes. Copies of all specifications shall be filed with the County Auditor at least forty-eight (48) hours in advance of the awarding of any contract.

In cases in which the materials, supplies, machinery, equipment or other items sought to be purchased or the contract sought to be made shall exceed One Thousand Dollars ($1,000.00), written specifications shall be filed with the County Auditor and advertisement shall be published once a week for two (2) successive weeks or for such added time as the Board may require in a daily newspaper published within said District, the first publication to be fourteen (14) days prior to the date of the opening of the bids, in which advertisement shall be stated the items or things to be purchased or the contract sought to be made; the time and the place of the opening of the bids; and the place where specifications may be obtained. The specifications shall state in detail what is desired; shall require that bids be sealed; and shall require the attachment to said bid of a certified or cashier's check payable to the Navigation District, drawn on a bank which is a member of the Federal Reserve System, for five per cent (5%) of the total amount of the bid, conditioned that the successful bidder will enter into a contract and give bond as required by the specifications. All such contracts shall be awarded by the Board at a regularly scheduled or specially called meeting; shall be reduced to writing; executed for the District by the Chairman or General Manager; and filed with the proper officers of said District with a copy thereof filed with the County Auditor. Before any contract or requisition shall be placed into effect or become binding upon the Navigation District, it shall be submitted to the County

Auditor for his approval and certification that funds are or will be available to meet the contract when due and a requisition, purchase order or work order issued in triplicate, one copy to be delivered to the contractor, one copy to be delivered to the County Auditor, and one copy to remain on file with the Navigation District. Provided, however, that the provisions of this Section shall not apply in cases of public calamity where it becomes necessary to act at once to appropriate money to relieve the distress of the citizens or to protect the property of the District; in cases of unforeseen damage to Navigation District property, machinery, or equipment, or in the handling of ships where time will not permit of advertisement; nor shall they apply to contracts for professional services. In all such cases the Board shall set out in the minutes of the District that an emergency exists and the facts which gave rise to the emergency. In such cases, bids and the advertisement therefor may be waived.

Any purchase or contract made without compliance with the provisions of this Act shall be void and unenforcible in any courts in this state.

Claims and obligations

Sec. 4. All claims against the District and all obligations of the Navigation District shall be paid only after approval of claims by the Board upon warrants issued or authorized by the governing board thereof after such claims have been submitted to and approved by the County Auditor. Such warrants shall be signed by the Chairman or by three or more of the Navigation Commissioners, or by the General Manager when authorized by order of the governing board. When authorized to do so, the General Manager may execute contracts previously awarded by the governing board and may issue and sign any warrant upon the funds of the District, when the account or accounts in payment of which such warrant is issued shall have been approved and ordered paid as herein provided. The General Manager may issue requisitions to put executed contracts into effect and may issue emergency requisitions for labor and supplies not to exceed One Hundred Dollars ($100.00) provided by law. He may issue and sign all pay roll vouchers and checks, after the pay roll shall have been approved by the governing board, and payment of the sums thereon listed authorized by the Board.

Assistant to general manager

Sec. 5. In the event of the incapacity, absence, or inability of the General Manager to discharge any of the duties required of him, the Board may designate an assistant to the General Manager, to discharge any of the duties or functions required of the General Manager. Such assistant or other person shall give such bond and be subject to such limitations upon his authority as may be fixed by the order of the Board. Such appointment shall become effective when written notice of the designation and the authority vested shall have been given to the County Auditor.

Hospitalization and medical attention for employees

Sec. 6. The Board may, by an order or regulation entered in its minutes, provide for a system of hospitalization and medical attention for its employees, as a part of the compensation provided for such employees. All contracts of employment shall be in writing, and shall make reference to the regulations governing the medical attention and hospitalization benefits, and such regulations shall be a part of the contract of employment. Such regulations may be changed from time to time, as the necessities may require, in the judgment of the Board. The contracts of employment shall provide accordingly, and a copy of each contract shall be filed immediately with the County Auditor for his certificate of availability of funds before such contract shall become effective.

Authorized agents

Sec. 7. The General Manager, and such other employees as may be designated by the Board, shall act as authorized agents of the District in its warehousing activities but only upon order duly entered in the minutes of the Board and upon the filing and approval of a bond in such sum as shall be fixed by the Board guaranteeing the faithful performance of such duties.

Statistics and information; property, responsibility for

Sec. 8. Such Navigation Districts are empowered to require periodic statistics and information on rates and tonnage of all water-borne commerce from pilots, boatmen, tugboat operators, steamship and barge operators, and all employees of the District, and shall provide for an adequate inventory of all properties, real, personal, and mixed belonging to such District, and for reports on property purchased, lost, stolen, sold, or destroyed. All officers and employees shall be held responsible for all property committed to their charge or custody, and shall not receive final payment of salary upon termination of employment until all such property in their charge or custody has been properly accounted for. The County Auditor shall prescribe the inventory system, the form, manner, and time of such inventory and the making of reports to him, and he shall have access to all books, records and property of the District for such purposes.

Provisions cumulative

Sec. 9. The provisions of this Act are cumulative of the provisions of Title 128, sub-division 5, and Title 34, sub-division 2, and other applicable laws which shall remain in full force and effect except where in conflict with this Act, in which event the provisions of this Act shall control. [Acts 1945, 49th Leg., p. 130, ch. 90.]

Art. 8236. Bonds.—Such districts may issue bonds in payment for the improvements facilities, and acquisition of property authorized herein, upon compliance with the provisions of this chapter, and may also issue bonds to purchase wharves, docks, warehouses, bunkering facilities, belt railroads, lands to be used for port purposes and development, or other facilities constructed or owned by any municipality containing One Hundred Thousand population or more, as determined by the last preceding census within such district. An election shall be held therefor, and such bonds shall be issued as other bonds under this chapter. The outstanding bonds and the additional bonds so ordered shall not exceed in amount ten (10) per cent of the assessed value of the real property in such district as shown by the last annual assessment thereof made for State and County. [Acts 1921, 37th Leg., 1st C.S., p. 53, ch. 30; Acts 1927, 40th Leg., 1st C.S., p. 149, ch. 52, § 1.]

Art. 8237. Powers.—Such districts shall have all the right, power and authority herein granted, subject to the provisions of this law, and shall have all the authority granted by general or special law to navigation districts, and shall also have the fullest powers consistent with the State Constitution for the regulation of wharfage and of all facilities of or pertaining to the said port, waterways and navigation district, and shall have a right to assess and collect charges for the use of all facilities acquired or constructed in accordance with the provisions hereof. [Id.]

Art. 8238. Property rights.—Such districts may exercise the right of eminent domain as provided under the preceding subdivision, and may also acquire, and take over, by lease or rental agreements, the docks, wharves, buildings, railroads, lands, improvements and other facilities already provided, constructed or owned by any incorporated municipality situ-

ated within such district for a period of not less than twenty-five (25) years, only with the consent of the lawful authorities of such municipality, and upon such terms as may be mutually agreed upon by the district and the said municipality. No agreement for the use, acquisition or operation of such property or facilities of such municipality by the district shall be for a lease, or rental value thereof, which shall exceed the annual net revenues derived or to be derived by the navigation district after payment of the expenses of operation and maintenance of said property and facilities. The district shall have no supervision or control over such property or facilities owned, controlled or constructed by any municipality, until agreement for the lease and rental thereof by the district has been reached and made in the manner herein provided. Such districts now or hereafter leasing lands or facilities from any municipality in whole or in part, or having the right to do so under the provisions of this chapter, shall be authorized to purchase or acquire the same in the manner hereinafter set out.

The Navigation Commissioners and the officials of such municipality shall be authorized to enter into an agreement setting forth the lands and facilities to be acquired, the amount agreed upon as the purchase price thereof, and the terms of sale. The Navigation Commissioners shall be authorized to have issued in the manner provided in this Chapter, bonds of the District in such amount as represents the purchase price less any outstanding bonds previously issued by such municipality. Said bonds shall be issued, registered and sold in all respects as other bonds of the District, and the proceeds paid to the municipality. If there be outstanding bonds of the municipality, the Navigation District shall assume payment of said bonds and interest, and the Commissioners Court of the County shall levy a tax sufficient to meet the interest when due, and the amount due at the maturity of the bonds. Such taxes shall be collected as other taxes are now collected, and by the Navigation Commissioners paid to the city on or before the due dates of interest and principal for the sole purpose of paying the interest and principal on said outstanding bonds. Provided, however, that said municipality shall not be released from any obligation to the owners and holders of any outstanding bonds issued on account of the lands or facilities so purchased. Said municipality shall not levy, assess and collect any tax for interest and sinking fund thereon unless the payments from said Navigation District shall fail in whole or part in which event the municipality shall have the right to, and it shall, immediately proceed to levy and collect such tax as may be necessary to discharge the interest and meet the principal of the bonds then outstanding, and until paid, and shall further have the right to collect any and all amounts so paid on account of the Navigation District from said District and in the event of the continued failure to make said payments by the District, to take back said facilities. Provided, however, that no such bonds shall be issued or tax levied until the question of purchase of such facilities shall have been submitted to a vote of the people in said Navigation District. In addition to the requirements for submitting bonds to a vote, the notice of election shall contain a copy of the agreement, the bonds outstanding, the bonds sought to be issued by the district and the amount of taxes required to be levied. Said election shall be called and held as other elections for bonds and the ballots shall have printed thereon: "Official Ballot. For the Purchase of municipal facilities and the issuance of bonds and levy of tax in payment therefor. Against the purchase of municipal facilities and the issuance of bonds and levy of tax in payment therefor." Should said election carry by a two-thirds majority of the qualified tax paying voters voting at said election, then the same shall be declared carried and said bonds be issued and sold, and the necessary taxes levied in accordance with the provisions of this Act. [Acts 1921, 37th Leg., 1st C.S., p. 53, ch. 30; Acts 1927, 40th Leg., 1st C.S., p. 149, ch. 52, § 1.]

Section 2 of Acts 1927 provides that if any provision of the act be held invalid, such holding shall not affect the remainder which shall remain in effect.

Art. 8239. Unimproved lands.—Districts acquiring, leasing and taking over unimproved lands owned or controlled by any such incorporated municipality, may pay for the use, rent and hire of such unimproved lands, a price or rental value to be fixed by the district commissioners. If such commissioners fail or are unable to agree upon terms and conditions for the use and rental of such unimproved lands, then the district, under its right of eminent domain, may condemn such lands or parts thereof, as in its discretion the interest of the district requires. [Acts 1st C.S. 1921, p. 53.]

Art. 8240. Franchises.—Such districts shall have power to grant franchises to persons or corporations on property owned or controlled by such districts, provided said franchises are granted for purposes consistent with the provisions of this chapter, but no franchise shall be granted for a longer period than thirty years, nor shall any franchise be granted hereunder except upon the affirmative vote of at least three commissioners at three separate meetings of said commissioners, said meetings to be not closer together than one week, and no franchise shall be granted until after the same as finally proposed to be passed shall be published at the expense of the applicant in full once a week for three consecutive weeks in some daily newspaper of general circulation published within said district. Said franchise shall require the grantee therein to file his or their written acceptance thereof within thirty days from the time of the final passage of said franchise. Nothing herein shall be construed as preventing said navigation district from granting revocable licenses or permits for the use of limited portions of water front or facilities for the purposes consistent with the provisions of this chapter. [Id.]

Art. 8241. Franchise: election.—If in the opinion of the commissioners any proposed franchise should be submitted to a vote of the people, they shall so certify to the commissioners court, whereupon said court shall order an election thereon at the earliest legal time. At said election any resident of said district qualified under the Constitution and laws of this State to vote for Governor in a general election shall be qualified to vote. [Id.]

Art. 8242. Ballots.—The ballots used for voting upon such proposed franchise shall set forth the nature of said franchise sufficiently to identify it, and shall also set forth upon separate lines the words "For the franchise" and "Against the franchise." If at said election a majority of those voting shall vote in favor of the franchise, the same shall be granted; otherwise said franchise shall be of no force and effect. [Id.]

Art. 8243. Petition protesting franchise.—If prior to the date when any franchise has been granted by the commissioners, a petition signed by qualified voters of said district equal in number to ten per cent of the total vote cast at the last general election for State officers, shall be presented to the commissioners court protesting against the enactment or granting of said franchise, it shall be suspended from taking effect, and immediately upon the filing of such petition the commissioners court shall order an election upon said proposed franchise, which said election shall be governed by the provisions of the two preceding articles. [Id.]

Art. 8244. District Depositories.—The navigation and canal commissioners of all navigation dis-

tricts, whether created pursuant to Section 52 of Article 3 or Section 59 of Article 16 of the Constitution, shall select a depository or depositories for such district under the same provisions as are now or may hereafter be provided by law for the selection of the depository for the counties in this State. The navigation and canal commissioners in the selection of depositories shall act in the same capacity and perform the same duties as is incumbent upon the county judge and the members of the county commissioners' court in the selection of the county depository. Such depository or depositories selected or to be selected for such navigation district shall have all the powers and duties in the execution of a depository bond or bonds and/or in the pledging of collateral in lieu of or in addition to a personal surety or surety company bond as now provided by law or as may be provided by law in the selection of county depositories. When such depository or depositories have given bond or bonds as provided by law and the same have been approved by the navigation and canal commission, the county treasurer shall be required to give only such bond as the navigation and canal commissioners may require. [Acts 1st C.S. 1921, p. 53; Acts 1933, 43rd Leg., 1st C.S., p. 266, ch. 94, § 1.]

Art. 8245. Employes; County Auditor, duties and compensation.—Such commissioners may employ such persons as they may deem necessary for the construction, maintenance, operation, and development of the Navigation District, its business and facilities, prescribe their duties and fix their compensation, and the County Auditor, as Auditor for such Navigation District having large port facilities, shall make such additional reports and perform such accounting services in addition to those now required by law as may be reasonably incident to the proper conduct of the business of such districts, provided the compensation of the County Auditor who shall act hereunder and under the provisions of Title 34, Subdivision 2, shall be fixed and determined by the judge of the District Court or courts having jurisdiction in said county after due hearing with respect to the amount and value of the services performed, which amount shall be paid monthly from the funds of said Navigation District, and further provided that the maximum amount which may be allowed by said District Judges for said services shall not exceed the amount now being paid. [Acts 1st C.S. 1921, p. 53; Acts 1935, 4th Leg., p. 316, ch. 119, § 1.]

Art. 8246. Contracts.—The provisions governing letting of contracts for navigation districts shall apply in all cases consistent with the provisions of this law; provided, that in case of emergency, contracts may be let by the commissioners not exceeding one thousand dollars without advertisement for bids, and in case of urgent necessity or present calamity, advertisement for bids may be waived. [Acts 1st C.S. 1921, p. 53.]

Art. 8247. City police powers.—Nothing herein shall repeal or affect the police powers of any municipality within the navigation district, or any law, ordinance or regulation authorizing and empowering such municipality to exercise such powers as to any navigable stream or aids to navigation and facilities therefor, in a navigation district, not in conflict with this chapter. [Id.]

Art. 8247a. Additional powers to navigation districts for improvement of port facilities.

Wharves, warehouses, elevators, etc.

Section 1. Any navigation district heretofore organized or hereafter to be organized under any of the provisions of the Constitution or laws of the State of Texas, in addition to all other powers conferred by law is hereby given authority and shall hereafter have power in the manner hereinafter provided to acquire, purchase, construct, enlarge, extend, repair, maintain, operate or develop wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, and facilities, lightering facilities and towing facilities, and everything appurtenant thereto, together with all other facilities or aids incident to or useful in the operation or development of the district's ports and waterways or in aid of navigation and commerce thereon.

Fees and charges for use of facilities

Sec. 2. The Board of Navigation and Canal Commissioners of any district taking advantage of the provisions of this Act shall prescribe fees and charges to be collected for the use of the improvements and facilities of such district and for the use of any improvements or facilities acquired under the provisions of this Act, which fees and charges shall be reasonable and equitable and fully sufficient to produce revenues adequate to pay, and said Board of Navigation and Canal Commissioners shall cause to be paid:

(a) All expenses necessary to the operation and maintenance of said improvements and facilities. Such operating and maintenance expenses payable from current revenues shall include the cost of the acquisitions of properties and materials necessary to maintain said improvements and facilities in good condition and operate them efficiently, wages and salaries paid to the employees of the District in that connection, and such other expenses as may be necessary to the efficient operation of said improvements and facilities.

(b) The annual or semi-annual interest upon any obligations issued hereunder and payable out of the revenues of said improvements and facilities.

(c) The amount required to be paid annually into the sinking fund for the payment of any obligations issued hereunder and payable out of the revenues of said improvements and facilities.

No other charge shall be made upon the revenues derived from said improvements and facilities so long as any obligations issued hereunder shall remain outstanding and unpaid as to principal or interest; provided, however, that out of revenues which may be received in excess of those required for the purposes listed in the above sub-paragraphs (a), (b) and (c) the Board of Navigation and Canal Commissioners may pay the cost of improvements and replacements not covered by said paragraph (a) and may establish a depreciation fund.

Borrowing from Federal Emergency Administration

Sec. 3. The Board of Navigation and Canal Commissioners of any such navigation district may borrow money from the Federal Emergency Administration of Public Works of the United States, or from any other department or agency of the United States, or from any other source, and in evidence thereof issue the notes, warrants, certificates of indebtedness or other forms of obligation of such district payable solely out of the revenues to be derived from said improvements and facilities, for the purpose of obtaining funds to acquire, purchase, construct, enlarge, extend, repair, maintain, operate or develop wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants and facilities, lightering facilities, towing facilities, and everything appurtenant thereto, together with all other facilities or aids incident to or useful in the operation or development of the district's ports and waterways or in aid of navigation and commerce therein.

Obligations issued, execution, interest, etc.

Sec. 4. Each issue of obligations authorized hereunder shall constitute a separate series and shall be appropriately designated. Such obligations shall not constitute an indebtedness or pledge of the credit of

such district, shall never be paid in whole or in part out of any funds raised or to be raised by taxation, and shall contain a recital to that effect. All obligations issued hereunder shall be in registered or coupon form and if in coupon form may be registerable as to principal only, or as to both principal and interest, shall bear interest at a rate not to exceed six per cent per annum, payable annually or semi-annually, and shall be in such denominations and shall mature serially or at one time not more than forty years from their date in such manner as may be provided by the Board of Navigation and Canal Commissioners. Principal of and interest on such obligations shall be made payable at any place or places within or without the State of Texas and in the discretion of the Board of Navigation and Canal Commissioners such obligations may be made redeemable at the option of said Board prior to maturity at such premium or premiums as the Board shall determine. Such obligations shall be signed by the Chairman and Secretary of the Board of Navigation and Canal Commissioners, and the interest coupons attached thereto may be executed with the facsimile signatures of such officers. Such obligations shall be sold in such manner and at such time as the Board of Navigation and Canal Commissioners shall determine to be expedient and necessary to the interests of the district, provided, that in no event shall such obligations be sold for a price which will result in an interest yield therefrom of more than six per cent computed to maturity according to standard bond tables in general use by banks and insurance companies. In the event any of the officers whose signatures are on such obligations or coupons shall cease to be such officers before the delivery of such obligations to the purchaser, such signature or signatures, nevertheless, shall be valid and sufficient for all purposes. All obligations issued hereunder shall constitute negotiable instruments within the meaning of the Negotiable Instruments Law.

Pledge of revenues for payment of obligations

Sec. 5. Any obligations issued hereunder may be issued payable from and secured by the pledge of all the revenues derived from the operation of the improvements and facilities of the district, exclusive of any revenues derived from taxation or assessments, or may be payable from and secured by the pledge of only such revenues as may be derived from the operation of the improvements and facilities acquired with the proceeds of the sale of such obligations, or may be payable from and secured by the pledge of a specified part of the revenues derived from the operation of the improvements and facilities of the district, all as may be provided in the proceedings authorizing the issuance of such obligations. If more than one series of obligations shall be issued under the provisions of this Act payable from and secured by identical revenues, priority of lien against such revenues shall depend on the time of delivery of such obligations, each series enjoying a lien against such revenues prior and superior to that enjoyed by any other series of obligations subsequently delivered, provided, however, that as to any issue or series of obligations which may be authorized as a unit but delivered from time to time in blocks, the Board of Navigation and Canal Commissioners may in the proceedings authorizing the issuance of such obligations provide that all of the obligations of such series or issue shall be co-equal as to lien regardless of the time of delivery.

Sinking fund

Sec. 6. Any resolution or order authorizing the issuance of obligations under the provisions hereof shall provide for the creation of a sinking fund into which shall be paid from the revenues pledged to the payment of such obligations from month to month as said revenues are collected, sums fully sufficient to pay principal of and interest on such obligations. The money in such sinking fund shall be applied solely to the payment of interest on the obligations for the payment of which such fund is created and for the retirement of said obligations at or prior to maturity in the manner herein provided. The Board of Navigation and Canal Commissioners may at the time obligations are authorized hereunder provide that all money in such sinking fund in excess of the amount required for the payment of interest on and principal of such outstanding obligations for such period as it may determine shall be expended once each year and pursuant to its orders in the purchase of obligations for the account of which such sinking fund has been accumulated, if any of such obligations can be purchased at a price which shall seem reasonable to the Board, and may provide that in the event such obligations contain an option permitting retirement prior to maturity then such excess sums shall be paid out as aforesaid for the purchase of such obligations, but that if the Board shall be unable to so purchase sufficient obligations of said issue to absorb all such surplus it shall call for redemption, a sufficient amount of such obligations to absorb so far as practicable the entire surplus remaining in said sinking fund. It may be provided that any excess in the sinking fund which cannot be applied to the purchase or redemption of obligations shall remain in said sinking fund to be used for payment of principal or interest when due, or for the subsequent call of obligations for purchase or redemption in the manner above provided.

Covenants as to management and operation of improvements

Sec. 7. Any resolution or order authorizing the issuance of obligations hereunder may contain such covenants with the holders of the obligations as to the management and operation of said improvements and facilities, collection of fees and charges for the use thereof, disposition of such fees and charges, issuance of future obligations and creation of future liens and encumbrances against said improvements and facilities and the revenues thereof and other pertinent matters, as may be deemed necessary to insure the marketability of said obligations, provided such covenants are not inconsistent with the provisions of this Act.

Revenues set aside monthly for sinking fund

Sec. 8. Any resolution or order authorizing the issuance of obligations hereunder shall provide that the revenues from which such obligations are to be paid and which are pledged to the payment of such obligations shall from month to month as the same shall accrue and be received, be set apart and placed in the sinking fund and disbursed in the manner hereinabove provided. In fixing and determining the amount of revenues which shall be so set aside, the Board of Navigation and Canal Commissioners shall provide that the amount to be set aside and paid into said fund in any year or years shall be not less than a fixed sum, which sum shall be at least sufficient to provide for the payment of the interest on and principal of all obligations maturing and becoming payable in each such year, together with a surplus or margin of ten per cent in excess thereof.

Holders of obligations may compel performance of duties

Sec. 9. Any holder of obligations issued hereunder or of coupons originally attached thereto, may either at law or in equity, by suit, action, mandamus, or other proceeding, enforce and compel performance of all duties required by this Act to be performed by the Board of Navigation and Canal Commissioners, including the making and collection of reasonable and sufficient fees or charges for the use of the improvements and facilities of the district, the segregation of the income and revenues of such improvements and facilities, and the application of such income and revenues pursuant to the provisions of this Act.

Mortgage as additional security

Sec. 10. As additional security for the payment of any obligations issued hereunder, the Board of Navigation and Canal Commissioners may in its discretion have executed in favor of the holders of such obligations an indenture, mortgaging and encumbering the improvements, facilities and properties acquired with the proceeds of the sale of such obligations, and may provide in such encumbrance for a grant to any purchaser or purchasers at foreclosure sale thereunder of a franchise to operate such improvements, facilities and properties for a term of not over fifty years from the date of such purchase, subject to all laws regulating same then in force. Any such indenture may contain such terms and provisions as the Board of Navigation and Canal Commissioners shall deem proper and shall be enforcible in the manner provided by the laws of Texas for the enforcement of other mortgages and encumbrances. Under any sale ordered pursuant to the provisions of such mortgage or encumbrance, the purchaser or purchasers at such sale, and his or their successors or assigns, shall be and hereby are vested with a permit and franchise to maintain and operate the improvements, facilities and properties purchased at such sale with like powers and privileges as may theretofore have been enjoyed by the district in the operation of said improvements, facilities and properties. The purchaser or purchasers of such improvements, facilities and properties at any such sale, and his or their successors and assigns, may operate said improvements, facilities and properties as provided in the last above sentence or may at their option remove all or part of said improvements, facilities and properties for diversion to other purposes. Any statutes of the State of Texas pertaining to the granting of franchises shall not be applicable to the authorization or execution of any mortgage or encumbrance entered into pursuant to the provisions of this Act, nor to the granting of any franchise hereunder.

Deposit of proceeds of obligations and payment

Sec. 11. The proceeds of the sale of any obligations issued hereunder may be deposited in such bank or banks as may be agreed upon between the purchaser at such sale and the Board of Navigation and Canal Commissioners, and may be deposited and paid out pursuant to such terms and conditions as may be so agreed upon, it being expressly provided that the statutes of Texas pertaining to the deposit of navigation district funds in the depository of such district shall not be applicable to the deposit of the proceeds of such sale. Any part of the proceeds of the sale of obligations issued hereunder which may remain unexpended after the project for which the obligations were authorized has been completed may be paid into the sinking fund for the payment of said obligations and be used only for the payment of principal of such obligations, or for the purposes of acquiring such outstanding obligations by purchase in the manner hereinabove provided.

Insurance of improvements for protection of obligations

Sec. 12. The Board of Navigation and Canal Commissioners is authorized to enter into an agreement or agreements with the purchaser or purchasers of any obligations issued hereunder under the terms of which such Board shall agree to keep all of the improvements and facilities, the revenues of which are pledged to the payment of such obligations, insured with insurers of good standing against loss or damage by fire, water or flood, and also from any other hazards customarily insured against by private companies operating similar properties, and to carry with insurers of good standing such insurance covering the use and occupancy of such property as is customarily carried by such private companies. The cost of such insurance shall be budgeted as maintenance and operation expense and such insurance shall be carried for the benefit of the holders of such obligations.

Contracts, leases and agreements authorized

Sec. 13. Any navigation district taking advantage of the terms of this Act, in addition to the other powers hereinabove set out, shall have general power and authority to make and enter into all contracts, leases and agreements necessary or convenient to the carrying out of any of the powers granted in this Act, which contracts, leases or agreements may be entered into with any person, real or artificial, any corporation, municipal, public or private, and any government or governmental agency, including those of the United States and the State of Texas. Any and all contracts, leases or agreements entered into pursuant hereto shall be approved by Resolution of the Board of Navigation and Canal Commissioners of such District, and shall be executed by the Chairman and attested by the Secretary thereof.

Obligations exempt from taxation

Sec. 14. Any obligations issued pursuant to the provisions of this Act shall be exempt from taxation by the State of Texas or by any municipal corporation, county, or other political subdivision or taxing district of the State.

Refunding obligations

Sec. 15. Any navigation district issuing obligations under the provisions hereof may thereafter authorize and issue its refunding obligations on such terms as its Board of Navigation and Canal Commissioners may deem advisable for the purpose of providing for the retirement of any such outstanding obligations, either due or to become due, which refunding obligations may be either exchanged for like par amounts of such outstanding obligations or may be sold and the proceeds of the sale so applied. Any refunding obligations authorized and issued pursuant hereto shall be subject to the provisions of this Act pertaining to the issuance of other obligations and shall be secured in all respects to the same extent and be payable from the same revenues as were the obligations refunded thereby.

Conversion of district into navigation district

Sec. 16. If the Board of Navigation and Canal Commissioners of any district heretofore organized under the provisions of Section 52 of Article 3 of the Constitution which has not become converted into a navigation district operating under the provisions of Section 59, Article 16 of the Constitution shall find it expedient in order to avail said district of the provisions of this Act to convert such district into a navigation district operating under the provisions of Section 59, Article 16, such conversion may be accomplished in the same manner and with like effect as provided by Section 1 of Chapter 103 of the General Acts of the First Called Session of the Forty-first Legislature, 1929, as now existing or hereafter amended,[1] except that all proceedings and hearings had in connection with such conversion shall be adopted and conducted by the Board of Navigation and Canal Commissioners of said district instead of by the Navigation Board of said district.

[1] Article 8263a, post.

Construction of Act

Sec. 17. This Act shall be construed as cumulative authority for the accomplishment of the purposes herein mentioned and is not to be construed to repeal any existing laws on the same subject matter, it being the purpose and intent hereof to create an additional and alternate method for the accomplishment of such purposes. This Act, without reference to other statutes of the State of Texas, shall constitute full authority for the authorization and issuance of obligations hereunder and for the accomplishment of

all things herein authorized to be done, and no proceedings relating to the authorization or issuance of such obligation or the doing of such things shall be necessary except such as are herein required, and neither the Bond and Warrant Law of 1931 or any other provisions of the laws of the State of Texas pertinent to the authorization or issuance of obligations, the operation and maintenance of ports, canals and water way, the granting of franchises or permits, the right to elections or referendum petitions, or in anywise impeding or restricting the carrying out of the acts authorized to be done hereunder or acts done pursuant hereto. This Act being necessary for and intended to secure the safety, convenience and welfare of the citizens of navigation districts in the State of Texas, shall be liberally construed to effectuate the purposes hereof.

Improvements payable from revenues other than taxes

Sec. 18. No navigation district shall, in the operation, maintenance or repair of any improvements or facilities acquired, purchased or constructed under the provisions of this Act, incur any indebtedness or assume any liability or obligation payable out of taxes; and any and all liabilities and obligations so arising shall be payable solely out of the revenues from such improvements and facilities which may be applicable thereto as herein authorized.

Pilot or pilotage laws unaffected

Sec. 19. It is expressly hereby provided that nothing in this Act contained shall be construed to amend, repeal or affect the laws relating to pilots and pilotage, their appointment and remuneration.

Partial invalidity

Sec. 20. If any paragraph, clause or provision of this Act shall be held unconstitutional the remainder hereof shall remain in full force and effect. [Acts 1933, 43rd Leg., 1st C.S., p. 303, ch. 111.]

Art. 8247b. Additional powers conferred on navigation districts.—Sec. 1. That any Navigation District heretofore organized or hereafter to be organized, under any of the provisions of the Constitution or laws of the State of Texas, in addition to all other powers conferred by law, is hereby given authority and shall hereafter have and exercise the following powers and in the following manner:

Sub-Sec. (a). Such Navigation Districts, in which the United States government does not participate as a Navigation project, may construct out of any funds belonging to such district, except Interest and Sinking Funds, any turning basin, storage basin, harbor, yacht basin, and/or any facilities which may in the judgment of the Navigation and Canal Commission be necessary or useful in developing and utilizing such waterway project for navigation purposes, or in aid thereof, and may own or lease a dredge or dredges and other equipment for the construction and/or maintenance of the same.

Sub-Sec. (a-1). Provided that either owned or leased dredge or dredges and/or other equipment shall not engage in any work or service for hire or non-hire on any State or Federal waterway which is not a necessary adjunctive part of such Navigation District as defined above in Sub-Section (a), but such equipment shall be confined to use on such waters as are under control of the Navigation District or a necessary adjunctive part thereof and nothing in this Act shall give to any Navigation District power or right to borrow or receive money from any source or to levy taxes upon the taxable property within and coming under the jurisdiction of said Navigation District for the purpose of building tugs, barges, scows, dredges, pile driver or other floating equipment to be used in any manner upon any of the waters of the United States other than those waters coming under the jurisdiction of the Navigation District as defined in this Act or in the waters necessarily adjunctive to use of such Navigation District as set forth in Sub-Section (a).

Sub-sec. (b). Such Navigation District, through its Navigation and Canal Commission, shall have power to lease for oil, gas and minerals all rights-of-way, spoil grounds, spoil basins, or any other lands owned by such Navigation District, provided such leasing shall not interfere with the use of or obstruct any waterway, natural or artificial, of such Navigation District for navigation purposes. Before such lease or leases may be executed by the Navigation and Canal Commissioners of such District upon all or any part of such land, the Navigation and Canal Commission shall cause a notice to be published in some newspaper of general circulation within said Navigation District, at least once per week for a period of ten days next preceding the execution of such lease, requesting bids on such leases, which notice shall contain the approximate amount of land offered for leasing, the general location thereof, the time and place when such bids shall be opened and that each bid shall be accompanied by a certified check, bank draft, cashier's check or bidder's bond with a responsible surety in an amount equal to the rental and/or bonus offered for such lease over and above the one-eighth royalty, to guarantee that such bidder will perform the terms of his bid, providing the same is accepted by the Navigation and Canal Commission and which notice shall state that the Navigation and Canal Commission reserves the right to reject any or all bids. The Navigation and Canal Commission may lease all or any part of such land providing that such lease is awarded to the highest and best bidder for the same and shall reserve at least one-eighth royalty of all gas, oil or minerals in or produced upon said land, and said lease shall contain such other provisions as shall be reasonably necessary to protect the interests of the Navigation District, and in no event shall be less favorable to the navigation district than customary commercial leases in such locality, such leases to be executed by the Chairman and Secretary of the Navigation and Canal Commission pursuant to an order entered in the minutes thereof, which shall, among other things, give the consideration for such lease.

Sub-Sec. (c). Such Navigation District may sell or lease all or any part of any surplus lands owned by it, whether said lands be acquired by gift, purchase or in settlement of any litigation, controversy, or claim in behalf of the district, or in any other manner, provided such lands are not necessary to be used by such Navigation District in connection with the development of such navigation project, and provided further that such sale or lease shall be made in the manner provided in this sub-section. Before making such sale or lease, the Navigation and Canal Commission shall cause to be published in some newspaper of general circulation within said Navigation District, at least once per week for a period of ten days next preceding the execution of such deed, contract for sale, or lease, a notice requesting bids on such land, which notice shall contain the approximate amount of land offered for sale or lease, the general location thereof, the time and place when such bids shall be opened and providing that each bid shall be accompanied by a certified check, bank draft, cashier's check or bidder's bond, with a responsible surety, or sureties, each in an amount equal to the bid for such land or for such lease, to guarantee that such bidder will perform the terms of his bid, providing such bid is accepted by the Navigation and Canal Commission, and which such notice shall further provide that the Navigation and Canal Commission reserves the right to reject any or all bids. After the publication of such notice, as above provided, the Navigation and Canal Commission may sell or lease all or any part of such land, provided that such sale or lease is awarded to the highest and best

bidder for the same and shall enter an order in the minutes of the Navigation and Canal Commission confirming such sale, which order, among other things, shall set forth the terms thereof, including the consideration therefor, and which shall further provide that when such bidder complies with the terms of his bid, the Chairman and Secretary of the Navigation and Canal Commission shall execute a deed or lease, as the case may be, in proper form and providing further that such sale or lease shall not be made for a less sum than its reasonable market value in such locality at the time and place of such sale or lease.

Sub-Sec. (d). Such Navigation District, through its Navigation and Canal Commission, shall have absolute control over its channel or channels, or other waterways within the corporate limits of such district, turning basin, or turning basins, yacht basins, storage basins, shall have authority to prevent or remove any obstructions of the same of any kind whatsoever, and shall have authority to fix proper fees, charges, and tolls for the use of any channel, canal, waterway, turning basin, storage basin, yacht basin, in addition to proper charges made for any facilities as heretofore provided by law, by any ship, boat, or vessel or any other character of craft used for water transportation for commercial purposes, provided commercial purposes as used in this Act shall mean any common carrier, contract carrier, public or private carrier, who shall transport or cause to be transported persons, commodities, goods, wares, or merchandise for hire or compensation; provided further that the provisions of this Sub-Section of this Act shall not apply to navigation projects owned or constructed by the United States government as a navigation project, but such navigation projects so owned or constructed shall be governed by Section 5 of Title 33 of the United States Code, insofar as the same may be inconsistent herewith.

Sub-Sec. (e). Such Districts shall be controlled by Sections 18, 19, 20, 21 and 22 of Acts 1932, 42nd Legislature, Third Called Session, Page 63, Chapter 27.[1]

[1] Article 8263e, post.

Sec. 2. This Act shall be cumulative of all other laws affecting Navigation Districts. The powers specifically granted herein shall not be a limitation upon the general grants of power in this Act.

Sec. 3. If any part of this Act shall be held unconstitutional, it shall not affect the remainder of such Act, but the same shall remain in full force and effect. [Acts 1935, 44th Leg., p. 368, ch. 134.]

Art. 8247c. Lease to United States, or agency thereof, of lands and facilities by navigation districts containing municipalities of 100,000 or more.

Section 1. Any Navigation District heretofore organized, or hereafter to be organized, under General or Special Law, which Navigation District contains a municipality which has one hundred thousand (100,000) population or more by the last preceding or by any future Federal Census, is hereby granted, in addition to all the powers now conferred upon such Navigation District, the right, power, and authority to lease any of its lands or facilities to the United States Government, or any agency thereof, or to any person, firm, or corporation whose activities are connected with, or contribute to, the construction, maintenance, operation and development of the port and its facilities and of its waterways, for any purpose expressly authorized by the statutes creating and empowering such Districts; and, in addition thereto, for the purpose of manufacturing or repairing vessels, or parts thereof, or for the construction, fabrication, operation and repair of buildings, shipways, drydocks, piers, railways, office buildings, shops, or other facilities and structures thereon, for the use or benefit of the United States Government, or of such person, firm, or corporation; and for similar purposes connected with the development and operation of ports.

Sec. 2. Such lease shall be upon such terms and conditions, and contain such provisions and stipulations, and be in such form, as may be agreed upon between the Navigation Commissioners and the lessee, provided that, if such lease is for a term of ten (10) years or less, advertisement thereof may be dispensed with where the lease is with the United States Government or any agency thereof, or with any person, firm, or corporation contracting with the United States Government or any agency thereof, or with any person, firm, or corporation whose activities are connected with, or contribute to, the construction, maintenance, operation, and development of the port and its facilities and its waterways, or whose activities are connected with commerce and navigation.

Sec. 3. Such lease, when authorized by the Navigation Commissioners, shall be executed on behalf of the Navigation District by the Chairman or Vice-chairman of such Navigation District and attested by its Secretary or Assistant-Secretary, and when so executed, shall become immediately effective.

Sec. 4. If any part of this Act shall be held to be unconstitutional or void, it shall not affect the other portions of this law.

Sec. 5. All laws and parts of laws in conflict herewith are to the extent of such conflict hereby repealed.

Sec. 6. This Act is not to be construed as a limitation upon, but is a grant of additional power to, such Navigation Districts and shall not affect their present authority to grant leases and revocable permits for limited periods of time without advertising, except in cases of mineral leases and franchises, where the advertising shall be as presently provided by the statutes. [Acts 1941, 47th Leg., p. 8, ch. 6.]

Art. 8247d. Additional powers conferred on navigation districts for improvements without taxation.

Power to borrow money and encumber property and franchise

Sec. 1. Any navigation district organized or hereafter to be organized under any of the provisions of the Constitution or Laws of this State created for the development of deep water navigation in addition to the other powers conferred by law, is hereby granted and shall hereafter, in addition, have the power to borrow money and to mortgage and encumber any part or all of its properties and facilities and the franchise and revenues and income from the operation thereof and everything pertaining thereto acquired or to be acquired to secure the payment of funds to purchase, build, improve, enlarge, extend, or repair any of its wharves, docks, warehouses, levees, bulkheads, canals, waterways, or other aids to navigation and as additional security therefor by the terms of such encumbrance may pledge and encumber the net income and revenues from the operation of the properties and facilities of said district and may provide in such encumbrance for a grant to the purchaser under sale or foreclosure thereunder of a franchise to operate the property and facilities so encumbered for a term of not over twenty (20) years after such purchase, subject to all laws regulating same then in force.

Obligations a charge on encumbered property and facilities only

Sec. 2. No such obligation shall ever be a debt of such district but solely a charge upon the property and facilities so encumbered and such revenues and income shall never be reckoned in determining the power of such navigation district to issue any bonds for any purpose authorized by law.

Obligations issued; interest; maturity, etc.

Sec. 3. Such districts shall have the power to issue evidence of such indebtedness secured by said encumbrance bearing interest not exceeding six (6) per cent per annum and maturing not to exceed twenty (20) years after date thereof but said encumbrance and said evidences of indebtedness shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Lien on revenues; foreclosure of encumbrance

Sec. 4. When the revenues and income of said properties and facilities of a navigation district shall be encumbered under this law the expense of operation and maintenance necessary to render efficient service of said properties and facilities shall always be a first lien and charge against such revenues and income prior to and superior to the lien of said encumbrance. No encumbrance shall be foreclosed because of default of said district until said default has existed for a period of ninety (90) days and notice thereof has been served upon the governing body of said district.

Trustee to enforce foreclosure; franchise to purchaser under foreclosure

Sec. 5. The encumbrance may provide for a trustee to enforce foreclosure and in the event of foreclosure may provide for the grant of a franchise to the purchaser under foreclosure to operate the properties encumbered for a period not to exceed twenty (20) years from the date of default and the district shall have the option at any five-year period for twenty (20) years after default to repurchase said properties upon reasonable terms and at reasonable prices to be set forth in said encumbrance.

Borrowing for current expenses

Sec. 6. Such district shall also have the right to borrow funds for current expenses and to issue warrants therefor, payable not later than the close of any calendar year for which loans are made, such warrants not to exceed in the aggregate the anticipated revenue of the district and to bear interest not to exceed six (6) per cent per annum.

Management and control by district commissioners

Sec. 7. The management and control of any such property and facilities so encumbered during the time they are encumbered shall be in the hands of the Commissioners of said district as provided by law.

Encumbering properties, facilities, franchises, revenues, etc.; notice of hearing

Sec. 8. Whenever any such navigation district proposes to borrow money and to mortgage and encumber any part or all of its properties and facilities and franchises and revenues and income from the operation thereof, for the purposes contemplated and authorized by Section 1 hereof, the Commissioners of such district shall issue notice of intention to authorize and to issue the evidence of any such indebtedness, and such notice shall include a statement of the amount and purpose of the proposed indebtedness, and it shall be the further duty of such Commissioners to fix a time and place at which a public hearing shall be held in respect of such proposed indebtedness, and the date of such hearing shall be not less than fifteen (15) nor more than thirty (30) days from the date of the resolution of the Commissioners issuing such notice. Such notice shall inform all persons of such time and place of hearing, and of their right to appear at such hearing and contend for or protest the creation of such indebtedness. The Secretary of the Commissioners of the district shall post true copies of such notice in three (3) public places within the district, and one copy at the door of each county courthouse that may be situated within the district. Said notice shall be posted for ten (10) days prior to the date of hearing. Said notice shall also be published in a newspaper of general circulation in the district, if a newspaper is published therein, one time, and at least five (5) days prior to such hearing. If no newspaper is published in such district, then such notice shall be published in some newspaper published in any county situated in whole or in part within the district. The duties herein imposed upon the Secretary may be performed by any Commissioner of the district, or the Assistant Secretary.

Hearing on encumbering properties, facilities, revenues, etc.

Sec. 9. At the time and placed set for such hearing, or such subsequent date as may then be fixed, the Commissioners shall proceed to hear and to determine all matters in respect of the proposed indebtedness. Any person interested may appear before the Commissioners in person or by attorney and contend for or protest the creation of the proposed indebtedness. Such hearing may be adjourned from day to day and from time to time, as the Commissioners may deem necessary. If upon the hearing it is determined by the Commissioners that the proposed improvements are necessary, feasible, practicable, and are needed, and will benefit the property in such district, then such Commissioners may adopt a resolution or order providing for the creation of the proposed indebtedness, and the issuance of the evidence thereof; and such Commissioners are authorized and empowered to adopt all necessary resolutions, orders, certificates, and trust indentures in respect to the issuance, sale, and delivery of the securities evidencing such indebtedness.

Obligations; execution; requisites

Sec. 10. Each note, warrant, or other security evidencing any indebtedness created under the provisions of this Act shall be signed by the Chairman and countersigned by the Secretary of the Commissioners of such district, and the seal of the district shall be impressed thereon; and each note, warrant, or other security may be registered as to principal by the trustee named and designated by the Commissioners of the district in the trust indenture executed by them to secure payment thereof.

Certain articles inapplicable

Sec. 11. The provisions of Articles 8240, 8241, 8242, and 8243, Revised Civil Statutes, 1925, relating to the grant of franchises by navigation districts, shall not apply to the grant of any franchises under authority of Section 5 hereof.

Sale of obligations

Sec. 12. The evidences of indebtedness hereby authorized may be sold by the Commissioners of the district on the best terms and for the best price possible.

Commissioners to supervise proceedings for borrowing money, etc.

Sec. 13. All proceedings to be taken and acts and things to be done in connection with the borrowing of money hereunder by any such district, and the mortgaging and encumbering of its properties and facilities, and the franchise and revenues and income from the operation thereof, and the issuing of its evidence of indebtedness, shall be taken and done by and under the supervision of the Commissioners of such district, it being the intention hereof that neither the Commissioners Court of any county lying in whole or in part within the boundaries of such district, nor the Navigation Board established for such district under the provisions of General Law governing the same shall be required to take any action in connection therewith nor to approve or ratify any proceedings so taken by the Commissioners of the district or any act

or thing done by said Commissioners in such connection.

Validation of acts of commissioners

Sec. 14. In case any navigation district has commenced proceedings in respect to the creation of indebtedness under authority hereof, and notice issued and given in respect thereto, and hearing held thereon in accordance with the provisions and requirements of this Act, or any other law, General or Special, all acts and proceedings had and done in connection therewith by the Commissioners of the district, in respect to such indebtedness, and securing the payment thereof, are hereby ratified, confirmed, legalized, approved, and validated; and power and authority is hereby expressly conferred upon the Commissioners of any such district to pass and adopt all orders and resolutions, and to do all other and further acts necessary in the issuance and sale of said evidences of indebtedness.

Construction of Act

Sec. 15. This Act shall be construed as cumulative authority for the accomplishment of the purposes herein mentioned and not to be construed as repealing any existing laws on the same subject matter, it being the intent and purpose hereof to create an alternate and additional and more adequate method for the accomplishment of such purposes. [Acts 1941, 47th Leg., p. 53, ch. 38.]

B. Pilots

Art. 8248. Pilot Board.—The navigation and canal commissioners of any navigation district included in Part A of this subdivision, in connection with their other duties as such commissioners, shall constitute a Pilot Board, and be commissioners of pilots and their terms of office as such shall be contemporaneous with their terms of office as navigation and canal commissioners. No person who is engaged directly or indirectly in the towing business or in any pilot boat, or in any other business affected by or connected with the performance of his duties as a commissioner of pilots, shall be a member of such pilot board. [Acts 4th C. S., 1920, p. 3; Acts 1923, p. 42.]

Art. 8249. Jurisdiction.—Such navigation districts shall have exclusive jurisdiction as hereinafter defined over the pilotage of boats between the Gulf of Mexico and their respective ports. as well as of intermediate stops or landing places for such boats upon navigable streams wholly or partly within such navigation districts. [Id.]

Art. 8250. Supervision of pilots.—The right, power and authority is hereby granted to such commission to appoint, suspend or dismiss from office, branch pilots or deputy pilots of their respective ports, and to examine and determine upon their qualifications. No branch pilot or deputy pilot shall be suspended or dismissed except for misconduct, inefficiency, or inebriety on duty, and after due hearing of accusation, testimony and defense before said board of navigation and canal commissioners. [Id.]

Art. 8251. Applicant's qualifications.—Before making any appointments as branch pilot or deputy pilots, the commissioners shall examine and determine upon the qualifications for office of each applicant for the position of branch pilot or deputy pilot; and shall require of each of said applicants such terms of residence in this State preceding such appointment as they may deem advisable, not to exceed two years. [Id.]

Art. 8252. Powers of board.—The right, power and authority is further granted to such commissioners to fix rates of pilotage between the Gulf of Mexico and their respective ports, as well as intermediate stops or landing places for such boats, upon navigable streams wholly or partly within such districts; and to make, adopt and enforce all rules and regulations which they deem advisable in the matter of appointment, qualification and regulation of pilots and deputy pilots as may be needed for the government of pilots and their deputy pilots and the proper operation of their respective ports, not inconsistent with the Federal regulations thereof, the Constitution of Texas, or the provisions of this law. [Id.]

Art. 8253. Branch pilot license.—All branch pilots appointed under and in accordance with this law or the rules and regulations of such navigation district shall enter into bond with one or more good and sufficient sureties in the sum of five thousand dollars, payable to the Governor, conditioned upon the faithful performance of the duties of his office. Said bond shall be approved by the commissioners of such district, and shall be deposited in the office of the Secretary of State. Each pilot shall also take the official oath, which shall be endorsed on said bond. Upon the filing of said bond, and the taking of said oath, the commissioners of such district shall certify to the Governor that each branch pilot has duly qualified to act as such, and thereupon the Governor shall issue to said branch pilot, in the name and under the seal of the State, a commission to serve as branch pilot from such ports, across any intermediate bars, to the open gulf; and said commission shall be for a term of two years, unless such branch pilot shall be dismissed from service by said navigation and canal commissioners, in which event such commission shall expire. [Acts 1923, p. 44.]

Art. 8254. Deputy branch pilots.—Each branch pilot may appoint, subject to examination and approval by the navigation and canal commissioners, two deputies for whose acts such branch pilot shall be responsible, and any branch pilot who shall appoint a deputy without the approval of said commissioners, shall forfeit his own appointment; provided that an additional deputy shall be appointed if such branch pilot and commissioners mutually deem it advisable. [Id.]

Art. 8255. Pilotage charges.—The rates of pilotage charged by the pilots operating under this law shall at all times be fair and just, and a schedule of such rates shall at all times be on file in the office of the district commissioners, said schedule to be furnished by the pilots and strictly adhered to by them; provided that each time a change in the rate shall be effected, a revised schedule shall be filed as above specified. Whenever a vessel, (except vessels of twenty tons or under and all vessels excepted by Federal statutes and regulations) shall decline the services of a pilot operating under this law, offered outside the bar, and shall enter any channel subject to the jurisdiction of such navigation district, without the aid of a pilot operating under this law, such vessel shall be liable to the first pilot operating under this law whose services she has declined, for the payment of half-pilotage; and any vessel which, after being brought in by a pilot operating under this law, shall go without employing one, shall be liable to the payment of half-pilotage to the pilot operating under this law who brought her in; or if she has come in without the aid of such pilot, though offered outside, she shall, on so going out, be liable for the payment of one-half pilotage to the pilot operating under this law who has first offered his services before she came in. [Id.]

Art. 8256. Consignee liable for pilotage.—The consignee of any vessel shall be held responsible to pilots operating under this law for the pilotage of said vessel or services offered, and such pilots shall be entitled to recover same from the consignee of said vessel in any court of competent jurisdiction. [Id.]

Art. 8257. Unauthorized pilot: liability.—If any person not appointed a branch pilot or deputy

pilot under this law shall pilot any ship or vessel out of, or into, the port, channel or waterway of which exclusive jurisdiction is, under this law, given to the navigation and canal commissioners of such navigation district, when a branch pilot or deputy pilot, operating hereunder has offered such services, the person so piloting shall forfeit and pay to such branch pilot or deputy pilot, the sum of fifty dollars, to be recovered by suit. [Id.]

3. GENERAL PROVISIONS

Art. 8258. "Commissioner."—The term "commissioner" as used in this chapter, shall mean Navigation and Canal Commissioner.

Art. 8259. Election notice.—When any election is held under this chapter, notice thereof shall be given for thirty days prior thereto, stating the time and place of holding same, the proposition to be voted on and the purpose thereof, and shall contain a copy of the election order. Such notices shall be posted in the manner provided for posting other notices hereunder.

Art. 8260. Election requisites.—At any such election a two-thirds vote shall be necessary to carry the proposition submitted thereat unless otherwise provided. The commissioners court shall order twice as many ballots printed as there are resident property taxpayers who are qualified voters in the district; and shall create and define, by order of the court, the voting precincts, in the district, and name convenient polling places therein, and shall appoint necessary election officers. Each such election shall be held at the earliest legal time.

Art. 8261. Voter's qualifications.—Every person who offers to vote in any such election shall first take the following oath before the presiding judge of the polling place where he offers to vote, and the presiding judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of ——— County, that I am a resident property taxpayer of the ——— Navigation District, and I have not voted before at this election."

Art. 8262. Election: declaration of result.—If the commissioners court on canvassing the returns of any such election find that the proposition submitted thereat has carried, they shall so declare and enter the same in their minutes as specially provided hereunder.

Art. 8263. [5960] Duties imposed without compensation.—The duties and powers herein conferred upon the county, city and other officers, are made a part of the legal duty of said officials, which they shall perform without additional compensation, unless otherwise provided herein. [Acts 1909, p. 32.]

Additional legislation, see Article 8263h, post, and note.

Art. 8263a. Conversion of navigation districts into other districts under Constitution.

Manner of conversion; resolution

Section 1. Any Navigation District heretofore organized or hereafter to be organized under the provisions of Section 52 of Article 3 of the State Constitution may become and converted into a Navigation District under Section 59, Article 16, of the State Constitution in the following manner: The Navigation Board of such District shall adopt a resolution declaring that in its judgment it is for the best interest of such District and will be a benefit to the lands and property included in said District to become a Navigation District operating under the provisions of Article 16, Section 59, of the Constitution of Texas, and calling a hearing on said proposal. Such resolution shall be entered in the Minutes of said Board. Notice of the adoption of such resolution shall be given by publication thereof in a newspaper having general circulation in the county or counties in which the District is situated, which notice shall be published once a week for two consecutive weeks and the first publication must appear not less than fourteen full days prior to the time set down for a hearing. Such notice shall state the time and place of the hearing and shall set out the resolution in full. It shall notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution. If upon a hearing the Navigation Board finds that it would be for the best interest of the District and would be a benefit to the lands and property situated in said District for said District to be converted into a Navigation District under Section 59 of Article 16 of the Constitution of Texas, then and in that event said Board shall enter its order so finding; and said District shall thereupon become a Navigation District operating under the provisions of Article 16, Section 59 of the Constitution of this State. If said Navigation Board finds that it would not be to the best interest of the District and would not be a benefit to the lands and property situated in the District, it shall so find and enter its order against the conversion of the District as proposed. The finding of said Navigation Board shall be final and not subject to appeal or review. All Navigation Districts so converted as provided herein shall become and be constituted Conservation and Reclamation Districts, under the provisions of Section 59, Article 16, of the State Constitution, and shall thereafter be governed by said provisions and any amendments thereafter adopted, and Chapter 5 of the Acts of the 39th Legislature, 1925, and all amendments thereto,[1] and shall have and may exercise all the powers, authority, functions and privileges in the same manner and to the same extent as if said Navigation District had been originally organized under the provisions of Section 59, Article 16 of the Constitution of Texas.

[1] Article 8263h, post.

Converted district to exercise powers conferred on original district

Sec. 2. Nothing in this Act shall be so construed as depriving any Navigation District so converted of any of the powers conferred on said District by the law or laws under which it was organized, but said District so converted shall have all of the powers conferred upon it under said law or laws under which it was organized and shall in addition thereto have all of the powers and jurisdiction conferred upon Districts originally organized under Section 59 of Article 16 of the Constitution and Chapter 5 of the Acts of the 39th Legislature, 1925, and amendments thereto; [1] and in the event there is any conflict between the provisions of Chapter 5, of the Acts of the 39th Legislature, 1925, and the Act under which said District was organized the provisions of Chapter 5 of the Acts of the 39th Legislature, 1925, shall control. There being some question as to the powers conferred on Navigation Districts under the different Acts heretofore passed, it is hereby declared that all Navigation Districts, heretofore created or hereafter to be created, under any of the Acts of the Legislature authorizing the creation thereof, have and by this Act are granted, and shall have all the powers conferred by Articles 8229, 8237, 8238, 8239, 8240, 8241, 8242, 8243, and 8245, Title 128, Subdivision V, Chapter 9, Section 2A, Revised Civil Statutes of 1925, and all amendments thereto, regardless of whether or not there is a city of 100,000 inhabitants or more within the boundaries of said District, and all Acts of said Districts heretofore exercising any of such powers are hereby validated. The enumeration of any particular powers herein shall not be construed as a limitation upon the powers conferred, but the Navigation and Canal Commissioners of said District shall have the full powers, control and jurisdiction, consistent with the State and Federal Consti-

tution, of all watershipping and navigation, the regulation of wharfage, and of all facilities of or pertaining to waterways and navigation within said Districts. The Navigation and Canal Commissioners of such Districts shall constitute a Pilot Board with all the powers and duties provided for in Section 2B, Title 128, Subdivision V, Chapter 9, in the same manner as therein provided for Navigation Districts having within their confines a city of 100,000 inhabitants or more.

[1] Article 8263h, post.

Annexation of territory or extension of boundaries

Sec. 3. Navigation Districts heretofore created under and by virtue of Section 59 of Article 16 of the Constitution of the State of Texas, as authorized by Chapter 5 of the Acts of the 39th Legislature in 1925 [1] or hereafter created by the authority of the same as amended or hereinafter converted from Navigation Districts created under Section 52 of Article 3 of the Constitution into Conservation and Reclamation Districts under Section 59 of Article 15 of the Constitution may extend their boundaries and annex adjacent territory in the following manner:

Upon the petition of fifty (50) or a majority of the resident property taxpaying voters residing in such adjacent territory proposed to be annexed, being presented to the Navigation and Canal Commission of any such District, praying that an election be ordered within and throughout such adjacent territory proposed to be annexed, for the purpose of determining whether or not said territory shall be annexed to such Navigation District, and whether or not such territory proposed to be annexed shall assume its pro rata part of the bonded debt of such Navigation District then outstanding; and when such petition is presented it shall be the duty of the Navigation and Canal Commission to set the petition down for a hearing which hearing shall be within ten (10) days from the date of presentation of said petition after notice duly given of such hearing by posting at three public places within the proposed territory to be annexed for at least five (5) days preceding the hearing on the petition, such notice shall contain the time and place of said hearing and the boundaries of the territory proposed to be annexed; such hearing shall be held by the Navigation and Canal Commission and any person who has taxable property within said territory proposed to be annexed may appear in person or by counsel and offer testimony or argument for or against the inclusion of all or any part of the lands within the territory proposed to be annexed to the Navigation District, and if after conducting said hearing the Navigation and Canal Commission shall find that the inclusion of the territory proposed to be annexed shall be a direct benefit to all the lands situated within the territory proposed to be annexed, it shall be the duty of the Navigation and Canal Commission to order such election to be held within and throughout such territory proposed to be annexed, which said election shall be held not less than twenty (20) nor more than thirty (30) days from date of such order and after notice is given, which notice shall give the time and place or places of holding such election and the boundaries of the territory proposed to be annexed, and may contain the substance of the order of the Navigation and Canal Commission ordering such election; which said notice shall be published once each week for twenty (20) days next preceding such election in some newspaper published in said territory proposed to be annexed, and if there be no newspaper published in such territory proposed to be annexed, then by posting such notice in three public places within such territory proposed to be annexed for at least twenty (20) days next preceding such election, and it shall be the duty of the Secretary of such Navigation and Canal Commission to cause to be published or posted such notice.

The ballots to be used at such election shall have written or printed thereon "FOR THE ANNEXATION TO THE NAVIGATION DISTRICT" and "AGAINST THE ANNEXATION TO THE NAVIGATION DISTRICT", and "FOR THE ASSUMPTION OF THE PRO RATA PART OF THE BONDED DEBT OF THE NAVIGATION DISTRICT", and "AGAINST THE ASSUMPTION OF THE PRO RATA PART OF THE BONDED DEBT OF THE NAVIGATION DISTRICT".

The Navigation and Canal Commission shall appoint one judge and two clerks for each election box or place, who shall be property taxpaying voters within the territory proposed to be annexed, and reside near the place of holding such election, to hold said election, which said election shall be held in conformity with the General Election Laws of the State of Texas, except as herein otherwise provided, and the judge or judges of said election shall certify the returns thereof to the Navigation and Canal Commission, ordering such election, which Commission shall canvass the returns of such election, and should a majority of the property taxpaying voters voting at said election be in favor of such annexation, and for the assumption of the pro rata part of the bonded debt of the Navigation District then the Navigation and Canal Commission shall enter an order in its Minutes, annexing such territory and from and after such entry said territory so annexed shall become a part of such Navigation District, with all the rights, benefits and burdens of property originally situated within the District; but should the majority of the property taxpaying voters voting at said election be in favor of the annexation to the Navigation District and the proposition to assume the bonded debt fail to carry, then the Navigation and Canal Commission shall enter an order in their Minutes annexing such territory to the Navigation District, and from and after such entry said territory so annexed shall become a part of such Navigation District with the exception of the assumption of the bonded indebtedness outstanding but shall be subject to a tax for maintenance and operation and shall be liable for all other bonded indebtedness and other indebtedness legally imposed upon the District thereafter. When such order of annexation shall be entered in the Minutes of the Navigation and Canal Commission as above provided, a certified copy of the same shall be prepared by the Secretary of the Navigation and Canal Commission which said Order shall include the boundaries of the territory annexed, and the Secretary shall record the same or cause it to be recorded in the Real Estate Records of the county or counties in which said territory shall be situated.

Districts created pursuant to Section 59 of Article 16 of the Constitution may be annexed and become a part of another adjacent Navigation District created pursuant to the General Law in the same manner above provided in Section 3 of this Act, except the Navigation and Canal Commission of such District shall conduct the hearing, order the election and canvass the returns of the election and perform the other duties above provided for the Navigation and Canal Commission of the annexing District, and if such election shall carry by a majority of the votes of the property taxpaying voters voting at such election the Navigation and Canal Commission of such District proposed to be annexed shall certify the result of said election together with the metes and bounds of such District to the Navigation and Canal Commission of the annexing District, and the Navigation and Canal Commission of the annexing District shall conduct a hearing to determine whether or not it will be a benefit to the annexing District to annex such territory, which said hearing shall be conducted after giving five (5) days notice in some newspaper published within the annexing District, and if at said hearing it shall appear that the annexation of such District will be a benefit to the territory with the annexing District, the Navigation and Canal Commission shall enter an

order in the Minutes of the Navigation and Canal Commission annexing such District and from and after the entry of such order such District shall become a part of the annexing District with all rights and privileges of territory originally situated therein, but neither the annexing District nor the District to be annexed shall assume the bonded debt of the other outstanding, without a majority vote of the property taxpaying voters in such District, but such an annexation shall in no way affect the bonded debt or any other valid obligation outstanding of either the annexing District or the District to be annexed, and it shall be the duty of the Navigation and Canal Commission of the annexing District to annually levy and collect sufficient taxes on the District to be annexed to discharge all valid obligations outstanding of the District to be annexed; and from and after the time of the entry of said order annexing said District in the Minutes of the Navigation and Canal Commission, said District shall be dissolved and all powers theretofore vested in said District annexed shall be vested in the annexing District, and the powers theretofore vested in the Navigation and Canal Commission of the District annexed shall be vested in the Navigation and Canal Commission of the annexing District.

[1] Article 8263h, post.

Manner of creating navigation districts

Sec. 4. There may be created within this State under and by virtue of Section 59 of Article 16 of the Constitution of the State of Texas, Districts to be known as Navigation Districts in the manner hereinafter provided; and such Districts may or may not include within their boundaries and limits villages, towns, cities, road districts, drainage districts, irrigation districts, levy districts, and other improvement districts, and municipal corporations of any kind, or any part thereof. Such Navigation Districts when so established may make improvements for the navigation of inland and coastal waters, and for the preservation and conservation of inland and coastal waters for navigation, and for the control and distribution of storm and flood waters of rivers and streams in aid of navigation, and for any and all purposes stated in Section 59 of Article 16 of the Constitution of the State of Texas, necessary or incidental to the navigation of inland or coastal waters or in aid thereof, which Districts shall be Governmental Agencies and bodies politic and corporate with such powers of Government and with the authority to exercise such rights, privileges, and functions as may be essential to the accomplishment of such purposes; and provided that such Districts shall not include therein the territory of more than three counties, or parts of three counties, and that such improvements herein authorized shall be made within or adjacent to such Districts.

Navigation and canal commissioners

Sec. 5. After the establishment of any Navigation District as herein provided the Commissioners' Court or Navigation Board as the case may be, shall appoint three Navigation and Canal Commissioners all of whom shall be residents of the proposed Navigation District who shall be freehold property taxpaying voters of the county whose duties shall be as hereinafter provided, and who shall each receive for their services such compensation as may be fixed by the Commissioners' Court of the county exercising jurisdiction in creating said District. Said Navigation and Canal Commissioners shall hold office for a term of two years and until their successors have been elected and qualified, unless sooner removed by a unanimous vote of the County Commissioners or Navigation Board as the case may be for mal-feasance or non-feasance in office, after a hearing duly had according to law, from which judgment of removal appeal may be had to the District Court of the County in which such Commissioners reside and said Court shall proceed to try the case de novo. Such Navigation and Canal Commissioners shall be elected on the first Saturday in July in each odd year beginning with the first Saturday in July, 1929, and shall hold office for two years and until their successors are elected and qualified, such election to be ordered by the Navigation and Canal Commissioners, and notice thereof shall be given by the Secretary of such Commission by posting or publishing the same for at least twenty (20) days prior to such election, and shall otherwise be held according to the General Election Laws of the State of Texas. Should any vacancy occur through the death or resignation or otherwise of any Commissioner the same shall be filled by the remaining members of such Navigation and Canal Commission; provided that if two or more vacancies occur at the same time a special election may be called by a petition signed by fifty (50) resident property taxpaying voters after notice duly given by publishing or posting for at least twenty (20) days prior to such election which petition shall contain the judges and clerks for such election who shall jointly canvass the returns and declare the results of such election and issue certificates of election to the successful candidate which election shall otherwise be held according to the General Election Laws of the State of Texas; provided further that this Section shall not apply to Navigation Districts created pursuant to Section 52 of Article 3 of the Constitution of Texas, or to any such District converted or transformed into Navigation Districts under Section 59 of Article 16 of the Constitution of Texas, by virtue of Sections 1 and 2 of this Act, but the Navigation and Canal Commissioners of such Districts shall be appointed by the Navigation Board or the Commissioners' Court of the county having jurisdiction as heretofore provided by law.

Refunding bonds

Sec. 6. It is hereby provided that the governing body of Navigation Districts heretofore created or hereafter created, whether by General or Special Law, or converted or transformed by the provisions of this Act, may fund or refund their bonded debt legally outstanding without a vote of the people of such District, in the manner now provided by law for counties, cities and towns and may fund or refund their bonded debt legally outstanding owned by the State Board of Education in the manner now provided by law for Independent School Districts incorporated for free school purposes only.

Provisions cumulative

Sec. 7. The provisions of this Act shall be cumulative of all other Acts heretofore enacted into Law with reference to the organization and operation of Navigation Districts. In case of any conflict the provisions of this Act shall control. [Acts 1929, 41st Leg., 1st C.S., p. 246, ch. 103.]

Section 8 of this Act provides that if any provision is held unconstitutional, such holding shall not affect the remainder.

Special Laws 1931, p. 460, ch. 238, validates the conversion of all navigation districts converted from navigation districts under Const. Art. 3, § 52, into navigation districts under Acts 1929, 41st Leg., 1st C.S., p. 246, ch. 103, and all proceedings with reference to such conversion.

Art. 8263b. Conversion of certain navigation districts validated.—Sec. 1. That all navigation districts in this State originally created under Section 52 of Article 3 of the Constitution of the State of Texas which have been converted into navigation districts under Article 16, Section 59 of the Constitution of the State of Texas, under the provisions of Section 1 of Chapter 103, Acts of the 41st Legislature, 1st Called Session, 1929, since the 23rd day of May, A. D. 1929, when said Act became effective,[1] are hereby declared converted into navigation districts under the provisions of Section 69, Article 16 of the State Constitution and shall thereafter be governed by said

provisions and any amendments hereafter adopted and shall have and may exercise all the powers, authority, functions and privileges in the same manner and to the same extent as if said navigation districts were originally organized under the provisions of Section 59, Article 16 of the Constitution of this State, in addition to the other powers conferred upon said navigation districts by law, within the boundaries of said districts as originally created or as thereafter extended. All proceedings heretofore had and taken to convert such districts as aforesaid, including the action of the Navigation Board in adopting a resolution calling a hearing on said conversion, the notice of said hearing, the holding of said hearing, and the finding and order of the Navigation Board of said districts converting said navigation district into a navigation district under Section 59 of Article 16 of the State Constitution shall be and hereby are in all things approved, ratified, confirmed and validated.

Sec. 2. The fact that some of the navigation districts in this State created originally under Section 52 of Article 3 of the Constitution of this State have availed themselves of the privilege granted by Chapter 103, Section 1, Acts of the 41st Legislature, 1st Called Session, 1929,[1] and have been converted under the provisions of said Act into navigation districts under Section 59 of Article 16 of the Constitution of this State and it is of public importance that such conversion and the proceedings had with reference thereto should be in all things ratified, confirmed and validated, creates an emergency and an imperative public necessity requiring the suspension of the Constitutional Rule requiring bills to be read on three several days in each House, and the Said Rule is hereby suspended and that this Act shall take effect and be in force from and after its passage, and it is so enacted. [Acts 1931, 42nd Leg., p. 858, ch. 365; Act 1931, 42nd Leg., Spec.L., p. 460, ch. 238.]

[1] Article 8263a, ante.

Art. 8263c. Navigation districts; power to borrow money and encumber properties and revenue.

Powers granted

Section 1. Any navigation district organized or hereafter to be organized under any of the provisions of the Constitution or laws of this State created for the development of deep water navigation which may now have, or may hereafter have, within the boundaries of such district, a city of not less than 27,000, nor more than 28,000 inhabitants as shown by the Federal Census, last preceding such action, in addition to the other powers conferred by law, is hereby granted and shall hereafter, in addition, have the power to borrow money and to mortgage and encumber any part or all of its properties and facilities and the franchise and revenues and income from the operation thereof and everything pertaining thereto acquired or to be acquired to secure the payment of funds to purchase, build, improve, enlarge, extend or repair any of its wharves, docks, warehouses, levees, bulkheads, canals, waterways or other aids to navigation and as additional security therefor by the terms of such encumbrance may pledge and encumber the net income and revenues from the operation of the properties and facilities of said district and may provide in such encumbrance for a grant to the purchaser under sale or foreclosure thereunder of a franchise to operate the property and facilities so encumbered for a term of not over twenty years after such purchase, subject to all laws regulating same then in force.

Debt as charge only on property incumbered

Sec. 2. No such obligation shall ever be a debt of such district but solely a charge upon the property and facilities so encumbered and such revenues and income shall never be reckoned in determining the power of such navigation district to issue any bonds for any purpose authorized by law.

Evidence of indebtedness

Sec. 3. Such districts shall have the power to issue evidence of such indebtedness secured by said encumbrance bearing interest not exceeding six (6%) per cent. and maturing not to exceed twenty years after date thereof but said encumbrance and said evidences of indebtedness shall contain this clause: "The holder hereof shall never have the right to demand payment of any obligation out of any funds raised or to be raised by taxation."

Operating expenses as first charge on income

Sec. 4. When the revenues and income of said properties and facilities of a navigation district shall be encumbered under this law the expense of operation and maintenance necessary to render efficient service of said properties and facilities shall always be a first lien and charge against such revenues and income prior to and superior to the lien of said encumbrance. No encumbrance shall be foreclosed because of default of said district until said default has existed for a period of ninety days and notice thereof has been served upon the governing body of said district.

Foreclosure

Sec. 5. The encumbrance may provide for a trustee to enforce foreclosure and in the event of foreclosure may provide for the grant of a franchise to the purchaser under foreclosure to operate the properties encumbered for a period of not to exceed twenty years from the date of default and the district shall have the option at any five year period for twenty years after default to repurchase said properties upon reasonable terms and at reasonable prices to be set forth in said encumbrance.

Borrowing for current expenses

Sec. 6. Such district shall also have the right to borrow funds for current expenses and to issue warrants therefor, payable not later than the close of any calendar year for which loans are made, such warrants not to exceed in the aggregate the anticipated revenue of the district and to bear interest not to exceed six (6%) per cent. per annum.

Commissioners to manage property

Sec. 7. The management and control of any such property and facilities so encumbered during the time they are encumbered shall be in the hands of the Commissioners of said district as provided by law. [Acts 1931, 42nd Leg., Spec.L., p. 192, ch. 89.]

Notice of intention to borrow

Sec. 8. Whenever any such navigation district proposes to borrow money and to mortgage and encumber any part or all of its properties and facilities and franchises and revenues and income from the operation thereof, for the purposes contemplated and authorized by Section 1 hereof, the Commissioners of such district shall issue Notice of Intention to authorize and to issue the evidence of any such indebtedness, and such notice shall include a statement of the amount and purpose of the proposed indebtedness, and it shall be the further duty of such Commissioners to fix a time and place at which a public hearing shall be held in respect of such proposed indebtedness, and the date of such hearing shall be not less than fifteen (15) nor more than thirty (30) days from the date of the resolution of the Commissioners issuing such notice. Such notice shall inform all persons of such time and place of hearing, and of their right to appear at such hearing and contend for or protest the creation of such indebtedness. The Secretary of the Commissioners of the district shall post true copies of such notice in three public places within the district, and one copy at the door of each county court house that

may be situated within the district. Said notice shall be posted for ten (10) days prior to the date of hearing. Said notice shall also be published in a newspaper of general circulation in the district, if a newspaper is published therein, one time, and at least five (5) days prior to such hearing. If no newspaper is published in such district, then such notice shall be published in some newspaper published in any county situated in whole or in part within the district. The duties herein imposed upon the Secretary may be performed by any Commissioner of the district, or the Assistant Secretary.

Hearing

Sec. 9. At the time and place set for such hearing, or such subsequent date as may then be fixed, the Commissioners shall proceed to hear and to determine all matters in respect of the proposed indebtedness. Any person interested may appear before the Commissioners in person or by attorney and contend for or protest the creation of the proposed indebtedness. Such hearing may be adjourned from day to day and from time to time, as the Commissioners may deem necessary. If upon the hearing it is determined by the Commissioners that the proposed improvements are necessary, feasible, practicable, and are needed, and will benefit the property in such district, then such Commissioners may adopt a resolution or order providing for the creation of the proposed indebtedness, and the issuance of the evidence thereof; and such Commissioners are authorized and empowered to adopt all necessary resolutions, orders, certificates and trust indentures in respect to the issuance, sale and delivery of the securities evidencing such indebtedness.

Signatures to evidences of indebtedness

Sec. 10. Each note, warrant, or other security evidencing any indebtedness created under the provisions of this Act shall be signed by the Chairman and countersigned by the Secretary of the Commissioners of such district, and the seal of the district shall be impressed thereon; and each note, warrant or other security may be registered as to principal by the Trustee named and designated by the Commissioners of the District in the trust indenture executed by them to secure payment thereof.

Articles of statutes inapplicable

Sec. 11. The provisions of Articles 8240, 8241, 8242, and 8243, Revised Statutes 1925, relating to the grant of franchises by navigation districts, shall not apply to the grant of any franchises under authority of Section 5 hereof.

Sale of obligations

Sec. 12. The evidences of indebtedness hereby authorized may be sold by the Commissioners of the district on the best terms and for the best price possible.

Supervision of Commissioners

Sec. 13. All proceedings to be taken and acts and things to be done in connection with the borrowing of money hereunder by any such district, and the mortgaging and encumbering of its properties and facilities, and the franchise and revenues and income from the operation thereof, and the issuing of its evidences of indebtedness, shall be taken and done by and under the supervision of the Commissioners of such district, it being the intention hereof that neither the Commissioners Court of any county lying in whole or in part within the boundaries of such district, nor the Navigation Board established for such district by Chapter 5, General Acts of 1925,[1] shall be required to take any action in connection therewith nor to approve or ratify any proceedings so taken by the Commissioners of the district or any act or thing done by said Commissioners in such connection.

[1] Article 8263h, post.

Validation of proceedings

Sec. 14. That, in case any navigation district has commenced proceedings in respect of the creation of indebtedness under authority hereof, and notice issued and given in respect thereto, and hearing held thereon in accordance with the provisions and requirements of this amendment, all acts and proceedings had and done in connection therewith by the Commissioners of the district, in respect to such indebtedness, and securing payment thereof, are hereby ratified, confirmed, legalized, approved and validated; and power and authority is hereby expressly conferred upon the Commissioners of any such district to pass and adopt all orders and resolutions, and to do all other and further acts necessary in the issuance and sale of said evidences of indebtedness. [Acts 1933, 43rd Leg., 1st C.S., p. 208, ch. 78, § 1.]

Art. 8263d. Navigation districts authorized to contract with United States.—Sec. 1. Two (2) or more navigation districts incorporated under the laws of the State of Texas, all, or parts of which are situated within a single county, and which may be interested in, or in the judgment of the governing bodies of such district, may be benefited by any navigation project which has been approved by Act of Congress of the United States, or by the Secretary of War, shall have power to enter into contracts with the Government of the United States, and with any one or more of such navigation districts interested in such common project, for the purpose of consummating such project, or in aid thereof; and are expressly authorized, as parts of such contracts, to assume joint, or joint and several liability for the construction, completion, and consummation of such project, and for the acquisition of real or other property in connection therewith; to lend and contribute funds of such navigation districts to the United States, or to any other such navigation district, in support, or in aid of such project; and to assume and become responsible for valid obligations of the United States, or of any such navigation district or districts incurred in furtherance of such common project.

Sec. 2. All contracts so made and entered into by such navigation district shall be approved by resolution of the governing bodies of such districts and shall be executed by the presiding officer of such governing body, duly attested by the corporate seal of the navigation district.

Sec. 3. It is the purpose and intent of this Act to confer upon navigation districts incorporated under the laws of this State, and jointly or mutually interested in a navigation project which has been approved by the Government of the United States, either by Act of Congress, or Act of the Secretary of War, the fullest possible power of contract with regard to such navigation project of common interest. [Acts 1931, 42nd Leg., 1st C.S., p. 24, ch. 12.]

Art. 8263e. Creating self-liquidating and supporting districts; bond issues; authorizing loans from Reconstruction Finance Corporation

Districts declared self-liquidating

Section 1. All navigation districts within this State organized under the provisions of Section 59, Article 16 of the Constitution, and under the provisions of Chapter 5 of the General Laws of Texas passed by the 39th Legislature of the State of Texas, at its Regular Session, and Acts amendatory thereof,[1] or created, organized, existing, doing business or acting under and by virtue of any local and special law of the Legislature of Texas, and purporting to have been enacted under the provisions of said Section 59 of Article 16 of the Constitution, and which have voted bonds but not issued or otherwise finally disposed of such bonds, and all districts which may hereafter be organized hereunder, are declared to be

self-liquidating in character and may be made self-supporting and return the construction cost thereof within a reasonable period, by means of tolls, rents, fees, assessments or other charges other than by taxation, and such navigation districts shall be deemed as coming originally within the scope of this Act, and none of the proceedings provided in Section 93 hereof shall be required of them as a prerequisite to the exercise of the rights, powers, privileges and benefits of this Act. [As amended Acts 1934, 43rd Leg., 2nd C.S., p. 19, ch. 8, § 1.]

[1] Article 8263h, post.

Creation of districts authorized

Sec. 2. There may be created within this State under and by virtue of Section 59 of Article 16 of the Constitution of the State of Texas, districts to be known as Navigation Districts, in the manner hereinafter provided; which districts shall be of the character provided in Section 1 hereof; and such districts may or may not include within their boundaries and limits villages, towns, cities, road districts, drainage districts, irrigation districts, levee districts, and other improvement districts, or conservation and reclamation districts, and municipal corporations of any kind, or any part thereof. Such districts, when so established, may make improvements for the navigation of inland and coastal waters, and for the preservation and conservation of inland and coastal waters for navigation and for the control and distribution of storm and flood waters of rivers and streams in aid of navigation, and for any and all other purposes stated in Section 59 of Article 16 of the Constitution of the State of Texas necessary or incidental to the navigation of inland and coastal waters or in aid thereof, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with authority to exercise such rights, privileges and functions as may be essential to the accomplishment of such purposes; provided, that such districts shall not include therein the territory of more than two counties, or parts of two counties.

Petition for creation

Sec. 3. When it is proposed to create a navigation district wholly within one county, there shall be presented to the County Commissioners' Court of the county in which the lands to be included in such districts are located, at any regular or special session, a petition accompanied by a deposit of Five Hundred Dollars ($500.00), which petition shall be signed by twenty-five (25) of the resident property taxpayers, or in the event there are less than seventy-five property taxpayers in the proposed district, then by one-third of such resident property taxpayers in the proposed district, praying for the establishment of a navigation district, and setting forth the boundaries of the proposed district, which petition shall be accompanied by a map of such proposed district and which shall show the general nature of the improvement or improvements proposed and an estimate of the probable cost thereof, and designating a name for such navigation district, which name shall include the name of the county; said petitioners shall make affidavit to accompany said petition of their qualifications; and when it is proposed to create such a district to be composed of lands in two counties, then a petition of the nature above indicated, signed by twenty-five (25) of the property taxpayers residing in the territory of each county to be included in such proposed district, or in the event there are less than seventy-five (75) property taxpayers residing in such territory, then by one-third of such resident taxpayers, accompanied by a deposit of Five Hundred Dollars ($500.00), which petition shall be presented to the Commissioners' Court of the county in which is located the greater amount of acreage of such proposed district, which shall be the county of jurisdiction in respect to all matters concerning said district, and the name of which county shall be included in the name of such district and, upon presentation of such petition the said Commissioners' Court shall at the same session when said petition is presented set same down for hearing at some regular term of said Court, or at some special session of said Court called for the purpose, not less than sixty (60) days from the presentation of said petition and shall order the clerk of said Court to give notice of the date and the place of said hearing by posting a copy of said petition and the order of the Court thereon, in five public places in said county, one of which shall be the courthouse door of said county and four of which shall be within the limits of said navigation district; and if the proposed district be composed of more than one county, then there shall be posted a copy of said petition and the order of the Court thereon at the door of the courthouse of each county in which any portion of the proposed district is located, and four (4) copies at four (4) different places within each county in which any portion of said proposed district is located, and within the boundaries of such proposed district, which notice shall be posted not less then twenty (20) days prior to the time set for the hearing. The county clerk issuing such notices shall receive as compensation One Dollar ($1.00) for each such notice and five cents per mile for each mile necessarily traveled in posting such notices.

District including city or cities

Sec. 4. In the event the boundaries of the proposed district shall include a city or cities, or part or parts thereof, acting under special charter granted by the Legislature, the hearing of said petition, hereinafter provided for, shall be had before the County Judge and members of the Commissioners' Court and the mayor and aldermen or Commissioners, as the case may be, of said city or cities; and said persons shall constitute a board to be known and designated as the navigation board, to pass upon such petition. Each individual member of said board shall be entitled to a vote on all matters pertaining to such petition and such election. A majority in number of the individuals composing said board shall constitute a quorum and the action of a majority of the quorum shall control.

Hearing

Sec. 5. In the event the hearing on said petition shall be held before the navigation board, the Commissioners' Court of said county shall set the petition down for hearing not less than thirty (30) nor more than sixty (60) days from the date of the presentation of said petition without reference to any term of the Commissioners' Court, but said hearing shall be held at the regular place of meeting of the Commissioners' Court, and notice shall be given of the hearing in the manner and for the time as hereinbefore provided.

Records

Sec. 6. The county clerk shall enter and record the proceedings of the navigation board in a record book kept for such purpose, which record shall be a public archive.

Duties of officers

Sec. 7. The duties and powers herein conferred on the county judge and members of the Commissioners' Court, and upon the mayor and aldermen or Commissioners as the case may be of cities, and upon the county clerk and other officers, are made a part of the legal duty of said officials, which they shall render and perform without additional compensation, unless otherwise provided herein.

Contest of creation

Sec. 8. Upon the day set by said County Commissioners for the hearing of said petition, any person who has taxable property within the proposed district, or who may be affected thereby, may appear before

the said Court, or navigation board as the case may be, and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of the said district, to show that the proposed improvement or improvements would or would not be of any public utility and would or would not be feasible or practicable, and the probable cost of such improvement or improvements, or as to any other matter pertaining to the proposed district. Said county Commissioners' Court, or navigation board, shall have the exclusive jurisdiction to hear and determine all contests and objections to the creation of such districts, and all matters pertaining to the creation and establishment of the same, and may adjourn hearing in any matter connected therewith from day to day; and all judgments or decisions rendered by said Court, or navigation board, in relation thereto shall be final, except as otherwise provided.

Bond issues

Sec. 9. If, at the hearing of said petition, it shall appear to the Commissioners' Court, or navigation board, as the case may be, that the proposed improvement is feasible or practicable, that it would be a public benefit and a public utility; and, if the Court, or navigation board, as the case may be, shall approve the boundaries of the proposed district as set out in said petition, then the Court, or navigation board, shall so find, and shall also find the amount of money necessary for said improvement or improvements and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance, for a less amount, and shall specify the amount of bonds to issue, the maximum length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be recorded in the records of the Commissioners' Court, or minutes of the navigation board, as the case may be. If the Court, or navigation board, shall find that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility, but does not approve the boundaries of the proposed district as set forth in the petition, the Court or navigation board, shall define the boundaries of such district as the Court considers the same should be, and shall also find the amount of money necessary for such improvement or improvements, and for all expenses, incident thereto, and shall determine whether to issue bonds for said full amount, or in the first instance for a less amount, and shall specify the amount of bonds to issue, the maximum length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be entered of record, together with a map thereof. Providing, however, that before any change is made by said Court, or navigation board, as the case may be, of the boundaries, notice and hearing thereof shall be given and had as provided for in Section 2 of this Act. If the Court, or navigation board, shall find that the proposed improvement is not feasible or practicable, or that it would not be a public benefit or public utility, and that the establishment of such navigation district is therefore unnecessary, then the Court, or navigation board, shall enter such findings of record and dismiss the petition at the cost of petitioners, but the order dismissing said petition shall not prevent or conclude the presentation at a later date of a similar petition.

Election on bond issues

Sec. 10. After the hearing upon the petition, as herein provided, if the Court, or navigation board, as the case may be, shall find in favor of the petitioners for the establishment of the navigation district according to the boundaries as set out in said petition, or as changed or modified as above provided by the said Court, or navigation board, the Commissioners' Court of jurisdiction shall order an election in which order provision shall be made for submitting to the qualified property taxpaying voters residing in said district whether or not such navigation district shall be created, and whether or not said bonds shall be issued and a tax shall be levied sufficient to pay the interest and provide a sinking fund sufficient to redeem said bonds at maturity, said order specifying the amount of bonds to be issued, together with the length of time the bonds shall run and the rate of interest said bonds shall bear, as said matters have been determined by the commissioners' court or navigation board, as the case may be, under the provisions of this Act. Said election to be held within such proposed navigation district at the earliest legal time, at which election there shall be submitted the following proposition, and none other: "For the navigation district, and the issuance of bonds and the levy of tax in payment thereof;" "Against the navigation district, and the issuance of bonds and levy of tax in payment thereof."

Notice of election

Sec. 11. Notice of such election, stating the time and place of holding the same, shall be given by the clerk of the said court by posting notices thereof in four public places in such proposed navigation district, and one at the courthouse door of the county in which such district is located, and if the district be composed of more than one county, then there shall be posted a copy of said notice at the door of the courthouse of each county in which any portion of the proposed district is located, and four copies in four public places within each county in which any of the proposed district is located, and within the boundaries of said district; said notices shall be posted for thirty days prior to the date set for the election. Such notices shall contain the proposition to be voted upon as set forth in Section 10 of this Act, and shall also specify the purpose for which said bonds are to be issued, and the amount of said bonds, and shall contain a copy of the order of the court ordering the election.

Conduct of election

Sec. 12. The manner of conducting said election shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of said proposed district, shall be entitled to vote at any election on any question submitted to the voters thereof by the county Commissioners' Court at such election. The county Commissioners' Court shall create and define, by an order of the Court, the voting precincts in the proposed navigation district, and shall name a polling place or places within said precincts, taking into consideration the convenience of the voters in the proposed navigation district, and shall also select and appoint the judges and other necessary officers of the election, and shall provide one and one-half times as many ballots as there are qualified resident property taxpaying voters within such navigation district. Said ballot shall have printed thereon the words and none others: "For the navigation district, and the issuance of bonds and levy of tax in payment thereof"; "Against the navigation district, and the issuance of bonds and levy of tax in payment thereof."

Declaring result of election

Sec. 13. Immediately after said election, the officers holding the same shall make returns of the result thereof to the Commissioners' Court having jurisdiction, and return the ballot boxes to the clerk of said Court, who shall safely keep the same and deliver them, together with the returns of the election, to the Commissioners' Court of jurisdiction at its next regular or special session, and the said court at such session shall canvass the vote and return; and if it be found that a majority of those voting at such election shall have been cast in favor of the navigation district and the issuance of bonds and levy of tax, then the court

shall declare the result of said election to be in favor of said navigation district, the issuance of said bonds and the levy of the tax, and shall enter same in the minutes of the court as follows:

Commissioners' Court of ——— County, Texas, ——— term, A. D. ———, in the matter of the petition of ——— and ——— and others praying for the establishment of a navigation district, and issuance of bonds and levy of taxes in said petition described and designated by the name of ——— Navigation District. Be it known that at an election called for the purpose in said district, held on the ——— day of ——— A. D. ——— a majority of the resident property taxpayers voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district be, and the same is hereby established by the name of ——— Navigation District, and that bonds of said district in the amount of ——— dollars be issued, and a tax of ——— cents on the One Hundred Dollars ($100.00), valuation, or so much thereof as may be necessary to be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund to redeem that at maturity, and that if said tax shall at any time become insufficient for such purpose same shall be increased until same is sufficient. The metes and bounds of said district being as follows: (Giving metes and bounds)

Navigation and canal commissioners

Sec. 14. After the establishment of any navigation district, as herein provided, the Commissioners' Court shall appoint three navigation and canal commissioners, all of whom shall be residents of the proposed navigation district, who shall be freehold property taxpayers and legal voters of the county, whose duties shall be as hereinafter provided. Said navigation and canal commissioners shall hold office for the term of two years and until their successor shall have qualified after appointment or election as hereinafter provided. Should any vacancy occur through the death or resignation or otherwise of any navigation or canal commissioner, the same shall be filled by those remaining on said board; or if one shall remain, then by the district judge residing in the county wherein a majority of the acreage of such district lies, together with such remaining navigation or canal commissioner.

Oath of commissioners

Sec. 15. Before entering upon their duties, all navigation and canal commissioners appointed as herein provided, shall take and subscribe before the county judge of the county having jurisdiction, in addition to the constitutional oath provided for county commissioners, an additional oath to faithfully discharge the duties of their office without favor or partiality.

Bond of commissioners

Sec. 16. Before entering upon their duties, each of such navigation and canal commissioners so appointed shall make and enter into a good and sufficient bond in the sum of One Thousand Dollars ($1000.00) payable to the county judge of the county having jurisdiction for the use and benefit of such navigation district, and conditioned upon the faithful performance of their duties.

Chairman and secretary

Sec. 17. Said commissioners shall organize by electing one of their members chairman and one secretary, and two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district.

Term of office of commissioners

Sec. 18. All navigation and canal commissioners now holding office by appointment of any Commissioners' Court, or navigation board as the case may be, or by virtue of an election held within such district under the provision of any local and special Act are hereby declared to be the legally constituted qualified and acting navigation and canal commissioners of such district, and shall hold office until their successors are elected and qualify; and on the first Tuesday in December, 1932, and on the first Tuesday in December of each even year thereafter, there shall be held in all the districts coming within the purview of this Act, a general election for the election of navigation and canal commissioners, at which time there shall be elected three navigation and canal commissioners for such district who shall hold office for a term of two years, and until their successors are elected and qualified, which election shall be held in accordance with the General Election Laws of this State, except as herein otherwise provided.

Election officers

Sec. 19. The board of navigation and canal commissioners shall name the polling place, and if more than one is required, divide the district into election precincts which may be changed from time to time as required, and shall appoint the officers to hold such election. The officers of the election shall consist of one presiding judge and an assistant judge and two clerks; more clerks may be appointed by the presiding judge when necessary. The officers of the election shall be appointed when such election is ordered, and the polling place or places shall be designated in such election order.

Notice of election

Sec. 20. The notice of election shall be signed by the president and secretary of the board and shall contain a copy of the order of election, and shall be published once each week for three consecutive weeks in some newspaper published in said district, or if none be published in said district, then in a newspaper located nearest to the boundaries of such district; the first publication shall be had not less than twenty-one (21) days prior to the election and not more than thirty-five (35) days prior thereto.

Returns of election

Sec. 21. The officers holding the election shall make and deliver the returns in triplicate, one copy being retained by the presiding judge, one delivered to the chairman of the board of navigation and canal commissioners of the district, and one delivered to the secretary. The ballot boxes and other election records and supplies shall be delivered to the secretary at the office of the district. All boxes containing ballots voted or mutilated shall be preserved for six (6) months subject to the order of any Court in which a contest thereof shall be filed, after which time, unless a contrary order shall be entered by a Court of competent jurisdiction, they shall be destroyed. The navigation and canal commissioners shall meet and canvass the returns of the election at any time not less than five (5) full days thereafter, nor more than seven (7) days thereafter, provided the same can be canvassed within seven (7) days, or such canvass shall be done as soon thereafter as possible.

Vacancies in office of commissioners

Sec. 22. All vacancies in the office of navigation and canal commissioners for such districts shall be filled by appointment by the board itself for the unexpired term. In the event two vacancies occur at the same time, the remaining navigation and canal commissioners shall call a special election to fill such vacancies, and if he fails to do so within fifteen (15) days after such vacancies occur, or if the third place be vacant also, the judge or judges of the District Court or Courts of the Judicial Districts in which such navigation district lies, upon the petition of any voter or creditor thereof, may order the holding of such election, fixing the date thereof and order the publication of notice of such election

by the County Clerk of the county, and name the officers to hold such election. In any such election held by order of the district judge or judges, the returns of election shall be made and filed in the office of the Clerk of the District Court, and he shall declare the result thereof.

Bond of commissioners

Sec. 23. The navigation and canal commissioners of such districts shall each make and furnish a good and sufficient bond in the sum of Ten Thousand Dollars ($10,000.00), payable to the district, conditioned upon the faithful performance of their duties as such navigation and canal commissioners; they shall each take and subscribe the oath of office with conditions therein as provided by law for members of the Commissioners' Court in so far as such conditions may be made applicable. All such bonds required to be given by navigation and canal commissioners shall be approved by them as a board and by the district judge or judges of the District Court having jurisdiction over the territories of such navigation districts, and all bonds of other officers of the district shall be approved by the board of navigation and canal commissioners and shall be filed for record in the offices of such district and shall be recorded in a book kept for that purpose in the offices of the district, which book shall be open to the inspection of the public during the office hours of the district.

Bonds of employes

Sec. 24. The navigation and canal commissioners of such districts shall require all officers and employees charged with the handling of any funds or property of the district to furnish good and sufficient bonds to be prescribed by such board, payable to the district and conditioned upon the faithful performance of their duties and their accounting of all funds and property of the district coming into their hands, which bonds shall be in each instance for a sum sufficient to safeguard the district.

Fees of commissioners

Sec. 25. The navigation and canal commissioners of the district shall receive as fees of office the sum of not more than Ten Dollars ($10.00) per day for each day of service necessary to the discharge of their duties; provided however, that by an order entered on the minutes of the proceedings of such board any district may provide that no compensation shall be paid for such services and that the office of navigation and canal commissioners for such district shall be without emolument for a period of two (2) years from the date of such order.

Records

Sec. 26. The navigation and canal commissioners of such district shall keep and file a true account of their meetings and proceedings, and preserve their minutes, contracts, notices, accounts, receipts and records in a fireproof vault or safe. A regular office shall be established and maintained for the conducting of the district's business at such place as the board may designate in the district.

Employment of manager

Sec. 27. The navigation and canal commissioners of such district may employ a general manager and give him full authority in the management and operation of the affairs of the district, subject only to the supervision of the board of navigation and canal commissioners. The term of office and compensation to be paid such manager and all employees shall be fixed by the board, and all employees may be removed by the board.

Tax assessor and collector

Sec. 28. The office of tax assessor and collector for such districts is hereby created, to be filled by one person who shall be appointed by the board of navigation and canal commissioners, and shall give a good and sufficient bond with at least two sureties, or a surety company having a permit to do business in Texas, to be approved by the board of navigation and canal commissioners, in a sum to be fixed by said board not to exceed the estimated amount of revenue of such district for any one year (and not to be less than twice average daily balance of such district in its depository for the preceding year), which bond shall be conditioned for the faithful performance of his duties as tax assessor and collector and for the paying over to the depository of all funds or other things of value coming into his hands as such officer. The board of navigation and canal commissioners may require additional bonds or a bond in a larger amount, or additional security at any time the same may be advisable in their judgment. The tax assessor and collector shall be a resident of the district and shall be a qualified voter. One or more deputies may be appointed by the board of navigation and canal commissioners to assist the tax assessor and collector for such time not to exceed one year as may be ordered, and such assistant or assistants may or may not be required to furnish bond with conditions similar to those required of the tax assessor and collector. The compensation to be paid to the tax assessor and collector or any deputy shall be fixed by the board.

Assessments

Sec. 29. The tax assessor and collector shall make an assessment of all the taxable property in the district; the property subject to taxation shall be governed by the laws of this State providing for the taxation of State and County taxes, and all such laws of this State shall apply thereto, except as herein otherwise provided.

Record of taxpayers

Sec. 30. The tax assessor and collector shall compile a record of all taxpayers subject to payment of taxes in the district and all the taxable property, and the post office address of the owners of such taxable property. He shall on or before the first day of April of each year furnish each taxpayer and owner of property in the district a blank form for the rendition of property for taxation and such form may be delivered in person or deposited in the mail, addressed to such owner at his last known address. It shall be the duty of the owner of any and all property subject to taxation in the district to file in the office of the tax assessor and collector a full, accurate and complete statement, made under oath, of all property owned by him, it or them as the case may be, subject to taxation therein. Such statement or rendition shall be filed on or before the last day of April of each year, stating the true value of all property listed or rendered subject to taxation in such district. Such taxpayer or person rendering property for taxation shall make the same oath as required in the rendition for State and County taxes. Such statement may be filed by any authorized agent of the owner of any such property, provided such agent shall state therein that he makes and files same as such agent. All property not rendered for taxation by the owner or by such authorized agent shall be placed upon the tax rolls of such districts as unrendered, in the name of "Unknown Owner" and such tax assessor and collector shall estimate the value thereof and place such estimated valuation on the tax rolls of the district. The board of navigation and canal commissioners of such district shall, not later than their first regular meeting in May in each year, appoint three commissioners, each being a qualified voter and property taxpayer in said district, who shall be styled "Board of Equalization" and at the same meeting the board of navigation and canal commissioners shall fix the time for the meeting of such board of equalization, and such board of equalization shall convene at the time fixed by the board of navigation

and canal commissioners to receive all assessment lists or books of such district for examination, correction and equalization, appraisement and approval, and at all meetings of said board of equalization the secretary of the board of navigation and canal commissioners shall act as secretary thereof and keep a permanent record of the proceedings of such board of equalization.

Board of equalization

Sec. 31. Before entering upon the duties of such board of equalization, each of the members thereof shall take the following oath: "I ——— do solemnly swear (or affirm) that I will to the best of my ability, make a full and complete examination, correction, equalization and appraisement of all property contained within such district as shown by the assessment lists or books of the assessor and collector for said district, and add thereto all property not included therein of which I have knowledge" and such oath shall be spread upon the minutes to be kept by the secretary. Such board of equalization shall convene not later than the first Monday in June of each year, and shall complete their work by the first day of September, or as soon thereafter as possible.

General tax laws applicable

Sec. 32. In all matters pertaining to the levying and assessing of taxes, the equalization thereof and the collection of same, and the duties of all officers in connection therewith, the laws of the State of Texas for the assessing, levying and collection the State and county taxes shall apply, except as herein otherwise provided, and the district shall have a lien upon all property against which taxes may be levied and assessed enforcing same under the same laws and in the same manner as liens securing State and county taxes. Limitation shall not run against the district as a bar to the collection of any delinquent taxes or other public charges of the district, provided that nothing herein shall be construed as giving authority to any county officer in connection with the levying, equalizing, assessing or collection of the taxes of such district, but such duties shall be in and remain wholly within the control of the officers of such district.

Collection of taxes

Sec. 33. The tax assessor and collector of such districts shall be charged with the assessment rolls of such district, and are required to make collection of all taxes levied and assessed against the property in such district, and pay over the same to the depository of the district, and in all matters pertaining to the collection of taxes levied under the provisions of this Act, the tax assessor and collector shall be authorized to act and shall be governed by the laws of the State of Texas for the collection of State and County taxes, except as herein otherwise provided.

Delinquents

Sec. 34. It shall be the duty of the tax assessor and collector, during the month of September of each year to make a certified list of all delinquent property upon which the navigation district taxes have not been paid, and return the same to the board of navigation and canal commissioners which shall proceed to have the same collected by the sale of such delinquent property in the manner, both by suit and otherwise, as now or may be provided for the sale of property for the collection of State and county taxes; and at the sale of any property for any delinquent tax, the navigation and canal commissioners may become the purchasers of the same for the benefit of the district, provided that such delinquent taxes shall be collected by the attorney for the district as hereinafter provided.

Attorneys to collect delinquent taxes

Sec. 35. The navigation and canal commissioners of the district shall have the power and authority to employ such attorney or attorneys as they may deem necessary, and fix the compensation of such attorney or attorneys; they shall on or before the first day of October of each year employ an attorney to collect delinquent taxes or public charges and file suits for the collection thereof if necessary; said attorney or attorneys shall be entitled to a fee of ten per cent (10%) upon the amount of all delinquent taxes or other delinquent charges collected by him or through his efforts, or paid into the district after suit is filed and same shall be charged as costs of court, and in the event judgment is taken, the district shall have judgment therefor for the benefit of such attorney together with said tax or public charge and other costs, and as a part of same; such suits shall be filed and tried as other civil cases. Except as herein otherwise provided, the laws governing tax suits for the recovery of State and county taxes shall apply.

Engineer; duties

Sec. 36. The board of navigation and canal commissioners shall have authority to employ a competent engineer whose term of office shall be at the will of said commissioners and he shall receive such compensation as may be determined by such commissioners. It shall be the duty of the engineer to make all necessary surveys, examination, investigations, maps, plans and drawings with reference to the proposed improvements; he shall make an estimate or estimates of the cost of same, shall supervise the work of improvements, and shall do and perform all such duties as may be required of him by the commissioners; provided that if the river, creek, bay, stream, canal or waterway to be improved as navigable, or the improvements be of such nature as requires the permission or consent of the government of the United States or any department or officer of the United States, the navigation and canal commissioners shall be authorized to obtain the permission or consent of the government of the United States or any officer or department, and in lieu of the employment of an engineer as herein provided, or in addition thereto, the navigation and canal commissioners shall have the power to adopt any survey of the river, creek, canal, stream, bay or waterway theretofore made by the government of the United States or any department thereof, and to arrange for surveys, examinations and investigations of the proposed improvement and for the supervision of the work of improvement by the government of the United States or the proper department or officer thereof; provided that such commissioners shall have full power and authority to cooperate and act with the government of the United States or any officer or department thereof in any and all matters pertaining to or relating to the construction and maintenance of said canals, and the improvement and navigation of all such navigable rivers, bays, creeks, streams, canals, and waterways, whether by survey, work or expenditure of money made or to be made either by said navigation and canal commissioners, or by said government of the United States, or any proper officer or department thereof, or by both; and, to the end that the said Government of the United States may aid in all such matters, the said commissioners shall have authority to agree and consent to the said Government of the United States entering upon and taking management and control of said work, insofar as it may be necessary or permissible under the laws of the United States, and the regulations and orders of any department thereof.

Tax to pay bonds

Sec. 37. When any bonds have been voted, the board of navigation and canal commissioners of the district shall levy a tax upon all taxable property within such district, sufficient in amount to pay the interest of such bonds and to redeem and discharge the principal of such bonds at their maturity, and said

board shall annually levy or cause to be assessed and collected upon all taxable property within said district, an amount sufficient to pay for the expense of assessing and collecting said tax.

Bonds

Sec. 38. All bonds issued under the provisions of this Act shall be issued in the name of the navigation district, shall be signed by the chairman of the board of said navigation and canal commissioners of such district, shall be attested by its secretary, and the seal of the district shall be affixed to each bond. They shall be issued in such denominations and payable at such time or times, not exceeding forty years from their date, as may be deemed most expedient by said board of navigation and canal commissioners, and such bonds shall bear interest not to exceed six per centum (6%) per annum, payable annually or semi-annually.

Warrants

Sec. 39. All district funds shall be handled by and under the orders of the board of navigation and canal commissioners upon warrants drawn therefor, and no warrant shall be paid unless signed by at least two of the members of the board.

Depositories

Sec. 40. The funds of the district shall be kept in the district depository, which shall be designated at the time and in the manner and under the same regulations and laws as county depositories.

Powers of districts

Sec. 41. Such districts shall have the right, power and authority to acquire, purchase, take over, construct, maintain, operate, develop and regulate wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, lighterage, towing facilities, lands and all other facilities or aids incident to or necessary to the operation or development of ports or waterways within such districts.

Additional improvements

Sec. 42. When the board of navigation and canal commissioners of any such district deems it for the best interest of the district to avail itself of the rights, powers and authority and benefits provided in the foregoing section, or if said board shall find that additional improvements are necessary for the navigation of or in aid of navigation of any river, creek, stream, bay, canal, or waterway in addition to the improvements originally planned or constructed as hereinabove provided, said board shall so find by an order entered in its minutes, and shall direct the district engineer to make an estimate showing the character and cost of such improvements.

Hearing on additional improvements

Sec. 43. After entering its findings as provided in the preceding section, the board of navigation and canal commissioners shall publish a notice in some newspaper published within the district; if no newspaper be published in such district, then in the newspaper published nearest to such district once each week for three consecutive weeks, which notice shall contain a copy of the order making such findings, in which notice a time and place shall be designated for a hearing, and the board of navigation and canal commissioners shall hear evidence, and at such hearing any taxpayer of such district, or person interested, may present evidence, and such hearing may adjourn from day to day for a reasonable time so that all interested persons and taxpayers may be heard. After completing such hearing the board of navigation and canal commissioners shall enter its order making its findings as to whether such improvements and the construction of such facilities as provided in the preceding section be feasible and practicable, and whether benefits to the public will result therefrom, and if such findings be in the negative, no further action shall be taken under said notice and hearing, but if the board shall find that such improvements and the construction of such facilities would be a public benefit and are feasible and practicable, then said district may issue bonds for the purpose of paying for the improvements and facilities so found to be necessary and an election shall be held thereafter for the purpose of voting such bonds, and such bonds shall be issued as other bonds provided for herein, but such bonds shall not exceed the cost of such improvements as estimated by the engineer. The ballots at such election shall have printed thereon these words and none others: "For the issuance of bonds and levying of tax in payment thereof"; "Against the issuance of bonds and levying of tax in payment thereof."

Taxpayers as voters

Sec. 44. Only those who are qualified property taxpaying voters as provided herein shall vote at such election, and the returns of such election shall be canvassed as provided elsewhere herein.

Bond issues

Sec. 45. If upon a canvass of the vote the board of navigation and canal commissioners shall determine that a majority of the votes cast at said election shall have been cast in favor of the issuance of bonds and the levying of tax, such board shall make an order directing the issuance of said bonds and levying of tax, and such bonds when so issued shall be issued in the name of the navigation district, shall be signed by the president of the board of navigation and canal commissioners and attested by its secretary, and the seal of such district shall be affixed to each bond, and they shall be issued in such denominations and payable at such time or times not exceeding forty years from their date, as may be deemed most expedient by said board, and shall bear interest not to exceed six per cent (6%) per annum, payable annually or semi-annually.

Approval of Attorney General

Sec. 46. Any navigation district in the State of Texas existing under the provisions of this Act desiring to issue bonds in accordance therewith, shall before such bonds are offered for sale, present to the Attorney General a copy of the bonds to be issued and a certified copy of all the minutes of the proceedings of said board pertaining to the issuance of such bonds, including also a copy of all notices of such hearing and of such election, together with a certified copy of the return of each such notice, and a certified copy of the order of said board levying the tax to pay interest and to retire such bonds at their maturity, and a statement of the total bonded indebtedness of such navigation district as such, including the series of bonds proposed and the assessed value of the property for the purpose of taxation, as shown by the last official assessment of the district, together with such other information as the Attorney General may require; whereupon it shall be the duty of the Attorney General to carefully examine said bonds in connection with the facts and the Constitution and laws on the subject of the execution of such bonds; and, if as a result of such examination the Attorney General shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon such navigation district by which they are issued, he shall so officially certify.

Approved bonds as binding

Sec. 47. When said bonds have been examined by the Attorney General and his certificate issued as provided in the preceding section, they shall be registered by the State Comptroller, in a book to be kept for that purpose; and the certificate of the Attorney General to the validity of such bonds shall be preserved of record for use in the event of litigation.

Such bonds, after being approved by the Attorney General, and after having been registered in the Comptroller's office as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligation. And, in every action brought to enforce collection of said bonds or interest thereon, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received as prima facie evidence of the validity of such bonds, together with the coupons thereto attached; provided, that the only defense that can be offered against the validity of said bonds or coupons be forgery or fraud.

Records of bonds

Sec. 48. When bonds shall have been issued under the provisions of this Act, the navigation board of said district shall procure and deliver to the secretary of such district a well bound book in which a record shall be kept of all such bonds, with their numbers, amount, rate of interest, date of issuance, when due, where payable, amount received for same, the tax levy to pay interest on and to provide sinking funds for their payment, and said book shall at all times be open to the inspection of the parties interested in said district, either as taxpayers, or bondholders or otherwise; and upon payment of any bond, an entry thereof shall be made in said book.

Sale of bonds

Sec. 49. When such bonds have been registered as provided in the preceding section of this Act, the chairman of the navigation and canal commissioners of the district shall offer for sale and sell said bonds on the best terms and for the best price possible, but none of said bonds shall be sold for less than ninety per cent (90%) of the face par value thereof and accrued interest thereon; and, as fast as said bonds are sold, all moneys received therefor shall be paid to the district depository for the credit of such navigation district.

Expenses from construction and maintenance fund

Sec. 50. All expenses of any kind, after the filing of the original petition for the creation of such district, necessarily incurred in connection with the creation, establishment and maintenance of any navigation district organized under the provisions of this section, shall be paid out of the "Construction and Maintenance Fund" of such navigation district; which fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever source, except the tax or other collections applied to the sinking fund and payment of interest on the bonds of the district; provided, that should the proposition of the creation of such navigation district and the issuance of bonds be defeated at the election called to vote upon the same then all expenses up to and including said election shall be paid in the following manner; when the original petition praying for the establishment of a navigation district is filed with the County Commissioners' Court it shall be accompanied by Five Hundred Dollars ($500.00) in cash, which shall be deposited with the clerk of said county Commissioners' Court and by him held until after the result of the election for the creation of said navigation district has been declared and entered of record by the Commissioners' Court; and should the result of said election be in favor of the establishment of said district, then the Five Hundred Dollars ($500.00) shall be by said clerk returned to the signers of said original petition or their agent or attorney; but should the result of said election be against the establishment of said district, then the said clerk shall pay out of the Five Hundred Dollars ($500.00), upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed district up to and including said election, and shall return the balance, if any, of said Five Hundred Dollars ($500.00) to the signers of said original petition, or their agent or attorney.

Tax levy

Sec. 51. Whenever such navigation district bonds shall have been voted, the board of navigation and canal commissioners of such district shall levy and cause to be assessed and collected improvement taxes upon all taxable property within said navigation district, whether real, personal, mixed or otherwise, and sufficient in amount to pay the interest on such bonds, together with an additional amount to be used to discharge and redeem said bonds at their maturity, and in all such navigation districts which have heretofore been created or may hereafter be created, the board of navigation and canal commissioners shall be and are hereby authorized to levy and cause to be assessed and collected for the maintenance, operation and upkeep of such navigation district and the improvements constructed by said district, an annual tax not to exceed ten cents on the One Hundred Dollar ($100.00) valuation upon all taxable property within such navigation district, whether real, personal, mixed or otherwise; provided, however, that the interest on said bonds may be paid and said bonds retired, and all costs for the maintenance, operation and upkeep of such navigation district and improvements constructed by such district may be retired and paid by means of tolls, rents, fees, or other charges other than by taxation, or by assessments made upon said properties in such district, upon the basis of benefits derived by such properties, in the manner hereinafter set out.

Assessments

Sec. 52. The entire cost of making such improvement or improvements as hereinbefore provided, and such bonds, notes, debentures or other evidences of debt as may be issued by the district for such improvements, together with interest thereon, may be paid by assessments against the property within such district, which assessments shall be equitably distributed and may be fixed in the manner hereinafter set out.

Notice of intention to retire bonds

Sec. 53. In the event the board of navigation and canal commissioners shall decide to retire such bonds and other evidences of debt by means of assessments against the property within such district, equitably distributed, said board shall so find by an order entered on the minutes of its proceedings, and shall thereafter cause to be published in some newspaper within said district, or if no newspaper be published in such district, then in the newspaper published nearest to such district, a general notice once each week for three consecutive weeks, which notice shall contain a copy of such order, and which notice shall fix a certain date for a hearing at which all property owners and persons interested in such district and in such improvements shall have the right to appear and contest such assessments and offer evidence before the board of navigation and canal commissioners for or against such assessments. All protests, contests and objections at such hearing shall be in writing and the board of navigation and canal commissioners shall have the right, and it shall be their duty, to summon witnesses when requested to do so, and take testimony with reference thereto. Said hearing may be adjourned from day to day until full opportunity has been had for all proponents or contestants of such assessments to present evidence.

Assessments for retiring bonds

Sec. 54. After such hearing the board of navigation and canal commissioners shall enter its findings, and if such findings be against the proposition of such assessments, then no further action shall be taken

in the matter; but if such findings shall be in favor of levying assessments as hereinabove provided, then the board of navigation and canal commissioners shall so find and shall direct the tax assessor and collector of the district to make up a roll of all the taxable property in such district, as in the case of assessment of ad valorem taxes, in which he shall make an assessment in the proportion of cost to be borne by each item of property on the tax rolls, basing such proportion of cost upon benefits to be derived from such improvements by such property and the owner thereof, and when such rolls shall have been completed, same shall be submitted to the board of equalization appointed as hereinbefore provided, and such board of equalization shall sit and act in all respects as when sitting as a board of equalization for the equalizing of the bond taxes hereinbefore provided, and notice shall be given of such hearing by publication thereof once each week for three consecutive weeks in some newspaper published in such district, or if no newspaper be published therein, then in the newspaper published nearest to such district, and the owners of property shall have the same opportunity to present evidence as in hearings before the board of equalization for equalizing bond taxes; and all interested persons shall have an opportunity to appear and present evidence as to the benefits or lack of benefits to property in which they are interested; and after all hearings have been completed, the Board of Equalization shall report its findings to the board of navigation and canal commissioners for its acceptance or disapproval; and said board of navigation and canal commissioners in the event of refusal to approve such rolls, shall itself hold hearings on all items not approved, precisely as herein provided for the board of equalization; provided, that the findings of said board of equalization as approved and the approval of the rolls as finally fixed by said board of equalization, shall be conclusive, except in cases of fraud or the failure to equitably distribute such assessments.

Assessments as personal obligations

Sec. 55. Such assessments when so fixed shall be personal obligations of the property owners against whom such assessments are made, and the district shall have a lien against such taxable property so assessed.

Payments into Assessment Fund

Sec. 56. Such assessments shall be paid to the tax collector and shall by him be kept in a separate fund to be known as the "Assessment Fund". Payments out of said fund shall be made to retire such bonds, notes, debentures or other evidences of debt of the district, upon vouchers drawn by such navigation and canal commissioners upon the maturity of such indebtedness each year, together with interest thereon, which vouchers shall be signed by at least two (2) members of the board of navigation and canal commissioners.

Delinquent assessments

Sec. 57. Not later than August 1st of each year the tax assessor and collector of the district shall make up a delinquent roll showing all delinquencies in the payment of such assessments, and shall post the same in the office of the district for at least twenty (20) days, after which time the attorney for the district shall be authorized to make collections by filing suit in any court having jurisdiction, and ten per cent (10%) on the amount of principal and interest due at the time of filing such suit shall accrue against such property owner and shall be charged as costs of court, as attorney's or collection fee, and shall be collectible against said property owners and said property from and after the date of the filing of such suit; such suit shall be filed and prosecuted in all respects as tax suits for the collection of State and County taxes, except that the attorney for the district shall file and prosecute such suits instead of the County Attorney or other public official.

Correction of errors or mistakes in assessments

Sec. 58. No error, mistake or formality in the assessment hereinabove provided, or in any other step or proceeding prerequisite to such assessment shall invalidate the same, but the board of navigation and canal commissioners shall at all times have power and authority to correct same. No error or mistake in describing any parcel or item of property, or the name of any owner thereof shall invalidate the assessment, but it shall have full force and be in effect against said premises and the real and true owner thereof.

Whenever in the opinion of the board of navigation and canal commissioners any error, mistake or invalidity exists in any proceeding with reference to said improvements or assessments, it shall correct said error, mistake or invalidity, and re-assess said property and the owners thereof with reference to which same exists. Such re-assessments shall be made after notice and hearing as herein provided for the making of original assessments, but in making such re-assessments the board of navigation and canal commissioners shall take into consideration any enhancement in value of the property assessed, or depreciation thereof, and shall in all respects make such re-assessment on a basis of equalization and the equitable distribution of benefits to such property with respect to all other property within the district.

No such re-assessment shall be made later than three (3) years from the date of the original assessment, except in cases of fraud or of undisclosed ownership of property.

Rules and regulations

Sec. 59. The board of navigation and canal commissioners shall have power to adopt all necessary rules, regulations and orders not inconsistent with the provisions of this Act, for the purpose of carrying into effect every part hereof pertaining to such assessments, re-assessments and the collection thereof.

Pleading in suit to enforce assessment

Sec. 60. In the event of suit to enforce the collection of such assessment, it shall not be necessary to specifically plead and prove the orders, notices, rules, regulations, etc., of the board of navigation and canal commissioners pertaining to such assessments or re-assessments, but it shall be sufficient that the petition or other pleading allege that the proceedings with reference to the making of such improvements and of such assessments or re-assessments have been regularly had in compliance with the law, and that all prerequisites to the fixing of the assessment lien upon the property assessed and the personal liability of the owner have been performed.

Suit to set aside assessment

Sec. 61. Any property owner against whom or whose property an assessment or re-assessment has been made, shall have the right, within twenty (20) days thereafter, to bring suit in any court having jurisdiction, to set aside or correct the same or any proceedings with reference thereto on account of any error or invalidity therein, and the cost thereof shall be borne by the loser of such litigation, and after such twenty (20) day period shall have expired, no owner, his heirs, assigns or successors shall have such right of action or any defense of invalidity or assessments or re-assessments in any action in which same may be brought in question, except in cases of fraud.

Purchase of property by district

Sec. 62. In the event of the sale of any property by virtue of any judgment entered in favor of the district on any delinquent assessment or re-assessment, the district shall have the right to become the purchaser thereof, being the best bidder.

Eminent domain

Sec. 63. The right of eminent domain is hereby conferred upon all navigation districts established or validated under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through any and all lands, private or public, except property used for cemetery purposes, necessary for the improvement of any river, bay, creek, or arm of the Gulf of Mexico in the Construction and Maintenance of any canal or waterway, and for any and all purposes authorized by this Act. All such condemnation proceedings shall be instituted under the direction of the navigation and canal commissioners, and in the name of the navigation district, and the assessing of damages shall be in conformity with the statutes of the State of Texas for condemning and acquiring rights of way by railroads; provided, that no appeal from the finding and assessment of damages by the commissioners appointed for that purpose shall have the effect of causing a suspension of work by the navigation and canal commissioners in prosecuting the work of improvement in all of its details; provided, that no right of way can be condemned through any part of an incorporated city or town without the consent of the lawful authorities of such city or town.

Rights of way

Sec. 64. The navigation and canal commissioners of any district are hereby empowered to acquire the necessary right of way and property of any kind for all necessary improvements contemplated by this Act by gift, purchase or condemnation proceedings.

Entry on lands

Sec. 65. The navigation and canal commissioners of any district, and the engineers thereof, from the time of their appointment, are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools, instruments, machinery and implements necessary therefor, without subjecting themselves to action of trespass.

Contracts for improvements

Sec. 66. If the improvement or improvements be not carried out and performed by the Government of the United States as herein provided, the contract or contracts for such improvement or improvements shall be let by the navigation and canal commissioners, and the same shall be awarded to the lowest and best responsible bidder, after giving notice by advertising the same in one or more newspapers of general circulation in the State of Texas once a week for four consecutive weeks, and by posting notice for at least thirty (30) days in five (5) public places in the county of jurisdiction, one of which shall be at the courthouse door, and at least two (2) of which shall be within said district. Nothing herein contained shall prevent the making of more than one improvement, and where more than one improvement is to be made, the contract may be let separately for each one contract for all such improvements.

Bids for contracts

Sec. 67. Any person, corporation, or firm, desiring to bid on the construction of any work advertised for as provided under the preceding section of this Act, shall, upon application to the navigation and canal commissioners, be furnished at actual cost the survey, plans and estimates for the said work, and all bids or offers for any such work shall be in writing and sealed and delivered to the chairman of the navigation and canal commissioners, together with a certified check for at least five per cent (5%) of the total amount of bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract, and give a proper bond, if his bid is accepted. Any and all bids may be rejected at the discretion of the navigation and canal commissioners.

Written contracts

Sec. 68. All contracts made by the navigation and canal commissioners shall be reduced to writing and signed by the contractors and navigation and canal commissioners, or any two of said commissioners, and a copy of same filed with the county clerk for reference.

Bond of contractor

Sec. 69. The party, firm or corporation, to whom any such contract is let, shall give adequate bond, payable to the navigation and canal commissioners for said district, in the amount of the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contract, and that in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by such navigation and canal commissioners.

Supervision of work by engineer

Sec. 70. All work contracted for the navigation and canal commissioners, unless done under the supervision of the Government of the United States, or the proper department or officer thereof, shall be done under the supervision of the district engineer; and, when the work is completed according to contract, the engineer shall make a detailed report of the same to the navigation and canal commissioners, showing whether the contract has been fully complied with, according to its terms, and if not on what particular it has not been complied with.

Payments for work

Sec. 71. The navigation and canal commissioners shall have the right, and it is hereby made their duty, during the progress of the work being done under contract, to inspect the same; and upon the completion of any contract, they shall draw a warrant on the depository of the district for the amount of the contract price in favor of the contractor or his assignee, which warrant shall be paid out of the construction and maintenance fund of such district; provided, that, if the navigation and canal commissioners shall deem it advisable, they may contract for the work to be paid for in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate eighty per cent (80%) of the contract price of the total amount of work done under the contract, the amount of work completed to be shown by a certificate of the engineer; and provided, further, that nothing in this Section shall affect the provisions of this Act providing for the carrying out and performing of the improvement or improvements by the Government of the United States.

Reports by commissioners

Sec. 72. The navigation and canal commissioners shall make an annual report of their acts and doings as such commissioners, and file the same with the clerk of the County Court on or before the first day of January of each year; which report shall show in detail the kind, character and amount of work done in the district, the cost of same, and the amount paid out on order, for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this Act.

Employes

Sec. 73. The navigation and canal commissioners are hereby authorized and empowered to employ such assistant engineers and other employees as may be necessary, paying such compensation as they may determine; and the said commissioners are authorized to employ counsel to represent such district in the preparation of any contract, or the conducting of any proceeding in or out of court, and to be the legal advisor of the navigation and canal commissioners on such terms and for such fees as may be agreed upon by them; and such commissioners shall have the au-

thority to draw warrant or warrants in payment of such legal services, and for the salary of the engineer, his assistant, or any other employees, and for all expenses incident and pertaining to the navigation district.

Engineers not to be interested in contracts

Sec. 74. The members of the navigation board or engineer shall not be directly or indirectly interested for themselves, or as agents for any one else, in the contract for the construction of any work to be performed by such navigation district.

Suits by or against district

Sec. 75. All navigation districts established under this Act may, by and through the navigation and canal commissioners, sue and be sued in all courts of this State in the name of such navigation district, and all courts of this State shall take judicial notice of the establishment of all districts.

Acquisition of port facilities

Sec. 76. All navigation districts provided for in this Chapter and operating hereunder are hereby granted the right, power and authority to acquire, purchase, take over, construct, maintain, operate, develop and regulate wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, lighterage, lands, towing facilities, and all other facilities or aids incident to or necessary to the operation or development of ports or waterways, within the district and extending to the Gulf of Mexico.

General powers of districts

Sec. 77. Such districts shall have all the rights, power and authority herein granted, subject to the provisions of this law, and shall have all the authority granted by General or Special Law to navigation districts, and shall also have the fullest powers consistent with the State Constitution for the regulation of wharfage and of all facilities of or pertaining to ports and waterways within such navigation district, and shall have the right to assess and collect charges for the use of all facilities acquired or constructed in accordance with the provisions hereof, and to apply all amounts so collected to the maintenance and operation of the business of such districts and for the purpose of making themselves self-supporting and financially solvent and retiring the construction cost of their improvements within a reasonable period, and in addition to their authority granted herein to pay the principal and interest of their bonds by means of an ad valorem tax, such districts are hereby granted full power and authority to enter into valid and binding contracts to apply such revenues, over and above their maintenance and operation costs, as may be derived from all sources of whatsoever kind or character, other than by taxation, authorized under this Act, to the payment of principal and interest of their bonds issued in accordance with the provisions of the laws of the State of Texas; and to make contracts with the United States Government or any department, bureau or agency thereof for loans and grants upon such terms and conditions as may be necessary to comply with the regulations and requirements of such departments, bureaus or agencies under the provisions of the "National Industrial Recovery Act" and other Federal Laws now in force or which may be enacted hereafter; and it is hereby specifically provided that writs of mandamus shall issue from Courts of competent jurisdiction to compel the Board of Navigation and Canal Commissioners or other governing bodies of such districts to apply such revenues in accordance with the terms of the contracts so entered into with the Federal Emergency Administrator of Public Works or other department, bureau or agency of the United States Government, and likewise writ of injunction may issue to restrain such Navigation and Canal Commissioners or other governing bodies of such districts from violating the terms and provisions of such contracts; and all contracts heretofore entered into by such Navigation Districts in this State with the Federal Emergency Administrator of Public Works, or any department, bureau or agency of the Government of the United States for the purpose of borrowing money from, or selling their bonds to, the United States of America or any department, bureau or agency thereof, are hereby ratified, legalized, approved and validated. [As amended Acts 1934, 43rd Leg., 2nd C.S., p. 19, ch. 8, § 2.]

Ownership of adjacent lands

Sec. 78. Such districts shall have the right, power and authority to own lands adjacent or accessible to the navigable waters developed by them, and may lease same to any individual or corporation and charge therefor reasonable tolls, fees or other charges, and use such proceeds both for the maintenance and operation of the business of such districts and for the purpose of making themselves self-supporting and financially solvent and returning the construction cost of their improvements within a reasonable period.

Authority to grant franchises

Sec. 79. Such districts shall have the power to grant franchises and to charge fees therefor to persons or corporations on property owned or controlled by such districts, provided said franchises are granted for purposes consistent with the provisions of this Chapter; but no franchise shall be granted for a longer period than thirty (30) years, nor shall any franchise be granted except upon the affirmative vote of a majority of the navigation and canal commissioners at three separate meetings of such board, such meetings to be at least one week apart, and no franchise shall be granted until after the same as finally proposed to be passed shall be published at the expense of the applicant, in full, once a week for three consecutive weeks in some newspaper published within such district. Said franchise shall require the grantee therein to file his, its or their written acceptance within thirty (30) days from the time of the final passage of such franchise. Nothing herein shall be construed as preventing said navigation district from granting revocable licenses or permits for the use of limited portions of water front or facilities for the purposes consistent with the provisions of this Chapter. All fees so charged may be used for the maintenance and operation of such districts and to pay interest on bonds or other securities issued by the district for the construction of its improvements and to retire same at their maturity.

Employes

Sec. 80. Such navigation and canal commissioners may employ such persons as they may deem necessary for the construction, maintenance, operation and development of the navigation district, its business and facilities, prescribe their duties, and fix their compensation.

Police powers of municipalities within district

Sec. 81. Nothing herein shall repeal or affect the police powers of any municipality within the navigation district, or any law, ordinance or regulation authorizing and empowering such municipality to exercise such powers as to any navigable stream or aids to navigation and facilities therefor, in a navigation district, not in conflict with this Chapter; and such districts may also appoint peace officers to protect life and property within the district and the property of the district itself. Such officers shall have the same rights, powers and authority as policemen of a city or town.

Powers of commissioners

Sec. 82. The navigation and canal commissioners of any district operating hereunder shall have all the rights, powers and duties provided for navigation and canal commissioners in Articles 8248 to 8257 inclusive, and said Articles shall apply fully and completely to all districts operating hereunder.

Borrowing from Reconstruction Finance Corporation

Sec. 83. Such districts are authorized to borrow money from the Reconstruction Finance Corporation at not exceeding eight per cent (8%) interest, for all legal purposes which they are authorized to effectuate, and may pledge therefor any authorized and unsold bonds or other securities in such amounts as may be reasonably necessary to secure such loans; provided, that neither the bonds nor the warrants of such district shall ever be sold for less than ninety per cent (90%) of the par value thereof and accrued interest thereon.

Audits

Sec. 84. A complete book of all accounts and records shall be kept by the district and annually in January of each year the County Auditor shall be employed to make a complete audit of such books and records and make a report thereon.

Auditor's report

Sec. 85. The report of such auditor shall be in triplicate, one copy to be filed in the office of the district, one with the depository of the district, and one copy at the office of the County Auditor.

Borrowing to pay construction costs

Sec. 86. Such districts may retire the original cost of construction of their improvements, or pay for such cost of construction, by borrowing money and pledging and mortgaging therefor all lands, wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, lighterage, towing facilities and all other facilities or aids incident or necessary to the operation or development of ports or waterways of the district, and may issue their debentures or other evidences of debt secured by such mortgage, for such length of time, and at such rate of interest not to exceed eight per cent (8%) per annum as may be necessary, and may also secure such debentures, notes or other evidences of debt so issued, by the bonds of the district.

Retirement of notes

Sec. 87. Such debentures, notes or other evidences of debt may be retired by rents, tolls, fees or other charges other than by taxation, and by means of assessments against the taxable properties of the district equitably distributed on a basis of benefits derived by such properties from the district's improvements.

Validation of districts

Sec. 88. All navigation districts heretofore created, organized, operating or doing business under the provisions of Chapter 5 of the Acts of the 39th Legislature,[1] or of any local or special law, and purporting to come within the provisions of Section 59 of Article 16 of the State Constitution, are hereby legalized, approved and validated, and all orders, notices or other proceedings and Commissioners' Court of any county, or the board of navigation and canal commissioners of any such district, for the establishment of such district, or for the voting or issuing of any bonds, and all minutes of proceedings of such Commissioners' Court or board of navigation and canal commissioners as the case may be, pertaining to the establishment of such district or the voting or issuing of any bonds, whether by districts operating under the general provisions of said Chapter 5 of the Acts of the 39th Legislature, or of any local or special law, and purporting to act under the provisions of Section 59 of Article 16 of the State Constitution, are hereby legalized, approved and validated, and certified copies thereof may be offered in evidence in any legal proceeding, whether in courts or otherwise, and all bonds heretofore executed under and by virtue of such orders by any such navigation and canal commissioners, or by the Commissioners' Court of any county for such navigation district, are hereby legalized, approved and validated as to form and substance, and such districts are hereby fully authorized and empowered to issue and sell such bonds at not less than ninety per cent (90%) of the face value thereof and accrued interest and to use the proceeds of such bonds for the purposes for which such bonds were voted, and said bonds as and when issued and sold at any time, or from time to time, shall be and are hereby declared to be the legal, valid and binding obligation of such districts, and the board of navigation and canal commissioners thereof are hereby fully authorized and empowered to pay off and discharge such bonds by any or all of the methods for retiring the cost of construction of their improvements provided in this Chapter.

[1] Article 8263h, post.

Candidates for commissioners

Sec. 89. Candidates for navigation and canal commissioners must make application to the secretary to have their names printed on the ballot at least twenty (20) clear days before the date of such election; provided, that such names may also be placed thereon by petition of twenty (20) or more qualified voters of the district.

Districts as governmental agencies

Sec. 90. The Legislature hereby exercises the authority conferred upon it by Section 59 of Article 16 of the Constitution of Texas, and declares that all navigation districts created or validated hereunder are essential to the accomplishment of said constitutional provisions and declares them to be governmental agencies and bodies politic and corporate with such powers of government and with authority to exercise such rights, privileges and functions as are conferred in this Act and by said Constitutional provision.

Act as cumulative

Sec. 91. This Act is declared to be cumulative of all other Acts now in force as to Navigation Districts hereinafter to be organized; and in order to come within the purview of this Act, the petition for the organizing of such districts hereafter to be organized, shall state that it is the intention of the petitioners to organize same under and by virtue of this Act. In the event it is desired to organize under the provisions of Chapter 5 of the Acts of the 39th Legislature and Acts amendatory thereof,[1] then such shall not apply to such district.
petition shall so state, and the provisions of this Act

[1] Article 8263h, post.

Partial invalidity

Sec. 92. If any provision of this Act shall be held to be invalid, it is hereby declared to be the intention of the Legislature that all other provisions of this Act shall remain in force and effect.

Extension of act to other districts

Sec. 93. Any navigation district organized under the provisions of Section 59 of Article 16 or of Section 52 of Article 3, of the Constitution, and not originally coming within the scope hereof, may avail itself of the provisions of this Act to become self-liquidating in character and to be made self-supporting and return the construction cost of its improvements within a reasonable period by means of tolls, rents, fees, assessments, or other charges other than by taxation, in the manner following:

The Board of Navigation and Canal Commissioners of such district shall adopt a resolution declaring that in their judgment it is for the best interests of such district and will be a benefit to the lands and property included in such district, to avail itself of

the provisions of this Act providing for such districts to become self-liquidating in character and to make themselves self-supporting and return the construction cost within a reasonable period by means of tolls, rents, fees, assessments, or other charges other than by taxation, and shall designate in such resolution the sections of this Act of which such district wishes to avail itself. Such resolution shall be entered in the minutes of proceedings of said Board and notice thereof shall be given by publication in a newspaper having general circulation in the county or counties in which the district is situated. Such notice shall be published once each week for two consecutive weeks, and the first publication must appear not less than fourteen full days prior to the time set down for hearing. Said notice shall state the time and place of the hearing and shall set out said resolution in full; it shall notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution. Such hearing may be adjourned from day to day until all interested persons shall have had an opportunity to appear and present testimony. If upon hearing the Board of Navigation and Canal Commissioners shall find that it will be for the best interests of the district to avail itself of the provisions set out in said resolution and would be a benefit to the lands and property situated in said district, then, and in that event, said Board of Navigation and Canal Commissioners shall enter their order so finding. If they find it would not be for the best interests of the district and would not be a benefit to the lands and property situated in the district, they shall so find and enter their order to that effect. The adverse findings of said Board of Navigation and Canal Commissioners shall be final and not subject to appeal or review, and if such finding shall be favorable to the resolution, then said Board of Navigation and Canal Commissioners shall have the same right, power and authority to act under the provisions of this Act so adopted by such resolution as if such district had originally come within the purview of the Act itself. [Acts 1932, 42nd Leg., 3rd C.S., p. 63, ch. 27.]

Acts 1934, 43rd Leg., 2nd C.S., p. 19, ch. 8, §§ 1, 2, amended sections 1 and 77 of this Article.

Section 2a of Acts 1934, 43rd Leg., 2nd C.S., p. 19, ch. 8, provides that it shall not be construed as amending Acts 1933, 43rd Leg., 1st C.S., p. 303, ch. 111 (Art. 8247a, ante) or in any way changing or repealing its provisions.

Art. 8263f. Validation of navigation districts created by Commissioners' Court.—Sec. 1. That whenever the county commissioners' court of any county shall have caused to be described upon its records any defined portion of contiguous territory located wholly or in part within said county, for the improvement of rivers, bays, creeks, streams, and canals within or adjacent to such districts, and the construction and maintenance of canals and waterways to permit of navigation, or in aid thereof, under authority of Article 3, Section 52 of the Constitution of this State and such district so created has been thereafter converted into a navigation district under Article 16, Section 59, of the Constitution and in accordance with Section 1, Chapter 103, Acts of the Forty-first Legislature, First Called Session, 1929,[1] each such defined portion of contiguous territory is hereby recognized as a legal body politic and corporate of this state and as a navigation district for such purposes, under authority of Section 52, of Article 3, of the Constitution of Texas, and as the creation of each such navigation district is hereby validated and legalized, and the conversion thereof into navigation districts under Article 16, Section 59 of the Constitution of Texas, as hereinbefore set forth, is hereby validated and legalized.

Sec. 2. That the boundaries of each such navigation district are hereby designated as the same are described by metes and bounds upon the minutes or records of the county commissioners' court of any county wherein a navigation district has been heretofore established pursuant to any general or special law, and such boundaries are hereby designated as the same appear upon said record books of the county commissioners' courts of the several counties in the State of Texas, and upon certified copies of such records on file in the office of the State Comptroller of Public Accounts, and with like effect as though the metes and bounds description of each such navigation district were here severally set out at large.

Sec. 3. That where a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of any such navigation district and the issuance of bonds and levy of a tax upon the taxable properties therein for the purpose of paying interest on said bonds and providing a sinking fund for the redemption thereof, for navigation district purposes, the canvass of said vote, revealing such majority, having been recorded in the minutes of said county commissioners' court, and where thereafter the county commissioners' court of such county, pursuant to authority conferred by the navigation and canal commissioners, by order adopted and recorded in its minutes, authorized the issuance of navigation bonds for such district in the amount so certified by the navigation and canal commissioners, and prescribed the date and maturity thereof and rate of interest the bonds were to bear, the place of payment of principal and interest, and provided for the levy of a tax on the valuation of taxable property in such navigation district according to the value thereof as fixed for state and county purposes, sufficient to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity, and said bonds were sold and delivered and the proceeds received by the County Treasurer of said county for the credit of such navigation district, each such election and all acts and proceedings had and taken in connection therewith by such county commissioners' court in respect of the establishment of such navigation district and the issuance of such bonds, levy of taxes, and construction of improvements, are hereby legalized, approved and validated.

Sec. 4. That taxes sufficient to pay the principal of and interest on said bonds, so levied for such purposes upon the valuation of taxable property in such navigation district, according to the value of taxable property as determined for state and county purposes, are hereby found and fixed as the amount to be raised in such navigation district, and constitute the basis for such taxation, and the assessment and levy of such taxes is hereby validated and legalized; and that said taxes in an amount sufficient to pay the principal of and interest on said bonds now outstanding shall be annually assessed and collected according to the value of taxable property as fixed for state and county taxes by the county commissioners' court of each such county, and express authority so to do is hereby delegated and granted to such commissioners' courts; and it is hereby found and determined that all lands within such navigation districts have been and/or will be benefited by reason of the creation of such districts and the construction of the improvements. [Acts 1933, 43rd Leg., 1st C.S., p. 217, ch. 81.]

[1] Article 8263a, ante.

Art. 8263g. Refunding bonds authorized.

Issuance; maturity; interest

Section 1. That any navigation district in the State of Texas organized pursuant to the provisions of Chapter 5, of the Acts of the Thirty-ninth Texas Legislature, Regular Session, 1925,[1] which has bonds now outstanding, may and is hereby empowered by order of the Commissioners Court of the county in which all or the major part of such district is located, and without submitting the proposition to an election, to authorize and issue its refunding bonds for the purpose of retiring all or any part of such out-

standing bonds. Such refunding bonds may mature serially or otherwise not exceeding forty (40) years from their date, may bear interest at any rate not to exceed six (6) per cent per annum, shall be executed in the name of such navigation district by the County Judge and County Clerk under the seal of the Commissioners Court, and shall in other respects have such details and be issued in the manner provided by the Commissioners Court in the order authorizing such bonds.

[1] Article 8263h, post.

Bonds sold at par

Sec. 2. That refunding bonds authorized hereunder shall be either sold by the Board of Navigation and Canal Commissioners of such district at not less than the par value thereof, or if so directed by said Board shall be delivered to the holders of not less than a like par amount of the bonds of such district authorized to be refunded in exchange therefor, or may be sold in part and exchanged in part.

Approval by Attorney General

Sec. 3. That refunding bonds authorized hereunder shall be submitted to the Attorney General of the State of Texas for approval and shall be registered by the Comptroller of Public Accounts of the State of Texas in like manner and with like effect as is now provided by the laws of Texas for the approval and registration of municipal bonds.

Tax levy

Sec. 4. That if any district shall issue refunding bonds hereunder it shall be authorized and is hereby required annually to levy taxes on all taxable property in such district fully sufficient to pay interest on such refunding bonds as it falls due and to pay the principal thereof at maturity. In making such annual levies each such district is authorized to take into consideration the percentage of delinquencies occurring in its tax collections over the preceding years, and to levy and extend taxes in an amount, after the deduction of estimated delinquencies, fully sufficient to take care of principal and interest requirements and the cost of tax collection. Such district may in its discretion pledge to the payment of such refunding bonds either the proceeds of taxes levied for payment of the bonds refunded and delinquent at the time of the authorization of the refunding bonds, or cash and securities in the sinking fund maintained for payment of the bonds refunded, or both; provided however, that such tax proceeds, cash and securities may be so pledged only in so far as is consistent with the rights of the holders of the bonds so refunded.

Full authority granted for issuing bonds

Sec. 5. That this Act shall be construed as cumulative authority for the accomplishment of the purposes herein named, and shall, without reference to other Statutes of the State of Texas, constitute full authority for the issuance of refunding bonds hereunder, and no proceedings, publications, elections, or referendums other than those herein required, shall be necessary to the authorization and issuance of such bonds.

Constitutionality

Sec. 6. That if any paragraph, clause or provision of this Act shall be held unconstitutional or invalid, the remainder hereof shall remain in full force and effect. [Acts 1935, 44th Leg., 1st C.S., p. 1585, ch. 398.]

Art. 8263h. Development and improvement of navigation of inland and coastal waters.

Navigation Districts

Section 1. There may be created within this State under and by virtue of Section 59 of Article 16 of the Constitution of the State of Texas, districts to be known as Navigation Districts, in the manner hereinafter provided; and such districts may or may not include within their boundaries and limits villages, towns, cities, road districts, drainage districts, irrigation districts, levee districts, and other improvement districts, and municipal corporations of any kind, or any part thereof. Such navigation districts, when so established, may make improvements for the navigation of inland and coastal waters, and for the preservation and conservation of inland and coastal waters for navigation, and for the control and distribution of storm and flood waters of rivers and streams in aid of navigation, and for any and all other purposes stated in Section 59 of Article 16 of the Constitution of the State of Texas, necessary or incidental to the navigation of inland and coastal waters or in aid thereof, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions as may be essential to the accomplishment of such purposes; provided, that such districts shall not include therein the territory of more than two counties, or parts of two counties.

Petition

Sec. 2. When it is proposed to create a navigation district wholly within one county, there shall be presented to the county commissioners' court of the county in which the lands to be included in such districts are located, at any regular or special session, a petition accompanied by the deposit provided for in Section 26 of this Act, signed by twenty-five of the resident property taxpayers, or in the event there are less than seventy-five resident property taxpayers in the proposed district then by one-third of such resident property taxpayers in the proposed district; praying for the establishment of a navigation district, and setting forth the boundaries of the proposed district, accompanied by a map thereof, the general nature of the improvement or improvements proposed, and an estimate of the probable cost thereof, and designating a name for such navigation district, which name shall include the name of the county, said petitioners shall make affidavit to accompany said petition of their said qualifications; and when it is proposed to create such a district to be composed of lands in two counties, then a petition of the nature above indicated, signed by twenty-five of the property taxpayers residing in the territory of each county to be included in such proposed district, or in the event there are less than seventy-five property taxpayers residing in said territory, then by one-third of such resident property taxpayers, accompanied by the deposit provided for in Section 26 of this Act; which petition shall be presented to the commissioners' court of the county in which is located the greater amount of acreage of such proposed district, which shall be the county of jurisdiction in respect to all matters concerning said district, and the name of which county shall be included in the name of such district and, upon presentation of such petition the said commissioners' court shall, at the same session when said petition is presented set down for hearing at some regular term of said court, or at some special session of said court called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition and shall order the clerk of said court to give notice of the date and the place of said hearing, by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be the courthouse door of said county and four of which shall be within the limits of said proposed navigation district; and if the district be composed of more than one county, then there shall be posted a copy of said petition and the order of the court thereon, at the door of the courthouse of each county in which any portion of the proposed district is located, and four copies in four different places within each

county in which any portion of the proposed district is located, and within the boundaries of said districts. Said notices shall be posted not less than twenty days prior to the time set for the hearing. The said clerk shall receive as compensation for such service one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices.

Hearing; navigation board

Sec. 3. In the event the boundaries of the proposed district shall include a city or cities, or a part or parts thereof, acting under special charter granted by the Legislature, the hearing of said petition, hereinafter provided for, shall be had before the county judge and the members of the commissioners' court and the mayor and aldermen or commissioners, as the case may be, of said city or cities; and said persons shall constitute a board to be known and designated as the navigation board, to pass upon the petition aforesaid. Each individual member of said board shall be entitled to a vote. A majority in number of the individuals composing said board shall constitute a quorum, and the action of a majority of the quorum shall control.

Date of hearing; notice

Sec. 4. In the event the hearing of said petition shall be had before the navigation board, the commissioners' court of said county shall set the petition down for hearing not less than thirty nor more than sixty days from the date of the presentation of said petition without reference to any term of the commissioners' court, but said hearing shall be held at the regular place of meeting of the commissioners' court, and notice shall be given of the hearing in the manner and for the time as hereinbefore provided.

Record

Sec. 5. The county clerk shall enter and record the proceedings of the navigation board in a record book kept for this purpose, which record shall be a public archive.

Duties of officials

Sec. 6. The duties and powers herein conferred upon the county judge and members of the commissioners' court, and upon the mayor and aldermen or commissioners of cities, and upon the county clerk and other officers, are made a part of the legal duty of said officials, which they shall render and perform without additional compensation, unless otherwise provided herein.

Contests and objections; jurisdiction

Sec. 7. Upon the day set by said county commissioners for the hearing of said petition, any person who has taxable property within the proposed district, or who may be affected thereby, may appear before the said court, or navigation board, as the case may be, and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of the said district, to show that the proposed improvement or improvements would or would not be of any public utility and would or would not be feasible or practicable, and the probable cost of such improvement or improvements, or as to any other matter pertaining to the proposed district. Said county commissioners' court, or navigation board, shall have the exclusive jurisdiction to hear and determine all contests and objections to the creation of such districts, and all matters pertaining to the creation of [1] such districts, and all matters pertaining to the creation and establishment of the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, except as hereinafter provided, and may adjourn hearing in any matter connected therewith from day to day; and all judgments or decisions rendered by said court, or navigation board, in relation thereto shall be final, except as herein otherwise provided.

[1] So in enrolled bill. The words "such districts, and all matters pertaining to the creation of" seem to be superfluous.

Hearing and determination

Sec. 8. If, at the hearing of said petition, it shall appear to the commissioners' court, or navigation board, as the case may be, that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility; and, if the court, or navigation board, as the case may be, shall approve the boundaries of the proposed district as set out in said petition, then the court, or navigation board, shall so find, and shall also find the amount of money necessary for said improvement or improvements and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be recorded in the records of the commissioners' court, or minutes of the navigation board, as the case may be. If the court, or navigation board, shall find that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility, but does not approve the boundaries of the proposed district as set forth in the petition, the court, or navigation board, shall so find, and shall define the boundaries of such district as the court considers the same should be, and shall also find the amount of money necessary for said improvement or improvements, and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be entered of record, together with a map thereof. Providing, however, that before any change is made by said court, or navigation board, as the case may be, of the boundaries, notice and hearing thereof shall be given and had as provided for in Section 2 of this Act. If the court, or navigation board, shall find that the proposed improvement is not feasible or practicable, or that it would not be a public benefit or public utility, and that the establishment of such navigation district is therefore unnecessary, then the court, or navigation board, shall enter such findings of record and dismiss the petition at the cost of petitioners, but the order dismissing said petition shall not prevent or conclude the presentation at a later date of a similar petition.

Election

Sec. 9. After the hearing upon the petition, as herein provided, if the court, or navigation board, as the case may be, shall find in favor of the petitioners for the establishment of navigation district according to the boundaries as set out in said petition, or as changed or modified as above provided by the said court, or navigation board, the commissioners' court of jurisdiction shall order an election, in which order provision shall be made for submitting to the qualified property taxpaying voters residing in said district whether or not such navigation district shall be created, and whether or not said bonds shall be issued and a tax shall be levied sufficient to pay the interest and provide a sinking fund sufficient to redeem said bonds at maturity, said order specifying the amount of bonds to be issued, together with the length of time the bonds shall run and the rate of interest said bonds shall bear, as said matters have been determined by the commissioners' court or navigation board, as the case may be, under the provisions of Section 8 of this Act. Said election to be held within such proposed navigation at the earliest legal

time, at which election there shall be submitted the following proposition, and none other; "For the navigation district, and the issuance of bonds and the levy of tax in payment thereof;" "Against the navigation district, and the issuance of bonds and levy of tax in payment thereof."

Notice of election

Sec. 10. Notice of such election, stating the time and place of holding the same, shall be given by the clerk of the said court by posting notices thereof in four public places in such proposed navigation district, and one at the courthouse door of the county in which such district is located, and if the district be composed of more than one county, then there shall be posted a copy of said notice at the door of the courthouse of each county in which any portion of the proposed district is located, and four copies in four public places within each county in which any of the proposed district is located, and within the boundaries of said district; said notices shall be posted for thirty days prior to the date set for the election. Such notices shall contain the proposition to be voted upon as set forth in Section 9 of this Act, and shall also specify the purpose for which said bonds are to be issued, and the amount of said bonds, and shall contain a copy of the order of the court ordering the election.

Conduct of election

Sec. 11. The manner of conducting said election shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of said proposed district, shall be entitled to vote at any election on any question submitted to the voters thereof by the county commissioners' court at such election. The county commissioners' court shall create and define, by an order of the court, the voting precincts in the proposed navigation district, and shall name a polling place or places within said precincts, taking into consideration the convenience of the voters in the proposed navigation district, and shall also select and appoint the judges and other necessary officers of the election, and shall provide one and one-half times as many ballots as there are qualified resident property taxpaying voters within such navigation district. Said ballot shall have printed thereon the words and none others: "For the navigation district, and issuance of bonds and levy of tax in payment thereof"; "Against the navigation district, and issuance of bonds and levy of tax in payment thereof."

Returns; canvass; declaration of result

Sec. 12. Immediately after said election, the officers holding the same shall make returns of the result thereof to the commissioners' court having jurisdiction, and return the ballot boxes to the clerk of said court, who shall safely keep the same and deliver them, together with the returns of the election, to the commissioners' court of jurisdiction at its next regular or special session, and the said court at such session shall canvass the vote and return; and if it be found that a majority of those voting at such election shall have been cast in favor of the navigation district and the issuance of bonds and levy of tax, then the court shall declare the result of said election to be in favor of said navigation district, the issuance of said bonds and the levy of the tax, and shall enter same in the minutes of the court as follows:

Commissioners' Court of ——— County, Texas. ——— term, A. D. ———, in the matter of the petition of ——— and ——— others praying for the establishment of a navigation district, and issuance of bonds and levy of taxes in said petition described and designated by the name of ——— Navigation District. Be it known that at an election called for the purpose in said district, held on the ——— day of ——— A. D. ——— a majority of the resident property taxpayers voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district, be, and the same is hereby established by the name of ——— Navigation District, and that bonds of said district in the amount of ——— dollars be issued, and a tax of ——— cents on the one hundred dollars valuation, or so much thereof as may be necessary to be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund to redeem that at maturity, and that if said tax shall at any time become insufficient for such purposes same shall be increased until same is sufficient. The metes and bounds of said district being as follows:

(Giving metes and bounds.)

Navigation and canal commissioners

Sec. 13. After the establishment of any navigation district, as herein provided, the commissioners' court, or navigation board, as the case may be, shall appoint three navigation and canal commissioners, all of whom shall be residents of the proposed navigation district, who shall be freehold property taxpayers and legal voters of the county, whose duties shall be as hereinafter provided, and who shall each receive for their services such compensation as may be fixed by the commissioners' court and made of record. Said navigation and canal commissioners shall hold office for the term of two years, and until their successors have qualified, unless sooner removed by a majority vote of the county commissioners, or navigation board, as the case may be, for malfeasance or nonfeasance in office. Upon the expiration of the term of office of said navigation and canal commissioners, the commissioners' court, or navigation board, as the case may be, shall appoint their successors by a majority vote. Should any vacancy occur through the death or resignation or otherwise of any commissioners, the same shall be filled by the commissioners' court, or the navigation board, as the case may be.

Oath of commissioners

Sec. 14. Before entering upon their duties, all navigation and canal commissioners shall take and subscribe before the county judge of the county having jurisdiction an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the commissioners' court having jurisdiction, or navigation board, by which they are appointed whenever required to do so, which oath shall be filed by the clerk of said court and preserved as part of the records of said navigation district.

Bond

Sec. 15. Before entering upon duties each of the navigation and canal commissioners shall make and enter into a good and sufficient bond in the sum of one thousand ($1,000.00) dollars payable to the county judge of the county having jurisdiction for the use and benefit of said navigation district, and conditioned upon the faithful performance of their duties.

Organization

Sec. 16. Said commissioners shall also organize by electing one of their number chairman and one secretary, and two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district.

Engineer

Sec. 17. Said commissioners shall have authority to employ a competent engineer, whose term of office shall

be at the will of said commissioners, and who shall receive such compensation as may be determined by such commissioners. It shall be the duty of the engineer to make all necessary surveys, examinations, investigations, maps, plans and drawings with reference to the proposed improvements. He shall make estimate or estimates of the cost of same, shall supervise the work of improvement, and shall do and perform all such duties as may be required of him by the commissioners. Provided, that if the river, creek, stream, bay, canal, or waterway, to be improved is navigable or the improvement proposed to be of such nature as requires the permission or consent of the Government of the United States, or any department or officer of the Government of the United States, the navigation and canal commissioners shall be authorized to obtain the required permission or consent of the Government of the United States, or any officer or department thereof; and, in lieu of the employment of an engineer as herein provided, or in addition thereto, the navigation and canal commissioners shall have power to adopt any survey of the river, creek, canal, stream, bay, or waterway theretofore made by the Government of the United States, or any department thereof, and to arrange for surveys, examinations and investigations of the proposed improvement, and for supervision of the work of improvement by the Government of the United States, or the proper department or officer thereof; provided, that said commissioners shall have full power and authority to co-operate and act with the Government of the United States, or any officer or department thereof, in any and all matters pertaining to or relating to the construction and maintenance of said canals, and the improvement and navigation of all such navigable rivers, bays, creeks, streams, canals, and waterways, whether by survey, work or expenditure of money made or to be made either by said navigation and canal commissioners, or by said Government of the United States, or any proper officer or department thereof, or by both; and, to the end that the said Government of the United States may aid in all such matters, the said commissioners shall have authority to agree and consent to the said Government of the United States entering upon and taking management and control of said work, in so far as it may be necessary or permissible under the laws of the United States, and the regulations and orders of any department thereof.

Navigation bonds, issuance of; additional bonds

Sec. 18. When said commissioners shall have determined the cost of the proposed improvement or improvements, all of the expenses incident thereto and cost of maintenance thereof, they shall certify to the commissioners' court having jurisdiction the amount of bonds necessary to be issued, and thereupon the said court, at a regular or special meeting, shall make an order directing the issuance of navigation bonds for such navigation district in the amount so certified; provided that the amount of bonds shall not exceed the amount authorized by the election theretofore held. In the event the proceeds of bonds issued by such navigation district should be insufficient to complete the proposed improvement or construction, or in the event said commissioners shall determine to make other and further construction or improvements, or shall require additional funds with which to maintain the improvements made, they shall certify to said commissioners' court the necessity for an additional bond issue, stating the amount required, the purpose of the same, the rate of interest of said bonds, and the time for which they are to run, whereupon said commissioners' court shall issue such bonds, unless the amount previously authorized shall have been exhausted, in which case said commissioners' court shall order an election on the issuance of said bonds to be held within such navigation district at the earliest possible legal time and in the manner hereinbefore provided for the original issue of bonds, at which election there shall be submitted the following proposition, and none other: "For the issuance of bonds and levy of tax in payment thereof;" "against the issuance of bonds and levy of tax in payment thereof;" notices of said election shall be given as provided in Section 10 of this Act; and the election shall be held and conducted in the manner provided in Section 11 of this Act. Only those who are qualified property taxpaying voters as provided in this Act shall vote at such election, and the returns of such election shall be canvassed as provided in Section 12 of this Act.

Order for bonds and tax

Sec. 19. If, upon a canvass of the vote, the commissioners' court shall determine that a majority of the votes cast at said election shall have been cast in favor of the issuance of bonds and levy of tax, the said court shall make an order directing the issuance of said bonds and levy of tax.

Formalities in issuing bonds; interest

Sec. 20. All bonds issued under the provisions of this Act shall be issued in the name of the navigation district, shall be signed by the county judge of the county whose commissioners' court has jurisdiction of said district, shall be attested by the county clerk, and the seal of the commissioners' court of such county shall be affixed to each, they shall be issued in such denominations and payable at such time, or times, not exceeding forty years from their date, as may be deemed most expedient by said commissioners' court, and said bonds shall bear interest not to exceed six per cent per annum.

Attorney General's duties regarding bonds

Sec. 21. Any navigation district in the State of Texas desiring to issue bonds in accordance with this Chapter shall, before such bonds are offered for sale, forward to the Attorney General a copy of the bonds to be issued, a certified copy of the order of the commissioners' court levying the tax, a copy of the order of the commissioners' court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such navigation district as such, including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last official assessment by the county, together with such other information as the Attorney General may require; whereupon it shall be the duty of the Attorney General to carefully examine said bonds in connection with the facts and the Constitution and laws on the subject of the execution of such bonds; and, if as the result of such examination the Attorney General shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon such navigation district by which they are issued, he shall so officially certify.

Approval and registration of bonds; actions

Sec. 22. When said bonds have been examined by the Attorney General, and his certificate issued to that effect, they shall be registered by the State Comptroller, in a book to be kept for that purpose; and the certificate of the Attorney General to the validity of such bonds shall be preserved of record for use in the event of litigation. Such bonds, after being approved by the Attorney General, and after having been registered in the Comptroller's office as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is or may be brought in question, prima facie valid and binding obligations. And, in every action brought to enforce collection of said bonds or interest thereon, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received as prima facie evidence of the validity of such bonds, together with the coupons thereto attached; provided, that the only defense that can be offered against the validity of said bonds or coupons be forgery or fraud.

Record of bonds

Sec. 23. When bonds shall have been issued under the provisions of this Act, the navigation board of said district shall procure and deliver to the treasurer of the county whose commissioners' court has jurisdiction, a well bound book in which a record shall be kept of all such bonds, with their numbers, amount, rate of interest, date of issuance, when due, where payable, amount received for same, the tax levy to pay interest on and to provide sinking funds for their payment, and said book shall at all times be open to the inspection of the parties interested in said district, either as taxpayers, or bondholders or otherwise: and upon payment of any bond, an entry thereof shall be made in said book. The county treasurer shall receive for his services in recording these matters the same fees as may be allowed by law to the county clerk for other like records.

Sale of bonds

Sec. 24. When such bonds have been registered, as provided for in the preceding section of this Act, the chairman of the navigation and canal commission shall offer for sale and sell said bonds on the best terms and for the best price possible, but none of said bonds shall be sold for less than the face par value thereof and accrued interest thereon; and, as fast as said bonds are sold, all moneys received therefor shall be paid to the county treasurer, and shall by him be placed to the credit of such navigation district.

Bond of chairman

Sec. 25. Before the said chairman of the navi_tion and canal commissioners shall be authorized to sell any of the navigation bonds, he shall execute a good and sufficient bond, payable to the county judge or his successors in office, to be approved by the county commissioners' court of said county, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties.

Expenses

Sec. 26. All expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of any navigation district organized under the provisions of this Section, shall be paid out of the "Construction and Maintenance Fund" of such navigation district; which fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever source, except the tax collections applied to the sinking fund and payment of interest on the navigation bonds; provided, that, should the proposition of the creation of such navigation district and issuance of bonds be defeated at the election called to vote upon the same then all expenses up to and including said election shall be paid in the following manner: When the original petition praying for the establishment of a navigation district is filed with the county commissioners' court, it shall be accompanied by five hundred dollars in cash, which shall be deposited with the clerk of said county commissioners' court, and by him held until after the result of the election for the creation of said navigation district has been declared and entered of record by the commissioners' court, as hereinafter provided; and, should the result of said election be in favor of the establishment of said district, then the said five hundred dollars shall be by said clerk returned to the signers of said original petition, or their agent or attorney; but, should the result of said election be against the establishment of said district, then the said clerk shall pay out of the said five hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed district up to and including the said election, and shall return the balance, if any, of said five hundred dollars to the signers of said original petition, or their agent or attorney.

Improvement taxes

Sec. 27. Whenever such navigation district bonds shall have been voted, the commissioners' court shall levy and cause to be assessed and collected improvement taxes upon all property within said navigation district, whether real, personal, mixed or otherwise, and sufficient in amount to pay the interest on such bonds, together with an additional amount to be annually placed in a sinking fund sufficient to discharge and redeem said bonds at their maturity, and in all such navigation districts which have heretofore been created or may hereafter be created, the commissioners' courts of the respective counties wherein said districts may be created, shall be and are hereby authorized to levy and cause to be assessed and collected for the maintenance, operation and up-keep of such navigation district and the improvements constructed by said district, an annual tax not to exceed ten cents on the one hundred dollar valuation upon all property within such navigation district, whether real, personal, mixed, or otherwise.

Sinking fund investments

Sec. 28. If advisable, the sinking fund shall, from time to time, be invested by the commissioners' court of the county in such county, municipal, district or other bonds as shall be approved by the Attorney General of the State.

Additional books; assessment of property; lien

Sec. 29. The navigation board of said district shall provide all necessary additional books for the use of assessors and collectors of taxes and the clerk of the commissioners' court of jurisdiction for said navigation districts. The tax assessors of each county in said navigation district, when ordered to do so by the commissioners' court having jurisdiction of said district, shall assess all property within said navigation district which is located in his county and list the same for taxation in the books or rolls furnished him for said purposes, and return said books or rolls at the same time when he returns the other books or rolls of the State and county taxes for correction and approval to the commissioners' court of his county, and if said court shall find said books or rolls correct they shall approve the same, and in all matters pertaining to the assessment of property for taxation in said district, the tax assessors and boards of equalization of the counties in which said district is located shall be authorized to act and shall be governed by the laws of Texas for assessing and equalizing property for State and county taxes, except as herein provided. All taxes authorized to be levied by this Act shall be a lien upon the property upon which said taxes are assessed, and said taxes may be paid and shall mature and be paid at the time provided by the laws of this State for the payment of State and county taxes; and all the penalties provided by the laws of this State for the non-payment of State and county taxes shall apply to all taxes authorized to be levied by this Section. The tax assessors shall receive for such services such compensation as the said navigation and canal commissioners shall deem proper: provided that said county assessors shall in no event be allowed more than they are now allowed for like services. Should any tax assessor fail or refuse to comply with the orders of said commissioners' court requiring him to assess and list for taxation all the property in such navigation district, as herein provided, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers.

Collection of taxes; bonds of collectors

Sec. 30. That tax collectors of the several counties in said navigation district shall be charged with the assessment rolls of navigation districts, and are re-

quired to make collection of all taxes levied and assessed against the property in their county within such district and promptly pay over the same to the treasurer of the county, the commissioners' court of which has jurisdiction of said district; and said tax collectors shall be allowed no more compensation for the collection of said taxes than is now allowed for collection of other taxes, same to be fixed by the navigation and canal commissioners. The bonds of such collectors shall stand as security for the proper performance of their duties as tax collectors of such navigation districts; or, if in the judgment of the navigation and canal commissioners of such districts it be necessary, additional bonds, payable to such districts, may be required, and in all matters pertaining to the collection of taxes levied under the provisions of this section, the tax collectors shall be authorized to act and shall be governed by the laws of the State of Texas for the collection of State and county taxes, except as herein provided; and suits may be brought for the collection of said taxes and the enforcement of the tax liens created by this section. Should any collector of taxes fail or refuse to give such additional bond or security as herein provided, when requested to do so by said navigation and canal commissioners, within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law.

List of delinquent property

Sec. 31. It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the navigation tax has not been paid, and return the same to the county commissioners' court, which shall proceed to have the same collected by the sale of such delinquent property in the same manner, both by suit and otherwise, as now or may be provided for the sale of property for the collection of State and county taxes; and, at the sale of any property for any delinquent tax, the navigation and canal commissioners may become the purchasers of the same for the benefit of the navigation district.

Treasurer of navigation district

Sec. 32. The county treasurer of the county, the commissioners' court of which has jurisdiction of said district, shall be treasurer of said navigation district, and it shall be his duty to open an account of all monies received by him belonging to such district and all amounts paid out by him. He shall pay out no money except upon a voucher signed by the chairman or any two of said navigation and canal commissioners, or the said commissioners' court, and he shall carefully preserve on file all orders for the payment of money; and, as often as required by the said commissioners' court, he shall render a correct account to them of all matters pertaining to the financial condition of such district.

Bond of treasurer; compensation

Sec. 33. The county treasurer shall execute a good and sufficient bond, payable to the navigation and canal commissioners of such district, in a sum equal to twice the amount of funds he will have in his hands as treasurer of such district, at any time as estimated by said navigation and canal commissioners, such bond to be conditioned for the faithful performance of his duties as treasurer of such district and to be approved by said navigation and canal commissioners; provided, whenever any bonds are voted by such navigation district the county treasurer before receiving the proceeds of sale thereof shall execute additional good and sufficient bond payable to the navigation and canal commissioners of such district in the sum equal to twice the amount of bonds so issued, which bond shall likewise be conditioned and approved as aforesaid, but such additional bond shall not be required after such treasurer shall have properly disbursed the proceeds of such bond issue; and the county treasurer shall be allowed such compensation for his services as treasurer of such navigation district as may be determined by said navigation and canal commissioners not exceeding the same per cent as is now authorized by law for his services as county treasurer.

Condemnation proceedings

Sec. 34. The right of eminent domain is hereby conferred upon all navigation districts established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through any and all lands, private or public, except property used for cemetery purposes, necessary for the improvement of any river, bay, creek, or stream, and the construction and maintenance of any canal or waterway, and for any and all purposes authorized by this Act. All such condemnation proceedings shall be instituted under the direction of the navigation and canal commissioners, and in the name of the navigation district, and the assessing of damages shall be in conformity to the statutes of the State of Texas for condemning and acquiring the right of way by railroads; provided, that no appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall have the effect of causing a suspension of work by the navigation commissioners in prosecuting the work of improvement in all of its details: provided, that no right of way can be condemned through any part of an incorporated city or town without the consent of the lawful authorities of such city or town.

Right of way

Sec. 35. The navigation and canal commissioners of any district are hereby empowered to acquire the necessary right of way and property of any kind for all necessary improvements contemplated by this Act by gift, grant, purchase or condemnation proceedings.

Examination of property; surveys, maps, etc.

Sec. 36. The navigation and canal commissioners of any district, and the engineers, from the time of their appointment, are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass.

Contract, awarding of

Sec. 37. If the improvement or improvements be not carried out and performed by the Government of the United States, as herein provided, the contract or contracts for such improvement or improvements shall be let by the navigation and canal commissioners, and the same shall be awarded to the lowest and best responsible bidder, after giving notice by advertising the same in one or more newspapers, of general circulation in the State of Texas once a week for four consecutive weeks, and by posting notices for at least thirty days in five public places in the county of jurisdiction, one of which shall be at the courthouse door, and at least two of which shall be within said district. Nothing herein contained shall prevent the making of more than one improvement, and where more than one improvement is to be made, the contract may be let separately for each one contract for all such improvements.

Bids

Sec. 38. Any person, corporation, or firm, desiring to bid on the construction of any work advertised for as provided under the preceding section of this Act, shall, upon application to the navigation and canal commissioners, be furnished the survey, plans and estimates for the said work, and all bids or offers for any such work shall be in writing and sealed and delivered to the chairman of the navigation and canal commissioners, together with a certified check for at least five per cent on the total amount of bid, which shall be for-

feited to the district in case the bidder refuses to enter into a proper contract, if his bid is accepted. Any and all bids may be rejected at the discretion of the navigation and canal commissioners.

Contracts, reduction to writing

Sec. 39. All contracts made by the navigation and canal commissioners shall be reduced to writing and signed by the contractors and navigation and canal commissioners, or any two of said commissioners, and a copy of same filed with the county clerk for reference

Bond of contractor

Sec. 40. The party, firm or corporation, to whom any such contract is let, shall give bond, payable to the navigation and canal commissioners for said district, in twice the amount of the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contract, and that in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by such navigation and canal commissioners.

Supervision of work; report

Sec. 41. All work contracted for by the navigation and canal commissioners, unless done under the supervision of the Government of the United States, or the proper department or officer thereof, shall be done under the supervision of the engineer; and, when the work is completed according to contract, the engineer shall make a detailed report of the same to the navigation and canal commissioners, showing whether the contract has been fully complied with, according to its terms, and if not in what particular it has not been complied with.

Inspection of work; payment

Sec. 42. The commissioners shall have the right, and it is hereby made their duty, during the progress of the work being done under contract, to inspect the same; and, upon the completion of any contract, they shall draw a warrant on the county treasurer for the amount of the contract price in favor of the contractor or his assignee, which warrant shall be paid out of the construction and maintenance fund of such district; provided, that, if the navigation and canal commissioners shall deem it advisable, they may contract for the work to be paid for in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate eight per cent of the total amount to be paid under the contract, the amount of work completed to be shown by a certificate of the engineer; and provided, further, that nothing in this Section shall affect the provisions of this Act providing for the carrying out and performing of the improvement or improvements by the Government of the United States.

Annual report

Sec. 43. The commissioners shall make an annual report of their acts and doings as such commissioners, and file the same with the clerk of the county court on or before the first day of January of each year; which report shall show in detail the kind, character and amount of work done in the district, the cost of same, and the amount paid out on order, for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this Act.

Assistant engineers; employees; counsel

Sec. 44. The commissioners are hereby authorized and empowered to employ such assistant engineers and other employees as may be necessary, paying such compensation as they may determine; and the said commissioners are authorized to employ counsel to represent such district in the preparation of any contract, or the conducting of any proceedings in or out of court, and to be the legal adviser of the navigation and canal commissioners on such terms and for such fees as may be agreed upon by them; and such commissioners shall have the authority to draw warrant or warrants in payment of such legal services, and for the salary of the engineer, his assistant, or any other employees, and for all expense incident and pertaining to the navigation district.

Interest in contracts by officials forbidden

Sec. 45. Neither the county judge of any county in said navigation district, nor any county commissioner of said counties, nor members of the navigation board or engineer shall be directly or indirectly interested for themselves, or as agents for any one else, in the contract for the construction of any work to be performed by such navigation district.

Suits; judicial notice

Sec. 46. All navigation districts established under this Act may, by and through the navigation and canal commissioners, sue and be sued in all courts of this State in the name of such navigation district, and all courts of this State shall take judicial notice of the establishment of all districts. [Acts 1925, p. 7.] [39th Leg., ch. 5, §§ 1–46.]

Appointment of Board of Navigation and Canal Commissioners

Sec. 47. In navigation districts composed of lands in two (2) counties, the Board of Navigation and Canal Commissioners shall be appointed in the following manner:

The Commissioners Court of the county of jurisdiction by a majority vote shall appoint one commissioner; the Commissioners Court of the other county which is included in whole or in part within the district, shall appoint a second commissioner by a majority vote; and the two (2) Commissioners Courts shall appoint the third commissioner at a joint meeting of the two (2) Courts called and presided over by the county judge of the county of jurisdiction. Notice in writing of said meeting shall be given by mail, properly stamped and addressed, or delivered in person, at least two (2) days prior to the date fixed for said meeting. Each of the county judges and county commissioners composing the Commissioners Courts of both counties shall be entitled to one vote in appointing said third commissioner and a majority vote of those present at such meeting shall be sufficient to make such appointment. Upon the termination of the term of office of each navigation and canal commissioner or in case of vacancy, a successor shall be appointed by the same Commissioners Court or Courts which appointed the navigation and canal commissioner whose place is being filled. Except as herein otherwise provided, the provisions of said Chapter 5, Acts of the Thirty-ninth Legislature,[1] shall apply to the appointment of navigation and canal commissioners in navigation districts composed of lands in two (2) counties. [Added Acts 1945, 49th Leg., p. 180, ch. 139, § 1.]

1 Article 8263h.

Revenue bonds; operating contracts and leases

Sec. 48. All navigation districts organized under Article XVI, Section 59, of the Constitution of Texas, whether created by Act of the Legislature or organized under General Law, shall be authorized to issue revenue bonds upon the terms and under the provisions of Chapter 111, Acts of the Forty-third Legislature of Texas, First Called Session, 1933,[1] or Chapter 38, Acts of the Forty-seventh Legislature of Texas, Regular Session, 1941,[2] for the purpose of acquiring by purchase or construction, or both, improving, enlarging, extending, and repairing dams, reservoirs, water rights, water wells, canals, pipe lines, pumps, pump stations, lands, easements, rights of way, and all

other property and facilities within or without the boundaries of the district, but not within the boundaries of any other navigation district or flood control district heretofore created, necessary to provide a water supply for the irrigation of lands and for industrial, commercial, domestic, municipal and other beneficial uses, but not within the boundaries of any other navigation district or flood control district heretofore created. Such districts shall be authorized to own and operate such facilities and to sell and deliver water to any person, group, corporation, or association within or without the boundaries of the district, but not within the boundaries of any other navigation district or flood control district heretofore created.

Revenue bonds may be issued for any or all of the purposes designated in this Section together with any or all of the purposes designated in either of the two (2) Acts mentioned in the next preceding paragraph or, at the discretion of the Board of Navigation and Canal Commissioners or Board of Directors, such bonds may be authorized for general improvement purposes without specifically designating the particular improvements to be acquired. In the latter case, the proceeds of sale of said bonds may be expended for any of the purposes for which revenue bonds are authorized to be issued by this Section and by either of the two (2) Acts mentioned in the next preceding paragraph respectively. As each installment of any authorized issue of bonds is prepared for delivery, the governing board shall specify the particular purposes for which the proceeds of such installment shall be expended.

Such district may enter into operating contracts and leases with responsible persons or corporations for the operation of such portions of the district's water distribution system as the Board of Navigation and Canal Commissioners may designate, but in such case, the annual rentals to be paid to the district by the lessee shall be a sum sufficient to permit the district to meet its obligations for the payment of that proportionate part of any revenue bonds, both principal, interest, reserves, and other requirements provided in the bond proceedings, which were issued to acquire the properties leased to the extent that the proceeds of such bonds were used to acquire the portion leased.

The authority granted by this Section shall be cumulative of, and in addition to, the authority granted by other laws. [Added Acts 1945, 49th Leg., p. 180, ch. 139, § 1.]

[1] Article 2350m note.
[2] Article 8247d.

Proceedings, bonds and taxes validated

Sec. 49. All proceedings for the creation of navigation districts composed of lands in two (2) counties and for the issuance of bonds by such districts and for the levy of taxes to pay said bonds, where a public hearing was had before the Commissioners Court of one of said counties and the proposition of creating said district and issuing said bonds and levying said taxes was submitted to a vote of the duly qualified resident electors of said district, as proposed, who owned taxable property within said district, as proposed, and who had duly rendered the same for taxation and said proposition was approved by a majority of the voters voting thereat, all such proceedings for the creation of said districts and the issuance of said bonds and the levy of said taxes are hereby validated, approved, ratified, and confirmed and said districts and all bonds issued by said districts and the taxes levied to pay the same are hereby validated, approved, ratified, and confirmed and neither said districts nor said bonds nor said taxes shall be held to be invalid by reason of the failure to comply with any statutory provision or because of any irregularity in the manner in which said districts were created and organized or said bonds were voted, authorized, and issued or said taxes were levied. [Added Acts 1945, 49th Leg., p. 180, ch. 139, § 1.]

Acquisition of lands

Sec. 50. All navigation districts organized under Article XVI, Section 59, of the Constitution of Texas, whether created by Act of the Legislature or organized under General Law, shall have the right, power and authority to acquire by gift, purchase or condemnation proceedings and to own lands adjacent or accessible to the navigable waters and ports developed by them, that may be necessary or required for any and all purposes incident to or necessary for the development and operation of said navigable waters or ports within said districts or that may be necessary or required for or in aid of the development of industries on said lands, and may lease same or any part thereof to any individual or corporation and charge therefor reasonable tolls, rents, fees or other charges, and use such proceeds both for the maintenance and operation of the business of such districts and for the purpose of making themselves self-supporting and financially solvent and returning the construction costs of their improvements within a reasonable period. The acquisition of said lands for said purposes and the operation and industrial development of such ports and waterways are hereby declared to be a public purpose and a matter of public necessity.

The authority granted by this Section shall be cumulative of, and in addition to, the authority granted by other laws. [Added Acts 1947, 50th Leg., p. 218, ch. 125, § 1.]

Section 2 of the Acts of 1945 and 1947 read as follows: "If any paragraph, clause, or provision of this Act shall be held unconstitutional, the remainder hereof shall not be affected thereby but shall remain in full force and effect."

The Act of 1925, cited to the text, was set out in R.S. 1925, following Article 8263, as additional legislation. It was not assigned a specific article number. For purpose of clarity, it is now set out in this article.

Art. 8263i. Navigation districts composed of parts of one or more of certain counties; use of public lands and waters; conveyances to United States.—Section 1. Any navigation district created under the provisions of Chapter 5 of the Acts of the 39th Legislature in 1925 (Vernon's Texas Civil Statutes, Article 8263 h) composed of parts of one or more counties, one of which counties has one or more boundaries coincident with any part of the international boundary between the United States and the Republic of Mexico, is hereby granted and conveyed the free and uninterrupted use, liberty and easement in and to all the rivers, streams, bayous, arroyos, resacas, lakes, lagoons, bays, arms of the sea, beds, banks or shores thereof, mud flats or other lands covered or partly covered by the waters of any of the bays or other arms of the sea, and any other submerged land or lands owned by the State of Texas within the county or counties in which such district or districts are located and within the adjoining counties thereto, and along the route of any waterway, a part of which lies within such district, in order to connect such waterway with the Louisiana and Texas Intra-Coastal Canal Waterway now completed to Corpus Christi, Texas, for the purpose of navigation, conservation, reclamation, and flood control, in aid of navigation. Provided, nevertheless, that nothing in this Act shall be construed to affect or impair any vested rights heretofore granted by the State of Texas in and to such lands and waters; provided, further, that nothing in this Act shall be construed to affect or impair private vested rights.

Sec. 2. When any such navigation district may be the owner of any property, land, or interest in land desired by the United States of America to enable any department or establishment thereof to

carry out the provisions of any Act of Congress in aid of navigation, flood control, or improvement of water courses in aid of navigation, any such district of this state is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title or easement to any part of such property, land, or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to convey the same with or without monetary consideration therefor to the United States of America, and such navigation districts are hereby specifically authorized to acquire such necessary lands and rights of way in order to carry out the provisions or meet the conditions of such Act of Congress.

Sec. 3. This Act shall be cumulative of all existing laws upon the subject of this Act.

Sec. 4. If any section, word, phrase, clause or sentence in this Act shall be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby. [Acts 1947, 50th Leg., p. 267, ch. 163.]

CHAPTER 10.—PILOTS

1. PILOT BOARDS

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1. PILOT BOARDS

Article 8264. [6299] [3790] Governor to appoint.—The Governor shall appoint, with the consent of the Senate, for each port whose population and circumstances warrant it, and also for Matagorda and Lavaca Bays from Pass Cavallo to Indianola and Lavaca, a board of five persons of respectable standing, under the denomination of "commissioners of pilots" for such port and bays, three of whom shall be practical seamen and the other two merchants, who shall be commissioned by the Governor for the term of two years; and the Governor shall, during the recess of the Legislature, be authorized to suspend, until the next session of the same, any of said commissioners, and to fill, until the same period, any vacancies in the board caused by death, resignation or otherwise. No member of the board of commissioners shall be directly or indirectly pecuniarily interested in any pilot boat or branch pilot in the business of their trust. [Acts 1846, p. 79; G.L. vol. 2, p. 1385; Acts 1861, p. 19; P. D. 4762, 4775; G.L. vol. 5, p. 355.]

Art. 8265. [6300] [3791] Duties of board.—Said board of commissioners shall be authorized, if they deem it advisable, to examine and decide on the qualifications of any branch or deputy pilot whom they find already appointed at the time of their organization; and it shall be their duty to examine each new applicant for the office of branch or deputy pilot, and to decide on his qualifications, recommending to the Governor, where new appointments are proper, such as are meritorious; and it shall also be their duty to examine into any cause of alleged or supposed misconduct or inefficiency in branch or deputy pilots; and they shall be authorized, after a due hearing of accusation, testimony and defense, to suspend such pilot if sufficient cause appear, and during such suspension he shall not be allowed to exercise the functions of his office; the Governor shall, however, have power at his will and pleasure to remove any branch pilot, or to reinstate any one of the same who has been suspended by the commissioners. [Acts 1846, p. 79; P. D. 4763; G. L. vol. 2, p. 1385.]

Art. 8266. [6301] [3792] Pilots' qualifications.—The board shall require a certain term of residence in this State, not less than two years, to authorize any person to exercise the functions of branch pilot for their port or said bays; as also to establish a term of probation, not exceeding one year, as a deputy pilot before any person can exercise the functions of branch pilot. [Id.]

Art. 8267. [6302] [3793] Regulations and rates.—The board shall have authority, within the limits provided in this subdivision, to fix rates of pilotage, and to establish regulations respecting the stations whereat and the times wherein pilots shall be on duty, with provisions for leave of absence; as also respecting the class, condition, number and use of pilot boats, and such other minor regulations, compatible with the provisions of this subdivision as may be needed for the government of pilots and for the order and good effect of the proceedings of the board, of which proceedings a record shall be kept; provided, no regulation shall be adopted repugnant to the Constitution. [Id.]

Art. 8268. [6303] [3794] Settlement of disputes.—The board shall be authorized and required to hear and determine all disputes that may arise respecting pilots and pilotage; to award to pilots extra compensation for extra services to vessels in distress; as also compensation for injurious loss of time incurred by pilots in waiting on vessels or by being carried off to sea on vessels by default of the master or owner when such pilots might have been landed; provided, always, that no more than three dollars for each day shall be awarded for mere loss of time; and said board shall superintend and generally attend to all matters appertaining to pilots and pilotage; but from any decision of said board an appeal may be taken to the court having cognizance of the case. [Id.]

Art. 8269. [6304] [3795] Boards in small ports.—At any port whose population and circumstances do not warrant the appointment of a board of commissioners of pilots in the manner before provided, the Governor may authorize the county judge of the county to appoint a provisional committee of from three to five persons of good character and maritime experience who shall be authorized under this chapter to establish the rates of pilotage and the rules for governing pilots; to examine the qualifications of pilots and applicants for the office; to investigate the case of any pilot charged with misconduct or inefficiency, and to suspend him if sufficient cause appear. [Id.]

2. BRANCH AND DEPUTY PILOTS

Art. 8270. [6305] [3796] Appointment.—The Governor shall appoint at each of the ports such number of branch pilots as may from time to time be necessary, each of whom shall hold his office for the term of two years. [Acts 1846, p. 79; P. D. 4761; G. L. vol. 2, p. 1385.]

Art. 8271. [6306] [3797] Bond and oath.—Each branch pilot shall give bond, with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the Governor, and conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the board of commissioners of pilots for the port, or if there be no such

board, by the county judge of the county in which the port is situated, and forwarded to the Governor. Each pilot shall also take and subscribe the official oath which shall be endorsed on said bond, and together with the bond shall be recorded in the office of the county clerk of the county in which such port is situated before being forwarded to the Governor. Certified copies of said bonds, under the hand and seal of the county clerk, may be used as evidence in all the courts with like effect as the originals. [Id.; Acts 1861, p. 19; G. L. vol. 5, p. 355.]

Art. 8272. [6307] [3798] May appoint deputies.—Each branch pilot may appoint subject to examination and approval by the board of commissioners, two deputies, for whose acts the branch pilot so appointed shall be responsible; and any branch pilot who shall appoint a deputy without the approval of said board shall forfeit his own appointment and said board shall have authority to restrict all deputy pilots from piloting over the bar vessels of over a certain draught of water. [Id.]

Art. 8273. [6308] [3799] Malfeasance.—Any branch or deputy pilot in a state of inebriety who shall take charge of a vessel shall, upon proof of the same, for the first offense be suspended for one month, and for the second offense be dismissed and be rendered incapable of again serving in either capacity. If any branch or deputy pilot shall willfully or by neglect cause the wreck of a vessel, he shall be dismissed and be rendered incapable of again serving in either capacity. [Id.]

Art. 8274. [6309] [3800] Pilotage.—The rate of pilotage on any class of vessels shall not, in any port of this State, exceed four dollars for each foot of water which the vessel at the time of piloting draws, and whenever a vessel, except of the classes below excepted, shall decline the services of a pilot, offered outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot whose services she so declined for the payment of half pilotage; and any vessel which, after being brought in by a pilot, shall go out without employing one, shall be liable to the payment of half pilotage to the pilot who brought her in, or if she has come in without the aid of a pilot, though offered outside, she shall on so going out be liable for the payment of half pilotage to the pilot who had first offered his services before she came in, but if she has come in without the aid of a pilot, or the offer of one outside, she shall not, in case of going out without a pilot, be liable to half pilotage. At any port where vessels shall receive or discharge their cargoes at an anchorage outside of the bar, such vessel shall be liable to pilotage at the above rate to such anchorage, but shall not be liable for or compelled to pay pilotage from such anchorage to the open sea; and if any vessel bound from open sea to such anchorage, while under way, shall decline the services of a pilot, and shall afterward receive or discharge any portion of her cargo at such anchorage on the lighters or otherwise, she shall be liable for the payment of half pilotage, at the above rate to such anchorage to the first pilot whose services shall have been tendered to and declined by her, but not liable for any pilotage from such anchorage to the open sea; and when a pilot takes charge of a vessel twenty miles outside of the bar, and brings her to it, he shall be entitled to one-fourth pilotage for such off-shore service, in addition to what he is entitled to recover for bringing her in, but if such off-shore service be declined, no portion of said compensation shall be recovered. [Acts 1866, pp. 14, 15; G. L. vol. 5, p. 932; Acts 1879, p. 99; G. L. vol. 8, p. 1399.]

Art. 8275. [6310] [3801] Exemptions from extra pilotage.—The following classes of vessels shall be free from any charge for pilotage, unless for actual service, to-wit: All vessels of twenty tons and under, all vessels of whatsoever burthen owned in this State and registered and licensed in the district of Texas, when arriving from or departing to any port of this State; all vessels of seventy-five tons and under owned and licensed for the coasting trade in any part of the United States, when arriving from or departing to any port in the State of Texas; all vessels of seventy-five tons or under owned in this State and licensed for the coasting trade in the district of Texas, when arriving from or departing to any port in the United States. [Id.]

The provisions relating to coastwise vessels, as distinguished from foreign, are in conflict with the laws of the United States and are void, but these provisions are separable from other provisions of the statute and such other provisions are not void. Olsen v. Smith, Civ.App., 68 S.W. 320.

Art. 8276. [6311] [3802] Consignee responsible for pilotage.—The consignee of any vessel shall be held responsible for the pilotage of said vessel. [Acts 1846, p. 79; P. D. 4772; G. L. vol. 2, p. 1385.]

Art. 8277. [6312] [3803] Unauthorized pilot: liability.—If any person not appointed a branch or deputy pilot shall pilot any ship or vessel out of or into any port when a branch or deputy pilot has offered such service, the person so piloting shall forfeit and pay to such branch or deputy pilot the sum of fifty dollars to be recovered by suit. [Id.]

Art. 8278. [6313–14] Pilots for mouth of Brazos.—The Governor shall also appoint a sufficient number of competent pilots for the mouth of the Brazos River, whose terms of office, mode of qualification and pilotage shall be the same as prescribed in the preceding articles for branch pilots; and they shall be entitled to all the privileges and shall exercise all the powers, and discharge all the duties prescribed for branch pilots, and be subject to like penalties. The county judge of Brazoria County shall approve the bond of any such pilot. [Acts 1848, p. 144; P. D. 4776, 4782; G. L. vol. 3, p. 144.]

Art. 8279. [6315–16–17] Pilots for Matagorda and Lavaca Bays.—The Governor shall also appoint not less than two nor more than four competent pilots for Matagorda and Lavaca Bays, from Pass Cavallo to Indianola and Lavaca, who shall hold their offices for the same term as branch pilots, and whose mode of qualification, powers and privileges, in so far as the same are applicable, shall be the same; the bonds of such pilots shall be approved by the county judge of Calhoun County. Such pilots shall keep the channels of said bays properly staked and marked out, and in default thereof they shall be subject to removal or suspension. The rate of pilotage for said bays shall be two dollars and fifty cents for each foot of water the vessel may draw at the time of piloting; and all vessels that may draw five feet or more shall be subject to pay any licensed pilot for said bays, whose services are tendered and declined, one-half the pilotage herein prescribed. [Acts 1861, p. 19; P. D. 4775; G. L. vol. 5, p. 355.]

Art. 8280. [6318–19] Rules for branch pilots applicable.—All the provisions of this chapter relating to branch pilots at ports in so far as the same are applicable and not expressly qualified, shall apply to and govern pilots appointed for the mouth of the Brazos River and for Matagorda and Lavaca Bays. If any person not a licensed pilot or deputy shall pilot any vessel into or out of the mouth of said river or through the channel of said bays, up or down, he shall forfeit and pay to any pilot licensed or commissioned for the mouth of said river, or for said bays, full pilotage for such vessel, to be recovered by suit. [Id.]

VI. GENERAL PROVISIONS

CHAPTER 11. IN GENERAL

Art.
8280—1. Accounting system in districts in counties over 500,000—audit.

Art. 8280—1. Accounting system in districts in counties over 500,000—audit.—In all districts which were heretofore or may hereafter be organized under the provisions of any sections of law contained in Title 128, Revised Statutes, Texas, 1925, as amended, situated wholly within counties having a population of five hundred thousand (500,000) or more according to the last preceding or any future Federal Census and composed of territory less than the whole of such counties, a complete system of accounts shall be kept by the officers of such districts; and in lieu or auditing and supervision by the County Auditor in such counties, the Board of Supervisors may contract with some competent person, firm or corporation qualified under law to perform such work to audit the cash, books, accounts, records and vouchers of all of the officers of such district at least once each year. One copy of the report of such audit shall be filed with the governing board of the district, and one copy with the County Auditor. Such report shall constitute a public record and be open to public inspection at all reasonable times. The County Auditor in such counties shall not be required to perform any other duty in connection with such districts than the filing of such report. [Acts 1947, 50th Leg., p. 464, ch. 265, § 1.]

TITLE 129—WILLS

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Art. 8281. [7855] [5333] [4857] Who may execute.—Every person aged twenty-one (21) years or upward, or who may be or may have been lawfully married, or who may be a member of the Armed Forces of the United States or the Auxiliaries thereof or Maritime Service at the time of the making of the will, being of sound mind, shall have power to make a last will and testament, under the rules and limitations prescribed by law. [Acts 1840, p. 167; Acts 1856, p. 5; G.L. vol. 2, p. 341; vol. 4, p. 423; Acts 1945, 49th Leg., p. 469, ch. 297, § 1.]

Section 2 of the Act of 1945 amends art. 3348. Section 3 read as follows: "If any section, sentence, clause or phrase of this Act is held to be unconstitutional or otherwise invalid, it shall not affect the validity of the remaining portion thereof."

Art. 8282. [7856] [5334] [4858] May pass estate.—Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title and interest in possession, reversion or remainder, which he has, or at the time of his death shall have, of, in or to any lands, tenements, hereditaments or rents charged upon or issuing out of them, or shall have of, in or to any personal property whatever, subject to the limitations prescribed by law. [P. D. 5361–2.]

Art. 8283. [7857] [5335] [4859] Requisites.—Every last will and testament except where otherwise provided by law, shall be in writing and signed by the testator or by some other person by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years, subscribing their names thereto in their own handwriting in the presence of the testator. [Acts Jan. 28, 1840; G.L. vol. 2, p. 341; Acts 1947, 50th Leg., p. 275, ch. 170, § 1.]

Art. 8284. [7858] [5336] [4860] Exception.—Where the will is wholly written in the handwriting of the testator the attestation of the subscribing witnesses may be dispensed with. [Acts Jan. 28, 1840; G.L. vol. 2, p. 341; Acts 1947, 50th Leg., p. 276, ch. 170, § 2.]

Art. 8285. [7859] [5337] [4861] Cancellation.—No will in writing, made in conformity with the preceding articles, nor any clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil or declaration in writing, executed with like formalities, or by the testator destroying, canceling or obliterating the same, or causing it to be done in his presence.

Art. 8286. [7860] [5338] [4862] Nuncupative will.—Any person who is competent to make a last will and testament, under Articles 8281 and 8282 may dispose of his property by a nuncupative will made under the conditions and limitations hereinafter prescribed. [P. D. 5366.]

Art. 8287. [7861] [5339] [4863] Requisites.—No nuncupative will shall be established, unless it be made in the time of the last sickness of the deceased, at his habitation or where he has resided for ten days next preceding, except when the deceased is taken sick from home and dies before he returns to such habitation; nor when the value exceeds thirty dollars, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import. [P. D. 5366.]

Art. 8288. [7862] [5340] [4864] Notice and proof.—No nuncupative will shall be proved within fourteen days after the death of the testator, nor until those who would have been entitled by inheritance, had there been no will, have been summoned to contest the same, if they desire to do so. [P. D. 5371.]

Art. 8289. [7863] [5341] [4865] Testimony.—After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony or the substance thereof, shall have been committed to writing within six days after making the will. [P. D. 5367.]

Art. 8290. [7864] [5342] [4866] Soldier's will.—Any soldier in actual military service, or any mariner or seaman being at sea, may dispose of his chattels without regard to the provisions of this title. [P. D. 5369.]

Art. 8291. [7865] [5343] [4867] Posthumous children.—When a testator shall have children born and his wife enceinte, the posthumous child, if unprovided for by settlement and pretermitted by his last will and testament, shall succeed to the same

portion of the father's estate as such child would have been entitled to if the father had died intestate; toward which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament; provided, however, that where the surviving wife is the mother of all of testator's children and said surviving wife is the principal beneficiary in said testator's last will and testament to the entire exclusion, by silence or otherwise, of all of said testator's children, then and in that event the foregoing provisions of this Article shall not apply or be considered in the construction of said last will and testament. [P.D. 5363; Acts 1931, 42nd Leg., p. 329, ch. 196, § 1.]

Art. 8292. [7866] [5344] [4868] After-born child.—If a testator having a child or children born at the time of making his last will and testament, shall at his death, leave a child or children born after the making of such last will and testament, the child or children so after born and pretermitted shall, unless provided for by settlement, succeed to the same portion of the father's estate as they would have been entitled to if the father had died intestate; toward raising which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament, in the same manner as is provided in Article 8291, provided, however, that where the surviving wife is the mother of all of testator's children and said surviving wife is the principal beneficiary in said testator's last will and testament to the entire exclusion, by silence or otherwise, of all of said testator's children, then and in that event the foregoing provisions of this Article shall not apply or be considered in the construction of said last will and testament. [P.D. 5364; Acts 1931, 42nd Leg., p. 329, ch. 196, § 2.]

Art. 8293. [7867] [5345] [4869] Validity.—Every last will and testament made when the testator had no child living, wherein any child he might have is not provided for or mentioned, if at the time of his death he shall leave a child, or leave his wife enceinte of a child which shall be born, shall have no effect during the life of such after-born child, and shall be void, unless the child die without having been married and before he shall have attained the age of twenty-one years. [P. D. 5363.]

Art. 8294. [7868] [5346] [4870] Descendants.—Under the name of "children" as used in this title, are included descendants of whatever degree they may be, it being understood that they are only counted for the child they represent. [P. D. 5373.]

Art. 8295. [7869] [5347] [4871] Prior death of legatee.—Where a testator shall devise or bequeath an estate or interest of any kind by will to a child or other descendant of such testator, should such devisee or legatee, during the lifetime of the testator, die leaving children or descendants who shall survive such testator, such devise or legacy shall not lapse by reason of such death; but the estate so devised or bequeathed shall vest in the children or descendants of such legatee or devisee in the same manner as if he had survived the testator and died intestate. [P. D. 5365.]

Art. 8296. [7870] [5348] [4872] Bequest to witness.—Should any person be subscribing witness to a will, and be also a legatee or devisee therein, if the will cannot be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to so much of such share as shall not exceed the value of the bequest to him in the will. [Acts 1875, p. 179; G. L. vol. 8, p. 551.]

Art. 8297. [7871] [5349] [4873] Proof by witness.—In the case provided for in the preceding article, such will may be proved by the evidence of the subscribing witnesses, corroborated by the testimony of one or more other disinterested and credible persons, to the effect that the testimony of such subscribing witnesses necessary to sustain the will is substantially true; in which event the bequest to such subscribing witnesses shall not be void. [Id.]

Art. 8298. [7872] [5350] [4874] Separate property.—The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep his or her separate property together, until each of the several heirs shall become of lawful age, and to manage and control the same under the provisions of law relating to community property, and such other restrictions as may be imposed by such will; provided, the surviving husband or wife is the father or mother, as the case may be, of the minor heirs; and provided further, that any child or heir entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate. [Acts 1856, p. 51; G. L. vol. 4, p. 469.]

Art. 8299. [7873] [5351] [4875] Custody.—All original wills, together with the probate thereof, shall be deposited in the office of the clerk of the county court of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed to some other court, by proper process, for inspection. [P. D. 5372.]

Art. 8300. [7874] [5352] [4876] Registration.—Every such will, together with the probate thereof, shall be recorded by the clerk of the county court in a book to be kept for that purpose; and certified copies of such will and the probate of the same, or of the record thereof, may be recorded in other counties, and may be used in evidence as the original might be. [Id.]

Art. 8301. [7875] [5353] Foreign will.—When any will or testament, or testamentary instrument of any character, conveying or in any manner disposing of land in this State, has been duly probated according to the laws of any of the United States or territories, a copy thereof and its probate, attested by the clerk of the court in which such will and testament or testamentary instrument was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court that the said attestation is in due form, may be filed and recorded in the register of deeds in any county in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded, and without further proof or authentication; provided, that, at any time within four years from the date of the record of such will in this State, the validity of such will may be contested in a proceeding instituted for that purpose as the original might have been. [Acts 1887, p. 38; G. L. vol. 9, p. 836.]

Art. 8302. [7876] [5354] Foreign will: registration.—A copy of such will and testament, or testamentary instrument, and its probate so attested, together with the certificate that said attestation is in due form, as required by the preceding article, shall be prima facie evidence that said will has been duly admitted to probate, according to the laws of the State wherein it has been admitted to probate, and shall be sufficient to authorize the same to be recorded in the proper county or counties in this State. [Id.]

Art. 8303. [7877] [5355] Effective, when.—Every such will and testament, or testamentary instrument, and its probate, which shall be attested and proven, as provided in the second preceding article, and delivered to the clerk of the proper court to be

recorded, shall take effect and be valid and effectual as a deed of conveyance of said property; and the record thereof shall have the same force and effect as the record of deeds or other conveyances to land from the time when such instrument was delivered to such clerk to be recorded, and from that time only. [Id.]

Art. 8304. [7878] [5356] Notice.—The record of such will and testament, or testamentary instrument, and its probate, duly attested and proven, as provided in the preceding articles, and duly made in the proper county, shall be taken and held as notice to all persons of the existence of such will and testament, and of the title or titles conferred thereby. [Id.]

Art. 8305. Foreign trustee.—When by any foreign will, filed and recorded in this State, as authorized by the four preceding articles, power is given an executor or trustee to sell any real or personal property situated in this State, no order of court shall be necessary to authorize such executor or trustee to make such sale and execute proper conveyance, and whenever any particular directions are given by a testator in any such will respecting the sale of any such property situated in this State, belonging to his estate, the same shall be followed unless such directions have been annulled or suspended by order of a court of competent jurisdiction. [Acts 1915, p. 120.]

TITLE 130—WORKMEN'S COMPENSATION LAW

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PART 1

Article 8306. Damages and compensation for personal injuries.

Defenses

Section 1. In an action to recover damages for personal injuries sustained by an employé in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employé was guilty of contributory negligence.

2. That the injury was caused by the negligence of a fellow employé.

3. That the employé had assumed the risk of the injury incident to his employment; but such employer may defend in such action on the ground that the injury was caused by the willful intention of the employé to bring about the injury, or was so caused while the employé was in a state of intoxication.

4. In all such actions against an employer who is not a subscriber, as defined hereafter in this law, it shall be necessary to a recovery for the plaintiff to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment. [Acts 1917, p. 269.]

Application of law; exceptions

Sec. 2. The provisions of this law shall not apply to actions to recover damages for personal injuries nor for death resulting from personal injuries sustained by domestic servants, farm laborers, ranch laborers, nor to employés of any firm, person or corporation having in his or their employ less than three employés, nor to the employés of any person, firm or corporation operating any steam, electric, street, or interurban railway as a common carrier. Any employer of three or more employés at the time of becoming a subscriber shall remain a subscriber subject to all the rights, liabilities, duties and exemptions of such, notwithstanding after having become a subscriber the number of employés may at times be less than three. [Acts 1917, p. 269, Acts 1921, p. 221.]

Exclusive remedy; exemption of compensation from legal process; assignability

Sec. 3. The employés of a subscriber and the parents of minor employés shall have no right of action against their employer or against any agent, servant or employé of said employer for damages for personal injuries, and the representatives and beneficiaries of deceased employés shall have no right of action against such subscribing employer or his agent, servant or employé for damages for injuries resulting in death, but such employés and their representatives and beneficiaries shall look for compensation solely to the association, as the same is hereinafter provided for. All compensation allowed under the succeeding sections herein shall be exempt from garnishment, attachment, judgment and all other suits or claims, and

no such right of action and no such compensation and no part thereof or of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void. [Acts 1917, p. 269; Acts 1923, p. 385.]

Waiver of common law or statutory right of action

Sec. 3a. An employé of a subscriber shall be held to have waived his right of action at common law or under any statute of this State to recover damages for injuries sustained in the course of his employment if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed said right or if the contract of hire was made before the employer became a subscriber, if the employé shall not have given the said notice within five days of notice of such subscription. An employé who has given notice to his employer that he claimed his right of action at common law or under any statute may thereafter waive such claim by notice in writing, which shall take effect five days after its delivery to his employer or his agent. Any employé of a subscriber who has not waived his right of action at common law or under any statute to recover damages for injury sustained in the course of his employment, as above provided in this section, shall, as well as his legal beneficiaries and representatives have his or their cause of action for such injuries as now exist by the common law and statutes of this State, which action shall be subject to all defenses under the common law and statutes of this State. [Acts 1917, p. 269.]

Compensation, when to be paid

Sec. 3b. If an employé who has not given notice of his claim of common law or statutory rights of action, or who has given such notice and waived the same, sustains an injury in the course of his employment, he shall be paid compensation by the association as hereinafter provided, if his employer is a subscriber at the time of the injury. [Id.]

Notice of provision for compensation

Sec. 3c. From and after the time of the receipt by the Industrial Accident Board of notice from any employer that the latter has become a subscriber under this law, all employés of said subscriber then and thereafter employed, shall be conclusively deemed to have notice of the fact that such subscriber has provided with the association for the payment of compensation under this law. If any employer ceases to be a subscriber he shall on or before the date on which his policy expires give notice to that effect to the Industrial Accident Board, and to such subscribers' employés by posting notices to that effect in three public places around such subscribers' plant. [Acts 1923, p. 384.]

Rights of employes when employer not subscriber

Sec. 4. Employés whose employers are not at the time of the injury subscribers to said association, and the representatives and beneficiaries of deceased employés who at the time of the injury were working for nonsubscribing employers can not participate in the benefits of said insurance association, but they shall be entitled to bring suit and may recover judgment against such employers, or any of them, for all damages, sustained by reason of any personal injury received in the course of employment or by reason of death resulting from such injury, and the provisions of section 1 of this law shall be applied in all such actions. [Acts 1917, p. 269.]

Exemplary damages

Sec. 5. Nothing in this law shall be taken or held to prohibit the recovery of exemplary damages by the surviving husband, wife, heirs of his or her body, or such of them as there may be of any deceased employé whose death is occasioned by homicide from the wilful act or omission or gross negligence of any person, firm or corporation from the employer of such employé at the time of the injury causing the death of the latter. In any suit so brought for exemplary damages the trial shall be de novo, and no presumption shall exist that any award, ruling or finding of the Industrial Accident Board was correct. In any such suit, such award, ruling or finding shall neither be pleaded nor offered in evidence. [Id.]

The legislature was without power to change right, under Const., art. 16, § 26, to exemplary damages from fellow employee for wrongful death, by making remedy under this title exclusive. Dudley v. Community Public Service Co., C.C.A., 108 F.2d 119.

Accrual of compensation; medical aid, etc.

Sec. 6. No compensation shall be paid under this law for an injury which does not incapacitate the employé for a period of at least one week from earning full wages, but if incapacity extends beyond one week compensation shall begin to accrue on the eighth day after the injury. The medical aid, hospital services, and medicines, as provided for in Section 7 hereof, shall be supplied as and when needed and according to the terms and provisions of said Section 7. If incapacity does not follow at once after the infliction of the injury or within eight days thereof but does result subsequently, compensation shall begin to accrue with the eighth day after the date incapacity commenced. In any event the employé shall be entitled to the medical aid, hospital service and medicines provided in this law. Provided further, that if such incapacity continues for four (4) weeks or longer, compensation shall be computed from the incention date of such incapacity. [Acts 1917, 35th Leg., p. 269, ch. 103, part I, § 6; Acts 1927, 40th Leg., p. 84, ch. 60, § 1.]

Medical aid, hospital services and medicines

Sec. 7. During the first four weeks of the injury, dating from the date of its infliction, the association shall furnish reasonable medical aid, nursing, hospital services and medicines. During the fourth or any subsequent week, upon application of the attending physician certifying the necessity therefor to the Board and to the association, the Board may authorize additional medical attention and nursing not to exceed one (1) week, unless at the end of such additional week the attending physician shall certify to the necessity for another week of medical attention or nursing or so much thereof as may be needed, but in no event shall such medical attention or nursing be authorized for a period longer than ninety-one (91) days from date of injury. If the association fails to so furnish same as and when needed during the time specified after notice of the injury to the association or subscriber, the injured employee may provide said medical aid, nursing, hospital service or medicines at the cost and expense of the association. The employee shall not be entitled to recover any amount expended or incurred by him for said medical aid, nursing, hospital services or medicines, nor shall any person who supplied the same be entitled to recover of the association therefor, unless the association or subscriber shall have had notice of the injury and shall have refused, failed or neglected to furnish it or them within a reasonable time. At the time of the injury or immediately thereafter, if necessary, the employee shall have the right to call in any available physician or surgeon to administer first-aid treatment as may be reasonably necessary at the expense of the association. During the fourth or any subsequent week of continuous total incapacity requiring the confinement to a hospital, the association shall, upon application of the attending physician or surgeon certifying the necessity therefor to the Industrial Accident Board and to the association, furnish such additional hospital services as may be deemed necessary not to exceed one (1) week, unless at the end of such additional week the attending physician shall certify

to the necessity for another week of hospital services or so much thereof as may be needed, but in no event shall such hospital services be authorized for a period longer than one hundred and eighty (180) days from date of injury. Such additional hospital services as are herein provided shall not be held to include any obligation on the part of the association to pay for medical, nursing or surgical services not ordinarily provided by hospitals as a part of their services. [Acts 1917, p. 269; Acts 1923, p. 384; Acts 1947, 50th Leg., p. 521, ch. 307, § 1.]

Change in medical aid, hospital services and medicines

Sec. 7a. If it be shown that the association is furnishing medical aid, hospital services and medicines provided for by Section 7 hereof in such manner that there is reasonable ground for believing that the life, health or recovery of the employé is being endangered or impaired thereby, the board may order a change in the physician or other requirements of said section. If the association fails promptly to comply with such order after receiving it, the board may permit the employé or some one for him to provide the same at the expense of the association under such reasonable regulations as may be provided by said board. [Acts 1917, p. 269.]

Fees and charges for medical aid, hospital services or medicines

Sec. 7b. All fees and charges under Sections 7 and 7a hereof shall be fair and reasonable, shall be subject to regulation of the board and shall be limited to such charges as are reasonable for similar treatment of injured persons of a like standard of living where such treatment is paid for by the injured person himself or some one acting for him. In determining what fees are reasonable, the board may also consider the increased security of payment afforded by this law. Where such medical aid, hospital service or medicines are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting the same, and the amount so paid shall be promptly reported to the board. [Id.]

Fees of attorneys

Sec. 7c. All fees of attorneys for representing claimants before the board under the provisions of this law shall be subject to the approval of the board. No attorney's fees for representing claimants before the board shall be allowed or approved against any party or parties not represented by such attorney, nor exceeding an amount equal to fifteen per cent of the amount of the first one thousand dollars or fraction thereof recovered, nor ten per cent of the excess of such recovery, if any, over one thousand dollars, in addition to the reasonable expenses incurred by the attorney in the preparation and presentation of the said claim before the board, such expenses to be allowed by the board. Where an attorney represents only a part of those interested in the allowance of a claim before the board and his services in prosecuting such claim and obtaining an award therein inures to the benefit of others jointly interested therein, then the board may take these facts into consideration and allow the attorney a reasonable charge, to be assessed against the interest of those receiving benefits from the service of such attorney. The attorney's fees herein provided for may be redeemed by the association by the payment of a lump sum or may be commuted by agreement of the parties subject to the approval of the board, but not until the claim represented by said attorney has been finally determined by the board and recognized and accepted by the association. After the approval, as first above provided for, if the association be notified in writing of such claim or agreement for legal services, the same shall be a lien against any amount thereafter to be paid as compensation; provided, that where the employé's compensation is payable by the association in periodical installments the Board shall fix at the time of approval the proportion of each installment to be paid on account of said legal services. [Id.]

Contract for attorney's fee

Sec. 7d. For representing the interest of any claimant in any manner carried from the board into the courts, it shall be lawful for the attorney representing such interest to contract with any beneficiary under this law for an attorney's fee for such representation, not to exceed one-third (⅓) of the amount recovered, such fee for services so rendered to be fixed and allowed by the trial court in which such matter may be heard and determined.

In fixing and allowing such attorney's fees the court must take into consideration the benefit accruing to the beneficiary as a result of such services. No attorney's fees (other than the amount which the board may have approved) shall be allowed for representing a claimant in the trial court unless the court finds that benefits have accrued to the claimant by virtue of such representation, and then such attorney's fees may be allowed only on a basis of services performed and benefits accruing to the beneficiary. [Acts 1917, p. 269; Acts 1937, 45th Leg., p. 535, ch. 261, § 1.]

Section 3 of the amendatory Act of 1937 provided that: "All laws or part of laws in conflict herewith are hereby repealed to the extent, and only to the extent of such conflict."

Artificial appliances

Sec. 7-e. In all cases where liability for compensation exists for an injury sustained by an employee in the course of his employment where artificial appliances of any kind would materially and beneficially improve the future usefulness and occupational opportunities of such injured employee, the association shall furnish such employee with the artificial appliance or appliances needed by him for such occupational opportunities. The association shall not be liable for replacing or repairing any artificial appliances so furnished. The cost of such artificial appliances so furnished to any such employee shall be in keeping with the salary or wages received by such employee but in no event to exceed the sum of Two Hundred Dollars ($200).

In the event the association shall fail or refuse to furnish or provide such artificial appliances, such employee shall make application to the Board for such artificial appliances. On receipt of such application the Board shall order a medical examination of the employee and obtain such other evidence as in their opinion they may deem necessary, after which the Board shall determine whether or not the artificial appliances would materially and beneficially improve the future usefulness and occupational opportunities of the injured employee and in the event they find that such improvement would exist, then the Board shall order the association to furnish the artificial appliances. [Added Acts 1941, 47th Leg., p. 854, ch. 529, § 1.]

Death, compensation for

Sec. 8. If death should result from the injury the association hereinafter created shall pay the legal beneficiaries of the deceased employee a weekly payment equal to sixty per cent (60%) of his average weekly wages, but not more than Twenty-five Dollars ($25) nor less than Nine Dollars ($9) per week, for a period of three hundred and sixty (360) weeks from the date of the injury. Acts 1917, p. 269; Acts 1923, p. 384; Acts 1947, 50th Leg., p. 521, ch. 307, § 1.]

Persons to whom death benefits payable; exemptions; distribution; payments

Sec. 8a. The compensation provided for in the foregoing section of this law shall be for the sole

and exclusive benefit of the survivng husband who has not for good cause and for a period of three years prior thereto, abandoned his wife at the time of the injury, and of the wife who has not at the time of the injury without good cause and for a period of three years prior thereto, abandoned her husband, and of the minor children, parents and stepmother, without regard to the question of dependency, dependent grandparents, dependent children and dependent brothers and sisters of the deceased employé; and the amount recovered thereunder shall not be liable for the debts of the deceased nor the debts of the beneficiary or beneficiaries and shall be distributed among the beneficiaries as may be entitled to the same as hereinbefore provided according to the laws of descent and distribution of this State; provided the right in such beneficiary or beneficiaries to recover compensation for death be determined by the facts that exist at the date of the death of the deceased and that said right be a complete, absolute and vested one. Such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of this State, or to their guardian or next friend, in case of lunacy, infancy or other disqualifying cause of any beneficiary. The compensation provided for in this law shall be paid weekly to the beneficiaries herein specified, subject to the provisions of this law. [Acts 1917, p. 269; Acts 1923, p. 384.]

Death after period of total or partial invalidity

Sec. 8b. In case death occurs as a result of the injury after a period of total or partial incapacity, for which compensation has been paid, the period of incapacity shall be deducted from the total period of compensation and the benefits paid thereunder from the maximum allowed for the death. [Acts 1917, p. 269.]

Death without legal beneficiaries; expenses of last sickness; funeral expenses

Sec. 9. If the deceased employee leaves no legal beneficiaries, the Association shall pay all expenses incident to his last sickness as a result of the injury and in addition a funeral benefit not to exceed $250.00.

Where any deceased employee leaves legal beneficiaries, but is buried at the expense of his employer or any other person, the expense of such burial, not to exceed $250.00, shall be payable out of the compensation due the beneficiary or beneficiaries of such deceased employee, subject to the approval of the Board. [Acts 1917, p. 269; Acts 1931, 42nd Leg., p. 303, ch. 178, § 1.]

Total incapacity, compensation

Sec. 10. While the incapacity for work resulting from the injury is total, the association shall pay the injured employee a weekly compensation equal to sixty per cent (60%) of his average weekly wages, but not more than Twenty-five Dollars ($25) nor less than Nine Dollars ($9) and in no case shall the period covered by such compensation be greater than four hundred and one (401) weeks from the date of the injury. [Acts 1917, p. 269; Acts 1923, p. 384; Acts 1947, 50th Leg., p. 521, ch. 307, § 1.]

Partial incapacity, compensation

Sec. 11. While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to sixty per cent (60%) of the difference between his average weekly wages before the injury and his average weekly wage earning capacity during the existence of such partial incapacity, but in no case more than Twenty-five Dollars ($25) per week. The period covered by such compensation shall be in no case greater than three hundred (300) weeks; provided that in no case shall the period of compensation for total and partial incapacity exceed four hundred and one (401) weeks from the date of injury. [Acts 1917, p. 269; Acts 1923, p. 384; Acts 1947, 50th Leg., p. 521, ch. 307, § 1.]

Injuries constituting total and permanent incapacity

Sec. 11a. In cases of the following injuries, the incapacity shall conclusively be held to be total and permanent, to-wit:

(1) The total and permanent loss of the sight of both eyes.

(2) The loss of both feet at or above the ankle.

(3) The loss of both hands at or above the wrist.

(4) A similar loss of one hand and one foot.

(5) An injury to the spine resulting in permanent and complete paralysis of both arms or both legs or of one arm and one leg.

(6) An injury to the skull resulting in incurable insanity or imbecility.

In any of the above enumerated cases it shall be considered that the total loss of the use of a member shall be equivalent to and draw the same compensation during the time of such total loss of the use thereof as for the total and permanent loss of such member.

The above enumeration is not to be taken as exclusive but in all other cases the burden of proof shall be on the claimant to prove that his injuries have resulted in permanent, total incapacity. [Added Acts 1927, 40th Leg., p. 41, ch. 28, § 1.]

Enumerated and concurrent injuries, compensation; partial incapacity

Sec. 12. For the injuries enumerated in the following schedule the employee shall receive in lieu of all other compensation except medical aid, hospital services and medicines as elsewhere herein provided, a weekly compensation equal to sixty per cent (60%) of the average weekly wages of such employee, but not less than Nine Dollars ($9) per week nor exceeding Twenty-five Dollars ($25) per week, for the respective periods stated herein, to wit:

For the loss of a thumb, sixty per cent (60%) of the average weekly wages during sixty (60) weeks.

For the loss of a first finger, commonly called the index finger, sixty per cent (60%) of the average weekly wages during forty-five (45) weeks.

For the loss of a second finger, sixty per cent (60%) of the average weekly wages during thirty (30) weeks.

For the loss of a third finger, sixty per cent (60%) of the average weekly wages during twenty-one (21) weeks.

For the loss of a fourth finger, commonly known as the little finger, sixty per cent (60%) of the average weekly wages during fifteen (15) weeks.

The loss of the second or distal phalange of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third or distal phalange of any finger shall be considered to be equal to the loss of one-third of such finger.

The loss of more than the middle and distal phalange of any finger shall be considered to be equal to the loss of the whole finger; provided that in no case shall the amount received for the loss of a thumb and more than one finger on the same hand exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bone or palm) for the corresponding thumb, finger or fingers above, add ten (10) weeks to the number of weeks as above subject to the limitation that in no case shall the amount received for the loss or injury to any one hand be more than for the loss of the hand.

For ankylosis (total stiffness of) or contracture (due to scars or injuries) which make the fingers useless,

the same number of weeks shall apply to such finger or fingers or parts of fingers (not thumb) as given above.

For the loss of a hand, sixty per cent (60%) of the average weekly wage during one hundred and fifty (150) weeks.

For the loss of an arm at or above the elbow, sixty per cent (60%) of the average weekly wage during two hundred (200) weeks.

For the loss of one of the toes other than the great toe, sixty per cent (60%) of the average weekly wages during ten (10) weeks.

For the loss of the great toe, sixty per cent (60%) of the average weekly wages during thirty (30) weeks.

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be equal to the loss of one-half of the toe.

For the loss of a foot, sixty per cent (60%) of the average weekly wages during one hundred and twenty-five (125) weeks.

For the loss of a leg, at or above the knee, sixty per cent (60%) of the average weekly wages during two hundred (200) weeks.

For the total and permanent loss of the sight of one eye, sixty per cent (60%) of the average weekly wages during one hundred (100) weeks.

In the foregoing enumerated cases of permanent, partial incapacity, it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member.

For the complete and permanent loss of the hearing in both ears, sixty per cent (60%) of the weekly wages during one hundred and fifty (150) weeks.

For the loss of an eye and leg above the knee, sixty per cent (60%) of the average weekly wages during a period of three hundred and fifty (350) weeks.

For the loss of an eye and an arm above the elbow, sixty per cent (60%) of the average weekly wages during a period of three hundred and fifty (350) weeks.

For the loss of an eye and a hand, sixty per cent (60%) of the average weekly wages during a period of three hundred and twenty-five (325) weeks.

For the loss of an eye and a foot, sixty per cent (60%) of the average weekly wages during a period of three hundred (300) weeks.

Where the employee sustains concurrent injuries resulting in concurrent incapacities, he shall receive compensation only for the injury which produces the longest period of incapacity; but this section shall not affect liability for the concurrent loss or the loss of the use thereof of more than one member, for which member compensation is provided in this schedule, compensation for specific injuries under this law shall be cumulative as to time and not concurrent.

In all cases of permanent partial incapacity it shall be considered that the permanent loss of the use of the member is equivalent to, and shall draw the same compensation as, the loss of that member; but the compensation in and by said schedule provided shall be in lieu of all other compensation in such cases.

In all other cases of partial incapacity, including any disfigurement which will impair the future usefulness or occupational opportunities of the injured employee, compensation shall be determined according to the percentage of incapacity, taking into account among other things any previous incapacity, the nature of the physical injury or disfigurement, the occupation of the injured employee, and the age at the time of injury. The compensation paid therefor shall be sixty per cent (60%) of the average weekly wages of the employees but not to exceed Twenty-five Dollars ($25) per week, multiplied by the percentage of incapacity caused by the injury for such period not exceeding three hundred (300) weeks as the board may determine. Whenever the weekly payments under this paragraph would be less than Three Dollars ($3) per week, the period may be shortened, and the payments correspondingly increased by the board. [Acts 1923, p. 386; Acts 1947, 50th Leg., p. 521, ch. 307, § 1.]

Injured employé, refusal of employment

Sec. 12a. If the injured employé refuses employment reasonably suited to his incapacity and physical condition, procured for him in the locality where injured or at a place agreeable to him, he shall not be entitled to compensation during the period of such refusal, unless in opinion of the board such refusal is justifiable. This section shall not apply in cases of specific injuries for which a schedule is fixed by this law. [Acts 1917, p. 269.]

Hernia

Sec. 12b. In all claims for hernia resulting from injury sustained in the course of employment, it must be definitely proven to the satisfaction of the board:

1. That there was an injury resulting in hernia.
2. That the hernia appeared suddenly and immediately following the injury.
3. That the hernia did not exist in any degree prior to the injury for which compensation is claimed.
4. That the injury was accompanied by pain.

In all such cases where liability for compensation exists, the association shall provide competent surgical treatment by radical operation. In case the injured employé refuses to submit to the operation, the board shall immediately order a medical examination of such employee by a physician or physicians of its own selection at a time and place to be by them named, at which examination the employé and the association, or either of them, shall have the right to have his or their physician present. The physician or physicians so selected shall make to the board a written report, signed and sworn to, setting forth the facts developed at such examination and giving his or their opinion as to the advisability or non-advisability of an operation. If it be shown to the board by such examination and such report thereof and the expert opinions thereon that the employé has any chronic disease or is otherwise in such physical condition as to render it more than ordinarily unsafe to submit to such operation he shall, if unwilling to submit to the operation, be entitled to compensation for incapacity under the general provisions of this law. If the examination and the written report thereof and the expert opinions thereon then on file before the board do not show to the board the existence of disease or other physical condition rendering the operation more than ordinarily unsafe and the board shall unanimously so find and so reduce its findings to writing and file the same in the case and furnish the employé and the association with a copy of its findings, then if the employé with the knowledge of the result of such examination, such report, such opinions and such findings, thereafter refuses to submit within a reasonable time, which time shall be fixed in the findings of the board, to such operation, he shall be entitled to compensation for incapacity under the general provisions of this law for a period not exceeding one year.

If the employé submits to the operation and the same is successful, which shall be determined by the board, he shall in addition to the surgical benefits herein provided for be entitled to compensation for twenty-six weeks from the date of the operation. If such operation is not successful and does not result in death, he shall be paid compensation under the general provisions of this law the same as if such operation had not been had; other than in determining the compensation to be paid to the employé, the board may take into consideration any minor benefits that accrued to the employé by reason thereof or any aggravation or increased injury which accrued to him by reason thereof.

If the hernia results in death within one year after it is sustained, or the operation results in death, such death shall be held a result of the injury causing such hernia and compensated accordingly under this law. This paragraph shall not apply where the employé has wilfully refused to submit to an operation which has been found by the examination herein provided for not to be more than ordinarily unsafe. [Acts 1917, p. 269.]

Subsequent injury; Second-Injury Fund

Sec. 12c. If an employee who has suffered a previous injury shall suffer a subsequent injury which results in a condition of incapacity to which both injuries or their effects have contributed, the association (Texas Employers' Insurance Association) shall be liable because of such injury only for the compensation to which the subsequent injury would have entitled the injured employee had there been no previous injury; provided that there shall be created a fund known as the "Second-Injury Fund" hereinafter described, from which an employee who has suffered a subsequent injury shall be compensated for the combined incapacities resulting from both injuries. [Acts 1917, p. 269; Acts 1947, 50th Leg., p. 690, ch. 349, § 1.]

Permanent and total incapacity through loss of or loss of use of, another member or organ

Sec. 12c-1. If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently and totally incapacitated through the loss or loss of use of another member or organ, the association shall be liable only for the compensation payable for such second injury provided, however, that in addition to such compensation and after the combination of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for the total permanent incapacity out of the special fund known as "Second-Injury Fund," hereafter defined. [Acts 1947, 50th Leg., p. 690, ch. 349, § 1.]

Second-Injury Fund, creation of

Sec. 12c-2. The special fund known as the "Second-Injury Fund" shall be created in the following manner:

(a) In every case of the death of an employee under this Act where there is no person entitled to compensation surviving said employee, the association shall pay to the Industrial Accident Board the sum of One Thousand, Five Hundred Dollars ($1,500) to be deposited with the Treasurer of the State for the benefit of said Fund and the Board shall direct the distribution thereof.

(b) When the total amount of all such payments into the Fund, together with the accumulated interest thereon, equals or exceeds One Hundred Thousand Dollars ($100,000) in excess of existing liabilities, no further payments shall be required to be paid to said Fund; but whenever thereafter the amount of such Fund shall be reduced below Fifty Thousand Dollars ($50,000) by reason of payments to such Fund, then payments to such Fund shall be resumed forthwith, and shall continue until such Fund again amounts to One Hundred Thousand Dollars ($100,000) including accumulated interest thereon. [Acts 1947, 50th Leg., p. 690, ch. 349, § 1.]

Change of condition, mistake or fraud; review

Sec. 12d. Upon its own motion or upon the application of any person interested showing a change of condition, mistake or fraud, the Board at any time within the compensation period, may review any award or order, ending, diminishing or increasing compensation previously awarded, within the maximum and minimum provided in this Law, or change or revoke its previous order denying compensation, sending immediately to the parties a copy of its subsequent order or award. Provided, when such previous order has denied compensation, application to review same shall be made to the Board within twelve months after its entry, and not afterward. Review under this Section shall be only upon notice to the parties interested. [Acts 1917, p. 269; Acts 1931, 42nd Leg., p. 260, ch. 155, § 1.]

Surgical operation

Sec. 12e. In all cases where liability for compensation exists for an injury sustained by an employé in the course of his employment and a surgical operation for such injury will effect a cure of the employé or will materially and beneficially improve his condition, the association or the employé may demand that a surgical operation be had upon the employé as herein provided, and the association shall provide and pay for all necessary surgical treatment, medicines and hospital services incident to the performance of said operation, provided the same is had. In case either of said parties demands in writing to the board such operation, the board shall immediately order a medical examination of the employé in the same manner as is provided for in the section of this law relating to hernia. If it be shown by the examination, report of facts and opinions of experts, all reduced to writing and filed with the board, that such operation is advisable and will relieve the condition of the injured employé or will materially benefit him, the board shall so state in writing and upon unanimous order of said board in writing, a copy of which shall be delivered to the employé and the association, shall direct the employé at a time and place therein stated to submit himself to an operation for said injury. If the board should find that said operation is not advisable, then the employé shall continue to be compensated for his incapacity under the general provisions of this law. If the board shall unanimously find and so state in writing that said operation is advisable, it shall make its order to that effect, stating the time and place when and where such operation is to be performed, naming the physicians therein who shall perform said operation, and if the employé refuses to submit to such operation, the board may order or direct the association to suspend the whole or any part of his compensation during the time of said period of refusal. The results of such operation, the question as to whether the injured employé shall be required to submit thereto and the benefits and liabilities arising therefrom shall attach, be treated, handled and determined by the board in the same way as is provided in the case of hernia in this law. [Acts 1917, p. 269.]

Physicians employed by subscriber of association

Sec. 12f. In all cases where a subscriber or the association has in his or its employ a physician or physicians regularly paid in any manner whatsoever by such subscriber or association to administer to or treat injured employés, the name or names of such physicians at the date of employment of the same shall be filed with the board together with a copy of the contract of such employment. If the contract of such physician or physicians is not in writing, then the same shall be reduced to writing and a copy thereof filed with the board. Such contract shall state fully the extent and scope of the employment and the compensation to be paid such physician or physicians. If the association or subscriber willfully fails or refuses to comply with this provision of this law, then an injured employé or any person acting for him shall have the right to provide hospital services, medical aid and medicine for said injured employé, at the expense of and the same shall be charged to the association, and the subscriber or association shall notify the employé at or before the time of injury what physician or physicians are contracted with to treat his or its employés. [Id.]

Insurance premiums

Sec. 12g. It shall be unlawful for any subscriber or any employer who seeks to comply with the provisions of this law to either directly or indirectly collect of or from his employés by any means or pretense whatever any premium under this law or part thereof paid or to be paid upon any policy of such insurance under this law which covers such employés, or any intended policy of such insurance designed to cover such employés. If any such subscriber or any employer of labor in this State violates this provision of this law, then any employé or the legal beneficiary of any employé of such employer or subscriber shall be entitled to all the benefits of this law and in addition thereto shall have a separate right of action to recover damages against such employer without regard to the compensation paid or to be paid to such employé or beneficiary under this law. The association shall in no wise be responsible because of such separate action by such employé or beneficiary against such employer on such separate cause of action. [Id.]

Indemnity or insurance contracts

Sec. 12h. Every contract or agreement of an employer, the purpose of which is to indemnify him from loss or damage on account of the injury of an employé by accidental means or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it also covers liability for the payment of the compensation provided for by this law. This section shall not apply to employers of labor who are not eligible under the terms hereof to become subscribers thereto, nor to employers whose employés have elected to reject the provisions of this law, nor to employers eligible to come under the terms of this law who do not elect to do so, but who choose to carry insurance upon their employés independently of this law and without attempting in such insurance to provide compensation under the terms of this law. Any evasion of this section whereby an insurance company shall undertake, under the guise of writing insurance against the risk of the employers who do not see proper to come under this law, to write insurance substantially or in any material respect similar to the insurance provided for by this law shall render such insurance void as provided for in this section. [Id.]

Minors

Sec. 121.[1] If it be established that the injured employee were a minor when injured and that under normal condition his wages would be expected to increase, that fact may be considered in arriving at his average weekly wages, and compensation may be fixed accordingly.

A minor who has been employed in any hazardous or other employment which is prohibited by any Statute of this State, shall nevertheless be entitled to receive compensation under the terms and provisions of this Act. Provided, that this Section shall not be construed to excuse or justify any person, firm or corporation employing or permitting to be employed a minor in any hazardous or other employment prohibited by any Statute of this State. [Acts 1917, p. 269; Acts 1931, 42nd Leg., p. 259, ch. 154, § 1.]

[1] So in enrolled bill. Should probably be "12i".

Minor or incompetent injured employee

Sec. 13. If an injured employé is mentally incompetent or is a minor or is under any other disqualifying cause at the time when any right or privileges accrue to him or exist under this law, his guardian or next friend may in his behalf claim and exercise such rights and privileges except as otherwise herein provided. In case of partial incapacity or temporary total incapacity, payment of compensation may be made direct to the minor and his receipt taken therefor, if the authority to so pay and receipt therefor is first obtained from the board. [Acts 1917, p. 269.]

Waiver of right to compensation

Sec. 14. No agreement by any employé to waive his rights to compensation under this law shall be valid. [Id.]

Lump sum settlement

Sec. 15. In cases where death or total permanent incapacity results from an injury, the liability of the association may be redeemed by payment of a lump sum by agreement of the parties thereto, subject to the approval of the Industrial Accident Board. This section shall be construed as excluding any other character of lump sum settlement except as herein specified. In special cases where in the judgment of the board manifest hardship and injustice would otherwise result, the board may compel the association in the cases provided for in this section to redeem their liability by payment of a lump sum as may be determined by the board. [Id.]

Increase of weekly compensation

Sec. 15a. In any case where compensation is payable weekly at a definite sum and for a definite period, and it appears to the board that the amount of compensation being paid is inadequate to meet the necessities of the employé or beneficiary, the board shall have the power to increase the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid allowing discount for present payment at legal rate of interest; provided that in no case shall the amount to which it is increased exceed the amount of the average weekly wages upon which the compensation is based; provided it is not intended hereby to prevent lump sum settlement when approved by the board. [Acts 1917, p. 269; Acts 1923, p. 384.]

Death, survival of cause of action

Sec. 16. In all cases of injury resulting in death, where such injury was sustained in the course of employment, cause of action shall survive. [Acts 1917, p. 269.]

Non-resident and resident alien beneficiaries

Sec. 17. Non-resident alien beneficiaries and resident alien beneficiaries shall be entitled to compensation under this law. Non-resident alien beneficiaries may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects, and in such cases the consular officers shall have the right to receive for distribution for such non-resident alien beneficiaries all compensation awarded hereunder, and the receipt of such consular officers shall be a full discharge of all sums paid to and received by them. The association may at any time, subject to the approval of the board, commute all future installments of compensation payable to alien beneficiaries, not resident of the United States, by paying to such alien beneficiaries the sum agreed upon and filing receipts therefor with the board. [Id.]

Weekly compensation; non-payment; forfeiture or revocation of association's license

Sec. 18. It is the purpose of this law that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein. If the association willfully fails or refuses to pay compensation as and when the same matures and accrues, the board shall notify said association that such is the course it is pursuing. If after such notice the association continues to willfully refuse and fail to meet these payments of compensation as provided for in this law, the board shall have the power to hold that such association is not complying with the provisions of this law, and shall certify such fact to the Commis-

sioner of Insurance, and said certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such association to do business in Texas; provided, said power of the board shall not be held to deny the association the right to bring suit or suits to set aside any ruling, order or decision of the board. [Id.]

Injuries sustained outside state; venue

Sec. 19. If an employee, who has been hired in this State, sustain injury in the course of his employment he shall be entitled to compensation according to the Law of this State even though such injury was received outside of the State, and that such employee, though injured out of the State of Texas, shall be entitled to the same rights and remedies as if injured within the State of Texas, except that in such cases of injury outside of Texas, the suit of either the injured employee or his beneficiaries, or of the Association, to set aside an award of the Industrial Accident Board of Texas, or to enforce it, as mentioned in Article 8307, Sections 5–5a, shall be brought either

a. In the county of Texas where the contract of hiring was made; or

b. In the county of Texas where such employee or his beneficiaries or any of them reside when the suit is brought, or

c. In the county where the employee or the employer resided when the contract of hiring was made, as the one filing such suit may elect.

Providing that such injury shall have occurred within one year from the date such injured employee leaves this State; and provided, further, that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred. Acts 1917, p. 269; Acts 1927, 40th Leg., p. 383, ch. 259; Acts 1931, 42nd Leg., p. 133, ch. 90, § 1.

Acts 1931, 42nd Leg., p. 133, ch. 90, § 1, in addition to amending section 19 of this article, contained provisions as follows:

That this amendatory Act shall be effective and be deemed and held to be in effect as of March 28, 1917, that being the effective date of the Act of 1917, Chapter 103, and that every such suit heretofore filed by either party in a Court of Texas having jurisdiction of the amount involved, to set aside an award of the Industrial Accident Board of Texas where the injury occurred outside of Texas, shall be held and deemed to have been properly filed, and the Court to have jurisdiction thereof in the cases mentioned in Section 1 hereof where the injury occurred outside of Texas, if filed in a Court of Competent Jurisdiction as to amount in either of the counties mentioned in Section 1 hereof if the Court entertained jurisdiction of such suit; and provided that where any such suit by either party to set aside any such award was dismissed on the ground that the Court, because of the injury having occurred outside of Texas, had no jurisdiction thereof, then that either party to any proceeding or claim before the Industrial Accident Board of Texas relating to an injury which occurred outside of Texas, shall have six months after this amendatory Act becomes effective in which to bring suit to set aside any award of said Board heretofore made by it in such cases where the injury occurred outside of Texas, such suit to be brought in the proper county or counties, as mentioned in Section 1 of this Act, but provided, further, that where neither party to any such award made attempt to set the award aside, that such award shall be deemed and held to be in full force and effect.

"Injury" and "personal injury" defined; occupational diseases, what are

Sec. 20. Wherever the terms "injury" or "personal injury," are used in the Workmen's Compensation Law of this state, such terms shall be construed to mean damage or harm to the physical structure of the body and such diseases or infection as naturally result therefrom. Unless from the context the meaning is clearly to the contrary, such terms shall also be construed to mean and include occupational diseases, as hereinafter defined. The following diseases only shall be deemed to be occupational diseases:

(a) Poisoning by: (1) Aluminum Trioxide; (2) Arsenic; (3) Benzol or its homologues and derivatives; (4) Beryllium; (5) Cadmium; (6) Carbon Bisulphide; (7) Carbon Dioxide; (8) Carbon Monoxide; (9) Chlorine; (10) Cyanide; (11) Formaldehyde; (12) Halogenated Hydrocarbons; (13) Hydrochloric Acid; (14) Hydrofluoric Acid; (15) Hydrogen Sulphide; (16) Lead; (17) Manganese; (18) Mercury; (19) Methanol (Wood Alcohol); (20) Methanol Chloride; (21) Nitrous Fumes; (22) Nitric Acid; (23) Petroleum or Petroleum Products; (24) Phosphorus; (25) Selenium; (26) Sulphuric Acid; (27) Sulphur Dioxide; (28) Sulphur Trioxide; (29) Tellurium; (30) Thallium; (31) Zinc;

(b) Anthrax caused by handling of wool, hair, bristles, hides and skins;

(c) Blisters caused by prolonged or repeated use of tools or mechanical appliances;

(d) Synovitis, Tenosynovitis, or Bursitis due to an occupation involving continual or repeated pressure on the parts affected;

(e) Chrome ulceration;

(f) Compressed air illness;

(g) Dermatitis, that is, inflammation of the skin due to oil, cutting compounds or lubricants, dust, liquids, fumes, gases or vapors;

(h) Diseased condition caused by exposure to x-rays or radio-active substances;

(i) Diseased condition of the eyes due to electric arc and welding, and cataract in glass workers;

(j) (Epitheliomatous cancer) or ulceration of the skin or the corneal surface of the eye caused by tar, pitch, bitumen, mineral oil or paraffin or any compound, product or residue of any of these substances;

(k) Glanders and other diseased conditions caused by handling any equine animal or the carcass of any such animal;

(l) Infectious or contagious disease contracted in the course of employment in or in immediate connection with a hospital or sanatorium in which persons or animals suffering from such disease are cared for or treated;

(m) Nystagmus incurred in underground work;

(n) Asbestosis;

(o) Silicosis. [Added Acts 1947, 50th Leg., p. 176, ch. 113, § 2.]

False representations as to previous disease

Sec. 21. If the employee, at the time of his employment, wilfully and falsely represents in writing that he has not previously been afflicted with the occupational disease which is the cause of incapacity or death, no compensation shall be payable. [Added Acts 1947, 50th Leg., p. 177, ch. 113, § 3.]

Aggravation of previously existing diseases

Sec. 22. Where an occupational disease is aggravated by any other non-compensable disease or infirmity, or where incapacity or death from any other non-compensable cause, is aggravated, prolonged, accelerated or in anywise contributed to by an occupational disease, the number of weeks of compensation payable by the Association shall be reduced and limited to such proportion only of the total number of weeks of compensation that would be payable if the occupational disease were the sole cause of the incapacity or death, as such occupational disease, as a causative factor, bears to all the causes of such incapacity or death, such reduction in compensation to be effected by reducing the number of weekly payments of compensation for which the Association is liable. [Added Acts 1947, 50th Leg., p. 178, ch. 113, § 4.]

Retroactive effect of statute

Sec. 23. The provisions of this Act do not apply to cases of incapacity or death resulting from a disease in which the last injurious exposure to the hazards of such disease occurred before the date on which this Act takes effect. [Added Acts 1947, 50th Leg., p. 178, ch. 113, § 5.]

Employer, who deemed

Sec. 24. Where compensation is payable for an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of such disease shall be deemed the employer within the meaning of the Act. [Added Acts 1947, 50th Leg., p. 178, ch. 113, § 6.]

Compensation for occupational disease; association liable when

Sec. 25. The Association shall not be liable for any compensation for an occupational disease unless such disease shall be due to the nature of an employment in which the hazards of such disease actually exist, and are characteristic thereof and peculiar to the trade, occupation, process, or employment, and is actually incurred in such employment, and unless incapacity or death results within three (3) years in the case of silicosis or asbestosis, or one (1) year in case of any other occupational disease, after the last injurious exposure to such disease in such employment; or, in case of death, unless death follows continuous incapacity from such disease commencing within the period above limited, for which compensation has been paid or awarded or timely claim made as provided in this Act, and occurs within three hundred sixty (360) weeks after such last exposure. [Added Acts 1947, 50th Leg., p. 178, ch. 113, § 7.]

Silicosis and asbestosis

Sec. 26. (a) Wherever used in this section "silicosis" shall mean the characteristic fibrotic condition of the lungs caused by inhalation of silica dust. "Asbestosis" shall mean the characteristic fibrotic condition of the lungs caused by the inhalation of asbestos dust.

(b) In the absence of conclusive evidence in favor of the claimant, disability or death from silicosis or asbestosis shall be presumed not to be due to the nature of any employment within the provision of this section, unless during the ten (10) years immediately preceding the date of incapacity the employee has been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five (5) years, two (2) years of which shall have been in this state, under a contract of employment existing in this state; provided, however, that if the employee shall have been employed by the same employer during the whole of such five (5) years period, his right to compensation against the association shall not be affected by the fact that he has been employed during any part of said period outside this state; provided further, that the employee has not been working outside of the state for more than one (1) year prior to the commencement of incapacity.

(c) In the event of incapacity or death from silicosis or asbestosis, compensation shall be payable to employees or their beneficiaries as follows: If incapacity occurs, or, in the case of no claim for prior incapacity, if death occurs in the first twelve (12) months period after this section becomes effective, the total compensation or death benefits payable shall be twenty per cent of the number of weeks of compensation otherwise payable for such incapacity or death. If incapacity occurs, or, in the case of no claim for prior incapacity, if death occurs during the next twelve (12) months period, the total compensation or death benefits payable shall be forty per cent of the number of weeks of compensation otherwise payable for such incapacity or death. Thereafter, the total number of weeks of compensation payable for incapacity or death shall increase at the rate of twenty per cent for each succeeding twelve (12) months period; the aggregate number of weeks of compensation payable in each case to be limited according to the foregoing formula for the year in which incapacity occurs, or, in case of no claim for prior incapacity, in which death occurs. Such progressive increase in the limitation of the total number of weeks of compensation in any event payable for incapacity or death due to silicosis or asbestosis shall continue only until such total number of weeks equals but does not exceed the number which would be payable to the particular employee or his beneficiaries had such incapacity or death been due to an injury other than an occupational disease.

(d) In the event of incapacity from silicosis or asbestosis, the Association shall provide reasonable medical treatment; but liability for such treatment shall not extend beyond ninety-one (91) days as provided in Section 7 of Article 8306.

(e) Where an employee, though not actually incapacitated, is found to be affected by silicosis or asbestosis, he may, subject to the approval of the Board, be permitted to waive in writing full compensation for any aggravation of his condition that may result from his continuing in the hazardous occupation. In the event of total incapacity or death as a result of the disease with which the employee was so affected, after such a waiver, compensation shall nevertheless be payable as herein elsewhere provided; but in no case, whether for incapacity or death or both, for longer than one hundred (100) weeks. A waiver so permitted shall remain effective, for the trade, occupation, process, or employment for which executed, notwithstanding a change or changes of employer. The Board shall make reasonable rules and regulations relative to the form, execution, filing or registration and public inspection of waivers or records thereof. [Added Acts 1947, 50th Leg., p. 178, ch. 113, § 8.]

Acute state of certain diseases, compensation only during

Sec. 27. In any case wherein the employment causes an acute disease, condition or allergy which can be arrested by a change of employment or by medical treatment under which the employee will suffer no objective symptoms of such disease, condition or allergy, the employee shall be entitled to compensation only for the period during which said disease, condition or allergy persists in an acute state. [Added Acts 1947, 50th Leg., p. 179, ch. 113, § 9.]

Section 15 of the Act of 1947 provided that partial invalidity should not affect the remaining portions of the Act.

Rules of Civil Procedure. Rule 820 of the Texas Rules of Civil Procedure provides that: "All portions of the Workmen's Compensation Law, Title 130 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, which relate to matters of practice and procedure are hereby adopted and retained in force and effect as rules of court."

Art. 8306a. Discount for present payment.— In all cases when the payments of weekly compensation due an injured employe or beneficiary coming within the provisions of the Workmen's Compensation Act are accelerated by increasing the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid, and when the liability of the insurance company is redeemed by the payment of a lump sum, by agreement of parties interested, or as a result of an order made by the Industrial Accident Board or a judgment rendered by a court of competent jurisdiction, and when advanced payments of compensation are made, and in all cases when compensation is paid before becoming due, discount shall be allowed for present payment at six (6%) per cent compounded annually.

Provided, however, future installments of compensation payable to alien beneficiaries, not residents of the United States, may be commuted and paid according to the terms and provisions of Section 17, Article 8306 of the Revised Civil Statutes of 1925; and provided further when either party shall appeal from the award of the Industrial Accident Board to the District Court, the District Court shall try the matter appealed from only, and shall not in said trial adjudicate in any way any right to exemplary

damages, as is granted in Article 16, Section 26, of the State Constitution. [Acts 1931, 42nd Leg., p. 415, ch. 248, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

PART 2

Article 8307. Industrial Accident Board.

Members; powers

Sec. 1. The Industrial Accident Board shall consist of three members, one to be biennially appointed by the Governor for a term of six years. Said board shall have the powers, duties and functions hereinafter conferred. [Acts 1917, p. 269.]

Eligibility of members

Sec. 2. At the time of each appointment one member of the Industrial Accident Board shall be an employer of labor in some industry or business covered by this law; one shall be employed in some business industry as a wage earner, and the third member shall be a practicing attorney of recognized ability, and shall act in the capacity of legal adviser to the board, in addition to his other duties as a member thereof, and be chairman of said board. [Id.]

Secretary; clerical services; expenses; office

Sec. 3. The board may appoint a secretary at a salary not to exceed $2,700.00 a year, and may appoint such other clerical and other assistants as may be necessary to properly administer this Act. It shall also be allowed a reasonable sum, the amount to be determined by the Legislature, for clerical and other services, office equipment, traveling expenses and all other expenses necessary. The board shall be provided suitable offices in the capitol where its records shall be kept. [Acts 1917, p. 269; Acts 1923, p. 384.]

Partial invalidity. For section 15 of Act of 1947 relating to partial invalidity, see note under art. 8306.

Rules; physical examination; suspension of compensation; procedure and powers

Sec. 4. The Board may make rules not inconsistent with this Law for carrying out and enforcing its provisions, and may require any employee claiming to have sustained injury to submit himself for examination before such Board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians authorized to practice under the Laws of this State. If the employee or the Association requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the employee to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the Association to reduce or suspend the compensation of any such injured employee. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the employee and an opportunity to be heard.

When authorized by the board, the Association shall have the privilege of having any injured employee examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employee and convenient and accessible to him. The Association shall pay for such examination and the reasonable expense incident to the injured employee in submitting thereto. The injured employee shall have the privilege to have a physician of his own selection present to participate in such examination. Provided, when such examination is directed by the board at the request of the Association, the Association shall pay the fee of the physician selected by the employee, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this Law. The Board or any member thereof shall have the power to subpœna witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute, punish for contempt in the same manner and to the same extent as a District Court may do, and to bar persons guilty of unethical or fraudulent conduct from practicing before the Board. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this Law. [Acts 1917, p. 269; Acts 1931, 42nd Leg., p. 175, ch. 102, § 1.]

Notice of injury; claim for compensation

Sec. 4a. Unless the Association or subscriber have notice of the injury, no proceeding for compensation for injury under this law shall be maintained unless a notice of the injury shall have been given to the Association or subscriber within thirty (30) days after the happening of an injury or the first distinct manifestation of an occupational disease, and unless a claim for compensation with respect to such injury shall have been made within six (6) months after the occurrence of the injury or of the first distinct manifestation of an occupational disease; or, in case of death of the employee or in the event of his physical or mental incapacity, within six (6) months after death or the removal of such physical or mental incapacity. For good cause the Board may, in meritorious cases, waive the strict compliance with the foregoing limitations as to notice, and the filing of the claim before the Board. [Acts 1917, p. 269; Acts 1947, 50th Leg., p. 180, ch. 113, § 10.]

Determination of questions; suit to set aside final ruling and decision; revocation of association's license

Sec. 5. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall, within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision, and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. In all cases of occupational diseases, for the purpose of determining venue when an appeal is effected to set aside the final ruling and decision of the Board, suit shall be brought in a court of competent jurisdiction in the said county in which the employee was last exposed to the disease alleged, prior to the manifestation of the disease, or death therefrom, or in the county in which the adverse party resides, or has a permanent place or business, or by agreement of the parties in a court of competent jurisdiction in any county in this state. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law, and the suit of the injured employee or person suing on account of the death of such employee shall be against the Association, if the employer of such injured or deceased employee at the time of such injury or death was a subscriber as de-

fined in this law. If the final order of the Board is against the Association, then the Association and not the employer shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause, instead of the Board, upon trial de novo, and the burden or [1] proof shall be upon the party claiming compensation. The Industrial Accident Board shall furnish any interested party in said claim pending in court, upon request, free of charge, with a certified copy of the notice of the employer becoming a subscriber, filed with the Board, and the same when properly certified to shall be admissible in evidence in any court in this state upon trial of such claim therein pending, and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery, the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto; and, if the same is against the Association, it shall at once comply with such final ruling and decision; and failing to do so, the Board shall certify the fact to the Commissioner of Insurance, and such certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such Association to do business in Texas. [Acts 1917, p. 269; Acts 1927, 40th Leg., p. 328, ch. 223, § 1; Acts 1931, 42nd Leg., p. 378, ch. 224, § 1; Acts 1947, 50th Leg., p. 180, ch. 113, § 11.]

[1] So in enrolled bill. Probably should be "of."

Rights and remedies

Sec. 5a. In all cases where the board shall make a final order, ruling or decision as provided in the preceding section and against the association, and the association shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said section is provided, then in that event, the claimant in addition to the rights and remedies given him and the board in said section may bring suit where the injury occurred, upon said order, ruling or decision. If he secures a judgment sustaining such order, ruling or decision in whole or in part, he shall also be entitled to recover the further sum of twelve per cent as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the board has made an award against an association requiring the payment to an injured employé or his beneficiaries of any weekly or monthly payments, under the terms of this law, and such association should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employé or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve per cent penalties and attorney's fees, as herein provided for. Suit may be brought under the provisions of this section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit. [Acts 1917, p. 269.]

Computation of time for notice or suit

Sec. 5b. In computing the twenty (20) days for the filing with the Board notices of unwillingness to abide by the final ruling and decision of the Board, and likewise in computing the twenty (20) days to institute a suit to set aside the final ruling of said Board, if the last day is a legal holiday or is Sunday, then, and in such case, such last day shall not be counted, and the time shall be and the same is hereby extended so as to include the next succeeding business day; but this provision shall not extend to or include any cases now filed or now pending in the trial court or on appeal from the trial court; the rights of the parties in such suits now pending or on appeal from the trial courts shall be determined by the law existing prior to the passage of this Act. [Added Acts 1937, 45th Leg., 2nd C.S., p. 1890, ch. 19, § 1.]

Employee of sub-contractor

Sec. 6. If any subscriber to this law with the purpose and intention of avoiding any liability imposed by its terms sublets the whole or any part of the work to be performed or done by said subscriber to any subcontractor, then in the event any employé of such sub-contractor sustains an injury in the course of his employment he shall be deemed to be and taken for all purposes of this law to be the employé of the subscriber, and in addition thereto such employé shall have an independent right of action against such subcontractor, which shall in no way be affected by any compensation to be received by him under the provisions of this law. [Acts 1917, p. 269.]

Recovery from third person; subrogation; compromise

Sec. 6a. Where the injury for which compensation is payable under this law was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employé may at his option proceed either at law against that person to recover damages or against the association for compensation under this law, but not against both, and if he elects to proceed at law against the person other than the subscriber, then he shall not be entitled to compensation under this law. If compensation be claimed under this law by the injured employé or his legal beneficiaries, then the association shall be subrogated to the rights of the injured employé in so far as may be necessary and may enforce in the name of the injured employé or of his legal beneficiaries or in its own name and for the joint use and benefit of said employé or beneficiaries and the association the liability of said other person, and in case the association recovers a sum greater than that paid or assumed by the association to the employé or his legal beneficiaries, together with a reasonable cost of enforcing such liability, which shall be determined by the court trying the case, then out of the sum so recovered the association shall reimburse itself and pay said cost and the excess so recovered shall be paid to the injured employé or his beneficiaries. The association shall not have the right to adjust or compromise such liability against such third person without notice to the injured employé or his beneficiaries and the approval of the board, upon a hearing thereof. [Id.]

Record of injuries; reports

Sec. 7. Every subscriber shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one (1) day, or within eight (8) days after the employee notifies the employer of a definite manifestation of an occupational disease, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured employee, or if such incapacity extends beyond a period of sixty (60) days, the subscriber shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name and nature of the business of the employer, the location of the establish-

ment, the name, age, sex and occupation of the injured employee, and the character of work in which he was engaged at the time of the injury, and shall state the date and hour of receiving such injury or of the definite manifestation of the occupational disease, and the nature and cause of the injury, and such other information as the Board may require. Any employer wilfully failing or refusing to make any such report within the time herein provided, or wilfully failing or refusing to give said Board any information demanded by said Board relating to any injury to any employee, which information is in the possession of or can be ascertained by the employer by the use of reasonable diligence, shall be liable for and shall pay to the State of Texas a penalty of not more than One Thousand ($1,000.00) Dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis County by the Attorney General or by the district or county attorney, under his direction, in a District Court thereof. [Acts 1917, p. 269; Acts 1947, 50th Leg., p. 181, ch. 113, § 12.]

Quorum of Board; seal; proceedings as evidence

Sec. 8. A majority of the Board shall constitute a quorum to transact business, and the Act or decision of any two members thereof shall be held the act or decision of the Board, except as otherwise herein specifically provided. No vacancy shall impair the right of the remaining member or members of the Board to exercise all the powers of the Board. The Board shall provide itself with a seal on which shall be inscribed the words "Industrial Accident Board, State of Texas." Any Order, award or proceeding of said Board when duly attested by any member of the Board or its secretary, shall be admissible as evidence of the act of said Board in any Court of this State. [Acts 1917, p. 269; Acts 1931, 42nd Leg., p. 132, ch. 89, § 1.]

Certified copy of records; fees

Sec. 9. Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the board shall furnish to any person entitled thereto a certified copy of any order, award, decision or paper on file in the office of said board, and the fees so received for such copies shall be paid into the State Treasury and credited to the general revenue fund. No fee or salary shall be paid to any person in said department for making such copies in excess of the fees charged for such copies. [Acts 1917, p. 269.]

Hearings; investigations; adjusters

Sec. 10. Said board or any member thereof may hold hearings or take testimony or make investigations at any point within this State, reporting the result thereof, if the same is made by one member, to the board, or it can employ or use the assistance of an inspector or adjuster for the purpose of adjusting and settling claims for compensation or developing the facts relating to any claim for compensation. [Id.]

Association suspending payments

Sec. 11. When the association suspends or stops payment of compensation, it shall immediately notify the board of that fact, giving the board the name, number and style of the claim, the amount paid thereon, the date of the suspension or stopping of payment thereon, and the reason for such suspension or stopping. [Id.]

Compensation payments; compromise; commutation

Sec. 12. The board upon application of either party may, in its discretion, having regard to the welfare of the employé and the convenience of the association, authorize compensation to be paid monthly or quarterly.

Where the liability of the association or the extent of the injury of the employé is uncertain, indefinite or incapable of being satisfactorily established, the board may approve any compromise, adjustment, settlement or commutation thereof made between the parties. [Id.]

Medical Committee; examination of employee; report

Sec. 13. (a) If, on the hearing of a claim for compensation for occupational disease, any controverted medical question or questions shall arise, upon the request of either party, or its own motion, the Board shall appoint a Medical Committee consisting of three (3) doctors, duly qualified in the diagnosis and treatment of occupational diseases, and licensed to practice in the state, and the Board shall reserve its decision and award until it shall have received a report from such Medical Committee. The date of incapacity, if in dispute, shall be deemed to be a medical question.

(b) The Medical Committee, upon reference to it of a case of occupational disease, shall notify the employee, or, in case he be dead, his beneficiary or beneficiaries, and the Association to appear before the Medical Committee at a time and place stated in the notice. If the employee be living he shall appear before the Medical Committee at the time and place specified, and he shall submit to such examinations including clinical and x-ray examinations as the Medical Committee may require. The employee, or, if he be dead, his beneficiary or beneficiaries, and the Association shall be entitled to have present at all such examinations a physician of his or its own selection, who shall be given an opportunity to witness the same, and whose services shall be paid for by the person who engaged his services. The claimant and the Association shall produce to the Medical Committee all reports, medical and x-ray examinations which may be in their respective possession or control showing the past or present condition of the employee, to assist the Medical Committee in reaching its conclusion.

(c) The Medical Committee shall, if it deems advisable, inspect or cause to be inspected, the plant or industrial operation or process, where the exposure to the occupational disease is alleged to have occurred, to determine whether such conditions exist in such plant, industrial operation or process as to produce the occupational disease complained of.

(d) The Medical Committee shall, as soon as practicable after it has completed its consideration of a case, report to the Board its opinion regarding all medical questions involved in the case. The Medical Committee shall include in its report a statement of what, if any, physician or physicians were present at the examination on behalf of the claimant or Association and what, if any, medical reports and x-rays were produced by or on behalf of the claimant or Association.

(e) The Medical Committee shall file its report in triplicate with the Board, which shall send one copy thereof to the claimant and one copy to the Association. All fees, costs, and expenses incident to the functioning of said Medical Committee shall be paid by the party requesting same; the Board shall determine the reasonableness of said fees, costs and expenditures.

(f) If the employee refuses to submit to such examination, all action on his claim for compensation shall be suspended during such period as he persists in such refusal.

(g) Where a case of occupational disease is pending in any court of this state, upon the motion of either party, or upon its own motion, the court shall appoint a Medical Committee consisting of three (3) doctors duly qualified in the diagnosis and treatment of

occupational diseases and licensed to practice in the state, and shall direct the employee to submit to examination, including clinical and x-ray examination, as the Medical Committee may require or deem advisable. The Medical Committee shall report its findings and conclusions in open court, and such may be rebuttable. The court shall pass on the reasonableness of the fees, costs and other expenditures of the Medical Committee, which fees shall be taxed as costs. [Added Acts 1947, 50th Leg., p. 181, ch. 113, § 13.]

Autopsy

Sec. 14. Upon the filing of a claim for compensation for death by reason of an occupational disease where an autopsy is necessary to accurately and scientifically determine the cause of death, upon the request of either party, or on its own motion, such autopsy shall be ordered by the Board. The Board shall designate a duly licensed physician, who is a specialist in such examinations, to perform or attend such autopsy, and to certify his findings thereon. Such findings are to be filed with the Board and shall be a public record. All proceedings for compensation shall be suspended upon refusal of the beneficiaries of the deceased employee to permit such autopsy when ordered, and no compensation shall be payable for any period during which such autopsy is refused. No autopsy shall be held in any case, by any person, without notice first being given to the parties in interest, (if they reside in this state or their whereabouts can be reasonably ascertained,) of the time and place thereof, and reasonable time and opportunity given such parties in interest to have a representative or representatives present to witness the same. If such notice is not given, all evidence obtained by such autopsy shall be suppressed on motion duly made to the Board. [Added Acts 1947, 50th Leg., p. 182, ch. 113, § 14.]

Rules of Civil Procedure. Rule 820 of the Texas Rules of Civil Procedure provides that: "All portions of the Workmen's Compensation Law, Title 130 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, which relate to matters of practice and procedure are hereby adopted and retained in force and effect as rules of court."

Art. 8307a. Suit to set aside decision of Industrial Accident Board; transfer to county where injury occurred.—Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Industrial Accident Board shall, in the manner and within the time provided by Section 5 of Article 8307, Revised Civil Statutes of 1925, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the Court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merits, transfer the case to the proper Court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court. [Acts 1931, 42nd Leg., p. 351, ch. 208, § 1.]

Rules of Civil Procedure. Rule 820 of the Texas Rules of Civil Procedure provides that: "All portions of the Workmen's Compensation Law, Title 130 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, which relate to matters of practice and procedure are hereby adopted and retained in force and effect as rules of court."

Art. 8307b. Presumptions on appeal from Board; denial by verified pleadings.—In the trial of any case appealed to the court from the board the following, if plead, shall be presumed to be true as plead and have been done and filed in legal time and manner, unless denied by verified pleadings:

(1) Notice of injury;
(2) Claim for compensation;
(3) Award of the board;
(4) Notice of intention not to abide by the award of the board;
(5) Filing of suit to set aside the award.

Such denial may be made in original or amended pleadings; but if in amended pleadings such must be filed not less than seven days before the case proceeds to trial. In case of such denial the things so denied shall not be presumed to be true, and if essential to the case of the party alleging them must be proved. [Added Acts 1937, 45th Leg., p. 535, ch. 261, § 2.]

Section 3 repealed conflicting laws.

Rules of Civil Procedure. Rule 820 of the Texas Rules of Civil Procedure provides that: "All portions of the Workmen's Compensation Law, Title 130 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, which relate to matters of practice and procedure are hereby adopted and retained in force and effect as rules of court."

PART 3

Article 8308. Employers' Insurance Association.

Creation

Sec. 1. The "Texas Employers' Insurance Association" is hereby created a body corporate with the powers provided in this law and with all general corporate powers incident thereto. [Acts 1917, p. 269.]

Board of directors

Sec. 2. The Governor shall appoint a board of directors of the association consisting of twelve members, who shall serve for a term of one year or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide. At any annual meeting of subscribers the number of directors may be increased or decreased by resolution duly recorded in the minutes of such meeting. [Id.]

Powers of directors

Sec. 3. Until the first meeting of the subscribers, the board of directors shall have and exercise all the powers of the subscribers and may adopt by-laws, not inconsistent with the provisions of this law, which shall be in effect until amended or repealed by the subscribers. [Id.]

Officers

Sec. 4. The board of directors shall immediately choose by ballot a president, who shall be a member of the board, and shall elect a secretary, a treasurer, and such other officials as the by-laws may provide. [Id.]

Quorum; vacancies

Sec. 5. Seven or more directors shall constitute a quorum for the transaction of business. Vacancies in any office may be filled in such manner as the by-laws shall provide. [Id.]

Executive committee

Sec. 6. The board of directors may appoint an executive committee which may have and exercise all of the powers of the board of directors except when the board is in session. [Id.]

Subscribers

Sec. 7. Any employer of labor in this State who may be subject to the terms of this Law or to the terms of the "Longshoremen's and Harbor Worker's Compensation Act" of the United States [1] may become a subscriber to the Association. [Acts 1917, p. 269; Acts 1931, 42nd Leg., p. 289, ch. 170, § 1.]

[1] 33 U.S.C.A. §§ 901–950.

Votes

Sec. 8. In any meeting of the subscribers each subscriber shall have one vote, and if a subscriber has 500 employés to whom the association is bound to pay compensation he shall be entitled to two votes and he shall be entitled to one additional vote for each additional 500 employés to whom the association is bound to pay

compensation, but no subscriber shall cast, by his own right or by right of proxy, more than 20 votes. [Acts 1917, p. 269.]

Minimum number of subscribers

Sec. 9. No policies shall be issued by the association until not less than 50 members have subscribed, who have not less than 2,000 employés to whom the association may be bound to pay compensation. [Id.]

List of subscribers to be filed

Sec. 10. No policies shall be issued by the association until a list of the subscribers with the number of employés of each, together with such information as the Commissioner of Insurance may require, shall have been filed with the Commissioner, nor until the president and secretary of the association shall have certified under oath that every subscription on the list so filed is genuine and made with an agreement with each subscriber that he will take the policy so subscribed for by him within thirty days of the granting of a license to the association by the Commissioner to issue policies. [Id.]

Subscribers falling below minimum

Sec. 11. If the number of subscribers falls below fifty, or the number of employés to whom the association may be bound to pay compensation falls below 2,000, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than fifty, who have not less than 2,000 employés to whom the association may be bound to pay compensation, said subscriptions to be subject to the provisions of the preceding section. [Id.]

Investigation; license to issue policies

Sec. 12. Upon the filing of the certificates provided for in the two preceding sections, the Commissioner of Insurance shall make such investigations as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies. [Id.]

Distribution of subscribers into groups

Sec. 13. The board of directors may distribute the subscribers into groups for the purpose of segregating the experience of each such group as to premiums and losses, and for the purpose of determining dividends payable to and assessments payable by the subscribers within each group, but for the purpose of determining the solvency of the association, the funds of the association shall be deemed one and indivisible. The board of directors shall have power to re-arrange any of the groups by withdrawing any subscriber and transferring him wholly or in part to any group and to set up new groups at its discretion. [Id.]

Limit of liability of subscribers, fixing

Sec. 14. The association may, in its by-laws and policies, fix the limit of liability of the subscribers for the payment of assessments hereinafter provided for, but such limit of liability of the subscribers shall not, except by special agreement in writing between the association and subscriber, be fixed at an amount greater than an amount equal to and in addition to an annual premium. [Id.]

Assessments

Sec. 15. If the association, at the end of any calendar year, is not possessed of admitted assets in excess of unearned premiums sufficient for the payment of its incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses, first upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses show a deficiency for the group, and second only upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses show a surplus, and in no event shall it make an assessment for any aggregate amount more than is needed to pay losses and expenses. Every subscriber shall, in accordance with the law and his contract, pay his proportionate part of any assessment which may be levied by the association on account of losses and expenses incurred during any calendar year while he is a subscriber. [Id.]

Dividends

Sec. 16. The board of directors may by vote fix the amount to be paid as dividends on the policies in force during each calendar year after retaining sums sufficient to pay all compensation which may be payable on account of injuries sustained and expenses incurred during the calendar year. Dividends and assessments shall be fixed by and for groups, but the entire assets of the association, including the liability of the subscriber to assessment within the limits fixed by the by-laws or by special agreement in writing as authorized, shall be subject to the payment of any approved claim for compensation against the association. [Id.]

Surplus; liability of members suspended

Sec. 16a. Whenever the Association shall have accumulated, at the end of any calendar year, an admitted surplus in excess of incurred losses, expenses and unearned premiums or other liabilities amounting to the sum of Two Hundred Thousand Dollars ($200,000.00) or more, the liability of its members to assessment under Article 8308, Section 15, shall be suspended, and it shall be authorized to issue policies not subject to assessment. It shall be the duty of the Board of Insurance Commissioners to determine promptly after the filing of the annual Statement of the Association, whether or not such an amount of surplus exists and if it finds that it does, it shall so state in a certificate. Such certificate shall remain in full force and effect for one (1) year or until such time as a later report to or [1] examination by the Department of Insurance shall show the surplus to be less than Two Hundred Thousand ($200,000.00) Dollars, whereupon the Board of Insurance Commissioners shall cancel and revoke such certificate and require the Association to issue policies subject to assessment under Article 8308, Section 15, as they were prior to the time when such surplus of Two Hundred Thousand ($200,000.00) Dollars or more was first accumulated. [Acts 1917, p. 269; Acts 1931, 42nd Leg., p. 203, ch. 119, § 1.]

[1] So in enrolled bill. Session Laws insert "by" after the word "or".

Repealed

Sec. 17. Repealed by Acts 1939, 46th Leg., p. 713.

Rules for prevention of injuries

Sec. 18. The association shall make and enforce reasonable rules for the prevention of injuries on the premises of subscribers. For this purpose the inspector of the association or of the board shall have free access to all such premises during regular working hours. Any subscriber aggrieved by such rule or regulation may petition the board for a review and it may affirm, amend or annul the rule or regulation. [Acts 1917, p. 269.]

Information to be furnished when employer becomes subscriber

Sec. 18a. Whenever any employer of labor in this State becomes a subscriber to this law, he shall immediately notify the board of such fact, stating in such notice his name, place of business, character of the business, approximate number of employés, estimated amount of his pay roll and the name of the insurance company carrying his insurance, the date of issuing the policy and the date when the same will expire, and whenever any policy is renewed that fact shall be made known to the board and the notice thereof shall contain the above facts. The association shall also report the same to the board, giving the name of the

employer, place of business, character of the business, approximate number of employés, estimated amount of pay roll, date of issuance and date of expiration of said policy. Any employer or association willfully failing or refusing to make any such report shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each offense, the same to be recovered by suit in Travis County by the Attorney General or by the district or county attorney under his direction in the district court thereof. [Id.]

Notice by subscriber to persons under contract

Sec. 19. Every subscriber shall, as soon as he secures a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the board, to all persons under contract of hire with him that he has provided for payment of compensation for injuries with the association. [Id.]

Notice by subscriber of insurance; notice of expiration

Sec. 20. Every subscriber shall, after receiving a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the board to all persons with whom he is about to enter into a contract of hire that he has provided for payment of compensation for injuries by the association. If any employer ceases to be a subscriber, he shall on or before the date on which his policy expires, give notice to that effect in writing or print or in such other manner or way as the board may direct or approve to all persons under contract of hire with him. In case of the renewal of his policy no notice shall be required under this law. He shall file a copy of said notice with the board. [Id.]

Payment of judgment and costs

Sec. 21. If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any Judgment of a Court at Law, or by any Judgment of a Court of Equity or of admiralty and maritime jurisdiction to pay any employee any damages, actual or exemplary, on account of any personal injury sustained by any such employee in the course of his employment during the period of subscription the association shall pay to the subscriber the full amount of the Judgment and the costs assessed therewith, if the subscriber shall have given the Association notice of the bringing of the action upon which the Judgment was recovered and an opportunity to appear and defend the same in his or its name. [Acts 1917, p. 269; Acts 1927, 40th Leg., p. 359, ch. 241, § 1; Acts 1931, 42nd Leg., p. 289, ch. 170, § 2.]

Failure to issue policies

Sec. 22. The corporate powers of the association shall not expire because of failure to issue policies or to make insurance. [Acts 1917, p. 269.]

Reserves

Sec. 23. The association shall set up and maintain reserves adequate to meet anticipated losses, carry all claims to maturity and policies to termination, which reserves shall be computed in accordance with such rules as shall be approved by the Commissioner of Insurance and may be invested in such securities as are permitted to casualty companies organized under the General Laws; and, for the protection of its reserves and surpluses against the liability herein imposed, shall have the same right to reinsure or be reinsured as casualty companies organized under General Laws. [Acts 1917, p. 269, Acts 1923, p. 384.]

Rules of Civil Procedure. Rule 820 of the Texas Rules of Civil Procedure provides that: "All portions of the Workmen's Compensation Law, Title 130 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, which relate to matters of practice and procedure are hereby adopted and retained in force and effect as rules of court."

PART 4

Art. 8309. Definitions and general provisions.

Words and phrases defined

Sec. 1. The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

"Employer" shall mean any person, firm, partnership, association of persons or corporations or their legal representatives that makes contracts of hire.

"Employee" shall mean every person in the service of another under any contract of hire, expressed or implied, oral or written, except masters of or seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is not in the usual course of the trade, business, profession or occupation of his employer; provided that an employee who is employed in the usual course of the trade, business, profession or occupation of an employer and who is temporarily directed or instructed by his employer to perform service outside of the usual course of trade, business, profession or occupation of his employer is also an employee while performing such services pursuant to such instructions or directions; provided further, that such persons, other than independent contractors and their employees, as may be engaged in the work of the employer of enlargement, construction, remodeling or repairing of the premises or buildings used or to be used in the conduct of the business of the employer shall be deemed employees; and provided further that any person, who may be performing or doing work or service that may be otherwise legally performed or done, shall be deemed an employee as herein defined and shall be entitled to receive compensation under the terms and provisions of this Act despite the fact that such person may not have secured a license, permit or certificate to perform or do such work or service as may be required by any Statute or municipal ordinance, or despite the fact that such person may have been performing or doing such work or service in violation of any wage law, hour law or Sunday law. Provided that this Section shall not be construed to relieve from fine or imprisonment any person, firm or corporation employing or performing any work or services prohibited by any Statute of this State or any valid municipal ordinance.

The words "legal beneficiaries" as used in this Act shall mean the relatives named in Section 8a, Part 1, of this Act.[1]

"Association" shall mean the "Texas Employers' Insurance Association" or other insurance company authorized under this Act to insure the payment of compensation to injured employees or to the beneficiaries of deceased employees.

"Subscriber" shall mean any employer who has become a member of the association by paying the required premium; provided that the association holds a license issued by the Commissioner of Insurance, as provided for in Section 12, Part 3, of this Act.[2]

"Average weekly wages" shall mean:

1. If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same employer or not, substantially the whole of the year immediately preceding the injury, his average annual wages shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed.

2. If the injured employee shall not have worked in such employment during substantially the whole of the year, his average annual wages shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same

or neighboring place, shall have earned in such employment during the days when so employed.

3. When by reason of the shortness of the time of the employment of the employee, or other employees engaged in the same class of work in the manner and for the length of time specified in the above Subsections 1 and 2, or other good and sufficient reasons it is impracticable to compute the average weekly wages as above defined, it shall be computed by the Board in any manner which may seem just and fair to both parties.

4. Said wages shall include the market value of board, lodging, laundry, fuel, and other advantage which can be estimated in money, which the employee receives from the employer as a part of his remuneration. Any sums, however, which the employer has paid to the employee to cover any special expenses entailed on him by the act of his employment shall not be included.

5. The average weekly wages of an employee shall be one-fifty-second part of the average annual wages.[3]

The term "injury sustained in the course of employment," as used in this Act, shall not include:

1. An injury caused by the act of God, unless the employee is at the time engaged in the performance of duties that subject him to a greater hazard from the act of God responsible for the injury than ordinarily applies to the general public.

2. An injury caused by an act of a third person intended to injure the employee because of reasons personal to him and not directed against him as an employee, or because of his employment.

3. An injury received while in a state of intoxication.

4. An injury caused by the employee's willful intention and attempt to injure himself, or to unlawfully injure some other person, but shall include all other injuries of every kind and character having to do with and originating in the work, business, trade or profession of the employer received by an employee while engaged in or about the furtherance of the affairs or business of his employer whether upon the employer's premises or elsewhere.

Any reference to any employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. The word "board" whenever used in this Act shall be held to mean the Industrial Accident Board created by this Act. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included. [Acts 1917, p. 269; Acts 1937, 45th Leg., p. 537, ch. 262, § 1; Acts 1943, 48th Leg., p. 279, ch. 176, § 1.]

[1] Article 8306.
[2] Article 8308.
[3] The following paragraph reading "The terms 'injury' or 'personal injury', shall be construed to mean damage or harm to the physical structure of the body and such diseases or infection as naturally result therefrom," was repealed by Acts 1947, 50th Leg., p. 176, ch. 113, § 1. For definition of such terms see art. 8306, § 20.

Officers not to be deemed employees

Sec. 1a. The president, vice-president or vice-presidents, secretary or other officers thereof provided in its charter or by-laws and the directors of any corporation which is a subscriber to this law shall not be deemed or held to be an employé within the meaning of that term as defined in the preceding section hereof, and this notwithstanding they may hold other offices in the corporation and may perform other duties and render other services for which they receive a salary. [Acts 1917, p. 269; Acts 1923, p. 384.]

Insurance companies may insure

Sec. 2. Any insurance company, which term shall include mutual and reciprocal companies, lawfully transacting a liability or accident business in this State shall have the same right to insure the liability and pay the compensation provided for in part 1 of this law, and when such company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so far as applicable under this law, and when such company insures such payment of compensation it shall be subject to the provisions of parts 1, 2 and 4[3] and of sections 10, 17, 18a and 21 of part 3 of this law.[4] Such company may have and exercise all of the rights and powers conferred by this law on the association created hereby, but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least fifty subscribers who have not less than 2,000 employés. [Acts 1917, p. 269.]

Termination of status as subscriber

Sec. 3. Any subscriber who has paid a premium as provided in section 1, part 4, of this law may upon application to the board and to the association and after a showing satisfactory to the board that he has notified all of his employés, in such manner as may be required by the board, cease to be a subscriber, and be entitled to a refund of the unearned portion of his premium, subject, however, to any rule approved by the Commissioner of Insurance as to the minimum premiums or short rate cancellation. [Id.]

Liability for misrepresentation of pay roll

Sec. 3a. Any subscriber who shall willfully misrepresent the amount of his pay roll to the association writing his insurance upon which any premium under this law is to be based shall be liable to the association insuring the compensation of his employés in an amount not to exceed ten times the amount of the difference between the premium which he paid and the amount which said subscriber should have paid had his pay roll been correctly computed; and the liability to said association for such misrepresentation if it was deceived thereby, may be enforced by suit therefor. [Id.]

Effect of amendments on existing right, remedies, etc.

Sec. 3b. No inchoate, vested, matured, existing or other rights, remedies, powers, duties or authority, either of any employé or legal beneficiary, or of the board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made, and to that end it is hereby declared that said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties and authority; and further this law in so far as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment. [Id.]

Advance payments of compensation

Sec. 4. In cases of emergency or impending necessity the association may make advance payments of compensation to any employé during the period of his incapacity or to his beneficiaries within the terms of this law, and when the same is either directed or approved by the board it shall be credited as against any unaccrued compensation due said employé or beneficiaries. [Id.]

Reports of accidents as admissions and evidence

Sec. 5. The reports of accidents required by this law to be made by subscribers shall not be deemed as admissions and evidence against the association or the subscriber in any proceedings before the board or elsewhere in a contested case where the facts set out

therein or in any one of them is sought to be contradicted by the association or subscriber. [Id.]

[1] Article 8306, ante.
[2] Article 8308, ante.
[3] This article and Articles 8306, 8307, ante.
[4] Article 8308, ante.

Rules of Civil Procedure. Rule 820 of the Texas Rules of Civil Procedure provides that: "All portions of the Workmen's Compensation Law, Title 130 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, which relate to matters of practice and procedure are hereby adopted and retained in force and effect as rules of court."

Art. 8309a. Hearing of claim by Industrial Accident Board; postponement of hearing.—When an injured employee of a subscriber under the Workmen's Compensation Act has sustained an injury in the course of employment and filed claim for compensation and given notice as required by Law, the Industrial Accident Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured employee is being paid compensation as provided in the Workmen's Compensation Act, and the Insurance Association is furnishing either hospitalization or medical treatment to such employee, the Industrial Accident Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board. [Acts 1931, 42nd Leg., p. 304, ch. 179, § 1.]

Section 2 of this Act repeals conflicting laws and parts of laws.

Rules of Civil Procedure. Rule 820 of the Texas Rules of Civil Procedure provides that: "All portions of the Workmen's Compensation Law, Title 130 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, which relate to matters of practice and procedure are hereby adopted and retained in force and effect as rules of court."

Art. 8309b. Agricultural and Mechanical College Directors, Workmen's compensation insurance for employees under.

Law passed pursuant to Const. art. 3, § 59

Section 1. By virtue of the provisions of Section 59 of Article III of the Constitution of the State of Texas granting the Legislature power to pass such laws as may be necessary to provide for Workmen's Compensation Insurance for State employees, as in its judgment is necessary or required, and to provide for the payment of all costs, charges, and premiums on such insurance, provision is made as hereinafter set forth.

Definitions

Sec. 2. The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

1. "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Directors of the Agricultural and Mechanical College of Texas including the following:

Agricultural and Mechanical College of Texas
Texas Agricultural Experiment Station
Extension Service, A. and M. College of Texas
Texas Forest Service
Rodent Control Service
Firemen's Training School
John Tarleton Agricultural College
North Texas Agricultural College
Prairie View State Normal and Industrial College

Any other agencies now or hereafter under the direction and control of said Board of Directors.

2. "Workman" shall mean every person employed in the service of any institution as defined above whose name appears on the pay roll thereof except the following:

(a) Administrative Staff including officers of administration
(b) Teaching Staff
(c) Research, Extension and Regulatory Staff
(d) Clerical and Stenographic Staff

3. "Insurance" shall mean Workmen's Compensation Insurance.

4. "Board" shall mean the Industrial Accident Board of the State of Texas.

5. "Legal beneficiaries" shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this Act.

6. "Average weekly wages" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

7. The terms "injury" or "personal injury" and "injuries sustained in the course of employment" shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925.

8. Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Group life and accident insurance; employees deemed to have accepted act

Sec. 3. After the effective date of this Act the Board of Directors of the Agricultural and Mechanical College of Texas is hereby authorized to require, as a condition of employment, all employees except workmen as defined above, to acquire protection under a group life and accident insurance plan approved by it.

After the effective date any workman, as defined in this Act, who sustains an injury in the course of his employment shall be paid compensation as hereinafter provided.

The institution is hereby authorized to be self-insuring and is charged with the administration of this Act. The institution shall notify the Board of the effective date of such insurance, stating in such notice the nature of the work performed by the workmen of the institution, the approximate number of workmen, and the estimated amount of pay roll.

The institution shall give notice to all workmen that, effective at the time stated in such notice, the institution has provided for payment of insurance.

Workmen of the institution shall be conclusively deemed to have accepted the provisions hereof in lieu of common law or statutory causes of action, if any, for injuries resulting in the course of their employment.

Compensation for injury in course of employment

Sec. 4. If a workman of the institution sustains an injury in the course of his employment, he shall be paid compensation by the institution, as hereinafter provided.

Actions; defenses

Sec. 5. If [1] an action to recover damages for personal injuries sustained by a workman in the course of his employment, or for death resulting from personal injuries so sustained, the institution may defend in such action on the ground that the injury was caused by the willful intention of the workman to bring about the injury, or was so caused while the workman was in a state of intoxication.

[1] So in enrolled bill. Probably should be "In".

Exclusiveness of remedy; exemption of compensation from legal process; assignability

Sec. 6. Workmen of the institution and parents of minor workmen shall have no right of action against the agents, servants, or employees of the institution for damages for personal injuries nor shall representatives and beneficiaries of deceased workmen have a right of action against the agents, servants

or employees of the institution for injuries resulting in death, but such workmen and their representatives and beneficiaries shall look for compensation solely to the institution as is provided in this Act. All compensation allowed herein shall be exempt from garnishment, attachment, judgment, and all other suits or claims, and no such right of action and no such compensation and no part thereof nor of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void.

Laws governing

Sec. 7. Unless otherwise provided herein, Section 6 as amended by Acts, 1927, Fortieth Legislature, page 84, Chapter 60, Section 1; 7; 7b; 7c; 8; 8a; 8b; 9 as amended by Acts, 1931, Forty-second Legislature, page 303, Chapter 178; 10; 11; 11a, Acts, 1927, Fortieth Legislature, page 41, Chapter 28, Section 1; 12; 12a; 12b; 12c; 12d as amended by Acts, 1931, Forty-second Legislature, page 260, Chapter 155, Section 1; 12e; 12f; 12i, as amended by Acts, 1931, Forty-second Legislature, page 259, Chapter 154, Section 1; 13; 15; 15a; 16; 17; 19, as amended by Acts, 1927, Fortieth Legislature, page 383, Chapter 259, Section 1, as amended by Acts, 1931, Forty-second Legislature, page 133, Chapter 90, Section 1; Acts, 1931, Forty-second Legislature, page 415, Chapter 248, Section 1, all being Sections of Article 8306 of the Revised Civil Statutes of Texas, 1925; Section 4a; 6a; 11; and 12 of Article 8307, of the Revised Civil Statutes of Texas, 1925; and Sections 4 and 5 of Article 8309 of the Revised Civil Statutes of Texas, 1925, and Senate Bill 64, Acts, Regular Session, Forty-fifth Legislature, are hereby adopted and shall govern in so far as applicable under the provisions of this Act. Provided that whenever in the above adopted Sections of Articles 8306, 8307 and 8309 of the Revised Civil Statutes of Texas, 1925, the words "association," "subscriber," or "employer," or their equivalents appear in such Articles, they shall be construed to and shall mean "the institution."

Attorney's fees

Sec. 8. For representing the interest of any claimant in any manner carried from the Board into the courts, it shall be lawful for the attorney representing such interest to contract with any beneficiary under this Act for an attorney's fee for such representation, such fee to be determined as herein provided and, when the amount recovered exceeds the amount of the award appealed from, to include not more than one-third (⅓) of the amount by which the judgment exceeds the award, such fee for services so rendered to be determined and allowed by the Trial Court in which such cause may be heard and determined.

Payment of compensation

Sec. 9. It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein.

Examination by physicians; process and procedure

Sec. 10. The Board may require any workman claiming to have sustained injury to submit himself for examination before such Board or some one acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians authorized to practice under the Laws of this State. If the workman or the institution requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the workman to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any workman shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the Board may in its discretion order or direct the institution to reduce or suspend the compensation of any such injured workman. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the workman and an opportunity to be heard.

The institution shall have the privilege of having any injured workman examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured workman and convenient and accessible to him. The institution shall pay for such examination and the reasonable expense incident to the injured workman in submitting thereto. The injured workman shall have the privilege to have a physician of his own selection present to participate in such examination. Provided, when such examination is directed by the Board or the institution, the institution shall pay the fee of the physician selected by the workman, such fee to be fixed by the Board.

Process and procedure shall be as summary as may be under this Act. The Board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the Board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this Act.

Decisions of Board; suits; enforcement of award

Sec. 11. All questions arising under this Act, if not settled by agreement of the parties interested therein and within the provisions of this Act, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this Act and the suit of the injured workman or person suing on account of the death of such workman shall be against the institution. If the final order of the Board is against the institution, then the institution shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause instead of the Board upon trial de novo and the burden of proof shall be upon the party claiming compensation. The Board shall furnish any interested party in said claim pending in court upon request free of charge, with a certified copy of the notice of the institution becoming an insurer filed with the Board and the same when properly certified to shall be admissible in evidence in any court in this State upon trial of such claim therein pending and shall be prima-facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this Act. If any party to any such

final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the institution, it shall at once comply with such final ruling and decision.

In all cases where the Board shall make a final order, ruling, or decision, as provided in the preceding Section and against the institution, and the institution shall willfully fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section is provided, then in that event the claimant in addition to the rights and remedies given him and the Board in said Section may, after demanding compliance, bring suit in a Court of competent jurisdiction, upon said order, ruling, or decision. If he secures a judgment sustaining such order, ruling, or decision in whole or in part, he shall also be entitled to recover the further sum of twelve per cent (12%) as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the Board has made an award against the institution requiring the payment to an injured workman or his beneficiaries of any weekly or monthly payments, under the terms of this Act, and the institution should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured workman or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve per cent (12%) penalties and attorney's fees as herein provided for. Suit may be brought under provisions of this Section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit.

Record of injuries; reports

Sec. 12. The institution shall hereafter keep a record of all injuries fatal or otherwise, sustained by its workmen in the course of their employment. Within eight (8) days after the occurrence of an accident resulting in an injury to a workman, causing his absence from work for more than one day, a written report thereof shall be made to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured workman, or if such incapacity extends beyond a period of sixty (60) days, the institution shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name, age, sex and occupation of the injured workman and the character of work in which he was engaged at the time of the injury, and shall state the place, date and hour of receiving such injury and the nature and cause of the injury, and such other information as the Board may require. The institution shall be responsible for the submission of the reports in the time specified in this Section.

Rules and regulations; physicians for examinations; reports of examinations

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the institution all reports of such examinations so filed with it.

Physical examination necessary to be certified as workman

Sec. 14. No person shall be certified as a workman in the institution under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 12a [1] herein and has been certified by the examining physician or surgeon to be physically fit to perform the duties and services to which he is to be assigned, provided that absence of a physical examination shall not be a bar to recovery.

[1] So in enrolled bill. Probably should read "13".

Waiver of rights

Sec. 15. An agreement to waive his rights under this Act made in writing by any workman prior to his employment shall be valid.

Certified copies of orders, awards and decisions

Sec. 16. Any order, award, or proceeding of said Board when duly attested by any member of the Board or its secretary shall be admissible as evidence of the act of said Board in any court of this State.

Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision, or paper on file in the office of said Board and the fees so received for such copies shall be paid into the State Treasury and credited to the General Revenue Fund; provided that the institution shall be furnished such certified copies without charge. No fee or salary shall be paid to any person in said Board for making such copies in excess of the fees charged for such copies.

Suit to set aside final decision

Sec. 17. Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Board shall, in the manner and within the time provided by Section 11 of this Act, file notice with said Board, and bring suit in the county where the injury occurred to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, the court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merit, transfer the case to the proper court in the county where the injury occurred. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court.

Hearing of claim

Sec. 18. When an injured workman has sustained an injury in the course of employment and filed claim for compensation and given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal

shall be taken from any such order made by the Board.

Amounts to be set aside for awards and expenses

Sec. 19. The institutions covered by this Act are hereby authorized to set aside from available appropriations other than itemized salary appropriations an amount not to exceed two per cent (2%) of the annual workman pay roll of the institution for the payment of all costs, administrative expense, charges, benefits, and awards authorized by this Act.

The amounts so set aside shall be set up in a separate account in the records of the institution, which account shall show the disbursements authorized by this Act; provided the amounts so set aside in this account shall not exceed two per cent (2%) of the annual workman pay roll at any one time. A statement of the amounts set aside for and disbursements from said account shall be included in reports made to the Governor and the Legislature as required by the Statutes.

Attorney General as legal representative

Sec. 20. The Attorney General of the State of Texas shall be the legal representative of the institution and is hereby given power and authority to bring and defend all suits and hearings necessary to carry out the purposes of this Act.

Notice by clerk on appeal

Sec. 21. In every case appealed from the Board to any District or County Court, the Clerk of such Court shall, within twenty (20) days after the filing thereof, mail to the Board a notice giving the style, number, and date of filing such suit, and shall, within twenty (20) days after judgment is rendered in such suit, mail to the Board a certified copy of such judgment. The duties devolving upon District and County Clerks under this Act shall constitute a part of their ex officio duties and for such services they shall not be entitled to any fee.

In every such case the attorney preparing the judgment shall file the original and a copy of same with the Clerk of the Court. However, the failure of such attorney to comply with this provision shall not excuse the failure of the Clerk of a District or County Court to mail a certified copy of such judgment to the Board as above provided.

Any Clerk of a District or County Court who fails to comply with the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Two Hundred and Fifty Dollars ($250). (Acts, 1931, Forty-second Legislature, page 308, Chapter 182.)

Similar provisions, see. also, Pen.Code, articles 427c, 427c—1.

Partial invalidity

Sec. 22. If any section, paragraph, or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs, or provisions of this Act, but the same shall remain in full force and effect. [Acts 1947, 50th Leg., p. 417, ch. 239.]

Section 23 of the act of 1947 read as follows: "All laws or parts of laws in conflict herewith are hereby expressly suspended to the extent of such conflict."

TITLE 131—WRECKS

Chap. Art.
1. Wreck-masters 8310
2. Cotton salvage 8319

CHAPTER 1.—WRECK-MASTERS

Art.
8310. Appointment.
8311. Bond and oath.
8312. Duties.
8313. Controlled by commissioners.
8314. To sell property.
8315. To keep a record.
8316. Additional record and reports.
8317. Fees and perquisites.
8318. Duty to prosecute.

Article 8310. [7887] [5365] Appointment.—The Governor shall appoint not more than three persons of good character in each maritime county of the State as wreck-masters for such county. [Acts April 30, 1846, p. 158; G. L. 2, p. 1464.]

Art. 8311. [7888] [5366] Bond and oath.—Each person so appointed shall, before entering upon the duties of his office, give a good bond in the sum of five thousand dollars, payable to and to be approved by the county judge of the county for which he is appointed, conditioned that the appointee shall faithfully discharge the duties of his office; which bond shall be deposited with the county clerk of such county. The appointee shall also take the official oath, which oath shall be indorsed on said bond before the same is filed. [Id.]

Art. 8312. [7889] [5367] Duties.—It shall be the duty of each wreck-master so appointed, as soon as he may be apprised of any wreck in his county, or the portion of such county allotted to him, to repair at once to the place where such wreck occurred. If the property so wrecked be found abandoned, to attend to the salving thereof, to use his best endeavors for the preservation of the same and to attend generally to the interests of the owners of such property or whom it may concern. The wreck-master shall have the command and direction of all persons engaged in saving and preserving such property. [Id.]

Art. 8313. [7890] [5368] Controlled by commissioners.—Wreck-masters shall be subject to the control and direction of the commissioners of pilots for the principal ports of their counties, if such there be. In case there are no such officers in such county, then wreck-masters shall be under the control of the county judge of their county. [Id.]

Art. 8314. [7891] [5369] To sell property.—Each wreck-master shall take into his custody and safely keep all wrecked property salved by him, or under his direction, or found wrecked and abandoned in his county, or that portion of the county under his supervision and jurisdiction. After the notice required by law, he shall sell the same at public auction for the benefit of the owners or underwriters and the salvers, to all of whom he shall faithfully account. [Id.]

Art. 8315. [7892] [5370] To keep a record.—Each wreck-master shall keep a true account of all property salved by him, or under his direction, with the circumstances under which it was salved, and the name of each person engaged in salving, the time that each was so employed and other data needful for the proper apportionment of salvage. [Id.]

Art. 8316. [7893] [5371] Additional record and reports.—He shall also keep a true account, in a book to be kept for that purpose of all sales made by him and the proceeds thereof, commissions, expenses, salvage, balance left, and the condition and disposition of the same. Within one month after each sale, and at other times when required, he shall make an abstract report in writing, signed by him, of the matters provided for in this and the preceding article, to the commissioners of pilots or the county judge, as the case may be, and he shall also, when required, report the same, together with all needful information in his possession, to the court or other tribunal before which cases of salvage may be pending. [Id.]

Art. 8317. [7894] [5372] Fees and perquisites.—Wreck-masters shall receive a commission of five per cent upon the amount of all sales made by them, after deducting all expenses, not including

salvage, with such reasonable expenses as may be allowed by the authority which may control them, or the court before which the case may come; which expenses may include the wages and mileage of a crier, at a rate to be fixed by such controlling authority. [Id.]

Art. 8318. [7895] [5373] Duty to prosecute.—It shall be the duty of each wreck-master to cause a prosecution of any person who may be guilty of wasting, stealing or embezzling any wrecked property. [Id.]

CHAPTER 2.—COTTON SALVAGE

Art.
8319. Wrecked cotton advertised.
8320. Delivered to owner.
8321. When sold.
8322. Proceeds.
8323. County clerk may act.
8324. Warrant for suspected cotton.

Article 8319. [7896] [5374] Wrecked cotton advertised.—It shall be the duty of the person taking up cotton afloat, abandoned in rivers, or in the waters of the Gulf of Mexico on the coast of this State, or in the bays or bayous thereof, to place the same in a secure place out of the weather, and give early notice by advertisement, or by other means, at the port to which said cotton was destined, if within this State, and, if without the limits of the State, or its destination be unknown to the finder, then at the nearest port of entry in this State to the locality where it may be taken up, of the finding of the same, giving a description of the marks or brands on said cotton, together with the place of finding and the name of the finder. [Act Aug. 30, 1856, p. 76; G. L. vol. 4, p. 494.]

Art. 8320. [7897] [5375] Delivered to owner.—It shall be the duty of the finder or other person having said cotton in his possession, to deliver the same to the owner, insurer or consignee thereof, on demand, upon being paid the expenses of advertisement and five dollars upon each bale so saved and delivered. [Id.]

Art. 8321. [7898] When sold.—If no owner, insurer or consignee of the cotton appear within three months after such advertisement, the person finding shall cause the same to be sold at auction by a legal wreck-master of the county in which said cotton is deposited, at public outcry to the highest bidder. The wreck-master shall, from the proceeds of such sale, pay the necessary expenses attending the storage, advertising and sale of said cotton, and to the finder the salvage of five dollars for each bale as aforesaid. The remainder, less his commissions and other necessary expenses, he shall hold in trust for the benefit of the owner of [or] others concerned. [Id.]

Art. 8322. [7899] [5377] Proceeds.—If. at the expiration of one year thereafter, no legal claimant appears therefor, said proceeds shall be paid over by said wreck-master to the treasurer of the county in which the sale took place; and said treasurer shall immediately pay the same over to the State Treasurer who shall pay the same over to the person entitled thereto on proof being made of the right of the claimant in the manner provided for the recovery of money paid into the State treasury by executors or administrators of estates where no heirs, devisees or legatees of the estate appear to claim the fund of the estate on the final settlement thereof. [Id.]

Art. 8323. [7900] [5378] County clerk may act.—If there shall be no wreck-master in the county in which the cotton is deposited, then the county clerk shall perform all the duties required of wreck-masters by the two preceding articles, and such clerk shall receive the same compensation as is allowed to wreck-masters under this chapter. [Id.]

Art. 8324. [7901] [5379] Warrant for suspected cotton.—Upon affidavit being made before any justice of the peace that the affiant has good reason to believe, and does believe, that certain cotton within his county has been so found, or having been found without such county has been brought therein, and that reasonable time has elapsed, and that the finder has neglected to comply with the requirements of the foregoing articles, such justice shall issue his warrant and cause said cotton, or its proceeds, to be seized by a legal officer and delivered to the wreck-master of said county, to be disposed of according to the provisions of this chapter. [Id.]

FINAL TITLE

Sec.
2. Repealing clause.
3. Not ex post facto.
4. Validating Acts.
5. Public debt.
6. School funds.
7. Counties.
8. Courts.
9. Public and other lands.
10. Public buildings, etc.
11. Public libraries.
12. Taxes.
13. Railroads.
14. Public roads.
15. Pensions.
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Be it further enacted:

Sec. 2. Repealing clause.—That all civil statutes of a general nature, in force when the Revised Statutes take effect, and which are not included herein, or which are not hereby expressly continued in force, are hereby repealed.

Sec. 3. Not ex post facto.—That the repeal of any statute, or any portion thereof, by the preceding section, shall not affect or impair any act done, or right vested or accrued, or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents or purposes as if such statute, or part thereof so repealed, had remained in force, except that where the course of practice or procedure for the enforcement of such right, or the conducting of such proceeding, suit or prosecution shall be changed, the same shall be conducted as near as may be in accordance with the Revised Statutes No offense committed and no liability, penalty or

forfeiture, either civil or criminal, incurred prior to the time when any statute, or part thereof, shall be repealed or altered by the Revised Statutes, shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior statute, or part thereof, had not been repealed or altered, except that where the mode of procedure or matters of practice have been changed by the Revised Statutes, the procedure had after the Revised Statutes shall have taken effect in such prosecution or suit shall be, as far as practicable, in accordance with the Revised Statutes.

Sec. 4. Validating Acts.—That no general or special law heretofore enacted validating or legalizing the acts or omissions of any officer, or validating any law, act or proceeding whatever, shall be affected by the repealing clause of this title; but all validating or legalizing statutes whatsoever now in force in this State are hereby continued in force.

Sec. 5. Public debt.—That no law relating to the public debt or the public credit shall be affected by the repealing clause of this title.

Sec. 6. School funds.—That no law relating to the University or public school fund, or to the Agricultural and Mechanical College fund, or the investment of any such funds, or making any reservation in favor of the same, and no law affecting Federal aid for vocational education in this State, shall be affected by the repealing clause of this title, except where altered or amended by the Revised Statutes.

Sec. 7. Counties.—That no statute creating, adding to or organizing any county, or establishing any county seat, and no law affecting unorganized or new counties, shall be affected by the repealing clause of this title, or by any law relating to the establishment of county boundaries contained in this Act.

Sec. 8. Courts.—That the laws now in force organizing the several district and other courts, or increasing, diminishing, restoring or defining the jurisdiction of said courts, and prescribing the times of holding said courts, except as herein otherwise provided, are continued in force.

The apportionment acts are included in this compilation under Title 8.

Sec. 9. Public and other lands.—That all laws affecting the issuance of patents under valid land certificates; or fixing a time limit in which to redeem lands sold for taxes; or authorizing suits to contest forfeiture of sale for non-payment of interest on public lands, or affecting the reinstatement of rights after such forfeiture; or conferring a prior right to purchase land surveyed by virtue of a private right, for which a patent cannot issue; or extending oil and gas permits on public lands; or extending the time for payment of principal due on public lands sold in accordance with law; or affecting the title to public and other lands; or authorizing the Land Commissioner, the Governor, or any authorized board, to sell or lease certain lands or water rights; or granting land to cities; or affecting land reservations, or setting apart portions of such reservations for the benefit of actual settlers, are continued in force.

Sec. 10. Public buildings, etc.—That no law providing for the construction or repairing of the public buildings of this State, or providing for the establishment of a central prison system, nor any law establishing or providing for the maintenance of any public institution, shall be affected or impaired by the repealing clause of this title, unless expressly altered or repealed in some of the preceding articles of the Revised Statutes.

Sec. 11. Public libraries.—That no law giving authority to cities or towns to establish public libraries, or for like purposes, shall be affected or impaired by the repealing clause herein.

Sec. 12. Taxes.—That all laws now in force which donate taxes to, or release the inhabitants from payment of taxes in any city or county or part of a county in this State on account of any calamity; and all laws now in force authorizing the levy of taxes by levee or drainage districts to redeem certificates of indebtedness issued on account of damage from flood, are continued in force.

Sec. 13. Railroads.—That all laws now in force authorizing railroad companies to sell or buy or lease other railroad companies, or to buy, sell or abandon tracks or right of way, or extending the time for constructing main or branch lines; and all laws now in force affecting the State Railroad, are continued in force.

Sec. 14. Public roads.—That all laws providing for the maintenance of public roads in certain counties by a patrol system, are continued in force.

Sec. 15. Pensions.—That all laws granting pensions to soldiers and other persons entitled thereto by reason of service performed in connection with the Mexican War are continued in force.

Sec. 16. World War veterans.—That all laws exempting persons who served in the late world war from payment of fees in public educational institutions in Texas are continued in force.

Sec. 17. Monuments.—That all laws authorizing the erection of monuments are continued in force.

Sec. 18. Appropriations.—That all laws making specific appropriations of public funds are continued in force.

Sec. 19. Special laws.—That all laws, civil or criminal, of a local nature, operating in particular counties, cities or towns, or of a temporary nature operative when these Statutes go into effect, and all laws of a private nature operating on particular persons or corporations, are not affected by the repealing clause of this title.

Sec. 20. Effect of repeal.—That nothing in the repealing clause of this title shall be construed as releasing any person or corporation from any duty enjoined in the limitation or condition imposed by any law that may be repealed by said repealing clause.

Sec. 21. New laws.—That nothing in this Act shall be construed to repeal or in anywise affect the validity of any law passed by this legislature in its regular session.

Sec. 22. Validity of Statutes.—That these Revised Statutes when adopted shall be construed to be an Act of the Legislature. No law herein shall be held to be void because its caption, when enacted, was in any way defective.

The provision of this section that no law shall be void for defect of caption is invalid. Globe Indemnity Co. v. Barnes, Civ.App., 280 S.W. 275.

Sec. 23. Publication of Statutes.—That the Revised Statutes shall not be printed in the pamphlet laws of the thirty-ninth Legislature, but shall be printed, published and distributed at such time and in such manner as may be provided by law.

Sec. 23a. Same.—That the Revised Civil Statutes, the Penal Code and Code of Criminal Procedure of the State of Texas adopted and established by the Thirty-ninth Legislature at its Regular Session, shall, as soon as practicable, be printed and published under the supervision of the Secretary of State and the Board of Control with the assistance of a supervisor as hereinafter provided, in the manner provided for in this Act. [Acts 1925, 39th Leg., ch. 104, p. 282, § 1.]

Sec. 23b. Title.—That said Revised Civil Statutes shall be published in two volumes to be entitled "The

Revised Civil Statutes of Texas, 1925"; and that said Penal Code and said Code of Criminal Procedure shall be published in one volume to be entitled "Texas Criminal Statutes, 1925". In the publication thereof the head indices and references, titles, chapters, and articles contained and numbered in the acts by which the same were adopted and established shall be retained and published therein, together with a full and accurate index to each of said Codes and said Revised Statutes. [Acts 1925, 39th Leg., ch. 104, p. 282, § 2.]

Sec. 23c. Omission of repealed articles.—Where any article in said Revised Statutes or Codes has been expressly repealed by the Thirty-ninth Legislature said article shall be omitted from said volume, and in lieu thereof, there shall be inserted a statement to the effect that said article has been repealed, and the page of the session acts containing said repealing statute. [Acts 1925, 39th Leg., ch. 104, p. 282, § 3.]

Sec. 23d. Omission of amended articles.—Where any article in said Revised Statutes or Codes shall have been amended and re-enacted by the Thirty-ninth Legislature, said article shall be omitted and the article as amended and re-enacted shall be inserted in lieu thereof, with notes or references showing the date of the Statute by which said article was amended, and the page of the session acts in which said Statute appears. [Acts 1925, 39th Leg., ch. 104, p. 282, § 4.]

Sec. 23e. Retention of modified articles.—When any article, chapter, or title of said Revised Statutes or Codes has been modified by an act of said Legislature, but the same is not amended and re-enacted, then said article, chapter, or title shall be retained in said volume, and the act modifying the same shall be inserted immediately after such article, chapter, or title, together with like notes or references, as hereinbefore provided. [Acts 1925, 39th Leg., ch. 104, p. 283, § 5.]

Sec. 23f. Indices.—Full and accurate indices to said Codes and the Revised Statutes shall be attached to each of said Codes and to the Revised Statutes respectively. The supervisor to be appointed shall have authority to correct evident typographical errors and inaccuracies found in said Revised Statutes and Codes. [Acts 1925, 39th Leg., ch. 104, p. 283, § 6.]

Sec. 23g. Reviser.—The Governor shall appoint a lawyer of experience and ability who shall prepare said volumes for publication as directed in this Act, under the direction of the Secretary of State, and who shall read and revise the proof of the said Statutes, Codes and indices, and other matters included in said volumes, and shall receive for his services the same compensation as was allowed the commissioners who revised the Codes and Statutes, to-wit, five hundred dollars per month, for the time he is actually engaged in the duties required of him, the same to be paid upon the certificate of the Comptroller out of the amount appropriated for printing the Revised Statutes and Codes, and said codifier is authorized to employ one assistant such assistant to be paid on the certificate of the Comptroller out of the same fund, an amount not exceeding one hundred and fifty dollars per month and the total to be expended under this section shall not exceed two thousand five hundred dollars. [Acts 1925, 39th Leg., ch. 104, p. 283, § 7.]

Sec. 23h. Printing.—The Statutes and Codes shall be printed on the good quality of book paper, in size of page and style and type corresponding with the printed bill adopting the Revised Statutes of Texas of 1925. There shall be printed eight thousand copies of each of said volumes of said Civil and Criminal Codes. The binding shall be of the best style and workmanship and in law buckram of the best quality, and the title page of each volume shall recite and show that it is published by authority of the State of Texas, and each shall be authenticated by the certificate of the Secretary of State annexed thereto, as other laws when published are required to be certified; and said State Board of Control shall require said edition to be electrotyped and shall secure and preserve the plates as the property of the State, same to be delivered to the Secretary of State. [Acts 1925, 39th Leg., ch. 104, p. 283, § 8.]

Sec. 23i. Printing contract.—The Board of Control shall immediately after the passage of this Act advertise for thirty days in three daily newspapers in this State for sealed proposals for printing, binding and electrotyping the laws as aforesaid, and shall on the day fixed in the advertisement, in the presence of such persons as desire to be present proceed to open the proposals and award the contract to the best and lowest bidder, which proposal shall state the price per volume at which the bidder proposes to electrotype, print, bind and furnish under the superintendence and direction of the said board the laws and electrotype plates, as herein provided, and no bid or proposal shall be considered that is not accompanied by a guarantee of two or more sufficient sureties that if the contract should be awarded to the bidder he will execute the necessary bond for the performance of the work in the manner and style provided in this Act; and the person or persons to whom such contract is awarded shall within ten days after receiving notice thereof, execute a bond to the State of Texas in the sum of such amount as may be fixed by the Board of Control, with two or more sufficient sureties, to be approved by the board, conditioned for the faithful performance of the work in the manner and style therein prescribed and according to the provisions of this Act, and for the delivery of said volumes and plates to the Secretary of State on or before the first day of September, 1925; said volumes may be received, for an earlier distribution, in numbers of a thousand at a time, as the work progresses; and the right shall be reserved by the board to reject any and all bids and proposals if in their judgment the terms proposed are not favorable to the State. Upon the delivery by the contractor of the volumes and plates aforesaid to the Secretary of State, executed according to the terms of the contract and accepted by the board, the amount due therefor shall be audited, allowed, and paid as provided by law in cases of other public printing, and the statutes in force in relation to public printing shall be applicable to the contract under this Act in all matters not herein otherwise provided. [Acts 1925, 39th Leg., ch. 104, p. 283, § 9.]

Sec. 23j. Copies for officials.—The Secretary of State shall furnish one copy of each volume to each member of the Legislature including the Lieutenant Governor and to each county judge in the State and shall in addition thereto furnish each county judge of the State a sufficient number of each of said volumes to supply each elective county and precinct officer, with one copy of each of said volumes and the Secretary of State shall furnish one copy of each volume to each of the judges of the Supreme Court, the Courts of Civil and Criminal Appeals, to each district judge, to each district attorney, and each executive at the seat of government and four copies to the librarian of the State Library. In forwarding said copies the Secretary of State shall regard only those officers who have secured their certificate of election as officers, where certificates are required, entitled to receive said copies. After the officials hereinbefore enumerated have been supplied, single copies may be sold by the Secretary of State for the same price which the State pays the contracting printer, plus expense of handling and postage, such sales to be made

to persons who desire them for their own use and the proceeds of such sales shall be paid the State Treasurer and the Secretary of State shall report such sales in his biennial report. [Acts 1925, 39th Leg., ch. 104, p. 284, § 10.]

Sec. 23k. Reprint.—The Board of Control shall contract for the printing of eight thousand copies each of the Civil and Criminal Statutes and may from time to time, if the demand shall make it necessary, at the request of the Secretary of State, cause such additional volumes to be printed as may be required to supply such demand. [Acts 1925, 39th Leg., ch. 104, p. 284, § 11.]

Sec. 23*l*. Appropriation.—Sixty thousand dollars, or so much of that sum as may be necessary, is hereby appropriated for the purpose of carrying into effect the provisions of this Act. [Acts 1925, 39th Leg., ch. 104, p. 285, § 12.]

Sec. 23m. Emergency clause.—The necessity for the publication of the Revised Statutes and the Penal Code and Code of Criminal Procedure of the State of Texas in as complete a form as possible, and their early distribution among the people, creates an imperative public necessity and emergency that the rule requiring bills to be read on three several days be suspended, and this Act take effect and be in force from and after its passage, and it is so enacted. [Acts 1925, 39th Leg., ch. 104, p. 285, § 13.]

Sec. 24. Date effective.—That these Revised Statutes shall take effect and be in force at twelve o'clock, meridian, on the first day of September, Anno Domini, one thousand nine hundred and twenty-five.

Sec. 25. Reading Act.—The importance and great length of this Act, the fact that it is impossible to read the same on any one day or on any three consecutive days, the length of time required for its publication, and the near approach of the end of the present session of the Legislature, create an imperative public necessity requiring that the constitutional rule which requires that bills be read on three several days in each house be and the same is hereby suspended.

RECORD OF ENACTMENT

The enrolled bill (*REVISED CIVIL STATUTES 1925*) on file in the office of the Secretary of State shows that the foregoing act passed the Senate finally January 27, 1925 (*no vote given*).

PASSED the House March 18th, 1925 (*no vote given*).

APPROVED by the Governor April 1, 1925.

TEXAS RULES
OF
CIVIL PROCEDURE

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TEXAS RULES OF CIVIL PROCEDURE

PART I. GENERAL RULES

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Rule 1. Objective of Rules.—The proper objective of rules of civil procedure is [are] to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law. To the end that this objective may be attained with as great expedition and dispatch and at the least expense both to the litigants and to the state as may be practicable, these rules shall be given a liberal construction.

Source: New rule.

Rule 2. Scope of Rules.—These rules shall govern the procedure in the justice, county, district, and appellate courts of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated. Where any statute in effect immediately prior to September 1, 1941, prescribed a rule of procedure in lunacy, guardianship, or estates of decedents, or any other probate proceedings in the county court differing from these rules, and not included in the "List of Repealed Statutes," such statute shall apply; and where any statute in effect immediately prior to September 1, 1941, and not included in the "List of Repealed Statutes," prescribed a rule of procedure in any special statutory proceeding differing from these rules, such statute shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in bond or recognizance forfeitures in criminal cases are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in tax suits are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply; provided, however, that Rule 117a shall control with respect to citation in tax suits. Amended by an order of Sept. 20, 1941, effective Dec. 31, 1941; order of June 16, 1943, effective Dec. 31, 1943; order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Federal Rule 1, adapted to Texas practice.

By amendment effective December 31, 1941, all matter after the first sentence was added, except the following, which was added by amendment effective December 31, 1943: the words, "and not included in the 'List of Repealed Statutes'" in the first clause of the second sentence and the words, "and where any statute in effect immediately prior to September 1, 1941, and not included in the 'List of Repealed Statutes' prescribed a rule of procedure in any special statutory proceeding differing from these rules such statute shall apply," in the second clause.

These amendments make clear the inapplicability of the rules to special statutory proceedings, insofar as statutory rules of procedure are specifically prescribed for such proceedings and differ from these rules. These special proceedings appear under the following titles in the Revised Civil Statutes:

"Adoption; apprentices, arbitration; assignments for creditors; election contests; eminent domain (condemnation); escheat; estates of decedents, minors, persons non compos mentis and habitual drunkards, except appeal and certiorari; exemption of homestead (determining excess); feebleminded persons, proceedings for; fences, husband and wife (emancipation, etc., divorce); minors (removal of disabilities); name (change of); officers (removal of); lunacy proceedings; juvenile courts (custody of delinquent children); rights of married women."

There are also some special proceedings of a civil nature provided for in the Penal Code. See in this connection Hallum v. Texas Liquor Control Board, 166 S.W.2d 175 (error refused).

Change by amendment effective December 31, 1947: The wording from "provided, however," through "tax suits" has been added.

Rule 3. Construction of Rules.—Unless otherwise expressly provided, the past, present or future tense shall each include the other; the masculine, feminine, or neuter gender shall each include the other; and the singular and plural number shall each include the other.

Source: Art. 10, subdivisions 2, 3 and 4.

Change: The three subdivisions have been combined. No change of meaning has been attempted.

Rule 4. Computation.—In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday.

Source: Federal Rule 6(a).

Change: Omission of the Federal provision excluding intermediate Sundays or holidays when the period of time is less than seven days and the Federal reference to half-holidays.

Rule 5. Enlargement.—When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (a) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (b) upon motion permit the act to be done after the expiration of the specified period

where good cause is shown for the failure to act; but it may not enlarge the period for taking any action under the rules relating to new trials or motions for rehearing except as stated in the rules relating thereto or the period for taking an appeal or writ of error from the trial court to any higher court or the period for application for writ of error in the Supreme Court, except as stated in the rules relating thereto.

Source: Federal Rule 6(b).
Change: The second clause in the Federal Rule requires a showing that the failure to act "was the result of excusable neglect." Also, specific reference is made in this rule to the time limitations relating to motions for new trial and for rehearings and to appeals on writs of error, while in the Federal Rule the cross reference to such subjects is by Rule number.

Rule 6. Suits Commenced on Sunday.—No civil suit shall be commenced nor process issued or served on Sunday, except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings.

Source: Art. 1974, unchanged.

Rule 7. May Appear by Attorney.—Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.

Source: Art. 1993, unchanged.

Rule 8. Leading Counsel Defined.—The attorney first employed shall be considered leading counsel in the case, and, if present, shall have control in the management of the cause unless a change is made by the party himself, to be entered of record.

Source: Texas Rule 45 (for the District and County Courts), unchanged.

Rule 9. Number of Counsel Heard.—Not more than two counsel on each side shall be heard on any question or on the trial, except in important cases, and upon special leave of the court.

Source: Texas Rule 44 (for District and County Courts), unchanged.

Rule 10. Attorney of Record Defined.—An attorney of record is one who has appeared in the case, as evidenced by his name subscribed to the pleadings or to some agreement of the parties filed in the case; and he shall be considered to have continued as such attorney to the end of the suit in the trial court, unless there is something appearing to the contrary in the record.

Source: Texas Rule 46 (for District and County Courts), unchanged.

Rule 11. Agreements To Be in Writing.—No agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record.

Source: Texas Rule 47 (for District and County Courts), unchanged.

Rule 12. Attorney to Show Authority.—Any defendant in any suit or proceeding pending in any court of this state may, by sworn written motion stating that such defendant believes that such suit or proceeding was instituted against him or is being prosecuted against him without authority on the part of the plaintiff's attorney, cause such attorney to be cited to appear before such court and show his authority for same, notice of which motion shall be served upon such attorney at least ten days before the trial of such motion. Upon the hearing of such motion, the burden of proof shall be upon the attorney appearing for the plaintiff to show sufficient authority from the plaintiff in such suit or proceeding to institute or prosecute the same. Upon his failure to show such authority, the court shall refuse to permit such attorney to appear in said cause, and shall dismiss the same if no person who is authorized to prosecute said cause appears. Such motion may be heard and determined at any time before the parties have announced ready for trial, but the trial shall not be unnecessarily continued or delayed for the hearing thereof.

Source: Art. 320.
Change: Minor textual change and the addition of the requirement that notice be served at least ten days before trial of the motion.

Rule 13. Penalty for Fictitious Suits or Pleading.—Any attorney who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading presenting a state of case which he knows to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt; and the court, of its own motion, or at the instance of any party, will direct an inquiry to ascertain the fact.

Source: Texas Rule 51 (for District and County Courts), unchanged.

Rule 14. Affidavit by Agent.—Whenever it may be necessary or proper for any party to a civil suit or proceeding to make an affidavit, it may be made by either the party or his agent or his attorney.

Source: Art. 24, unchanged.

Rule 14a. Amendment and Correction Practice in All Courts.—The provisions of Rules 430 and 437 shall apply to appellate procedure in all other courts of this State. Promulgated by order of Oct. 10, 1945, effective Feb. 1, 1946.

This is a new rule, effective February 1, 1946.

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15. Writs and Process.
16. Shall Indorse All Process.
17. Officer to Execute Process.
18. When Judge Dies During Term, Resigns or is Disabled.
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21. Motions.
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SECTION 2. INSTITUTION OF SUIT

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23. Suits To Be Numbered Consecutively.
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28. Suits in Assumed Name.
29. Suits On Claim Against Dissolved Corporation.
30. Parties to Suits.
31. Surety Not To Be Sued Alone.
32. May Have Question of Suretyship Tried.
33. Suits By or Against Counties.
34. Against Sheriff, etc.
35. On Official Bonds.
36. Different Officials and Bondsmen.
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79. The Petition.
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81. Defensive Matters.
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SECTION 1. GENERAL RULES.

Rule 15. Writs and Process.—The style of all writs and process shall be "The State of Texas;" and unless otherwise specially provided by law or these rules every such writ and process shall be directed to any sheriff or any constable within the State of Texas, shall be made returnable on the Monday next after expiration of twenty days from the date of service thereof, and shall be dated and attested by the clerk with the seal of the court impressed thereon; and the date of issuance shall be noted thereon.

Source: Art. 2286.
Change: Elimination of the former requirement that the writ be addressed to the sheriff or any constable of a specific county and that the writ be returnable to a term of court. Compare Rule 101.

Rule 16. Shall Indorse All Process.—Every officer shall indorse on all process and precepts coming to his hand the day and hour on which he received them, the manner in which he executed them, and the time and place the process was served as well as the distance actually traveled in serving such process, and shall sign the returns officially.

Source: Art. 6875, with minor textual changes.

Rule 17. Officer to Execute Process.—Except where otherwise expressly provided by law or these rules, the officer receiving any process to be executed shall not be entitled in any case to demand his fee for executing the same in advance of such execution, but his fee shall be taxed and collected as other costs in the case.

Source: Art. 3911.
Change: Addition of the matter to the first comma.

Rule 18. When Judge Dies During Term, Resigns or Is Disabled.—If the judge dies, resigns, or becomes unable to hold court during the session of court duly convened for the term, and the time provided by law for the holding of said court has not expired, such death, resignation, or inability on the part of the judge shall not operate to adjourn said court for the term, but such court shall be deemed to continue in session. If a successor to such judge shall qualify and assume office during the term, or if a judge be transferred to said district from some other judicial district, he may continue to hold said court for the term provided, and all motions undisposed of shall be heard and determined by him, and statements of facts and bills of exception shall be approved by him. If the time for holding such court expires before a successor shall qualify, and before a judge can be transferred to said district from some other judicial district, then all motions pending, including those for new trial, shall stand as continued in force until such successor has qualified and assumed office, or a judge has been transferred to said district who can hold said court, and thereupon such judge shall have power to act thereon at the succeeding term, or on an earlier day in vacation, on notice to all parties to the motion, and such orders shall have the same effect as if rendered in term time. The time for allowing statement of facts and bills of exception from such orders shall date from the time the motion was decided. Amended by order of June 16, 1943 effective December 31, 1943.

Source: Art. 2288.
Amendment effective December 31, 1943: The square-bracketed wording following was in Rule 18 and has been eliminated; the italicized wording has been added:

Rule 18. When Judge Dies During Term, *Resigns or Is Disabled*—If the judge dies, *resigns, or becomes unable to hold court* during the session of court duly convened for the term, and the time provided by law for the holding of said court has not expired, such death, *resignation or inability on the part of the judge* shall not operate to adjourn said court for the term, but [the court shall be deemed at recess for not exceeding six days, and if no successor be appointed or elected during said recess, or if a person appointed or elected does not qualify and assume the duties of office during said recess, then the court shall be deemed to have adjourned] *such court shall be deemed to continue in session.* If a successor to *such* judge shall qualify and assume office during [said recess] *the term, or if a judge be transferred to said district from some other judicial district,* he may continue to hold said court for the term [as] provided, and all motions undisposed of shall be heard and determined by him, and statements of facts and bills of exception shall be approved by him. If the time for holding such court expires [or the recess expire] before a successor shall qualify, *and before a judge can be transferred to said district from some other judicial district,* then all motions pending, including those for new trial, shall stand as continued in force until such successor has qualified and assumed office, *or a judge has been transferred to said district who can hold said court, and thereupon such judge* [and he] shall have power to act [on them] *thereon* at the succeeding term, or on an earlier day in vacation, on notice to all parties to the motion, and such orders shall have the same effect as if rendered in term time. The time for allowing statement of facts and bills of exception from such orders shall date from the time the motion was decided.

The Legislature has passed a statute that authorizes the presiding judge of a judicial administrative district to

transfer a judge to a district where the regular judge has died, resigned, or become disabled; hence the changes in the above rule.

Rule 19. Non-Adjournment of Term.—Every term of court shall commence and convene by operation of law at the time fixed by statute without any act, order, or formal opening by a judge or other official thereof, and shall continue to be open at all times until and including the last day of the term unless sooner adjourned by the judge thereof. Amended by order of June 16, 1943 effective December 31, 1943.

Change: The former rule has been reversed because of the growing prevalance of so-called continuous terms.

Rule 20. Minutes Read and Signed.—On the last day of the session, the minutes shall be read, corrected and signed in open court by the judge. Each special judge shall sign the minutes of such proceedings as were had by him.

Source: Art. 1918.
Change: Elimination of former requirement that minutes be signed daily. Extension of the rule to judges of both district and county courts.

Rule 21. Motions.—The clerk shall enter upon the docket every motion filed in his court, with a brief statement of the nature of the motion and the number of the suit in which it is made, if it relates to a pending suit. If the motion does not relate to a pending suit, the docket notation shall further show the names of the parties and the name of the attorney filing the motion. Amended by order of Sept. 20, 1941, effective December 31, 1941; order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 2291, unchanged.
Change by amendment effective December 31, 1941: The third sentence has been clarified.
Change by amendment effective December 31, 1947: All of the rule that was effective December 31, 1941, has been eliminated, except the first sentence, which has been amended by partial rewording and repunctuation and by requiring names of parties and attorneys to be entered in the motion docket. The sentence commencing "If the motion" and ending "attorney filing the motion" has been added.

Rule 21a. Notice.—Every notice required by these rules, other than the citation to be served upon the filing of a cause of action, and except as otherwise expressly provided in these rules, may be served by delivering a copy of the notice or of the document to be served, as the case may be, to the party to be served, or his duly authorized agent, or his attorney of record, either in person or by registered mail to his last known address, or it may be given in such other manner as the court in its discretion may direct. It may be served by a party to the suit or his attorney of record, or by the proper sheriff, or constable, or by any other person competent to testify. A written statement by an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. If the time of service is not elsewhere prescribed, the adverse party is entitled to three days' notice of a motion not relating to a pending suit. Notice of a motion in a suit pending is given by filing the motion and its entry in the motion docket. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules. Added by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: This is a new rule, effective December 31, 1947.

SECTION 2. INSTITUTION OF SUIT

Rule 22. Commenced By Petition.—A civil suit in the district or county court shall be commenced by a petition filed in the office of the clerk.

Source: Art. 1971, with minor textual change.

Rule 23. Suits To Be Numbered Consecutively.—It shall be the duty of the clerk to designate the suits by regular consecutive numbers, called file numbers, and he shall mark on each paper in every case the file number of the cause.

Source: Texas Rule 82 (for District and County Courts).
Change: Omission at beginning of rule of words, "In preparing the court docket."

Rule 24. Duty of Clerk.—When a petition is filed with the clerk he shall indorse thereon the file number, the day on which it was filed and the time of filing, and sign his name officially thereto.

Source: Art. 1972.
Change: Addition of the words, "and the time of filing."

Rule 25. Clerk's File Docket.—Each clerk shall keep a file docket which shall show in convenient form the number of the suit, the names of the attorneys, the names of the parties to the suit, and the nature thereof, and, in brief form, the officer's return on the process, and all subsequent proceedings had in the case with the dates thereof.

Source: Art. 1973, with minor textual change.

Rule 26. Clerk's Court Docket.—Each clerk shall also keep a court docket in a well bound book in which he shall enter the number of the case and the names of the parties, the names of the attorneys, the nature of the action, the pleas, the motions, and the rulings of the court as made.

Source: Texas Rule 79 (for District and County Courts), with minor textual change.

Rule 27. Order of Cases.—The cases shall be placed on the docket as they are filed.

Source: Texas Rule 80 (for District and County Courts), unchanged.

SECTION 3. PARTIES TO SUITS

Rule 28. Suits in Assumed Name.—A partnership or other unincorporated association, or an individual doing business under an assumed name, may sue or be sued in the partnership, assumed or common name for the purpose of enforcing for or against it a substantive right.

Source: Part of Federal Rule 17(b).
Change: Addition of "an individual doing business under an assumed name," and partnership or common name.

Rule 29. Suit On Claim Against Dissolved Corporation.—When no receiver has been appointed for a corporation which has dissolved, suit may be instituted on any claim against said corporation as though the same had not been dissolved, and service of process may be obtained on the president, directors, general manager, trustee, assignee, or other person in charge of the affairs of the corporation at the time it was dissolved, and judgment may be rendered as though the corporation had not been dissolved.

Source: Art. 1391, with minor textual change.

Rule 30. Parties To Suits.—Assignors, indorsers and other parties not primarily liable upon any instruments named in the title of the Revised Civil Statutes of Texas, 1925, dealing with Bills and Notes, may be jointly sued with their principal obligors, or may be sued alone in the cases provided for in Articles 1986 and 1987 of such statutes.

Source: Art. 572, with minor textual change.

Rule 31. Surety Not To Be Sued Alone.—No surety shall be sued unless his principal is joined with him, or unless a judgment has previously been rendered against his principal, except in cases otherwise provided for in the law and these rules.

Source: Art. 6251, with minor textual change.

Rule 32. May Have Question of Suretyship Tried.—When any suit is brought against two or more defendants upon any contract, any one or more of the defendants being surety for the other, the surety may cause the question of suretyship to be tried and determined upon the issue made for the parties defendant at the trial of the cause, or at any time be-

fore or after the trial or at a subsequent term. Such proceedings shall not delay the suit of the plaintiff.

Source: Art. 6246, unchanged.

Rule 33. Suits By or Against Counties.—Suits by or against a county or incorporated city, town or village shall be in its corporate name.

Source: Art. 1980, unchanged.

Rule 34. Against Sheriff, etc.—Whenever a sheriff, constable, or a deputy or either has been sued for damages for any act done in his official character, and has taken an indemnifying bond for the acts upon which the suit is based, he may make the principal and surety on such bond parties defendant in such suit, and the cause may be continued to obtain service on such parties.

Source: Art. 1988, unchanged.

Rule 35. On Official Bonds.—In suits brought by the State or any county, city, independent school district, irrigation district, or other political subdivision of the State, against any officer who has held an office for more than one term, or against any depository which has been such depository for more than one term, or has given more than one official bond, the sureties on each and all such bonds may be joined as defendants in the same suit whenever it is difficult to determine when the default sued for occurred and which set of sureties on such bonds is liable therefor. Amended by order of June 16, 1943, effective December 13, 1943.

Source: Art. 1989, unchanged, except that by amendment effective December 31, 1943, "irrigation district, or other political subdivision of the State," was interpolated, the second "or" omitted, and a comma placed after "city."

Rule 36. Different Officials and Bondsmen.—In suits by the State upon the official bond of a State officer, any subordinate officer who has given bond, payable either to the State or such superior officer, to cover all or part of the default sued for, together with the sureties on his official bond, may be joined as defendants with such superior officer and his bondsmen whenever it is alleged in the petition that both of such officers are liable for the money sued for.

Source: Art. 1990, unchanged.

Rule 37. Additional Parties.—Before a case is called for trial, additional parties, necessary or proper parties to the suit, may be brought in, either by the plaintiff or the defendant, upon such terms as the court may prescribe; but not at a time nor in a manner to unreasonably delay the trial of the case.

Source: Art. 1992, unchanged.

Rule 38. Third Party Practice.—(a) When defendant may bring in third party. A defendant, on notice to the plaintiff, may ask leave of the court to file a cross-action against a person not a party to the action who is or may be liable to him or to the plaintiff for all or part of the plaintiff's claim against the defendant. If the leave is granted, and service is completed upon the cross-action, the person so served, hereinafter called the third party defendant, shall make his defenses under the rules applicable to the defendant, and his counter-claims and cross-claims against the plaintiff, the defendant impleading him (hereinafter called the third-party plaintiff) or any other party. The third-party defendant may assert any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff, as well as of his own to the plaintiff or to the third-party plaintiff. The plaintiff may amend his pleadings to assert against the third-party defendant any claim which the plaintiff might have asserted against the third-party defendant had he been joined originally as a defendant. A third-party defendant may proceed under this rule against any person not a party to the action who is or who may be liable to him or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant.

(b) When plaintiff may bring in third party. When a counter-claim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) This rule shall not be applied, in tort cases, so as to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract liable to the person injured or damaged.

(d) This rule shall not be applied so as to violate any venue statute, as venue would exist absent this rule. Amended by order of March 31, 1941.

Source: Federal Rule 14, with minor textual change.
Change by amendment of March 31, 1941: Subdivisions (c) and (d) added.

Rule 39. Necessary Joinder of Parties.—(a) Necessary joinder. Except as otherwise provided in these rules, persons having a joint interest shall be made parties and be joined as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff.

(b) Effect of failure to join. When persons who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court, the court shall order them made parties. The court in its discretion may proceed in the action without making such persons parties, if its jurisdiction over them can be acquired only by their consent or voluntary appearance; but the judgment rendered therein shall not affect the rights or liabilities of persons who are not parties.

(c) Names of omitted persons and reasons for nonjoinder to be pleaded. In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, of persons who ought to be parties, if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

Source: Federal Rule 19.
Change: In (a), "except as otherwise provided in these rules" is substituted for a numerical reference found in the Federal Rule. "On the same side" is omitted from the first sentence of this rule.
In (b), "who are not indispensable, but" is omitted in the first sentence. "As to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it" is omitted in the same sentence. In the second sentence, "as to either service of process or venue" and "or if, though they are subject to its jurisdiction, their joinder would deprive the court of jurisdiction of the parties before it" are omitted in this rule. The last two words of the Federal Rule, "absent persons," have been changed to "persons who are not parties."

Rule 40. Permissive Joinder of Parties.—(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who as-

serts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Source: Federal Rule 20, unchanged.

Rule 41. Misjoinder and Non-Joinder of Parties.—Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added, or suits filed separately may be consolidated, or actions which have been improperly joined may be severed and each ground of recovery improperly joined may be docketed as a separate suit between the same parties, by order of the court on motion of any party or on its own initiative at any stage of the action, before the time of submission to the jury or to the court if trial is without a jury, on such terms as are just. Any claim against a party may be severed and proceeded with separately. Amended by order of March 31, 1941.

Source: Federal Rule 21.
Change: Addition of provision for adding and dropping parties and for consolidation of suits and for severing actions in case of misjoinder of parties or causes.
Change by amendment of March 31, 1941: The procedure "after judgment" is eliminated.

Rule 42. Class Actions.—(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

(b) Dismissal or compromise. A class action shall not be dismissed nor compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision (a) of this rule notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraphs (2) or (3) of subdivision (a) notice shall be given only if the court requires it. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Federal Rule 23.
Change: In paragraph (b) the requirement of the Federal Rule that the petition allege "that the action is not a collusive one to confer jurisdiction, etc." has been omitted.
Change by Amendment effective December 31, 1941: Elimination of paragraph (b) from the original rule and change of paragraph (c) to read paragraph (b).

Rule 43. Interpleader.—Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in any other rules.

Source: Federal Rule 22(1) with minor textual change.

Rule 44. May Appear by Next Friend.—Minors, lunatics, idiots, or persons non compos mentis who have no legal guardian may sue and be represented by "next friend" under the following rules:

(1) Such next friend shall have the same rights concerning such suits as guardians have, but shall give security for costs, or affidavits in lieu thereof, when required.

(2) Such next friend or his attorney of record may with the approval of the court compromise suits and agree to judgments, and such judgments, agreements and compromises, when approved by the court, shall be forever binding and conclusive upon the party plaintiff in such suit.

Source: Parts 1 and 2 of Art. 1994, unchanged.
Comment: Parts 3 to 6 of this article are not deemed to be repealed, but are considered beyond the scope of the rule making power.

SECTION 4. PLEADING

A. GENERAL

Rule 45. Definition and System.—Pleadings in the district and county courts shall

(a) Be by petition and answer.

(b) Consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of legal conclusion shall not be ground for objection when fair notice to the opponent is given by the allegations as a whole.

(c) Contain any other matter which may be required by any law or rule authorizing or regulating any particular action or defense.

(d) Be in writing, signed by the party or his attorney, and be filed with the clerk.

All pleadings shall be so construed as to do substantial justice.

Source: This rule embraces in part Art. 1997, Texas Rules 1 and 32 (for the District and County Courts), and Federal Rule 8(f).
Change: No change in Art. 1997 except the addition of the final sentence and the elimination, in paragraph two, of the requirement that the allegations be statements of fact.

Rule 46. Petition and Answer; Each One Instrument of Writing.—The original petition, first supplemental petition, second supplemental petition, and every other, shall each be contained in one instrument of writing, and so with the original answer and each of the supplemental answers.

Source: Texas Rule 9 (for District and County Courts), unchanged.

Rule 47. Claims for Relief.—A pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved, and

(b) a demand for judgment for the relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded.

Source: Federal Rule 8(a).
Change: Omission of the Federal requirement that jurisdictional grounds be stated. The Federal Rule requires "a short and plain statement of the claim showing that the pleader is entitled to relief," for which wording that of subdivision (a) above has been substituted.

Rule 48. Alternative Claims for Relief.—A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regard-

less of consistency and whether based upon legal or equitable grounds or both.

Source: Federal Rule 8(e), in part, unchanged.

Rule 49. Where Several Counts.—Where there are several counts in the petition, and entire damages are given, the verdict or judgment, as the case may be, shall be good, notwithstanding one or more of such counts may be defective.

Source: Art. 2213, unchanged.

Rule 50. Paragraphs, Separate Statements.—All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, so long as the pleading containing such paragraph has not been superseded by an amendment as provided by Rule 65. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

Source: Federal Rule 10(b).
Change: Addition of the reference to Rule 65.

Rule 51. Joinder of Claims and Remedies.—(a) Joinder of Claims. The plaintiff in his petition or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 39, 40, and 43 are satisfied. There may be a like joinder of cross claims or third-party claims if the requirements of Rules 38 and 97, respectively, are satisfied.

(b) Joinder of Remedies. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. This rule shall not be applied in tort cases so as to permit the joinder of a liability or indemnity insurance company, unless such company is by law or contract directly liable to the person injured or damaged. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Federal Rule 18.
Change: Reference to the right of plaintiff to join an action upon a claim for money and an action to set aside a fraudulent conveyance is omitted as unnecessary in view of the decisions of this state.
Change by amendment effective December 31, 1941: The last sentence has been added.

Rule 52. Alleging a Corporation.—An allegation that a corporation is incorporated shall be taken as true, unless denied by the affidavit of the adverse party, his agent or attorney, whether such corporation is a public or private corporation and however created.

Source: Art. 1999.
Change: Omission of the word "duly."

Rule 53. Special Act or Law.—A pleading founded wholly or in part on any private or special act or law of this State or of the Republic of Texas need only recite the title thereof, the date of its approval, and set out in substance so much of such act or laws as may be pertinent to the cause of action or defense.

Source: Art. 2000, unchanged.

Rule 54. Conditions Precedent.—In pleading the performance or occurrence of conditions precedent, it shall be sufficient to aver generally that all conditions precedent have been performed or have occurred. When such performances or occurrences have been so plead, the party so pleading same shall be required to prove only such of them as are specifically denied by the opposite party. Amended by Order of March 31, 1941.

Source: Federal Rule 9(c).
Change: Substitution of "it shall be" for "it is."
Change by amendment of March 31, 1941: The practice on failure of specific denial is made clearer by changes in the wording of the last sentence.

Rule 55. Judgment.—In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it shall be sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

Source: Federal Rule 9(e). No change except the substitution of "it shall be" for "it is."

Rule 56. Special Damage.—When items of special damage are claimed, they shall be specifically stated.

Source: Federal Rule 9(g), unchanged.

Rule 57. Signing of Pleadings.—Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address.

Source: Federal Rule 11, first two sentences, unchanged.

Rule 58. Adoption by Reference.—Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion, so long as the pleading containing such statements has not been superseded by an amendment as provided by Rule 65.

Source: Federal Rule 10(c), first sentence.
Change: Addition of words after comma.

Rule 59. Exhibits and Pleading.—Notes, accounts, bonds, mortgages, records, and all other written instruments, constituting, in whole or in part, the claim sued on, or the matter set up in defense, may be made a part of the pleadings by copies thereof, or the originals, being attached or filed and referred to as such, or by copying the same in the body of the pleading in aid and explanation of the allegations in the petition or answer made in reference to said instruments and shall be deemed a part thereof for all purposes. Such pleadings shall not be deemed defective because of the lack of any allegations which can be supplied from said exhibit. No other instrument of writing shall be made an exhibit in the pleading.

Source: Texas Rule 19 (for District and County Courts).
Change: The rule has been shortened. Provision is made for copying the exhibit into the body of the pleading. Addition of provision making the exhibit a part of the pleading for all purposes and for supplying allegations from the exhibit.

Rule 60. Of Intervenor.—Any party may intervene, subject to being stricken out by the court for sufficient cause on the motion of the opposite party; and such intervenor shall, in accordance with Rule 72, notify the opposite party or his attorney of the filing of such pleadings within five days from the filing of same.

Source: Art. 1998.
Change: Intervention is authorized without leave of court, regardless of whether the court is in session or in vacation.

Rule 61. Trial: Interveners: Rules Apply to All Parties.—These rules of pleading shall apply equally, so far as it may be practicable to intervenors and to parties, when more than one, who may plead separately.

Source: Art. 1998 with minor textual change; and Texas Rule 30 (for District and County Courts), unchanged.

Rule 62. Amendment Defined.—The object of an amendment, as contra-distinguished from a supplemental petition or answer, is to add something to, or withdraw something from, that which has been

previously pleaded so as to perfect that which is or may be deficient, or to correct that which has been incorrectly stated by the party making the amendment, or to plead new matter, additional to that formerly pleaded by the amending party, which constitutes an additional claim or defense permissible to the suit.

Source: Texas Rules 12 and 15 (for District and County Courts). Combined with minor textual change.

Rule 63. Amendments.—Parties may amend their pleadings, file suggestions of death and make representative parties, and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to operate as a surprise to the opposite party; provided, that any amendment offered for filing within seven days of the date of trial or thereafter shall be filed only after leave of the judge is obtained, which leave shall be granted by the judge unless there be a showing that such amendment will operate as a surprise to the opposite party.

Source: Art. 2001, subdivisions 1 and 2.
Change: This rule authorizes amendment without leave of court when filed seven days or more before the date of trial. It requires leave to amend thereafter, which may be granted by the judge instead of by the court. Subdivision 3 of Article 2001 is superseded by Rules 66 and 67.

Rule 64. Amended Instrument.—The party amending shall point out the instrument amended, as "original petition," or "plaintiff's first supplemental petition," or as "original answer," or "defendant's first supplemental answer" or other instrument filed by the party and shall amend by filing a substitute therefor, entire and complete in itself, indorsed "amended original petition," or, "amended first supplemental petition," or "amended original answer," or "amended first supplemental answer," accordingly as said instruments of pleading are designated.

Source: Texas Rule 13 (for District and County Courts).
Change: Other than minor textual changes, the only alteration is the omission of the requirement that the amendment point out the date of the instrument amended.

Rule 65. Substituted Instrument Takes Place of Original.—Unless the substituted instrument shall be set aside on exceptions, the instrument for which it is substituted shall no longer be regarded as a part of the pleading in the record of the cause, unless some error of the court in deciding upon the necessity of the amendment, or otherwise in superseding it, be complained of, and exception be taken to the action of the court, or unless it be necessary to look to the superseded pleading upon a question of limitation.

Source: Texas Rule 14 (for District and County Courts) with minor textual change.

Rule 66. Trial Amendment.—If evidence is objected to at the trial on the ground that it is not within the issues made by the pleading, or if during the trial any defect, fault or omission in a pleading, either of form or substance, is called to the attention of the court, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the allowance of such amendment would prejudice him in maintaining his action or defense upon the merits. The court may grant a postponement to enable the objecting party to meet such evidence. Amended by Order of March 31, 1941.

Source: Federal Rule 15(b) (last two sentences) with minor textual change.
Change by amendment of March 31, 1941: The last comma following the word "merits" has been changed into a period, thereby closing the sentence with the word "merits"; and by capitalizing the first letter of the word "The" so that said word will be the commencement of a new sentence.

Rule 67. Amendments to Conform to Issues Tried Without Objection.—When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. In such case such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made by leave of court upon motion of any party at any time up to the submission of the case to the Court or jury, but failure so to amend shall not affect the result of the trial of these issues; provided that written pleadings, before the time of submission, shall be necessary to the submission of special issues, as is provided in Rules 277 and 279. Amended by Order of March 31, 1941.

Source: Federal Rule 15(b).
Change by amendment of March 31, 1941: The first two sentences of the Federal Rule are the source, but the second of them has been changed by interpolating the words "in such case" at the commencement, by interpolating the words "by leave of the court" between the word "made" and the word "upon', by substituting in place of the words "even after judgment" the words "up to the submission of the case to the court or jury," and by adding to the end of the sentence the proviso shown above.

Rule 68. Court May Order Repleader.—The court, when deemed necessary in any case, may order a repleader on the part of one or both of the parties, in order to make their pleadings substantially conform to the rules.

Source: Texas Rule 29 (for District and County Courts), unchanged.

Rule 69. Supplemental Petition or Answer.—Each supplemental petition or answer, made by either party, shall be a response to the last preceding pleading by the other party, and shall not repeat allegations formerly pleaded further than is necessary as an introduction to that which is stated in the pleading then being drawn up. These instruments, to wit, the original petition and its several supplements, and the original answer and its several supplements, shall respectively, constitute separate and distinct parts of the pleadings of each party; and the position and identity, by number and name, with the indorsement of each instrument, shall be preserved throughout the pleadings of either party.

Source: Texas Rule 10 (for District and County Courts).
Change: The word "facts" has been omitted.

Rule 70. Pleading: Surprise: Cost.—When either a supplemental or amended pleading is of such character and is presented at such time as to take the opposite party by surprise (to be judged by the court) it shall be cause for imposing the cost of the term upon, and charging the continuance of the cause (both or either) to the party causing the surprise, if the other party demand it, and shall make a satisfactory showing, or if it otherwise be apparent, that he is not ready for trial on account of said supplemental or amended pleading being allowed to be filed by the court.

Source: Texas Rule 16 (for District and County Courts), with minor textual change.

Rule 71. Misnomer of Pleading.—When a party has mistakenly designated any plea or pleading, the court, if justice so requires, shall treat the plea or pleading as if it had been properly designated.

Source: Federal Rule 8(c) last sentence. See Rule 94 for balance of the Federal Rule.
Change: This rule extends the provision of the Federal Rule to any plea or pleading misnamed.

Rule 72. Filing Pleadings: Copy Delivered to Adverse Party or Parties.—Whenever any party files, or asks leave to file any pleading, plea, or motion of any character which is not by law or by these rules required to be served upon the adverse party, he shall at the same time either deliver or mail to the adverse party or his attorney of record a copy of such pleading, plea, or motion. If there is more than one adverse party and the adverse parties are represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney representing the adverse parties, but a firm of attorneys associated in the case shall count as one. Not more

than four copies of any pleading, plea, or motion shall be required to be furnished to adverse parties, and if there be more than four adverse parties, four copies of such pleading shall be deposited with the clerk of court and the party filing them, or asking leave to file them, shall inform all adverse parties or their attorneys of record that such copies have been deposited with the clerk. The copies shall be delivered by the clerk to the first four applicants entitled thereto, and in such case no copies shall be required to be mailed or delivered to the adverse parties or their attorneys by the attorney thus filing the pleading. After a copy of a pleading is furnished to an attorney, he cannot require another copy of the same pleading to be furnished to him.

Source: Acts 1939, 46th Leg., p. 203, Secs. 1 (part) and 2 appearing in Vernon's Tex.Ann.Civ.St. as Arts 2002a, 2002b.
Change: Where there are four or less adverse parties, this rule prescribes that they be mailed or delivered copies of the pleading. Where there are more than four it provides for actual notice of the filing of the pleading.
Caveat: Note that the above statute took effect subsequent to the effective date of the Rule Making Act. See, however, Garrett v. Mercantile National Bank of Dallas, 140 Tex. 394, 168 S.W.2d 636.

Rule 73. Failure to Furnish Copy of Pleadings to Adverse Party.—If any party fails to furnish the adverse party with a copy of any pleading in accordance with the preceding rule, a certified copy may be ordered to be furnished by the clerk and the costs thereof charged to the party who had failed to comply with the order to furnish the same.

Source: Acts 1939, 46th Leg., p. 203, Sec. 3, appearing in Vernon's Tex.Ann.Civ.St. as Art. 2002c.
Change: Omission of the requirement that a party be allowed five days in which to comply with Rule 72, and of the provision for punishment for contempt on failure.
Caveat: Note that the above statute took effect subsequent to the effective date of the Rule Making Act. See, however, Garrett v. Mercantile National Bank of Dallas, 140 Tex. 394, 168 S.W.2d 636.

Rule 74. Filing With the Court Defined.—The filing of pleadings and other papers as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and time and forthwith transmit them to the office of the clerk.

Source: Federal Rule 5(e).
Change: The rule permits the judge to accept instruments for filing and directs him, when he does so, to note thereon the date and time.

Rule 75. Filed Pleadings; Withdrawal.—All filed pleadings shall remain at all times in the clerk's office or in the court or in custody of the clerk, except that the court may by order entered on the minutes allow a filed pleading to be withdrawn for a limited time whenever necessary, on leaving a certified copy on file. The party withdrawing such pleading shall pay the costs of such order and certified copy.

Source: The last sentence of Acts 1939, 46th Leg., p. 203, Sec. 1, appearing in Vernon's Tex.Ann.Civ.St. as Art. 2002a, unchanged. The balance of such article is incorporated in Rule 72.

Rule 76. May Inspect Papers.—Each attorney at law practicing in any court, shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested.

Source: Art. 318.
Change: Provision for a descriptive receipt of withdrawn instruments is omitted.

Rule 77. Lost Records and Papers.—When any papers or records are lost or destroyed during the pendency of a suit, the parties may, with the approval of the judge, agree in writing on a brief statement of the matters contained therein; or either party may supply such lost records or papers as follows:

(a) After three days' notice to the adverse party on his attorney, make written sworn motion before the court stating the loss or destruction of such record or papers, accompanied by certified copies of the originals if obtainable, or by substantial copies thereof.

(b) If, upon hearing, the court be satisfied that they are substantial copies of the original, an order shall be made substituting such copies or brief statement for the originals.

(c) Such substituted copies or brief statement shall be filed with the clerk, constitute a part of the cause, and have the force and effect of the originals. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 2289, unchanged, except that by amendment, effective December 31, 1943, subdivision b has been reworded.

B. PLEADING OF PLAINTIFF

Rule 78. Petition; Original and Supplemental; Indorsement.—The pleading of plaintiff shall consist of an original petition, and such supplemental petitions as may be necessary in the course of pleading by the parties to the suit. The original petition and the supplemental petitions shall be indorsed, so as to show their respective positions in the process of pleading, as "original petition," "plaintiff's first supplemental petition," "plaintiff's second supplemental petition," and so on, to be successively numbered, named, and indorsed.

Source: Texas Rule 3 (for District and County Courts).
Change: Omission, at the end of the first sentence, of "to enable the plaintiff to state all the facts presenting his cause of action, and such other facts as may be required to rebut the facts that may be stated in the original and supplemental petitions as pleaded by the defendant."

Rule 79. The Petition.—The petition shall state the names of the parties and their residences, if known, together with the contents prescribed in Rule 47 above.

Source: New rule.

Rule 80. Plaintiff's Supplemental Petition.—The plaintiff's supplemental petitions may contain special exceptions, general denials, and the allegations of new matter not before alleged by him, in reply to those which have been alleged by the defendant.

Source: Texas Rule 5 (for the District and County Courts), unchanged.

Rule 81. Defensive Matters.—When the defendant sets up a counter claim, the plaintiff may plead thereto under rules prescribed for pleadings of defensive matter by the defendant, so far as applicable. Whenever the defendant is required to plead any matter of defense under oath, the plaintiff shall be required to plead such matters under oath when relied on by him.

Source: Art. 2004, unchanged.

Rule 82. Special Defenses.—The plaintiff need not deny any special matter of defense pleaded by the defendant, but the same shall be regarded as denied unless expressly admitted.

Source: Art. 2005, unchanged.

C. PLEADINGS OF DEFENDANT

Rule 83. Answer; Original and Supplemental; Indorsement.—The answer of defendant shall consist of an original answer, and such supplemental answers as may be necessary, in the course of pleading by the parties to the suit. The original answer and the supplemental answers shall be indorsed, so as to show their respective positions in the process of pleading, as "original answer," "defendant's first supplemental answer," "defendant's second supplemental answer," and so on, to be successively numbered, named and indorsed.

Source: Texas Rule 6.
Change: Omission at the end of the first sentence: "To enable the defendant to state all of the exceptions and facts presenting his defense as contained in his original answer,

and such other facts as may be required to rebut the facts that may be stated in the original and supplemental petitions as pleaded by the plaintiff."

Rule 84. Answer May Include Several Matters.—The defendant in his answer may plead as many several matters, whether of law or fact, as he shall think necessary for his defense, and which may be pertinent to the cause; provided, that he shall file them all at the same time and in due order of pleading; and such pleas shall be heard in such order under the direction of the court.

Source: Arts. 2006 (part), 2012.
Change: These two articles have been combined with minor textual change. See also Rule 92 for balance of Art. 2006.

Rule 85. Original Answer; Contents.—The original answer may consist of pleas of privilege, to the jurisdiction, in abatement, or any other dilatory pleas; of special exceptions[,] of general denial, and any defense by way of avoidance or estoppel, and it may present a cross-action, which to that extent will place defendant in the attitude of a plaintiff. Matters in avoidance and estoppel may be stated together, or in several special pleas, each presenting a distinct defense, and numbered so as to admit of separate issues to be formed on them.

Source: Texas Rule 7 (for District and County Courts).
Change: The plea of privilege has been listed first. Reference to the general exception has been omitted. The word "facts" is not used.

Rule 86. Plea of Privilege.—A plea of privilege to be sued in the county of one's residence shall be in writing and sworn to, and shall state that the party claiming such privilege was not, at the institution of such suit, nor at the time of the service of process therein, nor at the time of filing such plea, a resident of the county in which suit was instituted, and shall state the county of his residence, and the post-office address of himself or his attorney and that "no exception to exclusive venue in the county of one's residence provided by law exists in said cause"; and such plea of privilege when filed shall be prima facie proof of the defendant's right to change of venue; provided that such plea shall not constitute a denial under oath of any allegations of plaintiff's petition required to be denied under oath by Rule 93 unless specifically alleged in such plea. If the plaintiff desires to controvert the plea of privilege, he shall within ten days after appearance day if the plea of privilege is filed in vacation, or if not, within ten days after appearance day or after the filing of the plea of privilege, whichever is the later date, file a controverting plea under oath, setting out specifically the grounds relied upon to confer venue of such cause on the court where the cause is pending. Amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 2007 as amended Acts 1939, 46th Leg., p. 204, sec. 1.
Change: The plea of privilege is required to state the post-office address of the defendant or his attorney. The time allowed for filing a controverting affidavit has been increased to ten days.
Change by amendment of March 31, 1941: The word "or" changed to read "of" between "service" and "process".
Change by amendment effective December 31, 1943: In the last sentence, above, the wording beginning, "if the plea" and ending, "whichever is the later date" has been added.

Rule 87. Hearing on Plea.—Upon the filing of such controverting plea the judge or justice of the peace shall note on same a time for a hearing on the plea of privilege. Setting of the date for such hearing and the notation thereof may be made by such judge or justice of the peace anywhere he may be found, either within or without the county where the suit is pending. Such hearing, unless the parties agree upon the date, shall not be had until a copy of such controverting plea, including a copy of such notation thereon, shall have been mailed by registered mail to the defendant or his attorney at the post office address stated in such plea of privilege, or shall have been delivered to defendant or his attorney, at least ten days before the date set for hearing, after which the court shall promptly hear such plea of privilege and enter judgment thereon. If the defendant demands a trial by jury on the venue question, the court, in its discretion, may require the cause to be tried on its merits at the same time. Amended by order of Sept. 20, 1941, effective Dec. 31, 1941; order of June 16, 1943, effective Dec. 31, 1943; order of Aug. 18, 1947, effective Dec. 13, 1947.

Source: Art. 2008 (part).
Change: Service of notice of the controverting affidavit by registered mail is substituted for service by officer. Provision for appeals from order sustaining or overruling pleas of privilege is made in Art. 2008, which is deemed jurisdictional insofar as it grants the right to appeal, and hence not repealed. This part of 2008 is carried for context following Rule 384. See also Rule 385, which prescribes the procedure for appeals, when allowed, from interlocutory orders.
Change by amendment effective December 31, 1941: The second sentence has been added.
Change by amendment effective December 31, 1943: The words "or shall have been delivered to defendant or his attorney" have been interpolated between the words "privilege" and "at."
Change by amendment effective December 31, 1947. The sentence commencing "If the defendant" and ending "at the same time" has been added.

Rule 88. Plea Not Waived.—Issuing process for witnesses and taking depositions shall not constitute a waiver of a plea of privilege, but depositions taken in such case may be read in evidence in any subsequent suit between the same parties concerning the same subject-matter in like manner as if taken in such subsequent suit.

Source: Art. 2018, unchanged.

Rule 89. Transferred if Plea Is Sustained.—If a plea of privilege is sustained, the cause shall not be dismissed, but the court shall transfer said cause to the proper court; and the costs incurred prior to the time such suit is filed in the court to which said cause is transferred shall be taxed against the plaintiff. The clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send it with the original papers in the cause to the clerk of the court to which the venue has been changed. Provided, however, if the cause be severable as to parties defendant and shall be ordered transferred as to one or more defendants but not as to all, the clerk, instead of sending the original papers, shall make certified copies of such filed papers as directed by the court and forward the same to the clerk of the court to which the venue has been changed. After the cause has been transferred, as above provided for, the same will be subject to trial at the expiration of ten days after the mailing of notification to the parties or their attorneys by the clerk or any party or his attorney that the papers have been filed in the court to which the cause has been transferred. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Arts. 2019 and 2020.
Change: The two articles have been combined with minor textual change and, by amendment effective December 31, 1943, the final sentence, above, has been added, and a misprint of "court" for "clerk" has been corrected.

Rule 90. Waiver of Defects in Pleading.—General demurrers shall not be used. Every defect, omission or fault in a pleading either of form or of substance, which is not specifically pointed out by motion or exception in writing and brought to the attention of the Judge in the trial court before the instruction or charge to the jury or, in a non-jury case, before the rendition of judgment, shall be deemed to have been waived by the party seeking reversal on such account; provided that this rule shall not apply as to any party against whom default judgment is rendered.

Source: New rule.

Rule 91. Special Exceptions.—A special exception shall not only point out the particular pleading excepted to, but it shall also point out intelligibly and with particularity the defect, omission, obscurity, duplicity, generality, or other insufficiency in the allegations in the pleading excepted to. Amended by Order of March 31, 1941.

Source: Texas Rule 18 (for the District and County Courts).
Change: The last sentence of such rule has been omitted.
Change by amendment of March 31, 1941: The word "or" changed to "in" between "allegations" and "the."

Rule 92. General Denial.—A general denial of matters pleaded by the adverse party which are not required to be denied under oath, shall be sufficient to put the same in issue. Where the defendant has pleaded a general denial, and the plaintiff shall afterward amend his pleading, such original denial shall be presumed to extend to all matters subsequently set up by the plaintiff.

Source: Arts. 2006 (part) and 2012 combined without change.

Rule 93. Certain Pleas To Be Verified.—A pleading setting up any of the following matters, unless the truth of such matters appear of record, shall be verified by affidavit.

(a) That the suit is not commenced in the proper county.

(b) That the plaintiff has not legal capacity to sue, or that the defendant has not legal capacity to be sued.

(c) That the plaintiff is not entitled to recover in the capacity in which he sues, or that the defendant is not liable in the capacity in which he is sued.

(d) That there is another suit pending in this State between the same parties involving the same claim.

(e) That there is a defect of parties, plaintiff or defendant.

(f) A denial of partnership as alleged in any pleading as to any party to the suit.

(g) That any party alleged in any pleading to be a corporation is not incorporated as alleged.

(h) Denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part, and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit shall be sufficient if it state that the affiant has reason to believe and does believe that such instrument was not executed by the decedent or by his authority. In the absence of such a sworn plea, the instrument shall be received in evidence as fully proved.

(i) A denial of the genuineness of the indorsement or assignment of a written instrument upon which suit is brought by an indorsee or assignee and in the absence of such a sworn plea, the indorsement or assignment thereof shall be held as fully proved. The denial required by this subdivision of the rule may be made upon information and belief.

(j) That a written instrument upon which a pleading is founded is without consideration, or that the consideration of the same has failed in whole or in part.

(k) That an account which is the foundation of the plaintiff's action, and supported by an affidavit, is not just; and, in such case, the answer shall set forth the items and particulars which are unjust.

(l) That a contract sued upon is usurious. Unless such plea is filed, no evidence of usurious interest as a defense shall be received.

(m) That notice and proof of loss or claim for damage has not been given, as alleged. Unless such plea is filed such notice and proof shall be presumed and no evidence to the contrary shall be admitted. A denial of such notice or such proof shall be made specifically and with particularity.

(n) In the trial of any case appealed to the court from the Industrial Accident Board the following, if plead, shall be presumed to be true as plead and have been done and filed in legal time and manner, unless denied by verified pleadings:

(1) Notice of injury.
(2) Claim for compensation.
(3) Award of the Board.
(4) Notice of intention not to abide by the award of the Board.
(5) Filing of suit to set aside the award.
(6) That the insurance company alleged to have been the carrier of the workmen's compensation insurance at the time of the alleged injury was in fact the carrier thereof.
(7) That there was good cause for not filing claim with the Industrial Accident Board within the six months' period provided by statute.

A denial of any of the matters set forth in Sections (1) or (7) of this Subdivision (n) may be made on information and belief.

Any such denial may be made in original or amended pleadings; but if in amended pleadings the same must be filed not less than seven days before the case proceeds to trial. In case of such denial the things so denied shall not be presumed to be true, and if essential to the case of the party alleging them, must be proved.

(o) Any other matter required by statute to be plead under oath. As amended by order of March 31, 1941; order of Sept. 20, 1941, effective Dec. 31, 1941; order of June 16, 1943, effective Dec. 31, 1943.

Source: Arts. 573, 574, 1999, 2010, 3734, and 5074.
Change: The basic statute relating to sworn pleadings was Art. 2010. With it have been combined provisions from a number of other specific statutes requiring sworn pleas. No change of meaning has been intended in so far as the combinations, as such, are concerned. The scope of sworn denials has, however, been broadened. Subdivision (b) will under this rule include the plea that "the defendant has not legal capacity to be sued." Subdivision (c) has been extended to include a denial of defendant's liability in the capacity in which he is sued. In subdivision (d) the term "cause of action" has been replaced by the word "claim." Subdivisions (f) and (g) apply to allegations in any pleading, not merely to the petition as formerly stated in Art. 2010.
Change by amendment of March 31, 1941: Subdivisions (m) and (n) (Source: Art. 5546, and Acts 1937, 45th Leg., p. 535, ch. 261, sec. 2) and (o) added.
Change by amendment effective December 31, 1941: Section (6) has been added to Subdivision (n).
Change by amendment effective December 31, 1943: Section (7) and the new sentence concerning Sections (1) and (7) have been added to Subdivision (n) and minor textual changes have been made in the next to last paragraph, above.

Rule 94. Affirmative Defenses.—In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. Where the suit is on an insurance contract which insures against certain general hazards, but contains other provisions limiting such general liability, the party suing on such contract shall never be required to allege that the loss was not due to a risk or cause coming within any of the exceptions specified in the contract, nor shall the insurer be allowed to raise such issue unless it shall specifically allege that the loss was due to a risk or cause coming within a particular exception to the general liability; provided that nothing herein shall be construed to change the burden of proof on such issue as it now exists. Amended by Order of March 31, 1941.

Source: Portion of Federal Rule 8(c), unchanged. See Rule 71 for the balance of Federal Rule 8(c).
Change by amendment of March 31, 1941: The second sentence is new.

Rule 95. Pleas of Payment.—When a defendant shall desire to prove payment, he shall file with his plea an account stating distinctly the nature of such payment, and the several items thereof; failing to do so, he shall not be allowed to prove the same, unless it be so plainly and particularly described in the plea as to give the plaintiff full notice of the character thereof.

Source: Art. 2014.
Change: Omission of reference to counter claim and set off.

Rule 96. No Discontinuance.—Where the defendant has filed a counterclaim seeking affirmative relief, the plaintiff shall not be permitted by a discontinuance of his suit, to prejudice the right of the defendant to be heard on such counterclaim.

Source: Art. 2016, unchanged.

Rule 97. Counterclaim and Cross-Claim.—(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim within the jurisdiction of the court, not the subject of a pending action, which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party, so long as the subject matter is within the jurisdiction of the court.

(d) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after filing his pleading may be presented as a counterclaim by amended pleading.

(e) Cross-claim Against Co-party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(f) Additional Parties May be Brought In. When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained and their joinder will not deprive the Court of jurisdiction of the action; provided that in tort cases this rule shall not be applied so as to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract liable to the person injured or damaged.

(g) Tort shall not be the subject of set-off or counterclaim against a contractual demand nor a contractual demand against tort unless it arises out of or is incident to or is connected with same.

(h) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 174, judgment on a counterclaim or cross-claim may be rendered when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of. Amended by Order of March 31, 1941.

Source: Federal Rule 13.
Change: Subdivisions (d) and (f) of the Federal Rule have been omitted and the subdivisions re-lettered. Subdivisions (d), (e), (f) in part, and (h) above correspond to subdivisions (e), (g), (h) and (i) respectively o the Federal Rule. In (a) above the compulsory counterclaim has been limited to a claim within the jurisdiction of the court. In (c) a similar limitation has been embodied. Other subdivisions have minor textual changes.
Change by amendment of March 31, 1941: The proviso in subdivision (f) takes the place of the last sentence of subdivision (f) in original Rule 97, and subdivision (g) has been added. Subdivision (g) in original Rule 97 has been changed to (h).

Rule 98. Supplemental Answers.—The defendant's supplemental answers may contain special exceptions, general denial, and the allegations of new matter not before alleged by him, in reply to that which has been alleged by the plaintiff. Amended by Order of March 31, 1941.

Source: Texas Rule 8 (for District and County Courts).
Change by amendment of March 31, 1941: The wording after "alleged" has been changed so as to make good sense.

SECTION 5. CITATION

Rule 99. Issuance.—When a petition is filed with the clerk, he shall promptly issue such citations, for the defendant or defendants, as shall be requested by any party or his attorney. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Original note:
Source: Art. 2021.
Change: The rule authorizes the clerk to issue as many citations for the defendant or defendants as the plaintiff may request, without the delay of securing a return on any prior citation.
Change by amendment effective February 1, 1946:
The word "the" preceding "party" has been changed to "any."

Rule 100. Other Process.—When any process has not been returned, or has been returned without service, or has been improperly served, the clerk shall, upon the application of any party to the suit, his agent or attorney, issue such further process as the applicant may direct.

Source: Art. 2035.
Change: Reference to the county to which process is to be directed is omitted.

Rule 101. Requisites.—The citation shall be styled "The State of Texas" and shall be directed to the defendant and shall command him to appear and answer the plaintiff's petition at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service thereof, stating the place of holding the court. It shall state the date of the filing of the petition, its file number and the style of the case, and the date of issuance of the citation, be signed and sealed by the clerk, and shall be accompanied by a copy of plaintiff's petition. The citation shall further direct that if it is not served within 90 days after date of its issuance, it shall be returned unserved. The party filing any pleading upon which citation is to be had shall furnish the clerk with a sufficient number of copies thereof for use in serving the parties to be served, and when the copies are so furnished the clerk shall make no charge therefor. Amended by Order of September 20, 1941, effective December 31, 1941.

Source: R.C.S. Art. 2022.
Change: The citation will be directed to the defendant rather than to the officer and may be served in any county in the State of Texas where the defendant may be found (see Rule 102). The return day will be fixed by the date of service. All citations will be accompanied by a copy of the petition, which need not be certified.
Change by amendment effective December 31, 1941: By adding the last sentence.

Rule 102. Territorial Limits of Effective Service.—All process may be served anywhere within the limits of the State of Texas.

Source: New rule.

Rule 103. Officer Who May Serve.—All process may be served by the sheriff or any constable of

any county in which the party to be served is found, provided that no officer who is a party to or interested in the outcome of a suit shall serve any process therein.

Source: New rule.

Rule 104. If Officer Disqualified.—If there is no officer qualified to serve the process in a particular suit in the county in which the same is to be executed, the judge of the court in which said cause is pending may enter an order in the cause directing that all process to be executed in said county shall be served by a resident citizen of such county, to be designated in said order, and thereupon such person so designated shall have full power and authority as an officer of the court to execute any such process or writ and make due return thereof as in other cases. But in every such case a certified copy of such order shall be attached to all such process or writs.

Source: Art. 2024.
Change: The rule shortens the article. It permits service in the first instance by a resident citizen of the county of service, instead of the sheriff of some adjoining county.

Rule 105. Duty of Officer Receiving.—The officer to whom process is delivered shall indorse thereon the day and hour on which he received it, and shall execute and return the same without delay.

Source: Art. 2025, unchanged.

Rule 106. Service of Citation.—Unless it otherwise directs, the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto. Where it is impractical to secure personal service, as above directed, the court, upon motion, may authorize service by leaving a copy of the citation, with petition attached, at the usual place of business of the party to be served, or by delivering same to any one over sixteen years of age at the party's usual place of abode, or in any other manner which will be reasonably effective to give the defendant notice of the suit. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 2026.
Change: The officer is directed to note upon the copy of the citation which he delivers to the defendant the date of delivery. He delivers a copy of the petition in all cases.
Change by amendment effective December 31, 1947: The sentence commencing "Where it is impractical" and ending "notice of the suit" has been added.

Rule 107. Return of Citation.—The return of the officer executing the citation shall be indorsed on or attached to the same; it shall state when the citation was served and the manner of service, and shall certify that a true copy of the citation with the accompanying copy of the petition was delivered to the defendant, and be signed by him officially. When the citation has not been served, the return shall show the diligence used by the officer to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain. No default judgment shall be granted in any cause until the citation, with the officer's return thereon, shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment.

Source: Arts. 2034, 2036.
Change: That part of the rule derived from Art. 2034 has been changed only textually. The last sentence of the rule supersedes Art. 2036 in the District and County Courts in harmony with the new rules making the time for answer date from the day of service.

Rule 108. Defendant Without State.—Where the defendant is absent from the State, or is a nonresident of the State, the form of notice to such defendant of the institution of the suit shall be the same as prescribed for citation to a resident defendant; and such notice may be served by any disinterested person competent to make oath of the fact in the same manner as provided in Rule 106 hereof. The return of service in such cases shall be indorsed on or attached to the original notice, and shall be in the form provided in Rule 107, and be signed and sworn to by the party making such service before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer. A defendant served with such notice shall be required to appear and answer in the same manner and time and under the same penalties as if he had been personally served with a citation within this State.

Source: Arts. 2037 and 2038.
Change: This rule supersedes the former statutes governing non-resident notice. Form of citation and method of service is to be the same as provided for resident defendants.

Rule 109. Citation by Publication.—Where a party to a suit, his agent or attorney, shall make oath that the residence of any party defendant is unknown to affiant (and to such party where the affidavit is made by his agent or attorney) or that such defendant is a transient person, and that after due diligence such party and the affiant have been unable to locate the whereabouts of such defendant, or that such defendant is absent from or is a nonresident of the State, and that the party applying for the citation has attempted to obtain personal service of nonresident notice as provided for in Rule 108, but has been unable to do so, the clerk shall issue citation for such defendant for service by publication. In such cases it shall be the duty of the court trying the case to inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the defendant or to obtain service of nonresident notice, as the case may be, before granting any judgment on such service. Provided, however, that where the affidavit shows that the defendant is not within the continental United States, and is not in the Armed Forces of the United States, it shall not be necessary for the party to show that the residence or whereabouts of the defendant is unknown or that an attempt has been made to procure service of nonresident notice. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Art. 2039, first sentence, with minor textual change.
Change: The balance of the article is incorporated in the general provision for requisites of citation by publication.
Change by amendment effective February 1, 1946:
The rule has been redrafted. Service of nonresident notice is required where possible; with an exception.

Rule 110. Effect of Rules on Other Statutes.—Where by statute or these rules citation by publication is authorized and the statute or rules do not specify the requisites of such citation or the method of service thereof, or where they direct that such citation be issued or served as in other civil actions, the provisions of these rules shall govern. Where, however, the statute authorizing citation by publication provides expressly for requisites of such citation or service thereof, or both, differing from the provisions of Rules 114, 115, and 116, these rules shall not govern, but the special statutory procedure shall continue in force; provided, however, that Rule 117a shall control with respect to citation in tax suits. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: New rule.
Change by amendment effective December 31, 1947: The wording from "provided, however," through "tax suits" has been added.

Rule 111. Citation by Publication in Action Against Unknown Heirs or Stockholders of Defunct Corporations.—If the plaintiff, his agent, or attorney, shall make oath that the names of the heirs or stockholders against whom an action is authorized by Art. 2040 of the Revised Civil Statutes of Texas, 1925, are unknown to the affiant, the clerk shall issue a citation for service by publication. Such citation shall be addressed to the defendants by a con-

cise description of their classification, as "the Unknown Heirs of A. B., deceased," or "the Unknown Stockholders of ..... Corporation," as the case may be, and shall contain the other requisites prescribed in Rules 114 and 115 and shall be served as provided by Rule 116.

Source: Art. 2040.
Comment: The first sentence of Art. 2040 is substantive and is carried for context. The second sentence is incorporated herein with minor textual change. The last sentence of the statute is deemed to be covered by other rules.

Rule 112. Parties to Actions Against Unknown Owners or Claimants of Interest in Land.—In suits authorized by Acts 1931, 42nd Leg., p. 369, ch. 216, all persons claiming under such conveyance whose names are known to plaintiff shall be made parties by name and cited to appear, in the manner now provided by law as in other suits; all other persons claiming any interest in such land under such conveyance may be made parties to the suit and cited by publication under the designation "all persons claiming any title or interest in land under deed heretofore given to ———— of ———— as grantee" (inserting in the blanks the name and residence of grantee as given in such conveyance). It shall be permissible to join in one suit all persons claiming under two or more conveyances affecting title to the same tract of land.

Source: Same, Section 2 and last sentence of Sec. 3, unchanged.

Rule 113. Citation by Publication in Actions Against Unknown Owners or Claimants of Interest in Land.—If the plaintiff in an action authorized under Acts 1931, 42nd Leg., p. 369, ch. 216, his agent or attorney shall make and file with the clerk of the court an affidavit, stating

(a) the name of the grantee as set out in the conveyance constituting source of title of defendants, and

(b) stating that affiant does not know the names of any persons claiming title or interest under such conveyance other than as stated in plaintiff's petition and

(c) if the conveyance is to a company or association name as grantee, further stating whether grantee is incorporated or unincorporated, if such fact is known, and if such fact is unknown, so stating.

Said clerk shall thereupon issue a citation for service upon all persons claiming any title or interest in such land under such conveyance. The citation in such cases shall contain the requisites and be served in the manner provided in T.R.s. 114, 115 and 116.

Source: Acts 1931, 42nd Leg., p. 369, ch. 216, Sec. 3 (Art. 2041a, Vernon's Tex.Ann.Civ.St.) with minor textual change.

Rule 114. Citation by Publication; Requisites.—Where citation by publication is authorized by these rules, the citation shall contain the requisites prescribed by Rules 15 and 101, in so far as they are not inconsistent herewith, provided that no copy of the plaintiff's petition shall accompany this citation and that the last sentence of Rule 101 shall not here apply, and shall be styled "The State of Texas" and shall be directed to the defendant or defendants by name, if their names are known, or to the defendant or defendants as designated in the petition, if unknown, or such other classification as may be fixed by any statute or by these rules. Where there are two or more defendants or classes of defendants to be served by publication, the citation may be directed to all of them by name and classification, so that service may be completed by publication of the one citation for the required number of times. The citation shall contain the names of the parties, a brief statement of the nature of the suit (which need not contain the details and particulars of the claim), a description of any property involved and of the interest of the named or unknown defendant or defendants, and, where the suit involves land, the requisites of Rule 115. If issued from the district or county court, the citation shall command such parties to appear and answer at or before 10 o'clock a. m. of the first Monday after the expiration of 42 days from the date of issuance thereof, specifying the day of the week, the day of the month, and the time of day the defendant is required to answer. If issued from the justice of the peace court, such citation shall command such parties to appear and answer on or before the first day of the first term of court which convenes after the expiration of 42 days from the date of issue thereof, specifying the day of the week, and the day of the month, that such term will meet. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Arts. 2041, 2092(6).
Change by amendment effective December 31, 1941: The following words have been interpolated in the first sentence: "shall contain the requisites prescribed by Rules 15 and 101, in so far as they are not inconsistent herewith, provided that no copy of the plaintiff's petition shall accompany this citation and that the last sentence of Rule 101 shall not here apply, and".

Rule 115. Form of Published Citation in Actions Involving Land.—In citations by publication involving land, it shall be sufficient in making the brief statement of the claim in such citation to state the kind of suit, the number of acres of land involved in the suit, or the number of the lot and block, or any other plat description that may be of record if the land is situated in a city or town, the survey on which and the county in which the land is situated, and any special pleas which are relied upon in such suit.

Source: Art. 2041, with minor textual change.

Rule 116. Service of Citation by Publication.—The citation, when issued, shall be served by the sheriff or any constable of any county of the State of Texas by having the same published once each week for four (4) consecutive weeks, the first publication to be at least twenty-eight (28) days before the return day of the citation. In all suits which do not involve the title to land or the partition of real estate, such publication shall be made in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in an adjoining county where a newspaper is published. In all suits which involve the title to land or partition of real estate, such publication shall be made in the county where the land, or a portion thereof, is situated, if there be a newspaper in such county, but if not, then in an adjoining county to the county where the land or a part thereof is situated, where a newspaper is published.

Source: Arts. 2042, 2092(6).

Rule 117. Return of Citation by Publication.—The return of the officer executing such citation shall be indorsed or attached to the same, and show how and when the citation was executed, specifying the dates of such publication, be signed by him officially and shall be accompanied by a printed copy of such publication.

Source: Art. 2043, unchanged.

Rule 117a. Citation in Suits for Delinquent Ad Valorem Taxes.—In all suits for collection of delinquent ad valorem taxes, the rules of civil procedure governing issuance and service of citation shall control the issuance and service of citation therein, except as herein otherwise specially provided.

1. Personal Service: Owner and Residence Known, Within State:

Where any defendant in a tax suit is a resident of the State of Texas and is not subject to citation by publication under subdivision 3 below, the process shall conform substantially to the form hereinafter set out for personal service and shall contain the essential elements and be served and returned and oth-

erwise regulated by the provisions of Rules 99 to 107, inclusive.

2. Personal Service: Owner and Residence Known, Out of State:

Where any such defendant is absent from the State or is a nonresident of the State and is not subject to citation by publication under subdivision 3 below, the process shall conform substantially to the form hereinafter set out for personal service and shall contain the essential elements and be served and returned and otherwise regulated by the provisions of Rule 108.

3. Service by Publication: Nonresident, Absent from State, Transient, Name Unknown, Residence Unknown, Owner Unknown, Heirs Unknown, Corporate Officers, Trustees, Receivers or Stockholders Unknown, Any Other Unknown Persons Owning or Claiming or Having an Interest:

Where any defendant in a tax suit is a nonresident of the State, or is absent from the State, or is a transient person, or the name or the residence of any owner of any interest in any property upon which a tax lien is sought to be foreclosed, is unknown to the attorney requesting the issuance of process or filing the suit for the taxing unit, and such attorney shall make affidavit that such defendant is a nonresident of the State, or is absent from the State, or is a transient person, or that the name or residence of such owner is unknown and cannot be ascertained after diligent inquiry, each such person in every such class above mentioned, together with any and all other persons, including adverse claimants, owning or claiming or having any legal or equitable interest in or lien upon such property, may be cited by publication. All unknown owners of any interest in any property upon which any taxing unit seeks to foreclose a lien for taxes, including stockholders of corporations—defunct or otherwise—their successors, heirs, and assigns, may be joined in such suit under the designation of "unknown owners" and citation be had upon them as such; provided, however, that record owners of such property or of any apparent interest therein, including, without limitation, record lien holders, shall not be included in the designation of "unknown owners"; and provided further that where the rendition or assessment list in the assessor's office shows the address of any record owner, citation of such record owner may not be had by publication or posting unless the party applying therefor shall first make affidavit that he has caused citation to issue for personal service on such defendant at the address shown on said rendition or assessment list and has attempted to secure service thereof, but has been unable to do so. Where any attorney filing a tax suit for a taxing unit, or requesting the issuance of process in such suit, shall make affidavit that a corporation is the record owner of any interest in any property upon which a tax lien is sought to be foreclosed, and that he does not know, and after diligent inquiry has been unable to ascertain, the location of the place of business, if any, of such corporation, or the name or place of residence of any officer of such corporation upon whom personal service may be had, such corporation may be cited by publication as herein provided. All defendants of the classes enumerated above may be joined in the same citation by publication.

An affidavit which complies with the foregoing requirements therefor shall be sufficient basis for the citation above mentioned in connection with it but shall be held to be made upon the criminal responsibility of affiant.

Such citation by publication shall be directed to the defendants by names or by designation as hereinabove provided, and shall be issued and signed by the clerk of the court in which such tax suit is pending. It shall be sufficient if it states the file number and style of the case, the date of the filing of the petition, the names of all parties by name or by designation as hereinabove provided, and the court in which the suit is pending; shall command such parties to appear and defend such suit at or before 10 o'clock a. m. of the first Monday after the expiration of forty-two days from the date of the issuance thereof, specifying such date when such parties are required to answer; shall state the place of holding the court, the nature of the suit, and the date of the issuance of the citation; and shall be signed and sealed by the clerk.

The citation shall be published in the English language one time a week for two weeks in some newspaper published in the county in which the property is located, which newspaper must have been in general circulation for at least one year immediately prior to the first publication and shall in every respect answer the requirements of the law applicable to newspapers which are employed for such a purpose, the first publication to be not less than twenty-eight days prior to the return day fixed in the citation; and the affidavit of the editor or publisher of the newspaper giving the date of publication, together with a printed copy of the citation as published, shall constitute sufficient proof of due publication when returned and filed in court. If there is no newspaper published in the county, then the publication may be made in a newspaper in an adjoining county, which newspaper shall in every respect answer the requirements of the law applicable to newspapers which are employed for such a purpose. A maximum fee of two cents per word for the first insertion and one cent per word for the second insertion may be taxed for publishing the citation, but in no event shall the fee exceed the published word or line rate of that newspaper for like classes of advertising. If the publication of the citation cannot be had for this fee, chargeable as costs and payable upon sale of the property, as provided by law, and this fact is supported by the affidavit of the attorney for the plaintiff or the attorney requesting the issuance of the process, then service of the citation may be made by posting a copy at the courthouse door of the county in which the suit is pending, the citation to be posted at least twenty-eight days prior to the return day fixed in the citation. Proof of the posting of the citation shall be made by affidavit of the attorney for the plaintiff, or of the person posting it. When citation is served as here provided it shall be sufficient, and no other form of citation or notice to the named defendants therein shall be necessary.

4. Citation in Tax Suits: General Provisions.

Any process authorized by this rule may issue jointly in behalf of all taxing units who are plaintiffs or intervenors in any tax suit. The statement of the nature of the suit, to be set out in the citation, shall be sufficient if it contains a brief general description of the property upon which the taxes are due and the amount of such taxes, exclusive of interest, penalties, and costs, and shall state, in substance, that in such suit the plaintiff and all other taxing units who may set up their claims therein seek recovery of the delinquent ad valorem taxes due on said property, and the (establishment and foreclosure) of liens, if any, securing the payment of same, as provided by law; that in addition to the taxes all interest, penalties, and costs allowed by law up to and including the day of judgment are included in the suit; and that all parties to the suit, including plaintiff, defendants, and intervenors, shall take notice that claims for any taxes on said property becoming delinquent subsequent to the filing of the suit and up to the day of judgment, together with all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered therein without further citation or notice to any parties thereto. Such citation need not be accompanied by a copy of plaintiff's petition and no such copy need be served. Such citation shall

also show the names of all taxing units which assess and collect taxes on said property not made parties to such suit, and shall contain, in substance, a recitation that each party to such suit shall take notice of, and plead and answer to, all claims and pleadings then on file or thereafter filed in said cause by all other parties therein, or who may intervene therein and set up their respective tax claims against said property. After citation or notice has been given on behalf of any plaintiff or intervenor taxing unit, the court shall have jurisdiction to hear and determine the tax claims of all taxing units who are parties plaintiff, intervenor or defendant at the time such process is issued and of all taxing units intervening after such process is issued, not only for the taxes, interest, penalties, and costs which may be due on said property at the time the suit is filed, but those becoming delinquent thereon at any time thereafter up to and including the day of judgment, without the necessity of further citation or notice to any party to said suit; and any taxing unit having a tax claim against said property may, by answer or intervention, set up and have determined its tax claim without the necessity of further citation or notice to any parties to such suit.

5. Form of Citation by Publication or Posting:

The form of citation by publication or posting shall be sufficient if it is in substantially the following form, with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient:

THE STATE OF TEXAS)
COUNTY OF .....)

In the name and by the authority of the State of Texas

Notice is hereby given as follows:

To .....
.....

and any and all other persons, including adverse claimants, owning or having or claiming any legal or equitable interest in or lien upon the following described property delinquent to Plaintiff herein, for taxes, to-wit:

.....
.....

Which said property is delinquent to Plaintiff for taxes in the following amounts:

$....., exclusive of interest, penalties, and costs, and there is included in this suit in addition to the taxes all said interest, penalties, and costs thereon, allowed by law up to and including the day of judgment herein.

You are hereby notified that suit has been brought by ..... as Plaintiffs, against ..... as Defendants, by petition filed on the ..... day of ....., 19..., in a certain suit styled ..... v. ..... for collection of the taxes on said property and that said suit is now pending in the District Court of ..... County, Texas, ... Judicial District, and the file number of said suit is ....., that the names of all taxing units which assess and collect taxes on the property hereinabove described, not made parties to this suit, are.....

Plaintiff and all other taxing units who may set up their tax claims herein seek recovery of delinquent ad valorem taxes on the property hereinabove described, and in addition to the taxes all interest, penalties, and costs allowed by law thereon up to and including the day of judgment herein, and the establishment and foreclosure of liens, if any, securing the payment of same, as provided by law.

All parties to this suit, including plaintiff, defendants, and intervenors, shall take notice that claims not only for any taxes which were delinquent on said property at the time this suit was filed but all taxes becoming delinquent thereon at any time thereafter up to the day of judgment, including all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered herein without further citation or notice to any parties herein, and all said parties shall take notice of and plead and answer to all claims and pleadings now on file and which may hereafter be filed in said cause by all other parties herein, and all of those taxing units above named who may intervene herein and set up their respective tax claims against said property.

You are hereby commanded to appear and defend such suit on the first Monday after the expiration of forty-two (42) days from and after the date of issuance hereof, the same being the ..... day of ....., A. D., 19... (which is the return day of such citation), before the honorable District Court of ..... County, Texas, to be held at the courthouse thereof, then and there to show cause why judgment shall not be rendered for such taxes, penalties, interest, and costs, and condemning said property and ordering foreclosure of the constitutional and statutory tax liens thereon for taxes due the plaintiff and the taxing units parties hereto, and those who may intervene herein, together with all interest, penalties, and costs allowed by law up to and including the day of judgment herein, and all costs of this suit.

Issued and given under my hand and seal of said court in the City of ....., ... County, Texas, this ..... day of ....., A. D., 19 ....

.....
Clerk of the District Court.
..... County, Texas,
..... Judicial District.

6. Form of Citation by Personal Service in or out of State:

The form of citation for personal service shall be sufficient if it is in substantially the following form, with proper changes to make the same applicable to personal property, where necessary, and if the suit includes or is for the recovery of taxes assessed on personal property, a general description of such personal property shall be sufficient:

THE STATE OF TEXAS

To ....., Defendant..,

GREETING:

YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court, ... Judicial District, ... County, Texas, at the Courthouse of said county in ....., Texas, at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of ....., Plaintiff, filed in said Court on the ..... day of ....., A. D., 19..., against ....., Defendant.., said suit being number ..... on the docket of said Court, the nature of which demand is a suit to collect delinquent ad valorem taxes on the property hereinafter described.

The amount of taxes due Plaintiff, exclusive of interest, penalties, and costs, is the sum of $....., said property being described as follows, to-wit:

.....
.....

The names of all taxing units which assess and collect taxes on said property, not made parties to this suit, are:

.....

Plaintiff and all other taxing units who may set up their tax claims herein seek recovery of delinquent ad valorem taxes on the property hereinabove described, and in addition to the taxes all interest, penalties, and costs allowed by law thereon up to and including the day of judgment herein, and the establishment and foreclosure of liens securing the payment of same, as provided by law.

All parties to this suit, including plaintiff, defendants, and intervenors, shall take notice that claims not

only for any taxes which were delinquent on said property at the time this suit was filed but all taxes becoming delinquent thereon at any time thereafter up to the day of judgment, including all interest, penalties, and costs allowed by law thereon, may, upon request therefor, be recovered herein without further citation or notice to any parties herein, and all said parties shall take notice of and plead and answer to all claims and pleadings now on file and which may hereafter be filed in this cause by all other parties hereto, and by all of those taxing units above named, who may intervene herein and set up their respective tax claims against said property.

If this citation is not served within 90 days after the date of its issuance, it shall be returned unserved.

The officer executing this return shall promptly serve the same according to the requirements of law and the mandates hereof and make due return as the law directs.

Issued and given under my hand and seal of said Court at ....., Texas, this the ..... day of ....., A. D., 19....

.....
Clerk of the District Court of
..... County, Texas.
By ....., Deputy.

Promulgated by order of Aug. 18, 1947, effective Dec. 31, 1947; amended by order of May 4, 1948, effective October 1, 1948.

Note: This is a new rule, effective December 31, 1947. Changed by amendment effective October 1, 1948. Last paragraph of Subdivision 3 re-written, changing maximum fee for publishing citations from two and one-half cents per line to two cents per word for the first insertion and one cent per word for the second insertion, and minor textual changes.

Rule 118. Amendment.—At any time in its discretion and upon such notice and on such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Source: Art. 2044, Federal Rule 4(h).
Change: The rule authorizes amendment in the process as well as in the proof of its service.

Rule 119. Acceptance of Service.—The defendant may accept service of process, or waive the issuance or service thereof by a written memorandum signed by him or by his duly authorized agent or attorney, sworn to before a proper officer other than an attorney in the case, and filed among the papers of the cause, and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law. The party signing such memorandum shall be delivered a copy of plaintiff's petition, and the receipt of the same shall be acknowledged in such memorandum. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Art. 2045.
Change: Addition of requirement that the waiver of service be sworn to before an officer authorized to administer oaths.
Change by amendment effective December 31, 1941: It is provided that the officer shall be "other than an attorney in the case," and the last sentence is added.

Rule 120. Entering Appearance.—The defendant may, in person, or by attorney, or by his duly authorized agent, enter an appearance in open court. Such appearance shall be noted by the judge upon his docket and entered in the minutes, and shall have the same force and effect as if the citation had been duly issued and served as provided by law.

Source: Art. 2046, unchanged.

Rule 121. Answer is Appearance.—An answer shall constitute an appearance of the defendant so as to dispense with the necessity for the issuance or service of citation upon him.

Source: R.C.S. Art. 2047, unchanged.

Rule 122. Constructive Appearance.—If the citation or service thereof is quashed on motion of the defendant, such defendant shall be deemed to have entered his appearance at ten o'clock a. m. on the Monday next after the expiration of twenty (20) days after the day on which the citation or service is quashed, and such defendant shall be deemed to have been duly served so as to require him to appear and answer at that time, and if he fails to do so, judgment by default may be rendered against him.

Source: R.C.S. Articles 2048 and 2093, Sec. 8.
Change: Art. 2092, Sec. 8, unchanged is made applicable to all courts throughout the state.

Rule 123. Reversal of Judgment.—Where the judgment is reversed on appeal or writ of error for the want of service, or because of defective service of process, no new citation shall be issued or served, but the defendant shall be presumed to have entered his appearance to the term of the court at which the mandate shall be filed.

Source: Art. 2049, with minor textual change.

Rule 124. No Judgment Without Service.—In no case shall judgment be rendered against any defendant unless upon service, or acceptance or waiver of process, or upon an appearance by the defendant, as prescribed in these rules, except where otherwise expressly provided by law or these rules.

Source: Art. 2050, with minor textual change.

SECTION 6. COSTS AND SECURITY THEREFOR

Rule 125. Parties Responsible.—Each party to a suit shall be liable to the officers of the court for all costs incurred by himself.

Source: Art. 2051, first sentence, unchanged.

Rule 126. Fee for Execution of Process, Demand.—No sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; except when affidavit is filed, as provided by law or these rules. The clerk issuing the process shall indorse thereon the words, "pauper oath filed," and sign his name officially below them; and the officer in whose hands such process is placed for service shall serve the same.

Source: Art. 2051 (second sentence), with minor textual change.
Note: See Rule 17.

Rule 127. Parties Liable for Other Costs.—Each party to a suit shall be liable for all costs incurred by him. If the costs cannot be collected from the party against whom they have been adjudged, execution may issue against any party in such suit for the amount of costs incurred by such party, but no more.

Source: Art. 2052, unchanged.

Rule 128. Officers May Demand Payment.—Officers may demand payment of all costs due in each and every case pending in their respective courts, up to the adjournment of each term of said courts.

Source: Art. 2053, unchanged.

Rule 129. How Costs Collected.—If any party responsible for costs fails or refuses to pay the same within ten days after demand for payment, the clerk or justice of the peace may make certified copy of the bill of costs then due, and place the same in the hands of the sheriff or constable for collection. All taxes imposed on law proceedings shall be included in the bill of costs. Such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the issuance of an execution for costs at the end of the term.

Source: R.C.S. Art. 2054, unchanged.

Rule 130. Officer to Levy.—The sheriff or constable upon demand and failure to pay said bill of

costs, may levy upon a sufficient amount of property of the person from whom said costs are due to satisfy the same, and sell such property as under execution. Where such party is not a resident of the county where such suit is pending, the payment of such costs may be demanded of his attorney of record; and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs unless he is compelled to make a levy.

Source: Art. 2055, with minor textual change.

Rule 131. Successful Party to Recover.—The successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided.

Source: Art. 2056, unchanged.

Rule 132. Fees of Only Two Witnesses.—In no cause shall there be allowed the fees of more than two witnesses to any one fact.

Source: Art. 2057, unchanged.

Rule 133. Costs of Motion.—The court may give or refuse costs on motions at its discretion, except where otherwise provided by law or these rules.

Source: Art. 2058, with minor textual change.

Rule 134. On Exception to Pleading.—If an exception to a pleading is sustained, all the costs of such exception and of the pleading adjudged to be insufficient, shall be taxed against the party filing such insufficient pleadings. If such exception be overruled, all costs of such exception shall be taxed against the party taking the exception.

Source: Art. 2059, unchanged.

Rule 135. Of Several Suits.—Where any plaintiff shall bring in the same court several suits against the same defendant for causes of action which should have been joined, he shall recover the costs of one action only; and the costs of the other action shall be adjudged against him, unless sufficient reasons appear to the court for instituting several actions.

Source: Art. 2060, unchanged.

Rule 136. Demand Reduced by Payments.—Where the plaintiff's demand is reduced by payment to an amount which would not have been within the jurisdiction of the court, the defendant shall recover his costs.

Source: Art. 2061, unchanged.

Rule 137. In Assault and Battery, etc.—In civil actions for assault and battery, slander and defamation of character, if the verdict or judgment shall be for the plaintiff, but for less than twenty dollars, the plaintiff shall not recover his costs, but each party shall be taxed with the costs incurred by him in such suit.

Source: Art. 2062, unchanged.

Rule 138. Cost of New Trials.—The costs of new trials may either abide the result of the suit or may be taxed against the party to whom the new trial is granted, as the court may adjudge when he grants such new trial.

Source: Art. 2063, unchanged.

Rule 139. On Appeal and Certiorari.—When a case is appealed, if the judgment of the higher court be against the appellant, but for less amount than the original judgment, such party shall recover the costs of the higher court but shall be adjudged to pay the costs of the court below; if the judgment be against him for the same or a greater amount than in the court below, the adverse party shall recover the costs of both courts. If the judgment of the court above be in favor of the party appealing and for more than the original judgment, such party shall recover the costs of both courts; if the judgment be in his favor, but for the same or a less amount than in the court below, he shall recover the costs of the court below, and pay the costs of the court above.

Source: Art. 2065, unchanged.

Rule 140. No Fee for Copy.—No fee for a copy of a paper not required by law or these rules to be copied shall be taxed in the bill of costs.

Source: Art. 3906, with minor textual change.

Rule 141. Court May Otherwise Adjudge Costs.—The court may, for good cause, to be stated on the record, adjudge the costs otherwise than as provided by law or these rules.

Source: Art. 2066, with minor textual change.

Rule 142. Security for Costs.—The clerk may require from the plaintiff security for costs before issuing any process, but shall file the petition and enter the same on the docket. No attorney or other officer of the court shall be surety in any cause pending in the court, except under special leave of court. Amended by Order of March 31, 1941.

Source: Art. 2067, unchanged.
Change by amendment of March 31, 1941: The second sentence is added, and its source is Texas Rule 50 (for District and County Courts).

Rule 143. Rule for Costs.—The plaintiff may be ruled to give security for costs at any time before final judgment, upon motion of the defendant or any officer of the court interested in the costs accruing in such suit, and, if such rule be entered against the plaintiff and he fail to comply therewith on or before twenty (20) days after knowledge or notice that such rule has been entered, the suit shall be dismissed.

Source: Art. 2068.
Change: Substitution of twenty day period for reference to next term of court.

Rule 144. Judgment on Cost Bond.—All bonds given as security for costs shall authorize judgment against all the obligors in such bond for the said costs, to be entered in the final judgment of the cause.

Source: Art. 2069, unchanged.

Rule 145. Affidavit of Inability.—A party who is required to give security for costs may file with the clerk or justice of the peace an affidavit that he is too poor to pay the costs of court and is unable to give security therefor; and the clerk or justice shall issue process and perform all other services required of him, in the same manner as if the security had been given. Any party to the suit, or the clerk or justice, shall have the right to contest such affidavit. Such contest may be tried before the trial of the cause, at such time as the court may fix, at the term of court at which the affidavit is filed, after notice thereof has been given to the opposite party or his attorney of record. In the event a contest is filed, the burden shall be on the affiant to prove his alleged inability in open court by evidence other than by the affidavit above referred to.

Source: Art. 2070.
Change: Provision is made for contest of the affidavit of inability to pay costs during the term at which the affidavit is filed, after actual notice of the hearing to the party filing the affidavit. The last sentence is added.

Rule 146. Deposit for Costs.—In lieu of a bond for costs, the party required to give the same may deposit with the clerk of court or the justice of the peace such sum as the court or justice from time to time may designate as sufficient to pay the accrued costs.

Source: Art. 2071, with minor textual change.
Note: Art. 2072 and (Vernon's Tex.Ann.Civ.St.) Art. 2072a were not deemed procedural. These statutes deal with special provisions exempting certain parties from giving security for costs. Related articles on the same general subject will be found in Vernon's Statutes as Articles 279a, 1174, 2072a, 2276, 2276a, 3700, and 7880—126a.

Rule 147. Intervenor or Defendant.—The foregoing rules as to security and rule for costs shall apply also to an intervenor and to a defendant who seeks

a judgment against the plaintiff or any other party upon a cross-action or counterclaim.

Source: Art. 2073.
Change: Elimination from the former statute of the words, "after the plaintiff has discontinued his suit." Addition of the words, "or any other party" and "cross-action or."

Rule 148. Secured by Other Bond.—No further security shall be required if the costs are secured by the provisions of an attachment or other bond filed by the party required to give security for costs.

Source: Art. 2074, unchanged.

Rule 149. Execution for Costs.—When costs have been adjudged against a party and are not paid, the clerk or justice of the court in which the suit was determined may issue execution, accompanied by an itemized bill of costs, against such party to be levied and collected as in other cases; and said officer, on demand of any party to whom any such costs are due, shall issue execution for costs at once. This rule shall not apply to executors, administrators or guardians in cases where costs are adjudged against the estate of a deceased person or of a ward. No execution shall issue in any case for costs until after judgment rendered therefor by the court.

Source: Art. 2077, with minor textual change.

SECTION 7. ABATEMENT AND DISCONTINUANCE OF SUIT

Rule 150. Death of Party.—Where the cause of action is one which survives, no suit shall abate because of the death of any party thereto before the verdict or decision of the court is rendered, but such suit may proceed to judgment as hereinafter provided.

Source: Art. 2078 (part), unchanged.

Rule 151. Death of Plaintiff.—If the plaintiff dies, the heirs, or the administrator or executor of such decedent may appear and upon suggestion of such death being entered of record in open court, may be made plaintiff, and the suit shall proceed in his or their name. If no such appearance and suggestion be made at the first term of the court after the death of the plaintiff, the clerk upon the application of defendant, his agent or attorney, shall issue a scire facias for the heirs or the administrator or executor of such decedent, requiring him to appear and prosecute such suit. After service of such scire facias, should such heir or administrator or executor fail to enter appearance within the time provided, the defendant may have the suit discontinued.

Source: Art. 2078 (part) and 2079, unchanged.

Rule 152. Death of Defendant.—Where the defendant shall die, upon the suggestion of death being entered of record in open court, or upon petition of the plaintiff, the clerk shall issue a scire facias for the administrator or executor or heir requiring him to appear and defend the suit and upon the return of such service, the suit shall proceed against such administrator or executor or heir.

Source: Art. 2080, unchanged.
Note: Art. 4676 contains provisions which are deemed to be in part procedural and in part substantive. The above rule is deemed sufficient to continue in force the procedural portions of Art. 4676.

Rule 153. Where Executor, etc., Dies.—Where an executor or administrator shall be a party to any suit, whether as plaintiff or as defendant, and shall die or cease to be such executor or administrator, the suit may be continued by or against the person succeeding him in the administration, or by or against the heirs, upon like proceedings being had as provided in the two preceding rules, or the suit may be discontinued, as provided in Rule 151.

Source: Art. 2081, with minor textual change.

Rule 154. Requisites of Scire Facias.—The scire facias and returns thereon, provided for in this section, shall conform to the requisites of citations and the returns thereon, under the provisions of these rules.

Source: Art. 2091, with minor textual change.

Rule 155. Surviving Parties.—Where there are two or more plaintiffs or defendants, and one or more of them die, upon suggestion of such death being entered upon the record, the suit shall at the instance of either party proceed in the name of the surviving plaintiffs or against the surviving defendants, as the case may be.

Source: Art. 2082, unchanged.

Rule 156. Death Between Verdict and Judgment.—Where either party dies between verdict and judgment, the judgment shall be entered as if both parties were living.

Source: Art. 2083, unchanged.

Rule 157. Marriage Not to Abate Suit.—A suit by or against a feme sole shall not abate by her marriage, but upon suggestion of such marriage being entered on the record, the husband may make himself a party plaintiff, or if she be a defendant, the clerk shall upon suggestion or upon a petition issue a scire facias to the husband; and the case, after the service and return thereof, shall thereupon proceed to judgment.

Source: Art. 2084, with minor textual change.

Rule 158. Suit for the Use of Another.—When a plaintiff suing for the use of another shall die before verdict, the person for whose use such suit was brought, upon such death being suggested on the record in open court, may prosecute the suit in his own name, and shall be as responsible for costs as if he brought the suit.

Source: Art. 2085, unchanged.

Rule 159. Suit for Injuries Resulting in Death.—In cases arising under the provisions of the title relating to injuries resulting in death, the suit shall not abate by the death of either party pending the suit, but in such case, if the plaintiff dies, where there is only one plaintiff, some one or more of the parties entitled to the money recovered may be substituted and the suit prosecuted to judgment in the name of such party or parties, for the benefit of the person entitled; if the defendant dies, his executor, administrator or heir may be made a party, and the suit prosecuted to judgment.

Source: Art. 2086, unchanged.

Rule 160. Dissolution of Corporation.—The dissolution of a corporation shall not operate to abate any pending suit in which such corporation is a defendant, but such suit shall continue against such corporation and judgment shall be rendered as though the same were not dissolved.

Source: Art. 1390 (part), unchanged.
Comment: The last clause of art. 1390 is deemed to be substantive and is not repealed.

Rule 161. Where Some Defendants Not Served.—Where some of the several defendants in a suit are served with process in due time and others not so served, the plaintiff may either discontinue as to those not so served and proceed against those that are, or he may take new process against those not served. No defendant against whom any suit may be so discontinued shall be thereby exonerated from any liability under which he was, but may at any time be proceeded against as if no such suit had been brought and no such discontinuance entered.

Source: Art. 2087.
Change: Reference to the succeeding term of court is eliminated.

Rule 162. Discontinuance in Vacation.—The plaintiff may enter a discontinuance on the docket in vacation, in any suit wherein the defendant has

not answered, on the payment of all costs that have accrued thereon.

Source: Art. 2089, unchanged.

Rule 163. Discontinuance As to Defendants Served, etc.—When it will not prejudice the other defendants, the court may permit the plaintiff to discontinue his suit as to one or more of several defendants who were served with process, or who have answered, but no such discontinuance shall in any case, be allowed as to a principal obligor, except in the cases provided for in Art. 2088 of the Revised Civil Statutes of Texas.

Source: Art. 2090, with minor textual changes.

Rule 164. Non-Suit.—At any time before the jury has retired, the plaintiff may take a non-suit, but he shall not thereby prejudice the right of an adverse party to be heard on his claim for affirmative relief. When the case is tried by the judge, such non-suit may be taken at any time before the decision is announced.

Source: R.C.S. Art. 2182, unchanged.

Rule 165. Abandonment.—A party who abandons any part of his claim or defense, as contained in the pleadings, may have that fact entered of record, so as to show that the matters therein were not tried.

Source: Texas Rule 33 (for District and County Courts).
Change: All reference to costs has been omitted.

SECTION 8. PRE-TRIAL PROCEDURE

Rule 166. Pre-Trial Procedure; Formulating Issues.—In any action, the court may in its discretion direct the attorneys for the parties and the parties or their duly authorized agents to appear before it for a conference to consider:

(a) All dilatory pleas and all motions and exceptions relating to a suit pending;

(b) The simplification of the issues;

(c) The necessity or desirability of amendments to the pleadings;

(d) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(e) The limitation of the number of expert witnesses;

(f) The advisability of a preliminary reference of issues to a master or auditor for findings to be used as evidence when the trial is to be by jury;

(g) Such other matters as may aid in the disposition of the action. The court shall make an order which recites the action taken at the pre-trial conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or extend it to all actions.

Source: Federal Rule 16.
Change: Subsection 1 has been added. The court has been given the power to compel the appearance of the parties or their agents as well as the attorneys. Reference to an auditor is also authorized.

Rule 167. Discovery and Production of Documents and Things for Inspection, Copying, or Photographing.—Upon motion of any party showing good cause therefor and upon notice to all other parties the court in which an action is pending may order any party to produce and permit the inspection and copying or photographing by or on behalf of the moving party, of any designated documents, papers (except written statements of witnesses), books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just, provided that the rights herein granted shall not extend to the written communications passing between agents or representatives or the employees of either party to the suit, or communications between any party and his agents, representatives, or their employees, where made subsequent to the occurrence of transaction upon which the suit is based, and made in connection with the prosecution, investigation or defense of such claim or the circumstances out of which same has arisen.

Source: Federal Rule 34.
Change: The provision of the Federal Rule regarding land surveying is omitted. The proviso is added to limit the scope of the discovery authorized.

Rule 168. Repealed effective March 31, 1941.

Prior to repeal by Order of March 31, 1941, rule 168 read as follows:

In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending shall, on request as herein provided, order him to submit to one physical or mental examination by such physician or physicians as shall be deemed necessary to completely examine such party, provided that on trial, if two or more of the physicians designated to make the examination shall testify, the testimony shall be limited to different aspects of the examination, and shall not be merely cumulative. After such examination, the court may, in its discretion, order him to submit to an additional physical or mental examination or examinations upon any material amendment of the claim or any material change in the condition of such party. The order may be made only on motion for good cause shown and upon notice to the party to be examined and to all other parties, and shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made. If requested by the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions.

Rule 169. Admission of Facts and of Genuineness of Documents.—At any time after the defendant has made appearance in the cause, or time therefor has elapsed, a party may deliver or cause to be delivered to any other party or his attorney of record a written request for the admission by such party of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth by the request. Copies of the documents shall be delivered with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after delivery thereof or within such further time as the court may allow on motion and notice, the party to whom the request is directed delivers or causes to be delivered to the party requesting the admission or his attorney of record a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters. Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding. Amended by Order of the Supreme Court dated September 20, 1941, effective December 31, 1941.

Source: Federal Rule 36, with minor textual change.
Change by amendment effective December 31, 1941: The method of service is explained to be delivery, etc.

Rule 170. Refusal to Make Discovery; Consequences.—If any party or an officer or managing agent of a party refuses to obey an order made under Rule 167 the court may make such orders in regard to the refusal as are just, and among others, the following:

(a) an order that the matters regarding the character or description of the thing, or the contents of the paper, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony;

(c) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. If a party, after being served with a request under Rule 169 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making such proof. If in the course of such a hearing it shall appear to the satisfaction of the court that any party or his attorney is arbitrarily refusing to cooperate in disposing of questions of fact as to which there is no basis for bona fide controversy, the court shall tax all expenses of proving such facts, including reasonable attorneys fees, against the party refusing to co-operate, subject to review upon appeal. Amended by Order of March 31, 1941.

Source: Federal Rule 37(b) and (c).
Change: Reference to depositions and land descriptions have been omitted. All provision for contempt proceedings is omitted. The penalty for arbitrary refusal to cooperate or denials in bad faith includes the expense of proving the facts and reasonable attorneys fees.
Change by Amendment of March 31, 1941: The parts of the original rule having to do with original rule 168 are now omitted, this being done by changing the word "Rules" in the first sentence to read "Rule"; by striking out and eliminating from such sentence the words and figures "and 168"; by striking out and eliminating the words "or the physical or mental condition of the party" appearing in subdivision (a); and by striking out and eliminating the words "or from introducing evidence of physical or mental condition" appearing in subdivision (b).

Rule 171. Master in Chancery.—The court may, in exceptional cases, for good cause appoint a master in chancery, who shall be a citizen of this State, and not an attorney for either party to the action, nor related to either party, who shall perform all of the duties required of him by the court, and shall be under orders of the court, and have such power as the master of chancery has in a court of equity.

The order of reference to the master may specify or limit his powers, and may direct him to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only and may fix the time and place for beginning and closing the hearings, and for the filing of the master's report. Subject to the limitations and specifications stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of books, papers, vouchers, documents and other writings applicable thereto. He may rule upon the admissibility of evidence, unless otherwise directed by the order of reference and has the authority to put witnesses on oath, and may, himself, examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner as provided for a court sitting in the trial of a case.

The clerk of the court shall forthwith furnish the master with a copy of the order of reference.

The parties may procure the attendance of witnesses before the master by the issuance and service of process as provided by law and these rules.

The court may conform, modify, correct, reject, reverse or recommit the report, after it is filed, as the court may deem proper and necessary in the particular circumstances of the case. The court shall award reasonable compensation to such master to be taxed as costs of suit. Amended by Order of Supreme Court dated September 20, 1941, effective December 31, 1941.

Source: R.C.S. Art. 2320 and Fed. Rule 53 (part).
Change: Elimination of reference to the appointment of a receiver, as found in the statute. Parts only of the Federal Rule have been stated in the above rule.
Change by amendment effective December 31, 1941: In the last sentence the word "master" has been substituted for the word "auditor." Minor changes of punctuation.

Rule 172. Audit.—When an investigation of accounts or examination of vouchers appears necessary for the purpose of justice between the parties to any suit, the court shall appoint an auditor or auditors to state the accounts between the parties and to make report thereof to the court as soon as possible. The auditor shall verify his report by his affidavit stating that he has carefully examined the state of the account between the parties, and that his report contains a true statement thereof, so far as the same has come within his knowledge. Said report shall be admitted in evidence, but may be contradicted by evidence from either party where exceptions to such report or of any item thereof have been filed before the trial. The court shall award reasonable compensation to such auditor to be taxed as costs of suit.

Source: Art. 2292, unchanged.

Rule 173. Guardian Ad Litem.—When a minor, lunatic, idiot or a non-compos mentis may be a defendant to a suit and has no guardian within this State, or where such person is a party to a suit either as plaintiff, defendant or intervenor and is represented by a next friend or a guardian who appears to the court to have an interest adverse to such minor, lunatic, idiot or non-compos mentis, the court shall appoint a guardian ad litem for such person and shall allow him a reasonable fee for his services to be taxed as a part of the costs.

Source: Art. 2159.
Change: Addition of provision for appointment of a guardian ad litem whenever the minor, whether plaintiff, defendant or intervenor, is represented by one having an adverse interest.

Rule 174. Consolidation; Separate Trials.—(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

Source: Federal Rule 42, unchanged.
Note: Supersedes Art. 2160.

Rule 175. Issue of Law and Dilatory Pleas.—When a case is called for trial in which there has been no pre-trial hearing as provided by Rule 166, the issues of law arising on the pleadings, all pleas in abatement and other dilatory pleas remaining undisposed of shall be determined; and it shall be no cause for postponement of a trial of the issues of law that a party is not prepared to try the issues of fact.

Source: R.C.S. Art. 2166 with minor textual change.

SECTION 9. EVIDENCE AND DEPOSITIONS

A. EVIDENCE

Rule 176. Witnesses Subpoenaed.—The clerk of the district or county court, or justice of the peace, as the case may be, at the request of any party to a suit pending in his court, or of any agent or attorney, shall issue a subpoena for any witness or witnesses, male or female, who may be represented to reside within the county or to be found therein at the time of trial.

Source: Acts 1939, 46th Leg., p. 323, Sec. 1, amending Art. 3704, unchanged.
Note: This act took effect prior to the Rule Making Act. See however, Garrett v. Mercantile National Bank of Dallas, 140 Tex. 394, 168 S.W.2d 636.

Rule 177. Form of Subpoena.—The style of the subpoena shall be "The State of Texas." It shall state the style of the suit, the court in which the same is pending, the time and place at which the witness is required to appear, and the party at whose instance the witness is summoned. It shall be dated and tested by the clerk or justice, but need not be under the seal of the court, and the date of its issuance shall be noted thereon. It may be made returnable forthwith, or on any date for which trial of the cause may be set. It shall be addressed to the sheriff or any constable of the county in which the suit is pending. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Acts 1939, 46th Leg., p. 323, Sec. 2, amending Art. 3705.
Note: Same as Rule 176.
Change by amendment effective December 31, 1941: Instead of the words "names of the parties to" the words "style of" have been supplied; and the last sentence has been added.

Rule 178. Service Of.—Subpoenas may be executed and returned at any time, and shall be served by being read to the witness; and service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena.

Source: Acts 1939, 46th Leg., p. 323, Sec. 3, amending Art. 3706, minor textual change.
Note: Same as Rule 176.

Rule 179. Witness Shall Attend.—Every witness summoned in any suit shall attend the court from day to day, and from term to term, until discharged by the court or party summoning such witness. If any witness, after being duly summoned, shall fail to attend, such witness may be fined by the court as for contempt of court, and an attachment may issue against the body of such witness to compel the attendance of such witness; but no such fine shall be imposed, nor shall such attachment issue in a civil suit until it shall be shown to the court, by affidavit of the party, his agent or attorney, that all lawful fees have been paid or tendered to such witness.

Source: Acts 1939, 46th Leg., p. 323, Sec. 4, amending R.C.S. Art. 3707, unchanged.
Note: Same as Rule 176.

Rule 180. Refusal to Testify.—Any witness refusing to give evidence may be committed to jail, there to remain without bail until such witness shall consent to give evidence.

Source: Acts 1939, 46th Leg., p. 323, Sec. 5, amending Art. 3709, unchanged.
Note: Same as Rule 176.

Rule 181. Party As Witness.—Either party to a suit may examine the opposing party as a witness, and shall have the same process to compel his attendance as in the case of any other witness.

Source: Acts 1939, 46th Leg., p. 323, Sec. 6, amending Art. 3711.
Note: Same as Rule 176.

Rule 182. Testimony of Adverse Parties in Civil Suits.—In the trial of any civil suit or proceeding in any justice court, county court, or district court any party plaintiff or defendant shall have the right to call as a witness in his behalf any other individual who is a party to such suit or proceedings, either as plaintiff or defendant. If such other party be a corporation, then any officer or director of such corporation, or manager, superintendent, agent or party in control of the particular matters and things under investigation by any of said courts in the trial of a case may be called as a witness with like effect as if they were individual parties to such suit or proceeding. Any such witness may be examined by the party calling the witness, and if such witness give testimony adverse to the party calling him, the party so calling such adverse witness shall not be bound to accept the testimony of such adverse witness as true, but shall have the right to impeach such witness and the testimony of such witness, and shall have the right to introduce other evidence upon any issue involved in such suit or proceeding without regard to the testimony of such adverse witness; and in examining such adverse witness leading questions may be asked by counsel for the party calling such witness but opposing counsel shall not be permitted to ask such witness leading questions or in any manner lead such witness.

Source: Acts 1929, 41st Leg., 1st C.S., p. 255, ch. 105, Sec. 1; Acts 1931, 42nd Leg., p. 307, ch. 181, Sec. 1, appearing in Vernon's Tex.Ann.Civ.St. as Art. 3769c, with minor textual change.

Rule 183. Interpreters.—The court may, when necessary, appoint interpreters, who may be summoned in the same manner as witnesses, and shall be subject to the same penalties for disobedience.

Source: Art. 3712, unchanged.

Rule 184. Common Law Rules.—The common law of England as practiced and understood shall, in its application to evidence, be followed and practiced in the courts of this State, so far as the same may not be inconsistent with the provisions of the statutes or of these rules.

Source: Art. 3713, with minor textual change.

Rule 184a. Judicial Notice of Law of Other States, Etc.—The judge upon the motion of either party shall take judicial notice of the common law, public statutes, and court decisions of every other state, territory, or jurisdiction of the United States. Any party requesting that judicial notice be taken of such matter shall furnish the judge sufficient information to enable him properly to comply with the request, and shall give each adverse party such notice, if any, as the judge may deem necessary, to enable the adverse party fairly to prepare to meet the request. The rulings of the judge on such matters shall be subject to review. Promulgated by order of October 10, 1945, effective February 1, 1946.

Source: American Law Institute, Code of Evidence, Rules 801 to 806, inclusive.
This is a new rule effective December 31, 1943.
Change by amendment effective February 1, 1946:
The parts giving trial judge and reviewing court power on their own motion have been eliminated, and this includes the proviso and what followed the words "subject to review."

Rule 185. Suit on Sworn Account.—When any action or defense is founded upon an open account or other claim or claims for goods, wares and merchandise, including claims or suits for liquidated money demands based upon written contracts or based on business dealings between the parties, or for personal service rendered, on which a systematic record of said account has been kept, supported by the affidavit of the party, his agent or attorney taken before some officer authorized to administer oaths, to the effect that such cause of action is, within the knowledge of affiant, just and true, that it is due, and that all just and lawful offsets, payments and credits have been allowed, the same shall be taken as prima facie evidence thereof, unless the party re-

sisting such claim shall, before an announcement of ready for trial in said cause, file a written denial, under oath, stating that such account is not just or true, in whole or in part, and if in part only, stating the items and particulars which are unjust; provided, that when such counter-affidavit shall be filed on the day of the trial the party claiming under such verified account shall have the right to continue such cause until the next term of court; when he fails to file such affidavit, he shall not be permitted to deny the account, or any item therein, as the case may be.

Source: Art. 3736, unchanged.

B. DEPOSITIONS

Rule 186. Depositions of Witnesses.—Depositions of witnesses may be taken when the party desires to perpetuate the testimony of a witness, and, in all civil suits heretofore or hereafter brought in this State, whether the witness resides in the county where the suit is brought or out of it; provided, the failure to obtain the deposition of any witness, male or female, residing in the county in which the suit is pending shall not be regarded as want of diligence where diligence has been used to secure the personal attendance of such witness by the service of subpoena or attachment, under the rules of law, unless by reason of age, infirmity or sickness, or official duty, the witness will be unable to attend the court, or unless such witness is about to leave, or has left the State or county in which the suit is pending and will not probably be present at the trial.

Source: Acts 1939, 46th Leg., p. 323, Sec. 7, amending R.C.S. Art. 3738, unchanged.
Caveat: Same as Rule 176. See, however, Garrett v. Mercantile National Bank of Dallas, 140 Tex. 394, 168 S.W. 2d 636.

Rule 187. Deposition to Perpetuate Testimony.—When any person may anticipate the institution of a suit in which he may be interested, and may desire to perpetuate the testimony of a witness to be used in such suit, he, his agent or attorney, may file a written statement in the proper court of the county where such suit could be instituted, representing the fact and the names and residences, if known, of the persons supposed to be interested adversely to said person; a copy of which statement and writ shall be served on the persons interested adversely. Where such person, his agent or attorney, shall at the time of filing such statement make affidavit that the names and residences of the heirs, successors or legal representative of any deceased person are unknown to the affiant, or reside beyond the jurisdiction of the State, the clerk of the court or justice shall issue a like writ, which shall be served on such unknown or non-resident persons by publication in some newspaper in the mode and manner provided by law for the service of original citation upon non-residents or unknown parties; after which the depositions of such witnesses may be taken and returned by the parties making the said statement in the form and under the rules prescribed for taking testimony by deposition; and such testimony may be used in any suit which may be thereafter instituted by or between any of the parties to the statement, or those claiming under them, in like manner as if such depositions had been taken after the institution of such suit. An application or petition for the probate of a will, or an anticipated application or petition for the probate of a will, shall be considered as a suit within the meaning and purport of this article; and, whenever any person in this State shall desire to perpetuate testimony for use in an anticipated application for the probate of a will, notice thereof shall be given in the mode and manner now provided by law for the giving of notices in probate, as provided in Articles 3333 and 3334 of Chapter 4, Title 54, Revised Civil Statutes of 1925. When such suit has been instituted, all such depositions so taken and returned shall be subject to the like exceptions as other depositions.

Source: R.C.S. Art. 3742, unchanged.

Rule 188. Of Adverse Party.—These rules shall govern the taking of the deposition of the adverse party:

(a) Either party to a suit may examine the opposing party as a witness, upon interrogatories filed in the cause, and shall have the same process to obtain his testimony as in the case of any other witness.

(b) No notice of the filing of the interrogatories is necessary.

(c) A commission to take the answers of the party to the interrogatories shall be issued by the clerk or justice, and be executed and returned by any authorized officer as in other cases.

(d) A copy of the interrogatories need not be served on the adverse party before a commission shall issue to take the answers thereto.

(e) The examination of the adverse party shall be conducted and testimony received in the same manner and according to the same rules which apply in the case of any other witness, subject to the provisions of this rule.

(f) The party interrogated may, in answer to questions propounded, state any matter connected with the cause and pertinent to the issue to be tried; and the adverse party may contradict the answers by any other competent testimony in the same manner as he might contradict the testimony of any other witness.

(g) If the party interrogated refuses to answer, the officer executing the commission shall certify such refusal; and any interrogatory which the party refuses to answer, or which he answers evasively, shall be taken as confessed.

(h) The party interrogated may, upon the trial of the case, take exception to the interrogatories on the ground that they are not pertinent, and to the answers that they are not competent evidence.

(i) It shall be no objection to the interrogatories that they are leading in their character.

(j) Where any party to a suit is a corporation, such corporation shall not be permitted to take ex parte depositions, nor shall any ex parte deposition be taken of the agents of such corporation, but if there are more than two parties to the suit ex parte depositions may be taken by or of any such parties to the suit, except the corporation or its agents. It is hereby expressly provided that any party to a suit wherein a corporation is a party shall have the right to take written and oral depositions of any party to such suit or of any witness, after giving notice and complying with the other requirements of the rules governing the taking of written or oral depositions of witnesses. It is further hereby expressly provided that when any ex parte deposition is taken in any suit whatever, either the party taking the same or the party giving the same shall have the right to introduce the deposition in evidence, subject to the general rules of evidence without regard to whether the person offering the same has crossed the interrogatories or not, and without regard to whether or not the witness who gave the deposition is present in court or has testified in the case.

Source: Art. 3769, unchanged.

Rule 189. Notice and Service on Written Interrogatories.—The party wishing to take the deposition of a witness in a suit pending in court shall file with the clerk or justice of the peace, as the case may be, a notice of his intention to apply for a commission to take the answers of the witness to interrogatories attached to such notice. The notice shall state the name and residence of the witness, or the place where he is to be found, and the suit in which the deposition is to be used; and a copy thereof and of the attached interrogatories shall be served up-

on the adverse party, or his attorney of record, five days before the issuance of a commission. Whenever the adverse party is a corporation or joint stock association, service may be made upon the president, secretary or treasurer of such corporation or association, or upon the local agent representing such corporation or association in the county in which the suit is pending, or by leaving a copy of the notice and attached interrogatories at the principal office of such corporation or association during office hours.

Source: Art. 3739, unchanged.

Rule 190. Notice by Publication.—In all civil suits where it shall be shown to the court, by affidavit filed therein, that either party is beyond the jurisdiction of the court, or that he cannot be found, or has died since the commencement of the suit and such death has been suggested at a prior term of court, so that the notice and copy of interrogatories cannot be served upon him for the purpose of taking depositions, and such party has no attorney of record upon whom they can be served, or if he be deceased and all the persons entitled to claim by or through such deceased defendant have not made themselves parties to the suit, and are unknown, the party wishing to take depositions may file his interrogatories in the court where said suit is pending, and the clerk of such court or justice of the peace shall thereupon cause a notice to be published in some newspaper in the county where the suit is pending, if there be a newspaper published in said county, but if not, then in the nearest county where a newspaper is published, once each week for two (2) consecutive weeks, stating the number of the suit, the names of the original parties, in what court the suit is pending, name and residence of the witness to whom the interrogatories are propounded, and that a commission will issue on or after the fourteenth day after the first publication to take the deposition of such witness, at the expiration of which time such clerk or justice shall, on the application of the party filing such interrogatories, his agent or attorney, issue a commission as in other cases.

Source: Acts 1939, 46th Leg., p. 327, Sec. 1, amending Art. 3740, with minor textual change.
Caveat: The 1939 Act took effect after the Rule Making Act. See, however, Garrett v. Mercantile National Bank of Dallas, 140 Tex. 394, 168 S.W.2d 636.

Rule 191. When Citation Served by Publication.—In suits where service of citation has been made by publication, and the defendant has not answered within the time prescribed by law, service of notice of filing interrogatories may be made at any time after the date when the defendant is required to answer, by filing such notice among the papers of the suit at least twenty days before the issuance of a commission; service of notice may also be made in the manner prescribed in the preceding rule.

Source: Art. 3741, with minor textual change.

Rule 192. Cross Interrogatories.—Whenever one party may file interrogatories for the purpose of taking the deposition of a witness, the opposite party may file cross-interrogatories at any time before the commission issues, and a copy of the same shall accompany the direct interrogatories, and shall be answered and returned therewith.

Source: Art. 3743, unchanged.

Rule 193. Commission.—After the service of the notice of filing the interrogatories has been completed, the clerk or justice shall issue a commission to take the deposition of the witness named in the notice.

Source: Art. 3744, unchanged.

Rule 194. Requisites of Commission.—The style of the commission shall be: "The State of Texas." It shall be dated and attested as other process; and be addressed to the several officers set forth in Article 3746 of the Revised Civil Statutes of Texas, 1925, as amended, wheresoever the witness may be found, either of whom may execute and return the same within their respective jurisdictions. It shall authorize and require them, or either of them, to summon the witness before him forthwith, and to take his answers under oath to the direct and cross interrogatories, if any, a copy of which shall be attached to such commission, and to return without delay the commission and interrogatories and the answers of the witness thereto to the clerk or justice of the proper court, giving his official title and post-office address. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Art. 3745, unchanged.
Change by amendment effective February 1, 1946:
The last part of the second sentence commencing "as amended" and ending "jurisdictions," has been added.

Rule 195. Subpoena for Witness.—Upon the receipt of such commission by any officer to whom it is addressed, residing in this State, if the witness does not voluntarily appear, he shall issue a subpoena, directed to the sheriff or any constable of the county, requiring him to summon the witness to appear and answer interrogatories at a time and place named in the subpoena.

Source: Art. 3747, unchanged.

Rule 196. Execution of Commission.—Upon the appearance of the witness the officer to whom the commission is directed shall proceed to take his answers to the interrogatories, reduce to writing, and shall cause the same to be signed and sworn to by the witness. The officer shall certify that the answers were signed and sworn to by the witness before him, and shall seal them up in an envelope, together with the commission and interrogatories and cross-interrogatories, if any, write his name across the seal, and indorse on the envelope the names of the parties to the suit and of the witnesses, and shall direct the package to the clerk of the court or justice from which the commission issued. If the depositions be sent by mail, the officer taking the same shall certify on the envelope enclosing the depositions that he in person deposited same in the mail for transmission, stating the date when and the post office in which the same are so deposited.

Source: Art. 3749, unchanged.

Rule 197. Interpreter.—The officer executing such commission shall have authority, when he deems it expedient, to summon and swear an interpreter to facilitate the taking of the deposition.

Source: Art. 3750, unchanged.

Rule 198. Return of Depositions.—Depositions may be returned to the court either by mail, or by a party interested in taking the same, or by any other person. If returned by mail, the clerk or justice taking them from the postoffice shall indorse on them that he received them from the postoffice, and sign his name thereto. If not sent by mail, the person delivering them into court shall make affidavit before the clerk or justice that he received them from the hands of the officer before whom they were taken; that they have not been out of his possession since, and that they have undergone no alteration.

Source: Art. 3751, unchanged.

Rule 199. Oral Deposition.—The testimony of any witness and of any party to a suit may be taken in any civil case in any district or county court of this State by oral deposition and answer in any instance where depositions are now authorized to be taken.

Source: Art. 3752, with minor textual change.

Rule 200. Notice.—Ten days' notice must be given in writing by the party, or his attorney, proposing to take such deposition, to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the

taking of his deposition. In all cases in rem, the person having the agency or possession of the property at the time of the seizure shall be deemed the adverse party until a claim shall have been put in.

Source: Art. 3753, unchanged.

Rule 201. Compelling Appearance.—Any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify in court provided, that when such depositions are to be taken at a point more than one hundred miles distant from the court where the suit is pending, the party to whom such notice is given may, by notice to the adverse party or his attorney, require the deposition to be taken upon commission and written interrogatories, unless the judge or court before whom said suit is pending shall, upon proper application, after notice, made either in term time or vacation, otherwise direct.

Source: Art. 3754, unchanged.

Rule 202. Request for Issuance.—Upon the application of any party to a suit who desires to take the oral deposition of a witness, the clerk of the court in which the cause is pending shall immediately issue a commission to take the deposition, fixing the time and place for the taking of the testimony as set out in the application. The officer authorized to take the deposition and to whom the commission is delivered shall immediately issue and cause to be served upon the witness a subpoena directing him to appear before said officer at the time and place named in the commission for the purpose of giving his deposition. But the deposition shall not be taken until the opposite party, or his attorney of record, has had the ten days' notice provided for in Rule 200. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 3755, unchanged.
Change by amendment effective December 31, 1947: The previous rule has been completely redrafted and its meaning has been materially altered.

Rule 203. Commission, Requisites Of.—Such commission shall be styled, addressed, dated and tested as provided for in case of written interrogatories, and shall authorize and require the officer or officers to whom the same is addressed, or either of them, to examine said witness before him on the date named in the notice and commission and to take his answers under oath to such questions as may be propounded to him by the respective parties or their attorneys to the suit or proceeding. Such commission shall require such witness to remain in attendance from day to day until such deposition is begun and completed.

Source: Art. 3756, unchanged.

Rule 204. Written Cross-Interrogatories Filed.—At any time before the expiration of ten days from the date of the service of the notice provided for in Rule 200, the party upon whom the notice is served may file with the clerk of the court written interrogatories to the witness and deliver or mail a true copy thereof to the party proposing to take the deposition, or his attorney of record; and the party proposing to take the deposition shall cause a true copy of the interrogatories to be attached to the commission and the answers of the witness to be taken thereto and returned as a part of the deposition. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 3758, unchanged.
Change by amendment effective December 31, 1947: The previous rule has been almost completely redrafted and the procedure as to cross-interrogatories has been materially altered.

Rule 205. Witness Sworn.—Every person so deposing shall be first cautioned and sworn to testify the truth, the whole truth and nothing but the truth.

Source: Art. 3759, unchanged.

Rule 206. Examination.—The witness shall be carefully examined, his testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent.

Source: Art. 3760, unchanged.

Rule 207. Objections to Testimony.—The officer taking such oral deposition shall not sustain objections to any of the testimony taken, nor exclude same; but any of the parties or attorneys engaged in taking the testimony may have any objections they may make recorded with the testimony and reserved for the action of the court in which the cause is pending, but the court shall not be confined to objections made at the taking of the testimony.

Source: Art. 3761, with minor textual change.

Rule 208. Depositions Certified and Returned, How Rules As to Use, etc.—Such depositions shall be certified and returned by the officer taking the same, and opened and used as is provided in case of depositions on written interrogatories.

Source: Art. 3762, unchanged.

Rule 209. Submission to Witness; Changes; Signing.—When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, made as provided in Rule 212, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

Source: Federal Rule 30(e).
Change: Substitution of reference to Rule 212 for reference to Federal Rule 32(d).

Rule 210. Depositions Opened.—Depositions, after being filed, may be opened by the clerk or justice at the request of either party or his counsel; and the clerk or justice shall indorse on such depositions upon what day and at whose request they were opened, signing his name thereto, and they shall remain on file for the inspection of either party.

Source: Art. 3763, unchanged.

Rule 211. Either Party May Use Depositions.—Regardless of whether cross-interrogatories have been propounded either party has the right to use the depositions on the trial.

Source: Art. 3764.
Change: The right to use depositions is not made dependent upon the filing of cross-interrogatories.

Rule 212. Objections to Deposition.—When a deposition shall have been filed in the court at least one entire day before the day on which the case is called for trial, no objection to the form thereof, or to the manner of taking the same, shall be heard, unless such objections are in writing and notice thereof is given to the opposite counsel before the trial commences. Such objection shall be made and determined at the first term of the court after the deposition has been filed, and not thereafter.

Source: Art. 3765, unchanged.

Rule 213. Depositions As Evidence.—Depositions may be read in evidence upon the trial of any

suit in which they are taken, subject to all legal exceptions which might have been made to the interrogatories and answers, were the witness personally present before the court giving evidence.

Source: Art. 3766, unchanged.

Rule 214. Matter Not Responsive.—If any deposition shall contain any testimony not pertinent to the direct and cross-interrogatories propounded, such matter shall be deemed surplusage, and may be stricken out by the court upon objection thereto.

Source: Art. 3767, unchanged.

Rule 215. One's Own Deposition.—The deposition of either party to a suit who is competent to testify therein may be taken in his own behalf in the same manner and with like effect with the depositions of other witnesses.

Source: Art. 3768, unchanged.

SECTION 10. THE JURY IN COURT

Rule 216. Fee.—No jury trial shall be had in any civil suit, unless application be made therefor in open court and unless a fee of five dollars if in the district court, and three dollars if in the county court, be deposited by the applicant with the clerk to the use of the county on or before appearance day or, if thereafter, a reasonable time before the date set for trial of the cause on the non-jury docket, but not less than ten days in advance. The clerk shall promptly enter a notation of the payment of such fee upon the court's docket sheet. Amended by order of March 31, 1941; also by order of September 20, 1941, effective December 31, 1941.

Source: Arts. 2124 and 2125.
Change: The fee must be paid ten days or more before the case is set upon the non-jury docket.
Change by amendment of March 31, 1941: In the first sentence of the original rule the words "unless application be made therefor in open court and" have been interpolated after the first comma.
Change by amendment effective December 31, 1941: The words "the cause is set for trial" have been made to read "the date set for trial of the cause."

Rule 217. Oath of Inability.—The deposit for a jury fee shall not be required when the party shall within the time for making such deposit, file with the clerk his affidavit to the effect that he is unable to make such deposit, and that he can not, by the pledge of property or otherwise, obtain the money necessary for that purpose; and the court shall then order the clerk to enter the suit on the jury docket.

Source: Art. 2127, unchanged.

Rule 218. Jury Docket.—The clerks of the district and county courts shall each keep a docket, styled, "The Jury Docket," in which shall be entered in their order the cases in which jury fees have been paid or affidavit in lieu thereof has been filed as provided in the two preceding rules.

Source: Art. 2128.
Change: The rule provides that all cases be placed on the jury docket upon payment of the fee. The statute provides for placing cases thereon when jury trials "have been ordered by the court."

Rule 219. Jury Trial Day.—The court shall designate any day during the term for the taking up of the jury docket and the trial of the cases thereon. Such order may be revoked or changed at discretion.

Source: Art. 2129.
Change: Elimination of the present statutory requirement that the order be entered upon the minutes.

Rule 220. Withdrawing Cause from Jury Docket.—When any party has paid the fee for a jury trial, he shall not be permitted to withdraw the cause from the jury docket over the objection of the parties adversely interested. If so permitted, the court in its discretion may by an order permit him to withdraw also his jury fee deposit. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 2130, with minor textual change.
Change by amendment effective December 31, 1947: "One" substituted by "any"; "such" by "the"; and "without the consent" by "over the objection."

Rule 221. Challenge to the Array.—When the jurors summoned have not been selected by jury commissioners or by drawing the names from a jury wheel, any party to a suit which is to be tried by a jury may, before the jury is drawn challenge the array upon the ground that the officer summoning the jury has acted corruptly, and has wilfully summoned jurors known to be prejudiced against the party challenging or biased in favor of the adverse party. All such challenges must be in writing setting forth distinctly the grounds of such challenge and supported by the affidavit of the party or some other credible person. When such challenge is made, the court shall hear evidence and decide without delay whether or not the challenge shall be sustained.

Source: Art. 2131, with minor textual change.

Rule 222. When Challenge Is Sustained.—If the challenge be sustained, the array of jurors summoned shall be discharged, and the court shall order other jurors summoned in their stead, and shall direct that the officer who summoned the persons so discharged, and on account of whose misconduct the challenge has been sustained, shall not summon any other jurors in the case.

Source: Art. 2132, unchanged.

Rule 223. Jury List in Certain Counties.—In counties governed as to juries by the laws providing for interchangeable juries, the names of the jurors shall be placed upon the general panel in the order in which they are drawn from the wheel, and jurors shall be assigned for service from the top thereof, in the order in which they shall be needed, and jurors returned to the general panel after service in any of such courts shall be enrolled at the bottom of the list in the order of their respective return; provided, however, that the trial judge upon the demand of any party to any case reached for trial by jury, or of the attorney for any such party, shall cause the names of all the members of the general panel available for service as jurors in such case to be placed in a receptacle and well shaken, and said trial judge shall draw therefrom the names of a sufficient number of jurors from which a jury may be selected to try such cause, and such names shall be transcribed in the order drawn on the jury list from which the jury is to be selected to try such case.

Source: Art. 2138, unchanged.

Rule 224. Preparing Jury List.—In counties not governed as to juries by the laws providing for interchangeable juries, when the parties have announced ready for trial the clerk shall write the name of each regular juror entered of record for that week on separate slips of paper, as near the same size and appearance as may be, and shall place the slips in a box and mix them well. The clerk shall draw from the box, in the presence of the court, the names of twenty-four jurors, if in the district court, or so many as there may be, if there be a less number in the box; and the names of twelve jurors if in the county court, or so many as there may be, and write the names as drawn upon two slips of paper and deliver one slip to each party to the suit or his attorney.

Source: Arts. 2139 and 2140, unchanged.

Rule 225. Summoning Talesman.—When there are not as many as twenty-four names drawn from the box, if in the district court, or as many as twelve, if in the county court, the court shall direct the sheriff to summon such number of qualified persons as the court deems necessary to complete the panel. The names of those thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding rules.

Source: Art. 2141.
Change: "Twenty-four" substituted for "twelve" and "twelve" substituted for "six."

Rule 226. Oath to Jury Panel.—Before the parties or their attorneys begin the examination of the jurors whose names have thus been listed, the jurors shall be sworn by the court under its direction, as follows: "You, and each of you, do solemnly swear that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God."

Source: New rule.

Rule 227. Challenge to Juror.—A challenge to a particular juror is either a challenge for cause or a peremptory challenge. The court shall decide without delay any such challenge, and if sustained, the juror shall be discharged from the particular case. Either such challenge may be made orally on the formation of a jury to try the case.

Source: Art. 2142, unchanged.

Rule 228. "Challenge for Cause" Defined.—A challenge for cause is an objection made to a juror, alleging some fact which by law disqualifies him to serve as a juror in the case or in any case, or which in the opinion of the court, renders him an unfit person to sit on the jury. Upon such challenge the examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge.

Source: Art. 2144, unchanged.

Rule 229. Challenge for Cause.—When twenty-four or more jurors, if in the district court, or twelve or more, if in the county court, are drawn, and the lists of their names delivered to the parties, if either party desires to challenge any juror for cause, the challenge shall then be made. The name of a juror challenged and set aside for cause shall be erased from such lists.

Source: Art. 2143.
Change: Substitution of "twenty-four" for "twelve," and of "twelve" for "six."

Rule 230. Certain Questions Not To Be Asked.—In examining a juror, he shall not be asked a question the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands charged by some legal accusation with theft or any felony.

Source: Art. 2145, unchanged.

Rule 231. Number Reduced by Challenges.—If the challenges reduce the number of jurors to less than twenty-four, if in the district court, or to less than twelve, if in the county court, the court shall order other jurors to be drawn from the wheel or from the central jury panel or summoned, as the practice may be in the particular county, and their names written upon the list instead of those set aside for cause. Such jurors so summoned may likewise be challenged for cause.

Source: Art. 2146.
Change: "Twenty-four" substituted for "twelve" and "twelve" substituted for "six."

Rule 232. Making Peremptory Challenges.—If there remain on such lists not subject to challenge for cause, twenty-four names, if in the district court, or twelve names, if in the county court, the parties shall proceed to make their peremptory challenges. A peremptory challenge is made to a juror without assigning any reason therefor.

Source: Art. 2147.
Change: Same as Rule 231.

Rule 233. Number of Peremptory Challenges.—Each party to a civil suit shall be entitled to six peremptory challenges in a case tried in the district court, and to three in the county court.

Source: Art. 2148, unchanged.

Rule 234. Lists Returned to the Clerk.—When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case be in the district court, call off the first twelve names on the lists that have not been erased; and if the case be in the county court, he shall call off the first six names on the lists that have not been erased; those whose names are called shall be the jury.

Source: Art. 2149, unchanged.

Rule 235. If Jury Is Incomplete.—When by peremptory challenges the jury is left incomplete, the court shall direct other jurors to be drawn or summoned to complete the jury; and such other jurors shall be impaneled as in the first instance.

Source: Art. 2150, unchanged.

Rule 236. Oath to Jury.—The jury shall be sworn by the court or under its direction, in substance as follows: "You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God."

Source: Arts. 2151 and 2179.
Change: Articles combined with minor textual change.

SECTION 11. TRIAL OF CAUSES

A. APPEARANCE AND PROCEDURE

Rule 237. Appearance Day.—If a defendant, who has been duly cited, is by the citation required to answer on a day which is in term time, such day is appearance day as to him. If he is so required to answer on a day in vacation, he shall plead or answer accordingly, and the first day of the next term is appearance day as to him.

If a defendant who is required to answer on a day in vacation file a petition and bond to remove to the Federal Court, said bond may be accepted and approved in vacation either by the clerk or by the judge of the court; and such judge, either in vacation or in term time, and at any place that he may be found within his district, may approve the bond and have entered such order as is proper in regard to the removal of the cause to the Federal Court. Amended by Order of March 31, 1941.

Source: Art. 2152.
Change: Appearance day, where the answer is to be filed during the term, depends upon the date of service rather than on terms of court.

Rule 238. Call of Appearance Docket.—On the appearance day of a particular defendant and at the hour named in the citation, or as soon thereafter as may be practicable, the court or clerk in open court shall call, in their order, all the cases on the docket in which such day is appearance day as to any defendant, or, the court or clerk failing therein, any such case shall be so called on request of the plaintiff's attorney.

Source: Art. 2153.
Change: Directing the call of the appearance docket on the appearance day for the particular case rather than once each term of court, and authorizing the clerk to make the call.

Rule 239. Judgment by Default.—Upon such call of the docket, or at any time after a defendant is required to answer, the plaintiff may in term time take judgment by default against such defendant if he has not previously filed an answer.

Source: Art. 2154, with minor textual change.
Change: "In term time" added.

Rule 240. Where Only Some Answer.—Where there are several defendants, some of whom have answered or have not been duly served and some of whom have been duly served and have made default, an interlocutory judgment by default may be entered against those who have made default, and the cause may proceed or be postponed as to the others.

Source: Art. 2155, with textual change.

Rule 241. Assessing Damages on Liquidated Demands.—Where a judgment by default is rendered against the defendant, or all of several defendants, if the claim is liquidated and proved by an instrument in writing, the damages shall be assessed by the court, or under its direction, and judgment final shall be rendered therefor, unless the defendant shall demand and be entitled to a trial by jury.

Source: Art. 2156.
Change: Substitution of "claim" for "cause of action."

Rule 242. Repealed effective Dec. 31, 1941.
Prior to repeal by order of September 20, 1941, effective December 31, 1941, Rule 242 read as follows:
In a district court any such interlocutory judgment by default and any such final judgment by default which does not require the hearing of evidence, may be noted by the clerk, pursuant to general rule by the judge directing such practice, notwithstanding the judge may be absent, and shall be entered and binding upon the approval of a draft thereof after inspection of the papers by the judge of such court, in open court within the judicial district of and for which he is the judge.

Rule 243. Unliquidated Demands.—If the cause of action is unliquidated or be not proved by an instrument in writing, the court shall hear evidence as to damages and shall render judgment therefor, unless the defendant shall demand and be entitled to a trial by jury in which case the judgment by default shall be noted, a writ of inquiry awarded, and the cause entered on the jury docket. Amended by Order of March 31, 1941.

Source: Art. 2157, unchanged.
Change by amendment of March 31, 1941: The original rule has been amended by striking out the word "claim" and substituting in lieu thereof the words "cause of action."

Rule 244. On Service by Publication.—Where service has been made by publication, and no answer has been filed nor appearance entered within the prescribed time, the court shall appoint an attorney to defend the suit in behalf of the defendant, and judgment shall be rendered as in other cases; but, in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof. The court shall allow such attorney a reasonable fee for his services, to be taxed as part of the costs.

Source: Art. 2158, with minor textual change.

Rule 245. Assignment of Cases for Trial.—The court shall provide by rule for the placing of actions upon the trial calendar.
(a) without request of the parties or
(b) upon request of a party and notice to the other parties or
(c) in such other manner as the courts deem expedient. Precedence shall be given to actions entitled thereto by any statute or rule.

Source: Federal Rule 40, with minor textual change.

Rule 246. Clerk to Give Notice of Settings.—The clerk shall keep a record in his office of all cases set for trial, and it shall be his duty to inform any non-resident attorney of the date of setting of any case upon request by mail from such attorney, accompanied by a return envelope properly addressed and stamped. Failure of the clerk to furnish such information on proper request shall be sufficient ground for continuance or for a new trial when it appears to the court that such failure has prevented the attorney from preparing or presenting his claim or defense.

Source: New rule.

Rule 247. Tried When Set.—Every suit shall be tried when it is called, unless continued or postponed to a future day of the term or placed at the end of the docket to be called again for trial in its regular order. No cause which has been set upon the trial docket of the court shall be taken from the trial docket for the date set except by agreement of the parties or for good cause upon motion and notice to the opposing party.

Source: Art. 2162.
Change: Addition of last sentence.

Rule 248. Jury Cases.—Where juries have been demanded, questions of law, motions, exceptions to pleadings, etc., shall, as far as practicable, be heard and determined by the court before the day designated for the trial, and jurors shall be summoned to appear on the day of the term so designated.

Source: Art. 2164.
Change: The word "motions" has been substituted for the word "demurrers."

Rule 249. Call of Non-Jury Docket.—The non-jury docket shall be taken up at such times as not unnecessarily to interfere with the dispatch of business on the jury docket.

Source: Art. 2165, unchanged.

Rule 250. Repealed effective Dec. 31, 1941.
Prior to repeal by Order of September 20, 1941, effective December 31, 1941, Rule 250 read as follows:
Where a judicial district contains more than one county, by agreement of all parties the evidence may be heard and judgment rendered in any other county of such district without changing the venue of such suit. All pleadings and orders of the court shall be filed in the county where the suit was originally filed.

B. CONTINUANCE AND CHANGE OF VENUE

Rule 251. Continuance.—No application for a continuance shall be heard before the defendant files his defense, nor shall any continuance be granted except for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law.

Source: Art. 2167, unchanged.

Rule 252. Application for Continuance.—If the ground of such application be the want of testimony, the party applying therefor shall make affidavit that such testimony is material, showing the materiality thereof, and that he has used due diligence to procure such testimony, stating such diligence, and the cause of failure, if known; that such testimony cannot be procured from any other source; and, if it be for the absence of a witness, he shall state the name and residence of the witness, and what he expects to prove by him; and also state that the continuance is not sought for delay only, but that justice may be done; provided that, on a first application for a continuance, it shall not be necessary to show that the absent testimony cannot be procured from any other source.

Source: Art. 2168, unchanged.

Rule 253. Absence of Counsel as Ground for Continuance.—Except as provided elsewhere in these rules, absence of counsel will not be good cause for a continuance or postponement of the cause when called for trial, except it be allowed in the discretion of the court, upon cause shown or upon matters within the knowledge or information of the judge to be stated on the record.

Source: Texas Rule 49 (for District and County Courts).
Change: Addition of the wording to the first comma.

Rule 254. Attendance on Legislature.—In all civil actions pending in any court of this State at any time the legislature is in session, it shall be sufficient ground for a continuance of such cause if it shall appear to the court, by affidavit, that any party applying for such continuance, or any attorney for any party to such cause, is a member of either branch of the legislature, and is in actual attendance on a session of the same, and that the presence of party or attorney is necessary to a fair and proper trial of the cause. Where a party to any cause is a member of the legislature his affidavit need not be corroborated but where a continuance is sought by reason of the fact that an attorney for any party is a member of the legislature such affidavit shall be made by both

the party and his said attorney. On the filing of such affidavit the court shall continue the cause until ten days after the adjournment of the legislature and such affidavit shall be proof of the necessity for such continuance, and such continuance shall be deemed one of right and shall not be charged against the movant upon any subsequent application for continuance.

Source: Acts 1929, 41st Leg., p. 17, ch. 7, appearing in Vernon's Tex.Ann.Civ.St. as Art. 2168a, with minor textual change.

Rule 255. Change of Venue by Consent.—Upon the written consent of the parties filed with the papers of the cause, the court, by an order entered on the minutes, may transfer the same for trial to the court of any other county having jurisdiction of the subject matter of such suit.

Source: R.C.S. Art. 2169, unchanged.

Rule 256. Repealed effective Sept. 1, 1941.

Prior to repeal by Order of March 31, 1941, Rule 256 read as follows:

Whenever in any civil case pending in a district or county court, the trial judge shall find and certify of record that a trial, alike fair and impartial to the plaintiff and defendant, cannot from any cause be had in the county in which such suit is pending, he may on his own motion order a change of venue:

(a) If from a district court, to any county in the same or an adjoining district;

(b) If from a county court, to any adjoining county; and thereupon transfer shall be effected in the manner provided for in Rule 261.

Rule 257. Granted on Application.—A change of venue may be granted in civil causes upon application of either party, supported by his own affidavit and the affidavit of at least three credible persons, residents of the county in which the suit is pending, for any following cause:

(a) That there exists in the county where the suit is pending so great a prejudice against him that he cannot obtain a fair and impartial trial.

(b) That there is a combination against him instigated by influential persons, by reason of which he cannot expect a fair and impartial trial.

(c) For other sufficient cause to be determined by the court.

Source: Art. 2170, unchanged.

Rule 258. Shall Be Granted.—Where such application for a change of venue is duly made, it shall be granted, unless the credibility of those making such application, or their means of knowledge or the truth of the facts set out in the said application are attacked by the affidavit of a credible person; when thus attacked, the issue thus formed shall be tried by the judge, and the application either granted or refused.

Source: Art. 2171, unchanged.

Rule 259. To What County.—If the application is granted, the cause shall be removed:

(a) If from a district court, to any county in the same or an adjoining district;

(b) If from a county court, to any adjoining county; but the parties may agree that it shall be changed to some other county, and the order of court shall conform to such agreement.

Source: Art. 2172.

Change: The venue is not required to be changed to the adjoining county with the courthouse nearest to the courthouse in the county where the suit is pending.

Rule 260. In Case of New Counties.—When a suit is pending in the district or county court of any county, out of the territory of which a new county has been or may be made, in whole or in part, if the defendants or any one of them, shall file a motion in the court where such suit is pending, to transfer the same to such new county, naming it, together with an affidavit stating that neither he nor anyone of the defendants resided in said territorial limit at the time the suit was instituted, and further stating that at the date of the filing of such suit, said defendant was a resident citizen within the territorial limits of the new county, the court shall grant a change of venue to such new county, unless the suit could be properly brought in the county in which the same is pending under some provision of law.

Source: Art. 2173, unchanged.

Rule 261. Transcript on Change.—When a change of venue has been granted, the clerk shall immediately make out a correct transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send the same, with the original papers in the cause, to the clerk of the court to which the venue has been changed.

Source: Art. 2174, unchanged.

C. THE TRIAL

Rule 262. Trial by the Court.—The rules governing the trial of causes before a jury shall govern in trials by the court in so far as applicable.

Source: Art. 2176, unchanged.

Rule 263. Agreed Case.—Parties may submit matters in controversy to the court upon an agreed statement of facts filed with the clerk, upon which judgment shall be rendered as in other cases; and such agreed statement signed and certified by the court to be correct and the judgment rendered thereon shall constitute the record of the cause.

Source: Art. 2177, unchanged.

Rule 264. Appeal Tried De Novo.—Cases brought up from inferior courts shall be tried de novo.

Source: Art. 2178, unchanged.

Rule 265. Order of Proceedings on Trial by Jury.—The trial of cases before a jury shall proceed in the following order unless the court should, for good cause, to be stated in the record, otherwise direct:

(a) Plaintiff's petition shall be read to the jury.

(b) Defendant's answer shall be read to the jury.

(c) If there be any intervenor his pleadings shall be read.

(d) The party upon whom rests the burden of proof on the whole case under the pleadings, shall be permitted to state to the jury briefly the nature of his claim or defense and facts relied upon in support thereof.

(e) Such party shall then introduce his evidence.

(f) The adverse party may then state briefly the nature of his defense or claim and the facts relied on in support thereof.

(g) He shall then introduce his evidence.

(h) The intervenor may, in like manner, make his statement, and shall then introduce his evidence.

(i) The parties shall then be confined to rebutting testimony on each side.

(j) But one counsel on each side shall examine and cross-examine the same witness, except on leave granted. As amended by Order of March 31, 1941.

Source: Art. 2180.

Change by amendment of March 31, 1941: The above Article is unchanged except that subdivision (j) above has been added. Its source is Texas Rule 43 (for District and County Courts), unchanged.

Rule 266. Open and Close—Admission.—Except as provided in Rule 269 the plaintiff shall have the right to open and conclude both in adducing his evidence and in the argument, unless the burden of proof on the whole case under the pleadings rests upon the defendant, or unless the defendant or all of the defendants, if there should be more than one, shall, after the issues of fact are settled and before the trial commences, admit that the plaintiff is entitled to recover as set forth in the petition, except so far as he may be defeated, in whole or in part, by the allegations of the answer constituting a good defense, which may be established on the trial; which admission shall be entered of record, whereupon the defendant, or the defendants, if more than one, shall

have the right to open and conclude in adducing the evidence and in the argument of the cause. The admission shall not serve to admit any allegation which is inconsistent with such defense, which defense shall be one that defendant has the burden of establishing, as for example, and without excluding other defenses: accord and satisfaction, adverse possession, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, release, res judicata, statute of frauds, statute of limitations, waiver, and the like.

Source: Texas Rule 31 (for District and County Courts).
Change: Reference to Rule 269. Substitution of "is entitled to recover" for "has a good cause of action," substitution of "allegations" for "facts." Last sentence is added.

Rule 267. Witnesses Placed Under Rule.—At the request of either party, in a civil case, the witnesses on both sides may be sworn and removed out of the court room to some place where they can not hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under the rule. Neither party to the suit shall be placed under the rule. Where a corporation is a party to the suit, the court may exempt from the rule an officer or other representative of such corporation to aid counsel in the presentation of the case. If any party be absent the court in its discretion may exempt from the rule a representative of such party. Witnesses, when placed under the rule, shall be instructed by the court that they are not to converse with each other or with any other person about the case other than the attorneys in the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under the rule. Any person violating such instructions may be punished for contempt of court.

Source: C.C.P. Arts. 644, 647.
Change: Specific authorization is given for the parties or their proper representatives to be exempted from the rule, and no requirement is made in civil cases that the witnesses be placed in the custody of an officer of the court.

Rule 268. Motion for Instructed Verdict.—A motion for directed verdict shall state the specific grounds therefor.

Source: Last sentence of Federal Rule 50(a) unchanged.

Rule 269. Argument.—(a) After the evidence is concluded and the charge is read, the parties may argue the case to the jury. The party having the burden of proof on the whole case, or on all matters which are submitted by the charge, whether upon special issues or otherwise, shall be entitled to open and conclude the argument; where there are several parties having separate claims or defenses, the court shall prescribe the order of argument between them.

(b) In all arguments, and especially in arguments on the trial of the case, the counsel opening shall present his whole case as he relies on it, both of law and facts, and shall be heard in the concluding argument only in reply to the counsel on the other side.

(c) Counsel for an intervenor shall occupy the position in the argument assigned by the court according to the nature of the claim.

(d) Arguments on questions of law shall be addressed to the court, and counsel should state the substance of the authorities referred to without reading more from books than may be necessary to verify the statement. On a question on motions, exceptions to the evidence, and other incidental matters, the counsel will be allowed only such argument as may be necessary to present clearly the question raised, and refer to authorities on it, unless further discussion is invited by the court.

(e) Arguments on the facts should be addressed to the jury, when one is impaneled in a case that is being tried, under the supervision of the court. Counsel shall be required to confine the argument strictly to the evidence and to the arguments of opposing counsel. Mere personal criticism by counsel upon each other shall be avoided, and when indulged in shall be promptly corrected as a contempt of court.

(f) Side-bar remarks, and remarks by counsel of one side, not addressed to the court, while the counsel on the other side is examining a witness or arguing any question to the court, or addressing the jury, will be rigidly repressed by the court.

(g) The court will not be required to wait for objections to be made when the rules as to arguments are violated; but should they not be noticed and corrected by the court, opposing counsel may ask leave of the court to rise and present his point of objection. But the court shall protect counsel from any unnecessary interruption made on frivolous and unimportant grounds.

(h) It shall be the duty of every counsel to address the court from his place at the bar, and in addressing the court to rise to his feet; and while engaged in the trial of a case, he shall remain at his place in the bar. Amended by Order of March 31, 1941.

Source of Subdivision (a): Art. 2183.
Change: Addition, in second sentence, of words "or on all the matters which are submitted by the charge, whether upon special issues or otherwise."
Change by amendment of March 31, 1941: Source of Subdivisions (b) through (h): Texas Rules 36 through 42 (for District and County Courts).

Rule 270. Additional Testimony.—At any time the court may permit additional evidence to be offered where it clearly appears to be necessary to the due administration of justice. Provided in a jury case no evidence on a controversial matter shall be received after the verdict of the jury.

Source: Art. 2181.
Change: Omission of the words "before the conclusion of the argument to supply an omission" after "offered," and addition of proviso.

D. CHARGE TO THE JURY

Note: Rules 271–273, 275–277, and 279, following are based upon present statues. After stating the rule as recommended, its source is stated and it is then carried in full with changes in the statutory language indicated for information. Wording of the present statute which is eliminated is enclosed within brackets. Wording which is added to the statutory language is indicated by italics.

Rule 271. Charge to the Jury.—Unless expressly waived by the parties, the judge shall prepare and in open court deliver a written charge to the jury. If the case is submitted on a general charge, he shall instruct the jury on the law applicable to the case. If the case is submitted on special issues, he shall submit the issues of fact to the jury.

Source: Art. 2184.
*Note: Changes indicated: "Unless expressly waived by the parties, the judge shall prepare and in open court deliver a written charge to the jury [on the law of the case, or]. *If the case is submitted on a general charge, he shall instruct the jury on the law applicable to the case.* If the case is submitted on special issues, he shall submit the issues of fact to the jury."
*See Note, Subsection D, supra.

Rule 272. Requisites.—The charge shall be in writing, signed by the judge, and filed with the clerk, and shall be a part of the record of the cause. It shall be prepared after the evidence has been concluded and shall be submitted to the respective parties or their attorneys for inspection, and a reasonable time given them in which to examine and present objections thereto, which objections shall in every instance be presented to the court in writing before the charge is read to the jury, and all objections not so made and presented shall be considered as waived. When written objections have been so made and presented, if the court overrules same, he shall endorse his ruling thereon and sign the same officially, and when the same is so endorsed, it shall constitute a sufficient bill of exception to the ruling of the court thereon, and when so endorsed by the judge it shall be presumed, unless otherwise noted thereon, that the party making such objections presented the same at the proper time and excepted to the ruling thereon. The requirement that the objections to the court's

charge shall be in writing will be sufficiently complied with if such objections are dictated to the court reporter in the presence of and with the consent of the court and opposing counsel, before the reading of the court's charge to the jury, and are subsequently transcribed and the court's ruling and official signature endorsed thereon and filed with the clerk in time to be included in the transcript. Failure of the court to give reasonable time to the parties or their attorneys for examination of the charge shall be reviewable upon appeal upon proper exception. The judge shall so frame his charge as to distinctly separate questions of law from questions of fact, and not therein comment on the weight of the evidence, and so as to instruct the jury as to the law arising on the facts, and shall only submit controverted questions of fact. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Art. 2185.

*Note: Changes indicated: "The charge shall be in writing, signed by the judge, *and* filed with the clerk, and shall be a part of the record of the cause. It shall be prepared after the evidence has been concluded and shall be submitted to the respective parties or their attorneys for inspection, and a reasonable time given them in which to examine and present objections thereto, which objections shall in every instance be presented to the court *in writing* before the charge is read to the jury, and all objections not so made and presented shall be considered as waived. *When written objections have been so made and presented, if the court overrules same, he shall endorse his ruling thereon and sign the same officially, and when the same is so endorsed, it shall constitute a sufficient bill of exception to the ruling of the court thereon, and when so endorsed by the judge it shall be presumed, unless otherwise noted thereon, that the party making such objections presented the same at the proper time and excepted to the ruling thereon.* Failure of the court to give reasonable time to the parties or their attorneys for examination of the charge shall be reviewable upon appeal upon proper exception. The judge shall so frame his charge as to distinctly separate questions of law from questions of fact, and not therein comment on the weight of the evidence, and so as to instruct the jury as to the law arising on the facts, and shall only submit controverted questions of fact."

Change by amendment effective December 31, 1941: The fourth sentence has been added, that is, the sentence which authorizes counsel to dictate his objections to the court reporter with the consent of the court and opposing counsel.

*See Note, Subsection D, supra.

Rule 273. Special Charges.—Either party may present to the judge and request such written instructions, special issues, definitions or explanatory instructions, as he desires to be given to the jury; and the judge may give same or a part thereof, or he may refuse to give them, as he may see proper. Such requests shall be prepared and presented to the court and submitted to opposing counsel for examination and objection within a reasonable time after the charge is given to the parties or their attorneys for examination.

Source: Art. 2186.

*Note: Changes indicated: "Either party may present to the judge *and request* such written instructions, *special issues, definitions or explanatory instructions,* as he desires to be given to the jury; and the judge may give [such instructions] *same* or a part thereof, or he may refuse to give them, as he may see proper. Such [instructions] *requests* shall be prepared and presented to the court and submitted to opposing counsel for examination and objection within a reasonable time after the charge is given to the parties or their attorneys for examination."

*See Note, Subsection D, supra.

Rule 274. Objections and Requests.—A party objecting to a charge must point out distinctly the matter to which he objects and the grounds of his objection. Any complaint as to an instruction, issue, definition or explanatory instruction, on account of any defect, omission, or fault in pleading, shall be deemed waived unless specifically included in the objections. Where the objection made by the complaining party, or an instruction, issue, definition, or explanatory instruction requested by him, is in the opinion of the appellate court obscured or concealed by voluminous unfounded objections, minute differentiations or numerous unnecessary requests, such objection or request shall be untenable. No objection to one part of the charge may be adopted and applied to any other part of the charge by reference only. Amended by order of September 20, 1941, effective December 31, 1941.

Source: A new rule.

Change by amendment effective December 31, 1941: The second sentence has been added.

Rule 275. Charge Read Before Argument.—Before the argument is begun, the judge shall read to the jury, in the precise words in which they were written, his charge and all requested instructions, special issues, definitions, and explanatory instructions which he may give.

Source: R.C.S. Art. 2187.

*Note: Changes indicated: "Before the argument is begun, the judge shall read to the jury, in the precise words in which they are written, his charge and all [special charges] *requested instructions, special issues, definitions, and explanatory instructions* which he may give."

*See Note, Subsection D, supra.

Rule 276. Refusal or Modification.—When an instruction, special issue, definition or explanatory instruction is requested and the provisions of the law have been complied with and the trial judge refuses the same, he shall indorse thereon "Refused," and sign the same officially. If the trial judge modifies the same he shall indorse thereon "Modified as follows: (stating in what particular he has modified the same) and given, and exception allowed" and sign the same officially. Such refused or modified instruction, special issue, definition or explanatory instruction, when so indorsed shall constitute a bill of exceptions, and it shall be conclusively presumed that the party asking the same presented it at the proper time, excepted to its refusal or modification, and that all the requirements of law have been observed, and such procedure shall entitle the party requesting the same to have the action of the trial judge thereon reviewed without preparing a formal bill of exceptions.

Source: R.C.S. Art. 2188.

*Note: Changes indicated: "When [a special] *an* instruction *special issue, definition or explanatory instruction* is requested and the provisions of the law have been complied with and the trial judge refuses the same, he shall indorse thereon 'Refused,' and sign the same officially. If the trial judges modifies [a special charge] *the same* he shall indorse thereon "Modified as follows: (stating in what particular he has modified the [charge] *same*) and given, and exception allowed" and sign the same officially. Such refused or modified [charge] *instruction, special issue, definition or explanatory instruction,* when so indorsed shall constitute a bill of exceptions, and it shall be conclusively presumed that the party asking [said charge] *the same* presented [the same] *it* at the proper time, excepted to its refusal or modification, and that all the requirements of law have been observed, and [the same] *such procedure* shall entitle the party requesting [such charge] *the same* to have the action of the trial judge thereon reviewed without preparing a formal bill of exceptions."

*See Note, Subsection D, supra.

Rule 277. Special Issues.—In all jury cases the court may submit said cause upon special issues without request of either party, and, upon request of either party, shall submit the cause upon special issues raised by the written pleadings and the evidence in the case, except that, for good cause subject to review or on agreement of the parties, the court may submit the same on a general charge. Such special issues shall be submitted distinctly and separately and each issue shall be answered by the jury separately, provided that, if it be deemed advisable, the court may submit disjunctively in the same question two inconsistent issues where it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists. For example, the court may, in a workmen's compensation case, submit in one question whether the injured employee was permanently or only temporarily disabled. Where practicable, all issues should be submitted in the affirmative, and in plain and simple language. It is proper to so frame the issue as to place the burden of proof thereon, but where, in the opinion of the court, this cannot be done without complicating the form of the issue, the burden of proof on such issue

may be placed by a separate instruction thereon. In submitting special issues the court shall submit such explanatory instructions and such definitions of legal terms as shall be necessary to enable the jury to properly pass upon and render a verdict on such issues, and in such instances the charge shall not be subject to the objection that it is a general charge. If the nature of the suit is such that it cannot be determined on the submission of special issues, the court may refuse the request to do so, but the action of the court in refusing may be reviewed on proper exception in the appellate court, and this rule shall be construed in connection with the succeeding rule. Amended by order of March 31, 1941.

Source: R.C.S. Art. 2189.

*Note: Changes indicated: "In all jury cases the court may submit said cause upon special issues without request of either party, and upon request of either party, shall submit the cause upon special issues raised by the *written* pleadings and the evidence in the case, *except that, for good cause subject to review or on agreement of the parties, the court may submit the same on a general charge.* Such special issues shall be submitted distinctly and separately *and* each issue shall be answered by the jury separately, *provided that, if it be deemed advisable, the court may submit disjunctively in the same question two inconsistent issues where it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists. For example, the court may, in a workmen's compensation case, submit in one question whether the injured employee was permanently or only temporarily disabled. Where practicable, all issues should be submitted in the affirmative, and in plain and simple language. It is proper to so frame the issues as to place the burden of proof thereon, but where, in the opinion of the court, this cannot be done without complicating the form of the issue, the burden of proof on such issue may be placed by a separate instruction thereon.* In submitting special issues the court shall submit such [explanations] *explanatory instructions* and *such* definitions of legal terms as shall be necessary to enable the jury to properly pass upon and render a verdict on such issues, *and in such instances the charge shall not be subject to the objection that it is a general charge. If* the nature of the suit is such that it cannot be determined on the submission of special issues, the court may refuse the request to do so, but the action of the court in refusing may be reviewed on proper exception in the appellate court, and this [article] *rule* shall be construed in connection with the succeeding [article] *rule.*"

Change by Amendment of March 31, 1941: These changes for convenience have been indicated in the above Note and consist of the following: The word "written" has been interpolated before the word "pleadings" in the first sentence; words in the original rule coming after the words "provided that" in the second sentence, and providing for certain disjunctive submission, have been eliminated; the word "If" in the third sentence has been changed to read "if"; and also in such sentence the words "also" and "or more" have been eliminated. The Note begining with an asterisk has been changed so as not to refer to a page but to a particular part of the original rules.

*See Note, Subsection D, Charge to the Jury, in original rules.

Rule 278. Repealed effective Sept. 1, 1941.

Prior to repeal by Order of March 31, 1941, Rule 278 read as follows:

The fact that an issue is multifarious or duplicitous shall not constitute ground for reversal except where it affirmatively appears from the record that the complaining party was prejudiced thereby.

Rule 279. Submission of Issues.—When the court submits a case upon special issues, he shall submit the controlling issues made by the written pleadings and the evidence, and, except in trespass to try title, statutory partition proceedings and other special proceedings in which the pleadings are specially defined by statutes or procedural rules, a party shall not be entitled to an affirmative submission of any issue in his behalf where such issue is raised only by a general denial and not by an affirmative written pleading on his part. Nothing herein shall change the burden of proof from what it would have been under a general denial. Where the court has fairly submitted the controlling issues raised by such pleading and the evidence, the case shall not be reversed because of the failure to submit other and various phases or different shades of the same issue. Failure to submit an issue shall not be deemed a ground for reversal of the judgment, unless its submission, in substantially correct wording, has been requested in writing and tendered by the party complaining of the judgment; provided, however, that objection to such failure shall suffice in such respect if the issue is one relied upon by the opposing party. Failure to submit a definition or explanatory instruction shall not be deemed a ground for reversal of the judgment unless a substantially correct definition or explanatory instruction has been requested in writing and tendered by the party complaining of the judgment.

Upon appeal all independent grounds of recovery or of defense not conclusively established under the evidence and upon which no issue is given or requested shall be deemed as waived; but where such ground of recovery or of defense consists of more than one issue, if one or more of the issues necessary to sustain such ground of recovery or of defense, and necessarily referable thereto, are submitted to and answered by the jury, and one or more of such issues are omitted, without such request, or objection, and there is evidence to support a finding thereon, the trial court, at the request of either party, may after notice and hearing and at any time before the judgment is rendered, make and file written findings on such omitted issue or issues in support of the judgment, but if no such written findings are made, such omitted issue or issues shall be deemed as found by the court in such manner as to support the judgment. A claim that the evidence was insufficient to warrant the submission of any issue may be made for the first time after verdict, regardless of whether the submission of such issue was requested by the complaining party. Amended by Order of March 31, 1941.

Source: Art. 2190.

*Note: Changes indicated: "When the court submits a case upon special issues, he shall submit [all] the *controlling* issues made by the *written* pleadings and the evidence, *and, except in trespass to try title, statutory partition proceedings and other special proceedings in which the pleadings are specially defined by statute or procedural rules, a party shall not be entitled to an affirmative submission of any issue in his behalf where such issue is raised only by a general denial and not by an affirmative written pleading on his part. Nothing herein shall change the burden of proof from what it would have been under a general denial. Where the court has fairly submitted the controlling issues raised by such pleading and the evidence, the case shall not be reversed because of the failure to submit other and various phases or different shades of the same issue.* Failure to submit an issue shall not be deemed a ground for reversal of the judgment, unless its submission, *in substantially correct wording,* has been requested in writing *and tendered* by the party complaining of the judgment; *provided, however, that objection to such failure shall suffice in such respect if the issue is one relied upon by the opposing party. Failure to submit a definition or explanatory instruction shall not be deemed a ground for reversal of the judgment unless a correct definition or explanatory instruction has been requested in writing and tendered by the party complaining of the judgment.*

"Upon appeal [or Writ of Error, an issue not submitted and not requested is] *all independent grounds of recovery or of defense not conclusively established under the evidence and upon which no issue is given or requested shall be deemed as waived; but where such ground of recovery or of defense consists of more than one issue, if one or more of the issues necessary to sustain such ground of recovery or of defense, and necessarily referable thereto are submitted to and answered by the jury, and one or more of such issues are omitted, without such request, or objection, and there is evidence to support a finding thereon, the trial court, at the request of either party, may after notice and hearing and at any time before the judgment is rendered make and file written findings on such omitted issue or issues in support of the judgment, but if no such written findings are made, such omitted issue or issues shall be* deemed as found by the court in such manner as to support the judgment [if there is evidence to sustain such finding]. A claim that the evidence was insufficient to warrant the submission of any issue may be made for the first time after verdict, regardless of whether the submission of such issue was requested by the complaining party."

*See Note, Subsection D, Charge to the Jury, in the original rules.

Change by amendment of March 31, 1941: These changes for convenience have been indicated in the above Note and consist of the following: The original rule has been amended in the first sentence thereof by inserting the word "written" immediately before the words "pleadings and the evidence"; and also by inserting the word "written" immediately before the words "pleading on his part."

This rule has also been amended by striking out and eliminating the words "favorably to the judgment" in the second paragraph of the rule.

E. CASE TO THE JURY

Rule 280. Foreman of Jury.—Each jury shall appoint one of their body foreman.

Source: Art. 2192, unchanged.

Rule 281. Papers Taken to Jury Room.—The jury may take with them in their retirement the charges and instructions, general or special, which were given and read to them, and any written evidence, except the depositions of witnesses, but shall not take with them any special charges which have been refused. Where part only of a paper has been read in evidence, the jury shall not take the same with them, unless the part so read to them is detached from that which was excluded.

Source: R.C.S. Art. 2193, unchanged.

Rule 282. Jury Kept Together.—The jury may either decide a case in court or retire for deliberation. If they retire, they shall be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court; but the court in its discretion may permit them to separate temporarily for the night and at their meals, and for other proper purposes.

Source: Art. 2194, unchanged.

Rule 283. Duty of Officer Attending Jury.—The officer in charge of the jury shall not make nor permit any communication to be made to them, except to inquire if they have agreed upon a verdict, unless by order of the court; and he shall not before their verdict is rendered communicate to any person the state of their deliberations or the verdict agreed upon.

Source: Art. 2195, unchanged.

Rule 284. Judge to Caution Jury.—If permitted to separate, either during the trial or after the case is submitted to them, the jury shall be admonished by the court that it is their duty not to converse with, or permit themselves to be addressed by any other person, on any subject connected with the trial.

Source: Art. 2196, unchanged.

Rule 285. Jury May Communicate With Court.—The jury may communicate with the court by making their wish known to the officer in charge, who shall inform the court, and they may then in open court, and through their foreman, communicate with the court, either verbally or in writing. If the communication is to request further instructions, Rule 286 shall be followed.

Source: Art. 2197, unchanged. The last sentence is added.

Rule 286. Jury May Receive Further Instructions.—After having retired, the jury may receive further instructions of the court touching any matter of law, either at their request or upon the court's own motion. For this purpose they shall appear before the judge in open court in a body, and if the instruction is being given at their request, they shall through their foreman state to the court, in writing, the particular question of law upon which they desire further instruction. The court shall give such instruction in writing, but no instruction shall be given except in conformity with the rules relating to the charge. Additional argument may be allowed in the discretion of the court.

Source: Art. 2198.
Change: Authorizing court to give additional instructions on his own motion where deemed proper, and requiring the jury to make its request in writing.

Rule 287. Disagreement As to Evidence.—If the jury disagree as to the statement of any witness, they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness' testimony on the point in dispute; but, if there be no such reporter, or if his notes cannot be read to the jury, the court may cause such witness to be again brought upon the stand and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, as nearly as he can in the language used on the trial; and on their notifying the court that they disagree as to any portion of a deposition or other paper not permitted to be carried with them in their retirement, the court may, in like manner, permit such portion of said deposition or paper to be again read to the jury.

Source: Acts 1939, 46th Leg., p. 213, Sec. 1, being Art. 2199, as amended, with minor textual change.
Caveat: The above statute took effect on Jan. 1, 1940, after the Rule Making Act became effective. See, however, Garrett v. Mercantile National Bank of Dallas, 140 Tex. 394, 168 S.W.2d 636.

Rule 288. Court Open for Jury.—The court, during the deliberations of the jury, may proceed with other business or recess from time to time, but shall be deemed open for all purposes connected with the case before the jury.

Source: Art. 2201, with minor textual change.

Rule 289. Discharge of Jury.—The jury to whom a case has been submitted may be discharged by the court in instances as follows:

(a) When they cannot agree and both parties consent to their discharge, or when they have been kept together for such time as to render it altogether improbable that they can agree, or when any calamity or accident may, in the opinion of the court, require it, or when by sickness or other cause their number is reduced below the number constituting the jury in such court.

(b) The jury shall be discharged by the final adjournment of the court before they have agreed upon a verdict.

(c) Where a jury has been discharged without having rendered a verdict, the cause may be again tried at the same or another term.

Source: Art. 2200, reworded with minor textual change.

F. VERDICT

Rule 290. Definition and Substance.—A verdict is a written declaration by a jury of its decision, comprehending the whole or all the issues submitted to the jury, and shall be either a general or special verdict, as directed, which shall be signed by the foreman of the jury.

A general verdict is one whereby the jury pronounces generally in favor of one or more parties to the suit upon all or any of the issues submitted to it. A special verdict is one wherein the jury finds the facts only on issues made up and submitted to them under the direction of the court.

A special verdict shall, as between the parties, be conclusive as to the facts found.

Source: Art. 2202, reworded with minor textual change.

Rule 291. Form of Verdict.—No special form of verdict is required, and the judgment shall not be arrested or reversed for mere want of form therein if there has been substantial compliance with the requirements of the law in rendering a verdict. No verdict shall be rendered in any cause except upon the concurrence of all members of the jury trying the case.

Source: Art. 2203, unchanged.

Rule 292. Verdict by Nine Jurors.—Pending a trial of a civil case in the district court, where one or more jurors may die or be disabled from sitting, if there be as many as nine of the jurors remaining, those remaining may render and return a verdict; but in such case the verdict must be signed by each juror rendering it.

Source: Art. 2204, unchanged.

Rule 293. When the Jury Agree.—When the jury agree upon a verdict, they shall be brought into court by the proper officer, and they shall deliver

their verdict to the clerk; and if they state that they have agreed, the verdict shall be read aloud by the clerk. If in proper form, and no juror dissent therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court.

Source: R.C.S. Art. 2205.
Change: Elimination of the requirement that the jurors' names be called by the clerk.

Rule 294. Polling the Jury.—Either party shall have the right to have the jury polled. When a jury is polled, this is done by reading once to the jury collectively the general verdict, or the special issues and answers thereto consecutively, and then calling the name of each juror separately and asking him if it is his verdict. If any juror answer in the negative, the jury shall be retired for further deliberation.

Source: R.C.S. Art. 2206.
Change: Omission of words "which is done by." Addition of words of second sentence through words, "and then."

Rule 295. Defective Verdict.—If the verdict is informal or defective, the court may direct it to be reformed at the bar. If it is not responsive to the issue submitted, or contains conflicting findings, the court shall call the jury's attention thereto in writing and send them back for further deliberation.

Source: Art. 2207.
Change: Addition of words, "in writing."

G. FINDINGS BY COURT

Rule 296. Conclusions of Fact and Law.—Upon a trial by the court, the judge shall, at the request of either party, state in writing the conclusions of fact found by him separately from the conclusions of law. Such findings of fact and conclusions of law shall be filed with the clerk and shall be a part of the record.

Source: Art. 2208, unchanged.

Rule 297. Time to File Conclusions.—When demand is made therefor, the judge of a district or county court thirty days before the time for filing transcript in the cause shall prepare his findings of fact and conclusions of law in any case tried before the court. If he shall fail so to prepare them, the party so demanding, in order to complain of the failure, shall, in writing, within five days after such period, call the omission to the attention of the judge, whereupon the period for due preparation and filing shall be automatically extended for five days after such notification.

Source: Art. 2247, unchanged.

Rule 298. Additional or Amended Findings.—After the judge so files original findings of fact and conclusions of law either party may, within five days, request of him specified further, additional, or amended findings; and the judge shall, within five days after such request, and not later, prepare and file such further, other or amended findings and conclusions as may be proper, whereupon they shall be considered as filed in due time.

Source: Acts 1931, 42nd Leg., p. 118, ch. 76, appearing in Vernon's Statutes as Art. 2247a, unchanged.

Rule 299. Omitted Findings.—Where findings of fact are filed by the trial court they shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein. The judgment may not be supported upon appeal by a presumption of finding upon any ground of recovery or defense, no element of which has been found by the trial court; but where one or more elements thereof have been found by the trial court, omitted unrequested elements, where supported by evidence, will be supplied by presumption in support of the judgment. Refusal of the court to make a finding requested shall be reviewable on appeal. Amended by order of September 20, 1941, effective December 31, 1941.

Source: New rule.
Change by amendment effective December 31, 1941: Between the words "has been found by the trial court; but" and the words "omitted unrequested elements" the following words have been interpolated: "where one or more elements thereof have been found by the trial court."

H. JUDGMENTS

Rule 300. Court to Render Judgment.—Where a special verdict is rendered, or the conclusions of fact found by the judge are separately stated the court shall render judgment thereon unless set aside or a new trial is granted, or judgment is rendered notwithstanding verdict or jury finding under these rules.

Source: Art. 2209, with minor textual change.

Rule 301. Judgments.—The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any Special Issue Jury Finding that has no support in the evidence. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

Source: Art. 2211.

Rule 302. On Counter Claim.—If the defendant establishes a demand against the plaintiff upon a counter claim exceeding that established against him by the plaintiff, the court shall render judgment for defendant for such excess.

Source: Art. 2215, unchanged.

Rule 303. On Counter Claim for Costs.—Whenever a counter claim is pleaded, the party in whose favor final judgment is rendered shall also recover the costs, unless it be made to appear on the trial that the counter claim of the defendant was acquired after the commencement of the suit, in which case, if the plaintiff establishes a claim existing at the commencement of the suit, he shall recover his costs.

Source: R.C.S. Art. 2216, with minor textual change.

Rule 304. Judgment Upon Record.—Judgments rendered upon questions raised upon citations, pleadings, and all other proceedings, constituting the record proper as known at common law, must be entered at the date of each term when pronounced.

Source: Texas Rule 65 (for District and County Courts), unchanged.

Rule 305. Draft.—Counsel of the party for whom a judgment is rendered shall prepare the form of the judgment to be entered and submit it to the court.

Source: Texas Rule 48 (for District and County Courts), unchanged.

Rule 306. Recitation of Judgment.—The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is rendered, and shall carefully recite the finding of the jury, or the several findings, if more than one, upon which the judgment of the court is based.

Source: State Rules 63 and 64 (for District and County Courts) combined but otherwise unchanged.

Rule 306a. Date of Judgment, Etc.—Judges are directed to cause, and attorneys and clerks are directed to use their efforts to cause all judgments, decisions, and orders of any kind to be reduced to writing and signed by the trial judge and the date of signing stated therein; but absence of any such showing shall not invalidate any judgment or order.

In determining the periods within which the various steps of an appeal must be taken, the date of rendition of a judgment or order shall be deemed to be the date upon which the written draft thereof was signed by the trial judge as stated therein. This rule shall apply in determining the time within which to file a motion for new trial, notice of appeal, appeal bond or affidavit in lieu thereof, bills of exceptions, statements of facts in trial and appellate court, transcript in appellate court, petition for writ of error if appeal is by writ of error, or other procedure in connection with appeal; but this rule shall not be construed as determining what constitutes rendition of a judgment or order in any other situation or for any other purpose. In event the date of signing of a judgment or order is not shown therein as required above, then the date of rendition shall be otherwise shown of record. Promulgated by order of June 16, 1943, effective December 31, 1943, amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

This is a new rule, effective December 31, 1943.
Change by amendment effective February 1, 1946: The rule has been reworded so as better to define date of rendition and insure its appearance of record.

Rule 306b. Time to Appeal From Nunc Pro Tunc Orders.—When a judgment or order is entered nunc pro tunc, the right of appeal shall date from the date of rendition of the nunc pro tunc judgment or order, which shall be deemed to be the date upon which the trial judge signed the nunc pro tunc judgment or order if the date is shown therein; and the periods within which the various steps in such an appeal are to be taken shall be computed from that date. Promulgated by order of Oct. 10, 1945, effective Feb. 1, 1946.

This is a new rule, effective February 1, 1946.

Rule 306c. Prematurely Filed Motions for New Trial, Appeal Bonds, Etc.—No motion for new trial or appeal bond or affidavit in lieu thereof shall be held ineffective because prematurely filed, but every such motion shall be deemed to have been filed on the date of but subsequent to the rendition of the judgment the motion assails; and every such appeal bond or affidavit shall be deemed to have been filed on the date of but subsequent to the rendition of the judgment appealed from or from the date of the overruling of motion for new trial, if such a motion is filed. Promulgated by order of Oct. 10, 1945, effective Feb. 1, 1946.

This is a new rule, effective February 1, 1946.

Rule 307. Exceptions, etc., Transcript.—In non-jury cases, where findings of fact and conclusions of law are requested and filed, and in jury cases, where a special verdict is returned, any party claiming that the findings of the court or the jury, as the case may be, do not support the judgment, may have noted in the record an exception to said judgment and thereupon take an appeal or writ of error, where such writ is allowed, without a statement of facts or further exceptions in the transcript, but the transcript in such cases shall contain the conclusions of law and fact or the special verdict and the judgment rendered thereon.

Source: R.C.S. Art. 2210 reworded with minor textual change.

Rule 308. Court Shall Enforce Its Decrees.—The court shall cause its judgments and decrees to be carried into execution; and where the judgment is for personal property, and it is shown by the pleadings and evidence and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff; and in such case may enforce its judgment by attachment, fine and imprisonment.

Source: Art. 2217, unchanged.

Rule 309. In Foreclosure Proceedings.—Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiff's lien on the property subject thereto, and, except in judgments against executors, administrators and guardians, that an order of sale shall issue to the sheriff or any constable of any county of the State of Texas, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and, if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to make the money or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions.

Source: Art. 2218.
Change: The order of sale is to be directed to the sheriff or constable of any county of the State, in harmony with the rules relating to executions.

Rule 310. Writ of Possession.—When an order foreclosing a lien upon real estate is made in a suit having for its object the foreclosure of such lien, such order shall have all the force and effect of a writ of possession as between the parties to the foreclosure suit and any person claiming under the defendant to such suit by any right acquired pending such suit; and the court shall so direct in the judgment providing for the issuance of such order. The sheriff or other officer executing such order of sale shall proceed by virtue of such order of sale to place the purchaser of the property sold thereunder in possession thereof within thirty days after the day of sale.

Source: Art. 2219, unchanged.

Rule 311. On Appeal From Probate Court.—Judgment on appeal or certiorari from any county court sitting in probate shall be certified to such county court for observance.

Source: Art. 2220, unchanged.

Rule 312. On Appeal From Justice Court.—Judgments on appeal or certiorari from a justice court shall be enforced by the county or district court rendering the judgment.

Source: Art. 2221.
Change: District court included to cover situations where county court jurisdiction is transferred to the district court.

Rule 313. Against Executors, etc.—A judgment for the recovery of money against an executor, administrator or guardian, as such, shall state that it is to be paid in the due course of administration. No execution shall issue thereon, but it shall be certified to the county court, sitting in matters of probate, to be there enforced in accordance with law, but judgment against an executor appointed and acting under a will dispensing with the action of the county court in reference to such estate shall be enforced against the property of the testator in the hands of such executor, by execution, as in other cases.

Source: Art. 2222, unchanged.

Rule 314. Confession of Judgment.—Any person against whom a cause of action exists may, without process, appear in person or by attorney, and confess judgment therefor in open court as follows:

(a) A petition shall be filed and the justness of the debt or cause of action be sworn to by the person in whose favor the judgment is confessed.

(b) If the judgment is confessed by attorney, the power of attorney shall be filed and its contents be recited in the judgment.

(c) Every such judgment duly made shall operate as a release of all errors in the record thereof, but such judgment may be impeached for fraud or other equitable cause.

Source: Art. 2225, unchanged.

I. REMITTITUR AND CORRECTION

Rule 315. Remittitur.—Any party in whose favor a judgment has been rendered may remit any part thereof:

(a) In open court, and such remittitur shall be noted on the docket and entered in the minutes.

(b) In vacation, by executing and filing with the clerk a written release signed by him or his attorney of record, and attested by the clerk with his official seal. Such releases shall be a part of the record of the cause.

(c) Execution shall issue for the balance only of such judgment.

Source: Art. 2227, unchanged.

Rule 316. Correction of Mistakes.—Mistakes in the record of any judgment or decree may be amended by the judge in open court according to the truth or justice of the case after notice of the application therefor has been given to the parties interested in such judgment or decree, and thereafter the execution shall conform to the judgment as amended.

The opposite party shall have reasonable notice of an application to enter a judgment nunc pro tunc. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 2228, unchanged, except that by amendment effective December 31, 1943, the last sentence above has been added. See 25 Tex.Jur. 438.

Rule 317. Misrecitals Corrected.—Where in the record of any judgment or decree of a court, there shall be any omission or mistake, miscalculation or misrecital of a sum or sums of money, or of any name or names, if there is among the records of the cause any verdict or instrument of writing whereby such judgment or decree may be safely amended, it shall be corrected by the court, wherein such judgment or decree was rendered, or by the judge thereof in vacation, upon application of either party, according to the truth and justice of the case. The opposite party shall have reasonable notice of the application for such amendment.

Source: Art. 2229, unchanged.

Rule 318. Correction in Vacation.—The judge making such correction in vacation shall embody the same in a judgment, and certify thereto and deliver it to the clerk who shall enter it in the minutes. Such judgment shall constitute a part of the record of the cause, and any execution thereafter issued shall conform to the judgment as corrected.

Source: Art. 2230, unchanged.

Rule 319. Defective Judgment Cured.—A remittitur or correction made as provided in any of the four preceding rules shall from the making thereof cure any error in the verdict or judgment by reason of such error, omission, mistake or excess.

Source: Art. 2231, with minor textual change.

J. NEW TRIALS

Rule 320. Motion.—New trials may be granted and judgments set aside on motion for good cause, on such terms as the court shall direct. Each such motion shall:

(a) Be made within two days after the rendition of judgment if the term of court shall continue so long, if not, then before the end of the term, and may be amended under leave of the court except where otherwise expressly provided in these rules.

(b) Be in writing and signed by the party or his attorney.

(c) Specify each ground on which it is founded, and no ground not specified shall be considered.

(d) Be determined at the term of the court at which it is made except where otherwise expressly provided in these rules.

Source: Art. 2232.
Change: Exceptions inserted to harmonize with provisions for special situations.

Rule 321. Form.—Each ground of a motion for a new trial or in arrest of judgment shall briefly refer to that part of the ruling of the court, charge given to the jury, or charge refused, admission or rejection of evidence, or other proceedings which are designated to be complained of, in such way as that the point of objection can be clearly identified and understood by the court.

Source: Texas Rule 67 (for District and County Courts), unchanged.

Rule 322. Generality To Be Avoided.—Grounds of objections couched in general terms—as that the court erred in its charge, in sustaining or overruling exceptions to the pleadings, and in excluding or admitting evidence, the verdict of the jury is contrary to law, and the like—shall not be considered by the court.

Source: Texas Rule 68 (for District and County Courts), unchanged.

Rule 323. Grounds of Motion in Causes Tried Without Jury.—When the case is determined by the judge without a jury, if a motion for new trial is filed, counsel shall specify succinctly the supposed errors of law or of fact, or both, into which the judge has fallen, as far as may be practicable to do so. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Texas Rule 69 (for District and County Courts), unchanged.
Change by amendment effective December 31, 1941: The words "if a motion for new trial is filed" have been interpolated between the words "without a jury" and the word "counsel". The words "in making a motion for a new trial" between the words "counsel" and "shall" have been eliminated.

Rule 324. Prerequisites of Appeal.—In all jury cases tried in the county or district court, where parties desire to appeal from a judgment of the trial court or to sue out a writ of error, if the judgment of the court is rendered five days or more before the adjournment of the court for the term, or, if, upon request or for any other reason, the court continues the term so as to cover a period of five days from the rendition of a judgment, a motion for new trial shall be filed. It is the object of this rule to require a motion for new trial to be filed as a prerequisite to an appeal in all cases unless the case is tried before the court without a jury, or a peremptory instruction is given in the case, or the appeal is based upon some error arising after the action of the trial court upon the motion for new trial, or unless there is not full five days' time from the rendition of the judgment to the adjournment of the court for the term. Provided, however, that when the judgment is rendered non obstante veredicto, or notwithstanding the jury finding on one or more special issues, the appellee may complain of any prejudicial error committed against him over his objection on such trial. A motion for new trial shall not be necessary in behalf of appellee, except where he complains of the judgment or a part thereof.

An assignment in a motion for new trial shall not be a necessary prerequisite to the right to complain on appeal of the action of the court in giving an instructed verdict, or in withdrawing the case from the jury and rendering judgment, or in rendering or refusing to render judgment non obstante veredicto, or in overruling a motion for judgment for appellant on the verdict. Amended by order of March 31, 1941; also by order of September 20, 1941, effective December 31, 1941.

Source: Texas Rule 71a (for District and County Courts).
Change: Reference to fundamental error as an exceptional situation not requiring motion for new trial eliminated. Addition of last sentence commencing "Provided, however".
Change by amendment of March 31, 1941: The second paragraph above has been added.
Change by amendment effective December 31, 1941: In the first paragraph the concluding wording beginning "by cross assignments of error" has been omitted, and the sen-

tence beginning "A motion for new trial" has been added. Also, in the last paragraph as appearing in the amendment of March 31, 1941, after the words "instructed verdict" the following wording has been interpolated "or in withdrawing the case from the jury and rendering judgment."

Rule 325. Errors on Motions.—In cases of motions for continuance, or for change of venue, or other preliminary motions made and filed in the progress of the cause, the rulings of the court thereon shall be considered as acquiesced in, unless complained of in the motion for new trial; and the judge may recite in his order disposing of the motion for new trial the grounds of such ruling. Nothing in Rule 324 shall render a motion for new trial unnecessary in the instances mentioned in this Rule nor in instances of newly discovered evidence, misconduct, fraud or the like.

Source: Texas Rule 70 (for District and County Courts).
Change: Omission of the provision in the rule for bills of exception and substitution therefor of the last part of the rule, beginning "unless."

Rule 326. Not More Than Two.—Not more than two new trials shall be granted either party in the same cause because of insufficiency or weight of the evidence.

Source: Art. 2233.
Change: Substitution of clause beginning "because" for "except when the jury have erred in matter of law or been guilty of misconduct."

Rule 327. For Misconduct.—Where the ground of the motion is misconduct of the jury or of the officer in charge of them, or because of any communication made to the jury or that they received other testimony, the court shall hear evidence thereof from the jury or others in open court, and may grant a new trial if such misconduct proved, or the testimony received, or the communication made, be material, and if it reasonably appears from the evidence both on the hearing of the motion and the trial of the case and from the record as a whole that injury probably resulted to the complaining party.

Source: Art. 2234.
Change: Imposing burden on complaining party to show probability of injury.

Rule 328. If Not Equitable.—New trials may be granted when the damages are manifestly too small or too large, provided that whenever the court shall direct a remittitur in any action, and the same is made, and the party for whose benefit it is made shall appeal in said action, then the party remitting shall not be barred from contending in the appellate court that said remittitur should not have been required either in whole or in part, and if the appellate court sustains such contention it shall render such judgment as the trial court should have rendered without respect to said remittitur.

Source: Art. 2235.
Change: Addition of all wording after the first comma.

Rule 329. Motion for New Trial on Judgment Following Citation by Publication.—In cases in which judgment has been rendered on service of process by publication, where the defendant has not appeared in person or by attorney of his own selection:

(a) The court may grant a new trial upon petition of the defendant showing good cause, supported by affidavit, filed within two years after such judgment was rendered. The parties adversely interested in such judgment shall be cited as in other cases.

(b) Execution of such judgment shall not be suspended unless the party applying therefor shall give a good and sufficient bond payable to the plaintiff in the judgment, in an amount fixed in accordance with Rule 364 relating to supersedeas bonds, to be approved by the clerk, and conditioned that the party will prosecute his petition for new trial to effect and will perform such judgment as may be rendered by the court should its decision be against him.

(c) If property has been sold under the judgment and execution before the process was suspended, the defendant shall not recover the property so sold, but shall have judgment against the plaintiff in the judgment for the proceeds of such sale.

Source: Art. 2236.
Change: In (b) the amount of the bond is to be fixed in accordance with the rules relating to supersedeas bonds.

K. CERTAIN DISTRICT COURTS

Rule 330. Rules of Practice and Procedure in Certain District Courts.—The following rules of practice and procedure shall govern and be followed in all civil actions in district courts in counties where the only district court of said county vested with civil jurisdiction, or all the district courts thereof having civil jurisdiction, have successive terms in said county throughout the year, without more than two days intervening between any of such terms, whether or not any one or more of such district courts include one or more other counties within its jurisdiction.

(a) Appealed Cases.

In cases appealed to said district courts from inferior courts, the appeal, including transcript, shall be filed in the district court within thirty (30) days after the rendition of the judgment or order appealed from, and the appellee shall enter his appearance on the docket or answer to said appeal on or before ten o'clock a. m. of the Monday next after the expiration of twenty (20) days from the date the appeal is filed in the district court.

Source: Art. 2092, Sec. 13.

(b) Setting Cases for Trial, etc.

On the first Monday in each calendar month the judge of each court may, and as far as practicable shall, set for trial during the calendar month next after the month during which the setting is made, all contested cases which are requested to be set, and by agreement of the parties, or on motion of either party, or on the court's own motion with notice to the parties, the court may set any case for trial at any time so as to allow the parties reasonable time for preparation. Non-contested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.

Source: Art. 2092, Sec. 18, unchanged.

(c) Postponement or Continuance.

Cases may be postponed or continued by agreement with the approval of the court, or upon the court's own motion or for cause. When a case is called for trial and only one party is ready, the court may for good cause either continue the case for the term or postpone and reset it for a later day in the same or succeeding term.

Source: Art. 2092, Sec. 19, unchanged.

(d) Cases May Be Reset.

A case that is set and reached for trial may be postponed for a later day in the term or continued and reset for a day certain in the succeeding term on the same grounds as an application for continuance would be granted in other district courts. After any case has been set and reached in its due order and called for trial two (2) or more times and not tried, the court may dismiss the same unless the parties agree to a postponement or continuance but the court shall respect written agreements of counsel for postponement and continuance if filed in the case when or before it is called for trial unless to do so will unreasonably delay or interfere with other business of the court.

Source: Art. 2092, Sec. 20, unchanged.

(e) Exchange and Transfer.

Where in such county there are two or more district courts having civil jurisdiction, the judges of such courts may, in their discretion, exchange benches

or districts from time to time, and may transfer cases and other proceedings from one court to another, and any of them may in his own courtroom try and determine any case or proceeding pending in another court without having the case transferred, or may sit in any other of said courts and there hear and determine any case there pending, and every judgment and order shall be entered in the minutes of the court in which the case is pending and at the time the judgment or order is rendered, and two (2) or more judges may try different cases in the same court at the same time, and each may occupy his own courtroom or the room of any other court. The judge of any such court may issue restraining orders and injunctions returnable to any other judge or court, and any judge may transfer any case or proceeding pending in his court to any other of said courts, and the judge of any court to which a case or proceeding is transferred shall receive and try the same, and in turn shall have power in his discretion to transfer any such case to any other of said courts and any other judge may in his courtroom try any case pending in any other of such courts.

Source: Art. 2092, Sec. 21, with minor textual change.

(f) Cases Transferred to Judges Not Occupied.

Where in such counties there are two or more district courts having civil jurisdiction, when the judge of any such court shall become disengaged, he shall notify the presiding judge, and the presiding judge shall transfer to the court of the disengaged judge the next case which is ready for trial in any of said courts. Any judge not engaged in his own court may try any case in any other court.

Source: Art. 2092, Sec. 22, with minor textual change.

(g) Judge May Hear Only Part of Case.

Where in such counties there are two or more district courts having civil jurisdiction, any judge may hear any part of any case or proceeding pending in any of said courts and determine the same, or may hear and determine any question in any case, and any other judge may complete the hearing and render judgment in the case.

Source: Art. 2092, Sec. 24, with minor textual change.

(h) Any Judge May Hear Dilatory Pleas, etc.

Where in such county there are two or more district courts having civil jurisdiction, any judge may hear and determine motions, petitions for injunction, applications for appointment of receivers, interventions, pleas of privilege, pleas in abatement, all dilatory pleas and special exceptions, motions for a new trial and all preliminary matters, questions and proceedings and may enter judgment or order thereon in the court in which the case is pending without having the case transferred to the court of the judge acting, and the judge in whose court the case is pending may thereafter proceed to hear, complete and determine the case or other matter, or any part thereof, and render final judgment therein. Any judgment rendered or action taken by any judge in any of said courts in the county shall be valid and binding.

Source: R.C.S. Art. 2092, Sec. 25.
Change: Elimination of "demurrers" and addition of "and exceptions" in the list of subjects.

(i) Selection of Presiding Judge.

When in such county there are two or more district courts having civil jurisdiction, the judges of such courts shall twice a year, in January and July, select one of their number as Presiding Judge and may at any time cancel and annul such selection and select any other judge as Presiding Judge. Each such proceeding shall be by majority vote. Each judge shall enter on his minutes an order reciting the selection of the Presiding Judge. The Presiding Judge may assign any case in his court or any of such courts in the county to any other judge or court or may assign any judge to try any case in any of the courts, and the judge in whose court an assigned case is pending shall transfer the case to the court to which it is assigned, and the judge of the court to which it is assigned shall receive and try the case, and such judge shall hold any other court or try any case which he is requested by the Presiding Judge to try.

Source: Art. 2092, Sec. 26, unchanged.

(j) Motion for New Trial.

A motion for new trial filed during one term of court may be heard and acted on at the next term of court. If a case or other matter is on trial or in process of hearing when the term of court expires, such trial, hearing or other matter may be proceeded with at the next term of the court. No motion for new trial or other motion or plea shall be considered as waived or overruled, because not acted on at the term of court at which it was filed, but may be acted on at the succeeding term or at any time which the judge may fix or to which it may have been postponed or continued by agreement of the parties with leave of the court. All motions and amended motions for new trials must be presented within thirty (30) days after the original motion or amended motion is filed and must be determined within not exceeding forty-five (45) days after the original or amended motion is filed, unless by written agreement of the parties in the case, the decision of the motion is postponed to a later date.

Source: Art. 2092(28) unchanged.

(k) Time to File Motion for New Trial.

A motion for new trial where required shall be filed within ten (10) days after the judgment is rendered or other order complained of is rendered, and may be amended by leave of the court at any time before it is acted on within twenty (20) days after it is filed.

Source: Art. 2092(29) unchanged, except "rendered" is supplied for "entered."

(l) Judgments Final, When.

Judgments of such civil district courts shall become as final after the expiration of 30 days after the date of judgment or after a motion for a new trial is overruled as if the term of court had expired. After the expiration of thirty days from the date the judgment is rendered or motion for new trial is overruled, the judgment cannot be set aside except by bill of review for sufficient cause, filed within the time allowed by law for the filing of bills of review in other district courts.

Source: Art. 2092(30).

Rule 331. Rules in Other Courts Apply.—Where any special practice or procedure is provided for certain district or county courts of exceptional classification or description, the same shall govern therein instead of any inconsistent practice or procedure that is provided for district and county courts in general but shall not affect the practice or procedure in such district and county courts in general; and such practice and procedure in district and county courts in general shall apply in such exceptional district and county courts where not inconsistent with the special practice and procedure that is provided for the latter.

Source: R.C.S. Art. 2093.
Change: Reworded and extended generally to embrace all exceptional District and County Courts.

SECTION 12. REVIEW BY DISTRICT COURTS OF COUNTY COURT RULINGS

A. ESTATES OF DECEDENTS

Rule 332. Appeal Bond, Requisites.—The party desiring to appeal shall, within fifteen days after such decision, order, judgment or decree shall have been rendered, file with the county clerk a bond with

two or more good and sufficient sureties to be approved by the county clerk, payable to the county judge in any amount to be fixed by the county judge, conditioned that the appellant shall prosecute said appeal to effect and perform the decision, order, decree or judgment which the district court shall make thereon in case the cause shall be decided against him. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 3699, with minor textual change.
Change by amendment effective December 31, 1947: Sureties "to be approved by the county clerk."

Rule 333. Appeal on Affidavit.—Where the party who desires to appeal is unable to give appeal bond, it shall be sufficient if he file with the county clerk, within the time prescribed for giving such bond, an affidavit that he has made diligent efforts to give such bond and is unable to do so by reason of his poverty, and such affidavit, or the overruling of the contest thereof, if one is filed, shall operate a perfection of the appeal in respect to the matter of costs. Said affidavit shall be subject to contest under the procedure provided in Rule 355. As amended by order of June 16, 1943 effective December 31, 1943.

Source: Art. 3701.
Change: Addition of last sentence.
Change by amendment effective December 31, 1943: The words "or the overruling of the contest thereof, if one is filed," have been interpolated between the words "affidavit" and "shall." Also, the last sentence is changed so as to refer to Rule 355 instead of to Rule 145.

Rule 334. Papers Sent to District Court.—Upon such appeal bond or affidavit being filed with the county clerk, or upon the overruling of the contest, if one is filed, he shall immediately transmit all the original papers in said proceedings to the clerk of the district court together with the appeal bond or affidavit and a certified copy of the order or decree appealed from, and the district clerk shall immediately file and docket the cause in the district court. Such cases shall be tried de novo in the district court, and shall be governed by the same rules of procedure as other civil cases in said court. As amended by order of June 16, 1943 effective December 31, 1943.

Source: Art. 3702.
Change: Elimination of reference to term of court.
Change by amendment effective December 31, 1943: The words "or upon the overruling of the contest, if one is filed" are interpolated between the word "clerk" and the word "he."

Rule 335. Certified Copy of Judgment.—A certified copy of the judgment of the district court when rendered shall forthwith be transmitted by the clerk of the district court to the clerk of the county court from which the case was appealed for the observance of such court, and the original papers shall be returned to the clerk of the county court who shall file such certified copy of the judgment and record it upon the minutes of the court and note it upon the docket; and the county judge shall make such order as may be necessary for the enforcement of such judgment.

Source: Art. 3703, unchanged.

B. GUARDIAN AND WARD

Rule 336. Notice of Appeal.—An appeal is taken by causing an entry of notice thereof to be made on the record during the term at which such decision, order or judgment is entered; or, if such decision, order or judgment be made in vacation, by causing the entry of such notice to be made before the close of the next regular term of the court thereafter.

Source: Art. 4319, unchanged.

Rule 337. Transcript on Appeal.—When notice of appeal has been given, the clerk shall immediately make out a certified transcript of the proceedings and send it to the district court of the county; such transcript shall not contain anything that does not relate to the decision, order or judgment appealed from.

Source: Art. 4320.
Change: Addition of word "immediately."

Rule 338. Joint Appeals.—When notice of appeal has been given by the same person from more than one decision, order or judgment of the court in the same guardianship, at the same term, all of the appeals may be embraced in the same transcript.

Source: Art. 4321, unchanged.

Rule 339. Appeal Bond.—The appeal shall not suspend the decision, order or judgment except in the cases mentioned in the succeeding rule, unless the appellant, within twenty days after the entry of notice of appeal, shall file a bond in an amount fixed by the court, signed by two or more good and sufficient sureties, payable to and approved by the clerk, conditioned that the appellant shall perform the orders and judgment which the district court may make therein, in case the decision be against him.

Source: Art. 4323, with minor textual change.

Rule 340. Judgment Suspended.—An appeal suspends the decision, order or judgment without bond:

(a) When taken by a claimant from the disapproval of his claim.

(b) When taken by the guardian or trustee, except where the controversy is respecting the rights of guardianship or the settlement of an account.

Source: Art. 4324, unchanged.

Rule 341. Judgment of District Court.—When a certified copy of the judgment of the district court in the case is received, it shall be entered of record upon the minutes of the county court as the judgment of such county court.

Source: Art. 4325, unchanged.

Rule 342. Trial of Appeals.—Appeals from the decision, order or judgment of the county court or county judge to the district court in cases of guardianship shall be tried in the district court de novo. The judgment of the district court therein shall be certified to the county court to be carried into effect.

Source: Art. 4327, unchanged.

Rule 343. Judgment Dismissing Appeal.—Where a certified copy of the judgment of the district court dismissing an appeal or quashing a supersedeas is received, it shall be entered of record on the minutes of the county court, and the decision, order or judgment of the county court which was appealed from shall stand as if no appeal or supersedeas had been taken or obtained.

Source: Art. 4326, unchanged.

C. CERTIORARI TO COUNTY COURT

Rule 344. Application For.—An application for writ of certiorari to the county court shall be made to the district court, or a judge thereof. It shall state the name and residence of each party adversely interested, and shall distinctly set forth the error in the proceeding sought to be revised.

Source: Art. 933, unchanged.

Rule 345. Granted on Execution of Bond.—The writ of certiorari shall in all cases be granted upon the application of a party therefor upon the applicant entering into bond in such sum as shall be required by the judge, sufficient to secure the costs of the proceeding.

Source: Art. 934, unchanged.

Rule 346. Not to Operate As Supersedeas.—A writ of certiorari shall not operate as a supersedeas of the judgment of the county court, unless the applicant therefor shall enter into bond with two or more good and sufficient sureties, in such sum as shall be fixed by the order of the district judge, payable to the adverse party, and conditioned for the performance of the judgment of the district court, in case such judgment shall be against the applicant.

Source: Art. 935, unchanged.

Rule 347. The Writ.—The writ of certiorari shall be issued by the district clerk upon compliance of the party with the order of the district court or judge thereof. It shall be directed to the county clerk and command him to immediately make out a certified transcript of the proceedings designated in the writ, and immediately transmit the same to the district court out of which the writ issues. The writ shall be delivered to the county clerk by the district clerk in person or by mail.

Source: Art. 936.1
Change: Requiring the county clerk to act immediately rather than before the next term of the district court and changing service provisions.
1 This was erroneously stated as Art. 396 in the Original Rules, but was corrected by the Supreme Court's Amendatory Order of March 31, 1941.

Rule 348. When Supersedeas Granted.—When an order for a supersedeas has been made, it shall also require the clerk and all officers of said court to stay further proceedings on the judgment specified in said writ.

Source: Art. 937, unchanged.

Rule 349. Citation As in Ordinary Cases.—Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation for the party named in the application as being adversely interested in the proceedings sought to be revised.

Source: Art. 938, unchanged.

Rule 350. Trial De Novo.—The cause shall be tried de novo in the district court, but the issues shall be confined to the grounds of error specified in the application for the writ. The judgment shall be certified to the county court for observance.

Source: Art. 939, unchanged.

Rule 351. Appeals and Writs of Error.—Appeals and writs of error to the Supreme Court, from the judgments of the district courts in cases of certiorari, shall be allowed and governed by the rules as in other cases.

Source: Art. 940, unchanged.1
1 Source added by Supreme Court's Amendatory Order of March 31, 1941.

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SECTION 1. PERFECTING APPEAL

Rule 352. Definitions.—The party taking an appeal or suing out a writ of error is called the "appellant" and the adverse party is called the "appellee." The term "appellate court" includes the Supreme Court or Court of Civil Appeals having jurisdiction of the cause appealed. The term "court below" means the court from which the appeal or writ or [of] error is taken.

Source: Art. 2252.
Change: Elimination of the terms "plaintiff in error" and "defendant in error" as designations of parties on appeal by writ of error to the Court of Civil Appeals.

Rule 353. Notice of Appeal.—(a) An appeal, when allowed by law, may be taken by notice of appeal (1) in open court, noted on the docket or embodied in the judgment, order overruling motion for new trial, or other minute of the court, or (2) filed with the clerk; such notice to be given or filed within ten days after the judgment or order overruling motion for new trial is rendered.

(b) Such notice, when filed with the clerk, shall be sufficient if it state the number and style of the case, the court in which pending, and that appellant desires to appeal from the judgment or from some designated portion thereof.

Source: Arts 2253 and 2254.
See Rule 363.

Rule 354. Cost Bond.—The appellant shall execute a bond to be approved by the clerk, payable to the appellee in a sum at least double the probable amount of the costs of the court below, the Court of Civil Appeals, and the Supreme Court, to be fixed by the clerk, less such sums as may have been paid to the clerk by appellant on the costs, conditioned that appellant shall prosecute his appeal on writ of error with effect, and shall pay all the costs which have accrued in the court below, and which may accrue in the Court of Civil Appeals and the Supreme Court. Each surety on the bond shall give his post-office address. Appellant may make the bond payable to the clerk instead of the appellee, and same shall inure to the use and benefit of the appellee and the officers of the court, and shall have the same force and effect as if it were payable to the appellee; or in lieu of a bond, appellant may deposit with the clerk cash equal to the estimated costs, less such sums as have been paid to the clerk by appellant on the costs, and in that event the clerk shall file among the papers his certificate showing that the deposit has been made and copy same in the transcript, and this shall have the force and effect of an appeal bond. Amended by order of Sept. 20, 1941, effective Dec. 31, 1941; order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 2265, with minor textual change.
Change by amendment effective February 1, 1946: The last sentence has been added.
Change by amendment effective December 31, 1947: In the first sentence "such" in three instances has been omitted and in two of them supplied by "the." After the previous final sentence commencing "Each surety" and ending "address," the sentence commencing "Appellant may make" and ending "an appeal bond" has been added.
Note: **Exemptions From Cost Bond.**—By statutes which are considered outside the scope of the Rule Making Power the following parties are not required to execute a cost bond when appealing in their official capacity:
The State of Texas
Any State Department or the head thereof, and specifically the Banking Commissioner and State Banking Board and the Railroad Commission
Any County of Texas
Any Water Improvement District, Water Control and Improvement District, Water Control and Preservation District, Levee Improvement District, or Drainage District
Any Incorporated City
The Federal Housing Administration, Home Owners Loan Corporation, any National Mortgage Association, National Mortgage Savings and Loan Insurance Corp.
See Arts. 1174; 2276; and Acts 1927, 40th Leg., p. 203, ch. 135, appearing in Vernon's Tex.Ann.Civ.St. as Art. 2072a; Acts 1932, 42nd Leg., 3rd C.S., p. 54, ch. 23, appearing in Vernon's Tex.Ann.Civ.St. as Art. 7880—126a; Acts 1933, 43rd Leg., p. 131, ch. 62, appearing in Vernon's Tex.Ann.St. as Art. 2276a; and Acts 1935, 44th Leg., p. 670, ch. 283, appearing in Vernon's Tex.Ann.Civ.St. as Art. 279a.
Change by amendment effective December 31, 1941: After the words "to be fixed by the clerk" the following words have been interpolated: "less such sums as may have been paid to such clerk by appellant on such costs."

Rule 355. Party Unable to Give Cost Bond.—(a) When the appellant is unable to pay the costs of appeal or give security therefor, he shall be entitled to prosecute an appeal by filing with the clerk his affidavit stating that he is unable to pay the costs of appeal or any part thereof, or to give security therefor.

(b) The clerk shall forthwith give notice of the filing of such affidavit to the opposing party or his attorney.

(c) Any interested officer of the court or party to the suit, may, by sworn pleading, contest the affidavit within ten days after the giving of such notice whereupon the court trying the case (if in session) or (if not in session) the judge of the court or county judge of the county in which the case is pending shall set the contest for hearing, and the clerk shall give the respective parties notice of such setting.

(d) Upon such hearing the burden of proof shall rest upon the appellant to sustain the allegations of his affidavit.

(e) Where no contest is filed in the allotted time the allegations of the affidavit shall be taken as true.

(f) Where the appellant is able to pay or give security for a part of the costs of appeal he shall be required to make such payment or give such security

(one or both) to the extent of his ability. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Art. 2266.
Change: Subdivision (b) is new. Burden of proof is placed upon appellant. Provision for requiring payment or securing of part of costs where appellant can not pay or secure all of such costs is new.
Change by amendment effective February 1, 1946: In subdivision (c) the words "by sworn pleading" have been added after the word "may."

Rule 356. Time for Filing Cost Bond.—(a) Whenever a bond for costs on appeal is required, the bond shall be filed with the clerk within thirty days after the date of rendition of judgment or order overruling motion for new trial.

(b) The affidavit in lieu of bond shall be filed not more than twenty days after the date of rendition of such judgment or order. As amended by order of March 31, 1941; order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Arts. 2253, 2258.
Change: The time for filing cost bond on appeal is made uniform in all cases and in all courts.
Change by amendment of March 31, 1941: The following wording of Subdivision (a) of the original rule has been eliminated: "but the trial judge may, for good cause shown, extend such time for not exceeding thirty days additional."
Change by amendment effective February 1, 1946: The words, "rendition of," have been added immediately after the words, "date of," in subdivision (a), and the words, "the date of rendition of," immediately after the words, "twenty days after," in subdivision (b).

Rule 357. Judgment Not Suspended.—The bond or affidavit in lieu thereof shall not have the effect to suspend the judgment but execution shall issue thereon as if no such appeal or writ of error had been taken.

Source: Art. 2268, with minor textual change.

Rule 358. Revival Against Successor in Office.—(a) When a suit in mandamus or injunction is brought against a person holding a public office, in his official capacity, and after final trial and judgment in the trial court, and notice of appeal to the Court of Civil Appeals or Supreme Court has been given, if such person should vacate such office, the suit shall not abate, but his successor may be made a party thereto by a motion showing such facts.

(b) Unless waived, the clerk shall give the successor ten days notice of such motion, whereupon the court shall hear and determine same, and its judgment, order or decree shall be enforced, and the successor bound thereby.

(c) In such cases, the successor shall not be liable for any costs that have accrued prior to the time he was made a party.

Source: Art. 2269.
Change: The statute is considered to be largely outside the description of practice and procedure, and such portions as are not embraced within the Rule Making Power are carried for context only. The procedural change is in the provision for ten days' notice of the motion and the elimination of verification on the motion and of certain allegations heretofore required in the motion.

Rule 359. Petition for Writ of Error.—The party desiring to sue out a writ of error shall file with the clerk of the court in which the judgment was rendered a written petition signed by him or by his attorney, and addressed to such clerk.

Source: Art. 2256, unchanged.

Rule 360. Requisites of Petition.—The petition shall state the names and residences of the parties adversely interested, shall describe the judgment with sufficient certainty to identify it, and shall state that he desires to remove the same to the Court of Civil Appeals for revision and correction.

Source: Art. 2257, unchanged.

Rule 361. Cost Bond on Writ of Error.—At the time of filing the petition, the appellant shall file with the clerk an appeal bond, or affidavit in lieu thereof, as provided by these rules.

Source: Art. 2258, with minor textual change.

Rule 362. Notice of Petition for Writ of Error.—When the petition for writ of error and cost bond or affidavit in lieu thereof have been filed, the clerk shall notify the adverse parties thereof by mailing a copy of the petition and bond, or affidavit in lieu thereof, to all parties to the judgment other than the party or parties filing the petition for writ of error, but his failure so to do shall not affect the validity of the appeal. The notification of a party shall be given by mailing copies of such instruments to his attorney of record or, if the party is not represented by an attorney, then to the party at his last known address, and such notification is sufficient notwithstanding the death of the party or his attorney prior to the giving of the notification. The clerk shall note on the file docket the names of the parties to whom he mails the copies, with the date of mailing.

Source: New rule. The provisions for notice by mail are based upon Federal Rule 73(b).
Change: This rule supersedes Arts. 2259 to 2264, inclusive, which heretofore provided for citation on writ of error.

Rule 363. Appeal or Writ of Error Perfected.—The appeal is perfected when the notice of appeal is given and the bond or affidavit in lieu thereof has been filed, or if affidavit is contested, when the contest is overruled. The writ of error is perfected when the petition and bond (when bond is required) or affidavit in lieu thereof is filed, or, if contested, when the contest is overruled. [Amended by Order of March 31, 1941.]

Source: Art. 2267 with minor textual changes.
Change: Notice of appeal perfects the appeal, without reference to the bond for costs.
Change by Amendment of March 31, 1941: The words "or if affidavit is contested, when the contest is overruled" have been added at the end of the first sentence.

Rule 364. Supersedeas Bond.—(a) An appellant desiring to suspend the execution of the judgment may do so by giving a good and sufficient bond to be approved by the clerk, payable to appellee in a sum at least the amount of the judgment, interest and costs, conditioned that the appellant shall prosecute his appeal or writ of error with effect; and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against him, he shall perform its judgment, sentence or decree, and pay all such damages as said court may award against him.

(b) Where the judgment is for the recovery of land or other property, the bond shall be further conditioned that the appellant shall, in case the judgment is affirmed, pay to the appellee the value of the rent or hire of such property in any suit which may be brought therefor.

(c) Where the judgment is for the recovery of or foreclosure upon real estate, the appellant may supersede the judgment in so far as it decrees the recovery of or foreclosure against said specific real estate by giving a supersedeas bond in an amount to be fixed by the court below, not less than the rents and hire of said real estate; but if the amount of said supersedeas bond is less than the amount of the money judgment, with interest and costs, then the appellee shall be allowed to have his execution against any other property of appellant.

(d) Where the judgment is for the recovery of or foreclosure upon specific personal property, the appellant may supersede the judgment in so far as it decrees the recovery of or foreclosure against said specific personal property by giving a supersedeas bond in an amount to be fixed by the court below, not less than the value of said property on the date of rendition of judgment, but if the amount of the supersedeas bond is less than the amount of the money judgment with interest and costs, then the appellee shall be allowed to have his execution against any other property of appellant.

(e) Where the judgment is for other than money or property or foreclosure, the bond shall be in such amount to be fixed by the court below as will secure

the plaintiff in judgment in any loss or damage occasioned by the delay on appeal.

(f) Where the judgment is one involving the care or custody of a child, the appeal, with or without a supersedeas bond, shall not have the effect of suspending the judgment as to the care or custody of the child, unless it shall be so ordered by the court entering the judgment. However, the appellate court, upon a proper showing, may permit the judgment to be superseded.

(g) Where the judgment is in favor of the State, a municipality, a State agency, or a subdivision of the State in its governmental capacity, and is such that the judgment holder has no pecuniary interest in it and no monetary damages can be shown, the bond shall be allowed and its amount fixed within the discretion of the trial court, and the liability of the appellant on the bond shall be for its face amount if the appeal is not prosecuted with effect. The discretion of the trial court in fixing the amount of the bond shall be subject to review. Provided, that under equitable circumstances and for good cause shown by affidavit or otherwise, the court rendering judgment on the bond may allow recovery for less than its full face amount.

(h) In lieu of a bond, where bond is permitted under this rule, appellant may deposit with the clerk cash equivalent to the amount of the required bond. The clerk's certificate that the deposit has been made shall be sufficient evidence thereof. Amended by order of Oct. 10, 1945 effective Feb. 1, 1946; order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Arts. 2270 and 2271. Subdivisions (c) (d), and (e) are new.
Change: Elimination of "double" in Art. 2270 and addition of the last three subparagraphs.
Change by amendment effective February 1, 1946; Subdivision (f) has been added.
Change by amendment effective December 31, 1947: "Such" preceding "appellant" in the previous first sentence has been made to read "the." Subdivisions (g) and (h) have been added.

Rule 365. Additional Bond.—The sufficiency of a cost or supersedeas bond shall be reviewable by the appellate court and said court may require additional bond or security in case of the insufficiency of the amount of said bond or the sureties thereon, whether arising from the fixing of an inadequate amount in the trial court or from any subsequent condition which may arise affecting the sufficiency of said bond. The court in which the appeal is pending shall, upon proper showing of such insufficiency, require the giving of an additional bond to be approved by the clerk of the court in which said appeal or writ of error is pending.

Source: Art. 2272, with minor textual change.

Rule 366. When Party Fails to Comply.—Upon failure to comply with the rule of the court ordering the execution of an [said] additional supersedeas bond within a period of twenty days after such order is served, the court in which said appeal or writ of error is pending shall issue an order to the trial court, directing or permitting the issuance of execution on the judgment appealed from; but said appeal or writ of error shall not be dismissed, but continued upon the docket as if said cause had been appealed or writ of error granted upon cost bond, provided the clerk of the court in which said appeal or writ of error is pending is satisfied that the original bond is still sufficient when considered as a cost bond.

Source: Art. 2273, unchanged.

Rule 367. Bond Insufficient As Cost Bond.—In the event that said clerk shall consider the original supersedeas bond insufficient when considered as a cost bond, then the said appeal or writ of error shall be dismissed, unless the appellant within twenty days after notice served by the clerk that the said bond is deemed insufficient for the purposes of the cost bond, shall execute a new bond satisfactory to such clerk, sufficient to secure the payment of the costs theretofore accrued, or that may thereafter accrue in the further prosecution of such appeal or writ of error. The giving of said additional original bond or bonds shall not release the liability of the sureties on the original supersedeas bond.

Source: Art. 2274, with minor textual change.

Rule 368. Judgment Stayed.—Upon the filing of the proper supersedeas bond, execution of the judgment, or so much thereof as has been superseded, shall be stayed, and should execution have been issued thereon, the clerk shall forthwith issue a supersedeas.

Source: Art. 2275.
Change: Elimination of the statement that the appeal is perfected by filing of bond.

Rule 369. Trial Court Docket of Appealed Cases.—In every case removed by appeal or writ of error to a Court of Civil Appeals, the clerk of the trial court shall, in making up the docket at each succeeding term, keep the said cause in its proper place on the docket for disposition after the appeal has been decided; and immediately upon return of the mandate from the appellate court shall, if the judgment has been affirmed or reversed and rendered, remove the case from the docket and proceed to issue process to enforce the judgment as in other cases; but if the judgment has been reversed and remanded he shall continue the cause on the docket with its original file number for trial.

Source: Art. 2284 and Art. 2285 and Texas Rule 83 (for District and County Courts).
Change: The statutes and rule have been combined and harmonized with other rules as changed. Minor textual changes were sufficient.

Rule 369-a. No Abatement for Death.—If any party to the record in a cause dies after rendition of judgment in the trial court, and before such cause has been finally disposed of on appeal, such cause shall not abate by such death, but the appeal may be perfected and the Court of Civil Appeals or the Supreme Court, if it has granted or thereafter grants a writ therein, shall proceed to adjudicate such cause and render judgment therein as if all the parties thereto were living, and such judgment shall have the same force and effect as if rendered in the lifetime of all the parties thereto. If appellant dies after judgment, and before the expiration of the time for perfecting appeal, sixty days after the date of such death shall be allowed in which to perfect appeal and file the record, and all bonds or other papers may be made in the names of the original parties the same as if all the parties thereto were living. Promulgated by order of Sept. 20, 1941, effective Dec. 31, 1941; as amended by order of June 16, 1943, effective December 31, 1943.

This is a new rule, effective December 31, 1941.
Source: Arts 1760 and 1850, which articles have been repealed pursuant to Rule 819.
Amendment effective December 31, 1943, permits and regulates appeal in names of original parties where dying at any time after judgment of trial court.

SECTION 2. RECORD ON APPEAL

Rule 370. Record on Appeal To Be Shortened.—In view of the crowded condition of the dockets of the appellate courts, the record and briefs on appeal should be limited as far as possible to the questions relied on for reversal. The primary purpose of the courts is to administer justice between the parties with as little expense and delay as possible. Liberal provisions are therefore made in these rules for amendments on appeal to bring forward any material matter which may have been omitted. With this protection, the bar as expected to cooperate in shortening the records in furtherance of the provisions of these rules.

Source: New rule.

Rule 371. Record on Appeal Defined.—The record on appeal shall consist of a transcript and, where necessary to the appeal, a statement of facts.

Source: New rule.

Rule 372. Bills of Exception.—If either party during the progress of a cause is dissatisfied with any ruling, opinion, or other action of the court, he may except thereto at the time the said ruling is made, or announced or such action taken, and at his request time shall be given to embody such exception in a written bill. Where, under Rule 373, formal exception is not required, a similar opportunity shall be given the objecting party to embody his objection in a written bill. The term "bill of exceptions," as herein used, shall embrace bills both for the purpose of showing formal exceptions and for the purpose of showing objections under Rule 373. The preparation and filing of bills of exception shall be governed by the following rules:

(a) No particular form of words shall be required in a bill of exception; but the objection to the ruling or action of the court shall be stated with such circumstances, or so much of the evidence as may be necessary to explain, and no more, and the whole as briefly as possible.

(b) Where the statement of facts contains all the evidence requisite to explain the bill of exception evidence need not be set out in the bill; but it shall be sufficient to refer to the same as it appears in the statement of facts.

(c) All objections to rulings on evidence or other matters may be shown in the statement of facts without the necessity of formal bills of exception, but the parties may have approved and filed formal bills of exception showing such objection, exception, ruling and other matters.

(d) The ruling of the court in giving or qualifying instructions to the jury shall be regarded as approved unless excepted to.

(e) Where the ruling or other action of the court appears otherwise of record, no bill shall be necessary to reserve an exception thereto; and all motions and answers thereto, the orders thereon and any exceptions shown in such orders shall, for the purpose of this rule, be considered a part of the record without the necessity of bills of exception; provided that if testimony is heard upon a motion, such testimony may be preserved only by bill of exception or statement of facts.

(f) Bills of exceptions not in the statement of facts shall be presented to the judge for his allowance and signature.

(g) The judge shall submit such bill to the adverse party or his counsel, if in attendance on the court, and if found to be correct the judge shall sign it without delay and file it with the clerk.

(h) If the judge finds such bill incorrect, he shall suggest to the party or his counsel such corrections as he deems necessary therein, and if they are agreed to, he shall make such corrections, sign the bill and file it with the clerk.

(i) Should the party not agree to such corrections, the judge shall return the bill to him with his refusal indorsed thereon, and shall prepare, sign and file with the clerk such bill of exception as will, in his opinion, present the ruling of the court as it actually occurred.

(j) Should the party be dissatisfied with said bill filed by the judge, he may, upon procuring the signatures of three respectable bystanders, citizens of this State, attesting to the correctness of the bill as presented by him, have the same filed as part of the record of the cause; and the truth of the matter in reference thereto may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the papers of the cause, within ten days after the filing of said bill and to be considered as a part of the record relating thereto. The truth of such bill of exceptions shall be determined on appeal from such affidavits.

(k) In the event a separate bill of exception is filed and there is a conflict between its provisions and the provisions of the statement of facts, the bill of exceptions shall control.

Source: Art. 2237, with minor textual change. Art. 1838 has been incorporated in subdivision (j).

Caveat: The article was amended in 1939, effective January 1st, 1940, subsequent to the effective date of the Rule Making Act. See, however, Garrett v. Mercantile National Bank of Dallas, 140 Tex. 394, 168 S.W.2d 636.

Rule 373. Exceptions Unnecessary.—Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

Source: Federal Rule 46, unchanged.

Rule 374. Assignments of Error.—The motion for new trial, when required to be filed under these rules, shall constitute the assignments of error on appeal or writ of error. A ground of error not distinctly set forth in the motion for new trial, in cases where a motion for new trial is required, shall be considered as waived. Complaint of the action of the court on all matters arising under circumstances where no motion for new trial is required by these rules, if relied upon on appeal, shall be included in the statement of points in the brief as hereinafter provided, and in such cases no assignments of error shall be necessary. Amended by Order of March 31, 1941.

Source: New rule, superseding Art. 1844. Texas Rule 24 (part) (for Courts of Civil Appeals) is incorporated.

Note: See Land Co. v. McClelland Bros., 86 Tex. 179, 23 S.W. 576, 22 L.R.A. 105, rehearing denied 23 S.W. 1100.

Change by amendment of March 31, 1941: The period at the conclusion of the original rule has been changed to a comma, and at the end of the original rule have been added the words, "and in such cases no assignments of error shall be necessary."

Rule 375. Stipulation As to Record.—The parties by written stipulation filed with the clerk of the trial court may designate the parts of the record, proceedings and evidence to be included in the record on appeal.

Source: Federal Rule 75(f), with minor textual change.

Rule 376. Transcript.—The clerk of the trial court, under written direction of appellant, shall prepare under his hand and seal of the court for transmission to the appellate court a true copy of the proceedings in the trial court, and, unless otherwise designated by agreement of the parties, shall include the following: the material pleadings upon which the trial was had without unnecessary duplication; the order of the court upon any motions or exceptions as to which complaint is made; the charge of the court and the verdict of the jury, or the findings of fact and conclusions of law; bills of exceptions; the judgment of the court; the motion for new trial and the order of the court thereon; the notice of appeal with the date of giving or filing the same; any statement of the parties as to the matter to be included in the record; the bond on appeal; a certified bill of costs; and any filed paper either party may designate as material. The appellant shall promptly file with the clerk and deliver or mail to the appellee or his attorney a copy of such written direction, and appellee or any party to the appeal may so file and deliver or mail a written direction to include in the transcript additional portions of the proceedings in the trial court, and the clerk shall comply. Amended by Order of March 31, 1941.

Source: Federal Rule 75(g), superseding Art. 2278.

Change: Addition of "under the direction of appellant." Provision for designation of instruments. The list is made controlling in the absence of a designation. The list differs from the enumeration in the Federal Rule in several respects.

Change by amendment of March 31, 1941: "written" has been supplied for the word "the" between "under" and "direction"; the words of the original rule "pertinent to the points of error on appeal and cross-appeal if any," have been eliminated; and at the end of the original rule the last sentence, above, has been added.

Rule 376-a. Form of Transcript.—The transcript shall be prepared in such form as may be directed by the Supreme Court. Such Court will enter an order or orders in such respect for the guidance of trial clerks. Promulgated by order of June 16, 1943, effective December 31, 1943.

This is a new rule, effective December 31, 1943.

Rule 377. Statement of Facts.—(a) Testimony. The testimony of the witnesses need not be in narrative form but may be in question and answer form. A party may prepare and file with the clerk a condensed statement in narrative form of all or part of the testimony and deliver a true copy thereof to the opposing party or his counsel, and such opposing party, if dissatisfied with the narrative statement, may require the testimony in question and answer form to be substituted for all or part thereof.

(b) Abbreviation of Statement. All matters not essential to the decision of the questions presented on appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document appearing in the transcript or the statement of facts shall be excluded. All documents shall be abridged by omitting all irrelevant and formal portions thereof.

(c) Promptly after notice of appeal is given and where a request is made of the official court reporter for the preparation of a transcript of all or any part of the evidence adduced on the trial of the case, or whenever, with or without such a request, a statement of facts is filed or offered for filing by appellant, the appellant shall deliver or mail to the appellee or his counsel and file with the clerk of the court a designation in writing of the portions of the evidence desired, and shall specify the portions desired in narrative form, if any, and the portions desired in question and answer form, if any, and the portions that are desired to be omitted. Within ten days thereafter any other party to the appeal may file a designation in writing of any additional portions of the evidence to be included, specifying the portions desired in narrative form, if any, and the portions desired in question and answer form, if any.

(d) Approval of Trial Court Unnecessary. It shall be unnecessary for the statement of facts to be approved by the trial court or judge thereof when agreed to by the parties. If any difference arises as to whether the record truly discloses what occurred in the trial court, or if the opposing party fails to agree or to disagree within ten days after being furnished with a copy of the proposed statement of facts, the matter shall be submitted to and settled by the trial court or judge thereof and the statement of facts be by him made to conform to the truth.

(e) If either party arbitrarily requires in either narrative or question and answer form more of the testimony than is necessary, he shall be required to pay the cost thereof, even though he is successful on the appeal. Amended by order of March 31, 1941; also by order of September 20, 1941, effective December 31, 1941.

Source: Federal Rule 75(c), (e), and (h).
Change: In (a) the party filing a condensed statement is required to furnish a copy to the opposing party, which is not expressly required by the Federal Rule.
(b) is a substantial copy of the first three sentences of Federal Rule 75(e).
(d) is a substantial copy of Federal Rule 75(h) with the addition of provision for submitting to the judge the statement of facts when the opposing party fails to agree or disagree within ten days.
(h) with the addition of provision for submitting to the judge the statement of facts when the opposing party fails to agree or disagree within ten days.
Change by amendment of March 31, 1941: Subdivision (c) has been supplied and the original subdivisions (c) and (d) have been re-lettered (d) and (e), respectively.
Change by amendment effective December 31, 1941: Amended in the following respects: by inserting in paragraph (c) after the words "of the case" and before the words "the appellant shall," the following: "or whenever, with or without such a request, a statement of facts is filed or offered for filing by appellant"; also by adding after the words "in question and answer form, if any", the following: "and the portions that are desired to be omitted"; also by adding to the last sentence the words, "specifying the portions desired in narrative form, if any, and the portions desired in question and answer form, if any"; and also by inserting in paragraph (e), after the words "arbitrarily requires in," the words "either narrative or". Minor changes in punctuation.

Rule 377-a. Statement Of The Points To Be Relied On.—For the purpose of inducing the opposing party to accept an abbreviated transcript or statement of facts, the appellant, or the appellee to the extent that he complains of the judgment or any part therof, may file with the clerk of the trial court a statement of the points on which he intends to rely on appeal; and he shall thereafter be limited to such points.

This is a new rule, effective December 31, 1941.

Rule 378. Agreed Statement.—The parties may agree upon a brief statement of the case and of the facts proven as will enable the appellate court to determine whether there is error in the judgment. Such statement shall be copied into the transcript in lieu of the proceedings themselves.

Source: Art. 2280.
Change: Elimination of the requirement that the judge approve such statement.

Rule 379. Order As to Original Papers or Exhibits.—Whenever the trial court is of the opinion that original papers or exhibits should be inspected by the appellate court or sent to the appellate court in lieu of copies, it may make such order therefor and for the safekeeping, transportation, and return thereof as it deems proper. The appellate court on its own initiative may direct the clerk of the court below to send to it any original paper or exhibit for its inspection.

Source: Federal Rule 75(i).
Change: Addition of last sentence.

Rule 380. Free Statement of Facts on Appeal for Paupers.—In any case where the appellant has made the proof required to appeal his case without bond, the court or judge upon application of appellant shall order the official reporter to make a transcript in narrative form, in duplicate, and to deliver the same to said party, but such court reporter shall receive no pay for same.

Source: Acts 1930, 41st Leg., 4th C.S., p. 91, ch. 50, appearing in Vernon's Tex.Ann.Civ.St. as Art. 2278a.
Change: Elimination of requirement that there be filed an affidavit stating that the pauper's oath has been filed.

Rule 381. Time for Filing Statement of Facts in Trial Court.—(a) When an appeal is taken from a judgment rendered in a civil cause tried in either the district court, county court, or county court at law, the party appealing shall have fifty days after the rendition of final judgment or order overruling motion for new trial, if such motion is filed, or perfection of writ of error, within which to prepare and file his statement of facts and bills of exception in the trial court.

(b) Upon application of the party appealing, the judge of the court may, in term time or vacation, for good cause shown, extend the time for filing such statement of facts and bills of exception, but the time shall not be extended in any case so as to delay the filing thereof beyond the time for filing the transcript, bills of exceptions, and statement of facts in the Court of Civil Appeals, as prescribed by these rules or as

extended by said court. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Art. 2246, as amended, with minor textual change.
Change by amendment effective February 1, 1946: The words "the rendition of" have been interpolated after the words "fifty days after" in subdivision (a), and the caveat has been dropped from the note.
Caveat: This article was amended in 1939, the effective date of the amendment being subsequent to the effective date of the Rule Making Act. See, however, Garrett v. Mercantile National Bank of Dallas, 140 Tex. 394, 168 S.W.2d 636.

Rule 382. Violations of Rules: Costs.—The appellate court may impose or withhold costs as the circumstances of the case may require for any unreasonable infraction of the rules with respect to the preparation of the record on appeal.

Source: Federal Rule 75(e) in part, with minor textual change.

SECTION 3. PROCEEDINGS IN THE COURTS OF CIVIL APPEALS

Rule 383. Original Proceedings.—A petition seeking to institute an original proceeding in the Court of Civil Appeals shall be presented to the clerk, accompanied with a motion for leave to file, and such written argument in behalf of the motion as may be desired. The motion shall be filed and, together with the petition and argument, if any, sent at once to the consultation room for the action of the court. If the court should be clearly of the opinion that the facts stated in the petition entitle petitioner to the relief sought, the motion will be granted, the petition filed, and the cause placed upon the trial docket. Otherwise the motion will be denied. The court, upon filing the motion, may require a bond or deposit in a reasonable amount to secure payment of costs, or an affidavit in lieu of such bond as in appealed cases.

Source: New rule.

Rule 384. Appeal in Quo Warranto Proceedings.—In an appeal in a quo warranto proceeding the appeal shall be perfected and the transcript and statement of facts filed in the Court of Civil Appeals within twenty days after final judgment or order overruling motion for new trial; provided, that upon the filing of a motion in the appellate court within such twenty-day period, or within five days thereafter, showing good cause therefor, the court may grant a reasonable extension of time in which to file the record or any part thereof. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Texas Rule 7 (for Courts of Civil Appeals).
Change: Elimination of provision for motion day in such causes.
Change by amendment effective December 31, 1947: The previous rule has been almost completely redrafted and the procedure has been materially altered.

Rule 385. Appeals From Interlocutory Orders.—Appeals from interlocutory orders (when allowed by law) may be taken by

(a) Filing an appeal or supersedeas bond within twenty days after rendition of the order appealed from, conditioned as required by the rules governing appeals generally; and

(b) Filing the record in the appellate court within twenty days after rendition of the order appealed from. Provided, that upon the filing of a motion in the appellate court within such twenty-day period, or within five days thereafter, showing good cause therefor, such court may grant a reasonable extension of time in which to file such record or any part thereof.

(c) Where the appeal is from an order sustaining a plea of privilege, transfer of the venue and trial upon the merits shall be suspended pending the appeal.

(d) Where the appeal is from an order granting or refusing a temporary injunction, or granting or overruling a motion to dissolve such an injunction, the cause may be heard in the Court of Civil Appeals or the Supreme Court on the bill and answer and such affidavits and evidence as may have been admitted by the judge of the court below. Such appeal shall not have the effect to suspend the order appealed from, unless it shall be so ordered by the court or judge entering the order.

(e) In all appeals from interlocutory orders there shall be no motion for a new trial, and the trial judge need not file findings of fact or conclusions of law, provided, however, it shall be permissible for the trial judge to file findings of fact and conclusions of law, if they are filed so as not to delay the filing of the record in the appellate court. As amended by order of Sept. 20, 1941, effective Dec. 31, 1941; order of June 16, 1943, effective Dec. 31, 1943.

Source: In part a new rule. Subsection (c) is based on Art. 2008(d) on Art. 4662.
Change by amendment effective December 31, 1941: The last sentence has been added to subsection (b) and the last sentence has been added to subsection (d).
By amendment effective December 31, 1943, subsection (e), above, was added.

Rule 386. Time to File Transcript and Statement of Facts.—In appeal or writ of error the appellant shall file the transcript and statement of facts with the clerk of the Court of Civil Appeals within sixty days from the rendition of the final judgment or order overruling motion for new trial, or perfection of writ of error; provided, by motion filed before, at, or within a reasonable time, not exceeding fifteen days after the expiration of such sixty-day period, showing good cause to have existed within such sixty-day period why said transcript and statement of facts could not be so filed, the Court of Civil Appeals may permit the same to be thereafter filed upon such terms as it shall prescribe. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Art. 1839 as amended in 1939.
Change: Substitution of "perfection of writ of error" for "service of writ of error."
Change by amendment effective February 1, 1946: The words "rendition of the" have been added immediately after the words "sixty days from the," and the caveat has been dropped from the note.
Caveat: The amendment of 1939 took effect Jan. 1st, 1940, subsequent to the effective date of the Rule Making Act.

Rule 387. Affirmance on Certificate.—(a) If the appellant shall fail to file a transcript of the record in the proper time the appellee may upon motion have the case affirmed on certificate by filing in the appellate court a certified copy of the judgment and a certificate of the clerk of the trial court stating the time when and how such appeal or writ of error was perfected.

(b) If a copy of the bond accompanies such certificate, the judgment shall be affirmed against the sureties thereon.

(c) Affirmance of the judgment on certificate may be had at any time after the right to file the transcript has expired; but no affirmance of the judgment on certificate shall be had against the sureties upon the bond unless the motion to so affirm has been filed within one year after the right to file the transcript has expired.

(d) Ten days' notice by mail of the hearing of the motion shall be given by the clerk to the appellant. Amended by order of March 31, 1941.

Source: Arts. 1841–43, Texas Rule 11a (for Courts of Civil Appeals).
Change: In (c) the right to affirmance on certificate is given without reference to terms of court. Addition of (d) which is new. Omission of the statutory provision allowing fifteen days after affirmance on certificate within which to file application for permission to file the transcript.
Change by amendment of March 31, 1941: Subdivision (e) of the original rule has been dropped, because bond or affidavit, etc., have elsewhere been made necessary to the perfection of appeal.

Rule 388. Transcript Filed With Court of Civil Appeals.—The clerks of the Courts of Civil Appeals shall receive the transcripts delivered and sent to them, and receipt for same if required; but they shall not be required to take a transcript out

of the postoffice or an express office, unless the postage or charges thereon be fully paid. Upon receipt of the transcript, it shall be the duty of the clerk to examine it in order to ascertain whether or not, in case of an appeal, notice of appeal and a proper appeal bond or affidavit in lieu thereof (where bond is required) have been given; and in case of a writ of error, whether or not the petition and bond or affidavit in lieu thereof (where bond is required) appear to have been filed. If it seems to him that the appeal or writ of error has not been duly perfected, he shall note on the transcript the day of its reception and refer the matter to the court. If upon such reference the court shall be of the opinion that the transcript shows that the appeal or writ of error has been duly perfected, they shall order the transcript to be filed as of the date of its reception. If not, they shall cause notice of the defect to issue to the attorneys of record of the appellant, to the end that they may take steps to amend the record, if it can be done; for doing which a reasonable time shall be allowed. If the transcript does not show the jurisdiction of the court, and if after notice it be not amended, the appeal shall be dismissed. Amended by order of Sept. 20, 1941, effective Dec. 31, 1941.

Source: Texas Rule 1 (for Courts of Civil Appeals), with minor textual change to harmonize with Rule 363 as to perfection of appeal.

Change by amendment effective December 31, 1941: Amended by striking out the words, in the second sentence reading, "notice of appeal has been given," and substituting therefor the words, "notice of appeal and proper appeal bond or affidavit in lieu thereof (where bond is required) have been given." Also in the last sentence the word "appeal" has been substituted for the word "case."

Rule 389. Transcript: Duty of Clerk on Receiving.—Upon receipt of the transcript the clerk shall indorse his filing thereon, showing the date of its reception, if it comes to him properly indorsed and provided it is filed within the time required, and shall notify the adverse party of the receipt of the record in said cause. If it comes to him after the said date, or is not so properly indorsed, he shall without filing it, make a memorandum upon it of the date of its reception and keep it in his office subject to the order of the person who sent it or to the disposition of the court, at the same time notifying in writing the person who sent it why the clerk does not file it. Said transcript shall not be filed until a proper showing has been made to the court for its not being properly indorsed or for not being received by the clerk in proper time, and upon this being done it may be ordered by the court to be filed, if the rules have been complied with, upon such terms as may be deemed proper, having respect to the rights of the opposite party.

Source: Art. 1845 (part) and Texas Rule 2 (for Courts of Civil Appeals), with minor textual change.

Rule 390. Party to File Own Transcript.—(a) Either party may file the transcript for which he has applied to the district or county clerk, and which has been delivered to him; both of which facts must appear on the transcript by the indorsement of the clerk. If the indorsement shows that it was applied for by one party and delivered to the other, it must be shown by the indorsement of the clerk, or otherwise, to entitle it to be properly filed as the transcript of the party to whom it was delivered, that it was delivered to him by consent of the other party, as each party has the sole right to the transcript which he has applied for to be made out for him; and if it is so filed without that fact being shown, the court may strike the case from the docket as improperly filed, upon its own inspection, or upon motion of the party to whom the transcript belonged.

(b) If but one party file his transcript in proper time, that shall be regarded as the transcript of the record of the case.

(c) If both parties file transcripts within the proper time, which they may do, and that of the appellant is properly made and indorsed, it shall be regarded by the court as the transcript of the record in the case, and the court will grant the appellee leave to withdraw that filed by him for his own use. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Texas Rules, 3, 4, and 5 (for Courts of Civil Appeals), with minor textual change.

Amendment effective December 31, 1943, has added the italicized and dropped the bracketed word in the first sentence as shown below: "Either party may file the transcript for which he has applied to the district *or county* clerk, and which has been delivered to him; both of which facts must appear on the transcript by the indorsement of the [district] clerk."

Rule 391. Record Must Be Indexed.—If the transcript when filed in the Court of Civil Appeals shall not be indexed as required by these rules, or, if the statement of facts, however made up, shall not be indexed as to witnesses or instruments introduced in evidence, the Court of Civil Appeals may cause a proper index to be made by the clerk of their court and shall cause the cost of the same to be taxed against the appellant.

Source: Texas Rule 7a (for Courts of Civil Appeals), with minor textual change.

Rule 392. Filed Transcript a Court Record.—From the time when the transcript, properly made out and indorsed, is filed, it will cease to belong to either party, but will become a record of the court, subject to its control and disposition. The clerk, before the regular call of the trial docket, shall have the file number indorsed on each transcript.

Source: Texas Rule 6 and first sentence of Rule 16 (for Courts of Civil Appeals), unchanged.

Rule 393. Clerk Responsible for Papers.—The clerk shall be responsible for every transcript or other paper in a cause that is missing from his office, unless he can produce the receipt of an attorney for the same, or otherwise show, by satisfactory evidence, that some one took it from his custody or from the court room without his consent, or that said transcript had passed into the hands of one of the justices of the court, and had not been returned to his custody.

Source: Texas Rule 59 (for Courts of Civil Appeals), unchanged.

Rule 394. Issuance of Process.—Any writ or process issuing from any Court of Civil Appeals shall bear the teste of the Chief Justice under the seal of said court and be signed by the clerk thereof, and, unless otherwise expressly provided by law or by these rules, shall be directed to the party or court to be served, and may be served by the sheriff or any constable of any county of the State of Texas within which such person to be served may be found, and shall be returned to the court from which it issued. Whenever such writ or process shall not be executed, the clerk of such court shall issue another like process or writ upon the application of the party suing out the former writ or process.

Source: Art. 1825.
Change: Process is directed to the individual to be served, not to a particular county.

Rule 395. Withdrawing Papers.—Neither the transcript nor any of the papers in a case shall be withdrawn from the custody of the clerk, nor taken from his office or the court room, without a receipt left therefor.

Source: Texas Rule 55 (for Courts of Civil Appeals), unchanged.

Rule 396. Same: Restrictions.—Cases while under submission, either on the merits of the appeal or on motion, are no longer under the control of the attorneys; and while so under submission, the clerk will not let the transcripts of such cases go out of his office, except on the order of one of the justices of the court. While not under submission, either before submission or after decision, the parties or their at-

torneys may, by complying with Rule 395, obtain possession of the transcript; provided, however, that when a case has been decided upon the merits of the appeal, no one, except the losing party or his attorney, shall be allowed to take the transcript out of the clerk's office until after said party has filed his motion for a rehearing, or until the time for filing such motion has expired.

Source: Texas Rule 56 (for Courts of Civil Appeals), unchanged.

Rule 397. Same: Original Documents.—Original papers sent up with the transcript by order of the court below for the inspection of the appellate court will be retained in the office and will not be allowed to go out of the custody of the clerk, except by order of one of the justices of the court, which order must be filed with the papers of the cause.

Source: Texas Rule 57 (for Courts of Civil Appeals), unchanged.

Rule 398. Papers Not To Be Removed.—No attorney shall take, or suffer to be taken, any transcript or other paper for which he has receipted, out of the reach of the court, so that it can not be produced in court or in the clerk's office when needed.

Source: Texas Rule 60 (for Courts of Civil Appeals), unchanged.

Rule 399. Disposition of Papers When Appeal Dismissed.—In all cases in which appeals or writs of error are dismissed, the appellant or party filing the transcript, without further leave of court, shall have the right to withdraw the transcript, unless it contains original papers belonging to an adverse party, in which event leave of court shall be had before such original papers are withdrawn.

Source: Texas Rule 62 (for Courts of Civil Appeals), unchanged.

Rule 400. Inspection of Records.—The clerk shall furnish the parties and counsel with an opportunity, when reasonably applied to for that purpose, to inspect the records, judgments, papers, opinions, books and dockets in his office in which they may be interested; but he shall not be required to permit copies thereof to be taken without his consent. He shall, upon tender of reasonable compensation, give certified copies of the records of his office.

Source: Texas Rule 58 (for Courts of Civil Appeals), unchanged.

Rule 401. Correspondence.—Correspondence relative to any matter before the court must be with the clerk and shall not be addressed to any of the justices.

Source: Texas Rule 20 (for Supreme Court), extended to Courts of Civil Appeals.

Rule 402. Trial Docket.—Each cause carried to the Court of Civil Appeals, either by appeal or by writ of error, shall be docketed in the order received upon the trial docket. Before the attorney has filed his brief he may notify the clerk in writing of the fact that he represents a named party to the appeal, which fact shall be by the clerk noted upon the trial docket, opposite the name of the party for whom he appears, and shall be regarded by the court as having whatever effect is given to the appearance of a party to a case without brief filed. After briefs have been filed, the name of the attorney or attorneys signed to the brief shall be entered by the clerk on the trial docket, opposite the name of the appropriate party if such names have not already been so entered. The court will not enter upon the docket the names of attorneys in a case, but counsel desiring their names entered shall see that it is done under the provisions of this rule.

Source: Arts. 1845 and 1846, Texas Rules 16, 17, and 18 (for Courts of Civil Appeals).
Change: Allowing appearance by written notice before brief is filed.

Rule 403. Agreements of Counsel.—All agreements of parties or their counsel relating either to the merits or conduct of the case in the court or in reference to a waiver of any of the requirements prescribed by the rules, looking to the proper preparation of an appeal or writ of error for a submission, shall be in writing, signed by the parties or their counsel, and filed with the transcript or be contained in it, and, to the extent that such agreement may vary the regular order of proceeding, shall be subject to such orders of the court as may be necessary to secure a proper presentation of the case.

Source: Texas Rule 46 (for Courts of Civil Appeals), with minor textual change.

Rule 404. Motions Relating to Informalities in Record.—All motions relating to informalities in the manner of bringing a case into court shall be filed and entered by the clerk on the motion docket within thirty days after the filing of the transcript in the Court of Civil Appeals, otherwise the objection shall be considered as waived, if it can be waived by the party.

Source: Texas Rule 8 (for Courts of Civil Appeals), unchanged.

Rule 405. Motions to Dismiss for Want of Jurisdiction.—Motions to dismiss for want of jurisdiction to try the case and for such defects as defeat the jurisdiction in the particular case and cannot be waived shall also be made, filed and docketed at said time; provided, however, if made afterwards they may be entertained by the court upon such terms as the court may deem just and proper.

Source: Texas Rule 9 (for Courts of Civil Appeals), unchanged.

Rule 406. Evidence on Motions.—Motions made either to sustain or defeat the jurisdiction of the court, dependent on facts not apparent in the record and not ex officio known to the court, must be supported by affidavits or other satisfactory evidence.

Source: Texas Rule 10 (for Courts of Civil Appeals), unchanged.

Rule 407. Motion to Delay Cause.—Motions made to postpone the case to a future day, or to continue it until the next term, unless consented to by the opposite party, shall be supported by sufficient cause, verified by affidavit, unless such sufficient cause is apparent to the court.

Source: Texas Rule 12 (for Courts of Civil Appeals), unchanged.

Rule 408. Notation on Motion Docket.—The clerk, upon the filing and docketing of a motion, will indorse upon the motion its number and the number of the case to which it belongs, which shall also be entered in the motion docket, together with the attorney's name who makes the motion. Any opposition in the way of answer to said motion by the opposite party may be filed, and in like manner indorsed and noted in the motion docket, and the name of the attorney therein entered.

Source: Texas Rule 15 (for Courts of Civil Appeals), unchanged.

Rule 409. Notice on Motion.—The clerk, upon filing and docketing a motion other than one for rehearing in any cause, shall, unless waived, give notice to the opposite party or his attorneys of record, by transmitting a brief notice of the nature or purpose of such motion to said party or his attorneys in the manner provided in Rule 411, and no such motion shall be heard or determined until ten days after such notice has been mailed. The ten days' notice requirement may be disregarded by the court in cases of emergency.

Source: Texas Rule 15a (for Courts of Civil Appeals).
Change: Adding authorization to court to shorten period before hearing where deemed advisable.

Rule 410. Order of Deciding Cases.—Cases shall be decided in the order in which they are filed,

but the following cases shall have precedence of all others:

(a) Cases in which the Railroad Commission is a party.

(b) Cases in which the State is a party.

(c) Cases given precedence by law or these rules.

(d) Cases submitted on oral argument for all parties to the cause.

(e) Appeals from interlocutory orders.

(f) Such other cases as the court, by order or rule, may direct.

Source: Art. 1849, with additions.

Rule 411. Submission in Order of Filing: Service of Notice.—Causes on the trial docket of the Court of Civil Appeals which are not advanced as otherwise provided shall be submitted in the order of the date of filing and the clerk shall notify the parties or their attorneys of the date of filing, and of the date of submission, by letter delivered in person or through the mails. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 1847, unchanged.
Change by amendment effective December 31, 1943: The mode of transmitting notice has been altered.

Rule 412. Order of Hearing.—Cases upon the trial docket of the court which have not been advanced shall be set for submission eight weeks ahead of the date of submission and the parties or their attorneys of record shall be notified of the date of submission as provided by Rule 411.

Source: Art. 1848, first sentence, with minor textual change.

Rule 413. Preparation of Cause for Submission.—A cause will be properly prepared for submission only when a transcript of the record exhibits a cause prepared for appeal in accordance with these rules, and filed in the court under the rules, with briefs of one or of both the parties. All parties will be expected, before submission, to see that the transcript of the record is properly prepared.

Source: Texas Rule 22 (for Courts of Civil Appeals).
Change: Elimination of part of the last sentence, which provided that failure to observe omissions or inaccuracies would not be admitted as a reason for correction of the record after submission.

Rule 414. Briefs: Time for Filing, Etc.—Briefs of each party shall be subscribed by at least one of his attorneys, shall give the post-office address of each attorney whose name is signed thereto, and shall state that a copy of such brief has been delivered or mailed to each group of opposing parties or counsel thereof. Appellant shall file three copies of his brief in the Court of Civil Appeals within thirty days after the filing therein of the transcript and statement of facts, if any, having theretofore delivered or mailed an additional copy to opposing parties or their counsel. Appellee shall file three copies of his brief in said court within twenty-five days after the filing of appellant's brief and at the same time deliver or mail an additional copy to each group of opposing parties or counsel thereof. Any Court of Civil Appeals may by rule permit the filing therein of a less number of briefs. Upon good cause shown, the Court of Civil Appeals may grant either or both parties further time for filing their respective briefs, and may extend the time for submission of the case. The court may also shorten the time for filing briefs and the submission of the cause in case of emergency, where in its opinion the needs of justice require it. As amended by order of March 31, 1941; order of June 16, 1943, effective Dec. 31, 1943.

Source: Art. 1848 (part) and Texas Rule 36 (for Courts of Civil Appeals), with minor textual change.
Change by amendment of March 31, 1941: The third, fourth, and fifth words of the original rule, which read "not less than," have been stricken out and the word "within" substituted therefor.
Change by amendment effective December 31, 1943: The last three sentences of the rule have been retained with minor textual differences. The rest of the amendment is largely new.

Rule 415. Briefs: Dismissal for Failure to File.—When the appellant has failed to file his brief in the time prescribed, the appellate court may dismiss the appeal for want of prosecution, unless good cause is shown for such failure and that appellee has not suffered material injury thereby. The court, may, however, decline to dismiss the appeal, whereupon it shall give such direction to the cause as it may deem proper.

Source: Texas Rule 38 (for Courts of Civil Appeals), rewritten.
Change: Reference to filing of assignments in trial court eliminated.

Rule 416. Brief: Appellee's Brief When Appellant Files No Brief.—When appellant has failed to file his brief as provided in the foregoing rules, the appellee may, prior to the call of the case, file his brief, which the court may in its discretion regard as a correct presentation of the case, and upon which it may, in its discretion, affirm the judgment of the court below without examining the record.

Source: Texas Rule 39 (for Courts of Civil Appeals), with minor textual change.

Rule 417. Briefs Written or Typewritten.—The brief of either party may be written, typewritten, or printed. If written, it shall not exceed fifteen pages of manuscript. If typewritten, it must be with double space between the lines, and at least one copy shall be an original written on heavy white paper in clear type. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Texas Rule 34 (for Courts of Civil Appeals.)
Change: Addition of express requirement that one typewritten brief be an original upon heavy white paper.
Change by amendment effective February 1, 1946:
The words "written or typewritten" have been replaced by the words, "written, typewritten, or printed."

Rule 418. Briefs: Contents.—The brief for appellant should contain in the order here stated.

(a) A short, plain statement of the nature of the case without argument. A resumé of the pleadings or evidence is seldom necessary and should be avoided.

(b) A statement of the points upon which the appeal is predicated, separately numbered in short form and without argument, and germane to one or more assignments of error when assignments are required. Such points will be sufficient if they direct the attention of the court to the error relied upon and they should ordinarily be so concisely stated that they may appear, separately numbered, on a single page of the brief. Assignments of error need not be copied in the brief, and may be cited by reference only.

(c) A brief of the argument, presenting separately or grouped, if germane, the points relied upon for reversal, the argument to include (i) a fair, condensed statement of the facts pertinent to such points, with references to the pages in the record where the same may be found; and (ii) such discussion of the facts and the authorities relied upon as may be requisite to maintain the point at issue. If complaint is made of any charge given or refused, such charge shall be set out in full. If complaint is made of the improper admission or rejection of evidence, the full substance of such evidence so admitted or rejected shall be set out with reference to the pages of the record where the same may be found. Repetition or prolixity of statement or argument must be avoided. As amended by order of March 31, 1941; order of Sept. 20, 1941, effective Dec. 31, 1941.

Source: New rule, substantially stating the practice under Art. 1757.
Change: The "points" provided for are not to be formal propositions, but brief expressions of the questions involved in the appeal. For example, "First Point: The error of the court in refusing to charge upon the issue of appellant's liability under the family purpose doctrine. Germane to Assignment of Error No. 4, Transcript p. 38."
Change by amendment of March 31, 1941: To Subdivision (b) as contained in the original rule, at the end of the first

sentence, have been added the words "when assignments are required"; and after the last comma, instead of the original wording the words "and may be cited by reference only" have been supplied.
Change by amendment effective December 31, 1941: The second from last sentence has been clarified.

Rule 419. Briefs: Statements Not Challenged Accepted.—Any statement made by appellant in his original brief as to the facts or the record may be accepted by the court as correct unless challenged by opposing party. Amended by order of Sept. 20, 1941, effective Dec. 31, 1941.

Source: New Rule.
Change by amendment effective December 31, 1941: The rule has been redrafted.

Rule 420. Brief: Appellee's.—The brief of the appellee shall reply to the points relied upon by the appellant in due order when practicable; and in case the appellee desires to complain of any ruling or action of the trial court, his brief in regard to such matters shall follow substantially the form of the brief for appellant. Amended by order of Sept. 20, 1941, effective Dec. 31, 1941.

Source: New Rule.
Change by amendment effective December 31, 1941: The rule has been redrafted.

Rule 421. Briefs: Index.—Every brief shall contain at the front thereof a subject index with page references where the discussion of the points relied upon may be found. It shall also contain a list of the authorities alphabetically arranged, together with the references to the pages of the brief where they are cited. Each reply brief shall also contain a cross-index to the matters replied to. As amended by order of March 31, 1941.

Source: New rule.
Change by amendment of March 31, 1941: The words "and the reply thereto" occurring in the original rule between "upon" and "may" have been eliminated.

Rule 422. Briefing Rules To Be Liberally Construed.—The purpose of briefs being to acquaint the court with the points relied upon, the manner in which they arose, together with such argument of facts and law as will enable the court to decide the same, a substantial compliance with these rules will suffice in the interest of justice; but for a flagrant violation of the rules the court may require the case to be rebriefed.

Source: New rule.

Rule 423. Argument of Counsel: Right.—When a case is properly prepared for submission, any party who has filed briefs in accordance with the rules prescribed therefor may, upon the call of the case for submission, submit an argument to the court, either oral or plainly written or printed, which, if written or printed, may be left on file with the transcript, copies of which need not be furnished, unless printed.

Source: Texas Rule 47 (for Courts of Civil Appeals), unchanged.

Rule 424. Same: Subject Matter.—The arguments must be upon the disputed points, whether of law or fact, in support of the points relied on, on one side, and objections and counter-points on the other, and it must be confined to them, avoiding any reference or comment upon positions taken in the trial court, or to other extraneous matters not involved in or pertaining to that which is found in the record.

Source: Texas Rule 48 (for Courts of Civil Appeals), unchanged.

Rule 425. Same: Counsel to Answer Questions.—Counsel will be expected to answer questions propounded by members of the court relating to the matter in the record and to the law or authorities cited by counsel in the argument.

Source: Texas Rule 52 (for Courts of Civil Appeals), with minor textual change.

Rule 426. Same: Time Allowed.—After the case has been presented to the court by such explanation as may be necessary, each side may be allowed an hour in argument, with twenty minutes more in conclusion by the appellant; and, after being so presented, if the magnitude or importance of the case or the difficulty of the question seem to require it, a longer time may be allowed. Not more than two counsel on each side will be heard except upon leave of the court. Provided, however, that any Court of Civil Appeals may, in its discretion, by general rule, reduce the time allowed for oral argument in said court to conform to Rule 498.

Source: Texas Rule 50 (for Courts of Civil Appeals), with minor textual change.

Rule 427. Same: Where But One Party Files Brief.—If counsel for but one party has filed briefs, an argument by him may be allowed, conformably to the preceding rules as nearly as practicable, under the direction of the court.

Source: Texas Rule 51 (for Courts of Civil Appeals), unchanged.

Rule 428. Amendment: Record.—If anything material to either party is omitted from the transcript or statement of facts, the parties by stipulation, or the trial court, either before or after the record has been transmitted to the appellate court, or the appellate court, on a proper suggestion or on its own initiative, may direct a supplemental record to be certified and transmitted by the clerk of the trial court supplying such omitted matter.

Source: Federal Rule 75(h), last sentence, with minor textual change.

Rule 429. Amendment: Defects Appearing At or After Submission.—Should it be apparent during the submission or afterwards that the case has not been properly prepared, as shown in the transcript, or properly presented in the brief or briefs, or that the law and authorities have not been properly cited, which will enable the court to decide the case, it may decline to receive the submission; or, if received, may set it aside and make such orders as may be necessary to secure a more satisfactory submission of the case; or should it appear to the court, after the submission of the cause, that the statement of facts has been prepared in violation of the rules, the court may require the appellant to furnish a correct statement of facts, and upon his failure to do so may disregard it. If the violation of the rule be flagrant, the court may disregard the statement of facts altogether, unless counsel for the appellant shall make it appear by affidavit or otherwise that he prepared a statement giving what, in his opinion, he deemed a fair presentation of the evidence, prepared in accordance with the rules, and that he was unable to get it agreed to or approved. Should counsel for appellant show that he has used due diligence to have a proper statement of facts filed, and that the statement of facts as prepared is the result of the fault of the counsel for the opposite party, such as his failure or refusal to agree to a proper statement presented to him, the costs of the statement, if ordered, shall be taxed against the appellee.

Source: Texas Rule 53 (for Courts of Civil Appeals), with minor textual change.

Rule 430. Amendment: New Appeal Bond.—When there is a defect of substance or form in any appeal or writ of error bond, then on motion to dismiss the same for such defect, the appellate court may allow the same to be amended by filing in such appellate court a new bond, on such terms as the court may prescribe.

Source: Art. 1840, unchanged.

Rule 431. Amendment: Briefs.—Briefs may be amended or supplemented at any time when justice requires upon such reasonable terms as the court may prescribe, and if the court shall strike or refuse to consider any part of a brief, the court shall on rea-

sonable terms allow the same to be amended or supplemented.

Source: New rule.

Rule 432. Reporter To Have Access to Records.—The reporter shall have access to the minutes and judgments of the court, and shall have custody of the transcripts, briefs and opinions so long as may be necessary to discharge his duties.

Source: Texas Rule 61 (for Courts of Civil Appeals), with minor textual change.

SECTION 4. JUDGMENT

Rule 433. Decision of Court.—When a case has been properly prepared for submission and a satisfactory oral argument has been made, the court will promptly announce its judgment.

Source: First part of Texas Rule 54 (for Courts of Civil Appeals), unchanged. Balance of rule eliminated.

Rule 434. If Judgment Reversed.—When the judgment or decree of the court below shall be reversed, the court shall proceed to render such judgment or decree as the court below should have rendered, except when it is necessary that some matter of fact be ascertained or the damage to be assessed or the matter to be decreed is uncertain, in either of which cases the cause shall be remanded for a new trial.

Provided, first, that no judgment shall be reversed on appeal and a new trial ordered in any cause on the ground that the trial court has committed an error of law in the course of the trial, unless the appellate court shall be of the opinion that the error complained of amounted to such a denial of the rights of the appellant as was reasonably calculated to cause and probably did cause the rendition of an improper judgment in the case, or was such as probably prevented the appellant from making a proper presentation of the case to the appellate court; and if it appear to the court that the error affects a part only of the matter in controversy, and the issues are severable, the judgment shall only be reversed and a new trial ordered as to that part affected by such error.

Provided, second, that if the erroneous action or failure or refusal of the trial judge to act shall prevent the proper presentation of a cause to the Court of Civil Appeals, and be such as may be corrected by the judge of the trial court, then the judgment shall not be reversed for such error, but the appellate court shall direct the said judge to correct the error, and thereafter the Court of Civil Appeals shall proceed as if such erroneous action or failure to act had not occurred. Amended by Order of March 31, 1941.

Source: Art. 1856.

Change: Addition of the first two provisos recommended in Bill No. 10 of the Texas Civil Judicial Council in its 1936 report. See 8 Ann.Rep.(1936), 48. Retains in part Rule 62a.

Change by amendment of March 31, 1941: The third proviso respecting amendment of pleadings as appearing in the original rule has been eliminated.

Rule 435. Judgment on Affirmance or Rendition.—When a Court of Civil Appeals affirms the judgment or decree of the court below, or proceeds to modify the judgment and to render such judgment or decree against the appellant as should have been rendered by the court below, it shall render judgment against the appellant and the sureties on his supersedeas bond, if any, for the performance of said judgment or decree, and shall make such disposition of the costs as the court shall deem proper, rendering judgment against the appellant and the sureties on his appeal or supersedeas bond, if any, for such costs as are taxed against him. The appellate court may, in its discretion, include in the judgment or decree such damages, not exceeding ten per cent on the amount of the original judgment, as it may deem proper.

Source: Art. 1857.

Change: The disposition of costs is left to the Court of Civil Appeals. The judgment is to be rendered against the sureties on the supersedeas bond where the judgment below is affirmed, though it be reduced in amount.

Rule 436. Judgment Enforced.—Upon the rendition by any Court of Civil Appeals of any such judgment or decree as is contemplated in the preceding rule, the lower court from which the cause was removed need not make any further order or decree therein; but the clerk of said lower court, on receipt of the mandate of the Supreme Court or Court of Civil Appeals, shall proceed to issue execution thereon as in other cases.

Source: Art. 1858, unchanged.

Rule 437. No Affirmance, Reversal or Dismissal for Want of Form or Substance.—A judgment shall not be affirmed or reversed or an appeal dismissed for defects or irregularities in appellate procedure, either of form or substance, without allowing a reasonable time to correct or amend such defects or irregularities, provided the court may make no enlargement of time prohibited by Rule 5 nor any enlargement of the time for filing transcript and statement of facts except as contemplated by Rule 386. Amended by order of Sept. 20, 1941, effective Dec. 31, 1941.

Source: New rule, adopted in lieu of Art. 1859.

Change by amendment effective December 31, 1941: The rule has been redrafted and material changes have been made therein, by rewording the caption so as to extend to affirmance and to substance and by extending the text of the rule in the same manner, by confining the text of the rule to "appellate" procedure, and by adding the proviso at the end of the rule.

Rule 438. Affirmance With Damages for Delay.—Where the court shall find that an appeal or writ of error has been taken for delay and that there was no sufficient cause for taking such appeal, then the appellant, if he be the defendant in the court below, shall pay ten per cent on the amount in dispute as damages, together with the judgment and interest and costs of suit thereon accruing.

Source: Art. 1860, unchanged.

Rule 439. Remittitur.—If, in any judgment rendered in the district or county court, there shall be an excess of damages allowed, and before the plaintiff has entered a release of same in such court, in the manner provided by these rules, such judgment shall be removed to the Court of Civil Appeals, it shall be lawful for the party in whose favor such excess of damages has been rendered to make such remittitur in the Court of Civil Appeals in the same manner as such release is required to be made in the district or county court. Upon such release being filed in said court, after revising said judgment, said Court of Civil Appeals shall proceed to give such judgment as the court below ought to have given if the release had been filed therein.

Source: Art. 1861, unchanged.

Rule 440. Suggestion of Remittitur.—In civil cases appealed to a Court of Civil Appeals, if such court is of the opinion that the verdict and judgment of the trial court is excessive and that said cause should be reversed for that reason only, then said appellate court shall indicate to such party, or his attorney, within what time he may file a remittitur of such excess. If such remittitur is so filed, then the court shall reform and affirm such judgment in accordance therewith; if not filed as indicated then the judgment shall be reversed.

Source: Art. 1862, with minor textual change.

Rule 441. Refusal to Remit Not To Be Alluded To.—Whenever a Court of Civil Appeals shall indicate that a verdict is excessive, and no remittitur shall be filed, no evidence shall be allowed, nor allu-

sion made in a subsequent trial to the action of such appellate court in reference to the amount of excess of such verdict.

Source: Art. 1863, unchanged.

Rule 442. Mandate Issued, When.—If no writ of error is sued out, the clerk shall issue the mandate after the expiration of thirty days after the decision of the Court of Civil Appeals has been entered therein or the motion for rehearing overruled, under the terms of Rule 443. The mandate may issue at an earlier date by agreement of the parties. Every mandate issued from the Court of Civil Appeals or Supreme Court shall contain the file number of the case in the trial court. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 1864, with minor textual change, except that by amendment effective December 31, 1943, a comma and the last two sentences, above, were added.

Rule 443. Payment of Costs.—On the rendition of a final judgment or decree in the Court of Civil Appeals, the clerk of said court shall not issue and deliver the mandate of the court nor certify the proceedings to the lower court until all costs accruing in the case in such appellate court have been paid, subject to the provisions of Rule 444. Amended by order of Sept. 20, 1941, effective Dec. 31, 1941.

Source: Art. 1865.
Change: Provision for the appellee to obtain a mandate upon the affirmance of the cause without first having to pay costs not taxed against him.
Change by amendment effective December 31, 1941: The following words have been deleted: "and provided that when the trial court's judgment is affirmed, the appellee may obtain mandate without payment of any costs which are not taxed against him."

Rule 444. Affidavit of Inability.—If the party against whom the costs are adjudged shall make affidavit of his inability to pay the same or give security therefor, he may apply to the Court of Civil Appeals in which the case is pending for an order to require the clerk to issue the mandate or to certify the proceedings as the case may be; which motion shall be governed by the provisions of Rule 355.

Source: Art. 1860.
Change: The final wording, making the affidavit and contest thereof subject to the provisions of Rule 355, has been added.

Rule 445. Mandate to Issue in Twelve Months.—In cases which have been reversed and remanded by a Court of Civil Appeals, if no mandate shall have been taken out and filed in the court where the cause originated within one year after the motion for rehearing is overruled or final judgment rendered, then upon the filing in the court below of a certificate of the clerk of the Court of Civil Appeals where the cause was pending that no mandate has been taken out, the case shall be dismissed from the docket.

Source: Art. 1867, unchanged.

Rule 446. When Judgment Set Aside.—If a Court of Civil Appeals sets aside its judgment after the mandate has been issued, the clerk shall at once notify the party to whom the mandate was directed to return it.

Source: Art. 1868, unchanged.

Rule 447. Execution On Failure to Pay Costs.—If neither party shall pay the costs within thirty days after the judgment becomes final, the clerk shall issue execution for the costs accruing in his court against the party or parties against whom such costs have been adjudged. The execution shall be styled "The State of Texas" and shall be directed to the sheriff or any constable of any county of the State of Texas, as provided in Rule 629. It shall be sent by mail to the proper officer for collection, but the clerk shall retain the mandate until the costs have been paid or collected, subject, however, to the provisions of Rules 443 and 444.

Source: Art. 1869.
Change: The direction of the execution is harmonized with the general rules for Executions.

Rule 448. Appellant to Recover Costs.—In any cause reversed by the Court of Civil Appeals, the appellant shall be entitled to an execution against the appellee for costs occasioned by such appeal, including costs for the transcript, said costs to be taxed by the clerk of the said court. Provided that nothing herein shall be construed to affect the present law with reference to the accrual and taxing of costs in tax suits. Provided further, that nothing herein shall be construed to limit or impair the power of the Court of Civil Appeals to otherwise tax the costs for good cause.

Source: Art. 1870.
Change: Addition of last sentence.

Rule 449. Return of Execution.—All executions for costs of the Court of Civil Appeals shall be returnable by the sheriff or constable to whom they are directed within thirty, sixty, or ninety days from the date thereof, as the court or clerk thereof may direct.

Source: Art. 1871, with minor textual change.

Rule 450. Officer Failing to Make Return.—If any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same, within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of said court may issue citation returnable forthwith to such officer to appear before said court and show cause, if any he can, why he has not collected and returned said costs and execution; and failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for said costs, together with the costs of such proceedings.

Source: Art. 1872, unchanged.

SECTION 5. OPINIONS

Rule 451. Decision and Opinion.—The Courts of Civil Appeals shall decide all issues presented to them by proper assignments of error by either party, whether such issues be of fact or of law, and announce in writing their conclusions.

Source: Art. 1876, with minor textual change.

Rule 452. Opinions To Be Brief.—Opinions of the Courts of Civil Appeals shall be as brief as practicable, and shall avoid as far as possible lengthy quotations from other decisions or texts; and where the issues involved have been clearly settled by authority or elementary principles of law, the court shall write only brief memorandum opinions. In every case where application for writ of error is unqualifiedly refused or is granted, the opinion shall be ordered published; in other cases opinions shall be ordered not published when they present no question or application of any rule of law of interest or importance to the jurisprudence of the State. As amended by order of June 16, 1943, effective December 31, 1943.

Source: New rule.
By amendment effective December 31, 1943, the first part of the last sentence above through the words "in other cases" has been added.

Rule 453. Conclusions of Fact and Law.—Conclusions of fact and law upon each material point assigned as error in the Court of Civil Appeals shall be made and filed within thirty days after the decision of the case, if the case be one in which the Supreme Court has jurisdiction of an application for writ of error. The evidence need not be stated, except when necessary to determine the correctness of some ruling of the court. Such findings of fact and conclusions of law may be included in the opinion.

Source: Art. 1873, with minor textual change.

Rule 454. To State Reasons for Reversal.—In cases where the judgment of the trial court shall be reversed and the cause remanded, the Court of Civil Appeals shall state its reasons for the judgment.

Source: Art. 1874, unchanged.

Rule 455. Supplemental Findings.—If either party to a case, decided by a Court of Civil Appeals, shall be of the opinion that the findings of fact are insufficient upon any material issue assigned in that court as error, such party may, in his motion for rehearing, specify the point upon which there is no finding of fact, or upon which the finding made by the court is insufficient, and ask said court to make and file conclusions of fact upon the points indicated in the motion. If the court refuses to make such findings, or if the finding made be insufficient, such action may be assigned as error in application to the Supreme Court for writ of error.

Source: Art. 1875, unchanged.

Rule 456. Copy of Opinion to Attorneys, Etc.—It shall be the duty of the clerk of each of the Courts of Civil Appeal and the clerk of the Supreme Court, within three days after rendition of a decision by such court, to mail or deliver to the clerk of the trial court and to one of the attorneys for the plaintiffs and one of the attorneys for the defendants a copy of the opinion rendered by such appellate court. The copy received by the clerk of the trial court shall be by him filed among the papers of the cause in such court. Where there is more than one attorney on each side, the attorneys may designate in advance the one to whom the copy shall be mailed. The clerk shall charge a fee of $1.00 for each such copy of such opinion, to be taxed as costs. As amended by order of Sept. 20, 1941, effective Dec. 31, 1941; order of June 16, 1943, effective Dec. 31, 1943.

Source: Acts 1929, 41st Leg., p. 233, ch. 98, sec. 2, appearing in Vernon's Statutes as Art. 1836b.
Change: Omission of reference to Court of Criminal Appeals.
Change by amendment effective December 31, 1941: Rule 457, which sourced in Acts 1930, 41st Leg., 4th C.S., p. 86, ch. 45, appearing in Vernon's Statutes as Art. 1836c, has been repealed, but in substance has been combined with this rule; and the caption has been amended to read "Copy of Opinion to Attorneys"; and the rule has been materially redrafted, it being provided that the copies of opinions of both appellate courts shall be sent to attorneys.
Change by amendment effective December 31, 1943: "Etc." added to caption, and wording interpolated in the body of the rule which makes delivery of copy of opinion permissible and which requires a copy to go to and be filed by the trial clerk.

Rule 457. Notice of Judgment, Etc.—Upon the rendering of judgment in the Court of Civil Appeals, as well as upon the making of an order granting or overruling a motion for rehearing, the clerk shall immediately give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be, unless such notice is waived. The notice to the successful party or his attorney may be given by postal card, but notice to the unsuccessful party or his attorney shall be given by letter sent under first-class postage and so marked as to be returnable to the clerk in case of non-delivery. Notice of the disposition of any other motion, or of any other matter which requires notice, may, except as otherwise provided in these rules, be given by postal card. Promulgated by order of June 16, 1943, effective Dec. 31, 1943.

New rule, substituted for old Rule 457 upon a different subject, which has heretofore been repealed.

SECTION 6. REHEARING

Rule 458. Motion and Second Motion for Rehearing.—Any party desiring a rehearing of any matter determined by any Court of Civil Appeals may, within fifteen days after the date of rendition of the judgment or decision of the court, or the filing of the findings of fact and conclusions of law, whether such date be in the same or a succeeding term of said court, file with the clerk of said court his motion in writing for a rehearing thereof, in which the assignments of error relied upon for the rehearing shall be distinctly specified, and the name and residence of the counsel of the opposing party, if known, and if not known, then the name and residence of the opposing party as shown in the record. The party filing such motion shall deliver or mail to each opposing party, or his attorney of record, a true copy of such motion, and shall note on the motion so filed with the clerk that such copies have been so furnished. Upon his failure to do so, he shall accompany his motion with, or furnish to the clerk on his request, a sufficient number of duplicates or copies thereof for the clerk to use in complying with the provisions of Rule 460. Failure to supply such copies on request of the clerk may result in a dismissal of the motion.

If the Court of Civil Appeals hands down an opinion in connection with the overruling of a motion for rehearing, a further motion for rehearing may, if the losing party deems same necessary, be filed within fifteen days after such opinion is handed down and the above regulations and those of Rules 460 and 468 shall apply to it as though it were the first motion; but a further motion for rehearing shall not be made as a matter of right in any other case.

Any motion for rehearing may be amended as a matter of right any time before the expiration of the fifteen-day period allowed for filing it, and with leave of the court any time before its final disposition.

All motions and other matters filed in either the Supreme Court or the Court of Civil Appeals, and not finally disposed of at the end of the term, shall be automatically continued to the next succeeding term of court. Amended by order of Sept. 20, 1941, effective Dec. 31, 1941; order of Oct. 10, 1945, effective Feb. 1, 1946; order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 1877.
Change: The last sentence of the statute has been eliminated. "Date of rendition of the judgment" has been substituted for "date of entry of the judgment." "Assignments of error" has been substituted for "ground." "Whether such date be in the same or a succeeding term of said court" has been added.
Change by amendment effective December 31, 1941: The fourth, third and second from the last three sentences above have been added.
Change by amendment effective December 31, 1943: The last sentence above has been added and the caption has been revised to fit.
Change by amendment effective February 1, 1946: The word "second" in the last paragraph has been replaced in two instances by the word "further."
Change by amendment effective December 31, 1947: The paragraph commencing "Any motion" and ending "disposition" and the one commencing "All motions" and ending "term of court" have been added.

Rule 459. Repealed effective Dec. 31, 1941.

Prior to repeal of September 20, 1941, effective December 31, 1941, Rule 459 read as follows:
The motion shall be confined to the assignments of error, without statement, citation of authorities, or argument. Such statement, citation of authorities and argument, if desired, may be embodied in a separate paper filed with the motion with proper references to the assignments in the motion.

Rule 460. Notice of Motion.—Upon the filing of such motion the clerk shall notify the opposing party by postal card, and if copies of such motion have not been furnished to the opposing parties or their attorneys of record by the party filing same, the clerk shall mail to the opposing parties or their attorneys of record such copies thereof as may have been furnished by the party filing the motion as required in Rule 458. The motion may be submitted at any time after five days from the date of such notice. Amended by order of September 20, 1941, effective December 31, 1941.

Source: New rule, substituted for Arts. 1878–1880.
Change by amendment effective December 31, 1941: The rule has been materially changed in wording. Registered mail and certified copies have been eliminated, and the wording respecting time of submission and manner of notice has been altered.

SECTION 7. CERTIFICATION OF QUESTIONS

Rule 461. Questions of Law Certified.—Whenever there shall arise an issue of law which a Court of Civil Appeals should deem advisable to present to the Supreme Court for adjudication, the presiding judge shall certify the question to be decided by the Supreme Court. Pending the decision of the Supreme Court, the cause in which the issue is raised shall be retained for judgment in harmony with the decision of the Supreme Court upon the issue submitted. The Supreme Court reserves the right to exercise its discretion in determining whether or not it will decide certified questions in cases which can lawfully reach it on writ of error. All rules regarding certified questions will be construed in the light of this provision.

Source: Art. 1851, unchanged, except last two sentences added.

Rule 462. What Questions Certified.—Where a decision of a Court of Civil Appeals is in conflict with an opinion rendered by the Supreme Court of Texas or by some other Court of Civil Appeals in this State on any question of law, and such Court of Civil Appeals refuses to concur with the opinion rendered by the Supreme Court or such Court of Civil Appeals, the court refusing to concur with the conflicting opinion shall transmit the question of law involved in the cause wherein said conflict of opinion has arisen, duly certified, together with the record or transcript in such cause, to the Supreme Court for adjudication by the Supreme Court.

Source: Art. 1855, unchanged.

Rule 463. Certifying Dissent.—When a dissenting opinion is rendered by one judge as to a conclusion of law material to a decision of the case, the grounds of his dissent shall be entered of record by the dissenting member. Upon motion of a party or upon its own motion the court shall certify the point or points of dissent to the Supreme Court. The provisions hereof shall apply to cases appealed from the county court as well as from the district court.

Source: Art. 1852, unchanged.

Rule 464. Papers Sent to Supreme Court.—When a certificate of dissent is sent up by any Court of Civil Appeals, the clerk shall send up a certified copy of the conclusions of fact and law as found by the court, and the questions of law upon which there is a division, also the original transcript if so ordered by the Supreme Court.

Source: Art. 1853, unchanged.

Rule 465. Motion to Certify.—At any time within fifteen days after overruling the motion for rehearing either party may file a motion asking the court to certify a question to the Supreme Court. After the expiration of that date, if no motion is filed, the court may not be required by mandamus to certify.

Source: New rule.

Rule 466. Instruments to Accompany Certificate.—When any Court of Civil Appeals shall certify to the Supreme Court any question of law for determination, or shall send to the Supreme Court any cause upon certificate of dissent, either upon its own motion or that of any party, the certificate shall be accompanied by the briefs filed in the Court of Civil Appeals. Also, the Court of Civil Appeals may accompany such certificate with the entire record in the case, or any part thereof that it deems advisable. The Court of Civil Appeals shall also accompany the certificate with all or any part of the record that any party to the suit may request. Except in cases of emergency, the emergency to be stated in the certificate, all cases certified to the Supreme Court under Rule 461 shall be accompanied by a proposed or tentative opinion of the Court of Civil Appeals, which proposed or tentative opinion shall set forth the views and tentative opinion of the Court of Civil Appeals on the questions certified. In certifying questions under Rule 463, the provisions of Rule 464 shall be fully complied with. All cases certified under Rule 462 shall be accompanied by the opinion of the Court of Civil Appeals in such cases.

Source: Rule 15 (for Supreme Court), with minor textual change and last sentence eliminated.

SECTION 8. APPLICATION FOR WRIT OF ERROR

Rule 467. Good Cause To Be Shown.—The Supreme Court may review final judgments of Courts of Civil Appeals upon writ of error, when good cause therefor be shown by application for such writ, as hereinafter required, the sufficiency of such cause to be determined as herein provided.

Source: Art. 1739, unchanged.

Rule 468. Filing of Application for Writ of Error.—The application shall be filed with the clerk of the Court of Civil Appeals within thirty days after the overruling of the motion for rehearing, or within thirty days after the overruling of a final motion for rehearing if filed under Rule 458, provided that when the thirtieth day falls on Sunday or a legal holiday the petition may be filed on the next day following which is neither a Sunday nor a legal holiday. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Art. 1742.
Change: Addition of the proviso.
Change by amendment effective December 31, 1943:
The wording above commencing, "or within thirty days after the overruling of the second" and ending, "under Rule 458," has been interpolated.
Change by amendment effective February 1, 1946:
The word "second" has been replaced by the word "final."

Rule 469. Requisites of Application.—The fact that the docket of the Supreme Court is overcrowded makes it imperative that applications for writs of error be as brief as possible. The attorneys are urged to co-operate with the Court in this respect, in order to reduce the work of the Court. The respondent is urged to file to reply.

The application for writ of error shall be addressed to "The Supreme Court of Texas," and shall state the name of the party or parties applying for the writ. The parties shall be designated as "Petitioner" and "Respondent." The application shall contain the following:

(a) Statement of the Case. The opinion of the Court of Civil Appeals will always be read before the application is considered; consequently the application should not contain matter that is found in the opinion of the Court of Civil Appeals. Ordinarily it should contain only a statement of the general nature of the suit,—for instance, whether it is a suit for damages, on a note, or in trespass to try title, and that the statement as contained in the opinion of the Court of Civil Appeals is correct, except in the particulars pointed out. Example: "This is a suit for damages in excess of $1000.00 for personal injuries growing out of an automobile collision. The opinion of the Court of Civil Appeals correctly states the nature and result of the suit, except in the following particulars: (If any.)" Such statement should seldom exceed one-half page. The details of the case should be reserved to be stated in connection with the points to which they are pertinent.

(b) Statement of Jurisdiction. Except in those cases in which the jurisdiction of the Court depends on a conflict of decisions under Subdivision 1 of Article 1821, the petition should merely state that the Supreme Court has jurisdiction under a particular subdivision of Article 1728. Example: "The Supreme Court has jurisdiction of this suit under Subdivision 6 of Article 1728." Where the case is one coming

within the provisions of Subdivision 1 of Article 1821, and jurisdiction of the Supreme Court depends on a conflict of decisions, the conflict on the question of law should be clearly and plainly stated.

(c) Points of Error. The points of error relied upon, separately numbered, shall be stated in short form and without argument and be germane to some assignment of error in the motion for new trial in the trial court, or otherwise saved in the statement of points as authorized by the rules, and likewise assigned as error in the motion for rehearing in the Court of Civil Appeals, and where Rule 377-a has been employed, saved in the statement there authorized. If the ruling complained of originated in the Court of Civil Appeals, it must also be assigned as error in the motion for rehearing in said court.

(d) Brief of the Argument. The brief of the argument may present separately, or grouped if germane, the points of error relied upon for reversal, the argument to include such pertinent statements from the record as may be requisite, together with page references and such discussion of the authorities as is deemed necessary to make clear the points of error complained of. The opinion of the Court of Civil Appeals will be considered with the application, and statements therein, if accepted by counsel as correct, need not be repeated.

(e) Subject Index. The application shall contain at the front thereof a subject index with page references where the discussion of each point relied upon may be found and also a list of authorities alphabetically arranged, together with reference to the pages of the application where the same are cited.

(f) If any brief, or application for writ of error is unnecessarily lengthy or not prepared in conformity with these rules, the court may require same to be redrawn. Amended by Order of March 31, 1941; also by order of September 20, 1941, effective December 31, 1941.

Source: New rules in lieu of Arts. 1740 and 1741 and of Texas Rule 1 (for the Supreme Court).
Change by amendment of March 31, 1941: Subdivisions (a) and (b) have been reworded so as to be clearer respecting purpose and practice.
Change by amendment effective December 31, 1941: Amended in the second paragraph so as to require the application to state the name of the party applying for the writ, and to designate the parties as "Petitioner" and "Respondent." In Subdivision (a) the Example has been clarified and the word "assignments" in the last sentence has been changed so as to read "points". Subdivision (b) has been changed by substituting Article 1821 for Article 1819 in two places and by modifying the Example, and subdivision (c) by striking out the words "governing the record on appeal," and by interpolating the words: "and where Rule 377-a has been e ıployed, saved in the statement there authorized." Minor textual change in Subdivision (d).

Rule 470. Number of Copies, Etc.—The application for writ of error may be typewritten or printed. If it is typewritten it must be with double space between the lines and on heavy white paper in clear type. Nine legible copies of the application shall be delivered to the Clerk of the Court of Civil Appeals and by him forwarded to the Supreme Court, but only one copy thereof shall be actually filed in the Court of Civil Appeals and in the Supreme Court. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: New rule.
Change by amendment effective February 1, 1946: The rule and its caption have been rewritten.

Rule 471. Service on Respondent; Answer.—When an application for a writ of error from a Court of Civil Appeals to the Supreme Court is filed in the Court of Civil Appeals, the petitioner shall, at the same time, cause to be delivered to an attorney of record of respondent or else to be deposited with the Clerk of said Court of Civil Appeals a true copy of the application, notifying the attorney of record of the respondent of the deposit of said copy. In the latter case, on request of the respondent or his attorney the Clerk shall deliver the copy of the application to the respondent or his attorney. Said respondent shall have ten days after the filing of the application for writ of error in the Supreme Court, unless additional time is allowed therefor by the Supreme Court, in which to file an answer to the application. When an answer is filed or the time for filing same has expired, the application shall be deemed submitted to the court and ready for disposition. The court may dispense with notice and may grant the writ immediately upon the filing of the application where, in its opinion, the circumstances require it. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Arts. 1744, 1881, 1882, and Rule 3 (for Supreme Court).
Change: Omission of provision for final disposition of the case as if the application had been granted, when respondent fails to answer.
Change by amendment effective December 31, 1943: Delivery allowed alternatively to filing. It is made clear that the respondent has ten days after the filing of the record in the Supreme Court, and not ten days from the filing of the record in the Court of Civil Appeals, in which to file his answer. The Supreme Court is authorized to proceed to consider the application as soon as the answer is filed. The last sentence gives the court authority to shorten the period of delay where necessary. The caption is made clearer.

Rule 472. Forwarded to Supreme Court.—When an application for a writ of error to the Supreme Court is filed with the clerk of a Court of Civil Appeals, he shall note upon his record the filing of said petition, and promptly forward the same to the clerk of the Supreme Court with the original record in the case and the opinion of the Court of Civil Appeals, the motions filed therein, certified copies of the judgment and orders of the Court of Civil Appeals, and a copy of the appeal or the supersedeas bond of the appellant. The clerk need not so forward any exhibits that are not documentary in nature unless ordered to do so by the Supreme Court. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 1883 with minor textual change.
The final sentence above has been added by amendment effective December 31, 1943.

Rule 473. Petition With Record.—The petition with the original record in the case, and the opinions of the Court of Civil Appeals, and the motion filed therein, and certified copies of the judgments and orders of the Court of Civil Appeals and copy of the appeal or supersedeas bond shall be filed with the Supreme Court. The party applying for the writ of error shall deposit with the clerk of the Court of Civil Appeals a sum sufficient to pay the expressage or carriage of the record to and from the clerk of the Supreme Court which sum shall be charged as costs of suit.

Source: Art. 1743, unchanged.

PART IV. RULES OF PRACTICE FOR THE SUPREME COURT

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SECTION 1. PROCEEDINGS IN THE SUPREME COURT

Rule 474. Original Proceedings.—A petition seeking to institute an original proceeding for writ of mandamus, prohibition, injunction, and other like proceedings in the Supreme Court shall be presented to the Clerk, accompanied with a motion for leave to file, and such written argument in behalf of the motion as may be desired. The motion will be filed and, together with the petition and argument, if any, will be sent at once to the consultation room for the action of the court. If the court should be clearly of the opinion that the facts set out in the petition entitle petitioner to the relief sought, the motion will be granted, the petition filed, and the cause placed upon the trial docket. Otherwise the motion will be overruled.

If the leave is granted, the petitioner shall deliver to the opposite party a copy of the petition and advise the clerk that he has done so, or deliver to the clerk an extra copy for delivery to the opposite party. The clerk shall give notice of the filing of the petition to the opposite party or his attorney of record by mail, or give such other notice as may be ordered by the court.

A motion for leave to file petition for mandamus to compel the Court of Civil Appeals to certify a question of law shall be filed in the Supreme Court within 15 days after the overruling of the motion to certify by the Court of Civil Appeals. Amended by order of June 16, 1943, effective Dec. 31, 1943; order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: New rule superseding Texas Rule 18 (for Supreme Court).
Change by amendment effective December 31, 1943: The first part of the last sentence, above.
Change by amendment effective December 31, 1947: The original proceeding has been characterized and other alterations have been made in the first paragraph of a minor textual nature. The former sentence commencing "The clerk" and ending "Courts of Civil Appeals" has been eliminated. The paragraph commencing "If the leave" and ending "by the court" and the one commencing "A motion for leave" and ending "Court of Civil Appeals" have been added.

Rule 475. Original Proceedings: Petition for Mandamus to Compel Certification.—Where a motion for leave to file a petition for mandamus against a Court of Civil Appeals to require that court to certify a question on the ground of conflict is granted, the petition shall be docketed and set down for hearing both on the question whether there is a conflict and on the merits of the question involved in the conflict. If the petition be granted the mandamus will then issue unless the Court of Civil Appeals conform its ruling and decision to those of the Supreme Court; or the Supreme Court may, upon such hearing, if it be deemed proper, direct the Court of Civil Appeals to conform its ruling and decision to those of the Supreme Court, without the necessity of certifying the question to the Supreme Court. As amended by order of June 16, 1943, effective December 31, 1943.

Source: New rule.
Change by amendment effective December 31, 1943: The last clause of the final sentence, above, has been added.

Rule 476. Trial on Questions of Law.—Trials in the Supreme Court shall be only upon the questions of law raised by the assignments of error in the application for writ of error, or upon the questions of law which were certified to the Supreme Court from a Court of Civil Appeals. The Supreme Court may require the original transcript to be sent up.

Source: Art. 1756.
Change: Substitution of words from "raised by" through "writ of error" for words of the statute, "upon which the writ of error was allowed."

Rule 477. Proceedings on Certified Questions.—When a certified question from a Court of Civil Appeals is presented to the clerk of the Supreme Court, he will file and docket it and send it at once to the consultation room. If the court should determine that the question is not properly certified under the statute and these rules so as to give jurisdiction to answer it, it will be dismissed without a hearing. Otherwise, it will be set down for argument on a day to be fixed by the court in regular session. The clerk shall issue notices to the attorneys whose names appear of record in the case of the day on which the question or questions shall be submitted, at least fifteen days before the said date set for hearing.

Source: Art. 1758 and State Rules 15 (part) and 17 (for Supreme Court), combined with minor textual change.

Rule 478. Answer to Question.—The Supreme Court, on receiving such record, and certified question of law, from the Court of Civil Appeals transmitting the same, shall examine such record and certified question of law, and render an opinion as in other cases; which opinion, when so rendered by the Supreme Court on the record and question of law presented therein, shall be final and shall be the law on the question involved until said opinion shall have been overruled by the Supreme Court or abrogated by legislative enactment, and the Court of Civil Appeals shall be governed thereby. After the question is decided, the Supreme Court shall immediately notify the lower court of its decision.

Source: Art. 1759, unchanged.

Rule 479. Decision of Supreme Court.—When the Supreme Court decides a question certified to it by a Court of Civil Appeals, such decision shall be binding upon the Court of Civil Appeals.

Source: Art. 1854, unchanged.

Rule 480. Docketing Application.—The clerk of the Supreme Court shall receive all applications for writ of error, shall file the petition and accompanying record from the Court of Civil Appeals and enter the same upon the application docket, but he shall not be required to receive same from the post office or express office unless the postage or express charges shall have been paid. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Rule 2 (for the Supreme Court) with minor textual change.
Change by amendment effective February 1, 1946: The last sentence of the former rule has been eliminated.

Rule 481. Amendment of Application and Briefs.—The application, or brief or the argument in support thereof, or in reply thereto, may be amended at any time when justice requires upon such reasonable terms as the court may prescribe. The record and appeal bond may be amended in the Supreme Court under the same circumstances and on the same terms as in the Court of Civil Appeals under Rules 428, 429, 430 and 431.

Source: New rule.

Rule 482. May Refer Case Back.—If a Court of Civil Appeals shall fail to file conclusions of fact, or to comply with the requirements of the law in filing such conclusions of fact, and such conclusions are necessary to enable the Supreme Court to properly determine the rights of the parties, the court may suspend action on the petition for writ of error and return the record to the Court of Civil Appeals with instructions to make and return conclusions of fact upon the points indicated by the Supreme Court.

Source: Art. 1745, unchanged.

Rule 483. Order on Application for Writ of Error.—In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court will refuse the application with the docket notation "Refused." In all cases where the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal, the Court will deny the application, with the notation "Refused. No Reversible Error." In all cases where the Supreme Court is without jurisdiction of the case as presented in the application it will dismiss the application with the docket notation, "Dismissed for want of jurisdiction."

Provided, that in cases of conflict named in Subdivision 2 of Art. 1728 of the Revised Civil Statutes of Texas, 1925, the Supreme Court may, in its discretion, refuse the writ of error where the court is in agreement with the decision of the Court of Civil Appeals in the case in which the application is filed; and in cases of such conflict with a previous opinion of the Supreme Court, the Supreme Court may, in its discretion, without the necessity of granting the writ and hearing the case, reverse and remand the same on the application for writ of error. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Art. 1728, last two sub-paragraphs.
Change: Substitution of notation, "Refused for want of merit" for the notation under the present practice, "Dismissed for want of jurisdiction, correct judgment."
Change by amendment effective February 1, 1946: The second sentence has been reworded.

Rule 484. Where Application Dismissed or Refused.—When the application shall have been filed for a period of ten days, if the court determines to refuse or dismiss the same, whether the respondent has answered or not, the clerk of the court will retain the application, together with the transcript and accompanying papers, for fifteen days from the date of rendition of the judgment refusing or dismissing the writ. At the end of that time, if no motion for rehearing has been filed, or upon the overruling or dismissal of such motion, in case one has been filed, the clerk of the Supreme Court shall transmit to the Court of Civil Appeals to which the writ of error is sought a certified copy of the orders denying or dismissing such application and of the order overruling the motion for a rehearing thereof, and shall return the papers which belong to that court to the clerk thereof, but shall retain the application for writ of error.

Source: Texas Rule 4 (for Supreme Court).
Change: Textual change and elimination of reference to terms of court.

Rule 485. Bond.—When an application for writ of error is filed with the Clerk of the Court of Civil Appeals, the petitioner shall deliver to said Clerk the sum of $10.00 as costs in the Supreme Court, and the Clerk shall forward said deposit to the Supreme Court with the record. If the writ is granted, the petitioner shall deposit with the Clerk of the Supreme Court the additional sum of $25 to cover the costs in the Supreme Court. In all proceedings for writs of mandamus, prohibition, injunction, and other like proceedings originating in the Supreme Court, the petitioner, upon the filing of the motion for leave to file, shall deposit with the Clerk the sum of $10.00 as costs, and if the leave to file is granted, he shall deposit the additional sum of $15.00 to cover the costs in the Supreme Court. In all other original proceedings in the Supreme Court and in all direct appeals from the district court as provided for in Rule 499a, the petitioner shall deposit, upon the filing of the petition or record, the sum of $25 to cover the costs in the Supreme Court. The court reserves the right to dismiss the proceedings for failure to make proper deposit for costs; provided, however, that no such deposit shall be required of any petitioner who, under these rules or statutes, is not required to give security for costs. If the appellant is unable to pay the costs as above required, he may make affidavit of his inability to do so and deliver same to the Clerk of the Court of Civil Appeals to be forwarded to the Supreme Court with the record. Contest of such affidavit in the Supreme Court shall be governed by the provisions of Rule 355. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 1747, with minor textual change.
Change by amendment effective December 31, 1947: The previous rule has been completely redrafted and a new procedure has been substituted.

Rule 486. Notice of Granting.—When a writ of error is granted, and it is made to appear by affidavit that the respondent has no attorney of record and that his residence is unknown, the clerk shall cause notice of its granting of the writ to be published once each week for four consecutive weeks in some newspaper published in the county in which the case was tried. Where respondent has an attorney of record or the residence of respondent is known the clerk shall send said notice by mail to said attorney of record or respondent. Where publication of the notice is required the petitioner shall deposit with the clerk an amount sufficient to cover the cost thereof.

Source: Texas Rule 7 (for the Supreme Court).
Change: Substitution of notice by mail where the attorney for respondent or the residence of respondent is known. Textual changes to shorten the balance of the rule.

Rule 487. Repealed effective Feb. 1, 1946.

Prior to repeal by Order of Oct. 10, 1945, Rule 487 read as follows:

When a writ of error has been granted, and notice as required by these rules has been given or the respondent has filed a reply to the application, it shall be the duty of the clerk to put the case upon the trial docket and to mark upon the file the number of the case as shown upon such

docket. Cases upon the trial docket shall be numbered consecutively in the order in which they are entered thereon.

Rule 488. Process.—All writs and process issuing from the Supreme Court shall bear the teste of the Chief Justice or Presiding Judge of said court, and be under the seal of said court and signed by the clerk thereof, and unless otherwise specially provided by law or these rules shall be directed to the party or court to be served and may be executed by the sheriff or any constable of any county of the State when such party is found within his county, and shall be by such officer returned according to the direction of the writ. Whenever such writs or process shall not be executed, the clerk is authorized to issue other like process or writs, upon the application of the party suing out the former writ or process. Two or more writs may be issued simultaneously at the request of the party suing out the same.

Source: Art. 1761.
Change: The writ is directed to the individual, and may be served by any officer of the county in which he may be located.

Rule 489. Filed Papers to State Addresses.—Each filed paper shall recite the names and post-office address of opposing counsel and in signing filed papers attorneys shall give their own post-office addresses.

Source: Texas Rule 21 (for Supreme Court), unchanged.

Rule 490. Withdrawal of Papers.—Attorneys desiring to withdraw papers from the clerk's office, after the decision of a cause or of an application for writ of error, to prepare motion for rehearing or for other purpose, shall first file with the clerk of the Supreme Court an agreement with opposing counsel or an order of the court or a justice thereof. The clerk is not authorized to send papers from his office in the absence of such agreement or order. Transcripts and other papers in cases finally disposed of shall not be taken from the clerk's office.

Source: Texas Rule 19 (for Supreme Court).
Change: Allowing withdrawal without agreement by order of court.

Rule 491. Certain Rules of Civil Appeals Applicable.—The rules prescribed for the Courts of Civil Appeals as to the custody of the transcripts, as to the notices to attorneys of the disposition of cases, and as to amendments of the record, bonds, and briefs, shall govern in the Supreme Court.

Source: Texas Rule 16 (for Supreme Court) in part.
Change: Addition of reference to amendments.

Rule 492. Printing, etc. and Copies.—Where it can be reasonably done in view of the amount involved or the importance of the litigation the court requests that all applications, motions, answers, briefs, and arguments, and all documents originally filed in the Supreme Court which exceed in length fifteen pages, be printed. However, it is permissible to file typewritten copies of the above instruments, provided they are double spaced on heavy white paper in clear type. Nine legible copies of each of such instruments shall be delivered to the Clerk of the Supreme Court for the use of the Justices, but only one copy thereof shall be filed by the Clerk. A copy of each such instrument shall be delivered to the adverse party by the party filing it. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Texas Rule 9 (for Supreme Court) unchanged.
Change by amendment effective February 1, 1946:
The rule and its caption have been rewritten.

Rule 493. Submission Day.—(a) Causes in the Supreme Court will be regularly submitted on Wednesday of each week, though a case may be set down for submission upon another day by the permission or direction of the court.

(b) A case shall stand for submission upon the first regular day of the submission of causes coming after the expiration of twenty days from the day on which the writ of error shall have issued; provided the notice of granting the writ shall have been given ten days before such submission day. If not so given, then the case shall be subject to submission on the first regular submission day which falls ten days after giving of notice.

Source: Texas Rules 10 and 11 (for Supreme Court), with minor textual change.

Rule 494. Repealed effective Feb. 1, 1946.

Prior to repeal by Order of Oct. 10, 1945, Rule 494 read as follows:
The clerk shall keep a motion docket upon which shall be entered every motion as soon as filed. The motions shall be numbered consecutively upon the docket and its number shall be placed on the motion itself.

Rule 495. Submission of Motions.—Unless otherwise ordered, motions will be submitted with the case, and the adverse party shall be given notice thereof.

Source: Texas Rule 12 (for Supreme Court), with textual change.

Rule 496. Brief.—A party who elects to file in this court a brief in addition to the brief filed in the Court of Civil Appeals, shall comply as nearly as may be with the rules prescribed for briefing causes in the latter court and shall confine his briefs to the points raised in the motion for a rehearing and presented in the application for a writ of error. The clerk may receive amicus curiae briefs or arguments, provided it is shown that copies have been furnished to all attorneys of record in the case. As amended by order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Texas Rule 14 (for Supreme Court), unchanged.
Change by amendment effective February 1, 1946:
The last sentence has been added.

Rule 497. Order of Trial of Causes.—Causes may be tried in such order as the justices of the Supreme Court may deem to the best interest and convenience of the parties or their attorneys.

Source: Art. 1755, with minor textual change.

Rule 498. Argument.—In the argument of cases in the Supreme Court each side may be allowed thirty minutes in the argument at the bar, with fifteen minutes more in conclusion by the petitioner. In cases of very great importance, involving difficult questions, the time allotted herein may be extended by the court, provided application therefor is made before argument begins. Not more than two counsel on each side will be heard, except on leave of the court.

Source: Texas Rule 16 (for Supreme Court) in part, unchanged.

Rule 499. Correspondence.—Correspondence relative to any matter before the court must be conducted with the clerk and shall not be addressed to any of the justices, or to any judge of the Commission of Appeals.

Source: Texas Rule 20 (for Supreme Court), unchanged.

Rule 499-a. Direct Appeals.—In obedience to an act of the Regular Session of the Forty-eighth Legislature approved February 16, 1943, and entitled "An Act authorizing appeals in certain cases direct from trial courts to the Supreme Court; authorizing the Supreme Court to prescribe rules of procedure for such appeals; and declaring an emergency," which act was passed by authority of an amendment known as Section 3-b of Article 5 of the Constitution, the following procedure is promulgated:

(a) In view of Section 3 of Article 5 of the Constitution which confines the appellate jurisdiction of the Supreme Court to questions of law only, this court under the present and later amendment, above

cited, and such present and any future legislation under it, has and will take appellate jurisdiction over questions of law only, and in view of Sections 3, 6, 8 and 16 of such Article 5, will not take such jurisdiction from any court other than a district or county court.

(b) An appeal to the Supreme Court directly from such a trial court may present only the constitutionality or unconstitutionality of a statute of this State, or the validity or invalidity of an administrative order issued by a state board or commission under a statute of this State, when the same shall have arisen by reason of the order of a trial court granting or denying an interlocutory or permanent injunction.

(c) Such appeal shall be in lieu of an appeal to the Court of Civil Appeals and shall be upon such question or questions of law only, and a statement of facts shall not be brought up except to such extent as may be necessary to show that the appellant has an interest in the subject matter of the appeal and to show the proof concerning the promulgation of any administrative order that may be involved in the appeal. If the case involves the determination of any contested issue of fact, even though the contested evidence should be adduced as to constitutionality or unconstitutionality of a statute, or as to the validity or invalidity of an administrative order, neither the statute or statutes, above mentioned, nor these rules, apply, and such an appeal will be dismissed.

(d) Except where they are inconsistent with this rule, the rules now or hereafter prescribed in instances of appeal to the Courts of Civil Appeals shall, in so far as they are applicable, apply to appeals to the Supreme Court pursuant to such amendment to the Constitution and the legislation thereunder. Promulgated by order of June 16, 1943, effective December 31, 1943.

This is a new rule effective December 31, 1943.

SECTION 2. JUDGMENT

Rule 500. Judgments in Open Court.—In all cases decided by the Supreme Court, its judgments or decrees will be pronounced in open court; and the opinion of the court will be reduced to writing in such cases as the court deems of sufficient importance to be reported. Where the court, after the submission of a case, is of the opinion that the Court of Civil Appeals has entered the correct judgment, and that the writ should not have been granted, the court may set aside the order granting the writ, and dismiss or refuse the application as though the writ had never been granted, without writing any opinion. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 1766, with minor textual change.
Change by amendment effective December 31, 1943: The last sentence has been added.

Rule 501. Judgment on Affirmance or Rendition.—Whenever the Supreme Court shall affirm the judgment or decree of the trial court or the Court of Civil Appeals, or proceeds to modify the judgment and to render such judgment or decree against the appellant in the Court of Civil Appeals as should have been rendered by the trial court or the Court of Civil Appeals, it shall render judgment against the appellant and the sureties upon his supersedeas bond, if any, for the performance of said judgment or decree, and shall make such disposition of the costs as the court shall deem proper, rendering judgment against the appellant or petitioner and the sureties on his appeal or supersedeas bond, if any, for such costs as are taxed against him.

Source: Art. 1767.
Change: The disposition of costs is left to the Supreme Court. The judgment is to be rendered against the sureties on the supersedeas bond where the judgment below is affirmed, though it be reduced in amount.

Rule 502. Judgment Enforced.—Upon the rendition by the Supreme Court of any such judgment or decree as is contemplated by the preceding rule, it shall not be necessary for the lower court from which the cause was removed to make any further order or decree therein, but the clerk of said lower court, on receipt of the mandate of the Supreme Court or the Court of Civil Appeals, shall proceed to issue execution thereon as in other cases.

Source: Art. 1768, with minor textual change.

Rule 503. May Remand.—If the judgment of a Court of Civil Appeals shall be reversed, the Supreme Court may remand the case either to the Court of Civil Appeals from which it came or to the district court for another trial.

Provided, first, that no judgment shall be reversed on appeal and a new trial ordered in any cause on the ground that an error of law has been committed by the trial court in the course of the trial, unless the appellate court shall be of the opinion that the error complained of amounted to such a denial of the rights of the petitioner as was reasonably calculated to cause and probably did cause the rendition of an improper judgment in the case, or was such as probably prevented the petitioner from making a proper presentation of his case to the appellate courts; and if it appear to the court that the error affects a part only of the matter in controversy, and the issues are severable, the judgment shall only be reversed and a new trial ordered as to that part affected by such error.

Provided, second, that if the erroneous action or failure or refusal to act by either the trial judge or any judge or official employee of the Court of Civil Appeals, shall prevent the proper presentation of a cause to the Supreme Court, and be such as may be corrected by the judge or official below, then the judgment shall not be reversed for such error, but the Supreme Court will direct the said judge or official to correct the error, and thereafter the Supreme Court will proceed as if such erroneous action or failure to act had not occurred. Amended by Order of March 31, 1941.

Source: Art. 1769.
Change: Addition of provisos. Rule 62a retained in part. See Rule 434.
Change by Amendment of March 31, 1941: In the second paragraph of the original rule, the words "an error of all" are amended so as to read "an error of law"; and the last paragraph thereof, constituting the last proviso of said rule, and pertaining to amendment of pleadings in the Supreme Court, is eliminated.

Rule 504. No Affirmance, Reversal or Dismissal for Want of Form or Substance.—The Supreme Court will not affirm or reverse a judgment or dismiss a writ of error for defects or irregularities in appellate procedure, either of form or substance, without allowing a reasonable time to correct or amend such defects or irregularities, provided the court may make no enlargement of time prohibited by Rule 5 nor any enlargement of the time for filing transcript or statement of facts. Amended by order of Sept. 20, 1941, effective Dec. 31, 1941.

Source: New rule adopted in lieu of Art. 1770.
Change by amendment effective December 31, 1941: The rule has been redrafted and material changes have been made therein, by rewording the caption so as to extend to affirmance and to substance and by extending the text of the rule in the same manner, by confining the text of the rule to "appellate" procedure, and by adding the proviso at the end of the rule..

Rule 505. Decision.—In each case, the Supreme Court shall either affirm the judgment, or reverse and render such judgment as the Court of Civil Appeals should have rendered, or reverse the judgment and remand the case to the lower court, if it shall appear that the justice of the case demands another trial, subject to the provisions of Rules 503 and 504 relating to reversals.

Source: Art. 1771, with minor textual change.

Rule 506. Judgment Becomes Final.—The judgment of the Supreme Court shall be final at the expiration of fifteen days from the rendition thereof, when no motion for rehearing has been filed.

Source: Art. 1772, unchanged.

Rule 507. Mandate to Issue.—On the rendition of a final judgment or decree in the Supreme Court, the clerk of said court shall not issue and deliver the mandate of the court, nor certify the proceedings to the lower court, until all costs accruing in the case in the Supreme Court and the Court of Civil Appeals have been paid, subject to the provisions of the succeeding rule. In cases where the Supreme Court declines to grant an application for writ of error, the costs of the Supreme Court shall be paid in the Court of Civil Appeals and the mandate issued from that court. As amended by order of Sept. 20, 1941, effective Dec. 31, 1941; order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Art. 1773.
Change: See Rule 443.
Change by amendment effective December 31, 1941: The proviso has been eliminated.
Change by amendment effective February 1, 1946: The last sentence has been added.

Rule 508. Affidavit on Inability to Pay.—If the party against whom the costs are adjudged by the Supreme Court shall make affidavit of his inability to pay, or give security therefor, he may apply to the Supreme Court for an order to require the clerk of the court to issue the mandate in the cause, which motion shall be governed by the provisions of Rule 355.

Source: Art. 1774.
Change: Adoption by reference of Rule 355 with reference to the affidavit of inability to pay costs.

Rule 509. Mandate Barred.—When a case is reversed and remanded, no mandate shall issue after twelve months from the rendition of final judgment of the Supreme Court, or the overruling of a motion for rehearing. When a cause is reversed and remanded by the Supreme Court, and the mandate is not taken out within twelve months as hereinbefore provided, then, upon the filing in the court below of a certificate of the clerk of the Supreme Court that no mandate has been taken out, the case shall be dismissed from the docket of said lower court.

Source: Art. 1775, with minor textual change.

Rule 510. Mandate Recalled.—Should the Supreme Court set aside its judgment after the mandate has issued, the clerk shall at once notify the party to whom the mandate was directed to return it.

Source: Art. 1776, unchanged.

Rule 511. Execution.—If the costs have not been paid at the end of fifteen days from the date of judgment or from the overruling of a motion for rehearing, the clerk may issue an execution for the costs of the Supreme Court and the Court of Civil Appeals, specifying the amount of each, and attach to said execution a correct list of all costs accruing in each of said courts. The execution shall be directed to the sheriff or any constable of any county of the State of Texas as provided in Rule 629. It shall be the duty of every sheriff or constable receiving such execution to execute and return the same under the same rules, regulations and liabilities as provided for executions from district courts.

Source: Art. 1777.
Change: The execution is not to be addressed to a particular county.

Rule 512. Execution Returnable.—All executions for costs of the Supreme Court shall be returned by the officer within thirty, sixty, or ninety days from the date thereof, as the court or clerk thereof may direct.

Source: Art. 1778, with minor textual change.

Rule 513. Officer Failing to Make Return.—In case any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same, within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of the Supreme Court may issue citation returnable forthwith to such officer to appear before the Supreme Court and show cause why he has not collected and returned such costs and execution; and failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for the amount of said costs, together with the costs of such proceeding.

Source: Art. 1779, unchanged.

Rule 514. Money Due Other Clerk.—When the clerk of the Supreme Court receives any money due a clerk of the Court of Civil Appeals, or the clerk of any Court of Civil Appeals receives any money due the clerk of the Supreme Court, such clerk so receiving same shall pay such money over to the clerk to whom it is due. If he refuses to do so upon demand, the clerk to whom the same is due may file in the Supreme Court a motion against him, and, upon ten days' notice to him, the Supreme Court may enter judgment against him and the sureties on his official bond for such amount. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 1780, unchanged, except that by amendment effective December 31, 1943, the rule has been expanded to reach a case where "the clerk of any Court of Civil Appeals receives any money" etc.

SECTION 3. REHEARING

Rule 515. Motion for Rehearing.—A motion for rehearing may be filed with the clerk of the court within fifteen days after the date of rendition of the judgment or decision of the court or the order refusing or dismissing an application for writ of error, whether such date be in the same or a succeeding term of such court, and not later; provided, however, that the court in cases of emergency where the ends of justice require it, may deny the right to file such motion. The grounds relied upon for the rehearing shall be distinctly specified in the motion. The motion shall give the name and residence of the counsel of the opposing party if known, and if not known, the name and residence as shown in the record. The party filing such motion shall deliver or mail to each opposing party, or his attorney of record, a true copy of such motion, and shall note on the motion so filed with the clerk that such copies have been so furnished. Upon his failure to do so, he shall accompany his motion with or furnish to the clerk on his request a sufficient number of duplicates or copies thereof for the clerk to use in complying with the provisions of Rule 516. Failure to supply such copies on request of the clerk may result in dismissal of the motion. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Art. 1762.
Change: Substitution of "date of rendition" for "date of entry." Addition of "whether such date be in the same or a succeeding term of such court." Addition of "or the order refusing or dismissing an application for writ of error."
Change by amendment effective December 31, 1941: The last three sentences of the rule have been added. See also Rule 458 and Note thereto.

Rule 516. Notice on Motion.—Upon the filing of such motion the clerk shall notify the opposing party by postal card, and if copies of such motion have not been furnished to the opposing parties or their attorneys of record by the party filing same, the clerk shall mail to the opposing parties or their attorneys of record such copies thereof as have been furnished by the party filing the motion as required in Rule 515. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Arts. 1763 and 1764.
Change: Substitution of notice by mail for process.
Change by amendment effective December 31, 1941: The rule has been materially changed in wording. Certified

copies have been eliminated, and the wording respecting the manner of notice has been altered.

Rule 517. Hearing on motion.—The opposing party shall have five days after notice, as provided for in Rule 516, in which to file an answer to the motion. Upon the filing of an answer or the expiration of the five-day period, the motion shall be deemed submitted to the court and ready for disposition. However, if the court deems it advisible it may limit the time in which a motion for rehearing or an answer thereto may be filed, and may act upon any motion at any time after it is filed. As amended by order of Sept. 20, 1941, effective Dec. 31, 1941; order of Oct. 10, 1945, effective Feb. 1, 1946.

Source: Art. 1765.
Change: Dating the period of time from mailing of notice.
Change by amendment effective December 31, 1941:
Redrafted: the period of time running from "the date of such notice."
Change by amendment effective February 1, 1946:
The rule has been rewritten.

SECTION 4. COMMISSION OF APPEALS

Rule 518. Repealed effective Feb. 1, 1946

Prior to repeal by Order of Oct. 10, 1945, Rule 518 read as follows:
All laws and rules regulating practice and procedure in the Supreme Court shall be of force in the practice and proceedings of the Commission of Appeals so far as applicable. All applications for rehearing in cases referred to said commission shall be made before and determined by it.

Rule 519. Repealed effective Feb. 1, 1946

Prior to repeal by Order of Oct. 10, 1945, Rule 519 read as follows:
In cases referred to the Commission of Appeals the papers shall not be re-filed with said commission, and only such additional costs as may be essential to carry into effect the provisions of the statutes and these rules shall be incurred by the parties thereto by the reference of such causes to the commission.

Rule 520. Repealed effective Feb. 1, 1946

Prior to repeal by Order of Oct. 10, 1945, Rule 520 read as follows:
(a) When a case has been referred to the commission, it shall be the duty of the clerk to place the case upon the trial docket of the section to which the same has been referred and to mark upon the file the number of the case shown upon such docket. Cases upon the trial docket shall be numbered consecutively in the order in which they are entered thereon.
(b) The clerk shall give notice of the setting for submission of a case at least ten days before the submission day. Such notice shall be made by mailing same to the parties or their attorneys of record.
(c) Causes in Section A shall be regularly submitted on Friday of each week, and in Section B on Thursday of each week; provided, however, that in either section cases may be set down for submission upon another day by the permission or direction of the court.
(d) Submission will not be postponed as of course, on agreement of counsel. Motions to postpone submissions shall set up the grounds for same and will be granted only when deemed adequate by the court and on such terms as the court may order.

Rule 521. Repealed effective Feb. 1, 1946

Prior to repeal by Order of Oct. 10, 1945, Rule 521 read as follows:
When the commission has determined the proper disposition of any case referred to it, their opinion shall be submitted to the Supreme Court, together with a brief synopsis of the case, and the record shall be returned therewith to be used by the Supreme Court. The conclusion or award thus reported when approved, shall be the judgment of the Supreme Court, and said court shall make and render such further order, judgment, or decree thereon as may be necessary or proper to make said award effective.

Rule 522. Repealed effective Feb. 1, 1946

Prior to repeal by Order of Oct. 10, 1945, Rule 522 read as follows:
The opinion of the commission in cases referred to it by consent under the provisions of Art. 1788 of the Revised Statutes of Texas, 1925, shall not be published in the reports of the decisions of the Supreme Court, nor shall it have any further or other effect than to determine the particular causes wherein rendered, and shall have no force, effect or authority as precedent in other causes, unless otherwise decided by the Supreme Court.
The opinion of the commission in cases so referred to it, when adopted by the Supreme Court, may be published as the opinion thereof as in other cases.

PART V. RULES OF PRACTICE IN JUSTICE COURTS

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SECTION 1. GENERAL

Rule 523. District Court Rules Govern.—All rules governing the district and county courts shall also govern the justice courts, insofar as they can be applied, except where otherwise specifically provided by law or these rules.

Source: Arts. 2381 and 2410.
Change: The particular provisions of these statutes have been covered by a single general rule.

Rule 524. Docket.—Each justice shall keep a civil docket in which he shall enter:

(a) The title of all suits commenced before him.

(b) The time when the first process was issued against the defendant, when returnable, and the nature thereof.

(c) The time when the parties, or either of them, appeared before him, either with or without a citation.

(d) A brief statement of the nature of the plaintiff's demand or claim, and the amount claimed, and a brief statement of the nature of the defense made by the defendant, if any.

(e) Every adjournment, stating at whose request and to what time.

(f) The time when the trial was had, stating whether the same was by a jury or by the justice.

(g) The verdict of the jury, if any.

(h) The judgment rendered by the justice and the time of rendering same.

(i) All applications for setting aside judgments or granting new trials and the order of the justice thereon, with the date thereof.

(j) The time of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs; and, when any execution is returned, he shall note such return on said docket, with the manner in which it was executed.

(k) All stays and appeals that may be taken, and the time when taken, the amount of the bond and the names of the sureties.

(*l*) He shall also keep such other dockets, books and records as may be required by law or these rules, and shall keep a fee book in which shall be taxed all costs accruing in every suit commenced before him.

Source: Art. 2382, unchanged.

Rule 525. Oral Pleadings.—The pleadings shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket; provided that after a case has been appealed and is docketed in the county (or district) court all pleadings shall be reduced to writing.

Source: Art. 2388.
Change: Pleadings must be in writing or be reduced to writing after an appeal from the justice court.

Rule 526. Sworn Pleadings.—An answer or other pleadings setting up any of the matters specified in Rule 93 shall be in writing and signed by the party or his attorney and verified by affidavit.

Source: Art. 2389.
Change: The reference to the provisions of Rule 93 substituted for the separate list of pleas required to be filed under oath in the justice court.

Rule 527. Plea of Privilege.—A plea of privilege filed in the justice court shall contain the requisites prescribed in Rule 86; and in addition shall set forth the precinct to which transfer is sought.

Source: Art. 2389, subdivision 1, with minor textual change.

SECTION 2. INSTITUTION OF SUIT

Rule 528. Venue Changed on Affidavit.—If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification.

Source: Art. 2394, unchanged.

Rule 529. "Nearest Justice" Defined.—By the term "nearest justice," as used in this section, is meant the justice whose place of holding his court is nearest to that of the justice before whom the proceeding is pending or should have been brought.

Source: Art. 2395, unchanged.

Rule 530. By Consent.—The venue may also be changed to the court of any other justice of the county, upon the written consent of the parties or their attorneys, filed with the papers of the cause.

Source: Art. 2396, unchanged.

Rule 531. Order of Transfer.—The order of transfer in such cases shall state the cause of the transfer, and the name of the court to which the transfer is made, and shall require the parties and witnesses to appear before such court at its next ensuing term.

Source: Art. 2397, unchanged.

Rule 532. Transcript.—When such order of transfer is made, the justice who made the order shall immediately make out a true and correct transcript of all the entries made on his docket in the cause, certify thereto officially, and send it, with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the justice of the precinct to which the same has been transferred.

Source: Art. 2398, unchanged.

Rule 533. Requisites of Process.—Every writ or process from the justice courts shall be issued by the justice, shall be in writing and signed by him officially. The style thereof shall be "The State of Texas." It shall, except where otherwise specially provided by law or these rules be directed to the person or party upon whom it is to be served, be made returnable to some regular term of court, and have noted thereon the date of its issuance.

Source: Art. 2400.
Change: The process is to be directed to the party rather than to an officer of a named county.

Rule 534. Citation.—When a claim or demand is lodged with a justice for suit, he shall issue forthwith citations for the defendant or defendants. The citation shall require the defendant to appear and answer plaintiff's suit at or before 10:00 o'clock a. m. on the Monday next after the expiration of ten days from the date of service thereof, and shall state the place of holding the court. It shall state the number of the suit, the names of all the parties to the suit, and the nature of plaintiff's demand, and shall be dated and signed by the justice of the peace. The citation shall further direct that if it is not served within 90 days after date of its issuance, it shall be returned unserved. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 2401.
Change: The citation is directed to the party upon whom it is to be served, instead of to the officer of a named county.
Change by amendment effective December 31, 1947: The time to be required for appearance and answer has been changed and additional wording has been added as to other requisites of the citation. There is also some minor textual change.

Rule 535. Answer Filed.—Where citation has been personally served at least ten days before appearance day, exclusive of the day of service and of return, the answer of the defendant shall be filed at or before ten o'clock a. m. on such day. Where citation has been served by publication, and the first publication has been made at least twenty-eight days before appearance day, the answer of the defendant shall be filed at or before ten o'clock a. m. on the first day of the first term which shall convene after the expiration of forty-two days from the date of issuance of such citation.

Source: Art. 2009 and Art. 2404.
Change: The rewording harmonizes with Rule 114 dealing with citation by publication, but retains without change the present rule where citation has been personally served.

Rule 536. Special Process Server.—The justice, in case of an emergency, may depute any person of good character to serve any process; and the person so deputed shall for such purpose have all the authority of a sheriff or constable, but in every such case the justice shall indorse on the process a statement in writing, signed by him officially, to the effect that he has deputed such person to serve such process. Such person shall also take and subscribe an affidavit, to be indorsed on or attached to the process, to the effect that he will to the best of his ability execute the same according to law and these rules.

Source: Art. 2402, with minor textual change.

SECTION 3. APPEARANCE AND TRIAL

Rule 537. Appearance Day.—If a defendant who has been duly cited is required by the citation to answer on a day which is in term time, such day is appearance day as to him. If he is so required to answer on a day in vacation, the first day of the next term is appearance day as to him. Where service of citation has been had by publication, the first day of the term of court which convenes after the expiration of 42 days from the date of issuance of the citation shall be appearance day. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 2404.
Change: Alteration of appearance day in cases where citation is by publication. See Rule 114.
Change by amendment effective December 31, 1947: The former rule has been completely altered as to appearance day, in case of citation other than by publication, and in the latter respect there has been minor textual change.

Rule 538. If Defendant Fails to Appear.—If the defendant who has been duly served with a citation shall fail to appear at, or before, ten o'clock a. m. on appearance day, the justice shall proceed in the following manner:

(a) If the plaintiff's claim be liquidated and proved by an instrument of writing purporting to have been executed by the defendant, or be upon an open account duly verified by affidavit, the justice shall, whether the plaintiff appear or not, render judgment in his favor against the defendant for the amount of such written obligation or sworn account, after deducting all credits indorsed thereon.

(b) If the plaintiff's claim is not so liquidated, and the plaintiff appears in person or by attorney, the justice shall proceed to hear the testimony; and, if it appears therefrom that the plaintiff is entitled to recover, judgment shall be rendered against the defendant for such amount as the testimony shows the plaintiff entitled to; otherwise, judgment shall be rendered for the defendant.

Source: Art. 2405.
Change: Substitution of "claim" for "cause of action." Omission of "agent" in subdivision (b).

Rule 539. Appearance Noted.—If the defendant appear, the same shall be noted on the docket, and the cause shall stand for trial in its order.

Source: Art. 2406, unchanged.

Rule 540. If No Demand for Jury.—If neither party shall demand and be entitled to a jury, the justice shall try the cause without a jury.

Source: Art. 2407, with minor textual change.

Rule 541. Continuance.—The justice for good cause shown, supported by affidavit, may continue any suit pending before him to the next regular term of his court, or postpone the same to some other day of the term.

Source: Art. 2403, unchanged.

Rule 542. Call of Non-Jury Docket.—The docket of cases to be tried by the justice shall be called regularly, and the cases shall be tried when called unless continued or postponed.

Source: Art. 2408, with minor textual change.

Rule 543. Dismissal.—If the plaintiff shall fail to appear when the cause is called in its order for trial, the justice, on motion of the defendant, may dismiss the suit.

Source: Art. 2409, unchanged.

Rule 544. Jury Trial Demanded.—Either party shall be entitled to a trial by jury. The party desiring a jury shall before the case is called for trial make a demand for a jury, and also deposit a jury fee of three dollars, which shall be noted on the docket; and the case shall be set down as a jury case.

Source: Art. 2411, with minor textual change.

Rule 545. Jury Trial Day.—The justice shall, on the first day of the term, fix a day for taking up the jury cases, if any, pending for trial at such term, and he may fix said first day of the term for that purpose.

Source: Art. 2412, unchanged.

Rule 546. Call of Jury Docket.—When the required number of jurors is present, the jury cases set for trial shall be called.

Source: Art. 2419.
Change: Jury cases are to be called as set for trial, rather than in their order on the docket.

Rule 547. Challenge to the Array.—When the parties to a jury case have announced themselves for trial, either party may challenge the array of jurors. The cause and the manner of making such challenge, the decision thereof and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts.

Source: Art. 2420, unchanged.

Rule 548. Drawing Jury.—If no challenge to the array is made, the justice shall write the names of all the jurors present on separate slips of paper, as nearly alike as may be, and shall place them in a box and mix them well, and shall then draw the names one by one from the box, and write them down as they are drawn, upon several slips of paper, and deliver one slip to each of the parties, or their attorneys.

Source: Art. 2421, unchanged.

Rule 549. Challenge for Cause.—If either party desires to challenge any juror for cause, such challenge shall now be made. The causes of such challenge, and the manner of making it and the decision thereof, and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts.

Source: Art. 2422, unchanged.

Rule 550. Peremptory Challenge.—When a juror has been challenged for cause, and the challenge has been sustained, his name shall be erased from the slips furnished to the parties; and, if as many as twelve names remain on such slips, the parties may make their peremptory challenges governed by the rules prescribed for the district and county courts.

Each party shall be entitled to three peremptory challenges.

Source: Art. 2423.
Change: Requiring a full prospective panel of twelve before requiring the parties to exercise their peremptory challenges. Specifically fixing the number of peremptory challenges allowed.

Rule 551. The Jury.—When the peremptory challenges are made, they shall deliver their slips to the justice, who shall call off the first six names on the slips that have not been erased, and these shall be the jury to try the case.

Source: Art. 2424, unchanged.

Rule 552. If Jury Is Incomplete.—If the jury by peremptory challenges is left incomplete, the justice shall direct the sheriff or constable to summon others to complete the jury; and the same proceedings shall be had in selecting and impaneling such jurors as are had in the first instance.

Source: Art. 2425, unchanged.

Rule 553. Jury Sworn.—When the jury has been selected, such of them as have not been previously sworn for the trial of civil cases shall be sworn by the justice. The form of the oath shall be in substance as follows: "You and each of you do solemnly swear that in all cases between parties which shall be to you submitted you will a true verdict render, according to the law and the evidence. So help you God."

Source: Art. 2426, unchanged.

Rule 554. Justice Shall Not Charge Jury.—The justice of the peace shall not charge the jury in any cause tried in his court before a jury.

Source: Art. 2410 (part), unchanged.

Rule 555. Verdict.—When the suit is for the recovery of specific articles, the jury shall, if they find for the plaintiff, assess the value of each of such articles separately, according to the proof.

Source: Art. 2427, unchanged.

SECTION 4. JUDGMENT

Rule 556. Judgment Upon Verdict.—Where the case has been tried by a jury and a verdict has been returned by them, the justice shall announce the same in open court and note it in his docket, and shall proceed to render judgment thereon.

Source: Art. 2429, unchanged.

Rule 557. Case Tried by Justice.—When the case has been tried by the justice without a jury, he shall announce his decision in open court and note the same in his docket and render judgment thereon.

Source: Art. 2430, unchanged.

Rule 558. Judgment.—The judgment shall be recorded at length in the justice's docket, and shall be signed by the justice. It shall clearly state the determination of the rights of the parties in the subject matter in controversy and the party who shall pay the costs, and shall direct the issuance of such process as may be necessary to carry the judgment into execution.

Source: Art. 2431, with minor textual change.

Rule 559. Costs.—The successful party in the suit shall recover his costs, except in cases where it is otherwise expressly provided.

Source: Art. 2432, unchanged.

Rule 560. Judgment for Specific Articles.—Where the judgment is for the recovery of specific articles, their value shall be separately assessed, and the judgment shall be that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed with interest thereon at the rate of six per cent from the date of judgment.

Source: Art. 2433, unchanged.

Rule 561. To Enforce Judgment.—The court shall cause its judgments to be carried into execution, and where the judgment is for personal property and the verdict, if any, is that such property has an especial value to the plaintiff the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, enforce its judgment by attachment, fine and imprisonment.

Source: Art. 2434, unchanged.

Rule 562. No Judgment Without Citation.—No judgment, other than judgment by confession, shall be rendered by the justice of the peace against any party who has not entered an appearance or accepted service, unless such party has been duly cited.

Source: Art. 2435, shortened by minor textual change.

Rule 563. Confession of Judgment.—Any party may appear in person, or by an agent or attorney, before any justice of the peace, without the issuance or service of process, and confess judgment for any amount within the jurisdiction of the justice court; and such judgment shall be entered on the justice's docket as in other cases; but, in such cases, the plaintiff, his agent or attorney shall make and file an affidavit signed by him, to the justness of his claim.

Source: Art. 2436, unchanged.

Rule 564. Warrant of Attorney.—Where such judgment is confessed by an agent or attorney, the warrant of attorney shall be in writing and filed with the justice and noted in the judgment.

Source: Art. 2437, with minor textual change.

Rule 565. Rules Governing.—The rules governing the district and county courts in relation to judgment and confession thereof shall also apply to justice courts, insofar as they do not conflict with some provision of the rules applicable to justice courts.

Source: Art. 2438.
Change: Addition of "and confession thereof."

SECTION 5. NEW TRIAL

Rule 566. Judgments by Default.—A justice may within ten days after the rendition of a judgment by default or of dismissal, set aside such judgment, on motion in writing, for good cause shown, supported by affidavit. Notice of such motion shall be given to the opposite party at least one full day prior to the hearing thereof.

Source: Art. 2439, unchanged.

Rule 567. New Trials.—The justice, within ten days after the rendition of a judgment in any suit tried before him, may grant a new trial therein on motion in writing showing that justice has not been done in the trial of the cause.

Source: Art. 2440, unchanged.

Rule 568. Sworn Motion.—If the grounds of the motion be other than that the verdict or judgment is contrary to the law or the evidence, or that the justice erred in some matter of law, the motion shall be supported by affidavit.

Source: Art. 2441, unchanged.

Rule 569. Notice.—All motions to set aside a judgment or to grant a new trial, under the two preceding rules, shall be made within five days after the rendition of judgment and one day's notice thereof shall be given the opposite party or his attorney.

Source: Art. 2442, with minor textual change.

Rule 570. But One New Trial.—But one new trial may be granted to either party.

Source: Art. 2444.
Change: "Shall" changed to "may."

SECTION 6. APPEAL

Rule 571. Appeal Bond.—The party appealing, his agent or attorney, shall within ten days from the date of the judgment, or order overruling motion for new trial, file with the justice a bond, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on appeal. Where such bond has been filed with the justice, the appeal shall be held to be thereby perfected and all parties to said suit or to any suit so appealed shall make their appearance at the next term of court to which said case has been appealed without further notice. The appeal shall not be dismissed for defects or irregularities in procedure, either of form or substance, without allowing appellant five (5) days after notice within which to correct or amend same.

Source: Art. 2456 and Art. 2457 (part).
Change: Allowing ten days from order overruling motion for new trial during which appeal bond may be filed. Transfer to this rule of provision of Art. 2457 prohibiting dismissals for defects without allowing time to amend.

Rule 572. Affidavit of Inability.—Where appellant is unable to pay the costs of appeal, or give security therefor, he shall nevertheless be entitled to appeal by making strict proof of such inability within five days after the judgment or order overruling motion for new trial, which shall consist of his affidavit filed with the justice of the peace stating his inability to pay such costs, or any part thereof, or to give security, which may be contested within five days after the filing of such affidavit and notice thereof to the opposite party or his attorney of record by any officer of court or party to the suit, whereupon it shall be the duty of the justice of the peace in whose court the suit is pending to hear evidence and determine the right of the party to appeal, and he shall enter his finding on the docket as a part of the record. It will be presumed prima facie that the affidavit speaks the truth, and, unless contested within five days after the filing and notice thereof, the presumption shall be deemed conclusive; but if a contest is filed, the burden shall then be on the appellant to prove his alleged inability by competent evidence other than by the affidavit above referred to. If the justice of the peace denies the right of appeal, appellant may, within five days thereafter, bring the matter before the county judge of the county for final decision, and, on request, the justice shall certify to the county judge appellant's affidavit, the contest thereof, and all documents and papers pertaining thereto. The county judge shall set a day for hearing, not later than ten days, and shall hear the contest de novo, and if the appeal is granted, shall direct the justice to transmit to the clerk of the county court, the transcript, records and papers of the case, as provided in these rules.

Source: Art. 2457.
Change: Allowing five days after the order overruling motion for new trial in which to file affidavit. Notice of the affidavit is to be given the opposing party. The burden is on affiant in the event of a contest. Transfer to the previous rule of provision prohibiting dismissal without allowing time to correct defects.

Rule 573. Appeal Perfected.—When the bond, or the affidavit in lieu thereof, provided for in the rules applicable to justice courts, has been filed and the previous requirements have been complied with, the appeal shall be held to be perfected.

Source: Art. 2458, with minor textual change.

Rule 574. Transcript.—Whenever an appeal has been perfected from the justice court, the justice who made the order, or his successor, shall immediately make out a true and correct copy of all the entries made on his docket in the cause, and certify thereto officially, and immediately send it together with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the clerk of the county court of his county, or other court having jurisdiction.

Source: Art. 2459.
Change: Addition of words, "or his successor." Requirement that the transcript be sent up immediately.

SECTION 7. CERTIORARI

Rule 575. Order for Writ.—The writ of certiorari shall be issued by order of the county court or the judge thereof (or district court or judge thereof, if jurisdiction is transferred to the district court) as provided in these rules.

Source: Art. 942, with minor textual change.

Rule 576. Requisites of Writ.—The writ shall command the justice to immediately make and certify a copy of the entries in the cause on his docket, and immediately transmit the same, with the papers in his possession and a certified copy of the bill of costs to the proper court.

Source: Arts. 943 and 2460 (part).
Change: Requiring the justice to act immediately instead of before the next term of the county court.

Rule 577. Affidavit of Sufficient Cause.—The writ shall not be granted unless the applicant or some person for him having knowledge of the facts, shall make affidavit setting forth sufficient cause to entitle him thereto.

Source: Art. 944, unchanged.

Rule 578. Application for Certiorari.—To constitute a sufficient cause, the facts stated must show that either the justice of the peace had not jurisdiction, or that injustice was done to the applicant by the final determination of the suit or proceeding, and that such injustice was not caused by his own inexcusable neglect.

Source: Art. 945, unchanged.

Rule 579. Within What Time Granted.—Such writ shall not be granted after ninety days from the final judgment of the justice.

Source: Art. 946, unchanged.

Rule 580. Bond With Sureties Required.—The writ shall not be issued unless the applicant shall first cause to be filed a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to the adverse party, in such sum as the judge shall direct, to the effect that the party applying therefor will perform the judgment of the county or district court, if the same shall be against him.

Source: Art. 947, unchanged.

Rule 581. Bond, Affidavit and Order.—The bond and affidavit, with the order of the judge, when made in vacation, shall be filed with the clerk of the court to which the same is returnable.

Source: Art. 948, unchanged.

Rule 582. Writ to Issue Instanter.—As soon as such affidavit, order of the judge, and bond, shall have been filed, the clerk shall issue a writ of certiorari.

Source: Art. 949, unchanged.

Rule 583. Justice Shall Stay Proceedings.—Upon service of such writ of certiorari being made upon the justice of the peace, he shall stay further proceedings on the judgment and forthwith comply with said writ.

Source: Art. 950, unchanged.

Rule 584. Citation As In Other Cases.—Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation for the party adversely interested.

Source: Art. 951, unchanged.

Rule 585. Cause Docketed.—The action shall be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

Source: Art. 952, unchanged.

Rule 586. Motion to Dismiss.—Within thirty days after the service of citation on the writ of certiorari, the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in the affidavit, or for want of sufficient bond.

Source: Art. 953.
Change: Substitution of thirty day time limit for reference to term of court.

Rule 587. Amendment of Bond or Oath.—The affidavit or bond may be amended in the discretion of the court in which it is filed.

Source: Art. 954.
Change: The statute did not authorize amendment of the affidavit.

Rule 588. Judgment of Dismissal.—If the certiorari be dismissed, the judgment shall direct the justice to proceed with the execution of the judgment below.

Source: Art. 955, unchanged.

Rule 589. Pleading.—After the transcript of the proceedings in the justice court, together with the original papers and a bill of costs, have been filed in the county (or district) court, all pleadings in the cause which are not already written shall be reduced to writing.

Source: Arts. 956 and 957.
Change: Written pleadings are required in the county court.

Rule 590. New Matter May Be Pleaded.—Either party may plead any new matter in the county or district court which was not presented in the court below, but no new ground of recovery shall be set up by the plaintiff, nor shall any set-off or counter claim be set up by the defendant which was not pleaded in the court below. The pleading thereof shall be in writing and filed in the cause before the parties have announced ready for trial.

Source: Art. 958.
Change: "Ground of recovery" substituted for "cause of action."

Rule 591. Trial De Novo.—The cause shall be tried de novo in the county or district court; and judgment shall be rendered as in cases appealed from justice courts.

Source: Art. 959, unchanged.

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SECTION 1. ATTACHMENT

Rule 592. Form of Attachment Bond.—The following form of bond may be used:

"The State of Texas,
County of ————,

"We, the undersigned, ———— as principal, and ———— and ———— as sureties, acknowledge ourselves bound to pay to C. D. the sum of ———— dollars, conditioned that the above bound plaintiff in attachment against the said C. D., defendant, will prosecute his said suit to effect, and that he will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment. Witness our hands this ———— day of ————, 19——."

Source: Art. 280, unchanged.

Rule 593. To whom Writ Directed.—The writ of attachment shall be directed as follows: "To the Sheriff or any Constable of any County of the State of Texas." It shall command him to attach so much of the property of the defendant as shall be found within his county, sufficient to satisfy the demand of the plaintiff and the probable costs of the suit.

Source: Art. 282 (part).
Change: The writ of attachment is not to be directed to a particular county.

Rule 594. Form of Writ.—The following form of writ may be issued:

"The State of Texas.

To the Sheriff or any Constable of any County of the State of Texas, greeting:

"We command you that you attach forthwith so much of the property of C. D., if it be found in your county, repleviable on security, as shall be of value sufficient to make the sum of ———— dollars, and the probable costs of suit, to satisfy the demand of A. B., and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon to be had before our court in ————, County of ————. You will true return make of this writ on or before 10 a. m. of Monday, the ———— day of ————, 19——, showing how you have executed the same."

Source: Art. 284.
Change: Direction of the writ to officers generally in harmony with Rule 593, and change of return date in harmony with Rule 606.

Rule 595. Several Writs.—Several writs of attachment may, at the option of the plaintiff, be issued at the same time, or in succession, and sent to different counties, until sufficient property shall be attached to satisfy the writ.

Source: Art. 283, unchanged.

Rule 596. Delivery of Writ.—The writ of attachment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer issuing it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Source: Art. 285, unchanged.

Rule 597. Duty of Officer.—The sheriff or constable receiving the writ shall immediately proceed to execute the same by levying upon so much of the property of the defendant subject to the writ, and found within his county, as may be sufficient to satisfy the command of the writ.

Source: Art. 286, unchanged.

Rule 598. Delivery of Writ.—The writ of attachment shall be levied in the same manner as is, or may be, the writ of execution upon similar property.

Source: Art. 289, unchanged.

Rule 599. Defendant May Replevy.—At any time before judgment, should the property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, by giving bond, with two or more good and sufficient sureties, to be approved by the officer who levied the writ, payable to the plaintiff, in double the amount of the plaintiff's debt, or, at the defendant's option, for the value of the property replevied, to be estimated by the officer, conditioned that should the defendant be condemned in the action, he shall satisfy the judgment which may be rendered against him therein,

or shall pay the estimated value of the property with lawful interest thereon from the date of the bond.

Source: Art. 292, with minor textual change.

Rule 600. Sale of Perishable Property.—Whenever personal property which has been attached shall not have been claimed or replevied, the judge, or justice of the peace, out of whose court the writ was issued, may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping of the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

Source: Art. 293, unchanged.

Rule 601. To Protect Interests.—In determining whether the property attached is perishable, and the necessity or advantage of ordering a sale thereof, the judge or justice of the peace may act upon affidavits in writing or oral testimony, and may by a preliminary order entered of record, with or without notice to the parties as the urgency of the case in his opinion requires, direct the sheriff or constable to sell such property at public auction for cash, and thereupon the officer shall sell it accordingly.

Source: Art. 294, reworded.

Rule 602. Bond of Applicant for Sale.—If the application for an order of sale be filed by any person or party other than the defendant from whose possession the property was taken by levy, the court shall not grant such order unless the applicant shall file with such court a bond payable to such defendant, with two or more good and sufficient sureties, to be approved by said court, conditioned that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made.

Source: New rule as applied to attachment proceedings. See Art. 5233 (in part).

Rule 603. Procedure for Sale.—Such sale of attached perishable personal property shall be conducted in the same manner as sales of personal property under execution; provided, however, that the time of the sale, and at the time of advertisement thereof, may be fixed by the judge or justice of the peace at a time earlier than ten days, according to the exigency of the case, and in such event notice thereof shall be given in such manner as directed by the order.

Source: Art. 295, reworded.

Rule 604. Return of Sale.—The officer making such sale of perishable property shall promptly pay the proceeds of such sale to the clerk of such court or justice of the peace, as the case may be, and shall make written return of the order of sale signed by him officially, stating the time and place of the sale, the name of the purchaser, and the amount of money received, with an itemized account of the expenses attending the sale. Such return shall be filed with the papers of the case.

Source: Art. 296, reworded.

Rule 605. Judge May Make Necessary Orders.—When the perishable personal property levied on under the attachment writ has not been claimed or replevied, the judge or justice of the peace may make such orders, either in term time or vacation, as may be necessary for its preservation or use.

Source: Art. 297, reworded.

Rule 606. Return of Writ.—The officer executing the writ of attachment shall return the writ, with his action endorsed thereon, or attached thereto, signed by him officially, to the court from which it issued, at or before 10 o'clock a. m. of the Monday next after the expiration of fifteen days from the date of issuance of the writ. Such return shall describe the property attached with sufficient certainty to identify it, and state when the same was attached, and whether any personal property attached remains still in his hands, and, if not, the disposition made of the same. When property has been replevied he shall deliver the replevy bond to the clerk or justice of the peace to be filed with the papers of the cause.

Source: Art. 298.
Change: Return date changed from first day of the next term.

Rule 607. Report of Disposition of Property.—When the property levied on is claimed, replevied or sold, or otherwise disposed of after the writ has been returned, the officer having the custody of the same shall immediately make a report in writing, signed by him officially, to the clerk, or justice of the peace, as the case may be, showing such disposition of the property. Such report shall be filed among the papers of the cause.

Source: Art. 299, unchanged.

Rule 608. Order of Court When Attachment Quashed.—If the attachment be quashed or otherwise vacated by interlocutory judgment or order of the court, the court shall make the proper order making disposition of the property, or the proceeds of the sale thereof, if the same has been sold under order of the court, directing that it be turned over to the defendant. The property or the proceeds of the sale thereof, if the same has not been replevied, shall remain in the hands of the officers pending the final disposition of the main case and until it shall be finally disposed of, or until the time for perfecting an appeal has elapsed and no appeal has been perfected, when said order disposing of the property shall be carried into effect. Pending the final disposition of the main case, the defendant shall have the right at any time to replevy the property in the same manner as is provided for in cases of replevy before judgment. If the property has been sold, he may replevy the proceeds of such sale by giving bond in double the amount of the money arising from such sale, with like conditions as when replevied before judgment. Any replevy bond given in such case, whether before or after the quashing or vacating such attachment, shall be as valid and binding as if such attachment had never been quashed or vacated.

Source: Art. 303, unchanged.

Rule 609. Amendment.—Clerical errors in the affidavit, bond, or writ of attachment, or the officer's return thereof, may upon application in writing to the judge or justice of the court in which the suit is filed, and after notice to the opponent, be amended in such manner and on such terms as the judge or justice shall authorize by an order entered in the minutes of the court or noted on the docket of the justice of the peace, provided the amendment does not change or add to the grounds of such attachment as stated in the affidavit, and provided such amendment appears to the judge or justice to be in furtherance of justice.

Source: New rule.

SECTION 2. DISTRESS WARRANT

Rule 610. Oath.—The plaintiff, his agent or attorney shall make oath that the amount sued for is rent or advances, such as are mentioned in Art. 5222 of the Revised Civil Statutes, 1925, or shall produce a writing signed by such tenant to that effect, and shall further swear that such warrant is not sued out for the purpose of vexing and harassing the defendant.

Source: Art. 5228 (part), with minor textual change.

Rule 611. Bond.—The person applying for such warrant shall execute a bond with two or more good and sufficient sureties, to be approved by the justice of the peace, payable to the defendant, conditioned that the plaintiff will pay the defendant such damages as he may sustain in case such warrant has been il-

legally and unjustly sued out, which bond shall be filed among the papers of the cause; and, in case the suit shall be finally decided in favor of the defendant, he may bring suit against the plaintiff and his sureties on such bond, and shall recover such damages as may be awarded to him.

Source: Art. 5228 (part), unchanged.

Rule 612. Issuance of Distress Warrant.—Upon the filing of the oath and bond for the distress warrant, the justice of the peace shall forthwith issue such warrant to the proper officer, commanding him to seize the property of the defendant, or so much thereof as will be sufficient to satisfy the plaintiff's demand. Such warrant shall be made returnable to the court having jurisdiction of the amount in controversy, or if the amount be within the concurrent jurisdiction of the district and county courts to either of such courts as plaintiff or his attorney shall direct, on or before ten o'clock a. m. of the Monday next after the expiration of fifteen days from the date of issuance of the writ. When the writ is made returnable to the district or county court the justice shall transmit all papers in the cause to the proper court on or before the return day fixed by the writ.

Source: Art. 5229.
Change: Fixing return day on the first Monday after the expiration of fifteen days from issuance of the writ.

Rule 613. Duty of Officer.—The officer to whom such warrant is directed shall seize the property of such tenant, or so much thereof as shall be of value sufficient to satisfy such debt and costs, and safely keep it in his possession unless replevied, and make due return thereon to the court to which the warrant is returnable.

Source: Art. 5230.
Change: Omission of reference to term of court.

Rule 614. Defendant May Replevy.—The defendant at any time within ten days from the date of levy may replevy the property by giving bond payable to the plaintiff, with two or more good and sufficient sureties, in double the amount of the debt, or at his election, for the value of the property so seized, conditioned that if the defendant be cast in the action he shall satisfy the judgment that may be rendered against him or pay the estimated value of the property, with lawful interest thereon from the date of the bond.

Source: Art. 5231, unchanged.

Rule 615. Sale of Perishable Property.—Whenever personal property which has been levied on under a distress warrant shall not have been claimed or replevied, the judge, or justice of the peace, to whose court such writ is made returnable may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping of the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

Source: Art. 5233, reworded.

Rule 616. To Protect Interests.—In determining whether the property levied upon is perishable, and the necessity or advantage of ordering a sale thereof, the judge or justice of the peace may act upon affidavits in writing or oral testimony, and may by a preliminary order entered of record with or without notice to the parties as the urgency of the case in his opinion requires, direct the sheriff or constable to sell such property at public auction for cash, and thereupon the sheriff or constable shall sell it accordingly. If the application for an order of sale be filed by any person or party other than the defendant from whose possession the property was taken by levy, the court shall not grant such order, unless the applicant shall file with such court a bond payable to such defendant, with two or more good and sufficient sureties, to be approved by said court, conditioned that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made.

Source: Arts. 294 and 5233, reworded.

Rule 617. Procedure for Sale.—Such sale of perishable personal property shall be conducted in the same manner as sales of personal property under execution; provided, however, that the time of the sale, and the time of advertisement thereof, may be fixed by the judge or justice of the peace at a time earlier than ten days, according to the exigency of the case, and in such event notice thereof shall be given in such manner as directed by the order.

Source: Art. 295, with minor textual change.

Rule 618. Return of Sale.—The officer making such sale of perishable property shall promptly pay the proceeds of such sale to the clerk of such court or to the justice of the peace, as the case may be, and shall make written return of the order of sale, signed by him officially, stating the time and place of the sale, the name of the purchaser, and the amount of money received, with an itemized account of the expenses attending the sale. Such return shall be filed with the papers of the case.

Source: Art. 296, with minor textual change.

Rule 619. Citation for Defendant.—The justice at the time he issues the warrant shall issue a citation to the defendant requiring him to answer before such justice at the first day of the next succeeding term of court, stating the time and place of holding the same, if he has jurisdiction to finally try the cause, and upon its being returned served, to proceed to judgment as in ordinary cases; and, if he has not such jurisdiction, the citation shall require the defendant to answer before the court to which the warrant was made returnable at or before ten o'clock a. m. of the Monday next after the expiration of twenty days from the date of service thereof, stating the place of holding the court, and shall be returned with the other papers to such court. If the defendant has removed from the county without service, the proper officer shall state this fact in his return on the citation; and the court shall proceed to try the case ex parte, and may enter judgment.

Source: Art. 5234.
Change: Alteration of return date in district and county courts.

Rule 620. Petition.—When the warrant is made returnable to the district or county court, the plaintiff shall file his petition within ten days from the date of the issuance of the writ.

Source: Art. 5235.
Change: Elimination of reference to term of court and substitution of a ten day period within which petition is to be filed.

SECTION 3. EXECUTIONS

Rule 621. Enforcement of Judgment.—The judgments of the district, county, and justice courts shall be enforced by execution or other appropriate process. Such execution or other process shall be returnable in thirty, sixty, or ninety days as requested by the plaintiff, his agent or attorney.

Source: Arts. 2445 and 3784, combined and reworded.

Rule 622. Execution.—An execution is a process of the court from which it is issued. The clerk of the district or county court or the justice of the peace, as the case may be, shall tax the costs in every case in which a final judgment has been rendered and shall issue execution to enforce such judgment and collect such costs. The execution and subsequent executions shall not be addressed to a particular county, but shall be addressed to any sheriff or any constable

within the State of Texas. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Arts. 2446, 2447, 3770, 3780, 3781 and 3782.
Change: The execution is made a state-wide process and is not required to be directed to a specific county.
Change by amendment effective December 31, 1941: The wording as to the address of the execution has been changed.

Rule 623. On Death of Executor.—When an executor, administrator, guardian or trustee of an express trust dies, or ceases to be such executor, administrator, guardian or trustee after judgment, execution shall issue on such judgment in the name of his successor, upon an affidavit of such death or termination being filed with the clerk of the court or the justice of the peace, as the case may be, together with the certificate of the appointment of such successor under the hand and seal of the clerk of the court wherein the appointment was made.

Source: Art. 3776, with minor textual change.

Rule 624. On Death of Nominal Plaintiff.—When a person in whose favor a judgment is rendered for the use of another dies after judgment, execution shall issue in the name of the party for whose use the suit was brought upon an affidavit of such death being filed with the clerk of the court or the justice of the peace.

Source: Art. 3777, with minor textual change.

Rule 625. On Money of Deceased.—If a sole defendant dies after judgment for money against him, execution shall not issue thereon, but the judgment may be proved up and paid in due course of administration.

Source: Art. 3778, unchanged.

Rule 626. On Property of Deceased.—In any case of judgment other than a money judgment, where the sole defendant, or one or more of several joint defendants, shall die after judgment, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of a representative of such decedent under the hand and seal of the clerk of the court wherein such appointment was made, the proper process on such judgment shall issue against such representative.

Source: Art. 3779, unchanged.

Rule 627. Time for Issuance.—The clerk of the court or the justice of the peace shall issue the execution upon such judgment upon the application of the successful party or his attorney after the expiration of twenty days from and after the rendition of a final judgment in the district or county court or in the justice court, and after the overruling of any motion therein for a new trial, or in arrest of the judgment, if no supersedeas bond has been filed and approved.

Source: Arts. 2448 and 3771.
Change: Provision of a uniform twenty day period for executions from all trial courts.

Rule 628. Execution Within Twenty Days.—Such execution may be issued at any time before the twentieth day upon the filing of an affidavit by the plaintiff in the judgment or his agent or attorney that the defendant is about to remove his personal property subject to execution by law out of the county, or is about to transfer or secrete such personal property for the purpose of defrauding his creditors.

Source: Arts. 2449 and 3774, combined with minor textual change.

Rule 629. Requisites of Execution.—The style of the execution shall be "The State of Texas." It shall be directed to any sheriff or any constable within the State of Texas. It shall be signed by the clerk or justice officially, and bear the seal of the court, if issued out of the district or county court, and shall require the officer to execute it according to its terms, and to make the costs which have been adjudged against the defendant in execution and the further costs of executing the writ. It shall describe the judgment, stating the court in which, and the time when, rendered, and the names of the parties in whose favor and against whom the judgment was rendered. A correct copy of the bill of costs taxed against the defendant in execution shall be attached to the writ. It shall require the officer to return it within thirty, sixty, or ninety days, as directed by the plaintiff or his attorney. Amended by order of September 20, 1941, effective December 20, 1941.

Source: Arts. 2446, 3783 and 3784.
Change: Effectuation of the rule making execution a state-wide process. Elimination of the requirement that an alias or pluries execution show upon its face the number of previous executions.
Change by amendment effective December 31, 1941: The wording as to the address of the execution has been changed.

Rule 630. Execution on Judgment for Money.—When an execution is issued upon a judgment for a sum of money, or directing the payment simply of a sum of money, it must specify in the body thereof the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due. It must require the officer to satisfy the judgment and costs out of the property of the judgment debtor subject to execution by law.

Source: Art. 3783, subdivision 2, with minor textual change.

Rule 631. Execution for Sale of Particular Property.—An execution issued upon a judgment for the sale of particular chattels or personal property or real estate, must particularly describe the property, and shall direct the officer to make the sale by previously giving the public notice of the time and place of sale required by law and these rules.

Source: Art. 3783, subdivision 3, with minor textual change.

Rule 632. Execution for Delivery of Certain Property.—An execution issued upon a judgment for the delivery of the possession of a chattel or personal property, or for the delivery of the possession of real property, shall particularly describe the property, and designate the party to whom the judgment awards the possession. The writ shall require the officer to deliver the possession of the property to the party entitled thereto.

Source: Art. 3783, subdivision 4, with minor textual change.

Rule 633. Execution for Possession or Value of Personal Property.—If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered, liable to execution.

Source: Art. 3783, subdivision 5, unchanged.

Rule 634. Execution Superseded.—The clerk or justice of the peace shall immediately issue a writ of supersedeas suspending all further proceedings under any execution previously issued when a supersedeas bond is afterward filed and approved within the time prescribed by law or these rules.

Source: Art. 3772 reworded with minor textual change.

Rule 635. Stay of Execution in Justice Court.—At any time within ten days after the rendition of any judgment in a justice court, the justice may grant a stay of execution thereof for three months from the date of such judgment, if the person against whom such judgment was rendered shall, with one or more good and sufficient sureties, to be approved by the justice, appear before him and acknowledge themselves and each of them bound to the successful party in such judgment for the full amount thereof, with interest and costs, which acknowledgment shall be entered in writing on the docket, and signed by the persons binding themselves as sureties; provided, no such stay of execution shall be granted unless the

party applying therefor shall first file an affidavit with the justice that he has not the money with which to pay such judgment, and that the enforcement of same by execution prior to three months would be a hardship upon him and would cause a sacrifice of his property which would not likely be caused should said execution be stayed. Such acknowledgment shall be entered by the justice on his docket and shall constitute a judgment against the defendant and such sureties, upon which execution shall issue in case the same is not paid on or before the expiration of such day.

Source: Art. 2453, unchanged.

Rule 636. Indorsements by Officer.—The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person he shall number them as received.

Source: Art. 3785, first sentence and first part of second sentence, unchanged.

Rule 637. Levy of Execution.—When an execution is delivered to an officer he shall proceed without delay to levy the same upon the property of the defendant found within his county not exempt from execution, unless otherwise directed by the plaintiff, his agent or attorney. The officer shall first call upon the defendant, if he can be found, or, if absent, upon his agent within the county, if known, to point out property to be levied upon, and the levy shall first be made upon the property designated by the defendant, or his agent. If in the opinion of the officer the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall require an additional designation by the defendant. If no property be thus designated by the defendant, the officer shall levy the execution upon any property of the defendant subject to execution.

Source: Arts. 3788, 3789, and 3790.
Change: Minor textual change only, except in connection with Art. 3790. Therein the requirement that the levy, when defendant fails to designate property subject to execution, shall be made first upon personal property has been eliminated.

Rule 638. Property Not To Be Designated.—A defendant in execution shall not point out property which he has sold, mortgaged or conveyed in trust, or property exempt from forced sale.

Source: Art. 3791, unchanged.

Rule 639. Levy.—In order to make a levy on real estate, it shall not be necessary for the officer to go upon the ground but it shall be sufficient for him to indorse such levy on the writ. Levy upon personal property is made by taking possession thereof, when the defendant in execution is entitled to the possession. Where the defendant in execution has an interest in personal property, but is not entitled to the possession thereof, a levy is made thereon by giving notice thereof to the person who is entitled to the possession, or one of them where there are several.

Source: Art. 3793, unchanged.

Rule 640. Levy on Stock Running at Large.—A levy upon livestock running at large in a range, and which cannot be herded and penned without great inconvenience and expense, may be made by designating by reasonable estimate the number of animals and describing them by their marks and brands, or either; such levy shall be made in the presence of two or more credible persons, and notice thereof shall be given in writing to the owner or his herder or agent, if residing within the county and known to the officer.

Source: Art. 3794, unchanged.

Rule 641. Levy on Shares of Stock.—A levy upon shares of stock of any corporation or joint stock company for which a certificate is outstanding is made by the officer seizing and taking possession of such certificate. Provided, however, that nothing herein shall be construed as restricting any rights granted under Acts of 1943, 48th Leg., p. 722, ch. 397, secs. 13 and 14 (Vernon's Annotated Statutes, Art. 1358, secs. 13 and 14). Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 3795, unchanged.
Change by amendment effective December 31, 1947: The wording of the former rule and its meaning have been materially altered.

Rule 642. Levy Upon Interest of Partner.—A levy upon the interest of a partner in partnership property is made by leaving a notice with one or more of the partners or with a clerk of the partnership.

Source: Art. 3796, unchanged.

Rule 643. Levy on Goods Pledged or Mortgaged.—Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage.

Source: Art. 3797, unchanged.

Rule 644. May Give Delivery Bond.—Any personal property taken in execution may be returned to the defendant by the officer upon the delivery by the defendant to him of a bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by the officer, conditioned that the property shall be delivered to the officer at the time and place named in the bond, to be sold according to law, or for the payment to the officer of a fair value thereof, which shall be stated in the bond.

Source: Art. 3801, unchanged.

Rule 645. Property May Be Sold by Defendant.—Where property has been replevied, as provided in the preceding rule, the defendant may sell or dispose of the same, paying the officer the stipulated value thereof.

Source: Art. 3802, unchanged.

Rule 646. Forfeited Delivery Bond.—In case of the non-delivery of the property according to the terms of the delivery bond, and non-payment of the value thereof, the officer shall forthwith indorse the bond "Forfeited" and return the same to the clerk of the court or the justice of the peace from which the execution issued; whereupon, if the judgment remain unsatisfied in whole or in part, the clerk or justice shall issue execution against the principal debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which instruction shall be indorsed by the clerk or justice on the execution.

Source: Art. 3803, with minor textual change.

Rule 647. Notice of Sale of Real Estate.—The time and place of sale of real estate under execution, order of sale, or venditioni exponas, shall be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes. Publishers of newspapers shall charge the legal rate of Two (2) Cents per word for the first insertion of such publication and One (1) Cent per word for such subsequent insertions, or such newspapers shall be entitled to

charge for such publication at a rate equal to but not in excess of the published word or line rate of that newspaper for such class of advertising. If there be no newspaper published in the county, or none which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of such county, for at least twenty days successively next before the day of sale. The officer making the levy shall give the defendant, or his attorney, written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Art. 3808, unchanged.
Change by amendment effective December 31, 1941: The article above cited having been amended by Acts 1941, 47th Leg., ch. 303, Sec. 2, the rule is now changed so as to read exactly like such amendment reads, the material change being with respect to the charges for publication.

Rule 648. "Courthouse Door" Defined.—By the term "courthouse door" of a county is meant either of the principal entrances to the house provided by the proper authority for the holding of the district court. If from any cause there is no such house, the door of the house where the district court was last held in that county shall be deemed to be the courthouse door. Where the courthouse, or house used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place where such house stood shall be deemed to be the courthouse door.

Source: Art. 3809, unchanged.

Rule 649. Sale of Personal Property.—Personal property levied on under execution shall be offered for sale on the premises where it is taken in execution, or at the courthouse door of the county, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. Personal property susceptible of being exhibited shall not be sold unless the same be present and subject to the view of those attending the sale, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession in which case the interest of defendant may be sold and conveyed without the presence or delivery of the property. When a levy is made upon livestock running at large on the range, it is not necessary that such stock, or any part thereof, be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.

Source: Arts. 3811, 3813 and 3814, combined with minor textual change.

Rule 650. Notice of Sale of Personal Property.—Previous notice of the time and place of the sale of any personal property levied on under execution shall be given by posting notice thereof for ten days successively immediately prior to the day of sale at the courthouse door of any county and at the place where the sale is to be made.

Source: Art. 3812.
Change: Requirement that the notice be posted in three places has been changed to two.

Rule 651. When Execution Not Satisfied.—When the property levied upon does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

Source: Art. 3815, unchanged.

Rule 652. Purchaser Failing to Comply.—If any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the sale, he shall be liable to pay the plaintiff in execution twenty per cent on the value of the property thus bid off, besides costs, to be recovered on motion, five days notice of such motion being given to such purchaser; and should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution all loss which he sustains thereby, to be recovered on motion as above provided.

Source: Art. 3821, unchanged.

Rule 653. Resale of Property.—When the terms of the sale shall not be complied with by the bidder the levying officer shall proceed to sell the same property again on the same day, if there be sufficient time; but if not, he shall re-advertise and sell the same as in the first instance.

Source: Art. 3822, with minor textual change.

Rule 654. Return of Execution.—The levying officer shall make due return of the execution, in writing and signed by him officially, stating concisely what such officer has done in pursuance of the requirements of the writ and of the law. The return shall be filed with the clerk of the court or the justice of the peace as the case may be. The execution shall be returned forthwith if satisfied by the collection of the money or if ordered by the plaintiff or his attorney indorsed thereon.

Source: Art. 3828.
Change: Provision for the officer's return in all cases.

Rule 655. Return of Execution by Mail.—When an execution is placed in the hands of an officer of a county other than the one in which the judgment is rendered, return may be made by mail; but money cannot be thus sent except by direction of the party entitled to receive the same or his attorney of record.

Source: Art. 3823, with minor textual change.

Rule 656. Execution Docket.—The clerk of each court shall keep an execution docket in which he shall enter a statement of all executions as they are issued by him, specifying the names of the parties, the amount of the judgment, the amount due thereon, the rate of interest when it exceeds six per cent, the costs, the date of issuing the execution, to whom delivered, and the return of the officer thereon, with the date of such return. Such docket entries shall be taken and deemed to be a record. The clerk shall keep an index and cross-index to the execution docket. When execution is in favor or against several persons, it shall be indexed in the name of each person. Any clerk who shall fail to keep said execution docket and index thereto, or shall neglect to make the entries therein, shall be liable upon his official bond to any person injured for the amount of damages sustained by such neglect.

Source: Art. 3831.
Change: "Six" substituted for "eight."

SECTION 4. GARNISHMENT

Rule 657. Judgment Final for Garnishment.—In the case mentioned in subdivision 3 of Article 4076 of the Revised Civil Statutes of Texas, 1925, the judgment whether based upon a liquidated demand or an unliquidated demand, shall be deemed final and subsisting for the purpose of garnishment from and after the date of its rendition, unless a supersedeas bond shall have been approved and filed in accordance with Rule 364.

Source: New rule.

Rule 658. Application for Writ.—Before the issuance of the writ of garnishment, the plaintiff shall make application therefor, signed by him, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his hands

effects belonging to the defendant. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 4078, unchanged.
Change by amendment effective December 31, 1947: Elimination of the wording of the former rule commencing "or that the garnishee" and ending "interest therein."

Rule 659. Case Docketed.—When the foregoing requirements of these rules and of Article 4077 of the Revised Statutes of Texas, 1925 (when such article is applicable), have been complied with, the judge, or clerk, or justice of the peace, as the case may be, shall docket the case in the name of the plaintiff as plaintiff and of the garnishee as defendant; and shall immediately issue a writ of garnishment directed to the garnishee, commanding him to appear before the court out of which the same is issued at or before 10 o'clock a. m. of the Monday next following the expiration of twenty days from the date the writ was served, if the writ is issued out of the district or county court; or the Monday next after the expiration of ten days from the date the writ was served, if the writ is issued out of the justice court. The writ shall command the garnishee to answer under oath upon such return date what, if anything, he is indebted to the defendant, and was when the writ was served, and what effects, if any, of the defendant he has in his possession, and had when such writ was served, and what other persons, if any, within his knowledge, are indebted to the defendant or have effects belonging to him in their possession. Amended by order of September 20, 1941, effective Dec. 31, 1941; order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 4079.
Change: Writ directed to garnishee instead of to an officer. Writ returnable on the first Monday after the expiration of twenty days from date of issue when issued from the district or county court.
Change by amendment effective December 31, 1941: The word "served" has been substituted for the word "issued" in the passage originally reading "twenty days from the date the writ was issued."
Change by amendment effective December 31, 1947: The former wording respecting the command of the writ as to time of appearance if the writ is issued out of the justice court, has been materially altered.

Rule 660. Repealed effective Dec. 31, 1947.

Prior to repeal by Order of August 18, 1947, Rule 660 read as follows:
Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what number of shares, if any, the defendant owns in such company, or owned when such writ was served, and what interest, if any, he has in such company, or had when such writ was served.
Repealed because of Article 1358, §§ 13, 14, in regard to attachment and levy upon shares of stock in corporations, for which see Statutory Appendix, p. 833 hereof. See also Rules 641, 658, 661, 666, 669, 671, 672, and 678 as amended by Supreme Court's order of August 18, 1947.
See also Snyder Motor Co. v. Universal Credit Co., 199 S.W.2d 792, ref. n.r.e. as to effect of above statutes.

Rule 661. Form of Writ.—The following form of writ may be used:

"The State of Texas.

To E. F., Garnishee, greeting:

Whereas, in the ..... Court of ..... County (if a justice court, state also the number of the precinct), in a certain cause wherein A. B. is plaintiff and C. D. is defendant, the plaintiff, claiming an indebtedness against the said C. D. of ..... dollars, besides interest and costs of suit, has applied for a writ of garnishment against you, E. F.; therefore you are hereby commanded to be and appear before said court at ..... in said county (if the writ is issued from the county or district court, here proceed: 'at 10 o'clock a. m. on the Monday next following the expiration of twenty days from the date of service hereof.' If the writ is issued from a justice of the peace court, here proceed: 'at or before 10 o'clock a. m. on the Monday next after the expiration of ten days from the date of service hereof.' In either event, proceed as follows:) then and there to answer upon oath what, if anything, you are indebted to the said C. D., and were when this writ was served upon you, and what effects, if any, of the said C. D. you have in your possession, and had when this writ was served, and what other persons, if any, within your knowledge, are indebted to the said C. D. or have effects belonging to him in their possession. Herein fail not, but make due answer as the law directs." Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 4081.
Change: Writ directed to the garnishee instead of to the officer, and return date in district and county courts changed.
Change by amendment effective December 31, 1941: The words "of service" have been interpolated between the words "twenty days from the date" and the word "hereof."
Change by amendment effective December 31, 1947: The former requirement as to time of appearance, etc., in the justice court has been altered and the wording of the former rule commencing "and if the garnishee" and ending "was served" has been eliminated.

Rule 662. Delivery of Writ.—The writ of garnishment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Source: Art. 4082, unchanged.

Rule 663. Execution and Return of Writ.—The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

Source: Art. 4083, unchanged.

Rule 664. Defendant May Replevy.—The defendant may, at any time before judgment, replevy any effects, debts, shares, or claims of any kind seized or garnisheed, by giving bond, with two or more good and sufficient sureties to be approved by the officer who issued the writ of garnishment, payable to the plaintiff, in double the amount of the plaintiff's debt, and conditioned for the payment of any judgment that may be rendered against the said garnishee in such suit, which when properly approved shall be filed among the papers in the cause in the court in which the suit is pending. In all proceedings in garnishment where the defendant gives bond as herein provided for, such defendant may make any defense which the defendant in garnishment could make in such suit.

Source: Art. 4084, second and third sentences, unchanged.

Rule 665. Answer to Writ.—The answer of the garnishee shall be under oath, in writing and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment.

Source: Art. 4085, unchanged.

Rule 666. Garnishee Discharged.—If it appears from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served upon him, and that he has not in his possession any effects of the defendant and had not when the writ was served, and if he has either denied that any other persons within his knowledge are indebted to the defendant or have in their possession effects belonging to the defendant, or else has named such persons, should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 4086.
Change: The garnishee is required to answer as to other persons, if any, known to him to be indebted to defendant or to have in their possession effects belonging to defendant.
Change by amendment effective December 31, 1947: The former wording commencing "and when the garnishee" and ending "in such company" has been eliminated.

Rule 667. Judgment by Default.—If the garnishee fails to file an answer to the writ of garnish-

ment at or before the time directed in the writ, it shall be lawful for the court, at any time after judgment shall have been rendered against the defendant, and on or after appearance day, to render judgment by default, as in other civil cases, against such garnishee for the full amount of such judgment against the defendant together with all interest and costs that may have accrued in the main case and also in the garnishment proceedings. The answer of the garnishee may be filed as in any other civil case at any time before such default judgment is rendered.

Source: Art. 4087, with minor textual change.

Rule 668. Judgment When Garnishee Is Indebted.—Should it appear from the answer of the garnishee or should it be otherwise made to appear and be found by the court that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against the garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount is in excess of the amount of the plaintiff's judgment against the defendant with interest and costs, in which case, judgment shall be rendered against the garnishee for the full amount of the judgment already rendered against the defendant, together with interest and costs of the suit in the original case and also in the garnishment proceedings. If the garnishee fail or refuse to pay such judgment rendered against him, execution shall issue thereon in the same manner and under the same conditions as is or may be provided for the issuance of execution in other cases.

Source: Art. 4088, with minor textual change.

Rule 669. Judgment for Effects.—Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, including any certificates of stock in any corporation or joint stock company, the court shall render a decree ordering sale of such effects under execution in satisfaction of plaintiff's judgment and directing the garnishee to deliver them, or so much thereof as shall be necessary to satisfy plaintiff's judgment, to the proper officer for that purpose. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 4089, unchanged.
Change by amendment effective December 31, 1947: The former wording commencing "requiring the garnishee" and ending "such execution" has been eliminated and the wording commencing "including" and ending "company" and that commencing "ordering sale" and ending "that purpose" have been added.

Rule 670. Refusal to Deliver Effects.—Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding rule, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon on motion of the plaintiff, the garnishee shall be cited to show cause upon a date to be fixed by the court why he should not be attached for contempt of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

Source: Art. 4090.
Change: Substitution of "upon a date to be fixed by the court" for "at the next term of the court."

Rule 671. Repealed effective Dec. 31, 1947.

Prior to repeal by Order of Aug. 18, 1947, Rule 671 read as follows:
Where the garnishee is an incorporated or joint stock company, and it appears from the answer, or otherwise, that the defendant is, or was when the writ of garnishment was served, the owner of any shares of stock in such company, or any interest therein, the court shall render a decree, ordering the sale under execution, in favor of the plaintiff against the defendant, of such shares or interest of the defendant in such company, or so much thereof as may be necessary to satisfy such execution.
Repealed because of Article 1358, §§ 13, 14, in regard to attachment and levy upon shares of stock in corporations, for which see Statutory Appendix, p. 833 hereof. See also Rules 641, 658, 660, 661, 666, 669, 672 and 678 as amended by Supreme Court's order of August 18, 1947.
As to effect of above statutes see Snyder Motor Co. v. Universal Credit Co., Civ.App., 199 S.W.2d 792, ref. n. r. e.

Rule 672. Sale of Effects.—The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the officer making such sale shall execute a transfer of such effects or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 4092, unchanged.
Change by amendment effective December 31, 1947: The former words "Shares of Stock" in the caption have been changed to read "Effects" and the former word "shares," in the rule, to read "effects."

Rule 673. May Traverse Answer.—If the plaintiff should not be satisfied with the answer of any garnishee, he may controvert the same by his affidavit stating that he has good reason to believe, and does believe, that the answer of the garnishee is incorrect, stating in what particular he believes the same to be incorrect. The defendant may also, in like manner, controvert the answer of the garnishee.

Source: Art. 4094, unchanged.

Rule 674. Trial of Issue.—If the garnishee whose answer is controverted, is a resident of the county in which the proceeding is pending, an issue shall be formed under the direction of the court and tried as in other cases.

Source: Art. 4095, unchanged.

Rule 675. Docket and Notice.—The clerk of the court or the justice of the peace, on receiving certified copies filed in the county of the garnishee's residence under the provisions of the statutes, shall docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant, and issue a notice to the garnishee, stating that his answer has been so controverted, and that such issue will stand for trial on the docket of such court. Such notice shall be directed to the garnishee, be dated and tested as other process from such court, and served by delivering a copy thereof to the garnishee. It shall be returnable, if issued from the district or county court, at ten o'clock a. m. of the Monday next after the expiration of twenty days from the date of its service; and if issued from the justice court, to the next term of such court convening after the expiration of twenty days after the service of such notice. Amended by order of September 20, 1941, effective December 31, 1941.

Source: Art. 4097.
Change: Alteration of return days in harmony with similar changes in other process.
Change by amendment effective December 31, 1941: "The Statutes" are referred to instead of "Art. 4096 of the Revised Statutes"; the last sentence has been changed by interpolating "such" and by adding at the end the words "convening after the expiration of twenty days after the service of such notice."

Rule 676. Issue Tried As in Other Cases.—Upon the return of such notice served, an issue shall be formed under the direction of the court and tried as in other cases.

Source: Art. 4098, unchanged.

Rule 677. Costs.—Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, such costs shall be taxed against the defendant and included in the execution provided for in this section; where the answer

is contested, the costs shall abide the issue of such contest.

Source: Art. 4100, with minor textual change.

Rule 678. Garnishee Discharged on Proof.—It shall be a sufficient answer to any claim of the defendant against the garnishee founded on an indebtedness of such garnishee, or on the possession by him of any effects, for the garnishee to show that such indebtedness has been paid, or such effects, including any certificates of stock in any incorporated or joint stock company, have been delivered to any sheriff or constable as provided for in Rule 669. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 4101, unchanged.
Change by amendment effective December 31, 1947: The former wording commencing "or where" and ending "interest therein" and that commencing "were delivered" and ending "of this title" have been eliminated and the wording commencing "including" and ending "Rule 669" has been added; and there has been minor textual change elsewhere.

Rule 679. Amendment.—Clerical errors in the affidavit, bond, or writ of garnishment or the officer's return thereof, may upon application in writing to the judge or justice of the court in which the suit is filed, and after notice to the opponent, be amended in such manner and on such terms as the judge or justice shall authorize by an order entered in the minutes of the court (or noted on the docket of the justice of the peace), provided such amendment appears to the judge or justice to be in furtherance of justice.

Source: New rule.

SECTION 5. INJUNCTION

Rule 680. Temporary Restraining Order.—No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the application for a temporary injunction shall be set down for hearing at the earliest possible date and takes precedence of all matters except older matters of the same character; and when the application comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Source: Federal Rule 65(b), with minor textual change, superseding Art. 4654.

Rule 681. Temporary Injunctions: Notice.—No temporary injunction shall be issued without notice to the adverse party.

Source: Federal Rule 65(a), with minor textual change.

Rule 682. Sworn Petition.—No writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge verified by his affidavit and containing a plain and intelligible statement of the grounds for such relief. Amended by order of March 31, 1941.

Source: Art. 4647, unchanged.
Change by amendment of March 31, 1941: The original rule is eliminated and the present wording supplied therefor.

Rule 683. Form and Scope of Injunction or Restraining Order.—Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Source: Federal Rule 65(d), unchanged.

Rule 684. Applicant's Bond.—In the order granting any temporary restraining order or temporary injunction, the court shall fix the amount of security to be given by the applicant. Before the issuance of the temporary restraining order or temporary injunction the applicant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by the clerk, in the sum fixed by the judge, conditioned that the applicant will abide the decision which may be made in the cause, and that he will pay all sums of money and costs that may be adjudged against him if the restraining order or temporary injunction shall be dissolved in whole or in part. If the injunction be applied for to restrain the execution of a money judgment or the collection of a debt the bond shall be fixed in the amount of such judgment or debt, plus a reasonable amount to cover interest and costs. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 4649, harmonized with the Federal Rules adopted above by minor textual change.
By amendment effective December 31, 1943, the last sentence above has been added, from old Art. 4648.

Rule 685. Filing and Docketing.—Upon the grant of a temporary restraining order or an order fixing a time for hearing upon an application for a temporary injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge, with the clerk of the proper court; and, if such orders do not pertain to a pending suit in said court, the cause shall be entered on the docket of the court in its regular order in the name of the party applying for the writ as plaintiff and of the opposite party as defendant.

Source: Art. 4650, harmonized with the Federal Rules adopted above by minor textual change.

Rule 686. Citation.—Upon the filing of such petition and order not pertaining to a suit pending in the court, the clerk of such court shall issue a citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court; provided, however, that when a temporary restraining order is issued and is accompanied with a true copy of plaintiff's petition, it shall not be necessary for the citation in the original suit to be accompanied with a copy of plaintiff's petition, nor contain a statement of the nature of plaintiff's demand, but it shall be sufficient for said citation to refer to plaintiff's claim as set forth in a true copy of plaintiff's petition which accompanies the temporary restraining order; and provided further that the court may have a hearing upon an application for a temporary restraining order or temporary injunction at such time and upon such reasonable notice given in such manner as the court may direct.

Amended by order of June 16, 1943, effective Dec. 31, 1943; order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 4655.
Change: To harmonize with prior changes requiring notice before the issuance of a temporary injunction.
Change by amendment effective December 31, 1943: The last proviso has been added.
Change by amendment effective December 31, 1947: Minor textual change. The wording commencing "given" and ending "the court" is mostly new.

Rule 687. Requisites of Writ.—The writ of injunction shall be sufficient if it contains substantially the following requisites:

(a) Its style shall be, "The State of Texas."

(b) It shall be directed to the person or persons enjoined.

(c) It must state the names of the parties to the proceedings, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.

(d) It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.

(e) If it is a temporary restraining order, it shall state the day and time set for hearing, which shall not exceed ten days from the date of the court's order granting such temporary restraining order; but if it is a temporary injunction, issued after notice, it shall be made returnable at or before ten o'clock a. m. of the Monday next after the expiration of twenty days from the date of service thereof, as in the case of ordinary citations.

(f) It shall be dated and signed by the clerk officially and attested with the seal of his office and the date of its issuance must be indorsed thereon.

Source: Art. 4651.
Change: In subdivision (e) the return dates are harmonized with other rule changes.

Rule 688. Clerk To Issue Writ.—When the petition, order of the judge and bond have been filed, the clerk shall issue the temporary restraining order or temporary injunction, as the case may be, in conformity with the terms of the order, and deliver the same to the sheriff or any constable of the county of the residence of the person enjoined, or to the applicant, as the latter shall direct. If several persons are enjoined, residing in different counties, the clerk shall issue such additional copies of the writ as shall be requested by the applicant.

Source: Art. 4652, with minor textual change.

Rule 689. Service and Return.—The officer receiving a writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy thereof. The original shall be returned to the court from which it issued on or before the return day named therein with the action of the officer indorsed thereon or annexed thereto showing how and when he executed the same.

Source: Art. 4653, unchanged.

Rule 690. The Answer.—The defendant to an injunction proceeding may answer as in other civil actions; but no injunction shall be dissolved before final hearing because of the denial of the material allegations of the plaintiff's petition, unless the answer denying the same is verified by the oath of the defendant.

Source: Art. 4657, unchanged.

Rule 691. Bond on Dissolution.—Upon the dissolution of an injunction restraining the collection of money, by an interlocutory order of the court or judge, made in term time or vacation, if the petition be continued over for trial, the court or judge shall require of the defendant in such injunction proceedings a bond, with two or more good and sufficient sureties, to be approved by the clerk of the court, payable to the complainant in double the amount of the sum enjoined, and conditioned to refund to the complainant the amount of money, interest and costs which may be collected of him in the suit or proceeding enjoined if such injunction is made perpetual on final hearing. If such injunction is so perpetuated, the court, on motion of the complainant, may enter judgment against the principal and sureties in such bond for such amount as may be shown to have been collected from such defendant.

Source: Art. 4659, unchanged.

Rule 692. Disobedience.—Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. In case of such disobedience, the complainant, his agent or attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating what person is guilty of such disobedience and describing the acts constituting the same; and thereupon the court or judge shall cause to be issued an attachment for such person, directed to the sheriff or any constable of any county, and requiring such officer to arrest the person therein named if found within his county and have him before the court or judge at the time and place named in such writ; or said court or judge may issue a show cause order, directing and requiring such person to appear on such date as may be designated and show cause why he should not be adjudged in contempt of court. On return of such attachment or show cause order, the judge shall proceed to hear proof; and if satisfied that such person has disobeyed the injunction, either directly or indirectly, may commit such person to jail without bail until he purges himself of such contempt, in such manner and form as the court or judge may direct. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 4661.
Change: Omission of first sentence, which is covered by Rule 683, and by amendment effective December 31, 1943, the parts respecting "show cause order" have been interpolated, the designation of the officer to execute attachment has been broadened, and minor textual changes have been made.

Rule 693. Principles of Equity Applicable.—The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with these rules or the provisions of the statutes.

Source: Art. 4663, with minor textual change.

Rule 693-a. Bond in Divorce Case.—In a divorce case the court in its discretion may dispense with the necessity of a bond in connection with an ancillary injunction in behalf of one spouse against the other. Promulgated by order of June 16, 1943, effective December 31, 1943.

A new rule effective December 31, 1943.

SECTION 6. MANDAMUS

Rule 694. No Mandamus Without Notice.—No mandamus shall be granted by the district or county court on ex parte hearing, and any peremptory mandamus granted without notice shall be abated on motion.

Source: Art. 2328, unchanged.

SECTION 7. RECEIVERS

Rule 695. No Receiver of Immovable Property Appointed Without Notice.—Except where otherwise provided by statute, no receiver shall be appointed without notice to take charge of property which is fixed and immovable. When an application for appointment of a receiver to take possession of property of this type is filed, the judge or court shall set the same down for hearing and notice of such hearing shall be given to the adverse party by serving notice thereof not less than three days prior to such

hearing. If the order finds that the defendant is a non-resident or that his whereabouts is unknown, the notice may be served by affixing the same in a conspicuous manner and place upon the property or if that is impracticable it may be served in such other manner as the court or judge may require. As amended by order of June 16, 1943, effective December 31, 1943.

Source: New rule.
The last sentence has been added by amendment effective December 31, 1943.

Rule 695-a. Bond, and Bond in Divorce Case.—No receiver shall be appointed with authority to take charge of property until the party applying therefor has filed with the clerk of the court a good and sufficient bond, to be approved by such clerk, payable to the defendant in the amount fixed by the court, conditioned for the payment of all damages and cost in such suit, in case it should be decided that such receiver was wrongfully appointed to take charge of such property. The amount of such bond shall be fixed at a sum sufficient to cover all such probable damages and costs. In a divorce case the court or judge, as a matter of discretion, may dispense with the necessity of a bond. Promulgated by order of June 16, 1943, effective December 31, 1943.

Source: New rule, adopted as of December 31, 1943.

SECTION 8. SEQUESTRATION

Rule 696. Applicant's affidavit.—No sequestration shall issue in any cause until the party applying therefor shall file an affidavit in writing stating:

(a) That he is the owner of the property sued for, or some interest therein specifying such interest, and is entitled to the possession thereof; or,

(b) If the suit be to foreclose a mortgage or enforce a lien upon the property, the fact of the existence of such mortgage or lien, and that the same is just and unsatisfied, and the amount of the same still unsatisfied, and the date when due.

(c) The property to be sequestered shall be described with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which the same is situated.

(d) It shall set forth one or more of the causes named in Art. 6840 of the Revised Civil Statutes of Texas, 1925, entitling him to the writ. The writ shall not be quashed because two or more grounds are stated conjunctively or disjunctively.

Source: Art. 6841.
Change: Addition of last sentence.

Rule 697. Petition.—If the suit be in the district or county court, no writ of sequestration shall issue, unless a petition shall have been first filed therein, as in other suits in said courts.

Source: Art. 6842, unchanged.

Rule 698. Applicant's Bond.—No writ of sequestration shall issue until the party applying therefor has filed with the officer authorized to issue such writ a bond payable to the defendant for a sum not less than double the value of the property to be sequestered as stated in his affidavit, with two or more good sureties to be approved by such officer, conditioned for the payment of all damages and costs in such suit in case it shall be decided that such sequestration was wrongfully issued.

Source: Art. 6843, unchanged.

Rule 699. Requisites of Writ.—The writ of sequestration shall be directed "To the Sheriff or any Constable of any County of the State of Texas" (not naming a specific county) and shall command him to take into his possession the property, describing the same as it is described in the affidavit, if to be found in his county, and keep the same subject to the further order of the judge, court, or justice of the peace who issued the writ, unless the same is replevied according to the provisions of the law and these rules.

Source: Art. 6845.
Change: The writ is not directed to a specific county, and may be levied in any county within the state of Texas wherein the property may be found.

Rule 700. Amendment.—Clerical errors in the affidavit, bond, or writ of sequestration or the officer's return thereof may upon application in writing to the judge of the court in which the suit is filed and after notice to the opponent, be amended in such manner and on such terms as the judge shall authorize by an order entered in the minutes of the court, provided the amendment does not change or add to the grounds of such sequestration as stated in the affidavit, and provided such amendment appears to the judge to be in furtherance of justice.

Source: New rule.

Rule 701. Defendant May Replevy.—When property has been sequestered, the defendant having possession of such property at the time the writ of sequestration was levied shall have the right to retain possession of the same by delivering to the officer executing the writ, his bond payable to the plaintiff, with two or more good and sufficient sureties, to be approved by such officer, in an amount not less than double the value of the property to be replevied.

Source: Art. 6849.
Change: Addition of the words, "having possession of such property at the time the writ of sequestration was levied."

Rule 702. Bond for Personal Property.—If the property to be replevied be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or that he will not waste, ill-treat, injure, destroy, or dispose of the same, according to the plaintiff's affidavit, and that he will have such property, in the same condition as when it is replevied, together with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, or the difference between its value at the time of replevy and the time of judgment and of the fruits, hire or revenue of the same in case he shall be condemned to do so.

Source: Art. 6850.
Change: Addition of words, "in the same condition as when it is replevied," and "or the difference between its value at the time of replevy and the time of judgment."

Rule 703. Bond for Real Estate.—If the property be real estate, the condition of such bond shall be that the defendant will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned so to do.

Source: Art. 6851, unchanged.

Rule 704. Return of Bond and Entry of Judgment.—The bond provided for in the three preceding rules shall be returned with the writ to the court from whence the writ issued. In case the suit is decided against the defendant, final judgment shall be entered against all the obligors in such bond, jointly and severally, for the value of the property replevied as of the date of the execution of the replevy bond, and the value of the fruits, hire, revenue, or rent thereof, as the case may be.

Source: Art. 6852.
Change: Fixing time that value of property is to be determined as the date of the execution of the replevy bond.

Rule 705. Defendant May Return Sequestered Property.—Within ten days after final judgment for personal property the defendant may deliver to the plaintiff, or to the officer who levied the sequestration or to his successor in office the personal property in question, and such officer shall deliver same to plaintiff upon his demand therefor; or such defendant shall deliver such property to the officer demanding same under execution issued therefor upon a judgment for the title or possession of the

same; and such officer shall receipt the defendant for such property; provided, however, that such delivery to the plaintiff or to such officer shall be without prejudice to any rights of the plaintiff under the replevy bond given by the defendant. Where a mortgage or other lien of any kind is foreclosed upon personal property sequestered and replevied, the defendant shall deliver such property to the officer calling for same under order of sale issued upon a judgment foreclosing such mortgage or other lien, either in the county of defendant's residence or in the county where sequestered, as demanded by such officer; provided, however, that such delivery by the defendant shall be without prejudice to any rights of the plaintiff under the replevy bond given by the defendant. Amended by order of September 20, 1941, effective December 31, 1941.

Change by amendment effective December 31, 1941: The Rule has been redrafted.

Rule 706. Disposition of the Property by Officer.—When the property is tendered back by the defendant to the officer who sequestered the same or to the officer calling for same under an order of sale, such officer shall receive said property and hold or dispose of the same as ordered by the court; provided, however, that such return to and receipt of same by the officer and any sale or disposition of said property by the officer under order or judgment of the court shall not affect or limit any rights of the plaintiff under the bond provided for in Rule 702. Amended by order of September 20, 1941, effective December 31, 1941.

Change by amendment effective December 31, 1941: The Rule has been redrafted.

Rule 707. Execution.—If the property be not returned and received, as provided in the two preceding rules, execution shall issue upon said judgment for the amount due thereon, as in other cases.

Source: Art. 6855, with minor textual change.

Rule 708. Plaintiff May Replevy.—When the defendant fails to replevy the property within ten days after the levy of the writ, if such defendant, his agent or attorney is present in the county, or within twenty days if absent from the county at the time of such levy, the officer having the property in possession shall at any time thereafter and before final judgment, deliver the same to the plaintiff upon his giving bond payable to the defendant in a sum of money not less than double the value of such property, with two or more good and sufficient sureties to be approved by such officer. If the property to be replevied be personal property, the condition of the bond shall be that he will have such property, in the same condition as when it is replevied, together with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, or the difference between its value at the time of replevy and the time of judgment (regardless of the cause of such difference in value, and of the fruits, hire or revenue of the same in case he shall be condemned to do so.) If the property be real estate, the condition of such bond shall be that the plaintiff will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned to do so.

Source: Art. 6856.

Change: Giving plaintiff right to replevy at any time prior to judgment, when defendant fails to do so. Making the condition of plaintiff's bond the same as that of the defendant.

Rule 709. When Bond Forfeited.—The bond provided for in the preceding rule shall be returned by the officer to the court issuing the writ immediately after he has approved same, and in case the suit is decided against the plaintiff, final judgment shall be entered against all the obligors in such bond, jointly and severally for the value of the property replevied as of the date of the execution of the replevy bond, and the value of the fruits, hire, revenue or rent thereof as the case may be. The same rules which govern the discharge or enforcement of a judgment against the obligors in the defendant's replevy bond shall be applicable to and govern in case of a judgment against the obligors in the plaintiff's replevy bond.

Source: Art. 6857, changed to harmonize with prior rules.

Rule 710. Sale of Perishable Goods.—If after the expiration of ten days from the levy of a writ of sequestration the defendant has failed to replevy the same, if the plaintiff or defendant shall make affidavit in writing that the property levied upon, or any portion thereof, is likely to be wasted or destroyed or greatly depreciated in value by keeping, and if the officer having possession of such property shall certify to the truth of such affidavit, it shall be the duty of the judge or justice of the peace to whose court the writ is returnable, upon the presentation of such affidavit and certificate, either in term time or vacation, to order the sale of said property or so much thereof as is likely to be so wasted, destroyed or depreciated in value by keeping, but either party may replevy the property at any time before such sale.

Source: Art. 6859, unchanged.

Rule 711. Order of Sale For.—The judge or justice granting the order provided for in the preceding rule shall issue an order directed to the officer having such property in possession, commanding such officer to sell such property in the same manner as under execution.

Source: Art. 6860, with minor textual change.

Rule 712. Return of Order.—The officer making such sale shall, within five days thereafter, return the order of sale to the court from whence the same issued, with his proceedings thereon, and shall, at the time of making such return, pay over to the clerk or justice of the peace the proceeds of such sale.

Source: Art. 6861, unchanged.

Rule 713. Sale on Debt Not Due.—If the suit in which the sequestration issued be for a debt or demand not yet due, and the property sequestered be likely to be wasted, destroyed or greatly depreciated in value by keeping, the judge or justice of the peace shall, under the regulations hereinbefore provided, order the same to be sold, giving credit on such sale until such debt or demand shall become due.

Source: Art. 6862, unchanged.

Rule 714. Purchaser's Bond.—In the case of a sale as provided for in the preceding rule, the purchaser of the property shall execute his bond, with two or more good and sufficient sureties, to be approved by the officer making the sale, and payable to such officer, in a sum not less than double the amount of the purchase money, conditioned that such purchaser shall pay such purchase money at the expiration of the time given.

Source: Art. 6863, with minor textual change.

Rule 715. Return of Bond.—The bond provided for in the preceding rule shall be returned by the officer taking the same to the clerk or justice of the peace from whose court the order of sale issued, with such order, and shall be filed among the papers in the cause.

Source: Art. 6864 (part), with minor textual change.

Rule 716. Recovery on Bond.—In case the purchaser does not pay the purchase money at the expiration of the time given, judgment shall be rendered against all the obligors in such bond for the amount of such purchase money, interest thereon and all costs incurred in the enforcement and col-

lection of the same; and execution shall issue thereon in the name of the plaintiff in the suit, as in other cases, and the money when collected shall be paid to the clerk or justice of the peace to abide the final decision of the cause.

Source: Art. 6864 (part), unchanged.

SECTION 9. TRIAL OF RIGHT OF PROPERTY

Rule 717. Claimant Must Make Affidavit.—Whenever a writ of execution, sequestration, attachment, or other like writ is levied upon personal property, and such property, or any part thereof, shall be claimed by any person who is not a party to such writ, such person or his agent or attorney may make affidavit that such claim is made in good faith, and present such affidavit to the officer who made such levy.

Source: Art. 7402, unchanged.

Rule 718. Bond.—He shall also execute and deliver to the officer who made such levy, his bond, with two or more good and sufficient sureties, to be approved by such officer, payable to the plaintiff in such writ, for an amount equal to double the value of the property so claimed, to be assessed by such officer. When more than one writ has been levied, the bond may be made payable to all the plaintiffs in the several writs levied. Said bond shall inure to the benefit of all the plaintiffs in the several writs according to their respective priorities in time of levy. Upon the approval of such bond and delivery of the property to the claimant, the same shall be deemed in custodia legis, and shall not be taken out of his possession by any other like writ or writs; but said writs may be levied on the same by giving notice to the claimant; and in such cases the claimant's bond shall also inure to the benefit of the several plaintiffs in such writs according to their respective priorities.

Source: Art. 7403, unchanged.

Rule 719. Condition of Bond.—The bond shall be conditioned that the party making such claim in case he fails to establish his right to such property, shall return the same to the officer making the levy, or his successor, in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase and fruits thereof from the date of said bond, or, in case he fails so to return said property and pay for the use of the same, that he shall pay the plaintiff the value of said property, with legal interest thereon from the date of the bond, and shall also pay all damages and costs that may be awarded against him.

Source: Art. 7404, unchanged.

Rule 720. Property Delivered to Claimant.—The officer receiving such oath and bond shall deliver the property so claimed to the person so claiming it.

Source: Art. 7405, unchanged.

Rule 721. Return of Oath and Bond.—Whenever any person shall claim property and shall duly make the oath and give the bond, if the writ under which the levy was made was issued by a justice of the peace or a court of the county where such levy was made, the officer receiving such oath and bond shall indorse on the writ that such claim has been made and oath and bond given, and by whom; and shall also indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath to the proper court having jurisdiction to try such claim.

Source: Art. 7406, unchanged.

Rule 722. Out-County Levy.—Whenever any person shall claim property and shall make the oath and give the bond as provided for herein, if the writ under which such levy was made was issued by a justice of the peace or a court of another county than that in which such levy was made, then the officer receiving such oath and bond shall indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath with a copy of the writ, to the justice or court of the county in which such levy was made having jurisdiction according to the value of the property as assessed by said officer.

Source: Art. 7407, unchanged.

Rule 723. Return of Original Writ.—The officer taking such bond shall also indorse on the original writ that such claim has been made and oath and bond given, stating by whom, the names of the sureties and to what justice or court the bond has been returned; and he shall forthwith return such original writ to the tribunal from which it issued.

Source: Art. 7408, unchanged.

Rule 724. [The number 724 was omitted in original draft of Rules.]

Rule 725. Docketing Cause.—Whenever any oath and bond for the trial of the right of property shall be returned, the clerk of the court, or such justice of the peace, shall docket the same in the name of the plaintiff in the writ as the plaintiff, and the claimant of the property as defendant.

Source: Art. 7410, unchanged.

Rule 726. Issue Made Up.—At the first term of court after the claim proceedings have been docketed in such court, and on the appearance day of such court, if both parties to the claim proceedings appear, then the court, or the justice of the peace, as the case may be, shall enter an order directing the making and joinder of issues by the parties. Such issues shall be in writing and signed by each party or his attorney. The plaintiff shall make a brief statement of the authority and right by which he seeks to subject the property levied on to the process, and it shall be sufficient for the defendant to make a brief statement of the nature of his claim thereto.

Source: Arts. 7411 and 7412, combined with minor textual change.

Rule 727. Judgment by Default.—If the plaintiff appears and the defendant fails to appear or neglect[s] or refuses to join issue under the direction of the court or justice within the time prescribed for pleading, the plaintiff shall have judgment by default.

Source: Art. 7413, unchanged.

Rule 728. Judgment of Non-Suit.—If the plaintiff does not appear at the first term, the case shall be continued to the next term, when, if he appears, the like proceedings may be had as at the first term; but if he does not then appear, on or before the appearance day of said term, he shall be non-suited.

Source: Art. 7414, unchanged.

Rule 729. Proceedings.—The proceedings and practice on the trial shall be as nearly as may be the same as in other cases before such court or justice.

Source: Art. 7415, unchanged.

Rule 730. Burden of Proof.—If the property was taken from the possession of the claimant, the burden of proof shall be on the plaintiff. If it was taken from the possession of the defendant in such writ, or any other person than the claimant, the burden of proof shall be on the claimant.

Source: Art. 7416, unchanged.

Rule 731. Copy of Writ Evidence.—In all trials of the right of property, under the provisions of this section in any county other than that in which the writ issued under which the levy was made, the copy of the writ herein required to be returned

by the officer making the levy shall be received in evidence in like manner as the original could be.

Source: Art. 7419, unchanged.

Rule 732. Failure to Establish Title.—Where any claimant of property shall fail to establish his right thereto judgment shall be rendered against him and his sureties for the value of the property, with legal interest thereon from the date of such bond. Such judgment shall be rendered in favor of the plaintiff in the writ, or of the several plaintiffs, if more than one, and shall fix the amount of each plaintiff's claim.

Source: Art. 7420, unchanged.

Rule 733. Execution Shall Issue.—If such judgment should not be satisfied by a return of the property, then after the expiration of ten days from the date of the judgment, execution shall issue thereon in the name of the plaintiff for the amount of his claim, or of all the plaintiffs for the sum of their several claims, provided the amount of such judgment shall inure to the benefit of any person who shall show superior right or title to the property claimed as against the claimant; but if such judgment be for a less amount than the sum of the several plaintiffs' claims, then the respective rights and priorities of the several plaintiffs shall be fixed and adjusted in the judgment.

Source: Arts. 7421 and 7422 combined with minor textual change.

Rule 734. Return of Property by Claimant.—If, within ten days from the rendition of said judgment, the claimant shall return such property in as good condition as he received it, and pay for the use of the same together with the damages and costs, such delivery and payment shall operate as a satisfaction of such judgment.

Source: Art. 7423, unchanged.

Rule 735. Claim Is a Release of Damages.—A claim made to the property, under the provisions of this section, shall operate as a release of all damages by the claimant against the officer who levied upon said property.

Source: Art. 7424, unchanged.

Rule 736. Levy on Other Property.—Proceedings for the trial of right of property under these rules shall in no case prevent the plaintiff in the writ from having a levy made upon any other property of the defendant.

Source: Art. 7425, unchanged.

PART VII. RULES RELATING TO SPECIAL PROCEEDINGS

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SECTION 1. BILL OF DISCOVERY

Rule 737. Bill of Discovery.—All trial courts shall entertain suits in the nature of bills of discovery, and grant relief therein in accordance with the usages of courts of equity. Such remedy shall be cumulative of all other remedies. In actions of such nature, the plaintiff shall have the right to have the defendant examined on oral interrogatories, either by summoning him to appear for examination before the trial court as in ordinary trials, or by taking his oral deposition in accordance with the general rules relating thereto.

Source: Art. 2002.
Change: Addition of last sentence.

SECTION 2. FORCIBLE ENTRY AND DETAINER

Rule 738. May Sue for Rent.—A suit for rent may be joined with an action of forcible entry and detainer, wherever the suit for rent is within the jurisdiction of the justice court. In such case the court in rendering judgment in the action of forcible entry and detainer, may at the same time render judgment for any rent due the landlord by the renter; provided the amount thereof is within the jurisdiction of the justice court.

Source: Art. 3976, unchanged.

Rule 739. Citation.—When the party aggrieved or his authorized agent shall file his written sworn complaint with such justice, the justice shall immediately issue citation directed to the defendant or defendants commanding him to appear before such justice at a time and place named in such citation, such time being not more than ten days nor less than six days from the date of service of the citation.

Source: Art. 3977.
Change: The citation is addressed to the defendant or defendants and not to the officer.

Rule 740. Complainant May Have Possession.—If the party aggrieved shall, at the time of filing his complaint, or thereafter prior to final judgment in the justice court, execute a bond, to be approved by the justice, in such an amount as the justice may fix as the probable amount of the costs of suit and of the damages which may result to defendant in the event the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages as shall be adjudged against him, the officer serving such citation or the constable of the precinct or the sheriff of the county where the property is situated shall place the aggrieved party in possession of the property sued for promptly after the expiration of six days from the service of the citation or after the expiration of six days from notice to the defendant of the filing of the bond in the event it is not filed at the time of the filing of the complaint, unless the defendant, before the expiration of such six days, shall execute and deliver to such officer a bond in an amount double the amount of the bond given by the plaintiff, to be approved by the officer serving such citation or such constable or sheriff and filed with the justice, which bond shall be conditioned that the defendant in case judgment is rendered against him will pay all the costs of suit and the reasonable rental or value of the use of the property during the time he has withheld possession of the same from plaintiff to the time of making such bond and in addition will also pay the reasonable value or rental of such property while such suit is pending and until it is finally disposed of. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 3978, unchanged, except that by amendment effective December 31, 1943, the regulations as to the bond of defendant have been enlarged so as to include a case where an out-of-county officer effects service of citation and so as to make it clear that six days' time will be allowed, before possession is given the aggrieved party, within which defendant may give such bond; and other relevant changes have been made.

Rule 741. Requisites of Complaint.—The complaint shall describe the lands, tenements or premises, the possession of which is claimed, with certainty sufficient to identify the same, and it shall also state the facts which entitle the complainant to the possession and authorize the action under Articles 3973, 3974 and 3975 of the Revised Civil Statutes of Texas of 1925.

Source: Art. 3979, unchanged.

Rule 742. Service of Citation.—The officer receiving such citation shall execute the same by delivering a copy of it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode, at least six days before the return day thereof; and on or before the day assigned for trial he shall return such citation, with his action written thereon, to the justice who issued the same. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 3980, with minor textual change.
Change by amendment effective December 31, 1947: "Delivering a copy" has been substituted for the former "reading."

Rule 743. Docketed.—The cause shall be docketed and tried as other cases. If the defendant shall fail to enter an appearance upon the docket in the justice court or file answer before the case is called for trial, the allegations of the complaint may be taken as admitted and judgment by default entered accordingly. The justice shall have authority to issue subpoenas for witnesses to enforce their attendance, and to punish for contempt. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 3981, unchanged.
Change by amendment effective December 31, 1947: The sentence respecting judgment by default has been added and there has been minor textual change elsewhere.

Rule 744. Demanding Jury.—Either party shall have the right of trial by jury, by making demand to the justice on or before the day for which the case is set for trial, and paying the jury fee of three dollars. When a jury is demanded they shall be summoned as in other cases in justice court.

Source: Art. 3982, unchanged.

Rule 745. Trial Postponed.—For good cause shown, supported by affidavit of either party, the trial may be postponed not exceeding six days.

Source: Art. 3983, unchanged.

Rule 746. Only Issue.—In case of forcible entry or of forcible detainer under Title 64, Revised Civil Statutes of Texas, 1925, the only issue shall be as to the right to actual possession; and the merits of the title shall not be inquired into.

Source: Art. 3984, with minor textual change.

Rule 747. Trial.—If no jury is demanded by either party, the justice shall try the case. If a jury is demanded by either party, the jury shall be empaneled and sworn as in other cases; and after hearing the evidence it shall return its verdict in favor of the plaintiff or the defendant as it shall find. If the defendant fails to enter an appearance or file an answer in the justice court before the case is called for trial, the justice may enter judgment by default. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 3985.
Change: Elimination of verdict of "guilty" or "not guilty."
Change by amendment effective December 31, 1943: The last sentence above taken from old Art. 3985, as amended, has been added.

Rule 748. Judgment and Writ.—If the judgment or verdict be in favor of the plaintiff, the justice shall give judgment for plaintiff for restitution of the premises and costs; and he shall award his writ of restitution. If the judgment or verdict be in favor of the defendant, judgment shall be given in favor of the

defendant and against the plaintiff for all costs. No writ of restitution shall issue until the expiration of two days from the rendition of the judgment.

Source: Art. 3986.
Change: Elimination of verdict of "guilty" or "not guilty."

Rule 749. May Appeal.—Either party may appeal from a final judgment in such case, to the county court of the county in which the judgment is rendered by filing with the justice within five days after the rendition of said judgment a bond to be approved by said justice, and payable to the adverse party, conditioned that he will prosecute his appeal with effect, or pay all costs and damages which may be adjudged against him; and no motion for a new trial shall be necessary to authorize such appeal. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 3987, unchanged.
Change by amendment effective December 31, 1947: The former wording respecting notice (other than that afforded by the filing of the bond) has been eliminated and there has been change in punctuation.

Rule 750. Form of Appeal Bond.—The appeal bond made in the preceding article may be substantially as follows:

"The State of Texas,

"County of ————

"Whereas, upon a writ of forcible entry (or forcible detainer) in favor of A. B., and against C. D., tried before ————, a justice of the peace of ———— county, a judgment was rendered in favor of the said A. B. on the ——— day of ————, A. D. ———, and against the said C. D., from which the said C. D. has appealed to the county court; now, therefore, the said C. D. and ———— his sureties, covenant that he will prosecute his said appeal with effect and pay all costs and damages which may be adjudged against him.

"Given under our hands this ——— day of ————, A. D. ———."

Source: Art. 3988, unchanged.

Rule 751. Transcript.—When such appeal bond is filed and approved, the justice shall stay all further proceedings on the judgment, and immediately make out a transcript of all the entries made on his docket of the proceedings had in the case; and he shall file the same, together with the original papers, with the clerk of the county court of the county in which the trial was had, or other court having jurisdiction of such appeal, within six days from the date of filing the appeal bond. The clerk shall docket the cause, and the trial shall be de novo, and shall be entitled to precedence in the county court.

Source: Art. 3989.
Change: Shortening of periods and giving precedence in the county court in order to expedite disposition of cases of this type.

Rule 752. Damages.—On the trial of the cause in the county court the appellant or appellee shall be permitted to plead and prove his damages if any suffered for withholding or defending possession of the premises during the pendency of the appeal and also all necessary and reasonable expenses incurred in prosecuting or defending the cause in the county court; provided that only the party prevailing in the county court shall be entitled to recover against the adverse party such damages, expenses, and costs. He shall also be entitled to recover against the sureties on the appeal bond in cases where the adverse party has executed such bond. As amended by order of June 16, 1943, effective December 31, 1943.

Source: Art. 3990, unchanged; except that by amendment effective December 31, 1943, the rule is made to extend, in a proper case, to appellant as well as to appellee; and other relevant changes have been made.

Rule 753. Judgment by Default.—Said cause shall be subject to trial at any time after the expiration of five full days after the day the transcript is filed in the county court. If the defendant has filed a written answer in the justice court, the same shall be taken to constitute his appearance and answer in the county court, and such answer may be amended as in other cases. If the defendant made no answer in writing in the justice court, and if he fails to file a written answer within five full days after the transcript is filed in the county court, the allegations of the complaint may be taken as admitted and judgment by default may be entered accordingly. As amended effective Dec. 31, 1943; amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 3991, with minor textual change.
Change by amendment effective December 31, 1943: Wording has been interpolated to prevent delay and to allow default judgment at a term of the county court even though the transcript reaches that court shortly before or in the midst of a term of the county court. The caveat in the original note has been dropped on account of the decision in Garrett v. Mercantile National Bank at Dallas, 140 Tex. 394, 168 S.W.2d 636.
Change by amendment effective December 31, 1947: Former wording commencing "and if the defendant" and ending "for trial" has been eliminated and that commencing "If the defendant" and ending "county court" has been added, and there has been change in punctuation.

Rule 754. [The number 754 was omitted in original draft of Rules.]

Rule 755. Writ of Restitution.—The writ of restitution, or execution, or both, shall be issued by the clerk of the county court according to the judgment rendered, and the same shall be executed by the sheriff or constable, as in other cases; and such writ of restitution shall not be suspended or superseded in any case by appeal from such final judgment in the county court.

Source: Art. 3993, unchanged.

SECTION 3. PARTITION OF REAL ESTATE

Rule 756. Petition.—The plaintiff's petition shall state:

(a) The names and residence, if known, of each of the other joint owners, or joint claimants, of such property.

(b) The share or interest which the plaintiff and the other joint owners, or joint claimants, of same own or claim so far as known to the plaintiff.

(c) The land sought to be partitioned shall be so described as that the same may be distinguished from any other and the estimated value thereof stated.

Source: Art. 6083 (part), unchanged.

Rule 757. Citation and Service.—Upon the filing of a petition for partition, the clerk shall issue citation for each of the joint owners, or joint claimants, named therein, as in other cases, and such citations shall be served in the manner and for the time provided for the service of citations in other cases.

Source: Art. 6084, unchanged.

Rule 758. Where Defendant Is Unknown.—If the plaintiff, his agent or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in the plaintiff's petition in said suit is owned by some person unknown to affiant, the clerk of the court shall issue citation for publication, conforming to the requirements of Rules 114 and 115 and served in accordance with the directions of Rule 116.

Source: Art. 6085.
Change: Elimination of specific declaration of requisites of citation by publication and service thereof and adoption (by reference) of the general rules.

Rule 759. Judgment Where Defendant Cited by Publication.—When the defendant has been duly cited by publication in accordance with the preceding rule, and no appearance is entered within the time prescribed for pleadings, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication. It shall be the special duty

of the court in all cases to see that its decree protects the rights of the unknown parties thereto. The judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners.

Source: Art. 6085, last two sentences, without material change.

Caveat: This article was amended in 1939, effective date being subsequent to the enactment of the Rule Making Statute. See, however, Garrett v. Mercantile National Bank of Dallas, 140 Tex. 394, 168 S.W.2d 636.

Rule 760. Court Shall Determine, What.—Upon the hearing of the cause, the court shall determine the share or interest of each of the joint owners or claimants in the real estate sought to be divided, and all questions of law or equity affecting the title to such land which may arise.

Source: Art. 6086, unchanged.

Rule 761. Appointment of Commissioners.—The court shall determine before entering the decree of partition whether the property, or any part thereof, is susceptible of partition; and, if the court determines that the whole, or any part of such property is susceptible of partition, then the court for that part of such property held to be susceptible of partition shall enter a decree directing the partition of such real estate, describing the same, to be made in accordance with the respective shares or interests of each of such parties entitled thereto, specify in such decree the share or interest of each party, and shall appoint three or more competent and disinterested persons as commissioners to make such partition in accordance with such decree and the law, a majority of which commissioners may act.

Source: Art. 6087, unchanged.

Rule 762. Writ of Partition.—The clerk shall issue a writ of partition, directed to the sheriff or any constable of the county, commanding such sheriff or constable to notify each of the commissioners of their appointment as such, and shall accompany such writ with a certified copy of the decree of the court directing the partition.

Source: Art. 6088, unchanged.

Rule 763. Service of Writ of Partition.—The writ of partition shall be served by reading the same to each of the persons named therein as commissioners, and by delivering to any one of them the accompanying certified copy of the decree of the court.

Source: Art. 6089, unchanged.

Rule 764. May Appoint Surveyor.—The court may, should it be deemed necessary, appoint a surveyor to assist the commissioners in making the partition, in which case the writ of partition shall name such surveyor, and shall be served upon him by reading the same to him.

Source: Art. 6090, unchanged.

Rule 765. Return of Writ.—A writ of partition, unless otherwise directed by the court, shall be made returnable twenty days from date of service on the commissioner last served; and the officer serving it shall endorse thereon the time and manner of such service.

Source: Art. 6091.

Change: Elimination of the provision for return to the next term of court, and substitution of a twenty day period.

Rule 766. Shall Proceed To Partition.—The commissioners, or a majority of them, shall proceed to partition the real estate described in the decree of the court, in accordance with the directions contained in such decree and with the provisions of law and these rules.

Source: Art. 6092, with minor textual change.

Rule 767. May Cause Survey.—If the commissioners deem it necessary, they may cause to be surveyed the real estate to be partitioned into several tracts or parcels.

Source: Art. 6093, unchanged.

Rule 768. Shall Divide Real Estate.—The commissioners shall divide the real estate to be partitioned into as many shares as there are persons entitled thereto, as determined by the court, each share to contain one or more tracts or parcels, as the commissioners may think proper, having due regard in the division to the situation, quantity and advantages of each share, so that the shares may be equal in value, as nearly as may be, in proportion to the respective interests of the parties entitled. The commissioners shall then proceed by lot to set apart to each of the parties entitled one of said shares, as determined by the decrees of the court.

Source: Art. 6094, unchanged.

Rule 769. Report of Commissioners.—When the commissioners have completed the partition, they shall report the same in writing and under oath to the court, which report shall show:

(a) The property divided, describing the same.

(b) The several tracts or parcels into which the same was divided by them, describing each particularly.

(c) The number of shares and the land which constitutes each share, and the estimated value of each share.

(d) The allotment of each share.

(e) The report shall be accompanied by such field notes and maps as may be necessary to make the same intelligible.

Source: Art. 6095, unchanged.

Rule 770. Property Incapable of Division.—Should the court be of the opinion that a fair and equitable division of the real estate, or any part thereof, cannot be made, it shall order a sale of so much as is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as under execution or by private sale through a receiver, if the court so order, and the proceeds thereof shall be returned into court and be partitioned among the persons entitled thereto, according to their respective interests.

Source: Art. 6096, unchanged.

Rule 771. Objections to Report.—Either party to the suit may file objections to any report of the commissioners in partition, and in such case a trial of the issues thereon shall be had as in other cases. If the report be found to be erroneous in any material respect, or unequal and unjust, the same shall be rejected, and other commissioners shall be appointed by the Court, and the same proceedings had as in the first instance.

Source: Art. 6097, unchanged.

SECTION 4. PARTITION OF PERSONAL PROPERTY

Rule 772. Procedure.—An action seeking partition of personal property as authorized by Art. 6101 of the Revised Civil Statutes of Texas, 1925, shall be commenced in the same manner as other civil suits, and the several owners or claimants of such property shall be cited as in other cases.

Source: Art. 6102, last clause with minor textual change.

Rule 773. Value Ascertained.—The separate value of each article of such personal property, and the allotment in kind to which each owner is entitled, shall be ascertained by the court, with or without a jury.

Source: Art. 6103, unchanged.

Rule 774. Decree of Court Executed.—When partition in kind of personal property is ordered by the judgment of the court, a writ shall be issued in

accordance with such judgment, commanding the sheriff or constable of the county where the property may be to put the parties forthwith in possession of the property allotted to each respectively.

Source: Art. 6104, unchanged.

Rule 775. Property Sold.—When personal property will not admit of a fair and equitable partition, the court shall ascertain the proportion to which each owner thereof is entitled, and order the property to be sold, and execution shall be issued to the sheriff or any constable of the county where the property may be, describing such property and commanding such officer to sell the same as in other cases of execution, and pay over the proceeds of sale to the parties entitled thereto, in the proportion ascertained by the judgment of the court.

Source: Art. 6105, unchanged.

SECTION 5. PARTITION: MISCELLANEOUS PROVISIONS

Rule 776. Construction.—No provision of the statutes or rules relating to partition shall affect the mode of proceeding prescribed by law for the partition of estates of decedents among the heirs and legatees, nor preclude partition in any other manner authorized by the rules of equity, which rules shall govern in proceedings for partition in all respects not provided for by law or these rules.

Source: Art. 6106, with minor textual change.

Rule 777. Pleading and Practice.—The same rules of pleading, practice and evidence which govern in other civil actions shall govern in suits for partition, when not in conflict with any provisions of the law or these rules relating to partition.

Source: Art. 6107, with minor textual change.

Rule 778. Costs.—The court shall adjudge the costs in a partition suit to be paid by each party to whom a share has been allotted in proportion to the value of such share.

Source: Art. 6109, unchanged.

SECTION 6. QUO WARRANTO

Rule 779. Joinder of Parties.—When it appears to the court or judge that the several rights of divers parties to the same office or franchise may properly be determined on one information, the court or judge may give leave to join all such persons in the same information in order to try their respective rights to such office or franchise.

Source: Art. 6254, unchanged.

Rule 780. Citation to Issue.—When such information is filed, the clerk shall issue citation as in civil actions, commanding the defendant to appear and answer the relator in an information in the nature of a quo warranto.

Source: Art. 6255.
Change: Elimination of reference to the terms of court.

Rule 781. Proceedings as in Civil Cases.—Every person or corporation who shall be cited as hereinbefore provided shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in cases of trial of civil cases in this State. Either party may prosecute an appeal or writ of error from any judgment rendered, as in other civil cases, subject, however, to the provisions of Rule 384, and the appellate court shall give preference to such case, and hear and determine the same as early as practicable. Amended by order of Aug. 18, 1947, effective Dec. 31, 1947.

Source: Art. 6256, unchanged.
Change by amendment effective December 31, 1947: The wording respecting Rule 384 has been added.

Rule 782. Remedy Cumulative.—The remedy and mode of procedure hereby prescribed shall be construed to be cumulative of any now existing.

Source: Art. 6258, unchanged.

SECTION 7. TRESPASS TO TRY TITLE

Rule 783. Requisites of Petition.—The petition shall state:

(a) The real names of the plaintiff and defendant and their residence, if known.

(b) A description of the premises by metes and bounds, or with sufficient certainty to identify the same, so that from such description possession thereof may be delivered, and state the county or counties in which the same are situated.

(c) The interest which the plaintiff claims in the premises, whether it be a fee simple or other estate; and, if he claims an undivided interest, the petition shall state the same and the amount thereof.

(d) That the plaintiff was in possession of the premises or entitled to such possession.

(e) That the defendant afterward unlawfully entered upon and dispossessed him of such premises, stating the date, and withholds from him the possession thereof.

(f) If rents and profits or damages are claimed, such facts as show the plaintiff to be entitled thereto and the amount thereof.

(g) It shall conclude with a prayer for the relief sought.

Source: Art. 7366, with minor textual change.

Rule 784. The Possessor Shall Be Defendant.—The defendant in the action shall be the person in possession if the premises are occupied, or some person claiming title thereto in case they are unoccupied.

Source: Art. 7370, unchanged.

Rule 785. May Join As Defendants, When.—The plaintiff may join as a defendant with the person in possession, any other person who, as landlord, remainderman, reversioner or otherwise, may claim title to the premises, or any part thereof, adversely to the plaintiff.

Source: Art. 7371, unchanged.

Rule 786. Warrantor, etc., May Be Made a Party.—When a party is sued for lands, the real owner or warrantor may make himself, or may be made, a party defendant in the suit, and shall be entitled to make such defense as if he had been the original defendant in the action.

Source: Art. 7368, unchanged.

Rule 787. Landlord May Become Defendant.—When such action shall be commenced against a tenant in possession, the landlord may enter himself as the defendant, or he may be made a party on motion of such tenant; and he shall be entitled to make the same defense as if the suit had been originally commenced against him.

Source: Art. 7369, unchanged.

Rule 788. May File Plea of "Not Guilty" Only.—The defendant in such action may file only the plea of "not guilty," which shall state in substance that he is not guilty of the injury complained of in the petition filed by the plaintiff against him, except that if he claims an allowance for improvements, he shall state the facts entitling him to the same.

Source: Art. 7372, unchanged.

Rule 789. Proof Under Such Plea.—Under such plea of "not guilty" the defendant may give in evidence any lawful defense to the action except the defense of limitations, which shall be specially pleaded.

Source: Art. 7373, unchanged.

Rule 790. Answer Taken As Admitting Possession.—Such plea or any other answer to the merits shall be an admission by the defendant, for the pur-

pose of that action, that he was in possession of the premises sued for, or that he claimed title thereto at the time of commencing the action, unless he states distinctly in his answer the extent of his possession or claim, in which case it shall be an admission to such extent only.

Source: Art. 7374, unchanged.

Rule 791. May Demand Abstract of Title.—After answer filed, either party may, by notice in writing, duly served on the opposite party or his attorney of record, not less than ten days before the trial of the cause, demand an abstract in writing of the claim or title to the premises in question upon which he relies.

Source: Art. 7376, unchanged.

Rule 792. Time to File Abstract.—Such abstract of title shall be filed with the papers of the cause within twenty days after the service of the notice, or within such further time as the court on good cause shown may grant; and, in default thereof, no evidence of the claim or title of such opposite party shall be given on trial.

Source: Art. 7377, unchanged.

Rule 793. Abstract Shall State, What.—The abstract mentioned in the two preceding rules shall state:

(a) The nature of each document or written instrument intended to be used as evidence and its date; or

(b) If a contract or conveyance, its date, the parties thereto and the date of the proof of acknowledgment, and before what officer the same was made; and

(c) Where recorded, stating the book and page of the record.

(d) If not recorded in the county when the trial is had, copies of such instrument, with the names of the subscribing witnesses, shall be included.

If such unrecorded instrument be lost or destroyed it shall be sufficient to state the nature of such instrument and its loss or destruction.

Source: Art. 7378.
Change: The word "articles" changed to read "rules."

Rule 794. Amended Abstract.—The court may allow either party to file an amended abstract of title, under the same rules, which authorize the amendment of pleadings so far as they are applicable; but in all cases the documentary evidence of title shall at the trial be confined to the matters contained in the abstract of title.

Source: Art. 7379, unchanged.

Rule 795. Rules in Other Cases Observed.—The trial shall be conducted according to the rules of pleading, practice and evidence in other cases in the district court and conformable to the principles of trial by ejectment, except as otherwise provided by these rules.

Source: Art. 7365, with minor textual change.

Rule 796. Surveyor Appointed, etc.—The judge of the court may, either in term time or in vacation, at his own discretion, or on motion of either party to the action appoint a surveyor, who shall survey the premises in controversy pursuant to the order of the court, and report his action under oath to such court. If said report be not rejected for good cause shown, the same shall be admitted as evidence on the trial.

Source: Art. 7380, unchanged.

Rule 797. Survey Unnecessary When.—Where there is no dispute as to the lines or boundaries of the land in controversy, or where the defendant admits that he is in possession of the lands or tenements included in the plaintiff's claim, or title, an order of survey shall be unnecessary.

Source: Art. 7381, unchanged.

Rule 798. Common Source of Title.—It shall not be necessary for the plaintiff to deraign title beyond a common source. Proof of a common source may be made by the plaintiff by certified copies of the deeds showing a chain of title to the defendant emanating from and under such common source. Before any such certified copies shall be read in evidence, they shall be filed with the papers of the suit three days before the trial, and the adverse party served with notice of such filing as in other cases. Such certified copies shall not be evidence of title in the defendant unless offered in evidence by him. The plaintiff may make any legal objection to such certified copies, or the originals thereof, when introduced by the defendant.

Source: Art. 7382, unchanged.

Rule 799. Judgment by Default.—If the defendant, who has been personally served with citation according to law or these rules fails to appear and answer by himself or attorney within the time prescribed by law or these rules for other actions in the district court, then judgment by default may be entered against him and in favor of the plaintiff for the title to the premises, or the possession thereof, or for both, according to the petition, and for all costs, without any proof of title by the plaintiff.

Source: Art. 7383, with minor textual change.

Rule 800. Proof Ex Parte.—If the defendant has been cited only by publication, and fails to appear and answer by himself, or by attorney of his own selection, or if any defendant, having answered, fails to appear by himself or attorney when the case is called for trial on its merits, the plaintiff shall make such proof as will entitle him prima facie to recover, whereupon the proper judgment shall be entered.

Source: Art. 7384.

Rule 801. When Defendant Claims Part Only.—Where the defendant claims part of the premises only, the answer shall be equivalent to a disclaimer of the balance.

Source: Art. 7385, unchanged.

Rule 802. When Plaintiff Proves Part.—Where the defendant claims the whole premises, and the plaintiff shows himself entitled to recover part, the plaintiff shall recover such part and costs.

Source: Art. 7386, unchanged.

Rule 803. May Recover a Part.—When there are two or more plaintiffs or defendants any one or more of the plaintiffs may recover against one or more of the defendants the premises, or any part thereof, or any interest therein, or damages, according to the rights of the parties.

Source: Art. 7387, unchanged.

Rule 804. The Judgment.—Upon the finding of the jury, or of the court where the case is tried by the court, in favor of the plaintiff for the whole or any part of the premises in controversy, the judgment shall be that the plaintiff recover of the defendant the title or possession, or both, as the case may be, of such premises, describing them, and where he recovers the possession, that he have his writ of possession.

Source: Art. 7388, unchanged.

Rule 805. Damages.—Where it is alleged and proved that one of the parties is in possession of the premises, the court or jury, if they find for the adverse party, shall assess the damages for the use and occupation of the premises. If special injury to the property be alleged and proved, the damages for such injury shall also be assessed, and the proper judgment shall be entered therefor, on which execution may issue.

Source: Art. 7389 (part). No change.

Rule 806. Claim for Improvements.—When the defendant or person in possession has claimed an allowance for improvements in accordance with Articles 7393–7401 of the Revised Civil Statutes of Texas,

1925, the claim for use and occupation and damages mentioned in the preceding rule shall be considered and acted on in connection with such claim by the defendant or person in possession.

Source: Art. 7390, with minor textual change.

Rule 807. Judgment Where Claim for Improvements Is Made.—Where a claim for improvements is successfully made under Arts. 7393 to 7401 of the Revised Civil Statutes of Texas, 1925, the judgment shall recite the estimated value of the premises without the improvements, and shall also include the conditions, stipulations and directions contained in Articles 7397, 7398 and 7399 of the Revised Civil Statutes of Texas, 1925, so far as applicable to the case before the court.

Source: Art. 7400, with minor textual change.

Rule 808. Former Laws Shall Govern, When.—Nothing in Title 124 of the Revised Civil Statutes of Texas, 1925, shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law, but the same shall be decided by the principles of the law under which the same accrued, or by which the same were regulated or in any manner affected.

Source: Art. 7392, with minor textual change.

Rule 809. These Rules Shall Not Govern, When.—Nothing in these rules relating to trespass to try title shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law, but the same shall be decided by the principles of the law under which the same accrued, or by which the same were regulated or in any manner affected.

Source: New rule.

SECTION 8. SUITS AGAINST NON-RESIDENTS

Rule 810. Requisites of Pleadings.—The petition in actions authorized by Article 1975 of the 1925 Revised Civil Statutes shall state the real names of the plaintiff and defendant, and shall describe the property involved with sufficient certainty to identify the same, the interest which the plaintiff claims, and such proceedings shall be had in such action as may be necessary to fully settle and determine the question of right or title in and to said property between the parties to said suit, and to decree the title or right of the party entitled thereto; and the court may issue the appropriate order to carry such decree, judgment or order into effect; and whenever such petition has been duly filed and citation thereon has been duly served by publication as required by Rules 114–116, the plaintiff may, at any time prior to entering the decree by leave of court first had and obtained file amended and supplemental pleadings that do not subject additional property to said suit without the necessity of reciting the defendants so cited as aforesaid.

Source: Art. 1977, with minor textual change.

Rule 811. Service by Publication in Actions Under Article 1975.—In actions authorized by Article 1975 of the 1925 Revised Civil Statutes of the State of Texas, service on the defendant or defendants may be made by publication as is provided by Rules 114–116 or by service of notice of the character and in the manner provided by Rule 108.

Source: Art. 1976 (part).
Change: Textual only. Art. 1976 embraces matter which is in part substantive, and in part procedural. The above portion is deemed procedural and continued as a rule.

Rule 812. No judgment by Default.—No judgment by default shall be taken in such case, but the facts entitling the plaintiff to judgment shall be exhibited to the court on the trial; and a statement of facts shall be filed as provided by law and these rules in suits against non-residents of this State where no appearance has been made by them.

Source: Art. 1978, with minor textual change.

Rule 813. Suit to Extinguish Lien.—If said suit shall be for the extinguishment of a lien or claim for money on said property that may be held by the defendant, the amount thereof, with interest, shall be ascertained by the court; and the same deposited in the registry of the court, subject to be drawn by the parties entitled thereto; but in such case no decree shall be entered until said sum is deposited; which fact shall be noted in said decree.

Source: Art. 1979, unchanged.

PART VIII. CLOSING RULES

Rule
814. Effective Date.
815. Substantive Rights Unaffected.
816. Jurisdiction and Venue Unaffected.
817. Rules by Other Courts.
818. Reference to Former Statutes.
819. Procedure Continued.
820. Workmen's Compensation Law.
821. Prior Court Rules Repealed.
822. Title.

Rule 814. Effective Date.—These rules shall take effect on September 1st, 1941. They shall govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure shall apply. All things properly done under any previously existing rule or statutes prior to the taking effect of these rules shall be treated as valid. Where citation or other process is issued and served in compliance with existing rules or laws prior to the taking effect of these rules, the party upon whom such citation or other process has been served shall have the time provided for under such previously existing rules or laws in which to comply therewith.

Source: Federal Rule 86.
Change: In effective date and the addition of last sentence.

Rule 815. Substantive Rights Unaffected.—These rules shall not be construed to enlarge or diminish any substantive rights or obligations of any parties to any civil action.

Source: New rule.

Rule 816. Jurisdiction and Venue Unaffected.—These rules shall not be construed to extend or limit the jurisdiction of the courts of the State of Texas nor the venue of actions therein.

Source: Federal Rule 82, with minor textual change.

Rule 817. Rules by Other Courts.—The Commission of Appeals, each Court of Civil Appeals, and each district and each county court may, from time to time, make and amend rules governing its practice not inconsistent with these rules. Copies of rules and amendments so made shall upon their promulgation be furnished to the Supreme Court of Texas. In all cases not provided for by these rules, the Courts of Civil Appeals and district and county courts may regulate their practice in any manner not inconsistent with these rules.

Source: Federal Rule 83, with minor textual change.

Rule 818. Reference to Former Statutes.—Wherever any statute or rule refers to any practice or procedure in any law, laws, statute or statutes, or to a title, chapter, section, or article of the statutes, or contains any reference of any such nature, and the matter referred to has been supplanted in whole or in part

by these rules, every such reference shall be deemed to be to the pertinent part or parts of these rules.

Source: New rule.

Rule 819. Procedure Continued.—All procedure prescribed by statutes of the State of Texas not specifically listed in the accompanying enumeration of repealed articles shall, insofar as the same is not inconsistent with the provisions of these rules, continue in accordance with the provisions of such statutes as rules of court. In case of inconsistency between the provisions of these rules and any statutory procedure not specifically listed as repealed, these rules shall apply.

Source: New rule.

Rule 820. Workmen's Compensation Law.—All portions of the Workmen's Compensation Law, Title 130 of the Revised Civil Statutes of Texas, 1925, and amendments thereto, which relate to matters of practice and procedure are hereby adopted and retained in force and effect as rules of court.

Source: New rule.

Rule 821. Prior Court Rules Repealed.—These rules shall supersede all Court Rules heretofore promulgated for any court; and all of said prior Court Rules are hereby repealed; provided, however, any rules of procedure heretofore adopted by a particular county or district court or by any Court of Civil Appeals which were not of general application but were solely to regulate procedure in the particular court promulgating such rules are to remain in force and effect insofar as they are not inconsistent with these rules.

Source: New rule.

Rule 822. Title.—These rules may be known and cited as the Texas Rules of Civil Procedure.

Source: Federal Rule 85, with minor textual change.

LIST OF REPEALED STATUTES

The following articles of the Revised Civil Statutes of 1925 and amendments and additions thereto (indicated, where given separate numbers by the publishers of Vernon's Annotated Statutes by the "a," "b," and "c" numbers used there) are deemed to be repealed by the Rules of Practice Act, Acts 1939, 46th Leg., p. 201, Sec. 1. All consecutive numbers in the enumeration are inclusive. Statutes marked with an asterisk were amended by the 46th Legislature and the amendments became effective subsequent to the effective date of the Rules of Practice Act.

ENUMERATION

Articles 24, 280, 282 (part. See Rule 593), 283–286, 289, 292–299, 303, 318, 320, 572–574, 933–940, 942–959, 1390, (part. See Rule 160), 1391 (part. See Rule 29), 1728 (part. See Rule 483), 1739–1747, 1755–1759, 1761–1780, 1789–1791, 1799, 1800a Sects. 6 and 11 (part. See Rule 518), 1825, 1836b and 1836c insofar as they relate to the Civil Appellate Courts, 1837–1838, 1839*, 1840, 1840a (insofar as it relates to the Civil Appellate Courts), 1841–1849, 1851–1883, 1918, 1922, 1926, 1971–1974, 1976 (part. See Rule 811), 1977–1980, 1988–1990, 1992–1993, 1994 Secs. 1 and 2, 1997–2002, 2002a*, 2002b*, 2002c*, 2003–2006, 2007*, 2008 (part. See Rules 87 and 385), 2009–2026, 2034–2039, 2040 (part. See Rule 111), 2041, 2041a Secs. 2 and 3, 2042–2049, 2050–2071, 2073–2074, 2077–2087, 2089, 2091, 2092 Secs. 1–18, 19–22, and 24–31*; 2093, 2093a, 2093b, 2116b Secs. 9–11, 2124–2132, 2138–2168, 2168a in civil actions, 2169–2190 (but not including 2172a), 2192–2198, 2199*, 2200–2211, 2213, 2215–2222, 2225, 2227–2236, 2237*, 2238–2245 (including 2241a*, 2241b), 2246*, 2247, 2247a, 2252–2254, 2256–2275, 2278–2282, (including 2278a), 2284–2286, 2288–2289, 2291–2292, 2320, 2328, 2381–2382, 2388–2389, 2394–2398, 2400–2412, 2419–2427, 2429–2449, 2452–2453, 2456–2459, 3699, 3701–3707, 3709, 3711–3713, 3734, 3736, 3738–3739, 3740*, 3741–3745, 3747, 3749–3756, 3758–3769, 3769c, 3770–3772, 3774, 3776–3784, 3785 (part. See Rule 636), 3788–3791, 3793–3797, 3801–3803, 3808–3809, 3811–3815, 3821–3823, 3828, 3831, 3906, 3911, 3976–3984, 3985*, 3986–3990, 3991*, 3993, 4078–4083, 4084 (part. See Rule 664), 4085–4092, 4094–4095, 4097–4098, 4100–4101, 4319–4327, 4647–4655, 4657–4659, 4661, 4662 (part. See Rule 385), 4663 (part. See Rule 693), 4670, 5074, 5228–5231, 5233–5235, 5540, 6083 (part. See Rule 756), 6084, 6085*, 6086–6097, 6102 (part. See Rule 772), 6103–6105, 6106–6107, 6109, 6246, 6251, 6254–6256, 6258, 6841–6843, 6845, 6849–6857, 6859–6864, 6875, 7365–7374, 7376–7388, 7389 (part. See Rule 805), 7390, 7400, 7402–7408, 7410–7416, 7419–7425.

Also, the following statutes have been repealed to the extent that they are in conflict with the Rules effective December 31, 1947: 29a, 7328, 7328.1, 7337, 7342, 7343, 7345b, 7681.

It is recognized that there are additional procedural provisions intermingled with the substantive portions of other articles of the statutes, and perhaps some procedural articles standing alone, which have not been listed above. By Rule 819 these procedural and practice provisions are continued in full force unchanged. No doubt, with the passage of time all of these provisions will be segregated and brought forward expressly into the tabulation and into the rules.

REPEALED RULES

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